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112TH CONGRESS
1ST SESSION

S. 1258

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

IN THE SENATE OF THE UNITED STATES

JUNE 22, 2011

Mr. MENENDEZ (for himself, Mr. REID, Mr. LEAHY, Mr. DURBIN, Mr. SCHUMER, Mr. KERRY, Mrs. MURRAY, and Mrs. GILLIBRAND) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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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.

This Act may be cited as the "Comprehensive Immigration Reform Act of 2011".

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Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms as 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.—The term ''Department'' means the Department of Homeland Security.

(2) NORTHERN BORDER.—The term ''Northern border'' means the international land border between the United States and Canada.

(3) SECRETARY .—The term ''Secretary'' means the Secretary of Homeland Security.

(4) SOUTHERN BORDER.—The term ''Southern border'' means the international land border between the United States and Mexico.

TITLE I—IMMIGRATION REGISTRATION AND EMPLOYMENT

Subtitle A—Registration of Undocumented Individuals, the Dream Act, Family Unity, and AgJobs

PART I—LAWFUL PROSPECTIVE IMMIGRANT STATUS

SEC. 111. LAWFUL PROSPECTIVE IMMIGRANT STATUS.

(a) IN GENERAL.—

(1) AUTHORITY TO GRANT LAWFUL PROSPECTIVE IMMIGRANT STATUS.—Notwithstanding any other provision of law, the Secretary may grant lawful prospective immigrant status to an alien who—

(A) submits an application for such status; and

(B) meets the requirements under this section.

(2) TREATMENT OF APPLICANTS.—An applicant for lawful prospective immigrant status under this section shall be treated as an applicant for admission to the United States.

(b) ELIGIBILITY REQUIREMENTS.—

(1) IN GENERAL.—

(A) INADMISSIBILITY.—Except as provided in paragraph (3), an alien may not be granted lawful prospective immigrant status if the alien is inadmissible under section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)).

(B) PHYSICAL PRESENCE.—An alien may not be granted lawful prospective immigrant status under this section unless the alien—

(i) is physically present in the United States on the date on which alien applies for such status;

(ii) was physically present in the United States before June 1, 2011; and

(iii) has maintained continuous physical presence in the United States between June 1, 2011 and the date on which the alien is granted such status.

(2) GROUNDS OF INELIGIBILITY.—

(A) IN GENERAL.—An alien is ineligible for lawful prospective immigrant status under this section if the Secretary determines that the alien—

(i) was convicted of any offense under Federal or State law punishable with a

maximum term of imprisonment of more than 1 year;

(ii) is a person described in subparagraph (A)(iii), (E)(i), or (E)(ii) of section 237(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1227(a)(2));

(iii) 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;

(iv) is entering, has entered, or has attempted to enter, the United States illegally on or after June 1, 2011; or

(v) was, as of June 1, 2011—

(I) an alien lawfully admitted for permanent residence;

(II) an alien granted asylum under section 208 of the Immigration and Nationality Act or admitted as a refugee under section 207 of such Act;

(III) an alien who, according to the records of the Secretary, and notwithstanding any unauthorized em-

ployment or other violation of nonimmigrant status—

(aa) is in a period of authorized stay in any nonimmigrant status (other than an alien considered to be in a nonimmigrant status solely by reason of section 244(f)(4) of such Act); and

(bb) has been in the United States in a nonimmigrant status for 5 consecutive years;

(IV) an alien paroled into the United States under section 212(d)(5) of such Act for purposes of prosecution or of serving as a witness in proceedings being, or to be, conducted by judicial, administrative, or legislative bodies in the United States; or

(V) an alien paroled into the Commonwealth of the Northern Mariana Islands.

(B) CONSTRUCTION.—For purposes of determining ineligibility under this paragraph, section 101(a)(48) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(48)) shall apply

to determinations of conviction or sentencing for an offense.

(3) GROUNDS OF INADMISSIBILITY.—

(A) IN GENERAL.—In determining an alien's admissibility under paragraph (1)(B)—

(i) section 212(a)(5) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(5)) shall not apply;

(ii) paragraphs (6)(A), (6)(B), (6)(C), (6)(D), (6)(F), (6)(G), (7), (9), and (10)(B) of section 212(a) of such Act shall not apply with regard to conduct or unlawful presence occurring before the date of application;

(iii) the Secretary may not waive—

(I) subparagraphs (B), (C), (D)(ii), (E), (H), (I), or (J) 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);

(III) subparagraphs (A), (C), or (D) of section 212(a)(10) of such Act

(relating to polygamists and child abductors); or

(IV) paragraph (6)(A)(i) of section 212(a) of such Act (with respect to any entries occurring on or after June 1, 2011); and

(iv) the Secretary may waive the application of any provision under section 212(a) of such Act not listed under clause (iii) on behalf of an individual alien for humanitarian purposes, to ensure family unity, or if such waiver is otherwise in the public interest.

(B) CONSTRUCTION.—Nothing in this paragraph may be construed to—

(i) require the Secretary to commence removal proceedings against an alien; or

(ii) affect the authority of the Secretary other than under this paragraph to waive the provisions of section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)).

(4) CONTINUOUS PHYSICAL PRESENCE.—Any absence from the United States without authoriza-

tion pursuant to subsection (d)(1) shall constitute a break in continuous physical presence.

(5) APPLICABILITY OF OTHER PROVISIONS.—Sections 208(d)(6) and 240B(d) of the Immigration and Nationality Act (8 U.S.C. 1158(d)(6) and 1229c(d)) shall not apply to an alien with respect to an application for lawful prospective immigrant status under this section.

(c) APPLICATION PROCEDURES.—

(1) FILING OF APPLICATION.—

(A) IN GENERAL.—In accordance with the rulemaking procedures described in section 121—

(i) the Secretary shall prescribe by interim final rule published in the Federal Register—

(I) the procedures for an alien in the United States to apply for lawful prospective immigrant status;

(II) the procedures for an alien granted lawful prospective immigrant status to petition for a spouse or child outside the United States to be classified as a lawful prospective immigrant; and

(III) the evidence required to demonstrate eligibility for such status, or otherwise required as part of the application, including information about the alien's spouse or children; and

(ii) the Secretary of State shall prescribe by regulation published in the Federal Register—

(I) the procedures for an alien overseas who is the beneficiary of an approved petition for lawful prospective immigrant status to apply at a consulate for a visa or other appropriate documentation authorizing travel to a United States port of entry; and

(II) the evidence required to demonstrate eligibility for such documentation.

(B) RECEIPT OF APPLICATIONS.—The Secretary shall accept applications from aliens in the United States for lawful prospective immigrant status during the 1-year period beginning on the first day of the tenth month that begins

after the date of the enactment of this Act. If the Secretary determines, during such 1-year period, that additional time is required to process applications for such status or for other good cause, the Secretary may extend the period for accepting applications by not more than 6 additional months.

(C) APPLICATION BY ALIENS APPREHENDED BEFORE START OF APPLICATION PERIOD.—If an alien who is apprehended during the application period set forth in subparagraph (B) can establish prima facie eligibility for lawful prospective immigrant status under this section, the Secretary shall provide the alien with a reasonable opportunity to file an application under this section after regulations implementing this section are promulgated.

(D) APPLICATION BY ALIENS IN REMOVAL PROCEEDINGS.—Notwithstanding any provision of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.)—

(i) if the Secretary determines that an alien, during the application period set forth in subparagraph (B), is in removal, deportation, or exclusion proceedings be-

fore the Executive Office for Immigration Review and is prima facie eligible for lawful prospective immigrant status under this section—

(I) the Secretary shall notify the Executive Office for Immigration Review of such determination; and

(II) upon the consent of the alien, the Executive Office for Immigration Review shall—

(aa) terminate such proceedings without prejudice to future proceedings on any basis; and

(bb) provide the alien a reasonable opportunity to apply for such status; and

(ii) if the Executive Office for Immigration Review determines that an alien, during the application period set forth in subparagraph (B), is in removal, deportation, or exclusion proceedings before the Executive Office for Immigration Review and is prima facie eligible for lawful pro-

spective immigrant status under this section—

(I) the Executive Office of Immigration Review shall notify the Secretary of such determination; and

(II) if the Secretary does not dispute the determination of prima facie eligibility within 14 days, the Executive Office for Immigration Review, upon consent of the alien, shall—

(aa) terminate such proceedings without prejudice to future proceedings on any basis; and

(bb) permit the alien a reasonable opportunity to apply for such status.

(E) APPLICATION BY ALIENS WITH CERTAIN ORDERS.—

(i) IN GENERAL.—An alien who is present in the United States and has been ordered excluded, deported, or removed, or ordered to depart voluntarily from the United States under any provision of the Act—

(I) notwithstanding such order or section 241(a)(5) of the Immigration and Nationality Act (8 U.S.C. 1231(a)(5)), may apply for lawful prospective immigrant status under this section if the alien meets all of the other conditions set forth in this section; and

(II) shall not be required to file a separate motion to reopen, reconsider, or vacate the exclusion, deportation, removal, or voluntary departure order.

(ii) EFFECT OF GRANT OF STATUS.—If the Secretary grants lawful prospective immigrant status to an alien under this section, the order against the alien described in clause (i) shall be rendered null and void by operation of law.

(iii) EFFECT OF DENIAL OF STATUS.—If the Secretary renders a final administrative decision to deny an alien's application for lawful prospective immigrant status under this section, the order described in clause (i) shall be effective and

enforceable to the same extent as if the application had not been made.

(2) APPLICATION FORM.—

(A) IN GENERAL.—The Secretary shall create an application form that an alien shall be required to complete to be granted lawful prospective immigrant status.

(B) LANGUAGE AND ASSISTANCE.—The Secretary shall make available forms and accompanying instructions in the most common languages spoken by persons in the United States, as determined by the Secretary. The Secretary shall create a plan for providing reasonable accommodation to individuals with disabilities in accordance with applicable law.

(C) APPLICATION INFORMATION.—The application form created under this paragraph shall request such information as the Secretary determines necessary and appropriate. The application, and all information submitted as part of the application process, shall be submitted in English.

(3) SECURITY AND LAW ENFORCEMENT BACKGROUND CHECKS.—

(A) SUBMISSION OF BIOMETRIC AND BIOGRAPHIC DATA.—The Secretary may not grant lawful prospective immigrant status to an alien unless the alien submits biometric and biographic data in accordance with procedures established by the Secretary, or, with respect to overseas applications for visas or other documentation of status submitted pursuant to regulations promulgated under section 601(c)(1)(A)(ii), by the Secretary of State. The Secretary shall provide an alternative procedure for applicants who cannot provide the standard biometric data because of a physical impairment.

(B) BACKGROUND CHECKS.—Before granting lawful prospective immigrant status to any alien, the Secretary shall complete, to the satisfaction of the Secretary, security and law enforcement background checks on the alien, utilizing biometric, biographic, and other data that the Secretary determines to be appropriate, to determine the existence of any criminal, national security, or other factors that would render the alien ineligible for status under this section.

(4) FEES AND PENALTIES.—

(A) PROCESSING FEES.—

(i) IN GENERAL.—Aliens older than 14 years of age who are applying for lawful prospective immigrant status, applying for an extension of such status, or petitioning for classification of a spouse or child outside the United States as a lawful prospective immigrant, shall be required to pay a processing fee to the Department of Homeland Security. Spouses or children of lawful prospective immigrants applying at United States embassies or consulates for a visa or other documentation of status pursuant to regulations promulgated under paragraph (1)(A)(ii) shall, regardless of age, be required to pay a processing fee to the Department of State, which may not be waived.

(ii) AMOUNT.—The amount of the fees under clause (i) shall be set by regulation at a level sufficient to recover the full cost of processing the application or petition.

(B) PENALTIES.—Aliens older than 21 years of age who are filing an initial application for the first extension of the initial period of lawful prospective immigrant status shall be required to pay a penalty of $500 in addition to the processing fee required under subparagraph (A).

(C) DEPOSIT AND SPENDING OF FEES.—The processing fees required under subparagraph (A) shall be deposited as an offsetting collection in the appropriate account of the relevant agency identified in subparagraph (A)(i) and shall remain available until expended.

(D) DEPOSIT, ALLOCATION, AND SPENDING OF PENALTIES.—The penalty described in subparagraph (B) shall be deposited and remain available as provided under section 166.

(5) INTERVIEW.—The Secretary may interview an applicant for lawful prospective immigrant status to determine eligibility for such status.

(6) ADJUDICATION OF APPLICATION FILED BY ALIEN.—

(A) IN GENERAL.—The Secretary may issue documentation of lawful prospective immi-

grant status, or documentation extending such status, upon—

(i) receiving an application that establishes to the satisfaction of the Secretary that the applicant is eligible for such status through such documentary or other evidence of eligibility as the Secretary may require; and

(ii) completing all background and security checks to the satisfaction of the Secretary.

(B) BURDEN OF PROOF.—An alien who is applying for lawful prospective immigrant status under this section shall prove, by a preponderance of the evidence, that the alien has satisfied the requirements of this section and is eligible to receive such status.

(C) DENIAL OF APPLICATION.—

(i) FAILURE TO MEET ELIGIBILITY REQUIREMENTS.—If an applicant does not meet the eligibility requirements for lawful prospective immigrant status, or for the extension of such status, the Secretary shall deny any application for such status

or extension filed by the applicant until the applicant meets such requirements.

(ii) FAILURE TO SUBMIT EVIDENCE.—The Secretary shall deny the application of an alien who fails to submit requested initial evidence, including requested biometric data, or any requested additional evidence by the date required by the Secretary.

(iii) NEW APPLICATIONS.—An alien whose application for lawful prospective immigrant status is denied under clause (ii) is not precluded from filing a new application if the new application is filed within the period allowed under paragraph (1)(B) and contains all required fees and penalties.

(7) EVIDENCE OF LAWFUL PROSPECTIVE IMMIGRANT STATUS.—

(A) IN GENERAL.—The Secretary shall issue documentary evidence of lawful prospective immigrant status to each alien whose application for such status has been approved—

(i) after final adjudication of such alien's application for such status; or

(ii) in the case of an alien outside the United States, after admission to the United States as a lawful prospective immigrant.

(B) FEATURES OF DOCUMENTATION.—Documentary evidence provided under subparagraph (A)—

(i) shall be machine-readable and tamper-resistant;

(ii) shall contain a digitized photograph and at least 1 other biometric identifier that can be authenticated;

(iii) shall, during the alien's authorized period of admission under paragraphs (3) and (4) of subsection (e), serve as a valid travel and entry document for the purpose of applying for admission to the United States;

(iv) may be accepted during the period of its validity by an employer as evidence of employment authorization and identity under section 274A(b)(1)(B) of the Immigration and Nationality Act (8 U.S.C. 1324a(b)(1)(B)); and

(v) shall include such other features and information prescribed by the Secretary.

(d) LAWFUL PROSPECTIVE IMMIGRANT DEPENDENTS.—

(1) IN GENERAL.—The Secretary may classify an alien not present in the United States as a lawful prospective immigrant if—

(A) the alien is the spouse (as defined in section 101(a)(35) of the Immigration and Nationality Act) or child (as defined in section 101(b)(1) of such Act) of a lawful prospective immigrant;

(B) the spouse or child meets the eligibility requirements under subsection (b) (other than the physical presence requirements under section (b)(1)(C)), except that section 212(a)(7) of the Act shall apply; and

(C) the lawful prospective immigrant files a petition in the United States for status as a lawful prospective immigrant on behalf of the spouse or child.

(2) REVOCATION OR DENIAL OF STATUS.—A petition for classification as a lawful prospective immigrant filed on behalf of a spouse or child de-

scribed in paragraph (1) shall be denied, an approved petition for classification as a lawful prospective immigrant for such spouse or child shall be revoked, and any lawful prospective immigrant status granted to such spouse or child shall be revoked, if the alien who filed the petition on behalf of the spouse or child was not eligible for lawful prospective immigrant status at the time the alien filed an application under section 111(a).

(e) TERMS AND CONDITIONS OF LAWFUL PROSPECTIVE IMMIGRANT STATUS.—

(1) BENEFITS PENDING ADJUDICATION OF APPLICATION.—

(A) IN GENERAL.—Until a final decision on the application for lawful prospective immigrant status, an alien in the United States who files an application under this section for lawful prospective immigrant status—

(i) may in the Secretary's discretion receive advance parole to re-enter the United States, but only when urgent humanitarian circumstances compel such travel; and

(ii) may not be detained by the Secretary or removed from the United States,

unless the Secretary determines, in the Secretary's sole discretion, that such alien is or has become—

(I) ineligible for lawful prospective immigrant status under section (b)(2);

(II) inadmissible under section (b)(1)(B), without regard to the possibility of a waiver under section (b)(3)(A)(iii); or

(III) removable under subparagraph (A)(iii), (E)(i), or (E)(ii) of section 237 of the Immigration and Nationality Act (8 U.S.C. 1227(a)(2)).

(B) RULE OF CONSTRUCTION.—Nothing in this section may be construed to prevent the Secretary from detaining an alien for up to 48 hours on the basis of probable cause that the alien is a person described in subparagraph (A)(ii). After the conclusion of the 48-hour period, detention is authorized in accordance with the provisions of the Immigration and Nationality Act governing the removal process.

(C) EVIDENCE OF APPLICATION FILING.—A document shall be issued by the Secretary

showing receipt of an application for lawful prospective immigrant status.

(D) CONTINUING EMPLOYMENT.—An employer who knows that an alien employee is an applicant for lawful prospective immigrant status is not in violation of section 274A(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1324a(a)(2)) if the employer continues to employ the alien pending adjudication of the application.

(E) APPLICABILITY OF OTHER PROVISIONS.—Section 101(g) of such Act shall not apply to an alien granted advance permission under subparagraph (A)(ii) to reenter the United States.

(2) BENEFITS OF LAWFUL PROSPECTIVE IMMIGRANT STATUS.—

(A) EMPLOYMENT.—Notwithstanding any other provision of law, including section 241(a)(7) of the Immigration and Nationality Act (8 U.S.C. 1231(a)(7)), lawful prospective immigrants shall be granted employment authorization incident to their lawful prospective immigrant status.

(B) TRAVEL OUTSIDE THE UNITED STATES.—

(i) IN GENERAL.—A lawful prospective immigrant may travel outside of the United States and may be admitted (if otherwise admissible) upon return to the United States without having to obtain a visa if—

(I) the alien is the bearer of valid, unexpired documentary evidence of lawful prospective immigrant status that satisfies the conditions set forth in subsection (c)(7);

(II) the alien's absence from the United States was not for a period exceeding 6 months; and

(III) the alien is not subject to the bars on extension described in paragraph (4)(C).

(ii) ADMISSIBILITY.—On seeking readmission to the United States after travel outside the United States a lawful prospective immigrant shall establish that he or she is not inadmissible in accordance with

section 235 of the Act, except as provided by subsection (b)(3).

(iii) EFFECT ON PERIOD OF AUTHORIZED ADMISSION.—Time spent outside the United States under clause (i) shall not extend the most recent period of authorized admission in the United States under paragraph (3).

(C) PROTECTION FROM DETENTION OR REMOVAL.—A lawful prospective immigrant may not be detained by the Secretary or removed from the United States, unless—

(i) the Secretary determines in her discretion that such alien is or has become—

(I) ineligible for lawful prospective immigrant status under subsection (b)(2);

(II) inadmissible under subsection (b)(1)(B); or

(III) removable under subparagraph (A)(iii), (E)(i), or (E)(ii) of section 237 of the Immigration and Nationality Act (8 U.S.C. 1227(a)(2)); or

(ii) the alien's lawful prospective immigrant status has expired or has been revoked under paragraph (6).

(D) RULE OF CONSTRUCTION.—Nothing in this paragraph may be construed to prevent the Secretary from detaining a lawful prospective immigrant for up to 48 hours on the basis of probable cause that the alien is a person described in subparagraph (C)(i). After the conclusion of such 48-hour period, detention is authorized in accordance with the provisions of the Immigration and Nationality Act governing the removal process.

(E) ADMISSION.—An alien granted status as a lawful prospective immigrant shall be considered to have been admitted in lawful prospective immigrant status as of the date of approval of the alien's application or (in the case of an alien outside the United States) on the date such alien is admitted to the United States, whichever is later. An alien in lawful prospective immigrant status is lawfully admitted, but is not a nonimmigrant or an alien who has been lawfully admitted for permanent residence.

(3) INITIAL PERIOD OF AUTHORIZED ADMISSION.—Except as provided under paragraph (4), the initial period of authorized admission for a lawful prospective immigrant may not exceed 4 years from the date on which such status is conferred. The Secretary may in her discretion provide for shorter expiration dates among subsets of lawful prospective immigrants, based upon the date of filing or other appropriate factors, in order to encourage early filing, vary expiration dates, or otherwise improve the administration of the program.

(4) EXTENSION.—

(A) IN GENERAL.—The Secretary may extend a lawful prospective immigrant's period of lawful admission beyond the initial period described in paragraph (3) only where the lawful prospective immigrant has filed, in the United States, a timely application for extension. In no case, however, may the period of authorized admission provided in any such extension extend past the date that is 11 years after the date of enactment of this Act.

(B) ELIGIBILITY.—In order to be eligible for an extension of the period of authorized admission under this paragraph, an alien shall

demonstrate continuing eligibility for status as a lawful prospective immigrant and not be subject to any of the bars to extension in subparagraph (C).

(C) BARS TO EXTENSION.—A lawful prospective immigrant shall not be eligible to extend such status if—

(i) the alien has violated any term or condition of his or her lawful prospective immigrant status; or

(ii) the period of authorized admission of the lawful prospective immigrant has expired or been revoked for any reason.

(D) FILING OF APPLICATION FOR EXTENSION.—

(i) IN GENERAL.—Except as provided in clause (ii), an extension of status under this subparagraph shall not be approved where status as a lawful prospective immigrant expired or was revoked before the date on which the application was filed.

(ii) EXCEPTION.—Failure to file before the period of previously authorized admission expired or was revoked may be excused in the discretion of the Secretary,

with any extension granted from the date the previously authorized period of admission expired, where it is demonstrated at the time of filing that—

(I) the delay was due to extraordinary circumstances beyond the control of the applicant, and the Secretary finds the delay commensurate with the circumstances; and

(II) the alien has not otherwise violated the terms or conditions of his or her status as a lawful prospective immigrant.

(E) SECURITY AND LAW ENFORCEMENT BACKGROUND CHECKS.—An alien applying for extension of status as a lawful prospective immigrant shall be required to submit to renewed security and law enforcement background checks that shall be completed to the satisfaction of the Secretary before such extension may be granted.

(F) DENIAL OF APPLICATION FOR EXTENSION.—A denial of an application for extension of status as a lawful prospective immigrant

shall be considered a revocation of such status for purposes of this title.

(5) REGISTRATION REQUIREMENT.—Chapter 7 of title II of the Immigration and Nationality Act (8 U.S.C. 1301 et seq.) shall apply to lawful prospective immigrants, except that the Secretary may, in the discretion of the Secretary, excuse a delay of up to 90 days in complying with the requirement under section 265 of such Act to file notice of change of address. An alien whose failure to timely file such notice of an address change has been excused by the Secretary shall not be subject to the penalty under section 266(b) of such Act for that failure.

(6) REVOCATION.—

(A) IN GENERAL.—At any time after an alien has been granted lawful prospective immigrant status but has not yet adjusted from such status to that of an alien lawfully admitted for permanent residence under section 112, the Secretary may revoke the alien's status following appropriate notice to the alien and exhaustion or waiver of all applicable administrative review procedures under section 113, if—

(i) the alien is or has become inadmissible under subsection (b)(1)(B) or ineli-

gible for such status under subsection (b)(2);

(ii) the alien knowingly used documentation issued under this section for unlawful or fraudulent purposes; or

(iii) the alien is or was absent from the United States for any single period of more than 6 months since the grant of lawful prospective immigrant status.

(B) ADDITIONAL EVIDENCE.—In considering revocation, the Secretary may require the alien to submit additional evidence or to appear for an interview. A failure to comply with such requirements will result in revocation except where the alien demonstrates to the Secretary's satisfaction that such failure was reasonably excusable and not willful.

(C) INVALIDATION OF DOCUMENTATION.—Any documentation that is issued by the Secretary under subsection (c)(7) to any alien shall automatically be rendered invalid for any purpose except departure, if the alien's status as a lawful prospective immigrant is revoked under subparagraph (A).

(7) MEDICAL EXAMINATION.—A lawful prospective immigrant is required to undergo medical observation and examination. The Secretary, with the concurrence of the Secretary of Health and Human Services, shall prescribe policies and procedures for the nature, frequency, and timing of such observation and examination.

(8) RULE OF CONSTRUCTION.—Nothing in this section may be construed—

(A) to require the Secretary to revoke status as a lawful prospective immigrant before commencing removal proceedings with respect to an alien described in subsection (a) who has been granted such status, or in any way prohibit the initiation of such proceedings against a lawful prospective immigrant where such proceedings are authorized under this Act; or

(B) to authorize the Attorney General to adjudicate or grant any application for status as a lawful prospective immigrant, to receive or consider an appeal from a denial or revocation of lawful prospective immigrant status, or to adjust the status of any lawful prospective immigrant to an alien lawfully admitted for permanent residence, unless the Secretary has del-

egated such authority to the Attorney General in appropriate cases pursuant to section 103(a)(6) of the Immigration and Nationality Act (8 U.S.C. 1103(a)(6)).

(f) DISSEMINATION OF INFORMATION ON LAWFUL PROSPECTIVE IMMIGRANT PROGRAM.—After the date of the enactment of this Act, the Secretary, in cooperation with entities approved by the Secretary, and in accordance with a plan adopted by the Secretary in the Secretary's discretion, shall broadly disseminate information regarding lawful prospective immigrant status, the rights and benefits that flow from such status, and the requirements to be satisfied to obtain this status. Such information shall be disseminated in the top 5 principal languages, as determined by the Secretary in the Secretary's discretion, spoken by aliens who would qualify for status under this section, including to television, radio, and print media to which such aliens would have access.

SEC. 112. ADJUSTMENT OF STATUS FOR LAWFUL PROSPECTIVE IMMIGRANTS.

(a) 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 lawful prospective immigrant to that of an alien lawfully admitted for permanent resi-

dence if the lawful prospective immigrant satisfies, in addition to all other requirements imposed by law, the eligibility requirements under this section.

(b) ELIGIBILITY REQUIREMENTS.—

(1) LAWFUL PROSPECTIVE IMMIGRANT STATUS.—

(A) IN GENERAL.—The alien shall be in a period of authorized admission as a lawful prospective immigrant and shall continue to satisfy—

(i) the eligibility requirements for such status under section 601(b); and

(ii) the terms and conditions of such status under section 601(d).

(B) MAINTENANCE OF WAIVERS OF ADMISSIBILITY.—

(i) IN GENERAL.—The grounds of inadmissibility under section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)) that are made inapplicable or previously waived for the alien under section 111(b)(3) shall also be considered inapplicable for purposes of the alien's adjustment pursuant to this section.

(ii) EXCEPTION FOR POST-FILING CONDUCT.—No waiver previously granted shall apply to any inadmissibility under section 111(b)(1)(B) arising out of conduct occurring after the date on which the application for lawful prospective immigrant status was filed.

(C) PENDING REVOCATION PROCEEDINGS.—If the Secretary has sent the applicant a notice of intent to revoke the applicant's lawful prospective immigrant status under section 111(e)(6)(A)(i), an application for adjustment under this section may not be approved until the Secretary has made a final determination on whether to revoke the applicant's status.

(2) BASIC CITIZENSHIP SKILLS.——

(A) IN GENERAL.—Except as provided under subparagraph (C), a lawful prospective immigrant who is older than 14 years of age shall establish that he or she—

(i) meets the requirements under section 312 of the Immigration and Nationality Act (8 U.S.C. 1423); or

(ii) is satisfactorily pursuing a course of study, pursuant to standards established by the Secretary of Education, in consultation with the Secretary, to achieve such an understanding of English and knowledge and understanding of the history and Government of the United States.

(B) RELATION TO NATURALIZATION EXAMINATION.—A lawful prospective immigrant who demonstrates that he or she meets the requirements under section 312 of such Act 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 such Act.

(C) EXCEPTIONS.—

(i) MANDATORY.—Subparagraph (A) shall not apply to any person who is unable to comply with those requirements because of a physical or developmental disability or mental impairment as described in section 312(b)(1) of such Act.

(ii) DISCRETIONARY.—The Secretary may waive all or part of subparagraph (A) for a lawful prospective immigrant who is

at least 65 years of age on the date on which an application is filed for adjustment of status under this section.

(3) PAYMENT OF TAXES.—

(A) IN GENERAL.—Not later than the date on which the application for adjustment of status under this section is filed, the applicant shall satisfy any applicable Federal tax liability.

(B) APPLICABLE FEDERAL TAX LIABILITY.—For purposes of subparagraph (A), the term ''applicable Federal tax liability'' means liability for unpaid assessed Federal taxes, including penalties and interest, owed.

(4) CONTINUOUS PHYSICAL PRESENCE.—The alien shall establish that the alien did not have a single absence from the United States of more than 6 months during the period of admission as a lawful prospective immigrant.

(5) MILITARY SELECTIVE SERVICE.—The alien shall establish that the alien has registered under the Military Selective Service Act (50 U.S.C. App. 451 et seq.), if the alien is subject to such registration under such Act.

(c) APPLICATION PROCEDURES.—

(1) IN GENERAL.—In accordance with the procedures described in section 121, the Secretary shall prescribe by regulation the procedures for an alien in the United States to apply for adjustment of status under this section and the evidence required to demonstrate eligibility for such adjustment.

(2) FILING OF APPLICATION.—

(A) BACK OF THE LINE.—An alien may not adjust status to that of an alien lawfully admitted for permanent residence under this section until the earlier of—

(i) 30 days after an immigrant visa has become available for all approved petitions filed under sections 201 and 203 of the Act that were filed before the date of enactment of this Act; or

(ii) 8 years after the date of enactment of this Act.

(B) ACCEPTANCE OF APPLICATIONS.—No application to adjust status under this section may be filed before the date that is 6 years after the initial grant of lawful prospective immigrant status, regardless of whether such date is after the date on which, pursuant to subpara-

graph (A), an alien may adjust status under this section.

(3) FEES AND PENALTIES.—

(A) PROCESSING FEES.—The Secretary shall impose a processing fee on applications for adjustment filed under this section which shall be sufficient to recover the full cost of adjudicating the application, including the cost of taking and processing biometrics, and the cost of expenses relating to prevention and investigation of fraud.

(B) PENALTIES.—An alien 21 years of age or over who is filing an application for adjustment of status under this section shall pay a $1000 penalty to the Secretary, in addition to the processing fee required under subparagraph (A).

(C) DEPOSIT, ALLOCATION, AND SPENDING OF FEES AND PENALTIES.—Fees and penalties collected under subparagraph (B) shall be deposited and remain available as provided under section 111.

(4) INTERVIEW.—The Secretary may interview an applicant for adjustment under this section to determine eligibility for such adjustment.

(5) SECURITY AND LAW ENFORCEMENT BACKGROUND CHECKS.—An alien applying for adjustment under this section shall be required to submit to a renewed security and law enforcement background check that shall be completed to the satisfaction of the Secretary before such adjustment may be granted.

(6) ADJUDICATION OF ADJUSTMENT APPLICATION.—

(A) EVIDENCE OF CONTINUOUS PHYSICAL PRESENCE.—The Secretary shall determine continuous physical presence based upon the Secretary's records of admission to the United States or such other relevant information as the Secretary may require.

(B) EVIDENCE OF PAYMENT OF TAXES.—

(i) IN GENERAL.—The alien may demonstrate compliance with the requirement under paragraph (b)(3) by submitting documentation, in accordance with regulations promulgated by the Secretary, that establishes that—

(I) no such unpaid assessed Federal tax liability exists;

(II) all such 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.

(ii) IRS COOPERATION.—The Secretary of the Treasury, in consultation with the Secretary, shall establish procedures pursuant to applicable provisions of section 6103 of the Internal Revenue Code of 1986, under which the Commissioner of Internal Revenue shall provide documentation whereby the Secretary or the applicant may establish the payment of all taxes required under this subsection, to verify that the individual meets the requirements of clause (i).

(C) BURDEN OF PROOF.—An alien 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 section.

(d) 5-YEAR ELIGIBILITY WAITING PERIOD.—An individual who meets the requirements under this section for adjustment from lawful prospective immigrant status to lawful permanent resident status shall be considered, as of the date of such adjustment, to have completed the 5-year period specified in sections 402 and 403 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1612 and 1613).

SEC. 113. ADMINISTRATIVE REVIEW, REMOVAL PROCEEDINGS, AND JUDICIAL REVIEW FOR ALIENS WHO HAVE APPLIED FOR LAWFUL PROSPECTIVE IMMIGRANT STATUS.

(a) ADMINISTRATIVE REVIEW.—

(1) EXCLUSIVE ADMINISTRATIVE REVIEW.—Administrative review of a determination respecting an application for status as a lawful prospective immigrant under section 111(b) or respecting an application for adjustment of status under section 112 shall be conducted solely as provided in this subsection.

(2) ADMINISTRATIVE APPELLATE REVIEW.—

(A) ESTABLISHMENT OF ADMINISTRATIVE APPELLATE AUTHORITY.—The Secretary shall establish or designate an appellate authority within U.S. Citizenship and Immigration Services to provide for a single level of administra-

tive appellate review of a determination respecting an application for status or revocation of status as a lawful prospective immigrant under section 111(b) or respecting an application for adjustment of status under section 112. Any such application is not renewable in any proceeding before the Attorney General.

(B) SINGLE APPEAL FOR EACH ADMINISTRATIVE DECISION.—

(i) LAWFUL PROSPECTIVE IMMIGRANT.—An alien in the United States whose application for status as a lawful prospective immigrant under section 111(b) has been denied or whose status as a lawful prospective immigrant has been revoked, may file with the Secretary not more than 1 appeal of each decision to deny or revoke such status.

(ii) ADJUSTMENT OF STATUS.—An alien in lawful prospective immigrant status whose application under section 112 for adjustment of status to that of an alien lawfully admitted for permanent residence has been denied may file with the Sec-

retary not more than 1 appeal of each decision to deny or revoke such status.

(iii) NOTICE OF APPEAL.—A notice of appeal filed under this subsection shall be filed not later than 60 calendar days after the date of service of the decision of denial or revocation.

(C) SECRETARIAL REVIEW.—Nothing in this subsection may be construed to limit the authority of the Secretary, in the Secretary's sole and unreviewable discretion, from certifying appeals for review and final administrative decision.

(D) DENIAL OF PETITIONS FOR DEPENDENTS.—Appeals of a decision to deny a petition filed by a lawful prospective immigrant pursuant to regulations promulgated under section 111(c)(1)(A)(i) to classify a spouse or child of such alien as a lawful prospective immigrant shall be to the administrative appellate authority described in subsection (A).

(E) STAY OF REMOVAL.—Aliens seeking administrative review under this section shall not be removed from the United States until a final decision is rendered establishing ineligi-

bility under this title, unless such removal is based on criminal or national security grounds.

(3) RECORD FOR REVIEW.—Administrative appellate review referred to in paragraph (2) shall be based solely upon the administrative record established at the time of the determination on the application and upon such additional newly discovered or previously unavailable evidence.

(b) SELF INITIATED REMOVAL AND NOTICE PRESERVING JUDICIAL REVIEW.—

(1) IN GENERAL.—Except as provided in subparagraphs (2) and (3), any alien who receives a denial of an administrative appeal filed under subsection (a) may request, not later than 60 calendar days after the date of service of the administrative appellate decision, that the Secretary place the alien in removal proceedings. That request shall serve as a notice preserving judicial review of the denial. The Secretary shall place such alien in removal proceedings to which the alien would otherwise be subject, provided that no court shall have jurisdiction to review the timing of the Secretary's initiation of such proceedings. If removal proceedings are not commenced within 1 year of the timely filing of the request specified in this section, the alien may peti-

tion for review as if an order of removal was filed within 1 year of the request.

(2) ALIENS IN REMOVAL PROCEEDINGS.—Any alien who is in removal, deportation, or exclusion proceedings that are not administratively final and who receives a denial of an administrative appeal filed under subsection (a), may file with the Secretary, not later than 60 calendar days after the date of service of the administrative appellate decision, a notice to preserve judicial review of that appeal.

(3) ALIENS WITH A FINAL REMOVAL ORDER.—Any alien who is subject to an administratively final, unexecuted order of removal, deportation, or exclusion and who receives a denial of an administrative appeal filed under subsection (a), may file with the Secretary, not later than 60 calendar days after the date of service of the administrative appellate decision, a notice to preserve judicial review of that appeal. Nothing in this subsection shall be construed to authorize motions to reopen or reconsider the removal order not otherwise permitted under statute or regulation.

(4) EFFECT OF MOTIONS TO REOPEN OR RECONSIDER.—The 60-day period described in para-

graphs (1), (2), and (3) shall not be affected or extended by the filing of a motion to reopen or reconsider.

(5) EFFECT OF SERVICE BY MAIL.—If the administrative appellate decision described in paragraphs (1), (2), and (3) is served by mail, the date of mailing shall be considered the date of service, and 3 days shall be added to the prescribed period that the alien has to file the request or notices under such paragraphs.

(c) JUDICIAL REVIEW.—Section 242 (8 U.S.C. 11252) is amended—

(1) in subsection (b)(2), by striking ''completed the proceedings'' and inserting ''or the Secretary of Homeland Security completed the removal proceedings'';

(2) by amending subsection (d)(1) to read as follows:

''(1) the alien has exhausted all administrative remedies available to the alien as of right, except that the alien need not file an administrative appeal of an order of an immigration judge if the alien seeks review solely of a denial or revocation of lawful prospective immigrant status pursuant to subsection (i)(3), and''; and

(3) by adding at the end the following:

"(i) JUDICIAL REVIEW OF DETERMINATIONS RELATING TO LAWFUL PROSPECTIVE IMMIGRANT STATUS.—

"(1) DIRECT REVIEW.—A person whose application for classification or adjustment of status under this section is denied after administrative appellate review under title V of the Comprehensive Immigration Reform Act of 2011 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 adjustment of status under title V of the Comprehensive Immigration Reform Act of 2011 in conjunction with judicial review of an order of removal, deportation, or exclusion, but only if the validity of the denial has not been upheld in a prior judicial proceeding under paragraph (1).

"(3) STANDARD FOR JUDICIAL REVIEW.—Judicial review of a denial of an application under title V of the Comprehensive Immigration Reform Act of 2011 shall be based upon the administrative record

established at the time of the review, but the court may remand the case to the Secretary 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 Secretary. Notwithstanding any other provision of law, judicial review of all questions arising from a denial of an application under title V of the Comprehensive Immigration Reform Act of 2011 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 title V of the Comprehensive Immigration Reform Act of 2011 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.

"(5) STAY OF REMOVAL.—Aliens seeking judicial review under section 113 of the Comprehensive Immigration Reform Act of 2011 shall not be removed from the United States until a final decision is rendered establishing ineligibility under this title.

"(6) NO REVIEW FOR LATE FILINGS.—An alien may not file an application for lawful prospective immigrant status, under title V of the Comprehensive Immigration Reform Act of 2011 beyond the period for receipt of such applications established by section 111(e)(1) of such Act. The denial of any application filed beyond the expiration of the period established by that subsection shall not be subject to judicial review or remedy, including under paragraph (5).

"(7) CHALLENGES ON VALIDITY OF THE LAWFUL PROSPECTIVE IMMIGRANT SYSTEM.—

"(A) IN GENERAL.—Any claim that title V of the Comprehensive Immigration Reform Act of 2011, or any regulation, guideline, directive, or procedure issued to implement such title, violates the Constitution of the United States or is otherwise in violation of law is available exclu-

sively in an action instituted in any United States District Court in accordance with the procedures prescribed under this paragraph. No claims challenging the validity of the system established by title V of the Comprehensive Immigration Reform Act of 2011 may be initiated after the period for receipt of such applications established by subsection 111(c)(1) of title VI of the Comprehensive Immigration Reform Act of 2011 by or on behalf of an alien who did not timely file for lawful prospective immigrant status.

"(B) DEADLINES FOR BRINGING ACTIONS.—Any action instituted under this paragraph that asserts a claim that this title or any regulation, guideline, directive, or procedure issued by or under the authority of the Secretary to implement this title violates the Constitution or is otherwise unlawful, shall be filed—

"(i) not later than 3 years after the date of the publication or promulgation of the challenged regulation, policy, or directive; or

"(ii) if the action challenges the validity of any provision of the Comprehensive Immigration Reform Act of 2011, not later than 3 years after the date of the enactment of such Act.

"(C) Subject to subparagraph (D), nothing in subparagraph (A) or (B) shall preclude an applicant for lawful prospective immigrant status under title VI of the Comprehensive Immigration Reform Act of 2011 from asserting that an action taken or decision made by the Secretary with respect to his status under that title was contrary to law in a proceeding under section 113 of title V of the Comprehensive Immigration Reform Act of 2011.

"(D) CLASS ACTIONS.—Any claim described in subparagraph (A) that is brought as a class action shall be brought in conformity with the Class Action Fairness Act of 2005 (Public Law 109–2) and the Federal Rules of Civil Procedure. After the expiration of the period for receipt of such applications established by section 111(c)(1) of title V of the Comprehensive Immigration Reform Act of 2011, an alien who did not timely file for lawful prospec-

tive immigrant status may not be a class member of or otherwise benefit from a class action described in subparagraph (A).

"(E) EXHAUSTION AND STAY OF PROCEEDINGS.—No claim brought under this paragraph shall require the plaintiff to exhaust administrative remedies under section 113 of title V of the Comprehensive Immigration Reform Act of 2011, but nothing shall prevent the court from staying proceedings under this paragraph to permit the Secretary to evaluate an allegation challenging a policy or practice or to take corrective action. In issuing such a stay, the court shall take into account any harm the stay may cause to the claimant and to the government. This subsection conveys no authority to stay proceedings initiated under any other section of the Act.

"(F) EXPEDITIOUS CONSIDERATION OF CASES.—It shall be the duty of the District Court, the Court of Appeals, and the United States Supreme Court to advance on the docket and to expedite to the greatest possible extent the disposition of any case considered under this section.".

SEC. 114. CONFIDENTIALITY OF INFORMATION.

(a) IN GENERAL.—Except as otherwise provided in this section and in section 117, no Federal agency or bureau, or any officer or employee of such agency or bureau, may, without the written consent of the applicant—

(1) use the information furnished by the applicant pursuant to an application filed under section 111 or 112, for any purpose, other than to make a determination on the application, including revocation of an application previously approved;

(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, employees or contractors of such agency or bureau, to examine individual applications that have been filed.

(b) REQUIRED DISCLOSURES.—

(1) The Secretary shall provide the information furnished pursuant to an application filed under section 111 or 112, and any other information derived from such furnished information to—

(A) a Federal, State, tribal, or local law enforcement agency, intelligence agency, national security agency, component of the Department of Homeland Security, court, or

grand jury in connection with a criminal investigation or prosecution, a background check conducted pursuant to the Brady Handgun Violence Protection Act, or for homeland security or national security purposes, in each instance about an individual, when such information is requested by such entity or consistent with an information sharing agreement or mechanism; 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.

(2) Nothing in this section may be construed as prohibiting any entity described in paragraph (1)(A) from disseminating information provided to such entity under this subsection by the Secretary for any authorized purpose.

(c) INAPPLICABILITY AFTER DENIAL, REVOCATION, OR ABANDONMENT.—The limitations under subsection (a)—

(1) shall apply only until an application filed under section 111 or 112 is denied and all opportunities for administrative appeal of the denial have been exhausted;

(2) shall not apply to the use of the information furnished pursuant to such application in any removal proceeding or other criminal or civil case or action, including administrative action, relating to an alien whose application has been granted that is based upon any violation of law committed or discovered after such grant; and

(3) shall not apply in a case in which—

(A) the Secretary has revoked the alien's status as a lawful prospective immigrant; or

(B) the alien's lawful prospective immigrant status has expired.

(d) FRAUD IN APPLICATION PROCESS OR CRIMINAL CONDUCT.—Notwithstanding any other provision of this section, information concerning whether the applicant has engaged in fraud in the application for lawful prospective immigrant status or for adjustment of status from lawful prospective immigrant status or at any time committed a crime may be used or released for immigration enforcement, law enforcement, or national security purposes.

(e) AUDITING AND EVALUATION OF INFORMATION.—

(1) The Secretary may audit and evaluate information furnished as part of any application filed under section 111 or 112 for purposes of identifying fraud or fraud schemes, and may use any evidence

of fraud detected by means of audits, evaluations, or other means for purposes of investigating, prosecuting or referring for prosecution, denying, or terminating immigration benefits.

(2) Nothing in this section may be construed as limiting the authority of the relevant Offices of Inspectors General from conducting reviews, audits, oversight, and administrative, civil or criminal investigations.

(f) USE OF INFORMATION IN IMMIGRATION MATTERS SUBSEQUENT TO ADJUSTMENT OF STATUS.—If the Secretary has adjusted an alien's status to that of an alien lawfully admitted for permanent residence pursuant to section 112, then at any time thereafter the Secretary may use the information furnished by the alien in the application for adjustment of status or in the applications for status pursuant to sections 501 in any subsequent immigration matter.

(g) OTHER AUTHORIZED DISCLOSURES.—The Federal Bureau of Investigation may disclose information derived from biometric and biographic checks of the applicant to assist in the apprehension of a person who is the subject of a warrant of arrest, or to notify intelligence agencies of the location of a known or suspected terrorist.

(h) CIVIL PENALTY.—Whoever willfully uses, publishes, or permits information to be disclosed in violation of this section shall be subject to appropriate disciplinary action and subject to a civil monetary penalty of not more than $5,000.

(i) CONSTRUCTION.—Nothing in this section shall be construed to limit the use or release for immigration enforcement purposes of information contained in files or records of the Secretary or Attorney General pertaining to an application filed under section 111 or 112, 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.

(j) INTERAGENCY FRAUD PREVENTION COORDINATION.—The Secretary or the Secretary's designee shall convene an interagency committee to address issues relating to the identification, prevention, investigation, and prosecution of fraud and related conduct in connection with this program.

SEC. 115. ALIENS NOT SUBJECT TO DIRECT NUMERICAL LIMITATIONS.

Section 201(b)(1) (8 U.S.C. 1151(b)(1)), is amended by adding at the end the following:

"(N) Aliens whose status is adjusted from that of a lawful prospective immigrant under section 112 of CIR Act of 2010.".

SEC. 116. EMPLOYER PROTECTIONS.

(a) USE OF EMPLOYMENT RECORDS.—Copies of employment records or other evidence of employment provided by an alien or by an alien's employer in support of an alien's application for lawful prospective immigrant status under section 601 shall not be used in a prosecution or investigation (civil or criminal) of that employer under section 274A of the Immigration and Nationality Act or the tax laws of the United States for the prior unlawful employment of that alien, regardless of the adjudication of such application or reconsideration by the Secretary of such alien's prima facie eligibility determination. This section does not apply to employment records submitted by aliens or employers that are deemed to be fraudulent.

(b) 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. 117. ASSIGNMENT OF SOCIAL SECURITY NUMBER.

The Commissioner of the Social Security Administration, in coordination with the Secretary, shall implement

a system to allow for the assignment of a Social Security number and issuance of a Social Security card after the Secretary has granted an alien status as a lawful prospective immigrant. The Secretary shall provide to the Commissioner of Social Security information from the application filed under section 111(a) and such other information as the Commissioner of Social Security deems necessary to assign a Social Security account number. The Commissioner of Social Security may use such information to assign such Social Security account numbers and to administer the programs for which the Commissioner of Social Security has responsibility. The Commissioner of Social Security may maintain, use, and disclose such information only as permitted by the Privacy Act and other Federal law.

PART II—IMPLEMENTATION

SEC. 121. RULEMAKING.

(a) IN GENERAL.—The Secretary and Attorney General separately shall issue interim final regulations not later than 9 months after the date of the enactment of this Act to implement this title and the amendments made by this title. Such interim final regulations shall become effective immediately upon publication in the Federal Register.

(b) EXEMPTION FROM NATIONAL ENVIRONMENTAL POLICY ACT.—Any decision by the Secretary concerning any rulemaking action, plan, or program described in this section shall not be considered to be a major Federal action subject to review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

SEC. 122. EXEMPTION FROM GOVERNMENT CONTRACTING AND HIRING RULES.

(a) EXEMPTION FROM GOVERNMENT CONTRACTING RULES.—

(1) PROCUREMENT COMPETITION EXEMPTION.—Any Federal agency's determination to use a procurement competition exemption under section 253(c) of title 41, United States Code, or to use the authority granted in paragraph (2), for the purpose of implementing this title is not subject to challenge by protest to either the Government Accountability Office, under sections 3551 through 3556 of title 31, United States Code, or to the Court of Federal Claims, under section 1491 of title 28, United States Code. An agency shall immediately advise Congress of the exercise of the authority granted in this subsection.

(2) WAIVER OF COMPETITION REQUIREMENTS.—The competition requirement of section

253(a) of title 41, United States Code may be waived or modified by a Federal agency for any procurement conducted to implement this title pursuant to a determination and finding, approved by the senior procurement executive for the agency conducting the procurement, that explains why the waiver or modification is necessary if such a determination and finding is furnished to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Oversight and Government Reform of the House of Representatives.

(b) EXEMPTION FROM GOVERNMENT HIRING RULES.—Notwithstanding any other provision of law, the Secretary shall have authority to make term, temporary, limited, and part-time appointments for purposes of implementing this title without regard to the number of such employees, their ratio to permanent full-time employees, and the duration of their employment. Nothing in chapter 71 of title 5, United States Code, shall affect the authority of any Department management official to hire term, temporary, limited, or part-time employees under this subsection.

SEC. 123. AUTHORITY TO ACQUIRE LEASEHOLDS.

Notwithstanding any other provision of law, the Secretary may acquire a leasehold interest in real property,

and may provide in a lease entered into under this subsection for the construction or modification of any facility on the leased property, if the Secretary determines that the acquisition of such interest, and such construction or modification is necessary in order to facilitate the implementation of this title.

SEC. 124. PRIVACY AND CIVIL LIBERTIES.

(a) PROTECTION OF PRIVACY.—Consistent with section 114, the Secretary shall require appropriate administrative and physical safeguards to protect the security, confidentiality, and integrity of personally identifiable information collected, maintained, and disseminated pursuant to sections 111 and 112.

(b) REQUIREMENT FOR IMPACT ASSESSMENTS.—Notwithstanding privacy requirements under section 222 of the Homeland Security Act and the E-Government Act of 2002, the Secretary shall conduct a privacy impact assessment and a civil liberties impact assessment of the legalization program established in sections 111 and 112 during the pendency of the interim final rule.

SEC. 125. STATUTORY CONSTRUCTION.

Except as specifically provided otherwise, nothing in this title, or any amendment made by this title, shall be construed to create any substantive or procedural right or benefit that is legally enforceable by any party against the

United States or its agencies or officers or any other person.

PART III—MISCELLANEOUS

SEC. 131. 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) by inserting after subparagraph (C) the following:

''(D) who is granted status as a lawful prospective immigrant pursuant to section 111 of the CIR Act of 2010; or

''(E) whose status is adjusted to that of lawful permanent resident under section 112 of the CIR Act of 2010,''; and

(3) by striking ''1990.'' and inserting ''1990, or in the case of an alien described in subparagraph (D) or (E), if such conduct is alleged to have occurred before the date on which the alien submitted an application under section 111 of the CIR Act of 2010 for classification as a lawful prospective immigrant.''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the first day of the tenth

month that begins after the date of the enactment of this Act.

SEC. 132. FRAUD PREVENTION PROGRAM.

(a) IN GENERAL.—The head of each Department responsible for the administration of a program related to this title or with authority to confer an immigration benefit, relief, or status under Federal immigration law shall develop an administrative program to prevent fraud within or upon such program or authority. Subject to such modifications as the head of the Department may direct, the program shall provide for—

(1) fraud prevention training for the relevant administrative adjudicators within the Department;

(2) the regular audit of pending and approved applications for examples and patterns of fraud or abuse;

(3) the receipt and evaluation of reports of fraud or abuse;

(4) the identification of deficiencies in administrative practice or procedure that encourage fraud or abuse;

(5) the remedy of any identified deficiencies; and

(6) the referral of cases of identified or suspected fraud or other misconduct for investigation.

(b) IMPLEMENTATION.—Except as the head of the Department shall otherwise provide, the implementation of the administrative program referred to in subsection (a) shall be assigned to and made part of the component or agency within the Department that is responsible for conferring the relevant immigration benefit, relief, or status under Federal immigration law.

(c) COORDINATION.—The heads of relevant Departments shall coordinate their respective efforts under this subsection.

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

SEC. 133. DATA COLLECTION REQUIREMENTS.

(a) IN GENERAL.—The head of each department or agency of the United States shall ensure that general demographic data provided by applicants under this title shall be made available in the aggregate in a searchable public database.

(b) DEMOGRAPHIC DATA.—General demographic data including gender, country of origin, age, education, annual earnings, employment, State of residence, marital status, date of arrival in the United States, method of entry into the United States, number and ages of children,

and birthplace of children shall be made available to the public.

(c) PROTECTION OF CONFIDENTIALITY.—Data collected and gathered in the aggregate for purposes of research shall not be recorded in such a way that it violates confidentiality provisions under this title.

PART IV—DREAM ACT

SEC. 141. SHORT TITLE.

This part may be cited as the ''Development, Relief, and Education for Alien Minors Act of 2011'' or the ''DREAM Act of 2011''.

SEC. 142. DEFINITIONS.

In this part:

(1) IN GENERAL.—Except as otherwise specifically provided, terms used in this part shall have the meanings given such term in the immigration laws (as defined in section 101(a)(17) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(17))).

(2) INSTITUTION OF HIGHER EDUCATION.—The term ''institution of higher education'' has the meaning given such term in section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002), except that the term does not include an institution of higher education outside the United States.

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

(4) UNIFORMED SERVICES.—The term ''Uniformed Services'' has the meaning given the term ''uniformed services'' in section 101(a) of title 10, United States Code.

SEC. 143. CONDITIONAL PERMANENT RESIDENT STATUS FOR CERTAIN LONG-TERM RESIDENTS WHO ENTERED THE UNITED STATES AS CHILDREN.

(a) CONDITIONAL BASIS FOR STATUS.—Notwithstanding any other provision of law, an alien shall be considered, at the time of obtaining the status of an alien lawfully admitted for permanent residence under this section, to have obtained such status on a conditional basis subject to the provisions of this part.

(b) REQUIREMENTS.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the Secretary may cancel removal of, and adjust to the status of an alien lawfully admitted for permanent residence on a conditional basis, an alien who is inadmissible or deportable from the United States or is in temporary protected status under section 244 of the Immigration and

Nationality Act (8 U.S.C. 1254a), if the alien demonstrates by a preponderance of the evidence that—

(A) the alien has been continuously physically present in the United States since the date that is 5 years before the date of the enactment of this Act;

(B) the alien was 15 years of age or younger on the date the alien initially entered the United States;

(C) the alien has been a person of good moral character since the date the alien initially entered the United States;

(D) subject to paragraph (2), the alien—

(i) is not inadmissible under paragraph (2), (3), (6)(E), (6)(G), (8), (10)(A), (10)(C), or (10)(D) of section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a));

(ii) 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

(iii) has not been convicted of—

(I) any offense under Federal or State law punishable by a maximum term of imprisonment of more than 1 year; or

(II) 3 or more offenses under Federal or State law, for which the alien was convicted on different dates for each of the 3 offenses and imprisoned for an aggregate of 90 days or more;

(E) the alien—

(i) has been admitted to an institution of higher education in the United States; or

(ii) has earned a high school diploma or obtained a general education development certificate in the United States; and

(F) the alien was 35 years of age or younger on the date of the enactment of this Act.

(2) WAIVER.—With respect to any benefit under this part, the Secretary may waive the grounds of inadmissibility under paragraph (6)(E), (6)(G), or (10)(D) of section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)) for hu-

manitarian purposes or family unity or when it is otherwise in the public interest.

(3) SUBMISSION OF BIOMETRIC AND BIOGRAPHIC DATA.—The Secretary may not grant permanent resident status on a conditional basis to an alien under this section unless the alien submits biometric and biographic data, in accordance with procedures established by the Secretary. The Secretary shall provide an alternative procedure for applicants who are unable to provide such biometric or biographic data because of a physical impairment.

(4) BACKGROUND CHECKS.—

(A) REQUIREMENT FOR BACKGROUND CHECKS.—The Secretary shall utilize biometric, biographic, and other data that the Secretary determines is appropriate—

(i) to conduct security and law enforcement background checks of an alien seeking permanent resident status on a conditional basis under this section; and

(ii) to determine whether there is any criminal, national security, or other factor that would render the alien ineligible for such status.

(B) COMPLETION OF BACKGROUND CHECKS.—The security and law enforcement background checks required by subparagraph (A) for an alien shall be completed, to the satisfaction of the Secretary, prior to the date the Secretary grants permanent resident status on a conditional basis to the alien.

(5) MEDICAL EXAMINATION.—An alien applying for permanent resident status on a conditional basis under this section shall undergo a medical examination. The Secretary, with the concurrence of the Secretary of Health and Human Services, shall prescribe policies and procedures for the nature and timing of such examination.

(6) MILITARY SELECTIVE SERVICE.—An alien applying for permanent resident status on a conditional basis under this section shall establish that the alien has registered under the Military Selective Service Act (50 U.S.C. App. 451 et seq.), if the alien is subject to such registration under that Act.

(c) DETERMINATION OF CONTINUOUS PRESENCE.—

(1) TERMINATION OF CONTINUOUS PERIOD.—Any period of continuous physical presence in the United States of an alien who applies for permanent resident status on a conditional basis under this sec-

tion shall not terminate when the alien is served a notice to appear under section 239(a) of the Immigration and Nationality Act (8 U.S.C. 1229(a)).

(2) TREATMENT OF CERTAIN BREAKS IN PRESENCE.—

(A) IN GENERAL.—An alien shall be considered to have failed to maintain continuous physical presence in the United States under subsection (b)(1)(A) if the alien has departed from the United States for any period in excess of 90 days or for any periods in the aggregate exceeding 180 days.

(B) EXTENSIONS FOR EXTENUATING CIRCUMSTANCES.—The Secretary may extend the time periods described in subparagraph (A) for an alien if the alien demonstrates that the failure to timely return to the United States was due to extenuating circumstances beyond the alien's control.

(d) APPLICATION.—

(1) IN GENERAL.—An alien seeking lawful permanent resident status on a conditional basis shall file an application for such status in such manner as the Secretary may require.

(2) DEADLINE FOR SUBMISSION OF APPLICATION.—An alien shall submit an application for relief under this section not later than the date that is 1 year after the later of—

(A) the date the alien earned a high school diploma or obtained a general education development certificate in the United States; or

(B) the effective date of the final regulations issued pursuant to section 536.

(e) LIMITATION ON REMOVAL OF CERTAIN ALIENS.—

(1) IN GENERAL.—The Secretary or the Attorney General may not remove an alien who—

(A) has a pending application for relief under this section; and

(B) establishes prima facie eligibility for relief under this section.

(2) CERTAIN ALIENS ENROLLED IN PRIMARY OR SECONDARY SCHOOL.—

(A) STAY OF REMOVAL.—The Attorney General shall stay the removal proceedings of an alien who—

(i) meets all the requirements of subparagraphs (A), (B), (C), (D), and (F) of subsection (b)(1);

(ii) is at least 5 years of age; and

(iii) is enrolled full-time in a primary or secondary school.

(B) ALIENS NOT IN REMOVAL PROCEEDINGS.—If an alien is not in removal proceedings, the Secretary shall not commence such proceedings with respect to the alien if the alien is described in clauses (i) through (iii) of subparagraph (A).

(C) EMPLOYMENT.—An alien whose removal is stayed pursuant to subparagraph (A) or who may not be placed in removal proceedings pursuant to subparagraph (B) shall, upon application to the Secretary, be granted an employment authorization document.

(D) LIFT OF STAY.—The Secretary or Attorney General may lift the stay granted to an alien under subparagraph (A) if the alien—

(i) is no longer enrolled in a primary or secondary school; or

(ii) ceases to meet the requirements of such paragraph.

(f) EXEMPTION FROM NUMERICAL LIMITATIONS.—Nothing in this section or in any other law may be construed to apply a numerical limitation on the number of

aliens who may be eligible for adjustment of status under this part.

SEC. 144. TERMS OF CONDITIONAL PERMANENT RESIDENT STATUS.

(a) PERIOD OF STATUS.—Permanent resident status on a conditional basis granted under this part is—

(1) valid for a period of 6 years, unless such period is extended by the Secretary; and

(2) subject to termination under subsection (c).

(b) NOTICE OF REQUIREMENTS.—

(1) AT TIME OF OBTAINING STATUS.—At the time an alien obtains permanent resident status on a conditional basis under this part, the Secretary shall provide for notice to the alien regarding the provisions of this part and the requirements to have the conditional basis of such status removed.

(2) EFFECT OF FAILURE TO PROVIDE NOTICE.—The failure of the Secretary to provide a notice under this subsection—

(A) shall not affect the enforcement of the provisions of this part with respect to the alien; and

(B) shall not give rise to any private right of action by the alien.

(c) TERMINATION OF STATUS.—

(1) IN GENERAL.—The Secretary shall terminate the conditional permanent resident status of an alien, if the Secretary determines that the alien—

(A) ceases to meet the requirements of subparagraph (C) or (D) of section 533(b)(1); or

(B) was discharged from the Uniformed Services and did not receive an honorable discharge.

(d) RETURN TO PREVIOUS IMMIGRATION STATUS.—

(1) IN GENERAL.—Except as provided in paragraph (2), an alien whose permanent resident status on a conditional basis expires under subsection (a)(1) or is terminated under subsection (c) or whose application for such status is denied shall return to the immigration status the alien had immediately prior to receiving permanent resident status on a conditional basis or applying for such status, as appropriate.

(2) SPECIAL RULE FOR TEMPORARY PROTECTED STATUS.—In the case of an alien whose permanent resident status on a conditional basis expires under subsection (a)(1) or is terminated under subsection (c) or whose application for such status is denied and who had temporary protected status im-

mediately prior to receiving or applying for such status, as appropriate, the alien may not return to temporary protected status if—

(A) the relevant designation under section 244(b) of the Immigration and Nationality Act (8 U.S.C. 1254a(b)) has been terminated; or

(B) the Secretary determines that the reason for terminating the permanent resident status on a conditional basis renders the alien ineligible for temporary protected status.

(e) INFORMATION SYSTEMS.—The Secretary shall use the information systems of the Department of Homeland Security to maintain current information on the identity, address, and immigration status of aliens granted permanent resident status on a conditional basis under this part.

SEC. 145. REMOVAL OF CONDITIONAL BASIS OF PERMANENT RESIDENT STATUS.

(a) ELIGIBILITY FOR REMOVAL OF CONDITIONAL BASIS.—

(1) IN GENERAL.—Subject to paragraph (2), the Secretary may remove the conditional basis of an alien's permanent resident status granted under this part if the alien demonstrates by a preponderance of the evidence that—

(A) the alien has been a person of good moral character during the entire period of conditional permanent resident status;

(B) the alien is described in section 533(b)(1)(D);

(C) the alien has not abandoned the alien's residence in the United States;

(D) the alien—

(i) 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; or

(ii) has served in the Uniformed Services for at least 2 years and, if discharged, received an honorable discharge; and

(E) the alien has provided a list of each secondary school (as that term is defined in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801)) that the alien attended in the United States.

(2) HARDSHIP EXCEPTION.—

(A) IN GENERAL.—The Secretary may, in the Secretary's discretion, remove the condi-

tional basis of an alien's permanent resident status if the alien—

(i) satisfies the requirements of subparagraphs (A), (B), (C), and (E) of paragraph (1);

(ii) demonstrates compelling circumstances for the inability to satisfy the requirements of subparagraph (D) of such paragraph; and

(iii) demonstrates that the alien's removal from the United States would result in extreme hardship to the alien or the alien's spouse, parent, or child who is a citizen or a lawful permanent resident of the United States.

(B) EXTENSION.—Upon a showing of good cause, the Secretary may extend the period of permanent resident status on a conditional basis for an alien so that the alien may complete the requirements of subparagraph (D) of paragraph (1).

(3) TREATMENT OF ABANDONMENT OR RESIDENCE.—For purposes of paragraph (1)(C), an alien—

(A) shall be presumed to have abandoned the alien's residence in the United States if the alien is absent from the United States for more than 365 days, in the aggregate, during the alien's period of conditional permanent resident status, unless the alien demonstrates to the satisfaction of the Secretary that the alien has not abandoned such residence; and

(B) 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.

(4) CITIZENSHIP REQUIREMENT.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the conditional basis of an alien's permanent resident status may not be removed unless the alien demonstrates that the alien satisfies the requirements of section 312(a) of the Immigration and Nationality Act (8 U.S.C. 1423(a)).

(B) EXCEPTION.—Subparagraph (A) shall not apply to an alien who is unable because of a physical or developmental disability or mental impairment to meet the requirements of such subparagraph.

(5) SUBMISSION OF BIOMETRIC AND BIOGRAPHIC DATA.—The Secretary may not remove the conditional basis of an alien's permanent resident status unless the alien submits biometric and biographic data, in accordance with procedures established by the Secretary. The Secretary shall provide an alternative procedure for applicants who are unable to provide such biometric data because of a physical impairment.

(6) BACKGROUND CHECKS.—

(A) REQUIREMENT FOR BACKGROUND CHECKS.—The Secretary shall utilize biometric, biographic, and other data that the Secretary determines appropriate—

(i) to conduct security and law enforcement background checks of an alien applying for removal of the conditional basis of the alien's permanent resident status; and

(ii) to determine whether there is any criminal, national security, or other factor that would render the alien ineligible for removal of such conditional basis.

(B) COMPLETION OF BACKGROUND CHECKS.—The security and law enforcement

background checks required by subparagraph (A) for an alien shall be completed, to the satisfaction of the Secretary, prior to the date the Secretary removes the conditional basis of the alien's permanent resident status.

(b) APPLICATION TO REMOVE CONDITIONAL BASIS.—

(1) IN GENERAL.—An alien seeking to have the conditional basis of the alien's lawful permanent resident status removed shall file an application for such removal in such manner as the Secretary may require.

(2) DEADLINE FOR SUBMISSION OF APPLICATION.—

(A) IN GENERAL.—An alien shall file an application under this subsection during the period beginning 6 months prior to and ending on the date that is later of—

(i) 6 years after the date the alien was initially granted conditional permanent resident status; or

(ii) any other expiration date of the alien's conditional permanent resident status, as extended by the Secretary in accordance with this part.

(B) STATUS DURING PENDENCY.—An alien shall be deemed to have permanent resident status on a conditional basis during the period that the alien's application submitted under this subsection is pending.

(3) ADJUDICATION OF APPLICATION.—

(A) IN GENERAL.—The Secretary shall make a determination on each application filed by an alien under this subsection as to whether the alien meets the requirements for removal of the conditional basis of the alien's permanent resident status.

(B) ADJUSTMENT OF STATUS IF FAVORABLE DETERMINATION.—If the Secretary determines that the alien meets such requirements, the Secretary shall notify the alien of such determination and remove the conditional basis of the alien's permanent resident status, effective as of the date of such determination.

(C) TERMINATION IF ADVERSE DETERMINATION.—If the Secretary determines that the alien does not meet such requirements, the Secretary shall notify the alien of such determination and, if the period of the alien's conditional permanent resident status under section

534(a)(1) has ended, terminate the conditional permanent resident status granted the alien under this part as of the date of such determination.

(c) TREATMENT FOR PURPOSES OF NATURALIZATION.—

(1) IN GENERAL.—For purposes of title III of the Immigration and Nationality Act (8 U.S.C. 1401 et seq.), an alien granted permanent resident status on a conditional basis under this part shall be considered to have been admitted as an alien lawfully admitted for permanent residence and to be in the United States as an alien lawfully admitted to the United States for permanent residence.

(2) LIMITATION ON APPLICATION FOR NATURALIZATION.—An alien may not apply for naturalization during the period that the alien is in permanent resident status on a conditional basis under this part.

SEC. 146. REGULATIONS.

(a) INITIAL PUBLICATION.—Not later than 180 days after the date of the enactment of this Act, the Secretary shall publish regulations implementing this part. Such regulations shall allow eligible individuals to apply affirma-

tively for the relief available under section 533 without being placed in removal proceedings.

(b) INTERIM REGULATIONS.—Notwithstanding section 553 of title 5, United States Code, the regulations required by subsection (a) shall be effective, on an interim basis, immediately upon publication but may be subject to change and revision after public notice and opportunity for a period of public comment.

(c) FINAL REGULATIONS.—Within a reasonable time after publication of the interim regulations in accordance with subsection (b), the Secretary shall publish final regulations implementing this part.

(d) PAPERWORK REDUCTION ACT.—The requirements of chapter 35 of title 44, United States Code (commonly known as the ''Paperwork Reduction Act'') shall not apply to any action to implement this part.

SEC. 147. PENALTIES FOR FALSE STATEMENTS.

Whoever files an application for any relief or benefit under this part and willfully and knowingly falsifies, misrepresents, or conceals a material fact or makes any false or fraudulent statement or representation, or makes or uses any false writing or document knowing the same to contain any false or fraudulent statement or entry, shall be fined in accordance with title 18, United States Code, imprisoned not more than 5 years, or both.

SEC. 148. CONFIDENTIALITY OF INFORMATION.

(a) PROHIBITION.—Except as provided in subsection (b), no officer or employee of the United States may—

(1) use the information furnished by an individual pursuant to an application filed under this part in removal proceedings against any person identified in the application;

(2) make any publication whereby the information furnished by any particular individual pursuant to an application under this part can be identified; or

(3) permit anyone other than an officer, employee or authorized contractor of the United States Government or, in the case of an application filed under this part with a designated entity, permit that designated entity, to examine such application filed under such sections.

(b) REQUIRED DISCLOSURE.—The Attorney General or the Secretary shall provide the information furnished under this part, and any other information derived from such furnished information, to—

(1) a Federal, State, tribal, or local law enforcement agency, intelligence agency, national security agency, component of the Department of Homeland Security, court, or grand jury in connection with a criminal investigation or prosecution, a background

check conducted pursuant to section 103 of the Brady Handgun Violence Protection Act (Public Law 103–159; 18 U.S.C. 922 note), or national security purposes, if such information is requested by such entity or consistent with an information sharing agreement or mechanism; or

(2) an official coroner for purposes of affirmatively identifying a deceased individual (whether or not such individual is deceased as a result of a crime).

(c) FRAUD IN APPLICATION PROCESS OR CRIMINAL CONDUCT.—Notwithstanding any other provision of this section, information concerning whether an alien seeking relief under this part has engaged in fraud in an application for such relief or at any time committed a crime, may be used or released for immigration enforcement, law enforcement, or national security purposes.

(d) PENALTY.—Whoever knowingly uses, publishes, or permits information to be examined in violation of this section shall be fined not more than $10,000.

SEC. 149. HIGHER EDUCATION ASSISTANCE.

(a) IN GENERAL.—Notwithstanding any provision of the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.), with respect to assistance provided under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070

et seq.), an alien who has permanent resident status on a conditional basis under this part shall be eligible only for the following assistance under such title:

(1) Student loans under parts D and E of such title IV (20 U.S.C. 1087a et seq. and 1087aa et seq.), subject to the requirements of such parts.

(2) Federal work-study programs under part C of such title IV (42 U.S.C. 2751 et seq.), subject to the requirements of such part.

(3) Services under such title IV (20 U.S.C. 1070 et seq.), subject to the requirements for such services.

(b) RESTORATION OF STATE OPTION TO DETERMINE RESIDENCY FOR PURPOSES OF HIGHER EDUCATION BENEFITS.—

(1) IN GENERAL.—section 115 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1623) is repealed.

(2) EFFECTIVE DATE.—The repeal under paragraph (1) 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).

PART V—AGRICULTURAL JOB OPPORTUNITIES, BENEFITS, AND SECURITY

SEC. 150. SHORT TITLES.

This part may be cited as the ''Agricultural Job Opportunities, Benefits, and Security Act of 2011'' or the ''AgJOBS Act of 2011''.

CHAPTER 1—BLUE CARD STATUS

SEC. 151. 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) has performed agricultural employment in the United States for at least 863 hours or 150 work days during the 24-month period ending on December 31, 2010;

(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 the 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 154(a)(2) of this Act; 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 154(a)(2) of this Act;

(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 153(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 determines, after notice and opportunity for a hearing, that an employer of an alien granted blue card status has failed to provide the record of employment required under 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 $100 fine 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.

(i) TREATMENT OF ALIENS GRANTED BLUE CARD STATUS.—

(1) 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.).

(2) DELAYED ELIGIBILITY FOR CERTAIN FEDERAL PUBLIC BENEFITS.—Except as otherwise provided in law, an alien granted blue card status (including a spouse or child of the alien granted derivative 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 153.

SEC. 152. APPLICATION FOR BLUE CARD STATUS.

(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 153 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 section 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 requirements under section 151(a)(1) or 153(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 151(a) or 153(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 151(a)(1) or 153(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 151(a)(1) or 153(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 subsection (a)(1)(B) if the applicant has consented to such forwarding;

(B) not to forward to the Secretary any such application if the applicant has not consented to such forwarding; and

(C) to assist an alien in obtaining documentation of the alien's work history, if the alien requests such assistance.

(2) NO AUTHORITY TO MAKE DETERMINATIONS.—No qualified designated entity may make a determination required by this part to be made by the Secretary.

(e) LIMITATION ON ACCESS TO INFORMATION.—Files and records collected or compiled by a qualified designated entity for the purposes of this section are confidential and the Secretary shall not have access to such a file or record relating to an alien without the consent of the alien, except as allowed by a court order issued pursuant to subsection (f).

(f) CONFIDENTIALITY OF INFORMATION.—

(1) IN GENERAL.—Except as otherwise provided in this section, the Secretary or any other official or employee of the Department or a bureau or agency of the Department is prohibited from—

(A) using information furnished by the applicant pursuant to an application filed under this title, 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 title 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 may 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 153 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 under this section or for adjustment of status under section 153 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 grounds 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 114(a)(11) of Public Law 104–134 (110 Stat. 1321–53 et seq.) may 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 under this section or for adjustment of status under section 153.

(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 under this section or for adjustment of status under section 153; 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 under this section or for adjustment of status under section 153.

SEC. 153. 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 pe-

riod 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, during the 4-year period beginning on the date of the enactment of this Act—

(i) agricultural employment in the United States for at least 150 work days during 3 of such years; and

(ii) at least 100 work days during the remaining year.

(2) PROOF.—An alien may demonstrate compliance with the requirement under paragraph (1) by submitting—

(A) the record of employment described in section 151(e); or

(B) documentation that may be submitted under section 152(c).

(3) EXTRAORDINARY CIRCUMSTANCES.—

(A) IN GENERAL.—In determining whether an alien has met the requirement under 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 154(a)(2);

(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 sec-

tion, 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 under this subsection.

(e) SPOUSES AND MINOR CHILDREN.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the Secretary shall confer the sta-

tus 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 section 151(h).

(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 154(a)(2);

(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. 154. OTHER PROVISIONS.

(a) WAIVER OF NUMERICAL LIMITATIONS AND CERTAIN GROUNDS FOR INADMISSIBILITY.—

(1) NUMERICAL LIMITATIONS DO NOT APPLY.—The numerical limitations of sections 201 and 202 of the Immigration and Nationality Act (8 U.S.C. 1151 and 1152) shall not apply to the adjustment of aliens to lawful permanent resident status under section 153.

(2) 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 adjustment of status under section 153(b)(2)(A) the following rules shall apply:

(A) GROUNDS OF EXCLUSION NOT APPLICABLE.—The provisions of paragraphs (5), (6)(A), (7), and (9) of section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)) shall not apply.

(B) WAIVER OF OTHER GROUNDS.—

(i) IN GENERAL.—Except as provided in 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.

(ii) 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).

(iii) CONSTRUCTION.—Nothing in this paragraph may be construed as affecting the authority of the Secretary other than under this subparagraph to waive provisions under such section 212(a).

(C) SPECIAL RULE FOR DETERMINATION OF PUBLIC CHARGE.—An alien is not ineligible for blue card status or an adjustment of status under section 153 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.

(3) TEMPORARY STAY OF REMOVAL AND WORK AUTHORIZATION FOR CERTAIN APPLICANTS.—

(A) BEFORE APPLICATION PERIOD.—Effective on the date of the 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 151(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—

(i) may not be removed; and

(ii) 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.

(B) 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 pe-

riod described in section 151(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—

(i) may not be removed; and

(ii) 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.

(b) ADMINISTRATIVE AND JUDICIAL REVIEW.—

(1) 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 153 except in accordance with this section.

(2) ADMINISTRATIVE REVIEW.—

(A) 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.

(B) STANDARD FOR REVIEW.—Such administrative appellate review shall be based solely upon the administrative record established at the time of the determination on the application and upon such additional or newly discovered evidence as may not have been available at the time of the determination.

(3) JUDICIAL REVIEW.—

(A) LIMITATION TO REVIEW OF REMOVAL.—There shall be judicial review of such a determination only in the judicial review of an order of removal under section 242 of the Immigration and Nationality Act (8 U.S.C. 1252).

(B) STANDARD FOR JUDICIAL REVIEW.—Such judicial review shall be based solely upon the administrative record established at the time of the review by the appellate authority and the findings of fact and determinations contained in such record shall be conclusive unless the applicant can establish abuse of discretion or that the findings are directly contrary to clear and convincing facts contained in the record considered as a whole.

(c) USE OF INFORMATION.—Beginning not later than the first day of the application period described in section

151(a)(2), the Secretary, in cooperation with qualified designated entities (as that term is defined in section 152(b)), shall broadly disseminate information respecting the benefits that aliens may receive under this part and the requirements that an alien is required to meet to receive such benefits.

(d) REGULATIONS, EFFECTIVE DATE, AUTHORIZATION OF APPROPRIATIONS.—

(1) REGULATIONS.—The Secretary shall issue regulations to implement this chapter not later than the first day of the seventh month that begins after the date of the enactment of this Act.

(2) EFFECTIVE DATE.—This chapter shall take effect on the date that regulations required under subsection (a) are issued, regardless of whether such regulations are issued on an interim basis or on any other basis.

(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary such sums as may be necessary to implement this part, including any sums needed for costs associated with the initiation of such implementation, for fiscal years 2012 and 2013.

SEC. 155. 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 AgJOBS Act of 2011.''; 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.

SEC. 156. DETERMINATION AND USE OF USER FEES.

(a) SCHEDULE OF FEES.—The Secretary shall establish and periodically adjust a schedule of fees for the employment of aliens pursuant to the amendment made by section 159 and a collection process for such fees from

1 employers. Such fees shall be the only fees chargeable to
2 employers for services provided under such amendment.
3 (b) DETERMINATION OF SCHEDULE.—
4 (1) IN GENERAL.—The schedule under sub-
5 section (a) shall reflect a fee rate based on the num-
6 ber of job opportunities indicated in the employer's
7 application under section 218 of the Immigration
8 and Nationality Act, as amended by section 159,
9 and sufficient to provide for the direct costs of pro-
10 viding services related to an employer's authorization
11 to employ aliens pursuant to the amendment made
12 by section 159(a), to include the certification of eli-
13 gible employers, the issuance of documentation, and
14 the admission of eligible aliens.
15 (2) PROCEDURE.—
16 (A) IN GENERAL.—In establishing and ad-
17 justing such a schedule, the Secretary shall
18 comply with Federal cost accounting and fee
19 setting standards.
20 (B) PUBLICATION AND COMMENT.—The
21 Secretary shall publish in the Federal Register
22 an initial fee schedule and associated collection
23 process and the cost data or estimates upon
24 which such fee schedule is based, and any sub-
25 sequent 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 159 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 added by section 159; and

(2) the provisions of this part.

(d) EFFECTIVE DATE.—This section and the amendments made by section 159 shall take effect 1 year after the date of the enactment of this Act.

SEC. 157. RULEMAKING.

(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 159 of this Act—

(1) shall take effect on the effective date of section 159; and

(2) shall be issued not later than 1 year after the date of the enactment of this Act.

SEC. 158. 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 Nation-

1 ality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)), and the
2 number of workers actually admitted, disaggregated
3 by State and by occupation;
4 (2) the number of such aliens reported to have
5 abandoned employment pursuant to section
6 218B(e)(2) of such Act;
7 (3) the number of such aliens who departed the
8 United States within the period specified in section
9 218B(d) of such Act;
10 (4) the number of aliens who applied for blue
11 card status pursuant to section 151(a);
12 (5) the number of aliens who were granted such
13 status pursuant section 151(a);
14 (6) the number of aliens who applied for an ad-
15 justment of status pursuant to section 153(a); and
16 (7) the number of aliens who received an ad-
17 justment of status pursuant section 153(a).
18 (b) IMPLEMENTATION REPORT.—Not later than 180
19 days after the date of the enactment of this Act, the Sec-
20 retary shall prepare and submit a report to Congress that
21 describes the measures being taken and the progress made
22 in implementing this part.

Subchapter A—Reform of H–2A Worker Program

SEC. 159. AMENDMENTS TO THE IMMIGRATION AND NATIONALITY ACT.

(a) IN GENERAL.—Title II (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 to mail a letter to, or otherwise 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 tem-

1 porary or seasonal agricultural job op-
2 portunity, the employer shall submit a
3 copy of the job offer described in sub-
4 section (a)(2) to the local office of the
5 State employment security agency
6 which serves the area of intended em-
7 ployment and authorize the posting of
8 the job opportunity on 'America's Job
9 Bank' or other electronic job registry,
10 except that nothing in this subclause
11 shall require the employer to file an
12 interstate job order under section 653
13 of title 20, Code of Federal Regula-
14 tions.

15 "(III) ADVERTISING OF JOB OP-
16 PORTUNITIES.—Not later than 14
17 days before the date on which the em-
18 ployer desires to employ an H–2A
19 worker in a temporary or seasonal ag-
20 ricultural job opportunity, the em-
21 ployer shall advertise the availability
22 of the job opportunities for which the
23 employer is seeking workers in a pub-
24 lication in the local labor market that

is likely to be patronized by potential farm workers.

"(IV) EMERGENCY PROCEDURES.—The Secretary of Labor, by regulation, shall provide a procedure for acceptance and approval of applications in which the employer has not complied with the provisions of this clause 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—

"(I) applies and is equally or better qualified for the job for which the nonimmigrant is, or nonimmigrants are, sought; and

"(II) 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 work-

er departs for the employer's place of employment and ending on the date on which 50 percent of the period of employment for which the H–2A worker 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 complaint. 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 if 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 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 not later than 7 days after the application is filed.

"SEC. 218A. H–2A EMPLOYMENT REQUIREMENTS.

"(a) PREFERENTIAL TREATMENT OF ALIENS PROHIBITED.—Employers seeking to hire United States workers shall offer the United States workers no less than the same benefits, wages, and working conditions that the employer is offering, intends to offer, or will provide to H–2A workers. Conversely, no job offer may impose on United States workers any restrictions or obligations which will not be imposed on the employer's H–2A workers.

"(b) MINIMUM BENEFITS, WAGES, AND WORKING CONDITIONS.—Except in cases where higher benefits, wages, or working conditions are required by the provisions of subsection (a), in order to protect similarly employed United States workers from adverse effects with respect to benefits, wages, and working conditions, every job offer which shall accompany an application under section 218(b)(2) shall include each of the following benefit, wage, and working condition provisions:

"(1) REQUIREMENT TO PROVIDE HOUSING OR A HOUSING ALLOWANCE.—

"(A) IN GENERAL.—An employer applying under section 218(a) for H–2A workers shall offer to provide housing at no cost to all workers in job opportunities for which the employer has applied under that section and to all other

workers in the same occupation at the place of employment, whose place of residence is beyond normal commuting distance.

"(B) TYPE OF HOUSING.—In complying with subparagraph (A), an employer may, at the employer's election, provide housing that meets applicable Federal standards for temporary labor camps or secure housing that meets applicable local standards for rental or public accommodation housing or other substantially similar class of habitation, or in the absence of applicable local standards, State standards for rental or public accommodation housing or other substantially similar class of habitation. In the absence of applicable local or State standards, Federal temporary labor camp standards shall apply.

"(C) FAMILY HOUSING.—If it is the prevailing practice in the occupation and area of intended employment to provide family housing, family housing shall be provided to workers with families who request it.

"(D) WORKERS ENGAGED IN THE RANGE PRODUCTION OF LIVESTOCK.—The Secretary of Labor shall issue regulations that address the

specific requirements for the provision of housing to workers engaged in the range production of livestock.

"(E) LIMITATION.—Nothing in this paragraph shall be construed to require an employer to provide or secure housing for persons who were not entitled to such housing under the temporary labor certification regulations in effect on June 1, 1986.

"(F) CHARGES FOR HOUSING.—

"(i) CHARGES FOR PUBLIC HOUSING.—If public housing provided for migrant agricultural workers under the auspices of a local, county, or State government is secured by an employer, and use of the public housing unit normally requires charges from migrant workers, such charges shall be paid by the employer directly to the appropriate individual or entity affiliated with the housing's management.

"(ii) DEPOSIT CHARGES.—Charges in the form of deposits for bedding or other similar incidentals related to housing shall not be levied upon workers by employers

who provide housing for their workers. An employer may require a worker found to have been responsible for damage to such housing which is not the result of normal wear and tear related to habitation to reimburse the employer for the reasonable cost of repair of such damage.

"(G) HOUSING ALLOWANCE AS ALTERNATIVE.—

"(i) IN GENERAL.—If the requirement set out in clause (ii) is satisfied, the employer may provide a reasonable housing allowance instead of offering housing under subparagraph (A). Upon the request of a worker seeking assistance in locating housing, the employer shall make a good faith effort to assist the worker in identifying and locating housing in the area of intended employment. An employer who offers a housing allowance to a worker, or assists a worker in locating housing which the worker occupies, pursuant to this clause shall not be deemed a housing provider under section 203 of the Migrant and Seasonal Agricultural Worker Protection

Act (29 U.S.C. 1823) solely by virtue of providing such housing allowance. No housing allowance may be used for housing which is owned or controlled by the employer.

"(ii) CERTIFICATION.—The requirement of this clause is satisfied if the Governor of the State certifies to the Secretary of Labor that there is adequate housing available in the area of intended employment for migrant farm workers and H–2A workers who are seeking temporary housing while employed 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 Comprehensive Immigration Reform Act of 2011 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, 2011, 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 the 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, 2011, had been annually adjusted, beginning on March 1, 2014, 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 the 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

"(vi) if piece rates of pay are used, the units produced daily.

"(G) REPORT ON WAGE PROTECTIONS.—Not later than December 31, 2012, the Comptroller General of the United States shall submit a report to the Secretary of Labor, the Committee on the Judiciary of the Senate, and the Committee on the Judiciary of the House of Representatives that addresses—

"(i) whether the employment of H–2A or unauthorized aliens in the United States agricultural workforce has depressed United States farm worker wages below the levels that would otherwise have prevailed if alien farm workers had not been employed in the United States;

"(ii) whether an adverse effect wage rate is necessary to prevent wages of United States farm workers in occupations in which H–2A workers are employed from falling below the wage levels that would have prevailed in the absence of the employment of H–2A workers in those occupations;

"(iii) whether alternative wage standards, such as a prevailing wage standard, would be sufficient to prevent wages in occupations in which H–2A workers are employed from falling below the wage level that would have prevailed in the absence of H–2A employment;

"(iv) whether any changes are warranted in the current methodologies for calculating the adverse effect wage rate and the prevailing wage; and

"(v) recommendations for future wage protection under this section.

"(H) COMMISSION ON WAGE STANDARDS.—

"(i) ESTABLISHMENT.—There is established the Commission on Agricultural Wage Standards under the H–2A program (in this subparagraph referred to as the 'Commission').

"(ii) COMPOSITION.—The Commission shall consist of 10 members as follows:

"(I) 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, 2012, 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.

"(iv) AGRICULTURAL MACHINERY AND EQUIPMENT EXCLUDED.—This subsection does not apply to the transportation of an H–2A worker on a tractor, combine, harvester, picker, or other similar machinery or equipment while such worker is actually engaged in the planting, cultivating, or harvesting of agricultural commodities or the care of livestock or poultry or engaged in transportation incidental thereto.

"(v) COMMON CARRIERS EXCLUDED.—This subsection does not apply to common carrier motor vehicle transportation in which the provider holds itself out to the general public as engaging in the transportation of passengers for hire and holds a valid certification of authorization for such purposes from an appropriate Federal, State, or local agency.

"(B) APPLICABILITY OF STANDARDS, LICENSING, AND INSURANCE REQUIREMENTS.—

"(i) IN GENERAL.—When using, or causing to be used, any vehicle for the purpose of providing transportation to which

this subparagraph applies, each employer shall—

"(I) ensure that each such vehicle conforms to the standards prescribed by the Secretary of Labor under section 401(b) of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1841(b)) and other applicable Federal and State safety standards;

"(II) ensure that each driver has a valid and appropriate license, as provided by State law, to operate the vehicle; and

"(III) have an insurance policy or a liability bond that is in effect which insures the employer against liability for damage to persons or property arising from the ownership, operation, or causing to be operated, of any vehicle used to transport any H–2A worker.

"(ii) AMOUNT OF INSURANCE REQUIRED.—The level of insurance required shall be determined by the Secretary of

Labor pursuant to regulations to be issued under this subsection.

"(iii) EFFECT OF WORKERS' COMPENSATION COVERAGE.—If the employer of any H–2A worker provides workers' compensation coverage for such worker in the case of bodily injury or death as provided by State law, the following adjustments in the requirements of subparagraph (B)(i)(III) relating to having an insurance policy or liability bond apply:

"(I) No insurance policy or liability bond shall be required of the employer, if such workers are transported only under circumstances for which there is coverage under such State law.

"(II) An insurance policy or liability bond shall be required of the employer for circumstances under which coverage for the transportation of such workers is not provided under such State law.

"(c) COMPLIANCE WITH LABOR LAWS.—An employer shall assure that, except as otherwise provided in

this section, the employer will comply with all applicable Federal, State, and local labor laws, including laws affecting migrant and seasonal agricultural workers, with respect to all United States workers and alien workers employed by the employer, except that a violation of this assurance shall not constitute a violation of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1801 et seq.).

''(d) COPY OF JOB OFFER.—The employer shall provide to the worker, not later than the day the work commences, a copy of the employer's application and job offer described in section 218(a), or, if the employer will require the worker to enter into a separate employment contract covering the employment in question, such separate employment contract.

''(e) RANGE PRODUCTION OF LIVESTOCK.—Nothing in this section, section 218, or section 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—

"(A) is otherwise admissible under this section, section 218, and section 218A; and

"(B) is not ineligible under paragraph (2).

"(2) DISQUALIFICATION.—An alien shall be considered inadmissible to the United States and ineligible for nonimmigrant status under section 101(a)(15)(H)(ii)(a) if the alien has, at any time during the past 5 years—

"(A) violated a material provision of this section, including the requirement to promptly depart the United States when the alien's authorized period of admission under this section has expired; or

"(B) otherwise violated a term or condition of admission into the United States as a nonimmigrant, including overstaying the period of authorized admission as such a nonimmigrant.

"(3) WAIVER OF INELIGIBILITY FOR UNLAWFUL PRESENCE.—

"(A) IN GENERAL.—An alien who has not previously been admitted into the United States pursuant to this section, and who is otherwise eligible for admission in accordance with paragraphs (1) and (2), shall not be deemed inadmissible by virtue of section 212(a)(9)(B). If an alien described in the preceding sentence is present in the United States, the alien may apply from abroad for H–2A worker 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 may be construed to 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 may be construed 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.—In 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—

"(I) whose period of authorized status as an H–2A worker (including any extensions) was for a period of not more than 10 months; and

"(II) has been outside the United States for at least 2 months during the 12-month period immediately preceding the date on which the alien is reapplying 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 Comprehensive Immigration Reform Act of 2011, 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.—In 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 months after the date of the failure, or misrepresentation, respectively. The Secretary of Labor shall conduct an investigation under this subparagraph if there is reasonable cause to believe that such a failure or misrepresentation has occurred.

"(B) DETERMINATION ON COMPLAINT.—Not later than 30 days after the date on which a complaint is filed under subparagraph (A), the Secretary of Labor shall determine whether or not a reasonable basis exists to make a finding described in subparagraph (C), (D), (E), or (G). If the Secretary of Labor determines that such a reasonable basis exists, the Secretary of Labor shall provide for notice of such determination to the interested parties and an opportunity for a hearing on the complaint, in accordance with section 556 of title 5, United States Code, not later than 60 days after the date of the determination. If such a hearing is requested, the Secretary of Labor shall make a finding concerning the matter not later than 60 days after the date of the hearing. In the case of similar complaints regarding the same applicant, the Secretary of Labor may consolidate

the hearings under this subparagraph on such complaints.

"(C) FAILURES TO MEET CONDITIONS.—If the Secretary of Labor finds, after notice and opportunity for a hearing, a failure to meet a condition of paragraph (1)(A), (1)(B), (1)(D), (1)(F), (2)(A), (2)(B), or (2)(G) of section 218(b), a substantial failure to meet a condition of paragraph (1)(C), (1)(E), (2)(C), (2)(D), (2)(E), or (2)(H) of section 218(b), or a 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 a 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 hear-

ing, 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) CONSTRUCTION.—Nothing in this section may 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, section 218, or section 218A.

"(b) RIGHTS ENFORCEABLE BY PRIVATE RIGHT OF ACTION.—H–2A workers may enforce, through the private right of action provided in subsection (c), the following rights:

1 "(1) The provision of housing or a housing al-
2 lowance as required under section 218A(b)(1).
3 "(2) The reimbursement of transportation as
4 required under section 218A(b)(2).
5 "(3) The payment of wages required under sec-
6 tion 218A(b)(3) when due.
7 "(4) The benefits and material terms and con-
8 ditions of employment expressly provided in the job
9 offer described in section 218(a)(2), not including
10 the assurance to comply with other Federal, State,
11 and local labor laws described in section 218A(c),
12 compliance with which shall be governed by the pro-
13 visions of such laws.
14 "(5) The guarantee of employment required
15 under section 218A(b)(4).
16 "(6) The motor vehicle safety requirements
17 under section 218A(b)(5).
18 "(7) The prohibition of discrimination under
19 subsection (d)(2).
20 "(c) PRIVATE RIGHT OF ACTION.—
21 "(1) MEDIATION.—Upon the filing of a com-
22 plaint by an H–2A worker aggrieved by a violation
23 of rights enforceable under subsection (b), and with-
24 in 60 days of the filing of proof of service of the
25 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 may 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 established under 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.

''In this section and in sections 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 H–2A workers 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; and

"(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.".

PART VI—FAMILY UNITY REFORMS

SEC. 161. PROMOTING FAMILY UNITY.

(a) UNLAWFULLY PRESENT ALIENS.—Section 212(a)(9) (8 U.S.C. 1182(a)(9)) is amended by striking subparagraphs (B) and (C) and inserting the following:

"(B) ALIENS UNLAWFULLY PRESENT.—

"(i) IN GENERAL.—Subject to clause (iii), any alien (other than an alien lawfully admitted for permanent residence) who has been unlawfully present in the United States for 1 year or more is inadmissible until such time as the alien departs or is removed and remains outside of the United States for a period of 3 consecutive years.

"(ii) CONSTRUCTION OF UNLAWFUL PRESENCE.—For purposes of this paragraph, an alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized by the Secretary or is present in the United States without being admitted or paroled.

"(iii) EXCEPTIONS.—

"(I) MINORS.—No period of time in which an alien is under 21 years of age shall be taken into account in determining the period of unlawful presence in the United States under clause (i).

"(II) ASYLEES.—No period of time in which an alien has a bona fide application for asylum pending under section shall be taken into account in determining the period of unlawful presence in the United States under clause (i) unless the alien during such period was employed without authorization in the United States.

"(III) FAMILY UNITY.—No period of time in which the alien is a beneficiary of family unity protection pursuant to section of the Immigration Act of 1990 shall be taken into account in determining the period of unlawful presence in the United States under clause (I).

"(IV) BATTERED WOMEN AND CHILDREN.—Clause (i) shall not apply to an alien who would be described in paragraph (6)(A)(ii) if 'violation of the terms of the alien's nonimmigrant visa' were substituted for 'unlawful entry into the United States' in subclause (III) of that paragraph.

"(V) TRAFFICKING VICTIMS.—Clause (i) shall not apply to an alien who demonstrates that the severe form of trafficking (as that term is defined in section 103 of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7102)) was at least 1 central reason for the alien's unlawful presence in the United States.

"(VI) IMMIGRANT VISAS.—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 Comprehensive Immigration Reform Act of 2011, and is otherwise admissible to the United States for permanent residence.

"(VII) PRIOR UNLAWFUL PRESENCE.—Any unlawful presence accrued by an alien as of the date of enactment of the Comprehensive Immigration Reform Act of 2011 shall not be considered unlawful presence for the purpose of the subparagraph if

such alien was as of the date of enactment of the Comprehensive Immigration Reform Act of 2011—

"(aa) the beneficiary of a pending or approved petition for classification as an immediate relative (as described in section 201(b)(2));

"(bb) the beneficiary of a pending or approved petition under section 203(a) or (b); or

"(cc) a derivative beneficiary of a pending or approved petition for classification as an immediate relative or under section 203(a) or (b).

"(iv) TOLLING FOR GOOD CAUSE.—In the case of an alien who—

"(I) has been lawfully admitted or paroled into the United States;

"(II) has filed a nonfrivolous application for a change or extension of status before the date of expiration of the period of stay authorized by the Secretary; and

"(III) has not been employed without authorization in the United States before or during the pendency of such application, the calculation of the period of time specified in clause (i)(I) shall be tolled during the pendency of such application, but not to exceed 120 days.

"(v) WAIVER.—The Secretary may waive the applicability of clause (i) for an immigrant who is the spouse, son, daughter, or parent of a United States citizen or of an alien lawfully admitted for permanent residence if the Secretary determines that—

"(I) the refusal of admission to such immigrant alien would result in hardship to the alien or to the citizen or lawfully resident spouse, son, daughter, or parent of such alien;

"(II) a waiver is necessary for humanitarian purposes or the public interest or to ensure family unity in the case of an alien who is eligible for

an immigrant visa under section 201 or 203; or

"(III) the alien should be permitted to depart the United States voluntarily pursuant to section 240B(a)(1).".

(b) FALSE CLAIMS AND MISREPRESENTATIONS.—Title II (8 U.S.C. 1151 et seq.) is amended—

(1) in section 212 (8 U.S.C. 1182)—

(A) in subsection (a)(6)(C)—

(i) in clause (ii), by inserting "and willfully" after "falsely" each place such term appears; and

(ii) in clause (iii), by striking "of clause (i)"; and

(B) in subsection (i), by amending paragraph (1) to read as follows:

"(1) The Attorney General or the Secretary of Homeland Security may, in the discretion of the Attorney General or the Secretary, waive the application of subsection (a)(6)(C) if it is established to the satisfaction of the Attorney General or the Secretary that the refusal of admission to the United States would—

"(A) result in extreme hardship to the alien or, 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, to the citizen or lawfully resident parent, spouse, son, or daughter; or

"(B) in the case of a VAWA self-petitioner, result in significant hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child."; and

(2) 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.

SEC. 162. EFFECTIVE LEGALIZATION PROGRAM FUNDING.

(a) DEPARTMENT OF HOMELAND SECURITY LEGALIZATION PROGRAM ACCOUNT.—

(1) ESTABLISHMENT.—There is established in the General Fund of the Treasury a separate account, which shall be known as the "Department of Homeland Security Legalization Program Account".

(2) SOURCE OF FUNDS.—The Secretary of the Treasury shall immediately transfer such sums as the Secretary of Homeland Security determines to

be necessary from the General Fund of the Treasury to the Department of Homeland Security Legalization Program Account.

(3) AUTHORIZATION OF APPROPRIATIONS.—

(A) IN GENERAL.—There are authorized to be appropriated, for the purposes described in subparagraph (B), such sums as are transferred pursuant to paragraph (2), which shall remain available for obligation during the 10-year period beginning on the date of the enactment of this Act.

(B) USE OF FUNDS.—Amounts appropriated pursuant to subparagraph (A) may be used by the Secretary to implement and operate the legalization programs and activities described in this subtitle, including—

(i) infrastructure, staffing, and adjudication activities;

(ii) outreach activities;

(iii) grants to community and faith-based organizations; and

(iv) anti-fraud programs and actions relating to such legalization programs.

(4) REPORT.—

(A) IN GENERAL.—Not later than 90 days after the date of the enactment of this Act, and annually thereafter, the Secretary shall provide a plan to the congressional committees set forth in subparagraph (B) that describes how funds made available under paragraph (3) will be expended, including—

(i) 1-time and on-going costs;

(ii) the level of funding for each program, project, and activity, including whether such funding will supplement a program, project, or activity receiving Federal funding otherwise appropriated; and

(iii) the amount of funding to be obligated in each fiscal year, by program, project, and activity.

(B) CONGRESSIONAL COMMITTEES.—The congressional committees set forth in the subparagraph are—

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

(ii) the Committee on Appropriations of the Senate;

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

(iv) the Committee on Appropriations of the House of Representatives.

(b) DEPARTMENT OF STATE LEGALIZATION PROGRAM ACCOUNT.—

(1) ESTABLISHMENT.—There is established in the General Fund of the Treasury a separate account, which shall be known as the ''Department of State Legalization Program Account''.

(2) SOURCE OF FUNDS.—The Secretary of the Treasury shall immediately transfer such sums as the Secretary of State determines to be necessary from the General Fund of the Treasury to the Department of State Legalization Program Account.

(3) AUTHORIZATION OF APPROPRIATIONS.—

(A) IN GENERAL.—There are authorized to be appropriated, for the purposes described in subparagraph (B), such sums as are transferred pursuant to paragraph (2), which shall remain available for obligation during the 10-year period beginning on the date of the enactment of this Act.

(B) USE OF FUNDS.—Amounts appropriated pursuant to subparagraph (A) may be used by the Secretary of State to implement

and operate the legalization programs and activities described in this subtitle, including—

(i) infrastructure, staffing, and adjudication activities;

(ii) outreach activities; and

(iii) anti-fraud programs and actions relating to such legalization programs.

(4) REPORT.—Not later than 90 days after the date of the enactment of this Act, and annually thereafter, the Secretary of State shall provide a plan to the congressional committees set forth in subsection (a)(4)(B) that describes how funds made available under paragraph (3) will be expended, including—

(A) 1-time and on-going costs;

(B) the level of funding for each program, project, and activity, including whether such funding will supplement a program, project, or activity receiving Federal funding otherwise appropriated; and

(C) the amount of funding to be obligated in each fiscal year, by program, project, and activity.

(c) IMMIGRATION REFORM PENALTY ACCOUNT.—

(1) ESTABLISHMENT.—There is established in the General Fund of the Treasury a separate account, which shall be known as the ''Immigration Reform Penalty Account''.

(2) SOURCE OF FUNDS.—Notwithstanding any other provision of this Act, there shall be deposited into the Immigration Reform Penalty Account all civil penalties collected under section 274A of the Immigration and Nationality Act (8 U.S.C. 1324a) and this subtitle, except as specifically provided otherwise in this subtitle.

(3) USE OF FUNDS.—Amounts deposited into the Immigration Reform Penalty Account shall remain available to the Secretary until expended in the following priority order:

(A) Any costs incurred in implementing and operating the immigration services programs described in this subtitle that are not otherwise paid for with—

(i) funds from the Department of Homeland Security Legalization Program Account; or

(ii) processing fees described in section 111(c)(4)(A).

(B) Any amount remaining in the account after the costs described in subparagraph (A) have been paid for shall be deposited into the General Fund of the Treasury to the extent necessary to reimburse the General Fund for funds transferred to the Department of Homeland Security Legalization Program Account under subsection (a)(2).

(C) Of the amount, if any, remaining in the account after the reimbursement described in subparagraph (B)—

(i) ⅓ shall be allocated to the Secretary to carry out investigation and prevention of fraud in—

(I) the legalization programs established under this subtitle; and

(II) the employment verification programs established under subtitle B;

(ii) ⅓ shall be allocated to the Secretary for immigrant integration programs, including English-language and United States civics instruction;

(iii) ⅙ shall be allocated to the Secretary for immigration services; and

(iv) ⅙ shall be allocated to the Secretary for immigration enforcement.

(d) CONSTRUCTION.—Nothing in this section may be construed to modify or limit any authority to collect and use immigration fees under this Act, section 286 of the Immigration and Nationality Act (8 U.S.C. 1356), or any other law.

Subtitle B—Worksite Enforcement

SEC. 171. UNLAWFUL EMPLOYMENT OF ALIENS.

(a) Section 274A of the Immigration and Nationality Act (8 U.S.C. 1324a) is amended to read as follows:

"SEC. 274A. UNLAWFUL EMPLOYMENT OF UNAUTHORIZED ALIENS.

"(a) IN GENERAL.—

"(1) IN GENERAL.—It is unlawful for an employer—

"(A) to hire 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 for employment in the United States an individual without complying with the requirements under subsections (c) and (d).

"(2) CONTINUING EMPLOYMENT.—It is unlawful for an employer, after hiring an alien for employ-

ment, to continue to employ the alien in the United States knowing or with reckless disregard that the alien is, or has become, an unauthorized alien with respect to such employment. Nothing in this section may be construed to prohibit or to require the employment of an authorized employee who was previously unauthorized.

"(3) USE OF LABOR THROUGH CONTRACT.—

"(A) IN GENERAL.—Any person or entity who uses a contract, subcontract, or exchange 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 deemed to have hired the alien for employment in the United States in violation of subparagraph (a)(1)(A).

"(B) CONTRACT REQUIREMENT.—For purposes of ensuring compliance with Federal immigration law, the Secretary may require by regulation that a person or entity include in a written contract or subcontract an effective and enforceable requirement that the contractor or subcontractor adhere to the immigration laws, including the use of an employment verification

system (referred to in this section as the 'System').

"(C) CONFIRMATION PROCEDURES.—The Secretary may establish procedures by which a person or entity may obtain confirmation from the Secretary that the contractor or subcontractor has registered with the System and is utilizing the System to verify its employees.

"(D) OTHER REQUIREMENTS.—The Secretary may establish such other requirements for persons or entities using contractors or subcontractors, including procedures adapted to different employment sectors, as the Secretary deems necessary to prevent knowing violations of this paragraph.

"(4) DEFENSE.—

"(A) IN GENERAL.—Subject to subparagraphs (B) and (C), an employer that establishes that it has complied in good faith with the requirements under paragraphs (1) through (4) of subsection (c) (pertaining to document verification requirements) and subsection (d) (pertaining to the use of the System) has established an affirmative defense that the employer has not violated subsection (a)(1)(A) with re-

spect to such hiring until such time as the Secretary has required an employer to participate in the System.

"(B) VOLUNTARY PARTICIPATION.—If an employer is participating on a voluntary basis pursuant to subsection (d), a defense may be established under this paragraph without a showing of compliance with subsection (d).

"(C) ADDITIONAL REQUIREMENTS.—To establish a defense under this paragraph, the employer shall also be in compliance with any additional requirements that the Secretary may promulgate by regulation pursuant to subsections (c) and (d).

"(5) PRESUMPTION.—An employer is presumed to have acted with knowledge or reckless disregard if the employer fails to comply with written standards, procedures, or instructions issued by the Secretary.

"(b) DEFINITIONS.—In this section:

"(1) EMPLOYER.—The term 'employer'—

"(A) means any person or entity hiring an individual for employment in the United States, including—

"(i) any person or entity who is an agent acting on behalf of an employer; and

"(ii) entities in any branch of the Federal Government; and

"(B) does not include a person or entity with fewer than 5 full- or part-time employees, for purposes of any requirement to participate in the System under subsection (d), except as it relates to subsection (d)(2)(H).

"(2) UNAUTHORIZED ALIEN.—The term 'unauthorized alien' means, with respect to the employment of an alien at a particular time, that the alien is not—

"(A) an alien lawfully admitted for permanent residence; or

"(B) authorized to be so employed under this Act or by the Secretary.

"(c) DOCUMENT VERIFICATION REQUIREMENTS.—Any employer hiring an individual for employment in the United States shall take the following steps, and those provided in subsection (d), to verify that the individual is authorized to work in the United States:

"(1) ATTESTATION AFTER EXAMINATION OF DOCUMENTATION.—

"(A) IN GENERAL.—The employer shall attest, under penalty of perjury and on a form prescribed by the Secretary, that it has verified the identity and employment authorization status of the individual by examining—

"(i) a document described in subparagraph (B); or

"(ii) a document described in subparagraph (C) and a document described in subparagraph (D).

The form prescribed by the Secretary may be electronic or on paper, and may be integrated electronically with the requirements under subsection (d), if the Secretary determines that combining the requirements in (c) and (d) would improve efficiency of the verification requirements. Such attestation may be manifested by either a handwritten or digital signature. An employer has complied with the requirements of this paragraph with respect to examination of documentation if the employer has followed applicable regulations and any written procedures or instructions provided by the Secretary, and if a reasonable person would conclude that the documentation is genuine and relates to the in-

dividual presenting it, taking into account any information provided to the employer by the Secretary, including photographs and other biometric information.

"(B) DOCUMENTS ESTABLISHING BOTH EMPLOYMENT AUTHORIZATION AND IDENTITY.—A document described in this subparagraph is an individual's—

"(i) United States passport or passport card issued pursuant to the Secretary of State's authority under section 211a of title 22, United States Code;

"(ii) permanent resident card or other document issued to aliens authorized to work in the United States, as designated by the Secretary, if the document—

"(I) contains a photograph of the individual, other biometric data such as fingerprints, or such other personal identifying information relating to the individual as the Secretary finds, by regulation, sufficient for the purposes of this subsection;

"(II) is evidence of authorization for employment in the United States; and

"(III) contains security features to make it resistant to tampering, counterfeiting, and fraudulent use;

"(iii) enhanced driver's license, enhanced identification card, or enhanced tribal card issued to a citizen of the United States, provided that the Secretary has certified by notice published in the Federal Register that such enhanced document is suitable for use under this subparagraph based upon the accuracy and security of the issuance process, security features on the document, and such other factors as the Secretary may determine; or

"(iv) a passport issued by the Federated States of Micronesia (FSM) or the Republic of the Marshall Islands (RMI) with evidence of nonimmigrant admission to the United States under the Compact of Free Association between the United States and the FSM or the RMI.

"(C) DOCUMENTS ESTABLISHING IDENTITY OF INDIVIDUAL.—A document described in this subparagraph includes—

"(i) an individual's driver's license or identity card issued by a State or an outlying possession of the United States, a Federally recognized Indian tribe, or an agency (including military) of the Federal government if the driver's license or identity card includes, at a minimum,—

"(I) the individual's photograph, name, date of birth, gender, and driver's license or identification card number, and

"(II) security features to make it resistant to tampering, counterfeiting, and fraudulent use, or

"(ii) for individuals under 18 years of age who are unable to present a document listed in clause (i), documentation of personal identity of such other type as the Secretary finds provides a reliable means of identification, which may include an attestation as to the individual's identity by

a person 21 years of age or older under penalty of perjury.

"(D) DOCUMENTS EVIDENCING EMPLOYMENT AUTHORIZATION.—All documents shall be unexpired. The following documents may be accepted as evidence of employment authorization—

"(i) a Social Security account number card issued by the Commissioner of Social Security (referred to in this section as the 'Commissioner') other than a card which specifies on its face that the card is not valid for employment in the United States or has other similar words of limitation. The Secretary, in consultation with the Commissioner, may require by publication of a notice in the Federal Register that only a Social Security account number card described in section 173 of the CIR Act of 2011 be accepted for this purpose; or

"(ii) any other documentation evidencing authorization of employment in the United States which the Secretary determines, by notice published in the Federal

Register, to be acceptable for purposes of this section, provided that the document, including any electronic security measures linked to the document, contains security features to make it resistant to tampering, counterfeiting, and fraudulent use.

"(E) AUTHORITY TO PROHIBIT USE OF CERTAIN DOCUMENTS.—If the Secretary finds that any document or class of documents described in subparagraph (B), (C), or (D) does not reliably establish employment authorization or identity or is being used fraudulently to an unacceptable degree, the Secretary may prohibit or restrict the use of that document or class of documents for purposes of this subsection.

"(2) INDIVIDUAL ATTESTATION OF EMPLOYMENT AUTHORIZATION.—The individual shall attest, under penalty of perjury in the form prescribed by the Secretary, that the individual is a citizen or national of the United States, an alien lawfully admitted for permanent residence, or an alien who is authorized under this Act or by the Secretary to be hired for such employment. Such attestation may be manifested by either a hand-written or digital signature. The individual shall also provide any Social Se-

curity Account Number issued to the individual on such form.

"(3) RETENTION OF VERIFICATION RECORD.—After completion of such form in accordance with paragraphs (1) and (2), the employer shall retain a paper, microfiche, microfilm, or electronic version of the form, according to such standards as the Secretary may provide, and make it available for inspection by officers or employees of the Department of Homeland Security (or persons designated by the Secretary), the Special Counsel for Immigration-Related Unfair Employment Practices, or the Department of Labor during a period beginning on the date of the hiring of the individual and ending 7 years after such date of hiring, or 2 years after the date the individual's employment is terminated, whichever is later.

"(4) COPYING OF DOCUMENTATION AND RECORDKEEPING REQUIRED.—

"(A) Notwithstanding any other provision of law, the employer shall copy all documents presented by an individual pursuant to this subsection and shall retain a paper, microfiche, microfilm, or electronic copy, but only (except as otherwise permitted under law) for the pur-

poses of complying with the requirements of this section and section 274B. Such copies may be required to reflect the signatures of the employer and the employee, as well as the date of receipt. The Secretary may authorize or require an alternative method of storing and authenticating the employee's documentation information if the Secretary determines that such alternative method is more secure or efficient.

"(B) The employer shall maintain records of all actions and copies of any correspondence or action taken by the employer to clarify or resolve any issue as to the validity of the individual's identity or employment authorization.

"(C) The employer shall maintain the records described in this paragraph for any employee for the period of time required by paragraph (3) for retention of that employee's verification form. The Secretary may prescribe the manner of recordkeeping and may require that additional records be kept or that additional documents be copied and maintained. The Secretary in furtherance of an investigation based on reasonable suspicion of a violation of this act, may require that these documents be

transmitted electronically for purposes of authorized inspections or other enforcement actions, and may develop automated capabilities to request such documents.

"(D) An employer shall safeguard any information retained under this paragraph and paragraph (3) and protect any means of access to such information to ensure that such information is not used for any purpose other than as authorized in this paragraph or paragraph (3) or 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, except as provided in paragraph (3).

"(5) PENALTIES.—An employer that fails to comply with any requirement of this subsection shall be penalized under subsection (e)(4)(B).

"(6) PROTECTION OF CIVIL RIGHTS.—

"(A) Nothing in this section shall be construed to prohibit any reasonable accommodation necessary to protect the religious freedom

of any individual, or to ensure access to employment opportunities of any disabled individual.

"(B) The employer shall use the procedures for document verification set forth in this paragraph for all employees without regard to race, sex, national origin, or, unless specifically permitted in this section, to citizenship status.

"(7) RECEIPTS.—The Secretary shall provide for the use of receipts for replacement documents, and temporary evidence of employment authorization by an individual to meet a documentation requirement of this subsection on a temporary basis not to exceed 1 year, pending satisfaction by the individual of such requirement.

"(d) EMPLOYMENT VERIFICATION SYSTEM.—

"(1) IN GENERAL.—

"(A) The Secretary, in consultation with the Commissioner, shall implement and specify the procedures for the System. The participating employers shall timely register with the System and shall use the System as described in subsection (d)(5).

"(B) The Secretary shall create the necessary processes to monitor the functioning of the System, including the volume of the

1 workflow, the speed of processing of queries,
2 the speed and accuracy of responses, misuse of
3 the System, fraud or identity theft, whether use
4 of the System results in wrongful adverse ac-
5 tions or discrimination based upon a prohibited
6 factor against U.S. citizens or employment au-
7 thorized aliens, and the security, integrity and
8 privacy of the program.
9 ''(2) IMPLEMENTATION SCHEDULE.—
10 ''(A) FEDERAL GOVERNMENT.—All em-
11 ployers within the Executive, Legislative, or Ju-
12 dicial Branches of the Federal Government
13 shall participate in the System on or after the
14 date of enactment of this subsection as fol-
15 lows—
16 ''(i) as of the date of enactment, to
17 the extent required by section 402(e)(1) of
18 the Illegal Immigration Reform and Immi-
19 grant Responsibility Act of 1996 as al-
20 ready implemented by each Branch; or
21 ''(ii) on or after the date that is 60
22 days after the date of enactment of this
23 subsection,

whichever is earlier, with respect to all newly hired employees and employees with expiring employment authorization.

"(B) FEDERAL CONTRACTORS.—Federal contractors shall participate in the System as provided in the final rule published at 73 Federal Register 67,651 (Nov. 14, 2008), or any subsequent amendments to such rule, for which purpose references to E–Verify in the final rule shall be construed to apply to the System.

"(C) CRITICAL INFRASTRUCTURE.—As of the date that is 1 year after the end of the application period for lawful protective status under section 111(c)(1)(B) of the Comprehensive Immigration Reform Act of 2011, the Secretary, in the Secretary's discretion, with notice to the public provided in the Federal Register, may require any employer or industry which the Secretary determines to be part of the critical infrastructure or directly related to the national security or homeland security of the United States to participate in the System with respect to all newly hired employees and employees with expiring employment authorization. The Secretary shall notify employers subject to this

subparagraph no less than 60 days prior to such required participation.

"(D) EMPLOYERS WITH MORE THAN 1,000 EMPLOYEES.—Not later than 2 years after the end of the application period for lawful protective status under section 111(c)(1)(B), all employers with more than 1,000 employees shall participate in the System with respect to all newly hired employees and employees with expiring employment authorization.

"(E) EMPLOYERS WITH MORE THAN 500 EMPLOYEES.—Not later than 3 years after the end of the application period for lawful protective status under section 111(c)(1)(B), all employers with more than 500 employees shall participate in the System with respect to all newly hired employees and employees with expiring employment authorization.

"(F) EMPLOYERS WITH MORE THAN 100 EMPLOYEES.—Not later than 4 years after the end of the application period for lawful protective status under section 111(c)(1)(B), all employers with more than 100 employees shall participate in the System with respect to all

newly hired employees and employees with expiring employment authorization.

"(G) ALL EMPLOYERS.—Not later than 5 years after the end of the application period for lawful protective status under section 111(c)(1)(B), all employers shall participate in the System with respect to all newly hired employees and employees with expiring employment authorization.

"(H) WAIVER.—

"(i) AUTHORIZATION.—The Secretary of Homeland Security may waive or delay the participation requirements under this paragraph with respect to any employer or class of employers if the Secretary provides notice to Congress of such waiver before the date on which such waiver is granted.

"(ii) REQUIREMENT.—The Secretary of Homeland Security shall waive or delay the participation requirements under this paragraph with respect to any employer or class of employers—

"(I) until the date on which the Comptroller General of the United

States submits the initial certification under paragraph (10)(E); and

"(II) during any year in which the Comptroller General fails to submit a certification under such paragraph.

"(I) IMMIGRATION LAW VIOLATORS.—An order finding any employer to have violated section 274A, 274B, or 274C shall require the employer to participate in the System with respect to newly hired employees and employees with expiring employment authorization, if such employer is not otherwise required to participate in the System by this section. The Secretary shall monitor such employer's compliance with System procedures.

"(3) PARTICIPATION IN THE SYSTEM.—The Secretary may—

"(A) permit any employer that is not required under this section to participate in the System to do so on a voluntary basis; and

"(B) require any employer that is required to participate in the System with respect to its newly hired employees also to do so with respect to its current workforce if the employer is de-

termined by the Secretary or other appropriate authority to have engaged in any violation of the immigration laws.

"(4) CONSEQUENCE OF FAILURE TO PARTICIPATE.—If an employer is required under this subsection to participate in the System and fails to comply with the requirements of such program with respect to an individual—

"(A) such failure shall be treated as a violation of subsection (a)(1)(B) with respect to that individual, and

"(B) a rebuttable presumption is created that the employer has violated paragraph (1)(A) or (2) of subsection (a), except in the case of any criminal prosecution.

"(5) PROCEDURES FOR PARTICIPANTS IN THE SYSTEM.—

"(A) IN GENERAL.—An employer participating in the System shall register such participation with the Secretary and conform to the following procedures in the event of hiring any individual for employment in the United States—

"(i) REGISTRATION OF EMPLOYERS.—The Secretary, through notice in the Fed-

eral Register, shall prescribe procedures that employers shall follow to register with the System. In prescribing these procedures, the Secretary shall have authority to require employers to provide—

"(I) employer's name;

"(II) employer's Employment Identification Number (EIN) and such other employer identification information as the Secretary may designate;

"(III) company address;

"(IV) name, date of birth, and position of the employer's employees accessing the System;

"(V) the information described in subclauses (I) through (IV) of this clause with respect to any agent, contractor, or other service provider accessing the System on the employer's behalf; and

"(VI) such other information as the Secretary deems necessary to ensure proper use and security of the System.

"(ii) UPDATING INFORMATION.—The employer is responsible for providing notice of any change to the information required under subclauses (I) through (V) of clause (i) before conducting any further inquiries within the System, or on such other schedule as the Secretary may provide.

"(iii) TRAINING.—The Secretary shall require employers to undergo such training to ensure proper use, protection of civil rights and civil liberties, privacy, integrity and security of the System. To the extent practicable, such training shall be made available electronically.

"(iv) NOTIFICATION TO EMPLOYEES.—The employer shall post notice or otherwise inform individuals hired for employment of the use of the System, that the System may be used for immigration enforcement purposes, and that the System cannot be used to discriminate or to take adverse action against U.S. citizens or employment authorized aliens.

"(v) PROVISION OF ADDITIONAL INFORMATION.—The employer shall obtain

from the individual (and the individual shall provide) and shall record in such manner as the Secretary may specify—

"(I) the individual's Social Security account number, or any other information relevant to determining citizenship as the Secretary of Homeland Security may specify,

"(II) if the individual does not attest to United States nationality under subsection (c)(2), such identification or authorization number established by the Department of Homeland Security as the Secretary of Homeland Security shall specify, and

"(III) such other information as the Secretary may require to determine the identity and employment authorization of an employee.

"(vi) PRESENTATION OF DOCUMENTATION.—The employer, and the individual whose identity and employment eligibility are being confirmed, shall fulfill the requirements of subsection (c).

1 "(B) SEEKING CONFIRMATION.—

2 "(i) The employer shall use the Sys-
3 tem to provide to the Secretary all required
4 information in order to initiate confirma-
5 tion of the identity and employment eligi-
6 bility of any individual no earlier than the
7 date upon which the individual has accept-
8 ed an offer of employment, and no later
9 than 3 business days, or such other rea-
10 sonable period as the Secretary may pro-
11 vide, after the date when employment be-
12 gins. An employer may not, however, make
13 the starting date of an individual's employ-
14 ment or training or any other term and
15 condition of employment dependent on the
16 receipt of a confirmation of identity and
17 employment eligibility.

18 "(ii) For reverification of an indi-
19 vidual with a limited period of employment
20 authorization, all required System proce-
21 dures shall be initiated no later than 3
22 business days after the date the individ-
23 ual's employment authorization expires.

24 "(iii) For those employers required by
25 the Secretary to verify their entire work-

force, the System can be used for initial verification of an individual hired before the employer is subject to the System, and the employer shall initiate all required procedures on or before such date as the Secretary shall specify.

''(iv) The Secretary shall provide, and the employer shall utilize, as part of the System, a method of notifying employers of a confirmation or nonconfirmation of an individual's identity and employment eligibility, or a notice that further action is required to verify such identity or employment eligibility ('further action notice'). The Secretary and the Commissioner shall establish procedures to directly notify the individual, as well as the employer, of a confirmation, nonconfirmation, or further action notice, and provide information about filing an administrative appeal pursuant to paragraph (7). The Secretary and the Commissioner may provide for a phased-in implementation of the notification requirements of this clause as appropriate, but the notification system shall

cover all inquiries not later than 5 years after the date of the enactment of the CIR Act of 2011.

"(C) CONFIRMATION OR NONCONFIRMATION.—

"(i) INITIAL RESPONSE.—The System shall provide a confirmation of an individual's identity and employment eligibility or a further action notice at the time of the inquiry, unless for technological reasons or due to unforeseen circumstances, the System is unable to provide such confirmation or further action notice. In such situations, the System shall provide a confirmation or further action notice within 3 business days of the initial inquiry. If providing a confirmation or further action notice, the System shall provide an appropriate code indicating such confirmation or such further action notice.

"(ii) CONFIRMATION UPON INITIAL INQUIRY.—When the employer receives an appropriate confirmation of an individual's identity and employment eligibility under the System, the employer shall record the

1 confirmation in such manner as the Sec-
2 retary may specify.
3 "(iii) FURTHER ACTION NOTICE AND
4 LATER CONFIRMATION OR NONCONFIRMA-
5 TION.—
6 "(I) NOTIFICATION AND AC-
7 KNOWLEDGMENT THAT FURTHER AC-
8 TION IS REQUIRED.—Not later than 3
9 business days after an employer's re-
10 ceipt of a further action notice of an
11 individual's identity or employment
12 eligibility under the System, the em-
13 ployer shall notify the individual for
14 whom the confirmation is sought of
15 the further action notice and any pro-
16 cedures specified by the Secretary for
17 addressing such notice. The further
18 action notice shall be given to the in-
19 dividual in writing. The individual
20 shall affirmatively acknowledge in
21 writing, or in such other manner as
22 the Secretary may specify, the receipt
23 of the further action notice from the
24 employer. If the individual refuses to
25 acknowledge the receipt of the further

action notice, or acknowledges in writing that he or she will not contest the further action notice under subclause (II), the employer shall notify the Secretary in such manner as the Secretary may specify.

"(II) CONTEST.—Not later than 15 business days after receiving notification of a further action notice under subclause (I), the individual shall contact the appropriate Federal agency and, if the Secretary so requires, appear in person for purposes of verifying the individual's identity and employment eligibility. The employer shall provide the individual with time as needed during daytime hours to contest the further action notice. The Secretary, in consultation with the Commissioner and other appropriate Federal agencies, shall specify an available secondary verification procedure to confirm the validity of information provided and

to provide a confirmation or nonconfirmation.

"(III) NO CONTEST.—If the individual refuses to acknowledge receipt of the further action notice, acknowledges that he or she will not contest the further action notice as provided in subclause (I), or does not contact the appropriate Federal agency within the period specified in subclause (II), a nonconfirmation shall issue. The employer shall record the nonconfirmation in such manner as the Secretary may specify and terminate the individual's employment. An individual's failure to contest a further action notice shall not be considered an admission of guilt with respect to any violation of this section or any provision of law.

"(IV) CONFIRMATION OR NONCONFIRMATION.—Unless the period is extended in accordance with this subclause, the System shall provide a confirmation or nonconfirmation with-

in 15 business days from the date that the individual contests the further action notice under subclause (II). If the Secretary determines that good cause exists, including to permit the individual to obtain and provide needed evidence of identity or employment eligibility, the Secretary shall extend the period for providing confirmation or nonconfirmation for stated periods beyond 15 business days. When confirmation or nonconfirmation is provided, the confirmation system shall provide an appropriate code indicating such confirmation or nonconfirmation.

"(V) RE-EXAMINATION.—Nothing in this section shall prevent the Secretary from establishing procedures to reexamine a case where a confirmation or nonconfirmation has been provided if subsequently received information indicates that the confirmation or nonconfirmation may not have been correct.

"(VI) EMPLOYEE PROTECTIONS.—In no case shall an employer terminate employment or take any other adverse action against an individual solely because of a failure of the individual to have identity and employment eligibility confirmed under this subsection until a nonconfirmation has been issued, and if the further action notice was contested, the period to timely file an administrative appeal has expired without an appeal, or in the case where an administrative appeal or an action for judicial review has been filed, or the stay of the nonconfirmation has been terminated.

"(iv) NOTICE OF NONCONFIRMATION.—Not later than 3 business days after an employer's receipt of a nonconfirmation, the employer shall notify the individual who is the subject of the nonconfirmation, and provide information about filing an administrative appeal pursuant to paragraph (7). The nonconfirmation notice

shall be given to the individual in writing. The individual shall affirmatively acknowledge in writing, or in such other manner as the Secretary may specify, the receipt of the nonconfirmation notice from the employer. If the individual refuses or fails to acknowledge the receipt of the nonconfirmation notice, the employer shall notify the Secretary in such manner as the Secretary may specify.

"(D) CONSEQUENCES OF NONCONFIRMATION.—

"(i) TERMINATION OF CONTINUED EMPLOYMENT.—Except as provided in clause (iii), if the employer has received a nonconfirmation regarding an individual and has notified the individual as required by subparagraph (C)(iv), the employer shall terminate employment of the individual upon the expiration of the time period as specified in paragraph (7)(A) for filing an administrative appeal, or immediately if the further action notice was not contested.

"(ii) CONTINUED EMPLOYMENT AFTER NONCONFIRMATION.—If the employer, in violation of clause (i), continues to employ an individual after receiving nonconfirmation, a rebuttable presumption is created that the employer has violated subsections (a)(1)(A) and (a)(2) of this section. The previous sentence shall not apply in any prosecution under subsection (l)(1) of this section.

"(iii) EFFECT OF ADMINISTRATIVE APPEAL AND JUDICIAL REVIEW.—If an individual files an administrative appeal of the nonconfirmation within the time period specified in paragraph (7)(A) and provides a copy of such appeal to the employer, the employer shall not terminate the individual's employment under this subparagraph prior to the resolution of the administrative appeal or an action for judicial review under paragraph (8)(A) unless the Secretary or Commissioner terminates the stay under paragraph (7)(B).

"(E) OBLIGATION TO RESPOND TO QUERIES AND ADDITIONAL INFORMATION.—

"(i) Employers are required to comply with requests for information from the Secretary, including queries concerning current and former employees (within the time frame during which records are required to be maintained under this section regarding such former employees) that relate to the functioning of the System, the accuracy of the responses provided by the System, and any suspected misuse, discrimination, fraud, or identity theft in the use of the System. Failure to comply with such a request is a violation of section (a)(1)(B).

"(ii) Individuals being verified through the System may be required to take further action to address irregularities identified by the Secretary or the Commissioner in the documents relied upon for purposes of subsection (c). The employer shall communicate to the individual within 3 business days any such requirement for further actions and shall record the date and manner of such communication. The individual shall acknowledge in writing, or

in such other manner as the Secretary may specify, the receipt of this communication from the employer. Failure to communicate such a requirement is a violation of section (a)(1)(B).

"(iii) The Secretary is authorized, with notice to the public provided in the Federal Register, to implement, clarify, and supplement the requirements of this paragraph in order to facilitate the functioning, accuracy, and fairness of the System or to prevent misuse, discrimination, fraud, or identity theft in the use of the System.

"(F) The Secretary may establish a process to certify, on an annual basis or such other time frame as the Secretary may provide, designated agents and other System service providers seeking access to the System to perform verification queries on behalf of employers, based upon training, usage, and security standards designated by the Secretary.

"(G) No later than 3 months after the date of the enactment of this section, the Secretary of Homeland Security, in consultation

with the Secretary of Labor, the Secretary of Agriculture, the Commissioner of Social Security, the Attorney General, the Equal Employment Opportunity Commission, Office of Special Counsel for Unfair Immigration Related Employment Practices, and the Administrator of the Small Business Administration, shall commence a campaign to disseminate information respecting the procedures, rights, and remedies prescribed under this section. Such campaign shall be aimed at increasing the knowledge of employers, employees, and the general public concerning employer and employee rights, responsibilities, and remedies under this section. The Secretary shall assess the success of the campaign in achieving its goals.

"(i) In order to carry out and assess the campaign under this paragraph, the Secretary of Homeland Security may, to the extent deemed appropriate and subject to the availability of appropriations, contract with public and private organizations for outreach and assessment activities under the campaign.

"(ii) There are authorized to be appropriated to carry out this paragraph $40,000,000 for each fiscal year 2012 through 2014.

"(H) Based on a regular review of the System and the document verification procedures to identify misuse or fraudulent use and to assess the security of the documents and processes being used to establish identity or employment authorization, the Secretary, in consultation with the Commissioner, may modify the documents or information that shall be presented to the employer, the information that shall be provided to the System by the employer, and the procedures that shall be followed by employers with respect to any aspect of the System if the Secretary, in the Secretary's discretion, concludes that the modification is necessary to ensure that the System accurately and reliably determines the identity and employment authorization of employees while providing protection against misuse, discrimination, fraud, and identity theft.

"(I) Subject to appropriate safeguards to prevent misuse of the system, the Secretary, in

consultation with the Commissioner, shall establish a secure self-verification procedure to permit an individual who seeks to verify the individual's own employment eligibility prior to obtaining or changing employment to contact the appropriate agency and, in a timely manner, correct or update the information used by the System.

"(J) The Secretary may, upon notice provided in the Federal Register, adjust the time periods described in this paragraph.

"(6) PROTECTION FROM LIABILITY FOR ACTIONS TAKEN ON THE BASIS OF INFORMATION PROVIDED BY THE SYSTEM.—No employer participating in the System who complies with all System procedures as required in this Act shall be liable under this Act for any employment-related action taken with respect to the employee in good faith reliance on information provided through the confirmation system.

"(7) ADMINISTRATIVE REVIEW.—

"(A) IN GENERAL.—An individual who is notified pursuant to paragraph (5)(C)(iv) of a nonconfirmation by the employer may, not later than 15 business days after the date that such

notice is received, file an administrative appeal of such nonconfirmation. An individual subject to a nonconfirmation may file an appeal thereof after the 15-day period if the appeal is accompanied by evidence that the individual did not receive timely notice of a nonconfirmation, or that there was good cause for the failure to file an appeal within the 15-day period. All administrative appeals shall be filed as follows:

"(i) CITIZENS OR NATIONALS OF THE UNITED STATES.—An individual claiming to be a citizen or national of the United States shall file the administrative appeal with the Commissioner.

"(ii) ALIENS.—An individual claiming to be an alien authorized to work in the United States shall file the administrative appeal with the Secretary.

"(B) ADMINISTRATIVE STAY OF NONCONFIRMATION.—The nonconfirmation shall be automatically stayed upon the timely filing of an administrative appeal, and the stay shall remain in effect until the resolution of the appeal, unless the Secretary or the Commissioner terminates the stay based on a determination that

the administrative appeal is frivolous or filed for purposes of delay.

"(C) REVIEW FOR ERROR.—The Secretary and the Commissioner shall develop procedures for resolving administrative appeals regarding nonconfirmations based upon the information that the individual has provided, including any additional evidence or argument that was not previously considered. Any such additional evidence or argument shall be filed within 15 days of the date the appeal was originally filed. Appeals shall be resolved within 30 days after the individual has submitted all evidence and arguments he or she wishes to submit, or has stated in writing that there is no additional evidence that he or she wishes to submit. The Secretary and the Commissioner may, on a case by case basis for good cause, extend the filing and submission period in order to ensure accurate resolution of an appeal before him or her. Administrative review under this paragraph shall be limited to whether the nonconfirmation notice is supported by the weight of the evidence.

"(D) COMPENSATION FOR ERROR.—If the individual was denied a stay under subpara-

graph (B) and the Secretary makes a determination that the 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 in an amount not exceeding $75,000 and reasonable costs and attorneys' fees incurred during administrative and judicial review which shall not exceed $50,000. Amounts under this clause may be adjusted to account for inflation pursuant to the US Consumer Price Index—All Urban Consumers (CPI–U) compiled by the Bureau of Labor Statistics.

"(i) 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 oc-

curs 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.

"(ii) 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.

"(iii) 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 30 days to permit the individual to seek judicial review of the decision under paragraph (8)(A). If a judicial action is

brought within this period, the stay shall remain in effect until the resolution of the case, unless the Court terminates the stay based on a determination that the action for judicial review is frivolous or filed for purposes of delay.

"(8) JUDICIAL REVIEW.—

"(A) IN GENERAL.—After the Secretary or the Commissioner makes a final determination on an appeal filed by an individual under paragraph (7), the individual may obtain judicial review of such determination in a civil action commenced not later than 30 days after notice of such decision.

"(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, if the plaintiff does not reside within any such judicial district, in the District Court of the United States for the District of Columbia.

"(C) SERVICE.—The defendant is either the Secretary or the Commissioner, but not both, depending upon who issued the administrative order under paragraph (7). In addition

to serving the defendant, the plaintiff shall also serve the Attorney General.

"(D) ANSWER.—As part of the Secretary's or the Commissioner's answer to a complaint for such judicial review, the Secretary or the Commissioner shall file a certified copy of the administrative record compiled during the administrative review under paragraph (7), including the evidence upon which the findings and decision complained of are based. The court shall have power to enter, upon the pleadings and the administrative record, a judgment affirming or reversing the result of that administrative review, with or without remanding the cause for a rehearing.

"(E) STANDARD OF REVIEW.—

"(i) The burden shall be on the plaintiff to show that the administrative order was erroneous. Administrative findings of fact are conclusive unless any reasonable adjudicator would be compelled to conclude to the contrary. The court, upon good cause shown, may in its discretion remand to the Secretary or the Commissioner for

additional fact-finding or other proceedings.

"(ii) If the plaintiff meets his or her burden to show that the administrative order was erroneous, the court shall, upon request of the plaintiff, determine whether the plaintiff can establish by the preponderance of the evidence that the error was caused by the decision rules, processes, or procedures utilized by the System or erroneous system information that was not the result of acts or omissions of the individual.

"(F) COMPENSATION FOR ERROR.—

"(i) IN GENERAL.—In cases in which the judicial review reverses the final determination of the Secretary or the Commissioner made under paragraph (7), the individual was denied a stay under subparagraph (B), and the court finds that the final determination was erroneous by reason of the decision rules, processes, or procedures utilized by the System or erroneous system information that was not the result of acts or omissions of the indi-

vidual, the court may award to the individual lost wages not exceeding $75,000, reasonable costs and attorneys' fees incurred during administrative and judicial review which shall not exceed $50,000, and compensatory damages in an amount deemed necessary by the court. Amounts under this clause may be adjusted to account for inflation pursuant to 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 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 judicial review process. No lost wages shall be awarded for any period of time during which the individual was not authorized to be employed in the United States.

''(iii) PAYMENT OF COMPENSATION.—Notwithstanding any other law, payment of compensation for lost wages, costs and attorneys' fees under this paragraph, or compromise settlements of the same, shall be made as provided by section 1304 of title 31, United States Code. Appropriations made available to the Secretary or the Commissioner, accounts provided for under section 286 of the Immigration and Nationality Act (8 U.S.C. 1356), and funds from the Federal Old-Age and Survivors Insurance Trust Fund or the Federal Disability Insurance Trust Fund shall not be available to pay such compensation.

''(iv) EXCLUSIVE REMEDY.—Awards of compensation for lost wages, costs, and attorneys' fees under this paragraph shall

be the exclusive remedy for a finding under clause (i) that a final determination of the Secretary or the Commissioner made under paragraph (7) was erroneous by reason of the negligence or recklessness of the Secretary or the Commissioner.

"(9) PRIVATE RIGHT OF ACTION.—If the nonconfirmation issued for an individual was caused by negligence or other misconduct on the part of the employer, the individual may seek recovery of damages, reinstatement, back pay, and other appropriate remedies in a civil action against the employer. Such action shall be commenced not later than 90 days after notice of the Secretary's or the Commissioner's decision on an administrative appeal under paragraph (7) or the Court's decision in an action for judicial review under paragraph (8), or 90 days after termination of the individual as a result of the final nonconfirmation if no such administrative appeal or action for judicial review is taken. The action shall be brought in the district court of the United States for the judicial district in which the plaintiff resides or, if the plaintiff does not reside within any such judicial district, in the District Court of the United States for the District of Columbia. In such action,

no prior administrative or judicial finding relating to the employer in any proceeding to which the employer was not a party may be given any res judicata or collateral estoppel effect against the employer.

"(10) 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 COMPLIANCE WITH SYSTEM RULES.—

"(I) RATES OF INCORRECT NONCONFIRMATION AND CONFIRMATION NOTICES.—That, during a year, the

number of incorrect tentative nonconfirmations provided through the System is not more than 1 percent.

"(II) STABILITY OR IMPROVEMENT IN ERROR RATES.—That, during a year—

"(aa) the rate of incorrect tentative nonconfirmations shall not have increased by more than 3 percent compared to the previous year.

"(bb) the rate at which unauthorized immigrants receive incorrect confirmations shall not have increased by more than 3 percent compared to the previous year.

"(III) EMPLOYER COMPLIANCE.—That, during the year, not more than 10 percent of employers are found in violation of section 171(a)(4).

"(iii) PROTECTIONS FOR AMERICAN WORKERS.—

"(I) NO DISCRIMINATION BASED ON SYSTEM OPERATIONS.—The System has not resulted in increased discrimination or cause reasonable employers to conclude that individuals of certain races or ethnicities are more likely to have difficulties when offered employment caused by the operation of the System.

"(II) NO INCREASE IN EMPLOYER NONCOMPLIANCE.—The System has not resulted in increased employer noncompliance with system rules, including not notifying workers of tentative nonconfirmations, adverse employment consequences due to tentative nonconfirmations, prescreening, and reverification of workers against System rules.

"(III) NO INCREASE IN IDENTITY FRAUD AND THEFT.—The System has not and will not result in increased identity fraud or theft.

"(iv) 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.

"(v) PROTECTING SMALL BUSINESSES.—The System will not result in lost productivity or replacement and retraining costs due to United States citizen and work-authorized immigrants being terminated due to database errors.

"(vi) PROTECTING AMERICANS ACCESS TO PRODUCE AND SMALL FAMILY FARMS.—

"(I) NO INCREASE IN FOOD PRICES.—The System has not and will not increase the cost of agricultural products by more than 5 percent.

"(II) PROTECTING SMALL FARMERS.—Use of the System will not put small family farms out of business.

"(III) PROTECTING JOBS.—Use of the System will not cause Americans to lose jobs related to the agriculture industry.

"(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) REQUIREMENT FOR INDEPENDENT STUDY.—The determinations described in clauses (i) through (vi) of subparagraph (B) shall be based on an independent study commissioned by the Comptroller General in each phase of expansion of the System.

"(D) 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.

"(E) REPORTS.—Not later than 21 months after the date of the enactment of the 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 and shall include the following:

"(i) An assessment of the accuracy of the databases utilized by the System and of the timeliness and accuracy of the responses provided through the System to employers.

"(ii) An assessment of the privacy and confidentiality of the System and of the overall security of the System with respect to cybertheft and theft or misuse of private data.

"(iii) An assessment of whether the System is being implemented in a nondiscriminatory and nonretaliatory manner.

"(iv) An assessment of the most common causes for the erroneous issuance of nonconfirmations by the System and recommendations to correct such causes.

"(v) The recommendations of the Comptroller General regarding whether or not the System should be modified prior to further expansion.

"(F) CERTIFICATION.—If the Comptroller General determines that the System meets the requirements set out in clauses (i) through (vii) of subparagraph (B) for 1 year, the Comp-

1 troller shall certify such determination and sub-
2 mit such certification to Congress with the re-
3 port required by subparagraph (E).
4 "(11) ANNUAL AUDIT AND REPORT.—
5 "(A) PURPOSE OF THE AUDIT AND RE-
6 PORT.—The Office for Civil Rights and Civil
7 Liberties shall conduct annual audits of E–
8 Verify described in section 403(a) of the Illegal
9 Immigration Reform and Responsibility Act of
10 1996, Public Law No. 104–208, Div. C, 110
11 Stat. 3009–546, to assess employer compliance
12 with System requirements, including civil rights
13 and civil liberties protections, and compliance
14 with the System rules and procedures set forth
15 in the Memorandum of Understanding between
16 employers and the Social Security Administra-
17 tion and the Department of Homeland Security.
18 "(B) REQUIREMENTS OF AUDIT.—Annual
19 audits shall include, but are not limited to, the
20 following activities:
21 "(i) Use of testers to check if employ-
22 ers' are using E–Verify as outlined in the
23 Memorandum of Understanding between
24 employers and the Department of Home-
25 land Security and the Social Security Ad-

ministration, including if employers are misusing of the system to prescreen job applicants, if employers are giving proper notification to employees' regarding non-confirmations, and if employers are taking adverse actions against workers based upon nonconfirmations.

''(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; and

''(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 E–Verify 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 this subsection.

"(E) REQUIREMENT FOR REPORTS.—Not later than 18 months after the date of the enactment of the Act, and annually thereafter, the Office for Civil Rights and Civil Liberties shall submit a report to the President of the Senate, the Speaker of the House of Representatives, and the appropriate committees and subcommittees of Congress that contains the findings of the audit carried out under this paragraph.

"(12) MANAGEMENT OF THE SYSTEM.—

"(A) IN GENERAL.—The Secretary is authorized to establish, manage, and modify the System, which shall—

"(i) respond to inquiries made by participating employers at any time through the internet, or such other means as the Secretary may designate, concerning an individual's identity and whether the individual is authorized to be employed;

"(ii) maintain records of the inquiries that were made, of confirmations provided (or not provided), and of the codes provided to employers as evidence of their compliance with their obligations under the System; and

"(iii) provide information to, and require action by, employers and individuals using the System.

"(B) DESIGN AND OPERATION OF SYSTEM.—The System shall be designed and operated—

"(i) to maximize its reliability and ease of use by employers consistent with protecting the privacy and security of the underlying information, and ensuring full notice of such use to employees;

"(ii) to maximize its ease of use by employees, including notification of its use, of results, and ability to challenge results;

"(iii) to respond accurately to all inquiries made by employers on whether individuals are authorized to be employed and to register any times when the system is unable to receive inquiries;

"(iv) to maintain appropriate administrative, technical, and physical safeguards to prevent unauthorized disclosure of personal information, misuse by employers and employees, and discrimination;

"(v) to allow for auditing of the use of the System to detect misuse, discrimination, fraud, and identity theft, and to preserve the integrity and security of the information in all of the System, including but not limited to the following—

"(I) to develop and use tools and processes to detect or prevent fraud and identity theft, such as multiple uses of the same identifying information or documents to fraudulently gain employment;

"(II) to develop and use tools and processes to detect and prevent misuse of the system by employers and employees;

"(III) to develop tools and processes to detect anomalies in the use of the system that may indicate potential fraud or misuse of the system; and

"(IV) to audit documents and information submitted by employees to employers, including authority to conduct interviews with employers and employees, and obtain information concerning employment from the employer;

"(vi) to confirm identity and employment authorization through verification and comparison of records maintained by the Secretary, other Federal departments, states, or outlying possessions of the United States, or other available information, as determined necessary by the Secretary, including—

"(I) records maintained by the Social Security Administration;

"(II) birth and death records maintained by vital statistics agencies of any state or other United States jurisdiction;

"(III) passport and visa records (including photographs) maintained by the Department of State; and

"(IV) state driver's license or identity card information (including photographs) maintained by State departments of motor vehicles;

"(vii) to confirm electronically the issuance of the employment authorization or identity document and to display the digital photograph that the issuer placed on the document so that the employer can compare the photograph displayed to the photograph on the document presented by the employee. If a photograph is not available from the issuer, the Secretary shall specify alternative procedures for confirming the authenticity of the document; and

"(viii) to include, notwithstanding section 6103 of title 26, U.S. Code, procedures for verification by the Secretary of the Treasury of the validity of any employer identification number and related information provided by an employer to the Secretary for the purpose of participating in the System.

"(C) ACCESS TO INFORMATION.—

"(i) Notwithstanding any other provision of law, the Secretary of Homeland Security shall have access to relevant records described in subparagraphs (B)(vi) and (viii), for the purposes of preventing identity theft, fraud and misuse in the use of the System and administering and enforcing the provisions of this section governing employment verification. Any governmental agency or entity possessing such relevant records shall provide such assistance and cooperation in resolving further action notices and nonconfirmations relating to such records, or otherwise to improve the accuracy of the System, as the Secretary may request. A state or other non-Federal jurisdiction that does not provide such access, assistance, and cooperation shall not be eligible for any grant or other program of financial assistance administered by the Secretary or by the Commissioner.

"(ii) The Secretary, in consultation with the Commissioner and other appropriate Federal and State agencies, shall develop policies and procedures to ensure

1 protection of the privacy and security of
2 personally identifiable information and
3 identifiers contained in the records
4 accessed or maintained by the System. The
5 Secretary, in consultation with the Com-
6 missioner and other appropriate Federal
7 and State agencies, shall develop and de-
8 ploy appropriate privacy and security
9 training for the Federal and State employ-
10 ees accessing the records under the Sys-
11 tem.

12 ''(iii) The Secretary, acting through
13 the Chief Privacy Officer of the Depart-
14 ment of Homeland Security, shall conduct
15 regular privacy audits of the policies and
16 procedures established under clause (ii),
17 including any collection, use, dissemina-
18 tion, and maintenance of personally identi-
19 fiable information and any associated in-
20 formation technology systems, as well as
21 scope of requests for this information. The
22 Chief Privacy Officer shall review the re-
23 sults of the audits and recommend to the
24 Secretary any changes necessary to im-

prove the privacy protections of the program.

"(D) RESPONSIBILITIES OF THE SECRETARY OF HOMELAND SECURITY.—

"(i) As part of the System, the Secretary shall maintain a reliable, secure method, which, operating through the System and within the time periods specified, compares the name, alien identification or authorization number, or other information as determined relevant by the Secretary, provided in an inquiry against such information maintained or accessed by the Secretary in order to confirm (or not confirm) the validity of the information provided, the correspondence of the name and number, whether the alien is authorized to be employed in the United States (or, to the extent that the Secretary determines to be feasible and appropriate, whether the records available to the Secretary verify the identity or status of a national of the United States), and such other information as the Secretary may prescribe.

"(ii) As part of the System, the Secretary shall establish a reliable, secure method, which, operating through the System, displays the digital photograph described in subparagraph (B)(vii).

"(iii) The Secretary shall have authority to prescribe when a confirmation, nonconfirmation, or further action notice shall be issued.

"(iv) The Secretary shall perform regular audits under the System, as described in subparagraph (B)(v) and shall utilize the information obtained from such audits, as well as any information obtained from the Commissioner pursuant to section 174 of the Comprehensive Immigration Reform Act of 2011, for the purposes of this section, to administer and enforce the immigration laws, and to ensure employee rights are protected under the System.

"(v) The Secretary may make appropriate arrangements to allow employers or employees who are otherwise unable to access the System to use Federal Government facilities or public facilities or other

available locations in order to utilize the program.

"(vi) The Secretary shall, in consultation with the Commissioner, establish a program which shall provide a reliable, secure method by which victims of identity fraud and other individuals may suspend or limit the use of their Social Security account number or other identifying information for System purposes. The Secretary may implement the program on a limited pilot program basis before making it fully available to all individuals.

"(vii) The Secretary, in consultation with the Commissioner of Social Security, shall establish procedures for an Enhanced Verification System under section 178 of the Comprehensive Immigration Reform Act of 2011.

"(viii) The Secretary and the Commissioner shall establish a program in which Social Security account numbers that have been identified to be subject to unusual multiple use in the System, or that are otherwise suspected or determined to have

been compromised by identity fraud or other misuse, shall be blocked from use for System purposes unless the individual using such number is able to establish, through secure and fair additional security procedures, that he or she is the legitimate holder of the number.

''(ix) The Secretary shall establish a monitoring and compliance unit to detect and reduce identity fraud and other misuse of the program.

''(x) The Secretary, acting through the Officer for Civil Rights and Civil Liberties of the Department of Homeland Security, shall conduct regular civil rights and civil liberties assessments of the System, including participation by employers, other private entities, other Federal agencies, and state and local government. The Officer shall review the results of the assessment and recommend to the Secretary any changes necessary to improve the civil rights and civil liberties protections of the program.

"(E) RESPONSIBILITIES OF THE SECRETARY OF STATE.—As part of the System, the Secretary of State shall provide to the Secretary access to passport and visa information as needed to confirm that a passport or passport card presented under subsection (c)(1)(B) confirms the identity of the subject of the System check, or that a passport, passport card or visa photograph matches the Secretary of State's records, and shall provide such assistance as the Secretary may request in order to resolve further action notices or nonconfirmations relating to such information.

"(F) UPDATING INFORMATION.—The Commissioner and the Secretaries of Homeland Security and State shall update their information in a manner that promotes maximum accuracy and shall provide a process for the prompt correction of erroneous information.

"(13) 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 Government to utilize any information, database, or other records assembled under

this subsection for any purpose other than for verification as provided by this subsection the enforcement and administration of the immigration laws, or the enforcement of Federal laws for violations relating to use of the System.

"(14) CONFORMING AMENDMENT.—Sections 401 to 405 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (division C of Public Law 104–208; 8 U.S.C. 1234a note) are repealed. Nothing in this subsection may be construed to limit the authority of the Secretary to allow or continue to allow the participation in the System of employers who have participated in the E–Verify program established by such sections.

"(15) NONDISCRIMINATION.—The employer shall use the procedures for the System specified in this section for all employees without regard to race, sex, national origin, or, unless specifically permitted in this section, to citizenship status.

"(e) COMPLIANCE.—

"(1) COMPLAINTS AND INVESTIGATIONS.—The Secretary of Homeland Security shall establish procedures—

"(A) for individuals and entities to file complaints respecting potential violations of subsections (a) or (f)(1);

"(B) for the investigation of those complaints which the Secretary deems appropriate to investigate; and

"(C) for such other investigations of violations of subsections (a) or (f)(1) as the Secretary determines to be appropriate.

"(2) AUTHORITY IN INVESTIGATIONS.—In conducting investigations and hearings under this subsection, immigration officers shall have reasonable access to examine evidence of any employer being investigated.

"(3) JOINT EMPLOYMENT FRAUD TASK FORCE.—The Secretary, in cooperation with the Commissioner and Attorney General, and in consultation with other relevant agencies, shall establish a Joint Employment Fraud Task Force consisting of, at a minimum, the System's compliance personnel, immigration law enforcement officers, Special Counsel for Unfair Immigration-Related Employment Practices personnel, Department of Homeland Security Office for Civil Rights and Civil Lib-

erties personnel, and Social Security Administration fraud division personnel.

"(4) COMPLIANCE PROCEDURES.—

"(A) PRE-PENALTY NOTICE.—If the Secretary has reasonable cause to believe that there has been a civil violation of this section, the Secretary shall issue to the employer concerned a written notice of the Department's intention to issue a claim for a monetary or other penalty. Such pre-penalty notice shall—

"(i) describe the violation;

"(ii) specify the laws and regulations allegedly violated;

"(iii) disclose the material facts which establish the alleged violation;

"(iv) describe the penalty sought to be imposed; and

"(v) inform such employer that he or she shall have a reasonable opportunity to make representations as to why a monetary or other penalty should not be imposed.

"(B) EMPLOYER'S RESPONSE.—Whenever any employer receives written pre-penalty notice of a fine or other penalty in accordance with

subparagraph (A), the employer may, within 30 days from receipt of such notice, file with the Secretary its written response to the notice. The response may include any relevant evidence or proffer of evidence that the employer wishes to present with respect to whether the employer violated this section and whether, if so, the penalty should be mitigated, and shall be filed and considered in accordance with procedures to be established by the Secretary.

"(C) PENALTY CLAIM.—After considering the employer's response under 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. If the Secretary determines that there was a violation, the Secretary shall issue the final determination with a written penalty claim. The penalty claim shall specify all charges in the information provided under clauses (i) through (iii) of subparagraph (A) and any mitigation of the penalty that the Secretary deems appropriate under paragraph (5)(D).

"(5) CIVIL PENALTIES.—

"(A) HIRING OR CONTINUING TO EMPLOY UNAUTHORIZED ALIENS.—Any employer that violates any provision of subsection (a)(1)(A) or (a)(2) shall:

"(i) pay a civil penalty of not less than $2,000 and not more than $5,000 for each unauthorized alien with respect to which each violation of either subsection (a)(1)(A) or (a)(2) occurred;

"(ii) if the employer has previously been fined under this paragraph, pay a civil penalty of not less than $4,000 and not more than $10,000 for each unauthorized alien with respect to which a violation of either subsection (a)(1)(A) or (a)(2) occurred; and

"(iii) if the employer has previously been fined more than once under this paragraph, pay a civil penalty of not less than $8,000 and not more than $25,000 for each unauthorized alien with respect to which a violation of either subsection (a)(1)(A) or (a)(2) occurred.

"(B) ENHANCED PENALTY.—If an employer is determined to have committed within the 5 years immediately preceding the date of any violation of subsection (a)(1)(A) or (a)(2) a civil or criminal violation of a Federal or State law relating to wage and hour or other employment standards, workplace safety, collective bargaining, civil rights, or immigration, by a court or an administrative agency with jurisdiction over such violation, for which a monetary penalty of at least $500, a judicial injunction, or other equitable relief, or any term of imprisonment has been imposed, any civil money penalty or criminal fine otherwise applicable under this section shall be trebled. In any proceeding under this section, the Secretary of Homeland Security, administrative law judge, or court, as appropriate, shall determine whether a court or administrative agency has imposed such penalty for such previous violation of other law, but the validity and appropriateness of such prior action shall not be subject to review.

"(C) RECORDKEEPING OR VERIFICATION PRACTICES.—Any employer that violates or fails

to comply with any requirement of subsection (a)(1)(B), shall pay a civil penalty as follows:

"(i) not less than $500 and not more than $2,000 for each violation;

"(ii) if an employer has previously been fined under this paragraph, not less than $1,000 and not more than $4,000 for each violation; and

"(iii) if an employer has previously been fined more than once under this paragraph, not less than $2,000 and not more than $8,000 for each violation.

"(D) OTHER PENALTIES.—The Secretary may impose additional penalties for violations, including cease and desist orders, specially designed compliance plans to prevent further violations, suspended fines to take effect in the event of a further violation, and in appropriate cases, the remedy provided by paragraph (f)(2).

"(E) MITIGATION.—The Secretary is authorized, upon such terms and conditions as the Secretary deems reasonable and just and in accordance with such procedures as the Secretary may establish, to reduce or mitigate penalties imposed upon employers, based upon factors in-

cluding, but not limited to, the employer's hiring volume, compliance history, good-faith implementation of a compliance program, and voluntary disclosure of violations of this subsection to the Secretary. The Secretary shall not mitigate a penalty below the minimum penalty provided by this section, except that the Secretary may, in the case of an employer subject to penalty for record-keeping or verification violations only who has not previously been penalized under this section, in the Secretary's discretion, mitigate the penalty below the statutory minimum or remit it entirely.

"(F) INFLATION ADJUSTMENTS.—All penalties authorized in this paragraph may be adjusted periodically to account for inflation as provided by law.

"(6) ORDER OF INTERNAL REVIEW AND CERTIFICATION OF COMPLIANCE.—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 it is in compliance with this section, or has instituted a program to come into compliance. Within 60 days of receiving a notice from the Sec-

retary requiring such a certification, the employer's chief executive officer or similar official with responsibility for, and authority to bind the company on, all hiring and immigration compliance notices shall certify under penalty of perjury that the employer is in conformance with the requirements under paragraphs (1) through (4) of subsection (c), pertaining to document verification requirements, and with subsection (d), pertaining to the System (once that system is implemented with respect to that employer according to the requirements of subsection (d)(1)), and with any additional requirements that the Secretary may promulgate by regulation pursuant to subsections (c) or (d) or that the employer has instituted a program to come into compliance with these requirements. At the request of the employer, the Secretary may extend the 60-day deadline for good cause. The Secretary is authorized to publish in the Federal Register standards or methods for such certification, require specific recordkeeping practices with respect to such certifications, and audit the records thereof at any time. This authority shall not be construed to diminish or qualify any other penalty provided by this section.

"(7) JUDICIAL REVIEW.—

"(A) IN GENERAL.—Notwithstanding any other provision of law, including sections 1361 and 1651 of title 28, United States Code, no court shall have jurisdiction to consider a final determination or penalty claim issued under paragraph (4)(C), except as specifically provided by this paragraph. Judicial review of a final determination under paragraph (5) is governed only by chapter 158 of such title 28, except as specifically provided below. The Secretary is authorized to require that the petitioner provide, prior to filing for review, security for payment of fines and penalties through bond or other guarantee of payment acceptable to the Secretary.

"(B) REQUIREMENTS FOR REVIEW OF A FINAL DETERMINATION.—With respect to judicial review of a final determination or penalty claim issued under paragraph (4)(C), the following requirements apply:

"(i) DEADLINE.—The petition for review shall be filed no later than 30 days after the date of the final determination or penalty claim issued under paragraph (4)(C).

"(ii) VENUE AND FORMS.—The petition for review shall be filed with the court of appeals for the judicial circuit where the employer's principal place of business was located when the final determination or penalty claim was issued. The record and briefs do not have to be printed. The court of appeals shall review the proceeding on a typewritten or electronically filed record and briefs.

"(iii) SERVICE.—The respondent is the Secretary of Homeland Security. In addition to serving the respondent, the petitioner shall also serve the Attorney General.

"(iv) PETITIONER'S BRIEF.—The petitioner shall serve and file a brief in connection with a petition for judicial review not later than 40 days after the date on which the administrative record is available, and may serve and file a reply brief not later than 14 days after service of the brief of the respondent, and the court may not extend these deadlines, except for good cause shown. If a petitioner fails to file a

1 brief within the time provided in this para-
2 graph, the court shall dismiss the appeal
3 unless a manifest injustice would result.

4 "(v) SCOPE AND STANDARD FOR RE-
5 VIEW.—The court of appeals shall decide
6 the petition only on the administrative
7 record on which the final determination is
8 based. The burden shall be on the peti-
9 tioner to show that the final determination
10 was arbitrary, capricious, an abuse of dis-
11 cretion, not supported by substantial evi-
12 dence, or otherwise not in accordance with
13 law.

14 "(C) EXHAUSTION OF ADMINISTRATIVE
15 REMEDIES.—A court may review a final deter-
16 mination under paragraph (4)(C) only if—

17 "(i) the petitioner has exhausted all
18 administrative remedies available to the pe-
19 titioner as of right; and

20 "(ii) another court has not decided
21 the validity of the order, unless the review-
22 ing court finds that the petition presents
23 grounds that could not have been pre-
24 sented in the prior judicial proceeding or
25 that the remedy provided by the prior pro-

ceeding was inadequate or ineffective to test the validity of the order.

"(D) LIMIT ON INJUNCTIVE RELIEF.—Regardless of the nature of the action or claim or of the identity of the party or parties bringing the action, no court (other than the Supreme Court) shall have jurisdiction or authority to enjoin or restrain the operation of the provisions in this section, other than with respect to the application of such provisions to an individual petitioner.

"(8) ENFORCEMENT OF ORDERS.—If the final determination issued against the employer under this subsection is not subject to review under paragraph (7), the Attorney General, upon request by the Secretary, may bring a civil action to enforce compliance with the final determination in any appropriate district court of the United States. The court, on a proper showing, shall issue a temporary restraining order or a preliminary or permanent injunction requiring that the employer comply with the final determination issued against that employer under this subsection. In any such civil action, the validity and appropriateness of the final determination shall not be subject to review.

"(9) LIENS.—

"(A) CREATION OF LIEN.—If any employer liable for a fee or penalty under this section neglects or refuses to pay such liability and fails to file a petition for review (if applicable) under paragraph (7), such liability is a lien in favor of the United States on all property and rights to property of such person as if the liability of such person were a liability for a tax assessed under the Internal Revenue Code of 1986. If a petition for review is filed as provided in paragraph (7), the lien (if any) shall arise upon the entry of a final judgment by the court. The lien continues for 20 years or until the liability is satisfied, remitted, set aside, or terminated.

"(B) EFFECT OF FILING NOTICE OF LIEN.—Upon filing of a notice of lien in the manner in which a notice of tax lien would be filed under paragraphs (1) and (2) of section 6323(f) of the Internal Revenue Code of 1986, the lien shall be valid against any purchaser, holder of a security interest, mechanic's lien or judgment lien creditor, except with respect to properties or transactions specified in subsection (b), (c), or (d) of section 6323 of the In-

ternal Revenue Code of 1986 for which a notice of tax lien properly filed on the same date would not be valid. The notice of lien shall be considered a notice of lien for taxes payable to the United States for the purpose of any State or local law providing for the filing of a notice of a tax lien. A notice of lien that is registered, recorded, docketed, or indexed in accordance with the rules and requirements relating to judgments of the courts of the State where the notice of lien is registered, recorded, docketed, or indexed shall be considered for all purposes as the filing prescribed by this section. The provisions of section 3201(e) of chapter 176 of title 28, United States Code, shall apply to liens filed as prescribed under this section.

"(C) ENFORCEMENT OF A LIEN.—A lien obtained through this process shall be considered a debt (as defined in section 3002 of title 28, United States Code) and enforceable pursuant to the Federal Debt Collection Procedures Act (28 U.S.C. 3201 et seq.).

"(10) TRANSITION PROVISION.—The Attorney General shall have jurisdiction to adjudicate administrative proceedings under this subsection, pursuant

to procedures for hearings before administrative law judges as in effect under section 274A(e) of this Act and its implementing regulations on the day immediately before the date of the enactment of the CIR Act of 2011, until the date that regulations promulgated by the Secretary, in consultation with the Attorney General, for the adjudication of cases under this subsection are in effect. Such regulations may provide for the continuing jurisdiction of the Attorney General over cases pending before the Attorney General on such date that the regulations are promulgated. Sections 1512 and 1517 of the Homeland Security Act (6 U.S.C. 552 and 557) shall apply to any transfer of jurisdiction to adjudicate cases under this subsection from the Attorney General to the Secretary as if such transfer is a transfer under the Homeland Security Act; provided that, nothing in this sentence shall be construed to require any transfer of personnel from the Department of Justice to the Department of Homeland Security.

"(f) PROHIBITION OF INDEMNITY BONDS.—

"(1) PROHIBITION.—It is unlawful for an employer, in the hiring of any individual, to require the individual to post a bond or security, to pay or agree to pay an amount, or otherwise to provide a finan-

1 cial guarantee or indemnity, against any potential li-
2 ability arising under this section relating to such hir-
3 ing of the individual.

4 ''(2) CIVIL PENALTY.—Any employer who is de-
5 termined, after notice and opportunity for mitigation
6 of the monetary penalty under subsection (e), to
7 have violated paragraph (1) shall be subject to a
8 civil penalty of $10,000 for each violation and to an
9 administrative order requiring the return of any
10 amounts received in violation of such paragraph to
11 the employee or, if the employee cannot be located,
12 to the general fund of the Treasury.

13 ''(g) GOVERNMENT CONTRACTS.—

14 ''(1) CONTRACTORS AND RECIPIENTS.—When-
15 ever an employer who holds Federal contracts,
16 grants, or cooperative agreements, or reasonably
17 may be expected to submit offers for or be awarded
18 a government contract, is determined by the Sec-
19 retary to be a repeat violator of this section or is
20 convicted of a crime under this section, the employer
21 shall be subject to debarment from the receipt of
22 Federal contracts, grants, or cooperative agreements
23 for a period of up to 5 years in accordance with the
24 procedures and standards prescribed by the Federal
25 Acquisition Regulation. Prior to debarring the em-

ployer, the Secretary, in cooperation with the Administrator of General Services, shall advise all agencies holding contracts, grants, or cooperative agreements with the employer of the proceedings to debar the employer from the receipt of new Federal contracts, grants, or cooperative agreements for a period of up to 5 years. After consideration of the views of agencies holding contracts, grants or cooperative agreements with the employer, the Secretary may, in lieu of proceedings to debar the employer from the receipt of new Federal contracts, grants, or cooperative agreements for a period of up to 5 years, waive operation of this subsection, limit the duration or scope of the proposed debarment, or may refer to an appropriate lead agency the decision of whether to seek debarment of the employer, for what duration, and under what scope in accordance with the procedures and standards prescribed by the Federal Acquisition Regulation. However, any administrative determination of liability for civil penalty by the Secretary or the Attorney General shall not be reviewable in any debarment proceeding.

"(2) EFFECT OF INDICTMENTS OR OTHER ACTIONS.—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.

"(3) INADVERTENT VIOLATIONS.—Inadvertent violations of recordkeeping or verification requirements, in the absence of any other violations of this section, shall not be a basis for determining that an employer is a repeat violator for purposes of this subsection.

"(4) OTHER REMEDIES AVAILABLE.—Nothing in this subsection shall be construed to modify or limit any remedy available to any agency or official of the Federal Government for violation of any contractual requirement to participate in the System, as provided in the final rule published at 73 Federal Register 67,651 (Nov. 14, 2008), or any subsequent amendments to such rule.

"(h) PREEMPTION.—The provisions of this section preempt any State or local law, contract license, or other standard, requirement, action or instrument from—

"(1) imposing sanctions or liabilities for employing, or recruiting or referring for employment, unauthorized aliens, or for working without employment authorization;

"(2) requiring those hiring, recruiting, or referring individuals for employment to ascertain or verify the individuals' employment authorization or to participate in an employment authorization verification system, or requiring individuals to demonstrate employment authorization; and

"(3) requiring, authorizing or permitting the use of an employment verification system, unless otherwise mandated by Federal law, for any other purpose, including verifying the status of renters, determining eligibility for receipt of benefits, enrollment in school, obtaining or retaining a business license or other license, or conducting a background check.

"(i) BACKPAY REMEDIES.—Neither backpay nor any other monetary remedy for unlawful employment practices, workplace injuries or other causes of action giving rise to liability shall be denied to a present or former employee on account of—

"(1) the employer's or the employee's failure to comply with the requirements of this section in establishing or maintaining the employment relationship; the employee's violation of the provisions of federal law related to the employment verification system set forth in subsection (a); or'

"(2) the employee's continuing status as an unauthorized alien both during and after termination of employment.

"(j) DEPOSIT OF AMOUNTS RECEIVED.—Except as otherwise specified, civil penalties collected under this section shall be deposited by the Secretary into the Immigration Reform Penalty Account.

"(k) CHALLENGES TO VALIDITY OF THE SYSTEM.—

"(1) IN GENERAL.—Any right, benefit, or claim not otherwise waived or limited pursuant to this section is available in an action instituted in the United States District Court for the District of Columbia, but shall be limited to determinations of—

"(A) whether this section, or any regulation issued to implement this section, violates the Constitution of the United States; or

"(B) whether such a regulation issued by or under the authority of the Secretary to implement this section, is contrary to applicable provisions of this section or was issued in violation of title 5, chapter 5, United States Code.

"(2) DEADLINES FOR BRINGING ACTIONS.—Any action instituted under this subsection shall be filed not later than 180 days after the date of the implementation of the challenged section or regula-

tion described in subparagraph (A) or (B) of paragraph (1).

"(3) CONSTRUCTION.—In determining whether the Secretary's interpretation regarding any provision of this section is contrary to law, a court shall accord to such interpretation the maximum deference permissible under the Constitution.

"(l) PRIVATE RIGHT OF ACTION.—Any person or entity who is injured in his business or property by reason of the employment of an unauthorized alien by any other person or entity may sue such other person or entity in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages sustained, and the cost of suit, including reasonable attorney's fees. The award of interest, and the amount of damages payable to foreign states and instrumentalities of foreign states, shall be determined in the manner provided by section 15 of title 15, United States Code. The provision shall become effective 3 years after the date of the enactment of the CIR Act of 2011 and shall apply only to injury occurring after the effective date.

"(m) CRIMINAL PENALTIES AND INJUNCTIONS FOR PATTERN OR PRACTICE VIOLATIONS.—

"(1) PATTERN AND PRACTICE.—Any employer who engages in a pattern or practice of knowing violations of paragraph (1)(A) or (2) of subsection (a) shall be fined under title 18, United States Code, imprisoned for not more than 3 years for the entire pattern or practice, or both.

"(2) ENJOINING OF PATTERN OR PRACTICE VIOLATIONS.—Whenever the Secretary or the Attorney General has reasonable cause to believe that an employer is engaged in a pattern or practice of employment in violation of paragraph (1)(A) or (2) of subsection (a), the Attorney General may bring a civil action in the appropriate district court of the United States requesting such relief, including a permanent or temporary injunction, restraining order, or other order against the employer, as the Secretary or Attorney General determines to be necessary.

"(n) CRIMINAL PENALTIES FOR UNLAWFUL EMPLOYMENT.—

"(1) UNAUTHORIZED ALIENS.—Any person who, during any 12-month period, knowingly employs or hires for employment 10 or more individuals within the United States knowing that the individuals are unauthorized aliens (as defined in sub-

section (b)(1) of this section) shall be fined under title 18, United States Code, imprisoned for not more than 5 years, or both.

"(2) ABUSIVE EMPLOYMENT.—Any person who, during any 12-month period, knowingly employs or hires for employment 10 or more individuals within the United States—

"(A) knowing that the individuals are unauthorized aliens; and

"(B) under conditions that violate section 206 or 207 of title 29, United States Code (relating to minimum wages and maximum hours of employment),

shall be fined under title 18, United States Code, or imprisoned for not more than 10 years, or both.

"(3) ATTEMPT AND CONSPIRACY.—Any person who attempts or conspires to commit any offense under this subsection shall be punished in the same manner as a person who completes the offense.".

(b) CONFORMING AMENDMENT.—Section 274(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1324(a)(3)) is repealed.

SEC. 172. COMPLIANCE BY DEPARTMENT OF HOMELAND SECURITY CONTRACTORS WITH CONFIDENTIALITY SAFEGUARDS.

(a) IN GENERAL.—Section 6103(p) of the Internal Revenue Code is amended by adding at the end the following new paragraph:

"(9) DISCLOSURE TO DEPARTMENT OF HOMELAND SECURITY.—Notwithstanding any other provision of this section, no return or return information shall be disclosed to any contractor of the Department of Homeland Security unless such Department, to the satisfaction of the Secretary of the Treasury—

"(A) has requirements in effect that require each such contractor that would have access to returns or return information to provide safeguards (within the meaning of paragraph (4)) to protect the confidentiality of such returns or return information;

"(B) agrees to conduct an on-site review every 3 years (mid-point review in the case of contracts or agreements of less than 3 years in duration) of each contractor to determine compliance with such requirements;

"(C) submits the findings of the most recent review conducted under subparagraph (B)

to the Secretary as part of the report required by paragraph (4)(E); and

"(D) certifies to the Secretary for the most recent annual period that such contractor is in compliance with all such requirements, which shall include the name and address of each contractor, a description of the contract or agreement with such contractor, and the duration of such contract or agreement.".

(b) CONFORMING AMENDMENTS.—

(1) Section 6103(p)(8)(B) of such Code is amended by inserting "or paragraph (9)" after "subparagraph (A)".

(2) Section 7213(a)(2) of such Code is amended by striking "or (20)" and inserting "(20), or (21)".

(c) REPEAL OF REPORTING REQUIREMENTS.—

(1) REPORT ON EARNINGS OF ALIENS NOT AUTHORIZED TO WORK.—Subsection (c) of section 290 of the Immigration and Nationality Act (8 U.S.C. 1360) is repealed.

(2) 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.

SEC. 173. INCREASING SECURITY AND INTEGRITY OF SOCIAL SECURITY CARDS.

(a) FRAUD RESISTANT, TAMPER-RESISTANT, AND WEAR-RESISTANT SOCIAL SECURITY CARDS.—

(1) ISSUANCE.—

(A) PRELIMINARY WORK.—Not later than 180 days after the date of the enactment of this Act, the Commissioner of Social Security shall begin work to administer and issue fraud-resistant, tamper-resistant, and wear-resistant Social Security cards.

(B) COMPLETION.—Not later than 2 years after the date of the enactment of this Act, the Commissioner of Social Security shall issue only fraud-resistant, tamper-resistant and wear-resistant Social Security cards.

(2) AMENDMENT.—Section 205(c)(2)(G) of the Social Security Act (42 U.S.C. 405(c)(2)(G)) is amended to read—

"(i) The Commissioner of Social Security shall issue a Social Security card to each individual at the time of the issuance of a Social Security account number to

such individual. The Social Security card shall be fraud-resistant, tamper-resistant and wear-resistant.''.

(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this subsection and the amendments made by this subsection.

(b) MULTIPLE CARDS.—Section 205(c)(2)(G) of the Social Security Act (42 U.S.C. 405(c)(2)(G)) is further amended by adding at the end the following:

''(ii) The Commissioner of Social Security shall not issue a replacement Social Security card to any individual unless the Commissioner determines that the purpose for requiring the issuance of the replacement document is legitimate.''.

(c) CRIMINAL PENALTIES.—Section 208(a) of the Social Security Act (42 U.S.C. 408(a)) is amended—

(1) by amending paragraph (7) to read as follows:

''(7) for any purpose—

''(A) knowingly uses a Social Security account number or social security card knowing that the number or card was obtained from the Commissioner of Social Security by means of

fraud or false statement with the intent to defraud the actual holder of the number or card;

''(B) knowingly and falsely represents a number to be the Social Security account number assigned by the Commissioner of Social Security to him or to another person, when in fact such number is not the Social Security account number assigned by the Commissioner of Social Security to him or to such other person with the intent to defraud the actual holder of the number or card;

''(C) knowingly sells, or possesses with intent sell a Social Security account number or a Social Security card that is or purports to be a number or card issued by the Commissioner of Social Security; or

''(D) knowingly alters, counterfeits, forges, or falsely makes a Social Security account number or a Social Security card;

''(E) knowingly distributes a social security account number or a Social Security card knowing the number or card to be altered, counterfeited, forged, falsely made, or stolen; or;'';

(2) in paragraph (8)—

(A) by inserting the word ''knowingly'' immediately before the word ''discloses'';

(B) by inserting the word ''account'' immediately after the word ''security''; and

(C) by adding ''or'' at the end of the paragraph;

(3) by inserting immediately after paragraph (8) the following:

''(9) without lawful authority, knowingly produces or acquires for any person a Social Security account number, a Social Security card, or a number or card that purports to be a Social Security account number or Social Security card;'';

(4) in the undesignated penalty language at the end of subsection (a), by striking the word ''five'' and inserting the word ''ten''.

(d) CONSPIRACY AND DISCLOSURE.—Section 208 of the Social Security Act (42 U.S.C. 408) is amended by adding at the end the following:

''(f) Whoever attempts or conspires to violate any criminal provision within this section shall be punished in the same manner as a person who completes a violation of that provision.''.

SEC. 174. INCREASING SECURITY AND INTEGRITY OF IMMIGRATION DOCUMENTS.

Not later than 1 year after the date of the enactment of this Act, the Secretary shall—

(1) issue only machine-readable, tamper-resistant employment authorization documents that use biometric identifiers; and

(2) submit a report to Congress that describes the feasibility, advantages, and disadvantages of issuing a document described in paragraph (1) to any nonimmigrant alien authorized for employment with a specific employer.

SEC. 175. RESPONSIBILITIES OF THE SOCIAL SECURITY ADMINISTRATION.

Section 205(c)(12) of the Social Security Act, 42 U.S.C. 405(c)(2), is amended by adding at the end the following new subparagraph:

"(A) RESPONSIBILITIES OF THE COMMISSIONER OF SOCIAL SECURITY.—

"(i) As part of the verification system, the Commissioner of Social Security shall, subject to the provisions of section 274A(d) of the Immigration and Nationality Act, establish a reliable, secure method that, operating through the System and within the time periods specified in section

1 274A(d) of the Immigration and Nation-
2 ality Act:
3 "(I) Compares the name, date of
4 birth, Social Security account number
5 and available citizenship information
6 provided in an inquiry against such
7 information maintained by the Com-
8 missioner in order to confirm (or not
9 confirm) the validity of the informa-
10 tion provided regarding an individual
11 whose identity and employment eligi-
12 bility shall be confirmed.
13 "(II) Determines the correspond-
14 ence of the name, number, and any
15 other identifying information.
16 "(III) Determines whether the
17 name and number belong to an indi-
18 vidual who is deceased.
19 "(IV) Determines whether an in-
20 dividual is a national of the United
21 States (when available).
22 "(V) Determines whether the in-
23 dividual has presented a Social Secu-
24 rity account number that is not valid
25 for employment.

1 The System shall not disclose or release
2 Social Security information to employers
3 through the confirmation system (other
4 than such confirmation or nonconfirma-
5 tion, information provided by the employer
6 to the System, or the reason for the
7 issuance of a further action notice).

8 ''(ii) SOCIAL SECURITY ADMINISTRA-
9 TION DATABASE IMPROVEMENTS.—For
10 purposes of preventing identity theft, pro-
11 tecting employees, and reducing burden on
12 employers, and notwithstanding section
13 6103 of the Internal Revenue Code of
14 1986, the Commissioner of Social Security,
15 in consultation with the Secretary of
16 Homeland Security, shall review the Social
17 Security Administration databases and in-
18 formation technology to identify any defi-
19 ciencies and discrepancies related to name,
20 birth date, citizenship status, or death
21 records of the Social Security accounts and
22 Social Security account holders likely to
23 contribute to fraudulent use of documents,
24 or identity theft, or to affect the proper
25 functioning of the System, and shall cor-

rect any identified errors. The Commissioner shall ensure that a system for identifying and correcting such deficiencies and discrepancies is adopted to ensure the accuracy of the Social Security Administration's databases.

"(iii) NOTIFICATION TO SUSPEND USE OF SOCIAL SECURITY NUMBER.—The Commissioner of Social Security, in consultation with the Secretary of Homeland Security, may establish a secure process whereby an individual can request that the Commissioner preclude any confirmation under the System based on that individual's Social Security number until it is reactivated by that individual.".

SEC. 176. ANTIDISCRIMINATION PROTECTIONS.

(a) AMENDMENTS.—Section 274B (8 U.S.C. 1324b) is amended—

(1) by amending subsection (a) to read as follows:

"(a) PROHIBITION OF DISCRIMINATION BASED ON NATIONAL ORIGIN OR CITIZENSHIP STATUS.—

"(1) IN GENERAL.—It is an unfair immigration-related employment practice for a person or

other entity to discriminate against any individual, because of such individual's national origin or citizenship status, with respect to the hiring of the individual for employment, the verification of the individual's eligibility for employment through the System described in section 274A(d), the compensation, terms, conditions, or privileges of the employment of the individual, or the discharging of the individual from employment.

"(2) EXCEPTIONS.—Paragraph (1) shall not apply to—

"(A) a person or other entity that employs 3 or fewer employees, except for an employment agency, as defined in paragraph (9);

"(B) a person's or entity's discrimination because of an individual's national origin if the discrimination with respect to that person or entity and that individual is covered under section 703 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–2);

"(C) discrimination because of citizenship status which is otherwise required in order to comply with law, regulation, or executive order, or required by Federal, State, or local government contract, or which the Attorney General

determines to be essential for an employer to do business with an agency or department of the Federal, State, or local government.

"(3) ADDITIONAL EXCEPTION PROVIDING RIGHT TO PREFER EQUALLY QUALIFIED CITIZENS.—Notwithstanding any other provision of this section, it is not an unfair immigration-related employment practice for a person or other entity to prefer to hire, recruit, or refer an individual who is a citizen or national of the United States over another individual who is an alien if the two individuals are equally qualified.

"(4) UNFAIR IMMIGRATION-RELATED EMPLOYMENT PRACTICES AND THE SYSTEM.—It is also an unfair immigration-related employment practice for a person or other entity—

"(A) to terminate the employment of an individual or take any adverse employment action with respect to that individual (including any change in the terms and conditions of employment of the individual) due to a further action notice issued by the System, or the individual's decision to challenge or appeal any System determination;

"(B) to use the System with regard to any person who is not an employee;

"(C) to use the System to reverify the employment authorization of a current employee, other than reverification upon expiration of employment authorization, or as otherwise authorized under section 274A(d) or by Executive Order;

"(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 newly hired individuals;

"(E) to fail to provide any required notice to a current employee within the relevant time period;

"(F) to use the System to deny workers' employment benefits or otherwise interfere with their labor rights;

"(G) to use the System for any discriminatory or retaliatory purpose;

"(H) to use the System to prescreen an individual for employment; and

"(I) to use an immigration status verification system or service other than those described in section 274A for purposes of verifying employment eligibility under that section.

"(5) PROHIBITION OF INTIMIDATION OR RETALIATION.—It is also an unfair immigration-related employment practice for a person or other entity to intimidate, threaten, coerce, or retaliate against any individual for the purpose of interfering with any right or privilege secured under this section or because the individual intends to file or has filed a charge or a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this section.

"(6) TREATMENT OF CERTAIN DOCUMENTARY PRACTICES AS EMPLOYMENT PRACTICES.—A person's or other entity's request, for purposes of satisfying the requirements of section 274A(b), for more or different documents than are required under such section or refusing to honor documents tendered that reasonably appear to be genuine shall be treated as an unfair immigration-related employment practice in violation of paragraph (1).

"(7) BURDEN OF PROOF IN DISPARATE IMPACT CASES.—

"(A) An unlawful immigration-related employment practice or unfair employment practice case based on disparate impact is established 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.

"(ii) The complaining party demonstrates that an alternative employment practice is available 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 (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 decision-making 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.

"(8) MOTIVATING FACTOR.—Except as otherwise provided in this Act, an unlawful immigration-related unfair employment practice is established when the charging party demonstrates that citizenship status or national origin was a motivating fac-

tor for any employment practice, even though other factors also motivated the practice.

"(9) EMPLOYMENT AGENCY DEFINED.—As used in this section, the term 'employment agency' means any person or entity 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 person or entity.";

(2) in subsection (d), by amending paragraphs (1) and (2) to read as follows:

"(1) The Special Counsel shall investigate each charge received and determine whether or not there is reasonable cause to believe that the charge is true and whether or not to bring a complaint with respect to the charge before an administrative law judge. The Special Counsel may, on his or her own initiative, conduct investigations respecting unfair immigration-related employment practices or unfair employment practices and, based on such an investigation, file a complaint before such judge.

"(2) If the Special Counsel, after receiving such a charge respecting an unfair immigration-related employment practice or an unfair employment practice which alleges discriminatory activity or a pat-

tern or practice of discriminatory activity, has not filed a complaint before an administrative law judge with respect to such charge within 120 days, the Special Counsel shall notify the person making the charge of the determination not to file such a complaint during such period and the person making the charge may file a complaint directly before such judge within 90 days after the date of receipt of the notice.'';

(3) in subsection (g)(2)—

(A) in subparagraph (A), by inserting before the period ''and which requires such affirmative action as may be appropriate, or any other individual equitable relief as the administrative law judge determines appropriate.'';

(B) in subparagraph (B)—

(i) in clause (iii), by inserting before the semicolon '', and to provide such other relief as the administrative law judge determines appropriate to make the individual whole''; and

(ii) by amending clause (iv) to read as follows—

''(iv) to pay any applicable civil penalties proscribed below, the amounts of

which may be adjusted periodically to account for inflation as provided by law—

"(I) except as provided in subclauses (II) through (IV), to pay a civil penalty of not less than $2,000 and not more than $5,000 for each individual subjected to an unfair immigration related employment practice;

"(II) except as provided in subclauses (III) and (IV), in the case of a person or entity previously subject to a single order under this paragraph, to pay a civil penalty of not less than $4,000 and not more than $10,000 for each individual subjected to an unfair immigration related employment practice;

"(III) except as provided in subclause (IV), in the case of a person or entity previously subject to more than one order under this paragraph, to pay a civil penalty of not less than $8,000 and not more than $25,000 for each individual subjected to an un-

fair immigration related employment practice; and

"(IV) in the case of an unfair immigration-related employment practice described in subsection (a)(6) of this section, to pay a civil penalty of not less than $500 and not more than $5,000 for each individual subjected to an unfair immigration related employment practice.";

(C) in clause (vii) by striking "and" at the end;

(D) in clause (viii), by striking the period at the end and inserting "; and"; and

(E) by adding at the end the following:

"(ix)(I) An order of the administrative law judge may not 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, if such individual was refused admission, suspended, or expelled, or was refused employment or advancement or was suspended or discharged more likely that not, for any reason other than dis-

crimination 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 paragraph (a)(9) and a respondent demonstrates that the respondent would have taken the same action in the absence of the impermissible motivating factor, the administrative law judge may grant declaratory relief, injunctive relief (except as provided in clause (b)(2)), and attorney's fees and costs demonstrated to be directly attributable only to the pursuit of a claim under paragraph (a)(9); and shall not award damages or issue an order requiring any admission, reinstatement, hiring, promotion, or payment, described in subparagraph (I).";

(4) in subsection (l)(3), by inserting "and an additional $40,000,000 for each of fiscal years 2012 through 2014" before the period at the end; and

(5) by adding at the end the following:

"(m) REPORTS.—The Secretary of Homeland Security shall make transactional data and citizenship status

1 data related to the System available upon request by the
2 Special Counsel.
3 "(n) RECORDS.—
4 "(1) IN GENERAL.—Every employer, employ-
5 ment agency, and labor organization subject to this
6 section shall—
7 "(A) make and keep such records relevant
8 to the determinations of whether unlawful em-
9 ployment practices have been or are being com-
10 mitted;
11 "(B) preserve such records for such peri-
12 ods; and
13 "(C) make reports from such records as
14 prescribed by the Special Counsel, by regulation
15 or order, after public hearing, as reasonable,
16 necessary, or appropriate for the enforcement of
17 this section.
18 "(2) COOPERATION.—The Special Counsel
19 may—
20 "(A) cooperate with State and local agen-
21 cies charged with the administration of State
22 fair employment practices laws;
23 "(B) with the consent of the agencies re-
24 ferred to in subparagraph (A), for the purpose
25 of carrying out its functions and duties under

this section, and within the limitation of funds appropriated specifically for such purpose—

"(i) engage in and contribute to the cost of research and other projects of mutual interest undertaken by such agencies;

"(ii) utilize the services of such agencies and their employees; and

"(iii) notwithstanding any other provision of law, pay by advance or reimbursement such agencies and their employees for services rendered to assist the Special Counsel in carrying out this section.

"(C) in furtherance of the cooperative efforts under this paragraph, enter into written agreements with such State or local agencies, which—

"(i) may include provisions under which the Special Counsel shall refrain from processing a charge in any cases or class of cases specified in such agreements or under which the Special Counsel shall relieve any person or class of persons in such State or locality from requirements imposed under this section; and

"(ii) shall be rescinded if the Special Counsel determines that the agreement no longer serves the interest of effective enforcement of this section.".

(b) 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. 177. IMMIGRATION ENFORCEMENT SUPPORT BY THE INTERNAL REVENUE SERVICE AND THE SOCIAL SECURITY ADMINISTRATION.

(a) INCREASE IN PENALTY ON EMPLOYER FAILING TO FILE CORRECT INFORMATION RETURNS.—Section 6721 of the Internal Revenue Code of 1986 (relating to failure to file correct information returns) is amended—

(1) in subsection (a)(1)—

(A) by striking "$100" and inserting "$200"; and

(B) by striking "$1,500,000" and inserting "$2,000,000";

(2) in subsection (b)(1)—

(A) in subparagraph (A), by striking "$30 in lieu of $100" and inserting "$60 in lieu of $200"; and

(B) in subparagraph (B), by striking "$250,000" and inserting "$300,000";

(3) in subsection (b)(2)—

(A) in subparagraph (A), by striking "$60 in lieu of $100" and inserting "$120 in lieu of $200"; and

(B) in subparagraph (B), by striking "$500,000" and inserting "$600,000";

(4) in subsection (d)—

(A) in the subsection heading, by striking "$5,000,000" and inserting "$2,000,000";

(B) in paragraph (1)(B), by striking "'$75,000' for '$250,000'" and inserting "'$100,000' for '$300,000'";

(C) in paragraph (1)(C), by striking "'$200,000' for '$500,000'" and inserting "'$200,000' for '$600,000'"; and

(D) in paragraph (2)(A), by striking "$5,000,000" and inserting "$2,000,000"; and

(5) in subsection (e)—

(A) in paragraph (2)—

(i) in the matter preceding subparagraph (A), by striking "$250" and inserting "$400";

(ii) in subparagraph (C)(i), by striking "$25,000" and inserting "$100,000"; and

(iii) in subparagraph (C)(ii), by striking "$100,000" and inserting "$400,000"; and

(B) in paragraph (3)(A), by striking "$1,500,000" and inserting "$2,000,000".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to failures occurring after the date of the enactment of this Act.

SEC. 178. ENHANCED VERIFICATION SYSTEM.

(a) RIGHT TO REVIEW AND CORRECT SYSTEM INFORMATION.—The Secretary, in consultation with the Commissioner of Social Security, shall establish—

(1) procedures to permit an individual—

(A) to verify the individual's eligibility for employment in the United States before obtaining or changing employment;

(B) to view the individual's own records in the Enhanced Verification System in order to ensure the accuracy of such records; and

(C) to correct or update the information used by the System regarding the individual by

electronic means, to the greatest extent practicable; and

(2) procedures for establishing an Enhanced Verification System under subsection (b) through which an individual who has viewed the individual's own record may electronically—

(A) block the use of the individual's Social Security number under the System; and

(B) remove such block in order to—

(i) prevent the fraudulent or other misuse of a Social Security account number;

(ii) prevent employer misuse of the system;

(iii) protect privacy; and

(iv) limit erroneous nonconfirmations during employment verification.

(b) ENHANCED VERIFICATION SYSTEM.—

(1) IN GENERAL.—The Secretary, in consultation with the Commissioner of Social Security, shall establish a voluntary self-verification system to allow an individual to submit biometric information, verify the individual's own record, and to block and unblock the use of the individual's Social Security number in order to prevent the fraudulent or other

misuse of the individual's Social Security number during employment verification, to prevent employer misuse of the system, to protect privacy, and to limit erroneous non-confirmations during employment verification.

(2) VOLUNTARY ENROLLMENT.—An individual may enroll in the Enhanced Verification System on a voluntary basis.

(3) ELECTRONIC ACCESS.—The Secretary shall establish procedures allowing individuals to use a Personal Identification Number (PIN) or other biographic information to authenticate the individual's identity and to block and unblock the individual's Social Security number electronically.

(4) USE OF ENHANCED VERIFICATION SYSTEM RECEIPT FOR PURPOSE OF EMPLOYMENT VERIFICATION.—The Secretary shall establish procedures to allow an individual who has authenticated the individual's identity and unblocked the individual's Social Security number to receive a single –use code as a receipt indicating that the individual is work authorized and has self-verified, and procedures to allow the individual to use the single-use code in place of the identity and eligibility documents described in this section.

(5) EXPEDITED REVIEW PROCESS.—The Secretary shall establish an expedited review process to allow an individual who has authenticated the individual's identity and unblocked the individual's Social Security number immediately to correct user or system errors which result in an erroneous non-confirmation of work eligibility.

(6) REPORTS.—

(A) SYSTEM ASSESSMENT.—Not later than 3 months after the end of the third and fourth years in which the programs are in effect, the Secretary shall submit reports to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives on the Enhanced Verification System that—

(i) assesses the degree of fraudulent attesting of United States citizenship;

(ii) assesses the benefits of the Enhanced Verification System to employers and the degree to which it assists in the enforcement of section 274A of the Immigration and Nationality Act;

(iii) assesses 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) determines whether the Enhanced Verification System reduces discrimination during the employment verification process;

(v) assesses the degree to which the Enhanced Verification System protects employee civil liberties and privacy; and

(vi) includes recommendations on whether the Enhanced Verification System should be continued or modified.

(B) REPORT ON EXPANSION.—Not later than July 1, 2016, the Secretary shall submit a report shall to the committees referred to in subparagraph (A) that—

(i) evaluates whether the problems identified by the reports submitted under subparagraph (A) have been substantially resolved; and

(ii) describes the actions to be taken by the Secretary before requiring any individual to participate in the Enhanced Verification System.

(7) LIMITATION ON USE OF THE CONFIRMATION SYSTEM AND ANY RELATED SYSTEMS.—Notwithstanding any other provision of law, nothing in this section may be construed to permit any department, bureau, or other agency of the United States Government to utilize any information, database, or other records assembled under this section for any other purpose other than as provided for under the Enhanced Verification System.

SEC. 179. AUTHORIZATION OF APPROPRIATIONS.

(a) DEPARTMENT OF HOMELAND SECURITY.—There are authorized to be appropriated to the Department such sums as may be necessary to carry out this subtitle, and the amendments made by this subtitle, including the following:

(1) In each of the 5 years beginning on the date of the enactment of this Act, the appropriations necessary to increase to a level not less than 4500, by the end of such five-year period, the total number of personnel of the Department of Homeland Security assigned exclusively or principally to an office or offices in U.S. Citizenship and Immigration Services and U.S. Immigration and Customs Enforcement (and consistent with the missions of such agencies), dedicated to administering the System, and moni-

1 toring and enforcing compliance with sections 274A,
2 274B, and 274C of the Immigration and Nationality
3 Act (8 U.S.C. 1324a, 1324b, and 1324c), including
4 compliance with the requirements of the System.
5 These personnel shall perform compliance and moni-
6 toring functions, including the following:
7 (A) Verify Employment Identification
8 Numbers of employers participating in the Sys-
9 tem.
10 (B) Verify compliance of employers partici-
11 pating in the System with the requirements for
12 participation that are prescribed by the Sec-
13 retary.
14 (C) Monitor the System for multiple uses
15 of Social Security numbers and immigration
16 identification numbers that could indicate iden-
17 tity theft or fraud.
18 (D) Monitor the System to identify dis-
19 criminatory or unfair practices.
20 (E) Monitor the System to identify employ-
21 ers who are not using the system properly, in-
22 cluding employers who fail to make available
23 appropriate records with respect to their queries
24 and any notices of confirmation, nonconfirma-
25 tion, or further action.

(F) Identify instances where employees allege that an employer violated their privacy, civil or labor rights, or misused the System, and create procedures for employees to report such allegations.

(G) Analyze and audit the use of the System and the data obtained through the System to identify fraud trends, including fraud trends across industries, geographical areas, or employer size.

(H) Analyze and audit the use of the System and the data obtained through the System to develop compliance tools as necessary to respond to changing patterns of fraud.

(I) Provide employers with additional training and other information on the proper use of the System, including but not limited to privacy training and employee rights.

(J) Perform threshold evaluation of cases for referral to the Special Counsel for Unfair Immigration-Related Employment Practices or the Equal Employment Opportunity Commission, and other officials or agencies with responsibility for enforcing anti-discrimination,

civil rights, privacy or worker protection laws, as may be appropriate.

(K) Any other compliance and monitoring activities that, in the Secretary's judgment, are necessary to ensure the functioning of the System.

(L) Investigate identity theft and fraud detected through the System and undertake the necessary enforcement or referral actions.

(M) Investigate use of or access to fraudulent documents and undertake the necessary enforcement actions.

(N) Perform any other investigations that, in the Secretary's judgment, are necessary to ensure the lawful functioning of the System, and undertake any enforcement actions necessary as a result of these investigations.

(2) The appropriations necessary to acquire, install and maintain technological equipment necessary to support the functioning of the System and the connectivity between U.S. Citizenship and Immigration Services and U.S. Immigration and Customs Enforcement, Department of Justice, and other agencies or officials with respect to the sharing of

information to support the System and related immigration enforcement actions.

(3) The appropriations necessary to establish a robust redress process for employees who wish to appeal contested nonconfirmations to ensure the accuracy and fairness of the System.

(4) The appropriations necessary to provide a means by which individuals may access their own employment authorization data to ensure its accuracy independent of their employer.

(5) The appropriations necessary to establish a Joint Employment Fraud Task Force to promote employer compliance with the system and ensure a coordinated response to noncompliance.

(6) The appropriations necessary for the Office for Civil Rights and Civil Liberties and the Office of Privacy to perform their responsibilities as they relate to the System.

(7) The appropriations necessary to make grants to states to support them in assisting the federal government in carrying out the provisions of this subtitle.

(b) SOCIAL SECURITY ADMINISTRATION.—There are authorized to be appropriated to the Social Security Administration such sums as may be necessary to carry out

its responsibilities under this subtitle, including section 177.

(c) DEPARTMENT OF JUSTICE.—There are authorized to be appropriated to the Department of Justice such sums as may be necessary to carry out its responsibilities under this subtitle, including enforcing compliance with section 274B of the Act, as amended by section 176 of this Act.

(d) DEPARTMENT OF STATE.—There are authorized to be appropriated to the Department of State such sums as may be necessary to carry out its responsibilities under this subtitle.

TITLE II—IMMIGRATION ENFORCEMENT AND REFORM

Subtitle A—Border Enforcement

PART I—ADDITIONAL ASSETS AND RESOURCES

SEC. 201. EFFECTIVE DATE TRIGGERS.

(a) IN GENERAL.—Notwithstanding any effective date provision or any other law, the status of an alien in lawful prospective immigrant status may not be adjusted to the status of an alien lawfully admitted for permanent residence under section 112 unless—

(1) the Secretary has submitted a written certification to the President and Congress that the

measures described in subsection (b) are established, funded, and operational; and

(2) the Attorney General has submitted a written certification to the President and Congress that each of the measures described in subsection (c) are established, funded, and operational.

(b) MEASURES BY DEPARTMENT OF HOMELAND SECURITY.—The measures described in this subsection are established, funded, and operational if—

(1) U.S. Immigration and Customs Enforcement has—

(A) employed not fewer than 6,410 agents to investigate violations of criminal law, including—

(i) document and benefit fraud; and

(ii) the cross-border smuggling of aliens, firearms, narcotics, and other contraband;

(B) employed not fewer than 185 worksite enforcement auditors to support a worksite enforcement strategy that prioritizes developing cases against employers committing serious violations;

(C) created and staffed an Immigration Benefit and Document Fraud Task Force in

each field office headed by a Special Agent in Charge;

(D) established a nationwide plan, with benchmarks, to dramatically increase the nationwide enrollment in an alternatives to detention program that utilizes community-based nonprofit organizations; and

(E) implemented civil detention standards with which each facility detaining immigrants is required to comply;

(2) U.S. Customs and Border Protection has—

(A) employed not fewer than 21,000 United States Border Patrol agents who have been trained and have reported for duty, including additional agents who conduct inspections for drugs, contraband, and immigrants who are unlawfully present at ports of entry in the United States;

(B) employed not fewer than 21,500 officers who have been trained and have reported for duty at the Office of Field Operations;

(C) deployed 7 unmanned aircraft systems;

(D) deployed remote video surveillance systems at 300 sites;

(E) acquired 200 scope trucks; and

(F) acquired 56 mobile surveillance systems; and

(3) the Secretary has received and is processing and adjudicating applications under title I in a timely manner, including conducting all necessary background and security checks required under such title.

(c) MEASURES BY DEPARTMENT OF JUSTICE.—The measures described in this subsection are established, funded, and operational if the Department of Justice has—

(1) employed not fewer than 150 Assistant United States Attorneys who prosecute criminal violations at the border; and

(2) employed not fewer than 275 immigration judges and appropriate support staff.

SEC. 202. CUSTOMS AND BORDER PROTECTION PERSONNEL.

(a) STAFF ENHANCEMENTS.—

(1) REVISIONS TO FISCAL YEAR ALLOCATIONS AND FUNDING.—Title II of the Department of Homeland Security Appropriations Act, 2010 (Public Law 111–83), is amended by inserting "*Provided further,* That of the total amount provided, $40,000,000 shall be used to pay the salaries and

related compensation for 250 additional Customs and Border Protection officers and 25 associated support staff personnel, who shall be devoted to new inspection lanes at new land ports of entry on the Southwest border'' before the period at the end of the first paragraph.

(2) NEW PERSONNEL.—In addition to positions authorized before the date of the enactment of this Act and any officer vacancies within U.S. Customs and Border Protection on such date, the Secretary shall hire, train, and assign to duty, not later than September 30, 2013—

(A) 2,500 full-time Customs and Border Protection officers to serve on all primary, secondary, incoming, and outgoing inspection lanes and enforcement teams at United States land ports of entry on the Northern border;

(B) 2,500 full-time Customs and Border Protection officers to serve on all primary, secondary, incoming, and outgoing inspection lanes and enforcement teams at United States land ports of entry on the Southern border; and

(C) 350 full-time support staff for all United States ports of entry.

(b) WAIVER OF FTE LIMITATION.—The Secretary may waive any limitation on the number of full-time equivalent personnel assigned to the Department to comply with subsection (a).

(c) REPORT TO CONGRESS.—

(1) OUTBOUND INSPECTIONS.—Not later than 90 days after the date of the enactment of this Act, the Secretary shall submit a report that describes the Department's plans for ensuring the placement of sufficient U.S. Customs and Border Protection officers on outbound inspections at all Southern border and Northern border land ports of entry to—

(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; and

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

(2) AGRICULTURAL SPECIALISTS.—Not later than 90 days after the date of the enactment of this Act, the Secretary, in consultation with the Secretary of Agriculture, shall submit a report to the committees set forth in paragraph (1) that contains

1 plans for ensuring the placement of sufficient agri-
2 culture specialists at all Southern border and North-
3 ern border land ports of entry.
4 (d) RETENTION INCENTIVE PAYMENTS.—
5 (1) PAYMENTS AUTHORIZED.—Subject to para-
6 graph (2), during the 6-year period beginning on
7 July 1, 2011, the Secretary may make incentive pay-
8 ments to qualified U.S. Customs and Border Protec-
9 tion port of entry officers, to the extent necessary to
10 retain such officers.
11 (2) SPECIAL RULES FOR INCENTIVE PAY-
12 MENTS.—
13 (A) IN GENERAL.—Each payment made
14 under paragraph (1)—
15 (i) shall be paid to each qualified em-
16 ployee, in a lump sum that does not exceed
17 $10,000, at the end of the fiscal year in
18 which the employee is selected by the Sec-
19 retary, or a delegate of the Secretary, to
20 receive such payment;
21 (ii) may not be limited solely to work
22 performance, but may be based on criteria
23 such as—

(I) comparative salaries for law enforcement officers in other Federal agencies;

(II) costs for replacement and training of a new employee; and

(III) volume of work at the port of entry;

(iii) shall be contingent upon the selected employee signing an agreement, under penalty of perjury, to continue serving as a United States Customs and Border Protection officer at a land port of entry for at least 3 additional years; and

(iv) shall be subject to reimbursement if the employee fails to complete the 3-year service requirement described in clause (iii) due to voluntary or involuntary separation from service.

(B) LIMITATIONS.—

(i) TOTAL PAYMENTS.—The total payments under subparagraph (A) may not exceed $55,000,000.

(ii) FISCAL YEARS 2012 THROUGH 2016.—In each of the fiscal years 2012 through 2016, the Secretary may not make

more than 500 incentive payments under this subsection.

(iii) ELIGIBILITY.—Any employee who receives a retention incentive payment under this subsection in a fiscal year shall not be eligible to receive another such payment until the employee completes at least 2 years of service with the Department after receiving such payment.

SEC. 203. SECURE COMMUNICATION; EQUIPMENT; AND GRANTS FOR BORDER PERSONNEL.

(a) SECURE COMMUNICATION.—The Secretary shall ensure that each U.S. Customs and Border Protection officer is equipped with a secure 2-way communication and satellite-enabled device, supported by system interoperability, which allows such officers to communicate—

(1) between ports of entry and inspection stations; and

(2) with other Federal, State, local, and tribal law enforcement entities.

(b) BORDER AREA SECURITY INITIATIVE GRANT PROGRAM.—

(1) IN GENERAL.—The Secretary shall establish a grant program for the purchase of detection equipment at land ports of entry and mobile, hand-held,

2-way communication devices for State and local law enforcement officers serving on the Southern border or the Northern border.

(2) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated, for the 6-year period beginning on October 1, 2011, $30,000,000, which shall be used for grants authorized under paragraph (1).

SEC. 204. INFRASTRUCTURE IMPROVEMENTS AND EXPANSION OF LAND PORTS OF ENTRY.

(a) AMENDMENTS TO AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009.—Title VI of the American Recovery and Reinvestment Act of 2009 (Public Law 111–5) is amended, under the heading entitled ''Construction''—

(1) by striking ''U.S. Customs and Border Protection owned''; and

(2) by inserting ''*Provided further,* That $300,000,000 shall be used for infrastructure improvements, expansion, and new construction (or reimbursement for new construction costs incurred during fiscal years 2007 through 2012) of high-volume ports of entry along the Northern border and the Southern border, regardless of port ownership'' before the period at the end.

(b) EFFECTIVE DATE.—The amendments made under subsection (a) shall take effect as if included in the American Recovery and Reinvestment Act of 2009, as of the date of the enactment of such Act.

SEC. 205. ADDITIONAL AUTHORITIES FOR PORT OF ENTRY CONSTRUCTION.

(a) IN GENERAL.—In order to aid in the enforcement of Federal customs, immigration, and agriculture laws, the Commissioner of U.S. Customs and Border Protection 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, exchange, or otherwise, 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 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 (as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b)), 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) SAVINGS PROVISION.—Nothing in this subsection may be construed—

(A) to create any right or liability of the parties described in paragraph (1);

(B) to affect the legality and validity of any determination under this Act by the Secretary; or

(C) to affect any consultation requirement under any other law.

SEC. 206. ADDITIONAL INCREASES IN IMMIGRATION ENFORCEMENT PERSONNEL.

(a) IMMIGRATION AND CUSTOMS ENFORCEMENT INVESTIGATORS.—Section 5203 of the Intelligence Reform

and Terrorism Prevention Act of 2004 (Public Law 108–458; 118 Stat. 3734) is amended by striking "800" and inserting "1000".

(b) ADDITIONAL PERSONNEL.—In addition to the positions authorized under section 5203 of the Intelligence Reform and Terrorism Prevention Act of 2004, as amended by subsection (a), during each of the fiscal years 2012 through 2016, the Secretary shall, subject to the availability of appropriations, increase by not less than 50 the number of positions for personnel within the Department assigned to investigate alien smuggling.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary such sums as may be necessary for each of the fiscal years 2012 through 2016 to carry out this section.

SEC. 207. ADDITIONAL IMMIGRATION COURT PERSONNEL.

(a) DEPARTMENT OF JUSTICE.—

(1) LITIGATION ATTORNEYS.—In each of the fiscal years 2012 through 2016, the Attorney General, subject to the availability of appropriations for such purpose, shall increase the number of positions for attorneys in the Office of Immigration Litigation of the Department of Justice by not fewer than 50.

(2) IMMIGRATION JUDGES.—In each of the fiscal years 2012 through 2016, the Attorney General,

subject to the availability of appropriations for such purpose, shall—

(A) increase the number of full-time immigration judges by not fewer than 20, compared to the number of such positions for which funds were made available during the preceding fiscal year; and

(B) increase the number of personnel to support the immigration judges described in subparagraph (A) by not fewer than 80, compared to the number of such positions for which funds were made available during the preceding fiscal year.

(3) STAFF ATTORNEYS.—In each of fiscal years 2012 through 2016, the Attorney General, subject to the availability of appropriations for such purpose, shall increase by not fewer than 10—

(A) the number of positions for full-time staff attorneys in the Board of Immigration Appeals, compared to the number of such positions for which funds were made available during the preceding fiscal year; and

(B) the number of positions for personnel to support the staff attorneys described in subparagraph (A), compared to the number of such

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

(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Attorney General for each of the fiscal years 2012 through 2016 such sums as may be necessary to carry out this subsection, including hiring necessary support staff.

SEC. 208. IMPROVED TRAINING FOR BORDER SECURITY AND IMMIGRATION ENFORCEMENT OFFICERS.

The Secretary shall ensure that U.S. Customs and Border Protection agents, U.S. Border Patrol agents, U.S. Immigration and Customs Enforcement agents, and Agricultural Inspectors stationed within 100 miles of any land or marine border of the United States or at any United States port of entry receive appropriate training, which shall be prepared in collaboration with the Office for Civil Rights and Civil Liberties, in—

(1) identifying and detecting fraudulent travel documents;

(2) protecting the civil, constitutional, and privacy rights of individuals, including the rights of detained persons;

(3) limitations on the use of force, including lethal force, against individuals apprehended or encountered while on duty; and

(4) screening, identifying, and addressing vulnerable populations, including children, victims of crime and human trafficking, and individuals fleeing persecution or torture.

SEC. 209. INVENTORY OF ASSETS AND PERSONNEL.

(a) INVENTORY.—The Secretary shall compile an inventory of—

(1) the assets, equipment, supplies, and other physical resources dedicated to border security and enforcement as of the date of the enactment of this Act; and

(2) the personnel and other human resources dedicated to border security and enforcement as of the date of the enactment of this Act.

(b) REPORT.—Not later than 90 days after the date of the enactment of this Act, the Secretary shall submit the inventory required under subsection (a) 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;

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

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

SEC. 210. U.S. CUSTOMS AND BORDER PROTECTION ASSETS.

(a) PERSONAL EQUIPMENT.—

(1) BODY ARMOR.—The Secretary shall ensure that each border patrol agent—

(A) is issued high-quality body armor that is appropriate for the climate and risks faced by the agent;

(B) is permitted to select body armor from among a variety of approved brands and styles;

(C) is strongly encouraged to wear such body armor whenever practicable; and

(D) is issued replacement body armor not less frequently than once every 5 years.

(2) WEAPONS.—The Secretary shall ensure that—

(A) border patrol agents are equipped with weapons that are reliable and effective to protect themselves, their fellow agents, and inno-

cent third parties from the threats posed by armed criminals; and

(B) all agents are authorized to carry weapons that are suited to the potential threats that they face.

(3) UNIFORMS.—The Secretary shall ensure that all agents are provided, at no cost to such agents—

(A) all necessary uniform items, including outerwear suited to the climate, footwear, belts, holsters, and personal protective equipment; and

(B) replacement uniform items when such items become worn or unserviceable or no longer fit properly.

(b) HELICOPTERS AND POWER BOATS.—

(1) HELICOPTERS.—The Secretary shall—

(A) conduct a review of the helicopters needed by the Border Patrol;

(B) acquire additional helicopters for the Border Patrol if the Secretary determines that the existing number of helicopters is insufficient; and

(C) ensure that appropriate types of helicopters are procured for the various missions being performed.

(2) POWER BOATS.—The Secretary shall—

(A) conduct a review of the power boats needed by the Border Patrol;

(B) acquire additional power boats for the Border Patrol if the Secretary determines that the existing number of power boats is insufficient; and

(C) ensure that appropriate types of power boats are procured for the waterways in which they are used and the mission requirements.

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

(A) establish a standard policy on the use of the helicopters and power boats procured under this subsection; and

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

(c) MOTOR VEHICLES.—

(1) QUANTITY.—The Secretary shall—

(A) conduct a review of the motor vehicles needed by the Border Patrol;

(B) acquire additional, appropriate motor vehicles for the Border Patrol if the Secretary determines that the existing number of motor vehicles is insufficient; and

(C) 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—

(A) is equipped with a portable computer with access to all necessary law enforcement databases; and

(B) is otherwise suited to the unique operational requirements of the Border Patrol.

(2) RADIO EQUIPMENT.—The Secretary shall augment the radio communications system of the Border Patrol so that—

(A) 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; and

(B) each portable communications device is 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.—If the Secretary determines that each member of a class of Border Patrol agents need a handheld global positioning system device to effectively and safely carry out his or her duties, the Secretary shall ensure that each such agent is issued such 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 2012 through 2016 to carry out this section.

SEC. 211. TECHNOLOGICAL ASSETS AND PROGRAMS.

(a) ACQUISITION.—Subject to the availability of appropriations for such purpose, the Secretary shall procure additional unmanned aerial systems, aircrafts, cameras, poles, ground sensors, and other technologies necessary to achieve effective control of the land and maritime borders of the United States.

(b) UNMANNED AIRCRAFT AND ASSOCIATED INFRASTRUCTURE.—The Secretary shall acquire and maintain unmanned aerial systems for use on the border, including related equipment such as—

(1) additional sensors;

(2) critical spares;

(3) satellite command and control; and

(4) other necessary equipment for operational support.

(c) PRIVACY AND CIVIL LIBERTIES ASSESSMENTS.—The Secretary, in consultation with the Attorney General, shall conduct a privacy impact assessment and a civil lib-

erties impact assessment before deploying new technologies acquired under this subsections (a) and (b).

(d) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated to the Secretary such sums as may be necessary for each of the fiscal years 2012 through 2016 to carry out subsections (a) and (b).

(2) AVAILABILITY OF FUNDS.—Amounts appropriated pursuant to paragraph (1) shall remain available until expended.

(e) SURVEILLANCE TECHNOLOGIES PROGRAMS.—

(1) AERIAL SURVEILLANCE PROGRAM.—

(A) IN GENERAL.—In conjunction with the border surveillance plan developed under section 5201 of the Intelligence Reform and Terrorism Prevention Act of 2004 (8 U.S.C. 1701 note) and subject to the availability of appropriations for such purpose, the Secretary shall fully integrate and utilize aerial surveillance technologies, including unmanned aerial systems, that the Secretary determines to be necessary to enhance the security of the Northern border and the Southern border.

(B) ASSESSMENT AND CONSULTATION REQUIREMENTS.—The Secretary shall—

(i) consider current and proposed aerial surveillance technologies;

(ii) 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;

(iii) consult with the Secretary of Defense regarding any technologies or equipment which the Secretary may deploy along a border of the United States;

(iv) 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;

(v) consult with the Secretary of State with respect to any foreign policy or international law implications relating to the implementation or conduct of the program; and

(vi) conduct a privacy impact assessment and civil liberties impact assessment before the deployment of the new technologies acquired under this paragraph.

(C) EVALUATION OF TECHNOLOGIES.—The aerial surveillance program authorized under this paragraph shall include the use of a variety of aerial surveillance technologies in a variety of topographies and areas, including populated and unpopulated areas located on or near the international border of the United States, 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, civil liberties, and privacy concerns relating to the utilization of such technologies for border security.

(D) ADDITIONAL REVIEWS.—In accordance with sections 222 and 705 of the Homeland Security Act of 2002 (6 U.S.C. 142 and 345), the Chief Privacy Officer and the Officer for Civil Rights and Civil Liberties shall conduct additional reviews, as necessary.

(E) CONTINUED USE OF AERIAL SURVEILLANCE TECHNOLOGIES.—The Secretary may continue the operation of aerial surveillance technologies in use on the date of the enactment of this Act while assessing the effectiveness of the utilization of such technologies.

(F) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2012 through 2016 to carry out this paragraph.

(2) INTEGRATED AND AUTOMATED SURVEILLANCE PROGRAM.—

(A) REQUIREMENT FOR PROGRAM.—Subject to the availability of appropriations, the Secretary shall establish a program to procure additional unmanned aerial systems, cameras, poles, sensors, satellites, radar coverage, and other technologies necessary—

(i) to achieve effective control of the Northern border and the Southern border; and

(ii) to establish a security perimeter (to be known as a ''virtual fence'') along the Northern border and the Southern bor-

1 der to provide a barrier to unauthorized
2 immigration.
3 (B) PROGRAM COMPONENTS.—In carrying
4 out the program authorized under this para-
5 graph, the Secretary, to the maximum extent
6 feasible, shall—
7 (i) utilize integrated technologies that
8 function cohesively in an automated fash-
9 ion;
10 (ii) use a standard process to collect,
11 catalog, and report intrusion and response
12 data collected under the program;
13 (iii) ensure that future surveillance
14 technology investments and upgrades for
15 the program can be integrated with exist-
16 ing systems;
17 (iv) develop and apply performance
18 measures to evaluate whether the program
19 is providing desired results by increasing
20 response effectiveness in monitoring and
21 detecting unauthorized intrusions along the
22 Northern border and the Southern border;
23 (v) develop plans, in accordance with
24 relevant environmental laws, to streamline
25 site selection, site validation, and environ-

mental assessment processes to minimize delays of installing surveillance technology infrastructure;

(vi) develop standards to expand the shared use of existing private and governmental structures to install remote surveillance technology infrastructure to the extent possible; and

(vii) develop standards to identify and deploy the use of nonpermanent or mobile surveillance platforms that will increase the Secretary's mobility and ability to identify unauthorized border intrusions.

(C) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2012 through 2016 to carry out this paragraph.

PART II—ENHANCED COORDINATION AND PLANNING FOR BORDER SECURITY

SEC. 216. ANNUAL REPORT ON IMPROVING NORTH AMERICAN SECURITY INFORMATION EXCHANGE.

(a) REQUIREMENT FOR REPORTS.—Not later than 1 year after the date of the enactment of this Act, and annually thereafter, the Secretary of State, in coordination with

the Secretary and the heads of other appropriate Federal agencies, shall submit a report to Congress that describes the progress made during the most recent 12-month period in improving the effectiveness with which information relating to North American security is exchanged between the Governments of the United States, of Canada, and of Mexico.

(b) CONTENTS.—

(1) SECURITY CLEARANCES AND DOCUMENT INTEGRITY.—Each report submitted under subsection (a) shall describe the development of common enrollment, security, technical, and biometric standards for the issuance, authentication, validation, and repudiation of secure documents, including—

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

(i) passports;

(ii) visas; and

(iii) permanent resident cards;

(B) the joint efforts of the United States, Canada, and Mexico to encourage foreign governments to enact laws that—

(i) combat alien smuggling and trafficking; and

(ii) forbid the use and manufacture of fraudulent travel documents; and

(C) efforts made to ensure that other countries meet proper travel document standards and are committed to travel document verification before the nationals of such countries travel internationally, including travel to the United States.

(2) IMMIGRATION AND VISA MANAGEMENT.—Each report submitted under subsection (a) shall describe the progress made in sharing information regarding high-risk individuals who attempt to enter the United States, Canada, or Mexico, including—

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

(B) identifying and analyzing trends related to immigration fraud, including asylum and document fraud.

(3) VISA POLICY COORDINATION AND IMMIGRATION SECURITY.—Each report submitted under subsection (a) shall describe the progress made by the

1 United States, Canada, and Mexico to enhance
2 North American security by cooperating on visa pol-
3 icy and identifying best practices regarding immigra-
4 tion security, including—
5 (A) enhancing consultation among officials
6 who issue visas at the consulates or embassies
7 of the United States, of Canada, or of Mexico,
8 or throughout the world to share information,
9 trends, and best practices on visa flows;
10 (B) comparing the procedures and policies
11 of the United States and Canada related to vis-
12 itor visa processing, including—
13 (i) application process;
14 (ii) interview policy;
15 (iii) general screening procedures;
16 (iv) visa validity;
17 (v) quality control measures; and
18 (vi) access to appeal or review;
19 (C) exploring methods for the United
20 States, Canada, and Mexico to waive visa re-
21 quirements for nationals and citizens of the
22 same foreign countries;
23 (D) developing and implementing an immi-
24 gration security strategy for North America
25 that utilizes a common security perimeter by

enhancing technical assistance for programs and systems to support advance automated reporting and risk targeting of international passengers;

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

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

(4) NORTH AMERICAN VISITOR OVERSTAY PROGRAM.—Each report submitted under subsection (a) shall describe the progress made by the United States and Canada in implementing parallel entry-exit tracking systems that—

(A) respect the privacy laws of both countries; and

(B) share information regarding third country nationals who have overstayed their period of authorized admission in the United States or Canada.

(5) TERRORIST WATCH LISTS.—Each report submitted under subsection (a) shall describe the capacity of the United States to combat terrorism

through the coordination of counterterrorism efforts, including—

(A) developing and implementing bilateral agreements between Canada and the United States and between Mexico and the United States—

(i) to govern the sharing of terrorist watch list data; and

(ii) to comprehensively enumerate the uses of such data by the governments of each country;

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

(C) establishing a multilateral watch list mechanism that would facilitate direct coordination between the country that identifies individuals on a watch list and the country that owns such list, including procedures that satisfy security concerns, comply with privacy laws, and are consistent with the other laws of each participating country; and

(D) 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.—Each report submitted under subsection (a) shall describe improvements made in information sharing and law enforcement cooperation in combating organized crime, including—

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

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

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

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

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

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

(7) LAW ENFORCEMENT COOPERATION.—Each report submitted under subsection (a) shall describe enhancements in law enforcement cooperation among the United States, Canada, and Mexico, including—

(A) enhanced technical assistance for the development and maintenance of a national database built upon identified best practices to identify suspected criminals or terrorists;

(B) the feasibility of establishing law enforcement teams that include personnel from the United States and Mexico; and

(C) the appropriate procedures for such multinational teams.

SEC. 217. 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 appropriate officials of the Government of Mexico to improve coordination between the United States and Mexico in—

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

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

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

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

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

(6) reducing 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 appropriate officials of the Government of Mexico to educate citizens and nationals of Mexico regarding their eligibility for nonimmigrant status in the United States to ensure that such citizens and nationals are not exploited while working in the United States.

(c) COOPERATION REGARDING CIRCULAR MIGRATION.—The Secretary of State, in cooperation with the Secretary of Labor and other appropriate Federal officials, shall work with appropriate officials of the Govern-

ment of Mexico to encourage circular migration of citizens and nationals of Mexico, including—

(1) assisting in the development of economic opportunities; and

(2) providing job training for such citizens and nationals.

(d) CONSULTATION REQUIREMENT.—The Secretary, in cooperation with State and local government officials in the United States, shall cooperate with their counterparts in Mexico to enhance border security structures along the international border between the United States and Mexico, as authorized by this title, by—

(1) soliciting the views of affected communities;

(2) lessening tensions; and

(3) fostering greater understanding and stronger cooperation on border security structures and other important security issues of mutual concern.

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

SEC. 218. EXPANSION OF COMMERCE SECURITY PROGRAMS.

(a) CUSTOMS-TRADE PARTNERSHIP AGAINST TERRORISM.—

(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Commissioner, U.S. Customs and Border Protection, in consultation with the Secretary, shall develop a plan to expand the programs of the Customs-Trade Partnership Against Terrorism established 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 the Southern border.

(2) C-TPAT PROGRAMS.—The programs referred to in paragraph (1) include—

(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; and

(F) other industry partnership programs administered by the Commissioner.

(b) DEMONSTRATION PROGRAMS.—Not later than 180 days after the date of the enactment of this Act, the Commissioner shall—

(1) implement, on a demonstration basis, a Customs-Trade Partnership Against Terrorism program, which has been successfully implemented along the Northern border and the Southern border; and

(2) establish a demonstration program to develop a cooperative trade security system to improve supply chain security.

SEC. 219. NORTHERN BORDER AND SOUTHERN BORDER DRUG PROSECUTION INITIATIVE.

(a) REIMBURSEMENT TO STATE AND LOCAL PROSECUTORS FOR PROSECUTING FEDERALLY INITIATED DRUG CASES.—Subject to the availability of appropriations, the Attorney General shall reimburse State and county prosecutors located in States along the Northern border or the Southern border for prosecuting federally initiated and referred drug cases.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be

1 necessary for each of the fiscal years 2012 through 2016
2 to carry out subsection (a).

3 **SEC. 220. BORDER RELIEF GRANT PROGRAM.**

4 (a) GRANTS AUTHORIZED.—

5 (1) IN GENERAL.—The Attorney General may
6 award grants, on a competitive basis, to—

7 (A) eligible law enforcement agencies or a
8 coalition of such agencies, including sheriff's of-
9 fices, police departments, and tribal police de-
10 partments; and

11 (B) institutions of higher education that
12 provide assistance to law enforcement agencies
13 in counties described in subparagraph (A) or
14 (B) of subsection (e)(1) to provide the resources
15 described in subsection (b)(4).

16 (2) PRIORITY.—In awarding grants for the uses
17 described in paragraphs (1) through (3) of sub-
18 section (b), the Attorney General shall give priority
19 to law enforcement agencies—

20 (A) located in a county that is within 100
21 miles from the Northern border or the Southern
22 border; and

23 (B) that are in compliance with Federal
24 and State racial profiling laws and guidelines.

(3) DURATION.—Grants awarded under this section may not exceed 2 years.

(4) SUBSEQUENT GRANTS.—A grantee desiring continued grant funding after the expiration of the initial grant shall reapply for such funding.

(5) PROHIBITION.—The Attorney General may not award a grant under this section to any applicant that is under investigation for a violation of Federal or State racial profiling laws or guidelines.

(b) USE OF FUNDS.—Grants awarded under this section may only be used to provide—

(1) additional resources for eligible law enforcement agencies to address drug-related criminal activity;

(2) training and technical assistance related to—

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

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

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

(3) resources to combat criminal activities along the Northern border and the Southern border by—

(A) obtaining, upgrading, or maintaining 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;

(4) resources to 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, State, tribal, and local law enforcement agencies; and

(5) resources to 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.

(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 been investigated for, or convicted of, a violation of Federal or State racial profiling laws; and

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

(d) MONITORING AND OVERSIGHT.—

(1) IN GENERAL.—Each grantee under this section shall submit a report to the Attorney General that documents the use of grant funds received under this section, including an assessment of their utility in—

(A) protecting border community safety;

(B) preventing smuggling activities; and

(C) apprehending persons involved in violence and organized crime.

(2) USE OF INFORMATION.—The Attorney General shall analyze the information contained in the reports submitted under paragraph (1) to determine whether the grantee—

(A) used grant funds appropriately; and

(B) 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 State, tribal, 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 so designated 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 biannual report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives that assesses—

(1) the success of the grant program established under this section in combating and reducing drug-trafficking and drug-related criminal activity;

(2) the cost-effectiveness of the program; and

(3) the future value and viability of the program.

(g) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated $100,000,000 for each of the fiscal years 2012 through 2016 to carry out 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 (2) and (5) 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 State, tribal, and local public funds obligated for the purposes described in subsection (b).

SEC. 221. REPORT ON DEATHS AND STRATEGY STUDY.

(a) IN GENERAL.—The Commissioner of U.S. Customs and Border Protection shall—

(1) collect statistics relating to deaths occurring at the Southern border, including—

(A) the causes of the deaths; and

(B) the total number of deaths;

(2) publish the statistics collected under paragraph (1) on a quarterly basis; and

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

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

(B) recommends actions to reduce and prevent the deaths described in paragraph (1)(B).

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2012 through 2016 to carry out this section.

SEC. 222. IMMIGRATION AND 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 Southern border, including the Department, the Department of Justice, and other relevant agencies;

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

(C) to ensure that the strategies, programs, and policies of Federal agencies along the Southern border and the agents and employees charged to implement such strategies, programs, and policies protect the due process, civil, and human rights of all individuals and communities at and near the Southern border; and

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

(3) MEMBERSHIP.—

(A) IN GENERAL.—The Commission shall be composed of 16 voting members and 2 nonvoting members.

(B) APPOINTMENT OF VOTING MEMBERS.—The Governors of the States of California, New Mexico, Arizona, and Texas shall each appoint 4 voting members to the Commission, 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.

(C) APPOINTMENT OF NONVOTING MEMBERS.—The Secretary and the Attorney General shall each appoint 1 nonvoting member to the Commission.

(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 Southern border.

(B) POLITICAL AFFILIATION.—Not more than 2 members of the Commission appointed by each Governor under paragraph (3)(B) 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 date of 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.—Members of the Commission shall be appointed for terms lasting not longer than the shorter of—

(A) 3 years; or

(B) the life of the Commission.

(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 practicable.

(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, who

shall serve in such capacities for the life of the Commission or until removed by the majority vote of a quorum.

(11) STRUCTURE.—The Commission shall have a Federal, regional, and local review structure, divided into 2 subcommittees, of which—

(A) 1 shall focus on border technology, equipment, and infrastructure; and

(B) 1 shall 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 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 policies and practices relating to engagement, detention, apprehension, use of force, definition and use of reasonable 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 near the Southern border;

(4) the extent to which—

(A) the complaint process is transparent and accessible to the public;

(B) investigations are opened as necessary and are effectively pursued; and

(C) 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 the Southern border on the—

(A) environment;

(B) cross border 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 Southern 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 that the Commission determines to be appropriate.

(c) POWERS OF COMMISSION.—

(1) HEARINGS AND EVIDENCE.—The Commission and any subcommittee or member of the Commission authorized by the Commission may, for the purpose of carrying out this title—

(A) hold hearings, sit and act, take testimony, receive evidence, and administer oaths; and

(B) request the attendance and testimony of such witnesses and the production of such

books, records, correspondence, memoranda, papers, and documents, as the Commission or such authorized subcommittee or member determines to be advisable.

(2) RECOMMENDATIONS.—

(A) IN GENERAL.—The Commission may make recommendations to the Secretary on the disposition of cases and the discipline of personnel under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

(B) RESPONSE.—Not later than 180 days after receipt a report from the Commission, the Secretary shall issue a response that describes how the Department, the Department of Justice, and the Department of Defense have addressed the recommendations included in such report.

(3) CONTRACTING.—The Commission may enter into contracts to enable the Commission to discharge its duties under this title.

(4) INFORMATION FROM FEDERAL AGENCIES.—

(A) IN GENERAL.—Upon request made by the Chairman, the chairman of any subcommittee created by a majority of the Commission, or any member designated by a major-

ity of the Commission, the Commission may secure information, suggestions, estimates, and statistics for the purposes of this title directly from any executive department, bureau, agency, board, commission, office, independent establishment, or instrumentality of the Federal Government, which shall, to the extent authorized by law, furnish such information, suggestions, estimates, and statistics directly to the Commission.

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

(5) ASSISTANCE FROM FEDERAL AGENCIES.—

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

(B) OTHER DEPARTMENTS AND AGENCIES.—In addition to the assistance described

in paragraph (1), Federal departments and agencies may provide the Commission with such services, funds, facilities, staff, and other support services 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 meeting called pursuant to subsection (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;

(4) a recommendation as to whether the Commission should continue to operate after the sunset date set forth in subsection (h); and

(5) if continued operations are recommended under paragraph (4), a description of the purposes and duties recommended to be carried out by the Commission after the sunset date set forth in subsection (h).

(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2012 through 2014 to carry out this section.

(h) SUNSET.—Unless the Commission is authorized by Congress to continue operations after such date, the Commission shall terminate on the date that is 60 days after the date on which the Commission submits the report described in subsection (f).

SEC. 223. PREEMPTION.

(a) IN GENERAL.—Except as provided in subsections (b) and (c), this Act preempts any State or local law, licensing requirement, or other standard, requirement, action or instrument that—

(1) discriminates among persons on the basis of immigration status; or

(2) imposes any sanction or liability—

(A) on any person 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) based on a violation or alleged violation of immigration law.

(b) EFFECT OF CONVICTION.—Notwithstanding subsection (a)(2)(C), a State or political subdivision of a State may take account of a Federal conviction for an immigration-related crime in the same manner as any other Federal criminal conviction.

(c) LIMITATION.—Nothing in this Act may be construed to preempt—

(1) State or local discrimination based on immigration status if such discrimination is explicitly authorized by Federal law; or

(2) State or local citizenship requirements for voting, jury service, elective office, or other important governmental positions, to the extent such requirements comply with the Constitution of the United States.

(d) DEFINED TERM.—In this section, the term ''immigration status'' refers to a person's—

(1) actual or perceived 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 authorized under this Act; and

(2) lack of any status referred to in paragraph (1).

SEC. 224. INHERENT AUTHORITY.

Section 287(g) (8 U.S.C. 1357(g)) is amended by striking paragraph (10) and inserting the following:

''(10) Except as provided in sections 103(a)(10), 103(a)(11), 242(c), and 274(c), or an agreement under this subsection, the authority to investigate, identify, apprehend, arrest, or detain persons for any violation of this Act or any regulation issued pursuant to this Act—

1 ''(A) is restricted to immigration officers and
2 employees of the Department of Homeland Security;
3 and
4 ''(B) is subject to the specific limitations set
5 forth in this Act.
6 ''(11)(A) Not later than 60 days after the end of each
7 fiscal year, the Secretary of Homeland Security shall—
8 ''(i) review the compliance of the State or local
9 government with the terms of each agreement under
10 this subsection; and
11 ''(ii) prepare a written report that contains the
12 results of the compliance review and any rec-
13 ommendations to improve compliance with such
14 agreement.
15 ''(B) Not later than 120 days after date on which
16 recommendations are issued under subparagraph (A)(ii),
17 the Secretary shall—
18 ''(i) review the implementation of such rec-
19 ommendations; and
20 ''(ii) inform the State or local government of
21 any unresolved recommendations.
22 ''(C) If 1 or more of the recommendations issued
23 under subparagraph (A)(ii) remain unresolved at the time
24 of the subsequent annual compliance review, the Secretary

shall immediately terminate the State or local government's agreement under this subsection.''.

SEC. 225. BORDER PROTECTION STRATEGY.

(a) IN GENERAL.—Not later than July 1, 2012, the Secretary, the Secretary of the Interior, the Secretary of Agriculture, the Secretary of Defense, and the Secretary of Commerce, in consultation with State, tribal, and local government officials, shall jointly develop and submit to Congress a border protection strategy for the Northern border and the Southern border.

(b) ELEMENTS OF THE STRATEGY.—The strategy developed under subsection (a) shall include—

(1) a comparative analysis of the levels of border security, based on auditable and verifiable data, achievable through alternative tactical infrastructure and other security measures, including an assessment of—

(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—

(i) unmanned aerial vehicles;

(ii) other advanced technologies and 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, urban, and rural variation in border security methodologies, including the incorporation of natural barriers;

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

(H) removal of obstructive nonnative 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 labor and material costs;

(C) maintenance costs for the next 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, State, tribal, local government, and private lands along the Northern border and the Southern border; and

(G) the costs of fully mitigating the adverse impacts to Federal, State, tribal, local, and private lands, waters (including water quality, quantity, and hydrological flows), wildlife, and wildlife habitats, including, if 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 ap-

propriate authorities of State, tribal, and local governments and appropriate authorities of the Government of Canada and the Government of Mexico;

(3) a comprehensive compilation of the fiscal investments in acquiring or managing Federal, State, tribal, local, and private lands and waters in the vicinity of, or ecologically related to, the land borders 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 any military department;

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

(H) tribal lands;

(I) State and private lands; and

(J) lands within Canada or Mexico; and

(4) recommendations for strategic border security management based on—

(A) comparative security described in paragraph (1);

(B) the cost-benefit analysis described in paragraph (2); and

(C) the protection of investments in the 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 U.S. 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 U.S. 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 paragraph (1)(A), the Secretary shall coordinate with the Secretary concerned and the relevant tribal government to ensure that such training—

(A) is appropriate to the mission of the relevant agency; and

(B) 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.

(d) DEFINED TERM.—In this section, the term ''Secretary concerned'' means—

(1) the Secretary of Agriculture, with respect to land under the jurisdiction of the Secretary of Agriculture;

(2) the Secretary of the Interior, with respect to land under the jurisdiction of the Secretary of the Interior;

(3) the Secretary of Defense, with respect to land under the jurisdiction of the Secretary of Defense or the secretary of a military department; and

(4) the Secretary of Commerce, with respect to land under the jurisdiction of the Secretary of Commerce.

SEC. 226. 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 on the Southern border or the Northern border.

(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—

(A) agency policies, directives, and laws;

(B) agency strategies and strategy development; and

(C) agency services and operational issues;

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

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

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary in each of the fiscal years 2012 through 2016 to carry out this section.

SEC. 227. 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 2012 through 2016 to carry out this part.

(b) INTERNATIONAL AGREEMENTS.—Amounts appropriated pursuant to subsection (a) may be used to implement projects that are authorized under this part and are described in—

(1) 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

(2) the Smart Border Declaration between the United States and Canada, agreed to December 12, 2001, Ottawa, Canada.

Subtitle B—Interior Enforcement

PART I—PREVENTING UNAUTHORIZED ENTRIES AND ENSURING REMOVAL

SEC. 235. US–VISIT SYSTEM.

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

(1) equipping all ports of entry of the United States with the United States-Visitor and Immigrant Status Indicator Technology system (referred to in this section as ''US–VISIT'') implemented under section 110 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1365a), including all necessary changes to infrastructure at the ports of entry to fully deploy US–VISIT;

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

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

(b) VISA EXIT TRACKING SYSTEM.—Not later than 18 months after the date of the enactment of this Act, the Secretary shall establish and deploy a system capable of recording the departure of aliens admitted on temporary nonimmigrant visas under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.)—

(1) at designated ports of entry; and

(2) in coordination with the Secretary of State, at designated United States consulates.

SEC. 236. ILLEGAL ENTRY AND REENTRY.

(a) ILLEGAL ENTRY.—Section 275(b) (8 U.S.C. 1325(b)) is amended to read as follows:

"(b) IMPROPER TIME OR PLACE; CIVIL PENALTIES.—Any alien older than 18 years of age who is apprehended while entering or attempting to enter, or knowingly crossing or attempting to cross the border to, the United States at a time or place that has not been designated as a lawful entry by immigration officers shall be subject to a civil penalty, in addition to any criminal or other civil penalties that may be imposed under any other provision of law, in an amount equal to—

"(1) not less than $250 or more than $500 for each such entry or attempted entry; or

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

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

"SEC. 276. REENTRY OF REMOVED ALIENS.

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

"(b) REENTRY OF CRIMINAL OFFENDERS.—In addition to the penalty provided in subsection (a), any alien described in that subsection—

"(1) whose removal was subsequent to a conviction for 3 or more misdemeanors involving drugs or crimes against the person, or a felony for which the alien was sentenced to a term of imprisonment of more than 12 months before such removal or departure, shall be fined under title 18, United States Code, imprisoned not more than 10 years, or both;

"(2) whose removal was subsequent to a conviction for a felony involving drugs or crimes against the person before such removal or departure for which the alien was sentenced to a term of imprisonment of not less than 30 months, shall be fined under such title 18, imprisoned not more than 10 years, or both;

"(3) who has been excluded from the United States pursuant to section 235(c) because the alien was excludable under section 212(a)(3)(B) or has been removed from the United States, and who thereafter, without the permission of the Attorney General, enters the United States, or attempts to do so, shall be fined under title 18, United States Code, and imprisoned for a period of 10 years, which sentence shall not run concurrently with any other sentence;

"(4) who was removed from the United States pursuant to section 241(a)(4)(B) and who thereafter, without the permission of the Attorney General, enters, attempts to enter, or is at any time found in, the United States (unless the Attorney General has expressly consented to such alien's reentry) shall be fined under title 18, United States

1 Code, imprisoned for not more than 10 years, or
2 both;
3 ''(5) whose removal was subsequent to a convic-
4 tion for an aggravated felony before such removal or
5 departure for which the alien was sentenced to a
6 term of imprisonment of not less than 60 months,
7 shall be fined under such title 18, imprisoned not
8 more than 20 years, or both; or
9 ''(6) was convicted for 3 felonies before such re-
10 moval or departure, shall be fined under such title
11 18, imprisoned not more than 25 years, or both.
12 ''(c) PROOF OF PRIOR CONVICTIONS.—The prior con-
13 victions described in subsection (b) are elements of the
14 crimes described in that subsection. The penalties set
15 forth in subsection (b) shall apply only in cases in which
16 the conviction or convictions that form the basis for the
17 additional penalty are—
18 ''(1) alleged in the indictment or information;
19 and
20 ''(2) proven beyond a reasonable doubt at trial
21 or admitted by the defendant.
22 ''(d) AFFIRMATIVE DEFENSES.—It shall be an af-
23 firmative defense to a violation of this section if—
24 ''(1) the alien sought and received the express
25 consent of the Secretary of Homeland Security to re-

apply for admission into the United States before the alleged violation occurred;

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

"(A) was not required to obtain such advance consent under this Act; and

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

"(3) the prior order of removal was based on charges filed against the alien before the alien reached 18 years of age.

"(e) LIMITATION ON COLLATERAL ATTACK ON UNDERLYING REMOVAL ORDER.—In a criminal proceeding under this section, an alien may not challenge the validity of the order described in subsection (a) or (b) unless the alien demonstrates that—

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

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

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

"(f) RE-ENTRY OF ALIEN REMOVED PRIOR TO COMPLETION OF TERM OF IMPRISONMENT.—Any alien removed pursuant to section 241(a)(4) who enters, attempts to enter, crosses the border to, attempts to cross the border to, or is at any time found in, the United States—

"(1) shall be incarcerated for the remainder of the sentence of imprisonment which was pending at the time of deportation without any reduction for parole or supervised release unless the alien affirmatively demonstrates that the Secretary of Homeland Security has expressly consented to the alien's reentry or the alien is prima facie eligible for protection from removal; and

"(2) shall be subject to such other penalties relating to the reentry of removed aliens as may be available under this section or any other provision of law.

"(g) LIMITATION.—An individual, acting without compensation or the expectation of compensation, is not aiding and abetting a violation of this section by—

"(1) providing, or attempting to provide, an alien with humanitarian assistance, including emergency medical care or food; or

"(2) transporting the alien to a location where such humanitarian assistance can be rendered with-

out compensation or the expectation of compensation.''.

SEC. 237. DETERRING ALIENS ORDERED REMOVED FROM REMAINING IN THE UNITED STATES UNLAWFULLY.

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

(1) in clause (i), by striking ''seeks admission within 5 years of the date of such removal (or within 20 years'' and inserting ''seeks admission not later than 5 years after the date of the alien's removal (or not later than 20 years after the alien's removal''; and

(2) in clause (ii), by striking ''seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of'' and inserting ''seeks admission not later than 10 years after the date of the alien's departure or removal (or not later than 20 years after''.

SEC. 238. BIOMETRIC SCREENING.

Section 212 (8 U.S.C. 1182) is amended—

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

''(C) WITHHOLDING INFORMATION.—Except as provided in subsection (d)(2), any alien

who, through his or her own fault, fails or has failed to comply with a lawful request for biometric information is inadmissible.''; and

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

''(2) The Secretary may waive the application of subsection (a)(7)(C) for an individual alien or a class of aliens. A decision by the Secretary to grant or deny a waiver under this paragraph shall not be subject to review.''.

SEC. 239. ENCOURAGING ALIENS TO DEPART VOLUNTARILY.

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

(1) in subsection (a)—

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

''(1) IN GENERAL.—If an alien is not removable under paragraph (2)(A)(iii) or (4) of section 237(a)—

''(A) the Secretary of Homeland Security may permit the alien to voluntarily depart the United States at the alien's own expense under this subsection instead of being subject to proceedings under section 240; or

"(B) the Attorney General may permit the alien to voluntarily depart the United States at the alien's own expense under this subsection after the initiation of removal proceedings under section 240 and before the conclusion of such proceedings before an immigration judge.";

(B) in paragraph (2), by amending subparagraph (A) to read as follows:

"(A) IN GENERAL.—

"(i) INSTEAD OF REMOVAL.—Subject to subparagraph (B), the Secretary of Homeland Security—

"(I) may not grant an alien permission to voluntarily depart the United States under paragraph (1)(A) for a period exceeding 180 days; and

"(II) may require such alien to post a voluntary departure bond, which shall be surrendered upon proof that the alien has departed the United States within the time specified in such bond.

"(ii) BEFORE THE CONCLUSION OF REMOVAL PROCEEDINGS.—

"(I) LIMITATION.—The Attorney General—

"(aa) may not grant an alien permission to voluntarily depart under paragraph (1)(B) for a period exceeding 90 days; and

"(bb) may only grant such permission after determining that the alien has the means to depart the United States and intends to do so.

"(II) VOLUNTARY DEPARTURE BOND.—An immigration judge may—

"(aa) require an alien permitted to voluntarily depart under paragraph (1)(B) to post a voluntary departure bond, in an amount necessary to ensure that the alien will depart, which shall be surrendered upon proof that the alien has departed the United States within the time specified in such bond; and

"(bb) waive the requirement to post a voluntary departure bond after determining that the alien has presented—

"(AA) compelling evidence that the posting of a bond will pose a serious financial hardship; and

"(BB) credible evidence that such a bond is unnecessary to guarantee timely departure.";

(C) by striking paragraph (3); and

(D) by redesignating paragraph (4) as paragraph (3);

(2) by amending subsection (c) to read as follows:

"(c) CONDITIONS ON VOLUNTARY DEPARTURE.—

"(1) VOLUNTARY DEPARTURE AGREEMENT.—Voluntary departure under this section may only be granted as part of an affirmative agreement by the alien.

"(2) CONCESSIONS BY THE SECRETARY.—In connection with the alien's agreement to voluntarily depart under paragraph (1)(A), the Secretary of

Homeland Security may reduce the period of inadmissibility under subparagraph (A) or (B)(i) of section 212(a)(9).

"(3) ADVISALS.—Agreements relating to voluntary departure granted during removal proceedings under section 240, or at the conclusion of such proceedings, shall be presented on the record before the immigration judge, who shall advise the alien of the consequences of a voluntary departure agreement, including the consequences of failing to comply with the agreement, before accepting such agreement.

"(4) FAILURE TO COMPLY WITH AGREEMENT.—If an alien who has agreed to voluntarily depart under this section fails to depart the United States within the time allowed for voluntary departure or fails to comply with any other terms of the agreement (including failure to timely post any required bond), unless such noncompliance is through no fault of the alien, the alien is—

"(A) ineligible for the benefits of the agreement;

"(B) subject to the penalties described in subsection (d); and

"(C) subject to an alternate order of removal if voluntary departure was granted under subsection (a)(1)(B) or (b).

"(5) VOLUNTARY DEPARTURE PERIOD NOT AFFECTED.—Except as expressly agreed to by the Secretary of Homeland Security in writing before the expiration of the period allowed for voluntary departure, no motion, appeal, application, petition, or petition for review shall affect, reinstate, enjoin, delay, stay, or toll the alien's obligation to depart from the United States during the period agreed to by the alien and the Secretary.";

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

"(d) PENALTIES FOR FAILURE TO DEPART.—

"(1) CIVIL PENALTY.—An alien who is permitted to voluntarily depart under this section and fails to leave the United States during the period specified in the voluntary departure agreement or otherwise violates the terms of such agreement shall be liable for a civil penalty of $1,000. The voluntary departure order shall specify the amount of the penalty, which shall be acknowledged by the alien on the record.

"(2) COLLECTION OF PENALTY.—If the Secretary of Homeland Security establishes, by clear and convincing evidence, that the alien failed to leave the United States during the period specified in the voluntary departure agreement—

"(A) no further procedure will be necessary to establish the amount of the penalty;

"(B) the Secretary may collect the civil penalty at any time thereafter and by whatever means provided by law; and

"(C) the alien shall be ineligible for any benefits under this chapter until this civil penalty is paid."; and

(4) by amending subsection (e) to read as follows:

"(e) ELIGIBILITY.—

"(1) PRIOR GRANT OF VOLUNTARY DEPARTURE.—An alien may not be permitted to voluntarily depart under this section if the Secretary of Homeland Security or the Attorney General previously permitted the alien to depart voluntarily under this section on or after the date of the enactment of the CIR Act of 2011.

"(2) RULEMAKING.—The Secretary may promulgate regulations to limit eligibility or impose ad-

ditional conditions for voluntary departure under subsection (a)(1)(A) for any class of aliens.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to all orders granting voluntary departure under section 240B of the Immigration and Nationality Act (8 U.S.C. 1229c) made on or after the date that is 180 days after the date of the enactment of this Act.

SEC. 240. CANCELLATION OF VISAS.

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

(1) in paragraph (1), by striking ''Attorney General, such visa'' and inserting ''Secretary of Homeland Security, such visa and any other nonimmigrant visa issued by the United States that is in the possession of the alien''; and

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

SEC. 241. PENALTIES RELATING TO VESSELS AND AIRCRAFT.

Section 243(c) (8 U.S.C. 1253(c)) is amended—

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

(2) by striking ''Commissioner'' each place such term appears and inserting ''Secretary''; and

(3) in paragraph (1)—

(A) in subparagraph (A), by striking ''$2,000'' and inserting ''$5,000'';

(B) in subparagraph (B), by striking ''$5,000'' and inserting ''$10,000''; and

(C) by amending paragraph (1)(C) to read as follows:

''(C) COMPROMISE.—The Secretary of Homeland Security, in the Secretary's unreviewable discretion and upon the receipt of a written request, may mitigate the monetary penalties required under this subsection for each alien stowaway to an amount equal to not less than $500, upon such terms that the Secretary determines to be appropriate.''.

SEC. 242. SANCTIONS FOR COUNTRIES THAT DELAY OR PREVENT REPATRIATION OF THEIR CITIZENS AND NATIONALS.

Sec. 243(d) (8 U.S.C. 1253(d)) is amended—

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

(2) by inserting ''or subsets of such visas'' after ''both,''; and

(3) by inserting ''of State'' after ''Secretary'' the last place such term appears.

SEC. 243. STATE CRIMINAL ALIEN ASSISTANCE PROGRAM.

(a) AUTHORIZATION OF APPROPRIATIONS.—Section 241(i)(5)(C) (8 U.S.C. 1231(i)(5)(C)) is amended by striking ''to carry out this subsection'' and all that follows and inserting ''$950,000,000 for each of the fiscal years 2012 through 2016 to carry out this subsection.''.

(b) REIMBURSEMENT OF STATES FOR INDIRECT COSTS RELATING TO THE INCARCERATION OF UNAUTHORIZED ALIENS.—Section 501 of the Immigration Reform and Control Act of 1986 (8 U.S.C. 1365) is amended—

(1) by striking subsection (a) and inserting the following:

''(a) REIMBURSEMENT OF STATES.—Subject to the amounts provided in advance in appropriation Acts, the Attorney General shall reimburse a State for—

"(1) the costs incurred by the State for the imprisonment of all unauthorized aliens convicted of a felony by such State; and

"(2) the indirect costs related to the imprisonments described in paragraph (1)."; and

(2) by striking subsections (c) through (e) and inserting the following:

"(c) ALLOCATION OF REIMBURSEMENTS.—Reimbursements under this section shall be allocated in a manner that gives special consideration for any State that shares a border with Mexico or with Canada.

"(d) DEFINITIONS.—In this section:

"(1) INDIRECT COSTS.—The term 'indirect costs' includes—

"(A) court costs, county attorney costs, detention costs, and criminal proceedings expenditures that do not involve going to trial;

"(B) indigent defense costs; and

"(C) unsupervised probation costs.

"(2) STATE.—The term 'State' has the meaning given such term in section 101(a)(36) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(36)).

"(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $200,000,000 for each

of the fiscal years 2012 through 2016 to carry out subsection (a)(2).''.

SEC. 244. PROCEDURES REGARDING ALIENS APPREHENDED BY STATE AND LOCAL LAW ENFORCEMENT OFFICERS.

(a) ISSUANCE OF DETAINERS.—Section 287(d) (8 U.S.C. 1357(d)) is amended to read as follows:

''(d) ISSUANCE OF DETAINERS.—

''(1) DETERMINATION.—An authorized officer or employee of the Department of Homeland Security shall promptly determine whether or not to issue a detainer to detain an alien who is arrested by a Federal, State, or local law enforcement official for a violation of any law relating to controlled substances if the law enforcement official—

''(A) has reason to believe that the alien has not been lawfully admitted to the United States or is otherwise not lawfully present in the United States;

''(B) expeditiously informs such officer or employee of the arrest and of facts concerning the status of the alien; and

''(C) requests the Department of Homeland Security to determine whether or not to issue such detainer.

"(2) CUSTODY.—If a detainer is issued pursuant to paragraph (1) and the alien is not otherwise detained by Federal, State, or local officials, the Secretary shall effectively and expeditiously take custody of the alien.

"(3) DATA COLLECTION.—The Secretary of Homeland Security shall collect data regarding detainers issued under this subsection, including—

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

"(B) the date on which the detainer was issued;

"(C) the basis for the issuance of the detainer;

"(D) the date on which the detainer was lifted;

"(E) the date on which a Federal or State criminal court or other government entity ordered the release of the individual;

"(F) the date on which the Department of Homeland Security took custody of the individual;

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

"(H) the age of the individual;

"(I) whether the individual was a victim of, or a witness to, a crime;

"(J) the disposition of the criminal case against the individual;

"(K) the ultimate disposition of the immigration case, including whether the individual was determined to be a United States citizen;

"(L) the grounds of removal, if applicable, and any charges brought by the Secretary; and

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

(b) RULEMAKING.—The Secretary shall issue regulations that require officers and employees of the Department of Homeland Security—

(1) to confirm, before issuing a detainer—

(A) the alienage of the individual to be made subject to such detainer through lawfully obtained information, including—

(i) the name of the individual;

(ii) the date of birth of the individual; or

(iii) the fingerprints of the individual;

(B) whether the individual is removable from the United States; and

(C) that the individual was not the victim of a crime or a witness to a crime; and

(2) to provide notice to the individual being detained, in the individual's native language—

(A) that a detainer has been issued; and

(B) the procedure for challenging the detainer.

SEC. 245. REFORM OF PASSPORT, VISA, AND IMMIGRATION FRAUD OFFENSES.

(a) TRAFFICKING IN PASSPORTS.—Section 1541 of title 18, United States Code, is amended to read as follows:

"§ 1541. Trafficking in passports

''(a) MULTIPLE PASSPORTS.—Any person who, during any period of 3 years or less, knowingly—

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

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

''(3) secures, possesses, uses, receives, buys, sells, or distributes 10 or more passports, knowing the passports to be forged, counterfeited, altered,

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

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

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

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

(b) FALSE STATEMENT IN AN APPLICATION FOR A PASSPORT.—Section 1542 of title 18, United States Code, is amended to read as follows:

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

"(a) IN GENERAL.—Any person who knowingly—

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

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

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

"(b) VENUE.—

"(1) IN GENERAL.—An offense under subsection (a) may be prosecuted in any district—

"(A) in which the false statement or representation was made or the application for a United States passport was prepared or signed; or

"(B) in which or to which the application was mailed or presented.

"(2) ACTS OCCURRING OUTSIDE THE UNITED STATES.—An offense under subsection (a) involving an application for a United States passport prepared and adjudicated outside the United States may be prosecuted in the district in which the resultant passport was or would have been produced.

"(c) SAVINGS CLAUSE.—Nothing in this section may be construed to limit the venue otherwise available under sections 3237 and 3238.".

(c) FORGERY AND UNLAWFUL PRODUCTION OF A PASSPORT.—Section 1543 of title 18, United States Code, is amended to read as follows:

"§ 1543. Forgery and unlawful production of a passport

''(a) FORGERY.—Any person who knowingly—

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

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

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

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

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

''(2) produces, issues, authorizes, or verifies a United States passport for or to any person knowing or in reckless disregard of the fact that such person is not entitled to receive a passport; or

"(3) transfers or furnishes a passport to any person for use by any person other than the person for whom the passport was issued or designed,

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

(d) MISUSE OF A PASSPORT.—Section 1544 of title 18, United States Code, is amended to read as follows:

"§ 1544. Misuse of a passport

"Any person who knowingly—

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

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

"(3) secures, possesses, uses, receives, buys, sells, or distributes any passport knowing it to be forged, counterfeited, altered, falsely made, procured by fraud, or produced or issued without lawful authority; or

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

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

(e) SCHEMES TO DEFRAUD ALIENS.—Section 1545 of title 18, United States Code, is amended to read as follows:

"§ 1545. Schemes To defraud aliens

''(a) IN GENERAL.—Any person who knowingly executes a scheme or artifice, in connection with any matter that is authorized by or arises under any Federal immigration law or any matter the offender claims or represents is authorized by or arises under any Federal immigration law, to—

''(1) defraud any person; or

''(2) obtain or receive money or anything else of value from any person by means of false or fraudulent pretenses, representations, or promises,

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

''(b) MISREPRESENTATION.—Any person who knowingly and falsely represents that such person is an attorney or an accredited representative (as that term is defined in section 1292.1 of title 8, Code of Federal Regulations (or any successor regulation)) in any matter arising under any Federal immigration law shall be fined under this title, imprisoned not more than 15 years, or both.''.

(f) IMMIGRATION AND VISA FRAUD.—Section 1546 of title 18, United States Code, is amended—

(1) by amending the section heading to read as follows:

"§ 1546. Immigration and visa fraud";

(2) by striking subsections (b) and (c) and inserting the following:

''(b) TRAFFICKING.—Any person who, during any period of 3 years or less, knowingly—

''(1) and without lawful authority produces, issues, or transfers 10 or more immigration documents;

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

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

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

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

"(c) IMMIGRATION DOCUMENT MATERIALS.—Any person who knowingly and without lawful authority produces, buys, sells, possesses, or uses any official material (or counterfeit of any official material) used to make immigration documents, including any distinctive paper, seal, hologram, image, text, symbol, stamp, engraving, or plate, shall be fined under this title, imprisoned not more than 20 years, or both.

"(d) EMPLOYMENT DOCUMENTS.—Any person who uses—

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

"(2) a false attestation, for the purpose of satisfying a requirement under section 274A(b) of the Immigration and Nationality Act (8 U.S.C. 1324a(b)), shall be fined under this title, imprisoned not more than 1 year, or both.".

(g) ALTERNATIVE IMPRISONMENT MAXIMUM FOR CERTAIN OFFENSES.—Section 1547 of title 18, United States Code, is amended—

(1) in the matter preceding paragraph (1), by striking "(other than an offense under section 1545)";

(2) in paragraph (1), by striking ''15'' and inserting ''20''; and

(3) in paragraph (2), by striking ''20'' and inserting ''25''.

(h) ATTEMPTS, CONSPIRACIES, JURISDICTION, AND DEFINITIONS.—Chapter 75 of title 18, United States Code, is amended by adding after section 1547 the following:

''§ 1548. Attempts and conspiracies

''Any person who attempts or conspires to violate any section of this chapter shall be punished in the same manner as a person who completed a violation of such section.

''§ 1549. Additional jurisdiction

''(a) IN GENERAL.—Any person who commits an offense under this chapter within the special maritime and territorial jurisdiction of the United States shall be punished as provided under this chapter.

''(b) EXTRATERRITORIAL JURISDICTION.—Any person who commits an offense under this chapter outside the United States shall be punished as provided under this chapter if—

''(1) the offense involves a United States passport or immigration document (or any document purporting to be such a document) or any matter,

right, or benefit arising under or authorized by any Federal immigration law;

"(2) the offense is in or affects foreign commerce;

"(3) the offense affects, jeopardizes, or poses a significant risk to the lawful administration of Federal immigration laws, or the national security of the United States;

"(4) the offense is committed to facilitate an act of international terrorism (as defined in section 2331) or a drug trafficking crime (as defined in section 929(a)(2)) that affects or would affect the national security of the United States;

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

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

"§ 1550. Authorized law enforcement activities

"Nothing in this chapter may be construed to prohibit—

"(1) any lawfully authorized investigative, protective, or intelligence activity of a law enforcement

agency of the United States, a State, or a political subdivision of a State, or an intelligence agency of the United States; or

"(2) any activity authorized under title V of the Organized Crime Control Act of 1970 (Public Law 91–452; 84 Stat. 933).".

(i) CLERICAL AMENDMENT.—The table of sections for chapter 75 of title 18, United States Code, is amended to read as follows:

"Sec.
"1541. Trafficking in passports.
"1542. False statement in an application for a passport.
"1543. Forgery and unlawful production of a passport.
"1544. Misuse of a passport.
"1545. Schemes to defraud aliens.
"1546. Immigration and visa fraud.
"1547. Alternative imprisonment maximum for certain offenses.
"1548. Attempts and conspiracies.
"1549. Additional jurisdiction.
"1550. Authorized law enforcement activities.".

(j) UNIFORM STATUTE OF LIMITATIONS FOR CERTAIN IMMIGRATION, NATURALIZATION, AND PEONAGE OFFENSES.—

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

"§ 3291. Immigration, naturalization, and peonage offenses

"A person may not be prosecuted, tried, or punished for any violation under chapter 69 (relating to nationality and citizenship offenses), 75 (relating to passport, visa, and immigration offenses), or 77 (relating to peonage,

slavery, and trafficking in persons), for an attempt or conspiracy to commit such a violation, for a violation of any criminal provision under section 243, 266, 274, 275, 276, 277, or 278 of the Immigration and Nationality Act (8 U.S.C. 1253, 1306, 1324, 1325, 1326, 1327, and 1328), or for an attempt or conspiracy to commit any such violation, unless the indictment is returned or the information filed not later than 10 years after the commission of the offense.''.

(2) CLERICAL AMENDMENT.—The table of sections for chapter 213 of title 18, United States Code, is amended by striking the item relating to section 3291 and inserting the following:

''3291. Immigration, naturalization, and peonage offenses.''.

SEC. 246. DIRECTIVES RELATED TO PASSPORT AND DOCUMENT FRAUD.

(a) DIRECTIVE TO THE UNITED STATES SENTENCING COMMISSION.—

(1) IN GENERAL.—Pursuant to the authority under section 994 of title 28, United States Code, the United States Sentencing Commission shall promulgate or amend the sentencing guidelines, policy statements, and official commentaries related to passport fraud offenses, including the offenses described in chapter 75 of title 18, United States

Code, as amended by section 245, to reflect the serious nature of such offenses.

(2) REPORT.—Not later than 1 year after the date of the enactment of this Act, the United States Sentencing Commission shall submit a report on the implementation of this subsection to—

(A) the Committee on the Judiciary of the Senate; and

(B) the Committee on the Judiciary of the House of Representatives.

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

(1) IN GENERAL.—

(A) REQUIREMENT FOR GUIDELINES.—The Attorney General, in consultation with the Secretary, shall develop binding prosecution guidelines for Federal prosecutors to ensure that each prosecution of an alien seeking entry into the United States by fraud is consistent with the United States treaty obligations under Article 31(1) of the Convention Relating to the Status of Refugees, done at Geneva July 28, 1951 (as made applicable by the Protocol Relating to the Status of Refugees, done at New York January 31, 1967 (19 UST 6223)).

(B) NO PRIVATE RIGHT OF ACTION.—The guidelines developed pursuant to subparagraph (A), and any internal office procedures related to such guidelines—

(i) are intended solely for the guidance of attorneys of the United States; and

(ii) are not intended to, do not, and may not be relied upon to, create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter.

(2) PROTECTION OF VULNERABLE PERSONS.—A person described in paragraph (3) may not be prosecuted under chapter 75 of title 18, United States Code, or under section 275 or 276 of the Immigration and Nationality Act (8 U.S.C. 1325 and 1326), in connection with the person's entry or attempted entry into the United States until after the date on which the person's application for such protection, classification, or status has been adjudicated and denied in accordance with the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

(3) PERSONS SEEKING PROTECTION, CLASSIFICATION, OR STATUS.—A person described in this paragraph is a person who—

(A) is seeking protection, classification, or status; and

(B)(i) has filed an application for asylum under section 208 of the Immigration and Nationality Act (8 U.S.C. 1158), withholding of removal under section 241(b)(3) of such Act (8 U.S.C. 1231), or relief under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, done at New York, December 10, 1994, pursuant to title 8, Code of Federal Regulations;

(ii) indicates immediately after apprehension, that he or she intends to apply for such asylum, withholding of removal, or relief and promptly files the appropriate application;

(iii) has been referred for a credible fear interview, a reasonable fear interview, or an asylum-only hearing under section 235 of the Immigration and Nationality Act (8 U.S.C. 1225) or title 8, Code of Federal Regulations; or

(iv) has filed an application for classification or status under—

(I) paragraph (15)(T), (15) (U), (27)(J), or (51) of section 101(a) of the

Immigration and Nationality Act (8 U.S.C. 1101(a)); or

(II) section 216(c)(4)(C), 240A(b)(2), or 244(a)(3) of such Act (8 U.S.C. 1186a(c)(4)(C), 1229b(b)(2), and 1254a(a)(3)).

SEC. 247. EXPANDING THE DEFINITION OF CONVEYANCES SUBJECT TO FORFEITURE.

(a) IN GENERAL.—Section 1703 of title 19, United States Code, is amended—

(1) by amending the section heading to read as follows:

"§ 1703. Seizure and forfeiture of vessels, vehicles, other conveyances, and instruments of international traffic";

(2) in subsection (a), by amending the subsection heading to read as follows:

"(a) VESSELS, VEHICLES, OTHER CONVEYANCES, AND INSTRUMENTS OF INTERNATIONAL TRAFFIC SUBJECT TO SEIZURE AND FORFEITURE.—";

(3) in subsection (b), by amending the subsection heading to read as follows:

"(b) VESSELS, VEHICLES, OTHER CONVEYANCES, AND INSTRUMENTS OF INTERNATIONAL TRAFFIC DEFINED.—";

(4) in subsections (a) and (b), by inserting ", vehicle, other conveyance, or instrument of international traffic" after "vessel" each place such term appears; and

(5) by amending subsection (c) to read as follows:

"(c) ACTS CONSTITUTING PRIMA FACIE EVIDENCE OF SMUGGLING.—For purposes of this section, prima facie evidence that a conveyance is being, has been, or is attempting to be employed in smuggling or to defraud the revenue of the United States shall be—

"(1) in the case of a vessel, the vessel—

"(A) has become subject to pursuit, as described in section 1581;

"(B) is a hovering vessel; or

"(C) fails, at any place within the customs waters of the United States or within a customs-enforcement area, to display lights as required by law;

"(2) in the case of a vehicle, other conveyance, or instrument of international traffic, the vehicle, other conveyance, or instrument of international traffic has any compartment or equipment that is built or fitted out for smuggling.".

(b) CLERICAL AMENDMENT.—The table of sections for chapter 5 of title 19, United States Code, is amended by striking the item relating to section 1703 and inserting the following:

"1703. Seizure and forfeiture of vessels, vehicles, other conveyances, or instruments of international traffic.".

SEC. 248. CRIMINAL FORFEITURE.

Section 982(a) of title 18, United States Code, is amended—

(1) in paragraph (2)(B), by inserting "1028A" between "1028" and "1029;"

(2) in paragraph (6)(A)—

(A) by striking " or 274A(a)(2)" and inserting "274A(a)(2) or 274A(i)"; and

(B) by inserting "and 1028A" after "1028" and

(3) in paragraph (8), by inserting "and 1028A" after "1028".

SEC. 249. ADVANCE DELIVERY OF INFORMATION INCLUDING PASSENGER MANIFESTS.

(a) IN GENERAL.—Section 231 (8 U.S.C. 1221) is amended—

(1) by striking "commercial vessel or aircraft" each place it appears and inserting "commercial vessel, commercial vehicle, or aircraft";

(2) in subsection (a), by striking ''such vessel or aircraft'' and inserting ''such vessel, vehicle, or aircraft'';

(3) in subsection (g), by striking ''$1,000'' and inserting ''$5,000'';

(4) in subsection (j), by striking ''The Attorney General'' and inserting the following:

''(j) INFORMATION TO BE RECORDED.—The Secretary of Homeland Security''; and

(5) by inserting at the end the following:

''(k) SHARING OF MANIFEST AND PASSENGER NAME RECORD INFORMATION WITH OTHER GOVERNMENT AGENCIES.—The Secretary of Homeland Security may provide information contained in passenger and crew manifests and passenger name record information received under this section to other Federal, State, tribal, local, and foreign government authorities in order to protect the national security of the United States or as otherwise authorized by law.

''(l) SAVINGS PROVISION.—Nothing in this section may be construed to abrogate, diminish, or weaken the provisions of any Federal law that prevents or protects against unauthorized collection or release of personal records.''.

(b) ASSESSMENTS.—Not later than 1 year after the date of the enactment of this Act, the Secretary shall assess the privacy and civil liberties impacts of the amendments made by subsection (a).

SEC. 250. UNLAWFUL FLIGHT FROM IMMIGRATION OR CUSTOMS CONTROLS AND DISOBEYANCE OF LAWFUL ORDERS.

Section 758 of title 18, United States Code, is amended to read as follows:

"§ 758. Unlawful flight from Federal checkpoints and disobeyance of lawful orders

"(a) EVADING A CHECKPOINT.—Any person who, while operating a motor vehicle or vessel—

"(1) knowingly flees or evades a checkpoint operated by the Department of Homeland Security or any other Federal law enforcement agency; and

"(2) knowingly or recklessly disregards or disobeys the lawful command of a Federal law enforcement officer engaged in the enforcement of Federal law, or the lawful command of any law enforcement officer assisting such Federal officer,

shall be fined under this title, imprisoned not more than 5 years, or both.

"(b) FAILURE TO STOP.—Any person who, while operating a motor vehicle, aircraft, or vessel, knowingly or

recklessly disregards or disobeys the lawful command of a Federal law enforcement officer engaged in the enforcement of Federal law, or the lawful command of any law enforcement officer assisting such Federal officer, shall be fined under this title, imprisoned not more than 2 years, or both.''.

SEC. 251. REDUCING ILLEGAL IMMIGRATION AND ALIEN SMUGGLING ON TRIBAL LANDS.

(a) GRANTS AUTHORIZED.—The Secretary may award grants to any Indian tribe that—

(1) owns land that is adjacent to an international border of the United States; and

(2) has been adversely affected by illegal immigration.

(b) USE OF FUNDS.—Grants awarded under subsection (a) may be used for—

(1) law enforcement activities;

(2) health care services;

(3) environmental restoration; and

(4) the preservation of cultural resources.

(c) REPORT.—Not later than 180 days after the date of the enactment of this Act, the Secretary shall submit a report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives that—

(1) describes the level of access that Border Patrol agents have on tribal lands;

(2) describes the extent to which the enforcement of Federal immigration laws and rescue operations by Border Patrol officers may be improved by enhanced access to tribal lands;

(3) contains a strategy for improving access to tribal lands through increased cooperation with tribal authorities; and

(4) identifies grants provided by the Department to Indian tribes, either directly or through grants provided to State or local governments, for border security expenses.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2012 through 2016 to carry out this section.

SEC. 252. DIPLOMATIC SECURITY SERVICE.

(a) Section 37(a)(1) of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2709(a)(1)) is amended to read as follows:

"(1) conduct investigations concerning—

"(A) illegal passport or visa issuance or use;

"(B) identity theft or document fraud affecting or relating to the programs, functions, or authorities of the Department of State;

"(C) violations of chapter 77 of title 18, United States Code; and

"(D) Federal offenses committed within the special maritime and territorial jurisdiction defined in section 7(9) of title 18, United States Code, except as that jurisdiction relates to the premises of United States military missions and related residences;".

(b) RULE OF CONSTRUCTION.—Nothing in this section may be construed to limit the investigative authority of any Federal department or agency.

SEC. 253. INCREASED PENALTIES BARRING THE ADMISSION OF CONVICTED SEX OFFENDERS FAILING TO REGISTER AND REQUIRING DEPORTATION OF SEX OFFENDERS FAILING TO REGISTER.

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

(1) in subclause (I), by striking "or" at the end;

(2) in subclause (II), by striking the comma at the end and inserting a semicolon; and

(3) by inserting after subclause (II) the following:

"(III) a conviction under section 2250 of title 18, United States Code (relating to failure to register as a sex offender),".

(b) DEPORTABILITY.—Section 237(a)(2)(A)(i) (8 U.S.C. 1227(a)(2)(A)(i)) is amended—

(1) in subclause (I), by striking ", and" and inserting a semicolon;

(2) in subclause (II), by striking the comma at the end and inserting "; or"; and

(3) by inserting after subclause (II) the following:

"(III) a conviction under section 2250 of title 18, United States Code (relating to failure to register as a sex offender),".

SEC. 254. AGGRAVATED FELONY.

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

(1) in the matter preceding subparagraph (A), by striking "The term 'aggravated felony' means—" and inserting "Notwithstanding any other provision of law, the term 'aggravated felony' applies to

any offense which is a felony described in this paragraph, whether in violation of Federal or State law, for which the individual served at least 1 year of imprisonment and to such a felony offense in violation of the law of a foreign country, for which the term of imprisonment was completed during the previous 15 years, regardless of whether the conviction was entered before, on, or after September 30, 1996, and means—";

(2) in subparagraph (N), by striking "paragraph (1)(A) or (2) of" and inserting "paragraph (1)(A), (2), or (4) of"; and

(3) by striking the undesignated matter following subparagraph (U).

(b) EFFECTIVE DATE AND APPLICATION.—

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

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

(B) apply to any act that occurred on or after such date.

(2) APPLICATION OF AMENDMENTS.—The amendments to section 101(a)(43) of the Immigration and Nationality Act made by section 321 of the Illegal Immigration Reform and Immigrant Respon-

sibility Act of 1996 (division C of Public Law 104–208; 110 Stat. 3009–627) shall continue to apply to actions taken on or after September 30, 1996, regardless of when the conviction for such actions occurred.

SEC. 255. INCREASED CRIMINAL PENALTIES RELATED TO GANG VIOLENCE.

(a) CRIMINAL STREET GANGS.—

(1) INADMISSIBILITY.—Section 212(a)(2) (8 U.S.C. 1182(a)(2)) is amended by adding at the end the following:

"(J) MEMBERS OF CRIMINAL STREET GANGS.—Unless the Secretary of Homeland Security or the Attorney General waives the application of this subparagraph, any alien who has been convicted of a crime under section 521 of title 18, United States Code, is inadmissible.".

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

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

been convicted of a crime under section 521 of title 18, United States Code, is deportable.''.

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

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

(B) in subsection (c)(2)(B)—

(i) in clause (i), by striking '', or'' at the end and inserting a semicolon;

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

(iii) by adding at the end the following:

''(iii) the alien has been convicted of a crime under section 521 of title 18, United States Code.''.

(C) in subsection (d)—

(i) by striking paragraph (3);

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

(iii) in paragraph (3), as redesignated, by adding at the end the following: ''The Secretary of Homeland Security shall detain an alien provided temporary protected

status under this section if the alien has been found by an immigration judge to be subject to detention under section 236(c)(1).''.

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

(1) in subsection (a)(1), in the matter following subparagraph (D)—

(A) by striking ''or imprisoned not more than four years'' and inserting ''and imprisoned for not more than 5 years''; and

(B) by striking '', or both''; and

(2) in subsection (b), by striking ''not more than $1,000 or imprisoned for not more than 1 year, or both'' and inserting ''under title 18, United States Code, and imprisoned for not more than 3 years (or for not more than 10 years if the alien is removable under paragraph (1)(E), (2), or (4) of section 237(a)).''.

PART II—DETENTION REFORM

SEC. 261. DEFINITIONS.

In this part:

(1) APPREHENSION.—The term ''apprehension'' means the detention, arrest, or custody, or any significant deprivation of an individual's freedom of ac-

tion by government officials or entities acting under agreement with the Department for suspicion of violations under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

(2) CHILD.—The term ''child'' has the meaning given to the term in section 101(b)(1) of the Immigration and Nationality Act (8 U.S.C. 1101(b)(1)).

(3) CHILD WELFARE AGENCY.—The term ''child welfare agency'' means the State or local agency responsible for child welfare services under subtitles B and E of title IV of the Social Security Act (42 U.S.C. 601 et seq.).

(4) COOPERATING ENTITY.—The term ''cooperating entity'' means a State or local entity acting under agreement with, or at the request of, the Department.

(5) DETAINEE.—The term ''detainee'' means an individual who is subject to detention under the Immigration and Nationality Act.

(6) DETENTION.—The term ''detention'' means government custody or any other deprivation of an individual's freedom of movement by government agents.

(7) DETENTION FACILITY.—The term ''detention facility'' means a Federal, State, or local gov-

ernment facility, or a privately owned and operated facility, that is used to hold individuals suspected or found to be in violation of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) for more than 72 hours.

(8) FAMILIES WITH CHILDREN.—The term ''family with children'' means any parent or legal guardian who is apprehended with 1 or more of their children.

(9) GROUP LEGAL ORIENTATION PRESENTATIONS.—The term ''group legal orientation presentations'' means live group presentations, supplemented by individual orientations, pro se workshops, and pro bono referrals, that—

(A) are carried out by private nongovernmental organizations;

(B) are presented to detainees;

(C) inform detainees about Federal immigration law and procedures; and

(D) enable detainees to determine their eligibility for relief.

(10) IMMIGRATION ENFORCEMENT ACTION.—The term ''immigration enforcement action'' means the apprehension of, detention of, or request for or issuance of a detainer for, 1 or more individuals for

suspected or confirmed violations of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) by the Department or cooperating entities.

(11) LOCAL EDUCATION AGENCY.—The term ''local education agency'' has the meaning given to the term in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).

(12) NGO.—The term ''NGO'' means a nongovernmental organization that provides social services or humanitarian assistance to the immigrant community.

(13) SECURE ALTERNATIVES.—The term ''secure alternatives'' means custodial or noncustodial 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.

(14) SHORT-TERM DETENTION FACILITY.—The term ''detention facility'' means a Federal, State, or local government facility, or a privately owned and operated facility, that is used to hold individuals suspected or found to be in violation of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) for 72 hours or less.

(15) UNACCOMPANIED ALIEN CHILDREN.—The term ''unaccompanied alien children'' has the meaning given the term in section 462(g) of the Homeland Security Act of 2002 (6 U.S.C. 279(g)).

SEC. 262. PROTECTIONS FOR VULNERABLE POPULATIONS.

(a) PROTECTION OF VULNERABLE POPULATIONS.—

(1) IN GENERAL.—Not later than 72 hours after the commencement of an immigration-related enforcement activity, the Department shall screen each detainee to determine if the individual is a member of a vulnerable population.

(2) ELIGIBILITY FOR RELEASE.—An individual is a member of a vulnerable population and eligible for release under subsection (b) if the Department determines that he or she—

(A) has a nonfrivolous claim to United States citizenship;

(B) has been deemed by a medically trained professional to have medical or mental health needs, or a disability;

(C) is pregnant or nursing;

(D) is being detained with 1 or more of his or her children, or is 1 of such children;

(E) provides financial, physical, and other direct support to his or her minor children, parents, or other dependents;

(F) is older than 65 years of age;

(G) is a child (as defined in section 101(b) of the Immigration and Nationality Act (8 U.S.C. 1101(b));

(H) is a victim of abuse, violence, crime, or human trafficking;

(I) is a lesbian, gay, bisexual, or transgender individual;

(J) has been referred for a credible fear interview, a reasonable fear interview, or an asylum hearing, or is a stateless individual;

(K) has applied or intends 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;

(L) is prima facie eligible for relief under any provision of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) including returning lawful permanent residents; or

(M) is a member of any other group that has been designated as a vulnerable population in regulations or guidance promulgated by the Secretary.

(b) OPTIONS REGARDING DETENTION DECISIONS FOR VULNERABLE POPULATIONS.—Section 236 (8 U.S.C. 1226), 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'' at the end; and

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

''(C) the alien's own recognizance;''; and.

(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; and''; and

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

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

"(b) CUSTODY DECISIONS.—

"(1) CRITERIA TO BE CONSIDERED.—For any alien who is not charged with inadmissibility or removability under a ground specified in subsection (g) or section 236A, the criteria that the Secretary of Homeland Security or the Attorney General shall use to demonstrate that detention is necessary are—

"(A) whether the alien poses a risk to public safety, including a risk to national security; and

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

"(2) EXCEPTION.—A decision to detain an alien shall not be subject to the criteria under paragraph (1) if the Secretary demonstrates, by a preponderance of the evidence, that the alien is described in subsection (g)(1).

"(3) REVIEW.—Decisions by the Secretary or the Attorney General under this section shall be subject to review.

"(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 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 evidence that the individual—

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

"(B) poses a risk to public safety, including a risk to national security; or

"(C) is a flight risk and the risk cannot be mitigated through other conditions of release, such as bond or secure alternatives, which will reasonably ensure the alien will appear for immigration proceedings.

"(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);

"(C) on parole, in accordance with section 212(d)(5)(A); or

"(D) into a noncustodial secure alternatives program.

"(d) DECISION TO REMOVE OR RELEASE AN ALIEN.—

"(1) IN GENERAL.—All decisions to detain an individual under this Act—

"(A) shall be made in writing by the Secretary of Homeland Security or the Attorney General;

"(B) shall specify the reasons for such decision if the decision is made to continue detention without bond, parole, release on recognizance, or release into a noncustodial secure alternatives program; and

"(C) shall be served upon the individual in the language spoken by the individual—

"(i) not later than 72 hours after the commencement of the alien's detention; or

"(ii) in the case of an alien subject to section 235 or 241(a)(5) who must estab-

lish a credible fear of persecution or torture, not later than 72 hours after a positive credible fear of persecution or reasonable fear of persecution or torture determination.

"(2) REDETERMINATION.—

"(A) IN GENERAL.—Any alien detained by the Department of Homeland Security under this Act may, at any time after being served with the Secretary's decision under paragraph (1), request a redetermination of that decision by an immigration judge.

"(B) OTHER DECISIONS.—The Attorney General may review and conduct custody redeterminations for any custody decision by the Secretary.

"(C) SAVINGS PROVISION.—Nothing in this subparagraph may be construed to prevent an individual from requesting a bond redetermination.

"(e) TIMELY NOTICE UPON APPREHENSION AND SERVICE OF CHARGING DOCUMENTS.—

"(1) NOTICE.—The Secretary of Homeland Security, for each individual detained by the Depart-

ment of Homeland Security under this section, shall—

"(A) file the notice to appear or other relevant charging document with the closest immigration court to where the individual was apprehended; and

"(B) serve such notice on the individual not later than 48 hours after the commencement of the individual's detention.

"(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 such right in accordance with paragraph (3).

"(3) WAIVER.—The requirements under this subsection may be waived for 7 days if the individual—

"(A) enters into a written agreement with the Department of Homeland Security to waive such requirement; and

"(B) is eligible for immigration benefits or demonstrates eligibility for a defense against removal.

"(4) APPLICABILITY OF OTHER LAW.—Nothing in this section may be construed to repeal section 236A.";

(4) in subsection (g)(2), as redesignated, by inserting "or for humanitarian reasons," after "such an investigation,"; and

SEC. 263. APPREHENSION PROCEDURES FOR IMMIGRATION ENFORCEMENT-RELATED ACTIVITIES RELATING TO CHILDREN.

(a) NOTIFICATION.—

(1) ADVANCE NOTIFICATION.—Subject to paragraph (2), when conducting any immigration enforcement action involving more than 10 individuals, the Department and cooperating entities shall notify the Governor of the State, the local child welfare agency, and relevant State and local law enforcement before commencing the action, or, if advance notification is not possible, immediately after commencing such action, of—

(A) the approximate number of individuals to be targeted in the immigration enforcement action; and

(B) the primary language or languages believed to be spoken by individuals at the targeted site.

(2) HOURS OF NOTIFICATION.—To the extent possible, advance notification under paragraph (1) should occur during business hours and allow the notified entities sufficient time to identify resources to conduct the interviews described in subsection (b)(1).

(3) OTHER NOTIFICATION.—When conducting any immigration action involving more than 10 individuals, the Department and cooperating entities shall notify the relevant local education agency and local NGOs of the information described in paragraph (1) immediately after commencing the action.

(b) APPREHENSION PROCEDURES.—In any immigration enforcement action involving more than 10 individuals, the Department and cooperating entities shall—

(1) as soon as possible and not later than 6 hours after an immigration enforcement action, provide licensed social workers or case managers employed or contracted by the child welfare agency or local NGOs with confidential access to screen and interview individuals apprehended in such immigration enforcement action to assist the Department or cooperating entity in determining if such individuals are parents, legal guardians, or primary caregivers of a child in the United States;

(2) as soon as possible and not later than 8 hours after an immigration enforcement action, provide any apprehended individual believed to be a parent, legal guardian, or primary caregiver of a child in the United States with—

(A) free, confidential telephone calls, including calls to child welfare agencies, attorneys, and legal services providers, to arrange for the care of children or wards, unless the Department has reasonable grounds to believe that providing confidential phone calls to the individual would endanger public safety or national security; and

(B) contact information for—

(i) child welfare agencies in all 50 States, the District of Columbia, all United States territories, counties, and local jurisdictions; and

(ii) attorneys and legal service providers capable of providing free legal advice or free legal representation regarding child welfare, child custody determinations, and immigration matters;

(3) ensure that personnel of the Department and cooperating entities do not—

(A) interview individuals in the immediate presence of children; or

(B) compel or request children to translate for interviews of other individuals who are encountered as part of an immigration enforcement action; and

(4) ensure that any parent, legal guardian, or primary caregiver of a child in the United States—

(A) receives due consideration of the best interests of his or her children or wards in any decision or action relating to his or her detention, release, or transfer between detention facilities; and

(B) is not transferred from his or her initial detention facility or to the custody of the Department until the individual—

(i) has made arrangements for the care of his or her children or wards; or

(ii) if such arrangements are impossible, is informed of the care arrangements made for the children and of a means to maintain communication with the children.

(c) NONDISCLOSURE AND RETENTION OF INFORMATION ABOUT APPREHENDED INDIVIDUALS AND THEIR CHILDREN.—

(1) IN GENERAL.—Information collected by child welfare agencies and NGOs in the course of the screenings and interviews described in subsection (b)(1) about an individual apprehended in an immigration enforcement action may not be disclosed to Federal, State, or local government entities or to any person, except pursuant to written authorization from the individual or his or her legal counsel.

(2) CHILD WELFARE AGENCY OR NGO RECOMMENDATION.—Notwithstanding paragraph (1), a child welfare agency or NGO may—

(A) submit a recommendation to the Department of Homeland Security or cooperating entities regarding whether an apprehended individual is a parent, legal guardian, or primary caregiver who is eligible for the protections provided under this Act; and

(B) disclose information that is necessary to protect the safety of the child, to allow for the application of subsection (b)(4)(A), or to prevent reasonably certain death or substantial bodily harm.

SEC. 264. DETENTION OF FAMILIES.

(a) PLACEMENT IN REMOVAL PROCEEDINGS.—Any family with children sought to be removed by the Depart-

1 ment shall be placed in removal proceedings under section
2 240 of the Immigration and Nationality Act (8 U.S.C.
3 1229a).

4 (b) CUSTODY OF FAMILIES WITH CHILDREN.—

5 (1) SEPARATION.—Families with children shall
6 not be separated or taken into custody except when
7 justified by exceptional circumstances, or when re-
8 quired by law.

9 (2) EXCEPTIONAL CIRCUMSTANCES.—In excep-
10 tional circumstances, if release or a secure alter-
11 natives program is not an option for families with
12 children, the Secretary shall ensure that—

13 (A) special nonpenal, residential, home-like
14 facilities that enable families to live as a family
15 unit are designed to house families with chil-
16 dren, taking into account the particular needs
17 and vulnerabilities of the children;

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

20 (C) entities with demonstrated experience
21 and expertise in child welfare staff and are re-
22 sponsible for the management of facilities hous-
23 ing families with children;

24 (D) unless such restrictions are necessary
25 to prevent flight or to ensure the safety of resi-

dents, families with children are not subject to restrictions—

(i) on freedom of movement;

(ii) involving access to visitations, telephones, internet, a library, and a law library;

(iii) regarding possession of personal property, including personal clothing;

(iv) on the availability of age appropriate education; or

(v) religious practices;

(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 3 weeks;

(F) all families are notified in writing of the decisions resulting from such reviews and of the individualized reasons for the decision; and

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

(c) DISCRETIONARY WAIVER AUTHORITY FOR FAMILIES WITH CHILDREN.—Section 235(b)(1)(B)(iii) (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 benefit not to detain families with children who are otherwise subject to mandatory detention under subclause (IV).''.

SEC. 265. ACCESS TO CHILDREN, LOCAL AND STATE COURTS, CHILD WELFARE AGENCIES, AND CONSULAR OFFICIALS.

(a) IN GENERAL.—The Secretary shall ensure that all detention facilities operated by or under agreement with the Department implement procedures to ensure that the best interest of the child, including the best outcome for the family of the child, is considered in any decision or action relating to the custody of children whose parent,

legal guardian, or primary caregiver is detained as the result of an immigration enforcement action.

(b) ACCESS TO CHILDREN, STATE AND LOCAL COURTS, CHILD WELFARE AGENCIES, AND CONSULAR OFFICIALS.—At all detention facilities operated by, or under agreement with, the Department, the Secretary shall—

(1) ensure that individuals who are detained by reason of their immigration status may receive the screenings and interviews described in section 263(b)(1) not later than 6 hours after their arrival at the detention facility;

(2) ensure that individuals who are detained by reason of their immigration status and are believed to be parents, legal guardians, or primary caregivers of children in the United States are—

(A) permitted daily phone calls and regular contact visits with their children or wards;

(B) able to participate fully, and to the extent possible in-person, in all family court proceedings and any other proceeding impacting upon custody of their children or wards;

(C) able to fully comply with all family court or child welfare agency orders impacting upon custody of their children or wards;

(D) provided with contact information for family courts in all 50 States, the District of Columbia, all United States territories, counties, and local jurisdictions;

(E) granted free and confidential telephone calls to child welfare agencies and family courts;

(F) granted free and confidential telephone calls and confidential in-person visits with attorneys, legal representatives, and consular officials;

(G) provided United States passport applications for the purpose of obtaining travel documents for their children or wards;

(H) granted adequate time before removal to obtain passports and other necessary travel documents on behalf of their children or wards if such children or wards will accompany them on their return to their country of origin or join them in their country of origin; and

(I) provided with the access necessary to obtain birth records or other documents required to obtain passports for their children or wards; and

(3) facilitate the ability of detained parents, legal guardians, and primary caregivers to share information regarding travel arrangements with their children or wards, child welfare agencies, or other caregivers well in advance of the detained individual's departure from the United States.

SEC. 266. MEMORANDA OF UNDERSTANDING.

The Secretary shall develop and implement memoranda of understanding or protocols with child welfare agencies and NGOs regarding the best ways to cooperate and facilitate ongoing communication between all relevant entities in cases involving a child whose parent, legal guardian, or primary caregiver has been apprehended or detained in an immigration enforcement action to protect the best interests of the child and the best outcome for the family of the child.

SEC. 267. MANDATORY TRAINING.

The Secretary, in consultation with the Secretary of Health and Human Services and independent child welfare experts, shall require and provide in-person training on the protections required to all personnel of the Department and of States and local entities acting under agreement with the Department who regularly come into contact with children or parents in the course of conducting immigration enforcement actions.

SEC. 268. ALTERNATIVES TO DETENTION.

(a) SECURE ALTERNATIVES.—The Secretary shall establish secure alternatives programs to ensure public safety and appearances at immigration proceedings. The Secretary may use secure alternatives programs to maintain custody over any alien detained under the Immigration and Nationality Act, except aliens detained under section 236A of such Act (8 U.S.C. 1226a). If an individual is not eligible for release from custody, the Secretary shall consider the alien for placement in secure alternatives that maintain custody over the alien, including the use of electronic ankle devices.

(b) CONTRACTS AUTHORIZED.—The Secretary shall contract with nongovernmental organizations to conduct screening of detainees, provide appearance assistance services, and operate community-based supervision programs.

(c) INDIVIDUALIZED DETERMINATIONS.—When deciding whether to use custodial secure alternatives, the Secretary shall make an individualized determination and review each case on a monthly basis.

SEC. 269. DETENTION CONDITIONS.

(a) DETENTION REQUIREMENTS.—

(1) IN GENERAL.—The Secretary shall ensure that all persons detained pursuant to the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) are treated humanely and granted the protections set

1 forth in this section by complying and enforcing the
2 minimum requirements under this subsection.
3 (2) QUALITY OF MEDICAL CARE.—
4 (A) IN GENERAL.—Each detainee has the
5 right to prompt and adequate medical care, de-
6 signed to ensure continuity of care, at no cost
7 to the detainee, including care to address med-
8 ical needs that existed before the detainee was
9 placed in detention, primary care, emergency
10 care, chronic care, reproductive health care,
11 prenatal care, dental care, eye care, mental
12 health care, medical dietary needs, and other
13 medically necessary specialized care. The Sec-
14 retary shall discontinue the use of any short
15 term facility or detention facility that fails to
16 maintain accreditation for more than 1 year.
17 (B) INTAKE SCREENING AND EXAMINA-
18 TION.—Each detainee shall receive, from a li-
19 censed health care professional—
20 (i) a comprehensive medical, dental,
21 and mental health intake screening upon
22 arrival at the detention facility; and
23 (ii) a comprehensive medical and men-
24 tal health examination not later than 14
25 days after arrival.

1 (C) MEDICATIONS.—

2 (i) PRESCRIPTION MEDICATIONS.—
3 Each detainee taking prescribed medica-
4 tions prior to detention shall be allowed to
5 continue taking such medications, on
6 schedule and without interruption, until
7 and unless a licensed health care profes-
8 sional examines the immigration detainee
9 and decides upon an alternative course of
10 treatment. Detainees who arrive at a de-
11 tention facility with prescription medica-
12 tions shall be permitted to continue taking
13 their medications, on schedule and without
14 interruption, until such time as a qualified
15 health care professional examines the de-
16 tainee and decides upon an alternative
17 course of treatment. Detainees who arrive
18 at a detention facility without prescription
19 medications but who report being on such
20 medications shall be evaluated by a quali-
21 fied health care professional as soon as
22 possible, but not later than 24 hours after
23 arrival. All decisions to discontinue or
24 modify a detainee's reported prescription
25 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.

(ii) INVOLUNTARY PSYCHOTROPIC MEDICATION.—Involuntary psychotropic medication may be used only if allowed by applicable law and then only in emergency situations when a physician has determined, after personally examining the patient, that a detainee is imminently dangerous to self or others due to a mental illness and that involuntary psychotropic medication is medically appropriate to treat the mental illness and necessary to prevent harm. Medication shall not be forcibly administered to a detainee to facilitate transport, removal or otherwise to control the detainee's behavior.

(D) MEDICALLY NECESSARY TREATMENT.—Each detainee shall be provided access to medically necessary treatment, including, for female detainees, prenatal care, prenatal vitamins, and hormonal therapies, such as birth

control, and adequate access to sanitary products.

(E) ON-SITE MEDICAL PROVIDERS.—Any decision regarding requested medical care for a detainee—

(i) shall be made in writing by an on-site licensed health care professional within 72 hours; and

(ii) shall be communicated to the detainee without delay.

(F) ADMINISTRATIVE APPEALS PROCESS.—Detention facilities, in conjunction with the Department, shall provide for an administrative process for handling appeals of denials of medical or mental health treatment or care. Detention facilities, in conjunction with the Department, 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. The appeals board shall include health care professionals in the fields relevant to the request for medical or mental health care. Any such appeal shall be re-

1 solved in writing within 7 days by the appeals
2 board or earlier if medically necessary.
3 (G) REVIEW OF ON-SITE MEDICAL PRO-
4 VIDER REQUESTS.—The Secretary shall respond
5 within 72 hours to any request by an on-site
6 medical provider for authorization to provide
7 medical or mental health care to an immigra-
8 tion detainee. In each case in which the Sec-
9 retary denies or fails to grant such a request by
10 the onsite medical provider, a written expla-
11 nation of the reasons for the decision shall be
12 conveyed without delay to the on-site medical
13 provider and the immigration detainee. The on-
14 site medical provider and immigration detainee
15 (or legally appointed advocate) shall be per-
16 mitted to appeal the denial of or failure to
17 grant the requested health care service. Such
18 appeal shall be resolved in writing within 7 days
19 by an impartial appeals board or earlier if
20 medically necessary and communicated without
21 delay to the on-site medical provider and the
22 immigration detainee.
23 (H) MEDICAL RELEASE.—Any detainee
24 deemed by a licensed health care professional to
25 have a medical or mental health care condition

shall be considered for release on parole, on bond, or into a secure alternatives program, with periodic reevaluations for such detainees not initially released. Upon removal or release, all detainees with medical or mental health conditions and women who are pregnant, postnatal, and nursing mothers shall receive discharge planning to ensure continuity of care for a reasonable period of time.

(I) MEDICAL RECORDS.—The Department shall maintain complete, confidential medical records for every detainee, which shall be made available within 72 hours upon request to a detainee or individuals authorized by the detainee. Immediately upon an immigration detainee's transfer from 1 detention facility to another, the immigration detainee's complete medical records, including any transfer summary, shall be provided to the receiving facility.

(3) TRANSFERS OF DETAINEES.—

(A) NOTICE.—Absent exigent circumstances, such as a natural disaster or comparable emergency, the Secretary shall provide not less than 72 hours written notice to any detainee before such detainee is transferred to an-

other detention facility. Not later than 24 hours after a transfer, the Secretary shall notify, by telephone and in writing, the detainee's legal representative or other person designated by the detainee of the transfer.

(B) PROCEDURES.—Absent exigent circumstances, such as a natural disaster or comparable emergency, the Secretary may not transfer a detainee to another detention facility if such transfer would—

(i) impair an existing attorney-client relationship;

(ii) prejudice the rights of the detainee in any legal proceeding, including any Federal, State or administrative proceeding; or

(iii) negatively affect the detainee's health, including by interrupting the continuity of medical care or provision of prescription medication.

(C) TRANSPORTATION.—The Secretary shall ensure the safe transport and deportation of each individual detained under the Immigration and Nationality Act (8 U.S.C. 1101 et

seq.), including the appropriate use of safety harnesses and occupancy limitations of vehicles.

(4) ACCESS TO TELEPHONES.—

(A) IN GENERAL.—The Secretary shall ensure that detainees at detention facilities are provided with reasonable access to telephones not later than 6 hours after the commencement of their detention. Such access shall include not fewer than 1 working phone for every 25 detainees.

(B) TOLL-FREE NUMBERS.—Each detainee has the right to contact, free of charge through confidential toll-free numbers—

(i) legal representatives;

(ii) designated nongovernmental organizations;

(iii) consular officials;

(iv) Federal and State courts where the detainee is or may become involved in a legal proceeding; and

(v) all Government immigration agencies and adjudicatory bodies, including the Office of the Inspector General and the Office for Civil Rights and Civil Liberties of the Department.

1 (C) PRIVACY.—The Secretary shall—
2 (i) make confidential calls available at
3 no charge to detainees, who are subject to
4 expedited removal or who are experiencing
5 personal or family emergencies, including
6 the need to arrange care for dependents,
7 for the purpose of obtaining legal represen-
8 tation or discussing other legal matters;
9 and
10 (ii) ensure that rates charged in de-
11 tention facilities for telephone calls are rea-
12 sonable and do not significantly impair the
13 detainee's right to access telephones.
14 (5) PHYSICAL AND SEXUAL ABUSE.—No de-
15 tainee, whether in a detention facility or short term
16 detention facility, shall be subject to degrading or in-
17 humane treatment such as physical abuse, sexual
18 abuse or harassment, or arbitrary punishment. De-
19 tention facilities shall take all necessary measures to
20 prevent sexual abuse and sexual assaults of detain-
21 ees, to provide medical and mental health treatment
22 to victims of sexual abuse and sexual assaults and
23 shall comply fully with the standards under the Pris-
24 on Rape Elimination Act of 2003 (42 U.S.C. 15601
25 et seq.)

(6) LIMITATIONS ON SOLITARY CONFINEMENT AND STRIP SEARCHES.—The use of solitary confinement, shackling, and strip searches of detainees shall be limited to situations where the use of such techniques is necessitated by extraordinary circumstances when the safety of other persons is at imminent risk. These techniques shall in no event be used for the purpose of humiliating detainees either within or outside the detention facility. Detention facilities shall adopt written policies pertaining to the use of force and the use of restraints and shall train all staff on the proper use of such devices. Solitary confinement, shackling and strip searches shall not be used on pregnant women, nursing mothers, women in labor or delivery or children who are younger than 18 years of age. Strip searches shall not be conducted in front of children who are younger than 21 years of age.

(7) LOCATION OF DETENTION FACILITIES.—All new detention facilities used by the Department shall be located within 50 miles of a city or municipality in which there is a demonstrated capacity to provide free or low-cost legal representation by nonprofit legal aid organizations or pro bono attorneys with expertise in asylum or immigration law. By

January 1, 2013, all detention facilities used by the Department shall meet this requirement, and if the Secretary is unable to comply, the Secretary shall submit a report to Congress on that date and annually each year thereafter, explaining the reasons for the failure and the specific plans to meet the requirement.

(8) ACCESS TO IMMIGRATION COURTS.—At any detention facility where a contract to house immigration detainees is newly made, renewed, or extended during the period beginning on the date of the enactment of this Act and ending on December 31, 2013, detainees in removal proceedings shall appear before the immigration court in person, unless in person appearance is knowingly waived in writing by the detainee or the detainee's representative.

(9) TRANSLATION CAPABILITIES.—Detention facilities and short term detention facilities shall employ facility staff who are professionally qualified in any language spoken by more than 10 percent of its immigration detainee population. All short term detention facilities and detention facilities shall provide alternative translation services in the exceptional circumstances when trained bilingual staff members are unavailable to translate. All such facilities shall

provide notices and written materials to detainees translated in any language spoken by more than 5 percent of its immigration detainee population.

(10) LEGAL ACCESS.—Detainees in detention facilities have the right to access legal information, including an on-site law library with up-to-date legal materials and law databases. Each detainee has the right to access free of charge the necessary equipment and materials for legal research and correspondence, such as computers, printers, copiers, and typewriters. The Secretary shall ensure each detainee is provided with information regarding the availability of legal information and services to assist those with limited English proficiency or disabilities. Detention facilities shall also provide access for each detainee to meet confidentially with legal counsel and shall provide services to send confidential legal documents to legal counsel, government offices and legal organizations.

(11) VISITATIONS.—Detainees in detention facilities have the right to meet privately with his or her current or prospective legal representative, interpreters, and other legal support staff a minimum of 8 hours per day on regular business days and 4 hours per day on weekends and holidays, subject to

appropriate security procedures. Legal visits shall not be restricted absent narrowly defined exceptional circumstances, such as a natural disaster or comparable emergency. Detention facilities shall prominently post official lists, updated semi-annually by the Secretary of Homeland Security, of pro bono legal organizations and their contact information in detainee housing units and other appropriate areas. Each detainee has the right to reasonable access to religious or other qualified individuals to address religious, cultural, or spiritual considerations. Detainees have the right to regular, private contact visits with children who are younger 18 years of age.

(12) RECREATIONAL PROGRAMS AND ACTIVITIES.—Detainees in detention facilities shall be afforded access to at least 1 hour each day of indoor and outdoor recreational programs and activities for detainees.

(13) TRAINING OF PERSONNEL.—All personnel in detention facilities and short term detention facilities shall be given a comprehensive specialized training and regular, periodic updates that shall include at a minimum an overview of immigration detention and all detention standards; the characteristics of the non-citizen detainee population including special

1 characteristics of vulnerable groups; and the due
2 process and grievance procedures to protect the
3 rights of detainees.
4 (14) SHORT TERM DETENTION FACILITIES.—
5 (A) IN GENERAL.—All detainees in short
6 term detention facilities shall receive—
7 (i) potable water;
8 (ii) food, if detained for more than 5
9 hours;
10 (iii) basic toiletries, diapers, sanitary
11 products, blankets; and
12 (iv) access to bathroom facilities and
13 telephones.
14 (B) CONSULAR OFFICIALS.—The Secretary
15 or his designates shall provide consular officials
16 with access to detainees held at such facilities.
17 (C) HEALTH CARE.—Detainees shall be af-
18 forded reasonable access to a licensed health
19 care professional.
20 (D) NURSING MOTHERS.—The Secretary
21 shall ensure that nursing mothers in such facili-
22 ties have access to their children.
23 (E) PROPERTY.—Any property the De-
24 partment confiscates from detainees shall be re-
25 turned upon repatriation or transfer.

(F) PROTECTIONS FOR CHILDREN.—The Secretary shall provide adequately trained and qualified staff at each major port of entry (as defined by the U.S. Customs and Border Protection station assigned to that port having in its custody over the past 2 fiscal years an average per year of 50 or more unaccompanied alien children (as defined in section 462 of the Homeland Security Act of 2002 (6 U.S.C. 279))), including U.S. Customs and Border Protection agents charged primarily with the safe, swift, and humane transportation of unaccompanied alien children to Office of Refugee Resettlement custody and independent licensed social workers dedicated to ensuring the proper temporary care for the children while in Department custody before their transfer to the Office of Refugee Resettlement. These staff will ensure that each child—

(i) receives emergency medical care;

(ii) receives mental health care in case of trauma and has access to psychosocial health services;

(iii) is provided with a pillow, linens, and sufficient blankets to rest at a com-

fortable temperature, a bed, and a mattress placed in an area specifically designated for residential use;

(iv) receives adequate nutrition;

(v) enjoys a safe and sanitary living environment;

(vi) receives educational materials; and

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

(G) CONFIDENTIALITY.—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, consistent with the best interest of the unaccompanied alien child, by not disclosing such information to other government agencies or nonparental third parties. The Secretary may share information when authorized to do so by the child and when consistent with the child's best interest. The Secretary may provide information to a duly recognized law enforcement entity, if such disclosure

would prevent imminent and serious harm to another individual. All disclosures shall be duly recorded in writing and placed in the child's files.

(15) VULNERABLE POPULATIONS.—Detention facility conditions and minimum requirements for detention facilities shall recognize and accommodate the unique needs of vulnerable populations as defined by this Act.

(16) CHILDREN.—The Secretary shall 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 an immediate family member 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.)

(b) RULEMAKING AND ENFORCEMENT.—

(1) IN GENERAL.—

(A) 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 enforcement of this section.

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

(2) ENFORCEMENT.—

(A) IN GENERAL.—The Secretary shall enforce all regulations promulgated under paragraph (1).

(B) GUIDANCE.—Not later than 180 days after the date of the enactment of this Act, the Secretary shall issue guidance for ensuring that short term detention facilities and detention facilities comply with all detention requirements and all regulations and standards promulgated under paragraph (1).

(C) COMPLIANCE MECHANISMS.—To ensure the compliance described in subparagraph (B), the Secretary—

(i) shall establish mechanisms for reviewing any evidence of noncompliance with the provisions under this section;

(ii) may impose financial penalties upon noncompliant detention facilities; and

(iii) may terminate the contracts of persistently noncompliant detention facilities.

(D) INVESTIGATIONS.—The Secretary shall investigate evidence pertaining to violations of the provisions under this section, including detainee complaints. The Secretary shall complete such investigation not later than 30 days after collecting the relevant evidence. If the Secretary determines that a violation has occurred, the Secretary shall ensure that such violation is remedied not later than 30 days after such determination. A decision by the Secretary not to pursue such an enforcement action shall constitute final agency action.

(E) GRIEVANCES.—Each detainee has the right to file grievances with the staff of short

term detention facilities, detention facilities, and the Department and shall be protected from retaliation.

(F) COMPLIANCE OFFICER.—Each short term detention facility and detention facility shall designate an officer to ensure compliance with the provisions of this section. Such officer shall investigate all evidence pertaining to a violation of this section. If a violation is identified, the officer shall remedy the violation not later than 30 days after such identification.

(G) JUDICIAL REVIEW.—A detainee may not seek—

(i) review in district court until after the passage of the 30-day remediation period described in subparagraph (F);

(ii) remedy in district court unless he or she has complied with the procedures promulgated under this subsection; or

(iii) punitive damages for violations of this section.

(H) RULE OF CONSTRUCTION.—Nothing in the section may be construed to preclude review of noncompliance with this section under section 1983 of title 42, United States Code.

1 (c) DETENTION COMMISSION.—

2 (1) APPOINTMENT.—The Secretary shall ap-
3 point and convene a detention commission comprised
4 of—

5 (A) experts from U.S. Immigration and
6 Customs Enforcement, U.S. Customs and Bor-
7 der Protection, the Office of Refugee Resettle-
8 ment, and Division of Immigration Health
9 Services in the Department of Health and
10 Human Services; and

11 (B) an equal number of independent ex-
12 perts from nongovernmental organizations and
13 intergovernmental organizations with expertise
14 in working on behalf of aliens detained under
15 immigration laws and vulnerable populations.

16 (2) DUTIES.—The detention commission shall
17 conduct independent investigations, evaluate, and re-
18 port on the compliance of short term detention fa-
19 cilities, detention facilities, and the Department with
20 the requirements set forth in this section.

21 (3) REPORT.—Not later than 60 days after end
22 of the fiscal year during which this Act was enacted,
23 and biennially thereafter, the detention commission
24 shall submit a report on the duties set forth in para-
25 graph (2) to—

(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; and

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

(d) DEATH IN CUSTODY REPORTING REQUIREMENT.—

(1) IN GENERAL.—If an individual dies while in the custody of the Department or en route to or from custody, the supervising official at a short term detention facility or detention facility shall immediately report such death to the Secretary. Not later than 48 hours after receiving the report of such death, the Secretary shall report the death to the Office of the Inspector General of the Department and the Department of Justice.

(2) INVESTIGATIONS.—The Department 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 con-

1 ducted by a panel of physicians with experience in
2 morbidity and mortality reviews and shall include
3 the medical staff of the facility or facilities that
4 cared for the deceased detainee, physicians from
5 within the Department, and independent physicians
6 not affiliated with the Department or facility. The
7 panel shall complete a report and corrective action
8 plan in each case.

9 (3) REPORTS.—

10 (A) IN GENERAL.—Not later than 60 days
11 after the end of each fiscal year, the Secretary
12 shall submit a report to the committees set
13 forth in subsection (c)(3) that contains detailed
14 information regarding all detainee deaths dur-
15 ing the preceding fiscal year, including—

16 (i) each mortality and morbidity re-
17 port;

18 (ii) each corrective action plan; and

19 (iii) corrective actions taken.

20 (B) CONTENTS.—The reports to the Office
21 of the Inspector General and to Congress re-
22 ferred to in paragraph (1) shall include—

23 (i) the name, gender, race, ethnicity,
24 and age of the deceased;

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

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

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

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

(vi) all medical records of the deceased.

SEC. 270. ACCESS TO COUNSEL.

Section 240(b)(4) (8 U.S.C. 1229a(b)(4)) is amended—

(1) in the matter preceding subparagraph (A), by striking ''In proceedings under this section, under regulations of the Attorney General'' and inserting ''The Attorney General shall promulgate regulations for proceedings under this section, under which—''

(2) in subparagraph (B), by striking '', and'' at the end and inserting a semicolon;

(3) by redesignating subparagraph (C) as subparagraph (D); and

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

"(C) the Attorney General, or the designee of the Attorney General, may appoint counsel to represent an alien if the fair resolution or effective adjudication of the proceedings would be served by appointment of counsel; and".

SEC. 271. GROUP LEGAL ORIENTATION PRESENTATIONS.

(a) ESTABLISHMENT OF A NATIONAL LEGAL ORIENTATION SUPPORT AND TRAINING CENTER.—The Attorney General, in consultation with the Secretary, shall establish a National Legal Orientation Support and Training Center (referred to in this section as the "Center") to ensure quality and consistent implementation of group legal orientation programs nationwide.

(b) DUTIES.—The Center shall—

(1) offer training to nonprofit agencies that will offer group legal orientation programs;

(2) consult with nonprofit agencies offering group legal orientation programs regarding program development and substantive legal issues;

(3) develop standards for group legal orientation programs; and

(4) ensure that all detained aliens in immigration and asylum proceedings under sections 235,

238, 240, and 241(b)(5) of the Immigration and Nationality Act (8 U.S.C. 1225, 1228, 1229a, and 1231(b)(5)) receive group legal orientation programs.

(c) PROCEDURES.—The Secretary shall establish procedures for regularly scheduled, group legal orientation presentations.

(d) GRANTS AUTHORIZED.—The Attorney General shall establish a program to award grants to nongovernmental agencies to develop, implement, or expand legal orientation programs for all detainees at a detention facility that offers such programs.

SEC. 272. PROTECTIONS FOR REFUGEES.

(a) PROTECTION OF REFUGEES PRIOR TO ADJUSTMENT.—Section 209 (8 U.S.C. 1159) is amended—

(1) in subsection (a)(1), by striking ''return or be returned to the custody of the Department of Homeland Security for inspection and examination for admission to the United States as an immigrant in accordance with the provisions of sections 235, 240, and 241'' and inserting ''be eligible for adjustment of status as an immigrant to the United States'';

(2) in subsection (a)(2), by striking ''upon inspection and examination''; and

(3) in subsection (c), by adding at the end the following: "An application for adjustment under this section may be filed up to 3 months before the date on which the applicant would first otherwise be eligible for adjustment under this section.".

(b) PROCEDURES FOR ENSURING ACCURACY AND VERIFIABILITY OF SWORN STATEMENTS TAKEN PURSUANT TO EXPEDITED REMOVAL AUTHORITY.—

(1) IN GENERAL.—The Secretary shall establish quality assurance procedures to ensure the accuracy and verifiability of signed or sworn statements taken by employees of the Department exercising expedited removal authority under section 235(b) of the Immigration and Nationality Act (8 U.S.C. 1225(b)).

(2) RECORDING OF INTERVIEWS.—Any sworn or signed written statement taken of an alien as part of the record of a proceeding under section 235(b)(1)(A) of the Immigration and Nationality Act (8 U.S.C. 1225(b)(1)(A) shall be accompanied by a recording of the interview which served as the basis for that sworn statement.

(3) RECORDINGS.—

(A) IN GENERAL.—The recording of the interview shall include the written statement, in its entirety, being read back to the alien in a

language that the alien claims to understand, and the alien affirming the accuracy of the statement or making any corrections thereto.

(B) FORMAT.—The recording shall be made in video, audio, or other equally reliable format.

(4) EXEMPTION AUTHORITY.—

(A) IN GENERAL.—Subsections (b) and (c) shall not apply to interviews that occur at detention facilities exempted by the Secretary pursuant to this paragraph.

(B) UNDUE BURDENS OR COSTS.—The Secretary or the Secretary's designee may exempt any detention facility based on a determination by the Secretary or the Secretary's designee that compliance with subsections (b) and (c) at that facility would impair operations or impose undue burdens or costs.

(C) ANNUAL REPORT.—The Secretary or the Secretary's designee shall report annually to Congress on the detention facilities that have been exempted pursuant to this subsection.

(D) PRIVATE CAUSE OF ACTION.—The exercise of the exemption authority shall not give rise to a private cause of action.

(c) INTERPRETERS.—The Secretary shall ensure that a professional, fluent interpreter is used when—

(1) the interviewing officer does not speak a language understood by the alien; and

(2) no other Federal, State or local government employee is available who is able to interpret effectively, accurately, and impartially.

(d) RECORDINGS IN IMMIGRATION PROCEEDINGS.—Recordings of interviews of aliens described in section (b) shall be included in the record of a proceeding and may be considered as evidence in any further proceedings involving the alien.

(e) STUDY ON THE EFFECT OF EXPEDITED REMOVAL PROVISIONS, PRACTICES AND PROCEDURES ON ASYLUM CLAIMS.—

(1) IN GENERAL.—The United States Commission on International Religious Freedom (referred to in this subsection as the ''Commission'') is authorized to conduct a study to determine whether immigration officers described in paragraph (2) are engaging in conduct described in paragraph (3).

(2) IMMIGRATION OFFICERS DESCRIBED.—An immigration officer described in this paragraph is an immigration officer performing duties under section 235(b) of the Immigration and Nationality Act (8

U.S.C. 1225(b)) with respect to aliens who are apprehended after entering the United States and who may be eligible to apply for asylum under such section or section 208 of such Act (8 U.S.C. 1158).

(3) CONDUCT DESCRIBED.—Conduct described in this paragraph is—

(A) improperly encouraging an alien described in paragraph (2) to withdraw or retract claims for asylum;

(B) incorrectly failing to refer such an alien for an interview by an asylum officer for a determination of whether the alien has a credible fear of persecution (within the meaning of section 235(b)(1)(B)(v) of the Immigration and Nationality Act (8 U.S.C. 1225(b)(1)(B)(v)));

(C) incorrectly removing such an alien to a country where the alien may be persecuted; or

(D) detaining such an alien improperly or in inappropriate conditions.

(f) REPORT.—Not later than 2 years after the date on which the Commission initiates the study conducted under subsection (a), the Commission shall submit a report containing the results of the study to—

(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 Foreign Relations of the Senate;

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

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

(6) the Committee on Foreign Affairs of the House of Representatives.

(g) STAFF.—

(1) FROM OTHER AGENCIES.—At the request of the Commission, the Secretary, the Attorney General, and the Comptroller General of the United States shall authorize staff designated by the Commission who are recognized for their expertise and knowledge of refugee and asylum issues to assist the Commission in conducting the study under subsection (a).

(2) HIRING OF STAFF.—The Commission may hire additional staff and consultants to conduct the study under subsection (a).

(3) ACCESS TO PROCEEDINGS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the Secretary and the Attor-

ney General shall permit staff designated under paragraph (1) or hired under paragraph (2) to have unrestricted access to all stages of all proceedings conducted under section 235(b) of the Immigration and Nationality Act (8 U.S.C. 1225(b)).

(B) EXCEPTIONS.—The Secretary and the Attorney General shall not permit unrestricted access pursuant to subparagraph (A) in any case in which—

(i) an alien that is subject to a proceeding conducted under section 235(b) of the Immigration and Nationality Act objects to such access; or

(ii) the Secretary or Attorney General determines that the security of a particular proceeding would be threatened by such access.

SEC. 273. 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 shall be in the Department of Homeland Security the 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 U.S. 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 offi-

cials 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 Senate and the Committee on the Judiciary of the House of Representatives on the objectives of the Office of the Ombudsman for the next fiscal year.

"(2) CONTENTS.—Each report submitted under paragraph (1) shall include—

"(A) full and substantive analysis of the objectives of the Office of the Ombudsman;

"(B) statistical information regarding such objectives;

"(C) a description of each detention facility found to be in noncompliance with the detention standards of the Department of Homeland Security or other applicable regulations;

"(D) a description of the actions taken by the Department of Homeland Security to remedy any findings of noncompliance or other identified problems;

"(E) information regarding whether the actions described in subparagraph (D) resulted in compliance with detention standards;

"(F) a summary of the most pervasive and serious problems encountered by individuals subject to the enforcement operations of the Department of Homeland Security, including a 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. 274. ELIMINATION OF TIME LIMITS ON ASYLUM APPLICATIONS.

Section 208(a)(2) (8 U.S.C. 1158(a)(2)) is amended—

(1) in subparagraph (A), by striking "Attorney General" each place it appears and inserting "Attor-

ney General or the Secretary of Homeland Security";

(2) by striking subparagraph (B);

(3) by redesignating subparagraphs (C) and (D) as subparagraphs (B) and (C), respectively;

(4) in subparagraph (B), as redesignated, by striking "subparagraph (D)" and inserting "subparagraphs (C) and (D)"; and

(5) by striking subparagraph (C), as redesignated, and inserting the following:

"(C) CHANGED CIRCUMSTANCES.—Notwithstanding subparagraph (B), an application for asylum of an alien may be considered if the alien demonstrates, to the satisfaction of the Attorney General or the Secretary of Homeland Security, the existence of changed circumstances that materially affect the applicant's eligibility for asylum.

"(D) MOTION TO REOPEN DENIED ASYLUM CLAIM.—Notwithstanding subparagraph (B) or section 240(c)(7), an alien may file a motion to reopen an asylum claim during the 2-year period beginning on the date of the enactment of this subparagraph if the alien—

"(i) was denied asylum based solely upon a failure to meet the 1-year application filing deadline in effect on the date on which the application was filed;

"(ii) was granted withholding of removal to the alien's country of nationality (or, if stateless, to the country of last habitual residence under section 241(b)(3));

"(iii) has not obtained lawful permanent residence in the United States pursuant to any other provision of law;

"(iv) is not subject to the safe third country exception in section 208(a)(2)(A) or a bar to asylum under section 208(b)(2) and should not be denied asylum as a matter of discretion; and

"(v) is physically present in the United States when the motion is filed."; and

(6) in subparagraph (E), by striking "subparagraphs (A) and (B)" and inserting "subparagraph (A)."

SEC. 275. EFFICIENT ASYLUM DETERMINATION PROCESS AND DETENTION OF ASYLUM SEEKERS.

Section 235(b)(1)(B) (8 U.S.C. 1225(b)(1)(B)) is amended—

(1) in clause (ii), by striking ''shall be detained for further consideration of the application for asylum'' and inserting ''may, in the Secretary's discretion, be detained for further consideration of the application for asylum by an asylum officer designated by the Director of United States Citizenship and Immigration Services. The asylum officer, after conducting a nonadversarial asylum interview, may grant asylum to the alien under section 208 or refer the case to a designee of the Attorney General, for a de novo asylum determination, for relief under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, done at New York December 10, 1984, or for withholding of removal under section 241(b)(3).''; and

(2) in clause (iii)(IV)—

(A) by amending the subclause heading to read as follows:

''(IV) DETENTION.—''; and

(B) by striking ''shall'' and inserting ''may, in the Secretary's discretion,''.

SEC. 276. PROTECTION OF STATELESS PERSONS IN THE UNITED STATES.

(a) IN GENERAL.—Chapter 1 of title II (8 U.S.C. 1151 et seq.) is amended by adding at the end the following:

"SEC. 210A. PROTECTION OF STATELESS PERSONS IN THE UNITED STATES.

"(a) DEFINED TERM.—

"(1) IN GENERAL.—In this section, the term 'de jure stateless person' means an individual who is not considered a national under the laws of any country. Individuals who have lost their nationality as a result of their voluntary action or knowing inaction after arrival in the United States shall not be considered de jure stateless persons.

"(2) DESIGNATION OF SPECIFIC DE JURE GROUPS.—The Secretary of Homeland Security, in consultation with the Secretary of State, may, in the discretion of the Secretary, designate specific groups of individuals who are considered de jure stateless persons, for purposes of this section.

"(b) MECHANISMS FOR REGULARIZING THE STATUS OF STATELESS PERSONS.—

"(1) RELIEF FOR INDIVIDUALS DETERMINED TO BE DE JURE STATELESS PERSONS.—The Secretary of Homeland Security or the Attorney Gen-

eral may, in his or her discretion, provide conditional lawful status to an alien who is otherwise inadmissible or deportable from the United States if the alien—

"(A) is a de jure stateless person;

"(B) applies for such relief;

"(C) is not inadmissible under paragraph (2) or (3) of section 212(a); and

"(D) is not described in section 241(b)(3)(B)(i).

"(2) WAIVERS.—The provisions of paragraphs (4), (5), (6)(A), (7)(A), and (9) of section 212(a) shall not be applicable to any alien seeking relief under paragraph (1), and the Secretary of Homeland Security or the Attorney General may waive any other provision of such section (other than paragraph (2)(C) or subparagraph (A), (B), (C), or (E) of paragraph (3)) with respect to such an alien for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.

"(3) SUBMISSION OF PASSPORT OR TRAVEL DOCUMENT.—Any alien who seeks benefits under this section must submit to the Secretary or the Attorney General—

"(A) any passport or travel document issued at any time to the alien (whether or not the passport or document has expired or been cancelled, rescinded, or revoked); or

"(B) an affidavit sworn under penalty of perjury stating that the alien has never been issued a passport or travel document, or identifying with particularity any such passport or travel document and explaining why the alien cannot submit it.

"(4) WORK AUTHORIZATION.—The Secretary may—

"(A) authorize an alien who has applied for relief under paragraph (1) to engage in employment in the United States while such application is being considered; and

"(B) provide such applicant with an employment authorized endorsement or other appropriate document signifying authorization of employment.

"(5) TREATMENT OF SPOUSES AND CHILDREN.—The spouse or child of an alien who has been granted conditional lawful status under paragraph (1) shall, if not otherwise eligible for admission under paragraph (1), be granted conditional

lawful status under this section if accompanying, or following to join, such alien, provided that the spouse or child is admissible (except as otherwise provided in paragraph (2)), and provided further that the qualifying relationship to the principal beneficiary existed on the date on which such alien was granted conditional lawful status.

''(c) ADJUSTMENT OF STATUS.—

''(1) INSPECTION AND EXAMINATION.—At the end of the 5-year period beginning on the date on which an alien has been granted conditional lawful status under subsection (b), the alien may apply for lawful permanent residence in the United States if—

''(A) the alien has been physically present in the United States for at least 5 years;

''(B) the alien's conditional lawful status has not been terminated by the Secretary of Homeland Security or the Attorney General, pursuant to such regulations as the Secretary or the Attorney General may prescribe; and

''(C) the alien has not otherwise acquired permanent resident status.

''(2) REQUIREMENTS FOR ADJUSTMENT.—The Secretary or the Attorney General, under such regulations as the Secretary or the Attorney General

may prescribe, may adjust the status of an alien granted conditional lawful status under subsection (b) to that of an alien lawfully admitted for permanent residence if such alien—

"(A) is a de jure stateless person;

"(B) properly applies for such adjustment of status;

"(C) has been physically present in the United States for at least 5 years after being granted conditional lawful status under subsection (b);

"(D) is not firmly resettled in any foreign country; and

"(E) is admissible (except as otherwise provided under subsection (b)(2)) as an immigrant under this chapter at the time of examination of such alien for adjustment of status.

"(3) RECORD.—Upon approval of an application under this subsection, the Secretary or the Attorney General shall establish a record of the alien's admission for lawful permanent residence as of the date that is 5 years before the date of such approval.

"(d) PROVING THE CLAIM.—In determining an alien's eligibility for lawful conditional status or adjustment of status under this subsection, the Secretary or the

Attorney General shall consider any credible evidence relevant to the application. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Secretary or the Attorney General.

"(e) REVIEW.—

"(1) ADMINISTRATIVE REVIEW.—No appeal shall lie from the denial of an application by the Secretary, but such denial will be without prejudice to the alien's right to renew the application in proceedings under section 240.

"(2) MOTIONS TO REOPEN.—Notwithstanding any limitation imposed by law on motions to reopen removal, deportation, or exclusion proceedings, any individual who is eligible for relief under this section may file 1 motion to reopen removal or deportation proceedings in order to apply for relief under this section, except that any such motion shall be filed not later than the later of—

"(A) 2 years after the date of the enactment of this section; or

"(B) 90 days after the date of entry of a final administrative order of removal, deportation, or exclusion.

"(f) LIMITATION.—The provisions of this section shall apply only to aliens present in the United States. Nothing in this section may be construed to authorize or require—

"(1) the admission of any alien to the United States;

"(2) the parole of any alien into the United States; or

"(3) the grant of any motion to reopen or reconsider filed by an alien after departure or removal from the United States.".

(b) JUDICIAL REVIEW.—Section 242(a)(2)(B)(ii) of the Immigration and Nationality Act (8 U.S.C. 1252(a)(2)(B)(ii)) is amended by inserting "or 210A" after "208(a)".

(c) CLERICAL AMENDMENT.—The table of contents for the Immigration and Nationality Act is amended by inserting after the item relating to section 210 the following:

"210A. Protection of stateless persons in the United States.".

SEC. 277. AUTHORITY TO DESIGNATE CERTAIN GROUPS OF REFUGEES FOR CONSIDERATION.

(a) IN GENERAL.—Section 207(c)(1) (8 U.S.C. 1157(c)(1)) is amended—

(1) by inserting "(A)" before "Subject to the numerical limitations"; and

(2) by adding at the end the following:

''(B)(i) The President, upon a recommendation of the Secretary of State made in consultation with the Secretary of Homeland Security, and after appropriate consultation, may designate specifically defined groups of aliens whose resettlement in the United States is justified by humanitarian concerns or is otherwise in the national interest and who share common characteristics that identify them as targets of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion or of other serious harm, or who, having been identified as targets of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion or of other serious harm, share a common need for resettlement due to a specific vulnerability.

''(ii) An alien who establishes membership in a group designated under clause (i) to the satisfaction of the Secretary of Homeland Security shall be considered a refugee for purposes of admission as a refugee under this section, unless the Secretary determines that such alien 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.

''(iii) A designation under clause (i)—

"(I) may be revoked by the President at any time after notification to Congress;

"(II) if not revoked, shall expire at the end of each fiscal year; and

"(III) may be renewed by the President after appropriate consultation.

"(iv) Categories of aliens established under section 599D of title V of Public Law 101–167 (8 U.S.C. 1157 note) shall—

"(I) be designated under clause (i) until the end of the first fiscal year commencing after the date of the enactment of this subparagraph; and

"(II) be eligible for designation thereafter, at the discretion of the President.

"(v) An alien's admission under this subparagraph shall count against the refugee admissions goal under subsection (a).

"(vi) A designation under clause (i) shall not influence decisions to grant, to any alien, asylum under section 208, protection under section 241(b)(3), or protection under Article 3 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, done at New York December 10, 1984.".

(b) WRITTEN REASONS FOR DENIALS OF REFUGEE STATUS.—Each decision to deny an application for ref-

ugee status of an alien who is within a category established under this section shall be in writing and shall state, to the maximum extent feasible, the reason for the denial.

(c) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the first day of the first fiscal year that begins after the date of the enactment of this Act.

SEC. 278. ADMISSION OF REFUGEES IN THE ABSENCE OF THE ANNUAL PRESIDENTIAL DETERMINATION.

Section 207(a) (8 U.S.C. 1157(a)) is amended—

(1) by striking paragraph (1);

(2) by redesignating paragraphs (2), (3), (4), and (5) as paragraphs (1), (2), (3), and (4), respectively;

(3) in paragraph (1), as redesignated—

(A) by striking ''after fiscal year 1982''; and

(B) by adding at the end the following: ''If the President does not issue a determination under this paragraph before the beginning of a fiscal year, the number of refugees that may be admitted under this section in each quarter before the issuance of such determination shall be 25 percent of the number of refugees admissible

under this section during the previous fiscal year.''; and

(4) in paragraph (3), as redesignated, by striking ''(beginning with fiscal year 1992)''.

Subtitle C—Reforming America's Legal Immigration System

PART I—STANDING COMMISSION ON FOREIGN WORKERS, LABOR MARKETS, AND THE NATIONAL INTEREST

SEC. 300. STANDING COMMISSION ON FOREIGN WORKERS, LABOR MARKETS, AND THE NATIONAL INTEREST.

(a) ESTABLISHMENT OF COMMISSION.—

(1) IN GENERAL.—There is established an independent Federal agency within the executive branch to be known as the Standing Commission on Foreign Workers, Labor Markets, and the National Interest (referred to in this section as the ''Commission'').

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

(A) to establish employment-based immigration policies that promote America's economic growth and competitiveness while mini-

mizing job displacement, wage depression and unauthorized employment in the United States;

(B) to create and implement a policy-focused research agenda on the economic impacts of immigration at the national, regional, State, industry and occupation levels;

(C) to 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) to recommend to the Congress and the President on a regular basis an evidence-based methodology for determining the level of employment-based immigration;

(E) to recommend to Congress and the President the numeric levels and characteristics of workers to be admitted in various employment-based visa categories;

(F) to work with the Department of Labor to conduct pilot programs to examine ways to improve the operation of foreign worker programs; and

(G) to collect and analyze information about the economic, labor, security, and foreign

1 policy impacts of our Nation's immigration poli-
2 cies.
3 (3) MEMBERSHIP.—The Commission shall be
4 composed of—
5 (A) 7 voting members—
6 (i) who shall be appointed by the
7 President, with the advice and consent of
8 the Senate, not later than 6 months after
9 the date of the enactment of this Act;
10 (ii) who shall serve for 5-year stag-
11 gered terms;
12 (iii) 1 of whom the President shall ap-
13 point as Chair of the Commission to serve
14 a 6-year term, which can be extended for
15 1 additional 3-year term;
16 (iv) who shall have expertise in eco-
17 nomics, demography, sociology, labor, busi-
18 ness, civil rights, immigration, or other
19 pertinent qualifications or experience;
20 (v) who may not be an employee of
21 the Federal Government or of any State or
22 local government; and
23 (vi) not more than 4 of whom may be
24 members of the same political party; and
25 (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.—Four voting members of the Commission shall constitute a quorum.

(b) DUTIES OF THE COMMISSION.—The Commission shall collect, analyze, and publish data regarding—

(1) 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;

(2) the national, regional, State, and local impacts of employment-based immigration—

(A) within industries and business sectors;

(B) on wages, labor standards, occupations, and employment levels;

(C) on small business;

(D) on employment and unemployment levels;

(E) on economic growth, productivity, and competitiveness;

(F) on national and border security; and

(G) on local communities;

(3) the development and implementation of the new worker program to admit H–2C nonimmigrants (referred to in this section as the ''Program''), including—

(A) the criteria for the admission of workers under the Program; and

(B) the formula and methodologies for determining the annual numerical limitations of the Program;

(4) the current and anticipated needs of employers for skilled and unskilled labor;

(5) the national interest;

(6) the current and anticipated supply of skilled and unskilled labor;

(7) the impact of employment-based immigration on the economic growth, competitiveness, labor standards, labor conditions, and wages;

(8) the extent and impact of unauthorized employment in the United States;

(9) the factors that determine the economic success of immigrants to the United States;

(10) specific aspects of the Nation's immigration policies and programs that Congress has requested the Commission to examine or analyze; and

(11) any other matters regarding the impact of employment-based immigration that the Commission considers appropriate.

(c) ANNUAL REPORTS.—

(1) PROGRAM EVALUATION.—Not later than 1 year after the date of the enactment of this Act, and

annually thereafter, the Commission shall submit a report to the President and Congress that—

(A) assesses the economic, labor, security, and foreign policy impacts of the Nation's immigration policies;

(B) evaluates the Program and defines a formula and methodologies for measuring the need for nonimmigrants in States, industries, and occupations;

(C) recommends adjustments, based on the established methodologies, to the Program's numeric allocations for the subsequent fiscal year; and

(D) reviews the issuance and allocations of employment-based immigrant and nonimmigrant visa categories.

(2) EFFECT ON EMPLOYMENT LEVELS.—Not later than February 1 of each year, the Commission shall submit a report to Congress that contains—

(A) the Commission's recommendations on the increase or decrease in the number of employment-based immigrant visas to be made available for temporary or permanent employment under the Immigration and Nationality

Act and a statement of the reasons for such recommendations; and

(B) the Commission's recommendations on how many immigrant visas from the discretionary national interest pool described in section 301(e) should be added to the subsequent fiscal year's annual immigrant visa allocations to comport with the increases recommended in subparagraph (A) and to which employment preference categories such visas should be added.

(3) EFFECT OF CONGRESSIONAL INACTION.—If Congress does not enact a law to approve or disapprove the Commission's recommendations under paragraph (2) not later than 90 days after receiving a report under such paragraph, the number of employment-based immigrant visas shall remain at the level authorized for the previous fiscal year.

(d) NATIONAL INTEREST DEFINED.—For purposes of determining whether immigrant visas should be allocated from the discretionary national interest pool in a given fiscal year, the term ''national interest'' shall be broadly defined and shall take into consideration—

(1) national and regional unemployment rates;

(2) unemployment rates by industry and sector;

(3) national and regional demographic and industry projections;

(4) wage and labor impact;

(5) education, workforce development, and social support considerations;

(6) immigrant visa backlogs and length of familial separation;

(7) national security and border security;

(8) community impact assessments; and

(9) competitiveness and economic growth.

(e) POWERS OF THE COMMISSION.—The Commission, by vote of a majority of the members present and voting, shall have the power to—

(1) establish general policies and promulgate such rules and regulations for the Commission as are necessary to carry out the purposes of this section;

(2) 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;

(3) 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;

(4) 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 for such utilization;

(5) 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;

(6) 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;

(7) 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;

(8) 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;

(9) establish a research and development program within the Commission for the purpose of understanding and documenting the effects of immigration and the admission of foreign workers on the labor market and national competitiveness;

(10) collect systematically the data obtained from studies, research, and the empirical experience of public and private agencies concerning the need for and effects of immigration;

(11) 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;

(12) make recommendations to Congress concerning the numeric limitations of the immigrant and nonimmigrant employment-based visa categories and recommend modifications or the enactment of statutes relating to matters that the Commission finds to be necessary and advisable to carry out an effective immigration policy;

(13) hold hearings and call witnesses to assist the Commission in the exercise of its powers or duties;

(14) retain and, in its discretion pay reasonable attorneys' fees out if its appropriated funds to, private attorneys who—

(A) 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

(B) 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, United States Code);

(15) grant incentive awards to its employees pursuant to chapter 45 of title 5, United States Code;

(16) create occupational, industry, and regional advisory committees; and

(17) perform such other functions as may be necessary to carry out the purposes of this section, which may be delegated to any member or designated person, as appropriate.

(f) 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 the heads of such departments and agencies determine advisable and authorized by law.

(g) PERSONNEL MATTERS.—

(1) STAFF.—

(A) APPOINTMENT AND COMPENSATION.—The Chair, in accordance with rules agreed upon by the Commission, may appoint and fix the compensation of a staff director and such other personnel as may be necessary to enable the Commission to carry out its functions.

(B) FEDERAL EMPLOYEES.—

(i) IN GENERAL.—Except as provided under clause (ii), the executive director and 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.

(ii) COMMISSION MEMBERS.—Clause (i) 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 the Executive Schedule under section 5315 of such title 5.

(h) 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, at rates authorized for employees of agencies under section 5703(b) of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

PART II—FAMILY AND EMPLOYMENT VISA REFORMS

CHAPTER 1—FAMILY AND EMPLOYMENT-BASED IMMIGRANT VISAS

SEC. 301. RECAPTURE OF IMMIGRANT VISAS LOST TO BUREAUCRATIC DELAY.

(a) WORLDWIDE LEVEL OF FAMILY-SPONSORED IMMIGRANTS.—Section 201(c) (8 U.S.C. 1151(c)) is amended to read as follows:

"(c) WORLDWIDE LEVEL OF FAMILY-SPONSORED IMMIGRANTS.—

"(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 2007.—The number computed under this paragraph is—

"(A) the difference, if any, between—

"(i) the sum of the worldwide levels of family-sponsored immigrant visas established for fiscal years 1992 through 2007; 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 2007 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) (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) 140,000;

"(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 of employment-based immigrant visas established for the previous fiscal year; and

"(B) the number of visas issued under section 203(b), subject to this subsection, during the previous fiscal year.

"(3) UNUSED VISA NUMBERS FROM FISCAL YEARS 1992 THROUGH 2007.—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 employment-based immigrant visas established for each of fiscal years 1992 through 2007; and

"(ii) the number of visas issued under section 203(b), subject to this subsection, during such fiscal years; and

"(B) the number of unused visas from fiscal years 1992 through 2007 that were issued after fiscal year 2007 under section 203(b), subject to this subsection.".

(c) ALIENS NOT SUBJECT TO DIRECT NUMERICAL LIMITATIONS.—Section 201(b)(1) (8 U.S.C. 1151(b)(1)) is amended by adding at the end the following:

"(F) A derivative beneficiary as described in section 203(d) of an employment-based immigrant under section 203(b).

"(G) Aliens with extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim, if:

"(i) the achievements of such alien have been recognized in the field through extensive documentation;

"(ii) such alien seeks to enter the United States to continue work in the area of extraordinary ability; and

"(iii) the entry of such alien into the United States will substantially benefit prospectively the United States.

"(H) Aliens who have earned an advanced degree in the sciences (not including the social sciences), technology, engineering, or mathematics from a United States institution of higher education (as defined in section 1001(a) of title 20) and have been working in a field related to their degree subject in the United States under a nonimmigrant visa during the 2-year period preceding their application for an immigrant visa under section 203(b).

"(I) Alien physicians who have completed service requirements of a waiver or exemption

requested by an interested State agency or by an interested Federal agency under section 214(l), including those alien physicians who completed such service before the date of the enactment of this subparagraph.

"(J) Aliens who are eligible for adjustment of status under section 245(n)(1) as an alien who described in section 101(a)(15)(H)(ii)(c)."

(d) REQUIREMENT TO SATISFY ELIGIBILITY REQUIREMENTS.—Section 203 (8 U.S.C. 1153) is amended by adding at the end the following new subsection:

"(i) REQUIREMENT TO SATISFY ELIGIBILITY REQUIREMENTS.—Notwithstanding the inapplicability of the worldwide levels specified in sections 201(c) and (d) to aliens described in section 201(b)(1), aliens described in subparagraph (H) or (I) of section 201(b)(1) shall satisfy the requirements for eligibility for an immigrant visa under 1 of the preference categories under subsection (b).".

(e) DISCRETIONARY NATIONAL INTEREST POOL.—The discretionary national interest pool is the number that is the average of the difference between—

(1) the number of legal immigrant visas issued annually from fiscal year 1995 through fiscal year 2010; and

(2) the number of legal immigrant visas issued annually plus unauthorized entries estimated annually by the Secretary of Homeland Security from fiscal year 1995 through fiscal year 2010.

(f) APPLICABILITY.—The amendments made by subsection (c) shall apply to any immigrant petition or immigrant visa application—

(1) pending on the date of the enactment of this Act; or

(2) filed on or after such date of enactment.

(g) ELIMINATION OF THE EB–1A PREFERENCE CATEGORY.—Section 203(b)(1) (8 U.S.C. 1153(b)(1)) is amended—

(1) by striking subparagraph (A); and

(2) by redesignating subparagraphs (B) and (C) as subparagraphs (A) and (B), respectively.

(h) EFFECTIVE DATE.—The amendments made by this section shall take effect on the first day of the first fiscal year that commences no earlier than 9 months after the date of the enactment of the Comprehensive Immigration Reform Act of 2010.

SEC. 302. RECLASSIFICATION OF SPOUSES AND MINOR CHILDREN OF LAWFUL PERMANENT RESIDENTS AS IMMEDIATE RELATIVES.

(a) IN GENERAL.—Section 201(b)(2) (8 U.S.C. 1151(b)(2)) is amended to read as follows:

"(2)(A)(i) Immediate relatives.

"(ii) In this paragraph, 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.

"(iii) If an alien who was the spouse of a citizen of the United States and was not legally separated from the citizen at the time of the citizen's death files a petition under section 204(a)(1)(A)(ii) not later than 2 years after the date of the citizen's death, the alien and each child of the alien shall be remain, for purposes of this paragraph, an immediate relative during the period beginning on the date of the citizen's death and ending on the date on which the alien remarries.

"(iv) An alien who has filed a petition under clause (iii) or (iv) of section 204(a)(1)(A) shall remain, for purposes of this paragraph, a an immediate relative if the United States citizen or lawful permanent resident spouse or parent loses United States citizenship on account of the abuse.

"(B) Aliens admitted under section 211(a) on the basis of a prior issuance of a visa to their accompanying parent who is an immediate relative.

"(C) Aliens born to an alien lawfully admitted for permanent residence during a temporary visit abroad.".

(b) ALLOCATION OF IMMIGRANT VISAS.—Section 203(a) (8 U.S.C. 1153(a)) is amended—

(1) in paragraph (1), by striking "23,400" and inserting "127,200";

(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

80,640, plus any visas not required for the class specified in paragraph (1).";

(3) in paragraph (3), by striking "23,400" and inserting "80,640"; and

(4) in paragraph (4), by striking "65,000" and inserting "191,520".

(c) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) RULES FOR DETERMINING WHETHER CERTAIN ALIENS ARE IMMEDIATE RELATIVES.—Section 201(f) (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 (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), 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) (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 in-

serting "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)."; 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 (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 in-

serting ", 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)".

(d) COUNTRY LIMIT.—Section 202(a)(2) (8 U.S.C. 1152(a)(2)) is amended to read as follows:

"(2) PER COUNTRY LEVELS FOR FAMILY-SPONSORED AND EMPLOYMENT-BASED IMMIGRANTS.—Subject to paragraphs (3), (4), and (5) the total number of immigrant visas made available to natives of any single foreign state under subsection (a) of section 203 in any fiscal year may not exceed 15 percent of the total number of such visas made available under such subsection in that fiscal year.".

SEC. 303. RETENTION OF PRIORITY DATE.

Section 203(h)(3) (8 U.S.C. 1153(h)(3)) is amended to read as follows:

"(3) RETENTION OF PRIORITY DATE.—If the age of an alien is determined under paragraph (1) to be 21 years of age or older for the purposes of subsections (a)(2)(A) and (d), and a parent of the alien files a petition under section 204 for classification of such alien based upon a relationship described in subsection (a), the priority date for such petition shall be the original priority date issued upon receipt of the original family- or employment-based petition for which either parent was a beneficiary.".

SEC. 304. DISCRETIONARY AUTHORITY WITH RESPECT TO REMOVAL OR DEPORTATION OF CITIZEN AND RESIDENT IMMEDIATE FAMILY MEMBERS.

Section 240(c)(4) (8 U.S.C. 1229a(c)(4)) is amended by adding at the end the following:

"(D) JUDICIAL DISCRETION.—In the case of an alien subject to removal, deportation, or exclusion, 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 against the public interest or would result in hardship to the alien's United States citizen or permanent resident parent, spouse, or child except that this subparagraph shall not apply to an alien whom the judge determines—

"(i) is described in—

"(I) subparagraph (B), (C), (D)(ii), (E), (H), (I), or (J) of section 212(a)(2);

"(II) section 212(a)(3);

"(III) subparagraph (A), (C), or (D) of section 212(a)(10); or

"(IV) section 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. 305. MILITARY FAMILIES.

(a) IN GENERAL.—Section 245 (8 U.S.C. 1255) is amended by adding at the end the following:

"(n) ADJUSTMENT OF STATUS FOR IMMEDIATE FAMILY MEMBERS OF MEMBERS OF THE ARMED FORCES.—

"(1) IN GENERAL.—The Secretary of Homeland Security shall adjust the status of an alien described in paragraph (2) to that of an alien lawfully admitted for permanent residence if the alien—

"(A) applies for such adjustment;

"(B) is admissible to the United States as an immigrant, except as provided in paragraph (4); and

"(C) is physically present in the United States.

"(2) ALIENS ELIGIBLE FOR ADJUSTMENT OF STATUS.—An alien described in this paragraph is an alien—

"(A) who is a parent, spouse, child, son, daughter, or the legal guardian of a child of—

"(i) a living Armed Forces member; or

"(ii) a deceased Armed Forces member if—

"(I) the Armed Forces member died as a result of injury or disease incurred in, or aggravated by, the Armed Forces member's service; and

"(II) the alien applies for such adjustment—

"(aa) if the death of the Armed Forces member occurred before the date of the enactment of the CIR Act of 2011, not later than 2 years after such date of enactment; or

"(bb) if the death of the Armed Forces member occurred after the date of the enactment of the CIR Act of 2011, not later than 2 years after the death of the Armed Forces member; or

"(B) who is the spouse, child, son, or daughter of an alien described in subparagraph (A).

"(3) ARMED FORCES MEMBER DEFINED.—In this subsection, the term 'Armed Forces member' means an individual who—

"(A) is, or was at the time of the individual's death described in paragraph (2)(A)(ii)(I), a national of the United States or lawfully admitted for permanent residence;

"(B) on or after October 7, 2001, served as a member of—

"(i) the Armed Forces on active duty;

"(ii) the National Guard; or

"(iii) the Selected Reserve of the Ready Reserve; and

"(C) if separated from the service described in subparagraph (B), was separated under honorable conditions.

"(4) INAPPLICABILITY OF CERTAIN GROUNDS OF INADMISSIBILITY.—

"(A) IN GENERAL.—The provisions of paragraphs (4), (5), (6)(A), (7)(A), and (9)(B) of section 212(a) shall not apply to an adjustment of status made pursuant to this subsection.

"(B) WAIVER.—The Secretary of Homeland Security or the Attorney General, as ap-

propriate, may waive any other provision of section 212(a) (other than paragraph (2)(C) and subparagraphs (A), (B), (C), (E), and (F) of paragraph (3)) with respect to an adjustment of status made pursuant to this subsection—

"(i) for humanitarian purposes;

"(ii) to assure family unity; or

"(iii) if such waiver is otherwise in the public interest.

"(5) FEE AUTHORITY.—The Secretary of Homeland Security or the Secretary of State, as appropriate, may establish a fee pursuant to section 9701 of title 31, United States Code, for the processing of an application for an adjustment of status made pursuant to this subsection.

"(6) JURISDICTION.—

"(A) SECRETARY OF HOMELAND SECURITY.—Except as provide in subparagraph (B), the Secretary of Homeland Security shall have exclusive jurisdiction to determine eligibility for an adjustment of status made pursuant to this subsection.

"(B) ATTORNEY GENERAL.—Notwithstanding paragraph (1) or subparagraph (A), in cases in which an alien has been placed into de-

portation, exclusion, or removal proceedings, either before or after filing an application for an adjustment of status under this subsection, the Attorney General shall have exclusive jurisdiction and shall assume all the powers and duties of the Secretary of Homeland Security until proceedings are terminated, or if a final order of deportation, exclusion, or removal is entered.''.

(b) EXEMPTION FROM DIRECT NUMERICAL LIMITATIONS.—Section 201(b)(1) (8 U.S.C. 1151(b)(1)), as amended by is amended section 301(c), is further amended by adding at the end the following:

''(K) Aliens provided permanent residence status under section 245(n).''.

SEC. 306. EQUAL TREATMENT FOR ALL STEPCHILDREN.

Section 101(b)(1)(B) (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. 307. WIDOWS, WIDOWERS, AND ORPHANS.

(a) PROTECTION FOR CERTAIN SURVIVING RELATIVES.—Section 204(l)(1) (8 U.S.C. 1154(l)(1) is amended by adding at the end the following: ''An alien is not required to reside in the United States to qualify

to have his or her petition or application adjudicated under this paragraph if the alien is described in subparagraph (A), (B), or (C) of paragraph (2) and his or her priority date was current at the time of the qualifying relative's death or is described in subparagraph (D), (E), or (F) of paragraph (2).''

''(1) IN GENERAL.—An alien described in paragraph (2) who resided in the United States at the time of the death of the qualifying relative and who continues to reside in the United States''.

(b) CONTINUED WAIVER ELIGIBILITY FOR WIDOWS, WIDOWERS, AND ORPHANS.—Section 212(a)(1)(B) (8 U.S.C. 1182(a)(1)(B)) is amended to read as follows:

''(B) WAIVER FOR WIDOWS, WIDOWERS, AND ORPHANS.—An alien who would have been statutorily eligible for a waiver of inadmissibility under this Act, if his or her qualifying relative had not died, may be considered for any waiver under this Act notwithstanding such death, which shall constitute the functional equivalent of extreme hardship to the qualifying relative.''.

(c) NATURALIZATION OF SURVIVING RELATIVES.—Section 319(a) (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''.

SEC. 308. FIANCÉ CHILD STATUS PROTECTION.

(a) DEFINITION.—Section 101(a)(15)(K)(iii) (8 U.S.C. 1101(a)(15)(K)(iii)) is amended by inserting '', provided that 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 fiancé 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));'' before the semicolon at the end.

(b) ADJUSTMENT OF STATUS AUTHORIZED.—Section 214(d) (8 U.S.C. 1184(d)(1)) is amended—

(1) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively; and

(2) in paragraph (1), by striking ''In the event'' and inserting 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) (8 U.S.C. 1155(d)) is amended—

(1) by inserting ''(1)'' before ''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 fiancé 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 subsection 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 subsection 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 subparagraph (B)(ii) shall be granted if such motion is filed with the Secretary or the Attorney General not later than 2 years after the date of the enactment of this Act.

SEC. 309. SPECIAL HUMANITARIAN VISAS.

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

"(i) AUTHORITY TO WAIVE ELIGIBILITY REQUIREMENTS FOR SPECIAL HUMANITARIAN CONSIDERATIONS.—Notwithstanding any other provision of law, the Secretary of Homeland Security may waive any requirements under this Act on behalf of not more than 1,000

aliens whose circumstances involve special humanitarian considerations.''.

SEC. 310. EXEMPTION FROM IMMIGRANT VISA LIMIT FOR CERTAIN VETERANS FROM THE PHILIPPINES.

Section 201(b)(1) (8 U.S.C. 1151(b)(1)), as amended by this subtitle, is further amended by adding at the end the following:

''(L) Aliens who are eligible for an immigrant visa under paragraph (1) or (3) of section 203(a) and have a parent (regardless of whether the parent is living or dead) who was naturalized pursuant to section 405 of the Immigration Act of 1990 (8 U.S.C. 1440 note) or title III of the Act of October 14, 1940 (8 U.S.C. 501 et seq.), as in effect between March 27, 1942 and December 24, 1952.''.

SEC. 311. AFFIDAVIT OF SUPPORT.

Section 213A (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. 312. RETAINING WORKERS SUBJECT TO GREEN CARD BACKLOG.

(a) ADJUSTMENT OF STATUS.—

(1) IN GENERAL.—Section 245 (8 U.S.C. 1255), as amended by section 305, is further amended by adding at the end the following:

"(o) 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 "Notwithstanding any other provisions of law," and inserting the following:

"(c) 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:

"(C) 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''.

CHAPTER 2—UNITING AMERICAN FAMILIES ACT

SEC. 315. SHORT TITLE.

This chapter may be cited as the ''Uniting American Families Act of 2011''.

SEC. 316. DEFINITIONS OF PERMANENT PARTNER AND PERMANENT PARTNERSHIP.

Section 101(a) (8 U.S.C. 1101(a)) is amended—

(1) in paragraph (15)(K)(ii), by inserting ''or permanent partnership'' after ''marriage''; and

(2) by adding at the end the following:

''(52) The term 'permanent partner' means an individual 18 years of age or older who—

''(A) is in a committed, intimate relationship with another individual 18 years of age or

older in which both individuals intend a lifelong commitment;

"(B) is financially interdependent with that other individual;

"(C) is not married to, or in a permanent partnership with, any individual other than that other individual;

"(D) is unable to contract with that other individual a marriage cognizable under this Act; and

"(E) is not a first, second, or third degree blood relation of that other individual.

"(53) The term 'permanent partnership' means the relationship that exists between 2 permanent partners.".

SEC. 317. IMMIGRANT VISAS.

(a) WORLDWIDE LEVEL OF IMMIGRATION.—Section 201(b)(2)(A) (8 U.S.C. 1151(b)(2)(A)), as amended by section 302, is further amended—

(1) by striking "spouse" each place it appears and inserting "spouse or permanent partner";

(2) by inserting "(or, in the case of a permanent partnership, whose permanent partnership was not terminated)" after "was not legally separated from the citizen"; and

(3) by striking ''remarries.'' and inserting ''remarries or enters a permanent partnership with another person.''.

(b) NUMERICAL LIMITATIONS ON INDIVIDUAL FOREIGN STATES.—

(1) PER COUNTRY LEVELS.—Section 202(a)(4) (8 U.S.C. 1152(a)(4)) is amended—

(A) in the paragraph heading, by inserting '', PERMANENT PARTNERS,'' after ''SPOUSES'';

(B) in the heading of subparagraph (A), by inserting '', PERMANENT PARTNERS,'' after ''SPOUSES''; and

(C) in the heading of subparagraph (C), by striking ''AND DAUGHTERS'' inserting ''WITHOUT PERMANENT PARTNERS AND UNMARRIED DAUGHTERS WITHOUT PERMANENT PARTNERS''.

(2) RULES FOR CHARGEABILITY.—Section 202(b)(2) (8 U.S.C. 1152(b)(2)) is amended—

(A) by striking ''his spouse'' and inserting ''his or her spouse or permanent partner'';

(B) by striking ''such spouse'' each place it appears and inserting ''such spouse or permanent partner''; and

(C) by inserting ''or permanent partners'' after ''husband and wife''.

(c) ALLOCATION.—

(1) PREFERENCE ALLOCATION FOR FAMILY MEMBERS OF PERMANENT RESIDENT ALIENS.—Section 203(a)(2) (8 U.S.C. 1153(a)(2)) is amended—

(A) by striking the paragraph heading and inserting the following:

''(B) SPOUSES, PERMANENT PARTNERS, UNMARRIED SONS WITHOUT PERMANENT PARTNERS, AND UNMARRIED DAUGHTERS WITHOUT PERMANENT PARTNERS OF PERMANENT RESIDENT ALIENS.—'';

(B) in subparagraph (A), by inserting '', permanent partners,'' after ''spouses''; and

(C) in subparagraph (B), by striking ''or unmarried daughters'' and inserting ''without permanent partners or the unmarried daughters without permanent partners''.

(2) PREFERENCE ALLOCATION FOR SONS AND DAUGHTERS OF CITIZENS.—Section 203(a)(3) (8 U.S.C. 1153(a)(3)) is amended—

(A) by striking the paragraph heading and inserting the following:

"(2) MARRIED SONS AND DAUGHTERS OF CITIZENS AND SONS AND DAUGHTERS WITH PERMANENT PARTNERS OF CITIZENS.—"; and

(B) by inserting ", or sons or daughters with permanent partners," after "daughters".

(3) EMPLOYMENT CREATION.—Section 203(b)(5)(A)(ii) (8 U.S.C. 1153(b)(5)(A)(ii)) is amended by inserting "permanent partner," after "spouse,".

(4) TREATMENT OF FAMILY MEMBERS.—Section 203(d) (8 U.S.C. 1153(d)) is amended—

(A) by inserting "or permanent partner" after "section 101(b)(1)"; and

(B) by inserting ", permanent partner," after "the spouse".

(d) PROCEDURES.—

(1) CLASSIFICATION PETITIONS.—Section 204(a)(1) (8 U.S.C. 1154(a)(1)) is amended—

(A) in subparagraph (A)—

(i) in clause (ii), by inserting "or permanent partner" after "spouse";

(ii) in clause (iii)—

(I) by inserting "or permanent partner" after "spouse" each place it appears; and

(II) in subclause (I), by inserting ''or permanent partnership'' after ''marriage'' each place it appears;

(iii) in clause (v)(I), by inserting ''permanent partner,'' after ''is the spouse,''; and

(iv) in clause (vi)—

(I) by inserting ''or termination of the permanent partnership'' after ''divorce''; and

(II) by inserting '', permanent partner,'' after ''spouse''; and

(B) in subparagraph (B)—

(i) by inserting ''or permanent partner'' after ''spouse'' each place it appears; and

(ii) in clause (ii)—

(I) in subclause (I)(aa), by inserting ''or permanent partnership'' after ''marriage'';

(II) in subclause (I)(bb), by inserting ''or permanent partnership'' after ''marriage'' the first place it appears; and

(III) in subclause (II)(aa), by inserting ''(or the termination of the permanent partnership)'' after ''termination of the marriage''.

(2) IMMIGRATION FRAUD PREVENTION.—Section 204(c) (8 U.S.C. 1154(c)) is amended—

(A) by inserting ''or permanent partner'' after ''spouse'' each place it appears; and

(B) by inserting ''or permanent partnership'' after ''marriage'' each place it appears.

SEC. 318. REFUGEES AND ASYLEES.

(a) ANNUAL ADMISSION OF REFUGEES AND ADMISSION OF EMERGENCY SITUATION REFUGEES.—Section 207(c) (8 U.S.C. 1157(c)) is amended—

(1) in paragraph (2)—

(A) by inserting '', permanent partner,'' after ''spouse'' each place it appears; and

(B) by inserting '', permanent partner's,'' after ''spouse's''; and

(2) in paragraph (4), by inserting '', permanent partner,'' after ''spouse''.

(b) ASYLUM.—Section 208(b)(3) (8 U.S.C. 1158(b)(3)) is amended—

(1) in the paragraph heading, by inserting '', PERMANENT PARTNER,'' after ''SPOUSE''; and

(2) in subparagraph (A), by inserting ", permanent partner," after "spouse".

(c) ADJUSTMENT OF STATUS OF REFUGEES.—Section 209(b)(3) (8 U.S.C. 1159(b)(3)) is amended by inserting ", permanent partner," after "spouse".

SEC. 319. INADMISSIBLE ALIENS.

(a) CLASSES OF ALIENS INELIGIBLE FOR VISAS OR ADMISSION.—Section 212(a) (8 U.S.C. 1182(a)) is amended—

(1) in paragraph (3)(D)(iv), by inserting "permanent partner," after "spouse,";

(2) in paragraph (4)(C)(i)(I), by inserting ", permanent partner," after "spouse";

(3) in paragraph (6)(E)(ii), by inserting "permanent partner," after "spouse,"; and

(4) in paragraph (9)(B)(v), by inserting ", permanent partner," after "spouse".

(b) WAIVERS.—Section 212(d) (8 U.S.C. 1182(d)) is amended—

(1) in paragraph (11), by inserting "permanent partner," after "spouse,"; and

(2) in paragraph (12), by inserting ", permanent partner," after "spouse".

(c) WAIVERS OF INADMISSIBILITY ON HEALTH-RELATED GROUNDS.—Section 212(g)(1)(A) (8 U.S.C.

1182(g)(1)(A)) is amended by inserting ", permanent partner," after "spouse".

(d) WAIVERS OF INADMISSIBILITY ON CRIMINAL AND RELATED GROUNDS.—Section 212(h)(1)(B) (8 U.S.C. 1182(h)(1)(B)) is amended by inserting "permanent partner," after "spouse,".

(e) WAIVER OF INADMISSIBILITY FOR MISREPRESENTATION.—Section 212(i)(1) (8 U.S.C. 1182(i)(1)) is amended by inserting "permanent partner," after "spouse,".

SEC. 320. NONIMMIGRANT STATUS FOR PERMANENT PARTNERS AWAITING THE AVAILABILITY OF AN IMMIGRANT VISA.

Section 214(r) (8 U.S.C. 1184(r)) is amended—

(1) in paragraph (1), by inserting "or permanent partner" after "spouse"; and

(2) in paragraph (2), by inserting "or permanent partnership" after "marriage" each place it appears.

SEC. 321. CONDITIONAL PERMANENT RESIDENT STATUS.

(a) CERTAIN ALIEN SPOUSES, PERMANENT PARTNERS, AND SONS AND DAUGHTERS.—

(1) SECTION HEADING.—

(A) IN GENERAL.—The heading for section 216 (8 U.S.C. 1186a) is amended by striking

"AND SONS" and inserting ", PERMANENT PARTNERS, SONS,".

(B) CLERICAL AMENDMENT.—The table of contents is amended by amending the item relating to section 216 to read as follows:

"Sec. 216. Conditional permanent resident status for certain alien spouses, permanent partners, sons, and daughters.".

(2) IN GENERAL.—Section 216(a) (8 U.S.C. 1186a(a)) is amended—

(A) in paragraph (1), by inserting "or permanent partner" after "spouse"; and

(B) in paragraph (2)—

(i) in subparagraph (A), by inserting "or permanent partner" after "spouse";

(ii) in subparagraph (B), by inserting "permanent partner," after "spouse,"; and

(iii) in subparagraph (C), by inserting "permanent partner," after "spouse,".

(3) TERMINATION OF STATUS IF FINDING THAT QUALIFYING MARRIAGE IMPROPER.—Section 216(b) (8 U.S.C. 1186a(b)) is amended—

(A) in the subsection heading, by inserting "OR PERMANENT PARTNERSHIP" after "MARRIAGE"; and

(B) in paragraph (1)(A)—

(i) by inserting ''or permanent partnership'' after ''marriage''; and

(ii) in clause (ii)—

(I) by inserting ''or has ceased to satisfy the criteria for being considered a permanent partnership under this Act,'' after ''terminated,''; and

(II) by inserting ''or permanent partner'' after ''spouse''.

(4) REQUIREMENTS OF TIMELY PETITION AND INTERVIEW FOR REMOVAL OF CONDITION.—Section 216(c) (8 U.S.C. 1186a(c)) is amended—

(A) in paragraphs (1), (2)(A)(ii), (3)(A)(ii), (3)(C), (4)(B), and (4)(C), by inserting ''or permanent partner'' after ''spouse'' each place it appears; and

(B) in paragraph (3)(A), (3)(D), (4)(B), and (4)(C), by inserting ''or permanent partnership'' after ''marriage'' each place it appears.

(5) CONTENTS OF PETITION.—Section 216(d)(1) (8 U.S.C. 1186a(d)(1)) is amended—

(A) in subparagraph (A)—

(i) in the heading, by inserting ''OR PERMANENT PARTNERSHIP'' after ''MARRIAGE'';

(ii) in clause (i)—

(I) by inserting ''or permanent partnership'' after ''marriage'';

(II) in subclause (I), by inserting before the comma at the end '', or is a permanent partnership recognized under this Act''; and

(III) in subclause (II)—

(aa) by inserting ''or has not ceased to satisfy the criteria for being considered a permanent partnership under this Act,'' after ''terminated,''; and

(bb) by inserting ''or permanent partner'' after ''spouse''; and

(iii) in clause (ii), by inserting ''or permanent partner'' after ''spouse''; and

(B) in subparagraph (B)(i)—

(i) by inserting ''or permanent partnership'' after ''marriage''; and

(ii) by inserting ''or permanent partner'' after ''spouse''.

(6) DEFINITIONS.—Section 216(g) (8 U.S.C. 1186a(g)) is amended—

(A) in paragraph (1)—

(i) by inserting ''or permanent partner'' after ''spouse'' each place it appears; and

(ii) by inserting ''or permanent partnership'' after ''marriage'' each place it appears;

(B) in paragraph (2), by inserting ''or permanent partnership'' after ''marriage'';

(C) in paragraph (3), by inserting ''or permanent partnership'' after ''marriage''; and

(D) in paragraph (4)—

(i) by inserting ''or permanent partner'' after ''spouse'' each place it appears; and

(ii) by inserting ''or permanent partnership'' after ''marriage''.

(b) CERTAIN ALIEN ENTREPRENEURS, SPOUSES, PERMANENT PARTNERS, AND CHILDREN.—

(1) IN GENERAL.—Section 216A (8 U.S.C. 1186b) is amended—

(A) in the section heading, by inserting ", PERMANENT PARTNERS," after "SPOUSES"; and

(B) in paragraphs (1), (2)(A), (2)(B), and (2)(C), by inserting "or permanent partner" after "spouse" each place it appears.

(2) TERMINATION OF STATUS IF FINDING THAT QUALIFYING ENTREPRENEURSHIP IMPROPER.—Section 216A(b)(1) (8 U.S.C. 1186b(b)(1)) is amended by inserting "or permanent partner" after "spouse" in the matter following subparagraph (C).

(3) REQUIREMENTS OF TIMELY PETITION AND INTERVIEW FOR REMOVAL OF CONDITION.—Section 216A(c) (8 U.S.C. 1186b(c)) is amended, in paragraphs (1), (2)(A)(ii), and (3)(C), by inserting "or permanent partner" after "spouse".

(4) DEFINITIONS.—Section 216A(f)(2) (8 U.S.C. 1186b(f)(2)) is amended by inserting "or permanent partner" after "spouse" each place it appears.

(5) CLERICAL AMENDMENT.—The table of contents is amended by amending the item relating to section 216A to read as follows:

"Sec. 216A. Conditional permanent resident status for certain alien entrepreneurs, spouses, permanent partners, and children.".

SEC. 322. DEPORTATION AND REMOVAL.

(a) DEPORTABLE ALIENS.—Section 237(a)(1) (8 U.S.C. 1227(a)(1)) is amended—

(1) in subparagraph (D)(i), by inserting ''or permanent partners'' after ''spouses'' each place it appears;

(2) in subparagraphs (E)(ii), (E)(iii), and (H)(i)(I), by inserting ''or permanent partner'' after ''spouse'';

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

''(F) PERMANENT PARTNERSHIP FRAUD.—An alien shall be considered to be deportable as having procured a visa or other documentation by fraud (within the meaning of section 212(a)(6)(C)(i)) and to be in the United States in violation of this Act (within the meaning of subparagraph (B)) if—

''(i) the alien obtains any admission to the United States with an immigrant visa or other documentation procured on the basis of a permanent partnership entered into less than 2 years before such admission and which, within 2 years subsequent to such admission, is terminated because the criteria for permanent partnership are

no longer fulfilled, unless the alien establishes to the satisfaction of the Secretary of Homeland Security that such permanent partnership was not contracted for the purpose of evading any provision of the immigration laws; or

"(ii) it appears to the satisfaction of the Secretary of Homeland Security that the alien has failed or refused to fulfill the alien's permanent partnership, which the Secretary of Homeland Security determines was made for the purpose of procuring the alien's admission as an immigrant."; and

(4) in paragraphs (2)(E)(i) and (3)(C)(ii), by inserting "or permanent partner" after "spouse" each place it appears.

(b) REMOVAL PROCEEDINGS.—Section 240 (8 U.S.C. 1229a) is amended—

(1) in the heading of subsection (c)(7)(C)(iv), by inserting "PERMANENT PARTNERS," after "SPOUSES,"; and

(2) in subsection (e)(1), by inserting "permanent partner," after "spouse,".

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

(1) in paragraph (1)(D), by inserting ''or permanent partner'' after ''spouse''; and

(2) in paragraph (2)—

(A) in the paragraph heading, by inserting '', PERMANENT PARTNER,'' after ''SPOUSE''; and

(B) in subparagraph (A), by inserting '', permanent partner,'' after ''spouse'' each place it appears.

SEC. 323. ADJUSTMENT OF STATUS; CRIMINAL PENALTIES; OTHER REQUIREMENTS.

(a) ADJUSTMENT OF STATUS OF NONIMMIGRANT TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE.—

(1) PROHIBITION ON ADJUSTMENT OF STATUS.—Section 245(d) (8 U.S.C. 1255(d)) is amended by inserting ''or permanent partnership'' after ''marriage''.

(2) AVOIDING IMMIGRATION FRAUD.—Section 245(e) (8 U.S.C. 1255(e)) is amended—

(A) in paragraph (1), by inserting ''or permanent partnership'' after ''marriage''; and

(B) by adding at the end the following:

"(4)(A) Paragraph (1) and section 204(g) shall not apply with respect to a permanent partnership if the alien establishes by clear and convincing evidence to the satisfaction of the Secretary of Homeland Security that—

"(i) the permanent partnership was entered into in good faith and in accordance with section 101(a)(52);

"(ii) the permanent partnership was not entered into for the purpose of procuring the alien's admission as an immigrant; and

"(iii) no fee or other consideration was given (other than a fee or other consideration to an attorney for assistance in preparation of a lawful petition) for the filing of a petition under section 204(a) or 214(d) with respect to the alien permanent partner.

"(B) The Secretary shall promulgate regulations that provide for only 1 level of administrative appellate review for each alien under subparagraph (A).".

(3) ADJUSTMENT OF STATUS FOR CERTAIN ALIENS PAYING FEE.—Section 245(i)(1)(B) (8 U.S.C. 1255(i)(1)(B)) is amended by inserting ", permanent partner," after "spouse".

(b) APPLICATION OF CRIMINAL PENALTIES TO FOR MISREPRESENTATION AND CONCEALMENT OF FACTS RE-

GARDING PERMANENT PARTNERSHIPS.—Section 275(c) (8 U.S.C. 1325(c)) is amended to read as follows:

"(c) Any individual who knowingly enters into a marriage or permanent partnership for the purpose of evading any provision of the immigration laws shall be imprisoned for not more than 5 years, fined not more than $250,000, or both.".

(c) REQUIREMENTS AS TO RESIDENCE, GOOD MORAL CHARACTER, ATTACHMENT TO THE PRINCIPLES OF THE CONSTITUTION.—Section 316(b) (8 U.S.C. 1427(b)) is amended by inserting ", permanent partner," after "spouse".

SEC. 324. NATURALIZATION FOR PERMANENT PARTNERS OF CITIZENS.

(a) IN GENERAL.—Section 319 (8 U.S.C. 1430) is amended—

(1) in subsection (a)—

(A) by inserting "or permanent partner" after "spouse" each place it appears; and

(B) by inserting "or permanent partnership" after "marital union";

(2) in subsection (b)—

(A) in paragraph (1), by inserting "or permanent partner" after "spouse"; and

(B) in paragraph (3), by inserting ''or permanent partner'' after ''spouse'';

(3) in subsection (d)—

(A) by inserting ''or permanent partner'' after ''spouse'' each place it appears; and

(B) by inserting ''or permanent partnership'' after ''marital union'';

(4) in subsection (e)(1)—

(A) by inserting ''or permanent partner'' after ''spouse'';

(B) by inserting ''by the Secretary of Defense'' after ''is authorized''; and

(C) by inserting ''or permanent partnership'' after ''marital union''; and

(5) in subsection (e)(2), by inserting ''or permanent partner'' after ''spouse''.

(b) SAVINGS PROVISION.—Section 319(e) (8 U.S.C. 1430(e)) is amended by adding at the end the following:

''(3) Nothing in this subsection may be construed to confer a right for an alien to accompany a member of the Armed Forces of the United States or to reside abroad with such member, except as authorized by the Secretary of Defense in the member's official orders.''.

SEC. 325. APPLICATION OF FAMILY UNITY PROVISIONS TO OTHER LAWS.

(a) APPLICATION OF FAMILY UNITY PROVISIONS TO PERMANENT PARTNERS OF CERTAIN LIFE ACT BENEFICIARIES.—Section 1504 of the LIFE Act Amendments of 2000 (division B of Public Law 106–554; 114 Stat. 2763–325) is amended—

(1) in the heading, by inserting "**, PERMANENT PARTNERS,**" after "**SPOUSES**";

(2) in subsection (a), by inserting ", permanent partner," after "spouse"; and

(3) in each of subsections (b) and (c)—

(A) in each of the subsection headings, by inserting ", PERMANENT PARTNERS," after "SPOUSES"; and

(B) by inserting ", permanent partner," after "spouse" each place it appears.

(b) APPLICATION TO CUBAN ADJUSTMENT ACT.—

(1) IN GENERAL.—The first section of Public Law 89–732 (8 U.S.C. 1255 note) is amended—

(A) in the next to last sentence, by inserting ", permanent partner," after "spouse" the first 2 places it appears; and

(B) in the last sentence, by inserting ", permanent partners," after "spouses".

(2) CONFORMING AMENDMENT.—Section 101(a)(51)(D) (8 U.S.C. 1101(a)(51)(D)) is amended by striking ''or spouse'' and inserting '', spouse, or permanent partner''.

CHAPTER 3—REFORMS TO SPECIFIC EMPLOYMENT-BASED VISA CATEGORIES

Subchapter A—EB–5 Program Reauthorization

SEC. 326. PERMANENT REAUTHORIZATION OF EB–5 REGIONAL CENTER PROGRAM.

(a) SHORT TITLE.—This section may be cited as the ''Creating American Jobs Through Foreign Capital Investment Act''.

(b) PERMANENT REAUTHORIZATION.—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 such term appears; and

(2) in subsection (b), by striking ''until September 30, 2012''.

Subchapter B—Adjustments to Other Select Visa Programs

SEC. 331. ELIMINATION OF SUNSET PROVISIONS.

(a) SPECIAL IMMIGRANT NONMINISTER RELIGIOUS WORKER PROGRAM.—Section 101(a)(27)(C)(ii) (8 U.S.C. 1101 (a)(27)(C)(ii)) is amended by striking ''September 30, 2012'' each place such term appears.

(b) CONRAD STATE 30 PROGRAM.—Section 220(c) of the Immigration and Nationality Technical Corrections Act of 1994 (8 U.S.C. 1182 note) is amended by striking ''and before September 30, 2012.''.

SEC. 332. PERMANENT AUTHORIZATION OF THE NON-IMMIGRANT NURSES IN HEALTH PROFESSIONAL SHORTAGE AREAS PROGRAM.

(a) IN GENERAL.—Section 2(e) of the Nursing Relief for Disadvantaged Areas Act of 1999 (8 U.S.C. 1182 note) is amended to read as follows:

''(e) APPLICATION OF NONIMMIGRANT CHANGES.—The amendments made by this section shall apply to classification petitions filed for nonimmigrant status only—

''(1) during the period—

''(A) beginning on the date that interim or final regulations are first promulgated under subsection (d); and

"(B) ending on the date that is 3 years after the date of the enactment of the Nursing Relief for Disadvantaged Areas Reauthorization Act of 2005; and

"(2) during the period beginning on the date of the enactment of the CIR Act of 2011.".

(b) INAPPLICABILITY OF CERTAIN REGULATORY REQUIREMENTS.—The requirements under chapter 5 of title 5, United States Code (commonly referred to as the "Administrative Procedure Act") or any other law relating to rulemaking, information collection or publication in the Federal Register, shall not apply to any action to implement the amendment made by subsection (a) to the extent the Secretary, the Secretary of Labor, or the Secretary of Health and Human Services determines that compliance with any such requirement would impede the expeditious implementation of such amendment.

SEC. 333. INCENTIVES FOR PHYSICIANS TO PRACTICE IN MEDICALLY UNDERSERVED COMMUNITIES.

Section 214 of the Immigration and Nationality Act (8 U.S.C. 1184) is amended—

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

"(12) An alien physician described in section 212(j)(2)(B) who entered the United States as a non-

1 immigrant described in section 101(a)(15)(H)(i)(b) to
2 pursue graduate medical education or training shall not
3 be subject to the limitations described in paragraphs (1)
4 and (4). The period of authorized admission of such alien
5 as an H–1B nonimmigrant may not extend beyond the 6-
6 year period beginning on the date on which the alien re-
7 ceives the exemption described in subparagraph (A), other
8 than extensions authorized under section 104 and 106 of
9 the American Competitiveness in the Twenty-First Cen-
10 tury Act of 2000 (Public Law 106–313) if—

11 ''(A) an interested State agency submits a re-
12 quest for an exemption under section 214(l)(1)(B),
13 but not 1 of the 10 waivers or exemptions described
14 in subsection (l)(1)(D)(ii); and

15 ''(B) the Secretary of State recommends that
16 the alien be exempted from such limitations.''; and

17 (2) in subsection (l)—

18 (A) in paragraph (1)—

19 (i) in the matter preceding subpara-
20 graph (A), by striking ''the Attorney Gen-
21 eral shall not grant such waiver unless''
22 and inserting ''or for an exemption from
23 the limitations described in paragraphs (1)
24 and (4) of subsection (g) on behalf of an
25 alien described in subsection (g)(12), the

Secretary shall not grant such waiver or exemption unless'';

(ii) in subparagraph (A), by inserting ''or exemption'' before the semicolon at the end;

(iii) in subparagraph (B), by striking ''would not cause the number of waivers allotted for that State for that fiscal year to exceed 30'' and inserting ''or exemption would not cause the total number of waivers plus the total number of exemptions allotted for that State for that fiscal year to exceed 30, unless such allotment is increased pursuant to paragraph (4)'';

(iv) in subparagraph (C)—

(I) in clause (ii), by striking ''within 90 days'' and all that follows and inserting the following: ″not later than the latest of—

''(II) 90 days after receiving such waiver or exemption;

''(III) 90 days after completing graduate medical education or training in a program approved under section 212(j)(1); or

"(IV) 90 days after receiving nonimmigrant status or employment authorization;

"(iii) the alien agrees to continue to work for a total of not less than 3 years while authorized to work in the United States under this Act, absent extenuating circumstances, including—

"(I) the original interested Federal or State agency that requested the waiver or exemption attests that extenuating circumstances exist;

"(II) the contracting health facility or health care organization attests that the alien's employment is being terminated through no fault of the alien;

"(III) the contracting health facility or health care organization commits a material breach of contract, including the failure to pay the salary or rate of pay, the failure to provide vacation or other paid leave, or requiring the alien to work excess hours in

violation of an employment agreement;

"(IV) the contracting health facility or health care organization is—

"(aa) violating the rules of the Federal agency or State agency that requested the waiver or exemption; or

"(bb) otherwise violating any applicable Federal or State law;

"(V) the closure or anticipated closure of the contracting health facility or health care organization, the termination of the service contract between the contracting health care organization and the health facility worksite for the alien, or the anticipated inability of the contracting health facility or health care organization to pay the offered rate of pay to the alien;

"(VI) the failure of the contracting health facility or health care organization to support the

credentialing of the alien in order for the alien to be able to begin employment on the date on which the alien's employment authorization begins;

"(VII) the alien, or a spouse or child of the alien, experiences unforeseen health problems that require treatment outside of the approved geographic area;

"(VIII) in the case of employment by an individual physician, the license of the employing physician is suspended or revoked;

"(IX) the contracting health facility or health care organization fails to agree to sponsor the alien for an extension of the alien's status under section 101(a)(15)(H)(i)(b) in a timely manner; or

"(X) the contracting health facility or health care organization engages in practices that endanger the health of patients;

1 "(iv) contracting health facilities and
2 health care organizations enter into an em-
3 ployment agreement with the alien that—
4 "(I) specifies the maximum num-
5 ber of on-call hours per week that the
6 alien will be expected to be available
7 and the compensation the alien will
8 receive for on-call time;
9 "(II) specifies whether the con-
10 tracting health facility or health care
11 organization will pay for the alien's
12 malpractice insurance premiums;
13 "(III) specifies whether the em-
14 ployer will provide malpractice tail in-
15 surance and the amount of such in-
16 surance;
17 "(IV) describes all of the work lo-
18 cations at which the alien will work;
19 "(V) states that the contracting
20 health facility or health care organiza-
21 tion will not add additional work loca-
22 tions without the approval or the Fed-
23 eral agency or State agency that re-
24 quested the waiver or exemption; and

"(VI) does not include liquidated damages provisions; and

"(v) the alien whose employment terminates during the 3-year service period is given 120 days to submit an application or petition to commence employment with another contracting health facility or health care organization and is considered to be maintaining lawful status in an authorized stay during that period; and"; and

(v) in subparagraph (D)—

(I) in clause (ii), by striking "would not cause the number of the waivers" and inserting "or exemption would not cause the total number of waivers and exemptions"; and

(II) in clause (iii), by inserting "or exemption" after "waiver";

(B) in paragraph (2)(A), by inserting "described in 212(e)(iii)" after "status of an alien"; and

(C) by adding at the end the following:

"(4)(A) If at least 90 percent of the total number of waivers and exemptions allotted in a fiscal year under paragraph (1)(B) to States that were granted not fewer

than 5 such waivers or exemptions, in the aggregate, during any 1 of the 3 previous fiscal years are granted, on a nationwide basis, in such fiscal year, the allotment of such waivers and exemptions in the next fiscal year shall be increased from 30 to 35 for each State. Such allotments shall be further increased by 5 each time such 90 percent threshold of the adjusted allotment level is reached, on a nationwide basis.

''(B) Any increase in allotments under subparagraph (A) shall be maintained indefinitely in future fiscal years, unless the total number of waivers and exemptions granted in a fiscal year is 10 percent lower than in most recent fiscal year in which there was an increase in the number of waivers and exemptions allotted pursuant to this paragraph. In such circumstances—

''(i) the number of waivers and exemptions allotted shall be decreased by 5 per State beginning in the next fiscal year; and

''(ii) each additional 10 percent decrease in such waivers and exemptions compared with the most recent fiscal year in which there was an increase in the allotment shall decrease by 5 the allotment of waivers and exemptions per State, which shall not be lower 30.''.

SEC. 334. RETAINING PHYSICIANS IN MEDICALLY UNDERSERVED COMMUNITIES.

Section 201(b)(1) (8 U.S.C. 1151(b)(1)), as amended by this subtitle, is further amended by adding at the end the following:

"(M) Aliens who have completed service requirements of a waiver or exemption requested under section 214(l), including aliens who completed such service before the date of the enactment of this subparagraph.".

SEC. 335. TEMPORARY VISAS FOR INDIVIDUALS FROM IRELAND.

(a) DEFINITION.—Section 101(a)(15)(E)(iii) (8 U.S.C. 1101(a)(15)(E)) is amended by inserting "or solely to perform services as an employee who meets the requirements of section 203(d)(2) if the alien is a national of the Republic of Ireland" after "Australia".

(b) TEMPORARY ADMISSION OF INADMISSIBLE ALIENS.—Clause (i) of section 212(a)(d)(3)(A) (8 U.S.C. 1182(d)(3)(A)) is amended by inserting before the semicolon the following: "provided that such recommendation and approval shall not be required for the issuance of a visa pursuant to section 101(a)(15)(E) for ineligibility under paragraphs (6), (7), or (9) of section 212(a) that is based on conduct occurring prior to the date of enactment of this Act".

(c) NUMERICAL LIMITATIONS.—Section 214(g)(11)(B)(8 U.S.C. 1184(g)(11)(B)) is amended by inserting "for each of the nationalities included in section 101(a)(15)(E)(iii)" before the period.

CHAPTER 4—MISCELLANEOUS EMPLOYMENT VISA REFORMS

SEC. 336. PROVIDING PREMIUM PROCESSING OF EMPLOYMENT-BASED VISA PETITIONS.

Pursuant to section 286(u) of the Immigration and Nationality Act (8 U.S.C. 1356(u)), the Secretary shall establish and collect—

(a) a fee for premium processing of employment-based immigrant petitions; and

(b) a fee for premium processing of an administrative appeal of any decision on a permanent employment-based immigrant petition.

SEC. 337. VISA REVALIDATION.

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

(1) in subsection (h), in the matter preceding subparagraph (1), by inserting "and except as provided under subsection (i)," after "Act"; and

(2) by adding at the end the following:

"(i) The Secretary of State shall permit an alien granted a nonimmigrant visa under subparagraph (E),

(H), (I), (L), (O), or (P) of section 101(a)(15) to apply for a renewal of such visa within the United States if—

"(1) such visa is valid or did not expire more than 12 months before the date of such application;

"(2) the alien is seeking a nonimmigrant visa under the same subparagraph under which the alien had previously received a visa; and

"(3) the alien has complied with the immigration laws of the United States.".

SEC. 338. APPLICATION FEES FOR INTENDING IMMIGRANTS.

Section 402 of Public Law 111–230 is amended—

(1) in subsection (a), by inserting "and are not intending immigrants" before the period at the end;

(2) in subsection (b), by inserting "and are not intending immigrants" before the period at the end; and

(3) by adding at the end the following:

"(d) Subsections (a) and (b) shall not apply to seasonal or intermittent nonimmigrants, and family members of nonimmigrants described in section 101(a)(15)(L).

"(e) For purposes of subsections (a) and (b), the term 'intending immigrant' means any alien who intends to work and reside permanently in the United States, as evidenced by—

"(1) a pending or approved application for alien employment certification under section 212(a)(5)(A); or

"(2) a pending or approved petition under paragraph (1), (2), or (3) of section 203(b).".

SEC. 339. EMPLOYMENT OF SPOUSES.

Section 214(c)(2)(E) (8 U.S.C. 1184(c)(2)(E)) is amended by striking "section 101(a)(15)(L)" and inserting "subparagraph (H) or (L) of section 101(a)(15)".

SEC. 340. TIME LIMITS FOR NONIMMIGRANTS TO DEPART THE UNITED STATES.

Section 214 (8 U.S.C. 1184) is amended by adding at the end the following:

"(s) SEPARATED EMPLOYEES AND DEPENDENTS.—

"(1) IN GENERAL.—Any alien who ceases to be employed by the alien's petitioning employer, regardless of the reason for such separation, shall be automatically granted a period of authorized stay equal to 60 days from the date of separation, during which the alien may—

"(A) depart the United States; or

"(B) apply for change or extension of status.

"(2) SPOUSE AND CHILDREN.—

"(A) IN GENERAL.—The spouse and children of an alien described in paragraph (1) shall be automatically granted a period of authorized stay equal to the principal alien employee.

"(B) DEATH OF PRINCIPAL ALIEN EMPLOYEE.—The spouse and children of a nonimmigrant alien who dies shall be entitled to retain the dependent nonimmigrant status to which they were eligible at the time of such death until the later of—

"(i) 1 year after such death; or

"(ii) the date on which an adjudication of benefits under section 204(l) is completed.".

CHAPTER 5—POWER ACT

SEC. 341. SHORT TITLES.

This chapter may be cited as the " Protect Our Workers from Exploitation and Retaliation Act" or the "POWER Act".

SEC. 342. VICTIMS OF SERIOUS LABOR AND EMPLOYMENT VIOLATIONS OR CRIME.

(a) PROTECTION FOR VICTIMS OF LABOR AND EMPLOYMENT VIOLATIONS.—Section 101(a)(15)(U) (8 U.S.C. 1101(a)(15)(U)) is amended—

(1) in clause (i)—

(A) by amending subclause (I) to read as follows:

"(I) the alien—

"(aa) has suffered substantial abuse or harm as a result of having been a victim of criminal activity described in clause (iii);

"(bb) has suffered substantial abuse or harm related to a violation described in clause (iv);

"(cc) is a victim of criminal activity described in clause (iii) and would suffer extreme hardship upon removal; or

"(dd) has suffered a violation described in clause (iv) and would suffer extreme hardship upon removal;";

(B) in subclause (II), by inserting ", or a labor or employment violation resulting in a workplace claim described in clause (iv)" before the semicolon at the end;

(C) in subclause (III)—

(i) by striking "or State judge, to the Service" and inserting ", State, or local

judge, to the Department of Homeland Security, to the Equal Employment Opportunity Commission, to the Department of Labor, to the National Labor Relations Board''; and

(ii) by inserting '', or investigating, prosecuting, or seeking civil remedies for a labor or employment violation related to a workplace claim described in clause (iv)'' before the semicolon at the end; and

(D) in subclause (IV)—

(i) by inserting ''(aa)'' after ''(IV)''; and

(ii) by adding at the end the following: ''or

''(bb) a workplace claim described in clause (iv) resulted from a labor or employment violation;'';

(2) in clause (ii)(II), by striking ''and'' at the end;

(3) by moving clause (iii) 2 ems to the left;

(4) in clause (iii), by striking ''or'' at the end and inserting ''and''; and

(5) by adding at the end the following:

"(iv) in the labor or employment violation related to a workplace claim, the alien—

"(I) has filed, is a material witness in, or is likely to be helpful in the investigation of, a bona fide workplace claim (as defined in section 274A(e)(10)(C)(iii)(II)); and

"(II) reasonably fears, has been threatened with, or has been the victim of, an action involving force, physical restraint, retaliation, or abuse of the immigration or other legal process against the alien or another person by the employer in relation to acts underlying the workplace claim or related to the filing of the workplace claim; or".

(b) TEMPORARY PROTECTION FOR VICTIMS OF CRIME, LABOR, AND EMPLOYMENT VIOLATIONS.—Notwithstanding any other provision of law, the Secretary may permit an alien to temporarily remain in the United States and grant the alien employment authorization if the Secretary determines that the alien—

(1) has filed for relief under section 101(a)(15)(U) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(U)); or

(2)(A) has filed, or is a material witness to, a bona fide workplace claim (as defined in section 274A(e)(10)(B)(iii)(II) of such Act, as added by section 3(b)); and

(B) has been helpful, is being helpful, or is likely to be helpful to—

(i) a Federal, State, or local law enforcement official;

(ii) a Federal, State, or local prosecutor;

(iii) a Federal, State, or local judge;

(iv) the Department of Homeland Security;

(v) the Equal Employment Opportunity Commission;

(vi) the Department of Labor;

(vii) the National Labor Relations Board; or

(viii) other Federal, State, or local authorities investigating, prosecuting, or seeking civil remedies related to the workplace claim.

(c) CONFORMING AMENDMENTS.—Section 214(p) (8 U.S.C. 1184(p)) is amended—

(1) in paragraph (1), by inserting ''or investigating, prosecuting, or seeking civil remedies for workplace claims described in section

101(a)(15)(U)(iv)'' after ''section 101(a)(15)(U)(iii)'' each place such term appears;

(2) in paragraph (2)(A), by striking ''10,000'' and inserting ''30,000''; and

(3) in paragraph (6)—

(A) by inserting ''or workplace claims described in section 101(a)(15)(U)(iv)'' after ''described in section 101(a)(15)(U)(iii)''; and

(B) by inserting ''or workplace claim'' after ''prosecution of such criminal activity''.

(d) ADJUSTMENT OF STATUS FOR VICTIMS OF CRIMES.—Section 245(m)(1) (8 U.S.C. 1255(m)(1)) is amended by inserting ''or an investigation or prosecution regarding a workplace claim'' after ''prosecution''.

(e) CHANGE OF NONIMMIGRANT CLASSIFICATION.—Section 384(a)(1) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1367(a)(1)) is amended—

(1) in subparagraph (E), by striking ''physical or mental abuse and the criminal activity,'' and inserting ''abuse and the criminal activity or workplace claim;'';

(2) in subparagraph (F), by striking the comma at the end and inserting ''; or''; and

(3) by inserting after subparagraph (F) the following:

"(G) the alien's employer,".

SEC. 343. LABOR ENFORCEMENT ACTIONS.

(a) REMOVAL PROCEEDINGS.—Section 239(e) (8 U.S.C. 1229(e)) is amended—

(1) in paragraph (1)—

(A) by striking "In cases where" and inserting "If"; and

(B) by inserting "or as a result of information provided to the Department of Homeland Security in retaliation against individuals for exercising or attempting to exercise their employment rights or other legal rights" after "paragraph (2)"; and

(2) in paragraph (2), by adding at the end the following:

"(C) At a facility about which a workplace claim has been filed or is contemporaneously filed.".

(b) UNLAWFUL EMPLOYMENT OF ALIENS.—Section 274A(e) (8 U.S.C. 1324a(e)) is amended by adding at the end the following:

"(10) CONDUCT IN ENFORCEMENT ACTIONS.—

"(A) ENFORCEMENT ACTION.—If the Department of Homeland Security undertakes an enforcement action at a facility about which a workplace claim has been filed or is contemporaneously filed, or as a result of information provided to the Department in retaliation against employees for exercising their rights related to a workplace claim, the Department shall ensure that—

"(i) any aliens arrested or detained who are necessary for the investigation or prosecution of workplace claim violations or criminal activity (as described in subparagraph (T) or (U) of section 101(a)(15)) are not removed from the United States until after the Department—

"(I) notifies the appropriate law enforcement agency with jurisdiction over such violations or criminal activity; and

"(II) provides such agency with the opportunity to interview such aliens; and

"(ii) no aliens entitled to a stay of removal or abeyance of removal proceedings under this section are removed.

"(B) PROTECTIONS FOR VICTIMS OF CRIME, LABOR, AND EMPLOYMENT VIOLATIONS.—

"(i) STAY OF REMOVAL OR ABEYANCE OF REMOVAL PROCEEDINGS.—An alien against whom removal proceedings have been initiated under chapter 4 of title II, who has filed a workplace claim, who is a material witness in any pending or anticipated proceeding involving a bona fide workplace claim, or who has filed for relief under section 101(a)(15)(U), shall be entitled to a stay of removal or an abeyance of removal proceedings and to employment authorization until the resolution of the workplace claim or the denial of relief under section 101(a)(15)(U) after exhaustion of administrative appeals, whichever is later, unless the Department establishes, by a preponderance of the evidence in proceedings before the immigration judge pre-

siding over that alien's removal hearing, that—

"(I) the alien has been convicted of a felony; or

"(II) the workplace claim was filed in a bad faith with the intent to delay or avoid the alien's removal.

"(ii) DURATION.—Any stay of removal or abeyance of removal proceedings and employment authorization issued pursuant to clause (i) shall remain valid until the resolution of the workplace claim or the denial of relief under section 101(a)(15)(U) after the exhaustion of administrative appeals, and shall be extended by the Secretary of Homeland Security for a period of not longer than 3 additional years upon determining that—

"(I) such relief would enable the alien asserting a workplace claim to pursue the claim to resolution;

"(II) the deterrent goals of any statute underlying a workplace claim would be served; or

1 "(III) such extension would oth-
2 erwise further the interests of justice.
3 "(iii) DEFINITIONS.—In this section:
4 "(I) MATERIAL WITNESS.—Not-
5 withstanding any other provision of
6 law, the term 'material witness' means
7 an individual who presents a declara-
8 tion from an attorney investigating,
9 prosecuting, or defending the work-
10 place claim or from the presiding offi-
11 cer overseeing the workplace claim at-
12 testing that, to the best of the declar-
13 ant's knowledge and belief, reasonable
14 cause exists to believe that the testi-
15 mony of the individual will be relevant
16 to the outcome of the workplace claim.
17 "(II) WORKPLACE CLAIM.—The
18 term 'workplace claim' means any
19 written or oral claim, charge, com-
20 plaint, or grievance filed with, commu-
21 nicated to, or submitted to the em-
22 ployer, a Federal, State, or local agen-
23 cy or court, or an employee represent-
24 ative related to the violation of appli-
25 cable Federal, State, and local labor

laws, including laws concerning wages and hours, labor relations, family and medical leave, occupational health and safety, or nondiscrimination.''.

SEC. 344. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out this chapter and the amendments made by this chapter.

Subtitle D—Immigrant Integration and Other Reforms

PART I—STRENGTHEN AND UNITE COMMUNITIES WITH CIVICS EDUCATION AND ENGLISH SKILLS

CHAPTER 1—EXPANDING ENGLISH LITERACY, UNITED STATES HISTORY, AND CIVICS EDUCATION

SEC. 351. INCREASED INVESTMENT IN ENGLISH LITERACY, UNITED STATES HISTORY, AND CIVICS EDUCATION UNDER THE ADULT EDUCATION AND FAMILY LITERACY ACT.

(a) INTEGRATED ENGLISH LITERACY AND CIVICS EDUCATION PROGRAM.—Section 203 of the Adult Education and Family Literacy Act (20 U.S.C. 9202) is amended—

(1) by redesignating paragraphs (12) through (18) as paragraphs (13) through (19), respectively; and

(2) by inserting after paragraph (11), the following:

"(12) INTEGRATED ENGLISH LITERACY, UNITED STATES HISTORY, AND CIVICS EDUCATION PROGRAM.—The term 'integrated English literacy, United States history, and civics education program' means a program of instruction designed to help an English language learner achieve competence in English through contextualized instruction on the rights and responsibilities of citizenship, naturalization procedures, civic participation, and United States history and Government to help such learner acquire the skills and knowledge to become an active and informed parent, worker, and community member.".

(b) STATE LEADERSHIP ACTIVITIES.—Section 223(a) of the Adult Education and Family Literacy Act (20 U.S.C. 9223(a)) is amended by inserting after paragraph (11) the following:

"(12) Technical assistance for grant applications of faith- and community-based organizations.".

(c) NATIONAL INSTITUTE FOR LITERACY.—Section 242(c)(1) of the Adult Education and Family Literacy Act (20 U.S.C. 9252(c)(1)) is amended—

(1) by redesignating subparagraphs (G), (H), and (I), as subparagraphs (I), (J), and (K), respectively; and

(2) by inserting after subparagraph (F) the following:

"(G) to coordinate and share information with national organizations and associations that are interested in integrated English literacy, United States history, and civics education programs;

"(H) to study the effectiveness of distance learning or self-study programs in assisting the English language learner population achieve competence in English;".

(d) REPORT.—Section 242(k) of the Adult Education and Family Literacy Act (20 U.S.C. 9252(k)) is amended—

(1) in paragraph (2), by striking "and" at the end;

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

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

"(3) a separate analysis of—

"(A) national and State adult English instruction needs;

"(B) data on the composition of recent immigration flows and immigration settlement patterns throughout the United States; and

"(C) estimated instructional needs based on the English ability and educational attainment of English language learners under recent migration patterns; and".

(e) NATIONAL LEADERSHIP ACTIVITIES.—Section 243 of the Adult Education and Family Literacy Act (20 U.S.C. 9253) is amended—

(1) in paragraph (1)—

(A) in subparagraph (A), by inserting "and integrated English literacy, United States history, and civics education programs" before the semicolon at the end; and

(B) in subparagraph (B), by inserting "and integrated English literacy, United States history, and civics education programs" before ", based on scientific evidence"; and

(2) in paragraph (2)—

(A) in subparagraph (B), by inserting ''and integrated English literacy, United States history, and civics education programs'' before the semicolon at the end;

(B) in subparagraph (D)(ii), by inserting ''integrated English literacy, United States history, and civics education programs,'' before ''and workplace literacy programs''; and

(C) in subparagraph (E)—

(i) in clause (i), by inserting ''and integrated English literacy, United States history, and civics education programs'' before the semicolon at the end;

(ii) in clause (iii), by striking ''and'' at the end;

(iii) in clause (iv)—

(I) by striking ''section 231'' and inserting ''sections 231 and 244''; and

(II) by adding ''and'' at the end; and

(iv) by adding at the end the following:

''(v) the extent to which integrated English literacy, United States history, and civics education programs carried out

under section 244 lead participants in such programs to increase their civic participation and, if applicable, lead such participants to become United States citizens;''.

(f) INTEGRATED ENGLISH LITERACY, UNITED STATES HISTORY, AND CIVICS EDUCATION.—Chapter 4 of subtitle A of the Adult Education and Family Literacy Act (20 U.S.C. 9251 et seq.) is amended by adding at the end the following:

''SEC. 244. INTEGRATED ENGLISH LITERACY, UNITED STATES HISTORY, AND CIVICS EDUCATION PROGRAMS.

''(a) PROGRAM AUTHORIZED.—The Secretary shall award grants to States, from allocations under subsection (b), for integrated English literacy, United States history, and civics education programs.

''(b) ALLOCATIONS.—

''(1) IN GENERAL.—Subject to paragraph (2), the Secretary shall allocate for each fiscal year, from the amount appropriated pursuant to subsection (c) for such fiscal year—

''(A) 65 percent of such amount to States on the basis of a State's need for integrated English, United States history, and civics education programs, as determined by calculating

each State's share of a 10-year average of the data compiled by the Office of Immigration Statistics of the Department of Homeland Security, for immigrants admitted for lawful permanent residence during the 10 most recent fiscal years; and

"(B) 35 percent of such amount to the States on the basis of whether the State experienced growth, as measured by the average of the 3 most recent years for which data compiled by the Office of Immigration Statistics of the Department of Homeland Security are available, for immigrants admitted for lawful permanent residence.

"(2) MINIMUM.—Each State shall receive an allocation under paragraph (1) in an amount that is not less than $60,000.

"(c) AUTHORIZATION OF APPROPRIATION.—There are authorized to be appropriated to carry out this section—

"(1) $200,000,000 for fiscal year 2012;

"(2) $250,000,000 for fiscal year 2013; and

"(3) $300,000,000 for fiscal year 2014.".

SEC. 352. DEFINITIONS OF ENGLISH LANGUAGE LEARNER.

(a) ADULT EDUCATION AND FAMILY LITERACY ACT.—The Adult Education and Family Literacy Act (20 U.S.C. 9201 et seq.) is amended—

(1) in section 203 (20 U.S.C. 9202)—

(A) by redesignating paragraphs (6), (7), (8), (9), and (10), as paragraphs (7), (8), (9), (10), and (6), respectively;

(B) in paragraph (6), as redesignated—

(i) in the paragraph heading, by striking ''INDIVIDUAL OF LIMITED ENGLISH PROFICIENCY'' and inserting ''ENGLISH LANGUAGE LEARNER''; and

(ii) in the matter preceding subparagraph (A), by striking ''individual of limited English proficiency'' and inserting ''English language learner''; and

(C) in paragraph (7), as redesignated, by striking ''individuals of limited English proficiency'' and inserting ''English language learners'';

(2) in section 224(b)(10)(D) (20 U.S.C. 9224(b)(10)(D)), by striking ''individuals with limited English proficiency'' and inserting ''English language learners''; and

(3) in section 243(2)(D)(ii) (20 U.S.C. 9253(2)(D)(ii)), by striking ''individuals with limited English proficiency who are adults'' and inserting ''adult English language learners''.

(b) ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965.—

(1) AMENDMENT.—Section 9101(25) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801(25)) is amended by striking the matter preceding subparagraph (A) and inserting the following:

''(25) ENGLISH LANGUAGE LEARNER.—The term 'English language learner' means an individual—''.

(2) REFERENCES.—Any reference in the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.) to an individual who is limited English proficient shall be construed to refer to an English language learner.

SEC. 353. 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) $750, for each of the first 5 taxable years for which the taxpayer is allowed a credit under this section; and

"(2) $500, 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 DEFINED.—

"(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 in-

1 struction for the academic year ending in such
2 taxable year.
3 "(2) ELIGIBLE PART-TIME TEACHER.—The
4 term 'eligible part-time teacher' means, with respect
5 to a taxable year, an individual who teaches at least
6 20 hours per week during the academic year ending
7 in such taxable year. Such term does not include any
8 individual who is a full-time teacher of English as a
9 second language during such academic year.
10 "(3) SPECIAL RULE.—In the case of an eligible
11 part-time teacher, subsection (a) shall be applied by
12 substituting '$375' for '$750' and by substituting
13 '$250' for '$500'.".
14 (b) CLERICAL AMENDMENT.—The table of sections
15 for such subpart is amended by inserting after the item
16 relating to section 25D the following:

"Sec. 25E. Teachers of English language learners.".

17 (c) TEACHER CERTIFICATION EXPENSES.—Part VII
18 of subchapter B of chapter 1 of the Internal Revenue Code
19 of 1986 (relating to additional itemized deductions for in-
20 dividuals) is amended by redesignating section 224 as sec-
21 tion 225 and by inserting after section 223 the following:

22 **"SEC. 224. CERTIFICATION EXPENSES FOR TEACHERS OF**
23 **ENGLISH LANGUAGE LEARNERS.**

24 "(a) IN GENERAL.—In the case of an individual,
25 there shall be allowed a deduction for eligible teacher cer-

1 tification expenses paid or incurred by the taxpayer for
2 the taxable year.

3 "(b) ELIGIBLE TEACHER CERTIFICATION EX-
4 PENSES.—The term 'eligible teacher certification ex-
5 penses'—

6 "(1) means the tuition and fees required for the
7 enrollment or attendance of the taxpayer at an eligi-
8 ble educational institution (as defined in section
9 25A) for a course which is required for certification
10 or licensure of such individual as qualified to provide
11 English as a second language or bilingual instruction
12 to elementary or secondary school students who are
13 limited English proficient (as defined in section
14 9901 of the Elementary and Secondary Education
15 Act of 1965); and

16 "(2) shall not include any amounts that are—

17 "(A) used for a course that is part of the
18 individual's degree program; or

19 "(B) funded by another person or any gov-
20 ernmental entity.

21 "(c) DENIAL OF DOUBLE BENEFIT.—No deduction
22 shall be allowed under this section for any expense for
23 which a deduction or credit is allowed under any other
24 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 inserting after paragraph (21) the following new paragraph:

"(22) TEACHER CERTIFICATION EXPENSES.—The deduction allowed by section 224.".

(e) CLERICAL AMENDMENT.—The table of sections for part VII of subchapter B of chapter 1 of such Code is amended by striking the last item and inserting the following:

"Sec. 224. Certification expenses for teachers of English language learners.
"Sec. 225. Cross reference.".

(f) 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.

(g) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 354. RESEARCH IN ADULT EDUCATION.

(a) IN GENERAL.—Section 133(c)(2)(A) of the Education Sciences Reform Act of 2002 (20 U.S.C.

9533(c)(2)(A)) is amended by inserting ''education and'' before ''literacy''.

(b) NATIONAL RESEARCH AND DEVELOPMENT CENTER.—

(1) IN GENERAL.—The Secretary of Education shall direct the Commissioner for Education Research of the National Center for Education Research established pursuant to section 131 of the Education Sciences Reform Act of 2002 (20 U.S.C. 9531) to establish a national research and development center for adult education and literacy (as described in section 133(c)(2)(A) of such Act).

(2) PROVISION FOR EXPANSION OF RESEARCH.—If, as of the date of the enactment of this Act, the Commissioner has established a center for adult literacy in accordance with section 133(c)(2)(A) of the Education Sciences Reform Act of 2002 (20 U.S.C. 9533(c)(2)(A)), the Commissioner shall expand the topic of research of such center to include adult education, in accordance with the amendment made by subsection (a).

CHAPTER 2—SUPPORTING ENGLISH LANGUAGE ACQUISITION AND ADULT EDUCATION IN THE WORKFORCE

SEC. 356. CREDIT FOR EMPLOYER-PROVIDED ADULT ENGLISH LITERACY AND BASIC EDUCATION PROGRAMS.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to business related credits) is amended by 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 (20 U.S.C. 9241) 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' have the respective meanings given to such terms in

section 203 of the Adult Education and Family Literacy Act (20 U.S.C. 9202).

"(4) ENGLISH LANGUAGE LEARNER.—The term 'English language learner' has the same meaning given 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 employed 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) ELECTION TO HAVE CREDIT NOT APPLY.—A taxpayer may elect (at such time and in such manner as the Secretary may by regulations prescribe) to have this section not apply for any taxable year.

"(f) 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 of the year in which this Act was enacted.

SEC. 357. PRESIDENTIAL AWARD FOR BUSINESS LEADERSHIP IN PROMOTING UNITED STATES CITIZENSHIP.

(a) ESTABLISHMENT.—The Presidential Award for Business Leadership in Promoting United States Citizenship (referred to in this section as the ''Presidential Citizenship Award'') shall be awarded by the President to companies and other organizations that make extraordinary efforts in assisting their employees and members to learn English and increase their understanding of United States history and civics.

(b) SELECTION AND PRESENTATION OF AWARD.—

(1) SELECTION.—The President, after reviewing recommendations from the Secretary of Homeland Security and the Secretary of Commerce, shall periodically award the Presidential Citizenship Award to large and small companies and other organizations described in subsection (a).

(2) PRESENTATION.—The presentation of the Presidential Citizenship Award shall be made by the President, or a designee of the President, in conjunction with an appropriate ceremony.

CHAPTER 3—BUILDING STRONGER COMMUNITIES

SEC. 361. OFFICE OF CITIZENSHIP AND NEW AMERICANS.

(a) RENAMING THE OFFICE OF CITIZENSHIP.—

(1) IN GENERAL.—Beginning on the date of the enactment of this Act, the Office of Citizenship of United States Citizenship and Immigration Services shall be referred to as the ''Office of Citizenship and New Americans''.

(2) CONFORMING AMENDMENTS.—Section 451(f) of the Homeland Security Act of 2002 (6 U.S.C. 271(f)) is amended—

(A) in the subsection heading, by striking ''Citizenship.'' and inserting ''Citizenship and New Americans.'';

(B) in paragraph (1), by inserting ''and New Americans'' after ''Office of Citizenship''; and

(C) in paragraph (2), by inserting ''and New Americans'' after ''Office of Citizenship''.

(3) REFERENCES.—Any reference in a law, regulation, document, paper, or other record of the United States to the Office of Citizenship within United States Citizenship and Immigration Services shall be deemed to be a reference to the ''Office of Citizenship and New Americans''.

(b) FUNCTIONS.—Section 451(f)(2) of the Homeland Security Act of 2002 (6 U.S.C. 271(f)(2)), as amended by subsection (a)(2)(C), is further amended by striking

"for promoting" and all that follows through the period at the end and inserting the following: "for—

"(A) establishing national goals for introducing new immigrants into the United States and measuring the degree to which such goals are met;

"(B) assessing and coordinating Federal policies, regulations, task forces, and commissions related to introducing immigrants into the United States;

"(C) continuing with the efforts of the Task Force on New Americans established under Executive Order 13404—

"(i) to facilitate a dialogue among Federal agencies;

"(ii) make recommendations to the President; and

"(iii) follow through with initiatives administered by the Task Force under the authority of such Executive Order;

"(D) serving as a liaison and intermediary with State and local governments and other entities to assist in establishing local goals, task forces, and councils to assist in introducing immigrants into the United States;

"(E) coordinating with other Federal agencies to provide information to State and local governments on the demand for English acquisition programs and best practices in place on the Federal and State level for immigrants who have recently arrived in the United States;

"(F) assisting States in coordinating activities with the grant program carried out under this subtitle; and

"(G) promoting instruction and training on citizenship responsibilities for aliens interested in becoming naturalized citizens of the United States, including the development of educational materials for such aliens.".

(c) DONATIONS.—Section 451(f) of the Homeland Security Act of 2002 (6 U.S.C. 271(f)), as amended by this section, is further amended by adding at the end the following:

"(3) DONATIONS.—

"(A) ACCEPTANCE OF DONATIONS.—The Chief of the Office of Citizenship and New Americans may accept monetary and in-kind donations to support the activities described in paragraph (2).

"(B) DEDICATION OF FUNDS.—Notwithstanding any other provision of law—

"(i) any amounts donated to the Office of Citizenship and New Americans to support the activities described in paragraph (2) shall be deposited into an account dedicated for such purpose;

"(ii) the amounts contained in the account described in clause (i) shall be used solely to support such activities; and

"(iii) amounts that were not donated for the exclusive purpose of supporting such activities may not be deposited into such account.".

(d) REPORT TO CONGRESS.—The Chief of the Office of Citizenship and New Americans shall submit a biennial report to the appropriate committees in Congress that describes the activities of the Office of Citizenship and New Americans.

SEC. 362. GRANTS TO STATES.

(a) AUTHORITY TO PROVIDE GRANTS.—Subject to subsections (c) and (d), the Chief of the Office of Citizenship and New Americans (referred to in this section as the "Chief") is authorized to provide competitive grants

to States to form State New American Councils to carry out the activities described in section 363.

(b) STATE NEW AMERICAN COUNCILS.—A State New American Council shall—

(1) consist of not fewer than 15 individuals and not more than 19 individuals from the State; and

(2) shall include, to the extent practicable, representatives from—

(A) business;

(B) faith-based organizations;

(C) civic organizations;

(D) philanthropic organizations;

(E) nonprofit organizations, including those with experience working with immigrant communities;

(F) key education stakeholders, such as State educational agencies, local educational agencies, community colleges, or teachers;

(G) State adult education offices;

(H) State or local public libraries; and

(I) State or local government officials.

(c) WAIVER OF REQUIREMENT.—

(1) AUTHORITY TO GRANT.—The Chief may award a grant under subsection (a) to a State without requiring the State to form a State New Amer-

ican Council if the Chief determines that the State is carrying out similar statewide initiatives to introduce immigrants into the State and into the United States.

(2) GUIDELINES.—The Chief shall establish guidelines for awarding grants to States described in paragraph (1).

(d) GRANTS TO LOCAL GOVERNMENTS.—The Chief may provide a grant under subsection (a) to a local government.

(e) APPLICATION.—An applicant for a grant under this section shall submit an application to the Chief at such time, in such manner, and containing such information as the Chief may reasonably require, including—

(1) if the applicant is a State seeking to form a State New American Council, an assurance that such State New American Council will meet the requirements under subsection (b);

(2) the number of immigrants in the State in which the applicant is located; and

(3) a description of the challenges in introducing new immigrants into the State and local community.

(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 that have experienced a large increase in the population of immigrants during the most recent 10-year period relative to past migration patterns, based on data compiled by the Office of Immigration Statistics.

(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 shall reserve not more than 1 percent of the amount appropriated to carry out this section for the administration of the Office of Citizenship and New Americans, including for 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 a State New American Council.

SEC. 363. AUTHORIZED ACTIVITIES.

(a) MANDATORY ACTIVITIES.—A grant awarded under section 361(a) shall be used—

(1) to develop, implement, expand, or enhance a comprehensive plan to introduce new immigrants into the State, including improving English literacy, knowledge of United States history, and civics education;

(2) to provide subgrants to local communities in accordance with subsection (c);

(3) if the grant is awarded to a State, to form a State New American Council, which shall meet not less frequently than once each quarter;

(4) to disseminate best practices and other information compiled by the Office of Citizenship and New Americans that pertains to effective programs for English acquisition and civics education; and

(5) to convene public hearings not less frequently than once each year to report on the activities carried out by such grant.

(b) PERMISSIBLE ACTIVITIES.—A grant awarded under section 361(a) may be used—

(1) to solicit and disseminate solutions and remedies to the challenges of introducing new immigrants in the State or municipality in which the grant is awarded;

(2) to provide technical assistance, training, or coordination for State or local agencies to improve programs to introduce new immigrants into the United States, such as English literacy, United States history, and civics education;

(3) to review and develop strategies to expand distance learning as a method of instruction for English literacy, United States history, and civics education and available technological programs that may supplement or supplant quality classroom instruction;

(4) to coordinate with entities of other States engaged in activities under this part or other activities to introduce new immigrants into the State or community;

(5) to develop materials focused on preparation for the naturalization test;

(6) to engage in outreach and educational activities on the naturalization process; and

(7) to provide assistance to immigrants with the naturalization application, as appropriate.

(c) SUBGRANTS TO LOCAL COMMUNITIES.—

(1) REQUIREMENT TO AWARD.—A grant under section 108(a) shall be used to award subgrants to entities of local governments to assist communities with local efforts to introduce new Americans into the community.

(2) AUTHORIZED ACTIVITIES.—Subgrants shall be awarded under paragraph (1) to entities of local governments for use to carry out activities in accordance with—

(A) a comprehensive plan described in subsection (a)(1); and

(B) any guidance provided by the Chief of the Office of Citizenship and New Americans.

(3) SUBGRANT AMOUNT.—The amount of a subgrant awarded under this subsection shall be not less than $100,000 and not more than $600,000 for a fiscal year.**

SEC. 364. REPORTING AND EVALUATION.

(a) REPORTING REQUIREMENT.—

(1) IN GENERAL.—Each entity awarded a grant under section 108(a) shall submit a report annually to the Office of Citizenship and New Americans that—

(A) describes the activities of the State New American Council and subgrant recipients and how these activities meet the goals of—

(i) the Chief of the Office of Citizenship and New Americans; and

(ii) the comprehensive plan described in section 109(a)(1); and

(B) describes the geographic areas being served, the number of immigrants in such areas, and the primary languages spoken there.

(2) OTHER REQUIREMENTS.—The Chief of the Office of Citizenship may set out other requirements as the Chief sees fit in order to—

(A) impose accountability; and

(B) measure the outcomes of the activities carried out with grants awarded under section 1083(a).

(b) ANNUAL EVALUATION.—The Chief of the Office of Citizenship and New Americans shall conduct an annual evaluation of the grant program established under this subtitle and use such evaluation—

(1) to improve the effectiveness of programs carried out by the Chief;

(2) to assess future needs of immigrants and of State and local governments related to immigrants;

(3) to determine the effectiveness of such grant program; and

(4) to ensure that the grantees and subgrantees are acting within the scope and purpose of this subtitle.

SEC. 365. NEW CITIZENS AWARD PROGRAM.

(a) ESTABLISHMENT.—There is established a new citizens award program to recognize citizens who—

(1) have made an outstanding contribution to the United States; and

(2) are naturalized during the 10-year period ending on the date of such recognition.

(b) PRESENTATION AUTHORIZED.—

(1) IN GENERAL.—The President is authorized to present a medal, in recognition of outstanding contributions to the United States, to citizens described in subsection (a).

(2) MAXIMUM NUMBER OF AWARDS.—Not more than 10 citizens may receive a medal under this section in any calendar year.

SEC. 366. RULE OF CONSTRUCTION.

Nothing in this subtitle may be construed to limit the authority of the Secretary, acting through the Director of United States Citizenship and Immigration Services or such other officials of the Department of Homeland Secu-

rity as the Secretary may direct, to manage, direct, and control the activities of the Chief of the Office of Citizenship and New Americans.

SEC. 367. REPORT TO CONGRESS ON FEE INCREASES.

Section 286 (8 U.S.C. 1356), as amended by section 326(b), is further amended by adding at the end the following:

"(x) REPORT TO CONGRESS ON FEES AND FEE INCREASES.—The Secretary of Homeland Security shall annually submit a report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives that—

"(1) identifies the direct and overhead costs associated with providing immigration services, distinguishing such costs from immigration enforcement and national security costs;

"(2) identifies the costs for providing premium processing services to business customers under subsection (u);

"(3) describes the extent to which the premium processing fee prescribed under subsection (u) is set at a level that ensures recovery of those costs;

"(4) identifies the amount of funding allocated for the infrastructure improvements in the adjudica-

tions and customer-service processes as prescribed under subsection (u); and

"(5) contains information about the basis for any fee increases that will occur during the following 12 months.".

SEC. 368. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to carry out this subtitle $100,000,000 for each of the fiscal years 2012 through 2016.

PART II—EMERGENCY RELIEF FOR CERTAIN POPULATIONS

SEC. 371. ADJUSTMENT OF STATUS FOR CERTAIN HAITIAN ORPHANS.

(a) IN GENERAL.—The Secretary may adjust the status of an alien described in subsection (b) to that of an alien lawfully admitted for permanent residence if the alien—

(1) subject to subsection (c), applies for such adjustment;

(2) is physically present in the United States on the date the application for such adjustment is filed; and

(3) is admissible to the United States as an immigrant, except as provided in subsection (d).

(b) ALIENS ELIGIBLE FOR ADJUSTMENT OF STATUS.—An alien is described in this subsection if the alien was inspected and granted parole into the United States pursuant to the humanitarian parole policy for certain Haitian orphans announced on January 18, 2010, and suspended as to new applications on April 15, 2010.

(c) APPLICATION.—In the case of a minor, an application under this section may be submitted on behalf of the alien by—

(1) a parent; or

(2) a legal guardian.

(d) GROUNDS OF INADMISSIBILITY.—Paragraphs (4) and (7)(A) of section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)) shall not apply to adjustment of status under this section.

(e) VISA AVAILABILITY.—When an alien is granted the status of having been lawfully admitted for permanent residence under this section, the Secretary of State shall not be required to reduce the number of immigrant visas authorized to be issued under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

(f) ALIEN DEEMED TO MEET DEFINITION OF CHILD.—An alien described in subsection (b) shall be deemed to satisfy the requirements applicable to adopted children under section 101(b)(1) of the Immigration and

Nationality Act (8 U.S.C. 1101(b)(1)) if, before the date on which the alien reaches 18 years of age—

(1) the alien obtains adjustment of status under this section; and

(2) a United States citizen adopts the alien, regardless of whether the adoption occurs before, on, or after the date of the decision-granting adjustment of status under this section.

(g) NO IMMIGRATION BENEFITS FOR BIRTH PARENTS.—No birth parent of an alien who obtains adjustment of status under this section shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this section or the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

SEC. 372. ADJUSTMENT OF STATUS FOR CERTAIN LIBERIAN NATIONALS.

(a) ADJUSTMENT OF STATUS.—

(1) IN GENERAL.—

(A) ELIGIBILITY.—Except as provided under subparagraph (B), the Secretary shall adjust the status of an alien described in subsection (b) to that of an alien lawfully admitted for permanent residence, if the alien—

(i) applies for adjustment not later than 1 year after the date of the enactment of this Act; and

(ii) is otherwise eligible to receive an immigrant visa and admissible to the United States for permanent residence, except that, in determining such admissibility, the grounds for inadmissibility specified in paragraphs (4), (5), (6)(A), and (7)(A) of section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)) shall not apply.

(B) INELIGIBLE ALIENS.—An alien shall not be eligible for adjustment of status under this section if the Secretary determines that the alien—

(i) has been convicted of any aggravated felony (as defined in section 101(a)(43) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(43));

(ii) has been convicted of 2 or more crimes involving moral turpitude; or

(iii) has ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, na-

tionality, membership in a particular social group, or political opinion.

(2) RELATIONSHIP OF APPLICATION TO CERTAIN ORDERS.—

(A) IN GENERAL.—An alien present in the United States who has been subject to an order of exclusion, deportation, or removal, or has been ordered to depart voluntarily from the United States under any provision of the Immigration and Nationality Act may, notwithstanding such order, apply for adjustment of status under paragraph (1) if otherwise qualified under such paragraph.

(B) SEPARATE MOTION NOT REQUIRED.—An alien described in subparagraph (A) may not be required, as a condition of submitting or granting such application, to file a separate motion to reopen, reconsider, or vacate the order described in subparagraph (A).

(C) EFFECT OF DECISION BY SECRETARY.—If the Secretary grants an application under paragraph (1), the Secretary shall cancel the order described in subparagraph (A). If the Secretary makes a final decision to deny the application, the order shall be effective and

enforceable to the same extent as if the application had not been made.

(b) ALIENS ELIGIBLE FOR ADJUSTMENT OF STATUS.—

(1) IN GENERAL.—The benefits provided under subsection (a) shall apply to any alien—

(A) who is—

(i) a national of Liberia; and

(ii) has been continuously present in the United States between January 1, 2011, and the date on which the alien submits an application under subsection (a); or

(B) who is the spouse, child, or unmarried son or daughter of an alien described in subparagraph (A).

(2) DETERMINATION OF CONTINUOUS PHYSICAL PRESENCE.—For purposes of establishing the period of continuous physical presence referred to in paragraph (1)(A)(ii), an alien shall not be considered to have failed to maintain continuous physical presence by reasons of an absence, or absences, from the United States for any period or periods amounting in the aggregate to not more than 180 days.

(c) STAY OF REMOVAL.—

(1) IN GENERAL.—The Secretary shall establish procedures, by regulation, through which an alien, who is subject to a final order of deportation, removal, or exclusion, may seek a stay of such order based upon the filing of an application under subsection (a).

(2) DURING CERTAIN PROCEEDINGS.—Notwithstanding any provision of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), the Secretary shall not order an alien to be removed from the United States if the alien is in exclusion, deportation, or removal proceedings under any provision of such Act and has applied for adjustment of status under subsection (a), unless the Secretary has made a final determination to deny the application.

(3) WORK AUTHORIZATION.—

(A) IN GENERAL.—The Secretary may—

(i) authorize an alien who has applied for adjustment of status under subsection (a) to engage in employment in the United States while a determination regarding such application is pending; and

(ii) provide the alien with an employment authorized endorsement or other ap-

propriate document signifying authorization of employment.

(B) PENDING APPLICATIONS.—If an application for adjustment of status under subsection (a) is pending for a period exceeding 180 days and has not been denied, the Secretary shall authorize such employment.

(d) RECORD OF PERMANENT RESIDENCE.—Upon the approval of an alien's application for adjustment of status under subsection (a), the Secretary shall establish a record of the alien's admission for permanent record as of the date of the alien's arrival in the United States.

(e) AVAILABILITY OF ADMINISTRATIVE REVIEW.—The Secretary shall provide to applicants for adjustment of status under subsection (a) the same right to, and procedures for, administrative review as are provided to—

(1) applicants for adjustment of status under section 245 of the Immigration and Nationality Act (8 U.S.C. 1255); and

(2) aliens subject to removal proceedings under section 240 of such Act (8 U.S.C. 1229a).

(f) LIMITATION ON JUDICIAL REVIEW.—A determination by the Secretary regarding the adjustment of status of any alien under this section is final and shall not be subject to review by any court.

(g) NO OFFSET IN NUMBER OF VISAS AVAILABLE.—If an alien is granted the status of having been lawfully admitted for permanent residence pursuant to this section, the Secretary of State shall not be required to reduce the number of immigrant visas authorized to be issued under any provision of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

(h) APPLICATION OF IMMIGRATION AND NATIONALITY ACT PROVISIONS.—

(1) DEFINITIONS.—Except as otherwise specifically provided in this chapter, the definitions contained in the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) shall apply in this section.

(2) SAVINGS PROVISION.—Nothing in this chapter may be construed to repeal, amend, alter, modify, effect, or restrict the powers, duties, function, or authority of the Secretary in the administration and enforcement of the Immigration and Nationality Act or any other law relating to immigration, nationality, or naturalization.

(i) EFFECT OF ELIGIBILITY FOR ADJUSTMENT OF STATUS.—Eligibility to be granted the status of having been lawfully admitted for permanent residence under this section shall not preclude an alien from seeking any status

under any other provision of law for which the alien may otherwise be eligible.

PART III—STATE COURT INTERPRETER GRANT PROGRAM

SEC. 381. FINDINGS.

Congress finds that—

(1) the fair administration of justice depends on the ability of all participants in a courtroom proceeding to understand that proceeding, regardless of their English proficiency;

(2) 19 percent of the population of the United States older than 5 years of age speaks a language other than English at home;

(3) only qualified court interpreters can ensure that persons with limited English proficiency comprehend judicial proceedings in which they are a party;

(4) the knowledge and skills required of a qualified court interpreter differ substantially from those required in other interpretation settings, such as social service, medical, diplomatic, and conference interpreting;

(5) the Federal Government has demonstrated its commitment to equal administration of justice regardless of English proficiency;

(6) regulations implementing title VI of the Civil Rights Act of 1964 and the guidance issued by the Department of Justice pursuant to Executive Order 13166, issued August 11, 2000, clarify that all recipients of Federal financial assistance, including State courts, are required to take reasonable steps to provide meaningful access to their proceedings for persons with limited English proficiency;

(7) 40 States have developed, or are developing, qualified court interpreting programs;

(8) robust, effective court interpreter programs—

(A) actively recruit skilled individuals to be court interpreters;

(B) train those individuals in the interpretation of court proceedings;

(C) develop and use a thorough, systematic certification process for court interpreters; and

(D) have sufficient funding to ensure that a qualified interpreter will be available to the court whenever necessary; and

(9) Federal funding is necessary to—

(A) encourage State courts that do not have court interpreter programs to develop them;

(B) assist State courts with nascent court interpreter programs to implement them;

(C) assist State courts with limited court interpreter programs to enhance them; and

(D) assist State courts with robust court interpreter programs to make further improvements and share successful programs with other States.

SEC. 382. STATE COURT INTERPRETER PROGRAM.

(a) GRANTS AUTHORIZED.—

(1) IN GENERAL.—The Administrator of the Office of Justice Programs of the Department of Justice (referred to in this section as the ''Administrator'') shall award grants, in accordance with such regulations as the Attorney General may prescribe, to State courts to develop and implement programs to assist individuals with limited English proficiency to access and understand State court proceedings in which they are a party.

(2) TECHNICAL ASSISTANCE.—The Administrator shall allocate, for each fiscal year, $500,000 of the amount appropriated pursuant to section 383,

which shall be used to establish a court interpreter technical assistance program to assist State courts receiving grants under this part.

(b) USE OF GRANTS.—Grants awarded under subsection (a) may be used by State courts to—

(1) assess regional language demands;

(2) develop a court interpreter program for the State courts;

(3) develop, institute, and administer language certification examinations;

(4) recruit, train, and certify qualified court interpreters;

(5) pay for salaries, transportation, and technology necessary to implement the court interpreter program developed under paragraph (2); and

(6) engage in other related activities, as prescribed by the Attorney General.

(c) APPLICATION.—

(1) IN GENERAL.—The highest State court of each State desiring a grant under this section shall submit an application to the Administrator at such time, in such manner, and accompanied by such information as the Administrator may reasonably require.

(2) STATE COURTS.—The highest State court of each State submitting an application under paragraph (1) shall include in the application—

(A) a demonstration of need for the development, implementation, or expansion of a State court interpreter program;

(B) an identification of each State court in that State which would receive funds from the grant;

(C) the amount of funds each State court identified under subparagraph (B) would receive from the grant; and

(D) the procedures the highest State court would use to directly distribute grant funds to State courts identified under subparagraph (B).

(d) STATE COURT ALLOTMENTS.—

(1) BASE ALLOTMENT.—From amounts appropriated for each fiscal year pursuant to section 383, the Administrator shall allocate $100,000 to each of the highest State court of each State, which has an application approved under subsection (c).

(2) DISCRETIONARY ALLOTMENT.—From amounts appropriated for each fiscal year pursuant to section 383, the Administrator shall allocate $5,000,000 to be distributed among the highest

State courts of States which have an application approved under subsection (c), and that have extraordinary needs that are required to be addressed in order to develop, implement, or expand a State court interpreter program.

(3) ADDITIONAL ALLOTMENT.—In addition to the allocations made under paragraphs (1) and (2), the Administrator shall allocate, to the highest State court of each State whose application was approved under subsection (c), an amount equal to the product reached by multiplying—

(A) the unallocated balance of the amount appropriated for each fiscal year pursuant to section 383; and

(B) the ratio between the number of people older than 5 years of age who speak a language other than English at home in the State and the number of people older than 5 years of age who speak a language other than English at home in all the States that receive an allocation under paragraph (1), as those numbers are determined by the Bureau of the Census.

(4) TREATMENT OF DISTRICT OF COLUMBIA.—For purposes of this section—

(A) the District of Columbia shall be treated as a State; and

(B) the District of Columbia Court of Appeals shall act as the highest State court for the District of Columbia.

SEC. 383. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated $15,000,000 for each of the fiscal years 2012 through 2016 to carry out this part.

PART IV—OTHER MATTERS

SEC. 391. ADJUSTMENT OF STATUS FOR CERTAIN VICTIMS OF TERRORISM.

(a) ADJUSTMENT OF STATUS.—The status of any alien described in subsection (b) may be adjusted by the Secretary to that of an alien lawfully admitted for permanent residence, if the alien—

(1) applies for such adjustment not later than 1 year after the date of the enactment of this Act;

(2) is not inadmissible to the United States under paragraph (2) or (3) of section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)), or deportable under paragraph (2) or (4) of section 237(a) of such Act (8 U.S.C. 1227(a)); and

(3) not later than the date on which the application under paragraph (1) is submitted, satisfies any applicable Federal tax liability by establishing that—

(A) no such tax liability exists; or

(B) all outstanding liabilities have been paid.

(b) ALIENS ELIGIBLE FOR ADJUSTMENT OF STATUS.—

(1) IN GENERAL.—The benefit provided under subsection (a) shall apply to any alien who—

(A) was, on September 10, 2001, the spouse, child, unmarried son, or unmarried daughter of an alien who died as a direct result of the terrorist activity conducted against the United States on September 11, 2001;

(B) was deemed to be a beneficiary of, and by, the September 11th Victim Compensation Fund of 2001 (49 U.S.C. 40101); and

(C) made a proffer of information to the Secretary between April 24, 2008, and August 15, 2008, in connection with a request for immigration relief.

(2) EXCEPTION.—An alien shall not be provided any benefit under this section if the Secretary

determines that the alien has willfully made a material misrepresentation or material omission in the proffer of information described in paragraph (1)(C).

(c) WORK AUTHORIZATION.—The Secretary may authorize an alien who has applied for adjustment of status under subsection (a) to engage in employment in the United States during the pendency of such application.

(d) CONSTRUCTION.—Nothing in this section shall be construed to limit the existing authority of the Secretary on the date of the enactment of this Act to require any form or other submission of information or to perform any background or security check for the purpose of determining the admissibility, or eligibility under this section, of any alien.

(e) WAIVER OF REGULATIONS.—Not later than 6 months after the date of the enactment of this Act, the Secretary shall issue guidance to carry out this section. The Secretary shall not be required to promulgate regulations before implementing this section.

(f) NO OFFSET IN NUMBER OF VISAS AVAILABLE.—At the time an alien is granted the status of having been lawfully admitted for permanent residence under this section, the Secretary of State shall not be required to reduce the number of immigrant visas authorized to be issued

under title II of the Immigration and Nationality Act (8 U.S.C. 1151 et seq.).

(g) DEFINITIONS.—

(1) APPLICABLE FEDERAL TAX LIABILITY DEFINED.—In this section, the term ''applicable Federal tax liability'' means liability for Federal taxes, including penalties and interest, owed for any year for which the statutory period for assessment of any deficiency for such taxes has not expired.

(2) INCORPORATION BY REFERENCE.—Except as otherwise specifically provided in this section, the definitions used in the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) (excluding the definitions applicable exclusively to title III of such Act) shall apply in the administration of this section.

SEC. 392. DEVELOPMENT OF ASSESSMENT AND STRATEGY ADDRESSING FACTORS DRIVING MIGRATION.

(a) DEVELOPMENT OF ASSESSMENT.—Not later than 6 months after the date of the enactment of this Act, the Comptroller General of the United States shall submit a report to Congress that contains a baseline assessment of the primary factors driving migration in a prioritized group of 10 countries with the highest rates of irregular migration to the United States, including—

(1) factors driving migration in the prioritized countries; and

(2) the impact of United States assistance, trade, or foreign policy on migration trends in the prioritized countries.

(b) STRATEGY TO ADDRESS FACTORS DRIVING IMMIGRATION.—The Secretary of State, working with the Administrator of the United States Agency for International Development, and in consultation with the Bureau of Population, Refugees, and Migration of the Department of State, the Department of Labor, and the Office of the United States Trade Representative, shall submit strategy to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives for addressing the economic, social, and security factors driving high rates of irregular migration from the prioritized countries, as identified by the report submitted under subsection (a).

(c) ELEMENTS OF STRATEGY.—The strategy required under subsection (b) shall include—

(1) a summary and evaluation of current assistance provided by the Government of the United States to countries with the highest rates of irregular migration to the United States;

(2) an identification of the regions and municipalities experiencing the highest emigration rates and the current level of United States aid or investment in these areas; and

(3) recommendations for future United States Government assistance and technical support to address key economic, social and development factors identified in the prioritized migration source countries that are designed to ensure appropriate engagement of national and local governments and civil society organizations.

SEC. 393. PRIORITIZATION OF MIGRATION SOURCE COUNTRIES BY THE UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT.

(a) IN GENERAL.—The Administrator of the United States Agency for International Development shall expand programming that prioritizes sustainable alternatives to emigration and incorporates migration and development programming to assist communities in the countries identified in the previous section, including—

(1) communities that currently experience, or are projected to soon experience, high rates of population loss due to international migration to the United States;

(2) communities experiencing or at high risk of trafficking in persons;

(3) communities that are receiving high rates of returned or deported migrants from the United States;

(4) communities affected by destabilizing levels of generalized violence, or violence associated with gang or drug related crimes; and

(5) communities that currently have developed partnerships with migrant associations and federations based in the United States.

(b) INCREASED ASSISTANCE.—The Secretary of State and the Administrator of the United States Agency for International Development shall work with the Committee on Foreign Relations of the Senate, the Committee on Appropriations of the Senate, the Committee on Foreign Affairs of the House of Representatives, and the Committee on Appropriations of the House of Representatives to increase, beginning in fiscal year 2012, financial assistance to the communities described in subsection (a) with the goal of—

(1) alleviating rural poverty and revitalizing agricultural production by supporting investment in rural development strategies, marketing support to small farmers, small scale agroenterprise initiatives,

and expanded access to credit and micro-finance opportunities for small farmers, particularly in regions of highest outmigration;

(2) fully funding micro-finance and micro-enterprise initiatives and ensure mechanisms for access to rural credit and micro-insurance and target available funding to traditionally marginalized groups and at-risk populations, particularly youth and indigenous populations;

(3) prioritizing income generation and livelihood alternatives targeted to youth;

(4) supporting innovations and matching funds for collective remittance investment and business development through the establishment or expansion of United States matching funds through United States Agency for International Development for collective remittance investment by migrant associations and federations in migrant sending municipalities or regions; and

(5) recognizing that the highest rates of irregular migration are from Mexico and other Western Hemisphere countries by dedicating particular attention to bilateral and multilateral efforts to reduce the economic and social factors driving irregular migration in this region.

SEC. 394. SENSE OF CONGRESS ON INCREASED UNITED STATES FOREIGN POLICY COHERENCY IN THE WESTERN HEMISPHERE.

It is the sense of Congress that the Secretary of State should review the United States foreign policy toward Latin America in order to strengthen hemispheric security through the reduction of poverty and inequality, expansion of equitable trade, support for democratic institutions, citizen security and the rule of law, as essential elements in consolidation of a well-managed regional migration policy.

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