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111TH CONGRESS
1ST SESSION

H. R. 4321

To provide for comprehensive immigration reform, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 15, 2009

Mr. ORTIZ (for himself, Mr. CONYERS, Mr. SERRANO, Mr. RANGEL, Mr. PASTOR of Arizona, Mr. STARK, Mr. GUTIERREZ, Mr. WAXMAN, Mr. BECERRA, Mr. FRANK of Massachusetts, Ms. ROYBAL-ALLARD, Mr. BERMAN, Ms. VELÁZQUEZ, Mrs. CHRISTENSEN, Mr. HINOJOSA, Mr. TOWNS, Mr. REYES, Mr. LEWIS of Georgia, Mr. BACA, Mr. PALLONE, Mr. GONZALEZ, Mr. ANDREWS, Mrs. NAPOLITANO, Mr. MCDERMOTT, Mr. GRIJALVA, Mr. ENGEL, Mr. CUELLAR, Mr. FALEOMAVAEGA, Mr. SALAZAR, Mr. NEAL of Massachusetts, Mr. SIRES, Mr. ABERCROMBIE, Mr. LUJÁN, Ms. NORTON, Mr. PIERLUISI, Mr. MORAN of Virginia, Mr. SABLAN, Mr. NADLER of New York, Mr. OLVER, Ms. WATERS, Ms. CORRINE BROWN of Florida, Mr. FARR, Mr. FILNER, Mr. GENE GREEN of Texas, Mr. HASTINGS of Florida, Ms. EDDIE BERNICE JOHNSON of Texas, Mrs. MALONEY, Mr. RUSH, Mr. SCOTT of Virginia, Ms. WOOLSEY, Mr. BLUMENAUER, Mr. FATTAH, Mr. JACKSON of Illinois, Ms. JACKSON-LEE of Texas, Mrs. CAPPS, Mr. DAVIS of Illinois, Ms. DEGETTE, Ms. KILPATRICK of Michigan, Mr. KUCINICH, Ms. LEE of California, Mr. MCGOVERN, Mr. MEEKS of New York, Ms. SCHAKOWSKY, Ms. BERKLEY, Mr. CAPUANO, Mr. CROWLEY, Mr. WEINER, Mr. CLAY, Mr. HONDA, Mr. ISRAEL, Ms. WATSON, Ms. BORDALLO, Mr. MEEK of Florida, Mr. CLEAVER, Mr. AL GREEN of Texas, Ms. MATSUI, Ms. MOORE of Wisconsin, Mr. CARSON of Indiana, Ms. CLARKE, Ms. EDWARDS of Maryland, Mr. ELLISON, Ms. FUDGE, Ms. HIRONO, Mr. JOHNSON of Georgia, Mr. PERLMUTTER, Ms. RICHARDSON, Mr. WELCH, Ms. CHU, Mr. HEINRICH, Ms. PINGREE of Maine, Mr. POLIS of Colorado, and Mr. QUIGLEY) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committees on Homeland Security, Armed Services, Foreign Affairs, Natural Resources, Ways and Means, Education and Labor, Oversight and Government Reform, and House Administration, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

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 for America's Security and Prosperity Act of 2009'', the ''Comprehensive Immigration Reform ASAP Act of 2009'', or as the ''CIR ASAP Act of 2009''.

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

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1 **SEC. 2. FINDINGS.**

2 Congress makes the following findings:

(1) Federal immigration laws must uphold America's long history of being a Nation of immigrants from every continent in the world, and reaffirm our Nation's commitment to strong and united families, civil rights, economic opportunity and diversity.

(2) The Government of the United States should reduce the deficit by ensuring that all individuals and employers pay their fair share of taxes and contribute equally to the prosperity of our great Nation.

(3) The Government of the United States has an obligation to ensure the labor rights of all workers in our country, and end the driving down of wages and workplace standards that exists today due to our broken immigration system. Unscrupulous employers should not be able to profit off of the backs of a workforce with no voice in the workplace or civic society.

(4) The Government of the United States also has an obligation to ensure the growth and vitality of honest American businesses that are playing by the rules and fueling our economic recovery.

(5) The labor and immigration policies of the United States Government should be modernized to

reflect the current needs of American workers and the American economy.

(6) The Government of the United States cannot effectively carry out its national security policies unless it requires undocumented immigrants to come forward and participate fully in our communities and legally in the economy of the United States, so that enforcement efforts are concentrated on the truly bad actors.

(7) Elimination of America's immigrant workforce is not an effective or honest solution to Americas economic crisis. We need a solution that levels the playing field and promotes equal rights for all.

(8) Dividing American families in not a moral or just solution to the broken immigration system. We need policies that treat all families equally and keep them together, to support each other and build strong communities.

(9) Flawed immigration laws and persistent unequal administration of justice at the local level, based on race or national origin, has undermined effective community policing by discouraging the reporting of crime and cooperation with prosecutors in immigrant communities, due to well-founded fears of immigration enforcement action against them. This

puts entire communities at risk and undermines public safety for all.

(10) The Government of the United States should ensure that racial profiling and unequal administration of the law based on race or national origin is not permitted by any agency of Federal, State or local government bodies.

(11) Our Government should ensure that our Nation's borders are secure by investing in effective strategies, eliminating the millions of dollars currently being allocated to ineffective ones, and by requiring consultation with state and local communities on both the northern and southern borders before implementing new border enforcement strategies.

(12) Foreign governments, particularly those that share an international border with the United States, must play a critical role in securing international borders and deterring illegal entry of foreign nationals into the United States.

(13) The Government of the United States has an obligation to reaffirm its commitment to effective immigrant integration by supporting the teaching and promoting the learning of English.

(14) Comprehensive immigration reform and strong enforcement of immigration laws will encourage legal immigration, deter illegal immigration, and promote the economic and national security interests of the United States.

SEC. 3. REFERENCE TO THE IMMIGRATION AND NATIONALITY ACT.

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, 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. 4. 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. 5. 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 SECURITY AND ENFORCEMENT

SEC. 101. SENSE OF CONGRESS.

It is the sense of Congress that—

(1) the Secretary of Homeland Security should establish a national strategic plan for short-term and long-term border security with improved accountability and transparency in agency functions;

(2) the Secretary's border security priorities must support and strengthen the significant advances in operational control of the border;

(3) the Secretary must secure our Nation's ports of entry and facilitate the flow of commerce and travel;

(4) the ports of entry to the United States require additional assets, personnel, infrastructure and improvements in technology;

(5) although states along the Southern and Northern borders play a unique role in supporting the Federal Government, border security and en-

forcement of the immigration laws are the responsibility of the Federal Government;

(6) combating human smuggling, arms trafficking and drug trafficking are essential to border security;

(7) protecting the economic and civic vitality of the border region is central to border security; and

(8) effective border security depends on sustained international cooperation.

Subtitle A—Border Security

SEC. 111. 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 maintain 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) 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.

(2) 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, 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.

(3) 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 to include—

(A) a comprehensive assessment of risks in terms of cost, probability, and threats to society and risk prevention and response measures currently taken and potentially taken relative to that assessment of risks;

(B) prevention efforts and response measures to address such risks, whether already underway or planned;

(C) recommendations on realignment of programs, locations, and resources to best address the comprehensive assessment of risks.

(4) 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.

(5) 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.

(6) An assessment of existing programs, activities and technologies used for border security and the effect of the use of such efforts and technologies on civil rights, family unity, private property rights, privacy rights, and civil liberties, including an assessment of efforts to take into account asylum seek-

ers, trafficking victims, unaccompanied minor aliens, and other vulnerable populations.

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

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

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

(10) 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 management.

(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 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 change of such Strategy that the Secretary determines is necessary, not later than 30 days after such determination.

(f) IMMEDIATE ACTION.—Nothing in this section may be construed to relieve the Secretary of the responsibility to take all actions necessary and appropriate to

maintain and enhance operational control of the international land and maritime borders of the United States.

SEC. 112. INCREASE IN NUMBER OF CUSTOMS AND BORDER PROTECTION OFFICERS.

(a) CUSTOMS AND BORDER PROTECTION OFFICERS.—During the 5-year period between fiscal years 2010 and 2014, the Secretary of Homeland Security shall, subject to the availability of appropriations for such purpose, increase by not fewer than 5,000 the total number of full-time, active-duty Customs and Border Protection Officers within United States Customs and Border Protection for posting at United States ports of entry above the number of such officers for which funds were made available during fiscal year 2009.

(b) AGRICULTURE SPECIALISTS.—During the 5-year period between fiscal years 2010 and 2014, the Secretary of Homeland Security shall, subject to the availability of appropriations for such border security purposes, increase by not fewer than a total of 1,200 the number of full-time Customs and Border Protection agriculture specialists for United States ports of entry above the number of such support personnel for which funds were made available during fiscal year 2009.

(c) BORDER SECURITY SUPPORT PERSONNEL.—During the 5-year period between fiscal years 2010 and

2014, the Secretary of Homeland Security shall, subject to the availability of appropriations for such purpose, increase by not fewer than a total of 350 the number of full-time border security support personnel for United States ports of entry above the number of such support personnel for which funds were made available during fiscal year 2009.

SEC. 113. IMPROVING PORTS OF ENTRY FOR BORDER SECURITY AND OTHER PURPOSES.

(a) IN GENERAL.—There are authorized to be appropriated to the Administrator of the General Services Administration $1,000,000,000 for each of fiscal years 2010 through 2014 to make improvements to existing ports of entry in the United States to improve border security and for other purposes.

(b) PRIORITY.—In making improvements described in subsection (a), the Administrator of the General Services Administration, in coordination with the Commissioner of Customs and Border Protection, shall give priority to the ports of entry that the Administrator determines are in most need of repair to improve border security and for other purposes in accordance with port of entry infrastructure assessment studies required in section 603 of title VI, division E, of the Consolidated Appropriations Act of 2008 (Public Law 101–161).

SEC. 114. INVENTORY OF PERSONNEL.

(a) INVENTORY.—The Secretary shall identify and inventory the current personnel or other human resources dedicated to border security and enforcement prior to any increase in personnel or other human resources.

(b) REPORT.—The Secretary shall submit the inventory required in subsection (a) to the following congressional committees, 90 days after the enactment of this Act—

(1) the Committee on Homeland Security and Governmental Affairs and the Committee on the Judiciary of the Senate;

(2) the Committee on Homeland Security and the Committee on the Judiciary of the House of Representatives; and

(3) the Committee on Oversight and Government Reform of the House of Representatives.

SEC. 115. STANDARDS OF PROFESSIONAL CONDUCT.

(a) ESTABLISHMENT OF STANDARDS.—Not more than 90 days after the date of enactment of this Act, the Secretary of Homeland Security shall establish clear standards of professional conduct for interaction with the public, for all Customs and Border Protection agents, U.S. Border Patrol agents, Immigration and Customs Enforcement agents, and Agricultural Inspectors stationed within

100 miles of all land and marine borders and at ports of entry.

(b) PURPOSE.—These standards of professional conduct will provide agents with a better understanding of the prohibitions and limitations pertaining to their conduct and activities while representing the Department of Homeland Security. These standards are intended to—

(1) alert agents to some of the more sensitive and often problematic matters involved in agent conduct;

(2) specify, where possible, actions and inactions that are contrary to and that conflict with the duties and responsibilities of Department of Homeland security agents; and

(3) guide agents in conducting themselves in a manner that reflects standards of deportment and professionalism.

(c) STANDARDS.—Department of Homeland Security agents stationed within 100 miles of all land and marine borders and at ports of entry—

(1) shall not violate any law or any agency policy, rule, or procedure;

(2) shall obey all lawful orders;

(3) shall not engage in any conduct or activities on- or off-duty that reflect discredit on the agents,

tend to bring the agency into disrepute, or impair its efficient and effective operation;

(4) shall conduct themselves toward the public in a civil and professional manner that connotes a service orientation and that will foster public respect and cooperation;

(5) shall treat violators, or perceived violators, with respect and courtesy, guard against employing an officious or overbearing attitude or language that may belittle, ridicule, or intimidate the individual, or act in a manner that unnecessarily delays the performance of their duty;

(6) while recognizing the need to demonstrate authority and control over suspects and detainees, agents shall adhere to this agency's use-of-force policy and shall observe the civil rights and protect the well-being of those in their charge; and

(7) shall not use their agency powers to resolve personal grievances (e.g., those involving the officer, family members, relatives, or friends) with individuals. In cases where there is personal involvement with a member of the public that would reasonably require law enforcement intervention, agents shall summon other on-duty personnel and a supervisor.

(d) OVERSIGHT AND EVALUATION.—The Department of Homeland Security shall develop and implement a plan that applies the aforementioned standards in officer evaluation and supervisor evaluation. This plan shall include the following provisions to ensure responsibility and protect civil rights:

(1) Adherence to the standards of professional conduct shall be a central criterion in the change from probationary to journeyman status, as well as periodic evaluations and promotions of officers.

(2) Managers and senior officers will be held responsible for—

(A) performance according to these standards;

(B) assessments of subordinates according to these standards; and

(C) performance of their subordinates on these standards, with meaningful penalties to supervisors for failures of subordinates to adhere to such standards.

(3) The Department shall establish strong penalties for failures to follow the standards of professional conduct that were unaddressed until exposed by complaint processes or Inspector General investigations. However, organizational peers and superi-

ors who uncover and act on failures or abuses shall be exempt from such penalties.

(4) Agents should not be indemnified when it is determined that a violation of civil rights standards occurred.

(e) EXCEPTION.—The standards of conduct set forth in this section are not intended to serve as an exhaustive treatment of requirements, limitations, or prohibitions on agent conduct and activities established by the Secretary of Homeland Security.

(f) NOTICE.—The standards of conduct established under this section shall be posted at all ports of entry in locations easily viewed by members of the public.

(g) COMPLAINTS.—Not more than 180 days after enactment, the Secretary shall, in consultation with the Office of Civil Rights and Civil Liberties, establish a uniform and standardized process for the public regarding complaints against all Customs and Border Protection agents, U.S. Border Patrol agents, and Agricultural Inspectors for violations of standards of professional conduct. The complaint process shall—

(1) quickly review, effectively investigate, meaningfully resolve complaints and identify patterns of abuse or malfeasance and be accessible, transparent, consistent, effective, and fair;

(2) apply uniformly to all Border Patrol Sectors and Ports of Entry;

(3) specify to whom, how, and where complaints are to be filed;

(4) be visible to the public at all ports of entry and interior checkpoints, and be accessible in multiple languages;

(5) receive staff and funding commensurate with the quantity of complaints submitted and with the funding disbursed to Department enforcement initiatives;

(6) establish a publicly accessible national, standardized database capable of tracking and analyzing complaints and their resolution; and

(7) provide publicly accessible records, with copies of complaints and their resolutions permanently preserved and available for inspection, while maintaining the confidentiality of complainants' identities.

(h) COMPLAINANTS.—The following shall apply to all complainants:

(1) Any interested party may file a complaint through the complaint procedure, including a legal representative.

(2) Complainants shall be protected from retaliatory action by law enforcement.

(3) No officer of the US may use the information from a complaint to initiate removal proceedings or removals against any person filing a complaint or identified in the complaint, nor remove any individual involved in a complaint while the complaint is pending.

(4) There shall be no publication of information to related to an individual involved in a complaint which would result in identification of the individual.

(5) Complainants shall receive full assistance from the Department in filing complaints, including language assistance, accommodations for disabilities, and accurate and complete responses to their questions.

(i) REPORTING.—The Secretary shall report annually to the following Congressional Committees on the number and type of complaints received in each sector, demographic of complainants, results of investigations including violations of standards and any disciplinary actions taken, and identifying any complaint patterns that could be prevented or reduced by policy or practice changes—

(1) the Committee on Homeland Security and Governmental Affairs and the Committee on the Judiciary of the Senate;

(2) the Committee on Homeland Security and the Committee on the Judiciary of the House of Representatives; and

(3) the Committee on Oversight and Government Reform of the House of Representatives.

SEC. 116. INVENTORY OF ASSETS.

(a) INVENTORY.—The Secretary shall identify and inventory the current assets, equipment, supplies, or other physical resources dedicated to border security and enforcement prior to any increase in assets, equipment, supplies or other physical resources.

(b) REPORT.—The Secretary shall submit the inventory required in subsection (a) to the following congressional committees, 90 days from the enactment of this Act—

(1) the Committee on Homeland Security and Governmental Affairs and the Committee on the Judiciary of the Senate;

(2) the Committee on Homeland Security and the Committee on the Judiciary of the House of Representatives; and

(3) the Committee on Oversight and Government Reform of the House of Representatives.

SEC. 117. CUSTOMS BORDER PATROL AND BORDER PROTECTION ASSETS.

(a) PERSONAL EQUIPMENT.—

(1) BODY 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 often than once every five years.

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

(3) UNIFORMS.—The Secretary shall ensure that all agents are provided with all necessary uniform items, including outerwear suited to the cli-

mate, 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 such items become worn or unserviceable or no longer fit properly

(b) HELICOPTERS AND POWER BOATS.—

(1) HELICOPTERS.—The Secretary shall conduct a review of asset needs, and if determined to be insufficient, shall increase the number of helicopters under the control of the Border Patrol. The Secretary shall ensure that appropriate types of helicopters are procured for the various missions being performed.

(2) POWER BOATS.—The Secretary shall conduct a review of asset needs and if determined to be insufficient, shall increase the number of power boats under the control of the 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 conduct a review of asset needs and if determined to be insufficient, establish a fleet of motor vehicles appropriate for use by the Border Patrol. The Secretary shall ensure that there are sufficient numbers and types of other motor vehicles to support the mission of the Border Patrol.

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

(A) be appropriate for the mission of the 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.

(d) ELECTRONIC EQUIPMENT.—

(1) PORTABLE COMPUTERS.—The Secretary shall ensure that each police-type motor vehicle in the fleet of the 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 Border Patrol.

(2) RADIO EQUIPMENT.—The Secretary shall augment the existing radio communications system so that all law enforcement personnel working in each area where 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.

(3) HANDHELD GLOBAL POSITIONING SYSTEM DEVICES.—The Secretary shall ensure that each Border Patrol agent who is determined by the Secretary to need a handheld global positioning device to effectively and safely carry out his or her duties is issued a state-of-the-art handheld global positioning system device for navigational purposes.

(4) 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 Border Patrol agent working during the hours of darkness to be equipped with a portable night vision device.

(e) APPROPRIATIONS.—There are authorized to be appropriated to the Secretary such sums as may be necessary for each of fiscal years 2011 through 2015 to carry out this section.

SEC. 118. TECHNOLOGICAL ASSETS.

(a) INCREASED AVAILABILITY OF EQUIPMENT.—The Secretary and the Secretary of Defense shall analyze use of authorities provided to the Secretary of Defense under chapter 18 of title 10, United States Code, and whether 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 deter criminal activity and terrorist threats.

(b) REPORT.—Not later than 180 days after the date of enactment of this Act, the Secretary and the Secretary of Defense shall submit to Congress a report that contains

(1) an analysis 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) an analysis of projected future use of Department of Defense equipment to assist such surveillance activities, including any increases;

(3) an analysis of the types of equipment and other support to be provided by the Secretary of Defense under such plan during the one-year period beginning on the date of the submission of the report;

(4) an analysis of costs and cost-effectiveness related to any increase in the availability and use of Department of Defense equipment; and

(5) an analysis of projected schedules for implementation.

(c) 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.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary such sums as may be necessary for each of fiscal years 2011 through 2015 to carry out this section.

SEC. 119. 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. 120. 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 enactment of this Act.

(3) A description of how the Commissioner of the United States Customs and Border Protection 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.

(8) A description of the demonstration program to fully integrate and utilize aerial surveillance technologies developed pursuant to section 121(a).

(9) A description of the Integrated and Automated Surveillance demonstration program established pursuant to section 121(b).

(c) SUBMISSION TO CONGRESS.—Not later than 180 days after the date of enactment of this Act, the Secretary shall submit to Congress the plan required by this section.

SEC. 121. SURVEILLANCE TECHNOLOGIES PROGRAMS.

(a) AERIAL SURVEILLANCE DEMONSTRATION 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 a demonstration 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.

(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, cost-effectiveness, reliability, and minimal impact on border residential areas;

(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;

(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; and

(E) conduct a privacy impact assessment with the Officer for Civil Rights and Civil Liberties with the Department that includes recommendations with respect to ensuring the civil liberties and civil rights of individuals in surrounding communities.

(3) ADDITIONAL REQUIREMENTS.—

(A) IN GENERAL.—The demonstration program developed under this subsection may 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 developing the demonstration program and assessing the effectiveness of the utilization of such technologies.

(5) REPORT TO CONGRESS.—Not later than 180 days after developing the demonstration program under this subsection, the Secretary shall submit to Congress a report regarding such program. The Secretary shall include in the report a description of such program together with any recommendations that the Secretary finds appropriate for implementing or terminating the program.

(b) INTEGRATED AND AUTOMATED SURVEILLANCE DEMONSTRATION PROGRAM.—

(1) REQUIREMENT FOR PROGRAM.—Subject to the availability of appropriations, the Secretary shall establish a demonstration program to procure additional unmanned aerial vehicles, cameras, poles, sensors, satellites, radar coverage, and other technologies necessary to enhance operational control of the international borders of the United States. Such program shall be known as the Integrated and Automated Surveillance Demonstration Program.

(2) PROGRAM COMPONENTS.—The Secretary shall ensure, to the maximum extent feasible, that—

(A) the technologies utilized in the Integrated and Automated Surveillance Demonstration Program are integrated and function cohesively in an automated fashion, including the

integration of motion sensor alerts and cameras in a manner where a sensor alert automatically activates a corresponding camera to pan and tilt in the direction of the triggered sensor;

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

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

(D) surveillance video taken by such cameras is able to be viewed at multiple designated communications centers;

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

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

(G) performance measures are developed and applied that can evaluate whether the Program is providing desired results and increasing response effectiveness in monitoring and detecting illegal intrusions along the international borders of the United States;

(H) plans are developed under the Program to streamline site selection, site valida-

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 one year after the initial implementation of the Integrated and Automated Surveillance Demonstration 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 or terminating 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 Demonstration Program.

(B) REVIEW BY THE INSPECTOR GENERAL.—

(i) IN GENERAL.—The Inspector General of the Department shall review each new contract related to the Program that has a value of more than $5,000,000 in a timely manner, to determine whether such contract fully complies with applicable cost requirements, performance objectives, program milestones, and schedules.

(ii) REPORTS.—The Inspector General shall report the findings of each review carried out under clause (i) 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 section.

SEC. 122. BORDER SECURITY SEARCHES OF ELECTRONIC DEVICES.

(a) RULE.—Not later than 180 days after the date of the enactment of this Act, the Secretary, acting through the Commissioner of United States Customs and Border Protection, in coordination with the Assistant Secretary of Homeland Security for United States Immigration and Customs Enforcement and the senior official appointed pursuant to section 222 of the Homeland Security Act of 2002 (6 U.S.C. 142), shall issue a rule with respect to the scope of and procedural and record keeping requirements associated with border security searches of electronic devices.

(b) CONTENT.—The rule issued pursuant to subsection (a) shall include the following:

(1) A requirement that information collected during a border security search of an electronic device that is determined to be commercial information, including trade secrets, information subject to

attorney-client privilege, information subject to doctor-patient privilege, or information subject to another privilege or protection shall be handled consistent with the laws, rules, and regulations governing such information and shall not be shared with a Federal, State, local, tribal, or foreign agency unless it is determined that such agency has the mechanisms in place to comply with such laws, rules, and regulations.

(2) A requirement that authorized agents, to the greatest extent practicable, conduct all border security searches of electronic devices at a port of entry in the presence of a supervisor and, where appropriate, in the presence of the individuals whose electronic devices are subject to such searches.

(3) A determination of the number of days that an electronic device subjected to a border security search or the information collected from such device may be retained, unless probable cause exists, that prohibits retention exceeding the period necessary to translate, decrypt, or reasonably search such device or information and that requires such information to be destroyed if in the custody of an authorized agent after such number of days.

(4) A requirement that if information collected from an electronic device subjected to a border security search is copied, shared, retained, or entered into an electronic database, the individual from whose electronic device such information is collected shall receive written notification of such copying, sharing, retention, or entry unless such notification would hinder an investigation involving national security or would meet another criteria established by the Secretary in the rule.

(5) A requirement that an individual subjected to a border security search of an electronic device shall receive a receipt for such device if such device is removed from the possession of such individual.

(6) A requirement that an individual subjected to a border security search of an electronic device shall receive notice of how to report abuses or concerns and how to seek redress from the Department of Homeland Security.

(7) A requirement that information on the rights of individuals with respect to border security searches and Department of Homeland Security redress procedures shall be posted at all ports of entry in locations that are likely to be viewed by individuals subject to border security searches.

(8) A privacy impact assessment of the rule, as prepared by the senior official appointed pursuant to section 222 of the Homeland Security Act of 2002, that includes recommendations with respect to the copying, sharing, retention, and entry into an electronic database of personally identifiable information collected from electronic devices subjected to a border security search.

(9) A civil liberties impact assessment of the rule, as prepared by the Officer for Civil Rights and Civil Liberties of the Department of Homeland Security.

(c) TRAINING AND AUDITING WITH RESPECT TO SEARCHES.—

(1) TRAINING.—The Secretary shall provide each authorized agent with appropriate training to conduct border security searches of electronic devices at ports of entry in accordance with the rule issued pursuant to subsection (a). The training shall include instruction on constitutional, privacy, civil rights, and civil liberties issues related to such searches.

(2) AUDITING.—The Secretary, acting through the Inspector General of the Department of Homeland Security, shall develop and annually administer

an auditing mechanism to review whether authorized agents are conducting border security searches of electronic devices at ports of entry in accordance with the rule issued pursuant to subsection (a).

(d) REPORT.—Not later than 180 days after the effective date of the rule issued pursuant to subsection (a), and quarterly thereafter, the Secretary shall submit to the Committee on Homeland Security of the House of Representatives and to the Committee on Homeland Security and Governmental Affairs of the Senate a report that shall include the following:

(1) A description of the activities of authorized agents with respect to border security searches of electronic devices at ports of entry.

(2) A description of the manner in which the Department of Homeland Security has complied with this Act.

(3) The number, by port of entry, of border security searches of electronic devices at ports of entry conducted during the reporting period.

(4) The number, by port of entry, of instances during the reporting period that information from an electronic device subjected to a border security search was retained, copied, shared, or entered in an electronic database, including the number of elec-

tronic devices retained as the result of a border security search.

(5) The race, ethnicity, national origin, and citizenship of each individual whose electronic device was subjected to a border security at a port of entry search during the reporting period, to determine the existence or absence of racial profiling.

(6) The number of instances during the reporting period that information collected from an electronic device subjected to a border security search at a port of entry was referred to a law enforcement or intelligence agency for further action, including whether such information resulted in a prosecution or conviction.

(e) DEFINITIONS.—In this section, the following definitions apply:

(1) AUTHORIZED AGENT.—The term ''authorized agent'' means an agent, officer, or official of United States Customs and Border Protection, United States Immigration and Customs Enforcement, or any other office or agency of the Department of Homeland Security who is authorized to conduct a border security search.

(2) BORDER SECURITY SEARCH.—The term ''border security search'' means a search by an au-

thorized agent of persons, baggage, or cargo entering, departing, or passing through the United States through any port of entry.

(3) ELECTRONIC DEVICE.—The term ''electronic device'' means an electronic, magnetic, optical, electrochemical, or other high-speed data processing device performing logical, arithmetic, or storage functions, such as a computer, a cellular telephone, or any other device used for electronic communication or for storing electronic, digital or analog data, and which includes any data storage facility or communications facility directly related to or operating in conjunction with such device.

SEC. 123. BORDER RELIEF GRANT PROGRAM.

(a) GRANTS AUTHORIZED.—

(1) IN GENERAL.—The Attorney General is authorized to award grants to—

(A) eligible law enforcement agencies, or a coalition of such agencies, including sheriff's offices, police departments and tribal police departments; and

(B) institutions of higher education that provide assistance to law enforcement agencies in counties described in subparagraph (A) or

(B) of subsection (d)(1) to provide the resources described in subsection (b)(4).

(2) COMPETITIVE BASIS.—The Attorney General shall award grants under this section on a competitive basis.

(3) PRIORITY.—In awarding grants for the uses described in paragraphs (1) through (3) of subsection (b), the Attorney General shall give priority to law enforcement agencies:

(A) located in a county that is within 100 miles from the United States border with Mexico or Canada; and

(B) in compliance with Federal and State racial profiling laws and guidelines.

(4) DURATION.—Grants awarded under this section shall not exceed two years. Prior awardees must reapply to be considered for continued funding.

(5) PROHIBITION.—The Attorney General shall not award a grant to any applicant that is under investigation for violations of federal or state racial profiling laws or guidelines.

(b) USE OF FUNDS.—Grants awarded under this section may only be used to provide additional resources for eligible law enforcement agencies to address drug-related criminal activity, and for the training and assistance de-

scribed in paragraph (4) for organizations described in subsection (a)(3), including resources to—

(1) combat criminal activities along the Northern and Southern border by—

(A) obtaining, upgrading, or maintain equipment;

(B) hiring additional personnel;

(C) reimbursing operational expenditures, including overtime and transportation costs; and

(D) providing other assistance necessary to address drug-related criminal activity;

(2) facilitate information sharing and collaboration by—

(A) establishing, maintaining, or enhancing multi-jurisdictional intelligence gathering and sharing activities;

(B) facilitating regional crime prevention and reduction efforts; and

(C) strengthening partnerships between Federal, tribal, State, and local law enforcement agencies;

(3) enhance jails, community corrections, and detention operations by—

(A) improving the administration and operations of correction functions related to reducing and preventing criminal narcotics activity;

(B) improving access to intelligence and collaboration between law enforcement and correctional system personnel;

(C) reducing the recidivism rates of drug offenders; and

(D) hiring detention, probation, parole, and other corrections personnel for implementation of the efforts described in this paragraph; and

(4) provide training and technical assistance, including training and assistance related to—

(A) narcotics-related kidnapping negotiation and rescue tactics;

(B) intelligence and information sharing on drug trafficking organizations; and

(C) the interdiction of narcotics, weapons, and illegal drug proceeds.

(c) APPLICATION.—

(1) IN GENERAL.—Each eligible law enforcement agency, or coalition of such agencies, seeking a grant under this section shall submit an application to the Attorney General at such time, in such

manner, and accompanied by such information as the Attorney General may reasonably require.

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

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

(B) disclose whether the applicant has ever been investigated for or convicted of violation of Federal or State racial profiling laws or guidelines; and

(C) provide such additional assurances as the Attorney General determines to be essential to ensure compliance with the requirements under this section.

(d) MONITORING AND OVERSIGHT.—

(1) Each grantee shall submit to the Attorney General documentation of the use of grant funds, including an assessment of their utility in protecting border community safety, the prevention of smuggling activities, and the apprehension of persons involved in violence and organized crime.

(2) These reports will determine whether the grantee uses funds appropriately and should be considered for a renewal grant.

(e) DEFINITIONS.—In this section:

(1) ELIGIBLE LAW ENFORCEMENT AGENCY.—The term ''eligible law enforcement agency'' means a tribal, State, or local law enforcement agency, including a community corrections agency and any agency that employs prosecutors, probation officers, or parole officers, which is located or performs duties in—

(A) a county that is not more than 100 miles from a United States border with Mexico;

(B) a county that is not more than 100 miles from a United States border with Canada; or

(C) a jurisdiction that has been designated by the Director of the Office of Drug Control Policy as a High Intensity Drug Trafficking Area.

(2) HIGH INTENSITY DRUG TRAFFICKING AREA.—The term ''High Intensity Drug Trafficking Area'' means any jurisdiction designated as a ''High Intensity Drug Trafficking Area'' by the National Drug Control Program under section 707 of the Office of National Drug Control Policy Reauthorization Act of 1998 (21 U.S.C. 1706).

(f) ASSESSMENT AND REPORT.—The Attorney General shall submit a bi-annual report assessing the success

of the program in combating and reducing drug-trafficking and drug-related criminal activity, cost-effectiveness of the program, and future value and viability of the program to—

(1) the Committee on the Judiciary of the House of Representatives; and

(2) the Committee on the Judiciary of the Senate.

(g) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated $100,000,000 for each of the fiscal years 2011 through 2015 to carry out the provisions of this section.

(2) ALLOCATION OF AUTHORIZED FUNDS.—Of the amounts appropriated pursuant to paragraph (1)—

(A) not more than 33 percent may be set aside for High Intensity Drug Trafficking Areas; and

(B) not more than 30 percent may be used for activities described in paragraphs (3) and (4) of subsection (b).

(3) SUPPLEMENT NOT SUPPLANT.—Amounts appropriated for grants pursuant to paragraph (1) shall be used to supplement and not to supplant

other tribal, State, and local public funds obligated for the purposes provided under this section.

SEC. 124. NORTHERN AND SOUTHERN BORDER DRUG 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 State and county prosecutors located in States along the Northern or Southern border of the United States for prosecuting federally initiated and referred drug cases.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as necessary for each of the fiscal years 2011 through 2015 to carry out subsection (a).

SEC. 125. OPERATION STREAMLINE PROSECUTION INITIATIVE.

(a) SUSPENSION OF OPERATION STREAMLINE.—The Secretary shall suspend the program pending submission of the report in subsection (b) to the relevant congressional committees in subsection (c) and a revaluation of the program's future viability.

(b) REPORTING REQUIREMENT.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Homeland Security, in coordination with the At-

1 torney General, shall submit a report to the relevant con-
2 gressional committees set forth in subsection (c) that pro-
3 vides details about—

4 (1) operational goals and oversight mechanisms
5 of ''Operation Streamline'' and similar programs;

6 (2) costs of seeking Federal court prosecution
7 and jail time for all illegal entrants prior to referral
8 to immigration court removal proceedings, as com-
9 pared to initial referral of such entrants to immigra-
10 tion courts upon apprehension;

11 (3) costs of detentions, prosecutions, and incar-
12 cerations for immigrant offenses under Operation
13 Streamline programs over the three years prior to
14 enactment of this Act;

15 (4) cost estimates for federal resources that
16 would be necessary to implement Operation Stream-
17 line effectively in each Border Patrol sector, includ-
18 ing sufficient judicial resources, Federal Public De-
19 fenders, U.S. Marshals, detention facilities, United
20 States Attorneys, and costs already being incurred
21 in active areas;

22 (5) the impact of Operation Streamline pro-
23 grams on federal prosecutorial initiatives focused on
24 curbing border violence, including enhanced use of
25 investigations and prosecutions for money laun-

dering or other financial offenses to disrupt the illicit firearms trade, human smuggling, and cross-border drug and currency trafficking;

(6) the impact of Operation Streamline programs on discretionary prosecutorial decisions;

(7) the numbers of Federal prosecutions for drug trafficking, human smuggling, white-collar, civil rights, environmental, and other criminal cases over the three years prior to enactment of this Act in areas utilizing Operation Streamline initiatives;

(8) lengths of imprisonment, names, convictions, and locations of prisons used for those arrested under Operation Streamline programs over the three years prior to enactment of this Act;

(9) Federal convictions obtained under Operation Streamline including number of non-violent immigration offenses;

(10) comparison of rates of Federal prosecutions and convictions in districts along the southern border in relation to other districts nationwide; and

(11) interviews with criminal defense attorneys who have represented defendants charged under Operation Streamline, including review of the opportunity of arrestees to consult with immigration at-

torneys prior to conviction, and the ratio of defendants to defense attorneys.

(c) RELEVANT CONGRESSIONAL COMMITTEES IN THIS SECTION.—

(1) The Committee on Appropriations of the Senate.

(2) The Committee on the Judiciary of the Senate.

(3) The Committee on Appropriations of the House of Representatives.

(4) The Committee on the Judiciary of the House of Representatives.

(5) The Committee on Homeland Security and Governmental Affairs of the Senate.

(6) The Committee on Homeland Security of the House of Representatives.

(d) RE-EVALUATION OF PROGRAM.—The Secretary of Homeland Security, in coordination with the Attorney General, shall have 180 additional days, after submission of the report in subsection (b) to the relevant congressional committees, to re-evaluate the future viability of the program. At the end of the 180 day period, the Secretary shall determine whether to continue or terminate the program.

SEC. 126. PROJECT GUNRUNNER.

(a) IN GENERAL.—The Attorney General shall dedicate and expand the resources provided for the Project Gunrunner initiative of the Bureau of Alcohol, Tobacco, Firearms, and Explosives to identify, investigate, and prosecute individuals involved in the trafficking of firearms across the international border between the United States and Mexico.

(b) ACTIVITIES.—In carrying out this section, the Attorney General shall

(1) assign additional agents of the Bureau of Alcohol, Tobacco, Firearms, and Explosives to the area of the United States adjacent to the international border between the United States and Mexico to support the expansion of Project Gunrunner teams;

(2) establish not fewer than one Project Gunrunner team in each State along the international border between the United States and Mexico; and

(3) coordinate with the heads of other relevant Federal law enforcement agencies and State and local law enforcement agencies to address firearms trafficking in a comprehensive manner.

(c) ADDITIONAL STAFF.—The Attorney General may hire Bureau of Alcohol, Tobacco, Firearms, and Explo-

sives agents for, and otherwise expend additional resources needed to adequately support, Project Gunrunner.

(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated $15,000,000 for each of fiscal years 2011 and 2015 to carry out this section.

SEC. 127. OPERATION ARMAS CRUZADAS.

(a) IN GENERAL.—In accordance with subsection (b), the Secretary of Homeland Security shall dedicate and expand the resources provided for Operation Armas Cruzadas of United States Immigration and Customs Enforcement (ICE) to identify, investigate, and prosecute individuals involved in the trafficking and smuggling of firearms across the international border between the United States and Mexico.

(b) RESOURCES.—To achieve the goal described in subsection (a), the Secretary of Homeland Security shall—

(1) increase the number of ICE agents assigned to Operation Armas Cruzadas over the number of such agents who are so assigned as of the date of the enactment of this section;

(2) increase the number of Border Enforcement Security Task Force (BEST) teams stationed along the border over the number of such teams so sta-

tioned as of the date of the enactment of this section; and

(3) coordinate with the heads of other relevant Federal, State, and local law enforcement agencies to address firearms trafficking in a comprehensive manner.

(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated $15,000,000 for each of fiscal years 2011 and 2012 to carry out this section.

SEC. 128. COMBATING HUMAN SMUGGLING.

(a) REQUIREMENT FOR PLAN.—The Secretary shall develop and implement a plan to improve coordination among United States Immigration and Customs Enforcement and United States Customs and Border Protection 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, including methods to ascertain crime victims and vulnerable populations as described in subtitle B of this title;

(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 combat human smuggling.

(c) REPORT.—Not later than one 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.

SEC. 129. REPORT ON DEATHS AND STRATEGY STUDY.

(a) IN GENERAL.—The Commissioner of the United States Customs and Border Protection shall do the following:

(1) COLLECTION OF STATISTICS.—Collect statistics relating to deaths occurring at the border between the United States and Mexico, including—

(A) the causes of the deaths; and

(B) the total number of deaths.

(2) PUBLICATION OF STATISTICS.—Publish the statistics collected in paragraph (1) quarterly.

(3) REPORT.—Not later than 1 year after the date of enactment of this Act, and annually thereafter, submit to the Secretary a report that—

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

(B) recommends actions to reduce and prevent the deaths described in subsection (a).

(b) SOUTHWEST BORDER STRATEGY STUDY & ANALYSIS.—The Secretary shall conduct a study of Southwest Border Enforcement operations since 1994 and its relationship to death rates on the US-Mexico border.

(1) SUBSTANCE.—The study shall include—

(A) an analysis on the relationship of border enforcement and deaths on the border;

(B) an analysis of whether physical barriers, technology, and enforcement programs have contributed to the rate of migrant deaths;

(C) an analysis of the effectiveness of geographical terrain as a natural barrier for entry into the United States in achieving Department goals and its role in contributing to rates of migrant deaths; and

(D) consultation with nongovernmental organizations and other community stakeholders involved in recovering and identifying migrant deaths; and

(E) an assessment of existing protocol related to reporting, tracking and inter-agency communications between CBP and local first responders and consular services.

(2) REPORT.—The studies shall be submitted to—

(3) the United States-Mexico Border Enforcement Commission as established in section 130;

(4) the Committee on Homeland Security and Governmental Affairs and the Committee on the Judiciary of the Senate;

(5) the Committee on Homeland Security and the Committee on the Judiciary of the House of Representatives; and

(6) the Committee on Oversight and Government Reform of the House of Representatives.

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

SEC. 130. UNITED STATES-MEXICO BORDER ENFORCEMENT COMMISSION.

(a) ESTABLISHMENT OF COMMISSION.—

(1) IN GENERAL.—There is established an independent commission to be known as the Immigration and United States-Mexico Border Enforcement Commission (referred to in this section as the ''Commission'').

(2) PURPOSES.—The purposes of the Commission are—

(A) to study the overall enforcement strategies, programs and policies of Federal agencies along the United States-Mexico border, including the Department of Homeland Security, Justice and other relevant agencies;

(B) to strengthen relations and collaboration between communities in the border regions and the Department of Homeland Security, Justice and other Federal agencies that carry out such strategies, programs and policies;

(C) to ensure the strategies, programs and policies of Federal agencies along the United

States-Mexico border and the agents and employees charged to implement them protect the due process and civil and human rights of all individuals and communities at and near the border; and

(D) to make recommendations to the President and Congress with respect to such strategies, programs, and policies.

(3) MEMBERSHIP.—The Commission shall be composed of 16 voting members, who shall be appointed as follows:

(A) The Governors of the States of California, New Mexico, Arizona, and Texas shall each appoint 4 voting members of whom—

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

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

(iii) 2 shall be from the State's communities of academia, religious leaders, civic leaders or community leaders.

(B) 2 nonvoting members, of whom—

(i) 1 shall be appointed by the Secretary; and

(ii) 1 shall be appointed by the Attorney General.

(4) QUALIFICATIONS.—

(A) IN GENERAL.—Members of the Commission shall be—

(i) individuals with expertise in migration, border enforcement and protection, civil and human rights, community relations, cross-border trade and commerce or other pertinent qualifications or experience; and

(ii) representative of a broad cross section of perspectives from the region along the international border between the United States and Mexico.

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

(C) NONGOVERNMENTAL APPOINTEES.—An individual appointed as a voting member to the Commission may not be an officer or employee of the Federal Government.

(5) DEADLINE FOR APPOINTMENT.—All members of the Commission shall be appointed not later

than 6 months after the enactment of this Act. If any member of the Commission described in paragraph (3)(A) is not appointed by such date, the Commission shall carry out its duties under this section without the participation of such member.

(6) TERM OF SERVICE.—The term of office for members shall be for the life of the Commission, or 3 years, whichever is shorter.

(7) VACANCIES.—Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner in which the original appointment was made.

(8) MEETINGS.—

(A) INITIAL MEETING.—The Commission shall meet and begin the operations of the Commission as soon as practical.

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

(C) OUTREACH.—The Commission shall formulate and implement an effective outreach strategy to border communities.

(9) QUORUM.—Nine members of the Commission shall constitute a quorum.

(10) CHAIR AND VICE CHAIR.—The voting members of the Commission shall elect a Chairman and Vice Chairman from among its members. The term of office shall be for the life of the Commission or by a vote of a minimum of quorum members of the Commission.

(11) STRUCTURE.—The Review Commission will have a Federal, regional and local review structure, and will be divided into two subcommittees—one focused on border technology, equipment and infrastructure, and a second to focus on border and immigration enforcement policies and programs.

(b) DUTIES.—The Commission shall review, examine, and make recommendations regarding immigration and border enforcement policies, strategies, and programs, including recommendations regarding—

(1) the compliance of the Department of Homeland Security and other immigration and border-related agencies with existing laws and regulations;

(2) the extent to which agency policies and practices protect the civil rights of migrants and border community residents, including but not limited to the contexts of engagement, detention, apprehension, use of force, definition and use of reason-

able suspicion and probable cause, and racial profiling;

(3) the frequency, adequacy and effectiveness of human and civil rights training of border enforcement personnel and others from Federal agencies who have contact with the public in the border regions;

(4) the complaint process and the extent to which the process is transparent and accessible to the public, investigations are opened as necessary and effectively pursued and complaints are resolved in a timely and transparent manner;

(5) the effectiveness and capacity of agency oversight, accountability, and management including prevention and disciplinary policies involving use of force, abuse, malfeasance, corruption and illegal activity,

(6) the effect of operations, technology, and enforcement infrastructure along such border on the—

(A) environment;

(B) crossborder traffic and commerce;

(C) privacy rights and other civil liberties; and

(D) the quality of life of border communities;

(7) the extent to which State and local law enforcement engage in the enforcement of Federal immigration law;

(8) the extent of compliance with due process standards and equal protection of the law for immigrants and other individuals at and near the border;

(9) whether border policies and agencies are accomplishing their stated goals; and

(10) any other matters regarding immigration and border enforcement policies, strategies, and programs the Commission determines appropriate.

(c) POWERS OF COMMISSION.—

(1) IN GENERAL.—

(A) HEARINGS AND EVIDENCE.—The Commission or, on the authority of the Commission, any subcommittee or member thereof, may, for the purpose of carrying out this title—

(i) hold such hearings and sit and act at such times and places, take such testimony, receive such evidence, administer such oaths; and

(ii) subject to paragraph (2)(A), require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, records,

correspondence, memoranda, papers, and documents, as the Commission or such designated subcommittee or designated member may determine advisable.

(B) SUBPOENAS.—

(i) ISSUANCE.—A subpoena may be issued under this subsection only—

(I) by the agreement of the chairman and the vice chairman; or

(II) by the affirmative vote of 6 members of the Commission.

(ii) SIGNATURE.—Subject to clause (i), subpoenas issued under this subsection may be issued under the signature of the chairman or any member designated by a majority of the Commission, and may be served by any person designated by the chairman or by a member designated by a majority of the Commission.

(iii) ENFORCEMENT.—In the case of contumacy or failure to obey a subpoena issued under subsection (a), the United States district court for the judicial district in which the subpoenaed person resides, is served, or may be found, or where the sub-

poena is returnable, may issue an order requiring such person to appear at any designated place to testify or to produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt of that court.

(2) RECOMMENDATIONS.—

(A) The Commission has the ability to make recommendations to the Secretary of Homeland Security on the disposition of cases and discipline of personnel under the Immigration and Naturalization Act.

(B) Within 180 days of receipt of a Commission report, the Secretary of Homeland Security shall issue a response, which shall describe how the Department of Homeland Security, the Department of Justice, and the Department of Defense have addressed the recommendation.

(3) CONTRACTING.—The Commission may, to such extent and in such amounts as are provided in appropriation Acts, enter into contracts to enable the Commission to discharge its duties under this title.

(4) INFORMATION FROM FEDERAL AGENCIES.—

(A) IN GENERAL.—The Commission is authorized to secure directly from any executive department, bureau, agency, board, commission, office, independent establishment, or instrumentality of the Government, information, suggestions, estimates, and statistics for the purposes of this title. Each department, bureau, agency, board, commission, office, independent establishment, or instrumentality shall, to the extent authorized by law, furnish such information, suggestions, estimates, and statistics directly to the Commission, upon request made by the chairman, the chairman of any subcommittee created by a majority of the Commission, or any member designated by a majority of the Commission.

(B) RECEIPT, HANDLING, STORAGE, AND DISSEMINATION.—Information shall only be received, handled, stored, and disseminated by members of the Commission and its staff consistent with all applicable statutes, regulations, and Executive orders.

(5) ASSISTANCE FROM FEDERAL AGENCIES.—

(A) GENERAL SERVICES ADMINISTRATION.—The Administrator of General Services shall provide to the Commission on a reimbursable basis administrative support and other services for the performance of the Commission's functions.

(B) OTHER DEPARTMENTS AND AGENCIES.—In addition to the assistance prescribed in paragraph (1), departments and agencies of the United States may provide to the Commission such services, funds, facilities, staff, and other support services as they may determine advisable and as may be authorized by law.

(6) POSTAL SERVICES.—The Commission may use the United States mails in the same manner and under the same conditions as departments and agencies of the United States.

(d) COMPENSATION.—

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

(2) REIMBURSEMENT OF EXPENSES.—All members of the Commission shall be reimbursed for reasonable travel expenses and subsistence, and other reasonable and necessary expenses incurred by them in the performance of their duties.

(e) TRAINING.—The Commission shall establish a process and criteria by which Commission members receive orientation and training on human, constitutional and civil rights.

(f) REPORT.—Not later than 2 years after the date of the first meeting called pursuant to (a)(8)(A), the Commission shall submit a report to the President and Congress that contains—

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

(2) recommendations regarding border and immigration enforcement policies, strategies, and programs;

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

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

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

(h) SUNSET.—Unless the Commission is re-authorized by Congress, the Commission shall terminate on the

date that is 60 days after the date the Commission submits the report described in subsection (f).

SEC. 131. PROHIBITION ON MILITARY INVOLVEMENT IN NONEMERGENCY BORDER ENFORCEMENT.

(a) IN GENERAL.—The Armed Forces of the United States, including the National Guard, are prohibited from assisting in Federal, State and local and civilian law enforcement of immigration laws.

(b) EXCEPTION.—The Armed Forces of the United States, including the National Guard may assist in Federal, State and local and civilian law enforcement of immigration laws when the President of the United States has declared a national emergency or when required for specific counter-terrorism duties. In the case that, Armed Forces of the United States, including the National Guard are required to perform such duties, those duties in support of Federal, State and local and civilian law enforcement of immigration laws shall be limited to—

(1) rear echelon support duties, including logistical support, construction, and intelligence collection from positions at least 25 miles from the border;

(2) nonarmed operations within 25 miles of the border, including listening posts and observation post operations; and

(3) armed operations outside 25 miles of the border, including listening posts and observation post operations.

(c) REPORT.—The Secretary shall submit on an annual basis a report to Congress that details the involvement of the Armed Forces in border security and the enforcement of Federal immigration laws.

SEC. 132. DEFINITIONS.

For sections 124 through 128:

(a) INDIAN TRIBE.—The term ''Indian tribe'' has the meaning given such term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

(b) SECRETARY CONCERNED.—The term ''Secretary concerned'' means the Secretary of Agriculture with respect to land under the jurisdiction of the Secretary of Agriculture, the Secretary of the Interior with respect to land under the jurisdiction of the Secretary of the Interior, the Secretary of Defense with respect to land under the jurisdiction of the Secretary of Defense or the secretary of a military department, or the Secretary of Commerce with respect to land under the jurisdiction of the Secretary of Commerce.

SEC. 133. BORDER PROTECTION STRATEGY.

(a) IN GENERAL.—Not later than September 30, 2010, the Secretary, the Secretary of the Interior, the Secretary of Agriculture, the Secretary of Defense, and the Secretary of Commerce, in consultation with tribal, State, and local officials, shall jointly develop and submit to Congress a border protection strategy for the international land borders of the United States.

(b) ELEMENTS OF THE STRATEGY.—The strategy developed in accordance with subsection (a) shall include the following components:

(1) A comparative analysis of the levels of operational control, based on auditable and verifiable data, achievable through alternative tactical infrastructure and other security measures. Measures assessed shall include, at a minimum—

(A) pedestrian fencing;

(B) vehicle barriers, especially in the vicinity of existing or planned roads;

(C) additional Border Patrol agents;

(D) efficacy of natural barriers and open space in response to unauthorized or unlawful border crossing;

(E) fielding of advanced remote sensing and information integration technology, including the use of unmanned aerial vehicles and

other advanced technologies and systems, including systems developed and employed, or under development, for tactical surveillance, multisource information integration, and response analysis in difficult terrain and under adverse environmental conditions;

(F) regional as well as urban and rural variation in border security methodologies, and incorporation of natural barriers;

(G) enhanced cooperation with, and assistance to, intelligence, security, and law enforcement agencies in Mexico and Canada in detecting, reporting, analyzing, and successfully responding to unauthorized or unlawful border crossings from or into Mexico or Canada; and

(H) removal of obstructive non-native vegetation.

(2) A comprehensive analysis of cost and other impacts of security measures assessed in paragraph (1), including an assessment of—

(A) land acquisition costs, including related litigation and other costs;

(B) construction costs, including both labor and material costs;

(C) maintenance costs over 25 years;

(D) contractor costs;

(E) management and overhead costs;

(F) the impacts on wildlife, wildlife habitat, natural communities, and functioning cross-border wildlife migration corridors and hydrology (including water quantity, quality, and natural hydrologic flows) on Federal, tribal, State, local, and private lands along the border; and

(G) costs of fully mitigating the adverse impacts to Federal, tribal, State, local, and private lands, waters (including water quality, quantity, and hydrological flows), wildlife, and wildlife habitats, including, where such action is possible, the full costs of the replacement or restoration of severed wildlife migration corridors with protected corridors of equivalent biological functionality, as determined by each Secretary concerned, in consultation with appropriate authorities of tribal, State, and local governments and appropriate authorities of Mexico and Canada.

(3) A comprehensive compilation of the fiscal investments in acquiring or managing Federal, tribal, State, local, and private lands and waters in the vicinity of, or ecologically related to, the land bor-

ders of the United States that have been acquired or managed in whole or in part for conservation purposes (including the creation or management of protected wildlife migration corridors) in—

(A) units of the National Park System;

(B) National Forest System land;

(C) land under the jurisdiction of the Bureau of Land Management;

(D) land under the jurisdiction of the United States Fish and Wildlife Service;

(E) other relevant land under the jurisdiction of the Department of the Interior or the Department of Agriculture;

(F) land under the jurisdiction of the Department of Defense or the individual military department;

(G) land under the jurisdiction of the Department of Commerce;

(H) tribal lands;

(I) State and private lands; and

(J) lands within Mexico and Canada.

(4) Recommendations for strategic border security management based on comparative security as detailed in paragraph (1), the cost-benefit analysis as detailed in paragraph (2), as well as protection of

investments in public lands specified in paragraph (3).

(c) TRAINING.—

(1) REQUIRED TRAINING.—The Secretary, in cooperation with the Secretary concerned, shall provide—

(A) natural resource protection training for Customs and Border Protection agents or other Federal personnel assigned to plan or oversee the construction or operation of border security tactical infrastructure or to patrol land along or in the vicinity of a land border of the United States; and

(B) cultural resource training for Customs and Border Protection agents and other Federal personnel assigned to plan or oversee the construction or operation of border security tactical infrastructure or to patrol tribal lands.

(2) ADDITIONAL CONSIDERATIONS.—In developing and providing training under subparagraph (A) of paragraph (1), the Secretary shall coordinate with the Secretary concerned and the relevant tribal government to ensure that such training is appropriate to the mission of the relevant agency and is focused on achieving border security objectives while

avoiding or minimizing the adverse impact on natural and cultural resources resulting from border security tactical infrastructure, operations, or other activities.

SEC. 134. ACTIONS TO FURTHER SECURE OPERATIONAL CONTROL OF THE INTERNATIONAL LAND BORDERS OF THE UNITED STATES.

(a) IN GENERAL.—Section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Public Law 104–208; 8 U.S.C. 1103 note) is amended to read as follows:

"SEC. 102. IMPROVEMENT OF OPERATIONAL CONTROL OF BORDER.

"(a) IN GENERAL.—The Secretary of Homeland Security shall take such actions as may be required to gain operational control of the international land borders of the United States. Such actions may be taken only in accordance with the border protection strategy developed under section 124(a).

"(b) PRIORITY OF METHODS.—In carrying out the requirements of subsection (a), the Secretary of Homeland Security shall, where practicable, give first priority to the use of remote cameras, sensors, removal of nonnative vegetation, incorporation of natural barriers, additional

manpower, unmanned aerial vehicles, or other low impact border enforcement techniques.

"(c) CONSULTATION.—

"(1) IN GENERAL.—In carrying out this section, the Secretary of Homeland Security shall consult with the Secretary of the Interior, the Secretary of Agriculture, the Secretary of Defense, Secretary of Commerce, States, local governments, tribal governments, and private property owners in the United States to minimize the impact on the environment, culture, commerce, safety, and quality of life for the communities and residents located near the sites at which actions under subsection (a) are proposed to be taken.

"(2) RULE OF CONSTRUCTION.—Nothing in this subsection may be construed to—

"(A) create or negate any right of action for a State, local government, tribal government, or other person or entity affected by this subsection;

"(B) affect the eminent domain laws of the United States or of any State; or

"(C) waive the application of any other applicable Federal, State, local, or tribal law.

"(3) LIMITATION ON REQUIREMENTS.—Notwithstanding subsection (a), nothing in this section shall require the Secretary of Homeland Security to install fencing, physical barriers, roads, lighting, cameras, or sensors in a particular location along an international border of the United States if the Secretary determines that the use or placement of such resources is not the most effective and appropriate means to achieve and maintain operational control over the international border at such location, or if the Secretary determines that the direct and indirect costs of or the impacts on the environment, culture, commerce, safety, or quality of life for the communities and residents along the border likely to result from the use or placement of such resources outweigh the benefits of such use or placement.".

(b) PRECONDITIONS.—In fulfilling the requirements of section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended by this section, the Secretary of Homeland Security shall not commence any construction of fencing, physical barriers, roads, lighting, cameras, sensors, or other tactical infrastructure along or in the vicinity of an international land border of the United States, or award or expend funds pursuant to any contract or other agreement related there-

to, prior to 90 days following the submission to Congress of the border protection strategy required under section 133(a) of this subtitle.

SEC. 135. BORDERLANDS MONITORING AND MITIGATION.

(a) IN GENERAL.—The Secretary, in consultation with the Secretary of the Interior, the Secretary of Agriculture, the Secretary of Defense, the Secretary of Commerce, and the heads of appropriate State and tribal wildlife agencies and entities, shall develop and implement a comprehensive monitoring and mitigation plan to address the ecological and environmental impacts of border security infrastructure, measures, and activities along the international land borders of the United States.

(b) REQUIREMENTS.—The mitigation plan required under subsection (a) shall include, at a minimum, measures to address and mitigate the full range of ecological and environmental impacts of border security infrastructure, measures, and activities, including—

(1) preserving, maintaining, and, if necessary, restoring wildlife migration corridors, key habitats, and the ecologically functional connectivity between and among key habitats sufficient to ensure that species (whether or not designated as rare, protected, or of concern) remain viable and are able to adapt to the impacts of climate change;

(2) addressing control of invasive species and implementing measures necessary to avoid the spread of such species;

(3) maintaining hydrological functionality, including water quantity and quality;

(4) incorporating adaptive management, including detailed provisions for long-term monitoring of the mitigation plan's effectiveness and for necessary adjustments to such plan based on such monitoring results; and

(5) protection of cultural and historical resources.

(c) PREEMPTION.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the Secretary may, subject to paragraph (2), carry out the mitigation plan required under subsection (a) on any Federal, State, local, tribal, or private lands in the vicinity of or ecologically related to an international land border of the United States regardless of which individual, agency, or entity has ownership of or principal responsibility for the management of any such lands.

(2) CONDITIONS.—Activities carried out pursuant to paragraph (1) in connection with the mitigation plan shall be carried out in full consultation

with, and with the concurrence of, the owner of, or entity with principal responsibility for, the management of the lands described in such paragraph.

(d) ADMINISTRATION.—

(1) AUTHORIZATION.—The Secretary of Homeland Security may transfer funds of the Department of Homeland Security to other Federal agencies for—

(A) expenditure under programs (including any international programs) of such agencies that are designed to fund conservation related activities (directly or through grants or similar mechanisms) on non-Federal lands, including land acquisition programs; and

(B) mitigation activities on Federal lands managed by such agencies, if such activities are required to implement the mitigation plan required under subsection (a) and if the costs of such activities are higher than the costs associated with managing such lands in the absence of such activities.

(2) EXEMPTION FROM REPROGRAMMING REQUIREMENTS.—Funds transferred pursuant to the authorization under paragraph (1) shall not be subject to reprogramming requirements.

(3) ACCEPTANCE AND USE OF DONATIONS.—The Secretary may accept and use donations for the purpose of developing and implementing the mitigation plan required under subsection (a), and may transfer such funds to any other Federal agency for expenditure under such plan pursuant to paragraph (1).

(e) AUTHORIZATION OF APPROPRIATIONS.—Notwithstanding any other provision of law, funds appropriated to the Department of Homeland Security for border security infrastructure and activities may be used by the Secretary to develop and implement the mitigation plan required under subsection (a).

SEC. 136. BORDER COMMUNITIES LIAISON OFFICE.

(a) ESTABLISHMENT.—The Secretary shall establish, in consultation with the Office of Civil Rights and Civil Liberties, a Border Communities Liaison Office in every border patrol sector at the southern and northern borders.

(b) PURPOSE.—The purpose of the Border Communities Liaison Office shall be—

(1) to foster and institutionalize consultation with border communities;

(2) to consult with border communities on agency policies, directives and laws;

(3) to consult with border communities on agency strategies and strategy development;

(4) to consult with border communities on agency services and operational issues;

(5) to receive assessments on agency performance from border communities; and

(6) to receive complaints regarding agency performance and agent conduct.

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

SEC. 137. OFFICE OF CIVIL RIGHTS AND CIVIL LIBERTIES AND OFFICE OF INSPECTOR GENERAL.

There are authorized to be appropriated such sums as are necessary for the Department's Office of Inspector General and the Department's Office of Civil Rights and Civil Liberties to be comparable to those of other Federal agencies and commensurate with the size and scope of the DHS operational budget.

SEC. 138. IMPROVING PORTS OF ENTRY FOR BORDER SECURITY AND OTHER PURPOSES.

(a) IN GENERAL.—There are authorized to be appropriated to the Administrator of the General Services Administration such sums as may be necessary for each of fiscal years 2011 through 2015 to make improvements to

existing ports of entry in the United States to improve border security and for other purposes.

(b) PRIORITY.—In making improvements described in subsection (a), the Administrator of the General Services Administration, in coordination with the Commissioner of Customs and Border Protection, shall give priority to the ports of entry that the Administrator determines are in most need of repair to improve border security and for other purposes in accordance with port of entry infrastructure assessment studies required in section 603 of title VI, division E, of the Consolidated Appropriations Act of 2008 (Public Law 101–161).

SEC. 139. PORTS OF ENTRY.

(a) IN GENERAL.—In order to aid in the enforcement of Federal customs, immigration, and agriculture laws, and national security goals the Customs and Border Protection Commissioner may—

(1) design, construct, and modify land ports of entry and other structures and facilities, including living quarters for officers, agents, and personnel;

(2) acquire, by purchase, donation, or exchange, land or any interest in land determined to be necessary to carry out the Commissioner's duties under this section; and

(3) construct additional ports of entry along the southern border and the northern border.

(b) CONSULTATION.—

(1) LOCATIONS FOR NEW PORTS OF ENTRY.—The Secretary of Homeland Security shall consult with the Secretary of the Interior, the Secretary of Agriculture, the Secretary of State, the International Boundary and Water Commission, the International Joint Commission, and appropriate representatives of States, local governments, Indian tribes, and property owners to—

(A) determine locations for new ports of entry; and

(B) minimize adverse impacts from such ports on the environment, historic and cultural resources, commerce, and quality of life for the communities and residents located near such ports.

(2) ACQUISITION OF LEASEHOLD INTEREST.—The Secretary of Homeland Security may acquire a leasehold interest in real property, and may construct or modify any facility on the leased property, if the Secretary determines that the acquisition of such interest, and such construction or modification,

are necessary to facilitate the implementation of this Act.

(3) CONSTRUCTION OF BORDER CONTROL FACILITIES.—Subject to the availability of appropriations, the Secretary may construct all-weather roads and acquire additional vehicle barriers and facilities necessary to maintain and enhance operational control of the international borders of the United States.

SEC. 140. PORTS OF ENTRY INFRASTRUCTURE AND OPERATIONS 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 and Operations Assessment Study prepared by United States 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 of U.S. Customs and Border Protection.

(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 travel and commerce if implemented;

(2) identify port operations and practices (to include, but not be limited to training and staffing levels) that would enhance border security and facilitate the flow of legitimate individual travel and commerce if implemented;

(3) establish a process to identify and prioritize needs at ports for shelter from the elements, Americans with Disability Act compliance, and related issues;

(4) include the projects identified in the National Land Border Ports of Entry Security Plan required by section 141; and

(5) prioritize the projects described in paragraphs (1), (2), (3), and (4) based on the ability of a project to—

(A) fulfill immediate security requirements;

(B) facilitate trade across the borders of the United States;

(C) facilitate individual travel; and

(D) reduce individual and commercial wait times for pedestrians and vehicles.

(d) PROJECT IMPLEMENTATION.—The Commissioner shall implement the infrastructure, operations, and technology improvement projects described in subsection (c) in the order of priority assigned to each project under paragraph (3) of such subsection.

(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. 141. NATIONAL LAND BORDER PORTS OF ENTRY SECURITY PLAN.

(a) IN GENERAL.—Not later than one year after the date of enactment of this Act, and 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 Northern or Southern ports of entry, shall submit

a National Land Border Ports of Entry 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 coordinators 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. 142. PORTS OF ENTRY TECHNOLOGY DEMONSTRATION PROGRAM.

(a) DEMONSTRATION PROGRAM.—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, including 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 three sites and not more than five 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 is able to 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 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 one-year period ending on the date of enactment of this Act.

(d) RELATIONSHIP WITH OTHER AGENCIES.—The Secretary shall permit personnel from an appropriate Federal 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 one year after the date of 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 United States Customs and Border Protection.

SEC. 143. REPORTS ON IMPROVING THE EXCHANGE OF INFORMATION ON NORTH AMERICAN SECURITY.

(a) REQUIREMENT FOR REPORTS.—Not later than one year after the date of enactment of this Act, and annually thereafter, the Secretary of State, in coordination with the Secretary and the heads of other appropriate

1 Federal agencies, shall submit to Congress a report on the
2 status of improvements to information exchange related
3 to the security of North America.

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

6 (1) SECURITY CLEARANCES AND DOCUMENT IN-
7 TEGRITY.—The status of the development of com-
8 mon enrollment, security, technical, and biometric
9 standards for the issuance, authentication, valida-
10 tion, and repudiation of secure documents, includ-
11 ing—

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

17 (i) passports;

18 (ii) visas; and

19 (iii) permanent resident cards;

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

(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.

(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 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;

(E) 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

(F) 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 status of the capacity of the United States to combat terrorism through the coordination of counterterrorism efforts, including any 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 enumerate 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;

(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; and

(D) in establishing transparent standards and processes that enable innocent individuals to remove their names from a watch list.

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

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

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

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

(F) 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 to identify 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. 144. SOUTHERN BORDER SECURITY TASK FORCE.

(a) ESTABLISHMENT.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Homeland Security shall establish a Southern Border Security Task Force (in this Act referred to as the ''Task Force'') to coordinate the efforts of Federal, State, and local border and law enforcement officials and task forces to protect United States border cities and communities from violence associated with drug trafficking, gunrunning, illegal alien smuggling, violence, and kidnapping along and across the international border between the United States and Mexico.

(b) COMPOSITION AND DEPLOYMENT.—

(1) COMPOSITION.—The Task Force shall be comprised of personnel from—

(A) United States Customs and Border Protection;

(B) United States Immigration and Customs Enforcement;

(C) the Coast Guard;

(D) other Federal agencies, as appropriate;

(E) southern border State law enforcement agencies; and

(F) local law enforcement agencies from affected southern border cities and communities.

(2) DEPLOYMENT.—The Secretary of Homeland Security shall deploy the Task Force along the international border between the United States and Mexico in cities and communities most affected by violence, as determined by the Secretary.

(c) DIRECTOR.—The Secretary of Homeland Security shall appoint as a Director of the Task Force an individual who is experienced and knowledgeable in law enforcement generally and border security issues specifically.

(d) REPORT.—Not later than 180 days after the date of the establishment of the Task Force under subsection (a) and annually thereafter, the Secretary of Homeland Security shall submit to the Committee on Homeland Security of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate a report on the effectiveness of the Task Force in reducing the drug trafficking, gunrunning, illegal alien smuggling, violence, and kidnapping along and across the international border between the United States and Mexico as measured by crime statistics, including violent deaths, incidents of violence, and drug related arrests.

(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary of Homeland Security $10,000,000 for each of fiscal years 2010 through 2014—

(1) to establish and operate the Task Force, including to provide for operational, administrative, and technological costs to Federal, State, and local law enforcement agencies participating in the Task Force; and

(2) to investigate, apprehend, and prosecute individuals engaged in drug trafficking, gunrunning, illegal alien smuggling, violence, and kidnapping along and across the international border between the United States and Mexico.

SEC. 145. 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 offi-

cials, 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 work to cooperate with their counterparts in Mexico concerning border security structures along the international border between the United States and Mexico, as authorized by this title, 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.

SEC. 146. ENHANCED INTERNATIONAL COOPERATION.

(a) IN GENERAL.—The Attorney General, in cooperation with the Secretary of State, shall—

(1) assign agents of the Bureau of Alcohol, Tobacco, Firearms, and Explosives to the United States mission in Mexico, to work with Mexican law enforcement agencies in conducting investigations relating to firearms trafficking and other criminal enterprises;

(2) provide the equipment and technological resources necessary to support investigations and to trace firearms recovered in Mexico; and

(3) support the training of Mexican law enforcement officers in serial number restoration techniques, canine explosive detection, and anti-trafficking tactics.

(b) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated $9,500,000 for each of fiscal years 2011 and 2012 to carry out this section.

SEC. 147. 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 programs of the Customs–Trade Partnership Against Terrorism estab-

lished pursuant to section 211 of the SAFE Port Act (6 U.S.C. 961), including adding additional personnel for such programs, along the northern border and southern border, including the following programs:

(A) The Business Anti-Smuggling Coalition.

(B) The Carrier Initiative Program.

(C) The Americas Counter Smuggling Initiative.

(D) The Container Security Initiative established pursuant to section 205 of the SAFE Port Act (6 U.S.C. 945).

(E) The Free and Secure Trade Initiative.

(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) DEMONSTRATION PROGRAM.—Not later than 180 days after the date of enactment of this Act, the Commis-

sioner shall establish a demonstration program to develop a cooperative trade security system to improve supply chain security.

SEC. 148. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—In addition to any funds otherwise available, there are authorized to be appropriated such sums as may be necessary for the fiscal years 2011 through 2015 to carry out this subtitle.

(b) INTERNATIONAL AGREEMENTS.—Amounts appropriated pursuant to the authorization of appropriations in subsection (a) 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 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 B—Detention

SEC. 151. DEFINITIONS.

In this subtitle:

(1) DETENTION.—The term ''detention'', in the context of an immigration-related enforcement activity, means government custody or any other depriva-

tion of an individual's freedom of movement by government agents.

(2) DETENTION FACILITY.—The term ''detention facility'' means any Federal, State, local government facility, or privately owned and operated facility that is used to hold immigration detainees for more than 72 hours.

(3) SHORT-TERM DETENTION FACILITY.—The term ''short-term detention facility'' means any Federal, State, local government facility, or privately owned and operated facility that is used to hold immigration detainees for 72 hours or less.

(4) IMMIGRATION-RELATED ENFORCEMENT ACTIVITY.—The term ''immigration-related enforcement activity'' means any government action in which—

(A) an individual suspected of an immigration violation is detained for such violation; or

(B) an individual who has been detained by government agents is questioned about possible immigration violations.

(5) SECURE ALTERNATIVES PROGRAMS.—The term ''secure alternatives'' means custodial or non-custodial programs under which aliens are screened and provided with appearance assistance services or

placed in supervision programs as needed to ensure they appear at all immigration interviews, appointments and hearings.

(6) UNACCOMPANIED ALIEN CHILDREN.—The term ''unaccompanied alien child or children'' shall be defined as found in section 462(g) of the Homeland Security Act of 2002 (6 U.S.C. 279(g))

(7) APPREHENSION.—The term ''apprehension'', in the context of an immigration enforcement related activity, means government detention, arrest, or custody, or any significant deprivation of an individuals freedom of action by government officials or entities acting under agreement with the Department of Homeland Security for suspicion of violations under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

(8) SSA.—The term ''SSA'' means the appropriate State or local service agency, including relevant nongovernmental organizations, child welfare agencies, child protective service agencies, school and head start administrators, mental health and legal service providers, and hospitals.

SEC. 152. DETENTION CONDITIONS.

(a) IN GENERAL.—The Secretary shall—

(1) ensure that all detainees are treated humanely and granted the protections described in this section; and

(2) comply with the minimum requirements set forth in this section.

(b) QUALITY OF MEDICAL CARE.—

(1) RIGHT TO MEDICAL CARE.—Each detainee has the right to—

(A) prompt and adequate medical care, designed to ensure continuity of care, at no cost to the detainee;

(B) care to address medical needs that existed prior to detention; and

(C) primary care, emergency care, chronic care, prenatal care, dental care, eye care, mental health care, and other medically necessary specialized care.

(2) SCREENINGS AND EXAMINATIONS.—Each detainee shall receive—

(A) a comprehensive medical, dental, and mental health intake screening, including screening for sexual abuse or assault by a licensed health care professional upon arrival at a detention facility or short-term detention facility; and

(B) a comprehensive medical and mental health examination by a licensed health care professional not later than 14 days after the detainee's arrival at a detention facility.

(3) MEDICATIONS AND TREATMENT.—

(A) PRESCRIPTIONS.—Each detainee taking prescribed medications prior to detention shall be allowed to continue taking such medications, on schedule and without interruption, until and unless a licensed health care professional examines the immigration detainee and decides upon an alternative course of treatment. Detainees who arrive at a detention facility without prescription medications and report being on such medications shall be evaluated by a qualified health care professional not later than 24 hours after arrival. All decisions to discontinue or modify a detainee's reported prescription medication regimen shall be conveyed to the detainee in a language that the detainee understands and shall be recorded in writing in the detainee's medical records.

(B) PSYCHOTROPIC MEDICATION.—Medication may not be forcibly administered to a detainee to facilitate transport, removal, or other-

wise to control the detainee's behavior. Involuntary psychotropic medication may only be used, to the extent authorized by applicable law, in emergency situations after a physician has personally examined the detainee and determined that—

(i) the detainee is imminently dangerous to self or others due to a mental illness; and

(ii) involuntary psychotropic medication is medically appropriate to treat the mental illness and necessary to prevent harm.

(C) TREATMENT.—Each detainee shall be provided medically necessary treatment, including prenatal care, prenatal vitamins, hormonal therapies, and birth control. Female detainees shall be provided with adequate access to sanitary products.

(4) MEDICAL CARE DECISIONS.—Any decision regarding requested medical care for a detainee—

(A) shall be made in writing by an on-site licensed health care professional not later than 72 hours after such medical care is requested; and

(B) shall be immediately communicated to the detainee.

(5) ADMINISTRATIVE APPEALS PROCESS.—

(A) IN GENERAL.—Detention facilities, in conjunction with the Department of Homeland Security, shall ensure that detainees, medical providers, and legally appointed advocates have the opportunity to appeal a denial of requested health care services by an on-site provider to an independent appeals board.

(B) APPEALS BOARD.—The appeals board shall include health care professionals in the fields relevant to the request for medical or mental health care.

(C) DECISION.—Not later than 7 days after an appeal is received by the appeals board under this paragraph, or earlier if medically necessary, the appeals board shall issue a written decision regarding the appeal and notify the detention facility and the appellee of such decision.

(6) REVIEW OF ON-SITE MEDICAL PROVIDER REQUESTS.—

(A) IN GENERAL.—The Secretary shall respond within 72 hours to any request by an on-

site medical provider for authorization to provide medical or mental health care to a detainee.

(B) WRITTEN EXPLANATION.—If the Secretary denies or fails to grant a request described in subparagraph (A), the Secretary shall immediately provide a written explanation of the reasons for such decision to the on-site medical provider and the detainee.

(C) APPEALS BOARD.—The on-site medical provider and the detainee (or the detainee's legally appointed advocate) shall be permitted to appeal the denial of, or failure to grant, a request described in subparagraph (A) to an independent appeals board.

(D) DECISION.—Not later than 7 days after an appeal is received by the appeals board under this paragraph, or earlier if medically necessary, the appeals board shall issue a written decision regarding the appeal and notify the on-site medical provider, the detainee, and the detention facility of such decision.

(7) CONDITIONAL RELEASE.—

(A) IN GENERAL.—If a licensed health care professional determines that a detainee has

a medical or mental health care condition, is pregnant, or is a nursing mother, the Secretary shall consider releasing the detainee on parole, on bond, or into a secure alternatives program.

(B) REEVALUATION.—If a detainee described in subparagraph (A) is not initially released under this paragraph, the Secretary shall periodically reevaluate the situation of the detainee to determine if such a release would be appropriate.

(C) DISCHARGE PLANNING.—Upon removal or release, all detainees with medical or mental health conditions and women who are pregnant, post-natal, and nursing mothers shall receive discharge planning to ensure continuity of care for a reasonable period of time.

(8) MEDICAL RECORDS.—

(A) IN GENERAL.—The Secretary shall maintain complete, confidential medical records for every detainee and make such records available to a detainee or to individuals authorized by the detainee not later than 72 hours after receiving a request for such records.

(B) TRANSFER OF MEDICAL RECORDS.—Immediately upon a detainee's transfer between

1 detention facilities, the detainee's complete
2 medical records, including any transfer sum-
3 mary, shall be provided to the receiving deten-
4 tion facility.

5 (c) ACCESS TO TELEPHONES.—Detention facilities
6 shall provide to detainees reasonable and equitable access
7 to working telephones, and the ability to contact, through
8 confidential toll-free numbers, legal representatives, family
9 courts, child protective services, foreign consulates, the im-
10 migration courts, Federal and state courts in which the
11 detainee is, or may become, involved in a legal proceeding,
12 the Board of Immigration Appeals, nongovernmental orga-
13 nizations designated by the Secretary, all government im-
14 migration agencies and adjudicatory bodies including the
15 Office of the Inspector General of the Department of
16 Homeland Security and the Office for Civil Rights and
17 Civil Liberties of the Department of Homeland Security,
18 in addition to persons and offices contacted for the pur-
19 pose of obtaining legal representation. Detention facilities
20 shall provide to detainees access to telephones during facil-
21 ity working hours and on an emergency basis in accord-
22 ance with the following:

23 (1) The detention facility shall provide to each
24 detainee a copy of its rules governing telephone ac-
25 cess and shall post those rules, together with an ex-

planation of how to make calls, within sight of each telephone available to detainees. These rules shall be translated into Spanish and two additional languages spoken by a substantial part of the detainee population of the detention facility. If a detention facility has determined that more than 5 percent of its population is of a certain language group, the document should be translated into that language group's appropriate language. The detention facility shall also provide oral interpretation and written translation assistance to detainees in reading any relevant materials required to request telephone access, including oral interpretation assistance for those who are not literate in English, Spanish, and other languages spoken by the detainee population of the facility.

(2) The rates charged for telephone calls shall be reasonable and equitable and shall not significantly impair detainees' access to telephones.

(3) The detention facility shall not restrict the number of calls detainees may place to their legal representatives or consular officials, or to any others for the purpose of obtaining legal representation, or limit the duration of those calls by rule or automatic cut-off, unless necessary for security reasons. The

detention facility shall have a reasonable number of working phones available to detainees, and at a minimum one phone per each 25 users.

(4) The detention facility shall ensure the privacy of telephone conversations between detainees and legal representatives or consular officials, and calls made for the purpose of obtaining legal representation. Means to ensure privacy may include the use of privacy panels, the placement of phones in housing pods, and other appropriate measures.

(5) Detainees' telephone calls to a court, legal representative, or consular official, or for the purpose of obtaining legal representation, shall not be monitored or recorded without a court order and without prior notification to the detainee.

(6) The detention facility shall take and deliver telephone messages to detainees as promptly as possible, but no less often than twice a day. Detainees shall be permitted to make confidential telephone calls promptly within 8 hours of receipt of messages left by a court, legal representative, prospective legal representative, or consular official as soon as reasonably possible after the delivery of the message.

(d) SEXUAL ABUSE REGULATIONS CONCERNING CARE AND CUSTODY OF DETAINEES.—

1 (1) IN GENERAL.—Detention facilities shall
2 take all necessary measures to prevent sexual abuse
3 of detainees, including sexual assaults, and shall ob-
4 serve the minimum standards under the Prison Rape
5 Elimination Act of 2003 (42 U.S.C. 15601 et seq.).
6 (2) MEASURES WHERE ABUSE OCCURS.—Where
7 sexual abuse occurs, detention facilities shall ensure
8 that—
9 (A) prompt and appropriate medical inter-
10 vention is taken to minimize medical and psy-
11 chological trauma;
12 (B) a medical history is taken and a phys-
13 ical examination is conducted by qualified and
14 culturally appropriate licensed medical profes-
15 sionals to determine the extent of physical in-
16 jury and whether referral to another medical fa-
17 cility is indicated;
18 (C) prophylactic treatment and follow-up
19 for sexually transmitted diseases are provided
20 within the appropriate time frame;
21 (D) the case is evaluated by a qualified
22 and culturally appropriate mental health profes-
23 sional for crisis intervention counseling and
24 long-term follow-up;

(E) victims are separated from their abusers and are considered for release on parole or for an alternative to detention program—

(i) shall not result in the transfer of the victim away from counsel absent expectional circumstances; and

(ii) shall never result in the placement of the victim in solitary confinement; and

(F) any and all medical and mental health records arising out of a detainee's allegation of sexual abuse shall be treated as confidential, as required by the Health Insurance Portability and Accountability Act of 1996.

(3) REPORTING.—A detention facility shall not subject any person to punishment or any other form of retaliation for reporting incidents of sexual abuse.

(4) INVESTIGATION.—In all cases of alleged sexual abuse, the detention facility shall conduct a thorough and timely investigation and shall provide to the Secretary of Homeland Security a report of the circumstances and the response of the detention facility. If the report is not completed within 30 days after alleged sexual abuse comes to the attention of the detention facility, the detention facility shall submit to the Secretary of Homeland Security

a description of the status of the investigation and an estimated date of completion 30 days after the alleged sexual abuse comes to the attention of the detention facility and every 30 days thereafter until the report is provided to the Secretary of Homeland Security. The report required by this subsection shall include at minimum a determination of whether the alleged sexual abuse occurred, an in-depth analysis of the relevant facts including the causes of any sexual abuse that may have occurred and whether and to what extent the alleged abuse indicates a failure of policy, a failure of training, a failure of oversight, or a failure of management, and a description of the actions that the facility will take to prevent the occurrence of similar incidents in the future and a plan for monitoring the implementation of those actions. The detention facility shall provide to the Secretary of Homeland Security periodic reports monitoring the implementation of the plan in accordance with the schedule set forth in such plan as approved by the Secretary of Homeland Security.

(e) TRANSFER OF DETAINEES.—

(1) PROCEDURES.—In adopting procedures governing the transfer of individuals detained under the Immigration and Nationality Act (8 U.S.C. 1226),

the Secretary of Homeland Security shall prohibit transfer of a detainee if such transfer would—

(A) negatively affect an existing attorney-client relationship;

(B) negatively affect the detainee's legal proceedings, including merits or calendar hearings, or a pending application with United States Citizenship and Immigration Services or the Executive Office for Immigration Review, by—

(i) limiting the detainee's access to securing legal representation;

(ii) limiting the detainee's ability to prepare a legal defense to removal; or

(iii) removing the detainee from the legal venue of such proceeding;

(C) negatively affect the detainee's health and medical fitness; or

(D) to the extent it does not conflict with clauses (i), (ii), and (iii)—

(i) place the detainee in a location more distant from the detainee's residence than the original detention location; or

(ii) place the detainee in a location more distant from family members than the original detention location.

(2) NOTICE.—Unless exigent circumstances dictate an immediate transfer—

(A) the Secretary of Homeland Security shall provide not less than 72 hours notice to any detainee prior to transferring the detainee to another detention facility;

(B) detainees shall be afforded at least one toll-free call and the Secretary of Homeland Security shall notify the detainee's legal representative or if unrepresented, an adult family member or other person designated by the detainee, of the transfer and the detainee's new location by telephone and in writing;

(C) if removal proceedings are pending, the Secretary of Homeland Security shall also promptly notify the Immigration Court, Board of Immigration Appeals, or the Circuit Court of Appeals, as appropriate of the transfer and the detainee's new address; and

(D) the Secretary of Homeland Security shall not transfer any detainee who has already

requested, and is awaiting, a bond hearing or a bond redetermination hearing.

(3) EXCEPTION.—The Secretary may transfer a detainee who has an existing attorney-client relationship to an alternate detention facility if such transfer is necessitated by a highly unusual emergency, such as a natural disaster or comparable emergency.

(4) PROTECTING DETAINEES LEGAL RIGHTS.—If the Secretary determines that a transfer is necessary due to a highly unusual emergency, the Secretary shall ensure that the detainee's legal rights are not prejudiced and the existing attorney-client relationship is not impaired, including evaluating the location of the detention facility based on it proximity to the detainee's counsel or nongovernmental or pro bono organizations providing free or low cost immigration legal services.

(5) RECORD.—In cases in which a detainee is transferred, the Secretary shall make a record of the reasons and circumstances necessitating such transfer.

SEC. 153. SPECIFIC DETENTION REQUIREMENTS FOR SHORT-TERM DETENTION FACILITIES.

(a) ACCESS TO BASIC NEEDS, PEOPLE, AND PROPERTY.—

(1) BASIC NEEDS.—All detainees in short-term detention facilities shall receive—

(A) potable water;

(B) food, if detained for more than 5 hours;

(C) basic toiletries, diapers, sanitary products, and blankets;

(D) access to bathroom facilities; and

(E) access to telephones.

(2) PEOPLE.—The Secretary shall provide consular officials with access to detainees held at any short-term detention facility. Detainees shall be afforded reasonable access to a licensed health care professional. The Secretary shall ensure that nursing mothers in such facilities have access to their children.

(3) PROPERTY.—Any property belonging to a detainee that was confiscated by an official of the Department of Homeland Security shall be returned to the detainee upon repatriation or transfer.

(b) PROTECTIONS FOR CHILDREN.—

(1) QUALIFIED STAFF.—The Secretary shall ensure that adequately trained and qualified staff are stationed at each major port of entry at which, during the most recent 2 fiscal years, an average of

not fewer than 50 unaccompanied alien children per year have been held by United States Customs and Border Protection, such staff shall include—

(A) independent licensed social workers dedicated to ensuring the proper temporary care for the children while in the custody of United States Customs and Border Protection; and

(B) agents charged primarily with the safe, swift, and humane transportation of such children to the custody of the Office of Refugee Resettlement.

(2) SPECIFIC RIGHTS.—The social workers described in paragraph (1)(A) shall ensure that each unaccompanied alien child—

(A) receives emergency medical care;

(B) receives mental health care in case of trauma;

(C) has access to psychosocial health services;

(D) is provided with—

(i) a pillow, linens, and sufficient blankets to rest at a comfortable temperature; and

(ii) a bed and mattress placed in an area specifically designated for residential use;

(E) receives adequate nutrition;

(F) enjoys a safe and sanitary living environment;

(G) receives educational materials; and

(H) has access to at least 3 hours of indoor and outdoor recreational programs and activities per day.

(c) CONFIDENTIALITY.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall maintain the privacy and confidentiality of all information gathered in the course of providing care, custody, placement, and follow-up services to unaccompanied alien children and separated children as defined in section 164(c), consistent with the best interest of such children, by not disclosing such information to other government agencies or nonparental third parties, except as provided under paragraph (2).

(2) LIMITED DISCLOSURE OF INFORMATION.—The Secretary may only disclose information regarding an unaccompanied alien child if—

(A) the child authorizes such disclosure and such is consistent with the child's best interest; or

(B) the disclosure is to a duly recognized law enforcement entity and is necessary to prevent imminent and serious harm to another individual.

(3) WRITTEN RECORD.—All disclosures under paragraph (2) shall be duly recorded in writing and placed in the child's file.

SEC. 154. RULEMAKING AND ENFORCEMENT.

(a) REGULATIONS.—

(1) NOTICE OF PROPOSED RULEMAKING.—Not later than 60 days after the date of the enactment of this Act, the Secretary shall issue a notice of proposed rulemaking regarding the implementation of this Act.

(2) FINAL REGULATIONS.—Not later than 180 days after the date of the enactment of this Act, the Secretary shall promulgate regulations, which shall be binding upon all detention facilities and short-term detention facilities, to ensure that the detention requirements under sections 142 and 143 are fully implemented and enforced and that all facilities comply with the regulations.

(b) ENFORCEMENT.—

(1) IN GENERAL.—The Secretary shall enforce all regulations and standards promulgated under subsection (a). Not later than 180 days after the date of the enactment of this Act, the Secretary shall issue guidance to detention facilities and short-term detention facilities to ensure compliance with all the detention requirements under sections 142 and 143.

(2) INVESTIGATION.—

(A) GRIEVANCES.—Each detainee has the right to file grievances with the staff of detention facilities, short-term detention facilities, and the Department of Homeland Security, and shall be protected from retaliation for exercising such right.

(B) REVIEW.—The Secretary shall—

(i) review any grievance or other complaint containing evidence that a detention facility or short-term detention facility has violated any requirement under this Act;

(ii) issue a determination in writing to the complainant indicating the Secretary's findings regarding the alleged violation not

later than 30 days after receiving such complaint;

(iii) remedy any violation not later than 30 days after issuing a determination under clause (ii); and

(iv) promptly advise the complainant of the remedy referred to in clause (iii).

(C) WRITTEN RESPONSE.—If the Secretary issues a written response under subparagraph (B)(ii) indicating that no violation has occurred, such response shall constitute final agency action for the purposes of section 702 of title 5, United States Code.

(3) PENALTIES.—The Secretary shall enforce compliance with the detention requirements under sections 142 and 143 by—

(A) imposing financial penalties upon detention facilities and short-term detention facilities that are not in compliance with such requirements; and

(B) terminating the contracts of such facilities if such noncompliance persists.

(4) COMPLIANCE OFFICER.—

(A) DESIGNATION.—Each detention facility and short-term detention facility shall des-

ignate an officer to ensure compliance with the provisions of this Act.

(B) DUTIES.—Each officer designated under subparagraph (A) shall—

(i) investigate all evidence pertaining to a violation of this Act; and

(ii) if a violation is identified, remedy the violation within 30 days.

(C) JUDICIAL REVIEW.—A detainee may not seek judicial review of the detention facility's determination until after the passage of the 30-day period, except where irreparable harm would result.

(c) RULE OF CONSTRUCTION.—Nothing in this section may be construed to preclude review of noncompliance with this Act under—

(1) section 1331 or 2241 of title 28, United States Code; or

(2) section 1979 of the Revised Statutes (42 U.S.C. 1983).

(d) PUNITIVE DAMAGES.—No individual may seek punitive damages for any violation under this Act.

SEC. 155. IMMIGRATION DETENTION COMMISSION.

(a) APPOINTMENT.—The Secretary shall appoint and convene an Immigration Detention Commission (referred

to in this section as the "Commission"), which shall be comprised of—

(1) experts from United States Immigration and Customs Enforcement, United States Customs and Border Protection, the Office of Refugee Resettlement, and the Division of Immigration Health Services of the Department of Health and Human Services; and

(2) independent experts, in a number equal to the number of experts appointed under paragraph (1), from nongovernmental organizations and intergovernmental organizations with expertise in working on behalf of detainees and other vulnerable populations.

(b) DUTIES.—The Commission shall conduct independent investigations, and evaluate and report on the compliance of detention facilities, short-term detention facilities, and the Department of Homeland Security with the detention requirements under sections 142 and 143.

(c) BIENNIAL REPORTS.—Not later than 60 days after the end of the first fiscal year beginning after the date of the enactment of this Act, and every 2 years thereafter, the Commission shall submit a report containing the findings of its investigations and evaluations under subsection (b) to—

(1) the Committee on the Judiciary of the Senate;

(2) the Committee on Homeland Security and Governmental Affairs of the Senate;

(3) the Committee on the Judiciary of the House of Representatives; and

(4) the Committee on Homeland Security of the House of Representatives.

SEC. 156. DEATH IN CUSTODY REPORTING REQUIREMENT.

(a) IN GENERAL.—If an individual dies while in the custody of the Department of Homeland Security or en route to or from such custody—

(1) the supervising official at the detention facility or short-term detention facility at which the death took place shall immediately notify the Secretary of such death; and

(2) not later than 48 hours after receiving a notification under paragraph (1), the Secretary shall report the death to—

(A) the Office of the Inspector General of the Department of Homeland Security; and

(B) the Department of Justice.

(b) MORBIDITY AND MORTALITY REVIEW.—The Department of Homeland Security shall complete an investigation of each detainee death that shall be conducted

consistent with established medical practice for morbidity and mortality reviews and examine both individual and systemic contributors to the death. The investigation shall be conducted by a panel of physicians with experience in morbidity and mortality reviews and shall include the medical staff of the facility or facilities that cared for the deceased detainee, physicians from within the Department, and independent physicians not affiliated with the Department or facility. The panel shall complete a report and corrective action plan in each case.

(c) REPORT TO CONGRESS.—Not later than 60 days after the end of each fiscal year, the Secretary shall submit a report containing detailed information regarding all the deaths of individuals in the custody of the Department of Homeland Security during the preceding fiscal year to the committees set forth in section 155(c).

(d) CONTENTS.—The reports submitted under subsection (a)(2) and subsection (c) shall include—

(1) the name, gender, race, ethnicity, and age of the deceased;

(2) the date, time, and location of death;

(3) the law enforcement agency that detained, arrested, or was in the process of arresting the deceased;

(4) a description of the circumstances surrounding the death;

(5) the status and results of any investigation that has been conducted into the circumstances surrounding the death; and

(6) all medical records of the deceased.

SEC. 157. PROTECTION OF COMMUNITY-BASED ORGANIZATIONS, FAITH-BASED ORGANIZATIONS AND OTHER INSTITUTIONS.

(a) IN GENERAL.—The Secretary shall issue regulations requiring officials of the Department of Homeland Security to—

(1) prohibit the apprehension of persons on the premises or in the immediate vicinity of—

(A) a childcare provider;

(B) a school;

(C) a legal-service provider;

(D) a Federal court or State court proceeding;

(E) an administrative proceeding;

(F) a funeral home;

(G) a cemetery;

(H) a college, university, or community college;

(I) a victim services agency;

(J) a social service agency;

(K) a hospital or emergency care center;

(L) a health care clinic;

(M) a place of worship;

(N) a day care center;

(O) a head start center;

(P) a school bus stop;

(Q) a recreation center;

(R) a mental health facility; and

(S) a community center; and

(2) tightly control investigative operations at the locations described in paragraph (1).

(b) NOTICE TO APPEAR.—The Secretary shall amend the Notice to Appear form to include a statement that no immigration enforcement activity was undertaken in any of the locations described in subsection (a)(1).

SEC. 158. APPREHENSION PROCEDURES FOR IMMIGRATION-RELATED ENFORCEMENT ACTIVITIES.

(a) IN GENERAL.—Any immigration-related enforcement activity engaged in by the Department of Homeland Security or by other entities under agreement with the Department of Homeland Security for alleged violations under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), which results in the apprehension of at least

1 1 alien shall be carried out in accordance with the proce-
2 dures described in this section.

3 (b) APPREHENSION PROCEDURES.—The Department
4 of Homeland Security and entities under agreement with
5 the Department of Homeland Security shall—

6 (1) conduct an initial review of each individual
7 apprehended in an immigration-related enforcement
8 activity to ascertain whether such individual may be
9 a United States citizen, a lawful permanent resident
10 of the United States, or an alien lawfully present in
11 the United States;

12 (2) if an individual claims to be a United States
13 citizen, a lawful permanent resident of the United
14 States, or an alien lawfully present in the United
15 States, ensure that personnel of the Department of
16 Homeland Security or personnel under agreement
17 with the Department of Homeland Security inves-
18 tigates the individual's claims and considers the indi-
19 vidual for release under section 160(c);

20 (3) notify SSAs of such immigration-related en-
21 forcement activity not later than 24 hours before the
22 commencement of such activity, specifically notifying
23 the SSAs of—

24 (A) the specific area of the State that will
25 be affected; and

(B) the languages anticipated may be spoken by individuals at the targeted site;

(4) if such immigration-related enforcement activities cannot be planned more than 24 hours in advance, notify SSAs in a timely fashion before the activity commences or, if this is not possible, immediately following the commencement of such activity;

(5) provide SSAs with ongoing confidential access to individuals apprehended by the Department of Homeland Security or any entity operating under agreement with the Department of Homeland Security within six hours of the individual's apprehension, to assist the Department of Homeland Security in determining if he or she is a member of a vulnerable population as described in section 160(a)(2);

(6) notify local law enforcement of the specific area of the State that will be affected by such immigration-related enforcement activity not later than 24 hours before the commencement of such activity or, if such immigration-related enforcement activity cannot be planned more than 24 hours in advance, notify local law enforcement in a timely fashion before the activity commences, or if this is not possible, immediately following the commencement of such activity;

(7) provide all Department of Homeland Security personnel, personnel from entities under agreement with the Department of Homeland Security participating, SSAs, and medical personnel with detailed instructions on what steps to take if they encounter individuals who are a member of a vulnerable population;

(8) ensure that not fewer than one independent certified interpreter who is fluent in Spanish or any language other than English spoken by more than 5 percent of the target population of the immigration-related enforcement activity is available for in-person translation for every 5 individuals targeted by an immigration-related enforcement activity, and that the Department of Homeland Security and entities operating under agreement with the Department of Homeland Security utilize appropriate translation services where interpreters cannot or have not been retained prior to commencement of an immigration-related enforcement activity;

(9) permit nonprofit legal service providers, organizations, and attorneys to offer free legal services to individuals subject to an immigration-related enforcement activity at the time of the apprehension of such individuals; and

(10) permit access to a telephone within 6 hours after an individual is detained.

SEC. 159. PROTECTIONS AGAINST UNLAWFUL DETENTIONS OF UNITED STATES CITIZENS.

(a) NOTIFICATIONS.—

(1) IN GENERAL.—Prior to questioning an individual who has been detained on the basis of a suspected immigration violation or has been detained during an immigration-related enforcement activity, a Department of Homeland Security or other officer must first advise the detainee, in the language spoken by the detainee that—

(A) the detainee has the right to be represented by counsel at no expense to the Federal Government;

(B) the detainee may remain silent; and

(C) any statement made by the detainee may be used against the detainee in a subsequent removal or criminal proceeding.

(2) EFFECT OF VIOLATION.—Any evidence obtained by an officer from a detainee in violation of paragraph (1) may not be—

(A) admissible in a removal proceeding against the detainee; or

(B) used to confirm that the detainee is a noncitizen for purposes of issuing an immigration detainer.

(b) LEGAL ORIENTATION PROGRAM.—

(1) IN GENERAL.—The Attorney General, in consultation with the Secretary, shall ensure that all detained aliens who are in, or may be subject to, detention by the Department of Homeland Security, Immigration and Customs Enforcement, and who are, or may be, in EOIR Immigration Court proceedings pursuant to sections 235, 238, 240, and 241 of the Immigration and Nationality Act receive legal orientation through a program administered and implemented by the Executive Office of Immigration Review of the Department of Justice.

(2) CONTENT OF THE PROGRAM.—The legal orientation program developed pursuant to this section shall be based on the Legal Orientation Program carried out by the Executive Office for Immigration Review on the date of the enactment of this Act.

(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out suchlegal orientation program.

(c) ACCESS TO COUNSEL.—

(1) IN GENERAL.—An individual who is subject to or detained during an immigration-related enforcement activity may be represented by legal counsel at any time.

(2) LIST OF FREE LEGAL SERVICES.—The examining officer shall, in the language spoken by the individual being detained—

(A) provide the individual, prior to transferring the individual from the point of apprehension to the detention facility for an immigration-related violation with a list of available free or low-cost legal services provided by organizations and attorneys that are located in the region in which the arrest occurred; and

(B) certify on the Notice to Appear issued to such individual that such a list was provided to the individual.

(3) AMENDMENT.—Section 236 of the Immigration and Nationality Act (8 U.S.C. 1226) is amended—

(A) by redesignating subsection (e) as subsection (l);

(B) by redesignating subsections (b), (c), (d), and (e) as subsections (f), (g), and (h), and (i) respectively; and

(C) by inserting before subsection (l), as redesignated, the following:

''(k) RIGHT OF ACCESS TO COUNSEL.—An individual may be represented by counsel of the individual's choosing while being subject to any immigration-related enforcement activity, including—

''(1) interviews;

''(2) processing appointments;

''(3) booking or intake questions;

''(4) hearings; and

''(5) any procedure that may result in a conclusion that the detainee will be detained or removed from the United States.''.

(d) REPRESENTATION OF DISABLED ALIENS; ACCESS TO COUNSEL.—The Attorney General shall ensure that any alien with a legal, mental or physical disability that prevents him from meaningfully representing himself in proceedings shall have counsel, including counsel appointed by the Attorney General at the expense of the Government.

(e) NOTICE.—

(1) AMENDMENT.—Section 236 of such Act, as amended by subsection (b)(3), is further amended by inserting before subsection (k), the following:

"(j) NOTICE AND CHARGES.—

"(1) IN GENERAL.—Not later than 48 hours after the commencement of a detention of an individual under this section, the Secretary of Homeland Security shall—

"(A) file a Notice to Appear or other relevant charging document with the immigration court closest to the location at which the individual was apprehended; and

"(B) serve such notice or charging document on the individual.

"(2) CUSTODY DETERMINATION.—Any individual who is detained under this section for more than 48 hours shall be brought before an immigration judge for a custody determination not later than 72 hours after the commencement of such detention unless the individual waives the right in accordance with paragraph (3).

"(3) WAIVER.—The requirements of this subsection may be waived for not more than 7 days if the detainee—

1 "(A) enters into a written agreement with
2 the Department of Homeland Security to waive
3 such requirements; and
4 "(B) is prima facie eligible for immigration
5 benefits or demonstrates prima facie eligibility
6 for a defense against removal.".
7 (2) APPLICABILITY OF OTHER LAW.—Nothing
8 in section 236(f) of the Immigration and Nationality
9 Act, as added by paragraph (1), may be construed
10 to repeal section 236A of such Act (8 U.S.C.
11 1226a).
12 (f) ISSUANCE OF DETAINERS.—
13 (1) IN GENERAL.—Section 287(d) is amended
14 by adding at the end the following: "The alien and
15 his or her attorney in the criminal proceeding shall
16 be provided with a written notice of the detainer in-
17 dicating the intention of the Secretary to assume
18 custody of the alien upon completion of the pending
19 criminal proceedings. The written notice shall in-
20 clude information about the specific basis for issuing
21 the detainer and instructions about how individuals
22 can challenge a detainer lodged in error. Where the
23 state or federal criminal court has granted pre-trial
24 release, and the alien has complied with conditions
25 of such release, DHS shall not take custody of the

alien until resolution of the pending criminal charges. The existence of a detainer shall not be used as a basis for denying pre-trial release. This section is the sole authority for issuance of immigration detainers.''.

(2) RULEMAKING.—The Secretary shall issue regulations that require officials of the Department of Homeland Security to confirm, before issuing a detainer, the alienage of the individual to be made subject to such detainer. The regulations shall require officials of the Department of Homeland Security to confirm—

(A) the alienage of an individual through lawfully obtained information, including the name of the individual; the date of birth of the individual; or the fingerprints of the individual; and

(B) whether the individual is removable from the United States.

(3) DATA COLLECTION.—The Secretary of Homeland Security shall collect data regarding detainers issued under section 287(d) of the Immigration and Nationality Act (8 U.S.C. 1357(d)) including—

(A) the criminal charge for which the individual was arrested and/or convicted;

(B) the date the detainer was issued;

(C) the basis for issuance of the detainer;

(D) the date(s) the detainer was lifted;

(E) the date(s) of release of the individual ordered by a State or Federal criminal court or other government entity;

(F) the date that DHS took custody of the individual;

(G) the race and ethnicity and country of origin of the individual against whom the detainer was issued;

(H) the disposition of criminal case;

(I) the ultimate disposition of immigration case or whether individual was discovered to be a United States citizen;

(J) the grounds of removal if applicable and any charges brought by the Secretary; and

(K) the number of individuals removed after the Secretary took custody while any criminal matter was still pending.

(4) REPORT ON DETAINERS.—On a yearly basis beginning one year after the date of the enactment of this Act, the Secretary of Homeland Security

shall report the results of the Secretary's data collection to the Department of Homeland Security Inspector General, the Department of Justice Civil Rights Division, Congress, and the Department of Homeland Security Office of Civil Rights and Civil Liberties for purposes of ascertaining the extent to which detainers are erroneously lodged against individuals who are United States citizens or not deportable, how often individuals remain in detention unlawfully past the expiration of the detainer, whether detainers are lodged disproportionately against certain ethnicities, whether the lodging of detainers results in longer incarceration times, and whether detainers are lodged for an investigatory purpose to investigate criminal activity instead of placing individuals in removal proceedings.

(5) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section for each of fiscal years 2008 through 2012 to carry out this section.

SEC. 160. BASIC PROTECTIONS FOR VULNERABLE POPULATIONS.

(a) VULNERABLE POPULATIONS.—

1 (1) IN GENERAL.—Not later than 48 hours
2 after the commencement of an immigration-related
3 enforcement activity, the Department of Homeland
4 Security shall screen each detainee to determine
5 whether the detainee is a member of a vulnerable
6 population.
7 (2) VULNERABLE POPULATIONS.—A member of
8 a vulnerable population includes any of the fol-
9 lowing:
10 (A) Individuals with a nonfrivolous claim
11 to United States citizenship.
12 (B) Individuals who have a disability or
13 have been determined by a medically trained
14 professional to have medical or mental health
15 needs.
16 (C) Pregnant or nursing women.
17 (D) Individuals who are detained with 1 or
18 more of their children, and their detained chil-
19 dren.
20 (E) Individuals who provide financial,
21 physical, and other direct support to their
22 minor children, parents, or other dependents.
23 (F) Individuals who are at least 65 years
24 of age.

(G) Children (as defined in section 101(b)(1) of the Immigration and Nationality Act (8 U.S.C. 1101(b)(1))).

(H) Victims of abuse, violence, crime, or human trafficking.

(I) Individuals who have been referred for a credible fear interview, a reasonable fear interview, or an asylum hearing.

(J) Stateless individuals.

(K) Individuals who have applied or intend to apply for asylum, withholding 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, and entered into force June 26, 1987.

(L) Individuals who make a prima facie case for eligibility for relief under any provision of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), including returning lawful permanent residents.

(M) Any group designated by the Secretary as a vulnerable population.

(b) OPTIONS REGARDING DETENTION DECISIONS FOR VULNERABLE POPULATIONS.—Section 236 of the

Immigration and Nationality Act, as amended by this Act, is further amended—

(1) in subsection (a)—

(A) in the matter preceding paragraph (1), by striking ''(c)'' and inserting ''(g)''; and

(B) in paragraph (2)—

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

(ii) in subparagraph (B), by striking ''but'' and inserting ''or''; and

(iii) by adding at the end the following:

''(C) the individual's own recognizance;'';

(C) by redesignating paragraph (3) as paragraph (4); and

(D) by inserting after paragraph (2) the following:

''(3) may enroll the alien in a secure alternatives program; but''; and

(2) by inserting after subsection (a) the following:

''(b) DETENTION DECISION STANDARDS.—

''(1) CRITERIA TO BE CONSIDERED.—If an alien is not subject to mandatory detention under subsection (g) or section 236A, the criteria that the

Secretary or the Attorney General shall use to demonstrate that detention of the alien is necessary are the following:

"(A) Whether the alien poses a risk to public safety, including a risk to national security.

"(B) Whether—

"(i) the alien poses a risk of flight; and

"(ii) there are no conditions of release that will reasonably ensure that the alien will appear for immigration proceedings, including bond or other conditions of release that reduce the risk of flight.

"(2) EXCEPTION FOR MANDATORY DETAINEES.—The requirements described in paragraph (1) shall not apply if the Secretary of Homeland Security demonstrates by substantial evidence that the alien is subject to detention under subsection (g).

"(c) CUSTODY DECISIONS FOR VULNERABLE POPULATIONS.—

"(1) IN GENERAL.—Not later than 72 hours after an individual is detained under this section (unless the 72-hour requirement is waived in writing by the individual), an individual who is a member of

a vulnerable population (as defined by section 5(a)(3) of the Protect Citizens and Residents from Unlawful Detention Act) shall be released from the custody of the Department of Homeland Security and shall not be subject to electronic monitoring unless the Department demonstrates by a preponderance of the evidence that the individual—

"(A) is subject to mandatory custody or mandatory detention under subsection (g) or section 236A;

"(B) poses a risk to the national security of the United States; or

"(C) is a flight risk and the risk cannot be mitigated through supervision in a non-custodial secure alternatives program.

"(2) RELEASE.—An individual shall be released from custody under this subsection—

"(A) on the individual's own recognizance;

"(B) by posting a minimum bond under subsection (a)(2)(a); or

"(C) on parole in accordance with section 212(d)(5)(A).

"(d) DECISIONS TO DETAIN ALIENS.—

"(1) IN GENERAL.—All detention decisions under this section shall—

"(A) be made in writing by an official of the Department of Homeland Security;

"(B) specify the reasons for the decision, if the decision is made to continue the detention without bond or parole; and

"(C) be served upon the detainee, in the language spoken by the alien, not later than 72 hours after—

"(i) the commencement of the detention; or

"(ii) a positive determination of credible fear of persecution or reasonable fear of persecution or torture, if the detainee is subject to section 235 or 241(a)(5).

"(2) REDETERMINATION.—

"(A) REQUEST.—Any alien detained by the Department of Homeland Security, at any time after being served with the decision described in paragraph (1)(A), may request a redetermination of such decision by an immigration judge.

"(B) OTHER DECISIONS.—All custody decisions by the Secretary of Homeland Security shall be subject to redetermination by an immigration judge.

1 "(C) SAVINGS PROVISION.—Nothing in
2 this paragraph may be construed to prevent a
3 detainee from requesting a bond redetermina-
4 tion.
5 "(e) SECURE ALTERNATIVES PROGRAMS.—
6 "(1) IN GENERAL.—The Secretary of Homeland
7 Security shall establish secure alternatives programs
8 to ensure public safety and appearances at immigra-
9 tion proceedings.
10 "(2) CONTRACT AUTHORITY.—The Secretary
11 shall contract with nongovernmental organizations to
12 conduct screening of detainees, provide appearance
13 assistance services, and operate community-based
14 supervision programs.
15 "(3) INDIVIDUALIZED DETERMINATIONS.—
16 When deciding whether to use secure alternatives,
17 the Secretary shall make an individualized deter-
18 mination and review each case on a monthly basis.
19 "(4) CUSTODY.—If an individual is not eligible
20 for release from custody, the Secretary shall con-
21 sider the alien for placement in secure alternatives
22 that maintain custody over the alien, including the
23 use of electronic ankle devices. The Secretary may
24 use secure alternatives programs to maintain cus-

tody over any alien detained under this Act except for aliens detained under section 236A.''.

SEC. 161. REPORT ON PROTECTIONS FOR VULNERABLE POPULATIONS IMPACTED BY IMMIGRATION ENFORCEMENT ACTIVITIES.

(a) REQUIREMENT FOR REPORTS.—Not later than 1 year after the date of the enactment of this Act, and annually thereafter, the Secretary of Homeland Security shall submit a report to Congress that describes the impact of immigration-related enforcement activities and fugitive operations on United States citizens, lawful permanent residents, individuals otherwise lawfully present in the United States, and, where possible, undocumented aliens present in the United States.

(b) CONTENT.—The report submitted under subsection (a) shall include an assessment of—

(1) the number of individuals apprehended during immigration-related enforcement activities who are children, United States citizens, lawful permanent residents, lawfully present non-citizens;

(2) immigration-related apprehensions at homes, schools, school bus stops, day care centers, colleges, places of worship, hospitals, health care clinics, funeral homes, cemeteries, victim services agencies, social services agencies, head start centers,

1 recreation centers, legal service providers, courts and
2 community centers;
3 (3) apprehensions, detentions, and removals of
4 sole caregivers, primary breadwinners, pregnant and
5 nursing mothers, and other vulnerable populations
6 during an immigration-related enforcement activity;
7 (4) the extent to which the Department of
8 Homeland Security cooperates and coordinates with
9 State and local law enforcement during immigration-
10 related enforcement activities;
11 (5) the number of immigration-related enforce-
12 ment apprehensions resulting from cooperation with
13 State and local law enforcement;
14 (6) whether apprehended individuals are pro-
15 vided access to a telephone;
16 (7) how quickly apprehended individuals are
17 provided access to a telephone;
18 (8) the manner through which family members
19 of the target population of the immigration-related
20 enforcement activity are notified of their family
21 member's detention;
22 (9) the number of parents, guardians, or care-
23 givers of children removed from the United States;

(10) the number of parents, guardians, or caregivers of children removed from the United States whose children accompany or join them;

(11) the number of parents, guardians, or caregivers of children removed from the United States who are removed without their children;

(12) the number of occasions on which both parents of a particular children are removed from the United States without their children;

(13) the length of time the parents, guardians, or caregivers of children were present in the United States before their removal from the United Sates;

(14) the number of United States citizen children that remain in the United States after the removal of a parent, guardian, or caregiver;

(15) the number of individuals apprehended determined to be part of a vulnerable population released within specified time limit under section 160(c);

(16) the length of time between when an individual is determined to be part of a vulnerable population and that individual is released under section 160(c);

(17) the methodology of the Department of Homeland Security for notifying agents and entities

under agreement with the Department of Homeland Security about standards regarding enforcement actions concerning vulnerable populations and holding them accountable when such standards are violated;

(18) the number of officials of the Department of Homeland Security disciplined for violations during apprehensions and in making detention decisions;

(19) transfers of immigrants during the course of an immigration-related enforcement activity, including—

(A) whether the immigrants had access to legal counsel before being transferred;

(B) whether the immigrant received notice of an impending transfer; and

(C) whether the immigrant was evaluated for vulnerability under section 160(a) before being transferred;

(20) apprehension procedures for immigration-related enforcement activities, and compliance with screening procedures for vulnerable populations;

(21) recommendations for improving immigration-related enforcement activities and fugitive operations by reducing the negative impact on children and vulnerable populations;

(22) secure alternatives programs, including the types of programs used, number of individuals placed in theses programs, reasons for not placing immigrants that qualify as a member of a vulnerable population as defined in section 160(a) in these programs, percentage of cases in which adjustment of immigration status is granted, percentage of cases in which removal is undertaken, and frequency of absconding; and

(23) the number of individuals apprehended after officials were notified by a health or mental health professional.

SEC. 162. FAMILY DETENTION AND UNITY PROTECTIONS.

(a) DEFINITION OF FAMILIES WITH CHILDREN.—-Family with Children is defined as any parent or legal guardian who is apprehended with one or more of their children.

(b) PLACEMENT IN REMOVAL PROCEEDINGS.—Any family with children sought to be removed by the Department of Homeland Security shall be placed in removal proceedings under section 240 of the Immigration and Nationality Act (8 U.S.C. 1229a).

(c) CUSTODY OF FAMILIES WITH CHILDREN.—The following requirements shall apply with respect to families with children:

(1) Families with children shall not be separated or taken into custody except when justified by exceptional circumstances, or when required by law.

(2) In exceptional circumstances where release or a secure alternatives program is not an option, the Secretary shall ensure that—

(A) special non-penal, residential, home-like facilities that enable families to live as a family unit are designed to house families with children, taking into account the particular needs and vulnerabilities of the children;

(B) procedures and conditions of custody are appropriate for families with children;

(C) entities with demonstrated experience and expertise in child welfare shall staff and be responsible for the management of facilities housing families with children;

(D) no restrictions on freedom of movement; visitations; telephone, internet, library, and law library access; possession of personal property, including personal clothing; age appropriate education; or religious practice shall apply other than to prevent flight and ensure the safety of residents;

(E) individualized reviews by an immigration judge of each family's well being, custody status and the need for continued detention are conducted every 30 days for any family held in such a facility for more than three weeks, and all families shall be notified in writing of the decision and of the individualized reasons for the decision; and

(F) parents retain fundamental parental rights and responsibilities, including the discipline of children, in keeping with applicable State laws.

(d) DISCRETIONARY WAIVER AUTHORITY FOR FAMILIES WITH CHILDREN.—Section 235(b)(1)(B)(iii) of the Immigration and Nationality Act (8 U.S.C. 1225(b)(1)(B)(iii)) is amended—

(1) in subclause (IV), by striking ''Any alien'' and inserting ''Except as provided in subclause (V), any alien''; and

(2) by adding at the end the following:

''(V) DISCRETIONARY WAIVER AUTHORITY FOR FAMILIES WITH CHILDREN.—The Secretary of Homeland Security may decide for humanitarian reasons or significant public

1 benefit not to detain families with
2 children who are otherwise subject to
3 mandatory detention under subclause
4 (IV).''.

5 **SEC. 163. APPREHENSION PROCEDURES FOR FAMILIES**
6 **AND PARENTS.**

7 The Department of Homeland Security and entities
8 under agreement with the Department of Homeland Secu-
9 rity shall—

10 (1) offer confidential psychosocial and mental
11 health services to children and family members of
12 such individuals at the time of the apprehension;

13 (2) provide, and advertise in the mainstream
14 and foreign language media, as well as make avail-
15 able to the public via the website of the Department
16 of Homeland Security, a toll-free number through
17 which family members of persons apprehended as a
18 result of an immigration enforcement-related activity
19 may report information relevant to the release of an
20 apprehended family member as a member of a vul-
21 nerable population, which will be conveyed to the ap-
22 propriate Department of Homeland Security official
23 and applicable SSA, and through which State child
24 welfare service providers, family members, and legal
25 counsel representing those who are apprehended may

1 obtain information about the apprehended family
2 members, including their location, in English and
3 the majority language of those who are apprehended;
4 (3) if there is reason to believe that an indi-
5 vidual who is apprehended is a parent, legal guard-
6 ian, or primary caregiver relative of a dependent
7 child in the United States, provide this parent, legal
8 guardian, or primary caregiver relative with—
9 (A) confidential and toll-free telephone
10 calls to arrange for care of dependent children
11 within 2 hours of screening;
12 (B) information regarding and contact in-
13 formation for legal service providers, organiza-
14 tions, and attorneys that can offer free legal ad-
15 vice regarding child welfare and custody deter-
16 minations; and
17 (C) information regarding and contact in-
18 formation for multiple State and local child wel-
19 fare providers;
20 (4) ensure that personnel of the Department of
21 Homeland Security and of entities operating under
22 agreement with the Department do not—
23 (A) interrogate or screen individuals in the
24 immediate presence of children;

(B) interrogate, arrest, or detain any child apprehended with his or her parent or parents without the presence or consent of a parent, family member, legal guardian, or legal counsel; or

(C) compel or request children to translate for other individuals who are encountered as part of an immigration enforcement-related activity; and

(5) ensure that the best interests of children are considered in decisions and actions relating to the detention or release of any individual apprehended by the Department of Homeland Security, and that there be a preference for family unity whenever appropriate.

SEC. 164. CHILD WELFARE SERVICES FOR CHILDREN SEPARATED FROM PARENTS DETAINED OR REMOVED FROM THE UNITED STATES FOR IMMIGRATION VIOLATIONS.

(a) STATE PLAN REQUIREMENTS.—Section 471(a) of the Social Security Act (42 U.S.C. 671(a)) is amended—

(1) by striking ''and'' at the end of paragraph (32);

(2) by striking the period at the end of paragraph (33) and inserting "; and"; and

(3) by adding at the end the following:

"(34) provides that the State shall—

"(A) create and implement protocols to provide guidance on how all employees of State agencies providing services to children under the State plan should handle cases of separated children that take into account the best interest of the child, including consideration of the best outcome for the family of the child;

"(B) develop and implement memoranda of understanding or protocols with the Department of Homeland Security, Federal, State, and local government agencies to facilitate communication between the agencies and such a child, a parent, guardian, or relative referred to in section 475(9)(B), family members of such a child, family courts, providers of services to such a child under the State plan, providers of long-term care to such a child, and legal representatives of such a child or of such a parent, guardian, or relative;

"(C) develop and implement joint protocols and training with law enforcement agencies to

minimize the trauma, at the time of the apprehension of such a parent, guardian, or relative, to a child who will become a separated child as a result of the apprehension, including protocols and training for apprehension of such a parent, guardian, or relative in the presence of the child and how to best ensure appropriate and prompt care arrangements for the child;

''(D) ensure that the case manager for such a child is capable of communicating in the native language of the child and of the family of the child, or an interpreter who is so capable is provided to communicate with the child and the family of the child at no cost to the child or the family of the child;

''(E) require that, in all decisions and actions relating to the care, custody, and placement of such a child, the best interest of the child, including the best outcome for the family of the child, be considered, and ensure that the decisions are based on clearly articulated factors that do not include predictions or conclusions about immigration status or pending Federal immigration proceedings; and

"(F) coordinate with the Department of Homeland Security, foreign consular officials and nongovernmental organizations designated by the Secretary to ensure that parents of such a child who wish for the child to accompany them to their country of origin are given adequate time to obtain a passport and visa, collect all relevant vital documents such as birth certificate, health and educational records, and other information.".

(b) ADDITIONAL INFORMATION TO BE INCLUDED IN CASE PLAN.—Section 475(1) of such Act (42 U.S.C. 675(1)) is amended by adding at the end the following:

"(H) In the case of a separated child with respect to whom the State plan requires the State to provide services pursuant to section 471(a)(34)—

"(i) the location of the parent, guardian, or relative referred to in paragraph (9)(B) of this subsection from whom the child has been separated; and

"(ii) a written record of each disclosure to a government agency or person (other than such a parent, guardian, or relative) of information gathered in the

course of tracking the care, custody, and placement of, and follow-up services provided to, the child.''.

(c) SEPARATED CHILDREN DEFINED.—Section 475 of such Act (42 U.S.C. 675) is amended by adding at the end the following:

''(9) The term 'separated children' means individuals who—

''(A) have a parent, legal guardian, or primary caregiver relative who has been detained by a Federal, State, or local law enforcement agency in the enforcement of an immigration law, or removed from the United States as a result of a violation of such a law; and

''(B) are in foster care under the responsibility of a State.''.

SEC. 165. VULNERABLE POPULATION AND CHILD WELFARE TRAINING FOR IMMIGRATION ENFORCEMENT OFFICERS.

(a) MANDATORY TRAINING.—

(1) IN GENERAL.—The Secretary of Homeland Security, in consultation with the Secretary of Health and Human Services, and independent child welfare experts shall mandate live specialized training of all Federal personnel, relevant personnel em-

ployed by those States reimbursed for activities related to care and services for separated children, and State and local personnel and relevant SSAs, who come into contact with vulnerable populations as defined at section 160(a) in all relevant legal authorities, policies, and procedures pertaining to the humanitarian and due process protections for these vulnerable populations.

(2) VULNERABLE POPULATIONS.—Such personnel shall be trained to work with vulnerable populations, including identifying members of a vulnerable population, and identifying members of a vulnerable population for whom asylum or special juvenile immigrant relief may be appropriate.

(3) MENTAL HEALTH NEEDS.—Personnel shall establish collaborative relationships with local mental health professionals to provide training in preparation for apprehensions of individuals with mental health needs.

(4) BEST PRACTICES.—Participants will be required to undertake periodic and continuing training on best practices and changes in the law, policies, and procedures for these vulnerable populations.

(b) MEMORANDA OF UNDERSTANDING.—The Secretary of Homeland Security shall require all law enforce-

ment agencies under agreement with the Department of Homeland Security to establish Memoranda of Understanding with SSAs with respect to the availability of services relevant to the humanitarian and due process protections for vulnerable populations as defined in section 160(a).

SEC. 166. ACCESS FOR PARENTS, LEGAL GUARDIANS, AND, PRIMARY CAREGIVER RELATIVES.

(a) IN GENERAL.—The Secretary of the Department of Homeland Security shall ensure that all detention facilities operated by or under agreement with the Department take steps to preserve family unity and ensure that the best outcome for families can be considered in decisions and actions relating to the custody of children whose parent, legal guardian, or primary caregiver relative is detained by reason of the parent's, legal guardian's, or primary caregiver relative's immigration status.

(b) TRAINING.—The Secretary of Homeland Security, in consultation with the Department of Health and Human Services, the Department of Justice, the Department of State, and independent family law experts, shall mandate live, specialized training of all personnel at detention facilities operated by the Department of Homeland Security or under agreement with the Department of Homeland Security in all relevant legal authorities, poli-

1 cies and procedures related to ensuring that parents, legal
2 guardians, and primary caregiver relatives of children
3 have regular, ongoing and in-person access to children,
4 State family courts, consular officers and staff of State
5 social service agencies responsible for administering child
6 welfare programs. Such personnel shall be required to un-
7 dertake periodic and continuing training on best practices
8 and changes in relevant law, policies, and procedures per-
9 taining to the preservation of family unity.

10 (c) ACCESS TO CHILDREN, LOCAL AND STATE
11 COURTS, CHILD PROTECTIVE SERVICES, AND CONSULAR
12 OFFICIALS.—The Secretary of Homeland Security shall
13 be responsible for—

14 (1) ensuring that detained parents, legal guard-
15 ians, and primary caregiver relatives of children
16 under 18 years of age are granted free and confiden-
17 tial phone calls with their children on a daily basis;

18 (2) ensuring that detained parents, legal guard-
19 ians, and primary caregiver relatives of children
20 under 18 years of age are permitted regular contact
21 visits with their children;

22 (3) ensuring that detained parents, legal guard-
23 ians, and primary caregiver relatives of children
24 under 18 years of age are able to participate fully,
25 and to the extent possible in-person, in all family

court proceedings and any other proceeding impacting upon custody of their children;

(4) ensuring that detained parents, legal guardians, and primary caregiver relatives of children under 18 years of age are able to fully participate in and comply with all family court orders impacting upon custody of their child;

(5) ensuring that detained parents, legal guardians, and primary caregiver relatives of children under 18 years of age have regular, on-site access to reunification programming including parenting classes;

(6) ensuring that detained parents, legal guardians, and primary caregiver relatives of children under 18 years of age are provided with contact information for child protective services entities and family courts in all fifty States, the District of Columbia, all United States territories, and are granted free, confidential, and unlimited telephone access to child protective services entities and family courts to report child abuse, abandonment or neglect;

(7) ensuring that detained parents, legal guardians, and primary caregiver relatives of children under 18 years of age are granted regular, confidential and in-person access to consular officials; free,

unlimited, confidential phone calls to consular officials; and access to United States passport applications for the purpose of obtaining travel documents for their children;

(8) ensuring that detained parents, legal guardians, and primary caregiver relatives of children under 18 years of age who wish to take their children with them to their country of origin are granted adequate time prior to being removed to obtain a passport and other relevant travel documents necessary for children to accompany them on their return to their country of origin or join them in their country of origin; and

(9) facilitating detained parents', legal guardians', and primary caregiver relatives' ability to reunify with their children under 18 years of age at the time of removal to their country of origin, including providing information about the detained parent, legal guardian, or primary caregiver relative's travel arrangements to State social service agencies or other caregivers.

SEC. 167. ENHANCED PROTECTIONS FOR VULNERABLE UNACCOMPANIED ALIEN CHILDREN AND FEMALE DETAINEES.

(a) MANDATORY TRAINING.—The Secretary of Homeland Security, in consultation with the Office of Refugee Resettlement of the Department of Health and Human Services and independent child welfare experts, shall mandate live training of all personnel who come into contact with unaccompanied alien children (as defined in section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279)) in all relevant legal authorities, policies, and procedures pertaining to this vulnerable population.

(b) CARE AND TRANSPORTATION.—Notwithstanding any other provision of law, the Secretary of Homeland Security shall ensure that all unaccompanied children who will undergo any immigration proceedings before the Department of Homeland Security and the Executive Office for Immigration Review are duly transported and placed in the care and legal and physical custody of the Office of Refugee Resettlement within a maximum of 24 hours of their apprehension absent narrowly defined exceptional circumstances, including a natural disaster or comparable emergency beyond the control of the Secretary of Homeland Security or the Office of Refugee Resettlement. The Secretary of Homeland Security shall ensure that female officers are responsible and at all times present during the

1 transfer and transport of female detainees who are in the
2 custody of the Secretary of Homeland Security.

3 (c) NOTIFICATION.—The Secretary of Homeland Se-
4 curity shall immediately notify the Office of Refugee Re-
5 settlement of an unaccompanied alien child in the custody
6 of the Department of Homeland Security to effectively and
7 efficiently coordinate the child's transfer to and placement
8 with the Office of Refugee Resettlement.

9 (d) NOTICE OF RIGHTS AND ACCESS TO COUNSEL.—
10 The Secretary of Homeland Security shall ensure that an
11 independent licensed social worker, as described in section
12 153(b)(1)(A), provides all unaccompanied alien children
13 upon apprehension with both a video orientation and oral
14 and written notice of their rights under the Immigration
15 and Nationality Act including their rights to relief from
16 removal and their rights to confer with counsel (as guar-
17 anteed under section 292 of such Act), family, or friends
18 while in the Department of Homeland Security's tem-
19 porary custody and relevant complaint mechanisms to re-
20 port any abuse or misconduct they may have experienced.
21 The Secretary of Homeland Security shall ensure that the
22 video orientation and written notice of rights is available
23 in English and in the five most common native languages
24 spoken by the unaccompanied children held in custody at
25 that location during the preceding fiscal year, and that

1 the oral notice of rights is available in English and in the
2 most common native language spoken by the unaccom-
3 panied children held in custody at that location during the
4 preceding fiscal year.

5 (e) CONFIDENTIALITY.—The Secretary of Health
6 and Human Services shall maintain the privacy and con-
7 fidentiality of all information gathered in the course of
8 providing care, custody, placement and follow-up services
9 to unaccompanied alien children, consistent with the best
10 interest of the unaccompanied alien child, by not dis-
11 closing such information to other government agencies or
12 nonparental third parties. The Secretary may share infor-
13 mation when authorized to do so by the child and when
14 consistent with the child's best interest. The Secretary
15 may provide information to a duly recognized law enforce-
16 ment entity, if such disclosure would prevent imminent
17 and serious harm to another individual. All disclosures
18 shall be duly recorded in writing and placed in the child's
19 files.

20 (f) OTHER POLICIES AND PROCEDURES.—The Sec-
21 retary shall further adopt fundamental child protection
22 policies and procedures—

23 (1) for reliable age-determinations of children
24 which exclude the use of fallible forensic testing of

children's bone and teeth developed in consultation with medical and child welfare experts;

(2) to ensure the safe and secure repatriation and reintegration of unaccompanied alien children to their home countries through specialized programs developed in close consultation with the Secretary of State, the Office of the Refugee Resettlement and reputable independent child welfare experts including placement of children with their families or non-governmental agencies to provide food, shelter and vocational training and microfinance opportunities;

(3) to utilize all legal authorities to defer the child's removal if the child faces a risk of life-threatening harm upon return including due to the child's mental health or medical condition; and

(4) to ensure that unaccompanied alien children (as defined in section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279)) are physically separated from any adult who is not a family member, guardian, or caregiver and are separated by sight and sound from immigration detainees and inmates with criminal convictions, pretrial inmates facing criminal prosecution, children who have been adjudicated delinquents or convicted of adult offenses or are pending delinquency or criminal proceedings,

and those inmates exhibiting violent behavior while in detention as is consistent with the Juvenile Justice and Delinquency Prevention Act of 1974 (42 U.S.C. 5601 et seq.).

SEC. 168. PREVENTING UNNECESSARY DETENTION OF REFUGEES.

Section 209 of the Immigration and Nationality Act (8 U.S.C. 1159) is amended—

(1) in subsection (a)(1) by striking ''return or be returned to the Department of Homeland Security for inspection and examination for admission'' and also ''in accordance with the provisions of sections 235, 240, and 241'' and inserting ''be eligible for adjustment of status'';

(2) in subsection (a)(2) by striking ''upon inspection and examination''; and

(3) in subsection (c) by adding at the end ''An application for adjustment under this section may be filed up to 3 months before the date the applicant would first otherwise be eligible for adjustment under this section.''.

SEC. 169. REPORTS ON PROTECTIONS FROM UNLAWFUL DETENTION.

(a) REPORT REQUIREMENT.—Not later than 1 year after the date of the enactment of this Act, and annually

thereafter, the Secretary shall prepare and submit a report to Congress that describes the impact of worksite and fugitive operations on United States citizens, lawful permanent residents, and individuals otherwise lawfully present in the United States.

(b) CONTENT.—The report submitted under subsection (a) shall include an assessment of—

(1)(A) United States Immigration and Customs Enforcement protocol for humanitarian screening during a worksite enforcement action;

(B) the compliance with such protocol; and

(C) the nature of any related protocol in smaller worksite or nonworksite actions;

(2) collateral arrests under the National Fugitive Operations Program and worksite enforcement initiatives;

(3) whether individuals detained in an immigration-related enforcement activity are notified of their right to counsel;

(4) whether United States Immigration and Customs Enforcement agents—

(A) use excessive force in executing warrants, arrests, detentions, or other immigration-enforcement activities;

(B) enter private homes or residences without a search warrant or consent; or

(C) display and use weapons during immigration-enforcement activities or interrogations;

(5) whether United States Immigration and Customs Enforcement agents identify themselves when entering a location for enforcement purposes;

(6) the conditions under which individuals are confined;

(7) whether detainees are notified of their rights in a language they can understand;

(8) whether individuals detained during a raid or an immigration enforcement activity are forced or coerced to sign any documents or waive any rights without consulting with an attorney;

(9) the procedures used by the Department of Homeland Security—

(A) to notify agents about humanitarian standards regarding enforcement actions; and

(B) hold agents accountable when they violate such standards;

(10) the per detainee cost of each raid involving more than 50 detainees;

(11) the number of United States Immigration and Customs Enforcement agents disciplined for violations in detention proceedings; and

(12) recommendations for improving worksite operations and fugitive operations.

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

SEC. 170. RULEMAKING.

Not later than 1 year after the date of the enactment of this Act, the Secretary shall promulgate regulations to implement this subtitle and the amendments made by this subtitle.

Subtitle C—Enforcement

SEC. 181. LABOR ENFORCEMENT.

(a) LABOR ENFORCEMENT ACTIONS.—Section 274A(e) of the Immigration and Nationality Act (8 U.S.C. 1324a(e)) is amended to add a new paragraph (10).

"(10) CONDUCT IN ENFORCEMENT ACTIONS.—

"(A) ENFORCEMENT ACTION.—When an enforcement action is undertaken by the Department of Homeland Security and the Department receives information that there is a labor dispute in progress, or that information was provided to the Department of Homeland

1 Security to retaliate against employees for exer-
2 cising their employment rights, the Department
3 shall ensure that any aliens who are arrested or
4 detained and are necessary for the prosecution
5 of any labor or employment law violations are
6 not removed from the country without notifying
7 the appropriate law enforcement agency that
8 has jurisdiction over the violations and pro-
9 viding the agency with the opportunity to inter-
10 view such aliens. The Department shall ensure
11 that no aliens entitled to a stay of removal
12 under this section are removed.

13 "(B) INTERVIEWS.—Any arrangements for
14 aliens to be held or interviewed shall be made
15 in consultation with the relevant labor and em-
16 ployment law enforcement agencies.

17 "(C) STAY OF REMOVAL.—

18 "(i) An alien against whom removal
19 proceedings have been initiated pursuant
20 to chapter 4 of title III of the Immigration
21 and Nationality Act, who has filed a work-
22 place claim or who is a material witness in
23 any pending or anticipated proceeding in-
24 volving a workplace claim, shall be entitled
25 to a stay of removal and to an employment

authorized endorsement unless the Department establishes by a preponderance of the evidence in proceedings before the immigration judge presiding over that alien's removal hearing that—

"(I) the Department initiated the alien's removal proceeding for wholly independent reasons and not in any respect based on, or as a result of, any information provided to or obtained by the Department from the aliens employer, from any outside source, including any anonymous source, or as a result of the filing or prosecution of the workplace claim; and

"(II) the workplace claim was filed in a bad faith with the intent to delay or avoid the alien's removal.

"(ii) Any stay of removal or work authorization issued pursuant to subsection (i) shall remain valid and in effect at least during the pendency of the proceedings concerning such workplace claim. The Secretary of Homeland Security shall extend

1 such relief for a period of not longer than
2 3 additional years upon determining that—
3 ''(I) such relief would enable the
4 alien asserting the workplace claim to
5 be made whole;
6 ''(II) the deterrent goals of any
7 statute underlying the workplace
8 claim would thereby be served; or
9 ''(III) such extension would oth-
10 erwise further the interests of justice.
11 ''(iii) In this section—
12 ''(I) the term 'workplace claim'
13 shall include any claim, charge, com-
14 plaint, or grievance filed with or sub-
15 mitted to the employer, a Federal or
16 State or local agency or court, or an
17 arbitrator, to challenge an employer's
18 alleged civil or criminal violation of
19 any legal or administrative rule or re-
20 quirement affecting the terms or con-
21 ditions of its workers employment, the
22 treatment of workers, or the hiring or
23 firing of its workers; and
24 ''(II) the term 'material witness'
25 means an individual who presents a

declaration from an attorney investigating, prosecuting, or defending the workplace claim or from the presiding officer overseeing the workplace claim attesting that, to the best of the declarant's knowledge and belief, reasonable cause exists to believe that the testimony of the individual will be relevant to the outcome of the workplace claim.''

(b) WHISTLE BLOWER PROTECTIONS; VICTIMS OF CRIMINAL ACTIVITY.—Section 101(a)(15)(U) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(U)) is amended—

(1) in clause (ii), by striking ''and'' at the end;

(2) in clause (iii)—

(A) by striking ''or'' before ''attempt''; and

(B) by adding at the end the following: ''a civil violation of Federal, State, orlocal employment or labor laws; and''; and

(3) by adding at the end the following:

''(iv) the Secretary may not grant a petition filed by an alien based on a civil violation of Federal employment or labor laws unless the alien has—

"(I) a reasonable fear of retaliation based on immigration status;

"(II) has been threatened with retaliation based on immigration; or

"(III) has been retaliated against based on immigration status for attempting to remedy such violations; or".

SEC. 182. MANDATORY ADDRESS 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" 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 nonresidential 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).

"(f) REQUIREMENT FOR DATABASE.—The Secretary of Homeland Security shall establish an electronic database to timely record and preserve addresses provided under this section.".

(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) EFFECT ON ELIGIBILITY FOR IMMIGRATION BENEFITS.—If an alien fails to comply with section 262, 263, or 265 of the Immigration and Nationality Act (8 U.S.C. 1302, 1303, and 1305) or section 264.1 of title 8, Code of Federal Regulations, or removal orders or voluntary departure agreements based on any such section for acts committed prior to the enactment of this Act such failure shall not affect the eligibility of the alien to apply for a benefit under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

(d) TECHNICAL AMENDMENTS.—Section 266 (8 U.S.C. 1306) is amended by striking ''Attorney General'' each place it appears and inserting ''Secretary of Homeland Security''.

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall take effect on the date of the enactment of this Act.

(2) EXCEPTIONS.—The amendments made by paragraphs (1)(A), (1)(B), (2), and (3) of subsection (a) shall take effect as if enacted on March 1, 2003.

SEC. 183. PREEMPTION OF STATE AND LOCAL LAW.

(a) PREEMPTION.—This Act preempts any State or local law, contract, license, or other standard, requirement, action or instrument—

(1) discriminating among persons on the basis of immigration status, except as specifically authorized in Federal law; or

(2) imposing any sanction or liability—

(A) on any individual based on his or her immigration status;

(B) on any person or entity based on the immigration status of its clients, employees, tenants, or other associates; or

(C) relating to a violation or alleged violation of immigration law.

(b) DEFINITION.—For purposes of this section, ''immigration status'' refers to a person's present or previous: visa classification, refugee status, temporary protected status, status as an immigrant lawfully admitted for permanent residence, lawful presence, work authorization, or other classification or category created by, or related to this, Act or the Immigration and Nationality Act.

SEC. 184. DELEGATION OF IMMIGRATION AUTHORITY.

Section 287(g) (8 U.S.C. 1357(g)) is amended to read as follows:

"(g) Except as provided in section 103(a)(10), 242, or 274(c), the authority to investigate, identify, apprehend, arrest, or detain persons for a violation of any section of this Act or regulation pursuant to this Act is restricted to immigration officers and employees of the Department. Any such authority is further subject to any specific limitations set forth in this Act.".

SEC. 185. IMMIGRATION AND CUSTOMS ENFORCEMENT OMBUDSMAN.

(a) ESTABLISHMENT.—Subtitle D of title III of the Homeland Security Act of 2002 (6 U.S.C. 251 et seq.) is amended by adding at the end the following:

"SEC. 447. IMMIGRATION AND CUSTOMS ENFORCEMENT OMBUDSMAN.

"(a) IN GENERAL.—There established in the Department of Homeland Security a position of Immigration and Customs Enforcement Ombudsman (referred to in this section as the 'Ombudsman').

"(b) REQUIREMENTS.—The Ombudsman shall—

"(1) report directly to the Assistant Secretary for Immigration and Customs Enforcement (referred to in this section as the 'Assistant Secretary'); and

"(2) have a background in immigration law.

"(c) FUNCTIONS.—The Ombudsman shall—

"(1) undertake regular and unannounced inspections of detention facilities and local offices of United States Immigration and Customs Enforcement to determine whether the facilities and offices comply with relevant policies, procedures, standards, laws, and regulations;

"(2) report all findings of compliance or noncompliance of the facilities and local offices described in paragraph (1) to the Secretary and the Assistant Secretary;

"(3) develop procedures for detainees or their representatives to submit confidential written complaints directly to the Ombudsman;

"(4) investigate and resolve all complaints, including confidential and anonymous complaints, related to decisions, recommendations, acts, or omissions made by the Assistant Secretary or the Commissioner of United States Customs and Border Protection in the course of custody and detention operations;

"(5) initiate investigations into allegations of systemic problems at detention facilities;

"(6) conduct any review or audit relating to detention, as directed by the Secretary or Assistant Secretary;

"(7) refer matters, as appropriate, to the Office of Inspector General of the Department of Justice, the Office of Civil Rights and Civil Liberties of the Department, or any other relevant office or agency;

"(8) propose changes in the policies or practices of United States Immigration and Customs Enforcement to improve the treatment of United States citizens and residents, immigrants, detainees, and others subject to immigration-related enforcement operations;

"(9) establish a public advisory group consisting of nongovernmental organization representatives and Federal, State, and local government officials with expertise in detention and vulnerable populations to provide the Ombudsman with input on—

"(A) the priorities of the Ombudsman; and

"(B) current practices of United States Immigration and Customs Enforcement; and

"(10) recommend to the Assistant Secretary personnel action based on any finding of noncompliance.

"(d) ANNUAL REPORT.—

"(1) OBJECTIVES.—Not later than June 30 of each year, the Ombudsman shall prepare and submit a report to the Committee on the Judiciary of the

1 Senate and the Committee on the Judiciary of the
2 House of Representatives on the objectives of the
3 Office of the Ombudsman for the next fiscal year.
4 ''(2) CONTENTS.—Each report submitted under
5 paragraph (1) shall include—
6 ''(A) full and substantive analysis of the
7 objectives of the Office of the Ombudsman;
8 ''(B) statistical information regarding such
9 objectives;
10 ''(C) a description of each detention facil-
11 ity found to be in noncompliance with the de-
12 tention standards of the Department of Home-
13 land Security or other applicable regulations;
14 ''(D) a description of the actions taken by
15 the Department of Homeland Security to rem-
16 edy any findings of noncompliance or other
17 identified problems;
18 ''(E) information regarding whether the
19 actions described in subparagraph (D) resulted
20 in compliance with detention standards;
21 ''(F) a summary of the most pervasive and
22 serious problems encountered by individuals
23 subject to the enforcement operations of the
24 Department of Homeland Security, including a
25 description of the nature of such problems; and

"(G) such other information as the Ombudsman may consider advisable.".

(b) AMENDMENT.—The table of contents in section 1(b) of the Homeland Security Act of 2002 (6 U.S.C. 101 et seq.) is amended by inserting after the item relating to section 446 the following:

"Sec. 447. Immigration and Customs Enforcement Ombudsman.".

SEC. 186. ELIMINATING ARBITRARY BAR TO ASYLUM.

Section 208(a)(2) (8. U.S.C. 1158(a)(2)) is amended—

(1) by striking subparagraph (B);

(2) in subparagraph (C), by striking "(D)" and inserting "(C)";

(3) in subparagraph (D), by striking "subparagraphs (B) and (C)," and inserting "subparagraph (B),"; and

(4) by redesignating subparagraphs (C) and (D) as subparagraphs (B) and (C), respectively.

SEC. 187. RESTORATION OF JUDICIAL REVIEW.

Section 242 (8 U.S.C. 1252) is amended—

(1) by striking subsection (a)(2) (matters not subject to judicial review);

(2) in subsection (b)(1), by striking "30 days" and inserting "60 days";

(3) in subsection (b)(3)(B), by striking "does not" and inserting "shall";

(4) in subsection (b)(3)(C), by striking ''shall'' and inserting ''may'';

(5) in subsection (b)(4)(B), by striking ''any reasonable adjudicator would be compelled to conclude to the contrary'' and inserting ''the findings are not supported by substantial evidence'';

(6) in subsection (b)(8)(C), by inserting ''unless a stay is automatically granted by any provision of law or any court of competent jurisdiction'' after ''to defer removal of the alien'';

(7) in subsection (b)(9), by striking ''Except as otherwise provided in this section, no court shall have jurisdiction, by habeas corpus under section 2241 of title 28 or any other habeas corpus provision, by section 1361 or 1651 of such title, or by any other provision of law (statutory or nonstatutory), to review such an order or such questions of law or fact.'';

(8) by striking subsection (e)(1)(B);

(9) in subsection (e)(2)(B) by inserting ''lawfully'' after ''was'' and before ''ordered'';

(10) by striking subsection (e)(3);

(11) by redesignating subsection (e)(4) as subsection (e)(3);

(12) by redesignating subsection (e)(5) as subsection (e)(4);

(13) by striking subsection (f);

(14) by redesignating subsection (g) as subsection (f); and

(15) in subsection (g) (as so redesignated), by striking ''and notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title,''.

TITLE II—EMPLOYMENT VERIFICATION

SEC. 201. EMPLOYMENT VERIFICATION.

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

''SEC. 274A. EMPLOYMENT VERIFICATION.

''(a) MAKING EMPLOYMENT OF UNAUTHORIZED ALIENS UNLAWFUL.—

''(1) IN GENERAL.—It is unlawful for an employer—

''(A) to hire, 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 in the United States an individual unless such employer meets the requirements of subsections (b) and (c).

"(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.—An employer who uses a contract, subcontract, or exchange entered into, renegotiated, or extended after the date of the enactment of this Act to obtain the labor of an alien in the United States knowing or with reckless disregard that the alien is an unauthorized alien with respect to performing such labor, shall be considered to have hired the alien for employment in the United States in violation of paragraph (1)(A).

"(4) TREATMENT OF DOCUMENTATION FOR CERTAIN EMPLOYEES.—

"(A) IN GENERAL.—For purposes of this section, if—

"(i) an individual is a member of a collective-bargaining unit and is employed,

under a collective bargaining agreement entered into between one or more employee organizations and an association of two or more employers, by an employer that is a member of such association; and

"(ii) within the period specified in subparagraph (B), another employer that is a member of the association (or an agent of such association on behalf of the employer) has complied with the requirements of subsection (b) of this section with respect to the employment of the individual, the subsequent employer shall be deemed to have complied with the requirements of subsection (b) of this section with respect to the hiring of the employee and shall not be liable for civil penalties described in subsection (d)(4) of this section.

"(B) PERIOD.—The period described in this subparagraph is 3 years, or, if less, the period of time that the individual is authorized to be employed in the United States.

"(C) LIABILITY.—

"(i) IN GENERAL.—If any employer that is a member of an association hires

for employment in the United States an individual and relies upon the provisions of subparagraph (A) to comply with the requirements of subsection (b) of this section and the individual is an alien not authorized to work in the United States, then for the purposes of paragraph (1)(A), subject to clause (ii), the employer shall be presumed to have known at the time of hiring or afterward that the individual was an alien not authorized to work in the United States.

"(ii) REBUTTAL OF PRESUMPTION.—The presumption established by clause (i) may be rebutted by the employer only through the presentation of clear and convincing evidence that the employer did not know (and could not reasonably have known) that the individual at the time of hiring or afterward was an alien not authorized to work in the United States.

"(iii) EXCEPTION.—Clause (i) shall not apply in any prosecution under subsection (e)(1) of this section.

"(5) ORDER OF INTERNAL REVIEW AND CERTIFICATION OF COMPLIANCE.—

"(A) 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 with the section.

"(B) CONTENT OF CERTIFICATION.—Not later than 60 days after the date an employer receives a request for a certification under subparagraph (A) the employer shall certify under penalty of perjury that—

"(i) the employer is in compliance with the requirements of subsections (b) and (c); or

"(ii) that the employer has instituted a program to come into compliance with such requirements.

"(C) EXTENSION.—The 60-day period referred to in subparagraph (B), may be extended by the Secretary for good cause, at the request of the employer.

"(D) PUBLICATION.—The Secretary is authorized to publish in the Federal Register standards or methods for certification under subparagraph (A) and for specific recordkeeping practices with respect to such certification, and procedures for the audit of any records related to such certification.

"(6) DEFENSE.—

"(A) IN GENERAL.—Subject to subparagraph (B), an employer that establishes that the employer has complied in good faith, notwithstanding a technical or procedural failure, with the requirements of subsections (b) and (c) with respect to the hiring of an individual has established an affirmative defense that the employer has not violated paragraph (1)(B) with respect to such hiring.

"(B) EXCEPTION.—Until the date that an employer is required to participate in the Electronic Employment Verification System under subsection (c), the employer may establish an affirmative defense under subparagraph (A) without a showing of compliance with subsection (c).

"(7) NO AUTHORIZATION OF NATIONAL IDENTIFICATION CARDS.—Nothing in this title may be construed to authorize, directly or indirectly, the issuance, use, or establishment of a national identification card or a national identification system.

"(b) DOCUMENT VERIFICATION REQUIREMENTS.—An employer hiring 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 an original, unexpired document or documents described in section 274a.2(b)(1)(v) of title 8, Code of Federal Regulation as evidence of the individual's employment authorization and identity.

"(ii) SIGNATURE REQUIREMENTS.—An attestation required by clause (i) may be manifested by a handwritten or electronic signature.

"(iii) STANDARDS FOR EXAMINATION.—An employer has complied with the requirement of this paragraph with respect to examination of a document if the document examined reasonably appears on its face to be genuine and relates to the individual whose identity and eligibility for employment in the United States is being verified. Nothing in this paragraph may be construed as requiring the employer to solicit the production of any other document or as requiring the individual to produce such other document.

"(B) AUTHORITY TO PROHIBIT USE OF CERTAIN DOCUMENTS.—

"(i) AUTHORITY.—If the Secretary finds that a document or class of documents described in subparagraph (A)(i) is not reliable to establish identity or eligibility for employment (as the case may be) or is being used fraudulently to an unacceptable degree, the Secretary is authorized to 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 INDIVIDUAL.—

"(A) IN GENERAL.—The individual shall attest, under penalty of perjury on a form prescribed by the Secretary, that the individual is—

"(i) a national of the United States;

"(ii) an alien lawfully admitted for permanent residence; or

"(iii) an alien who is authorized under this Act or by the Secretary to be employed in the United States.

"(B) SIGNATURE FOR EXAMINATION.—An attestation required by subparagraph (A) may be manifested by a handwritten or electronic signature.

"(C) PENALTIES.—An individual who falsely attests that he or she is eligible for employment in the United States shall be subject to the terms and penalties regarding document fraud described in section 274C of the Immigration and Nationality Act.

"(D) SCHEDULE.—

"(i) REPLACEMENT DOCUMENTS.—An employer shall accept a receipt for the application for a replacement document or a document described in subparagraph (B) of subsection (b)(1) in lieu of the required document in order to comply with any requirement to examine documentation imposed by this section, in the following circumstances:

"(I) The individual is unable to provide the required document within the time specified in this section because the document was lost, stolen, or damaged.

"(II) The individual presents a receipt for the application for the document within the time specified in this section.

"(III) The individual presents the document within 90 days of the hire. If the actual document or replacement document is to be issued by the United States Citizenship and Immigration Services and the application

is still under review 60 days after receipt of the application, United States Citizenship and Immigration Services shall, not later than the 60th day after receipt of the application, issue a letter for the applicant to take to the employer which shall automatically grant the individual an additional 90 days from the original deadline in subsection (b)(6)(A)(i)(II) to present the document or replacement document; and

"(ii) PROHIBITION ON ACCEPTANCE OF A RECEIPT FOR SHORT-TERM EMPLOYMENT.—An employer may not accept a receipt in lieu of the required document if the individual is hired for a duration of less than 10 working days.

"(3) DOCUMENT RETENTION AND RECORD-KEEPING REQUIREMENTS.—The System described in subsection (c) shall include an auto-save feature allowing the employer to retain an electronic version of an attestation submitted under paragraph (1) or (2) for an individual and a record 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, including records received through the Electronic Employment Verification System under subsection (c). The employer shall retain such records, either in electronic, paper, microfiche, or microfilm form, 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—

"(A) during a period beginning on the date of the hiring of the individual and ending on the date that is the later of—

"(i) 3 years after the date of such hiring; or

"(ii) 1 year after the date the individual's employment is terminated; or

"(B) during a shorter period determined by the Secretary, if the Secretary reduces the period described in subparagraph (A) for the employer or a class of employers that includes the employer.

"(C) 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.

"(4) PENALTIES.—An employer that fails to comply with the requirement of this subsection shall be subject to the penalties described in subsection (d)(4)(B).

"(e) 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') as described in this subsection.

"(2) TECHNOLOGY STANDARD TO VERIFY EMPLOYMENT ELIGIBILITY.—

"(A) IN GENERAL.—The Secretary, based upon recommendations from the Director of the National Institute of Standards and Technology, shall not later than 180 days after the date of the enactment of the this Act develop

1 and certify a technology standard as described
2 in this subparagraph. The Secretary shall have
3 discretion to extend the 180-day period if the
4 Secretary determines that such extension will
5 result in substantial improvement of the Sys-
6 tem.

7 "(B) INTEGRATED.—Notwithstanding any
8 other provision of Federal law, the technology
9 standard developed shall be the technological
10 basis for a secure cross-agency, cross-platform
11 electronic system that is a cost-effective, effi-
12 cient, fully integrated means to share immigra-
13 tion and Social Security information necessary
14 to confirm the employment eligibility of all indi-
15 viduals seeking employment while protecting in-
16 dividual privacy.

17 "(C) REPORT.—Not later than 18 months
18 after the date of the enactment of this Act, the
19 Secretary and the Director of the National In-
20 stitute of Standards and Technology shall joint-
21 ly submit to Congress a report describing the
22 development, implementation, efficacy, and pri-
23 vacy implications of the technology standard
24 and the System.

1 "(3) IDENTITY AND EMPLOYMENT ELIGIBILITY
2 VERIFICATION.—An employer shall verify the iden-
3 tity and eligibility for employment of an individual
4 hired by the employer through the System as fol-
5 lows:
6 "(A) INITIAL INQUIRY.—The employer
7 shall submit through the Internet or other elec-
8 tronic media, or over a telephone line an inquiry
9 through the System to seek confirmation of the
10 individual's identity and eligibility for employ-
11 ment in the United States not earlier than on
12 the first day such employment actually com-
13 mences and not later than 5 working days after
14 the date such employment actually commences.
15 "(i) IN GENERAL.—The Secretary,
16 through the System, shall confirm or ten-
17 tatively nonconfirm an individual's identity
18 and eligibility for employment in the
19 United States not later than 1 working day
20 after an employer submits an inquiry re-
21 garding the employee.
22 "(ii) MANUAL VERIFICATION.—If the
23 System provides a tentative nonconfirma-
24 tion with respect to an individual under
25 clause (i), the Secretary and/or Commis-

sioner shall complete a secondary manual verification not later than 6 working days after such tentative nonconfirmation is made.

"(iii) DETERMINATION.—Not later than 10 days after the employer submits an inquiry under subparagraph (A) the Secretary, through the System, shall provide to the employer the results of the verification required by clause (i) and (ii). Such results shall be a determination that—

"(I) confirms the individual's identity and eligibility for employment in the United States; or

"(II) the System is tentatively unable to confirm the individual's identity or eligibility for employment (referred to in this section as a 'tentative nonconfirmation').

"(B) SUBMISSION OF INFORMATION.—An individual who is the subject of a tentative nonconfirmation may submit to the Secretary or Commissioner, through the System, information to confirm such individual's identity or eligi-

bility for employment or to otherwise contest such tentative nonconfirmation not later than 15 working days after the individual receives notice of such tentative nonconfirmation.

"(C) EXTENSION.—The 15-day period referred to in subparagraph (B) may be extended by the Secretary for good cause at the request of the individual.

"(D) PROHIBITION ON TERMINATION FOR TENTATIVE NONCONFIRMATION.—An employer may not terminate the employment of an individual based on tentative nonconfirmation.

"(E) FINAL DETERMINATION.—Not later than 10 days after the individual contests such tentative nonconfirmation or, in the case of an individual who fails to contest such tentative nonconfirmation, not later than 25 days after the date of the initial tentative nonconfirmation, the Secretary shall provide, through the system to the employer the results of the verification. Such results shall be a determination that—

"(i) confirms the individual's identity and eligibility for employment in the United States; or

"(ii) the System is unable to confirm the individual's identity or eligibility for employment (referred to in this section as a 'final nonconfirmation').

"(F) ADMINISTRATIVE AND JUDICIAL REVIEW.—If the Secretary, through the System, provides a final nonconfirmation with respect to an individual, the individual shall have the right to administrative review under paragraph (21) and judicial review under paragraph (22) of such final nonconfirmation.

"(G) TERMINATION OF EMPLOYEE.—If an employer receives a final nonconfirmation with respect to an individual under paragraph (E), the employer shall terminate the employment of such individual after the conclusion of the 30-day period for the individual to file an administrative appeal as described in paragraph (21), unless the Secretary or the Commissioner stays the final nonconfirmation notice pending the resolution of the administrative appeal or judicial review.

"(H) RIGHT TO REVIEW AND CORRECT SYSTEM INFORMATION.—

1 "(i) The Secretary, in consultation
2 with the Commissioner of Social Security,
3 shall establish procedures to permit an in-
4 dividual to verify the individual's eligibility
5 for employment in the United States prior
6 to obtaining or changing employment, to
7 view the individual's own records in the
8 System in order to ensure the accuracy of
9 such records, and to correct or update the
10 information used by the System regarding
11 the individual. To the greatest practicable
12 extent such procedures shall allow elec-
13 tronic submission of such information.
14 "(ii) The Secretary, in consultation
15 with the Commissioner of Social Security,
16 shall establish procedures for an Enhanced
17 Verification System under paragraph (25)
18 through which an individual who has
19 viewed the individual's own record may
20 electronically block he use of the individ-
21 ual's social security number and may reg-
22 ister a phone number or e-mail address to
23 be contacted upon removal of the block
24 under the System and remove such block
25 in order to prevent the fraudulent or other

misuse of a social security account number, prevent employer misuse of the system, protect privacy, and limit erroneous non-confirmations during employment verification.

"(H) REVERIFICATION.—

"(i) IN GENERAL.—It is an unfair immigration-related employment practice under section 274B for an employer to reverify an individual's identity and employment eligibility unless—

"(I) the individual's work authorization expires as described in section 274a.2(b)(1)(vii) of title 8, Code of Federal Regulation or a subsequent similar regulation, in which case—

"(aa) not later than 30 days prior to the expiration of the individual's work authorization, the Secretary shall notify the employer of such expiration and of the employer's need to reverify the individual's employment eligibility; and

"(bb) the individual may present, and the employer shall accept, a receipt for the application for a replacement document, extension of work authorization, or a document described in clause (i) through (v) of subparagraph (B) of subsection (b)(1) in lieu of the required document by the expiration date in order to comply with any requirement to examine documentation imposed by this section, and the individual shall present the required document within 90 days from the date the employment authorization expires. If the actual document or replacement document is to be issued by United States Citizenship and Immigration Services and the application is still under review 60 days after the employment authorization expiration date, United States Citizenship and Immigration Services

shall by the 60th day after the expiration date of the employment authorization, issue a letter for the applicant to take to the employer which shall automatically grant the individual an additional 90 days to present the document or replacement document; and

"(II) the employer has actual or constructive knowledge that the individual is not authorized to work in the United States; or

"(III) unless otherwise required by law.

"(ii) CONTINUING EMPLOYMENT.—An employer may not verify an individual's employment eligibility if the individual is continuing in his or her employment as described in section 274a.2(b)(1)(viii) of title 8, Code of Federal Regulation or any subsequent similar regulation.

"(4) DESIGN AND OPERATION OF SYSTEM.—The Secretary, in consultation with the Commis-

sioner of Social Security, shall design and operate the System—

"(A) to maximize reliability and ease of use by employers and employees in a manner that protects and maintains the privacy and security of the information maintained in the System;

"(B) to permit an employer to submit an inquiry to the System through the Internet or other electronic media or over a telephone line;

"(C) to respond to each inquiry made by an employer;

"(D) to maintain a record of each such inquiry and each such response;

"(E) to track and record any occurrence when the System is unable to receive such an inquiry;

"(F) to include appropriate administrative, technical, and physical safeguards to prevent unauthorized disclosure of personal information during use, transmission, storage, or disposal of that information, including the use of encryption, carrying out periodic testing of the System to detect, prevent, and respond to

vulnerabilities or other failures, and utilizing periodic security updates;

"(G) to allow for monitoring of the use of the System and provide an audit capability;

"(H) to have reasonable safeguards, developed in consultation with the Attorney General, to prevent employers from engaging in unlawful discriminatory practices;

"(I) to permit an employer to submit the attestations required by subsection (b); and

"(J) to permit an employer to utilize any technology that is consistent with this section and with any regulation or guidance from the Secretary to streamline the procedures to comply with the attestation and employment eligibility verification requirements contained in this section.

"(5) LIMITATION ON DATA ELEMENTS STORED.—

"(A) The System and any databases created by the Commissioner of Social Security or the Secretary for use in the System shall store only the minimum data about each individual for whom an inquiry was made through the System to facilitate the successful operation of

the System, and in no case shall the data stored be other than—

"(i) the individual's full legal name;

"(ii) the individual's date of birth;

"(iii) the individual's social security account number or employment authorization status identification number;

"(iv) the address of the employer making the inquiry and the dates of any prior inquiries concerning the identity and authorization of the individual by the employer or any other employer and the address of such employer;

"(v) a record of each prior determination regarding the individual's identity and employment eligibility issued through the System; and

"(vi) in the case of the individual who successfully contested or appealed a tentative nonconfirmation or final nonconfirmation, explanatory information concerning the successful resolution of any erroneous data or confusion regarding the identity or eligibility for employment of the

individual, including the source of that error.

"(B) Information provided pursuant to subsection (c)(5)(A)(i)–(v) shall be deleted from the System one year after the date of entry unless the Secretary shall determine it is relevant to an ongoing determination or appeal, a review of errors or compensation for errors, or an ongoing investigation of fraud or misuse of the system. The Secretary shall not retain any data pursuant to this subsection after the completion of an appeal or investigation except as described in subsection (c)(5)(A)(vi).

"(6) RESPONSIBILITIES OF THE COMMISSIONER OF SOCIAL SECURITY.—The Commissioner of Social Security shall establish a reliable, secure method to provide through the System, within the time periods required by subparagraphs (B) and (C) of paragraph (2)—

"(A) a confirmation of whether or not the individual is a United States citizen;

"(B) a determination of whether the name and social security account number provided, with respect to an individual, in an inquiry by an employer, match such information main-

tained by the Commissioner in order to confirm the validity of the information provided;

"(C) a determination of whether such social security account number was issued to the individual; and

"(D) a determination described in subparagraph (B) or (C) of paragraph (2), in a manner that ensures that other information maintained by the Commissioner is not disclosed or released to employers through the System.

"(7) RESPONSIBILITIES OF THE SECRETARY.—The Secretary shall establish a reliable, secure method to provide, through the System, within the time periods required by subparagraphs (B) and (C) of paragraph (2)—

"(A) a determination of whether the name and alien identification or authorization number provided, with respect to an individual, in an inquiry by an employer match such information maintained by the Secretary in order to confirm the validity of the information provided;

"(B) a determination of whether such number was issued to the individual;

"(C) a determination of whether the individual is authorized to be employed in the United States; and

"(D) any other related information that the Secretary determines is appropriate.

"(8) PRIVACY IMPACT ASSESSMENT.—The Commissioner of Social Security and the Secretary shall each complete a privacy impact assessment as described in section 208 of the E-Government Act of 2002 (Public Law 107–347; 44 U.S.C. 3501 note) with regard to the System.

"(9) TRAINING.—Not later than 6 months before implementation of the EEVS, the Commissioner of Social Security and the Secretary shall institute a comprehensive program of outreach and training for employers regarding the operation of the verification system described in this section and informing them of ongoing assistance resources for the implementation and use of such systems.

"(10) PUBLIC EDUCATION.—Not later than 6 months before implementation of the EEVS, the Commissioner of Social Security and the Secretary shall develop a public education campaign regarding the obligations imposed by this section as well as in-

structional materials provided without cost to the public regarding how to use the EEVS.

"(11) HOTLINE.—The Secretary shall establish a fully staffed 24-hour toll-free hotline that shall receive inquiries from individuals or employers concerning determinations made by the System and shall identify for an individual, at the time of inquiry, the particular data that resulted in a determination that the System was unable to verify the individual's identity or eligibility for employment.

"(12) PARTICIPATION.—

"(A) REQUIREMENTS FOR PARTICIPATION.—Except as provided in subparagraphs (D) and (E), the Secretary shall require employers to participate in the System as follows:

"(i) CRITICAL EMPLOYERS.—Not later than 6 months after the date of enactment of this Act, the Secretary shall require all agencies and departments of the United States (including the Armed Forces), a State government (including a State employment agency before making a referral), or any other employer if it employs individuals working in a location that is a Federal, State, or local government building, a

military base, a nuclear energy site, a weapon site, or an airport, but only to the extent of such individuals, to participate in the System, with respect to all individuals hired after the date the Secretary requires such participation.

"(ii) LARGE EMPLOYERS.—Not later than 1 year after the date of enactment of this Act the Secretary shall require an employer with 5,000 or more employees in the United States to participate in the System, with respect to all employees hired by the employer after the date the Secretary requires such participation.

"(iii) MIDSIZED EMPLOYERS.—Not later than 2 years after the date of enactment of this Act the Secretary shall require an employer with less than 5,000 employees and 1,000 or more employees in the United States to participate in the System, with respect to all employees hired by the employer after the date the Secretary requires such participation.

"(iv) SMALL EMPLOYERS.—Not later than 3 years after the date of the enact-

ment of the this Act, the Secretary shall require all employers with less than 1,000 employees in the United States to participate in the System, with respect to all employees hired by the employer after the date the Secretary requires such participation.

"(B) REQUIREMENT TO PUBLISH.—The Secretary shall publish in the Federal Register the requirements for participation in the System for employers described in clauses (i) through (iv) of subparagraph (A) prior to the effective date of such requirements.

"(C) OTHER PARTICIPATION IN SYSTEM.—Notwithstanding subparagraph (A), the Secretary has the authority to permit any employer that is not required to participate in the System under subparagraph (A) to participate in the System on a voluntary basis

"(D) WAIVER.—

"(i) AUTHORITY TO PROVIDE A WAIVER.—The Secretary is authorized to waive or delay the participation requirements of subparagraph (A) with respect to any employer or class of employers if the Sec-

retary provides notice to Congress of such waiver prior to the date such waiver is granted.

"(ii) REQUIREMENT TO PROVIDE A WAIVER.—The Secretary shall waive or delay the participation requirements of subparagraph (A) with respect to any employer or class of employers until the date that the Comptroller General of the United States submits the initial certification described in paragraph (19)(E) and shall waive or delay such participation during a year if the Comptroller General fails to submit a certification of paragraph (19)(E) for such year.

"(E) 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 individual—

"(i) such failure shall be treated as a violation of subsection (a)(1)(B); and

"(ii) a rebuttable presumption is created that the employer has violated subsection (a)(1)(A), however, such presump-

1 tion may not apply to a prosecution under
2 subsection (e)(1).
3 "(13) EMPLOYER REQUIREMENTS.—
4 "(A) IN GENERAL.—An employer that par-
5 ticipates in the System, with respect to the hir-
6 ing of an individual for employment in the
7 United States, shall—
8 "(i) notify the individual of the use of
9 the System and that the System may be
10 used for immigration enforcement pur-
11 poses;
12 "(ii) obtain from the individual the
13 documents required by subsection (b)(1)
14 and record on the form designated by the
15 Secretary—
16 "(I) the individual's social secu-
17 rity account number; and
18 "(II) in the case of an individual
19 who does not attest that the indi-
20 vidual is a national of the United
21 States under subsection (b)(2), such
22 identification or authorization number
23 that the Secretary shall require;
24 "(iii) retain such form in electronic,
25 paper, microfilm, or microfiche form and

make such form available for inspection for the periods and in the manner described in subsection (b)(3); and

"(iv) safeguard any information collected for purposes of the System and protect any means of access to such information to ensure that such information is not used for any purpose other than to determine the identity and employment eligibility of the individual and to protect the confidentiality of such information, including ensuring that such information is not provided to any person other than a person who carries out the employer's responsibilities under this subsection. Failure to safeguard such information shall be a violation of subsection (c)(14).

"(B) CONFIRMATION, TENTATIVE NONCONFIRMATION, OR FINAL NONCONFIRMATION.—

"(i) CONFIRMATION.—If an employer receives a determination through the System under paragraph (3) for an individual, the employer shall retain either an electronic, paper, or microfiche form record of

1 such confirmation for the period required
2 by subsection (b)(4)(A).
3 "(ii) TENTATIVE NONCONFIRMATION
4 AND VERIFICATION.—
5 "(I) NONCONFIRMATION.—If an
6 employer receives a tentative noncon-
7 firmation with respect to an indi-
8 vidual, the employer shall retain either
9 an electronic or paper record of such
10 nonconfirmation for the period re-
11 quired by subsection (b)(4)(A) and in-
12 form such individual not later than 3
13 working days after the issuance of
14 such notice in the manner prescribed
15 by the Secretary that includes infor-
16 mation regarding the individual's
17 right to submit information to contest
18 the tentative nonconfirmation and the
19 address and telephone numbers estab-
20 lished by the Commissioner and the
21 Secretary to obtain information on
22 how to submit such information. The
23 individual must acknowledge in writ-
24 ing whether or not the individual
25 chooses to contest or not contest the

tentative nonconfirmation. The employer shall submit to the System the individual's action.

"(II) NO CONTEST.—If the individual does not contest the tentative nonconfirmation notice within 15 working days of receiving notice from the individual's employer, the notice shall become final and the employer shall retain either an electronic or paper record of such final nonconfirmation for the period required by subsection (b)(4)(A). An individual's failure to contest a tentative nonconfirmation may not be the basis for determining that the employer acted in a knowing (as defined in section 274a.1 of title 8, Code of Federal Regulations, or any corresponding similar regulation) manner.

"(III) CONTEST.—If the individual contests the tentative nonconfirmation notice under subclause (I), the individual shall submit appropriate information to contest such no-

tice to the Secretary or Commissioner of Social Security within 15 working days of receiving notice from the individual's employer and shall utilize the verification process developed under paragraph (3)(B).

"(IV) EFFECTIVE PERIOD OF TENTATIVE NONCONFIRMATION.—A tentative nonconfirmation notice shall remain in effect until such notice becomes final under clause (II) or a final confirmation notice or final nonconfirmation notice is issued by the System.

"(V) PROHIBITION.—An employer may not terminate the employment of an individual based on a tentative nonconfirmation notice. Nothing in this clause shall apply to termination of employment for any legitimate reason other than because of such a tentative nonconfirmation.

"(iii) FINAL NONCONFIRMATION.—

"(I) If an employer has received a final nonconfirmation with respect

to an individual, the employer shall terminate the employment of the individual after the expiration of the time period prescribed in paragraph (21) for the individual to file an administrative appeal of a final nonconfirmation notice, unless the Secretary or the Commissioner stays the final nonconfirmation notice pending the resolution of the administrative appeal, or a stay is issued pending judicial review.

"(II) CONTINUED EMPLOYMENT AFTER FINAL NONCONFIRMATION.—If the employer continues to employ (or to recruit or refer) an individual after the expiration of the period for the individual to file an administrative appeal of a final nonconfirmation notice under paragraph (21) (unless the Secretary or the Commissioner stayed the final nonconfirmation notice pending the resolution of the administrative appeal or a stay is issued pending judicial review), a rebuttable presump-

tion is created that the employer has violated subsections paragraphs (1)(A) and (2) of subsection (a). Such presumption may not apply to a prosecution under subsection (e)(1).

"(14) PROHIBITION OF UNLAWFUL ACCESSING AND OBTAINING OF INFORMATION.—

"(A) IN GENERAL.—It shall be unlawful for any individual other than an employee of the Social Security Administration or the Department of Homeland Security specifically charged with maintaining the System to intentionally and knowingly—

"(i) access the System or the databases utilized to verify identity or employment eligibility for the System for any purpose other than verifying identity or employment eligibility or modifying the System pursuant to law or regulation; or

"(ii) obtain the information concerning an individual stored in the System or the databases utilized to verify identity or employment eligibility for the System for any purpose other than verifying identity or employment authorization or modi-

1 fying the System pursuant to law or regu-
2 lation.
3 "(B) PENALTIES.—
4 "(i) UNLAWFUL ACCESS.—Any indi-
5 vidual who unlawfully accesses the System
6 or the databases as described in subpara-
7 graph (A)(i) shall be fined no more than
8 $1,000 per individual or sentenced to no
9 more than 6 months imprisonment or both
10 per individual whose file was compromised.
11 "(ii) UNLAWFUL USE.—Any indi-
12 vidual who unlawfully obtains information
13 stored in the System in the database uti-
14 lized to verify identity or employment eligi-
15 bility for the System and uses the informa-
16 tion to commit identity theft for financial
17 gain or to evade security or to assist an-
18 other in gaining financially or evading se-
19 curity, shall be fined no more than
20 $10,000 per individual or sentenced to no
21 more than 1 year of imprisonment or both
22 per individual whose information was ob-
23 tained and misappropriated.
24 "(15) PROTECTION FROM LIABILITY.—No em-
25 ployer that participates in the System and complies

in good faith with the attestation in subsection (b)(1) and the employer requirements of this section 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 regarding that individual.

"(16) LIMITATION ON USE OF THE SYSTEM.—Notwithstanding any other provision of law, nothing in this subsection shall be construed to permit or allow any department, bureau, or other agency of the United States to utilize any information, database, or other records used in the System for any purpose other than as provided for under this subsection.

"(17) ACCESS TO DATABASE.—No officer or employee of any agency or department of the United States, other than such an officer or employee who is responsible for the verification of employment eligibility or for the evaluation of an employment eligibility verification program at the Social Security Administration, the Department of Homeland Security, and the Department of Labor, may have access to any information, database, or other records utilized by the System.

"(18) 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, including requirements 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.

"(19) ANNUAL STUDY AND REPORT.—

"(A) REQUIREMENT FOR STUDY.—The Comptroller General of the United States shall conduct an annual study of the System as described in this paragraph.

"(B) PURPOSE OF THE STUDY.—The Comptroller General shall, for each year, undertake a study to determine whether the System meets the following requirements:

"(i) DEMONSTRATED ACCURACY OF THE DATABASES.—New information and information changes submitted by an individual to the System is updated in all of the relevant databases not later than 3

working days after submission in at least 99 percent of all cases.

"(ii) LOW ERROR RATES AND DELAYS IN VERIFICATION.—

"(I) RATES OF INCORRECT FINAL NONCONFIRMATION NOTICES.—That, during a year, not more than .5 percent of all final nonconfirmations provided through the System during such year are incorrect.

"(II) RATES OF INCORRECT TENTATIVE NONCONFIRMATION NOTICES.—

"(aa) That, during a year, not more than 1 percent of native-born United States citizens whose identity and work eligibility are submitted to the system is the subject of a tentative nonconfirmation.

"(bb) That, during a year, not more than 3 percent of foreign-born, work authorized individuals whose identity and work eligibility are submitted to the

System are the subject of a tentative nonconfirmation.

"(iii) CONTAINMENT OF ERROR RATES.—That, during a year, the rate of incorrect final and incorrect tentative nonconfirmations shall not have increased by more than 3 percent over the previous year.

"(iv) MEASURABLE EMPLOYER COMPLIANCE WITH SYSTEM REQUIREMENTS.—

"(I) NO DISCRIMINATION BASED ON SYSTEM OPERATIONS.—The System has not resulted in increased employment discrimination on the basis of race or national origin.

"(II) REQUIREMENT FOR INDEPENDENT STUDY.—The determination described in subclause (I) shall be based on an independent study commissioned by the Comptroller General in each phase of expansion of the System.

"(v) PROTECTION OF WORKERS' PRIVATE INFORMATION.—At least 97 percent of employers who participate in the System

are in full compliance with the privacy requirements described in this subsection.

"(vi) EFFECTIVE SECURITY.—An assessment of the privacy and confidentiality of the system and of the overall security of the system with respect to cybertheft and theft and misuse of private data.

"(vii) ADEQUATE AGENCY STAFFING AND FUNDING.—The Secretary and Commissioner of Social Security have sufficient funding to meet all of the deadlines and requirements of this subsection.

"(C) CONSULTATION.—In conducting a study under this paragraph, the Comptroller General shall consult with representatives of business, labor, immigrant communities, State governments, privacy advocates, and appropriate departments of the United States.

"(D) REQUIREMENT FOR REPORTS.—Not later than 21 months after the date of the enactment of this Act and annually thereafter, the Comptroller General shall submit to the Secretary and to Congress a report containing the findings of the study carried out under this paragraph.

"(E) CERTIFICATION.—If the Comptroller General determines that the System meets the requirements set out in clauses (i) through (vii) of subparagraph (B) for a year, the Comptroller shall certify such determination and submit such certification to Congress with the report required by subparagraph (D).

"(20) ANNUAL AUDIT AND REPORT.—

"(A) PURPOSE OF THE AUDIT AND REPORT.—The Office for Civil Rights and Civil Liberties shall conduct annual audits of the system described in section 403(a) of the Illegal Immigration Reform and Responsibility Act of 1996, Public Law 104–208, Div. C, 110 Stat. 3009-546, to assess employer compliance with System requirements, including civil rights and civil liberties protections, and compliance with the System rules and procedures set forth in the Memorandum of Understanding between employers and the Social Security Administration and the Department of Homeland Security.

"(B) REQUIREMENTS OF AUDIT.—Annual audits shall include, but are not limited to, the following activities:

"(i) Use of testers to check if employers are using E-Verify as outlined in the Memorandum of Understanding between employers and the Department of Homeland Security and the Social Security Administration, including if employers are misusing the system to prescreen job applicants, if employers are giving proper notification to employees' regarding tentative non-confirmations, and if employers are taking adverse actions against workers based upon tentative non-confirmations.

"(ii) Random audits of employers to confirm that employers are using the system as outlined in the Memorandum of Understanding and in a manner consistent with civil rights and civil liberties protections.

"(iii) Periodic audits of employers for which the Special Counsel has received information or complaints and/or actual charges of citizenship/national origin discrimination or document abuse.

"(C) AUTHORITY OF OFFICE FOR CIVIL RIGHTS AND CIVIL LIBERTIES.—The Office

shall have the authority to obtain from users of the E-Verify program relevant documents and testimony and answers to written interrogatories. The Office shall also have the authority to conduct site visits, and interview employees.

"(D) FAILURE OF EMPLOYERS TO COOPERATE.—Employers that fail to cooperate with the Office for Civil Rights and Civil Liberties shall be noted in the annual report set forth below in subsection (E).

"(E) REQUIREMENT FOR REPORTS.—Not later than 18 months after the date of enactment of this Act, and annually thereafter, the Office for Civil Rights and Civil Liberties shall submit to the President of the Senate, the Speaker of the House of Representatives, and the appropriate committees and subcommittees of Congress a report containing the findings of the audit carried out under this paragraph.

"(21) ADMINISTRATIVE REVIEW.—

"(A) IN GENERAL.—An individual who receives a final nonconfirmation may, not later than 30 days after the date of such notice, file an appeal of such final nonconfirmation. An individual subject to a final nonconfirmation may

file an appeal thereof after the 30-day period if the appeal is accompanied by evidence that the individual did not receive timely notice of a tentative or final nonconfirmation, or that there was good cause for the failure to file an appeal within the 30-day period.

"(B) PROCEDURES.—

"(i) 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. The review on appeal may include any additional or newly discovered evidence presented by the appellant during the time of the pending appeal or subsequently by motion to reopen.

"(ii) The Secretary or the Commissioner shall stay the final nonconfirmation notice pending the resolution of the administrative appeal unless the Secretary or the Commissioner determines that the administrative appeal is frivolous, unlikely to succeed on the merits, or filed for purposes of delay.

"(C) REVIEW FOR ERRORS.—If a final determination on an appeal filed under subparagraph (A) results in a confirmation of an individual's eligibility for employment in the United States, the administrative review process shall require the Secretary to determine if the final nonconfirmation 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) an error or negligence on the part of an employer or entity acting on behalf of the employer;

"(iii) the decision rules, processes, or procedures utilized by the System; or

"(iv) erroneous system information that was not the result of acts or omissions of the individual.

"(D) COMPENSATION FOR ERROR.—

"(i) IN GENERAL.—If the individual was denied a stay under subparagraph (B)(2) and Secretary makes a determination under subparagraph (C) that the final nonconfirmation issued for an individual

was not caused by an act or omission of the individual or the employer, the Secretary shall compensate the individual for lost wages and for reasonable costs and attorneys' fees not exceeding $75,000, subject to annual inflation adjustments per the US Consumer Price Index - All Urban Consumers (CPI-U) compiled by the Bureau of Labor Statistics.

"(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 judicial review if any, or the day after the individual is reinstated or obtains employment elsewhere, whichever occurs first. If the individual obtains employment elsewhere at a lower wage rate, the individual shall be compensated for the difference in wages for the period ending

180 days after completion of the administrative review process or judicial review, if any.

"(iii) 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.

"(iv) SOURCE OF FUNDS.—Compensation or reimbursement provided under this paragraph shall not be provided from funds appropriated in annual appropriations Acts to the Secretary for the Department of Homeland Security.

"(E) TEMPORARY STAY OF FINAL ADMINISTRATIVE DECISION DENYING APPEAL.—If the appeal is denied, the Secretary shall stay the decision for a period of 15 days to permit the individual to seek judicial review of the decision pursuant to paragraph (21).

"(22) JUDICIAL REVIEW.—

"(A) IN GENERAL.—After the Secretary makes a final determination on an appeal filed

by an individual under paragraph (19), the individual may obtain judicial review of such determination in a civil action commenced not later than 90 days after notice 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 (21), 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 administra-

tive review, with or without remanding the cause for a rehearing.

"(D) COMPENSATION FOR ERROR.—

"(i) IN GENERAL.—In cases in which the individual was denied a stay under subparagraph (19)(B)(2) and such judicial review reverses the final determination of the Secretary made under paragraph (21), the court shall compensate the individual for lost wages and for reasonable costs and attorneys' fees not exceeding $75,000, subject to annual inflation adjustments per the US Consumer Price Index - All Urban Consumers (CPI-U) compiled by the Bureau of Labor Statistics.

"(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 judicial review described in this paragraph or the day after the individual is reinstated or

1 obtains employment elsewhere, whichever
2 occurs first. If the individual obtains em-
3 ployment elsewhere at a lower wage rate,
4 the individual shall be compensated for the
5 difference in wages for the period ending
6 180 days after completion of the adminis-
7 trative and judicial review process.

8 ''(23) PRIVATE RIGHT OF ACTION.—If the Sec-
9 retary makes a determination under paragraph (21)
10 that the final nonconfirmation issued for an indi-
11 vidual was caused by an act or negligence on the
12 part of the employer, the individual may seek recov-
13 ery of damages, reinstatement, back pay, and other
14 appropriate remedies in a civil action against the
15 employer. Such action must be commenced not later
16 than 90 days after notice of the Secretary's decision.
17 The action shall be brought in the district court of
18 the United States for the judicial district in which
19 the plaintiff resides, or has a principal place of busi-
20 ness, or, if the plaintiff does not reside or have a
21 principal place of business within any such judicial
22 district, in the District Court of the United States
23 for the District of Columbia.

24 ''(24) STATUTORY CONSTRUCTION.—Nothing in
25 this subsection shall affect any existing rights and

1 obligations of employers or employees under other
2 Federal, State, or local laws.
3 "(25) ENHANCED VERIFICATION SYSTEM.—The
4 Secretary, in consultation with the Commissioner of
5 Social Security, shall establish a voluntary self-
6 verification system in order to prevent the fraudu-
7 lent or other misuse of the individual's Social Secu-
8 rity number during employment verification, to pre-
9 vent employer misuse of the system, to protect pri-
10 vacy, and to limit erroneous nonconfirmation during
11 employment verification. The voluntary system shall
12 allow an individual to verify the individual's own
13 record, to block and unblock the use of the individ-
14 ual's Social Security number, and to register a
15 phone number or e-mail address to be contacted
16 upon removal of the block.
17 "(A) VOLUNTARY ENROLLMENT.—An indi-
18 vidual may enroll in the Enhanced Verification
19 System on a voluntary basis.
20 "(B) SELECT ENTITIES REQUIRED TO PAR-
21 TICIPATE IN THE ENHANCED VERIFICATION
22 SYSTEM.—
23 "(i) EXECUTIVE DEPARTMENTS.—
24 Each Department of the Federal Govern-
25 ment shall elect to participate in the En-

1 hanced Verification System and shall com-
2 ply with the terms and conditions of such
3 an election.
4 "(ii) LEGISLATIVE BRANCH.—Each
5 Member of Congress, each officer of Con-
6 gress, and the head of each agency of the
7 legislative branch shall elect to participate
8 in the Enhanced Verification System and
9 shall comply with the terms and conditions
10 of such an election.
11 "(C) ELECTRONIC ACCESS.—The Secretary
12 shall establish procedures allowing individuals
13 to use a Personal Identification Number (PIN)
14 or other biographic information to authenticate
15 the individual's identity and to block and
16 unblock the individual's Social Security number
17 electronically.
18 "(D) USE OF ENHANCED VERIFICATION
19 SYSTEM RECEIPT FOR PURPOSE OF EMPLOY-
20 MENT VERIFICATION.—
21 "(i) ENCRYPTED CODE.—The Sec-
22 retary shall establish procedures to allow
23 an individual who has authenticated the in-
24 dividual's identity and unblocked the indi-
25 vidual's Social Security number to receive

1 a single-use encrypted code which may be
2 presented to the employer instead of the
3 documents described in subsection (b) and
4 for the employer to submit the encrypted
5 single-use code to the system.

6 "(ii) CONFIRMATION.—An employer
7 who submits a valid single-use encrypted
8 code with respect to an individual shall im-
9 mediately receive a confirmation through
10 the system.

11 "(iii) EXPEDITED REVIEW PROC-
12 ESS.—The Secretary shall establish an ex-
13 pedited review process to allow an indi-
14 vidual who has authenticated the individ-
15 ual's identity and unblocked the individ-
16 ual's Social Security number immediately
17 to correct user or system errors which re-
18 sult in an erroneous non-confirmation of
19 work eligibility.

20 "(E) REPORTS.—

21 "(i) IN GENERAL.—The Secretary of
22 Homeland Security shall submit to the
23 Committees on the Judiciary of the House
24 of Representatives and of the Senate re-
25 ports on the Enhanced Verification System

within 3 months after the end of the third and fourth years in which the programs are in effect. Such reports shall—

"(I) assess the degree of fraudulent attesting of United States citizenship;

"(II) assess the benefits of the Enhanced Verification System to employers and the degree to which it prevents fraudulent claims of United States citizenship or legal residence and strengthens the enforcement of section 274A;

"(III) assess the benefits of the Enhanced Verification System to individuals and the degree to which they prevent misuse of the System and erroneous non-confirmations during employment verification;

"(IV) assess if the Enhanced Verification System aides in reducing discrimination during the employment verification process;

"(V) assess the degree to which the Enhanced Verification System

1 protects employee civil liberties and
2 privacy; and
3 ''(VI) include recommendations
4 on whether or not Enhanced
5 Verification System should be contin-
6 ued or modified, and
7 ''(ii) REPORT ON EXPANSION.—Not
8 later than 6 months after the end of the
9 fourth year in which the programs are in
10 effect, the Secretary of Homeland Security
11 shall submit to the Committees on the Ju-
12 diciary of the House of Representatives
13 and the Senate a report—
14 ''(I) evaluating whether the prob-
15 lems identified by the report sub-
16 mitted under subsection (i) have been
17 substantially resolved; and
18 ''(II) describing what actions the
19 Secretary of Homeland Security shall
20 take before requiring any individuals
21 to participate in the Enhanced
22 Verification System.
23 ''(F) LIMITATION ON USE OF THE CON-
24 FIRMATION SYSTEM AND ANY RELATED SYS-
25 TEMS.—Notwithstanding any other provision of

law, nothing in this subtitle shall be construed to permit or allow any department, bureau, or other agency of the United States Government to utilize any information, data base, or other records assembled under this subtitle for any other purpose other than as provided for under the Enhanced Verification System.

"(d) COMPLIANCE.—

"(1) COMPLAINTS AND INVESTIGATIONS.—The Secretary shall establish procedures—

"(A) for a person to file a complaint regarding a potential violation of paragraph (1)(A), (1)(B), or (2) of subsection (a);

"(B) for the investigation of any such complaint that the Secretary determines is appropriate to investigate; and

"(C) for the investigation of such other violation of paragraph (1)(A), (1)(B), or (2) 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, if designated by the Sec-

retary, 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), 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, or any regulation or order issued under this section.

"(D) AGENCY REPRESENTATION AND COORDINATION.—United States Immigration and Customs Enforcement officials may not misrepresent to employees or employers that they are a member of any agency or organization that provides domestic violence services, en-

1 forces health and safety law or other labor laws,
2 provides health care services, or any other serv-
3 ices intended to protect life and safety.
4 ''(3) COMPLIANCE PROCEDURES.—
5 ''(A) PREPENALTY NOTICE.—If the Sec-
6 retary has reasonable cause to believe that
7 there has been a violation of a requirement of
8 this section and determines that further pro-
9 ceedings related to such violation are war-
10 ranted, the Secretary shall issue to the em-
11 ployer concerned a written notice of the Sec-
12 retary's intention to issue a claim for a fine or
13 other penalty. Such notice shall—
14 ''(i) describe the violation;
15 ''(ii) specify the laws and regulations
16 allegedly violated;
17 ''(iii) disclose the material facts which
18 establish the alleged violation; and
19 ''(iv) inform such employer that the
20 employer shall have a reasonable oppor-
21 tunity to make representations as to why a
22 claim for a monetary or other penalty
23 should not be imposed.
24 ''(B) REMISSION OR MITIGATION OF PEN-
25 ALTIES.—

"(i) PETITION BY EMPLOYER.—If an employer receives written notice of a fine or other penalty in accordance with subparagraph (A), the employer may file within 45 days from receipt of such notice, with the Secretary a petition for the remission or mitigation of such fine or penalty, or a petition for termination of the proceedings. The petition may include any relevant evidence or proffer of evidence the employer wishes to present, and shall be filed and considered in accordance with procedures to be established by the Secretary.

"(ii) REVIEW BY SECRETARY.—If the Secretary finds that such fine or other penalty was incurred erroneously, or finds 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. Such miti-

gating circumstances may include good faith compliance and participation in, or agreement to participate in, the System, if not otherwise required.

"(iii) APPLICABILITY.—This subparagraph may not apply to an employer that has or is engaged in a pattern or practice of violations of paragraph (1)(A), (1)(B), or (2) of subsection (a) or of any other requirements of this section.

"(C) PENALTY CLAIM.—After considering evidence and representations offered by the employer pursuant to subparagraph (B), 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 paragraph (1)(A) or (2) 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 within the preceding 12 months 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 within the preceding 12 months 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 paragraph (1)(B) of subsection (a) 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 or failure.

"(ii) If the employer has previously been fined 1 time within the preceding 12 months under this subparagraph, pay a civil penalty of not less than $400 and not more than $4,000 for each such violation of failure.

"(iii) If the employer has previously been fined more than 1 time within the preceding 12 months under this subparagraph or has failed to comply with a previously issued and final order related to such requirements, pay a civil penalty of $6,000 for each such violation or failure.

"(iv) SPECIAL RULE GOVERNING PAPERWORK VIOLATION.—In the case where an employer commits a violation of this section that is deemed to be purely a paperwork violation where the Secretary fails to establish any intent to hire an individual who is not unauthorized for employment in the United States, the Secretary shall permit the employer to correct such paperwork error within 30 days of receiving notice from the Secretary of such violation.

1 "(C) OTHER PENALTIES.—Notwith-
2 standing subparagraphs (A) and (B), the Sec-
3 retary may impose additional penalties for vio-
4 lations, including cease and desist orders, spe-
5 cially designed compliance plans to prevent fur-
6 ther violations, suspended fines to take effect in
7 the event of a further violation, and in appro-
8 priate cases, the civil penalty described in sub-
9 section (e)(2).
10 "(5) JUDICIAL REVIEW.—
11 "(A) IN GENERAL.—An employer adversely
12 affected by a final determination may, within
13 45 days after the date the final determination
14 is issued, obtain judicial review of such deter-
15 mination.
16 "(B) REPORT.—Not later than 180 days
17 after the date of enactment of the this Act, the
18 Director of the Federal Judicial Center shall
19 submit to Congress a report on judicial review
20 of a final determination. The report shall con-
21 tain recommendations on jurisdiction and pro-
22 cedures that shall be instituted to seek ade-
23 quate and timely review of such decision.
24 "(6) ENFORCEMENT OF ORDERS.—If an em-
25 ployer 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 90 days, after the date the final determination is issued, in any appropriate district court of the United States. The burden shall remain on the employer to show that the final determination was not supported by a preponderance of the evidence.

"(7) RECOVERY OF COSTS AND ATTORNEYS' FEES.—In any appeal brought under paragraph (5) or suit brought under paragraph (6), the employer shall be entitled to recover from the Secretary reasonable costs and attorneys' fees if such employer prevails on the merits of the case. The award of attorneys' fees shall not exceed $75,000. Such amount shall be subject to annual inflation adjustments per the United States Consumer Price Index - All Urban Consumers (CPI-U) compiled by the Bureau of Labor Statistics. Any costs and attorneys' fees assessed against the Secretary shall be charged against the operating expenses of the Department of Homeland Security for the fiscal year in which the assess-

1 ment is made, and shall not be reimbursed from any
2 other source.
3 "(8) COORDINATION.—An investigation under
4 paragraph (1)(C) shall be coordinated with the ap-
5 propriate regional office of the National Labor Rela-
6 tions Board, the Department of Labor, and all rel-
7 evant State and local agencies that are charged with
8 enforcing workplace standards. Evidence gathered
9 from such agencies shall be considered in deter-
10 mining whether the entity under investigation has
11 violated subsection (a).
12 "(e) CRIMINAL PENALTIES AND INJUNCTIONS FOR
13 PATTERN OR PRACTICE VIOLATIONS.—
14 "(1) CRIMINAL PENALTY.—An employer that
15 engages in a pattern or practice of knowing viola-
16 tions of paragraph (1)(A) or (2) of subsection (a)
17 shall be fined not more than $20,000 for each unau-
18 thorized alien with respect to whom such a violation
19 occurs, imprisoned for not more than 3 years for the
20 entire pattern or practice, or both.
21 "(2) ENJOINING OF PATTERN OR PRACTICE
22 VIOLATIONS.—If the Secretary or the Attorney Gen-
23 eral has reasonable cause to believe that an employer
24 is engaged in a pattern or practice of employment in
25 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 such relief, including a permanent or temporary injunction, restraining order, or other order against the employer, as the Secretary deems necessary.

''(f) 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; United States 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.

''(g) PROHIBITION OF INDEMNITY BONDS.—

''(1) PROHIBITION.—It is unlawful for an employer, in the hiring 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 guaranty or indemnity, against any potential liability arising under this section relating to such hiring of the individual.

''(2) CIVIL PENALTY.—Any employer which is determined, after notice and opportunity for mitiga-

tion of the monetary penalty under subsection (d), to have violated paragraph (1) 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 individual.

"(h) 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 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) REVIEW.—The decision of whether to debar or take alternate action under this para-

graph shall be reviewable pursuant to section 9, Federal Acquisition Regulation.

"(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.

"(4) REPEAT VIOLATOR DEFINED.—In this subsection, the term 'repeat violator' means, with respect to an employer, that the employer has violated paragraph (1)(A), (1)(B), or (2) of subsection (a) more than 1 time and that such violations were discovered as a result of more than 1 separate investigation of the employer. A violation of such paragraph (1)(B) that is inadvertent and unrelated to a violation of subsection (a)(1)(A) and (a)(2) may not be considered to be a violation of such paragraph (1)(B) for the purposes of this paragraph.

"(i) MISCELLANEOUS PROVISIONS.—

"(1) DOCUMENTATION.—In providing documentation or endorsement of authorization of aliens (other than aliens lawfully admitted for permanent residence) eligible to be employed in the United States, the Secretary shall provide that any limita-

1 tions with respect to the period or type of employ-
2 ment or employer shall be conspicuously stated on
3 the documentation or endorsement.

4 "(2) PREEMPTION.—The provisions of this sec-
5 tion preempt any State or local law, contract license,
6 or other standard, requirement, action or instrument
7 from—

8 "(A) imposing sanctions or liabilities for
9 employing, or recruiting or referring for em-
10 ployment, unauthorized aliens, or for working
11 without employment authorization;

12 "(B) requiring those hiring, recruiting, or
13 referring individuals for employment to ascer-
14 tain or verify the individuals' employment au-
15 thorization or to participate in an employment
16 authorization verification system, or requiring
17 individuals to demonstrate employment author-
18 ization; and

19 "(C) requiring, authorizing or permitting
20 the use of an employment verification system,
21 unless otherwise mandated by Federal law, for
22 any other purpose including, but without limita-
23 tion, such purposes as verifying the status of
24 renters, determining eligibility for receipt of
25 benefits, enrollment in school, obtaining or re-

1 taining a business license or other license, or
2 conducting a background check.
3 "(j) BACKPAY REMEDIES.—Neither backpay nor any
4 other monetary remedy for unlawful employment prac-
5 tices, workplace injuries or other causes of action giving
6 rise to liability shall be denied to a present or former em-
7 ployee on account of: the employer's or the employee's fail-
8 ure to comply with the requirements of this section in es-
9 tablishing or maintaining the employment relationship; the
10 employee's violation of the provisions of federal law related
11 to the employment verification system set forth in sub-
12 section (a); or the employee's continuing status as an un-
13 authorized alien both during and after termination of em-
14 ployment.
15 "(k) DEFINITIONS.—In this section—
16 "(1) EMPLOYER.—The term 'employer' means
17 any person or entity, including any entity of the
18 Government of the United States, hiring an indi-
19 vidual for employment in the United States.
20 "(2) SECRETARY.—Except as otherwise pro-
21 vided, the term 'Secretary' means the Secretary of
22 Homeland Security.
23 "(3) UNAUTHORIZED ALIEN.—The term 'unau-
24 thorized 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 E-VERIFY.—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.

(C) REPEAL OF DEFINITION.—Paragraph (1)(F) of section 1961 of title 18, United States Code, is repealed.

(2) CONSTRUCTION.—Nothing in this subsection or in subsection (c) 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 E-Verify program under such 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(h)".

(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(d)''; and

(B) in subsection (g)(2)(B)(ii), by striking ''274A(b)(5)'' and inserting ''274A(d)(9)''.

(d) EMPLOYMENT VERIFICATION ADVISORY PANEL.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Secretary shall establish an Employment Verification Advisory Panel (hereinafter in the subsection referred to as the ''Advisory Panel'').

(2) MEMBERSHIP.—The Advisory Panel should consist of members appointed by the Secretary, after consulting with the Commissioner of Social Security, the Director of National Institutes of Standards and Technology, and other appropriate Federal agencies. Such members should include representatives from appropriate Federal agencies and private sector representatives of affected industries and groups, including immigration policy, human resource, employer and employee organizations, experts in fields

1 including database security, employment verification,
2 biometrics, and privacy.
3 (3) FUNCTIONS.—
4 (A) ADVICE ON IMPLEMENTATION AND DE-
5 PLOYMENT.—The Advisory Panel shall advise
6 the Secretary and the Commissioner of Social
7 Security on the implementation and deployment
8 of the verification systems established under the
9 amendments made by this section, including—
10 (i) the best means of promoting effi-
11 ciency, compliance responsiveness, accu-
12 racy, public education, user support, inter-
13 operability, and cost-effectiveness of the
14 systems established under this section;
15 (ii) the best practices and procedures
16 in order to protect the privacy and identi-
17 ties of individuals enrolled in the systems
18 established under this section;
19 (iii) standards of database accuracy,
20 error rates, privacy, and measurable com-
21 pliance with system rules that must be met
22 before implementation begins and before
23 each additional phase of implementation;
24 and

(iv) the best means by which data obtained through such systems may be used to timely improve the accuracy of databases maintained by the Secretary and the Commissioner of Social Security.

(B) STUDY AND REPORT ON IDENTITY FRAUD AND ALTERNATIVES FOR STRENGTHENING IDENTITY AUTHENTICATION.—

(i) STUDY.—The Advisory Panel shall evaluate the vulnerability of the System to identity fraud and the degree to which individuals not authorized for employment in the United States are able to be confirmed by the System.

(ii) REPORT.—Not later than 180 days after its establishment, the Advisory Panel shall issue a report to the Secretary on alternatives for strengthening identity authentication and preventing fraudulent confirmations by the System. The report shall—

(I) survey available technologies for identity authentication, including but not limited to biometric and biographical identity assurance systems;

(II) analyze alternatives to identity assurance technologies, including the en-

1 hanced verification system described in
2 subsection (c)(25) of section 274A of the
3 Immigration and Nationality Act, as
4 amended by this section;
5 (III) analyze the technical feasibility
6 of adding new identity authentication re-
7 quirements to the System described in sub-
8 section (c) of such section, including by
9 considering:
10 (IV) process burdens (at the point of
11 collection, information processing, etc.);
12 (V) performance burdens (anticipated
13 system throughputs, scalability,
14 reconfigurability, etc);
15 (VI) accuracy and realistic failure
16 rates and projected increases in erroneous
17 nonconfirmations of work authorized indi-
18 viduals;
19 (VII) projected compliance and non-
20 compliance rates,
21 (VIII) data Security, data storage re-
22 quirements, and added risk to individuals'
23 privacy;
24 (IX) estimate the costs and benefits of
25 different strategies for strengthening iden-

tity authentication and evaluate their overall strengths and weaknesses, including but not limited to requirements that employers collect biometric, biographical, or other data from new employees instead of or in addition to the data identified in subsections (b) and (c) of such section and requirements that individuals participate in the enhanced verification system described in subsection (c)(25) of such section.

(4) TERMINATION.—The Advisory Panel shall terminate 5 years after the date of the enactment of this Act.

(e) EFFECTIVE DATE.—The amendments made by subsections (a), (b), and (c) shall take effect on the date that is 180 days after the date of the enactment of this Act.

SEC. 202. PARITY WITH CIVIL RIGHTS ACT OF 1964.

(a) PROHIBITION OF EMPLOYMENT DISCRIMINATION.—Section 274B(a) (8 U.S.C. 1324b(a)) is amended—

(1) by amending paragraph (1) to read as follows:

"(1) IN GENERAL.—It is an unfair immigration-related employment practice for a person or

other entity to discriminate against any individual (other than an unauthorized alien defined in section 274A(h)(3)) with respect to—

"(A) the hiring, or recruitment or referral for a fee, of the individual for employment, the verification of the individual's eligibility for employment, or the discharging of the individual from employment—

"(i) because of such individual's national origin; or

"(ii) because of such individual's citizenship status;

"(B) the compensation, terms, or conditions of the employment of the individual.";

(2) by amending paragraph (2)(A) to read as follows:

"(A) a person or other entity that employs three or fewer employees, except for an 'employment agency,' meaning any person regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer and includes an agent of such a person.";

(3) by repealing section 274(a)(3) (8 U.S.C. 1324(a)(3));

(4) in paragraph (6), by striking "if made for the purpose or with the intent of discriminating against an individual in violation of paragraph (1)" and inserting "in violation of paragraph (1). Additional information and compliance assistance will be provided to employers to assist them in complying with the law";

(5) by inserting a new paragraph (7) as follows:

"(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 Employment Verification System described in section 274A(c)—

"(A) to terminate the employment of an individual or take any adverse employment action due to a tentative nonconfirmation issued by such System, with respect to that individual;

"(B) to use the System for screening of an applicant for employment prior to making the individual an offer of employment;

"(C) to use the System for the reverification of an employee after the employee

has satisfied the process described in (b)(1), unless otherwise required by Federal law.

"(D) to use the System selectively to exclude certain individuals from consideration for employment as a result of a perceived likelihood that additional verification will be required, beyond what is required for most job applicants; or

"(E) to use the System to deny workers' employment benefits or otherwise interfere with their labor rights, or to engage in any other unlawful employment practice.";

(6) by inserting a new paragraph (8) as follows:

"(8) BURDEN OF PROOF IN DISPARATE IMPACT CASES.—

"(A) An unlawful immigration-related employment practice or unfair labor practice case based on disparate impact is established under this general rule only if—

"(i) a complaining party demonstrates that a respondent uses a particular employment practice that causes a disparate impact on the basis of national origin or citizenship status and the respondent fails to demonstrate that the challenged practice

is job related for the position in question and consistent with business necessity; or

"(ii) the complaining party makes the demonstration with respect to an alternative employment practice and the respondent refuses to adopt such an alternative employment practice. An alternative employment practice is defined as a policy that would satisfy the employer's legitimate interests without having a disparate impact on a protected class.

"(B) With respect to demonstrating that a particular employment practice causes a disparate impact as described in subparagraph (8)(A), the complaining party shall demonstrate that each particular challenged employment practice causes a disparate impact, except that if the complaining party can demonstrate to the court that the elements of a respondent's decision-making process are not capable of separation for analysis, the decisionmaking process may be analyzed as one employment practice.

"(C) If the respondent demonstrates that a specific employment practice does not cause the disparate impact, the respondent shall not be

required to demonstrate that such practice is required by business necessity.

"(D) A demonstration that an employment practice is required by business necessity may not be used as a defense against a claim of intentional discrimination under this statute."; and

(7) by inserting a new paragraph (9) as follows:

"(9) Except as otherwise provided in this subchapter, an unlawful immigration-related unfair employment practice is established when the charging party demonstrates that citizenship status or national origin was a motivating factor for any employment practice, even though other factors also motivated the practice."

(b) CHARGES AND COMPLAINTS.—Section 274B(d) (8 U.S.C. 1324b(d)) is amended—

(1) in paragraph (1), by striking "within 120 days of the date of the receipt of the charge" and "subject to paragraph (3)";

(2) by striking "The Special Counsel's failure to file such a complaint within such 120-day period shall not affect the right of the Special Counsel to investigate the charge or to bring a complaint before an administrative law judge during such 90-day pe-

riod.'' and inserting at the end of paragraph (2) ''Nothing contained in this Act shall relieve any Government agency or official of his or her responsibility for unlawful electronic employment verification practices.'';

(3) by striking paragraph (3).

(c) INCREASE IN CIVIL MONEY PENALTIES.—Section 274B(g)(2)(B)(iv) (8 U.S.C. 1324b(g)(2)(B)(iv)) is amended—

(1) in subclause (I), by striking ''$250 and not more than $1,000'' and inserting ''$2,000 and not more than $4,000'';

(2) in subclause (II), by striking ''$2,000 and not more than $5,000'' and inserting ''$4,000 and not more than $10,000'';

(3) in subclause (III), by striking ''$3,000 and not more than $10,000'' and inserting ''$6,000 and not more than $20,000'';

(4) in subclause (IV), by striking ''$100 and not more than $1,000'' and inserting ''$500 and not more than $5,000.''

(d) ORDERS FINDING VIOLATIONS.—Section 274B(g) (8 U.S.C. 1324b(g)) is amended—

(1) in paragraph (2)(B)(iii), by inserting '', and to provide such other relief as the administrative law

judge determines appropriate to make the individual whole'' before the semicolon at the end; and

(2) by inserting the following at the end of paragraph (2)(B)(viii):

''(ix)(I) No order of the court shall require the admission or reinstatement of an individual as a member of a union, or the hiring, reinstatement, or promotion of an individual as an employee, or the payment to him of any back pay, if such individual was refused admission, suspended, or expelled, or was refused employment or advancement or was suspended or discharged for any reason other than discrimination on account of citizenship status or national origin or in violation of this section.

''(II) On a claim in which an individual proves a violation under subsection (a)(7) and a respondent demonstrates that the respondent would have taken the same action in the absence of the impermissible motivating factor, the court may grant declaratory relief, injunctive relief (except as provided in clause (b)), and attorney's fees and costs demonstrated to be directly at-

tributable only to the pursuit of a claim under subsection (a)(7); and shall not award damages or issue an order requiring any admission, reinstatement, hiring, promotion, or payment, described in subparagraph (I).";

(3) by inserting at the end of paragraph (2) a new subparagraph (E) as follows:

"(E) COMPENSATORY AND PUNITIVE DAMAGES.—

"(i) DETERMINATION OF PUNITIVE DAMAGES.—A complaining party may acquire punitive damages against a respondent (other than the federal government or a federal government agency) if the complaining party demonstrates that the respondent engaged in discriminatory practice or practices with malice or reckless indifference to the federally protected rights of an aggrieved individual under subsection (a)(1).

"(ii) COMPENSATORY DAMAGES AWARDED UNDER THIS SECTION.—Compensatory damages awarded under this section shall not include backpay, interest

on backpay, or any other type of relief authorized under subparagraphs (B) and (C) of subsection (g)(2).

"(iii) LIMITATIONS.—The sum of compensatory damages awarded under this section for future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses on account of national origin discrimination shall not exceed $50,000 for each complaining party. In the case of citizenship status discrimination, the limitations should be as follows:

"(I) In the case of a respondent who has more than 3 and fewer than 101 employees in each of 20 or more calendar weeks in the current or preceding calendar year, $50,000.

"(II) In the case of a respondent who has more than 100 and fewer than 201 employees in each of 20 or more calendar weeks in the current or preceding calendar year, $100,000.

"(III) In the case of a respondent who has more than 200 and fewer

than 501 employees in each of 20 or more calendar weeks in the current or preceding calendar year, $200,000.

"(IV) In the case of a respondent who has more than 500 employees in each of 20 or more calendar weeks in the current or preceding calendar year, $300,000.".

(e) DISSEMINATION OF INFORMATION.—Section 274B is amended—

(1) in subparagraph (l)(3), by striking "$10,000,000" and inserting "$50,000,000".

(2) by adding at the end the following:

"(m) REPORTS.—The Secretary of Homeland Security shall make transactional data and citizenship status data available upon request by the Special Counsel (appointed under subsection (c) of this section).".

(f) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act and shall apply to violations occurring on or after such date.

SEC. 203. AMENDMENTS TO THE SOCIAL SECURITY ACT.

(a) 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 title III of the this Act, establish a reliable, secure method to provide through the employment verfication systems established pursuant to section 274A of the Immigration and Nationality Act (referred to in this subparagraph as the 'System'), within the time periods required by such section—

"(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;

"(II) a determination of the citizenship status associated with such name and social security account number, according to the records maintained by the Commissioner;

"(III) a determination of whether the name and number belongs to an individual

1 who is deceased, according to the records
2 maintained by the Commissioner;
3 "(IV) a determination of whether the
4 name and number is blocked in accordance
5 with clause (ii); and
6 "(V) a confirmation or a nonconfirma-
7 tion described in such subsection (c), in a
8 manner that ensures that other informa-
9 tion maintained by the Commissioner is
10 not disclosed or released to employers
11 through the System.
12 "(ii) The Commissioner of Social Security
13 shall prevent the fraudulent or other misuse of
14 a social security account number by establishing
15 procedures under which an individual who has
16 been assigned a social security account number
17 may block the use of such number under the
18 System and remove such block.
19 "(J) In assigning social security account
20 numbers to aliens who are authorized to work
21 in the United States under section 218A of the
22 Immigration and Nationality Act, the Commis-
23 sioner of Social Security shall, to the maximum
24 extent practicable, assign such numbers by em-
25 ploying the enumeration procedure administered

jointly by the Commissioner, the Secretary of State, and the Secretary.''.

(b) 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 Insurance Trust Fund or the Federal Disability Insurance Trust Fund be used to carry out such responsibilities.

(c) 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.

TITLE III—VISA REFORMS

SEC. 301. ELIMINATION OF EXISTING BACKLOGS.

(a) WORLDWIDE LEVEL OF FAMILY-SPONSORED IMMIGRANTS.—Section 201(c) of the Immigration and Nationality Act (8 U.S.C. 1151(c)) is amended to read as follows:

"(c) WORLDWIDE LEVEL OF FAMILY-SPONSORED IMMIGRANTS.—

"(1) IN GENERAL.—Subject to subparagraph (B), the worldwide level of family-sponsored immigrants under this subsection for a fiscal year is equal to the sum of—

"(A) 480,000; and

"(B) the sum of—

"(i) the number computed under paragraph (2); and

"(ii) the number computed under paragraph (3).

"(2) UNUSED VISA NUMBERS FROM PREVIOUS FISCAL YEAR.—The number computed under this paragraph for a fiscal year is the difference, if any, between—

"(A) the worldwide level of family-sponsored immigrant visas established for the previous fiscal year; and

"(B) the number of visas issued under section 203(a), subject to this subsection, during the previous fiscal year.

"(3) UNUSED VISA NUMBERS FROM FISCAL YEARS 1992 THROUGH 2009.—The number computed under this paragraph is the difference, if any, between—

"(A) the difference, if any, between—

"(i) the sum of the worldwide levels of family-sponsored immigrant visas established for each of fiscal years 1992 through 2008; and

"(ii) the number of visas issued under section 203(a), subject to this subsection, during such fiscal years; and

"(B) the number of unused visas from fiscal years 1992 through 2008 that were issued after fiscal year 2007 under section 203(a), subject to this subsection.".

(b) WORLDWIDE LEVEL OF EMPLOYMENT-BASED IMMIGRANTS.—Section 201(d) of the Immigration and Nationality Act (8 U.S.C. 1151(d)) is amended to read as follows:

"(d) WORLDWIDE LEVEL OF EMPLOYMENT-BASED IMMIGRANTS.—

"(1) IN GENERAL.—The worldwide level of employment-based immigrants under this subsection for a fiscal year is equal to the sum of—

"(A) 290,000;

"(B) the number computed under paragraph (2); and

"(C) the number computed under paragraph (3).

"(2) UNUSED VISA NUMBERS FROM PREVIOUS FISCAL YEAR.—The number computed under this paragraph for a fiscal year is the difference, if any, between—

"(A) the worldwide level established under paragraph (1) for the previous fiscal year; and

"(B) the number of visas actually issued under section 203(b), subject to this subsection, during the previous fiscal year.

"(3) UNUSED VISA NUMBERS FROM FISCAL YEARS 1992 THROUGH 2009.—The number computed under this paragraph is the difference, if any, between—

"(A) the difference, if any, between—

"(i) the sum of the worldwide levels established under paragraph (1) for fiscal years 1992 through 2009; and

"(ii) the number of visas actually issued under section 203(b), subject to this subsection, during such fiscal years; and

"(B) the number of visas actually issued after fiscal year 2009 pursuant to an immigrant visa number issued under section 203(b), subject to this subsection, during fiscal years 1992 through 2009.".

(c) EXCEPTION TO NONDISCRIMINATION.—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)".

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date which is 60 days after the date of the enactment of this Act.

SEC. 302. RECLASSIFICATION OF SPOUSES AND MINOR CHILDREN OF LEGAL PERMANENT RESIDENTS AS IMMEDIATE RELATIVES.

(a) IN GENERAL.—Section 201(b)(2) of the Immigration and Nationality Act (8 U.S.C. 1151(b)(2)) is amended to read as follows:

"(2) IMMEDIATE RELATIVE.—

"(A) IN GENERAL.—

"(i) IMMEDIATE RELATIVE DEFINED.—In this subparagraph, the term 'immediate relative' means a child, spouse,

or parent of a citizen of the United States or a child or spouse of a lawful permanent resident (and for each family member of a citizen or lawful permanent resident under this subparagraph, such individual's spouse or child who is accompanying or following to join the individual), except that, in the case of parents, such citizens shall be at least 21 years of age.

"(ii) PREVIOUSLY ISSUED VISA.—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.

"(iii) PARENTS AND CHILDREN.—An alien who was the child or the parent of a citizen of the United States or a child of a lawful permanent resident at the time of the citizen's or resident's death if the alien files a petition under section 204(a)(1)(A)(ii) within 2 years after such date or prior to reaching 21 years of age.

"(iv) SPOUSE.—In the case of an alien who was the spouse of a citizen of the

United States or spouse of a lawful permanent resident and was not legally separated from the citizen or resident at the time of the citizen's or resident's death, the alien (and each child of the alien) shall be considered for purposes of this subsection, to remain an immediate relative after the date of the citizen's or resident'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.

"(v) SPECIAL RULE.—For purposes of this subparagraph, 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 or lawful permanent resident spouse or parent loses United States citizenship or residence on account of the abuse.

"(B) BIRTH DURING TEMPORARY VISIT ABROAD.—Aliens born to an alien lawfully admitted for permanent residence during a temporary visit abroad.".

(b) ALLOCATION OF IMMIGRANT VISAS.—Section 203(a) of the Immigration and Nationality Act (8 U.S.C. 1153(a)) is amended—

(1) in paragraph (1), by striking ''23,400'' and inserting ''38,000'';

(2) by striking paragraph (2) and inserting the following:

''(2) UNMARRIED SONS AND UNMARRIED DAUGHTERS OF PERMANENT RESIDENT ALIENS.—Qualified immigrants who are the unmarried sons or unmarried daughters (but are not the children) of an alien lawfully admitted for permanent residence shall be allocated visas in a number not to exceed 60,000, plus any visas not required for the class specified in paragraph (1).'';

(3) in paragraph (3), by striking ''23,400'' and inserting ''38,000''; and

(4) in paragraph (4), by striking ''65,000'' and inserting ''90,000''.

(c) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) RULES FOR DETERMINING WHETHER CERTAIN ALIENS ARE IMMEDIATE RELATIVES.—Section 201(f) of the Immigration and Nationality Act (8 U.S.C. 1151(f)) is amended—

(A) in paragraph (1), by striking ''paragraphs (2) and (3),'' and inserting ''paragraph (2),'';

(B) by striking paragraph (2);

(C) by redesignating paragraphs (3) and (4) as paragraphs (2) and (3), respectively; and

(D) in paragraph (3), as redesignated by subparagraph (C), by striking ''through (3)'' and inserting ''and (2)''.

(2) NUMERICAL LIMITATION TO ANY SINGLE FOREIGN STATE.—Section 202 of the Immigration and Nationality Act (8 U.S.C. 1152) is amended—

(A) in subsection (a)(4)—

(i) by striking subparagraphs (A) and (B);

(ii) by redesignating subparagraphs (C) and (D) as subparagraphs (A) and (B), respectively; and

(iii) in subparagraph (A), as redesignated by clause (ii) of this paragraph, by striking ''section 203(a)(2)(B)'' and inserting ''section 203(a)(2)''; and

(B) in subsection (e), in the flush matter following paragraph (3), by striking '', or as limiting the number of visas that may be issued

under section 203(a)(2)(A) pursuant to subsection (a)(4)(A)''.

(3) ALLOCATION OF IMMIGRATION VISAS.—Section 203(h) of the Immigration and Nationality Act (8 U.S.C. 1153(h)) is amended—

(A) in paragraph (1)—

(i) in the matter preceding subparagraph (A), by striking ''subsections (a)(2)(A) and (d)'' and inserting ''subsection (d)'';

(ii) in subparagraph (A), by striking ''becomes available for such alien (or, in the case of subsection (d), the date on which an immigrant visa number became available for the alien's parent),'' and inserting ''became available for the alien's parent,''; and

(iii) in subparagraph (B), by striking ''applicable'';

(B) by amending paragraph (2) to read as follows:

''(2) PETITIONS DESCRIBED.—The petition described in this paragraph is a petition filed under section 204 for classification of the alien's parent

under subsection (a), (b), or (c) of this section.''; and

(C) in paragraph (3), by striking ''subsections (a)(2)(A) and (d)'' and inserting ''subsection (d)''.

(4) PROCEDURE FOR GRANTING IMMIGRANT STATUS.—Section 204 of the Immigration and Nationality Act (8 U.S.C. 1154) is amended—

(A) in subsection (a)(1)—

(i) in subparagraph (A)—

(I) in clause (i), by inserting ''or lawful permanent resident'' after ''citizen'';

(II) in clause (ii), by striking ''described in the second sentence of section 201(b)(2)(A)(i) also'' and inserting '', alien child, or alien parent described in section 201(b)(2)(A)'';

(III) in clause (iii)—

(aa) in subclause (I)(aa), by inserting ''or legal permanent resident'' after ''citizen''; and

(bb) in subclause (II)(aa)—

(AA) in subitems (AA) and (BB), by inserting ''or

legal permanent resident;'' after ''citizen'' each place that term appears;

(BB) in subitem (CC), by inserting ''or legal permanent resident'' after ''citizen'' each place that term appears; and

(CC) in subitem (CC)(bbb), by inserting ''or legal permanent resident'' after ''citizenship'';

(IV) in clause (iv), by inserting ''or legal permanent resident'' after ''citizen'' each place that term appears;

(V) in clause (v)(I), by inserting ''or legal permanent resident'' after ''citizen''; and

(VI) in clause (vi)—

(aa) by inserting ''or legal permanent resident status'' after ''renunciation of citizenship''; and

(bb) by inserting ''or legal permanent resident'' after ''abuser's citizenship'';

(ii) by striking subparagraph (B);

(iii) in subparagraph (C), by striking ''subparagraph (A)(iii), (A)(iv), (B)(ii), or (B)(iii)'' and inserting ''clause (iii) or (iv) of subparagraph (A)''; and

(iv) in subparagraph (J), by striking ''or clause (ii) or (iii) of subparagraph (B)'';

(B) in subsection (a), by striking paragraph (2);

(C) in subsection (c)(1), by striking ''or preference status''; and

(D) in subsection (h), by striking ''or a petition filed under subsection (a)(1)(B)(ii)''.

SEC. 303. COUNTRY LIMITS.

Section 202(a) of the Immigration and Nationality Act (8 U.S.C. 1152(a)) is amended—

(1) in paragraph (2)—

(A) by striking '', (4), and (5)'' and inserting ''and (4)'';

(B) by striking ''subsections (a) and (b) of section 203'' and inserting ''section 203(a)'';

(C) 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''; and

(D) by striking ''such subsections'' and inserting ''such section''; and

(2) by striking paragraph (5).

SEC. 304. PROMOTING FAMILY UNITY.

(a) WAIVERS OF INADMISSIBILITY.—Section 212(a)(9) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(9)) is amended—

(1) in subparagraph (B)—

(A) in clause (iii)—

(i) in subclause (I), by striking ''18 years of age'' and inserting ''21 years of age'';

(ii) by moving subclause (V) 4 ems to the right; and

(iii) by adding at the end the following:

''(VI) Clause (i) shall not apply to an alien for whom an immigrant visa is available or was available on or before the date of the enactment of the CIR ASAP Act of 2009, and is

otherwise admissible to the United States for permanent residence; and''; (B) in clause (v)—

(i) by striking ''spouse or son or daughter'' and inserting ''spouse, son, daughter, or parent'';

(ii) by striking ''extreme'';

(iii) by inserting '', son, daughter,'' after ''lawfully resident spouse''; and

(iv) by striking ''alien.'' and inserting ''alien or, if the Attorney General determines that a waiver is necessary for humanitarian purposes, to ensure family unity or is otherwise in the public interest.''; and

(2) in subparagraph (C), by amending clause (ii) to read as follows:

''(ii) EXCEPTIONS.—Clause (i) shall not apply to an alien—

''(I) seeking admission more than 10 years after the date of the alien's last departure from the United States if, prior to the alien's reembarkation at a place outside the United States or attempt to be readmitted from a

foreign contiguous territory, the Secretary of Homeland Security has consented to the alien's reapplication for admission; or

"(II) for whom an immigrant visa is available or was available on or before the date of the enactment of this Act, and is otherwise admissible to the United States for permanent residence.".

(b) FALSE CLAIMS AND MISREPRESENTATIONS.—The Immigration and Nationality Act (8 U.S.C. 1101, et seq.) is amended—

(1) in section 237(a)(3)(D) (8 U.S.C. 1227(a)(3)(D)), by inserting "and willfully" after "falsely" each place such term appears;

(2) in section 212(a)(6)(C)(ii) (8 U.S.C. 1182(a)(6)(C)(ii)), by inserting "and willfully" after "falsely" each place such term appears;

(3) in section 212(a)(6)(C)(iii) (8 U.S.C. 1182(a)(6)(C)(iii)), by striking "of clause (i)"; and

(4) by amending section 212(i)(1) (8 U.S.C. 1182(i)(1)) to read as follows:

"(1) The Attorney General or the Secretary of Homeland Security may, in the discretion of the At-

torney General or the Secretary, waive the application of subsection (a)(6)(C) in the case of an immigrant who is the parent, spouse, son, or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, or an alien granted classification under clause (iii) or (iv) of section 204(a)(1)(A), if it is established to the satisfaction of the Attorney General or the Secretary that the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States.''.

SEC. 305. SURVIVING RELATIVES.

(a) CONTINUED WAIVER ELIGIBILITY FOR WIDOWS, WIDOWERS AND ORPHANS.—Section 212(a)(2)(F) is amended to read as follows:

''(F) CONTINUED WAIVER ELIGIBILITY FOR WIDOWS, WIDOWERS AND ORPHANS.—In the case of an alien who would have been statutorily eligible for a waiver of inadmissibility under the Immigration and Nationality Act but for the death of the qualifying relative, the alien may be considered for any waiver under the Immigration and Nationality Act notwithstanding the death of the qualifying relative upon a showing of hardship to the alien or a family

member, or that the granting of the waiver is in the public interest.''.

(b) NATURALIZATION OF SURVIVING RELATIVES.—Section 319(a) of the Immigration and Nationality Act (8 U.S.C. 1430(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''.

(c) PROTECTION FOR THE SURVIVING RELATIVES OF REFUGEES AND ASYLEES.—An alien described in section 204(l)(2)(D) of the Immigration and Nationality Act may have such petition described in paragraph (2) of section 204(l) or an application for adjustment of status to that of a person admitted for lawful permanent residence based upon the family relationship described in such paragraph, and any related applications, adjudicated notwithstanding the death of the qualifying relative, regardless of whether the alien is present inside or outside the United States at the time of the qualifying relative's death or after the qualifying relative's death.

SEC. 306. EXTENSION OF WAIVER AUTHORITY.

Section 217(c)(8)(A)(iii) of the Immigration and Nationality Act (8 U.S.C. 1187(c)(8)(A)(iii)) is amended—

(1) by striking ''June 30, 2009'' and inserting ''June 30, 2011''; and

(2) by striking ''July 1, 2009'' and inserting ''July 1, 2011''.

SEC. 307. DISCRETIONARY WAIVER FOR LONG-TERM LAWFUL PERMANENT RESIDENTS.

Section 240A(a) is amended by inserting after paragraph (3) the following:

''The Attorney General may waive the application of subparagraph (C) to an individual only if the individual's conviction resulted in a sentence served of two years or less and the Attorney General determines in his or her sole discretion that the individual does not pose a danger to the community or a national security threat and that subparagraph (C) should be waived for compelling reasons such as to preserve family unity or because removal is otherwise not in the public interest.''.

SEC. 308. CONTINUOUS PRESENCE.

Section 240A(d) of the Immigration and Nationality Act (8 U.S.C. 1229b(d)) is amended by striking paragraph (1).

SEC. 309. BAR ON THE REMOVAL OF CERTAIN REFUGEES, PAROLEES OR ASYLEES.

(a) IN GENERAL.—Chapter 4 of title II of the Immigration and Nationality Act is amended by inserting after section 237 the following new section:

"SEC. 237A. BAR ON REMOVAL OF CERTAIN REFUGEES, PAROLEES OR ASYLEES.

"'No individual who fled their homeland for fear of persecution while under the age of 12 years and was later admitted to the United States as a refugee or parolee or was granted asylum in the United States shall be removed from the United States.'".

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for the Immigration and Nationality Act is amended by inserting after the item relating to section 237 the following new item:

"Sec. 237A. Bar on removal of certain refugees, parolees or asylees.".

SEC. 310. EXEMPTION FROM IMMIGRANT VISA LIMIT FOR CERTAIN VETERANS WHO ARE NATIVES OF PHILIPPINES.

Section 201(b)(1) of the Immigration and Nationality Act (8 U.S.C. 1151(b)(1)) is amended by adding at the end the following:

"(F) Aliens who are eligible for an immigrant visa under paragraph (1) or (3) of section 203(a) and who have a parent who was naturalized pursuant to section 405 of the Immigration Act of 1990 (8 U.S.C. 1440 note).".

SEC. 311. FIANCÉE OR FIANCÉ CHILD STATUS PROTECTION.

(a) DEFINITION.—Section 101(a)(15)(K)(iii) of the Immigration and Nationality Act (8 U.S.C.

1101(a)(15)(K)(iii)) is amended by inserting before the semicolon at the end the following: ''if a determination of the age of such minor child is made using the age of the alien on the date on which the petition is filed with the Secretary of Homeland Security to classify the alien's parent as the fiancée or fiancé of a United States citizen (in the case of an alien parent described in clause (i)) or as the spouse of a United States citizen under section 201(b)(2)(A)(i) (in the case of an alien parent described in clause (ii))''.

(b) ADJUSTMENT OF STATUS AUTHORIZED.—Section 214(d) of the Immigration and Nationality Act (8 U.S.C. 1184(d)) is amended—

(1) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively;

(2) in paragraph (1), by striking the last sentence; and

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

''(2)(A) If an alien does not marry the petitioner under paragraph (1) within 3 months after the alien and the alien's minor children are admitted into the United States, such alien and children shall be required to depart from the United States. If such aliens fail to depart from the United States,

they shall be removed in accordance with sections 240 and 241.

"(B) Subject to subparagraphs (C) and (D), if an alien marries the petitioner described in section 101(a)(15)(K)(i) within 3 months after the alien is admitted into the United States, the Secretary of Homeland Security or the Attorney General, subject to the provisions of section 245(d), may adjust the status of the alien, and any minor children accompanying or following to join the alien, to that of an alien lawfully admitted for permanent residence on a conditional basis under section 216 if the alien and any such minor children apply for such adjustment and are not determined to be inadmissible to the United States.

"(C) Paragraphs (5) and (7)(A) of section 212(a) shall not apply to an alien who is eligible to apply for adjustment of his or her status to an alien lawfully admitted for permanent residence under this section.

"(D) An alien eligible for a waiver of inadmissibility as otherwise authorized under this Act shall be permitted to apply for adjustment of his or her status to that of an alien lawfully admitted for permanent residence under this section.".

(c) AGE DETERMINATION.—Section 245(d) of the Immigration and Nationality Act (8 U.S.C. 1155(d)) is amended—

(1) by striking ''(d) The Attorney General'' inserting the following:

''(d)(1) The Attorney General''; and

(2) by adding at the end the following:

''(2) A determination of the age of an alien admitted to the United States under section 101(a)(15)(K)(iii) shall be made, for purposes of adjustment to the status of an alien lawfully admitted for permanent residence on a conditional basis under section 216, using the age of the alien on the date on which the petition is filed with the Secretary of Homeland Security to classify the alien's parent as the fiancée or fiancé of a United States citizen (in the case of an alien parent admitted to the United States under section 101(a)(15)(K)(i)) or as the spouse of a United States citizen under section 201(b)(2)(A)(i) (in the case of an alien parent admitted to the United States under section 101(a)(15)(K)(ii)).''.

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall be effective as if included in the

Immigration Marriage Fraud Amendments of 1986 (Public Law 99–639).

(2) APPLICABILITY.—The amendments made by this section shall apply to all petitions or applications described in such amendments that—

(A) are pending as of the date of the enactment of this Act; or

(B) have been denied, but would have been approved if such amendments had been in effect at the time of adjudication of the petition or application.

(3) MOTION TO REOPEN OR RECONSIDER.—A motion to reopen or reconsider a petition or application described in paragraph (2)(B) shall be granted if such motion is filed with the Secretary of Homeland Security or the Attorney General not later than 2 years after the date of the enactment of this Act and the Secretary shall use parole authority to permit an alien outside the United States to pursue a petition or application that has been reopened.

SEC. 312. EQUAL TREATMENT FOR ALL STEPCHILDREN.

Section 101(b)(1)(B) of the Immigration and Nationality Act (8 U.S.C. 1101(b)(1)(B)) is amended by striking ", provided the child had not reached the age of eighteen

years at the time the marriage creating the status of stepchild occurred''.

SEC. 313. SONS AND DAUGHTERS OF FILIPINO WORLD WAR II VETERANS.

Section 201(b)(1) (8 U.S.C. 1151(b)(1)), as amended by section 310 of this Act, is further amended by adding at the end the following:

''(G) Aliens who are eligible for a visa under paragraph (1) or (3) of section 203(a) and are the son or daughter 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. 314. DETERMINATIONS 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 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 are promulgated to implement this section and the amendment made by subsection (a).

(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—

(1) in subsection (a)(1)(B), by inserting ''(6)(C)(i),'' after ''(6)(A),''; and

(2) in subsection (d)(1)(D), by inserting ''(6)(C)(i),'' after ''(6)(A),''.

SEC. 315. DISCRETIONARY AUTHORITY.

Section 240(c)(4) of the Immigration and Nationality Act (8 U.S.C. 1229a(c)(4)) is amended by adding at the end the following:

"(D) DISCRETION OF JUDGE IN CASE OF CITIZEN CHILD.—In the case of an alien subject to removal, deportation, or exclusion who is the parent of a child who is a citizen of the United States, the immigration judge may exercise discretion to decline to order the alien removed, deported, or excluded from the United States if the judge determines that such removal, deportation, or exclusion is clearly against the best interests of the child, except that this subparagraph shall not apply to any alien who the judge determines—

"(i) is described in section 212(a)(3) or 237(a)(4); or

"(ii) has engaged in conduct described in paragraph (8) or (9) of section 103 of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7102).".

SEC. 316. AFFIDAVIT OF SUPPORT.

Section 213A of the Immigration and Nationality Act (8 U.S.C. 1183a) is amended—

(1) in subsection (a)(1)(A) by striking "125" and inserting "100";

(2) in subsection (f)(1)(E), by striking "125" and inserting "100";

(3) in subsection (f)(4)(B)(i), by striking ''125'' and inserting ''100''; and

(4) in subsection (f)(5)(A), by striking ''125'' and inserting ''100''.

SEC. 317. VISA TO PREVENT UNAUTHORIZED MIGRATION.

(a) WORLDWIDE LEVEL OF TRANSITIONAL VISAS.—Section 201 of the Immigration and Nationality Act (8 U.S.C. 1152) is amended by adding at the end the following:

''(g) WORLDWIDE LEVEL OF PUM IMMIGRANTS.—The worldwide level of PUM immigrants is equal to 100,000 for each fiscal year the PUM visa is authorized.''.

(b) TRANSITION TO SAFE AND LEGAL IMMIGRATION.—Section 203 of the Immigration and Nationality Act is amended by adding at the end the following:

''(i) PREVENT UNAUTHORIZED MIGRATION (PUM) TRANSITIONAL VISA.—

''(1) IN GENERAL.—Except as provided in paragraph (2), aliens subject to the worldwide level specified in section 201(g) for PUM immigrants shall be allotted visas during the first three fiscal years following 6 months after enactment of the CIR ASAP Act of 2009 as follows:

''(A) DETERMINATION OF ADMISSION STATES.—The Secretary shall determine for the

most recent previous 5-fiscal year period for which data are available—

"(i) each country (in this paragraph referred to as a 'transitional visa admission state') whose nationals represented not less than 5 percent of the total number of unauthorized immigrants to the United States during the 5-fiscal year period; and

"(ii) the percentage of unauthorized immigrants that nationals of each transitional visa admission state represented of the total number of unauthorized immigrants to all transitional visa admission states during the 5-year period.

"(B) DISTRIBUTION OF VISAS.—

"(i) FOR A TRANSITIONAL VISA ADMISSION STATE.—Subject to clause (ii), the percentage of immigrant visas made available under this paragraph to nationals of any single transitional visa admission state shall not exceed the percentage determined for that transitional visa admission state in subparagraph (A)(ii).

"(ii) REDISTRIBUTION OF UNUSED VISA NUMBERS.—If the Secretary of State

estimates that the number of immigrant visas to be issued to nationals in any state for a fiscal year under this paragraph is less than the number of immigrant visas made available to such nationals under this paragraph for the fiscal year, the excess visa numbers shall be made available to nationals of the other states in proportion to the percentages otherwise specified in subparagraph (A)(ii).

"(2) ELIGIBILITY.—An alien is not eligible for a visa under this subsection unless the alien—

"(A) at the time of application for such a visa, is not present in the United States and is not entitled to an immigrant status under any other provision of the Immigration and Nationality Act;

"(B) has no other employment-based or family-based visa application pending;

"(C) submits to a security and law enforcement background check, according to procedures established by the Secretary; and

"(D) with regard to education, has completed less than a 4-year college degree program.

"(3) REQUIREMENT WITH REGARD TO PARTICIPATION IN DATA COLLECTION AND STUDY.—Transitional visa holders shall be required to participate in data collection and study as described in section 501(b)(1)(G) of this Act that the Labor Commission deems necessary or helpful to fulfill its purpose and mission.

"(4) MAINTENANCE OF INFORMATION.—The Secretary of State shall maintain information on the age, occupation, education level, and other relevant characteristics of immigrants issued visas under this subsection and share such information to the Labor Commission in Title V of this Act as needed.

"(5) ORDER OF CONSIDERATION.—Immigrant visas made available each fiscal year under this subsection shall be issued to eligible qualified immigrants in a random order established by the Secretary of State.".

SEC. 318. ADJUSTMENT OF STATUS.

(a) CONDITIONAL PERMANENT RESIDENT STATUS.—

(1) IN GENERAL.—

(A) CONDITIONAL BASIS FOR STATUS.—Notwithstanding any other provision of law, an alien whose status has been adjusted under sub-

section (b) 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 paragraph. Such conditional permanent resident status shall be valid for a period of 3 years, subject to termination under paragraph (2).

(B) NOTICE OF REQUIREMENTS.—At the time an alien obtains permanent resident status on a conditional basis under subsection (b), the Secretary of Homeland Security shall provide notice to the alien regarding the provisions of this section and the requirements of paragraph (3) to have the conditional basis of such status removed.

(2) TERMINATION OF STATUS.—

(A) IN GENERAL.—The Secretary shall terminate the conditional permanent resident status of any alien who obtained such status under this Act, if the Secretary determines that the alien ceases to meet the requirements of subsection (b)(1).

(B) RETURN TO COUNTRY OF ORIGIN.—Any alien whose conditional permanent resident status is terminated under subparagraph (A)

shall be required to return to their country of origin.

(3) REQUIREMENTS OF TIMELY PETITION FOR REMOVAL OF CONDITION.—

(A) IN GENERAL.—In order for the conditional basis of the permanent resident status obtained by an alien under subsection (b) to be removed, the alien must file with the Secretary of Homeland Security, in accordance with paragraph (4), 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 subparagraph (B)(i).

(B) ADJUDICATION OF PETITION TO REMOVE CONDITION.—

(i) IN GENERAL.—If a petition is filed in accordance with clause (A) for an alien, the Secretary shall make a determination as to whether the alien meets the requirements set out in subparagraphs (A) and (B) of paragraph (4).

(ii) REMOVAL OF CONDITIONAL BASIS IF FAVORABLE DETERMINATION.—If the Secretary determines that the alien meets

1 such requirements, the Secretary shall no-
2 tify the alien of such determination and
3 immediately remove the conditional basis
4 of the status of the alien.

5 (iii) TERMINATION OF CONDITIONAL
6 STATUS IF UNFAVORABLE DETERMINA-
7 TION.—If the Secretary determines that
8 the alien does not meet such requirements,
9 the Secretary shall notify the alien of such
10 determination and terminate conditional
11 permanent resident status of the alien as
12 of the date of the determination.

13 (C) TIME TO FILE PETITION.—An alien
14 may petition to remove the conditional basis of
15 lawful resident status during the period begin-
16 ning 90 days before and ending 180 days after
17 either the date that is 3 years after the date of
18 granting conditional permanent resident status
19 or any other expiration date of the conditional
20 permanent resident status provided by the Sec-
21 retary in accordance with this Act. The alien
22 shall be deemed in conditional permanent resi-
23 dent status in the United States during the pe-
24 riod in which the petition is pending.

25 (4) DETAILS OF PETITION.—

(A) CONTENTS OF PETITION.—Each petition for an alien under paragraph (3)(A) shall contain information to permit the Secretary to determine whether each of the following requirements is met:

(i) The alien has demonstrated good moral character during the entire period the alien has been a conditional permanent resident.

(ii) The alien is in compliance with subsection (b)(1).

(iii) 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 the 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.

(iv) The alien has satisfied all Federal income tax liabilities and is in good standing with the Internal Revenue Service as described in (B) of this paragraph.

(v) where applicable, can establish proof of registration under the Military Selective Service Act (50 U.S.C. App. 451 et seq.).

(B) PAYMENT OF INCOME TAXES.—

(i) IN GENERAL.—Not later than the date on which status is adjusted under this section, a conditional nonimmigrant or conditional nonimmigrant dependent shall satisfy any applicable Federal tax liability by establishing that—

(I) no such tax liability exists;

(II) all outstanding liabilities have been paid; or

(III) the conditional nonimmigrant has entered into, and is in compliance with, an agreement for payment of all outstanding liabilities with the Internal Revenue Service.

(ii) APPLICABLE FEDERAL TAX LIABILITY.—For purposes of (i), the term

1 ''applicable Federal tax liability'' means li-
2 ability for Federal taxes, including pen-
3 alties and interest, owed for any year while
4 classified as a conditional permanent resi-
5 dent for which the statutory period for as-
6 sessment of any deficiency for such taxes
7 has not expired.

8 (iii) IRS COOPERATION.—The Sec-
9 retary of the Treasury shall establish rules
10 and procedures under which the Commis-
11 sioner of Internal Revenue shall provide
12 documentation to—

13 (I) a conditional permanent resi-
14 dent, upon request, to establish the
15 payment of all taxes required under
16 this subsection; or

17 (II) the Secretary, upon request,
18 regarding the payment of Federal
19 taxes by an alien applying for a ben-
20 efit under this section.

21 (iv) COMPLIANCE.—The alien may
22 satisfy proof of compliance with this sub-
23 section by submitting documentation that
24 establishes that—

25 (I) no such tax liability exists;

(II) all outstanding liabilities have been met; or

(III) the alien has entered into, and is in compliance with, an agreement for payment of all outstanding liabilities with the Internal Revenue Service.

(b) ADJUSTMENT OF STATUS.—

(1) ADJUSTMENT OF STATUS.—Notwithstanding any other provision of law, and except as otherwise provided in this Act, the Secretary of Homeland Security may adjust the status of an alien granted a PUM visa, subject to the conditional basis described in subsection (a), if the alien demonstrates that the alien is not inadmissible under paragraph (2) (criminal grounds), (3) (security grounds), 4(A) and (B) (public charge), 6(E) (smugglers), or 10(C) (child abductors) of section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)),

(2) MANDATORY FEE.—Aliens granted a waiver of inadmissibility from 212(a) not listed in (1) shall pay a $500 fee that shall be deposited into the Security and Prosperity Account as described in section 502 of the Comprehensive Immigration Reform ASAP Act of 2009.

(3) ALIENS NOT SUBJECT TO DIRECT NUMERICAL LIMITATIONS.—Section 201(b)(1) (8 U.S.C. 1151(b)(1)), as amended by sections 310, 313, and 317(a) of this Act, is further amended by adding at the end the following:

"(I) Aliens whose status is adjusted under section 203(i).".

SEC. 319. RULEMAKING.

The Secretary shall promulgate regulations regarding the timely filing and processing of applications for visas awarded under section 203(i) of the Immigration and Nationality Act, as added by section 317(b) of this Act.

SEC. 320. UNITED STATES-EDUCATED IMMIGRANTS.

(a) EXEMPTION FROM NUMERICAL LIMITATIONS.—

(1) IN GENERAL.—Section 201(b)(1) (8 U.S.C. 1151(b)(1)), as amended by sections 310, 313, 317(a), and 318(b)(3) of this Act, is further amended by adding at the end the following:

"(J) Aliens who have earned a master's or higher degree from an accredited university in the United States.

"(K) Aliens who have been awarded medical specialty certification based on postdoctoral training and experience in the United States

preceding their application for an immigrant visa under section 203(b).

"(L) 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.

"(M) Aliens who have earned a master's degree or higher in science, technology, engineering, or mathematics 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).

"(N) 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).

"(O) The spouse and minor children of an alien described in subparagraph (J), (K), (L), (M), or (N).".

(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 CERTIFICATIONS.—Section 212(a)(5)(A)(ii) (8 U.S.C. 1182(a)(5)(A)(ii)) is amended—

(1) in subclause (I), by striking ", or" and inserting a semicolon;

(2) in subclause (II), by striking the period at the end 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 university in the United States or has been awarded medical specialty certification based on postdoctoral training and experience in the United States.".

(c) ATTESTATION BY HEALTH CARE WORKERS.—

(1) REQUIREMENT FOR ATTESTATION.—Section 212(a)(5) (8 U.S.C. 1182(a)(5)) is amended by adding at the end the following:

1 "(E) HEALTH CARE WORKERS WITH
2 OTHER OBLIGATIONS.—
3 "(i) IN GENERAL.—An alien who
4 seeks to enter the United States for the
5 purpose of performing labor as a physician
6 or other health care worker is inadmissible
7 unless the alien submits to the Secretary of
8 Homeland Security or the Secretary of
9 State, as appropriate, an attestation that
10 the alien is not seeking to enter the United
11 States for such purpose during any period
12 in which the alien has an outstanding obli-
13 gation to the government of the alien's
14 country of origin or the alien's country of
15 residence.
16 "(ii) OBLIGATION DEFINED.—In this
17 subparagraph, the term 'obligation' means
18 an obligation incurred as part of a valid,
19 voluntary individual agreement in which
20 the alien received financial assistance to
21 defray the costs of education or training to
22 qualify as a physician or other health care
23 worker in consideration for a commitment
24 to work as a physician or other health care

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 obligation 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.".

(2) EFFECTIVE DATE AND APPLICATION.—

(A) EFFECTIVE DATE.—The amendment made by paragraph (1) shall become effective 180 days after the date of the enactment of this Act.

(B) APPLICATION BY THE SECRETARY.—The Secretary shall begin to carry out section 212(a)(5)(E) of the Immigration and Nationality Act, as added by paragraph (1), not later than the effective date described in subparagraph (A), including the requirement for the attestation and the granting of a waiver described in such section, regardless of whether regulations to implement such section have been promulgated.

SEC. 321. RETAINING WORKERS SUBJECT TO GREEN CARD BACKLOG.

(a) ADJUSTMENT OF STATUS.—Section 245 (8 U.S.C. 1255), as amended by this title, is further amended by adding at the end the following:

"(n) ADJUSTMENT OF STATUS FOR EMPLOYMENT-BASED IMMIGRANTS.—

"(1) ELIGIBILITY.—The Secretary of Homeland Security shall promulgate regulations to provide for the filing of an application for adjustment of status by an alien (and any eligible dependents of such

alien), regardless of whether an immigrant visa is immediately available at the time the application is filed, if the alien—

"(A) has an approved petition under subparagraph (E) or (F) of section 204(a)(1); or

"(B) at the discretion of the Secretary, has a pending petition under subparagraph (E) or (F) of section 204(a)(1).

"(2) VISA AVAILABILITY.—An application filed pursuant to paragraph (1) may not be approved until an immigrant visa becomes available.

"(3) FEES.—If an application is filed pursuant to paragraph (1), the beneficiary of such application shall pay a supplemental fee of $500. Such fee may not be charged to any dependent accompanying or following to join such beneficiary.

"(4) EXTENSION OF EMPLOYMENT AUTHORIZATION AND ADVANCED PAROLE DOCUMENT.—

"(A) IN GENERAL.—The Secretary of Homeland Security shall provide employment authorization and advanced parole documents, in 3-year increments, to beneficiaries of an application for adjustment of status based on a petition that is filed or, at the discretion of the

Secretary, pending, under subparagraph (E) or (F) of section 204(a)(1).

"(B) FEE ADJUSTMENTS.—Application fees under this subsection may be adjusted in accordance with the 3-year period of validity assigned to the employment authorization or advanced parole documents under subparagraph (A).".

(b) USE OF FEES.—Section 286 (8 U.S.C. 1356) is amended—

(1) in subsection (m)—

(A) by striking "(m) Notwithstanding any other provisions of law," and inserting the following:

"(m) IMMIGRATION EXAMINATIONS FEE ACCOUNT.—

"(1) IN GENERAL.—Notwithstanding any other provision of law, all fees collected under section 245(o)(3) and";

(B) by striking ": *Provided, however*, That all" and inserting the following:

"(2) VIRGIN ISLANDS; GUAM.—All"; and

(C) by striking ": *Provided further*, That fees" and inserting the following:

"(3) COST RECOVERY.—Fees";

(2) in subsection (n)—

(A) by striking ''(n) All deposits'' and inserting the following:

''(4) USE OF FUNDS.—

''(A) IN GENERAL.—Except as provided under subparagraph (B), all deposits''; and

(B) adding at the end the following:

''(B) SUPPLEMENTAL FEE FOR ADJUSTMENT OF STATUS OF EMPLOYMENT-BASED IMMIGRANTS.—Any amounts deposited into the Immigration Examinations Fee Account that were collected under section 245(o)(3) shall remain available until expended by the Secretary of Homeland Security for backlog reduction and clearing security background check delays.'';

(3) in subsection (o), by striking ''(o) The Attorney General'' and inserting the following:

''(5) ANNUAL FINANCIAL REPORT TO CONGRESS.—The Attorney General''; and

(4) in subsection (p), by striking ''(p) The provisions set forth in subsections (m), (n), and (o) of this section'' and inserting the following:

''(6) APPLICABILITY.—The provisions set forth in this subsection shall''.

SEC. 322. RETURN OF TALENT PROGRAM.

(a) SHORT TITLE.—This section may be cited as the ''Return of Talent Act''.

(b) ESTABLISHMENT.—

(1) IN GENERAL.—Title III (8 U.S.C. 1401 et seq.) is amended by inserting after section 317 the following:

''SEC. 317A. TEMPORARY ABSENCE OF PERSONS PARTICIPATING IN THE RETURN OF TALENT PROGRAM.

''(a) IN GENERAL.—The Secretary of Homeland Security, in consultation with the Secretary of State, shall establish the Return of Talent Program to permit eligible aliens to temporarily return to the alien's country of citizenship in order to make a material contribution to that country if the country is engaged in postconflict or natural disaster reconstruction activities, for a period not longer than 2 years, unless an exception is granted under subsection (d).

''(b) ELIGIBLE ALIEN.—An alien is eligible to participate in the Return of Talent Program established under subsection (a) if the alien meets the special immigrant description under section 101(a)(27)(N).

''(c) FAMILY MEMBERS.—The spouse, parents, siblings, and any minor children of an alien who participates in the Return of Talent Program established under sub-

section (a) may return to such alien's country of citizenship with the alien and reenter the United States with the alien.

"(d) EXTENSION OF TIME.—The Secretary of Homeland Security may extend the 2-year period referred to in subsection (a) upon a showing that circumstances warrant that an extension is necessary for postconflict or natural disaster reconstruction efforts.

"(e) RESIDENCY REQUIREMENTS.—An immigrant described in section 101(a)(27)(N) who participates in the Return of Talent Program established under subsection (a), and the spouse, parents, siblings, and any minor children who accompany such immigrant to that immigrant's country of citizenship, shall be considered, during such period of participation in the program—

"(1) for purposes of section 316(a), physically present and residing in the United States for purposes of naturalization within the meaning of that section; and

"(2) for purposes of section 316(b), to meet the continuous residency requirements in that section.

"(f) OVERSIGHT AND ENFORCEMENT.—The Secretary of Homeland Security, in consultation with the Secretary of State, shall oversee and enforce the requirements of this section.".

(2) TABLE OF CONTENTS.—The table of contents (8 U.S.C. 1101 et seq.) is amended by inserting after the item relating to section 317 the following:

"317A. Temporary absence of persons participating in the Return of Talent Program"."

(c) ELIGIBLE IMMIGRANTS.—Section 101(a)(27) (8 U.S.C. 1101(a)(27)) is amended by adding at the end the following:

"(N) an immigrant who—

"(i) has been lawfully admitted to the United States for permanent residence;

"(ii) demonstrates an ability and willingness to make a material contribution to the postconflict or natural disaster reconstruction in the alien's country of citizenship; and

"(iii) as determined by the Secretary of State in consultation with the Secretary of Homeland Security—

"(I) is a citizen of a country in which Armed Forces of the United States are engaged, or have engaged in the 10 years preceding such determination, in combat or peacekeeping operations;

"(II) is a citizen of a country where authorization for United Nations peacekeeping operations was initiated by the United Nations Security Council during the 10 years preceding such determination; or

"(III) is a citizen of a country which received, during the preceding 2 years, funding from the Office of Foreign Disaster Assistance of the United States Agency for International Development in response to a declared disaster in such country by the United States Ambassador, the Chief of the U.S. Mission, or the appropriate Assistant Secretary of State, that is beyond the ability of such country's response capacity and warrants a response by the United States Government.".

(d) REPORT TO CONGRESS.—Not later than 2 years after the date of the enactment of this Act, the Secretary, in consultation with the Secretary of State, shall submit a report to Congress that describes—

(1) the countries of citizenship of the participants in the Return of Talent Program established under section 317A of the Immigration and Nationality Act, as added by subsection (b);

(2) the postconflict or natural disaster reconstruction efforts that benefitted, or were made possible, through participation in the program; and

(3) any other information that the Secretary determines to be appropriate.

(e) REGULATIONS.—Not later than 6 months after the date of the enactment of this Act, the Secretary shall promulgate regulations to carry out this section and the amendments made by this section.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to United States Citizenship and Immigration Services such sums as may be necessary to carry out this section and the amendments made by this section.

TITLE IV—EARNED LEGALIZATION OF UNDOCUMENTED INDIVIDUALS

Subtitle A—Conditional Nonimmigrants

SEC. 401. CONDITIONAL NONIMMIGRANTS.

(a) IN GENERAL.—

(1) REQUIRED REGISTRATION.—An alien as described in this section shall register with the Department of Homeland Security by submitting biometric identification pursuant to subsection (b) and filing an application with the Secretary that demonstrates the alien's compliance with the requirements listed in subsections (b) through (e).

(2) CLASSIFICATION.—Notwithstanding any other provision of law, including section 244(h) of the Immigration and Nationality Act (8 U.S.C. 1254a(h)), the Secretary shall classify an alien as a conditional nonimmigrant or conditional nonimmigrant dependent if the alien registers pursuant to paragraph (1) and is determined to meet the requirements listed in this section.

(b) COMPLIANCE WITH SECURITY AND LAW ENFORCEMENT BACKGROUND CHECKS.—Registration and classification as a conditional nonimmigrant or conditional nonimmigrant dependent under this section is contingent upon the submission of all required biometric data in accordance with procedures established by the Secretary.

(c) PHYSICAL PRESENCE.—

(1) PRESENCE IN THE UNITED STATES.—The alien shall establish that the alien—

(A) was present in the United States on the date of the introduction of this Act in the United States House of Representatives;

(B) has been continuously present in the United States since the date described in subparagraph (A); and

(C) was not legally present in the United States on the date of the introduction of this Act in the United States House of Representatives under any classification described in section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)) or has been in violation of status on or before such date.

(2) CONTINUOUS PRESENCE.—For purposes of this subsection, an absence from the United States without authorization for a continuous period of more than 180 days between the date of the enactment of this Act and the beginning of the application period for classification as a conditional nonimmigrant or conditional nonimmigrant dependent shall constitute a break in continuous physical presence. Individuals absent under advance parole shall not be considered as failing to meet the continuous physical presence requirement.

(d) OTHERWISE ADMISSIBLE TO THE UNITED STATES.—

(1) IN GENERAL.—An alien shall be eligible for classification as a conditional nonimmigrant or conditional nonimmigrant dependent if the Secretary determines that the alien—

(A) is not inadmissible to the United States under section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)), except as provided in paragraph (2);

(B) has not ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion; and

(C) is not an alien—

(i) who has been convicted by final judgment of a particularly serious crime and constitutes a danger to the community of the United States;

(ii) for whom there are reasonable grounds for believing that the alien has committed a particularly serious crime outside the United States before arriving in the United States; or

(iii) for whom there are reasonable grounds for regarding the alien as a danger to the security of the United States; and

(iv) who has been convicted of a felony or 3 or more misdemeanors for which the alien has served not less than 12 months of imprisonment in the aggregate.

(2) GROUNDS OF INADMISSIBILITY.—In determining an alien's admissibility under paragraph (1)(A)—

(A) paragraphs (5), (6), (7), (9), and (10)(B) of section 212(a) of such Act shall not apply;

(B) the Secretary may not waive—

(i) subparagraph (A), (B), (C), (D)(ii), (E), (G), (H), or (I) of section 212(a)(2) of such Act (relating to criminals);

(ii) section 212(a)(3) of such Act (relating to security and related grounds); or

(iii) subparagraph (A), (C), or (D) of section 212(a)(10) of such Act (relating to polygamists and child abductors);

(C) the Secretary may waive the application of any provision of section 212(a) of such Act not listed in subparagraph (B) on behalf of an individual alien for humanitarian purposes, to ensure family unity, or if such waiver is otherwise in the public interest; and

(D) nothing in this paragraph shall be construed as affecting the authority of the Secretary other than under this paragraph to waive the provisions of section 212(a) of such Act.

(3) APPLICABILITY OF OTHER PROVISIONS.—Sections 240B(d) and 241(a)(5) of the Immigration and Nationality Act (8 U.S.C. 1229c(d) and 1231(a)(5)) shall not apply to an alien who is applying for classification under this section for conduct that occurred before the date of enactment of this Act.

(e) CONTRIBUTIONS TO THE UNITED STATES THROUGH EMPLOYMENT, EDUCATION, MILITARY SERVICE OR OTHER COMMITMENT TO THE COMMUNITY.—

(1) IN GENERAL.—The Secretary shall not accept the registration of an alien, or classify an alien as a conditional nonimmigrant or conditional nonimmigrant dependent unless the alien attests, under penalty of perjury, that he or she is contributing to

the United States through one or more of the following enterprises—

(A) the alien is employed full-time, part-time, or seasonally in the United States, is self-employed, or is actively seeking employment; or

(B) is enrolled full- or part-time in an accredited secondary or post-secondary school, university, or other institution of higher education, or an accredited vocational, technical, or other training program; or

(C) is a member of the active or reserve Armed Services, the National Guard, or other government sponsored civil service program; or

(D) otherwise establishes, to the satisfaction of the Secretary, that the alien is an active volunteer or community member.

(2) EXEMPTIONS.—The requirements in paragraph (1) shall not apply to any individual who, at the time of registration—

(A) is 65 years of age or older, has a physical or mental disability, is pregnant, is the primary caregiver to a child under the age of 16 or to an elderly or disabled person, or is on official extended medical leave; or

(B) is the spouse of a United States citizen or lawful permanent resident;

(C) is a child 21 years of age or younger of a United States citizen or lawful permanent resident; or

(D) 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 and had not yet reached the age of 35 years on the date of the enactment of this Act.

(3) DEFINITIONS.—In this subtitle:

(A) 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).

(B) UNIFORMED SERVICES.—The term ''uniformed services'' has the meaning given that term in section 101(a) of title 10, United States Code.

(f) SPECIAL RULE FOR SPOUSES AND CHILDREN.—Notwithstanding any other provision of law, the Secretary

shall classify the spouse or child of a conditional nonimmigrant as a conditional nonimmigrant dependent, or provide the spouse or child with a conditional nonimmigrant dependent visa if—

(1) the spouse or child is not otherwise inadmissible to the United States as described in subsection (d);

(2) in the case of a child, was 21 years of age or younger on the date of enactment of this Act; or

(3) in the case of a spouse, was married to the conditional nonimmigrant on or before the date of enactment and is married at the time of the application;

(4) except that the spouse or child of an alien who was subsequently classified as a conditional nonimmigrant under this Act may apply for classification as a conditional nonimmigrant if the spousal or parental relationship has terminated and—

(A) the termination of the relationship with such spouse or parent was connected to domestic violence; and

(B) the spouse or child has been battered or subjected to extreme cruelty by the spouse or parent who is a conditional nonimmigrant.

(g) APPLICATION PROCEDURES, FEE AND PENALTY.—

(1) APPLICATION PROCEDURES.—For purposes of establishing enrollment in this program, an application shall be considered complete if it includes appropriate biometric data, applicable fees, penalties through fines, and answers fully and completely all questions attesting to eligibility as described in subsections (a) through (f). The Secretary may require evidence upon initial submission of the application sufficient to establish prima facie eligibility for conditional nonimmigrant or conditional nonimmigrant dependent status. The Secretary may, at his or her discretion, require additional evidence or an interview to make a final determination that an alien has established eligibility for classification.

(2) APPLICATION FEE AND PENALTY.—

(A) APPLICATION FEE.—The Secretary shall impose a fee for filing an application under this section. Such fee shall be sufficient to cover the administrative and other expenses incurred in connection with the review of such applications.

(B) PENALTY.—

(i) IN GENERAL.—Except as provided under clause (ii), an alien filing an application under this section shall submit to the Secretary, in addition to the fee required under subparagraph (A), a fine of $500.

(ii) EXCEPTION.—An alien who is classified as a conditional nonimmigrant who qualifies for classification based on the exemption in subsection (e)(2)(D) or a conditional nonimmigrant dependent because he or she was younger than 21 years of age on the date of enactment of this Act shall not be required to pay a fine under this paragraph.

(C) DISPOSITION OF FEES AND FINES.—

(i) FEES.—Fees collected under this paragraph shall be deposited into the Immigration Examination Fee Account and remain available as provided under subsections (m) and (n) of section 286 of the Immigration and Nationality Act (8 U.S.C. 1356).

(ii) FINES.—Fines collected under this paragraph shall be deposited into the

Security and Prosperity Account established under section 286(w) of such Act.

(h) TREATMENT OF APPLICANTS.—

(1) IN GENERAL.—An alien who files an application under this section to become a conditional nonimmigrant or a conditional nonimmigrant dependent shall be considered enrolled in the program pursuant to subsection (a)(2) until such time as a final determination is made on the application for classification. Following submission of biometric data pursuant to subsection (b) and successful clearance of the Secretary's security and criminal background checks, a registered alien—

(A) shall be granted employment authorization pending final adjudication of the alien's application;

(B) shall be granted permission to travel abroad;

(C) may not be detained for immigration purposes, determined inadmissible or deportable, or removed pending final adjudication of the alien's application, unless the alien, due to subsequent conduct or criminal conviction, becomes ineligible for conditional nonimmigrant classification; and

(D) may not be considered an unauthorized alien (as defined in section 274A(h)(3) of the Immigration and Nationality Act (8 U.S.C. 1324a(h)(3))) until employment authorization under subparagraph (A) is denied.

(2) DOCUMENT OF AUTHORIZATION.—The Secretary 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 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) BEFORE APPLICATION PERIOD.—If an alien is apprehended between the date of the enactment of this Act and the date on which the alien files an application under this section, and the alien can establish prima facie eligibility as a conditional nonimmigrant or a conditional nonimmigrant dependent, the alien shall not be detained and the Secretary

shall provide the alien with a reasonable opportunity to file an application under this section.

(4) DURING CERTAIN PROCEEDINGS.—Notwithstanding any provision of the Immigration and Nationality Act, if an immigration judge determines that an alien who is in removal proceedings has made a prima facie case of eligibility for classification as a conditional nonimmigrant or a conditional nonimmigrant dependent, the judge shall administratively close such proceedings and permit the alien a reasonable opportunity to apply for such classification.

(5) RELATIONSHIPS OF APPLICATION TO CERTAIN ORDERS.—

(A) IN GENERAL.—An alien who is present in the United States and has been ordered excluded, deported, removed, or ordered to depart voluntarily from the United States under any provision of the Immigration and Nationality Act—

(i) notwithstanding such order, may apply for classification as a conditional nonimmigrant or conditional nonimmigrant dependent under this subtitle;

(ii) shall not be required to file a separate motion to reopen, reconsider, or vacate the exclusion, deportation, removal, or voluntary departure order; and

(iii) the filing of an application for conditional nonimmigrant or conditional nonimmigrant dependent status shall stay the removal of the alien pending final adjudication of the application, unless the removal or detainment of the alien is based on criminal or national security-related grounds that would render the alien ineligible under this section.

(B) APPLICATION GRANTED.—If the Secretary grants the application described in subparagraph (A)(i), the Secretary shall cancel the order described in subparagraph (A).

(C) APPLICATION DENIED.—If the Secretary renders a final administrative decision to deny the application described in subparagraph (A)(i), the order described in subparagraph (A) shall be effective and enforceable to the same extent as if the application had not been made.

(i) CLASSIFICATION.—

(1) BENEFITS AND DOCUMENTATION.—If the Secretary determines that an alien is eligible for classification as a conditional nonimmigrant or conditional nonimmigrant dependent, the alien shall be entitled to all benefits described in subsection (h)(1). The Secretary may authorize the use of a document described in subsection (h)(2) as evidence of such classification or may issue additional documentation as evidence of classification as a conditional nonimmigrant or conditional nonimmigrant dependent.

(2) PERIOD OF AUTHORIZED STAY.—

(A) IN GENERAL.—Except as provided under subparagraph (C), the period of authorized stay for a conditional nonimmigrant or a conditional nonimmigrant dependent shall be 6 years from the date on which such status is conferred.

(B) EXTENSION.—The Secretary may extend the period described in subparagraph (A) in additional 5-year increments provided that the alien continues to meet the requirements of this section.

(j) TERMINATION OF BENEFITS.—

(1) IN GENERAL.—Any benefit provided to an alien seeking classification as a conditional non-

immigrant or conditional nonimmigrant dependent, or who is classified as such, under this section shall terminate if—

(A) the Secretary determines that the alien is ineligible for such classification and all review procedures under section 603 have been exhausted or waived by the alien;

(B) the alien has used documentation issued under this section for unlawful or fraudulent purposes; or

(C) in the case of the spouse or child of an alien applying for classification as a conditional nonimmigrant or classified as a conditional nonimmigrant under this section, the benefits for the principal alien are terminated unless benefits are terminated due to the death of the principal applicant; provided that the spouse or child shall be given a reasonable opportunity to apply independently for classification under this section.

(k) DISSEMINATION OF INFORMATION ON CONDITIONAL NONIMMIGRANT PROGRAM.—During the 12-month period immediately following the issuance of regulations implementing this section, the Secretary, in cooperation with entities approved by the Secretary, shall

broadly disseminate information respecting conditional nonimmigrant or conditional nonimmigrant dependent classification under this section and the requirements to be satisfied to obtain such classification. The Secretary shall disseminate information to employers and labor unions to advise them of the rights and protections available to them and to workers who file applications under this section. Such information shall be broadly disseminated, in the principal languages, as determined by the Secretary, spoken by aliens who would qualify for classification under this section, including to television, radio, and print media to which such aliens would have access.

(l) CONSTRUCTION CLAUSE.—Nothing in this subsection shall be construed to prevent an alien described in this section from filing an application for an immigration benefit in accordance with any other provision of law.

SEC. 402. ADJUSTMENT OF STATUS FOR CONDITIONAL NONIMMIGRANTS.

(a) REQUIREMENTS.—

(1) IN GENERAL.—Notwithstanding any other provision of law, including section 244(h) of the Immigration and Nationality Act (8 U.S.C. 1254a(h)), the Secretary may adjust the status of a conditional nonimmigrant or a conditional nonimmigrant dependent to that of an alien lawfully admitted for

1 permanent residence if the conditional nonimmigrant
2 or conditional nonimmigrant dependent satisfies the
3 applicable requirements under this subsection.

4 (2) FULFILLMENT OF CONDITIONAL REQUIRE-
5 MENTS.—A conditional nonimmigrant applying for
6 adjustment of status under this section shall estab-
7 lish that during the 5-year period immediately pre-
8 ceding the application for adjustment of status, he
9 or she has fulfilled the requirements of the alien's
10 conditional status by demonstrating that the alien—

11 (A) has not been convicted of any offenses
12 that would render the alien inadmissible as de-
13 scribed in subsection (b);

14 (B) has satisfied all past or current Fed-
15 eral income tax liabilities and is in good stand-
16 ing with the Internal Revenue Service as de-
17 scribed in subsection (c);

18 (C) can establish that he or she has con-
19 tributed to the community through employment,
20 education, military service or other enterprise
21 as described in subsection (d);

22 (D) has demonstrated sufficient mastery of
23 basic English skills as described in subsection
24 (e); and

(E) where applicable, can establish proof of registration under the Military Selective Service Act (50 U.S.C. App. 451 et seq.).

(b) ADMISSIBLE UNDER IMMIGRATION LAWS.—A conditional nonimmigrant or conditional nonimmigrant dependent applying for adjustment of status under this section shall establish that he or she is not inadmissible under section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)), except for any provision under that section that is not applicable or waived under paragraph (2) or (3) of section 401(d). For purposes of an application filed under this section, any prior waiver of inadmissibility granted to an alien under section 401(d)(2) shall remain in effect with respect to the specific conduct considered by the Secretary at the time of classification under section 401.

(c) PAYMENT OF INCOME TAXES.—

(1) IN GENERAL.—Not later than the date on which status is adjusted under this section, a conditional nonimmigrant or conditional nonimmigrant dependent shall satisfy any applicable Federal tax liability by establishing that—

(A) no such tax liability exists;

(B) all outstanding liabilities have been paid; or

(C) the conditional nonimmigrant has entered into, and is in compliance with, an agreement for payment of all outstanding liabilities with the Internal Revenue Service.

(2) APPLICABLE FEDERAL TAX LIABILITY.—For purposes of paragraph (1), the term ''applicable Federal tax liability'' means liability for Federal taxes, including penalties and interest, owed for any year while classified as a conditional nonimmigrant or conditional nonimmigrant dependent for which the statutory period for assessment of any deficiency for such taxes has not expired.

(3) IRS COOPERATION.—The Secretary of the Treasury shall establish rules and procedures under which the Commissioner of Internal Revenue shall provide documentation to—

(A) a conditional nonimmigrant or conditional nonimmigrant dependent, upon request, to establish the payment of all taxes required under this subsection; or

(B) the Secretary, upon request, regarding the payment of Federal taxes by an alien applying for a benefit under this section.

(4) COMPLIANCE.—The alien may satisfy proof of compliance with this subsection by submitting documentation that establishes that—

(A) no such tax liability exists;

(B) all outstanding liabilities have been met; or

(C) the alien has entered into, and is in compliance with, an agreement for payment of all outstanding liabilities with the Internal Revenue Service.

(d) CONTRIBUTIONS TO THE UNITED STATES THROUGH EMPLOYMENT, EDUCATION, MILITARY SERVICE OR OTHER COMMITMENT TO THE COMMUNITY.—

(1) An alien shall demonstrate contributions to the United States by submitting evidence that he or she—

(A) is or has been engaged in full-time, part-time, self, or seasonal employment in the United States; or

(B) has completed or is enrolled in an accredited education program as described under subsection (e)(1)(B) of section 401; or

(C) is serving in the military or has completed military service as described in subsection (e)(1)(C) of section 401; or

(D) otherwise establishes, to the satisfaction of the Secretary, that the alien is an active volunteer or community member; or

(E) is exempt from these requirements, as described under subsection (e)(2) of section 401; and

(F) is self-sufficient or self-supporting, including through the support of family, community members, or others, as determined by the Secretary, such that the alien is not a public charge or at risk of becoming a public charge.

(2) EVIDENCE OF EMPLOYMENT, EDUCATION, MILITARY SERVICE OR OTHER CONTRIBUTIONS.—

(A) CONCLUSIVE DOCUMENTS.—An alien may conclusively establish compliance with paragraph (1) by submitting records to the Secretary that demonstrate such employment, education, military service, or other contributions that have been maintained by the Social Security Administration, the Internal Revenue Service, the Armed Services or any other Federal, State, or local government agency or public or private educational institution.

(B) OTHER DOCUMENTS.—An alien who is unable to submit a document described in sub-

1 paragraph (A) may satisfy the requirement
2 under paragraph (1) by submitting to the Sec-
3 retary at least 2 other types of reliable docu-
4 ments that provide evidence of contributions to
5 the United States, including—
6 (i) bank records;
7 (ii) business records;
8 (iii) employer records;
9 (iv) records of a labor union, day
10 labor center, or organization that assists
11 workers in employment;
12 (v) records of a registered charitable,
13 voluntary or 501(c)(3) nonprofit organiza-
14 tion; and
15 (vi) sworn affidavits from nonrelatives
16 who have direct knowledge of the alien's
17 contribution, that contain—
18 (I) the name, address, and tele-
19 phone number of the affiant;
20 (II) the nature and duration of
21 the relationship between the affiant
22 and the alien; and
23 (III) other verification or infor-
24 mation; and
25 (vii) remittance records.

(C) ADDITIONAL DOCUMENTS AND RESTRICTIONS.—The Secretary may—

(i) designate additional documents to evidence employment, education, military service or and other contributions to the United States; and

(ii) set such terms and conditions on the use of affidavits as is necessary to verify and confirm the identity of any affiant or otherwise prevent fraudulent submissions.

(4) BURDEN OF PROOF.—An alien described in paragraph (1) who is applying for adjustment of status under this section shall prove, 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 employment, education, military service, or other contribution to the United States as a matter of reasonable inference.

(e) BASIC CITIZENSHIP SKILLS.—

(1) IN GENERAL.—Except as provided under paragraph (2), a conditional nonimmigrant or conditional nonimmigrant dependent shall establish that he or she—

(A) meets the requirements under section 312 of the Immigration and Nationality Act (8 U.S.C. 1423);

(B) earned a high school diploma or obtained a general education development certificate in the United States; or

(C) is satisfactorily pursuing a course of study to achieve such an understanding of English and knowledge and understanding of the history and Government of the United States.

(2) RELATION TO NATURALIZATION EXAMINATION.—A conditional nonimmigrant or conditional nonimmigrant dependent who demonstrates that he or she meets the requirements under such 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 of the Immigration and Nationality Act (8 U.S.C. 1401 et seq.).

(3) EXCEPTIONS.—

(A) MANDATORY.—Paragraph (1) shall not apply to any person who is unable to comply with those requirements because of a physical or developmental disability or mental im-

pairment (as described in section 312(b)(1) of the Immigration and Nationality Act (8 U.S.C. 1423(b)(1))).

(B) DISCRETIONARY.—The Secretary may waive all or part of paragraph (1) for a conditional nonimmigrant who is at least 65 years of age on the date on which an application is filed for adjustment of status under this section.

(f) APPLICATION PROCEDURE, FEES, AND FINES.—

(1) COMPLIANCE WITH ALL REQUIREMENTS.—A conditional nonimmigrant or conditional nonimmigrant dependent seeking to adjust status to that of a lawful permanent resident shall submit to a full medical examination and all security and other law enforcement checks required of an applicant for adjustment under section 245 of the Immigration and Nationality Act.

(2) APPLICATION AND FEE.—The Secretary shall promulgate regulations establishing procedures for submitting an application for adjustment of status under this section. The Secretary shall impose a fee for filing an application for adjustment of status under this section which shall be sufficient to cover the administrative and other expenses incurred in connection with the review of such applications.

1 (3) DEPOSIT OF FEES.—Fees collected under
2 this paragraph shall be deposited into the Immigra-
3 tion Examination Fee Account and shall remain
4 available as provided under subsections (m) and (n)
5 of section 286 of the Immigration and Nationality
6 Act (8 U.S.C. 1356).
7 (g) TREATMENT OF CONDITIONAL NONIMMIGRANT
8 DEPENDENTS.—
9 (1) ADJUSTMENT OF STATUS.—Notwith-
10 standing any other provision of law, the Secretary
11 may—
12 (A) adjust the status of a conditional non-
13 immigrant dependent to that of a person admit-
14 ted for lawful permanent residence if the prin-
15 cipal conditional nonimmigrant spouse or par-
16 ent has been found eligible for adjustment of
17 status under this section, provided that the de-
18 pendent complies with subparagraphs (A), (B),
19 and (E), where applicable, of subsection (a)(2)
20 and completes the application requirements de-
21 scribed in subsection (f);
22 (B) adjust the status of a conditional non-
23 immigrant dependent who was the spouse or
24 child of an alien who was classified as a condi-
25 tional nonimmigrant, or was eligible for such

classification under section 401, to that of a person admitted for permanent residence if—

(i) the termination of the relationship with such spouse or parent was connected to domestic violence; and

(ii) the spouse or child has been battered or subjected to extreme cruelty by the spouse or parent; provided that the dependent complies with subparagraphs (A), (B), and (E), where applicable, of subsection (a)(2) and completes the application requirements described in subsection (g).

(2) APPLICATION OF OTHER LAW.—In processing applications under this subsection on behalf of aliens who have been battered or subjected to extreme cruelty, the Secretary shall apply—

(A) the provisions under section 204(a)(1)(J) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(J)); and

(B) the protections, prohibitions, and penalties under section 384 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1367).

(h) BACK OF THE LINE.—

(1) IN GENERAL.—An alien may not adjust status to that of a lawful permanent resident status under this Act until that earlier of—

(A) 30 days after an immigrant visa becomes available for petitions filed under section 201, 202, or 203 of the Immigration and Nationality Act (8 U.S.C. 1151, 1152, and 1153), which were filed before the date of enactment of this Act; or

(B) 6 years after the date of the enactment of this Act.

(2) SPECIAL RULE FOR CONDITIONAL IMMIGRANTS QUALIFYING UNDER SUBSECTION (e)(2)(D) OF SECTION 401.—An alien who qualifies as a conditional nonimmigrant as described in subsection (e)(2)(D) of section 401 shall be eligible to apply for adjustment of status immediately upon the completion of one of the following:

(A) 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.

(B) The alien has served in the uniformed services for at least 2 years and, if discharged, has received an honorable discharge.

(C) The alien has been employed full-time, part-time, or seasonally for at least 2 years prior to date of application.

(3) NATURALIZATION.—For purposes of naturalization only, aliens who adjust their status to that of a lawful permanent resident under the special rule described in paragraph (2) shall be eligible to apply for naturalization 3 years after the date on which adjustment of status is granted.

(i) 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 under this section 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.).

SEC. 403. ADMINISTRATIVE AND JUDICIAL REVIEW.

(a) ADMINISTRATIVE REVIEW.—

(1) SINGLE LEVEL OF ADMINISTRATIVE APPELLATE REVIEW.—The Secretary of Homeland Security shall establish an independent appellate author-

ity within the Bureau of Citizenship and Immigration Services to provide for a single level of administrative appellate review of a determination respecting an application for classification or adjustment of status under this subtitle.

(2) STANDARD FOR REVIEW.—Administrative appellate review referred to in paragraph (1) 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 or subsequently on motion to reopen.

(b) JUDICIAL REVIEW.—

(1) DIRECT REVIEW.—A person whose application for classification or adjustment of status under this subtitle is denied after administrative appellate review under subsection (a) 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.

(2) REVIEW AFTER REMOVAL PROCEEDINGS.—There shall be judicial review in the Federal courts of appeal of the denial of an application for classification or adjustment of status under this subtitle

in conjunction with judicial review of an order of removal, deportation, or exclusion.

(3) STANDARD FOR JUDICIAL REVIEW.—Judicial review of a denial of an application under this subtitle shall be based upon the administrative record established at the time of the review, but the court may remand the case to the agency for consideration of additional evidence where the court finds that the evidence is material and there were reasonable grounds for failure to adduce the evidence before the agency. Notwithstanding any other provision of law, judicial review of all questions arising from a denial of an application under this subtitle shall be governed by the standard of review set forth in chapter 7 of title 5, United States Code.

(4) REMEDIAL POWERS.—Notwithstanding any other provision of law, the district courts of the United States shall have jurisdiction over any cause or claim arising from a pattern or practice of the Secretary of Homeland Security in the operation or implementation of this subtitle that is arbitrary, capricious, or otherwise contrary to law, and may order any appropriate relief. The district courts may order any appropriate relief in accordance with the preceding sentence without regard to exhaustion,

ripeness, or other standing requirements (other than constitutionally-mandated requirements), if the court determines that resolution of such cause or claim will serve judicial and administrative efficiency or that a remedy would otherwise not be reasonably available or practicable.

(c) STAY OF REMOVAL.—Aliens seeking administrative or judicial review under this section shall not be removed from the United States until a final decision is rendered establishing ineligibility under this subtitle.

SEC. 404. MANDATORY DISCLOSURE OF INFORMATION.

(a) MANDATORY DISCLOSURE.—The Secretary and the Secretary of State shall provide a duly recognized law enforcement entity that submits a written request with the information furnished pursuant to an application filed under this subtitle, and any other information derived from such furnished information, in connection with a criminal investigation or prosecution, or a national security investigation or prosecution, of an individual suspect or group of suspects.

(b) LIMITATIONS.—Except as otherwise provided under this section, no Federal agency, or any officer, employee, or agent of such agency, may—

(1) use the information furnished by the applicant pursuant to an application for benefits under

this subtitle for any purpose other than to make a determination on the application;

(2) make any publication through which the information furnished by any particular applicant can be identified; or

(3) permit anyone other than the sworn officers and employees of such agency to examine individual applications.

(c) CONSTRUCTION.—Nothing under subsection (b) shall prevent an alien or an alien's attorney access to his or her application, case file, or information related to such application or adjudication thereof.

(d) CRIMINAL PENALTY.—Any person who knowingly uses, publishes, or permits information to be examined in violation of this section shall be fined not more than $10,000.

SEC. 405. PENALTIES FOR FALSE STATEMENTS IN APPLICATIONS.

(a) CRIMINAL PENALTY.—

(1) VIOLATION.—It shall be unlawful for any person—

(A) to file, or assist in filing, an application for benefits under this subtitle; and

(i) to knowingly and willfully falsify, misrepresent, conceal, or cover up a material fact;

(ii) to make any false, fictitious, or fraudulent statements or representations; or

(iii) to make or use any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry; or

(B) to create or supply a false writing or document for use in making such an application.

(2) PENALTY.—Any person who violates paragraph (1) 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 violating subsection (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)).

(c) EXCEPTION.—Notwithstanding subsections (a) and (b), any alien or other entity (including an employer or union) that submits an employment record that con-

tains incorrect data used by the alien to obtain such employment, shall not, on that ground, be determined to have violated this section.

SEC. 406. ALIENS NOT SUBJECT TO DIRECT NUMERICAL LIMITATIONS.

Section 201(b)(1) (8 U.S.C. 1151(b)(1)), as amended by title III, is further amended—

(1) in subparagraph (A), by striking ''subparagraph (A) or (B) of''; and

(2) by adding at the end the following:

''(N) Aliens whose status is adjusted from that of a conditional nonimmigrant or conditional nonimmigrant dependent.''.

SEC. 407. EMPLOYER PROTECTIONS.

(a) IMMIGRATION STATUS OF ALIEN.—Employers of aliens applying for conditional nonimmigrant or conditional nonimmigrant dependent classification or adjustment of status under section 401 or 402 shall not be subject to civil and criminal tax liability relating directly to the employment of such alien before receiving employment authorization under this subtitle.

(b) PROVISION OF EMPLOYMENT RECORDS.—Employers that provide unauthorized aliens with copies of employment records or other evidence of employment pursuant to an application for conditional nonimmigrant or con-

ditional nonimmigrant dependent classification or adjustment of status under section 401 or 402 or any other application or petition pursuant to any other immigration law, shall not be subject to civil and criminal liability under section 274A of the Immigration and Nationality Act (8 U.S.C. 1324a) for employing such unauthorized aliens.

(c) APPLICABILITY OF OTHER LAW.—Nothing in this section may be used to shield an employer from liability under section 274B of the Immigration and Nationality Act (8 U.S.C. 1324b) or any other labor or employment law.

SEC. 408. LIMITATIONS ON ELIGIBILITY.

(a) IN GENERAL.—An alien is not ineligible for any immigration benefit under any provision of this subtitle, or any amendment made by this subtitle, solely on the basis that the alien violated section 1543, 1544, or 1546 of title 18, United States Code, or any amendment made by this Act, during the period beginning on the date of the enactment of this Act and ending on the date on which the alien applies for any benefits under this subtitle.

(b) PROSECUTION.—An alien who violates section 1543, 1544, or 1546 of such title, or any amendment made by this Act, during the period beginning on the date of 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.

SEC. 409. RULEMAKING.

The Secretary shall promulgate regulations regarding the timely filing and processing of applications for benefits under this subtitle.

SEC. 410. CORRECTION OF SOCIAL SECURITY RECORDS.

(a) IN GENERAL.—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) who is granted an adjustment of immigration status pursuant to the CIR ASAP Act of 2009 or an amendment made by that 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 before the date on which the alien was granted an adjustment of status described in such subparagraph.''.

(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.

SEC. 411. 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 (division C of Public Law 104–208; 110 Stat. 3009–546).

SEC. 412. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—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.

(b) AVAILABILITY OF FUNDS.—Funds appropriated pursuant to subsection (a) shall remain available until expended.

(c) SENSE OF CONGRESS.—It is the sense of Congress that funds authorized to be appropriated under sub-

section (a) should be directly appropriated so as to facilitate the orderly and timely commencement of the processing of applications filed under sections 401 and 402.

Subtitle B—Agricultural Job Opportunities, Benefits, and Security

CHAPTER 1—TITLE AND DEFINITIONS

SEC. 421. SHORT TITLE.

This subtitle may be cited as the ''Agricultural Job Opportunities, Benefits, and Security Act of 2009'' or the ''AgJOBS Act of 2009''.

SEC. 422. DEFINITIONS.

In this Act:

(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 or the performance of agricultural labor or services described in 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 101(a).

(3) DEPARTMENT.—The term ''Department'' means the Department of Homeland Security.

(4) EMPLOYER.—The term ''employer'' means any person or entity, including any farm labor contractor and any agricultural association, that employs workers in agricultural employment.

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

(6) WORK DAY.—The term ''work day'' means any day in which the individual is employed 5.75 or more hours in agricultural employment.

CHAPTER 2—PILOT PROGRAM FOR EARNED STATUS ADJUSTMENT OF AGRICULTURAL WORKERS

Subchapter A—Blue Card Status

SEC. 431. REQUIREMENTS FOR BLUE CARD STATUS.

(a) REQUIREMENT TO GRANT BLUE CARD STATUS.—Notwithstanding any other provision of law, the Secretary shall, pursuant to the requirements of this section, grant blue card status to an alien who qualifies under this section if the Secretary determines that the alien—

(1) during the 24-month period ending on December 31, 2008—

(A) performed agricultural employment in the United States for at least 863 hours or 150 work days; or

(B) earned at least $7,500 from agricultural employment in the United States;

(2) 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;

(3) 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 section 105(b); and

(4) has not been convicted of any felony or a misdemeanor, an element of which involves bodily injury, threat of serious bodily injury, or harm to property in excess of $500.

(b) AUTHORIZED TRAVEL.—An alien who is granted blue card status is authorized to travel outside the United States (including commuting to the United States from a residence in a foreign country) in the same manner as an alien lawfully admitted for permanent residence.

(c) AUTHORIZED EMPLOYMENT.—The Secretary shall provide an alien who is granted blue card status an employment authorized endorsement or other appropriate work permit, in the same manner as an alien lawfully admitted for permanent residence.

(d) TERMINATION OF BLUE CARD STATUS.—

(1) DEPORTABLE ALIENS.—The Secretary shall terminate blue card status granted to an alien if the Secretary determines that the alien is deportable.

(2) OTHER GROUNDS FOR TERMINATION.—The Secretary shall terminate blue card status granted to an alien if—

(A) 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

(B) 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 section 105(b);

(ii) is convicted of a felony or 3 or more misdemeanors committed in the United States;

(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; or

(iv) fails to perform the agricultural employment required under paragraph (1)(A) of section 103(a) unless the alien was unable to work in agricultural employment due to the extraordinary circumstances described in paragraph (3) of such section.

(e) RECORD OF EMPLOYMENT.—

(1) IN GENERAL.—Each employer of an alien granted blue card status shall annually—

(A) provide a written record of employment to the alien; and

(B) provide a copy of such record to the Secretary.

(2) CIVIL PENALTIES.—

(A) IN GENERAL.—If the Secretary finds, after notice and opportunity for a hearing, that an employer of an alien granted blue card sta-

tus has failed to provide the record of employment required under paragraph (1) or has provided a false statement of material fact in such a record, the employer shall be subject to a civil penalty in an amount not to exceed $1,000 per violation.

(B) LIMITATION.—The penalty applicable under subparagraph (A) for failure to provide records shall not apply unless the alien has provided the employer with evidence of employment authorization granted under this section.

(3) SUNSET.—The obligation under paragraph (1) shall terminate on the date that is 6 years after the date of the enactment of this Act.

(f) REQUIRED FEATURES OF IDENTITY CARD.—The Secretary shall provide each alien granted blue card status, and the spouse and any child of each such alien residing in the United States, with a card that contains—

(1) an encrypted, machine-readable, electronic identification strip that is unique to the alien to whom the card is issued;

(2) biometric identifiers, including fingerprints and a digital photograph; and

(3) physical security features designed to prevent tampering, counterfeiting, or duplication of the card for fraudulent purposes.

(g) FINE.—An alien granted blue card status shall pay a fine of $100 to the Secretary.

(h) MAXIMUM NUMBER.—The Secretary may not issue more than 1,350,000 blue cards during the 5-year period beginning on the date of the enactment of this Act.

SEC. 432. TREATMENT OF ALIENS GRANTED BLUE CARD STATUS.

(a) IN GENERAL.—Except as otherwise provided under this section, an alien granted blue card status (including a spouse or child of the alien granted derivative 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.).

(b) DELAYED ELIGIBILITY FOR CERTAIN FEDERAL PUBLIC BENEFITS.—Except as otherwise provided in law, an alien granted 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

alien is granted an adjustment of status under section 103.

SEC. 433. ADJUSTMENT TO PERMANENT RESIDENCE.

(a) IN GENERAL.—Except as provided in subsection (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:

(1) QUALIFYING EMPLOYMENT.—

(A) IN GENERAL.—Subject to subparagraph (B), the alien has performed at least—

(i) 5 years of agricultural employment in the United States for at least 100 work days per year, during the 5-year period beginning 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 per year, during the 3-year period beginning on the date of the enactment of this Act.

(B) 4-YEAR PERIOD OF EMPLOYMENT.—An alien shall be considered to meet the requirements of subparagraph (A) if the alien has performed 4 years of agricultural employment

in the United States for at least 150 work days during 3 years of those 4 years and at least 100 work days during the remaining year, during the 4-year period beginning on the date of the enactment of this Act.

(2) PROOF.—An alien may demonstrate compliance with the requirement under paragraph (1) by submitting—

(A) the record of employment described in section 101(e); or

(B) documentation that may be submitted under section 104(c).

(3) EXTRAORDINARY CIRCUMSTANCES.—

(A) IN GENERAL.—In determining whether an alien has met the requirement of paragraph (1)(A), the Secretary may credit the alien with not more than 12 additional months of agricultural employment in the United States to meet such requirement 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;

(iii) severe weather conditions that prevented the alien from engaging in agricultural employment for a significant period of time; or

(iv) termination from agricultural employment, if the Secretary finds that the termination was without just cause and that the alien was unable to find alternative agricultural employment after a reasonable job search.

(B) EFFECT OF FINDING.—A finding made under subparagraph (A)(iv), with respect to an alien, shall not—

(i) be conclusive, binding, or admissible in a separate or subsequent judicial or administrative action or proceeding between the alien and a current or prior employer of the alien or any other party; or

(ii) subject the alien's employer to the payment of attorney fees incurred by the

alien in seeking to obtain a finding under subparagraph (A)(iv).

(4) APPLICATION PERIOD.—The alien applies for adjustment of status not later than 7 years after the date of the enactment of this Act.

(5) FINE.—The alien pays a fine of $400 to the Secretary.

(b) GROUNDS FOR DENIAL OF ADJUSTMENT OF STATUS.—The Secretary shall deny an alien granted blue card status an adjustment of status under this section if—

(1) 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

(2) the alien—

(A) 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 section 105(b);

(B) is convicted of a felony or 3 or more misdemeanors committed in the United States;

(C) 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; or

(D) failed to perform the agricultural employment required under paragraph (1)(A) of subsection (a) unless the alien was unable to work in agricultural employment due to the extraordinary circumstances described in paragraph (3) of such subsection.

(c) GROUNDS FOR REMOVAL.—Any alien granted blue card status who does not apply for adjustment of status under this section before the expiration of the application period described in subsection (a)(4) or who fails to meet the other requirements of subsection (a) by the end of the application 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.—

(1) IN GENERAL.—Not later than the date on which an alien's status is adjusted under this section, the alien shall establish that the alien does not owe any applicable Federal tax liability by establishing that—

(A) no such tax liability exists;

(B) all such outstanding tax liabilities have been paid; or

(C) the alien has entered into an agreement for payment of all outstanding liabilities with the Internal Revenue Service.

(2) APPLICABLE FEDERAL TAX LIABILITY.—In paragraph (1) 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 subsection (a)(1) for which the statutory period for assessment of any deficiency for such taxes has not expired.

(3) 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 subsection.

(e) SPOUSES AND MINOR CHILDREN.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the Secretary shall confer the status of lawful permanent resident on the spouse and minor child of an alien granted any adjustment of status under subsection (a), including any individual who was a minor child on the date such alien was

granted blue card status, if the spouse or minor child applies for such status, or if the principal alien includes the spouse or minor child in an application for adjustment of status to that of a lawful permanent resident.

(2) TREATMENT OF SPOUSES AND MINOR CHILDREN.—

(A) GRANTING OF STATUS AND REMOVAL.—The Secretary shall grant derivative status to the alien spouse and any minor child residing in the United States of an alien granted blue card status and shall not remove such derivative spouse or child during the period that the alien granted blue card status maintains such status, except as provided in paragraph (3). A grant of derivative status to such a spouse or child under this subparagraph shall not decrease the number of aliens who may receive blue card status under subsection (h) of section 101.

(B) TRAVEL.—The derivative 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.

(C) EMPLOYMENT.—The derivative 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.

(3) GROUNDS FOR DENIAL OF ADJUSTMENT OF STATUS AND REMOVAL.—The Secretary shall deny an alien spouse or child adjustment of status under paragraph (1) 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—

(A) 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 section 105(b);

(B) is convicted of a felony or 3 or more misdemeanors committed in the United States; or

(C) 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.

SEC. 434. APPLICATIONS.

(a) SUBMISSION.—The Secretary shall provide that—

(1) applications for blue card status may be submitted—

(A) to the Secretary if the applicant is represented by an attorney or a nonprofit 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

(B) to a qualified designated entity if the applicant consents to the forwarding of the application to the Secretary; and

(2) applications for adjustment of status under section 103 shall be filed directly with the Secretary.

(b) QUALIFIED DESIGNATED ENTITY DEFINED.—In this section, the term ''qualified designated entity'' means—

(1) a qualified farm labor organization or an association of employers designated by the Secretary; or

(2) any such other person designated by the Secretary if that Secretary determines such person is qualified and has substantial experience, demonstrated competence, and has a history of long-term involvement in the preparation and submission of applications for adjustment of status under sec-

tion 209, 210, or 245 of the Immigration and Nationality Act (8 U.S.C. 1159, 1160, and 1255), the Act entitled "An Act to adjust the status of Cuban refugees to that of lawful permanent residents of the United States, and for other purposes", approved November 2, 1966 (Public Law 89–732; 8 U.S.C. 1255 note), Public Law 95–145 (8 U.S.C. 1255 note), or the Immigration Reform and Control Act of 1986 (Public Law 99–603; 100 Stat. 3359) or any amendment made by that Act.

(c) PROOF OF ELIGIBILITY.—

(1) IN GENERAL.—An alien may establish that the alien meets the requirement of section 101(a)(1) or 103(a)(1) 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.

(2) DOCUMENTATION OF WORK HISTORY.—

(A) BURDEN OF PROOF.—An alien applying for status under section 101(a) or 103(a) has the burden of proving by a preponderance of the evidence that the alien has worked the

requisite number of hours or days required under section 101(a)(1) or 103(a)(1), as applicable.

(B) 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 subparagraph (A) may be met by securing timely production of those records under regulations to be promulgated by the Secretary.

(C) SUFFICIENT EVIDENCE.—An alien may meet the burden of proof under subparagraph (A) to establish that the alien has performed the days or hours of work required by section 101(a)(1) or 103(a)(1) by producing sufficient evidence to show the extent of that employment as a matter of just and reasonable inference.

(d) APPLICATIONS SUBMITTED TO QUALIFIED DESIGNATED ENTITIES.—

(1) REQUIREMENTS.—Each qualified designated entity shall agree—

(A) to forward to the Secretary an application submitted to that entity pursuant to sub-

1 section (a)(1)(B) if the applicant has consented
2 to such forwarding;
3 (B) not to forward to the Secretary any
4 such application if the applicant has not con-
5 sented to such forwarding; and
6 (C) to assist an alien in obtaining docu-
7 mentation of the alien's work history, if the
8 alien requests such assistance.
9 (2) NO AUTHORITY TO MAKE DETERMINA-
10 TIONS.—No qualified designated entity may make a
11 determination required by this subtitle to be made
12 by the Secretary.
13 (e) LIMITATION ON ACCESS TO INFORMATION.—Files
14 and records collected or compiled by a qualified designated
15 entity for the purposes of this section are confidential and
16 the Secretary shall not have access to such a file or record
17 relating to an alien without the consent of the alien, except
18 as allowed by a court order issued pursuant to subsection
19 (f).
20 (f) CONFIDENTIALITY OF INFORMATION.—
21 (1) IN GENERAL.—Except as otherwise pro-
22 vided in this section, the Secretary or any other offi-
23 cial or employee of the Department or a bureau or
24 agency of the Department is prohibited from—

(A) using information furnished by the applicant pursuant to an application filed under this subtitle, the information provided by an applicant to a qualified designated entity, or any information provided by an employer or former employer for any purpose other than to make a determination on the application or for imposing the penalties described in subsection (g);

(B) making any publication in which the information furnished by any particular individual can be identified; or

(C) permitting a person other than a sworn officer or employee 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.

(2) REQUIRED DISCLOSURES.—The Secretary shall provide the information furnished under this subtitle or any other information derived from such furnished information to—

(A) 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

(B) an official coroner, for purposes of affirmatively identifying a deceased individual, whether or not the death of such individual resulted from a crime.

(3) CONSTRUCTION.—

(A) IN GENERAL.—Nothing in this subsection 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.

(B) CRIMINAL CONVICTIONS.—Notwithstanding any other provision of this subsection, information concerning whether the alien applying for blue card status or an adjustment of status under section 103 has been convicted of a crime at any time may be used or released for immigration enforcement or law enforcement purposes.

(4) CRIME.—Any person who knowingly uses, publishes, or permits information to be examined in

violation of this subsection shall be subject to a fine in an amount not to exceed $10,000.

(g) PENALTIES FOR FALSE STATEMENTS IN APPLICATIONS.—

(1) CRIMINAL PENALTY.—Any person who—

(A) files an application for blue card status or an adjustment of status under section 103 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

(B) 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.

(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) of

the Immigration and Nationality Act (8 U.S.C. 1182(a)(6)(C)(i)).

(h) 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 Corporation Act (42 U.S.C. 2996 et seq.) from providing legal assistance directly related to an application for blue card status or an adjustment of status under section 103.

(i) APPLICATION FEES.—

(1) FEE SCHEDULE.—The Secretary shall provide for a schedule of fees that—

(A) shall be charged for the filing of an application for blue card status or for an adjustment of status under section 103; and

(B) may be charged by qualified designated entities to help defray the costs of services provided to such applicants.

(2) PROHIBITION ON EXCESS FEES BY QUALIFIED DESIGNATED ENTITIES.—A qualified designated entity may not charge any fee in excess of, or in addition to, the fees authorized under paragraph (1)(B) for services provided to applicants.

(3) DISPOSITION OF FEES.—

(A) IN GENERAL.—There is established in the general fund of the Treasury a separate account, which shall be known as the ''Agricultural Worker Immigration Status Adjustment Account''. Notwithstanding any other provision of law, there shall be deposited as offsetting receipts into the account all fees collected under paragraph (1)(A).

(B) 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 blue card status or an adjustment of status under section 103.

SEC. 435. WAIVER OF NUMERICAL LIMITATIONS AND CERTAIN GROUNDS FOR INADMISSIBILITY.

(a) 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 section 103.

(b) WAIVER OF CERTAIN GROUNDS OF INADMISSIBILITY.—In the determination of an alien's eligibility for status under section 101(a) or an alien's eligibility for ad-

justment of status under section 103(b)(2)(A) the following rules shall apply:

(1) 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.

(2) WAIVER OF OTHER GROUNDS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), 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.

(B) GROUNDS THAT MAY NOT BE WAIVED.—Subparagraphs (A), (B), (C), (D), (G), (H), and (I) of paragraph (2) and paragraphs (3) and (4) of such section 212(a) may not be waived by the Secretary under subparagraph (A).

(C) CONSTRUCTION.—Nothing in this paragraph shall be construed as affecting the authority of the Secretary other than under this subparagraph to waive provisions of such section 212(a).

(3) SPECIAL RULE FOR DETERMINATION OF PUBLIC CHARGE.—An alien is not ineligible for blue card status or an adjustment of status under section 103 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.

(c) 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 section 101(a)(2) 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 endorsement 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 section 101(a)(2), 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.

SEC. 436. ADMINISTRATIVE AND JUDICIAL REVIEW.

(a) IN GENERAL.—There shall be no administrative or judicial review of a determination respecting an application for blue card status or adjustment of status under section 103 except in accordance with this section.

(b) ADMINISTRATIVE REVIEW.—

(1) SINGLE LEVEL OF ADMINISTRATIVE APPELLATE REVIEW.—The Secretary shall establish an appellate authority to provide for a single level of administrative appellate review of such a determination.

(2) 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.

(c) JUDICIAL REVIEW.—

(1) 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).

(2) 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 con-

trary to clear and convincing facts contained in the record considered as a whole.

SEC. 437. USE OF INFORMATION.

Beginning not later than the first day of the application period described in section 101(a)(2), the Secretary, in cooperation with qualified designated entities (as that term is defined in section 104(b)), shall broadly disseminate information respecting the benefits that aliens may receive under this subtitle and the requirements that an alien is required to meet to receive such benefits.

SEC. 438. REGULATIONS, EFFECTIVE DATE, AUTHORIZATION OF APPROPRIATIONS.

(a) REGULATIONS.—The Secretary shall issue regulations to implement this subtitle not later than the first day of the seventh month that begins after the date of enactment of this Act.

(b) EFFECTIVE DATE.—This subtitle shall take effect on the date that regulations required by subsection (a) are issued, regardless of whether such regulations are issued on an interim basis or on any other basis.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary such sums as may be necessary to implement this subtitle, including any sums needed for costs associated with the ini-

tiation of such implementation, for fiscal years 2009 and 2010.

Subchapter B—Correction of Social Security Records

SEC. 441. CORRECTION OF SOCIAL SECURITY RECORDS.

(a) IN GENERAL.—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) who is granted blue card status under the Agricultural Job Opportunities, Benefits, and Security Act of 2009''; 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 3—REFORM OF H–2A WORKER PROGRAM

SEC. 451. AMENDMENTS TO THE IMMIGRATION AND NATIONALITY ACT.

(a) IN GENERAL.—Title II of the Immigration and Nationality Act (8 U.S.C. 1151 et seq.) is amended 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 has applied for 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.

"(B) TEMPORARY OR SEASONAL JOB OPPORTUNITIES.—The job opportunity is temporary or seasonal.

"(C) BENEFIT, WAGE, AND WORKING CONDITIONS.—The employer will provide, at a minimum, the benefits, wages, and working conditions required by section 218A to all workers employed in the job opportunities for which the employer has applied for an H–2A worker under subsection (a) and to all other workers in the same occupation at the place of employment.

"(D) NONDISPLACEMENT OF UNITED STATES WORKERS.—The employer did not displace and will not displace a United States worker employed by the employer during the

period of employment and for a period of 30 days preceding the period of employment in the occupation at the place of employment for which the employer has applied for an H–2A worker.

"(E) REQUIREMENTS FOR PLACEMENT OF THE 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 worksites 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 employer 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 pub-

lication 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 procedure 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 H–2A worker departs for the employer's place of em-

ployment and ending on the date on which 50 percent of the period of employment for which the H–2A 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 218A, 218B, and 218C.

"(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 worksite, 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 subsection (a). 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."

"SEC. 218A. H–2A EMPLOYMENT REQUIREMENTS.

"(a) PREFERENTIAL TREATMENT OF ALIENS PROHIBITED.—Employers seeking to hire United States work-

ers 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

1 employment, whose place of residence is beyond
2 normal commuting distance.
3 "(B) TYPE OF HOUSING.—In complying
4 with subparagraph (A), an employer may, at
5 the employer's election, provide housing that
6 meets applicable Federal standards for tem-
7 porary labor camps or secure housing that
8 meets applicable local standards for rental or
9 public accommodation housing or other sub-
10 stantially similar class of habitation, or in the
11 absence of applicable local standards, State
12 standards for rental or public accommodation
13 housing or other substantially similar class of
14 habitation. In the absence of applicable local or
15 State standards, Federal temporary labor camp
16 standards shall apply.
17 "(C) FAMILY HOUSING.—If it is the pre-
18 vailing practice in the occupation and area of
19 intended employment to provide family housing,
20 family housing shall be provided to workers
21 with families who request it.
22 "(D) WORKERS ENGAGED IN THE RANGE
23 PRODUCTION OF LIVESTOCK.—The Secretary of
24 Labor shall issue regulations that address the
25 specific requirements for the provision of hous-

ing 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

1 employer may require a worker found to
2 have been responsible for damage to such
3 housing which is not the result of normal
4 wear and tear related to habitation to re-
5 imburse the employer for the reasonable
6 cost of repair of such damage.

7 ''(G) HOUSING ALLOWANCE AS ALTER-
8 NATIVE.—

9 ''(i) IN GENERAL.—If the requirement
10 set out in clause (ii) is satisfied, the em-
11 ployer may provide a reasonable housing
12 allowance instead of offering housing
13 under subparagraph (A). Upon the request
14 of a worker seeking assistance in locating
15 housing, the employer shall make a good
16 faith effort to assist the worker in identi-
17 fying and locating housing in the area of
18 intended employment. An employer who of-
19 fers a housing allowance to a worker, or
20 assists a worker in locating housing which
21 the worker occupies, pursuant to this
22 clause shall not be deemed a housing pro-
23 vider under section 203 of the Migrant and
24 Seasonal Agricultural Worker Protection
25 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 in agricultural 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 transportation 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 sub-

paragraph (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 WORKSITE.—The employer shall provide transportation between the worker's living quarters and the employer's worksite 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 2009 and continuing for 3 years thereafter, no adverse effect wage rate for a State may be more than the adverse effect wage rate for that State in effect on January 1, 2009, 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, 2009, had been annually adjusted, beginning on March 1, 2012, 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 prevailing 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 ¾ 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

1 "(vi) if piece rates of pay are used,
2 the units produced daily.
3 "(G) REPORT ON WAGE PROTECTIONS.—
4 Not later than December 31, 2011, the Comp-
5 troller General of the United States shall pre-
6 pare and transmit to the Secretary of Labor,
7 the Committee on the Judiciary of the Senate,
8 and Committee on the Judiciary of the House
9 of Representatives, a report that addresses—
10 "(i) whether the employment of H–2A
11 or unauthorized aliens in the United States
12 agricultural workforce has depressed
13 United States farm worker wages below
14 the levels that would otherwise have pre-
15 vailed if alien farm workers had not been
16 employed in the United States;
17 "(ii) whether an adverse effect wage
18 rate is necessary to prevent wages of
19 United States farm workers in occupations
20 in which H–2A workers are employed from
21 falling below the wage levels that would
22 have prevailed in the absence of the em-
23 ployment of H–2A workers in those occu-
24 pations;

"(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) Four representatives of agricultural employers and 1 representative of the Department of Agriculture,

1 each appointed by the Secretary of
2 Agriculture.
3 ''(II) Four representatives of ag-
4 ricultural workers and 1 representa-
5 tive of the Department of Labor, each
6 appointed by the Secretary of Labor.
7 ''(iii) FUNCTIONS.—The Commission
8 shall conduct a study that shall address—
9 ''(I) whether the employment of
10 H–2A or unauthorized aliens in the
11 United States agricultural workforce
12 has depressed United States farm
13 worker wages below the levels that
14 would otherwise have prevailed if alien
15 farm workers had not been employed
16 in the United States;
17 ''(II) whether an adverse effect
18 wage rate is necessary to prevent
19 wages of United States farm workers
20 in occupations in which H–2A work-
21 ers are employed from falling below
22 the wage levels that would have pre-
23 vailed in the absence of the employ-
24 ment of H–2A workers in those occu-
25 pations;

"(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 rate; and

"(V) recommendations for future wage protection under this section.

"(iv) FINAL REPORT.—Not later than December 31, 2011, 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 ¾ 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 voluntarily abandons employment before the end of the contract period, or is terminated for cause, the worker is not entitled to the '¾ 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 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 employer 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 specifically 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.

1 "(iv) AGRICULTURAL MACHINERY AND
2 EQUIPMENT EXCLUDED.—This subsection
3 does not apply to the transportation of an
4 H–2A worker on a tractor, combine, har-
5 vester, picker, or other similar machinery
6 or equipment while such worker is actually
7 engaged in the planting, cultivating, or
8 harvesting of agricultural commodities or
9 the care of livestock or poultry or engaged
10 in transportation incidental thereto.
11 "(v) COMMON CARRIERS EX-
12 CLUDED.—This subsection does not apply
13 to common carrier motor vehicle transpor-
14 tation in which the provider holds itself out
15 to the general public as engaging in the
16 transportation of passengers for hire and
17 holds a valid certification of authorization
18 for such purposes from an appropriate
19 Federal, State, or local agency.
20 "(B) APPLICABILITY OF STANDARDS, LI-
21 CENSING, AND INSURANCE REQUIREMENTS.—
22 "(i) IN GENERAL.—When using, or
23 causing to be used, any vehicle for the pur-
24 pose 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

1 Labor pursuant to regulations to be issued
2 under this subsection.
3 "(iii) EFFECT OF WORKERS' COM-
4 PENSATION COVERAGE.—If the employer
5 of any H–2A worker provides workers'
6 compensation coverage for such worker in
7 the case of bodily injury or death as pro-
8 vided by State law, the following adjust-
9 ments in the requirements of subparagraph
10 (B)(i)(III) relating to having an insurance
11 policy or liability bond apply:
12 "(I) No insurance policy or liabil-
13 ity bond shall be required of the em-
14 ployer, if such workers are trans-
15 ported only under circumstances for
16 which there is coverage under such
17 State law.
18 "(II) An insurance policy or li-
19 ability bond shall be required of the
20 employer for circumstances under
21 which coverage for the transportation
22 of such workers is not provided under
23 such State law.
24 "(c) COMPLIANCE WITH LABOR LAWS.—An em-
25 ployer 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 218B 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. 218B. 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 218A, and the alien is not ineligible under paragraph (2).

"(2) DISQUALIFICATION.—An alien shall be considered inadmissible to the United States and in-

eligible 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 worksite 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 the alien's 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 employment 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 ⅕ 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 2009, 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 cu-

mulative 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 the 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 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. 218C. 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

1 months after the date of the failure, or mis-
2 representation, respectively. The Secretary of
3 Labor shall conduct an investigation under this
4 subparagraph if there is reasonable cause to be-
5 lieve that such a failure or misrepresentation
6 has occurred.

7 "(B) DETERMINATION ON COMPLAINT.—
8 Under such process, the Secretary of Labor
9 shall provide, within 30 days after the date
10 such a complaint is filed, for a determination as
11 to whether or not a reasonable basis exists to
12 make a finding described in subparagraph (C),
13 (D), (E), or (G). If the Secretary of Labor de-
14 termines that such a reasonable basis exists,
15 the Secretary of Labor shall provide for notice
16 of such determination to the interested parties
17 and an opportunity for a hearing on the com-
18 plaint, in accordance with section 556 of title 5,
19 United States Code, within 60 days after the
20 date of the determination. If such a hearing is
21 requested, the Secretary of Labor shall make a
22 finding concerning the matter not later than 60
23 days after the date of the hearing. In the case
24 of similar complaints respecting the same appli-
25 cant, 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 material 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 penalties 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 218A(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 218A(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 218A.

"(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 218A(b)(1).

"(2) The reimbursement of transportation as required under section 218A(b)(2).

"(3) The payment of wages required under section 218A(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 218A(c), compliance with which shall be governed by the provisions of such laws.

"(5) The guarantee of employment required under section 218A(b)(4).

"(6) The motor vehicle safety requirements under section 218A(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 nonbinding 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 Con-

ciliation 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 over 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 per-

son 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 218A or any rule or regulation pertaining to section 218 or 218A, 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 218A 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 person 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

1 Secretary shall establish a process under which an H–2A
2 worker who files a complaint regarding a violation of sub-
3 section (d) and is otherwise eligible to remain and work
4 in the United States may be allowed to seek other appro-
5 priate employment in the United States for a period not
6 to exceed the maximum period of stay authorized for such
7 nonimmigrant classification.

8 ''(f) ROLE OF ASSOCIATIONS.—

9 ''(1) VIOLATION BY A MEMBER OF AN ASSOCIA-
10 TION.—An employer on whose behalf an application
11 is filed by an association acting as its agent is fully
12 responsible for such application, and for complying
13 with the terms and conditions of sections 218 and
14 218A, as though the employer had filed the applica-
15 tion itself. If such an employer is determined, under
16 this section, to have committed a violation, the pen-
17 alty for such violation shall apply only to that mem-
18 ber of the association unless the Secretary of Labor
19 determines that the association or other member
20 participated in, had knowledge, or reason to know,
21 of the violation, in which case the penalty shall be
22 invoked against the association or other association
23 member as well.

24 ''(2) VIOLATIONS BY AN ASSOCIATION ACTING
25 AS AN EMPLOYER.—If an association filing an appli-

cation 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. 218D. DEFINITIONS.

''For purposes of this section and section 218, 218A, 218B, and 218C:

''(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 or the performance of agricultural labor or services described in 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 or seasonal full-time employment at a place in the United States to which United States workers can be referred.

"(9) LAYING OFF.—

"(A) IN GENERAL.—The term 'laying off', with respect to a worker—

"(i) means to cause the worker's loss of employment, other than through a discharge for inadequate performance, violation of workplace rules, cause, voluntary departure, voluntary retirement, contract impossibility (as described in section 218A(b)(4)(D)), or temporary suspension of employment 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 entity 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.—Except as otherwise provided, 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 national of the United States, an alien lawfully admitted for permanent residence, 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 of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended by striking the item relating to section 218 and inserting the following:

"Sec. 218. H–2A employer applications.
"Sec. 218A. H–2A employment requirements.
"Sec. 218B. Procedure for admission and extension of stay of H–2A workers.
"Sec. 218C. Worker protections and labor standards enforcement.
"Sec. 218D. Definitions.".

CHAPTER 4—MISCELLANEOUS PROVISIONS

SEC. 461. DETERMINATION AND USE OF USER FEES.

(a) SCHEDULE OF FEES.—The Secretary shall establish and periodically adjust a schedule of fees for the em-

ployment of aliens pursuant to the amendment made by section 451(a) of this Act and a collection process for such fees from employers. Such fees shall be the only fees chargeable to employers for services provided under such amendment.

(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 amended by section 451 of this Act, and sufficient to provide for the direct costs of providing services related to an employer's authorization to employ aliens pursuant to the amendment made by section 451(a) of this Act, 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 fees pursuant to the amendment made by section 451(a) of this Act shall be available without further appropriation and shall remain available without fiscal year limitation to reimburse the Secretary, the Secretary of State, and the Secretary of Labor for the costs of carrying out—

(1) sections 218 and 218B of the Immigration and Nationality Act, as amended and added, respectively, by section 451 of this Act; and

(2) the provisions of this Act.

SEC. 462. REGULATIONS.

(a) REQUIREMENT FOR THE SECRETARY TO CONSULT.—The Secretary shall consult with the Secretary of Labor and the Secretary of Agriculture during the promulgation of all regulations to implement the duties of the Secretary under this Act and the amendments made by this Act.

(b) REQUIREMENT FOR THE SECRETARY OF STATE TO CONSULT.—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 Act and the amendments made by this Act.

(c) REQUIREMENT FOR THE SECRETARY OF LABOR TO CONSULT.—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 Act and the amendments made by this Act.

(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, 218A, 218B, 218C, and 218D of the Immigration and Nationality Act, as amended or added by section 451 of this Act, shall take effect on the effective date of section 451 and shall be issued not later than 1 year after the date of enactment of this Act.

SEC. 463. REPORTS TO CONGRESS.

(a) ANNUAL REPORT.—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, disaggregated by State and by occupation;

(2) the number of such aliens reported to have abandoned employment pursuant to subsection (e)(2) of section 218B of such Act, as added by section 451;

(3) the number of such aliens who departed the United States within the period specified in subsection (d) of such section 218B;

(4) the number of aliens who applied for blue card status pursuant to section 431(a);

(5) the number of aliens who were granted such status pursuant section 431(a);

(6) the number of aliens who applied for an adjustment of status pursuant to section 433(a); and

(7) the number of aliens who received an adjustment of status pursuant section 433(a).

(b) IMPLEMENTATION REPORT.—Not later than 180 days after the date of the enactment of this Act, the Secretary shall prepare and submit to Congress a report that describes the measures being taken and the progress made in implementing this Act.

SEC. 464. EFFECTIVE DATE.

The amendments made by section 451 and section 461 shall take effect 1 year after the date of the enactment of this Act.

TITLE V—STRENGTHENING THE U.S. ECONOMY AND WORKFORCE

Subtitle A—Immigration and Labor

CHAPTER 1—IMMIGRATION AND LABOR MARKETS

SEC. 501. COMMISSION ON IMMIGRATION AND LABOR MARKETS.

(a) ESTABLISHMENT OF COMMISSION.—

(1) IN GENERAL.—There is established a permanent, independent, Federal agency within the Executive Branch of the United States to be known as the Commission on Immigration and Labor Markets (referred to in this section as ''Commission'').

(2) PURPOSES.—Through objective, thorough, accurate and nonpartisan review and analysis, the purposes of the Commission are to—

(A) establish employment-based immigration policies that promote America's economic growth and competitiveness while minimizing job displacement, wage depression and unauthorized employment in the United States;

(B) create and implement a policy-focused research agenda on the economic impacts of immigration at the national, regional, state, industry and occupation levels;

(C) collect and analyze information about employment-based immigration and the labor market and share the data and analysis with lawmakers, researchers and the American public;

(D) recommend to the Congress and the President on a regular basis an evidence-based methodology for determining the level of employment-based immigration; and

(E) recommend to Congress and the President the numeric levels and characteristics of workers to be admitted in various employment-based visa categories.

(3) MEMBERSHIP.—The Commission shall be composed of—

(A) 7 voting members—

(i) who shall be appointed by the President, with the advice and consent of the Senate, no later than 6 months after the date of the enactment of this Act;

(ii) who shall serve for 5-year staggered terms;

(iii) one of whom the President shall appoint as Chair of the commission to serve a 6-year term, which can be extended for 1 additional 3-year term;

(iv) who shall have expertise in economics, demography, sociology, labor, business, civil rights, immigration or other pertinent qualifications or experience; and

(v) not more than 4 of whom may be members of the same political party; and

(B) 8 ex-officio members, including—

(i) the Secretary;

(ii) the Secretary of State;

(iii) the Attorney General;

(iv) the Secretary of Labor;

(v) the Secretary of Commerce

(vi) the Secretary of Health and Human Services;

(vii) the Secretary of Agriculture; and

(viii) The Commissioner of Social Security.

(4) VACANCIES.—Any vacancy in the Commission shall be filled in the same manner as the original appointment.

(5) MEETINGS.—

(A) INITIAL MEETING.—The Commission shall meet and begin carrying out the duties described in subsection (b) as soon as practicable.

(B) SUBSEQUENT MEETINGS.—After its initial meeting, the Commission shall meet upon the call of the Chair or a majority of its members.

(C) QUORUM.—Five voting members of the Commission shall constitute a quorum.

(b) DUTIES OF THE COMMISSION.—The Commission shall—

(1) collect, analyze and publish data regarding—

(A) the historic migration patterns to and from the United States and demographic trends, including the birth rate, education levels, and age profiles of the immigrant and native population of the United States;

(B) the impact of employment-based immigration—

(i) at the national, regional, state and local levels;

(ii) within industries and business sectors;

(iii) on occupations and occupational levels;

(iv) on small business; and

(v) on employment and unemployment levels;

(C) the current and anticipated needs of employers for skilled and unskilled labor;

(D) the current and anticipated supply of skilled and unskilled labor;

(E) the impact of employment-based immigration on the economic growth and competitiveness and labor standards, conditions, and wages;

(F) the extent and impact of unauthorized employment in the United States;

(G) the factors that determine the economic success of immigrants to the United States; and

(H) any other matters regarding the impact of employment-based immigration that the Commission considers appropriate;

(2) after soliciting and reviewing input from the public, develop and publish in the federal register a plan for the performance of its duties, including a description of the methodologies it will employ to measure the need for immigrant workers or nonimmigrant foreign workers in different regions, states, industries and occupations;

(3) submit to the Congress, according to the procedures in subsection (c), the methodologies it proposes to use to determine the need for immigrant workers and nonimmigrant foreign workers;

(4) submit to the Congress, according to the procedures in subsection (c), any amendments which the Commission deems appropriate to the numeric levels of visas established by the Immigration and Nationality Act for temporary or permanent employment;

(5) annually thereafter, submit a report to the President and Congress that—

(A) contains any amendments to the numeric levels set according to the procedures in subsection (c)(2), which shall take effect in the same manner described therein unless disapproved by the passage of a resolution in Congress; and

(B) makes other recommendations regarding employment-based visas or immigration, including legislative or administrative action, that the Commission determines to be in the national interest; and

(6) establish collaborative relationships with international organizations and agencies in countries of origin to encourage the deposit of remittances with financial institutions that will reinvest the remittances received from the United States to promote job development in those countries of origin that have sent immigrants to the United States.

(c) PROCEDURES TO DETERMINE APPROPRIATE LEVEL OF EMPLOYMENT BASED IMMIGRATION FOR TEMPORARY OR PERMANENT EMPLOYMENT.—

(1) METHODOLOGY.—Not later than 12 months after Congress appropriates funds for its operation, the Commission shall submit to Congress the methodologies it proposes to use to determine the need for immigrant workers and nonimmigrant foreign workers. Congress shall have 90 days to enact a resolution of disapproval. In the absence of such action, the methodologies shall stand approved.

(2) INITIAL DETERMINATION OF NUMERIC LEVELS.—At the beginning of the first regular session

of Congress after the methodologies in paragraph (1) have been approved, but not later than the first day of April, the Commission shall submit to Congress the numeric levels of visas it recommends, by majority vote, to be made available for temporary or permanent employment under the Immigration and Nationality Act and a statement of the reasons therefore. Congress shall have 90 days to enact a resolution of disapproval. In absence of such action, the numeric levels shall stand approved and be implemented at the start of the next fiscal year.

(3) ANNUAL DETERMINATIONS.—Once the initial determination of numeric levels is established, the Commission shall annually thereafter submit to Congress any increase or decrease in numeric levels of employment based immigration it recommends by majority vote, which shall be disapproved by Congress in the same manner as in clause (2), or stand approved for the next fiscal year.

(d) POWERS OF THE COMMISSION.—

(1) The Commission, by vote of a majority of the members present and voting, shall have the power to—

(A) establish general policies and promulgate such rules and regulations for the Commis-

sion as are necessary to carry out the purposes of this section;

(B) appoint and fix the salary and duties of the Staff Director of the Commission, who shall serve at the discretion of the Commission and who shall be compensated at a rate not to exceed the highest rate now or hereafter prescribed for Level 6 of the Senior Executive Service Schedule (5 U.S.C. 5382), and such other personnel as may be necessary to enable the Commission to carry out its functions;

(C) deny, revise, or ratify any request for regular, supplemental, or deficiency appropriations prior to any submission of such request to the Office of Management and Budget by the Chair;

(D) utilize, with their consent, the services, equipment, personnel, information, and facilities of other Federal, State, local, and private agencies and instrumentalities with or without reimbursement therefor;

(E) without regard to section 3324 of title 31, United States Code, enter into and perform such contracts, leases, cooperative agreements, and other transactions as may be necessary in

the conduct of the functions of the Commission, with any public agency, or with any person, firm, association, corporation, educational institution, or nonprofit organization;

(F) accept and employ, in carrying out the provisions of this title, voluntary and uncompensated services, notwithstanding the provisions of section 1342 of title 31, United States Code, however, individuals providing such services shall not be considered Federal employees except for purposes of chapter 81 of title 5, United States Code, with respect to job-incurred disability and title 28, United States Code, with respect to tort claims;

(G) request such information, data, and reports from any Federal agency as the Commission may from time to time require and as may be produced consistent with other law;

(H) arrange with the head of any other Federal agency for the performance by such agency of any function of the Commission, with or without reimbursement;

(I) establish a research and development program within the Commission for the purpose of understanding and documenting the effects

of immigration and the temporary admission of foreign workers on the labor market and national competitiveness;

(J) collect systematically the data obtained from studies, research, and the empirical experience of public and private agencies concerning the need for and effects of employment-based immigration and the admission of nonimmigrant workers;

(K) interview and confer with state and local officials, representatives of labor and industry, and experts in academia to obtain information about the need for or benefit of additional immigrant or nonimmigrant workers;

(L) make recommendations to Congress concerning modification or enactment of statutes relating to matters that the Commission finds to be necessary and advisable to carry out an effective employment-based immigration policy;

(M) hold hearings and call witnesses to assist the Commission in the exercise of its powers or duties;

(N) retain and, in its discretion pay reasonable attorneys' fees out if its appropriated funds to, private attorneys who—

(i) shall provide legal advice to the Commission in the conduct of its work, or to appear for or represent the Commission in any case in which the Commission is authorized by law to represent itself, or in which the Commission is representing itself with the consent of the Department of Justice; and

(ii) when serving as officers or employees of the United States, shall be considered special government employees as defined in section 202(a) of title 18; and

(O) grant incentive awards to its employees pursuant to chapter 45 of title 5, United States Code.

(2) The Commission shall have such other powers and duties and shall perform such other functions as may be necessary to carry out the purposes of this section, and may delegate to any member or designated person such powers as may be appropriate.

(e) INFORMATION AND ASSISTANCE FROM FEDERAL AGENCIES.—

(1) INFORMATION.—The head of any Federal department or agency that receives a request from the Commission for information, including suggestions, estimates, and statistics, as the Commission considers necessary to carry out the provisions of this section, shall furnish such information to the Commission, to the extent allowed by law.

(2) ASSISTANCE.—

(A) GENERAL SERVICES ADMINISTRATION.—The Administrator of General Services shall, on a reimbursable basis, provide the Commission with administrative support and other services for the performance of the Commission's functions.

(B) OTHER FEDERAL AGENCIES.—The departments and agencies of the United States may provide the Commission with such services, funds, facilities, staff, and other support services as heads of such departments and agencies determine advisable and authorized by law.

(f) PERSONNEL MATTERS.—

(1) STAFF.—

(A) Except as provided under subparagraph (B), any personnel of the Commission who are employees shall be considered to be employees under section 2105 of title 5, United States Code, for purposes of chapters 63, 81, 83, 84, 85, 87, 89 and 90 of such title.

(B) Subparagraph (A) shall not apply to members of the Commission.

(2) DETAILEES.—Any employee of the Federal Government may be detailed to the Commission without reimbursement from the Commission. Such detailee shall retain the rights, status, and privileges of his or her regular employment without interruption.

(3) CONSULTANT SERVICES.—The Commission may procure the services of experts and consultants in accordance with section 3109 of title 5, United States Code, at rates not to exceed the daily rate paid a person occupying a position at level IV of Executive Schedule under section 5315 of such title 5.

(g) COMPENSATION AND TRAVEL EXPENSES.—

(1) COMPENSATION.—Each voting member of the Commission may be compensated at a rate not to exceed the daily equivalent of the annual rate of basic pay in effect for a position at level IV of the

Executive Schedule under section 5315 of title 5, United States Code, for each day during which that member is engaged in the actual performance of the duties of the Commission.

(2) TRAVEL EXPENSES.—Members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in Government service are allowed expenses under section 5703(b) of title 5, United States Code, while away from their homes or regular places of business in performance of services for the Commission.

(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to carry out the purposes of this section such sums as may be necessary.

SEC. 502. SECURITY AND PROSPERITY ACCOUNT.

Section 286 (8 U.S.C. 1356) is amended by adding at the end the following new subsection:

''(w) PROSPERITY ACCOUNT.—

''(1) ESTABLISHMENT.—There is established in the general fund of the Treasury an account, which shall be known as the 'Security and Prosperity Account'.

''(2) DEPOSITS.—Notwithstanding any other provision of this Act, there shall be deposited as off-

setting receipts into the Security and Prosperity Account—

"(A) all fines collected under section 401(g)(2)(B) of the CIR ASAP Act of 2009; and

"(B) all fees collected under section 401(g)(2)(A) of such Act.

"(3) USE OF FUNDS.—The fees and fines deposited into the Security and Prosperity Fund shall be allocated as follows:

"(A) 25 percent shall be allocated for 'Training and Employment Services' for activities under the Workforce Investment Act (WIA) of 1998 which shall distributed as follows:

"(i) 25 percent for grants to the States for adult employment and training activities.

"(ii) 20 percent for grants to the States for dislocated worker employment and training activities.

"(iii) 10 percent shall be allocated for the dislocated workers assistance national reserve, except that—

"(I) such funds shall be made available for grants only to eligible en-

1 tities that serve areas of high unem-
2 ployment or high poverty and only for
3 purposes described in subsection
4 173(a)(1) of the WIA; and
5 ''(II) the Secretary of Labor shall
6 ensure that applicants for such funds
7 demonstrate how income support,
8 child care and other supportive serv-
9 ices necessary for an individual's par-
10 ticipation in job training will be pro-
11 vided; and
12 ''(iv) 45 percent for a program of
13 competitive grants for worker training and
14 placement in high growth and emerging in-
15 dustry sectors.
16 ''(B) 5 percent shall be allocated for the
17 American Worker Recruit and Match System
18 described in section 503 of the CIR ASAP Act
19 of 2009.
20 ''(C) 10 percent shall be allocated to the
21 Secretary of Homeland Security for the proc-
22 essing of immigration benefits applications and
23 to subsidize the costs of immigration benefits
24 applications described in section 321.

"(D) 3 percent shall be allocated to implement title VI of the CIR ASAP Act of 2009.

"(E) 2 percent shall be allocated for the establishment and operations of the Commission on Labor Markets and Immigration as described in section 501 of such Act.

"(F) 30 percent shall be allocated to implement the amendments made by title II of the CIR ASAP Act of 2009, and enforcement efforts mandated in such amendments to ensure compliance with the employment practices described in such amendments.

"(G) 25 percent distributed equally among the programs established in title I of the CIR ASAP Act of 2009 for border security, detention, and enforcement.".

SEC. 503. AMERICAN RECRUIT AND MATCH SYSTEM.

(a) ESTABLISHMENT OF PROGRAM.—Each State Workforce Agency (SWA) shall establish an Internet-based program entitled "American Worker Recruit and Match" program, to be incorporated with existing SWA Web-based job search engines, if any—

(1) whereby employers may electronically post employment opportunities in fields and occupations that have traditionally relied on unauthorized labor,

such as hospitality, agriculture, construction, domestic services, food services and as determined by the Secretary of Labor;

(2) whereby individuals may electronically post employment profiles; and

(3) that shall be searchable and shall match employers with qualified individuals.

(b) SINGLE INTERNET LINK.—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 American Worker Recruit and Match program.

(c) EDUCATION.—Each State workforce agency shall conduct monthly seminars that shall be publicly noticed, to educate employers and individuals regarding use of the American Recruit and Match System.

(d) FUNDING.—Fees and fines deposited in the Prosperity Fund under section 286(w)(3)(B) of the Immigration and Nationality Act may be used to carry out this section.

CHAPTER 2—PROTECTION OF WORKERS RECRUITED ABROAD

SEC. 511. PROTECTIONS FOR WORKERS RECRUITED ABROAD.

(a) BASIC REQUIREMENTS.—(1) Each employer and foreign labor contractor who engages in foreign labor contracting activity shall ascertain and disclose to each such worker who is recruited for employment the following information 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) The transportation, housing, and any other employee benefit to be provided and any costs to be charged for each benefit.

(F) The existence of any labor organizing effort, strike, lockout, or other labor dispute at the place of employment.

(G) The existence of any arrangements with any owner or agent of any establishment in the area of employment under which the contractor or employer is to receive a commission or any other benefit resulting from any sales (including the provision of services) by such establishment to the workers.

(H) Whether and the extent to which workers will be compensated through workers' compensation, private insurance, or otherwise for injuries or death, including work related injuries and death, during the period of employment and, if so, the name of the State workers' compensation insurance carrier or the name of the policyholder of the private insurance, the name and the telephone number of each person who must be notified of an injury or death, and the time period within which such notice must be given.

(I) Any education or training to be provided or made available, including the nature and cost of such training, who will pay such costs, and whether the training is a condition of employment, continued employment, or future employment.

(J) A statement, approved by the Secretary of Labor, describing the protections of this part for workers recruited abroad.

(2) No foreign labor contractor or employer shall knowingly provide false or misleading information to any worker concerning any matter required to be disclosed in paragraph (1).

(3) The information required to be disclosed by paragraph (1) to workers shall be provided in written form. Such information shall be provided in English or, as nec-

1 essary and reasonable, in the language of the worker being
2 recruited. The Department of Labor shall make forms
3 available in English, Spanish, and other languages, as nec-
4 essary, which may be used in providing workers with infor-
5 mation required under this section.

6 (4) No fees may be charged to a worker for recruit-
7 ment.

8 (5) No employer or foreign labor contractor shall,
9 without justification, violate the terms of any working ar-
10 rangement made by that contractor or employer.

11 (6) The employer shall pay the transportation costs,
12 including subsistence costs during the period of travel, for
13 the worker from the place of recruitment to the place of
14 employment and from the place of employment to such
15 worker's place of permanent residence.

16 (7)(A) It shall be unlawful for an employer or a for-
17 eign labor contractor to fail or refuse to hire or to dis-
18 charge any individual, or otherwise discriminate against
19 an individual with respect to compensation, terms, condi-
20 tions, or privileges of employment because such individ-
21 ual's race, color, creed, sex, national origin, religion, age,
22 or disability.

23 (B) For the purposes of determining the existence of
24 unlawful discrimination under subclause (A)—

(i) in the case of a claim of discrimination based on race, color, creed, sex, national origin, or religion, the same legal standards shall apply as are applicable under title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.);

(ii) in the case of a claim of discrimination based on unlawful discrimination based on age, the same legal standards shall apply as are applicable under the Age Discrimination in Employment Act of 1967 (29 U.S.C. 621 et seq.); and

(iii) in the case of a claim of discrimination based on disability, the same legal standards shall apply as are applicable under title I of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.).

(b) OTHER WORKER PROTECTIONS.—(1) Each employer shall notify the Secretary of the identity of any foreign labor contractor involved in any foreign labor contractor activity for or on behalf of the employer. The employer shall be subject to the civil remedies of this chapter for violations committed by such foreign labor contractor to the same extent as if the employer had committed the violation. The employer shall notify the Secretary of the identity of such a foreign labor contractor whose activities do not comply with this chapter.

(2) The Secretary shall maintain a list of all foreign labor contractors whom the Secretary knows or believes have been involved in violations of this chapter, and make that list publicly available. The Secretary shall provide a procedure by which an employer, a foreign labor contractor, or someone acting on behalf of such contractor may seek to have a foreign labor contractor's name removed from such list by demonstrating to the Secretary's satisfaction that the foreign labor contractor has not violated this chapter in the previous five years.

(3) No foreign labor contractor shall violate, without justification, the terms of any written agreements made with an employer pertaining to any contracting activity or worker protection under this chapter.

(c) DISCRIMINATION PROHIBITED AGAINST WORKERS SEEKING RELIEF UNDER THIS CHAPTER.—No person shall intimidate, threaten, restrain, coerce, blacklist, discharge, or in any manner discriminate against any worker because such worker has, with just cause, filed any complaint or instituted, or caused to be instituted, any proceeding under or related to this chapter, or has testified or is about to testify in any such proceedings, or because of the exercise, with just cause, by such worker on behalf of himself or others of any right or protection afforded by this chapter.

SEC. 512. ENFORCEMENT PROVISIONS.

(a) CRIMINAL SANCTIONS.—Whoever knowingly violates this chapter shall be fined under title 18, United States Code, or imprisoned not more than one year, or both. Upon conviction, after a first conviction under this section, for a second or subsequent violation of this chapter, the defendant shall be fined under title 18, United States Code, or imprisoned not more than three years, or both.

(b) ADMINISTRATIVE SANCTIONS.—(1)(A) Subject to subparagraph (B), the Secretary may assess a civil money penalty of not more than $5,000 on any person who violates this chapter.

(B) In determining the amount of any penalty to be assessed under subparagraph (A), the Secretary shall take into account (i) the previous record of the person in terms of compliance with this chapter and with comparable requirements of the Fair Labor Standards Act of 1938, and with regulations promulgated under such Acts, and (ii) the gravity of the violation.

(2) Any employer who uses the services of a foreign labor contractor who is on the list maintained by the Secretary pursuant to section 2(b)(2), shall, if the actions of such foreign labor contractor have contributed to a violation of this chapter by the employer, be fined $10,000 per

violation in addition to any other fines or penalties for which the employer may be liable for the violation.

(c) ACTIONS BY SECRETARY.—The Secretary may take such actions, including seeking appropriate injunctive relief and specific performance of contractual obligations, as may be necessary to assure employer compliance with terms and conditions of employment under this chapter and with this chapter.

(d) WAIVER OF RIGHTS.—Agreements by employees purporting to waive or to modify their rights under this chapter shall be void as contrary to public policy.

(e) REPRESENTATION IN COURT.—Except as provided in section 518(a) of title 28, United States Code, relating to litigation before the Supreme Court, the Solicitor of Labor may appear for and represent the Secretary in any civil litigation brought under this chapter, but all such litigation shall be subject to the direction and control of the Attorney General.

SEC. 513. PROCEDURES IN ADDITION TO OTHER RIGHTS OF EMPLOYEES.

The rights and remedies provided to workers by this chapter are in addition to, and not in lieu of, any other contractual or statutory rights and remedies of the workers, and are not intended to alter or affect such rights and remedies.

SEC. 514. AUTHORITY TO PRESCRIBE REGULATIONS.

The Secretary of Labor shall prescribe such regulations as may be necessary to carry out this chapter.

SEC. 515. DEFINITIONS.

(a) IN GENERAL.—Except as otherwise provided by this chapter, for purposes of this chapter the terms used in this chapter shall have the same meanings, respectively, as are given those terms in section 3 of the Fair Labor Standards Act of 1938.

(b) OTHER DEFINITIONS.—As used in this chapter:

(1) The term ''State'' means any State of the United States and includes the District of Columbia, Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands of the United States.

(2) The term ''foreign labor contractor'' means any person who for any money or other valuable consideration paid or promised to be paid, performs any foreign labor contracting activity.

(3) The term ''foreign labor contracting activity'' means recruiting, soliciting, hiring, employing, or furnishing, an individual who resides outside of the United States to be employed in the United States.

(4) The term ''Secretary'' means the Secretary of Labor.

(5) The term ''worker'' means an individual who is the subject of foreign labor contracting activity.

CHAPTER 3—TECHNICAL CORRECTION

SEC. 521. TECHNICAL CORRECTION.

Section 212 of the Immigration and Nationality Act is amended by redesignating the second subsection (t), as added by section 1(b)(2)(B) of the Act entitled ''An Act to amend and extend the Irish Peace Process Cultural and Training Program Act of 1998'' (Public Law 108–449 (118 Stat. 3470)), as subsection (u).

Subtitle B—Reforms of Certain Classes of Employment-based Visas

CHAPTER 1—H–1B VISA FRAUD AND ABUSE PROTECTIONS

Subchapter A—H–1B Employer Application Requirements

SEC. 531. MODIFICATION OF APPLICATION REQUIREMENTS.

(a) GENERAL APPLICATION REQUIREMENTS.—Subparagraph (A) of section 212(n)(1) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(1)) is amended to read as follows:

''(A) The employer—

"(i) is offering and will offer to H–1B nonimmigrants, during the period of authorized employment for each H–1B nonimmigrant, wages that are determined based on the best information available at the time the application is filed and which are not less than the highest of—

"(I) the locally determined prevailing wage level for the occupational classification in the area of employment;

"(II) the median average wage for all workers in the occupational classification in the area of employment; and

"(III) the median wage for skill level 2 in the occupational classification found in the most recent Occupational Employment Statistics survey; and

"(ii) will provide working conditions for such H–1B nonimmigrant that will not adversely affect the working conditions of other workers similarly employed.".

(b) INTERNET POSTING REQUIREMENT.—Subparagraph (C) of such section 212(n)(1) is amended—

(1) by redesignating clause (ii) as subclause (II);

(2) by striking ''(i) has provided'' and inserting the following:

''(ii)(I) has provided''; and

(3) by inserting before clause (ii), as redesignated by paragraph (2) of this subsection, the following:

''(i) has posted on the Internet website described in paragraph (3), for at least 30 calendar days, a detailed description of each position for which a nonimmigrant is sought that includes a description of—

''(I) the wages and other terms and conditions of employment;

''(II) the minimum education, training, experience, and other requirements for the position; and

''(III) the process for applying for the position; and''.

(c) WAGE DETERMINATION INFORMATION.—Subparagraph (D) of such section 212(n)(1) is amended by inserting ''the wage determination methodology used under subparagraph (A)(i),'' after ''shall contain''.

(d) APPLICATION OF REQUIREMENTS TO ALL EMPLOYERS.—

(1) NONDISPLACEMENT.—Subparagraph (E) of such section 212(n)(1) is amended—

(A) in clause (i)—

(i) by striking ''90 days'' both places it appears and inserting ''180 days''; and

(ii) by striking ''(i) In the case of an application described in clause (ii), the'' and inserting ''The''; and

(B) by striking clause (ii).

(2) RECRUITMENT.—Subparagraph (G)(i) of such section 212(n)(1) is amended by striking ''In the case of an application described in subparagraph (E)(ii), subject'' and inserting ''Subject''.

(e) REQUIREMENT FOR WAIVER.—Subparagraph (F) of such section 212(n)(1) is amended to read as follows:

''(F) The employer shall not place, outsource, lease, or otherwise contract for the services or placement of H–1B nonimmigrants with another employer unless the employer of the alien has been granted a waiver under paragraph (2)(E).''.

SEC. 532. NEW APPLICATION REQUIREMENTS.

Section 212(n)(1) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(1)) is amended by inserting after clause (ii) of subparagraph (G) the following:

"(H)(i) The employer has not advertised any available position specified in the application in an advertisement that states or indicates that—

"(I) such position is only available to an individual who is or will be an H–1B nonimmigrant; or

"(II) an individual who is or will be an H–1B nonimmigrant shall receive priority or a preference in the hiring process for such position.

"(ii) The employer has not solely recruited individuals who are or who will be H–1B nonimmigrants to fill such position.

"(I) If the employer employs 50 or more employees in the United States, the sum of the number of such employees who are H–1B nonimmigrants plus the number of such employees who are nonimmigrants described in section 101(a)(15)(L) may not exceed 50 percent of the total number of employees.

"(J) If the employer, in such previous period as the Secretary shall specify, employed 1 or more H–1B nonimmigrants, the employer shall submit to the Secretary the Internal Revenue Service Form W–2 Wage and Tax Statement filed by the employer with

respect to the H–1B nonimmigrants for such period.''.

SEC. 533. APPLICATION REVIEW REQUIREMENTS.

(a) TECHNICAL AMENDMENT.—Section 212(n)(1) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(1)), as amended by section 102, is further amended in the undesignated paragraph at the end, by striking ''The employer'' and inserting the following:

''(K) The employer.''.

(b) APPLICATION REVIEW REQUIREMENTS.—Subparagraph (K) of such section 212(n)(1), as designated by subsection (a), is amended—

(1) by inserting ''and through the Department of Labor's website, without charge.'' after ''D.C.'';

(2) by striking ''only for completeness'' and inserting ''for completeness and clear indicators of fraud or misrepresentation of material fact,'';

(3) by striking ''or obviously inaccurate'' and inserting '', presents clear indicators of fraud or misrepresentation of material fact, or is obviously inaccurate'';

(4) by striking ''within 7 days of'' and inserting ''not later than 14 days after''; and

(5) by adding at the end the following: ''If the Secretary's review of an application identifies clear

indicators of fraud or misrepresentation of material fact, the Secretary may conduct an investigation and hearing in accordance with paragraph (2).''.

Subchapter B—Investigation and Disposition of Complaints Against H–1B

SEC. 541. GENERAL MODIFICATION OF PROCEDURES FOR INVESTIGATION AND DISPOSITION.

Subparagraph (A) of section 212(n)(2) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(2)) is amended—

(1) by striking ''(A) Subject'' and inserting ''(A)(i) Subject'';

(2) by striking ''12 months'' and inserting ''24 months'';

(3) by striking the last sentence; and

(4) by adding at the end the following:

''(ii)(I) Upon the receipt of such a complaint, the Secretary may initiate an investigation to determine if such a failure or misrepresentation has occurred.

''(II) The Secretary may conduct surveys of the degree to which employers comply with the requirements of this subsection and may conduct annual compliance audits of employers that employ H–1B nonimmigrants.

"(III) The Secretary shall—

"(aa) conduct annual compliance audits of not less than 1 percent of the employers that employ H–1B nonimmigrants during the applicable calendar year;

"(bb) conduct annual compliance audits of each employer with more than 100 employees who work in the United States if more than 15 percent of such employees are H–1B nonimmigrants; and

"(cc) make available to the public an executive summary or report describing the general findings of the audits carried out pursuant to this subclause.".

SEC. 542. INVESTIGATION, WORKING CONDITIONS, AND PENALTIES.

Subparagraph (C) of section 212(n)(2) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(2)) is amended—

(1) in clause (i)—

(A) in the matter preceding subclause (I)—

(i) by striking "a condition of paragraph (1)(B), (1)(E), or (1)(F)" and inserting "a condition under subparagraph

(A), (B), (C)(i), (E), (F), (G)(i)(I), (H), (I), or (J) of paragraph (1)''; and

(ii) by striking ''(1)(C)'' and inserting ''(1)(C)(ii)''; and

(B) in subclause (I)—

(i) by striking ''$1,000'' and inserting ''$2,000''; and

(ii) by striking ''and'' at the end;

(C) in subclause (II), by striking the period at the end and inserting a semicolon and ''and'';

(D) by adding at the end the following:

''(III) an employer that violates such subparagraph (A) shall be liable to the employees harmed by such violations for lost wages and benefits.''; and

(2) in clause (ii)—

(A) in subclause (I)—

(i) by striking ''may'' and inserting ''shall''; and

(ii) by striking ''$5,000'' and inserting ''$10,000''; and

(B) in subclause (II), by striking the period at the end and inserting a semicolon and ''and'';

(C) by adding at the end the following:

"(III) an employer that violates such subparagraph (A) shall be liable to the employees harmed by such violations for lost wages and benefits."; and

(3) in clause (iii)—

(A) in the matter preceding subclause (I), by striking "90 days" both places it appears and inserting "180 days";

(B) in subclause (I)—

(i) by striking "may" and inserting "shall"; and

(ii) by striking "and" at the end;

(C) in subclause (II), by striking the period at the end and inserting a semicolon and "and"; and

(D) by adding at the end the following:

"(III) an employer that violates subparagraph (A) of such paragraph shall be liable to the employees harmed by such violations for lost wages and benefits.";

(4) in clause (iv)—

(A) by inserting "to take, fail to take, or threaten to take or fail to take, a personnel action, or" before "to intimidate";

(B) by inserting "(I)" after "(iv)"; and

(C) by adding at the end the following:

"(II) An employer that violates this clause shall be liable to the employees harmed by such violation for lost wages and benefits."; and

(5) in clause (vi)—

(A) by amending subclause (I) to read as follows:

"(I) It is a violation of this clause for an employer who has filed an application under this subsection—

"(aa) to require an H–1B nonimmigrant to pay a penalty for ceasing employment with the employer prior to a date agreed to by the nonimmigrant and the employer (the Secretary shall determine whether a required payment is a penalty, and not liquidated damages, pursuant to relevant State law); and

"(bb) to fail to offer to an H–1B nonimmigrant, during the nonimmigrant's period of authorized employment, on the same basis, and in accordance with the same criteria, as the employer offers to United States workers, benefits and eligibility for benefits, including—

"(AA) the opportunity to participate in health, life, disability, and other insurance plans;

"(BB) the opportunity to participate in retirement and savings plans; and

"(CC) cash bonuses and noncash compensation, such as stock options (whether or not based on performance)."; and

(B) in subclause (III), by striking "$1,000" and inserting "$2,000".

SEC. 543. WAIVER REQUIREMENTS.

(a) IN GENERAL.—Subparagraph (E) of section 212(n)(2) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(2)) is amended to read as follows:

"(E)(i) The Secretary of Labor may waive the prohibition in paragraph (1)(F) if the Secretary determines that the employer seeking the waiver has established that—

"(I) the employer with whom the H–1B nonimmigrant would be placed has not displaced, and does not intend to displace, a United States worker employed by the employer within the period beginning 180 days before and ending 180 days after the date of the placement of the nonimmigrant with the employer;

"(II) the H–1B nonimmigrant will not be controlled and supervised principally by the employer

with whom the H–1B nonimmigrant would be placed; and

"(III) the placement of the H–1B nonimmigrant is not essentially an arrangement to provide labor for hire for the employer with whom the H–1B nonimmigrant will be placed.

"(ii) The Secretary shall grant or deny a waiver under this subparagraph not later than 7 days after the Secretary receives the application for such waiver.".

(b) REQUIREMENT FOR RULES.—

(1) RULES FOR WAIVERS.—The Secretary of Labor shall promulgate rules, after notice and a period for comment, for an employer to apply for a waiver under subparagraph (E) of section 212(n)(2) of such Act, as amended by subsection (a).

(2) REQUIREMENT FOR PUBLICATION.—The Secretary of Labor shall submit to Congress and publish in the Federal Register and other appropriate media a notice of the date that rules required by paragraph (1) are published.

SEC. 544. INITIATION OF INVESTIGATIONS.

Subparagraph (G) of section 212(n)(2) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(2)) is amended—

(1) in clause (i), by striking ''if the Secretary'' and all that follows and inserting ''with regard to the employer's compliance with the requirements of this subsection.'';

(2) in clause (ii), by striking ''and whose identity'' and all that follows through ''failure or failures.'' and inserting ''the Secretary of Labor may conduct an investigation into the employer's compliance with the requirements of this subsection.'';

(3) in clause (iii), by striking the last sentence;

(4) by striking clauses (iv) and (v);

(5) by redesignating clauses (vi), (vii), and (viii) as clauses (iv), (v), and (vi), respectively;

(6) in clause (iv), as so redesignated, by striking ''meet a condition described in clause (ii), unless the Secretary of Labor receives the information not later than 12 months'' and inserting ''comply with the requirements under this subsection, unless the Secretary of Labor receives the information not later than 24 months'';

(7) by amending clause (v), as so redesignated, to read as follows:

''(v) The Secretary of Labor shall provide notice to an employer of the intent to conduct an investigation. The notice shall be provided in such a

manner, and shall contain sufficient detail, to permit the employer to respond to the allegations before an investigation is commenced. The Secretary is not required to comply with this clause if the Secretary determines that such compliance would interfere with an effort by the Secretary to investigate or secure compliance by the employer with the requirements of this subsection. A determination by the Secretary under this clause shall not be subject to judicial review.'';

(8) in clause (vi), as so redesignated, by striking ''An investigation'' and all that follows through ''the determination.'' and inserting ''If the Secretary of Labor, after an investigation under clause (i) or (ii), determines that a reasonable basis exists to make a finding that the employer has failed to comply with the requirements under this subsection, the Secretary shall provide interested parties with notice of such determination and an opportunity for a hearing in accordance with section 556 of title 5, United States Code, not later than 120 days after the date of such determination.''; and

(9) by adding at the end the following:

''(vii) If the Secretary of Labor, after a hearing, finds a reasonable basis to believe that the em-

ployer has violated the requirements under this subsection, the Secretary shall impose a penalty under subparagraph (C).''.

SEC. 545. INFORMATION SHARING.

Subparagraph (H) of section 212(n)(2) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(2)) is amended to read as follows:

''(H) The Director of United States Citizenship and Immigration Services shall provide the Secretary of Labor with any information contained in the materials submitted by employers of H–1B nonimmigrants as part of the adjudication process that indicates that the employer is not complying with visa program requirements for H–1B nonimmigrants. The Secretary may initiate and conduct an investigation and hearing under this paragraph after receiving information of noncompliance under this subparagraph.''.

SEC. 546. CONFORMING AMENDMENT.

Subparagraph (F) of section 212(n)(2) of the Immigration and Nationality Act (8 U.S.C. 1182) is amended by striking ''The preceding sentence shall apply to an employer regardless of whether or not the employer is an H–1B-dependent employer.''.

Subchapter C—Other H–1B Provisions

SEC. 551. POSTING AVAILABLE H–1B POSITIONS THROUGH THE DEPARTMENT OF LABOR.

(a) DEPARTMENT OF LABOR WEBSITE.—Paragraph (3) of section 212(n) of the Immigration and Nationality Act (8 U.S.C. 1182(n)) is amended to read as follows:

"(3)(A) Not later than 90 days after the date of the enactment of the H–1B and L–1 Visa Reform Act of 2009, the Secretary of Labor shall establish a searchable Internet website for posting positions as required by paragraph (1)(C). Such website shall be available to the public without charge.

"(B) The Secretary may work with private companies or nonprofit organizations to develop and operate the Internet website described in subparagraph (A).

"(C) The Secretary may promulgate rules, after notice and a period for comment, to carry out the requirements of this paragraph.".

(b) REQUIREMENT FOR PUBLICATION.—The Secretary of Labor shall submit to Congress and publish in the Federal Register and other appropriate media a notice of the date that the Internet website required by paragraph (3) of section 212(n) of such Act, as amended by subsection (a), will be operational.

(c) APPLICATION.—The amendments made by subsection (a) shall apply to an application filed on or after the date that is 30 days after the date described in subsection (b).

SEC. 552. H–1B GOVERNMENT AUTHORITY AND REQUIREMENTS.

(a) IMMIGRATION DOCUMENTS.—Section 204 of the Immigration and Nationality Act (8 U.S.C. 1154) is amended by adding at the end the following:

''(l) EMPLOYER TO PROVIDE IMMIGRATION PAPERWORK EXCHANGED WITH FEDERAL AGENCIES.—Not later than 21 business days after receiving a written request from a former, current, or future employee or beneficiary, an employer shall provide such employee or beneficiary with the original (or a certified copy of the original) of all petitions, notices, and other written communication exchanged between the employer and the Department of Labor, the Department of Homeland Security, or any other Federal agency or department that is related to an immigrant or nonimmigrant petition filed by the employer for such employee or beneficiary.''.

(b) REPORT ON JOB CLASSIFICATION AND WAGE DETERMINATIONS.—Not later than 1 year after the date of the enactment of this Act, the Comptroller General of the United States shall prepare a report analyzing the ac-

curacy and effectiveness of the Secretary of Labor's current job classification and wage determination system. The report shall—

(1) specifically address whether the systems in place accurately reflect the complexity of current job types as well as geographic wage differences; and

(2) make recommendations concerning necessary updates and modifications.

SEC. 553. ADDITIONAL DEPARTMENT OF LABOR EMPLOYEES.

(a) IN GENERAL.—The Secretary of Labor is authorized to hire 200 additional employees to administer, oversee, investigate, and enforce programs involving nonimmigrant employees described in section 101(a)(15)(H)(i)(B).

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

CHAPTER 2—L–1 NONIMMIGRANTS

SEC. 561. PROHIBITION ON OUTPLACEMENT OF L–1 NONIMMIGRANTS.

(a) IN GENERAL.—Subparagraph (F) of section 214(c)(2) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(2)) is amended to read as follows:

"(F)(i) Unless an employer receives a waiver under clause (ii), an employer may not employ an alien, for a cumulative period of more than 1 year, who—

"(I) will serve in a capacity involving specialized knowledge with respect to an employer for purposes of section 101(a)(15)(L); and

"(II) will be stationed primarily at the worksite of an employer other than the petitioning employer or its affiliate, subsidiary, or parent, including pursuant to an outsourcing, leasing, or other contracting agreement.

"(ii) The Secretary of Homeland Security may grant a waiver of the requirements of clause (i) for an employer if the Secretary determines that the employer has established that—

"(I) the employer with whom the alien referred to in clause (i) would be placed has not displaced and does not intend to displace a United States worker employed by the employer within the period begin-

ning 180 days after the date of the placement of such alien with the employer;

"(II) such alien will not be controlled and supervised principally by the employer with whom the nonimmigrant would be placed; and

"(III) the placement of the nonimmigrant is not essentially an arrangement to provide labor for hire for an unaffiliated employer with whom the nonimmigrant will be placed, rather than a placement in connection with the provision or a product or service for which specialized knowledge specific to the petitioning employer is necessary.

"(iii) The Secretary shall grant or deny a waiver under clause (ii) not later than 7 days after the date that the Secretary receives the application for the waiver.".

(b) REGULATIONS.—The Secretary of Homeland Security shall promulgate rules, after notice and a period for comment, for an employer to apply for a waiver under subparagraph (F)(ii) of section 214(c)(2), as added by subsection (a).

SEC. 562. L–1 EMPLOYER PETITION REQUIREMENTS FOR EMPLOYMENT AT NEW OFFICES.

Section 214(c)(2) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(2)) is amended by adding at the end the following:

"(G)(i) If the beneficiary of a petition under this paragraph is coming to the United States to open, or be employed in, a new office, the petition may be approved for up to 12 months only if—

"(I) the alien has not been the beneficiary of 2 or more petitions under this subparagraph during the immediately preceding 2 years; and

"(II) the employer operating the new office has—

"(aa) an adequate business plan;

"(bb) sufficient physical premises to carry out the proposed business activities; and

"(cc) 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 an application to

the Secretary of Homeland Security that contains—

"(I) evidence that the importing employer meets the requirements of this subsection;

"(II) evidence that the beneficiary of the petition is eligible for nonimmigrant status under 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)(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, for the entire period beginning on the date on which the petition was approved under clause (i), has been doing business at the new office through regular, systematic, and continuous provision of goods and services;

"(VII) a statement of the duties the beneficiary has performed at the new office

during the approval period under clause (i) and the duties the beneficiary will perform at the new office during the extension period granted under this clause;

"(VIII) a statement describing the staffing at the new office, including the number of employees and the types of positions held by such employees;

"(IX) evidence of wages paid to employees;

"(X) evidence of the financial status of the new office; and

"(XI) any other evidence or data prescribed by the Secretary.

"(iii) A NEW OFFICE EMPLOYING THE BENEFICIARY OF AN L.—1 petition approved under this paragraph shall do business only through regular, systematic, and continuous provision of goods and services for the entire period for which the petition is sought.

"(iv) Notwithstanding clause (ii), and subject to the maximum period of authorized admission set forth in subparagraph (D), the Secretary of Homeland Security, in the Secretary's discretion, may approve a subsequently filed pe-

tition on behalf of the beneficiary to continue employment at the office described in this subparagraph for a period beyond the initially granted 12-month period if the importing employer has been doing business at the new office through regular, systematic, and continuous provision of goods and services for the 6 months immediately preceding the date of extension petition filing and demonstrates that the failure to satisfy any of the requirements described in those subclauses was directly caused by extraordinary circumstances, as determined by the Secretary in the Secretary's discretion.''.

SEC. 563. COOPERATION WITH SECRETARY OF STATE.

Section 214(c)(2) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(2)), as amended by section 202, is further amended by adding at the end the following:

''(H) For purposes of approving petitions under this paragraph, the Secretary of Homeland Security shall work cooperatively with the Secretary of State to verify the existence or continued existence of a company or office in the United States or in a foreign country.''.

SEC. 564. INVESTIGATION AND DISPOSITION OF COMPLAINTS AGAINST L–1 EMPLOYERS.

Section 214(c)(2) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(2)), as amended by sections 202 and 203, is further amended by adding at the end the following:

"(I)(i) The Secretary of Homeland Security may initiate an investigation of any employer that employs nonimmigrants described in section 101(a)(15)(L) with regard to the employer's compliance with the requirements of this subsection.

"(ii) If the Secretary receives specific credible information from a source who is likely to have knowledge of an employer's practices, employment conditions, or compliance with the requirements under this subsection, the Secretary may conduct an investigation into the employer's compliance with the requirements of this subsection. The Secretary may withhold the identity of the source from the employer, and the source's identity shall not be subject to disclosure under section 552 of title 5, United States Code.

"(iii) The Secretary shall establish a procedure for any person desiring to provide to the

Secretary information described in clause (ii) that may be used, in whole or in part, as the basis for the commencement of an investigation described in such clause, to provide the information in writing on a form developed and provided by the Secretary and completed by or on behalf of the person.

''(iv) No investigation described in clause (ii) (or hearing described in clause (vi) based on such investigation) may be conducted with respect to information about a failure to comply with the requirements under this subsection, unless the Secretary receives the information not later than 24 months after the date of the alleged failure.

''(v) Before commencing an investigation of an employer under clause (i) or (ii), the Secretary shall provide notice to the employer of the intent to conduct such investigation. The notice shall be provided in such a manner, and shall contain sufficient detail, to permit the employer to respond to the allegations before an investigation is commenced. The Secretary is not required to comply with this clause if the Secretary determines that to do so would inter-

fere with an effort by the Secretary to investigate or secure compliance by the employer with the requirements of this subsection. There shall be no judicial review of a determination by the Secretary under this clause.

"(vi) If the Secretary, after an investigation under clause (i) or (ii), determines that a reasonable basis exists to make a finding that the employer has failed to comply with the requirements under this subsection, the Secretary shall provide the interested parties with notice of such determination and an opportunity for a hearing in accordance with section 556 of title 5, United States Code, not later than 120 days after the date of such determination. If such a hearing is requested, the Secretary shall make a finding concerning the matter by not later than 120 days after the date of the hearing.

"(vii) If the Secretary, after a hearing, finds a reasonable basis to believe that the employer has violated the requirements under this subsection, the Secretary shall impose a penalty under subparagraph (L).

"(viii)(I) The Secretary may conduct surveys of the degree to which employers comply with the requirements under this section.

"(II) The Secretary shall—

"(aa) conduct annual compliance audits of not less than 1 percent of the employers that employ nonimmigrants described in section 101(a)(15)(L) during the applicable fiscal year;

"(bb) conduct annual compliance audits of each employer with more than 100 employees who work in the United States if more than 15 percent of such employees are nonimmigrants described in 101(a)(15)(L); and

"(cc) make available to the public an executive summary or report describing the general findings of the audits carried out pursuant to this subclause.".

SEC. 565. WAGE RATE AND WORKING CONDITIONS FOR L–1 NONIMMIGRANT.

(a) IN GENERAL.—Section 214(c)(2) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(2)), as amended by section 202, 203, and 204, is further amended by adding at the end the following:

1 "(J)(i) An employer that employs a nonimmigrant
2 described in section 101(a)(15)(L) for a cumulative period
3 of time in excess of 1 year shall—
4 "(I) offer such nonimmigrant, during the period
5 of authorized employment, wages, based on the best
6 information available at the time the application is
7 filed, which are not less than the highest of—
8 "(aa) the locally determined prevailing
9 wage level for the occupational classification in
10 the area of employment;
11 "(bb) the median average wage for all
12 workers in the occupational classification in the
13 area of employment; and
14 "(cc) the median wage for skill level 2 in
15 the occupational classification found in the
16 most recent Occupational Employment Statis-
17 tics survey; and
18 "(II) provide working conditions for such non-
19 immigrant that will not adversely affect the working
20 conditions of workers similarly employed.
21 "(ii) If an employer, in such previous period specified
22 by the Secretary of Homeland Security, employed 1 or
23 more such nonimmigrants, the employer shall provide to
24 the Secretary of Homeland Security the Internal Revenue
25 Service Form W–2 Wage and Tax Statement filed by the

1 employer with respect to such nonimmigrants for such pe-
2 riod.

3 "(iii) It is a failure to meet a condition under this
4 subparagraph for an employer who has filed a petition to
5 import 1 or more aliens as nonimmigrants described in
6 section 101(a)(15)(L)—

7 "(I) to require such a nonimmigrant to pay a
8 penalty for ceasing employment with the employer
9 before a date mutually agreed to by the non-
10 immigrant and the employer; or

11 "(II) to fail to offer to such a nonimmigrant,
12 during the nonimmigrant's period of authorized em-
13 ployment, on the same basis, and in accordance with
14 the same criteria, as the employer offers to United
15 States workers, benefits and eligibility for benefits,
16 including—

17 "(aa) the opportunity to participate in
18 health, life, disability, and other insurance
19 plans;

20 "(bb) the opportunity to participate in re-
21 tirement and savings plans; and

22 "(cc) cash bonuses and noncash compensa-
23 tion, such as stock options (whether or not
24 based on performance).

"(iv) The Secretary of Homeland Security shall determine whether a required payment under clause (iii)(I) is a penalty (and not liquidated damages) pursuant to relevant State law.".

(b) REGULATIONS.—The Secretary of Homeland Security shall promulgate rules, after notice and a period of comment, to implement the requirements of subparagraph (J) of section 214(c)(2) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(2)), as added by subsection (a). In promulgating these rules, the Secretary shall take into consideration any special circumstances relating to intracompany transfers.

SEC. 566. PENALTIES.

Section 214(c)(2) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(2)), as amended by sections 202, 203, 204, and 205, is further amended by adding at the end the following:

"(K)(i) If the Secretary of Homeland Security finds, after notice and an opportunity for a hearing, a failure by an employer to meet a condition under subparagraph (F), (G), (J), or (L) or a misrepresentation of material fact in a petition to employ 1 or more aliens as nonimmigrants described in section 101(a)(15)(L)—

"(I) the Secretary shall impose such administrative remedies (including civil monetary penalties

in an amount not to exceed $2,000 per violation) as the Secretary determines to be appropriate;

"(II) the Secretary may not, during a period of at least 1 year, approve a petition for that employer to employ 1 or more aliens as such nonimmigrants; and

"(III) in the case of a violation of subparagraph (J) or (L), the employer shall be liable to the employees harmed by such violation for lost wages and benefits.

"(ii) If the Secretary finds, after notice and an opportunity for a hearing, a willful failure by an employer to meet a condition under subparagraph (F), (G), (J), or (L) or a willful misrepresentation of material fact in a petition to employ 1 or more aliens as nonimmigrants described in section 101(a)(15)(L)—

"(I) the Secretary shall impose such administrative remedies (including civil monetary penalties in an amount not to exceed $10,000 per violation) as the Secretary determines to be appropriate;

"(II) the Secretary may not, during a period of at least 2 years, approve a petition filed for that employer to employ 1 or more aliens as such nonimmigrants; and

"(III) in the case of a violation of subparagraph (J) or (L), the employer shall be liable to the employees harmed by such violation for lost wages and benefits.".

SEC. 567. PROHIBITION ON RETALIATION AGAINST L–1 NONIMMIGRANTS.

Section 214(c)(2) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(2)), as amended by section 202, 203, 204, 205, and 206, is further amended by adding at the end the following:

"(L)(i) It is a violation of this subparagraph for an employer who has filed a petition to import 1 or more aliens as nonimmigrants described in section 101(a)(15)(L) to take, fail to take, or threaten to take or fail to take, a personnel action, or to intimidate, threaten, restrain, coerce, blacklist, discharge, or discriminate in any other manner against an employee because the employee—

"(I) has disclosed information that the employee reasonably believes evidences a violation of this subsection, or any rule or regulation pertaining to this subsection; or

"(II) cooperates or seeks to cooperate with the requirements of this subsection, or any rule or regulation pertaining to this subsection.

"(ii) In this subparagraph, the term 'employee' includes—

"(I) a current employee;

"(II) a former employee; and

"(III) an applicant for employment.".

SEC. 568. TECHNICAL AMENDMENTS.

Section 214(c)(2) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(2)) is amended by striking "Attorney General" each place it appears and inserting "Secretary of Homeland Security".

SEC. 569. REPORTS ON L–1 NONIMMIGRANTS.

Section 214(c)(8) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(8)) is amended by inserting "(L)," after "(H),".

SEC. 570. APPLICATION.

The amendments made by sections 201 through 207 shall apply to applications filed on or after the date of the enactment of this Act.

SEC. 571. REPORT ON L–1 BLANKET PETITION PROCESS.

(a) REQUIREMENT FOR REPORT.—Not later than 6 months after the date of the enactment of this Act, the Inspector General of the Department of Homeland Security shall submit to the appropriate committees of Congress a report regarding the use of blanket petitions under section 214(c)(2)(A) of the Immigration and Nationality

Act (8 U.S.C. 1184(c)(2)(A)). Such report shall assess the efficiency and reliability of the process for reviewing such blanket petitions, including whether the process includes adequate safeguards against fraud and abuse.

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

(1) the Committee on Homeland Security and Governmental Affairs of the Senate;

(2) the Committee on the Judiciary of the Senate;

(3) the Committee on Homeland Security of the House of Representatives; and

(4) the Committee on the Judiciary of the House of Representatives.

SEC. 572. REQUIREMENTS FOR INFORMATION FOR H–1B AND L–1 NONIMMIGRANTS.

Section 214 of the Immigration and Nationality Act (8 U.S.C. 1184) is amended by adding at the end the following:

''(s) REQUIREMENTS FOR INFORMATION FOR H–1B AND L–1 NONIMMIGRANTS.—

''(1) IN GENERAL.—Upon issuing a visa to an applicant for nonimmigrant status pursuant to subparagraph (H)(i)(b) or (L) of section 101(a)(15)

who is outside the United States, the issuing office shall provide the applicant with—

"(A) a brochure outlining the obligations of the applicant's employer and the rights of the applicant with regard to employment under Federal law, including labor and wage protections;

"(B) the contact information for appropriate Federal agencies or departments that offer additional information or assistance in clarifying such obligations and rights; and

"(C) a copy of the application submitted for the nonimmigrant under section 212(n) or the petition submitted for the nonimmigrant under subsection (c)(2)(A), as appropriate.

"(2) Upon the issuance of a visa to an applicant referred to in paragraph (1) who is inside the United States, the issuing officer of the Department of Homeland Security shall provide the applicant with the material described in clauses (i), (ii), and (iii) of subparagraph (A).".

CHAPTER 3—PROTECTION OF H–2B NONIMMIGRANTS

SEC. 581. ENFORCEMENT OF FEDERAL LABOR LAWS RELATING TO H–2B NONAGRICULTURAL GUEST WORKERS.

(a) IN GENERAL.—Section 214(c)(14) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(14)) is amended—

(1) in subparagraph (A), by striking ''of Homeland Security'' each place it appears and inserting ''of Labor'';

(2) by striking subparagraph (B);

(3) by redesignating subparagraphs (C) and (D) as subparagraphs (B) and (C), respectively; and

(4) by adding at the end the following:

''(D) The Secretary of Labor is authorized to take such actions, including imposing appropriate penalties and seeking appropriate injunctive relief and specific performance of contractual obligations, as may be necessary to assure employer compliance with the terms and conditions required under this Act for employing nonimmigrant workers described in section 101(a)(15)(H)(ii)(b), and as required under the Increasing American Wages and Benefits Act of

2007. The authority of the Secretary of Labor under this subparagraph shall not preempt any other rights which affected persons may have under Federal or State law.

''(E) Any aggrieved person whose wages or working conditions have been directly and adversely affected by an employer in violation of applicable laws and regulations governing the employment of nonimmigrant workers described in section 101(a)(15)(H)(ii)(b), or by a violation of the terms and conditions of employment, may bring a civil action against such employer in the appropriate district court of the United States. Such cause of action shall not be subject to exhaustion of administrative remedies and shall be in addition to any other causes of action and remedies that may exist.

''(F) Notwithstanding any other provision of law, the Legal Services Corporation may provide legal services on behalf of nonimmigrant workers described in section 101(a)(15)(H)(ii)(b) regarding the terms and conditions of employment, transportation, and housing and other provisions of law applicable to the employment of such nonimmigrants.''.

(b) REPORT.—Section 214(g)(10) of the Immigration and Nationality Act (8 U.S.C. 1184(g)(10)) is amended—

(1) by inserting ''(A)'' after ''(10)''; and

(2) by adding at the end the following:

''(B) Each employer that hires a nonimmigrant worker described in section 101(a)(15)(H)(ii)(b) shall—

''(i) notify the Secretary of Labor not later than 30 days after the conclusion of each such nonimmigrant's term of employment; and

''(ii) submit to the Secretary of Labor employment payroll records and similar documentation showing that the employer paid the required prevailing wage and transportation, and other expenses required under this section and section 212.''.

SEC. 582. RECRUITMENT OF UNITED STATES WORKERS.

Section 212 of the Immigration and Nationality Act (8 U.S.C. 1182) is amended—

(1) in subsection (p)(3), by striking ''(a)(5)(A), (n)(1)(A)(i)(II),'' and inserting ''(n)(1)(A)(i)(II)'';

(2) by redesignating subsection (t) (as added by section 1(b)(2)(B) of Public Law 108-449) as subsection (u); and

(3) by adding at the end the following:

"(v)(1) Except as provided under paragraph (5), an employer that seeks to employ an alien described in section 101(a)(15)(H)(ii)(b) (referred to in this subsection as an 'H-2B nonimmigrant') shall take the following steps to recruit United States workers for the position for which the alien is sought not later than 14 days before filing an application under paragraph (3):

"(A) The employer shall submit a copy of the job offer, including a description of the wages and other terms and conditions of employment, to the State Workforce Agency that serves the area of employment in the State in which the employer is located (referred to in this subsection as the 'SWA'). The SWA shall provide the employer with an acknowledgment of receipt of such documentation in accordance with this paragraph.

"(B) The employer shall authorize the SWA to post the job opportunity on the Internet through the web site for 'America's Job Bank', with local job banks, and with unemployment agencies and other

1 labor referral and recruitment sources pertinent to
2 such job opportunity.
3 "(C) The employer shall authorize the SWA to
4 provide notification of the job opportunity, and the
5 SWA shall designate that these are job opportunities
6 for which H-2B visas have been requested, to—
7 "(i) the central office of the State Federa-
8 tion of Labor in the State in which the job is
9 located; and
10 "(ii) the office of the local union which
11 represents the employees in the same or sub-
12 stantially equivalent job classification, if appli-
13 cable.
14 "(D) The employer shall post the availability of
15 the job opportunity for which the employer is seek-
16 ing a worker in conspicuous locations at the place of
17 employment for all employees to see.
18 "(E) The employer shall advertise the avail-
19 ability of the job opportunity for which the employer
20 is seeking a worker in a publication with the highest
21 circulation in the labor market that is likely to be
22 patronized by a potential worker for at least 5 con-
23 secutive days.
24 "(F) Based on recommendations by the local
25 job service, the employer shall advertise the avail-

ability of the job opportunity in professional, trade, or local minority and ethnic publications that are likely to be patronized by a potential worker.

"(2) An employer that seeks to employ an H-2B nonimmigrant shall—

"(A) first offer the job to any eligible United States worker who—

"(i) applies;

"(ii) is qualified for the job; and

"(iii) is available at the time of need; and

"(B) maintain, for at least 3 years after the employment relation is terminated, documentation of recruitment efforts and responses conducted and received before filing an application with the Department of Labor, including—

"(i) resumes;

"(ii) applications; and

"(iii) tests of United States workers who applied and were not hired for the job the employer seeks to fill with a nonimmigrant worker, if applicable.

"(3) An employer that seeks to hire an H-2B nonimmigrant shall submit an application to the Secretary of Labor that includes a certification, under penalty of perjury, that—

"(A) the employer has not made a job offer to a United States worker, which imposed restrictions or obligations that will not be imposed on an H-2B nonimmigrant;

"(B) the employer has complied with the recruitment requirements under paragraph (1);

"(C) the employer will offer an H-2B nonimmigrant not less than the same benefits and working conditions provided to United States workers similarly employed in the same occupational classification at the same actual place of employment in addition to paying an H-2B nonimmigrant a prevailing wage rate not less than the wage rate offered to United States workers;

"(D) there is currently no strike, lockout, or labor dispute (as defined in section 2(9) of the Labor-Management Relations Act (29 U.S.C. 152(9)), at the same place of employment, which affects employees in the same occupational classification in which an H-2B nonimmigrant will be employed;

"(E) the employer will comply with all applicable laws and regulations relating to the right of workers to join or organize a union (including rights

1 protected under section 7 of the Labor-Management
2 Relations Act (29 U.S.C. 157));
3 "(F) the employer has—
4 "(i) provided notice of the filing of an ap-
5 plication to the bargaining representative of em-
6 ployees, if any, working in the same occupa-
7 tional classification at the place of employment
8 as an H-2B nonimmigrant who the employer in-
9 tends to employ; or
10 "(ii) if there is no such bargaining rep-
11 resentative, posted notice of filing such applica-
12 tion in conspicuous locations at the place of em-
13 ployment for all employees to see for not fewer
14 than 14 business days; and
15 "(G) the requirements applicable to the job,
16 which the employer intends to hire an H-2B non-
17 immigrant to perform, represent the actual min-
18 imum requirements applicable to that job and the
19 employer will not hire an H-2B nonimmigrant to
20 perform the job who has less training or experience
21 than the employer's other employees.
22 "(4)(A) An employer that applies to hire an H-2B
23 nonimmigrant shall hire any qualified United States work-
24 er who applies for the job for which such nonimmigrant
25 was intended to be employed if such United States worker

applies before the date that is 30 days before the date on which the last such H-2B nonimmigrant is scheduled to begin work for such employer.

"(B) The Secretary of Labor, through the workforce agency of a State, as appropriate, shall provide information about applications for H-2B nonimmigrants, including information about domestic workers who apply for jobs but are not hired, to a United States worker, nonprofit organization, or union not later than 48 hours after such worker, organization, or union requests such information.".

SEC. 583. PREVAILING WAGES FOR UNITED STATES WORKERS AND H–2B WORKERS.

Section 212 of the Immigration and Nationality Act (8 U.S.C. 1182), as amended by section 102, is further amended by adding at the end the following:

"(w)(1) No alien may be admitted or provided status as a nonimmigrant under section 101(a)(15)(H)(ii)(b) in an occupational classification unless the Secretary of Labor certifies that the employer—

"(A) is offering and will offer during the period of authorized employment to aliens admitted or provided such status the wage rate set forth in the collective bargaining agreement, if the job opportunity is covered by a collective bargaining agreement;

"(B) if the job opportunity is not covered by a collective bargaining agreement, the wage the employer is offering and will offer, to any alien or United States worker employed by or offered employment by the employer, during the period of authorized employment for aliens admitted or provided such status, wages that are not less than the higher of—

"(i) the wage determination, if any, issued pursuant to subchapter IV of chapter 31 of title 40, United States Code (commonly known as the 'Davis-Bacon Act');

"(ii) the wage determination, if any, issued pursuant to the Service Contract Act of 1965 (41 U.S.C. 351 et seq.);

"(iii) the median rate of the highest 66 percent of the wage data applicable to such occupational classification under the most recently published Occupational Employment Statistics Survey, compiled by the Bureau of Labor Statistics; or

"(iv) a wage that is not less than 150 percent of the Federal minimum wage in effect under the Fair Labor Standards Act (29 U.S.C. 201 et seq.); and

"(C) will provide working conditions for such alien that will not adversely affect the working conditions of workers similarly employed.

"(2) An employer may not appeal a decision of the Secretary of Labor concerning the wages required to be paid under paragraph (1)(A) unless United States workers and their labor representatives are given the opportunity to submit contrary evidence or appeal that such required wages are too low.

"(3) An employer may not hire a nonimmigrant described in section 101(a)(15)(H)(ii)(b) unless—

"(A) real prevailing wages in the occupational classification in which such nonimmigrant is to be hired are at least 3 percent higher than such wages during the preceding year under the Occupational Employment Statistics Survey compiled by the Bureau of Labor Statistics; or

"(B) the employer offers to pay the H-2B worker or a United States worker a wage in the occupational classification in which such worker is to be hired that is at least 3 percent higher during the preceding year, after adjusting for inflation under the Occupational Employment Survey.".

SEC. 584. CERTIFICATION REQUIREMENT.

Section 214(c)(14) of the Immigration and Nationality Act, as amended by section 101, is further amended by adding at the end the following:

''(G) A petition by an employer seeking to hire an alien described in section 101(a)(15)(H)(ii)(b) shall not be approved until the employer has provided written certification, under penalty of perjury, to the Secretary of Labor that—

''(i) the employer has not been required under law to provide a notice of a mass layoff pursuant to the Worker Adjustment and Retraining Notification Act (29 U.S.C. 2101 et seq.) during the 12-month period immediately preceding the date on which the alien is to be hired; and

''(ii) the employer does not intend to provide a notice of a mass layoff pursuant to such Act.

''(H) If an employer is required under law to provide a notice of a mass layoff pursuant to such Act after hiring nonimmigrants granted status under section 101(a)(15)(H)(ii)(b), the status of such nonimmigrants shall expire on the date that is 60 days after the date on which such notice is provided.

''(I) An employer shall be exempt from the requirements under subparagraphs (G) and (H) if the employer provides written certification, under penalty of perjury,

that the total number of the employer's employees in the United States will not be reduced as a result of a mass layoff.''.

SEC. 585. PROTECTIONS FOR WORKERS.

Section 214(c)(14) of the Immigration and Nationality Act, as amended by section 104, is further amended by adding at the end the following:

''(J) Employers who hire nonimmigrants described in section 101(a)(15)(H)(ii)(b) shall reimburse the nonimmigrants for the reasonable transportation costs incurred by such nonimmigrants and United States workers to initially reach the job site and, once the period of employment for the job opportunity is completed, to return to their countries of origin or to the next place of employment, if the worker has contracted with a subsequent employer who has not agreed to provide or pay for the worker's transportation to such subsequent employer's place of employment. The amount of reimbursement for such transportation expenses 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.

"(K)(i) Employers who hire nonimmigrants described in section 101(a)(15)(H)(ii)(b) shall guarantee to offer the worker employment for at least 75 percent of the workdays of the total periods during which the work contract and all extensions of such contract are in effect, beginning with the first workday after the arrival of the worker at the place of employment and ending on the expiration date specified in the work contract or in its extensions, if any.

"(ii) If the employer affords a worker during the total work contract period less employment than that required under this subparagraph, the employer shall pay the worker the amount which the worker would have earned had the worker worked for the guaranteed number of days.

"(iii) In this subparagraph, the term 'workday'—

1 "(I) means a day in which the worker
2 is offered the number of hours stated in
3 the job order; and
4 "(II) excludes the worker's Sabbath
5 and Federal holidays.
6 "(iv) A work guarantee does not meet the
7 requirements under this subparagraph unless
8 the number of hours of work offered by the em-
9 ployer is equal to not less than the product of—
10 "(I) 75 percent of the workdays; mul-
11 tiplied by
12 "(II) the average number of hours per
13 day stated in the job order.
14 "(v) A worker may be offered more than
15 the specified hours of work on a single workday.
16 "(vi) The employer may not require, for
17 purposes of meeting the work guarantee, that
18 the worker work longer than the number of
19 hours specified in the job order on a workday,
20 the worker's Sabbath, or a Federal holiday.
21 "(L) If the job opportunity is not covered
22 by the State workers' compensation law, the
23 employer will provide, at no cost to the worker,
24 insurance covering injury and disease arising
25 out of, and in the course of, the worker's em-

ployment which will provide benefits at least equal to those provided under the State's workers' compensation law for comparable employment.''.

SEC. 586. PETITIONS BY EMPLOYERS THAT HAVE SIGNED LABOR AGREEMENTS WITH UNIONS THAT OPERATE HIRING HALLS.

Section 212(v) of the Immigration and Nationality Act, as added by section 102, is amended by adding at the end the following:

''(5) An employer that seeks to hire an H-2B nonimmigrant may file an application with the Secretary of Labor in accordance with this paragraph, instead of complying with paragraphs (1) through (4), if—

''(A) the employer has signed a labor agreement with a labor organization (as defined in section 2(5) of the Labor-Management Relations Act (29 U.S.C. 152(5)) under which the labor organization is responsible for referring applicants for employment to the employer under a procedure commonly known as a 'hiring hall' or 'referral hall'; and

"(B) the application is accompanied by a written statement prepared by the labor organization attesting that—

"(i) the labor organization operates a hiring hall that, pursuant to contractual agreement and actual practice, is a source of employees in the same or substantially equivalent occupational classification in which the employer seeks to employ an H-2B nonimmigrant;

"(ii) the labor organization does not have a sufficient number of qualified applicants available for referral in the same or substantially equivalent occupational classification in which the employer seeks to employ an H-2B nonimmigrant;

"(iii) the labor organization has advertised, for at least 5 consecutive days, the availability of the job opportunity for which the employer is seeking to employ an H-2B nonimmigrant in the publication with the highest circulation in the labor market that is likely to be patronized by potential applicants;

"(iv) the employer is contractually obligated to pay all employees, in the same or substantially equivalent occupational classification in which the employer seeks to employ an H-2B nonimmigrant, wages and benefits set forth in a labor agreement with the labor organization, which equals or exceeds the prevailing wage rate the employer would be obligated to pay; and

"(v) the H-2B nonimmigrants who the employer seeks to employ will be paid not less than the same wages and benefits and be subject to the same terms and conditions of employment set forth in the employer's labor agreement with the labor organization.".

SEC. 587. H–2B NONIMMIGRANT LABOR CERTIFICATION APPLICATION FEES.

(a) ESTABLISHMENT OF FEES.—Section 212(a)(5)(A) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(5)(A)) is amended by adding the following:

"(v) ESTABLISHMENT OF H-2B EMPLOYMENT CERTIFICATION APPLICATION FEE.—

1 "(I) IN GENERAL.—The Sec-
2 retary of Labor shall impose a fee on
3 an employer that submits an applica-
4 tion for an employment certification
5 for aliens granted nonimmigrant sta-
6 tus under section 101(a)(15)(H)(ii)(b)
7 to the Secretary of Labor under this
8 subparagraph on or after the date
9 that is 30 days after the date of en-
10 actment of the Increasing American
11 Wages and Benefits Act of 2007.
12 "(II) FEE DURING INITIAL
13 YEAR.—During the period beginning
14 30 days after the date of enactment of
15 the Increasing American Wages and
16 Benefits Act of 2007 and ending 1
17 year after such date, the fee imposed
18 under subclause (I) shall be $800 for
19 each application.
20 "(III) FEE AFTER INITIAL
21 YEAR.—After the date that is one
22 year after the date of enactment of
23 the Increasing American Wages and
24 Benefits Act of 2007, the fee imposed
25 under subclause (I) shall be set at a

level the Secretary of Labor determines will ensure recovery of the full costs of carrying out labor certification activities under this subparagraph and will recover any additional costs associated with the administration of the fees collected.

"(IV) PROHIBITION ON EMPLOYER ACCEPTING REIMBURSEMENT OF FEE.—

"(aa) IN GENERAL.—An employer subject to a fee under this clause shall not require or accept reimbursement, directly or indirectly, of or other compensation for all or part of the cost of such fee.

"(bb) CIVIL PENALTY.—If the Secretary of Labor determines, after notice and opportunity for a hearing, that a violation of item (aa) has occurred, the Secretary of Labor may impose a civil penalty in an amount

not to exceed $5,000 per violation.

"(V) DEPOSIT OF FEES AND PENALTIES.—Fees and civil penalties collected under this clause shall be deposited in the 'H-2B Employment Certification Application Fee Account' established under section 286(x).".

(b) ESTABLISHMENT OF ACCOUNT AND USE OF FUND.—Section 286 of the Immigration and Nationality Act (8 U.S.C. 1356) is amended by adding at the end the following:

"(x) H-2B EMPLOYMENT CERTIFICATION APPLICATION FEE ACCOUNT.—

"(1) ESTABLISHMENT OF ACCOUNT.—There is established in the general fund of the Treasury a separate account, which shall be known as the 'H-2B Employment Certification Application Fee Account'. Notwithstanding any other provision of this title, there shall be deposited as offsetting receipts into the account all amounts from the fees and civil penalties collected under section 212(a)(5)(A)(v).

"(2) USE OF FEES.—Of the amounts deposited into the H-2B Employment Certification Application Fee Account under this subsection in each fiscal

year, the Secretary of Labor shall use such amounts as the Secretary of Labor determines are necessary for the costs of Federal administration, including personnel, in carrying out labor certification activities under section 212(a)(5)(A), and to assist the States, as appropriate, in the determination of prevailing wages for purposes of carrying out such section.

"(3) AVAILABILITY OF FUNDS.—The fees deposited into the H-2B Employment Certification Application Fee Account under this subsection shall remain available until expended for the activities described in paragraph (2).".

(c) PROGRAM INTEGRITY.—Section 212(a)(5)(A) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(5)(A)), as amended by subsection (a), is further amended by adding at the end the following:

"(vi) PROGRAM INTEGRITY REGULATIONS.—The Secretary of Labor may prescribe such regulations as may be necessary to ensure the integrity of the labor certification process carried out under this subparagraph. Such regulations may include standards and procedures under which employers and their representatives

are excluded from participation in the labor certification process under this subparagraph.''.

CHAPTER 4—ADJUSTMENTS TO THE EB–5 VISA PROGRAM

SEC. 591. PERMANENT REAUTHORIZATION OF EB–5 REGIONAL CENTER PROGRAM; APPLICATION FEE.

(a) IN GENERAL.—Section 610 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993 (8 U.S.C. 1153 note) is amended—

(1) by striking ''pilot'' each place it appears;

(2) in subsection (b), by striking ''for 15 years''; and

(3) by adding at the end the following:

''(e) In addition to any other fees authorized by law, the Secretary of Homeland Security shall impose a fee of $2,500 to apply for designation as a regional center under this section. Fees collected under this subsection shall be deposited in the Treasury in accordance with section 286(y) of the Immigration and Nationality Act (8 U.S.C. 1356(y)).''.

(b) ESTABLISHMENT OF ACCOUNT; USE OF FEES.—Section 286 of the Immigration and Nationality Act (8

U.S.C. 1356) is amended by adding at the end the following:

"(y) IMMIGRANT ENTREPRENEUR REGIONAL CENTER ACCOUNT.—

"(1) IN GENERAL.—There is established in the general fund of the Treasury a separate account, which shall be known as the 'Immigrant Entrepreneur Regional Center Account'. Notwithstanding any other provision of law, there shall be deposited as offsetting receipts into the account all fees collected under section 610(b) of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993 (8 U.S.C. 1153 note) and any fees collected in connection with forms I-526 or I-829.

"(2) USE OF FEES.—Fees collected under this section may only be used by the Secretary of Homeland Security to administer and operate the employment creation program described in section 203(b)(5).".

(c) RULEMAKING.—Not later than 120 days after the date of the enactment of this Act, the Secretary of Homeland Security shall prescribe regulations to implement the amendments made by this section.

(d) EFFECTIVE DATE.—The amendments made by subsections (a)(3) and (b) shall take effect on the effective date of the regulations prescribed pursuant to subsection (c). The remaining amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 592. PREMIUM PROCESSING FEE FOR EB–5 IMMIGRANT INVESTORS.

Section 286(u) of the Immigration and Nationality Act (8 U.S.C. 1356(u)) is amended by adding at the end the following: ''In the case of a petition filed under section 204(a)(1)(H) for classification under section 203(b)(5), if the petitioner desires a guarantee of a decision on the petition in 60 days or less, the premium fee under this subsection shall be set at $2,500 and shall be deposited as offsetting receipts in the Immigrant Entrepreneur Regional Center Account established under subsection (y).''.

SEC. 593. CONCURRENT FILING OF EB–5 PETITIONS AND APPLICATIONS FOR ADJUSTMENT OF STATUS.

Section 245 of the Immigration and Nationality Act (8 U.S.C. 1255) is amended by adding at the end the following:

''(n) If, at the time a petition is filed for classification through a regional center under section 203(b)(5), approval of the petition would make a visa immediately avail-

able to the alien beneficiary, the alien beneficiary's adjustment application under this section shall be considered to be properly filed whether the application is submitted concurrently with, or subsequent to, the visa petition.''.

SEC. 594. IMPROVED SET-ASIDE FOR TARGETED EMPLOYMENT AREAS.

Section 203(b)(5)(B) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)(B)) is amended as follows:

(1) TARGETED EMPLOYMENT AREA DEFINED.—Clause (ii) is amended to read as follows:

''(ii) TARGETED EMPLOYMENT AREA DEFINED.—In this paragraph, the term 'targeted employment area' means, at the time a petition for classification under this paragraph is filed, any of the following:

''(I) A rural area.

''(II) An area that has experienced high unemployment (of at least 150 percent of the national average rate).

''(III) A county that has had a 20 percent or more decrease in population since 1970.

''(IV) An area that is within the boundaries established for purposes of

a State or Federal economic development incentive program, including areas defined as Enterprise Zones, Renewal Communities and Empowerment Zones.

"(V) An area designated by a State agency to which the Governor has delegated the authority to designate targeted employment areas within the State.".

(2) RURAL AREA DEFINED.—Clause (iii) is amended by striking "other than an area within a metropolitan statistical area or".

(3) EFFECT OF PRIOR DETERMINATION.—Such section is amended by adding at the end the following:

"(iv) EFFECT OF PRIOR DETERMINATION.—In a case in which a geographic area is determined under clause (ii) to be a targeted employment area, such determination shall remain in effect during the 2-year period beginning on the date of the determination for purposes of any alien seeking a visa reserved under this subparagraph.".

SEC. 595. SET-ASIDE OF VISAS FOR REGIONAL CENTER PROGRAM.

Section 610(b) of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993 (8 U.S.C. 1153 note) is amended by striking ''3,000'' and inserting ''10,000''.

SEC. 596. EXTENSION.

Subparagraph (A) of section 216A(d)(2) of the Immigration and Nationality Act (8 U.S.C. 1186b(d)(2)(A)) is amended by adding at the end the following: ''A date specified by the applicant (but not later than the fourth anniversary) shall be substituted for the second anniversary in applying the preceding sentence if the applicant demonstrates that the applicant has attempted to follow his business model in good faith, provides an explanation for the delay in filing the petition that is based on circumstances outside of the applicant's control, and demonstrates that such circumstances will be able to be resolved within the specified period.''.

SEC. 597. STUDY.

(a) IN GENERAL.—The Secretary of the Department of Homeland Security, in appropriate consultation with the Secretary of Commerce and other interested parties, shall conduct a study concerning the following:

(1) Current job creation counting methodology and initial projections under section 203(b)(5) of the

Immigration and Nationality Act (8 U.S.C. 1153(b)(5)).

(2) How best to promote the employment creation program described in such section overseas to potential immigrant investors.

(b) REPORT.—The Secretary of Homeland Security shall submit a report to the Congress not later than 1 year after the date of the enactment of this Act containing the results of the study conducted under subsection (a).

SEC. 598. FULL-TIME EQUIVALENTS.

(a) IN GENERAL.—Section 203(b)(5)(A)(ii) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)(A)(ii)) is amended by inserting ''(or full-time equivalent)'' after ''full-time''.

(b) DEFINITION.—Section 203(b)(5)(D) of such Act (8 U.S.C. 1153(b)(5)(D)) is amended to read as follows:

''(D) EMPLOYMENT-RELATED DEFINITIONS.—

''(i) FULL-TIME EMPLOYMENT DEFINED.—In this paragraph, the term 'full-time employment' means employment in a position that requires at least 35 hours of service per week at any time, regardless of who fills the position.

"(ii) FULL-TIME EQUIVALENT EMPLOYMENT DEFINED.—In this paragraph, the term 'full-time equivalent employment' means employment representing the number of full-time employees that could have been employed if the reported number of hours worked by part-time employees had been worked by full-time employees. This shall be calculated by dividing the part-time hours paid by the standard number of hours for full-time employees.".

SEC. 599. ELIGIBILITY FOR ADJUSTMENT OF STATUS.

Section 245(k) of the Immigration and Nationality Act (8 U.S.C. 1255(k)) is amended, in the matter preceding paragraph (1), by striking "(1), (2), or (3)" and inserting "(1), (2), (3), or (5)".

SEC. 599A. EXPANSION OF EB–5 ELIGIBILITY TO INCLUDE QUALIFIED IMMIGRANTS WHO COMPLETE INVESTMENT AGREEMENTS.

(a) CHANGES TO INVESTMENT CRITERIA.—Section 203(b)(5)(A) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)(A)) is amended—

(1) in the matter preceding clause (i), by striking "partnership)—" and inserting "partnership) as follows:"

(2) in clause (i)—

(A) by striking ''(i) in which'' and inserting the following:

''(i) A new commercial enterprise—

''(I) in which'';

(B) by striking '', and'' at the end and inserting a semicolon; and

(C) by adding at the end the following:

''(II) with respect to which such alien has completed an investment agreement with a qualified venture capital operating company for an investment in the enterprise of an amount not less than the amount specified in subparagraph (C); or

''(III) with respect to which such alien has completed an investment agreement with 1 or more angel investors for an investment in the enterprise of an amount not less than the amount specified in subparagraph (C).''; and

(3) in clause (ii)—

(A) by striking ''(ii) which will'' and inserting the following:

"(ii) In the case of an enterprise—

"(I) described in clause (i)(I), which will";

(B) by striking the period at the end and inserting "; or"; and

(C) by adding at the end the following:

"(II) described in subparagraph (II) or (III) of clause (i), which will benefit the United States economy and create full-time employment for not fewer than 5 United States citizens or aliens lawfully admitted for permanent residence or other immigrants lawfully authorized to be employed in the United States (other than the immigrant and the immigrant's spouse, sons, or daughters).".

(b) CHANGES TO CAPITAL REQUIREMENTS.—Section 203(b)(5)(C)(i) of such Act (8 U.S.C. 1153(b)(5)(C)(i)) is amended by inserting after "$1,000,000" the following: "in the case of an enterprise described in subparagraph (A)(i)(I), $500,000 in the case of an enterprise described in subparagraph (A)(i)(II), and $500,000 in the case of an enterprise described in subparagraph (A)(i)(III)".

(c) DEFINITIONS.—Section 203(b)(5) of such Act (8 U.S.C. 1153(b)(5)) is amended by adding at the end the following:

"(E) QUALIFIED VENTURE CAPITAL OPERATING COMPANY DEFINED.—In this paragraph, the term 'qualified venture capital operating company' means an entity that—

"(i) is registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.); or

"(ii) is an investment company, as defined in subsection (a)(1) of section 3 of such Act (15 U.S.C. 80a-3), that is exempt from registration under subsection (c)(1) or (c)(7) of such section, is not registered, and—

"(I) is organized or incorporated, and domiciled, in the United States, and the majority ownership of which is composed of United States citizens or aliens lawfully admitted to the United States for permanent residence; or

"(II) is owned or controlled by an entity that is organized or incor-

1 porated, and domiciled, in the United
2 States, and the majority ownership of
3 that entity is composed of United
4 States citizens or aliens lawfully ad-
5 mitted to the United States for per-
6 manent residence.
7 "(F) ANGEL INVESTOR DEFINED.—In this
8 paragraph, the term 'angel investor' means—
9 "(i) any individual who is a United
10 States citizen or an alien lawfully admitted
11 to the United States for permanent resi-
12 dence, or any entity wholly owned and con-
13 trolled by United States citizens or aliens
14 lawfully admitted to the United States for
15 permanent residence; or
16 "(ii) any entity that has made at least
17 5 angel investments totaling at least
18 $500,000 during the 3 years preceding the
19 completion of an investment agreement de-
20 scribed in subparagraph (A)(i)(III).
21 "(G) ANGEL INVESTMENT.—In this para-
22 graph, the term 'angel investment' means an in-
23 vestment made in a commercial enterprise that,
24 prior to such investment, was not owned or con-
25 trolled by—

"(i) the investor;

"(ii) any member of the immediate family of the investor; or

"(iii) any entity owned or controlled by any member of the immediate family of the investor.".

(d) CONFORMING AMENDMENTS TO CONDITIONAL PERMANENT STATUS PROVISIONS.—

(1) TERMINATION OF STATUS IF FINDING THAT QUALIFYING ENTREPRENEURSHIP IMPROPER.—Section 216A(b)(1)(B) of such Act (8 U.S.C. 1186b(b)(1)(B)) is amended to read as follows:

"(B)(i) the alien—

"(I) did not invest, or was not actively in the process of investing, the requisite capital described in section 203(b)(5)(A)(i)(I), or was not sustaining such actions throughout the period of the alien's residence in the United States; or

"(II) did not complete an investment agreement described in subclause (II) or (III) of section 203(b)(5)(A)(i), or such agreement was not carried out or was not actively in the process of being carried out; or

"(ii) the commercial enterprise did not—

"(I) create the minimum number of jobs required to be created under section 203(b)(5)(A)(ii); or

"(II) generate a profit and at least $1,000,000 in revenue; or".

(2) CONTENTS OF PETITION.—Section 216A(d)(1) of such Act (8 U.S.C. 1186b(d)(1)) is amended—

(A) in the matter preceding subparagraph (A), by striking "that the alien—" and inserting "that—";

(B) by amending subparagraph (A) to read as follows:

"(A)(i) the alien—

"(I) invested, or was actively in the process of investing, the requisite capital described in section 203(b)(5)(A)(i)(I), and sustained such actions throughout the period of the alien's residence in the United States; or

"(II) completed an investment agreement described in subclause (II) or (III) of section 203(b)(5)(A)(i), and such agree-

ment was carried out or was actively in the process of being carried out; and

"(ii) the commercial enterprise—

"(I) created the minimum number of jobs required to be created under section 203(b)(5)(A)(ii); or

"(II) generated a profit and at least $1,000,000 in revenue; and"; and

(C) in subparagraph (B), by inserting "the alien" before "is otherwise".

CHAPTER 5—EFFECTIVE DATE

SEC. 599B. APPLICATION.

Except as specifically otherwise provided, the amendments made by this title shall apply to applications filed on or after the date of the enactment of this Act.

TITLE VI—INTEGRATION OF NEW AMERICANS

Subtitle A—Citizenship Promotion

SEC. 601. IMMIGRATION SERVICE FEES.

(a) IN GENERAL.—Subsection (m) of section 286 of the Immigration and Nationality Act (8 U.S.C. 1356(m)) is amended to read as follows:

"(m) IMMIGRATION SERVICE FEES.—

"(1) IN GENERAL.—Except as provided in paragraph (2) and notwithstanding any other provision

of law, all adjudication fees as are designated by the Secretary of Homeland Security in regulations shall be deposited as offsetting receipts into a separate account entitled 'Immigration Examinations Fee Account' in the Treasury of the United States, whether collected directly by the Secretary or through clerks of courts.

"(2) VIRGIN ISLANDS AND GUAM.—All fees received by the Secretary of Homeland Security from applicants residing in the Virgin Islands of the United States, or in Guam, under this subsection shall be paid over to the treasury of the Virgin Islands or to the treasury of Guam, respectively.

"(3) FEES FOR IMMIGRATION SERVICES.—

"(A) IN GENERAL.—Subject to subparagraph (B), the Secretary of Homeland Security may set fees for providing immigration services at a level that will—

"(i) ensure recovery of the full costs of providing such services, or a portion thereof, including the costs of similar services provided without charge to asylum applicants or other immigrants; and

"(ii) recover the full cost of administering the collection of fees under this paragraph, or a portion thereof.

"(B) REPORT REQUIREMENT.—The Secretary of Homeland Security may not increase any fee under this paragraph above the level of such fee on the day before the date of the introduction of the Citizenship Promotion Act of 2009, until—

"(i) the Secretary submits to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report that—

"(I) identifies the direct and overhead costs associated with providing immigration services, and distinguishes such costs from immigration enforcement and national security costs;

"(II) identifies the costs allocable to providing the premium processing services to business customers prescribed by section 286(u) of this Act; describes the extent to which the fee prescribed in that section is set at a

level that ensures recovery of those costs; and identifies the amount of funding that is being allocated for the infrastructure improvements in the adjudications and customer-service processes as prescribed by that section; and

"(III) contains information regarding the amount the fee will be increased; and

"(ii) a period of 45 days has expired beginning on the date that the report in clause (i) is received by the committees described in such clause.

"(4) WAIVERS OF FEES FOR IMMIGRATION SERVICES.—

"(A) Except as otherwise provided in this paragraph, any of the fees for immigration services described in paragraph (3)(A) of this section may be waived by the Department of Homeland Security in any case under its jurisdiction in which the alien or other party affected is able to substantiate that he or she is unable to pay the prescribed fee. The person seeking a fee waiver must file his or her affi-

davit, or unsworn declaration made pursuant to section 1746 of title 28, United States Code, asking for permission to prosecute without payment of fee of the application, petition, appeal, motion, or request, and stating his or her belief that he or she is entitled to or deserving of the benefit requested and the reasons for his or her inability to pay. The officer of the Department of Homeland Security having jurisdiction to render a decision on the application, petition, appeal, motion, or request may, in his or her discretion, grant the waiver of fee. The payment of the additional sum prescribed by section 245(i) of the Act when applying for adjustment of status under section 245 of the Act may not be waived. The fee for the employment-based petitions and applications prescribed by section 286(u) of the Act may not be waived.

"(B) The Secretary of Homeland Security shall prescribe by regulations the criteria that applicants must meet for the approval of the waivers of fees in subparagraph (A), and the documentation that applicants must submit to substantiate that they meet such criteria. The regulations shall include a form for the affidavit

or declaration described in subparagraph (A) that must be completed by applicants for the waivers of fees. An applicant shall be deemed to have substantiated that he or she is unable to pay the prescribed fee if—

"(i) the individual has demonstrated that within 180 days of the receipt of the application, he or she qualified for or received any public benefit funded in whole or in part by funds provided by the Federal Government that the Federal agency administering the Federal funds has determined to be a Federal 'means-tested public benefit' under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104–193; or

"(ii) the individual has demonstrated that his or her annual household income is at or below 125 percent of the poverty level, as indicated in the most recent Federal poverty guidelines set by the Secretary of Health and Human Services.".

(b) SENSE OF CONGRESS.—It is the sense of Congress that—

(1) the Secretary of Homeland Security should set fees under section 286(m)(3) of the Immigration and Nationality Act (8 U.S.C. 1356(m)(3)), as amended by subsection (a) of this section, at a level that ensures recovery of only the direct costs associated with the services described in such section 286(m)(3); and

(2) Congress should appropriate to the Secretary of Homeland Security such funds as may be necessary to cover the indirect costs associated with the services described in such section 286(m)(3).

(c) TECHNICAL AMENDMENT.—Section 286 of the Immigration and Nationality Act (8 U.S.C. 1356) is amended—

(1) in subsections (d), (e), (f), (h), (i), (j), (k), (l), (n), (o), (q), (t), and (u), by striking ''Attorney General'' each place it appears and inserting ''Secretary of Homeland Security'';

(2) in subsection (i) of such section, by striking ''Attorney General's'' and inserting ''Secretary's''; and

(3) in subsection (r)—

(A) in paragraph (2), by striking ''Department of Justice'' and inserting ''Department of Homeland Security''; and

(B) in paragraphs (3) and (4), by striking "Attorney General" each place it appears and inserting "Secretary of Homeland Security".

(d) FUNDING.—Fees and fines deposited in the Security and Prosperity Account under section 286(w)(3)(B) of the Immigration and Nationality Act may be used to carry out this section.

SEC. 602. ADMINISTRATION OF TESTS FOR NATURALIZATION; FULFILLMENT BY ELDERLY PERSONS OF REQUIREMENT FOR NATURALIZATION RELATING TO KNOWLEDGE OF ENGLISH LANGUAGE.

(a) IN GENERAL.—Subsection (a) of section 312 of the Immigration and Nationality Act (8 U.S.C. 1423) is amended to read as follows:

"(a) NATURALIZATION TEST.—

"(1) REQUIREMENTS.—Except as otherwise provided in this title, a person may not be naturalized as a citizen of the United States upon the application of such person if such person cannot demonstrate the following:

"(A) An understanding of the English language, including an ability to read, write, and speak words in the ordinary usage in the English language.

"(B) A knowledge and understanding of—

"(i) the fundamentals of the history of the United States; and

"(ii) the principles and form of government of the United States.

"(2) TESTING.—

"(A) UNIFORMITY OF TEST ADMINISTRATION.—The Secretary of Homeland Security, in administering any test that the Secretary uses to determine whether an applicant for naturalization as a citizen of the United States has the proficiency and knowledge sufficient to meet the requirements of paragraph (1), shall administer such test uniformly throughout the United States, including the application of the criteria set forth in subparagraph (B).

"(B) CONSIDERATION.—In selecting and phrasing items in the administration of a test described in subparagraph (A) and in evaluating the performance of an applicant on such test, the Secretary shall consider the following:

"(i) The age of the applicant.

"(ii) The education level of the applicant.

"(iii) The amount of time the applicant has resided in the United States.

"(iv) The efforts made by the applicant, and the opportunities available to the applicant, to acquire the knowledge and proficiencies required by paragraph (1).

"(v) Such other factors as the Secretary considers appropriate.

"(C) ENGLISH LANGUAGE TESTING.—The requirement in paragraph (1)(A) shall be satisfactorily met if an applicant can—

"(i) speak words in ordinary usage in the English language; and

"(ii) read or write simple words and phrases in ordinary usage in the English language.

"(D) PROHIBITION ON EXTRAORDINARY AND UNREASONABLE CONDITIONS.—The Secretary may not impose any extraordinary or unreasonable condition on any applicant seeking to meet the requirements of paragraph (1).".

(b) PROMOTING CITIZENSHIP AMONG THE ELDERLY.—Subsection (b) of such section is amended—

(1) in paragraph (1), by striking "subsection (a)" and inserting "subsection (a)(1)";

(2) by amending paragraph (2) to read as follows:

"(2) The requirement of subsection (a)(1)(A) shall not apply to any person who, on the date of the filing of the person's application for naturalization as provided in section 334—

"(A) is over 50 years of age and has been living in the United States for periods totaling at least twenty years subsequent to a lawful admission for permanent residence,

"(B) is over 55 years of age and has been living in the United States for periods totaling at least 15 years subsequent to a lawful admission for permanent residence; or

"(C) is over 60 years of age and has been living in the United States for periods totaling at least 5 years subsequent to a lawful admission for permanent residence.".

SEC. 603. VOLUNTARY ELECTRONIC FILING OF APPLICATIONS.

The Secretary of Homeland Security may not require that an applicant or petitioner for permanent residence or citizenship of the United States use an electronic method to file any application to, or access a customer account.

SEC. 604. TIMELY BACKGROUND CHECKS.

(a) STUDY.—

(1) IN GENERAL.—The Comptroller General of the United States shall conduct a study on the process used by the Department of Justice or the Department of Homeland Security on the day before the date of the enactment of this Act to conduct a background check on an applicant for citizenship of the United States.

(2) REPORT.—Not later than 1 year after the date of the enactment of this Act and annually thereafter, the Comptroller General of the United States shall report to Congress on the findings of the study required by paragraph (1).

(3) CONTENTS OF REPORT.—The report required by paragraph (2) shall include the following information with respect to the calendar year preceding the date on which the report is filed:

(A) The number of background checks conducted by the Department of Justice or the Department of Homeland Security on applicants for citizenship of the United States.

(B) The types of such background checks conducted.

(C) The average time spent on each such type of background check.

(D) A description of the obstacles that impede the timely completion of such background checks.

(4) EXAMINATION OF NAME CHECK CONDUCTED BY THE DEPARTMENT OF JUSTICE.—The first report required by paragraph (2) shall also include an examination of the name check conducted by the Department of Justice to assess the extent to which the name check provides information relating to the eligibility of applicants for citizenship of the United States that is not otherwise provided by other background checks conducted by the Department of Justice or the Department of Homeland Security.

(b) TIMELY COMPLETION OF BACKGROUND CHECKS.—

(1) ATTORNEY GENERAL BACKGROUND CHECKS.—With respect to a request submitted to the Attorney General by the Secretary of Homeland Security for a background check on an applicant for temporary or permanent residence or citizenship of the United States, the Attorney General shall make a reasonable effort to complete a background check on such applicant not later than 90 days after the

Attorney General receives such request from the Secretary of Homeland Security.

(2) DEPARTMENT OF HOMELAND SECURITY BACKGROUND CHECKS.—With respect to background checks on an applicant for temporary or permanent residence or citizenship of the United States, the Secretary of Homeland Security shall make a reasonable effort to complete the background check on such applicant not later than 90 days after the date the application is received by the Department of Homeland Security.

(3) DELAYS ON ATTORNEY GENERAL BACKGROUND CHECKS.—If a background check described in paragraph (1) is not completed by the Attorney General before the date that is 91 days after the date that the Attorney General receives a request described in paragraph (1)—

(A) the Attorney General shall document the reason why such background check was not completed before such date; and

(B) if such background check is not completed before the date that is 181 days after the date of such receipt, then the Attorney General shall, not later than 210 days after the date of such receipt, submit to the appropriate congres-

sional committees and the Secretary of Homeland Security a report that describes—

(i) the reason that such background check was not completed within 180 days; and

(ii) the earliest date on which the Attorney General is certain the background check will be completed.

(4) DELAYS ON DEPARTMENT OF HOMELAND SECURITY BACKGROUND CHECKS.—If a background check described in paragraph (2) is not completed by the Secretary of Homeland Security before the date that is 91 days after the date that the Department of Homeland Security receives the application described in paragraph (2)—

(A) the Secretary of Homeland Security shall document the reason why such background check was not completed before such date; and

(B) if such background check is not completed before the date that is 181 days after the date of such receipt, then the Secretary of Homeland Security shall, not later than 210 days after the date of such receipt, submit to

the appropriate congressional committees a report that describes—

(i) the reason that such background check was not completed within 180 days; and

(ii) the earliest date on which the Secretary of Homeland Security is certain the background check will be completed.

(5) ANNUAL REPORT ON DELAYED ATTORNEY GENERAL BACKGROUND CHECKS.—Not later than the end of each fiscal year, the Attorney General shall submit to the appropriate congressional committees a report containing, with respect to that fiscal year—

(A) the number of background checks described in subparagraph (B) of paragraph (3);

(B) the time taken to complete each such background check;

(C) a statistical analysis of the causes of the delays in completing such background checks; and

(D) a description of the efforts being made by the Attorney General to address each such cause.

(6) NOTIFICATION TO APPLICANT.—If, with respect to a background check on an applicant described in paragraph (2), the Secretary of Homeland Security is required to furnish a report under paragraph (3)(B), then the Secretary shall provide to such applicant a copy of such report, redacted to remove any classified information contained therein.

(7) ANNUAL REPORT ON DELAYED HOMELAND SECURITY BACKGROUND CHECKS.—Not later than the end of each fiscal year, the Secretary of Homeland Security shall submit to the appropriate congressional committees a report containing, with respect to that fiscal year—

(A) the number of background checks described in subparagraph (B) of paragraph (4);

(B) the time taken to complete each such background check;

(C) a statistical analysis of the causes of the delays in completing such background checks; and

(D) a description of the efforts being made by the Secretary of Homeland Security to address each such cause.

(8) NOTIFICATION TO APPLICANT.—If, with respect to a background check on an applicant de-

scribed in paragraph (2), the Secretary of Homeland Security is required to furnish a report to the appropriate congressional committees under subsection (b)(4)(B), then the Secretary shall provide to such applicant a copy of such report, redacted to remove any classified information contained therein.

(9) APPROPRIATE CONGRESSIONAL COMMITTEES.—In this subsection, the term ''appropriate congressional committees'' means the following:

(A) The Committee on the Judiciary of the Senate.

(B) The Committee on Homeland Security and Governmental Affairs of the Senate.

(C) The Committee on the Judiciary of the House of Representatives.

(D) The Committee on Homeland Security of the House of Representatives.

(10) FUNDING.—Fees and fines deposited in the Security and Prosperity Account under section 286(w)(3)(B) of the Immigration and Nationality Act may be used to carry out this section.

SEC. 605. NATIONAL CITIZENSHIP PROMOTION PROGRAM.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—Not later than 6 months following the date of enactment of this Act, the Sec-

retary of Homeland Security shall establish a program to assist aliens who have been lawfully admitted for permanent residence in becoming citizens of the United States.

(2) DESIGNATION.—The program required by paragraph (1) shall be known as the ''New Americans Initiative'' (in this section referred to as the ''Program'').

(b) PROGRAM ACTIVITIES.—As part of the Program required by subsection (a), the Secretary of Homeland Security shall—

(1) award grants in accordance with subsection (c); and

(2) carry out outreach activities in accordance with subsection (d).

(c) GRANTS TO SUPPORT NATURALIZATION EFFORTS.—

(1) IN GENERAL.—The Secretary of Homeland Security shall award grants to eligible entities to assist aliens who have been lawfully admitted for permanent residence in becoming citizens of the United States.

(2) ELIGIBLE ENTITY DEFINED.—In this subsection, the term ''eligible entity'' means a not-for-

1 profit organization that has experience working with
2 immigrant communities.
3 (3) USE OF FUNDS.—Grants awarded under
4 this subsection shall be used for activities to assist
5 aliens who have been lawfully admitted for perma-
6 nent residence in becoming citizens of the United
7 States, including—
8 (A) conducting English language and citi-
9 zenship classes for such aliens;
10 (B) providing legal assistance, by attorneys
11 or entities recognized by the Board of Immigra-
12 tion Appeals, to such aliens to assist such aliens
13 in becoming citizens of the United States;
14 (C) carrying out outreach activities and
15 providing education to immigrant communities
16 to assist such aliens in becoming citizens of the
17 United States; and
18 (D) assisting such aliens with applications
19 to become citizens of the United States, as al-
20 lowed by Federal and State law.
21 (4) APPLICATION FOR GRANT.—
22 (A) IN GENERAL.—Each eligible entity
23 seeking a grant under this subsection shall sub-
24 mit an application to the Secretary of Home-
25 land Security at such time, in such manner,

and accompanied by such information as the Secretary shall require.

(B) CONTENTS.—Each application submitted pursuant to subparagraph (A) shall include a description of—

(i) the activities for which a grant under this section is sought;

(ii) the manner in which the entity plans to leverage available private and State and local government resources to assist aliens who have been lawfully admitted for permanent residence in becoming citizens of the United States;

(iii) the experience of the entity in carrying out the activities for which a grant under this section is sought, including the number of aliens and geographic regions served by such entity; and

(iv) the manner in which the entity plans to employ best practices developed by adult educators, State and local governments, and community organizations—

(I) to promote citizenship and civic participation by such aliens; and

(II) to provide assistance to such aliens with the process of becoming citizens of the United States.

(d) OUTREACH.—The Secretary of Homeland Security shall—

(1) develop outreach materials targeted to aliens who have been lawfully admitted for permanent residence to encourage such aliens to apply to become citizens of the United States; and

(2) make such outreach materials available through—

(A) public service announcements;

(B) advertisements; and

(C) such other media as the Secretary determines is appropriate.

(e) FUNDING.—Fees and fines deposited in the Security and Prosperity Account under section 286(w)(3)(B) of the Immigration and Nationality Act may be used to carry out this section.

SEC. 606. EFFECTIVE DATE.

The amendments made by this title shall take effect on the date of the enactment of this Act and shall apply to applications for naturalization pending on or after such date.

Subtitle B—Miscellaneous

SEC. 611. GRANTS TO SUPPORT PUBLIC EDUCATION AND COMMUNITY TRAINING.

(a) GRANTS AUTHORIZED.—The Assistant Attorney General, Office of Justice Programs, may award grants to qualified nonprofit community organizations to educate, train, and support non-profit agencies, immigrant communities, and other interested entities regarding the provisions of this Act and the amendments made by this Act.

(b) USE OF FUNDS.—

(1) IN GENERAL.—Grants awarded under this section shall be used—

(A) for public education, training, technical assistance, government liaison, and all related costs (including personnel and equipment) incurred by the grantee in providing services related to this Act; and

(B) to educate, train, and support non-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) FUNDING.—Fees and fines deposited in the Security and Prosperity Account under section 286(w)(3)(B) of the Immigration and Nationality Act may be used to carry out this section.

SEC. 612. GRANT PROGRAM TO ASSIST APPLICANTS FOR NATURALIZATION.

(a) PURPOSE.—The purpose of this section is to establish a grant program within United States 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 naturalization.

(b) 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 (c).

(c) ESTABLISHMENT OF INITIAL ENTRY, ADJUSTMENT, AND CITIZENSHIP ASSISTANCE GRANT PROGRAM.—

(1) GRANTS AUTHORIZED.—The Secretary, working through the Director of United States 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 conditional

nonimmigrant or conditional nonimmigrant dependent classification under section 401. Such assistance may include assisting applicants in—

(i) screening to assess prospective applicants' potential eligibility for participating in such program;

(ii) filling out applications for such program;

(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 section 401.

(B) ADJUSTMENT OF STATUS.—Assistance and instruction, including legal assistance, to aliens seeking to adjust their status in accordance with section 402 of this Act or section 245 of the Immigration and Nationality Act (8 U.S.C. 1255).

(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.—Subject to subparagraph (B), 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 the 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 residents who were born in foreign countries; 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 eth-

nically diverse population, to the greatest extent possible.

(d) LIAISON BETWEEN USCIS AND GRANTEES.—The Secretary shall establish a liaison between United States 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.

(e) REPORTS TO CONGRESS.—Not later than 180 days after the date of enactment of this Act, and July 1 of each subsequent year, 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 activities carried out with such grants.

(f) SOURCE OF GRANT FUNDS.—

(1) APPLICATION FEES.—The Secretary may use funds made available under section 401(g)(2)(A) of this Act and section 218A(b)(3) of the Immigration and Nationality Act, as added by this Act, to carry out this section.

(2) FUNDING.—Fees and fines deposited in the Security and Prosperity Account under section

286(w)(3)(B) of the Immigration and Nationality Act may be used to carry out this section.

(g) DISTRIBUTION OF CONDITIONAL NONIMMIGRANT VISA FEES AND FINES.—Notwithstanding section 401(g)(2)(B), 2 percent of the fees and fines collected under section 401 shall be made available for grants under the Initial Entry, Adjustment, and Citizenship Assistance Grant Program established under this section.

SEC. 613. NATURALIZATION FOR CERTAIN U.S. HIGH SCHOOL GRADUATES.

(a) IN GENERAL.—Title III of the Immigration and Nationality Act (8 U.S.C. 1401 et seq.) is amended by inserting after section 320 the following:

"SEC. 321. CITIZENSHIP FOR CERTAIN U.S. HIGH SCHOOL GRADUATES.

"(a) REQUIREMENTS DEEMED SATISFIED.—In the case of an alien described in subsection (b), the alien shall be deemed to have satisfied the requirements of section 312(a).

"(b) ALIENS DESCRIBED.—An alien is described in this subsection if the alien is under 25 years of age on the date on which the alien submits an application for naturalization under section 334 that contains the following:

"(1) Transcripts from public or private schools in the United States that demonstrate the following:

"(A) The alien completed grades 6 through 12 in the United States and was graduated with a high school diploma.

"(B) The alien completed a curriculum that reflects knowledge of United States history, Government, and civics.

"(2) A copy of the alien's high school diploma.

"(c) REDUCED FEE.—The Secretary of Homeland Security shall reduce the naturalization application fee for an alien described in subsection (b) by 50 percent.".

(b) CLERICAL AMENDMENT.—The table of contents for the Immigration and Nationality Act is amended by inserting after the item relating to section 320 the following:

"Sec. 321. Citizenship for certain U.S. high school graduates.".

(c) APPLICABILITY.—The amendments made by this Section shall take effect on the date of the enactment of this Act and shall apply to applicants for naturalization who apply for naturalization on or after such date.

(d) REGULATIONS.—The Secretary of Homeland Security shall promulgate regulations to carry out this Section and the amendments made by this Section not later than 180 days after the date of the enactment of this Act.

SEC. 614. FAMILY INTEGRATION.

Section 201 of the Immigration and Nationality Act (8 U.S.C. 1151) is amended by striking in subsection

(b)(2)(A)(i) the number ''21'' and inserting the number ''18''.

SEC. 615. CONSIDERATION FOR DOMESTIC RESETTLEMENT OF REFUGEES.

Section 412 is amended as follows:

(1) In subsection (a)(2)(C)(i) strike ''insure'' and insert ''ensure''.

(2) At the end, add the following:

''(V) the geography, climate and environmental composition of the proposed resettlement area compared with that of the geography, climate and environmental composition of their country of origin.''.

SEC. 616. CREDITS FOR TEACHERS OF ENGLISH LANGUAGE LEARNERS.

(a) IN GENERAL.—Subpart A of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to nonrefundable personal credits) is amended by inserting after section 25D the following new section:

''SEC. 25E. TEACHERS OF ENGLISH LANGUAGE LEARNERS.

''(a) IN GENERAL.—In the case of an eligible teacher, there shall be allowed a credit against the tax imposed by this chapter for the taxable year an amount equal to—

"(1) $1,500, for each of the first 5 taxable years for which the taxpayer is allowed a credit under this section; and

"(2) $1,000, for any other taxable year.

"(b) CREDIT ALLOWED ONLY FOR 10 TAXABLE YEARS.—No credit shall be allowed under this section with respect to a taxpayer for any taxable year after the 10th taxable year for which such taxpayer is allowed a credit under this section.

"(c) ELIGIBLE TEACHER.—For purposes of this section—

"(1) IN GENERAL.—Except as provided in paragraph (2), the term 'eligible teacher' means, with respect to a taxable year, any individual who is—

"(A) a full-time teacher of English as a second language or bilingual instruction for the academic year ending in such taxable year, or

"(B) an eligible part-time teacher of English as a second language or bilingual instruction for the academic year ending in such taxable year.

"(2) ELIGIBLE PART-TIME TEACHER.—The term 'eligible part-time teacher' means, with respect to a taxable year, an individual who teaches at least 20 hours per week during the academic year ending

in such taxable year. Such term does not include any individual who is a full-time teacher of English as a second language during such academic year.

"(3) SPECIAL RULE.—In the case of an eligible part-time teacher, subsection (a) shall be applied by substituting '$375' for '$750' and by substituting '$250' for '$500'.".

(b) CLERICAL AMENDMENT.—The table of sections for such subpart is amended by inserting after the item relating to section 25D the following new item:

"Sec. 25E. Teachers of English language learners.".

(c) TEACHER CERTIFICATION EXPENSES.—Part VII of subchapter B of chapter 1 of the Internal Revenue Code of 1986 (relating to additional itemized deductions for individuals) is amended by redesignating section 224 as section 225 and by inserting after section 223 the following new section:

"SEC. 224. CERTIFICATION EXPENSES FOR TEACHERS OF ENGLISH LANGUAGE LEARNERS.

"(a) IN GENERAL.—In the case of an individual, there shall be allowed a deduction for eligible teacher certification expenses paid or incurred by the taxpayer for the taxable year.

"(b) ELIGIBLE TEACHER CERTIFICATION EXPENSES.—The term 'eligible teacher certification expenses'—

"(1) means the tuition and fees required for the enrollment or attendance of the taxpayer at an eligible educational institution (as defined in section 25A) for a course which is required for certification or licensure of such individual as qualified to provide English as a second language or bilingual instruction to elementary or secondary school students who are limited English proficient (as defined in section 9901 of the Elementary and Secondary Education Act of 1965); and

"(2) shall not include any amounts that are—

"(A) used for a course that is part of the individual's degree program; or

"(B) funded by another person or any governmental entity.

"(c) DENIAL OF DOUBLE BENEFIT.—No deduction shall be allowed under this section for any expense for which a deduction or credit is allowed under any other provision of this chapter.

"(d) TERMINATION.—This section shall not apply to expenses paid or incurred after December 31, 2014.".

(d) CERTIFICATION DEDUCTION ALLOWED WHETHER OR NOT TAXPAYER ITEMIZES OTHER DEDUCTIONS.—Subsection (a) of section 62 of such Code is amended by

1 inserting after paragraph (21) the following new para-
2 graph:

3 "(22) TEACHER CERTIFICATION EXPENSES.—
4 The deduction allowed by section 224.".

5 (e) CLERICAL AMENDMENT.—The table of sections
6 for part VII of subchapter B of chapter 1 of such Code
7 is amended by striking the last item and inserting the fol-
8 lowing new item:

"Sec. 224. Certification expenses for teachers of English language learners.".

9 (f) REGULATIONS.—Not later than 180 days after
10 the date of the enactment of this Act, the Secretary of
11 the Treasury shall promulgate regulations implementing
12 the provisions of this section.

13 (g) EFFECTIVE DATE.—The amendments made by
14 this section shall apply to taxable years beginning after
15 December 31, 2009.

16 **SEC. 617. CREDITS FOR EMPLOYER-PROVIDED ADULT**
17 **ENGLISH LITERACY AND BASIC EDUCATION**
18 **PROGRAMS.**

19 (a) IN GENERAL.—Subpart D of part IV of sub-
20 chapter A of chapter 1 of the Internal Revenue Code of
21 1986 (relating to business related credits) is amended by
22 adding at the end the following:

"SEC. 45R. EMPLOYER-PROVIDED ADULT ENGLISH LITERACY AND BASIC EDUCATION PROGRAMS.

"(a) IN GENERAL.—For the purposes of section 38, the credit determined under this section with respect to any employer for the taxable year is an amount equal to 20 percent of qualified education program expenses, but in no case shall the employer receive a credit in an amount of more than $1,000 per full-time employee participating in the qualified education program.

"(b) QUALIFIED EDUCATION PROGRAM EXPENSES.—For purposes of this section—

"(1) IN GENERAL.—The term 'qualified education program expenses' means expenses paid or incurred by an employer to make available qualified education to employees of the employer, who—

"(A) are English language learners; and

"(B)(i) have not received a secondary school diploma, or its recognized equivalent; or

"(ii) lack sufficient mastery of basic educational skills, including financial literacy, to enable the individuals to function effectively in society.

"(2) QUALIFIED EDUCATION.—The term 'qualified education' means adult education and literacy activities provided—

"(A) by an eligible provider which for the fiscal year ending during the employer's taxable year receives or is eligible to receive Federal funds under section 231 of the Adult Education and Family Literacy Act for adult education and literacy activities; or

"(B) in curriculum approved by the Department of Education, the Employment and Training Administration of the Department of Labor, or in current use by a Federal agency.

"(3) ELIGIBLE PROVIDER; ADULT EDUCATION AND LITERACY ACTIVITIES.—The terms 'eligible provider' and 'adult education and literacy activities' shall have the respective meanings given to such terms in section 203 of the Adult Education and Family Literacy Act.

"(4) ENGLISH LANGUAGE LEARNER.—The term 'English language learner' shall have the same meaning given to such term in section 9101(25) of the Elementary and Secondary Education Act of 1965.

"(c) SPECIAL RULES.—For purposes of this section—

"(1) FULL-TIME EMPLOYMENT.—An employee shall be considered full-time if such employee is em-

ployed at least 30 hours per week for 25 or more calendar weeks in the taxable year.

"(2) AGGREGATION RULE.—All persons treated as a single employer under subsection (a) or (b) or section 52, or subsection (m) or (o) of section 414, shall be treated as 1 person.

"(d) DENIAL OF DOUBLE BENEFIT.—No deduction or credit shall be allowed under any other provision of this chapter for any amount taken into account in determining the credit under this section.

"(e) TERMINATION.—This section shall not apply to expenses paid or incurred after December 31, 2014.".

(b) CREDIT TO BE PART OF GENERAL BUSINESS CREDIT.—Subsection (b) of section 38 of such Code (relating to the current year business credit) is amended—

(1) by striking "plus" at the end of paragraph (34);

(2) by striking the period at the end of paragraph (35) and inserting ", plus"; and

(3) by adding at the end the following new paragraph:

"(36) the adult English literacy and basic education programs credit determined under section 45R.".

(c) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1 of the such Code is amended by adding at the end the following new item:

"Sec. 45R. Employer-provided adult English literacy and basic education programs.".

(d) REGULATIONS.—Not later than 180 days after the date of the enactment of this Act, the Secretary of the Treasury shall promulgate regulations implementing the provisions of this section.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2009.

SEC. 618. GRANTS TO STATES TO FORM NEW AMERICAN COUNCILS.

(a) AUTHORITY TO PROVIDE GRANTS.—Subject to subsections (c) and (d), the Chief of the Office of Citizenship and Immigrant Integration is authorized to provide competitive grants to States to form State New American Councils as described in subsection (b) to carry out activities described in section 303.

(b) STATE NEW AMERICAN COUNCILS.—A State New American Council shall consist of not less than 15 and not more than 19 individuals from the State and shall include, to the extent practicable, representatives from the following sectors:

(1) Business.

(2) Faith-based organizations.

(3) Civic organizations.

(4) Philanthropic leaders.

(5) Nonprofit organizations, including those with experience working with immigrant communities.

(6) Representatives from key education stakeholders, such as State educational agencies, local educational agencies, community colleges, teachers, or organizations representing teachers and other employees.

(7) Representatives of State adult education offices.

(8) Representatives of State or local public libraries.

(9) Representatives of statewide or local government officials.

(c) WAIVER OF REQUIREMENT.—

(1) AUTHORITY TO GRANT.—The Chief of the Office of Citizenship and Immigrant Integration may award a grant under subsection (a) to a State without requiring the State to form a State New American Council if the Chief determines that the State is carrying out similar statewide initiatives to

1 introduce immigrants into the State and into the
2 United States.
3 (2) GUIDELINES.—The Chief shall establish
4 guidelines for awarding grants to States described in
5 paragraph (1).
6 (d) GRANTS TO LOCAL GOVERNMENTS.—The Chief
7 of the Office of Citizenship and Immigrant Integration
8 may provide a grant under subsection (a) to a local gov-
9 ernment at the discretion of the Chief.
10 (e) APPLICATION.—To be eligible to receive a grant
11 under this section, an applicant shall submit an applica-
12 tion to the Chief of the Office of Citizenship and Immi-
13 grant Integration at such time, in such manner, and con-
14 taining such information as the Chief may reasonably re-
15 quire. Such application shall include—
16 (1) if the applicant is a State seeking to form
17 a State New American Council, an assurance that
18 such State New American Council will meet the re-
19 quirements of subsection (b);
20 (2) the number of immigrants in the State in
21 which the applicant is located;
22 (3) a description of the challenges in intro-
23 ducing new Americans in the State and local com-
24 munity; and

(4) any other information that the Chief may reasonably require.

(f) DURATION.—A grant awarded under subsection (a) shall be for a period of 5 years.

(g) PRIORITY.—Priority shall be given to grant applications that—

(1) use matching funds, from non-Federal sources, which may include in-kind contributions; and

(2) demonstrate collaboration with private entities to achieve the goals of their comprehensive plan.

(h) ADDITIONAL CONSIDERATION.—Additional consideration shall be given to grant applications submitted by States with a large increase in the population of immigrants over the previous 10 years relative to past migration patterns, based on data compiled by the Office of Immigration Statistics of the Department of Homeland Security.

(i) GRANT AMOUNT.—The amount of a grant awarded under subsection (a) shall be not less than $500,000 and not more than $5,000,000 for each fiscal year.

(j) RESERVATIONS.—

(1) NATIONAL.—The Chief of the Office of Citizenship and Immigrant Integration shall reserve not more than 1 percent of the amount appropriated to

carry out this section for such Office, including the evaluation of funds distributed.

(2) STATES.—A State awarded a grant under subsection (a) may reserve not more than 10 percent of such grant amount for the creation and operation of the State New American Council.

(k) FUNDING.—Fees and fines deposited in the Security and Prosperity Account under section 286(w)(3)(B) of the Immigration and Nationality Act may be used to carry out this section.

SEC. 619. INDEPENDENCE DAY CEREMONIES FOR OATHS OF ALLEGIANCE.

(a) IN GENERAL.—The Secretary of Homeland Security shall make available funds each fiscal year to the Director of U.S. Citizenship and Immigration Services or to public or private nonprofit entities to support public ceremonies for administering oaths of allegiance under section 337(a) of the Immigration and Nationality Act (8 U.S.C. 1448(a)) to legal immigrants whose applications for naturalization have been approved.

(b) CEREMONIES.—A ceremony conducted with funds under this section—

(1) shall be held on a date that is on or near Independence Day; and

(2) shall include appropriate outreach, ceremonial, and celebratory activities.

(c) SELECTION OF SITES.—

(1) IN GENERAL.—The Secretary of Homeland Security shall select the site for each ceremony conducted with funds under this section.

(2) SELECTION PROCESS.—In selecting a site under paragraph (1), the Secretary of Homeland Security should consider—

(A) the number of naturalization applicants living in proximity to the site; and

(B) the degree of participation in and support for the ceremony by the local community at the site.

(d) AMOUNTS AVAILABLE; USE OF FUNDS.—

(1) AMOUNTS AVAILABLE.—Amounts made available under this section for each ceremony shall not exceed $5,000.

(2) USE OF FUNDS.—Funds made available under this section may be used only for the following:

(A) Costs of personnel of the Department of Homeland Security and the Federal judiciary (including travel and overtime expenses).

(B) Site rental, including audio equipment rental.

(C) Logistical requirements, including sanitation.

(D) Costs for printing brochures about the naturalization participants and the naturalization process.

(3) FUNDING.—Fees and fines deposited in the Security and Prosperity Account under section 286(w)(3)(B) of the Immigration and Nationality Act may be used to carry out this section.

(e) APPLICATION.—No amount may be made available under this section to an entity that is not part of the Department of Homeland Security, for supporting a ceremony described in subsection (b), unless—

(1) the entity submits an application to the Secretary of Homeland Security, in a form and manner specified by the Secretary of Homeland Security; and

(2) the Secretary of Homeland Security approves the application.

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