

1  
2 **Secure Borders, Economic**  
3 **Opportunity and Immigration**  
4 **Reform Act of 2007**

5  
6 **SEC. 1. EFFECTIVE DATE TRIGGERS.**  
7

8 (a) With the exception of the probationary benefits conferred by  
9 Section 601(h), the provisions of Subtitle C of Title IV, and the  
10 admission of aliens under Section 101(a)(15)(H)(ii) of the Immigration  
11 and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)), as amended by Title  
12 IV,  
13

- 14 (i) the programs established by Title IV of this Act; and  
15 (ii) the programs established by Title VI of this Act that grant  
16 legal status to any individual or adjust the current status of any  
17 individual who is unlawfully present in the United States to that  
18 of an alien lawfully admitted for permanent residence,  
19

20 shall become effective on the date that the Secretary submits a written  
21 certification to the President and the Congress that the following  
22 border security and other measures are funded, in place, and in  
23 operation:  
24

25 (1) *Staff Enhancements for Border Patrol*: The U.S. Customs and  
26 Border Protection (CBP) Border Patrol has, in its continued effort  
27 to increase the number of agents and support staff, hired 18,000  
28 agents;  
29

30 (2) *Strong Border Barriers*: Have installed at least 200 miles of  
31 vehicle barriers, 370 miles of fencing, and 70 ground-based  
32 radar and camera towers along the southern land border of the  
33 United States, and have deployed 4 Unmanned Aerial Vehicles  
34 and supporting systems;  
35

36 (3) *Catch and Return*: The Department of Homeland Security is  
37 detaining all removable aliens apprehended crossing the  
38 southern border, except as specifically mandated by law or  
39 humanitarian circumstances, and U.S. Immigration and Customs  
40 Enforcement (ICE) has the resources to maintain this practice,

1 including resources to detain up to 27,500 aliens per day on an  
2 annual basis;

3  
4 (4) *Workplace Enforcement Tools*: As required through all the  
5 provisions of Title III of this Act, the Department of Homeland  
6 Security has established and is using secure and effective  
7 identification tools to prevent unauthorized workers from  
8 obtaining jobs in the United States. These tools shall include, but  
9 not be limited to, establishing:

10  
11 (i) strict standards for identification documents that must  
12 be presented in the hiring process, including the use of  
13 secure documentation that contains a photograph,  
14 biometrics, and/or complies with the requirements for such  
15 documentation under the REAL ID Act; and

16  
17 (ii) an electronic employment eligibility verification system  
18 that queries federal and state databases to restrict fraud,  
19 identity theft, and use of false social security numbers in  
20 the hiring process by electronically providing a digitized  
21 version of the photograph on the employee's original  
22 federal or state issued document or documents for  
23 verification of the employee's identity and work eligibility;  
24 and

25  
26 (5) *Processing Applications of Aliens*: The Department of  
27 Homeland Security has received and is processing and  
28 adjudicating in a timely manner applications for Z nonimmigrant  
29 status under Title VI of this Act, including conducting all  
30 necessary background and security checks.

31  
32 (b) It is the sense of Congress that the border security and other  
33 measures described in such subsection can be completed within 18  
34 months of enactment, subject to the necessary appropriations.

35  
36 (c) The President shall submit a report to Congress detailing the  
37 progress made in funding, appropriating, contractual agreements  
38 reached, and specific progress on each of the measures include in  
39 (a)(1)-(5):

40  
41 (i) 90 days after the date of enactment; and  
42 (ii) every 90 days thereafter until the terms of this section have  
43 been met.  
44

1 If the President determines that sufficient progress is not being made,  
2 the President shall include in the report specific funding  
3 recommendations, authorization needed, or other actions that are  
4 being undertaken by the Department.

5

## 6 **TITLE I—BORDER ENFORCEMENT**

### 7 **Subtitle A—Assets for Controlling United** 8 **States Borders.**

#### 9 **SEC. 101. ENFORCEMENT PERSONNEL.**

10 (a) Additional Personnel-

11 (1) U.S. CUSTOMS AND BORDER PROTECTION OFFICERS -  
12 In each of the fiscal years 2008 through 2012, the  
13 Secretary shall, subject to the availability of  
14 appropriations, increase by not less than 500 the number  
15 of positions for full-time active duty CBP officers and  
16 provide appropriate training, equipment, and support to  
17 such additional CBP officers.

18 (2) INVESTIGATIVE PERSONNEL-

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

24 (B) ADDITIONAL PERSONNEL- In addition to the  
25 positions authorized under section 5203 of the  
26 Intelligence Reform and Terrorism Prevention Act of  
27 2004, as amended by subparagraph (A), during each  
28 of the fiscal years 2008 through 2012, the Secretary  
29 shall, subject to the availability of appropriations,  
30 increase by not less than 200 the number of  
31 positions for personnel within the Department  
32 assigned to investigate alien smuggling.

33 (3) DEPUTY UNITED STATES MARSHALS- In each of the  
34 fiscal years 2008 through 2012, the Attorney General  
35 shall, subject to the availability of appropriations, increase  
36 by not less than 50 the number of positions for full-time  
37 active duty Deputy United States Marshals that assist in  
38 matters related to immigration.

1 (4) RECRUITMENT OF FORMER MILITARY PERSONNEL-  
2 (A) IN GENERAL- The Commissioner of United States  
3 Customs and Border Protection, in conjunction with  
4 the Secretary of Defense or a designee of the  
5 Secretary of Defense, shall establish a program to  
6 actively recruit members of the Army, Navy, Air  
7 Force, Marine Corps, and Coast Guard who have  
8 elected to separate from active duty.  
9 (B) REPORT- Not later than 180 days after the date  
10 of the enactment of this Act, the Commissioner shall  
11 submit a report on the implementation of the  
12 recruitment program established pursuant to  
13 subparagraph (A) to the Committee on the Judiciary  
14 of the Senate and the Committee on the Judiciary of  
15 the House of Representatives.

16 (b) Authorization of Appropriations-

17 (1) U.S. CUSTOMS AND BORDER PROTECTION OFFICERS -  
18 There are authorized to be appropriated to the Secretary  
19 such sums as may be necessary for each of the fiscal years  
20 2008 through 2012 to carry out paragraph (1) of  
21 subsection (a).

22 (2) DEPUTY UNITED STATES MARSHALS- There are  
23 authorized to be appropriated to the Attorney General such  
24 sums as may be necessary for each of the fiscal years  
25 2008 through 2012 to carry out subsection (a)(3).

26 (3) BORDER PATROL AGENTS- Section 5202 of the  
27 Intelligence Reform and Terrorism Prevention Act of 2004  
28 (118 Stat. 3734) is amended to read as follows:

29 **` SEC. 5202. INCREASE IN FULL-TIME BORDER PATROL**  
30 **AGENTS.**

31 `(a) Annual Increases- The Secretary of Homeland Security  
32 shall, subject to the availability of appropriations for such  
33 purpose, increase the number of positions for full-time active-  
34 duty border patrol agents within the Department of Homeland  
35 Security (above the number of such positions for which funds  
36 were appropriated for the preceding fiscal year), by not less  
37 than—

38 `(1) 2,000 in fiscal year 2007;

39 `(2) 2,400 in fiscal year 2008;

- 1           ` (3) 2,400 in fiscal year 2009;
- 2           ` (4) 2,400 in fiscal year 2010;
- 3           ` (5) 2,400 in fiscal year 2011; and
- 4           ` (6) 2,400 in fiscal year 2012.

5           ` (b) Northern Border- In each of the fiscal years 2008 through  
6           2012, in addition to the border patrol agents assigned along the  
7           northern border of the United States during the previous fiscal  
8           year, the Secretary shall assign a number of border patrol  
9           agents equal to not less than 20 percent of the net increase in  
10          border patrol agents during each such fiscal year.

11          ` (c) Authorization of Appropriations- There are authorized to be  
12          appropriated such sums as may be necessary for each of fiscal  
13          years 2008 through 2012 to carry out this section.'

14

15          **SEC. 102. TECHNOLOGICAL ASSETS.**

16          (a) Acquisition—Subject to the availability of appropriations for such  
17          purpose, the Secretary shall procure additional unmanned aerial  
18          vehicles, cameras, poles, sensors, and other technologies necessary to  
19          achieve operational control of the borders of the United States.

20          (b) Increased Availability of Equipment—The Secretary and the  
21          Secretary of Defense shall develop and implement a plan to use  
22          authorities provided to the Secretary of Defense under chapter 18 of  
23          title 10, United States Code, to increase the availability and use of  
24          Department of Defense equipment, including unmanned aerial  
25          vehicles, tethered aerostat radars, and other surveillance equipment,  
26          to assist the Secretary in carrying out surveillance activities conducted  
27          at or near the international land borders of the United States to  
28          prevent illegal immigration.

29          (c) Authorization of Appropriations—There are authorized to be  
30          appropriated to the Secretary such sums as may be necessary for each  
31          of the fiscal years 2008 through 2012 to carry out subsection (a).

32          **SEC. 103. INFRASTRUCTURE.**

33          Section 102 of the Illegal Immigration Reform and Immigrant  
34          Responsibility Act of 1996 (8 U.S.C. 1103 note) is amended—

35                  (1) in subsection (a), by striking "Attorney General, in  
36                  consultation with the Commissioner of Immigration and  
37                  Naturalization," and inserting "Secretary of Homeland Security";  
38                  and

1 (2) in subsection (b)—

2 (A) by redesignating paragraphs (1), (2), (3), and (4) as  
3 paragraphs (2), (3), (4), and (5), respectively;

4 (B) by inserting before paragraph (2), as redesignated, the  
5 following:

6 “(1) FENCING NEAR SAN DIEGO, CALIFORNIA —In carrying out  
7 subsection (a), the Secretary shall provide for the construction  
8 along the 14 miles of the international land border of the United  
9 States, starting at the Pacific Ocean and extending eastward, of  
10 second and third fences, in addition to the existing reinforced  
11 fence, and for roads between the fences.”.

12 **SEC. 104. PORTS OF ENTRY.**

13 Section 102 of the Illegal Immigration Reform and Immigrant  
14 Responsibility Act of 1996, Division C of Public Law 104-208, is  
15 amended by the addition, at the end of that section, of the following  
16 new subsection:

17 “(e) Construction and Improvements —The Secretary is authorized  
18 to—

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

22 (2) make necessary improvements to the ports of entry.”.

23

24 **Subtitle B—Other Border Security**  
25 **Initiatives**

26 **SEC. 111. BIOMETRIC ENTRY-EXIT SYSTEM.**

27 (a) Collection of Biometric Data From Aliens Entering and Departing  
28 the United States —Section 215 (8 U.S.C. 1185) is amended—

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

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

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

33 “(c) The Secretary is authorized to require aliens entering and  
34 departing the United States to provide biometric data and other  
35 information relating to their immigration status.”.

36 (b) Inspection of Applicants for Admission—Section 235(d) (8 U.S.C.

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1 1225(d)) is amended by adding at the end the following:

2 “(5) AUTHORITY TO COLLECT BIOMETRIC DATA—In conducting  
3 inspections under subsections (a) and (b), immigration officers are  
4 authorized to collect biometric data from—

5 “(A) any applicant for admission or any alien who is paroled  
6 under section 212(d)(5), seeking to or permitted to land  
7 temporarily as an alien crewman, or seeking to or permitted  
8 transit through the United States; or

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

12 (c) Collection of Biometric Data From Alien Crewmen—Section 252  
13 (8 U.S.C. 1282) is amended by adding at the end the following:

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

17 (d) Grounds of Inadmissibility—Section 212 (8 U.S.C. 1182) is  
18 amended—

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

20 “(C) WITHHOLDERS OF BIOMETRIC DATA—Any alien who fails or  
21 has failed to comply with a lawful request for biometric data  
22 under section 215(c), 235(d), or 252(d) is inadmissible.”; and

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

25 “(2) The Secretary may waive the application of subsection  
26 (a)(7)(C) for an individual alien or class of aliens.”.

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

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

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

37 (2) in subsection (l)—

1 (A) by striking "There are authorized" and inserting the  
2 following:

3 "(1) IN GENERAL—There are authorized"; and

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

5 "(2) IMPLEMENTATION AT ALL LAND BORDER PORTS OF ENTRY—There are  
6 authorized to be appropriated such sums as may be necessary for  
7 each of fiscal years 2008 and 2009 to implement the automated  
8 biometric entry and exit data system at all land border ports of  
9 entry."  
10

11 **SEC. 112. UNLAWFUL FLIGHT FROM IMMIGRATION OR**  
12 **CUSTOMS CONTROLS.**

13 (a) In General- Section 758 of Title 18, United States Code, is  
14 amended to read as follows:

15 **"758. Unlawful Flight from Immigration or Customs Controls**

16 "(a) Evading a checkpoint- Any person who, while operating a  
17 motor vehicle or vessel, knowingly flees or evades a checkpoint  
18 operated by the Department of Homeland Security or any other  
19 Federal law enforcement agency, and then knowingly or recklessly  
20 disregards or disobeys the lawful command of any law enforcement  
21 agent, shall be fined under this title, imprisoned not more than five  
22 years, or both.

23 "(b) Failure to stop- Any person who, while operating a motor  
24 vehicle, aircraft, or vessel, knowingly or recklessly disregards or  
25 disobeys the lawful command of an officer of the Department of  
26 Homeland Security engaged in the enforcement of the immigration,  
27 customs, or maritime laws, or the lawful command of any law  
28 enforcement agent assisting such officer, shall be fined under this  
29 title, imprisoned not more than two years, or both.

30 "(c) Alternative penalties- Notwithstanding the penalties provided  
31 in subsection (a) or (b), any person who violates such subsection  
32 shall—

33 "(1) be fined under this title, imprisoned not more than 10  
34 years, or both, if the violation involved the operation of a motor  
35 vehicle, aircraft, or vessel—

36 "(A) in excess of the applicable or posted speed limit,

37 "(B) in excess of the rated capacity of the motor vehicle,  
38 aircraft, or vessel, or

39 "(C) in an otherwise dangerous or reckless manner;



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1           “(2) be fined under this title, imprisoned not more than 20  
2           years, or both, if the violation created a substantial and  
3           foreseeable risk of serious bodily injury or death to any person;

4           “(3) be fined under this title, imprisoned not more than 30  
5           years, or both, if the violation caused serious bodily injury to any  
6           person; or

7           “(4) be fined under this title, imprisoned for any term of years or  
8           life, or both, if the violation resulted in the death of any person.

9           “(d) Attempt and conspiracy- Any person who attempts or  
10          conspires to commit any offense under this section shall be punished  
11          in the same manner as a person who completes the offense.

12          “(e) Forfeiture- Any property, real or personal, constituting or  
13          traceable to the gross proceeds of the offense and any property, real  
14          or personal, used or intended to be used to commit or facilitate the  
15          commission of the offense shall be subject to forfeiture.

16          “(f) Forfeiture procedures- Seizures and forfeitures under this  
17          section shall be governed by the provisions of chapter 46 of this title,  
18          relating to civil forfeitures, including section 981(d) of such title,  
19          except that such duties as are imposed upon the Secretary of the  
20          Treasury under the customs laws described in that section shall be  
21          performed by such officers, agents, and other persons as may be  
22          designated for that purpose by the Secretary of Homeland Security or  
23          the Attorney General. Nothing in this section shall limit the authority  
24          of the Secretary to seize and forfeit motor vehicles, aircraft, or vessels  
25          under the Customs laws or any other laws of the United States.

26          “(g) Definitions- For purposes of this section—

27                  “(1) The term “checkpoint” includes, but is not limited to, any  
28                  customs or immigration inspection at a port of entry.

29                  “(2) The term “lawful command” includes, but is not limited to,  
30                  a command to stop, decrease speed, alter course, or land, whether  
31                  communicated orally, visually, by means of lights or sirens, or by  
32                  radio, telephone, or other wire communication.

33                  “(3) The term “law enforcement agent” means any Federal,  
34                  State, local or tribal official authorized to enforce criminal law, and,  
35                  when conveying a command covered under subsection (b) of this  
36                  section, an air traffic controller.

37                  “(4) The term “motor vehicle” means any motorized or self-  
38                  propelled means of terrestrial transportation.

39                  “(5) The term “serious bodily injury” has the meaning given in

1 section 2119(2) of this title.”.

2

3 **SEC. 113. RELEASE OF ALIENS FROM NONCONTIGUOUS**  
4 **COUNTRIES.**

5 Section 236(a)(2) (8 U.S.C. 1226(a)(2)) is amended—

6 (1) by striking “on”;

7 (2) in subparagraph (A)—

8 (A) by inserting “except as provided under subparagraph  
9 (B), upon the giving of a” before “bond”; and

10 (B) by striking “or” at the end;

11 (3) by redesignating subparagraph (B) as subparagraph (C); and

12 (4) by inserting after subparagraph (A) the following:

13 “(B) upon the giving of a bond of not less than \$5,000 with  
14 security approved by, and containing conditions prescribed by,  
15 the Secretary or the Attorney General, if the alien—

16 “(i) is a national of a noncontiguous country;

17 “(ii) has not been admitted or paroled into the United  
18 States; and

19 “(iii) was apprehended within 100 miles of the  
20 international border of the United States or presents a  
21 flight risk, as determined by the Secretary of Homeland  
22 Security; or”.

23

24 **SEC. 114. SEIZURE OF CONVEYANCE WITH CONCEALED**  
25 **COMPARTMENT: EXPANDING THE DEFINITION OF**  
26 **CONVEYANCES WITH HIDDEN COMPARTMENTS SUBJECT TO**  
27 **FORFEITURE.**

28 (a) In General. Section 1703 of Title 19, United States Code is  
29 amended:

30 (i) by amending the title of such section to read as follows:

31 “Sec. 1703. Seizure and forfeiture of vessels, vehicles, other  
32 conveyances and instruments of international traffic”;

33 (ii) by amending the title of subsection (a) to read as follows:

34 “(a) Vessels, vehicles, other conveyances and instruments of  
35 international traffic subject to seizure and forfeiture”;

1 (iii) by amending the title of subsection (b) to read as follows:

2 "(b) Vessels, vehicles, other conveyances and instruments of  
3 international traffic defined";

4 (iv) by inserting ",vehicle, other conveyance or instrument of  
5 international traffic" after the word "vessel" everywhere it  
6 appears in the text of subsections (a) and (b); and

7 (v) by amending subsection (c) to read as follows:

8 "(c) Acts constituting prima facie evidence of vessel, vehicle, or  
9 other conveyance or instrument of international traffic engaged  
10 in smuggling "For the purposes of this section, prima facie  
11 evidence that a conveyance is being, or has been, or is  
12 attempted to be employed in smuggling or to defraud the  
13 revenue of the United States shall be --

14 "(1) in the case of a vessel, the fact that a vessel has  
15 become subject to pursuit as provided in section 1581 of  
16 this title, or is a hovering vessel, or that a vessel fails, at  
17 any place within the customs waters of the United States  
18 or within a customs-enforcement area, to display light as  
19 required by law.

20 "(2) in the case of a vehicle, other conveyance or  
21 instrument of international traffic, the fact that a vehicle,  
22 other conveyance or instrument of international traffic has  
23 any compartment or equipment that is built or fitted out  
24 for smuggling."

25 (b) Clerical Amendment. The table of sections for Chapter 5 in title  
26 19, United States Code, is amended by striking the items relating to  
27 section 1703 and inserting in lieu thereof the following:

28 "1703. Seizure and forfeiture of vessels, vehicles, other conveyances  
29 or instruments of international traffic.

30 "(a) Vessels, vehicles, other conveyances or instruments of  
31 international traffic subject to seizure and forfeiture.

32 "(b) Vessels, vehicles, other conveyances or instruments of  
33 international traffic defined.

34 "(c) Acts constituting prima facie evidence of vessel, vehicle, other  
35 conveyance or instrument of international traffic engaged in  
36 smuggling."

37

38 **Subtitle C –Other Measures**

1 **SEC. 121. DEATHS AT UNITED STATES-MEXICO BORDER.**

2 (a) Collection of Statistics- The Commissioner of the Bureau of  
3 Customs and Border Protection shall collect statistics relating to deaths  
4 occurring at the border between the United States and Mexico,  
5 including—

6 (1) the causes of the deaths; and

7 (2) the total number of deaths.

8 (b) Report- Not later than 1 year after the date of enactment of  
9 this Act, and annually thereafter, the Commissioner of the Bureau of  
10 Customs and Border Protection shall submit to the Secretary a report  
11 that--

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

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

16 **SEC. 122. BORDER SECURITY ON CERTAIN FEDERAL LAND.**

17 (a) Definitions- In this section:

18 (1) PROTECTED LAND- The term `protected land' means  
19 land under the jurisdiction of the Secretary concerned.

20 (2) SECRETARY CONCERNED- The term `Secretary  
21 concerned' means—

22 (A) with respect to land under the jurisdiction of the  
23 Secretary of Agriculture, the Secretary of  
24 Agriculture; and

25 (B) with respect to land under the jurisdiction of the  
26 Secretary of the Interior, the Secretary of the  
27 Interior.

28 (b) Support for Border Security Needs-

29 (1) IN GENERAL- To gain operational control over the  
30 international land borders of the United States and to  
31 prevent the entry of terrorists, unlawful aliens, narcotics,  
32 and other contraband into the United States, the  
33 Secretary, in cooperation with the Secretary concerned,  
34 shall provide--

35 (A) increased U.S. Customs and Border Protection  
36 personnel to secure protected land along the  
37 international land borders of the United States;

1 (B) Federal land resource training for U.S. Customs  
2 and Border Protection agents dedicated to protected  
3 land; and

4 (C) Unmanned Aerial Vehicles, aerial assets, Remote  
5 Video Surveillance camera systems, and sensors on  
6 protected land that is directly adjacent to the  
7 international land border of the United States.

8 (2) COORDINATION- In providing training for Customs and  
9 Border Protection agents under paragraph (1)(B), the  
10 Secretary shall coordinate with the Secretary concerned to  
11 ensure that the training is appropriate to the mission of  
12 the National Park Service, the United States Fish and  
13 Wildlife Service, the Forest Service, or the relevant agency  
14 of the Department of the Interior or the Department of  
15 Agriculture to minimize the adverse impact on natural and  
16 cultural resources from border protection activities.

17 (c) Analysis of Damage to Protected Lands- The Secretary and  
18 Secretaries concerned shall develop an analysis of damage to  
19 protected lands relating to illegal border activity, including the  
20 cost of equipment, training, recurring maintenance, construction  
21 of facilities, restoration of natural and cultural resources,  
22 recapitalization of facilities, and operations.

23 (d) Recommendations- The Secretary shall--

24 (1) develop joint recommendations with the National Park  
25 Service, the United States Fish and Wildlife Service, and  
26 the Forest Service for an appropriate cost recovery  
27 mechanism relating to items identified in subsection (c);  
28 and

29 (2) not later than one year from the date of enactment,  
30 submit to the appropriate congressional committees (as  
31 defined in section 2 of the Homeland Security Act of 2002  
32 (6 U.S.C. 101)), including the Subcommittee on National  
33 Parks of the Senate and the Subcommittee on National  
34 Parks, Recreation and Public Lands of the House of  
35 Representatives, the recommendations developed under  
36 paragraph (1).

37 (e) Border Protection Strategy- The Secretary, the Secretary of  
38 the Interior, and the Secretary of Agriculture shall jointly  
39 develop a border protection strategy that supports the border  
40 security needs of the United States in the manner that best  
41 protects the homeland, including--

- 1 (1) units of the National Park System;
- 2 (2) National Forest System land;
- 3 (3) land under the jurisdiction of the United States Fish
- 4 and Wildlife Service; and
- 5 (4) other relevant land under the jurisdiction of the
- 6 Department of the Interior or the Department of
- 7 Agriculture.

8 **SEC. 123. SECURE COMMUNICATION.**

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

- 13 (1) among all Border Patrol agents conducting operations
- 14 between ports of entry;
- 15 (2) between Border Patrol agents and their respective Border
- 16 Patrol stations; and
- 17 (3) between all appropriate border security agencies of the
- 18 Department and State, local, and tribal law enforcement
- 19 agencies.

20 **SEC. 124. UNMANNED AIRCRAFT SYSTEMS.**

21 (a) Unmanned Aircraft and Associated Infrastructure- The  
22 Secretary shall acquire and maintain unmanned aircraft systems  
23 for use on the border, including related equipment such as--

- 24 (1) additional sensors;
- 25 (2) critical spares;
- 26 (3) satellite command and control; and
- 27 (4) other necessary equipment for operational support.

28 (b) Authorization of Appropriations-

29 (1) IN GENERAL- There are authorized to be appropriated  
30 to the Secretary to carry out subsection (a)--

- 31 (A) \$178,400,000 for fiscal year 2008; and
- 32 (B) \$276,000,000 for fiscal year 2009.

33 (2) AVAILABILITY OF FUNDS- Amounts appropriated  
34 pursuant to paragraph (1) shall remain available until  
35 expended.

**SEC. 125. SURVEILLANCE TECHNOLOGIES PROGRAMS.**

(a) Aerial Surveillance Program-

(1) IN GENERAL- In conjunction with the border surveillance plan developed under section 5201 of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108-458; 8 U.S.C. 1701 note), the Secretary, not later than 90 days after the date of enactment of this Act, shall develop and implement a program to fully integrate and utilize aerial surveillance technologies, including unmanned aerial vehicles, to enhance the security of the international border between the United States and Canada and the international border between the United States and Mexico. The goal of the program shall be to ensure continuous monitoring of each mile of each such border.

(2) ASSESSMENT AND CONSULTATION REQUIREMENTS- In developing the program under this subsection, the Secretary shall—

(A) consider current and proposed aerial surveillance technologies;

(B) assess the feasibility and advisability of utilizing such technologies to address border threats, including an assessment of the technologies considered best suited to address respective threats;

(C) consult with the Secretary of Defense regarding any technologies or equipment, which the Secretary may deploy along an international border of the United States; and

(D) consult with the Administrator of the Federal Aviation Administration regarding safety, airspace coordination and regulation, and any other issues necessary for implementation of the program.

(3) ADDITIONAL REQUIREMENTS-

(A) IN GENERAL- The program developed under this subsection shall include the use of a variety of aerial surveillance technologies in a variety of topographies and areas, including populated and unpopulated areas located on or near an international border of the United States, in order to evaluate, for a range of circumstances--

- 1 (i) the significance of previous experiences
- 2 with such technologies in border security or
- 3 critical infrastructure protection;
- 4 (ii) the cost and effectiveness of various
- 5 technologies for border security, including
- 6 varying levels of technical complexity; and
- 7 (iii) liability, safety, and privacy concerns
- 8 relating to the utilization of such technologies
- 9 for border security.

10 (4) CONTINUED USE OF AERIAL SURVEILLANCE  
11 TECHNOLOGIES- The Secretary may continue the  
12 operation of aerial surveillance technologies while  
13 assessing the effectiveness of the utilization of such  
14 technologies.

15 (5) REPORT TO CONGRESS- Not later than 180 days after  
16 implementing the program under this subsection, the  
17 Secretary shall submit a report to Congress regarding the  
18 program developed under this subsection. The Secretary  
19 shall include in the report a description of the program  
20 together with such recommendations as the Secretary  
21 finds appropriate for enhancing the program.

22 (6) AUTHORIZATION OF APPROPRIATIONS- There are  
23 authorized to be appropriated such sums as may be  
24 necessary to carry out this subsection.

25 (b) Integrated and Automated Surveillance Program-

26 (1) REQUIREMENT FOR PROGRAM- Subject to the  
27 availability of appropriations, the Secretary shall establish  
28 a program to procure additional unmanned aerial vehicles,  
29 cameras, poles, sensors, satellites, radar coverage, and  
30 other technologies necessary to achieve operational control  
31 of the international borders of the United States and to  
32 establish a security perimeter known as a `virtual fence'  
33 along such international borders to provide a barrier to  
34 illegal immigration. Such program shall be known as the  
35 Integrated and Automated Surveillance Program.

36 (2) PROGRAM COMPONENTS- The Secretary shall ensure,  
37 to the maximum extent feasible, the Integrated and  
38 Automated Surveillance Program is carried out in a manner  
39 that—

- 40 (A) the technologies utilized in the Program are



1 integrated and function cohesively in an automated  
2 fashion, including the integration of motion sensor  
3 alerts and cameras, whereby a sensor alert  
4 automatically activates a corresponding camera to  
5 pan and tilt in the direction of the triggered sensor;  
6 (B) cameras utilized in the Program do not have to  
7 be manually operated;  
8 (C) such camera views and positions are not fixed;  
9 (D) surveillance video taken by such cameras can be  
10 viewed at multiple designated communications  
11 centers;  
12 (E) a standard process is used to collect, catalog,  
13 and report intrusion and response data collected  
14 under the Program;  
15 (F) future remote surveillance technology  
16 investments and upgrades for the Program can be  
17 integrated with existing systems;  
18 (G) performance measures are developed and  
19 applied that can evaluate whether the Program is  
20 providing desired results and increasing response  
21 effectiveness in monitoring and detecting illegal  
22 intrusions along the international borders of the  
23 United States;  
24 (H) plans are developed under the Program to  
25 streamline site selection, site validation, and  
26 environmental assessment processes to minimize  
27 delays of installing surveillance technology  
28 infrastructure;  
29 (I) standards are developed under the Program to  
30 expand the shared use of existing private and  
31 governmental structures to install remote  
32 surveillance technology infrastructure where  
33 possible; and  
34 (J) standards are developed under the Program to  
35 identify and deploy the use of nonpermanent or  
36 mobile surveillance platforms that will increase the  
37 Secretary's mobility and ability to identify illegal  
38 border intrusions.

39 (3) REPORT TO CONGRESS- Not later than 1 year after the

1 initial implementation of the Integrated and Automated  
2 Surveillance Program, the Secretary shall submit to  
3 Congress a report regarding the Program. The Secretary  
4 shall include in the report a description of the Program  
5 together with any recommendation that the Secretary  
6 finds appropriate for enhancing the program.

7 (4) EVALUATION OF CONTRACTORS-

8 (A) REQUIREMENT FOR STANDARDS- The Secretary  
9 shall develop appropriate standards to evaluate the  
10 performance of any contractor providing goods or  
11 services to carry out the Integrated and Automated  
12 Surveillance Program.

13 (B) REVIEW BY THE INSPECTOR GENERAL- The  
14 Inspector General of the Department shall timely  
15 review each new contract related to the Program  
16 that has a value of more than \$5,000,000, to  
17 determine whether such contract fully complies with  
18 applicable cost requirements, performance  
19 objectives, program milestones, and schedules. The  
20 Inspector General shall report the findings of such  
21 review to the Secretary in a timely manner. Not later  
22 than 30 days after the date the Secretary receives a  
23 report of findings from the Inspector General, the  
24 Secretary shall submit to the Committee on  
25 Homeland Security and Governmental Affairs of the  
26 Senate and the Committee on Homeland Security of  
27 the House of Representatives a report of such  
28 findings and a description of any the steps that the  
29 Secretary has taken or plans to take in response to  
30 such findings.

31 (5) AUTHORIZATION OF APPROPRIATIONS- There are  
32 authorized to be appropriated such sums as may be  
33 necessary to carry out this subsection.

34 **SEC. 126. SURVEILLANCE PLAN.**

35 (a) Requirement for Plan- The Secretary shall develop a  
36 comprehensive plan for the systematic surveillance of the  
37 international land and maritime borders of the United States.

38 (b) Content- The plan required by subsection (a) shall include  
39 the following:

40 (1) An assessment of existing technologies employed on

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

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

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

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

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

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

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

22 (c) Submission to Congress- Not later than 6 months after the  
23 date of the enactment of this Act, the Secretary shall submit to  
24 Congress the plan required by this section.

25 **SEC. 127. NATIONAL STRATEGY FOR BORDER SECURITY.**

26 (a) Requirement for Strategy- The Secretary, in consultation  
27 with the heads of other appropriate Federal agencies, shall  
28 develop a National Strategy for Border Security that describes  
29 actions to be carried out to achieve operational control over all  
30 ports of entry into the United States and the international land  
31 and maritime borders of the United States.

32 (b) Content- The National Strategy for Border Security shall  
33 include the following:

34 (1) The implementation schedule for the comprehensive  
35 plan for systematic surveillance described in section 136.

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

- 1 (3) A risk assessment for all United States ports of entry  
2 and all portions of the international land and maritime  
3 borders of the United States that includes a description of  
4 activities being undertaken--
- 5 (A) to prevent the entry of terrorists, other unlawful  
6 aliens, instruments of terrorism, narcotics, and other  
7 contraband into the United States; and
- 8 (B) to protect critical infrastructure at or near such  
9 ports of entry or borders.
- 10 (4) An assessment of the legal requirements that prevent  
11 achieving and maintaining operational control over the  
12 entire international land and maritime borders of the  
13 United States.
- 14 (5) An assessment of the most appropriate, practical, and  
15 cost-effective means of defending the international land  
16 and maritime borders of the United States against threats  
17 to security and illegal transit, including intelligence  
18 capacities, technology, equipment, personnel, and training  
19 needed to address security vulnerabilities.
- 20 (6) An assessment of staffing needs for all border security  
21 functions, taking into account threat and vulnerability  
22 information pertaining to the borders and the impact of  
23 new security programs, policies, and technologies.
- 24 (7) A description of the border security roles and missions  
25 of Federal, State, regional, local, and tribal authorities, and  
26 recommendations regarding actions the Secretary can  
27 carry out to improve coordination with such authorities to  
28 enable border security and enforcement activities to be  
29 carried out in a more efficient and effective manner.
- 30 (8) An assessment of existing efforts and technologies  
31 used for border security and the effect of the use of such  
32 efforts and technologies on civil rights, personal property  
33 rights, privacy rights, and civil liberties, including an  
34 assessment of efforts to take into account asylum seekers,  
35 trafficking victims, unaccompanied minor aliens, and other  
36 vulnerable populations.
- 37 (9) A prioritized list of research and development  
38 objectives to enhance the security of the international land  
39 and maritime borders of the United States.
- 40 (10) A description of ways to ensure that the free flow of

1 travel and commerce is not diminished by efforts,  
2 activities, and programs aimed at securing the  
3 international land and maritime borders of the United  
4 States.

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

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

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

19 (c) Consultation- In developing the National Strategy for Border  
20 Security, the Secretary shall consult with representatives of--

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

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

27 (d) Coordination- The National Strategy for Border Security shall  
28 be consistent with the National Strategy for Maritime Security  
29 developed pursuant to Homeland Security Presidential Directive  
30 13, dated December 21, 2004.

31 (e) Submission to Congress-

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

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

39 (f) Immediate Action- Nothing in this section or section 111 may

1 be construed to relieve the Secretary of the responsibility to take  
2 all actions necessary and appropriate to achieve and maintain  
3 operational control over the entire international land and  
4 maritime borders of the United States.

5 **SEC. 128. BORDER PATROL TRAINING CAPACITY REVIEW.**

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

10 (b) Components of Review- The review under subsection (a)  
11 shall include the following components:

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

19 (2) A review and a detailed breakdown of the costs  
20 incurred by the Bureau of Customs and Border Protection  
21 and the Federal Law Enforcement Training Center to train  
22 1 new Border Patrol agent.

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

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

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

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

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

37 **SEC. 129. BIOMETRIC DATA ENHANCEMENTS.**

38 Not later than October 1, 2008, the Secretary shall--

1 (1) in consultation with the Attorney General, enhance  
2 connectivity between the Automated Biometric Fingerprint  
3 Identification System (IDENT) of the Department and the  
4 Integrated Automated Fingerprint Identification System  
5 (IAFIS) of the Federal Bureau of Investigation to ensure  
6 more expeditious data searches; and

7 (2) in consultation with the Secretary of State, collect all  
8 fingerprints from each alien required to provide  
9 fingerprints during the alien's initial enrollment in the  
10 integrated entry and exit data system described in section  
11 110 of the Illegal Immigration Reform and Immigrant  
12 Responsibility Act of 1996 (8 U.S.C. 1365a).

13 **SEC. 130. US-VISIT SYSTEM.**

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

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

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

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

26 **SEC. 131. DOCUMENT FRAUD DETECTION.**

27 (a) Training- Subject to the availability of appropriations, the  
28 Secretary shall provide all U.S. Customs and Border Protection  
29 officers with training in identifying and detecting fraudulent  
30 travel documents. Such training shall be developed in  
31 consultation with the head of the Forensic Document Laboratory  
32 of the U.S. Immigration and Customs Enforcement.

33 (b) Forensic Document Laboratory- The Secretary shall provide  
34 all U.S. Customs and Border Protection officers with access to  
35 the Forensic Document Laboratory.

36 (c) Assessment-

37 (1) REQUIREMENT FOR ASSESSMENT- The Inspector  
38 General of the Department shall conduct an independent  
39 assessment of the accuracy and reliability of the Forensic

1 Document Laboratory.

2 (2) REPORT TO CONGRESS- Not later than 6 months after  
3 the date of the enactment of this Act, the Inspector  
4 General shall submit to Congress the findings of the  
5 assessment required by paragraph (1).

6 (d) Authorization of Appropriations- There are authorized to be  
7 appropriated to the Secretary such sums as may be necessary  
8 for each of fiscal years 2008 through 2012 to carry out this  
9 section.

10 **SEC. 132. BORDER RELIEF GRANT PROGRAM.**

11 (a) Grants Authorized-

12 (1) IN GENERAL- The Secretary is authorized to award  
13 grants, subject to the availability of appropriations, to an  
14 eligible law enforcement agency to provide assistance to  
15 such agency to address--

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

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

21 (2) DURATION- Grants may be awarded under this  
22 subsection during fiscal years 2008 through 2012.

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

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

28 (B) located no more than 100 miles from a United  
29 States border with--

30 (i) Canada; or

31 (ii) Mexico.

32 (b) Use of Funds- Grants awarded pursuant to subsection (a)  
33 may only be used to provide additional resources for an eligible  
34 law enforcement agency to address criminal activity occurring  
35 along any such border, including--

36 (1) to obtain equipment;

37 (2) to hire additional personnel;



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- 1 (3) to upgrade and maintain law enforcement technology;  
2 (4) to cover operational costs, including overtime and  
3 transportation costs; and  
4 (5) such other resources as are available to assist that  
5 agency.

6 (c) Application-

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

12 (2) CONTENTS- Each application submitted pursuant to  
13 paragraph (1) shall--

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

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

19 (d) Definitions- For the purposes of this section:

20 (1) ELIGIBLE LAW ENFORCEMENT AGENCY- The term  
21 `eligible law enforcement agency' means a tribal, State, or  
22 local law enforcement agency—

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

25 (i) Canada; or

26 (ii) Mexico; or

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

30 (2) HIGH IMPACT AREA- The term `High Impact Area'  
31 means any county designated by the Secretary as such,  
32 taking into consideration--

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

37 (B) the relationship between any lack of security

1 along the United States border and the rise, if any,  
2 of criminal activity in that county; and  
3 (C) any other unique challenges that local law  
4 enforcement face due to a lack of security along the  
5 United States border.

6 (e) Authorization of Appropriations-

7 (1) IN GENERAL- There are authorized to be appropriated  
8 \$50,000,000 for each of fiscal years 2008 through 2012 to  
9 carry out the provisions of this section.

10 (2) DIVISION OF AUTHORIZED FUNDS- Of the amounts  
11 authorized under paragraph (1)--

12 (A) 2/3 shall be set aside for eligible law  
13 enforcement agencies located in the 6 States with  
14 the largest number of undocumented alien  
15 apprehensions; and

16 (B) 1/3 shall be set aside for areas designated as a  
17 High Impact Area under subsection (d).

18 (f) Supplement Not Supplant- Amounts appropriated for grants  
19 under this section shall be used to supplement and not supplant  
20 other State and local public funds obligated for the purposes  
21 provided under this title.

22 **SEC. 133. PORT OF ENTRY INFRASTRUCTURE ASSESSMENT**  
23 **STUDY.**

24 (a) Requirement To Update- Not later than January 31 of each  
25 year, the Administrator of General Services, in consultation with  
26 U.S. Customs and Border Protection, shall update the Port of  
27 Entry Infrastructure Assessment Study prepared by U.S.  
28 Customs and Border Protection in accordance with the matter  
29 relating to the ports of entry infrastructure assessment that is  
30 set out in the joint explanatory statement in the conference  
31 report accompanying H.R. 2490 of the 106th Congress, 1st  
32 session (House of Representatives Rep. No. 106-319, on page  
33 67) and submit such updated study to Congress.

34 (b) Consultation- In preparing the updated studies required in  
35 subsection (a), the Administrator of General Services shall  
36 consult with the Director of the Office of Management and  
37 Budget, the Secretary, and the Commissioner.

38 (c) Content- Each updated study required in subsection (a) shall-  
39 (1) identify port of entry infrastructure and technology

1 improvement projects that would enhance border security  
2 and facilitate the flow of legitimate commerce if  
3 implemented;

4 (2) include the projects identified in the National Land  
5 Border Security Plan required by section; and

6 (3) prioritize the projects described in paragraphs (1) and  
7 (2) based on the ability of a project to--

8 (A) fulfill immediate security requirements; and

9 (B) facilitate trade across the borders of the United  
10 States.

11 (d) Project Implementation- The Commissioner shall implement  
12 the infrastructure and technology improvement projects  
13 described in subsection (c) in the order of priority assigned to  
14 each project under subsection (c)(3).

15 (e) Divergence From Priorities- The Commissioner may diverge  
16 from the priority order if the Commissioner determines that  
17 significantly changed circumstances, such as immediate security  
18 needs or changes in infrastructure in Mexico or Canada,  
19 compellingly alter the need for a project in the United States.

20 **SEC. 134. NATIONAL LAND BORDER SECURITY PLAN.**

21 (a) In General- Not later than 1 year after the date of the  
22 enactment of this Act, an annually thereafter, the Secretary,  
23 after consultation with representatives of Federal, State, and  
24 local law enforcement agencies and private entities that are  
25 involved in international trade across the northern border or the  
26 southern border, shall submit a National Land Border Security  
27 Plan to Congress.

28 (b) Vulnerability Assessment-

29 (1) IN GENERAL- The plan required in subsection (a) shall  
30 include a vulnerability assessment of each port of entry  
31 located on the northern border or the southern border.

32 (2) PORT SECURITY COORDINATORS- The Secretary may  
33 establish 1 or more port security coordinators at each port  
34 of entry located on the northern border or the southern  
35 border--

36 (A) to assist in conducting a vulnerability assessment  
37 at such port; and

38 (B) to provide other assistance with the preparation

1 of the plan required in subsection (a).

2 **SEC. 135. PORT OF ENTRY TECHNOLOGY DEMONSTRATION**  
3 **PROGRAM.**

4 (a) Establishment- The Secretary shall carry out a technology  
5 demonstration program to—

6 (1) test and evaluate new port of entry technologies;

7 (2) refine port of entry technologies and operational  
8 concepts; and

9 (3) train personnel under realistic conditions.

10 (b) Technology and Facilities-

11 (1) TECHNOLOGY TESTING- Under the technology  
12 demonstration program, the Secretary shall test  
13 technologies that enhance port of entry operations,  
14 including operations related to--

15 (A) inspections;

16 (B) communications;

17 (C) port tracking;

18 (D) identification of persons and cargo;

19 (E) sensory devices;

20 (F) personal detection;

21 (G) decision support; and

22 (H) the detection and identification of weapons of  
23 mass destruction.

24 (2) DEVELOPMENT OF FACILITIES- At a demonstration site  
25 selected pursuant to subsection (c)(2), the Secretary shall  
26 develop facilities to provide appropriate training to law  
27 enforcement personnel who have responsibility for border  
28 security, including--

29 (A) cross-training among agencies;

30 (B) advanced law enforcement training; and

31 (C) equipment orientation.

32 (c) Demonstration Sites-

33 (1) NUMBER- The Secretary shall carry out the  
34 demonstration program at not less than 3 sites and not  
35 more than 5 sites.

1 (2) SELECTION CRITERIA- To ensure that at least 1 of the  
2 facilities selected as a port of entry demonstration site for  
3 the demonstration program has the most up-to-date  
4 design, contains sufficient space to conduct the  
5 demonstration program, has a traffic volume low enough  
6 to easily incorporate new technologies without interrupting  
7 normal processing activity, and can efficiently carry out  
8 demonstration and port of entry operations, at least 1 port  
9 of entry selected as a demonstration site shall--

10 (A) have been established not more than 15 years  
11 before the date of the enactment of this Act;

12 (B) consist of not less than 65 acres, with the  
13 possibility of expansion to not less than 25 adjacent  
14 acres; and

15 (C) have serviced an average of not more than  
16 50,000 vehicles per month during the 1-year period  
17 ending on the date of the enactment of this Act.

18 (d) Relationship With Other Agencies- The Secretary shall permit  
19 personnel from an appropriate Federal or State agency to utilize  
20 a demonstration site described in subsection (c) to test  
21 technologies that enhance port of entry operations, including  
22 technologies described in subparagraphs (A) through (H) of  
23 subsection (b)(1).

24 (e) Report-

25 (1) REQUIREMENT- Not later than 1 year after the date of  
26 the enactment of this Act, and annually thereafter, the  
27 Secretary shall submit to Congress a report on the  
28 activities carried out at each demonstration site under the  
29 technology demonstration program established under this  
30 section.

31 (2) CONTENT- The report submitted under paragraph (1)  
32 shall include an assessment by the Secretary of the  
33 feasibility of incorporating any demonstrated technology  
34 for use throughout the U.S. Customs and Border  
35 Protection.

36 **SEC. 136. COMBATING HUMAN SMUGGLING.**

37 (a) Requirement for Plan- The Secretary shall develop and  
38 implement a plan to improve coordination between the U.S.  
39 Immigration and Customs Enforcement and the U.S. Customs  
40 and Border Protection of the Department and any other Federal,

1 State, local, or tribal authorities, as determined appropriate by  
2 the Secretary, to improve coordination efforts to combat human  
3 smuggling.

4 (b) Content- In developing the plan required by subsection (a),  
5 the Secretary shall consider--

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

8 (2) adequate and effective personnel training;

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

11 (4) effective utilization of--

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

13 and

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

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

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

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

29 (d) Savings Provision- Nothing in this section may be construed  
30 to provide additional authority to any State or local entity to  
31 enforce Federal immigration laws.

32 **SEC. 137. INCREASE OF FEDERAL DETENTION SPACE AND THE**  
33 **UTILIZATION OF FACILITIES IDENTIFIED FOR CLOSURES AS A**  
34 **RESULT OF THE DEFENSE BASE CLOSURE REALIGNMENT ACT OF**  
35 **1990.**

36 (a) Construction or Acquisition of Detention Facilities-

37 (1) IN GENERAL- The Secretary shall construct or acquire,

1 in addition to existing facilities for the detention of aliens,  
2 at least 20 detention facilities in the United States that  
3 have the capacity to detain a combined total of not less  
4 than 20,000 individuals at any time for aliens detained  
5 pending removal or a decision on removal of such aliens  
6 from the United States subject to available appropriations.

7 (b) Construction of or Acquisition of Detention Facilities-

8 (1) REQUIREMENT TO CONSTRUCT OR ACQUIRE- The  
9 Secretary shall construct or acquire additional detention  
10 facilities in the United States to accommodate the  
11 detention beds required by section 5204(a) of the  
12 Intelligence Reform and Terrorism Protection Act of 2004,  
13 as amended by subsection (a), subject to available  
14 appropriations.

15 (2) USE OF ALTERNATE DETENTION FACILITIES- Subject  
16 to the availability of appropriations, the Secretary shall  
17 fully utilize all possible options to cost effectively increase  
18 available detention capacities, and shall utilize detention  
19 facilities that are owned and operated by the Federal  
20 Government if the use of such facilities is cost effective.

21 (3) USE OF INSTALLATIONS UNDER BASE CLOSURE  
22 LAWS- In acquiring additional detention facilities under this  
23 subsection, the Secretary shall consider the transfer of  
24 appropriate portions of military installations approved for  
25 closure or realignment under the Defense Base Closure  
26 and Realignment Act of 1990 (part A of title XXIX of Public  
27 Law 101-510; 10 U.S.C. 2687 note) for use in accordance  
28 with subsection (a).

29 (4) DETERMINATION OF LOCATION- The location of any  
30 detention facility constructed or acquired in accordance  
31 with this subsection shall be determined, with the  
32 concurrence of the Secretary, by the senior officer  
33 responsible for Detention and Removal Operations in the  
34 Department. The detention facilities shall be located so as  
35 to enable the officers and employees of the Department to  
36 increase to the maximum extent practicable the annual  
37 rate and level of removals of illegal aliens from the United  
38 States.

39 (c) Annual Report to Congress- Not later than 1 year after the  
40 date of the enactment of this Act, and annually thereafter, in  
41 consultation with the heads of other appropriate Federal

1 agencies, the Secretary shall submit to Congress an assessment  
2 of the additional detention facilities and bed space needed to  
3 detain unlawful aliens apprehended at the United States ports of  
4 entry or along the international land borders of the United  
5 States.

6 (d) Technical and Conforming Amendment- Section 241(g)(1) (8  
7 U.S.C. 1231(g)(1)) is amended by striking 'may expend' and  
8 inserting 'shall expend'.

9 (e) Authorization of Appropriations- There are authorized to be  
10 appropriated such sums as may be necessary to carry out this  
11 section.

12 **Sec. 138. UNITED STATES-MEXICO BORDER ENFORCEMENT**  
13 **REVIEW COMMISSION.**

14 (a) Establishment of Commission.-

15 (1) IN GENERAL-There is established an independent  
16 commission to be known as the United States-Mexico  
17 Border Enforcement Review Commission (referred to in  
18 this section as the "Commission").

19 (2) PURPOSES-The purposes of the Commission are-

20 (A) to study the overall enforcement strategies,  
21 programs and policies of Federal agencies along the  
22 United States-Mexico border; and

23 (B) to make recommendations to the President and  
24 Congress with respect to such strategies, programs  
25 and policies.

26 (3) MEMBERSHIP-The Commission shall be composed of 17  
27 voting members, who shall be appointed as follows:

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

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

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

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

38 (B) 2 nonvoting members, of whom-



- 1 (i) 1 shall be appointed by the Secretary;
- 2 (ii) 1 shall be appointed by the Attorney
- 3 General; and
- 4 (iii) 1 shall be appointed by the Secretary of
- 5 State.[BC1]

6 (4) QUALIFICATIONS-

7 (A) IN GENERAL-Members of the Commission shall

8 be-

9 (i) individuals with expertise in migration,

10 border enforcement and protection, civil and

11 human rights, community relations, cross-

12 border trade and commerce or other pertinent

13 qualifications or experience; and

14 (ii) representative of a broad cross section of

15 perspectives from the region along the

16 international border between the United States

17 and Mexico;

18 (B) POLITICAL AFFILIATION-Not more than 2

19 members of the Commission appointed by each

20 Governor under paragraph (3)(A) may be members

21 of the same political party.

22 (C) NONGOVERNMENTAL APPOINTEES-An individual

23 appointed as a voting member to the Commission

24 may not be an officer or employee of the Federal

25 Government.

26 (5) DEADLINE FOR APPOINTMENT-All members of the

27 Commission shall be appointed not later than 6 months

28 after the enactment of this Act. If any member of the

29 Commission described in paragraph (3)(A) is not appointed

30 by such date, the Commission shall carry out its duties

31 under this section without the participation of such

32 member.

33 (6) TERM OF SERVICE-The term of office for members

34 shall be for life of the Commission.

35 (7) VACANCIES-Any vacancy in the Commission shall not

36 affect its powers, but shall be filled in the same manner in

37 which the original appointment was made.

38 (8) MEETINGS-

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1 (A) INITIAL MEETING-The Commission shall meet  
2 and begin the operations of the Commission as soon  
3 as practicable.

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

7 (9) QUORUM-Nine members of the Commission shall  
8 constitute a quorum.

9 (10) CHAIR AND VICE CHAIR-The voting members of the  
10 Commission shall elect a Chairman and Vice Chairman  
11 from among its members. The term of office shall be for  
12 the life of the Commission.

13 (b) Duties-The Commission shall review, examine, and make  
14 recommendations regarding border enforcement policies,  
15 strategies, and programs, including recommendations regarding-

16 (1) the protection of human and civil rights of community  
17 residents and migrants along the international border  
18 between the United States and Mexico;

19 (2) the adequacy and effectiveness of human and civil  
20 rights training of enforcement personnel on such border;

21 (3) the adequacy of the complaint process within the  
22 agencies and programs of the Department that are  
23 employed when an individual files a grievance;

24 (4) the effect of the operations, technology, and  
25 enforcement infrastructure along such border on the-

26 (A) environment;

27 (B) cross border traffic and commerce; and

28 (C) the quality of life of border communities;

29 (5) local law enforcement involvement in the enforcement  
30 of Federal immigration law; and

31 (6) any other matters regarding border enforcement  
32 policies, strategies, and programs the Commission  
33 determines appropriate.

34 (c) Information and Assistance From Federal Agencies.-

35 (1) INFORMATION FROM FEDERAL AGENCIES-The  
36 Commission may seek directly from any department or  
37 agency of the United States such information, including

1 suggestions, estimates, and statistics, as allowed by law  
2 and as the Commission considers necessary to carry out  
3 the provisions of this section. Upon request of the  
4 Commission, the head of such department or agency shall  
5 furnish such information to the Commission.

6 (2) ASSISTANCE FROM FEDERAL AGENCIES-The  
7 Administrator of General Services shall, on a reimbursable  
8 basis, provide the Commission with administrative support  
9 and other services for the performance of the  
10 Commission's functions. The departments and agencies of  
11 the United States may provide the Commission with such  
12 services, funds, facilities, staff, and other support services  
13 as they determine advisable and as authorized by law.

14 (d) Compensation-

15 (1) IN GENERAL-Members of the Commission shall serve  
16 without pay.

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

22 (e) Report-Not later than 2 years after the date of the first  
23 meeting called pursuant to (a)(8)(A), the Commission shall  
24 submit a report to the President and Congress that contains-

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

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

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

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

35 (f) Authorization of Appropriations-There are authorized to be  
36 appropriated such sums as may be necessary to carry out this  
37 section.

38 (g) Sunset-Unless the Commission is reauthorized by Congress,  
39 the Commission shall terminate on the date that is 90 days after

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- 1 the date the Commission submits the report described in
- 2 subsection (e).
- 3

1

**TITLE II--INTERIOR ENFORCEMENT**

2

**SEC. 201. ADDITIONAL IMMIGRATION**

3

**PERSONNEL.**

4

(a) Department of Homeland Security.—

5

(1) TRIAL ATTORNEYS.—In each of the fiscal years 2008 through 2012, the Secretary, subject to the availability of appropriations for such purpose, shall increase the number of positions for attorneys in the Office of General Counsel of the Department who represent the Department in immigration matters by not less than 100 compared to the number of such positions for which funds were made available during the preceding fiscal year.

13

(2) USCIS ADJUDICATORS.— In each of the fiscal years 2008 through 2012, the Secretary, subject to the availability of appropriations for such purpose, shall increase the number of positions for adjudicators in the United States Citizenship and Immigration Service by not less than 100 compared to the number of such positions for which funds were made available during the preceding fiscal year.

20

(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary for each of the fiscal years 2008 through 2012 such sums as may be necessary to carry out paragraphs (1) and (2).

24

25

(b) Department of Justice.—

26

(1) JUDICIAL CLERKS—The Attorney General shall, subject to the availability of appropriations for such purpose, appoint necessary law clerks for immigration judges and Board of Immigration Appeals members of no less than one per judge and member. A law clerk appointed under this section shall be exempt from the provisions of subchapter I of chapter 63 of title 5 [5 USCS §§ 6301 et seq.]

33

(2) LITIGATION ATTORNEYS.—In each of the fiscal years 2008 through 2012, 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 by not less than 50 compared to the number of such positions for which funds were made available during the preceding fiscal year.

40

1 (3) UNITED STATES ATTORNEYS.—In each of the fiscal years 2008  
2 through 2012,  
3 the Attorney General, subject to the availability of appropriations  
4 for such purpose, shall increase the number of attorneys in the  
5 United States Attorneys’ office to litigate immigration cases in  
6 the Federal courts by not less than 50 compared to the number  
7 of such positions for which funds were made available during the  
8 preceding fiscal year.

9 (4) IMMIGRATION JUDGES.—In each of the fiscal years 2008 through  
10 2012, the  
11 Attorney General, subject to the availability of appropriations for  
12 such purpose,  
13 shall—

14 (A) increase by not less than 20 the number of full-time  
15 immigration judges compared to the number of such  
16 positions for which funds were made available during the  
17 preceding fiscal year; and

18 (B) increase by not less than 80 the number of positions  
19 for personnel to  
20 support the immigration judges described in subparagraph  
21 (A) compared to the number of such positions for which  
22 funds were made available during the preceding fiscal  
23 year.

24 (5) BOARD OF IMMIGRATION APPEALS MEMBERS.—The Attorney General  
25 shall, subject to the availability of appropriations, increase by 10  
26 the number members of the Board of Immigration Appeals over  
27 the number of members serving on the date of enactment of this  
28 Act.

29 (6) STAFF ATTORNEYS.—In each of the fiscal years 2008 through  
30 2012, the  
31 Attorney General shall, subject to the availability of  
32 appropriations for such  
33 purpose—

34 (A) increase the number of positions for full-time staff  
35 attorneys in the Board of Immigration Appeals by not less  
36 than 20 compared to the number of such positions for  
37 which funds were made available during the preceding  
38 fiscal year; and

39 (B) increase the number of positions for personnel to  
40 support the staff  
41 attorneys described in subparagraph (A) by not less than  
42 10 compared to the number of such positions for which  
43 funds were made available during the preceding fiscal  
44 year.

1 (7) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be  
2 appropriated to the Attorney General for each of the fiscal years  
3 2008 through 2012 such sums as may be necessary to carry out  
4 this subsection, including the hiring of necessary support staff.  
5

6 (c) Administrative Office of the United States Courts.—In each of the  
7 fiscal years 2008  
8 through 2012, the Director of the Administrative Office of the United  
9 States Courts,  
10 subject to the availability of appropriations, shall increase the number  
11 of attorneys in the  
12 Federal Defenders Program who litigate criminal immigration cases in  
13 the Federal courts  
14 by not less than 50 compared to the number of such positions for  
15 which funds were made  
16 available during the preceding fiscal year.  
17

18 (d) Legal Orientation Program.

19 (1) CONTINUED OPERATION.—The Director of the Executive Office for  
20 Immigration Review shall continue to operate a legal orientation  
21 program to provide basic information about immigration court  
22 procedures for immigration detainees and shall expand the legal  
23 orientation program to provide such information on a nationwide basis.

24 (2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be  
25 appropriated such sums as may be necessary to carry out such legal  
26 orientation program.

27 **SEC. 202. DETENTION AND REMOVAL OF ALIENS ORDERED**  
28 **REMOVED.**

29 (a) In General-

30 (1) AMENDMENTS- Section 241(a) (8 U.S.C. 1231(a)) is  
31 amended--

32 (A) by striking `Attorney General' the first place it  
33 appears, except for the first reference in clause  
34 (a)(4)(B)(i), and inserting `Secretary of Homeland  
35 Security';

36 (B) by striking `Attorney General' any other place it  
37 appears and inserting `Secretary';

38 (C) in paragraph (1)--

39 (i) in subparagraph (B), by amending clause

40 (ii) to read as follows:

41 ` (ii) If a court, the Board of Immigration

42 Appeals, or an immigration judge orders a stay

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1 of the removal of the alien, the expiration date  
2 of the stay of removal.';  
3 (ii) by amending subparagraph (C) to read as  
4 follows:  
5 ` (C) EXTENSION OF PERIOD- The removal period  
6 shall be extended beyond a period of 90 days and  
7 the alien may remain in detention during such  
8 extended period if the alien fails or refuses to--  
9 ` (i) make all reasonable efforts to comply with  
10 the removal order; or  
11 ` (ii) fully cooperate with the Secretary's efforts  
12 to establish the alien's identity and carry out  
13 the removal order, including failing to make  
14 timely application in good faith for travel or  
15 other documents necessary to the alien's  
16 departure, or conspiring or acting to prevent  
17 the alien's removal.'; and  
18 (iii) by adding at the end the following:  
19 ` (D) TOLLING OF PERIOD- If, at the time described  
20 in subparagraph (B), the alien is not in the custody  
21 of the Secretary under the authority of this Act, the  
22 removal period shall not begin until the alien is taken  
23 into such custody. If the Secretary lawfully transfers  
24 custody of the alien during the removal period to  
25 another Federal agency or to a State or local  
26 government agency in connection with the official  
27 duties of such agency, the removal period shall be  
28 tolled, and shall recommence on the date on which  
29 the alien is returned to the custody of the  
30 Secretary.';  
31 (D) in paragraph (2), by adding at the end the  
32 following: ` If a court, the Board of Immigration  
33 Appeals, or an immigration judge orders a stay of  
34 removal of an alien who is subject to an  
35 administrative final order of removal, the Secretary,  
36 in the exercise of discretion, may detain the alien  
37 during the pendency of such stay of removal.';  
38 (E) in paragraph (3), by amending subparagraph (D)  
39 to read as follows:  
40 ` (D) to obey reasonable restrictions on the alien's  
41 conduct or activities, or to perform affirmative acts,  
42 that the Secretary prescribes for the alien--  
43 ` (i) to prevent the alien from absconding;  
44 ` (ii) for the protection of the community; or



1                   ` (iii) for other purposes related to the  
2                   enforcement of the immigration laws.';  
3                   (F) in paragraph (6), by striking ` removal period  
4                   and, if released,' and inserting ` removal period, in  
5                   the discretion of the Secretary, without any  
6                   limitations other than those specified in this section,  
7                   until the alien is removed. If an alien is released, the  
8                   alien';  
9                   (G) by redesignating paragraph (7) as paragraph  
10                  (10); and  
11                  (H) by inserting after paragraph (6) the following:  
12                  ` (7) PAROLE- If an alien detained pursuant to paragraph  
13                  (6) is an applicant for admission, the Secretary of  
14                  Homeland Security, in the Secretary's discretion, may  
15                  parole the alien under section 212(d)(5) and may provide,  
16                  notwithstanding section 212(d)(5), that the alien shall not  
17                  be returned to custody unless either the alien violates the  
18                  conditions of the alien's parole or the alien's removal  
19                  becomes reasonably foreseeable, provided that in no  
20                  circumstance shall such alien be considered admitted.  
21                  ` (8) ADDITIONAL RULES FOR DETENTION OR RELEASE OF  
22                  ALIENS- The following procedures shall apply to an alien  
23                  detained under this section:  
24                  ` (A) DETENTION REVIEW PROCESS FOR ALIENS  
25                  WHO HAVE EFFECTED AN ENTRY AND FULLY  
26                  COOPERATE WITH REMOVAL- The Secretary of  
27                  Homeland Security shall establish an administrative  
28                  review process to determine whether an alien  
29                  described in subparagraph (B) should be detained or  
30                  released after the removal period in accordance with  
31                  this paragraph.  
32                  ` (B) ALIEN DESCRIBED- An alien is described in this  
33                  subparagraph if the alien--  
34                      ` (i) has effected an entry into the United  
35                      States;  
36                      ` (ii) has made all reasonable efforts to comply  
37                      with the alien's removal order;  
38                      ` (iii) has cooperated fully with the Secretary's  
39                      efforts to establish the alien's identity and to  
40                      carry out the removal order, including making  
41                      timely application in good faith for travel or  
42                      other documents necessary for the alien's  
43                      departure; and

1                   ` (iv) has not conspired or acted to prevent  
2                   removal.  
3           ` (C) EVIDENCE- In making a determination under  
4           subparagraph (A), the Secretary--  
5                   ` (i) shall consider any evidence submitted by  
6                   the alien;  
7                   ` (ii) may consider any other evidence,  
8                   including--  
9                           ` (I) any information or assistance  
10                           provided by the Department of State or  
11                           other Federal agency; and  
12                           ` (II) any other information available to  
13                           the Secretary pertaining to the ability to  
14                           remove the alien.  
15           ` (D) AUTHORITY TO DETAIN FOR 90 DAYS BEYOND  
16           REMOVAL PERIOD- The Secretary, in the exercise of  
17           the Secretary's discretion and without any limitations  
18           other than those specified in this section, may detain  
19           an alien for 90 days beyond the removal period  
20           (including any extension of the removal period under  
21           paragraph (1)(C)).  
22           ` (E) AUTHORITY TO DETAIN FOR ADDITIONAL  
23           PERIOD- The Secretary, in the exercise of the  
24           Secretary's discretion and without any limitations  
25           other than those specified in this section, may detain  
26           an alien beyond the 90-day period authorized under  
27           subparagraph (D) until the alien is removed, if the  
28           Secretary--  
29                   ` (i) determines that there is a significant  
30                   likelihood that the alien will be removed in the  
31                   reasonably foreseeable future; or  
32                   ` (ii) certifies in writing--  
33                           ` (I) in consultation with the Secretary of  
34                           Health and Human Services, that the  
35                           alien has a highly contagious disease  
36                           that poses a threat to public safety;  
37                           ` (II) after receipt of a written  
38                           recommendation from the Secretary of  
39                           State, that the release of the alien would  
40                           likely have serious adverse foreign policy  
41                           consequences for the United States;  
42                           ` (III) based on information available to  
43                           the Secretary (including classified,  
44                           sensitive, or national security

1 information, and regardless of the  
2 grounds upon which the alien was  
3 ordered removed), that there is reason  
4 to believe that the release of the alien  
5 would threaten the national security of  
6 the United States;  
7 ` (IV) that--

8 ` (aa) the release of the alien would  
9 threaten the safety of the community or  
10 any person, and conditions of release  
11 cannot reasonably be expected to ensure  
12 the safety of the community or any  
13 person; and

14 ` (bb) the alien--

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

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

31 ` (V) that--

32 ` (aa) the release of the alien would  
33 threaten the safety of the community or  
34 any person, notwithstanding conditions  
35 of release designed to ensure the safety  
36 of the community or any person; and

1                                   ` (bb) the alien has been convicted of 1  
2                                   or more aggravated felonies (as defined  
3                                   in section 101(a)(43)) for which the alien  
4                                   was sentenced to an aggregate term of  
5                                   imprisonment of not less than 1 year.

6                                   ` (F) ATTORNEY GENERAL REVIEW – If the Secretary  
7                                   authorizes an extension of detention under  
8                                   subparagraph (E), the alien may seek review of that  
9                                   determination before the Attorney General. If the  
10                                  Attorney General concludes that the alien should be  
11                                  released, then the Secretary shall release the alien  
12                                  pursuant to subparagraph (I). The Attorney General,  
13                                  in consultation with the Secretary, shall promulgate  
14                                  regulations governing review under this paragraph.

15                                  ` (G) ADMINISTRATIVE REVIEW PROCESS- The  
16                                  Secretary, without any limitations other than those  
17                                  specified in this section, may detain an alien pending  
18                                  a determination under subparagraph (E)(ii), if the  
19                                  Secretary has initiated the administrative review  
20                                  process identified in subparagraph (A) not later than  
21                                  30 days after the expiration of the removal period  
22                                  (including any extension of the removal period under  
23                                  paragraph (1)(C)).

24  
25                                  ` (H) RENEWAL AND DELEGATION OF  
26                                  CERTIFICATION-

27                                  ` (i) RENEWAL- The Secretary may renew a  
28                                  certification under subparagraph (E)(ii) every 6  
29                                  months, without limitation, after providing the  
30                                  alien with an opportunity to request  
31                                  reconsideration of the certification and to  
32                                  submit documents or other evidence in support  
33                                  of that request. If the Secretary does not  
34                                  renew such certification, the Secretary shall  
35                                  release the alien, pursuant to subparagraph  
36                                  (I). If the Secretary authorizes an extension of  
37                                  detention under paragraph (E), the alien may  
38                                  seek review of that determination before the  
39                                  Attorney General. If the Attorney General  
40                                  concludes that the alien should be released,  
41                                  then the Secretary shall release the alien  
42                                  pursuant to subparagraph (I).

- 1                   ` (ii) DELEGATION- Notwithstanding any other  
2                   provision of law, the Secretary may not  
3                   delegate the authority to make or renew a  
4                   certification described in subclause (II), (III),  
5                   or (V) of subparagraph (E)(ii) below the level  
6                   of the Assistant Secretary for Immigration and  
7                   Customs Enforcement.  
8                   ` (iii) HEARING- The Secretary may request  
9                   that the Attorney General, or a designee of the  
10                  Attorney General, provide for a hearing to  
11                  make the determination described in  
12                  subparagraph (E)(ii)(IV)(bb)(BB).  
13                  ` (I) RELEASE ON CONDITIONS- If it is determined  
14                  that an alien should be released from detention, the  
15                  Secretary may, in the Secretary's discretion, impose  
16                  conditions on release in accordance with the  
17                  regulations prescribed pursuant to paragraph (3).  
18  
19                  ` (J) REDETENTION- The Secretary, without any  
20                  limitations other than those specified in this section,  
21                  may detain any alien subject to a final removal order  
22                  who has previously been released from custody if--  
23                    ` (i) the alien fails to comply with the  
24                    conditions of release;  
25                    ` (ii) the alien fails to continue to satisfy the  
26                    conditions described in subparagraph (B); or  
27                    ` (iii) upon reconsideration, the Secretary  
28                    determines that the alien can be detained  
29                    under subparagraph (E).  
30  
31                  ` (K) APPLICABILITY- This paragraph and paragraphs  
32                  (6) and (7) shall apply to any alien returned to  
33                  custody under subparagraph (I) as if the removal  
34                  period terminated on the day of the redetention.  
35  
36                  ` (L) DETENTION REVIEW PROCESS FOR ALIENS  
37                  WHO HAVE EFFECTED AN ENTRY AND FAIL TO  
38                  COOPERATE WITH REMOVAL- The Secretary shall  
39                  detain an alien until the alien makes all reasonable  
40                  efforts to comply with a removal order and to  
41                  cooperate fully with the Secretary's efforts, if the  
42                  alien--  
43                    ` (i) has effected an entry into the United  
44                    States; and

1                   ` (ii)(I) and the alien faces a significant  
2                   likelihood that the alien will be removed in the  
3                   reasonably foreseeable future, or would have  
4                   been removed if the alien had not--

5                   ` (aa) failed or refused to make all  
6                   reasonable efforts to comply with a  
7                   removal order;

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

15                  ` (cc) conspired or acted to prevent  
16                  removal; or

17                  ` (II) the Secretary makes a certification as  
18                  specified in subparagraph (E), or the renewal  
19                  of a certification specified in subparagraph (H).

20  
21                  ` (M) DETENTION REVIEW PROCESS FOR ALIENS  
22                  WHO HAVE NOT EFFECTED AN ENTRY- Except as  
23                  otherwise provided in this subparagraph, the  
24                  Secretary shall follow the guidelines established in  
25                  section 241.4 of title 8, Code of Federal Regulations,  
26                  when detaining aliens who have not effected an  
27                  entry. The Secretary may decide to apply the review  
28                  process outlined in this paragraph.

29  
30                  ` (9) JUDICIAL REVIEW- Judicial review of any action or  
31                  decision made pursuant to paragraph (6), (7), or (8) shall  
32                  be available exclusively in a habeas corpus proceeding  
33                  brought in a United States district court and only if the  
34                  alien has exhausted all administrative remedies (statutory  
35                  and nonstatutory) available to the alien as of right.'.

36  
37                  (2) EFFECTIVE DATE- The amendments made by  
38                  paragraph (1)--

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

41                  (B) shall apply to--

42                  (i) any alien subject to a final administrative  
43                  removal, deportation, or exclusion order that  
44                  was issued before, on, or after the date of the

1 enactment of this Act, unless (a) that order  
2 was issued and the alien was subsequently  
3 released or paroled before the enactment of  
4 this Act and (b) the alien has complied with  
5 and remains in compliance with the terms and  
6 conditions of that release or parole; and  
7 (ii) any act or condition occurring or existing  
8 before, on, or after the date of the enactment  
9 of this Act.  
10  
11

12 **SEC. 203. AGGRAVATED FELONY.**

13 (a) Definition of Aggravated Felony- Section 101(a)(43) (8  
14 U.S.C. 1101(a)(43)) is amended--

15 (1) by striking `The term `aggravated felony' means--'  
16 and inserting `Notwithstanding any other provision of law,  
17 the term `aggravated felony' applies to an offense  
18 described in this paragraph, whether in violation of Federal  
19 or State law, and to such an offense in violation of the law  
20 of a foreign country for which the term of imprisonment  
21 was completed within the previous 15 years, and  
22 regardless of whether the conviction was entered before,  
23 on, or after September 30, 1996, and means--';

24 (2) in subparagraph (A), by striking `murder, rape, or  
25 sexual abuse of a minor;' and inserting `murder, rape, or  
26 sexual abuse of a minor, whether or not the minority of  
27 the victim is established by evidence contained in the  
28 record of conviction or by evidence extrinsic to the record  
29 of conviction;';

30 (3) in subparagraph (N), by striking `paragraph (1)(A) or  
31 (2) of'; and

32 (4) by striking the undesignated matter following  
33 subparagraph (U).

34 (b) Effective Date and Application-

35 (1) IN GENERAL- The amendments made by subsection (a)  
36 shall--

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

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

41 (2) APPLICATION OF IIRAIRA AMENDMENTS- The  
42 amendments to section 101(a)(43) of the Immigration and

1 Nationality Act made by section 321 of the Illegal  
2 Immigration Reform and Immigrant Responsibility Act of  
3 1996 (division C of Public Law 104-208; 110 Stat. 3009-  
4 627) shall continue to apply, whether the conviction was  
5 entered before, on, or after September 30, 1996.  
6

7 **SEC. 205. INCREASED CRIMINAL PENALTIES RELATED TO GANG**  
8 **VIOLENCE AND REMOVAL.**

9 (a) DEFINITION OF CRIMINAL GANG– Section 101(a) of the  
10 Immigration and Nationality  
11 Act (8 U.S.C. 1101(a)) is amended by inserting after subparagraph  
12 (51) the following:  
13

14 “(52) The term “criminal gang”

15 (a) means an ongoing group, club, organization, or  
16 association of 5 or more persons--

17 **(1)** that has as 1 of its primary purposes the  
18 commission of 1 or more of the criminal offenses  
19 described in subsection (b); and  
20

21 **(2)** the members of which engage, or have engaged  
22 within the past 5 years, in a continuing series of  
23 offenses described in subsection (b);  
24

25 (b) Offenses described in this section, whether in violation  
26 of Federal or State law or in violation of the law of a  
27 foreign country, and regardless of whether charged, are:  
28

29 (1) a “felony drug offense” (as defined in section 102  
30 of the Controlled Substances Act (21 U.S.C. 802));  
31

32 (2) a felony offense involving firearms or explosives  
33 or in violation of section 931 of title 18 (relating to  
34 purchase, ownership, or possession of body armor by  
35 violent felons);  
36

37 (3) an offense under section 274 (relating to bringing  
38 in and harboring certain aliens), section 277 (relating  
39 to aiding or assisting certain aliens to enter the  
40 United States), or section 278 (relating to the  
41 importation of an alien for immoral purpose) of the  
42 Immigration and Nationality Act;



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(4) a felony crime of violence as defined in section 16 of title 18, which is punishable by a sentence of imprisonment of five years or more;

(5) a crime involving obstruction of justice; tampering with or retaliating against a witness, victim, or informant; or burglary;

(6) Any conduct punishable under sections 1028 and 1029 of title 18 (relating to fraud and related activity in connection with identification documents or access devices), sections 1581 through 1594 of title 18 (relating to peonage, slavery and trafficking in persons), section 1952 of title 18 (relating to interstate and foreign travel or transportation in aid of racketeering enterprises), section 1956 of title 18 (relating to the laundering of monetary instruments), section 1957 of title 18 (relating to engaging in monetary transactions in property derived from specified unlawful activity), or sections 2312 through 2315 of title 18 (relating to interstate transportation of stolen motor vehicles or stolen property);

(7) a conspiracy to commit an offense described in subparagraphs (1)-(6).

“Notwithstanding any other provision of law (including any effective date), the term applies regardless of whether the conduct occurred before, on, or after the date of enactment of this provision.”.

(b) INADMISSIBILITY- Section 212(a)(2) (8 U.S.C. 1182(a)(2)) is amended--

(A) by redesignating subparagraph (F) as subparagraph (J); and  
(B) by inserting after subparagraph (E) the following:

(F) ALIENS ASSOCIATED WITH CRIMINAL GANGS- Unless the Secretary of Homeland Security or the Attorney General waives the application of this subparagraph, any alien who a consular officer, the Attorney General, or the Secretary of Homeland Security knows or has

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1 reason to believe has participated in a criminal  
2 gang (as defined in section 101(a)(52)),  
3 knowing or having reason to know that such  
4 participation promoted, furthered, aided, or  
5 supported the illegal activity of the criminal  
6 gang, is inadmissible.'. .

7  
8 (c) DEPORTABILITY. Section 237(a)(2) of the Immigration and  
9 Nationality Act (8  
10 U.S.C. 1227(a)(2)) is amended by adding at the end the following:

11  
12 "(F) ALIENS ASSOCIATED WITH CRIMINAL GANGS- Any alien, in or  
13 admitted to the United States, who at any time has participated in a  
14 criminal gang (as defined in section 101(a)(52)), knowing or having  
15 reason to know that such participation will promote, further, aid, or  
16 support the illegal activity of the criminal gang is deportable. The  
17 Secretary of Homeland Security or the Attorney General may in his  
18 discretion waive this subparagraph."

19  
20 (d) TEMPORARY PROTECTED STATUS. Section 244 (8 U.S.C. 1254a) is  
21 amended—

22  
23 (1) by striking "Attorney General" each place it appears and  
24 inserting "Secretary  
25 of Homeland Security";

26  
27 (2) in subparagraph (c)(2)(B), by adding at the end:

28  
29 "(iii) the alien participates in, or at any time after admission has  
30 participated in, the activities of a criminal gang (as defined in  
31 section 101(a)(52)), knowing or having reason to know that  
32 such participation will promote, further, aid, or support  
33 the illegal activity of the criminal gang."; and

34  
35 (3) in subsection (d)—

36  
37 (A) by striking paragraph (3); and

38  
39 (B) in paragraph (4), by adding at the end the following:  
40 "The Secretary of Homeland Security may detain an alien  
41 provided temporary protected status under this section  
42 whenever appropriate under any other provision."  
43  
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1 (e) Penalties Related to Removal- Section 243 (8 U.S.C. 1253) is  
2 amended--

3 (1) in subsection (a)(1)--

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

6 (B) in the matter following subparagraph (D)--

7 (i) by striking `or imprisoned not more than  
8 four years' and inserting `and imprisoned for  
9 not more than 5 years'; and

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

11 (2) in subsection (b), by striking `not more than \$1000 or  
12 imprisoned for not more than one year, or both' and  
13 inserting `under title 18, United States Code, and  
14 imprisoned for not more than 5 years (or for not more  
15 than 10 years if the alien is a member of any of the classes  
16 described in paragraphs (1)(E), (2), (3), and (4) of section  
17 237(a)).'; and

18  
19 (f) Prohibiting Carrying or Using a Firearm During and in Relation to an  
20 Alien Smuggling Crime- Section 924(c) of title 18, United States Code,  
21 is amended--

22 (1) in paragraph (1)--

23 (A) in subparagraph (A), by inserting `, alien  
24 smuggling crime,' after `any crime of violence';

25 (B) in subparagraph (A), by inserting `, alien  
26 smuggling crime,' after `such crime of violence';

27 (C) in subparagraph (D)(ii), by inserting `, alien  
28 smuggling crime,' after `crime of violence'; and

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

30 `(6) For purposes of this subsection, the term `alien smuggling  
31 crime' means any felony punishable under section 274(a), 277,  
32 or 278 of the Immigration and Nationality Act (8 U.S.C. 1324(a),  
33 1327, and 1328).'

34 **SEC. 206. ILLEGAL ENTRY.**

35 (a) In General- Section 275 (8 U.S.C. 1325) is amended to read  
36 as follows:

37 **`SEC. 275. ILLEGAL ENTRY.**

38 `(a) In General-

39 `(1) CRIMINAL OFFENSES- An alien shall be subject to the  
40 penalties set forth in paragraph (2) if the alien--

1                   ` (A) knowingly enters or crosses the border into the  
2                   United States at any time or place other than as  
3                   designated by the Secretary of Homeland Security;  
4                   ` (B) knowingly eludes examination or inspection by  
5                   an immigration officer (including failing to stop at the  
6                   command of such officer), or a customs or  
7                   agriculture inspection at a port of entry; or  
8                   ` (C) knowingly enters or crosses the border to the  
9                   United States by means of a knowingly false or  
10                  misleading representation or the knowing  
11                  concealment of a material fact (including such  
12                  representation or concealment in the context of  
13                  arrival, reporting, entry, or clearance requirements  
14                  of the customs laws, immigration laws, agriculture  
15                  laws, or shipping laws).  
16                  ` (2) CRIMINAL PENALTIES- Any alien who violates any  
17                  provision under paragraph (1)--  
18                  ` (A) shall, for the first violation, be fined under title  
19                  18, United States Code, imprisoned not more than 6  
20                  months, or both;  
21                  ` (B) shall, for a second or subsequent violation, or  
22                  following an order of voluntary departure, be fined  
23                  under such title, imprisoned not more than 2 years,  
24                  or both;  
25                  ` (C) if the violation occurred after the alien had been  
26                  convicted of 3 or more misdemeanors or for a felony,  
27                  shall be fined under such title, imprisoned not more  
28                  than 10 years, or both;  
29                  ` (D) if the violation occurred after the alien had  
30                  been convicted of a felony for which the alien  
31                  received a term of imprisonment of not less than 30  
32                  months, shall be fined under such title, imprisoned  
33                  not more than 15 years, or both; and  
34                  ` (E) if the violation occurred after the alien had been  
35                  convicted of a felony for which the alien received a  
36                  term of imprisonment of not less than 60 months,  
37                  such alien shall be fined under such title, imprisoned  
38                  not more than 20 years, or both.  
39                  ` (3) PRIOR CONVICTIONS- The prior convictions described  
40                  in subparagraphs (C) through (E) of paragraph (2) are  
41                  elements of the offenses described in that paragraph and  
42                  the penalties in such subparagraphs shall apply only in  
43                  cases in which the conviction or convictions that form the  
44                  basis for the additional penalty are--

1                   ` (A) alleged in the indictment or information; and  
2                   ` (B) proven beyond a reasonable doubt at trial or  
3                   admitted by the defendant.  
4           ` (4) DURATION OF OFFENSE- An offense under this  
5           subsection continues until the alien is discovered within the  
6           United States by an immigration officer.  
7           ` (5) ATTEMPT- Whoever attempts to commit any offense  
8           under this section shall be punished in the same manner  
9           as for a completion of such offense.  
10          ` (b) Improper Time or Place; Civil Penalties-Any alien who is  
11          apprehended while entering, attempting to enter, or knowingly  
12          crossing or attempting to cross the border to the United States  
13          at a time or place other than as designated by immigration  
14          officers shall be subject to a civil penalty, in addition to any  
15          criminal or other civil penalties that may be imposed under any  
16          other provision of law, in an amount equal to--  
17                  ` (1) not less than \$50 or more than \$250 for each such  
18                  entry, crossing, attempted entry, or attempted crossing; or  
19                  ` (2) twice the amount specified in paragraph (1) if the  
20                  alien had previously been subject to a civil penalty under  
21                  this subsection.  
22          (b) Clerical Amendment- The table of contents is amended by  
23          striking the item relating to section 275 and inserting the  
24          following:  
25                  ` Sec. 275. Illegal entry.'.  
26          (c) Effective Date – Subsection (a)(4) of section 275 of the  
27          Immigration and Nationality Act, as created by this Act, shall  
28          apply only to violations of subsection (a)(1) of Section 275  
29          committed on or after the date of enactment of this Act.

30          **SEC. 207. ILLEGAL REENTRY.**

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

32          ` **SEC. 276. REENTRY OF REMOVED ALIEN.**

33                  ` (a) Reentry After Removal- Any alien who has been denied  
34                  admission, excluded, deported, or removed, or who has  
35                  departed the United States while an order of exclusion,  
36                  deportation, or removal is outstanding, and subsequently enters,  
37                  attempts to enter, crosses the border to, attempts to cross the  
38                  border to, or is at any time found in the United States, shall be  
39                  fined under title 18, United States Code, imprisoned not more  
40                  than 2 years, or both.

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1           ` (b) Reentry of Criminal Offenders- Notwithstanding the penalty  
2 provided in subsection (a), if an alien described in that  
3 subsection--

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

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

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

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

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

27           ` (c) Reentry After Repeated Removal- Any alien who has been  
28 denied admission, excluded, deported, or removed 3 or more  
29 times and thereafter enters, attempts to enter, crosses the  
30 border to, attempts to cross the border to, or is at any time  
31 found in the United States, shall be fined under title 18, United  
32 States Code, imprisoned not more than 10 years, or both.

33           ` (d) Proof of Prior Convictions- The prior convictions described in  
34 subsection (b) are elements of the crimes described in that  
35 subsection, and the penalties in that subsection shall apply only  
36 in cases in which the conviction or convictions that form the  
37 basis for the additional penalty are--

38               ` (1) alleged in the indictment or information; and

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

41           ` (e) Affirmative Defenses- It shall be an affirmative defense to a  
42 violation of this section that--

43               ` (1) prior to the alleged violation, the alien had sought  
44 and received the express consent of the Secretary of

1 Homeland Security to reapply for admission into the United  
2 States;  
3 `(2) with respect to an alien previously denied admission  
4 and removed, the alien--  
5 `(A) was not required to obtain such advance  
6 consent under the Immigration and Nationality Act or  
7 any prior Act; and  
8 `(B) had complied with all other laws and regulations  
9 governing the alien's admission into the United  
10 States; or  
11 `(3) at the time of the prior exclusion, deportation,  
12 removal, or denial of admission alleged in the violation, the  
13 alien—  
14 `(A) was under the age of eighteen, and  
15 `(B) had not been convicted of a crime or adjudicated  
16 a delinquent minor by a court of the United States,  
17 or a court of a state or territory, for conduct that  
18 would constitute a felony if committed by an adult.  
19  
20 `(f) Limitation on Collateral Attack on Underlying Removal  
21 Order- In a criminal proceeding under this section, an alien may  
22 not challenge the validity of any prior removal order concerning  
23 the alien unless the alien demonstrates by clear and convincing  
24 evidence that--  
25 `(1) the alien exhausted all administrative remedies that  
26 may have been available to seek relief against the order;  
27 `(2) the removal proceedings at which the order was  
28 issued improperly deprived the alien of the opportunity for  
29 judicial review; and  
30 `(3) the entry of the order was fundamentally unfair.  
31 `(g) Reentry of Alien Removed Prior to Completion of Term of  
32 Imprisonment- Any alien removed pursuant to section 241(a)(4)  
33 who enters, attempts to enter, crosses the border to, attempts  
34 to cross the border to, or is at any time found in, the United  
35 States shall be incarcerated for the remainder of the sentence of  
36 imprisonment which was pending at the time of deportation  
37 without any reduction for parole or supervised release unless the  
38 alien affirmatively demonstrates that the Secretary of Homeland  
39 Security has expressly consented to the alien's reentry. Such  
40 alien shall be subject to such other penalties relating to the  
41 reentry of removed aliens as may be available under this section  
42 or any other provision of law.  
43 `(h) Limitation- It is not aiding and abetting a violation of this  
44 section for an individual to provide an alien with emergency

1 humanitarian assistance, including emergency medical care and  
2 food, or to transport the alien to a location where such  
3 assistance can be rendered without compensation or the  
4 expectation of compensation.

5 ` (i) Definitions- In this section:

6 `(1) FELONY- Term `felony' means any criminal offense  
7 punishable by a term of imprisonment of more than 1 year  
8 under the laws of the United States, any State, or a  
9 foreign government.

10 `(2) MISDEMEANOR- The term `misdemeanor' means any  
11 criminal offense punishable by a term of imprisonment of  
12 not more than 1 year under the applicable laws of the  
13 United States, any State, or a foreign government.

14 `(3) REMOVAL- The term `removal' includes any denial of  
15 admission, exclusion, deportation, or removal, or any  
16 agreement by which an alien stipulates or agrees to  
17 exclusion, deportation, or removal.

18 `(4) STATE- The term `State' means a State of the United  
19 States, the District of Columbia, and any commonwealth,  
20 territory, or possession of the United States.'

21  
22 **SEC. 208. REFORM OF PASSPORT, VISA, AND IMMIGRATION**  
23 **FRAUD OFFENSES.**

24 (a) Passport, Visa, and Immigration Fraud-

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

27 **` CHAPTER 75--PASSPORT, VISA, AND IMMIGRATION**  
28 **FRAUD**

29 ` Sec.

30 ` 1541. Trafficking in passports.

31 ` 1542. False statement in an application for a passport.

32 ` 1543. Forgery and unlawful production of a passport.

33 ` 1544. Misuse of a passport.

34 ` 1545. Schemes to defraud aliens.

35 ` 1546. Immigration and visa fraud.

36 ` 1547. Marriage fraud.

37 ` 1548. Attempts and conspiracies.

38 ` 1549. Alternative penalties for certain offenses.



1           ` 1550. Seizure and forfeiture.

2           ` 1551. Additional jurisdiction.

3           ` 1552. Definitions.

4           ` 1553. Authorized law enforcement activities.`

5

6   ` **Sec. 1541. Trafficking in passports**

7       ` (a) Multiple Passports.- Any person who, during any period of 3  
8       years or less, knowingly--

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

11          ` (2) forges, counterfeits, alters, or falsely makes 10 or more  
12          passports;

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

17          ` (4) completes, mails, prepares, presents, signs, or submits  
18          10 or more applications for a United States passport, knowing  
19          the applications to contain any false statement or  
20          representation,

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

23       ` (b) Passport Materials- Any person who knowingly and without  
24       lawful authority produces, buys, sells, possesses, or uses any  
25       official material (or counterfeit of any official material) used to  
26       make a passport, including any distinctive paper, seal, hologram,  
27       image, text, symbol, stamp, engraving, or plate, shall be fined  
28       under this title, imprisoned not more than 20 years, or both.

29

30   ` **Sec. 1542. False statement in an application for a passport.**

31       (a) In General.- Any person who knowingly makes any false statement  
32       or representation in an application for a United States passport, or  
33       mails, prepares, presents, or signs an application for a United States  
34       passport knowing the application to contain any false statement or  
35       representation, shall be fined under this title, imprisoned not more  
36       than 15 years, or both.

37

38       (b) Venue.-

1 (1) An offense under subsection (a) may be prosecuted in any  
2 district,

3 (A) in which the false statement or representation was  
4 made or the application for a United States passport was  
5 prepared or signed, or

6 (B) in which or to which the application was mailed or  
7 presented.

8 (2) An offense under subsection (a) involving an application  
9 prepared and adjudicated outside the United States may be  
10 prosecuted in the district in which the resultant passport was or  
11 would have been produced.

12  
13 (c) Savings Clause.—Nothing in this section may be construed to limit  
14 the venue otherwise available under sections 3237 and 3238 of this  
15 title.

16  
17 **` Sec. 1543. Forgery and unlawful production of a passport**

18 `(a) Forgery- Any person who--

19 `(1) knowingly forges, counterfeits, alters, or falsely makes  
20 any passport; or

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

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

26 `(b) Unlawful Production- Any person who knowingly and without  
27 lawful authority--

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

31 `(2) produces, issues, authorizes, or verifies a United States  
32 passport for or to any person, knowing or in reckless  
33 disregard of the fact that such person is not entitled to  
34 receive a passport; or

35 `(3) transfers or furnishes a passport to any person for use  
36 by any person other than the person for whom the passport  
37 was issued or designed,

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

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**` Sec. 1544. Misuse of a passport**

Any person who knowingly--

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

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

` (3) 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.

**` Sec. 1545. Schemes to defraud aliens**

` (a) In General- Any person who knowingly executes a scheme or artifice, in connection with any matter that is authorized by or arises under Federal immigration laws or any matter the offender claims or represents is authorized by or arises under Federal immigration laws, 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 accredited representative (as that term is defined in section 1292.1 of title 8, Code of Federal Regulations (or any successor regulation to such section)) in any matter arising under Federal immigration laws shall be fined under this title, imprisoned not more than 15 years, or both.

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**` Sec. 1546. Immigration and visa fraud**

`(a) In General- Any person who knowingly--

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

`(2) forges, counterfeits, alters, or falsely makes any immigration document;

`(3) completes, mails, prepares, presents, signs, or submits any immigration document knowing it to contain any materially false statement or representation;

`(4) secures, possesses, uses, transfers, receives, buys, sells, or distributes any immigration document knowing it to be forged, counterfeited, altered, falsely made, stolen, procured by fraud, or produced or issued without lawful authority;

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

`(6) transfers or furnishes, without lawful authority, an immigration document to another person for use by a person other than the person for whom the immigration document was issued or designed,

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

`(b) 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.

1       ` (c) Immigration Document Materials.- Any person who knowingly  
2       and without lawful authority produces, buys, sells, or possesses any  
3       official material (or counterfeit of any official material) used to  
4       make an immigration document, including any distinctive paper,  
5       seal, hologram, image, text, symbol, stamp, engraving, or plate,  
6       shall be fined under this title, imprisoned not more than 20 years,  
7       or both.

8       “(d) Employment Documents.—Whoever uses—

9           “(1) an identification document, knowing (or having reason to  
10          know) that the document was not issued lawfully for the use of the  
11          possessor;

12          “(2) an identification document knowing (or having reason to  
13          know) that the document is false; or

14          “(3) a false attestation,

15          for the purpose of satisfying a requirement of section 274A(b) of  
16          the Immigration and Nationality Act (8 U.S.C. 1324a(b)), shall be  
17          fined under this title, imprisoned not more than 5 years, or both.”.

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19       ` **Sec. 1547. Marriage fraud**

20       ` (a) Evasion or Misrepresentation.- Any person who--

21           ` (1) knowingly enters into a marriage for the purpose of  
22           evading any provision of the immigration laws; or

23           ` (2) knowingly misrepresents the existence or circumstances  
24           of a marriage--

25                   ` (A) in an application or document authorized by the  
26                   immigration laws; or

27                   ` (B) during any immigration proceeding conducted by  
28                   an administrative adjudicator (including an immigration  
29                   officer or examiner, a consular officer, an immigration  
30                   judge, or a member of the Board of Immigration  
31                   Appeals),

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

34       ` (b) Multiple Marriages.- Any person who--

35           ` (1) knowingly enters into 2 or more marriages for the  
36           purpose of evading any immigration law; or

1           ` (2) knowingly arranges, supports, or facilitates 2 or more  
2           marriages designed or intended to evade any immigration  
3           law,

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

6           ` (c) Commercial Enterprise- Any person who knowingly establishes  
7           a commercial enterprise for the purpose of evading any provision of  
8           the immigration laws shall be fined under this title, imprisoned for  
9           not more than 10 years, or both.

10          ` (d) Duration of Offense.-

11           ` (1) IN GENERAL- An offense under subsection (a) or (b)  
12           continues until the fraudulent nature of the marriage or  
13           marriages is discovered by an immigration officer.

14           ` (2) COMMERCIAL ENTERPRISE- An offense under subsection  
15           (c) continues until the fraudulent nature of the commercial  
16           enterprise is discovered by an immigration officer or other law  
17           enforcement officer.

18

19          ` **Sec. 1548. Attempts and conspiracies**

20           ` Any person who attempts or conspires to violate any section of  
21           this chapter shall be punished in the same manner as a person who  
22           completed a violation of that section.

23

24          ` **Sec. 1549. Alternative penalties for certain offenses**

25          Notwithstanding any other provision of this title, the maximum term of  
26          imprisonment that may be imposed for an offense under this chapter—

27           (1) if committed to facilitate a drug trafficking crime (as defined  
28           in 929(a)) is 20 years; and

29           (2) if committed to facilitate an act of international terrorism (as  
30           defined in section 2331) is 25 years.

31

32          ` **Sec. 1550. Seizure and forfeiture**

33           ` (a) Forfeiture- Any property, real or personal, used to commit or  
34           facilitate the commission of a violation of any section of this  
35           chapter, the gross proceeds of such violation, and any property  
36           traceable to such property or proceeds, shall be subject to  
37           forfeiture.

38           ` (b) Applicable Law- Seizures and forfeitures under this section  
39           shall be governed by the provisions of chapter 46 relating to civil

1 forfeitures, except that such duties as are imposed upon the  
2 Secretary of the Treasury under the customs laws described in  
3 section 981(d) shall be performed by such officers, agents, and  
4 other persons as may be designated for that purpose by the  
5 Secretary of Homeland Security, the Secretary of State, or the  
6 Attorney General.

7

8 **`Sec. 1551. Additional jurisdiction**

9 `(a) In General.- Any person who commits an offense under this  
10 chapter within the special maritime and territorial jurisdiction of the  
11 United States shall be punished as provided under this chapter.

12 `(b) Extraterritorial Jurisdiction.- Any person who commits an  
13 offense under this chapter outside the United States shall be  
14 punished as provided under this chapter if--

15 `(1) the offense involves a United States passport or  
16 immigration document (or any document purporting to be  
17 such a document) or any matter, right, or benefit arising  
18 under or authorized by Federal immigration laws;

19 `(2) the offense is in or affects foreign commerce;

20 `(3) the offense affects, jeopardizes, or poses a significant  
21 risk to the lawful administration of Federal immigration laws,  
22 or the national security of the United States;

23 `(4) the offense is committed to facilitate an act of  
24 international terrorism (as defined in section 2331) or a drug  
25 trafficking crime (as defined in section 929(a)(2)) that affects  
26 or would affect the national security of the United States;

27 `(5) the offender is a national of the United States or an alien  
28 lawfully admitted for permanent residence in the United  
29 States (as those terms are defined in section 101(a) of the  
30 Immigration and Nationality Act (8 U.S.C. 1101(a))); or

31 `(6) the offender is a stateless person whose habitual  
32 residence is in the United States.

33

34 **`Sec. 1552. Definitions**

35 `As used in this chapter:

36 `(1) The term `falsely make' means to prepare or complete  
37 an immigration document with knowledge or in reckless  
38 disregard of the fact that the document--

- 1                   ` (A) contains a statement or representation that is  
2                   false, fictitious, or fraudulent;
- 3                   ` (B) has no basis in fact or law; or
- 4                   ` (C) otherwise fails to state a fact which is material to  
5                   the purpose for which the document was created,  
6                   designed, or submitted.
- 7                   ` (2) The term `application for a United States passport'  
8                   includes any document, photograph, or other piece of  
9                   evidence attached to or submitted in support of the  
10                  application.
- 11                  ` (3) The term `false statement or representation' includes a  
12                  personation or an omission.
- 13                  ` (4) The term `immigration document'--
- 14                    ` (A) means any application, petition, affidavit,  
15                    declaration, attestation, form, visa, identification card,  
16                    alien registration document, employment authorization  
17                    document, border crossing card, certificate, permit,  
18                    order, license, stamp, authorization, grant of authority,  
19                    or other official document, arising under or authorized  
20                    by the immigration laws of the United States; and
- 21                    ` (B) includes any document, photograph, or other piece  
22                    of evidence attached to or submitted in support of an  
23                    immigration document.
- 24                  ` (5) The term `immigration laws' includes--
- 25                    ` (A) the laws described in section 101(a)(17) of the  
26                    Immigration and Nationality Act (8 U.S.C.  
27                    1101(a)(17));
- 28                    ` (B) the laws relating to the issuance and use of  
29                    passports; and
- 30                    ` (C) the regulations prescribed under the authority of  
31                    any law described in paragraphs (A) and (B).
- 32                  ` (6) The term `immigration proceeding' includes an  
33                  adjudication, interview, hearing, or review.
- 34                  ` (7) A person does not exercise `lawful authority' if the  
35                  person abuses or improperly exercises lawful authority the  
36                  person otherwise holds.
- 37                  ` (8) The term `passport' means—



1 (A) a travel document attesting to the identity and  
2 nationality of the bearer that is issued under the  
3 authority of the Secretary of State, a foreign  
4 government, or an international organization; or

5 (B) any instrument purporting to be a document  
6 described in subparagraph (A).

7 ` (9) The term `to present' means to offer or submit for official  
8 processing, examination, or adjudication. Any such  
9 presentation continues until the official processing,  
10 examination, or adjudication is complete.

11 ` (10) The term `proceeds' includes any property or interest in  
12 property obtained or retained as a consequence of an act or  
13 omission in violation of this section.

14 ` (11) The term `produce' means to make, prepare,  
15 assemble, issue, print, authenticate, or alter.

16 ` (12) The term `State' means a State of the United States,  
17 the District of Columbia, or any commonwealth, territory, or  
18 possession of the United States.

19 ` (13) The `use' of a passport or an immigration document  
20 referred to in section 1541(a), section 1543(b), section 1544,  
21 section 1546(a), and section 1546(b) of this chapter includes  
22 any officially authorized use; use to travel; use to  
23 demonstrate identity, residence, nationality, citizenship, or  
24 immigration status; use to seek or maintain employment; or  
25 use in any matter within the jurisdiction of the Federal  
26 government or of a State government.'

27 **` Sec. 1553. Authorized law enforcement activities**

28 ` Nothing in this chapter shall prohibit any lawfully authorized  
29 investigative, protective, or intelligence activity of a law enforcement  
30 agency of the United States, a State, or a political subdivision of a  
31 State, or an intelligence agency of the United States, or any activity  
32 authorized under title V of the Organized Crime Control Act of 1970  
33 (84 Stat. 933).

34  
35 (b) Protection For Legitimate Refugees And Asylum Seekers—

36 (1) Prosecution Guidelines.— The Attorney General, in  
37 consultation with the Secretary of Homeland Security, shall  
38 develop binding prosecution guidelines for federal prosecutors to  
39 ensure that any prosecution of an alien seeking entry into the  
40 United States by fraud is consistent with the obligations of the

1 United States under Article 31(1) of the Convention Relating to  
2 the Status of Refugees, done at Geneva July 28, 1951 (as made  
3 applicable by the Protocol Relating to the Status of Refugees,  
4 done at New York January 31, 1967 (19 UST 6223)).

5 (2) No Private Right of Action.— The guidelines required by  
6 subparagraph (1), and any internal office procedures adopted  
7 pursuant thereto, are intended solely for the guidance of  
8 attorneys for the United States. This section, the guidelines  
9 required by subsection (a), and the process for determining such  
10 guidelines are not intended to, do not, and may not be relied  
11 upon to create any right or benefit, substantive or procedural,  
12 enforceable at law by any party in any administrative, civil, or  
13 criminal matter.  
14

15 **SEC. 209. INADMISSIBILITY AND REMOVAL FOR PASSPORT**  
16 **AND IMMIGRATION FRAUD OFFENSES.**

17 (a) Inadmissibility- Section 212(a)(2)(A)(i) (8 U.S.C.  
18 1182(a)(2)(A)(i)) is amended--

- 19 (1) in subclause (I), by striking ` , or' at the end and  
20 inserting a semicolon;  
21 (2) in subclause (II), by striking the comma at the end and  
22 inserting ` ; or'; and  
23 (3) by inserting after subclause (II) the following:  
24 ` (III) a violation of (or a conspiracy or  
25 attempt to violate) section 1541, 1545,  
26 subsection (b) of section 1546, or  
27 subsection (b) of section 1547 of title 18,  
28 United States Code,'.

29 (b) Removal- Section 237(a)(3)(B)(iii) (8 U.S.C.  
30 1227(a)(3)(B)(iii)) is amended to read as follows:

- 31 ` (iii) a violation of (or a conspiracy or attempt  
32 to violate) section 1541, 1545, 1546, or  
33 subsection (b) of section 1547 of title 18,  
34 United States Code,'.

35 (c) Effective Date- The amendments made by subsections (a)  
36 and (b) shall apply to proceedings pending on or after the date  
37 of the enactment of this Act, with respect to conduct occurring  
38 on or after that date.

39 **SEC. 210. INCARCERATION OF CRIMINAL ALIENS.**

1 (a) Institutional Removal Program-

2 (1) CONTINUATION- The Secretary shall continue to  
3 operate the Institutional Removal Program (referred to in  
4 this section as the `Program') or shall develop and  
5 implement another program to--

6 (A) identify removable criminal aliens in Federal and  
7 State correctional facilities;

8 (B) ensure that such aliens are not released into the  
9 community; and

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

12 (2) EXPANSION- The Secretary may extend the scope of  
13 the Program to all States.

14 (b) Technology Usage- Technology, such as videoconferencing,  
15 shall be used to the maximum extent practicable to make the  
16 Program available in remote locations. Mobile access to Federal  
17 databases of aliens, such as IDENT, and live scan technology  
18 shall be used to the maximum extent practicable to make these  
19 resources available to State and local law enforcement agencies  
20 in remote locations.

21 (c) Report to Congress- Not later than 6 months after the date of  
22 the enactment of this Act, and annually thereafter, the Secretary  
23 shall submit a report to Congress on the participation of States  
24 in the Program and in any other program authorized under  
25 subsection (a).

26 (d) Authorization of Appropriations- There are authorized to be  
27 appropriated such sums as may be necessary in each of the  
28 fiscal years 2008 through 2012 to carry out the Program.

29 **SEC. 211. ENCOURAGING ALIENS TO DEPART VOLUNTARILY.**

30 (a) In General- Section 240B (8 U.S.C. 1229c) is amended--

31 (1) in subsection (a)--

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

33 `(1) INSTEAD OF REMOVAL PROCEEDINGS- If an alien is  
34 not described in paragraph (2)(A)(iii) or (4) of section  
35 237(a), the Secretary of Homeland Security may permit  
36 the alien to voluntarily depart the United States at the  
37 alien's own expense under this subsection instead of being  
38 subject to proceedings under section 240.';

39 (B) by striking paragraph (3);

40 (C) by redesignating paragraph (2) as paragraph  
41 (3);

42 (D) by adding after paragraph (1) the following:

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**May 18, 2007 11:58 p.m.**

1           ` (2) BEFORE THE CONCLUSION OF REMOVAL  
2 PROCEEDINGS- If an alien is not described in paragraph  
3 (2)(A)(iii) or (4) of section 237(a), the Attorney General  
4 may permit the alien to voluntarily depart the United  
5 States at the alien's own expense under this subsection  
6 after the initiation of removal proceedings under section  
7 240 and before the conclusion of such proceedings before  
8 an immigration judge.';

9           (E) in paragraph (3), as redesignated--

10           (i) by amending subparagraph (A) to read as  
11 follows:

12           ` (A) INSTEAD OF REMOVAL- Subject to  
13 subparagraph (C), permission to voluntarily depart  
14 under paragraph (1) shall not be valid for any period  
15 in excess of 120 days. The Secretary may require an  
16 alien permitted to voluntarily depart under  
17 paragraph (1) to post a voluntary departure bond, to  
18 be surrendered upon proof that the alien has  
19 departed the United States within the time  
20 specified.';

21           (ii) by redesignating subparagraphs (B), (C),  
22 and (D) as paragraphs (C), (D), and (E),  
23 respectively;

24           (iii) by adding after subparagraph (A) the  
25 following:

26           ` (B) BEFORE THE CONCLUSION OF REMOVAL  
27 PROCEEDINGS- Permission to voluntarily depart  
28 under paragraph (2) shall not be valid for any period  
29 in excess of 60 days, and may be granted only after  
30 a finding that the alien has the means to depart the  
31 United States and intends to do so. An alien  
32 permitted to voluntarily depart under paragraph (2)  
33 shall post a voluntary departure bond, in an amount  
34 necessary to ensure that the alien will depart, to be  
35 surrendered upon proof that the alien has departed  
36 the United States within the time specified. An  
37 immigration judge may waive the requirement to  
38 post a voluntary departure bond in individual cases  
39 upon a finding that the alien has presented  
40 compelling evidence that the posting of a bond will  
41 pose a serious financial hardship and the alien has  
42 presented credible evidence that such a bond is  
43 unnecessary to guarantee timely departure.';

1 (iv) in subparagraph (C), as redesignated, by  
2 striking ` subparagraphs (C) and(D)(ii)' and  
3 inserting ` subparagraphs (D) and (E)(ii)';  
4 (v) in subparagraph (D), as redesignated, by  
5 striking ` subparagraph (B)' each place that  
6 term appears and inserting ` subparagraph  
7 (C)'; and  
8 (vi) in subparagraph (E), as redesignated, by  
9 striking ` subparagraph (B)' each place that  
10 term appears and inserting ` subparagraph  
11 (C)'; and  
12 (F) in paragraph (4), by striking ` paragraph (1)' and  
13 inserting ` paragraphs (1) and (2)';  
14 (2) in subsection (b)(2), by striking ` a period exceeding  
15 60 days' and inserting ` any period in excess of 45 days';  
16 (3) by amending subsection (c) to read as follows:  
17 ` (c) Conditions on Voluntary Departure-  
18 ` (1) VOLUNTARY DEPARTURE AGREEMENT- Voluntary  
19 departure may only be granted as part of an affirmative  
20 agreement by the alien.  
21 ` (2) CONCESSIONS BY THE SECRETARY- In connection  
22 with the alien's agreement to depart voluntarily under  
23 paragraph (1), the Secretary of Homeland Security may  
24 agree to a reduction in the period of inadmissibility under  
25 subparagraph (A) or (B)(i) of section 212(a)(9).  
26 ` (3) ADVISALS- Agreements relating to voluntary  
27 departure granted during removal proceedings under  
28 section 240, or at the conclusion of such proceedings, shall  
29 be presented on the record before the immigration judge.  
30 The immigration judge shall advise the alien of the  
31 consequences of a voluntary departure agreement before  
32 accepting such agreement.  
33 ` (4) FAILURE TO COMPLY WITH AGREEMENT- If an alien  
34 agrees to voluntary departure under this section and fails  
35 to depart the United States within the time allowed for  
36 voluntary departure or fails to comply with any other terms  
37 of the agreement (including failure to timely post any  
38 required bond), the alien is--  
39 ` (A) ineligible for the benefits of the agreement;  
40 ` (B) subject to the penalties described in subsection  
41 (d); and  
42 ` (C) subject to an alternate order of removal if  
43 voluntary departure was granted under subsection  
44 (a)(2) or (b);

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

2 (d) Penalties for Failure To Depart- If an alien is permitted to  
3 voluntarily depart under this section and fails to voluntarily  
4 depart from the United States within the time period specified or  
5 otherwise violates the terms of a voluntary departure  
6 agreement, the alien will be subject to the following penalties:

7 (1) CIVIL PENALTY- The alien shall be liable for a civil  
8 penalty of \$3,000. The order allowing voluntary departure  
9 shall specify the amount of the penalty, which shall be  
10 acknowledged by the alien on the record. If the Secretary  
11 thereafter establishes that the alien failed to depart  
12 voluntarily within the time allowed, no further procedure  
13 will be necessary to establish the amount of the penalty,  
14 and the Secretary may collect the civil penalty at any time  
15 thereafter and by whatever means provided by law. An  
16 alien will be ineligible for any benefits under this chapter  
17 until this civil penalty is paid.

18 (2) INELIGIBILITY FOR RELIEF- The alien shall be  
19 ineligible during the time the alien remains in the United  
20 States and for a period of 10 years after the alien's  
21 departure for any further relief under this section and  
22 sections 240A, 245, 248, and 249. The order permitting  
23 the alien to depart voluntarily shall inform the alien of the  
24 penalties under this subsection.

25 (3) REOPENING- The alien shall be ineligible to reopen  
26 the final order of removal that took effect upon the alien's  
27 failure to depart, or upon the alien's other violations of the  
28 conditions for voluntary departure, during the period  
29 described in paragraph (2). This paragraph does not  
30 preclude a motion to reopen to seek withholding of  
31 removal under section 241(b)(3) or protection against  
32 torture, if the motion--

33 (A) presents material evidence of changed country  
34 conditions arising after the date of the order granting  
35 voluntary departure in the country to which the alien  
36 would be removed; and

37 (B) makes a sufficient showing to the satisfaction of  
38 the Attorney General that the alien is otherwise  
39 eligible for such protection.'; and

40 (5) by amending subsection (e) to read as follows:

41 (e) Eligibility-

42 (1) PRIOR GRANT OF VOLUNTARY DEPARTURE- An alien  
43 shall not be permitted to voluntarily depart under this  
44 section if the Secretary of Homeland Security or the

1 Attorney General previously permitted the alien to depart  
2 voluntarily.

3 ` (2) RULEMAKING- The Secretary may promulgate  
4 regulations to limit eligibility or impose additional  
5 conditions for voluntary departure under subsection (a)(1)  
6 for any class of aliens. The Secretary or Attorney General  
7 may by regulation limit eligibility or impose additional  
8 conditions for voluntary departure under subsections  
9 (a)(2) or (b) of this section for any class or classes of  
10 aliens.'; and

11 (6) in subsection (f), by adding at the end the following:  
12 ` Notwithstanding section 242(a)(2)(D) of this Act, sections  
13 1361, 1651, and 2241 of title 28, United States Code, any  
14 other habeas corpus provision, and any other provision of  
15 law (statutory or nonstatutory), no court shall have  
16 jurisdiction to affect, reinstate, enjoin, delay, stay, or toll  
17 the period allowed for voluntary departure under this  
18 section.'.

19 (b) Rulemaking- The Secretary shall promulgate regulations to  
20 provide for the imposition and collection of penalties for failure  
21 to depart under section 240B(d) of the Immigration and  
22 Nationality Act (8 U.S.C. 1229c(d)).

23 (c) Effective Dates-

24 (1) IN GENERAL- Except as provided in paragraph (2), the  
25 amendments made by this section shall apply with respect  
26 to all orders granting voluntary departure under section  
27 240B of the Immigration and Nationality Act (8 U.S.C.  
28 1229c) made on or after the date that is 180 days after  
29 the enactment of this Act.

30 (2) EXCEPTION- The amendment made by subsection  
31 (a)(6) shall take effect on the date of the enactment of this  
32 Act and shall apply with respect to any petition for review  
33 which is filed on or after such date.

34 **SEC. 212. DETERRING ALIENS ORDERED REMOVED FROM**  
35 **REMAINING IN THE UNITED STATES UNLAWFULLY.**

36 (a) Inadmissible Aliens- Section 212(a)(9)(A) (8 U.S.C.  
37 1182(a)(9)(A)) is amended--

38 (1) in clause (i), by striking ` seeks admission within 5  
39 years of the date of such removal (or within 20 years' and  
40 inserting ` seeks admission not later than 5 years after the  
41 date of the alien's removal (or not later than 20 years after  
42 the alien's removal'; and

1 (2) in clause (ii), by striking `seeks admission within 10  
2 years of the date of such alien's departure or removal (or  
3 within 20 years of' and inserting `seeks admission not  
4 later than 10 years after the date of the alien's departure  
5 or removal (or not later than 20 years after'.

6 (b) Bar on Discretionary Relief- Section 274D (8 U.S.C. 1324d) is  
7 amended--

8 (1) in subsection (a), by striking `Commissioner' and  
9 inserting `Secretary of Homeland Security'; and

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

11 `(c) Ineligibility for Relief-

12 `(1) IN GENERAL- Unless a timely motion to reconsider  
13 under section 240(c)(6) or a timely motion to reopen  
14 under section 240(c)(7) is granted, an alien described in  
15 subsection (a) shall be ineligible for any discretionary relief  
16 from removal (including cancellation of removal and  
17 adjustment of status) during the time the alien remains in  
18 the United States and for a period of 10 years after the  
19 alien's departure from the United States.

20 `(2) SAVINGS PROVISION- Nothing in paragraph (1) shall  
21 preclude a motion to reopen to seek withholding of  
22 removal under section 241(b)(3) or protection against  
23 torture, if the motion--

24 `(A) presents material evidence of changed country  
25 conditions arising after the date of the final order of  
26 removal in the country to which the alien would be  
27 removed; and

28 `(B) makes a sufficient showing to the satisfaction of  
29 the Attorney General that the alien is otherwise  
30 eligible for such protection.'

31 (c) Effective Dates- The amendments made by this section shall  
32 take effect on the date of the enactment of this Act with respect  
33 to aliens who are subject to a final order of removal entered on  
34 or after such date.

35 **SEC. 213. PROHIBITION OF THE SALE OF FIREARMS TO, OR THE**  
36 **POSSESSION OF FIREARMS BY CERTAIN ALIENS.**

37 Section 922 of title 18, United States Code, is amended--

38 (a) in subsection (d)(5)--

39 in subparagraph (B), by striking `(y)(2)' and all that  
40 follows and inserting `(y), is in the United States not  
41 as an alien lawfully admitted for permanent  
42 residence';



1 (b) in subsection (g)(5)--  
2 in subparagraph (B), by striking `(y)(2)' and all that  
3 follows and inserting `(y), is in the United States not  
4 as an alien lawfully admitted for permanent  
5 residence'; and

6 (c) in subsection (y)--  
7 (1) in the header, by striking `Admitted Under  
8 Nonimmigrant Visas' and inserting `not Lawfully  
9 Admitted for Permanent Residence';  
10 (2) in paragraph (1), by amending subparagraph (B)  
11 to read as follows:  
12 `(B) the term `lawfully admitted for permanent  
13 residence' has the same meaning as in section  
14 101(a)(20) of the Immigration and Nationality Act (8  
15 U.S.C. 1101(a)(20)).';  
16 (C) in paragraph (2), by striking `under a  
17 nonimmigrant visa' and inserting `but not lawfully  
18 admitted for permanent residence'; and  
19 (D) in paragraph (3)(A), by striking `admitted to the  
20 United States under a nonimmigrant visa' and  
21 inserting `lawfully admitted to the United States but  
22 not as an alien lawfully admitted for permanent  
23 residence'.

24 **SEC. 214. UNIFORM STATUTE OF LIMITATIONS FOR CERTAIN**  
25 **IMMIGRATION, PASSPORT, AND NATURALIZATION OFFENSES.**

26 (a) In General- Section 3291 of title 18, United States Code, is  
27 amended to read as follows:

28 `**Sec. 3291. IMMIGRATION, PASSPORT, AND NATURALIZATION**  
29 **OFFENSES**

30 `No person shall be prosecuted, tried, or punished for a violation  
31 of any section of chapters 69 (relating to nationality and  
32 citizenship offenses), 75 (relating to passport, visa, and  
33 immigration offenses), or for a violation of any criminal  
34 provision under section 243, 266, 274, 275, 276, 277, or 278 of  
35 the Immigration and Nationality Act (8 U.S.C. 1253, 1306, 1324,  
36 1325, 1326, 1327, and 1328), or for an attempt or conspiracy to  
37 violate any such section, unless the indictment is returned or the  
38 information filed not later than 10 years after the commission of  
39 the offense.'.

1 (b) Clerical Amendment- The table of sections for chapter 213 of  
2 title 18, United States Code, is amended by striking the item  
3 relating to section 3291 and inserting the following:  
4 `3291. Immigration, passport, and naturalization  
5 offenses.'.

6 **SEC. 215. DIPLOMATIC SECURITY SERVICE.**

7 (a) Section 2709(a)(1) of title 22, United States Code, is  
8 amended to read as follows:  
9 `(1) conduct investigations concerning—  
10 `(A) illegal passport or visa issuance or use;  
11 `(B) identity theft or document fraud affecting or  
12 relating to the programs, functions, and authorities  
13 of the Department of State;  
14 `(C) violations of chapter 77 of title 18, United  
15 States Code; and  
16 `(D) Federal offenses committed within the special  
17 maritime and territorial jurisdiction defined in  
18 paragraph (9) of section 7 of title 18, United States  
19 Code, except as that jurisdiction relates to the  
20 premises of United States military missions and  
21 related residences;”.

22  
23 (b) Construction.— Nothing in this section shall be construed to  
24 limit the investigative authority of any other Federal department  
25 or agency.  
26

27 **SEC. 216. STREAMLINED PROCESSING OF BACKGROUND**  
28 **CHECKS CONDUCTED FOR IMMIGRATION BENEFITS.**

29 (a) Information Sharing; Interagency Task Force- Section 105 (8  
30 U.S.C. 1105) is amended by adding at the end the following:  
31 `(e) Interagency Task Force-  
32 `(1) IN GENERAL- The Secretary of Homeland Security  
33 and the Attorney General shall establish an interagency  
34 task force to resolve cases in which an application or  
35 petition for an immigration benefit conferred under this Act  
36 has been delayed due to an outstanding background check  
37 investigation for more than 2 years after the date on which  
38 such application or petition was initially filed.

1 (2) MEMBERSHIP- The interagency task force established  
2 under paragraph (1) shall include representatives from  
3 Federal agencies with immigration, law enforcement, or  
4 national security responsibilities under this Act.'

5 (b) Authorization of Appropriations- There are authorized to be  
6 appropriated to the Director of the Federal Bureau of  
7 Investigation such sums as are necessary for each fiscal year,  
8 2008 through 2012 for enhancements to existing systems for  
9 conducting background and security checks necessary to support  
10 immigration security and orderly processing of applications.

11 (c) Report on Background and Security Checks-

12 (1) IN GENERAL- Not later than 180 days after the date of  
13 the enactment of this Act, the Director of the Federal  
14 Bureau of Investigation shall submit to the Committee on  
15 the Judiciary of the Senate and the Committee on the  
16 Judiciary of the House of Representatives a report on the  
17 background and security checks conducted by the Federal  
18 Bureau of Investigation on behalf of United States  
19 Citizenship and Immigration Services.

20 (2) CONTENT- The report required under paragraph (1)  
21 shall include--

22 (A) a description of the background and security  
23 check program;

24 (B) a statistical breakdown of the background and  
25 security check delays associated with different types  
26 of immigration applications;

27 (C) a statistical breakdown of the background and  
28 security check delays by applicant country of origin;  
29 and

30 (D) the steps that the Director of the Federal Bureau  
31 of Investigation is taking to expedite background and  
32 security checks that have been pending for more  
33 than 180 days.

34  
35  
36 **SEC. 217. STATE CRIMINAL ALIEN ASSISTANCE PROGRAM.**

37 (a) Reimbursement for Costs Associated With Processing  
38 Criminal Illegal Aliens- The Secretary may reimburse States and  
39 units of local government for costs associated with processing  
40 undocumented criminal aliens through the criminal justice  
41 system, including--

42 (1) indigent defense;

- 1 (2) criminal prosecution;
- 2 (3) autopsies;
- 3 (4) translators and interpreters; and
- 4 (5) courts costs.

5 (b) Authorization of Appropriations-

6 (1) PROCESSING CRIMINAL ILLEGAL ALIENS- There are  
7 authorized to be appropriated \$400,000,000 for each of  
8 the fiscal years 2008 through 2013 to carry out subsection  
9 (a).

10 (2) COMPENSATION UPON REQUEST- Section 241(i)(5) (8  
11 U.S.C. 1231(i)) is amended to read as follows:

12 ` (5) There are authorized to be appropriated to carry this  
13 subsection--

14 ` (A) such sums as may be necessary for fiscal year  
15 2008;

16 ` (B) \$750,000,000 for fiscal year 2009;

17 ` (C) \$850,000,000 for fiscal year 2010; and

18 ` (D) \$950,000,000 for each of the fiscal years 2011  
19 through 2013.'.

20 (c) Technical Amendment- Section 501 of the Immigration  
21 Reform and Control Act of 1986 (8 U.S.C. 1365) is amended by  
22 striking ` Attorney General' each place it appears and inserting  
23 ` Secretary of Homeland Security'.

24 **SEC. 218. TRANSPORTATION AND PROCESSING OF ILLEGAL**  
25 **ALIENS APPREHENDED BY STATE AND LOCAL LAW**  
26 **ENFORCEMENT OFFICERS.**

27 (a) In General- The Secretary may provide sufficient  
28 transportation and officers to take illegal aliens apprehended by  
29 State and local law enforcement officers into custody for  
30 processing at a detention facility operated by the Department.

31 (b) Authorization of Appropriations- There are authorized to be  
32 appropriated such sums as may be necessary for each of fiscal  
33 years 2008 through 2012 to carry out this section.

34 **SEC. 219. REDUCING ILLEGAL IMMIGRATION AND ALIEN**  
35 **SMUGGLING ON TRIBAL LANDS.**

36 (a) Grants Authorized- The Secretary may award grants to  
37 Indian tribes with lands adjacent to an international border of  
38 the United States that have been adversely affected by illegal  
39 immigration.

1 (b) Use of Funds- Grants awarded under subsection (a) may be  
2 used for--

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

7 (c) Report- Not later than 180 days after the date of the  
8 enactment of this Act, the Secretary shall submit a report to the  
9 Committee on the Judiciary of the Senate and the Committee on  
10 the Judiciary of the House of Representatives that--

- 11 (1) describes the level of access of Border Patrol agents on  
12 tribal lands;
- 13 (2) describes the extent to which enforcement of  
14 immigration laws may be improved by enhanced access to  
15 tribal lands;
- 16 (3) contains a strategy for improving such access through  
17 cooperation with tribal authorities; and
- 18 (4) identifies grants provided by the Department for Indian  
19 tribes, either directly or through State or local grants,  
20 relating to border security expenses.

21 (d) Authorization of Appropriations- There are authorized to be  
22 appropriated such sums as may be necessary for each of the  
23 fiscal years 2008 through 2012 to carry out this section.

24 **SEC. 220. ALTERNATIVES TO DETENTION.**

25 The Secretary shall conduct a study of--

- 26 (1) the effectiveness of alternatives to detention, including  
27 electronic monitoring devices and intensive supervision  
28 programs, in ensuring alien appearance at court and  
29 compliance with removal orders;
- 30 (2) the effectiveness of the Intensive Supervision  
31 Appearance Program and the costs and benefits of  
32 expanding that program to all States; and
- 33 (3) other alternatives to detention, including--
  - 34 (A) release on an order of recognizance;
  - 35 (B) appearance bonds; and
  - 36 (C) electronic monitoring devices.

37 **SEC. 221. STATE AND LOCAL ENFORCEMENT OF FEDERAL**  
38 **IMMIGRATION LAWS.**

39 (a) In General- Section 287(g) (8 U.S.C. 1357(g)) is amended--

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

2 ` If such training is provided by a State or political  
3 subdivision of a State to an officer or employee of such  
4 State or political subdivision of a State, the cost of such  
5 training (including applicable overtime costs) shall be  
6 reimbursed by the Secretary of Homeland Security.'; and

7 (2) in paragraph (4), by adding at the end the following:

8 ` The cost of any equipment required to be purchased  
9 under such written agreement and necessary to perform  
10 the functions under this subsection shall be reimbursed by  
11 the Secretary of Homeland Security.'.

12 (b) Authorization of Appropriations- There are authorized to be  
13 appropriated to the Secretary such sums as may be necessary to  
14 carry out this section and the amendments made by this section.  
15

16 **SEC. 222. PROTECTING IMMIGRANTS FROM CONVICTED SEX**  
17 **OFFENDERS.**

18 (a) Immigrants- Section 204(a)(1) (8 U.S.C. 1154(a)(1)), is  
19 amended--

20 (1) in subparagraph (A), by amending clause (viii) to read  
21 as follows:

22 ` (viii) Clause (i) shall not apply to a citizen of the United  
23 States who has been convicted of an offense described in  
24 subparagraph (A), (I), or (K) of section 101(a)(43), unless  
25 the Secretary of Homeland Security, in the Secretary's sole  
26 and unreviewable discretion, determines that the citizen  
27 poses no risk to the alien with respect to whom a petition  
28 described in clause (i) is filed.'; and

29 (2) in subparagraph (B)(i), by amending subclause (II) to  
30 read as follows:

31 ` (II) Subclause (I) shall not apply in the case of an alien  
32 admitted for permanent residence who has been convicted  
33 of an offense described in subparagraph (A), (I), or (K) of  
34 section 101(a)(43), unless the Secretary of Homeland  
35 Security, in the Secretary's sole and unreviewable  
36 discretion, determines that the alien lawfully admitted for  
37 permanent residence poses no risk to the alien with  
38 respect to whom a petition described in subclause (I) is  
39 filed.'.

40 (b) Nonimmigrants- Section 101(a)(15)(K) (8 U.S.C.  
41 1101(a)(15)(K)), is amended by inserting ` (other than a citizen

1 described in section 204(a)(1)(A)(viii))' after ` citizen of the  
2 United States' each place that phrase appears.

3 **SEC. 223 LAW ENFORCEMENT AUTHORITY OF STATES AND**  
4 **POLITICAL SUBDIVISIONS AND TRANSFER TO FEDERAL**  
5 **CUSTODY.**

6 (a) In General- Title II (8 U.S.C. 1151 et. seq.) is amended by  
7 adding after section 240C the following new section:

8 **` SEC. 240D. LAW ENFORCEMENT AUTHORITY OF STATES AND**  
9 **POLITICAL SUBDIVISIONS AND TRANSFER OF ALIENS TO**  
10 **FEDERAL CUSTODY.**

11 `(a) Transfer- If the head of a law enforcement entity of a State  
12 (or, if appropriate, a political subdivision of the State) exercising  
13 authority with respect to the apprehension or arrest of an alien  
14 submits a request to the Secretary of Homeland Security that  
15 the alien be taken into Federal custody, the Secretary of  
16 Homeland Security--

17 `(1) shall--

18 `(A) deem the request to include the inquiry to  
19 verify immigration status described in section 642(c)  
20 of the Illegal Immigration Reform and Immigrant  
21 Responsibility Act of 1996 (8 U.S.C. 1373(c)), and  
22 expeditiously inform the requesting entity whether  
23 such individual is an alien lawfully admitted to the  
24 United States or is otherwise lawfully present in the  
25 United States; and

26 `(B) if the individual is an alien who is not lawfully  
27 admitted to the United States or otherwise is not  
28 lawfully present in the United States--

29 `(i) take the illegal alien into the custody of  
30 the Federal Government not later than 72  
31 hours after--

32 `(I) the conclusion of the State charging  
33 process or dismissal process; or

34 `(II) the illegal alien is apprehended, if  
35 no State charging or dismissal process is  
36 required; or

37 `(ii) request that the relevant State or local  
38 law enforcement agency temporarily detain or  
39 transport the alien to a location for transfer to  
40 Federal custody; and

1           ` (2) shall designate at least 1 Federal, State, or local  
2           prison or jail or a private contracted prison or detention  
3           facility within each State as the central facility for that  
4           State to transfer custody of aliens to the Department of  
5           Homeland Security.

6           ` (b) Reimbursement-

7           ` (1) IN GENERAL- The Secretary of Homeland Security  
8           shall reimburse a State, or a political subdivision of a  
9           State, for expenses, as verified by the Secretary, incurred  
10          by the State or political subdivision in the detention and  
11          transportation of an alien as described in subparagraphs  
12          (A) and (B) of subsection (c)(1).

13          ` (2) COST COMPUTATION- Compensation provided for  
14          costs incurred under subparagraphs (A) and (B) of  
15          subsection (c)(1) shall be--

16           ` (A) the product of--

17           ` (i) the average daily cost of incarceration of a  
18           prisoner in the relevant State, as determined  
19           by the chief executive officer of a State (or, as  
20           appropriate, a political subdivision of the  
21           State); multiplied by

22           ` (ii) the number of days that the alien was in  
23           the custody of the State or political  
24           subdivision; plus

25           ` (B) the cost of transporting the alien from the point  
26           of apprehension or arrest to the location of  
27           detention, and if the location of detention and of  
28           custody transfer are different, to the custody transfer  
29           point; plus

30           ` (C) the cost of uncompensated emergency medical  
31           care provided to a detained alien during the period  
32           between the time of transmittal of the request  
33           described in subsection (c) and the time of transfer  
34           into Federal custody.

35          ` (c) Requirement for Appropriate Security- The Secretary of  
36          Homeland Security shall ensure that--

37           ` (1) aliens incarcerated in a Federal facility pursuant to  
38           this section are held in facilities which provide an  
39           appropriate level of security; and

40           ` (2) if practicable, aliens detained solely for civil violations  
41           of Federal immigration law are separated within a facility  
42           or facilities.

43          ` (d) Requirement for Schedule- In carrying out this section, the  
44          Secretary of Homeland Security shall establish a regular circuit



1 and schedule for the prompt transportation of apprehended  
2 aliens from the custody of those States, and political subdivisions  
3 of States, which routinely submit requests described in  
4 subsection (c), into Federal custody.

5 ` (e) Authority for Contracts-

6 ` (1) IN GENERAL- The Secretary of Homeland Security  
7 may enter into contracts or cooperative agreements with  
8 appropriate State and local law enforcement and detention  
9 agencies to implement this section.

10 ` (2) DETERMINATION BY SECRETARY- Prior to entering  
11 into a contract or cooperative agreement with a State or  
12 political subdivision of a State under paragraph (1), the  
13 Secretary shall determine whether the State, or if  
14 appropriate, the political subdivision in which the agencies  
15 are located, has in place any formal or informal policy that  
16 violates section 642 of the Illegal Immigration Reform and  
17 Immigrant Responsibility Act of 1996 (8 U.S.C. 1373). The  
18 Secretary shall not allocate any of the funds made  
19 available under this section to any State or political  
20 subdivision that has in place a policy that violates such  
21 section.'.

22 (b) Authorization of Appropriations for the Detention and  
23 Transportation to Federal Custody of Aliens Not Lawfully Present-  
24 There are authorized to be appropriated \$850,000,000 for fiscal  
25 year 2008 and each subsequent fiscal year for the detention and  
26 removal of aliens not lawfully present in the United States under  
27 the Immigration and Nationality Act (8 U.S.C. 1101 et. seq.).

28 **SEC. 224. LAUNDERING OF MONETARY INSTRUMENTS.**

29 Section 1956(c)(7)(D) of title 18, United States Code, is  
30 amended--

31 (1) by inserting ` section 1590 (relating to trafficking with  
32 respect to peonage, slavery, involuntary servitude, or  
33 forced labor),' after ` section 1363 (relating to destruction  
34 of property within the special maritime and territorial  
35 jurisdiction),'; and

36 (2) by inserting ` section 274(a) of the Immigration and  
37 Nationality Act (8 U.S.C.1324(a)) (relating to bringing in  
38 and harboring certain aliens),' after ` section 590 of the  
39 Tariff Act of 1930 (19 U.S.C. 1590) (relating to aviation  
40 smuggling),'.

41 **SEC. 225. COOPERATIVE ENFORCEMENT PROGRAMS.**

1 Not later than 2 years after the date of the enactment of this  
2 Act, the Secretary shall negotiate and execute, where  
3 practicable, a cooperative enforcement agreement described in  
4 section 287(g) of the Immigration and Nationality Act (8 U.S.C.  
5 1357(g)) with at least 1 law enforcement agency in each State,  
6 to train law enforcement officers in the detection and  
7 apprehension of individuals engaged in transporting, harboring,  
8 sheltering, or encouraging aliens in violation of section 274 of  
9 such Act (8 U.S.C. 1324).

10 **SEC. 226. EXPANSION OF THE JUSTICE PRISONER AND ALIEN**  
11 **TRANSFER SYSTEM.**

12 Not later than 60 days after the date of enactment of this Act,  
13 the Attorney General shall issue a directive to expand the Justice  
14 Prisoner and Alien Transfer System (JPATS) so that such System  
15 provides additional services with respect to aliens who are  
16 illegally present in the United States. Such expansion should  
17 include--

- 18 (1) increasing the daily operations of such System with  
19 buses and air hubs in 3 geographic regions;
  - 20 (2) allocating a set number of seats for such aliens for  
21 each metropolitan area;
  - 22 (3) allowing metropolitan areas to trade or give some of  
23 seats allocated to them under the System for such aliens  
24 to other areas in their region based on the transportation  
25 needs of each area; and
  - 26 (4) requiring an annual report that analyzes of the number  
27 of seats that each metropolitan area is allocated under this  
28 System for such aliens and modifies such allocation if  
29 necessary.
- 30

31 **SEC. 227. DIRECTIVE TO THE UNITED STATES SENTENCING**  
32 **COMMISSION.**

33 (a) In General.—Pursuant to the authority under section 994 of title  
34 28, United States Code, the United States Sentencing Commission  
35 shall promulgate or amend the sentencing guidelines, policy  
36 statements, and official commentaries related to passport fraud  
37 offenses, including the offenses described in chapter 75 of title 18,  
38 United States Code, as amended by section 208 of this Act, to reflect  
39 the serious nature of such offenses.

1 (b) Report.—Not later than one year after the date of the enactment  
2 of this Act, the United States Sentencing Commission shall submit to  
3 the Committee on the Judiciary of the Senate and the Committee on  
4 the Judiciary of the House of Representatives a report on the  
5 implementation of this section.

6  
7 **SEC. 228. CANCELLATION OF VISAS.**

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

10  
11 (1) in paragraph (1)—

12  
13 (A) by striking "Attorney General" and inserting "Secretary";

14  
15 (B) by inserting "or otherwise violated any of the terms of the  
16 nonimmigrant classification in which the alien was admitted, "  
17 before "such visa"; and

18  
19 (C) by inserting "and any other nonimmigrant visa issued by the  
20 United States that is in the possession of the alien" after "such  
21 visa"; and

22  
23 (2) in paragraph (2)(A), by striking "(other than the visa described in  
24 paragraph (1)) issued in a consular office located in the country of the  
25 alien's nationality" and inserting "(other than a visa described in  
26 paragraph (1)) issued in a consular office located in the country of the  
27 alien's nationality or foreign residence".

28

**TITLE III—WORKSITE ENFORCEMENT**

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- Sec. 301. Purposes.
- Sec. 302. Unlawful Employment of Aliens.
- Sec. 303. Effective Date.
- Sec. 304. Disclosure of Certain Taxpayer Information to Assist in Immigration Enforcement.
- Sec. 305. Increasing Security and Integrity of Social Security Cards.
- Sec. 306. Increasing Security and Integrity of Identity Documents.
- Sec. 307. Voluntary Advanced Verification Program to Combat Identity Theft.
- Sec. 308. Responsibilities of the Social Security Administration.
- Sec. 309. Immigration Enforcement Support by the Internal Revenue Service and the Social Security Administration.
- Sec. 310. Authorization of appropriations.

**TITLE III – WORKSITE ENFORCEMENT**

**SEC. 301. PURPOSES.**

(a) To continue to prohibit the hiring, recruitment, or referral of unauthorized aliens.

(b) To require that each employer take reasonable steps to verify the identity and work authorization status of all its employees, without regard to national origin and citizenship status.

(c) To authorize the Secretary of Homeland Security to access records of other federal agencies for the purposes of confirming identity, authenticating lawful presence and preventing identity theft and fraud related to unlawful employment.

(d) To ensure that the Commissioner of Social Security has the necessary authority to provide information to the Secretary of Homeland Security that would assist in the enforcement of the immigration laws.

(e) To authorize the Secretary of Homeland Security to confirm issuance of state identity documents, including driver's licenses, and to obtain and transmit individual photographic images held by states for identity authentication purposes.

(f) To collect information on employee hires.

(g) To electronically secure a social security number in the Employment Eligibility Verification System (EEVS) at the request of an individual who has been confirmed to be the holder of that number, and to prevent fraudulent use of the number by others.

(h) To provide for record retention of EEVS inquiries, to prevent identity fraud and employment authorization fraud.

(i) To employ fast track regulatory and procurement procedures to expedite implementation of this Title and pertinent sections of the INA for a period of two years from enactment.

(j) To establish the following:

- 1 (i) a document verification process requiring employers to
- 2 inspect, copy, and retain identity and work authorization
- 3 documents;
- 4
- 5 (ii) an EEVS requiring employers to obtain confirmation of an
- 6 individual's identity and work authorization;
- 7
- 8 (iii) procedures for employers to register for the EEVS and to
- 9 confirm work eligibility through the EEVS;
- 10
- 11 (iv) a streamlined enforcement procedure to ensure efficient
- 12 adjudication of violations of this Title;
- 13
- 14 (v) a system for the imposition of civil penalties and their
- 15 enforcement, remission or mitigation;
- 16
- 17 (vi) an enhancement of criminal and civil penalties;
- 18
- 19 (vii) increased coordination of information and enforcement
- 20 between the Internal Revenue Service and the Department of
- 21 Homeland Security regarding employers who have violations
- 22 related to the employment of unauthorized aliens;
- 23
- 24 (viii) increased penalties under the Internal Revenue Code for
- 25 employers who have violations relating to the employment of
- 26 unauthorized aliens.
- 27

28 **SEC. 302. UNLAWFUL EMPLOYMENT OF ALIENS.**

29 (a) Section 274A of the Immigration and Nationality Act (8 U.S.C.  
30 1324a) is amended to read as follows:

31 "(a) Making Employment of Unauthorized Aliens Unlawful.

32 "(1) In general.—It is unlawful for an employer—

33 "(A) to hire, or to recruit or refer for a fee, an alien for

34

35 employment in the United States knowing or with reckless

36 disregard that the alien is an unauthorized alien (as

37 defined in subsection (b)(1)) with respect to such

38 employment; or

39

40

1           “(B) to hire, or to recruit or refer for a fee, for employment  
2           in the United States an individual without complying with  
3           the requirements of subsections (c) and (d).  
4

5           “(2) Continuing employment.— It is unlawful for an employer,  
6           after hiring an alien for employment, to continue to employ the  
7           alien in the United States knowing or with reckless disregard that  
8           the alien is (or has become) an unauthorized alien with respect  
9           to such employment.  
10

11           “(3) Use of labor through contract.— For purposes of this  
12           section, an employer who uses a contract, subcontract, or  
13           exchange to obtain the labor of an alien in the United States  
14           knowing that the alien is an unauthorized alien (as defined in  
15           subsection (b)(1)) with respect to performing such labor, shall  
16           be considered to have hired the alien for employment in the  
17           United States in violation of paragraph (1)(A).

18           (A) By regulation, the Secretary may require, for  
19           purposes of ensuring compliance with the immigration  
20           laws, that an employer include in a written contract,  
21           subcontract, or exchange an effective and enforceable  
22           requirement that the contractor or subcontractor  
23           adhere to the immigration laws of the United States,  
24           including use of EEVS. .

25           (B) The Secretary may establish procedures by which an  
26           employer may obtain confirmation from the Secretary  
27           that the contractor or subcontractor has registered with  
28           the EEVS and is utilizing the EEVS to verify its  
29           employees.

30           (C) The Secretary may establish such other  
31           requirements for employers using contractors or  
32           subcontractors as the Secretary deems necessary to  
33           prevent knowing violations of this paragraph.  
34

35           “(4) Application to federal government.— For purposes of this  
36           section, the term “employer” includes entities in any branch of  
37           the Federal Government.

38           “(5) Defense.— An employer that establishes that it has  
39           complied in good faith with the requirements of subsections

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**May 18, 2007 11:58 p.m.**

1 (c)(1) through (c)(4), pertaining to document verification  
2 requirements, and subsection (d) has established an affirmative  
3 defense that the employer has not violated paragraph (1)(A)  
4 with respect to such hiring, recruiting, or referral, however:

5  
6 “(A) until such time as the Secretary has required an employer  
7 to participate in the EEVS or such participation is permitted on a  
8 voluntary basis pursuant to subsection (d), a defense is  
9 established without a showing of compliance with subsection (d)  
10 ; and

11  
12 “(B) to establish a defense, the employer must also be in  
13 compliance with any additional requirements that the Secretary  
14 may promulgate by regulation pursuant to subsections (c), (d),  
15 and (k).

16  
17 “(6) An employer is presumed to have acted with knowledge or  
18 reckless disregard if the employer fails to comply with written  
19 standards, procedures or instructions issued by the Secretary.  
20 Such standards, procedures or instructions shall be objective and  
21 verifiable.

22  
23 “(b) Definitions.—

24 “(1) Definition of unauthorized alien.— As used in this section,  
25 the term ‘unauthorized alien’ means, with respect to the  
26 employment of an alien at a particular time, that the alien is not  
27 at that time either—

28  
29 “(A) an alien lawfully admitted for permanent residence; or

30 “(B) authorized to be so employed by this Act or by the  
31 Secretary.

32 “(2) Definition of employer. —For purposes of this section, the  
33 term “employer” means any person or entity hiring, recruiting,  
34 or referring an individual for employment in the United States.

35  
36 “(c) Document Verification Requirements.—

37 “Any employer hiring, recruiting, or referring an individual for  
38 employment in the United States shall take all reasonable steps to  
39 verify that the individual is authorized to work in the United States,



1 including the requirements of subsection (d) and the following  
2 paragraphs:

3  
4 “(1) Attestation after examination of documentation.

5  
6 “(A) In general.— The employer must attest, under penalty  
7 of perjury and on a form prescribed by the Secretary, that  
8 it has verified the identity and work authorization status of  
9 the individual by examining:—

10 “(i) a document described in subparagraph (B); or

11  
12 “(ii) a document described in subparagraph (C) and  
13 a document described in subparagraph (D).

14  
15 “Such attestation may be manifested by a handwritten or  
16 electronic signature. An employer has complied with the  
17 requirement of this paragraph with respect to examination  
18 of documentation if the employer has followed applicable  
19 regulations and any written procedures or instructions  
20 provided by the Secretary and if a reasonable person  
21 would conclude that the documentation is genuine and  
22 establishes the employee’s identity and authorization to  
23 work, taking into account any information provided to the  
24 employer by the Secretary, including photographs.

25 “(B) Documents establishing both employment  
26 authorization and identity.— A document described in this  
27 subparagraph is an individual’s—

28  
29 “(i) United States passport, or passport card issued  
30 pursuant to the Secretary of State’s authority under  
31 22 U.S.C. 211a;

32  
33 “(ii) permanent resident card or other document  
34 issued by the Secretary or Secretary of State to  
35 aliens authorized to work in the United States, if the  
36 document—

37  
38 “(I) contains a photograph of the individual,  
39 biometric data, such as fingerprints, or such  
40 other personal identifying information relating  
41 to the individual as the Secretary finds, by

1 regulation, sufficient for the purposes of this  
2 subsection;

3  
4 “(II) is evidence of authorization for  
5 employment in the United States; and

6  
7 “(III) contains security features to make it  
8 resistant to tampering, counterfeiting, and  
9 fraudulent use; or

10  
11 (iii) a temporary interim benefits card valid under  
12 section 218C(c) of the Immigration and Nationality  
13 Act, as amended by Section 602 of the  
14 Comprehensive Immigration Reform Act of 2007,  
15 bearing a photograph and an expiration date, and  
16 issued by the Secretary to aliens applying for  
17 temporary worker status under the Z-visa

18  
19 “(C) Documents establishing identity of individual.— A  
20 document described in this subparagraph includes—

21  
22 “(i) an individual’s driver’s license or identity card  
23 issued by a State, the Commonwealth of the  
24 Northern Mariana Islands, or an outlying possession  
25 of the United States, provided that the issuing state  
26 or entity has certified to the Secretary of Homeland  
27 Security that it is in compliance with the minimum  
28 standards required under section 202 of the REAL ID  
29 Act of 2005 (division B of Public Law 109-13) (49  
30 U.S.C. 30301 note) and implementing regulations  
31 issued by the Secretary of Homeland Security once  
32 those requirements become effective;

33  
34 “(ii) an individual’s driver’s license or identity card  
35 issued by a State, the Commonwealth of the  
36 Northern Mariana Islands, or an outlying possession  
37 of the United States which is not compliant with  
38 section 202 of the REAL ID Act of 2005 if

39  
40 “(I) the driver’s license or identity card  
41 contains the individual’s photograph as well as  
42 the individual’s name, date of birth, gender,  
43 height, eye color and address,  
44

1 (II) the card has been approved for this  
2 purpose in accordance with timetables and  
3 procedures established by the Secretary  
4 pursuant to subsection (c)(1)(F) of this  
5 section, and

6  
7 (III) the card is presented by the individual  
8 and examined by the employer in combination  
9 with a U.S. birth certificate, or a Certificate of  
10 Naturalization, or a Certificate of Citizenship,  
11 or such other documents as may be prescribed  
12 by the Secretary,

13  
14 “(iii) for individuals under 16 years of age who are  
15 unable to present a document listed in clause (i) or  
16 (ii), documentation of personal identity of such other  
17 type as the Secretary finds provides a reliable means  
18 of identification, provided it contains security  
19 features to make it resistant to tampering,  
20 counterfeiting, and fraudulent use; or

21  
22 “(iv) other documentation evidencing identity as  
23 identified by the Secretary in his discretion, with  
24 notice to the public provided in the Federal Register,  
25 to be acceptable for purposes of this section,  
26 provided that the document, including any electronic  
27 security measures linked to the document, contains  
28 security features that make the document as  
29 resistant to tampering, counterfeiting, and fraudulent  
30 use as the documents listed in (B)(i), B(ii), or (C)(i).

31  
32 “(D) Documents evidencing employment authorization.—  
33 The following documents may be accepted as evidence of  
34 employment authorization—

35  
36 “(i) a social security account number card issued by  
37 the Commissioner of Social Security (other than a  
38 card which specifies on its face that the card is not  
39 valid for employment in the United States). The  
40 Secretary, in consultation with the Commissioner of  
41 Social Security, may require by publication of a  
42 notice in the Federal Register that only a social  
43 security account number card described in Section  
44 305 of this Title be accepted for this purpose; or

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“(ii) any other documentation evidencing authorization of employment in the United States which the Secretary declares, by publication 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) as establishing employment authorization or identity does not reliably establish such authorization or identity or is being used fraudulently to an unacceptable degree, the Secretary shall, with notice to the public provided in the Federal Register, prohibit or restrict the use of that document or class of documents for purposes of this subsection.

“(F) After June 1, 2013, no driver’s license or state identity card may be accepted if it does not comply with the REAL ID Act of 2005. This paragraph (c)(1)(F) shall have no effect on paragraphs (c)(1)(B), (c)(1)(C)(iii), (c)(1)(C)(iv), or (c)(1)(D).

“(2) Individual attestation of employment authorization.— The individual must attest, under penalty of perjury on 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, recruited, or referred for such employment. Such attestation may be manifested by either a hand-written or electronic signature.

“(3) Retention of verification form.— After completion of such form in accordance with paragraphs (1) and (2), the employer must retain a paper, microfiche, microfilm, or electronic version of the form and make it available for inspection by officers 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

1 period beginning on the date of the hiring, recruiting, or referral  
2 of the individual and ending—

3  
4 “(A) in the case of the recruiting or referral for a fee  
5 (without hiring) of an individual, seven years after the date  
6 of the recruiting or referral; and

7  
8 “(B) in the case of the hiring of an individual—

9  
10 “(i) seven years after the date of such hiring; or

11  
12 “(ii) two years after the date the individual’s  
13 employment is terminated, whichever is earlier.

14 “(4) Copying of documentation and recordkeeping required.

15  
16 “(A) Notwithstanding any other provision of law, the  
17 employer shall copy all documents presented by an  
18 individual pursuant to this subsection and shall retain a  
19 paper, microfiche, microfilm, or electronic copy as  
20 prescribed in paragraph (3), but only (except as otherwise  
21 permitted under law) for the purposes of complying with  
22 the requirements of this subsection. Such copies shall  
23 reflect the signatures of the employer and the employee,  
24 as well as the date of receipt.

25  
26 “(B) The employer shall also maintain records of Social  
27 Security Administration correspondence regarding name  
28 and number mismatches or no-matches and the steps  
29 taken to resolve such issues.

30  
31 “(C) The employer shall maintain records of all actions and  
32 copies of any correspondence or action taken by the  
33 employer to clarify or resolve any issue that raises  
34 reasonable doubt as to the validity of the alien’s identity or  
35 work authorization.

36  
37 “(D) The employer shall maintain such records as  
38 prescribed in this subsection. The Secretary may prescribe  
39 the manner of recordkeeping and may require that  
40 additional records be kept or that additional documents be  
41 copied and maintained. The Secretary may require that  
42 these documents be transmitted electronically, and may

1           develop automated capabilities to request such  
2           documents.

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

6           “(6) No Authorization of National Identification Cards.— Nothing  
7           in this section shall be construed to authorize, directly or  
8           indirectly, the issuance or use of national identification cards or  
9           the establishment of a national identification card.

10          “(7) The employer shall use the procedures for  
11          document verification set forth in this paragraph for all  
12          employees without regard to national origin or citizenship status.  
13

14          “(d) Employment Eligibility Verification System. —

15           “(1) In general. The Secretary, in cooperation and consultation  
16           with the Secretary of State, the Commissioner of Social Security,  
17           and the states, shall implement and specify the procedures for  
18           EEVS. The participating employers shall timely register with  
19           EEVS and shall use EEVS as described in subsection (d)(5).

20          “(2) Implementation schedule.

21           “(A) As of the date of enactment of this section, the  
22           Secretary in his discretion, with notice to the public  
23           provided in the Federal Register, is authorized to require  
24           any employer or industry which the Secretary determines  
25           to be part of the critical infrastructure, a federal  
26           contractor, or directly related to the national security or  
27           homeland security of the United States to participate in the  
28           EEVS. This requirement may be applied to both newly  
29           hired and current employees. The Secretary shall notify  
30           employers subject to this subparagraph 30 days prior to  
31           EEVS.

32           “(B) No later than 6 months after the date of enactment of  
33           this section, the Secretary shall require additional  
34           employers or industries to participate in the EEVS. This  
35           requirement shall be applied to new employees hired, and  
36           current employees subject to reverification because of  
37           expiring work authorization documentation or expiration of  
38           immigration status, on or after the date on which the

1 requirement takes effect. The Secretary, by notice in the  
2 Federal Register, shall designate these employers or  
3 industries, in his discretion, based upon risks to critical  
4 infrastructure, national security, immigration enforcement,  
5 or homeland security needs.

6 “(C) No later than 18 months after the date of  
7 enactment of this section, the Secretary shall require  
8 all employers to participate in the EEVS with respect to  
9 newly hired employees and current employees subject  
10 to reverification because of expiring work authorization  
11 documentation or expiration of immigration status.

12 “(D) No later than three years after the date of  
13 enactment of this section, all employers shall  
14 participate in the EEVS with respect to new employees,  
15 all employees whose identity and employment  
16 authorization have not been previously verified  
17 through EEVS, and all employees in Z status who have  
18 not previously presented a secure document  
19 evidencing their Z status. The Secretary may specify  
20 earlier dates for participation in the EEVS in his  
21 discretion for some or all classes of employer or  
22 employee.

23 “(E) The Secretary shall create the necessary systems and  
24 processes to monitor the functioning of the EEVS, including  
25 the volume of the workflow, the speed of processing of  
26 queries, and the speed and accuracy of responses. These  
27 systems and processes shall be audited by the  
28 Government Accountability Office 9 months after the date  
29 of enactment of this section and 24 months after the date  
30 of enactment of this section. The Government  
31 Accountability Office shall report the results of the audits  
32 to Congress.

33  
34 “(3) Participation in EEVS. —The Secretary has the following  
35 discretionary authority to require or to permit participation in  
36 the EEVS –

37 “(A) To permit any employer that is not required to  
38 participate in the EEVS to do so on a voluntary basis;

1           “(B) To require any employer that is required to  
2           participate in the EEVS with respect to its newly hired  
3           employees also to do so with respect to its current  
4           workforce if the Secretary has reasonable cause to  
5           believe that the employer has engaged in any violation of  
6           the immigration laws.

7           “(4) Consequence of failure to participate. —If an employer is  
8           required under this subsection to participate in the EEVS and  
9           fails to comply with the requirements of such program with  
10          respect to an individual—

11                           “(A) such failure shall be treated as a violation of  
12                           subsection (a)(1)(B) of this section with respect to that  
13                           individual, and

14   “(B) a rebuttable presumption is created that the employer  
15   has violated subsection (a)(1)(A) or (a)(2) of this section.

16   “(B) a rebuttable presumption is created that the employer  
17   has violated subsection (a)(1)(A) or (a)(2) of this section.  
18   “(B) a rebuttable presumption is created that the employer  
19   has violated subsection (a)(1)(A) or (a)(2) of this section.  
20   “(B) a rebuttable presumption is created that the employer  
21   has violated subsection (a)(1)(A) or (a)(2) of this section.

19          “Subparagraph (B) shall not apply in any prosecution under  
20          subsection 274A(f)(1).

21          “(5) Procedures for participants in the EEVS.

22                           “(A) In general. —An employer participating in the EEVS  
23                           must register in the EEVS and conform to the following  
24                           procedures in the event of hiring, recruiting, or referring  
25                           any individual for employment in the United States:

26   “(i) Registration of Employers.—The Secretary,  
27   through notice in the Federal Register, shall  
28   prescribe procedures that employers must follow to  
29   register in the EEVS. In prescribing these  
30   procedures, the Secretary shall have authority to  
31   require employers to provide:

- 32   “(I) employer’s name;  
33   “(II) employer’s Employment Identification  
34   Number (EIN);  
35   “(III) company address;  
36   “(IV) name, position and social security  
37   number of the employer’s employees accessing  
38   the EEVS; and  
39   “(IV) name, position and social security  
40   number of the employer’s employees accessing  
41   the EEVS; and



1                                   “(V) such other information as the Secretary  
2                                   deems necessary to ensure proper use and  
3                                   security of the EEVS.  
4

5                                   The Secretary shall require employers to undergo  
6                                   such training as the Secretary deems necessary to  
7                                   ensure proper use and security of the EEVS. To the  
8                                   extent practicable, such training shall be made  
9                                   available electronically.  
10

11                                  “(ii) Provision of additional information.—The  
12                                  employer shall obtain from the individual (and the  
13                                  individual shall provide) and shall record in such  
14                                  manner as the Secretary may specify:--  
15

16   “(I) an individual’s social security account  
17   number,  
18

19   “(II) if the individual does not attest to United  
20   States nationality under subsection (c)(2) of  
21   this section, such identification or authorization  
22   number established by the Department of  
23   Homeland Security as the Secretary of  
24   Homeland Security shall specify, and  
25

26   “(III) such other information as the Secretary  
27   may require to determine the identity and  
28   work authorization of an employee.  
29

30                                  “(iii) Presentation of documentation.— The employer,  
31                                  and the individual whose identity and employment  
32                                  eligibility are being confirmed, shall fulfill the  
33                                  requirements of subsection (c) of this section.  
34

35                                  “(iv) Presentation of biometrics. -- Employers who  
36                                  are enrolled in the Voluntary Advanced Verification  
37                                  Program to Combat Identity Theft under section 307  
38                                  of this Title shall, in addition to documentary  
39                                  evidence of identity and work eligibility,  
40                                  electronically provide the fingerprints of the  
41                                  individual to the Department of Homeland Security.”  
42

43                                  “(B) Seeking confirmation.—  
44

1 (i) The employer shall use the EEVS to provide to the  
2 Secretary all required information in order to obtain  
3 confirmation of the identity and employment eligibility  
4 of any individual no earlier than the date of hire and no  
5 later than on the first day of employment (or  
6 recruitment or referral, as the case may be). An  
7 employer may not, however, make the starting date of  
8 an individual's employment contingent on the receipt of  
9 a confirmation of the identity and employment  
10 eligibility.

11  
12 (ii) For reverification of an employee with a limited  
13 period of work authorization (including Z card holder),  
14 all required verification procedures must be complete  
15 on the date the employee's work authorization expires.  
16

17 (iii) For initial verification of an employee hired before  
18 the employer is subject to the employment eligibility  
19 verification system, all required procedures must be  
20 complete on such date as the Secretary shall specify in  
21 accordance with subparagraph (d)(2)(D).  
22

23 (iv) The Secretary shall provide, and the employer shall  
24 utilize, as part of EEVS, a method of communicating  
25 notices and requests for information or action on the  
26 part of the employer with respect to expiring work  
27 authorization or status and other matters. Additionally,  
28 the Secretary shall provide a method of notifying  
29 employers of a confirmation, nonconfirmation or a  
30 notice that further action is required ("further action  
31 notice"). The employer shall communicate to the  
32 individual that is the subject of the verification all  
33 information provided to the employer by the EEVS for  
34 communication to the individual.  
35

36 "(C) Confirmation or nonconfirmation.—

37 "(i) Initial response. —The verification system shall  
38 provide a confirmation, a nonconfirmation, or a  
39 further action notice of an individual's identity and  
40 employment eligibility at the time of the inquiry,  
41 unless for technological reasons or due to  
42 unforeseen circumstances, the EEVS is unable to  
43 provide such confirmation or further action notice.

1 In such situations, the system shall provide  
2 confirmation or further action notice within 3  
3 business days of the initial inquiry. If providing  
4 confirmation or further action notice, the EEVS shall  
5 provide an appropriate code indicating such  
6 confirmation or such further action notice.

7 “(ii) Confirmation upon initial inquiry.—When the  
8 employer receives an appropriate confirmation of an  
9 individual's identity and work eligibility under the  
10 EEVS, the employer shall record the confirmation in  
11 such manner as the Secretary may specify.

12  
13 “(iii) Further action notice upon initial inquiry and  
14 secondary verification.—

15 “(I) Further action notice. —If the employer  
16 receives a further action notice of an  
17 individual's identity or work eligibility under  
18 the EEVS, the employer shall inform the  
19 individual without delay for whom the  
20 confirmation is sought of the further action  
21 notice and any procedures specified by the  
22 Secretary for addressing the further action  
23 notice. The employee must acknowledge in  
24 writing the receipt of the further action notice  
25 from the employer.

26 “(II) Contest. —Within ten business days from  
27 the date of notification to the employee, the  
28 employee must contact the appropriate agency  
29 to contest the further action notice and, if the  
30 Secretary so requires, appear in person at the  
31 appropriate Federal or state agency for  
32 purposes of verifying the individual's identity  
33 and employment authorization. The Secretary,  
34 in consultation with the Commissioner of Social  
35 Security and other appropriate Federal and  
36 State agencies, shall specify an available  
37 secondary verification procedure to confirm the  
38 validity of information provided and to provide  
39 a final confirmation or nonconfirmation. An  
40 individual contesting a further action notice

1 must attest under penalty of perjury to his  
2 identity and employment authorization.

3 “(III) No contest. – If the individual does not  
4 contest the further action notice within the  
5 period specified in subparagraph (5)(C)(iii)(II),  
6 a final nonconfirmation shall issue. The  
7 employer shall then record the  
8 nonconfirmation in such manner as the  
9 Secretary may specify.

10 “(IV) Finality. – The EEVS shall provide a final  
11 confirmation or nonconfirmation within 10  
12 business days from the date of the employee’s  
13 contesting of the further action notice. As long  
14 as the employee is taking the steps required  
15 by the Secretary and the agency that the  
16 employee has contacted to resolve a further  
17 action notice, the Secretary shall extend the  
18 period of investigation until the secondary  
19 verification procedure allows the Secretary to  
20 provide a final confirmation or  
21 nonconfirmation. If the employee fails to take  
22 the steps required by the Secretary and the  
23 appropriate agency, a final nonconfirmation  
24 may be issued to that employee.

25  
26 “(V) Re-examination. – Nothing in this section  
27 shall prevent the Secretary from reexamining a  
28 case where a final confirmation has been  
29 provided if subsequently received information  
30 indicates that the individual may not be work  
31 authorized.

32  
33 “In no case shall an employer terminate employment  
34 of an individual solely because of a failure of the  
35 individual to have identity and work eligibility  
36 confirmed under this section until a nonconfirmation  
37 becomes final and the period to timely file an  
38 administrative appeal has passed, and in the case  
39 where an administrative appeal has been denied, the  
40 period to timely file a petition for judicial review has  
41 passed. When final confirmation or nonconfirmation  
42 is provided, the confirmation system shall provide an

1 appropriate code indicating such confirmation or  
2 nonconfirmation. An individual's failure to contest a  
3 further action notice shall not be considered an  
4 admission of guilt with respect to any violation of  
5 this section or any provision of law.

6 "(D) Consequences of nonconfirmation.—

7 "(i) Termination of continued employment.—If the  
8 employer has received a final nonconfirmation  
9 regarding an individual, the employer shall terminate  
10 employment (or recruitment or referral) of the  
11 individual, unless the individual files an  
12 administrative appeal of a final nonconfirmation  
13 notice under paragraph (7) within the time period  
14 prescribed in that paragraph and the Secretary or  
15 the Commissioner stays the final nonconfirmation  
16 notice pending the resolution of the administrative  
17 appeal.

18  
19 "(ii) Continued employment after final  
20 nonconfirmation. —If the employer continues to  
21 employ (or to recruit or refer) an individual after  
22 receiving final nonconfirmation (unless the individual  
23 filed an administrative appeal of a final  
24 nonconfirmation notice under paragraph (7) within  
25 the time period prescribed in that paragraph and the  
26 Secretary of the Commissioner stayed the final  
27 nonconfirmation notice pending the resolution of the  
28 administrative appeal), a rebuttable presumption is  
29 created that the employer has violated subsections  
30 (a)(1)(A) and (a)(2) of this section. The previous  
31 sentence shall not apply in any prosecution under  
32 subsection (f)(1) of this section.

33  
34 "(E) Obligation to Respond to Queries and Additional  
35 Information --

36  
37 (i) Employers are required to comply with  
38 requests from the Secretary through EEVS for  
39 information, including queries concerning  
40 current and former employees that relate to  
41 the functioning of the EEVS, the accuracy of  
42 the responses provided by the EEVS, and any

1 suspected fraud or identity theft in the use of  
2 the EEVS. Failure to comply with such a  
3 request is a violation of section (a)(1)(B).  
4

5 (ii) Individuals being verified through EEVS may  
6 be required to take further action to address  
7 irregularities identified in the documents relied  
8 upon for purposes of employment verification.  
9 The employer shall communicate to the  
10 individual any such requirement for further  
11 actions and shall record the date and manner  
12 of such communication. The individual must  
13 acknowledge in writing the receipt of this  
14 communication from the employer. Failure to  
15 communicate such a requirement is a violation  
16 of section (a)(1)(B).  
17

18  
19 (iii) The Secretary is authorized, with notice to the  
20 public provided in the Federal Register, to  
21 implement, clarify, and supplement the  
22 requirements of this paragraph in order to  
23 facilitate the functioning of the EEVS or to  
24 prevent fraud or identity theft in the use of the  
25 EEVS.  
26

27 “(F) Impermissible Use of the EEVS –

28  
29 “(i) An employer may not use the EEVS to verify an  
30 individual prior to extending to the individual an offer  
31 of employment.  
32

33 “(ii) An employer may not require an individual to  
34 verify the individual’s own employment eligibility  
35 through the EEVS as a condition of extending to that  
36 individual an offer of employment. Nothing in this  
37 paragraph shall be construed to prevent an employer  
38 from encouraging an employee or a prospective  
39 employee from verifying the employee’s or a  
40 prospective employee’s own employment eligibility  
41 prior to obtaining employment pursuant to  
42 paragraph (5)(H).  
43

1                   “(iii) An employer may not terminate an individual’s  
2                   employment solely because that individual has been  
3                   issued a further action notice.

4  
5                   “(iv) An employer may not take the following actions  
6                   solely because an individual has been issued a  
7                   further action notice:

8  
9                                 “(I) reduce salary, bonuses or other  
10                                compensation due to the employee;

11  
12                               “(II) suspend the employee without pay;

13  
14                               “(III) reduce the hours that the employee is  
15                               required to work if such reduction is  
16                               accompanied by a reduction in salary, bonuses  
17                               or other compensation due to the employee,  
18                               except that, with the agreement of the  
19                               employee, an employer may provide an  
20                               employee with reasonable time off without pay  
21                               in order to contest and resolve the further  
22                               action notice received by the employee;

23  
24                               “(IV) deny the employee the training necessary  
25                               to perform the employment duties for which  
26                               the employee has been hired.

27  
28                   “(v) An employer may not, in the course of utilizing  
29                   the procedures for document verification set forth in  
30                   subsection (c), require that a prospective employee  
31                   present additional documents or different documents  
32                   than those prescribed under that subsection.

33  
34                   “(vi) The Secretary of Homeland Security shall  
35                   develop the necessary policies and procedures to  
36                   monitor employers’ use of the EEVS and their  
37                   compliance with the requirements set forth in this  
38                   section. Employers are required to comply with  
39                   requests from the Secretary for information related  
40                   to any monitoring, audit or investigation undertaken  
41                   pursuant to this subparagraph.

42  
43                   “(vii) The Secretary of Homeland Security, in  
44                   consultation with the Secretary of Labor, shall

1 establish and maintain a process by which any  
2 employee (or any prospective employee who would  
3 otherwise have been hired) who has reason to  
4 believe that an employer has violated subparagraphs  
5 (i)-(v) may file a complaint against the employer.  
6

7 “(viii) Any employer found to have violated  
8 subparagraphs (i)-(v) shall pay a civil penalty of up  
9 to \$10,000 for each violation.  
10

11 “(ix) This paragraph is not intended to, and does not,  
12 create any right, benefit, trust, or responsibility,  
13 whether substantive or procedural, enforceable at  
14 law or equity by a party against the United States,  
15 its departments, agencies, instrumentalities, entities,  
16 officers, employees, or agents, or any person, nor  
17 does it create any right of review in a judicial  
18 proceeding.  
19

20  
21 “(x) No later than 3 months after the date of  
22 enactment of this section, the Secretary of Homeland  
23 Security, in cooperation with the Secretary of Labor  
24 and the Administrator of the Small Business  
25 Administration, shall conduct a campaign to  
26 disseminate information respecting the rights and  
27 remedies prescribed under this section. Such  
28 campaign shall be aimed at increasing the knowledge  
29 of employers, employees, and the general public  
30 concerning employer and employee rights,  
31 responsibilities and remedies under this section.  
32

33 “(I) In order to carry out the campaign under  
34 this paragraph, the Secretary of Homeland  
35 Security may, to the extent deemed  
36 appropriate and subject to the availability of  
37 appropriations, contract with public and private  
38 organizations for outreach activities under the  
39 campaign.  
40

41 “(II) There are authorized to be appropriated  
42 to carry out this paragraph \$40,000,000 for  
43 each fiscal year 2007 through 2009.



1           “(G) Based on a regular review of the EEVS and the  
2 document verification procedures to identify fraudulent use  
3 and to assess the security of the documents being used to  
4 establish identity or employment authorization, the  
5 Secretary in consultation with the Commissioner of Social  
6 Security may modify by Notice published in the Federal  
7 Register the documents that must be presented to the  
8 employer, the information that must be provided to EEVS  
9 by the employer, and the procedures that must be  
10 followed by employers with respect to any aspect of the  
11 EEVS if the Secretary in his discretion concludes that the  
12 modification is necessary to ensure that EEVS accurately  
13 and reliably determines the work authorization of  
14 employees while providing protection against fraud and  
15 identity theft.

16  
17           “(H) Subject to appropriate safeguards to prevent misuse  
18 of the system, the Secretary in consultation with the  
19 Commissioner of Social Security, shall establish secure  
20 procedures to permit an individual who seeks to verify the  
21 individual's own employment eligibility prior to obtaining or  
22 changing employment, to contact the appropriate agency  
23 and, in a timely manner, correct or update the information  
24 used by the EEVS.

25  
26           “(6) Protection from liability for actions taken on the basis of  
27 information provided by the confirmation system.—No employer  
28 participating in the EEVS shall be liable under any law for any  
29 employment-related action taken with respect to the employee  
30 in good faith reliance on information provided through the  
31 confirmation system.

32  
33           “(7) ADMINISTRATIVE REVIEW –

34  
35           “(A) IN GENERAL -- An individual who receives a final  
36 nonconfirmation notice may, not later than 15 days after  
37 the date that such notice is received, file an administrative  
38 appeal of such final notice. An individual who did not  
39 timely contest a further action notice may not avail himself  
40 of this paragraph. Unless the Secretary of Homeland  
41 Security, in consultation with the Commissioner of Social  
42 Security, specifies otherwise, all administrative appeals  
43 shall be filed as follows:  
44

1 (i) NATIONALS OF THE UNITED STATES – An  
2 individual claiming to be a national of the United States  
3 shall file the administrative appeal with the Commissioner.  
4

5 (ii) ALIENS – An individual claiming to be an alien  
6 authorized to work in the United States shall file the  
7 administrative appeal with the Secretary.  
8

9 “(B) REVIEW FOR ERROR. – The Secretary and the  
10 Commissioner shall each develop procedures for resolving  
11 administrative appeals regarding final nonconfirmations  
12 based upon the information that the individual has  
13 provided, including any additional evidence that was not  
14 previously considered. Appeals shall be resolved within 30  
15 days after the individual has submitted all evidence  
16 relevant to the appeal. The Secretary and the  
17 Commissioner may, on a case by case basis for good  
18 cause, extend this period in order to ensure accurate  
19 resolution of an appeal before him. Administrative review  
20 under this paragraph (7) shall be limited to whether the  
21 final nonconfirmation notice is supported by the weight of  
22 the evidence.  
23

24 “(C) ADMINISTRATIVE RELIEF. -- The relief available  
25 under this paragraph (7) is limited to an administrative  
26 order upholding, reversing, modifying, amending, or  
27 setting aside the final nonconfirmation notice. The  
28 Secretary or the Commissioner shall stay the final  
29 nonconfirmation notice pending the resolution of the  
30 administrative appeal unless the Secretary or the  
31 Commissioner determines that the administrative appeal is  
32 frivolous, unlikely to succeed on the merits, or filed for  
33 purposes of delay and terminates the stay.  
34

35 “(D) DAMAGES, FEES AND COSTS.-- No money damages,  
36 fees or costs may be awarded in the administrative review  
37 process, and no court shall have jurisdiction to award any  
38 damages, fees or costs relating to such administrative  
39 review under the Equal Access to Justice Act or any other  
40 law.  
41

42 “(8) JUDICIAL REVIEW.—  
43

1           “(A) EXCLUSIVE PROCEDURE. -- Notwithstanding any  
2 other provision of law (statutory or nonstatutory) including  
3 sections 1361 and 1651 of title 28, no court shall have  
4 jurisdiction to consider any claim against the United  
5 States, or any of its agencies, officers, or employees,  
6 challenging or otherwise relating to a final nonconfirmation  
7 notice or to the EEVS, except as specifically provided by  
8 this paragraph. Judicial review of a final nonconfirmation  
9 notice is governed only by chapter 158 of title 28, except  
10 as provided below.

11  
12           (B) REQUIREMENTS FOR REVIEW OF A FINAL  
13 NONCONFIRMATION NOTICE. With respect to review of a  
14 final nonconfirmation notice under subsection (a), the  
15 following requirements apply:

16  
17           (i) Deadline. The petition for review must be filed no  
18 later than 30 days after the date of the completion of  
19 the administrative appeal.

20  
21           (ii) Venue and forms. The petition for review shall be  
22 filed with the United States Court of Appeals for the  
23 judicial circuit wherein the petitioner resided when the  
24 final nonconfirmation notice was issued. The record  
25 and briefs do not have to be printed. The court of  
26 appeals shall review the proceeding on a typewritten  
27 record and on typewritten briefs.

28  
29           (iii) Service. The respondent is either the Secretary of  
30 Homeland Security or the Commissioner of Social  
31 Security, but not both, depending upon who issued (or  
32 affirmed) the final nonconfirmation notice. In addition  
33 to serving the respondent, the petitioner must also  
34 serve the Attorney General.

35  
36           (iv) Petitioner’s Brief. The petitioner shall serve and file  
37 a brief in connection with a petition for judicial review  
38 not later than 40 days after the date on which the  
39 administrative record is available, and may serve and  
40 file a reply brief not later than 14 days after service of  
41 the brief of the respondent, and the court may not  
42 extend these deadlines, except for good cause shown.  
43 If a petitioner fails to file a brief within the time  
44 provided in this paragraph, the court shall dismiss the

1 appeal unless a manifest injustice would result. The  
2 court of appeals may set an expedited briefing  
3 schedule.  
4

5 (v) Scope and standard for review. The court of  
6 appeals shall decide the petition only on the  
7 administrative record on which the final  
8 nonconfirmation order is based. The burden shall be on  
9 the petitioner to show that the final nonconfirmation  
10 decision was arbitrary, capricious, not supported by  
11 substantial evidence, or otherwise not in accordance  
12 with law. Administrative findings of fact are conclusive  
13 unless any reasonable adjudicator would be compelled  
14 to conclude to the contrary.  
15

16 (vi) Stay. The court of appeals shall stay the final  
17 nonconfirmation notice pending its decision on the  
18 petition for review unless the court determines that the  
19 petition for review is frivolous, unlikely to succeed on  
20 the merits, or filed for purposes of delay.  
21

22  
23 “(C) Exhaustion of Administrative Remedies. A court may  
24 review a final nonconfirmation order only if –

- 25 (1) the petitioner has exhausted all administrative  
26 remedies available to the alien as of right, and  
27 (2) another court has not decided the validity of the  
28 order, unless the reviewing court finds that the  
29 petition presents grounds that could not have  
30 been presented in the prior judicial proceeding or  
31 that the remedy provided by the prior proceeding  
32 was inadequate or ineffective to test the validity  
33 of the order.  
34

35 “(D) Limit on injunctive relief. Regardless of the nature of  
36 the action or claim or of the identity of the party or parties  
37 bringing the action, no court (other than the Supreme  
38 Court) shall have jurisdiction or authority to enjoin or  
39 restrain the operation of the provisions in this section,  
40 other than with respect to the application of such  
41 provisions to an individual petitioner.

42 “(9) Management of Employment Eligibility Verification System. —

1           “(A) In general. —The Secretary is authorized to  
2 establish, manage and modify an EEVS that shall—

3  
4           “(i) respond to inquiries made by participating  
5 employers at any time through the internet  
6 concerning an individual's identity and whether the  
7 individual is authorized to be employed;

8  
9           “(ii) maintain records of the inquiries that were  
10 made, of confirmations provided (or not provided),  
11 and of the codes provided to employers as evidence  
12 of their compliance with their obligations under the  
13 EEVS; and

14  
15           “(iii) provide information to, and request action by,  
16 employers and individuals using the system,  
17 including notifying employers of the expiration or  
18 other relevant change in an employee’s employment  
19 authorization, and directing an employer to convey  
20 to the employee a request to contact the appropriate  
21 Federal or State agency.

22  
23           “(B) Design and operation of system.— The EEVS shall be  
24 designed and operated—

25           “(i) to maximize its reliability and ease of use by  
26 employers consistent with insulating and protecting  
27 the privacy and security of the underlying  
28 information;

29  
30           “(ii) to respond accurately to all inquiries made by  
31 employers on whether individuals are authorized to  
32 be employed and to register any times when the  
33 system is unable to receive inquiries;

34  
35           “(iii) to maintain appropriate administrative,  
36 technical, and physical safeguards to prevent  
37 unauthorized disclosure of personal information;

38  
39           “(iv) to allow for auditing use of the system to detect  
40 fraud and identify theft, and to preserve the security  
41 of the information in all of the system, including but  
42 not limited to the following:

- 1 (a) to develop and use algorithms to
- 2 detect potential identity theft, such as
- 3 multiple uses of the same identifying
- 4 information or documents;
- 5 (b) to develop and use algorithms to
- 6 detect misuse of the system by
- 7 employers and employees;
- 8 (c) to develop capabilities to detect
- 9 anomalies in the use of the system
- 10 that may indicate potential fraud or
- 11 misuse of the system;
- 12 (d) to audit documents and information
- 13 submitted by potential employees to
- 14 employers, including authority to
- 15 conduct interviews with employers
- 16 and employees;
- 17

18 “(v) to confirm identity and work authorization  
19 through verification of records maintained by the  
20 Secretary, other federal departments, states, the  
21 Commonwealth of the Northern Mariana Islands, or  
22 an outlying possession of the United States, as  
23 determined necessary by the Secretary, including:

- 24 a) records maintained by the Social Security
- 25 Administration as specified in (D);
- 26 b) Birth and death records maintained by
- 27 vital statistics agencies of any state or
- 28 other United States jurisdiction;
- 29 c) Passport and visa records (including
- 30 photographs) maintained by the United
- 31 States Department of State;
- 32 d) State driver’s license or identity card
- 33 information (including photographs)
- 34 maintained by State department of
- 35 motor vehicles.
- 36

37 “(vi) to confirm electronically the issuance of the  
38 employment authorization or identity document and  
39 to display the digital photograph that the issuer  
40 placed on the document so that the employer can  
41 compare the photograph displayed to the photograph  
42 on the document presented by the employee. If in  
43 exceptional cases a photograph is not available from  
44 the issuer, the Secretary shall specify a temporary

1 alternative procedure for confirming the authenticity  
2 of the document.

3  
4 “(C) The Secretary is authorized, with notice to the public  
5 provided in the Federal Register, to issue regulations  
6 concerning operational and technical aspects of the EEVS  
7 and the efficiency, accuracy, and security of the EEVS.

8  
9 “(D) Access to Information. ---

10  
11 “(i) Notwithstanding any other provision of law, the  
12 Secretary of Homeland Security shall have access to  
13 relevant records described at paragraph (9)(B)(v),  
14 for the purposes of preventing identity theft and  
15 fraud in the use of the EEVS and enforcing the  
16 provisions of this section governing employment  
17 verification. A State or other non-federal jurisdiction  
18 that does not provide such access shall not be  
19 eligible for any grant or other program of financial  
20 assistance administered by the Secretary.

21  
22 “(ii) The Secretary, in consultation with the  
23 Commissioner of Social Security and other  
24 appropriate Federal and State agencies, shall  
25 develop policies and procedures to ensure protection  
26 of the privacy and security of personally identifiable  
27 information and identifiers contained in the records  
28 accessed pursuant to this paragraph and  
29 subparagraph (d)(5)(E)(i). The Secretary, in  
30 consultation with the Commissioner and other  
31 appropriate Federal and State agencies, shall  
32 develop and deploy appropriate privacy and security  
33 training for the Federal and State employees  
34 accessing the records pursuant to this paragraph and  
35 subparagraph (d)(5)(E)(i).

36  
37 “(iii) The Chief Privacy Officer of the Department of  
38 Homeland Security shall conduct regular privacy  
39 audits of the policies and procedures established  
40 under subparagraph (9)(D)(ii), including any  
41 collection, use, dissemination, and maintenance of  
42 personally identifiable information and any  
43 associated information technology systems, as well  
44 as scope of requests for this information. The Chief

1 Privacy Officer shall review the results of the audits  
2 and recommend to the Secretary and the Privacy  
3 and Civil Liberties Oversight Board any changes  
4 necessary to improve the privacy protections of the  
5 program.

6  
7 “(E) Responsibilities of the Secretary of Homeland  
8 Security.—

9 “(i) As part of the EEVS, the Secretary shall establish  
10 a reliable, secure method, which, operating through  
11 the EEVS and within the time periods specified,  
12 compares the name, alien identification or  
13 authorization number, or other relevant information  
14 provided in an inquiry against such information  
15 maintained or accessed by the Secretary in order to  
16 confirm (or not confirm) the validity of the  
17 information provided, the correspondence of the  
18 name and number, whether the alien is authorized to  
19 be employed in the United States (or, to the extent  
20 that the Secretary determines to be feasible and  
21 appropriate, whether the Secretary’s records verify  
22 United States citizenship), and such other  
23 information as the Secretary may prescribe.

24 “(ii) As part of the EEVS, the Secretary shall  
25 establish a reliable, secure method, which, operating  
26 through the EEVS, displays the digital photograph  
27 described in paragraph (d)(9)(B)(vi).

28 “(iii) The Secretary shall have authority to prescribe  
29 when a confirmation, nonconfirmation or further  
30 action notice shall be issued.

31 “(iv) The Secretary shall perform regular audits  
32 under the EEVS, as described in paragraph  
33 (d)((9)(B)(iv) of this section and shall utilize the  
34 information obtained from such audits, as well as  
35 any information obtained from the Commissioner of  
36 Social Security pursuant to section 304 of the  
37 Comprehensive Immigration Act of 2007, for the  
38 purposes of this Title and of immigration  
39 enforcement in general.



1                   “(v) The Secretary shall make appropriate  
2                   arrangements to allow employers who are otherwise  
3                   unable to access the EEVS to use federal government  
4                   facilities or public facilities in order to utilize the  
5                   EEVS.

6  
7                   “(F) Responsibilities of the Secretary of State.----- As part  
8                   of the EEVS, the Secretary of State shall provide to the  
9                   Secretary access to passport and visa information as  
10                  needed to confirm that a passport or passport card  
11                  presented under section (c)(1)(B) belongs to the subject of  
12                  the EEVS check, or that a passport or visa photograph  
13                  matches an individual;

14  
15                  “(G) Updating information.— The Commissioner of Social  
16                  Security and the Secretaries of Homeland Security and  
17                  State shall update their information in a manner that  
18                  promotes maximum accuracy and shall provide a process  
19                  for the prompt correction of erroneous information.

20                  “(10) Limitation on use of the Employment Eligibility Verification  
21                  System.— Notwithstanding any other provision of law, nothing in  
22                  this subsection shall be construed to permit or allow any  
23                  department, bureau, or other agency of the United States  
24                  Government to utilize any information, database, or other  
25                  records assembled under this subsection for any purpose other  
26                  than for the enforcement and administration of the immigration  
27                  laws, anti-terrorism laws, or for enforcement of Federal criminal  
28                  law related to the functions of the EEVS, including prohibitions  
29                  on forgery, fraud and identity theft.

30                  “(11) Unauthorized Use or Disclosure of Information.  
31  
32                  Any employee of the Department of Homeland Security or  
33                  another Federal or State agency who knowingly uses or discloses  
34                  the information assembled under this subsection for a purpose  
35                  other than one authorized under this section shall pay a civil  
36                  penalty of \$5,000-\$50,000 for each violation.

37  
38                  “(12) Conforming amendment.— Public Law 104-208, Div. C,  
39                  Title IV, Subtitle A, sections 401-05 are repealed, provided that  
40                  nothing in this subsection shall be construed to limit the  
41                  authority of the Secretary to allow or continue to allow the

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1 participation of Basic Pilot employers in the EEVS established by  
2 this subsection.

3  
4 “(13) Funds.— In addition to any appropriated funds, the  
5 Secretary is authorized to use funds provided in sections 286(m)  
6 and (n), for the maintenance and operation of the EEVS. EEVS  
7 shall be considered an immigration adjudication service for  
8 purposes of sections 286(m) and (n).”

9 “(14) The employer shall use the procedures for EEVS specified  
10 in this section for all employees without regard to national origin  
11 or citizenship status.

12  
13 “(e) Compliance.—

14 “(1) Complaints and investigations.— The Secretary of Homeland  
15 Security shall establish procedures—

16  
17 “(A) for individuals and entities to file complaints  
18 respecting potential violations of subsection (a) or (g)(1);

19  
20 “(B) for the investigation of those complaints which the  
21 Secretary deems it appropriate to investigate; and

22  
23 “(C) for the investigation of such other violations of  
24 subsection (a) or (g)(1) as the Secretary determines to be  
25 appropriate.

26  
27 “(2) Authority in investigations.— In conducting investigations  
28 and hearings under this subsection—

29  
30 “(A) immigration officers shall have reasonable access to  
31 examine evidence of any employer being investigated; and

32  
33 “(B) immigration officers designated by the Secretary may  
34 compel by subpoena the attendance of witnesses and the  
35 production of evidence at any designated place in an  
36 investigation or case under this subsection. In case of  
37 contumacy or refusal to obey a subpoena lawfully issued  
38 under this paragraph, the Secretary may request that the  
39 Attorney General apply in an appropriate district court of  
40 the United States for an order requiring compliance with  
41 such subpoena, and any failure to obey such order may be  
42 punished by such court as a contempt thereof. Failure to

1 cooperate with such subpoena shall be subject to further  
2 penalties, including but not limited to further fines and the  
3 voiding of any mitigation of penalties or termination of  
4 proceedings under subsection (e)(3)(B).

5  
6 “(3) Compliance Procedures.—

7  
8 “(A) Pre-penalty notice.— If the Secretary has reasonable  
9 cause to believe that there has been a civil violation of this  
10 section or the requirements of this section, including but  
11 not limited to subsections (b), (c), (d) and (k), and  
12 determines that further proceedings are warranted, the  
13 Secretary shall issue to the employer concerned a written  
14 notice of the Department’s intention to issue a claim for a  
15 monetary or other penalty. Such pre-penalty notice shall:

16  
17 “(i) describe the violation;

18 “(ii) specify the laws and regulations allegedly  
19 violated;

20 “(iii) disclose the material facts which establish the  
21 alleged violation; and

22 “(iv) inform such employer that he or she shall  
23 have a reasonable opportunity to make  
24 representations as to why a claim for a monetary  
25 or other penalty should not be imposed.

26  
27 “(B) Remission or mitigation of penalties.— Whenever any  
28 employer receives written pre-penalty notice of a fine or  
29 other penalty in accordance with subparagraph (A), the  
30 employer may file, within 15 days from receipt of such  
31 notice, with the Secretary a petition for the remission or  
32 mitigation of such fine or penalty, or a petition for  
33 termination of the proceedings. The petition may include  
34 any relevant evidence or proffer of evidence the employer  
35 wishes to present, and shall be filed and considered in  
36 accordance with procedures to be established by the  
37 Secretary. If the Secretary finds that such fine, penalty,  
38 or forfeiture was incurred erroneously, or finds the  
39 existence of such mitigating circumstances as to justify the  
40 remission or mitigation of such fine or penalty, the  
41 Secretary may remit or mitigate the same upon such

1 terms and conditions as the Secretary deems reasonable  
2 and just, or order termination of any proceedings relating  
3 thereto. Such mitigating circumstances may include, but  
4 need not be limited to, good faith compliance and  
5 participation in, or agreement to participate in, the EEVS, if  
6 not otherwise required.

7 “This subparagraph shall not apply to an employer that  
8 has or is engaged in a pattern or practice of violations of  
9 subsection (a)(1)(A), (a)(1)(B), or (a)(2) or of any other  
10 requirements of this section.

11 “(C) Penalty Claim.—After considering evidence and  
12 representations, if any, offered by the employer pursuant  
13 to subparagraph (B), the Secretary shall determine  
14 whether there was a violation and promptly issue a written  
15 final determination setting forth the findings of fact and  
16 conclusions of law on which the determination is based. If  
17 the Secretary determines that there was a violation, the  
18 Secretary shall issue the final determination with a written  
19 penalty claim. The penalty claim shall specify all charges in  
20 the information provided under clauses (i) through (iii) of  
21 subparagraph (A) and any mitigation or remission of the  
22 penalty that the Secretary deems appropriate.

23  
24 “(4) Civil Penalties.—

25  
26 “(A) Hiring or continuing to employ unauthorized aliens.  
27 Any employer that violates any provision of subsection  
28 (a)(1)(A) or (a)(2) shall:

29  
30 “(1) pay a civil penalty of \$5,000 for each  
31 unauthorized alien with respect to which each  
32 violation of either subsection (a)(1)(A) or (a)(2)  
33 occurred;

34  
35 “(2) if an employer has previously been fined under  
36 subsection (e)(4)(A), pay a civil penalty of \$ 10,000  
37 for each unauthorized alien with respect to which a  
38 violation of either subsection (a)(1)(A) or (a)(2)  
39 occurred; and

40  
41 “(3) if an employer has previously been fined more  
42 than once under subsection (e)(4), pay a civil

1 penalty of \$ 25,000 for each unauthorized alien with  
2 respect to which a violation of either subsection has  
3 occurred. This penalty shall apply, in addition to any  
4 penalties previously assessed, to employers who fail  
5 to comply with a previously issued and final order  
6 under this section.

7  
8 “(4) if an employer has previously been fined  
9 more than twice under subsection (e)(4)(A), pay  
10 a civil penalty of \$75,000 for each alien with  
11 respect to which a violation of either subsection  
12 (a)(1) or (a)(2) occurred

13  
14 “(5) In addition to any penalties previously assessed,  
15 an employer who fails to comply with a previously  
16 issued and final order under this section shall be  
17 fined \$75,000 for each violation.

18  
19 “(B) Recordkeeping or Verification Practices.—Any  
20 employer that violates or fails to comply with any  
21 requirement of subsection (b), (c), and (d), shall pay a  
22 civil penalty as follows:

23 “(1) pay a civil penalty of \$1,000 for each violation;

24 “(2) if an employer has previously been fined under  
25 subsection (e)(4)(B), pay a civil penalty of \$2,000  
26 for each violation; and

27  
28 “(3) if an employer has previously been fined more  
29 than once under subsection (e)(4), pay a civil  
30 penalty of \$5,000 for each violation. This penalty  
31 shall apply, in addition to any penalties previously  
32 assessed, to employers who fail to comply with a  
33 previously issued and final order under this section.

34  
35 “(4) if an employer has previously been fined more  
36 than twice under subsection (e)(4)(B), pay a civil  
37 penalty of \$15,000 for each violation.

38  
39 “(5) In addition to any penalties previously assessed,  
40 an employer who fails to comply with a previously  
41 issued and final order under this section shall be  
42 fined \$15,000 for each violation.

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“(C) 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 (g)(2). All penalties in this section may be adjusted every four years to account for inflation as provided by law.

“(D) The Secretary is authorized to reduce or mitigate penalties imposed upon employers, based upon factors including, but not limited to, the employer’s hiring volume, compliance history, good-faith implementation of a compliance program, participation in a temporary worker program, and voluntary disclosure of violations of this subsection to the Secretary.

“(5) 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 Secretary 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 of subsections (c)(1) through (c)(4), pertaining to document verification requirements, and with subsection (d), pertaining to the EEVS (once that system is implemented according to the requirements of (d)(1)), and with any additional requirements that the Secretary may promulgate by regulation pursuant to subsections (c), (d), and (k), 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.

1           “(6) Judicial review.—

2           “(A) Notwithstanding any other provision of law (statutory  
3           or nonstatutory) including sections 1361 and 1651 of title  
4           28, no court shall have jurisdiction to consider a final  
5           determination or penalty claim issued under subparagraph  
6           (3)(C), except as specifically provided by this paragraph.  
7           Judicial review of a final determination under paragraph  
8           (e)(4) is governed only by chapter 158 of title 28, except  
9           as specifically provided below. The filing of a petition as  
10          provided in this paragraph shall stay the Secretary's  
11          determination until entry of judgment by the court. The  
12          Secretary is authorized to require that petitioner provide,  
13          prior to filing for review, security for payment of fines and  
14          penalties through bond or other guarantee of payment  
15          acceptable to the Secretary.

16          (B) REQUIREMENTS FOR REVIEW OF A FINAL  
17          DETERMINATION. With respect to judicial review of a final  
18          determination or penalty claim issued under subparagraph  
19          (3)(C), the following requirements apply:

20                   (i) Deadline. The petition for review must be filed no  
21                   later than 30 days after the date of the final  
22                   determination or penalty claim issued under  
23                   subparagraph (3)(C).  
24                   

25                   (ii) Venue and forms. The petition for review shall be  
26                   filed with the court of appeals for the judicial circuit  
27                   wherein the employer resided when the final  
28                   determination or penalty claim was issued. The record  
29                   and briefs do not have to be printed. The court of  
30                   appeals shall review the proceeding on a typewritten  
31                   record and on typewritten briefs.  
32                   

33                   (iii) Service. The respondent is either the Secretary of  
34                   Homeland Security or the Commissioner of Social  
35                   Security, but not both, depending upon who issued (or  
36                   affirmed) the final nonconfirmation notice. In addition  
37                   to serving the respondent, the petitioner must also  
38                   serve the Attorney General.  
39                   

40                   (iv) Petitioner’s Brief. The petitioner shall serve and  
41                   file a brief in connection with a petition for judicial  
42

1 review not later than 40 days after the date on which  
2 the administrative record is available, and may serve  
3 and file a reply brief not later than 14 days after  
4 service of the brief of the respondent, and the court  
5 may not extend these deadlines, except for good cause  
6 shown. If a petitioner fails to file a brief within the  
7 time provided in this paragraph, the court shall dismiss  
8 the appeal unless a manifest injustice would result.  
9

10 (v) Scope and standard for review. The court of  
11 appeals shall decide the petition only on the  
12 administrative record on which the final determination  
13 is based. The burden shall be on the petitioner to  
14 show that the final determination was arbitrary,  
15 capricious, not supported by substantial evidence, or  
16 otherwise not in accordance with law. Administrative  
17 findings of fact are conclusive unless any reasonable  
18 adjudicator would be compelled to conclude to the  
19 contrary.  
20

21 “(C) Exhaustion of Administrative Remedies. A court may  
22 review a final determination under subparagraph (3)(C)  
23 only if –  
24

- 25 (1) the petitioner has exhausted all administrative  
26 remedies available to the petitioner as of right,  
27 and  
28 (2) another court has not decided the validity of  
29 the order, unless the reviewing court finds that  
30 the petition presents grounds that could not have  
31 been presented in the prior judicial proceeding or  
32 that the remedy provided by the prior proceeding  
33 was inadequate or ineffective to test the validity  
34 of the order.  
35

36 “(D) Limit on injunctive relief. Regardless of the nature of  
37 the action or claim or of the identity of the party or parties  
38 bringing the action, no court (other than the Supreme  
39 Court) shall have jurisdiction or authority to enjoin or  
40 restrain the operation of the provisions in this section,  
41 other than with respect to the application of such  
42 provisions to an individual petitioner.  
43



1           “(7) Enforcement of orders. —If an employer fails to comply  
2           with a final determination issued against that employer under  
3           this subsection, and the final determination is not subject to  
4           review as provided in paragraph (6), the Attorney General may  
5           file suit to enforce compliance with the final determination in  
6           any appropriate district court of the United States. In any such  
7           suit, the validity and appropriateness of the final determination  
8           shall not be subject to review.

9           “(8) Liens.—

10           “(A) Creation of lien. —If any employer liable for a fee or  
11           penalty under this section neglects or refuses to pay such  
12           liability and fails to file a petition for review (if applicable)  
13           as provided in paragraph 6 of this subsection, such  
14           liability is a lien in favor of the United States on all  
15           property and rights to property of such person as if the  
16           liability of such person were a liability for a tax assessed  
17           under the Internal Revenue Code of 1986. If a petition for  
18           review is filed as provided in paragraph 6 of this  
19           subsection, the lien (if any) shall arise upon the entry of a  
20           final judgment by the court. The lien continues for 20  
21           years or until the liability is satisfied, remitted, set aside,  
22           or is terminated.

23           “(B) Effect of filing notice of lien. —Upon filing of a notice  
24           of lien in the manner in which a notice of tax lien would be  
25           filed under section 6323(f)(1) and (2) of the Internal  
26           Revenue Code of 1986, the lien shall be valid against any  
27           purchaser, holder of a security interest, mechanic's lien or  
28           judgment lien creditor, except with respect to properties or  
29           transactions specified in subsection (b), (c), or (d) of  
30           section 6323 of the Internal Revenue Code of 1986 for  
31           which a notice of tax lien properly filed on the same date  
32           would not be valid. The notice of lien shall be considered a  
33           notice of lien for taxes payable to the United States for the  
34           purpose of any State or local law providing for the filing of  
35           a notice of a tax lien. A notice of lien that is registered,  
36           recorded, docketed, or indexed in accordance with the  
37           rules and requirements relating to judgments of the courts  
38           of the State where the notice of lien is registered,  
39           recorded, docketed, or indexed shall be considered for all  
40           purposes as the filing prescribed by this section. The  
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1 provisions of section 3201(e) of chapter 176 of title 28  
2 shall apply to liens filed as prescribed by this section.

3 “(C) Enforcement of a lien -- A lien obtained through this  
4 process shall be considered a debt as defined by 28  
5 U.S.C. § 3002 and enforceable pursuant to the Federal  
6 Debt Collection Procedures Act.

7 “(f) Criminal Penalties and Injunctions for Pattern or Practice  
8 Violations.—

9 “(1) Criminal penalty.—Any employer which engages in a pattern  
10 or practice of knowing violations of subsection (a)(1)(A) or  
11 (a)(2) shall be fined not more than \$75,000 for each  
12 unauthorized alien with respect to whom such a violation occurs,  
13 imprisoned for not more than six months for the entire pattern  
14 or practice, or both.

15 “(2) Enjoining of pattern or practice violations.—Whenever the  
16 Secretary or the Attorney General has reasonable cause to  
17 believe that an employer is engaged in a pattern or practice of  
18 employment, recruitment, or referral in violation of paragraph  
19 (1)(A) or (2) of subsection (a), the Attorney General may bring a  
20 civil action in the appropriate district court of the United States  
21 requesting such relief, including a permanent or temporary  
22 injunction, restraining order, or other order against the  
23 employer, as the Secretary deems necessary.

24 “(g) Prohibition of Indemnity Bonds.—

25 “(1) Prohibition.—It is unlawful for an employer, in the hiring,  
26 recruiting, or referring for employment of any individual, to  
27 require the individual to post a bond or security, to pay or agree  
28 to pay an amount, or otherwise to provide a financial guarantee  
29 or indemnity, against any potential liability arising under this  
30 section relating to such hiring, recruiting, or referring of the  
31 individual.

32  
33 “(2) Civil penalty.—Any employer which is determined, after  
34 notice and opportunity for mitigation of the monetary penalty  
35 under subsection (e), to have violated paragraph (1) of this  
36 subsection shall be subject to a civil penalty of \$10,000 for each  
37 violation and to an administrative order requiring the return of  
38 any amounts received in violation of such paragraph to the

1 employee or, if the employee cannot be located, to the general  
2 fund of the Treasury.

3

4 “(h) Government Contracts.

5 “(1) Employers.—Whenever an employer who does not hold  
6 Federal contracts, grants, or cooperative agreements is  
7 determined by the Secretary to be a repeat violator of this  
8 section or is convicted of a crime under this section, the  
9 employer shall be subject to debarment from the receipt of  
10 Federal contracts, grants, or cooperative agreements for a  
11 period of up to two years in accordance with the procedures and  
12 standards prescribed by the Federal Acquisition Regulations. The  
13 Secretary or the Attorney General shall advise the Administrator  
14 of General Services of any such debarment, and the  
15 Administrator of General Services shall list the employer on the  
16 List of Parties Excluded from Federal Procurement and  
17 Nonprocurement Programs for the period of the debarment. The  
18 Administrator of General Services, in consultation with the  
19 Secretary and Attorney General, may waive operation of this  
20 subsection or may limit the duration or scope of the debarment.

21 “(2) Contractors and recipients.—Whenever an employer who  
22 holds Federal contracts, grants, or cooperative agreements is  
23 determined by the Secretary to be a repeat violator of this  
24 section or is convicted of a crime under this section, the  
25 employer shall be subject to debarment from the receipt of  
26 Federal contracts, grants, or cooperative agreements for a  
27 period of up to two years in accordance with the procedures and  
28 standards prescribed by the Federal Acquisition Regulations.  
29 Prior to debarring the employer, the Secretary, in cooperation  
30 with the Administrator of General Services, shall advise all  
31 agencies holding contracts, grants, or cooperative agreements  
32 with the employer of the proceedings to debar the employer  
33 from the receipt of new Federal contracts, grants, or cooperative  
34 agreements for a period of up to two years. After consideration  
35 of the views of agencies holding contracts, grants or cooperative  
36 agreements with the employer, the Secretary may, in lieu of  
37 proceedings to debar the employer from the receipt of new  
38 Federal contracts, grants, or cooperative agreements for a  
39 period of up to two years, waive operation of this subsection,  
40 limit the duration or scope of the proposed debarment, or may  
41 refer to an appropriate lead agency the decision of whether to  
42 seek debarment of the employer, for what duration, and under

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1 what scope in accordance with the procedures and standards  
2 prescribed by the Federal Acquisition Regulation. However, any  
3 proposed debarment predicated on an administrative  
4 determination of liability for civil penalty by the Secretary or the  
5 Attorney General shall not be reviewable in any debarment  
6 proceeding.

7 “(3) Indictments for violations of this section or adequate  
8 evidence of actions that could form the basis for debarment  
9 under this subsection shall be considered a cause for  
10 suspension under the procedures and standards for suspension  
11 prescribed by the Federal Acquisition Regulation.

12 “(4) Inadvertent violations of recordkeeping or verification  
13 requirements, in the absence of any other violations of this  
14 section, shall not be a basis for determining that an employer is  
15 a repeat violator for purposes of this subsection.

16  
17 “(i) Miscellaneous Provisions.—

18 “(1) Documentation.—In providing documentation or  
19 endorsement of authorization of aliens (other than aliens lawfully  
20 admitted for permanent residence) authorized to be employed in  
21 the United States, the Secretary shall provide that any  
22 limitations with respect to the period or type of employment or  
23 employer shall be conspicuously stated on the documentation or  
24 endorsement.

25  
26 “(2) Preemption.—The provisions of this section preempt any  
27 State or local law that requires the use of the EEVS in a fashion  
28 that conflicts with federal policies, procedures or timetables, or  
29 that imposes civil or criminal sanctions (other than through  
30 licensing and similar laws) upon those who employ, or recruit or  
31 refer for a fee for employment, unauthorized aliens.

32 “(j) Deposit of Amounts Received.— Except as otherwise specified, civil  
33 penalties  
34 collected under this section shall be deposited by the Secretary into  
35 the general fund of the Treasury.

36 “(k) No Match Notice. —

37 “(1) For the purpose of this subsection, a no match notice is written  
38 notice from the Social Security Administration (SSA) to an employer  
39 reporting earnings on a Form W-2 that employees’ names or

1 corresponding social security account numbers fail to match SSA  
2 records. The Secretary, in consultation with the Commissioner of the  
3 Social Security Administration, is authorized to establish by regulation  
4 requirements for verifying the identity and work authorization of  
5 employees who are the subject of no-match notices. The Secretary  
6 shall establish by regulation a reasonable period during which an  
7 employer must allow an employee who is subject to a no-match notice  
8 to resolve the no match notice with no adverse employment  
9 consequences to the employee. The Secretary may also establish  
10 penalties for noncompliance by regulation.

11  
12 **“(I) Challenges to Validity—**

13  
14 **“(1) In General.—**Any right, benefit, or claim not otherwise  
15 waived or limited pursuant to this section is available in an  
16 action instituted in the United States District Court for the  
17 District of Columbia, but shall be limited to determinations of –

18  
19 **“(A)** whether this section, or any regulation issued to  
20 implement this section, violates the Constitution of the  
21 United States; or

22  
23 **“(B)** whether such a regulation issued by or under the  
24 authority of the Secretary to implement this section, is  
25 contrary to applicable provisions of this section or was  
26 issued in violation of title 5, chapter 5, United States Code.

27  
28 **“(2) Deadlines for Bringing Actions.–** Any action instituted under  
29 this paragraph must be filed no later than 90 days after the date  
30 the challenged section or regulation described in clause (i) or (ii)  
31 of subparagraph (A) is first implemented.

32  
33 **“(3) Class Actions.--**The court may not certify a class under Rule  
34 23 of the Federal Rules of Civil Procedure in any action under  
35 this section.

36  
37 **“(4) Rule of Construction.--** In determining whether the  
38 Secretary’s interpretation regarding any provision of this section  
39 is contrary to law, a court shall accord to such interpretation the  
40 maximum deference permissible under the Constitution.

41  
42 **“(5) No Attorneys’ Fees.--**Notwithstanding any other provision of  
43 law, the court shall not award fees or other expenses to any

1 person or entity based upon any action relating to this Title  
2 brought pursuant to this section (I).”  
3

4 **SEC. 303. EFFECTIVE DATE.**

5 This title shall become effective on the date of enactment.  
6

7 **SEC. 304. DISCLOSURE OF CERTAIN TAXPAYER INFORMATION**  
8 **TO ASSIST IN IMMIGRATION ENFORCEMENT.**  
9

10 (a) Disclosure of Certain Taxpayer Identity Information.--

11  
12 (1) IN GENERAL.--Section 6103(I) of the Internal Revenue Code of  
13 1986 is amended by adding at the end the following new paragraph:  
14

15 `` (21) DISCLOSURE OF CERTAIN TAXPAYER IDENTITY  
16 INFORMATION BY SOCIAL SECURITY ADMINISTRATION TO  
17 DEPARTMENT OF HOMELAND SECURITY.—  
18

19 `` (A) IN GENERAL.--From taxpayer identity information or other  
20 information which has been disclosed or otherwise made available to  
21 the Social Security Administration and upon written request by the  
22 Secretary of Homeland Security (in this paragraph referred to as the  
23 `Secretary'), the Commissioner of Social Security shall disclose  
24 directly to officers, employees, and contractors of the Department of  
25 Homeland Security—  
26

27 `` (i) the taxpayer identity information of each person who has filed  
28 an information return required by reason of section 6051 after  
29 calendar year 2005 and before the date specified in subparagraph (D)  
30 which contains—  
31

32 `` (I) 1 (or any greater number the Secretary shall request)  
33 taxpayer identifying number, name, and address of any employee  
34 (within the meaning of such section) that did not match the records  
35 maintained by the Commissioner of Social Security, or  
36

37 `` (II) 2 (or any greater number the Secretary shall request)  
38 names, and addresses of employees (within the meaning of such  
39 section), with the same taxpayer identifying number,  
40  
41 and the taxpayer identity of each such employee, and  
42

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1    (ii) the taxpayer identity of each person who has filed an  
2 information return required by reason of section 6051 after calendar  
3 year 2005 and before the date specified in subparagraph (D) which  
4 contains the taxpayer identifying number (assigned under section  
5 6109) of an employee (within the meaning of section 6051)—

6  
7    (I) who is under the age of 14 (or any lesser age the Secretary shall  
8 request), according to the records maintained by the Commissioner of  
9 Social Security,

10  
11    (II) whose date of death, according to the records so maintained,  
12 occurred in a calendar year preceding the calendar year for which the  
13 information return was filed,

14  
15    (III) whose taxpayer identifying number is contained in more than  
16 one (or any greater number the Secretary shall request) information  
17 return filed in such calendar year, or

18  
19    (IV) who is not authorized to work in the United States, according to  
20 the records maintained by the Commissioner of Social Security,

21  
22 and the taxpayer identity and date of birth of each such employee.

23  
24    (B) REIMBURSEMENT.-- The Secretary shall transfer to the  
25 Commissioner the funds necessary to cover the additional cost directly  
26 incurred by the Commissioner in carrying out the searches or  
27 manipulations requested by the Secretary.”

28  
29    (2) COMPLIANCE BY DHS CONTRACTORS WITH CONFIDENTIALITY  
30 SAFEGUARDS.—

31  
32    (A) IN GENERAL.--Section 6103(p) of such Code is amended by  
33 adding at the end the following new paragraph:

34  
35    (9) DISCLOSURE TO DHS CONTRACTORS.--Notwithstanding any  
36 other provision of this section, no return or return information shall be  
37 disclosed to any contractor of the Department of Homeland Security  
38 unless such Department, to the satisfaction of the Secretary—

39  
40    (A) has requirements in effect which require each such contractor  
41 which would have access to returns or return information to provide  
42 safeguards (within the meaning of paragraph (4)) to protect the  
43 confidentiality of such returns or return information,  
44

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1       ` ` (B) agrees to conduct an on-site review every 3 years (mid-point  
2 review in the case of contracts or agreements of less than 3 years in  
3 duration) of each contractor to determine compliance with such  
4 requirements,

5  
6       ` ` (C) submits the findings of the most recent review conducted  
7 under subparagraph (B) to the Secretary as part of the report required  
8 by paragraph (4)(E), and

9  
10       ` ` (D) certifies to the Secretary for the most recent annual period  
11 that such contractor is in compliance with all such requirements.

12  
13       The certification required by subparagraph (D) shall include the  
14 name and address of each contractor, a description of the contract or  
15 agreement with such contractor, and the duration of such contract or  
16 agreement."

17  
18       (3) CONFORMING AMENDMENTS.—

19  
20       (A) Section 6103(a)(3) of such Code is amended by striking ` ` or  
21 (20)" and inserting ` `(20), or (21)".

22  
23       (B) Section 6103(p)(3)(A) of such Code is amended by adding at  
24 the end the following new sentence: ` `The Commissioner of Social  
25 Security shall provide to the Secretary such information as the  
26 Secretary may require in carrying out this paragraph with respect to  
27 return information inspected or disclosed under the authority of  
28 subsection (l)(21)".

29  
30       (C) Section 6103(p)(4) of such Code is amended—

31  
32       (i) by striking ` ` or (17)" both places it appears and inserting  
33 ` `(17), or (21)"; and

34  
35       (ii) by striking ` ` or (20)" each place it appears and inserting  
36 ` `(20), or (21)".

37  
38       (D) Section 6103(p)(8)(B) of such Code is amended by inserting  
39 ` ` or paragraph (9)" after ` `subparagraph (A)".

40  
41       (E) Section 7213(a)(2) of such Code is amended by striking ` ` or  
42 (20)" and inserting ` `(20), or (21)".

43  
44       (b) Authorization of Appropriations.—



1 There are authorized to be appropriated to the Secretary of Homeland  
2 Security such sums as are necessary to carry out the amendments  
3 made by this section.

4  
5 (c) Repeal of Reporting Requirements.--

6 (1) REPORT ON EARNINGS OF ALIENS NOT AUTHORIZED TO  
7 WORK.--Subsection (c) of section 290 of the Immigration and  
8 Nationality Act (8 U.S.C. 1360) is repealed.

9  
10 (2) REPORT ON FRAUDULENT USE OF SOCIAL SECURITY ACCOUNT  
11 NUMBERS.--Subsection (b) of section 414 of the Illegal Immigration  
12 Reform and Immigrant Responsibility Act of 1996 (division C of Public  
13 Law 104-208; 8 U.S.C. 1360 note) is repealed.

14  
15 (d) Effective Dates.--

16 (1) IN GENERAL.--The amendments made by subsection (a) shall  
17 apply to disclosures made after the date of the enactment of this Act.

18  
19 (2) CERTIFICATIONS.--The first certification under section  
20 6103(p)(9)(D) of the Internal Revenue Code of 1986, as added by  
21 subsection (a)(2), shall be made with respect to calendar year 2007.

22  
23 (3) REPEALS.--The repeals made by subsection (c) shall take effect  
24 on the date of the enactment of this Act.

25  
26 **SEC. 305. INCREASING SECURITY AND INTEGRITY OF SOCIAL**  
27 **SECURITY CARDS**

28  
29 (a) FRAUD-RESISTANT, TAMPER-RESISTANT AND WEAR-RESISTANT  
30 SOCIAL SECURITY CARDS.—

31  
32 (1) ISSUANCE.—

33  
34 (A) PRELIMINARY WORK.—Not later than 180 days after the date of  
35 enactment of this title, the Commissioner of Social Security shall begin  
36 work to administer and issue fraud-resistant, tamper-resistant Social  
37 Security cards.

38  
39 (B) COMPLETION.—Not later than two years after the date of  
40 enactment of this title, the Commissioner of Social Security shall only  
41 issue fraud-resistant, tamper-resistant and wear-resistant Social  
42 Security cards.

43

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1 (2) AMENDMENT.—Section 205(c)(2)(G) of the Social Security Act (42  
2 U.S.C. 405(c)(2)(G)) is amended to read —

3  
4 “(i) The Commissioner of Social Security shall issue a social security  
5 card to each individual at the time of the issuance of a social security  
6 account number to such individual. The social security card shall be  
7 fraud-resistant, tamper-resistant and wear-resistant.”

8  
9 (3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to  
10 be appropriated such sums as may be necessary to carry out this  
11 subsection and the amendments made by this subsection.

12  
13 (3) Report on Feasibility of Including Biometrics - Within 180 days of  
14 enactment, the Commissioner of Social Security shall provide to  
15 Congress a report on the utility, costs and feasibility of including a  
16 photograph and other biometric information on the Social Security  
17 Card.

18  
19 (b) MULTIPLE CARDS.— Section 205(c)(2)(G) of of the Social Security  
20 Act (42 U.S.C. 405(c)(2)(G)) is further amended by adding at the end  
21 the following:

22  
23 “(ii) The Commissioner of Social Security shall not issue a replacement  
24 Social Security card to any individual unless the Commissioner  
25 determines that the purpose for requiring the issuance of the  
26 replacement document is legitimate.”

27  
28 **SEC. 306. INCREASING SECURITY AND INTEGRITY OF IDENTITY**  
29 **DOCUMENTS**

30  
31 (a) Purpose- The Secretary of Homeland Security, shall establish  
32 the State Records Improvement Grant Program (referred to in this  
33 section as the `Program'), under which the Secretary may award  
34 grants to States for the purpose of advancing the purposes of this Act  
35 and of issuing or implementing plans to issue driver’s license and  
36 identity cards that can be used for purposes of verifying identity under  
37 this Title and that comply with the state license requirements in  
38 section 202 of the REAL ID Act of 2005 (division B of Public Law 109-  
39 13; 49 U.S.C. 30301 note).

40  
41 (b) States that do not certify their intent to comply with the  
42 REAL ID Act and implementing regulations or that do not submit a

1 compliance plan acceptable to the Secretary are not eligible for grants  
2 under the Program. Driver's license or identification cards issued by  
3 States that do not comply with REAL ID may not be used to verify  
4 identity under this Title except under conditions approved by the  
5 Secretary.

6  
7 (c) Grants and Contracts Authorized—

8  
9 (1) IN GENERAL- The Secretary is authorized to award  
10 grants, subject to the availability of appropriations, to a  
11 State to provide assistance to such State agency to meet  
12 the deadlines for the issuance of a driver's license which  
13 meets the requirements of section 202 of the REAL ID Act  
14 of 2005 (division B of Public Law 109-13; 49 U.S.C. 30301  
15 note).

16  
17 (2) DURATION- Grants may be awarded under this  
18 subsection during fiscal years 2007 through 2011.

19  
20 (3) COMPETITIVE BASIS - The Secretary shall give priority  
21 to States whose REAL ID implementation plan is  
22 compatible with the employment verification systems,  
23 processes, and implementation schedules set forth in  
24 Section 302, as determined by the Secretary. Minimum  
25 standards for compatibility will include the ability of the  
26 State to promptly verify the document and provide access  
27 to the digital photograph displayed on the document.

28  
29 (4) Where the Secretary of Homeland Security determines  
30 that compliance with REAL ID and with the requirements of  
31 the employment verification system can best be met by  
32 awarding grants or contracts to a State, a group of States,  
33 a government agency, or a private entity, the Secretary  
34 may utilize Program funds to award such a grant, grants,  
35 contract or contracts.

36  
37 (5) On an expedited basis, the Secretary shall award  
38 grants or contracts for the purpose of improving the  
39 accuracy and electronic availability of states' records of  
40 births, deaths, driver's licenses, and of other records  
41 necessary for implementation of EEVS and as otherwise  
42 necessary to advance the purposes of this Act.  
43

1 (d) Use of Funds- Grants or contracts awarded pursuant to the  
2 Program may be used to assist State compliance with the REAL  
3 ID requirements, including, but not limited to -

- 4  
5 (1) upgrade and maintain technology  
6 (2) obtain equipment;  
7 (3) hire additional personnel;  
8 (4) cover operational costs, including overtime; and  
9 (5) such other resources as are available to assist that  
10 agency.

11  
12 (e) Application-

13  
14 (1) IN GENERAL- Each eligible state seeking a grant under  
15 this section shall submit an application to the Secretary at  
16 such time, in such manner, and accompanied by such  
17 information as the Secretary may reasonably require.

18  
19 (2) CONTENTS- Each application submitted pursuant to  
20 paragraph (1) shall—

21  
22 (A) describe the activities for which assistance under  
23 this section is sought; and

24  
25 (B) provide such additional assurances as the  
26 Secretary determines to be essential to ensure  
27 compliance with the requirements of this section.

28  
29 (f) Conditions - All grants under the Program shall be  
30 conditioned on the recipient providing REAL ID compliance  
31 certification and implementation plans acceptable to the  
32 Secretary which include ---

33 (1) adopting appropriate security measures to protect  
34 against improper issuance of driver's licenses and  
35 identity cards, tampering with electronic issuance  
36 systems, and identity theft as the Secretary may  
37 prescribe;

38 (2) ensuring introduction and maintenance of such  
39 security features and other measures necessary to  
40 make the documents issued by recipient resistant to  
41 tampering, counterfeiting, and fraudulent use as the  
42 Secretary may prescribe; and

1 (3) ensuring implementation and maintenance of such  
2 safeguards for the security of the information contained  
3 on these documents as the Secretary may prescribe.  
4

5 All grants shall also be conditioned on the recipient  
6 agreeing to adhere to the timetables and procedures for  
7 issuing REAL ID driver's licenses and identification cards as  
8 specified in section 274A(c)(1)(F).  
9

10 All grants shall further be conditioned on the recipient  
11 agreeing to implement the requirements of this Act and  
12 any implementing regulations to the satisfaction of the  
13 Secretary of Homeland Security.  
14

15 (g) Authorization of Appropriations- IN GENERAL- There is  
16 authorized to be appropriated \$300,000,000 for each of fiscal  
17 years 2007 through 2011 to carry out the provisions of this  
18 section.  
19

20 (h) Supplement Not Supplant- Amounts appropriated for grants  
21 under this section shall be used to supplement and not supplant  
22 other State and local public funds obligated for the purposes  
23 provided under this title.  
24

25 (i) Additional Uses – Amounts authorized under this section may  
26 also be used to assist in sharing of law enforcement information  
27 between States and the Department of Homeland Security for  
28 purposes of implementing Section 602(c), at the discretion of  
29 the Secretary.  
30

31 **SECTION 307. VOLUNTARY ADVANCED VERIFICATION PROGRAM TO COMBAT**  
32 **IDENTITY THEFT.**  
33

34 (a) Voluntary Advanced Verification Program. The Secretary  
35 shall establish and make available a voluntary program allowing  
36 employers to submit and verify an employee's fingerprints for  
37 purposes of determining the identity and work authorization of  
38 the employee.  
39

40 (1) Implementation Date. No later than 18 months after  
41 the date of enactment of this Act, the Secretary shall  
42 implement the voluntary advanced verification program  
43 and make it available to employers willing to volunteer in  
44 the program.

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(2) Voluntary Participation. The fingerprint verification program is voluntary; employers are not required to participate in it.

(b) Limited Retention Period for Fingerprints.

(1) The Secretary shall only maintain fingerprint records of a U.S. Citizen that were submitted by an employer through the EEVS for 10 business days, upon which such records shall be purged from any EEVS-related system unless the fingerprints have been ordered to be retained for purposes of a fraud or similar investigation by a government agency with criminal or other investigative authority.

(2) Exception: For purposes of preventing identity theft or other harm, a U.S. Citizen employee may request in writing that his fingerprint records be retained for employee verification purposes by the Secretary. In such instances of written consent, the Secretary may retain such fingerprint records until notified in writing by the U.S. Citizen of his withdrawal of consent, at which time the Secretary must purge such fingerprint records within 10 business days unless the fingerprints have been ordered to be retained for purposes of a fraud or similar investigation by a government agency with an independent criminal or other investigative authority.

(d) Limited Use of Fingerprints Submitted for Program. The Secretary and the employer may use any fingerprints taken from the employee and transmitted for querying the EEVS solely for the purposes of verifying identity and employment eligibility during the employee verification process. Such transmitted fingerprints may not be used for any other purpose. This provision does not alter any other provisions regarding the use of non-fingerprint information in the EEVS.

(e) Safeguarding of Fingerprint Information. The Secretary, subject to specifications and limitations set forth under this section and other relevant provisions of this Act, shall be responsible for safely and securely maintaining and storing all fingerprints submitted under this program.

1 **SEC. 308. RESPONSIBILITIES OF THE SOCIAL SECURITY ADMINISTRATION**

2

3 Section 205(c)(12) of the Social Security Act, 42 U.S.C. 405(c)(2), is  
4 amended by adding at the end the following new subparagraphs:

5 “(I) Responsibilities of the Commissioner of Social Security.—

6 “(i) As part of the verification system, the Commissioner of  
7 Social Security shall, subject to the provisions of section  
8 274A(d) of the Immigration and Nationality Act, establish a  
9 reliable, secure method that, operating through the EEVS  
10 and within the time periods specified in section 274A(d) of  
11 the Immigration and Nationality Act:

12 “(1) compares the name, social security account  
13 number and available citizenship information  
14 provided in an inquiry against such information  
15 maintained by the Commissioner in order to confirm  
16 (or not confirm) the validity of the information  
17 provided regarding an individual whose identity and  
18 employment eligibility must be confirmed;

19 “(2) the correspondence of the name, number, and  
20 any other identifying information;

21 “(3) whether the name and number belong to an  
22 individual who is deceased;

23 “(4) whether an individual is a national of the United  
24 States (when available); and

25 “(5) whether the individual has presented a social  
26 security account number that is not valid for  
27 employment.

28 The EEVS shall not disclose or release social security  
29 information to employers through the confirmation system  
30 (other than such confirmation or nonconfirmation).

31 “(ii) Social Security Administration Database  
32 Improvements – For purposes of preventing identity theft,  
33 protecting employees, and reducing burden on employers,

1 and notwithstanding section 6103 of title 26, United States  
2 Code, the Commissioner of Social Security, in consultation  
3 with the Secretary, shall review the Social Security  
4 Administration databases and information technology to  
5 identify any deficiencies and discrepancies related to  
6 name, birth date, citizenship status, or death records of  
7 the social security accounts and social security account  
8 holders likely to contribute to fraudulent use of documents,  
9 or identity theft, or to affect the proper functioning of the  
10 EEVS and shall correct any identified errors. The  
11 Commissioner shall ensure that a system for identifying  
12 and correcting such deficiencies and discrepancies is  
13 adopted to ensure the accuracy of the Social Security  
14 Administration's databases.

15 "(iii) Notification to "Freeze" Use of Social Security Number  
16 – The Commissioner of Social Security, in consultation with  
17 the Secretary of Homeland Security, shall establish a  
18 secure process whereby an individual can request that the  
19 Commissioner preclude any confirmation under the EEVS  
20 based on that individual's Social Security number until it is  
21 reactivated by that individual."

22

23 **SEC. 309. IMMIGRATION ENFORCEMENT SUPPORT BY THE INTERNAL**  
24 **REVENUE SERVICE AND THE SOCIAL SECURITY ADMINISTRATION.**

25

26 (a) Tightening requirements for the provision of social security  
27 numbers on Form W-2 wage and tax statements.--

28

29 Section 6724 of the Internal Revenue Code of 1986 (relating to  
30 waiver; definitions and special rules) is amended by adding at  
31 the end the following new subsection:

32

33 "(f) Special rules with respect to social security numbers  
34 on withholding exemption certificates.

35

36 "(l) Reasonable cause waiver not to apply.

37

38 Subsection (a) shall not apply with respect to the social  
39 security account number of an employee furnished under  
40 section 6051 (a)(2).

41



1 "(2) Exception.- "(A) In general.-Except as provided in  
2 subparagraph (B), [*paragraph (1)*] shall not apply in any  
3 case in which the employer-

4  
5 "(i) receives confirmation that the discrepancy  
6 described in section 205(c)(2)(I) of the Social  
7 Security Act has been resolved, or

8  
9 "(ii) corrects a clerical error made by the employer  
10 with respect to the social security account number of  
11 an employee within 60 days after notification under  
12 section 205(c)(2)(1) of the Social Security Act that  
13 the social security account number contained in  
14 wage records provided to the Social Security  
15 Administration by the employer with respect to the  
16 employee does not match the social security account  
17 number of the employee contained in relevant  
18 records otherwise maintained by the Social Security  
19 Administration.

20  
21 "(B) Exception not applicable to frequent offenders.  
22 Subparagraph (A) shall not apply -

23  
24 "(i) in any case in which not less than 50 of the  
25 statements required to be made by an employer  
26 pursuant to section 6051 either fail to include an  
27 employee's social security account number or include  
28 an incorrect social security account number, or

29 "(ii) with respect to any employer who has received  
30 written notification under section 205(c)(2)(1) of the  
31 Social Security Act during each of the 3 preceding  
32 taxable years that the social security account  
33 numbers in the wage records provided to the Social  
34 Security Administration by such employer with  
35 respect to 10 more employees do not match relevant  
36 records otherwise  
37 maintained by the Social Security Administration."

38  
39 (b) Enforcement -

40  
41 (1) In general.-Not later than 90 days after the date of the  
42 enactment of this Act, the Secretary of the Treasury, in  
43 consultation with the Secretary of Homeland Security, shall  
44 establish a unit within the Criminal Investigation office of

1 the Internal Revenue Service to investigate violations of  
2 the Internal Revenue Code of 1986 related to the  
3 employment of individuals who are not authorized to work  
4 in the United States.

5  
6 (2) Special agents; support staff. – The Secretary of the  
7 Treasury shall assign to the unit a minimum of 10 full-time  
8 special agents and necessary support staff and is  
9 authorized to employ up to 200 full time special agents for  
10 this unit based on investigative requirements and work  
11 load.

12  
13 (3) Reports.-During each of the first 5 calendar years  
14 beginning after the establishment of such unit and  
15 biennially thereafter, the unit shall transmit to Congress a  
16 report that describes its activities and includes the number  
17 of investigations and cases referred for prosecution.

18  
19 (c) INCREASE IN PENALTY ON EMPLOYER FAILING TO FILE  
20 CORRECT INFORMATION RETURNS.-Section 6721 of such Code  
21 (relating to failure to file correct information returns) is amended  
22 as follows-

23  
24 (1) in subsection (a)(1)-

25  
26 (A) by striking "\$50" and inserting "\$200", and

27  
28 (B) by striking "\$250,000" and inserting "\$1,000,000",

29  
30 (2) in subsection (b)(1)(A), by striking "\$15 in lieu of  
31 \$50" and inserting "\$60 in lieu of \$200",

32  
33 (3) in subsection (b)(1 )(B), by striking "\$75,000" and  
34 inserting "\$300,000",

35  
36 (4) in subsection (b)(2)(A), by striking "\$30 in lieu of  
37 \$50" and inserting "\$120 in lieu of \$200",

38  
39 (5) in subsection (b )(2)(B), by striking "\$150,000"  
40 and inserting "\$600,000",

41  
42 (6) in subsection (d) (A) in paragraph (1)-

1

(i) by striking " '\$100,000' for '\$250,000' " and inserting " '\$400,000' for '\$1,000,000' " in subparagraph (A),

5

(ii) by striking " '\$25,000' for '\$75,000' " and inserting " '\$100,000' for '\$300,000' " in subparagraph (B), and

9

(iii) by striking " '\$50,000' for '\$150,000' " and inserting " '\$200,000' for '\$600,000' " in subparagraph (C),

10

11

12

(B) in paragraph (2)(A), by striking "\$5,000,000" and inserting "\$2,000,000", and

13

14

15

(C) in the heading, by striking "\$5,000,000" and inserting "\$2,000,000",

16

17

18

(7) in subsection (e )(2)-

19

20

(A) by striking "\$100" and inserting "\$400",

21

22

(B) by striking "\$25,000" and inserting "\$100,000" in subparagraph (C)(i), and

23

24

25

(C) by striking "\$100,000" and inserting "\$400,000" in subparagraph (C)(ii), and

26

27

(8) in subsection (e)(3)(A), by striking "\$250,000" and inserting "\$1,000,000".

28

29

30

(d) Effective Date.-

31

32

The amendments made by subsections (b) and (c) shall apply to failures occurring after December 31, 2006.

33

34

35

**SEC. 310. AUTHORIZATION OF APPROPRIATIONS**

(a) There are authorized to be appropriated to the Secretary of Homeland Security such sums as may be necessary to carry out the provisions of this Act, and the amendments made by this Act, including the following appropriations:

(1) In each of the five years beginning on the date of the enactment of this Act, the appropriations necessary to increase to a level not less than 4500 the number of personnel of the Department of Homeland Security assigned exclusively or principally to an office or offices dedicated to monitoring and enforcing compliance with sections 274A and 274C of the Immigration and Nationality Act (8 U.S.C. 1324a and 1324c), including compliance with the requirements of the EEVS. These personnel shall perform the following compliance and monitoring activities:

(i) verify Employment Identification Numbers of employers participating in the EEVS;

(ii) verify compliance of employers participating in the EEVS with the requirements for participation that are prescribed by the Secretary;

(iii) monitor the EEVS for multiple uses of Social Security Numbers and any immigration identification numbers for evidence that could indicate identity theft or fraud;

(iv) monitor the EEVS to identify discriminatory practices;

(v) monitor the EEVS to identify employers who are not using the system properly, including employers who fail to make appropriate records with respect to their queries and any notices of confirmation, nonconfirmation, or further action;

(vi) identify instances where employees allege that an employer violated their privacy rights;

(vii) analyze and audit the use of the EEVS and the data obtained through the EEVS to identify fraud trends, including fraud trends across industries, geographical areas, or employer size;

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(viii) analyze and audit the use of the EEVS and the data obtained through the EEVS to develop compliance tools as necessary to respond to changing patterns of fraud;

(ix) provide employers with additional training and other information on the proper use of the EEVS;

(x) perform threshold evaluation of cases for referral to the U.S. Immigration and Customs Enforcement and to liaise with the U.S. Immigration and Customs Enforcement with respect to these referrals;

(xi) any other compliance and monitoring activities that, in the Secretary's judgment, are necessary to ensure the functioning of the EEVS;

(x) investigate identity theft and fraud detected through the EEVS and undertake the necessary enforcement actions;

(xi) investigate use of fraudulent documents or access to fraudulent documents through local facilitation and undertake the necessary enforcement actions;

(xii) provide support to the U.S. Citizenship and Immigration Services with respect to the evaluation of cases for referral to the U.S. Immigration and Customs Enforcement;

(xiii) perform any other investigations that, in the Secretary's judgment, are necessary to ensure the functioning of the EEVS, 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 EEVS and the connectivity between U.S. Citizenship and Immigration Services and the U.S. Immigration and Customs Enforcement with respect to the sharing of information to support the EEVS and related immigration enforcement actions.

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1 (b) There are authorized to be appropriated to Commissioner of Social  
2 Security such sums as may be necessary to carry out the provisions of  
3 this Act, including Section 308 of this Act.

4

5

1 **TITLE IV--NEW TEMPORARY WORKER PROGRAM**

2 **SUBTITLE A: SEASONAL NON-AGRICULTURAL AND YEAR-ROUND**  
3 **NONIMMIGRANT TEMPORARY WORKERS**

4 **SEC. 401. NONIMMIGRANT TEMPORARY WORKER.**

5 (a) IN GENERAL- Section 101(a)(15) of the Immigration and Nationality Act (8  
6 U.S.C. 1101(a)(15)) is amended—

7  
8 (1) in subparagraph (H)-

9  
10 (A) by striking subclause (ii)(b);

11  
12 (B) by striking ` or (iii)' and inserting `(iii)';

13  
14 (C) by striking ` ; and the alien spouse' and inserting ` ; or (iv) the alien  
15 spouse';

16  
17 (2) by striking ` or' at the end of subparagraph (U);

18  
19 (3) by striking the period at the end of subparagraph (V) and inserting a  
20 semi-colon; and

21  
22 (4) by inserting at the end the following new subparagraphs-

23  
24 `(W) [Reserved];

25  
26 `(X) [Reserved]; or

27  
28 `(Y) subject to section 218A, an alien having a residence in a foreign country  
29 which the alien has no intention of abandoning and who is coming temporarily  
30 to the United States—

31  
32 `(i) to perform temporary labor or services other than the labor or  
33 services described in clause (i)(b), (i)(b1), (i)(c), or (iii) of  
34 subparagraph of (H), subparagraph (D), (E), (I), (L), (O), (P), or (R),  
35 or section 214(e) (if United States workers who are able, willing, and  
36 qualified to perform such labor or services cannot be found in the  
37 United States);

38  
39 `(ii) to perform seasonal non-agricultural labor or services;  
40 `or

41  
42 `(iii) as the spouse or child of an alien described in clause (i) or (ii) of  
43 this subparagraph.'

44  
45 (b) EFFECTIVE DATE- The effective date of the amendment made by subparagraph  
46 (1)(A) of subsection (a)[MV2] shall be the date on which the Secretary of Homeland  
47 Security makes the certification described in section 1(a) of this Act.

1 **SEC. 402. ADMISSION OF NONIMMIGRANT WORKERS.**

2 (a) New Workers- Chapter 2 of title II of the Act (8 U.S.C. 1181 et seq.) is amended  
3 by striking section 218 and inserting the following:

4 **`SEC. 218A. ADMISSION OF Y NONIMMIGRANTS.**

5 `(a) Application Procedures.—

6  
7 `(1) Labor Certification.—The Secretary of Labor shall prescribe by regulation  
8 the procedures for a United States employer to obtain a labor certification of a  
9 job opportunity under the terms set forth in section 218B.

10  
11 `(2) Petition.--The Secretary of Homeland Security shall prescribe by  
12 regulation the procedures for a United States employer to petition to the  
13 Secretary of Homeland Security for authorization to employ an alien as a Y  
14 nonimmigrant worker and the evidence required to demonstrate eligibility for  
15 such authorization under the terms set forth in subsection (c).

16  
17 `(3) Y Nonimmigrant Visa.-- The Secretary of State and the Secretary of  
18 Homeland Security, as appropriate, shall prescribe by regulation the  
19 procedures for an alien to apply for a Y nonimmigrant visa and the evidence  
20 required to demonstrate eligibility for such visa under the terms set forth in  
21 subsection (e).

22  
23 `(4) Regulations.--The regulations referenced in paragraphs (1), (2), and (3)  
24 shall describe, at a minimum—

25  
26 `(A) the procedures for collection and verification of biometric data  
27 from an alien seeking a Y nonimmigrant visa or admission in Y  
28 nonimmigrant status; and

29  
30 `(B) the procedure and standards for validating an employment  
31 arrangement between a United States employer and an alien seeking a  
32 visa or admission described in (A).

33  
34 `(b) Application for Certification of a Job Opportunity Offered to Y Nonimmigrant  
35 Workers.—An employer desiring to employ a Y nonimmigrant worker shall, with  
36 respect to a specific opening that the employer seeks to fill with such a Y  
37 nonimmigrant, submit an application for labor certification of the job opportunity  
38 filed in accordance with the procedures established by section 218B.

39 `(c) Petition to Employ Y Nonimmigrant Workers.—

40  
41 `(1) In General.-- An employer that seeks authorization to employ a Y  
42 nonimmigrant worker must file a petition with the Secretary of Homeland  
43 Security. The petition must be accompanied by—

44  
45 `(A) evidence that the employer has obtained a certification under  
46 section 218B from the Secretary of Labor for the position sought to be  
47 filled by a Y nonimmigrant worker and that such certification remains  
48 valid;



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` (B) evidence that the job offer was and remains valid;

` (C) the name and other biographical information of the alien beneficiary and any accompanying spouse or child; and

` (D) any biometrics from the beneficiary that the Secretary of Homeland Security may require by regulation.

` (2) Timing of Filing.—

` (A) In General.—A petition under this subsection must be filed with the Secretary of Homeland Security within 180 days of the date of certification under section 218B by the Secretary of Labor of the job opportunity.

` (B) Expiration of Certification.--If a labor certification is not filed in support of a petition under this subsection with the Secretary of Homeland Security within 180 days of the date of certification by the Secretary of Labor, then the certification expires and may not support a Y nonimmigrant petition or be the basis for Y nonimmigrant visa issuance.

` (3) Ability to Request Documentation.--The Secretary of Homeland Security may request information to verify the attestations the employer made during the labor certification process, and any other fact relevant to the adjudication of the petition.

` (4) Adjudication of Petition.—

` (A) Post-Adjudication Action.--After review of the petition, if the Secretary—

` (i) is satisfied that the petition meets all of the requirements of paragraph (1), and any other requirements the Secretary has prescribed in regulations, he may approve the petition and by fax, cable, electronic, or any other means assuring expedited delivery—

` (I) transmit a copy of the notice of action on the petition to the petitioner; and

` (II) in the case of approved petitions, transmit notice of the approval to the Secretary of State;

[DHS3] ` (ii) finds that the employer is not eligible or that the petition is otherwise not approvable, the Secretary may—

` (I) deny the petition without seeking additional evidence and inform the petitioner—

` (aa) that the petition was denied and the reason for the denial;

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- 1                                   ` (bb) of any available process for administrative  
2                                   appeal of the decision; and
- 3                                   ` (cc) that the denial is without prejudice to the  
4                                   filing of any subsequent petitions, except as  
5                                   provided in section 218B(e)(4)[DHS4];
- 6                                   ` (II) issue a request for documentation of the  
7                                   attestations or any other information or evidence that is  
8                                   material to the petition; or
- 9                                   ` (III) audit, investigate or otherwise review the petition  
10                                  in such manner as he may determine and refer evidence  
11                                  of fraud to appropriate law enforcement agencies based  
12                                  on the audit information.
- 13                                ` (B) Validity of Approved Petition.—An approved petition shall have  
14                                the same period of validity as the certification described in subsection  
15                                (c)(1)(A) and expire on the same date that the certification expires,  
16                                except that the Secretary of Homeland Security may terminate in his  
17                                discretion an approved petition—
- 18                                    ` (i) when he determines that any material fact, including, but  
19                                    not limited to the proffered wage rate, the geographic location  
20                                    of employment, or the duties of the position, has changed in a  
21                                    way that would invalidate the recruitment actions; or
- 22                                    ` (ii) when he or the Secretary of Labor makes a finding of fraud  
23                                    or misrepresentation concerning the facts on the petition or any  
24                                    other representation made by the employer before the  
25                                    Secretary of Labor or Secretary of Homeland Security.
- 26                                    ` (C) Administrative Review.—The Secretary of Homeland Security  
27                                    shall authorize a single level of administrative review with the United  
28                                    States Citizenship and Immigration Services Administrative Appeals  
29                                    Office of a petition denial or termination.
- 30                                    ` (d) Authorization to Grant Y Nonimmigrant Visa-
- 31
- 32                                    ` (1) IN GENERAL- A consular officer may grant a single-entry temporary visa  
33                                    to a Y nonimmigrant who demonstrates an intent to perform labor or services  
34                                    in the United States (other than the labor or services described in clause  
35                                    (i)(b), (i)(b1), (i)(c), or (iii) of section 101(a)(15)(H), subparagraph (D), (E),  
36                                    (I), (L), (O), (P), or (R) of section 101(a)(15), or section 214(e) (if United  
37                                    States workers who are able, willing, and qualified to perform such labor or  
38                                    services cannot be found in the United States).
- 39
- 40
- 41                                    ` (2) APPLICANTS FROM CANADA.--Notwithstanding any waivers of the visa  
42                                    requirement under section 212(a)(7)(B)(i)(II), a national of Canada seeking  
43                                    admission as a Y nonimmigrant will be inadmissible if not in possession of-
- 44
- 45                                    ` (I) a valid Y nonimmigrant visa; or
- 46
- 47                                    ` (II) documentation of Y nonimmigrant status, as described in  
48                                    subsection (m).
- 49

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1  
2 (e) Requirements for Admission- An alien shall be eligible for Y nonimmigrant status  
3 if the alien meets the following requirements:

4  
5 (1) ELIGIBILITY TO WORK- The alien shall establish that the alien is capable  
6 of performing the labor or services required for an occupation described in  
7 section 101(a)(15)(Y)(i) or (Y)(ii).  
8

9 (2) EVIDENCE OF EMPLOYMENT OFFER- The alien's evidence of employment  
10 shall be provided in accordance with the requirements issued by the Secretary  
11 of State, in consultation with the Secretary of Labor. In carrying out this  
12 paragraph, the Secretary may consider evidence from employers, employer  
13 associations, and labor representatives.  
14

15 (3) FEES-

16  
17 (A) Processing Fees- An alien making an application for a Y  
18 nonimmigrant visa shall be required to pay, in addition to any fees  
19 charged by the Department of State for processing and adjudicating  
20 such visa application, a processing fee in an amount sufficient to  
21 recover the full cost to the Secretary of Homeland Security of  
22 administrative and other expenses associated with processing the  
23 alien's participation in the Y nonimmigrant program, including the  
24 costs of production of documentation of evidence under subsection  
25 (m).

26 (B) State Impact Fee- Aliens making an application for a Y-1  
27 nonimmigrant visa shall pay a state impact fee of \$500 and an  
28 additional \$250 for each dependent accompanying or following to join  
29 the alien, not to exceed \$1500 per family.

30 (C) Deposit and Spending of Fees- The processing fees under  
31 subparagraph (A) shall be deposited and remain available until  
32 expended as provided by sections 286(m) and (n).

33 (D) Deposit and Disposition of State Impact Assistance Funds- The  
34 funds described in subparagraph (B) shall be deposited and remain  
35 available as provided by section 286(x).

36 (E) Construction- Nothing in this paragraph shall be construed to  
37 affect consular procedures for collection of machine-readable visa fees  
38 or reciprocal fees for the issuance of the visa.  
39

40 (4) MEDICAL EXAMINATION- The alien shall undergo a medical examination  
41 (including a determination of immunization status), at the alien's expense,  
42 that conforms to generally accepted standards of medical practice.  
43

44 (5) APPLICATION CONTENT AND WAIVER-

45  
46 (A) APPLICATION FORM- The alien shall submit to the Secretary of  
47 State a completed application, which contains evidence that the  
48 requirements under paragraphs (1) and (2) have been met.

49 (B) CONTENT- In addition to any other information that the Secretary  
50 requires to determine an alien's eligibility for Y nonimmigrant status,  
51 the Secretary of State shall require an alien to provide information  
52 concerning the alien's--

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- 1                           ` (i) physical and mental health;  
2                           ` (ii) criminal history, including all arrests and dispositions, and  
3                           gang membership;  
4                           ` (iii) immigration history; and  
5                           ` (iv) involvement with groups or individuals that have engaged  
6                           in terrorism, genocide, persecution, or who seek the overthrow  
7                           of the United States Government.  
8                    ` (C) KNOWLEDGE- The alien shall include with the application  
9                    submitted under this paragraph a signed certification in which the alien  
10                   certifies that--  
11                    ` (i) the alien has read and understands all of the questions and  
12                    statements on the application form;  
13                    ` (ii) the alien certifies under penalty of perjury under the laws  
14                    of the United States that the application, and any evidence  
15                    submitted with it, are all true and correct; and  
16                    ` (iii) the applicant authorizes the release of any information  
17                    contained in the application and any attached evidence for law  
18                    enforcement purposes.  
19  
20                    ` (6) MUST NOT BE INELIGIBLE- The alien must not fall within a class of aliens  
21                    ineligible for Y nonimmigrant status listed under subsection (h).  
22  
23                    ` (7) MUST NOT BE INADMISSIBLE- The alien must not be inadmissible as a  
24                    nonimmigrant to the United States under section 212, except as provided in  
25                    subsection (f).  
26  
27                    ` (8) SPOUSE OR CHILD OF Y NONIMMIGRANT.—An alien seeking admission  
28                    as a derivative Y-3 nonimmigrant must demonstrate, in addition to  
29                    satisfaction of the requirements of paragraphs (2) through (6)—  
30  
31                    ` (A) that the annual wage of the principal Y nonimmigrant paid by the  
32                    principal nonimmigrant’s U.S. employer, combined with the annual  
33                    wage of the principal Y nonimmigrant’s spouse where the Y-3  
34                    nonimmigrant is a child and the Y nonimmigrant’s spouse is a member  
35                    of the principal Y nonimmigrant’s household, is equal to or greater  
36                    than 150 percent of the U.S. poverty level for a household size equal  
37                    in size to that of the principal alien (including all dependents, family  
38                    members supported by the principal alien, and the spouse or child  
39                    seeking to accompany or join the principal alien), as determined by  
40                    the Secretary of Health and Human Services for the fiscal year in  
41                    which the spouse or child’s application for a nonimmigrant visa is filed;  
42                    and  
43  
44                    ` (B) that the alien’s cost of medical care is covered by medical  
45                    insurance, valid in the United States, carried by the principal Y  
46                    nonimmigrant alien, the principal Y nonimmigrant’s spouse (where the  
47                    Y-3 nonimmigrant is a child), or the principal Y nonimmigrant alien’s  
48                    employer.  
49  
50                    ` (f) Grounds of Inadmissibility-  
51

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- 1           ` (1) WAIVED GROUNDS OF INADMISSIBILITY- In determining an alien's  
2           admissibility as a Y nonimmigrant, such alien shall be found to be  
3           inadmissible if the alien would be subject to the grounds of inadmissibility  
4           under section 601(d)(2).  
5
- 6           ` (2) WAIVER- The Secretary may in his discretion waive the application of  
7           any provision of section 212(a) of the Act not listed in paragraph (2) on  
8           behalf of an individual alien for humanitarian purposes, to ensure family  
9           unity, or if such waiver is otherwise in the public interest.  
10
- 11           ` (3) CONSTRUCTION- Nothing in this subsection shall be construed as  
12           affecting the authority of the Secretary other than under this paragraph to  
13           waive the provisions of section 212(a).  
14
- 15           ` (g) Background Checks- The Secretary of Homeland Security shall not admit, and  
16           the Secretary of State shall not issue a visa to, an alien seeking Y nonimmigrant visa  
17           or status unless all appropriate background checks have been completed to the  
18           satisfaction of the Secretaries of State and Homeland Security.  
19
- 20           ` (h) Grounds of Ineligibility-
- 21           ` (1) In General- An alien is ineligible for a Y nonimmigrant visa or Y  
22           nonimmigrant status if the alien is described in section 601(d)(1)(A), (D), (E),  
23           (F), or (G) of the [insert Title of Act].  
24
- 25           ` (2) Ineligibility of Derivative Y-3 Nonimmigrants.—An alien is ineligible for Y-  
26           3 nonimmigrant status if the principal Y nonimmigrant is ineligible under  
27           paragraph (1).  
28
- 29           ` (3) Applicability to Grounds of Inadmissibility.--Nothing in this subsection  
30           shall be construed to limit the applicability of any ground of inadmissibility  
31           under section 212.  
32
- 33
- 34           ` (i) Period of Authorized Admission-
- 35
- 36           ` (1) IN GENERAL.--Aliens admitted to the United States as Y nonimmigrants  
37           shall be granted the following periods of admission:  
38
- 39           ` (A) Y-1 Nonimmigrants.—Except as provided in (2), aliens granted  
40           admission as Y-1 nonimmigrants shall be granted an authorized period  
41           of admission of two years. Subject to paragraph (4), such two-year  
42           period of admission may be extended for two additional two-year  
43           periods.  
44
- 45           ` (B) Y-2B Nonimmigrants.—Aliens granted admission as Y-2B  
46           nonimmigrants shall be granted an authorized period of admission of  
47           10 months.  
48
- 49           ` (2) Y-1 Nonimmigrants With Y-3 Dependents.—A Y-1 nonimmigrant who has  
50           accompanying or following-to-join derivative family members in Y-3  
51           nonimmigrant status shall be limited to two two-year periods of admission. If  
52           the family members accompany the Y-1 nonimmigrant during the alien's first

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1 period of admission the family members may not accompany or join the Y-1  
2 nonimmigrant during the alien's second period of admission. If the Y-1  
3 nonimmigrant's family members accompany or follow to join the Y-1  
4 nonimmigrant during the alien's second period of admission, but not his first  
5 period of admission, then the Y-1 nonimmigrant shall not be granted any  
6 additional periods of admission in Y nonimmigrant status. The period of  
7 authorized admission of a Y-3 nonimmigrant shall expire on the same date as  
8 the period of authorized admission of the principal Y-1 nonimmigrant worker.  
9

10 ` (3) SUPPLEMENTARY PERIODS.—Each period of authorized admission  
11 described in paragraph (1) shall be supplemented by a period of not more  
12 than 1 week before the beginning of the period of employment for the  
13 purpose of travel to the worksite and [DHS5], except where such period of  
14 authorized admission has been terminated under subsection (j), a period of  
15 14 days following the period of employment for the purpose of departure or  
16 extension based on a subsequent offer of employment, except that—  
17

18 ` (A) the alien is not authorized to be employed during such 14-day  
19 period except in the employment for which the alien was previously  
20 authorized; and  
21

22 ` (B) the total period of employment, including such 14-day period,  
23 may not exceed the maximum applicable period of admission under  
24 paragraph (1).  
25

26 ` (4) EXTENSIONS OF THE PERIOD OF ADMISSION.—  
27

28 ` (A) In General- The periods of authorized admission described in  
29 paragraph (1) may not, except as provided in subparagraph (C)(2) of  
30 paragraph (1), be extended beyond the maximum period of admission  
31 set forth in that paragraph.  
32

33 ` (B) Extension of Y-1 Nonimmigrant Status- A Y-1 nonimmigrant  
34 described in paragraph (1)(A) who has spent 24 months in the United  
35 States in Y-1 nonimmigrant status may not seek extension or be  
36 readmitted to the United States as a Y-1 nonimmigrant unless the  
37 alien has resided and been physically present outside the United  
38 States for the immediate prior 12 months.  
39

40 ` (5) LIMITATION ON ADMISSION.—  
41

42 ` (A) Y-1 Nonimmigrants.--An alien who has been admitted to the  
43 United States in Y-1 nonimmigrant status for a period of two years  
44 under paragraph (1)(B), or as the Y-3 nonimmigrant spouse or child of  
45 such a Y-1 nonimmigrant, may not be readmitted to the United States  
46 as a Y-1 or Y-3 nonimmigrant after expiration of such period of  
47 authorized admission, regardless of whether the alien was employed or  
48 present in the United States for all or a part of such period.  
49

50 ` (B) Y-2B Nonimmigrants.-- An alien who has been admitted to the  
51 United States in Y-2B nonimmigrant status may not, after expiration of  
52 the alien's period of authorized admission, be readmitted to the  
United States as a Y nonimmigrant after expiration of the alien's period

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1 of authorized admission, regardless of whether the alien was employed  
2 or present in the United States for all or only a part of such period,  
3 unless the alien has resided and been physically present outside the  
4 United States for the immediately preceding two months.

5  
6 ` (C) Readmission With New Employment- Nothing in this paragraph  
7 shall be construed to prevent a Y nonimmigrant, whose period of  
8 authorized admission has not yet expired or been terminated under  
9 subsection (j), and who leaves the United States in a timely fashion  
10 after completion of the employment described in the petition of the Y  
11 nonimmigrant's most recent employer, from reentering the United  
12 States as a Y nonimmigrant to work for a new employer, if the alien  
13 and the new employer have complied with all applicable requirements  
14 of this section and section 218B.  
15

16 ` (6) INTERNATIONAL COMMUTERS- An alien who maintains actual residence  
17 and place of abode outside the United States and commutes, on days the  
18 alien is working, into the United States to work as a Y-1 nonimmigrant, shall  
19 be granted an authorized period of admission of three years. The limitations  
20 described in paragraphs (3) and (4) shall not apply to commuters described in  
21 this paragraph.  
22

23 ` (j) Termination-

24  
25 ` (1) IN GENERAL- The period of authorized admission of a Y nonimmigrant  
26 shall terminate immediately if:

27  
28 ` (A) the Secretary of Homeland Security determines that the alien was  
29 not eligible for such Y nonimmigrant status at the time of visa  
30 application or admission;

31  
32 ` (B) (i) the alien commits an act that makes the alien removable from  
33 the United States under section 237;

34  
35 ` (ii) the alien becomes inadmissible under section 212 (except  
36 as provided in subsection (f)); or

37  
38 ` (iii) the alien becomes ineligible under subsection (h);  
39

40 ` (C) the alien uses the documentation of his or her Y nonimmigrant  
41 status issued under subsection (m) for unlawful or fraudulent  
42 purposes;  
43

44 ` (D) subject to paragraph (2), the alien is unemployed within the  
45 United States for—

46  
47 ` (i) 60 or more consecutive days;

48  
49 ` (ii) in the case of a Y-1 nonimmigrant, an aggregate period of  
50 120 days, provided that the alien's 14-day period to lawfully  
51 depart the United States shall not be considered to begin until

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1 the date that the alien has been provided notice of the  
2 termination; or

3  
4 ` (iii) in the case of a Y-2B nonimmigrant, an aggregate period  
5 of 30 days, provided that the alien's 14-day period to lawfully  
6 depart the United States shall not be considered to begin until  
7 the date that the alien has been provided notice of the  
8 termination;

9 ` or;

10  
11 ` (E) the alien is a Y-3 nonimmigrant whose spouse or parent in Y-1  
12 nonimmigrant status is an alien described in subparagraphs (A), (B),  
13 (C), or (D).

14  
15 ` (2) EXCEPTION- The period of authorized admission of a Y nonimmigrant  
16 shall not terminate for unemployment under subparagraph (1)(D) if the alien  
17 submits documentation to the Secretary of Homeland Security that  
18 establishes that such unemployment was caused by--

19  
20 ` (A) a period of physical or mental disability of the alien or the spouse,  
21 son, daughter, or parent (as defined in section 101 of the Family and  
22 Medical Leave Act of 1993 (29 U.S.C. 2611)) of the alien;

23  
24 ` (B) a period of vacation, medical leave, maternity leave, or similar  
25 leave from employment authorized by employer policy, State law, or  
26 Federal law; or

27  
28 ` (C) any other period of temporary unemployment that is the direct  
29 result of a force majeure event.

30  
31 ` (3) RETURN TO FOREIGN RESIDENCE- Any alien whose period of authorized  
32 admission terminates under paragraph (1) shall be required to leave the  
33 United States immediately and register such departure at a designated port of  
34 departure in a manner to be prescribed by the Secretary.

35  
36 ` (4) INVALIDATION OF DOCUMENTATION.-- Any documentation that is  
37 issued by the Secretary of Homeland Security under subsection (m) to any  
38 alien, whose period of authorized admission terminates under paragraph (1),  
39 shall automatically be rendered invalid for any purpose except departure.

40  
41 ` (k) VISITS OUTSIDE THE UNITED STATES-

42  
43 ` (A) IN GENERAL- Under regulations established by the Secretary of  
44 Homeland Security, a Y nonimmigrant—

45  
46 ` (i) may travel outside of the United States; and

47  
48 ` (ii) may be readmitted for a period not more than the remaining time  
49 left until the alien accrues the maximum period of admission set forth  
50 in subsection (i), and without having to obtain a new visa if:  
51



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1                   ` (A) the period of authorized admission has not expired or  
2                   been terminated;

3  
4                   ` (B) the alien is the bearer of valid documentary evidence of Y  
5                   nonimmigrant status that satisfies the conditions set forth in  
6                   subsection (m); and

7                   ` (C) the alien is not subject to the bars on extension or  
8                   admission described in subsection (l).

9  
10                  ` (B) EFFECT ON PERIOD OF AUTHORIZED ADMISSION- Time spent outside  
11                  the United States under subparagraph (A) shall not extend the most recent  
12                  period of authorized admission in the United States.

13  
14                  ` (l) BARS TO EXTENSION OR ADMISSION- An alien may not be granted Y  
15                  nonimmigrant status if—

16  
17                    ` (A) the alien has violated any material term or condition of such status  
18                    granted previously, including failure to comply with the change of address  
19                    reporting requirements under section 265;

20  
21                    ` (B) the alien is inadmissible as a nonimmigrant, except for those grounds  
22                    previously waived under subsection (f); or

23  
24                    ` (C) the granting of such status would allow the alien to exceed limitations on  
25                    stay in the United States in Y status described in subsection (i).

26  
27                  ` (m) EVIDENCE OF NONIMMIGRANT STATUS- Each Y nonimmigrant shall be issued  
28                  documentary evidence of nonimmigrant status, which—

29  
30                    ` (1) shall be machine-readable, tamper-resistant, and shall contain a  
31                    digitized photograph and other biometric identifiers that can be  
32                    authenticated;

33  
34                    ` (2) shall, during the alien's authorized period of admission under subsection  
35                    (i), serve as a valid entry document for the purpose of applying for admission  
36                    to the United States—

37                    ` (A) instead of a passport and visa if the alien—

38  
39                            ` (i) is a national of a foreign territory contiguous to the United  
40                            States; and

41  
42                            ` (ii) is applying for admission at a land border port of entry;  
43                            and

44  
45                    ` (B) in conjunction with a valid passport, if the alien is applying for  
46                    admission at an air or sea port of entry;

47  
48                    ` (3) may be accepted during the period of its validity by an employer as  
49                    evidence of employment authorization and identity under section  
50                    274A(b)(1)(B); and  
51

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` (4) shall be issued to the Y nonimmigrant by the Secretary of Homeland Security promptly after such alien's admission to the United States as a Y nonimmigrant and reporting to the employer's worksite under subsection (q) or, at the discretion of the Secretary of Homeland Security, may be issued by the Secretary of State at a consulate instead of a visa.

` (n) Permanent Bars for Overstays.—

` (1) In General- Any Y nonimmigrant who remains beyond his or her initial authorized period of admission is permanently barred from any future benefits under the immigration laws, except—

` (A) asylum under section 208(a);

` (B) withholding of removal under section 241(b)(3); or

` (C) protection under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, done at New York December 10, 1984.

` (2) Exception- Overstay of the authorized period of admission may be excused in the discretion of the Secretary where it is demonstrated that:

` (A) the period of overstay was due to extraordinary circumstances beyond the control of the applicant, and the Secretary finds the period commensurate with the circumstances; and

` (B) the alien has not otherwise violated his Y nonimmigrant status.[DHS7]

` (o) Penalty for Illegal Entry or Overstay-

` (1) Illegal Entry- Any alien who after the date of the enactment of this section, unlawfully enters, attempts to enter, or crosses the border, and is physically present in the United States after such date in violation of the immigration laws, is barred permanently from any future benefits under the immigration laws, except as provided in paragraph (3) or (4).

` (2) Overstay- Any alien, other than a Y nonimmigrant, who, after the date of the enactment of this section remains unlawfully in the United States beyond the period of authorized admission, is barred for a period of ten years from any future benefits under the immigration laws, except as provided in paragraph (3) or (4).

` (3) Relief— Notwithstanding the bar in paragraph (1) or (2), an alien may apply for--

` (A) asylum under section 208(a);

` (B) withholding of removal under section 241(b)(3); or

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1                   ` (C) protection under the Convention Against Torture and Other Cruel,  
2                   Inhuman or Degrading Treatment or Punishment, done at New York  
3                   December 10, 1984.

4  
5                   ` (4) Exception.—Overstay of the authorized period of admission may be  
6                   excused in the discretion of the Secretary where it is demonstrated that:

7  
8                   ` (A) the period of overstay was due to extraordinary circumstances  
9                   beyond the control of the applicant, and the Secretary finds the period  
10                  commensurate with the circumstances; and

11  
12                  ` (B) the alien has not otherwise violated his nonimmigrant status.

13  
14                  ` (p) Portability- A Y nonimmigrant worker, who was previously issued a visa or  
15                  otherwise provided Y nonimmigrant status, may accept a new offer of employment  
16                  with a subsequent employer, if—

17  
18                  ` (1) the position being offered the Y nonimmigrant has been certified by the  
19                  Secretary of Labor under section 218B and the employer complies with all  
20                  requirements of this section and section 218B;

21  
22                  ` (2) the alien, after lawful admission to the United States, did not work  
23                  without authorization; and

24  
25                  ` (3) the subsequent employer has notified the Secretary of Homeland  
26                  Security under subsection (q) of the Y nonimmigrant's change of  
27                  employment.

28  
29                  ` (q) Reporting of Start and Termination of Employment.—

30  
31                  ` (1) Start of Y Worker Employment.--A Y nonimmigrant shall report in the  
32                  manner prescribed by the Secretary of Homeland Security to the employer  
33                  whose job offer was the basis for issuance of the alien's Y nonimmigrant visa  
34                  within 7 days of admission into the United States.

35  
36                  ` (2) Employer Notification Requirement.--An employer shall within three days  
37                  make notification in the manner prescribed by the Secretary of Homeland  
38                  Security, of the following events:

39  
40                  ` (A) a Y nonimmigrant worker has reported for work pursuant to  
41                  paragraph (1) after admission in Y nonimmigrant status;

42  
43                  ` (B) a Y nonimmigrant worker has changed jobs under subsection (r)  
44                  and started employment with the employer;

45  
46                  ` (C) the employment of a Y nonimmigrant worker has terminated; or

47  
48                  ` (D) a Y nonimmigrant worker on whose behalf the employer has filed  
49                  a petition under this subsection that has been approved by the  
50                  Secretary of Homeland Security has failed to report for work within  
51                  three days of the employment start date agreed upon between the  
52                  employer and the Y nonimmigrant.

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- 1  
2       ` (3) Verification.--An employer shall provide upon request of the Secretary of  
3 Homeland Security verification that an alien who has been granted admission  
4 as a Y nonimmigrant worker was or continues to be employed by the  
5 employer.  
6  
7       ` (4) Fine.--Any employer that fails to comply with the notification  
8 requirements of this subsection shall pay to the Secretary of Homeland  
9 Security a fine, in an amount and under procedures established by the  
10 Secretary in regulation.  
11  
12   ` (r) No Threatening of Employees.—It shall be a violation of this section for an  
13 employer who has filed a petition under this section to threaten the alien beneficiary  
14 of such petition with the withdrawal of such a petition in retaliation for the  
15 beneficiary's exercise of a right protected by section 218B.  
16  
17   ` (s) Change of Status.—  
18  
19       ` (1) In General.—  
20  
21           ` (A) A Y nonimmigrant may apply to change status to another  
22 nonimmigrant status, subject to section 248 and if otherwise eligible.  
23  
24           ` (B) No alien admitted to the United States under the immigration  
25 laws in a classification other than Y nonimmigrant status may change  
26 status to Y nonimmigrant status.  
27  
28           ` (C) An alien in Y nonimmigrant status may not change status to any  
29 other Y nonimmigrant status.  
30  
31       ` (2) Construction.--Nothing in this subsection shall be construed to prevent  
32 an alien who is precluded from changing status to a particular Y nonimmigrant  
33 classification under subparagraphs (1)(B), (C), or (D) from leaving the United  
34 States and applying at a U.S. consulate for the desired nonimmigrant visa,  
35 subject to all applicable eligibility requirements, in the appropriate Y  
36 classification.  
37  
38   ` (t) Visitation of Y Nonimmigrant by Spouse or Child of Without a Y-3 Nonimmigrant  
39 Visa.--Nothing in this section shall be construed to prohibit the spouse or child of a Y  
40 nonimmigrant worker to be admitted to the United States under any other existing  
41 legal basis for which the spouse or child may qualify.  
42 [DHS8]  
43   ` (u) Change of Address- A Y nonimmigrant shall comply with the change of address  
44 reporting requirements under section 265 through electronic or paper notification."  
45  
46   (b) Conforming Amendment Regarding Creation of Treasury Accounts.  
47 Section 286 of the Immigration and Nationality Act (8 U.S.C. 1356) is amended by  
48 inserting at the end the following new subsections.--  
49   ` (w) Temporary Worker Program account.--

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1       ` (1) IN GENERAL.-- There is established in the general fund of the Treasury a  
2 separate account, which shall be known as the `Temporary Worker Program  
3 Account". Notwithstanding any other section of this Act, there shall be deposited  
4 into the account all fines and civil penalties collected under sections 218A, 218B,  
5 or 218F and Title VI of [name of Act], except as specifically provided otherwise in  
6 such sections.

7       ` (2) USE OF FUNDS.-- Amounts deposited into the Temporary Worker Program  
8 Account shall remain available until expended as follows:

9               ` (A) for the administration of the Standing Commission on Immigration  
10 and Labor Markets, established under section 409 of the [Insert title of  
11 Act]; and

12               ` (B) after amounts needed by the Standing Commission on Immigration  
13 and Labor Markets have been expended, for the Secretaries of Labor and  
14 Homeland Security, as follows:

15                       ` (i) one-third to the Secretary of Labor to carry out the Secretary of  
16 Labor's functions and responsibilities, including enforcement of labor  
17 standards under sections 218A, 218B, and 218F, and under applicable  
18 labor laws including the Fair Labor Standards Act of 1938 (29 U.S.C.  
19 201 et seq.) and the Occupational Safety and Health Act of 1970 (29  
20 U.S.C. 651 et seq.). Such activities shall include random audits of  
21 employers that participate in the Y visa program; and

22                       ` (ii) two-thirds to the Secretary of Homeland Security to improve  
23 immigration services and enforcement.

24       ` (x) State Impact Assistance Account.--

25               ` (1) IN GENERAL.-- There is established in the general fund of the Treasury a  
26 separate account, which shall be known as the `State Impact Assistant  
27 Account".

28               ` (2) SOURCE OF FUNDS.-- Notwithstanding any other provision under this  
29 Act, there shall be deposited as offsetting receipts into the State Impact  
30 Assistance Account all State Impact Assistance fees collected under sections  
31 218A(e)(3)(B) and section 601(e)(6)(C) of the [Insert title of Act].

32               ` (3) USE OF FUNDS.-- Amounts deposited into the State Impact Assistance  
33 Account may only be used to carry out the State Impact Assistance Grant  
34 Program established under paragraph (4).

35               ` (4) STATE IMPACT ASSISTANCE GRANT PROGRAM.--

36                       ` (A) ESTABLISHMENT.-- The Secretary of Health and Human Services,  
37 in consultation with the Secretary of Education, shall establish the  
38 State Impact Assistance Grant Program (referred to in this subsection  
39 as the `Program'), under which the Secretary may award grants to  
40 States to provide health and education services to noncitizens in  
41 accordance with this paragraph.

42                       ` (B) STATE ALLOCATIONS.-- The Secretary of Health and Human  
43 Services shall annually allocate the amounts available in the State  
44 Impact Assistance Account among the States as follows:  
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` (i) NONCITIZEN POPULATION.-- Eighty percent of such amounts shall be allocated so that each State receives the greater of--

` (I) \$5,000,000; or

` (II) after adjusting for allocations under subclause (I), the percentage of the amount to be distributed under this clause that is equal to the noncitizen resident population of the State divided by the noncitizen resident population of all States, based on the most recent data available from the Bureau of the Census.

` (ii) HIGH GROWTH RATES.-- Twenty percent of such amounts shall be allocated among the 20 States with the largest growth rates in noncitizen resident population, as determined by the Secretary of Health and Human Services, so that each such State receives the percentage of the amount distributed under this clause that is equal to--

` (I) the growth rate in the noncitizen resident population of the State during the most recent 3-year period for which data is available from the Bureau of the Census; divided by

` (II) the average growth rate in noncitizen resident population for the 20 States during such 3-year period.

` (iii) LEGISLATIVE APPROPRIATIONS.-- The use of grant funds allocated to States under this paragraph shall be subject to appropriation by the legislature of each State in accordance with the terms and conditions under this paragraph.

` (C) FUNDING FOR LOCAL GOVERNMENT.--

` (i) DISTRIBUTION CRITERIA.-- Grant funds received by States under this paragraph shall be distributed to units of local government based on need and function.

` (ii) MINIMUM DISTRIBUTION.-- Except as provided in clause (iii), a State shall distribute not less than 30 percent of the grant funds received under this paragraph to units of local government not later than 180 days after receiving such funds.

` (iii) EXCEPTION.-- If an eligible unit of local government that is available to carry out the activities described in subparagraph (D) cannot be found in a State, the State does not need to comply with clause (ii).

` (iv) UNEXPENDED FUNDS.-- Any grant funds distributed by a State to a unit of local government that remain unexpended as

1 of the end of the grant period shall revert to the State for  
2 redistribution to another unit of local government.

3  
4 ` (D) USE OF FUNDS.-- States and units of local government shall use  
5 grant funds received under this paragraph to provide health services,  
6 educational services, and related services to noncitizens within their  
7 jurisdiction directly, or through contracts with eligible services  
8 providers, including—

9  
10 ` (i) health care providers;

11  
12 ` (ii) local educational agencies; and

13  
14 ` (iii) charitable and religious organizations.

15  
16 ` (E) STATE DEFINED.-- In this paragraph, the term `State' means  
17 each of the several States of the United States, the District of  
18 Columbia, the Commonwealth of Puerto Rico, the Virgin Islands,  
19 Guam, American Samoa, and the Commonwealth of the Northern  
20 Mariana Islands.

21  
22 ` (F) CERTIFICATION.-- In order to receive a payment under this  
23 section, the State shall provide the Secretary of Health and Human  
24 Services with a certification that the State's proposed uses of the fund  
25 are consistent with (D).

26  
27 ` (G) ANNUAL REPORT.-- The Secretary of Health and Human Services  
28 shall inform the States annually of the amount of funds available to  
29 each State under the Program.”.

30  
31 (c) Clerical Amendment- The table of contents Immigration and Nationality Act (8  
32 U.S.C. 1101 et seq.) is amended by inserting after the item relating to section 218  
33 the following:

34 ` Sec. 218A. Admission of Y nonimmigrants.’.

35 **SEC. 403. GENERAL Y NONIMMIGRANT EMPLOYER OBLIGATIONS.**

36 (a) In General- Title II (8 U.S.C. 1201 et seq.) is amended by inserting after section  
37 218A of the Immigration and Nationality Act, as added by section 402, the following:

38 **` SEC. 218B. GENERAL Y NONIMMIGRANT EMPLOYER OBLIGATIONS.**

39 `(a) General Requirements- Each employer who seeks to employ a Y nonimmigrant  
40 shall--

41 `(1) file in accordance with subsection (b) an application for labor certification  
42 of the position that the employer seeks to fill with a Y nonimmigrant that  
43 contains—

44  
45 `(A) the attestation described in subsection (c);

46  
47 `(B) a description of the nature and location of the work to be  
48 performed;

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`(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) include with the application filed under paragraph (1) 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; and

`(3) be required to pay, with respect to an application to employ a Y-1 worker—

`(A) an application processing fee for each alien, in an amount sufficient to recover the full cost to the Secretary of Labor of administrative and other expenses associated with adjudicating the application; and

`(B) a secondary fee, to be deposited in the Treasury in accordance with section 286(x), of--

`(i) \$500, in the case of an employer employing 25 employees or less;

`(ii) \$750, in the case of an employer employing between 26 and 150 employees;

`(iii) \$1000, in the case of an employer employing between 151 and 500 employees; or

`(iv) \$1,250, in the case of an employer employing more than 500 employees;

` provided that an employer who provides a Y nonimmigrant health insurance coverage shall not be required to pay the impact fee.

`(b) Required Procedure- Except where the Secretary of Labor has determined that there is a shortage of United States workers in the occupation and area of intended employment to which the Y nonimmigrant is sought, each employer of Y nonimmigrants shall comply with the following requirements:

`(1) EFFORTS TO RECRUIT UNITED STATES WORKERS- The employer involved shall recruit United States workers for the position for which labor certification is sought under this section, by--

`(A) Not later than 90 days before the date on which an application is filed under subsection (a)(1) submitting a copy of the job opportunity, including a description of the wages and other terms and conditions of employment and the minimum education, training, experience and other requirements of the job, to the designated state agency and--



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` (i) authorizing the designated state agency to post the job opportunity on the Internet website established under section 414 of [Title of bill], with local job banks, and with unemployment agencies and other labor referral and recruitment sources pertinent to the job involved; and

` (ii) authorizing the designated state agency to notify labor organizations in the State in which the job is located and, if applicable, the office of the local union which represents the employees in the same or substantially equivalent job classification of the job opportunity;

` (B) posting the availability of the job opportunity for which the employer is seeking a worker in conspicuous locations at the place of employment for all employees to see for a period of time beginning not later than 90 days before the date on which an application is filed under subsection (a)(1) and ending no earlier than 14 days before such filing date;

` (C) advertising the availability of the job opportunity for which the employer is seeking a worker in one of the three highest circulation publications in the labor market that is likely to be patronized by a potential worker for not fewer than 10 consecutive days during the period of time beginning not later than 90 days before the date on which an application is filed under subsection (a)(1) and ending no earlier than 14 days before such filing date; and

` (D) advertising the availability of the job opportunity in professional, trade, or ethnic publications that are likely to be patronized by a potential worker, as recommended by the designated state agency. The employer shall not be required to advertise in more than three such recommended publications.

` (2) EFFORTS TO EMPLOY UNITED STATES WORKERS- An employer that seeks to employ a Y nonimmigrant shall first offer the job with, at a minimum, the same wages, benefits, and working conditions, to any eligible United States worker who applies, is qualified for the job and is available at the time of need.

` (3) DEFINITION- For purposes of this subsection, `designated state agency' shall mean the state agency designated to perform the functions in this subsection in the area of employment in the State in which the employer is located.

` (c) Application- An application under this section for labor certification of a position that an employer seeks to fill with a Y nonimmigrant shall be filed with the Secretary of Labor and shall include an attestation by the employer of the following:

` (1) with respect to an application for labor certification of a position that an employer seeks to fill with a Y-1 or Y-2B nonimmigrant--

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` (A) PROTECTION OF UNITED STATES WORKERS- The employment of a Y nonimmigrant--

` (i) will not adversely affect the wages and working conditions of workers in the United States similarly employed; and

` (ii) did not and will not cause the separation from employment of a United States worker employed by the employer within the 180-day period beginning 90 days before the date on which the petition is filed.

` (B) WAGES-

` (i) IN GENERAL- The Y nonimmigrant worker will be paid not less than the greater of--

` (I) the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question; or

` (II) the prevailing competitive wage level for the occupational classification in the area of employment, taking into account experience and skill levels of employees.

` (ii) CALCULATION- The wage levels under subparagraph (A) shall be calculated based on the best information available at the time of the filing of the application.

` (iii) PREVAILING COMPETITIVE WAGE LEVEL- For purposes of subclause (i)(II), the prevailing competitive wage level shall be determined as follows:

` (I) If the job opportunity is covered by a collective bargaining agreement between a union and the employer, the prevailing competitive wage shall be the wage rate set forth in the collective bargaining agreement.

` (II) If the job opportunity is not covered by such an agreement and it is on a project that is covered by a wage determination under a provision of subchapter IV of chapter 31 of title 40, United States Code, or the Service Contract Act of 1965 (41 U.S.C. 351 et seq.), the prevailing competitive wage level shall be the appropriate statutory wage.

` (III)(aa) If the job opportunity is not covered by such an agreement and it is not on a project covered by a wage determination under a provision of subchapter IV of chapter 31 of title 40, United States Code, or the Service Contract Act of 1965 (41 U.S.C. 351 et seq.),

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the prevailing competitive wage level shall be based on published wage data for the occupation from the Bureau of Labor Statistics, including the Occupational Employment Statistics survey, Current Employment Statistics data, National Compensation Survey, and Occupational Employment Projections program. If the Bureau of Labor Statistics does not have wage data applicable to such occupation, the employer may base the prevailing competitive wage level on data from another wage survey approved by the state workforce agency under regulations promulgated by the Secretary of Labor.

`(bb) Such regulations shall require, among other things, that such surveys are statistically valid and recently conducted.

`(D) LABOR DISPUTE- There is not a strike, lockout, or work stoppage in the course of a labor dispute in the occupation at the place of employment at which the Y nonimmigrant will be employed. If such strike, lockout, or work stoppage occurs following submission of the application, the employer will provide notification in accordance with regulations promulgated by the Secretary of Labor.

`(E) PROVISION OF INSURANCE- If the position for which the Y nonimmigrant is sought is not covered by the State workers' compensation law, the employer will provide, at no cost to the Y nonimmigrant, insurance covering injury and disease arising out of, and in the course of, the worker's employment, which will provide benefits at least equal to those provided under the State workers' compensation law for comparable employment.

`(F) NOTICE TO EMPLOYEES-

`(i) IN GENERAL- The employer has provided notice of the filing of the application to the bargaining representative of the employer's employees in the occupational classification and area of employment for which the Y nonimmigrant is sought.

`(ii) NO BARGAINING REPRESENTATIVE- If there is no such bargaining representative, the employer has--

`(I) posted a notice of the filing of the application in a conspicuous location at the place or places of employment for which the Y nonimmigrant is sought; or

`(II) electronically disseminated such a notice to the employer's employees in the occupational classification for which the Y nonimmigrant is sought.

`(G) RECRUITMENT- Except where the Secretary of Labor has determined that there is a shortage of United States workers in the

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1 occupation and area of intended employment for which the Y  
2 nonimmigrant is sought--

3  
4 ` (i) there are not sufficient workers who are able, willing, and  
5 qualified, and who will be available at the time and place  
6 needed, to perform the labor or services described in the  
7 application; and

8  
9 ` (ii) good faith efforts have been taken to recruit United States  
10 workers, in accordance with regulations promulgated by the  
11 Secretary of Labor, which efforts included--

12  
13 ` (I) the completion of recruitment during the period  
14 beginning on the date that is 90 days before the date on  
15 which the application was filed with the Department of  
16 Labor and ending on the date that is 14 days before  
17 such filing date; and

18  
19 ` (II) the wages that the employer would be required by  
20 law to provide for the Y nonimmigrant were used in  
21 conducting recruitment.

22  
23 ` (H) INELIGIBILITY- The employer is not currently ineligible from  
24 using the Y nonimmigrant program described in this section.

25  
26 ` (I) BONAFIDE OFFER OF EMPLOYMENT- The job for which the Y  
27 nonimmigrant is sought is a bona fide job--

28  
29 ` (i) for which the employer needs labor or services;  
30 ` (ii) which has been and is clearly open to any United States  
31 worker; and  
32 ` (iii) for which the employer will be able to place the Y  
33 nonimmigrant on the payroll.

34  
35 ` (J) PUBLIC AVAILABILITY AND RECORDS RETENTION- A copy of each  
36 application filed under this section and documentation supporting each  
37 attestation, in accordance with regulations promulgated by the  
38 Secretary of Labor, will--

39  
40 ` (i) be provided to every Y nonimmigrant employed under the  
41 petition;

42  
43 ` (ii) be made available for public examination at the employer's  
44 place of business or work site;

45  
46 ` (iii) be made available to the Secretary of Labor during any  
47 audit; and

48  
49 ` (iv) remain available for examination for 5 years after the date  
50 on which the application is filed.  
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1           ` (K) NOTIFICATION UPON SEPARATION FROM OR TRANSFER OF  
2 EMPLOYMENT- The employer will notify the Secretary of Labor and the  
3 Secretary of Homeland Security of a Y nonimmigrant's separation from  
4 employment or transfer to another employer not more than 3 business  
5 days after the date of such separation or transfer, in accordance with  
6 section 218A(q)(2).  
7

8           ` (L) ACTUAL NEED FOR LABOR OR SERVICES- The application was  
9 filed not more than 60 days before the date on which the employer  
10 needed labor or services for which the Y nonimmigrant is sought.  
11

12   ` (d) Audit of Attestations-

13           ` (1) REFERRALS BY SECRETARY OF HOMELAND SECURITY- The Secretary of  
14 Homeland Security shall refer all petitions approved under section 218A to the  
15 Secretary of Labor for potential audit.  
16

17           ` (2) AUDITS AUTHORIZED- The Secretary of Labor may audit any approved  
18 petition referred pursuant to paragraph (1), in accordance with regulations  
19 promulgated by the Secretary of Labor.  
20  
21

22   ` (e) Ineligible Employers-

23           ` (1) IN GENERAL- In addition to any other applicable penalties under law, the  
24 Secretary of Labor and the Secretary of Homeland Security shall not, for the  
25 period described in paragraph (2), approve an employer's petition or  
26 application for a labor certification under any immigrant or nonimmigrant  
27 program if the Secretary of Labor determines, after notice and an opportunity  
28 for a hearing, that the employer submitting such documents--  
29  
30

31           ` (A) has, with respect to the application required under subsection  
32 (a), including attestations required under subsection (b)—  
33

34                   ` (i) misrepresented a material fact;

35                   ` (ii) made a fraudulent statement; or  
36

37                   ` (iii) failed to comply with the terms of such attestations; or  
38  
39

40           ` (B) failed to cooperate in the audit process in accordance with  
41 regulations promulgated by the Secretary of Labor;  
42

43           ` (C) has been convicted of any of the offenses codified in Chapter 77  
44 of Title 18 of the United States Code (slave labor) or any conspiracy to  
45 commit such offenses, or any human trafficking offense under state or  
46 territorial law;  
47

48           ` (D) has, within three years prior to the date of application:  
49

50                   (i) committed any hazardous occupation orders violation  
51 resulting in injury or death under the child labor provisions contained

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1 in section 12 of the Fair Labor Standards Act and any regulation  
2 thereunder;

3 (ii) been assessed a civil money penalty for any repeated or  
4 willful violation of the minimum wage provisions of section 6 of the  
5 Fair Labor Standards Act; or

6 (iii) been assessed a civil money penalty for any repeated or  
7 willful violation of the overtime provisions of section 7 of the Fair Labor  
8 Standards Act or any regulations thereunder, other than a repeated  
9 violation that is self-reported; or

10  
11 ` (E) has, within three years prior to the date of application, received a  
12 citation for:

13 (i) a willful violation; or

14 (ii) repeated serious violations involving injury or death of  
15 section 5 of the Occupational Safety and Health Act, or any standard,  
16 rule, or order promulgated pursuant to section 6 of the Occupational  
17 Safety and Health Act, or any regulations prescribed pursuant to that.  
18 This subsection shall also apply to equivalent violations of a plan  
19 approved under section 18 of the Occupational Safety and Health Act.  
20

21 `(2) LENGTH OF INELIGIBILITY- An employer described in paragraph (1)  
22 shall be ineligible to participate in the labor certification programs of the  
23 Secretary of Labor for not less than the time period determined by the  
24 Secretary, not to exceed 3 years. However, an employer who has been  
25 convicted of any of the offenses codified in Chapter 77 of Title 18 of the  
26 United States Code (slave labor) or any conspiracy to commit such offenses,  
27 or any human trafficking offense under state or territorial law shall be  
28 permanently ineligible to participate in the labor certification programs.  
29

30 `(3) EMPLOYERS IN HIGH UNEMPLOYMENT AREAS- The Secretary of Labor  
31 may not approve any employer's application under subsection (b) if the work  
32 to be performed by the Y nonimmigrant is not agriculture based and is located  
33 in a county where the unemployment rate during the most recently completed  
34 year is more than 7 percent. An employer in a high unemployment area may  
35 petition the Secretary for a waiver of this provision. The Secretary shall  
36 promulgate regulations for the expeditious review of such waivers, which shall  
37 specify that the employer must satisfy the requirements of section (b) above  
38 and in addition must provide documentation of its recruitment efforts,  
39 including proof that it has advertised the position in one of the three  
40 publications that have the highest circulation in the labor market that is likely  
41 to be patronized by a potential worker for not fewer than 20 consecutive days  
42 under the rules and conditions set forth in section (b). An employer who has  
43 provided proof of advertising in accordance with this section shall be deemed  
44 to be in compliance with the requirements of subsection (b)(1)(D) of this  
45 section. The Secretary shall provide for a process to promptly respond to all  
46 waiver requests, and shall maintain on the Department of Labor's website an  
47 annual list of counties to which this subsection applies.  
48

49 `(4) INELIGIBILITY FOR PETITIONS- The Secretary of Labor shall inform the  
50 Secretary of Homeland Security of a determination under paragraph (1) with  
51 respect to a specific employer. The Secretary of Homeland Security shall not,  
52 for the period described in paragraph (2), approve the petitions or

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1 applications of any such employer for any immigrant or nonimmigrant  
2 program, regardless of whether such application or petition requires a labor  
3 certification.  
4

5 `(f) Prohibition of Independent Contractors-

6  
7 `(1) COVERAGE- Notwithstanding any other provision of law--

8  
9 `(A) a Y nonimmigrant is prohibited from being treated as an  
10 independent contractor under any federal or state law;

11  
12 `(B) no person, including an employer or labor contractor and any  
13 persons who are affiliated with or contract with an employer or labor  
14 contractor, may treat a Y nonimmigrant as an independent contractor;  
15 and

16  
17 `(C) this provision shall not be construed to prevent employers who  
18 operate as independent contractors from employing Y nonimmigrants  
19 as employees.  
20

21 `(2) APPLICABILITY OF LAWS- A Y nonimmigrant shall not be denied any  
22 right or any remedy under Federal, State, or local labor or employment law  
23 that would be applicable to a United States worker employed in a similar  
24 position with the employer because of the alien's status as a nonimmigrant  
25 worker.  
26

27 `(3) TAX RESPONSIBILITIES- With respect to each employed Y  
28 nonimmigrant, an employer shall comply with all applicable Federal, State,  
29 and local tax and revenue laws.  
30

31 `(g) Whistleblower Protection-

32  
33 `(1) PROHIBITED ACTIVITIES- It shall be unlawful for an employer or a labor  
34 contractor of a Y nonimmigrant to intimidate, threaten, restrain, coerce,  
35 retaliate, discharge, or in any other manner, discriminate against an  
36 employee or former employee because the employee or former employee--  
37

38 `(A) discloses information to the employer or any other person that  
39 the employee or former employee reasonably believes demonstrates a  
40 violation of this Act or [title of bill]; or

41  
42 `(B) cooperates or seeks to cooperate in an investigation or other  
43 proceeding concerning compliance with the requirements of this Act or  
44 [title of bill].  
45

46 `(2) RULEMAKING- The Secretary of Labor shall promulgate regulations that  
47 establish a process by which a nonimmigrant alien described in section  
48 101(a)(15)(Y) or 101(a)(15)(H) who files a nonfrivolous complaint (as defined  
49 by the Federal Rules of Civil Procedure) regarding a violation of this Act, [title  
50 of bill] or any other Federal labor or employment law, or any other rule or  
51 regulation pertaining to such laws and is otherwise eligible to remain and  
52 work in the United States prior to the expiration of the maximum period of

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1 stay authorized for that nonimmigrant classification for a period of 120  
2 consecutive days or such additional time period as the Secretary shall  
3 determine through rulemaking is necessary to collect information or take  
4 evidence from the nonimmigrant alien regarding a complaint or agency  
5 investigation. This period shall be allowed to exceed the maximum period of  
6 stay authorized for that nonimmigrant classification if the Secretary of Labor  
7 has designated the nonimmigrant alien as a necessary witness.  
8

9 ` (h) Labor Recruiters-With respect to the employment of Y nonimmigrant workers--

10  
11 ` (1) IN GENERAL- Each employer that engages in foreign labor contracting  
12 activity and each foreign labor contractor shall ascertain and disclose, to each  
13 such worker who is recruited for employment at the time of the worker's  
14 recruitment--

15  
16 ` (A) the place of employment;

17  
18 ` (B) the compensation for the employment;

19  
20 ` (C) a description of employment activities;

21  
22 ` (D) the period of employment;

23  
24 ` (E) any other employee benefit to be provided and any costs to be  
25 charged for each benefit;

26  
27 ` (F) any travel or transportation expenses to be assessed;

28  
29 ` (G) the existence of any labor organizing effort, strike, lockout, or  
30 other labor dispute at the place of employment;

31  
32 ` (H) the existence of any arrangement with any owner, employer,  
33 foreign contractor, or its agent where such person receives a  
34 commission from the provision of items or services to workers;

35  
36 ` (I) the extent to which workers will be compensated through workers'  
37 compensation, private insurance, or otherwise for injuries or death,  
38 including--

39  
40 ` (i) work related injuries and death during the period of  
41 employment;

42  
43 ` (ii) the name of the State workers' compensation insurance  
44 carrier or the name of the policyholder of the private insurance;

45  
46 ` (iii) the name and the telephone number of each person who  
47 must be notified of an injury or death; and

48  
49 ` (iv) the time period within which such notice must be given;

50  
51 ` (J) any education or training to be provided or required, including--  
52



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- 1                   ` (i) the nature and cost of such training;  
2  
3                   ` (ii) the entity that will pay such costs; and  
4  
5                   ` (iii) whether the training is a condition of employment,  
6                   continued employment, or future employment; and  
7  
8                   ` (K) a statement, in a form specified by the Secretary of Labor,  
9                   describing the protections of this Act and of the Trafficking Victims  
10                   Protection Act of 2000, P.L. 106-486, for workers recruited abroad.  
11  
12                ` (2) FALSE OR MISLEADING INFORMATION- No foreign labor contractor or  
13                employer who engages in foreign labor contracting activity shall knowingly  
14                provide materially false or misleading information to any worker concerning  
15                any matter required to be disclosed in paragraph (1).  
16  
17                ` (3) LANGUAGES- The information required to be disclosed under paragraph  
18                (1) shall be provided in writing in English or, as necessary and reasonable, in  
19                the language of the worker being recruited. The Secretary of Labor shall make  
20                forms available in English, Spanish, and other languages, as necessary and  
21                reasonable, which may be used in providing workers with information  
22                required under this section.  
23  
24                ` (4) FEES- A person conducting a foreign labor contracting activity shall not  
25                assess any fee to a worker for such foreign labor contracting activity.  
26  
27                ` (5) TERMS- No employer or foreign labor contractor shall, without  
28                justification, violate the terms of any agreement related to the requirements  
29                of this section made by that contractor or employer regarding employment  
30                under this program.  
31  
32                ` (6) TRAVEL COSTS- If the foreign labor contractor or employer charges the  
33                employee for transportation, such transportation costs shall be reasonable.  
34  
35                ` (7) OTHER WORKER PROTECTIONS-  
36  
37                    ` (A) NOTIFICATION- Not less frequently than once every year, each  
38                    employer shall notify the Secretary of Labor of the identity of any  
39                    foreign labor contractor engaged by the employer in any foreign labor  
40                    contractor activity for, or on behalf of, the employer.  
41  
42                    ` (B) REGISTRATION OF FOREIGN LABOR CONTRACTORS-  
43  
44                        ` (i) IN GENERAL- No person shall engage in foreign labor  
45                        recruiting activity unless such person has a certificate of  
46                        registration from the Secretary of Labor specifying the activities  
47                        that such person is authorized to perform. An employer who  
48                        retains the services of a foreign labor contractor shall only use  
49                        those foreign labor contractors who are registered under this  
50                        subparagraph.  
51

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- 1                   ` (ii) ISSUANCE- The Secretary shall promulgate regulations to  
2                   establish an efficient electronic process for the investigation  
3                   and approval of an application for a certificate of registration of  
4                   foreign labor contractors not later than 14 days after such  
5                   application is filed, including--  
6  
7                   ` (I) requirements under paragraphs (1), (4), and (5) of  
8                   section 102 of the Migrant and Seasonal Agricultural  
9                   Worker Protection Act (29 U.S.C. 1812);  
10  
11                  ` (II) an expeditious means to update registrations and  
12                  renew certificates; and  
13  
14                  ` (III) any other requirements that the Secretary may  
15                  prescribe.  
16  
17                  ` (iii) TERM- Unless suspended or revoked, a certificate under  
18                  this subparagraph shall be valid for 2 years.  
19  
20                  ` (iv) REFUSAL TO ISSUE; REVOCATION; SUSPENSION- In  
21                  accordance with regulations promulgated by the Secretary of  
22                  Labor, the Secretary may refuse to issue or renew, or may  
23                  suspend or revoke, a certificate of registration under this  
24                  subparagraph if--  
25  
26                  ` (I) the application or holder of the certification has  
27                  knowingly made a material misrepresentation in the  
28                  application for such certificate;  
29  
30                  ` (II) the applicant for, or holder of, the certification is  
31                  not the real party in interest in the application or  
32                  certificate of registration and the real party in interest--  
33  
34                          ` (aa) is a person who has been refused issuance  
                                or renewal of a certificate;  
35  
36                          ` (bb) has had a certificate suspended or  
                                revoked; or  
37  
38                          ` (cc) does not qualify for a certificate under this  
                                paragraph; or  
39  
40                  ` (III) the applicant for or holder of the certification has  
41                  failed to comply with this Act.  
42  
43                  ` (C) REMEDY FOR VIOLATIONS- An employer engaging in foreign  
44                  labor contracting activity and a foreign labor contractor that violates  
45                  the provisions of this subsection shall be subject to remedies for  
46                  foreign labor contractor violations under subsections (j) and (k). If a  
47                  foreign labor contractor who is an agent of an employer violates any  
48                  provision of this subsection when acting within the scope of its agency,  
                                the employer shall be subject to remedies under subsections (j) and

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1 (k). An employer shall not be subject to remedies for violations  
2 committed by a foreign labor contractor when such contractor is acting  
3 in direct contravention of an express, written contractual provision  
4 contained in the agreement between the employer and the foreign  
5 labor contractor. An employer that violates a provision of this  
6 subsection relating to employer obligations shall be subject to  
7 remedies under subsections (j) and (k).  
8

9 ` (D) EMPLOYER NOTIFICATION- An employer shall notify the  
10 Secretary of Labor if the employer becomes aware of a violation of this  
11 subsection by a foreign labor recruiter.  
12

13 ` (E) WRITTEN AGREEMENTS- A foreign labor contractor may not  
14 violate the terms of any written agreements made with an employer  
15 relating to any contracting activity or worker protection under this  
16 subsection.  
17

18 ` (F) BONDING REQUIREMENT- The Secretary of Labor may require a  
19 foreign labor contractor to post a bond in an amount sufficient to  
20 ensure the protection of individuals recruited by the foreign labor  
21 contractor. The Secretary may consider the extent to which the foreign  
22 labor contractor has sufficient ties to the United States to adequately  
23 enforce this subsection.  
24

25 ` (i) Waiver of Rights Prohibited- A Y nonimmigrant may not be required to waive any  
26 rights or protections under this Act. Nothing under this subsection shall be construed  
27 to affect the interpretation of other laws.  
28

29 ` (j) Enforcement- With respect to violations of the provisions of this section relating  
30 to the employment of Y nonimmigrant workers—  
31

32 ` (1) IN GENERAL- The Secretary of Labor shall promulgate regulations for the  
33 receipt, investigation, and disposition of complaints by an aggrieved person  
34 respecting a violation of this section.  
35

36 ` (2) FILING DEADLINE- No investigation or hearing shall be conducted on a  
37 complaint concerning a violation under this section unless the complaint was  
38 filed not later than 12 months after the date of such violation.  
39

40 ` (3) REASONABLE BASIS - The Secretary of Labor shall conduct an  
41 investigation under this subsection if there is reasonable basis to believe that  
42 a violation of this section has occurred. The process established under this  
43 subsection shall provide that, not later than 30 days after a complaint is filed,  
44 the Secretary shall determine if there is reasonable cause to find such a  
45 violation.  
46

47 ` (4) NOTICE AND HEARING-  
48

49 ` (A) IN GENERAL- Not later than 60 days after the Secretary of Labor  
50 makes a determination of reasonable basis under paragraph (3), the  
51 Secretary shall issue a notice to the interested parties and offer an

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1 opportunity for a hearing on the complaint, in accordance with section  
2 556 of title 5, United States Code.

3  
4 ` (B) COMPLAINT- If the Secretary of Labor, after receiving a complaint  
5 under this subsection, does not offer the aggrieved person or  
6 organization an opportunity for a hearing under subparagraph (A), the  
7 Secretary shall notify the aggrieved person or organization of such  
8 determination and the aggrieved person or organization may seek a  
9 hearing on the complaint under procedures established by the  
10 Secretary which comply with the requirements of section 556.

11  
12 ` (C) HEARING DEADLINE- Not later than 60 days after the date of a  
13 hearing under this paragraph, the Secretary of Labor shall make a  
14 finding on the matter in accordance with paragraph (5).

15  
16 ` (5) ATTORNEY'S FEES- A complainant who prevails in an action under this  
17 section with respect to a claim related to wages or compensation for  
18 employment, or a claim for a violation of subsection (j), shall be entitled to an  
19 award of reasonable attorney's fees and costs.

20  
21 ` (6) POWER OF THE SECRETARY- The Secretary may bring an action in any  
22 court of competent jurisdiction--

23  
24 ` (A) to seek remedial action, including injunctive relief;

25  
26 ` (B) to recover the damages described in subsection (k); or

27  
28 ` (C) to ensure compliance with terms and conditions described in  
29 subsection (g).

30  
31 ` (7) SOLICITOR OF LABOR- Except as provided in section 518(a) of title 28,  
32 United States Code, the Solicitor of Labor may appear for and represent the  
33 Secretary of Labor in any civil litigation brought under this subsection. All  
34 such litigation shall be subject to the direction and control of the Attorney  
35 General.

36  
37 ` (8) PROCEDURES IN ADDITION TO OTHER RIGHTS OF EMPLOYEES- The  
38 rights and remedies provided to workers under this section are in addition to  
39 any other contractual or statutory rights and remedies of the workers, and  
40 are not intended to alter or affect such rights and remedies.

41  
42 ` (k) Penalties- With respect to violations of the provisions of this section relating to  
43 the employment of Y-1 or Y-2B nonimmigrants--

44  
45 ` (1) IN GENERAL- If, after notice and an opportunity for a hearing, the  
46 Secretary of Labor finds a violation of this section, the Secretary may impose  
47 administrative remedies and penalties, including—

48  
49 ` (A) back wages;

50  
51 ` (B) benefits; and  
52

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` (C) civil monetary penalties.

` (2) CIVIL PENALTIES- The Secretary of Labor may impose, as a civil penalty--

` (A) for a violation of subsections (b) through (g)--

` (i) a fine in an amount not more than \$2,000 per violation per affected worker and \$4,000 per violation per affected worker for each subsequent violation;

` (ii) if the violation was willful, a fine in an amount not more than \$5,000 per violation per affected worker;

` (iii) if the violation was willful and if in the course of such violation a United States worker was harmed, a fine in an amount not more than \$25,000 per violation per affected worker; and

` (B) for a violation of subsection (h)--

` (i) a fine in an amount not less than \$500 and not more than \$4,000 per violation per affected worker;

` (ii) if the violation was willful, a fine in an amount not less than \$2,000 and not more than \$5,000 per violation per affected worker; and

` (iii) if the violation was willful and if in the course of such violation a United States worker was harmed, a fine in an amount not less than \$6,000 and not more than \$35,000 per violation per affected worker.

` (C) for knowingly or recklessly failing to comply with the terms of representations made in petitions, applications, certifications, or attestations under any immigrant or nonimmigrant program, or with representations made in materials required by section (h) (concerning labor recruiters) -

` (1) a fine in an amount not more than \$4,000 per affected worker; and

` (2) upon the occasion of a third offense of failure to comply with representations, a fine in an amount not to exceed \$5,000 per affected worker and designation as an ineligible employer, recruiter, or broker for purposes of any immigrant or nonimmigrant program.

` (3) USE OF CIVIL PENALTIES- All penalties collected under this subsection shall be deposited in the Treasury in accordance with section 286(w).

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- 1           ` (4) CRIMINAL PENALTIES- If a willful and knowing violation of subsection (g)  
2 causes extreme physical or financial harm to an individual, the person in  
3 violation of such subsection may be imprisoned for not more than 6 months,  
4 fined in an amount not more than \$35,000, or both.  
5
- 6           ` (l) Definitions- Unless otherwise provided, in this section and section 218A:  
7
- 8           ` (1) AGGRIEVED PERSON- term `aggrieved person' means a person  
9 adversely affected by an alleged violation of this section, including--  
10
- 11                   ` (A) a worker whose job, wages, or working conditions are adversely  
12 affected by the violation; and  
13
- 14                   ` (B) a representative authorized by a worker whose jobs, wages, or  
15 working conditions are adversely affected by the violation who brings a  
16 complaint on behalf of such worker.  
17
- 18           ` (2) AREA OF EMPLOYMENT- The terms `area of employment' and `area of  
19 intended employment' mean the area within normal commuting distance of  
20 the worksite or physical location at which the work of the Y worker is or will  
21 be performed. If such worksite or location is within a Metropolitan Statistical  
22 Area, any place within such area is deemed to be within the area of  
23 employment.  
24
- 25           ` (3) CONVENTION AGAINST TORTURE- The term `Convention Against Torture'  
26 shall refer to the United Nations Convention Against Torture and Other Cruel,  
27 Inhuman or Degrading Treatment or Punishment, subject to any reservations,  
28 understandings, declarations, and provisos contained in the United States  
29 Senate resolution of ratification of the Convention, as implemented by section  
30 2242 of the Foreign Affairs Reform and Restructuring Act of 1998 (Pub. L.  
31 105-277, 112 Stat. 2681, 2681-821).  
32
- 33           ` (4) DERIVATIVE Y NONIMMIGRANT- The term `derivative' Y nonimmigrant  
34 means an alien described at paragraph (Y)(iii) of subsection 101(a)(15).  
35
- 36           ` (5) ELIGIBLE; ELIGIBLE INDIVIDUAL- The term `eligible,' when used with  
37 respect to an individual, or `eligible individual', means, with respect to  
38 employment, an individual who is not an unauthorized alien (as defined in  
39 section 274A) with respect to that employment.  
40
- 41           ` (6) EMPLOY; EMPLOYEE; EMPLOYER- The terms `employ', `employee', and  
42 `employer' have the meanings given such terms in section 3 of the Fair Labor  
43 Standards Act of 1938 (29 U.S.C. 203).  
44
- 45           ` (7) FELONY- The term `felony', with regard to a conviction in a foreign  
46 jurisdiction, means a crime for which a sentence of one year or longer in  
47 prison may be imposed.  
48
- 49           ` (8) FORCE MAJEURE EVENT- The term `force majeure event' shall mean an  
50 event that is beyond the control of either party, including, without limitation,  
51 hurricanes, earthquakes, act of terrorism, war, fire, civil disorder or other  
52 events of a similar or different kind.

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` (9) FOREIGN LABOR CONTRACTOR- The term `foreign labor contractor' means any person who for any compensation or other valuable consideration paid or promised to be paid, performs any foreign labor contracting activity.

` (10) FOREIGN LABOR CONTRACTING ACTIVITY- The term `foreign labor contracting activity' means recruiting, soliciting, hiring, employing, or furnishing, an individual who resides outside of the United States for employment in the United States as a nonimmigrant alien described in section 101(a)(15)(H)(ii)(c).

` (11) FULL TIME- The term `full time,' with respect to a job in agricultural labor or services, means any job in which the individual is employed 5.75 or more hours per day; and for any job, means in any period of authorized admission or portion of such period, employment or study for at least 90% of the total number of work-hours in such period, calculated at a rate of 1,575 work-hours per year (1,438 work-hours per year for agricultural employment). Each credit-hour of study shall be counted as the equivalent of 50 work-hours.

` (12) 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.

    ` (B) STATUTORY CONSTRUCTION- Nothing in this paragraph is intended to limit an employee's rights under a collective bargaining agreement or other employment contract.

` (14) MISDEMEANOR- The term `misdemeanor', with regard to a conviction in a foreign jurisdiction, means a crime for which a sentence of no more than 364 days in prison may be imposed.

` (15) REGULATORY DROUGHT- The term `regulatory drought' means a decision subsequent to the filing of the application under section 218B 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.

` (16) 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.

` (17) SECRETARY- Except as otherwise provided, the term `Secretary' means the Secretary of Homeland Security.

` (18) SEPARATION FROM EMPLOYMENT- The term `separation from employment' means the worker's loss of employment, other than through a discharge for inadequate performance, violation of workplace rules, cause,

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1 voluntary departure, voluntary retirement, or the expiration of a grant or  
2 contract. The term does not include any situation in which the worker is  
3 offered, as an alternative to such loss of employment, a similar employment  
4 opportunity with the same employer at equivalent or higher compensation  
5 and benefits than the position from which the employee was discharged,  
6 regardless of whether the employee accepts the offer. Nothing in this  
7 paragraph shall limit an employee's rights under a collective bargaining  
8 agreement or other employment contract.  
9

10 ` (19) UNITED STATES WORKER- The term ` United States worker' means an  
11 employee who is--

12  
13 ` (A) a citizen or national of the United States; or

14  
15 ` (B) an alien who is--

16  
17 ` (i) lawfully admitted for permanent residence;

18  
19 ` (ii) admitted as a refugee under section 207;

20  
21 ` (iii) granted asylum under section 208; or

22  
23 ` (iv) otherwise authorized, under this Act or by the Secretary  
24 of Homeland Security, to be employed in the United States.'

25  
26 ` (20) Y NONIMMIGRANT; Y NONIMMIGRANT WORKER

27  
28 ` (A) The term `Y nonimmigrant' means an alien admitted to the United  
29 States under paragraph (Y)(i) or (Y)(ii) of subsection 101(a)(15), or  
30 the spouse or child of such nonimmigrant in derivative status under  
31 (Y)(iii);

32  
33 ` (B) The term `Y nonimmigrant worker' means an alien admitted to  
34 the United States under paragraph (Y)(i) or (Y)(ii) of subsection  
35 101(a)(15); and

36  
37 ` (21) Y-1 NONIMMIGRANT; Y-1 WORKER- The term `Y-1 nonimmigrant' or  
38 `Y-1 worker' means an alien admitted to the United States under paragraph  
39 (i) of subsection 101(a)(15)(Y).

40  
41 ` (23) Y-2B NONIMMIGRANT; Y-2B WORKER - The term `Y-2B nonimmigrant'  
42 or `Y-2B worker' means an alien admitted to the United States under  
43 paragraph (ii) of subsection 101(a)(15)(Y).

44  
45 ` (24) Y-3 NONIMMIGRANT- The term `Y-3 nonimmigrant' means an alien  
46 admitted to the United States under paragraph (iii) of subsection  
47 101(a)(15)(Y).'

48 (b) Clerical Amendment- The table of contents is amended by inserting after the item  
49 relating to section 218A, as added by section 402, the following:

50 `Sec. 218B. Employer obligations.'

51



1 **SUBTITLE B: SEASONAL AGRICULTURAL NONIMMIGRANT TEMPORARY**  
2 **WORKERS**  
3

4 **SEC. 404. AMENDMENT TO THE IMMIGRATION**  
5 **AND NATIONALITY ACT.**

6 (a) In General.—Title II of the Immigration and Nationality Act (8 U.S.C. 1151 et  
7 seq.) is amended inserting the following after section 218B:

8 **“SEC. 218C. H–2A EMPLOYER APPLICATIONS.**

9 **“(a) Applications to the Secretary of Labor.—**

10 **“(1) IN GENERAL.—**No alien may be admitted to the United States as an H–2A  
11 worker, or otherwise provided status as an H–2A worker, unless the employer has  
12 filed with the Secretary of Labor an application containing—

13 **“(A)** the assurances described in subsection (b);

14 **“(B)** a description of the nature and location of the work to be performed;

15 **“(C)** the anticipated period (expected beginning and ending dates) for which  
16 the workers will be needed; and

17 **“(D)** the number of job opportunities in which the employer seeks to employ  
18 the workers.

19 **“(2) ACCOMPANIED BY JOB OFFER.—**Each application filed under paragraph (1)  
20 shall be accompanied by a copy of the job offer describing the wages and other  
21 terms and conditions of employment and the bona fide occupational qualifications  
22 that shall be possessed by a worker to be employed in the job opportunity in  
23 question.

24 **“(b) Assurances for Inclusion in Applications.—**The assurances referred to in  
25 subsection (a)(1) are the following:

26 **“(1) JOB OPPORTUNITIES COVERED BY COLLECTIVE BARGAINING AGREEMENTS.—**  
27 With respect to a job opportunity that is covered under a collective bargaining  
28 agreement:

29 **“(A) UNION CONTRACT DESCRIBED.—**The job opportunity is covered by a  
30 union contract which was negotiated at arm’s length between a bona fide union  
31 and the employer.

32 **“(B) STRIKE OR LOCKOUT.—**The specific job opportunity for which the  
33 employer is requesting an H–2A worker is not vacant because the former  
34 occupant is on strike or being locked out in the course of a labor dispute.

35 **“(C) NOTIFICATION OF BARGAINING REPRESENTATIVES.—**The employer, at  
36 the time of filing the application, has provided notice of the filing under this  
37 paragraph to the bargaining representative of the employer’s employees in the  
38 occupational classification at the place or places of employment for which  
39 aliens are sought.

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1 “(D) TEMPORARY OR SEASONAL JOB OPPORTUNITIES.—The job opportunity is  
2 temporary or seasonal.

3 “(E) OFFERS TO UNITED STATES WORKERS.—The employer has offered or  
4 will offer the job to any eligible United States worker who applies and is  
5 equally or better qualified for the job for which the nonimmigrant is, or the  
6 nonimmigrants are, sought and who will be available at the time and place of  
7 need.

8 “(F) PROVISION OF INSURANCE.—If the job opportunity is not covered by the  
9 State workers’ compensation law, the employer will provide, at no cost to the  
10 worker, insurance covering injury and disease arising out of, and in the course  
11 of, the worker’s employment which will provide benefits at least equal to those  
12 provided under the State’s workers’ compensation law for comparable  
13 employment.

14 “(2) JOB OPPORTUNITIES NOT COVERED BY COLLECTIVE BARGAINING  
15 AGREEMENTS.—With respect to a job opportunity that is not covered under a  
16 collective bargaining agreement:

17 “(A) STRIKE OR LOCKOUT.—The specific job opportunity for which the  
18 employer has applied for an H–2A worker is not vacant because the former  
19 occupant is on strike or being locked out in the course of a labor dispute.

20 “(B) TEMPORARY OR SEASONAL JOB OPPORTUNITIES.—The job opportunity is  
21 temporary or seasonal.

22 “(C) BENEFIT, WAGE, AND WORKING CONDITIONS.—The employer will  
23 provide, at a minimum, the benefits, wages, and working conditions required  
24 by section 218E to all workers employed in the job opportunities for which the  
25 employer has applied for an H–2A worker under subsection (a) and to all other  
26 workers in the same occupation at the place of employment.

27 “(D) NONDISPLACEMENT OF UNITED STATES WORKERS.—The employer did  
28 not displace and will not displace a United States worker employed by the  
29 employer during the period of employment and for a period of 30 days  
30 preceding the period of employment in the occupation at the place of  
31 employment for which the employer has applied for an H–2A worker.

32 “(E) REQUIREMENTS FOR PLACEMENT OF THE NONIMMIGRANT WITH OTHER  
33 EMPLOYERS.—The employer will not place the nonimmigrant with another  
34 employer unless—

35 “(i) the nonimmigrant performs duties in whole or in part at 1 or more  
36 worksites owned, operated, or controlled by such other employer;

37 “(ii) there are indicia of an employment relationship between the  
38 nonimmigrant and such other employer; and

39 “(iii) the employer has inquired of the other employer as to whether,  
40 and has no actual knowledge or notice that, during the period of  
41 employment and for a period of 30 days preceding the period of

1 employment, the other employer has displaced or intends to displace a  
2 United States worker employed by the other employer in the occupation at  
3 the place of employment for which the employer seeks approval to employ  
4 H-2A workers.

5 “(F) STATEMENT OF LIABILITY.—The application form shall include a clear  
6 statement explaining the liability under subparagraph (E) of an employer if the  
7 other employer described in such subparagraph displaces a United States  
8 worker as described in such subparagraph.

9 “(G) PROVISION OF INSURANCE.—If the job opportunity is not covered by the  
10 State workers’ compensation law, the employer will provide, at no cost to the  
11 worker, insurance covering injury and disease arising out of and in the course  
12 of the worker’s employment which will provide benefits at least equal to those  
13 provided under the State’s workers’ compensation law for comparable  
14 employment.

15 “(H) EMPLOYMENT OF UNITED STATES WORKERS.—

16 “(i) RECRUITMENT.—The employer has taken or will take the following  
17 steps to recruit United States workers for the job opportunities for which  
18 the H-2A nonimmigrant is, or H-2A nonimmigrants are, sought:

19 “(I) CONTACTING FORMER WORKERS.—The employer shall make  
20 reasonable efforts through the sending of a letter by United States  
21 Postal Service mail, or otherwise, to contact any United States worker  
22 the employer employed during the previous season in the occupation  
23 at the place of intended employment for which the employer is  
24 applying for workers and has made the availability of the employer’s  
25 job opportunities in the occupation at the place of intended  
26 employment known to such previous workers, unless the worker was  
27 terminated from employment by the employer for a lawful job-related  
28 reason or abandoned the job before the worker completed the period  
29 of employment of the job opportunity for which the worker was  
30 hired.

31 “(II) FILING A JOB OFFER WITH THE LOCAL OFFICE OF THE STATE  
32 EMPLOYMENT SECURITY AGENCY.—Not later than 28 days before the  
33 date on which the employer desires to employ an H-2A worker in a  
34 temporary or seasonal agricultural job opportunity, the employer  
35 shall submit a copy of the job offer described in subsection (a)(2) to  
36 the local office of the State workforce agency which serves the area  
37 of intended employment and authorize the posting of the job  
38 opportunity on its electronic job registry, except that nothing in this  
39 subclause shall require the employer to file an interstate job order  
40 under section 653 of title 20, Code of Federal Regulations.

41 “(III) ADVERTISING OF JOB OPPORTUNITIES.—Not later than 14  
42 days before the date on which the employer desires to employ an H-  
43 2A worker in a temporary or seasonal agricultural job opportunity,

1 the employer shall advertise the availability of the job opportunities  
2 for which the employer is seeking workers in a publication in the  
3 local labor market that is likely to be patronized by potential farm  
4 workers.

5 “(IV) EMERGENCY PROCEDURES.—The Secretary of Labor shall,  
6 by regulation, provide a procedure for acceptance and approval of  
7 applications in which the employer has not complied with the  
8 provisions of this subparagraph because the employer’s need for H–  
9 2A workers could not reasonably have been foreseen.

10 “(ii) JOB OFFERS.—The employer has offered or will offer the job to any  
11 eligible United States worker who applies and is equally or better qualified  
12 for the job for which the nonimmigrant is, or nonimmigrants are, sought  
13 and who will be available at the time and place of need.

14 “(iii) PERIOD OF EMPLOYMENT.—The employer will provide  
15 employment to any qualified United States worker who applies to the  
16 employer during the period beginning on the date on which the H–2A  
17 worker departs for the employer’s place of employment and ending on the  
18 date on which 50 percent of the period of employment for which the H–  
19 2A worker who is in the job was hired has elapsed, subject to the  
20 following requirements:

21 “(I) PROHIBITION.—No person or entity shall willfully and  
22 knowingly withhold United States workers before the arrival of H–  
23 2A workers in order to force the hiring of United States workers  
24 under this clause.

25 “(II) COMPLAINTS.—Upon receipt of a complaint by an employer  
26 that a violation of subclause (I) has occurred, the Secretary of Labor  
27 shall immediately investigate. The Secretary of Labor shall, within 36  
28 hours of the receipt of the complaint, issue findings concerning the  
29 alleged violation. If the Secretary of Labor finds that a violation has  
30 occurred, the Secretary of Labor shall immediately suspend the  
31 application of this clause with respect to that certification for that  
32 date of need.

33 “(III) PLACEMENT OF UNITED STATES WORKERS.—Before referring  
34 a United States worker to an employer during the period described in  
35 the matter preceding subclause (I), the Secretary of Labor shall make  
36 all reasonable efforts to place the United States worker in an open job  
37 acceptable to the worker, if there are other job offers pending with  
38 the job service that offer similar job opportunities in the area of  
39 intended employment.

40 “(iv) STATUTORY CONSTRUCTION.—Nothing in this subparagraph shall  
41 be construed to prohibit an employer from using such legitimate selection  
42 criteria relevant to the type of job that are normal or customary to the type  
43 of job involved so long as such criteria are not applied in a discriminatory

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1 manner.

2 “(V) UNITED STATES WORKER.—For purpose of this subparagraph,  
3 the term “United States worker” means an alien described in section  
4 218G(14) except an alien admitted or otherwise provided status under  
5 section 101(a)(15)(Z).

6 “(c) Applications by Associations on Behalf of Employer Members.—

7 “(1) IN GENERAL.—An agricultural association may file an application under  
8 subsection (a) on behalf of 1 or more of its employer members that the association  
9 certifies in its application has or have agreed in writing to comply with the  
10 requirements of this section and sections 218E, 218F, and 218G.

11 “(2) TREATMENT OF ASSOCIATIONS ACTING AS EMPLOYERS.—If an association  
12 filing an application under paragraph (1) is a joint or sole employer of the temporary  
13 or seasonal agricultural workers requested on the application, the certifications  
14 granted under subsection (e)(2)(B) to the association may be used for the certified  
15 job opportunities of any of its producer members named on the application, and such  
16 workers may be transferred among such producer members to perform the  
17 agricultural services of a temporary or seasonal nature for which the certifications  
18 were granted.

19 “(d) Withdrawal of Applications.—

20 “(1) IN GENERAL.—An employer may withdraw an application filed pursuant to  
21 subsection (a), except that if the employer is an agricultural association, the  
22 association may withdraw an application filed pursuant to subsection (a) with  
23 respect to 1 or more of its members. To withdraw an application, the employer or  
24 association shall notify the Secretary of Labor in writing, and the Secretary of Labor  
25 shall acknowledge in writing the receipt of such withdrawal notice. An employer  
26 who withdraws an application under subsection (a), or on whose behalf an  
27 application is withdrawn, is relieved of the obligations undertaken in the application.

28 “(2) LIMITATION.—An application may not be withdrawn while any alien  
29 provided status under section 101(a)(15)(H)(ii)(a) pursuant to such application is  
30 employed by the employer.

31 “(3) OBLIGATIONS UNDER OTHER STATUTES.—Any obligation incurred by an  
32 employer under any other law or regulation as a result of the recruitment of United  
33 States workers or H-2A workers under an offer of terms and conditions of  
34 employment required as a result of making an application under subsection (a) is  
35 unaffected by withdrawal of such application.

36 “(e) Review and Approval of Applications.—

37 “(1) RESPONSIBILITY OF EMPLOYERS.—The employer shall make available for  
38 public examination, within 1 working day after the date on which an application  
39 under subsection (a) is filed, at the employer’s principal place of business or  
40 worksite, a copy of each such application (and such accompanying documents as are  
41 necessary).

1           “(2) RESPONSIBILITY OF THE SECRETARY OF LABOR.—

2                   “(A) COMPILATION OF LIST.—The Secretary of Labor shall compile, on a  
3                   current basis, a list (by employer and by occupational classification) of the  
4                   applications filed under subsection (a). Such list shall include the wage rate,  
5                   number of workers sought, period of intended employment, and date of need.  
6                   The Secretary of Labor shall make such list available for examination in the  
7                   District of Columbia.

8                   “(B) REVIEW OF APPLICATIONS.—The Secretary of Labor shall review such  
9                   an application only for completeness and obvious inaccuracies. Unless the  
10                  Secretary of Labor finds that the application is incomplete or obviously  
11                  inaccurate, the Secretary of Labor shall certify that the intending employer has  
12                  filed with the Secretary of Labor an application as described in subsection (a).  
13                  Such certification shall be provided within 7 days of the filing of the  
14                  application.”

15           **“SEC. 218D. H-2A EMPLOYMENT REQUIREMENTS.**

16                  “(a) Preferential Treatment of Aliens Prohibited.—Employers seeking to hire United  
17                  States workers shall offer the United States workers no less than the same benefits,  
18                  wages, and working conditions that the employer is offering, intends to offer, or will  
19                  provide to H-2A workers. Conversely, no job offer may impose on United States workers  
20                  any restrictions or obligations which will not be imposed on the employer’s H-2A  
21                  workers.

22                  “(b) Minimum Benefits, Wages, and Working Conditions.—Except in cases where  
23                  higher benefits, wages, or working conditions are required by the provisions of  
24                  subsection (a), in order to protect similarly employed United States workers from adverse  
25                  effects with respect to benefits, wages, and working conditions, every job offer which  
26                  shall accompany an application under section 218C(b)(2) shall include each of the  
27                  following benefit, wage, and working condition provisions:

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

29                          “(A) IN GENERAL.—An employer applying under section 218C(a) for H-2A  
30                          workers shall offer to provide housing at no cost to all workers in job  
31                          opportunities for which the employer has applied under that section and to all  
32                          other workers in the same occupation at the place of employment, whose place  
33                          of residence is beyond normal commuting distance.

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

42                          “(C) FAMILY HOUSING.—If it is the prevailing practice in the occupation and

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1 area of intended employment to provide family housing, family housing shall  
2 be provided to workers with families who request it.

3 “(D) WORKERS ENGAGED IN THE RANGE PRODUCTION OF LIVESTOCK.—The  
4 Secretary of Labor shall issue regulations that address the specific requirements  
5 for the provision of housing to workers engaged in the range production of  
6 livestock.

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

11 “(F) CHARGES FOR HOUSING.—

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

18 “(ii) DEPOSIT CHARGES.—Charges in the form of deposits for bedding  
19 or other similar incidentals related to housing shall not be levied upon  
20 workers by employers who provide housing for their workers. An  
21 employer may require a worker found to have been responsible for  
22 damage to such housing which is not the result of normal wear and tear  
23 related to habitation to reimburse the employer for the reasonable cost of  
24 repair of such damage.

25 “(G) HOUSING ALLOWANCE AS ALTERNATIVE.—

26 “(i) IN GENERAL.—If the requirement set out in clause (ii) is satisfied,  
27 the employer may provide a reasonable housing allowance instead of  
28 offering housing under subparagraph (A). Upon the request of a worker  
29 seeking assistance in locating housing, the employer shall make a good  
30 faith effort to assist the worker in identifying and locating housing in the  
31 area of intended employment. An employer who offers a housing  
32 allowance to a worker, or assists a worker in locating housing which the  
33 worker occupies, pursuant to this clause shall not be deemed a housing  
34 provider under section 203 of the Migrant and Seasonal Agricultural  
35 Worker Protection Act (29 U.S.C. 1823) solely by virtue of providing such  
36 housing allowance. No housing allowance may be used for housing which  
37 is owned or controlled by the employer.

38 “(ii) CERTIFICATION.—The requirement of this clause is satisfied if the  
39 Governor of the State certifies to the Secretary of Labor that there is  
40 adequate housing available in the area of intended employment for  
41 migrant farm workers and H-2A workers who are seeking temporary  
42 housing while employed in agricultural work. Such certification shall  
43 expire after 3 years unless renewed by the Governor of the State.

1 “(iii) AMOUNT OF ALLOWANCE.—

2 “(I) NONMETROPOLITAN COUNTIES.—If the place of employment of  
3 the workers provided an allowance under this subparagraph is a  
4 nonmetropolitan county, the amount of the housing allowance under  
5 this subparagraph shall be equal to the statewide average fair market  
6 rental for existing housing for nonmetropolitan counties for the State,  
7 as established by the Secretary of Housing and Urban Development  
8 pursuant to section 8(c) of the United States Housing Act of 1937 (42  
9 U.S.C. 1437f(c)), based on a 2-bedroom dwelling unit and an  
10 assumption of 2 persons per bedroom.

11 “(II) METROPOLITAN COUNTIES.—If the place of employment of  
12 the workers provided an allowance under this paragraph is in a  
13 metropolitan county, the amount of the housing allowance under this  
14 subparagraph shall be equal to the statewide average fair market  
15 rental for existing housing for metropolitan counties for the State, as  
16 established by the Secretary of Housing and Urban Development  
17 pursuant to section 8(c) of the United States Housing Act of 1937 (42  
18 U.S.C. 1437f(c)), based on a 2-bedroom dwelling unit and an  
19 assumption of 2 persons per bedroom.

20 “(2) REIMBURSEMENT OF TRANSPORTATION.—

21 “(A) TO PLACE OF EMPLOYMENT.—A worker who completes 50 percent of  
22 the period of employment of the job opportunity for which the worker was  
23 hired shall be reimbursed by the employer for the cost of the worker’s  
24 transportation and subsistence from the place from which the worker came to  
25 work for the employer (or place of last employment, if the worker traveled  
26 from such place) to the place of employment.

27 “(B) FROM PLACE OF EMPLOYMENT.—A worker who completes the period of  
28 employment for the job opportunity involved shall be reimbursed by the  
29 employer for the cost of the worker’s transportation and subsistence from the  
30 place of employment to the place from which the worker, disregarding  
31 intervening employment, came to work for the employer, or to the place of next  
32 employment, if the worker has contracted with a subsequent employer who has  
33 not agreed to provide or pay for the worker’s transportation and subsistence to  
34 such subsequent employer’s place of employment.

35 “(C) LIMITATION.—

36 “(i) AMOUNT OF REIMBURSEMENT.—Except as provided in clause (ii),  
37 the amount of reimbursement provided under subparagraph (A) or (B) to a  
38 worker or alien shall not exceed the lesser of—

39 “(I) the actual cost to the worker or alien of the transportation and  
40 subsistence involved; or

41 “(II) the most economical and reasonable common carrier  
42 transportation charges and subsistence costs for the distance



1                   involved.

2                   “(ii) DISTANCE TRAVELED.—No reimbursement under subparagraph (A)  
3                   or (B) shall be required if the distance traveled is 100 miles or less, or the  
4                   worker is not residing in employer-provided housing or housing secured  
5                   through an allowance as provided in paragraph (1)(G).

6                   “(D) EARLY TERMINATION.—If the worker is laid off or employment is  
7                   terminated for contract impossibility (as described in paragraph (4)(D)) before  
8                   the anticipated ending date of employment, the employer shall provide the  
9                   transportation and subsistence required by subparagraph (B) and,  
10                  notwithstanding whether the worker has completed 50 percent of the period of  
11                  employment, shall provide the transportation reimbursement required by  
12                  subparagraph (A).

13                  “(E) TRANSPORTATION BETWEEN LIVING QUARTERS AND WORKSITE.—The  
14                  employer shall provide transportation between the worker’s living quarters and  
15                  the employer’s worksite without cost to the worker, and such transportation  
16                  will be in accordance with applicable laws and regulations.

17                  “(3) REQUIRED WAGES.—

18                  “(A) IN GENERAL.—An employer applying for workers under section  
19                  218C(a) shall offer to pay, and shall pay, all workers in the occupation for  
20                  which the employer has applied for workers, not less (and is not required to pay  
21                  more) than the greater of the prevailing wage in the occupation in the area of  
22                  intended employment or the adverse effect wage rate. No worker shall be paid  
23                  less than the greater of the hourly wage prescribed under section 6(a)(1) of the  
24                  Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) or the applicable State  
25                  minimum wage.

26                  “(B) LIMITATION.—Effective on the date of the enactment of the Agricultural  
27                  Job Opportunities, Benefits, and Security Act of 2007 and continuing for 3  
28                  years thereafter, no adverse effect wage rate for a State may be more than the  
29                  adverse effect wage rate for that State in effect on January 1, 2003, as  
30                  established by section 655.107 of title 20, Code of Federal Regulations.

31                  “(C) REQUIRED WAGES AFTER 3-YEAR FREEZE.—

32                  “(i) FIRST ADJUSTMENT.—If Congress does not set a new wage standard  
33                  applicable to this section before the first March 1 that is not less than 3  
34                  years after the date of enactment of this section, the adverse effect wage  
35                  rate for each State beginning on such March 1 shall be the wage rate that  
36                  would have resulted if the adverse effect wage rate in effect on January 1,  
37                  2003, had been annually adjusted, beginning on March 1, 2006, by the  
38                  lesser of—

39                          “(I) the 12-month percentage change in the Consumer Price Index  
40                          for All Urban Consumers between December of the second preceding  
41                          year and December of the preceding year; and

42                          “(II) 4 percent.

1                   “(ii) SUBSEQUENT ANNUAL ADJUSTMENTS.—Beginning on the first  
2 March 1 that is not less than 4 years after the date of enactment of this  
3 section, and each March 1 thereafter, the adverse effect wage rate then in  
4 effect for each State shall be adjusted by the lesser of—

5                   “(I) the 12-month percentage change in the Consumer Price Index  
6 for All Urban Consumers between December of the second preceding  
7 year and December of the preceding year; and

8                   “(II) 4 percent.

9                   “(D) DEDUCTIONS.—The employer shall make only those deductions from  
10 the worker’s wages that are authorized by law or are reasonable and customary  
11 in the occupation and area of employment. The job offer shall specify all  
12 deductions not required by law which the employer will make from the  
13 worker’s wages.

14                   “(E) FREQUENCY OF PAY.—The employer shall pay the worker not less  
15 frequently than twice monthly, or in accordance with the prevailing practice in  
16 the area of employment, whichever is more frequent.

17                   “(F) HOURS AND EARNINGS STATEMENTS.—The employer shall furnish to the  
18 worker, on or before each payday, in 1 or more written statements—

19                   “(i) the worker’s total earnings for the pay period;

20                   “(ii) the worker’s hourly rate of pay, piece rate of pay, or both;

21                   “(iii) the hours of employment which have been offered to the worker  
22 (broken out by hours offered in accordance with and over and above the  $\frac{3}{4}$   
23 guarantee described in paragraph (4);

24                   “(iv) the hours actually worked by the worker;

25                   “(v) an itemization of the deductions made from the worker’s wages;  
26 and

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

28                   “(G) REPORT ON WAGE PROTECTIONS.—Not later than December 31, 2009,  
29 the Comptroller General of the United States shall prepare and transmit to the  
30 Secretary of Labor, the Committee on the Judiciary of the Senate, and  
31 Committee on the Judiciary of the House of Representatives, a report that  
32 addresses—

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

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

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1 “(iii) whether alternative wage standards, such as a prevailing wage  
2 standard, would be sufficient to prevent wages in occupations in which H-  
3 2A workers are employed from falling below the wage level that would  
4 have prevailed in the absence of H-2A employment;

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

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

8 “(H) COMMISSION ON WAGE STANDARDS.—

9 “(i) ESTABLISHMENT.—There is established the Commission on  
10 Agricultural Wage Standards under the H-2A program (in this  
11 subparagraph referred to as the ‘Commission’).

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

14 “(I) Four representatives of agricultural employers and 1  
15 representative of the Department of Agriculture, each appointed by  
16 the Secretary of Agriculture.

17 “(II) Four representatives of agricultural workers and 1  
18 representative of the Department of Labor, each appointed by the  
19 Secretary of Labor.

20 “(iii) FUNCTIONS.—The Commission shall conduct a study that shall  
21 address—

22 “(I) whether the employment of H-2A or unauthorized aliens in  
23 the United States agricultural workforce has depressed United States  
24 farm worker wages below the levels that would otherwise have  
25 prevailed if alien farm workers had not been employed in the United  
26 States;

27 “(II) whether an adverse effect wage rate is necessary to prevent  
28 wages of United States farm workers in occupations in which H-2A  
29 workers are employed from falling below the wage levels that would  
30 have prevailed in the absence of the employment of H-2A workers in  
31 those occupations;

32 “(III) whether alternative wage standards, such as a prevailing  
33 wage standard, would be sufficient to prevent wages in occupations  
34 in which H-2A workers are employed from falling below the wage  
35 level that would have prevailed in the absence of H-2A employment;

36 “(IV) whether any changes are warranted in the current  
37 methodologies for calculating the adverse effect wage rate and the  
38 prevailing wage rate; and

39 “(V) recommendations for future wage protection under this  
40 section.

1  
2           “(iv) The Commission may for the purpose of carrying out this section,  
3 hold such hearings, sit and act at such times and places, take such  
4 testimony, and receive such evidence as the Commission considers  
5 appropriate.  
6

7           “(v) Interim Report—The Commission shall issue an interim report,  
8 published in the Federal Register, with opportunity and comment, for a  
9 period of at least 90 days.  
10

11           “(vi) Final Report: After considering recommendations from interested  
12 persons (including an opportunity for comment from the public and  
13 affected States), the Commission shall submit a report to the Congress  
14 setting forth the findings of the study conducted under clause (iii) not later  
15 than December 31, 2009.

16           “(vii) TERMINATION DATE.—The Commission shall terminate upon  
17 submitting its final report.

18           “(4) GUARANTEE OF EMPLOYMENT.—

19           “(A) OFFER TO WORKER.—The employer shall guarantee to offer the worker  
20 employment for the hourly equivalent of at least  $\frac{3}{4}$  of the work days of the total  
21 period of employment, beginning with the first work day after the arrival of the  
22 worker at the place of employment and ending on the expiration date specified  
23 in the job offer. For purposes of this subparagraph, the hourly equivalent means  
24 the number of hours in the work days as stated in the job offer and shall  
25 exclude the worker’s Sabbath and Federal holidays. If the employer affords the  
26 United States or H-2A worker less employment than that required under this  
27 paragraph, the employer shall pay such worker the amount which the worker  
28 would have earned had the worker, in fact, worked for the guaranteed number  
29 of hours.

30           “(B) FAILURE TO WORK.—Any hours which the worker fails to work, up to a  
31 maximum of the number of hours specified in the job offer for a work day,  
32 when the worker has been offered an opportunity to do so, and all hours of  
33 work actually performed (including voluntary work in excess of the number of  
34 hours specified in the job offer in a work day, on the worker’s Sabbath, or on  
35 Federal holidays) may be counted by the employer in calculating whether the  
36 period of guaranteed employment has been met.

37           “(C) ABANDONMENT OF EMPLOYMENT, TERMINATION FOR CAUSE.—If the  
38 worker voluntarily abandons employment before the end of the contract period,  
39 or is terminated for cause, the worker is not entitled to the ‘ $\frac{3}{4}$  guarantee’  
40 described in subparagraph (A).

41           “(D) CONTRACT IMPOSSIBILITY.—If, before the expiration of the period of  
42 employment specified in the job offer, the services of the worker are no longer  
43 required for reasons beyond the control of the employer due to any form of

1 natural disaster, including a flood, hurricane, freeze, earthquake, fire, drought,  
2 plant or animal disease or pest infestation, or regulatory drought, before the  
3 guarantee in subparagraph (A) is fulfilled, the employer may terminate the  
4 worker's employment. In the event of such termination, the employer shall  
5 fulfill the employment guarantee in subparagraph (A) for the work days that  
6 have elapsed from the first work day after the arrival of the worker to the  
7 termination of employment. In such cases, the employer will make efforts to  
8 transfer the United States worker to other comparable employment acceptable  
9 to the worker. If such transfer is not effected, the employer shall provide the  
10 return transportation required in paragraph (2)(D).

11 “(5) MOTOR VEHICLE SAFETY.—

12 “(A) MODE OF TRANSPORTATION SUBJECT TO COVERAGE.—

13 “(i) IN GENERAL.—Except as provided in clauses (iii) and (iv), this  
14 subsection applies to any H-2A employer that uses or causes to be used  
15 any vehicle to transport an H-2A worker within the United States.

16 “(ii) DEFINED TERM.—In this paragraph, the term ‘uses or causes to be  
17 used’—

18 “(I) applies only to transportation provided by an H-2A employer  
19 to an H-2A worker, or by a farm labor contractor to an H-2A worker  
20 at the request or direction of an H-2A employer; and

21 “(II) does not apply to—

22 “(aa) transportation provided, or transportation arrangements  
23 made, by an H-2A worker, unless the employer specifically  
24 requested or arranged such transportation; or

25 “(bb) car pooling arrangements made by H-2A workers  
26 themselves, using 1 of the workers' own vehicles, unless  
27 specifically requested by the employer directly or through a  
28 farm labor contractor.

29 “(iii) CLARIFICATION.—Providing a job offer to an H-2A worker that  
30 causes the worker to travel to or from the place of employment, or the  
31 payment or reimbursement of the transportation costs of an H-2A worker  
32 by an H-2A employer, shall not constitute an arrangement of, or  
33 participation in, such transportation.

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

40 “(v) COMMON CARRIERS EXCLUDED.—This subsection does not apply to  
41 common carrier motor vehicle transportation in which the provider holds

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1                   itself out to the general public as engaging in the transportation of  
2                   passengers for hire and holds a valid certification of authorization for such  
3                   purposes from an appropriate Federal, State, or local agency.

4                   “(B) APPLICABILITY OF STANDARDS, LICENSING, AND INSURANCE  
5                   REQUIREMENTS.—

6                   “(i) IN GENERAL.—When using, or causing to be used, any vehicle for  
7                   the purpose of providing transportation to which this subparagraph  
8                   applies, each employer shall—

9                   “(I) ensure that each such vehicle conforms to the standards  
10                  prescribed by the Secretary of Labor under section 401(b) of the  
11                  Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C.  
12                  1841(b)) and other applicable Federal and State safety standards;

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

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

19                  “(ii) AMOUNT OF INSURANCE REQUIRED.—The level of insurance  
20                  required shall be determined by the Secretary of Labor pursuant to  
21                  regulations to be issued under this subsection.

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

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

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

33                  “(c) Compliance With Labor Laws.—An employer shall assure that, except as  
34                  otherwise provided in this section, the employer will comply with all applicable Federal,  
35                  State, and local labor laws, including laws affecting migrant and seasonal agricultural  
36                  workers, with respect to all United States workers and alien workers employed by the  
37                  employer, except that a violation of this assurance shall not constitute a violation of the  
38                  Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1801 et seq.).

39                  “(d) Copy of Job Offer.—The employer shall provide to the worker, not later than the  
40                  day the work commences, a copy of the employer’s application and job offer described in  
41                  section 218C(a), or, if the employer will require the worker to enter into a separate

1 employment contract covering the employment in question, such separate employment  
2 contract.

3 “(e) Range Production of Livestock.—Nothing in this section, section 218C, or section  
4 218E shall preclude the Secretary of Labor and the Secretary from continuing to apply  
5 special procedures and requirements to the admission and employment of aliens in  
6 occupations involving the range production of livestock.

7 “(f) Evidence on Nonimmigrant Status.—Each H–2A nonimmigrant shall be issued  
8 documentary evidence of nonimmigrant status, which—

9 “(1) shall be machine-readable, tamper-resistant, and shall contain a digitized  
10 photograph and other biometric identifiers that can be authenticated;

11 “(2) shall, during the alien’s authorized period of admission as an H–2A  
12 nonimmigrant, serve as a valid entry document for the purpose of applying for  
13 admission to the United States—

14 “(A) instead of a passport and visa if the alien—

15 “(i) is a national of a foreign territory contiguous to the United States;  
16 and

17 “(ii) is applying for admission at a land border port of entry; or

18 “(B) in conjunction with a valid passport, if the alien is applying for  
19 admission at an air or sea port of entry;

20 “(3) may be accepted during the period of its validity by an employer as evidence  
21 of employment authorization and identity under section 274A(b)(1)(B); and

22 “(4) shall be issued to the H–2A nonimmigrant by the Secretary promptly after  
23 such alien’s admission to the United States as an H–2A nonimmigrant and reporting  
24 to the employer’s worksite under or, at the discretion of the Secretary, may be issued  
25 by the Secretary of State at a consulate instead of a visa.

26 **“SEC. 218E. PROCEDURE FOR ADMISSION AND**  
27 **EXTENSION OF STAY OF H–2A WORKERS.**

28 “(a) Petitioning for Admission.—An employer, or an association acting as an agent or  
29 joint employer for its members, that seeks the admission into the United States of an H–  
30 2A worker may file a petition with the Secretary. The petition shall be accompanied by  
31 an accepted and currently valid certification provided by the Secretary of Labor under  
32 section 218C(e)(2)(B) covering the petitioner.

33 “(b) Expedited Adjudication by the Secretary.—The Secretary shall establish a  
34 procedure for expedited adjudication of petitions filed under subsection (a) and within 7  
35 working days shall, by fax, cable, or other means assuring expedited delivery, transmit a  
36 copy of notice of action on the petition to the petitioner and, in the case of approved  
37 petitions, to the appropriate immigration officer at the port of entry or United States  
38 consulate (as the case may be) where the petitioner has indicated that the alien  
39 beneficiary (or beneficiaries) will apply for a visa or admission to the United States.

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1 “(c) Criteria for Admissibility.—

2 “(1) IN GENERAL.—An H–2A worker shall be considered admissible to the United  
3 States if the alien is otherwise admissible under this section, section 218C, and  
4 section 218D, and the alien is not ineligible under paragraph (2).

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

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

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

14 “(3) WAIVER OF INELIGIBILITY FOR UNLAWFUL PRESENCE.—

15 “(A) IN GENERAL.—An alien who has not previously been admitted into the  
16 United States pursuant to this section, and who is otherwise eligible for  
17 admission in accordance with paragraphs (1) and (2), shall not be deemed  
18 inadmissible by virtue of section 212(a)(9)(B). If an alien described in the  
19 preceding sentence is present in the United States, the alien may apply from  
20 abroad for H–2A status, but may not be granted that status in the United States.

21 “(B) MAINTENANCE OF WAIVER.—An alien provided an initial waiver of  
22 ineligibility pursuant to subparagraph (A) shall remain eligible for such waiver  
23 unless the alien violates the terms of this section or again becomes ineligible  
24 under section 212(a)(9)(B) by virtue of unlawful presence in the United States  
25 after the date of the initial waiver of ineligibility pursuant to subparagraph (A).

26 “(d) Period of Admission.—

27 “(1) IN GENERAL.—The alien shall be admitted for the period of employment in  
28 the application certified by the Secretary of Labor pursuant to section  
29 218C(e)(2)(B), not to exceed 10 months, supplemented by a period of not more than  
30 1 week before the beginning of the period of employment for the purpose of travel  
31 to the worksite and a period of 14 days following the period of employment for the  
32 purpose of departure or extension based on a subsequent offer of employment,  
33 except that—

34 “(A) the alien is not authorized to be employed during such 14-day period  
35 except in the employment for which the alien was previously authorized; and

36 “(B) the total period of employment, including such 14-day period, may not  
37 exceed 10 months.

38 “(2) CONSTRUCTION.—Nothing in this subsection shall limit the authority of the  
39 Secretary to extend the stay of the alien under any other provision of this Act.

40 “(e) Abandonment of Employment.—



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1           “(1) IN GENERAL.—An alien admitted or provided status under section  
2           101(a)(15)(H)(ii)(a) who abandons the employment which was the basis for such  
3           admission or status shall be considered to have failed to maintain nonimmigrant  
4           status as an H–2A worker and shall depart the United States or be subject to removal  
5           under section 237(a)(1)(C)(i).

6           “(2) REPORT BY EMPLOYER.—The employer, or association acting as agent for the  
7           employer, shall notify the Secretary not later than 7 days after an H–2A worker  
8           prematurely abandons employment.

9           “(3) REMOVAL BY THE SECRETARY.—The Secretary shall promptly remove from  
10          the United States any H–2A worker who violates any term or condition of the  
11          worker’s nonimmigrant status.

12          “(4) VOLUNTARY TERMINATION.—Notwithstanding paragraph (1), an alien may  
13          voluntarily terminate his or her employment if the alien promptly departs the United  
14          States upon termination of such employment.

15          “(f) Replacement of Alien.—

16               “(1) IN GENERAL.—Upon presentation of the notice to the Secretary required by  
17               subsection (e)(2), the Secretary of State shall promptly issue a visa to, and the  
18               Secretary shall admit into the United States, an eligible alien designated by the  
19               employer to replace an H–2A worker—

20                   “(A) who abandons or prematurely terminates employment; or

21                   “(B) whose employment is terminated after a United States worker is  
22                   employed pursuant to section 218C(b)(2)(H)(iii), if the United States worker  
23                   voluntarily departs before the end of the period of intended employment or if  
24                   the employment termination is for a lawful job-related reason.

25               “(2) CONSTRUCTION.—Nothing in this subsection is intended to limit any  
26               preference required to be accorded United States workers under any other provision  
27               of this Act.

28          “(g) Identification Document.—

29               “(1) IN GENERAL.—Each alien authorized to be admitted under section  
30               101(a)(15)(H)(ii)(a) shall be provided an identification and employment eligibility  
31               document to verify eligibility for employment in the United States and verify the  
32               alien’s identity.

33               “(2) REQUIREMENTS.—No identification and employment eligibility document  
34               may be issued which does not meet the following requirements:

35                   “(A) The document shall be capable of reliably determining whether—

36                           “(i) the individual with the identification and employment eligibility  
37                           document whose eligibility is being verified is in fact eligible for  
38                           employment;

39                           “(ii) the individual whose eligibility is being verified is claiming the  
40                           identity of another person; and

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1                   “(iii) the individual whose eligibility is being verified is authorized to  
2                   be admitted into, and employed in, the United States as an H-2A worker.

3                   “(B) The document shall be in a form that is resistant to counterfeiting and to  
4                   tampering.

5                   “(C) The document shall—

6                   “(i) be compatible with other databases of the Secretary for the purpose  
7                   of excluding aliens from benefits for which they are not eligible and  
8                   determining whether the alien is unlawfully present in the United States;  
9                   and

10                   “(ii) be compatible with law enforcement databases to determine if the  
11                   alien has been convicted of criminal offenses.

12                   “(h) Extension of Stay of H-2A Aliens in the United States.—

13                   “(1) EXTENSION OF STAY.—If an employer seeks approval to employ an H-2A  
14                   alien who is lawfully present in the United States, the petition filed by the employer  
15                   or an association pursuant to subsection (a), shall request an extension of the alien’s  
16                   stay and a change in the alien’s employment.

17                   “(2) LIMITATION ON FILING A PETITION FOR EXTENSION OF STAY.—A petition may  
18                   not be filed for an extension of an alien’s stay—

19                   “(A) for a period of more than 10 months; or

20                   “(B) to a date that is more than [] years after the date of the alien’s last  
21                   admission to the United States under this section.

22                   “(3) WORK AUTHORIZATION UPON FILING A PETITION FOR EXTENSION OF STAY.—

23                   “(A) IN GENERAL.—An alien who is lawfully present in the United States  
24                   may commence the employment described in a petition under paragraph (1) on  
25                   the date on which the petition is filed.

26                   “(B) DEFINITION.—For purposes of subparagraph (A), the term ‘file’ means  
27                   sending the petition by certified mail via the United States Postal Service,  
28                   return receipt requested, or delivered by guaranteed commercial delivery which  
29                   will provide the employer with a documented acknowledgment of the date of  
30                   receipt of the petition.

31                   “(C) HANDLING OF PETITION.—The employer shall provide a copy of the  
32                   employer’s petition to the alien, who shall keep the petition with the alien’s  
33                   identification and employment eligibility document as evidence that the  
34                   petition has been filed and that the alien is authorized to work in the United  
35                   States.

36                   “(D) APPROVAL OF PETITION.—Upon approval of a petition for an extension  
37                   of stay or change in the alien’s authorized employment, the Secretary shall  
38                   provide a new or updated employment eligibility document to the alien  
39                   indicating the new validity date, after which the alien is not required to retain a  
40                   copy of the petition.

1 “(4) LIMITATION ON EMPLOYMENT AUTHORIZATION OF ALIENS WITHOUT VALID  
2 IDENTIFICATION AND EMPLOYMENT ELIGIBILITY DOCUMENT.—An expired  
3 identification and employment eligibility document, together with a copy of a  
4 petition for extension of stay or change in the alien’s authorized employment that  
5 complies with the requirements of paragraph (1), shall constitute a valid work  
6 authorization document for a period of not more than 60 days beginning on the date  
7 on which such petition is filed, after which time only a currently valid identification  
8 and employment eligibility document shall be acceptable.

9 “(5) LIMITATION ON AN INDIVIDUAL’S STAY IN STATUS.—

10 “(A) MAXIMUM PERIOD.—The maximum continuous period of authorized  
11 status as an H–2A worker (including any extensions) is [] years.

12 “(B) REQUIREMENT TO REMAIN OUTSIDE THE UNITED STATES.—

13 “(i) IN GENERAL.—Subject to clause (ii), in the case of an alien outside  
14 the United States whose period of authorized status as an H–2A worker  
15 (including any extensions) has expired, the alien may not again apply for  
16 admission to the United States as an H–2A worker unless the alien has  
17 remained outside the United States for a continuous period equal to at least  
18 1/5 the duration of the alien’s previous period of authorized status as an  
19 H–2A worker (including any extensions).

20 “(ii) EXCEPTION.—Clause (i) shall not apply in the case of an alien if  
21 the alien’s period of authorized status as an H–2A worker (including any  
22 extensions) was for a period of not more than 10 months and such alien  
23 has been outside the United States for at least 2 months during the 12  
24 months preceding the date the alien again is applying for admission to the  
25 United States as an H–2A worker.

26 “SEC. 218F. WORKER PROTECTIONS AND LABOR  
27 STANDARDS ENFORCEMENT.

28 “(a) Enforcement Authority.—

29 “(1) INVESTIGATION OF COMPLAINTS.—

30 “(A) AGGRIEVED PERSON OR THIRD-PARTY COMPLAINTS.—The Secretary of  
31 Labor shall establish a process for the receipt, investigation, and disposition of  
32 complaints respecting a petitioner’s failure to meet a condition specified in  
33 section 218C(b), or an employer’s misrepresentation of material facts in an  
34 application under section 218C(a). Complaints may be filed by any aggrieved  
35 person or organization (including bargaining representatives). No investigation  
36 or hearing shall be conducted on a complaint concerning such a failure or  
37 misrepresentation unless the complaint was filed not later than 12 months after  
38 the date of the failure, or misrepresentation, respectively. The Secretary of  
39 Labor shall conduct an investigation under this subparagraph if there is  
40 reasonable cause to believe that such a failure or misrepresentation has  
41 occurred.

1           “(B) DETERMINATION ON COMPLAINT.—Under such process, the Secretary of  
2 Labor shall provide, within 30 days after the date such a complaint is filed, for  
3 a determination as to whether or not a reasonable basis exists to make a finding  
4 described in subparagraph (C), (D), (E), or (G). If the Secretary of Labor  
5 determines that such a reasonable basis exists, the Secretary of Labor shall  
6 provide for notice of such determination to the interested parties and an  
7 opportunity for a hearing on the complaint, in accordance with section 556 of  
8 title 5, United States Code, within 60 days after the date of the determination. If  
9 such a hearing is requested, the Secretary of Labor shall make a finding  
10 concerning the matter not later than 60 days after the date of the hearing. In the  
11 case of similar complaints respecting the same applicant, the Secretary of Labor  
12 may consolidate the hearings under this subparagraph on such complaints.

13           “(C) FAILURES TO MEET CONDITIONS.—If the Secretary of Labor finds, after  
14 notice and opportunity for a hearing, a failure to meet a condition of paragraph  
15 (1)(A), (1)(B), (1)(D), (1)(F), (2)(A), (2)(B), or (2)(G) of section 218C(b), a  
16 substantial failure to meet a condition of paragraph (1)(C), (1)(E), (2)(C),  
17 (2)(D), (2)(E), or (2)(H) of section 218C(b), or a material misrepresentation of  
18 fact in an application under section 218C(a)—

19                   “(i) the Secretary of Labor shall notify the Secretary of such finding and  
20 may, in addition, impose such other administrative remedies (including  
21 civil money penalties in an amount not to exceed \$1,000 per violation) as  
22 the Secretary of Labor determines to be appropriate; and

23                   “(ii) the Secretary may disqualify the employer from the employment of  
24 aliens described in section 101(a)(15)(H)(ii)(a) for a period of 1 year.

25           “(D) WILLFUL FAILURES AND WILLFUL MISREPRESENTATIONS.—If the  
26 Secretary of Labor finds, after notice and opportunity for hearing, a willful  
27 failure to meet a condition of section 218C(b), a willful misrepresentation of a  
28 material fact in an application under section 218C(a), or a violation of  
29 subsection (d)(1)—

30                   “(i) the Secretary of Labor shall notify the Secretary of such finding and  
31 may, in addition, impose such other administrative remedies (including  
32 civil money penalties in an amount not to exceed \$5,000 per violation) as  
33 the Secretary of Labor determines to be appropriate;

34                   “(ii) the Secretary of Labor may seek appropriate legal or equitable  
35 relief to effectuate the purposes of subsection (d)(1); and

36                   “(iii) the Secretary may disqualify the employer from the employment  
37 of H-2A workers for a period of 2 years.

38           “(E) DISPLACEMENT OF UNITED STATES WORKERS.—If the Secretary of Labor  
39 finds, after notice and opportunity for hearing, a willful failure to meet a  
40 condition of section 218C(b) or a willful misrepresentation of a material fact in  
41 an application under section 218C(a), in the course of which failure or  
42 misrepresentation the employer displaced a United States worker employed by  
43 the employer during the period of employment on the employer’s application

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1 under section 218C(a) or during the period of 30 days preceding such period of  
2 employment—

3 “(i) the Secretary of Labor shall notify the Secretary of such finding and  
4 may, in addition, impose such other administrative remedies (including  
5 civil money penalties in an amount not to exceed \$15,000 per violation) as  
6 the Secretary of Labor determines to be appropriate; and

7 “(ii) the Secretary may disqualify the employer from the employment of  
8 H–2A workers for a period of 3 years.

9 “(F) LIMITATIONS ON CIVIL MONEY PENALTIES.—The Secretary of Labor  
10 shall not impose total civil money penalties with respect to an application under  
11 section 218C(a) in excess of \$90,000.

12 “(G) FAILURES TO PAY WAGES OR REQUIRED BENEFITS.—If the Secretary of  
13 Labor finds, after notice and opportunity for a hearing, that the employer has  
14 failed to pay the wages, or provide the housing allowance, transportation,  
15 subsistence reimbursement, or guarantee of employment, required under  
16 section 218D(b), the Secretary of Labor shall assess payment of back wages, or  
17 other required benefits, due any United States worker or H–2A worker  
18 employed by the employer in the specific employment in question. The back  
19 wages or other required benefits under section 218D(b) shall be equal to the  
20 difference between the amount that should have been paid and the amount that  
21 actually was paid to such worker.

22 “(2) STATUTORY CONSTRUCTION.—Nothing in this section shall be construed as  
23 limiting the authority of the Secretary of Labor to conduct any compliance  
24 investigation under any other labor law, including any law affecting migrant and  
25 seasonal agricultural workers, or, in the absence of a complaint under this section,  
26 under section 218C or 218D.

27 “(b) Rights Enforceable by Private Right of Action.—H–2A workers may enforce the  
28 following rights through the private right of action provided in subsection (c), and no  
29 other right of action shall exist under Federal or State law to enforce such rights:

30 “(1) The providing of housing or a housing allowance as required under section  
31 218D(b)(1).

32 “(2) The reimbursement of transportation as required under section 218D(b)(2).

33 “(3) The payment of wages required under section 218D(b)(3) when due.

34 “(4) The benefits and material terms and conditions of employment expressly  
35 provided in the job offer described in section 218C(a)(2), not including the  
36 assurance to comply with other Federal, State, and local labor laws described in  
37 section 218D(c), compliance with which shall be governed by the provisions of such  
38 laws.

39 “(5) The guarantee of employment required under section 218D(b)(4).

40 “(6) The motor vehicle safety requirements under section 218D(b)(5).

1           “(7) The prohibition of discrimination under subsection (d)(2).

2           “(c) Private Right of Action.—

3           “(1) MEDIATION.—Upon the filing of a complaint by an H–2A worker aggrieved  
4 by a violation of rights enforceable under subsection (b), and within 60 days of the  
5 filing of proof of service of the complaint, a party to the action may file a request  
6 with the Federal Mediation and Conciliation Service to assist the parties in reaching  
7 a satisfactory resolution of all issues involving all parties to the dispute. Upon a  
8 filing of such request and giving of notice to the parties, the parties shall attempt  
9 mediation within the period specified in subparagraph (B).

10           “(A) MEDIATION SERVICES.—The Federal Mediation and Conciliation  
11 Service shall be available to assist in resolving disputes arising under  
12 subsection (b) between H–2A workers and agricultural employers without  
13 charge to the parties.

14           “(B) 90-DAY LIMIT.—The Federal Mediation and Conciliation Service may  
15 conduct mediation or other nonbinding dispute resolution activities for a period  
16 not to exceed 90 days beginning on the date on which the Federal Mediation  
17 and Conciliation Service receives the request for assistance unless the parties  
18 agree to an extension of this period of time.

19           “(C) AUTHORIZATION.—

20           “(i) IN GENERAL.—Subject to clause (ii), there are authorized to be  
21 appropriated to the Federal Mediation and Conciliation Service \$500,000  
22 for each fiscal year to carry out this section.

23           “(ii) MEDIATION.—Notwithstanding any other provision of law, the  
24 Director of the Federal Mediation and Conciliation Service is authorized  
25 to conduct the mediation or other dispute resolution activities from any  
26 other appropriated funds available to the Director and to reimburse such  
27 appropriated funds when the funds are appropriated pursuant to this  
28 authorization, such reimbursement to be credited to appropriations  
29 currently available at the time of receipt.

30           “(2) MAINTENANCE OF CIVIL ACTION IN DISTRICT COURT BY AGGRIEVED PERSON.—  
31 An H–2A worker aggrieved by a violation of rights enforceable under subsection (b)  
32 by an agricultural employer or other person may file suit in any district court of the  
33 United States having jurisdiction over the parties, without regard to the amount in  
34 controversy, without regard to the citizenship of the parties, and without regard to  
35 the exhaustion of any alternative administrative remedies under this Act, not later  
36 than 3 years after the date the violation occurs.

37           “(3) ELECTION.—An H–2A worker who has filed an administrative complaint  
38 with the Secretary of Labor may not maintain a civil action under paragraph (2)  
39 unless a complaint based on the same violation filed with the Secretary of Labor  
40 under subsection (a)(1) is withdrawn before the filing of such action, in which case  
41 the rights and remedies available under this subsection shall be exclusive.

42           “(4) PREEMPTION OF STATE CONTRACT RIGHTS.—Nothing in this Act shall be

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1 construed to diminish the rights and remedies of an H-2A worker under any other  
2 Federal or State law or regulation or under any collective bargaining agreement,  
3 except that no court or administrative action shall be available under any State  
4 contract law to enforce the rights created by this Act.

5 “(5) WAIVER OF RIGHTS PROHIBITED.—Agreements by employees purporting to  
6 waive or modify their rights under this Act shall be void as contrary to public policy,  
7 except that a waiver or modification of the rights or obligations in favor of the  
8 Secretary of Labor shall be valid for purposes of the enforcement of this Act. The  
9 preceding sentence may not be construed to prohibit agreements to settle private  
10 disputes or litigation.

11 “(6) AWARD OF DAMAGES OR OTHER EQUITABLE RELIEF.—

12 “(A) If the court finds that the respondent has intentionally violated any of  
13 the rights enforceable under subsection (b), it shall award actual damages, if  
14 any, or equitable relief.

15 “(B) Any civil action brought under this section shall be subject to appeal as  
16 provided in chapter 83 of title 28, United States Code.

17 “(C) In determining the amount of damages to be awarded under  
18 subparagraph (A), the court is authorized to consider whether an attempt was  
19 made to resolve the issues in dispute before the resort to litigation.

20 “(7) WORKERS’ COMPENSATION BENEFITS.—

21 “(A) EXCLUSIVE REMEDY.—Notwithstanding any other provision of this  
22 section, where a State’s workers’ compensation law is applicable and coverage  
23 is provided for an H-2A worker, the workers’ compensation benefits shall be  
24 the exclusive remedy for the loss of such worker under this section in the case  
25 of bodily injury or death in accordance with such State’s workers’  
26 compensation law.

27 “(B) RELATIONSHIP TO OTHER RELIEF.—The exclusive remedy prescribed in  
28 subparagraph (A) precludes the recovery under paragraph (6) of actual damages  
29 for loss from an injury or death but does not preclude other equitable relief,  
30 except that such relief shall not include back or front pay or in any manner,  
31 directly or indirectly, expand or otherwise alter or affect—

32 “(i) a recovery under a State workers’ compensation law; or

33 “(ii) rights conferred under a State workers’ compensation law.

34 “(C) CONSIDERATIONS.—In determining the amount of damages to be  
35 awarded under subparagraph (A), a court may consider whether an attempt was  
36 made to resolve the issues in dispute prior to resorting to litigation.

37 “(8) TOLLING OF STATUTE OF LIMITATIONS.—If it is determined under a State  
38 workers’ compensation law that the workers’ compensation law is not applicable to  
39 a claim for bodily injury or death of an H-2A worker, the statute of limitations for  
40 bringing an action for actual damages for such injury or death under subsection (c)  
41 shall be tolled for the period during which the claim for such injury or death under

1 such State workers' compensation law was pending. The statute of limitations for an  
2 action for actual damages or other equitable relief arising out of the same transaction  
3 or occurrence as the injury or death of the H-2A worker shall be tolled for the  
4 period during which the claim for such injury or death was pending under the State  
5 workers' compensation law.

6 “(9) PRECLUSIVE EFFECT.—Any settlement by an H-2A worker and an H-2A  
7 employer or any person reached through the mediation process required under  
8 subsection (c)(1) shall preclude any right of action arising out of the same facts  
9 between the parties in any Federal or State court or administrative proceeding,  
10 unless specifically provided otherwise in the settlement agreement.

11 “(10) SETTLEMENTS.—Any settlement by the Secretary of Labor with an H-2A  
12 employer on behalf of an H-2A worker of a complaint filed with the Secretary of  
13 Labor under this section or any finding by the Secretary of Labor under subsection  
14 (a)(1)(B) shall preclude any right of action arising out of the same facts between the  
15 parties under any Federal or State court or administrative proceeding, unless  
16 specifically provided otherwise in the settlement agreement.

17 “(d) Discrimination Prohibited.—

18 “(1) IN GENERAL.—It is a violation of this subsection for any person who has filed  
19 an application under section 218C(a), to intimidate, threaten, restrain, coerce,  
20 blacklist, discharge, or in any other manner discriminate against an employee (which  
21 term, for purposes of this subsection, includes a former employee and an applicant  
22 for employment) because the employee has disclosed information to the employer,  
23 or to any other person, that the employee reasonably believes evidences a violation  
24 of section 218C or 218D or any rule or regulation pertaining to section 218C or  
25 218D, or because the employee cooperates or seeks to cooperate in an investigation  
26 or other proceeding concerning the employer's compliance with the requirements of  
27 section 218C or 218D or any rule or regulation pertaining to either of such sections.

28 “(2) DISCRIMINATION AGAINST H-2A WORKERS.—It is a violation of this  
29 subsection for any person who has filed an application under section 218C(a), to  
30 intimidate, threaten, restrain, coerce, blacklist, discharge, or in any manner  
31 discriminate against an H-2A employee because such worker has, with just cause,  
32 filed a complaint with the Secretary of Labor regarding a denial of the rights  
33 enumerated and enforceable under subsection (b) or instituted, or caused to be  
34 instituted, a private right of action under subsection (c) regarding the denial of the  
35 rights enumerated under subsection (b), or has testified or is about to testify in any  
36 court proceeding brought under subsection (c).

37 “(e) Authorization To Seek Other Appropriate Employment.—The Secretary of Labor  
38 and the Secretary shall establish a process under which an H-2A worker who files a  
39 complaint regarding a violation of subsection (d) and is otherwise eligible to remain and  
40 work in the United States may be allowed to seek other appropriate employment in the  
41 United States for a period not to exceed the maximum period of stay authorized for such  
42 nonimmigrant classification.

43 “(f) Role of Associations.—



1 “(1) VIOLATION BY A MEMBER OF AN ASSOCIATION.—An employer on whose  
2 behalf an application is filed by an association acting as its agent is fully responsible  
3 for such application, and for complying with the terms and conditions of sections  
4 218C and 218D, as though the employer had filed the application itself. If such an  
5 employer is determined, under this section, to have committed a violation, the  
6 penalty for such violation shall apply only to that member of the association unless  
7 the Secretary of Labor determines that the association or other member participated  
8 in, had knowledge, or reason to know, of the violation, in which case the penalty  
9 shall be invoked against the association or other association member as well.

10 “(2) VIOLATIONS BY AN ASSOCIATION ACTING AS AN EMPLOYER.—If an association  
11 filing an application as a sole or joint employer is determined to have committed a  
12 violation under this section, the penalty for such violation shall apply only to the  
13 association unless the Secretary of Labor determines that an association member or  
14 members participated in or had knowledge, or reason to know of the violation, in  
15 which case the penalty shall be invoked against the association member or members  
16 as well.

17 **“SEC. 218G. DEFINITIONS.**

18 “For purposes of this section and section 218C, 218D, 218E, and 218F:

19 “(1) AGRICULTURAL EMPLOYMENT.—The term ‘agricultural employment’ means  
20 any service or activity that is considered to be agricultural under section 3(f) of the  
21 Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)) or agricultural labor under  
22 section 3121(g) of the Internal Revenue Code of 1986 or the performance of  
23 agricultural labor or services described in section 101(a)(15)(H)(ii)(a).

24 “(2) BONA FIDE UNION.—The term ‘bona fide union’ means any organization in  
25 which employees participate and which exists for the purpose of dealing with  
26 employers concerning grievances, labor disputes, wages, rates of pay, hours of  
27 employment, or other terms and conditions of work for agricultural employees. Such  
28 term does not include an organization formed, created, administered, supported,  
29 dominated, financed, or controlled by an employer or employer association or its  
30 agents or representatives.

31 “(3) DISPLACE.—The term ‘displace’, in the case of an application with respect to  
32 1 or more H-2A workers by an employer, means laying off a United States worker  
33 from a job for which the H-2A worker or workers is or are sought.

34 “(4) ELIGIBLE.—The term ‘eligible’, when used with respect to an individual,  
35 means an individual who is not an unauthorized alien (as defined in section 274A).

36 “(5) EMPLOYER.—The term ‘employer’ means any person or entity, including any  
37 farm labor contractor and any agricultural association, that employs workers in  
38 agricultural employment.

39 “(6) H-2A EMPLOYER.—The term ‘H-2A employer’ means an employer who  
40 seeks to hire 1 or more nonimmigrant aliens described in section  
41 101(a)(15)(H)(ii)(a).

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1 “(7) H-2A WORKER.—The term ‘H-2A worker’ means a nonimmigrant described  
2 in section 101(a)(15)(H)(ii)(a).

3 “(8) JOB OPPORTUNITY.—The term ‘job opportunity’ means a job opening for  
4 temporary or seasonal full-time employment at a place in the United States to which  
5 United States workers can be referred.

6 “(9) LAYING OFF.—

7 “(A) IN GENERAL.—The term ‘laying off’, with respect to a worker—

8 “(i) means to cause the worker’s loss of employment, other than through  
9 a discharge for inadequate performance, violation of workplace rules,  
10 cause, voluntary departure, voluntary retirement, contract impossibility (as  
11 described in section 218D(b)(4)(D)), or temporary suspension of  
12 employment due to weather, markets, or other temporary conditions; but

13 “(ii) does not include any situation in which the worker is offered, as an  
14 alternative to such loss of employment, a similar employment opportunity  
15 with the same employer (or, in the case of a placement of a worker with  
16 another employer under section 218C(b)(2)(E), with either employer  
17 described in such section) at equivalent or higher compensation and  
18 benefits than the position from which the employee was discharged,  
19 regardless of whether or not the employee accepts the offer.

20 “(B) STATUTORY CONSTRUCTION.—Nothing in this paragraph is intended to  
21 limit an employee’s rights under a collective bargaining agreement or other  
22 employment contract.

23 “(10) REGULATORY DROUGHT.—The term ‘regulatory drought’ means a decision  
24 subsequent to the filing of the application under section 218C by an entity not under  
25 the control of the employer making such filing which restricts the employer’s access  
26 to water for irrigation purposes and reduces or limits the employer’s ability to  
27 produce an agricultural commodity, thereby reducing the need for labor.

28 “(11) SEASONAL.—Labor is performed on a ‘seasonal’ basis if—

29 “(A) ordinarily, it pertains to or is of the kind exclusively performed at  
30 certain seasons or periods of the year; and

31 “(B) from its nature, it may not be continuous or carried on throughout the  
32 year.

33 “(12) SECRETARY.—Except as otherwise provided, the term ‘Secretary’ means the  
34 Secretary of Homeland Security.

35 “(13) TEMPORARY.—A worker is employed on a ‘temporary’ basis where the  
36 employment is intended not to exceed 10 months.

37 “(14) UNITED STATES WORKER.—The term ‘United States worker’ means any  
38 worker, whether a national of the United States, an alien lawfully admitted for  
39 permanent residence, or any other alien, who is authorized to work in the job  
40 opportunity within the United States, except an alien admitted or otherwise provided

1 status under section 101(a)(15)(H)(ii)(a).”.

2 (b) Table of Contents.—The table of contents of the Immigration and Nationality Act  
3 (8 U.S.C. 1101 et seq.) is amended by striking the item relating to section 218 and  
4 inserting the following:

5 “Sec.218C.H–2A employer applications.

6 “Sec.218D.H–2A employment requirements.

7 “Sec.218E.Procedure for admission and extension of stay of H–2A workers.

8 “Sec.218F.Worker protections and labor standards enforcement.

9 “Sec.218G.Definitions.”.

10 **SEC. 405. DETERMINATION AND USE OF USER**  
11 **FEES.**

12 (a) Schedule of Fees.—The Secretary shall establish and periodically adjust a schedule  
13 of fees for the employment of aliens pursuant to the amendment made by section 404(a)  
14 of this Act and a collection process for such fees from employers. Such fees shall be the  
15 only fees chargeable to employers for services provided under such amendment.

16 (b) Determination of Schedule.—

17 (1) IN GENERAL.—The schedule under subsection (a) shall reflect a fee rate based  
18 on the number of job opportunities indicated in the employer’s application under  
19 section 218C of the Immigration and Nationality Act, as amended by section 404 of  
20 this Act, and sufficient to provide for the direct costs of providing services related to  
21 an employer’s authorization to employ aliens pursuant to the amendment made by  
22 section 404(a) of this Act, to include the certification of eligible employers, the  
23 issuance of documentation, and the admission of eligible aliens.

24 (2) PROCEDURE.—

25 (A) IN GENERAL.—In establishing and adjusting such a schedule, the  
26 Secretary shall comply with Federal cost accounting and fee setting standards.

27 (B) PUBLICATION AND COMMENT.—The Secretary shall publish in the  
28 Federal Register an initial fee schedule and associated collection process and  
29 the cost data or estimates upon which such fee schedule is based, and any  
30 subsequent amendments thereto, pursuant to which public comment shall be  
31 sought and a final rule issued.

32 (c) Use of Proceeds.—Notwithstanding any other provision of law, all proceeds  
33 resulting from the payment of the fees pursuant to the amendment made by section 404(a)  
34 of this Act shall be available without further appropriation and shall remain available  
35 without fiscal year limitation to reimburse the Secretary, the Secretary of State, and the  
36 Secretary of Labor for the costs of carrying out sections 218C and 218E of the  
37 Immigration and Nationality Act, as amended and added, respectively, by section 404 of  
38 this Act, and the provisions of this Act.

1 **SEC. 406. REGULATIONS.**

2 (a) Requirement for the Secretary To Consult.—The Secretary shall consult with the  
3 Secretary of Labor and the Secretary of Agriculture during the promulgation of all  
4 regulations to implement the duties of the Secretary under this Act and the amendments  
5 made by this Act.

6 (b) Requirement for the Secretary of State To Consult.—The Secretary of State shall  
7 consult with the Secretary, the Secretary of Labor, and the Secretary of Agriculture on all  
8 regulations to implement the duties of the Secretary of State under this Act and the  
9 amendments made by this Act.

10 (c) Requirement for the Secretary of Labor To Consult.—The Secretary of Labor shall  
11 consult with the Secretary of Agriculture and the Secretary on all regulations to  
12 implement the duties of the Secretary of Labor under this Act and the amendments made  
13 by this Act.

14 (d) Deadline for Issuance of Regulations.—All regulations to implement the duties of  
15 the Secretary, the Secretary of State, and the Secretary of Labor created under sections  
16 218C, 218D, 218E, 218F, and 218G of the Immigration and Nationality Act, as amended  
17 or added by section 404 of this Act, shall take effect on the effective date of section 404  
18 and shall be issued not later than 1 year after the date of enactment of this Act, or the date  
19 such regulations are promulgated, whichever is sooner.

20 **SEC. 407. REPORTS TO CONGRESS.**

21 (a) Annual Report.—Not later than September 30 of each year, the Secretary shall  
22 submit a report to Congress that identifies, for the previous year—

23 (1) the number of job opportunities approved for employment of aliens admitted  
24 under section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act (8 U.S.C.  
25 1101(a)(15)(H)(ii)(a)), and the number of workers actually admitted, disaggregated  
26 by State and by occupation;

27 (2) the number of such aliens reported to have abandoned employment pursuant to  
28 subsection 218E(e)(2) of such Act;

29 (3) the number of such aliens who departed the United States within the period  
30 specified in subsection 218E(d) of such Act;

31 (4) the number of aliens who applied for adjustment of status pursuant to section  
32 623;

33 (5) the number of such aliens whose status was adjusted under section 623;

34 (6) the number of aliens who applied for permanent residence pursuant to section  
35 214A(j) of the Immigration and Nationality Act, as amended by 623(b); and

36 (7) the number of such aliens who were approved for permanent residence  
37 pursuant to section 214A(j) of the Immigration and Nationality Act, as amended by  
38 623(b).

39 (b) Implementation Report.—Not later than 180 days after the date of the enactment of

1 this Act, the Secretary shall prepare and submit to Congress a report that describes the  
2 measures being taken and the progress made in implementing this Act.

3 **SEC. 408. EFFECTIVE DATE.**

4 Except as otherwise provided, sections 404 and 405 shall take effect 1 year after the  
5 date of the enactment of this Act, or the date such regulations are promulgated, whichever  
6 is sooner.  
7

8 **SEC. 409. NUMERICAL LIMITATIONS.**

9 Section 214(g) of the Act (8 U.S.C. 1184(g)) is amended—

10

11 (1) in paragraph (1)—

12

13 (A) by striking `(beginning with fiscal year 1992)';

14

15 (B) by striking subparagraph (B) and inserting the following:

16

17 `(B) under section 101(a)(15)(Y)(i), may not exceed—

18

19 (i) 400,000 for the first fiscal year in which the program is  
20 implemented;

21

22 (ii) in any subsequent fiscal year, subject to clause (iii), the  
23 number for the previous fiscal year as adjusted in accordance  
24 with the method set forth in paragraph (2); and

25

26 (iii) 600,000 for any fiscal year; or

27

28 (C) under section 101(a)(15)(Y)(iii), may not exceed twenty percent  
29 of the annual limit on admissions of aliens under section  
30 101(a)(15)(Y)(i) for that fiscal year; or

31

32 (D) under section 101(a)(15)(Y)(ii)(II), may not exceed-

33

34 (i) 100,000 for the first fiscal year in which the program is  
35 implemented;

36

37 (ii) in any subsequent fiscal year, subject to clause (iii), the  
38 number for the previous fiscal year as adjusted in accordance  
39 with the method set forth in paragraph (2); and

40

41 (iii) 200,000 for any fiscal year.';

42

43

and

1 (2) by renumbering paragraph (2) as paragraph (3), and renumbering all  
2 subsequent paragraphs accordingly, and inserting the following as paragraph  
3 (2):

4  
5 ` (2) Market-Based Adjustment.—With respect to the numerical limitation set  
6 in subparagraph (A)(ii), (B)(ii), or (D)(ii) of paragraph (1)--

7  
8 ` (A) if the total number of visas allocated for that fiscal year are  
9 allotted within the first half of that fiscal year, then an additional 15  
10 percent of the allocated number shall be made available immediately  
11 and the allocated amount for the following fiscal year shall increase by  
12 15 percent of the original allocated amount in the prior fiscal year;

13  
14 ` (B) if the total number of visas allocated for that fiscal year are  
15 allotted within the second half of that fiscal year, then the allocated  
16 amount for the following fiscal year shall increase by 10 percent of the  
17 original allocated amount in the prior fiscal year; and

18  
19 ` (C) with the exception of the first subsequent fiscal year to the fiscal  
20 year in which the program is implemented, if fewer visas were allotted  
21 the previous fiscal year than the number of visas allocated for that  
22 year and the reason was not due to processing delays or delays in  
23 promulgating regulations, then the allocated amount for the following  
24 fiscal year shall decrease by 10 percent of the allocated amount in the  
25 prior fiscal year.'

26 **SEC. 410. REQUIREMENTS FOR PARTICIPATING COUNTRIES.**

27 (a) In General- The Secretary of State, in cooperation with the Secretary and the  
28 Attorney General, may, as a condition of authorizing the grant of nonimmigrant visas  
29 for Y nonimmigrants who are citizens or nationals of any foreign country, negotiate  
30 with each such country to enter into a bilateral agreement with the United States  
31 that conforms to the requirements under subsection (b).

32  
33 (b) Requirements of Bilateral Agreements- It is the sense of Congress that each  
34 agreement negotiated under subsection (a) shall require the participating home  
35 country to--

36  
37 (1) accept the return of nationals who are ordered removed from the United  
38 States within 3 days of such removal;

39  
40 (2) cooperate with the United States Government to--

41  
42 (A) identify, track, and reduce gang membership, violence, and human  
43 trafficking and smuggling; and

44  
45 (B) control illegal immigration;

46  
47 (3) provide the United States Government with--

48  
49 (A) passport information and criminal records of aliens who are  
50 seeking admission to, or are present in, the United States; and

- 1  
2 (B) admission and entry data to facilitate United States entry-exit data  
3 systems;  
4  
5 (4) educate nationals of the home country regarding United States temporary  
6 worker programs to ensure that such nationals are not exploited; and  
7  
8 (5) evaluate means to provide housing incentives in the alien's home country  
9 for returning workers; and  
10  
11 (6) agree to such other terms as the Secretary of State considers appropriate  
12 and necessary.

13 **SEC. 411. COMPLIANCE INVESTIGATORS.**

14 (a) The Secretary of Labor, subject to the availability of appropriations for such  
15 purpose, shall increase, by not less than 200 per year for each of the five fiscal years  
16 after the date of enactment of [name of bill], the number of positions for compliance  
17 investigators and attorneys dedicated to the enforcement of labor standards,  
18 including those contained in sections 218A, 218B, and 218C, the Fair Labor  
19 Standards Act of 1938 (29 U.S.C. 201 et seq.) and the Occupational Safety and  
20 Health Act of 1970 (29 U.S.C. 651 et seq.) in geographic and occupational areas in  
21 which a high percentage of workers are Y nonimmigrants.

22 **SEC. 412. STANDING COMMISSION ON IMMIGRATION AND LABOR**  
23 **MARKETS.**

- 24 (a) Establishment of Commission-  
25 (1) IN GENERAL- There is established an independent Federal agency  
26 within the Executive Branch to be known as the Standing Commission  
27 on Immigration and Labor Markets (referred to in this section as the  
28 'Commission').  
29 [(2) PURPOSES- The purposes of the Commission are--  
30 (A) to study nonimmigrant programs and the numerical limits  
31 imposed by law on admission of nonimmigrants;  
32 (B) to study the numerical limits imposed by law on immigrant  
33 visas;  
34 (C) to study the allocation of immigrant visas through the  
35 merit-based system;  
36 (D) to make recommendations to the President and Congress  
37 with respect to such programs.]  
38 (3) MEMBERSHIP- The Commission shall be composed of--  
39 (A) 6 voting members--  
40 (i) who shall be appointed by the President, with the  
41 advice and consent of the Senate, not later than 6  
42 months after the establishment of the Y Nonimmigrant  
43 Worker Program;  
44 (ii) who shall serve for 3-year staggered terms, which  
45 can be extended for 1 additional 3-year term;  
46 (iii) who shall select a Chair from among the voting  
47 members to serve a 2-year term, which can be extended  
48 for 1 additional 2-year term;

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- 1 (iv) who shall have expertise in economics,  
2 demography, labor, business, or immigration or other  
3 pertinent qualifications or experience;  
4 (v) who may not be an employee of the Federal  
5 Government or of any State or local government; and  
6 (vi) not more than 3 of whom may be members of the  
7 same political party.  
8 (B) 7 ex-officio members, including--  
9 (i) the Secretary;  
10 (ii) the Secretary of State;  
11 (iii) the Attorney General;  
12 (iv) the Secretary of Labor;  
13 (v) the Secretary of Commerce;  
14 (vi) the Secretary of Health and Human Services; and  
15 (vii) the Secretary of Agriculture.  
16 (4) VACANCIES- Any vacancy in the Commission shall be filled in the  
17 same manner as the original appointment.  
18 (5) MEETINGS-  
19 (A) INITIAL MEETING- The Commission shall meet and begin  
20 carrying out the duties described in subsection (b) as soon as  
21 practicable.  
22 (B) SUBSEQUENT MEETINGS- After its initial meeting, the  
23 Commission shall meet at least once per quarter upon the call  
24 of the Chair or a majority of its members.  
25 (C) QUORUM- Four voting members of the Commission shall  
26 constitute a quorum.  
27 (b) Duties of the Commission- The Commission shall--  
28 (1) examine and analyze--  
29 (A) the development and implementation of the programs;  
30 (B) the criteria for the admission of nonimmigrant workers;  
31 (C) the formula for determining the annual numerical  
32 limitations of nonimmigrant workers;  
33 (D) the impact of nonimmigrant workers on immigration;  
34 (E) the impact of nonimmigrant workers on the economy,  
35 unemployment rate, wages, workforce, and businesses of the  
36 United States;  
37 (F) the numerical limits imposed by law on immigrant visas and  
38 its effect on the economy, unemployment rate, wages,  
39 workforce, and businesses of the United States;  
40 (G) the allocation of immigrant visas through the evaluation  
41 system established by Title V of this Act; and  
42 (F) any other matters regarding the programs that the  
43 Commission considers appropriate;  
44 (2) not later than 18 months after the date of enactment, and every  
45 year thereafter, submit a report to the President and Congress that--  
46 (A) contains the findings of the analysis conducted under  
47 paragraph (1);  
48 (B) makes recommendations regarding the necessary  
49 adjustments to the programs studied to meet the labor market  
50 needs of the United States; and



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- 1 (C) makes other recommendations regarding the programs,  
2 including legislative or administrative action, that the  
3 Commission determines to be in the national interest.
- 4 (c) Information and Assistance From Federal Agencies-
- 5 (1) INFORMATION- The head of any Federal department or agency  
6 that receives a request from the Commission for information, including  
7 suggestions, estimates, and statistics, as the Commission considers  
8 necessary to carry out the provisions of this section, shall furnish such  
9 information to the Commission, to the extent allowed by law.
- 10 (2) ASSISTANCE-
- 11 (A) GENERAL SERVICES ADMINISTRATION- The Administrator  
12 of General Services shall, on a reimbursable basis, provide the  
13 Commission with administrative support and other services for  
14 the performance of the Commission's functions.
- 15 (B) OTHER FEDERAL AGENCIES- The departments and agencies  
16 of the United States may provide the Commission with such  
17 services, funds, facilities, staff, and other support services as  
18 the heads of such departments and agencies determine  
19 advisable and authorized by law.
- 20 (d) Personnel Matters-
- 21 (1) STAFF-
- 22 (A) APPOINTMENT AND COMPENSATION- The Chair, in  
23 accordance with rules agreed upon by the Commission, may  
24 appoint and fix the compensation of a staff director and such  
25 other personnel as may be necessary to enable the Commission  
26 to carry out its functions.
- 27 (B) FEDERAL EMPLOYEES-
- 28 (i) IN GENERAL- Except as provided under clause (ii),  
29 the executive director and any personnel of the  
30 Commission who are employees shall be considered to  
31 be employees under section 2105 of title 5, United  
32 States Code, for purposes of chapters 63, 81, 83, 84,  
33 85, 87, 89, and 90 of such title.
- 34 (ii) COMMISSION MEMBERS - Clause (i) shall not apply  
35 to members of the Commission.
- 36 (2) DETAILEES- Any employee of the Federal Government may be  
37 detailed to the Commission without reimbursement from the  
38 Commission. Such detailee shall retain the rights, status, and  
39 privileges of his or her regular employment without interruption.
- 40 (3) CONSULTANT SERVICES- The Commission may procure the  
41 services of experts and consultants in accordance with section 3109 of  
42 title 5, United States Code, at rates not to exceed the daily rate paid a  
43 person occupying a position at level IV of the Executive Schedule  
44 under section 5315 of such title 5.
- 45 (e) Compensation and Travel Expenses-
- 46 (1) COMPENSATION- Each voting member of the Commission may be  
47 compensated at a rate not to exceed the daily equivalent of the annual  
48 rate of basic pay in effect for a position at level IV of the Executive  
49 Schedule under section 5315 of title 5, United States Code, for each  
50 day during which that member is engaged in the actual performance of  
51 the duties of the Commission.

- 1 (2) TRAVEL EXPENSES- Members of the Commission shall be allowed  
2 travel expenses, including per diem in lieu of subsistence, under  
3 section 5703(b) of title 5, United States Code, while away from their  
4 homes or regular places of business in the performance of services for  
5 the Commission.  
6 (f) Funding- Fees and fines deposited into the Temporary Worker Program  
7 Account under section 286(w) of the Immigration and Nationality Act, as  
8 added by section 402 of [name of the Act], may be used by the Commission  
9 to carry out its duties under this section.

10 **SEC. 412. AGENCY REPRESENTATION AND COORDINATION.**

11 Section 274A(e) (8 U.S.C. 1324a(e)) is amended--

12  
13 (1) in paragraph (2)--

14  
15 (A) in subparagraph (A), by striking the comma at the end and  
16 inserting a semicolon;

17  
18 (B) in subparagraph (B), by striking `, and' and inserting a semicolon;

19  
20 (C) in subparagraph (C), by striking `paragraph (2).' And inserting  
21 `paragraph (1); and'; and

22  
23 (D) by inserting after subparagraph (C) the following:

24  
25 `(D) United States Immigration and Customs Enforcement officials  
26 may not misrepresent to employees or employers that they are a  
27 member of any agency or organization that provides domestic violence  
28 services, enforces health and safety law, provides health care services,  
29 or any other services intended to protect life and safety.'

30 **SEC. 413. BILATERAL EFFORTS WITH MEXICO TO REDUCE MIGRATION**  
31 **PRESSURES AND COSTS.**

32 (a) Findings- Congress makes the following findings:

- 33 (1) Migration from Mexico to the United States is directly linked to the degree  
34 of economic opportunity and the standard of living in Mexico.  
35 (2) Mexico comprises a prime source of migration to the United States.  
36 (3) Remittances from Mexican citizens working in the United States reached a  
37 record high of nearly \$17,000,000,000 in 2004.  
38 (4) Migration patterns may be reduced from Mexico to the United States by  
39 addressing the degree of economic opportunity available to Mexican citizens.  
40 (5) Many Mexican assets are held extra-legally and cannot be readily used as  
41 collateral for loans.  
42 (6) A majority of Mexican businesses are small or medium size with limited  
43 access to financial capital.  
44 (7) These factors constitute a major impediment to broad-based economic  
45 growth in Mexico.  
46 (8) Approximately 20 percent of Mexico's population works in agriculture, with  
47 the majority of this population working on small farms and few on large  
48 commercial enterprises.

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1 (9) The Partnership for Prosperity is a bilateral initiative launched jointly by  
2 the President of the United States and the President of Mexico in 2001, which  
3 aims to boost the social and economic standards of Mexican citizens,  
4 particularly in regions where economic growth has lagged and emigration has  
5 increased.

6 (10) The Presidents of Mexico and the United States and the Prime Minister of  
7 Canada, at their trilateral summit on March 23, 2005, agreed to promote  
8 economic growth, competitiveness, and quality of life in the agreement on  
9 Security and Prosperity Partnership of North America.

10 (b) Sense of Congress Regarding Partnership for Prosperity- It is the sense of  
11 Congress that the United States and Mexico should accelerate the implementation of  
12 the Partnership for Prosperity to help generate economic growth and improve the  
13 standard of living in Mexico, which will lead to reduced migration, by--

14 (1) increasing access for poor and under served populations in Mexico to the  
15 financial services sector, including credit unions;

16 (2) assisting Mexican efforts to formalize its extra-legal sector, including the  
17 issuance of formal land titles, to enable Mexican citizens to use their assets to  
18 procure capital;

19 (3) facilitating Mexican efforts to establish an effective rural lending system  
20 for small- and medium-sized farmers that will--

21 (A) provide long term credit to borrowers;

22 (B) develop a viable network of regional and local intermediary lending  
23 institutions; and

24 (C) extend financing for alternative rural economic activities beyond  
25 direct agricultural production;

26 (4) expanding efforts to reduce the transaction costs of remittance flows in  
27 order to increase the pool of savings available to help finance domestic  
28 investment in Mexico;

29 (5) encouraging Mexican corporations to adopt internationally recognized  
30 corporate governance practices, including anti-corruption and transparency  
31 principles;

32 (6) enhancing Mexican efforts to strengthen governance at all levels,  
33 including efforts to improve transparency and accountability, and to eliminate  
34 corruption, which is the single biggest obstacle to development;

35 (7) assisting the Government of Mexico in implementing all provisions of the  
36 Inter-American Convention Against Corruption (ratified by Mexico on May 27,  
37 1997) and urging the Government of Mexico to participate fully in the  
38 Convention's formal implementation monitoring mechanism;

39 (8) helping the Government of Mexico to strengthen education and training  
40 opportunities throughout the country, with a particular emphasis on  
41 improving rural education; and

42 (9) encouraging the Government of Mexico to create incentives for persons  
43 who have migrated to the United States to return to Mexico.

44 (c) Sense of Congress Regarding Bilateral Partnership on Health Care- It is the sense  
45 of Congress that the Government of the United States and the Government of Mexico  
46 should enter into a partnership to examine uncompensated and burdensome health  
47 care costs incurred by the United States due to legal and illegal immigration,  
48 including--

49 (1) increasing health care access for poor and under served populations in  
50 Mexico;

- 1 (2) assisting Mexico in increasing its emergency and trauma health care  
2 facilities along the border, with emphasis on expanding prenatal care in the  
3 United States-Mexico border region;  
4 (3) facilitating the return of stable, incapacitated workers temporarily  
5 employed in the United States to Mexico in order to receive extended, long-  
6 term care in their home country; and  
7 (4) helping the Government of Mexico to establish a program with the  
8 private sector to cover the health care needs of Mexican nationals  
9 temporarily employed in the United States.  
10

11 **SEC. 414. WILLING WORKER-WILLING EMPLOYER ELECTRONIC DATABASE.**

12 (a) ELECTRONIC JOB REGISTRY LINK  
13

14 (1) The Secretary of Labor shall establish a publicly accessible Web page on  
15 the internet website of the Department of Labor that provides a single  
16 Internet link to each State workforce agency's statewide electronic registry of  
17 jobs available throughout the United States to United States workers.  
18

19 (2) The Secretary of Labor shall promulgate regulations regarding the  
20 maintenance of electronic job registry records by the employer for the  
21 purpose of audit or investigations.  
22

23 (3) The Secretary of Labor shall ensure that job opportunities advertised on a  
24 State workforce agency statewide electronic job registry established under  
25 this section are accessible –  
26

- 27 (A) by the State workforce agencies, which may further disseminate  
28 job opportunity information to interested parties; and  
29 (B) through the internet, for access by workers, employers, labor  
30 organizations and other interested parties.  
31

32 (4) The Secretary of Labor may work with private companies and nonprofit  
33 organizations in the development and operation of the job registry link and  
34 system under paragraph (1).  
35

36 (b) ELECTRONIC REGISTRY OF CERTIFIED APPLICATIONS  
37

38 (1) The Secretary of Labor shall compile, on a current basis, a registry (by  
39 employer and by occupational classification) of the approved labor  
40 certification applications filed under this program. Such registry shall include  
41 the wage rate, number of workers sought, period of intended employment,  
42 and date of need. The Secretary of Labor shall make such registry publicly  
43 available through an Internet website.  
44

45 (2) The Secretary of Labor may consult with the Secretary of Homeland  
46 Security, and others as appropriate, in the establishment of the registry  
47 described in paragraph (1) to ensure its compatibility with any system  
48 designed to track Y nonimmigrant employment that is operated and  
49 maintained by the Secretary of Homeland Security.  
50

1 (3) The Secretary of Labor shall ensure that job opportunities advertised on  
2 the electronic job registry established under this subsection are accessible by  
3 the State workforce agencies, which may further disseminate job opportunity  
4 information to other interested parties.

5 [DHS12]

6 **SEC. 415. ENUMERATION OF SOCIAL SECURITY NUMBER.**

7 The Secretary of Homeland Security, in coordination with the Commissioner of the  
8 Social Security Administration, shall implement a system to allow for the prompt  
9 enumeration of a Social Security number after the Secretary of Homeland Security  
10 has granted an alien Y nonimmigrant status.

11 **SEC. 416. CONTRACTING.**

12 Nothing in this section shall be construed to limit the authority of the Secretary of  
13 Homeland Security or Secretary of Labor to contract with or license United States  
14 entities, as provided for in regulation, to implement any provision of this title, either  
15 entirely or in part, to the extent that each Secretary in his discretion determines that  
16 such implementation is feasible, cost-effective, secure, and in the interest of the  
17 United States. However, nothing in this provision shall be construed to alter or  
18 amend any of the requirements of OMB Circular A-76 or any other current law  
19 governing federal contracting. Any inherently governmental work already performed  
20 by employees of the Department of Homeland Security or the Department of Labor,  
21 or any inherently governmental work generated by the requirements of this  
22 legislation, shall continue to be performed by federal employees, and any current  
23 commercial work, or new commercial work generated by the requirements of this  
24 legislation, that is subject to public-private competition under OMB Circular A-76 or  
25 any other relevant law shall continue to be subject to public-private competition.

26 **SEC. 417. FEDERAL RULEMAKING REQUIREMENTS.**

27 (a) The Secretaries of Labor and Homeland Security shall each issue an interim final  
28 rule within six months of the date of enactment of this subtitle to implement this title  
29 and the amendments made by this title. Each such interim final rule shall become  
30 effective immediately upon publication in the Federal Register. Each such interim  
31 final rule shall sunset two years after issuance unless the relevant Secretary issues a  
32 final rule within two years of the issuance of the interim final rule.

33 (b) The exemption provided under subsection (a) shall sunset no later than two  
34 years after the date of enactment of this title, provided that, such sunset shall not be  
35 construed to impose any requirements on, or affect the validity of, any rule issued or  
36 other action taken by either Secretary under such exemption.

37  
38  
39

40 **Subtitle C – Nonimmigrant Visa**  
41 **Reform**

42

1 **SEC. 418. STUDENT VISAS**

2  
3 (a) IN GENERAL.— Section 101(a)(15)(F) of the Immigration and  
4 Nationality Act (8 U.S.C. 1101(a)(15)(F)) is amended—

5  
6 (1) in clause (i)—

7  
8 (A) by striking "who is" and inserting, "who is--  
9 "(I) ";

10  
11 (B) by striking "consistent with section 214(l)" and  
12 inserting "consistent with section 214(m) ";

13  
14 (C) by striking the comma at the end and inserting the  
15 following: "; or

16  
17 "(II) engaged in temporary employment for optional  
18 practical training for an aggregate period of not more  
19 than 24 months and related to such alien's major  
20 area of study, where such alien has been lawfully  
21 enrolled on a full time basis as a nonimmigrant  
22 under clause (i) or (iv) at a college, university,  
23 conservatory, or seminary described in subclause  
24 (i)(I) for one full academic year and such  
25 employment occurs:

26  
27 "(aa) during the student's annual vacation and  
28 at other times when school is not in session, if  
29 the student is currently enrolled, and is eligible  
30 for registration and intends to register for the  
31 next term or session;

32  
33 "(bb) while school is in session, provided that  
34 practical training does not exceed 20 hours a  
35 week while school is in session; or

36  
37 "(cc) within a 26-month period after  
38 completion of all course requirements for the  
39 degree (excluding thesis or equivalent); "; and

40  
41 (D) by striking "Attorney General" the two times that  
42 phrase appears and inserting "Secretary of  
43 Homeland Security".

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(2) in clause (ii)—

(A) by inserting "or (iv)" after "clause (i)"; and

(B) by striking ", and" and inserting a semicolon; and

(3) by adding at the end the following:

"(iv) an alien described in clause (i), except that the alien is not required to have a residence in a foreign country that the alien has no intention of abandoning, who has been accepted at and plans to attend an accredited graduate program in mathematics, engineering, information technology, or the natural sciences in the United States for the purpose of obtaining an advanced degree; and

"(v) an alien who maintains actual residence and place of abode in the alien's country of nationality, who is described in clause (i), except that the alien's actual course of study may involve a distance learning program, for which the alien is temporarily visiting the United States for a period not to exceed 30 days; ".

**(b) OFF CAMPUS WORK AUTHORIZATION FOR FOREIGN STUDENTS-**

**(1) IN GENERAL-** An alien admitted as a nonimmigrant student described in section 101(a)(15)(F) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(F)) may be employed in an off-campus position unrelated to the alien's field of study if—

(A) the alien has enrolled full-time at the educational institution and is maintaining good academic standing;

(B) the employer provides the educational institution and the Secretary of Labor with an attestation that the employer—

(i) has spent at least 21 days recruiting United States workers to fill the position; and

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1 (ii) will pay the alien and other similarly situated  
2 workers at a rate equal to not less than the greater  
3 of—

4  
5 (I) the actual wage level for the occupation at  
6 the place of employment; or

7  
8 (II) the prevailing wage level for the  
9 occupation in the area of employment; and

10  
11 (C) the alien will not be employed more than—

12  
13 (i) 20 hours per week during the academic term; or

14  
15 (ii) 40 hours per week during vacation periods and  
16 between academic terms.

17  
18 (2) DISQUALIFICATION- If the Secretary of Labor determines that  
19 an employer has provided an attestation under paragraph (1)(B)  
20 that is materially false or has failed to pay wages in accordance  
21 with the attestation, the employer, after notice and opportunity  
22 for a hearing, may be disqualified for a period of no more than 5  
23 years from employing an alien student under paragraph (1).

24  
25 (3) SOCIAL SECURITY- Any employment engaged in by a student  
26 pursuant to paragraph (1) of this subsection shall, for purposes  
27 of section 210 of the Social Security Act (42 USC 410) and  
28 section 3121 of the Internal Revenue Code (26 USC 3121), not  
29 be considered to be for a purpose related to section  
30 101(a)(15)(F) of the Immigration and Nationality Act.

31  
32 (c) CLARIFYING THE IMMIGRANT INTENT PROVISION.— Subsection (b) of  
33 section 214 of the Immigration and Nationality Act (8 U.S.C. 1184(b))  
34 is amended—

35  
36 (1) by striking the parenthetical phrase "(other than a  
37 nonimmigrant described in subparagraph (L) or (V) of section  
38 101(a)(15), and other than a nonimmigrant described in any  
39 provision of section 101(a)(15)(H)(i) except subclause (b1) of  
40 such section) " in the first sentence; and

41  
42 (2) by striking "under section 101(a)(15)" and inserting in its  
43 place "under the immigration laws."  
44



1 (d) GRANTING DUAL INTENT TO CERTAIN NONIMMIGRANT STUDENTS.—  
2 Subsection (h) of section 214 of the Immigration and Nationality Act  
3 (8 U.S.C. 1184(h)) is amended—

4  
5 (1) by inserting "(F)(iv)," following "(H)(i)(b) or (c),"; and

6  
7 (2) by striking "if the alien had obtained a change of status" and  
8 inserting in its place "if the alien had been admitted as, provided  
9 status as, or obtained a change of status";

10  
11 **SEC. 419. H-1B STREAMLINING AND**  
12 **SIMPLIFICATION**

13  
14 (a) H-1B Amendments.- Section 214(g) of the Immigration and  
15 Nationality Act (8 U.S.C. 1184(g)) is amended-

16  
17 (1) in paragraph (1) by deleting clauses (i) through (vii) of  
18 subparagraph (A) and inserting in their place --

19  
20 "(i) 115,000 in fiscal year 2008;

21  
22 "(ii) in any subsequent fiscal year, subject to clause (iii),  
23 the number for the previous fiscal year as adjusted in  
24 accordance with the method set forth in paragraph (2);  
25 and

26  
27 "(iii) 180,000 for any fiscal year; or"

28  
29 (2) in paragraph (9), as renumbered by Section 405—

30  
31 (A) by striking "The annual numeric limitations described  
32 in clause (i) shall not exceed" from subclause (ii) of  
33 subparagraph (B) and inserting the following: "Without  
34 respect to the annual numeric limitation described in  
35 clause (i), the Secretary may issue a visa or otherwise  
36 grant nonimmigrant status pursuant to section  
37 1101(a)(15)(H)(i)(b) in the following quantities:";

38  
39 (B) by striking subparagraphs (B)(iv); and

40  
41 (C) by striking subparagraph (D).  
42

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1 (b) REQUIRING A DEGREE.— Paragraph (2) of section 214(i) of the  
2 Immigration and Nationality Act (8 U.S.C. 1184(i)) is amended-

3  
4 (1) by deleting the comma at the end of subparagraph (A) and  
5 inserting in its place “; and”; and

6  
7 (2) by striking subparagraphs (B) and (C) and inserting the  
8 following:

9  
10 “(B) attainment of a bachelor’s or higher degree in the  
11 specific specialty from an educational institution in the  
12 United States accredited by a nationally recognized  
13 accrediting agency or association (or an equivalent degree  
14 from a foreign educational institution that is equivalent to  
15 such an institution) as a minimum for entry into the  
16 occupation in the United States.”.

17  
18 (c) PROVISION OF W-2 FORMS.— Section 214(g)(5) of the Immigration  
19 and Nationality Act (8 U.S.C. 1184(g)(5)), as renumbered by Section  
20 405, is amended to read as follows:

21  
22 “(5) In the case of a nonimmigrant described in section  
23 1101(a)(15)(H)(i)(b) of this title—

24  
25 “(A) The period of authorized admission as such a nonimmigrant  
26 may not exceed six years; [Provided that, this provision shall not  
27 apply to such a nonimmigrant who has filed a petition for an  
28 immigrant visa under section 203(b)(1), if 365 days or more  
29 have elapsed since filing and it has not been denied, in which  
30 case the Secretary of Homeland Security may extend the stay of  
31 an alien in one-year increments until such time as a final  
32 decision is made on the alien's lawful permanent residence];

33  
34 “(B) If the alien is granted an initial period of admission less  
35 than six years, any subsequent application for an extension of  
36 stay for such alien must include the Form W-2 Wage and Tax  
37 Statement filed by the employer for such employee, and such  
38 other form or information relating to such employment as the  
39 Secretary of Homeland Security may in his discretion specify,  
40 with respect to such nonimmigrant alien employee for the period  
41 of admission granted to the alien.

42  
43 “(C) Notwithstanding section 6103 of title 26, United States  
44 Code, or any other law, the Commissioner of Internal Revenue

1 or the Commissioner of the Social Security Administration shall  
2 upon request of the Secretary confirm whether the Form W-2  
3 Wage and Tax Statement filed by the employer under clause (i)  
4 matches a Form W-2 Wage and Tax Statement filed with the  
5 Internal Revenue Service or the Social Security Administration,  
6 as the case may be.”  
7

8 (d) EXTENSION OF H-1B STATUS FOR MERIT-BASED ADJUSTMENT APPLICANTS.—  
9

10 (1) Section 214(g)(4) of the Immigration and Nationality Act (8  
11 U.S.C. 1184(g)(4)) is amended by inserting before the period:

12  
13 “; Provided that, this provision shall not apply to such a  
14 nonimmigrant who has filed a petition for an immigrant  
15 visa accompanied by a qualifying employer  
16 recommendation under section 203(b)(1), if 365 days or  
17 more have elapsed since filing and it has not been denied,  
18 in which case the Secretary of Homeland Security may  
19 extend the stay of an alien in one-year increments until  
20 such time as a final decision is made on the alien's lawful  
21 permanent residence.”  
22

23 (2) Sections 106(a) and 106(b) of the American Competitiveness  
24 in the Twenty-First Century Act of 2000 -- Immigration Services  
25 and Infrastructure Improvements Act of 2000, Public Law 106-  
26 313, are hereby repealed.  
27

28 **SEC. 420. H-1B EMPLOYER REQUIREMENTS**  
29

30 (a) Application of Nondisplacement and Good Faith Recruitment  
31 Requirements to All H-1B Employers-

32 (1) AMENDMENTS- Section 212(n) of the Immigration and  
33 Nationality Act (8 U.S.C. 1182(n)) is amended--

34 (A) in paragraph (1)--

35 (i) in subparagraph (E);

36 (I) in clause (i), by striking “(E)(i) In the  
37 case of an application described in clause  
38 (ii), the” and inserting “(E) The”; and

39 (II) by striking clause (ii);

40 (ii) in subparagraph (F), by striking “In the  
41 case of” and all that follows through “where--”  
42 and inserting the following: “The employer will

- 1 not place the nonimmigrant with another  
2 employer if--'; and  
3 (iii) in subparagraph (G), by striking `In the  
4 case of an application described in  
5 subparagraph (E)(ii), subject' and inserting  
6 `Subject';  
7 (B) in paragraph (2)--  
8 (i) in subparagraph (E), by striking `If an H-  
9 1B-dependent employer' and inserting `If an  
10 employer that employs H-1B nonimmigrants';  
11 and  
12 (ii) in subparagraph (F), by striking `The  
13 preceding sentence shall apply to an employer  
14 regardless of whether or not the employer is  
15 an H-1B-dependent employer.'; and  
16 (C) by striking paragraph (3).  
17 (2) EFFECTIVE DATE- The amendments made by  
18 paragraph (1) shall apply to applications filed on or after  
19 the date of the enactment of this Act.  
20 (b) Nondisplacement Requirement-  
21 (1) EXTENDING TIME PERIOD FOR NONDISPLACEMENT-  
22 Section 212(n) of such Act, as amended by subsection (a),  
23 is further amended--  
24 (A) in paragraph (1)--  
25 (i) in subparagraph (E), by striking `90 days'  
26 each place it appears and inserting `180 days';  
27 (ii) in subparagraph (F)(ii), by striking `90  
28 days' each place it appears and inserting `180  
29 days'; and  
30 (B) in paragraph (2)(C)(iii), by striking `90 days'  
31 each place it appears and inserting `180 days'.  
32 (2) EFFECTIVE DATE- The amendments made by  
33 paragraph (1)--  
34 (A) shall apply to applications filed on or after the  
35 date of the enactment of this Act; and  
36 (B) shall not apply to displacements for periods  
37 occurring more than 90 days before such date.  
38 (c) H-1B Nonimmigrants Not Admitted for Jobs Advertised or  
39 Offered Only to H-1B Nonimmigrants- Section 212(n)(1) of such  
40 Act, as amended by this section, is further amended--  
41 (1) by inserting after subparagraph (G) the following:  
42 `(H)(i) The employer has not advertised the available jobs  
43 specified in the application in an advertisement that states  
44 or indicates that--

- 1                   ` (I) the job or jobs are only available to persons who  
2                   are or who may become H-1B nonimmigrants; or  
3                   ` (II) persons who are or who may become H-1B  
4                   nonimmigrants shall receive priority or a preference  
5                   in the hiring process.  
6                   ` (ii) The employer has not only recruited persons who are,  
7                   or who may become, H-1B nonimmigrants to fill the job or  
8                   jobs.'; and  
9                   (2) in the undesignated paragraph at the end, by striking  
10                  `The employer' and inserting the following:  
11                  ` (K) The employer'.  
12                  (d) Limit on Percentage of H-1B Employees- Section 212(n)(1)  
13                  of such Act, as amended by this section, is further amended by  
14                  inserting after subparagraph (H), as added by subsection (d)(1),  
15                  the following:  
16                    ` (I) If the employer employs not less than 50 employees  
17                    in the United States, not more than 50 percent of such  
18                    employees are H-1B nonimmigrants.'

19                  **SEC. 421. H-1B GOVERNMENT AUTHORITY AND**  
20                  **REQUIREMENTS.**

- 21                  (a) Safeguards Against Fraud and Misrepresentation in  
22                  Application Review Process- Section 212(n)(1)(K) of the  
23                  Immigration and Nationality Act, as redesignated by section  
24                  2(d)(2), is amended--  
25                    (1) by inserting `and through the Department of Labor's  
26                    website, without charge.' after `D.C.';  
27                    (2) by inserting `, clear indicators of fraud,  
28                    misrepresentation of material fact,' after `completeness';  
29                    (3) by striking `or obviously inaccurate' and inserting `,  
30                    presents clear indicators of fraud or misrepresentation of  
31                    material fact, or is obviously inaccurate';  
32                    (4) by striking `within 7 days of' and inserting `not later  
33                    than 14 days after'; and  
34                    (5) by adding at the end the following: `If the Secretary's  
35                    review of an application identifies clear indicators of fraud  
36                    or misrepresentation of material fact, the Secretary may  
37                    conduct an investigation and hearing under paragraph (2).  
38                  (b) Investigations by Department of Labor- Section 212(n)(2) of  
39                  such Act is amended--  
40                    (1) in subparagraph (A)--

- 1 (A) by striking `12 months' and inserting `24  
2 months'; and  
3 (B) by striking `The Secretary shall conduct' and all  
4 that follows and inserting `Upon the receipt of such  
5 a complaint, the Secretary may initiate an  
6 investigation to determine if such a failure or  
7 misrepresentation has occurred.';
- 8 (2) in subparagraph (C)(i)--  
9 (A) by striking `a condition of paragraph (1)(B),  
10 (1)(E), or (1)(F)' and inserting `a condition under  
11 subparagraph (B), (C)(i), (E), (F), (H), (I), or (J) of  
12 paragraph (1)'; and  
13 (B) by striking `(1)(C)' and inserting `(1)(C)(ii)';
- 14 (3) in subparagraph (G)--  
15 (A) in clause (i), by striking `if the Secretary' and all  
16 that follows and inserting `with regard to the  
17 employer's compliance with the requirements of this  
18 subsection.';  
19 (B) in clause (ii), by striking `and whose identity'  
20 and all that follows through `failure or failures.' and  
21 inserting `the Secretary of Labor may conduct an  
22 investigation into the employer's compliance with the  
23 requirements of this subsection.';  
24 (C) in clause (iii), by striking the last sentence;  
25 (D) by striking clauses (iv) and (v);  
26 (E) by redesignating clauses (vi), (vii), and (viii) as  
27 clauses (iv), (v), and (vi), respectively;  
28 (F) in clause (iv), as redesignated, by striking `meet  
29 a condition described in clause (ii), unless the  
30 Secretary of Labor receives the information not later  
31 than 12 months' and inserting `comply with the  
32 requirements under this subsection, unless the  
33 Secretary of Labor receives the information not later  
34 than 24 months';  
35 (G) by amending clause (v), as redesignated, to read  
36 as follows:  
37 `(v) The Secretary of Labor shall provide notice to an employer  
38 of the intent to conduct an investigation. The notice shall be  
39 provided in such a manner, and shall contain sufficient detail, to  
40 permit the employer to respond to the allegations before an  
41 investigation is commenced. The Secretary is not required to  
42 comply with this clause if the Secretary determines that such  
43 compliance would interfere with an effort by the Secretary to  
44 investigate or secure compliance by the employer with the

1 requirements of this subsection. A determination by the  
2 Secretary under this clause shall not be subject to judicial  
3 review.'

4 (H) in clause (vi), as redesignated, by striking 'An  
5 investigation' and all that follows through 'the  
6 determination.' and inserting 'If the Secretary of  
7 Labor, after an investigation under clause (i) or (ii),  
8 determines that a reasonable basis exists to make a  
9 finding that the employer has failed to comply with  
10 the requirements under this subsection, the  
11 Secretary shall provide interested parties with notice  
12 of such determination and an opportunity for a  
13 hearing in accordance with section 556 of title 5,  
14 United States Code, not later than 120 days after the  
15 date of such determination.'; and

16 (I) by adding at the end the following:

17 '(vii) If the Secretary of Labor, after a hearing, finds a  
18 reasonable basis to believe that the employer has violated the  
19 requirements under this subsection, the Secretary may impose a  
20 penalty under subparagraph (C).'; and

21 (4) by striking subparagraph (H).

22 (c) Information Sharing Between Department of Labor and  
23 Department of Homeland Security- Section 212(n)(2) of such  
24 Act, as amended by this section, is further amended by inserting  
25 after subparagraph (G) the following:

26 '(H) The Director of United States Citizenship and  
27 Immigration Services shall provide the Secretary of Labor  
28 with any information contained in the materials submitted  
29 by H-1B employers as part of the adjudication process that  
30 indicates that the employer is not complying with H-1B  
31 visa program requirements. The Secretary may initiate and  
32 conduct an investigation and hearing under this paragraph  
33 after receiving information of noncompliance under this  
34 subparagraph.'

35 (d) Audits- Section 212(n)(2)(A) of such Act, as amended by this  
36 section, is further amended by adding at the end the following:

37 'The Secretary may conduct surveys of the degree to which  
38 employers comply with the requirements under this subsection  
39 and may conduct annual compliance audits of employers that  
40 employ H-1B nonimmigrants. The Secretary shall conduct annual  
41 compliance audits of not less than 1 percent of the employers  
42 that employ H-1B nonimmigrants during the applicable calendar  
43 year.'

1 (e) Penalties- Section 212(n)(2)(C) of such Act, as amended by  
2 this section, is further amended--

3 (1) in clause (i)(I), by striking ` \$1,000' and inserting  
4 ` \$2,000';

5 (2) in clause (ii)(I), by striking ` \$5,000' and inserting  
6 ` \$10,000'; and

7 (3) in clause (vi)(III), by striking ` \$1,000' and inserting  
8 ` \$2,000'.

9 (f) Information Provided to H-1B Nonimmigrants Upon Visa  
10 Issuance- Section 212(n) of such Act, as amended by this  
11 section, is further amended by inserting after paragraph (2) the  
12 following:

13 ` (3)(A) Upon issuing an H-1B visa to an applicant outside the  
14 United States, the issuing office shall provide the applicant with--

15 -  
16 ` (i) a brochure outlining the employer's obligations and  
17 the employee's rights under Federal law, including labor  
18 and wage protections; and

19 ` (ii) the contact information for Federal agencies that can  
20 offer more information or assistance in clarifying employer  
21 obligations and workers' rights.'.

22 ` (B) Upon the issuance of an H-1B visa to an alien inside the  
23 United States, the officer of the Department of Homeland  
24 Security shall provide the applicant with--

25 ` (i) a brochure outlining the employer's obligations and  
26 the employee's rights under Federal law, including labor  
27 and wage protections; and

28 ` (ii) the contact information for Federal agencies that can  
29 offer more information or assistance in clarifying  
30 employer's obligations and workers' rights.'.

31  
32 **SEC. 422. L-1 VISA FRAUD AND ABUSE**  
33 **PROTECTIONS**

34 (a) In General- Section 214(c)(2) of the Immigration and  
35 Nationality Act (8 U.S.C. 1184(c)(2)) is amended--

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

38 (2) in subparagraph (E), by striking ` In the case of an  
39 alien spouse admitted under section 101(a)(15)(L), who'  
40 and inserting ` Except as provided in subparagraph (H), if



1 an alien spouse admitted under section 101(a)(15)(L)';  
2 and  
3 (3) by adding at the end the following:  
4 `(G)(i) If the beneficiary of a petition under this subsection is  
5 coming to the United States to open, or be employed in, a new  
6 facility, the petition may be approved for up to 12 months only if  
7 the employer operating the new facility has--  
8 `(I) a business plan;  
9 `(II) sufficient physical premises to carry out the proposed  
10 business activities; and  
11 `(III) the financial ability to commence doing business  
12 immediately upon the approval of the petition.  
13 `(ii) An extension of the approval period under clause (i) may  
14 not be granted until the importing employer submits an  
15 application to the Secretary of Homeland Security that contains--  
16 `(I) evidence that the importing employer meets the  
17 requirements of this subsection;  
18 `(II) evidence that the beneficiary meets the requirements  
19 under section 101(a)(15)(L);  
20 `(III) a statement summarizing the original petition;  
21 `(IV) evidence that the importing employer has fully  
22 complied with the business plan submitted under clause  
23 (i)(I);  
24 `(V) evidence of the truthfulness of any representations  
25 made in connection with the filing of the original petition;  
26 `(VI) evidence that the importing employer, during the  
27 preceding 12 months, has been doing business at the new  
28 facility through regular, systematic, and continuous  
29 provision of goods or services, or has otherwise been  
30 taking commercially reasonable steps to establish the new  
31 facility as a commercial enterprise;  
32 `(VII) a statement of the duties the beneficiary has  
33 performed at the new facility during the preceding 12  
34 months and the duties the beneficiary will perform at the  
35 new facility during the extension period approved under  
36 this clause;  
37 `(VIII) a statement describing the staffing at the new  
38 facility, including the number of employees and the types  
39 of positions held by such employees;  
40 `(IX) evidence of wages paid to employees;  
41 `(X) evidence of the financial status of the new facility;  
42 and  
43 `(XI) any other evidence or data prescribed by the  
44 Secretary.

1           ` (iii) Notwithstanding subclauses (I) through (VI) of clause (ii),  
2           and subject to the maximum period of authorized admission set  
3           forth in subparagraph (D), the Secretary of Homeland Security  
4           may approve a petition subsequently filed on behalf of the  
5           beneficiary to continue employment at the facility described in  
6           this subsection for a period beyond the initially granted 12-  
7           month period if the importing employer demonstrates that the  
8           failure to satisfy any of the requirements described in those  
9           subclauses was directly caused by extraordinary circumstances  
10          beyond the control of the importing employer.

11          ` (iv) For purposes of determining the eligibility of an alien for  
12          classification under section 101(a)(15)(L), the Secretary of  
13          Homeland Security shall work cooperatively with the Secretary of  
14          State to verify a company or facility's existence in the United  
15          States and abroad.'

16          (b) Investigations and Audits by Department of Homeland  
17          Security-

18                 (1) DEPARTMENT OF HOMELAND SECURITY  
19                 INVESTIGATIONS- Section 214(c)(2) of such Act, as  
20                 amended by this section, is further amended by adding at  
21                 the end the following:

22                 ` (I)(i) The Secretary of Homeland Security may initiate an  
23                 investigation of any employer that employs nonimmigrants  
24                 described in section 101(a)(15)(L) with regard to the employer's  
25                 compliance with the requirements of this subsection.

26                 ` (ii) If the Secretary of Homeland Security receives specific  
27                 credible information from a source who is likely to have  
28                 knowledge of an employer's practices, employment conditions,  
29                 or compliance with the requirements under this subsection, the  
30                 Secretary may conduct an investigation into the employer's  
31                 compliance with the requirements of this subsection. The  
32                 Secretary may withhold the identity of the source from the  
33                 employer, and the source's identity shall not be subject to  
34                 disclosure under section 552 of title 5.

35                 ` (iii) The Secretary of Homeland Security shall establish a  
36                 procedure for any person desiring to provide to the Secretary of  
37                 Homeland Security information described in clause (ii) that may  
38                 be used, in whole or in part, as the basis for the commencement  
39                 of an investigation described in such clause, to provide the  
40                 information in writing on a form developed and provided by the  
41                 Secretary of Homeland Security and completed by or on behalf  
42                 of the person.

43                 ` (iv) No investigation described in clause (ii) (or hearing  
44                 described in clause (vi) based on such investigation) may be

1 conducted with respect to information about a failure to comply  
2 with the requirements under this subsection, unless the  
3 Secretary of Homeland Security receives the information not  
4 later than 24 months after the date of the alleged failure.

5 ` (v) Before commencing an investigation of an employer under  
6 clause (i) or (ii), the Secretary of Homeland Security shall  
7 provide notice to the employer of the intent to conduct such  
8 investigation. The notice shall be provided in such a manner, and  
9 shall contain sufficient detail, to permit the employer to respond  
10 to the allegations before an investigation is commenced. The  
11 Secretary is not required to comply with this clause if the  
12 Secretary determines that to do so would interfere with an effort  
13 by the Secretary to investigate or secure compliance by the  
14 employer with the requirements of this subsection. There shall  
15 be no judicial review of a determination by the Secretary under  
16 this clause.

17 ` (vi) If the Secretary of Homeland Security, after an  
18 investigation under clause (i) or (ii), determines that a  
19 reasonable basis exists to make a finding that the employer has  
20 failed to comply with the requirements under this subsection, the  
21 Secretary shall provide interested parties with notice of such  
22 determination and an opportunity for a hearing in accordance  
23 with section 556 of title 5, United States Code, not later than  
24 120 days after the date of such determination. If such a hearing  
25 is requested, the Secretary shall make a finding concerning the  
26 matter by not later than 120 days after the date of the hearing.

27 ` (vii) If the Secretary of Homeland Security, after a hearing,  
28 finds a reasonable basis to believe that the employer has  
29 violated the requirements under this subsection, the Secretary  
30 may impose a penalty under section 214(c)(2)(J).'

31 (2) AUDITS- Section 214(c)(2)(I) of such Act, as added by  
32 paragraph (1), is amended by adding at the end the  
33 following:

34 ` (viii) The Secretary of Homeland Security may conduct surveys  
35 of the degree to which employers comply with the requirements  
36 under this section and may conduct annual compliance audits of  
37 employers that employ H-1B nonimmigrants. The Secretary shall  
38 conduct annual compliance audits of not less than 1 percent of  
39 the employers that employ nonimmigrants described in section  
40 101(a)(15)(L) during the applicable calendar year.

41 (3) REPORTING REQUIREMENT- Section 214(c)(8) of such  
42 Act is amended by inserting `(L),' after `(H),'.

43 (c) Penalties- Section 214(c)(2) of such Act, as amended by this  
44 section, is further amended by adding at the end the following:

1           ` (J)(i) If the Secretary of Homeland Security finds,  
2 after notice and an opportunity for a hearing, a  
3 failure by an employer to meet a condition under  
4 subparagraph (F), (G), (H), (I), or (K) or a  
5 misrepresentation of material fact in a petition to  
6 employ 1 or more aliens as nonimmigrants described  
7 in section 101(a)(15)(L)--

8               ` (I) the Secretary of Homeland Security may  
9 impose such other administrative remedies  
10 (including civil monetary penalties in an  
11 amount not to exceed \$2,000 per violation) as  
12 the Secretary determines to be appropriate;  
13 and

14               ` (II) the Secretary of Homeland Security may  
15 not, during a period of at least 1 year, approve  
16 a petition for that employer to employ 1 or  
17 more aliens as such nonimmigrants.

18           ` (ii) If the Secretary of Homeland Security finds,  
19 after notice and an opportunity for a hearing, a  
20 willful failure by an employer to meet a condition  
21 under subparagraph (F), (G), (H), (I), or (K) or a  
22 misrepresentation of material fact in a petition to  
23 employ 1 or more aliens as nonimmigrants described  
24 in section 101(a)(15)(L)--

25               ` (I) the Secretary of Homeland Security may  
26 impose such other administrative remedies  
27 (including civil monetary penalties in an  
28 amount not to exceed \$10,000 per violation)  
29 as the Secretary determines to be appropriate;  
30 and

31               ` (II) the Secretary of Homeland Security may  
32 not, during a period of at least 2 years,  
33 approve a petition filed for that employer to  
34 employ 1 or more aliens as such  
35 nonimmigrants.

36           ` (iii) If the Secretary of Homeland Security finds,  
37 after notice and an opportunity for a hearing, a  
38 willful failure by an employer to meet a condition  
39 under subparagraph (L)(i)--

40               ` (I) the Secretary of Homeland Security may  
41 impose such other administrative remedies  
42 (including civil monetary penalties in an  
43 amount not to exceed \$10,000 per violation)

1 as the Secretary determines to be appropriate;  
2 and  
3 ` (II) the employer shall be liable to employees  
4 harmed for lost wages and benefits.'.  
5

6 **SEC. 423. WHISTLEBLOWER PROTECTIONS.**

7  
8 (a) H-1B Whistleblower Protections- Section 212(n)(2)(C)(iv) of  
9 the Immigration and Nationality Act (8 U.S.C. 1182(n)(2)(C)(iv))  
10 is amended--

11 (1) by inserting `take, fail to take, or threaten to take or  
12 fail to take, a personnel action, or' before `to intimidate';  
13 and

14 (2) by adding at the end the following: `An employer that  
15 violates this clause shall be liable to the employees  
16 harmed by such violation for lost compensation, including  
17 back pay.'.

18 (b) L-1 Whistleblower Protections- Section 214(c)(2) of such Act,  
19 as amended by section 4, is further amended by adding at the  
20 end the following:

21 `(L)(i) It is a violation of this subparagraph for an employer who  
22 has filed a petition to import 1 or more aliens as nonimmigrants  
23 described in section 101(a)(15)(L) to take, fail to take, or  
24 threaten to take or fail to take, a personnel action, or to  
25 intimidate, threaten, restrain, coerce, blacklist, discharge, or  
26 discriminate in any other manner against an employee because  
27 the employee--

28 `(I) has disclosed information that the employee  
29 reasonably believes evidences a violation of this  
30 subsection, or any rule or regulation pertaining to this  
31 subsection; or

32 `(II) cooperates or seeks to cooperate with the  
33 requirements of this subsection, or any rule or regulation  
34 pertaining to this subsection.

35 `(ii) An employer that violates this subparagraph shall be liable  
36 to the employees harmed by such violation for lost wages and  
37 benefits.

38 `(iii) In this subparagraph, the term `employee' includes--

39 `(I) a current employee;

40 `(II) a former employee; and

41 `(III) an applicant for employment.'.  
42

1 **SEC. 424. LIMITATIONS ON APPROVAL OF L-1**  
2 **PETITIONS FOR START-UP COMPANIES**

3 Section 214(c)(2) of the Immigration and Nationality Act (8 U.S.C.  
4 1184(c)(2)) is amended--

5 (a) by striking "Attorney General" each place it appears and inserting  
6 "Secretary of Homeland Security";

7 (b) in subparagraph (E), by striking "In the case" and inserting "Except  
8 as provided in subparagraph (H), in the case"; and

9 (c) by adding at the end the following:

10 "(G)(i) If the beneficiary of a petition under this subsection is  
11 coming to the United States to be employed in a new office, the  
12 petition may be approved for a period not to exceed 12 months  
13 only if the alien has not been the beneficiary of two or more  
14 petitions under this subparagraph within the immediately  
15 preceding two years and only if the employer operating the new  
16 office has--

17 "(I) an adequate business plan;

18 "(II) sufficient physical premises to carry out the  
19 proposed business activities; and

20 "(III) the financial ability to commence doing  
21 business immediately upon the approval of the  
22 petition.

23 "(ii) An extension of the approval period under clause (i)  
24 may not be granted until the importing employer submits  
25 to the Secretary of Homeland Security--

26 "(I) evidence that the importing employer meets the  
27 requirements of this subsection;

28 "(II) evidence that the beneficiary meets the  
29 requirements of section 101(a)(15)(L);

30 "(III) a statement summarizing the original petition;

- 1                   “(IV) evidence that the importing employer has  
2                   substantially complied with the business plan  
3                   submitted under clause (i);
- 4                   “(V) evidence of the truthfulness of any  
5                   representations made in connection with the filing of  
6                   the original petition if requested by the Secretary;
- 7                   “(VI) evidence that the importing employer, from the  
8                   date of petition approval under clause (i), has been  
9                   doing business at the new office through regular,  
10                  systematic, and continuous provision of goods or  
11                  services;
- 12                  “(VII) a statement of the duties the beneficiary has  
13                  performed at the new office during the approval  
14                  period under clause (i) and the duties the beneficiary  
15                  will perform at the new office during the extension  
16                  period approved under this clause;
- 17                  “(VIII) a statement describing the staffing at the new  
18                  office, including the number of employees and the  
19                  types of positions held by such employees;
- 20                  “(IX) evidence of wages paid to employees if the  
21                  beneficiary will be employed in a managerial or  
22                  executive capacity;
- 23                  “(X) evidence of the financial status of the new  
24                  office; and
- 25                  “(XI) any other evidence or data prescribed by the  
26                  Secretary.
- 27                  “(iii) A new office employing the beneficiary of an L-1  
28                  petition approved under this subparagraph must do  
29                  business through regular, systematic, and continuous  
30                  provision of goods or services for the entire period of  
31                  petition approval.
- 32                  “(iv) Notwithstanding clause (iii) or subclauses (I) through  
33                  (VI) of clause (ii), and subject to the maximum period of  
34                  authorized admission set forth in subparagraph (D), the  
35                  Secretary of Homeland Security may in his discretion

1 approve a subsequently filed petition on behalf of the  
2 beneficiary to continue employment at the office described  
3 in this subsection for a period beyond the initially granted  
4 12-month period if the importing employer has been doing  
5 business at the new office through regular, systematic, and  
6 continuous provision of goods or services for the 6 months  
7 immediately preceding the date of extension petition filing  
8 and demonstrates that the failure to satisfy any of the  
9 requirements described in those subclauses was directly  
10 caused by extraordinary circumstances, as determined by  
11 the Secretary in his discretion.

12 "(H)(i) The Secretary of Homeland Security may not authorize  
13 the spouse of an alien described under section 101(a)(15)(L),  
14 who is a dependent of a beneficiary under subparagraph (G), to  
15 engage in employment in the United States during the initial 12-  
16 month period described in subparagraph (G)(i).

17 "(ii) A spouse described in clause (i) may be provided  
18 employment authorization upon the approval of an  
19 extension under subparagraph (G)(ii).

20 "(I) For purposes of determining the eligibility of an alien for  
21 classification under section 101(a)(15)(L) of this Act, the  
22 Secretary of Homeland Security shall establish procedures with  
23 the Department of State to verify a company or office's existence  
24 in the United States and abroad."

25 **SEC. 425. MEDICAL SERVICES IN UNDERSERVED**  
26 **AREAS**

27 (a) PERMANENT AUTHORIZATION OF THE CONRAD PROGRAM.—

28 (1) In General.-- Section 220(c) of the Immigration and  
29 Nationality Technical Corrections Act of 1994 (8 U.S.C.  
30 1182 note) ((as amended by section 1(a) of Public Law  
31 108-441 and section 2 of Public Law 109-477)) is amended  
32 by striking `and before June 1, 2008.'.

33 (2) Effective Date.—The amendment made by paragraph  
34 (1) shall take effect as if enacted on June 1, 2007.



1 (b) PILOT PROGRAM REQUIREMENTS - Section 214(l) of the  
2 Immigration and Nationality Act (8 U.S.C. 1184(l)) is amended—

3  
4 (1) by adding at the end the following:

5  
6 “(4)(A) Notwithstanding paragraph (1)(B), the  
7 Secretary of Homeland Security may grant up to a total of  
8 50 waivers for a State under section 212(e) in a fiscal year  
9 if, after the first 30 such waivers for the State are granted  
10 in that fiscal year—

11  
12 “(i) an interested State agency requests a waiver; and

13  
14 “(ii) the requirements under subparagraph (B) are met.

15  
16 “(B) The requirements under this subparagraph are met  
17 if—

18  
19 “(i) fewer than 20 percent of the physician vacancies in  
20 the health professional shortage areas of the State, as  
21 designated by the Secretary of Health and Human  
22 Services, were filled in the most recent fiscal year;

23  
24 “(ii) all of the waivers allotted for the State under  
25 paragraph (1)(B)) were used in the most recent fiscal  
26 year; and

27  
28 “(iii) all underserved highly rural States—

29  
30 “(I) used the minimum guaranteed number of  
31 waivers under section 212(e) in health professional  
32 shortage areas in the most recent fiscal year; or

33  
34 “(II) all agreed to waive the right to receive the  
35 minimum guaranteed number of such waivers.

36  
37 “(C) In this paragraph:

38  
39 “(i) The term “health professional shortage area” has  
40 the meaning given the term in section 332(a)(1) of the  
41 Public Health Service Act (42 U.S.C. 254e(a)(1));

42  
43 “(ii) The term “underserved highly rural State” means a  
44 State with at least 30 counties with a population density of

1 not more than 10 people per square mile, based on the  
2 latest available decennial census conducted by the Bureau  
3 of Census.

4  
5 “(iii) The term “minimum guaranteed number” means –

6  
7 “(I) for the first fiscal year of the pilot program, 15;

8  
9 “(II) for each subsequent fiscal year, the sum of—

10  
11 (aa) the minimum guaranteed number for the  
12 second fiscal year; and

13 (bb) 3, if any State received additional  
14 waivers under this paragraph in the first fiscal  
15 year.

16  
17 “(III) for the third fiscal year, the sum of—

18  
19 (aa) the minimum guaranteed number for the  
20 second fiscal year; and

21 (bb) 3, if any State received additional waivers  
22 under this paragraph in the first fiscal year.

23 (c) TERMINATION DATE – The authority provided by the  
24 amendments made by subsection (b) shall expire on September  
25 30, 2011.

26 (d) Section 212(j) of the Immigration and Nationality Act (8  
27 U.S.C. 1182(j)) is amended by –

28  
29 (1) revising the preamble of paragraph (2) to read “An  
30 alien who has graduated from a medical school and who is  
31 coming to the United States to practice primary care or  
32 specialty medicine as a member of the medical profession  
33 may not be admitted as a nonimmigrant under section  
34 1101(a)(15)(H)(i)(b) of this title unless –”

35  
36 (2) redesignating paragraph (2) as paragraph (3);

37  
38 (3) adding new paragraph (2) to read—

39  
40 “(2)(A) An alien who is coming to the United States to  
41 receive graduate medical education or training (or seeks to  
42 acquire status as a nonimmigrant under section

1 1101(a)(15)(J) to receive graduate medical education or  
2 training) may not change status under section 1258 to a  
3 nonimmigrant under section 1101(a)(15)(H)(i)(b) until the  
4 alien graduates from the medical education or training  
5 program and meets the requirements of paragraph (3)(B).  
6

7 “(B) Any occupation that an alien described in paragraph  
8 (2)(A) may be employed in while receiving graduate  
9 medical education or training shall not be deemed a  
10 “specialty occupation” within the meaning of section  
11 1184(i) for purposes of section 1101(a)(15)(H)(i)(b).”  
12

13 (e) Section 101(a)(15)(J) is amended by adding “(except an  
14 alien coming to the United States to receive graduate medical  
15 education or training)” after “abandoning”.  
16

17 (f) Section 214(h) of the Immigration and Nationality Act (8  
18 U.S.C. 1184(h)) is amended by inserting “(E), (J) who is coming  
19 to the United States to receive graduate medical education or  
20 training,” after “subparagraph” where that term first appears.  
21

22 (g) MEDICAL RESIDENTS INELIGIBLE FOR H-1B NONIMMIGRANT  
23 STATUS - Section 214(i) of the Immigration and Nationality Act  
24 (8 U.S.C. 1184(i)) is amended to read -  
25

26 “(1) Except as provided in paragraph (3), for purposes of  
27 section 101(a)(15)(H)(i)(b), section 101(a)(15)(E)(iii), and  
28 paragraph (2), the term “specialty occupation” -

29 “(A) means an occupation that requires-

30 “(i) theoretical and practical application of a  
31 body of highly specialized knowledge, and

32 “(ii) attainment of a bachelor’s or higher  
33 degree in the specific specialty (or its  
34 equivalent) as a minimum for entry into the  
35 occupation in the United States; and

36 “(B) shall not include graduate medical education or  
37 training.”  
38

39 (h) Section 214(l) of the Immigration and Nationality Act (8  
40 U.S.C. 1184(l)) is amended—  
41

42 (1) in paragraph (1)(C)(i) by striking “Attorney General”  
43 and inserting “Secretary of Homeland Security”;  
44

1 (2) in paragraph(1)(C) by striking subclause (ii) and  
2 inserting the following:

3  
4 “(ii) the alien has accepted employment with the health  
5 facility or health care organization and agrees to continue  
6 to work for a total of not less than 3 years; and

7  
8 “(iii) the alien begins employment within 90 days of:

9  
10 “(I) receiving such waiver; or

11  
12 “(II) receiving nonimmigrant status or employment  
13 authorization pursuant to an application filed under  
14 paragraph (2)(A) (if such application is filed with 90  
15 days of eligibility of completing graduate medical  
16 education or training under a program approved  
17 pursuant to section 212(j)(1));

18  
19 “whichever is latest.”

20  
21 (3) by striking at the end “.”, inserting “; or” and adding  
22 new paragraph (1)(E) to read—

23  
24 “(E) in the case of a request by an interested State  
25 agency, the alien agrees to practice primary care or  
26 specialty medicine care, for a continuous period of 2  
27 years, only at a federally qualified health facility, health  
28 care organization or center, or in a rural health clinic  
29 that is located in:

30  
31 “(i) a geographic area which is designated by the  
32 Secretary of Health and Human Services as having a  
33 shortage of health care professionals; and

34  
35 “(ii) a State that utilized less than 10 of the total  
36 allotted waivers for the State under paragraph (1)(B)  
37 (excluding the number of waivers available pursuant  
38 to paragraph (1)(D)(ii)) in the most recent fiscal  
39 year.”

40  
41 (4) in paragraph (2), by amending subparagraph (A) to  
42 read as follows:

43

1                   “(A) Notwithstanding section 248(a)(2), upon  
2                   submission of a request to an interested Federal  
3                   agency or an interested State agency for  
4                   recommendation of a waiver under this section by a  
5                   physician who is maintaining valid nonimmigrant  
6                   status under section 101(a)(15)(J), the Secretary of  
7                   Homeland Security may accept as properly filed an  
8                   application to change the status of such physician to  
9                   [any applicable nonimmigrant status]. Upon  
10                  favorable recommendation by the Secretary of State  
11                  of such request, and approval by the Secretary of  
12                  Homeland Security the waiver under this section, the  
13                  Secretary of Homeland Security may change the  
14                  status of such physician to that of [an appropriate  
15                  nonimmigrant status.]”

16  
17                   (5) in paragraph (3)(A) amended by inserting  
18                   “requirement of or” before “agreement entered into”.

19  
20                   (i) PERIOD OF AUTHORIZED ADMISSION FOR PHYSICIANS ON H-  
21                   1B VISAS WHO WORK IN MEDICALLY UNDERSERVED  
22                   COMMUNITIES

23  
24                   Section 214(g)(5), as renumbered by Section 405 and amended  
25                   by Section 719(c), is further amended by adding at the end the  
26                   following new subparagraph:

27  
28                   “(D) The period of authorized admission under subparagraph (A)  
29                   shall not apply to an alien physician who fulfills the requirements  
30                   of section 214(l)(1)(E) and who has practiced primary or  
31                   specialty care in a medically underserved community for a  
32                   continuous period of 5 years.”

33                   **SEC. 426. AUTHORIZATION OF APPROPRIATIONS.**

34                   There are authorized to be appropriated such sums as may be  
35                   necessary to carry out this title, and the amendments made by this  
36                   title.

**TITLE V—IMMIGRATION BENEFITS**

**SEC. 501. REBALANCING OF IMMIGRANT VISA ALLOCATION**

(a) FAMILY-SPONSORED IMMIGRANTS- Section 201(c) of the Immigration and Nationality Act (8 U.S.C. 1151(c)) is amended to read as follows:

“(c) Worldwide Level of Family-Sponsored Immigrants-

“(1) For each fiscal year until visas needed for petitions described in section 503(f)(2) of the [Insert title of Act] become available, the worldwide level of family-sponsored immigrants under this subsection is 567,000 for petitions for classifications under 203(a), plus any immigrant visas not required for the class specified in (d).

“(2) Except as provided in paragraph (1), the worldwide level of family-sponsored immigrants under this subsection for a fiscal year is 127,000, plus any immigrant visas not required for the class specified in (d).

(b) MERIT-BASED IMMIGRANTS- Section 201(d) of the Immigration and Nationality Act (8 U.S.C. 1151(d)) is amended to read as follows:

“(d) Worldwide Level of Merit-Based, Special, and Employment Creation Immigrants-

“(1) IN GENERAL- The worldwide level of merit-based, special, and employment creation immigrants under this subsection for a fiscal year—

“(A) for the first five fiscal years shall be equal to the number of immigrant visas made available to aliens seeking immigrant visas under section 203(b) of this Act for fiscal year 2005, plus any immigrant visas not required for the class specified in (c), of which:

- (i) at least 10,000 will be for exceptional aliens in nonimmigrant status under section 101(a)(15)(Y); and
- (ii) 90,000 will be for aliens who were the beneficiaries of an application that was pending or approved at the time of the effective date of this section, per Section 502(d) of the [Insert title of Act].

1                   “(B) stating in the sixth fiscal year, shall be equal to  
2                   140,000 for each fiscal year until aliens described in  
3                   section 101(a)(15)(Z) of this Act first become eligible  
4                   for an immigrant visa, plus any immigrant visas not  
5                   required for the class specified in (c), of which:

6                   (i) at least 10,000 will be for exceptional aliens  
7                   in nonimmigrant status under section  
8                   101(a)(15)(Y); and

9                   (ii) no more than 90,000 will be for aliens who  
10                  were the beneficiaries of an application that  
11                  was pending or approved at the time of the  
12                  effective date of this section, per Section  
13                  502(d) of the [Insert title of Act].

14                  “(C)(i) 380,000, for each fiscal year starting in the  
15                  first fiscal year in which aliens described in section  
16                  101(a)(15)(Z) of this Act become eligible for an  
17                  immigrant visa, of which at least 10,000 will be for  
18                  exceptional aliens in nonimmigrant status under  
19                  section 101(a)(15)(Y), plus any immigrant visas not  
20                  required for the class specified in (c); plus

21  
22                  “(ii) the temporary supplemental allocation of  
23                  additional visas described in paragraph (2) for  
24                  nonimmigrants described in section 101(a)(15)(Z).

25  
26                  “(2) TEMPORARY SUPPLEMENTAL ALLOCATION- The  
27                  temporary supplemental allocation of visas described in  
28                  this paragraph is as follows:

29                  “(A) for the first five fiscal years in which aliens  
30                  described in section 101(a)(15)(Z) of this Act are eligible  
31                  for an immigrant visa, the number calculated pursuant to  
32                  section 503(f)(2) of the [Insert title of Act];

33                  “(B) in the sixth fiscal year in which aliens described  
34                  in section 101(a)(15)(Z) of this Act are eligible for an  
35                  immigrant visa, the number calculated pursuant to section  
36                  503(f)(3) of [Insert title of Act]; and

37                  “(C) starting in the seventh fiscal year in which  
38                  aliens described in section 101(a)(15)(Z) of this Act are  
39                  eligible for an immigrant visa,, the number equal to the  
40                  number of Z nonimmigrants who became aliens admitted  
41                  for permanent residence based on the merit-based  
42                  evaluation system in the prior fiscal year until no further Z  
43                  nonimmigrants adjust status;

1           “(3) TERMINATION OF TEMPORARY SUPPLEMENTAL  
2           ALLOCATION- The temporary supplemental allocation of  
3           visas shall terminate when the number of visas calculated  
4           pursuant to paragraph (2)(C) is zero.

5  
6           “(4) LIMITATION- The temporary supplemental visas in  
7           paragraph (2) shall not be awarded to any individual other  
8           than an individual described in section 101(a)(15)(Z).

9  
10          (c) EFFECTIVE DATE.—The amendments made by this section shall take  
11          effect on the first day of the fiscal year subsequent to the fiscal year of  
12          enactment.

13  
14          **SEC. 502. INCREASING AMERICAN COMPETITIVENESS THROUGH A MERIT-  
15          BASED EVALUATION SYSTEM FOR IMMIGRANTS**

16  
17          (a) SENSE OF CONGRESS.— It is the sense of Congress that the United  
18          States benefits from a work force that has diverse skills, experience  
19          and training.

20  
21          (b) CREATION OF MERIT-BASED EVALUATION SYSTEM FOR IMMIGRANTS AND  
22          REALLOCATION OF VISAS- Section 203(b) of the Immigration and  
23          Nationality Act (8 U.S.C. 1153(b)) is amended by—

24  
25                  (1) striking paragraphs (1), (2), and (3) and inserting the  
26                  following:

27  
28                  “(1) Merit-based Immigrants. – Visas shall first be made  
29                  available in a number not to exceed 95 percent of such  
30                  worldwide level, plus any visas not required for the classes in  
31                  paragraphs (2) and (3), to qualified immigrants selected through  
32                  a merit-based evaluation system.

33  
34                  “(A) The merit-based evaluation system shall initially  
35                  consist of the following criteria and weights:

36

Category	Description	Max pts
<b>Employment</b>		<b>47</b>
<i>Occupation</i>	U.S. employment in Specialty Occupation (DoL definition) – <b>20 pts</b> U.S. employment in High Demand Occupation (BLS largest 10-yr job growth, top 30) – <b>16 pts</b>	
<i>National interest/ critical infrastructure</i>	U.S. employment in STEM or health occupation, current for at least 1 year – <b>8 pts</b> (extraordinary or ordinary)	



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<i>Employer endorsement</i>	A U.S. employer willing to pay 50% of LPR application fee either 1) offers a job, or 2) attests for a current employee – <b>6 pts</b>	
<i>Experience</i>	Years of work for U.S. firm – <b>2 pts/year (max 10 pts)</b>	
<i>Age of worker</i>	Worker’s age: 25-39 – <b>3 pts</b>	
<b>Education</b> <i>(terminal degree)</i>	M.D., M.B.A., Graduate degree, etc. – <b>20 pts</b> Bachelor’s degree – <b>16 pts</b> Associate’s degree – <b>10 pts</b> High School diploma or GED – <b>6 pts</b> Completed certified Perkins Vocational Education program – <b>5 pts</b>  Completed DoL Registered Apprenticeship – <b>8 pts</b> STEM, assoc & above – <b>8 pts</b>	<b>28</b>
<b>English &amp; civics</b>	Native speaker of English or TOEFL score of 75 or higher – <b>15 pts</b> TOEFL score of 60-74 – <b>10 pts</b> Pass USCIS Citizenship Tests in English&Civics– <b>6 pts</b>	<b>15</b>
<b>Extended family</b> <b>(Applied if threshold of 55 in above categories.)</b>	Adult (21 or older) son or daughter of USC – <b>8 pts</b> Adult (21 or older) son or daughter of LPR – <b>6 pts</b> Sibling of USC or LPR – <b>4 pts</b> If had applied for a family visa in any of the above categories after May 1, 2005– <b>2 pts</b>	<b>10</b>
		<b>100</b>

1

<b><u>Supplemental schedule for Zs</u></b>		
<i>Agriculture National Interest</i>	Worked in agriculture for 3 years, 150 days per year – 21 pts Worked in agriculture for 4 years (150 days for 3 years, 100 days for 1 year) – 23 pts Worked in agriculture for 5 years, 100 days per year – 25 points	<b>25</b>
<i>U.S. employment exp.</i>	Year of lawful employment – 1 pt	<b>15</b>
<i>Home ownership</i>	Own place of residence – 1 pt/year owned	<b>5</b>
<i>Medical Insurance</i>	Current medical insurance for entire family	<b>5</b>

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“(B) The Secretary of Homeland Security, after consultation with the Secretaries of Commerce and Labor, shall establish procedures to adjudicate petitions filed pursuant to the merit-based evaluation system. The Secretary may establish a time period in a fiscal year in which such petitions must be submitted.

“(C) The Standing Commission on Immigration and Labor Markets established pursuant to Section 407 of the [Insert title of Act] shall submit recommendations to Congress concerning the establishment of procedures for modifying the selection criteria and relative weights accorded such criteria in order to ensure that the merit-based evaluation system corresponds to the current needs of the United States economy and the national interest.

“(D) No modifications to the selection criteria and relative weights accorded such criteria that are established by the [Insert title of Act] should take effect earlier than the sixth fiscal year in which aliens described in section 101(a)(15)(Z) of this Act are eligible for an immigrant visa.

“(E) The application of the selection criteria to any particular visa petition or application pursuant to the merit-based evaluation system shall be within the Secretary’s sole and unreviewable discretion.

“(F) Any petition filed pursuant to this paragraph that has not been found by the Secretary to have qualified in the merit-based evaluation system shall be deemed denied on the first day of the third fiscal year following the date of such application. Such denial shall not preclude the petitioner from filing a successive petition pursuant to this paragraph. Notwithstanding this paragraph, the Secretary may deny a petition when denial is appropriate under other provisions of law, including but not limited to sections 204(c).”.

(2) redesignating paragraph (4) as paragraph (2), by striking “7.1 percent” and inserting “4,200”, and striking “5,000” and inserting “2,500”;

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(3) redesignating paragraph (5) as paragraph (3), by striking "7.1 percent" and inserting "2,800", and striking "3,000" and inserting "1,500";

(4) redesignating paragraph (6) as paragraph (4).

(c) PROCEDURE FOR GRANTING IMMIGRANT STATUS.- Section 204(a)(1) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)) is amended by striking subparagraphs (E) and (F).

(d) EFFECTIVE DATE.—

(1) IN GENERAL.—Subject to paragraph (2), the amendments made by this section shall take effect on the first day of the fiscal year subsequent to the fiscal year of enactment, unless such date is less than 270 days after the date of enactment, in which case the amendments shall take effect on the first day of the following fiscal year.

(2) PENDING AND APPROVED PETITIONS AND APPLICATIONS.—Petitions for an employment-based visa filed for classification under section 203(b)(1), (2), or (3) of the Immigration and Nationality Act (as such provisions existed prior to the enactment of this section) that were filed prior to the date of the introduction of the [Insert title of Act] and were pending or approved at the time of the effective date of this section, shall be treated as if such provision remained effective and an approved petition may serve as the basis for issuance of an immigrant visa. Aliens with applications for a labor certification pursuant to section 212(a)(5)(A) of the Immigration and Nationality Act shall preserve the immigrant visa priority date accorded by the date of filing of such labor certification application.

(e) CONFORMING AMENDMENTS.—

(1) Section 201 of the Immigration and Nationality Act (8 U.S.C. 1151) is amended by striking "employment-based" each place it appears and inserting "merit-based".

(2) Section 202 of the Immigration and Nationality Act (8 U.S.C. 1152) is amended by striking "employment-based" each place it appears and inserting "merit-based".

1 (3) Section 203(b) of the Immigration and Nationality Act (8  
2 U.S.C. 1153(b)) is amended by:

3  
4 (A) striking the heading and first sentence and inserting  
5 the following:

6  
7 “(b) Preference allocation for merit-based, special and  
8 employment creation immigrants. Aliens subject to the  
9 worldwide level specified in section 201(d) for merit-based,  
10 special and employment creation immigrants in a fiscal  
11 year shall be allotted visas as follows:”;

12  
13 (B) striking “employment based” and inserting “merit-  
14 based” and striking “paragraphs (1), (2), and (3)” and  
15 inserting “paragraph (1)” in subparagraph (6)(B)(i); and

16  
17 (C) striking “employment based” and inserting “merit-  
18 based” and striking “each of paragraphs (1) through (3)”  
19 and inserting “paragraph (1)” in subparagraph (6)(B)(iii).

20  
21 (4) Section 212(a)(4) of the Immigration and Nationality Act (8  
22 U.S.C. 1182(a)(4)) is amended by striking subparagraph (D).

23  
24 (5) Section 213A(f) of the Immigration and Nationality Act (8  
25 U.S.C. 1183a(f)) is amended by:

26  
27 (A) striking subparagraph (4);

28  
29 (B) striking subparagraph (5) and inserting the following:

30  
31 “(4) Non-Petitioning Cases. Such term also includes  
32 an individual who does not meet the requirement of  
33 paragraph (1)(D) but who is a spouse, parent,  
34 mother in law, father in law, sibling, child (if at least  
35 18 years of age), son, daughter, son in law,  
36 daughter in law, sister in law, brother in law,  
37 grandparent, or grandchild of a sponsored alien or a  
38 legal guardian of a sponsored alien, meets the  
39 requirements of paragraph (1) (other than  
40 subparagraph (D)), and executes an affidavit of  
41 support with respect to such alien in a case in  
42 which—  
43

1 (A) the individual petitioning under section 204  
2 for the classification of such alien died after the  
3 approval of such petition; and  
4

5 (B) the Secretary of Homeland Security has  
6 determined for humanitarian reasons that  
7 revocation of such petition under section 205  
8 would be inappropriate.”;  
9

10 (C) redesignating subparagraph (6) as subparagraph (5);

11 and

12  
13 (D) striking “(6)” and inserting “(5)” in subparagraph

14 (1)(E).

15  
16 (6) Section 212(a) of the Immigration and Nationality Act (8  
17 U.S.C. 1182(a)) is amended by striking paragraph (5).  
18

19 (7) Section 218(g)(3) of the Immigration and Nationality Act (8  
20 U.S.C. 1188) is amended by striking paragraph (3) and  
21 redesignating paragraph (4) as paragraph (3).  
22

23 (8)(A) Section 207(c)(3) of the Immigration and Nationality Act  
24 (8 U.S.C. 1157(c)(3)) is amended by striking “(5),” in the first  
25 sentence.  
26

27 (B) Section 209(c) of the Immigration and Nationality Act  
28 (8 U.S.C. 1159(c)) is amended by striking “(5),” in the  
29 second sentence  
30

31 (C) Section 210(c)(2)(A) of the Immigration and  
32 Nationality Act (8 U.S.C. 1160(c)(2)(A)) is amended by  
33 striking “paragraphs (5) and,” and inserting “paragraph”  
34

35 (D) Section 237(a)(1)(H)(i)(II) of the Immigration and  
36 Nationality Act (8 U.S.C. 1227(a)(1)(H)(i)(II)) is amended  
37 by striking “paragraphs (5) and,” and inserting  
38 “paragraph”  
39

40 (E) Section 245(h)(2)(A) of the Immigration and  
41 Nationality Act (8 U.S.C. 1255(h)(2)(A)) is amended by  
42 striking “(5)(a), ”  
43

1 (F) Section 245A(d)(2)(A) of the Immigration and  
2 Nationality Act (8 U.S.C. 1255a(d)(2)(A)) is amended by  
3 striking "paragraphs (5) and," and inserting "paragraph"  
4

5 (H) Section 286(s)(6) of the Immigration and Nationality  
6 Act (8 U.S.C. 1356(s)(6) is amended by striking "and  
7 section 212(a)(5)(A)"  
8

9 (f) REFERENCES TO SECRETARY OF HOMELAND SECURITY.—  
10

11 (1) Section 203 of the Immigration and Nationality Act (8 U.S.C.  
12 1153) is amended by striking "Attorney General" each place it  
13 appears and inserting "Secretary of Homeland Security".  
14

15 (2) Section 204 of the Immigration and Nationality Act (8 U.S.C.  
16 1154) is amended by striking "Attorney General" each place it  
17 appears, except for section 204(f)(4)(B), and inserting  
18 "Secretary of Homeland Security".  
19

20 **SEC. 503. REDUCING CHAIN MIGRATION AND PERMITTING PETITIONS BY**  
21 **NATIONALS**  
22

23 (a) CAP EXEMPT CATEGORIES.—Paragraph (1) of section 201(b) of the  
24 Immigration and Nationality Act (8 U.S.C. 1151(b)) is amended by  
25 adding the following two new subparagraphs at the end:  
26

27 "(F) Aliens admitted under section 211(a) on the basis of a prior  
28 issuance of a visa under section 203(a) to their accompanying  
29 parent who is an immediate relative.  
30

31 "(G) Aliens born to an alien lawfully admitted for permanent  
32 residence during a temporary visit abroad."  
33

34 (b) IMMEDIATE RELATIVES.—  
35

36 (1) Immediate Relative Redefined.--Paragraph (2) of section  
37 201(b) of the Immigration and Nationality Act (8 U.S.C.  
38 1151(b)) is amended to read as follows:  
39

40 "(2) Immediate Relatives.—  
41

42 "(A) In General.--For purposes of this subsection, the term  
43 'immediate relative' means a child or spouse of a citizen of

1 the United States (and each child of such child or spouse  
2 who is accompanying or following to join the alien).  
3

4 “(B) Spouse of a Deceased U.S. Citizen.--An alien who was  
5 the spouse of a citizen of the United States and not legally  
6 separated from the citizen at the time of the citizen's  
7 death, who was married to the citizen for not less than 2  
8 years at the time of the citizen's death (or, if married for  
9 less than 2 years at the time of the citizen's death, who  
10 proves by a preponderance of the evidence that the  
11 marriage was entered into in good faith and not solely for  
12 the purpose of obtaining an immigration benefit) , and  
13 each child of such alien, may be considered, for purposes  
14 of this subsection, to remain an immediate relative after  
15 the date of the citizen's death if the spouse files a petition  
16 under section 204(a)(1)(A)(ii) before the earlier of—  
17

18 “(i) 2 years after such date; or  
19

20 “(ii) the date on which the spouse remarries.  
21

22 “(C) Battered Spouse or Child.--An alien who has filed a  
23 petition under clause (iii) or (iv) of section 204(a)(1)(A)  
24 remains an immediate relative if the United States citizen  
25 spouse or parent loses United States citizenship on account  
26 of the abuse.  
27

28 (2) Petition- Section 204(a)(1)(A)(ii) of the Immigration and  
29 Nationality Act (8 U.S.C. 1154(a)(1)(A)(ii)) is amended by  
30 striking “in the second sentence of section 201(b)(2)(A)(i)” and  
31 inserting “in section 201(b)(2)(B)”.  
32

33 (c) PREFERENCE CATEGORIES.— Section 203(a) of the Immigration and  
34 Nationality Act (8 U.S.C. 1153(a)) is amended:  
35

36 (1) By striking paragraph (1) and inserting the following:  
37

38 “(1) Parents of a citizen of the United States if the citizen  
39 is at least 21 years of age. Qualified immigrants who are  
40 the parents of a citizen of the United States where the  
41 citizen is at least 21 years of age shall be allocated visas in  
42 a number not to exceed 40,000, plus any visas not  
43 required for the classes specified in paragraph (3), or”.

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(2) By striking paragraph (2) and inserting the following:

“(2) Spouses or children of an alien lawfully admitted for permanent residence or a national. Qualified immigrants who are the spouses or children of an alien lawfully admitted for permanent residence or a noncitizen national of the United States as defined in section 101(a)(22)(B) of this Act who is resident in the United States shall be allocated visas in a number not to exceed 87,000, plus any visas not required for the class specified in paragraph (1)”

(3) By striking paragraph (3) and inserting the following:

“(3) Family-sponsored immigrants who are beneficiaries of family-based visa petitions filed before May 1, 2005. Immigrant visas totaling 440,000 shall be allotted visas as follows:

“(A) Qualified immigrants who are the unmarried sons or daughters of citizens of the United States shall be allocated visas totaling 70,400 immigrant visas, plus any visas not required for the class specified in (D).

“(B) Qualified immigrants who are the unmarried sons or unmarried daughters of an alien lawfully admitted for permanent residence, shall be allocated visas totaling 110,000 immigrant visas, plus any visas not required for the class specified in (A).

“(C) Qualified immigrants who are the married sons or married daughters of citizens of the United States shall be allocated visas totaling 70,400 immigrant visas, plus any visas not required for the class specified in (A) and (B).

“(D) Qualified immigrants who are the brothers or sisters of citizens of the United States, if such citizens are at least 21 years of age, shall be allocated visas totaling 189,200 immigrant visas, plus any visas not required for the class specified in (A), (B), and (C).”



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1 (4) By striking paragraph (4).  
2

3 (d) PETITION.— Section 204(a)(1)(A)(i) of the Immigration and  
4 Nationality Act (8 U.S.C. 1154(a)(1)(A)(i)) is amended by striking “,  
5 (3), or (4)” after “paragraph (1)”.

6  
7 (e) EFFECTIVE DATE.—  
8

9 (1) IN GENERAL.— The amendments made by this section shall  
10 take effect on the first day of the fiscal year subsequent to the  
11 fiscal year of enactment.  
12

13 (2) PENDING AND APPROVED PETITIONS.—Petitions for a family-  
14 sponsored visa filed for classification under section 203(a)(1),  
15 (2)(B), (3), or (4) of the Immigration and Nationality Act (as  
16 such provisions existed prior to the enactment of this section)  
17 which were filed before May 1, 2005, regardless of whether the  
18 petitions have been approved before May 1, 2005, shall be  
19 treated as if such provision remained in effect, and an approved  
20 petition may be the basis of an immigrant visa pursuant to  
21 section 203(a)(3).  
22

23 (f) DETERMINATIONS OF NUMBER OF INTENDING LAWFUL PERMANENT RESIDENTS  
24

25 (1) SURVEY OF PENDING AND APPROVED FAMILY-BASED PETITIONS.—The  
26 Secretary of Homeland Security may require a submission from  
27 petitioners with approved or pending family-based petitions filed  
28 for classification under section 203(a)(1), (2)(B), (3), or (4) of  
29 the Immigration and Nationality Act (as such provisions existed  
30 prior to the enactment of this section) filed on or before May 1,  
31 2005 to determine that the petitioner and the beneficiary have a  
32 continuing commitment to the petition for the alien relative  
33 under the classification. In the event the Secretary requires a  
34 submission pursuant to this section, the Secretary shall take  
35 reasonable steps to provide notice of such a requirement. In the  
36 event that the petitioner or beneficiary is no longer committed to  
37 the beneficiary obtaining an immigrant visa under this  
38 classification or if the petitioner does not respond to the request  
39 for a submission, the Secretary of Homeland Security may deny  
40 the petition if the petition has not been adjudicated or revoke  
41 the petition without additional notice pursuant to section 205 if it  
42 has been approved.  
43

1 (2) FIRST SURVEY OF Z NONIMMIGRANTS INTENDING TO ADJUST STATUS.—  
2 The Secretary shall establish procedures by which  
3 nonimmigrants described in section 101(a)(15)(Z) who seek to  
4 become aliens lawfully admitted for permanent residence under  
5 the merit-based immigrant system shall establish their eligibility,  
6 pay any applicable fees and penalties, and file their petitions.  
7 No later than the conclusion of the eighth fiscal year after the  
8 effective date of section 218D of the Immigration and Nationality  
9 Act, the Secretary will determine the total number of qualified  
10 applicants who have followed the procedures set forth in this  
11 section. The number calculated pursuant to this paragraph shall  
12 be 20 percent of the total number of qualified applicants. The  
13 Secretary will calculate the number of visas needed per year.  
14

15 (3) SECOND SURVEY OF Z NONIMMIGRANTS INTENDING TO ADJUST  
16 STATUS.—No later than the conclusion of the thirteenth fiscal year  
17 after the effective date of section 218D of the Immigration and  
18 Nationality Act, the Secretary will determine the total number of  
19 qualified applicants not described in paragraph (2) who have  
20 followed the procedures set forth in this section. The number  
21 calculated pursuant to this paragraph shall be the lesser of:  
22 (A) the number of qualified applicants, as determined by  
23 the Secretary pursuant to this paragraph; and  
24 (B) the number calculated pursuant to paragraph (2).  
25

26 (g) CONFORMING AMENDMENTS.—  
27

28 (1) Section 212(d)(12)(B) of the Immigration and Nationality Act  
29 (8 U.S.C. 1182(d)(12)(B)) is amended by striking “201(b)(2)(A)”  
30 and inserting “201(b)(2)”;  
31

32 (2) Section 101(a)(15)(K) of the Immigration and Nationality Act  
33 (8 U.S.C. 1101(a)(15)(K)) is amended by striking  
34 “201(b)(2)(A)(i)” and inserting “201(b)(2)”;  
35

36 (3) Section 204(a) of the Immigration and Nationality Act (8  
37 U.S.C. 1154(a)) is amended by striking “201(b)(2)(A)(i)” each  
38 place it appears and inserting “201(b)(2)”;  
39

40 (4) Section 214(r)(3)(A) of the Immigration and Nationality Act  
41 (8 U.S.C. 1184(r)(3)(A)) is amended by striking  
42 “201(b)(2)(A)(i)” and inserting “201(b)(2)”;  
43

1 **SEC. 504. CREATION OF PROCESS FOR IMMIGRATION OF FAMILY MEMBERS**  
2 **IN HARDSHIP CASES.**

3  
4 (a) In General- The Immigration and Nationality Act (8 U.S.C. 1101 et  
5 seq.) is amended by adding a new section 203A reading:

6  
7 "SEC. 203A--. IMMIGRANT VISAS FOR HARDSHIP CASES.

8  
9 "(a) In general. Immigrant visas under this section may not  
10 exceed 5,000per fiscal year.

11  
12 "(b) Determination of eligibility. The Secretary of Homeland  
13 Security may grant an immigrant visa to an applicant who  
14 satisfies the following qualifications:

15  
16 "(1) Family relationship. Visas under this section will be  
17 given to aliens who are:

18  
19 "(A) the unmarried sons or daughters of citizens of  
20 the United States;

21  
22 "(B) the unmarried sons or the unmarried daughters  
23 of aliens lawfully admitted for permanent residence;

24  
25 "(C) the married sons or married daughters of  
26 citizens of the United States; or

27  
28 "(D) the brothers or sisters of citizens of the United  
29 States, if such citizens are at least 21 years of age,

30  
31 "(2) Necessary hardship. The petitioner must demonstrate  
32 to the satisfaction of the Secretary of Homeland Security  
33 that the lack of an immigrant visa under this clause would  
34 result in extreme hardship to the petitioner or the  
35 beneficiary that cannot be relieved by temporary visits as  
36 a nonimmigrant.

37  
38 "(3) Ineligibility to immigrate through other means. The  
39 alien described in clause (1) must be ineligible to  
40 immigrate or adjust status through other means, including  
41 but not limited to obtaining an immigrant visa filed for  
42 classification under section 201(b)(2)(A) or section 203(a)  
43 or (b) of this Act, and obtaining cancellation of removal  
44 under section 240A(b) of this Act. A determination under

1 this section that an alien is eligible to immigrate through  
2 other means does not foreclose or restrict any later  
3 determination on the question of eligibility by the  
4 Secretary of Homeland Security or the Attorney General.  
5

6 “(c) Processing of applications.  
7

8 “(1) An alien selected for an immigrant visa pursuant to  
9 this section shall remain eligible to receive such visa only if  
10 the alien files an application for an immigrant visa or an  
11 application for adjustment of status within the fiscal year  
12 in which the visa becomes available, or at such reasonable  
13 time as the Secretary may specify after the end of the  
14 fiscal year for petitions approved in the last quarter of the  
15 fiscal year.  
16

17 “(2) All petitions for an immigrant visa under this section  
18 shall automatically terminate if not granted within the  
19 fiscal year in which they were filed . The Secretary may in  
20 his discretion establish such reasonable application period  
21 or other procedures for filing petitions as he may deem  
22 necessary in order to ensure their orderly processing  
23 within the fiscal year of filing.  
24

25 “(3) The secretary may reserve up to 2,500of the  
26 immigrant visas under this section for approval in the  
27 period between March 31 and September 30 of a fiscal  
28 year.  
29

30 “(d) Decisions whether an alien qualifies for an immigrant visa  
31 under this section are in the unreviewable discretion of the  
32 Secretary.”  
33

34 **SEC. 505. ELIMINATION OF DIVERSITY VISA PROGRAM**  
35

36 (a) Section 201 of the Immigration and Nationality Act (8 U.S.C. 1151)  
37 is amended—  
38

39 (1) in subsection (a)—  
40

41 (A) by inserting “and” at the end of paragraph (1);  
42

43 (B) by striking “; and” at the end of paragraph (2) and  
44 inserting a period; and

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(C) by striking paragraph (3); and

(2) by striking subsection (e).

(b) Section 203 of the Immigration and Nationality Act (8 U.S.C. 1153) is amended—

(1) by striking subsection (c);

(2) in subsection (d), by striking “(a), (b), or (c),” and inserting “(a) or (b),”;

(3) in subsection (e), by striking paragraph (2) and redesignating paragraph (3) as paragraph (2);

(4) in subsection (f), by striking “(a), (b), or (c)” and inserting “(a) or (b)”;

(5) in subsection (g), by striking “(a), (b), and (c)” and inserting “(a) and (b)”.

(c) Section 204 of the Immigration and Nationality Act (8 U.S.C. 1154) is amended—

(1) by striking subsection (a)(1)(I);

(2) by redesignating subparagraphs (J), (K), and (L) of subsection (a)(1) as subparagraphs (I), (J), and (K), respectively; and

(3) in subsection (e), by striking “(a), (b), or (c)” and inserting “(a) or (b)”.

(d) REPEAL OF TEMPORARY REDUCTION IN VISAS FOR OTHER WORKERS.- Section 203(e) of the Nicaraguan Adjustment and Central American Relief Act, as amended (Public Law 105-100; 8 U.S.C. 1153 note), is repealed.

(e) EFFECTIVE DATE.—

(1) The amendments made by this section shall take effect on October 1, 2008;

1 (2) No alien may receive lawful permanent resident status based  
2 on the diversity visa program on or after the effective date of  
3 this section.  
4

5 (g) CONFORMING AMENDMENTS.— Section 203 of the Immigration and  
6 Nationality Act (8 U.S.C. 1153(a)) is amended by redesignating  
7 paragraphs (d), (e), (f), (g), and (h) as paragraphs (c), (d), (e), (f),  
8 and (g), respectively.  
9

10 **SEC. 506. FAMILY VISITOR VISAS.**

11  
12 (a) Section 101(a)(15)(B) of the Immigration and Nationality Act (8  
13 U.S.C. 1101(a)(15)(B)) is amended to read as follows:  
14

15 `` (B) an alien (other than one coming for the purpose of study  
16 or of performing skilled or unskilled labor or as a representative  
17 of foreign press, radio, film, or other foreign information media  
18 coming to engage in such vocation) having a residence in a  
19 foreign country which he or she has no intention of abandoning  
20 and who is visiting the United States temporarily for business or  
21 temporarily for pleasure. The requirement that the alien have a  
22 residence in a foreign country which the alien has no intention of  
23 abandoning shall not apply to an alien described in section  
24 214(s) who is seeking to enter as a temporary visitor for  
25 pleasure;”.  
26

27 (b) Section 214 of the Immigration and Nationality Act (8 U.S.C. 1184)  
28 is amended by adding at the end the following new subsection:  
29

30 `` (s) Parent Visitor Visas

31  
32 `` (1) In General.--The parent of a United States citizen at least 21  
33 years of age, or the spouse or child of an alien in nonimmigrant status  
34 under 101(a)(15)(Y)(i), demonstrating satisfaction of the requirements  
35 of this subsection may be granted a nonimmigrant visa under section  
36 101(a)(15)(B) as a temporary visitor for pleasure.  
37

38 `` (2) Requirements.—An alien seeking a nonimmigrant visa under this  
39 subsection must demonstrate through presentation of such  
40 documentation as the Secretary may by regulations prescribe, that—  
41

42 `` (A) the alien’s United States citizen son or daughter who is at  
43 least 21 years of age or the alien’s spouse or parent in

1 nonimmigrant status under 101(a)(15)(Y)(i), is sponsoring the  
2 alien's visit to the United States;

3  
4 `` (B) the sponsoring United States citizen, or spouse or parent  
5 in nonimmigrant status under 101(a)(15)(Y)(i), has, according  
6 to such procedures as the Secretary may by regulations  
7 prescribe, posted on behalf of the alien a bond in the amount of  
8 \$1,000, which shall be forfeit if the alien overstays the  
9 authorized period of admission (except as provided in  
10 subparagraph (5)(B)) or otherwise violates the terms and  
11 conditions of his or her nonimmigrant status; and

12  
13 `` (C) the alien, the sponsoring United States citizen son or  
14 daughter, or the spouse or parent in nonimmigrant status under  
15 101(a)(15)(Y)(i), possesses the ability and financial means to  
16 return the alien to his or her country of residence.

17  
18 `` (3) Terms and Conditions.—An alien admitted as a visitor for  
19 pleasure under the provisions of this subsection—

20  
21 `` (A) may not stay in the United States for an aggregate period  
22 in excess of 30 days within any calendar year.

23  
24 `` (B) must, according to such procedures as the Secretary may  
25 by regulations prescribe, register with the Secretary upon  
26 departure from the United States; and

27  
28 `` (C) may not be issued employment authorization by the  
29 Secretary or be employed.

30  
31 `` (4) Certification.—

32  
33 `` (A) Report.—No later than January 1 of each year, the  
34 Secretary of Homeland Security shall submit a written report to  
35 Congress estimating the percentage of aliens admitted to the  
36 United States during the preceding fiscal year as visitors for  
37 pleasure under the terms and conditions of this subsection who  
38 have remained in the United States beyond their authorized  
39 period of admission (except as provided in subparagraph  
40 (5)(B)). When preparing this report, the Secretary shall  
41 determine which countries, if any, have a disproportionately high  
42 rate of nationals overstaying their period of authorized admission  
43 under this subsection.

44

1       `` (B) Termination of Eligibility of Nationals of Certain  
2 Countries.— Except as provided in subparagraph (C), if the  
3 Secretary reports under subparagraph (A) for two consecutive  
4 fiscal years that the percentage of aliens overstaying their period  
5 of authorized admission exceeds 7%, the Secretary may, in his  
6 discretion, determine that no more visas under this section may  
7 be issued for those countries whose nationals have a  
8 disproportionately high rate of aliens overstaying their period of  
9 authorized admission under this subsection.

10  
11       `` (C) Termination of the Program.— Notwithstanding  
12 subparagraph (B), if the Secretary reports under subparagraph  
13 (A) for two consecutive fiscal years that the percentage of aliens  
14 overstaying their period of authorized admission under this  
15 subsection exceeds 7% and the percentage is not significantly  
16 affected by countries whose nationals have a disproportionately  
17 high rate of aliens overstaying their period of authorized  
18 admission, the Secretary may, in his discretion, determine that  
19 no more visas may be issued under this subsection as of the  
20 date of the second consecutive report described in subparagraph  
21 (A) finding an overstay rate in excess of 7%

22  
23       `` (D) Effect on Existing Visas.—In the event the Secretary  
24 determines to that no more visas shall be issued under  
25 subparagraphs (B) or (C), all visas previously issued under this  
26 subsection and still valid on the date that the Secretary  
27 determines that no more visas should be issued shall expire on  
28 the visa's date of expiration or 12 months after the date of the  
29 determination, whichever is soonest.

30  
31       `` (5) Permanent Bars for Overstays.—

32  
33       “(A) In General.--Any alien admitted as a visitor for pleasure  
34 under the terms and conditions of this subsection who remains in  
35 the United States beyond his or her authorized period of  
36 admission is permanently barred from any future immigration  
37 benefits under the immigration laws, except—

38  
39               “(i) asylum under section 208(a);

40  
41               “(ii) withholding of removal under section 241(b)(3); or  
42



1                   “(iii) protection under the Convention Against Torture and  
2                   Other Cruel, Inhuman or Degrading Treatment or  
3                   Punishment, done at New York December 10, 1984.

4  
5                   “(B) Exception.—Overstay of the authorized period of admission  
6                   granted to aliens admitted as visitors for pleasure under the  
7                   terms and conditions of this subsection may be excused in the  
8                   discretion of the Secretary where it is demonstrated that:

9  
10                   “(i) the period of overstay was due to extraordinary  
11                   circumstances beyond the control of the applicant, and the  
12                   Secretary finds the period commensurate with the  
13                   circumstances; and

14  
15                   “(ii) the alien has not otherwise violated his or her  
16                   nonimmigrant status.

17  
18                   “(6) Bar on Sponsor of Overstay.—The United States citizen or Y-1  
19                   nonimmigrant sponsor of an alien—

20  
21                   “(A) admitted as a visitor for pleasure under the terms and  
22                   conditions of this subsection, and

23  
24                   “(B) who remains in the United States beyond his or her  
25                   authorized period of admission,

26  
27 shall be permanently barred from sponsoring that alien or any other  
28 alien for admission as a visitor for pleasure under the terms and  
29 conditions of this subsection, and, in the case of a Y-1 nonimmigrant  
30 sponsor, shall have his Y-1 nonimmigrant status terminated.

31  
32                   “(7) Construction.—Nothing in this subsection shall be construed,  
33                   except as provided in this subsection, to make inapplicable the  
34                   requirements for admissibility and eligibility, as well as the terms and  
35                   conditions of admission, as a nonimmigrant under section  
36                   101(a)(15)(B).”.

37  
38                   **SEC. 507. PREVENTION OF VISA FRAUD**

39  
40                   (a) Section 204 of the Immigration and Nationality Act (8 U.S.C. 1154)  
41                   is amended by adding a paragraph at the end:

42  
43                   “(h) Fraud Prevention. – The Secretary of Homeland Security  
44                   may audit and evaluate the information furnished as part of the

1 applications filed under subsection (a) and refer evidence of  
2 fraud to appropriate law enforcement agencies based on the  
3 audit information.”  
4

5 (b) Sections 286(v)(2)(B) and (C) of the Immigration and Nationality  
6 Act (8 U.S.C. 1356(v)(2)(B), (C)) are amended to read as follows:  
7

8 “(B) Secretary of Homeland Security -- One-third of the  
9 amounts deposited into the Fraud Prevention and Detection  
10 Account shall remain available to the Secretary of Homeland  
11 Security until expended for programs and activities to prevent  
12 and detect immigration benefit fraud, including but not limited  
13 to fraud with respect to petitions under paragraph (1) or (2)(A)  
14 of section 214(c) to grant an alien nonimmigrant status  
15 described in subparagraph (H)(i), (H)(ii), or (L) of section  
16 101(a)(15).  
17

18 “(C) Secretary of Labor - One third of the amounts deposited  
19 into the Fraud Prevention and Detection Account shall remain  
20 available to the Secretary of Labor until expended for  
21 enforcement programs and activities described in section 212(n),  
22 and for enforcement programs, and fraud detection and  
23 prevention activities not otherwise authorized under 212(n), to  
24 be conducted by the Secretary of Labor that focus on industries  
25 likely to employ nonimmigrants.”  
26

27 **SEC. 508. INCREASING PER-COUNTRY LIMITS FOR FAMILY-BASED AND**  
28 **EMPLOYMENT-BASED IMMIGRANTS**  
29

30 (a) Section 202(a) of the Immigration and Nationality Act (8 U.S.C.  
31 1152(a) is amended by amending paragraph (2) to read as follows:  
32

33 “(2) Per country levels for family-sponsored and merit-based  
34 immigrants. – Subject to paragraphs (3), (4), (5), (6), and (7),  
35 the total number of immigrant visas made available to natives of  
36 any single foreign state or dependent area under subsections (a)  
37 and (b) of section 203 in any fiscal year may not exceed 10  
38 percent (in the case of a single foreign state) or 3 percent (in the  
39 case of a dependent area) of the total number of such visas  
40 made available under such subsections in that fiscal year;  
41

42 (b) Section 202(a) of the Immigration and Nationality Act (8 U.S.C.  
43 1152(a) is amended by adding at the end the following:

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14

“(6) Rules for certain family-based petition filed before May 1, 2005.— In the event that the per country levels in paragraph (2) prevent the use of otherwise available visas described in section 201(c)(1)(B), then the per country level will not apply for such visas.

“(7) Exception for Z nonimmigrants.— Paragraph (2) shall not apply to aliens who are nonimmigrants described in section 101(a)(15)(Z) of this Act who are eligible to seek lawful permanent resident status based on a petition for classification under section 203(b)(1) of this Act.”.

1 **TITLE VI—NONIMMIGRANTS IN THE UNITED STATES**  
2 **PREVIOUSLY IN UNLAWFUL STATUS**

3 **SEC. 601.**

4 (a) In General- Notwithstanding any other provision of law,  
5 (including section 244(h) of the Immigration and Nationality Act  
6 (hereinafter “the Act”) (8 U.S.C. 1254a(h)), the Secretary may  
7 permit an alien, or dependent of such alien, described in this  
8 section, to remain lawfully in the United States under the  
9 conditions set forth in this Title.

10  
11 (b) Definition of Z nonimmigrants- Section 101(a)(15) of the Act  
12 (8 U.S.C. 1101(a)(15)) is amended by inserting at the end the  
13 following new subparagraph-

14  
15 “(Z) subject to Title VI of the [Insert title of Act], an alien  
16 who—

17  
18 “(i) is physically present in the United States, has  
19 maintained continuous physical presence in the United  
20 States since January 1, 2007, is employed, and seeks to  
21 continue performing labor, services or education; or

22  
23 “(ii) is physically present in the United States, has  
24 maintained continuous physical presence in the United  
25 States since January 1, 2007, and

26  
27 “(I) is the spouse or parent (65 years of age or older) of  
28 an alien described in (i); or

29  
30 “(II) was, within two years of the date on which [NAME  
31 OF THIS ACT] was introduced, the spouse of an alien  
32 who was subsequently classified as a Z nonimmigrant  
33 under this section, or is eligible for such classification,  
34 if—

35  
36 “(aa) the termination of the relationship with such  
37 spouse was connected to domestic violence; and

38  
39 “(bb) the spouse has been battered or subjected to  
40 extreme cruelty by the spouse or parent who is a Z  
41 nonimmigrant.

1  
2           “(iii) is under 18 years of age at the time of application for  
3 nonimmigrant status under this subparagraph, is physically  
4 present in the United States, has maintained continuous  
5 physical presence in the United States since January 1,  
6 2007, and was born to or legally adopted by at least one  
7 parent who is at the time of application described in (i) or  
8 (ii).”  
9

10           (c) Presence in the United States-

11  
12           (1) IN GENERAL- The alien shall establish that the alien  
13 was not present in lawful status in the United States on  
14 January 1, 2007, under any classification described in  
15 section 101(a)(15) of the Act (8 U.S.C. 1101(a)(15)) or  
16 any other immigration status made available under a  
17 treaty or other multinational agreement that has been  
18 ratified by the Senate.  
19

20           (2) CONTINUOUS PRESENCE- For purposes of this section,  
21 an absence from the United States without authorization  
22 for a continuous period of 90 days or more than 180 days  
23 in the aggregate shall constitute a break in continuous  
24 physical presence.  
25

26           (d) Other Criteria-

27  
28           (1) GROUNDS OF INELIGIBILITY- An alien is ineligible for  
29 Z nonimmigrant status if the Secretary determines that the  
30 alien—  
31

32                   (A) (1) is inadmissible to the United States under  
33 section 212(a) of the Act (8 U.S.C. 1182(a)), except  
34 as provided in paragraph (2);  
35

36                   “(2) Nothing in this paragraph shall require the Secretary to  
37 commence removal proceedings against an alien.  
38

39                   (B) is subject to the execution of an outstanding  
40 administratively final order of removal, deportation,  
41 or exclusion;  
42

43                   (C) is described in or is subject to section 241(a)(5)  
of the Act;

- 1 (D) has ordered, incited, assisted, or otherwise  
2 participated in the persecution of any person on  
3 account of race, religion, nationality, membership in  
4 a particular social group, or political opinion;  
5  
6 (E) is an alien--  
7  
8 (i) for whom there are reasonable grounds for  
9 believing that the alien has committed a  
10 serious criminal offense as described in section  
11 101(h) of the Act outside the United States  
12 before arriving in the United States; or  
13  
14 (ii) for whom there are reasonable grounds for  
15 regarding the alien as a danger to the security  
16 of the United States; or  
17  
18 (F) has been convicted of—  
19  
20 (i) a felony;  
21  
22 (ii) an aggravated felony as defined at section  
23 101(a)(43) of the Act;  
24  
25 (iii) 3 or more misdemeanors under Federal or  
26 State law; or  
27  
28 (iv) a serious criminal offense as described in  
29 section 101(h) of the Act;  
30  
31 (G) has entered or attempted to enter the United  
32 States illegally on or after January 1, 2007; and  
33  
34 (H) with respect to an applicant for Z-2 or Z-3  
35 nonimmigrant status, a Z-2 nonimmigrant, or a Z-3  
36 nonimmigrant who is under 18 years of age, the  
37 alien is ineligible for Z nonimmigrant status if the  
38 principal Z-1 nonimmigrant or Z-1 nonimmigrant  
39 status applicant is ineligible.  
40  
41 (I) The Secretary may in his discretion waive  
42 ineligibility under subparagraph (B) or (C) if the alien  
43 has not been physically removed from the United  
44 States and if the alien demonstrates that his

1 departure from the United States would result in  
2 extreme hardship to the alien or the alien's spouse,  
3 parent or child.

4  
5 (2) GROUNDS OF INADMISSIBILITY-

6  
7 (A) In General.—In determining an alien's  
8 admissibility under paragraph (1)(A)—

9  
10 (i) paragraphs (6)(A)(i) (with respect to an  
11 alien present in the United States without  
12 being admitted or paroled before the date of  
13 application, but not with respect to an alien  
14 who has arrived in the United States on or  
15 after January 1, 2007), (6)(B), (6)(C)(i),  
16 (6)(C)(ii), (6)(D), (6)(F), (6)(G), (7), (9)(B),  
17 (9)(C)(i)(I), and (10)(B) of section 212(a) of  
18 the Act shall not apply, but only with respect to  
19 conduct occurring or arising before the date of  
20 application;

21  
22 (ii) the Secretary may not waive--

23  
24 (I) subparagraph (A), (B), (C), (D)(ii),  
25 (E), (F), (G), (H), or (I) of section  
26 212(a)(2) of the Act (relating to  
27 criminals);

28 (II) section 212(a)(3) of the Act (relating  
29 to security and related grounds);

30 (iii) with respect to an application for Z  
31 nonimmigrant status, section  
32 212(a)(6)(C)(i) of the Act;

33 (IV) paragraph (6)(A)(i) of section  
34 212(a) of the Act (with respect to any  
35 entries occurring on or after January 1,  
36 2007);

37 (V) section 212(a)(9)(C)(i)(II);

38 (VI) subparagraph (A), (C), or (D) of  
39 section 212(a)(10) of the Act (relating to  
40 polygamists, child abductors, and  
41 unlawful voters);

42  
43 (iii) the Secretary may in his discretion waive  
44 the application of any provision of section

1 212(a) of the Act not listed in subparagraph  
2 (B) on behalf of an individual alien for  
3 humanitarian purposes, to ensure family unity,  
4 or if such waiver is otherwise in the public  
5 interest; and  
6

7 (B) Construction.—Nothing in this paragraph shall be  
8 construed as affecting the authority of the Secretary  
9 other than under this paragraph to waive the  
10 provisions of section 212(a) of the Act.  
11

12 (e) Eligibility Requirements.--To be eligible for Z nonimmigrant  
13 status an alien shall meet the following and any other applicable  
14 requirements set forth in this section:  
15

16 (1) Eligibility- The alien must not fall within a class of  
17 aliens ineligible for Z nonimmigrant status listed under  
18 subsection (d)(1).  
19

20 (2) Admissibility- The alien must not be inadmissible as a  
21 nonimmigrant to the United States under section 212,  
22 except as provided in subsection (d)(2), regardless of  
23 whether the alien has previously been admitted to the  
24 United States.  
25

26 (3) Presence- To be eligible for Z-1 or Z-2 nonimmigrant  
27 status, or for nonimmigrant status under section  
28 101(a)(15)(Z)(iii)(I), the alien must—  
29

30 (A) have been physically present in the United States  
31 before January 1, 2007, and have maintained  
32 continuous physical presence in the United States  
33 since that date;  
34

35 (B) be physically present in the United States on the  
36 date of application for Z nonimmigrant status; and  
37

38 (C) be on January 1, 2007, and on the date of  
39 application for Z nonimmigrant status, not present in  
40 lawful status in the United States under any  
41 classification described in section 101(a)(15) of the  
42 Immigration and Nationality Act (8 U.S.C.  
43 1101(a)(15)) or any other immigration status made



1 available under a treaty or other multinational  
2 agreement that has been ratified by the Senate.

3  
4 (4) Employment- An alien seeking Z-1 nonimmigrant  
5 status must be employed in the United States on the date  
6 of filing of the application for Z-1 nonimmigrant status.

7  
8 (6) Fees and Penalties-

9  
10 (A) Processing Fees.—

11  
12 (i) An alien making an initial application for Z  
13 nonimmigrant status shall be required to pay a  
14 processing fee in an amount sufficient to recover the  
15 full cost of adjudicating the application, but no more  
16 than \$1,500 for a single Z nonimmigrant.

17  
18 (ii) An alien applying for extension of his Z  
19 nonimmigrant status shall be required to pay a  
20 processing fee in an amount sufficient to cover  
21 administrative and other expenses associated with  
22 processing the extension application, but no more  
23 than \$1,500 for a single Z nonimmigrant.

24  
25 (B) Penalties.—

26  
27 (i) An alien making an initial application for Z-1  
28 nonimmigrant status shall be required to pay, in  
29 addition to the processing fee in subparagraph (A), a  
30 penalty of \$1,000.

31  
32 (ii) A Z-1 nonimmigrant making an initial application  
33 for Z-1 nonimmigrant status shall be required to pay  
34 a \$500 penalty for each alien seeking Z-2 or Z-3  
35 nonimmigrant status derivative to the Z-1 applicant.

36  
37 (iii) An alien who is a Z-2 or Z-3 nonimmigrant and  
38 who has not previously been a Z-1 nonimmigrant,  
39 and who changes status to that of a Z-1  
40 nonimmigrant, shall in addition to processing fees be  
41 required to pay the initial application penalties  
42 applicable to Z-1 nonimmigrants.  
43

1 (C) State Impact Assistance Fee- In addition to any  
2 other amounts required to be paid under this  
3 subsection, a Z-1 nonimmigrant making an initial  
4 application for Z-1 nonimmigrant status shall be  
5 required to pay a State impact assistance fee equal to  
6 \$500.

7  
8 (D) Deposit and Spending of Fees.—The processing fees  
9 under subparagraph (A) shall be deposited and remain  
10 available until expended as provided by sections  
11 286(m) and (n).

12  
13 (E) Deposit, Allocation, and Spending of Penalties.—

14  
15 (i) Deposit of Penalties.--The penalty under  
16 subparagraph (B) shall be deposited and remain  
17 available as provided by section 286(w).

18  
19 (ii) Deposit of State Impact Assistance Funds.—The  
20 funds under subparagraph (C) shall be deposited and  
21 remain available as provided by section 286(x).

22  
23 (7) Interview- An applicant for Z nonimmigrant status  
24 must appear to be interviewed.

25  
26 (8) Military Selective Service.- The alien shall establish  
27 that if the alien is within the age period required under the  
28 Military Selective Service Act (50 U.S.C. App. 451 et seq.)  
29 that such alien has registered under that Act.

30  
31 (f) Application Procedures.—

32  
33 (1) In General.--The Secretary of Homeland Security shall  
34 prescribe by notice in the Federal Register, in accordance  
35 with the procedures described in section 610 of the [NAME  
36 OF THIS ACT], the procedures for an alien in the United  
37 States to apply for Z nonimmigrant status and the  
38 evidence required to demonstrate eligibility for such  
39 status.

40  
41 (2) Initial Receipt of Applications.--The Secretary of  
42 Homeland Security, or such other entities as are  
43 authorized by the Secretary to accept applications under  
44 the procedures established under this subsection, shall

1 accept applications from aliens for Z nonimmigrant status  
2 for a period of one year starting the first day of the first  
3 month beginning no more than 180 days after the date of  
4 enactment of this section. If, during the one-year initial  
5 period for the receipt of applications for Z nonimmigrant  
6 status, the Secretary of Homeland Security determines  
7 that additional time is required to register applicants for Z  
8 nonimmigrant status, the Secretary may in his discretion  
9 extend the period for accepting applications by up to 12  
10 months.

11  
12 (3) Biometric Data.--Each alien applying for Z  
13 nonimmigrant status must submit biometric data in  
14 accordance with procedures established by the Secretary  
15 of Homeland Security.

16  
17 (g) Content of Application Filed by Alien.—

18  
19 (1) Application Form.--The Secretary of Homeland Security  
20 shall create an application form that an alien shall be  
21 required to complete as a condition of obtaining Z  
22 nonimmigrant status.

23  
24 (2) Application Information-

25  
26 (A) In General.--The application form shall request  
27 such information as the Secretary deems necessary  
28 and appropriate, including but not limited to,  
29 information concerning the alien's physical and  
30 mental health; complete criminal history, including  
31 all arrests and dispositions; gang membership,  
32 renunciation of gang affiliation; immigration history;  
33 employment history; and claims to United States  
34 citizenship.

35  
36 (3) Security and Law Enforcement Background Checks-

37  
38 (A) Submission of Fingerprints- The Secretary may  
39 not accord Z nonimmigrant status unless the alien  
40 submits fingerprints and other biometric data in  
41 accordance with procedures established by the  
42 Secretary.

43

1 (B) Background Checks- The Secretary shall utilize  
2 fingerprints and other biometric data provided by the  
3 alien to conduct appropriate background checks of  
4 such alien to search for criminal, national security, or  
5 other law enforcement actions that would render the  
6 alien ineligible for classification under this section.  
7

8 (h) Treatment of Applicants-

9  
10 (1) IN GENERAL- An alien who files an application for Z  
11 nonimmigrant status shall, upon submission of any  
12 evidence required under paragraphs (f) and (g) and after  
13 the Secretary has conducted appropriate background  
14 checks, to include name and fingerprint checks, that have  
15 not by the end of the next business day produced  
16 information rendering the applicant ineligible -  
17

18 (A) be granted probationary benefits in the form of  
19 employment authorization pending final adjudication  
20 of the alien's application;  
21

22 (B) may in the Secretary's discretion receive  
23 advance permission to re-enter the United States  
24 pursuant to existing regulations governing advance  
25 parole;  
26

27 (C) may not be detained for immigration purposes,  
28 determined inadmissible or deportable, or removed  
29 pending final adjudication of the alien's application,  
30 unless the alien is determined to be ineligible for Z  
31 nonimmigrant status; and  
32

33 (D) may not be considered an unauthorized alien (as  
34 defined in section 274A(h)(3) of the Immigration and  
35 Nationality Act (8 U.S.C. 1324a(h)(3))) unless  
36 employment authorization under subparagraph (A) is  
37 denied.  
38

39 (2) Timing of Probationary Benefits.—No probationary  
40 benefits shall be issued to an alien until the alien has  
41 passed all appropriate background checks or the end of the  
42 next business day, whichever is sooner.  
43

44 (3) Construction. Nothing in this section shall be construed

1 to limit the Secretary's authority to conduct any  
2 appropriate background and security checks subsequent to  
3 issuance of evidence of probationary benefits under  
4 paragraph (4).  
5

6 (4) Probationary Authorization Document - The Secretary  
7 shall provide each alien described in paragraph (1) with a  
8 counterfeit-resistant document that reflects the benefits  
9 and status set forth in paragraph (h) (1). The Secretary  
10 may by regulation establish procedures for the issuance of  
11 documentary evidence of probationary benefits and,  
12 except as provided herein, the conditions under which such  
13 documentary evidence expires, terminates, or is renewed.  
14 All documentary evidence of probationary benefits shall  
15 expire no later than six months after the date on which the  
16 Secretary begins to approve applications for Z  
17 nonimmigrant status.  
18

19 (5) Before Application Period- If an alien is apprehended  
20 between the date of enactment and the date on which the  
21 period for initial registration closes under subsection (f)(2),  
22 and the alien can establish prima facie eligibility for Z  
23 nonimmigrant status, the Secretary shall provide the alien  
24 with a reasonable opportunity to file an application under  
25 this section after such regulations are promulgated.  
26

27 (6) During Certain Proceedings- Notwithstanding any  
28 provision of the Act, if the Secretary determines that an  
29 alien who is in removal proceedings is prima facie eligible  
30 for Z nonimmigrant status, then the Secretary shall  
31 affirmatively communicate such determination to the  
32 immigration judge. The immigration judge shall then  
33 terminate or administratively close such proceedings and  
34 permit the alien a reasonable opportunity to apply for such  
35 classification.  
36

37 (i) Adjudication of Application Filed by Alien.—  
38

39 (1) In General.--The Secretary may approve the issuance  
40 of documentation of status, as described in subsection (j),  
41 to an applicant for a Z nonimmigrant visa who satisfies the  
42 requirements of this section.

1 (2) Evidence of Continuous Physical Presence,  
2 Employment, or Education.—

3 (A) Presumptive Documents- A Z nonimmigrant or  
4 an applicant for Z nonimmigrant status may  
5 presumptively establish satisfaction of each required  
6 period of presence, employment, or study by  
7 submitting records to the Secretary that  
8 demonstrate such presence, employment, or study,  
9 and that the Secretary verifies have been maintained  
10 by the Social Security Administration, the Internal  
11 Revenue Service, or any other Federal, State, or  
12 local government agency.

13 (B) Verification.—Each Federal agency, and each  
14 State or local government agency, as a condition of  
15 receipt of any funds under Section 286(x), shall  
16 within 90 days of enactment ensure that procedures  
17 are in place under which such agency shall—

18 (i) consistent with all otherwise applicable  
19 laws, including but not limited to laws  
20 governing privacy, provide documentation to  
21 an alien upon request to satisfy the  
22 documentary requirements of this paragraph;  
23 or

24 (ii) notwithstanding any other provision of law,  
25 including section 6103 of title 26, United  
26 States Code, provide verification to the  
27 Secretary of documentation offered by an alien  
28 as evidence of

29 (a) presence or employment required  
30 under this section, or

31 (b) a requirement for any other benefit  
32 under the immigration laws.

33 (C) Other Documents- A Z nonimmigrant or an  
34 applicant for Z nonimmigrant status who is unable to  
35 submit a document described in subparagraph (i)  
36 may establish satisfaction of each required period of  
37 presence, employment, or study by submitting to the

1 Secretary at least 2 other types of reliable  
2 documents that provide evidence of employment,  
3 including—  
4

- 5 (I) bank records;
- 6 (II) business records;
- 7 (III) employer records;
- 8 (IV) records of a labor union or day labor  
9 center;
- 10 (V) remittance records;
- 11 (VI) sworn affidavits from nonrelatives who  
12 have direct knowledge of the alien's work, that  
13 contain--
  - 14 (a) the name, address, and telephone  
15 number of the affiant;
  - 16 (b) the nature and duration of the  
17 relationship between the affiant and the  
18 alien; and
  - 19 (c) other verification or information.

20  
21 (D) ADDITIONAL DOCUMENTS - The Secretary  
22 may—

- 23 (i) designate additional documents to evidence  
24 the required period of presence, employment,  
25 or study; and
- 26 (ii) set such terms and conditions on the use of  
27 affidavits as is necessary to verify and confirm  
28 the identity of any affiant or otherwise prevent  
29 fraudulent submissions.

30  
31 (3) BURDEN OF PROOF- An alien who is applying for a Z  
32 nonimmigrant visa under this section shall prove, by a  
33 preponderance of the evidence, that the alien has satisfied  
34 the requirements of this section.

35  
36 (4) DENIAL OF APPLICATION.—  
37

38 (i) An alien who fails to satisfy the eligibility  
39 requirements for a Z nonimmigrant visa shall have  
40 his application denied and may not file additional  
41 applications.

42  
43 (ii) An alien who fails to submit requested initial  
44 evidence, including requested biometric data, and

1 requested additional evidence by the date required  
2 by the Secretary shall, except where the alien  
3 demonstrates to the satisfaction of the Secretary  
4 that such failure was reasonably excusable or was  
5 not willful, have his application considered  
6 abandoned. Such application shall be denied and the  
7 alien may not file additional applications.  
8

9 (j) Evidence of Nonimmigrant Status.—

10 (1) In General.--Documentary evidence of nonimmigrant  
11 status shall be issued to each Z nonimmigrant.  
12

13 (2) Features of Documentation.--Documentary evidence of  
14 Z nonimmigrant status:

15  
16 (A) shall be machine-readable, tamper-resistant, and  
17 shall contain a digitized photograph and other  
18 biometric identifiers that can be authenticated;

19 (B) shall be designed in consultation with U.S.  
20 Immigration and Customs Enforcement's Forensic  
21 Document Laboratory;

22 (C) shall, during the alien's authorized period of  
23 admission under subsection (k), serve as a valid  
24 travel and entry document for the purpose of  
25 applying for admission to the United States where  
26 the alien is applying for admission at a Port of Entry.

27 (D) may be accepted during the period of its validity  
28 by an employer as evidence of employment  
29 authorization and identity under section  
30 274A(b)(1)(B); and

31 (E) shall be issued to the Z nonimmigrant by the  
32 Secretary of Homeland Security promptly after final  
33 adjudication of such alien's application for Z  
34 nonimmigrant status, except that an alien may not  
35 be granted permanent Z nonimmigrant status until  
36 all appropriate background checks on the alien are  
37 completed to the satisfaction of the Secretary of  
38 Homeland Security.

39  
40 (k) Period of Authorized Admission-  
41



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(1) Initial Period.—The initial period of authorized admission as a Z nonimmigrant shall be four years.

(2) Extensions-

(A) In General.—Z nonimmigrants may seek an indefinite number of four-year extensions of the initial period of authorized admission.

(B) Requirements.—In order to be eligible for an extension of the initial or any subsequent period of authorized admission under this paragraph, an alien must satisfy the following requirements:

(i) Eligibility.—The alien must demonstrate continuing eligibility for Z nonimmigrant status;

(ii) English Language and Civics.—

“(I) Requirement at First Renewal.--At or before the time of application for the first extension of Z nonimmigrant status, an alien who is 18 years of age or older must demonstrate an attempt to gain an understanding of the English language and knowledge of United States civics by taking the naturalization test described in sections 312(a)(1) and (2) by demonstrating enrollment in or placement on a waiting list for English classes.

(II) Requirement at Second Renewal.-- At or before the time of application for the second extension of Z nonimmigrant status, an alien who is 18 years of age or older must pass the naturalization test described in sections 312(a)(1) and (2). The alien may make up to three attempts to demonstrate such understanding and knowledge but must satisfy this requirement prior to the expiration of the second extension of Z nonimmigrant status.

1 (III) Exception.--The requirement of  
2 subclauses (I) and (II) shall not apply to  
3 any person who, on the date of the filing  
4 of the person's application for an  
5 extension of Z nonimmigrant status--

6  
7 (aa) is unable because of physical  
8 or developmental disability or  
9 mental impairment to comply  
10 therewith;

11  
12 (bb) is over fifty years of age and  
13 has been living in the United States  
14 for periods totaling at least twenty  
15 years, or

16  
17 (cc) is over fifty-five years of age  
18 and has been living in the United  
19 States for periods totaling at least  
20 fifteen years.  
21

22 (iii) Employment.—With respect to an  
23 extension of Z-1 or Z-3 nonimmigrant status  
24 an alien must demonstrate satisfaction of the  
25 employment or study requirements provided in  
26 subsection (m) during the alien's most recent  
27 authorized period of stay as of the date of  
28 application; and

29  
30 (iv) Fees.—The alien must pay a processing fee  
31 in an amount sufficient to recover the full cost  
32 of adjudicating the application, but no more  
33 than \$1,500 for a single Z nonimmigrant.  
34

35 (C) Security and Law Enforcement Background  
36 Checks.—An alien applying for extension of Z  
37 nonimmigrant status may be required to submit to a  
38 renewed security and law enforcement background  
39 check that must be completed to the satisfaction of  
40 the Secretary of Homeland Security before such  
41 extension may be granted.  
42

1 (D) Timely Filing and Maintenance of Status.

2  
3 (i) In General.--An extension of stay under this  
4 paragraph, or a change of status to another Z  
5 nonimmigrant status under subsection (I), may  
6 not be approved for an applicant who failed to  
7 maintain Z nonimmigrant status or where such  
8 status expired or terminated before the  
9 application was filed.

10  
11 (ii) Exception.--Failure to file before the period  
12 of previously authorized status expired or  
13 terminated may be excused in the discretion of  
14 the Secretary and without separate application,  
15 with any extension granted from the date the  
16 previously authorized stay expired, where it is  
17 demonstrated at the time of filing that:

18  
19 (I) the delay was due to extraordinary  
20 circumstances beyond the control of the  
21 applicant, and the Secretary finds the  
22 delay commensurate with the  
23 circumstances; and

24  
25 (II) the alien has not otherwise violated  
26 his Z nonimmigrant status.

27  
28 (iii) Exemptions from Penalty and Employment  
29 Requirements.—An alien demonstrating  
30 extraordinary circumstances under clause (ii),  
31 including the spouse of a Z-1 nonimmigrant  
32 who has been battered or has been the subject  
33 of extreme cruelty perpetrated by the Z-1  
34 nonimmigrant, and who is changing to Z-1  
35 nonimmigrant status, may be exempted by the  
36 Secretary, in his discretion, from—

37  
38 (I) the requirements under subsection  
39 (m) for a period of up to 180 days; and

40  
41 (II) the penalty provisions of section  
42 (e)(6)(B)(iii), except that the alien must  
43 pay the penalty under section (e)(6)(B)  
44 at the time of application for the alien's

1 first subsequent extension of Z-1  
2 nonimmigrant status.

3  
4 (E) Bars to Extension- Except as provided in  
5 subparagraph (D), a Z nonimmigrant shall not be  
6 eligible to extend such nonimmigrant status if:

7 (i) the alien has violated any term or condition  
8 of his or her Z nonimmigrant status, including  
9 but not limited to failing to comply with the  
10 change of address reporting requirements  
11 under section 265;

12 (ii) the period of authorized admission of the Z  
13 nonimmigrant has been terminated for any  
14 reason; or

15 (iii) with respect to a Z-2 or Z-3 nonimmigrant,  
16 the principal alien's Z-1 nonimmigrant status  
17 has been terminated.

18  
19 (I) Change of Status.—

20  
21 (1) Change from Z Nonimmigrant Status.—

22  
23 (A) In General.--A Z nonimmigrant may not change  
24 status under section 248 to another nonimmigrant  
25 status, except another Z nonimmigrant status or  
26 status under subparagraph (U) of section  
27 101(a)(15).

28  
29 (B) Change from Z-A Status.—A Z-A nonimmigrant  
30 may change status to Z nonimmigrant status at the  
31 time of renewal referenced in section 214A(j)(1)(C)  
32 of the Immigration and Nationality Act.

33  
34 (B) Limit on Changes.—A Z nonimmigrant may not  
35 change status more than one time per 365-day  
36 period. The Secretary may, in his discretion, waive  
37 the application of this subparagraph to an alien if it is  
38 established to the satisfaction of the Secretary that  
39 application of this subparagraph would result in  
40 extreme hardship to the alien.  
41

1 (2) No Change to Z Nonimmigrant Status.--A  
2 nonimmigrant under the immigration laws may not change  
3 status under section 248 to Z nonimmigrant status.  
4

5 (m) Employment.—

6  
7 (1) Z-1 and Z-3 Nonimmigrants.—

8  
9 (A) In General.--Z-1 and Z-3 nonimmigrants shall be  
10 authorized to work in the United States.

11  
12 (B) Continuous Employment Requirement.— All  
13 requirements that an alien be employed or seeking  
14 employment for purposes of this Title shall not apply  
15 to an alien who is under 16 years or over 65 years of  
16 age. A Z-1 or Z-3 nonimmigrant between 16 and 65  
17 years of age must remain continuously employed full  
18 time in the United States as a condition of such  
19 nonimmigrant status, except where—

20  
21 (i) the alien is pursuing a full course of study  
22 at an established college, university, seminary,  
23 conservatory, trade school, academic high  
24 school, elementary school, or other academic  
25 institution or language training program;

26  
27 (ii) the alien is employed while also engaged in  
28 study at an established college, university,  
29 seminary, conservatory, academic high school,  
30 elementary school, or other academic  
31 institution or language training program;

32  
33 (iii) the alien cannot demonstrate employment  
34 because of a physical or mental disability (as  
35 defined under section 3(2) of the Americans  
36 with Disabilities Act of 1990 (42 U.S.C.  
37 12102(2)) or as a result of pregnancy if such  
38 condition is evidenced by the submission of  
39 documentation prescribed by the Secretary; or

40  
41 (iv) the alien's ability to work has been  
42 temporarily interrupted by an event that the

1 Secretary has determined to be a force  
2 majeure interruption.

3  
4 (2) Z-2 Nonimmigrants.—Z-2 nonimmigrants shall be  
5 authorized to work in the United States.

6  
7 (3) Portability.— Nothing in this subsection shall be  
8 construed to limit the ability of a Z nonimmigrant to  
9 change employers during the alien’s period of authorized  
10 admission.

11  
12 (n) Travel Outside the United States-

13  
14 (1) In General- A Z nonimmigrant--

15  
16 (A) may travel outside of the United States; and

17  
18 (B) may be readmitted (if otherwise admissible)  
19 without having to obtain a visa if:

20  
21 (i) the alien’s most recent period of authorized  
22 admission has not expired;

23 (ii) the alien is the bearer of valid documentary  
24 evidence of Z nonimmigrant status that  
25 satisfies the conditions set forth in section (j);  
26 and

27 (iii) the alien is not subject to the bars on  
28 extension described in subsection (k)(2)(E).

29  
30 (2) Admissibility- On seeking readmission to the United  
31 States after travel outside the United States an alien  
32 granted Z nonimmigrant status must establish that he or  
33 she is not inadmissible, except as provided by subsection  
34 (d)(2).

35  
36 (3) Effect on Period of Authorized Admission- Time spent  
37 outside the United States under paragraph (1) shall not  
38 extend the most recent period of authorized admission in  
39 the United States under subsection (k).

40  
41 (o) Termination of Benefits-

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(1) IN GENERAL- Any benefit provided to a Z nonimmigrant or an applicant for Z nonimmigrant status under this section shall terminate if—

(A) the Secretary determines that the alien is ineligible for such classification and all review procedures under section 603 of the [Insert title of Act] have been exhausted or waived by the alien;

(B) (i) the alien is found removable from the United States under section 237 of the Immigration and Nationality Act (8 U.S.C. 1227); (ii) the alien becomes inadmissible under section 212 (except as provided in subsection (d)(2), or (iii) the alien becomes ineligible under subsection (d)(1);

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

(D) in the case of the spouse or child of an alien applying for a Z nonimmigrant visa or classified as a Z nonimmigrant under this section, the benefits for the principal alien are terminated;

(E) with respect to a Z-1 or Z-3 nonimmigrant, the employment or study requirements under subsection (m) have been violated; or

(F) with respect to probationary benefits, the alien's application for Z nonimmigrant status is denied.

(3) Denial of Immigrant Visa or Adjustment Application.— Any application for an immigrant visa or adjustment of status to lawful permanent resident status made under this section by an alien whose Z nonimmigrant status is terminated under paragraph (1) shall be denied.

(4) Departure from the United States- Any alien whose period of authorized admission or probationary benefits is terminated under paragraph (1), as well as the alien's Z-2 or Z-3 nonimmigrant dependents, shall depart the United States immediately.

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(5) Invalidation of Documentation- Any documentation that is issued by the Secretary of Homeland Security under subsection (j) or pursuant to subsection (h)(4) to any alien, whose period of authorized admission terminates under paragraph (1), shall automatically be rendered invalid for any purpose except departure.

(p) Revocation.—If, at any time after an alien has obtained status under section 601 of the [Insert title of Act] but not yet adjusted such status to that of an alien lawfully admitted for permanent residence under section 602, the Secretary may, for good and sufficient cause, if it appears that the alien was not in fact eligible for status under section 601, revoke the alien’s status following appropriate notice to the alien.

(q) Dissemination of Information on Z Program- During the 2 year period immediately after the issuance of regulations implementing this title, the Secretary, in cooperation with entities approved by the Secretary, shall broadly disseminate information respecting Z classification under this section and the requirements to be satisfied to obtain such classification. The Secretary shall disseminate information to employers and labor unions to advise them of the rights and protections available to them and to workers who file applications under this section. Such information shall be broadly disseminated, in no fewer than the top five principal languages, as determined by the Secretary in his discretion, spoken by aliens who would qualify for classification under this section, including to television, radio, and print media to which such aliens would have access.

(r) Definitions- In this title and section 214A of the Immigration and Nationality Act:

(1) Z NONIMMIGRANT; Z NONIMMIGRANT WORKER- The term ‘Z nonimmigrant worker’ means an alien admitted to the United States under paragraph (Z) of subsection 101(a)(15). The term does not include aliens granted probationary benefits under subsection (h) and whose applications for nonimmigrant status under section 101(a)(15)(Z) of the Act have not yet been adjudicated.



1 (2) Z-1 NONIMMIGRANT; Z-1 WORKER- The term 'Z-1  
2 nonimmigrant' or 'Z-1 worker' means an alien admitted to  
3 the United States under paragraph (i)(I) of subsection  
4 101(a)(15)(Z).

5  
6 (3) Z-A NONIMMIGRANT; Z-A WORKER - The term 'Z-A  
7 nonimmigrant' or 'Z-A worker' means an alien admitted to  
8 the United States under paragraph (ii)(II) of subsection  
9 101(a)(15)(Z).

10  
11 (4) Z-2 NONIMMIGRANT- The term 'Z-2 nonimmigrant'  
12 means an alien admitted to the United States under  
13 paragraph (ii) of subsection 101(a)(15)(Z).

14  
15 (5) Z-3 NONIMMIGRANT; Z-3 worker - The term 'Z-3  
16 nonimmigrant' or 'Z-3 worker' means an alien admitted to  
17 the United States under paragraph (iii) of subsection  
18 101(a)(15)(Z).

19 **SEC. 602. EARNED ADJUSTMENT FOR Z STATUS ALIENS**

20 (a) Lawful Permanent Residence.—

21  
22 (1) Z-1 Nonimmigrants.—

23  
24 (A) Prohibition on Immigrant Visa. A Z-1 nonimmigrant  
25 may not be issued an immigrant visa pursuant to sections  
26 221 and 222.

27  
28 (B) Adjustment.—Notwithstanding sections 245(a) and (c),  
29 the status of any Z-1 nonimmigrant may be adjusted by  
30 the Secretary of Homeland Security to that of an alien  
31 lawfully admitted for permanent residence.

32  
33 (C) Requirements.—A Z-1 nonimmigrant may adjust status  
34 to that of an alien lawfully admitted for permanent  
35 residence upon satisfying, in addition to all other  
36 requirements imposed by law, including the merit  
37 requirements set forth in section 203(b)(1)(A)[INSERT  
38 CITE], the following requirements:

39  
40 (i) Status.—The alien must be in valid Z-1  
41 nonimmigrant status;  
42

1 (ii) Consular Application.—

2  
3 (I) In General.—A Z-1 nonimmigrant’s  
4 application for adjustment of status to that of  
5 an alien lawfully admitted for permanent  
6 residence must be filed in person with a United  
7 States consulate abroad.

8  
9 (II) Place of Application.—Unless otherwise  
10 directed by the Secretary of State, a Z-1  
11 nonimmigrant applying for adjustment of  
12 status under this paragraph shall make an  
13 application at a consular office in the alien’s  
14 country of origin. A consular office in a  
15 country that is not a Z-1 nonimmigrant’s  
16 country of origin may as a matter of discretion,  
17 or shall at the direction of the Secretary of  
18 State, accept an application for adjustment of  
19 status from such an alien.

20  
21 (iii) Approved Petition.—The alien must be the  
22 beneficiary of an approved petition under section 204  
23 of the Act or have an approved petition that was filed  
24 pursuant to the evaluation system under section  
25 203(b)(1)(A) of the Act;

26  
27 (iv) Admissibility.—The alien must not be  
28 inadmissible under section 212(a), except for those  
29 grounds previously waived under subsection (d)(2);

30  
31 (v) Fees and Penalties.—In addition to the fees  
32 payable to the Secretary of Homeland Security and  
33 Secretary of State in connection with the filing of an  
34 immigrant petition and application for adjustment of  
35 status, a Z-1 head of household must pay a \$4,000  
36 penalty at the time of submission of any immigrant  
37 petition on his behalf, regardless of whether the alien  
38 submits such petition on his own behalf or the alien  
39 is the beneficiary of an immigrant petition filed by  
40 another party; and

41  
42 (D) EXEMPTIONS- Section 602(a)(1)(c)(ii) shall not apply  
43 to an alien who, on the date on which the application for

1 adjustment of status is filed under this section, is  
2 exempted from the employment requirements under  
3 subsection (m)(1)(B)(iii).  
4

5 (E) FAILURE TO ESTABLISH LAWFUL ADMISSION TO THE  
6 UNITED STATES- Unless exempted under subparagraph  
7 (D), a Z immigrant who fails to depart and reenter the  
8 United States in accordance with paragraph (1) may not  
9 become a lawful permanent resident under this section.

10  
11 (2) Z-2 and Z-3 Nonimmigrants.—  
12

13 (A) Restriction on Visa Issuance or Adjustment. An  
14 application for an immigrant visa or for adjustment of  
15 status to that of an alien lawfully admitted for permanent  
16 residence of a Z-2 nonimmigrant or a Z-3 nonimmigrant  
17 under 18 years of age may not be approved before the  
18 adjustment of status of the alien's principal Z-1  
19 nonimmigrant.  
20

21 (B) Adjustment of Status.—  
22

23 (i) Adjustment.—Notwithstanding sections 245(a)  
24 and (c), the status of any Z-2 or Z-3 nonimmigrant  
25 may be adjusted by the Secretary of Homeland  
26 Security to that of an alien lawfully admitted for  
27 permanent residence.  
28

29 (ii) Requirements.— A Z-2 or Z-3 nonimmigrant may  
30 adjust status to that of an alien lawfully admitted for  
31 permanent residence upon satisfying, in addition to  
32 all other requirements imposed by law, the following  
33 requirements:  
34

35 (I) Status.—The alien must be in valid Z-2 or  
36 Z-3 nonimmigrant status;  
37

38 (II) Approved Petition.—The alien must be the  
39 beneficiary of an approved petition under  
40 section 204 of the Act or have an approved  
41 petition that was filed pursuant to the merit-  
42 based evaluation system under section  
43 203(b)(1)(A) of the Act;

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(III) Admissibility.—The alien must not be inadmissible under section 212(a), except for those grounds previously waived under subsection (d)(2);

(IV) Fees .—The alien must pay the fees payable to the Secretary of Homeland Security and Secretary of State in connection with the filing of an immigrant petition and application for an immigrant visa; and

(3) Maintenance of Waivers of Inadmissibility.—The grounds of inadmissibility not applicable under section (d)(2) shall also be considered inapplicable for purposes of admission as an immigrant or adjustment pursuant to this subsection.

(4) APPLICATION OF OTHER LAW- In processing applications under this subsection on behalf of aliens who have been battered or subjected to extreme cruelty, the Secretary shall apply—

(A) the provisions under section 204(a)(1)(J) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(J)); and

(B) the protections, prohibitions, and penalties under section 384 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1367).

(5) BACK OF THE LINE- An alien may not adjust status to that of a lawful permanent resident under this section until 30 days after an immigrant visa becomes available for approved petitions filed under sections 201, 202, and 203 of the Act that were filed before May 1, 2005.

(6) Ineligibility for Public Benefits- For purposes of section 403 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1613), an alien whose status has been adjusted under this section shall not be eligible for any Federal means-tested public benefit unless the alien meets the alien eligibility criteria for such benefit under title IV of such Act (8 U.S.C. 1601 et seq.).

1 (7) Medical Examination- An applicant for earned adjustment  
2 shall undergo an appropriate medical examination (including a  
3 determination of immunization status) that conforms to  
4 generally accepted professional standards of medical practice.  
5

6 (8) Payment of Income Taxes-

7  
8 (A) IN GENERAL- Not later than the date on which status is  
9 adjusted under this section, the applicant shall satisfy any  
10 applicable Federal tax liability accrued during the period of  
11 Z status by establishing that—

- 12  
13 (i) no such tax liability exists;  
14 (ii) all outstanding liabilities have been paid; or  
15 (iii) the applicant has entered into, and is in  
16 compliance with, an agreement for payment of all  
17 outstanding liabilities with the Internal Revenue  
18 Service.  
19

20 (B) IRS COOPERATION- The Secretary of the Treasury  
21 shall establish rules and procedures under which the  
22 Commissioner of Internal Revenue shall provide  
23 documentation to—

24  
25 (i) the applicant, upon request, to establish the  
26 payment of all taxes required under this subsection;  
27 or

28  
29 (ii) the Secretary, upon request, regarding the  
30 payment of Federal taxes by an alien applying for a  
31 benefit under this section.  
32

33 (9) DEPOSIT OF FEES- Fees collected under this paragraph shall  
34 be deposited into the Immigration Examination Fee Account and  
35 shall remain available as provided under subsections (m) and (n)  
36 of section 286 of the Immigration and Nationality Act (8 U.S.C.  
37 1356).  
38

39 (10) DEPOSIT OF PENALTIES- Penalties collected under this  
40 paragraph shall be deposited into the Temporary Worker  
41 Program Account and shall remain available as provided under  
42 section 286(w) of the Immigration and Nationality Act.  
43

1 **SEC. 603. ADMINISTRATIVE REVIEW, REMOVAL**  
2 **PROCEEDINGS, AND JUDICIAL REVIEW FOR**  
3 **ALIENS WHO HAVE APPLIED FOR LEGAL STATUS.**

4  
5 (a) Administrative Review for Aliens Who Have Applied for Status Under this Title-

6  
7 (1) Exclusive Review- Administrative review of a determination respecting  
8 nonimmigrant status under this title shall be conducted solely in accordance with  
9 this subsection.

10  
11 (2) Administrative Appellate Review- Except as provided in subparagraph (b)(2),  
12 an alien whose status under this title has been denied, terminated, or revoked may  
13 file not more than one appeal of the denial, termination, or rescission with the  
14 Secretary not later than 30 calendar days after the date of the decision or mailing  
15 thereof, whichever occurs later in time. The Secretary shall establish an appellate  
16 authority to provide for a single level of administrative appellate review of a  
17 denial, termination, or rescission of status under [this Act].

18  
19 (3) Standard for Review—Such administrative appellate review shall be based  
20 solely upon the administrative record established at the time of the determination  
21 on the application and upon such additional newly discovered or previously  
22 unavailable evidence as the administrative appellate review authority may decide  
23 to consider at the time of the determination.

24  
25 (4) Limitation on Motions To Reopen and Reconsider—During the administrative  
26 appellate review process the alien may file not more than one motion to reopen or  
27 to reconsider. The Secretary’s decision whether to consider any such motion is  
28 committed to the Secretary’s discretion.

29  
30 (b) Removal of Aliens Who Have Been Denied Status Under this Title.—

31  
32 (1) Self-Initiated Removal—Any alien who receives a denial under subsection (a)  
33 may request, not later than 30 calendar days after the date of the denial or the  
34 mailing thereof, whichever occurs later in time, that the Secretary place the alien  
35 in removal proceedings. The Secretary shall place the alien in removal  
36 proceedings to which the alien would otherwise be subject, unless the alien is  
37 subject to an administratively final order of removal, provided that no court shall  
38 have jurisdiction to review the timing of the Secretary’s initiation of such  
39 proceedings. If the alien is subject to an administratively final order of removal,  
40 the alien may seek review of the denial under this section pursuant to subsection  
41 242(h) as though the order of removal had been entered on the date of the denial,  
42 provided that the court shall not review the order of removal except as otherwise  
43 provided by law.

44  
45 (2) Aliens Who Are Determined To Be Ineligible Due to Criminal Convictions.

1  
2 (i) Aggravated Felons. Notwithstanding any other provision of this Act, an  
3 alien whose application for status under this title has been denied or whose  
4 status has been terminated or revoked by the Secretary under clause  
5 (1)(F)(ii) of subsection 601(d) of [this Act] because the alien has been  
6 convicted of an aggravated felony, as defined in paragraph 101(a)(43) of  
7 the INA, may be placed forthwith in proceedings pursuant to section  
8 238(b) of the INA.  
9

10 (ii) Other Criminals. Notwithstanding any other provision of this Act, any  
11 other alien whose application for status under this title has been denied or  
12 whose status has been terminated or revoked by the Secretary under  
13 clauses (1)(F)(i), (iii), or (iv) of subsection [CITE: 601(d)] of [this Act]  
14 may be placed forthwith in removal proceedings under section 240 of the  
15 INA.  
16

17 (iii) Final Denial, Termination or Rescission. The Secretary's denial,  
18 termination, or rescission of the status of any alien described in clauses (i)  
19 and (ii) of this subparagraph shall be final for purposes of subparagraph  
20 242(h)(3)(C) of the INA and shall represent the exhaustion of all review  
21 procedures for purposes of subsections 601(h) (relating to treatment of  
22 applicants) and 601(o) (relating to termination of proceedings) of this Act,  
23 notwithstanding paragraph (a)(2) of this section.  
24

25 (3) Limitation on Motions To Reopen and Reconsider— During the removal  
26 process under this subsection the alien may file not more than one motion to  
27 reopen or to reconsider. The Secretary's or Attorney General's decision whether  
28 to consider any such motion is committed to the Attorney General's discretion.  
29

30 (c) Judicial Review-

31  
32 Section 242 of the Immigration and Nationality Act is amended by adding at the end the  
33 following subsection (h):  
34

35 “(h) Judicial Review of Eligibility Determinations Relating to Status Under Title VI of  
36 [this Act].  
37

38 “(1) Exclusive Review- Notwithstanding any other provision of law (statutory or  
39 nonstatutory), including section 2241 of title 28, or any other habeas corpus  
40 provision, and sections 1361 and 1651 of such title, and except as provided in this  
41 subsection, no court shall have jurisdiction to review a determination respecting  
42 an application for status under title VI of [this Act], including, without limitation,  
43 a denial, termination, or rescission of such status.  
44

45 “(2) No Review for Late Filings- An alien may not file an application for status  
46 under title VI of [this Act] beyond the period for receipt of such applications

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1 established by subsection 601(f) thereof. The denial of any application filed  
2 beyond the expiration of the period established by that subsection shall not be  
3 subject to judicial review or remedy.

4  
5 “(3) Review of a Denial, Termination, or Rescission of Status Under Title VI of  
6 [this Act].- A denial, termination, or rescission of status under subsection 601 of  
7 [this Act] may be reviewed only in conjunction with the judicial review of an  
8 order of removal under this section, provided that:

9  
10 “(A) the venue provision set forth in (b)(2) shall govern;

11  
12 “(B) the deadline for filing the petition for review in (b)(1) shall control;

13  
14 “(C) the alien has exhausted all administrative remedies available to the  
15 alien as of right, including but not limited to the timely filing of an  
16 administrative appeal pursuant to subsection 603(a) of [this Act];

17  
18 “(D) the court shall decide a challenge to the denial of status only on the  
19 administrative record on which the Secretary’s denial, termination, or  
20 rescission was based;

21  
22 “(E) Limitation on Review.—Notwithstanding any other provision of law  
23 (statutory or nonstatutory), including section 2241 of title 28, or any other  
24 habeas corpus provision, and sections 1361 and 1651 of such title, no  
25 court reviewing a denial, termination, or rescission of status under Title VI  
26 of [this Act] may review any discretionary decision or action of the  
27 Secretary regarding any application for or termination or rescission of  
28 such status; and

29  
30 “(F) Limitation on Motions To Reopen and Reconsider— The alien may  
31 file not more than one motion to reopen or to reconsider in proceedings  
32 brought under this section.

33  
34 “(4) Standard for Judicial Review- Judicial review of the Secretary’s denial,  
35 termination, or rescission of status under title VI of [this Act] relating to any alien  
36 shall be based solely upon the administrative record before the Secretary when he  
37 enters a final denial, termination, or rescission. The administrative findings of fact  
38 are conclusive unless any reasonable adjudicator would be compelled to conclude  
39 to the contrary. The legal determinations are conclusive unless manifestly  
40 contrary to law.

41  
42 “(5) Challenges on Validity of the System—

43  
44 “(A) In General.—Any claim that title VI of [this Act], or any regulation,  
45 written policy, or written directive issued or unwritten policy or practice  
46 initiated by or under the authority of the Secretary of Homeland Security



1 to implement that title, violates the Constitution of the United States or is  
2 otherwise in violation of law is available exclusively in an action instituted  
3 in the United States District Court for the District of Columbia in  
4 accordance with the procedures prescribed in this paragraph. Nothing in  
5 this subparagraph shall preclude an applicant for status under title VI of  
6 [this Act] from asserting that an action taken or decision made by the  
7 Secretary with respect to his status under that title was contrary to law in a  
8 proceeding under section 603 of [this Act] and paragraph (b)(2) of this  
9 section.

10  
11 “(B) Deadlines for Bringing Actions.— Any action instituted under this  
12 paragraph,

13  
14 (i) must, if it asserts a claim that title VI of [this Act] or any  
15 regulation, written policy, or written directive issued by or under the  
16 authority of the Secretary to implement that title violates the Constitution  
17 or is otherwise unlawful, be filed no later than one year after the date of  
18 the publication or promulgation of the challenged regulation, policy or  
19 directive or, in cases challenging the validity of the Act, within one year of  
20 enactment; and

21 (ii) must, if it asserts a claim that an unwritten policy or practice  
22 initiated by or under the authority of the Secretary violates the  
23 Constitution or is otherwise unlawful, be filed no later than one year after  
24 the plaintiff knew or reasonably should have known of the unwritten  
25 policy or practice.

26  
27 “(C) Class Actions.—Any claim described in subparagraph (A) that is  
28 brought as a class action shall be brought in conformity with Public Law  
29 109-2 and the Federal Rules of Civil Procedure.”

30  
31 “(D) Preclusive effect.—The final disposition of any claim brought under  
32 subparagraph (5)(A) shall be preclusive of any such claim asserted in a  
33 subsequent proceeding under this subsection or under subsection 603 [of  
34 this Act].

35  
36 “(E) Exhaustion and Stay of Proceedings.—No claim brought under  
37 this paragraph shall require the plaintiff to exhaust administrative  
38 remedies under subsection 603 of [this Act], but nothing shall prevent the  
39 court from staying proceedings under this paragraph to permit the  
40 Secretary to evaluate an allegation of an unwritten policy or practice or to  
41 take corrective action. In issuing such a stay, the court shall take into  
42 account any harm the stay may cause to the claimant. The court shall have  
43 no authority to stay proceedings initiated under any other section of the  
44 INA.”

45 **SEC. 604. MANDATORY DISCLOSURE OF INFORMATION.**

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1 (a) In general.—Except as otherwise provided in this section, no  
2 Federal agency or bureau, nor any officer, employee or contractor of  
3 such agency or bureau, may—

4  
5 (1) use the information furnished by an applicant under section  
6 601[and 602] of the [--] or the fact that the applicant applied for  
7 such Z status for any purpose other than to make a  
8 determination on the application, any subsequent application to  
9 extend such status under section 601 of such Act, or to adjust  
10 status to that of an alien lawfully admitted for permanent  
11 residence under section 602 of such Act;

12  
13 (2) make or release any publication through which the  
14 information furnished by any particular applicant can be  
15 identified; or

16  
17 (3) permit anyone other than the officers, employees or  
18 contractors of such agency, bureau, or approved entity, as  
19 approved by the Secretary of Homeland Security, to examine  
20 individual applications that have been filed.

21  
22 (b) Exceptions to confidentiality.—

23  
24 (1) Subsection (a) shall not apply with respect to—

25  
26 (A) an alien whose application has been denied,  
27 terminated or revoked based on the Secretary's finding  
28 that the alien —

29  
30 (i) is inadmissible under sections 212(a)(2), (3),  
31 (6)(C)(i) (with respect to information furnished by an  
32 applicant under section 601 or 602 of the [--]), or  
33 (6)(E) of the Act;

34  
35 (ii) is deportable under sections 237(a)(1)(E),  
36 (1)(G), (2), or (4) of the Act;

37  
38 (iii) was physically removed and is subject to  
39 reinstatement pursuant to section 241(a)(5).

40  
41 (B) an alien whose application for Z nonimmigrant status  
42 has been denied, terminated, or revoked under section  
43 601(d)(1)(F);

44

1 (C) an alien whom the Secretary determines has ordered,  
2 incited, assisted, or otherwise participated in the  
3 persecution of any person on account of race, religion,  
4 nationality, membership in a particular social group, or  
5 political opinion;

6  
7 (D) an alien whom the Secretary determines has, in  
8 connection with his application under sections 601 or 602,  
9 engaged in fraud or willful misrepresentation, concealment  
10 of a material fact, or knowingly offered a false statement,  
11 representation or document;

12  
13 (E) an alien who has knowingly and voluntarily waived in  
14 writing the confidentiality provisions in subsection (a); or

15  
16 (F) an order from a court of competent jurisdiction.

17  
18 (2) Nothing in this subsection shall require the Secretary to  
19 commence removal proceedings against an alien whose  
20 application has been denied, terminated, or revoked based on  
21 the Secretary's finding that the alien is inadmissible or  
22 deportable.

23  
24 (c) Authorized disclosures.—Information furnished on or derived from  
25 an application described in subsection (a) may be disclosed to—

26  
27 (1) a law enforcement agency, intelligence agency, national  
28 security agency, component of the Department of Homeland  
29 Security, court, or grand jury in connection with a criminal  
30 investigation or prosecution or a national security  
31 investigation or prosecution; or

32  
33 (2) an official coroner for purposes of affirmatively identifying a  
34 deceased individual, whether or not the death of such  
35 individual resulted from a crime.

36  
37 (e) Auditing and evaluation of information.—The Secretary may audit  
38 and evaluate information furnished as part of any application filed  
39 under sections 601 and 602, of [--] , any application to extend such  
40 status under section 601(k) of such Act, or any application to adjust  
41 status to that of an alien lawfully admitted for permanent residence  
42 under section 602 of such Act, for purposes of identifying fraud or  
43 fraud schemes, and may use any evidence detected by means of

1 audits and evaluations for purposes of investigating, prosecuting or  
2 referring for prosecution, denying, or terminating immigration benefits.

3  
4 (f) Use of information in petitions and applications subsequent to  
5 adjustment of status.—If the Secretary has adjusted an alien’s status  
6 to that of an alien lawfully admitted for permanent residence pursuant  
7 to section 602 of [--], then at any time thereafter the Secretary may  
8 use the information furnished by the alien in the application for  
9 adjustment of status or in the applications for status pursuant to  
10 sections 601 or 602 to make a determination on any petition or  
11 application.

12  
13 (g) Penalties.— Whoever knowingly uses, publishes, or permits  
14 information to be examined in violation of this section shall be fined  
15 not more than \$10,000.

16  
17 (h) Construction.—Nothing in this section shall be construed to limit  
18 the use, or release, for immigration enforcement purposes of  
19 information contained in files or records of the Secretary or Attorney  
20 General pertaining to an applications filed under sections 601 or 602,  
21 other than information furnished by an applicant pursuant to the  
22 application, or any other information derived from the application, that  
23 is not available from any other source.

24 **SEC. 605. EMPLOYER PROTECTIONS.**

25 (a) Copies of employment records or other evidence of employment  
26 provided by an alien or by an alien’s employer in support of an alien’s  
27 application for Z nonimmigrant status shall not be used in a  
28 prosecution or investigation (civil or criminal) of that employer under  
29 section 247A (8 U.S.C. 1324a) or the tax laws of the United States for  
30 the prior unlawful employment of that alien, regardless of the  
31 adjudication of such application or reconsideration by the Secretary of  
32 such alien’s prima facie eligibility determination.

33  
34 (b) Applicability of Other Law- Nothing in this section may be used to  
35 shield an employer from liability under section 274B of the  
36 Immigration and Nationality Act (8 U.S.C. 1324b) or any other labor or  
37 employment law.

38  
39 **SEC. 606. ENUMERATION OF SOCIAL SECURITY NUMBER.**

40  
41 The Secretary of Homeland Security, in coordination with the  
42 Commissioner of the Social Security Administration, shall implement a

1 system to allow for the prompt enumeration of a Social Security  
2 number after the Secretary of Homeland Security has granted an alien  
3 Z nonimmigrant status or any probationary benefits based upon  
4 application for such status.

5  
6 **SEC. 607. PRECLUSION OF SOCIAL SECURITY CREDITS FOR**  
7 **YEARS PRIOR TO ENUMERATION.**

8  
9 (a) Insured Status.—Section 214 of the Social Security Act (42 U.S.C.  
10 414) is amended by:

11  
12 (1) amending subsection (c) by deleting “For” and inserting “Except as  
13 provided in subsection (e), for”; and

14  
15 (2) adding at the end the following new subsections:

16  
17 “(d)(1) Except as provided in paragraph (2) and subsection (e),  
18 for purposes of this section and for purposes of determining a  
19 qualifying quarter of coverage under 8 U.S.C. 1612(b)(2)(B), no  
20 quarter of coverage shall be credited if, with respect to any  
21 individual who is assigned a social security account number after  
22 2007, such quarter of coverage is earned prior to the year in  
23 which such social security account number is assigned.

24  
25 “(2) Paragraph (1) shall not apply with respect to any quarter of  
26 coverage earned by an individual who satisfies the criterion  
27 specified in subsection (c)(2).

28  
29 “(e) Subsection (d) shall not apply with respect to a  
30 determination under subsection (a) or (b) for a deceased  
31 individual in the case of a child who is a United States citizen and  
32 who is applying for child’s insurance benefits under section  
33 202(d) based on the wages and self-employment income of such  
34 deceased individual.”

35  
36 (b) Benefit Computation.—Section 215(e) of such Act (42 U.S.C.  
37 415(e)) is amended—

38  
39 (1) by striking “and” at the end of paragraph (1);

40  
41 (2) by striking the period at the end of paragraph (2) and  
42 inserting “;and”;  
43 and  
44

1 (3) by adding at the end the following new paragraph:  
2

3 "(3) in computing the average indexed monthly earnings of an  
4 individual, there shall not be counted any wages or self-  
5 employment income for any year for which no quarter of  
6 coverage may be credited to such individual as a result of the  
7 application of section 214(d)."  
8

9 (c) Effective date--The amendment made by subsection (a) that  
10 provides for a new section 214(e) of the Social Security Act shall be  
11 effective with respect to applications for benefits filed after the sixth  
12 month following the month this Act is enacted.

13 **SEC. 608. PAYMENT OF PENALTIES AND USE OF PENALTIES**  
14 **COLLECTED.**

15 (a) The Secretary shall by regulation establish procedures allowing for  
16 the payment of 80 percent of the penalties described in Section  
17 601(e)(6)(B) and Section 602(a)(1)(C)(v) through an installment  
18 payment plan.

19 (b) Any penalties received under this title with respect to an  
20 application for Z-1 nonimmigrant status shall be used in the following  
21 order of priority:

22 (1) shall be credited as offsetting collections to appropriations  
23 provided pursuant to section 611 for the fiscal year in which this  
24 Act is enacted and the subsequent fiscal year; and

25 (2) shall be deposited and remain available as otherwise  
26 provided under this title.

27 **SEC. 609. LIMITATIONS ON ELIGIBILITY.**

28 (a) In General- An alien is not ineligible for any immigration benefit  
29 under any provision of this title, or any amendment made by this title,  
30 solely on the basis that the alien violated section 1543, 1544, or 1546  
31 of title 18, United States Code, or any amendments made by the  
32 [NAME OF THIS ACT], during the period beginning on the date of the  
33 enactment of such Act and ending on the date on which the alien  
34 applies for any benefits under this title, except with respect to any  
35 forgery, fraud or misrepresentation on the application for Z  
36 nonimmigrant status filed by the alien.  
37

1 (b) Prosecution- An alien who commits a violation of section 1543,  
2 1544, or 1546 of such title or any amendments made by the [NAME  
3 OF THIS ACT], during the period beginning on the date of the  
4 enactment of such Act and ending on the date that the alien applies  
5 for eligibility for such benefit may be prosecuted for the violation if the  
6 alien's application for such benefit is denied.

7 **SEC. 610. RULEMAKING.**

8 (a) The Secretary shall issue an interim final rule within six months of  
9 the date of enactment of this subtitle to implement this title and the  
10 amendments made by this title. The interim final rule shall become  
11 effective immediately upon publication in the Federal Register. The  
12 interim final rule shall sunset two years after issuance unless the  
13 Secretary issues a final rule within two years of the issuance of the  
14 interim final rule.

15 (b) The exemption provided under this section shall sunset no later  
16 than two years after the date of enactment of this subtitle, provided  
17 that, such sunset shall not be construed to impose any requirements  
18 on, or affect the validity of, any rule issued or other action taken by  
19 the Secretary under such exemptions.

20 **SEC. 611. AUTHORIZATION OF APPROPRIATIONS.**

21 (a) In General- There are authorized to be appropriated to the  
22 Secretary such sums as may be necessary to carry out this title and  
23 the amendments made by this title.

24  
25 (b) Availability of Funds- Funds appropriated pursuant to subsection  
26 (a) shall remain available until expended.

27  
28 (c) Sense of Congress- It is the sense of the Congress that funds  
29 authorized to be appropriated under subsection (a) should be directly  
30 appropriated so as to facilitate the orderly and timely commencement  
31 of the processing of applications filed under sections 601 and 602.  
32

33 **Subtitle B--DREAM Act**

34 **SEC. 612. SHORT TITLE.**

35 This subtitle may be cited as the `Development, Relief, and Education  
36 for Alien Minors Act of 2007' or the `DREAM Act of 2007'.

1 **SEC. 613. DEFINITIONS.**

2 In this subtitle:

3

4 (1) INSTITUTION OF HIGHER EDUCATION- The term 'institution  
5 of higher education' has the meaning given that term in section  
6 101 of the Higher Education Act of 1965 (20 U.S.C. 1001).

7

8 (2) UNIFORMED SERVICES- The term 'uniformed services' has  
9 the meaning given that term in section 101(a) of title 10, United  
10 States Code.

11 **SEC. 614. ADJUSTMENT OF STATUS OF CERTAIN LONG-TERM**  
12 **RESIDENTS WHO ENTERED THE UNITED STATES AS CHILDREN.**

13 (a) Special Rule for Certain Long-Term Residents Who Entered the  
14 United States as Children-

15

16 (1) IN GENERAL- Notwithstanding any other provision of law and  
17 except as otherwise provided in this subtitle, the Secretary may  
18 beginning on the date that is three years after the date of  
19 enactment of this Act adjust to the status of an alien lawfully  
20 admitted for permanent residence an alien who is determined to  
21 be eligible for or has been issued a probationary Z or Z  
22 nonimmigrant visa if the alien demonstrates that—

23

24 (A) the alien has been physically present in the United  
25 States for a continuous period since January 1, 2007, is  
26 under 30 years of age on the date of enactment, and had  
27 not yet reached the age of 16 years at the time of initial  
28 entry;

29

30 (B) the alien has earned a high school diploma or obtained  
31 a general education development certificate in the United  
32 States;

33

34 (C) The alien has not abandoned the alien's residence in  
35 the United States. The Secretary shall presume that the  
36 alien has abandoned such residence if the alien is absent  
37 from the United States for more than 365 days, in the  
38 aggregate, during the period of conditional residence,  
39 unless the alien demonstrates that alien has not  
40 abandoned the alien's residence. An alien who is absent  
41 from the United States due to active service in the



1 uniformed services has not abandoned the alien's  
2 residence in the United States during the period of such  
3 service.

4  
5 (D) The alien has

6  
7 (i) acquired a degree from an institution of higher  
8 education in the United States or has completed at  
9 least 2 years, in good standing, in a program for a  
10 bachelor's degree or higher degree in the United  
11 States; or

12  
13 (ii) The alien has served in the uniformed services  
14 for at least 2 years and, if discharged, has received  
15 an honorable discharge.

16  
17 (E) The alien has provided a list of all of the secondary  
18 educational institutions that the alien attended in the  
19 United States; and

20  
21 (F) The alien is in compliance with the eligibility and  
22 admissibility criteria set forth in section 601(d).

23  
24 (b) Treatment Of Period For Purposes Of Naturalization.—Solely for  
25 purposes of title III of the Immigration and Nationality Act (8 U.S.C.  
26 1401 et seq.), an alien who has been granted probationary benefits  
27 under section 601(h) or Z nonimmigrant status and has satisfied the  
28 requirements of subparagraphs (a)(1)(A) through (F) shall beginning  
29 on the date that is eight years after the date of enactment be  
30 considered to have satisfied the requirements of Section 316(a)(1) of  
31 the Act (8 U.S.C. 1427(a)(1)).

32  
33 (c) Exemption From Numerical Limitations- Nothing in this section may  
34 be construed to apply a numerical limitation on the number of aliens  
35 who may be eligible for adjustment of status.

36  
37 (d) Regulations-

38  
39 (1) PROPOSED REGULATIONS- Not later than 180 days after the  
40 date of enactment of this Act, the Secretary shall publish  
41 proposed regulations implementing this section. Such regulations  
42 shall be effective immediately on an interim basis, but are  
43 subject to change and revision after public notice and  
44 opportunity for a period for public comment.

1  
2 (2) INTERIM, FINAL REGULATIONS- Within a reasonable time  
3 after publication of the interim regulations in accordance with  
4 paragraph (1), the Secretary shall publish final regulations  
5 implementing this section.

6 **SEC. 615. EXPEDITED PROCESSING OF APPLICATIONS;**  
7 **PROHIBITION ON FEES.**

8 Regulations promulgated under this subtitle shall provide that no  
9 additional fee will be charged to an applicant for a Z nonimmigrant  
10 visa for applying for benefits under this subtitle.

11 **SEC. 616. HIGHER EDUCATION ASSISTANCE.**

12 (a) Section 505 of the Illegal Immigration Reform and Immigrant  
13 Responsibility Act of 1996 (8 U.S.C. 1623) shall have no force or effect  
14 with respect to an alien who is a probationary Z or Z nonimmigrant.  
15

16 (b) Notwithstanding any provision of the Higher Education Act of 1965  
17 (20 U.S.C. 1001 et seq.), with respect to assistance provided under  
18 title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.),  
19 an alien who adjusts status to that of a lawful permanent resident  
20 under this title, or who is a probationary Z or Z nonimmigrant under  
21 this title and who meets the eligibility criteria set forth in section  
22 614(a)(1)(A), (B), and (F), shall be eligible for the following assistance  
23 under such title IV:  
24

25 (1) Student loans under parts B, D, and E of such title IV (20  
26 U.S.C. 1071 et seq., 1087a et seq., 1087aa et seq.), subject to  
27 the requirements of such parts.  
28

29 (2) Federal work-study programs under part C of such title IV  
30 (42 U.S.C. 2751 et seq.), subject to the requirements of such  
31 part.  
32

33 (3) Services under such title IV (20 U.S.C. 1070 et seq.), subject  
34 to the requirements for such services.  
35

36 **SEC. 617. DELAY OF FINES AND FEES.**  
37

38 (a) Payment of the penalties and fees specified in section 601(e)(6)  
39 shall not be required with respect to an alien who meets the eligibility  
40 criteria set forth in section 614(a)(1)(A), (B), and (F) until the date

1 that is six years and six months after the date of enactment of this Act  
2 or the alien reaches the age of 24, whichever is later. If the alien  
3 makes all of the demonstrations specified in section 614(a)(1) by such  
4 date, the penalties shall be waived. If the alien fails to make the  
5 demonstrations specified in section 614(a)(1) by such date, the alien's  
6 Z nonimmigrant status will be terminated unless the alien pays the  
7 penalties and fees specified in section 601(e)(6) consistent with the  
8 procedures set forth in section 608 within 90 days.

9  
10 (b) With respect to an alien who meets the eligibility criteria set forth  
11 in section 614(a)(1)(A) and (F), but not the eligibility criteria in section  
12 614(a)(1)(B), the individual who pays the penalties specified in section  
13 601(e)(6) shall be entitled to a refund when the alien makes all the  
14 demonstrations specified in section 614(a)(1).

15 **SEC. 618. GAO REPORT.**

16 Seven years after the date of enactment of this Act, the Comptroller  
17 General of the United States shall submit a report to the Committee on  
18 the Judiciary of the Senate and the Committee on the Judiciary of the  
19 House of Representatives, which sets forth—

20  
21 (1) the number of aliens who were eligible for adjustment of  
22 status under section 623(a);

23  
24 (2) the number of aliens who applied for adjustment of status  
25 under section 623(a); and

26  
27 (3) the number of aliens who were granted adjustment of status  
28 under section 623(a).

29  
30 **SEC. 619. REGULATIONS, EFFECTIVE DATE, AUTHORIZATION**  
31 **OF APPROPRIATIONS.**

32 (a) Regulations.—The Secretary shall issue regulations to carry out the  
33 amendments made by this subtitle not later than the first day of the  
34 seventh month that begins after the date of enactment of this Act.

35  
36 (b) Effective Date.—This subtitle shall take effect on the date that  
37 regulations required by subsection (a) are issued, regardless of  
38 whether such regulations are issued on an interim basis or on any  
39 other basis.

1 (c) Authorization of Appropriations.—There are authorized to be  
2 appropriated to the Secretary such sums as may be necessary to  
3 implement this subtitle, including any sums needed for costs  
4 associated with the initiation of such implementation.

5  
6 **PART II—CORRECTION OF SOCIAL SECURITY RECORDS**

7 **SEC. 620. CORRECTION OF SOCIAL SECURITY RECORDS.**

8 (a) In General.—Section 208(e)(1) of the Social Security Act (42  
9 U.S.C. 408(e)(1)) is amended—

10 (1) in subparagraph (B)(ii), by striking “or” at the end;

11 (2) in subparagraph (C), by inserting “or” at the end;

12 (3) by inserting after subparagraph (C) the following:

13 “(D) who is granted nonimmigrant status pursuant to section  
14 101(a)(15)(Z–A) of the Immigration and Nationality Act,”; and

15 (4) by striking “1990.” and inserting “1990, or in the case of an  
16 alien described in subparagraph (D), if such conduct is alleged to  
17 have occurred before the date on which the alien was granted such  
18 nonimmigrant status.”.

19 (b) Effective Date.—The amendments made by subsection (a) shall  
20 take effect on the first day of the seventh month that begins after the  
21 date of the enactment of this Act.

22  
23 Subtitle C—Agricultural Workers

24 **SEC. 621. SHORT TITLE.**

25 This subtitle may be cited as the “Agricultural Job Opportunities,  
26 Benefits, and Security Act of 2007” or the “AgJOBS Act of 2007”

27  
28 **PART I—ADMISSION OF AGRICULTURAL WORKERS**

29 **SEC. 622. ADMISSION OF AGRICULTURAL WORKERS.**

30 (a) Z–A Nonimmigrant Visa Category.—

31 (1) ESTABLISHMENT.—Paragraph (15) of section 101(a) of the  
32 Immigration and Nationality Act (8 U.S.C. 1101(a)), [as amended  
33 by section 601(b), is further amended by adding at the end the  
34 following new subparagraph:

35 “(Z–A)(i) an alien who is coming to the United States to  
36 perform any service or activity that is considered to be

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1 agricultural under section 3(f) of the Fair Labor Standards Act  
2 of 1938 (29 U.S.C. 203(f)), agricultural labor under section  
3 3121(g) of the Internal Revenue Code of 1986, or the  
4 performance of agricultural labor or services described in  
5 subparagraph (H)(ii)(a), who meets the requirements of  
6 section 214A of this Act; or

7 “(ii) the spouse or minor child of an alien described in clause  
8 (i) who is residing in the United States.”.

9 (b) Requirements for Issuance of Nonimmigrant Visa.—Chapter 2 of  
10 title II of the Immigration and Nationality Act (8 U.S.C. 1181 et seq.)  
11 is amended by inserting after section 214 the following new section:

12 “SEC. 214A. ADMISSION OF AGRICULTURAL WORKERS.

13 “(a) Definitions.—In this section:

14 “(1) AGRICULTURAL EMPLOYMENT.—The term ‘agricultural  
15 employment’ means any service or activity that is considered to be  
16 agricultural under section 3(f) of the Fair Labor Standards Act of  
17 1938 (29 U.S.C. 203(f)) or agricultural labor under section  
18 3121(g) of the Internal Revenue Code of 1986 or the performance  
19 of agricultural labor or services described in section  
20 101(a)(15)(H)(ii)(a).

21 “(2) DEPARTMENT.—The term ‘Department’ means the Department  
22 of Homeland Security.

23 “(3) EMPLOYER.—The term ‘employer’ means any person or entity,  
24 including any farm labor contractor and any agricultural  
25 association, that employs workers in agricultural employment.

26 “(4) QUALIFIED DESIGNATED ENTITY.—The term ‘qualified designated  
27 entity’ means—

28 “(A) a qualified farm labor organization or an association of  
29 employers designated by the Secretary; or

30 “(B) any such other person designated by the Secretary if  
31 that Secretary determines such person is qualified and has  
32 substantial experience, demonstrated competence, and has a  
33 history of long-term involvement in the preparation and  
34 submission of applications for adjustment of status under  
35 section 209, 210, or 245, the Act entitled ‘An Act to adjust the  
36 status of Cuban refugees to that of lawful permanent residents  
37 of the United States, and for other purposes’, approved  
38 November 2, 1966 (Public Law 89–732; 8 U.S.C. 1255 note),  
39 Public Law 95–145 (8 U.S.C. 1255 note), or the Immigration

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1 Reform and Control Act of 1986 (Public Law 99-603; 100 Stat.  
2 3359) or any amendment made by that Act.

3 “(5) SECRETARY.—Except as otherwise provided, the term  
4 ‘Secretary’ means the Secretary of Homeland Security.

5 “(6) TEMPORARY.—A worker is employed on a ‘temporary’ basis  
6 when the employment is intended not to exceed 10 months.

7 “(7) WORK DAY.—The term ‘work day’ means any day in which the  
8 individual is employed 5.75 or more hours in agricultural  
9 employment.

10 “(8) Z-A DEPENDENT VISA.—The term ‘Z-A dependent visa’ means  
11 a nonimmigrant visa issued pursuant to section 101(a)(15)(Z-  
12 A)(ii).

13 “(9) Z-A VISA.—The term ‘Z-A visa’ means a nonimmigrant visa  
14 issued pursuant to section 101(a)(15)(Z-A)(i).

15 “(b) Authorization for Presence, Employment, and Travel in the  
16 United States.—

17 “(1) IN GENERAL.—An alien issued a Z-A visa or a Z-A dependent  
18 visa may remain in, and be employed in, the United States during  
19 the period such visa is valid.

20 “(2) AUTHORIZED EMPLOYMENT.—The Secretary shall provide an  
21 alien who is granted a Z-A visa or a Z-A dependent visa an  
22 employment authorized endorsement or other appropriate work  
23 permit, in the same manner as an alien lawfully admitted for  
24 permanent residence.

25 “(3) AUTHORIZED TRAVEL.—An alien who is granted a Z-A visa or a  
26 Z-A dependent visa is authorized to travel outside the United  
27 States (including commuting to the United States from a residence  
28 in a foreign country) in the same manner as an alien lawfully  
29 admitted for permanent residence.

30 “(c) Qualifications.—

31 “(1) Z-A VISA.—Notwithstanding any other provision of law, the  
32 Secretary shall, pursuant to the requirements of this section, grant  
33 a Z-A visa to an alien if the Secretary determines that the alien—

34 “(A) has performed agricultural employment in the United  
35 States for at least 863 hours or 150 work days during the 24-  
36 month period ending on December 31, 2006;

37 “(B) applied for such status during the 18-month application  
38 period beginning on the first day of the seventh month that

1 begins after the date of enactment of this Act;

2 "(C) is admissible to the United States under section 212,  
3 except as otherwise provided in paragraph (4);

4 "(D) has not been convicted of any felony or a misdemeanor,  
5 an element of which involves bodily injury, threat of serious  
6 bodily injury, or harm to property in excess of \$500; and

7 "(E) meets the requirements of paragraph (3).

8 "(2) Z-A DEPENDENT VISA.—Notwithstanding any other provision of  
9 law, the Secretary shall grant a Z-A dependent visa to an alien  
10 who is—

11 "(A) described in section 101(a)(15)(Z-A)(ii);

12 "(B) meets the requirements of paragraph (3); and

13 "(C) is admissible to the United States under section 212,  
14 except as otherwise provided in paragraph (4).

15 "(3) SECURITY AND LAW ENFORCEMENT BACKGROUND CHECKS.—

16 "(A) FINGERPRINTS.—An alien seeking a Z-A visa or a Z-A  
17 dependent visa shall submit fingerprints to the Secretary at  
18 such time and in manner as the Secretary may require.

19 "(B) BACKGROUND CHECKS.—The Secretary shall utilize  
20 fingerprints provided under subparagraph (A) and other  
21 biometric data provided by an alien to conduct a background  
22 check of the alien, including searching the alien's criminal  
23 history and any law enforcement actions taken with respect to  
24 the alien and ensuring that the alien is not a risk to national  
25 security.

26 "(4) WAIVER OF CERTAIN GROUNDS OF INADMISSIBILITY.—In the  
27 determination of an alien's eligibility for a Z-A visa or a Z-A  
28 dependent visa the following shall apply:

29 "(A) GROUNDS OF EXCLUSION NOT APPLICABLE.—The provisions of  
30 paragraphs (5), (6)(A), (7), and (9) of section 212(a) shall not  
31 apply.

32 "(B) WAIVER OF OTHER GROUNDS.—

33 "(i) IN GENERAL.—Except as provided in clause (ii), the  
34 Secretary may waive any provision of such section 212(a),  
35 other than the paragraphs described in subparagraph (A),  
36 in the case of individual aliens for humanitarian purposes,  
37 to ensure family unity, or if such waiver is otherwise in the  
38 public interest.

1           “(ii) GROUNDS THAT MAY NOT BE WAIVED.—Except as provided  
2           in subparagraph (C), subparagraphs (A), (B), and (C) of  
3           paragraph (2), and paragraphs (3) and (4) of section  
4           212(a) may not be waived by the Secretary under clause  
5           (i).

6           “(iii) CONSTRUCTION.—Nothing in this subparagraph shall  
7           be construed as affecting the authority of the Secretary  
8           other than under this subparagraph to waive provisions of  
9           such section 212(a).

10          “(C) SPECIAL RULE FOR DETERMINATION OF PUBLIC CHARGE.—An alien  
11          is not ineligible for a Z–A visa or a Z–A dependent visa by  
12          reason of a ground of inadmissibility under section 212(a)(4) if  
13          the alien demonstrates a history of employment in the United  
14          States evidencing self-support without reliance on public cash  
15          assistance.

16          “(d) Application.—

17           “(1) IN GENERAL.—An alien seeking a Z–A visa shall submit an  
18           application to the Secretary for such a visa, including information  
19           regarding any Z–A dependent visa for the spouse of child of the  
20           alien.

21           “(2) SUBMISSION.—Applications for a Z–A visa under may be  
22           submitted—

23           “(A) to the Secretary if the applicant is represented by an  
24           attorney or a nonprofit religious, charitable, social service, or  
25           similar organization recognized by the Board of Immigration  
26           Appeals under section 292.2 of title 8, Code of Federal  
27           Regulations (or similar successor regulations); or

28           “(B) to a qualified designated entity if the applicant consents  
29           to the forwarding of the application to the Secretary.

30          “(3) PROOF OF ELIGIBILITY.—

31           “(A) IN GENERAL.—An alien may establish that the alien meets  
32           the requirement for a Z–A visa through government  
33           employment records or records supplied by employers or  
34           collective bargaining organizations, and other reliable  
35           documentation as the alien may provide. The Secretary shall  
36           establish special procedures to properly credit work in cases in  
37           which an alien was employed under an assumed name.

38           “(B) DOCUMENTATION OF WORK HISTORY.—

39           “(i) BURDEN OF PROOF.—An alien applying for a Z–A visa or



1 applying for adjustment of status described in subsection  
2 (j) has the burden of proving by a preponderance of the  
3 evidence that the alien has performed the requisite  
4 number of hours or days of agricultural employment  
5 required for such application or adjustment of status, as  
6 applicable.

7 "(ii) TIMELY PRODUCTION OF RECORDS.—If an employer or  
8 farm labor contractor employing such an alien has kept  
9 proper and adequate records respecting such employment,  
10 the alien's burden of proof under clause (i) may be met by  
11 securing timely production of such records under  
12 regulations to be promulgated by the Secretary.

13 "(iii) SUFFICIENT EVIDENCE.—An alien may meet the burden  
14 of proof under clause (i) to establish that the alien has  
15 performed the requisite number of hours or days of  
16 agricultural employment by producing sufficient evidence  
17 to show the extent of that employment as a matter of just  
18 and reasonable inference.

19 "(4) APPLICATIONS SUBMITTED TO QUALIFIED DESIGNATED ENTITIES.—

20 "(A) REQUIREMENTS.—Each qualified designated entity shall  
21 agree—

22 "(i) to forward to the Secretary an application submitted  
23 to that entity pursuant to paragraph (2)(B) if the alien for  
24 whom the application is being submitted has consented to  
25 such forwarding;

26 "(ii) not to forward to the Secretary any such application  
27 if such an alien has not consented to such forwarding; and

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

30 "(B) NO AUTHORITY TO MAKE DETERMINATIONS.—No qualified  
31 designated entity may make a determination required by this  
32 section to be made by the Secretary.

33 "(5) APPLICATION FEES.—

34 "(A) FEE SCHEDULE.—The Secretary shall provide for a  
35 schedule of fees that—

36 "(i) shall be charged for applying for a Z-A visa under  
37 this section or for an adjustment of status described in  
38 subsection (j); and

39 "(ii) may be charged by qualified designated entities to

1 help defray the costs of services provided to such aliens  
2 making such an application.

3 “(B) PROHIBITION ON EXCESS FEES BY QUALIFIED DESIGNATED  
4 ENTITIES.—A qualified designated entity may not charge any fee  
5 in excess of, or in addition to, the fees authorized under  
6 subparagraph (A)(ii) for services provided to applicants.

7 “(6) LIMITATION ON ACCESS TO INFORMATION.—Files and records  
8 collected or compiled by a qualified designated entity for the  
9 purposes of this section are confidential and the Secretary shall  
10 not have access to such a file or record relating to an alien without  
11 the consent of the alien, except as allowed by a court order issued  
12 pursuant to [\_\_\_].

13 “(7) TREATMENT OF APPLICANTS.—

14 “(A) IN GENERAL.—An alien who files an application under this  
15 section to receive a Z–A visa and any spouse or child of the  
16 alien seeking a Z–A dependant visa, on the date described in  
17 subparagraph (B)—

18 “(i) shall be granted probationary benefits in the form of  
19 employment authorization pending final adjudication of the  
20 alien’s application;

21 “(ii) may in the Secretary’s discretion receive advance  
22 permission to re-enter the United States pursuant to  
23 existing regulations governing advance parole;

24 “(iii) may not be detained for immigration purposes,  
25 determined inadmissible or deportable, or removed  
26 pending final adjudication of the alien’s application, unless  
27 the alien is determined to be ineligible for Z–A visa; and

28 “(iv) may not be considered an unauthorized alien (as  
29 defined in section 274A) until the date on which [the  
30 alien’s application for a Z–A visa] is denied.

31 “(B) TIMING OF PROBATIONARY BENEFITS.—

32 “(i) IN GENERAL.—Subject to clause (ii), an alien who  
33 submits an application for a Z–A visa under subsection (d),  
34 including any evidence required under such subsection,  
35 and any spouse or child of the alien seeking a Z–A  
36 dependent visa shall receive the probationary benefits  
37 described in clauses (i) through (iv) of subparagraph (A) at  
38 the earlier of—

39 “(I) the date and time that the alien has passed all

1 appropriate background checks, including name and  
2 fingerprint checks; or

3 “(II) the end of the next business day after the date  
4 that the Secretary receives the alien’s application for  
5 Z–A visa.

6 “(ii) EXCEPTION.—If the Secretary determines that the  
7 alien fails the background checks referred to in clause  
8 (i)(I), the alien may not be granted probationary benefits  
9 described in clauses (i) through (iv) of subparagraph (A).

10 “(C) PROBATIONARY AUTHORIZATION DOCUMENT.—The Secretary  
11 shall provide each alien granted probationary benefits  
12 described in clauses (i) through (iv) of subparagraph (A) with  
13 a counterfeit-resistant document that reflects the benefits and  
14 status set forth in subparagraph (A). The Secretary may by  
15 regulation establish procedures for the issuance of  
16 documentary evidence of probationary benefits and, except as  
17 provided herein, the conditions under which such documentary  
18 evidence expires, terminates, or is renewed.

19 “(D) CONSTRUCTION.—Nothing in this section may be  
20 construed to limit the Secretary’s authority to conduct any  
21 appropriate background and security checks subsequent to  
22 issuance of evidence of probationary benefits under this  
23 paragraph.

24 “(8) TEMPORARY STAY OF REMOVAL AND WORK AUTHORIZATION FOR CERTAIN  
25 APPLICANTS.—

26 “(A) BEFORE APPLICATION PERIOD.—Beginning on the date of  
27 enactment of the AgJOBS Act of 2007, the Secretary shall  
28 provide that, in the case of an alien who is apprehended prior  
29 to the first date of the application period described in  
30 subsection (c)(1)(B) and who can establish a nonfrivolous case  
31 of eligibility for a Z–A visa (but for the fact that the alien may  
32 not apply for such status until the beginning of such period),  
33 the alien—

34 “(i) may not be removed; and

35 “(ii) shall be granted authorization to engage in  
36 employment in the United States and be provided an  
37 employment authorized endorsement or other appropriate  
38 work permit for such purpose.

39 “(B) DURING APPLICATION PERIOD.—The Secretary shall provide  
40 that, in the case of an alien who presents a nonfrivolous

1 application for Z-A visa during the application period described  
2 in subsection (c)(1)(B), including an alien who files such an  
3 application within 30 days of the alien's apprehension, and  
4 until a final determination on the application has been made in  
5 accordance with this section, the alien—

6 "(i) may not be removed; and

7 "(ii) shall be granted authorization to engage in  
8 employment in the United States and be provided an  
9 employment authorized endorsement or other appropriate  
10 work permit for such purpose.

11 "(e) Numerical Limitations.—

12 "(1) Z-A VISA.—The Secretary may not issue more than  
13 1,500,000 Z-A visas.

14 "(2) Z-A DEPENDENT VISA.—The Secretary may not count any Z-A  
15 dependent visa issued against the numerical limitation described in  
16 paragraph (1).

17 "(f) Evidence of Nonimmigrant Status.—

18 "(1) IN GENERAL.—Documentary evidence of nonimmigrant status  
19 shall be issued to each alien granted a Z-A visa or a Z-A  
20 dependent visa.

21 "(2) FEATURES OF DOCUMENTATION.—Documentary evidence of a Z-A  
22 visa or a Z-A dependent visa—

23 "(A) shall be machine-readable, tamper-resistant, and shall  
24 contain a digitized photograph and other biometric identifiers  
25 that can be authenticated;

26 "(B) shall be designed in consultation with U.S. Immigration  
27 and Customs Enforcement's Forensic Document Laboratory;

28 "(C) shall serve as a valid travel and entry document for an  
29 alien granted a Z-A visa or a Z-A dependent visa for the  
30 purpose of applying for admission to the United States where  
31 the alien is applying for admission at a port of entry;

32 "(D) may be accepted during the period of its validity by an  
33 employer as evidence of employment authorization and  
34 identity under section 274A; and

35 "(E) shall be issued to the alien granted the visa by the  
36 Secretary promptly after final adjudication of such alien's  
37 application for the visa, except that an alien may not be  
38 granted a Z-A visa or a Z-A dependent visa until all

1 appropriate background checks on each alien are completed to  
2 the satisfaction of the Secretary.

3 “(g) Fine.—An alien granted a Z–A visa shall pay a fine of \$100 to  
4 the Secretary.

5 “(h) Treatment of Aliens Granted a Z–A Visa.—

6 “(1) IN GENERAL.—Except as otherwise provided under this  
7 subsection, an alien granted a Z–A visa or a Z–A dependent visa  
8 shall be considered to be an alien lawfully admitted for permanent  
9 residence for purposes of any law other than any provision of this  
10 Act.

11 “(2) DELAYED ELIGIBILITY FOR CERTAIN FEDERAL PUBLIC BENEFITS.—An  
12 alien granted a Z–A visa shall not be eligible, by reason of such  
13 status, for any form of assistance or benefit described in section  
14 403(a) of the Personal Responsibility and Work Opportunity  
15 Reconciliation Act of 1996 (8 U.S.C. 1613(a)) until 5 years after  
16 the date on which the alien is granted an adjustment of status  
17 under subsection (d).

18 “(3) TERMS OF EMPLOYMENT.—

19 “(A) PROHIBITION.—No alien granted a Z–A visa may be  
20 terminated from employment by any employer during the  
21 period of a Z–A visa except for just cause.

22 “(B) TREATMENT OF COMPLAINTS.—

23 “(i) ESTABLISHMENT OF PROCESS.—The Secretary shall  
24 establish a process for the receipt, initial review, and  
25 disposition of complaints by aliens granted a Z–A visa who  
26 allege that they have been terminated without just cause.  
27 No proceeding shall be conducted under this subparagraph  
28 with respect to a termination unless the Secretary  
29 determines that the complaint was filed not later than 6  
30 months after the date of the termination.

31 “(ii) INITIATION OF ARBITRATION.—If the Secretary finds that  
32 an alien has filed a complaint in accordance with clause (i)  
33 and there is reasonable cause to believe that the alien was  
34 terminated from employment without just cause, the  
35 Secretary shall initiate binding arbitration proceedings by  
36 requesting the Federal Mediation and Conciliation Service  
37 to appoint a mutually agreeable arbitrator from the roster  
38 of arbitrators maintained by such Service for the  
39 geographical area in which the employer is located. The  
40 procedures and rules of such Service shall be applicable to

1 the selection of such arbitrator and to such arbitration  
2 proceedings. The Secretary shall pay the fee and expenses  
3 of the arbitrator, subject to the availability of  
4 appropriations for such purpose.

5 “(iii) ARBITRATION PROCEEDINGS.—The arbitrator shall  
6 conduct the proceeding under this subparagraph in  
7 accordance with the policies and procedures promulgated  
8 by the American Arbitration Association applicable to  
9 private arbitration of employment disputes. The arbitrator  
10 shall make findings respecting whether the termination  
11 was for just cause. The arbitrator may not find that the  
12 termination was for just cause unless the employer so  
13 demonstrates by a preponderance of the evidence. If the  
14 arbitrator finds that the termination was not for just cause,  
15 the arbitrator shall make a specific finding of the number  
16 of days or hours of work lost by the employee as a result  
17 of the termination. The arbitrator shall have no authority  
18 to order any other remedy, including reinstatement, back  
19 pay, or front pay to the affected employee. Not later than  
20 30 days after the date of the conclusion of the arbitration  
21 proceeding, the arbitrator shall transmit the findings in the  
22 form of a written opinion to the parties to the arbitration  
23 and the Secretary. Such findings shall be final and  
24 conclusive, and no official or court of the United States  
25 shall have the power or jurisdiction to review any such  
26 findings.

27 “(iv) EFFECT OF ARBITRATION FINDINGS.—If the Secretary  
28 receives a finding of an arbitrator that an employer has  
29 terminated the employment of an alien who is granted a  
30 Z–A visa without just cause, the Secretary shall credit the  
31 alien for the number of days of work not performed during  
32 such period of termination for the purpose of determining  
33 if the alien meets the qualifying employment requirement  
34 of subsection (f)(2).

35 “(v) TREATMENT OF ATTORNEY’S FEES.—Each party to an  
36 arbitration under this subparagraph shall bear the cost of  
37 their own attorney’s fees for the arbitration.

38 “(vi) NONEXCLUSIVE REMEDY.—The complaint process  
39 provided for in this subparagraph is in addition to any  
40 other rights an employee may have in accordance with  
41 applicable law.

42 “(vii) EFFECT ON OTHER ACTIONS OR PROCEEDINGS.—Any

1 finding of fact or law, judgment, conclusion, or final order  
2 made by an arbitrator in the proceeding before the  
3 Secretary shall not be conclusive or binding in any  
4 separate or subsequent action or proceeding between the  
5 employee and the employee's current or prior employer  
6 brought before an arbitrator, administrative agency, court,  
7 or judge of any State or the United States, regardless of  
8 whether the prior action was between the same or related  
9 parties or involved the same facts, except that the  
10 arbitrator's specific finding of the number of days or hours  
11 of work lost by the employee as a result of the  
12 employment termination may be referred to the Secretary  
13 pursuant to clause (iv).

14 "(4) RECORD OF EMPLOYMENT.—

15 "(A) IN GENERAL.—Each employer of an alien who is granted a  
16 Z-A visa shall annually—

17 "(i) provide a written record of employment to the alien;  
18 and

19 "(ii) provide a copy of such record to the Secretary.

20 "(B) CIVIL PENALTIES.—

21 "(i) IN GENERAL.—If the Secretary finds, after notice and  
22 opportunity for a hearing, that an employer of an alien  
23 granted a Z-A visa has failed to provide the record of  
24 employment required under subparagraph (A) or has  
25 provided a false statement of material fact in such a  
26 record, the employer shall be subject to a civil money  
27 penalty in an amount not to exceed \$1,000 per violation.

28 "(ii) LIMITATION.—The penalty applicable under clause (i)  
29 for failure to provide records shall not apply unless the  
30 alien has provided the employer with evidence of  
31 employment authorization granted under this subsection.

32 "(i) Termination of a Grant of Z-A Visa.—

33 "(1) IN GENERAL.—The Secretary may terminate a Z-A visa or a  
34 Z-A dependent visa granted to an alien only if the Secretary  
35 determines that the alien is deportable.

36 "(2) GROUNDS FOR TERMINATION.—Prior to the date that an alien  
37 granted a Z-A visa or a Z-A dependent visa becomes eligible for  
38 adjustment of status described in subsection (j), the Secretary  
39 may deny adjustment to permanent resident status and provide

1 for termination of the alien’s Z–A visa or Z–A dependent visa if—

2 “(A) the Secretary finds, by a preponderance of the  
3 evidence, that the grant of a Z–A visa was the result of fraud  
4 or willful misrepresentation (as described in section  
5 212(a)(6)(C)(i)); or

6 “(B) the alien—

7 “(i) commits an act that makes the alien inadmissible to  
8 the United States as an immigrant, except as provided  
9 under subsection (c)(4);

10 “(ii) is convicted of a felony or 3 or more misdemeanors  
11 committed in the United States;

12 “(iii) is convicted of an offense, an element of which  
13 involves bodily injury, threat of serious bodily injury, or  
14 harm to property in excess of \$500; or

15 “(iv) in the case of an alien granted a Z–A visa, fails to  
16 perform the agricultural employment described in  
17 subsection (j)(1)(A) unless the alien was unable to work in  
18 agricultural employment due to the extraordinary  
19 circumstances described in subsection (j)(1)(A)(iii).

20  
21 “(3) REPORTING REQUIREMENT.—The Secretary shall promulgate  
22 regulations to ensure that the alien granted a Z–A visa complies  
23 with the qualifying agricultural employment described in  
24 subsection (j)(1)(A) at the end of the 5 year work period, which  
25 may include submission of an application pursuant to this  
26 subsection.

27 “(j) Adjustment to Permanent Residence.—

28 “(1) Z–A VISA.—Except as provided in this subsection, the  
29 Secretary shall award the maximum number of points available  
30 pursuant to section 203(b)(1) and adjust the status of an alien  
31 granted a Z–A visa to that of an alien lawfully admitted for  
32 permanent residence under this Act, if the Secretary determines  
33 that the following requirements are satisfied:

34 “(A) QUALIFYING EMPLOYMENT.—

35 “(i) IN GENERAL.—Subject to clauses (ii) and (iii), the alien  
36 has performed at least—

37 “(I) 5 years of agricultural employment in the United  
38 States for at least 100 work days per year, during the  
39 5-year period beginning on the date of enactment of



1 the AgJobs Act of 2007; or

2 “(II) 3 years of agricultural employment in the  
3 United States for at least 150 work days per year,  
4 during the 3-year period beginning on such date of  
5 enactment.

6 “(ii) FOUR YEAR PERIOD OF EMPLOYMENT.—An alien shall be  
7 considered to meet the requirements of clause (i) if the  
8 alien has performed 4 years of agricultural employment in  
9 the United States for at least 150 work days during 3 years  
10 of those 4 years and at least 100 work days during the  
11 remaining year, during the 4-year period beginning on  
12 such date of enactment.

13 “(iii) EXTRAORDINARY CIRCUMSTANCES.—In determining  
14 whether an alien has met the requirement of clause (i),  
15 the Secretary may credit the alien with not more than 12  
16 additional months to meet the requirement of that clause if  
17 the alien was unable to work in agricultural employment  
18 due to—

19 “(I) pregnancy, injury, or disease, if the alien can  
20 establish such pregnancy, disabling injury, or disease  
21 through medical records;

22 “(II) illness, disease, or other special needs of a  
23 minor child, if the alien can establish such illness,  
24 disease, or special needs through medical records; or

25 “(III) severe weather conditions that prevented the  
26 alien from engaging in agricultural employment for a  
27 significant period of time.

28 “(B) PROOF.—An alien may demonstrate compliance with the  
29 requirements of subparagraph (A) by submitting—

30 “(i) the record of employment described in subsection  
31 (h)(4); or

32 “(ii) such documentation as may be submitted under  
33 subsection (d)(3).

34 “(C) APPLICATION PERIOD.—Not later than 8 years after the  
35 date of the enactment of the AgJOBS Act of 2007, the alien  
36 must—

37 “(i) apply for adjustment of status; or

38 “(ii) renew the alien’s Z visa status as described in  
39 section 601(k)(2).

1           “(D) FINE.—The alien pays to the Secretary a fine of \$400; or

2           “(2) SPOUSES AND MINOR CHILDREN.—Notwithstanding any other  
3 provision of law, the Secretary shall confer the status of lawful  
4 permanent resident on the spouse and minor child of an alien  
5 granted any adjustment of status under paragraph (1), including  
6 any individual who was a minor child on the date such alien was  
7 granted a Z–A visa, if the spouse or minor child applies for such  
8 status, or if the principal alien includes the spouse or minor child in  
9 an application for adjustment of status to that of a lawful  
10 permanent resident.

11           “(3) GROUNDS FOR DENIAL OF ADJUSTMENT OF STATUS.—The Secretary  
12 may deny an alien granted a Z–A visa or a Z–A dependent visa an  
13 adjustment of status under this Act and provide for termination of  
14 such visa if—

15           “(A) the Secretary finds by a preponderance of the evidence  
16 that grant of the Z–A visa was the result of fraud or willful  
17 misrepresentation (as described in section 212(a)(6)(C)(i)); or

18           “(B) the alien—

19           “(i) commits an act that makes the alien inadmissible to  
20 the United States under section 212, except as provided  
21 under subsection (c)(4);

22           “(ii) is convicted of a felony or 3 or more misdemeanors  
23 committed in the United States; or

24           “(iii) is convicted of an offense, an element of which  
25 involves bodily injury, threat of serious bodily injury, or  
26 harm to property in excess of \$500.

27           “(4) GROUNDS FOR REMOVAL.—Any alien granted Z–A visa status  
28 who does not apply for adjustment of status or renewal of Z status  
29 under section 601(k)(2) prior to the expiration of the application  
30 period described in subsection (c)(1)(B) or who fails to meet the  
31 other requirements of paragraph (1) by the end of the application  
32 period, is deportable and may be removed under section 240.

33           “(5) PAYMENT OF TAXES.—

34           “(A) IN GENERAL.—Not later than the date on which an alien’s  
35 status is adjusted as described in this subsection, the alien  
36 shall establish that the alien does not owe any applicable  
37 Federal tax liability by establishing that—

38           “(i) no such tax liability exists;

39           “(ii) all such outstanding tax liabilities have been paid; or

1                   “(iii) the alien has entered into an agreement for  
2                   payment of all outstanding liabilities with the Internal  
3                   Revenue Service.

4                   “(B) APPLICABLE FEDERAL TAX LIABILITY.—In this paragraph, the  
5                   term ‘applicable Federal tax liability’ means liability for Federal  
6                   taxes, including penalties and interest, owed for any year  
7                   during the period of employment required under paragraph  
8                   (1)(A) for which the statutory period for assessment of any  
9                   deficiency for such taxes has not expired.

10                  “(C) IRS COOPERATION.—The Secretary of the Treasury shall  
11                  establish rules and procedures under which the Commissioner  
12                  of Internal Revenue shall provide documentation to an alien  
13                  upon request to establish the payment of all taxes required by  
14                  this subsection.

15  
16                  “(6) English Language.—

17                         “(A) In General.—Not later than the date on which a Z-A  
18                         nonimmigrant’s status is adjusted or renewed under  
19                         section 601(k)(2), a Z-A nonimmigrant who is 18 years of  
20                         age or older must pass the naturalization test described in  
21                         sections 312(a)(1) and (2).

22                         “(B) Exception.--The requirement of subparagraph (A)  
23                         shall not apply to any person who, on the date of the filing  
24                         of the person's application for an extension of Z-A  
25                         nonimmigrant status--

26  
27                                 (i) is unable because of physical or developmental  
28                                 disability or mental impairment to comply therewith;

29  
30                                 (ii) is over fifty years of age and has been living in  
31                                 the United States for periods totaling at least twenty  
32                                 years, or

33  
34                                 (iii) is over fifty-five years of age and has been living  
35                                 in the United States for periods totaling at least  
36                                 fifteen years.

37  
38                  “(7) PRIORITY OF APPLICATIONS.—

39                         “(A) BACK OF LINE.—An alien may not adjust status to that of  
40                         a lawful permanent resident under this subsection until 30  
41                         days after the date on which an immigrant visa becomes

1 available for approved petitions filed under sections 201, 202,  
2 and 203 of the Act that were filed before May 1, 2005  
3 (referred to in this paragraph as the 'processing date').

4 "(B) OTHER APPLICANTS.—The processing of applications for an  
5 adjustment of status under this subsection shall be processed  
6 not later than 1 year after the processing date.

7  
8 "(C) CONSULAR APPLICATION.—

9  
10 (i) In General.—A Z-A nonimmigrant's application for  
11 adjustment of status to that of an alien lawfully admitted  
12 for permanent residence must be filed in person with a  
13 United States consulate abroad.

14  
15 (ii) Place of Application.—Unless otherwise directed by  
16 the Secretary of State, a Z-A nonimmigrant applying for  
17 adjustment of status under this paragraph shall make an  
18 application at a consular office in the alien's country of  
19 origin. The Secretary of State shall direct a consular  
20 office in a country that is not a Z-A nonimmigrant's  
21 country of origin to accept an application for adjustment  
22 of status from such an alien, where the Z-A  
23 nonimmigrant's country of origin is not contiguous to the  
24 United States, and as consular resources make possible.

25 "(k) Confidentiality of Information.— Applicants for Z-A  
26 nonimmigrant status under this subtitle shall be afforded  
27 confidentiality as provided under section 604.

28 "(l) Penalties for False Statements in Applications.—

29 "(1) CRIMINAL PENALTY.—Any person who—

30 "(A) applies for a Z-A visa or a Z-A dependent visa under  
31 this section or an adjustment of status described in subsection  
32 (j) and knowingly and willfully falsifies, conceals, or covers up  
33 a material fact or makes any false, fictitious, or fraudulent  
34 statements or representations, or makes or uses any false  
35 writing or document knowing the same to contain any false,  
36 fictitious, or fraudulent statement or entry; or

37 "(B) creates or supplies a false writing or document for use  
38 in making such an application,

39 shall be fined in accordance with title 18, United States Code,  
40 imprisoned not more than 5 years, or both.

**DRAFT - FOR DISCUSSION PURPOSES ONLY**

**May 18, 2007 11:58 p.m.**

1           “(2) INADMISSIBILITY.—An alien who is convicted of a crime under  
2           paragraph (1) shall be considered to be inadmissible to the United  
3           States on the ground described in section 212(a)(6)(C)(i).

4           “(m) Eligibility for Legal Services.—Section 504(a)(11) of Public Law  
5           104–134 (110 Stat. 1321–53 et seq.) shall not be construed to  
6           prevent a recipient of funds under the Legal Services Corporation Act  
7           (42 U.S.C. 2996 et seq.) from providing legal assistance directly  
8           related to an application for a Z–A visa under subsection (b) or an  
9           adjustment of status under subsection (j).

10          “(n) Administrative and Judicial Review.— Administrative or judicial  
11          review of a determination on an application for a Z–A visa shall be  
12          such as is provided under section 603.

13          “(o) Public Outreach.—Beginning not later than the first day of the  
14          application period described in subsection (c)(1)(B), the Secretary  
15          shall cooperate with qualified designated entities to broadly  
16          disseminate information regarding the availability of Z–A visas, the  
17          benefits of such visas, and the requirements to apply for and be  
18          granted such a visa.”.

19          (c) Numerical Limitations.—

20               (1) WORLDWIDE LEVEL OF IMMIGRATION.—Section 201(b)(1) of the  
21               Immigration and Nationality Act (8 U.S.C. 1151(b)(1)), as  
22               amended by [\_\_\_\_], is further amended—

23                       (A) in subparagraph (A), by striking “subparagraph (A) or  
24                       (B)” and inserting “subparagraph (A), (B), or (N)”; and

25                       (B) by adding at the end, the following new subparagraph:

26                               “(N) Aliens issued a Z–A visa or a Z–A dependent visa (as those  
27                               terms are defined in section 214A) who receive an adjustment of  
28                               status to that of an alien lawfully admitted for permanent  
29                               residence.”.

30               (2) NUMERICAL LIMITATIONS ON INDIVIDUAL FOREIGN STATES.—Section  
31               202(a) of the Immigration and Nationality Act (8 U.S.C. 1152) is  
32               amended by adding at the end the following new paragraph:

33                       “(6) SPECIAL RULE FOR Z–A NONIMMIGRANTS.—An immigrant visa may  
34                       be made available to an alien issued a Z–A visa or a Z–A  
35                       dependent visa (as those terms are defined in section 214A)  
36                       without regard to the numerical limitations of this section.”.

37          (d) Clerical Amendment.—The table of contents of the Immigration  
38          and Nationality Act (8 U.S.C. 1101 et seq.) is amended by inserting  
39          after the item relating to section 214 the following:

1 "Sec.214A.Admission of agricultural worker."  
2

3

4 **SEC. 623. AGRICULTURAL WORKER IMMIGRATION STATUS  
ADJUSTMENT ACCOUNT.**

5 Section 286 of the Immigration and Nationality Act (8 U.S.C. 1356)  
6 is amended by adding at the end the following new subsection:

7 "(y) Agricultural Worker Immigration Status Adjustment Account.—

8 "(1) ESTABLISHMENT.—There is established in the general fund of  
9 the Treasury a separate account, which shall be known as the  
10 'Agricultural Worker Immigration Status Adjustment Account'.  
11 Notwithstanding any other provision of law, there shall be  
12 deposited as offsetting receipts into the account all fees collected  
13 under section 214A.

14 "(2) USE OF FEES.—The fees deposited into the Agricultural Worker  
15 Immigration Status Adjustment Account shall be used by the  
16 Secretary of Homeland Security for processing applications made  
17 by aliens seeking nonimmigrant status under section  
18 101(a)(15)(Z-A) or for processing applications made by such an  
19 alien who is seeking an adjustment of status

20 "(3) AVAILABILITY OF FUNDS.—All amounts deposited in the  
21 Agricultural Worker Immigration Status Adjustment Account under  
22 this subsection shall remain available until expended."  
23

24

25 **SEC. 624. REGULATIONS, EFFECTIVE DATE, AUTHORIZATION  
OF APPROPRIATIONS.**

26 (a) Regulations.—The Secretary shall issue regulations to carry out  
27 the amendments made by this subtitle not later than the first day of  
28 the seventh month that begins after the date of enactment of this Act.

29 (b) Effective Date.—This subtitle shall take effect on the date that  
30 regulations required by subsection (a) are issued, regardless of  
31 whether such regulations are issued on an interim basis or on any  
32 other basis.

33 (c) Authorization of Appropriations.—There are authorized to be  
34 appropriated to the Secretary such sums as may be necessary to  
35 implement this subtitle, including any sums needed for costs  
36 associated with the initiation of such implementation.

37

38 PART II—CORRECTION OF SOCIAL SECURITY RECORDS

1 **SEC. 625. CORRECTION OF SOCIAL SECURITY RECORDS.**

2 (a) In General.—Section 208(e)(1) of the Social Security Act (42  
3 U.S.C. 408(e)(1)) is amended—

4 (1) in subparagraph (B)(ii), by striking “or” at the end;

5 (2) in subparagraph (C), by inserting “or” at the end;

6 (3) by inserting after subparagraph (C) the following:

7 “(D) who is granted nonimmigrant status pursuant to section  
8 101(a)(15)(Z–A) of the Immigration and Nationality Act,”; and

9 (4) by striking “1990.” and inserting “1990, or in the case of an  
10 alien described in subparagraph (D), if such conduct is alleged to  
11 have occurred before the date on which the alien was granted such  
12 nonimmigrant status.”.

13 (b) Effective Date.—The amendments made by subsection (a) shall  
14 take effect on the first day of the seventh month that begins after the  
15 date of the enactment of this Act.

16

17

18

19

1 TITLE VII – MISCELLANEOUS

2 Subtitle A – Miscellaneous Immigration  
3 Reform.

4  
5 **Sec. 701. Waiver of Requirement for**  
6 **Fingerprints for Members of the Armed**  
7 **Forces.**

8  
9 Notwithstanding any other provision of law or any regulation, for aliens  
10 currently serving in the U.S. Armed Forces overseas and applying for  
11 naturalization from overseas, the Secretary of Defense shall provide in  
12 a form designated by the Secretary of Homeland Security, and the  
13 Secretary of Homeland Security shall use the fingerprints provided by  
14 the Secretary of Defense for such individuals, if the individual –

- 15  
16 (a) may be naturalized pursuant to section 328 or 329 of the  
17 Immigration and Nationality Act (8 U.S.C. 1439 or 1440);  
18 (b) was fingerprinted in accordance with the requirements of the  
19 Secretary of Defense at the time the individual enlisted in the  
20 Armed Forces; and  
21 (c) submits the application to become a naturalized citizen of the  
22 United States not later than 12 months after the date the  
23 applicant is fingerprinted.  
24

25 **Sec. 702. Declaration of English.**

- 26  
27 (a) English is the common language of the United States.  
28  
29 (b) Preserving and Enhancing the Role of the English Language—The  
30 Government of the United States shall preserve and enhance the role  
31 of English as the language of the United States of America. Nothing  
32 herein shall diminish or expand any existing rights under the laws of  
33 the United States relative to services or materials provided by the  
34 Government of the United States in any language other than English.  
35  
36 (c) Definition: For the purposes of this section, law is defined as  
37 including provisions of the United States Constitution, the United  
38 States Code, controlling judicial decisions, regulations, and Presidential  
39 Executive Orders.



1  
2 **Sec. 703. Pilot Project Regarding**  
3 **Immigration Practitioner Complaints.**  
4

5 (a) Within 180 days of the enactment of this Act, the Secretary of  
6 Homeland Security, in consultation with the Attorney General, shall  
7 institute a three-year pilot project to—

8  
9 (1) Encourage alien victims of immigration practitioner fraud,  
10 and related crimes, to come forward and file practitioner fraud  
11 complaints with the Department of Homeland Security by  
12 utilizing existing statutory and administrative authority;

13  
14 (2) Cooperate with federal, state, and local law enforcement  
15 officials who are responsible for investigating and prosecuting  
16 such crimes; and

17  
18 (3) Increase public awareness regarding the problem of  
19 immigration practitioner fraud.  
20

21 (b) Reporting.—Not later than 1 year after the end of the three-year  
22 pilot period, the Secretary of Homeland Security shall submit to  
23 Congress a report that includes information concerning—

24  
25 (1) the number of individuals who file practitioner fraud  
26 complaints via the pilot program;

27 (2) the demographic characteristics, nationality, and immigration  
28 status of the complainants;

29 (3) the number of indictments that result from the pilot; and

30 (4) the number of successful fraud prosecutions that result from  
31 the pilot.  
32

33 **Subtitle B –Assimilation and Naturalization**  
34

35 **SEC. 704. The Office of Citizenship and**  
36 **Integration**  
37

38 Section 451(f) of the Homeland Security Act of 2002, Pub. L. 107-296  
39 (6 U.S.C. 271(f)), is amended by –

1  
2  
3  
4  
5  
6  
7  
8

(a) inserting "and Integration" after "Office of Citizenship" the two times that phrase appears; and  
(b) in paragraph (f)(2), striking "instruction and training on citizenship responsibilities" and inserting "civic integration, and instruction and training on citizenship responsibilities and requirements for citizenship".

9 **SEC. 705. Special Provisions for Elderly**  
10 **Immigrants**

11  
12 Section 312(b) of the Immigration and Nationality Act (8 U.S.C. 1423(b)) is  
13 amended by adding at the end the following: "(4) The requirements of  
14 subsection (a) of this section shall not apply to a person who is over 75  
15 years of age on the date of filing an application for naturalization; Provided  
16 that, the person expresses, in English or in the applicant's native language,  
17 at the time of examination for naturalization that the person understands  
18 and agrees to the elements of the oath required by section 337 of this Act."  
19

20 **SEC. 706. Funding for the Office of**  
21 **Citizenship and Integration.**

22  
23 (a) Authorization of Appropriations- There is authorized to be appropriated  
24 to the Secretary of Homeland Security the sum of **[\$100]** million to carry  
25 out the mission and operations of the Office of Citizenship and Integration in  
26 U.S. Citizenship and Immigration Services, including the patriotic integration  
27 of prospective citizens into--

- 28  
29 (1) American common values and traditions, including an  
30 understanding of American history and the principles of the  
31 Constitution of the United States; and  
32  
33 (2) civic traditions of the United States, including the Pledge of  
34 Allegiance, respect for the flag of the United States, and voting in  
35 public elections.  
36

37 **SEC. 707. Citizenship and Integration**  
38 **Councils**  
39

**DRAFT - FOR DISCUSSION PURPOSES ONLY**

**May 18, 2007 11:58 p.m.**

1 "(a) Grants authorized.—The Office of Citizenship and Immigrant Integration  
2 shall provide grants to states and municipalities for effective integration of  
3 immigrants into American society through the creation of New Americans  
4 Integrations Councils.

5  
6 "(b) Use of funds.—

7  
8 "(1) In general.—Grants awarded under this section shall be used

9  
10 "(A) To report on the status of new immigrants, lawful  
11 permanent residents, and citizens within the state or  
12 municipality;

13  
14 "(B) To conduct a needs assessment, including the availability of  
15 and demand for English language services and instruction  
16 classes, for new immigrants, lawful permanent residents, Z non-  
17 immigrants, and citizens;

18  
19 "(C) To convene public hearings and meetings to assist in the  
20 development of a comprehensive plan to integrate new  
21 immigrants, lawful permanent residents, Z non-immigrants, and  
22 citizens; and

23  
24 "(D) To develop a comprehensive plan to integrate new  
25 immigrants, lawful permanent residents, Z non-immigrants, and  
26 citizens into states and municipalities.

27  
28 "(2) Membership of integration councils.—New Americans Integration  
29 Councils established under this section shall consist of no less than ten  
30 and no more than fifteen individuals from the following sectors:

31  
32 "(A) State and local government;

33  
34 "(B) Business;

35  
36 "(C) Faith-based organizations;

37  
38 "(D) Civic organizations;

39  
40 "(E) Philanthropic leaders; and

41  
42 "(F) Nonprofit organizations with experience working with  
43 immigrant communities.  
44

1 “(c) Reporting.—The Government Accountability Office, in coordination with  
2 the Office of Citizenship and Immigrant Integration, shall conduct an annual  
3 evaluation of the grant program conducted under this section. Such  
4 evaluation shall be used by the Office of Citizenship and Immigrant  
5 Integration—

6  
7 “(1) To determine and improve upon the program’s effectiveness;

8  
9 “(2) To develop recommended best practices for states and  
10 municipalities who receive grant awards; and

11  
12 “(3) To further define the program’s goals and objectives.

13  
14 “(d) Authorization of appropriations.—There are authorized to be  
15 appropriated to the Office of Citizenship and Immigrant Integration such  
16 sums as may be necessary for each of the fiscal years 2008 through 2012 to  
17 carry out this section.]

## 18 **SEC. 708. History and Government Test.**

19  
20 (a) History and Government Test- The Secretary shall incorporate a  
21 knowledge and understanding of the meaning of the Oath of Allegiance  
22 provided by section 337 of the Immigration and Nationality Act (8 U.S.C.  
23 1448) into the history and government test given to applicants for  
24 citizenship. Nothing in this Act, other than the amendment made by this  
25 subsection, shall be construed to influence the naturalization test redesign  
26 process currently underway under the direction of U.S. Citizenship and  
27 Immigration Services.  
28

## 29 **SEC. 709. English Learning Program.**

30 (a) The Secretary of Education shall develop an open source electronic  
31 program, useable on personal computers and through the Internet,  
32 that teaches the English language at various levels of proficiency, up  
33 to and including the ability to pass the Test of English as a Foreign  
34 Language, to individuals inside the United States whose primary  
35 language is a language other than English. The Secretary shall make  
36 the program available to the public for free, including by placing it on  
37 the Department of Education website, and shall ensure that it is readily  
38 accessible to public libraries throughout the United States. The  
39 program shall be fully accessible, at a minimum, to speakers of the top  
40 five foreign languages spoken inside the United States.

41 (b) Authorization of Appropriations- There is authorized to be

1 appropriated to the Secretary of Education such sums as are necessary  
2 to carry out the purposes of this section.  
3

4 **SEC. 710. GAO Study on the Appellate**  
5 **Process for Immigration Appeals.**

6 (a) In General- The Comptroller General of the United States shall, not  
7 later than 180 days after enactment of this Act, conduct a study on the  
8 appellate process for immigration appeals.  
9

10 (b) Requirements- In conducting the study under subsection (a), the  
11 Comptroller General shall consider the possibility of consolidating all  
12 appeals from the Board of Immigration Appeals and habeas corpus  
13 petitions in immigration cases into 1 United States Court of Appeals,  
14 by--

15 (1) consolidating all such appeals into an existing circuit court,  
16 such as the United States Court of Appeals for the Federal  
17 Circuit;

18 (2) consolidating all such appeals into a centralized appellate  
19 court consisting of active circuit court judges temporarily  
20 assigned from the various circuits, in a manner similar to the  
21 Foreign Intelligence Surveillance Court or the Temporary  
22 Emergency Court of Appeals; or

23 (3) implementing a mechanism by which a panel of active circuit  
24 court judges shall have the authority to reassign such appeals  
25 from circuits with relatively high caseloads to circuits with  
26 relatively low caseloads.  
27

28 (c) Factors To Consider- In conducting the study under subsection (a),  
29 the Comptroller General, in consultation with the Attorney General, the  
30 Secretary, and the Judicial Conference of the United States, shall  
31 consider--

32 (1) the resources needed for each alternative, including judges,  
33 attorneys and other support staff, case management techniques  
34 including technological requirements, physical infrastructure, and  
35 other procedural and logistical issues as appropriate;

36 (2) the impact of each plan on various circuits, including their  
37 caseload in general and caseload per panel;

38 (3) the possibility of utilizing case management techniques to  
39 reduce the impact of any consolidation option, such as requiring  
40 certificates of reviewability, similar to procedures for habeas and

1 existing summary dismissal procedures in local rules of the  
2 courts of appeals;  
3 (4) the effect of reforms in this Act on the ability of the circuit  
4 courts to adjudicate such appeals;  
5 (5) potential impact, if any, on litigants; and  
6 (6) other reforms to improve adjudication of immigration  
7 matters, including appellate review of motions to reopen and  
8 reconsider, and attorney fee awards with respect to review of  
9 final orders of removal.

10

11