

112TH CONGRESS
1ST SESSION

S. 1258

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

IN THE SENATE OF THE UNITED STATES

JUNE 22, 2011

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

A BILL

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

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Comprehensive Immi-
5 gration Reform Act of 2011”.

6 **SEC. 2. TABLE OF CONTENTS.**

7 The table of contents for this Act is as follows:

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Sec. 4. Definitions.

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Family Unity, and AgJobs

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1 **SEC. 3. REFERENCES TO IMMIGRATION AND NATIONALITY**

2 **ACT.**

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

9 **SEC. 4. DEFINITIONS.**

10 In this Act:

11 (1) DEPARTMENT.—The term “Department”
 12 means the Department of Homeland Security.

13 (2) NORTHERN BORDER.—The term “Northern
 14 border” means the international land border between
 15 the United States and Canada.

16 (3) SECRETARY .—The term “Secretary”
 17 means the Secretary of Homeland Security.

18 (4) SOUTHERN BORDER.—The term “Southern
 19 border” means the international land border between
 20 the United States and Mexico.

1 **TITLE I—IMMIGRATION REG-**
2 **ISTRATION AND EMPLOY-**
3 **MENT**

4 **Subtitle A—Registration of Un-**
5 **documented Individuals, the**
6 **Dream Act, Family Unity, and**
7 **AgJobs**

8 **PART I—LAWFUL PROSPECTIVE IMMIGRANT**
9 **STATUS**

10 **SEC. 111. LAWFUL PROSPECTIVE IMMIGRANT STATUS.**

11 (a) IN GENERAL.—

12 (1) AUTHORITY TO GRANT LAWFUL PROSPEC-
13 TIVE IMMIGRANT STATUS.—Notwithstanding any
14 other provision of law, the Secretary may grant law-
15 ful prospective immigrant status to an alien who—

16 (A) submits an application for such status;

17 and

18 (B) meets the requirements under this sec-
19 tion.

20 (2) TREATMENT OF APPLICANTS.—An appli-
21 cant for lawful prospective immigrant status under
22 this section shall be treated as an applicant for ad-
23 mission to the United States.

24 (b) ELIGIBILITY REQUIREMENTS.—

25 (1) IN GENERAL.—

1 (A) INADMISSIBILITY.—Except as provided
2 in paragraph (3), an alien may not be granted
3 lawful prospective immigrant status if the alien
4 is inadmissible under section 212(a) of the Im-
5 migration and Nationality Act (8 U.S.C.
6 1182(a)).

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

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

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

15 (iii) has maintained continuous phys-
16 ical presence in the United States between
17 June 1, 2011 and the date on which the
18 alien is granted such status.

19 (2) GROUNDS OF INELIGIBILITY.—

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

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

1 maximum term of imprisonment of more
2 than 1 year;

3 (ii) is a person described in subpara-
4 graph (A)(iii), (E)(i), or (E)(ii) of section
5 237(a)(2) of the Immigration and Nation-
6 ality Act (8 U.S.C. 1227(a)(2));

7 (iii) ordered, incited, assisted, or oth-
8 erwise participated in the persecution of
9 any person on account of race, religion, na-
10 tionality, membership in a particular social
11 group, or political opinion;

12 (iv) is entering, has entered, or has
13 attempted to enter, the United States ille-
14 gally on or after June 1, 2011; or

15 (v) was, as of June 1, 2011—

16 (I) an alien lawfully admitted for
17 permanent residence;

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

23 (III) an alien who, according to
24 the records of the Secretary, and not-
25 withstanding any unauthorized em-

1 employment or other violation of non-
2 immigrant status—

3 (aa) is in a period of author-
4 ized stay in any nonimmigrant
5 status (other than an alien con-
6 sidered to be in a nonimmigrant
7 status solely by reason of section
8 244(f)(4) of such Act); and

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

12 (IV) an alien paroled into the
13 United States under section 212(d)(5)
14 of such Act for purposes of prosecu-
15 tion or of serving as a witness in pro-
16 ceedings being, or to be, conducted by
17 judicial, administrative, or legislative
18 bodies in the United States; or

19 (V) an alien paroled into the
20 Commonwealth of the Northern Mar-
21 iana Islands.

22 (B) CONSTRUCTION.—For purposes of de-
23 termining ineligibility under this paragraph,
24 section 101(a)(48) of the Immigration and Na-
25 tionality Act (8 U.S.C. 1101(a)(48)) shall apply

1 to determinations of conviction or sentencing
2 for an offense.

3 (3) GROUNDS OF INADMISSIBILITY.—

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

6 (i) section 212(a)(5) of the Immigra-
7 tion and Nationality Act (8 U.S.C.
8 1182(a)(5)) shall not apply;

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

15 (iii) the Secretary may not waive—

16 (I) subparagraphs (B), (C),
17 (D)(ii), (E), (H), (I), or (J) of section
18 212(a)(2) of such Act (relating to
19 criminals);

20 (II) section 212(a)(3) of such Act
21 (relating to security and related
22 grounds);

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

1 (relating to polygamists and child ab-
2 ductors); or

3 (IV) paragraph (6)(A)(i) of sec-
4 tion 212(a) of such Act (with respect
5 to any entries occurring on or after
6 June 1, 2011); and

7 (iv) the Secretary may waive the ap-
8 plication of any provision under section
9 212(a) of such Act not listed under clause
10 (iii) on behalf of an individual alien for hu-
11 manitarian purposes, to ensure family
12 unity, or if such waiver is otherwise in the
13 public interest.

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

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

18 (ii) affect the authority of the Sec-
19 retary other than under this paragraph to
20 waive the provisions of section 212(a) of
21 the Immigration and Nationality Act (8
22 U.S.C. 1182(a)).

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

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

3 (5) APPLICABILITY OF OTHER PROVISIONS.—

4 Sections 208(d)(6) and 240B(d) of the Immigration
5 and Nationality Act (8 U.S.C. 1158(d)(6) and
6 1229e(d)) shall not apply to an alien with respect to
7 an application for lawful prospective immigrant sta-
8 tus under this section.

9 (c) APPLICATION PROCEDURES.—

10 (1) FILING OF APPLICATION.—

11 (A) IN GENERAL.—In accordance with the
12 rulemaking procedures described in section
13 121—

14 (i) the Secretary shall prescribe by in-
15 terim final rule published in the Federal
16 Register—

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

20 (II) the procedures for an alien
21 granted lawful prospective immigrant
22 status to petition for a spouse or child
23 outside the United States to be classi-
24 fied as a lawful prospective immi-
25 grant; and

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

7 (ii) the Secretary of State shall pre-
8 scribe by regulation published in the Fed-
9 eral Register—

10 (I) the procedures for an alien
11 overseas who is the beneficiary of an
12 approved petition for lawful prospec-
13 tive immigrant status to apply at a
14 consulate for a visa or other appro-
15 priate documentation authorizing
16 travel to a United States port of
17 entry; and

18 (II) the evidence required to
19 demonstrate eligibility for such docu-
20 mentation.

21 (B) RECEIPT OF APPLICATIONS.—The Sec-
22 retary shall accept applications from aliens in
23 the United States for lawful prospective immi-
24 grant status during the 1-year period beginning
25 on the first day of the tenth month that begins

1 after the date of the enactment of this Act. If
2 the Secretary determines, during such 1-year
3 period, that additional time is required to proc-
4 ess applications for such status or for other
5 good cause, the Secretary may extend the pe-
6 riod for accepting applications by not more than
7 6 additional months.

8 (C) APPLICATION BY ALIENS APPRE-
9 HENDED BEFORE START OF APPLICATION PE-
10 RIOD.—If an alien who is apprehended during
11 the application period set forth in subparagraph
12 (B) can establish prima facie eligibility for law-
13 ful prospective immigrant status under this sec-
14 tion, the Secretary shall provide the alien with
15 a reasonable opportunity to file an application
16 under this section after regulations imple-
17 menting this section are promulgated.

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

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

1 fore the Executive Office for Immigration
2 Review and is prima facie eligible for law-
3 ful prospective immigrant status under this
4 section—

5 (I) the Secretary shall notify the
6 Executive Office for Immigration Re-
7 view of such determination; and

8 (II) upon the consent of the
9 alien, the Executive Office for Immi-
10 gration Review shall—

11 (aa) terminate such pro-
12 ceedings without prejudice to fu-
13 ture proceedings on any basis;
14 and

15 (bb) provide the alien a rea-
16 sonable opportunity to apply for
17 such status; and

18 (ii) if the Executive Office for Immi-
19 gration Review determines that an alien,
20 during the application period set forth in
21 subparagraph (B), is in removal, deporta-
22 tion, or exclusion proceedings before the
23 Executive Office for Immigration Review
24 and is prima facie eligible for lawful pro-

1 spective immigrant status under this sec-
2 tion—

3 (I) the Executive Office of Immi-
4 gration Review shall notify the Sec-
5 retary of such determination; and

6 (II) if the Secretary does not dis-
7 pute the determination of prima facie
8 eligibility within 14 days, the Execu-
9 tive Office for Immigration Review,
10 upon consent of the alien, shall—

11 (aa) terminate such pro-
12 ceedings without prejudice to fu-
13 ture proceedings on any basis;
14 and

15 (bb) permit the alien a rea-
16 sonable opportunity to apply for
17 such status.

18 (E) APPLICATION BY ALIENS WITH CER-
19 TAIN ORDERS.—

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

1 (I) notwithstanding such order or
2 section 241(a)(5) of the Immigration
3 and Nationality Act (8 U.S.C.
4 1231(a)(5)), may apply for lawful pro-
5 spective immigrant status under this
6 section if the alien meets all of the
7 other conditions set forth in this sec-
8 tion; and

9 (II) shall not be required to file
10 a separate motion to reopen, recon-
11 sider, or vacate the exclusion, deporta-
12 tion, removal, or voluntary departure
13 order.

14 (ii) EFFECT OF GRANT OF STATUS.—

15 If the Secretary grants lawful prospective
16 immigrant status to an alien under this
17 section, the order against the alien de-
18 scribed in clause (i) shall be rendered null
19 and void by operation of law.

20 (iii) EFFECT OF DENIAL OF STA-

21 TUS.—If the Secretary renders a final ad-
22 ministrative decision to deny an alien's ap-
23 plication for lawful prospective immigrant
24 status under this section, the order de-
25 scribed in clause (i) shall be effective and

1 enforceable to the same extent as if the ap-
2 plication had not been made.

3 (2) APPLICATION FORM.—

4 (A) IN GENERAL.—The Secretary shall
5 create an application form that an alien shall be
6 required to complete to be granted lawful pro-
7 spective immigrant status.

8 (B) LANGUAGE AND ASSISTANCE.—The
9 Secretary shall make available forms and ac-
10 companying instructions in the most common
11 languages spoken by persons in the United
12 States, as determined by the Secretary. The
13 Secretary shall create a plan for providing rea-
14 sonable accommodation to individuals with dis-
15 abilities in accordance with applicable law.

16 (C) APPLICATION INFORMATION.—The ap-
17 plication form created under this paragraph
18 shall request such information as the Secretary
19 determines necessary and appropriate. The ap-
20 plication, and all information submitted as part
21 of the application process, shall be submitted in
22 English.

23 (3) SECURITY AND LAW ENFORCEMENT BACK-
24 GROUND CHECKS.—

1 (A) SUBMISSION OF BIOMETRIC AND BIO-
2 GRAPHIC DATA.—The Secretary may not grant
3 lawful prospective immigrant status to an alien
4 unless the alien submits biometric and bio-
5 graphic data in accordance with procedures es-
6 tablished by the Secretary, or, with respect to
7 overseas applications for visas or other docu-
8 mentation of status submitted pursuant to reg-
9 ulations promulgated under section
10 601(c)(1)(A)(ii), by the Secretary of State. The
11 Secretary shall provide an alternative procedure
12 for applicants who cannot provide the standard
13 biometric data because of a physical impair-
14 ment.

15 (B) BACKGROUND CHECKS.—Before grant-
16 ing lawful prospective immigrant status to any
17 alien, the Secretary shall complete, to the satis-
18 faction of the Secretary, security and law en-
19 forcement background checks on the alien, uti-
20 lizing biometric, biographic, and other data that
21 the Secretary determines to be appropriate, to
22 determine the existence of any criminal, na-
23 tional security, or other factors that would
24 render the alien ineligible for status under this
25 section.

1 (4) FEES AND PENALTIES.—

2 (A) PROCESSING FEES.—

3 (i) IN GENERAL.—Aliens older than
4 14 years of age who are applying for law-
5 ful prospective immigrant status, applying
6 for an extension of such status, or peti-
7 tioning for classification of a spouse or
8 child outside the United States as a lawful
9 prospective immigrant, shall be required to
10 pay a processing fee to the Department of
11 Homeland Security. Spouses or children of
12 lawful prospective immigrants applying at
13 United States embassies or consulates for
14 a visa or other documentation of status
15 pursuant to regulations promulgated under
16 paragraph (1)(A)(ii) shall, regardless of
17 age, be required to pay a processing fee to
18 the Department of State, which may not
19 be waived.

20 (ii) AMOUNT.—The amount of the
21 fees under clause (i) shall be set by regula-
22 tion at a level sufficient to recover the full
23 cost of processing the application or peti-
24 tion.

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

8 (C) DEPOSIT AND SPENDING OF FEES.—
9 The processing fees required under subpara-
10 graph (A) shall be deposited as an offsetting
11 collection in the appropriate account of the rel-
12 evant agency identified in subparagraph (A)(i)
13 and shall remain available until expended.

14 (D) DEPOSIT, ALLOCATION, AND SPEND-
15 ING OF PENALTIES.—The penalty described in
16 subparagraph (B) shall be deposited and re-
17 main available as provided under section 166.

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

21 (6) ADJUDICATION OF APPLICATION FILED BY
22 ALIEN.—

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

1 grant status, or documentation extending such
2 status, upon—

3 (i) receiving an application that estab-
4 lishes to the satisfaction of the Secretary
5 that the applicant is eligible for such sta-
6 tus through such documentary or other
7 evidence of eligibility as the Secretary may
8 require; and

9 (ii) completing all background and se-
10 curity checks to the satisfaction of the Sec-
11 retary.

12 (B) BURDEN OF PROOF.—An alien who is
13 applying for lawful prospective immigrant sta-
14 tus under this section shall prove, by a prepon-
15 derance of the evidence, that the alien has sat-
16 isfied the requirements of this section and is eli-
17 gible to receive such status.

18 (C) DENIAL OF APPLICATION.—

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

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

3 (ii) FAILURE TO SUBMIT EVIDENCE.—

4 The Secretary shall deny the application of
5 an alien who fails to submit requested ini-
6 tial evidence, including requested biometric
7 data, or any requested additional evidence
8 by the date required by the Secretary.

9 (iii) NEW APPLICATIONS.—An alien

10 whose application for lawful prospective
11 immigrant status is denied under clause
12 (ii) is not precluded from filing a new ap-
13 plication if the new application is filed
14 within the period allowed under paragraph
15 (1)(B) and contains all required fees and
16 penalties.

17 (7) EVIDENCE OF LAWFUL PROSPECTIVE IMMI-
18 GRANT STATUS.—

19 (A) IN GENERAL.—The Secretary shall
20 issue documentary evidence of lawful prospec-
21 tive immigrant status to each alien whose appli-
22 cation for such status has been approved—

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

1 (ii) in the case of an alien outside the
2 United States, after admission to the
3 United States as a lawful prospective im-
4 migrant.

5 (B) FEATURES OF DOCUMENTATION.—
6 Documentary evidence provided under subpara-
7 graph (A)—

8 (i) shall be machine-readable and tam-
9 per-resistant;

10 (ii) shall contain a digitized photo-
11 graph and at least 1 other biometric iden-
12 tifier that can be authenticated;

13 (iii) shall, during the alien’s author-
14 ized period of admission under paragraphs
15 (3) and (4) of subsection (e), serve as a
16 valid travel and entry document for the
17 purpose of applying for admission to the
18 United States;

19 (iv) may be accepted during the pe-
20 riod of its validity by an employer as evi-
21 dence of employment authorization and
22 identity under section 274A(b)(1)(B) of
23 the Immigration and Nationality Act (8
24 U.S.C. 1324a(b)(1)(B)); and

1 (v) shall include such other features
2 and information prescribed by the Sec-
3 retary.

4 (d) **LAWFUL PROSPECTIVE IMMIGRANT DEPEND-**
5 **ENTS.—**

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

9 (A) the alien is the spouse (as defined in
10 section 101(a)(35) of the Immigration and Na-
11 tionality Act) or child (as defined in section
12 101(b)(1) of such Act) of a lawful prospective
13 immigrant;

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

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

23 (2) **REVOCAION OR DENIAL OF STATUS.—**A
24 petition for classification as a lawful prospective im-
25 migrant filed on behalf of a spouse or child de-

1 scribed in paragraph (1) shall be denied, an ap-
2 proved petition for classification as a lawful prospec-
3 tive immigrant for such spouse or child shall be re-
4 voked, and any lawful prospective immigrant status
5 granted to such spouse or child shall be revoked, if
6 the alien who filed the petition on behalf of the
7 spouse or child was not eligible for lawful prospec-
8 tive immigrant status at the time the alien filed an
9 application under section 111(a).

10 (e) TERMS AND CONDITIONS OF LAWFUL PROSPEC-
11 TIVE IMMIGRANT STATUS.—

12 (1) BENEFITS PENDING ADJUDICATION OF AP-
13 PPLICATION.—

14 (A) IN GENERAL.—Until a final decision
15 on the application for lawful prospective immi-
16 grant status, an alien in the United States who
17 files an application under this section for lawful
18 prospective immigrant status—

19 (i) may in the Secretary's discretion
20 receive advance parole to re-enter the
21 United States, but only when urgent hu-
22 manitarian circumstances compel such
23 travel; and

24 (ii) may not be detained by the Sec-
25 retary or removed from the United States,

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

4 (I) ineligible for lawful prospec-
5 tive immigrant status under section
6 (b)(2);

7 (II) inadmissible under section
8 (b)(1)(B), without regard to the possi-
9 bility of a waiver under section
10 (b)(3)(A)(iii); or

11 (III) removable under subpara-
12 graph (A)(iii), (E)(i), or (E)(ii) of sec-
13 tion 237 of the Immigration and Na-
14 tionality Act (8 U.S.C. 1227(a)(2)).

15 (B) RULE OF CONSTRUCTION.—Nothing in
16 this section may be construed to prevent the
17 Secretary from detaining an alien for up to 48
18 hours on the basis of probable cause that the
19 alien is a person described in subparagraph
20 (A)(ii). After the conclusion of the 48-hour pe-
21 riod, detention is authorized in accordance with
22 the provisions of the Immigration and Nation-
23 ality Act governing the removal process.

24 (C) EVIDENCE OF APPLICATION FILING.—

25 A document shall be issued by the Secretary

1 showing receipt of an application for lawful pro-
2 spective immigrant status.

3 (D) CONTINUING EMPLOYMENT.—An em-
4 ployer who knows that an alien employee is an
5 applicant for lawful prospective immigrant sta-
6 tus is not in violation of section 274A(a)(2) of
7 the Immigration and Nationality Act (8 U.S.C.
8 1324a(a)(2)) if the employer continues to em-
9 ploy the alien pending adjudication of the appli-
10 cation.

11 (E) APPLICABILITY OF OTHER PROVI-
12 SIONS.—Section 101(g) of such Act shall not
13 apply to an alien granted advance permission
14 under subparagraph (A)(ii) to reenter the
15 United States.

16 (2) BENEFITS OF LAWFUL PROSPECTIVE IMMI-
17 GRANT STATUS.—

18 (A) EMPLOYMENT.—Notwithstanding any
19 other provision of law, including section
20 241(a)(7) of the Immigration and Nationality
21 Act (8 U.S.C. 1231(a)(7)), lawful prospective
22 immigrants shall be granted employment au-
23 thorization incident to their lawful prospective
24 immigrant status.

1 (B) TRAVEL OUTSIDE THE UNITED
2 STATES.—

3 (i) IN GENERAL.—A lawful prospec-
4 tive immigrant may travel outside of the
5 United States and may be admitted (if
6 otherwise admissible) upon return to the
7 United States without having to obtain a
8 visa if—

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

14 (II) the alien's absence from the
15 United States was not for a period ex-
16 ceeding 6 months; and

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

20 (ii) ADMISSIBILITY.—On seeking re-
21 admission to the United States after travel
22 outside the United States a lawful prospec-
23 tive immigrant shall establish that he or
24 she is not inadmissible in accordance with

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

3 (iii) EFFECT ON PERIOD OF AUTHOR-
4 IZED ADMISSION.—Time spent outside the
5 United States under clause (i) shall not ex-
6 tend the most recent period of authorized
7 admission in the United States under
8 paragraph (3).

9 (C) PROTECTION FROM DETENTION OR
10 REMOVAL.—A lawful prospective immigrant
11 may not be detained by the Secretary or re-
12 moved from the United States, unless—

13 (i) the Secretary determines in her
14 discretion that such alien is or has be-
15 come—

16 (I) ineligible for lawful prospec-
17 tive immigrant status under sub-
18 section (b)(2);

19 (II) inadmissible under sub-
20 section (b)(1)(B); or

21 (III) removable under subpara-
22 graph (A)(iii), (E)(i), or (E)(ii) of sec-
23 tion 237 of the Immigration and Na-
24 tionality Act (8 U.S.C. 1227(a)(2));
25 or

1 (ii) the alien's lawful prospective im-
2 migrant status has expired or has been re-
3 voked under paragraph (6).

4 (D) RULE OF CONSTRUCTION.—Nothing in
5 this paragraph may be construed to prevent the
6 Secretary from detaining a lawful prospective
7 immigrant for up to 48 hours on the basis of
8 probable cause that the alien is a person de-
9 scribed in subparagraph (C)(i). After the con-
10 clusion of such 48-hour period, detention is au-
11 thorized in accordance with the provisions of
12 the Immigration and Nationality Act governing
13 the removal process.

14 (E) ADMISSION.—An alien granted status
15 as a lawful prospective immigrant shall be con-
16 sidered to have been admitted in lawful pro-
17 spective immigrant status as of the date of ap-
18 proval of the alien's application or (in the case
19 of an alien outside the United States) on the
20 date such alien is admitted to the United
21 States, whichever is later. An alien in lawful
22 prospective immigrant status is lawfully admit-
23 ted, but is not a nonimmigrant or an alien who
24 has been lawfully admitted for permanent resi-
25 dence.

1 (3) INITIAL PERIOD OF AUTHORIZED ADMIS-
2 SION.—Except as provided under paragraph (4), the
3 initial period of authorized admission for a lawful
4 prospective immigrant may not exceed 4 years from
5 the date on which such status is conferred. The Sec-
6 retary may in her discretion provide for shorter expi-
7 ration dates among subsets of lawful prospective im-
8 migrants, based upon the date of filing or other ap-
9 propriate factors, in order to encourage early filing,
10 vary expiration dates, or otherwise improve the ad-
11 ministration of the program.

12 (4) EXTENSION.—

13 (A) IN GENERAL.—The Secretary may ex-
14 tend a lawful prospective immigrant’s period of
15 lawful admission beyond the initial period de-
16 scribed in paragraph (3) only where the lawful
17 prospective immigrant has filed, in the United
18 States, a timely application for extension. In no
19 case, however, may the period of authorized ad-
20 mission provided in any such extension extend
21 past the date that is 11 years after the date of
22 enactment of this Act.

23 (B) ELIGIBILITY.—In order to be eligible
24 for an extension of the period of authorized ad-
25 mission under this paragraph, an alien shall

1 demonstrate continuing eligibility for status as
2 a lawful prospective immigrant and not be sub-
3 ject to any of the bars to extension in subpara-
4 graph (C).

5 (C) BARS TO EXTENSION.—A lawful pro-
6 spective immigrant shall not be eligible to ex-
7 tend such status if—

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

11 (ii) the period of authorized admission
12 of the lawful prospective immigrant has ex-
13 pired or been revoked for any reason.

14 (D) FILING OF APPLICATION FOR EXTEN-
15 SION.—

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

22 (ii) EXCEPTION.—Failure to file be-
23 fore the period of previously authorized ad-
24 mission expired or was revoked may be ex-
25 cused in the discretion of the Secretary,

1 with any extension granted from the date
2 the previously authorized period of admis-
3 sion expired, where it is demonstrated at
4 the time of filing that—

5 (I) the delay was due to extraor-
6 dinary circumstances beyond the con-
7 trol of the applicant, and the Sec-
8 retary finds the delay commensurate
9 with the circumstances; and

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

14 (E) SECURITY AND LAW ENFORCEMENT
15 BACKGROUND CHECKS.—An alien applying for
16 extension of status as a lawful prospective im-
17 migrant shall be required to submit to renewed
18 security and law enforcement background
19 checks that shall be completed to the satisfac-
20 tion of the Secretary before such extension may
21 be granted.

22 (F) DENIAL OF APPLICATION FOR EXTEN-
23 SION.—A denial of an application for extension
24 of status as a lawful prospective immigrant

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

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

14 (6) REVOCATION.—

15 (A) IN GENERAL.—At any time after an
16 alien has been granted lawful prospective immi-
17 grant status but has not yet adjusted from such
18 status to that of an alien lawfully admitted for
19 permanent residence under section 112, the
20 Secretary may revoke the alien’s status fol-
21 lowing appropriate notice to the alien and ex-
22 haustion or waiver of all applicable administra-
23 tive review procedures under section 113, if—

24 (i) the alien is or has become inadmis-
25 sible under subsection (b)(1)(B) or ineli-

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

3 (ii) the alien knowingly used docu-
4 mentation issued under this section for un-
5 lawful or fraudulent purposes; or

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

10 (B) ADDITIONAL EVIDENCE.—In consid-
11 ering revocation, the Secretary may require the
12 alien to submit additional evidence or to appear
13 for an interview. A failure to comply with such
14 requirements will result in revocation except
15 where the alien demonstrates to the Secretary's
16 satisfaction that such failure was reasonably ex-
17 cusable and not willful.

18 (C) INVALIDATION OF DOCUMENTATION.—
19 Any documentation that is issued by the Sec-
20 retary under subsection (c)(7) to any alien shall
21 automatically be rendered invalid for any pur-
22 pose except departure, if the alien's status as a
23 lawful prospective immigrant is revoked under
24 subparagraph (A).

1 (7) MEDICAL EXAMINATION.—A lawful prospec-
2 tive immigrant is required to undergo medical obser-
3 vation and examination. The Secretary, with the
4 concurrence of the Secretary of Health and Human
5 Services, shall prescribe policies and procedures for
6 the nature, frequency, and timing of such observa-
7 tion and examination.

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

10 (A) to require the Secretary to revoke sta-
11 tus as a lawful prospective immigrant before
12 commencing removal proceedings with respect
13 to an alien described in subsection (a) who has
14 been granted such status, or in any way pro-
15 hibit the initiation of such proceedings against
16 a lawful prospective immigrant where such pro-
17 ceedings are authorized under this Act; or

18 (B) to authorize the Attorney General to
19 adjudicate or grant any application for status
20 as a lawful prospective immigrant, to receive or
21 consider an appeal from a denial or revocation
22 of lawful prospective immigrant status, or to
23 adjust the status of any lawful prospective im-
24 migrant to an alien lawfully admitted for per-
25 manent residence, unless the Secretary has del-

1 egated such authority to the Attorney General
2 in appropriate cases pursuant to section
3 103(a)(6) of the Immigration and Nationality
4 Act (8 U.S.C. 1103(a)(6)).

5 (f) DISSEMINATION OF INFORMATION ON LAWFUL
6 PROSPECTIVE IMMIGRANT PROGRAM.—After the date of
7 the enactment of this Act, the Secretary, in cooperation
8 with entities approved by the Secretary, and in accordance
9 with a plan adopted by the Secretary in the Secretary’s
10 discretion, shall broadly disseminate information regard-
11 ing lawful prospective immigrant status, the rights and
12 benefits that flow from such status, and the requirements
13 to be satisfied to obtain this status. Such information shall
14 be disseminated in the top 5 principal languages, as deter-
15 mined by the Secretary in the Secretary’s discretion, spo-
16 ken by aliens who would qualify for status under this sec-
17 tion, including to television, radio, and print media to
18 which such aliens would have access.

19 **SEC. 112. ADJUSTMENT OF STATUS FOR LAWFUL PROSPEC-**
20 **TIVE IMMIGRANTS.**

21 (a) IN GENERAL.—Notwithstanding any other provi-
22 sion of law, including section 244(h) of the Immigration
23 and Nationality Act (8 U.S.C. 1254a(h)), the Secretary
24 may adjust the status of a lawful prospective immigrant
25 to that of an alien lawfully admitted for permanent resi-

1 dence if the lawful prospective immigrant satisfies, in ad-
2 dition to all other requirements imposed by law, the eligi-
3 bility requirements under this section.

4 (b) ELIGIBILITY REQUIREMENTS.—

5 (1) LAWFUL PROSPECTIVE IMMIGRANT STA-
6 TUS.—

7 (A) IN GENERAL.—The alien shall be in a
8 period of authorized admission as a lawful pro-
9 spective immigrant and shall continue to sat-
10 isfy—

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

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

15 (B) MAINTENANCE OF WAIVERS OF ADMIS-
16 SIBILITY.—

17 (i) IN GENERAL.—The grounds of in-
18 admissibility under section 212(a) of the
19 Immigration and Nationality Act (8 U.S.C.
20 1182(a)) that are made inapplicable or
21 previously waived for the alien under sec-
22 tion 111(b)(3) shall also be considered in-
23 applicable for purposes of the alien's ad-
24 justment pursuant to this section.

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

8 (C) PENDING REVOCATION PRO-
9 CEEDINGS.—If the Secretary has sent the appli-
10 cant a notice of intent to revoke the applicant’s
11 lawful prospective immigrant status under sec-
12 tion 111(e)(6)(A)(i), an application for adjust-
13 ment under this section may not be approved
14 until the Secretary has made a final determina-
15 tion on whether to revoke the applicant’s sta-
16 tus.

17 (2) BASIC CITIZENSHIP SKILLS.—

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

22 (i) meets the requirements under sec-
23 tion 312 of the Immigration and Nation-
24 ality Act (8 U.S.C. 1423); or

1 (ii) is satisfactorily pursuing a course
2 of study, pursuant to standards established
3 by the Secretary of Education, in consulta-
4 tion with the Secretary, to achieve such an
5 understanding of English and knowledge
6 and understanding of the history and Gov-
7 ernment of the United States.

8 (B) RELATION TO NATURALIZATION EXAM-
9 INATION.—A lawful prospective immigrant who
10 demonstrates that he or she meets the require-
11 ments under section 312 of such Act may be
12 considered to have satisfied the requirements of
13 that section for purposes of becoming natural-
14 ized as a citizen of the United States under title
15 III of such Act.

16 (C) EXCEPTIONS.—

17 (i) MANDATORY.—Subparagraph (A)
18 shall not apply to any person who is unable
19 to comply with those requirements because
20 of a physical or developmental disability or
21 mental impairment as described in section
22 312(b)(1) of such Act.

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

1 at least 65 years of age on the date on
2 which an application is filed for adjust-
3 ment of status under this section.

4 (3) PAYMENT OF TAXES.—

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

9 (B) APPLICABLE FEDERAL TAX LIABIL-
10 ITY.—For purposes of subparagraph (A), the
11 term “applicable Federal tax liability” means li-
12 ability for unpaid assessed Federal taxes, in-
13 cluding penalties and interest, owed.

14 (4) CONTINUOUS PHYSICAL PRESENCE.—The
15 alien shall establish that the alien did not have a
16 single absence from the United States of more than
17 6 months during the period of admission as a lawful
18 prospective immigrant.

19 (5) MILITARY SELECTIVE SERVICE.—The alien
20 shall establish that the alien has registered under
21 the Military Selective Service Act (50 U.S.C. App.
22 451 et seq.), if the alien is subject to such registra-
23 tion under such Act.

24 (c) APPLICATION PROCEDURES.—

1 (1) IN GENERAL.—In accordance with the pro-
2 cedures described in section 121, the Secretary shall
3 prescribe by regulation the procedures for an alien
4 in the United States to apply for adjustment of sta-
5 tus under this section and the evidence required to
6 demonstrate eligibility for such adjustment.

7 (2) FILING OF APPLICATION.—

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

12 (i) 30 days after an immigrant visa
13 has become available for all approved peti-
14 tions filed under sections 201 and 203 of
15 the Act that were filed before the date of
16 enactment of this Act; or

17 (ii) 8 years after the date of enact-
18 ment of this Act.

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

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

3 (3) FEES AND PENALTIES.—

4 (A) PROCESSING FEES.—The Secretary
5 shall impose a processing fee on applications for
6 adjustment filed under this section which shall
7 be sufficient to recover the full cost of adjudi-
8 cating the application, including the cost of tak-
9 ing and processing biometrics, and the cost of
10 expenses relating to prevention and investiga-
11 tion of fraud.

12 (B) PENALTIES.—An alien 21 years of age
13 or over who is filing an application for adjust-
14 ment of status under this section shall pay a
15 \$1000 penalty to the Secretary, in addition to
16 the processing fee required under subparagraph
17 (A).

18 (C) DEPOSIT, ALLOCATION, AND SPENDING
19 OF FEES AND PENALTIES.—Fees and penalties
20 collected under subparagraph (B) shall be de-
21 posited and remain available as provided under
22 section 111.

23 (4) INTERVIEW.—The Secretary may interview
24 an applicant for adjustment under this section to de-
25 termine eligibility for such adjustment.

1 (5) SECURITY AND LAW ENFORCEMENT BACK-
2 GROUND CHECKS.—An alien applying for adjustment
3 under this section shall be required to submit to a
4 renewed security and law enforcement background
5 check that shall be completed to the satisfaction of
6 the Secretary before such adjustment may be grant-
7 ed.

8 (6) ADJUDICATION OF ADJUSTMENT APPLICA-
9 TION.—

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

16 (B) EVIDENCE OF PAYMENT OF TAXES.—

17 (i) IN GENERAL.—The alien may dem-
18 onstrate compliance with the requirement
19 under paragraph (b)(3) by submitting doc-
20 umentation, in accordance with regulations
21 promulgated by the Secretary, that estab-
22 lishes that—

23 (I) no such unpaid assessed Fed-
24 eral tax liability exists;

1 (II) all such outstanding liabil-
2 ities have been met; or

3 (III) the alien has entered into,
4 and is in compliance with, an agree-
5 ment for payment of all outstanding
6 liabilities with the Internal Revenue
7 Service.

8 (ii) IRS COOPERATION.—The Sec-
9 retary of the Treasury, in consultation
10 with the Secretary, shall establish proce-
11 dures pursuant to applicable provisions of
12 section 6103 of the Internal Revenue Code
13 of 1986, under which the Commissioner of
14 Internal Revenue shall provide documenta-
15 tion whereby the Secretary or the applicant
16 may establish the payment of all taxes re-
17 quired under this subsection, to verify that
18 the individual meets the requirements of
19 clause (i).

20 (C) BURDEN OF PROOF.—An alien who is
21 applying for adjustment of status under this
22 section shall prove, by a preponderance of the
23 evidence, that the alien has satisfied the re-
24 quirements of this section.

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

9 **SEC. 113. ADMINISTRATIVE REVIEW, REMOVAL PRO-**
 10 **CEEDINGS, AND JUDICIAL REVIEW FOR**
 11 **ALIENS WHO HAVE APPLIED FOR LAWFUL**
 12 **PROSPECTIVE IMMIGRANT STATUS.**

13 (a) ADMINISTRATIVE REVIEW.—

14 (1) EXCLUSIVE ADMINISTRATIVE REVIEW.—Ad-
 15 ministrative review of a determination respecting an
 16 application for status as a lawful prospective immi-
 17 grant under section 111(b) or respecting an applica-
 18 tion for adjustment of status under section 112 shall
 19 be conducted solely as provided in this subsection.

20 (2) ADMINISTRATIVE APPELLATE REVIEW.—

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

1 tive appellate review of a determination respect-
2 ing an application for status or revocation of
3 status as a lawful prospective immigrant under
4 section 111(b) or respecting an application for
5 adjustment of status under section 112. Any
6 such application is not renewable in any pro-
7 ceeding before the Attorney General.

8 (B) SINGLE APPEAL FOR EACH ADMINIS-
9 TRATIVE DECISION.—

10 (i) LAWFUL PROSPECTIVE IMMI-
11 GRANT.—An alien in the United States
12 whose application for status as a lawful
13 prospective immigrant under section
14 111(b) has been denied or whose status as
15 a lawful prospective immigrant has been
16 revoked, may file with the Secretary not
17 more than 1 appeal of each decision to
18 deny or revoke such status.

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

1 retary not more than 1 appeal of each de-
2 cision to deny or revoke such status.

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

8 (C) SECRETARIAL REVIEW.—Nothing in
9 this subsection may be construed to limit the
10 authority of the Secretary, in the Secretary's
11 sole and unreviewable discretion, from certi-
12 fying appeals for review and final administra-
13 tive decision.

14 (D) DENIAL OF PETITIONS FOR DEPEND-
15 ENTS.—Appeals of a decision to deny a petition
16 filed by a lawful prospective immigrant pursu-
17 ant to regulations promulgated under section
18 111(c)(1)(A)(i) to classify a spouse or child of
19 such alien as a lawful prospective immigrant
20 shall be to the administrative appellate author-
21 ity described in subsection (A).

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

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

3 (3) RECORD FOR REVIEW.—Administrative ap-
4 pellate review referred to in paragraph (2) shall be
5 based solely upon the administrative record estab-
6 lished at the time of the determination on the appli-
7 cation and upon such additional newly discovered or
8 previously unavailable evidence.

9 (b) SELF INITIATED REMOVAL AND NOTICE PRE-
10 SERVING JUDICIAL REVIEW.—

11 (1) IN GENERAL.—Except as provided in sub-
12 paragraphs (2) and (3), any alien who receives a de-
13 nial of an administrative appeal filed under sub-
14 section (a) may request, not later than 60 calendar
15 days after the date of service of the administrative
16 appellate decision, that the Secretary place the alien
17 in removal proceedings. That request shall serve as
18 a notice preserving judicial review of the denial. The
19 Secretary shall place such alien in removal pro-
20 ceedings to which the alien would otherwise be sub-
21 ject, provided that no court shall have jurisdiction to
22 review the timing of the Secretary's initiation of
23 such proceedings. If removal proceedings are not
24 commenced within 1 year of the timely filing of the
25 request specified in this section, the alien may peti-

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

3 (2) ALIENS IN REMOVAL PROCEEDINGS.—Any
4 alien who is in removal, deportation, or exclusion
5 proceedings that are not administratively final and
6 who receives a denial of an administrative appeal
7 filed under subsection (a), may file with the Sec-
8 retary, not later than 60 calendar days after the
9 date of service of the administrative appellate deci-
10 sion, a notice to preserve judicial review of that ap-
11 peal.

12 (3) ALIENS WITH A FINAL REMOVAL ORDER.—
13 Any alien who is subject to an administratively final,
14 unexecuted order of removal, deportation, or exclu-
15 sion and who receives a denial of an administrative
16 appeal filed under subsection (a), may file with the
17 Secretary, not later than 60 calendar days after the
18 date of service of the administrative appellate deci-
19 sion, a notice to preserve judicial review of that ap-
20 peal. Nothing in this subsection shall be construed
21 to authorize motions to reopen or reconsider the re-
22 moval order not otherwise permitted under statute
23 or regulation.

24 (4) EFFECT OF MOTIONS TO REOPEN OR RE-
25 CONSIDER.—The 60-day period described in para-

1 graphs (1), (2), and (3) shall not be affected or ex-
2 tended by the filing of a motion to reopen or recon-
3 sider.

4 (5) EFFECT OF SERVICE BY MAIL.—If the ad-
5 ministrative appellate decision described in para-
6 graphs (1), (2), and (3) is served by mail, the date
7 of mailing shall be considered the date of service,
8 and 3 days shall be added to the prescribed period
9 that the alien has to file the request or notices under
10 such paragraphs.

11 (c) JUDICIAL REVIEW.—Section 242 (8 U.S.C.
12 11252) is amended—

13 (1) in subsection (b)(2), by striking “completed
14 the proceedings” and inserting “or the Secretary of
15 Homeland Security completed the removal pro-
16 ceedings”;

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

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

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

2 “(i) JUDICIAL REVIEW OF DETERMINATIONS RELAT-
3 ING TO LAWFUL PROSPECTIVE IMMIGRANT STATUS.—

4 “(1) DIRECT REVIEW.—A person whose appli-
5 cation for classification or adjustment of status
6 under this section is denied after administrative ap-
7 pellate review under title V of the Comprehensive
8 Immigration Reform Act of 2011 may seek review of
9 such denial, in accordance with chapter 7 of title 5,
10 United States Code, before the United States dis-
11 trict court for the district in which the person re-
12 sides.

13 “(2) REVIEW AFTER REMOVAL PRO-
14 CEEDINGS.—There shall be judicial review in the
15 Federal courts of appeal of the denial of an applica-
16 tion for adjustment of status under title V of the
17 Comprehensive Immigration Reform Act of 2011 in
18 conjunction with judicial review of an order of re-
19 moval, deportation, or exclusion, but only if the va-
20 lidity of the denial has not been upheld in a prior
21 judicial proceeding under paragraph (1).

22 “(3) STANDARD FOR JUDICIAL REVIEW.—Judi-
23 cial review of a denial of an application under title
24 V of the Comprehensive Immigration Reform Act of
25 2011 shall be based upon the administrative record

1 established at the time of the review, but the court
2 may remand the case to the Secretary for consider-
3 ation of additional evidence where the court finds
4 that the evidence is material and there were reason-
5 able grounds for failure to adduce the evidence be-
6 fore the Secretary. Notwithstanding any other provi-
7 sion of law, judicial review of all questions arising
8 from a denial of an application under title V of the
9 Comprehensive Immigration Reform Act of 2011
10 shall be governed by the standard of review set forth
11 in chapter 7 of title 5, United States Code.

12 “(4) REMEDIAL POWERS.—Notwithstanding
13 any other provision of law, the district courts of the
14 United States shall have jurisdiction over any cause
15 or claim arising from a pattern or practice of the
16 Secretary of Homeland Security in the operation or
17 implementation of title V of the Comprehensive Im-
18 migration Reform Act of 2011 that is arbitrary, ca-
19 pricious, or otherwise contrary to law, and may
20 order any appropriate relief. The district courts may
21 order any appropriate relief in accordance with the
22 preceding sentence without regard to exhaustion,
23 ripeness, or other standing requirements (other than
24 constitutionally mandated requirements), if the court
25 determines that resolution of such cause or claim

1 will serve judicial and administrative efficiency or
2 that a remedy would otherwise not be reasonably
3 available or practicable.

4 “(5) STAY OF REMOVAL.—Aliens seeking judi-
5 cial review under section 113 of the Comprehensive
6 Immigration Reform Act of 2011 shall not be re-
7 moved from the United States until a final decision
8 is rendered establishing ineligibility under this title.

9 “(6) NO REVIEW FOR LATE FILINGS.—An alien
10 may not file an application for lawful prospective im-
11 migrant status, under title V of the Comprehensive
12 Immigration Reform Act of 2011 beyond the period
13 for receipt of such applications established by section
14 111(e)(1) of such Act. The denial of any application
15 filed beyond the expiration of the period established
16 by that subsection shall not be subject to judicial re-
17 view or remedy, including under paragraph (5).

18 “(7) CHALLENGES ON VALIDITY OF THE LAW-
19 FUL PROSPECTIVE IMMIGRANT SYSTEM.—

20 “(A) IN GENERAL.—Any claim that title V
21 of the Comprehensive Immigration Reform Act
22 of 2011, or any regulation, guideline, directive,
23 or procedure issued to implement such title, vio-
24 lates the Constitution of the United States or is
25 otherwise in violation of law is available exclu-

1 sively in an action instituted in any United
2 States District Court in accordance with the
3 procedures prescribed under this paragraph. No
4 claims challenging the validity of the system es-
5 tablished by title V of the Comprehensive Immi-
6 gration Reform Act of 2011 may be initiated
7 after the period for receipt of such applications
8 established by subsection 111(c)(1) of title VI
9 of the Comprehensive Immigration Reform Act
10 of 2011 by or on behalf of an alien who did not
11 timely file for lawful prospective immigrant sta-
12 tus.

13 “(B) DEADLINES FOR BRINGING AC-
14 TIONS.—Any action instituted under this para-
15 graph that asserts a claim that this title or any
16 regulation, guideline, directive, or procedure
17 issued by or under the authority of the Sec-
18 retary to implement this title violates the Con-
19 stitution or is otherwise unlawful, shall be
20 filed—

21 “(i) not later than 3 years after the
22 date of the publication or promulgation of
23 the challenged regulation, policy, or direc-
24 tive; or

1 “(ii) if the action challenges the valid-
2 ity of any provision of the Comprehensive
3 Immigration Reform Act of 2011, not later
4 than 3 years after the date of the enact-
5 ment of such Act.

6 “(C) Subject to subparagraph (D), nothing
7 in subparagraph (A) or (B) shall preclude an
8 applicant for lawful prospective immigrant sta-
9 tus under title VI of the Comprehensive Immi-
10 gration Reform Act of 2011 from asserting that
11 an action taken or decision made by the Sec-
12 retary with respect to his status under that title
13 was contrary to law in a proceeding under sec-
14 tion 113 of title V of the Comprehensive Immi-
15 gration Reform Act of 2011.

16 “(D) CLASS ACTIONS.—Any claim de-
17 scribed in subparagraph (A) that is brought as
18 a class action shall be brought in conformity
19 with the Class Action Fairness Act of 2005
20 (Public Law 109–2) and the Federal Rules of
21 Civil Procedure. After the expiration of the pe-
22 riod for receipt of such applications established
23 by section 111(e)(1) of title V of the Com-
24 prehensive Immigration Reform Act of 2011, an
25 alien who did not timely file for lawful prospec-

1 tive immigrant status may not be a class mem-
2 ber of or otherwise benefit from a class action
3 described in subparagraph (A).

4 “(E) EXHAUSTION AND STAY OF PRO-
5 CEEDINGS.—No claim brought under this para-
6 graph shall require the plaintiff to exhaust ad-
7 ministrative remedies under section 113 of title
8 V of the Comprehensive Immigration Reform
9 Act of 2011, but nothing shall prevent the court
10 from staying proceedings under this paragraph
11 to permit the Secretary to evaluate an allega-
12 tion challenging a policy or practice or to take
13 corrective action. In issuing such a stay, the
14 court shall take into account any harm the stay
15 may cause to the claimant and to the govern-
16 ment. This subsection conveys no authority to
17 stay proceedings initiated under any other sec-
18 tion of the Act.

19 “(F) EXPEDITIOUS CONSIDERATION OF
20 CASES.—It shall be the duty of the District
21 Court, the Court of Appeals, and the United
22 States Supreme Court to advance on the docket
23 and to expedite to the greatest possible extent
24 the disposition of any case considered under
25 this section.”.

1 **SEC. 114. CONFIDENTIALITY OF INFORMATION.**

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

6 (1) use the information furnished by the appli-
7 cant pursuant to an application filed under section
8 111 or 112, for any purpose, other than to make a
9 determination on the application, including revoca-
10 tion of an application previously approved;

11 (2) make any publication through which the in-
12 formation furnished by any particular applicant can
13 be identified; or

14 (3) permit anyone other than the sworn offi-
15 cers, employees or contractors of such agency or bu-
16 reau, to examine individual applications that have
17 been filed.

18 (b) REQUIRED DISCLOSURES.—

19 (1) The Secretary shall provide the information
20 furnished pursuant to an application filed under sec-
21 tion 111 or 112, and any other information derived
22 from such furnished information to—

23 (A) a Federal, State, tribal, or local law
24 enforcement agency, intelligence agency, na-
25 tional security agency, component of the De-
26 partment of Homeland Security, court, or

1 grand jury in connection with a criminal inves-
2 tigation or prosecution, a background check
3 conducted pursuant to the Brady Handgun Vio-
4 lence Protection Act, or for homeland security
5 or national security purposes, in each instance
6 about an individual, when such information is
7 requested by such entity or consistent with an
8 information sharing agreement or mechanism;
9 or

10 (B) an official coroner for purposes of af-
11 firmatively identifying a deceased individual,
12 whether or not the death of such individual re-
13 sulted from a crime.

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

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

22 (1) shall apply only until an application filed
23 under section 111 or 112 is denied and all opportu-
24 nities for administrative appeal of the denial have
25 been exhausted;

1 (2) shall not apply to the use of the information
2 furnished pursuant to such application in any re-
3 moval proceeding or other criminal or civil case or
4 action, including administrative action, relating to
5 an alien whose application has been granted that is
6 based upon any violation of law committed or discov-
7 ered after such grant; and

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

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

11 (B) the alien's lawful prospective immi-
12 grant status has expired.

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

21 (e) AUDITING AND EVALUATION OF INFORMATION.—

22 (1) The Secretary may audit and evaluate infor-
23 mation furnished as part of any application filed
24 under section 111 or 112 for purposes of identifying
25 fraud or fraud schemes, and may use any evidence

1 of fraud detected by means of audits, evaluations, or
2 other means for purposes of investigating, pros-
3 ecuting or referring for prosecution, denying, or ter-
4 minating immigration benefits.

5 (2) Nothing in this section may be construed as
6 limiting the authority of the relevant Offices of In-
7 spectors General from conducting reviews, audits,
8 oversight, and administrative, civil or criminal inves-
9 tigations.

10 (f) USE OF INFORMATION IN IMMIGRATION MATTERS
11 SUBSEQUENT TO ADJUSTMENT OF STATUS.—If the Sec-
12 retary has adjusted an alien’s status to that of an alien
13 lawfully admitted for permanent residence pursuant to
14 section 112, then at any time thereafter the Secretary may
15 use the information furnished by the alien in the applica-
16 tion for adjustment of status or in the applications for
17 status pursuant to sections 501 in any subsequent immi-
18 gration matter.

19 (g) OTHER AUTHORIZED DISCLOSURES.—The Fed-
20 eral Bureau of Investigation may disclose information de-
21 rived from biometric and biographic checks of the appli-
22 cant to assist in the apprehension of a person who is the
23 subject of a warrant of arrest, or to notify intelligence
24 agencies of the location of a known or suspected terrorist.

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

6 (i) CONSTRUCTION.—Nothing in this section shall be
7 construed to limit the use or release for immigration en-
8 forcement purposes of information contained in files or
9 records of the Secretary or Attorney General pertaining
10 to an application filed under section 111 or 112, other
11 than information furnished by an applicant pursuant to
12 the application, or any other information derived from the
13 application, that is not available from any other source.

14 (j) INTERAGENCY FRAUD PREVENTION COORDINA-
15 TION.—The Secretary or the Secretary’s designee shall
16 convene an interagency committee to address issues relat-
17 ing to the identification, prevention, investigation, and
18 prosecution of fraud and related conduct in connection
19 with this program.

20 **SEC. 115. ALIENS NOT SUBJECT TO DIRECT NUMERICAL**
21 **LIMITATIONS.**

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

1 “(N) Aliens whose status is adjusted from
2 that of a lawful prospective immigrant under
3 section 112 of CIR Act of 2010.”.

4 **SEC. 116. EMPLOYER PROTECTIONS.**

5 (a) USE OF EMPLOYMENT RECORDS.—Copies of em-
6 ployment records or other evidence of employment pro-
7 vided by an alien or by an alien’s employer in support of
8 an alien’s application for lawful prospective immigrant
9 status under section 601 shall not be used in a prosecution
10 or investigation (civil or criminal) of that employer under
11 section 274A of the Immigration and Nationality Act or
12 the tax laws of the United States for the prior unlawful
13 employment of that alien, regardless of the adjudication
14 of such application or reconsideration by the Secretary of
15 such alien’s prima facie eligibility determination. This sec-
16 tion does not apply to employment records submitted by
17 aliens or employers that are deemed to be fraudulent.

18 (b) APPLICABILITY OF OTHER LAW.—Nothing in
19 this section may be used to shield an employer from liabil-
20 ity under section 274B of the Immigration and Nation-
21 ality Act (8 U.S.C. 1324b) or any other labor or employ-
22 ment law.

23 **SEC. 117. ASSIGNMENT OF SOCIAL SECURITY NUMBER.**

24 The Commissioner of the Social Security Administra-
25 tion, in coordination with the Secretary, shall implement

1 a system to allow for the assignment of a Social Security
2 number and issuance of a Social Security card after the
3 Secretary has granted an alien status as a lawful prospec-
4 tive immigrant. The Secretary shall provide to the Com-
5 missioner of Social Security information from the applica-
6 tion filed under section 111(a) and such other information
7 as the Commissioner of Social Security deems necessary
8 to assign a Social Security account number. The Commis-
9 sioner of Social Security may use such information to as-
10 sign such Social Security account numbers and to admin-
11 ister the programs for which the Commissioner of Social
12 Security has responsibility. The Commissioner of Social
13 Security may maintain, use, and disclose such information
14 only as permitted by the Privacy Act and other Federal
15 law.

16 **PART II—IMPLEMENTATION**

17 **SEC. 121. RULEMAKING.**

18 (a) IN GENERAL.—The Secretary and Attorney Gen-
19 eral separately shall issue interim final regulations not
20 later than 9 months after the date of the enactment of
21 this Act to implement this title and the amendments made
22 by this title. Such interim final regulations shall become
23 effective immediately upon publication in the Federal Reg-
24 ister.

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

7 **SEC. 122. EXEMPTION FROM GOVERNMENT CONTRACTING**
8 **AND HIRING RULES.**

9 (a) EXEMPTION FROM GOVERNMENT CONTRACTING
10 RULES.—

11 (1) PROCUREMENT COMPETITION EXEMP-
12 TION.—Any Federal agency's determination to use a
13 procurement competition exemption under section
14 253(c) of title 41, United States Code, or to use the
15 authority granted in paragraph (2), for the purpose
16 of implementing this title is not subject to challenge
17 by protest to either the Government Accountability
18 Office, under sections 3551 through 3556 of title
19 31, United States Code, or to the Court of Federal
20 Claims, under section 1491 of title 28, United
21 States Code. An agency shall immediately advise
22 Congress of the exercise of the authority granted in
23 this subsection.

24 (2) WAIVER OF COMPETITION REQUIRE-
25 MENTS.—The competition requirement of section

1 253(a) of title 41, United States Code may be
2 waived or modified by a Federal agency for any pro-
3 curement conducted to implement this title pursuant
4 to a determination and finding, approved by the sen-
5 ior procurement executive for the agency conducting
6 the procurement, that explains why the waiver or
7 modification is necessary if such a determination
8 and finding is furnished to the Committee on Home-
9 land Security and Governmental Affairs of the Sen-
10 ate and the Committee on Oversight and Govern-
11 ment Reform of the House of Representatives.

12 (b) EXEMPTION FROM GOVERNMENT HIRING
13 RULES.—Notwithstanding any other provision of law, the
14 Secretary shall have authority to make term, temporary,
15 limited, and part-time appointments for purposes of imple-
16 menting this title without regard to the number of such
17 employees, their ratio to permanent full-time employees,
18 and the duration of their employment. Nothing in chapter
19 71 of title 5, United States Code, shall affect the authority
20 of any Department management official to hire term, tem-
21 porary, limited, or part-time employees under this sub-
22 section.

23 **SEC. 123. AUTHORITY TO ACQUIRE LEASEHOLDS.**

24 Notwithstanding any other provision of law, the Sec-
25 retary may acquire a leasehold interest in real property,

1 and may provide in a lease entered into under this sub-
2 section for the construction or modification of any facility
3 on the leased property, if the Secretary determines that
4 the acquisition of such interest, and such construction or
5 modification is necessary in order to facilitate the imple-
6 mentation of this title.

7 **SEC. 124. PRIVACY AND CIVIL LIBERTIES.**

8 (a) PROTECTION OF PRIVACY.—Consistent with sec-
9 tion 114, the Secretary shall require appropriate adminis-
10 trative and physical safeguards to protect the security,
11 confidentiality, and integrity of personally identifiable in-
12 formation collected, maintained, and disseminated pursu-
13 ant to sections 111 and 112.

14 (b) REQUIREMENT FOR IMPACT ASSESSMENTS.—
15 Notwithstanding privacy requirements under section 222
16 of the Homeland Security Act and the E-Government Act
17 of 2002, the Secretary shall conduct a privacy impact as-
18 sessment and a civil liberties impact assessment of the le-
19 galization program established in sections 111 and 112
20 during the pendency of the interim final rule.

21 **SEC. 125. STATUTORY CONSTRUCTION.**

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

1 United States or its agencies or officers or any other per-
2 son.

3 **PART III—MISCELLANEOUS**

4 **SEC. 131. CORRECTION OF SOCIAL SECURITY RECORDS.**

5 (a) IN GENERAL.—Section 208(e)(1) of the Social
6 Security Act (42 U.S.C. 408(e)(1)) is amended—

7 (1) in subparagraph (B)(ii), by striking “or” at
8 the end;

9 (2) by inserting after subparagraph (C) the fol-
10 lowing:

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

14 “(E) whose status is adjusted to that of
15 lawful permanent resident under section 112 of
16 the CIR Act of 2010,”; and

17 (3) by striking “1990.” and inserting “1990, or
18 in the case of an alien described in subparagraph
19 (D) or (E), if such conduct is alleged to have oc-
20 curred before the date on which the alien submitted
21 an application under section 111 of the CIR Act of
22 2010 for classification as a lawful prospective immi-
23 grant.”.

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

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

3 **SEC. 132. FRAUD PREVENTION PROGRAM.**

4 (a) IN GENERAL.—The head of each Department re-
5 sponsible for the administration of a program related to
6 this title or with authority to confer an immigration ben-
7 efit, relief, or status under Federal immigration law shall
8 develop an administrative program to prevent fraud within
9 or upon such program or authority. Subject to such modi-
10 fications as the head of the Department may direct, the
11 program shall provide for—

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

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

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

19 (4) the identification of deficiencies in adminis-
20 trative practice or procedure that encourage fraud or
21 abuse;

22 (5) the remedy of any identified deficiencies;
23 and

24 (6) the referral of cases of identified or sus-
25 pected fraud or other misconduct for investigation.

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

8 (c) COORDINATION.—The heads of relevant Depart-
9 ments shall coordinate their respective efforts under this
10 subsection.

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

14 **SEC. 133. DATA COLLECTION REQUIREMENTS.**

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

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

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

3 (c) PROTECTION OF CONFIDENTIALITY.—Data col-
4 lected and gathered in the aggregate for purposes of re-
5 search shall not be recorded in such a way that it violates
6 confidentiality provisions under this title.

7 **PART IV—DREAM ACT**

8 **SEC. 141. SHORT TITLE.**

9 This part may be cited as the “Development, Relief,
10 and Education for Alien Minors Act of 2011” or the
11 “DREAM Act of 2011”.

12 **SEC. 142. DEFINITIONS.**

13 In this part:

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

19 (2) INSTITUTION OF HIGHER EDUCATION.—The
20 term “institution of higher education” has the
21 meaning given such term in section 102 of the High-
22 er Education Act of 1965 (20 U.S.C. 1002), except
23 that the term does not include an institution of high-
24 er education outside the United States.

1 (3) SECRETARY.—Except as otherwise specifi-
2 cally provided, the term “Secretary” means the Sec-
3 retary of Homeland Security.

4 (4) UNIFORMED SERVICES.—The term “Uni-
5 formed Services” has the meaning given the term
6 “uniformed services” in section 101(a) of title 10,
7 United States Code.

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

11 (a) CONDITIONAL BASIS FOR STATUS.—Notwith-
12 standing any other provision of law, an alien shall be con-
13 sidered, at the time of obtaining the status of an alien
14 lawfully admitted for permanent residence under this sec-
15 tion, to have obtained such status on a conditional basis
16 subject to the provisions of this part.

17 (b) REQUIREMENTS.—

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

1 Nationality Act (8 U.S.C. 1254a), if the alien dem-
2 onstrates by a preponderance of the evidence that—

3 (A) the alien has been continuously phys-
4 ically present in the United States since the
5 date that is 5 years before the date of the en-
6 actment of this Act;

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

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

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

14 (i) is not inadmissible under para-
15 graph (2), (3), (6)(E), (6)(G), (8),
16 (10)(A), (10)(C), or (10)(D) of section
17 212(a) of the Immigration and Nationality
18 Act (8 U.S.C. 1182(a));

19 (ii) has not ordered, incited, assisted,
20 or otherwise participated in the persecution
21 of any person on account of race, religion,
22 nationality, membership in a particular so-
23 cial group, or political opinion; and

24 (iii) has not been convicted of—

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

5 (II) 3 or more offenses under
6 Federal or State law, for which the
7 alien was convicted on different dates
8 for each of the 3 offenses and impris-
9 oned for an aggregate of 90 days or
10 more;

11 (E) the alien—

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

15 (ii) has earned a high school diploma
16 or obtained a general education develop-
17 ment certificate in the United States; and

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

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

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

3 (3) SUBMISSION OF BIOMETRIC AND BIO-
4 GRAPHIC DATA.—The Secretary may not grant per-
5 manent resident status on a conditional basis to an
6 alien under this section unless the alien submits bio-
7 metric and biographic data, in accordance with pro-
8 cedures established by the Secretary. The Secretary
9 shall provide an alternative procedure for applicants
10 who are unable to provide such biometric or bio-
11 graphic data because of a physical impairment.

12 (4) BACKGROUND CHECKS.—

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

17 (i) to conduct security and law en-
18 forcement background checks of an alien
19 seeking permanent resident status on a
20 conditional basis under this section; and

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

1 (B) COMPLETION OF BACKGROUND
2 CHECKS.—The security and law enforcement
3 background checks required by subparagraph
4 (A) for an alien shall be completed, to the satis-
5 faction of the Secretary, prior to the date the
6 Secretary grants permanent resident status on
7 a conditional basis to the alien.

8 (5) MEDICAL EXAMINATION.—An alien applying
9 for permanent resident status on a conditional basis
10 under this section shall undergo a medical examina-
11 tion. The Secretary, with the concurrence of the Sec-
12 retary of Health and Human Services, shall pre-
13 scribe policies and procedures for the nature and
14 timing of such examination.

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

21 (c) DETERMINATION OF CONTINUOUS PRESENCE.—

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

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

4 (2) TREATMENT OF CERTAIN BREAKS IN PRES-
5 ENCE.—

6 (A) IN GENERAL.—An alien shall be con-
7 sidered to have failed to maintain continuous
8 physical presence in the United States under
9 subsection (b)(1)(A) if the alien has departed
10 from the United States for any period in excess
11 of 90 days or for any periods in the aggregate
12 exceeding 180 days.

13 (B) EXTENSIONS FOR EXTENUATING CIR-
14 CUMSTANCES.—The Secretary may extend the
15 time periods described in subparagraph (A) for
16 an alien if the alien demonstrates that the fail-
17 ure to timely return to the United States was
18 due to extenuating circumstances beyond the
19 alien's control.

20 (d) APPLICATION.—

21 (1) IN GENERAL.—An alien seeking lawful per-
22 manent resident status on a conditional basis shall
23 file an application for such status in such manner as
24 the Secretary may require.

1 (2) DEADLINE FOR SUBMISSION OF APPLICA-
2 TION.—An alien shall submit an application for re-
3 lief under this section not later than the date that
4 is 1 year after the later of—

5 (A) the date the alien earned a high school
6 diploma or obtained a general education devel-
7 opment certificate in the United States; or

8 (B) the effective date of the final regula-
9 tions issued pursuant to section 536.

10 (e) LIMITATION ON REMOVAL OF CERTAIN
11 ALIENS.—

12 (1) IN GENERAL.—The Secretary or the Attor-
13 ney General may not remove an alien who—

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

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

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

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

23 (i) meets all the requirements of sub-
24 paragraphs (A), (B), (C), (D), and (F) of
25 subsection (b)(1);

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

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

4 (B) ALIENS NOT IN REMOVAL PRO-
5 CEEDINGS.—If an alien is not in removal pro-
6 ceedings, the Secretary shall not commence
7 such proceedings with respect to the alien if the
8 alien is described in clauses (i) through (iii) of
9 subparagraph (A).

10 (C) EMPLOYMENT.—An alien whose re-
11 moval is stayed pursuant to subparagraph (A)
12 or who may not be placed in removal pro-
13 ceedings pursuant to subparagraph (B) shall,
14 upon application to the Secretary, be granted
15 an employment authorization document.

16 (D) LIFT OF STAY.—The Secretary or At-
17 torney General may lift the stay granted to an
18 alien under subparagraph (A) if the alien—

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

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

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

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

3 **SEC. 144. TERMS OF CONDITIONAL PERMANENT RESIDENT**
4 **STATUS.**

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

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

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

10 (b) NOTICE OF REQUIREMENTS.—

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

17 (2) EFFECT OF FAILURE TO PROVIDE NO-
18 TICE.—The failure of the Secretary to provide a no-
19 tice under this subsection—

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

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

25 (c) TERMINATION OF STATUS.—

1 (1) IN GENERAL.—The Secretary shall termi-
2 nate the conditional permanent resident status of an
3 alien, if the Secretary determines that the alien—

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

7 (B) was discharged from the Uniformed
8 Services and did not receive an honorable dis-
9 charge.

10 (d) RETURN TO PREVIOUS IMMIGRATION STATUS.—

11 (1) IN GENERAL.—Except as provided in para-
12 graph (2), an alien whose permanent resident status
13 on a conditional basis expires under subsection
14 (a)(1) or is terminated under subsection (c) or
15 whose application for such status is denied shall re-
16 turn to the immigration status the alien had imme-
17 diately prior to receiving permanent resident status
18 on a conditional basis or applying for such status,
19 as appropriate.

20 (2) SPECIAL RULE FOR TEMPORARY PRO-
21 TECTED STATUS.—In the case of an alien whose per-
22 manent resident status on a conditional basis expires
23 under subsection (a)(1) or is terminated under sub-
24 section (c) or whose application for such status is
25 denied and who had temporary protected status im-

1 mediately prior to receiving or applying for such sta-
2 tus, as appropriate, the alien may not return to tem-
3 porary protected status if—

4 (A) the relevant designation under section
5 244(b) of the Immigration and Nationality Act
6 (8 U.S.C. 1254a(b)) has been terminated; or

7 (B) the Secretary determines that the rea-
8 son for terminating the permanent resident sta-
9 tus on a conditional basis renders the alien in-
10 eligible for temporary protected status.

11 (e) INFORMATION SYSTEMS.—The Secretary shall
12 use the information systems of the Department of Home-
13 land Security to maintain current information on the iden-
14 tity, address, and immigration status of aliens granted
15 permanent resident status on a conditional basis under
16 this part.

17 **SEC. 145. REMOVAL OF CONDITIONAL BASIS OF PERMA-**
18 **NENT RESIDENT STATUS.**

19 (a) ELIGIBILITY FOR REMOVAL OF CONDITIONAL
20 BASIS.—

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

1 (A) the alien has been a person of good
2 moral character during the entire period of con-
3 ditional permanent resident status;

4 (B) the alien is described in section
5 533(b)(1)(D);

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

8 (D) the alien—

9 (i) has acquired a degree from an in-
10 stitution of higher education in the United
11 States or has completed at least 2 years, in
12 good standing, in a program for a bach-
13 elor's degree or higher degree in the
14 United States; or

15 (ii) has served in the Uniformed Serv-
16 ices for at least 2 years and, if discharged,
17 received an honorable discharge; and

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

23 (2) HARDSHIP EXCEPTION.—

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

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

3 (i) satisfies the requirements of sub-
4 paragraphs (A), (B), (C), and (E) of para-
5 graph (1);

6 (ii) demonstrates compelling cir-
7 cumstances for the inability to satisfy the
8 requirements of subparagraph (D) of such
9 paragraph; and

10 (iii) demonstrates that the alien's re-
11 moval from the United States would result
12 in extreme hardship to the alien or the
13 alien's spouse, parent, or child who is a cit-
14 izen or a lawful permanent resident of the
15 United States.

16 (B) EXTENSION.—Upon a showing of good
17 cause, the Secretary may extend the period of
18 permanent resident status on a conditional
19 basis for an alien so that the alien may com-
20 plete the requirements of subparagraph (D) of
21 paragraph (1).

22 (3) TREATMENT OF ABANDONMENT OR RESI-
23 DENCE.—For purposes of paragraph (1)(C), an
24 alien—

1 (A) shall be presumed to have abandoned
2 the alien's residence in the United States if the
3 alien is absent from the United States for more
4 than 365 days, in the aggregate, during the
5 alien's period of conditional permanent resident
6 status, unless the alien demonstrates to the sat-
7 isfaction of the Secretary that the alien has not
8 abandoned such residence; and

9 (B) who is absent from the United States
10 due to active service in the Uniformed Services
11 has not abandoned the alien's residence in the
12 United States during the period of such service.

13 (4) CITIZENSHIP REQUIREMENT.—

14 (A) IN GENERAL.—Except as provided in
15 subparagraph (B), the conditional basis of an
16 alien's permanent resident status may not be
17 removed unless the alien demonstrates that the
18 alien satisfies the requirements of section
19 312(a) of the Immigration and Nationality Act
20 (8 U.S.C. 1423(a)).

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

1 (5) SUBMISSION OF BIOMETRIC AND BIO-
2 GRAPHIC DATA.—The Secretary may not remove the
3 conditional basis of an alien’s permanent resident
4 status unless the alien submits biometric and bio-
5 graphic data, in accordance with procedures estab-
6 lished by the Secretary. The Secretary shall provide
7 an alternative procedure for applicants who are un-
8 able to provide such biometric data because of a
9 physical impairment.

10 (6) BACKGROUND CHECKS.—

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

15 (i) to conduct security and law en-
16 forcement background checks of an alien
17 applying for removal of the conditional
18 basis of the alien’s permanent resident sta-
19 tus; and

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

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

1 background checks required by subparagraph
2 (A) for an alien shall be completed, to the satis-
3 faction of the Secretary, prior to the date the
4 Secretary removes the conditional basis of the
5 alien's permanent resident status.

6 (b) APPLICATION TO REMOVE CONDITIONAL
7 BASIS.—

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

13 (2) DEADLINE FOR SUBMISSION OF APPLICA-
14 TION.—

15 (A) IN GENERAL.—An alien shall file an
16 application under this subsection during the pe-
17 riod beginning 6 months prior to and ending on
18 the date that is later of—

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

22 (ii) any other expiration date of the
23 alien's conditional permanent resident sta-
24 tus, as extended by the Secretary in ac-
25 cordance with this part.

1 (B) STATUS DURING PENDENCY.—An
2 alien shall be deemed to have permanent resi-
3 dent status on a conditional basis during the
4 period that the alien's application submitted
5 under this subsection is pending.

6 (3) ADJUDICATION OF APPLICATION.—

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

13 (B) ADJUSTMENT OF STATUS IF FAVOR-
14 ABLE DETERMINATION.—If the Secretary deter-
15 mines that the alien meets such requirements,
16 the Secretary shall notify the alien of such de-
17 termination and remove the conditional basis of
18 the alien's permanent resident status, effective
19 as of the date of such determination.

20 (C) TERMINATION IF ADVERSE DETER-
21 MINATION.—If the Secretary determines that
22 the alien does not meet such requirements, the
23 Secretary shall notify the alien of such deter-
24 mination and, if the period of the alien's condi-
25 tional permanent resident status under section

1 534(a)(1) has ended, terminate the conditional
2 permanent resident status granted the alien
3 under this part as of the date of such deter-
4 mination.

5 (c) TREATMENT FOR PURPOSES OF NATURALIZA-
6 TION.—

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

15 (2) LIMITATION ON APPLICATION FOR NATU-
16 RALIZATION.—An alien may not apply for natu-
17 ralization during the period that the alien is in per-
18 manent resident status on a conditional basis under
19 this part.

20 **SEC. 146. REGULATIONS.**

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

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

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

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

13 (d) PAPERWORK REDUCTION ACT.—The require-
14 ments of chapter 35 of title 44, United States Code (com-
15 monly known as the “Paperwork Reduction Act”) shall
16 not apply to any action to implement this part.

17 **SEC. 147. PENALTIES FOR FALSE STATEMENTS.**

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

1 **SEC. 148. CONFIDENTIALITY OF INFORMATION.**

2 (a) PROHIBITION.—Except as provided in subsection

3 (b), no officer or employee of the United States may—

4 (1) use the information furnished by an indi-
5 vidual pursuant to an application filed under this
6 part in removal proceedings against any person iden-
7 tified in the application;

8 (2) make any publication whereby the informa-
9 tion furnished by any particular individual pursuant
10 to an application under this part can be identified;
11 or

12 (3) permit anyone other than an officer, em-
13 ployee or authorized contractor of the United States
14 Government or, in the case of an application filed
15 under this part with a designated entity, permit that
16 designated entity, to examine such application filed
17 under such sections.

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

22 (1) a Federal, State, tribal, or local law enforce-
23 ment agency, intelligence agency, national security
24 agency, component of the Department of Homeland
25 Security, court, or grand jury in connection with a
26 criminal investigation or prosecution, a background

1 check conducted pursuant to section 103 of the
2 Brady Handgun Violence Protection Act (Public
3 Law 103–159; 18 U.S.C. 922 note), or national se-
4 curity purposes, if such information is requested by
5 such entity or consistent with an information shar-
6 ing agreement or mechanism; or

7 (2) an official coroner for purposes of affirma-
8 tively identifying a deceased individual (whether or
9 not such individual is deceased as a result of a
10 crime).

11 (c) FRAUD IN APPLICATION PROCESS OR CRIMINAL
12 CONDUCT.—Notwithstanding any other provision of this
13 section, information concerning whether an alien seeking
14 relief under this part has engaged in fraud in an applica-
15 tion for such relief or at any time committed a crime, may
16 be used or released for immigration enforcement, law en-
17 forcement, or national security purposes.

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

21 **SEC. 149. HIGHER EDUCATION ASSISTANCE.**

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

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

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

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

10 (3) Services under such title IV (20 U.S.C.
11 1070 et seq.), subject to the requirements for such
12 services.

13 (b) RESTORATION OF STATE OPTION TO DETER-
14 MINE RESIDENCY FOR PURPOSES OF HIGHER EDUCATION
15 BENEFITS.—

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

19 (2) EFFECTIVE DATE.—The repeal under para-
20 graph (1) shall take effect as if included in the en-
21 actment of the Illegal Immigration Reform and Im-
22 migrant Responsibility Act of 1996 (division C of
23 Public Law 104–208; 110 Stat. 3009–546).

1 **PART V—AGRICULTURAL JOB OPPORTUNITIES,**
2 **BENEFITS, AND SECURITY**

3 **SEC. 150. SHORT TITLES.**

4 This part may be cited as the “Agricultural Job Op-
5 portunities, Benefits, and Security Act of 2011” or the
6 “AgJOBS Act of 2011”.

7 **CHAPTER 1—BLUE CARD STATUS**

8 **SEC. 151. REQUIREMENTS FOR BLUE CARD STATUS.**

9 (a) REQUIREMENT TO GRANT BLUE CARD STA-
10 TUS.—Notwithstanding any other provision of law, the
11 Secretary shall, pursuant to the requirements of this sec-
12 tion, grant blue card status to an alien who qualifies under
13 this section if the Secretary determines that the alien—

14 (1) has performed agricultural employment in
15 the United States for at least 863 hours or 150
16 work days during the 24-month period ending on
17 December 31, 2010;

18 (2) applied for such status during the 18-month
19 application period beginning on the first day of the
20 seventh month that begins after the date of the en-
21 actment of this Act;

22 (3) is otherwise admissible to the United States
23 under section 212 of the Immigration and Nation-
24 ality Act (8 U.S.C. 1182), except as otherwise pro-
25 vided under section 154(a)(2) of this Act; and

1 (4) has not been convicted of any felony or a
2 misdemeanor, an element of which involves bodily in-
3 jury, threat of serious bodily injury, or harm to
4 property in excess of \$500.

5 (b) AUTHORIZED TRAVEL.—An alien who is granted
6 blue card status is authorized to travel outside the United
7 States (including commuting to the United States from
8 a residence in a foreign country) in the same manner as
9 an alien lawfully admitted for permanent residence.

10 (c) AUTHORIZED EMPLOYMENT.—The Secretary
11 shall provide an alien who is granted blue card status an
12 employment authorized endorsement or other appropriate
13 work permit, in the same manner as an alien lawfully ad-
14 mitted for permanent residence.

15 (d) TERMINATION OF BLUE CARD STATUS.—

16 (1) DEPORTABLE ALIENS.—The Secretary shall
17 terminate blue card status granted to an alien if the
18 Secretary determines that the alien is deportable.

19 (2) OTHER GROUNDS FOR TERMINATION.—The
20 Secretary shall terminate blue card status granted to
21 an alien if—

22 (A) the Secretary finds, by a preponder-
23 ance of the evidence, that the adjustment to
24 blue card status was the result of fraud or will-
25 ful misrepresentation, as described in section

1 212(a)(6)(C)(i) of the Immigration and Nation-
2 ality Act (8 U.S.C. 1182(a)(6)(C)(i)); or

3 (B) the alien—

4 (i) commits an act that makes the
5 alien inadmissible to the United States
6 under section 212 of the Immigration and
7 Nationality Act (8 U.S.C. 1182), except as
8 provided under section 154(a)(2) of this
9 Act;

10 (ii) is convicted of a felony or 3 or
11 more misdemeanors committed in the
12 United States;

13 (iii) is convicted of an offense, an ele-
14 ment of which involves bodily injury, threat
15 of serious bodily injury, or harm to prop-
16 erty in excess of \$500; or

17 (iv) fails to perform the agricultural
18 employment required under paragraph
19 (1)(A) of section 153(a) unless the alien
20 was unable to work in agricultural employ-
21 ment due to the extraordinary cir-
22 cumstances described in paragraph (3) of
23 such section.

24 (e) RECORD OF EMPLOYMENT.—

1 (1) IN GENERAL.—Each employer of an alien
2 granted blue card status shall annually—

3 (A) provide a written record of employ-
4 ment to the alien; and

5 (B) provide a copy of such record to the
6 Secretary.

7 (2) CIVIL PENALTIES.—

8 (A) IN GENERAL.—If the Secretary deter-
9 mines, after notice and opportunity for a hear-
10 ing, that an employer of an alien granted blue
11 card status has failed to provide the record of
12 employment required under paragraph (1) or
13 has provided a false statement of material fact
14 in such a record, the employer shall be subject
15 to a civil penalty in an amount not to exceed
16 \$1,000 per violation.

17 (B) LIMITATION.—The penalty applicable
18 under subparagraph (A) for failure to provide
19 records shall not apply unless the alien has pro-
20 vided the employer with evidence of employment
21 authorization granted under this section.

22 (3) SUNSET.—The obligation under paragraph
23 (1) shall terminate on the date that is 6 years after
24 the date of the enactment of this Act.

1 (f) REQUIRED FEATURES OF IDENTITY CARD.—The
2 Secretary shall provide each alien granted blue card sta-
3 tus, and the spouse and any child of each such alien resid-
4 ing in the United States, with a card that contains—

5 (1) an encrypted, machine-readable, electronic
6 identification strip that is unique to the alien to
7 whom the card is issued;

8 (2) biometric identifiers, including fingerprints
9 and a digital photograph; and

10 (3) physical security features designed to pre-
11 vent tampering, counterfeiting, or duplication of the
12 card for fraudulent purposes.

13 (g) FINE.—An alien granted blue card status shall
14 pay a \$100 fine to the Secretary.

15 (h) MAXIMUM NUMBER.—The Secretary may not
16 issue more than 1,350,000 blue cards during the 5-year
17 period beginning on the date of the enactment of this Act.

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

20 (1) IN GENERAL.—Except as otherwise pro-
21 vided under this section, an alien granted blue card
22 status (including a spouse or child of the alien
23 granted derivative status) shall be considered to be
24 an alien lawfully admitted for permanent residence
25 for purposes of any law other than any provision of

1 the Immigration and Nationality Act (8 U.S.C. 1101
2 et seq.).

3 (2) DELAYED ELIGIBILITY FOR CERTAIN FED-
4 ERAL PUBLIC BENEFITS.—Except as otherwise pro-
5 vided in law, an alien granted blue card status (in-
6 cluding a spouse or child of the alien granted deriva-
7 tive status) shall not be eligible, by reason of such
8 status, for any form of assistance or benefit de-
9 scribed in section 403(a) of the Personal Responsi-
10 bility and Work Opportunity Reconciliation Act of
11 1996 (8 U.S.C. 1613(a)) until 5 years after the date
12 on which the alien is granted an adjustment of sta-
13 tus under section 153.

14 **SEC. 152. APPLICATION FOR BLUE CARD STATUS.**

15 (a) SUBMISSION.—The Secretary shall provide that—

16 (1) applications for blue card status may be
17 submitted—

18 (A) to the Secretary if the applicant is rep-
19 resented by an attorney or a nonprofit religious,
20 charitable, social service, or similar organization
21 recognized by the Board of Immigration Ap-
22 peals under section 292.2 of title 8, Code of
23 Federal Regulations; or

1 (B) to a qualified designated entity if the
2 applicant consents to the forwarding of the ap-
3 plication to the Secretary; and

4 (2) applications for adjustment of status under
5 section 153 shall be filed directly with the Secretary.

6 (b) QUALIFIED DESIGNATED ENTITY DEFINED.—In
7 this section, the term “qualified designated entity”
8 means—

9 (1) a qualified farm labor organization or an
10 association of employers designated by the Sec-
11 retary; or

12 (2) any such other person designated by the
13 Secretary if that Secretary determines such person
14 is qualified and has substantial experience, dem-
15 onstrated competence, and has a history of long-
16 term involvement in the preparation and submission
17 of applications for adjustment of status under sec-
18 tion 209, 210, or 245 of the Immigration and Na-
19 tionality Act (8 U.S.C. 1159, 1160, and 1255), the
20 Act entitled “An Act to adjust the status of Cuban
21 refugees to that of lawful permanent residents of the
22 United States, and for other purposes”, approved
23 November 2, 1966 (Public Law 89–732; 8 U.S.C.
24 1255 note), Public Law 95–145 (8 U.S.C. 1255
25 note), or the Immigration Reform and Control Act

1 of 1986 (Public Law 99–603; 100 Stat. 3359) or
2 any amendment made by that Act.

3 (c) PROOF OF ELIGIBILITY.—

4 (1) IN GENERAL.—An alien may establish that
5 the alien meets the requirements under section
6 151(a)(1) or 153(a)(1) through government employ-
7 ment records or records supplied by employers or
8 collective bargaining organizations, and other reli-
9 able documentation as the alien may provide. The
10 Secretary shall establish special procedures to prop-
11 erly credit work in cases in which an alien was em-
12 ployed under an assumed name.

13 (2) DOCUMENTATION OF WORK HISTORY.—

14 (A) BURDEN OF PROOF.—An alien apply-
15 ing for status under section 151(a) or 153(a)
16 has the burden of proving by a preponderance
17 of the evidence that the alien has worked the
18 requisite number of hours or days required
19 under section 151(a)(1) or 153(a)(1), as appli-
20 cable.

21 (B) TIMELY PRODUCTION OF RECORDS.—

22 If an employer or farm labor contractor employ-
23 ing such an alien has kept proper and adequate
24 records respecting such employment, the alien's
25 burden of proof under subparagraph (A) may

1 be met by securing timely production of those
2 records under regulations to be promulgated by
3 the Secretary.

4 (C) SUFFICIENT EVIDENCE.—An alien
5 may meet the burden of proof under subpara-
6 graph (A) to establish that the alien has per-
7 formed the days or hours of work required by
8 section 151(a)(1) or 153(a)(1) by producing
9 sufficient evidence to show the extent of that
10 employment as a matter of just and reasonable
11 inference.

12 (d) APPLICATIONS SUBMITTED TO QUALIFIED DES-
13 IGNATED ENTITIES.—

14 (1) REQUIREMENTS.—Each qualified des-
15 ignated entity shall agree—

16 (A) to forward to the Secretary an applica-
17 tion submitted to that entity pursuant to sub-
18 section (a)(1)(B) if the applicant has consented
19 to such forwarding;

20 (B) not to forward to the Secretary any
21 such application if the applicant has not con-
22 sented to such forwarding; and

23 (C) to assist an alien in obtaining docu-
24 mentation of the alien's work history, if the
25 alien requests such assistance.

1 (2) NO AUTHORITY TO MAKE DETERMINA-
2 TIONS.—No qualified designated entity may make a
3 determination required by this part to be made by
4 the Secretary.

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

12 (f) CONFIDENTIALITY OF INFORMATION.—

13 (1) IN GENERAL.—Except as otherwise pro-
14 vided in this section, the Secretary or any other offi-
15 cial or employee of the Department or a bureau or
16 agency of the Department is prohibited from—

17 (A) using information furnished by the ap-
18 plicant pursuant to an application filed under
19 this title, the information provided by an appli-
20 cant to a qualified designated entity, or any in-
21 formation provided by an employer or former
22 employer for any purpose other than to make a
23 determination on the application or for impos-
24 ing the penalties described in subsection (g);

1 (B) making any publication in which the
2 information furnished by any particular indi-
3 vidual can be identified; or

4 (C) permitting a person other than a
5 sworn officer or employee of the Department or
6 a bureau or agency of the Department or, with
7 respect to applications filed with a qualified
8 designated entity, that qualified designated en-
9 tity, to examine individual applications.

10 (2) REQUIRED DISCLOSURES.—The Secretary
11 shall provide the information furnished under this
12 title or any other information derived from such fur-
13 nished information to—

14 (A) a duly recognized law enforcement en-
15 tity in connection with a criminal investigation
16 or prosecution, if such information is requested
17 in writing by such entity; or

18 (B) an official coroner, for purposes of af-
19 firmatively identifying a deceased individual,
20 whether or not the death of such individual re-
21 sulted from a crime.

22 (3) CONSTRUCTION.—

23 (A) IN GENERAL.—Nothing in this sub-
24 section may be construed to limit the use, or re-
25 lease, for immigration enforcement purposes or

1 law enforcement purposes, of information con-
2 tained in files or records of the Department
3 pertaining to an application filed under this sec-
4 tion, other than information furnished by an
5 applicant pursuant to the application, or any
6 other information derived from the application,
7 that is not available from any other source.

8 (B) CRIMINAL CONVICTIONS.—Notwith-
9 standing any other provision of this subsection,
10 information concerning whether the alien apply-
11 ing for blue card status or an adjustment of
12 status under section 153 has been convicted of
13 a crime at any time may be used or released for
14 immigration enforcement or law enforcement
15 purposes.

16 (4) CRIME.—Any person who knowingly uses,
17 publishes, or permits information to be examined in
18 violation of this subsection shall be subject to a fine
19 in an amount not to exceed \$10,000.

20 (g) PENALTIES FOR FALSE STATEMENTS IN APPLI-
21 CATIONS.—

22 (1) CRIMINAL PENALTY.—Any person who—

23 (A) files an application for blue card status
24 under this section or for adjustment of status
25 under section 153 and knowingly and willfully

1 falsifies, conceals, or covers up a material fact
2 or makes any false, fictitious, or fraudulent
3 statements or representations, or makes or uses
4 any false writing or document knowing the
5 same to contain any false, fictitious, or fraudu-
6 lent statement or entry; or

7 (B) creates or supplies a false writing or
8 document for use in making such an applica-
9 tion,

10 shall be fined in accordance with title 18, United
11 States Code, imprisoned not more than 5 years, or
12 both.

13 (2) INADMISSIBILITY.—An alien who is con-
14 victed of a crime under paragraph (1) shall be con-
15 sidered to be inadmissible to the United States on
16 the grounds described in section 212(a)(6)(C)(i) of
17 the Immigration and Nationality Act (8 U.S.C.
18 1182(a)(6)(C)(i)).

19 (h) ELIGIBILITY FOR LEGAL SERVICES.—Section
20 114(a)(11) of Public Law 104–134 (110 Stat. 1321–53
21 et seq.) may not be construed to prevent a recipient of
22 funds under the Legal Services Corporation Act (42
23 U.S.C. 2996 et seq.) from providing legal assistance di-
24 rectly related to an application for blue card status under
25 this section or for adjustment of status under section 153.

1 (i) APPLICATION FEES.—

2 (1) FEE SCHEDULE.—The Secretary shall pro-
3 vide for a schedule of fees that—

4 (A) shall be charged for the filing of an
5 application for blue card status under this sec-
6 tion or for adjustment of status under section
7 153; and

8 (B) may be charged by qualified des-
9 ignated entities to help defray the costs of serv-
10 ices provided to such applicants.

11 (2) PROHIBITION ON EXCESS FEES BY QUALI-
12 FIED DESIGNATED ENTITIES.—A qualified des-
13 ignated entity may not charge any fee in excess of,
14 or in addition to, the fees authorized under para-
15 graph (1)(B) for services provided to applicants.

16 (3) DISPOSITION OF FEES.—

17 (A) IN GENERAL.—There is established in
18 the general fund of the Treasury a separate ac-
19 count, which shall be known as the “Agricul-
20 tural Worker Immigration Status Adjustment
21 Account”. Notwithstanding any other provision
22 of law, there shall be deposited as offsetting re-
23 ceipts into the account all fees collected under
24 paragraph (1)(A).

1 (B) USE OF FEES FOR APPLICATION PROC-
2 ESSING.—Amounts deposited in the “Agricul-
3 tural Worker Immigration Status Adjustment
4 Account” shall remain available to the Sec-
5 retary until expended for processing applica-
6 tions for blue card status under this section or
7 for adjustment of status under section 153.

8 **SEC. 153. ADJUSTMENT TO PERMANENT RESIDENCE.**

9 (a) IN GENERAL.—Except as provided in subsection
10 (b), the Secretary shall adjust the status of an alien grant-
11 ed blue card status to that of an alien lawfully admitted
12 for permanent residence if the Secretary determines that
13 the following requirements are satisfied:

14 (1) QUALIFYING EMPLOYMENT.—

15 (A) IN GENERAL.—Subject to subpara-
16 graph (B), the alien has performed at least—

17 (i) 5 years of agricultural employment
18 in the United States for at least 100 work
19 days per year, during the 5-year period be-
20 ginning on the date of the enactment of
21 this Act; or

22 (ii) 3 years of agricultural employ-
23 ment in the United States for at least 150
24 work days per year, during the 3-year pe-

1 riod beginning on the date of the enact-
2 ment of this Act.

3 (B) 4-YEAR PERIOD OF EMPLOYMENT.—

4 An alien shall be considered to meet the re-
5 quirements of subparagraph (A) if the alien has
6 performed, during the 4-year period beginning
7 on the date of the enactment of this Act—

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

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

13 (2) PROOF.—An alien may demonstrate compli-
14 ance with the requirement under paragraph (1) by
15 submitting—

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

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

20 (3) EXTRAORDINARY CIRCUMSTANCES.—

21 (A) IN GENERAL.—In determining whether
22 an alien has met the requirement under para-
23 graph (1)(A), the Secretary may credit the alien
24 with not more than 12 additional months of ag-
25 ricultural employment in the United States to

1 meet such requirement if the alien was unable
2 to work in agricultural employment due to—

3 (i) pregnancy, injury, or disease, if the
4 alien can establish such pregnancy, dis-
5 abling injury, or disease through medical
6 records;

7 (ii) illness, disease, or other special
8 needs of a minor child, if the alien can es-
9 tablish such illness, disease, or special
10 needs through medical records;

11 (iii) severe weather conditions that
12 prevented the alien from engaging in agri-
13 cultural employment for a significant pe-
14 riod of time; or

15 (iv) termination from agricultural em-
16 ployment, if the Secretary finds that the
17 termination was without just cause and
18 that the alien was unable to find alter-
19 native agricultural employment after a rea-
20 sonable job search.

21 (B) EFFECT OF FINDING.—A finding
22 made under subparagraph (A)(iv), with respect
23 to an alien, shall not—

24 (i) be conclusive, binding, or admis-
25 sible in a separate or subsequent judicial

1 or administrative action or proceeding be-
2 tween the alien and a current or prior em-
3 ployer of the alien or any other party; or

4 (ii) subject the alien's employer to the
5 payment of attorney fees incurred by the
6 alien in seeking to obtain a finding under
7 subparagraph (A)(iv).

8 (4) APPLICATION PERIOD.—The alien applies
9 for adjustment of status not later than 7 years after
10 the date of the enactment of this Act.

11 (5) FINE.—The alien pays a fine of \$400 to the
12 Secretary.

13 (b) GROUNDS FOR DENIAL OF ADJUSTMENT OF STA-
14 TUS.—The Secretary shall deny an alien granted blue card
15 status an adjustment of status under this section if—

16 (1) the Secretary finds, by a preponderance of
17 the evidence, that the adjustment to blue card status
18 was the result of fraud or willful misrepresentation,
19 as described in section 212(a)(6)(C)(i) of the Immi-
20 gration and Nationality Act (8 U.S.C.
21 1182(a)(6)(C)(i)); or

22 (2) the alien—

23 (A) commits an act that makes the alien
24 inadmissible to the United States under section
25 212 of the Immigration and Nationality Act (8

1 U.S.C. 1182), except as provided under section
2 154(a)(2);

3 (B) is convicted of a felony or 3 or more
4 misdemeanors committed in the United States;

5 (C) is convicted of an offense, an element
6 of which involves bodily injury, threat of serious
7 bodily injury, or harm to property in excess of
8 \$500; or

9 (D) failed to perform the agricultural em-
10 ployment required under paragraph (1)(A) of
11 subsection (a) unless the alien was unable to
12 work in agricultural employment due to the ex-
13 traordinary circumstances described in para-
14 graph (3) of such subsection.

15 (c) GROUNDS FOR REMOVAL.—Any alien granted
16 blue card status who does not apply for adjustment of sta-
17 tus under this section before the expiration of the applica-
18 tion period described in subsection (a)(4) or who fails to
19 meet the other requirements of subsection (a) by the end
20 of the application period, is deportable and may be re-
21 moved under section 240 of the Immigration and Nation-
22 ality Act (8 U.S.C. 1229a).

23 (d) PAYMENT OF TAXES.—

24 (1) IN GENERAL.—Not later than the date on
25 which an alien's status is adjusted under this sec-

1 tion, the alien shall establish that the alien does not
2 owe any applicable Federal tax liability by estab-
3 lishing that—

4 (A) no such tax liability exists;

5 (B) all such outstanding tax liabilities have
6 been paid; or

7 (C) the alien has entered into an agree-
8 ment for payment of all outstanding liabilities
9 with the Internal Revenue Service.

10 (2) APPLICABLE FEDERAL TAX LIABILITY.—In
11 paragraph (1), the term “applicable Federal tax li-
12 ability” means liability for Federal taxes, including
13 penalties and interest, owed for any year during the
14 period of employment required under subsection
15 (a)(1) for which the statutory period for assessment
16 of any deficiency for such taxes has not expired.

17 (3) IRS COOPERATION.—The Secretary of the
18 Treasury shall establish rules and procedures under
19 which the Commissioner of Internal Revenue shall
20 provide documentation to an alien upon request to
21 establish the payment of all taxes required under
22 this subsection.

23 (e) SPOUSES AND MINOR CHILDREN.—

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

1 tus of lawful permanent resident on the spouse and
2 minor child of an alien granted any adjustment of
3 status under subsection (a), including any individual
4 who was a minor child on the date such alien was
5 granted blue card status, if the spouse or minor
6 child applies for such status, or if the principal alien
7 includes the spouse or minor child in an application
8 for adjustment of status to that of a lawful perma-
9 nent resident.

10 (2) TREATMENT OF SPOUSES AND MINOR CHIL-
11 DREN.—

12 (A) GRANTING OF STATUS AND RE-
13 MOVAL.—The Secretary shall grant derivative
14 status to the alien spouse and any minor child
15 residing in the United States of an alien grant-
16 ed blue card status and shall not remove such
17 derivative spouse or child during the period that
18 the alien granted blue card status maintains
19 such status, except as provided in paragraph
20 (3). A grant of derivative status to such a
21 spouse or child under this subparagraph shall
22 not decrease the number of aliens who may re-
23 ceive blue card status under section 151(h).

24 (B) TRAVEL.—The derivative spouse and
25 any minor child of an alien granted blue card

1 status may travel outside the United States in
2 the same manner as an alien lawfully admitted
3 for permanent residence.

4 (C) EMPLOYMENT.—The derivative spouse
5 of an alien granted blue card status may apply
6 to the Secretary for a work permit to authorize
7 such spouse to engage in any lawful employ-
8 ment in the United States while such alien
9 maintains blue card status.

10 (3) GROUNDS FOR DENIAL OF ADJUSTMENT OF
11 STATUS AND REMOVAL.—The Secretary shall deny
12 an alien spouse or child adjustment of status under
13 paragraph (1) and may remove such spouse or child
14 under section 240 of the Immigration and Nation-
15 ality Act (8 U.S.C. 1229a) if the spouse or child—

16 (A) commits an act that makes the alien
17 spouse or child inadmissible to the United
18 States under section 212 of such Act (8 U.S.C.
19 1182), except as provided under section
20 154(a)(2);

21 (B) is convicted of a felony or 3 or more
22 misdemeanors committed in the United States;
23 or

24 (C) is convicted of an offense, an element
25 of which involves bodily injury, threat of serious

1 bodily injury, or harm to property in excess of
2 \$500.

3 **SEC. 154. OTHER PROVISIONS.**

4 (a) **WAIVER OF NUMERICAL LIMITATIONS AND CER-**
5 **TAIN GROUNDS FOR INADMISSIBILITY.—**

6 (1) **NUMERICAL LIMITATIONS DO NOT APPLY.—**

7 The numerical limitations of sections 201 and 202
8 of the Immigration and Nationality Act (8 U.S.C.
9 1151 and 1152) shall not apply to the adjustment
10 of aliens to lawful permanent resident status under
11 section 153.

12 (2) **WAIVER OF CERTAIN GROUNDS OF INAD-**
13 **MISSIBILITY.—**In the determination of an alien's eli-
14 gibility for status under section 101(a) or an alien's
15 eligibility for adjustment of status under section
16 153(b)(2)(A) the following rules shall apply:

17 (A) **GROUNDS OF EXCLUSION NOT APPLI-**
18 **CABLE.—**The provisions of paragraphs (5),
19 (6)(A), (7), and (9) of section 212(a) of the Im-
20 migration and Nationality Act (8 U.S.C.
21 1182(a)) shall not apply.

22 (B) **WAIVER OF OTHER GROUNDS.—**

23 (i) **IN GENERAL.—**Except as provided
24 in subparagraph (B), the Secretary may
25 waive any other provision of such section

1 212(a) in the case of individual aliens for
2 humanitarian purposes, to ensure family
3 unity, or if otherwise in the public interest.

4 (ii) GROUNDS THAT MAY NOT BE
5 WAIVED.—Subparagraphs (A), (B), (C),
6 (D), (G), (H), and (I) of paragraph (2)
7 and paragraphs (3) and (4) of such section
8 212(a) may not be waived by the Secretary
9 under subparagraph (A).

10 (iii) CONSTRUCTION.—Nothing in this
11 paragraph may be construed as affecting
12 the authority of the Secretary other than
13 under this subparagraph to waive provi-
14 sions under such section 212(a).

15 (C) SPECIAL RULE FOR DETERMINATION
16 OF PUBLIC CHARGE.—An alien is not ineligible
17 for blue card status or an adjustment of status
18 under section 153 by reason of a ground of in-
19 admissibility under section 212(a)(4) of the Im-
20 migration and Nationality Act (8 U.S.C.
21 1182(a)(4)) if the alien demonstrates a history
22 of employment in the United States evidencing
23 self-support without reliance on public cash as-
24 sistance.

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

3 (A) BEFORE APPLICATION PERIOD.—Ef-
4 fective on the date of the enactment of this Act,
5 the Secretary shall provide that, in the case of
6 an alien who is apprehended before the begin-
7 ning of the application period described in sec-
8 tion 151(a)(2) and who can establish a non-
9 frivolous case of eligibility for blue card status
10 (but for the fact that the alien may not apply
11 for such status until the beginning of such pe-
12 riod), until the alien has had the opportunity
13 during the first 30 days of the application pe-
14 riod to complete the filing of an application for
15 blue card status, the alien—

16 (i) may not be removed; and

17 (ii) shall be granted authorization to
18 engage in employment in the United States
19 and be provided an employment authorized
20 endorsement or other appropriate work
21 permit for such purpose.

22 (B) DURING APPLICATION PERIOD.—The
23 Secretary shall provide that, in the case of an
24 alien who presents a nonfrivolous application
25 for blue card status during the application pe-

1 riod described in section 151(a)(2), including
2 an alien who files such an application within 30
3 days of the alien's apprehension, and until a
4 final determination on the application has been
5 made in accordance with this section, the
6 alien—

7 (i) may not be removed; and

8 (ii) shall be granted authorization to
9 engage in employment in the United States
10 and be provided an employment authorized
11 endorsement or other appropriate work
12 permit for such purpose.

13 (b) ADMINISTRATIVE AND JUDICIAL REVIEW.—

14 (1) IN GENERAL.—There shall be no adminis-
15 trative or judicial review of a determination respect-
16 ing an application for blue card status or adjustment
17 of status under section 153 except in accordance
18 with this section.

19 (2) ADMINISTRATIVE REVIEW.—

20 (A) SINGLE LEVEL OF ADMINISTRATIVE
21 APPELLATE REVIEW.—The Secretary shall es-
22 tablish an appellate authority to provide for a
23 single level of administrative appellate review of
24 such a determination.

1 (B) STANDARD FOR REVIEW.—Such ad-
2 ministrative appellate review shall be based
3 solely upon the administrative record estab-
4 lished at the time of the determination on the
5 application and upon such additional or newly
6 discovered evidence as may not have been avail-
7 able at the time of the determination.

8 (3) JUDICIAL REVIEW.—

9 (A) LIMITATION TO REVIEW OF RE-
10 MOVAL.—There shall be judicial review of such
11 a determination only in the judicial review of an
12 order of removal under section 242 of the Im-
13 migration and Nationality Act (8 U.S.C. 1252).

14 (B) STANDARD FOR JUDICIAL REVIEW.—
15 Such judicial review shall be based solely upon
16 the administrative record established at the
17 time of the review by the appellate authority
18 and the findings of fact and determinations
19 contained in such record shall be conclusive un-
20 less the applicant can establish abuse of discre-
21 tion or that the findings are directly contrary to
22 clear and convincing facts contained in the
23 record considered as a whole.

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

1 151(a)(2), the Secretary, in cooperation with qualified
2 designated entities (as that term is defined in section
3 152(b)), shall broadly disseminate information respecting
4 the benefits that aliens may receive under this part and
5 the requirements that an alien is required to meet to re-
6 ceive such benefits.

7 (d) REGULATIONS, EFFECTIVE DATE, AUTHORIZA-
8 TION OF APPROPRIATIONS.—

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

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

18 (3) AUTHORIZATION OF APPROPRIATIONS.—
19 There are authorized to be appropriated to the Sec-
20 retary such sums as may be necessary to implement
21 this part, including any sums needed for costs asso-
22 ciated with the initiation of such implementation, for
23 fiscal years 2012 and 2013.

1 **SEC. 155. CORRECTION OF SOCIAL SECURITY RECORDS.**

2 (a) IN GENERAL.—Section 208(e)(1) of the Social
3 Security Act (42 U.S.C. 408(e)(1)) is amended—

4 (1) in subparagraph (B)(ii), by striking “or” at
5 the end;

6 (2) in subparagraph (C), by inserting “or” at
7 the end;

8 (3) by inserting after subparagraph (C) the fol-
9 lowing:

10 “(D) who is granted blue card status
11 under the AgJOBS Act of 2011.”; and

12 (4) by striking “1990.” and inserting “1990, or
13 in the case of an alien described in subparagraph
14 (D), if such conduct is alleged to have occurred be-
15 fore the date on which the alien was granted blue
16 card status.”.

17 (b) EFFECTIVE DATE.—The amendments made by
18 subsection (a) shall take effect on the first day of the sev-
19 enth month that begins after the date of the enactment
20 of this Act.

21 **SEC. 156. DETERMINATION AND USE OF USER FEES.**

22 (a) SCHEDULE OF FEES.—The Secretary shall estab-
23 lish and periodically adjust a schedule of fees for the em-
24 ployment of aliens pursuant to the amendment made by
25 section 159 and a collection process for such fees from

1 employers. Such fees shall be the only fees chargeable to
2 employers for services provided under such amendment.

3 (b) DETERMINATION OF SCHEDULE.—

4 (1) IN GENERAL.—The schedule under sub-
5 section (a) shall reflect a fee rate based on the num-
6 ber of job opportunities indicated in the employer’s
7 application under section 218 of the Immigration
8 and Nationality Act, as amended by section 159,
9 and sufficient to provide for the direct costs of pro-
10 viding services related to an employer’s authorization
11 to employ aliens pursuant to the amendment made
12 by section 159(a), to include the certification of eli-
13 gible employers, the issuance of documentation, and
14 the admission of eligible aliens.

15 (2) PROCEDURE.—

16 (A) IN GENERAL.—In establishing and ad-
17 justing such a schedule, the Secretary shall
18 comply with Federal cost accounting and fee
19 setting standards.

20 (B) PUBLICATION AND COMMENT.—The
21 Secretary shall publish in the Federal Register
22 an initial fee schedule and associated collection
23 process and the cost data or estimates upon
24 which such fee schedule is based, and any sub-
25 sequent amendments thereto, pursuant to which

1 public comment shall be sought and a final rule
2 issued.

3 (c) USE OF PROCEEDS.—Notwithstanding any other
4 provision of law, all proceeds resulting from the payment
5 of the fees pursuant to the amendment made by section
6 159 shall be available without further appropriation and
7 shall remain available without fiscal year limitation to re-
8 imburse the Secretary, the Secretary of State, and the
9 Secretary of Labor for the costs of carrying out—

10 (1) sections 218 and 218B of the Immigration
11 and Nationality Act, as added by section 159; and

12 (2) the provisions of this part.

13 (d) EFFECTIVE DATE.—This section and the amend-
14 ments made by section 159 shall take effect 1 year after
15 the date of the enactment of this Act.

16 **SEC. 157. RULEMAKING.**

17 (a) REQUIREMENT FOR THE SECRETARY TO CON-
18 SULT.—The Secretary shall consult with the Secretary of
19 Labor and the Secretary of Agriculture during the promul-
20 gation of all regulations to implement the duties of the
21 Secretary under this Act and the amendments made by
22 this Act.

23 (b) REQUIREMENT FOR THE SECRETARY OF STATE
24 TO CONSULT.—The Secretary of State shall consult with
25 the Secretary, the Secretary of Labor, and the Secretary

1 of Agriculture on all regulations to implement the duties
2 of the Secretary of State under this Act and the amend-
3 ments made by this Act.

4 (c) REQUIREMENT FOR THE SECRETARY OF LABOR
5 TO CONSULT.—The Secretary of Labor shall consult with
6 the Secretary of Agriculture and the Secretary on all regu-
7 lations to implement the duties of the Secretary of Labor
8 under this Act and the amendments made by this Act.

9 (d) DEADLINE FOR ISSUANCE OF REGULATIONS.—
10 All regulations to implement the duties of the Secretary,
11 the Secretary of State, and the Secretary of Labor created
12 under sections 218, 218A, 218B, 218C, and 218D of the
13 Immigration and Nationality Act, as amended or added
14 by section 159 of this Act—

15 (1) shall take effect on the effective date of sec-
16 tion 159; and

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

19 **SEC. 158. REPORTS TO CONGRESS.**

20 (a) ANNUAL REPORT.—Not later than September 30
21 of each year, the Secretary shall submit a report to Con-
22 gress that identifies, for the previous year—

23 (1) the number of job opportunities approved
24 for employment of aliens admitted under section
25 101(a)(15)(H)(ii)(a) of the Immigration and Nation-

1 ality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)), and the
2 number of workers actually admitted, disaggregated
3 by State and by occupation;

4 (2) the number of such aliens reported to have
5 abandoned employment pursuant to section
6 218B(e)(2) of such Act;

7 (3) the number of such aliens who departed the
8 United States within the period specified in section
9 218B(d) of such Act;

10 (4) the number of aliens who applied for blue
11 card status pursuant to section 151(a);

12 (5) the number of aliens who were granted such
13 status pursuant section 151(a);

14 (6) the number of aliens who applied for an ad-
15 justment of status pursuant to section 153(a); and

16 (7) the number of aliens who received an ad-
17 justment of status pursuant section 153(a).

18 (b) IMPLEMENTATION REPORT.—Not later than 180
19 days after the date of the enactment of this Act, the Sec-
20 retary shall prepare and submit a report to Congress that
21 describes the measures being taken and the progress made
22 in implementing this part.

1 **Subchapter A—Reform of H-2A Worker**
2 **Program**

3 **SEC. 159. AMENDMENTS TO THE IMMIGRATION AND NA-**
4 **TIONALITY ACT.**

5 (a) IN GENERAL.—Title II (8 U.S.C. 1151 et seq.)
6 is amended by striking section 218 and inserting the fol-
7 lowing:

8 **“SEC. 218. H-2A EMPLOYER APPLICATIONS.**

9 “(a) APPLICATIONS TO THE SECRETARY OF
10 LABOR.—

11 “(1) IN GENERAL.—No alien may be admitted
12 to the United States as an H-2A worker, or other-
13 wise provided status as an H-2A worker, unless the
14 employer has filed with the Secretary of Labor an
15 application containing—

16 “(A) the assurances described in sub-
17 section (b);

18 “(B) a description of the nature and loca-
19 tion of the work to be performed;

20 “(C) the anticipated period (expected be-
21 ginning and ending dates) for which the work-
22 ers will be needed; and

23 “(D) the number of job opportunities in
24 which the employer seeks to employ the work-
25 ers.

1 “(2) ACCOMPANIED BY JOB OFFER.—Each ap-
2 plication filed under paragraph (1) shall be accom-
3 panied by a copy of the job offer describing the
4 wages and other terms and conditions of employ-
5 ment and the bona fide occupational qualifications
6 that shall be possessed by a worker to be employed
7 in the job opportunity in question.

8 “(b) ASSURANCES FOR INCLUSION IN APPLICA-
9 TIONS.—The assurances referred to in subsection (a)(1)
10 are the following:

11 “(1) JOB OPPORTUNITIES COVERED BY COL-
12 LECTIVE BARGAINING AGREEMENTS.—With respect
13 to a job opportunity that is covered under a collec-
14 tive bargaining agreement:

15 “(A) UNION CONTRACT DESCRIBED.—The
16 job opportunity is covered by a union contract
17 which was negotiated at arm’s length between a
18 bona fide union and the employer.

19 “(B) STRIKE OR LOCKOUT.—The specific
20 job opportunity for which the employer is re-
21 questing an H-2A worker is not vacant because
22 the former occupant is on strike or being locked
23 out in the course of a labor dispute.

24 “(C) NOTIFICATION OF BARGAINING REP-
25 RESENTATIVES.—The employer, at the time of

1 filing the application, has provided notice of the
2 filing under this paragraph to the bargaining
3 representative of the employer's employees in
4 the occupational classification at the place or
5 places of employment for which aliens are
6 sought.

7 “(D) TEMPORARY OR SEASONAL JOB OP-
8 PORTUNITIES.—The job opportunity is tem-
9 porary or seasonal.

10 “(E) OFFERS TO UNITED STATES WORK-
11 ERS.—The employer has offered or will offer
12 the job to any eligible United States worker
13 who applies and is equally or better qualified
14 for the job for which the nonimmigrant is, or
15 the nonimmigrants are, sought and who will be
16 available at the time and place of need.

17 “(F) PROVISION OF INSURANCE.—If the
18 job opportunity is not covered by the State
19 workers' compensation law, the employer will
20 provide, at no cost to the worker, insurance cov-
21 ering injury and disease arising out of, and in
22 the course of, the worker's employment which
23 will provide benefits at least equal to those pro-
24 vided under the State's workers' compensation
25 law for comparable employment.

1 “(2) JOB OPPORTUNITIES NOT COVERED BY
2 COLLECTIVE BARGAINING AGREEMENTS.—With re-
3 spect to a job opportunity that is not covered under
4 a collective bargaining agreement:

5 “(A) STRIKE OR LOCKOUT.—The specific
6 job opportunity for which the employer has ap-
7 plied for an H-2A worker is not vacant because
8 the former occupant is on strike or being locked
9 out in the course of a labor dispute.

10 “(B) TEMPORARY OR SEASONAL JOB OP-
11 PORTUNITIES.—The job opportunity is tem-
12 porary or seasonal.

13 “(C) BENEFIT, WAGE, AND WORKING CON-
14 DITIONS.—The employer will provide, at a min-
15 imum, the benefits, wages, and working condi-
16 tions required by section 218A to all workers
17 employed in the job opportunities for which the
18 employer has applied for an H-2A worker
19 under subsection (a) and to all other workers in
20 the same occupation at the place of employ-
21 ment.

22 “(D) NONDISPLACEMENT OF UNITED
23 STATES WORKERS.—The employer did not dis-
24 place and will not displace a United States
25 worker employed by the employer during the

1 period of employment and for a period of 30
2 days preceding the period of employment in the
3 occupation at the place of employment for
4 which the employer has applied for an H-2A
5 worker.

6 “(E) REQUIREMENTS FOR PLACEMENT OF
7 THE NONIMMIGRANT WITH OTHER EMPLOY-
8 ERS.—The employer will not place the non-
9 immigrant with another employer unless—

10 “(i) the nonimmigrant performs du-
11 ties in whole or in part at 1 or more work-
12 sites owned, operated, or controlled by
13 such other employer;

14 “(ii) there are indicia of an employ-
15 ment relationship between the non-
16 immigrant and such other employer; and

17 “(iii) the employer has inquired of the
18 other employer as to whether, and has no
19 actual knowledge or notice that, during the
20 period of employment and for a period of
21 30 days preceding the period of employ-
22 ment, the other employer has displaced or
23 intends to displace a United States worker
24 employed by the other employer in the oc-
25 cupation at the place of employment for

1 which the employer seeks approval to em-
2 ploy H-2A workers.

3 “(F) STATEMENT OF LIABILITY.—The ap-
4 plication form shall include a clear statement
5 explaining the liability under subparagraph (E)
6 of an employer if the other employer described
7 in such subparagraph displaces a United States
8 worker as described in such subparagraph.

9 “(G) PROVISION OF INSURANCE.—If the
10 job opportunity is not covered by the State
11 workers’ compensation law, the employer will
12 provide, at no cost to the worker, insurance cov-
13 ering injury and disease arising out of and in
14 the course of the worker’s employment which
15 will provide benefits at least equal to those pro-
16 vided under the State’s workers’ compensation
17 law for comparable employment.

18 “(H) EMPLOYMENT OF UNITED STATES
19 WORKERS.—

20 “(i) RECRUITMENT.—The employer
21 has taken or will take the following steps
22 to recruit United States workers for the
23 job opportunities for which the H-2A non-
24 immigrant is, or H-2A nonimmigrants are,
25 sought:

1 “(I) CONTACTING FORMER
2 WORKERS.—The employer shall make
3 reasonable efforts to mail a letter to,
4 or otherwise contact, any United
5 States worker the employer employed
6 during the previous season in the oc-
7 cupation at the place of intended em-
8 ployment for which the employer is
9 applying for workers and has made
10 the availability of the employer’s job
11 opportunities in the occupation at the
12 place of intended employment known
13 to such previous workers, unless the
14 worker was terminated from employ-
15 ment by the employer for a lawful job-
16 related reason or abandoned the job
17 before the worker completed the pe-
18 riod of employment of the job oppor-
19 tunity for which the worker was hired.

20 “(II) FILING A JOB OFFER WITH
21 THE LOCAL OFFICE OF THE STATE
22 EMPLOYMENT SECURITY AGENCY.—
23 Not later than 28 days before the
24 date on which the employer desires to
25 employ an H-2A worker in a tem-

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

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

1 is likely to be patronized by potential
2 farm workers.

3 “(IV) EMERGENCY PROCEDURE.—The Secretary of Labor, by
4 regulation, shall provide a procedure
5 for acceptance and approval of appli-
6 cations in which the employer has not
7 complied with the provisions of this
8 clause because the employer’s need for
9 H-2A workers could not reasonably
10 have been foreseen.

11
12 “(ii) JOB OFFERS.—The employer has
13 offered or will offer the job to any eligible
14 United States worker who—

15 “(I) applies and is equally or bet-
16 ter qualified for the job for which the
17 nonimmigrant is, or nonimmigrants
18 are, sought; and

19 “(II) will be available at the time
20 and place of need.

21 “(iii) PERIOD OF EMPLOYMENT.—The
22 employer will provide employment to any
23 qualified United States worker who applies
24 to the employer during the period begin-
25 ning on the date on which the H-2A work-

1 er departs for the employer's place of em-
2 ployment and ending on the date on which
3 50 percent of the period of employment for
4 which the H-2A worker was hired has
5 elapsed, subject to the following require-
6 ments:

7 “(I) PROHIBITION.—No person
8 or entity shall willfully and knowingly
9 withhold United States workers before
10 the arrival of H-2A workers in order
11 to force the hiring of United States
12 workers under this clause.

13 “(II) COMPLAINTS.—Upon re-
14 ceipt of a complaint by an employer
15 that a violation of subclause (I) has
16 occurred, the Secretary of Labor shall
17 immediately investigate the complaint.
18 The Secretary of Labor shall, within
19 36 hours of the receipt of the com-
20 plaint, issue findings concerning the
21 alleged violation. If the Secretary of
22 Labor finds that a violation has oc-
23 curred, the Secretary of Labor shall
24 immediately suspend the application

1 of this clause with respect to that cer-
2 tification for that date of need.

3 “(III) PLACEMENT OF UNITED
4 STATES WORKERS.—Before referring
5 a United States worker to an em-
6 ployer during the period described in
7 the matter preceding subclause (I),
8 the Secretary of Labor shall make all
9 reasonable efforts to place the United
10 States worker in an open job accept-
11 able to the worker, if there are other
12 job offers pending with the job service
13 that offer similar job opportunities in
14 the area of intended employment.

15 “(iv) STATUTORY CONSTRUCTION.—
16 Nothing in this subparagraph shall be con-
17 strued to prohibit an employer from using
18 such legitimate selection criteria relevant
19 to the type of job that are normal or cus-
20 tomary to the type of job involved if such
21 criteria are not applied in a discriminatory
22 manner.

23 “(c) APPLICATIONS BY ASSOCIATIONS ON BEHALF
24 OF EMPLOYER MEMBERS.—

1 “(1) IN GENERAL.—An agricultural association
2 may file an application under subsection (a) on be-
3 half of 1 or more of its employer members that the
4 association certifies in its application has or have
5 agreed in writing to comply with the requirements of
6 this section and sections 218A, 218B, and 218C.

7 “(2) TREATMENT OF ASSOCIATIONS ACTING AS
8 EMPLOYERS.—If an association filing an application
9 under paragraph (1) is a joint or sole employer of
10 the temporary or seasonal agricultural workers re-
11 quested on the application, the certifications granted
12 under subsection (e)(2)(B) to the association may be
13 used for the certified job opportunities of any of its
14 producer members named on the application, and
15 such workers may be transferred among such pro-
16 ducer members to perform the agricultural services
17 of a temporary or seasonal nature for which the cer-
18 tifications were granted.

19 “(d) WITHDRAWAL OF APPLICATIONS.—

20 “(1) IN GENERAL.—An employer may withdraw
21 an application filed pursuant to subsection (a), ex-
22 cept that if the employer is an agricultural associa-
23 tion, the association may withdraw an application
24 filed pursuant to subsection (a) with respect to 1 or
25 more of its members. To withdraw an application,

1 the employer or association shall notify the Sec-
2 retary of Labor in writing, and the Secretary of
3 Labor shall acknowledge in writing the receipt of
4 such withdrawal notice. An employer who withdraws
5 an application under subsection (a), or on whose be-
6 half an application is withdrawn, is relieved of the
7 obligations undertaken in the application.

8 “(2) LIMITATION.—An application may not be
9 withdrawn while any alien provided status under sec-
10 tion 101(a)(15)(H)(ii)(a) pursuant to such applica-
11 tion is employed by the employer.

12 “(3) OBLIGATIONS UNDER OTHER STATUTES.—
13 Any obligation incurred by an employer under any
14 other law or regulation as a result of the recruit-
15 ment of United States workers or H-2A workers
16 under an offer of terms and conditions of employ-
17 ment required as a result of making an application
18 under subsection (a) is unaffected by withdrawal of
19 such application.

20 “(e) REVIEW AND APPROVAL OF APPLICATIONS.—

21 “(1) RESPONSIBILITY OF EMPLOYERS.—The
22 employer shall make available for public examina-
23 tion, within 1 working day after the date on which
24 an application under subsection (a) is filed, at the
25 employer’s principal place of business or worksite, a

1 copy of each such application (and such accom-
2 panying documents as are necessary).

3 “(2) RESPONSIBILITY OF SECRETARY OF
4 LABOR.—

5 “(A) COMPILATION OF LIST.—The Sec-
6 retary of Labor shall compile, on a current
7 basis, a list (by employer and by occupational
8 classification) of the applications filed under
9 subsection (a). Such list shall include the wage
10 rate, number of workers sought, period of in-
11 tended employment, and date of need. The Sec-
12 retary of Labor shall make such list available
13 for examination in the District of Columbia.

14 “(B) REVIEW OF APPLICATIONS.—The
15 Secretary of Labor shall review such an applica-
16 tion only for completeness and obvious inac-
17 curacies. Unless the Secretary of Labor finds
18 that the application is incomplete or obviously
19 inaccurate, the Secretary of Labor shall certify
20 that the intending employer has filed with the
21 Secretary of Labor an application as described
22 in subsection (a). Such certification shall be
23 provided not later than 7 days after the appli-
24 cation is filed.

1 **“SEC. 218A. H-2A EMPLOYMENT REQUIREMENTS.**

2 “(a) PREFERENTIAL TREATMENT OF ALIENS PRO-
3 HIBITED.—Employers seeking to hire United States work-
4 ers shall offer the United States workers no less than the
5 same benefits, wages, and working conditions that the em-
6 ployer is offering, intends to offer, or will provide to H-
7 2A workers. Conversely, no job offer may impose on
8 United States workers any restrictions or obligations
9 which will not be imposed on the employer’s H-2A work-
10 ers.

11 “(b) MINIMUM BENEFITS, WAGES, AND WORKING
12 CONDITIONS.—Except in cases where higher benefits,
13 wages, or working conditions are required by the provi-
14 sions of subsection (a), in order to protect similarly em-
15 ployed United States workers from adverse effects with
16 respect to benefits, wages, and working conditions, every
17 job offer which shall accompany an application under sec-
18 tion 218(b)(2) shall include each of the following benefit,
19 wage, and working condition provisions:

20 “(1) REQUIREMENT TO PROVIDE HOUSING OR A
21 HOUSING ALLOWANCE.—

22 “(A) IN GENERAL.—An employer applying
23 under section 218(a) for H-2A workers shall
24 offer to provide housing at no cost to all work-
25 ers in job opportunities for which the employer
26 has applied under that section and to all other

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

4 “(B) TYPE OF HOUSING.—In complying
5 with subparagraph (A), an employer may, at
6 the employer’s election, provide housing that
7 meets applicable Federal standards for tem-
8 porary labor camps or secure housing that
9 meets applicable local standards for rental or
10 public accommodation housing or other sub-
11 stantially similar class of habitation, or in the
12 absence of applicable local standards, State
13 standards for rental or public accommodation
14 housing or other substantially similar class of
15 habitation. In the absence of applicable local or
16 State standards, Federal temporary labor camp
17 standards shall apply.

18 “(C) FAMILY HOUSING.—If it is the pre-
19 vailing practice in the occupation and area of
20 intended employment to provide family housing,
21 family housing shall be provided to workers
22 with families who request it.

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

1 specific requirements for the provision of hous-
2 ing to workers engaged in the range production
3 of livestock.

4 “(E) LIMITATION.—Nothing in this para-
5 graph shall be construed to require an employer
6 to provide or secure housing for persons who
7 were not entitled to such housing under the
8 temporary labor certification regulations in ef-
9 fect on June 1, 1986.

10 “(F) CHARGES FOR HOUSING.—

11 “(i) CHARGES FOR PUBLIC HOUS-
12 ING.—If public housing provided for mi-
13 grant agricultural workers under the aus-
14 pices of a local, county, or State govern-
15 ment is secured by an employer, and use of
16 the public housing unit normally requires
17 charges from migrant workers, such
18 charges shall be paid by the employer di-
19 rectly to the appropriate individual or enti-
20 ty affiliated with the housing’s manage-
21 ment.

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

1 who provide housing for their workers. An
2 employer may require a worker found to
3 have been responsible for damage to such
4 housing which is not the result of normal
5 wear and tear related to habitation to re-
6 imburse the employer for the reasonable
7 cost of repair of such damage.

8 “(G) HOUSING ALLOWANCE AS ALTER-
9 NATIVE.—

10 “(i) IN GENERAL.—If the requirement
11 set out in clause (ii) is satisfied, the em-
12 ployer may provide a reasonable housing
13 allowance instead of offering housing
14 under subparagraph (A). Upon the request
15 of a worker seeking assistance in locating
16 housing, the employer shall make a good
17 faith effort to assist the worker in identi-
18 fying and locating housing in the area of
19 intended employment. An employer who of-
20 fers a housing allowance to a worker, or
21 assists a worker in locating housing which
22 the worker occupies, pursuant to this
23 clause shall not be deemed a housing pro-
24 vider under section 203 of the Migrant and
25 Seasonal Agricultural Worker Protection

1 Act (29 U.S.C. 1823) solely by virtue of
2 providing such housing allowance. No
3 housing allowance may be used for housing
4 which is owned or controlled by the em-
5 ployer.

6 “(ii) CERTIFICATION.—The require-
7 ment of this clause is satisfied if the Gov-
8 ernor of the State certifies to the Secretary
9 of Labor that there is adequate housing
10 available in the area of intended employ-
11 ment for migrant farm workers and H-2A
12 workers who are seeking temporary hous-
13 ing while employed in agricultural work.
14 Such certification shall expire after 3 years
15 unless renewed by the Governor of the
16 State.

17 “(iii) AMOUNT OF ALLOWANCE.—

18 “(I) NONMETROPOLITAN COUN-
19 TIES.—If the place of employment of
20 the workers provided an allowance
21 under this subparagraph is a non-
22 metropolitan county, the amount of
23 the housing allowance under this sub-
24 paragraph shall be equal to the state-
25 wide average fair market rental for

1 existing housing for nonmetropolitan
2 counties for the State, as established
3 by the Secretary of Housing and
4 Urban Development pursuant to sec-
5 tion 8(c) of the United States Hous-
6 ing Act of 1937 (42 U.S.C. 1437f(c)),
7 based on a 2-bedroom dwelling unit
8 and an assumption of 2 persons per
9 bedroom.

10 “(II) METROPOLITAN COUN-
11 TIES.—If the place of employment of
12 the workers provided an allowance
13 under this paragraph is in a metro-
14 politan county, the amount of the
15 housing allowance under this subpara-
16 graph shall be equal to the statewide
17 average fair market rental for existing
18 housing for metropolitan counties for
19 the State, as established by the Sec-
20 retary of Housing and Urban Devel-
21 opment pursuant to section 8(c) of
22 the United States Housing Act of
23 1937 (42 U.S.C. 1437f(c)), based on
24 a 2-bedroom dwelling unit and an as-
25 sumption of 2 persons per bedroom.

1 “(2) REIMBURSEMENT OF TRANSPORTATION.—

2 “(A) TO PLACE OF EMPLOYMENT.—A

3 worker who completes 50 percent of the period
4 of employment of the job opportunity for which
5 the worker was hired shall be reimbursed by the
6 employer for the cost of the worker’s transpor-
7 tation and subsistence from the place from
8 which the worker came to work for the em-
9 ployer (or place of last employment, if the
10 worker traveled from such place) to the place of
11 employment.

12 “(B) FROM PLACE OF EMPLOYMENT.—A

13 worker who completes the period of employment
14 for the job opportunity involved shall be reim-
15 bursed by the employer for the cost of the
16 worker’s transportation and subsistence from
17 the place of employment to the place from
18 which the worker, disregarding intervening em-
19 ployment, came to work for the employer, or to
20 the place of next employment, if the worker has
21 contracted with a subsequent employer who has
22 not agreed to provide or pay for the worker’s
23 transportation and subsistence to such subse-
24 quent employer’s place of employment.

25 “(C) LIMITATION.—

1 “(i) AMOUNT OF REIMBURSEMENT.—
2 Except as provided in clause (ii), the
3 amount of reimbursement provided under
4 subparagraph (A) or (B) to a worker or
5 alien shall not exceed the lesser of—

6 “(I) the actual cost to the worker
7 or alien of the transportation and sub-
8 sistence involved; or

9 “(II) the most economical and
10 reasonable common carrier transpor-
11 tation charges and subsistence costs
12 for the distance involved.

13 “(ii) DISTANCE TRAVELED.—No reim-
14 bursement under subparagraph (A) or (B)
15 shall be required if the distance traveled is
16 100 miles or less, or the worker is not re-
17 siding in employer-provided housing or
18 housing secured through an allowance as
19 provided in paragraph (1)(G).

20 “(D) EARLY TERMINATION.—If the worker
21 is laid off or employment is terminated for con-
22 tract impossibility (as described in paragraph
23 (4)(D)) before the anticipated ending date of
24 employment, the employer shall provide the
25 transportation and subsistence required by sub-

1 paragraph (B) and, notwithstanding whether
2 the worker has completed 50 percent of the pe-
3 riod of employment, shall provide the transpor-
4 tation reimbursement required by subparagraph
5 (A).

6 “(E) TRANSPORTATION BETWEEN LIVING
7 QUARTERS AND WORKSITE.—The employer
8 shall provide transportation between the work-
9 er’s living quarters and the employer’s worksite
10 without cost to the worker, and such transpor-
11 tation will be in accordance with applicable laws
12 and regulations.

13 “(3) REQUIRED WAGES.—

14 “(A) IN GENERAL.—An employer applying
15 for workers under section 218(a) shall offer to
16 pay, and shall pay, all workers in the occupa-
17 tion for which the employer has applied for
18 workers, not less (and is not required to pay
19 more) than the greater of the prevailing wage
20 in the occupation in the area of intended em-
21 ployment or the adverse effect wage rate. No
22 worker shall be paid less than the greater of the
23 hourly wage prescribed under section 6(a)(1) of
24 the Fair Labor Standards Act of 1938 (29

1 U.S.C. 206(a)(1)) or the applicable State min-
2 imum wage.

3 “(B) LIMITATION.—Effective on the date
4 of the enactment of the Comprehensive Immi-
5 gration Reform Act of 2011 and continuing for
6 3 years thereafter, no adverse effect wage rate
7 for a State may be more than the adverse effect
8 wage rate for that State in effect on January
9 1, 2011, as established by section 655.107 of
10 title 20, Code of Federal Regulations.

11 “(C) REQUIRED WAGES AFTER 3-YEAR
12 FREEZE.—

13 “(i) FIRST ADJUSTMENT.—If Con-
14 gress does not set a new wage standard
15 applicable to this section before the first
16 March 1 that is not less than 3 years after
17 the date of the enactment of this section,
18 the adverse effect wage rate for each State
19 beginning on such March 1 shall be the
20 wage rate that would have resulted if the
21 adverse effect wage rate in effect on Janu-
22 ary 1, 2011, had been annually adjusted,
23 beginning on March 1, 2014, by the lesser
24 of—

1 “(I) the 12-month percentage
2 change in the Consumer Price Index
3 for All Urban Consumers between De-
4 cember of the second preceding year
5 and December of the preceding year;
6 and

7 “(II) 4 percent.

8 “(ii) SUBSEQUENT ANNUAL ADJUST-
9 MENTS.—Beginning on the first March 1
10 that is not less than 4 years after the date
11 of the enactment of this section, and each
12 March 1 thereafter, the adverse effect
13 wage rate then in effect for each State
14 shall be adjusted by the lesser of—

15 “(I) the 12-month percentage
16 change in the Consumer Price Index
17 for All Urban Consumers between De-
18 cember of the second preceding year
19 and December of the preceding year;
20 and

21 “(II) 4 percent.

22 “(D) DEDUCTIONS.—The employer shall
23 make only those deductions from the worker’s
24 wages that are authorized by law or are reason-
25 able and customary in the occupation and area

1 of employment. The job offer shall specify all
2 deductions not required by law which the em-
3 ployer will make from the worker's wages.

4 “(E) FREQUENCY OF PAY.—The employer
5 shall pay the worker not less frequently than
6 twice monthly, or in accordance with the pre-
7 vailing practice in the area of employment,
8 whichever is more frequent.

9 “(F) HOURS AND EARNINGS STATE-
10 MENTS.—The employer shall furnish to the
11 worker, on or before each payday, in 1 or more
12 written statements—

13 “(i) the worker's total earnings for
14 the pay period;

15 “(ii) the worker's hourly rate of pay,
16 piece rate of pay, or both;

17 “(iii) the hours of employment which
18 have been offered to the worker (broken
19 out by hours offered in accordance with
20 and over and above the $\frac{3}{4}$ guarantee de-
21 scribed in paragraph (4);

22 “(iv) the hours actually worked by the
23 worker;

24 “(v) an itemization of the deductions
25 made from the worker's wages; and

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

3 “(G) REPORT ON WAGE PROTECTIONS.—

4 Not later than December 31, 2012, the Comp-
5 troller General of the United States shall sub-
6 mit a report to the Secretary of Labor, the
7 Committee on the Judiciary of the Senate, and
8 the Committee on the Judiciary of the House of
9 Representatives that addresses—

10 “(i) whether the employment of H-2A
11 or unauthorized aliens in the United States
12 agricultural workforce has depressed
13 United States farm worker wages below
14 the levels that would otherwise have pre-
15 vailed if alien farm workers had not been
16 employed in the United States;

17 “(ii) whether an adverse effect wage
18 rate is necessary to prevent wages of
19 United States farm workers in occupations
20 in which H-2A workers are employed from
21 falling below the wage levels that would
22 have prevailed in the absence of the em-
23 ployment of H-2A workers in those occu-
24 pations;

1 “(iii) whether alternative wage stand-
 2 ards, such as a prevailing wage standard,
 3 would be sufficient to prevent wages in oc-
 4 cupations in which H-2A workers are em-
 5 ployed from falling below the wage level
 6 that would have prevailed in the absence of
 7 H-2A employment;

8 “(iv) whether any changes are war-
 9 ranted in the current methodologies for
 10 calculating the adverse effect wage rate
 11 and the prevailing wage; and

12 “(v) recommendations for future wage
 13 protection under this section.

14 “(H) COMMISSION ON WAGE STAND-
 15 ARDS.—

16 “(i) ESTABLISHMENT.—There is es-
 17 tablished the Commission on Agricultural
 18 Wage Standards under the H-2A program
 19 (in this subparagraph referred to as the
 20 ‘Commission’).

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

23 “(I) Four representatives of agri-
 24 cultural employers and 1 representa-
 25 tive of the Department of Agriculture,

1 each appointed by the Secretary of
2 Agriculture.

3 “(II) Four representatives of ag-
4 ricultural workers and 1 representa-
5 tive of the Department of Labor, each
6 appointed by the Secretary of Labor.

7 “(iii) FUNCTIONS.—The Commission
8 shall conduct a study that shall address—

9 “(I) whether the employment of
10 H-2A or unauthorized aliens in the
11 United States agricultural workforce
12 has depressed United States farm
13 worker wages below the levels that
14 would otherwise have prevailed if alien
15 farm workers had not been employed
16 in the United States;

17 “(II) whether an adverse effect
18 wage rate is necessary to prevent
19 wages of United States farm workers
20 in occupations in which H-2A work-
21 ers are employed from falling below
22 the wage levels that would have pre-
23 vailed in the absence of the employ-
24 ment of H-2A workers in those occu-
25 pations;

1 “(III) whether alternative wage
2 standards, such as a prevailing wage
3 standard, would be sufficient to pre-
4 vent wages in occupations in which
5 H-2A workers are employed from fall-
6 ing below the wage level that would
7 have prevailed in the absence of H-2A
8 employment;

9 “(IV) whether any changes are
10 warranted in the current methodolo-
11 gies for calculating the adverse effect
12 wage rate and the prevailing wage
13 rate; and

14 “(V) recommendations for future
15 wage protection under this section.

16 “(iv) FINAL REPORT.—Not later than
17 December 31, 2012, the Commission shall
18 submit a report to the Congress setting
19 forth the findings of the study conducted
20 under clause (iii).

21 “(v) TERMINATION DATE.—The Com-
22 mission shall terminate upon submitting
23 its final report.

24 “(4) GUARANTEE OF EMPLOYMENT.—

1 “(A) OFFER TO WORKER.—The employer
2 shall guarantee to offer the worker employment
3 for the hourly equivalent of at least $\frac{3}{4}$ of the
4 work days of the total period of employment,
5 beginning with the first work day after the ar-
6 rival of the worker at the place of employment
7 and ending on the expiration date specified in
8 the job offer. For purposes of this subpara-
9 graph, the hourly equivalent means the number
10 of hours in the work days as stated in the job
11 offer and shall exclude the worker’s Sabbath
12 and Federal holidays. If the employer affords
13 the United States or H-2A worker less employ-
14 ment than that required under this paragraph,
15 the employer shall pay such worker the amount
16 which the worker would have earned had the
17 worker, in fact, worked for the guaranteed
18 number of hours.

19 “(B) FAILURE TO WORK.—Any hours
20 which the worker fails to work, up to a max-
21 imum of the number of hours specified in the
22 job offer for a work day, when the worker has
23 been offered an opportunity to do so, and all
24 hours of work actually performed (including vol-
25 untary work in excess of the number of hours

1 specified in the job offer in a work day, on the
2 worker's Sabbath, or on Federal holidays) may
3 be counted by the employer in calculating
4 whether the period of guaranteed employment
5 has been met.

6 “(C) ABANDONMENT OF EMPLOYMENT,
7 TERMINATION FOR CAUSE.—If the worker vol-
8 untarily abandons employment before the end
9 of the contract period, or is terminated for
10 cause, the worker is not entitled to the $\frac{3}{4}$ guar-
11 antee described in subparagraph (A).

12 “(D) CONTRACT IMPOSSIBILITY.—If, be-
13 fore the expiration of the period of employment
14 specified in the job offer, the services of the
15 worker are no longer required for reasons be-
16 yond the control of the employer due to any
17 form of natural disaster, including a flood, hur-
18 ricane, freeze, earthquake, fire, drought, plant
19 or animal disease or pest infestation, or regu-
20 latory drought, before the guarantee in sub-
21 paragraph (A) is fulfilled, the employer may
22 terminate the worker's employment. In the
23 event of such termination, the employer shall
24 fulfill the employment guarantee in subpara-
25 graph (A) for the work days that have elapsed

1 from the first work day after the arrival of the
2 worker to the termination of employment. In
3 such cases, the employer will make efforts to
4 transfer the United States worker to other com-
5 parable employment acceptable to the worker. If
6 such transfer is not effected, the employer shall
7 provide the return transportation required in
8 paragraph (2)(D).

9 “(5) MOTOR VEHICLE SAFETY.—

10 “(A) MODE OF TRANSPORTATION SUBJECT
11 TO COVERAGE.—

12 “(i) IN GENERAL.—Except as pro-
13 vided in clauses (iii) and (iv), this sub-
14 section applies to any H-2A employer that
15 uses or causes to be used any vehicle to
16 transport an H-2A worker within the
17 United States.

18 “(ii) DEFINED TERM.—In this para-
19 graph, the term ‘uses or causes to be
20 used’—

21 “(I) applies only to transpor-
22 tation provided by an H-2A employer
23 to an H-2A worker, or by a farm
24 labor contractor to an H-2A worker

1 at the request or direction of an H-
2 2A employer; and

3 “(II) does not apply to—

4 “(aa) transportation pro-
5 vided, or transportation arrange-
6 ments made, by an H-2A work-
7 er, unless the employer specifi-
8 cally requested or arranged such
9 transportation; or

10 “(bb) car pooling arrange-
11 ments made by H-2A workers
12 themselves, using 1 of the work-
13 ers’ own vehicles, unless specifi-
14 cally requested by the employer
15 directly or through a farm labor
16 contractor.

17 “(iii) CLARIFICATION.—Providing a
18 job offer to an H-2A worker that causes
19 the worker to travel to or from the place
20 of employment, or the payment or reim-
21 bursement of the transportation costs of
22 an H-2A worker by an H-2A employer,
23 shall not constitute an arrangement of, or
24 participation in, such transportation.

1 “(iv) AGRICULTURAL MACHINERY AND
2 EQUIPMENT EXCLUDED.—This subsection
3 does not apply to the transportation of an
4 H-2A worker on a tractor, combine, har-
5 vester, picker, or other similar machinery
6 or equipment while such worker is actually
7 engaged in the planting, cultivating, or
8 harvesting of agricultural commodities or
9 the care of livestock or poultry or engaged
10 in transportation incidental thereto.

11 “(v) COMMON CARRIERS EX-
12 CLUDED.—This subsection does not apply
13 to common carrier motor vehicle transpor-
14 tation in which the provider holds itself out
15 to the general public as engaging in the
16 transportation of passengers for hire and
17 holds a valid certification of authorization
18 for such purposes from an appropriate
19 Federal, State, or local agency.

20 “(B) APPLICABILITY OF STANDARDS, LI-
21 CENSING, AND INSURANCE REQUIREMENTS.—

22 “(i) IN GENERAL.—When using, or
23 causing to be used, any vehicle for the pur-
24 pose of providing transportation to which

1 this subparagraph applies, each employer
2 shall—

3 “(I) ensure that each such vehi-
4 cle conforms to the standards pre-
5 scribed by the Secretary of Labor
6 under section 401(b) of the Migrant
7 and Seasonal Agricultural Worker
8 Protection Act (29 U.S.C. 1841(b))
9 and other applicable Federal and
10 State safety standards;

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

15 “(III) have an insurance policy
16 or a liability bond that is in effect
17 which insures the employer against li-
18 ability for damage to persons or prop-
19 erty arising from the ownership, oper-
20 ation, or causing to be operated, of
21 any vehicle used to transport any H-
22 2A worker.

23 “(ii) AMOUNT OF INSURANCE RE-
24 QUIRED.—The level of insurance required
25 shall be determined by the Secretary of

1 Labor pursuant to regulations to be issued
2 under this subsection.

3 “(iii) EFFECT OF WORKERS’ COM-
4 PENSATION COVERAGE.—If the employer
5 of any H-2A worker provides workers’
6 compensation coverage for such worker in
7 the case of bodily injury or death as pro-
8 vided by State law, the following adjust-
9 ments in the requirements of subparagraph
10 (B)(i)(III) relating to having an insurance
11 policy or liability bond apply:

12 “(I) No insurance policy or liabil-
13 ity bond shall be required of the em-
14 ployer, if such workers are trans-
15 ported only under circumstances for
16 which there is coverage under such
17 State law.

18 “(II) An insurance policy or li-
19 ability bond shall be required of the
20 employer for circumstances under
21 which coverage for the transportation
22 of such workers is not provided under
23 such State law.

24 “(c) COMPLIANCE WITH LABOR LAWS.—An em-
25 ployer shall assure that, except as otherwise provided in

1 this section, the employer will comply with all applicable
2 Federal, State, and local labor laws, including laws affect-
3 ing migrant and seasonal agricultural workers, with re-
4 spect to all United States workers and alien workers em-
5 ployed by the employer, except that a violation of this as-
6 surance shall not constitute a violation of the Migrant and
7 Seasonal Agricultural Worker Protection Act (29 U.S.C.
8 1801 et seq.).

9 “(d) COPY OF JOB OFFER.—The employer shall pro-
10 vide to the worker, not later than the day the work com-
11 mences, a copy of the employer’s application and job offer
12 described in section 218(a), or, if the employer will require
13 the worker to enter into a separate employment contract
14 covering the employment in question, such separate em-
15 ployment contract.

16 “(e) RANGE PRODUCTION OF LIVESTOCK.—Nothing
17 in this section, section 218, or section 218B shall preclude
18 the Secretary of Labor and the Secretary from continuing
19 to apply special procedures and requirements to the ad-
20 mission and employment of aliens in occupations involving
21 the range production of livestock.

22 **“SEC. 218B. PROCEDURE FOR ADMISSION AND EXTENSION**
23 **OF STAY OF H-2A WORKERS.**

24 “(a) PETITIONING FOR ADMISSION.—An employer,
25 or an association acting as an agent or joint employer for

1 its members, that seeks the admission into the United
2 States of an H-2A worker may file a petition with the
3 Secretary. The petition shall be accompanied by an accept-
4 ed and currently valid certification provided by the Sec-
5 retary of Labor under section 218(e)(2)(B) covering the
6 petitioner.

7 “(b) EXPEDITED ADJUDICATION BY THE SEC-
8 RETARY.—The Secretary shall establish a procedure for
9 expedited adjudication of petitions filed under subsection
10 (a) and within 7 working days shall, by fax, cable, or other
11 means assuring expedited delivery, transmit a copy of no-
12 tice of action on the petition to the petitioner and, in the
13 case of approved petitions, to the appropriate immigration
14 officer at the port of entry or United States consulate (as
15 the case may be) where the petitioner has indicated that
16 the alien beneficiary (or beneficiaries) will apply for a visa
17 or admission to the United States.

18 “(c) CRITERIA FOR ADMISSIBILITY.—

19 “(1) IN GENERAL.—An H-2A worker shall be
20 considered admissible to the United States if the
21 alien—

22 “(A) is otherwise admissible under this
23 section, section 218, and section 218A; and

24 “(B) is not ineligible under paragraph (2).

1 “(2) DISQUALIFICATION.—An alien shall be
2 considered inadmissible to the United States and in-
3 eligible for nonimmigrant status under section
4 101(a)(15)(H)(ii)(a) if the alien has, at any time
5 during the past 5 years—

6 “(A) violated a material provision of this
7 section, including the requirement to promptly
8 depart the United States when the alien’s au-
9 thorized period of admission under this section
10 has expired; or

11 “(B) otherwise violated a term or condition
12 of admission into the United States as a non-
13 immigrant, including overstaying the period of
14 authorized admission as such a nonimmigrant.

15 “(3) WAIVER OF INELIGIBILITY FOR UNLAW-
16 FUL PRESENCE.—

17 “(A) IN GENERAL.—An alien who has not
18 previously been admitted into the United States
19 pursuant to this section, and who is otherwise
20 eligible for admission in accordance with para-
21 graphs (1) and (2), shall not be deemed inad-
22 missible by virtue of section 212(a)(9)(B). If an
23 alien described in the preceding sentence is
24 present in the United States, the alien may
25 apply from abroad for H–2A worker status, but

1 may not be granted that status in the United
2 States.

3 “(B) MAINTENANCE OF WAIVER.—An
4 alien provided an initial waiver of ineligibility
5 pursuant to subparagraph (A) shall remain eli-
6 gible for such waiver unless the alien violates
7 the terms of this section or again becomes ineli-
8 gible under section 212(a)(9)(B) by virtue of
9 unlawful presence in the United States after
10 the date of the initial waiver of ineligibility pur-
11 suant to subparagraph (A).

12 “(d) PERIOD OF ADMISSION.—

13 “(1) IN GENERAL.—The alien shall be admitted
14 for the period of employment in the application cer-
15 tified by the Secretary of Labor pursuant to section
16 218(e)(2)(B), not to exceed 10 months, supple-
17 mented by a period of not more than 1 week before
18 the beginning of the period of employment for the
19 purpose of travel to the worksite and a period of 14
20 days following the period of employment for the pur-
21 pose of departure or extension based on a subse-
22 quent offer of employment, except that—

23 “(A) the alien is not authorized to be em-
24 ployed during such 14-day period except in the

1 employment for which the alien was previously
2 authorized; and

3 “(B) the total period of employment, in-
4 cluding such 14-day period, may not exceed 10
5 months.

6 “(2) CONSTRUCTION.—Nothing in this sub-
7 section may be construed to limit the authority of
8 the Secretary to extend the stay of the alien under
9 any other provision of this Act.

10 “(e) ABANDONMENT OF EMPLOYMENT.—

11 “(1) IN GENERAL.—An alien admitted or pro-
12 vided status under section 101(a)(15)(H)(ii)(a) who
13 abandons the employment which was the basis for
14 such admission or status shall be considered to have
15 failed to maintain nonimmigrant status as an H-2A
16 worker and shall depart the United States or be sub-
17 ject to removal under section 237(a)(1)(C)(i).

18 “(2) REPORT BY EMPLOYER.—The employer, or
19 association acting as agent for the employer, shall
20 notify the Secretary not later than 7 days after an
21 H-2A worker prematurely abandons employment.

22 “(3) REMOVAL BY THE SECRETARY.—The Sec-
23 retary shall promptly remove from the United States
24 any H-2A worker who violates any term or condi-
25 tion of the worker’s nonimmigrant status.

1 “(4) VOLUNTARY TERMINATION.—Notwith-
2 standing paragraph (1), an alien may voluntarily
3 terminate his or her employment if the alien prompt-
4 ly departs the United States upon termination of
5 such employment.

6 “(f) REPLACEMENT OF ALIEN.—

7 “(1) IN GENERAL.—Upon presentation of the
8 notice to the Secretary required by subsection (e)(2),
9 the Secretary of State shall promptly issue a visa to,
10 and the Secretary shall admit into the United
11 States, an eligible alien designated by the employer
12 to replace an H-2A worker—

13 “(A) who abandons or prematurely termi-
14 nates employment; or

15 “(B) whose employment is terminated
16 after a United States worker is employed pur-
17 suant to section 218(b)(2)(H)(iii), if the United
18 States worker voluntarily departs before the
19 end of the period of intended employment or if
20 the employment termination is for a lawful job-
21 related reason.

22 “(2) CONSTRUCTION.—Nothing in this sub-
23 section may be construed to limit any preference re-
24 quired to be accorded United States workers under
25 any other provision of this Act.

1 “(g) IDENTIFICATION DOCUMENT.—

2 “(1) IN GENERAL.—Each alien authorized to be
3 admitted under section 101(a)(15)(H)(ii)(a) shall be
4 provided an identification and employment eligibility
5 document to verify eligibility for employment in the
6 United States and verify the alien’s identity.

7 “(2) REQUIREMENTS.—No identification and
8 employment eligibility document may be issued
9 which does not meet the following requirements:

10 “(A) The document shall be capable of re-
11 liably determining whether—

12 “(i) the individual with the identifica-
13 tion and employment eligibility document
14 whose eligibility is being verified is in fact
15 eligible for employment;

16 “(ii) the individual whose eligibility is
17 being verified is claiming the identity of
18 another person; and

19 “(iii) the individual whose eligibility is
20 being verified is authorized to be admitted
21 into, and employed in, the United States
22 as an H-2A worker.

23 “(B) The document shall be in a form that
24 is resistant to counterfeiting and to tampering.

25 “(C) The document shall—

1 “(i) be compatible with other data-
2 bases of the Secretary for the purpose of
3 excluding aliens from benefits for which
4 they are not eligible and determining
5 whether the alien is unlawfully present in
6 the United States; and

7 “(ii) be compatible with law enforce-
8 ment databases to determine if the alien
9 has been convicted of criminal offenses.

10 “(h) EXTENSION OF STAY OF H-2A ALIENS IN THE
11 UNITED STATES.—

12 “(1) EXTENSION OF STAY.—If an employer
13 seeks approval to employ an H-2A alien who is law-
14 fully present in the United States, the petition filed
15 by the employer or an association pursuant to sub-
16 section (a), shall request an extension of the alien’s
17 stay and a change in the alien’s employment.

18 “(2) LIMITATION ON FILING A PETITION FOR
19 EXTENSION OF STAY.—A petition may not be filed
20 for an extension of an alien’s stay—

21 “(A) for a period of more than 10 months;

22 or

23 “(B) to a date that is more than 3 years
24 after the date of the alien’s last admission to
25 the United States under this section.

1 “(3) WORK AUTHORIZATION UPON FILING A
2 PETITION FOR EXTENSION OF STAY.—

3 “(A) IN GENERAL.—An alien who is law-
4 fully present in the United States may com-
5 mence the employment described in a petition
6 under paragraph (1) on the date on which the
7 petition is filed.

8 “(B) DEFINITION.—In subparagraph (A),
9 the term ‘file’ means sending the petition by
10 certified mail via the United States Postal Serv-
11 ice, return receipt requested, or delivered by
12 guaranteed commercial delivery which will pro-
13 vide the employer with a documented acknowl-
14 edgment of the date of receipt of the petition.

15 “(C) HANDLING OF PETITION.—The em-
16 ployer shall provide a copy of the employer’s pe-
17 tition to the alien, who shall keep the petition
18 with the alien’s identification and employment
19 eligibility document as evidence that the peti-
20 tion has been filed and that the alien is author-
21 ized to work in the United States.

22 “(D) APPROVAL OF PETITION.—Upon ap-
23 proval of a petition for an extension of stay or
24 change in the alien’s authorized employment,
25 the Secretary shall provide a new or updated

1 employment eligibility document to the alien in-
2 dicating the new validity date, after which the
3 alien is not required to retain a copy of the pe-
4 tition.

5 “(4) LIMITATION ON EMPLOYMENT AUTHORIZA-
6 TION OF ALIENS WITHOUT VALID IDENTIFICATION
7 AND EMPLOYMENT ELIGIBILITY DOCUMENT.—An ex-
8 pired identification and employment eligibility docu-
9 ment, together with a copy of a petition for exten-
10 sion of stay or change in the alien’s authorized em-
11 ployment that complies with the requirements of
12 paragraph (1), shall constitute a valid work author-
13 ization document for a period of not more than 60
14 days beginning on the date on which such petition
15 is filed, after which time only a currently valid iden-
16 tification and employment eligibility document shall
17 be acceptable.

18 “(5) LIMITATION ON AN INDIVIDUAL’S STAY IN
19 STATUS.—

20 “(A) MAXIMUM PERIOD.—The maximum
21 continuous period of authorized status as an
22 H-2A worker (including any extensions) is 3
23 years.

24 “(B) REQUIREMENT TO REMAIN OUTSIDE
25 THE UNITED STATES.—

1 “(i) IN GENERAL.—Subject to clause
2 (ii), in the case of an alien outside the
3 United States whose period of authorized
4 status as an H-2A worker (including any
5 extensions) has expired, the alien may not
6 again apply for admission to the United
7 States as an H-2A worker unless the alien
8 has remained outside the United States for
9 a continuous period equal to at least $\frac{1}{5}$
10 the duration of the alien’s previous period
11 of authorized status as an H-2A worker
12 (including any extensions).

13 “(ii) EXCEPTION.—Clause (i) shall
14 not apply in the case of an alien—

15 “(I) whose period of authorized
16 status as an H-2A worker (including
17 any extensions) was for a period of
18 not more than 10 months; and

19 “(II) has been outside the United
20 States for at least 2 months during
21 the 12-month period immediately pre-
22 ceding the date on which the alien is
23 reapplying for admission to the
24 United States as an H-2A worker.

1 “(i) SPECIAL RULES FOR ALIENS EMPLOYED AS
2 SHEEPHERDERS, GOAT HERDERS, OR DAIRY WORK-
3 ERS.—Notwithstanding any provision of the Comprehen-
4 sive Immigration Reform Act of 2011, an alien admitted
5 under section 101(a)(15)(H)(ii)(a) for employment as a
6 shepherd, goat herder, or dairy worker—

7 “(1) may be admitted for an initial period of 12
8 months;

9 “(2) subject to subsection (j)(5), may have such
10 initial period of admission extended for a period of
11 up to 3 years; and

12 “(3) shall not be subject to the requirements of
13 subsection (h)(5) (relating to periods of absence
14 from the United States).

15 “(j) ADJUSTMENT TO LAWFUL PERMANENT RESI-
16 DENT STATUS FOR ALIENS EMPLOYED AS SHEEP-
17 HERDERS, GOAT HERDERS, OR DAIRY WORKERS.—

18 “(1) ELIGIBLE ALIEN.—In this subsection, the
19 term ‘eligible alien’ means an alien—

20 “(A) having nonimmigrant status under
21 section 101(a)(15)(H)(ii)(a) based on employ-
22 ment as a shepherd, goat herder, or dairy
23 worker;

24 “(B) who has maintained such non-
25 immigrant status in the United States for a cu-

1 mulative total of 36 months (excluding any pe-
2 riod of absence from the United States); and

3 “(C) who is seeking to receive an immi-
4 grant visa under section 203(b)(3)(A)(iii).

5 “(2) CLASSIFICATION PETITION.—In the case
6 of an eligible alien, the petition under section 204
7 for classification under section 203(b)(3)(A)(iii) may
8 be filed by—

9 “(A) the alien’s employer on behalf of the
10 eligible alien; or

11 “(B) the eligible alien.

12 “(3) NO LABOR CERTIFICATION REQUIRED.—
13 Notwithstanding section 203(b)(3)(C), no deter-
14 mination under section 212(a)(5)(A) is required with
15 respect to an immigrant visa described in paragraph
16 (1)(C) for an eligible alien.

17 “(4) EFFECT OF PETITION.—The filing of a pe-
18 tition described in paragraph (2) or an application
19 for adjustment of status based on the approval of
20 such a petition shall not constitute evidence of an
21 alien’s ineligibility for nonimmigrant status under
22 section 101(a)(15)(H)(ii)(a).

23 “(5) EXTENSION OF STAY.—The Secretary
24 shall extend the stay of an eligible alien having a
25 pending or approved classification petition described

1 in paragraph (2) in 1-year increments until a final
2 determination is made on the alien's eligibility for
3 adjustment of status to that of an alien lawfully ad-
4 mitted for permanent residence.

5 “(6) CONSTRUCTION.—Nothing in this sub-
6 section shall be construed to prevent an eligible alien
7 from seeking adjustment of status in accordance
8 with any other provision of law.

9 **“SEC. 218C. WORKER PROTECTIONS AND LABOR STAND-**
10 **ARDS ENFORCEMENT.**

11 “(a) ENFORCEMENT AUTHORITY.—

12 “(1) INVESTIGATION OF COMPLAINTS.—

13 “(A) AGGRIEVED PERSON OR THIRD-PARTY
14 COMPLAINTS.—The Secretary of Labor shall es-
15 tablish a process for the receipt, investigation,
16 and disposition of complaints respecting a
17 petitioner's failure to meet a condition specified
18 in section 218(b), or an employer's misrepre-
19 sentation of material facts in an application
20 under section 218(a). Complaints may be filed
21 by any aggrieved person or organization (in-
22 cluding bargaining representatives). No inves-
23 tigation or hearing shall be conducted on a
24 complaint concerning such a failure or mis-
25 representation unless the complaint was filed

1 not later than 12 months after the date of the
2 failure, or misrepresentation, respectively. The
3 Secretary of Labor shall conduct an investiga-
4 tion under this subparagraph if there is reason-
5 able cause to believe that such a failure or mis-
6 representation has occurred.

7 “(B) DETERMINATION ON COMPLAINT.—

8 Not later than 30 days after the date on which
9 a complaint is filed under subparagraph (A),
10 the Secretary of Labor shall determine whether
11 or not a reasonable basis exists to make a find-
12 ing described in subparagraph (C), (D), (E), or
13 (G). If the Secretary of Labor determines that
14 such a reasonable basis exists, the Secretary of
15 Labor shall provide for notice of such deter-
16 mination to the interested parties and an oppor-
17 tunity for a hearing on the complaint, in ac-
18 cordance with section 556 of title 5, United
19 States Code, not later than 60 days after the
20 date of the determination. If such a hearing is
21 requested, the Secretary of Labor shall make a
22 finding concerning the matter not later than 60
23 days after the date of the hearing. In the case
24 of similar complaints regarding the same appli-
25 cant, the Secretary of Labor may consolidate

1 the hearings under this subparagraph on such
2 complaints.

3 “(C) FAILURES TO MEET CONDITIONS.—If
4 the Secretary of Labor finds, after notice and
5 opportunity for a hearing, a failure to meet a
6 condition of paragraph (1)(A), (1)(B), (1)(D),
7 (1)(F), (2)(A), (2)(B), or (2)(G) of section
8 218(b), a substantial failure to meet a condition
9 of paragraph (1)(C), (1)(E), (2)(C), (2)(D),
10 (2)(E), or (2)(H) of section 218(b), or a mate-
11 rial misrepresentation of fact in an application
12 under section 218(a)—

13 “(i) the Secretary of Labor shall no-
14 tify the Secretary of such finding and may,
15 in addition, impose such other administra-
16 tive remedies (including civil money pen-
17 alties in an amount not to exceed \$1,000
18 per violation) as the Secretary of Labor
19 determines to be appropriate; and

20 “(ii) the Secretary may disqualify the
21 employer from the employment of aliens
22 described in section 101(a)(15)(H)(ii)(a)
23 for a period of 1 year.

24 “(D) WILLFUL FAILURES AND WILLFUL
25 MISREPRESENTATIONS.—If the Secretary of

1 Labor finds, after notice and opportunity for
2 hearing, a willful failure to meet a condition of
3 section 218(b), a willful misrepresentation of a
4 material fact in an application under section
5 218(a), or a violation of subsection (d)(1)—

6 “(i) the Secretary of Labor shall no-
7 tify the Secretary of such finding and may,
8 in addition, impose such other administra-
9 tive remedies (including civil money pen-
10 alties in an amount not to exceed \$5,000
11 per violation) as the Secretary of Labor
12 determines to be appropriate;

13 “(ii) the Secretary of Labor may seek
14 appropriate legal or equitable relief to ef-
15 fectuate the purposes of subsection (d)(1);
16 and

17 “(iii) the Secretary may disqualify the
18 employer from the employment of H-2A
19 workers for a period of 2 years.

20 “(E) DISPLACEMENT OF UNITED STATES
21 WORKERS.—If the Secretary of Labor finds,
22 after notice and opportunity for a hearing, a
23 willful failure to meet a condition of section
24 218(b) or a willful misrepresentation of a mate-
25 rial fact in an application under section 218(a),

1 in the course of which failure or misrepresenta-
2 tion the employer displaced a United States
3 worker employed by the employer during the
4 period of employment on the employer's appli-
5 cation under section 218(a) or during the pe-
6 riod of 30 days preceding such period of em-
7 ployment—

8 “(i) the Secretary of Labor shall no-
9 tify the Secretary of such finding and may,
10 in addition, impose such other administra-
11 tive remedies (including civil money pen-
12 alties in an amount not to exceed \$15,000
13 per violation) as the Secretary of Labor
14 determines to be appropriate; and

15 “(ii) the Secretary may disqualify the
16 employer from the employment of H-2A
17 workers for a period of 3 years.

18 “(F) LIMITATIONS ON CIVIL MONEY PEN-
19 ALTIES.—The Secretary of Labor shall not im-
20 pose total civil money penalties with respect to
21 an application under section 218(a) in excess of
22 \$90,000.

23 “(G) FAILURES TO PAY WAGES OR RE-
24 QUIRED BENEFITS.—If the Secretary of Labor
25 finds, after notice and opportunity for a hear-

1 ing, that the employer has failed to pay the
2 wages, or provide the housing allowance, trans-
3 portation, subsistence reimbursement, or guar-
4 antee of employment, required under section
5 218A(b), the Secretary of Labor shall assess
6 payment of back wages, or other required bene-
7 fits, due any United States worker or H-2A
8 worker employed by the employer in the specific
9 employment in question. The back wages or
10 other required benefits under section 218A(b)
11 shall be equal to the difference between the
12 amount that should have been paid and the
13 amount that actually was paid to such worker.

14 “(2) CONSTRUCTION.—Nothing in this section
15 may be construed as limiting the authority of the
16 Secretary of Labor to conduct any compliance inves-
17 tigation under any other labor law, including any
18 law affecting migrant and seasonal agricultural
19 workers, or, in the absence of a complaint under this
20 section, section 218, or section 218A.

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

1 “(1) The provision of housing or a housing al-
2 lowance as required under section 218A(b)(1).

3 “(2) The reimbursement of transportation as
4 required under section 218A(b)(2).

5 “(3) The payment of wages required under sec-
6 tion 218A(b)(3) when due.

7 “(4) The benefits and material terms and con-
8 ditions of employment expressly provided in the job
9 offer described in section 218(a)(2), not including
10 the assurance to comply with other Federal, State,
11 and local labor laws described in section 218A(c),
12 compliance with which shall be governed by the pro-
13 visions of such laws.

14 “(5) The guarantee of employment required
15 under section 218A(b)(4).

16 “(6) The motor vehicle safety requirements
17 under section 218A(b)(5).

18 “(7) The prohibition of discrimination under
19 subsection (d)(2).

20 “(c) PRIVATE RIGHT OF ACTION.—

21 “(1) MEDIATION.—Upon the filing of a com-
22 plaint by an H-2A worker aggrieved by a violation
23 of rights enforceable under subsection (b), and with-
24 in 60 days of the filing of proof of service of the
25 complaint, a party to the action may file a request

1 with the Federal Mediation and Conciliation Service
2 to assist the parties in reaching a satisfactory reso-
3 lution of all issues involving all parties to the dis-
4 pute. Upon a filing of such request and giving of no-
5 tice to the parties, the parties shall attempt medi-
6 ation within the period specified in subparagraph
7 (B).

8 “(A) MEDIATION SERVICES.—The Federal
9 Mediation and Conciliation Service shall be
10 available to assist in resolving disputes arising
11 under subsection (b) between H-2A workers
12 and agricultural employers without charge to
13 the parties.

14 “(B) 90-DAY LIMIT.—The Federal Medi-
15 ation and Conciliation Service may conduct me-
16 diation or other nonbinding dispute resolution
17 activities for a period not to exceed 90 days be-
18 ginning on the date on which the Federal Medi-
19 ation and Conciliation Service receives the re-
20 quest for assistance unless the parties agree to
21 an extension of this period of time.

22 “(C) AUTHORIZATION.—

23 “(i) IN GENERAL.—Subject to clause
24 (ii), there are authorized to be appro-
25 priated to the Federal Mediation and Con-

1 ciliation Service \$500,000 for each fiscal
2 year to carry out this section.

3 “(ii) MEDIATION.—Notwithstanding
4 any other provision of law, the Director of
5 the Federal Mediation and Conciliation
6 Service is authorized to conduct the medi-
7 ation or other dispute resolution activities
8 from any other appropriated funds avail-
9 able to the Director and to reimburse such
10 appropriated funds when the funds are ap-
11 propriated pursuant to this authorization,
12 such reimbursement to be credited to ap-
13 propriations currently available at the time
14 of receipt.

15 “(2) MAINTENANCE OF CIVIL ACTION IN DIS-
16 TRICT COURT BY AGGRIEVED PERSON.—An H-2A
17 worker aggrieved by a violation of rights enforceable
18 under subsection (b) by an agricultural employer or
19 other person may file suit in any district court of the
20 United States having jurisdiction over the parties,
21 without regard to the amount in controversy, with-
22 out regard to the citizenship of the parties, and
23 without regard to the exhaustion of any alternative
24 administrative remedies under this Act, not later
25 than 3 years after the date the violation occurs.

1 “(3) ELECTION.—An H-2A worker who has
2 filed an administrative complaint with the Secretary
3 of Labor may not maintain a civil action under
4 paragraph (2) unless a complaint based on the same
5 violation filed with the Secretary of Labor under
6 subsection (a)(1) is withdrawn before the filing of
7 such action, in which case the rights and remedies
8 available under this subsection shall be exclusive.

9 “(4) PREEMPTION OF STATE CONTRACT
10 RIGHTS.—Nothing in this Act may be construed to
11 diminish the rights and remedies of an H-2A worker
12 under any other Federal or State law or regulation
13 or under any collective bargaining agreement, except
14 that no court or administrative action shall be avail-
15 able under any State contract law to enforce the
16 rights established under this Act.

17 “(5) WAIVER OF RIGHTS PROHIBITED.—Agree-
18 ments by employees purporting to waive or modify
19 their rights under this Act shall be void as contrary
20 to public policy, except that a waiver or modification
21 of the rights or obligations in favor of the Secretary
22 of Labor shall be valid for purposes of the enforce-
23 ment of this Act. The preceding sentence may not
24 be construed to prohibit agreements to settle private
25 disputes or litigation.

1 “(6) AWARD OF DAMAGES OR OTHER EQUI-
2 TABLE RELIEF.—

3 “(A) If the court finds that the respondent
4 has intentionally violated any of the rights en-
5 forceable under subsection (b), it shall award
6 actual damages, if any, or equitable relief.

7 “(B) Any civil action brought under this
8 section shall be subject to appeal as provided in
9 chapter 83 of title 28, United States Code.

10 “(7) WORKERS’ COMPENSATION BENEFITS; EX-
11 CLUSIVE REMEDY.—

12 “(A) Notwithstanding any other provision
13 of this section, where a State’s workers’ com-
14 pensation law is applicable and coverage is pro-
15 vided for an H-2A worker, the workers’ com-
16 pensation benefits shall be the exclusive remedy
17 for the loss of such worker under this section
18 in the case of bodily injury or death in accord-
19 ance with such State’s workers’ compensation
20 law.

21 “(B) The exclusive remedy prescribed in
22 subparagraph (A) precludes the recovery under
23 paragraph (6) of actual damages for loss from
24 an injury or death but does not preclude other
25 equitable relief, except that such relief shall not

1 include back or front pay or in any manner, di-
2 rectly or indirectly, expand or otherwise alter or
3 affect—

4 “(i) a recovery under a State workers’
5 compensation law; or

6 “(ii) rights conferred under a State
7 workers’ compensation law.

8 “(8) TOLLING OF STATUTE OF LIMITATIONS.—

9 If it is determined under a State workers’ compensa-
10 tion law that the workers’ compensation law is not
11 applicable to a claim for bodily injury or death of an
12 H-2A worker, the statute of limitations for bringing
13 an action for actual damages for such injury or
14 death under subsection (c) shall be tolled for the pe-
15 riod during which the claim for such injury or death
16 under such State workers’ compensation law was
17 pending. The statute of limitations for an action for
18 actual damages or other equitable relief arising out
19 of the same transaction or occurrence as the injury
20 or death of the H-2A worker shall be tolled for the
21 period during which the claim for such injury or
22 death was pending under the State workers’ com-
23 pensation law.

24 “(9) PRECLUSIVE EFFECT.—Any settlement by
25 an H-2A worker and an H-2A employer or any per-

1 son reached through the mediation process required
2 under subsection (c)(1) shall preclude any right of
3 action arising out of the same facts between the par-
4 ties in any Federal or State court or administrative
5 proceeding, unless specifically provided otherwise in
6 the settlement agreement.

7 “(10) SETTLEMENTS.—Any settlement by the
8 Secretary of Labor with an H-2A employer on be-
9 half of an H-2A worker of a complaint filed with the
10 Secretary of Labor under this section or any finding
11 by the Secretary of Labor under subsection
12 (a)(1)(B) shall preclude any right of action arising
13 out of the same facts between the parties under any
14 Federal or State court or administrative proceeding,
15 unless specifically provided otherwise in the settle-
16 ment agreement.

17 “(d) DISCRIMINATION PROHIBITED.—

18 “(1) IN GENERAL.—It is a violation of this sub-
19 section for any person who has filed an application
20 under section 218(a), to intimidate, threaten, re-
21 strain, coerce, blacklist, discharge, or in any other
22 manner discriminate against an employee (which
23 term, for purposes of this subsection, includes a
24 former employee and an applicant for employment)
25 because the employee has disclosed information to

1 the employer, or to any other person, that the em-
2 ployee reasonably believes evidences a violation of
3 section 218 or 218A or any rule or regulation per-
4 taining to section 218 or 218A, or because the em-
5 ployee cooperates or seeks to cooperate in an inves-
6 tigation or other proceeding concerning the employ-
7 er's compliance with the requirements of section 218
8 or 218A or any rule or regulation pertaining to ei-
9 ther of such sections.

10 “(2) DISCRIMINATION AGAINST H-2A WORK-
11 ERS.—It is a violation of this subsection for any per-
12 son who has filed an application under section
13 218(a), to intimidate, threaten, restrain, coerce,
14 blacklist, discharge, or in any manner discriminate
15 against an H-2A employee because such worker has,
16 with just cause, filed a complaint with the Secretary
17 of Labor regarding a denial of the rights enumer-
18 ated and enforceable under subsection (b) or insti-
19 tuted, or caused to be instituted, a private right of
20 action under subsection (c) regarding the denial of
21 the rights enumerated under subsection (b), or has
22 testified or is about to testify in any court pro-
23 ceeding brought under subsection (c).

24 “(e) AUTHORIZATION TO SEEK OTHER APPRO-
25 PRIATE EMPLOYMENT.—The Secretary of Labor and the

1 Secretary shall establish a process under which an H-2A
2 worker who files a complaint regarding a violation of sub-
3 section (d) and is otherwise eligible to remain and work
4 in the United States may be allowed to seek other appro-
5 priate employment in the United States for a period not
6 to exceed the maximum period of stay authorized for such
7 nonimmigrant classification.

8 “(f) ROLE OF ASSOCIATIONS.—

9 “(1) VIOLATION BY A MEMBER OF AN ASSOCIA-
10 TION.—An employer on whose behalf an application
11 is filed by an association acting as its agent is fully
12 responsible for such application, and for complying
13 with the terms and conditions of sections 218 and
14 218A, as though the employer had filed the applica-
15 tion itself. If such an employer is determined, under
16 this section, to have committed a violation, the pen-
17 alty for such violation shall apply only to that mem-
18 ber of the association unless the Secretary of Labor
19 determines that the association or other member
20 participated in, had knowledge, or reason to know,
21 of the violation, in which case the penalty shall be
22 invoked against the association or other association
23 member as well.

24 “(2) VIOLATIONS BY AN ASSOCIATION ACTING
25 AS AN EMPLOYER.—If an association filing an appli-

1 cation as a sole or joint employer is determined to
2 have committed a violation under this section, the
3 penalty for such violation shall apply only to the as-
4 sociation unless the Secretary of Labor determines
5 that an association member or members participated
6 in or had knowledge, or reason to know of the viola-
7 tion, in which case the penalty shall be invoked
8 against the association member or members as well.

9 **“SEC. 218D. DEFINITIONS.**

10 “In this section and in sections 218, 218A, 218B,
11 and 218C:

12 “(1) AGRICULTURAL EMPLOYMENT.—The term
13 ‘agricultural employment’ means any service or ac-
14 tivity that is considered to be agricultural under sec-
15 tion 3(f) of the Fair Labor Standards Act of 1938
16 (29 U.S.C. 203(f)) or agricultural labor under sec-
17 tion 3121(g) of the Internal Revenue Code of 1986
18 or the performance of agricultural labor or services
19 described in section 101(a)(15)(H)(ii)(a).

20 “(2) BONA FIDE UNION.—The term ‘bona fide
21 union’ means any organization in which employees
22 participate and which exists for the purpose of deal-
23 ing with employers concerning grievances, labor dis-
24 putes, wages, rates of pay, hours of employment, or
25 other terms and conditions of work for agricultural

1 employees. Such term does not include an organiza-
2 tion formed, created, administered, supported, domi-
3 nated, financed, or controlled by an employer or em-
4 ployer association or its agents or representatives.

5 “(3) DISPLACE.—The term ‘displace’, in the
6 case of an application with respect to 1 or more H-
7 2A workers by an employer, means laying off a
8 United States worker from a job for which H-2A
9 workers are sought.

10 “(4) ELIGIBLE.—The term ‘eligible’, when used
11 with respect to an individual, means an individual
12 who is not an unauthorized alien (as defined in sec-
13 tion 274A).

14 “(5) EMPLOYER.—The term ‘employer’ means
15 any person or entity, including any farm labor con-
16 tractor and any agricultural association, that em-
17 ploys workers in agricultural employment.

18 “(6) H-2A EMPLOYER.—The term ‘H-2A em-
19 ployer’ means an employer who seeks to hire 1 or
20 more nonimmigrant aliens described in section
21 101(a)(15)(H)(ii)(a).

22 “(7) H-2A WORKER.—The term ‘H-2A worker’
23 means a nonimmigrant described in section
24 101(a)(15)(H)(ii)(a).

1 “(8) JOB OPPORTUNITY.—The term ‘job oppor-
2 tunity’ means a job opening for temporary or sea-
3 sonal full-time employment at a place in the United
4 States to which United States workers can be re-
5 ferred.

6 “(9) LAYING OFF.—

7 “(A) IN GENERAL.—The term ‘laying off’,
8 with respect to a worker—

9 “(i) means to cause the worker’s loss
10 of employment, other than through a dis-
11 charge for inadequate performance, viola-
12 tion of workplace rules, cause, voluntary
13 departure, voluntary retirement, contract
14 impossibility (as described in section
15 218A(b)(4)(D)), or temporary suspension
16 of employment due to weather, markets, or
17 other temporary conditions; and

18 “(ii) does not include any situation in
19 which the worker is offered, as an alter-
20 native to such loss of employment, a simi-
21 lar employment opportunity with the same
22 employer (or, in the case of a placement of
23 a worker with another employer under sec-
24 tion 218(b)(2)(E), with either employer de-
25 scribed in such section) at equivalent or

1 higher compensation and benefits than the
2 position from which the employee was dis-
3 charged, regardless of whether or not the
4 employee accepts the offer.

5 “(B) STATUTORY CONSTRUCTION.—Noth-
6 ing in this paragraph is intended to limit an
7 employee’s rights under a collective bargaining
8 agreement or other employment contract.

9 “(10) REGULATORY DROUGHT.—The term ‘reg-
10 ulatory drought’ means a decision subsequent to the
11 filing of the application under section 218 by an en-
12 tity not under the control of the employer making
13 such filing which restricts the employer’s access to
14 water for irrigation purposes and reduces or limits
15 the employer’s ability to produce an agricultural
16 commodity, thereby reducing the need for labor.

17 “(11) SEASONAL.—Labor is performed on a
18 ‘seasonal’ basis if—

19 “(A) ordinarily, it pertains to or is of the
20 kind exclusively performed at certain seasons or
21 periods of the year; and

22 “(B) from its nature, it may not be contin-
23 uous or carried on throughout the year.

1 “(12) SECRETARY.—Except as otherwise pro-
2 vided, the term ‘Secretary’ means the Secretary of
3 Homeland Security.

4 “(13) TEMPORARY.—A worker is employed on a
5 ‘temporary’ basis where the employment is intended
6 not to exceed 10 months.

7 “(14) UNITED STATES WORKER.—The term
8 ‘United States worker’ means any worker, whether
9 a national of the United States, an alien lawfully ad-
10 mitted for permanent residence, or any other alien,
11 who is authorized to work in the job opportunity
12 within the United States, except an alien admitted
13 or otherwise provided status under section
14 101(a)(15)(H)(ii)(a).”.

15 (b) TABLE OF CONTENTS.—The table of contents of
16 the Immigration and Nationality Act (8 U.S.C. 1101 et
17 seq.) is amended by striking the item relating to section
18 218 and inserting the following:

“Sec. 218. H-2A employer applications.

“Sec. 218A. H-2A employment requirements.

“Sec. 218B. Procedure for admission and extension of stay of H-2A workers.

“Sec. 218C. Worker protections and labor standards enforcement.

“Sec. 218D. Definitions.”.

19 **PART VI—FAMILY UNITY REFORMS**

20 **SEC. 161. PROMOTING FAMILY UNITY.**

21 (a) UNLAWFULLY PRESENT ALIENS.—Section
22 212(a)(9) (8 U.S.C. 1182(a)(9)) is amended by striking
23 subparagraphs (B) and (C) and inserting the following:

1 “(B) ALIENS UNLAWFULLY PRESENT.—

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

10 “(ii) CONSTRUCTION OF UNLAWFUL
11 PRESENCE.—For purposes of this para-
12 graph, an alien is deemed to be unlawfully
13 present in the United States if the alien is
14 present in the United States after the expi-
15 ration of the period of stay authorized by
16 the Secretary or is present in the United
17 States without being admitted or paroled.

18 “(iii) EXCEPTIONS.—

19 “(I) MINORS.—No period of time
20 in which an alien is under 21 years of
21 age shall be taken into account in de-
22 termining the period of unlawful pres-
23 ence in the United States under
24 clause (i).

1 “(II) ASYLEES.—No period of
2 time in which an alien has a bona fide
3 application for asylum pending under
4 section shall be taken into account in
5 determining the period of unlawful
6 presence in the United States under
7 clause (i) unless the alien during such
8 period was employed without author-
9 ization in the United States.

10 “(III) FAMILY UNITY.—No pe-
11 riod of time in which the alien is a
12 beneficiary of family unity protection
13 pursuant to section of the Immigra-
14 tion Act of 1990 shall be taken into
15 account in determining the period of
16 unlawful presence in the United
17 States under clause (I).

18 “(IV) BATTERED WOMEN AND
19 CHILDREN.—Clause (i) shall not apply
20 to an alien who would be described in
21 paragraph (6)(A)(ii) if ‘violation of
22 the terms of the alien’s nonimmigrant
23 visa’ were substituted for ‘unlawful
24 entry into the United States’ in sub-
25 clause (III) of that paragraph.

1 “(V) TRAFFICKING VICTIMS.—
2 Clause (i) shall not apply to an alien
3 who demonstrates that the severe
4 form of trafficking (as that term is
5 defined in section 103 of the Traf-
6 ficking Victims Protection Act of
7 2000 (22 U.S.C. 7102)) was at least
8 1 central reason for the alien’s unlaw-
9 ful presence in the United States.

10 “(VI) IMMIGRANT VISAS.—Clause
11 (i) shall not apply to an alien for
12 whom an immigrant visa is available
13 or was available on or before the date
14 of the enactment of the Comprehen-
15 sive Immigration Reform Act of 2011,
16 and is otherwise admissible to the
17 United States for permanent resi-
18 dence.

19 “(VII) PRIOR UNLAWFUL PRES-
20 ENCE.—Any unlawful presence ac-
21 crued by an alien as of the date of en-
22 actment of the Comprehensive Immi-
23 gration Reform Act of 2011 shall not
24 be considered unlawful presence for
25 the purpose of the subparagraph if

1 such alien was as of the date of enact-
2 ment of the Comprehensive Immigra-
3 tion Reform Act of 2011—

4 “(aa) the beneficiary of a
5 pending or approved petition for
6 classification as an immediate
7 relative (as described in section
8 201(b)(2));

9 “(bb) the beneficiary of a
10 pending or approved petition
11 under section 203(a) or (b); or

12 “(cc) a derivative beneficiary
13 of a pending or approved petition
14 for classification as an immediate
15 relative or under section 203(a)
16 or (b).

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

19 “(I) has been lawfully admitted
20 or paroled into the United States;

21 “(II) has filed a nonfrivolous ap-
22 plication for a change or extension of
23 status before the date of expiration of
24 the period of stay authorized by the
25 Secretary; and

1 “(III) has not been employed
2 without authorization in the United
3 States before or during the pendency
4 of such application, the calculation of
5 the period of time specified in clause
6 (i)(I) shall be tolled during the pend-
7 ency of such application, but not to
8 exceed 120 days.

9 “(v) WAIVER.—The Secretary may
10 waive the applicability of clause (i) for an
11 immigrant who is the spouse, son, daugh-
12 ter, or parent of a United States citizen or
13 of an alien lawfully admitted for perma-
14 nent residence if the Secretary determines
15 that—

16 “(I) the refusal of admission to
17 such immigrant alien would result in
18 hardship to the alien or to the citizen
19 or lawfully resident spouse, son,
20 daughter, or parent of such alien;

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

1 an immigrant visa under section 201
2 or 203; or

3 “(III) the alien should be per-
4 mitted to depart the United States
5 voluntarily pursuant to section
6 240B(a)(1).”.

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

9 (1) in section 212 (8 U.S.C. 1182)—

10 (A) in subsection (a)(6)(C)—

11 (i) in clause (ii), by inserting “and
12 willfully” after “falsely” each place such
13 term appears; and

14 (ii) in clause (iii), by striking “of
15 clause (i)”; and

16 (B) in subsection (i), by amending para-
17 graph (1) to read as follows:

18 “(1) The Attorney General or the Secretary of
19 Homeland Security may, in the discretion of the At-
20 torney General or the Secretary, waive the applica-
21 tion of subsection (a)(6)(C) if it is established to the
22 satisfaction of the Attorney General or the Secretary
23 that the refusal of admission to the United States
24 would—

1 “(A) result in extreme hardship to the
2 alien or, in the case of an immigrant who is the
3 parent, spouse, son, or daughter of a United
4 States citizen or of an alien lawfully admitted
5 for permanent residence, to the citizen or law-
6 fully resident parent, spouse, son, or daughter;
7 or

8 “(B) in the case of a VAWA self-peti-
9 tioner, result in significant hardship to the alien
10 or the alien’s United States citizen, lawful per-
11 manent resident, or qualified alien parent or
12 child.”; and

13 (2) in section 237(a)(3)(D) (8 U.S.C.
14 1227(a)(3)(D)), by inserting “and willfully” after
15 “falsely” each place such term appears.

16 **SEC. 162. EFFECTIVE LEGALIZATION PROGRAM FUNDING.**

17 (a) DEPARTMENT OF HOMELAND SECURITY LEGAL-
18 IZATION PROGRAM ACCOUNT.—

19 (1) ESTABLISHMENT.—There is established in
20 the General Fund of the Treasury a separate ac-
21 count, which shall be known as the “Department of
22 Homeland Security Legalization Program Account”.

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

1 be necessary from the General Fund of the Treasury
2 to the Department of Homeland Security Legaliza-
3 tion Program Account.

4 (3) AUTHORIZATION OF APPROPRIATIONS.—

5 (A) IN GENERAL.—There are authorized to
6 be appropriated, for the purposes described in
7 subparagraph (B), such sums as are trans-
8 ferred pursuant to paragraph (2), which shall
9 remain available for obligation during the 10-
10 year period beginning on the date of the enact-
11 ment of this Act.

12 (B) USE OF FUNDS.—Amounts appro-
13 priated pursuant to subparagraph (A) may be
14 used by the Secretary to implement and operate
15 the legalization programs and activities de-
16 scribed in this subtitle, including—

17 (i) infrastructure, staffing, and adju-
18 dication activities;

19 (ii) outreach activities;

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

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

24 (4) REPORT.—

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

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

9 (ii) the level of funding for each pro-
10 gram, project, and activity, including
11 whether such funding will supplement a
12 program, project, or activity receiving Fed-
13 eral funding otherwise appropriated; and

14 (iii) the amount of funding to be obli-
15 gated in each fiscal year, by program,
16 project, and activity.

17 (B) CONGRESSIONAL COMMITTEES.—The
18 congressional committees set forth in the sub-
19 paragraph are—

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

22 (ii) the Committee on Appropriations
23 of the Senate;

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

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

3 (b) DEPARTMENT OF STATE LEGALIZATION PRO-
4 GRAM ACCOUNT.—

5 (1) ESTABLISHMENT.—There is established in
6 the General Fund of the Treasury a separate ac-
7 count, which shall be known as the “Department of
8 State Legalization Program Account”.

9 (2) SOURCE OF FUNDS.—The Secretary of the
10 Treasury shall immediately transfer such sums as
11 the Secretary of State determines to be necessary
12 from the General Fund of the Treasury to the De-
13 partment of State Legalization Program Account.

14 (3) AUTHORIZATION OF APPROPRIATIONS.—

15 (A) IN GENERAL.—There are authorized to
16 be appropriated, for the purposes described in
17 subparagraph (B), such sums as are trans-
18 ferred pursuant to paragraph (2), which shall
19 remain available for obligation during the 10-
20 year period beginning on the date of the enact-
21 ment of this Act.

22 (B) USE OF FUNDS.—Amounts appro-
23 priated pursuant to subparagraph (A) may be
24 used by the Secretary of State to implement

1 and operate the legalization programs and ac-
2 tivities described in this subtitle, including—

3 (i) infrastructure, staffing, and adju-
4 dication activities;

5 (ii) outreach activities; and

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

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

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

16 (B) the level of funding for each program,
17 project, and activity, including whether such
18 funding will supplement a program, project, or
19 activity receiving Federal funding otherwise ap-
20 propriated; and

21 (C) the amount of funding to be obligated
22 in each fiscal year, by program, project, and ac-
23 tivity.

24 (c) IMMIGRATION REFORM PENALTY ACCOUNT.—

1 (1) ESTABLISHMENT.—There is established in
2 the General Fund of the Treasury a separate ac-
3 count, which shall be known as the “Immigration
4 Reform Penalty Account”.

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

12 (3) USE OF FUNDS.—Amounts deposited into
13 the Immigration Reform Penalty Account shall re-
14 main available to the Secretary until expended in the
15 following priority order:

16 (A) Any costs incurred in implementing
17 and operating the immigration services pro-
18 grams described in this subtitle that are not
19 otherwise paid for with—

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

23 (ii) processing fees described in sec-
24 tion 111(c)(4)(A).

1 (B) Any amount remaining in the account
2 after the costs described in subparagraph (A)
3 have been paid for shall be deposited into the
4 General Fund of the Treasury to the extent
5 necessary to reimburse the General Fund for
6 funds transferred to the Department of Home-
7 land Security Legalization Program Account
8 under subsection (a)(2).

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

12 (i) $\frac{1}{3}$ shall be allocated to the Sec-
13 retary to carry out investigation and pre-
14 vention of fraud in—

15 (I) the legalization programs es-
16 tablished under this subtitle; and

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

20 (ii) $\frac{1}{3}$ shall be allocated to the Sec-
21 retary for immigrant integration programs,
22 including English-language and United
23 States civics instruction;

24 (iii) $\frac{1}{6}$ shall be allocated to the Sec-
25 retary for immigration services; and

1 (iv) $\frac{1}{6}$ shall be allocated to the Sec-
 2 retary for immigration enforcement.

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

8 **Subtitle B—Worksite Enforcement**

9 **SEC. 171. UNLAWFUL EMPLOYMENT OF ALIENS.**

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

12 **“SEC. 274A. UNLAWFUL EMPLOYMENT OF UNAUTHORIZED** 13 **ALIENS.**

14 “(a) IN GENERAL.—

15 “(1) IN GENERAL.—It is unlawful for an em-
 16 ployer—

17 “(A) to hire an alien for employment in
 18 the United States knowing or with reckless dis-
 19 regard that the alien is an unauthorized alien
 20 with respect to such employment; or

21 “(B) to hire for employment in the United
 22 States an individual without complying with the
 23 requirements under subsections (c) and (d).

24 “(2) CONTINUING EMPLOYMENT.—It is unlaw-
 25 ful for an employer, after hiring an alien for employ-

1 ment, to continue to employ the alien in the United
2 States knowing or with reckless disregard that the
3 alien is, or has become, an unauthorized alien with
4 respect to such employment. Nothing in this section
5 may be construed to prohibit or to require the em-
6 ployment of an authorized employee who was pre-
7 viously unauthorized.

8 “(3) USE OF LABOR THROUGH CONTRACT.—

9 “(A) IN GENERAL.—Any person or entity
10 who uses a contract, subcontract, or exchange
11 to obtain the labor of an alien in the United
12 States knowing or with reckless disregard that
13 the alien is an unauthorized alien with respect
14 to performing such labor, shall be deemed to
15 have hired the alien for employment in the
16 United States in violation of subparagraph
17 (a)(1)(A).

18 “(B) CONTRACT REQUIREMENT.—For pur-
19 poses of ensuring compliance with Federal im-
20 migration law, the Secretary may require by
21 regulation that a person or entity include in a
22 written contract or subcontract an effective and
23 enforceable requirement that the contractor or
24 subcontractor adhere to the immigration laws,
25 including the use of an employment verification

1 system (referred to in this section as the ‘Sys-
2 tem’).

3 “(C) CONFIRMATION PROCEDURES.—The
4 Secretary may establish procedures by which a
5 person or entity may obtain confirmation from
6 the Secretary that the contractor or subcon-
7 tractor has registered with the System and is
8 utilizing the System to verify its employees.

9 “(D) OTHER REQUIREMENTS.—The Sec-
10 retary may establish such other requirements
11 for persons or entities using contractors or sub-
12 contractors, including procedures adapted to
13 different employment sectors, as the Secretary
14 deems necessary to prevent knowing violations
15 of this paragraph.

16 “(4) DEFENSE.—

17 “(A) IN GENERAL.—Subject to subpara-
18 graphs (B) and (C), an employer that estab-
19 lishes that it has complied in good faith with
20 the requirements under paragraphs (1) through
21 (4) of subsection (c) (pertaining to document
22 verification requirements) and subsection (d)
23 (pertaining to the use of the System) has estab-
24 lished an affirmative defense that the employer
25 has not violated subsection (a)(1)(A) with re-

1 spect to such hiring until such time as the Sec-
2 retary has required an employer to participate
3 in the System.

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

9 “(C) ADDITIONAL REQUIREMENTS.—To
10 establish a defense under this paragraph, the
11 employer shall also be in compliance with any
12 additional requirements that the Secretary may
13 promulgate by regulation pursuant to sub-
14 sections (c) and (d).

15 “(5) PRESUMPTION.—An employer is presumed
16 to have acted with knowledge or reckless disregard
17 if the employer fails to comply with written stand-
18 ards, procedures, or instructions issued by the Sec-
19 retary.

20 “(b) DEFINITIONS.—In this section:

21 “(1) EMPLOYER.—The term ‘employer’—

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

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

3 “(ii) entities in any branch of the
4 Federal Government; and

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

10 “(2) UNAUTHORIZED ALIEN.—The term ‘unau-
11 thorized alien’ means, with respect to the employ-
12 ment of an alien at a particular time, that the alien
13 is not—

14 “(A) an alien lawfully admitted for perma-
15 nent residence; or

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

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

23 “(1) ATTESTATION AFTER EXAMINATION OF
24 DOCUMENTATION.—

1 “(A) IN GENERAL.—The employer shall at-
2 test, under penalty of perjury and on a form
3 prescribed by the Secretary, that it has verified
4 the identity and employment authorization sta-
5 tus of the individual by examining—

6 “(i) a document described in subpara-
7 graph (B); or

8 “(ii) a document described in sub-
9 paragraph (C) and a document described
10 in subparagraph (D).

11 The form prescribed by the Secretary may be
12 electronic or on paper, and may be integrated
13 electronically with the requirements under sub-
14 section (d), if the Secretary determines that
15 combining the requirements in (c) and (d)
16 would improve efficiency of the verification re-
17 quirements. Such attestation may be manifested
18 by either a handwritten or digital signature. An
19 employer has complied with the requirements of
20 this paragraph with respect to examination of
21 documentation if the employer has followed ap-
22 plicable regulations and any written procedures
23 or instructions provided by the Secretary, and
24 if a reasonable person would conclude that the
25 documentation is genuine and relates to the in-

1 dividual presenting it, taking into account any
2 information provided to the employer by the
3 Secretary, including photographs and other bio-
4 metric information.

5 “(B) DOCUMENTS ESTABLISHING BOTH
6 EMPLOYMENT AUTHORIZATION AND IDEN-
7 TITY.—A document described in this subpara-
8 graph is an individual’s—

9 “(i) United States passport or pass-
10 port card issued pursuant to the Secretary
11 of State’s authority under section 211a of
12 title 22, United States Code;

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

17 “(I) contains a photograph of the
18 individual, other biometric data such
19 as fingerprints, or such other personal
20 identifying information relating to the
21 individual as the Secretary finds, by
22 regulation, sufficient for the purposes
23 of this subsection;

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

4 “(III) contains security features
5 to make it resistant to tampering,
6 counterfeiting, and fraudulent use;

7 “(iii) enhanced driver’s license, en-
8 hanced identification card, or enhanced
9 tribal card issued to a citizen of the United
10 States, provided that the Secretary has
11 certified by notice published in the Federal
12 Register that such enhanced document is
13 suitable for use under this subparagraph
14 based upon the accuracy and security of
15 the issuance process, security features on
16 the document, and such other factors as
17 the Secretary may determine; or

18 “(iv) a passport issued by the Fed-
19 erated States of Micronesia (FSM) or the
20 Republic of the Marshall Islands (RMI)
21 with evidence of nonimmigrant admission
22 to the United States under the Compact of
23 Free Association between the United
24 States and the FSM or the RMI.

1 “(C) DOCUMENTS ESTABLISHING IDEN-
2 TITY OF INDIVIDUAL.—A document described in
3 this subparagraph includes—

4 “(i) an individual’s driver’s license or
5 identity card issued by a State or an out-
6 lying possession of the United States, a
7 Federally recognized Indian tribe, or an
8 agency (including military) of the Federal
9 government if the driver’s license or iden-
10 tity card includes, at a minimum,—

11 “(I) the individual’s photograph,
12 name, date of birth, gender, and driv-
13 er’s license or identification card num-
14 ber, and

15 “(II) security features to make it
16 resistant to tampering, counterfeiting,
17 and fraudulent use, or

18 “(ii) for individuals under 18 years of
19 age who are unable to present a document
20 listed in clause (i), documentation of per-
21 sonal identity of such other type as the
22 Secretary finds provides a reliable means
23 of identification, which may include an at-
24 testation as to the individual’s identity by

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

3 “(D) DOCUMENTS EVIDENCING EMPLOY-
4 MENT AUTHORIZATION.—All documents shall be
5 unexpired. The following documents may be ac-
6 cepted as evidence of employment authoriza-
7 tion—

8 “(i) a Social Security account number
9 card issued by the Commissioner of Social
10 Security (referred to in this section as the
11 ‘Commissioner’) other than a card which
12 specifies on its face that the card is not
13 valid for employment in the United States
14 or has other similar words of limitation.
15 The Secretary, in consultation with the
16 Commissioner, may require by publication
17 of a notice in the Federal Register that
18 only a Social Security account number
19 card described in section 173 of the CIR
20 Act of 2011 be accepted for this purpose;
21 or

22 “(ii) any other documentation evidenc-
23 ing authorization of employment in the
24 United States which the Secretary deter-
25 mines, by notice published in the Federal

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

7 “(E) AUTHORITY TO PROHIBIT USE OF
8 CERTAIN DOCUMENTS.—If the Secretary finds
9 that any document or class of documents de-
10 scribed in subparagraph (B), (C), or (D) does
11 not reliably establish employment authorization
12 or identity or is being used fraudulently to an
13 unacceptable degree, the Secretary may prohibit
14 or restrict the use of that document or class of
15 documents for purposes of this subsection.

16 “(2) INDIVIDUAL ATTESTATION OF EMPLOY-
17 MENT AUTHORIZATION.—The individual shall attest,
18 under penalty of perjury in the form prescribed by
19 the Secretary, that the individual is a citizen or na-
20 tional of the United States, an alien lawfully admit-
21 ted for permanent residence, or an alien who is au-
22 thorized under this Act or by the Secretary to be
23 hired for such employment. Such attestation may be
24 manifested by either a hand-written or digital signa-
25 ture. The individual shall also provide any Social Se-

1 security Account Number issued to the individual on
2 such form.

3 “(3) RETENTION OF VERIFICATION RECORD.—

4 After completion of such form in accordance with
5 paragraphs (1) and (2), the employer shall retain a
6 paper, microfiche, microfilm, or electronic version of
7 the form, according to such standards as the Sec-
8 retary may provide, and make it available for inspec-
9 tion by officers or employees of the Department of
10 Homeland Security (or persons designated by the
11 Secretary), the Special Counsel for Immigration-Related
12 Unfair Employment Practices, or the Depart-
13 ment of Labor during a period beginning on the date
14 of the hiring of the individual and ending 7 years
15 after such date of hiring, or 2 years after the date
16 the individual’s employment is terminated, whichever
17 is later.

18 “(4) COPYING OF DOCUMENTATION AND REC-
19 ORDKEEPING REQUIRED.—

20 “(A) Notwithstanding any other provision
21 of law, the employer shall copy all documents
22 presented by an individual pursuant to this sub-
23 section and shall retain a paper, microfiche,
24 microfilm, or electronic copy, but only (except
25 as otherwise permitted under law) for the pur-

1 poses of complying with the requirements of
2 this section and section 274B. Such copies may
3 be required to reflect the signatures of the em-
4 ployer and the employee, as well as the date of
5 receipt. The Secretary may authorize or require
6 an alternative method of storing and authen-
7 ticating the employee's documentation informa-
8 tion if the Secretary determines that such alter-
9 native method is more secure or efficient.

10 “(B) The employer shall maintain records
11 of all actions and copies of any correspondence
12 or action taken by the employer to clarify or re-
13 solve any issue as to the validity of the individ-
14 ual's identity or employment authorization.

15 “(C) The employer shall maintain the
16 records described in this paragraph for any em-
17 ployee for the period of time required by para-
18 graph (3) for retention of that employee's
19 verification form. The Secretary may prescribe
20 the manner of recordkeeping and may require
21 that additional records be kept or that addi-
22 tional documents be copied and maintained.
23 The Secretary in furtherance of an investigation
24 based on reasonable suspicion of a violation of
25 this act, may require that these documents be

1 transmitted electronically for purposes of au-
2 thorized inspections or other enforcement ac-
3 tions, and may develop automated capabilities
4 to request such documents.

5 “(D) An employer shall safeguard any in-
6 formation retained under this paragraph and
7 paragraph (3) and protect any means of access
8 to such information to ensure that such infor-
9 mation is not used for any purpose other than
10 as authorized in this paragraph or paragraph
11 (3) or to determine the identity and employ-
12 ment eligibility of the individual, and to protect
13 the confidentiality of such information, includ-
14 ing ensuring that such information is not pro-
15 vided to any person other than a person who
16 carries out the employer’s responsibilities under
17 this subsection, except as provided in paragraph
18 (3).

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

22 “(6) PROTECTION OF CIVIL RIGHTS.—

23 “(A) Nothing in this section shall be con-
24 strued to prohibit any reasonable accommoda-
25 tion necessary to protect the religious freedom

1 of any individual, or to ensure access to employ-
2 ment opportunities of any disabled individual.

3 “(B) The employer shall use the proce-
4 dures for document verification set forth in this
5 paragraph for all employees without regard to
6 race, sex, national origin, or, unless specifically
7 permitted in this section, to citizenship status.

8 “(7) RECEIPTS.—The Secretary shall provide
9 for the use of receipts for replacement documents,
10 and temporary evidence of employment authorization
11 by an individual to meet a documentation require-
12 ment of this subsection on a temporary basis not to
13 exceed 1 year, pending satisfaction by the individual
14 of such requirement.

15 “(d) EMPLOYMENT VERIFICATION SYSTEM.—

16 “(1) IN GENERAL.—

17 “(A) The Secretary, in consultation with
18 the Commissioner, shall implement and specify
19 the procedures for the System. The partici-
20 pating employers shall timely register with the
21 System and shall use the System as described
22 in subsection (d)(5).

23 “(B) The Secretary shall create the nec-
24 essary processes to monitor the functioning of
25 the System, including the volume of the

1 workflow, the speed of processing of queries,
2 the speed and accuracy of responses, misuse of
3 the System, fraud or identity theft, whether use
4 of the System results in wrongful adverse ac-
5 tions or discrimination based upon a prohibited
6 factor against U.S. citizens or employment au-
7 thorized aliens, and the security, integrity and
8 privacy of the program.

9 “(2) IMPLEMENTATION SCHEDULE.—

10 “(A) FEDERAL GOVERNMENT.—All em-
11 ployers within the Executive, Legislative, or Ju-
12 dicial Branches of the Federal Government
13 shall participate in the System on or after the
14 date of enactment of this subsection as fol-
15 lows—

16 “(i) as of the date of enactment, to
17 the extent required by section 402(e)(1) of
18 the Illegal Immigration Reform and Immig-
19 rant Responsibility Act of 1996 as al-
20 ready implemented by each Branch; or

21 “(ii) on or after the date that is 60
22 days after the date of enactment of this
23 subsection,

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

4 “(B) FEDERAL CONTRACTORS.—Federal
5 contractors shall participate in the System as
6 provided in the final rule published at 73 Fed-
7 eral Register 67,651 (Nov. 14, 2008), or any
8 subsequent amendments to such rule, for which
9 purpose references to E-Verify in the final rule
10 shall be construed to apply to the System.

11 “(C) CRITICAL INFRASTRUCTURE.—As of
12 the date that is 1 year after the end of the ap-
13 plication period for lawful protective status
14 under section 111(c)(1)(B) of the Comprehen-
15 sive Immigration Reform Act of 2011, the Sec-
16 retary, in the Secretary’s discretion, with notice
17 to the public provided in the Federal Register,
18 may require any employer or industry which the
19 Secretary determines to be part of the critical
20 infrastructure or directly related to the national
21 security or homeland security of the United
22 States to participate in the System with respect
23 to all newly hired employees and employees with
24 expiring employment authorization. The Sec-
25 retary shall notify employers subject to this

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

3 “(D) EMPLOYERS WITH MORE THAN 1,000
4 EMPLOYEES.—Not later than 2 years after the
5 end of the application period for lawful protec-
6 tive status under section 111(c)(1)(B), all em-
7 ployers with more than 1,000 employees shall
8 participate in the System with respect to all
9 newly hired employees and employees with ex-
10 piring employment authorization.

11 “(E) EMPLOYERS WITH MORE THAN 500
12 EMPLOYEES.—Not later than 3 years after the
13 end of the application period for lawful protec-
14 tive status under section 111(c)(1)(B), all em-
15 ployers with more than 500 employees shall
16 participate in the System with respect to all
17 newly hired employees and employees with ex-
18 piring employment authorization.

19 “(F) EMPLOYERS WITH MORE THAN 100
20 EMPLOYEES.—Not later than 4 years after the
21 end of the application period for lawful protec-
22 tive status under section 111(c)(1)(B), all em-
23 ployers with more than 100 employees shall
24 participate in the System with respect to all

1 newly hired employees and employees with ex-
2 piring employment authorization.

3 “(G) ALL EMPLOYERS.—Not later than 5
4 years after the end of the application period for
5 lawful protective status under section
6 111(c)(1)(B), all employers shall participate in
7 the System with respect to all newly hired em-
8 ployees and employees with expiring employ-
9 ment authorization.

10 “(H) WAIVER.—

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

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

23 “(I) until the date on which the
24 Comptroller General of the United

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

3 “(II) during any year in which
4 the Comptroller General fails to sub-
5 mit a certification under such para-
6 graph.

7 “(I) IMMIGRATION LAW VIOLATORS.—An
8 order finding any employer to have violated sec-
9 tion 274A, 274B, or 274C shall require the em-
10 ployer to participate in the System with respect
11 to newly hired employees and employees with
12 expiring employment authorization, if such em-
13 ployer is not otherwise required to participate
14 in the System by this section. The Secretary
15 shall monitor such employer’s compliance with
16 System procedures.

17 “(3) PARTICIPATION IN THE SYSTEM.—The
18 Secretary may—

19 “(A) permit any employer that is not re-
20 quired under this section to participate in the
21 System to do so on a voluntary basis; and

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

1 terminated by the Secretary or other appropriate
2 authority to have engaged in any violation of
3 the immigration laws.

4 “(4) CONSEQUENCE OF FAILURE TO PARTICI-
5 PATE.—If an employer is required under this sub-
6 section to participate in the System and fails to
7 comply with the requirements of such program with
8 respect to an individual—

9 “(A) such failure shall be treated as a vio-
10 lation of subsection (a)(1)(B) with respect to
11 that individual, and

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

16 “(5) PROCEDURES FOR PARTICIPANTS IN THE
17 SYSTEM.—

18 “(A) IN GENERAL.—An employer partici-
19 pating in the System shall register such partici-
20 pation with the Secretary and conform to the
21 following procedures in the event of hiring any
22 individual for employment in the United
23 States—

24 “(i) REGISTRATION OF EMPLOYERS.—

25 The Secretary, through notice in the Fed-

1 eral Register, shall prescribe procedures
2 that employers shall follow to register with
3 the System. In prescribing these proce-
4 dures, the Secretary shall have authority to
5 require employers to provide—

6 “(I) employer’s name;

7 “(II) employer’s Employment
8 Identification Number (EIN) and
9 such other employer identification in-
10 formation as the Secretary may des-
11 ignate;

12 “(III) company address;

13 “(IV) name, date of birth, and
14 position of the employer’s employees
15 accessing the System;

16 “(V) the information described in
17 subclauses (I) through (IV) of this
18 clause with respect to any agent, con-
19 tractor, or other service provider ac-
20 cessing the System on the employer’s
21 behalf; and

22 “(VI) such other information as
23 the Secretary deems necessary to en-
24 sure proper use and security of the
25 System.

1 “(ii) UPDATING INFORMATION.—The
2 employer is responsible for providing notice
3 of any change to the information required
4 under subclauses (I) through (V) of clause
5 (i) before conducting any further inquiries
6 within the System, or on such other sched-
7 ule as the Secretary may provide.

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

15 “(iv) NOTIFICATION TO EMPLOY-
16 EES.—The employer shall post notice or
17 otherwise inform individuals hired for em-
18 ployment of the use of the System, that
19 the System may be used for immigration
20 enforcement purposes, and that the System
21 cannot be used to discriminate or to take
22 adverse action against U.S. citizens or em-
23 ployment authorized aliens.

24 “(v) PROVISION OF ADDITIONAL IN-
25 FORMATION.—The employer shall obtain

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

4 “(I) the individual’s Social Secu-
5 rity account number, or any other in-
6 formation relevant to determining citi-
7 zenship as the Secretary of Homeland
8 Security may specify,

9 “(II) if the individual does not
10 attest to United States nationality
11 under subsection (c)(2), such identi-
12 fication or authorization number es-
13 tablished by the Department of
14 Homeland Security as the Secretary
15 of Homeland Security shall specify,
16 and

17 “(III) such other information as
18 the Secretary may require to deter-
19 mine the identity and employment au-
20 thorization of an employee.

21 “(vi) PRESENTATION OF DOCUMENTA-
22 TION.—The employer, and the individual
23 whose identity and employment eligibility
24 are being confirmed, shall fulfill the re-
25 quirements of subsection (c).

1 “(B) SEEKING CONFIRMATION.—

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

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

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

1 force, the System can be used for initial
2 verification of an individual hired before
3 the employer is subject to the System, and
4 the employer shall initiate all required pro-
5 cedures on or before such date as the Sec-
6 retary shall specify.

7 “(iv) The Secretary shall provide, and
8 the employer shall utilize, as part of the
9 System, a method of notifying employers of
10 a confirmation or nonconfirmation of an
11 individual’s identity and employment eligi-
12 bility, or a notice that further action is re-
13 quired to verify such identity or employ-
14 ment eligibility (‘further action notice’).
15 The Secretary and the Commissioner shall
16 establish procedures to directly notify the
17 individual, as well as the employer, of a
18 confirmation, nonconfirmation, or further
19 action notice, and provide information
20 about filing an administrative appeal pur-
21 suant to paragraph (7). The Secretary and
22 the Commissioner may provide for a
23 phased-in implementation of the notifica-
24 tion requirements of this clause as appro-
25 priate, but the notification system shall

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

4 “(C) CONFIRMATION OR NONCONFIRMA-
5 TION.—

6 “(i) INITIAL RESPONSE.—The System
7 shall provide a confirmation of an individ-
8 ual’s identity and employment eligibility or
9 a further action notice at the time of the
10 inquiry, unless for technological reasons or
11 due to unforeseen circumstances, the Sys-
12 tem is unable to provide such confirmation
13 or further action notice. In such situations,
14 the System shall provide a confirmation or
15 further action notice within 3 business
16 days of the initial inquiry. If providing a
17 confirmation or further action notice, the
18 System shall provide an appropriate code
19 indicating such confirmation or such fur-
20 ther action notice.

21 “(ii) CONFIRMATION UPON INITIAL
22 INQUIRY.—When the employer receives an
23 appropriate confirmation of an individual’s
24 identity and employment eligibility under
25 the System, the employer shall record the

1 confirmation in such manner as the Sec-
2 retary may specify.

3 “(iii) FURTHER ACTION NOTICE AND
4 LATER CONFIRMATION OR NONCONFIRMA-
5 TION.—

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

1 action notice, or acknowledges in writ-
2 ing that he or she will not contest the
3 further action notice under subclause
4 (II), the employer shall notify the Sec-
5 retary in such manner as the Sec-
6 retary may specify.

7 “(II) CONTEST.—Not later than
8 15 business days after receiving noti-
9 fication of a further action notice
10 under subclause (I), the individual
11 shall contact the appropriate Federal
12 agency and, if the Secretary so re-
13 quires, appear in person for purposes
14 of verifying the individual’s identity
15 and employment eligibility. The em-
16 ployer shall provide the individual
17 with time as needed during daytime
18 hours to contest the further action no-
19 tice. The Secretary, in consultation
20 with the Commissioner and other ap-
21 propriate Federal agencies, shall
22 specify an available secondary
23 verification procedure to confirm the
24 validity of information provided and

1 to provide a confirmation or noncon-
2 firmation.

3 “(III) NO CONTEST.—If the indi-
4 vidual refuses to acknowledge receipt
5 of the further action notice, acknowl-
6 edges that he or she will not contest
7 the further action notice as provided
8 in subclause (I), or does not contact
9 the appropriate Federal agency within
10 the period specified in subclause (II),
11 a nonconfirmation shall issue. The
12 employer shall record the noncon-
13 firmation in such manner as the Sec-
14 retary may specify and terminate the
15 individual’s employment. An individ-
16 ual’s failure to contest a further ac-
17 tion notice shall not be considered an
18 admission of guilt with respect to any
19 violation of this section or any provi-
20 sion of law.

21 “(IV) CONFIRMATION OR NON-
22 CONFIRMATION.—Unless the period is
23 extended in accordance with this sub-
24 clause, the System shall provide a
25 confirmation or nonconfirmation with-

1 in 15 business days from the date
2 that the individual contests the fur-
3 ther action notice under subclause
4 (II). If the Secretary determines that
5 good cause exists, including to permit
6 the individual to obtain and provide
7 needed evidence of identity or employ-
8 ment eligibility, the Secretary shall ex-
9 tend the period for providing con-
10 firmation or nonconfirmation for stat-
11 ed periods beyond 15 business days.
12 When confirmation or nonconfirma-
13 tion is provided, the confirmation sys-
14 tem shall provide an appropriate code
15 indicating such confirmation or non-
16 confirmation.

17 “(V) RE-EXAMINATION.—Noth-
18 ing in this section shall prevent the
19 Secretary from establishing proce-
20 dures to reexamine a case where a
21 confirmation or nonconfirmation has
22 been provided if subsequently received
23 information indicates that the con-
24 firmation or nonconfirmation may not
25 have been correct.

1 “(VI) EMPLOYEE PROTEC-
2 TIONS.—In no case shall an employer
3 terminate employment or take any
4 other adverse action against an indi-
5 vidual solely because of a failure of
6 the individual to have identity and
7 employment eligibility confirmed
8 under this subsection until a noncon-
9 firmation has been issued, and if the
10 further action notice was contested,
11 the period to timely file an adminis-
12 trative appeal has expired without an
13 appeal, or in the case where an ad-
14 ministrative appeal or an action for
15 judicial review has been filed, or the
16 stay of the nonconfirmation has been
17 terminated.

18 “(iv) NOTICE OF NONCONFIRMA-
19 TION.—Not later than 3 business days
20 after an employer’s receipt of a noncon-
21 firmation, the employer shall notify the in-
22 dividual who is the subject of the noncon-
23 firmation, and provide information about
24 filing an administrative appeal pursuant to
25 paragraph (7). The nonconfirmation notice

1 shall be given to the individual in writing.
2 The individual shall affirmatively acknowl-
3 edge in writing, or in such other manner
4 as the Secretary may specify, the receipt of
5 the nonconfirmation notice from the em-
6 ployer. If the individual refuses or fails to
7 acknowledge the receipt of the noncon-
8 firmation notice, the employer shall notify
9 the Secretary in such manner as the Sec-
10 retary may specify.

11 “(D) CONSEQUENCES OF NONCONFIRMA-
12 TION.—

13 “(i) TERMINATION OF CONTINUED
14 EMPLOYMENT.—Except as provided in
15 clause (iii), if the employer has received a
16 nonconfirmation regarding an individual
17 and has notified the individual as required
18 by subparagraph (C)(iv), the employer
19 shall terminate employment of the indi-
20 vidual upon the expiration of the time pe-
21 riod as specified in paragraph (7)(A) for
22 filing an administrative appeal, or imme-
23 diately if the further action notice was not
24 contested.

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

11 “(iii) EFFECT OF ADMINISTRATIVE
12 APPEAL AND JUDICIAL REVIEW.—If an in-
13 dividual files an administrative appeal of
14 the nonconfirmation within the time period
15 specified in paragraph (7)(A) and provides
16 a copy of such appeal to the employer, the
17 employer shall not terminate the individ-
18 ual’s employment under this subparagraph
19 prior to the resolution of the administra-
20 tive appeal or an action for judicial review
21 under paragraph (8)(A) unless the Sec-
22 retary or Commissioner terminates the
23 stay under paragraph (7)(B).

24 “(E) OBLIGATION TO RESPOND TO QUE-
25 RIES AND ADDITIONAL INFORMATION.—

1 “(i) Employers are required to comply
2 with requests for information from the
3 Secretary, including queries concerning
4 current and former employees (within the
5 time frame during which records are re-
6 quired to be maintained under this section
7 regarding such former employees) that re-
8 late to the functioning of the System, the
9 accuracy of the responses provided by the
10 System, and any suspected misuse, dis-
11 crimination, fraud, or identity theft in the
12 use of the System. Failure to comply with
13 such a request is a violation of section
14 (a)(1)(B).

15 “(ii) Individuals being verified
16 through the System may be required to
17 take further action to address irregularities
18 identified by the Secretary or the Commis-
19 sioner in the documents relied upon for
20 purposes of subsection (c). The employer
21 shall communicate to the individual within
22 3 business days any such requirement for
23 further actions and shall record the date
24 and manner of such communication. The
25 individual shall acknowledge in writing, or

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

6 “(iii) The Secretary is authorized,
7 with notice to the public provided in the
8 Federal Register, to implement, clarify,
9 and supplement the requirements of this
10 paragraph in order to facilitate the func-
11 tioning, accuracy, and fairness of the Sys-
12 tem or to prevent misuse, discrimination,
13 fraud, or identity theft in the use of the
14 System.

15 “(F) The Secretary may establish a proc-
16 ess to certify, on an annual basis or such other
17 time frame as the Secretary may provide, des-
18 ignated agents and other System service pro-
19 viders seeking access to the System to perform
20 verification queries on behalf of employers,
21 based upon training, usage, and security stand-
22 ards designated by the Secretary.

23 “(G) No later than 3 months after the
24 date of the enactment of this section, the Sec-
25 retary of Homeland Security, in consultation

1 with the Secretary of Labor, the Secretary of
2 Agriculture, the Commissioner of Social Secu-
3 rity, the Attorney General, the Equal Employ-
4 ment Opportunity Commission, Office of Spe-
5 cial Counsel for Unfair Immigration Related
6 Employment Practices, and the Administrator
7 of the Small Business Administration, shall
8 commence a campaign to disseminate informa-
9 tion respecting the procedures, rights, and rem-
10 edies prescribed under this section. Such cam-
11 paign shall be aimed at increasing the knowl-
12 edge of employers, employees, and the general
13 public concerning employer and employee
14 rights, responsibilities, and remedies under this
15 section. The Secretary shall assess the success
16 of the campaign in achieving its goals.

17 “(i) In order to carry out and assess
18 the campaign under this paragraph, the
19 Secretary of Homeland Security may, to
20 the extent deemed appropriate and subject
21 to the availability of appropriations, con-
22 tract with public and private organizations
23 for outreach and assessment activities
24 under the campaign.

1 “(ii) There are authorized to be ap-
2 propriated to carry out this paragraph
3 \$40,000,000 for each fiscal year 2012
4 through 2014.

5 “(H) Based on a regular review of the Sys-
6 tem and the document verification procedures
7 to identify misuse or fraudulent use and to as-
8 sess the security of the documents and proc-
9 esses being used to establish identity or employ-
10 ment authorization, the Secretary, in consulta-
11 tion with the Commissioner, may modify the
12 documents or information that shall be pre-
13 sented to the employer, the information that
14 shall be provided to the System by the em-
15 ployer, and the procedures that shall be fol-
16 lowed by employers with respect to any aspect
17 of the System if the Secretary, in the Sec-
18 retary’s discretion, concludes that the modifica-
19 tion is necessary to ensure that the System ac-
20 curately and reliably determines the identity
21 and employment authorization of employees
22 while providing protection against misuse, dis-
23 crimination, fraud, and identity theft.

24 “(I) Subject to appropriate safeguards to
25 prevent misuse of the system, the Secretary, in

1 consultation with the Commissioner, shall es-
2 tablish a secure self-verification procedure to
3 permit an individual who seeks to verify the in-
4 dividual’s own employment eligibility prior to
5 obtaining or changing employment to contact
6 the appropriate agency and, in a timely man-
7 ner, correct or update the information used by
8 the System.

9 “(J) The Secretary may, upon notice pro-
10 vided in the Federal Register, adjust the time
11 periods described in this paragraph.

12 “(6) PROTECTION FROM LIABILITY FOR AC-
13 TIONS TAKEN ON THE BASIS OF INFORMATION PRO-
14 VIDED BY THE SYSTEM.—No employer participating
15 in the System who complies with all System proce-
16 dures as required in this Act shall be liable under
17 this Act for any employment-related action taken
18 with respect to the employee in good faith reliance
19 on information provided through the confirmation
20 system.

21 “(7) ADMINISTRATIVE REVIEW.—

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

1 notice is received, file an administrative appeal
2 of such nonconfirmation. An individual subject
3 to a nonconfirmation may file an appeal thereof
4 after the 15-day period if the appeal is accom-
5 panied by evidence that the individual did not
6 receive timely notice of a nonconfirmation, or
7 that there was good cause for the failure to file
8 an appeal within the 15-day period. All admin-
9 istrative appeals shall be filed as follows:

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

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

19 “(B) ADMINISTRATIVE STAY OF NONCON-
20 FIRMATION.—The nonconfirmation shall be
21 automatically stayed upon the timely filing of
22 an administrative appeal, and the stay shall re-
23 main in effect until the resolution of the appeal,
24 unless the Secretary or the Commissioner ter-
25 minates the stay based on a determination that

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

3 “(C) REVIEW FOR ERROR.—The Secretary
4 and the Commissioner shall develop procedures
5 for resolving administrative appeals regarding
6 nonconfirmations based upon the information
7 that the individual has provided, including any
8 additional evidence or argument that was not
9 previously considered. Any such additional evi-
10 dence or argument shall be filed within 15 days
11 of the date the appeal was originally filed. Ap-
12 peals shall be resolved within 30 days after the
13 individual has submitted all evidence and argu-
14 ments he or she wishes to submit, or has stated
15 in writing that there is no additional evidence
16 that he or she wishes to submit. The Secretary
17 and the Commissioner may, on a case by case
18 basis for good cause, extend the filing and sub-
19 mission period in order to ensure accurate reso-
20 lution of an appeal before him or her. Adminis-
21 trative review under this paragraph shall be
22 limited to whether the nonconfirmation notice is
23 supported by the weight of the evidence.

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

1 graph (B) and the Secretary makes a deter-
2 mination that the nonconfirmation issued for an
3 individual was not caused by an act or omission
4 of the individual or the employer, the Secretary
5 shall compensate the individual for lost wages
6 in an amount not exceeding \$75,000 and rea-
7 sonable costs and attorneys' fees incurred dur-
8 ing administrative and judicial review which
9 shall not exceed \$50,000. Amounts under this
10 clause may be adjusted to account for inflation
11 pursuant to the US Consumer Price Index—All
12 Urban Consumers (CPI-U) compiled by the
13 Bureau of Labor Statistics.

14 “(i) CALCULATION OF LOST WAGES.—

15 Lost wages shall be calculated based on
16 the wage rate and work schedule that pre-
17 vailed prior to termination. The individual
18 shall be compensated for wages lost begin-
19 ning on the first scheduled work day after
20 employment was terminated and ending
21 180 days after completion of the adminis-
22 trative review process described in this
23 paragraph, or judicial review if any, or the
24 day after the individual is reinstated or ob-
25 tains employment elsewhere, whichever oc-

1 curs first. If the individual obtains employ-
2 ment elsewhere at a lower wage rate, the
3 individual shall be compensated for the dif-
4 ference in wages for the period ending 180
5 days after completion of the administrative
6 review process or judicial review, if any.

7 “(ii) LIMITATION ON COMPENSA-
8 TION.—For purposes of determining an in-
9 dividual’s compensation for the loss of em-
10 ployment, such compensation shall not in-
11 clude any period in which the individual
12 was ineligible for employment in the
13 United States.

14 “(iii) SOURCE OF FUNDS.—Com-
15 pensation or reimbursement provided
16 under this paragraph shall not be provided
17 from funds appropriated in annual appro-
18 priations Acts to the Secretary for the De-
19 partment of Homeland Security.

20 “(E) TEMPORARY STAY OF FINAL ADMIN-
21 ISTRATIVE DECISION DENYING APPEAL.—If the
22 appeal is denied, the Secretary shall stay the
23 decision for a period of 30 days to permit the
24 individual to seek judicial review of the decision
25 under paragraph (8)(A). If a judicial action is

1 brought within this period, the stay shall re-
2 main in effect until the resolution of the case,
3 unless the Court terminates the stay based on
4 a determination that the action for judicial re-
5 view is frivolous or filed for purposes of delay.

6 “(8) JUDICIAL REVIEW.—

7 “(A) IN GENERAL.—After the Secretary or
8 the Commissioner makes a final determination
9 on an appeal filed by an individual under para-
10 graph (7), the individual may obtain judicial re-
11 view of such determination in a civil action
12 commenced not later than 30 days after notice
13 of such decision.

14 “(B) JURISDICTION.—A civil action for
15 such judicial review shall be brought in the dis-
16 trict court of the United States for the judicial
17 district in which the plaintiff resides or, if the
18 plaintiff does not reside within any such judicial
19 district, in the District Court of the United
20 States for the District of Columbia.

21 “(C) SERVICE.—The defendant is either
22 the Secretary or the Commissioner, but not
23 both, depending upon who issued the adminis-
24 trative order under paragraph (7). In addition

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

3 “(D) ANSWER.—As part of the Secretary’s
4 or the Commissioner’s answer to a complaint
5 for such judicial review, the Secretary or the
6 Commissioner shall file a certified copy of the
7 administrative record compiled during the ad-
8 ministrative review under paragraph (7), includ-
9 ing the evidence upon which the findings and
10 decision complained of are based. The court
11 shall have power to enter, upon the pleadings
12 and the administrative record, a judgment af-
13 firming or reversing the result of that adminis-
14 trative review, with or without remanding the
15 cause for a rehearing.

16 “(E) STANDARD OF REVIEW.—

17 “(i) The burden shall be on the plain-
18 tiff to show that the administrative order
19 was erroneous. Administrative findings of
20 fact are conclusive unless any reasonable
21 adjudicator would be compelled to conclude
22 to the contrary. The court, upon good
23 cause shown, may in its discretion remand
24 to the Secretary or the Commissioner for

1 additional fact-finding or other pro-
2 ceedings.

3 “(ii) If the plaintiff meets his or her
4 burden to show that the administrative
5 order was erroneous, the court shall, upon
6 request of the plaintiff, determine whether
7 the plaintiff can establish by the prepon-
8 derance of the evidence that the error was
9 caused by the decision rules, processes, or
10 procedures utilized by the System or erro-
11 neous system information that was not the
12 result of acts or omissions of the indi-
13 vidual.

14 “(F) COMPENSATION FOR ERROR.—

15 “(i) IN GENERAL.—In cases in which
16 the judicial review reverses the final deter-
17 mination of the Secretary or the Commis-
18 sioner made under paragraph (7), the indi-
19 vidual was denied a stay under subpara-
20 graph (B), and the court finds that the
21 final determination was erroneous by rea-
22 son of the decision rules, processes, or pro-
23 cedures utilized by the System or erro-
24 neous system information that was not the
25 result of acts or omissions of the indi-

1 vidual, the court may award to the indi-
2 vidual lost wages not exceeding \$75,000,
3 reasonable costs and attorneys' fees in-
4 curred during administrative and judicial
5 review which shall not exceed \$50,000, and
6 compensatory damages in an amount
7 deemed necessary by the court. Amounts
8 under this clause may be adjusted to ac-
9 count for inflation pursuant to the US
10 Consumer Price Index—All Urban Con-
11 sumers (CPI-U) compiled by the Bureau
12 of Labor Statistics.

13 “(ii) CALCULATION OF LOST
14 WAGES.—Lost wages shall be calculated
15 based on the wage rate and work schedule
16 that prevailed prior to termination. The in-
17 dividual shall be compensated for wages
18 lost beginning on the first scheduled work
19 day after employment was terminated and
20 ending 180 days after completion of the ju-
21 dicial review described in this paragraph or
22 the day after the individual is reinstated or
23 obtains employment elsewhere, whichever
24 occurs first. If the individual obtains em-
25 ployment elsewhere at a lower wage rate,

1 the individual shall be compensated for the
2 difference in wages for the period ending
3 180 days after completion of the judicial
4 review process. No lost wages shall be
5 awarded for any period of time during
6 which the individual was not authorized to
7 be employed in the United States.

8 “(iii) PAYMENT OF COMPENSATION.—
9 Notwithstanding any other law, payment of
10 compensation for lost wages, costs and at-
11 torneys’ fees under this paragraph, or com-
12 promise settlements of the same, shall be
13 made as provided by section 1304 of title
14 31, United States Code. Appropriations
15 made available to the Secretary or the
16 Commissioner, accounts provided for under
17 section 286 of the Immigration and Na-
18 tionality Act (8 U.S.C. 1356), and funds
19 from the Federal Old-Age and Survivors
20 Insurance Trust Fund or the Federal Dis-
21 ability Insurance Trust Fund shall not be
22 available to pay such compensation.

23 “(iv) EXCLUSIVE REMEDY.—Awards
24 of compensation for lost wages, costs, and
25 attorneys’ fees under this paragraph shall

1 be the exclusive remedy for a finding under
2 clause (i) that a final determination of the
3 Secretary or the Commissioner made under
4 paragraph (7) was erroneous by reason of
5 the negligence or recklessness of the Sec-
6 retary or the Commissioner.

7 “(9) PRIVATE RIGHT OF ACTION.—If the non-
8 confirmation issued for an individual was caused by
9 negligence or other misconduct on the part of the
10 employer, the individual may seek recovery of dam-
11 ages, reinstatement, back pay, and other appropriate
12 remedies in a civil action against the employer. Such
13 action shall be commenced not later than 90 days
14 after notice of the Secretary’s or the Commissioner’s
15 decision on an administrative appeal under para-
16 graph (7) or the Court’s decision in an action for ju-
17 dicial review under paragraph (8), or 90 days after
18 termination of the individual as a result of the final
19 nonconfirmation if no such administrative appeal or
20 action for judicial review is taken. The action shall
21 be brought in the district court of the United States
22 for the judicial district in which the plaintiff resides
23 or, if the plaintiff does not reside within any such
24 judicial district, in the District Court of the United
25 States for the District of Columbia. In such action,

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

5 “(10) ANNUAL STUDY AND REPORT.—

6 “(A) REQUIREMENT FOR STUDY.—The
7 Comptroller General of the United States shall
8 conduct an annual study of the System as de-
9 scribed in this paragraph.

10 “(B) PURPOSE OF THE STUDY.—The
11 Comptroller General shall, for each year, under-
12 take a study to determine whether the System
13 meets the following requirements:

14 “(i) DEMONSTRATED ACCURACY OF
15 THE DATABASES.—New information and
16 information changes submitted by an indi-
17 vidual to the System is updated in all of
18 the relevant databases not later than 3
19 working days after submission in at least
20 99 percent of all cases.

21 “(ii) LOW ERROR RATES AND COMPLI-
22 ANCE WITH SYSTEM RULES.—

23 “(I) RATES OF INCORRECT NON-
24 CONFIRMATION AND CONFIRMATION
25 NOTICES.—That, during a year, the

1 number of incorrect tentative noncon-
2 firmations provided through the Sys-
3 tem is not more than 1 percent.

4 “(II) STABILITY OR IMPROVE-
5 MENT IN ERROR RATES.—That, dur-
6 ing a year—

7 “(aa) the rate of incorrect
8 tentative nonconfirmations shall
9 not have increased by more than
10 3 percent compared to the pre-
11 vious year.

12 “(bb) the rate at which un-
13 authorized immigrants receive in-
14 correct confirmations shall not
15 have increased by more than 3
16 percent compared to the previous
17 year.

18 “(III) EMPLOYER COMPLI-
19 ANCE.—That, during the year, not
20 more than 10 percent of employers
21 are found in violation of section
22 171(a)(4).

23 “(iii) PROTECTIONS FOR AMERICAN
24 WORKERS.—

1 “(I) NO DISCRIMINATION BASED
2 ON SYSTEM OPERATIONS.—The Sys-
3 tem has not resulted in increased dis-
4 crimination or cause reasonable em-
5 ployers to conclude that individuals of
6 certain races or ethnicities are more
7 likely to have difficulties when offered
8 employment caused by the operation
9 of the System.

10 “(II) NO INCREASE IN EM-
11 PLOYER NONCOMPLIANCE.—The Sys-
12 tem has not resulted in increased em-
13 ployer noncompliance with system
14 rules, including not notifying workers
15 of tentative nonconfirmations, adverse
16 employment consequences due to ten-
17 tative nonconfirmations, prescreening,
18 and reverification of workers against
19 System rules.

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

24 “(iv) PROTECTION OF WORKERS’ PRI-
25 VATE INFORMATION.—At least 97 percent

1 of employers who participate in the System
2 are in full compliance with the privacy re-
3 quirements described in this subsection.

4 “(v) PROTECTING SMALL BUSI-
5 NESSES.—The System will not result in
6 lost productivity or replacement and re-
7 training costs due to United States citizen
8 and work-authorized immigrants being ter-
9 minated due to database errors.

10 “(vi) PROTECTING AMERICANS ACCESS
11 TO PRODUCE AND SMALL FAMILY
12 FARMS.—

13 “(I) NO INCREASE IN FOOD
14 PRICES.—The System has not and
15 will not increase the cost of agricul-
16 tural products by more than 5 per-
17 cent.

18 “(II) PROTECTING SMALL FARM-
19 ERS.—Use of the System will not put
20 small family farms out of business.

21 “(III) PROTECTING JOBS.—Use
22 of the System will not cause Ameri-
23 cans to lose jobs related to the agri-
24 culture industry.

1 “(vii) ADEQUATE AGENCY STAFFING
2 AND FUNDING.—The Secretary and Com-
3 missioner of Social Security have sufficient
4 funding to meet all of the deadlines and re-
5 quirements of this subsection.

6 “(C) REQUIREMENT FOR INDEPENDENT
7 STUDY.—The determinations described in
8 clauses (i) through (vi) of subparagraph (B)
9 shall be based on an independent study commis-
10 sioned by the Comptroller General in each
11 phase of expansion of the System.

12 “(D) CONSULTATION.—In conducting a
13 study under this paragraph, the Comptroller
14 General shall consult with representatives of
15 business, labor, immigrant communities, State
16 governments, privacy advocates, and appro-
17 priate departments of the United States.

18 “(E) REPORTS.—Not later than 21
19 months after the date of the enactment of the
20 Act, and annually thereafter, the Comptroller
21 General shall submit to the Secretary and to
22 Congress a report containing the findings of the
23 study carried out under this paragraph and
24 shall include the following:

1 “(i) An assessment of the accuracy of
2 the databases utilized by the System and
3 of the timeliness and accuracy of the re-
4 sponses provided through the System to
5 employers.

6 “(ii) An assessment of the privacy and
7 confidentiality of the System and of the
8 overall security of the System with respect
9 to cybertheft and theft or misuse of private
10 data.

11 “(iii) An assessment of whether the
12 System is being implemented in a non-
13 discriminatory and nonretaliatory manner.

14 “(iv) An assessment of the most com-
15 mon causes for the erroneous issuance of
16 nonconfirmations by the System and rec-
17 ommendations to correct such causes.

18 “(v) The recommendations of the
19 Comptroller General regarding whether or
20 not the System should be modified prior to
21 further expansion.

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

1 troller shall certify such determination and sub-
2 mit such certification to Congress with the re-
3 port required by subparagraph (E).

4 “(11) ANNUAL AUDIT AND REPORT.—

5 “(A) PURPOSE OF THE AUDIT AND RE-
6 PORT.—The Office for Civil Rights and Civil
7 Liberties shall conduct annual audits of E-
8 Verify described in section 403(a) of the Illegal
9 Immigration Reform and Responsibility Act of
10 1996, Public Law No. 104–208, Div. C, 110
11 Stat. 3009–546, to assess employer compliance
12 with System requirements, including civil rights
13 and civil liberties protections, and compliance
14 with the System rules and procedures set forth
15 in the Memorandum of Understanding between
16 employers and the Social Security Administra-
17 tion and the Department of Homeland Security.

18 “(B) REQUIREMENTS OF AUDIT.—Annual
19 audits shall include, but are not limited to, the
20 following activities:

21 “(i) Use of testers to check if employ-
22 ers’ are using E-Verify as outlined in the
23 Memorandum of Understanding between
24 employers and the Department of Home-
25 land Security and the Social Security Ad-

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

8 “(ii) Random audits of employers to
9 confirm that employers are using the sys-
10 tem as outlined in the Memorandum of
11 Understanding and in a manner consistent
12 with civil rights and civil liberties protec-
13 tions; and

14 “(iii) Periodic audits of employers for
15 which the Special Counsel has received in-
16 formation or complaints and/or actual
17 charges of citizenship/national origin dis-
18 crimination or document abuse.

19 “(C) AUTHORITY OF OFFICE FOR CIVIL
20 RIGHTS AND CIVIL LIBERTIES.—The Office
21 shall have the authority to obtain from users of
22 E-Verify relevant documents and testimony and
23 answers to written interrogatories. The Office
24 shall also have the authority to conduct site vis-
25 its, and interview employees.

1 “(D) FAILURE OF EMPLOYERS TO CO-
2 OPERATE.—Employers that fail to cooperate
3 with the Office for Civil Rights and Civil Lib-
4 erties shall be noted in the annual report set
5 forth below in this subsection.

6 “(E) REQUIREMENT FOR REPORTS.—Not
7 later than 18 months after the date of the en-
8 actment of the Act, and annually thereafter, the
9 Office for Civil Rights and Civil Liberties shall
10 submit a report to the President of the Senate,
11 the Speaker of the House of Representatives,
12 and the appropriate committees and sub-
13 committees of Congress that contains the find-
14 ings of the audit carried out under this para-
15 graph.

16 “(12) MANAGEMENT OF THE SYSTEM.—

17 “(A) IN GENERAL.—The Secretary is au-
18 thorized to establish, manage, and modify the
19 System, which shall—

20 “(i) respond to inquiries made by par-
21 ticipating employers at any time through
22 the internet, or such other means as the
23 Secretary may designate, concerning an in-
24 dividual’s identity and whether the indi-
25 vidual is authorized to be employed;

1 “(ii) maintain records of the inquiries
2 that were made, of confirmations provided
3 (or not provided), and of the codes pro-
4 vided to employers as evidence of their
5 compliance with their obligations under the
6 System; and

7 “(iii) provide information to, and re-
8 quire action by, employers and individuals
9 using the System.

10 “(B) DESIGN AND OPERATION OF SYS-
11 TEM.—The System shall be designed and oper-
12 ated—

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

18 “(ii) to maximize its ease of use by
19 employees, including notification of its use,
20 of results, and ability to challenge results;

21 “(iii) to respond accurately to all in-
22 quiries made by employers on whether in-
23 dividuals are authorized to be employed
24 and to register any times when the system
25 is unable to receive inquiries;

1 “(iv) to maintain appropriate adminis-
2 trative, technical, and physical safeguards
3 to prevent unauthorized disclosure of per-
4 sonal information, misuse by employers
5 and employees, and discrimination;

6 “(v) to allow for auditing of the use of
7 the System to detect misuse, discrimina-
8 tion, fraud, and identity theft, and to pre-
9 serve the integrity and security of the in-
10 formation in all of the System, including
11 but not limited to the following—

12 “(I) to develop and use tools and
13 processes to detect or prevent fraud
14 and identity theft, such as multiple
15 uses of the same identifying informa-
16 tion or documents to fraudulently gain
17 employment;

18 “(II) to develop and use tools
19 and processes to detect and prevent
20 misuse of the system by employers
21 and employees;

22 “(III) to develop tools and proc-
23 esses to detect anomalies in the use of
24 the system that may indicate potential
25 fraud or misuse of the system; and

1 “(IV) to audit documents and in-
2 formation submitted by employees to
3 employers, including authority to con-
4 duct interviews with employers and
5 employees, and obtain information
6 concerning employment from the em-
7 ployer;

8 “(vi) to confirm identity and employ-
9 ment authorization through verification
10 and comparison of records maintained by
11 the Secretary, other Federal departments,
12 states, or outlying possessions of the
13 United States, or other available informa-
14 tion, as determined necessary by the Sec-
15 retary, including—

16 “(I) records maintained by the
17 Social Security Administration;

18 “(II) birth and death records
19 maintained by vital statistics agencies
20 of any state or other United States
21 jurisdiction;

22 “(III) passport and visa records
23 (including photographs) maintained
24 by the Department of State; and

1 “(IV) state driver’s license or
2 identity card information (including
3 photographs) maintained by State de-
4 partments of motor vehicles;

5 “(vii) to confirm electronically the
6 issuance of the employment authorization
7 or identity document and to display the
8 digital photograph that the issuer placed
9 on the document so that the employer can
10 compare the photograph displayed to the
11 photograph on the document presented by
12 the employee. If a photograph is not avail-
13 able from the issuer, the Secretary shall
14 specify alternative procedures for con-
15 firming the authenticity of the document;
16 and

17 “(viii) to include, notwithstanding sec-
18 tion 6103 of title 26, U.S. Code, proce-
19 dures for verification by the Secretary of
20 the Treasury of the validity of any em-
21 ployer identification number and related
22 information provided by an employer to the
23 Secretary for the purpose of participating
24 in the System.

25 “(C) ACCESS TO INFORMATION.—

1 “(i) Notwithstanding any other provi-
2 sion of law, the Secretary of Homeland Se-
3 curity shall have access to relevant records
4 described in subparagraphs (B)(vi) and
5 (viii), for the purposes of preventing iden-
6 tity theft, fraud and misuse in the use of
7 the System and administering and enforce-
8 ing the provisions of this section governing
9 employment verification. Any governmental
10 agency or entity possessing such relevant
11 records shall provide such assistance and
12 cooperation in resolving further action no-
13 tices and nonconfirmations relating to such
14 records, or otherwise to improve the accu-
15 racy of the System, as the Secretary may
16 request. A state or other non-Federal juris-
17 diction that does not provide such access,
18 assistance, and cooperation shall not be eli-
19 gible for any grant or other program of fi-
20 nancial assistance administered by the Sec-
21 retary or by the Commissioner.

22 “(ii) The Secretary, in consultation
23 with the Commissioner and other appro-
24 priate Federal and State agencies, shall
25 develop policies and procedures to ensure

1 protection of the privacy and security of
2 personally identifiable information and
3 identifiers contained in the records
4 accessed or maintained by the System. The
5 Secretary, in consultation with the Com-
6 missioner and other appropriate Federal
7 and State agencies, shall develop and de-
8 ploy appropriate privacy and security
9 training for the Federal and State employ-
10 ees accessing the records under the Sys-
11 tem.

12 “(iii) The Secretary, acting through
13 the Chief Privacy Officer of the Depart-
14 ment of Homeland Security, shall conduct
15 regular privacy audits of the policies and
16 procedures established under clause (ii),
17 including any collection, use, dissemina-
18 tion, and maintenance of personally identi-
19 fiable information and any associated in-
20 formation technology systems, as well as
21 scope of requests for this information. The
22 Chief Privacy Officer shall review the re-
23 sults of the audits and recommend to the
24 Secretary any changes necessary to im-

1 prove the privacy protections of the pro-
2 gram.

3 “(D) RESPONSIBILITIES OF THE SEC-
4 RETARY OF HOMELAND SECURITY.—

5 “(i) As part of the System, the Sec-
6 retary shall maintain a reliable, secure
7 method, which, operating through the Sys-
8 tem and within the time periods specified,
9 compares the name, alien identification or
10 authorization number, or other information
11 as determined relevant by the Secretary,
12 provided in an inquiry against such infor-
13 mation maintained or accessed by the Sec-
14 retary in order to confirm (or not confirm)
15 the validity of the information provided,
16 the correspondence of the name and num-
17 ber, whether the alien is authorized to be
18 employed in the United States (or, to the
19 extent that the Secretary determines to be
20 feasible and appropriate, whether the
21 records available to the Secretary verify
22 the identity or status of a national of the
23 United States), and such other information
24 as the Secretary may prescribe.

1 “(ii) As part of the System, the Sec-
2 retary shall establish a reliable, secure
3 method, which, operating through the Sys-
4 tem, displays the digital photograph de-
5 scribed in subparagraph (B)(vii).

6 “(iii) The Secretary shall have author-
7 ity to prescribe when a confirmation, non-
8 confirmation, or further action notice shall
9 be issued.

10 “(iv) The Secretary shall perform reg-
11 ular audits under the System, as described
12 in subparagraph (B)(v) and shall utilize
13 the information obtained from such audits,
14 as well as any information obtained from
15 the Commissioner pursuant to section 174
16 of the Comprehensive Immigration Reform
17 Act of 2011, for the purposes of this sec-
18 tion, to administer and enforce the immi-
19 gration laws, and to ensure employee
20 rights are protected under the System.

21 “(v) The Secretary may make appro-
22 priate arrangements to allow employers or
23 employees who are otherwise unable to ac-
24 cess the System to use Federal Govern-
25 ment facilities or public facilities or other

1 available locations in order to utilize the
2 program.

3 “(vi) The Secretary shall, in consulta-
4 tion with the Commissioner, establish a
5 program which shall provide a reliable, se-
6 cure method by which victims of identity
7 fraud and other individuals may suspend
8 or limit the use of their Social Security ac-
9 count number or other identifying informa-
10 tion for System purposes. The Secretary
11 may implement the program on a limited
12 pilot program basis before making it fully
13 available to all individuals.

14 “(vii) The Secretary, in consultation
15 with the Commissioner of Social Security,
16 shall establish procedures for an Enhanced
17 Verification System under section 178 of
18 the Comprehensive Immigration Reform
19 Act of 2011.

20 “(viii) The Secretary and the Commis-
21 sioner shall establish a program in which
22 Social Security account numbers that have
23 been identified to be subject to unusual
24 multiple use in the System, or that are
25 otherwise suspected or determined to have

1 been compromised by identity fraud or
2 other misuse, shall be blocked from use for
3 System purposes unless the individual
4 using such number is able to establish,
5 through secure and fair additional security
6 procedures, that he or she is the legitimate
7 holder of the number.

8 “(ix) The Secretary shall establish a
9 monitoring and compliance unit to detect
10 and reduce identity fraud and other misuse
11 of the program.

12 “(x) The Secretary, acting through
13 the Officer for Civil Rights and Civil Lib-
14 erties of the Department of Homeland Se-
15 curity, shall conduct regular civil rights
16 and civil liberties assessments of the Sys-
17 tem, including participation by employers,
18 other private entities, other Federal agen-
19 cies, and state and local government. The
20 Officer shall review the results of the as-
21 sessment and recommend to the Secretary
22 any changes necessary to improve the civil
23 rights and civil liberties protections of the
24 program.

1 “(E) RESPONSIBILITIES OF THE SEC-
2 RETARY OF STATE.—As part of the System, the
3 Secretary of State shall provide to the Sec-
4 retary access to passport and visa information
5 as needed to confirm that a passport or pass-
6 port card presented under subsection (c)(1)(B)
7 confirms the identity of the subject of the Sys-
8 tem check, or that a passport, passport card or
9 visa photograph matches the Secretary of
10 State’s records, and shall provide such assist-
11 ance as the Secretary may request in order to
12 resolve further action notices or nonconfirma-
13 tions relating to such information.

14 “(F) UPDATING INFORMATION.—The
15 Commissioner and the Secretaries of Homeland
16 Security and State shall update their informa-
17 tion in a manner that promotes maximum accu-
18 racy and shall provide a process for the prompt
19 correction of erroneous information.

20 “(13) LIMITATION ON USE OF THE SYSTEM.—
21 Notwithstanding any other provision of law, nothing
22 in this subsection shall be construed to permit or
23 allow any department, bureau, or other agency of
24 the United States Government to utilize any infor-
25 mation, database, or other records assembled under

1 this subsection for any purpose other than for
2 verification as provided by this subsection the en-
3 forcement and administration of the immigration
4 laws, or the enforcement of Federal laws for viola-
5 tions relating to use of the System.

6 “(14) CONFORMING AMENDMENT.—Sections
7 401 to 405 of the Illegal Immigration Reform and
8 Immigrant Responsibility Act of 1996 (division C of
9 Public Law 104–208; 8 U.S.C. 1234a note) are re-
10 pealed. Nothing in this subsection may be construed
11 to limit the authority of the Secretary to allow or
12 continue to allow the participation in the System of
13 employers who have participated in the E–Verify
14 program established by such sections.

15 “(15) NONDISCRIMINATION.—The employer
16 shall use the procedures for the System specified in
17 this section for all employees without regard to race,
18 sex, national origin, or, unless specifically permitted
19 in this section, to citizenship status.

20 “(e) COMPLIANCE.—

21 “(1) COMPLAINTS AND INVESTIGATIONS.—The
22 Secretary of Homeland Security shall establish pro-
23 cedures—

1 “(A) for individuals and entities to file
2 complaints respecting potential violations of
3 subsections (a) or (f)(1);

4 “(B) for the investigation of those com-
5 plaints which the Secretary deems appropriate
6 to investigate; and

7 “(C) for such other investigations of viola-
8 tions of subsections (a) or (f)(1) as the Sec-
9 retary determines to be appropriate.

10 “(2) AUTHORITY IN INVESTIGATIONS.—In con-
11 ducting investigations and hearings under this sub-
12 section, immigration officers shall have reasonable
13 access to examine evidence of any employer being in-
14 vestigated.

15 “(3) JOINT EMPLOYMENT FRAUD TASK
16 FORCE.—The Secretary, in cooperation with the
17 Commissioner and Attorney General, and in con-
18 sultation with other relevant agencies, shall establish
19 a Joint Employment Fraud Task Force consisting
20 of, at a minimum, the System’s compliance per-
21 sonnel, immigration law enforcement officers, Spe-
22 cial Counsel for Unfair Immigration-Related Em-
23 ployment Practices personnel, Department of Home-
24 land Security Office for Civil Rights and Civil Lib-

1 erties personnel, and Social Security Administration
2 fraud division personnel.

3 “(4) COMPLIANCE PROCEDURES.—

4 “(A) PRE-PENALTY NOTICE.—If the Sec-
5 retary has reasonable cause to believe that
6 there has been a civil violation of this section,
7 the Secretary shall issue to the employer con-
8 cerned a written notice of the Department’s in-
9 tention to issue a claim for a monetary or other
10 penalty. Such pre-penalty notice shall—

11 “(i) describe the violation;

12 “(ii) specify the laws and regulations
13 allegedly violated;

14 “(iii) disclose the material facts which
15 establish the alleged violation;

16 “(iv) describe the penalty sought to be
17 imposed; and

18 “(v) inform such employer that he or
19 she shall have a reasonable opportunity to
20 make representations as to why a mone-
21 tary or other penalty should not be im-
22 posed.

23 “(B) EMPLOYER’S RESPONSE.—Whenever
24 any employer receives written pre-penalty notice
25 of a fine or other penalty in accordance with

1 subparagraph (A), the employer may, within 30
2 days from receipt of such notice, file with the
3 Secretary its written response to the notice.
4 The response may include any relevant evidence
5 or proffer of evidence that the employer wishes
6 to present with respect to whether the employer
7 violated this section and whether, if so, the pen-
8 alty should be mitigated, and shall be filed and
9 considered in accordance with procedures to be
10 established by the Secretary.

11 “(C) PENALTY CLAIM.—After considering
12 the employer’s response under subparagraph
13 (B), the Secretary shall determine whether
14 there was a violation and promptly issue a writ-
15 ten final determination setting forth the find-
16 ings of fact and conclusions of law on which the
17 determination is based. If the Secretary deter-
18 mines that there was a violation, the Secretary
19 shall issue the final determination with a writ-
20 ten penalty claim. The penalty claim shall speci-
21 fy all charges in the information provided under
22 clauses (i) through (iii) of subparagraph (A)
23 and any mitigation of the penalty that the Sec-
24 retary deems appropriate under paragraph
25 (5)(D).

1 “(5) CIVIL PENALTIES.—

2 “(A) HIRING OR CONTINUING TO EMPLOY
3 UNAUTHORIZED ALIENS.—Any employer that
4 violates any provision of subsection (a)(1)(A) or
5 (a)(2) shall:

6 “(i) pay a civil penalty of not less
7 than \$2,000 and not more than \$5,000 for
8 each unauthorized alien with respect to
9 which each violation of either subsection
10 (a)(1)(A) or (a)(2) occurred;

11 “(ii) if the employer has previously
12 been fined under this paragraph, pay a
13 civil penalty of not less than \$4,000 and
14 not more than \$10,000 for each unauthor-
15 ized alien with respect to which a violation
16 of either subsection (a)(1)(A) or (a)(2) oc-
17 curred; and

18 “(iii) if the employer has previously
19 been fined more than once under this para-
20 graph, pay a civil penalty of not less than
21 \$8,000 and not more than \$25,000 for
22 each unauthorized alien with respect to
23 which a violation of either subsection
24 (a)(1)(A) or (a)(2) occurred.

1 “(B) ENHANCED PENALTY.—If an em-
2 ployer is determined to have committed within
3 the 5 years immediately preceding the date of
4 any violation of subsection (a)(1)(A) or (a)(2) a
5 civil or criminal violation of a Federal or State
6 law relating to wage and hour or other employ-
7 ment standards, workplace safety, collective
8 bargaining, civil rights, or immigration, by a
9 court or an administrative agency with jurisdic-
10 tion over such violation, for which a monetary
11 penalty of at least \$500, a judicial injunction,
12 or other equitable relief, or any term of impris-
13 onment has been imposed, any civil money pen-
14 alty or criminal fine otherwise applicable under
15 this section shall be trebled. In any proceeding
16 under this section, the Secretary of Homeland
17 Security, administrative law judge, or court, as
18 appropriate, shall determine whether a court or
19 administrative agency has imposed such penalty
20 for such previous violation of other law, but the
21 validity and appropriateness of such prior ac-
22 tion shall not be subject to review.

23 “(C) RECORDKEEPING OR VERIFICATION
24 PRACTICES.—Any employer that violates or fails

1 to comply with any requirement of subsection
2 (a)(1)(B), shall pay a civil penalty as follows:

3 “(i) not less than \$500 and not more
4 than \$2,000 for each violation;

5 “(ii) if an employer has previously
6 been fined under this paragraph, not less
7 than \$1,000 and not more than \$4,000 for
8 each violation; and

9 “(iii) if an employer has previously
10 been fined more than once under this para-
11 graph, not less than \$2,000 and not more
12 than \$8,000 for each violation.

13 “(D) OTHER PENALTIES.—The Secretary
14 may impose additional penalties for violations,
15 including cease and desist orders, specially de-
16 signed compliance plans to prevent further vio-
17 lations, suspended fines to take effect in the
18 event of a further violation, and in appropriate
19 cases, the remedy provided by paragraph (f)(2).

20 “(E) MITIGATION.—The Secretary is au-
21 thorized, upon such terms and conditions as the
22 Secretary deems reasonable and just and in ac-
23 cordance with such procedures as the Secretary
24 may establish, to reduce or mitigate penalties
25 imposed upon employers, based upon factors in-

1 including, but not limited to, the employer's hir-
2 ing volume, compliance history, good-faith im-
3 plementation of a compliance program, and vol-
4 untary disclosure of violations of this subsection
5 to the Secretary. The Secretary shall not miti-
6 gate a penalty below the minimum penalty pro-
7 vided by this section, except that the Secretary
8 may, in the case of an employer subject to pen-
9 alty for record-keeping or verification violations
10 only who has not previously been penalized
11 under this section, in the Secretary's discretion,
12 mitigate the penalty below the statutory min-
13 imum or remit it entirely.

14 “(F) INFLATION ADJUSTMENTS.—All pen-
15 alties authorized in this paragraph may be ad-
16 justed periodically to account for inflation as
17 provided by law.

18 “(6) ORDER OF INTERNAL REVIEW AND CER-
19 TIFICATION OF COMPLIANCE.—If the Secretary has
20 reasonable cause to believe that an employer has
21 failed to comply with this section, the Secretary is
22 authorized, at any time, to require that the employer
23 certify that it is in compliance with this section, or
24 has instituted a program to come into compliance.
25 Within 60 days of receiving a notice from the Sec-

1 retary requiring such a certification, the employer’s
2 chief executive officer or similar official with respon-
3 sibility for, and authority to bind the company on,
4 all hiring and immigration compliance notices shall
5 certify under penalty of perjury that the employer is
6 in conformance with the requirements under para-
7 graphs (1) through (4) of subsection (c), pertaining
8 to document verification requirements, and with sub-
9 section (d), pertaining to the System (once that sys-
10 tem is implemented with respect to that employer
11 according to the requirements of subsection (d)(1)),
12 and with any additional requirements that the Sec-
13 retary may promulgate by regulation pursuant to
14 subsections (c) or (d) or that the employer has insti-
15 tuted a program to come into compliance with these
16 requirements. At the request of the employer, the
17 Secretary may extend the 60-day deadline for good
18 cause. The Secretary is authorized to publish in the
19 Federal Register standards or methods for such cer-
20 tification, require specific recordkeeping practices
21 with respect to such certifications, and audit the
22 records thereof at any time. This authority shall not
23 be construed to diminish or qualify any other pen-
24 alty provided by this section.

25 “(7) JUDICIAL REVIEW.—

1 “(A) IN GENERAL.—Notwithstanding any
2 other provision of law, including sections 1361
3 and 1651 of title 28, United States Code, no
4 court shall have jurisdiction to consider a final
5 determination or penalty claim issued under
6 paragraph (4)(C), except as specifically pro-
7 vided by this paragraph. Judicial review of a
8 final determination under paragraph (5) is gov-
9 erned only by chapter 158 of such title 28, ex-
10 cept as specifically provided below. The Sec-
11 retary is authorized to require that the peti-
12 tioner provide, prior to filing for review, secu-
13 rity for payment of fines and penalties through
14 bond or other guarantee of payment acceptable
15 to the Secretary.

16 “(B) REQUIREMENTS FOR REVIEW OF A
17 FINAL DETERMINATION.—With respect to judi-
18 cial review of a final determination or penalty
19 claim issued under paragraph (4)(C), the fol-
20 lowing requirements apply:

21 “(i) DEADLINE.—The petition for re-
22 view shall be filed no later than 30 days
23 after the date of the final determination or
24 penalty claim issued under paragraph
25 (4)(C).

1 “(ii) VENUE AND FORMS.—The peti-
2 tion for review shall be filed with the court
3 of appeals for the judicial circuit where the
4 employer’s principal place of business was
5 located when the final determination or
6 penalty claim was issued. The record and
7 briefs do not have to be printed. The court
8 of appeals shall review the proceeding on a
9 typewritten or electronically filed record
10 and briefs.

11 “(iii) SERVICE.—The respondent is
12 the Secretary of Homeland Security. In ad-
13 dition to serving the respondent, the peti-
14 tioner shall also serve the Attorney Gen-
15 eral.

16 “(iv) PETITIONER’S BRIEF.—The pe-
17 titioner shall serve and file a brief in con-
18 nection with a petition for judicial review
19 not later than 40 days after the date on
20 which the administrative record is avail-
21 able, and may serve and file a reply brief
22 not later than 14 days after service of the
23 brief of the respondent, and the court may
24 not extend these deadlines, except for good
25 cause shown. If a petitioner fails to file a

1 brief within the time provided in this para-
2 graph, the court shall dismiss the appeal
3 unless a manifest injustice would result.

4 “(v) SCOPE AND STANDARD FOR RE-
5 VIEW.—The court of appeals shall decide
6 the petition only on the administrative
7 record on which the final determination is
8 based. The burden shall be on the peti-
9 tioner to show that the final determination
10 was arbitrary, capricious, an abuse of dis-
11 cretion, not supported by substantial evi-
12 dence, or otherwise not in accordance with
13 law.

14 “(C) EXHAUSTION OF ADMINISTRATIVE
15 REMEDIES.—A court may review a final deter-
16 mination under paragraph (4)(C) only if—

17 “(i) the petitioner has exhausted all
18 administrative remedies available to the pe-
19 titioner as of right; and

20 “(ii) another court has not decided
21 the validity of the order, unless the review-
22 ing court finds that the petition presents
23 grounds that could not have been pre-
24 sented in the prior judicial proceeding or
25 that the remedy provided by the prior pro-

1 ceeding was inadequate or ineffective to
2 test the validity of the order.

3 “(D) LIMIT ON INJUNCTIVE RELIEF.—Re-
4 gardless of the nature of the action or claim or
5 of the identity of the party or parties bringing
6 the action, no court (other than the Supreme
7 Court) shall have jurisdiction or authority to
8 enjoin or restrain the operation of the provi-
9 sions in this section, other than with respect to
10 the application of such provisions to an indi-
11 vidual petitioner.

12 “(8) ENFORCEMENT OF ORDERS.—If the final
13 determination issued against the employer under
14 this subsection is not subject to review under para-
15 graph (7), the Attorney General, upon request by
16 the Secretary, may bring a civil action to enforce
17 compliance with the final determination in any ap-
18 propriate district court of the United States. The
19 court, on a proper showing, shall issue a temporary
20 restraining order or a preliminary or permanent in-
21 junction requiring that the employer comply with the
22 final determination issued against that employer
23 under this subsection. In any such civil action, the
24 validity and appropriateness of the final determina-
25 tion shall not be subject to review.

1 “(9) LIENS.—

2 “(A) CREATION OF LIEN.—If any employer
3 liable for a fee or penalty under this section ne-
4 glects or refuses to pay such liability and fails
5 to file a petition for review (if applicable) under
6 paragraph (7), such liability is a lien in favor
7 of the United States on all property and rights
8 to property of such person as if the liability of
9 such person were a liability for a tax assessed
10 under the Internal Revenue Code of 1986. If a
11 petition for review is filed as provided in para-
12 graph (7), the lien (if any) shall arise upon the
13 entry of a final judgment by the court. The lien
14 continues for 20 years or until the liability is
15 satisfied, remitted, set aside, or terminated.

16 “(B) EFFECT OF FILING NOTICE OF
17 LIEN.—Upon filing of a notice of lien in the
18 manner in which a notice of tax lien would be
19 filed under paragraphs (1) and (2) of section
20 6323(f) of the Internal Revenue Code of 1986,
21 the lien shall be valid against any purchaser,
22 holder of a security interest, mechanic’s lien or
23 judgment lien creditor, except with respect to
24 properties or transactions specified in sub-
25 section (b), (c), or (d) of section 6323 of the In-

1 ternal Revenue Code of 1986 for which a notice
2 of tax lien properly filed on the same date
3 would not be valid. The notice of lien shall be
4 considered a notice of lien for taxes payable to
5 the United States for the purpose of any State
6 or local law providing for the filing of a notice
7 of a tax lien. A notice of lien that is registered,
8 recorded, docketed, or indexed in accordance
9 with the rules and requirements relating to
10 judgments of the courts of the State where the
11 notice of lien is registered, recorded, docketed,
12 or indexed shall be considered for all purposes
13 as the filing prescribed by this section. The pro-
14 visions of section 3201(e) of chapter 176 of title
15 28, United States Code, shall apply to liens
16 filed as prescribed under this section.

17 “(C) ENFORCEMENT OF A LIEN.—A lien
18 obtained through this process shall be consid-
19 ered a debt (as defined in section 3002 of title
20 28, United States Code) and enforceable pursu-
21 ant to the Federal Debt Collection Procedures
22 Act (28 U.S.C. 3201 et seq.).

23 “(10) TRANSITION PROVISION.—The Attorney
24 General shall have jurisdiction to adjudicate admin-
25 istrative proceedings under this subsection, pursuant

1 to procedures for hearings before administrative law
2 judges as in effect under section 274A(e) of this Act
3 and its implementing regulations on the day imme-
4 diately before the date of the enactment of the CIR
5 Act of 2011, until the date that regulations promul-
6 gated by the Secretary, in consultation with the At-
7 torney General, for the adjudication of cases under
8 this subsection are in effect. Such regulations may
9 provide for the continuing jurisdiction of the Attor-
10 ney General over cases pending before the Attorney
11 General on such date that the regulations are pro-
12 mulgated. Sections 1512 and 1517 of the Homeland
13 Security Act (6 U.S.C. 552 and 557) shall apply to
14 any transfer of jurisdiction to adjudicate cases under
15 this subsection from the Attorney General to the
16 Secretary as if such transfer is a transfer under the
17 Homeland Security Act; provided that, nothing in
18 this sentence shall be construed to require any
19 transfer of personnel from the Department of Jus-
20 tice to the Department of Homeland Security.

21 “(f) PROHIBITION OF INDEMNITY BONDS.—

22 “(1) PROHIBITION.—It is unlawful for an em-
23 ployer, in the hiring of any individual, to require the
24 individual to post a bond or security, to pay or agree
25 to pay an amount, or otherwise to provide a finan-

1 cial guarantee or indemnity, against any potential li-
2 ability arising under this section relating to such hir-
3 ing of the individual.

4 “(2) CIVIL PENALTY.—Any employer who is de-
5 termined, after notice and opportunity for mitigation
6 of the monetary penalty under subsection (e), to
7 have violated paragraph (1) shall be subject to a
8 civil penalty of \$10,000 for each violation and to an
9 administrative order requiring the return of any
10 amounts received in violation of such paragraph to
11 the employee or, if the employee cannot be located,
12 to the general fund of the Treasury.

13 “(g) GOVERNMENT CONTRACTS.—

14 “(1) CONTRACTORS AND RECIPIENTS.—When-
15 ever an employer who holds Federal contracts,
16 grants, or cooperative agreements, or reasonably
17 may be expected to submit offers for or be awarded
18 a government contract, is determined by the Sec-
19 retary to be a repeat violator of this section or is
20 convicted of a crime under this section, the employer
21 shall be subject to debarment from the receipt of
22 Federal contracts, grants, or cooperative agreements
23 for a period of up to 5 years in accordance with the
24 procedures and standards prescribed by the Federal
25 Acquisition Regulation. Prior to debarring the em-

1 ployer, the Secretary, in cooperation with the Ad-
2 ministrator of General Services, shall advise all
3 agencies holding contracts, grants, or cooperative
4 agreements with the employer of the proceedings to
5 debar the employer from the receipt of new Federal
6 contracts, grants, or cooperative agreements for a
7 period of up to 5 years. After consideration of the
8 views of agencies holding contracts, grants or coop-
9 erative agreements with the employer, the Secretary
10 may, in lieu of proceedings to debar the employer
11 from the receipt of new Federal contracts, grants, or
12 cooperative agreements for a period of up to 5 years,
13 waive operation of this subsection, limit the duration
14 or scope of the proposed debarment, or may refer to
15 an appropriate lead agency the decision of whether
16 to seek debarment of the employer, for what dura-
17 tion, and under what scope in accordance with the
18 procedures and standards prescribed by the Federal
19 Acquisition Regulation. However, any administrative
20 determination of liability for civil penalty by the Sec-
21 retary or the Attorney General shall not be review-
22 able in any debarment proceeding.

23 “(2) EFFECT OF INDICTMENTS OR OTHER AC-
24 TIONS.—Indictments for violations of this section or
25 adequate evidence of actions that could form the

1 basis for debarment under this subsection shall be
2 considered a cause for suspension under the proce-
3 dures and standards for suspension prescribed by
4 the Federal Acquisition Regulation.

5 “(3) INADVERTENT VIOLATIONS.—Inadvertent
6 violations of recordkeeping or verification require-
7 ments, in the absence of any other violations of this
8 section, shall not be a basis for determining that an
9 employer is a repeat violator for purposes of this
10 subsection.

11 “(4) OTHER REMEDIES AVAILABLE.—Nothing
12 in this subsection shall be construed to modify or
13 limit any remedy available to any agency or official
14 of the Federal Government for violation of any con-
15 tractual requirement to participate in the System, as
16 provided in the final rule published at 73 Federal
17 Register 67,651 (Nov. 14, 2008), or any subsequent
18 amendments to such rule.

19 “(h) PREEMPTION.—The provisions of this section
20 preempt any State or local law, contract license, or other
21 standard, requirement, action or instrument from—

22 “(1) imposing sanctions or liabilities for em-
23 ploying, or recruiting or referring for employment,
24 unauthorized aliens, or for working without employ-
25 ment authorization;

1 “(2) requiring those hiring, recruiting, or refer-
2 ring individuals for employment to ascertain or
3 verify the individuals’ employment authorization or
4 to participate in an employment authorization
5 verification system, or requiring individuals to dem-
6 onstrate employment authorization; and

7 “(3) requiring, authorizing or permitting the
8 use of an employment verification system, unless
9 otherwise mandated by Federal law, for any other
10 purpose, including verifying the status of renters,
11 determining eligibility for receipt of benefits, enroll-
12 ment in school, obtaining or retaining a business li-
13 cense or other license, or conducting a background
14 check.

15 “(i) BACKPAY REMEDIES.—Neither backpay nor any
16 other monetary remedy for unlawful employment prac-
17 tices, workplace injuries or other causes of action giving
18 rise to liability shall be denied to a present or former em-
19 ployee on account of—

20 “(1) the employer’s or the employee’s failure to
21 comply with the requirements of this section in es-
22 tablishing or maintaining the employment relation-
23 ship; the employee’s violation of the provisions of
24 federal law related to the employment verification
25 system set forth in subsection (a); or’

1 “(2) the employee’s continuing status as an un-
2 authorized alien both during and after termination
3 of employment.

4 “(j) DEPOSIT OF AMOUNTS RECEIVED.—Except as
5 otherwise specified, civil penalties collected under this sec-
6 tion shall be deposited by the Secretary into the Immigra-
7 tion Reform Penalty Account.

8 “(k) CHALLENGES TO VALIDITY OF THE SYSTEM.—

9 “(1) IN GENERAL.—Any right, benefit, or claim
10 not otherwise waived or limited pursuant to this sec-
11 tion is available in an action instituted in the United
12 States District Court for the District of Columbia,
13 but shall be limited to determinations of—

14 “(A) whether this section, or any regula-
15 tion issued to implement this section, violates
16 the Constitution of the United States; or

17 “(B) whether such a regulation issued by
18 or under the authority of the Secretary to im-
19 plement this section, is contrary to applicable
20 provisions of this section or was issued in viola-
21 tion of title 5, chapter 5, United States Code.

22 “(2) DEADLINES FOR BRINGING ACTIONS.—
23 Any action instituted under this subsection shall be
24 filed not later than 180 days after the date of the
25 implementation of the challenged section or regula-

1 tion described in subparagraph (A) or (B) of para-
2 graph (1).

3 “(3) CONSTRUCTION.—In determining whether
4 the Secretary’s interpretation regarding any provi-
5 sion of this section is contrary to law, a court shall
6 accord to such interpretation the maximum def-
7 erence permissible under the Constitution.

8 “(1) PRIVATE RIGHT OF ACTION.—Any person or en-
9 tity who is injured in his business or property by reason
10 of the employment of an unauthorized alien by any other
11 person or entity may sue such other person or entity in
12 any district court of the United States in the district in
13 which the defendant resides or is found or has an agent,
14 without respect to the amount in controversy, and shall
15 recover threefold the damages sustained, and the cost of
16 suit, including reasonable attorney’s fees. The award of
17 interest, and the amount of damages payable to foreign
18 states and instrumentalities of foreign states, shall be de-
19 termined in the manner provided by section 15 of title 15,
20 United States Code. The provision shall become effective
21 3 years after the date of the enactment of the CIR Act
22 of 2011 and shall apply only to injury occurring after the
23 effective date.

24 “(m) CRIMINAL PENALTIES AND INJUNCTIONS FOR
25 PATTERN OR PRACTICE VIOLATIONS.—

1 “(1) PATTERN AND PRACTICE.—Any employer
2 who engages in a pattern or practice of knowing vio-
3 lations of paragraph (1)(A) or (2) of subsection (a)
4 shall be fined under title 18, United States Code,
5 imprisoned for not more than 3 years for the entire
6 pattern or practice, or both.

7 “(2) ENJOINING OF PATTERN OR PRACTICE
8 VIOLATIONS.—Whenever the Secretary or the Attor-
9 ney General has reasonable cause to believe that an
10 employer is engaged in a pattern or practice of em-
11 ployment in violation of paragraph (1)(A) or (2) of
12 subsection (a), the Attorney General may bring a
13 civil action in the appropriate district court of the
14 United States requesting such relief, including a per-
15 manent or temporary injunction, restraining order,
16 or other order against the employer, as the Sec-
17 retary or Attorney General determines to be nec-
18 essary.

19 “(n) CRIMINAL PENALTIES FOR UNLAWFUL EM-
20 PLOYMENT.—

21 “(1) UNAUTHORIZED ALIENS.—Any person
22 who, during any 12-month period, knowingly em-
23 ploys or hires for employment 10 or more individuals
24 within the United States knowing that the individ-
25 uals are unauthorized aliens (as defined in sub-

1 section (b)(1) of this section) shall be fined under
2 title 18, United States Code, imprisoned for not
3 more than 5 years, or both.

4 “(2) ABUSIVE EMPLOYMENT.—Any person who,
5 during any 12-month period, knowingly employs or
6 hires for employment 10 or more individuals within
7 the United States—

8 “(A) knowing that the individuals are un-
9 authorized aliens; and

10 “(B) under conditions that violate section
11 206 or 207 of title 29, United States Code (re-
12 lating to minimum wages and maximum hours
13 of employment),

14 shall be fined under title 18, United States Code, or
15 imprisoned for not more than 10 years, or both.

16 “(3) ATTEMPT AND CONSPIRACY.—Any person
17 who attempts or conspires to commit any offense
18 under this subsection shall be punished in the same
19 manner as a person who completes the offense.”.

20 (b) CONFORMING AMENDMENT.—Section 274(a)(3)
21 of the Immigration and Nationality Act (8 U.S.C.
22 1324(a)(3)) is repealed.

1 **SEC. 172. COMPLIANCE BY DEPARTMENT OF HOMELAND**
2 **SECURITY CONTRACTORS WITH CONFIDEN-**
3 **TIALITY SAFEGUARDS.**

4 (a) IN GENERAL.—Section 6103(p) of the Internal
5 Revenue Code is amended by adding at the end the fol-
6 lowing new paragraph:

7 “(9) DISCLOSURE TO DEPARTMENT OF HOME-
8 LAND SECURITY.—Notwithstanding any other provi-
9 sion of this section, no return or return information
10 shall be disclosed to any contractor of the Depart-
11 ment of Homeland Security unless such Department,
12 to the satisfaction of the Secretary of the Treas-
13 ury—

14 “(A) has requirements in effect that re-
15 quire each such contractor that would have ac-
16 cess to returns or return information to provide
17 safeguards (within the meaning of paragraph
18 (4)) to protect the confidentiality of such re-
19 turns or return information;

20 “(B) agrees to conduct an on-site review
21 every 3 years (mid-point review in the case of
22 contracts or agreements of less than 3 years in
23 duration) of each contractor to determine com-
24 pliance with such requirements;

25 “(C) submits the findings of the most re-
26 cent review conducted under subparagraph (B)

1 to the Secretary as part of the report required
2 by paragraph (4)(E); and

3 “(D) certifies to the Secretary for the most
4 recent annual period that such contractor is in
5 compliance with all such requirements, which
6 shall include the name and address of each con-
7 tractor, a description of the contract or agree-
8 ment with such contractor, and the duration of
9 such contract or agreement.”.

10 (b) CONFORMING AMENDMENTS.—

11 (1) Section 6103(p)(8)(B) of such Code is
12 amended by inserting “or paragraph (9)” after
13 “subparagraph (A)”.

14 (2) Section 7213(a)(2) of such Code is amended
15 by striking “or (20)” and inserting “(20), or (21)”.

16 (c) REPEAL OF REPORTING REQUIREMENTS.—

17 (1) REPORT ON EARNINGS OF ALIENS NOT AU-
18 THORIZED TO WORK.—Subsection (c) of section 290
19 of the Immigration and Nationality Act (8 U.S.C.
20 1360) is repealed.

21 (2) REPORT ON FRAUDULENT USE OF SOCIAL
22 SECURITY ACCOUNT NUMBERS.—Subsection (b) of
23 section 414 of the Illegal Immigration Reform and
24 Immigrant Responsibility Act of 1996 (division C of

1 Public Law 104–208; 8 U.S.C. 1360 note) is re-
2 pealed.

3 **SEC. 173. INCREASING SECURITY AND INTEGRITY OF SO-**
4 **CIAL SECURITY CARDS.**

5 (a) FRAUD RESISTANT, TAMPER-RESISTANT, AND
6 WEAR-RESISTANT SOCIAL SECURITY CARDS.—

7 (1) ISSUANCE.—

8 (A) PRELIMINARY WORK.—Not later than
9 180 days after the date of the enactment of this
10 Act, the Commissioner of Social Security shall
11 begin work to administer and issue fraud-resist-
12 ant, tamper-resistant, and wear-resistant Social
13 Security cards.

14 (B) COMPLETION.—Not later than 2 years
15 after the date of the enactment of this Act, the
16 Commissioner of Social Security shall issue only
17 fraud-resistant, tamper-resistant and wear-re-
18 sistant Social Security cards.

19 (2) AMENDMENT.—Section 205(c)(2)(G) of the
20 Social Security Act (42 U.S.C. 405(c)(2)(G)) is
21 amended to read—

22 “(i) The Commissioner of Social Secu-
23 rity shall issue a Social Security card to
24 each individual at the time of the issuance
25 of a Social Security account number to

1 such individual. The Social Security card
2 shall be fraud-resistant, tamper-resistant
3 and wear-resistant.”.

4 (3) AUTHORIZATION OF APPROPRIATIONS.—

5 There are authorized to be appropriated such sums
6 as may be necessary to carry out this subsection and
7 the amendments made by this subsection.

8 (b) MULTIPLE CARDS.—Section 205(e)(2)(G) of the
9 Social Security Act (42 U.S.C. 405(e)(2)(G)) is further
10 amended by adding at the end the following:

11 “(ii) The Commissioner of Social Se-
12 curity shall not issue a replacement Social
13 Security card to any individual unless the
14 Commissioner determines that the purpose
15 for requiring the issuance of the replace-
16 ment document is legitimate.”.

17 (c) CRIMINAL PENALTIES.—Section 208(a) of the
18 Social Security Act (42 U.S.C. 408(a)) is amended—

19 (1) by amending paragraph (7) to read as fol-
20 lows:

21 “(7) for any purpose—

22 “(A) knowingly uses a Social Security ac-
23 count number or social security card knowing
24 that the number or card was obtained from the
25 Commissioner of Social Security by means of

1 fraud or false statement with the intent to de-
2 fraud the actual holder of the number or card;

3 “(B) knowingly and falsely represents a
4 number to be the Social Security account num-
5 ber assigned by the Commissioner of Social Se-
6 curity to him or to another person, when in fact
7 such number is not the Social Security account
8 number assigned by the Commissioner of Social
9 Security to him or to such other person with
10 the intent to defraud the actual holder of the
11 number or card;

12 “(C) knowingly sells, or possesses with in-
13 tent sell a Social Security account number or a
14 Social Security card that is or purports to be a
15 number or card issued by the Commissioner of
16 Social Security; or

17 “(D) knowingly alters, counterfeits, forges,
18 or falsely makes a Social Security account num-
19 ber or a Social Security card;

20 “(E) knowingly distributes a social security
21 account number or a Social Security card know-
22 ing the number or card to be altered, counter-
23 feited, forged, falsely made, or stolen; or;”;

24 (2) in paragraph (8)—

1 (A) by inserting the word “knowingly” im-
2 mediately before the word “discloses”;

3 (B) by inserting the word “account” imme-
4 diately after the word “security”; and

5 (C) by adding “or” at the end of the para-
6 graph;

7 (3) by inserting immediately after paragraph
8 (8) the following:

9 “(9) without lawful authority, knowingly pro-
10 duces or acquires for any person a Social Security
11 account number, a Social Security card, or a number
12 or card that purports to be a Social Security account
13 number or Social Security card;”;

14 (4) in the undesignated penalty language at the
15 end of subsection (a), by striking the word “five”
16 and inserting the word “ten”.

17 (d) CONSPIRACY AND DISCLOSURE.—Section 208 of
18 the Social Security Act (42 U.S.C. 408) is amended by
19 adding at the end the following:

20 “(f) Whoever attempts or conspires to violate any
21 criminal provision within this section shall be punished in
22 the same manner as a person who completes a violation
23 of that provision.”.

1 **SEC. 174. INCREASING SECURITY AND INTEGRITY OF IMMI-**
2 **GRATION DOCUMENTS.**

3 Not later than 1 year after the date of the enactment
4 of this Act, the Secretary shall—

5 (1) issue only machine-readable, tamper-resist-
6 ant employment authorization documents that use
7 biometric identifiers; and

8 (2) submit a report to Congress that describes
9 the feasibility, advantages, and disadvantages of
10 issuing a document described in paragraph (1) to
11 any nonimmigrant alien authorized for employment
12 with a specific employer.

13 **SEC. 175. RESPONSIBILITIES OF THE SOCIAL SECURITY AD-**
14 **MINISTRATION.**

15 Section 205(c)(12) of the Social Security Act, 42
16 U.S.C. 405(c)(2), is amended by adding at the end the
17 following new subparagraph:

18 “(A) RESPONSIBILITIES OF THE COMMIS-
19 SIONER OF SOCIAL SECURITY.—

20 “(i) As part of the verification system,
21 the Commissioner of Social Security shall,
22 subject to the provisions of section
23 274A(d) of the Immigration and Nation-
24 ality Act, establish a reliable, secure meth-
25 od that, operating through the System and
26 within the time periods specified in section

1 274A(d) of the Immigration and Nation-
2 ality Act:

3 “(I) Compares the name, date of
4 birth, Social Security account number
5 and available citizenship information
6 provided in an inquiry against such
7 information maintained by the Com-
8 missioner in order to confirm (or not
9 confirm) the validity of the informa-
10 tion provided regarding an individual
11 whose identity and employment eligi-
12 bility shall be confirmed.

13 “(II) Determines the correspond-
14 ence of the name, number, and any
15 other identifying information.

16 “(III) Determines whether the
17 name and number belong to an indi-
18 vidual who is deceased.

19 “(IV) Determines whether an in-
20 dividual is a national of the United
21 States (when available).

22 “(V) Determines whether the in-
23 dividual has presented a Social Secu-
24 rity account number that is not valid
25 for employment.

1 The System shall not disclose or release
2 Social Security information to employers
3 through the confirmation system (other
4 than such confirmation or nonconfirma-
5 tion, information provided by the employer
6 to the System, or the reason for the
7 issuance of a further action notice).

8 “(ii) SOCIAL SECURITY ADMINISTRA-
9 TION DATABASE IMPROVEMENTS.—For
10 purposes of preventing identity theft, pro-
11 tecting employees, and reducing burden on
12 employers, and notwithstanding section
13 6103 of the Internal Revenue Code of
14 1986, the Commissioner of Social Security,
15 in consultation with the Secretary of
16 Homeland Security, shall review the Social
17 Security Administration databases and in-
18 formation technology to identify any defi-
19 ciencies and discrepancies related to name,
20 birth date, citizenship status, or death
21 records of the Social Security accounts and
22 Social Security account holders likely to
23 contribute to fraudulent use of documents,
24 or identity theft, or to affect the proper
25 functioning of the System, and shall cor-

1 rect any identified errors. The Commis-
 2 sioner shall ensure that a system for iden-
 3 tifying and correcting such deficiencies and
 4 discrepancies is adopted to ensure the ac-
 5 curacy of the Social Security Administra-
 6 tion’s databases.

7 “(iii) NOTIFICATION TO SUSPEND USE
 8 OF SOCIAL SECURITY NUMBER.—The Com-
 9 missioner of Social Security, in consulta-
 10 tion with the Secretary of Homeland Secu-
 11 rity, may establish a secure process where-
 12 by an individual can request that the Com-
 13 missioner preclude any confirmation under
 14 the System based on that individual’s So-
 15 cial Security number until it is reactivated
 16 by that individual.”.

17 **SEC. 176. ANTIDISCRIMINATION PROTECTIONS.**

18 (a) AMENDMENTS.—Section 274B (8 U.S.C. 1324b)
 19 is amended—

20 (1) by amending subsection (a) to read as fol-
 21 lows:

22 “(a) PROHIBITION OF DISCRIMINATION BASED ON
 23 NATIONAL ORIGIN OR CITIZENSHIP STATUS.—

24 “(1) IN GENERAL.—It is an unfair immigra-
 25 tion-related employment practice for a person or

1 other entity to discriminate against any individual,
2 because of such individual's national origin or citi-
3 zenship status, with respect to the hiring of the indi-
4 vidual for employment, the verification of the indi-
5 vidual's eligibility for employment through the Sys-
6 tem described in section 274A(d), the compensation,
7 terms, conditions, or privileges of the employment of
8 the individual, or the discharging of the individual
9 from employment.

10 “(2) EXCEPTIONS.—Paragraph (1) shall not
11 apply to—

12 “(A) a person or other entity that employs
13 3 or fewer employees, except for an employment
14 agency, as defined in paragraph (9);

15 “(B) a person's or entity's discrimination
16 because of an individual's national origin if the
17 discrimination with respect to that person or
18 entity and that individual is covered under sec-
19 tion 703 of the Civil Rights Act of 1964 (42
20 U.S.C. 2000e-2);

21 “(C) discrimination because of citizenship
22 status which is otherwise required in order to
23 comply with law, regulation, or executive order,
24 or required by Federal, State, or local govern-
25 ment contract, or which the Attorney General

1 determines to be essential for an employer to do
2 business with an agency or department of the
3 Federal, State, or local government.

4 “(3) ADDITIONAL EXCEPTION PROVIDING
5 RIGHT TO PREFER EQUALLY QUALIFIED CITIZENS.—
6 Notwithstanding any other provision of this section,
7 it is not an unfair immigration-related employment
8 practice for a person or other entity to prefer to
9 hire, recruit, or refer an individual who is a citizen
10 or national of the United States over another indi-
11 vidual who is an alien if the two individuals are
12 equally qualified.

13 “(4) UNFAIR IMMIGRATION-RELATED EMPLOY-
14 MENT PRACTICES AND THE SYSTEM.—It is also an
15 unfair immigration-related employment practice for
16 a person or other entity—

17 “(A) to terminate the employment of an
18 individual or take any adverse employment ac-
19 tion with respect to that individual (including
20 any change in the terms and conditions of em-
21 ployment of the individual) due to a further ac-
22 tion notice issued by the System, or the individ-
23 ual’s decision to challenge or appeal any System
24 determination;

1 “(B) to use the System with regard to any
2 person who is not an employee;

3 “(C) to use the System to reverify the em-
4 ployment authorization of a current employee,
5 other than reverification upon expiration of em-
6 ployment authorization, or as otherwise author-
7 ized under section 274A(d) or by Executive
8 Order;

9 “(D) to use the System selectively to ex-
10 clude certain individuals from consideration for
11 employment as a result of a perceived likelihood
12 that additional verification will be required, be-
13 yond what is required for most newly hired in-
14 dividuals;

15 “(E) to fail to provide any required notice
16 to a current employee within the relevant time
17 period;

18 “(F) to use the System to deny workers’
19 employment benefits or otherwise interfere with
20 their labor rights;

21 “(G) to use the System for any discrimina-
22 tory or retaliatory purpose;

23 “(H) to use the System to prescreen an in-
24 dividual for employment; and

1 “(I) to use an immigration status
2 verification system or service other than those
3 described in section 274A for purposes of
4 verifying employment eligibility under that sec-
5 tion.

6 “(5) PROHIBITION OF INTIMIDATION OR RETAL-
7 IATION.—It is also an unfair immigration-related
8 employment practice for a person or other entity to
9 intimidate, threaten, coerce, or retaliate against any
10 individual for the purpose of interfering with any
11 right or privilege secured under this section or be-
12 cause the individual intends to file or has filed a
13 charge or a complaint, testified, assisted, or partici-
14 pated in any manner in an investigation, proceeding,
15 or hearing under this section.

16 “(6) TREATMENT OF CERTAIN DOCUMENTARY
17 PRACTICES AS EMPLOYMENT PRACTICES.—A per-
18 son’s or other entity’s request, for purposes of satis-
19 fying the requirements of section 274A(b), for more
20 or different documents than are required under such
21 section or refusing to honor documents tendered
22 that reasonably appear to be genuine shall be treat-
23 ed as an unfair immigration-related employment
24 practice in violation of paragraph (1).

1 “(7) BURDEN OF PROOF IN DISPARATE IMPACT
2 CASES.—

3 “(A) An unlawful immigration-related em-
4 ployment practice or unfair employment prac-
5 tice case based on disparate impact is estab-
6 lished only if:

7 “(i) A complaining party dem-
8 onstrates that a respondent uses a par-
9 ticular employment practice that causes a
10 disparate impact on the basis of national
11 origin or citizenship status and the re-
12 spondent fails to demonstrate that the
13 challenged practice is job related for the
14 position in question and consistent with
15 business necessity.

16 “(ii) The complaining party dem-
17 onstrates that an alternative employment
18 practice is available and the respondent re-
19 fuses to adopt such an alternative employ-
20 ment practice. An alternative employment
21 practice is defined as a policy that would
22 satisfy the employer’s legitimate interests
23 without having a disparate impact on a
24 protected class.

1 “(B) With respect to demonstrating that a
2 particular employment practice causes a dis-
3 parate impact as described in subparagraph
4 (A), the complaining party shall demonstrate
5 that each particular challenged employment
6 practice causes a disparate impact, except that
7 if the complaining party can demonstrate to the
8 court that the elements of a respondent’s deci-
9 sion-making process are not capable of separa-
10 tion for analysis, the decision-making process
11 may be analyzed as one employment practice.

12 “(C) If the respondent demonstrates that a
13 specific employment practice does not cause the
14 disparate impact, the respondent shall not be
15 required to demonstrate that such practice is
16 required by business necessity.

17 “(D) A demonstration that an employment
18 practice is required by business necessity may
19 not be used as a defense against a claim of in-
20 tentional discrimination under this statute.

21 “(8) MOTIVATING FACTOR.—Except as other-
22 wise provided in this Act, an unlawful immigration-
23 related unfair employment practice is established
24 when the charging party demonstrates that citizen-
25 ship status or national origin was a motivating fac-

1 tor for any employment practice, even though other
2 factors also motivated the practice.

3 “(9) EMPLOYMENT AGENCY DEFINED.—As
4 used in this section, the term ‘employment agency’
5 means any person or entity regularly undertaking
6 with or without compensation to procure employees
7 for an employer or to procure for employees oppor-
8 tunities to work for an employer and includes an
9 agent of such person or entity.”;

10 (2) in subsection (d), by amending paragraphs
11 (1) and (2) to read as follows:

12 “(1) The Special Counsel shall investigate each
13 charge received and determine whether or not there
14 is reasonable cause to believe that the charge is true
15 and whether or not to bring a complaint with respect
16 to the charge before an administrative law judge.
17 The Special Counsel may, on his or her own initia-
18 tive, conduct investigations respecting unfair immi-
19 gration-related employment practices or unfair em-
20 ployment practices and, based on such an investiga-
21 tion, file a complaint before such judge.

22 “(2) If the Special Counsel, after receiving such
23 a charge respecting an unfair immigration-related
24 employment practice or an unfair employment prac-
25 tice which alleges discriminatory activity or a pat-

1 tern or practice of discriminatory activity, has not
2 filed a complaint before an administrative law judge
3 with respect to such charge within 120 days, the
4 Special Counsel shall notify the person making the
5 charge of the determination not to file such a com-
6 plaint during such period and the person making the
7 charge may file a complaint directly before such
8 judge within 90 days after the date of receipt of the
9 notice.”;

10 (3) in subsection (g)(2)—

11 (A) in subparagraph (A), by inserting be-
12 fore the period “and which requires such af-
13 firmative action as may be appropriate, or any
14 other individual equitable relief as the adminis-
15 trative law judge determines appropriate.”;

16 (B) in subparagraph (B)—

17 (i) in clause (iii), by inserting before
18 the semicolon “, and to provide such other
19 relief as the administrative law judge de-
20 termines appropriate to make the indi-
21 vidual whole”; and

22 (ii) by amending clause (iv) to read as
23 follows—

24 “(iv) to pay any applicable civil pen-
25 alties proscribed below, the amounts of

1 which may be adjusted periodically to ac-
2 count for inflation as provided by law—

3 “(I) except as provided in sub-
4 clauses (II) through (IV), to pay a
5 civil penalty of not less than \$2,000
6 and not more than \$5,000 for each in-
7 dividual subjected to an unfair immi-
8 gration related employment practice;

9 “(II) except as provided in sub-
10 clauses (III) and (IV), in the case of
11 a person or entity previously subject
12 to a single order under this para-
13 graph, to pay a civil penalty of not
14 less than \$4,000 and not more than
15 \$10,000 for each individual subjected
16 to an unfair immigration related em-
17 ployment practice;

18 “(III) except as provided in sub-
19 clause (IV), in the case of a person or
20 entity previously subject to more than
21 one order under this paragraph, to
22 pay a civil penalty of not less than
23 \$8,000 and not more than \$25,000
24 for each individual subjected to an un-

1 fair immigration related employment
2 practice; and

3 “(IV) in the case of an unfair im-
4 migration-related employment practice
5 described in subsection (a)(6) of this
6 section, to pay a civil penalty of not
7 less than \$500 and not more than
8 \$5,000 for each individual subjected
9 to an unfair immigration related em-
10 ployment practice.”;

11 (C) in clause (vii) by striking “and” at the
12 end;

13 (D) in clause (viii), by striking the period
14 at the end and inserting “; and”; and

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

16 “(ix)(I) An order of the administrative
17 law judge may not require the admission
18 or reinstatement of an individual as a
19 member of a union, or the hiring, rein-
20 statement, or promotion of an individual as
21 an employee, if such individual was refused
22 admission, suspended, or expelled, or was
23 refused employment or advancement or
24 was suspended or discharged more likely
25 that not, for any reason other than dis-

1 crimination on account of citizenship sta-
2 tus or national origin or in violation of this
3 section.

4 “(II) On a claim in which an indi-
5 vidual proves a violation under paragraph
6 (a)(9) and a respondent demonstrates that
7 the respondent would have taken the same
8 action in the absence of the impermissible
9 motivating factor, the administrative law
10 judge may grant declaratory relief, injunc-
11 tive relief (except as provided in clause
12 (b)(2)), and attorney’s fees and costs dem-
13 onstrated to be directly attributable only to
14 the pursuit of a claim under paragraph
15 (a)(9); and shall not award damages or
16 issue an order requiring any admission, re-
17 instatement, hiring, promotion, or pay-
18 ment, described in subparagraph (I).”;

19 (4) in subsection (l)(3), by inserting “and an
20 additional \$40,000,000 for each of fiscal years 2012
21 through 2014” before the period at the end; and

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

23 “(m) REPORTS.—The Secretary of Homeland Secu-
24 rity shall make transactional data and citizenship status

1 data related to the System available upon request by the
2 Special Counsel.

3 “(n) RECORDS.—

4 “(1) IN GENERAL.—Every employer, employ-
5 ment agency, and labor organization subject to this
6 section shall—

7 “(A) make and keep such records relevant
8 to the determinations of whether unlawful em-
9 ployment practices have been or are being com-
10 mitted;

11 “(B) preserve such records for such peri-
12 ods; and

13 “(C) make reports from such records as
14 prescribed by the Special Counsel, by regulation
15 or order, after public hearing, as reasonable,
16 necessary, or appropriate for the enforcement of
17 this section.

18 “(2) COOPERATION.—The Special Counsel
19 may—

20 “(A) cooperate with State and local agen-
21 cies charged with the administration of State
22 fair employment practices laws;

23 “(B) with the consent of the agencies re-
24 ferred to in subparagraph (A), for the purpose
25 of carrying out its functions and duties under

1 this section, and within the limitation of funds
2 appropriated specifically for such purpose—

3 “(i) engage in and contribute to the
4 cost of research and other projects of mu-
5 tual interest undertaken by such agencies;

6 “(ii) utilize the services of such agen-
7 cies and their employees; and

8 “(iii) notwithstanding any other provi-
9 sion of law, pay by advance or reimburse-
10 ment such agencies and their employees
11 for services rendered to assist the Special
12 Counsel in carrying out this section.

13 “(C) in furtherance of the cooperative ef-
14 forts under this paragraph, enter into written
15 agreements with such State or local agencies,
16 which—

17 “(i) may include provisions under
18 which the Special Counsel shall refrain
19 from processing a charge in any cases or
20 class of cases specified in such agreements
21 or under which the Special Counsel shall
22 relieve any person or class of persons in
23 such State or locality from requirements
24 imposed under this section; and

1 “(ii) shall be rescinded if the Special
2 Counsel determines that the agreement no
3 longer serves the interest of effective en-
4 forcement of this section.”.

5 (b) **EFFECTIVE DATE.**—The amendments made by
6 this section shall take effect on the date of the enactment
7 of this Act and shall apply to violations occurring on or
8 after such date.

9 **SEC. 177. IMMIGRATION ENFORCEMENT SUPPORT BY THE**
10 **INTERNAL REVENUE SERVICE AND THE SO-**
11 **CIAL SECURITY ADMINISTRATION.**

12 (a) **INCREASE IN PENALTY ON EMPLOYER FAILING**
13 **TO FILE CORRECT INFORMATION RETURNS.**—Section
14 6721 of the Internal Revenue Code of 1986 (relating to
15 failure to file correct information returns) is amended—

16 (1) in subsection (a)(1)—

17 (A) by striking “\$100” and inserting
18 “\$200”; and

19 (B) by striking “\$1,500,000” and insert-
20 ing “\$2,000,000”;

21 (2) in subsection (b)(1)—

22 (A) in subparagraph (A), by striking “\$30
23 in lieu of \$100” and inserting “\$60 in lieu of
24 \$200”; and

1 (B) in subparagraph (B), by striking
2 “\$250,000” and inserting “\$300,000”;

3 (3) in subsection (b)(2)—

4 (A) in subparagraph (A), by striking “\$60
5 in lieu of \$100” and inserting “\$120 in lieu of
6 \$200”; and

7 (B) in subparagraph (B), by striking
8 “\$500,000” and inserting “\$600,000”;

9 (4) in subsection (d)—

10 (A) in the subsection heading, by striking
11 “\$5,000,000” and inserting “\$2,000,000”;

12 (B) in paragraph (1)(B), by striking
13 “‘\$75,000’ for ‘\$250,000’” and inserting
14 “‘\$100,000’ for ‘\$300,000’”;

15 (C) in paragraph (1)(C), by striking
16 “‘\$200,000’ for ‘\$500,000’” and inserting
17 “‘\$200,000’ for ‘\$600,000’”; and

18 (D) in paragraph (2)(A), by striking
19 “\$5,000,000” and inserting “\$2,000,000”; and

20 (5) in subsection (e)—

21 (A) in paragraph (2)—

22 (i) in the matter preceding subpara-
23 graph (A), by striking “\$250” and insert-
24 ing “\$400”;

1 (ii) in subparagraph (C)(i), by strik-
2 ing “\$25,000” and inserting “\$100,000”;
3 and

4 (iii) in subparagraph (C)(ii), by strik-
5 ing “\$100,000” and inserting “\$400,000”;
6 and

7 (B) in paragraph (3)(A), by striking
8 “\$1,500,000” and inserting “\$2,000,000”.

9 (b) EFFECTIVE DATE.—The amendments made by
10 subsection (a) shall apply to failures occurring after the
11 date of the enactment of this Act.

12 **SEC. 178. ENHANCED VERIFICATION SYSTEM.**

13 (a) RIGHT TO REVIEW AND CORRECT SYSTEM IN-
14 FORMATION.—The Secretary, in consultation with the
15 Commissioner of Social Security, shall establish—

16 (1) procedures to permit an individual—

17 (A) to verify the individual’s eligibility for
18 employment in the United States before obtain-
19 ing or changing employment;

20 (B) to view the individual’s own records in
21 the Enhanced Verification System in order to
22 ensure the accuracy of such records; and

23 (C) to correct or update the information
24 used by the System regarding the individual by

1 electronic means, to the greatest extent prac-
2 ticable; and

3 (2) procedures for establishing an Enhanced
4 Verification System under subsection (b) through
5 which an individual who has viewed the individual's
6 own record may electronically—

7 (A) block the use of the individual's Social
8 Security number under the System; and

9 (B) remove such block in order to—

10 (i) prevent the fraudulent or other
11 misuse of a Social Security account num-
12 ber;

13 (ii) prevent employer misuse of the
14 system;

15 (iii) protect privacy; and

16 (iv) limit erroneous nonconfirmations
17 during employment verification.

18 (b) ENHANCED VERIFICATION SYSTEM.—

19 (1) IN GENERAL.—The Secretary, in consulta-
20 tion with the Commissioner of Social Security, shall
21 establish a voluntary self-verification system to allow
22 an individual to submit biometric information, verify
23 the individual's own record, and to block and
24 unblock the use of the individual's Social Security
25 number in order to prevent the fraudulent or other

1 misuse of the individual's Social Security number
2 during employment verification, to prevent employer
3 misuse of the system, to protect privacy, and to limit
4 erroneous non-confirmations during employment
5 verification.

6 (2) VOLUNTARY ENROLLMENT.—An individual
7 may enroll in the Enhanced Verification System on
8 a voluntary basis.

9 (3) ELECTRONIC ACCESS.—The Secretary shall
10 establish procedures allowing individuals to use a
11 Personal Identification Number (PIN) or other bio-
12 graphic information to authenticate the individual's
13 identity and to block and unblock the individual's
14 Social Security number electronically.

15 (4) USE OF ENHANCED VERIFICATION SYSTEM
16 RECEIPT FOR PURPOSE OF EMPLOYMENT
17 VERIFICATION.—The Secretary shall establish proce-
18 dures to allow an individual who has authenticated
19 the individual's identity and unblocked the individ-
20 ual's Social Security number to receive a single –use
21 code as a receipt indicating that the individual is
22 work authorized and has self-verified, and proce-
23 dures to allow the individual to use the single-use
24 code in place of the identity and eligibility docu-
25 ments described in this section.

1 (5) EXPEDITED REVIEW PROCESS.—The Sec-
2 retary shall establish an expedited review process to
3 allow an individual who has authenticated the indi-
4 vidual’s identity and unblocked the individual’s So-
5 cial Security number immediately to correct user or
6 system errors which result in an erroneous non-con-
7 firmation of work eligibility.

8 (6) REPORTS.—

9 (A) SYSTEM ASSESSMENT.—Not later than
10 3 months after the end of the third and fourth
11 years in which the programs are in effect, the
12 Secretary shall submit reports to the Committee
13 on the Judiciary of the Senate and the Com-
14 mittee on the Judiciary of the House of Rep-
15 resentatives on the Enhanced Verification Sys-
16 tem that—

17 (i) assesses the degree of fraudulent
18 attesting of United States citizenship;

19 (ii) assesses the benefits of the En-
20 hanced Verification System to employers
21 and the degree to which it assists in the
22 enforcement of section 274A of the Immi-
23 gration and Nationality Act;

24 (iii) assesses the benefits of the En-
25 hanced Verification System to individuals

1 and the degree to which they prevent mis-
2 use of the System and erroneous non-con-
3 firmations during employment verification;

4 (iv) determines whether the Enhanced
5 Verification System reduces discrimination
6 during the employment verification proc-
7 ess;

8 (v) assesses the degree to which the
9 Enhanced Verification System protects em-
10 ployee civil liberties and privacy; and

11 (vi) includes recommendations on
12 whether the Enhanced Verification System
13 should be continued or modified.

14 (B) REPORT ON EXPANSION.—Not later
15 than July 1, 2016, the Secretary shall submit
16 a report shall to the committees referred to in
17 subparagraph (A) that—

18 (i) evaluates whether the problems
19 identified by the reports submitted under
20 subparagraph (A) have been substantially
21 resolved; and

22 (ii) describes the actions to be taken
23 by the Secretary before requiring any indi-
24 vidual to participate in the Enhanced
25 Verification System.

1 (7) LIMITATION ON USE OF THE CONFIRMA-
2 TION SYSTEM AND ANY RELATED SYSTEMS.—Not-
3 withstanding any other provision of law, nothing in
4 this section may be construed to permit any depart-
5 ment, bureau, or other agency of the United States
6 Government to utilize any information, database, or
7 other records assembled under this section for any
8 other purpose other than as provided for under the
9 Enhanced Verification System.

10 **SEC. 179. AUTHORIZATION OF APPROPRIATIONS.**

11 (a) DEPARTMENT OF HOMELAND SECURITY.—There
12 are authorized to be appropriated to the Department such
13 sums as may be necessary to carry out this subtitle, and
14 the amendments made by this subtitle, including the fol-
15 lowing:

16 (1) In each of the 5 years beginning on the date
17 of the enactment of this Act, the appropriations nec-
18 essary to increase to a level not less than 4500, by
19 the end of such five-year period, the total number of
20 personnel of the Department of Homeland Security
21 assigned exclusively or principally to an office or of-
22 fices in U.S. Citizenship and Immigration Services
23 and U.S. Immigration and Customs Enforcement
24 (and consistent with the missions of such agencies),
25 dedicated to administering the System, and moni-

1 toring and enforcing compliance with sections 274A,
2 274B, and 274C of the Immigration and Nationality
3 Act (8 U.S.C. 1324a, 1324b, and 1324c), including
4 compliance with the requirements of the System.
5 These personnel shall perform compliance and moni-
6 toring functions, including the following:

7 (A) Verify Employment Identification
8 Numbers of employers participating in the Sys-
9 tem.

10 (B) Verify compliance of employers partici-
11 pating in the System with the requirements for
12 participation that are prescribed by the Sec-
13 retary.

14 (C) Monitor the System for multiple uses
15 of Social Security numbers and immigration
16 identification numbers that could indicate iden-
17 tity theft or fraud.

18 (D) Monitor the System to identify dis-
19 criminatory or unfair practices.

20 (E) Monitor the System to identify employ-
21 ers who are not using the system properly, in-
22 cluding employers who fail to make available
23 appropriate records with respect to their queries
24 and any notices of confirmation, nonconfirma-
25 tion, or further action.

1 (F) Identify instances where employees al-
2 lege that an employer violated their privacy,
3 civil or labor rights, or misused the System, and
4 create procedures for employees to report such
5 allegations.

6 (G) Analyze and audit the use of the Sys-
7 tem and the data obtained through the System
8 to identify fraud trends, including fraud trends
9 across industries, geographical areas, or em-
10 ployer size.

11 (H) Analyze and audit the use of the Sys-
12 tem and the data obtained through the System
13 to develop compliance tools as necessary to re-
14 spond to changing patterns of fraud.

15 (I) Provide employers with additional
16 training and other information on the proper
17 use of the System, including but not limited to
18 privacy training and employee rights.

19 (J) Perform threshold evaluation of cases
20 for referral to the Special Counsel for Unfair
21 Immigration-Related Employment Practices or
22 the Equal Employment Opportunity Commis-
23 sion, and other officials or agencies with re-
24 sponsibility for enforcing anti-discrimination,

1 civil rights, privacy or worker protection laws,
2 as may be appropriate.

3 (K) Any other compliance and monitoring
4 activities that, in the Secretary's judgment, are
5 necessary to ensure the functioning of the Sys-
6 tem.

7 (L) Investigate identity theft and fraud de-
8 tected through the System and undertake the
9 necessary enforcement or referral actions.

10 (M) Investigate use of or access to fraudu-
11 lent documents and undertake the necessary en-
12 forcement actions.

13 (N) Perform any other investigations that,
14 in the Secretary's judgment, are necessary to
15 ensure the lawful functioning of the System,
16 and undertake any enforcement actions nec-
17 essary as a result of these investigations.

18 (2) The appropriations necessary to acquire, in-
19 stall and maintain technological equipment necessary
20 to support the functioning of the System and the
21 connectivity between U.S. Citizenship and Immigra-
22 tion Services and U.S. Immigration and Customs
23 Enforcement, Department of Justice, and other
24 agencies or officials with respect to the sharing of

1 information to support the System and related immi-
2 gration enforcement actions.

3 (3) The appropriations necessary to establish a
4 robust redress process for employees who wish to ap-
5 peal contested nonconfirmations to ensure the accu-
6 racy and fairness of the System.

7 (4) The appropriations necessary to provide a
8 means by which individuals may access their own
9 employment authorization data to ensure its accu-
10 racy independent of their employer.

11 (5) The appropriations necessary to establish a
12 Joint Employment Fraud Task Force to promote
13 employer compliance with the system and ensure a
14 coordinated response to noncompliance.

15 (6) The appropriations necessary for the Office
16 for Civil Rights and Civil Liberties and the Office of
17 Privacy to perform their responsibilities as they re-
18 late to the System.

19 (7) The appropriations necessary to make
20 grants to states to support them in assisting the fed-
21 eral government in carrying out the provisions of
22 this subtitle.

23 (b) SOCIAL SECURITY ADMINISTRATION.—There are
24 authorized to be appropriated to the Social Security Ad-
25 ministration such sums as may be necessary to carry out

1 its responsibilities under this subtitle, including section
2 177.

3 (c) DEPARTMENT OF JUSTICE.—There are author-
4 ized to be appropriated to the Department of Justice such
5 sums as may be necessary to carry out its responsibilities
6 under this subtitle, including enforcing compliance with
7 section 274B of the Act, as amended by section 176 of
8 this Act.

9 (d) DEPARTMENT OF STATE.—There are authorized
10 to be appropriated to the Department of State such sums
11 as may be necessary to carry out its responsibilities under
12 this subtitle.

13 **TITLE II—IMMIGRATION**
14 **ENFORCEMENT AND REFORM**
15 **Subtitle A—Border Enforcement**
16 **PART I—ADDITIONAL ASSETS AND RESOURCES**
17 **SEC. 201. EFFECTIVE DATE TRIGGERS.**

18 (a) IN GENERAL.—Notwithstanding any effective
19 date provision or any other law, the status of an alien in
20 lawful prospective immigrant status may not be adjusted
21 to the status of an alien lawfully admitted for permanent
22 residence under section 112 unless—

23 (1) the Secretary has submitted a written cer-
24 tification to the President and Congress that the

1 measures described in subsection (b) are established,
2 funded, and operational; and

3 (2) the Attorney General has submitted a writ-
4 ten certification to the President and Congress that
5 each of the measures described in subsection (c) are
6 established, funded, and operational.

7 (b) MEASURES BY DEPARTMENT OF HOMELAND SE-
8 CURITY.—The measures described in this subsection are
9 established, funded, and operational if—

10 (1) U.S. Immigration and Customs Enforce-
11 ment has—

12 (A) employed not fewer than 6,410 agents
13 to investigate violations of criminal law, includ-
14 ing—

15 (i) document and benefit fraud; and

16 (ii) the cross-border smuggling of
17 aliens, firearms, narcotics, and other con-
18 traband;

19 (B) employed not fewer than 185 worksite
20 enforcement auditors to support a worksite en-
21 forcement strategy that prioritizes developing
22 cases against employers committing serious vio-
23 lations;

24 (C) created and staffed an Immigration
25 Benefit and Document Fraud Task Force in

1 each field office headed by a Special Agent in
2 Charge;

3 (D) established a nationwide plan, with
4 benchmarks, to dramatically increase the na-
5 tionwide enrollment in an alternatives to deten-
6 tion program that utilizes community-based
7 nonprofit organizations; and

8 (E) implemented civil detention standards
9 with which each facility detaining immigrants is
10 required to comply;

11 (2) U.S. Customs and Border Protection has—

12 (A) employed not fewer than 21,000
13 United States Border Patrol agents who have
14 been trained and have reported for duty, includ-
15 ing additional agents who conduct inspections
16 for drugs, contraband, and immigrants who are
17 unlawfully present at ports of entry in the
18 United States;

19 (B) employed not fewer than 21,500 offi-
20 cers who have been trained and have reported
21 for duty at the Office of Field Operations;

22 (C) deployed 7 unmanned aircraft systems;

23 (D) deployed remote video surveillance sys-
24 tems at 300 sites;

25 (E) acquired 200 scope trucks; and

1 (F) acquired 56 mobile surveillance sys-
2 tems; and

3 (3) the Secretary has received and is processing
4 and adjudicating applications under title I in a time-
5 ly manner, including conducting all necessary back-
6 ground and security checks required under such
7 title.

8 (c) MEASURES BY DEPARTMENT OF JUSTICE.—The
9 measures described in this subsection are established,
10 funded, and operational if the Department of Justice
11 has—

12 (1) employed not fewer than 150 Assistant
13 United States Attorneys who prosecute criminal vio-
14 lations at the border; and

15 (2) employed not fewer than 275 immigration
16 judges and appropriate support staff.

17 **SEC. 202. CUSTOMS AND BORDER PROTECTION PER-**
18 **SONNEL.**

19 (a) STAFF ENHANCEMENTS.—

20 (1) REVISIONS TO FISCAL YEAR ALLOCATIONS
21 AND FUNDING.—Title II of the Department of
22 Homeland Security Appropriations Act, 2010 (Pub-
23 lic Law 111–83), is amended by inserting “*Provided*
24 *further*, That of the total amount provided,
25 \$40,000,000 shall be used to pay the salaries and

1 related compensation for 250 additional Customs
2 and Border Protection officers and 25 associated
3 support staff personnel, who shall be devoted to new
4 inspection lanes at new land ports of entry on the
5 Southwest border” before the period at the end of
6 the first paragraph.

7 (2) NEW PERSONNEL.—In addition to positions
8 authorized before the date of the enactment of this
9 Act and any officer vacancies within U.S. Customs
10 and Border Protection on such date, the Secretary
11 shall hire, train, and assign to duty, not later than
12 September 30, 2013—

13 (A) 2,500 full-time Customs and Border
14 Protection officers to serve on all primary, sec-
15 ondary, incoming, and outgoing inspection lanes
16 and enforcement teams at United States land
17 ports of entry on the Northern border;

18 (B) 2,500 full-time Customs and Border
19 Protection officers to serve on all primary, sec-
20 ondary, incoming, and outgoing inspection lanes
21 and enforcement teams at United States land
22 ports of entry on the Southern border; and

23 (C) 350 full-time support staff for all
24 United States ports of entry.

1 (b) WAIVER OF FTE LIMITATION.—The Secretary
2 may waive any limitation on the number of full-time equiv-
3 alent personnel assigned to the Department to comply
4 with subsection (a).

5 (c) REPORT TO CONGRESS.—

6 (1) OUTBOUND INSPECTIONS.—Not later than
7 90 days after the date of the enactment of this Act,
8 the Secretary shall submit a report that describes
9 the Department’s plans for ensuring the placement
10 of sufficient U.S. Customs and Border Protection of-
11 ficers on outbound inspections at all Southern bor-
12 der and Northern border land ports of entry to—

13 (A) the Committee on the Judiciary of the
14 Senate;

15 (B) the Committee on Homeland Security
16 and Governmental Affairs of the Senate;

17 (C) the Committee on the Judiciary of the
18 House of Representatives; and

19 (D) the Committee on Homeland Security
20 of the House of Representatives.

21 (2) AGRICULTURAL SPECIALISTS.—Not later
22 than 90 days after the date of the enactment of this
23 Act, the Secretary, in consultation with the Sec-
24 retary of Agriculture, shall submit a report to the
25 committees set forth in paragraph (1) that contains

1 plans for ensuring the placement of sufficient agri-
2 culture specialists at all Southern border and North-
3 ern border land ports of entry.

4 (d) RETENTION INCENTIVE PAYMENTS.—

5 (1) PAYMENTS AUTHORIZED.—Subject to para-
6 graph (2), during the 6-year period beginning on
7 July 1, 2011, the Secretary may make incentive pay-
8 ments to qualified U.S. Customs and Border Protec-
9 tion port of entry officers, to the extent necessary to
10 retain such officers.

11 (2) SPECIAL RULES FOR INCENTIVE PAY-
12 MENTS.—

13 (A) IN GENERAL.—Each payment made
14 under paragraph (1)—

15 (i) shall be paid to each qualified em-
16 ployee, in a lump sum that does not exceed
17 \$10,000, at the end of the fiscal year in
18 which the employee is selected by the Sec-
19 retary, or a delegate of the Secretary, to
20 receive such payment;

21 (ii) may not be limited solely to work
22 performance, but may be based on criteria
23 such as—

1 (I) comparative salaries for law
2 enforcement officers in other Federal
3 agencies;

4 (II) costs for replacement and
5 training of a new employee; and

6 (III) volume of work at the port
7 of entry;

8 (iii) shall be contingent upon the se-
9 lected employee signing an agreement,
10 under penalty of perjury, to continue serv-
11 ing as a United States Customs and Bor-
12 der Protection officer at a land port of
13 entry for at least 3 additional years; and

14 (iv) shall be subject to reimbursement
15 if the employee fails to complete the 3-year
16 service requirement described in clause (iii)
17 due to voluntary or involuntary separation
18 from service.

19 (B) LIMITATIONS.—

20 (i) TOTAL PAYMENTS.—The total pay-
21 ments under subparagraph (A) may not
22 exceed \$55,000,000.

23 (ii) FISCAL YEARS 2012 THROUGH
24 2016.—In each of the fiscal years 2012
25 through 2016, the Secretary may not make

1 more than 500 incentive payments under
2 this subsection.

3 (iii) ELIGIBILITY.—Any employee who
4 receives a retention incentive payment
5 under this subsection in a fiscal year shall
6 not be eligible to receive another such pay-
7 ment until the employee completes at least
8 2 years of service with the Department
9 after receiving such payment.

10 **SEC. 203. SECURE COMMUNICATION; EQUIPMENT; AND**
11 **GRANTS FOR BORDER PERSONNEL.**

12 (a) SECURE COMMUNICATION.—The Secretary shall
13 ensure that each U.S. Customs and Border Protection of-
14 ficer is equipped with a secure 2-way communication and
15 satellite-enabled device, supported by system interoper-
16 ability, which allows such officers to communicate—

17 (1) between ports of entry and inspection sta-
18 tions; and

19 (2) with other Federal, State, local, and tribal
20 law enforcement entities.

21 (b) BORDER AREA SECURITY INITIATIVE GRANT
22 PROGRAM.—

23 (1) IN GENERAL.—The Secretary shall establish
24 a grant program for the purchase of detection equip-
25 ment at land ports of entry and mobile, hand-held,

1 2-way communication devices for State and local law
2 enforcement officers serving on the Southern border
3 or the Northern border.

4 (2) AUTHORIZATION OF APPROPRIATIONS.—
5 There is authorized to be appropriated, for the 6-
6 year period beginning on October 1, 2011,
7 \$30,000,000, which shall be used for grants author-
8 ized under paragraph (1).

9 **SEC. 204. INFRASTRUCTURE IMPROVEMENTS AND EXPAN-**
10 **SION OF LAND PORTS OF ENTRY.**

11 (a) AMENDMENTS TO AMERICAN RECOVERY AND RE-
12 INVESTMENT ACT OF 2009.—Title VI of the American
13 Recovery and Reinvestment Act of 2009 (Public Law 111-
14 5) is amended, under the heading entitled “Construc-
15 tion”—

16 (1) by striking “U.S. Customs and Border Pro-
17 tection owned”; and

18 (2) by inserting “*Provided further, That*
19 \$300,000,000 shall be used for infrastructure im-
20 provements, expansion, and new construction (or re-
21 imbursement for new construction costs incurred
22 during fiscal years 2007 through 2012) of high-vol-
23 ume ports of entry along the Northern border and
24 the Southern border, regardless of port ownership”
25 before the period at the end.

1 (b) EFFECTIVE DATE.—The amendments made
2 under subsection (a) shall take effect as if included in the
3 American Recovery and Reinvestment Act of 2009, as of
4 the date of the enactment of such Act.

5 **SEC. 205. ADDITIONAL AUTHORITIES FOR PORT OF ENTRY**
6 **CONSTRUCTION.**

7 (a) IN GENERAL.—In order to aid in the enforcement
8 of Federal customs, immigration, and agriculture laws, the
9 Commissioner of U.S. Customs and Border Protection
10 may—

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

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

18 (3) construct additional ports of entry along the
19 Southern border and the Northern border.

20 (b) CONSULTATION.—

21 (1) LOCATIONS FOR NEW PORTS OF ENTRY.—
22 The Secretary shall consult with the Secretary of the
23 Interior, the Secretary of Agriculture, the Secretary
24 of State, the International Boundary and Water
25 Commission, the International Joint Commission,

1 and appropriate representatives of States, local gov-
2 ernments, Indian tribes (as defined in section 4 of
3 the Indian Self-Determination and Education Assist-
4 ance Act (25 U.S.C. 450b)), and property owners
5 to—

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

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

13 (2) SAVINGS PROVISION.—Nothing in this sub-
14 section may be construed—

15 (A) to create any right or liability of the
16 parties described in paragraph (1);

17 (B) to affect the legality and validity of
18 any determination under this Act by the Sec-
19 retary; or

20 (C) to affect any consultation requirement
21 under any other law.

22 **SEC. 206. ADDITIONAL INCREASES IN IMMIGRATION EN-**
23 **FORCEMENT PERSONNEL.**

24 (a) IMMIGRATION AND CUSTOMS ENFORCEMENT IN-
25 VESTIGATORS.—Section 5203 of the Intelligence Reform

1 and Terrorism Prevention Act of 2004 (Public Law 108–
2 458; 118 Stat. 3734) is amended by striking “800” and
3 inserting “1000”.

4 (b) **ADDITIONAL PERSONNEL.**—In addition to the po-
5 sitions authorized under section 5203 of the Intelligence
6 Reform and Terrorism Prevention Act of 2004, as amend-
7 ed by subsection (a), during each of the fiscal years 2012
8 through 2016, the Secretary shall, subject to the avail-
9 ability of appropriations, increase by not less than 50 the
10 number of positions for personnel within the Department
11 assigned to investigate alien smuggling.

12 (c) **AUTHORIZATION OF APPROPRIATIONS.**—There
13 are authorized to be appropriated to the Secretary such
14 sums as may be necessary for each of the fiscal years 2012
15 through 2016 to carry out this section.

16 **SEC. 207. ADDITIONAL IMMIGRATION COURT PERSONNEL.**

17 (a) **DEPARTMENT OF JUSTICE.**—

18 (1) **LITIGATION ATTORNEYS.**—In each of the
19 fiscal years 2012 through 2016, the Attorney Gen-
20 eral, subject to the availability of appropriations for
21 such purpose, shall increase the number of positions
22 for attorneys in the Office of Immigration Litigation
23 of the Department of Justice by not fewer than 50.

24 (2) **IMMIGRATION JUDGES.**—In each of the fis-
25 cal years 2012 through 2016, the Attorney General,

1 subject to the availability of appropriations for such
2 purpose, shall—

3 (A) increase the number of full-time immi-
4 gration judges by not fewer than 20, compared
5 to the number of such positions for which funds
6 were made available during the preceding fiscal
7 year; and

8 (B) increase the number of personnel to
9 support the immigration judges described in
10 subparagraph (A) by not fewer than 80, com-
11 pared to the number of such positions for which
12 funds were made available during the preceding
13 fiscal year.

14 (3) STAFF ATTORNEYS.—In each of fiscal years
15 2012 through 2016, the Attorney General, subject to
16 the availability of appropriations for such purpose,
17 shall increase by not fewer than 10—

18 (A) the number of positions for full-time
19 staff attorneys in the Board of Immigration Ap-
20 peals, compared to the number of such posi-
21 tions for which funds were made available dur-
22 ing the preceding fiscal year; and

23 (B) the number of positions for personnel
24 to support the staff attorneys described in sub-
25 paragraph (A), compared to the number of such

1 positions for which funds were made available
2 during the preceding fiscal year.

3 (4) AUTHORIZATION OF APPROPRIATIONS.—

4 There are authorized to be appropriated to the At-
5 torney General for each of the fiscal years 2012
6 through 2016 such sums as may be necessary to
7 carry out this subsection, including hiring necessary
8 support staff.

9 **SEC. 208. IMPROVED TRAINING FOR BORDER SECURITY**
10 **AND IMMIGRATION ENFORCEMENT OFFI-**
11 **CERS.**

12 The Secretary shall ensure that U.S. Customs and
13 Border Protection agents, U.S. Border Patrol agents, U.S.
14 Immigration and Customs Enforcement agents, and Agri-
15 cultural Inspectors stationed within 100 miles of any land
16 or marine border of the United States or at any United
17 States port of entry receive appropriate training, which
18 shall be prepared in collaboration with the Office for Civil
19 Rights and Civil Liberties, in—

20 (1) identifying and detecting fraudulent travel
21 documents;

22 (2) protecting the civil, constitutional, and pri-
23 vacy rights of individuals, including the rights of de-
24 tained persons;

1 (3) limitations on the use of force, including le-
2 thal force, against individuals apprehended or en-
3 countered while on duty; and

4 (4) screening, identifying, and addressing vul-
5 nerable populations, including children, victims of
6 crime and human trafficking, and individuals fleeing
7 persecution or torture.

8 **SEC. 209. INVENTORY OF ASSETS AND PERSONNEL.**

9 (a) INVENTORY.—The Secretary shall compile an in-
10 ventory of—

11 (1) the assets, equipment, supplies, and other
12 physical resources dedicated to border security and
13 enforcement as of the date of the enactment of this
14 Act; and

15 (2) the personnel and other human resources
16 dedicated to border security and enforcement as of
17 the date of the enactment of this Act.

18 (b) REPORT.—Not later than 90 days after the date
19 of the enactment of this Act, the Secretary shall submit
20 the inventory required under subsection (a) to—

21 (1) the Committee on the Judiciary of the Sen-
22 ate;

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

1 (3) the Committee on the Judiciary of the
2 House of Representatives;

3 (4) the Committee on Homeland Security of the
4 House of Representatives; and

5 (5) the Committee on Oversight and Govern-
6 ment Reform of the House of Representatives.

7 **SEC. 210. U.S. CUSTOMS AND BORDER PROTECTION ASSETS.**

8 (a) **PERSONAL EQUIPMENT.**—

9 (1) **BODY ARMOR.**—The Secretary shall ensure
10 that each border patrol agent—

11 (A) is issued high-quality body armor that
12 is appropriate for the climate and risks faced by
13 the agent;

14 (B) is permitted to select body armor from
15 among a variety of approved brands and styles;

16 (C) is strongly encouraged to wear such
17 body armor whenever practicable; and

18 (D) is issued replacement body armor not
19 less frequently than once every 5 years.

20 (2) **WEAPONS.**—The Secretary shall ensure
21 that—

22 (A) border patrol agents are equipped with
23 weapons that are reliable and effective to pro-
24 tect themselves, their fellow agents, and inno-

1 cent third parties from the threats posed by
2 armed criminals; and

3 (B) all agents are authorized to carry
4 weapons that are suited to the potential threats
5 that they face.

6 (3) UNIFORMS.—The Secretary shall ensure
7 that all agents are provided, at no cost to such
8 agents—

9 (A) all necessary uniform items, including
10 outerwear suited to the climate, footwear, belts,
11 holsters, and personal protective equipment;
12 and

13 (B) replacement uniform items when such
14 items become worn or unserviceable or no
15 longer fit properly.

16 (b) HELICOPTERS AND POWER BOATS.—

17 (1) HELICOPTERS.—The Secretary shall—

18 (A) conduct a review of the helicopters
19 needed by the Border Patrol;

20 (B) acquire additional helicopters for the
21 Border Patrol if the Secretary determines that
22 the existing number of helicopters is insuffi-
23 cient; and

1 (C) ensure that appropriate types of heli-
2 copters are procured for the various missions
3 being performed.

4 (2) POWER BOATS.—The Secretary shall—

5 (A) conduct a review of the power boats
6 needed by the Border Patrol;

7 (B) acquire additional power boats for the
8 Border Patrol if the Secretary determines that
9 the existing number of power boats is insuffi-
10 cient; and

11 (C) ensure that appropriate types of power
12 boats are procured for the waterways in which
13 they are used and the mission requirements.

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

15 (A) establish a standard policy on the use
16 of the helicopters and power boats procured
17 under this subsection; and

18 (B) implement training programs for the
19 Border Patrol agents who use such assets, in-
20 cluding safe operating procedures and rescue
21 operations.

22 (c) MOTOR VEHICLES.—

23 (1) QUANTITY.—The Secretary shall—

24 (A) conduct a review of the motor vehicles
25 needed by the Border Patrol;

1 (B) acquire additional, appropriate motor
2 vehicles for the Border Patrol if the Secretary
3 determines that the existing number of motor
4 vehicles is insufficient; and

5 (C) ensure that there are sufficient num-
6 bers and types of other motor vehicles to sup-
7 port the mission of the Border Patrol.

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

10 (A) be appropriate for the mission of the
11 Border Patrol; and

12 (B) have a panic button and a global posi-
13 tioning system device that is activated solely in
14 emergency situations to track the location of
15 agents in distress.

16 (d) ELECTRONIC EQUIPMENT.—

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

20 (A) is equipped with a portable computer
21 with access to all necessary law enforcement
22 databases; and

23 (B) is otherwise suited to the unique oper-
24 ational requirements of the Border Patrol.

1 (2) RADIO EQUIPMENT.—The Secretary shall
2 augment the radio communications system of the
3 Border Patrol so that—

4 (A) all law enforcement personnel working
5 in each area where Border Patrol operations
6 are conducted have clear and encrypted 2-way
7 radio communication capabilities at all times;
8 and

9 (B) each portable communications device is
10 equipped with a panic button and a global posi-
11 tioning system device that is activated solely in
12 emergency situations to track the location of
13 agents in distress.

14 (3) HANDHELD GLOBAL POSITIONING SYSTEM
15 DEVICES.—If the Secretary determines that each
16 member of a class of Border Patrol agents need a
17 handheld global positioning system device to effec-
18 tively and safely carry out his or her duties, the Sec-
19 retary shall ensure that each such agent is issued
20 such device for navigational purposes.

21 (4) NIGHT VISION EQUIPMENT.—The Secretary
22 shall ensure that sufficient quantities of state-of-the-
23 art night vision equipment are procured and main-
24 tained to enable each Border Patrol agent working

1 during the hours of darkness to be equipped with a
2 portable night vision device.

3 (e) APPROPRIATIONS.—There are authorized to be
4 appropriated to the Secretary such sums as may be nec-
5 essary for each of fiscal years 2012 through 2016 to carry
6 out this section.

7 **SEC. 211. TECHNOLOGICAL ASSETS AND PROGRAMS.**

8 (a) ACQUISITION.—Subject to the availability of ap-
9 propriations for such purpose, the Secretary shall procure
10 additional unmanned aerial systems, aircrafts, cameras,
11 poles, ground sensors, and other technologies necessary to
12 achieve effective control of the land and maritime borders
13 of the United States.

14 (b) UNMANNED AIRCRAFT AND ASSOCIATED INFRA-
15 STRUCTURE.—The Secretary shall acquire and maintain
16 unmanned aerial systems for use on the border, including
17 related equipment such as—

- 18 (1) additional sensors;
19 (2) critical spares;
20 (3) satellite command and control; and
21 (4) other necessary equipment for operational
22 support.

23 (c) PRIVACY AND CIVIL LIBERTIES ASSESSMENTS.—
24 The Secretary, in consultation with the Attorney General,
25 shall conduct a privacy impact assessment and a civil lib-

1 erties impact assessment before deploying new tech-
2 nologies acquired under this subsections (a) and (b).

3 (d) AUTHORIZATION OF APPROPRIATIONS.—

4 (1) IN GENERAL.—There are authorized to be
5 appropriated to the Secretary such sums as may be
6 necessary for each of the fiscal years 2012 through
7 2016 to carry out subsections (a) and (b).

8 (2) AVAILABILITY OF FUNDS.—Amounts appro-
9 priated pursuant to paragraph (1) shall remain
10 available until expended.

11 (e) SURVEILLANCE TECHNOLOGIES PROGRAMS.—

12 (1) AERIAL SURVEILLANCE PROGRAM.—

13 (A) IN GENERAL.—In conjunction with the
14 border surveillance plan developed under section
15 5201 of the Intelligence Reform and Terrorism
16 Prevention Act of 2004 (8 U.S.C. 1701 note)
17 and subject to the availability of appropriations
18 for such purpose, the Secretary shall fully inte-
19 grate and utilize aerial surveillance tech-
20 nologies, including unmanned aerial systems,
21 that the Secretary determines to be necessary
22 to enhance the security of the Northern border
23 and the Southern border.

24 (B) ASSESSMENT AND CONSULTATION RE-
25 QUIREMENTS.—The Secretary shall—

- 1 (i) consider current and proposed aer-
2 ial surveillance technologies;
- 3 (ii) assess the feasibility and advis-
4 ability of utilizing such technologies to ad-
5 dress border threats, including an assess-
6 ment of the technologies considered best
7 suited to address respective threats;
- 8 (iii) consult with the Secretary of De-
9 fense regarding any technologies or equip-
10 ment which the Secretary may deploy
11 along a border of the United States;
- 12 (iv) consult with the Administrator of
13 the Federal Aviation Administration re-
14 garding safety, airspace coordination and
15 regulation, and any other issues necessary
16 for implementation of the program;
- 17 (v) consult with the Secretary of State
18 with respect to any foreign policy or inter-
19 national law implications relating to the
20 implementation or conduct of the program;
21 and
- 22 (vi) conduct a privacy impact assess-
23 ment and civil liberties impact assessment
24 before the deployment of the new tech-
25 nologies acquired under this paragraph.

1 (C) EVALUATION OF TECHNOLOGIES.—

2 The aerial surveillance program authorized
3 under this paragraph shall include the use of a
4 variety of aerial surveillance technologies in a
5 variety of topographies and areas, including
6 populated and unpopulated areas located on or
7 near the international border of the United
8 States, to evaluate, for a range of cir-
9 cumstances—

10 (i) the significance of previous experi-
11 ences with such technologies in border se-
12 curity or critical infrastructure protection;

13 (ii) the cost and effectiveness of var-
14 ious technologies for border security, in-
15 cluding varying levels of technical com-
16 plexity; and

17 (iii) liability, safety, civil liberties, and
18 privacy concerns relating to the utilization
19 of such technologies for border security.

20 (D) ADDITIONAL REVIEWS.—In accordance
21 with sections 222 and 705 of the Homeland Se-
22 curity Act of 2002 (6 U.S.C. 142 and 345), the
23 Chief Privacy Officer and the Officer for Civil
24 Rights and Civil Liberties shall conduct addi-
25 tional reviews, as necessary.

1 (E) CONTINUED USE OF AERIAL SURVEIL-
2 LANCE TECHNOLOGIES.—The Secretary may
3 continue the operation of aerial surveillance
4 technologies in use on the date of the enact-
5 ment of this Act while assessing the effective-
6 ness of the utilization of such technologies.

7 (F) AUTHORIZATION OF APPROPRIA-
8 TIONS.—There are authorized to be appro-
9 priated such sums as may be necessary for each
10 of the fiscal years 2012 through 2016 to carry
11 out this paragraph.

12 (2) INTEGRATED AND AUTOMATED SURVEIL-
13 LANCE PROGRAM.—

14 (A) REQUIREMENT FOR PROGRAM.—Sub-
15 ject to the availability of appropriations, the
16 Secretary shall establish a program to procure
17 additional unmanned aerial systems, cameras,
18 poles, sensors, satellites, radar coverage, and
19 other technologies necessary—

20 (i) to achieve effective control of the
21 Northern border and the Southern border;
22 and

23 (ii) to establish a security perimeter
24 (to be known as a “virtual fence”) along
25 the Northern border and the Southern bor-

1 der to provide a barrier to unauthorized
2 immigration.

3 (B) PROGRAM COMPONENTS.—In carrying
4 out the program authorized under this para-
5 graph, the Secretary, to the maximum extent
6 feasible, shall—

7 (i) utilize integrated technologies that
8 function cohesively in an automated fash-
9 ion;

10 (ii) use a standard process to collect,
11 catalog, and report intrusion and response
12 data collected under the program;

13 (iii) ensure that future surveillance
14 technology investments and upgrades for
15 the program can be integrated with exist-
16 ing systems;

17 (iv) develop and apply performance
18 measures to evaluate whether the program
19 is providing desired results by increasing
20 response effectiveness in monitoring and
21 detecting unauthorized intrusions along the
22 Northern border and the Southern border;

23 (v) develop plans, in accordance with
24 relevant environmental laws, to streamline
25 site selection, site validation, and environ-

1 mental assessment processes to minimize
2 delays of installing surveillance technology
3 infrastructure;

4 (vi) develop standards to expand the
5 shared use of existing private and govern-
6 mental structures to install remote surveil-
7 lance technology infrastructure to the ex-
8 tent possible; and

9 (vii) develop standards to identify and
10 deploy the use of nonpermanent or mobile
11 surveillance platforms that will increase
12 the Secretary's mobility and ability to iden-
13 tify unauthorized border intrusions.

14 (C) AUTHORIZATION OF APPROPRIA-
15 TIONS.—There are authorized to be appro-
16 priated such sums as may be necessary for each
17 of the fiscal years 2012 through 2016 to carry
18 out this paragraph.

19 **PART II—ENHANCED COORDINATION AND**
20 **PLANNING FOR BORDER SECURITY**

21 **SEC. 216. ANNUAL REPORT ON IMPROVING NORTH AMER-**
22 **ICAN SECURITY INFORMATION EXCHANGE.**

23 (a) REQUIREMENT FOR REPORTS.—Not later than 1
24 year after the date of the enactment of this Act, and annu-
25 ally thereafter, the Secretary of State, in coordination with

1 the Secretary and the heads of other appropriate Federal
2 agencies, shall submit a report to Congress that describes
3 the progress made during the most recent 12-month pe-
4 riod in improving the effectiveness with which information
5 relating to North American security is exchanged between
6 the Governments of the United States, of Canada, and of
7 Mexico.

8 (b) CONTENTS.—

9 (1) SECURITY CLEARANCES AND DOCUMENT IN-
10 TEGRITY.—Each report submitted under subsection
11 (a) shall describe the development of common enroll-
12 ment, security, technical, and biometric standards
13 for the issuance, authentication, validation, and re-
14 pudiation of secure documents, including—

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

20 (i) passports;

21 (ii) visas; and

22 (iii) permanent resident cards;

23 (B) the joint efforts of the United States,
24 Canada, and Mexico to encourage foreign gov-
25 ernments to enact laws that—

1 (i) combat alien smuggling and traf-
2 ficking; and

3 (ii) forbid the use and manufacture of
4 fraudulent travel documents; and

5 (C) efforts made to ensure that other
6 countries meet proper travel document stand-
7 ards and are committed to travel document
8 verification before the nationals of such coun-
9 tries travel internationally, including travel to
10 the United States.

11 (2) IMMIGRATION AND VISA MANAGEMENT.—

12 Each report submitted under subsection (a) shall de-
13 scribe the progress made in sharing information re-
14 garding high-risk individuals who attempt to enter
15 the United States, Canada, or Mexico, including—

16 (A) implementing the Statement of Mutual
17 Understanding on Information Sharing, signed
18 by Canada and the United States in February
19 2003; and

20 (B) identifying and analyzing trends re-
21 lated to immigration fraud, including asylum
22 and document fraud.

23 (3) VISA POLICY COORDINATION AND IMMIGRA-
24 TION SECURITY.—Each report submitted under sub-
25 section (a) shall describe the progress made by the

1 United States, Canada, and Mexico to enhance
2 North American security by cooperating on visa pol-
3 icy and identifying best practices regarding immigra-
4 tion security, including—

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

10 (B) comparing the procedures and policies
11 of the United States and Canada related to vis-
12 itor visa processing, including—

13 (i) application process;

14 (ii) interview policy;

15 (iii) general screening procedures;

16 (iv) visa validity;

17 (v) quality control measures; and

18 (vi) access to appeal or review;

19 (C) exploring methods for the United
20 States, Canada, and Mexico to waive visa re-
21 quirements for nationals and citizens of the
22 same foreign countries;

23 (D) developing and implementing an immi-
24 gration security strategy for North America
25 that utilizes a common security perimeter by

1 enhancing technical assistance for programs
2 and systems to support advance automated re-
3 porting and risk targeting of international pas-
4 sengers;

5 (E) real-time sharing of information on
6 lost and stolen passports among immigration or
7 law enforcement officials of the United States,
8 Canada, and Mexico; and

9 (F) collecting 10 fingerprints from each in-
10 dividual who applies for a visa.

11 (4) NORTH AMERICAN VISITOR OVERSTAY PRO-
12 GRAM.—Each report submitted under subsection (a)
13 shall describe the progress made by the United
14 States and Canada in implementing parallel entry-
15 exit tracking systems that—

16 (A) respect the privacy laws of both coun-
17 tries; and

18 (B) share information regarding third
19 country nationals who have overstayed their pe-
20 riod of authorized admission in the United
21 States or Canada.

22 (5) TERRORIST WATCH LISTS.—Each report
23 submitted under subsection (a) shall describe the ca-
24 pacity of the United States to combat terrorism

1 through the coordination of counterterrorism efforts,
2 including—

3 (A) developing and implementing bilateral
4 agreements between Canada and the United
5 States and between Mexico and the United
6 States—

7 (i) to govern the sharing of terrorist
8 watch list data; and

9 (ii) to comprehensively enumerate the
10 uses of such data by the governments of
11 each country;

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

15 (C) establishing a multilateral watch list
16 mechanism that would facilitate direct coordina-
17 tion between the country that identifies individ-
18 uals on a watch list and the country that owns
19 such list, including procedures that satisfy secu-
20 rity concerns, comply with privacy laws, and are
21 consistent with the other laws of each partici-
22 pating country; and

23 (D) establishing transparent standards and
24 processes that enable innocent individuals to re-
25 move their names from a watch list.

1 (6) MONEY LAUNDERING, CURRENCY SMUG-
2 GLING, AND ALIEN SMUGGLING.—Each report sub-
3 mitted under subsection (a) shall describe improve-
4 ments made in information sharing and law enforce-
5 ment cooperation in combating organized crime, in-
6 cluding—

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

10 (B) determining the feasibility of formu-
11 lating a firearms trafficking action plan be-
12 tween Mexico and the United States;

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

16 (D) determining the feasibility of formu-
17 lating a joint threat assessment on organized
18 crime between Mexico and the United States;

19 (E) developing mechanisms to exchange in-
20 formation on findings, seizures, and capture of
21 individuals transporting undeclared currency;
22 and

23 (F) developing and implementing a plan to
24 combat the transnational threat of illegal drug
25 trafficking.

1 (7) LAW ENFORCEMENT COOPERATION.—Each
2 report submitted under subsection (a) shall describe
3 enhancements in law enforcement cooperation among
4 the United States, Canada, and Mexico, including—

5 (A) enhanced technical assistance for the
6 development and maintenance of a national
7 database built upon identified best practices to
8 identify suspected criminals or terrorists;

9 (B) the feasibility of establishing law en-
10 forcement teams that include personnel from
11 the United States and Mexico; and

12 (C) the appropriate procedures for such
13 multinational teams.

14 **SEC. 217. COOPERATION WITH THE GOVERNMENT OF MEX-**
15 **ICO.**

16 (a) COOPERATION REGARDING BORDER SECUR-
17 RITY.—The Secretary of State, in cooperation with the
18 Secretary and representatives of Federal, State, and local
19 law enforcement agencies that are involved in border secu-
20 rity and immigration enforcement efforts, shall work with
21 appropriate officials of the Government of Mexico to im-
22 prove coordination between the United States and Mexico
23 in—

1 (1) improving border security along the inter-
2 national border between the United States and Mex-
3 ico;

4 (2) reducing human trafficking and smuggling
5 between the United States and Mexico;

6 (3) reducing drug trafficking and smuggling be-
7 tween the United States and Mexico;

8 (4) reducing gang membership in the United
9 States and Mexico;

10 (5) reducing violence against women in the
11 United States and Mexico; and

12 (6) reducing other violence and criminal activ-
13 ity.

14 (b) COOPERATION REGARDING EDUCATION ON IMMIGRATION LAWS.—The Secretary of State, in cooperation
15 with other appropriate Federal officials, shall work with
16 appropriate officials of the Government of Mexico to edu-
17 cate citizens and nationals of Mexico regarding their eligi-
18 bility for nonimmigrant status in the United States to en-
19 sure that such citizens and nationals are not exploited
20 while working in the United States.

22 (c) COOPERATION REGARDING CIRCULAR MIGRATION.—The Secretary of State, in cooperation with the
23 Secretary of Labor and other appropriate Federal offi-
24 cials, shall work with appropriate officials of the Govern-
25 ment of Mexico to ensure that such citizens and nationals are not exploited while working in the United States.

1 ment of Mexico to encourage circular migration of citizens
2 and nationals of Mexico, including—

3 (1) assisting in the development of economic op-
4 portunities; and

5 (2) providing job training for such citizens and
6 nationals.

7 (d) CONSULTATION REQUIREMENT.—The Secretary,
8 in cooperation with State and local government officials
9 in the United States, shall cooperate with their counter-
10 parts in Mexico to enhance border security structures
11 along the international border between the United States
12 and Mexico, as authorized by this title, by—

13 (1) soliciting the views of affected communities;

14 (2) lessening tensions; and

15 (3) fostering greater understanding and strong-
16 er cooperation on border security structures and
17 other important security issues of mutual concern.

18 (e) ANNUAL REPORT.—Not later than 180 days after
19 the date of the enactment of this Act, and annually there-
20 after, the Secretary of State shall submit a report to Con-
21 gress that describes the actions taken by the United States
22 and Mexico pursuant to this section.

1 **SEC. 218. EXPANSION OF COMMERCE SECURITY PRO-**
2 **GRAMS.**

3 (a) CUSTOMS-TRADE PARTNERSHIP AGAINST TER-
4 RORISM.—

5 (1) IN GENERAL.—Not later than 180 days
6 after the date of the enactment of this Act, the
7 Commissioner, U.S. Customs and Border Protection,
8 in consultation with the Secretary, shall develop a
9 plan to expand the programs of the Customs-Trade
10 Partnership Against Terrorism established pursuant
11 to section 211 of the SAFE Port Act (6 U.S.C.
12 961), including adding additional personnel for such
13 programs along the Northern border and the South-
14 ern border.

15 (2) C-TPAT PROGRAMS.—The programs re-
16 ferred to in paragraph (1) include—

17 (A) the Business Anti-Smuggling Coali-
18 tion;

19 (B) the Carrier Initiative Program;

20 (C) the Americas Counter Smuggling Ini-
21 tiative;

22 (D) the Container Security Initiative estab-
23 lished pursuant to section 205 of the SAFE
24 Port Act (6 U.S.C. 945);

25 (E) the Free and Secure Trade Initiative;
26 and

1 (F) other industry partnership programs
2 administered by the Commissioner.

3 (b) DEMONSTRATION PROGRAMS.—Not later than
4 180 days after the date of the enactment of this Act, the
5 Commissioner shall—

6 (1) implement, on a demonstration basis, a
7 Customs-Trade Partnership Against Terrorism pro-
8 gram, which has been successfully implemented
9 along the Northern border and the Southern border;
10 and

11 (2) establish a demonstration program to de-
12 velop a cooperative trade security system to improve
13 supply chain security.

14 **SEC. 219. NORTHERN BORDER AND SOUTHERN BORDER**
15 **DRUG PROSECUTION INITIATIVE.**

16 (a) REIMBURSEMENT TO STATE AND LOCAL PROS-
17 ECUTORS FOR PROSECUTING FEDERALLY INITIATED
18 DRUG CASES.—Subject to the availability of appropria-
19 tions, the Attorney General shall reimburse State and
20 county prosecutors located in States along the Northern
21 border or the Southern border for prosecuting federally
22 initiated and referred drug cases.

23 (b) AUTHORIZATION OF APPROPRIATIONS.—There
24 are authorized to be appropriated such sums as may be

1 necessary for each of the fiscal years 2012 through 2016
2 to carry out subsection (a).

3 **SEC. 220. BORDER RELIEF GRANT PROGRAM.**

4 (a) GRANTS AUTHORIZED.—

5 (1) IN GENERAL.—The Attorney General may
6 award grants, on a competitive basis, to—

7 (A) eligible law enforcement agencies or a
8 coalition of such agencies, including sheriff's of-
9 fices, police departments, and tribal police de-
10 partments; and

11 (B) institutions of higher education that
12 provide assistance to law enforcement agencies
13 in counties described in subparagraph (A) or
14 (B) of subsection (e)(1) to provide the resources
15 described in subsection (b)(4).

16 (2) PRIORITY.—In awarding grants for the uses
17 described in paragraphs (1) through (3) of sub-
18 section (b), the Attorney General shall give priority
19 to law enforcement agencies—

20 (A) located in a county that is within 100
21 miles from the Northern border or the Southern
22 border; and

23 (B) that are in compliance with Federal
24 and State racial profiling laws and guidelines.

1 (3) DURATION.—Grants awarded under this
2 section may not exceed 2 years.

3 (4) SUBSEQUENT GRANTS.—A grantee desiring
4 continued grant funding after the expiration of the
5 initial grant shall reapply for such funding.

6 (5) PROHIBITION.—The Attorney General may
7 not award a grant under this section to any appli-
8 cant that is under investigation for a violation of
9 Federal or State racial profiling laws or guidelines.

10 (b) USE OF FUNDS.—Grants awarded under this sec-
11 tion may only be used to provide—

12 (1) additional resources for eligible law enforce-
13 ment agencies to address drug-related criminal activ-
14 ity;

15 (2) training and technical assistance related
16 to—

17 (A) narcotics-related kidnaping negotiation
18 and rescue tactics;

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

21 (C) the interdiction of narcotics, weapons,
22 and illegal drug proceeds;

23 (3) resources to combat criminal activities along
24 the Northern border and the Southern border by—

1 (A) obtaining, upgrading, or maintaining
2 equipment;

3 (B) hiring additional personnel;

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

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

9 (4) resources to facilitate information sharing
10 and collaboration by—

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

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

16 (C) strengthening partnerships between
17 Federal, State, tribal, and local law enforce-
18 ment agencies; and

19 (5) resources to enhance jails, community cor-
20 rections, and detention operations by—

21 (A) improving the administration and oper-
22 ations of correction functions related to reduc-
23 ing and preventing criminal narcotics activity;

1 (B) improving access to intelligence and
2 collaboration between law enforcement and cor-
3 rectional system personnel;

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

6 (D) hiring detention, probation, parole,
7 and other corrections personnel for implementa-
8 tion of the efforts described in this paragraph.

9 (c) APPLICATION.—

10 (1) IN GENERAL.—Each eligible law enforce-
11 ment agency or coalition of such agencies seeking a
12 grant under this section shall submit an application
13 to the Attorney General at such time, in such man-
14 ner, and accompanied by such information as the
15 Attorney General may reasonably require.

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

18 (A) describe the activities for which assist-
19 ance under this section is sought;

20 (B) disclose whether the applicant has
21 been investigated for, or convicted of, a viola-
22 tion of Federal or State racial profiling laws;
23 and

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

4 (d) MONITORING AND OVERSIGHT.—

5 (1) IN GENERAL.—Each grantee under this sec-
6 tion shall submit a report to the Attorney General
7 that documents the use of grant funds received
8 under this section, including an assessment of their
9 utility in—

10 (A) protecting border community safety;

11 (B) preventing smuggling activities; and

12 (C) apprehending persons involved in vio-
13 lence and organized crime.

14 (2) USE OF INFORMATION.—The Attorney Gen-
15 eral shall analyze the information contained in the
16 reports submitted under paragraph (1) to determine
17 whether the grantee—

18 (A) used grant funds appropriately; and

19 (B) should be considered for a renewal
20 grant.

21 (e) DEFINITIONS.—In this section:

22 (1) ELIGIBLE LAW ENFORCEMENT AGENCY.—
23 The term “eligible law enforcement agency” means
24 a State, tribal, or local law enforcement agency, in-
25 cluding a community corrections agency and any

1 agency that employs prosecutors, probation officers,
2 or parole officers, which is located or performs du-
3 ties in—

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

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

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

13 (2) HIGH INTENSITY DRUG TRAFFICKING
14 AREA.—The term “High Intensity Drug Trafficking
15 Area” means any jurisdiction so designated by the
16 National Drug Control Program under section 707
17 of the Office of National Drug Control Policy Reau-
18 thorization Act of 1998 (21 U.S.C. 1706).

19 (f) ASSESSMENT AND REPORT.—The Attorney Gen-
20 eral shall submit a biannual report to the Committee on
21 the Judiciary of the Senate and the Committee on the Ju-
22 diciary of the House of Representatives that assesses—

23 (1) the success of the grant program estab-
24 lished under this section in combating and reducing
25 drug-trafficking and drug-related criminal activity;

- 1 (2) the cost-effectiveness of the program; and
2 (3) the future value and viability of the pro-
3 gram.

4 (g) AUTHORIZATION OF APPROPRIATIONS.—

5 (1) IN GENERAL.—There are authorized to be
6 appropriated \$100,000,000 for each of the fiscal
7 years 2012 through 2016 to carry out this section.

8 (2) ALLOCATION OF AUTHORIZED FUNDS.—Of
9 the amounts appropriated pursuant to paragraph
10 (1)—

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

14 (B) not more than 30 percent may be used
15 for activities described in paragraphs (2) and
16 (5) of subsection (b).

17 (3) SUPPLEMENT NOT SUPPLANT.—Amounts
18 appropriated for grants pursuant to paragraph (1)
19 shall be used to supplement, and not to supplant,
20 other State, tribal, and local public funds obligated
21 for the purposes described in subsection (b).

22 **SEC. 221. REPORT ON DEATHS AND STRATEGY STUDY.**

23 (a) IN GENERAL.—The Commissioner of U.S. Cus-
24 toms and Border Protection shall—

1 (1) collect statistics relating to deaths occurring
2 at the Southern border, including—

3 (A) the causes of the deaths; and

4 (B) the total number of deaths;

5 (2) publish the statistics collected under para-
6 graph (1) on a quarterly basis; and

7 (3) not later than 1 year after the date of the
8 enactment of this Act, and annually thereafter, sub-
9 mit a report to the Secretary that—

10 (A) analyzes trends with respect to the sta-
11 tistics collected under paragraph (1) during the
12 preceding year; and

13 (B) recommends actions to reduce and pre-
14 vent the deaths described in paragraph (1)(B).

15 (b) AUTHORIZATION OF APPROPRIATIONS.—There
16 are authorized to be appropriated such sums as may be
17 necessary for each of the fiscal years 2012 through 2016
18 to carry out this section.

19 **SEC. 222. IMMIGRATION AND UNITED STATES-MEXICO BOR-**
20 **DER ENFORCEMENT COMMISSION.**

21 (a) ESTABLISHMENT OF COMMISSION.—

22 (1) IN GENERAL.—There is established an inde-
23 pendent commission to be known as the Immigration
24 and United States-Mexico Border Enforcement

1 Commission (referred to in this section as the “Com-
2 mission”).

3 (2) PURPOSES.—The purposes of the Commis-
4 sion are—

5 (A) to study the overall enforcement strat-
6 egies, programs, and policies of Federal agen-
7 cies along the Southern border, including the
8 Department, the Department of Justice, and
9 other relevant agencies;

10 (B) to strengthen relations and collabora-
11 tion between communities in the border regions
12 and the Department, the Department of Jus-
13 tice, and other Federal agencies that carry out
14 such strategies, programs, and policies;

15 (C) to ensure that the strategies, pro-
16 grams, and policies of Federal agencies along
17 the Southern border and the agents and em-
18 ployees charged to implement such strategies,
19 programs, and policies protect the due process,
20 civil, and human rights of all individuals and
21 communities at and near the Southern border;
22 and

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

1 (3) MEMBERSHIP.—

2 (A) IN GENERAL.—The Commission shall
3 be composed of 16 voting members and 2 non-
4 voting members.

5 (B) APPOINTMENT OF VOTING MEM-
6 BERS.—The Governors of the States of Cali-
7 fornia, New Mexico, Arizona, and Texas shall
8 each appoint 4 voting members to the Commis-
9 sion, of whom—

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

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

14 (iii) 2 shall be from the State's com-
15 munities of academia, religious leaders,
16 civic leaders or community leaders.

17 (C) APPOINTMENT OF NONVOTING MEM-
18 BERS.—The Secretary and the Attorney Gen-
19 eral shall each appoint 1 nonvoting member to
20 the Commission.

21 (4) QUALIFICATIONS.—

22 (A) IN GENERAL.—Members of the Com-
23 mission shall be—

24 (i) individuals with expertise in migra-
25 tion, border enforcement and protection,

1 civil and human rights, community rela-
2 tions, cross-border trade and commerce, or
3 other pertinent qualifications or experience;
4 and

5 (ii) representative of a broad cross
6 section of perspectives from the region
7 along the Southern border.

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

12 (C) NONGOVERNMENTAL APPOINTEES.—
13 An individual appointed as a voting member to
14 the Commission may not be an officer or em-
15 ployee of the Federal Government.

16 (5) DEADLINE FOR APPOINTMENT.—All mem-
17 bers of the Commission shall be appointed not later
18 than 6 months after the date of the enactment of
19 this Act. If any member of the Commission de-
20 scribed in paragraph (3)(A) is not appointed by such
21 date, the Commission shall carry out its duties
22 under this section without the participation of such
23 member.

1 (6) TERM OF SERVICE.—Members of the Com-
2 mission shall be appointed for terms lasting not
3 longer than the shorter of—

4 (A) 3 years; or

5 (B) the life of the Commission.

6 (7) VACANCIES.—Any vacancy in the Commis-
7 sion shall not affect its powers, but shall be filled in
8 the same manner in which the original appointment
9 was made.

10 (8) MEETINGS.—

11 (A) INITIAL MEETING.—The Commission
12 shall meet and begin the operations of the Com-
13 mission as soon as practicable.

14 (B) SUBSEQUENT MEETINGS.—After its
15 initial meeting, the Commission shall meet upon
16 the call of the Chairman or a majority of its
17 members.

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

21 (9) QUORUM.—Nine members of the Commis-
22 sion shall constitute a quorum.

23 (10) CHAIR AND VICE CHAIR.—The voting
24 members of the Commission shall elect a Chairman
25 and Vice Chairman from among its members, who

1 shall serve in such capacities for the life of the Com-
2 mission or until removed by the majority vote of a
3 quorum.

4 (11) STRUCTURE.—The Commission shall have
5 a Federal, regional, and local review structure, di-
6 vided into 2 subcommittees, of which—

7 (A) 1 shall focus on border technology,
8 equipment, and infrastructure; and

9 (B) 1 shall focus on border and immigra-
10 tion enforcement policies and programs.

11 (b) DUTIES.—The Commission shall review, examine,
12 and make recommendations regarding immigration and
13 border enforcement policies, strategies, and programs, in-
14 cluding recommendations regarding—

15 (1) the compliance of the Department and other
16 immigration and border-related agencies with exist-
17 ing laws and regulations;

18 (2) the extent to which agency policies and
19 practices protect the civil rights of migrants and
20 border community residents, including policies and
21 practices relating to engagement, detention, appre-
22 hension, use of force, definition and use of reason-
23 able suspicion and probable cause, and racial
24 profiling;

1 (3) the frequency, adequacy, and effectiveness
2 of human and civil rights training of border enforce-
3 ment personnel and others from Federal agencies
4 who have contact with the public near the Southern
5 border;

6 (4) the extent to which—

7 (A) the complaint process is transparent
8 and accessible to the public;

9 (B) investigations are opened as necessary
10 and are effectively pursued; and

11 (C) complaints are resolved in a timely and
12 transparent manner;

13 (5) the effectiveness and capacity of agency
14 oversight, accountability, and management, including
15 prevention and disciplinary policies involving use of
16 force, abuse, malfeasance, corruption, and illegal ac-
17 tivity;

18 (6) the effect of operations, technology, and en-
19 forcement infrastructure along the Southern border
20 on the—

21 (A) environment;

22 (B) cross border traffic and commerce;

23 (C) privacy rights and other civil liberties;

24 and

1 (D) the quality of life of border commu-
2 nities;

3 (7) the extent to which State and local law en-
4 forcement engage in the enforcement of Federal im-
5 migration law;

6 (8) the extent of compliance with due process
7 standards and equal protection of the law for immi-
8 grants and other individuals at and near the South-
9 ern border;

10 (9) whether border policies and agencies are ac-
11 complishing their stated goals; and

12 (10) any other matters regarding immigration
13 and border enforcement policies, strategies, and pro-
14 grams that the Commission determines to be appro-
15 priate.

16 (c) POWERS OF COMMISSION.—

17 (1) HEARINGS AND EVIDENCE.—The Commis-
18 sion and any subcommittee or member of the Com-
19 mission authorized by the Commission may, for the
20 purpose of carrying out this title—

21 (A) hold hearings, sit and act, take testi-
22 mony, receive evidence, and administer oaths;
23 and

24 (B) request the attendance and testimony
25 of such witnesses and the production of such

1 books, records, correspondence, memoranda, pa-
2 pers, and documents, as the Commission or
3 such authorized subcommittee or member deter-
4 mines to be advisable.

5 (2) RECOMMENDATIONS.—

6 (A) IN GENERAL.—The Commission may
7 make recommendations to the Secretary on the
8 disposition of cases and the discipline of per-
9 sonnel under the Immigration and Nationality
10 Act (8 U.S.C. 1101 et seq.).

11 (B) RESPONSE.—Not later than 180 days
12 after receipt a report from the Commission, the
13 Secretary shall issue a response that describes
14 how the Department, the Department of Jus-
15 tice, and the Department of Defense have ad-
16 dressed the recommendations included in such
17 report.

18 (3) CONTRACTING.—The Commission may
19 enter into contracts to enable the Commission to dis-
20 charge its duties under this title.

21 (4) INFORMATION FROM FEDERAL AGENCIES.—

22 (A) IN GENERAL.—Upon request made by
23 the Chairman, the chairman of any sub-
24 committee created by a majority of the Com-
25 mission, or any member designated by a major-

1 ity of the Commission, the Commission may se-
2 cure information, suggestions, estimates, and
3 statistics for the purposes of this title directly
4 from any executive department, bureau, agency,
5 board, commission, office, independent estab-
6 lishment, or instrumentality of the Federal Gov-
7 ernment, which shall, to the extent authorized
8 by law, furnish such information, suggestions,
9 estimates, and statistics directly to the Commis-
10 sion.

11 (B) RECEIPT, HANDLING, STORAGE, AND
12 DISSEMINATION.—Information may only be re-
13 ceived, handled, stored, and disseminated by
14 members of the Commission and its staff in ac-
15 cordance with all applicable statutes, regula-
16 tions, and Executive orders.

17 (5) ASSISTANCE FROM FEDERAL AGENCIES.—

18 (A) GENERAL SERVICES ADMINISTRA-
19 TION.—The Administrator of General Services
20 shall provide, on a reimbursable basis, adminis-
21 trative support to the Commission and other
22 services required for the performance of the
23 Commission's functions.

24 (B) OTHER DEPARTMENTS AND AGEN-
25 CIES.—In addition to the assistance described

1 in paragraph (1), Federal departments and
2 agencies may provide the Commission with such
3 services, funds, facilities, staff, and other sup-
4 port services as may be authorized by law.

5 (6) POSTAL SERVICES.—The Commission may
6 use the United States mails in the same manner and
7 under the same conditions as departments and agen-
8 cies of the United States.

9 (d) COMPENSATION.—

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

12 (2) REIMBURSEMENT OF EXPENSES.—All mem-
13 bers of the Commission shall be reimbursed for rea-
14 sonable travel expenses and subsistence, and other
15 reasonable and necessary expenses incurred by them
16 in the performance of their duties.

17 (e) TRAINING.—The Commission shall establish a
18 process and criteria by which Commission members re-
19 ceive orientation and training on human, constitutional,
20 and civil rights.

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

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

3 (2) recommendations regarding border and im-
4 migration enforcement policies, strategies, and pro-
5 grams;

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

8 (4) a recommendation as to whether the Com-
9 mission should continue to operate after the sunset
10 date set forth in subsection (h); and

11 (5) if continued operations are recommended
12 under paragraph (4), a description of the purposes
13 and duties recommended to be carried out by the
14 Commission after the sunset date set forth in sub-
15 section (h).

16 (g) AUTHORIZATION OF APPROPRIATIONS.—There
17 are authorized to be appropriated such sums as may be
18 necessary for each of the fiscal years 2012 through 2014
19 to carry out this section.

20 (h) SUNSET.—Unless the Commission is authorized
21 by Congress to continue operations after such date, the
22 Commission shall terminate on the date that is 60 days
23 after the date on which the Commission submits the report
24 described in subsection (f).

1 **SEC. 223. PREEMPTION.**

2 (a) IN GENERAL.—Except as provided in subsections
3 (b) and (c), this Act preempts any State or local law, li-
4 censing requirement, or other standard, requirement, ac-
5 tion or instrument that—

6 (1) discriminates among persons on the basis of
7 immigration status; or

8 (2) imposes any sanction or liability—

9 (A) on any person based on his or her im-
10 migration status;

11 (B) on any person or entity based on the
12 immigration status of its clients, employees,
13 tenants, or other associates; or

14 (C) based on a violation or alleged viola-
15 tion of immigration law.

16 (b) EFFECT OF CONVICTION.—Notwithstanding sub-
17 section (a)(2)(C), a State or political subdivision of a State
18 may take account of a Federal conviction for an immigra-
19 tion-related crime in the same manner as any other Fed-
20 eral criminal conviction.

21 (c) LIMITATION.—Nothing in this Act may be con-
22 strued to preempt—

23 (1) State or local discrimination based on immi-
24 gration status if such discrimination is explicitly au-
25 thorized by Federal law; or

1 (2) State or local citizenship requirements for
2 voting, jury service, elective office, or other impor-
3 tant governmental positions, to the extent such re-
4 quirements comply with the Constitution of the
5 United States.

6 (d) DEFINED TERM.—In this section, the term “im-
7 migration status” refers to a person’s—

8 (1) actual or perceived present or previous visa
9 classification, refugee status, temporary protected
10 status, status as an immigrant lawfully admitted for
11 permanent residence, lawful presence, work author-
12 ization, or other classification or category authorized
13 under this Act; and

14 (2) lack of any status referred to in paragraph
15 (1).

16 **SEC. 224. INHERENT AUTHORITY.**

17 Section 287(g) (8 U.S.C. 1357(g)) is amended by
18 striking paragraph (10) and inserting the following:

19 “(10) Except as provided in sections 103(a)(10),
20 103(a)(11), 242(c), and 274(e), or an agreement under
21 this subsection, the authority to investigate, identify, ap-
22 prehend, arrest, or detain persons for any violation of this
23 Act or any regulation issued pursuant to this Act—

1 “(A) is restricted to immigration officers and
2 employees of the Department of Homeland Security;
3 and

4 “(B) is subject to the specific limitations set
5 forth in this Act.

6 “(11)(A) Not later than 60 days after the end of each
7 fiscal year, the Secretary of Homeland Security shall—

8 “(i) review the compliance of the State or local
9 government with the terms of each agreement under
10 this subsection; and

11 “(ii) prepare a written report that contains the
12 results of the compliance review and any rec-
13 ommendations to improve compliance with such
14 agreement.

15 “(B) Not later than 120 days after date on which
16 recommendations are issued under subparagraph (A)(ii),
17 the Secretary shall—

18 “(i) review the implementation of such rec-
19 ommendations; and

20 “(ii) inform the State or local government of
21 any unresolved recommendations.

22 “(C) If 1 or more of the recommendations issued
23 under subparagraph (A)(ii) remain unresolved at the time
24 of the subsequent annual compliance review, the Secretary

1 shall immediately terminate the State or local govern-
2 ment's agreement under this subsection.".

3 **SEC. 225. BORDER PROTECTION STRATEGY.**

4 (a) IN GENERAL.—Not later than July 1, 2012, the
5 Secretary, the Secretary of the Interior, the Secretary of
6 Agriculture, the Secretary of Defense, and the Secretary
7 of Commerce, in consultation with State, tribal, and local
8 government officials, shall jointly develop and submit to
9 Congress a border protection strategy for the Northern
10 border and the Southern border.

11 (b) ELEMENTS OF THE STRATEGY.—The strategy
12 developed under subsection (a) shall include—

13 (1) a comparative analysis of the levels of bor-
14 der security, based on auditable and verifiable data,
15 achievable through alternative tactical infrastructure
16 and other security measures, including an assess-
17 ment of—

18 (A) pedestrian fencing;

19 (B) vehicle barriers, especially in the vicin-
20 ity of existing or planned roads;

21 (C) additional Border Patrol agents;

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

- 1 (E) fielding of advanced remote sensing
2 and information integration technology, includ-
3 ing the use of—
- 4 (i) unmanned aerial vehicles;
- 5 (ii) other advanced technologies and
6 systems developed and employed, or under
7 development, for tactical surveillance,
8 multisource information integration, and
9 response analysis in difficult terrain and
10 under adverse environmental conditions;
- 11 (F) regional, urban, and rural variation in
12 border security methodologies, including the in-
13 corporation of natural barriers;
- 14 (G) enhanced cooperation with, and assist-
15 ance to, intelligence, security, and law enforce-
16 ment agencies in Canada and Mexico in detect-
17 ing, reporting, analyzing, and successfully re-
18 sponding to unauthorized or unlawful border
19 crossings from or into Canada or Mexico; and
- 20 (H) removal of obstructive nonnative vege-
21 tation;
- 22 (2) a comprehensive analysis of cost and other
23 impacts of security measures assessed in paragraph
24 (1), including an assessment of—

- 1 (A) land acquisition costs, including re-
2 lated litigation and other costs;
- 3 (B) construction costs, including labor and
4 material costs;
- 5 (C) maintenance costs for the next 25
6 years;
- 7 (D) contractor costs;
- 8 (E) management and overhead costs;
- 9 (F) the impacts on wildlife, wildlife habi-
10 tat, natural communities, and functioning cross-
11 border wildlife migration corridors and hydrolog-
12 y (including water quantity, quality, and nat-
13 ural hydrologic flows) on Federal, State, tribal,
14 local government, and private lands along the
15 Northern border and the Southern border; and
- 16 (G) the costs of fully mitigating the ad-
17 verse impacts to Federal, State, tribal, local,
18 and private lands, waters (including water qual-
19 ity, quantity, and hydrological flows), wildlife,
20 and wildlife habitats, including, if such action is
21 possible, the full costs of the replacement or
22 restoration of severed wildlife migration cor-
23 ridors with protected corridors of equivalent bi-
24 ological functionality, as determined by each
25 Secretary concerned, in consultation with ap-

1 appropriate authorities of State, tribal, and local
2 governments and appropriate authorities of the
3 Government of Canada and the Government of
4 Mexico;

5 (3) a comprehensive compilation of the fiscal in-
6 vestments in acquiring or managing Federal, State,
7 tribal, local, and private lands and waters in the vi-
8 cinity of, or ecologically related to, the land borders
9 of the United States that have been acquired or
10 managed in whole or in part for conservation pur-
11 poses (including the creation or management of pro-
12 tected wildlife migration corridors) in—

13 (A) units of the National Park System;

14 (B) National Forest System land;

15 (C) land under the jurisdiction of the Bu-
16 reau of Land Management;

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

19 (E) other relevant land under the jurisdic-
20 tion of the Department of the Interior or the
21 Department of Agriculture;

22 (F) land under the jurisdiction of the De-
23 partment of Defense or any military depart-
24 ment;

1 (G) land under the jurisdiction of the De-
2 partment of Commerce;

3 (H) tribal lands;

4 (I) State and private lands; and

5 (J) lands within Canada or Mexico; and

6 (4) recommendations for strategic border secu-
7 rity management based on—

8 (A) comparative security described in para-
9 graph (1);

10 (B) the cost-benefit analysis described in
11 paragraph (2); and

12 (C) the protection of investments in the
13 lands specified in paragraph (3).

14 (c) TRAINING.—

15 (1) REQUIRED TRAINING.—The Secretary, in
16 cooperation with the Secretary concerned, shall pro-
17 vide—

18 (A) natural resource protection training for
19 U.S. Customs and Border Protection agents or
20 other Federal personnel assigned to plan or
21 oversee the construction or operation of border
22 security tactical infrastructure or to patrol land
23 along or in the vicinity of a land border of the
24 United States; and

1 (B) cultural resource training for U.S.
2 Customs and Border Protection agents and
3 other Federal personnel assigned to plan or
4 oversee the construction or operation of border
5 security tactical infrastructure or to patrol trib-
6 al lands.

7 (2) ADDITIONAL CONSIDERATIONS.—In devel-
8 oping and providing training under paragraph
9 (1)(A), the Secretary shall coordinate with the Sec-
10 retary concerned and the relevant tribal government
11 to ensure that such training—

12 (A) is appropriate to the mission of the
13 relevant agency; and

14 (B) is focused on achieving border security
15 objectives while avoiding or minimizing the ad-
16 verse impact on natural and cultural resources
17 resulting from border security tactical infra-
18 structure, operations, or other activities.

19 (d) DEFINED TERM.—In this section, the term “Sec-
20 retary concerned” means—

21 (1) the Secretary of Agriculture, with respect to
22 land under the jurisdiction of the Secretary of Agri-
23 culture;

1 (2) the Secretary of the Interior, with respect
2 to land under the jurisdiction of the Secretary of the
3 Interior;

4 (3) the Secretary of Defense, with respect to
5 land under the jurisdiction of the Secretary of De-
6 fense or the secretary of a military department; and

7 (4) the Secretary of Commerce, with respect to
8 land under the jurisdiction of the Secretary of Com-
9 merce.

10 **SEC. 226. BORDER COMMUNITIES LIAISON OFFICE.**

11 (a) ESTABLISHMENT.—The Secretary shall establish,
12 in consultation with the Office of Civil Rights and Civil
13 Liberties, a Border Communities Liaison Office in every
14 Border Patrol sector on the Southern border or the North-
15 ern border.

16 (b) PURPOSE.—The purpose of the Border Commu-
17 nities Liaison Office shall be—

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

20 (2) to consult with border communities on—

21 (A) agency policies, directives, and laws;

22 (B) agency strategies and strategy develop-
23 ment; and

24 (C) agency services and operational issues;

1 (3) to receive assessments on agency perform-
2 ance from border communities; and

3 (4) to receive complaints regarding agency per-
4 formance and agent conduct.

5 (c) AUTHORIZATION OF APPROPRIATIONS.—There
6 are authorized to be appropriated such sums as may be
7 necessary in each of the fiscal years 2012 through 2016
8 to carry out this section.

9 **SEC. 227. AUTHORIZATION OF APPROPRIATIONS.**

10 (a) IN GENERAL.—In addition to any funds other-
11 wise available, there are authorized to be appropriated
12 such sums as may be necessary for the fiscal years 2012
13 through 2016 to carry out this part.

14 (b) INTERNATIONAL AGREEMENTS.—Amounts ap-
15 propriated pursuant to subsection (a) may be used to im-
16 plement projects that are authorized under this part and
17 are described in—

18 (1) the Declaration on Embracing Technology
19 and Cooperation to Promote the Secure and Effi-
20 cient Flow of People and Commerce across our
21 Shared Border between the United States and Mex-
22 ico, agreed to March 22, 2002, Monterrey, Mexico;
23 or

1 (2) the Smart Border Declaration between the
2 United States and Canada, agreed to December 12,
3 2001, Ottawa, Canada.

4 **Subtitle B—Interior Enforcement**

5 **PART I—PREVENTING UNAUTHORIZED ENTRIES**

6 **AND ENSURING REMOVAL**

7 **SEC. 235. US-VISIT SYSTEM.**

8 (a) IN GENERAL.—Not later than 6 months after the
9 date of the enactment of this Act, the Secretary, in con-
10 sultation with the heads of other appropriate Federal
11 agencies, shall submit to Congress a schedule for—

12 (1) equipping all ports of entry of the United
13 States with the United States-Visitor and Immigrant
14 Status Indicator Technology system (referred to in
15 this section as “US-VISIT”) implemented under
16 section 110 of the Illegal Immigration Reform and
17 Immigrant Responsibility Act of 1996 (8 U.S.C.
18 1365a), including all necessary changes to infra-
19 structure at the ports of entry to fully deploy US-
20 VISIT;

21 (2) developing and deploying the exit compo-
22 nent of US-VISIT at such ports of entry; and

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

1 (b) VISA EXIT TRACKING SYSTEM.—Not later than
2 18 months after the date of the enactment of this Act,
3 the Secretary shall establish and deploy a system capable
4 of recording the departure of aliens admitted on tem-
5 porary nonimmigrant visas under the Immigration and
6 Nationality Act (8 U.S.C. 1101 et seq.)—

7 (1) at designated ports of entry; and

8 (2) in coordination with the Secretary of State,
9 at designated United States consulates.

10 **SEC. 236. ILLEGAL ENTRY AND REENTRY.**

11 (a) ILLEGAL ENTRY.—Section 275(b) (8 U.S.C.
12 1325(b)) is amended to read as follows:

13 “(b) IMPROPER TIME OR PLACE; CIVIL PEN-
14 ALTIES.—Any alien older than 18 years of age who is ap-
15 prehended while entering or attempting to enter, or know-
16 ingly crossing or attempting to cross the border to, the
17 United States at a time or place that has not been des-
18 ignated as a lawful entry by immigration officers shall be
19 subject to a civil penalty, in addition to any criminal or
20 other civil penalties that may be imposed under any other
21 provision of law, in an amount equal to—

22 “(1) not less than \$250 or more than \$500 for
23 each such entry or attempted entry; or

1 “(2) twice the amount specified in paragraph
2 (1), if the alien had previously been subject to a civil
3 penalty under this subsection.”.

4 (b) **ILLEGAL REENTRY.**—Section 276 (8 U.S.C.
5 1326) is amended to read as follows:

6 **“SEC. 276. REENTRY OF REMOVED ALIENS.**

7 “(a) **REENTRY AFTER REMOVAL.**—Any alien who
8 has been denied admission, excluded, deported, or re-
9 moved, or who has departed the United States while an
10 order of exclusion, deportation, or removal is outstanding,
11 and subsequently enters, attempts to enter, crosses the
12 border to, attempts to cross the border to, or is at any
13 time found in the United States, shall be fined under title
14 18, United States Code, imprisoned not more than 2
15 years, or both.

16 “(b) **REENTRY OF CRIMINAL OFFENDERS.**—In addi-
17 tion to the penalty provided in subsection (a), any alien
18 described in that subsection—

19 “(1) whose removal was subsequent to a convic-
20 tion for 3 or more misdemeanors involving drugs or
21 crimes against the person, or a felony for which the
22 alien was sentenced to a term of imprisonment of
23 more than 12 months before such removal or depart-
24 ure, shall be fined under title 18, United States
25 Code, imprisoned not more than 10 years, or both;

1 “(2) whose removal was subsequent to a convic-
2 tion for a felony involving drugs or crimes against
3 the person before such removal or departure for
4 which the alien was sentenced to a term of imprison-
5 ment of not less than 30 months, shall be fined
6 under such title 18, imprisoned not more than 10
7 years, or both;

8 “(3) who has been excluded from the United
9 States pursuant to section 235(c) because the alien
10 was excludable under section 212(a)(3)(B) or has
11 been removed from the United States, and who
12 thereafter, without the permission of the Attorney
13 General, enters the United States, or attempts to do
14 so, shall be fined under title 18, United States Code,
15 and imprisoned for a period of 10 years, which sen-
16 tence shall not run concurrently with any other sen-
17 tence;

18 “(4) who was removed from the United States
19 pursuant to section 241(a)(4)(B) and who there-
20 after, without the permission of the Attorney Gen-
21 eral, enters, attempts to enter, or is at any time
22 found in, the United States (unless the Attorney
23 General has expressly consented to such alien’s re-
24 entry) shall be fined under title 18, United States

1 Code, imprisoned for not more than 10 years, or
2 both;

3 “(5) whose removal was subsequent to a convic-
4 tion for an aggravated felony before such removal or
5 departure for which the alien was sentenced to a
6 term of imprisonment of not less than 60 months,
7 shall be fined under such title 18, imprisoned not
8 more than 20 years, or both; or

9 “(6) was convicted for 3 felonies before such re-
10 moval or departure, shall be fined under such title
11 18, imprisoned not more than 25 years, or both.

12 “(c) PROOF OF PRIOR CONVICTIONS.—The prior con-
13 victions described in subsection (b) are elements of the
14 crimes described in that subsection. The penalties set
15 forth in subsection (b) shall apply only in cases in which
16 the conviction or convictions that form the basis for the
17 additional penalty are—

18 “(1) alleged in the indictment or information;
19 and

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

22 “(d) AFFIRMATIVE DEFENSES.—It shall be an af-
23 firmative defense to a violation of this section if—

24 “(1) the alien sought and received the express
25 consent of the Secretary of Homeland Security to re-

1 apply for admission into the United States before
2 the alleged violation occurred;

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

5 “(A) was not required to obtain such ad-
6 vance consent under this Act; and

7 “(B) had complied with all other laws and
8 regulations governing the alien’s admission into
9 the United States; or

10 “(3) the prior order of removal was based on
11 charges filed against the alien before the alien
12 reached 18 years of age.

13 “(e) LIMITATION ON COLLATERAL ATTACK ON UN-
14 DERLYING REMOVAL ORDER.—In a criminal proceeding
15 under this section, an alien may not challenge the validity
16 of the order described in subsection (a) or (b) unless the
17 alien demonstrates that—

18 “(1) the alien exhausted any administrative
19 remedies that may have been available to seek relief
20 against the order;

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

24 “(3) the entry of the order was fundamentally
25 unfair.

1 “(f) RE-ENTRY OF ALIEN REMOVED PRIOR TO COM-
2 PLETION OF TERM OF IMPRISONMENT.—Any alien re-
3 moved pursuant to section 241(a)(4) who enters, attempts
4 to enter, crosses the border to, attempts to cross the bor-
5 der to, or is at any time found in, the United States—

6 “(1) shall be incarcerated for the remainder of
7 the sentence of imprisonment which was pending at
8 the time of deportation without any reduction for
9 parole or supervised release unless the alien affirma-
10 tively demonstrates that the Secretary of Homeland
11 Security has expressly consented to the alien’s re-
12 entry or the alien is prima facie eligible for protec-
13 tion from removal; and

14 “(2) shall be subject to such other penalties re-
15 lating to the reentry of removed aliens as may be
16 available under this section or any other provision of
17 law.

18 “(g) LIMITATION.—An individual, acting without
19 compensation or the expectation of compensation, is not
20 aiding and abetting a violation of this section by—

21 “(1) providing, or attempting to provide, an
22 alien with humanitarian assistance, including emer-
23 gency medical care or food; or

24 “(2) transporting the alien to a location where
25 such humanitarian assistance can be rendered with-

1 out compensation or the expectation of compensa-
2 tion.”.

3 **SEC. 237. DETERRING ALIENS ORDERED REMOVED FROM**
4 **REMAINING IN THE UNITED STATES UNLAW-**
5 **FULLY.**

6 Section 212(a)(9)(A) (8 U.S.C. 1182(a)(9)(A)) is
7 amended—

8 (1) in clause (i), by striking “seeks admission
9 within 5 years of the date of such removal (or within
10 20 years” and inserting “seeks admission not later
11 than 5 years after the date of the alien’s removal (or
12 not later than 20 years after the alien’s removal”;
13 and

14 (2) in clause (ii), by striking “seeks admission
15 within 10 years of the date of such alien’s departure
16 or removal (or within 20 years of” and inserting
17 “seeks admission not later than 10 years after the
18 date of the alien’s departure or removal (or not later
19 than 20 years after”.

20 **SEC. 238. BIOMETRIC SCREENING.**

21 Section 212 (8 U.S.C. 1182) is amended—

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

24 “(C) WITHHOLDING INFORMATION.—Ex-
25 cept as provided in subsection (d)(2), any alien

1 who, through his or her own fault, fails or has
2 failed to comply with a lawful request for bio-
3 metric information is inadmissible.”; and

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

6 “(2) The Secretary may waive the application of sub-
7 section (a)(7)(C) for an individual alien or a class of
8 aliens. A decision by the Secretary to grant or deny a
9 waiver under this paragraph shall not be subject to re-
10 view.”.

11 **SEC. 239. ENCOURAGING ALIENS TO DEPART VOLUN-**
12 **TARILY.**

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

15 (1) in subsection (a)—

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

18 “(1) IN GENERAL.—If an alien is not removable
19 under paragraph (2)(A)(iii) or (4) of section
20 237(a)—

21 “(A) the Secretary of Homeland Security
22 may permit the alien to voluntarily depart the
23 United States at the alien’s own expense under
24 this subsection instead of being subject to pro-
25 ceedings under section 240; or

1 “(B) the Attorney General may permit the
2 alien to voluntarily depart the United States at
3 the alien’s own expense under this subsection
4 after the initiation of removal proceedings
5 under section 240 and before the conclusion of
6 such proceedings before an immigration
7 judge.”;

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

10 “(A) IN GENERAL.—

11 “(i) INSTEAD OF REMOVAL.—Subject
12 to subparagraph (B), the Secretary of
13 Homeland Security—

14 “(I) may not grant an alien per-
15 mission to voluntarily depart the
16 United States under paragraph (1)(A)
17 for a period exceeding 180 days; and

18 “(II) may require such alien to
19 post a voluntary departure bond,
20 which shall be surrendered upon proof
21 that the alien has departed the United
22 States within the time specified in
23 such bond.

24 “(ii) BEFORE THE CONCLUSION OF
25 REMOVAL PROCEEDINGS.—

1 “(I) LIMITATION.—The Attorney
2 General—

3 “(aa) may not grant an
4 alien permission to voluntarily
5 depart under paragraph (1)(B)
6 for a period exceeding 90 days;
7 and

8 “(bb) may only grant such
9 permission after determining that
10 the alien has the means to depart
11 the United States and intends to
12 do so.

13 “(II) VOLUNTARY DEPARTURE
14 BOND.—An immigration judge may—

15 “(aa) require an alien per-
16 mitted to voluntarily depart
17 under paragraph (1)(B) to post a
18 voluntary departure bond, in an
19 amount necessary to ensure that
20 the alien will depart, which shall
21 be surrendered upon proof that
22 the alien has departed the United
23 States within the time specified
24 in such bond; and

1 “(bb) waive the requirement
2 to post a voluntary departure
3 bond after determining that the
4 alien has presented—

5 “(AA) compelling evi-
6 dence that the posting of a
7 bond will pose a serious fi-
8 nancial hardship; and

9 “(BB) credible evidence
10 that such a bond is unneces-
11 sary to guarantee timely de-
12 parture.”;

13 (C) by striking paragraph (3); and

14 (D) by redesignating paragraph (4) as
15 paragraph (3);

16 (2) by amending subsection (c) to read as fol-
17 lows:

18 “(c) CONDITIONS ON VOLUNTARY DEPARTURE.—

19 “(1) VOLUNTARY DEPARTURE AGREEMENT.—

20 Voluntary departure under this section may only be
21 granted as part of an affirmative agreement by the
22 alien.

23 “(2) CONCESSIONS BY THE SECRETARY.—In
24 connection with the alien’s agreement to voluntarily
25 depart under paragraph (1)(A), the Secretary of

1 Homeland Security may reduce the period of inad-
2 missibility under subparagraph (A) or (B)(i) of sec-
3 tion 212(a)(9).

4 “(3) ADVISALS.—Agreements relating to vol-
5 untary departure granted during removal pro-
6 ceedings under section 240, or at the conclusion of
7 such proceedings, shall be presented on the record
8 before the immigration judge, who shall advise the
9 alien of the consequences of a voluntary departure
10 agreement, including the consequences of failing to
11 comply with the agreement, before accepting such
12 agreement.

13 “(4) FAILURE TO COMPLY WITH AGREE-
14 MENT.—If an alien who has agreed to voluntarily
15 depart under this section fails to depart the United
16 States within the time allowed for voluntary depar-
17 ture or fails to comply with any other terms of the
18 agreement (including failure to timely post any re-
19 quired bond), unless such noncompliance is through
20 no fault of the alien, the alien is—

21 “(A) ineligible for the benefits of the
22 agreement;

23 “(B) subject to the penalties described in
24 subsection (d); and

1 “(C) subject to an alternate order of re-
2 moval if voluntary departure was granted under
3 subsection (a)(1)(B) or (b).

4 “(5) VOLUNTARY DEPARTURE PERIOD NOT AF-
5 FECTED.—Except as expressly agreed to by the Sec-
6 retary of Homeland Security in writing before the
7 expiration of the period allowed for voluntary depart-
8 ture, no motion, appeal, application, petition, or pe-
9 tition for review shall affect, reinstate, enjoin, delay,
10 stay, or toll the alien’s obligation to depart from the
11 United States during the period agreed to by the
12 alien and the Secretary.”;

13 (3) by amending subsection (d) to read as fol-
14 lows:

15 “(d) PENALTIES FOR FAILURE TO DEPART.—

16 “(1) CIVIL PENALTY.—An alien who is per-
17 mitted to voluntarily depart under this section and
18 fails to leave the United States during the period
19 specified in the voluntary departure agreement or
20 otherwise violates the terms of such agreement shall
21 be liable for a civil penalty of \$1,000. The voluntary
22 departure order shall specify the amount of the pen-
23 alty, which shall be acknowledged by the alien on the
24 record.

1 “(2) COLLECTION OF PENALTY.—If the Sec-
2 retary of Homeland Security establishes, by clear
3 and convincing evidence, that the alien failed to
4 leave the United States during the period specified
5 in the voluntary departure agreement—

6 “(A) no further procedure will be nec-
7 essary to establish the amount of the penalty;

8 “(B) the Secretary may collect the civil
9 penalty at any time thereafter and by whatever
10 means provided by law; and

11 “(C) the alien shall be ineligible for any
12 benefits under this chapter until this civil pen-
13 alty is paid.”; and

14 (4) by amending subsection (e) to read as fol-
15 lows:

16 “(e) ELIGIBILITY.—

17 “(1) PRIOR GRANT OF VOLUNTARY DEPAR-
18 TURE.—An alien may not be permitted to volun-
19 tarily depart under this section if the Secretary of
20 Homeland Security or the Attorney General pre-
21 viously permitted the alien to depart voluntarily
22 under this section on or after the date of the enact-
23 ment of the CIR Act of 2011.

24 “(2) RULEMAKING.—The Secretary may pro-
25 mulgate regulations to limit eligibility or impose ad-

1 ditional conditions for voluntary departure under
2 subsection (a)(1)(A) for any class of aliens.”.

3 (b) **EFFECTIVE DATE.**—The amendments made by
4 this section shall apply with respect to all orders granting
5 voluntary departure under section 240B of the Immigra-
6 tion and Nationality Act (8 U.S.C. 1229e) made on or
7 after the date that is 180 days after the date of the enact-
8 ment of this Act.

9 **SEC. 240. CANCELLATION OF VISAS.**

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

11 (1) in paragraph (1), by striking “Attorney
12 General, such visa” and inserting “Secretary of
13 Homeland Security, such visa and any other non-
14 immigrant visa issued by the United States that is
15 in the possession of the alien”; and

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

23 **SEC. 241. PENALTIES RELATING TO VESSELS AND AIR-**
24 **CRAFT.**

25 Section 243(c) (8 U.S.C. 1253(c)) is amended—

1 (1) by striking “Attorney General” each place
2 such term appears and inserting “Secretary of
3 Homeland Security”;

4 (2) by striking “Commissioner” each place such
5 term appears and inserting “Secretary”; and

6 (3) in paragraph (1)—

7 (A) in subparagraph (A), by striking
8 “\$2,000” and inserting “\$5,000”;

9 (B) in subparagraph (B), by striking
10 “\$5,000” and inserting “\$10,000”; and

11 (C) by amending paragraph (1)(C) to read
12 as follows:

13 “(C) COMPROMISE.—The Secretary of
14 Homeland Security, in the Secretary’s
15 unreviewable discretion and upon the receipt of
16 a written request, may mitigate the monetary
17 penalties required under this subsection for
18 each alien stowaway to an amount equal to not
19 less than \$500, upon such terms that the Sec-
20 retary determines to be appropriate.”.

21 **SEC. 242. SANCTIONS FOR COUNTRIES THAT DELAY OR**
22 **PREVENT REPATRIATION OF THEIR CITIZENS**
23 **AND NATIONALS.**

24 Sec. 243(d) (8 U.S.C. 1253(d)) is amended—

1 (1) by striking “Attorney General” each place
2 such term appears and inserting “Secretary of
3 Homeland Security” ;

4 (2) by inserting “or subsets of such visas” after
5 “both,”; and

6 (3) by inserting “of State” after “Secretary”
7 the last place such term appears.

8 **SEC. 243. STATE CRIMINAL ALIEN ASSISTANCE PROGRAM.**

9 (a) AUTHORIZATION OF APPROPRIATIONS.—Section
10 241(i)(5)(C) (8 U.S.C. 1231(i)(5)(C)) is amended by
11 striking “to carry out this subsection” and all that follows
12 and inserting “\$950,000,000 for each of the fiscal years
13 2012 through 2016 to carry out this subsection.”.

14 (b) REIMBURSEMENT OF STATES FOR INDIRECT
15 COSTS RELATING TO THE INCARCERATION OF UNAU-
16 THORIZED ALIENS.—Section 501 of the Immigration Re-
17 form and Control Act of 1986 (8 U.S.C. 1365) is amend-
18 ed—

19 (1) by striking subsection (a) and inserting the
20 following:

21 “(a) REIMBURSEMENT OF STATES.—Subject to the
22 amounts provided in advance in appropriation Acts, the
23 Attorney General shall reimburse a State for—

1 “(1) the costs incurred by the State for the im-
2 prisonment of all unauthorized aliens convicted of a
3 felony by such State; and

4 “(2) the indirect costs related to the
5 imprisonments described in paragraph (1).”; and

6 (2) by striking subsections (c) through (e) and
7 inserting the following:

8 “(c) ALLOCATION OF REIMBURSEMENTS.—Reim-
9 bursements under this section shall be allocated in a man-
10 ner that gives special consideration for any State that
11 shares a border with Mexico or with Canada.

12 “(d) DEFINITIONS.—In this section:

13 “(1) INDIRECT COSTS.—The term ‘indirect
14 costs’ includes—

15 “(A) court costs, county attorney costs, de-
16 tention costs, and criminal proceedings expendi-
17 tures that do not involve going to trial;

18 “(B) indigent defense costs; and

19 “(C) unsupervised probation costs.

20 “(2) STATE.—The term ‘State’ has the mean-
21 ing given such term in section 101(a)(36) of the Im-
22 migration and Nationality Act (8 U.S.C.
23 1101(a)(36)).

24 “(e) AUTHORIZATION OF APPROPRIATIONS.—There
25 are authorized to be appropriated \$200,000,000 for each

1 of the fiscal years 2012 through 2016 to carry out sub-
2 section (a)(2).”.

3 **SEC. 244. PROCEDURES REGARDING ALIENS APPRE-**
4 **HENDED BY STATE AND LOCAL LAW EN-**
5 **FORCEMENT OFFICERS.**

6 (a) ISSUANCE OF DETAINERS.—Section 287(d) (8
7 U.S.C. 1357(d)) is amended to read as follows:

8 “(d) ISSUANCE OF DETAINERS.—

9 “(1) DETERMINATION.—An authorized officer
10 or employee of the Department of Homeland Secu-
11 rity shall promptly determine whether or not to issue
12 a detainer to detain an alien who is arrested by a
13 Federal, State, or local law enforcement official for
14 a violation of any law relating to controlled sub-
15 stances if the law enforcement official—

16 “(A) has reason to believe that the alien
17 has not been lawfully admitted to the United
18 States or is otherwise not lawfully present in
19 the United States;

20 “(B) expeditiously informs such officer or
21 employee of the arrest and of facts concerning
22 the status of the alien; and

23 “(C) requests the Department of Home-
24 land Security to determine whether or not to
25 issue such detainer.

1 “(2) CUSTODY.—If a detainer is issued pursu-
2 ant to paragraph (1) and the alien is not otherwise
3 detained by Federal, State, or local officials, the
4 Secretary shall effectively and expeditiously take
5 custody of the alien.

6 “(3) DATA COLLECTION.—The Secretary of
7 Homeland Security shall collect data regarding de-
8 tainers issued under this subsection, including—

9 “(A) the criminal charge for which the in-
10 dividual was arrested or convicted;

11 “(B) the date on which the detainer was
12 issued;

13 “(C) the basis for the issuance of the de-
14 tainer;

15 “(D) the date on which the detainer was
16 lifted;

17 “(E) the date on which a Federal or State
18 criminal court or other government entity or-
19 dered the release of the individual;

20 “(F) the date on which the Department of
21 Homeland Security took custody of the indi-
22 vidual;

23 “(G) the perceived race, ethnicity, and
24 country of origin of the individual against
25 whom the detainer was issued;

1 “(H) the age of the individual;

2 “(I) whether the individual was a victim of,
3 or a witness to, a crime;

4 “(J) the disposition of the criminal case
5 against the individual;

6 “(K) the ultimate disposition of the immi-
7 gration case, including whether the individual
8 was determined to be a United States citizen;

9 “(L) the grounds of removal, if applicable,
10 and any charges brought by the Secretary; and

11 “(M) the number of individuals removed
12 after the Secretary took custody while any
13 criminal matter was pending.”.

14 (b) RULEMAKING.—The Secretary shall issue regula-
15 tions that require officers and employees of the Depart-
16 ment of Homeland Security—

17 (1) to confirm, before issuing a detainer—

18 (A) the alienage of the individual to be
19 made subject to such detainer through lawfully
20 obtained information, including—

21 (i) the name of the individual;

22 (ii) the date of birth of the individual;

23 or

24 (iii) the fingerprints of the individual;

1 (B) whether the individual is removable
2 from the United States; and

3 (C) that the individual was not the victim
4 of a crime or a witness to a crime; and

5 (2) to provide notice to the individual being de-
6 tained, in the individual's native language—

7 (A) that a detainer has been issued; and

8 (B) the procedure for challenging the de-
9 tainer.

10 **SEC. 245. REFORM OF PASSPORT, VISA, AND IMMIGRATION**

11 **FRAUD OFFENSES.**

12 (a) **TRAFFICKING IN PASSPORTS.**—Section 1541 of
13 title 18, United States Code, is amended to read as fol-
14 lows:

15 **“§ 1541. Trafficking in passports**

16 “(a) **MULTIPLE PASSPORTS.**—Any person who, dur-
17 ing any period of 3 years or less, knowingly—

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

20 “(2) forges, counterfeits, alters, or falsely
21 makes 10 or more passports;

22 “(3) secures, possesses, uses, receives, buys,
23 sells, or distributes 10 or more passports, knowing
24 the passports to be forged, counterfeited, altered,

1 falsely made, stolen, procured by fraud, or produced
2 or issued without lawful authority; or

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

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

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

16 (b) FALSE STATEMENT IN AN APPLICATION FOR A
17 PASSPORT.—Section 1542 of title 18, United States Code,
18 is amended to read as follows:

19 “§ 1542. False statement in an application for a pass-
20 port

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

22 “(1) makes any false statement or representa-
23 tion in an application for a United States passport;
24 or

1 “(2) mails, prepares, presents, or signs an ap-
2 plication for a United States passport knowing the
3 application to contain any false statement or rep-
4 resentation,
5 shall be fined under this title, imprisoned not more than
6 15 years, or both.

7 “(b) VENUE.—

8 “(1) IN GENERAL.—An offense under sub-
9 section (a) may be prosecuted in any district—

10 “(A) in which the false statement or rep-
11 resentation was made or the application for a
12 United States passport was prepared or signed;
13 or

14 “(B) in which or to which the application
15 was mailed or presented.

16 “(2) ACTS OCCURRING OUTSIDE THE UNITED
17 STATES.—An offense under subsection (a) involving
18 an application for a United States passport prepared
19 and adjudicated outside the United States may be
20 prosecuted in the district in which the resultant
21 passport was or would have been produced.

22 “(c) SAVINGS CLAUSE.—Nothing in this section may
23 be construed to limit the venue otherwise available under
24 sections 3237 and 3238.”.

1 (c) FORGERY AND UNLAWFUL PRODUCTION OF A
2 PASSPORT.—Section 1543 of title 18, United States Code,
3 is amended to read as follows:

4 **“§ 1543. Forgery and unlawful production of a pass-**
5 **port**

6 “(a) FORGERY.—Any person who knowingly—

7 “(1) forges, counterfeits, alters, or falsely
8 makes any passport; or

9 “(2) transfers any passport knowing it to be
10 forged, counterfeited, altered, falsely made, stolen,
11 or to have been produced or issued without lawful
12 authority,

13 shall be fined under this title, imprisoned not more than
14 15 years, or both.

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

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

20 “(2) produces, issues, authorizes, or verifies a
21 United States passport for or to any person knowing
22 or in reckless disregard of the fact that such person
23 is not entitled to receive a passport; or

1 “(3) transfers or furnishes a passport to any
2 person for use by any person other than the person
3 for whom the passport was issued or designed,
4 shall be fined under this title, imprisoned not more than
5 15 years, or both.”.

6 (d) MISUSE OF A PASSPORT.—Section 1544 of title
7 18, United States Code, is amended to read as follows:

8 **“§ 1544. Misuse of a passport**

9 “Any person who knowingly—

10 “(1) uses any passport issued or designed for
11 the use of another person;

12 “(2) uses any passport in violation of the condi-
13 tions or restrictions contained in the passport, or in
14 violation of the laws, regulations, or rules governing
15 the issuance and use of the passport;

16 “(3) secures, possesses, uses, receives, buys,
17 sells, or distributes any passport knowing it to be
18 forged, counterfeited, altered, falsely made, procured
19 by fraud, or produced or issued without lawful au-
20 thority; or

21 “(4) violates the terms and conditions of any
22 safe conduct duly obtained and issued under the au-
23 thority of the United States,

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

1 (e) SCHEMES TO DEFRAUD ALIENS.—Section 1545
2 of title 18, United States Code, is amended to read as
3 follows:

4 **“§ 1545. Schemes To defraud aliens**

5 “(a) IN GENERAL.—Any person who knowingly exe-
6 cutes a scheme or artifice, in connection with any matter
7 that is authorized by or arises under any Federal immigra-
8 tion law or any matter the offender claims or represents
9 is authorized by or arises under any Federal immigration
10 law, to—

11 “(1) defraud any person; or

12 “(2) obtain or receive money or anything else of
13 value from any person by means of false or fraudu-
14 lent pretenses, representations, or promises,

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

17 “(b) MISREPRESENTATION.—Any person who know-
18 ingly and falsely represents that such person is an attor-
19 ney or an accredited representative (as that term is de-
20 fined in section 1292.1 of title 8, Code of Federal Regula-
21 tions (or any successor regulation)) in any matter arising
22 under any Federal immigration law shall be fined under
23 this title, imprisoned not more than 15 years, or both.”.

24 (f) IMMIGRATION AND VISA FRAUD.—Section 1546
25 of title 18, United States Code, is amended—

1 (1) by amending the section heading to read as
2 follows:

3 **“§ 1546. Immigration and visa fraud”;**

4 (2) by striking subsections (b) and (c) and in-
5 serting the following:

6 “(b) TRAFFICKING.—Any person who, during any pe-
7 riod of 3 years or less, knowingly—

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

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

13 “(3) secures, possesses, uses, buys, sells, or dis-
14 tributes 10 or more immigration documents, know-
15 ing the immigration documents to be forged, coun-
16 terfeited, altered, stolen, falsely made, procured by
17 fraud, or produced or issued without lawful author-
18 ity; or

19 “(4) completes, mails, prepares, presents, signs,
20 or submits 10 or more immigration documents
21 knowing the documents to contain any materially
22 false statement or representation,

23 shall be fined under this title, imprisoned not more than
24 20 years, or both.

1 “(c) IMMIGRATION DOCUMENT MATERIALS.—Any
2 person who knowingly and without lawful authority pro-
3 duces, buys, sells, possesses, or uses any official material
4 (or counterfeit of any official material) used to make im-
5 migration documents, including any distinctive paper, seal,
6 hologram, image, text, symbol, stamp, engraving, or plate,
7 shall be fined under this title, imprisoned not more than
8 20 years, or both.

9 “(d) EMPLOYMENT DOCUMENTS.—Any person who
10 uses—

11 “(1) an identification document, knowing or
12 having reason to know that the document is false or
13 was not issued lawfully for the use of the possessor;
14 or

15 “(2) a false attestation, for the purpose of sat-
16 isfying a requirement under section 274A(b) of the
17 Immigration and Nationality Act (8 U.S.C.
18 1324a(b)), shall be fined under this title, imprisoned
19 not more than 1 year, or both.”.

20 “(g) ALTERNATIVE IMPRISONMENT MAXIMUM FOR
21 CERTAIN OFFENSES.—Section 1547 of title 18, United
22 States Code, is amended—

23 “(1) in the matter preceding paragraph (1), by
24 striking “(other than an offense under section
25 1545)”;

1 (2) in paragraph (1), by striking “15” and in-
2 serting “20”; and

3 (3) in paragraph (2), by striking “20” and in-
4 serting “25”.

5 (h) ATTEMPTS, CONSPIRACIES, JURISDICTION, AND
6 DEFINITIONS.—Chapter 75 of title 18, United States
7 Code, is amended by adding after section 1547 the fol-
8 lowing:

9 **“§ 1548. Attempts and conspiracies**

10 “Any person who attempts or conspires to violate any
11 section of this chapter shall be punished in the same man-
12 ner as a person who completed a violation of such section.

13 **“§ 1549. Additional jurisdiction**

14 “(a) IN GENERAL.—Any person who commits an of-
15 fense under this chapter within the special maritime and
16 territorial jurisdiction of the United States shall be pun-
17 ished as provided under this chapter.

18 “(b) EXTRATERRITORIAL JURISDICTION.—Any per-
19 son who commits an offense under this chapter outside
20 the United States shall be punished as provided under this
21 chapter if—

22 “(1) the offense involves a United States pass-
23 port or immigration document (or any document
24 purporting to be such a document) or any matter,

1 right, or benefit arising under or authorized by any
2 Federal immigration law;

3 “(2) the offense is in or affects foreign com-
4 merce;

5 “(3) the offense affects, jeopardizes, or poses a
6 significant risk to the lawful administration of Fed-
7 eral immigration laws, or the national security of the
8 United States;

9 “(4) the offense is committed to facilitate an
10 act of international terrorism (as defined in section
11 2331) or a drug trafficking crime (as defined in sec-
12 tion 929(a)(2)) that affects or would affect the na-
13 tional security of the United States;

14 “(5) the offender is a national of the United
15 States or an alien lawfully admitted for permanent
16 residence (as those terms are defined in section
17 101(a) of the Immigration and Nationality Act (8
18 U.S.C. 1101(a))); or

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

21 **“§ 1550. Authorized law enforcement activities**

22 “Nothing in this chapter may be construed to pro-
23 hibit—

24 “(1) any lawfully authorized investigative, pro-
25 tective, or intelligence activity of a law enforcement

1 agency of the United States, a State, or a political
 2 subdivision of a State, or an intelligence agency of
 3 the United States; or

4 “(2) any activity authorized under title V of the
 5 Organized Crime Control Act of 1970 (Public Law
 6 91–452; 84 Stat. 933).”.

7 (i) CLERICAL AMENDMENT.—The table of sections
 8 for chapter 75 of title 18, United States Code, is amended
 9 to read as follows:

“Sec.

“1541. Trafficking in passports.

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

“1543. Forgery and unlawful production of a passport.

“1544. Misuse of a passport.

“1545. Schemes to defraud aliens.

“1546. Immigration and visa fraud.

“1547. Alternative imprisonment maximum for certain offenses.

“1548. Attempts and conspiracies.

“1549. Additional jurisdiction.

“1550. Authorized law enforcement activities.”.

10 (j) UNIFORM STATUTE OF LIMITATIONS FOR CER-
 11 TAIN IMMIGRATION, NATURALIZATION, AND PEONAGE
 12 OFFENSES.—

13 (1) IN GENERAL.—Section 3291 of title 18,
 14 United States Code, is amended to read as follows:

15 **“§ 3291. Immigration, naturalization, and peonage of-**
 16 **fenses**

17 “A person may not be prosecuted, tried, or punished
 18 for any violation under chapter 69 (relating to nationality
 19 and citizenship offenses), 75 (relating to passport, visa,
 20 and immigration offenses), or 77 (relating to peonage,

1 slavery, and trafficking in persons), for an attempt or con-
 2 spiracy to commit such a violation, for a violation of any
 3 criminal provision under section 243, 266, 274, 275, 276,
 4 277, or 278 of the Immigration and Nationality Act (8
 5 U.S.C. 1253, 1306, 1324, 1325, 1326, 1327, and 1328),
 6 or for an attempt or conspiracy to commit any such viola-
 7 tion, unless the indictment is returned or the information
 8 filed not later than 10 years after the commission of the
 9 offense.”.

10 (2) CLERICAL AMENDMENT.—The table of sec-
 11 tions for chapter 213 of title 18, United States
 12 Code, is amended by striking the item relating to
 13 section 3291 and inserting the following:

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

14 **SEC. 246. DIRECTIVES RELATED TO PASSPORT AND DOCU-**
 15 **MENT FRAUD.**

16 (a) DIRECTIVE TO THE UNITED STATES SEN-
 17 TENCING COMMISSION.—

18 (1) IN GENERAL.—Pursuant to the authority
 19 under section 994 of title 28, United States Code,
 20 the United States Sentencing Commission shall pro-
 21 mulgate or amend the sentencing guidelines, policy
 22 statements, and official commentaries related to
 23 passport fraud offenses, including the offenses de-
 24 scribed in chapter 75 of title 18, United States

1 Code, as amended by section 245, to reflect the seri-
2 ous nature of such offenses.

3 (2) REPORT.—Not later than 1 year after the
4 date of the enactment of this Act, the United States
5 Sentencing Commission shall submit a report on the
6 implementation of this subsection to—

7 (A) the Committee on the Judiciary of the
8 Senate; and

9 (B) the Committee on the Judiciary of the
10 House of Representatives.

11 (b) PROTECTION FOR LEGITIMATE REFUGEES AND
12 ASYLUM SEEKERS.—

13 (1) IN GENERAL.—

14 (A) REQUIREMENT FOR GUIDELINES.—
15 The Attorney General, in consultation with the
16 Secretary, shall develop binding prosecution
17 guidelines for Federal prosecutors to ensure
18 that each prosecution of an alien seeking entry
19 into the United States by fraud is consistent
20 with the United States treaty obligations under
21 Article 31(1) of the Convention Relating to the
22 Status of Refugees, done at Geneva July 28,
23 1951 (as made applicable by the Protocol Relat-
24 ing to the Status of Refugees, done at New
25 York January 31, 1967 (19 UST 6223)).

1 (B) NO PRIVATE RIGHT OF ACTION.—The
2 guidelines developed pursuant to subparagraph
3 (A), and any internal office procedures related
4 to such guidelines—

5 (i) are intended solely for the guid-
6 ance of attorneys of the United States; and

7 (ii) are not intended to, do not, and
8 may not be relied upon to, create any right
9 or benefit, substantive or procedural, en-
10 forceable at law by any party in any ad-
11 ministrative, civil, or criminal matter.

12 (2) PROTECTION OF VULNERABLE PERSONS.—

13 A person described in paragraph (3) may not be
14 prosecuted under chapter 75 of title 18, United
15 States Code, or under section 275 or 276 of the Im-
16 migration and Nationality Act (8 U.S.C. 1325 and
17 1326), in connection with the person's entry or at-
18 tempted entry into the United States until after the
19 date on which the person's application for such pro-
20 tection, classification, or status has been adjudicated
21 and denied in accordance with the Immigration and
22 Nationality Act (8 U.S.C. 1101 et seq.).

23 (3) PERSONS SEEKING PROTECTION, CLASSI-
24 FICATION, OR STATUS.—A person described in this
25 paragraph is a person who—

1 (A) is seeking protection, classification, or
2 status; and

3 (B)(i) has filed an application for asylum
4 under section 208 of the Immigration and Na-
5 tionality Act (8 U.S.C. 1158), withholding of
6 removal under section 241(b)(3) of such Act (8
7 U.S.C. 1231), or relief under the Convention
8 against Torture and Other Cruel, Inhuman or
9 Degrading Treatment or Punishment, done at
10 New York, December 10, 1994, pursuant to
11 title 8, Code of Federal Regulations;

12 (ii) indicates immediately after apprehen-
13 sion, that he or she intends to apply for such
14 asylum, withholding of removal, or relief and
15 promptly files the appropriate application;

16 (iii) has been referred for a credible fear
17 interview, a reasonable fear interview, or an
18 asylum-only hearing under section 235 of the
19 Immigration and Nationality Act (8 U.S.C.
20 1225) or title 8, Code of Federal Regulations;
21 or

22 (iv) has filed an application for classifica-
23 tion or status under—

24 (I) paragraph (15)(T), (15) (U),
25 (27)(J), or (51) of section 101(a) of the

1 Immigration and Nationality Act (8 U.S.C.
2 1101(a)); or

3 (II) section 216(c)(4)(C), 240A(b)(2),
4 or 244(a)(3) of such Act (8 U.S.C.
5 1186a(c)(4)(C), 1229b(b)(2), and
6 1254a(a)(3)).

7 **SEC. 247. EXPANDING THE DEFINITION OF CONVEYANCES**
8 **SUBJECT TO FORFEITURE.**

9 (a) IN GENERAL.—Section 1703 of title 19, United
10 States Code, is amended—

11 (1) by amending the section heading to read as
12 follows:

13 **“§ 1703. Seizure and forfeiture of vessels, vehicles,**
14 **other conveyances, and instruments of**
15 **international traffic”;**

16 (2) in subsection (a), by amending the sub-
17 section heading to read as follows:

18 **“(a) VESSELS, VEHICLES, OTHER CONVEYANCES,**
19 **AND INSTRUMENTS OF INTERNATIONAL TRAFFIC SUB-**
20 **JECT TO SEIZURE AND FORFEITURE.—”;**

21 (3) in subsection (b), by amending the sub-
22 section heading to read as follows:

23 **“(b) VESSELS, VEHICLES, OTHER CONVEYANCES,**
24 **AND INSTRUMENTS OF INTERNATIONAL TRAFFIC DE-**
25 **FINED.—”;**

1 (4) in subsections (a) and (b), by inserting “,
2 vehicle, other conveyance, or instrument of inter-
3 national traffic” after “vessel” each place such term
4 appears; and

5 (5) by amending subsection (c) to read as fol-
6 lows:

7 “(c) ACTS CONSTITUTING PRIMA FACIE EVIDENCE
8 OF SMUGGLING.—For purposes of this section, prima
9 facie evidence that a conveyance is being, has been, or is
10 attempting to be employed in smuggling or to defraud the
11 revenue of the United States shall be—

12 “(1) in the case of a vessel, the vessel—

13 “(A) has become subject to pursuit, as de-
14 scribed in section 1581;

15 “(B) is a hovering vessel; or

16 “(C) fails, at any place within the customs
17 waters of the United States or within a cus-
18 toms-enforcement area, to display lights as re-
19 quired by law;

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

1 (b) CLERICAL AMENDMENT.—The table of sections
2 for chapter 5 of title 19, United States Code, is amended
3 by striking the item relating to section 1703 and inserting
4 the following:

“1703. Seizure and forfeiture of vessels, vehicles, other conveyances, or instru-
ments of international traffic.”.

5 **SEC. 248. CRIMINAL FORFEITURE.**

6 Section 982(a) of title 18, United States Code, is
7 amended—

8 (1) in paragraph (2)(B), by inserting “1028A”
9 between “1028” and “1029;”

10 (2) in paragraph (6)(A)—

11 (A) by striking “ or 274A(a)(2)” and in-
12 serting “274A(a)(2) or 274A(i)”; and

13 (B) by inserting “and 1028A” after
14 “1028” and

15 (3) in paragraph (8), by inserting “and 1028A”
16 after “1028”.

17 **SEC. 249. ADVANCE DELIVERY OF INFORMATION INCLUD-**
18 **ING PASSENGER MANIFESTS.**

19 (a) IN GENERAL.—Section 231 (8 U.S.C. 1221) is
20 amended—

21 (1) by striking “commercial vessel or aircraft”
22 each place it appears and inserting “commercial ves-
23 sel, commercial vehicle, or aircraft”;

1 (2) in subsection (a), by striking “such vessel
2 or aircraft” and inserting “such vessel, vehicle, or
3 aircraft”;

4 (3) in subsection (g), by striking “\$1,000” and
5 inserting “\$5,000”;

6 (4) in subsection (j), by striking “The Attorney
7 General” and inserting the following:

8 “(j) INFORMATION TO BE RECORDED.—The Sec-
9 retary of Homeland Security”; and

10 (5) by inserting at the end the following:

11 “(k) SHARING OF MANIFEST AND PASSENGER NAME
12 RECORD INFORMATION WITH OTHER GOVERNMENT
13 AGENCIES.—The Secretary of Homeland Security may
14 provide information contained in passenger and crew
15 manifests and passenger name record information received
16 under this section to other Federal, State, tribal, local,
17 and foreign government authorities in order to protect the
18 national security of the United States or as otherwise au-
19 thorized by law.

20 “(l) SAVINGS PROVISION.—Nothing in this section
21 may be construed to abrogate, diminish, or weaken the
22 provisions of any Federal law that prevents or protects
23 against unauthorized collection or release of personal
24 records.”.

1 (b) ASSESSMENTS.—Not later than 1 year after the
2 date of the enactment of this Act, the Secretary shall as-
3 sess the privacy and civil liberties impacts of the amend-
4 ments made by subsection (a).

5 **SEC. 250. UNLAWFUL FLIGHT FROM IMMIGRATION OR CUS-**
6 **TOMS CONTROLS AND DISOBEYANCE OF LAW-**
7 **FUL ORDERS.**

8 Section 758 of title 18, United States Code, is
9 amended to read as follows:

10 **“§ 758. Unlawful flight from Federal checkpoints and**
11 **disobeyance of lawful orders**

12 “(a) EVADING A CHECKPOINT.—Any person who,
13 while operating a motor vehicle or vessel—

14 “(1) knowingly flees or evades a checkpoint op-
15 erated by the Department of Homeland Security or
16 any other Federal law enforcement agency; and

17 “(2) knowingly or recklessly disregards or dis-
18 obeys the lawful command of a Federal law enforce-
19 ment officer engaged in the enforcement of Federal
20 law, or the lawful command of any law enforcement
21 officer assisting such Federal officer,

22 shall be fined under this title, imprisoned not more than
23 5 years, or both.

24 “(b) FAILURE TO STOP.—Any person who, while op-
25 erating a motor vehicle, aircraft, or vessel, knowingly or

1 recklessly disregards or disobeys the lawful command of
2 a Federal law enforcement officer engaged in the enforce-
3 ment of Federal law, or the lawful command of any law
4 enforcement officer assisting such Federal officer, shall be
5 fined under this title, imprisoned not more than 2 years,
6 or both.”.

7 **SEC. 251. REDUCING ILLEGAL IMMIGRATION AND ALIEN**
8 **SMUGGLING ON TRIBAL LANDS.**

9 (a) GRANTS AUTHORIZED.—The Secretary may
10 award grants to any Indian tribe that—

11 (1) owns land that is adjacent to an inter-
12 national border of the United States; and

13 (2) has been adversely affected by illegal immi-
14 gration.

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

17 (1) law enforcement activities;

18 (2) health care services;

19 (3) environmental restoration; and

20 (4) the preservation of cultural resources.

21 (c) REPORT.—Not later than 180 days after the date
22 of the enactment of this Act, the Secretary shall submit
23 a report to the Committee on the Judiciary of the Senate
24 and the Committee on the Judiciary of the House of Rep-
25 resentatives that—

1 (1) describes the level of access that Border Pa-
2 trol agents have on tribal lands;

3 (2) describes the extent to which the enforce-
4 ment of Federal immigration laws and rescue oper-
5 ations by Border Patrol officers may be improved by
6 enhanced access to tribal lands;

7 (3) contains a strategy for improving access to
8 tribal lands through increased cooperation with trib-
9 al authorities; and

10 (4) identifies grants provided by the Depart-
11 ment to Indian tribes, either directly or through
12 grants provided to State or local governments, for
13 border security expenses.

14 (d) AUTHORIZATION OF APPROPRIATIONS.—There
15 are authorized to be appropriated such sums as may be
16 necessary for each of the fiscal years 2012 through 2016
17 to carry out this section.

18 **SEC. 252. DIPLOMATIC SECURITY SERVICE.**

19 (a) Section 37(a)(1) of the State Department Basic
20 Authorities Act of 1956 (22 U.S.C. 2709(a)(1)) is amend-
21 ed to read as follows:

22 “(1) conduct investigations concerning—

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

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

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

6 “(D) Federal offenses committed within
7 the special maritime and territorial jurisdiction
8 defined in section 7(9) of title 18, United
9 States Code, except as that jurisdiction relates
10 to the premises of United States military mis-
11 sions and related residences;”.

12 (b) RULE OF CONSTRUCTION.—Nothing in this sec-
13 tion may be construed to limit the investigative authority
14 of any Federal department or agency.

15 **SEC. 253. INCREASED PENALTIES BARRING THE ADMIS-**
16 **SION OF CONVICTED SEX OFFENDERS FAIL-**
17 **ING TO REGISTER AND REQUIRING DEPORTA-**
18 **TION OF SEX OFFENDERS FAILING TO REG-**
19 **ISTER.**

20 (a) INADMISSIBILITY.—Section 212(a)(2)(A)(i) (8
21 U.S.C. 1182(a)(2)(A)(i)) is amended—

22 (1) in subclause (I), by striking “or” at the
23 end;

24 (2) in subclause (II), by striking the comma at
25 the end and inserting a semicolon; and

1 (3) by inserting after subclause (II) the fol-
2 lowing:

3 “(III) a conviction under section
4 2250 of title 18, United States Code
5 (relating to failure to register as a sex
6 offender),”.

7 (b) DEPORTABILITY.—Section 237(a)(2)(A)(i) (8
8 U.S.C. 1227(a)(2)(A)(i)) is amended—

9 (1) in subclause (I), by striking “, and” and in-
10 serting a semicolon;

11 (2) in subclause (II), by striking the comma at
12 the end and inserting “; or”; and

13 (3) by inserting after subclause (II) the fol-
14 lowing:

15 “(III) a conviction under section
16 2250 of title 18, United States Code
17 (relating to failure to register as a sex
18 offender),”.

19 **SEC. 254. AGGRAVATED FELONY.**

20 (a) DEFINITION OF AGGRAVATED FELONY.—Section
21 101(a)(43) (8 U.S.C. 1101(a)(43)) is amended—

22 (1) in the matter preceding subparagraph (A),
23 by striking “The term ‘aggravated felony’ means—
24 ” and inserting “Notwithstanding any other provi-
25 sion of law, the term ‘aggravated felony’ applies to

1 any offense which is a felony described in this para-
2 graph, whether in violation of Federal or State law,
3 for which the individual served at least 1 year of im-
4 prisonment and to such a felony offense in violation
5 of the law of a foreign country, for which the term
6 of imprisonment was completed during the previous
7 15 years, regardless of whether the conviction was
8 entered before, on, or after September 30, 1996, and
9 means—”;

10 (2) in subparagraph (N), by striking “para-
11 graph (1)(A) or (2) of” and inserting “paragraph
12 (1)(A), (2), or (4) of”; and

13 (3) by striking the undesignated matter fol-
14 lowing subparagraph (U).

15 (b) EFFECTIVE DATE AND APPLICATION.—

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

18 (A) take effect on the date of the enact-
19 ment of this Act; and

20 (B) apply to any act that occurred on or
21 after such date.

22 (2) APPLICATION OF AMENDMENTS.—The
23 amendments to section 101(a)(43) of the Immigra-
24 tion and Nationality Act made by section 321 of the
25 Illegal Immigration Reform and Immigrant Respon-

1 sibility Act of 1996 (division C of Public Law 104–
2 208; 110 Stat. 3009–627) shall continue to apply to
3 actions taken on or after September 30, 1996, re-
4 gardless of when the conviction for such actions oc-
5 curred.

6 **SEC. 255. INCREASED CRIMINAL PENALTIES RELATED TO**
7 **GANG VIOLENCE.**

8 (a) CRIMINAL STREET GANGS.—

9 (1) INADMISSIBILITY.—Section 212(a)(2) (8
10 U.S.C. 1182(a)(2)) is amended by adding at the end
11 the following:

12 “(J) MEMBERS OF CRIMINAL STREET
13 GANGS.—Unless the Secretary of Homeland Se-
14 curity or the Attorney General waives the appli-
15 cation of this subparagraph, any alien who has
16 been convicted of a crime under section 521 of
17 title 18, United States Code, is inadmissible.”.

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

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

1 been convicted of a crime under section 521 of
2 title 18, United States Code, is deportable.”.

3 (3) TEMPORARY PROTECTED STATUS.—Section
4 244 (8 U.S.C. 1254a) is amended—

5 (A) by striking “Attorney General” each
6 place it appears and inserting “Secretary of
7 Homeland Security”;

8 (B) in subsection (c)(2)(B)—

9 (i) in clause (i), by striking “, or” at
10 the end and inserting a semicolon;

11 (ii) in clause (ii), by striking the pe-
12 riod at the end and inserting “; or”; and

13 (iii) by adding at the end the fol-
14 lowing:

15 “(iii) the alien has been convicted of
16 a crime under section 521 of title 18,
17 United States Code.”.

18 (C) in subsection (d)—

19 (i) by striking paragraph (3);

20 (ii) by redesignating paragraph (4) as
21 paragraph (3); and

22 (iii) in paragraph (3), as redesignated,
23 by adding at the end the following: “The
24 Secretary of Homeland Security shall de-
25 tain an alien provided temporary protected

1 status under this section if the alien has
2 been found by an immigration judge to be
3 subject to detention under section
4 236(c)(1).”.

5 (b) PENALTIES RELATED TO REMOVAL.—Section
6 243 (8 U.S.C. 1253) is amended—

7 (1) in subsection (a)(1), in the matter following
8 subparagraph (D)—

9 (A) by striking “or imprisoned not more
10 than four years” and inserting “and imprisoned
11 for not more than 5 years”; and

12 (B) by striking “, or both”; and

13 (2) in subsection (b), by striking “not more
14 than \$1,000 or imprisoned for not more than 1 year,
15 or both” and inserting “under title 18, United
16 States Code, and imprisoned for not more than 3
17 years (or for not more than 10 years if the alien is
18 removable under paragraph (1)(E), (2), or (4) of
19 section 237(a)).”.

20 **PART II—DETENTION REFORM**

21 **SEC. 261. DEFINITIONS.**

22 In this part:

23 (1) APPREHENSION.—The term “apprehension”
24 means the detention, arrest, or custody, or any sig-
25 nificant deprivation of an individual’s freedom of ac-

1 tion by government officials or entities acting under
2 agreement with the Department for suspicion of vio-
3 lations under the Immigration and Nationality Act
4 (8 U.S.C. 1101 et seq.).

5 (2) CHILD.—The term “child” has the meaning
6 given to the term in section 101(b)(1) of the Immi-
7 gration and Nationality Act (8 U.S.C. 1101(b)(1)).

8 (3) CHILD WELFARE AGENCY.—The term
9 “child welfare agency” means the State or local
10 agency responsible for child welfare services under
11 subtitles B and E of title IV of the Social Security
12 Act (42 U.S.C. 601 et seq.).

13 (4) COOPERATING ENTITY.—The term “cooper-
14 ating entity” means a State or local entity acting
15 under agreement with, or at the request of, the De-
16 partment.

17 (5) DETAINEE.—The term “detainee” means
18 an individual who is subject to detention under the
19 Immigration and Nationality Act.

20 (6) DETENTION.—The term “detention” means
21 government custody or any other deprivation of an
22 individual’s freedom of movement by government
23 agents.

24 (7) DETENTION FACILITY.—The term “deten-
25 tion facility” means a Federal, State, or local gov-

1 ernment facility, or a privately owned and operated
2 facility, that is used to hold individuals suspected or
3 found to be in violation of the Immigration and Na-
4 tionality Act (8 U.S.C. 1101 et seq.) for more than
5 72 hours.

6 (8) FAMILIES WITH CHILDREN.—The term
7 “family with children” means any parent or legal
8 guardian who is apprehended with 1 or more of their
9 children.

10 (9) GROUP LEGAL ORIENTATION PRESEN-
11 TATIONS.—The term “group legal orientation pres-
12 entations” means live group presentations, supple-
13 mented by individual orientations, pro se workshops,
14 and pro bono referrals, that—

15 (A) are carried out by private nongovern-
16 mental organizations;

17 (B) are presented to detainees;

18 (C) inform detainees about Federal immi-
19 gration law and procedures; and

20 (D) enable detainees to determine their eli-
21 gibility for relief.

22 (10) IMMIGRATION ENFORCEMENT ACTION.—
23 The term “immigration enforcement action” means
24 the apprehension of, detention of, or request for or
25 issuance of a detainer for, 1 or more individuals for

1 suspected or confirmed violations of the Immigration
2 and Nationality Act (8 U.S.C. 1101 et seq.) by the
3 Department or cooperating entities.

4 (11) LOCAL EDUCATION AGENCY.—The term
5 “local education agency” has the meaning given to
6 the term in section 9101 of the Elementary and Sec-
7 ondary Education Act of 1965 (20 U.S.C. 7801).

8 (12) NGO.—The term “NGO” means a non-
9 governmental organization that provides social serv-
10 ices or humanitarian assistance to the immigrant
11 community.

12 (13) SECURE ALTERNATIVES.—The term “se-
13 cure alternatives” means custodial or noncustodial
14 programs under which aliens are screened and pro-
15 vided with appearance assistance services or placed
16 in supervision programs as needed to ensure they
17 appear at all immigration interviews, appointments
18 and hearings.

19 (14) SHORT-TERM DETENTION FACILITY.—The
20 term “detention facility” means a Federal, State, or
21 local government facility, or a privately owned and
22 operated facility, that is used to hold individuals sus-
23 pected or found to be in violation of the Immigration
24 and Nationality Act (8 U.S.C. 1101 et seq.) for 72
25 hours or less.

1 (15) UNACCOMPANIED ALIEN CHILDREN.—The
2 term “unaccompanied alien children” has the mean-
3 ing given the term in section 462(g) of the Home-
4 land Security Act of 2002 (6 U.S.C. 279(g)).

5 **SEC. 262. PROTECTIONS FOR VULNERABLE POPULATIONS.**

6 (a) PROTECTION OF VULNERABLE POPULATIONS.—

7 (1) IN GENERAL.—Not later than 72 hours
8 after the commencement of an immigration-related
9 enforcement activity, the Department shall screen
10 each detainee to determine if the individual is a
11 member of a vulnerable population.

12 (2) ELIGIBILITY FOR RELEASE.—An individual
13 is a member of a vulnerable population and eligible
14 for release under subsection (b) if the Department
15 determines that he or she—

16 (A) has a nonfrivolous claim to United
17 States citizenship;

18 (B) has been deemed by a medically
19 trained professional to have medical or mental
20 health needs, or a disability;

21 (C) is pregnant or nursing;

22 (D) is being detained with 1 or more of his
23 or her children, or is 1 of such children;

1 (E) provides financial, physical, and other
2 direct support to his or her minor children, par-
3 ents, or other dependents;

4 (F) is older than 65 years of age;

5 (G) is a child (as defined in section 101(b)
6 of the Immigration and Nationality Act (8
7 U.S.C. 1101(b));

8 (H) is a victim of abuse, violence, crime, or
9 human trafficking;

10 (I) is a lesbian, gay, bisexual, or
11 transgender individual;

12 (J) has been referred for a credible fear
13 interview, a reasonable fear interview, or an
14 asylum hearing, or is a stateless individual;

15 (K) has applied or intends to apply for
16 asylum, withholding of removal, or protection
17 under the Convention Against Torture and
18 Other Cruel, Inhuman or Degrading Treatment
19 or Punishment, done at New York December
20 10, 1984;

21 (L) is prima facie eligible for relief under
22 any provision of the Immigration and Nation-
23 ality Act (8 U.S.C. 1101 et seq.) including re-
24 turning lawful permanent residents; or

1 (M) is a member of any other group that
2 has been designated as a vulnerable population
3 in regulations or guidance promulgated by the
4 Secretary.

5 (b) OPTIONS REGARDING DETENTION DECISIONS
6 FOR VULNERABLE POPULATIONS.—Section 236 (8 U.S.C.
7 1226), as amended by this Act, is further amended—

8 (1) in subsection (a)—

9 (A) in the matter preceding paragraph (1)
10 by striking “(c)” and inserting “(g)”; and

11 (B) in paragraph (2)—

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

14 (ii) in subparagraph (B), by striking
15 “but” at the end; and

16 (iii) by inserting after subparagraph
17 (B) the following:

18 “(C) the alien’s own recognizance;” and.

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

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

23 “(3) may enroll the alien in a secure alter-
24 natives program; and”;

1 (2) by redesignating subsections (b), (c), and
2 (d), as subsections (f), (g), and (h), respectively;

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

5 “(b) CUSTODY DECISIONS.—

6 “(1) CRITERIA TO BE CONSIDERED.—For any
7 alien who is not charged with inadmissibility or re-
8 movability under a ground specified in subsection (g)
9 or section 236A, the criteria that the Secretary of
10 Homeland Security or the Attorney General shall
11 use to demonstrate that detention is necessary are—

12 “(A) whether the alien poses a risk to pub-
13 lic safety, including a risk to national security;
14 and

15 “(B) whether alien poses a flight risk and
16 there are no conditions of release that will rea-
17 sonably ensure that the alien will appear for im-
18 migration proceedings, including bond or other
19 conditions that reduce the risk of flight.

20 “(2) EXCEPTION.—A decision to detain an
21 alien shall not be subject to the criteria under para-
22 graph (1) if the Secretary demonstrates, by a pre-
23 ponderance of the evidence, that the alien is de-
24 scribed in subsection (g)(1).

1 “(3) REVIEW.—Decisions by the Secretary or
2 the Attorney General under this section shall be sub-
3 ject to review.

4 “(c) CUSTODY DECISIONS FOR VULNERABLE POPU-
5 LATIONS.—

6 “(1) IN GENERAL.—Not later than 72 hours
7 after an individual is detained under this section
8 (unless the 72-hour requirement is waived in writing
9 by the individual), an individual who is a member of
10 a vulnerable population shall be released from the
11 custody of the Department of Homeland Security
12 and shall not be subject to electronic monitoring un-
13 less the Department demonstrates by a preponder-
14 ance of evidence that the individual—

15 “(A) is subject to mandatory detention
16 under subsection (g) or section 236A;

17 “(B) poses a risk to public safety, includ-
18 ing a risk to national security; or

19 “(C) is a flight risk and the risk cannot be
20 mitigated through other conditions of release,
21 such as bond or secure alternatives, which will
22 reasonably ensure the alien will appear for im-
23 migration proceedings.

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

1 “(A) on the individual’s own recognizance;

2 “(B) by posting a minimum bond under
3 subsection (a)(2)(a);

4 “(C) on parole, in accordance with section
5 212(d)(5)(A); or

6 “(D) into a noncustodial secure alter-
7 natives program.

8 “(d) DECISION TO REMOVE OR RELEASE AN
9 ALIEN.—

10 “(1) IN GENERAL.—All decisions to detain an
11 individual under this Act—

12 “(A) shall be made in writing by the Sec-
13 retary of Homeland Security or the Attorney
14 General;

15 “(B) shall specify the reasons for such de-
16 cision if the decision is made to continue deten-
17 tion without bond, parole, release on recog-
18 nizance, or release into a noncustodial secure
19 alternatives program; and

20 “(C) shall be served upon the individual in
21 the language spoken by the individual—

22 “(i) not later than 72 hours after the
23 commencement of the alien’s detention; or

24 “(ii) in the case of an alien subject to
25 section 235 or 241(a)(5) who must estab-

1 lish a credible fear of persecution or tor-
2 ture, not later than 72 hours after a posi-
3 tive credible fear of persecution or reason-
4 able fear of persecution or torture deter-
5 mination.

6 “(2) REDETERMINATION.—

7 “(A) IN GENERAL.—Any alien detained by
8 the Department of Homeland Security under
9 this Act may, at any time after being served
10 with the Secretary’s decision under paragraph
11 (1), request a redetermination of that decision
12 by an immigration judge.

13 “(B) OTHER DECISIONS.—The Attorney
14 General may review and conduct custody rede-
15 terminations for any custody decision by the
16 Secretary.

17 “(C) SAVINGS PROVISION.—Nothing in
18 this subparagraph may be construed to prevent
19 an individual from requesting a bond redeter-
20 mination.

21 “(e) TIMELY NOTICE UPON APPREHENSION AND
22 SERVICE OF CHARGING DOCUMENTS.—

23 “(1) NOTICE.—The Secretary of Homeland Se-
24 curity, for each individual detained by the Depart-

1 ment of Homeland Security under this section,
2 shall—

3 “(A) file the notice to appear or other rel-
4 evant charging document with the closest immi-
5 gration court to where the individual was appre-
6 hended; and

7 “(B) serve such notice on the individual
8 not later than 48 hours after the commence-
9 ment of the individual’s detention.

10 “(2) CUSTODY DETERMINATION.—Any indi-
11 vidual who is detained under this section for more
12 than 48 hours shall be brought before an immigra-
13 tion judge for a custody determination not later than
14 72 hours after the commencement of such detention
15 unless the individual waives such right in accordance
16 with paragraph (3).

17 “(3) WAIVER.—The requirements under this
18 subsection may be waived for 7 days if the indi-
19 vidual—

20 “(A) enters into a written agreement with
21 the Department of Homeland Security to waive
22 such requirement; and

23 “(B) is eligible for immigration benefits or
24 demonstrates eligibility for a defense against re-
25 moval.

1 “(4) APPLICABILITY OF OTHER LAW.—Nothing
2 in this section may be construed to repeal section
3 236A.”;

4 (4) in subsection (g)(2), as redesignated, by in-
5 serting “or for humanitarian reasons,” after “such
6 an investigation,”; and

7 **SEC. 263. APPREHENSION PROCEDURES FOR IMMIGRATION**
8 **ENFORCEMENT-RELATED ACTIVITIES RELAT-**
9 **ING TO CHILDREN.**

10 (a) NOTIFICATION.—

11 (1) ADVANCE NOTIFICATION.—Subject to para-
12 graph (2), when conducting any immigration en-
13 forcement action involving more than 10 individuals,
14 the Department and cooperating entities shall notify
15 the Governor of the State, the local child welfare
16 agency, and relevant State and local law enforce-
17 ment before commencing the action, or, if advance
18 notification is not possible, immediately after com-
19 mencing such action, of—

20 (A) the approximate number of individuals
21 to be targeted in the immigration enforcement
22 action; and

23 (B) the primary language or languages be-
24 lieved to be spoken by individuals at the tar-
25 geted site.

1 (2) HOURS OF NOTIFICATION.—To the extent
2 possible, advance notification under paragraph (1)
3 should occur during business hours and allow the
4 notified entities sufficient time to identify resources
5 to conduct the interviews described in subsection
6 (b)(1).

7 (3) OTHER NOTIFICATION.—When conducting
8 any immigration action involving more than 10 indi-
9 viduals, the Department and cooperating entities
10 shall notify the relevant local education agency and
11 local NGOs of the information described in para-
12 graph (1) immediately after commencing the action.

13 (b) APPREHENSION PROCEDURES.—In any immigra-
14 tion enforcement action involving more than 10 individ-
15 uals, the Department and cooperating entities shall—

16 (1) as soon as possible and not later than 6
17 hours after an immigration enforcement action, pro-
18 vide licensed social workers or case managers em-
19 ployed or contracted by the child welfare agency or
20 local NGOs with confidential access to screen and
21 interview individuals apprehended in such immigra-
22 tion enforcement action to assist the Department or
23 cooperating entity in determining if such individuals
24 are parents, legal guardians, or primary caregivers
25 of a child in the United States;

1 (2) as soon as possible and not later than 8
2 hours after an immigration enforcement action, pro-
3 vide any apprehended individual believed to be a
4 parent, legal guardian, or primary caregiver of a
5 child in the United States with—

6 (A) free, confidential telephone calls, in-
7 cluding calls to child welfare agencies, attor-
8 neys, and legal services providers, to arrange
9 for the care of children or wards, unless the De-
10 partment has reasonable grounds to believe that
11 providing confidential phone calls to the indi-
12 vidual would endanger public safety or national
13 security; and

14 (B) contact information for—

15 (i) child welfare agencies in all 50
16 States, the District of Columbia, all United
17 States territories, counties, and local juris-
18 dictions; and

19 (ii) attorneys and legal service pro-
20 viders capable of providing free legal advice
21 or free legal representation regarding child
22 welfare, child custody determinations, and
23 immigration matters;

24 (3) ensure that personnel of the Department
25 and cooperating entities do not—

1 (A) interview individuals in the immediate
2 presence of children; or

3 (B) compel or request children to translate
4 for interviews of other individuals who are en-
5 countered as part of an immigration enforce-
6 ment action; and

7 (4) ensure that any parent, legal guardian, or
8 primary caregiver of a child in the United States—

9 (A) receives due consideration of the best
10 interests of his or her children or wards in any
11 decision or action relating to his or her deten-
12 tion, release, or transfer between detention fa-
13 cilities; and

14 (B) is not transferred from his or her ini-
15 tial detention facility or to the custody of the
16 Department until the individual—

17 (i) has made arrangements for the
18 care of his or her children or wards; or

19 (ii) if such arrangements are impos-
20 sible, is informed of the care arrangements
21 made for the children and of a means to
22 maintain communication with the children.

23 (c) NONDISCLOSURE AND RETENTION OF INFORMA-
24 TION ABOUT APPREHENDED INDIVIDUALS AND THEIR
25 CHILDREN.—

1 (1) IN GENERAL.—Information collected by
2 child welfare agencies and NGOs in the course of
3 the screenings and interviews described in subsection
4 (b)(1) about an individual apprehended in an immi-
5 gration enforcement action may not be disclosed to
6 Federal, State, or local government entities or to
7 any person, except pursuant to written authorization
8 from the individual or his or her legal counsel.

9 (2) CHILD WELFARE AGENCY OR NGO REC-
10 OMMENDATION.—Notwithstanding paragraph (1), a
11 child welfare agency or NGO may—

12 (A) submit a recommendation to the De-
13 partment of Homeland Security or cooperating
14 entities regarding whether an apprehended indi-
15 vidual is a parent, legal guardian, or primary
16 caregiver who is eligible for the protections pro-
17 vided under this Act; and

18 (B) disclose information that is necessary
19 to protect the safety of the child, to allow for
20 the application of subsection (b)(4)(A), or to
21 prevent reasonably certain death or substantial
22 bodily harm.

23 **SEC. 264. DETENTION OF FAMILIES.**

24 (a) PLACEMENT IN REMOVAL PROCEEDINGS.—Any
25 family with children sought to be removed by the Depart-

1 ment shall be placed in removal proceedings under section
2 240 of the Immigration and Nationality Act (8 U.S.C.
3 1229a).

4 (b) CUSTODY OF FAMILIES WITH CHILDREN.—

5 (1) SEPARATION.—Families with children shall
6 not be separated or taken into custody except when
7 justified by exceptional circumstances, or when re-
8 quired by law.

9 (2) EXCEPTIONAL CIRCUMSTANCES.—In excep-
10 tional circumstances, if release or a secure alter-
11 natives program is not an option for families with
12 children, the Secretary shall ensure that—

13 (A) special nonpenal, residential, home-like
14 facilities that enable families to live as a family
15 unit are designed to house families with chil-
16 dren, taking into account the particular needs
17 and vulnerabilities of the children;

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

20 (C) entities with demonstrated experience
21 and expertise in child welfare staff and are re-
22 sponsible for the management of facilities hous-
23 ing families with children;

24 (D) unless such restrictions are necessary
25 to prevent flight or to ensure the safety of resi-

- 1 dents, families with children are not subject to
2 restrictions—
- 3 (i) on freedom of movement;
 - 4 (ii) involving access to visitations,
5 telephones, internet, a library, and a law li-
6 brary;
 - 7 (iii) regarding possession of personal
8 property, including personal clothing;
 - 9 (iv) on the availability of age appro-
10 priate education; or
 - 11 (v) religious practices;
- 12 (E) individualized reviews by an immigra-
13 tion judge of each family’s well being, custody
14 status and the need for continued detention are
15 conducted every 30 days for any family held in
16 such a facility for more than 3 weeks;
- 17 (F) all families are notified in writing of
18 the decisions resulting from such reviews and of
19 the individualized reasons for the decision; and
- 20 (G) parents retain fundamental parental
21 rights and responsibilities, including the dis-
22 cipline of children, in accordance with applica-
23 ble State laws.

1 (c) DISCRETIONARY WAIVER AUTHORITY FOR FAMI-
 2 LIES WITH CHILDREN.—Section 235(b)(1)(B)(iii) (8
 3 U.S.C. 1225(b)(1)(B)(iii)) is amended—

4 (1) in subclause (IV), by striking “Any alien”
 5 and inserting “Except as provided in subclause (V),
 6 any alien”; and

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

8 “(V) DISCRETIONARY WAIVER
 9 AUTHORITY FOR FAMILIES WITH
 10 CHILDREN.—The Secretary of Home-
 11 land Security may decide for humani-
 12 tarian reasons or significant public
 13 benefit not to detain families with
 14 children who are otherwise subject to
 15 mandatory detention under subclause
 16 (IV).”.

17 **SEC. 265. ACCESS TO CHILDREN, LOCAL AND STATE**
 18 **COURTS, CHILD WELFARE AGENCIES, AND**
 19 **CONSULAR OFFICIALS.**

20 (a) IN GENERAL.—The Secretary shall ensure that
 21 all detention facilities operated by or under agreement
 22 with the Department implement procedures to ensure that
 23 the best interest of the child, including the best outcome
 24 for the family of the child, is considered in any decision
 25 or action relating to the custody of children whose parent,

1 legal guardian, or primary caregiver is detained as the re-
2 sult of an immigration enforcement action.

3 (b) ACCESS TO CHILDREN, STATE AND LOCAL
4 COURTS, CHILD WELFARE AGENCIES, AND CONSULAR
5 OFFICIALS.—At all detention facilities operated by, or
6 under agreement with, the Department, the Secretary
7 shall—

8 (1) ensure that individuals who are detained by
9 reason of their immigration status may receive the
10 screenings and interviews described in section
11 263(b)(1) not later than 6 hours after their arrival
12 at the detention facility;

13 (2) ensure that individuals who are detained by
14 reason of their immigration status and are believed
15 to be parents, legal guardians, or primary caregivers
16 of children in the United States are—

17 (A) permitted daily phone calls and regular
18 contact visits with their children or wards;

19 (B) able to participate fully, and to the ex-
20 tent possible in-person, in all family court pro-
21 ceedings and any other proceeding impacting
22 upon custody of their children or wards;

23 (C) able to fully comply with all family
24 court or child welfare agency orders impacting
25 upon custody of their children or wards;

1 (D) provided with contact information for
2 family courts in all 50 States, the District of
3 Columbia, all United States territories, coun-
4 ties, and local jurisdictions;

5 (E) granted free and confidential telephone
6 calls to child welfare agencies and family
7 courts;

8 (F) granted free and confidential telephone
9 calls and confidential in-person visits with at-
10 torneys, legal representatives, and consular offi-
11 cials;

12 (G) provided United States passport appli-
13 cations for the purpose of obtaining travel docu-
14 ments for their children or wards;

15 (H) granted adequate time before removal
16 to obtain passports and other necessary travel
17 documents on behalf of their children or wards
18 if such children or wards will accompany them
19 on their return to their country of origin or join
20 them in their country of origin; and

21 (I) provided with the access necessary to
22 obtain birth records or other documents re-
23 quired to obtain passports for their children or
24 wards; and

1 (3) facilitate the ability of detained parents,
2 legal guardians, and primary caregivers to share in-
3 formation regarding travel arrangements with their
4 children or wards, child welfare agencies, or other
5 caregivers well in advance of the detained individ-
6 ual's departure from the United States.

7 **SEC. 266. MEMORANDA OF UNDERSTANDING.**

8 The Secretary shall develop and implement memo-
9 randa of understanding or protocols with child welfare
10 agencies and NGOs regarding the best ways to cooperate
11 and facilitate ongoing communication between all relevant
12 entities in cases involving a child whose parent, legal
13 guardian, or primary caregiver has been apprehended or
14 detained in an immigration enforcement action to protect
15 the best interests of the child and the best outcome for
16 the family of the child.

17 **SEC. 267. MANDATORY TRAINING.**

18 The Secretary, in consultation with the Secretary of
19 Health and Human Services and independent child welfare
20 experts, shall require and provide in-person training on
21 the protections required to all personnel of the Depart-
22 ment and of States and local entities acting under agree-
23 ment with the Department who regularly come into con-
24 tact with children or parents in the course of conducting
25 immigration enforcement actions.

1 **SEC. 268. ALTERNATIVES TO DETENTION.**

2 (a) **SECURE ALTERNATIVES.**—The Secretary shall
3 establish secure alternatives programs to ensure public
4 safety and appearances at immigration proceedings. The
5 Secretary may use secure alternatives programs to main-
6 tain custody over any alien detained under the Immigra-
7 tion and Nationality Act, except aliens detained under sec-
8 tion 236A of such Act (8 U.S.C. 1226a). If an individual
9 is not eligible for release from custody, the Secretary shall
10 consider the alien for placement in secure alternatives that
11 maintain custody over the alien, including the use of elec-
12 tronic ankle devices.

13 (b) **CONTRACTS AUTHORIZED.**—The Secretary shall
14 contract with nongovernmental organizations to conduct
15 screening of detainees, provide appearance assistance serv-
16 ices, and operate community-based supervision programs.

17 (c) **INDIVIDUALIZED DETERMINATIONS.**—When de-
18 ciding whether to use custodial secure alternatives, the
19 Secretary shall make an individualized determination and
20 review each case on a monthly basis.

21 **SEC. 269. DETENTION CONDITIONS.**

22 (a) **DETENTION REQUIREMENTS.**—

23 (1) **IN GENERAL.**—The Secretary shall ensure
24 that all persons detained pursuant to the Immigra-
25 tion and Nationality Act (8 U.S.C. 1101 et seq.) are
26 treated humanely and granted the protections set

1 forth in this section by complying and enforcing the
2 minimum requirements under this subsection.

3 (2) QUALITY OF MEDICAL CARE.—

4 (A) IN GENERAL.—Each detainee has the
5 right to prompt and adequate medical care, de-
6 signed to ensure continuity of care, at no cost
7 to the detainee, including care to address med-
8 ical needs that existed before the detainee was
9 placed in detention, primary care, emergency
10 care, chronic care, reproductive health care,
11 prenatal care, dental care, eye care, mental
12 health care, medical dietary needs, and other
13 medically necessary specialized care. The Sec-
14 retary shall discontinue the use of any short
15 term facility or detention facility that fails to
16 maintain accreditation for more than 1 year.

17 (B) INTAKE SCREENING AND EXAMINA-
18 TION.—Each detainee shall receive, from a li-
19 censed health care professional—

20 (i) a comprehensive medical, dental,
21 and mental health intake screening upon
22 arrival at the detention facility; and

23 (ii) a comprehensive medical and men-
24 tal health examination not later than 14
25 days after arrival.

1 (C) MEDICATIONS.—

2 (i) PRESCRIPTION MEDICATIONS.—

3 Each detainee taking prescribed medica-
4 tions prior to detention shall be allowed to
5 continue taking such medications, on
6 schedule and without interruption, until
7 and unless a licensed health care profes-
8 sional examines the immigration detainee
9 and decides upon an alternative course of
10 treatment. Detainees who arrive at a de-
11 tention facility with prescription medica-
12 tions shall be permitted to continue taking
13 their medications, on schedule and without
14 interruption, until such time as a qualified
15 health care professional examines the de-
16 tainee and decides upon an alternative
17 course of treatment. Detainees who arrive
18 at a detention facility without prescription
19 medications but who report being on such
20 medications shall be evaluated by a quali-
21 fied health care professional as soon as
22 possible, but not later than 24 hours after
23 arrival. All decisions to discontinue or
24 modify a detainee's reported prescription
25 medication regimen shall be conveyed to

1 the detainee in a language that the de-
2 tainee understands and shall be recorded
3 in writing in the detainee's medical
4 records.

5 (ii) INVOLUNTARY PSYCHOTROPIC
6 MEDICATION.—Involuntary psychotropic
7 medication may be used only if allowed by
8 applicable law and then only in emergency
9 situations when a physician has deter-
10 mined, after personally examining the pa-
11 tient, that a detainee is imminently dan-
12 gerous to self or others due to a mental ill-
13 ness and that involuntary psychotropic
14 medication is medically appropriate to
15 treat the mental illness and necessary to
16 prevent harm. Medication shall not be fore-
17 ibly administered to a detainee to facilitate
18 transport, removal or otherwise to control
19 the detainee's behavior.

20 (D) MEDICALLY NECESSARY TREAT-
21 MENT.—Each detainee shall be provided access
22 to medically necessary treatment, including, for
23 female detainees, prenatal care, prenatal vita-
24 mins, and hormonal therapies, such as birth

1 control, and adequate access to sanitary prod-
2 ucts.

3 (E) ON-SITE MEDICAL PROVIDERS.—Any
4 decision regarding requested medical care for a
5 detainee—

6 (i) shall be made in writing by an on-
7 site licensed health care professional within
8 72 hours; and

9 (ii) shall be communicated to the de-
10 tainee without delay.

11 (F) ADMINISTRATIVE APPEALS PROC-
12 ESS.—Detention facilities, in conjunction with
13 the Department, shall provide for an adminis-
14 trative process for handling appeals of denials
15 of medical or mental health treatment or care.
16 Detention facilities, in conjunction with the De-
17 partment, shall ensure that detainees, medical
18 providers, and legally-appointed advocates have
19 the opportunity to appeal a denial of requested
20 health care services by an on-site provider to an
21 independent appeals board. The appeals board
22 shall include health care professionals in the
23 fields relevant to the request for medical or
24 mental health care. Any such appeal shall be re-

1 solved in writing within 7 days by the appeals
2 board or earlier if medically necessary.

3 (G) REVIEW OF ON-SITE MEDICAL PRO-
4 VIDER REQUESTS.—The Secretary shall respond
5 within 72 hours to any request by an on-site
6 medical provider for authorization to provide
7 medical or mental health care to an immigra-
8 tion detainee. In each case in which the Sec-
9 retary denies or fails to grant such a request by
10 the onsite medical provider, a written expla-
11 nation of the reasons for the decision shall be
12 conveyed without delay to the on-site medical
13 provider and the immigration detainee. The on-
14 site medical provider and immigration detainee
15 (or legally appointed advocate) shall be per-
16 mitted to appeal the denial of or failure to
17 grant the requested health care service. Such
18 appeal shall be resolved in writing within 7 days
19 by an impartial appeals board or earlier if
20 medically necessary and communicated without
21 delay to the on-site medical provider and the
22 immigration detainee.

23 (H) MEDICAL RELEASE.—Any detainee
24 deemed by a licensed health care professional to
25 have a medical or mental health care condition

1 shall be considered for release on parole, on
2 bond, or into a secure alternatives program,
3 with periodic reevaluations for such detainees
4 not initially released. Upon removal or release,
5 all detainees with medical or mental health con-
6 ditions and women who are pregnant, post-
7 natal, and nursing mothers shall receive dis-
8 charge planning to ensure continuity of care for
9 a reasonable period of time.

10 (I) MEDICAL RECORDS.—The Department
11 shall maintain complete, confidential medical
12 records for every detainee, which shall be made
13 available within 72 hours upon request to a de-
14 tainee or individuals authorized by the detainee.
15 Immediately upon an immigration detainee’s
16 transfer from 1 detention facility to another,
17 the immigration detainee’s complete medical
18 records, including any transfer summary, shall
19 be provided to the receiving facility.

20 (3) TRANSFERS OF DETAINEES.—

21 (A) NOTICE.—Absent exigent cir-
22 cumstances, such as a natural disaster or com-
23 parable emergency, the Secretary shall provide
24 not less than 72 hours written notice to any de-
25 tainee before such detainee is transferred to an-

1 other detention facility. Not later than 24 hours
2 after a transfer, the Secretary shall notify, by
3 telephone and in writing, the detainee's legal
4 representative or other person designated by the
5 detainee of the transfer.

6 (B) PROCEDURES.—Absent exigent cir-
7 cumstances, such as a natural disaster or com-
8 parable emergency, the Secretary may not
9 transfer a detainee to another detention facility
10 if such transfer would—

11 (i) impair an existing attorney-client
12 relationship;

13 (ii) prejudice the rights of the de-
14 tainee in any legal proceeding, including
15 any Federal, State or administrative pro-
16 ceeding; or

17 (iii) negatively affect the detainee's
18 health, including by interrupting the con-
19 tinuity of medical care or provision of pre-
20 scription medication.

21 (C) TRANSPORTATION.—The Secretary
22 shall ensure the safe transport and deportation
23 of each individual detained under the Immigra-
24 tion and Nationality Act (8 U.S.C. 1101 et

1 seq.), including the appropriate use of safety
2 harnesses and occupancy limitations of vehicles.

3 (4) ACCESS TO TELEPHONES.—

4 (A) IN GENERAL.—The Secretary shall en-
5 sure that detainees at detention facilities are
6 provided with reasonable access to telephones
7 not later than 6 hours after the commencement
8 of their detention. Such access shall include not
9 fewer than 1 working phone for every 25 de-
10 tainees.

11 (B) TOLL-FREE NUMBERS.—Each detainee
12 has the right to contact, free of charge through
13 confidential toll-free numbers—

14 (i) legal representatives;

15 (ii) designated nongovernmental orga-
16 nizations;

17 (iii) consular officials;

18 (iv) Federal and State courts where
19 the detainee is or may become involved in
20 a legal proceeding; and

21 (v) all Government immigration agen-
22 cies and adjudicatory bodies, including the
23 Office of the Inspector General and the Of-
24 fice for Civil Rights and Civil Liberties of
25 the Department.

1 (C) PRIVACY.—The Secretary shall—

2 (i) make confidential calls available at
3 no charge to detainees, who are subject to
4 expedited removal or who are experiencing
5 personal or family emergencies, including
6 the need to arrange care for dependents,
7 for the purpose of obtaining legal represen-
8 tation or discussing other legal matters;
9 and

10 (ii) ensure that rates charged in de-
11 tention facilities for telephone calls are rea-
12 sonable and do not significantly impair the
13 detainee’s right to access telephones.

14 (5) PHYSICAL AND SEXUAL ABUSE.—No de-
15 tainee, whether in a detention facility or short term
16 detention facility, shall be subject to degrading or in-
17 humane treatment such as physical abuse, sexual
18 abuse or harassment, or arbitrary punishment. De-
19 tention facilities shall take all necessary measures to
20 prevent sexual abuse and sexual assaults of detain-
21 ees, to provide medical and mental health treatment
22 to victims of sexual abuse and sexual assaults and
23 shall comply fully with the standards under the Pris-
24 on Rape Elimination Act of 2003 (42 U.S.C. 15601
25 et seq.)

1 (6) LIMITATIONS ON SOLITARY CONFINEMENT
2 AND STRIP SEARCHES.—The use of solitary confine-
3 ment, shackling, and strip searches of detainees
4 shall be limited to situations where the use of such
5 techniques is necessitated by extraordinary cir-
6 cumstances when the safety of other persons is at
7 imminent risk. These techniques shall in no event be
8 used for the purpose of humiliating detainees either
9 within or outside the detention facility. Detention fa-
10 cilities shall adopt written policies pertaining to the
11 use of force and the use of restraints and shall train
12 all staff on the proper use of such devices. Solitary
13 confinement, shackling and strip searches shall not
14 be used on pregnant women, nursing mothers,
15 women in labor or delivery or children who are
16 younger than 18 years of age. Strip searches shall
17 not be conducted in front of children who are young-
18 er than 21 years of age.

19 (7) LOCATION OF DETENTION FACILITIES.—All
20 new detention facilities used by the Department
21 shall be located within 50 miles of a city or munici-
22 pality in which there is a demonstrated capacity to
23 provide free or low-cost legal representation by non-
24 profit legal aid organizations or pro bono attorneys
25 with expertise in asylum or immigration law. By

1 January 1, 2013, all detention facilities used by the
2 Department shall meet this requirement, and if the
3 Secretary is unable to comply, the Secretary shall
4 submit a report to Congress on that date and annu-
5 ally each year thereafter, explaining the reasons for
6 the failure and the specific plans to meet the re-
7 quirement.

8 (8) ACCESS TO IMMIGRATION COURTS.—At any
9 detention facility where a contract to house immigra-
10 tion detainees is newly made, renewed, or extended
11 during the period beginning on the date of the en-
12 actment of this Act and ending on December 31,
13 2013, detainees in removal proceedings shall appear
14 before the immigration court in person, unless in
15 person appearance is knowingly waived in writing by
16 the detainee or the detainee’s representative.

17 (9) TRANSLATION CAPABILITIES.—Detention
18 facilities and short term detention facilities shall em-
19 ploy facility staff who are professionally qualified in
20 any language spoken by more than 10 percent of its
21 immigration detainee population. All short term de-
22 tention facilities and detention facilities shall provide
23 alternative translation services in the exceptional cir-
24 cumstances when trained bilingual staff members
25 are unavailable to translate. All such facilities shall

1 provide notices and written materials to detainees
2 translated in any language spoken by more than 5
3 percent of its immigration detainee population.

4 (10) LEGAL ACCESS.—Detainees in detention
5 facilities have the right to access legal information,
6 including an on-site law library with up-to-date legal
7 materials and law databases. Each detainee has the
8 right to access free of charge the necessary equip-
9 ment and materials for legal research and cor-
10 respondence, such as computers, printers, copiers,
11 and typewriters. The Secretary shall ensure each de-
12 tainee is provided with information regarding the
13 availability of legal information and services to assist
14 those with limited English proficiency or disabilities.
15 Detention facilities shall also provide access for each
16 detainee to meet confidentially with legal counsel
17 and shall provide services to send confidential legal
18 documents to legal counsel, government offices and
19 legal organizations.

20 (11) VISITATIONS.—Detainees in detention fa-
21 cilities have the right to meet privately with his or
22 her current or prospective legal representative, inter-
23 preters, and other legal support staff a minimum of
24 8 hours per day on regular business days and 4
25 hours per day on weekends and holidays, subject to

1 appropriate security procedures. Legal visits shall
2 not be restricted absent narrowly defined exceptional
3 circumstances, such as a natural disaster or com-
4 parable emergency. Detention facilities shall promi-
5 nently post official lists, updated semi-annually by
6 the Secretary of Homeland Security, of pro bono
7 legal organizations and their contact information in
8 detainee housing units and other appropriate areas.
9 Each detainee has the right to reasonable access to
10 religious or other qualified individuals to address re-
11 ligious, cultural, or spiritual considerations. Detain-
12 ees have the right to regular, private contact visits
13 with children who are younger 18 years of age.

14 (12) RECREATIONAL PROGRAMS AND ACTIVI-
15 TIES.—Detainees in detention facilities shall be af-
16 farded access to at least 1 hour each day of indoor
17 and outdoor recreational programs and activities for
18 detainees.

19 (13) TRAINING OF PERSONNEL.—All personnel
20 in detention facilities and short term detention facili-
21 ties shall be given a comprehensive specialized train-
22 ing and regular, periodic updates that shall include
23 at a minimum an overview of immigration detention
24 and all detention standards; the characteristics of
25 the non-citizen detainee population including special

1 characteristics of vulnerable groups; and the due
2 process and grievance procedures to protect the
3 rights of detainees.

4 (14) SHORT TERM DETENTION FACILITIES.—

5 (A) IN GENERAL.—All detainees in short
6 term detention facilities shall receive—

7 (i) potable water;

8 (ii) food, if detained for more than 5
9 hours;

10 (iii) basic toiletries, diapers, sanitary
11 products, blankets; and

12 (iv) access to bathroom facilities and
13 telephones.

14 (B) CONSULAR OFFICIALS.—The Secretary
15 or his designates shall provide consular officials
16 with access to detainees held at such facilities.

17 (C) HEALTH CARE.—Detainees shall be af-
18 farded reasonable access to a licensed health
19 care professional.

20 (D) NURSING MOTHERS.—The Secretary
21 shall ensure that nursing mothers in such facili-
22 ties have access to their children.

23 (E) PROPERTY.—Any property the De-
24 partment confiscates from detainees shall be re-
25 turned upon repatriation or transfer.

1 (F) PROTECTIONS FOR CHILDREN.—The
2 Secretary shall provide adequately trained and
3 qualified staff at each major port of entry (as
4 defined by the U.S. Customs and Border Pro-
5 tection station assigned to that port having in
6 its custody over the past 2 fiscal years an aver-
7 age per year of 50 or more unaccompanied
8 alien children (as defined in section 462 of the
9 Homeland Security Act of 2002 (6 U.S.C.
10 279))), including U.S. Customs and Border
11 Protection agents charged primarily with the
12 safe, swift, and humane transportation of unac-
13 companied alien children to Office of Refugee
14 Resettlement custody and independent licensed
15 social workers dedicated to ensuring the proper
16 temporary care for the children while in De-
17 partment custody before their transfer to the
18 Office of Refugee Resettlement. These staff will
19 ensure that each child—

20 (i) receives emergency medical care;

21 (ii) receives mental health care in case
22 of trauma and has access to psychosocial
23 health services;

24 (iii) is provided with a pillow, linens,
25 and sufficient blankets to rest at a com-

1 comfortable temperature, a bed, and a mat-
2 tress placed in an area specifically des-
3 igned for residential use;

4 (iv) receives adequate nutrition;

5 (v) enjoys a safe and sanitary living
6 environment;

7 (vi) receives educational materials;

8 and

9 (vii) has access to at least 3 hours of
10 indoor and outdoor recreational programs
11 and activities per day.

12 (G) CONFIDENTIALITY.—The Secretary of
13 Health and Human Services shall maintain the
14 privacy and confidentiality of all information
15 gathered in the course of providing care, cus-
16 tody, placement and follow-up services to unac-
17 companied alien children, consistent with the
18 best interest of the unaccompanied alien child,
19 by not disclosing such information to other gov-
20 ernment agencies or nonparental third parties.
21 The Secretary may share information when au-
22 thorized to do so by the child and when con-
23 sistent with the child's best interest. The Sec-
24 retary may provide information to a duly recog-
25 nized law enforcement entity, if such disclosure

1 would prevent imminent and serious harm to
2 another individual. All disclosures shall be duly
3 recorded in writing and placed in the child's
4 files.

5 (15) VULNERABLE POPULATIONS.—Detention
6 facility conditions and minimum requirements for
7 detention facilities shall recognize and accommodate
8 the unique needs of vulnerable populations as de-
9 fined by this Act.

10 (16) CHILDREN.—The Secretary shall ensure
11 that unaccompanied alien children (as defined in
12 section 462 of the Homeland Security Act of 2002
13 (6 U.S.C. 279)) are physically separated from any
14 adult who is not an immediate family member and
15 are separated by sight and sound from immigration
16 detainees and inmates with criminal convictions, pre-
17 trial inmates facing criminal prosecution, children
18 who have been adjudicated delinquents or convicted
19 of adult offenses or are pending delinquency or
20 criminal proceedings, and those inmates exhibiting
21 violent behavior while in detention as is consistent
22 with the Juvenile Justice and Delinquency Preven-
23 tion Act of 1974 (42 U.S.C. 5601 et seq.)

24 (b) RULEMAKING AND ENFORCEMENT.—

25 (1) IN GENERAL.—

1 (A) NOTICE OF PROPOSED RULE-
2 MAKING.—Not later than 60 days after the date
3 of the enactment of this Act, the Secretary shall
4 issue a notice of proposed rulemaking regarding
5 the enforcement of this section.

6 (B) FINAL REGULATIONS.—Not later than
7 180 days after the date of the enactment of this
8 Act, the Secretary shall promulgate regulations,
9 binding upon all short term detention facilities
10 and detention facilities, to ensure that the de-
11 tention requirements under subsection (a) are
12 fully implemented and enforced, and that all fa-
13 cilities comply with the regulations.

14 (2) ENFORCEMENT.—

15 (A) IN GENERAL.—The Secretary shall en-
16 force all regulations promulgated under para-
17 graph (1).

18 (B) GUIDANCE.—Not later than 180 days
19 after the date of the enactment of this Act, the
20 Secretary shall issue guidance for ensuring that
21 short term detention facilities and detention fa-
22 cilities comply with all detention requirements
23 and all regulations and standards promulgated
24 under paragraph (1).

1 (C) COMPLIANCE MECHANISMS.—To en-
2 sure the compliance described in subparagraph
3 (B), the Secretary—

4 (i) shall establish mechanisms for re-
5 viewing any evidence of noncompliance
6 with the provisions under this section;

7 (ii) may impose financial penalties
8 upon noncompliant detention facilities; and

9 (iii) may terminate the contracts of
10 persistently noncompliant detention facili-
11 ties.

12 (D) INVESTIGATIONS.—The Secretary
13 shall investigate evidence pertaining to viola-
14 tions of the provisions under this section, in-
15 cluding detainee complaints. The Secretary
16 shall complete such investigation not later than
17 30 days after collecting the relevant evidence. If
18 the Secretary determines that a violation has
19 occurred, the Secretary shall ensure that such
20 violation is remedied not later than 30 days
21 after such determination. A decision by the Sec-
22 retary not to pursue such an enforcement ac-
23 tion shall constitute final agency action.

24 (E) GRIEVANCES.—Each detainee has the
25 right to file grievances with the staff of short

1 term detention facilities, detention facilities,
2 and the Department and shall be protected
3 from retaliation.

4 (F) COMPLIANCE OFFICER.—Each short
5 term detention facility and detention facility
6 shall designate an officer to ensure compliance
7 with the provisions of this section. Such officer
8 shall investigate all evidence pertaining to a vio-
9 lation of this section. If a violation is identified,
10 the officer shall remedy the violation not later
11 than 30 days after such identification.

12 (G) JUDICIAL REVIEW.—A detainee may
13 not seek—

14 (i) review in district court until after
15 the passage of the 30-day remediation pe-
16 riod described in subparagraph (F);

17 (ii) remedy in district court unless he
18 or she has complied with the procedures
19 promulgated under this subsection; or

20 (iii) punitive damages for violations of
21 this section.

22 (H) RULE OF CONSTRUCTION.—Nothing in
23 the section may be construed to preclude review
24 of noncompliance with this section under sec-
25 tion 1983 of title 42, United States Code.

1 (c) DETENTION COMMISSION.—

2 (1) APPOINTMENT.—The Secretary shall ap-
3 point and convene a detention commission comprised
4 of—

5 (A) experts from U.S. Immigration and
6 Customs Enforcement, U.S. Customs and Bor-
7 der Protection, the Office of Refugee Resettle-
8 ment, and Division of Immigration Health
9 Services in the Department of Health and
10 Human Services; and

11 (B) an equal number of independent ex-
12 perts from nongovernmental organizations and
13 intergovernmental organizations with expertise
14 in working on behalf of aliens detained under
15 immigration laws and vulnerable populations.

16 (2) DUTIES.—The detention commission shall
17 conduct independent investigations, evaluate, and re-
18 port on the compliance of short term detention fa-
19 cilities, detention facilities, and the Department with
20 the requirements set forth in this section.

21 (3) REPORT.—Not later than 60 days after end
22 of the fiscal year during which this Act was enacted,
23 and biennially thereafter, the detention commission
24 shall submit a report on the duties set forth in para-
25 graph (2) to—

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

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

5 (C) the Committee on the Judiciary of the
6 House of Representatives; and

7 (D) the Committee on Homeland Security
8 of the House of Representatives.

9 (d) DEATH IN CUSTODY REPORTING REQUIRE-
10 MENT.—

11 (1) IN GENERAL.—If an individual dies while in
12 the custody of the Department or en route to or
13 from custody, the supervising official at a short term
14 detention facility or detention facility shall imme-
15 diately report such death to the Secretary. Not later
16 than 48 hours after receiving the report of such
17 death, the Secretary shall report the death to the
18 Office of the Inspector General of the Department
19 and the Department of Justice.

20 (2) INVESTIGATIONS.—The Department shall
21 complete an investigation of each detainee death
22 that shall be conducted consistent with established
23 medical practice for morbidity and mortality reviews
24 and examine both individual and systemic contribu-
25 tors to the death. The investigation shall be con-

1 ducted by a panel of physicians with experience in
2 morbidity and mortality reviews and shall include
3 the medical staff of the facility or facilities that
4 cared for the deceased detainee, physicians from
5 within the Department, and independent physicians
6 not affiliated with the Department or facility. The
7 panel shall complete a report and corrective action
8 plan in each case.

9 (3) REPORTS.—

10 (A) IN GENERAL.—Not later than 60 days
11 after the end of each fiscal year, the Secretary
12 shall submit a report to the committees set
13 forth in subsection (c)(3) that contains detailed
14 information regarding all detainee deaths dur-
15 ing the preceding fiscal year, including—

16 (i) each mortality and morbidity re-
17 port;

18 (ii) each corrective action plan; and

19 (iii) corrective actions taken.

20 (B) CONTENTS.—The reports to the Office
21 of the Inspector General and to Congress re-
22 ferred to in paragraph (1) shall include—

23 (i) the name, gender, race, ethnicity,
24 and age of the deceased;

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

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

6 (iv) a description of the circumstances
7 surrounding the death;

8 (v) the status and results of any in-
9 vestigation that has been conducted into
10 the circumstances surrounding the death;
11 and

12 (vi) all medical records of the de-
13 ceased.

14 **SEC. 270. ACCESS TO COUNSEL.**

15 Section 240(b)(4) (8 U.S.C. 1229a(b)(4)) is amend-
16 ed—

17 (1) in the matter preceding subparagraph (A),
18 by striking “In proceedings under this section, under
19 regulations of the Attorney General” and inserting
20 “The Attorney General shall promulgate regulations
21 for proceedings under this section, under which—”

22 (2) in subparagraph (B), by striking “, and” at
23 the end and inserting a semicolon;

24 (3) by redesignating subparagraph (C) as sub-
25 paragraph (D); and

1 (4) by inserting after subparagraph (B) the fol-
2 lowing:

3 “(C) the Attorney General, or the designee
4 of the Attorney General, may appoint counsel to
5 represent an alien if the fair resolution or effec-
6 tive adjudication of the proceedings would be
7 served by appointment of counsel; and”.

8 **SEC. 271. GROUP LEGAL ORIENTATION PRESENTATIONS.**

9 (a) ESTABLISHMENT OF A NATIONAL LEGAL ORI-
10 ENTATION SUPPORT AND TRAINING CENTER.—The At-
11 torney General, in consultation with the Secretary, shall
12 establish a National Legal Orientation Support and Train-
13 ing Center (referred to in this section as the “Center”)
14 to ensure quality and consistent implementation of group
15 legal orientation programs nationwide.

16 (b) DUTIES.—The Center shall—

17 (1) offer training to nonprofit agencies that will
18 offer group legal orientation programs;

19 (2) consult with nonprofit agencies offering
20 group legal orientation programs regarding program
21 development and substantive legal issues;

22 (3) develop standards for group legal orienta-
23 tion programs; and

24 (4) ensure that all detained aliens in immigra-
25 tion and asylum proceedings under sections 235,

1 238, 240, and 241(b)(5) of the Immigration and
2 Nationality Act (8 U.S.C. 1225, 1228, 1229a, and
3 1231(b)(5)) receive group legal orientation pro-
4 grams.

5 (c) PROCEDURES.—The Secretary shall establish pro-
6 cedures for regularly scheduled, group legal orientation
7 presentations.

8 (d) GRANTS AUTHORIZED.—The Attorney General
9 shall establish a program to award grants to nongovern-
10 mental agencies to develop, implement, or expand legal
11 orientation programs for all detainees at a detention facil-
12 ity that offers such programs.

13 **SEC. 272. PROTECTIONS FOR REFUGEES.**

14 (a) PROTECTION OF REFUGEES PRIOR TO ADJUST-
15 MENT.—Section 209 (8 U.S.C. 1159) is amended—

16 (1) in subsection (a)(1), by striking “return or
17 be returned to the custody of the Department of
18 Homeland Security for inspection and examination
19 for admission to the United States as an immigrant
20 in accordance with the provisions of sections 235,
21 240, and 241” and inserting “be eligible for adjust-
22 ment of status as an immigrant to the United
23 States”;

24 (2) in subsection (a)(2), by striking “upon in-
25 spection and examination”; and

1 (3) in subsection (c), by adding at the end the
2 following: “An application for adjustment under this
3 section may be filed up to 3 months before the date
4 on which the applicant would first otherwise be eligi-
5 ble for adjustment under this section.”.

6 (b) PROCEDURES FOR ENSURING ACCURACY AND
7 VERIFIABILITY OF SWORN STATEMENTS TAKEN PURSU-
8 ANT TO EXPEDITED REMOVAL AUTHORITY.—

9 (1) IN GENERAL.—The Secretary shall establish
10 quality assurance procedures to ensure the accuracy
11 and verifiability of signed or sworn statements taken
12 by employees of the Department exercising expedited
13 removal authority under section 235(b) of the Immi-
14 gration and Nationality Act (8 U.S.C. 1225(b)).

15 (2) RECORDING OF INTERVIEWS.—Any sworn
16 or signed written statement taken of an alien as part
17 of the record of a proceeding under section
18 235(b)(1)(A) of the Immigration and Nationality
19 Act (8 U.S.C. 1225(b)(1)(A)) shall be accompanied
20 by a recording of the interview which served as the
21 basis for that sworn statement.

22 (3) RECORDINGS.—

23 (A) IN GENERAL.—The recording of the
24 interview shall include the written statement, in
25 its entirety, being read back to the alien in a

1 language that the alien claims to understand,
2 and the alien affirming the accuracy of the
3 statement or making any corrections thereto.

4 (B) FORMAT.—The recording shall be
5 made in video, audio, or other equally reliable
6 format.

7 (4) EXEMPTION AUTHORITY.—

8 (A) IN GENERAL.—Subsections (b) and (c)
9 shall not apply to interviews that occur at de-
10 tention facilities exempted by the Secretary pur-
11 suant to this paragraph.

12 (B) UNDUE BURDENS OR COSTS.—The
13 Secretary or the Secretary's designee may ex-
14 empt any detention facility based on a deter-
15 mination by the Secretary or the Secretary's
16 designee that compliance with subsections (b)
17 and (c) at that facility would impair operations
18 or impose undue burdens or costs.

19 (C) ANNUAL REPORT.—The Secretary or
20 the Secretary's designee shall report annually to
21 Congress on the detention facilities that have
22 been exempted pursuant to this subsection.

23 (D) PRIVATE CAUSE OF ACTION.—The ex-
24 ercise of the exemption authority shall not give
25 rise to a private cause of action.

1 (c) INTERPRETERS.—The Secretary shall ensure that
2 a professional, fluent interpreter is used when—

3 (1) the interviewing officer does not speak a
4 language understood by the alien; and

5 (2) no other Federal, State or local government
6 employee is available who is able to interpret effec-
7 tively, accurately, and impartially.

8 (d) RECORDINGS IN IMMIGRATION PROCEEDINGS.—
9 Recordings of interviews of aliens described in section (b)
10 shall be included in the record of a proceeding and may
11 be considered as evidence in any further proceedings in-
12 volving the alien.

13 (e) STUDY ON THE EFFECT OF EXPEDITED RE-
14 MOVAL PROVISIONS, PRACTICES AND PROCEDURES ON
15 ASYLUM CLAIMS.—

16 (1) IN GENERAL.—The United States Commis-
17 sion on International Religious Freedom (referred to
18 in this subsection as the “Commission”) is author-
19 ized to conduct a study to determine whether immi-
20 gration officers described in paragraph (2) are en-
21 gaging in conduct described in paragraph (3).

22 (2) IMMIGRATION OFFICERS DESCRIBED.—An
23 immigration officer described in this paragraph is an
24 immigration officer performing duties under section
25 235(b) of the Immigration and Nationality Act (8

1 U.S.C. 1225(b)) with respect to aliens who are ap-
2 prehended after entering the United States and who
3 may be eligible to apply for asylum under such sec-
4 tion or section 208 of such Act (8 U.S.C. 1158).

5 (3) CONDUCT DESCRIBED.—Conduct described
6 in this paragraph is—

7 (A) improperly encouraging an alien de-
8 scribed in paragraph (2) to withdraw or retract
9 claims for asylum;

10 (B) incorrectly failing to refer such an
11 alien for an interview by an asylum officer for
12 a determination of whether the alien has a cred-
13 ible fear of persecution (within the meaning of
14 section 235(b)(1)(B)(v) of the Immigration and
15 Nationality Act (8 U.S.C. 1225(b)(1)(B)(v)));

16 (C) incorrectly removing such an alien to a
17 country where the alien may be persecuted; or

18 (D) detaining such an alien improperly or
19 in inappropriate conditions.

20 (f) REPORT.—Not later than 2 years after the date
21 on which the Commission initiates the study conducted
22 under subsection (a), the Commission shall submit a re-
23 port containing the results of the study to—

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

1 (2) the Committee on the Judiciary of the Sen-
2 ate;

3 (3) the Committee on Foreign Relations of the
4 Senate;

5 (4) the Committee on Homeland Security of the
6 House of Representatives;

7 (5) the Committee on the Judiciary of the
8 House of Representatives; and

9 (6) the Committee on Foreign Affairs of the
10 House of Representatives.

11 (g) STAFF.—

12 (1) FROM OTHER AGENCIES.—At the request of
13 the Commission, the Secretary, the Attorney Gen-
14 eral, and the Comptroller General of the United
15 States shall authorize staff designated by the Com-
16 mission who are recognized for their expertise and
17 knowledge of refugee and asylum issues to assist the
18 Commission in conducting the study under sub-
19 section (a).

20 (2) HIRING OF STAFF.—The Commission may
21 hire additional staff and consultants to conduct the
22 study under subsection (a).

23 (3) ACCESS TO PROCEEDINGS.—

24 (A) IN GENERAL.—Except as provided in
25 subparagraph (B), the Secretary and the Attor-

1 ney General shall permit staff designated under
2 paragraph (1) or hired under paragraph (2) to
3 have unrestricted access to all stages of all pro-
4 ceedings conducted under section 235(b) of the
5 Immigration and Nationality Act (8 U.S.C.
6 1225(b)).

7 (B) EXCEPTIONS.—The Secretary and the
8 Attorney General shall not permit unrestricted
9 access pursuant to subparagraph (A) in any
10 case in which—

11 (i) an alien that is subject to a pro-
12 ceeding conducted under section 235(b) of
13 the Immigration and Nationality Act ob-
14 jects to such access; or

15 (ii) the Secretary or Attorney General
16 determines that the security of a particular
17 proceeding would be threatened by such
18 access.

19 **SEC. 273. IMMIGRATION AND CUSTOMS ENFORCEMENT OM-**
20 **BUDSMAN.**

21 (a) ESTABLISHMENT.—Subtitle D of title III of the
22 Homeland Security Act of 2002 (6 U.S.C. 251 et seq.)
23 is amended by adding at the end the following:

1 **“SEC. 447. IMMIGRATION AND CUSTOMS ENFORCEMENT**
2 **OMBUDSMAN.**

3 “(a) **IN GENERAL.**—There shall be in the Depart-
4 ment of Homeland Security the position of Immigration
5 and Customs Enforcement Ombudsman (referred to in
6 this section as the ‘Ombudsman’).

7 “(b) **REQUIREMENTS.**—The Ombudsman shall—

8 “(1) report directly to the Assistant Secretary
9 for Immigration and Customs Enforcement (referred
10 to in this section as the ‘Assistant Secretary’); and

11 “(2) have a background in immigration law.

12 “(c) **FUNCTIONS.**—The Ombudsman shall—

13 “(1) undertake regular and unannounced in-
14 spections of detention facilities and local offices of
15 United States Immigration and Customs Enforce-
16 ment to determine whether the facilities and offices
17 comply with relevant policies, procedures, standards,
18 laws, and regulations;

19 “(2) report all findings of compliance or non-
20 compliance of the facilities and local offices de-
21 scribed in paragraph (1) to the Secretary and the
22 Assistant Secretary;

23 “(3) develop procedures for detainees or their
24 representatives to submit confidential written com-
25 plaints directly to the Ombudsman;

1 “(4) investigate and resolve all complaints, in-
2 cluding confidential and anonymous complaints, re-
3 lated to decisions, recommendations, acts, or omis-
4 sions made by the Assistant Secretary or the Com-
5 missioner of U.S. Customs and Border Protection in
6 the course of custody and detention operations;

7 “(5) initiate investigations into allegations of
8 systemic problems at detention facilities;

9 “(6) conduct any review or audit relating to de-
10 tention, as directed by the Secretary or Assistant
11 Secretary;

12 “(7) refer matters, as appropriate, to the Office
13 of Inspector General of the Department of Justice,
14 the Office of Civil Rights and Civil Liberties of the
15 Department, or any other relevant office or agency;

16 “(8) propose changes in the policies or practices
17 of United States Immigration and Customs Enforce-
18 ment to improve the treatment of United States citi-
19 zens and residents, immigrants, detainees, and oth-
20 ers subject to immigration-related enforcement oper-
21 ations;

22 “(9) establish a public advisory group con-
23 sisting of nongovernmental organization representa-
24 tives and Federal, State, and local government offi-

1 cials with expertise in detention and vulnerable pop-
2 ulations to provide the Ombudsman with input on—

3 “(A) the priorities of the Ombudsman; and

4 “(B) current practices of United States
5 Immigration and Customs Enforcement; and

6 “(10) recommend to the Assistant Secretary
7 personnel action based on any finding of noncompli-
8 ance.

9 “(d) ANNUAL REPORT.—

10 “(1) OBJECTIVES.—Not later than June 30 of
11 each year, the Ombudsman shall prepare and submit
12 a report to the Committee on the Judiciary of the
13 Senate and the Committee on the Judiciary of the
14 House of Representatives on the objectives of the
15 Office of the Ombudsman for the next fiscal year.

16 “(2) CONTENTS.—Each report submitted under
17 paragraph (1) shall include—

18 “(A) full and substantive analysis of the
19 objectives of the Office of the Ombudsman;

20 “(B) statistical information regarding such
21 objectives;

22 “(C) a description of each detention facil-
23 ity found to be in noncompliance with the de-
24 tention standards of the Department of Home-
25 land Security or other applicable regulations;

1 ney General or the Secretary of Homeland Secu-
2 rity”;

3 (2) by striking subparagraph (B);

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

6 (4) in subparagraph (B), as redesignated, by
7 striking “subparagraph (D)” and inserting “sub-
8 paragraphs (C) and (D)”;

9 (5) by striking subparagraph (C), as redesi-
10 gnated, and inserting the following:

11 “(C) CHANGED CIRCUMSTANCES.—Not-
12 withstanding subparagraph (B), an application
13 for asylum of an alien may be considered if the
14 alien demonstrates, to the satisfaction of the
15 Attorney General or the Secretary of Homeland
16 Security, the existence of changed cir-
17 cumstances that materially affect the appli-
18 cant’s eligibility for asylum.

19 “(D) MOTION TO REOPEN DENIED ASYLUM
20 CLAIM.—Notwithstanding subparagraph (B) or
21 section 240(c)(7), an alien may file a motion to
22 reopen an asylum claim during the 2-year pe-
23 riod beginning on the date of the enactment of
24 this subparagraph if the alien—

1 “(i) was denied asylum based solely
2 upon a failure to meet the 1-year applica-
3 tion filing deadline in effect on the date on
4 which the application was filed;

5 “(ii) was granted withholding of re-
6 moval to the alien’s country of nationality
7 (or, if stateless, to the country of last ha-
8 bitual residence under section 241(b)(3));

9 “(iii) has not obtained lawful perma-
10 nent residence in the United States pursu-
11 ant to any other provision of law;

12 “(iv) is not subject to the safe third
13 country exception in section 208(a)(2)(A)
14 or a bar to asylum under section 208(b)(2)
15 and should not be denied asylum as a mat-
16 ter of discretion; and

17 “(v) is physically present in the
18 United States when the motion is filed.”;

19 and

20 (6) in subparagraph (E), by striking “subpara-
21 graphs (A) and (B)” and inserting “subparagraph
22 (A).”

1 **SEC. 275. EFFICIENT ASYLUM DETERMINATION PROCESS**
2 **AND DETENTION OF ASYLUM SEEKERS.**

3 Section 235(b)(1)(B) (8 U.S.C. 1225(b)(1)(B)) is
4 amended—

5 (1) in clause (ii), by striking “shall be detained
6 for further consideration of the application for asy-
7 lum” and inserting “may, in the Secretary’s discre-
8 tion, be detained for further consideration of the ap-
9 plication for asylum by an asylum officer designated
10 by the Director of United States Citizenship and Im-
11 migration Services. The asylum officer, after con-
12 ducting a nonadversarial asylum interview, may
13 grant asylum to the alien under section 208 or refer
14 the case to a designee of the Attorney General, for
15 a de novo asylum determination, for relief under the
16 Convention Against Torture and Other Cruel, Inhu-
17 man or Degrading Treatment or Punishment, done
18 at New York December 10, 1984, or for withholding
19 of removal under section 241(b)(3).”; and

20 (2) in clause (iii)(IV)—

21 (A) by amending the subclause heading to
22 read as follows:

23 “(IV) DETENTION.—”; and

24 (B) by striking “shall” and inserting
25 “may, in the Secretary’s discretion,”.

1 **SEC. 276. PROTECTION OF STATELESS PERSONS IN THE**
2 **UNITED STATES.**

3 (a) IN GENERAL.—Chapter 1 of title II (8 U.S.C.
4 1151 et seq.) is amended by adding at the end the fol-
5 lowing:

6 **“SEC. 210A. PROTECTION OF STATELESS PERSONS IN THE**
7 **UNITED STATES.**

8 “(a) DEFINED TERM.—

9 “(1) IN GENERAL.—In this section, the term
10 ‘de jure stateless person’ means an individual who is
11 not considered a national under the laws of any
12 country. Individuals who have lost their nationality
13 as a result of their voluntary action or knowing inac-
14 tion after arrival in the United States shall not be
15 considered de jure stateless persons.

16 “(2) DESIGNATION OF SPECIFIC DE JURE
17 GROUPS.—The Secretary of Homeland Security, in
18 consultation with the Secretary of State, may, in the
19 discretion of the Secretary, designate specific groups
20 of individuals who are considered de jure stateless
21 persons, for purposes of this section.

22 “(b) MECHANISMS FOR REGULARIZING THE STATUS
23 OF STATELESS PERSONS.—

24 “(1) RELIEF FOR INDIVIDUALS DETERMINED
25 TO BE DE JURE STATELESS PERSONS.—The Sec-
26 retary of Homeland Security or the Attorney Gen-

1 eral may, in his or her discretion, provide conditional
2 lawful status to an alien who is otherwise inadmis-
3 sible or deportable from the United States if the
4 alien—

5 “(A) is a de jure stateless person;

6 “(B) applies for such relief;

7 “(C) is not inadmissible under paragraph
8 (2) or (3) of section 212(a); and

9 “(D) is not described in section
10 241(b)(3)(B)(i).

11 “(2) WAIVERS.—The provisions of paragraphs
12 (4), (5), (6)(A), (7)(A), and (9) of section 212(a)
13 shall not be applicable to any alien seeking relief
14 under paragraph (1), and the Secretary of Home-
15 land Security or the Attorney General may waive
16 any other provision of such section (other than para-
17 graph (2)(C) or subparagraph (A), (B), (C), or (E)
18 of paragraph (3)) with respect to such an alien for
19 humanitarian purposes, to assure family unity, or
20 when it is otherwise in the public interest.

21 “(3) SUBMISSION OF PASSPORT OR TRAVEL
22 DOCUMENT.—Any alien who seeks benefits under
23 this section must submit to the Secretary or the At-
24 torney General—

1 “(A) any passport or travel document
2 issued at any time to the alien (whether or not
3 the passport or document has expired or been
4 cancelled, rescinded, or revoked); or

5 “(B) an affidavit sworn under penalty of
6 perjury stating that the alien has never been
7 issued a passport or travel document, or identi-
8 fying with particularity any such passport or
9 travel document and explaining why the alien
10 cannot submit it.

11 “(4) WORK AUTHORIZATION.—The Secretary
12 may—

13 “(A) authorize an alien who has applied
14 for relief under paragraph (1) to engage in em-
15 ployment in the United States while such appli-
16 cation is being considered; and

17 “(B) provide such applicant with an em-
18 ployment authorized endorsement or other ap-
19 propriate document signifying authorization of
20 employment.

21 “(5) TREATMENT OF SPOUSES AND CHIL-
22 DREN.—The spouse or child of an alien who has
23 been granted conditional lawful status under para-
24 graph (1) shall, if not otherwise eligible for admis-
25 sion under paragraph (1), be granted conditional

1 lawful status under this section if accompanying, or
2 following to join, such alien, provided that the
3 spouse or child is admissible (except as otherwise
4 provided in paragraph (2)), and provided further
5 that the qualifying relationship to the principal bene-
6 ficiary existed on the date on which such alien was
7 granted conditional lawful status.

8 “(c) ADJUSTMENT OF STATUS.—

9 “(1) INSPECTION AND EXAMINATION.—At the
10 end of the 5-year period beginning on the date on
11 which an alien has been granted conditional lawful
12 status under subsection (b), the alien may apply for
13 lawful permanent residence in the United States if—

14 “(A) the alien has been physically present
15 in the United States for at least 5 years;

16 “(B) the alien’s conditional lawful status
17 has not been terminated by the Secretary of
18 Homeland Security or the Attorney General,
19 pursuant to such regulations as the Secretary
20 or the Attorney General may prescribe; and

21 “(C) the alien has not otherwise acquired
22 permanent resident status.

23 “(2) REQUIREMENTS FOR ADJUSTMENT.—The
24 Secretary or the Attorney General, under such regu-
25 lations as the Secretary or the Attorney General

1 may prescribe, may adjust the status of an alien
2 granted conditional lawful status under subsection
3 (b) to that of an alien lawfully admitted for perma-
4 nent residence if such alien—

5 “(A) is a de jure stateless person;

6 “(B) properly applies for such adjustment
7 of status;

8 “(C) has been physically present in the
9 United States for at least 5 years after being
10 granted conditional lawful status under sub-
11 section (b);

12 “(D) is not firmly resettled in any foreign
13 country; and

14 “(E) is admissible (except as otherwise
15 provided under subsection (b)(2)) as an immi-
16 grant under this chapter at the time of exam-
17 ination of such alien for adjustment of status.

18 “(3) RECORD.—Upon approval of an applica-
19 tion under this subsection, the Secretary or the At-
20 torney General shall establish a record of the alien’s
21 admission for lawful permanent residence as of the
22 date that is 5 years before the date of such approval.

23 “(d) PROVING THE CLAIM.—In determining an
24 alien’s eligibility for lawful conditional status or adjust-
25 ment of status under this subsection, the Secretary or the

1 Attorney General shall consider any credible evidence rel-
2 evant to the application. The determination of what evi-
3 dence is credible and the weight to be given that evidence
4 shall be within the sole discretion of the Secretary or the
5 Attorney General.

6 “(e) REVIEW.—

7 “(1) ADMINISTRATIVE REVIEW.—No appeal
8 shall lie from the denial of an application by the
9 Secretary, but such denial will be without prejudice
10 to the alien’s right to renew the application in pro-
11 ceedings under section 240.

12 “(2) MOTIONS TO REOPEN.—Notwithstanding
13 any limitation imposed by law on motions to reopen
14 removal, deportation, or exclusion proceedings, any
15 individual who is eligible for relief under this section
16 may file 1 motion to reopen removal or deportation
17 proceedings in order to apply for relief under this
18 section, except that any such motion shall be filed
19 not later than the later of—

20 “(A) 2 years after the date of the enact-
21 ment of this section; or

22 “(B) 90 days after the date of entry of a
23 final administrative order of removal, deporta-
24 tion, or exclusion.

1 “(f) LIMITATION.—The provisions of this section
2 shall apply only to aliens present in the United States.
3 Nothing in this section may be construed to authorize or
4 require—

5 “(1) the admission of any alien to the United
6 States;

7 “(2) the parole of any alien into the United
8 States; or

9 “(3) the grant of any motion to reopen or re-
10 consider filed by an alien after departure or removal
11 from the United States.”.

12 (b) JUDICIAL REVIEW.—Section 242(a)(2)(B)(ii) of
13 the Immigration and Nationality Act (8 U.S.C.
14 1252(a)(2)(B)(ii)) is amended by inserting “or 210A”
15 after “208(a)”.

16 (c) CLERICAL AMENDMENT.—The table of contents
17 for the Immigration and Nationality Act is amended by
18 inserting after the item relating to section 210 the fol-
19 lowing:

“210A. Protection of stateless persons in the United States.”.

20 **SEC. 277. AUTHORITY TO DESIGNATE CERTAIN GROUPS OF**
21 **REFUGEES FOR CONSIDERATION.**

22 (a) IN GENERAL.—Section 207(c)(1) (8 U.S.C.
23 1157(c)(1)) is amended—

24 (1) by inserting “(A)” before “Subject to the
25 numerical limitations”; and

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

2 “(B)(i) The President, upon a recommendation of the
3 Secretary of State made in consultation with the Secretary
4 of Homeland Security, and after appropriate consultation,
5 may designate specifically defined groups of aliens whose
6 resettlement in the United States is justified by humani-
7 tarian concerns or is otherwise in the national interest and
8 who share common characteristics that identify them as
9 targets of persecution on account of race, religion, nation-
10 ality, membership in a particular social group, or political
11 opinion or of other serious harm, or who, having been
12 identified as targets of persecution on account of race, reli-
13 gion, nationality, membership in a particular social group,
14 or political opinion or of other serious harm, share a com-
15 mon need for resettlement due to a specific vulnerability.

16 “(ii) An alien who establishes membership in a group
17 designated under clause (i) to the satisfaction of the Sec-
18 retary of Homeland Security shall be considered a refugee
19 for purposes of admission as a refugee under this section,
20 unless the Secretary determines that such alien ordered,
21 incited, assisted or otherwise participated in the persecu-
22 tion of any person on account of race, religion, nationality,
23 membership in a particular social group, or political opin-
24 ion.

25 “(iii) A designation under clause (i)—

1 “(I) may be revoked by the President at any
2 time after notification to Congress;

3 “(II) if not revoked, shall expire at the end of
4 each fiscal year; and

5 “(III) may be renewed by the President after
6 appropriate consultation.

7 “(iv) Categories of aliens established under section
8 599D of title V of Public Law 101–167 (8 U.S.C. 1157
9 note) shall—

10 “(I) be designated under clause (i) until the end
11 of the first fiscal year commencing after the date of
12 the enactment of this subparagraph; and

13 “(II) be eligible for designation thereafter, at
14 the discretion of the President.

15 “(v) An alien’s admission under this subparagraph
16 shall count against the refugee admissions goal under sub-
17 section (a).

18 “(vi) A designation under clause (i) shall not influ-
19 ence decisions to grant, to any alien, asylum under section
20 208, protection under section 241(b)(3), or protection
21 under Article 3 of the Convention Against Torture and
22 Other Cruel, Inhuman or Degrading Treatment or Pun-
23 ishment, done at New York December 10, 1984.”.

24 (b) WRITTEN REASONS FOR DENIALS OF REFUGEE
25 STATUS.—Each decision to deny an application for ref-

1 ugee status of an alien who is within a category estab-
2 lished under this section shall be in writing and shall state,
3 to the maximum extent feasible, the reason for the denial.

4 (c) EFFECTIVE DATE.—The amendments made by
5 subsection (a) shall take effect on the first day of the first
6 fiscal year that begins after the date of the enactment of
7 this Act.

8 **SEC. 278. ADMISSION OF REFUGEES IN THE ABSENCE OF**
9 **THE ANNUAL PRESIDENTIAL DETERMINA-**
10 **TION.**

11 Section 207(a) (8 U.S.C. 1157(a)) is amended—

12 (1) by striking paragraph (1);

13 (2) by redesignating paragraphs (2), (3), (4),
14 and (5) as paragraphs (1), (2), (3), and (4), respec-
15 tively;

16 (3) in paragraph (1), as redesignated—

17 (A) by striking “after fiscal year 1982”;

18 and

19 (B) by adding at the end the following: “If
20 the President does not issue a determination
21 under this paragraph before the beginning of a
22 fiscal year, the number of refugees that may be
23 admitted under this section in each quarter be-
24 fore the issuance of such determination shall be
25 25 percent of the number of refugees admissible

1 under this section during the previous fiscal
2 year.”; and

3 (4) in paragraph (3), as redesignated, by strik-
4 ing “(beginning with fiscal year 1992)”.

5 **Subtitle C—Reforming America’s**
6 **Legal Immigration System**

7 **PART I—STANDING COMMISSION ON FOREIGN**
8 **WORKERS, LABOR MARKETS, AND THE NA-**
9 **TIONAL INTEREST**

10 **SEC. 300. STANDING COMMISSION ON FOREIGN WORKERS,**
11 **LABOR MARKETS, AND THE NATIONAL INTER-**
12 **EST.**

13 (a) ESTABLISHMENT OF COMMISSION.—

14 (1) IN GENERAL.—There is established an inde-
15 pendent Federal agency within the executive branch
16 to be known as the Standing Commission on For-
17 eign Workers, Labor Markets, and the National In-
18 terest (referred to in this section as the “Commis-
19 sion”).

20 (2) PURPOSES.—The purposes of the Commis-
21 sion are—

22 (A) to establish employment-based immi-
23 gration policies that promote America’s eco-
24 nomic growth and competitiveness while mini-

1 mizing job displacement, wage depression and
2 unauthorized employment in the United States;

3 (B) to create and implement a policy-foc-
4 cused research agenda on the economic impacts
5 of immigration at the national, regional, State,
6 industry and occupation levels;

7 (C) to collect and analyze information
8 about employment-based immigration and the
9 labor market and share the data and analysis
10 with lawmakers, researchers and the American
11 public;

12 (D) to recommend to the Congress and the
13 President on a regular basis an evidence-based
14 methodology for determining the level of em-
15 ployment-based immigration;

16 (E) to recommend to Congress and the
17 President the numeric levels and characteristics
18 of workers to be admitted in various employ-
19 ment-based visa categories;

20 (F) to work with the Department of Labor
21 to conduct pilot programs to examine ways to
22 improve the operation of foreign worker pro-
23 grams; and

24 (G) to collect and analyze information
25 about the economic, labor, security, and foreign

1 policy impacts of our Nation's immigration poli-
2 cies.

3 (3) MEMBERSHIP.—The Commission shall be
4 composed of—

5 (A) 7 voting members—

6 (i) who shall be appointed by the
7 President, with the advice and consent of
8 the Senate, not later than 6 months after
9 the date of the enactment of this Act;

10 (ii) who shall serve for 5-year stag-
11 gered terms;

12 (iii) 1 of whom the President shall ap-
13 point as Chair of the Commission to serve
14 a 6-year term, which can be extended for
15 1 additional 3-year term;

16 (iv) who shall have expertise in eco-
17 nomics, demography, sociology, labor, busi-
18 ness, civil rights, immigration, or other
19 pertinent qualifications or experience;

20 (v) who may not be an employee of
21 the Federal Government or of any State or
22 local government; and

23 (vi) not more than 4 of whom may be
24 members of the same political party; and

25 (B) 8 ex-officio members, including—

- 1 (i) the Secretary;
- 2 (ii) the Secretary of State;
- 3 (iii) the Attorney General;
- 4 (iv) the Secretary of Labor;
- 5 (v) the Secretary of Commerce;
- 6 (vi) the Secretary of Health and
- 7 Human Services;
- 8 (vii) the Secretary of Agriculture; and
- 9 (viii) the Commissioner of Social Se-
- 10 curity.

11 (4) VACANCIES.—Any vacancy in the Commis-

12 sion shall be filled in the same manner as the origi-

13 nal appointment.

14 (5) MEETINGS.—

15 (A) INITIAL MEETING.—The Commission

16 shall meet and begin carrying out the duties de-

17 scribed in subsection (b) as soon as practicable.

18 (B) SUBSEQUENT MEETINGS.—After its

19 initial meeting, the Commission shall meet upon

20 the call of the Chair or a majority of its mem-

21 bers.

22 (C) QUORUM.—Four voting members of

23 the Commission shall constitute a quorum.

24 (b) DUTIES OF THE COMMISSION.—The Commission

25 shall collect, analyze, and publish data regarding—

1 (1) the historic migration patterns to and from
2 the United States and demographic trends, including
3 the birth rate, education levels, and age profiles of
4 the immigrant and native population of the United
5 States;

6 (2) the national, regional, State, and local im-
7 pacts of employment-based immigration—

8 (A) within industries and business sectors;

9 (B) on wages, labor standards, occupa-
10 tions, and employment levels;

11 (C) on small business;

12 (D) on employment and unemployment lev-
13 els;

14 (E) on economic growth, productivity, and
15 competitiveness;

16 (F) on national and border security; and

17 (G) on local communities;

18 (3) the development and implementation of the
19 new worker program to admit H-2C nonimmigrants
20 (referred to in this section as the “Program”), in-
21 cluding—

22 (A) the criteria for the admission of work-
23 ers under the Program; and

1 (B) the formula and methodologies for de-
2 termining the annual numerical limitations of
3 the Program;

4 (4) the current and anticipated needs of em-
5 ployers for skilled and unskilled labor;

6 (5) the national interest;

7 (6) the current and anticipated supply of skilled
8 and unskilled labor;

9 (7) the impact of employment-based immigra-
10 tion on the economic growth, competitiveness, labor
11 standards, labor conditions, and wages;

12 (8) the extent and impact of unauthorized em-
13 ployment in the United States;

14 (9) the factors that determine the economic
15 success of immigrants to the United States;

16 (10) specific aspects of the Nation's immigra-
17 tion policies and programs that Congress has re-
18 quested the Commission to examine or analyze; and

19 (11) any other matters regarding the impact of
20 employment-based immigration that the Commission
21 considers appropriate.

22 (c) ANNUAL REPORTS.—

23 (1) PROGRAM EVALUATION.—Not later than 1
24 year after the date of the enactment of this Act, and

1 annually thereafter, the Commission shall submit a
2 report to the President and Congress that—

3 (A) assesses the economic, labor, security,
4 and foreign policy impacts of the Nation's im-
5 migration policies;

6 (B) evaluates the Program and defines a
7 formula and methodologies for measuring the
8 need for nonimmigrants in States, industries,
9 and occupations;

10 (C) recommends adjustments, based on the
11 established methodologies, to the Program's nu-
12 meric allocations for the subsequent fiscal year;
13 and

14 (D) reviews the issuance and allocations of
15 employment-based immigrant and non-
16 immigrant visa categories.

17 (2) EFFECT ON EMPLOYMENT LEVELS.—Not
18 later than February 1 of each year, the Commission
19 shall submit a report to Congress that contains—

20 (A) the Commission's recommendations on
21 the increase or decrease in the number of em-
22 ployment-based immigrant visas to be made
23 available for temporary or permanent employ-
24 ment under the Immigration and Nationality

1 Act and a statement of the reasons for such
2 recommendations; and

3 (B) the Commission's recommendations on
4 how many immigrant visas from the discre-
5 tionary national interest pool described in sec-
6 tion 301(e) should be added to the subsequent
7 fiscal year's annual immigrant visa allocations
8 to comport with the increases recommended in
9 subparagraph (A) and to which employment
10 preference categories such visas should be
11 added.

12 (3) EFFECT OF CONGRESSIONAL INACTION.—If
13 Congress does not enact a law to approve or dis-
14 approve the Commission's recommendations under
15 paragraph (2) not later than 90 days after receiving
16 a report under such paragraph, the number of em-
17 ployment-based immigrant visas shall remain at the
18 level authorized for the previous fiscal year.

19 (d) NATIONAL INTEREST DEFINED.—For purposes
20 of determining whether immigrant visas should be allo-
21 cated from the discretionary national interest pool in a
22 given fiscal year, the term “national interest” shall be
23 broadly defined and shall take into consideration—

24 (1) national and regional unemployment rates;

25 (2) unemployment rates by industry and sector;

1 (3) national and regional demographic and in-
2 dustry projections;

3 (4) wage and labor impact;

4 (5) education, workforce development, and so-
5 cial support considerations;

6 (6) immigrant visa backlogs and length of fa-
7 milial separation;

8 (7) national security and border security;

9 (8) community impact assessments; and

10 (9) competitiveness and economic growth.

11 (e) POWERS OF THE COMMISSION.—The Commis-
12 sion, by vote of a majority of the members present and
13 voting, shall have the power to—

14 (1) establish general policies and promulgate
15 such rules and regulations for the Commission as
16 are necessary to carry out the purposes of this sec-
17 tion;

18 (2) appoint and fix the salary and duties of the
19 Staff Director of the Commission, who shall serve at
20 the discretion of the Commission and who shall be
21 compensated at a rate not to exceed the highest rate
22 now or hereafter prescribed for Level 6 of the Senior
23 Executive Service Schedule (5 U.S.C. 5382), and
24 such other personnel as may be necessary to enable
25 the Commission to carry out its functions;

1 (3) deny, revise, or ratify any request for reg-
2 ular, supplemental, or deficiency appropriations
3 prior to any submission of such request to the Office
4 of Management and Budget by the Chair;

5 (4) utilize, with their consent, the services,
6 equipment, personnel, information, and facilities of
7 other Federal, State, local, and private agencies and
8 instrumentalities with or without reimbursement for
9 such utilization;

10 (5) without regard to section 3324 of title 31,
11 United States Code, enter into and perform such
12 contracts, leases, cooperative agreements, and other
13 transactions as may be necessary in the conduct of
14 the functions of the Commission, with any public
15 agency, or with any person, firm, association, cor-
16 poration, educational institution, or nonprofit orga-
17 nization;

18 (6) accept and employ, in carrying out the pro-
19 visions of this title, voluntary and uncompensated
20 services, notwithstanding the provisions of section
21 1342 of title 31, United States Code, however, indi-
22 viduals providing such services shall not be consid-
23 ered Federal employees except for purposes of chap-
24 ter 81 of title 5, United States Code, with respect

1 to job-incurred disability and title 28, United States
2 Code, with respect to tort claims;

3 (7) request such information, data, and reports
4 from any Federal agency as the Commission may
5 from time to time require and as may be produced
6 consistent with other law;

7 (8) arrange with the head of any other Federal
8 agency for the performance by such agency of any
9 function of the Commission, with or without reim-
10 bursement;

11 (9) establish a research and development pro-
12 gram within the Commission for the purpose of un-
13 derstanding and documenting the effects of immi-
14 gration and the admission of foreign workers on the
15 labor market and national competitiveness;

16 (10) collect systematically the data obtained
17 from studies, research, and the empirical experience
18 of public and private agencies concerning the need
19 for and effects of immigration;

20 (11) interview and confer with State and local
21 officials, representatives of labor and industry, and
22 experts in academia to obtain information about the
23 need for or benefit of additional immigrant or non-
24 immigrant workers;

1 (12) make recommendations to Congress con-
2 cerning the numeric limitations of the immigrant
3 and nonimmigrant employment-based visa categories
4 and recommend modifications or the enactment of
5 statutes relating to matters that the Commission
6 finds to be necessary and advisable to carry out an
7 effective immigration policy;

8 (13) hold hearings and call witnesses to assist
9 the Commission in the exercise of its powers or du-
10 ties;

11 (14) retain and, in its discretion pay reasonable
12 attorneys' fees out of its appropriated funds to, pri-
13 vate attorneys who—

14 (A) shall provide legal advice to the Com-
15 mission in the conduct of its work, or to appear
16 for or represent the Commission in any case in
17 which the Commission is authorized by law to
18 represent itself, or in which the Commission is
19 representing itself with the consent of the De-
20 partment of Justice; and

21 (B) when serving as officers or employees
22 of the United States, shall be considered special
23 Government employees (as defined in section
24 202(a) of title 18, United States Code);

1 (15) grant incentive awards to its employees
2 pursuant to chapter 45 of title 5, United States
3 Code;

4 (16) create occupational, industry, and regional
5 advisory committees; and

6 (17) perform such other functions as may be
7 necessary to carry out the purposes of this section,
8 which may be delegated to any member or des-
9 ignated person, as appropriate.

10 (f) INFORMATION AND ASSISTANCE FROM FEDERAL
11 AGENCIES.—

12 (1) INFORMATION.—The head of any Federal
13 department or agency that receives a request from
14 the Commission for information, including sugges-
15 tions, estimates, and statistics, as the Commission
16 considers necessary to carry out the provisions of
17 this section, shall furnish such information to the
18 Commission, to the extent allowed by law.

19 (2) ASSISTANCE.—

20 (A) GENERAL SERVICES ADMINISTRA-
21 TION.—The Administrator of General Services
22 shall, on a reimbursable basis, provide the Com-
23 mission with administrative support and other
24 services for the performance of the Commis-
25 sion's functions.

1 (B) OTHER FEDERAL AGENCIES.—The de-
2 partments and agencies of the United States
3 may provide the Commission with such services,
4 funds, facilities, staff, and other support serv-
5 ices as the heads of such departments and
6 agencies determine advisable and authorized by
7 law.

8 (g) PERSONNEL MATTERS.—

9 (1) STAFF.—

10 (A) APPOINTMENT AND COMPENSATION.—
11 The Chair, in accordance with rules agreed
12 upon by the Commission, may appoint and fix
13 the compensation of a staff director and such
14 other personnel as may be necessary to enable
15 the Commission to carry out its functions.

16 (B) FEDERAL EMPLOYEES.—

17 (i) IN GENERAL.—Except as provided
18 under clause (ii), the executive director and
19 any personnel of the Commission who are
20 employees shall be considered to be em-
21 ployees under section 2105 of title 5,
22 United States Code, for purposes of chap-
23 ters 63, 81, 83, 84, 85, 87, 89, and 90 of
24 such title.

1 (ii) COMMISSION MEMBERS.—Clause
2 (i) shall not apply to members of the Com-
3 mission.

4 (2) DETAILEES.—Any employee of the Federal
5 Government may be detailed to the Commission
6 without reimbursement from the Commission. Such
7 detailee shall retain the rights, status, and privileges
8 of his or her regular employment without interrup-
9 tion.

10 (3) CONSULTANT SERVICES.—The Commission
11 may procure the services of experts and consultants
12 in accordance with section 3109 of title 5, United
13 States Code, at rates not to exceed the daily rate
14 paid a person occupying a position at level IV of the
15 Executive Schedule under section 5315 of such title
16 5.

17 (h) COMPENSATION AND TRAVEL EXPENSES.—

18 (1) COMPENSATION.—Each voting member of
19 the Commission may be compensated at a rate not
20 to exceed the daily equivalent of the annual rate of
21 basic pay in effect for a position at level IV of the
22 Executive Schedule under section 5315 of title 5,
23 United States Code, for each day during which that
24 member is engaged in the actual performance of the
25 duties of the Commission.

1 (2) TRAVEL EXPENSES.—Members of the Com-
 2 mission shall be allowed travel expenses, including
 3 per diem in lieu of subsistence, at rates authorized
 4 for employees of agencies under section 5703(b) of
 5 title 5, United States Code, while away from their
 6 homes or regular places of business in the perform-
 7 ance of services for the Commission.

8 **PART II—FAMILY AND EMPLOYMENT VISA**

9 **REFORMS**

10 **CHAPTER 1—FAMILY AND EMPLOYMENT-**
 11 **BASED IMMIGRANT VISAS**

12 **SEC. 301. RECAPTURE OF IMMIGRANT VISAS LOST TO BU-**
 13 **REAUCRATIC DELAY.**

14 (a) WORLDWIDE LEVEL OF FAMILY-SPONSORED IM-
 15 MIGRANTS.—Section 201(c) (8 U.S.C. 1151(c)) is amend-
 16 ed to read as follows:

17 “(c) WORLDWIDE LEVEL OF FAMILY-SPONSORED
 18 IMMIGRANTS.—

19 “(1) IN GENERAL.—Subject to subparagraph
 20 (B), the worldwide level of family-sponsored immi-
 21 grants under this subsection for a fiscal year is
 22 equal to the sum of—

23 “(A) 480,000; and

24 “(B) the sum of—

1 “(i) the number computed under
2 paragraph (2); and

3 “(ii) the number computed under
4 paragraph (3).

5 “(2) UNUSED VISA NUMBERS FROM PREVIOUS
6 FISCAL YEAR.—The number computed under this
7 paragraph for a fiscal year is the difference, if any,
8 between—

9 “(A) the worldwide level of family-spon-
10 sored immigrant visas established for the pre-
11 vious fiscal year; and

12 “(B) the number of visas issued under sec-
13 tion 203(a), subject to this subsection, during
14 the previous fiscal year.

15 “(3) UNUSED VISA NUMBERS FROM FISCAL
16 YEARS 1992 THROUGH 2007.—The number computed
17 under this paragraph is—

18 “(A) the difference, if any, between—

19 “(i) the sum of the worldwide levels of
20 family-sponsored immigrant visas estab-
21 lished for fiscal years 1992 through 2007;
22 and

23 “(ii) the number of visas issued under
24 section 203(a), subject to this subsection,
25 during such fiscal years; and

1 “(B) the number of unused visas from fis-
2 cal years 1992 through 2007 that were issued
3 after fiscal year 2007 under section 203(a),
4 subject to this subsection.”.

5 (b) WORLDWIDE LEVEL OF EMPLOYMENT-BASED
6 IMMIGRANTS.—Section 201(d) (8 U.S.C. 1151(d)) is
7 amended to read as follows:

8 “(d) WORLDWIDE LEVEL OF EMPLOYMENT-BASED
9 IMMIGRANTS.—

10 “(1) IN GENERAL.—The worldwide level of em-
11 ployment-based immigrants under this subsection for
12 a fiscal year is equal to the sum of—

13 “(A) 140,000;

14 “(B) the number computed under para-
15 graph (2); and

16 “(C) the number computed under para-
17 graph (3).

18 “(2) UNUSED VISA NUMBERS FROM PREVIOUS
19 FISCAL YEAR.—The number computed under this
20 paragraph for a fiscal year is the difference, if any,
21 between—

22 “(A) the worldwide level of employment-
23 based immigrant visas established for the pre-
24 vious fiscal year; and

1 “(B) the number of visas issued under sec-
2 tion 203(b), subject to this subsection, during
3 the previous fiscal year.

4 “(3) UNUSED VISA NUMBERS FROM FISCAL
5 YEARS 1992 THROUGH 2007.—The number computed
6 under this paragraph is the difference, if any, be-
7 tween—

8 “(A) the difference, if any, between—

9 “(i) the sum of the worldwide levels of
10 employment-based immigrant visas estab-
11 lished for each of fiscal years 1992
12 through 2007; and

13 “(ii) the number of visas issued under
14 section 203(b), subject to this subsection,
15 during such fiscal years; and

16 “(B) the number of unused visas from fis-
17 cal years 1992 through 2007 that were issued
18 after fiscal year 2007 under section 203(b),
19 subject to this subsection.”.

20 (c) ALIENS NOT SUBJECT TO DIRECT NUMERICAL
21 LIMITATIONS.—Section 201(b)(1) (8 U.S.C. 1151(b)(1))
22 is amended by adding at the end the following:

23 “(F) A derivative beneficiary as described
24 in section 203(d) of an employment-based im-
25 migrant under section 203(b).

1 “(G) Aliens with extraordinary ability in
2 the sciences, arts, education, business, or ath-
3 letics which has been demonstrated by sus-
4 tained national or international acclaim, if:

5 “(i) the achievements of such alien
6 have been recognized in the field through
7 extensive documentation;

8 “(ii) such alien seeks to enter the
9 United States to continue work in the area
10 of extraordinary ability; and

11 “(iii) the entry of such alien into the
12 United States will substantially benefit
13 prospectively the United States.

14 “(H) Aliens who have earned an advanced
15 degree in the sciences (not including the social
16 sciences), technology, engineering, or mathe-
17 matics from a United States institution of high-
18 er education (as defined in section 1001(a) of
19 title 20) and have been working in a field re-
20 lated to their degree subject in the United
21 States under a nonimmigrant visa during the 2-
22 year period preceding their application for an
23 immigrant visa under section 203(b).

24 “(I) Alien physicians who have completed
25 service requirements of a waiver or exemption

1 requested by an interested State agency or by
2 an interested Federal agency under section
3 214(l), including those alien physicians who
4 completed such service before the date of the
5 enactment of this subparagraph.

6 “(J) Aliens who are eligible for adjustment
7 of status under section 245(n)(1) as an alien
8 who described in section 101(a)(15)(H)(ii)(e).”

9 (d) REQUIREMENT TO SATISFY ELIGIBILITY RE-
10 QUIREMENTS.—Section 203 (8 U.S.C. 1153) is amended
11 by adding at the end the following new subsection:

12 “(i) REQUIREMENT TO SATISFY ELIGIBILITY RE-
13 QUIREMENTS.—Notwithstanding the inapplicability of the
14 worldwide levels specified in sections 201(c) and (d) to
15 aliens described in section 201(b)(1), aliens described in
16 subparagraph (H) or (I) of section 201(b)(1) shall satisfy
17 the requirements for eligibility for an immigrant visa
18 under 1 of the preference categories under subsection
19 (b).”.

20 (e) DISCRETIONARY NATIONAL INTEREST POOL.—
21 The discretionary national interest pool is the number that
22 is the average of the difference between—

23 (1) the number of legal immigrant visas issued
24 annually from fiscal year 1995 through fiscal year
25 2010; and

1 (2) the number of legal immigrant visas issued
2 annually plus unauthorized entries estimated annu-
3 ally by the Secretary of Homeland Security from fis-
4 cal year 1995 through fiscal year 2010.

5 (f) APPLICABILITY.—The amendments made by sub-
6 section (c) shall apply to any immigrant petition or immi-
7 grant visa application—

8 (1) pending on the date of the enactment of
9 this Act; or

10 (2) filed on or after such date of enactment.

11 (g) ELIMINATION OF THE EB-1A PREFERENCE CAT-
12 EGORY.—Section 203(b)(1) (8 U.S.C. 1153(b)(1)) is
13 amended—

14 (1) by striking subparagraph (A); and

15 (2) by redesignating subparagraphs (B) and
16 (C) as subparagraphs (A) and (B), respectively.

17 (h) EFFECTIVE DATE.—The amendments made by
18 this section shall take effect on the first day of the first
19 fiscal year that commences no earlier than 9 months after
20 the date of the enactment of the Comprehensive Immigra-
21 tion Reform Act of 2010.

1 **SEC. 302. RECLASSIFICATION OF SPOUSES AND MINOR**
2 **CHILDREN OF LAWFUL PERMANENT RESI-**
3 **DENTS AS IMMEDIATE RELATIVES.**

4 (a) IN GENERAL.—Section 201(b)(2) (8 U.S.C.
5 1151(b)(2)) is amended to read as follows:

6 “(2)(A)(i) Immediate relatives.

7 “(ii) In this paragraph, the term ‘immediate
8 relative’ means a child, spouse, or parent of a citizen
9 of the United States or a child or spouse of a lawful
10 permanent resident (and for each family member of
11 a citizen or lawful permanent resident under this
12 subparagraph, such individual’s spouse or child who
13 is accompanying or following to join the individual),
14 except that, in the case of parents, such citizens
15 shall be at least 21 years of age.

16 “(iii) If an alien who was the spouse of a citizen
17 of the United States and was not legally separated
18 from the citizen at the time of the citizen’s death
19 files a petition under section 204(a)(1)(A)(ii) not
20 later than 2 years after the date of the citizen’s
21 death, the alien and each child of the alien shall be
22 remain, for purposes of this paragraph, an imme-
23 diate relative during the period beginning on the
24 date of the citizen’s death and ending on the date
25 on which the alien remarries.

1 “(iv) An alien who has filed a petition under
2 clause (iii) or (iv) of section 204(a)(1)(A) shall re-
3 main, for purposes of this paragraph, a an imme-
4 diate relative if the United States citizen or lawful
5 permanent resident spouse or parent loses United
6 States citizenship on account of the abuse.

7 “(B) Aliens admitted under section 211(a) on
8 the basis of a prior issuance of a visa to their ac-
9 companying parent who is an immediate relative.

10 “(C) Aliens born to an alien lawfully admitted
11 for permanent residence during a temporary visit
12 abroad.”.

13 (b) ALLOCATION OF IMMIGRANT VISAS.—Section
14 203(a) (8 U.S.C. 1153(a)) is amended—

15 (1) in paragraph (1), by striking “23,400” and
16 inserting “127,200”;

17 (2) by striking paragraph (2) and inserting the
18 following:

19 “(2) UNMARRIED SONS AND UNMARRIED
20 DAUGHTERS OF PERMANENT RESIDENT ALIENS.—
21 Qualified immigrants who are the unmarried sons or
22 unmarried daughters (but are not the children) of
23 an alien lawfully admitted for permanent residence
24 shall be allocated visas in a number not to exceed

1 80,640, plus any visas not required for the class
2 specified in paragraph (1).”;

3 (3) in paragraph (3), by striking “23,400” and
4 inserting “80,640”; and

5 (4) in paragraph (4), by striking “65,000” and
6 inserting “191,520”.

7 (c) TECHNICAL AND CONFORMING AMENDMENTS.—

8 (1) RULES FOR DETERMINING WHETHER CER-
9 TAIN ALIENS ARE IMMEDIATE RELATIVES.—Section
10 201(f) (8 U.S.C. 1151(f)) is amended—

11 (A) in paragraph (1), by striking “para-
12 graphs (2) and (3),” and inserting “paragraph
13 (2),”;

14 (B) by striking paragraph (2);

15 (C) by redesignating paragraphs (3) and
16 (4) as paragraphs (2) and (3), respectively; and

17 (D) in paragraph (3), as redesignated by
18 subparagraph (C), by striking “through (3)”
19 and inserting “and (2)”.

20 (2) NUMERICAL LIMITATION TO ANY SINGLE
21 FOREIGN STATE.—Section 202 (8 U.S.C. 1152) is
22 amended—

23 (A) in subsection (a)(4)—

24 (i) by striking subparagraphs (A) and

25 (B);

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

4 (iii) in subparagraph (A), as redesign-
5 ated by clause (ii), by striking “section
6 203(a)(2)(B)” and inserting “section
7 203(a)(2)”;

8 (B) in subsection (e), in the flush matter
9 following paragraph (3), by striking “, or as
10 limiting the number of visas that may be issued
11 under section 203(a)(2)(A) pursuant to sub-
12 section (a)(4)(A)”.

13 (3) ALLOCATION OF IMMIGRATION VISAS.—Sec-
14 tion 203(h) (8 U.S.C. 1153(h)) is amended—

15 (A) in paragraph (1)—

16 (i) in the matter preceding subpara-
17 graph (A), by striking “subsections
18 (a)(2)(A) and (d)” and inserting “sub-
19 section (d)”;

20 (ii) in subparagraph (A), by striking
21 “becomes available for such alien (or, in
22 the case of subsection (d), the date on
23 which an immigrant visa number became
24 available for the alien’s parent),” and in-

1 serting “became available for the alien’s
2 parent,”; and

3 (iii) in subparagraph (B), by striking
4 “applicable”;

5 (B) by amending paragraph (2) to read as
6 follows:

7 “(2) PETITIONS DESCRIBED.—The petition de-
8 scribed in this paragraph is a petition filed under
9 section 204 for classification of the alien’s parent
10 under subsection (a), (b), or (c).”; and

11 (C) in paragraph (3), by striking “sub-
12 sections (a)(2)(A) and (d)” and inserting “sub-
13 section (d)”.

14 (4) PROCEDURE FOR GRANTING IMMIGRANT
15 STATUS.—Section 204 (8 U.S.C. 1154) is amend-
16 ed—

17 (A) in subsection (a)(1)—

18 (i) in subparagraph (A)—

19 (I) in clause (i), by inserting “or
20 lawful permanent resident” after “cit-
21 izen”;

22 (II) in clause (ii), by striking
23 “described in the second sentence of
24 section 201(b)(2)(A)(i) also” and in-

1 serting “, alien child, or alien parent
2 described in section 201(b)(2)(A)”;

3 (III) in clause (iii)—

4 (aa) in subclause (I)(aa), by
5 inserting “or legal permanent
6 resident” after “citizen”; and

7 (bb) in subclause (II)(aa)—

8 (AA) in subitems (AA)
9 and (BB), by inserting “or
10 legal permanent resident;”
11 after “citizen” each place
12 that term appears;

13 (BB) in subitem (CC),
14 by inserting “or legal per-
15 manent resident” after “cit-
16 izen” each place that term
17 appears; and

18 (CC) in subitem
19 (CC)(bbb), by inserting “or
20 legal permanent resident”
21 after “citizenship”;

22 (IV) in clause (iv), by inserting
23 “or legal permanent resident” after
24 “citizen” each place that term ap-
25 pears;

- 1 (V) in clause (v)(I), by inserting
2 “or legal permanent resident” after
3 “citizen”; and
- 4 (VI) in clause (vi)—
- 5 (aa) by inserting “or legal
6 permanent resident status” after
7 “renunciation of citizenship”;
8 and
- 9 (bb) by inserting “or legal
10 permanent resident” after “abus-
11 er’s citizenship”;
- 12 (ii) by striking subparagraph (B);
- 13 (iii) in subparagraph (C), by striking
14 “subparagraph (A)(iii), (A)(iv), (B)(ii), or
15 (B)(iii)” and inserting “clause (iii) or (iv)
16 of subparagraph (A)”; and
- 17 (iv) in subparagraph (J), by striking
18 “or clause (ii) or (iii) of subparagraph
19 (B)”;
- 20 (B) in subsection (a), by striking para-
21 graph (2);
- 22 (C) in subsection (c)(1), by striking “or
23 preference status”; and
- 24 (D) in subsection (h), by striking “or a pe-
25 tition filed under subsection (a)(1)(B)(ii)”.

1 (d) COUNTRY LIMIT.—Section 202(a)(2) (8 U.S.C.
2 1152(a)(2)) is amended to read as follows:

3 “(2) PER COUNTRY LEVELS FOR FAMILY-SPON-
4 SORED AND EMPLOYMENT-BASED IMMIGRANTS.—
5 Subject to paragraphs (3), (4), and (5) the total
6 number of immigrant visas made available to natives
7 of any single foreign state under subsection (a) of
8 section 203 in any fiscal year may not exceed 15
9 percent of the total number of such visas made
10 available under such subsection in that fiscal year.”.

11 **SEC. 303. RETENTION OF PRIORITY DATE.**

12 Section 203(h)(3) (8 U.S.C. 1153(h)(3)) is amended
13 to read as follows:

14 “(3) RETENTION OF PRIORITY DATE.—If the
15 age of an alien is determined under paragraph (1)
16 to be 21 years of age or older for the purposes of
17 subsections (a)(2)(A) and (d), and a parent of the
18 alien files a petition under section 204 for classifica-
19 tion of such alien based upon a relationship de-
20 scribed in subsection (a), the priority date for such
21 petition shall be the original priority date issued
22 upon receipt of the original family- or employment-
23 based petition for which either parent was a bene-
24 ficiary.”.

1 **SEC. 304. DISCRETIONARY AUTHORITY WITH RESPECT TO**
2 **REMOVAL OR DEPORTATION OF CITIZEN AND**
3 **RESIDENT IMMEDIATE FAMILY MEMBERS.**

4 Section 240(c)(4) (8 U.S.C. 1229a(c)(4)) is amended
5 by adding at the end the following:

6 “(D) JUDICIAL DISCRETION.—In the case
7 of an alien subject to removal, deportation, or
8 exclusion, the immigration judge may exercise
9 discretion to decline to order the alien removed,
10 deported or excluded from the United States if
11 the judge determines that such removal, depor-
12 tation, or exclusion is against the public interest
13 or would result in hardship to the alien’s
14 United States citizen or permanent resident
15 parent, spouse, or child except that this sub-
16 paragraph shall not apply to an alien whom the
17 judge determines—

18 “(i) is described in—

19 “(I) subparagraph (B), (C),
20 (D)(ii), (E), (H), (I), or (J) of section
21 212(a)(2);

22 “(II) section 212(a)(3);

23 “(III) subparagraph (A), (C), or
24 (D) of section 212(a)(10); or

25 “(IV) section 237(a)(4); or

1 “(ii) has engaged in conduct described
2 in paragraph (8) or (9) of section 103 of
3 the Trafficking Victims Protection Act of
4 2000 (22 U.S.C. 7102).”.

5 **SEC. 305. MILITARY FAMILIES.**

6 (a) IN GENERAL.—Section 245 (8 U.S.C. 1255) is
7 amended by adding at the end the following:

8 “(n) ADJUSTMENT OF STATUS FOR IMMEDIATE FAM-
9 ILY MEMBERS OF MEMBERS OF THE ARMED FORCES.—

10 “(1) IN GENERAL.—The Secretary of Homeland
11 Security shall adjust the status of an alien described
12 in paragraph (2) to that of an alien lawfully admit-
13 ted for permanent residence if the alien—

14 “(A) applies for such adjustment;

15 “(B) is admissible to the United States as
16 an immigrant, except as provided in paragraph
17 (4); and

18 “(C) is physically present in the United
19 States.

20 “(2) ALIENS ELIGIBLE FOR ADJUSTMENT OF
21 STATUS.—An alien described in this paragraph is an
22 alien—

23 “(A) who is a parent, spouse, child, son,
24 daughter, or the legal guardian of a child of—

1 “(i) a living Armed Forces member;

2 or

3 “(ii) a deceased Armed Forces mem-

4 ber if—

5 “(I) the Armed Forces member

6 died as a result of injury or disease

7 incurred in, or aggravated by, the

8 Armed Forces member’s service; and

9 “(II) the alien applies for such

10 adjustment—

11 “(aa) if the death of the

12 Armed Forces member occurred

13 before the date of the enactment

14 of the CIR Act of 2011, not later

15 than 2 years after such date of

16 enactment; or

17 “(bb) if the death of the

18 Armed Forces member occurred

19 after the date of the enactment

20 of the CIR Act of 2011, not later

21 than 2 years after the death of

22 the Armed Forces member; or

23 “(B) who is the spouse, child, son, or

24 daughter of an alien described in subparagraph

25 (A).

1 “(3) ARMED FORCES MEMBER DEFINED.—In
2 this subsection, the term ‘Armed Forces member’
3 means an individual who—

4 “(A) is, or was at the time of the individ-
5 ual’s death described in paragraph (2)(A)(ii)(I),
6 a national of the United States or lawfully ad-
7 mitted for permanent residence;

8 “(B) on or after October 7, 2001, served
9 as a member of—

10 “(i) the Armed Forces on active duty;

11 “(ii) the National Guard; or

12 “(iii) the Selected Reserve of the
13 Ready Reserve; and

14 “(C) if separated from the service de-
15 scribed in subparagraph (B), was separated
16 under honorable conditions.

17 “(4) INAPPLICABILITY OF CERTAIN GROUNDS
18 OF INADMISSIBILITY.—

19 “(A) IN GENERAL.—The provisions of
20 paragraphs (4), (5), (6)(A), (7)(A), and (9)(B)
21 of section 212(a) shall not apply to an adjust-
22 ment of status made pursuant to this sub-
23 section.

24 “(B) WAIVER.—The Secretary of Home-
25 land Security or the Attorney General, as ap-

1 appropriate, may waive any other provision of sec-
2 tion 212(a) (other than paragraph (2)(C) and
3 subparagraphs (A), (B), (C), (E), and (F) of
4 paragraph (3)) with respect to an adjustment of
5 status made pursuant to this subsection—

6 “(i) for humanitarian purposes;

7 “(ii) to assure family unity; or

8 “(iii) if such waiver is otherwise in the
9 public interest.

10 “(5) FEE AUTHORITY.—The Secretary of
11 Homeland Security or the Secretary of State, as ap-
12 propriate, may establish a fee pursuant to section
13 9701 of title 31, United States Code, for the proc-
14 essing of an application for an adjustment of status
15 made pursuant to this subsection.

16 “(6) JURISDICTION.—

17 “(A) SECRETARY OF HOMELAND SECU-
18 RITY.—Except as provide in subparagraph (B),
19 the Secretary of Homeland Security shall have
20 exclusive jurisdiction to determine eligibility for
21 an adjustment of status made pursuant to this
22 subsection.

23 “(B) ATTORNEY GENERAL.—Notwith-
24 standing paragraph (1) or subparagraph (A), in
25 cases in which an alien has been placed into de-

1 portation, exclusion, or removal proceedings, ei-
2 ther before or after filing an application for an
3 adjustment of status under this subsection, the
4 Attorney General shall have exclusive jurisdic-
5 tion and shall assume all the powers and duties
6 of the Secretary of Homeland Security until
7 proceedings are terminated, or if a final order
8 of deportation, exclusion, or removal is en-
9 tered.”.

10 (b) EXEMPTION FROM DIRECT NUMERICAL LIMITA-
11 TIONS.—Section 201(b)(1) (8 U.S.C. 1151(b)(1)), as
12 amended by is amended section 301(c), is further amend-
13 ed by adding at the end the following:

14 “(K) Aliens provided permanent residence sta-
15 tus under section 245(n).”.

16 **SEC. 306. EQUAL TREATMENT FOR ALL STEPCHILDREN.**

17 Section 101(b)(1)(B) (8 U.S.C. 1101(b)(1)(B)) is
18 amended by striking “, provided the child had not reached
19 the age of eighteen years at the time the marriage creating
20 the status of stepchild occurred”.

21 **SEC. 307. WIDOWS, WIDOWERS, AND ORPHANS.**

22 (a) PROTECTION FOR CERTAIN SURVIVING REL-
23 ATIVES.—Section 204(l)(1) (8 U.S.C. 1154(l)(1)) is
24 amended by adding at the end the following: “An alien
25 is not required to reside in the United States to qualify

1 to have his or her petition or application adjudicated
2 under this paragraph if the alien is described in subpara-
3 graph (A), (B), or (C) of paragraph (2) and his or her
4 priority date was current at the time of the qualifying rel-
5 ative's death or is described in subparagraph (D), (E), or
6 (F) of paragraph (2).”

7 “(1) IN GENERAL.—An alien described in para-
8 graph (2) who resided in the United States at the
9 time of the death of the qualifying relative and who
10 continues to reside in the United States”.

11 (b) CONTINUED WAIVER ELIGIBILITY FOR WIDOWS,
12 WIDOWERS, AND ORPHANS.—Section 212(a)(1)(B) (8
13 U.S.C. 1182(a)(1)(B)) is amended to read as follows:

14 “(B) WAIVER FOR WIDOWS, WIDOWERS,
15 AND ORPHANS.—An alien who would have been
16 statutorily eligible for a waiver of inadmis-
17 sibility under this Act, if his or her qualifying
18 relative had not died, may be considered for any
19 waiver under this Act notwithstanding such
20 death, which shall constitute the functional
21 equivalent of extreme hardship to the qualifying
22 relative.”.

23 (c) NATURALIZATION OF SURVIVING RELATIVES.—
24 Section 319(a) (8 U.S.C. 1430(a)) is amended by insert-
25 ing “(or, if the spouse is deceased, the spouse was a citizen

1 of the United States)” after “citizen of the United
2 States”.

3 **SEC. 308. FIANCÉ CHILD STATUS PROTECTION.**

4 (a) DEFINITION.—Section 101(a)(15)(K)(iii) (8
5 U.S.C. 1101(a)(15)(K)(iii)) is amended by inserting “,
6 provided that a determination of the age of such minor
7 child is made using the age of the alien on the date on
8 which the petition is filed with the Secretary of Homeland
9 Security to classify the alien’s parent as the fiancé or
10 fiancé of a United States citizen (in the case of an alien
11 parent described in clause (i)) or as the spouse of a United
12 States citizen under section 201(b)(2)(A)(i) (in the case
13 of an alien parent described in clause (ii));” before the
14 semicolon at the end.

15 (b) ADJUSTMENT OF STATUS AUTHORIZED.—Section
16 214(d) (8 U.S.C. 1184(d)(1)) is amended—

17 (1) by redesignating paragraphs (2) and (3) as
18 paragraphs (3) and (4), respectively; and

19 (2) in paragraph (1), by striking “In the event”
20 and inserting the following:

21 “(2)(A) If an alien does not marry the peti-
22 tioner under paragraph (1) within 3 months after
23 the alien and the alien’s minor children are admitted
24 into the United States, such alien and children shall
25 be required to depart from the United States. If

1 such aliens fail to depart from the United States,
2 they shall be removed in accordance with sections
3 240 and 241.

4 “(B) Subject to subparagraphs (C) and (D), if
5 an alien marries the petitioner described in section
6 101(a)(15)(K)(i) within 3 months after the alien is
7 admitted into the United States, the Secretary of
8 Homeland Security or the Attorney General, subject
9 to the provisions of section 245(d), may adjust the
10 status of the alien, and any minor children accom-
11 panying or following to join the alien, to that of an
12 alien lawfully admitted for permanent residence on
13 a conditional basis under section 216 if the alien
14 and any such minor children apply for such adjust-
15 ment and are not determined to be inadmissible to
16 the United States.

17 “(C) Paragraphs (5) and (7)(A) of section
18 212(a) shall not apply to an alien who is eligible to
19 apply for adjustment of his or her status to an alien
20 lawfully admitted for permanent residence under this
21 section.

22 “(D) An alien eligible for a waiver of inadmis-
23 sibility as otherwise authorized under this Act shall
24 be permitted to apply for adjustment of his or her

1 status to that of an alien lawfully admitted for per-
2 manent residence under this section.”.

3 (c) AGE DETERMINATION.—Section 245(d) (8 U.S.C.
4 1155(d)) is amended—

5 (1) by inserting “(1)” before “The Attorney
6 General”; and

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

8 “(2) A determination of the age of an alien ad-
9 mitted to the United States under section
10 101(a)(15)(K)(iii) shall be made, for purposes of ad-
11 justment to the status of an alien lawfully admitted
12 for permanent residence on a conditional basis under
13 section 216, using the age of the alien on the date
14 on which the petition is filed with the Secretary of
15 Homeland Security to classify the alien’s parent as
16 the fiancé or fiancée of a United States citizen (in the
17 case of an alien parent admitted to the United
18 States under section 101(a)(15)(K)(i)) or as the
19 spouse of a United States citizen under section
20 201(b)(2)(A)(i) (in the case of an alien parent ad-
21 mitted to the United States under section
22 101(a)(15)(K)(ii)).”.

23 (d) EFFECTIVE DATE.—

24 (1) IN GENERAL.—The amendments made by
25 this subsection shall be effective as if included in the

1 Immigration Marriage Fraud Amendments of 1986
2 (Public Law 99–639).

3 (2) APPLICABILITY.—The amendments made
4 by this subsection shall apply to all petitions or ap-
5 plications described in such amendments that—

6 (A) are pending as of the date of the en-
7 actment of this Act; or

8 (B) have been denied, but would have been
9 approved if such amendments had been in effect
10 at the time of adjudication of the petition or
11 application.

12 (3) MOTION TO REOPEN OR RECONSIDER.—A
13 motion to reopen or reconsider a petition or applica-
14 tion described in subparagraph (B)(ii) shall be
15 granted if such motion is filed with the Secretary or
16 the Attorney General not later than 2 years after
17 the date of the enactment of this Act.

18 **SEC. 309. SPECIAL HUMANITARIAN VISAS.**

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

21 “(i) AUTHORITY TO WAIVE ELIGIBILITY REQUIRE-
22 MENTS FOR SPECIAL HUMANITARIAN CONSIDER-
23 ATIONS.—Notwithstanding any other provision of law, the
24 Secretary of Homeland Security may waive any require-
25 ments under this Act on behalf of not more than 1,000

1 aliens whose circumstances involve special humanitarian
2 considerations.”.

3 **SEC. 310. EXEMPTION FROM IMMIGRANT VISA LIMIT FOR**
4 **CERTAIN VETERANS FROM THE PHILIPPINES.**

5 Section 201(b)(1) (8 U.S.C. 1151(b)(1)), as amended
6 by this subtitle, is further amended by adding at the end
7 the following:

8 “(L) Aliens who are eligible for an immigrant
9 visa under paragraph (1) or (3) of section 203(a)
10 and have a parent (regardless of whether the parent
11 is living or dead) who was naturalized pursuant to
12 section 405 of the Immigration Act of 1990 (8
13 U.S.C. 1440 note) or title III of the Act of October
14 14, 1940 (8 U.S.C. 501 et seq.), as in effect between
15 March 27, 1942 and December 24, 1952.”.

16 **SEC. 311. AFFIDAVIT OF SUPPORT.**

17 Section 213A (8 U.S.C. 1183a) is amended—

18 (1) in subsection (a)(1)(A) by striking “125”
19 and inserting “100”;

20 (2) in subsection (f)(1)(E), by striking “125”
21 and inserting “100”;

22 (3) in subsection (f)(4)(B)(i), by striking “125”
23 and inserting “100”; and

24 (4) in subsection (f)(5)(A), by striking “125”
25 and inserting “100”.

1 **SEC. 312. RETAINING WORKERS SUBJECT TO GREEN CARD**

2 **BACKLOG.**

3 (a) **ADJUSTMENT OF STATUS.—**

4 (1) **IN GENERAL.—**Section 245 (8 U.S.C.
5 1255), as amended by section 305, is further
6 amended by adding at the end the following:

7 “(o) **ADJUSTMENT OF STATUS FOR EMPLOYMENT-**
8 **BASED IMMIGRANTS.—**

9 “(1) **ELIGIBILITY.—**The Secretary of Homeland
10 Security shall promulgate regulations to provide for
11 the filing of an application for adjustment of status
12 by an alien (and any eligible dependents of such
13 alien), regardless of whether an immigrant visa is
14 immediately available at the time the application is
15 filed, if the alien—

16 “(A) has an approved petition under sub-
17 paragraph (E) or (F) of section 204(a)(1); or

18 “(B) at the discretion of the Secretary, has
19 a pending petition under subparagraph (E) or
20 (F) of section 204(a)(1).

21 “(2) **VISA AVAILABILITY.—**An application filed
22 pursuant to paragraph (1) may not be approved
23 until an immigrant visa becomes available.

24 “(3) **FEEES.—**If an application is filed pursuant
25 to paragraph (1), the beneficiary of such application
26 shall pay a supplemental fee of \$500. Such fee may

1 not be charged to any dependent accompanying or
2 following to join such beneficiary.

3 “(4) EXTENSION OF EMPLOYMENT AUTHORIZA-
4 TION AND ADVANCED PAROLE DOCUMENT.—

5 “(A) IN GENERAL.—The Secretary of
6 Homeland Security shall provide employment
7 authorization and advanced parole documents,
8 in 3-year increments, to beneficiaries of an ap-
9 plication for adjustment of status based on a
10 petition that is filed or, at the discretion of the
11 Secretary, pending, under subparagraph (E) or
12 (F) of section 204(a)(1).

13 “(B) FEE ADJUSTMENTS.—Application
14 fees under this subsection may be adjusted in
15 accordance with the 3-year period of validity as-
16 signed to the employment authorization or ad-
17 vanced parole documents under subparagraph
18 (A).”.

19 (b) USE OF FEES.—Section 286 (8 U.S.C. 1356) is
20 amended—

21 (1) in subsection (m)—

22 (A) by striking “Notwithstanding any
23 other provisions of law,” and inserting the fol-
24 lowing:

25 “(c) IMMIGRATION EXAMINATIONS FEE ACCOUNT.—

1 “(1) IN GENERAL.—Notwithstanding any other
2 provision of law, all fees collected under section
3 245(o)(3) and”;

4 (B) by striking “: Provided, however, That
5 all” and inserting the following:

6 “(2) VIRGIN ISLANDS; GUAM.—All”; and

7 (C) by striking “: Provided further, That
8 fees” and inserting the following:

9 “(3) COST RECOVERY.—Fees”.

10 (2) in subsection (n)—

11 (A) by striking “(n) All deposits” and in-
12 serting the following:

13 “(4) USE OF FUNDS.—

14 “(A) IN GENERAL.—Except as provided
15 under subparagraph (B), all deposits”; and

16 (B) adding at the end the following:

17 “(C) SUPPLEMENTAL FEE FOR ADJUST-
18 MENT OF STATUS OF EMPLOYMENT-BASED IM-
19 MIGRANTS.—Any amounts deposited into the
20 Immigration Examinations Fee Account that
21 were collected under section 245(o)(3) shall re-
22 main available until expended by the Secretary
23 of Homeland Security for backlog reduction and
24 clearing security background check delays.”;

1 (3) in subsection (o), by striking “(o) The At-
2 torney General” and inserting the following:

3 “(5) ANNUAL FINANCIAL REPORT TO CON-
4 GRESS.—The Attorney General”; and

5 (4) in subsection (p), by striking “(p) The pro-
6 visions set forth in subsections (m), (n), and (o) of
7 this section” and inserting the following:

8 “(6) APPLICABILITY.—The provisions set forth
9 in this subsection shall”.

10 **CHAPTER 2—UNITING AMERICAN**
11 **FAMILIES ACT**

12 **SEC. 315. SHORT TITLE.**

13 This chapter may be cited as the “Uniting American
14 Families Act of 2011”.

15 **SEC. 316. DEFINITIONS OF PERMANENT PARTNER AND**
16 **PERMANENT PARTNERSHIP.**

17 Section 101(a) (8 U.S.C. 1101(a)) is amended—

18 (1) in paragraph (15)(K)(ii), by inserting “or
19 permanent partnership” after “marriage”; and

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

21 “(52) The term ‘permanent partner’ means an
22 individual 18 years of age or older who—

23 “(A) is in a committed, intimate relation-
24 ship with another individual 18 years of age or

1 older in which both individuals intend a lifelong
2 commitment;

3 “(B) is financially interdependent with
4 that other individual;

5 “(C) is not married to, or in a permanent
6 partnership with, any individual other than that
7 other individual;

8 “(D) is unable to contract with that other
9 individual a marriage cognizable under this Act;
10 and

11 “(E) is not a first, second, or third degree
12 blood relation of that other individual.

13 “(53) The term ‘permanent partnership’ means
14 the relationship that exists between 2 permanent
15 partners.”.

16 **SEC. 317. IMMIGRANT VISAS.**

17 (a) **WORLDWIDE LEVEL OF IMMIGRATION.**—Section
18 201(b)(2)(A) (8 U.S.C. 1151(b)(2)(A)), as amended by
19 section 302, is further amended—

20 (1) by striking “spouse” each place it appears
21 and inserting “spouse or permanent partner”;

22 (2) by inserting “(or, in the case of a perma-
23 nent partnership, whose permanent partnership was
24 not terminated)” after “was not legally separated
25 from the citizen”; and

1 (3) by striking “remarries.” and inserting “re-
2 marries or enters a permanent partnership with an-
3 other person.”.

4 (b) NUMERICAL LIMITATIONS ON INDIVIDUAL FOR-
5 EIGN STATES.—

6 (1) PER COUNTRY LEVELS.—Section 202(a)(4)
7 (8 U.S.C. 1152(a)(4)) is amended—

8 (A) in the paragraph heading, by inserting
9 “, PERMANENT PARTNERS,” after “SPOUSES”;

10 (B) in the heading of subparagraph (A), by
11 inserting “, PERMANENT PARTNERS,” after
12 “SPOUSES”; and

13 (C) in the heading of subparagraph (C), by
14 striking “AND DAUGHTERS” inserting “WITH-
15 OUT PERMANENT PARTNERS AND UNMARRIED
16 DAUGHTERS WITHOUT PERMANENT PART-
17 NERS”.

18 (2) RULES FOR CHARGEABILITY.—Section
19 202(b)(2) (8 U.S.C. 1152(b)(2)) is amended—

20 (A) by striking “his spouse” and inserting
21 “his or her spouse or permanent partner”;

22 (B) by striking “such spouse” each place it
23 appears and inserting “such spouse or perma-
24 nent partner”; and

1 (C) by inserting “or permanent partners”
2 after “husband and wife”.

3 (c) ALLOCATION.—

4 (1) PREFERENCE ALLOCATION FOR FAMILY
5 MEMBERS OF PERMANENT RESIDENT ALIENS.—Sec-
6 tion 203(a)(2) (8 U.S.C. 1153(a)(2)) is amended—

7 (A) by striking the paragraph heading and
8 inserting the following:

9 “(B) SPOUSES, PERMANENT PARTNERS,
10 UNMARRIED SONS WITHOUT PERMANENT PART-
11 NERS, AND UNMARRIED DAUGHTERS WITHOUT
12 PERMANENT PARTNERS OF PERMANENT RESI-
13 DENT ALIENS.—”;

14 (B) in subparagraph (A), by inserting “,
15 permanent partners,” after “spouses”; and

16 (C) in subparagraph (B), by striking “or
17 unmarried daughters” and inserting “without
18 permanent partners or the unmarried daughters
19 without permanent partners”.

20 (2) PREFERENCE ALLOCATION FOR SONS AND
21 DAUGHTERS OF CITIZENS.—Section 203(a)(3) (8
22 U.S.C. 1153(a)(3)) is amended—

23 (A) by striking the paragraph heading and
24 inserting the following:

1 “(2) MARRIED SONS AND DAUGHTERS OF CITI-
2 ZENS AND SONS AND DAUGHTERS WITH PERMANENT
3 PARTNERS OF CITIZENS.—”; and

4 (B) by inserting “, or sons or daughters
5 with permanent partners,” after “daughters”.

6 (3) EMPLOYMENT CREATION.—Section
7 203(b)(5)(A)(ii) (8 U.S.C. 1153(b)(5)(A)(ii)) is
8 amended by inserting “permanent partner,” after
9 “spouse,”.

10 (4) TREATMENT OF FAMILY MEMBERS.—Sec-
11 tion 203(d) (8 U.S.C. 1153(d)) is amended—

12 (A) by inserting “or permanent partner”
13 after “section 101(b)(1)”; and

14 (B) by inserting “, permanent partner,”
15 after “the spouse”.

16 (d) PROCEDURES.—

17 (1) CLASSIFICATION PETITIONS.—Section
18 204(a)(1) (8 U.S.C. 1154(a)(1)) is amended—

19 (A) in subparagraph (A)—

20 (i) in clause (ii), by inserting “or per-
21 manent partner” after “spouse”;

22 (ii) in clause (iii)—

23 (I) by inserting “or permanent
24 partner” after “spouse” each place it
25 appears; and

1 (II) in subclause (I), by inserting

2 “or permanent partnership” after

3 “marriage” each place it appears;

4 (iii) in clause (v)(I), by inserting “per-
5 manent partner,” after “is the spouse,”;

6 and

7 (iv) in clause (vi)—

8 (I) by inserting “or termination
9 of the permanent partnership” after

10 “divorce”; and

11 (II) by inserting “, permanent
12 partner,” after “spouse”; and

13 (B) in subparagraph (B)—

14 (i) by inserting “or permanent part-
15 ner” after “spouse” each place it appears;

16 and

17 (ii) in clause (ii)—

18 (I) in subclause (I)(aa), by in-
19 serting “or permanent partnership”
20 after “marriage”;

21 (II) in subclause (I)(bb), by in-
22 serting “or permanent partnership”
23 after “marriage” the first place it ap-
24 pears; and

1 (III) in subclause (II)(aa), by in-
 2 serting “(or the termination of the
 3 permanent partnership)” after “termi-
 4 nation of the marriage”.

5 (2) IMMIGRATION FRAUD PREVENTION.—Sec-
 6 tion 204(c) (8 U.S.C. 1154(c)) is amended—

7 (A) by inserting “or permanent partner”
 8 after “spouse” each place it appears; and

9 (B) by inserting “or permanent partner-
 10 ship” after “marriage” each place it appears.

11 **SEC. 318. REFUGEES AND ASYLEES.**

12 (a) ANNUAL ADMISSION OF REFUGEES AND ADMIS-
 13 SION OF EMERGENCY SITUATION REFUGEES.—Section
 14 207(c) (8 U.S.C. 1157(c)) is amended—

15 (1) in paragraph (2)—

16 (A) by inserting “, permanent partner,”
 17 after “spouse” each place it appears; and

18 (B) by inserting “, permanent partner’s,”
 19 after “spouse’s”; and

20 (2) in paragraph (4), by inserting “, permanent
 21 partner,” after “spouse”.

22 (b) ASYLUM.—Section 208(b)(3) (8 U.S.C.
 23 1158(b)(3)) is amended—

24 (1) in the paragraph heading, by inserting “,
 25 PERMANENT PARTNER,” after “SPOUSE”; and

1 (2) in subparagraph (A), by inserting “, perma-
2 nent partner,” after “spouse”.

3 (c) ADJUSTMENT OF STATUS OF REFUGEES.—Sec-
4 tion 209(b)(3) (8 U.S.C. 1159(b)(3)) is amended by in-
5 serting “, permanent partner,” after “spouse”.

6 **SEC. 319. INADMISSIBLE ALIENS.**

7 (a) CLASSES OF ALIENS INELIGIBLE FOR VISAS OR
8 ADMISSION.—Section 212(a) (8 U.S.C. 1182(a)) is
9 amended—

10 (1) in paragraph (3)(D)(iv), by inserting “per-
11 manent partner,” after “spouse,”;

12 (2) in paragraph (4)(C)(i)(I), by inserting “,
13 permanent partner,” after “spouse”;

14 (3) in paragraph (6)(E)(ii), by inserting “per-
15 manent partner,” after “spouse,”; and

16 (4) in paragraph (9)(B)(v), by inserting “, per-
17 manent partner,” after “spouse”.

18 (b) WAIVERS.—Section 212(d) (8 U.S.C. 1182(d)) is
19 amended—

20 (1) in paragraph (11), by inserting “permanent
21 partner,” after “spouse,”; and

22 (2) in paragraph (12), by inserting “, perma-
23 nent partner,” after “spouse”.

24 (c) WAIVERS OF INADMISSIBILITY ON HEALTH-RE-
25 LATED GROUNDS.—Section 212(g)(1)(A) (8 U.S.C.

1 1182(g)(1)(A)) is amended by inserting “, permanent
2 partner,” after “spouse”.

3 (d) WAIVERS OF INADMISSIBILITY ON CRIMINAL AND
4 RELATED GROUNDS.—Section 212(h)(1)(B) (8 U.S.C.
5 1182(h)(1)(B)) is amended by inserting “permanent part-
6 ner,” after “spouse,”.

7 (e) WAIVER OF INADMISSIBILITY FOR MISREPRESENTEN-
8 TATION.—Section 212(i)(1) (8 U.S.C. 1182(i)(1)) is
9 amended by inserting “permanent partner,” after
10 “spouse,”.

11 **SEC. 320. NONIMMIGRANT STATUS FOR PERMANENT PART-**
12 **NERS AWAITING THE AVAILABILITY OF AN**
13 **IMMIGRANT VISA.**

14 Section 214(r) (8 U.S.C. 1184(r)) is amended—

15 (1) in paragraph (1), by inserting “or perma-
16 nent partner” after “spouse”; and

17 (2) in paragraph (2), by inserting “or perma-
18 nent partnership” after “marriage” each place it ap-
19 pears.

20 **SEC. 321. CONDITIONAL PERMANENT RESIDENT STATUS.**

21 (a) CERTAIN ALIEN SPOUSES, PERMANENT PART-
22 NERS, AND SONS AND DAUGHTERS.—

23 (1) SECTION HEADING.—

24 (A) IN GENERAL.—The heading for section
25 216 (8 U.S.C. 1186a) is amended by striking

1 “AND SONS” and inserting “, PERMANENT
2 PARTNERS, SONS,”.

3 (B) CLERICAL AMENDMENT.—The table of
4 contents is amended by amending the item re-
5 lating to section 216 to read as follows:

“Sec. 216. Conditional permanent resident status for certain alien spouses, per-
 manent partners, sons, and daughters.”.

6 (2) IN GENERAL.—Section 216(a) (8 U.S.C.
7 1186a(a)) is amended—

8 (A) in paragraph (1), by inserting “or per-
9 manent partner” after “spouse”; and

10 (B) in paragraph (2)—

11 (i) in subparagraph (A), by inserting
12 “or permanent partner” after “spouse”;

13 (ii) in subparagraph (B), by inserting
14 “permanent partner,” after “spouse,”; and

15 (iii) in subparagraph (C), by inserting
16 “permanent partner,” after “spouse,”.

17 (3) TERMINATION OF STATUS IF FINDING THAT
18 QUALIFYING MARRIAGE IMPROPER.—Section 216(b)
19 (8 U.S.C. 1186a(b)) is amended—

20 (A) in the subsection heading, by inserting
21 “OR PERMANENT PARTNERSHIP” after “MAR-
22 RIAGE”; and

23 (B) in paragraph (1)(A)—

1 (i) by inserting “or permanent part-
2 nership” after “marriage”; and

3 (ii) in clause (ii)—

4 (I) by inserting “or has ceased to
5 satisfy the criteria for being consid-
6 ered a permanent partnership under
7 this Act,” after “terminated,”; and

8 (II) by inserting “or permanent
9 partner” after “spouse”.

10 (4) REQUIREMENTS OF TIMELY PETITION AND
11 INTERVIEW FOR REMOVAL OF CONDITION.—Section
12 216(c) (8 U.S.C. 1186a(c)) is amended—

13 (A) in paragraphs (1), (2)(A)(ii),
14 (3)(A)(ii), (3)(C), (4)(B), and (4)(C), by insert-
15 ing “or permanent partner” after “spouse”
16 each place it appears; and

17 (B) in paragraph (3)(A), (3)(D), (4)(B),
18 and (4)(C), by inserting “or permanent part-
19 nership” after “marriage” each place it ap-
20 pears.

21 (5) CONTENTS OF PETITION.—Section
22 216(d)(1) (8 U.S.C. 1186a(d)(1)) is amended—

23 (A) in subparagraph (A)—

1 (i) in the heading, by inserting “OR
2 PERMANENT PARTNERSHIP” after “MAR-
3 RIAGE”;

4 (ii) in clause (i)—

5 (I) by inserting “or permanent
6 partnership” after “marriage”;

7 (II) in subclause (I), by inserting
8 before the comma at the end “, or is
9 a permanent partnership recognized
10 under this Act”; and

11 (III) in subclause (II)—

12 (aa) by inserting “or has not
13 ceased to satisfy the criteria for
14 being considered a permanent
15 partnership under this Act,”
16 after “terminated,”; and

17 (bb) by inserting “or perma-
18 nent partner” after “spouse”;
19 and

20 (iii) in clause (ii), by inserting “or
21 permanent partner” after “spouse”; and

22 (B) in subparagraph (B)(i)—

23 (i) by inserting “or permanent part-
24 nership” after “marriage”; and

1 (ii) by inserting “or permanent part-
2 ner” after “spouse”.

3 (6) DEFINITIONS.—Section 216(g) (8 U.S.C.
4 1186a(g)) is amended—

5 (A) in paragraph (1)—

6 (i) by inserting “or permanent part-
7 ner” after “spouse” each place it appears;
8 and

9 (ii) by inserting “or permanent part-
10 nership” after “marriage” each place it ap-
11 pears;

12 (B) in paragraph (2), by inserting “or per-
13 manent partnership” after “marriage”;

14 (C) in paragraph (3), by inserting “or per-
15 manent partnership” after “marriage”; and

16 (D) in paragraph (4)—

17 (i) by inserting “or permanent part-
18 ner” after “spouse” each place it appears;
19 and

20 (ii) by inserting “or permanent part-
21 nership” after “marriage”.

22 (b) CERTAIN ALIEN ENTREPRENEURS, SPOUSES,
23 PERMANENT PARTNERS, AND CHILDREN.—

24 (1) IN GENERAL.—Section 216A (8 U.S.C.
25 1186b) is amended—

1 (A) in the section heading, by inserting “,
2 PERMANENT PARTNERS,” after “SPOUSES”; and

3 (B) in paragraphs (1), (2)(A), (2)(B), and
4 (2)(C), by inserting “or permanent partner”
5 after “spouse” each place it appears.

6 (2) TERMINATION OF STATUS IF FINDING THAT
7 QUALIFYING ENTREPRENEURSHIP IMPROPER.—Sec-
8 tion 216A(b)(1) (8 U.S.C. 1186b(b)(1)) is amended
9 by inserting “or permanent partner” after “spouse”
10 in the matter following subparagraph (C).

11 (3) REQUIREMENTS OF TIMELY PETITION AND
12 INTERVIEW FOR REMOVAL OF CONDITION.—Section
13 216A(c) (8 U.S.C. 1186b(c)) is amended, in para-
14 graphs (1), (2)(A)(ii), and (3)(C), by inserting “or
15 permanent partner” after “spouse”.

16 (4) DEFINITIONS.—Section 216A(f)(2) (8
17 U.S.C. 1186b(f)(2)) is amended by inserting “or
18 permanent partner” after “spouse” each place it ap-
19 pears.

20 (5) CLERICAL AMENDMENT.—The table of con-
21 tents is amended by amending the item relating to
22 section 216A to read as follows:

“Sec. 216A. Conditional permanent resident status for certain alien entre-
preneurs, spouses, permanent partners, and children.”

1 **SEC. 322. DEPORTATION AND REMOVAL.**

2 (a) DEPORTABLE ALIENS.—Section 237(a)(1) (8
3 U.S.C. 1227(a)(1)) is amended—

4 (1) in subparagraph (D)(i), by inserting “or
5 permanent partners” after “spouses” each place it
6 appears;

7 (2) in subparagraphs (E)(ii), (E)(iii), and
8 (H)(i)(I), by inserting “or permanent partner” after
9 “spouse”;

10 (3) by inserting after subparagraph (E) the fol-
11 lowing:

12 “(F) PERMANENT PARTNERSHIP FRAUD.—

13 An alien shall be considered to be deportable as
14 having procured a visa or other documentation
15 by fraud (within the meaning of section
16 212(a)(6)(C)(i)) and to be in the United States
17 in violation of this Act (within the meaning of
18 subparagraph (B)) if—

19 “(i) the alien obtains any admission to
20 the United States with an immigrant visa
21 or other documentation procured on the
22 basis of a permanent partnership entered
23 into less than 2 years before such admis-
24 sion and which, within 2 years subsequent
25 to such admission, is terminated because
26 the criteria for permanent partnership are

1 no longer fulfilled, unless the alien estab-
2 lishes to the satisfaction of the Secretary
3 of Homeland Security that such permanent
4 partnership was not contracted for the
5 purpose of evading any provision of the im-
6 migration laws; or

7 “(ii) it appears to the satisfaction of
8 the Secretary of Homeland Security that
9 the alien has failed or refused to fulfill the
10 alien’s permanent partnership, which the
11 Secretary of Homeland Security deter-
12 mines was made for the purpose of pro-
13 curing the alien’s admission as an immi-
14 grant.”; and

15 (4) in paragraphs (2)(E)(i) and (3)(C)(ii), by
16 inserting “or permanent partner” after “spouse”
17 each place it appears.

18 (b) REMOVAL PROCEEDINGS.—Section 240 (8 U.S.C.
19 1229a) is amended—

20 (1) in the heading of subsection (e)(7)(C)(iv),
21 by inserting “PERMANENT PARTNERS,” after
22 “SPOUSES,”; and

23 (2) in subsection (e)(1), by inserting “perma-
24 nent partner,” after “spouse,”.

1 (c) CANCELLATION OF REMOVAL.—Section 240A(b)
2 (8 U.S.C. 1229b(b)) is amended—

3 (1) in paragraph (1)(D), by inserting “or per-
4 manent partner” after “spouse”; and

5 (2) in paragraph (2)—

6 (A) in the paragraph heading, by inserting
7 “, PERMANENT PARTNER,” after “SPOUSE”;
8 and

9 (B) in subparagraph (A), by inserting “,
10 permanent partner,” after “spouse” each place
11 it appears.

12 **SEC. 323. ADJUSTMENT OF STATUS; CRIMINAL PENALTIES;**
13 **OTHER REQUIREMENTS.**

14 (a) ADJUSTMENT OF STATUS OF NONIMMIGRANT TO
15 THAT OF PERSON ADMITTED FOR PERMANENT RESI-
16 DENCE.—

17 (1) PROHIBITION ON ADJUSTMENT OF STA-
18 TUS.—Section 245(d) (8 U.S.C. 1255(d)) is amend-
19 ed by inserting “or permanent partnership” after
20 “marriage”.

21 (2) AVOIDING IMMIGRATION FRAUD.—Section
22 245(e) (8 U.S.C. 1255(e)) is amended—

23 (A) in paragraph (1), by inserting “or per-
24 manent partnership” after “marriage”; and

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

1 “(4)(A) Paragraph (1) and section 204(g) shall not
2 apply with respect to a permanent partnership if the alien
3 establishes by clear and convincing evidence to the satis-
4 faction of the Secretary of Homeland Security that—

5 “(i) the permanent partnership was entered
6 into in good faith and in accordance with section
7 101(a)(52);

8 “(ii) the permanent partnership was not en-
9 tered into for the purpose of procuring the alien’s
10 admission as an immigrant; and

11 “(iii) no fee or other consideration was given
12 (other than a fee or other consideration to an attor-
13 ney for assistance in preparation of a lawful peti-
14 tion) for the filing of a petition under section 204(a)
15 or 214(d) with respect to the alien permanent part-
16 ner.

17 “(B) The Secretary shall promulgate regulations that
18 provide for only 1 level of administrative appellate review
19 for each alien under subparagraph (A).”.

20 (3) ADJUSTMENT OF STATUS FOR CERTAIN
21 ALIENS PAYING FEE.—Section 245(i)(1)(B) (8
22 U.S.C. 1255(i)(1)(B)) is amended by inserting “,
23 permanent partner,” after “spouse”.

24 (b) APPLICATION OF CRIMINAL PENALTIES TO FOR
25 MISREPRESENTATION AND CONCEALMENT OF FACTS RE-

1 GARDING PERMANENT PARTNERSHIPS.—Section 275(c)
 2 (8 U.S.C. 1325(c)) is amended to read as follows:

3 “(c) Any individual who knowingly enters into a mar-
 4 riage or permanent partnership for the purpose of evading
 5 any provision of the immigration laws shall be imprisoned
 6 for not more than 5 years, fined not more than \$250,000,
 7 or both.”.

8 (c) REQUIREMENTS AS TO RESIDENCE, GOOD MORAL
 9 CHARACTER, ATTACHMENT TO THE PRINCIPLES OF THE
 10 CONSTITUTION.—Section 316(b) (8 U.S.C. 1427(b)) is
 11 amended by inserting “, permanent partner,” after
 12 “spouse”.

13 **SEC. 324. NATURALIZATION FOR PERMANENT PARTNERS**
 14 **OF CITIZENS.**

15 (a) IN GENERAL.—Section 319 (8 U.S.C. 1430) is
 16 amended—

17 (1) in subsection (a)—

18 (A) by inserting “or permanent partner”
 19 after “spouse” each place it appears; and

20 (B) by inserting “or permanent partner-
 21 ship” after “marital union”;

22 (2) in subsection (b)—

23 (A) in paragraph (1), by inserting “or per-
 24 manent partner” after “spouse”; and

1 (B) in paragraph (3), by inserting “or per-
2 manent partner” after “spouse”;

3 (3) in subsection (d)—

4 (A) by inserting “or permanent partner”
5 after “spouse” each place it appears; and

6 (B) by inserting “or permanent partner-
7 ship” after “marital union”;

8 (4) in subsection (e)(1)—

9 (A) by inserting “or permanent partner”
10 after “spouse”;

11 (B) by inserting “by the Secretary of De-
12 fense” after “is authorized”; and

13 (C) by inserting “or permanent partner-
14 ship” after “marital union”; and

15 (5) in subsection (e)(2), by inserting “or per-
16 manent partner” after “spouse”.

17 (b) SAVINGS PROVISION.—Section 319(e) (8 U.S.C.
18 1430(e)) is amended by adding at the end the following:

19 “(3) Nothing in this subsection may be construed to
20 confer a right for an alien to accompany a member of the
21 Armed Forces of the United States or to reside abroad
22 with such member, except as authorized by the Secretary
23 of Defense in the member’s official orders.”.

1 **SEC. 325. APPLICATION OF FAMILY UNITY PROVISIONS TO**
2 **OTHER LAWS.**

3 (a) APPLICATION OF FAMILY UNITY PROVISIONS TO
4 PERMANENT PARTNERS OF CERTAIN LIFE ACT BENE-
5 FICIARIES.—Section 1504 of the LIFE Act Amendments
6 of 2000 (division B of Public Law 106–554; 114 Stat.
7 2763–325) is amended—

8 (1) in the heading, by inserting “, **PERMA-**
9 **NENT PARTNERS,**” after “**SPOUSES**”;

10 (2) in subsection (a), by inserting “, permanent
11 partner,” after “spouse”; and

12 (3) in each of subsections (b) and (c)—

13 (A) in each of the subsection headings, by
14 inserting “, PERMANENT PARTNERS,” after
15 “SPOUSES”; and

16 (B) by inserting “, permanent partner,”
17 after “spouse” each place it appears.

18 (b) APPLICATION TO CUBAN ADJUSTMENT ACT.—

19 (1) IN GENERAL.—The first section of Public
20 Law 89–732 (8 U.S.C. 1255 note) is amended—

21 (A) in the next to last sentence, by insert-
22 ing “, permanent partner,” after “spouse” the
23 first 2 places it appears; and

24 (B) in the last sentence, by inserting “,
25 permanent partners,” after “spouses”.

1 (2) CONFORMING AMENDMENT.—Section
2 101(a)(51)(D) (8 U.S.C. 1101(a)(51)(D)) is amend-
3 ed by striking “or spouse” and inserting “, spouse,
4 or permanent partner”.

5 **CHAPTER 3—REFORMS TO SPECIFIC**
6 **EMPLOYMENT-BASED VISA CATEGORIES**

7 **Subchapter A—EB-5 Program**

8 **Reauthorization**

9 **SEC. 326. PERMANENT REAUTHORIZATION OF EB-5 RE-**
10 **GIONAL CENTER PROGRAM.**

11 (a) SHORT TITLE.—This section may be cited as the
12 “Creating American Jobs Through Foreign Capital In-
13 vestment Act”.

14 (b) PERMANENT REAUTHORIZATION.—Section 610
15 of the Departments of Commerce, Justice, and State, the
16 Judiciary, and Related Agencies Appropriations Act, 1993
17 (8 U.S.C. 1153 note) is amended—

18 (1) by striking “pilot” each place such term ap-
19 pears; and

20 (2) in subsection (b), by striking “until Sep-
21 tember 30, 2012”.

1 **Subchapter B—Adjustments to Other Select**
 2 **Visa Programs**

3 **SEC. 331. ELIMINATION OF SUNSET PROVISIONS.**

4 (a) SPECIAL IMMIGRANT NONMINISTER RELIGIOUS
 5 WORKER PROGRAM.—Section 101(a)(27)(C)(ii) (8 U.S.C.
 6 1101 (a)(27)(C)(ii)) is amended by striking “September
 7 30, 2012” each place such term appears.

8 (b) CONRAD STATE 30 PROGRAM.—Section 220(c) of
 9 the Immigration and Nationality Technical Corrections
 10 Act of 1994 (8 U.S.C. 1182 note) is amended by striking
 11 “and before September 30, 2012.”.

12 **SEC. 332. PERMANENT AUTHORIZATION OF THE NON-**
 13 **IMMIGRANT NURSES IN HEALTH PROFES-**
 14 **SIONAL SHORTAGE AREAS PROGRAM.**

15 (a) IN GENERAL.—Section 2(e) of the Nursing Relief
 16 for Disadvantaged Areas Act of 1999 (8 U.S.C. 1182
 17 note) is amended to read as follows:

18 “(e) APPLICATION OF NONIMMIGRANT CHANGES.—
 19 The amendments made by this section shall apply to clas-
 20 sification petitions filed for nonimmigrant status only—
 21 “(1) during the period—
 22 “(A) beginning on the date that interim or
 23 final regulations are first promulgated under
 24 subsection (d); and

1 “(B) ending on the date that is 3 years
2 after the date of the enactment of the Nursing
3 Relief for Disadvantaged Areas Reauthorization
4 Act of 2005; and

5 “(2) during the period beginning on the date of
6 the enactment of the CIR Act of 2011.”.

7 (b) **INAPPLICABILITY OF CERTAIN REGULATORY RE-**
8 **QUIREMENTS.**—The requirements under chapter 5 of title
9 5, United States Code (commonly referred to as the “Ad-
10 ministrative Procedure Act”) or any other law relating to
11 rulemaking, information collection or publication in the
12 Federal Register, shall not apply to any action to imple-
13 ment the amendment made by subsection (a) to the extent
14 the Secretary, the Secretary of Labor, or the Secretary
15 of Health and Human Services determines that compli-
16 ance with any such requirement would impede the expedi-
17 tious implementation of such amendment.

18 **SEC. 333. INCENTIVES FOR PHYSICIANS TO PRACTICE IN**
19 **MEDICALLY UNDERSERVED COMMUNITIES.**

20 Section 214 of the Immigration and Nationality Act
21 (8 U.S.C. 1184) is amended—

22 (1) in subsection (g), by adding at the end the
23 following:

24 “(12) An alien physician described in section
25 212(j)(2)(B) who entered the United States as a non-

1 immigrant described in section 101(a)(15)(H)(i)(b) to
2 pursue graduate medical education or training shall not
3 be subject to the limitations described in paragraphs (1)
4 and (4). The period of authorized admission of such alien
5 as an H-1B nonimmigrant may not extend beyond the 6-
6 year period beginning on the date on which the alien re-
7 ceives the exemption described in subparagraph (A), other
8 than extensions authorized under section 104 and 106 of
9 the American Competitiveness in the Twenty-First Cen-
10 tury Act of 2000 (Public Law 106-313) if—

11 “(A) an interested State agency submits a re-
12 quest for an exemption under section 214(l)(1)(B),
13 but not 1 of the 10 waivers or exemptions described
14 in subsection (l)(1)(D)(ii); and

15 “(B) the Secretary of State recommends that
16 the alien be exempted from such limitations.”; and
17 (2) in subsection (l)—

18 (A) in paragraph (1)—

19 (i) in the matter preceding subpara-
20 graph (A), by striking “the Attorney Gen-
21 eral shall not grant such waiver unless”
22 and inserting “or for an exemption from
23 the limitations described in paragraphs (1)
24 and (4) of subsection (g) on behalf of an
25 alien described in subsection (g)(12), the

1 Secretary shall not grant such waiver or
2 exemption unless”;

3 (ii) in subparagraph (A), by inserting
4 “or exemption” before the semicolon at the
5 end;

6 (iii) in subparagraph (B), by striking
7 “would not cause the number of waivers
8 allotted for that State for that fiscal year
9 to exceed 30” and inserting “or exemption
10 would not cause the total number of waiv-
11 ers plus the total number of exemptions al-
12 lotted for that State for that fiscal year to
13 exceed 30, unless such allotment is in-
14 creased pursuant to paragraph (4)”;

15 (iv) in subparagraph (C)—

16 (I) in clause (ii), by striking
17 “within 90 days” and all that follows
18 and inserting the following: “not later
19 than the latest of—

20 “(II) 90 days after receiving such
21 waiver or exemption;

22 “(III) 90 days after completing
23 graduate medical education or train-
24 ing in a program approved under sec-
25 tion 212(j)(1); or

1 “(IV) 90 days after receiving
2 nonimmigrant status or employment
3 authorization;

4 “(iii) the alien agrees to continue to
5 work for a total of not less than 3 years
6 while authorized to work in the United
7 States under this Act, absent extenuating
8 circumstances, including—

9 “(I) the original interested Fed-
10 eral or State agency that requested
11 the waiver or exemption attests that
12 extenuating circumstances exist;

13 “(II) the contracting health facil-
14 ity or health care organization attests
15 that the alien’s employment is being
16 terminated through no fault of the
17 alien;

18 “(III) the contracting health fa-
19 cility or health care organization com-
20 mits a material breach of contract, in-
21 cluding the failure to pay the salary
22 or rate of pay, the failure to provide
23 vacation or other paid leave, or requir-
24 ing the alien to work excess hours in

1 violation of an employment agree-
2 ment;

3 “(IV) the contracting health fa-
4 cility or health care organization is—

5 “(aa) violating the rules of
6 the Federal agency or State
7 agency that requested the waiver
8 or exemption; or

9 “(bb) otherwise violating
10 any applicable Federal or State
11 law;

12 “(V) the closure or anticipated
13 closure of the contracting health facil-
14 ity or health care organization, the
15 termination of the service contract be-
16 tween the contracting health care or-
17 ganization and the health facility
18 worksite for the alien, or the antici-
19 pated inability of the contracting
20 health facility or health care organiza-
21 tion to pay the offered rate of pay to
22 the alien;

23 “(VI) the failure of the con-
24 tracting health facility or health care
25 organization to support the

1 credentialing of the alien in order for
2 the alien to be able to begin employ-
3 ment on the date on which the alien’s
4 employment authorization begins;

5 “(VII) the alien, or a spouse or
6 child of the alien, experiences unfore-
7 seen health problems that require
8 treatment outside of the approved ge-
9 ographic area;

10 “(VIII) in the case of employ-
11 ment by an individual physician, the
12 license of the employing physician is
13 suspended or revoked;

14 “(IX) the contracting health fa-
15 cility or health care organization fails
16 to agree to sponsor the alien for an
17 extension of the alien’s status under
18 section 101(a)(15)(H)(i)(b) in a time-
19 ly manner; or

20 “(X) the contracting health facil-
21 ity or health care organization en-
22 gages in practices that endanger the
23 health of patients;

1 “(iv) contracting health facilities and
2 health care organizations enter into an em-
3 ployment agreement with the alien that—

4 “(I) specifies the maximum num-
5 ber of on-call hours per week that the
6 alien will be expected to be available
7 and the compensation the alien will
8 receive for on-call time;

9 “(II) specifies whether the con-
10 tracting health facility or health care
11 organization will pay for the alien’s
12 malpractice insurance premiums;

13 “(III) specifies whether the em-
14 ployer will provide malpractice tail in-
15 surance and the amount of such in-
16 surance;

17 “(IV) describes all of the work lo-
18 cations at which the alien will work;

19 “(V) states that the contracting
20 health facility or health care organiza-
21 tion will not add additional work loca-
22 tions without the approval of the Fed-
23 eral agency or State agency that re-
24 quested the waiver or exemption; and

1 “(VI) does not include liquidated
2 damages provisions; and

3 “(v) the alien whose employment ter-
4 minates during the 3-year service period is
5 given 120 days to submit an application or
6 petition to commence employment with an-
7 other contracting health facility or health
8 care organization and is considered to be
9 maintaining lawful status in an authorized
10 stay during that period; and”; and

11 (v) in subparagraph (D)—

12 (I) in clause (ii), by striking
13 “would not cause the number of the
14 waivers” and inserting “or exemption
15 would not cause the total number of
16 waivers and exemptions”; and

17 (II) in clause (iii), by inserting
18 “or exemption” after “waiver”;

19 (B) in paragraph (2)(A), by inserting “de-
20 scribed in 212(e)(iii)” after “status of an
21 alien”; and

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

23 “(4)(A) If at least 90 percent of the total number
24 of waivers and exemptions allotted in a fiscal year under
25 paragraph (1)(B) to States that were granted not fewer

1 than 5 such waivers or exemptions, in the aggregate, dur-
2 ing any 1 of the 3 previous fiscal years are granted, on
3 a nationwide basis, in such fiscal year, the allotment of
4 such waivers and exemptions in the next fiscal year shall
5 be increased from 30 to 35 for each State. Such allotments
6 shall be further increased by 5 each time such 90 percent
7 threshold of the adjusted allotment level is reached, on a
8 nationwide basis.

9 “(B) Any increase in allotments under subparagraph
10 (A) shall be maintained indefinitely in future fiscal years,
11 unless the total number of waivers and exemptions grant-
12 ed in a fiscal year is 10 percent lower than in most recent
13 fiscal year in which there was an increase in the number
14 of waivers and exemptions allotted pursuant to this para-
15 graph. In such circumstances—

16 “(i) the number of waivers and exemptions al-
17 lotted shall be decreased by 5 per State beginning in
18 the next fiscal year; and

19 “(ii) each additional 10 percent decrease in
20 such waivers and exemptions compared with the
21 most recent fiscal year in which there was an in-
22 crease in the allotment shall decrease by 5 the allot-
23 ment of waivers and exemptions per State, which
24 shall not be lower 30.”.

1 **SEC. 334. RETAINING PHYSICIANS IN MEDICALLY UNDER-**
2 **SERVED COMMUNITIES.**

3 Section 201(b)(1) (8 U.S.C. 1151(b)(1)), as amended
4 by this subtitle, is further amended by adding at the end
5 the following:

6 “(M) Aliens who have completed service re-
7 quirements of a waiver or exemption requested
8 under section 214(l), including aliens who com-
9 pleted such service before the date of the enact-
10 ment of this subparagraph.”.

11 **SEC. 335. TEMPORARY VISAS FOR INDIVIDUALS FROM IRE-**
12 **LAND.**

13 (a) DEFINITION.—Section 101(a)(15)(E)(iii) (8
14 U.S.C. 1101(a)(15)(E)) is amended by inserting “or solely
15 to perform services as an employee who meets the require-
16 ments of section 203(d)(2) if the alien is a national of
17 the Republic of Ireland” after “Australia”.

18 (b) TEMPORARY ADMISSION OF INADMISSIBLE
19 ALIENS.—Clause (i) of section 212(a)(d)(3)(A) (8 U.S.C.
20 1182(d)(3)(A)) is amended by inserting before the semi-
21 colon the following: “provided that such recommendation
22 and approval shall not be required for the issuance of a
23 visa pursuant to section 101(a)(15)(E) for ineligibility
24 under paragraphs (6), (7), or (9) of section 212(a) that
25 is based on conduct occurring prior to the date of enact-
26 ment of this Act”.

1 (c) NUMERICAL LIMITATIONS.—Section
2 214(g)(11)(B)(8 U.S.C. 1184(g)(11)(B)) is amended by
3 inserting “for each of the nationalities included in section
4 101(a)(15)(E)(iii)” before the period.

5 **CHAPTER 4—MISCELLANEOUS**
6 **EMPLOYMENT VISA REFORMS**

7 **SEC. 336. PROVIDING PREMIUM PROCESSING OF EMPLOY-**
8 **MENT-BASED VISA PETITIONS.**

9 Pursuant to section 286(u) of the Immigration and
10 Nationality Act (8 U.S.C. 1356(u)), the Secretary shall
11 establish and collect—

12 (a) a fee for premium processing of employment-
13 based immigrant petitions; and

14 (b) a fee for premium processing of an administrative
15 appeal of any decision on a permanent employment-based
16 immigrant petition.

17 **SEC. 337. VISA REVALIDATION.**

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

19 (1) in subsection (h), in the matter preceding
20 subparagraph (1), by inserting “and except as pro-
21 vided under subsection (i),” after “Act”; and

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

23 “(i) The Secretary of State shall permit an alien
24 granted a nonimmigrant visa under subparagraph (E),

1 (H), (I), (L), (O), or (P) of section 101(a)(15) to apply
2 for a renewal of such visa within the United States if—

3 “(1) such visa is valid or did not expire more
4 than 12 months before the date of such application;

5 “(2) the alien is seeking a nonimmigrant visa
6 under the same subparagraph under which the alien
7 had previously received a visa; and

8 “(3) the alien has complied with the immigra-
9 tion laws of the United States.”.

10 **SEC. 338. APPLICATION FEES FOR INTENDING IMMI-**
11 **GRANTS.**

12 Section 402 of Public Law 111–230 is amended—

13 (1) in subsection (a), by inserting “and are not
14 intending immigrants” before the period at the end;

15 (2) in subsection (b), by inserting “and are not
16 intending immigrants” before the period at the end;
17 and

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

19 “(d) Subsections (a) and (b) shall not apply to sea-
20 sonal or intermittent nonimmigrants, and family members
21 of nonimmigrants described in section 101(a)(15)(L).

22 “(e) For purposes of subsections (a) and (b), the
23 term ‘intending immigrant’ means any alien who intends
24 to work and reside permanently in the United States, as
25 evidenced by—

1 “(1) a pending or approved application for alien
2 employment certification under section 212(a)(5)(A);
3 or

4 “(2) a pending or approved petition under para-
5 graph (1), (2), or (3) of section 203(b).”.

6 **SEC. 339. EMPLOYMENT OF SPOUSES.**

7 Section 214(c)(2)(E) (8 U.S.C. 1184(c)(2)(E)) is
8 amended by striking “section 101(a)(15)(L)” and insert-
9 ing “subparagraph (H) or (L) of section 101(a)(15)”.

10 **SEC. 340. TIME LIMITS FOR NONIMMIGRANTS TO DEPART**
11 **THE UNITED STATES.**

12 Section 214 (8 U.S.C. 1184) is amended by adding
13 at the end the following:

14 “(s) SEPARATED EMPLOYEES AND DEPENDENTS.—

15 “(1) IN GENERAL.—Any alien who ceases to be
16 employed by the alien’s petitioning employer, regard-
17 less of the reason for such separation, shall be auto-
18 matically granted a period of authorized stay equal
19 to 60 days from the date of separation, during which
20 the alien may—

21 “(A) depart the United States; or

22 “(B) apply for change or extension of sta-
23 tus.

24 “(2) SPOUSE AND CHILDREN.—

1 “(A) IN GENERAL.—The spouse and chil-
 2 dren of an alien described in paragraph (1)
 3 shall be automatically granted a period of au-
 4 thorized stay equal to the principal alien em-
 5 ployee.

6 “(B) DEATH OF PRINCIPAL ALIEN EM-
 7 PLOYEE.—The spouse and children of a non-
 8 immigrant alien who dies shall be entitled to re-
 9 tain the dependent nonimmigrant status to
 10 which they were eligible at the time of such
 11 death until the later of—

12 “(i) 1 year after such death; or

13 “(ii) the date on which an adjudica-
 14 tion of benefits under section 204(l) is
 15 completed.”.

16 **CHAPTER 5—POWER ACT**

17 **SEC. 341. SHORT TITLES.**

18 This chapter may be cited as the “ Protect Our
 19 Workers from Exploitation and Retaliation Act” or the
 20 “POWER Act”.

21 **SEC. 342. VICTIMS OF SERIOUS LABOR AND EMPLOYMENT** 22 **VIOLATIONS OR CRIME.**

23 (a) PROTECTION FOR VICTIMS OF LABOR AND EM-
 24 PLOYMENT VIOLATIONS.—Section 101(a)(15)(U) (8
 25 U.S.C. 1101(a)(15)(U)) is amended—

1 (1) in clause (i)—

2 (A) by amending subclause (I) to read as
3 follows:

4 “(I) the alien—

5 “(aa) has suffered substantial
6 abuse or harm as a result of having
7 been a victim of criminal activity de-
8 scribed in clause (iii);

9 “(bb) has suffered substantial
10 abuse or harm related to a violation
11 described in clause (iv);

12 “(cc) is a victim of criminal ac-
13 tivity described in clause (iii) and
14 would suffer extreme hardship upon
15 removal; or

16 “(dd) has suffered a violation de-
17 scribed in clause (iv) and would suffer
18 extreme hardship upon removal;”;

19 (B) in subclause (II), by inserting “, or a
20 labor or employment violation resulting in a
21 workplace claim described in clause (iv)” before
22 the semicolon at the end;

23 (C) in subclause (III)—

24 (i) by striking “or State judge, to the
25 Service” and inserting “, State, or local

1 judge, to the Department of Homeland Se-
2 curity, to the Equal Employment Oppor-
3 tunity Commission, to the Department of
4 Labor, to the National Labor Relations
5 Board”; and

6 (ii) by inserting “, or investigating,
7 prosecuting, or seeking civil remedies for a
8 labor or employment violation related to a
9 workplace claim described in clause (iv)”
10 before the semicolon at the end; and

11 (D) in subclause (IV)—

12 (i) by inserting “(aa)” after “(IV)”;

13 and

14 (ii) by adding at the end the fol-
15 lowing: “or

16 “(bb) a workplace claim described in
17 clause (iv) resulted from a labor or employ-
18 ment violation;”;

19 (2) in clause (ii)(II), by striking “and” at the
20 end;

21 (3) by moving clause (iii) 2 ems to the left;

22 (4) in clause (iii), by striking “or” at the end
23 and inserting “and”; and

24 (5) by adding at the end the following:

1 “(iv) in the labor or employment violation
2 related to a workplace claim, the alien—

3 “(I) has filed, is a material witness in,
4 or is likely to be helpful in the investiga-
5 tion of, a bona fide workplace claim (as de-
6 fined in section 274A(e)(10)(C)(iii)(II));
7 and

8 “(II) reasonably fears, has been
9 threatened with, or has been the victim of,
10 an action involving force, physical re-
11 straint, retaliation, or abuse of the immi-
12 gration or other legal process against the
13 alien or another person by the employer in
14 relation to acts underlying the workplace
15 claim or related to the filing of the work-
16 place claim; or”.

17 (b) TEMPORARY PROTECTION FOR VICTIMS OF
18 CRIME, LABOR, AND EMPLOYMENT VIOLATIONS.—Not-
19 withstanding any other provision of law, the Secretary
20 may permit an alien to temporarily remain in the United
21 States and grant the alien employment authorization if the
22 Secretary determines that the alien—

23 (1) has filed for relief under section
24 101(a)(15)(U) of the Immigration and Nationality
25 Act (8 U.S.C. 1101(a)(15)(U)); or

1 (2)(A) has filed, or is a material witness to, a
2 bona fide workplace claim (as defined in section
3 274A(e)(10)(B)(iii)(II) of such Act, as added by sec-
4 tion 3(b)); and

5 (B) has been helpful, is being helpful, or is like-
6 ly to be helpful to—

7 (i) a Federal, State, or local law enforce-
8 ment official;

9 (ii) a Federal, State, or local prosecutor;

10 (iii) a Federal, State, or local judge;

11 (iv) the Department of Homeland Security;

12 (v) the Equal Employment Opportunity
13 Commission;

14 (vi) the Department of Labor;

15 (vii) the National Labor Relations Board;

16 or

17 (viii) other Federal, State, or local authori-
18 ties investigating, prosecuting, or seeking civil
19 remedies related to the workplace claim.

20 (c) CONFORMING AMENDMENTS.—Section 214(p) (8
21 U.S.C. 1184(p)) is amended—

22 (1) in paragraph (1), by inserting “or inves-
23 tigating, prosecuting, or seeking civil remedies for
24 workplace claims described in section

1 101(a)(15)(U)(iv)” after “section
2 101(a)(15)(U)(iii)” each place such term appears;

3 (2) in paragraph (2)(A), by striking “10,000”
4 and inserting “30,000”; and

5 (3) in paragraph (6)—

6 (A) by inserting “or workplace claims de-
7 scribed in section 101(a)(15)(U)(iv)” after “de-
8 scribed in section 101(a)(15)(U)(iii)”;

9 (B) by inserting “or workplace claim”
10 after “prosecution of such criminal activity”.

11 (d) ADJUSTMENT OF STATUS FOR VICTIMS OF
12 CRIMES.—Section 245(m)(1) (8 U.S.C. 1255(m)(1)) is
13 amended by inserting “or an investigation or prosecution
14 regarding a workplace claim” after “prosecution”.

15 (e) CHANGE OF NONIMMIGRANT CLASSIFICATION.—
16 Section 384(a)(1) of the Illegal Immigration Reform and
17 Immigrant Responsibility Act of 1996 (8 U.S.C.
18 1367(a)(1)) is amended—

19 (1) in subparagraph (E), by striking “physical
20 or mental abuse and the criminal activity,” and in-
21 serting “abuse and the criminal activity or work-
22 place claim;”;

23 (2) in subparagraph (F), by striking the comma
24 at the end and inserting “; or”; and

1 (3) by inserting after subparagraph (F) the fol-
2 lowing:

3 “(G) the alien’s employer,”.

4 **SEC. 343. LABOR ENFORCEMENT ACTIONS.**

5 (a) REMOVAL PROCEEDINGS.—Section 239(e) (8
6 U.S.C. 1229(e)) is amended—

7 (1) in paragraph (1)—

8 (A) by striking “In cases where” and in-
9 serting “If”; and

10 (B) by inserting “or as a result of informa-
11 tion provided to the Department of Homeland
12 Security in retaliation against individuals for
13 exercising or attempting to exercise their em-
14 ployment rights or other legal rights” after
15 “paragraph (2)”; and

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

18 “(C) At a facility about which a workplace
19 claim has been filed or is contemporaneously
20 filed.”.

21 (b) UNLAWFUL EMPLOYMENT OF ALIENS.—Section
22 274A(e) (8 U.S.C. 1324a(e)) is amended by adding at the
23 end the following:

24 “(10) CONDUCT IN ENFORCEMENT ACTIONS.—

1 “(A) ENFORCEMENT ACTION.—If the De-
2 partment of Homeland Security undertakes an
3 enforcement action at a facility about which a
4 workplace claim has been filed or is contem-
5 poraneously filed, or as a result of information
6 provided to the Department in retaliation
7 against employees for exercising their rights re-
8 lated to a workplace claim, the Department
9 shall ensure that—

10 “(i) any aliens arrested or detained
11 who are necessary for the investigation or
12 prosecution of workplace claim violations
13 or criminal activity (as described in sub-
14 paragraph (T) or (U) of section
15 101(a)(15)) are not removed from the
16 United States until after the Depart-
17 ment—

18 “(I) notifies the appropriate law
19 enforcement agency with jurisdiction
20 over such violations or criminal activ-
21 ity; and

22 “(II) provides such agency with
23 the opportunity to interview such
24 aliens; and

1 “(ii) no aliens entitled to a stay of re-
2 moval or abeyance of removal proceedings
3 under this section are removed.

4 “(B) PROTECTIONS FOR VICTIMS OF
5 CRIME, LABOR, AND EMPLOYMENT VIOLA-
6 TIONS.—

7 “(i) STAY OF REMOVAL OR ABEYANCE
8 OF REMOVAL PROCEEDINGS.—An alien
9 against whom removal proceedings have
10 been initiated under chapter 4 of title II,
11 who has filed a workplace claim, who is a
12 material witness in any pending or antici-
13 pated proceeding involving a bona fide
14 workplace claim, or who has filed for relief
15 under section 101(a)(15)(U), shall be enti-
16 tled to a stay of removal or an abeyance of
17 removal proceedings and to employment
18 authorization until the resolution of the
19 workplace claim or the denial of relief
20 under section 101(a)(15)(U) after exhaus-
21 tion of administrative appeals, whichever is
22 later, unless the Department establishes,
23 by a preponderance of the evidence in pro-
24 ceedings before the immigration judge pre-

1 siding over that alien’s removal hearing,
2 that—

3 “(I) the alien has been convicted
4 of a felony; or

5 “(II) the workplace claim was
6 filed in a bad faith with the intent to
7 delay or avoid the alien’s removal.

8 “(ii) DURATION.—Any stay of re-
9 moval or abeyance of removal proceedings
10 and employment authorization issued pur-
11 suant to clause (i) shall remain valid until
12 the resolution of the workplace claim or
13 the denial of relief under section
14 101(a)(15)(U) after the exhaustion of ad-
15 ministrative appeals, and shall be extended
16 by the Secretary of Homeland Security for
17 a period of not longer than 3 additional
18 years upon determining that—

19 “(I) such relief would enable the
20 alien asserting a workplace claim to
21 pursue the claim to resolution;

22 “(II) the deterrent goals of any
23 statute underlying a workplace claim
24 would be served; or

1 “(III) such extension would oth-
2 erwise further the interests of justice.

3 “(iii) DEFINITIONS.—In this section:

4 “(I) MATERIAL WITNESS.—Not-
5 withstanding any other provision of
6 law, the term ‘material witness’ means
7 an individual who presents a declara-
8 tion from an attorney investigating,
9 prosecuting, or defending the work-
10 place claim or from the presiding offi-
11 cer overseeing the workplace claim at-
12 testing that, to the best of the declar-
13 ant’s knowledge and belief, reasonable
14 cause exists to believe that the testi-
15 mony of the individual will be relevant
16 to the outcome of the workplace claim.

17 “(II) WORKPLACE CLAIM.—The
18 term ‘workplace claim’ means any
19 written or oral claim, charge, com-
20 plaint, or grievance filed with, commu-
21 nicated to, or submitted to the em-
22 ployer, a Federal, State, or local agen-
23 cy or court, or an employee represent-
24 ative related to the violation of appli-
25 cable Federal, State, and local labor

1 laws, including laws concerning wages
 2 and hours, labor relations, family and
 3 medical leave, occupational health and
 4 safety, or nondiscrimination.”.

5 **SEC. 344. AUTHORIZATION OF APPROPRIATIONS.**

6 There are authorized to be appropriated such sums
 7 as may be necessary to carry out this chapter and the
 8 amendments made by this chapter.

9 **Subtitle D—Immigrant Integration**
 10 **and Other Reforms**

11 **PART I—STRENGTHEN AND UNITE COMMUNITIES**

12 **WITH CIVICS EDUCATION AND ENGLISH SKILLS**

13 **CHAPTER 1—EXPANDING ENGLISH LIT-**

14 **ERACY, UNITED STATES HISTORY, AND**

15 **CIVICS EDUCATION**

16 **SEC. 351. INCREASED INVESTMENT IN ENGLISH LITERACY,**

17 **UNITED STATES HISTORY, AND CIVICS EDU-**

18 **CATION UNDER THE ADULT EDUCATION AND**

19 **FAMILY LITERACY ACT.**

20 (a) INTEGRATED ENGLISH LITERACY AND CIVICS
 21 EDUCATION PROGRAM.—Section 203 of the Adult Edu-
 22 cation and Family Literacy Act (20 U.S.C. 9202) is
 23 amended—

1 (1) by redesignating paragraphs (12) through
2 (18) as paragraphs (13) through (19), respectively;
3 and

4 (2) by inserting after paragraph (11), the fol-
5 lowing:

6 “(12) INTEGRATED ENGLISH LITERACY,
7 UNITED STATES HISTORY, AND CIVICS EDUCATION
8 PROGRAM.—The term ‘integrated English literacy,
9 United States history, and civics education program’
10 means a program of instruction designed to help an
11 English language learner achieve competence in
12 English through contextualized instruction on the
13 rights and responsibilities of citizenship, naturaliza-
14 tion procedures, civic participation, and United
15 States history and Government to help such learner
16 acquire the skills and knowledge to become an active
17 and informed parent, worker, and community mem-
18 ber.”.

19 (b) STATE LEADERSHIP ACTIVITIES.—Section
20 223(a) of the Adult Education and Family Literacy Act
21 (20 U.S.C. 9223(a)) is amended by inserting after para-
22 graph (11) the following:

23 “(12) Technical assistance for grant applica-
24 tions of faith- and community-based organizations.”.

1 (c) NATIONAL INSTITUTE FOR LITERACY.—Section
2 242(c)(1) of the Adult Education and Family Literacy Act
3 (20 U.S.C. 9252(c)(1)) is amended—

4 (1) by redesignating subparagraphs (G), (H),
5 and (I), as subparagraphs (I), (J), and (K), respec-
6 tively; and

7 (2) by inserting after subparagraph (F) the fol-
8 lowing:

9 “(G) to coordinate and share information
10 with national organizations and associations
11 that are interested in integrated English lit-
12 eracy, United States history, and civics edu-
13 cation programs;

14 “(H) to study the effectiveness of distance
15 learning or self-study programs in assisting the
16 English language learner population achieve
17 competence in English;”.

18 (d) REPORT.—Section 242(k) of the Adult Education
19 and Family Literacy Act (20 U.S.C. 9252(k)) is amend-
20 ed—

21 (1) in paragraph (2), by striking “and” at the
22 end;

23 (2) by redesignating paragraph (3) as para-
24 graph (4); and

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

3 “(3) a separate analysis of—

4 “(A) national and State adult English in-
5 struction needs;

6 “(B) data on the composition of recent im-
7 migration flows and immigration settlement
8 patterns throughout the United States; and

9 “(C) estimated instructional needs based
10 on the English ability and educational attain-
11 ment of English language learners under recent
12 migration patterns; and”.

13 (e) NATIONAL LEADERSHIP ACTIVITIES.—Section
14 243 of the Adult Education and Family Literacy Act (20
15 U.S.C. 9253) is amended—

16 (1) in paragraph (1)—

17 (A) in subparagraph (A), by inserting
18 “and integrated English literacy, United States
19 history, and civics education programs” before
20 the semicolon at the end; and

21 (B) in subparagraph (B), by inserting
22 “and integrated English literacy, United States
23 history, and civics education programs” before
24 “, based on scientific evidence”; and

25 (2) in paragraph (2)—

1 (A) in subparagraph (B), by inserting
2 “and integrated English literacy, United States
3 history, and civics education programs” before
4 the semicolon at the end;

5 (B) in subparagraph (D)(ii), by inserting
6 “integrated English literacy, United States his-
7 tory, and civics education programs,” before
8 “and workplace literacy programs”; and

9 (C) in subparagraph (E)—

10 (i) in clause (i), by inserting “and in-
11 tegrated English literacy, United States
12 history, and civics education programs” be-
13 fore the semicolon at the end;

14 (ii) in clause (iii), by striking “and”
15 at the end;

16 (iii) in clause (iv)—

17 (I) by striking “section 231” and
18 inserting “sections 231 and 244”; and

19 (II) by adding “and” at the end;
20 and

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

23 “(v) the extent to which integrated
24 English literacy, United States history,
25 and civics education programs carried out

1 under section 244 lead participants in such
 2 programs to increase their civic participa-
 3 tion and, if applicable, lead such partici-
 4 pants to become United States citizens;”.

5 (f) INTEGRATED ENGLISH LITERACY, UNITED
 6 STATES HISTORY, AND CIVICS EDUCATION.—Chapter 4
 7 of subtitle A of the Adult Education and Family Literacy
 8 Act (20 U.S.C. 9251 et seq.) is amended by adding at
 9 the end the following:

10 **“SEC. 244. INTEGRATED ENGLISH LITERACY, UNITED**
 11 **STATES HISTORY, AND CIVICS EDUCATION**
 12 **PROGRAMS.**

13 “(a) PROGRAM AUTHORIZED.—The Secretary shall
 14 award grants to States, from allocations under subsection
 15 (b), for integrated English literacy, United States history,
 16 and civics education programs.

17 “(b) ALLOCATIONS.—

18 “(1) IN GENERAL.—Subject to paragraph (2),
 19 the Secretary shall allocate for each fiscal year, from
 20 the amount appropriated pursuant to subsection (c)
 21 for such fiscal year—

22 “(A) 65 percent of such amount to States
 23 on the basis of a State’s need for integrated
 24 English, United States history, and civics edu-
 25 cation programs, as determined by calculating

1 each State's share of a 10-year average of the
2 data compiled by the Office of Immigration Sta-
3 tistics of the Department of Homeland Secu-
4 rity, for immigrants admitted for lawful perma-
5 nent residence during the 10 most recent fiscal
6 years; and

7 “(B) 35 percent of such amount to the
8 States on the basis of whether the State experi-
9 enced growth, as measured by the average of
10 the 3 most recent years for which data compiled
11 by the Office of Immigration Statistics of the
12 Department of Homeland Security are avail-
13 able, for immigrants admitted for lawful perma-
14 nent residence.

15 “(2) MINIMUM.—Each State shall receive an al-
16 location under paragraph (1) in an amount that is
17 not less than \$60,000.

18 “(c) AUTHORIZATION OF APPROPRIATION.—There
19 are authorized to be appropriated to carry out this sec-
20 tion—

21 “(1) \$200,000,000 for fiscal year 2012;

22 “(2) \$250,000,000 for fiscal year 2013; and

23 “(3) \$300,000,000 for fiscal year 2014.”.

1 **SEC. 352. DEFINITIONS OF ENGLISH LANGUAGE LEARNER.**

2 (a) ADULT EDUCATION AND FAMILY LITERACY
3 ACT.—The Adult Education and Family Literacy Act (20
4 U.S.C. 9201 et seq.) is amended—

5 (1) in section 203 (20 U.S.C. 9202)—

6 (A) by redesignating paragraphs (6), (7),
7 (8), (9), and (10), as paragraphs (7), (8), (9),
8 (10), and (6), respectively;

9 (B) in paragraph (6), as redesignated—

10 (i) in the paragraph heading, by strik-
11 ing “INDIVIDUAL OF LIMITED ENGLISH
12 PROFICIENCY” and inserting “ENGLISH
13 LANGUAGE LEARNER”; and

14 (ii) in the matter preceding subpara-
15 graph (A), by striking “individual of lim-
16 ited English proficiency” and inserting
17 “English language learner”; and

18 (C) in paragraph (7), as redesignated, by
19 striking “individuals of limited English pro-
20 ficiency” and inserting “English language
21 learners”;

22 (2) in section 224(b)(10)(D) (20 U.S.C.
23 9224(b)(10)(D)), by striking “individuals with lim-
24 ited English proficiency” and inserting “English lan-
25 guage learners”; and

1 (3) in section 243(2)(D)(ii) (20 U.S.C.
 2 9253(2)(D)(ii)), by striking “individuals with limited
 3 English proficiency who are adults” and inserting
 4 “adult English language learners”.

5 (b) ELEMENTARY AND SECONDARY EDUCATION ACT
 6 OF 1965.—

7 (1) AMENDMENT.—Section 9101(25) of the El-
 8 ementary and Secondary Education Act of 1965 (20
 9 U.S.C. 7801(25)) is amended by striking the matter
 10 preceding subparagraph (A) and inserting the fol-
 11 lowing:

12 “(25) ENGLISH LANGUAGE LEARNER.—The
 13 term ‘English language learner’ means an indi-
 14 vidual—”.

15 (2) REFERENCES.—Any reference in the Ele-
 16 mentary and Secondary Education Act of 1965 (20
 17 U.S.C. 6301 et seq.) to an individual who is limited
 18 English proficient shall be construed to refer to an
 19 English language learner.

20 **SEC. 353. CREDITS FOR TEACHERS OF ENGLISH LANGUAGE**
 21 **LEARNERS.**

22 (a) IN GENERAL.—Subpart A of part IV of sub-
 23 chapter A of chapter 1 of the Internal Revenue Code of
 24 1986 (relating to nonrefundable personal credits) is

1 amended by inserting after section 25D the following new
2 section:

3 **“SEC. 25E. TEACHERS OF ENGLISH LANGUAGE LEARNERS.**

4 “(a) IN GENERAL.—In the case of an eligible teacher,
5 there shall be allowed a credit against the tax imposed
6 by this chapter for the taxable year an amount equal to—

7 “(1) \$750, for each of the first 5 taxable years
8 for which the taxpayer is allowed a credit under this
9 section; and

10 “(2) \$500, for any other taxable year.

11 “(b) CREDIT ALLOWED ONLY FOR 10 TAXABLE
12 YEARS.—No credit shall be allowed under this section
13 with respect to a taxpayer for any taxable year after the
14 10th taxable year for which such taxpayer is allowed a
15 credit under this section.

16 “(c) ELIGIBLE TEACHER DEFINED.—

17 “(1) IN GENERAL.—Except as provided in para-
18 graph (2), the term ‘eligible teacher’ means, with re-
19 spect to a taxable year, any individual who is—

20 “(A) a full-time teacher of English as a
21 second language or bilingual instruction for the
22 academic year ending in such taxable year; or

23 “(B) an eligible part-time teacher of
24 English as a second language or bilingual in-

1 instruction for the academic year ending in such
2 taxable year.

3 “(2) ELIGIBLE PART-TIME TEACHER.—The
4 term ‘eligible part-time teacher’ means, with respect
5 to a taxable year, an individual who teaches at least
6 20 hours per week during the academic year ending
7 in such taxable year. Such term does not include any
8 individual who is a full-time teacher of English as a
9 second language during such academic year.

10 “(3) SPECIAL RULE.—In the case of an eligible
11 part-time teacher, subsection (a) shall be applied by
12 substituting ‘\$375’ for ‘\$750’ and by substituting
13 ‘\$250’ for ‘\$500’.”.

14 (b) CLERICAL AMENDMENT.—The table of sections
15 for such subpart is amended by inserting after the item
16 relating to section 25D the following:

“Sec. 25E. Teachers of English language learners.”.

17 (c) TEACHER CERTIFICATION EXPENSES.—Part VII
18 of subchapter B of chapter 1 of the Internal Revenue Code
19 of 1986 (relating to additional itemized deductions for in-
20 dividuals) is amended by redesignating section 224 as sec-
21 tion 225 and by inserting after section 223 the following:

22 **“SEC. 224. CERTIFICATION EXPENSES FOR TEACHERS OF**
23 **ENGLISH LANGUAGE LEARNERS.**

24 “(a) IN GENERAL.—In the case of an individual,
25 there shall be allowed a deduction for eligible teacher cer-

1 tification expenses paid or incurred by the taxpayer for
2 the taxable year.

3 “(b) ELIGIBLE TEACHER CERTIFICATION EX-
4 PENSES.—The term ‘eligible teacher certification ex-
5 penses’—

6 “(1) means the tuition and fees required for the
7 enrollment or attendance of the taxpayer at an eligi-
8 ble educational institution (as defined in section
9 25A) for a course which is required for certification
10 or licensure of such individual as qualified to provide
11 English as a second language or bilingual instruction
12 to elementary or secondary school students who are
13 limited English proficient (as defined in section
14 9901 of the Elementary and Secondary Education
15 Act of 1965); and

16 “(2) shall not include any amounts that are—

17 “(A) used for a course that is part of the
18 individual’s degree program; or

19 “(B) funded by another person or any gov-
20 ernmental entity.

21 “(c) DENIAL OF DOUBLE BENEFIT.—No deduction
22 shall be allowed under this section for any expense for
23 which a deduction or credit is allowed under any other
24 provision of this chapter.

1 “(d) TERMINATION.—This section shall not apply to
2 expenses paid or incurred after December 31, 2014.”.

3 (d) CERTIFICATION DEDUCTION ALLOWED WHETHER
4 OR NOT TAXPAYER ITEMIZES OTHER DEDUCTIONS.—
5 Subsection (a) of section 62 of such Code is amended by
6 inserting after paragraph (21) the following new para-
7 graph:

8 “(22) TEACHER CERTIFICATION EXPENSES.—
9 The deduction allowed by section 224.”.

10 (e) CLERICAL AMENDMENT.—The table of sections
11 for part VII of subchapter B of chapter 1 of such Code
12 is amended by striking the last item and inserting the fol-
13 lowing:

“Sec. 224. Certification expenses for teachers of English language learners.
“Sec. 225. Cross reference.”.

14 (f) REGULATIONS.—Not later than 180 days after
15 the date of the enactment of this Act, the Secretary of
16 the Treasury shall promulgate regulations implementing
17 the provisions of this section.

18 (g) EFFECTIVE DATE.—The amendments made by
19 this section shall apply to taxable years beginning after
20 the date of the enactment of this Act.

21 **SEC. 354. RESEARCH IN ADULT EDUCATION.**

22 (a) IN GENERAL.—Section 133(c)(2)(A) of the Edu-
23 cation Sciences Reform Act of 2002 (20 U.S.C.

1 9533(c)(2)(A)) is amended by inserting “education and”
2 before “literacy”.

3 (b) NATIONAL RESEARCH AND DEVELOPMENT CEN-
4 TER.—

5 (1) IN GENERAL.—The Secretary of Education
6 shall direct the Commissioner for Education Re-
7 search of the National Center for Education Re-
8 search established pursuant to section 131 of the
9 Education Sciences Reform Act of 2002 (20 U.S.C.
10 9531) to establish a national research and develop-
11 ment center for adult education and literacy (as de-
12 scribed in section 133(c)(2)(A) of such Act).

13 (2) PROVISION FOR EXPANSION OF RE-
14 SEARCH.—If, as of the date of the enactment of this
15 Act, the Commissioner has established a center for
16 adult literacy in accordance with section
17 133(c)(2)(A) of the Education Sciences Reform Act
18 of 2002 (20 U.S.C. 9533(c)(2)(A)), the Commis-
19 sioner shall expand the topic of research of such cen-
20 ter to include adult education, in accordance with
21 the amendment made by subsection (a).

1 **CHAPTER 2—SUPPORTING ENGLISH LAN-**
2 **GUAGE ACQUISITION AND ADULT EDU-**
3 **CATION IN THE WORKFORCE**

4 **SEC. 356. CREDIT FOR EMPLOYER-PROVIDED ADULT**
5 **ENGLISH LITERACY AND BASIC EDUCATION**
6 **PROGRAMS.**

7 (a) IN GENERAL.—Subpart D of part IV of sub-
8 chapter A of chapter 1 of the Internal Revenue Code of
9 1986 (relating to business related credits) is amended by
10 adding at the end the following:

11 **“SEC. 45R. EMPLOYER-PROVIDED ADULT ENGLISH LIT-**
12 **ERACY AND BASIC EDUCATION PROGRAMS.**

13 “(a) IN GENERAL.—For the purposes of section 38,
14 the credit determined under this section with respect to
15 any employer for the taxable year is an amount equal to
16 20 percent of qualified education program expenses, but
17 in no case shall the employer receive a credit in an amount
18 of more than \$1,000 per full-time employee participating
19 in the qualified education program.

20 “(b) QUALIFIED EDUCATION PROGRAM EX-
21 PENSES.—For purposes of this section:

22 “(1) IN GENERAL.—The term ‘qualified edu-
23 cation program expenses’ means expenses paid or in-
24 curred by an employer to make available qualified
25 education to employees of the employer, who—

1 “(A) are English language learners; and

2 “(B)(i) have not received a secondary
3 school diploma, or its recognized equivalent; or

4 “(ii) lack sufficient mastery of basic edu-
5 cational skills, including financial literacy, to
6 enable the individuals to function effectively in
7 society.

8 “(2) QUALIFIED EDUCATION.—The term ‘quali-
9 fied education’ means adult education and literacy
10 activities provided—

11 “(A) by an eligible provider which for the
12 fiscal year ending during the employer’s taxable
13 year receives or is eligible to receive Federal
14 funds under section 231 of the Adult Education
15 and Family Literacy Act (20 U.S.C. 9241) for
16 adult education and literacy activities; or

17 “(B) in curriculum approved by the De-
18 partment of Education, the Employment and
19 Training Administration of the Department of
20 Labor, or in current use by a Federal agency.

21 “(3) ELIGIBLE PROVIDER; ADULT EDUCATION
22 AND LITERACY ACTIVITIES.—The terms ‘eligible pro-
23 vider’ and ‘adult education and literacy activities’
24 have the respective meanings given to such terms in

1 section 203 of the Adult Education and Family Lit-
2 eracy Act (20 U.S.C. 9202).

3 “(4) ENGLISH LANGUAGE LEARNER.—The term
4 ‘English language learner’ has the same meaning
5 given such term in section 9101(25) of the Elemen-
6 tary and Secondary Education Act of 1965.

7 “(c) SPECIAL RULES.—For purposes of this section:

8 “(1) FULL-TIME EMPLOYMENT.—An employee
9 shall be considered full-time if such employee is em-
10 ployed at least 30 hours per week for 25 or more
11 calendar weeks in the taxable year.

12 “(2) AGGREGATION RULE.—All persons treated
13 as a single employer under subsection (a) or (b) or
14 section 52, or subsection (m) or (o) of section 414,
15 shall be treated as 1 person.

16 “(d) DENIAL OF DOUBLE BENEFIT.—No deduction
17 or credit shall be allowed under any other provision of this
18 chapter for any amount taken into account in determining
19 the credit under this section.

20 “(e) ELECTION TO HAVE CREDIT NOT APPLY.—A
21 taxpayer may elect (at such time and in such manner as
22 the Secretary may by regulations prescribe) to have this
23 section not apply for any taxable year.

24 “(f) TERMINATION.—This section shall not apply to
25 expenses paid or incurred after December 31, 2014.”.

1 (b) CREDIT TO BE PART OF GENERAL BUSINESS
2 CREDIT.—Subsection (b) of section 38 of such Code (re-
3 lating to the current year business credit) is amended—

4 (1) by striking “plus” at the end of paragraph
5 (34);

6 (2) by striking the period at the end of para-
7 graph (35) and inserting “, plus”; and

8 (3) by adding at the end the following new
9 paragraph:

10 “(36) the adult English literacy and basic edu-
11 cation programs credit determined under section
12 45R.”.

13 (c) CLERICAL AMENDMENT.—The table of sections
14 for subpart D of part IV of subchapter A of chapter 1
15 of the such Code is amended by adding at the end the
16 following new item:

“Sec. 45R. Employer-provided adult English literacy and basic education pro-
grams.”.

17 (d) REGULATIONS.—Not later than 180 days after
18 the date of the enactment of this Act, the Secretary of
19 the Treasury shall promulgate regulations implementing
20 the provisions of this section.

21 (e) EFFECTIVE DATE.—The amendments made by
22 this section shall apply to taxable years beginning after
23 December 31 of the year in which this Act was enacted.

1 **SEC. 357. PRESIDENTIAL AWARD FOR BUSINESS LEADER-**
2 **SHIP IN PROMOTING UNITED STATES CITI-**
3 **ZENSHIP.**

4 (a) ESTABLISHMENT.—The Presidential Award for
5 Business Leadership in Promoting United States Citizen-
6 ship (referred to in this section as the “Presidential Citi-
7 zenship Award”) shall be awarded by the President to
8 companies and other organizations that make extraor-
9 dinary efforts in assisting their employees and members
10 to learn English and increase their understanding of
11 United States history and civics.

12 (b) SELECTION AND PRESENTATION OF AWARD.—

13 (1) SELECTION.—The President, after review-
14 ing recommendations from the Secretary of Home-
15 land Security and the Secretary of Commerce, shall
16 periodically award the Presidential Citizenship
17 Award to large and small companies and other orga-
18 nizations described in subsection (a).

19 (2) PRESENTATION.—The presentation of the
20 Presidential Citizenship Award shall be made by the
21 President, or a designee of the President, in con-
22 junction with an appropriate ceremony.

23 **CHAPTER 3—BUILDING STRONGER**
24 **COMMUNITIES**

25 **SEC. 361. OFFICE OF CITIZENSHIP AND NEW AMERICANS.**

26 (a) RENAMING THE OFFICE OF CITIZENSHIP.—

1 (1) IN GENERAL.—Beginning on the date of the
2 enactment of this Act, the Office of Citizenship of
3 United States Citizenship and Immigration Services
4 shall be referred to as the “Office of Citizenship and
5 New Americans”.

6 (2) CONFORMING AMENDMENTS.—Section
7 451(f) of the Homeland Security Act of 2002 (6
8 U.S.C. 271(f)) is amended—

9 (A) in the subsection heading, by striking
10 “Citizenship.” and inserting “Citizenship and
11 New Americans.”;

12 (B) in paragraph (1), by inserting “and
13 New Americans” after “Office of Citizenship”;
14 and

15 (C) in paragraph (2), by inserting “and
16 New Americans” after “Office of Citizenship”.

17 (3) REFERENCES.—Any reference in a law, reg-
18 ulation, document, paper, or other record of the
19 United States to the Office of Citizenship within
20 United States Citizenship and Immigration Services
21 shall be deemed to be a reference to the “Office of
22 Citizenship and New Americans”.

23 (b) FUNCTIONS.—Section 451(f)(2) of the Homeland
24 Security Act of 2002 (6 U.S.C. 271(f)(2)), as amended
25 by subsection (a)(2)(C), is further amended by striking

1 “for promoting” and all that follows through the period
2 at the end and inserting the following: “for—

3 “(A) establishing national goals for intro-
4 ducing new immigrants into the United States
5 and measuring the degree to which such goals
6 are met;

7 “(B) assessing and coordinating Federal
8 policies, regulations, task forces, and commis-
9 sions related to introducing immigrants into the
10 United States;

11 “(C) continuing with the efforts of the
12 Task Force on New Americans established
13 under Executive Order 13404—

14 “(i) to facilitate a dialogue among
15 Federal agencies;

16 “(ii) make recommendations to the
17 President; and

18 “(iii) follow through with initiatives
19 administered by the Task Force under the
20 authority of such Executive Order;

21 “(D) serving as a liaison and intermediary
22 with State and local governments and other en-
23 tities to assist in establishing local goals, task
24 forces, and councils to assist in introducing im-
25 migrants into the United States;

1 “(E) coordinating with other Federal agen-
2 cies to provide information to State and local
3 governments on the demand for English acqui-
4 sition programs and best practices in place on
5 the Federal and State level for immigrants who
6 have recently arrived in the United States;

7 “(F) assisting States in coordinating ac-
8 tivities with the grant program carried out
9 under this subtitle; and

10 “(G) promoting instruction and training on
11 citizenship responsibilities for aliens interested
12 in becoming naturalized citizens of the United
13 States, including the development of edu-
14 cational materials for such aliens.”.

15 (c) DONATIONS.—Section 451(f) of the Homeland
16 Security Act of 2002 (6 U.S.C. 271(f)), as amended by
17 this section, is further amended by adding at the end the
18 following:

19 “(3) DONATIONS.—

20 “(A) ACCEPTANCE OF DONATIONS.—The
21 Chief of the Office of Citizenship and New
22 Americans may accept monetary and in-kind
23 donations to support the activities described in
24 paragraph (2).

1 “(B) DEDICATION OF FUNDS.—Notwith-
2 standing any other provision of law—

3 “(i) any amounts donated to the Of-
4 fice of Citizenship and New Americans to
5 support the activities described in para-
6 graph (2) shall be deposited into an ac-
7 count dedicated for such purpose;

8 “(ii) the amounts contained in the ac-
9 count described in clause (i) shall be used
10 solely to support such activities; and

11 “(iii) amounts that were not donated
12 for the exclusive purpose of supporting
13 such activities may not be deposited into
14 such account.”.

15 (d) REPORT TO CONGRESS.—The Chief of the Office
16 of Citizenship and New Americans shall submit a biennial
17 report to the appropriate committees in Congress that de-
18 scribes the activities of the Office of Citizenship and New
19 Americans.

20 **SEC. 362. GRANTS TO STATES.**

21 (a) AUTHORITY TO PROVIDE GRANTS.—Subject to
22 subsections (c) and (d), the Chief of the Office of Citizen-
23 ship and New Americans (referred to in this section as
24 the “Chief”) is authorized to provide competitive grants

1 to States to form State New American Councils to carry
2 out the activities described in section 363.

3 (b) STATE NEW AMERICAN COUNCILS.—A State
4 New American Council shall—

5 (1) consist of not fewer than 15 individuals and
6 not more than 19 individuals from the State; and

7 (2) shall include, to the extent practicable, rep-
8 resentatives from—

9 (A) business;

10 (B) faith-based organizations;

11 (C) civic organizations;

12 (D) philanthropic organizations;

13 (E) nonprofit organizations, including
14 those with experience working with immigrant
15 communities;

16 (F) key education stakeholders, such as
17 State educational agencies, local educational
18 agencies, community colleges, or teachers;

19 (G) State adult education offices;

20 (H) State or local public libraries; and

21 (I) State or local government officials.

22 (c) WAIVER OF REQUIREMENT.—

23 (1) AUTHORITY TO GRANT.—The Chief may
24 award a grant under subsection (a) to a State with-
25 out requiring the State to form a State New Amer-

1 ican Council if the Chief determines that the State
2 is carrying out similar statewide initiatives to intro-
3 duce immigrants into the State and into the United
4 States.

5 (2) GUIDELINES.—The Chief shall establish
6 guidelines for awarding grants to States described in
7 paragraph (1).

8 (d) GRANTS TO LOCAL GOVERNMENTS.—The Chief
9 may provide a grant under subsection (a) to a local gov-
10 ernment.

11 (e) APPLICATION.—An applicant for a grant under
12 this section shall submit an application to the Chief at
13 such time, in such manner, and containing such informa-
14 tion as the Chief may reasonably require, including—

15 (1) if the applicant is a State seeking to form
16 a State New American Council, an assurance that
17 such State New American Council will meet the re-
18 quirements under subsection (b);

19 (2) the number of immigrants in the State in
20 which the applicant is located; and

21 (3) a description of the challenges in intro-
22 ducing new immigrants into the State and local com-
23 munity.

24 (f) DURATION.—A grant awarded under subsection
25 (a) shall be for a period of 5 years.

1 (g) PRIORITY.—Priority shall be given to grant appli-
2 cations that—

3 (1) use matching funds from non-Federal
4 sources, which may include in-kind contributions;
5 and

6 (2) demonstrate collaboration with private enti-
7 ties to achieve the goals of their comprehensive plan.

8 (h) ADDITIONAL CONSIDERATION.—Additional con-
9 sideration shall be given to grant applications submitted
10 by States that have experienced a large increase in the
11 population of immigrants during the most recent 10-year
12 period relative to past migration patterns, based on data
13 compiled by the Office of Immigration Statistics.

14 (i) GRANT AMOUNT.—The amount of a grant award-
15 ed under subsection (a) shall be not less than \$500,000
16 and not more than \$5,000,000 for each fiscal year.

17 (j) RESERVATIONS.—

18 (1) NATIONAL.—The Chief shall reserve not
19 more than 1 percent of the amount appropriated to
20 carry out this section for the administration of the
21 Office of Citizenship and New Americans, including
22 for the evaluation of funds distributed.

23 (2) STATES.—A State awarded a grant under
24 subsection (a) may reserve not more than 10 percent

1 of such grant amount for the creation and operation
2 of a State New American Council.

3 **SEC. 363. AUTHORIZED ACTIVITIES.**

4 (a) MANDATORY ACTIVITIES.—A grant awarded
5 under section 361(a) shall be used—

6 (1) to develop, implement, expand, or enhance
7 a comprehensive plan to introduce new immigrants
8 into the State, including improving English literacy,
9 knowledge of United States history, and civics edu-
10 cation;

11 (2) to provide subgrants to local communities in
12 accordance with subsection (c);

13 (3) if the grant is awarded to a State, to form
14 a State New American Council, which shall meet not
15 less frequently than once each quarter;

16 (4) to disseminate best practices and other in-
17 formation compiled by the Office of Citizenship and
18 New Americans that pertains to effective programs
19 for English acquisition and civics education; and

20 (5) to convene public hearings not less fre-
21 quently than once each year to report on the activi-
22 ties carried out by such grant.

23 (b) PERMISSIBLE ACTIVITIES.—A grant awarded
24 under section 361(a) may be used—

1 (1) to solicit and disseminate solutions and
2 remedies to the challenges of introducing new immi-
3 grants in the State or municipality in which the
4 grant is awarded;

5 (2) to provide technical assistance, training, or
6 coordination for State or local agencies to improve
7 programs to introduce new immigrants into the
8 United States, such as English literacy, United
9 States history, and civics education;

10 (3) to review and develop strategies to expand
11 distance learning as a method of instruction for
12 English literacy, United States history, and civics
13 education and available technological programs that
14 may supplement or supplant quality classroom in-
15 struction;

16 (4) to coordinate with entities of other States
17 engaged in activities under this part or other activi-
18 ties to introduce new immigrants into the State or
19 community;

20 (5) to develop materials focused on preparation
21 for the naturalization test;

22 (6) to engage in outreach and educational ac-
23 tivities on the naturalization process; and

24 (7) to provide assistance to immigrants with the
25 naturalization application, as appropriate.

1 (c) SUBGRANTS TO LOCAL COMMUNITIES.—

2 (1) REQUIREMENT TO AWARD.—A grant under
3 section 108(a) shall be used to award subgrants to
4 entities of local governments to assist communities
5 with local efforts to introduce new Americans into
6 the community.

7 (2) AUTHORIZED ACTIVITIES.—Subgrants shall
8 be awarded under paragraph (1) to entities of local
9 governments for use to carry out activities in accord-
10 ance with—

11 (A) a comprehensive plan described in sub-
12 section (a)(1); and

13 (B) any guidance provided by the Chief of
14 the Office of Citizenship and New Americans.

15 (3) SUBGRANT AMOUNT.—The amount of a
16 subgrant awarded under this subsection shall be not
17 less than \$100,000 and not more than \$600,000 for
18 a fiscal year.**

19 **SEC. 364. REPORTING AND EVALUATION.**

20 (a) REPORTING REQUIREMENT.—

21 (1) IN GENERAL.—Each entity awarded a grant
22 under section 108(a) shall submit a report annually
23 to the Office of Citizenship and New Americans
24 that—

1 (A) describes the activities of the State
2 New American Council and subgrant recipients
3 and how these activities meet the goals of—

4 (i) the Chief of the Office of Citizen-
5 ship and New Americans; and

6 (ii) the comprehensive plan described
7 in section 109(a)(1); and

8 (B) describes the geographic areas being
9 served, the number of immigrants in such
10 areas, and the primary languages spoken there.

11 (2) OTHER REQUIREMENTS.—The Chief of the
12 Office of Citizenship may set out other requirements
13 as the Chief sees fit in order to—

14 (A) impose accountability; and

15 (B) measure the outcomes of the activities
16 carried out with grants awarded under section
17 1083(a).

18 (b) ANNUAL EVALUATION.—The Chief of the Office
19 of Citizenship and New Americans shall conduct an an-
20 nual evaluation of the grant program established under
21 this subtitle and use such evaluation—

22 (1) to improve the effectiveness of programs
23 carried out by the Chief;

24 (2) to assess future needs of immigrants and of
25 State and local governments related to immigrants;

1 (3) to determine the effectiveness of such grant
2 program; and

3 (4) to ensure that the grantees and subgrantees
4 are acting within the scope and purpose of this sub-
5 title.

6 **SEC. 365. NEW CITIZENS AWARD PROGRAM.**

7 (a) ESTABLISHMENT.—There is established a new
8 citizens award program to recognize citizens who—

9 (1) have made an outstanding contribution to
10 the United States; and

11 (2) are naturalized during the 10-year period
12 ending on the date of such recognition.

13 (b) PRESENTATION AUTHORIZED.—

14 (1) IN GENERAL.—The President is authorized
15 to present a medal, in recognition of outstanding
16 contributions to the United States, to citizens de-
17 scribed in subsection (a).

18 (2) MAXIMUM NUMBER OF AWARDS.—Not more
19 than 10 citizens may receive a medal under this sec-
20 tion in any calendar year.

21 **SEC. 366. RULE OF CONSTRUCTION.**

22 Nothing in this subtitle may be construed to limit the
23 authority of the Secretary, acting through the Director of
24 United States Citizenship and Immigration Services or
25 such other officials of the Department of Homeland Secu-

1 rity as the Secretary may direct, to manage, direct, and
2 control the activities of the Chief of the Office of Citizen-
3 ship and New Americans.

4 **SEC. 367. REPORT TO CONGRESS ON FEE INCREASES.**

5 Section 286 (8 U.S.C. 1356), as amended by section
6 326(b), is further amended by adding at the end the fol-
7 lowing:

8 “(x) REPORT TO CONGRESS ON FEES AND FEE IN-
9 CREASES.—The Secretary of Homeland Security shall an-
10 nually submit a report to the Committee on the Judiciary
11 of the Senate and the Committee on the Judiciary of the
12 House of Representatives that—

13 “(1) identifies the direct and overhead costs as-
14 sociated with providing immigration services, distin-
15 guishing such costs from immigration enforcement
16 and national security costs;

17 “(2) identifies the costs for providing premium
18 processing services to business customers under sub-
19 section (u);

20 “(3) describes the extent to which the premium
21 processing fee prescribed under subsection (u) is set
22 at a level that ensures recovery of those costs;

23 “(4) identifies the amount of funding allocated
24 for the infrastructure improvements in the adjudica-

1 tions and customer-service processes as prescribed
2 under subsection (u); and

3 “(5) contains information about the basis for
4 any fee increases that will occur during the following
5 12 months.”.

6 **SEC. 368. AUTHORIZATION OF APPROPRIATIONS.**

7 There are authorized to be appropriated to carry out
8 this subtitle \$100,000,000 for each of the fiscal years
9 2012 through 2016.

10 **PART II—EMERGENCY RELIEF FOR CERTAIN**
11 **POPULATIONS**

12 **SEC. 371. ADJUSTMENT OF STATUS FOR CERTAIN HAITIAN**
13 **ORPHANS.**

14 (a) IN GENERAL.—The Secretary may adjust the sta-
15 tus of an alien described in subsection (b) to that of an
16 alien lawfully admitted for permanent residence if the
17 alien—

18 (1) subject to subsection (c), applies for such
19 adjustment;

20 (2) is physically present in the United States on
21 the date the application for such adjustment is filed;
22 and

23 (3) is admissible to the United States as an im-
24 migrant, except as provided in subsection (d).

1 (b) ALIENS ELIGIBLE FOR ADJUSTMENT OF STA-
2 TUS.—An alien is described in this subsection if the alien
3 was inspected and granted parole into the United States
4 pursuant to the humanitarian parole policy for certain
5 Haitian orphans announced on January 18, 2010, and
6 suspended as to new applications on April 15, 2010.

7 (c) APPLICATION.—In the case of a minor, an appli-
8 cation under this section may be submitted on behalf of
9 the alien by—

- 10 (1) a parent; or
- 11 (2) a legal guardian.

12 (d) GROUNDS OF INADMISSIBILITY.—Paragraphs (4)
13 and (7)(A) of section 212(a) of the Immigration and Na-
14 tionality Act (8 U.S.C. 1182(a)) shall not apply to adjust-
15 ment of status under this section.

16 (e) VISA AVAILABILITY.—When an alien is granted
17 the status of having been lawfully admitted for permanent
18 residence under this section, the Secretary of State shall
19 not be required to reduce the number of immigrant visas
20 authorized to be issued under the Immigration and Na-
21 tionality Act (8 U.S.C. 1101 et seq.).

22 (f) ALIEN DEEMED TO MEET DEFINITION OF
23 CHILD.—An alien described in subsection (b) shall be
24 deemed to satisfy the requirements applicable to adopted
25 children under section 101(b)(1) of the Immigration and

1 Nationality Act (8 U.S.C. 1101(b)(1)) if, before the date
2 on which the alien reaches 18 years of age—

3 (1) the alien obtains adjustment of status under
4 this section; and

5 (2) a United States citizen adopts the alien, re-
6 gardless of whether the adoption occurs before, on,
7 or after the date of the decision-granting adjustment
8 of status under this section.

9 (g) NO IMMIGRATION BENEFITS FOR BIRTH PAR-
10 ENTS.—No birth parent of an alien who obtains adjust-
11 ment of status under this section shall thereafter, by vir-
12 tue of such parentage, be accorded any right, privilege,
13 or status under this section or the Immigration and Na-
14 tionality Act (8 U.S.C. 1101 et seq.).

15 **SEC. 372. ADJUSTMENT OF STATUS FOR CERTAIN LIBERIAN**
16 **NATIONALS.**

17 (a) ADJUSTMENT OF STATUS.—

18 (1) IN GENERAL.—

19 (A) ELIGIBILITY.—Except as provided
20 under subparagraph (B), the Secretary shall
21 adjust the status of an alien described in sub-
22 section (b) to that of an alien lawfully admitted
23 for permanent residence, if the alien—

1 (i) applies for adjustment not later
2 than 1 year after the date of the enact-
3 ment of this Act; and

4 (ii) is otherwise eligible to receive an
5 immigrant visa and admissible to the
6 United States for permanent residence, ex-
7 cept that, in determining such admissi-
8 bility, the grounds for inadmissibility speci-
9 fied in paragraphs (4), (5), (6)(A), and
10 (7)(A) of section 212(a) of the Immigra-
11 tion and Nationality Act (8 U.S.C.
12 1182(a)) shall not apply.

13 (B) INELIGIBLE ALIENS.—An alien shall
14 not be eligible for adjustment of status under
15 this section if the Secretary determines that the
16 alien—

17 (i) has been convicted of any aggra-
18 vated felony (as defined in section
19 101(a)(43) of the Immigration and Nation-
20 ality Act (8 U.S.C. 1101(a)(43));

21 (ii) has been convicted of 2 or more
22 crimes involving moral turpitude; or

23 (iii) has ordered, incited, assisted, or
24 otherwise participated in the persecution of
25 any person on account of race, religion, na-

1 tionality, membership in a particular social
2 group, or political opinion.

3 (2) RELATIONSHIP OF APPLICATION TO CER-
4 TAIN ORDERS.—

5 (A) IN GENERAL.—An alien present in the
6 United States who has been subject to an order
7 of exclusion, deportation, or removal, or has
8 been ordered to depart voluntarily from the
9 United States under any provision of the Immi-
10 gration and Nationality Act may, notwith-
11 standing such order, apply for adjustment of
12 status under paragraph (1) if otherwise quali-
13 fied under such paragraph.

14 (B) SEPARATE MOTION NOT REQUIRED.—
15 An alien described in subparagraph (A) may
16 not be required, as a condition of submitting or
17 granting such application, to file a separate mo-
18 tion to reopen, reconsider, or vacate the order
19 described in subparagraph (A).

20 (C) EFFECT OF DECISION BY SEC-
21 RETARY.—If the Secretary grants an applica-
22 tion under paragraph (1), the Secretary shall
23 cancel the order described in subparagraph (A).
24 If the Secretary makes a final decision to deny
25 the application, the order shall be effective and

1 enforceable to the same extent as if the applica-
2 tion had not been made.

3 (b) ALIENS ELIGIBLE FOR ADJUSTMENT OF STA-
4 TUS.—

5 (1) IN GENERAL.—The benefits provided under
6 subsection (a) shall apply to any alien—

7 (A) who is—

8 (i) a national of Liberia; and

9 (ii) has been continuously present in
10 the United States between January 1,
11 2011, and the date on which the alien sub-
12 mits an application under subsection (a);

13 or

14 (B) who is the spouse, child, or unmarried
15 son or daughter of an alien described in sub-
16 paragraph (A).

17 (2) DETERMINATION OF CONTINUOUS PHYS-
18 ICAL PRESENCE.—For purposes of establishing the
19 period of continuous physical presence referred to in
20 paragraph (1)(A)(ii), an alien shall not be consid-
21 ered to have failed to maintain continuous physical
22 presence by reasons of an absence, or absences, from
23 the United States for any period or periods amount-
24 ing in the aggregate to not more than 180 days.

25 (c) STAY OF REMOVAL.—

1 (1) IN GENERAL.—The Secretary shall establish
2 procedures, by regulation, through which an alien,
3 who is subject to a final order of deportation, re-
4 moval, or exclusion, may seek a stay of such order
5 based upon the filing of an application under sub-
6 section (a).

7 (2) DURING CERTAIN PROCEEDINGS.—Notwith-
8 standing any provision of the Immigration and Na-
9 tionality Act (8 U.S.C. 1101 et seq.), the Secretary
10 shall not order an alien to be removed from the
11 United States if the alien is in exclusion, deporta-
12 tion, or removal proceedings under any provision of
13 such Act and has applied for adjustment of status
14 under subsection (a), unless the Secretary has made
15 a final determination to deny the application.

16 (3) WORK AUTHORIZATION.—

17 (A) IN GENERAL.—The Secretary may—

18 (i) authorize an alien who has applied
19 for adjustment of status under subsection
20 (a) to engage in employment in the United
21 States while a determination regarding
22 such application is pending; and

23 (ii) provide the alien with an employ-
24 ment authorized endorsement or other ap-

1 appropriate document signifying authoriza-
2 tion of employment.

3 (B) PENDING APPLICATIONS.—If an appli-
4 cation for adjustment of status under sub-
5 section (a) is pending for a period exceeding
6 180 days and has not been denied, the Sec-
7 retary shall authorize such employment.

8 (d) RECORD OF PERMANENT RESIDENCE.—Upon the
9 approval of an alien’s application for adjustment of status
10 under subsection (a), the Secretary shall establish a record
11 of the alien’s admission for permanent record as of the
12 date of the alien’s arrival in the United States.

13 (e) AVAILABILITY OF ADMINISTRATIVE REVIEW.—
14 The Secretary shall provide to applicants for adjustment
15 of status under subsection (a) the same right to, and pro-
16 cedures for, administrative review as are provided to—

17 (1) applicants for adjustment of status under
18 section 245 of the Immigration and Nationality Act
19 (8 U.S.C. 1255); and

20 (2) aliens subject to removal proceedings under
21 section 240 of such Act (8 U.S.C. 1229a).

22 (f) LIMITATION ON JUDICIAL REVIEW.—A deter-
23 mination by the Secretary regarding the adjustment of
24 status of any alien under this section is final and shall
25 not be subject to review by any court.

1 (g) NO OFFSET IN NUMBER OF VISAS AVAILABLE.—

2 If an alien is granted the status of having been lawfully
3 admitted for permanent residence pursuant to this section,
4 the Secretary of State shall not be required to reduce the
5 number of immigrant visas authorized to be issued under
6 any provision of the Immigration and Nationality Act (8
7 U.S.C. 1101 et seq.).

8 (h) APPLICATION OF IMMIGRATION AND NATION-
9 ALITY ACT PROVISIONS.—

10 (1) DEFINITIONS.—Except as otherwise specifi-
11 cally provided in this chapter, the definitions con-
12 tained in the Immigration and Nationality Act (8
13 U.S.C. 1101 et seq.) shall apply in this section.

14 (2) SAVINGS PROVISION.—Nothing in this chap-
15 ter may be construed to repeal, amend, alter, mod-
16 ify, effect, or restrict the powers, duties, function, or
17 authority of the Secretary in the administration and
18 enforcement of the Immigration and Nationality Act
19 or any other law relating to immigration, nationality,
20 or naturalization.

21 (i) EFFECT OF ELIGIBILITY FOR ADJUSTMENT OF
22 STATUS.—Eligibility to be granted the status of having
23 been lawfully admitted for permanent residence under this
24 section shall not preclude an alien from seeking any status

1 under any other provision of law for which the alien may
2 otherwise be eligible.

3 **PART III—STATE COURT INTERPRETER GRANT**
4 **PROGRAM**

5 **SEC. 381. FINDINGS.**

6 Congress finds that—

7 (1) the fair administration of justice depends on
8 the ability of all participants in a courtroom pro-
9 ceeding to understand that proceeding, regardless of
10 their English proficiency;

11 (2) 19 percent of the population of the United
12 States older than 5 years of age speaks a language
13 other than English at home;

14 (3) only qualified court interpreters can ensure
15 that persons with limited English proficiency com-
16 prehend judicial proceedings in which they are a
17 party;

18 (4) the knowledge and skills required of a quali-
19 fied court interpreter differ substantially from those
20 required in other interpretation settings, such as so-
21 cial service, medical, diplomatic, and conference in-
22 terpreting;

23 (5) the Federal Government has demonstrated
24 its commitment to equal administration of justice re-
25 gardless of English proficiency;

1 (6) regulations implementing title VI of the
2 Civil Rights Act of 1964 and the guidance issued by
3 the Department of Justice pursuant to Executive
4 Order 13166, issued August 11, 2000, clarify that
5 all recipients of Federal financial assistance, includ-
6 ing State courts, are required to take reasonable
7 steps to provide meaningful access to their pro-
8 ceedings for persons with limited English pro-
9 ficiency;

10 (7) 40 States have developed, or are developing,
11 qualified court interpreting programs;

12 (8) robust, effective court interpreter pro-
13 grams—

14 (A) actively recruit skilled individuals to be
15 court interpreters;

16 (B) train those individuals in the interpre-
17 tation of court proceedings;

18 (C) develop and use a thorough, systematic
19 certification process for court interpreters; and

20 (D) have sufficient funding to ensure that
21 a qualified interpreter will be available to the
22 court whenever necessary; and

23 (9) Federal funding is necessary to—

1 (A) encourage State courts that do not
2 have court interpreter programs to develop
3 them;

4 (B) assist State courts with nascent court
5 interpreter programs to implement them;

6 (C) assist State courts with limited court
7 interpreter programs to enhance them; and

8 (D) assist State courts with robust court
9 interpreter programs to make further improve-
10 ments and share successful programs with other
11 States.

12 **SEC. 382. STATE COURT INTERPRETER PROGRAM.**

13 (a) GRANTS AUTHORIZED.—

14 (1) IN GENERAL.—The Administrator of the
15 Office of Justice Programs of the Department of
16 Justice (referred to in this section as the “Adminis-
17 trator”) shall award grants, in accordance with such
18 regulations as the Attorney General may prescribe,
19 to State courts to develop and implement programs
20 to assist individuals with limited English proficiency
21 to access and understand State court proceedings in
22 which they are a party.

23 (2) TECHNICAL ASSISTANCE.—The Adminis-
24 trator shall allocate, for each fiscal year, \$500,000
25 of the amount appropriated pursuant to section 383,

1 which shall be used to establish a court interpreter
2 technical assistance program to assist State courts
3 receiving grants under this part.

4 (b) USE OF GRANTS.—Grants awarded under sub-
5 section (a) may be used by State courts to—

6 (1) assess regional language demands;

7 (2) develop a court interpreter program for the
8 State courts;

9 (3) develop, institute, and administer language
10 certification examinations;

11 (4) recruit, train, and certify qualified court in-
12 terpreters;

13 (5) pay for salaries, transportation, and tech-
14 nology necessary to implement the court interpreter
15 program developed under paragraph (2); and

16 (6) engage in other related activities, as pre-
17 scribed by the Attorney General.

18 (c) APPLICATION.—

19 (1) IN GENERAL.—The highest State court of
20 each State desiring a grant under this section shall
21 submit an application to the Administrator at such
22 time, in such manner, and accompanied by such in-
23 formation as the Administrator may reasonably re-
24 quire.

1 (2) STATE COURTS.—The highest State court
2 of each State submitting an application under para-
3 graph (1) shall include in the application—

4 (A) a demonstration of need for the devel-
5 opment, implementation, or expansion of a
6 State court interpreter program;

7 (B) an identification of each State court in
8 that State which would receive funds from the
9 grant;

10 (C) the amount of funds each State court
11 identified under subparagraph (B) would re-
12 ceive from the grant; and

13 (D) the procedures the highest State court
14 would use to directly distribute grant funds to
15 State courts identified under subparagraph (B).

16 (d) STATE COURT ALLOTMENTS.—

17 (1) BASE ALLOTMENT.—From amounts appro-
18 priated for each fiscal year pursuant to section 383,
19 the Administrator shall allocate \$100,000 to each of
20 the highest State court of each State, which has an
21 application approved under subsection (c).

22 (2) DISCRETIONARY ALLOTMENT.—From
23 amounts appropriated for each fiscal year pursuant
24 to section 383, the Administrator shall allocate
25 \$5,000,000 to be distributed among the highest

1 State courts of States which have an application ap-
2 proved under subsection (c), and that have extraor-
3 dinary needs that are required to be addressed in
4 order to develop, implement, or expand a State court
5 interpreter program.

6 (3) ADDITIONAL ALLOTMENT.—In addition to
7 the allocations made under paragraphs (1) and (2),
8 the Administrator shall allocate, to the highest State
9 court of each State whose application was approved
10 under subsection (c), an amount equal to the prod-
11 uct reached by multiplying—

12 (A) the unallocated balance of the amount
13 appropriated for each fiscal year pursuant to
14 section 383; and

15 (B) the ratio between the number of people
16 older than 5 years of age who speak a language
17 other than English at home in the State and
18 the number of people older than 5 years of age
19 who speak a language other than English at
20 home in all the States that receive an allocation
21 under paragraph (1), as those numbers are de-
22 termined by the Bureau of the Census.

23 (4) TREATMENT OF DISTRICT OF COLUMBIA.—

24 For purposes of this section—

1 (A) the District of Columbia shall be treat-
2 ed as a State; and

3 (B) the District of Columbia Court of Ap-
4 peals shall act as the highest State court for
5 the District of Columbia.

6 **SEC. 383. AUTHORIZATION OF APPROPRIATIONS.**

7 There are authorized to be appropriated \$15,000,000
8 for each of the fiscal years 2012 through 2016 to carry
9 out this part.

10 **PART IV—OTHER MATTERS**

11 **SEC. 391. ADJUSTMENT OF STATUS FOR CERTAIN VICTIMS**
12 **OF TERRORISM.**

13 (a) ADJUSTMENT OF STATUS.—The status of any
14 alien described in subsection (b) may be adjusted by the
15 Secretary to that of an alien lawfully admitted for perma-
16 nent residence, if the alien—

17 (1) applies for such adjustment not later than
18 1 year after the date of the enactment of this Act;

19 (2) is not inadmissible to the United States
20 under paragraph (2) or (3) of section 212(a) of the
21 Immigration and Nationality Act (8 U.S.C.
22 1182(a)), or deportable under paragraph (2) or (4)
23 of section 237(a) of such Act (8 U.S.C. 1227(a));
24 and

1 (3) not later than the date on which the appli-
2 cation under paragraph (1) is submitted, satisfies
3 any applicable Federal tax liability by establishing
4 that—

5 (A) no such tax liability exists; or

6 (B) all outstanding liabilities have been
7 paid.

8 (b) ALIENS ELIGIBLE FOR ADJUSTMENT OF STA-
9 TUS.—

10 (1) IN GENERAL.—The benefit provided under
11 subsection (a) shall apply to any alien who—

12 (A) was, on September 10, 2001, the
13 spouse, child, unmarried son, or unmarried
14 daughter of an alien who died as a direct result
15 of the terrorist activity conducted against the
16 United States on September 11, 2001;

17 (B) was deemed to be a beneficiary of, and
18 by, the September 11th Victim Compensation
19 Fund of 2001 (49 U.S.C. 40101); and

20 (C) made a proffer of information to the
21 Secretary between April 24, 2008, and August
22 15, 2008, in connection with a request for im-
23 migration relief.

24 (2) EXCEPTION.—An alien shall not be pro-
25 vided any benefit under this section if the Secretary

1 determines that the alien has willfully made a mate-
2 rial misrepresentation or material omission in the
3 proffer of information described in paragraph
4 (1)(C).

5 (c) WORK AUTHORIZATION.—The Secretary may au-
6 thorize an alien who has applied for adjustment of status
7 under subsection (a) to engage in employment in the
8 United States during the pendency of such application.

9 (d) CONSTRUCTION.—Nothing in this section shall be
10 construed to limit the existing authority of the Secretary
11 on the date of the enactment of this Act to require any
12 form or other submission of information or to perform any
13 background or security check for the purpose of deter-
14 mining the admissibility, or eligibility under this section,
15 of any alien.

16 (e) WAIVER OF REGULATIONS.—Not later than 6
17 months after the date of the enactment of this Act, the
18 Secretary shall issue guidance to carry out this section.
19 The Secretary shall not be required to promulgate regula-
20 tions before implementing this section.

21 (f) NO OFFSET IN NUMBER OF VISAS AVAILABLE.—
22 At the time an alien is granted the status of having been
23 lawfully admitted for permanent residence under this sec-
24 tion, the Secretary of State shall not be required to reduce
25 the number of immigrant visas authorized to be issued

1 under title II of the Immigration and Nationality Act (8
2 U.S.C. 1151 et seq.).

3 (g) DEFINITIONS.—

4 (1) APPLICABLE FEDERAL TAX LIABILITY DE-
5 FINED.—In this section, the term “applicable Fed-
6 eral tax liability” means liability for Federal taxes,
7 including penalties and interest, owed for any year
8 for which the statutory period for assessment of any
9 deficiency for such taxes has not expired.

10 (2) INCORPORATION BY REFERENCE.—Except
11 as otherwise specifically provided in this section, the
12 definitions used in the Immigration and Nationality
13 Act (8 U.S.C. 1101 et seq.) (excluding the defini-
14 tions applicable exclusively to title III of such Act)
15 shall apply in the administration of this section.

16 **SEC. 392. DEVELOPMENT OF ASSESSMENT AND STRATEGY**
17 **ADDRESSING FACTORS DRIVING MIGRATION.**

18 (a) DEVELOPMENT OF ASSESSMENT.—Not later than
19 6 months after the date of the enactment of this Act, the
20 Comptroller General of the United States shall submit a
21 report to Congress that contains a baseline assessment of
22 the primary factors driving migration in a prioritized
23 group of 10 countries with the highest rates of irregular
24 migration to the United States, including—

1 (1) factors driving migration in the prioritized
2 countries; and

3 (2) the impact of United States assistance,
4 trade, or foreign policy on migration trends in the
5 prioritized countries.

6 (b) STRATEGY TO ADDRESS FACTORS DRIVING IM-
7 MIGRATION.—The Secretary of State, working with the
8 Administrator of the United States Agency for Inter-
9 national Development, and in consultation with the Bu-
10 reau of Population, Refugees, and Migration of the De-
11 partment of State, the Department of Labor, and the Of-
12 fice of the United States Trade Representative, shall sub-
13 mit strategy to the Committee on Foreign Relations of the
14 Senate and the Committee on Foreign Affairs of the
15 House of Representatives for addressing the economic, so-
16 cial, and security factors driving high rates of irregular
17 migration from the prioritized countries, as identified by
18 the report submitted under subsection (a).

19 (c) ELEMENTS OF STRATEGY.—The strategy re-
20 quired under subsection (b) shall include—

21 (1) a summary and evaluation of current assist-
22 ance provided by the Government of the United
23 States to countries with the highest rates of irreg-
24 ular migration to the United States;

1 (2) an identification of the regions and munici-
2 palities experiencing the highest emigration rates
3 and the current level of United States aid or invest-
4 ment in these areas; and

5 (3) recommendations for future United States
6 Government assistance and technical support to ad-
7 dress key economic, social and development factors
8 identified in the prioritized migration source coun-
9 tries that are designed to ensure appropriate engage-
10 ment of national and local governments and civil so-
11 ciety organizations.

12 **SEC. 393. PRIORITIZATION OF MIGRATION SOURCE COUN-**
13 **TRIES BY THE UNITED STATES AGENCY FOR**
14 **INTERNATIONAL DEVELOPMENT.**

15 (a) IN GENERAL.—The Administrator of the United
16 States Agency for International Development shall expand
17 programming that prioritizes sustainable alternatives to
18 emigration and incorporates migration and development
19 programming to assist communities in the countries iden-
20 tified in the previous section, including—

21 (1) communities that currently experience, or
22 are projected to soon experience, high rates of popu-
23 lation loss due to international migration to the
24 United States;

1 (2) communities experiencing or at high risk of
2 trafficking in persons;

3 (3) communities that are receiving high rates of
4 returned or deported migrants from the United
5 States;

6 (4) communities affected by destabilizing levels
7 of generalized violence, or violence associated with
8 gang or drug related crimes; and

9 (5) communities that currently have developed
10 partnerships with migrant associations and federa-
11 tions based in the United States.

12 (b) INCREASED ASSISTANCE.—The Secretary of
13 State and the Administrator of the United States Agency
14 for International Development shall work with the Com-
15 mittee on Foreign Relations of the Senate, the Committee
16 on Appropriations of the Senate, the Committee on For-
17 eign Affairs of the House of Representatives, and the
18 Committee on Appropriations of the House of Representa-
19 tives to increase, beginning in fiscal year 2012, financial
20 assistance to the communities described in subsection (a)
21 with the goal of—

22 (1) alleviating rural poverty and revitalizing ag-
23 ricultural production by supporting investment in
24 rural development strategies, marketing support to
25 small farmers, small scale agroenterprise initiatives,

1 and expanded access to credit and micro-finance op-
2 portunities for small farmers, particularly in regions
3 of highest outmigration;

4 (2) fully funding micro-finance and micro-enter-
5 prise initiatives and ensure mechanisms for access to
6 rural credit and micro-insurance and target available
7 funding to traditionally marginalized groups and at-
8 risk populations, particularly youth and indigenous
9 populations;

10 (3) prioritizing income generation and livelihood
11 alternatives targeted to youth;

12 (4) supporting innovations and matching funds
13 for collective remittance investment and business de-
14 velopment through the establishment or expansion of
15 United States matching funds through United
16 States Agency for International Development for col-
17 lective remittance investment by migrant associa-
18 tions and federations in migrant sending municipali-
19 ties or regions; and

20 (5) recognizing that the highest rates of irreg-
21 ular migration are from Mexico and other Western
22 Hemisphere countries by dedicating particular atten-
23 tion to bilateral and multilateral efforts to reduce
24 the economic and social factors driving irregular mi-
25 gration in this region.

1 **SEC. 394. SENSE OF CONGRESS ON INCREASED UNITED**
2 **STATES FOREIGN POLICY COHERENCY IN**
3 **THE WESTERN HEMISPHERE.**

4 It is the sense of Congress that the Secretary of State
5 should review the United States foreign policy toward
6 Latin America in order to strengthen hemispheric security
7 through the reduction of poverty and inequality, expansion
8 of equitable trade, support for democratic institutions, cit-
9 izen security and the rule of law, as essential elements
10 in consolidation of a well-managed regional migration pol-
11 icy.

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