Purpose: In the nature of a substitute.

S. 744

~~Title:~~ To provide for comprehensive immigration reform and for other purposes.

Referred to the Committee on _____ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE INTENDED TO BE PROPOSED BY MR. SCHUMER (for himself, Mr. GRAHAM, Mr. DURBIN, and Mr. FLAKE)

Viz:

Strike all after the enacting clause and insert the following: ~~Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,~~

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title.—This Act may be cited as the "Border Security, Economic Opportunity, and Immigration Modernization Act".

(b) Table of Contents.—The table of contents for this Act is as follows:

Sec.1.Short title; table of contents.
Sec.2.Statement of congressional findings.
Sec.3.Effective date triggers.
Sec.4.Southern Border Security Commission.
Sec.5.Comprehensive Southern Border Security Strategy and Southern Border Fencing Strategy.
Sec.6.Comprehensive Immigration Reform Trust Fund.
Sec.7.Reference to the Immigration and Nationality Act.
Sec.8.Definitions.

TITLE I—BORDER SECURITY

Sec.1101.Definitions.

Sec.1102.Additional U.S. Customs and Border Protection officers.
Sec.1103.National Guard support to secure the Southern border.
Sec.1104.Enhancement of existing border security operations.
Sec.1105.Border security on certain Federal land.
Sec.1106.Equipment and technology.
Sec.1107.Access to emergency personnel.
Sec.1108.Southwest Border ~~region prosecution initiative~~ **Region Prosecution Initiative**.
Sec.1109.Interagency collaboration.
Sec.1110.SCAAP reauthorization.
Sec.1111.Use of force.
Sec.1112.Training for border security and immigration enforcement officers.
Sec.1113.Department of Homeland Security Border Oversight Task Force.
Sec.1114.Immigration ombudsman.
Sec.1115.Reports.
Sec.1116.Severability **and delegation**.

TITLE II—IMMIGRANT VISAS

Subtitle A—Registration and Adjustment of Registered Provisional Immigrants

Sec.2101.Registered provisional immigrant status.
Sec.2102.Adjustment of status of registered provisional immigrants.
Sec.2103.The DREAM Act.
Sec.2104.Additional requirements.
Sec.2105.Criminal penalty.
Sec.2106.Grant program to assist eligible applicants.
Sec.2107.Conforming amendments to the Social Security Act.
Sec.2108.Government contracting and acquisition of real property interest.
Sec.2109.Long-term legal residents of the Commonwealth of the Northern Mariana Islands.
Sec.2110.Rulemaking.
Sec.2111.Statutory construction.

Subtitle B—Agricultural Worker Program

Sec.2201.Short title.

Sec.2202.Definitions.

Chapter 1—Program for Earned Status Adjustment of Agricultural Workers

subchapter a—blue card status

Sec.2211.Requirements for blue card status.

Sec.2212.Adjustment to permanent resident status.

Sec.2213.Use of information.

Sec.2214.Reports on blue cards.

Sec.2215.Authorization of appropriations.

subchapter b—correction of social security records

Sec.2221.Correction of social security records.

Chapter 2—Nonimmigrant Agricultural Visa Program

Sec.2231.Nonimmigrant classification for nonimmigrant agricultural workers.

Sec.2232.Establishment of nonimmigrant agricultural worker program.

Sec.2233.Transition of H-2A ~~worker program~~ **Worker Program**.

Sec.2234.Reports to Congress on nonimmigrant agricultural workers.

Chapter 3—Other Provisions

Sec.2241.Rulemaking.

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Subtitle C—Future Immigration

Sec.2301.Merit-based points track one.

Sec.2302.Merit-based track two.

Sec.2303.Repeal of the diversity visa program.

Sec.2304.World-wide levels and recapture of unused immigrant visas.

Sec.2305.Reclassification of spouses and minor children of lawful permanent residents as immediate relatives.

Sec.2306.Numerical limitations on individual foreign states.

Sec.2307.Allocation of immigrant visas.

Sec.2308.V nonimmigrant visas.

Sec.2309.Fiance1e and fiance1 child status protection.

Sec.2310.Equal treatment for all stepchildren.

~~Sec.2311.International~~ **Sec.2311.Modification of** adoption ~~harmonization~~ **age requirements**.

Sec.2312.Relief for orphans, widows, and widowers.

Sec.2313.Discretionary authority with respect to removal, deportation**,** or inadmissibility of citizen and resident immediate family members.

Sec.2314.Waivers of inadmissibility.

Sec.2315.Continuous presence.

Sec.2316.Global health care cooperation.

Sec.2317.Extension and improvement of the Iraqi special immigrant visa program.

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Sec.2319.Elimination of sunsets for certain visa programs.

Subtitle D—Conrad State 30 and Physician Access

Sec.2401.Conrad State 30 Program.

Sec.2402.Retaining physicians who have practiced in medically underserved communities.

Sec.2403.Employment protections for physicians.

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Sec.2405.Amendments to the procedures, definitions, and other provisions related to physician immigration.

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Sec.3402.Refugee family protections.

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Sec.4221.General modification of procedures for investigation and disposition.

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Chapter 3—Other Protections

Sec.4231.Posting available positions through the Department of Labor.

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Sec.4702.Nonimmigrant classification for W nonimmigrants.

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Sec.4801.Nonimmigrant INVEST visas.

Sec.4802.INVEST immigrant visa.

Sec.4803.Administration and oversight.

SEC. 2. STATEMENT OF CONGRESSIONAL FINDINGS.

Congress makes the following findings:

(1) The passage of this Act recognizes that the primary tenets of its success depend on securing the sovereignty of the United States of America and establishing a coherent and just system for integrating those who seek to join American society.

(2) We have a right, and duty, to maintain and secure our borders, and to keep our country safe and prosperous. As a nation founded, built and sustained by immigrants we also have a responsibility to harness the power of that tradition in a balanced way that secures a more prosperous future for America.

(3) We have always welcomed newcomers to the United States and will continue to do so. But in order to qualify for the honor and privilege of eventual citizenship, our laws must be followed. The world depends on America to be strong — economically, militarily and ethically. The establishment of a stable, just and efficient immigration system only supports those goals. As a nation, we have the right and responsibility to make our borders safe, to establish clear and just rules for seeking citizenship, to control the flow of legal immigration, and to eliminate illegal immigration, which in some cases has become a threat to our national security.

(4) All parts of this Act are premised on the right and need of the United States to achieve these goals, and to protect its borders and maintain its sovereignty.

SEC. 3. EFFECTIVE DATE TRIGGERS.

(a) Definitions.—In this section:

(1) COMMISSION.—The term “Commission” means the Southern Border Security Commission established pursuant to section 4.

(2) COMPREHENSIVE SOUTHERN BORDER SECURITY STRATEGY.—The term “Comprehensive Southern Border Security Strategy” means the strategy established by the Secretary pursuant to section 5(a) to achieve and maintain an effectiveness rate of 90 percent or higher in all high risk border sectors.

(3) EFFECTIVE CONTROL.—The term “effective control” means the ability to achieve and maintain, in a Border Patrol sector—

(A) persistent surveillance; and

(B) an effectiveness rate of 90 percent or higher.

(4) EFFECTIVENESS RATE.—The "effectiveness rate", in the case of a border sector, is the percentage calculated by dividing the number of apprehensions and turn backs in the sector during a fiscal year by the total number of illegal entries in the sector during such fiscal year.

(5) HIGH RISK BORDER SECTOR.—The term "high risk border sector" means a border sector in which more than 30,000 individuals were apprehended during the most recent fiscal year.

(6) SOUTHERN BORDER.—The term "Southern border" means the international border between the United States and Mexico.

(7) SOUTHERN BORDER FENCING STRATEGY.—The term "Southern Border Fencing Strategy" means the strategy established by the Secretary pursuant to section 5(b) that identifies where fencing, including double-layer fencing, should be deployed along the Southern border.

(b) Border Security Goal.—The Department's border security goal is to achieve and maintain effective control in high risk border sectors along the Southern border.

(c) Triggers.—

(1) PROCESSING OF APPLICATIONS FOR REGISTERED PROVISIONAL IMMIGRANT STATUS.—Not earlier than the date upon which the Secretary has submitted to Congress the Notice of Commencement of implementation of the Comprehensive Southern Border Security Strategy and the Southern Border Fencing Strategy under section 5 of this Act, the Secretary may commence processing applications for registered provisional immigrant status pursuant to section 245B of the Immigration and Nationality Act, as added by section 2101 of this Act.

(2) ADJUSTMENT OF STATUS OF REGISTERED PROVISIONAL IMMIGRANTS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the Secretary may not adjust the status of aliens who have been granted registered provisional immigrant status, except for aliens granted ~~agriculture~~ **blue** card status under section 2201 of this Act or described in section 245D(b) of the Immigration and Nationality Act, until the Secretary, after consultation with the Comptroller General of the United States, submits to the President and Congress a written certification that—

(i) the Comprehensive Southern Border Security Strategy has been submitted to Congress and is substantially deployed and substantially operational;

(ii) the Southern Border Fencing Strategy has been submitted to Congress, implemented, and is substantially completed;

(iii) the Secretary has implemented ~~a~~ **the** mandatory employment verification system ~~to be used~~ **required by section 274A of the Immigration and Nationality Act (8 U.S.C. 1324a), as amended by section 3101, for use** by all employers to prevent unauthorized workers from obtaining employment in the United States; and

(iv) the Secretary is using an electronic exit system at air and sea ports of entry

that operates by collecting machine-readable visa or passport information from air and vessel carriers.

(B) EXCEPTION.—The Secretary shall permit registered provisional immigrants to apply for an adjustment to lawful permanent resident status if—

(i)(I) litigation or a force majeure has prevented ~~one~~ **1** or more of the conditions described in clauses (i) through (iv) of subparagraph (A) from being implemented; or

(II) the implementation of subparagraph (A) has been held unconstitutional by the Supreme Court of the United States or the Supreme Court has granted certiorari to the litigation on the constitutionality of implementation of subparagraph (A); and

(ii) 10 years have elapsed since the date of the enactment of this Act.

(d) Waiver of Legal Requirements Necessary for Improvement at Borders.—Notwithstanding any other provision of law, the Secretary is authorized to waive all legal requirements that the Secretary determines to be necessary to ensure expeditious construction of the barriers, roads, or other physical tactical infrastructure needed to fulfill the requirements under this section. Any determination by the Secretary under this section shall be effective upon publication in the Federal Register.

(e) Federal Court Review.—

(1) IN GENERAL.—The district courts of the United States shall have exclusive jurisdiction to hear all causes or claims arising from any action undertaken, or any decision made, by the Secretary under subsection (d). A cause of action or claim may only be brought alleging a violation of the Constitution of the United States. The court does not have jurisdiction to hear any claim not specified in this paragraph.

(2) TIME FOR FILING COMPLAINT.—If a cause or claim under paragraph (1) is not filed within 60 days after the date of the contested action or decision by the Secretary, the claim shall be barred.

(3) APPELLATE REVIEW.—An interlocutory or final judgment, decree, or order of the district court may be reviewed only upon petition for a writ of certiorari to the Supreme Court of the United States.

SEC. 4. SOUTHERN BORDER SECURITY COMMISSION.

(a) Establishment.—If **the** Secretary certifies that the Department has not achieved effective control in all high risk border sectors during any fiscal year beginning before the date that is 5 years after the date of the enactment of this Act, not later than 60 days after ~~the date of the~~ **such** certification**,** there shall be established a commission to be known as the "Southern Border Security Commission" (referred to in this section as the "Commission").

(b) Composition.—

(1) IN GENERAL.—The Commission shall be composed of—

(A) 2 members who shall be appointed by the President;

(B) 2 members who shall be appointed by the President pro tempore of the Senate, of which—

(i) 1 shall be appointed upon the recommendation of the leader in the Senate of the political party that is not the political party of the President; and

(ii) 1 shall be appointed upon the recommendation of the leader in the Senate of the other political party;

(C) 2 members who shall be appointed by the Speaker of the House of Representatives, of which—

(i) 1 shall be appointed upon the recommendation of the leader in the House of Representatives of the political party that is not the political party of the President; and

(ii) 1 shall be appointed upon the recommendation of the leader in the House of Representatives of the other political party; and

(D) 4 members, consisting of 1 member from each of the States along the Southern border, who shall be—

(i) the Governor of such State; or

(ii) appointed by the Governor of each such State.

(2) QUALIFICATION FOR APPOINTMENT.—Appointed members of the Commission shall be distinguished individuals noted for their knowledge and experience in the field of border security at the Federal, State, or local level.

(3) TIME OF APPOINTMENT.—The appointments required by paragraph (1) shall be made not later than 60 days after the Secretary makes a certification described in subsection (a).

(4) CHAIR.—At the first meeting of the Commission, a majority of the members of the Commission present and voting shall elect the Chair of the Commission.

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

(6) RULES.—The Commission shall establish the rules and procedures of the Commission which shall require the approval of at least 6 members of the Commission.

(c) Duties.—The Commission's primary responsibility shall be making recommendations to the President, the Secretary, and Congress on policies to achieve and maintain the border security goal specified in section 3(b) by achieving and maintaining—

(1) the capability to engage in, and to engage in, persistent surveillance in high risk border sectors along the Southern border; and

(2) an effectiveness rate of 90 percent or higher in all high risk border sectors along the Southern border.

(d) Report.—Not later than 180 days after the end of the 5-year period described in subsection (a), the Commission shall submit to the President, the Secretary, and Congress a report setting forth specific recommendations for policies for achieving and maintaining the border security goals specified in subsection (c). The report shall include, at a minimum, recommendations for

the personnel, infrastructure, technology, and other resources required to achieve and maintain an effectiveness rate of 90 percent or higher in all high risk border sectors.

(e) Travel Expenses.—Members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

(f) Administrative Support.—The Secretary shall provide the Commission such staff and administrative services as may be necessary and appropriate for the Commission to perform its functions. Any employee of the executive branch of Government may be detailed to the Commission without reimbursement to the agency of that employee and such detail shall be without interruption or loss of civil service or status or privilege.

(g) Comptroller General Review.—The Comptroller General of the United States shall review the recommendations in the report submitted under subsection (d) in order to determine—

(1) whether any of the recommendations are likely to achieve effective control in all high risk border sectors;

(2) which recommendations are most likely to achieve effective control; and

(3) whether such recommendations are feasible within existing budget constraints.

(h) Termination.—The Commission shall terminate 30 days after the date on which the report is submitted under subsection (d).

SEC. 5. COMPREHENSIVE SOUTHERN BORDER SECURITY STRATEGY AND SOUTHERN BORDER FENCING STRATEGY.

(a) Comprehensive Southern Border Security Strategy.—

(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Secretary shall submit a strategy, to be known as the "Comprehensive Southern Border Security Strategy", for achieving and maintaining effective control between the ports of entry in all high risk border sectors along the Southern border, to—

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

(B) the Committee on Homeland Security of the House of Representatives;

(C) the Committee on Appropriations of the Senate;

(D) the Committee on Appropriations of the House of Representatives; and

(E) the Comptroller General of the United States.

(2) ELEMENTS.—The Comprehensive Southern Border Security Strategy shall specify—

(A) the priorities that must be met for the strategy to be successfully executed;

(B) the capabilities that must be obtained to meet each of the priorities referred to in subparagraph (A), including—

(i) surveillance and detection capabilities developed or used by the Department

of Defense to increase situational awareness; and

(ii) the requirement for stationing sufficient Border Patrol agents and Customs and Border Protection officers ~~at and~~ between **and at** ports of entry along the Southern border; and

(C) the resources, including personnel, infrastructure, and technology that must be procured and successfully deployed to obtain the capabilities referred to in subparagraph (B), including—

(i) fixed, mobile, and agent portable surveillance systems; and

(ii) unarmed, unmanned aerial systems and unarmed, fixed-wing aircraft and necessary and qualified staff and equipment to fully utilize such systems.

(3) ADDITIONAL ELEMENTS REGARDING EXECUTION.—The Comprehensive Southern Border Security Strategy shall describe—

(A) how the resources referred to in paragraph (2)(C) will be properly aligned with the priorities referred to in paragraph (2)(A) to ensure that the strategy will be successfully executed;

(B) the interim goals that must be accomplished to successfully implement the strategy; and

(C) the schedule and supporting milestones under which the Department will accomplish the interim goals referred to in subparagraph (B).

(4) IMPLEMENTATION.—

(A) IN GENERAL.—The Secretary shall commence the implementation of the Comprehensive Southern Border Security Strategy immediately after submitting the strategy under paragraph (1).

(B) NOTICE OF COMMENCEMENT.—Upon commencing the implementation of the strategy, the Secretary shall submit a notice of commencement of such implementation to—

(i) Congress; and

(ii) the Comptroller General of the United States.

(5) SEMIANNUAL REPORTS.—

(A) IN GENERAL.—After the Comprehensive Southern Border Security Strategy is submitted under paragraph (1),the Secretary shall submit, not later than May 15 and November 15 of each year, a report on the status of the Department's implementation of the strategy to—

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

(ii) the Committee on Homeland Security of the House of Representatives;

(iii) the Committee on Appropriations of the Senate; and

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

(B) ELEMENTS.—Each report submitted under subparagraph (A) shall include—

(i) a detailed description of the steps the Department has taken, or plans to take, to execute the strategy submitted under paragraph (1), including the progress made toward achieving the interim goals and milestone schedule established pursuant to subparagraphs (B) and (C) of paragraph (3);

(ii) a detailed description of—

(I) any impediments identified in the Department's efforts to execute the strategy;

(II) the actions the Department has taken, or plans to take, to address such impediments; and

(III) any additional measures developed by the Department to measure the state of security along the Southern border; and

(iii) for each Border Patrol sector along the Southern border—

(I) the effectiveness rate for each individual Border Patrol sector and the aggregated effectiveness rate;

(II) the number of recidivist apprehensions, sorted by Border Patrol sector; and

(III) the recidivism rate for all unique subjects that received a criminal consequence through the Consequence Delivery System process.

(b) Southern Border Fencing Strategy.—

(1) ESTABLISHMENT.—Not later than 180 days after the date of the enactment of this Act, the Secretary shall establish a strategy, to be known as the "Southern Border Fencing Strategy", to identify where fencing, including double-layer fencing, infrastructure, and technology should be deployed along the Southern border.

(2) ~~SUBMITTAL.—THE~~ **SUBMISSION.—The** Secretary shall submit the Southern Border Fencing Strategy to Congress and the Comptroller General of the United States for review.

(3) NOTICE OF COMMENCEMENT.—Upon commencing the implementation of the Southern Border Fencing Strategy, the Secretary shall submit a notice of commencement of the implementation of the Strategy to Congress and the Comptroller General of the United States.

SEC. 6. COMPREHENSIVE IMMIGRATION REFORM TRUST FUND.

(a) Comprehensive Immigration Reform Trust Fund.—

(1) ESTABLISHMENT.—There is established in the Treasury a separate account, to be known as the Comprehensive Immigration Reform Trust Fund (referred to in this section as the "Trust Fund"), consisting of—

(A) amounts transferred from the general fund of the Treasury under paragraph (2)(A); and

(B) proceeds from the fees described in paragraph (2)(B).

(2) DEPOSITS.—

(A) INITIAL FUNDING.—On the later of the date of the enactment of this Act or October 1, 2013, $6,500,000,000 shall be transferred from the general fund of the Treasury to the Trust Fund.

(B) START-UP COSTS.—On the later of the date of the enactment of this Act or October 1, 2013, ~~$100,000,000~~ **$1,000,000,000** is hereby appropriated from the general fund of the Treasury, to remain available until September 30, 2015, to the Department **of Homeland Security and the Department of State** to pay for one-time and startup costs necessary to implement this Act, **including application processing activities by U.S. Citizenship and Immigration Services.**

(C) ONGOING FUNDING.—In addition to the funding described in subparagraph (A), the following amounts shall be deposited in the trust fund:

(i) ELECTRONIC TRAVEL AUTHORIZATION SYSTEM ~~FEES.—75 PERCENT OF THE FEES~~ **FEES.—Fees** collected under section 217(h)(3)(B)**(i)(II)** of the Immigration and Nationality Act~~(8 U.S.C. 1187(h)(3)).~~**, as added by section 1102(c).**

~~(ii) J1 visa mitigation fees.—Mitigation fees collected from employers who employ aliens described in section 101(a)(15)(J)~~**(ii) REGISTERED PROVISIONAL IMMIGRANT PENALTIES.—Penalties collected under section 245B(c)(10)(C)** of the Immigration and Nationality Act~~(8 U.S.C. 1101(a)(15)(J)) through the Summer Work Travel Program.~~**, as added by section 2101.**

~~(iii) H1B visa fees.—Fees collected from employers hiring nonimmigrants described in section 101(a)(15)(H)(i)(b)~~**(iii) BLUE CARD PENALTY.—Penalties collected under section 2211(b)(9)(C).**

(iv) FINE FOR ADJUSTMENT FROM BLUE CARD STATUS.—Fines collected under section 245F(a)(5) of the Immigration and Nationality Act~~(8 U.S.C. 1101(a)(15)(H)(i)(b)).~~**, as added by section 2212(a).**

~~(iv) L1 visa fees.—Fees~~**(v) PENALTIES FOR FALSE STATEMENTS IN APPLICATIONS.—Fines** collected under section ~~214(c)(12)~~ **245F(f)** of the Immigration and Nationality Act~~(8 U.S.C. 1184(c)(12) from employers hiring a nonimmigrant described in section 101(a)(15)(L) of such Act (8 U.S.C. 1101(a)(15)(L)).~~**, as added by section 2212(a).**

~~(v) H2B visa~~**(vi) MERIT SYSTEM GREEN CARD** FEES.—Fees collected ~~from employers hiring nonimmigrants described in section 101(a)(15)(H)(ii)(b)~~ **under section 203(c)(6)** of the Immigration and Nationality Act~~(8 U.S.C. 1101(a)(15)(H)(i i)(b)) in the amount of $500 under section 214~~**, as amended by section 2301(a)(2).**

(vii) H–1B AND L VISA FEES.—Fees collected under section 281(d) of the Immigration and Nationality Act~~(8 U.S.C. 1184).~~

~~(vi) F1 visa fees.—Fees collected for nonimmigrants admitted under section 101(a)(15)(F)(i) of the Immigration and Nationality Act (8 U.S.C.~~

~~1101(a)(15)(F)(i)) in the amount of $500 under section 214 of the Immigration and Nationality Act (8 U.S.C. 1184)~~

~~(vii) Visitor visa fees.—Amend Section 214 to add a $5 fee for visitor visas 101(a)(15)(B).~~

~~(viii) Merit system green card fees.—Include the fee charged in the document to get a "merit system" green card.~~

~~(ix) Other aliens.—An alien who is allocated a visa under section 211 shall pay a fee of $1,500.~~

~~(x) Penalty.—Penalties collected from applicants for provisional immigrant status under section 245B(c)(9)(C) of the Immigration and Nationality Act~~, as added by section ~~2101 of this Act~~ **4105**.

~~* 1 (xi) H-1b nonimmigrant dependent employer fees.—Fees collected under section 423(a)(2).~~

~~(xii)~~**(viii)** H–1B OUTPLACEMENT FEE.—Fees collected under section 212(n)(1)(F)(ii) of the Immigration and Nationality Act, as amended by section ~~4201(d).~~ **4211(d).**

~~(xiii) L~~**(ix) H-1B** NONIMMIGRANT DEPENDENT EMPLOYER FEES.—Fees collected under section ~~435(a)(2)~~ **4233(a)(2)**.

**** 1** ~~(xi) H-1b~~**(x) L** NONIMMIGRANT DEPENDENT EMPLOYER FEES.—Fees collected under section ~~423(a)(2)~~ **4305(a)(2)**.

~~(xiv) Retiree~~**(xi) J–1** VISA **MITIGATION** FEES.—Fees collected under section ~~101(a)(15)(Y)~~ **281(e)** of the Immigration and Nationality Act~~(8 U.S.C. 1101(a)(15)(Y)).~~**, as added by section 4407.**

~~(xv) Nonimmigrants performing maintenance on common carriers.—Fees collected under subsection (z) of section 214~~**(xii) F–1 VISA FEES.—Fees collected under section 281(f)** of the Immigration and Nationality Act~~(8 U.S.C. 1184),~~ **, as added by section 4408.**

(xiii) RETIREE VISA FEES.—Fees collected under section 214(w)(1)(B) of the Immigration and Nationality Act, as added by section 4504(b).

(xiv) VISITOR VISA FEES.—Fees collected under section 281(g) of the Immigration and Nationality Act, as added by section 4509.

(xv) H–2B VISA FEES.—Fees collected under section 214(x)(5)(A) of the Immigration and Nationality Act, as added by section 4602(a).

(xvi) NONIMMIGRANTS PERFORMING MAINTENANCE ON COMMON CARRIERS.—Fees collected under section 214(z) of the Immigration and Nationality Act, as added by section 4604.

(xvii) X–1 VISA FEES.—Fees collected under section 214(s)(6) of the Immigration and Nationality Act, as added by section 4801.

(3) USE OF FUNDS.—

(A) INITIAL FUNDING.—Of the amounts transferred to the Trust Fund pursuant to paragraph (2)(A)—

(i) $3,000,000,000 shall be made available to the Secretary, during the 5-year period beginning on the date of the enactment of this Act, to carry out the Comprehensive Southern Border Security Strategy;

(ii) $2,000,000,000 shall be made available to the Secretary, during the 10-year period beginning on the date of the enactment of this Act, to carry out programs, projects, and activities recommended by the Commission pursuant to section 4(c) to achieve and maintain the border security goal specified in section 3(b); and

(iii) $1,500,000,000 shall be made available to the Secretary, during the 5-year period beginning on the date of the enactment of this Act, to procure and deploy additional fencing in high-risk border sectors in accordance with the Southern Border Fencing Strategy established pursuant to section 5(b).

(B) ~~ONGOING FUNDING.—OF THE AMOUNTS~~ **REPAYMENT OF BORDER SECURITY ENHANCEMENT EXPENSES.—The first $7,500,000,000** deposited into the Trust Fund pursuant to paragraph ~~(2)(B)—~~**(2)(C) shall be transferred to the general fund of the Treasury and used for Federal budget deficit reduction.**

(C) ONGOING FUNDING.—After the transfer is made pursuant to subparagraph (B), amounts deposited into the Trust Fund pursuant to paragraph (2)(C) shall be made available, subject to the availability of funds, for the following purposes:

(i) $50,000,000 shall be available during each of the fiscal years 2014 through 2018 to carry out the activities described in section 1104(a)(1)~~; and~~**.**

(ii) $50,000,000 shall be available during each of the fiscal years 2014 through 2018 to carry out the activities described in section 1104(b).

(b) Limitation on Collection.—No fee described in paragraph (2)(B) may be collected under this Act except to the extent that the expenditure of the fee to pay the costs of activities and services for which the fee is imposed is provided for in advance in an appropriations Act.

(c) Receipts Collected as Offsetting Receipts.—Notwithstanding section 3302 of title 31, United States Code, any fee collected under this Act—

(1) shall be credited as offsetting collections to the Trust Fund;

(2) shall be available for expenditure only to pay the costs of activities and services authorized from the Trust Fund; and

(3) shall remain available until expended.

(d) Determination of Budgetary Effects.—

~~* 12 (1) Emergency designation for congressional enforcement.—In the Senate, amounts made available under this section are designated as an emergency requirement pursuant to section 403(a) of S. Con. Res. 13 (111th Congress), the concurrent resolution on the budget for fiscal year 2010.~~

~~* 13 (2) Emergency designation for statutory paygo.—Amounts made available under this section are designated as an emergency requirement under section 4(g) of the Statutory Pay-As-You-Go Act of 2010 (Public Law 111139; 2 U.S.C. 933(g)).~~

(1) EMERGENCY DESIGNATION FOR CONGRESSIONAL ENFORCEMENT.—In the Senate, amounts appropriated by or transferred to the general fund of the Treasury pursuant to this section are designated as an emergency requirement pursuant to section 403(a) of S. Con. Res. 13 (111th Congress), the concurrent resolution on the budget for fiscal year 2010.

(2) EMERGENCY DESIGNATION FOR STATUTORY PAYGO.—Amounts appropriated by or transferred to the general fund of the Treasury pursuant to this section are designated as an emergency requirement under section 4(g) of the Statutory Pay-As-You-Go Act of 2010 (Public Law 111–139; 2 U.S.C. 933(g)).

SEC. 7. REFERENCE TO THE IMMIGRATION AND NATIONALITY ACT.

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

SEC. 8. DEFINITIONS.

In this Act:

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

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

TITLE I—BORDER SECURITY

SEC. 1101. DEFINITIONS.

In this title:

(1) **NORTHERN BORDER.—The term "Northern border" means the international border between the United States and Canada.**

(2) RURAL, HIGH-TRAFFICKED AREAS.—The term "rural, high-trafficked areas" means rural areas through which drugs and undocumented aliens are routinely smuggled, as designated by the Commissioner of U.S. Customs and Border Protection.

~~(2)~~**(3)** SOUTHERN BORDER.—The term "Southern border" means the international border between the United States and Mexico.

~~(3)~~**(4)** SOUTHWEST BORDER REGION.—The term "Southwest border region" means the area in the United States that is within 100 miles of the Southern border.

SEC. 1102. ADDITIONAL U.S. CUSTOMS AND BORDER PROTECTION OFFICERS.

(a) In General.—Not later than September 30, 2017, the Secretary shall increase the number of trained U.S. Customs and Border Protection officers by 3,500, compared to the number of such officers as of the date of the enactment of this Act. The Secretary shall make progress in increasing such number of officers during each of the fiscal years 2014 through 2017.

(b) Construction.—Nothing in subsection (a) may be ~~interpreted~~ **construed** to preclude the Secretary from reassigning or stationing U.S. Customs and Border ~~protection officers and agents~~ **Protection Officers and U.S. Border Patrol Agents** from the Northern border to the Southern border.

(c) ~~Funding.—There are authorized to be appropriated, from~~ **Funding.—Section 217(h)(3)(B) (8 U.S.C. 1187(h)(3)(B)) is amended—**

(1) in clause (i)—

(A) by striking "No later than 6 months after the date of enactment of the Travel Promotion Act of 2009, the" and inserting "The";

(B) in subclause (I), by striking "and" at the end;

(C) by redesignating subclause (II) as subclause (III); and

(D) by inserting after subclause (I) the following:

"(II) $16 for border processing; and";

(2) in clause (ii), by striking "Amounts collected under clause (i)(II)" and inserting "Amounts collected under clause (i)(II) shall be deposited into the Comprehensive Immigration Reform Trust Fund established under section 6(a)(1)~~, such sums as may be necessary to carry out this section.~~ **of the Border Security, Economic Opportunity, and Immigration Modernization Act. Amounts collected under clause (i)(III)"; and**

(3) in striking clause (iii).

SEC. 1103. NATIONAL GUARD SUPPORT TO SECURE THE SOUTHERN BORDER.

(a) In General.—With the approval of the Secretary of Defense, the Governor of a State may order any units or personnel of the National Guard of such State to perform operations and missions under section 502(f) of title 32, United States Code, in the Southwest Border region for the purposes of assisting U.S. Customs and Border Protection in securing the Southern border.

(b) Assignment of Operations and Missions.—

(1) IN GENERAL.—National Guard units and personnel deployed under subsection (a) may be assigned such operations and missions specified in subsection (c) as may be necessary to secure the Southern border.

(2) NATURE OF DUTY.—The duty of National Guard personnel performing operations and missions described in paragraph (1) shall be full-time duty under title 32, United States Code.

(c) Range of Operations and Missions.—The operations and missions assigned under subsection (b) shall include the temporary authority—

(1) to construct fencing, including double-layer and triple-layer fencing;

(2) to increase ground-based mobile surveillance systems;

(3) to deploy additional unmanned aerial systems and manned aircraft sufficient to maintain continuous surveillance of the Southern Border;

(4) to deploy and provide capability for radio communications interoperability between U.S. Customs and Border Protection and State, local, and tribal law enforcement agencies;

(5) to construct checkpoints along the Southern border to bridge the gap to long-term permanent checkpoints; and

(6) to provide assistance to U.S. Customs and Border Protection, particularly in rural, high-trafficked areas, as designated by the Commissioner of U.S. Customs and Border Protection.

(d) Materiel and Logistical Support.—The Secretary of Defense shall deploy such materiel and equipment and logistical support as may be necessary to ensure success of the operations and missions conducted by the National Guard under this section.

(e) Exclusion From National Guard Personnel Strength Limitations.—National Guard personnel deployed under subsection (a) shall not be included in—

(1) the calculation to determine compliance with limits on end strength for National Guard personnel; or

(2) limits on the number of National Guard personnel that may be placed on active duty for operational support under section 115 of title 10, United States Code.

SEC. 1104. ENHANCEMENT OF EXISTING BORDER SECURITY OPERATIONS.

(a) Border Crossing Prosecutions.—

(1) IN ~~GENERAL.—THE SECRETARY, ACTING THROUGH THE COMMISSIONER, U.S. CUSTOMS AND BORDER PROTECTION, SHALL—~~ **GENERAL.—From the amounts made available pursuant to the appropriations in paragraph (3), funds shall be made available—**

~~(A)~~ **(A) to** increase the number of border crossing prosecutions in the Tucson Sector of the Southwest Border region to up to 210 prosecutions per day ~~by~~ **through** increasing ~~the~~ funding available for—

(i) attorneys and administrative support staff in the Tucson United States Attorney Office;

(ii) support staff and interpreters in the Tucson Court Clerks Office;

(iii) pre-trial services;

(iv) activities of the Tucson Federal Public Defenders Office; and

(v) additional ~~marshals~~ **personnel, including Deputy U.S. Marshals** in the Tucson United States Marshals Office to perform intake, coordination, transportation, and court security; and

(B) reimburse **Federal,** State, local, and tribal law enforcement agencies for any detention costs related to the border crossing prosecutions carried out pursuant to subparagraph (A).

(2) ADDITIONAL MAGISTRATE JUDGES TO ASSIST WITH INCREASED CASELOAD.—The chief judge of the United States District Court for the District of Arizona is authorized to appoint additional full-time magistrate judges, who, consistent with the Constitution and laws of the United States, shall have the authority to hear cases and controversies in the judicial district in which the respective judges are appointed.

(3) FUNDING.—There are authorized to be appropriated, from the Comprehensive Immigration Reform Trust Fund established under section 6(a)(1), such sums as may be necessary to carry out this subsection.

(b) Operation Stonegarden.—

(1) IN GENERAL.—The Federal Emergency Management Agency shall enhance law enforcement preparedness and operational readiness along the borders of the United States through Operation Stonegarden. The amounts available under this paragraph are in addition to any other amounts otherwise made available for Operation Stonegarden. Not less than 90 percent of the amounts made available under section 5(a)(3)(B)(ii) shall be allocated for grants and reimbursements to law enforcement agencies in the States in the Southwest Border region for personnel, overtime, travel, and other costs related to **combating** illegal immigration and drug smuggling in the Southwest Border region.

(2) FUNDING.—There are authorized to be appropriated, from the amounts made available under section 6(a)(3)(A)(i), such sums as may be necessary to carry out this subsection.

(c) Infrastructure Improvements.—

(1) BORDER PATROL STATIONS.—The Secretary shall—

(A) construct additional Border Patrol stations in the Southwest Border region that U.S. Border Patrol determines are needed to provide full operational support in rural, high-trafficked areas; and

(B) analyze the feasibility of creating additional Border Patrol sectors along the Southern border to interrupt drug trafficking operations.

(2) FORWARD OPERATING BASES.—The Secretary shall enhance the security of the Southwest Border region by—

(A) establishing additional permanent forward operating bases for the **U.S.** Border Patrol, as needed;

(B) upgrading the existing forward operating bases to include modular buildings, electricity, and potable water; and

(C) ensuring that forward operating bases surveil and interdict individuals entering the United States unlawfully immediately after such individuals cross the Southern

border.

(3) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for each of fiscal years 2014 through 2018 such sums as may be necessary to carry out this subsection.

SEC. 1105. BORDER SECURITY ON CERTAIN FEDERAL LAND.

(a) Definitions.—In this section:

(1) FEDERAL LANDS.—The term "Federal lands" includes all land under the control of the Secretary concerned that is located within the Southwest border region in the State of Arizona along the international border between the United States and Mexico.

(2) SECRETARY CONCERNED.—The term "Secretary concerned" means—

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

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

(b) Support for Border Security Needs.—To achieve effective control of Federal lands—

(1) the Secretary concerned, notwithstanding any other provision of law, shall authorize and provide U.S. Customs and Border Protection personnel with immediate access to Federal lands for security activities, including—

(A) routine motorized patrols; and

(B) the deployment of communications, surveillance, and detection equipment;

(2) the security activities described in paragraph (1) shall be conducted, to the maximum extent practicable, in a manner that the Secretary determines will best protect the natural and cultural resources on Federal lands; and

(3) the Secretary concerned may provide education and training to U.S. Customs and Border Protection **personnel** on the natural and cultural resources present on individual Federal land units.

(c) Programmatic Environmental Impact Statement.—

(1) IN GENERAL.—After implementing subsection (b), the Secretary, in consultation with the Secretaries concerned, shall prepare and publish in the Federal Register a notice of intent to prepare a programmatic environmental impact statement in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) to analyze the impacts of the activities described in subsection (b).

(2) EFFECT ON PROCESSING APPLICATION AND SPECIAL USE PERMITS.—The pending completion of a programmatic environmental impact statement under this section shall not result in any delay in the processing or approving of applications or special use permits by the Secretaries concerned for the activities described in subsection (b).

(3) AMENDMENT OF LAND USE PLANS.—The Secretaries concerned shall amend any land

use plans, as appropriate, upon completion of the programmatic environmental impact statement described in subsection (b).

(4) SCOPE OF PROGRAMMATIC ENVIRONMENTAL IMPACT STATEMENT.—The programmatic environmental impact statement described in paragraph (1)—

(A) may be used to advise the Secretary on the impact on natural and cultural resources on Federal lands; and

(B) shall not control, delay, or restrict actions by the Secretary to achieve effective control on Federal lands.

(d) Intermingled State and Private Land.—This section shall not apply to any private or State-owned land within the boundaries of Federal lands.

SEC. 1106. EQUIPMENT AND TECHNOLOGY.

(a) Enhancements.—The Commissioner of U.S. Customs and Border Protection, working through U.S. Border Patrol, shall—

(1) deploy additional mobile, video, and agent-portable surveillance systems, and **unarmed,** unmanned aerial vehicles in the Southwest Border region as necessary to provide 24-hour operation and surveillance;

(2) operate unarmed unmanned aerial vehicles along the Southern border for 24 hours per day and for 7 days per week;

(3) deploy unarmed additional fixed-wing aircraft and helicopters along the Southern border;

(4) acquire new rotocraft and make upgrades to the existing helicopter fleet; and

(5) increase horse patrols in the Southwest Border region.

(b) Authorization of Appropriations.—In addition to amounts otherwise authorized to be appropriated, there is authorized to be appropriated to U.S. Customs and Border Protection such sums as may be necessary to carry out subsection (a) during fiscal years 2014 through 2018.

SEC. 1107. ACCESS TO EMERGENCY PERSONNEL.

(a) Southwest Border Region Emergency Communications Grants.—

(1) IN GENERAL.—The Secretary, in consultation with the governors of the States in the Southwest Border region, shall establish a 2-year grant program, to be administered by the Secretary, to improve emergency communications in the Southwest Border region.

(2) ELIGIBILITY FOR GRANTS.—An individual is eligible to receive a grant under this subsection if the individual demonstrates that he or she—

(A) regularly resides or works in the Southwest Border region;

(B) is at greater risk of border violence due to the lack of cellular service at his or her residence or business and his or her proximity to the Southern border.

(3) USE OF GRANTS.—Grants awarded under this subsection may be used to purchase satellite telephone communications systems and service that—

(A) can provide access to 9–1–1 service; and

(B) are equipped with global positioning systems.

(4) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated such sums as may be necessary to carry out the grant program established under this subsection.

(b) Interoperable Communications for Law Enforcement.—

(1) FEDERAL LAW ENFORCEMENT.—There are authorized to be appropriated, to the Department, the Department of Justice, and the Department of the Interior, during the 5-year period beginning on the date of the enactment of this Act, such sums as may be necessary—

(A) to purchase, through a competitive procurement process, P25-compliant radios, which may include a multi-band option, for Federal law enforcement agents working in the Southwest Border region in support of the activities of U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement, including law enforcement agents of the Drug Enforcement Administration, the Bureau of Alcohol, Tobacco, Firearms and Explosives, the Department of the Interior, and the Forest Service; and

(B) to upgrade, through a competitive procurement process, the communications network of the Department of Justice to ensure coverage and capacity, particularly when immediate access is needed in times of crisis, in the Southwest Border region for appropriate law enforcement personnel of the Department of Justice (including the Drug Enforcement Administration and the Bureau of Alcohol, Tobacco, Firearms and Explosives), the Department (including U.S. Immigration and Customs Enforcement and U.S. Customs and Border Protection), the United States Marshals Service, other Federal agencies, the State of Arizona, tribes, and local governments.

(2) STATE AND LOCAL LAW ENFORCEMENT.—

(A) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Department of Justice, during the 5-year period beginning on the date of the enactment of this Act, such sums as may be necessary to purchase, through a competitive procurement process, P25-compliant radios, which may include a multi-band option, for State and local law enforcement agents working in the Southwest Border region.

(B) ACCESS TO FEDERAL SPECTRUM.—If a State, tribal, or local law enforcement agency in the Southwest Border region experiences an emergency situation that necessitates immediate communication with the Department of Justice, the Department, the Department of the Interior, or any of their respective subagencies, such law enforcement agency shall have access to the spectrum assigned to such Federal agency for the duration of such emergency situation.

SEC. 1108. SOUTHWEST BORDER REGION PROSECUTION INITIATIVE.

(a) Reimbursement to State and Local Prosecutors for Federally Initiated Criminal Cases.—The Attorney General shall reimburse State, county, tribal, and municipal governments for costs

associated with the prosecution and pre-trial detention of Federally initiated **immigration-related** criminal cases declined by local offices of the United States Attorneys.

(b) Authorization of Appropriations.—There is authorized to be appropriated such sums as may be necessary to carry out subsection (a) during fiscal years 2014 through 2018 .

SEC. 1109. INTERAGENCY COLLABORATION.

The Assistant Secretary of Defense for Research and Engineering shall collaborate with the Under Secretary of Homeland Security for Science and Technology to identify equipment and technology used by the Department of Defense that could be used by U.S. Customs and Border Protection to improve the security of the Southern border by—

(1) detecting border tunnels;

(2) detecting the use of ultralight aircraft;

(3) enhancing wide aerial surveillance; and

(4) otherwise improving the enforcement of such border.

SEC. 1110. SCAAP REAUTHORIZATION.

Section 241(i)(5)(C) (8 U.S.C. 1231(i)(5)) is amended by striking “2011” and inserting “2015”.

SEC. 1111. USE OF FORCE.

Not later than 180 days after the date of the enactment of this Act, the Secretary, in consultation with the Assistant Attorney General for the Civil Rights Division of the Department of Justice, shall issue policies governing the use of force by all Department personnel that—

(1) require all Department personnel to report each use of force; and

(2) establish procedures for—

(A) accepting and investigating complaints regarding the use of force by Department personnel;

(B) disciplining Department personnel who violate any law or Department policy relating to the use of force; and

(C) reviewing all uses of force by Department personnel to determine whether the use of force—

(i) complied with Department policy; or

(ii) demonstrates the need for changes in policy, training, or equipment.

SEC. 1112. TRAINING FOR BORDER SECURITY AND IMMIGRATION ENFORCEMENT OFFICERS.

(a) In General.—The Secretary shall ensure that U.S. Customs and Border Protection officers, U.S. Border Patrol ~~officers~~ **agents**, U.S. Immigration and Customs Enforcement **officers and agents, United States Air and Marine Division** agents, and agriculture specialists stationed

within 100 miles of any land or marine border of the United States or at any United States port of entry receive appropriate training, which shall be prepared in collaboration with the Assistant Attorney General for the Civil Rights Division of the Department of Justice, in—

(1) identifying and detecting fraudulent travel documents;

(2) civil, constitutional, human, and privacy rights of individuals;

(3) the scope of enforcement authorities, including interrogations, stops, searches, seizures, arrests, and detentions;

(4) the use of force policies issued by the Secretary pursuant to section 1111;

(5) immigration laws, including screening, identifying, and addressing vulnerable populations, such as children, victims of crime and human trafficking, and individuals fleeing persecution or torture;

(6) social and cultural sensitivity toward border communities;

(7) the impact of border operations on communities; and

(8) any particular environmental concerns in a particular area.

(b) Training for Border Community Liaison Officers.—The Secretary shall ensure that border communities liaison officers in Border Patrol sectors along the international borders between the United States and Mexico and between the United States and Canada receive training to better—

(1) act as a liaison between border communities and the Office for Civil Rights and Civil Liberties of the Department and the Civil Rights Division of the Department of Justice;

(2) foster and institutionalize consultation with border communities;

(3) consult with border communities on Department programs, policies, strategies, and directives; and

(4) receive Department performance assessments from border communities.

SEC. 1113. DEPARTMENT OF HOMELAND SECURITY BORDER OVERSIGHT TASK FORCE.

(a) Establishment.—

(1) IN GENERAL.—There is established an independent task force, which shall be known as the Department of Homeland Security Border Oversight Task Force (referred to in this section as the "DHS Task Force").

(2) DUTIES.—The DHS Task Force shall—

(A) review and make recommendations regarding immigration and border enforcement policies, strategies, and programs that take into consideration their impact on border communities;

(B) recommend ways in which the Border Communities Liaison Offices can strengthen relations and collaboration between communities in the border regions and the Department, the Department of Justice, and other Federal agencies that carry out such policies, strategies, and programs;

(C) evaluate how the policies, strategies, and programs of Federal agencies operating along the international borders between the United States and Mexico and between the United States and Canada protect the due process, civil, and human rights of border residents, visitors, and migrants at and near such borders; and

(D) evaluate and make recommendations regarding the training of border enforcement personnel described in section 1112.

(3) MEMBERSHIP.—

(A) IN GENERAL.—The DHS Task Force shall be composed of 26 members, appointed by the President, who have expertise in migration, local crime indices, civil and human rights, community relations, cross-border trade and commerce, quality of life indicators, or other pertinent experience, of whom—

(i) 11 members shall be from the Northern border region and shall include—

(I) 2 local government elected officials;

(II) 2 local law enforcement official;

(III) 2 civil rights advocates;

(IV) 1 business representative;

(V) 1 higher education representative;

(VI) 1 representative of a faith community; and

(VII) 2 representatives of U.S. Border Patrol; and

(ii) 15 members shall be from the Southern border region and include—

(I) 3 local government elected officials;

(II) 3 local law enforcement officials;

(III) 3 civil rights advocates;

(IV) 2 business representatives;

(V) 1 higher education representative;

(VI) 1 representative of a faith community; and

(VII) 2 representatives of U.S. Border Patrol.

(B) ~~Nongovernmental appointees.—Individuals appointed as members of the DHS Task Force may not be employed by the Federal Government.~~

~~(C)~~ TERM OF SERVICE.—Members of the Task Force shall be appointed for the shorter of—

(i) 3 years; or

(ii) the life of the DHS Task Force.

~~(D)~~**(C)** CHAIR, VICE CHAIR.—The members of the DHS Task Force shall elect a Chair and a Vice Chair from among its members, who shall serve in such capacities for the life of the DHS Task Force or until removed by the majority vote of at least 14

members.

(b) Operations.—

(1) HEARINGS.—The DHS Task Force may, for the purpose of carrying out its duties, hold hearings, sit and act, take testimony, receive evidence, and administer oaths.

(2) RECOMMENDATIONS.—The DHS Task Force may make findings or recommendations to the Secretary related to the duties described in subsection (a)(2).

(3) RESPONSE.—Not later than 180 days after receiving the findings and recommendations from the DHS Task Force under paragraph (2), the Secretary shall issue a response that describes how the Department has addressed, or will address, such findings and recommendations. **If the Secretary disagrees with any finding of the DHS Task Force, the Secretary shall provide an explanation for the disagreement.**

(4) INFORMATION FROM FEDERAL AGENCIES.—The Chair, or 16 members of the DHS Task Force, may request statistics relating to the duties described in subsection (a)(2) directly from any Federal agency, which shall, to the extent authorized by law, furnish such information, suggestions, estimates, and statistics directly to the DHS Task Force.

(5) COMPENSATION.—Members of the DHS Task Force shall serve without pay, but shall be reimbursed for reasonable travel and subsistence expenses incurred in the performance of their duties.

(c) Report.—Not later than 2 years after its first meeting, the DHS Task Force shall submit a final report to the President, Congress, and the Secretary that contains—

(1) findings with respect to the duties of the DHS Task Force; and

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

(A) a recommendation as to whether the DHS Task Force should continue to operate; and

(B) a description of any duties the DHS Task Force should be responsible for after the termination date described in subsection (e).

(d) Authorization of Appropriations.—There are authorized to be appropriated such sums as may be necessary to carry out this section for each of the fiscal years 2014 through 2017.

(e) Sunset.—The DHS Task Force shall terminate operations 60 days after the date on which the DHS Task Force submits the report described in subsection (c).

SEC. 1114. IMMIGRATION OMBUDSMAN.

(a) In General.—Section 452 of the Homeland Security Act (6 U.S.C. 272) is amended—

(1) by amending the section heading to read as follows:

"SEC. 452. DEPARTMENT OF HOMELAND SECURITY IMMIGRATION OMBUDSMAN.";

(2) in subsection (a), by striking "Citizenship and Immigration Services Ombudsman"

and inserting "DHS Immigration Ombudsman";

(3) in subsection (c)(2), by striking "Director of the Bureau of Citizenship and Immigration Services" and inserting "Director, U.S. Citizenship and Immigration Services, the Assistant Secretary, U.S. Immigration and Customs Enforcement, the Commissioner, U.S. Customs and Border Protection";

(4) in subsections (d)(4) and (f), by striking "Director of the Bureau of Citizenship and Immigration Services" each place such term appears and inserting "Director, U.S. Citizenship and Immigration Services, the Assistant Secretary, U.S. Immigration and Customs Enforcement, and the Commissioner, U.S. Customs and Border Protection";

(5) in subsection (f), by striking "director" each place such term appears and inserting "official"; and

(6) by striking "the Bureau of Citizenship and Immigration Services" each place it appears and inserting "U.S. Citizenship and Immigration Services, U.S. Immigration and Customs Enforcement, or U.S. Customs and Border Protection".

(b) Clerical Amendment.—The table of contents in section 1 of the Homeland Security Act (6 U.S.C. 101 et seq.) is amended by striking the item relating to section 452 and inserting the following:

"Sec.452.Department of Homeland Security Immigration Ombudsman.".

SEC. 1115. REPORTS.

(a) Report on Certain Border Matters.—The Secretary shall submit a report to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Homeland Security of the House of Representatives that sets forth—

(1) the effectiveness rate (as defined in section 2(a)(4)) for each Border Patrol sector along the Northern border and the Southern border;

(2) the number of miles along the Southern border that is under persistent surveillance;

(3) the monthly wait times per passenger, including data on averages and peaks, for crossing the Southern border, and the staffing of such border crossings; and

(4) the allocations at each port of entry along the Southern border.

(b) Report on Interagency Collaboration.—The Under Secretary of Defense for Acquisition, Technology, and Logistics and the Under Secretary of Homeland Security for Science and Technology shall jointly submit a report on the results of the interagency collaboration under section 1109 to—

(1) the Committee on Armed Services of the Senate;

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

(3) the Committee on Armed Services of the House of Representatives; and

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

SEC. 1116. SEVERABILITY **AND DELEGATION.**

(a) Severability.—If~~.~~

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

(b) Delegation.—The Secretary may delegate any authority provided to the Secretary under this Act or an amendment made by this Act to the Secretary of Agriculture, the Attorney General, the Secretary of Defense, the Secretary of Health and Human Services, the Secretary of State, or the Commissioner of Social Security.

TITLE II—IMMIGRANT VISAS

Subtitle A—Registration and Adjustment of Registered Provisional Immigrants

SEC. 2101. REGISTERED PROVISIONAL IMMIGRANT STATUS.

(a) Authorization.—Chapter 5 of title II (8 U.S.C. 1255 et seq.) is amended by inserting after section 245A the following:

"SEC. 245B. ADJUSTMENT OF STATUS OF ELIGIBLE ENTRANTS BEFORE DECEMBER 31, 2011, TO THAT OF REGISTERED PROVISIONAL IMMIGRANT.

"(a) In General.—Notwithstanding any other provision of law, the Secretary of Homeland Security (referred to in this section **and in sections 245C through 245F** as the 'Secretary'), after conducting the national security and law enforcement clearances required under subsection (c)(8), may grant registered provisional immigrant status to an alien who—

"(1) meets the eligibility requirements set forth in subsection (b);

"(2) submits a completed application before the end of the period set forth in subsection (c)(3); and

"(3) has paid the fee required under subsection (c)(10)(A) and the penalty required under subsection (c)(10)(C), if applicable.

"(b) Eligibility Requirements.—

"(1) IN GENERAL.—An alien is not eligible for registered provisional immigrant status unless the alien establishes, by a preponderance of the evidence, that the alien meets the requirements set forth in this subsection.

"(2) PHYSICAL PRESENCE.—

"(A) IN GENERAL.—The alien—

"(i) shall be physically present in the United States on the date on which the alien submits an application for registered provisional immigrant status;

"(ii) shall have been physically present in the United States on or before December 31, 2011; and

"(iii) shall have maintained continuous physical presence in the United States from December 31, 2011, until the date on which the alien is granted status as a registered provisional immigrant under this section.

"(B) BREAK IN PHYSICAL PRESENCE.—

"(i) IN GENERAL.—Except as provided in clause (ii), an alien who is absent from the United States without authorization after the date of the enactment of this section does not meet the continuous physical presence requirement set forth in subparagraph (A)(iii).

"(ii) EXCEPTION.—An alien who departed from the United States after December 31, 2011 will not be considered to have failed to maintain continuous presence in the United States if the alien's absences from the United States are brief, casual, and innocent whether or not such absences were authorized by the Secretary.

"(3) GROUNDS FOR INELIGIBILITY.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), an alien is ineligible for registered provisional immigrant status if the Secretary determines that the alien—

"(i) has a conviction for—

"(I) an offense classified as a felony in the convicting jurisdiction (other than a State or local offense for which an essential element was the alien's immigration status**,** or a violation of this Act);

"(II) an aggravated felony (as defined in section 101(a)(43) at the time of the conviction);

"(III) 3 or more misdemeanor offenses (other than minor traffic offenses or State or local offenses for which an essential element was the alien's immigration status**,** or a violation of this Act) if the alien was convicted on different dates for each of the 3 offenses;

"(IV) any offense under foreign law, except for a purely political offense, which, if the offense had been committed in the United States, would render the alien inadmissible under section 212(a) (excluding the paragraphs set forth in clause (ii)) or removable under section 237(a), except as provided in paragraph (3) of section 237(a);

"(V) unlawful voting (as defined in section 237(a)(6));

"(ii) is ~~admissible~~ **inadmissible** under section 212(a), except that in determining an alien's ~~admissibility—~~ **inadmissibility—**

"(I) paragraphs (4), (5), (7), and (9)(B) of section 212(a) shall not apply;

"(II) subparagraphs (A), (C), (D), (F), and (G) of section 212(a)(6) and paragraphs (9)(C) and (10)(B) of section 212(a) shall not apply unless based on the act of unlawfully entering the United States after the date of the

enactment of the Border Security, Economic Opportunity, and Immigration Modernization Act; and

"(III) paragraphs (6)(B) and (9)(A) of section 212(a) shall not apply unless the relevant conduct began on or after the date on which the alien files an application for registered provisional immigrant status under this section;

"(iii) **is an alien who** the Secretary knows or has reasonable grounds to believe, is engaged in or is likely to engage after entry in any terrorist activity (as defined in section 212(a)(3)(B)(iv)); or

"(iv) was, on the date on which this Act was introduced in the Senate—

"(I) an alien lawfully admitted for permanent residence;

"(II) an alien admitted as a refugee under section 207 or granted asylum under section 208; or

"(III) an alien who, according to the records of the Secretary or the Secretary of State, is lawfully present in the United States in any nonimmigrant status (other than an alien considered to be a nonimmigrant solely due to the application of section 244(f)(4) or the amendment made by section 702 of the Consolidated Natural Resources Act of 2008 (Public Law 110–229)), notwithstanding any unauthorized employment or other violation of nonimmigrant status.

"(B) WAIVER.—

"(i) IN GENERAL.—The Secretary may waive the application of subparagraph (A)(i)(III) or any provision of section 212(a) that is not listed in clause (ii) on behalf of an alien for humanitarian purposes, to ensure family unity, or if such a waiver is otherwise in the public interest. Any discretionary authority to waive grounds of inadmissibility under section 212(a) conferred under any other provision of this Act shall apply equally to aliens seeking registered provisional status under this section.

"(ii) EXCEPTIONS.—The discretionary authority under clause (i) may not be used to waive—

"(I) subparagraph (B), (C), (D)(ii), (E), (G), (H), or (I) of section 212(a)(2);

"(II) section 212(a)(3);

"(III) subparagraph (A), (C), (D), or (E) of section 212(a)(10); or

"(IV) with respect to misrepresentations relating to the application for registered provisional immigrant status, section 212(a)(6)(C)(i).

"(C) CONVICTION EXPLAINED.—For purposes of this paragraph, the term 'conviction' does not include a judgment that has been expunged, set aside, or the equivalent.

"(D) RULE OF CONSTRUCTION.—Nothing in this paragraph may be construed to require the Secretary to commence removal proceedings against an alien.

"(4) APPLICABILITY OF OTHER PROVISIONS.—Sections 208(d)(6) and 240B(d) shall not apply to any alien filing an application for registered provisional immigrant status under this section.

"(5) DEPENDENT SPOUSE AND CHILDREN.—

"(A) IN GENERAL.—Notwithstanding any other provision of law, the Secretary ~~shall~~ **may** classify the spouse or child of a registered provisional immigrant as a registered provisional immigrant dependent if the spouse or child—

"(i) is physically present in the United States—

"(I) on the date on which the registered provisional immigrant is granted such status; and

"(II) on or before December ~~30~~ **31**, 2012;

"(ii) meets all of the eligibility requirements set forth in this subsection, other than the requirements of clause (ii) or (iii) of paragraph (2)**(A)**.

"(B) EFFECT OF TERMINATION OF LEGAL ~~RELATIONSHIP.—IF~~ **RELATIONSHIP OR DOMESTIC VIOLENCE.—If** the spousal or parental relationship between an alien who is granted registered provisional immigrant status under this section and the alien's **spouse or** child is terminated **due to death or divorce or the spouse or child has been battered or subjected to extreme cruelty by the alien (regardless of whether the legal relationship terminates)**, the spouse or child may apply for classification as a registered provisional immigrant ~~dependent if the termination of the relationship with such parent was due to death, divorce, or otherwise connected to domestic violence, notwithstanding subsection (c)(3)~~.

"(C) EFFECT OF DISQUALIFICATION OF ~~PARENT.—IF~~ **PARENT.—Notwithstanding subsection (c)(3), if** the application of a spouse or parent for registered provisional immigrant status is terminated or revoked, the husband, wife, or child of that spouse or parent shall be eligible to apply for registered provisional immigrant status independent of the parent ~~notwithstanding subsection (c)(3)~~ **or spouse**.

"(c) Application Procedures.—

"(1) IN GENERAL.—An alien, or the dependent spouse or child of such alien, who meets the eligibility requirements set forth in subsection (b) may apply for status as a registered provisional immigrant or a registered provisional immigrant dependent, as applicable, by submitting a completed application form to the Secretary during the application period set forth in paragraph (3), in accordance with the final rule promulgated by the Secretary under the Border Security, Economic Opportunity, and Immigration Modernization Act. An applicant for registered provisional immigrant status shall be treated as an applicant for admission.

"(2) PAYMENT OF TAXES.—

"(A) IN GENERAL.—An alien may not file an application for registered provisional immigrant status under paragraph (1) unless the applicant has satisfied any applicable Federal tax liability.

"(B) DEFINITION OF APPLICABLE FEDERAL TAX LIABILITY.—In this paragraph, the

term 'applicable Federal tax liability' means all Federal income taxes assessed in accordance with section 6203 of the Internal Revenue Code of 1986.

"(C) DEMONSTRATION OF COMPLIANCE.—An applicant may demonstrate compliance with this paragraph by submitting appropriate documentation, in accordance with regulations promulgated by the Secretary, in consultation with the Secretary of the Treasury.

"(3) APPLICATION PERIOD.—

"(A) INITIAL PERIOD.—Except as provided in subparagraph (B), the Secretary may only accept applications for registered provisional immigrant status from aliens in the United States during the 1-year period beginning on the date on which the final rule is published in the Federal Register pursuant to paragraph (1).

"(B) EXTENSION.—If the Secretary determines, during the initial period described in subparagraph (A), that additional time is required to process applications for registered provisional immigrant status or for other good cause, the Secretary may extend the period for accepting applications for such status for an additional 18 months.

"(4) APPLICATION FORM.—

"(A) REQUIRED INFORMATION.—The application form referred to in paragraph (1) shall collect such information as the Secretary determines necessary and appropriate.

"(B) FAMILY APPLICATION.—The Secretary shall establish a process through which an alien may submit a single application under this section on behalf of the alien, his or her spouse, and his or her children, who are residing in the United States.

"(C) INTERVIEW.—The Secretary may interview applicants for registered provisional immigrant status under this section to determine whether they meet the eligibility requirements set forth in subsection (b).

"(5) ALIENS APPREHENDED BEFORE OR DURING THE APPLICATION PERIOD.—If an alien who is apprehended during the period beginning on the date of the enactment of the Border Security, Economic Opportunity, and Immigration Modernization Act and the end of the application period described in paragraph (3) appears prima facie eligible for registered provisional immigrant status, to the satisfaction of the Secretary, the Secretary—

"(A) shall provide the alien with a reasonable opportunity to file an application under this section during such application period; and

"(B) may not remove the individual until a final administrative determination is made on the application.

"(6) ELIGIBILITY AFTER DEPARTURE.—

"(A) IN GENERAL.—An alien who departed from the United States while subject to an order of exclusion, deportation, or removal, or pursuant to an order of voluntary departure and who is outside of the United States, or who has reentered the United States illegally after December 31, 2011 without receiving the Secretary's consent to reapply for admission under section 212(a)(9), shall not be eligible to file an application for registered provisional immigrant status.

"(B) WAIVER.—The Secretary, in the Secretary's sole and unreviewable discretion, may waive the application of subparagraph (A) on behalf of an alien if the alien—

"(i) is the spouse or child of a United States citizen or lawful permanent resident;

"(ii) is the parent of a child who is a United States citizen or lawful permanent resident;

"(iii) meets the requirements set forth in ~~clause~~ **clauses** (ii) and (iii) of section 245D(b)(1)(A); or

"(iv) meets the requirements set forth in section 245D(b)(1)(A)(ii), is 16 years or older on the date on which the alien applies for registered provisional immigrant status, and was physically present in the United States for an aggregate period of not less than 3 years during the 6-year period immediately preceding the date of the enactment of the Border Security, Economic Opportunity, and Immigration Modernization Act.

"(C) ELIGIBILITY.—Notwithstanding subsection (b)(2), section 241(a)(5), or a prior order of exclusion, deportation, or removal, an alien described in subparagraph (B) who is otherwise eligible for registered provisional immigrant status may file an application for such status.

"(7) SUSPENSION OF REMOVAL DURING APPLICATION PERIOD.—

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

"(i) the Secretary determines that—

"(I) such alien is, or has become, ineligible for registered provisional immigrant status under subsection (b)(3); or

"(II) the alien's registered provisional immigrant status has been revoked under subsection (d)(2).

"(B) ALIENS IN REMOVAL PROCEEDINGS.—Notwithstanding any other provision of this Act—

"(i) if the Secretary determines that an alien, during the period beginning on the date of the enactment of this section and ending on the last day of the application period described in paragraph (3), is in removal, deportation, or exclusion proceedings before the Executive Office for Immigration Review and is prima facie eligible for registered provisional immigrant status under this section—

"(I) the Secretary shall provide the alien with the opportunity to file an application for such status; and

"(II) upon motion by the Secretary and with the consent of the alien or upon motion by the alien, the Executive Office for Immigration Review shall—

"(aa) terminate such proceedings without prejudice to future

proceedings on any basis; and

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

"(ii) if the Executive Office for Immigration Review determines that an alien, during the application period described in paragraph (3), is in removal, deportation, or exclusion proceedings before the Executive Office for Immigration Review and is prima facie eligible for registered provisional immigrant status under this section—

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

"(II) if the Secretary does not dispute the determination of prima facie eligibility within 7 days after such notification, the Executive Office for Immigration Review, upon consent of the alien, shall—

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

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

"(C) TREATMENT OF CERTAIN ALIENS.—

"(i) IN GENERAL.—If an alien who meets the eligibility requirements set forth in subsection (b) is present in the United States and has been ordered excluded, deported, or removed, or ordered to depart voluntarily from the United States under any provision of this Act—

"(I) notwithstanding such order or section 241(a)(5), the alien may apply for registered provisional immigrant status under this section; and

"(II) if the alien is granted such status, the alien shall file a motion to reopen the exclusion, deportation, removal, or voluntary departure order, which motion shall be granted unless 1 or more of the grounds of ineligibility is established by clear and convincing evidence.

"(ii) LIMITATIONS ON MOTIONS TO REOPEN.—The limitations on motions to reopen set forth in section 240(c)(7) shall not apply to motions filed under clause (i)(II).

"(D) PERIOD PENDING ADJUDICATION OF APPLICATION.—

"(i) IN GENERAL.—During the period beginning on the date on which an alien applies for registered provisional immigrant status under paragraph (1) and the date on which the Secretary makes a final decision regarding such application, the alien—

"(I) may receive advance parole to reenter the United States if urgent humanitarian circumstances compel such travel;

"(II) may not be detained by the Secretary or removed from the United States unless the Secretary makes a prima facie determination that such alien

is, or has become, ineligible for registered provisional immigrant status under subsection (b)(3);

"(III) shall not be considered unlawfully present for purposes of section 212(a)(9)(B); and

"(IV) shall not be considered an unauthorized alien (as defined in section 274A(h)(3)).

"(ii) EVIDENCE OF APPLICATION FILING.—As soon as practicable after receiving each application for registered provisional immigrant status, the Secretary shall provide the applicant with a document acknowledging the receipt of such application.

"(iii) CONTINUING EMPLOYMENT.—An employer who knows that an alien employee is an applicant for registered provisional immigrant status or will apply for such status once the application period commences is not in violation of section 274A(a)(2) if the employer continues to employ the alien pending the adjudication of the alien employee's application.

"(iv) EFFECT OF DEPARTURE.—Section 101(g) shall not apply to an alien granted—

"(I) advance parole under clause (i)(I) to reenter the United States; or

"(II) registered provisional immigrant status.

"(8) SECURITY AND LAW ENFORCEMENT CLEARANCES.—

"(A) BIOMETRIC AND BIOGRAPHIC DATA.—The Secretary may not grant registered provisional immigrant status to an alien or an alien dependent spouse or child under this section unless such alien submits biometric and biographic data in accordance with procedures established by the Secretary.

"(B) ALTERNATIVE PROCEDURES.—The Secretary shall provide an alternative procedure for applicants who cannot provide the ~~standard~~ biometric data required under subparagraph (A) because of a physical impairment.

"(C) CLEARANCES.—

"(i) DATA COLLECTION.—The Secretary shall collect, from each alien applying for status under this section, biometric, biographic, and other data that the Secretary determines to be appropriate—

"(I) to conduct national security and law enforcement clearances; and

"(II) to determine whether there are any national security or law enforcement factors that would render an alien ineligible for such status.

"(ii) PREREQUISITE.—The required clearances described in clause (i)(I) shall be completed before the alien may be granted registered provisional immigrant status.

"(9) DURATION OF STATUS AND EXTENSION.—

"(A) IN GENERAL.—The initial period of authorized admission for a registered

provisional immigrant—

"(i) shall remain valid for 6 years unless revoked pursuant to subsection (d)(2); and

"(ii) may be extended for additional 6-year terms if—

"(I) the alien remains eligible for registered provisional immigrant status;

"(II) the alien meets the employment requirements set forth in subparagraph (B); and

"(III) such status was not revoked by the Secretary for any reason.

"(B) EMPLOYMENT OR EDUCATION REQUIREMENT.—Except as provided in subparagraphs (D) and (E) of section 245C(b)(3), an alien may not be granted an extension of registered provisional immigrant status under this paragraph unless the alien establishes that, during the alien's period of status as a registered provisional immigrant, the alien—

"(i)(I) was regularly employed throughout the period of admission as a registered provisional immigrant, allowing for brief periods lasting not more than 60 days; and

"(II) is not likely to become a public charge (as determined under section 212(a)(4)); or

"(ii) is able to demonstrate average income or resources that are not less than 100 percent of the Federal poverty level throughout the period of admission as a registered provisional immigrant.

"(C) PAYMENT OF TAXES.—An applicant may not be granted an extension of registered provisional immigrant status under subparagraph (A)(ii) unless the applicant has satisfied any applicable Federal tax liability in accordance with paragraph (2).

"(10) FEES AND PENALTIES.—

"(A) STANDARD PROCESSING FEE.—

"(i) IN GENERAL.—Aliens who are 16 years of age or older and are applying for registered provisional immigrant status under paragraph (1), or for an extension of such status under paragraph (9)(A)(ii), shall pay a processing fee to the Department of Homeland Security in an amount determined by the Secretary.

"(ii) RECOVERY OF COSTS.—The processing fee authorized under clause (i) shall be set at a level that is sufficient to recover the full costs of processing the application, including any costs incurred—

"(I) to adjudicate the application;

"(II) to take and process biometrics;

"(III) to perform national security and criminal checks, including adjudication;

"(IV) to prevent and investigate fraud; and

"(V) to administer the collection of such fee.

"(iii) AUTHORITY TO LIMIT FEES.—The Secretary, by regulation, may—

"(I) limit the maximum processing fee payable under this subparagraph by a family, including spouses and unmarried children younger than 21 years of age; and

"(II) exempt defined classes of individuals, including individuals described in section 245B(c)(13), from the payment of the fee authorized under clause (i).

"(B) DEPOSIT AND USE OF PROCESSING FEES.—Fees collected under subparagraph (A)(i)—

"(i) shall be deposited into the ~~Comprehensive Immigration Reform Trust Fund established under section 6(a)(1) of the Border Security, Economic Opportunity, and Immigration Modernization Act; and~~ **Immigration Examinations Fee Account pursuant to section 286(m); and**

~~"(ii) may be used for the purposes set forth in section 6(a)(3)(B) of such Act.~~**"(ii) shall remain available until expended pursuant to section 286(n).**

"(C) PENALTY.—

"(i) PAYMENT.—In addition to the processing fee required under subparagraph (A), aliens not described in section 245D**(b)(A)(ii)** who are 21 years of age or older and are filing an application under this subsection shall pay a $1,000 penalty to the Department of Homeland Security.

"(ii) INSTALLMENTS.—The Secretary shall establish a process for collecting payments required under clause (i) that—

"(I) requires the alien to pay $500 in conjunction with the submission of an application under this subsection for registered provisional immigrant status; and

"(II) allows the remaining $500 to be paid in periodic installments that shall be completed before the alien may be granted an extension of status under paragraph (9)(A)(ii).

"(iii) DEPOSIT.—Penalties collected pursuant to this subparagraph shall be deposited into the Comprehensive Immigration Reform Trust Fund established under section 6(a)(1) of the Border Security, Economic Opportunity, and Immigration Modernization Act.

"(11) ADJUDICATION.—

"(A) FAILURE TO SUBMIT SUFFICIENT EVIDENCE.—The Secretary shall deny an application submitted by an alien who fails to submit—

"(i) requested initial evidence, including requested biometric data; or

"(ii) any requested additional evidence by the date required by the Secretary.

"(B) AMENDED APPLICATION.—An alien whose application for registered

provisional immigrant status is denied under subparagraph (A) may file an amended application for such status to the Secretary if the amended application—

"(i) is filed within the application period described in paragraph (3); and

"(ii) contains all the required information and fees that were missing from the initial application.

"(12) EVIDENCE OF REGISTERED PROVISIONAL IMMIGRANT STATUS.—

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

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

"(i) shall be machine-readable and tamper-resistant, and shall contain a digitized photograph;

"(ii) shall, during the alien's authorized period of admission, and any extension of such authorized admission, serve as a valid travel and entry document for the purpose of applying for admission to the United States;

"(iii) may be accepted during the period of its validity by an employer as evidence of employment authorization and identity under section 274A(b)(1)(B);

"(iv) shall indicate that the alien is authorized to work in the United States for up to 3 years; and

"(v) shall include such other features and information as may be prescribed by the Secretary.

"(13) ~~DACA~~ **DACA** RECIPIENTS.—Unless the Secretary determines that an alien who was granted Deferred Action for Childhood Arrivals (referred to in this paragraph as 'DACA') pursuant to the Secretary's memorandum of June 15, 2012, has engaged in conduct since the alien was granted DACA that would make the alien ineligible for registered provisional immigrant status, the Secretary may grant such status to the alien if renewed national security and law enforcement clearances have been completed on behalf of the alien.

"(d) Terms and Conditions of Registered Provisional Immigrant Status.—

"(1) CONDITIONS OF REGISTERED PROVISIONAL IMMIGRANT STATUS.—

"(A) EMPLOYMENT.—Notwithstanding any other provision of law, including section 241(a)(7), a registered provisional immigrant shall be authorized to be employed in the United States while in such status.

"(B) TRAVEL OUTSIDE THE UNITED STATES.—A registered provisional immigrant may travel outside of the United States and may be admitted, if otherwise admissible, upon returning to the United States without having to obtain a visa if—

"(i) the alien is in possession of—

"(I) valid, unexpired documentary evidence of registered provisional immigrant status that complies with subsection (c)(12); or

"(II) a travel document, duly approved by the Secretary, that was issued to the alien after the alien's original documentary evidence was lost, stolen, or destroyed;

"(ii) the alien's absence from the United States did not exceed 180 days, unless the alien's failure to timely return was due to extenuating circumstances beyond the alien's control;

"(iii) the alien meets the requirements for an extension as described in subclauses (I) and (III) of paragraph (9)(A); and

"(iv) the alien establishes that the alien is not inadmissible under subparagraph (A)(i), (A)(iii), (B), or (C) of section 212(a)(3).

"(C) ADMISSION.—An alien granted registered provisional immigrant status under this section shall be considered to have been admitted and lawfully present in the United States in such status as of the date on which the alien's application was filed.

"(D) CLARIFICATION OF STATUS.—An alien granted registered provisional immigrant status—

"(i) is lawfully admitted to the United States; and

"(ii) may not be classified as a nonimmigrant or as an alien who has been lawfully admitted for permanent residence.

"(2) REVOCATION.—

"(A) IN GENERAL.—The Secretary may revoke the status of a registered provisional immigrant at any time after providing appropriate notice to the alien, and after the exhaustion or waiver of all applicable administrative review procedures under section 245E(c), if the alien—

"(i) no longer meets the eligibility requirements set forth in subsection (b);

"(ii) knowingly used documentation issued under this section for an unlawful or fraudulent purpose; or

"(iii) was absent from the United States—

"(I) for any single period longer than 180 days in violation of the requirements set forth in paragraph (1)(B)(ii); or

"(II) for more than 180 days in the aggregate during any calendar year, unless the alien's failure to timely return was due to extenuating circumstances beyond the alien's control.

"(B) ADDITIONAL EVIDENCE.—In determining whether to revoke an alien's status under subparagraph (A), the Secretary may require the alien—

"(i) to submit additional evidence; or

"(ii) to appear for an interview.

"(C) INVALIDATION OF DOCUMENTATION.—If an alien's registered provisional immigrant status is revoked under subparagraph (A), any documentation issued by the Secretary to such alien under subsection (c)(12) shall automatically be rendered invalid

for any purpose except for departure from the United States.

"(3) INELIGIBILITY FOR PUBLIC BENEFITS.—An alien who has been granted registered provisional immigrant status under this section is not eligible for any Federal means-tested public benefit (as such term is defined **and implemented** in section 403 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1613)).

"(4) TREATMENT OF REGISTERED PROVISIONAL IMMIGRANTS.—A noncitizen granted registered provisional immigrant status under this section shall be considered lawfully present in the United States for all purposes while such noncitizen remains in such status, except that the noncitizen—

"(A) is not entitled to the premium assistance tax credit authorized under section 36B of the Internal Revenue Code of 1986 **for his or her coverage**;

"(B) shall be subject to the rules applicable to individuals not lawfully present that are set forth in subsection (e) of such section;~~ and~~

"(C) shall be subject to the rules applicable to individuals not lawfully present that are set forth in section 1402(e) of the Patient Protection and Affordable Care Act (42 U.S.C. 18071)**; and**

"(D) shall be subject to the rules applicable to individuals not lawfully present set forth in section 5000A(d)(3) of the Internal Revenue Code of 1986.~~.~~

"(5) ASSIGNMENT OF SOCIAL SECURITY NUMBER.—

"(A) IN GENERAL.—The Commissioner of Social Security, in coordination with the Secretary, shall implement a system to allow for the assignment of a Social Security number and the issuance of a Social Security card to each alien who has been granted registered provisional immigrant status under this section.

"(B) USE OF INFORMATION.—The Secretary shall provide the Commissioner of Social Security with information from the applications filed by aliens granted registered provisional immigrant status under this section and such other information as the Commissioner determines to be necessary to assign a Social Security account number to such aliens. The Commissioner may use information received from the Secretary under this subparagraph to assign Social Security account numbers to such aliens and to administer the programs of the Social Security Administration. The Commissioner may maintain, use, and disclose such information only as permitted under section 552a of title 5, United States Code (commonly known as the Privacy Act of 1974) and other applicable Federal laws.

"(e) Dissemination of Information on Registered Provisional Immigrant Program.—As soon as practicable after the date of the enactment of the Border Security, Economic Opportunity, and Immigration Modernization Act, the Secretary, in cooperation with entities approved by the Secretary, and in accordance with a plan adopted by the Secretary, shall broadly disseminate, in the most common languages spoken by aliens who would qualify for registered provisional immigrant status under this section, to television, radio, print, and social media to which such

aliens would likely have access—

"(1) the procedures for applying for such status;

"(2) the terms and conditions of such status; and

"(3) the eligibility requirements for such status.".

(b) Enlistment in the Armed Forces.—Section 504(b)(1) of title 10, United States Code, is amended by adding at the end the following:

"(D) An alien who has been granted registered provisional immigrant status under section 245B of the Immigration and Nationality Act.".

SEC. 2102. ADJUSTMENT OF STATUS OF REGISTERED PROVISIONAL IMMIGRANTS.

(a) In General.—Chapter 5 of title II (8 U.S.C. 1255 et seq.) is amended by inserting after section 245B, as added by section 2101 of this title, the following:

"SEC. 245C. ADJUSTMENT OF STATUS OF REGISTERED PROVISIONAL IMMIGRANTS.

"(a) In General.—Subject to section 245E(d) and section 2302(c)(3) of the Border Security, Economic Opportunity, and Immigration Modernization Act, the Secretary ~~of Homeland Security (referred to in this section as the 'Secretary')~~ may adjust the status of a registered provisional immigrant to that of an alien lawfully admitted for permanent residence if the registered provisional immigrant satisfies the eligibility requirements set forth in subsection (b).

"(b) Eligibility Requirements.—

"(1) REGISTERED PROVISIONAL IMMIGRANT STATUS.—

"(A) IN GENERAL.—The alien was granted registered provisional immigrant status under section 245B and remains eligible for such status.

"(B) CONTINUOUS PHYSICAL PRESENCE.—The alien establishes, to the satisfaction of the Secretary, that the alien was not continuously absent from the United States for more than 180 days in any calendar year during the period of admission as a registered provisional immigrant, unless the alien's absence was due to extenuating circumstances beyond the alien's control.

"(C) MAINTENANCE OF WAIVERS OF ~~ADMISSIBILITY.—THE~~ **INADMISSIBILITY.—The** grounds of inadmissibility set forth in section 212(a) that were previously waived for the alien or made inapplicable under section 245B(b) shall not apply for purposes of the alien's adjustment of status under this section.

"(D) PENDING REVOCATION PROCEEDINGS.—If the Secretary has notified the applicant that the Secretary intends to revoke the applicant's registered provisional immigrant status under section 245B(d)(2)(A), the Secretary may not approve an application for adjustment of status under this section unless the Secretary makes a final determination not to revoke the applicant's status.

"(2) PAYMENT OF TAXES.—

"(A) IN GENERAL.—An applicant may not file an application for adjustment of status under this section unless the applicant has satisfied any applicable Federal tax liability.

"(B) DEFINITION OF APPLICABLE FEDERAL TAX LIABILITY.—In subparagraph (A), the term 'applicable Federal tax liability' means all ~~assessed~~ Federal income taxes **assessed in accordance with section 6203 of the Internal Revenue Code of 1986** since the date on which the applicant was authorized to work in the United States as a registered provisional immigrant under section 245B(a).

"(C) COMPLIANCE.—The applicant may demonstrate compliance with subparagraph (A) by submitting such documentation as the Secretary, in consultation with the Secretary of the Treasury, may require by regulation.

"(3) EMPLOYMENT ~~OR EDUCATION~~ REQUIREMENT.—

"(A) IN GENERAL.—Except as provided in subparagraphs (D) and (E), an alien applying for adjustment of status under this section shall establish that, during his or her period of status as a registered provisional immigrant, he or she—

"(i)(I) was regularly employed throughout the period of admission as a registered provisional immigrant, allowing for brief periods lasting not more than 60 days; and

"(II) is not likely to become a public charge (as determined under section 212(a)(4)); or

"(ii) can demonstrate average income or resources that are not less than 125 percent of the Federal poverty level throughout the period of admission as a registered provisional immigrant.

"(B) EVIDENCE OF EMPLOYMENT.—

"(i) DOCUMENTS.—An alien may satisfy the employment requirement under subparagraph (A)(i) by submitting, to the Secretary, records that—

"(I) establish, by the preponderance of the evidence, compliance with such employment requirement; and

"(II) have been maintained by the Social Security Administration, the Internal Revenue Service, or any other Federal, State, or local government agency.

"(ii) OTHER DOCUMENTS.—An alien who is unable to submit the records described in clause (i) may satisfy the employment or education requirement under subparagraph (A) by submitting to the Secretary at least 2 types of reliable documents not described in clause (i) that provide evidence of employment or education, including—

"(I) bank records;

"(II) business records;

"(III) employer records;

"(IV) records of a labor union, day labor center, or organization that assists workers in employment;

"(V) sworn affidavits from nonrelatives who have direct knowledge of the alien's work or education, that contain—

"(aa) the name, address, and telephone number of the affiant;

"(bb) the nature and duration of the relationship between the affiant and the alien; and

"(cc) other verification or information;

"(VI) remittance records; and

"(VII) school records from institutions described in subparagraph (D).

"(iii) ADDITIONAL DOCUMENTS AND RESTRICTIONS.—The Secretary may—

"(I) designate additional documents that may be used to establish compliance with the requirement under subparagraph (A); and

"(II) set such terms and conditions on the use of affidavits as may be necessary to verify and confirm the identity of any affiant or to otherwise prevent fraudulent submissions.

"(C) SATISFACTION OF EMPLOYMENT REQUIREMENT.—An alien may not be required to satisfy the employment requirements under this section with a single employer.

"(D) EDUCATION PERMITTED.—An alien may satisfy the requirement under subparagraph (A), in whole or in part, by providing evidence of full-time attendance at—

"(i) an institution of higher education (as defined in section 102(a) of the Higher Education Act of 1965 (20 U.S.C. 1002(a)));

"(ii) a **secondary school, including a public** secondary school (as defined in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801));

"(iii) an education, literacy, or career **and technical** training program (including vocational training) that is designed to lead to placement in postsecondary education, job training, or employment through which the alien is working toward such placement; or

"(iv) an education program assisting students either in obtaining a ~~regular~~ high school **equivalency** diploma**, certificate,** or its recognized equivalent under ~~state~~ **State** law (including a certificate of completion, certificate of attendance, or alternate award), or in passing a General Educational Development exam or other equivalent State-authorized exam **or completed other applicable State requirements for high school equivalency**.

"(E) AUTHORIZATION OF EXCEPTIONS AND WAIVERS.—

"(i) EXCEPTIONS BASED ON AGE OR DISABILITY.—The employment and education requirements under this paragraph shall not apply to any alien who —

"(I) is younger than 21 years of age on the date on which the alien files an application for the first extension of the initial period of authorized

admission as a registered provisional immigrant;

"(II) is at least 60 years of age on the date on which the alien files an application ~~described in subclause (II)~~ **for an extension of registered provisional immigrant status** or at least 65 years of age on the date on which the alien's **application for adjustment of** status is ~~adjusted~~ **filed** under this section; or

"(III) has a physical or mental disability (as defined in section 3(2) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102(2))) or as a result of pregnancy if such condition is evidenced by the submission of documentation prescribed by the Secretary.

"(ii) FAMILY EXCEPTIONS.—The employment and education requirements under this paragraph shall not apply to any alien who is a dependent registered provisional immigrant under subsection (b)(5).

"(iii) TEMPORARY EXCEPTIONS.—The employment and education requirements under this paragraph shall not apply during any period during which the alien—

"(I) was on medical leave, maternity leave, or other employment leave authorized by Federal law, State law, or the policy of the employer;

"(II) is or was the primary caretaker of a child or another person who requires supervision or is unable to care for himself or herself; or

"(III) was unable to work due to circumstances outside the control of the alien.

"(iv) WAIVER.—The Secretary may waive the employment or education requirements under this paragraph with respect to any individual alien who demonstrates extreme hardship to himself or herself or to a spouse, parent, or child who is a United States citizen or lawful permanent resident.

"(4) ENGLISH SKILLS.—

"(A) IN GENERAL.—Except as provided under subparagraph (C), a registered provisional immigrant who is 16 years of age or older shall establish that he or she—

"(i) meets the requirements set forth in section 312; or

"(ii) is satisfactorily pursuing a course of study, pursuant to standards established by the Secretary of Education, in consultation with the Secretary, to achieve an understanding of English and knowledge and understanding of the history and Government of the United States, as described in section 312(a).

"(B) RELATION TO NATURALIZATION EXAMINATION.—A registered provisional immigrant who demonstrates that he or she meets the requirements set forth in section 312 may be considered to have satisfied such requirements for purposes of becoming naturalized as a citizen of the United States.

"(C) EXCEPTIONS.—

"(i) MANDATORY.—Subparagraph (A) shall not apply to any person who is unable to comply with the requirements under that subparagraph because of a

physical or developmental disability or mental impairment.

"(ii) DISCRETIONARY.—The Secretary may waive all or part of subparagraph (A) for a registered provisional immigrant who is 70 years of age or older on the date on which an application is filed for adjustment of status under this section.

"(5) MILITARY SELECTIVE SERVICE.—The alien shall provide proof of registration under the Military Selective Service Act (50 U.S.C. App. 451 et seq.)**,** if the alien is subject to such registration **on or before the date on which the alien's application for registered provisional immigrant status is granted**.

"(c) Application Procedures.—

"(1) IN GENERAL.—Beginning on the date described in paragraph (2), a registered provisional immigrant, or a registered provisional immigrant dependent, who meets the eligibility requirements set forth in subsection (b) may apply for adjustment of status to that of an alien lawfully admitted for permanent residence by submitting an application to the Secretary that includes the evidence required, by regulation, to demonstrate the applicant's eligibility for such adjustment.

"(2) BACK OF THE LINE.—The status of a registered provisional immigrant may not be adjusted to that of an alien lawfully admitted for permanent residence under this section until after the Secretary of State certifies that immigrant visas have become available for all approved petitions for immigrant visas that were filed under sections 201 and 203 before the date of the enactment of the Border Security, Economic Opportunity, and Immigration Modernization Act.

"(3) INTERVIEW.—The Secretary may interview applicants for adjustment of status under this section to determine whether they meet the eligibility requirements set forth in subsection (b).

"(4) SECURITY AND LAW ENFORCEMENT CLEARANCES.—The Secretary may not adjust the status of a registered provisional immigrant under this section until renewed national security and law enforcement clearances have been completed with respect to the registered provisional immigrant, to the satisfaction of the Secretary.

"(5) FEES AND PENALTIES.—

"(A) PROCESSING FEES.—

"(i) IN GENERAL.—The Secretary shall impose a processing fee on applicants for adjustment of status under this section at a level sufficient to recover the full cost of processing such applications, including costs associated with—

"(I) adjudicating the applications;

"(II) taking and processing biometrics;

"(III) performing national security and criminal checks, including adjudication;

"(IV) preventing and investigating fraud; and

"(V) the administration of the fees collected.

"(ii) AUTHORITY TO LIMIT FEES.—The Secretary, by regulation, may—

"(I) limit the maximum processing fee payable under this subparagraph by a family, including spouses and children; and

"(II) exempt other defined classes of individuals from the payment of the fee authorized under clause (i).

"(iii) DEPOSIT AND USE OF FEES.—Fees collected under this subparagraph—

"(I) shall be deposited into the ~~Comprehensive Immigration Reform Trust Fund established under section 6(a)(1) of the Border Security, Economic Opportunity, and Immigration Modernization Act; and~~ **Immigration Examinations Fee Account pursuant to section 286(m); and**

~~"(II) may be used for the purposes set forth in section 6(a)(3)(B) of such Act.~~**"(II) shall remain available until expended pursuant to section 286(n).**

"(B) PENALTIES.—

"(i) IN GENERAL.—In addition to the processing fee required under subparagraph (A) and the penalty required under section 245B(c)(6)(D), an alien who was 21 years of age or older on the date on which the Border Security, Economic Opportunity, and Immigration Modernization Act was originally introduced in the Senate and is filing an application for adjustment of status under this section shall pay a $1,000 penalty to the Secretary unless the alien meets the requirements under section 245D(b).

"(ii) INSTALLMENTS.—The Secretary shall establish a process for collecting payments required under clause (i) through periodic installments.

"(iii) DEPOSIT, ALLOCATION, AND SPENDING OF PENALTIES.—Penalties collected under this subparagraph—

"(I) shall be deposited into the Comprehensive Immigration Trust Fund established under section 6(a)(1) of the Border Security, Economic Opportunity, and Immigration Modernization Act; and

"(II) may be used for the purposes set forth in section 6(a)(3)(B) of such Act.".

(b) Limitation on Registered Provisional Immigrants.—An alien admitted as a registered provisional immigrant **under section 245B of the Immigration and Nationality Act, as added by subsection (a),** may only adjust status to an alien lawfully admitted for permanent resident status under section ~~2302~~ **245C or 245D** of ~~this~~ **such** Act **or section 2302**.

(c) Naturalization.—Section 319 (8 U.S.C. 1430) is amended—

(1) in the section heading, by striking "and employees of certain nonprofit organizations" and inserting ", employees of certain nonprofit organizations, and other long-term lawful residents"; and

(2) by adding at the end the following:

"(f) Any lawful permanent resident who was lawfully present in the United States and eligible for work authorization for not less than 10 years before becoming a lawful permanent resident

may be naturalized upon compliance with all the requirements under this title except the provisions of section 316(a)(1) if such person, immediately preceding the date on which the person filed an application for naturalization—

"(1) has resided continuously within the United States, after being lawfully admitted for permanent residence, for at least 3 years;

"(2) during the 3-year period immediately preceding such filing date, has been physically present in the United States for periods totaling at least 50 percent of such period; and

"(3) has resided within the State or in the jurisdiction of the U.S. Citizenship and Immigration Services field office in the United States in which the applicant filed such application for at least 3 months.".

SEC. 2103. THE DREAM ACT.

(a) Short Title.—This section may be cited as the "Development, Relief, and Education for Alien Minors Act of 2013" or the "DREAM Act 2013".

(b) Adjustment of Status for Certain Aliens Who Entered the United States as Children.—Chapter 5 of title II (8 U.S.C. 1255 et seq.) is amended by inserting after section 245C, as added by section 2102 of this title, the following:

"SEC. 245D. ADJUSTMENT OF STATUS FOR CERTAIN ALIENS WHO ENTERED THE UNITED STATES AS CHILDREN.

"(a) Definitions.—In this section:

"(1) INSTITUTION OF HIGHER EDUCATION.—The term 'institution of higher education' has the meaning given such term in section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002), except that the term does not include institutions described in subsection (a)(1)(C) of such section.

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

"(3) UNIFORMED SERVICES.—The term 'Uniformed Services' has the meaning given the term 'uniformed services' in section 101(a)(5) of title 10, United States Code.

"(b) Adjustment of Status for Certain Aliens Who Entered the United States as Children.—

"(1) REQUIREMENTS.—

"(A) IN GENERAL.—The Secretary ~~of Homeland Security~~ may adjust the status of a registered provisional immigrant to the status of a lawful permanent resident if the immigrant demonstrates that he or she—

"(i) has been a registered provisional immigrant for at least 5 years;

"(ii) was younger than 16 years of age on the date on which the alien initially entered the United States;

"(iii) has earned a high school diploma ~~or~~ **, a commensurate alternative award from a public or private high school or secondary school, or has**

obtained a general education development certificate **recognized under State law, or a high school equivalency diploma** in the United States;

"(iv)(I) has acquired a degree from an institution of higher education or has completed at least 2 years, in good standing, in a program for a bachelor's degree or higher degree in the United States; or

"(II) has served in the Uniformed Services for at least 4 years and, if discharged, received an honorable discharge; and

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

"(B) HARDSHIP EXCEPTION.—

"(i) IN GENERAL.—The Secretary may adjust the status of a registered provisional immigrant to the status of a lawful permanent resident if the alien—

"(I) satisfies the requirements under clauses (i), (ii), (iii), and (v) of subparagraph (A); and

"(II) demonstrates compelling circumstances for the inability to satisfy the requirement under subparagraph (A)(iv).

"(C) CITIZENSHIP REQUIREMENT.—

"(i) IN GENERAL.—Except as provided in clause (ii), the Secretary may not adjust the status of an alien to lawful permanent resident status under this section unless the alien demonstrates that the alien satisfies the requirements ~~of~~ **under** section 312(a) ~~of the Immigration and Nationality Act (8 U.S.C. 1423(a))~~.

"(ii) EXCEPTION.—Clause (i) shall not apply to an alien whose physical or developmental disability or mental impairment prevents the alien from meeting the requirements such section.

"(D) SUBMISSION OF BIOMETRIC AND BIOGRAPHIC DATA.—The Secretary may not adjust the status of an alien to lawful permanent resident status unless the alien—

"(i) submits biometric and biographic data, in accordance with procedures established by the Secretary; or

"(ii) complies with an alternative procedure prescribed by the Secretary, if the alien is unable to provide such biometric data because of a physical impairment.

"(E) BACKGROUND CHECKS.—

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

"(I) to conduct **national** security and law enforcement background checks of an alien applying for lawful permanent resident status under this section; and

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

"(ii) COMPLETION OF BACKGROUND CHECKS.—The Secretary may not adjust an alien's status to the status of a lawful permanent resident under this subsection until the **national** security and law enforcement background checks required under clause (i) have been completed with respect to the alien, to the satisfaction of the Secretary.

"(2) APPLICATION FOR LAWFUL PERMANENT RESIDENT STATUS.—

"(A) IN GENERAL.—A registered provisional immigrant seeking lawful permanent resident status shall file an application for such status in such manner as the Secretary ~~of Homeland Security~~ may require.

"(B) ADJUDICATION.—

"(i) IN GENERAL.—The Secretary shall evaluate each application filed by a registered provisional immigrant under this paragraph to determine whether the alien meets the requirements under paragraph (1).

"(ii) ADJUSTMENT OF STATUS IF FAVORABLE DETERMINATION.—If the Secretary determines that the alien meets the requirements under paragraph (1), the Secretary shall notify the alien of such determination and adjust the status of the alien to lawful permanent resident status, effective as of the date of such determination.

"(iii) ADVERSE DETERMINATION.—If the Secretary determines that the alien does not meet the requirements under paragraph (1), the Secretary shall notify the alien of such determination.

"(C) ~~DACA~~ **DACA** RECIPIENTS.—The Secretary may adopt streamlined procedures for applicants for adjustment to lawful permanent resident status under this section who were granted Deferred Action for Childhood Arrivals ~~(referred to in this paragraph as 'DACA')~~ pursuant to the Secretary's memorandum of June 15, 2012.

"(3) TREATMENT FOR PURPOSES OF NATURALIZATION.—

"(A) IN GENERAL.—An alien granted lawful permanent resident status under this ~~subsection~~ **section** shall be considered, for purposes of title III—

"(i) to have been lawfully admitted for permanent residence; and

"(ii) to have been in the United States as an alien lawfully admitted to the United States for permanent residence during the period the alien was a registered provisional immigrant.

"(B) LIMITATION ON APPLICATION FOR NATURALIZATION.—An alien may not apply for naturalization while the alien is a registered provisional immigrant..".

(c) Exemption From Numerical Limitations.—Section 201(b)**(1)** (8 U.S.C. 1151(b)(1)) is amended—

(1) by redesignating subparagraph (E) as subparagraph (F); and

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

"(E) Aliens whose status is adjusted to permanent resident status under section 245C or 245D.".

(d) Restoration of State Option To Determine Residency for Purposes of Higher Education.—

(1) REPEAL.—Section 505 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1623) is repealed.

(2) EFFECTIVE DATE.—The repeal under paragraph (1) shall take effect as if included in the original enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (division C of Public Law 104–208).

SEC. 2104. ADDITIONAL REQUIREMENTS.

(a) In General.—Chapter 5 of title II (8 U.S.C. 1255 et seq.) is amended by inserting after section 245C, as added by section 2102 of this title, the following:

"SEC. 245E. ADDITIONAL REQUIREMENTS RELATING TO REGISTERED PROVISIONAL IMMIGRANTS AND OTHERS.

"(a) Disclosures.—

"(1) PROHIBITED DISCLOSURES.—Except as otherwise provided in this subsection, no officer or employee of any Federal agency may—

"(A) use the information furnished in an application for lawful status under section 245B, 245C, or 245D for any purpose other than to make a determination on any application by the alien for any immigration benefit or protection;

"(B) make any publication through which information furnished by any particular applicant can be identified; or

"(C) permit anyone other than the sworn officers, employees, and contractors of such agency or of another entity approved by the Secretary ~~of Homeland Security to examine individual applications that have been filed under either such section.~~ **to examine any individual application for lawful status under section 245B, 245C, or 245D.**

"(2) REQUIRED DISCLOSURES.—The Secretary shall provide the information furnished in an application filed under section 245B, 245C, or 245D and any other information derived from such furnished information to—

"(A) a law enforcement agency, intelligence agency, national security agency, **a** component of the Department of Homeland Security, court, or grand jury ~~if such information is requested by such entity~~, consistent with law, in connection with—

"(i) a criminal investigation or prosecution of any ~~matter~~ **felony** not related to the applicant's immigration status; or

"(ii) a national security investigation or prosecution; and

"(B) an official coroner for purposes of affirmatively identifying a deceased individual, whether or not the death of such individual resulted from a crime.

"(3) AUDITING AND EVALUATION OF INFORMATION.—The Secretary may—

"(A) audit and evaluate information furnished as part of any application filed under section 245B, 245C, or 245D for purposes of identifying immigration fraud or fraud schemes; and

"(B) use any evidence detected by means of audits and evaluations for purposes of investigating, prosecuting, referring for prosecution, or denying or terminating immigration benefits.

"(b) Employer Protections.—

"(1) USE OF EMPLOYMENT RECORDS.—Copies of employment records or other evidence of employment provided by an alien or by an alien's employer in support of an alien's application for registered provisional immigrant status under section 245B may not be used in a civil or criminal prosecution or investigation of that employer under section 274A or the Internal Revenue Code of 1986 for the prior unlawful employment of that alien regardless of the adjudication of such application or reconsideration by the Secretary of ~~Homeland Security of~~ such alien's prima facie eligibility determination. Employers that provide unauthorized aliens with copies of employment records or other evidence of employment pursuant to an application for registered provisional immigrant status shall not be subject to civil and criminal liability pursuant to section 274A for employing such unauthorized aliens.

"(2) LIMIT ON APPLICABILITY.—The protections for employers and aliens under paragraph (1) shall not apply if the aliens or employers submit employment records that are deemed to be fraudulent.

"(c) Administrative Review.—

"(1) EXCLUSIVE ADMINISTRATIVE REVIEW.—Administrative review of a determination respecting an application for status under section 245B, 245C, ~~or 245D~~ **245D, or 245F or section 2211 of the Agricultural Worker Program Act of 2013** shall be conducted solely in accordance with this subsection.

"(2) ADMINISTRATIVE APPELLATE REVIEW.—

"(A) ESTABLISHMENT OF ADMINISTRATIVE APPELLATE AUTHORITY.—The Secretary ~~of Homeland Security~~ shall establish or designate an appellate authority to provide for a single level of administrative appellate review of a determination with respect to applications for, or revocation of, status under sections 245B, 245C, and 245D.

"(B) SINGLE APPEAL FOR EACH ADMINISTRATIVE DECISION.—

"(i) IN GENERAL.—An alien in the United States whose application for status under section 245B, 245C, or 245D has been denied or revoked may file with the Secretary not more than 1 appeal of each decision to deny or revoke such status.

"(ii) NOTICE OF APPEAL.—A notice of appeal filed under this subparagraph shall be filed not later than 90 days after the date of service of the decision of denial or revocation, unless the delay was reasonably justifiable.

"(C) REVIEW BY SECRETARY.—Nothing in this paragraph may be construed to limit the authority of the Secretary to certify appeals for review and final administrative decision.

"(D) DENIAL OF PETITIONS FOR DEPENDENTS.—Appeals of a decision to deny or revoke a petition filed by a registered provisional immigrant pursuant to regulations promulgated under section 245B to classify a spouse or child of such alien as a registered provisional immigrant shall be subject to the administrative appellate authority described in subparagraph (A).

"(E) STAY OF REMOVAL.—Aliens seeking administrative review shall not be removed from the United States until a final decision is rendered establishing ineligibility for status under section 245B, 245C, or 245D.

"(3) RECORD FOR REVIEW.—Administrative appellate review under paragraph (2) shall be de novo and based solely upon—

"(A) the administrative record established at the time of the determination on the application; and

"(B) any additional newly discovered or previously unavailable evidence.

"(4) UNLAWFUL PRESENCE.—During the period in which an alien may request administrative review under this subsection, and during the period that any such review is pending, the alien shall not be considered 'unlawfully present in the United States' for purposes of section 212(a)(9)(B).

"(d) Privacy and Civil Liberties.—

"(1) IN GENERAL.—The Secretary, in accordance with subsection (a)(1), shall require appropriate administrative and physical safeguards to protect the security, confidentiality, and integrity of personally identifiable information collected, maintained, and disseminated pursuant to sections 245B, 245C, and 245D.

"(2) ASSESSMENTS.—Notwithstanding the privacy requirements set forth in section 222 of the Homeland Security Act (6 U.S.C. 142) and the E-Government Act of 2002 (Public Law 107–347), the Secretary shall conduct a privacy impact assessment and a civil liberties impact assessment of the legalization program established under sections 245B, 245C, and 245D during the pendency of the interim final regulations required to be issued under section 2110 of the Border Security, Economic Opportunity, and Immigration Modernization Act.".

(b) Judicial Review.—Section 242 (8 U.S.C. 1252) is amended—

(1) in subsection (a)(2)—

(A) in subparagraph (B), by inserting "the exercise of discretion arising under" after "no court shall have jurisdiction to review";

(B) in subparagraph (D), by striking "raised upon a petition for review filed with an appropriate court of appeals in accordance with this section";

(2) in subsection (b)(2), by inserting "or, in the case of a decision rendered under section 245E(c), in the judicial circuit in which the petitioner resides" after "proceedings"; and

(3) by adding at the end the following:

"(h) Judicial Review of Eligibility Determinations Relating to Status Under Chapter 5.—

"(1) DIRECT REVIEW.—If an alien's application under section 245B, 245C, ~~or 245D~~

245D, or 245F or section 2211 of the Agricultural Worker Program Act of 2013 is denied, or is revoked after the exhaustion of administrative appellate review under section 245E(c), the alien may seek review of such decision, in accordance with chapter 7 of title 5, United States Code, before the United States district court for the district in which the person resides.

"(2) STATUS DURING REVIEW.—While a review described in paragraph (1) is pending—

"(A) the alien shall not be deemed to accrue unlawful presence for purposes of section 212(a)(9);

"(B) any unexpired grant of voluntary departure under section 240B shall be tolled; and

"(C) the court shall have the discretion to stay the execution of any order of exclusion, deportation, or removal.

"(3) REVIEW AFTER REMOVAL PROCEEDINGS.—An alien may seek judicial review of a denial or revocation of approval of the alien's application under section 245B, 245C, or 245D in the appropriate United States court of appeal in conjunction with the judicial review of an order of removal, deportation, or exclusion if the validity of the denial has not been upheld in a prior judicial proceeding under paragraph (1).

"(4) STANDARD FOR JUDICIAL REVIEW.—

"(A) BASIS.—Judicial review of a denial, or revocation of an approval, of an application under section 245B, 245C, or 245D shall be based upon the administrative record established at the time of the review.

"(B) AUTHORITY TO REMAND.—The reviewing court may remand a case under this subsection to the Secretary ~~of Homeland Security~~ for consideration of additional evidence if the court finds that—

"(i) the additional evidence is material; and

"(ii) there were reasonable grounds for failure to adduce the additional evidence before the Secretary.

"(C) SCOPE OF REVIEW.—Notwithstanding any other provision of law, judicial review of all questions arising from a denial, or revocation of an approval, of an application under section 245B, 245C, or 245D shall be governed by the standard of review set forth in section 706 of title 5, United States Code.

"(5) REMEDIAL POWERS.—

"(A) JURISDICTION.—Notwithstanding any other provision of law, the United States district courts shall have jurisdiction over any cause or claim arising from a pattern or practice of the Secretary ~~of Homeland Security~~ in the operation or implementation of the Border Security, Economic Opportunity, and Immigration Modernization Act, or the amendments made by such Act, that is arbitrary, capricious, or otherwise contrary to law.

"(B) SCOPE OF RELIEF.—The United States district courts may order any appropriate relief in a clause or claim described in subparagraph (A) without regard to exhaustion,

ripeness, or other standing requirements (other than constitutionally-mandated requirements), if the court determines that—

"(i) the resolution of such cause or claim will serve judicial and administrative efficiency; or

"(ii) a remedy would otherwise not be reasonably available or practicable.

"(6) CHALLENGES TO THE VALIDITY OF THE SYSTEM.—

"(A) IN GENERAL.—Except as provided in paragraph (5), any claim that section 245B, 245C, 245D, or 245E or any regulation, written policy, or written directive, issued or unwritten policy or practice initiated by or under the authority of the Secretary ~~of Homeland Security~~ to implement such sections, violates the Constitution of the United States or is otherwise in violation of law is available exclusively in an action instituted in United States District Court in accordance with the procedures prescribed in this paragraph.

"(B) SAVINGS PROVISION.—Except as provided in subparagraph (C), nothing in subparagraph (A) may be construed to preclude an applicant under 245B, 245C, or 245D from asserting that an action taken or a decision made by the Secretary with respect to the applicant's status was contrary to law.

"(C) CLASS ACTIONS.—Any claim described in subparagraph (A) that is brought as a class action shall be brought in conformity with—

"(i) the Class Action Fairness Act of 2005 (Public Law 109–2); and

"(ii) the Federal Rules of Civil Procedure.

"(D) PRECLUSIVE EFFECT.—The final disposition of any claim brought under subparagraph (A) shall be preclusive of any such claim asserted by the same individual in a subsequent proceeding under this subsection.

"(E) EXHAUSTION AND STAY OF PROCEEDINGS.—

"(i) IN GENERAL.—No claim brought under this paragraph shall require the plaintiff to exhaust administrative remedies under section 245E(c).

"(ii) STAY AUTHORIZED.—Nothing in this paragraph may be construed to prevent the court from staying proceedings under this paragraph to permit the Secretary to evaluate an allegation of an unwritten policy or practice or to take corrective action. In determining whether to issue such a stay, the court shall take into account any harm the stay may cause to the claimant.".

(c) Rule of Construction.—Section 244(h) shall not limit the authority of the Secretary to adjust the status of an alien under section 245C or 245D of the Immigration and Nationality Act, as added by this subtitle.

(d) Effect of Failure to Register on Eligibility for Immigration Benefits.—Failure to comply with section 264.1(f) of title 8, Code of Federal Regulations or with removal orders or voluntary departure agreements based on such section for acts committed before the date of the enactment of this Act shall not affect the eligibility of an alien to apply for a benefit under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

(e) Clerical Amendment.—The table of contents is amended by inserting after the item relating to section 245A the following:

"Sec.245B.Adjustment of status of eligible entrants before December 31, 2011, to that of registered provisional immigrant.

"Sec.245C.Adjustment of status of registered provisional immigrants.

"Sec.245D.Adjustment of status for certain aliens who entered the United States as children.

"Sec.245E.Additional requirements relating to registered provisional immigrants and others.".

SEC. 2105. CRIMINAL PENALTY.

(a) In General.—Chapter 69 of title 18, United States Code, is amended by adding at the end the following:

"1430. Improper use of information relating to registered provisional immigrant applications

"Any person who knowingly uses, publishes, or permits information described in section 245E(a) of the Immigration and Nationality Act to be examined in violation of such section shall be fined not more than $10,000.".

(b) Deposit of Fines.—All criminal penalties collected under section 1430 of title 18, United States Code, as added by subsection (a), shall be deposited into the Comprehensive Immigration Reform Trust Fund established under section 6(a)(1).

(c) Clerical Amendment.—The table of sections in chapter 69 of title 18, United States Code, is amended by adding at the end the following:

"1430. Improper use of information relating to registered provisional immigrant applications.".

SEC. 2106. GRANT PROGRAM TO ASSIST ELIGIBLE APPLICANTS.

(a) Establishment.—The Secretary may establish, within U.S. Citizenship and Immigration Services, a program to award grants, on a competitive basis, to eligible ~~public or private~~ nonprofit organizations that will use the funding to assist eligible applicants under section 245B, 245C, or 245D of the Immigration and Nationality Act by providing them with the services described in subsection (c).

(b) Eligible ~~Public or Private Non-profit~~ **Nonprofit** Organization.—The term "eligible ~~public or private nonprofit"~~ **nonprofit organization"** means a nonprofit, tax-exempt organization, including a community, faith-based or other immigrant-serving organization, whose staff has demonstrated qualifications, experience, and expertise in providing quality services to immigrants, refugees, persons granted asylum, or persons applying for such statuses.

(c) Use of Funds.—Grant funds awarded under this section may be used for the design and implementation of programs that provide—

(1) information to the public regarding the eligibility and benefits of registered provisional immigrant status authorized under section 245B of the Immigration and

Nationality Act, particularly individuals potentially eligible for such status;

(2) assistance, within the scope of authorized practice of immigration law, to individuals submitting applications for registered provisional immigrant status, including—

(A) screening prospective applicants to assess their eligibility for such status;

(B) completing applications and petitions, including providing assistance in obtaining the requisite documents and supporting evidence;

(C) applying for any waivers for which applicants and qualifying family members may be eligible; and

(D) providing any other assistance that the Secretary or grantees consider useful or necessary to apply for registered provisional immigrant status;

(3) assistance, within the scope of authorized practice of immigration law, to individuals seeking to adjust their status to that of an alien admitted for permanent residence under section 245C of the Immigration and Nationality Act; and

(4) assistance, within the scope of authorized practice of immigration law, and instruction, to individuals—

(A) on the rights and responsibilities of United States citizenship;

(B) in civics and civics-based English as a second language; and

(C) in applying for United States citizenship.

(d) Source of Grant Funds.—

(1) APPLICATION FEES.—The Secretary may use up to $50,000,000 from the Comprehensive Immigration Reform Trust Fund established under section 6(a)(1) to carry out this section.

(2) AUTHORIZATION OF APPROPRIATIONS.—

(A) AMOUNTS AUTHORIZED.—In addition to the amounts made available under paragraph (1), there are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2014 through 2018 to carry out this section.

(B) AVAILABILITY.—Any amounts appropriated pursuant to subparagraph (A) shall remain available until expended.

SEC. 2107. CONFORMING AMENDMENTS TO THE SOCIAL SECURITY ACT.

(a) Correction of Social Security Records.—

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

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

(B) in subparagraph (C), by striking the comma at the end and inserting a semicolon;

(C) by inserting after subparagraph (C) the following:

"(D) who is granted status as a registered provisional immigrant under section 245B or 245D of the Immigration and Nationality Act; or

"(E) whose status is adjusted to that of lawful permanent resident under section 245C of the Immigration and Nationality Act,"; and

(D) in the undesignated matter at the end, by inserting ", or in the case of an alien described in subparagraph (D) or (E), if such conduct is alleged to have occurred before the date on which the alien submitted an application under section 245B of such Act for classification as a registered provisional immigrant" before the period at the end.

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall take effect on the first day of the tenth month that begins after the date of the enactment of this Act.

(b) State Discretion Regarding Termination of Parental Rights .—

(1) IN GENERAL.—A compelling reason for a State not to file (or to join in the filing of) a petition to terminate parental rights under section 475(5)(E) of the Social Security Act (42 U.S.C. 675(5)(E)) shall include—

(A) the removal of the parent from the United States**, unless the parent is unfit or unwilling to be a parent of the child**; or

(B) the involvement of the parent in (including detention pursuant to) an immigration proceeding, unless the parent is unfit or unwilling to be a parent of the child.

(2) CONDITIONS.—Before a State may file to terminate the parental rights under such section **475(5)(E),** ~~475(5)(E)—~~

~~(A)~~ the State (or the county or other political subdivision of the State, as applicable) shall make reasonable efforts—

~~(i)~~**(A)** to identify, locate, and contact **(including, if appropriate**, through the diplomatic or consular offices of the country to which the parent was removed or in which a parent or relative ~~resides—~~ **resides)—**

~~(I)~~**(i) any parent of the child who is in immigration detention;**

(ii) any parent of the child who has been removed from the United States; and

~~(II)~~**(iii)** if possible, any potential adult relative of the child (as described in section 471(a)(29));

~~(ii)~~**(B)** to notify such parent or relative of the intent of the State (or the county or other political subdivision of the State, as applicable) to file (or to join in the filing of) a petition referred to in paragraph (1); or

~~(iii)~~**(C)** to reunify the child with any such parent or relative; and

~~(B)~~**(D) to provide and document** appropriate services ~~have been provided (and documented)~~ to the parent or relative.

(3) CONFORMING AMENDMENT.—Section 475(5)(E)(ii) of the Social Security Act (42 U.S.C. 675(5)(E)) is amended by inserting ", including the reason set forth in section

2107(b)(1) of the Border Security, Economic Opportunity, and Immigration Modernization Act" after "child".

(c) Children Separated From Parents and Caregivers.—

(1) STATE PLAN FOR FOSTER CARE AND ADOPTION ASSISTANCE.—Section 471(a) of the Social Security Act (42 U.S.C. 671(a)) is amended—

(A) by amending paragraph (19) to read as follows:

"(19) provides that the State shall ~~consider giving~~ **give** preference to an adult relative over a nonrelated caregiver when determining a placement for a child if—

"(A) the relative caregiver meets all relevant State child protection standards; and

"(B) the standards referred to in subparagraph (A) ensure that the immigration status alone of a parent, legal guardian, or relative shall not disqualify the parent, legal guardian, or relative from being a placement for a child;"; and

(B) in paragraph (32), by striking "and" at the end;

(C) in paragraph (33), by striking the period at the end and inserting "; and"; and

(D) by adding at the end the following:

"(34) provides that the State shall—

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

"(B) coordinate with the Department of Homeland Security to ensure that parents who wish for their child to accompany them to their country of origin are given adequate time and assistance to obtain a passport and visa, and to collect all relevant vital documents, such as birth certificate, health, and educational records and other information;

"(C) coordinate with State agencies regarding alternate documentation requirements for a criminal records check or a fingerprint-based check for a caregiver that does not have Federal or State-issued identification;

"(D) preserve, to the greatest extent ~~possible~~ **practicable**, the privacy and confidentiality of all information gathered in the course of administering the care, custody, and placement of, and follow up services provided to, a separated child, consistent with the best interest of such child, by not disclosing such information to other government agencies or persons (other than a parent, **legal** guardian, or relative caregiver or such child), except that the head of the State agency **(or the county or other political subdivision of the State, as applicable)** may disclose such information, after placing a written record of the disclosure in the file of the child—

"(i) to a consular official for the purpose of reunification of a child with a parent, legal guardian, or relative caregiver who has been removed or is involved in an immigration proceeding, unless the child has refused contact with, or the sharing of personal or identifying information with, the government of his or her

country of origin;

"(ii) when authorized to do so by the child (if the child has attained 18 years of age) if the disclosure is consistent with the best interest of the child; or

"(iii) to a law enforcement agency if the disclosure would prevent imminent and serious harm to another individual; and

"(E) not less frequently than annually, compile, update, and publish a list of entities in the State that are qualified to provide ~~guardian and~~ legal representation services for a separated child, in a language such that a child can read and understand.".

(2) ADDITIONAL INFORMATION TO BE INCLUDED IN CASE PLAN.—Section 475 of such Act (42 U.S.C. 675) is amended—

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

"(H) In the case of a separated child with respect to whom the State plan requires the State to provide services under section 471(a)(34)—

"(i) the location of the parent~~,~~ **or legal** guardian~~, or relative~~ described in paragraph (9)(A) from whom the child has been separated; and

"(ii) a written record of each disclosure to a government agency or person (other than such a parent, **legal** guardian, or relative) of information gathered in the course of tracking the care, custody, and placement of, and follow-up services provided to, the child."; and

(B) by adding at the end the following:

"(9) The term 'separated child' means an individual who—

"(A) has a parent~~,~~ **or** legal guardian~~, or primary caregiver~~ who has been—

"(i) detained by a Federal, State, or local law enforcement agency in the enforcement of an immigration law; or

"(ii) removed from the United States as a result of a violation of such a law; and

"(B) is in foster care under the responsibility of a State.".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on the 1st day of the 1st calendar quarter that begins after the 1-year period that begins on the date of the enactment of this Act.

SEC. 2108. GOVERNMENT CONTRACTING AND ACQUISITION OF REAL PROPERTY INTEREST.

(a) Exemption From Government Contracting and Hiring Rules.—

(1) IN GENERAL.—A determination by a Federal agency to use a procurement competition exemption under section 253(c) of title 41, United States Code, or to use the authority granted in paragraph (2), for the purpose of implementing this title and the amendments made by this title is not subject to challenge by protest to the Government Accountability Office under sections 3551 and 3556 of title 31, United States Code, or to the Court of

Federal Claims, under section 1491 of title 28, United States Code. An agency shall immediately advise the Congress of the exercise of the authority granted under this paragraph.

(2) GOVERNMENT CONTRACTING EXEMPTION.—The competition requirement under section 253(a) of title 41, United States Code, may be waived or modified by a Federal agency for any procurement conducted to implement this title or the amendments made by this title if the senior procurement executive for the agency conducting the procurement—

(A) determines that the waiver or modification is necessary; and

(B) submits an explanation for such determination to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Homeland Security of the House of Representatives.

(3) HIRING RULES EXEMPTION.—Notwithstanding any other provision of law, the Secretary ~~of Homeland Security~~ is authorized to make term, temporary limited, and part-time appointments of employees who will implement this title and the amendments made by this title without regard to the number of such employees, their ratio to permanent full-time employees, and the duration of their employment. Nothing in chapter 71 of title 5, United States Code, shall affect the authority of any Department ~~of Homeland Security~~ management official to hire term, temporary limited or part-time employees under this paragraph.

(b) Authority to Waive Annuity Limitations.—Section 824(g)(2)(B) of the Foreign Service Act of 1980 (22 U.S.C. 4064(g)(2)(B)) is amended by striking “2009” and inserting “2017”.

(c) Authority to Acquire Leaseholds.—Notwithstanding any other provision of law, the Secretary ~~of Homeland Security~~ may acquire a leasehold interest in real property, and may provide in a lease entered into under this subsection for the construction or modification of any facility on the leased property, if the Secretary determines that the acquisition of such interest, and such construction or modification, are necessary in order to facilitate the implementation of this title and the amendments made by this title.

SEC. 2109. LONG-TERM LEGAL RESIDENTS OF THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS.

Section (6)(e) of the Joint Resolution entitled “A Joint Resolution to approve the ‘Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America’, and for other purposes”, approved March 24, 1976 (48 U.S.C. 1806(e)), as added by section 702 of the Consolidated Natural Resources Act of 2008 (Public Law 110–229; 122 Stat. 854), is amended by adding at the end the following:

“(6) SPECIAL PROVISION REGARDING LONG-TERM RESIDENTS OF THE COMMONWEALTH.—

“(A) CNMI-ONLY RESIDENT STATUS.—Notwithstanding paragraph (1), an alien described in subparagraph (B) may, upon the application of the alien, be admitted as an immigrant to the Commonwealth subject to the following rules:

“(i) The alien shall be treated as an immigrant lawfully admitted for permanent

residence in the Commonwealth only, including permitting entry to and exit from the Commonwealth, until the earlier of the date on which—

"(I) the alien ceases to permanently reside in the Commonwealth; or

"(II) the alien's status is adjusted under this paragraph or section 245 of the Immigration and Nationality Act (8 U.S.C. 1255) to that of an alien lawfully admitted for permanent residence in accordance with all applicable eligibility requirements.

"(ii) The Secretary of Homeland Security shall establish a process for such aliens to apply for CNMI-only permanent resident status during the 90-day period beginning on the first day of the sixth month after the date of the enactment of this paragraph.

"(iii) Nothing in this subparagraph may be construed to provide any alien status under this subparagraph with public assistance to which the alien is not otherwise entitled.

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

"(i) is lawfully present in the Commonwealth under the immigration laws of the United States;

"(ii) is otherwise admissible to the United States under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.);

"(iii) resided continuously and lawfully in the Commonwealth from November 28, 2009, through the date of the enactment of this paragraph;

"(iv) is not a citizen of the Republic of the Marshall Islands, the Federated States of Micronesia, or the Republic of Palau; and

"(v)(I) was born in the Northern Mariana Islands between January 1, 1974 and January 9, 1978;

"(II) was, on May 8, 2008, and continues to be as of the date of the enactment of this paragraph, a permanent resident (as defined in section 4303 of title 3 of the Northern Mariana Islands Commonwealth Code, in effect on May 8, 2008);

"(III) is the spouse or child (as defined in section 101(b)(1) of the Immigration and Nationality Act (8 U.S.C. 1101(b)(1))), of an alien described in subclauses (I) or (II);

"(IV) was, on May 8, 2008, an immediate relative (as defined in section 4303 of title 3 of the Northern Mariana Islands Commonwealth Code, in effect on May 8, 2008, of a United States citizen, notwithstanding the age of the United States citizen, and continues to be such an immediate relative on the date of the application described in subparagraph (A);

"(V) resided in the Northern Mariana Islands as a guest worker under Commonwealth immigration law for at least 5 years before May 8, 2008 and is presently resident under CW-1 status; or

"(VI) is the spouse or child (as defined in section 101(b)(1) of the Immigration

and Nationality Act (8 U.S.C. 1101(b)(1))), of the alien guest worker described in subclause (V) and is presently resident under CW-2 status.

"(C) ADJUSTMENT FOR LONG TERM AND PERMANENT RESIDENTS.—Beginning on the date that is 5 years after the date of the enactment of the Border Security, Economic Opportunity, and Immigration Modernization Act, an alien described in subparagraph (B) may apply to receive an immigrant visa or to adjust his or her status to that of an alien lawfully admitted for permanent residence.".

SEC. 2110. RULEMAKING.

(a) In General.—Not later than 1 year after the date of the enactment of this Act, the Secretary, the Attorney General, and the Secretary of State separately shall issue interim final regulations to implement this subtitle and the amendments made by this subtitle, which shall take effect immediately upon publication in the Federal Register.

(b) Application Procedures; Processing Fees; Documentation.—The interim final regulations issued under subsection (a) shall include—

(1) the procedures by which an alien, and the dependent spouse and children of such alien may apply for status under section 245B of the Immigration and Nationality Act, as added by section 2101 of this Act, as a registered provisional immigrant or a registered provisional immigrant dependent, as applicable, including the evidence required to demonstrate eligibility for such status or to be included in each application for such status;

(2) the criteria to be used by the Secretary to determine—

(A) the maximum processing fee payable under sections 245B(c)(10)(B) and 245C(c)(5)(A) of such Act by a family, including spouses and unmarried children younger than 21 years of age; and

(B) which individuals will be exempt from such fees;

(3) the documentation required to be submitted by the applicant to demonstrate compliance with section 245C(b)(3) of such Act; and

(4) the procedures for a registered provisional immigrant to apply for adjustment of status under section 245C or 245D of such Act, including the evidence required to be submitted with such application to demonstrate the applicant's eligibility for such adjustment.

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

SEC. 2111. STATUTORY CONSTRUCTION.

Except as specifically provided, nothing in this subtitle, or any amendment made by this subtitle, may be construed to create any substantive or procedural right or benefit that is legally enforceable by any party against the United States or its agencies or officers or any other person.

Subtitle B—Agricultural Worker Program

SEC. 2201. SHORT TITLE.

This subtitle may be cited as the "Agricultural Worker Program Act of 2013".

SEC. 2202. DEFINITIONS.

In this subtitle:

(1) BLUE CARD STATUS.—The term "blue card status" means the status of an alien who has been lawfully admitted into the United States for temporary residence under section 2211.

(2) AGRICULTURAL EMPLOYMENT.—The term "agricultural **employment"** ~~employment"~~

~~(A) subject to subparagraph (B)~~ has the meaning given such term in section 3 of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1802), without regard to whether the specific service or activity is temporary or seasonal~~; and~~

~~(B) includes farming in all its branches, the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities, the raising of livestock, bees, fur-bearing animals, or poultry, and any practices (including any forestry or lumbering operations) performed by a farmer or on a farm as an incident to, or in conjunction with, such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market~~.

(3) CHILD.—The term "child" has the meaning given the term in section 101(b)(1) of the Immigration and Nationality Act (8 U.S.C. 1101(b)(1)).

(4) EMPLOYER.—The term "employer" means any person or entity, including any farm labor contractor and any agricultural association, that employs workers in agricultural employment.

(5) QUALIFIED DESIGNATED ENTITY.—The term "qualified designated entity" means—

(A) a qualified farm labor organization or an association of employers designated by the Secretary; or

(B) any other entity that the Secretary designates as having substantial experience, demonstrated competence, and a history of long-term involvement in the preparation and submission of application for adjustment of status under title II of the Immigration and Nationality Act (8 U.S.C. 1151 et seq.).

(6) WORK DAY.—The term "work day" means any day in which the individual is employed 5.75 or more hours in agricultural employment.

CHAPTER 1—PROGRAM FOR EARNED STATUS ADJUSTMENT OF AGRICULTURAL WORKERS

Subchapter A—Blue Card Status

SEC. 2211. REQUIREMENTS FOR BLUE CARD STATUS.

(a) Requirements for Blue Card Status.—Notwithstanding any other provision of law, the Secretary, after conducting the national security and law enforcement clearances required under section 245B(c)(4), may grant blue card status to an alien who—

(1)(A) performed agricultural employment in the United States for not fewer than 575 hours or 100 work days during the 2-year period ending on December 31, 2012; or

(B) is the spouse or child of an alien described in ~~paragraph (1)~~ **subparagraph (A)**;

(2) submits a completed application before the end of the period set forth in subsection (b)(2); and

(3) is not ineligible under paragraph (3) or (4) of section 245B(b) of the Immigration and Nationality Act **(other than a nonimmigrant alien admitted to the United States for agricultural employment described in section 101(a)(15)(H)(ii)(a) of such Act**.

(b) Application.—

(1) IN GENERAL.—An alien who meets the eligibility requirements set forth in subsection (a)(1), may apply for blue card status and that alien's spouse or child may apply for ~~agricultural worker~~ **blue card** status as a dependent, by submitting a completed application form to the Secretary during the application period set forth in paragraph (2) in accordance with the final rule promulgated by the Secretary pursuant to subsection ~~(f).~~**(e).**

~~(2)~~**(2) SUBMISSION.—The Secretary shall provide that the alien shall be able to submit an application under paragraph (1)—**

(A) if the applicant is represented by an attorney or a nonprofit religious, charitable, social service, or similar organization recognized by the Board of Immigration Appeals under section 292.2 of title 8, Code of Federal Regulations; or

(B) to a qualified entity if the applicant consents to the forwarding of the application to the Secretary.

(3) APPLICATION PERIOD.—

(A) INITIAL PERIOD.—Except as provided in subparagraph (B), the Secretary may only accept applications for blue card status **for a 1-year period** from aliens in the United States ~~during the 1-year period~~ beginning on the date on which the final rule is published in the Federal Register pursuant to subsection (f)**, except that qualified nonimmigrants who have participated in the H–2A Program may apply from outside of the United States**.

(B) EXTENSION.—If the Secretary determines, during the initial period described in subparagraph (A), that additional time is required to process applications for blue card status or for other good cause, the Secretary may extend the period for accepting applications for an additional 18 months.

~~(3)~~**(4)** APPLICATION FORM.—

(A) REQUIRED INFORMATION.—The application form referred to in paragraph (1) shall collect such information as the Secretary determines necessary and appropriate.

(B) FAMILY APPLICATION.—The Secretary shall establish a process through which

an alien may submit a single application under this section on behalf of the alien, his or her spouse, and his or her children, who are residing in the United States.

(C) INTERVIEW.—The Secretary may interview applicants for blue card status to determine whether they meet the eligibility requirements set forth in subsection (a)(1).

~~(4)~~**(5)** ALIENS APPREHENDED BEFORE OR DURING THE APPLICATION PERIOD.—If an alien, who is apprehended during the period beginning on the date of the enactment of this Act and ending on the application period described in paragraph ~~(2)~~**(3)**, appears prima facie eligible for blue card status, the Secretary—

(A) shall provide the alien with a reasonable opportunity to file an application under this section during such application period; and

(B) may not remove the individual until a final administrative determination is made on the application.

~~(5)~~**(6)** SUSPENSION OF REMOVAL DURING APPLICATION PERIOD.—

(A) PROTECTION FROM DETENTION OR REMOVAL.—An alien granted blue card status may not be detained by the Secretary or removed from the United States unless—

(i) such alien is, or has become, ineligible for blue card status ~~under subsection (a)(1)(C)~~; or

(ii) the alien's blue card status has been revoked ~~under subsection (2)~~.

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

(i) if the Secretary determines that an alien, during the period beginning on the date of the enactment of this section and ending on the last day of the application period described in paragraph (2), is in removal, deportation, or exclusion proceedings before the Executive Office for Immigration Review and is prima facie eligible for blue card status under this section—

(I) the Secretary shall provide the alien with the opportunity to file an application for such status; and

(II) upon motion by the Secretary and with the consent of the alien or upon motion by the alien, the Executive Office for Immigration Review shall—

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

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

(ii) if the Executive Office for Immigration Review determines that an alien, during the application period described in paragraph (2), is in removal, deportation, or exclusion proceedings before the Executive Office for Immigration Review and is prima facie eligible for blue card status under this section—

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

(II) if the Secretary does not dispute the determination of prima facie eligibility within 7 days after such notification, the Executive Office for Immigration Review, upon consent of the alien, shall—

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

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

(C) TREATMENT OF CERTAIN ALIENS.—

(i) IN GENERAL.—If an alien who meets the eligibility requirements set forth in subsection (a) is present in the United States and has been ordered excluded, deported, or removed, or ordered to depart voluntarily from the United States under any provision of this Act—

(I) notwithstanding such order or section 241(a)(5) of the Immigration and Nationality Act (8 U.S.C. 1231(a)(5)), the alien may apply for blue card status under this section; and

(II) if the alien is granted such status, the alien shall file a motion to reopen the exclusion, deportation, removal, or voluntary departure order, which motion shall be granted unless 1 or more of the grounds of ineligibility is established by clear and convincing evidence.

(ii) LIMITATIONS ON MOTIONS TO REOPEN.—The limitations on motions to reopen set forth in section 240(c)(7) of the Immigration and Nationality Act (8 U.S.C. 1229a(c)(7)) shall not apply to motions filed under clause (i)(II).

(D) PERIOD PENDING ADJUDICATION OF APPLICATION.—

(i) IN GENERAL.—During the period beginning on the date on which an alien applies for blue card status under ~~paragraph (1)~~ **this subsection** and the date on which the Secretary makes a final decision regarding such application, the alien—

(I) may receive advance parole to reenter the United States if urgent humanitarian circumstances compel such travel;

(II) may not be detained by the Secretary or removed from the United States unless the Secretary makes a prima facie determination that such alien is, or has become, ineligible for blue card status ~~under subsection (a)(1)(c)~~;

(III) shall not be considered unlawfully present for purposes of section 212(a)(9)(B) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(9)(B)); and

(IV) shall not be considered an unauthorized alien (as defined in section 274A(h)(3) of the Immigration and Nationality Act (8 U.S.C. 1324a(h)(3))).

(ii) EVIDENCE OF APPLICATION FILING.—As soon as practicable after receiving each application for blue card status, the Secretary shall provide the applicant with a document acknowledging the receipt of such application.

(iii) CONTINUING EMPLOYMENT.—An employer who knows an alien employee

is an applicant for blue card status or will apply for such status once the application period commences is not in violation of section 274A(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1324a(a)(2)) if the employer continues to employ the alien pending the adjudication of the alien employee's application.

(iv) EFFECT OF DEPARTURE.—Section 101(g) of the Immigration and Nationality Act (8 U.S.C. 1101(g)) shall not apply to an alien granted—

(I) advance parole under clause (i)(I) to reenter the United States; or

(II) blue card status.

~~(6)~~**(7)** SECURITY AND LAW ENFORCEMENT CLEARANCES.—

(A) BIOMETRIC AND BIOGRAPHIC DATA.—The Secretary may not grant blue card status to an alien or an alien dependent spouse or child under this section unless such alien submits biometric and biographic data in accordance with procedures established by the Secretary.

(B) ALTERNATIVE PROCEDURES.—The Secretary shall provide an alternative procedure for applicants who cannot provide the standard biometric data required under subparagraph (A) because of a physical impairment.

(C) CLEARANCES.—

(i) DATA COLLECTION.—The Secretary shall collect, from each alien applying for status under this section, biometric, biographic, and other data that the Secretary determines to be appropriate—

(I) to conduct national security and law enforcement clearances; and

(II) to determine whether there are any national security or law enforcement factors that would render an alien ineligible for such status.

(ii) PREREQUISITE.—The required clearances described in clause (i)(I) shall be completed before the alien may be granted blue card status.

~~(7)~~**(8)** DURATION OF STATUS AND EXTENSION.—

(A) IN GENERAL.—After the date that is 8 years after the date regulations are published under this section, no alien may remain in blue card status.

(B) EXTENSION.—An extension of blue card status may not be granted by the Secretary until renewed national security and law enforcement clearances have been completed with respect to the applicant, to the satisfaction of the Secretary.

~~(8)~~**(9)** FEES AND PENALTIES.—

(A) STANDARD PROCESSING FEE.—

(i) IN GENERAL.—Aliens who are 16 years of age or older and are applying for blue card status under paragraph (2), or for an extension of such status, shall pay a processing fee to the Department ~~of Homeland Security~~ in an amount determined by the Secretary.

(ii) RECOVERY OF COSTS.—The processing fee authorized under clause (i) shall be set at a level that is sufficient to recover the full costs of processing the

application, including any costs incurred—

(I) to adjudicate the application;

(II) to take and process biometrics;

(III) to perform national security and criminal checks, including adjudication;

(IV) to prevent and investigate fraud; and

(V) to administer the collection of such fee.

(iii) AUTHORITY TO LIMIT FEES.—The Secretary, by regulation, may—

(I) limit the maximum processing fee payable under this subparagraph by a family, including spouses and unmarried children younger than 21 years of age; and

(II) exempt defined classes of individuals from the payment of the fee authorized under clause (i).

(B) DEPOSIT AND USE OF PROCESSING FEES.—Fees collected pursuant to subparagraph (A)(i)—

(i) shall be deposited into the ~~Comprehensive Immigration Reform Trust Fund established under section 6(a)(1);~~ **Immigration Examinations Fee Account pursuant to section 286(m); and**

~~(ii) may be used for the purposes set forth in section 6(a)(3)(B).~~**(ii) shall remain available until expended pursuant to section 286(n).**

(C) PENALTY.—

(i) PAYMENT.—In addition to the processing fee required under subparagraph (A), aliens who are 21 years of age or older and are applying for blue card status under paragraph (2) shall pay a $100 penalty to the Department.

(ii) DEPOSIT.—Penalties collected pursuant to clause (i) shall be deposited into the Comprehensive Immigration Reform Trust Fund established under section 6(a)(1).

~~(9)~~**(10)** ADJUDICATION.—

(A) FAILURE TO SUBMIT SUFFICIENT EVIDENCE.—The Secretary shall deny an application submitted by an alien who fails to submit—

(i) requested initial evidence, including requested biometric data; or

(ii) any requested additional evidence by the date required by the Secretary.

(B) AMENDED APPLICATION.—An alien whose application for blue card status is denied under subparagraph (A) may file an amended application for such status to the Secretary if the amended application—

(i) is filed within the application period described in paragraph ~~(2)~~**(3)**; and

(ii) contains all the required information and fees that were missing from the

initial application.

~~(10)~~**(11)** EVIDENCE OF BLUE CARD STATUS.—

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

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

(i) shall be machine-readable and tamper-resistant, and shall contain a digitized photograph;

(ii) shall, during the alien's authorized period of admission, and any extension of such authorized admission, serve as a valid travel and entry document for the purpose of applying for admission to the United States;

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

(iv) shall include such other features and information as the Secretary may prescribe.

(c) Terms and Conditions of Blue Card Status.—

(1) CONDITIONS OF BLUE CARD STATUS.—

(A) EMPLOYMENT.—Notwithstanding any other provision of law, including section 241(a)(7) of the Immigration and Nationality Act (8 U.S.C. 1231(a)(7)), an alien with blue card status shall be authorized to be employed in the United States while in such status.

(B) TRAVEL OUTSIDE THE UNITED STATES.—An alien with blue card status may travel outside of the United States and may be admitted, if otherwise admissible, upon returning to the United States without having to obtain a visa if—

(i) the alien is in possession of—

(I) valid, unexpired documentary evidence of blue card status that complies with subsection (b)(11); or

(II) a travel document that has been approved by the Secretary and was issued to the alien after the alien's original documentary evidence was lost, stolen, or destroyed;

(ii) the alien's absence from the United States did not exceed 180 days, unless the alien's failure to timely return was due to extenuating circumstances beyond the alien's control; and

(iii) the alien establishes that the alien is not inadmissible under subparagraph (A)(i), (A)(iii), (B), or (C) of section 212(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)).

(C) ADMISSION.—An alien granted blue card status shall be considered to have been admitted in such status as of the date on which the alien's application was filed.

(D) CLARIFICATION OF STATUS.—An alien granted blue card status—

(i) is lawfully admitted to the United States; and

(ii) may not be classified as a nonimmigrant or as an alien who has been lawfully admitted for permanent residence.

(2) REVOCATION.—

(A) IN GENERAL.—The Secretary may revoke blue card status at any time after providing appropriate notice to the alien, and after the exhaustion or waiver of all applicable administrative review procedures under section 245E(c) of the Immigration and Nationality Act, as added by section 2104(a) of this Act, if the alien—

(i) no longer meets the eligibility requirements ~~described in subsection (a)(1)(C)~~ **for blue card status**;

(ii) knowingly used documentation issued under this section for an unlawful or fraudulent purpose; or

(iii) was absent from the United States for—

(I) any single period longer than 180 days in violation of the requirement under paragraph (1)(B)(ii); or

(II) for more than 180 days in the aggregate during any calendar year, unless the alien's failure to timely return was due to extenuating circumstances beyond the alien's control.

(B) ADDITIONAL EVIDENCE.—

(i) IN GENERAL.—In determining whether to revoke an alien's status under subparagraph (A), the Secretary may require the alien—

(I) to submit additional evidence; or

(II) to appear for an interview.

(ii) EFFECT OF NONCOMPLIANCE.—The status of an alien who fails to comply with any requirement imposed by the Secretary under clause (i) shall be revoked unless the alien demonstrates to the Secretary's satisfaction that such failure was reasonably excusable.

(C) INVALIDATION OF DOCUMENTATION.—If an alien's blue card status is revoked under subparagraph (A), any documentation issued by the Secretary to such alien under subsection (b)(11) shall automatically be rendered invalid for any purpose except for departure from the United States.

(3) INELIGIBILITY FOR PUBLIC BENEFITS.—An alien who has been granted blue card status is not eligible for any Federal means-tested public benefit (as such term is defined in section 403 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1613).

(4) TREATMENT OF BLUE CARD STATUS.—A noncitizen granted blue card status shall be considered lawfully present in the United States for all purposes while such noncitizen remains in such status, except that the noncitizen—

(A) is not entitled to the premium assistance tax credit authorized under section 36B of the Internal Revenue Code of 1986 **for his or her coverage**;

(B) shall be subject to the rules applicable to individuals who are not lawfully present set forth in subsection (e) of such section;~~ and~~

(C) shall be subject to the rules applicable to individuals who are not lawfully present set forth in section 1402(e) of the Patient Protection and Affordable Care Act (42 U.S.C. 18071(e))**; and**

(D) shall be subject to the rules applicable to individuals not lawfully present set forth in section 5000A(d)(3) of the Internal Revenue Code of 1986.~~.~~

(5) ADJUSTMENT TO REGISTERED PROVISIONAL IMMIGRANT STATUS.—The Secretary may adjust the status of an alien who has been granted blue card status to the status of a registered provisional immigrant under section 245B **of the Immigration and Nationality Act** if the Secretary determines that the alien is unable to fulfill the agricultural service requirement set forth in section ~~2212(a)(1)~~ **245F(a)(1) of such Act**.

(d) Record of Employment.—

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

(A) a written record of employment to the alien; and

(B) a copy of such record to the Secretary of Agriculture.

(2) CIVIL PENALTIES.—

(A) IN GENERAL.—If the Secretary finds, after notice and an opportunity for a hearing, that an employer of an alien granted blue card status has knowingly failed to provide the record of employment required under paragraph (1) or has provided a false statement of material fact in such a record, the employer shall be subject to a civil penalty in an amount not to exceed $500 per violation.

(B) LIMITATION.—The penalty under subparagraph (A) for failure to provide employment records shall not apply unless the alien has provided the employer with evidence of employment authorization provided under subsection (c).

(C) DEPOSIT OF CIVIL PENALTIES.—Civil penalties collected under this paragraph shall be deposited in the Comprehensive Immigration Reform Trust Fund established under section 6(a)(1).

(3) TERMINATION OF OBLIGATION.—The obligation under paragraph (1) shall terminate on the date that is 8 years after the date of the enactment of this Act.

(4) EMPLOYER PROTECTIONS.—

(A) USE OF EMPLOYMENT RECORDS.—Copies of employment records or other evidence of employment provided by an alien or by an alien's employer in support of an alien's application for blue card status may not be used in a civil or

criminal prosecution or investigation of that employer under section 274A of the Immigration and Nationality Act (8 U.S.C. 1324a) or the Internal Revenue Code of 1986 for the prior unlawful employment of that alien regardless of the adjudication of such application or reconsideration by the Secretary of such alien's prima facie eligibility determination. Employers that provide unauthorized aliens with copies of employment records or other evidence of employment pursuant to an application for blue card status shall not be subject to civil and criminal liability pursuant to such section 274A for employing such unauthorized aliens.

(B) LIMIT ON APPLICABILITY.—The protections for employers and aliens under subparagraph (A) shall not apply if the aliens or employers submit employment records that are deemed to be fraudulent.

(e) Rulemaking.—Not later than 1 year after the date of the enactment of this Act, the Secretary, in consultation with the Secretary of Agriculture, shall issue final regulations ~~for granting blue card status under this section~~ **to implement this chapter**.

SEC. 2212. ADJUSTMENT TO PERMANENT RESIDENT STATUS.

(a) **In General.—Chapter 5 of title II (8 U.S.C. 1255 et seq.) is amended by inserting after section 245E, as added by section 2104 of this Act, the following:**

"SEC. 245F. ADJUSTMENT TO PERMANENT RESIDENT STATUS FOR AGRICULTURAL WORKERS.

"(a) In General.—Except as provided in subsection (b), and not earlier than 5 years after the date of the enactment of ~~this~~ **the Border Security, Economic Opportunity, and Immigration Modernization** Act, the Secretary shall adjust the status of an alien granted blue card status to that of an alien lawfully admitted for permanent residence if the Secretary determines that the following requirements are satisfied:

~~(1)~~**"(1)** QUALIFYING EMPLOYMENT.—Except as provided in paragraph (3), the alien—

~~(A)~~**"(A)** during the 8-year period beginning on the date of the enactment of ~~this~~ **the Border Security, Economic Opportunity, and Immigration Modernization** Act, performed not less than 100 work days of agricultural employment during each of 5 years; or

~~(B)~~**"(B)** during the 5-year period beginning on ~~the~~ **such** date of ~~the~~ enactment ~~of this Act~~, performed not less than 150 work days of agricultural employment during each of 3 years.

~~(2)~~**"(2)** EVIDENCE.—An alien may demonstrate compliance with the requirement under paragraph (1) by submitting—

~~(A)~~**"(A)** the record of employment described in section ~~2211(e);~~ **2211(d) of the Border Security, Economic Opportunity, and Immigration Modernization Act;**

~~(B)~~**"(B)** documentation that may be submitted under subsection ~~(e)(5);~~**(e)(4);** or

~~(C)~~**"(C)** any other documentation designated by the Secretary for such purpose.

~~(3)~~**"(3)** EXTRAORDINARY CIRCUMSTANCES.—

~~(A)~~**"(A)** IN GENERAL.—In determining whether an alien has met the requirement under paragraph (1), the Secretary may credit the alien with not more than 12 additional months of agricultural employment in the United States to meet such requirement if the alien was unable to work in agricultural employment due to—

~~(i)~~**"(i)** pregnancy, disabling injury, or disease that the alien can establish through medical records;

~~(ii)~~**"(ii)** illness, disease, or other special needs of a child that the alien can establish through medical records;

~~(iii)~~**"(iii)** severe weather conditions that prevented the alien from engaging in agricultural employment for a significant period of time; or

~~(iv)~~**"(iv)** termination from agricultural employment, if the Secretary determines that—

~~(I)~~**"(I)** the termination was without just cause; and

~~(II)~~**"(II)** the alien was unable to find alternative agricultural employment after a reasonable job search.

~~(B)~~**"(B)** EFFECT OF DETERMINATION.—A determination under subparagraph (A)(iv), with respect to an alien, shall not be conclusive, binding, or admissible in a separate or subsequent judicial or administrative action or proceeding between the alien and a current or prior employer of the alien or any other party.

~~(4)~~**"(4)** APPLICATION PERIOD.—The alien applies for adjustment of status before the alien's ~~agricultural~~ **blue** card status expires.

~~(5)~~**"(5)** FINE.—The alien pays a fine of $400 to the Secretary, which shall be deposited into the Comprehensive Immigration Reform Trust Fund established under section 6(a)(1) **of the Border Security, Economic Opportunity, and Immigration Modernization Act.**

"(b)~~.~~

~~(b)~~ Grounds for Denial of Adjustment of Status.—

~~(1)~~**"(1)** IN GENERAL.—The Secretary may not adjust the status of an alien granted blue card status if the alien—

~~(A)~~**"(A)** is no longer eligible for blue card status; or

~~(B)~~**"(B)** failed to perform the qualifying employment requirement under subsection (a)(1), considering any amount credited by the Secretary under subsection (a)(3).

~~(2)~~**"(2)** MAINTENANCE OF WAIVERS OF INADMISSIBILITY.—The grounds of inadmissibility set forth in section 212(a) ~~of the Immigration and Nationality Act (8 U.S.C. 1182(a))~~ that were previously waived for the alien or made inapplicable shall not apply for purposes of the alien's adjustment of status under this section.

~~(3)~~**"(3)** PENDING REVOCATION PROCEEDINGS.—If the Secretary has notified the applicant that the Secretary intends to revoke the applicant's blue card status, the Secretary may not

approve an application for adjustment of status under this section unless the Secretary makes a final determination not to revoke the applicant's status.

~~(4)~~**"(4)** PAYMENT OF TAXES.—

~~(A)~~**"(A)** IN GENERAL.—An applicant may not file an application for adjustment of status under this section unless the applicant has satisfied any applicable Federal tax liability.

"(B) DEFINITION OF APPLICABLE FEDERAL TAX LIABILITY.—In this paragraph, the term 'applicable federal tax liability' means all Federal income taxes assessed in accordance with section 6203 of the Internal Revenue Code of 1986 since the date on which the applicant was authorized to work in the United States in blue card status.

"(C)~~(B)~~ COMPLIANCE.—The applicant may demonstrate compliance with subparagraph (A) by submitting such documentation as the Secretary, in consultation with the Secretary of the Treasury, may require by regulation.

~~(c)~~**"(c)** Spouses and Children.—Notwithstanding any other provision of law, the Secretary shall grant permanent resident status to the spouse or child of an alien whose status was adjusted under subsection (a) if—

~~(1)~~**"(1)** the spouse or child **(including any individual who was a child on the date such alien was granted blue card status)** applies for such status;

~~(2)~~**"(2)** the principal alien includes the spouse and children in an application for adjustment of status to that of a lawful permanent resident; and

~~(3)~~**"(3)** the spouse or child is not ineligible **for such status** under section 245B~~(b)(3).~~**.**

~~(d)~~**"(d)** Numerical Limitations Do Not **Apply.—The** ~~Apply.—~~

~~(1) In general.—The~~ numerical limitations under sections 201 and 202 ~~of the Immigration and Nationality Act (8 U.S.C. 1151 and 1152)~~ shall not apply to the adjustment of aliens to lawful permanent resident status under this section.

~~(2) Conforming amendment.—Section 201(b)(1) is amended by adding at the end the following:~~

~~"(F) Aliens granted lawful permanent resident status under section 245B.".~~

~~(e)~~**"(e)** Submission of Applications.—

~~(1)~~**"(1)** INTERVIEW.—The Secretary may interview applicants for adjustment of status under this section to determine whether they meet the eligibility requirements set forth in this section.

~~(2) Fees.—~~**"(2) FEES.—**

~~(A)~~**"(A)** IN GENERAL.—Applicants for adjustment of status under this section shall pay a processing fee to the Secretary in an amount that will ensure the recovery of the full costs of adjudicating such applications, including—

~~(i)~~**"(i)** the cost of taking and processing biometrics;

~~(ii)~~**"(ii)** expenses relating to prevention and investigation of fraud; and

~~(iii)~~**"(iii)** costs relating to the administration of the fees collected.

~~(B)~~**"(B)** AUTHORITY TO LIMIT FEES.—The Secretary, by regulation—

~~(i)~~**"(i)** may limit the maximum processing fee payable under this paragraph by a family, including spouses and unmarried children younger than 21 years of age; and

~~(ii)~~**"(ii)** may exempt individuals described in section 245B(c)(10) ~~of the Immigration and Nationality Act, as added by section 2201 of this Act,~~ and other defined classes of individuals from the payment of the fee under subparagraph (A).

~~(3)~~**"(3)** DISPOSITION OF **FEES.—All** ~~fees.—~~

~~(A) In general.—All~~ fees collected under paragraph ~~(1)(A) shall be deposited as offsetting receipts into the Comprehensive Immigration Reform Trust Fund established under section 6(a)(1).~~**(2)(A)—**

~~(B) Use of fees for application processing.—Amounts deposited into the Comprehensive Immigration Reform Trust Fund pursuant to subparagraph (A)~~**"(A) shall be deposited into the Immigration Examinations Fee Account pursuant to section 286(m); and**

"(B) shall remain available ~~to the Secretary until expended for processing applications for agriculture card status or for adjustment of status under this section or section 2211.~~ **until expended pursuant to section 286(n).**

~~(4)~~**"(4)** DOCUMENTATION OF WORK HISTORY.—

~~(A)~~**"(A)** BURDEN OF PROOF.—An alien applying for blue card status under ~~this section~~ **section 2211 of the Border Security, Economic Opportunity, and Immigration Modernization Act** or for adjustment of status under subsection (a) ~~has provided~~ **shall provide** evidence that the alien has worked the requisite number of hours or days required under **subsection (a)(1) of such** section 2211~~(a)(1)~~ or subsection (a)(3) **of this section**, as applicable.

~~(B)~~**"(B)** TIMELY PRODUCTION OF RECORDS.—If an employer or farm labor contractor employing such an alien has kept proper and adequate records respecting such employment, the alien's burden of proof under subparagraph (A) may be met by securing timely production of those records under regulations to be promulgated by the Secretary.

~~(C)~~**"(C)** SUFFICIENT EVIDENCE.—An alien may meet the burden of proof under subparagraph (A) to establish that the alien has performed the days or hours of work referred to in subparagraph (A) by producing sufficient evidence to show the extent of that employment as a matter of just and reasonable inference.

~~(f) Limitation on Access to Information.—Files and records collected or compiled by a qualified designated entity for the purposes of this section are confidential. The Secretary may not have access to such a file or record relating to an alien without the consent of the alien, except as allowed by a court order issued pursuant to subsection (g).~~

~~(g) Confidentiality of Information.—Except as otherwise provided in this section, the~~

~~Secretary or any other official or employee of the Department may not—~~

~~(1) use information furnished by the applicant pursuant to an application filed under this subtitle, the information provided by an applicant to a qualified designated entity, or any information provided by an employer or former employer for any purpose other than to make a determination on the application or for imposing the penalties described in subsection (h);~~

~~(2) make any publication in which the information furnished by any particular individual can be identified; or~~

~~(3) permit a person other than a sworn officer or employee of the Department or, with respect to applications filed with a qualified designated entity, that qualified designated entity, to examine individual applications.~~

~~(h)~~**"(f)** Penalties for False Statements in Applications.—

~~(1)~~**"(1)** CRIMINAL PENALTY.—Any person who—

~~(A)~~**"(A)** files an application for blue card status under section 2211 **of the Border Security, Economic Opportunity, and Immigration Modernization Act** or an adjustment of status under this section and knowingly and willfully falsifies, conceals, or covers up a material fact or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry; or

~~(B)~~**"(B)** creates or supplies a false writing or document for use in making such an application,

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

~~(2)~~**"(2)** INADMISSIBILITY.—An alien who is convicted of a crime under paragraph (1) shall be deemed inadmissible to the United States on the ground described in section 212(a)(6)(C)(i) ~~of the Immigration and Nationality Act (8 U.S.C. 1182(a)(6)(C)(i)).~~**.**

~~(3)~~**"(3)** DEPOSIT.—Fines collected under paragraph (1) shall be deposited into the Comprehensive Immigration Reform Trust Fund established under section 6(a)(1) **of the Border Security, Economic Opportunity, and Immigration Modernization Act.**

"(g)~~.~~

~~(i)~~ Eligibility for Legal Services.—Section 504(a)(11) of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1996 (Public Law 104–134; 110 Stat. 1321–55) may not be construed to prevent a recipient of funds under the Legal Services Corporation Act (42 U.S.C. 2996 et seq.) from providing legal assistance directly related to an application for blue card status under section 2211 ~~or~~ **of the Border Security, Economic Opportunity, and Immigration Modernization Act, to an individual who has been granted blue card status, or for an application for** an adjustment of status under this section.

"(h) Administrative and Judicial Review.—Aliens applying for blue card status under section 2211 of the Border Security, Economic Opportunity, and Immigration Modernization Act or adjustment to permanent resident status under this section shall be entitled to the rights and subject to the conditions applicable to other classes of aliens

under sections 242(h) and 245E.

"(i) Applicability of Other Provisions.—The provisions set forth in section 245E which are applicable to aliens described in section 245B, 245C, and 245D shall apply to aliens applying for blue card status under section 2211 of the Border Security, Economic Opportunity, and Immigration Modernization Act or adjustment to permanent resident status under this section.

"(j) Limitation on Blue Card Status.—An alien granted blue card status under section 2211 of the Border Security, Economic Opportunity, and Immigration Modernization Act may only adjust status to an alien lawfully admitted for permanent residence under this section, section 245C of this Act, or section 2302 of the Border Security, Economic Opportunity, and Immigration Modernization Act.

"(k) Definitions.—In this section:

"(1) BLUE CARD STATUS.—The term 'blue card status' means the status of an alien who has been lawfully admitted into the United States for temporary residence under section 2211 of the Border Security, Economic Opportunity, and Immigration Modernization Act.

"(2) AGRICULTURAL EMPLOYMENT.—The term 'agricultural employment' has the meaning given such term in section 3 of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1802), without regard to whether the specific service or activity is temporary or seasonal.

"(3) EMPLOYER.—The term 'employer' means any person or entity, including any farm labor contractor and any agricultural association, that employs workers in agricultural employment.

"(4) WORK DAY.—The term 'work day' means any day in which the individual is employed 5.75 or more hours in agricultural employment.".

(b) Conforming Amendment.—Section 201(b)(1) (8 U.S.C. 1151(b)(1), as amended by section 2103(c), is further amended by adding at the end the following:

"(G) Aliens granted lawful permanent resident status under section 245F.".

(c) Clerical Amendment.—The table of contents, as amended by section 2104(e), is further amended by inserting after the item relating to section 245E the following:

"Sec.245F.Adjustment to permanent resident status for agricultural workers.".

SEC. 2213. USE OF INFORMATION.

Beginning not later than the first day of the application period described in section ~~2211(c)(1)~~ **2211(b)(3)**, the Secretary, in cooperation with qualified designated entities, shall broadly disseminate information respecting the benefits that aliens may receive under this subchapter and the requirements that an alien is required to meet to receive such benefits.

SEC. 2214. REPORTS ON BLUE CARDS.

Not later than September 30, 2013, and annually thereafter for the next 8 years, the Secretary shall submit a report to Congress that identifies, for the previous fiscal year—

(1) the number of aliens who applied for blue card status;

(2) the number of aliens who were granted blue card status;

(3) the number of aliens who applied for an adjustment of status pursuant to section ~~2212(a);~~ **245F(a) of the Immigration and Nationality Act, as added by section 2212;** and

(4) the number of aliens who received an adjustment of status pursuant **such** section ~~2212(a)~~ **245F(a)**.

SEC. 2215. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Secretary such sums as may be necessary to implement this subpart, including any sums needed for costs associated with the initiation of such implementation, for fiscal years 2013 and 2014.

Subchapter B—Correction of Social Security Records

SEC. 2221. CORRECTION OF SOCIAL SECURITY RECORDS.

(a) In General.—Section 208(e)(1) of the Social Security Act (42 U.S.C. 408(e)(1)) is amended—

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

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

(3) by inserting after subparagraph (C) the following:

“(D) who is granted blue card status under the Agricultural Worker Program Act of 2013,”; and

(4) by striking “1990.” and inserting “1990, or in the case of an alien described in subparagraph (D), if such conduct is alleged to have occurred before the date on which the alien was granted blue card status under section 2211(a) of the Agricultural Worker Program Act of 2013.”.

(b) Effective Date.—The amendments made by subsection (a) shall take effect on the first day of the seventh month that begins after the date of the enactment of this Act.

CHAPTER 2—NONIMMIGRANT AGRICULTURAL VISA PROGRAM

SEC. 2231. NONIMMIGRANT CLASSIFICATION FOR NONIMMIGRANT AGRICULTURAL WORKERS.

Section 101(a)(15) ~~of the Immigration and Nationality Act~~(8 U.S.C. 1101(a)(15)) is **amended** ~~amended—~~

~~(1) in subparagraph (U), by striking “or” at the end;~~

~~(2) in subparagraph (V), by striking the period at the end and inserting “; or”; and~~

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

"(W) an alien having a residence in a foreign country who is coming to the United States for a temporary period—

"(iii)(I) to perform services or labor in agricultural employment and who has a written contract that specifies the wages, benefits, and working conditions of such full-time employment in an agricultural occupation with a designated agricultural employer for a specified period of time; **and**

"(II) who meets the requirements under section 218A for a nonimmigrant visa described in this clause; ~~and~~

~~"(III) with respect to whom the Secretary of Agriculture has notified the Secretary of Homeland Security and the Secretary of State that the intending employer has accepted the terms and conditions of such employment for such a nonimmigrant;~~ or

"(iv)(I) to perform services or labor in agricultural employment and who has an offer of full-time employment in an agricultural occupation from a designated agricultural employer for such employment and is not described in clause (i); **and**

"(II) who meets the requirements under section 218A for a nonimmigrant visa described in this **clause.".** ~~clause; and~~

~~"(III) with respect to whom the Secretary of Agriculture has notified the Secretary of Homeland Security and the Secretary of State that the intending employer has accepted the terms and conditions of such employment for such a nonimmigrant.".~~

SEC. 2232. ESTABLISHMENT OF NONIMMIGRANT AGRICULTURAL WORKER PROGRAM.

(a) In General.—Chapter 2 of title II ~~of the Immigration and Nationality Act~~(8 U.S.C. 211 et seq.) is amended by adding at the end the following:

"SEC. 218A. NONIMMIGRANT AGRICULTURAL WORKER PROGRAM.

"(a) Definitions.—In this section and in **clauses (iii) and (iv) of** section 101(a)(15)(W):

"(1) AGRICULTURAL EMPLOYMENT.—The term 'agricultural **employment'** ~~employment'—~~

~~"(A) subject to subparagraph (B)~~ has the meaning given such term in section 3 of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1802), without regard to whether the specific service or activity is temporary or seasonal~~; and~~

~~"(B) includes farming in all its branches, the cultivation and tillage of the soil, dairying, the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities, the raising of livestock, bees, fur-bearing animals, or poultry, and any practices (including any forestry or lumbering operations) performed by a farmer or on a~~

~~farm as an incident to, or in conjunction with, such farming operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market~~.

"(2) AT-WILL AGRICULTURAL WORKER.—The term 'at-will agricultural worker' means an alien present in the United States pursuant to section 101(a)(15)(W)(iv).

"(3) BLUE CARD.—The term 'blue card' means an employment authorization and travel document issued to an alien granted blue card status under section 2211(a) of the Agricultural ~~Job Opportunities, Benefits, and Security~~ **Worker Program** Act of 2013.

"(4) CONTRACT AGRICULTURAL WORKER.—The term 'contract agricultural worker' means an alien present in the United States pursuant to section 101(a)(15)(W)(iii).

"(5) DESIGNATED AGRICULTURAL EMPLOYER.—The term 'designated agricultural employer' means an employer who is registered with the Secretary of Agriculture pursuant to subsection (e)(1).

"(6) ELECTRONIC JOB REGISTRY.—The term 'Electronic Job Registry' means the Electronic Job Registry of a State workforce agency (or similar successor registry).

"(7) EMPLOYER.—Except as otherwise provided, the term 'employer' means any person or entity, including any farm labor contractor and any agricultural association, that employs workers in agricultural employment.

"(8) NONIMMIGRANT AGRICULTURAL WORKER.—The term 'nonimmigrant agricultural worker' mean a nonimmigrant described in clause (iii) or (iv) of section 101(a)(15)(W).

"(9) PROGRAM.—The term 'Program' means the Nonimmigrant Agricultural Worker Program established under subsection (b).

"(10) SECRETARY.—Except as otherwise specifically provided, the term 'Secretary' means the Secretary of Agriculture.

"(11) UNITED STATES WORKER.—The term 'United States worker' means an individual who—

"(A) is a national of the United States; or

"(B) is an alien who—

"(i) is lawfully admitted for permanent residence;

"(ii) is admitted as a refugee under section 207;

"(iii) is granted asylum under section 208;

"(iv) holds ~~an~~ **a** blue card; or

"(v) is an immigrant otherwise authorized by this Act or by the Secretary of Homeland Security to be employed in the United States.

"(b) Requirements.—

"(1) EMPLOYER.—An employer may not employ an alien for agricultural employment under the Program unless such employer is a designated agricultural employer and complies with the terms of this section.

"(2) WORKER.—An alien may not be employed for agricultural employment under the Program unless such alien is a nonimmigrant agricultural worker and complies with the terms of this section.

"(c) Numerical Limitation.—

"(1) FIRST 5 YEARS OF PROGRAM.—

"(A) IN GENERAL.—Subject to paragraph (2), the worldwide level of visas for nonimmigrant agricultural workers for the fiscal year during which the first visa is issued to a nonimmigrant agricultural worker and for each of the following 4 fiscal years shall be equal to—

"(i) 112,333; and

"(ii) the numerical adjustment made by the Secretary for such fiscal year in accordance with paragraph (2).

"(B) QUARTERLY ALLOCATION.—The annual allocation of visas described in subparagraph (A) shall be evenly allocated between the 4 quarters of the fiscal year unless the Secretary determines that an alternative allocation would better accommodate the seasonal demand for visas. Any unused visas in a quarter shall be added to the allocation for the subsequent quarter of the same fiscal year.

"(C) EFFECT OF 2ND OR SUBSEQUENT DESIGNATED AGRICULTURAL EMPLOYER.—A nonimmigrant agricultural worker who has a valid visa issued under this section that counted against the allocation described in subparagraph (A) shall not be recounted against the allocation if the worker is petitioned for by a subsequent designated agricultural employer.

"(2) ANNUAL ADJUSTMENTS FOR FIRST 5 YEARS OF PROGRAM.—

"(A) IN GENERAL.—The Secretary, **in consultation with the Secretary of Labor, and** after reviewing relevant evidence submitted by agricultural producers and organizations representing agricultural workers, may increase or decrease, as appropriate, the worldwide level of visas under paragraph (1) for each of the 5 fiscal years referred to in paragraph (1) ~~based on the following~~ **after considering appropriate** factors**, including**~~—~~**:**

"(i) ~~A~~ **a** demonstrated shortage of agricultural workers~~.~~**;**

"(ii) ~~The~~ **the** level of unemployment and underemployment of agricultural workers during the preceding fiscal year~~.~~**;**

"(iii) ~~The~~ **the** number of applications for blue card status~~.~~**;**

"(iv) ~~The~~ **the** number of blue card visa applications approved~~.~~**;**

"(v) ~~The~~ **the** number of nonimmigrant agricultural workers sought by employers during the preceding fiscal year~~.~~**;**

"(vi) ~~The~~ **the** estimated number of United States workers, including blue card workers, who worked in agriculture during the preceding fiscal year~~.~~**;**

"(vii) ~~The~~ **the** number of nonimmigrant agricultural workers issued a visa in the most recent fiscal year who remain in the United States in compliance with the

terms of such visa~~.~~**;**

"(viii) ~~The~~ **the** number of United States workers who accepted jobs offered by employers using the Electronic Job Registry during the preceding fiscal year~~.~~**;**

"(ix) ~~Any~~ **any** growth or contraction of the United States agricultural industry that has increased or decreased the demand for agricultural workers**; and**~~.~~

"(x) ~~Any~~ **any** changes in the real wages paid to agricultural workers in the United States as an indication of a shortage or surplus of agricultural labor.

"(B) NOTIFICATION; IMPLEMENTATION.—The Secretary shall notify the Secretary of Homeland Security of any change to the worldwide level of visas for nonimmigrant agricultural workers. The Secretary of Homeland Security shall implement such changes.

"(C) EMERGENCY PROCEDURES.—The Secretary shall establish, by regulation, procedures for immediately adjusting an annual allocation under paragraph (1) for ~~severe~~ labor shortages, as determined by the Secretary. **The Secretary shall make a decision on a petition for an adjustment of status not later than 30 days after receiving such petition.**

"(3) SIXTH AND SUBSEQUENT YEARS OF PROGRAM.—The Secretary, in consultation with the Secretary of Labor, shall establish the worldwide level of visas for nonimmigrant agricultural workers for each fiscal year following the fiscal years referred to in paragraph (1) after considering appropriate factors, including—

"(A) a demonstrated shortage of agricultural workers;

"(B) the level of unemployment and underemployment of agricultural workers during the preceding fiscal year;

"(C) the number of applications for blue card status;

"(D) the number of blue card visa applications approved;

"(E) the number of nonimmigrant agricultural workers sought by employers during the preceding fiscal year;

"(F) the estimated number of United States workers, including blue card workers, who worked in agriculture during the preceding fiscal year;

"(G) the number of nonimmigrant agricultural workers issued a visa in the most recent fiscal year who remain in the United States in compliance with the terms of such visa;

"(H) the number of United States workers who accepted jobs offered by employers using the Electronic Job Registry during the preceding fiscal year;

"(I) any growth or contraction of the United States agricultural industry that has increased or decreased the demand for agricultural workers; and

"(J) any changes in the real wages paid to agricultural workers in the United States as an indication of a shortage or surplus of agricultural labor.

"(4) EMERGENCY PROCEDURES.—The Secretary shall establish, by regulation,

procedures for immediately adjusting an annual allocation under paragraph (3) for labor shortages, as determined by the Secretary. The Secretary shall make a decision on a petition for an adjustment of status not later than 30 days after receiving such petition

"(d) Requirements for Nonimmigrant Agricultural Workers.—

"(1) ELIGIBILITY FOR NONIMMIGRANT AGRICULTURAL WORKER STATUS.—

"(A) IN GENERAL.—An alien is not eligible to be admitted to the United States as a nonimmigrant agricultural worker if the alien—

"(i) violated a material term or condition of a previous admission as a nonimmigrant agricultural worker during the most recent 3-year period (other than a contract agricultural worker who voluntarily abandons his or her employment before the end of the contract period or whose employment is terminated by the employer for cause);

"(ii) has not obtained successful clearance of any security and criminal background checks required by the Secretary of Homeland Security or any other examination required under this Act; or

"(iii)(I) departed from the United States while subject to an order of exclusion, deportation, or removal, or pursuant to an order of voluntary departure; and

"(II)(aa) is outside of the United States; or

"(bb) has reentered the United States illegally after December 31, 2012 without receiving consent to the alien's reapplication for admission under section 212(a)(9).

"(B) WAIVER.—The Secretary **of Homeland Security** may waive the application of subparagraph (A)(iii) on behalf of an alien if the alien—

"(i) is the spouse or child of a United States citizen or lawful permanent resident;

"(ii) is the parent of a child who is a United States citizen or lawful permanent resident;

"(iii) meets the requirements set forth in clause (ii) or (iii) of section 245D(b)(1)(A); or

"(iv)(I) meets the requirements set forth in section 245D(b)(1)(A)(ii);

"(II) is 16 years or older on the date on which the alien applies for nonimmigrant agricultural status; and

"(III) was physically present in the United States for an aggregate period of not less than 3 years during the 6-year period immediately preceding the date of the enactment of this section.

"(2) TERM OF STAY FOR NONIMMIGRANT AGRICULTURAL WORKERS.—

"(A) IN GENERAL.—

"(i) INITIAL ADMISSION.—A nonimmigrant agricultural worker may be admitted

into the United States in such status for an initial period of 3 years.

"(ii) RENEWAL.—A nonimmigrant agricultural worker may renew such worker's period of admission in the United States for 1 additional 3-year period.

"(B) BREAK IN PRESENCE.—A nonimmigrant agricultural worker who has been admitted to the United States for 2 consecutive periods under subparagraph (A) is ineligible to renew the alien's nonimmigrant agricultural worker status until such alien—

"(i) returns to a residence outside the United States for a period of not less than 3 months; and

"(ii) seeks to reenter the United States under the terms of the Program as a nonimmigrant agricultural worker.

"(3) LOSS OF STATUS.—

"(A) IN GENERAL.—An alien admitted as a nonimmigrant agricultural worker shall be ineligible for such status and shall be required to depart the United States if such alien—

"(i) after the completion of his or her contract with a designated agricultural employer, is not employed in agricultural employment by a designated agricultural employer; or

"(ii) is an at-will agricultural worker and is not continuously employed by a designated agricultural employer in agricultural employment as an at-will agricultural worker.

"(B) EXCEPTION.—Subject to subparagraph (C), a nonimmigrant agricultural worker has not violated subparagraph (A) if the ~~contract~~ **nonimmigrant** agricultural worker is not employed in agricultural employment for a period not to exceed 60 days.

"(C) WAIVER.—Notwithstanding subparagraph (B), the Secretary of Homeland Security may waive the application of clause (i) or (ii) of subparagraph (A) for a nonimmigrant agricultural worker who was not employed in agricultural employment for a period of more than 60 days if such period of unemployment was due to—

"(i) the injury of such worker; or

"(ii) a natural disaster declared by the Secretary.

"(D) TOLLING OF EMPLOYMENT REQUIREMENT.—A nonimmigrant agricultural worker may leave the United States for up to 60 days in any fiscal year while in such status. During the period in which the worker is outside of the United States, the 60-day limit specified in subparagraph (B) shall be tolled.

"(4) PORTABILITY OF STATUS.—

"(A) CONTRACT AGRICULTURAL WORKERS.—

"(i) IN GENERAL.—Except as provided in clause (ii), an alien who entered the United States as a contract agricultural worker may—

"(I) seek employment as a nonimmigrant agricultural worker with a

designated agricultural employer other than the designated agricultural employer with whom the employee had a contract described in section 101(a)(15)(W)(ii)(I); and

"(II) accept employment with such new employer after the date the contract agricultural worker completes such contract.

"(ii) VOLUNTARY ABANDONMENT; TERMINATION FOR CAUSE.—A contract agricultural worker who voluntarily abandons his or her employment before the end of the contract period or whose employment is terminated for cause by the employer—

"(I) may not accept subsequent employment with another designated agricultural employer without first departing the United States and reentering pursuant to a new offer of employment; and

"(II) is not entitled to the 75 percent payment guarantee described in subsection (e)(4)(B).

"(iii) TERMINATION BY MUTUAL AGREEMENT.—The termination of an employment contract by mutual agreement of the designated agricultural employer and the contract agricultural worker shall not be considered voluntary abandonment for purposes of clause (ii).

"(B) AT-WILL AGRICULTURAL WORKERS.—An alien who entered the United States as an at-will agricultural worker may seek employment as an at-will agricultural worker with any other designated agricultural employer referred to in section 101(a)(15)(W)(iii)(I).

"(5) PROHIBITION ON GEOGRAPHIC LIMITATION.—A nonimmigrant visa issued to a nonimmigrant agricultural worker—

"(A) shall not limit the geographical area within which such worker may be employed;

"(B) shall not limit the type of agricultural employment such worker may perform; and

"(C) ~~may~~ **shall** restrict such worker to employment with designated agricultural employers.

"(6) TREATMENT OF SPOUSES AND CHILDREN.—A spouse or child of a nonimmigrant agricultural worker—

"(A) shall not be entitled to **a** visa or ~~other~~ **any** immigration status by virtue of the relationship of such spouse or child to such worker; and

"(B) may be provided status as a nonimmigrant agricultural worker if the spouse or child is independently qualified for such status.

"(e) Employer Requirements.—

"(1) DESIGNATED AGRICULTURAL EMPLOYER STATUS.—

"(A) REGISTRATION REQUIREMENT.—Each employer seeking to employ nonimmigrant agricultural workers shall register for designated agricultural employer

status by submitting to the Secretary, through the Farm Service Agency in the geographic area of the employer or electronically to the Secretary, a registration that includes—

"(i) the employer's employer identification number; and

"(ii) a registration fee, in an amount determined by the Secretary**, which shall be used for the costs of administering the program**.

"(B) CRITERIA.—The Secretary shall grant designated agricultural employer status to an employer who submits ~~an registration~~ **a 6registration** for such status that includes—

"(i) documentation that the employer is engaged in agriculture;

"(ii) the estimated number of nonimmigrant agricultural workers the employer will need each year;

"(iii) the anticipated periods during which the employer will need such workers; and

"(iv) documentation establishing need for a specified agricultural occupation or occupations.

"(C) DESIGNATION.—

"(i) REGISTRATION NUMBER.—The Secretary shall assign each employer that meets the criteria established pursuant to subparagraph (B) with a designated agricultural employer registration number.

"(ii) TERM OF DESIGNATION.—Each employer granted designated agricultural employer status under this paragraph shall retain such status for a term of 3 years. **At the end of such 3-year term, the employer may renew the registration for another 3-year term if the employer meets the requirements set forth in subparagraphs (A) and (B).**

"(D) ASSISTANCE.—In carrying out the functions described in this subsection, the Secretary may work through the Farm Service Agency, or any other agency in the Department of Agriculture—

"(i) to assist agricultural employers with the registration process under this paragraph by providing such employers with—

"(I) technical assistance and expertise;

"(II) internet access for submitting such applications; and

"(III) a nonelectronic means for submitting such registrations; and

"(ii) to provide resources about the Program, including best practices and compliance related assistance and resources or training to assist in retention of such workers to agricultural employers.

"(E) DEPOSIT OF REGISTRATION ~~FEE.—ALL REGISTRATION FEES COLLECTED UNDER SUBPARAGRAPH (A)(II) SHALL BE DEPOSITED IN THE COMPREHENSIVE IMMIGRATION REFORM TRUST FUND ESTABLISHED UNDER SECTION 6(A)(1) OF THE BORDER SECURITY,~~

~~ECONOMIC OPPORTUNITY, AND IMMIGRATION MODERNIZATION ACT.~~ **FEE.—Fees collected pursuant to subparagraph (A)(ii)—**

"(i) shall be deposited into the Immigration Examinations Fee Account pursuant to section 286(m); and

"(ii) shall remain available until expended pursuant to section 286(n).

"(2) NONIMMIGRANT AGRICULTURAL WORKER PETITION PROCESS.—

"(A) IN GENERAL.—Not later than 45 days before the date on which nonimmigrant agricultural workers are needed, a designated agricultural employer seeking to employ such workers shall submit a petition to the Secretary of Homeland Security that includes the employer's designated agricultural employer registration number.

"(B) ATTESTATION.—An ~~application~~ **petition** submitted under subparagraph (A) shall include an attestation of the following**:**

"(i) ~~the~~ **The** number of named or unnamed nonimmigrant agricultural workers the designated agricultural employer is seeking to employ during the applicable period of employment~~;~~**.**

"(ii) ~~the~~ **The** total number of contract agricultural workers and of at-will agricultural workers the employer will require for each occupational category~~;~~**.**

"(iii) ~~the~~ **The** anticipated period, including expected beginning and ending dates, during which such employees will be needed~~;~~**.**

"(iv) ~~evidence~~ **Evidence** of contracts or written disclosures of employment terms and conditions in accordance with the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1801 et seq.), which have been **disclosed or** provided to the nonimmigrant agricultural workers, or a sample of such contract or disclosure for unnamed workers~~;~~**.**

"(v) ~~the~~ **The** information submitted to the State workforce agency pursuant to paragraph (3)(A)(i)~~;~~**.**

"(vi) ~~the~~ **The** record of United States workers described in paragraph ~~(3)(A)(iv)~~**(3)(A)(iii)** on the date of the request~~;~~**.**

"(vii) ~~evidence~~ **Evidence** of offers of employment made to United States workers as required under paragraph (3)(B)~~; and~~**.**

~~"(viii) that the employer has complied with the conditions pursuant to (4)(A) and (4)(B).~~**"(viii) The employer will comply with the additional program requirements for designated agricultural employers described in paragraph (4).**

"(C) EMPLOYMENT AUTHORIZATION WHEN CHANGING EMPLOYERS.—Nonimmigrant agricultural workers in the United States who are identified in a petition submitted pursuant to subparagraph (A) and are in lawful status may commence employment with their designated agricultural employer after such employer has submitted such petition to the Secretary of Homeland Security.

"(D) REVIEW.—The Secretary of Homeland Security shall review each petition

submitted by designated agricultural employers under this paragraph for completeness or obvious inaccuracies. Unless the Secretary of Homeland Security determines that the petition is incomplete or obviously inaccurate, the Secretary shall accept the petition. The Secretary shall establish a procedure for the processing of petitions filed under this subsection. Not later than 7 working days after the date of the filing, the Secretary, by electronic or other means assuring expedited delivery, shall submit a copy of notice of approval or denial of the petition to the petitioner and, in the case of approved petitions, to the appropriate immigration officer at the port of entry or United States consulate, as appropriate, if the petitioner has indicated that the alien beneficiary or beneficiaries will apply for a visa or admission to the United States.

"(3) EMPLOYMENT OF UNITED STATES WORKERS.—

"(A) RECRUITMENT.—

"(i) FILING A JOB ~~OFFER~~ **OPPORTUNITY** WITH ~~THE~~ LOCAL OFFICE OF ~~THE~~ STATE WORKFORCE AGENCY.—Not later than 60 days before the date on which the employer desires to employ a nonimmigrant agricultural worker, the employer shall submit the job ~~posting~~ **opportunity** for such worker to the local office of the State workforce agency where the job site is located and authorize the posting of the job opportunity on ~~'America's Job Bank' or other~~ **the appropriate Department of Labor** Electronic Job Registry for a period of 45 days. ~~Nothing in this clause may be construed to require the employer to file an interstate job order under section 653.500 of title 20, Code of Federal Regulations.~~

"(ii) CONSTRUCTION.—Nothing in clause (i) may be construed to cause a ~~listing~~ **posting** referred to in clause (i) to be treated as an interstate job order under section 653.500 of title 20, Code of Federal Regulations (or similar successor regulation).

"(iii) RECORD OF UNITED STATES WORKERS.—An employer shall keep a record of all eligible, able, willing, and qualified United States workers who apply for agricultural employment with the employer for the agricultural employment for which the nonimmigrant agricultural nonimmigrant workers are sought.

"(B) REQUIREMENT TO HIRE.—

"(i) UNITED STATES WORKERS.—An employer may not seek a nonimmigrant agricultural worker for agricultural employment unless the employer offers such employment to any equally or better qualified United States worker who will be available at the time and place of need and who applies for such employment during the ~~recruitment period.~~ **45-day recruitment period referred to in subparagraph (A)(i).**

~~"(ii) Blue card status.—Except as provided in clause (iii), the employer shall, for each job to be filled by~~**"(ii) EXCEPTION.—Notwithstanding clause (i), the employer may offer the job to** a nonimmigrant agricultural worker~~, offer the job to any eligible alien with blue card status who—~~

~~"(I) applies for such job;~~

~~"(II) is equally or better qualified for the job; and~~

~~"(III) will be available at the time and place of need.~~

~~"(iii) Exception.—Notwithstanding clauses (i) and (ii), the employer may hire a nonimmigrant described in section 101(a)(15)(H)(ii)(a) for agricultural employment if—~~

~~"(I)~~ **instead of an alien in blue card status if—**

"(I) such worker was previously employed by the employer as an H–2A worker;

"(II) such worker worked for the employer for 3 years during the ~~4-year period ending on the date on which the program authorized under section 218 (as in effect on the date of the enactment of the Agricultural Worker Program Act of 2013) is terminated; and~~ **most recent 4-year period; and**

~~"(II)~~**"(III)** the employer pays such worker the adverse effect wage rate calculated under subsection (f)(5)**(B)**.

"(4) ADDITIONAL PROGRAM REQUIREMENTS FOR DESIGNATED AGRICULTURAL EMPLOYERS.—Each designated agricultural employer shall comply with the following requirements:

"(A) NO DISPLACEMENT OF UNITED STATES WORKERS.—

"(i) IN GENERAL.—The employer shall not displace a United States worker employed by the employer, other than for good cause, during the period of employment of the nonimmigrant agricultural worker and for a period of 30 days preceding such period in the occupation and at the location of employment for which the employer seeks to employ nonimmigrant agricultural workers.

"(ii) LABOR DISPUTE.—The employer shall not employ a nonimmigrant agricultural worker for a specific job for which the employer is requesting a nonimmigrant agricultural worker because the former occupant of the job is on strike or being locked out in the course of a labor dispute.

"(B) GUARANTEE OF EMPLOYMENT FOR CONTRACT AGRICULTURAL WORKERS.—

"(i) OFFER TO CONTRACT WORKER.—The employer shall guarantee to offer contract agricultural workers employment for the hourly equivalent of at least 75 percent of the work days of the total period of employment, beginning with the first work day after the arrival of the worker at the place of employment and ending on the expiration date specified in the job offer. In this clause, the term 'hourly equivalent' means the number of hours in the work days as stated in the job offer and shall exclude the worker's Sabbath and Federal holidays. If the employer affords the contract agricultural worker less employment than the number of hours required under this subparagraph, the employer shall pay such worker the amount the worker would have earned had the worker worked the guaranteed number of hours.

"(ii) FAILURE TO WORK.—Any hours which the worker fails to work, up to a maximum of the number of hours specified in the job offer for a work day, when

the worker has been offered an opportunity to do so, and all hours of work actually performed (including voluntary work in excess of the number of hours specified in the job offer in a work day, on the worker's Sabbath, or on Federal holidays) may be counted by the employer in calculating whether the period of guaranteed employment has been met.

"(iii) CONTRACT IMPOSSIBILITY.—If, before the expiration of the period of employment specified in the job offer, the services of a contract agricultural worker are no longer required for reasons beyond the control of the employer due to any form of natural disaster, including a flood, hurricane, freeze, earthquake, fire, drought, plant or animal disease or pest infestation, or regulatory drought, before the guarantee in ~~subparagraph (A)~~ **clause (i)** is fulfilled, the employer—

"(I) may terminate the worker's employment;

"(II) shall fulfill the employment guarantee described in ~~subparagraph (B)~~ **clause (i)** for the work days that have elapsed from the first work day after the arrival of the worker to the termination of employment;

"(III) shall make efforts to transfer the worker to other comparable employment acceptable to the worker; and

"(IV) if such a transfer does not take place, shall provide the return transportation required under subparagraph (J).

"(C) WORKERS' COMPENSATION.—

"(i) REQUIREMENT TO PROVIDE.—If a job referred to in paragraph (3) is not covered by the State workers' compensation law, the employer shall provide, at no cost to the nonimmigrant agricultural worker, insurance covering injury and disease arising out of, and in the course of, such job.

"(ii) BENEFITS.—The insurance required to be provided under clause (i) shall provide benefits at least equal to those provided under and pursuant to State's workers' compensation law for comparable employment.

"(D) PROHIBITION FOR USE FOR NONAGRICULTURAL SERVICES.—The employer may not employ a nonimmigrant agricultural worker for employment other than agricultural employment.

"(E) WAGES.—The employer shall pay **not less than** the wage required under subsection (f).

"(F) DEDUCTION OF WAGES.—The employer shall make only deductions from a nonimmigrant agricultural worker's wages that are authorized by law ~~or~~ **and** are reasonable and customary in the occupation and area of employment of such worker.

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

"(i) IN GENERAL.—Except as provided in clauses (iv) and (v), a designated agricultural employer shall offer to provide a nonimmigrant agricultural worker with housing **at no cost** in accordance with clause (ii) or (iii).

"(ii) HOUSING.—An employer may provide housing to a nonimmigrant

agricultural worker that meets—

"(I) applicable Federal standards for temporary labor camps; or

"(II) applicable local standards (or, in the absence of applicable local standards, State standards) for rental or public accommodation housing or other substantially similar class of habitation.

"(iii) HOUSING PAYMENTS.—

"(I) PUBLIC HOUSING.—If the employer arranges public housing for nonimmigrant agricultural workers through a State, county, or local government program and such public housing units normally require payments from tenants, such payments shall be made by the employer directly to the landlord.

"(II) DEPOSITS.—Deposits for bedding or other similar incidentals related to housing shall not be collected from workers by employers who provide housing for such workers.

"(III) DAMAGES.—The employer may require any worker who is responsible for damage to housing that did not result from normal wear and tear related to habitation to reimburse the employer for the reasonable cost of repairing such damage.

"(iv) HOUSING ALLOWANCE ALTERNATIVE.—

"(I) IN GENERAL.—The employer may provide a reasonable housing allowance instead of providing housing under clause (i). Upon the request of a worker seeking assistance in locating housing, the employer shall make a good faith effort to assist the worker in identifying and locating housing in the area of intended employment. An employer who offers a housing allowance to a worker or assists a worker in locating housing, which the worker occupies shall not be deemed a housing ~~provided~~ **provider** under section 203 of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1823) solely by virtue of providing such housing allowance. No housing allowance may be used for housing that is owned or controlled by the employer.

"(II) CERTIFICATION REQUIREMENT.—Contract agricultural workers may only be provided a housing allowance if the Governor of the State in which the place of employment is located certifies to the Secretary that there is adequate housing available in the area of intended employment for migrant farm workers and contract agricultural workers who are seeking temporary housing while employed in agricultural work. Such certification shall expire after 3 years unless renewed by the Governor of the State.

"(III) AMOUNT OF ALLOWANCE.—

"(aa) NONMETROPOLITAN COUNTIES.—If the place of employment of the workers provided an allowance under this clause is a nonmetropolitan county, the amount of the housing allowance under this clause shall be equal to the average fair market rental for existing

housing in nonmetropolitan counties in the State in which the place of employment is located, as established by the Secretary of Housing and Urban Development pursuant to section 8(c) of the United States Housing Act of 1937 (42 U.S.C. 1437f(c)), based on a 2-bedroom dwelling unit and an assumption of 2 persons per bedroom.

"(bb) METROPOLITAN COUNTIES.—If the place of employment of the workers provided an allowance under this clause is a metropolitan county, the amount of the housing allowance under this clause shall be equal to the average fair market rental for existing housing in metropolitan counties in the State in which the place of employment is located, as established by the Secretary of Housing and Urban Development pursuant to section 8(c) of the United States Housing Act of 1937 (42 U.S.C. 1437f(c)), based on a 2-bedroom dwelling unit and an assumption of 2 persons per bedroom.

"(v) EXCEPTION FOR COMMUTING WORKERS.—Nothing in this subparagraph may be construed to require an employer to provide housing or a housing allowance to workers who reside outside of the United States if their place of residence is within normal commuting distance and the job site is within 50 miles of an international land border of the United States.

"(H) WORKSITE TRANSPORTATION FOR CONTRACT WORKERS.—During the period a designated agricultural employer employs a contract worker, such employer shall, at the employer's option, provide or reimburse the contract worker for the cost of **daily** transportation from the contract worker's ~~residence in the United States~~ **living quarters** to the contract worker's place of employment.

"(I) REIMBURSEMENT OF TRANSPORTATION TO **THE** PLACE OF EMPLOYMENT.—

~~* 2 "(i) In general.—Except as provided in subclause (II) a contract agricultural worker who completes at least 27 months under his or her contract with the same designated agricultural employer shall be reimbursed by that employer for the cost of the worker's transportation and subsistence from the place of employment to the place from which the worker came from abroad to work for the employer.~~

"(i) IN GENERAL.—A nonimmigrant agricultural worker shall be reimbursed by the first employer for the cost of the worker's transportation and subsistence from the place from which the worker came from to the place of first employment.

"(ii) LIMITATION.—The~~"(ii) Limitation.—Except as provided in clause (iii), the~~ amount of reimbursement provided under clause (i) to a worker shall not exceed the lesser of—

"(I) the actual cost to the worker of the transportation and subsistence involved; or

"(II) the most economical and reasonable common carrier transportation charges and subsistence costs for the distance involved.

~~"(iii) Distance traveled.—The employer shall not be required to reimburse a worker under clause (i) if—~~

~~"(I) the distance traveled is 100 miles or less; or~~

~~"(II) the worker is not residing in employer-provided housing or housing secured through an allowance described in subclause (I)(iv).~~

"(J) REIMBURSEMENT OF TRANSPORTATION FROM PLACE OF EMPLOYMENT.—

**** 2** "(i) IN ~~GENERAL.—EXCEPT AS PROVIDED IN SUBCLAUSE (II) A~~ **GENERAL.—A** contract agricultural worker who completes at least 27 months under his or her contract with the same designated agricultural employer shall be reimbursed by that employer for the cost of the worker's transportation and subsistence from the place of employment to the place from which the worker came from abroad to work for the employer.

~~"(i) In general.—~~

~~"(I) In general.—Except as provided in subclause (II), a contract agricultural worker who completes at least 75 percent of a contract for a designated agricultural employer shall be reimbursed by the employer for the cost of the worker's transportation and subsistence from the place of employment to the place from which the worker came to work for the employer.~~

~~"(II) Exception.—If a contract agricultural worker was employed by another designated agricultural worker after terminating employment with the designated agricultural employer described in subclause (I) and before returning to the place outside the United States from which the worker came, the subsequent designated agricultural employer shall reimburse the worker for the costs described in subclause (I).~~

~~"(III) Single trip.—A contract agricultural worker is only entitled to be reimbursed by a designated agricultural employer under this subparagraph for travel to the place from which the worker came at the time the worker is leaving the Program.~~

~~"(ii) Limitation.—Except as provided in clause (iii), the~~**"(ii) LIMITATION.—The** amount of reimbursement ~~provided~~ **required** under clause (i) ~~to a worker~~ shall not exceed the lesser of—

"(I) the actual cost to the worker of the transportation and subsistence involved; or

"(II) the most economical and reasonable common carrier transportation charges and subsistence costs for the distance involved.

~~"(iii) Distance traveled.—The employer shall not be required to reimburse a worker under clause (i) if—~~

~~"(I) the distance traveled is 100 miles or less; or~~

~~"(II) the worker is not residing in employer-provided housing or housing secured through an allowance described in subclause (I)(iv).~~

~~"(iv) Early termination.—If a contract agricultural worker is laid off or the worker's employment is terminated for contract impossibility (as described in subparagraph (C)(iii)) before completing 75 percent of such contract, the employer shall reimburse the worker for the costs described in clause (i)(I).~~

~~"(5) Violation of program requirements.—If the Secretary determines, after an opportunity for a hearing, that a designated agricultural employer has violated a term under this section the Secretary may—~~

~~"(A) impose penalties, including fines; and~~

~~"(B) for serious violations, disqualify the employer from future enrollment in the Program for a period of not more than 3 years.~~

"(f) Wages.—

"(1) WAGE RATE REQUIREMENT.—

"(A) IN GENERAL.—A nonimmigrant agricultural worker employed by a designated agricultural employer shall be paid **not less than** the wage rate for such employment set forth in paragraph (3).

"(B) WORKERS PAID ON A PIECE RATE OR OTHER INCENTIVE BASIS.—If an employer pays by the piece rate or other incentive method and requires ~~one~~ **1** or more minimum productivity standards as a condition of job retention, such standards shall be specified in the job offer and be no more than those which have been normally required (at the time of the employee's ~~initial entry into the country as a nonimmigrant agricultural worker)~~ **first application for designated employer status)** by other employers for the activity in the geographic area of the job, unless the Secretary approves a higher standard.

"(2) JOB ~~CATEGORIES.—FOR~~ **CATEGORIES.—**

"(A) IN GENERAL.—For purposes of paragraph (1), each nonimmigrant agricultural worker employed by such employer shall be assigned to 1 of the following standard occupational classifications, as defined by the Bureau of Labor Statistics:

~~"(A)~~**"(i)** First-Line Supervisors of Farming, Fishing, and Forestry Workers (45–1011).

~~"(B)~~**"(ii)** Animal Breeders (45-2021).

~~"(C)~~**"(iii)** Graders and Sorters, Agricultural Products (45–2041).

~~"(D)~~**"(iv)** Agricultural equipment operator (45–2091).

~~"(E)~~**"(v)** Farmworkers and Laborers, Crop, Nursery, and Greenhouse (45–2092).

~~"(F)~~**"(vi)** Farmworkers, Farm, Ranch and Aquacultural Animals (45-2093).

"(B) DETERMINATION OF CLASSIFICATION.—A nonimmigrant agricultural worker is employed in a standard occupational classification described in clause (i), (ii), (iii), (iv), (v), or (vi) of subparagraph (A) if the worker performs activities associated with that occupational classification, as specified on the employer's petition, for at least 75 percent of the time in a semiannual employment period.

"(3) DETERMINATION OF WAGE RATE.—

"(A) ~~FISCAL~~ **CALENDAR** YEARS 2014 THROUGH 2016.—The wage rate under this subparagraph for ~~fiscal~~ **calendar** years 2014 through 2016 shall be the higher of—

"(i) the applicable Federal, State or local minimum wage; or

"(ii)(I) for the category described in paragraph (2)(C)—

"(aa) $9.37 for ~~fiscal~~ **calendar** year 2014;

"(bb) $9.60 for ~~fiscal~~ **calendar** year 2015; and

"(cc) $9.84 for ~~fiscal~~ **calendar** year 2016;

"(II) for the category described in paragraph (2)(D)—

"(aa) $11.30 for ~~fiscal~~ **calendar** year 2014;

"(bb) $11.58 for ~~fiscal~~ **calendar** year 2015; and

"(cc) $11.87 for ~~fiscal~~ **calendar** year 2016;

"(III) for the category described in paragraph (2)(E)—

"(aa) $9.17 for ~~fiscal~~ **calendar** year 2014;

"(bb) $9.40 for ~~fiscal~~ **calendar** year 2015; and

"(cc) $9.64 for ~~fiscal~~ **calendar** year 2016; and

"(IV) for the category described in paragraph (2)(F)—

"(aa) $10.82 for ~~fiscal~~ **calendar** year 2014;

"(bb) $11.09 for ~~fiscal~~ **calendar** year 2015; and

"(cc) $11.37 for ~~fiscal~~ **calendar** year 2016;

"(B) SUBSEQUENT YEARS.—The Secretary shall increase the hourly wage rates set forth in clauses (i) through (iv) of subparagraph (A), for each ~~fiscal~~ **calendar** year after the ~~fiscal~~ **calendar** years described in subparagraph (A) by an amount equal to—

"(i) 1.5 percent, if the percentage increase in the Employment Cost Index for wages and salaries during the previous ~~fiscal~~ **calendar** year, as calculated by the Bureau of Labor Statistics, is less than 1.5 percent;

"(ii) the percentage increase in such Employment Cost Index, if such percentage increase is between 1.5 percent and 2.5 percent, inclusive; or

"(iii) 2.5 percent, if such percentage increase is greater than 2.5 percent.

"(C) AGRICULTURAL SUPERVISORS AND ANIMAL BREEDERS.—Not later than September 1, 2015, and annually thereafter, the Secretary, in consultation with the Secretary of Labor, shall establish the ~~prevailing~~ **required** wage for the next ~~fiscal~~ **calendar** year for each of the job categories set out in subparagraphs (A) and (B) of paragraph (2).

"(D) SURVEY BY BUREAU OF LABOR STATISTICS.—Not later than April 15, 2015, the Bureau of Labor Statistics shall consult with the Secretary to expand the Occupational

~~and~~ Employment **Statistics** Survey to survey agricultural producers and contractors and produce improved wage data by State and the job categories set out in subparagraphs (A) through (F) of paragraph (2).

"(4) CONSIDERATION.—In determining the wage rate under paragraph (3)**(C)**, the Secretary may consider appropriate factors, including—

"(A) whether the employment of additional alien workers at the ~~prevailing~~ **required** wage will adversely affect the wages and working conditions of workers in the United States similarly employed;

"(B) whether the employment in the United States of an alien admitted under section 101(a)(15)(H)(ii)(a) or unauthorized aliens in the agricultural workforce has depressed wages of United States workers engaged in agricultural employment below the levels that would otherwise have prevailed if such aliens had not been employed in the United States;

"(C) whether wages of agricultural workers are sufficient to support such workers and their families at a level above the poverty thresholds determined by the Bureau of Census;

"(D) the wages paid workers in the United States who are not employed in agricultural employment but who are employed in comparable employment;

"(E) the continued exclusion of employers of nonimmigrant alien workers in agriculture from the payment of taxes under chapter 21 of the Internal Revenue Code of 1986 (26 U.S.C. 3101 et seq.) and chapter 23 of such Code (26 U.S.C. 3301 et seq.);

"(F) the impact of farm labor costs in the United States on the movement of agricultural production to foreign countries;

"(G) a comparison of the expenses and cost structure of foreign agricultural producers to the expenses incurred by agricultural producers based in the United States; and

"(H) the accuracy and reliability of the Occupational ~~and~~ Employment **Statistics** Survey.

"(5) ADVERSE EFFECT WAGE RATE.—

"(A) PROHIBITION OF MODIFICATION.—The adverse effect wage rates in effect on April 15, 2013, for nonimmigrants admitted under 101(a)(15)(H)(ii)(a)—

"(i) shall remain in effect until the date described in section 2233 of the Agricultural Worker Program Act of 2013; and

"(ii) may not be modified except as provided in subparagraph (B).

"(B) EXCEPTION.—Until the Secretary establishes the wage rates required under paragraph (3)(C), the adverse effect wage rates in effect on the date of the enactment of the Agricultural Worker Program Act of 2013 shall be—

"(i) deemed to be such wage rates; and

"(ii) after September 1, 2015, adjusted annually in accordance with paragraph (3)(B).

~~"(6) Equal wages, benefits, and working conditions.—~~**"(C) NONPAYMENT OF FICA AND FUTA TAXES.—An employer employing nonimmigrant agricultural workers shall not be required to pay and withhold from such workers—**

~~"(A)~~**"(i) the tax required under section 3101 of the Internal Revenue Code of 1986; or**

"(ii) the tax required under section 3301 of the Internal Revenue Code of 1986.

"(6) PREFERENTIAL TREATMENT OF ALIENS PROHIBITED.—

~~"(i) In general.—The employer's job offer must offer to~~ **"(A) IN GENERAL.—Except as provided in subparagraph (B), employers seeking to hire** United States workers ~~no~~ **shall offer the United States workers not** less than the same benefits, wages, and working conditions that the employer is offering, intends to offer, or will provide to nonimmigrant **agricultural** workers. ~~Conversely, no~~ **No** job offer may impose on United States workers any restrictions or obligations ~~which~~ **that** will not be imposed on the employer's ~~nonimmigrants.~~ **nonimmigrant agricultural workers.**

~~"(ii) Similarly situated u.s. workers.—Except as provided in paragraph (3), all similarly situated U.S. workers employed at the same place of employment in the same occupational classification as the nonimmigrant workers must be provided the same wages, benefits, and working conditions described in this section.~~

~~"(iii)~~**"(B)** EXCEPTION.—Notwithstanding subparagraph ~~(2), an~~**(A), a designated agricultural** employer is not required to provide housing ~~for similarly situated~~ **or a housing allowance to** United States workers~~, other than United States workers recruited and hired pursuant to an offer of employment in connection with an application.~~

~~"(B) Attestation.—~~

~~"(i) In general.—Each designated agricultural employer shall include an attestation that the employer is or is not a Program dependent employer in its petition for nonimmigrant agricultural workers under paragraph (2).~~

~~"(ii) Program dependent employer determination.—Each designated agricultural employer shall annually determine whether the employer is a Program dependent employer, with at least 60 percent of its employees who are not United States workers, based upon—~~

~~"(I) the total number of employees employed by an employer during the preceding calendar year, as evidenced by the employer's payroll records; and~~

~~"(II) the employer's E-Verify records indicating the citizenship and alien status of each employee employed by the employer.~~

~~"(C) Housing exception.—An employer described in subparagraph (A) shall only be required to provide housing to United States workers in accordance with subsection (e)(4)(H) if such workers do not reside within 100 miles of their place of employment~~.

"(g) Worker Protections and Dispute Resolution.—

"(1) EQUALITY OF TREATMENT.—Nonimmigrant agricultural workers shall not be denied any right or remedy under any Federal, State, or local labor or employment law applicable to United States workers engaged in agricultural employment.

"(2) APPLICABILITY OF THE MIGRANT AND SEASONAL AGRICULTURAL WORKER PROTECTION ACT.—

"(A) MIGRANT AND SEASONAL AGRICULTURAL WORKER PROTECTION ACT.—Nonimmigrant agricultural workers shall be considered migrant agricultural workers for purposes of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1801 et seq.).

"(B) ELIGIBILITY OF NONIMMIGRANT AGRICULTURAL WORKERS FOR CERTAIN LEGAL ASSISTANCE.—A nonimmigrant agricultural worker shall be considered to be lawfully admitted for permanent residence for purposes of establishing eligibility for legal services under the Legal Services Corporation Act (42 U.S.C. 2996 et seq.) on matters relating to wages, housing, transportation, and other employment rights.

"(C) MEDIATION.—

"(i) FREE MEDIATION SERVICES.—The Federal Mediation and Conciliation Service shall be available to assist in resolving disputes arising under this section between nonimmigrant agricultural workers and designated agricultural employers without charge to the parties.

"(ii) COMPLAINT.—If a nonimmigrant agricultural worker files a complaint under section 504 of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1854), not later than 60 days after the filing of proof of service of the complaint, a party to the action may file a request with the Federal Mediation and Conciliation Service to assist the parties in reaching a satisfactory resolution of all issues involving all parties to the dispute.

"(iii) NOTICE.—Upon filing a request under clause (ii) and giving of notice to the parties, the parties shall attempt mediation within the period specified in clause (iv).

"(iv) 90-DAY LIMIT.—The Federal Mediation and Conciliation Service may conduct mediation or other nonbinding dispute resolution activities for a period not to exceed 90 days beginning on the date on which the Federal Mediation and Conciliation Service receives a request for assistance under clause (ii) unless the parties agree to an extension of such period.

"(v) AUTHORIZATION OF APPROPRIATIONS.—

"(I) IN GENERAL.—Subject to clause (II), there are authorized to be appropriated to the Federal Mediation and Conciliation Service $500,000 for each fiscal year to carry out this subparagraph.

"(II) MEDIATION.—Notwithstanding any other provision of law, the Director of the Federal Mediation and Conciliation Service is authorized—

"(aa) to conduct the mediation or other dispute resolution activities from any other account containing amounts available to the Director;

and

"(bb) to reimburse such account with amounts appropriated pursuant to subclause (I).

"(vi) PRIVATE MEDIATION.—If all parties agree, a private mediator may be employed as an alternative to the Federal Mediation and Conciliation Service.

"(3) OTHER RIGHTS.—Nonimmigrant agricultural workers shall be entitled to the rights granted to other classes of aliens under sections 242(h) and 245E.

"(4) WAIVER OF RIGHTS.—Agreements by nonimmigrant agricultural workers to waive or modify any rights or protections under this section shall be considered void or contrary to public policy except as provided in a collective bargaining agreement with a bona fide labor organization.

"(h) Enforcement Authority.—

"(1) ~~Review.—The Secretary of Homeland Security shall review petitions submitted by designated agricultural employers under subsection (e)(2) for completeness or obvious inaccuracies.~~

~~"(2)~~ INVESTIGATION OF COMPLAINTS.—

"(A) AGGRIEVED PERSON OR THIRD-PARTY COMPLAINTS.—

"(i) PROCESS.—The Secretary of Labor shall establish a process for the receipt, investigation, and disposition of complaints respecting a designated agricultural employer's failure to meet a condition specified in subsection (e), or an employer's misrepresentation of material facts in a petition under subsection (e)(2).

"(ii) FILING.—Any aggrieved person or organization, including bargaining representatives, may file a complaint referred to in clause (i) not later than 1 year after the date of the failure or misrepresentation, respectively.

"(iii) INVESTIGATION OR HEARING.—The Secretary of Labor shall conduct an investigation if there is reasonable cause to believe that such failure or misrepresentation has occurred.

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

"(C) FAILURE TO MEET CONDITIONS.—If the Secretary of Labor finds, after notice

and opportunity for a hearing, a failure to meet a condition under subsection (e) or (f), or made a material misrepresentation of fact in a petition under subsection (e)(2)—

"(i) the Secretary of Labor shall notify the Secretary of such finding and may, in addition, impose such other administrative remedies (including civil money penalties in an amount not to exceed $1,000 per violation) as the Secretary of Labor determines to be appropriate; and

"(ii) the Secretary may disqualify the designated agricultural employer from the employment of nonimmigrant agricultural workers for a period of 1 year.

"(D) WILLFUL FAILURES AND WILLFUL MISREPRESENTATIONS.—If the Secretary of Labor finds, after notice and opportunity for hearing, a willful failure to meet a condition under subsection (e) or (f) or a willful misrepresentation of a material fact in an ~~application~~ **registration** or petition under paragraph (1) or (2) of subsection (e)—

"(i) the Secretary of Labor shall notify the Secretary of such finding and may, in addition, impose such other administrative remedies (including civil money penalties in an amount not to exceed $5,000 per violation) as the Secretary of Labor determines to be appropriate;

"(ii) the Secretary of Labor may seek appropriate legal or equitable relief ~~to effectuate the purposes of subsection (e)(8)~~; and

"(iii) the Secretary may disqualify the designated agricultural employer from the employment of nonimmigrant agricultural workers for a period of 2 years.

"(E) DISPLACEMENT OF UNITED STATES WORKERS.—If the Secretary of Labor finds, after notice and opportunity for hearing, a willful failure to meet a condition under subsection (e) or (f) or a willful misrepresentation of a material fact in an ~~application~~ **registration** or petition under paragraph (1) or (2) of subsection (e), in the course of which failure or misrepresentation the employer displaced a United States worker employed by the employer during the period of employment on the employer's petition under subsection (e)(2) or during the period of 30 days preceding such period of employment—

"(i) the Secretary of Labor shall notify the Secretary of such finding and may, in addition, impose such other administrative remedies (including civil money penalties in an amount not to exceed $15,000 per violation) as the Secretary of Labor determines to be appropriate; and

"(ii) the Secretary may disqualify the employer from the employment of nonimmigrant agricultural workers for a period of 3 years.

"(F) FAILURES TO PAY WAGES OR REQUIRED BENEFITS.—If the Secretary of Labor finds, after notice and opportunity for a hearing, that the employer has failed to pay the wages, or provide the housing allowance, transportation, subsistence reimbursement, or guarantee of employment required under subsection (e)(4) and (f), the Secretary of Labor shall assess payment of back wages, or other required benefits, due any United States worker or nonimmigrant agricultural worker employed by the employer in the specific employment in question. The back wages or other required benefits required under subsection (e) and (f) shall be equal to the difference between the amount that

should have been paid and the amount that actually was paid to such worker.

"(G) DISPOSITION OF PENALTIES.—Civil penalties collected under this paragraph shall be deposited into the Comprehensive Immigration Reform Trust Fund established under section 6(a)(1) of the Border Security, Economic Opportunity, and Immigration Modernization Act.

~~"(3)~~**"(2)** LIMITATIONS ON CIVIL MONEY PENALTIES.—The Secretary of Labor shall not impose total civil money penalties with respect to a petition under subsection (e)(2) in excess of $90,000.

~~"(4)~~**"(3)** ELECTION.—A nonimmigrant agricultural worker who has filed an administrative complaint with the Secretary of Labor may not maintain a civil action ~~under paragraph (2)~~ unless a complaint based on the same violation filed with the Secretary of Labor under ~~subsection (a)~~ **paragraph** (1) is withdrawn before the filing of such action, in which case the rights and remedies available under this subsection shall be exclusive.

~~"(5)~~**"(4)** PRECLUSIVE EFFECT.—Any settlement by a nonimmigrant agricultural worker, a designated agricultural employer, or any person reached through the mediation process required under subsection (g)(2)(C) shall preclude any right of action arising out of the same facts between the parties in any Federal or State court or administrative proceeding, unless specifically provided otherwise in the settlement agreement.

~~"(6)~~**"(5)** SETTLEMENTS.—Any settlement by the Secretary of Labor ~~on behalf of~~ **with** a designated agricultural worker on behalf of a nonimmigrant agricultural worker of a complaint filed with the Secretary of Labor under this section or any finding by the Secretary of Labor under this subsection shall preclude any right of action arising out of the same facts between the parties under any Federal or State court or administrative proceeding, unless specifically provided otherwise in the settlement agreement.

~~"(7)~~**"(6)** STATUTORY CONSTRUCTION.—Nothing in this subsection may be construed as limiting the authority of the Secretary of Labor to conduct any compliance investigation under any other labor law, including any law affecting migrant and seasonal agricultural workers, or, in the absence of a complaint under this section~~, under paragraph (1), (3), or (4) of subsection (e), in the settlement agreement.~~**.**

~~"(8)~~**"(7)** DISCRIMINATION PROHIBITED.—It is a violation of this subsection for any person **who has filed a petition under subsection (e) or (f)** to intimidate, threaten, restrain, coerce, blacklist, discharge, or in any other manner discriminate against an employee, including a former employee or an applicant for employment, because the employee—

"(A) has disclosed information to the employer, or to any other person, that the employee reasonably believes evidences a violation of subsection (e) **or (f)**, or any rule or regulation relating to subsection (e) **or (f)**; or

"(B) cooperates or seeks to cooperate in an investigation or other proceeding concerning the employer's compliance with the requirements under subsection (e) or **(f) or** any rule or regulation pertaining to subsection (e) **or (f).**

"(8)~~.~~

~~"(9)~~ ROLE OF ASSOCIATIONS.—

"(A) VIOLATION BY A MEMBER OF AN ASSOCIATION.—

"(i) IN GENERAL.—If an association acting as the agent of an employer files an application on behalf of such employer, the employer is fully responsible for such application, and for complying with the terms and conditions of subsection (e). If such an employer is determined to have violated any requirement described in this subsection, the penalty for such violation shall apply only to that employer except as provided in clause (ii).

"(ii) COLLECTIVE RESPONSIBILITY.—If the Secretary of Labor determines that the association or other members of the association participated in, had knowledge of, or reason to know of a violation described in clause (i), the penalty shall also be invoked against the association and complicit association members.

"(B) VIOLATIONS BY AN ASSOCIATION ACTING AS AN EMPLOYER.—

"(i) IN GENERAL.—If an association filing an application as a sole or joint employer is determined to have violated any requirement described in this section, the penalty for such violation shall apply only to the association except as provided in clause (ii).

"(ii) MEMBER RESPONSIBILITY.—If the Secretary of Labor determines that 1 or more association members participated in, had knowledge of, or reason to know of the violation described in clause (i), the penalty shall be invoked against all complicit association members.

"(i) Special Nonimmigrant Visa Processing and Wage Determination Procedures for Certain Agricultural Occupations.—

"(1) FINDING.—Certain industries possess unique occupational characteristics that necessitate the Secretary of Agriculture adopt special procedures relating to housing, pay, and visa program application requirements for those industries.

"(2) SPECIAL PROCEDURES ~~INDUSTRIES~~ **INDUSTRY** DEFINED.—In this subsection, the term 'Special Procedures ~~Industries'~~ **Industry'** means—

"(A) sheepherding and goat herding;

"(B) itinerant commercial beekeeping and pollination;

"(C) open range production of livestock;

"(D) itinerant animal shearing; **and**

"(E) custom combining industries.~~; and~~

~~"(F) any other industry designated by the Secretary, upon petition by an employer, as a Special Procedures Industry.~~

"(3) WORK LOCATIONS.—The Secretary shall allow designated agricultural employers in a Special Procedures Industry that do not operate in a single fixed-site location to provide, as part of ~~application and job description~~ **its registration or petition** under the Program, a list of anticipated work locations, which—

"(A) may include an anticipated itinerary; and

"(B) may be subsequently amended by the employer, after notice to the Secretary.

"(4) WAGE RATES.—The Secretary may establish monthly, weekly, or biweekly wage rates for occupations in a Special Procedures Industry for a State or other geographic area. For an employer in those Special Industries that typically pay a monthly wage, the Secretary shall require that workers will be paid not less frequently than monthly and at a rate no less than the legally required monthly cash wage for such employer as of the date of enactment and in an amount as re-determined annually by the Secretary of Agriculture through rulemaking.

"(5) HOUSING.—The Secretary shall allow for the provision of housing or a housing allowance by employers in Special Procedures Industries and allow housing suitable for workers employed in remote locations.

"(6) ALLERGY LIMITATION.—An employer engaged in the commercial beekeeping or pollination services industry may require that an applicant be free from bee pollen ~~or honey~~**, venom, or other bee-**related allergies.

"(7) APPLICATION.—An individual employer in **a** Special Procedures Industry may file ~~visa~~ **a** program ~~applications~~ **petition** on its own behalf~~, including with use of an agent,~~ or in conjunction with an association of employers~~, and in any case the~~**. The** employer's ~~application~~ **petition** may be part of several related ~~applications~~ **petitions** submitted simultaneously that constitute a master ~~application~~ **petition**.

"(8) RULEMAKING.—The Secretary ~~of Agriculture~~ **or, as appropriate, the Secretary of Homeland Security or the Secretary of Labor**, after consultation with employers and employee representatives, shall publish for notice and comment proposed regulations relating to housing, pay and application procedures for Special Procedure Industries.

"(j) Miscellaneous Provisions.—

"(1) DISQUALIFICATION OF NONIMMIGRANT AGRICULTURAL WORKERS FROM FINANCIAL ASSISTANCE.—An alien admitted as a nonimmigrant agricultural worker is not eligible for any program of financial assistance under Federal law (whether through grant, loan, guarantee, or otherwise) on the basis of financial need, as such programs are identified by the Secretary in consultation with other agencies of the United States.

"(2) MONITORING REQUIREMENT.—

"(A) IN GENERAL.—The Secretary shall monitor the movement of nonimmigrant agricultural workers through—

"(i) the Employment Verification System described in section 274A(b); and

"(ii) the electronic monitoring system established pursuant to subparagraph (B).

"(B) ELECTRONIC MONITORING ~~SYSTEM.—THE~~ **SYSTEM.—Not later than 2 years after the effective date of this section, the** Secretary of Homeland Security, through the Director of U.S. Citizenship and Immigration Services, shall establish an electronic monitoring system, which shall—

"(i) be modeled on the Student and Exchange Visitor Information System (SEVIS) and the SEVIS II tracking system administered by U.S. Immigration and Customs Enforcement;

"(ii) monitor the presence and employment of nonimmigrant agricultural workers; and

"(iii) assist in ensuring the compliance of designated agricultural employers and nonimmigrant agricultural workers with the requirements of the Program.".

(b) Rulemaking.—The Secretary of Agriculture shall issue regulations to ~~cary~~ **carry** out section 218A of the Immigration and Nationality Act, as added by subsection (a), not later than 1 year after the date of the enactment of this Act.

(c) Clerical Amendment.—The table of contents ~~in the first section of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.)~~ is amended by inserting after the item relation to section 219 the following:

"Sec.218A.Nonimmigrant agricultural worker program.".

(d) Effective Date.—The amendments made by this section shall take effect on October 1, 2014.

SEC. 2233. TRANSITION OF H-2A WORKER PROGRAM.

(a) Sunset of ~~Program.—An~~ **Program.—**

(1) IN GENERAL.—Except as provided in paragraph (2), an employer may not petition to employ an alien ~~present in the United States~~ pursuant to section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)) after the date that is 1 year after the ~~effective~~ date ~~of~~ **on which** the regulations issued pursuant to section 2241(b) **become effective.**

(2) EXCEPTION.—An employer may employ an alien described in paragraph (1) for the shorter of—

(A) 10 months; or

(B) the time specified in the position.~~.~~

(b) Conforming Amendments.—

(1) REPEAL OF H-2A NONIMMIGRANT CATEGORY.—Section 101(a)(15)(H)(ii) ~~of the Immigration and Nationality Act~~(8 U.S.C. 1101(a)(15)(H)(ii)) is amended by striking subclause (a).

(2) REPEAL OF ADMISSION REQUIREMENTS FOR H-2A WORKER.—Section 218 ~~of the Immigration and Nationality Act~~(8 U.S.C. 1188) is repealed.

(3) CONFORMING AMENDMENTS.—

(A) AMENDMENT OF PETITION REQUIREMENTS.—Section 214(c)(1) ~~of the Immigration and Nationality Act~~(8 U.S.C. 1184(g)(9)) is amended by striking "For purposes of this subsection" and all that follows.

(4) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on the date that is 1 year after the effective date of the regulations issued pursuant to section 2241(b).

SEC. 2234. REPORTS TO CONGRESS ON NONIMMIGRANT AGRICULTURAL WORKERS.

(a) Annual Report by Secretary of Agriculture.—Not later than September 30 of each year, the Secretary of Agriculture shall submit a report to Congress that identifies, for the previous year, the number, disaggregated by State and by occupation, of—

(1) job opportunities approved for employment of aliens admitted pursuant to clause (iii) or clause (iv) of section 101(a)(15)(W) of the Immigration and Nationality Act, as added by section 2232; and

(2) aliens actually admitted pursuant to each such clause.

(b) Annual Report by Secretary of Homeland Security.—Not later than September 30 of each year, the Secretary shall submit a report to Congress that identifies, for the previous year, the number of aliens described in subsection (a)(2) who—

(1) violated the terms of the nonimmigrant agricultural worker program established under section 218A(b) of the Immigration and Nationality Act, as added by section 2232; and

(2) have not departed from the United States.

CHAPTER 3—OTHER PROVISIONS

SEC. 2241. RULEMAKING.

(a) Consultation Requirement.—In the course of promulgating any regulation necessary to implement this subtitle, or the amendments made by this subtitle, the Secretary, the Secretary of Agriculture, the Secretary of Labor, and the Secretary of State shall regularly consult with each other.

(b) Deadline for Issuance of Regulations.—Except as provided in section 2232(b), all regulations to implement this subtitle and the amendments made by this subtitle shall be issued not later than 6 months after the date of the enactment of this Act.

SEC. 2242. REPORTS TO CONGRESS.

Not later than 180 days after the date of the enactment of this Act, the Secretary and the Secretary of Agriculture shall jointly submit a report to Congress that describes the measures being taken and the progress made in implementing this subtitle and the amendments made by this subtitle.

SEC. 2243. EFFECTIVE DATE.

This subtitle and the amendments made by this subtitle, except for sections 2221, 2242, and 2243, shall take effect on the date on which the regulations required under section 2241~~(e)~~ are issued, regardless of whether such regulations are issued on an interim basis or on any other basis.

Subtitle C—Future Immigration

SEC. 2301. MERIT-BASED POINTS TRACK ONE.

(a) In General.—

(1) WORLDWIDE LEVEL OF MERIT-BASED IMMIGRANTS.—Section 201(e) (8 U.S.C. 1151(e)) is amended to read as follows:

"(e) Worldwide Level of Merit-based Immigrants.—

"(1) IN GENERAL.—

"(A) NUMERICAL LIMITATION.—Subject to paragraphs (2), (3), and (4), the worldwide level of merit-based immigrants is equal to 120,000 for each fiscal year.

"(B) STATUS.—An alien admitted on the basis of a merit-based immigrant visa under this section shall have the status of an alien lawfully admitted for permanent residence.

"(2) ANNUAL INCREASE.—

"(A) IN GENERAL.—Subject to subparagraph (B) and paragraph (3), if in any fiscal year the worldwide level of visas available for merit-based immigrants under this section—

"(i) is less than 75 percent of the number of applicants for such fiscal year, the worldwide level shall increase by 5 percent for the next fiscal year; and

"(ii) is equal to or more than 75 percent of such number, the worldwide level for the next fiscal year shall be the same as the worldwide level for such fiscal year, minus any amount added to the worldwide level for such fiscal year under paragraph (4).

"(B) LIMITATION ON INCREASE.—The worldwide level of visas available for merit-based immigrants shall not exceed 250,000.

"(3) EMPLOYMENT CONSIDERATION.—The worldwide level of visas available for merit-based immigrants may not be increased for a fiscal year under paragraph (2) if the annual average unemployment rate for the civilian labor force 18 years or over in the United States, as determined by the Bureau of Labor Statistics, for such previous fiscal year is more than 8\1/2\ percent.

"(4) RECAPTURE OF UNUSED VISAS.—The worldwide level of merit-based immigrants described in paragraph (1) for a fiscal year shall be increased by the difference (if any) between the worldwide level established under paragraph (1) for the previous fiscal year and the number of visas actually issued under this subsection during that fiscal year. Such visas shall be allocated for the following year pursuant to section 203(c)(3).".

(2) MERIT-BASED IMMIGRANTS.—Section 203 (8 U.S.C. 1153)~~, as amended by section 213, is further~~ **is** amended by inserting after subsection (b) the following:

"(c) Merit-based Immigrants.—

"(1) FISCAL YEARS 1 THROUGH 4.—For the first 4 fiscal years beginning after the date of enactment of the Border Security, Economic Opportunity, and Immigration Modernization Act, the worldwide level of merit-based immigrant visas made available under section 201(e)(1) shall be available for aliens described in section 203(b)(3) and in addition to any visas available for such aliens under such section.

"(2) SUBSEQUENT FISCAL YEARS.—Beginning with the fifth fiscal year beginning after the date of the enactment of the Border Security, Economic Opportunity, and Immigration Modernization Act, aliens subject to the worldwide level specified in section 201(e) for merit-based immigrants shall be allocated as follows:

"(A) 50 percent shall be available to applicants with the highest number of points allocated under tier 1 in paragraph (4).

"(B) 50 percent shall be available to applicants with the highest number of points allocated under tier 2 in paragraph (5).

"(3) UNUSED VISAS.—If the total number of visas allocated to tier 1 or tier 2 for a fiscal year are not granted during that fiscal year, such number may be added to the number of visas available section 201(e)(1) for the following fiscal year and allocated as follows:

"(A) If the unused visas were allocated for tier 1 in a fiscal year, \2/3\ of such visas shall be available for aliens allocated visas under tier 1 in the following fiscal year and \1/3\ of such visas shall be available for aliens allocated visas under either tier 1 or tier 2 in the following fiscal year.

"(B) If the unused visas were allocated for tier 2 in a fiscal year, \2/3\ of such visas shall be available for aliens allocated visas under tier 2 in the following fiscal year and \1/3\ of such visas shall be available for aliens allocated visas under either tier 1 or tier 2 in the following fiscal year.

"(4) TIER 1.—The Secretary shall allocate points to each alien seeking to be a tier 1 merit-based immigrant as follows:

"(A) EDUCATION.—

"(i) IN GENERAL.—An alien may ~~received~~ **receive** points under only ~~one~~ **1** of the following categories:

"(I) An alien who has received a doctorate degree **from an institution of higher education in the United States or the foreign equivalent** shall be allocated 15 points.

"(II) An alien who has received a master's degree **from an institution of higher education in the United States or the foreign equivalent** shall be allocated 10 points.

"(ii) An alien who has received a bachelor's degree from an institution of higher education (as defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)) shall be allocated 5 points.

"(B) EMPLOYMENT EXPERIENCE.—An alien shall be allocated not more than 20 points as follows:

"(i) 3 points for each year the alien has been lawfully employed in a zone 5 occupation in the United States.

"(ii) 2 points for each year the alien has been lawfully employed in a zone 4 occupation in the United States.

"(C) EMPLOYMENT RELATED TO EDUCATION.—An alien who **is** in the United States

and is employed full-time or has an offer of full-time employment in a field related to the alien's education—

"(i) in a zone 5 occupation shall be allocated 10 points; or

"(ii) in a zone 4 occupation shall be allocated 8 points.

"(D) ENTREPRENEURSHIP.—An alien who is an entrepreneur in business that employs at least 2 ~~employee~~ **employees** in a zone 4 occupation or a zone 5 occupation shall be allocated 10 points.

"(E) HIGH DEMAND OCCUPATION.—An alien who is employed full-time in the United States or has an offer of full-time employment in a high demand ~~occupation-high demand~~ tier 1 occupation shall be allocated 10 points.

"(F) CIVIC INVOLVEMENT.—An alien who has attested that he or she has engaged in a significant amount of community service, as determined by the Secretary, shall be allocated 2 points.

"(G) ENGLISH LANGUAGE.—An alien who received a score of 80 or more on the Test of English as a Foreign Language, or an equivalent score on a similar test, as determined by the Secretary, shall be allocated ~~points~~ 10 points.

"(H) SIBLINGS AND MARRIED SONS AND DAUGHTERS OF CITIZENS.—An alien who is the sibling of a citizen of the United States or who ~~is more than~~ **over** 31 years of age and is the married son or married daughter of a citizen of the United States shall be allocated 10 points.

"(I) AGE.—An alien who is—

"(i) between 18 and 24 years of age shall be allocated 8 points;

"(ii) between 25 and 32 years of age shall be allocated 6 points; or

"(iii) between 33 and 37 years of age shall be allocated 4 points.

"(J) COUNTRY OF ORIGIN.—An alien who is a national of a country of which fewer than 50,000 nationals were lawfully admitted to permanent residence in the United States in the previous 5 years shall be allocated 5 points.

"(5) TIER 2.—The Secretary shall allocate points to each alien seeking to be a tier 2 merit-based immigrant as follows:

"(A) EMPLOYMENT EXPERIENCE.—An alien shall be allocated 2 points for each year the alien has been lawfully employed in the United States, for a total of not more than 20 points.

"(B) SPECIAL EMPLOYMENT CRITERIA.—An alien who is employed full-time in the United States, or has an offer of full-time employment—

"(i) in a high demand tier 2 occupation shall be allocated 10 points; or

"(ii) in a zone 1 ~~occupation or~~**,** zone 2**, or zone 3** occupation shall be allocated 10 points.

"(C) CAREGIVER.—An alien who is or has been a primary caregiver shall be allocated 10 points.

"(D) EXCEPTIONAL EMPLOYMENT RECORD.—An alien who has a record of exceptional employment, as determined by the Secretary, shall be allocated 10 points. In determining a record of exceptional employment, the Secretary shall consider factors including promotions, longevity, changes in occupations from a lower job zone to a higher job zone, ~~good~~ **participated in** safety ~~record,~~ **training,** and ~~an~~ increases in pay.

"(E) CIVIC INVOLVEMENT.—An alien who has demonstrated significant ~~shall~~ civic involvement shall be allocated 2 points.

"(F) ENGLISH ~~LANGUAGE.—AN ALIEN WHO RECEIVED A SCORE ON THE TEST OF ENGLISH AS A FOREIGN LANGUAGE, OR AN EQUIVALENT SCORE ON A SIMILAR TEST, AS DETERMINED BY THE SECRETARY OF HOMELAND SECURITY OF—~~ **LANGUAGE.—**

~~"(i) 75 or more shall be allocated points 10 points; or~~**"(i) ENGLISH PROFICIENCY.—An alien who has demonstrated English proficiency, as determined by a standardized test designated by the Secretary of Education, shall be allocated 10 points.**

~~"(ii) more than 54 and less than 75~~**"(ii) ENGLISH KNOWLEDGE.—An alien who has demonstrated English knowledge, as determined by a standardized test designated by the Secretary of Education,** shall be allocated 5 points.

"(G) SIBLINGS AND MARRIED SONS AND DAUGHTERS OF CITIZENS.—An alien who is the sibling of a citizen of the United States or is over the age of 31 and is the married son or married daughter of a citizen of the United States shall be allocated 10 points.

"(H) AGE.—An alien who is—

"(i) between 18 and 24 years of age shall be allocated 8 points;

"(ii) between 25 and 32 years of age shall be allocated 6 points; or

"(iii) between 33 and 37 years of age shall be allocated 4 points.

"(I) COUNTRY OF ORIGIN.—An alien who is a national of a country of which fewer than 50,000 nationals were lawfully admitted to permanent residence in the United States in the previous 5 years shall be allocated 5 points.

"(6) FEE.—An alien who is allocated a visa under this section shall pay a fee of **$1,500 in addition to any fee assessed to cover the costs to process an application under this subsection. Fees collected under this paragraph shall be deposited by the Secretary into the Comprehensive Immigration Reform Trust Fund established under section 6(a)(1)** ~~$500.~~

~~"(7) Eligibility of aliens in registered provisional immigrant status.—An alien who was granted registered provisional immigrant status may be granted a merit-based immigrant visa under section 201(e) and may begin accruing points under subsections (b), (d), and (e) no earlier than the date that is 10 years after the date of the enactment~~ of the Border Security, Economic Opportunity, and Immigration Modernization Act.

"(7) ELIGIBILITY OF ALIENS IN REGISTERED PROVISIONAL IMMIGRANT STATUS.—An alien who was granted registered provisional immigrant status under section 245B is not eligible to receive a merit-based immigrant visa under section 201(e).

"(8) INELIGIBILITY OF ALIENS WITH PENDING OR APPROVED PETITIONS.—An alien who has a petition pending or approved in another immigrant category under this section or section 201 may not apply for a merit-based immigrant visa.

"(9) DEFINITIONS.—In this subsection:

"(A) HIGH DEMAND TIER 1 OCCUPATION.—The term 'high demand tier 1 occupation' means 1 of the 5 occupations for which the highest number of nonimmigrants described in section 101(a)(15)(H)(i) were sought to be admitted by employers during the previous fiscal year.

"(B) HIGH DEMAND TIER 2 OCCUPATION.—The term 'high demand tier 2 occupation' means 1 of the 5 occupations for which the highest number of positions were sought to become registered positions by employers under section 220(e) during the previous fiscal year.

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

"(D) ZONE 1 OCCUPATION.—The term 'zone 1 occupation' means an occupation that requires little or no preparation and is classified as a zone 1 occupation on—

"(i) the Occupational Information Network Database (O*NET) on the date of the enactment of this Act; or

"(ii) such Database or a similar successor database, as designated by the Secretary of Labor, after the date of the enactment of this Act.

"(E) ZONE 2 OCCUPATION.—The term 'zone 2 occupation' means an occupation that requires some preparation and is classified as a zone 2 occupation on—

"(i) the Occupational Information Network Database (O*NET) on the date of the enactment of this Act; or

"(ii) such Database or a similar successor database, as designated by the Secretary of Labor, after the date of the enactment of this Act.

"(F) ZONE 3 OCCUPATION.—The term 'zone 3 occupation' means an occupation that requires medium preparation and is classified as a zone 3 occupation on—

"(i) the Occupational Information Network Database (O*NET) on the date of the enactment of this Act; or

"(ii) such Database or a similar successor database, as designated by the Secretary of Labor, after the date of the enactment of this Act.

"(G) ZONE 4 OCCUPATION.—The term 'zone ~~3~~ **4** occupation' means an occupation that requires considerable preparation and is classified as a zone 4 occupation on—

"(i) the Occupational Information Network Database (O*NET) on the date of the enactment of this Act; or

"(ii) such Database or a similar successor database, as designated by the Secretary of Labor, after the date of the enactment of this Act.

"(H) ZONE 5 OCCUPATION.—The term 'zone 5 occupation' means an occupation that requires extensive preparation and is classified as a zone 5 occupation on—

"(i) the Occupational Information Network Database (O*NET) on the date of the enactment of this Act; or

"(ii) such Database or a similar successor database, as designated by the Secretary of Labor, after the date of the enactment of this Act.".

(b) Modification of Points.—The Secretary may submit to Congress a proposal to modify the number of points allocated under subsection (c) of section 203 of the Immigration and Nationality Act (8 U.S.C. 1153), as amended by subsection (a).

(c) ~~Conforming Amendment.—Section 203(d) of the Immigration and Nationality Act (8 U.S.C. 1153(d)), as amended by section 213(a)(2)(B) of this Act, is further amended by striking "(a) or (b)" and inserting "(a), (b), or (c)".~~

~~(d)~~ Effective Date.—The amendments made by this section shall take effect on the first day of the first fiscal year beginning after the date of the enactment of this Act.

SEC. 2302. MERIT-BASED TRACK TWO.

(a) In General.—In addition to any immigrant visa made available under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), as amended by this Act, the Secretary of State shall allocate merit-based immigrant visas as described in this section.

(b) Status.—An alien admitted on the basis of a merit-based immigrant visa under this section shall have the status of an alien lawfully admitted for permanent residence (as that term is defined in section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(20)).

(c) Eligibility.—Beginning on October 1, 2014, the following aliens shall be eligible for merit-based immigrant visas under this section:

(1) EMPLOYMENT-BASED IMMIGRANTS.—An alien who is the beneficiary of a petition filed before the date of the enactment of this Act to accord status under section 203(b) of the Immigration and Nationality Act, if the visa has not been issued within 5 years after the date on which such petition was filed.

(2) FAMILY-~~BASED~~ **SPONSORED** IMMIGRANTS.—Subject to subsection (d), an alien who is the beneficiary of a petition filed to accord status under section 203(a) of the Immigration and Nationality Act—

(A) prior to the date of the enactment of this Act, if the visa was not issued within 5 years after the date on which such petition was filed; or

(B) after such date of enactment, to accord status under paragraph (3) or (4) of section 203(a) of the Immigration and Nationality Act (8 U.S.C. 1153 (a)), as in effect the ~~day~~ **minute** before the effective date specified in section ~~217(a)(3)~~ **2307(a)(3)** of this Act, and the visa was not issued within 5 years after the date on which petition was filed.

(3) LONG-TERM ALIEN WORKERS AND OTHER MERIT-BASED IMMIGRANTS.—An alien who—

(A) is not admitted pursuant to subparagraph (W) of section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)); and

(B) has been lawfully present **and authorized for employment** in the United States for not less than 10 years; and

(d) Allocation of Employment-sponsored Merit-based Immigrant Visas.—In each of the fiscal years 2015 through and including 2021, the Secretary of State shall allocate to aliens described in subsection (c)(1) a number of merit-based immigrant visas equal to \1/7\ of the number of aliens described in subsection (c)(1) whose visas had not been issued as of the date of the enactment of this Act.

(e) Allocation of Family-sponsored Merit-based Immigrant Visas.—The visas authorized by subsection (c)(2) shall be allocated as follows:

(1) SPOUSES AND CHILDREN OF PERMANENT RESIDENTS.—Petitions to accord status under section 203(a)(2)(A) of the Immigration and Nationality Act (8 U.S.C. 1153(a)(2)(A)) ~~of the Immigration and Nationality Act~~, as in effect the ~~day~~ **minute** before the effective date specified in section ~~217(a)(3)~~ **2307(a)(3)** of this Act, are automatically converted to petitions to accord status to the same beneficiaries as immediate relatives under section 201(b)(2)(A) of the Immigration and Nationality Act (8 U.S.C. 1151(b)(2)(A)).

(2) OTHER FAMILY MEMBERS.—In each of the fiscal years 2015 through and including 2021, the Secretary of State shall allocate to the aliens described in subsection (c)(2)(A), other than those aliens described in paragraph (1), a number of transitional merit-based immigrant visas equal to \1/7\ of the difference between—

(A) the number of aliens described in subsection (c)(2)(A) whose visas had not been issued as of the date of the enactment of this Act; and

(B) the number of aliens described in paragraph (1).

(3) ORDER OF ISSUANCE FOR PREVIOUSLY FILED APPLICATIONS.—Subject to paragraphs (1) and (2), the visas authorized by subsection (c)(2)(A) shall be issued in the order in which the petitions to accord status under section 203(a) of the Immigration and Nationality Act were filed (8 U.S.C. 1153(a)).

(4) SUBSEQUENTLY FILED APPLICATIONS.—In fiscal year 2022, the Secretary of State shall allocate to the aliens described in subsection (c)(2)(B), the number of merit-based immigrant visas equal to \1/2\ of the number of aliens described in subsection (c)(2)(B) whose visas had not been issued by October 1, 2021. In fiscal year 2023, the Secretary of State shall allocate to the aliens described in subsection (c)(2)(B), the number of merit-based immigrant visas equal to the number of aliens described in subsection (c)(2)(B) whose visas had not been issued by October 1, 2022.

(5) ORDER OF ISSUANCE FOR SUBSEQUENTLY FILED APPLICATIONS.—Subject to paragraph (4), the visas authorized by subsection (c)(2)(B) shall be issued in the order in which the petitions to accord status under section 203(a) of the Immigration and Nationality Act were filed, as in effect the ~~day~~ **minute** before the effective date specified in section ~~217(a)(3)~~ **2307(a)(3)** of this Act.

(f) Eligibility in Years After 2028.—Beginning in fiscal year 2029, aliens eligible for adjustment of status under paragraph (c)(3) of this section must be lawfully present in an employment authorized status for 20 years prior to filing an application for adjustment of status.

~~(g) Registered Provisional Immigrants.—An alien granted registered provisional status under section 201 of this Act is not eligible to receive a merit-based immigrant visa under section 201(e) of the Immigration and Nationality Act, as amended by section 2301, until 10 years after the date of the enactment of this Act.~~

SEC. 2303. REPEAL OF THE DIVERSITY VISA PROGRAM.

(a) In General.—Title II (8 U.S.C. 1151 et seq.) is amended—

(1) in section 201**(a)** (8 U.S.C. 1151~~)—~~**(a))—**

~~(A) in subsection (a)—~~

~~(i)~~**(A)** in paragraph (1), by adding "and" at the end;

~~(ii)~~**(B)** in paragraph (2), by striking "; and" at the end and inserting a period; and

~~(iii)~~**(C)** by striking paragraph (3); ~~and~~

~~(B) by striking subsection (e);~~

(2) in section 203 (8 U.S.C. 1153)—

(A) by striking subsection (c);

(B) in subsection ~~(d), by striking "(a), (b), or (c)" and inserting "(a) or (b)~~

~~(C) in subsection~~(e)—

(i) by striking paragraph (2); and

(ii) by redesignating paragraph (3) as paragraph (2);

~~(D)~~**(C)** in subsection (f), by striking "(a), (b), or (c) of this section" and inserting "(a) or (b)"; and

~~(E)~~**(D)** in subsection (g), by striking "(a), (b), and (c)" and inserting "(a) and (b)"; and

(3) in section 204 (8 U.S.C. 1154)—

(A) in subsection (a)~~(1), by striking subparagraph (I)~~**, as amended by section 2305(d)(6)(A)(i), by striking paragraph (8)**; and

(B) in subsection (e), by striking "(a), (b), or (c)" and inserting "(a) or (b)".

(b) Effective Date and Application.—

(1) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 2014.

(2) APPLICATION.—An alien who receives a notification from the Secretary that the alien was selected to receive a diversity immigrant visa under section 203(c) of the Immigration

and Nationality Act (8 U.S.C. 1153(c)) for fiscal year 2013 or fiscal year 2014 shall remain eligible to receive such visa under the rules of such section, as in effect on September 30, 2014. No alien may be allocated such a diversity immigrant visa for a fiscal year after fiscal year 2015.

SEC. 2304. WORLD-WIDE LEVELS AND RECAPTURE OF UNUSED IMMIGRANT VISAS.

(a) Employment-based Immigrants.—Section 201(d) (8 U.S.C. 1151(d)) is amended to read as follows:

"(d) Worldwide Level of Employment-based Immigrants.—

"(1) IN GENERAL.—

"(A) WORLDWIDE LEVEL.—For a fiscal year after fiscal year 2015, the worldwide level of employment-based immigrants under this subsection is equal to the sum of—

"(i) 140,000; and

"(ii) the number computed under paragraph (2).

"(B) FISCAL YEAR 2015.—For fiscal year 2015, the worldwide level of employment-based immigrants under this subsection is equal to the sum of—

"(i) 140,000;

"(ii) the number computed under paragraph (2); and

"(iii) the number computed under paragraph (3).

"(2) PREVIOUS FISCAL YEAR.—The number computed under this paragraph for a fiscal year is the difference, if any, between the maximum number of visas which may be issued under section 203(a)(relating to family-sponsored immigrants) during the previous fiscal year and the number of visas issued under that section during that year.

"(3) UNUSED VISAS.—The number computed under this paragraph is the difference, if any, between—

"(A) the sum of the worldwide levels established under paragraph (1) for fiscal years 1992 through and including 2013; and

"(B) the number of visas actually issued under section 203(b) during such fiscal years.".

(b) Family-sponsored Immigrants.—Section 201(c) (8 U.S.C. 1151(c)) is amended to read as follows:

"(c) Worldwide Level of Family-sponsored Immigrants.—

"(1) IN GENERAL.—

"(A) WORLDWIDE LEVEL.—Subject to subparagraph (C), for each fiscal year after fiscal year 2015, the worldwide level of family-sponsored immigrants under this subsection for a fiscal year is equal to the sum of—

"(i) 480,000 minus the number computed under paragraph (2); and

"(ii) the number computed under paragraph (3).

"(B) FISCAL YEAR 2015.—Subject to subparagraph (C), for fiscal year 2015, the worldwide level of family-~~based~~ **sponsored** immigrants under this subsection ~~for a fiscal year after fiscal year 2015~~ is equal to the sum of—

"(i) 480,000 minus the number computed under paragraph (2);

"(ii) the number computed under paragraph (3); and

"(iii) the number computed under paragraph (4).

"(C) LIMITATION.—The number computed under subparagraph (A)(i) or (B)(i) may not be less than 226,000. The number computed under subparagraph (A)(i) or (B)(i) may not be less than 226,000, except that beginning on the date that is 18 months after the date of the enactment of the Border Security, Economic Opportunity, and Immigration Modernization Act, the number computed under subparagraph (A)(i) or (B)(i) may not be less than 161,000.

"(2) IMMEDIATE RELATIVES.—The number computed under this paragraph for a fiscal year is the number of aliens described in subparagraph (A) or (B) of subsection (b)(2) who were issued immigrant visas, or who otherwise acquired the status of an alien lawfully admitted to the United States for permanent residence, in the previous fiscal year.

"(3) PREVIOUS FISCAL YEAR.—The number computed under this paragraph for a fiscal year is the difference, if any, between the maximum number of visas which may be issued under section 203(b) (relating to employment-based immigrants) during the previous fiscal year and the number of visas issued under that section during that year.

"(4) UNUSED VISAS.—The number computed under this paragraph is the difference, if any, between—

"(A) the sum of the worldwide levels established under paragraph (1) for fiscal years 1992 through and including 2013; and

"(B) the number of visas actually issued under section 203(a) during such fiscal years.".

(c) Effective Date.—The amendments made by this Act shall take effect on the first day of the first fiscal year beginning after the date of the enactment of this Act.

SEC. 2305. RECLASSIFICATION OF SPOUSES AND MINOR CHILDREN OF LAWFUL PERMANENT RESIDENTS AS IMMEDIATE RELATIVES.

(a) Immediate Relatives.—Section 201(b)(2) (8 U.S.C. 1151(b)(2)) is amended to read as follows:

"(2)(A) Aliens who are immediate relatives.

"(B) In this paragraph, the term 'immediate relative' means—

"(i) a child, spouse, or parent of a citizen of the United States, except that in the case of such a parent such citizen shall be at least 21 years of age;

"(ii) a child or spouse of an alien lawfully admitted for permanent residence;

"(iii) ~~the~~ **a** child or spouse of an alien described in clause (i), who is accompanying or following to join the alien;

"(iv) ~~the~~ **a** child or spouse of an alien described in clause (ii), who is accompanying or following to join the alien;

"(v) an alien admitted under section 211(a) on the basis of a prior issuance of a visa to the alien's accompanying parent who is an immediate relative; and

"(vi) an alien born to an alien lawfully admitted for permanent residence during a temporary visit abroad.

"(C) If an alien who was the spouse or child of a citizen of the United States or of an alien lawfully admitted for permanent residence and was not legally separated from the citizen or lawful permanent resident at the time of the citizen's or lawful permanent resident's death files a petition under section ~~204(a)(1)(A)(ii) not later than 2 years after the date of the citizen's or permanent resident's death~~ **204(a)(1)(B)**, the alien spouse (and each child of the alien) shall remain, for purposes of this paragraph, an immediate relative during the period beginning on the date of the citizen's or permanent resident's death and ending on the date on which the alien spouse remarries.

"(D) An alien who has filed a petition under clause (iii) or (iv) of section 204(a)(1)(A) shall remain, for purposes of this paragraph, an immediate relative if the United States citizen or lawful permanent resident spouse or parent loses United States citizenship on account of the abuse.".

(b) Allocation of Immigrant Visas.—Section 203(a) (8 U.S.C. 1153(a)) is amended—

(1) in paragraph (1), by striking "23,400," and inserting "20 percent of the worldwide level of family-sponsored immigrants under section 201(c)";

(2) by striking paragraph (2) and inserting the following:

"(2) UNMARRIED SONS AND UNMARRIED DAUGHTERS OF PERMANENT RESIDENT ALIENS.—Qualified immigrants who are the unmarried sons or unmarried daughters (but are not the children) of an alien lawfully admitted for permanent residence shall be allocated visas in a number not to exceed 20 percent of the worldwide level of family-sponsored immigrants under section 201(c), plus any visas not required for the class specified in paragraph (1).";

(3) in paragraph (3) —

(A) by striking "23,400," and inserting "20 percent of the worldwide level of family-sponsored immigrants under section 201(c)"; and

(B) by striking "classes specified in paragraphs (1) and (2)." and inserting "class specified in paragraph (2)."; and

(4) in paragraph (4)—

(A) by striking "65,000," and inserting "40 percent of the worldwide level of family-sponsored immigrants under section 201(c)"; and

(B) by striking "classes specified in paragraphs (1) through (3)." and inserting "class specified in paragraph (3).".

(c) Termination of Registration.—Section 203(g) (8 U.S.C. 1153(g)) is amended to read as follows:

"(g) Lists.—

"(1) IN GENERAL.—For purposes of carrying out the orderly administration of this title, the Secretary of State may make reasonable estimates of the anticipated numbers of immigrant visas to be issued during any quarter of any fiscal year within each of the categories under subsections (a), (b), and (c) and may rely upon such estimates in authorizing the issuance of visas.

"(2) TERMINATION OF REGISTRATION.—

"(A) INFORMATION DISSEMINATION.—Not later than 180 days after the date of the enactment of the Border Security, Economic Opportunity, and Immigration Modernization Act, the Secretary of Homeland Security and the Secretary of State shall adopt a plan to broadly disseminate information to the public regarding termination of registration procedures described in subparagraphs (B) and (C), including procedures for notifying the Department of Homeland Security and the Department of State of any change of address on the part of a petitioner or a beneficiary of an immigrant visa petition.

"(B) TERMINATION FOR FAILURE TO ADJUST.—The Secretary of Homeland Security shall terminate the registration of any alien who has evidenced an intention to acquire lawful permanent residence under section 245 and who fails to apply to adjust status within 1 year following notification to the alien of the availability of an immigrant visa.

"(C) TERMINATION FOR FAILURE TO APPLY.—The Secretary of State shall terminate the registration of any alien not described in subparagraph (B) who fails to apply for an immigrant visa within 1 year following notification to the alien of the availability of such visa.

"(3) REINSTATEMENT.—The registration of any alien that was terminated under paragraph (2) shall be reinstated if ~~the alien establishes~~**,** within 2 years following the date of notification of the availability of such visa**, the alien** demonstrates that such failure to apply was due to good cause.".

(d) Technical and Conforming Amendments.—

(1) DEFINITIONS.—Section 101(a)(15)(K)(ii) (8 U.S.C. 1101(a)(15)(K)(ii)) is amended by striking "section 201(b)(2)(A)(i)" and inserting "section 201(b)(2) (other than clause (v) or (vi) of subparagraph ~~(A))"~~**(B))"**.

(2) PER COUNTRY LEVEL.—Section 202(a)(1)(A) (8 U.S.C. 1152(a)(1)(A)) is amended by striking "section 201(b)(2)(A)(i)" and inserting "section 201(b)(2) (other than clause (v) or (vi) of subparagraph ~~(A))"~~**(B))"**.

(3) RULES FOR DETERMINING WHETHER CERTAIN ALIENS ARE IMMEDIATE RELATIVES.—Section 201(f) (8 U.S.C. 1151(f)) is amended—

(A) in paragraph (1), by striking "paragraphs (2) and (3)," and inserting "paragraph (2),";

(B) by striking paragraph (2);

(C) by redesignating paragraphs (3) and (4) as paragraphs (2) and (3), respectively; and

(D) in paragraph (3), as redesignated by subparagraph (C), by striking "through (3)" and inserting "and (2)".

(4) NUMERICAL LIMITATION TO ANY SINGLE FOREIGN STATE.—Section 202**(a)(4)** (8 U.S.C. 1152~~)~~**(a)(4))** is amended—

(A)~~ in subsection (a)(4)—~~

~~(i)~~ by striking subparagraphs (A) and (B);

~~(ii)~~**(B)** by redesignating subparagraphs (C) and (D) as subparagraphs (A) and (B), respectively; and

~~(iii)~~**(C)** in subparagraph (A), as redesignated by clause (ii), by striking "section 203(a)(2)(B)" and inserting "section 203(a)(2)".~~; and~~

~~(B) in subsection (e), in the flush matter following paragraph (3), by striking ", or as limiting the number of visas that may be issued under section 203(a)(2)(A) pursuant to subsection (a)(4)(A).~~

(5) ALLOCATION OF IMMIGRANT VISAS.—Section 203(h) (8 U.S.C. 1153(h)) is amended—

(A) in paragraph (1)—

(i) in the matter preceding subparagraph (A), by striking "subsections (a)(2)(A) and (d)" and inserting "subsection (d)";

(ii) in subparagraph (A), by striking "becomes available for such alien (or, in the case of subsection (d), the date on which an immigrant visa number became available for the alien's parent)," and inserting "became available for the alien's parent,"; and

(iii) in subparagraph (B), by striking "applicable";

(B) by amending paragraph (2) to read as follows:

"(2) PETITIONS DESCRIBED.—The petition described in this paragraph is a petition filed under section 204 for classification of the alien's parent under subsection (a), (b), or (c).";
and

(C) by amending paragraph (3) to read as follows:

"(3) RETENTION OF PRIORITY DATE.—

"(A) PETITIONS FILED FOR CHILDREN.—For a petition originally filed to classify a child under subsection (d), if the age of the alien is determined under paragraph (1) to be 21 years of age or older on the date that a visa number becomes available to the alien's parent who was the principal beneficiary of the petition, then, upon the parent's admission to lawful permanent residence in the United States, the petition shall automatically be converted to a petition filed by the parent for classification of the alien under subsection (a)(2) and the petition shall retain the priority date established by the original petition.

"(B) FAMILY AND EMPLOYMENT-BASED PETITIONS.—The priority date for any family- or employment-based petition shall be the date of filing of the petition with the Secretary of Homeland Security (or the Secretary of State, if applicable), unless the filing of the petition was preceded by the filing of a labor certification with the Secretary of Labor, in which case that date shall constitute the priority date. The beneficiary of any petition shall retain his or her earliest priority date based on any petition filed on his or her behalf that was approvable when filed, regardless of the category of subsequent petitions.".

(6) PROCEDURE FOR GRANTING IMMIGRANT ~~STATUS.—SECTION~~ **STATUS.—**

(A) PETITIONING PROCEDURE.—Section 204 (8 U.S.C. 1154) is amended—

~~(A) in subsection (a)(1)—~~**(i) by striking subsection (a) and inserting the following:**

~~(i) in subparagraph (A)—~~**"(a) Petitioning Procedure.—**

~~(I) in clause (i), by inserting "or~~**"(1) IN GENERAL.—(A) Except as provided in subparagraph (H), any citizen of the United States or** alien lawfully admitted for permanent ~~residence" after "citizen of the United States";~~ **residence claiming that an alien is entitled to classification by reason of a relationship described in subparagraph (A) or (B) of section 203(a)(1) or to an immediate relative status under section 201(b)(2)(A) may file a petition with the Secretary of Homeland Security for such classification.**

~~(II) in clause (ii), by striking "described in the second sentence of section 201(b)(2)(A)(i) also" and inserting "or~~**"(B) An alien spouse or** alien child described in section ~~201(b)(2)(C)";~~ **201(b)(2)(C) may file a petition with the Secretary under this paragraph for classification of the alien (and the alien's children) under such section.**

~~(III) in clause (iii)—~~**"(C)(i) An alien who is described in clause (ii) may file a petition with the Secretary under this subparagraph for classification of the alien (and any child of the alien) if the alien demonstrates to the Secretary that—**

~~(aa) in subclause (I)(aa), by striking "United States citizen" and inserting "citizen~~**"(I) the marriage or the intent to marry the citizen** of the United States or lawful permanent ~~resident"; and~~ **resident was entered into in good faith by the alien; and**

~~(bb) in subclause (II)(aa)—~~**"(II) during the marriage or relationship intended by the alien to be legally a marriage, the alien or a child of the alien has been battered or has been the subject of extreme cruelty perpetrated by the alien's spouse or intended spouse.**

~~(AA) in subitem (AA), by striking the semicolon at the end and inserting "or lawful permanent resident;";~~**"(ii) For purposes of clause (i), an alien described in this clause is an alien—**

~~(BB) in subitem (BB)—~~

~~(cc) by inserting "or lawful permanent resident" after "a~~**"(I)(aa) who is the spouse of a** citizen of the United **States** ~~States"; and~~

~~(dd) by striking "States;" and inserting "States~~ or lawful permanent resident;

~~"; and~~**"(bb) who believed that he or she had married a citizen of the United States or lawful permanent resident and with whom a marriage ceremony was actually performed and who otherwise meets any applicable requirements under this Act to establish the existence of and bona fides of a marriage, but whose marriage is not legitimate solely because of the bigamy of such citizen of the United States or lawful permanent resident; or**

~~(CC) by amending subitem (CC) to read as follows:~~

~~"(CC)~~**"(cc)** who was a bona fide spouse of a citizen of the United States or a lawful permanent resident within the past 2 years and—

~~"(aaa)~~**"(AA)** whose spouse died within the past 2 years;

~~"(bbb)~~**"(BB)** whose spouse renounced citizenship status or renounced or lost status as a lawful permanent resident within the past 2 years related to an incident of domestic violence; or

~~"(ccc)~~**"(CC)** who demonstrates a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by ~~the~~ spouse who is a citizen of the United States or a lawful permanent resident spouse;

~~";~~

~~(IV) in clause (iv), by inserting "or lawful permanent resident" after "citizen" each place that term appears;~~

~~(V) in clause (v)(I), by inserting "or lawful permanent resident" after "citizen"; and~~

~~(VI) in clause (vi)—~~

~~(aa) by striking "citizenship," and inserting "citizenship or lawful permanent resident status,"; and~~

~~(bb) by inserting "or lawful permanent resident" after "abuser's citizenship";~~

~~(ii) by striking subparagraph (B);~~

~~(iii) in subparagraph (C), by striking "subparagraph (A)(iii), (A)(iv), (B)(ii), or (B)(iii)" and inserting "clause (iii) or (iv) of subparagraph (A)"; and~~

~~(iv) in subparagraph (J), by striking "or clause (ii) or (iii) of subparagraph (B)";~~

~~(B) in subsection (a), by striking paragraph (2);~~

~~(C)~~**"(II) who is a person of good moral character;**

"(III) who is eligible to be classified as an immediate relative under section 201(b)(2)(A) or who would have been so classified but for the bigamy of the citizen of the United States that the alien intended to marry; and

"(IV) who has resided with the alien's spouse or intended spouse.

"(D) An alien who is the child of a citizen or lawful permanent resident of the United States, or who was a child of a United States citizen or lawful permanent resident parent who within the past 2 years lost or renounced citizenship status related to an

incident of domestic violence, and who is a person of good moral character, who is eligible to be classified as an immediate relative under section 201(b)(2)(A), and who resides, or has resided in the past, with the citizen or lawful permanent resident parent may file a petition with the Secretary of Homeland Security under this paragraph for classification of the alien (and any child of the alien) under such section if the alien demonstrates to the Secretary that the alien has been battered by or has been the subject of extreme cruelty perpetrated by the alien's citizen or lawful permanent resident parent. For purposes of this subparagraph, residence includes any period of visitation.

"(E) An alien who—

"(i) is the spouse, intended spouse, or child living abroad of a citizen or lawful permanent resident who—

"(I) is an employee of the United States Government;

"(II) is a member of the uniformed services (as defined in section 101(a) of title 10, United States Code); or

"(III) has subjected the alien or the alien's child to battery or extreme cruelty in the United States; and

"(ii) is eligible to file a petition under subparagraph (C) or (D),

shall file such petition with the Secretary of Homeland Security under the procedures that apply to self-petitioners under subparagraph (C) or (D), as applicable.

"(F) For the purposes of any petition filed under subparagraph (C) or (D), the denaturalization, loss or renunciation of citizenship or lawful permanent resident status, death of the abuser, divorce, or changes to the abuser's citizenship or lawful permanent resident status after filing of the petition shall not adversely affect the approval of the petition, and for approved petitions shall not preclude the classification of the eligible self-petitioning spouse or child as an immediate relative or affect the alien's ability to adjust status under subsections (a) and (c) of section 245 or obtain status as a lawful permanent resident based on the approved self-petition under such clauses.

"(G) An alien may file a petition with the Secretary of Homeland Security under this paragraph for classification of the alien under section 201(b)(2)(A) if the alien—

"(i) is the parent of a citizen of the United States or was a parent of a citizen of the United States who, within the past 2 years, lost or renounced citizenship status related to an incident of domestic violence or died;

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

"(iii) is eligible to be classified as an immediate relative under section 201(b)(2)(A);

"(iv) resides, or has resided, with the citizen daughter or son; and

"(v) demonstrates that the alien has been battered or subject to extreme cruelty by the citizen daughter or son.

"(H)(i) Subparagraph (A) shall not apply to a citizen of the United States who has been convicted of a specified offense against a minor, unless the Secretary of Homeland Security, in the Secretary's sole and unreviewable discretion, determines that the citizen poses no risk to the alien with respect to whom a petition described in subparagraph (A) is filed.

"(ii) For purposes of clause (i), the term 'specified offense against a minor' has the meaning given such term in section 111 of the Adam Walsh Child Protection and Safety Act of 2006.

"(2) DETERMINATION OF GOOD MORAL CHARACTER.—Notwithstanding section 101(f), an act or conviction that is waivable with respect to the petitioner for purposes of a determination of the petitioner's admissibility under section 212(a) or deportability under section 237(a) shall not bar the Secretary of Homeland Security from finding the petitioner to be of good moral character under subparagraph (C) or (D) of paragraph (1), if the Secretary finds that the act or conviction was connected to the alien's having been battered or subjected to extreme cruelty.

"(3) PREFERENCE STATUS.—(A)(i) Any child who attains 21 years of age who has filed a petition under paragraph (1)(D) that was filed or approved before the date on which the child attained 21 years of age shall be considered (if the child has not been admitted or approved for lawful permanent residence by the date the child attained 21 years of age) a petitioner for preference status under paragraph (1), (2), or (3) of section 203(a), whichever paragraph is applicable, with the same priority date assigned to the self-petition filed under paragraph (1)(D). No new petition shall be required to be filed.

"(ii) Any individual described in clause (i) is eligible for deferred action and work authorization.

"(iii) Any derivative child who attains 21 years of age who is included in a petition described in subparagraph (B) that was filed or approved before the date on which the child attained 21 years of age shall be considered (if the child has not been admitted or approved for lawful permanent residence by the date the child attained 21 years of age) a VAWA self-petitioner with the same priority date as that assigned to the petitioner in any petition described in subparagraph (B). No new petition shall be required to be filed.

"(iv) Any individual described in clause (iii) and any derivative child of a petition described in subparagraph (B) is eligible for deferred action and work authorization.

"(B) The petition referred to in subparagraph (A)(iii) is a petition filed by an alien under subparagraph (C) or (D) of paragraph (1) in which the child is included as a derivative beneficiary.

"(C) Nothing in the amendments made by the Child Status Protection Act shall be construed to limit or deny any right or benefit provided under this paragraph.

"(D) Any alien who benefits from this paragraph may adjust status in accordance with subsections (a) and (c) of section 245 as an alien having an approved petition for classification under subparagraph (C) or (D) of paragraph (1).

"(E) For purposes of this paragraph, an individual who is not less than 21 years of age, who qualified to file a petition under paragraph (1)(D) as of the minute before the date on which the individual attained 21 years of age, and who did not file such a petition before such day, shall be treated as having filed a petition under such paragraph as of such day if a petition is filed for the status described in such paragraph before the individual attains 25 years of age and the individual shows that the abuse was at least 1 central reason for the filing delay. Subparagraphs (A) through (D) shall apply to an individual described in this subparagraph in the same manner as an individual filing a petition under paragraph (1)(D).

"(4) CLASSIFICATION AS ALIEN WITH EXTRAORDINARY ABILITY.—Any alien desiring to be classified under subparagraph (I), (J), (K), (L), or (M) of section 201(b)(1) or section 203(b)(1)(A), or any person on behalf of such an alien, may file a petition with the Secretary of Homeland Security for such classification.

"(5) CLASSIFICATION AS EMPLOYMENT-BASED IMMIGRANT.—Any employer desiring and intending to employ within the United States an alien entitled to classification under paragraph (1)(B), (1)(C), (2), or (3) of section 203(b) may file a petition with the Secretary of Homeland Security for such classification.

"(6) CLASSIFICATION AS SPECIAL IMMIGRANT.—(A) Any alien (other than a special immigrant under section 101(a)(27)(D)) desiring to be classified under section 203(b)(4), or any person on behalf of such an alien, may file a petition with the Secretary of Homeland Security for such classification.

"(B) Aliens claiming status as a special immigrant under section 101(a)(27)(D) may file a petition only with the Secretary of State and only after notification by the Secretary that such status has been recommended and approved pursuant to such section.

"(7) CLASSIFICATION AS IMMIGRANT INVESTOR.—Any alien desiring to be classified under paragraph (5) or (6) of section 203(b) may file a petition with the Secretary of Homeland Security for such classification.

"(8) DIVERSITY VISA.—(A) Any alien desiring to be provided an immigrant visa under section 203(c) may file a petition at the place and time determined by the Secretary of State by regulation. Only 1 such petition may be filed by an alien with respect to any petitioning period established. If more than 1 petition is submitted all such petitions submitted for such period by the alien shall be voided.

"(B)(i) The Secretary of State shall designate a period for the filing of petitions with respect to visas which may be issued under section 203(c) for the fiscal year beginning after the end of the period.

"(ii) Aliens who qualify, through random selection, for a visa under section 203(c) shall remain eligible to receive such visa only through the end of the specific fiscal year for which they were selected.

"(iii) The Secretary of State shall prescribe such regulations as may be necessary to carry out this subparagraph.

"(C) A petition under this paragraph shall be in such form as the Secretary of State

may by regulation prescribe and shall contain such information and be supported by such documentary evidence as the Secretary of State may require.

"(D) Each petition to compete for consideration for a visa under section 203(c) shall be accompanied by a fee equal to $30. All amounts collected under this subparagraph shall be deposited into the Treasury as miscellaneous receipts.

"(9) CONSIDERATION OF CREDIBLE EVIDENCE.—In acting on petitions filed under subparagraph (C) or (D) of paragraph (1), or in making determinations under paragraphs (2) and (3), the Secretary of Homeland Security shall consider any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Secretary.

"(10) WORK AUTHORIZATION.—Upon the approval of a petition as a VAWA self-petitioner, the alien—

"(A) is eligible for work authorization; and

"(B) may be provided an 'employment authorized' endorsement or appropriate work permit incidental to such approval.

"(11) LIMITATION.—Notwithstanding paragraph (1) through (10), an individual who was a VAWA petitioner or who had the status of a nonimmigrant under subparagraph (T) or (U) of section 101(a)(15) may not file a petition for classification under this section or section 214 to classify any person who committed the battery or extreme cruelty or trafficking against the individual (or the individual's child), which established the individual's (or individual's child) eligibility as a VAWA petitioner or for such nonimmigrant status.";

(ii) in subsection (c)(1), by striking "or preference status"; and

~~(D)~~**(iii)** in subsection (h), by striking "or a petition filed under subsection (a)(1)(B)(ii)".

(B) CONFORMING AMENDMENTS.—The Act (8 U.S.C. 1101 et seq.) is amended—

(i) in section 101(a)—

(I) in paragraph (15)(K), by striking "204(a)(1)(A)(viii)(I)" each place such term appears and inserting "204(a)(1)(H)(i)";

(II) in paragraph (50), by striking "204(a)(1)(A)(iii)(II)(aa)(BB), 204(a)(1)(B)(ii)(II)(aa)(BB)," and inserting "204(a)(1)(C)(ii)(I)(bb) or"; and

(III) in paragraph (51)—

(aa) in subparagraph (A), by striking "204(a)(1)(A)" and inserting "204(a)(1)";

(bb) by striking subparagraph (B); and

(cc) by redesignating subparagraphs (C), (D), (E), (F), and (G) as subparagraphs (B), (C), (D), (E), and (F), respectively;

(ii) in section 106(a), by striking "204(a)(1)(A)(iii)" and inserting "204(a)(1)(C)";

(iii) in section 212(a)(4)(C)(i)—

(I) in subclause (I), by striking "clause (ii), (iii), or (iv) of section 204(a)(1)(A), or" and inserting "subparagraph (B), (C), or (D) of section 204(a)(1);";

(II) by striking subclause (II); and

(III) by redesignating subclause (III) as subclause (II);

(iv) in section 216(c)(4)(D), by striking "204(a)(1)(A)(iii)(II)(aa)(BB)" and inserting "204(a)(1)(C)(ii)(I)(bb)"; and

(v) in section 240(c)(7)(C)(iv)(I), by striking "clause (iii) or (iv) of section 204(a)(1)(A), clause (ii) or (iii) of section 204(a)(1)(B)," and inserting "subparagraph (C) or (D) of section 204(a)(1),".

(7) EXCLUDABLE ALIENS.—Section 212(d)(12)(B) (8 U.S.C. 1182(d)(12)(B)) is amended by striking "section 201(b)(2)(A)" and inserting "section 201(b)(2) (other than subparagraph ~~(A)(vi))"~~**(B)(vi))"**.

(8) ADMISSION OF NONIMMIGRANTS.—Section 214(r)(3)(A) (8 U.S.C. 1184(r)(3)(A)) is amended by striking "section 201(b)(2)(A)(i)." and inserting "section 201(b)(2) (other than clause (v) or (vi) of subparagraph ~~(A)).”~~**(B)).”**.

(9) REFUGEE CRISIS IN IRAQ ACT OF 2007.—Section 1243(a)(4) of the Refugee Crisis in Iraq Act of 2007 (8 U.S.C. 1157 note) is amended by striking "section 201(b)(2)(A)(i)" and inserting "section 201(b)(2) (other than clause (v) or (vi) of subparagraph ~~(A))"~~**(B))"**.

(10) PROCESSING OF VISA APPLICATIONS.—Section 233 of the Department of State Authorization Act, Fiscal Year 2003 (8 U.S.C. 1201 note) is amended by striking "section 201(b)(2)(A)(i)" and inserting "section 201(b)(2) (other than clause (v) or (vi) of subparagraph ~~(A))"~~**(B))"**.

(11) ADJUSTMENT OF STATUS.—Section 245(a) (8 U.S.C. 1255(a)) is amended to read as follows:

"(a)(1) The status of an alien who was inspected and admitted or paroled into the United States or the status of any other alien having an approved petition for classification as a VAWA self-petitioner may be adjusted by the Attorney General or the Secretary of Homeland Security, in the Attorney General's or the Secretary's discretion and under such regulations as the Attorney General or Secretary may prescribe, to that of an alien lawfully admitted for permanent residence (regardless of whether the alien has already been admitted for permanent residence) if—

"(A) the alien makes an application for such adjustment;

"(B) the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence; and

"(C) subject to paragraph (2), an immigrant visa is immediately available to the alien at the time the alien's application is filed.

"(2)(A) An application that is based on a petition approved or approvable under subparagraph

(A) or (B) of section 204(a)(1) may be filed without regard to the limitation set forth in paragraph (1)(C).

"(B) An application for adjustment filed for an alien under this paragraph may not be approved until such time as an immigrant visa becomes available for the alien.".

(e) Effective Date.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 2306. NUMERICAL LIMITATIONS ON INDIVIDUAL FOREIGN STATES.

(a) Numerical Limitation to Any Single Foreign State.—Section 202(a)(2) (8 U.S.C. 1152(a)(2)) is amended—

(1) in the paragraph heading, by striking "AND EMPLOYMENT-BASED";

(2) by striking "(3), (4), and (5)," and inserting "(3) and (4),";

(3) by striking "subsections (a) and (b) of section 203" and inserting "section 203(a)";

(4) by striking "7" and inserting "15"; and

(5) by striking "such subsections" and inserting "such section".

(b) Conforming Amendments.—Section 202 (8 U.S.C. 1152) is amended—

(1) in subsection (a)—

(A) in paragraph (3), by striking "both subsections (a) and (b) of section 203" and inserting "section 203(a)"; and

(B) by striking paragraph (5); and

(2) by amending subsection (e) to read as follows:

"(e) Special Rules for Countries at Ceiling.—If it is determined that the total number of immigrant visas made available under section 203(a) to natives of any single foreign state or dependent area will exceed the numerical limitation specified in subsection (a)(2) in any fiscal year, in determining the allotment of immigrant visa numbers to natives under section 203(a), visa numbers with respect to natives of that state or area shall be allocated (to the extent practicable and otherwise consistent with this section and section 203) in a manner so that, except as provided in subsection (a)(4), the proportion of the visa numbers made available under each of paragraphs (1) through (4) of section 203(a) is equal to the ratio of the total number of visas made available under the respective paragraph to the total number of visas made available under section 203(a).".

(c) Country-specific Offset.—Section 2 of the Chinese Student Protection Act of 1992 (8 U.S.C. 1255 note) is amended—

(1) in subsection (a), by striking "subsection (e))" and inserting "subsection (d))"; and

(2) by striking subsection (d) and redesignating subsection (e) as subsection (d).

(d) Effective Date.—The amendments made by this section shall take effect 1 year after the date of the enactment of this Act.

SEC. 2307. ALLOCATION OF IMMIGRANT VISAS.

(a) Preference Allocation for Family-~~based~~ **sponsored** Immigrants.—

(1) IN GENERAL.—Section 203(a) (8 U.S.C. 1153(a)) is amended to read as follows:

"(a) Preference Allocation for Family-~~based~~ **sponsored** Immigrants.—Aliens subject to the worldwide level specified in section 201(c) for family-~~based~~ **sponsored** immigrants shall be allotted visas as follows:

"(1) SONS AND DAUGHTERS OF CITIZENS.—Qualified immigrants who are—

"(A) the unmarried sons or unmarried daughters but not the children of citizens of the United States shall be allocated visas in a number not to exceed 35 percent of the worldwide level authorized in section 201(c), plus the sum of—

"(i) the number of visas not required for the class specified in paragraph (2) for the current fiscal year; and

"(ii) the number of visas not required for the class specified in subparagraph (B); or

"(B) the married sons or married daughters of citizens of the United States who are ~~under~~ 31 years of age **or younger** at the time of filing a petition under section 204 shall be allocated visas in a number not to exceed 25 percent of the worldwide level authorized in section 201(c), plus the number of any visas not required for the class specified in subparagraph (A) current fiscal year.

"(2) SONS AND DAUGHTERS OF **PERMANENT** RESIDENTS.—Qualified immigrants who are the unmarried sons or unmarried daughters of aliens admitted for permanent residence shall be allocated visas in a number not to exceed 40 percent of the worldwide level authorized in section 201(c), plus any visas not required for the class specified in paragraph (1)(A).".

(2) CONFORMING AMENDMENTS.—

(A) PROCEDURE FOR GRANTING IMMIGRANT STATUS.—Section 204**(f)(1) (8 U.S.C. 1154(f)(1)) is amended**~~(8 U.S.C. 1154) is amended—~~

~~(i) in subsection (a)(1)(A)(i), by striking "(1), (3), or (4) of section 203(a)" and inserting "subparagraph (A) or (B) of section 203(a)(1)"; and~~

~~(ii) in subsection (f)(1),~~ by striking "section 201(b), 203(a)(1), or 203(a)(3)," and inserting "section 201(b) or subparagraph (A) or (B) of section 203(a)(1)".

(B) AUTOMATIC CONVERSION.—For the purposes of any petition pending or approved based on a relationship described—

(i) in subparagraph (A) of section 203(a)(1) of the Immigration and Nationality Act (8 U.S.C. 1153(a)(1)), as amended by paragraph (1), and notwithstanding the age of the alien, such a petition shall be deemed reclassified as a petition based on a relationship described in subparagraph (B) of such section 203(a)(1) upon the marriage of such alien; or

(ii) in subparagraph (B) of such section 203(a)(1), such a petition shall be deemed reclassified as a petition based on a relationship described in

subparagraph (A) of such section 203(a)(1) upon the legal termination of marriage or death of such alien's spouse.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on the first day of the first fiscal year that begins at least 18 months following the date of the enactment of this Act.

(b) Preference Allocation for Employment-~~based Immigrants.—Section~~ **Based Immigrants.—**

(1) IN GENERAL.—Section 201(b)(1) (8 U.S.C. 1151(b)(1)) ~~is~~ **, as amended by sections 2103(c) and 2212(d), is further** amended by adding at the end the following:

~~"(F)~~**"(H)** Derivative beneficiaries as described in section 203(d) of employment-based immigrants under section 203(b).

~~"(G)~~**"(I)** Aliens with extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim, if, with respect to any such alien—

"(i) the achievements of such alien have been recognized in the field through extensive documentation;

"(ii) such alien seeks to enter the United States to continue work in the area of extraordinary ability; and

"(iii) the entry of such alien into the United States will substantially benefit prospectively the United States.

~~"(H)~~**"(J)** Aliens who are outstanding professors and researchers if, with respect to any such alien—

"(i) the alien is recognized internationally as outstanding in a specific academic area;

"(ii) the alien has at least 3 years of experience in teaching or research in the academic area; and

"(iii) the alien seeks to enter the United States—

"(I) to be employed in for a tenured position (or tenure-track position) within a not for profit university or institution of higher education to teach in the academic area;

"(II) for employment in a comparable position with a not for profit university or institution of higher education , or a governmental research organization, to conduct research in the area; or

"(III) for employment in a comparable position to conduct research in the area with a department, division, or institute of a private employer, if the department, division, or institute employs at least 3 persons full-time in research activities and has achieved documented accomplishments in an academic field.

~~"(I)~~**"(K)** Aliens who are multinational executives and managers if, with respect to any such alien—

"(i) in the 3 years preceding the time of the alien's application for classification and admission into the United States under this subparagraph, the alien has been employed for at least 1 year by a firm or corporation or other legal entity or an affiliate or subsidiary thereof; and

"(ii) the alien seeks to enter the United States in order to continue to render services to the same employer or to a subsidiary or affiliate thereof in a capacity that is managerial or executive.

~~"(J)~~**"(L)** Aliens who have earned a doctorate degree **from an institution of higher education in the United States or the foreign equivalent.**

"(M)~~.~~

~~"(K)~~ Alien physicians who have completed the foreign residency requirements under section 212(e) or obtained a waiver of these requirements or an exemption requested by an interested State agency or by an interested Federal agency under section 214(l), including those alien physicians who completed such service before the date of the enactment of the Border Security, Economic Opportunity, and Immigration Modernization ~~Act.".~~

Act.

"(N) ADVANCED DEGREES IN A STEM FIELD.—

"(i) IN GENERAL.—An immigrant who—

"(I) has earned a master's or higher degree in a field of science, technology, engineering, or mathematics included in the Department of Education's Classification of Instructional Programs taxonomy within the summary groups of computer and information sciences and support services, engineering, mathematics and statistics, biological and biomedical sciences, and physical sciences, from a United States institution of higher education;

**** 3** "(II) has an offer of employment from a United States employer in a field related to such degree; and

**** 4** "(III) earned the qualifying graduate degree ~~within~~ **during** the 5 ~~years~~ **year period** immediately ~~prior to~~ **before** the initial filing date of the petition under which the nonimmigrant is a beneficiary.

"(ii) DEFINITIONS.—In this subparagraph—

"(I) the term

"(II) the term 'United States institution of higher education' means an institution that—

**** 5** ~~"(I)~~**"(aa)** is described in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)) or is a proprietary institution of higher education (as defined in section 102(b) of such Act (20 U.S.C. 1002(b)));

**** 6** ~~"(II)~~**"(bb)** was classified by the Carnegie Foundation for the

Advancement of Teaching on January 1, 2012, as a doctorate-granting university with a very high or high level of research activity or classified by the National Science Foundation after the date of enactment of this ~~paragraph~~ **subparagraph**, pursuant to an application by the institution, as having equivalent research activity to those institutions that had been classified by the Carnegie Foundation as being doctorate-granting universities with a very high or high level of research activity; and

**** 7** ~~"(III)~~**"(cc)** is accredited by an accrediting body that is itself accredited either by the Department of Education or by the Council for Higher Education ~~Accreditation~~ **Accreditation."**.

**** 8** ~~(4)~~**(2)** EXCEPTION FROM LABOR CERTIFICATION REQUIREMENT FOR STEM IMMIGRANTS.—Section 212(a)(5)(D) (8 U.S.C. 1182(a)(5)(D)) is amended to read as follows:

"(D) APPLICATION OF GROUNDS.—

**** 9** "(i) IN GENERAL.—Except as provided in clause (ii), the grounds for inadmissibility of aliens under subparagraphs (A) and (B) shall apply to immigrants seeking admission or adjustment of status under paragraph (2) or (3) of section 203(b).

**** 10** "(ii) SPECIAL RULE FOR STEM IMMIGRANTS.—The grounds for inadmissibility of aliens under subparagraph (A) shall not apply to an immigrant seeking admission or adjustment of status under ~~paragraph (2)(A)(ii) of~~ section ~~203(b)."~~ **203(b)(2)(B)."**.

(c) Technical and Conforming Amendments.—

(1) ~~Procedure for granting immigrant status.—Section 204(a)(1)(E) (8 U.S.C. 1154(a)(1)(E)) is amended by striking "under section 203(b)(1)(A)" and inserting "under subparagraph (G), (H), (I), (J) or (K) of section 201(b)(1), or section".~~

~~(2)~~ TREATMENT OF DERIVATIVE FAMILY MEMBERS.—Section 203(d) (8 U.S.C. 1153(d)) is amended to read as follows:

"(d) Treatment of Family Members.—If accompanying or following to join a spouse or parent issued a visa under subsection (a), (b), or (c), subparagraph ~~(G), (H),~~(I), ~~(j), or~~**(J),** (K)**, (L), or (M)** of section 201(b)(1), or section 201(b)(2), a spouse or child **(**as defined in subparagraph (A), (B), (C), (D), or (E) of section 101(b)(1)**)** shall be entitled to the same immigrant status and the same order of consideration provided in the respective subsection.".

~~(3)~~**(2)** ALIENS WHO ARE PRIORITY WORKERS OR MEMBERS OF THE PROFESSIONS HOLDING ADVANCED DEGREES.—Section 203(b) (8 U.S.C. 1153(b)) is amended—

(A) in the matter preceding paragraph (1), by striking "Aliens" and inserting "Other than aliens described in paragraph (1) or (2)(B), aliens";

(B) in paragraph (1)**,** by striking the matter preceding subparagraph (A) and inserting "Aliens described in any of the following subparagraphs **may** be admitted to the United States without respect to the worldwide level specified in section 201(d)";

and

(C) by amending **paragraph** (2) to read as follows:

"(2) ALIENS WHO ARE MEMBERS OF THE PROFESSIONS HOLDING ADVANCED DEGREES OR ADVANCED DEGREES IN A STEM FIELD.—

"(A) PROFESSIONS HOLDING ADVANCED DEGREES.—Visas shall be made available, in a number not to exceed 40 percent of the worldwide level authorized in section 201(d), plus any visas not required for the classes specified in paragraph (5), to qualified immigrants who are members of the professions holding advanced degrees or their equivalent whose services in the sciences, arts, professions, or business are sought by an employer in the United States, including alien physicians holding foreign medical degrees that have been deemed sufficient for acceptance by an accredited United States medical residency or fellowship program.

"(B) **WAIVER OF JOB OFFER.**— ~~Advanced degrees in a stem field.—~~

~~"(i) In general.—A qualified immigrant shall be admitted to the United States without respect to the worldwide level specified in section 201(d) if such immigrant—~~

~~"(I) has earned a graduate degree at the level of master's or higher in a field of science, technology, engineering, or mathematics from an accredited United States institution of higher education~~

~~* 3 "(II) has an offer of employment from a United States employer in a field related to such degree; and~~

~~* 4 "(III) earned the qualifying graduate degree within the 5 years immediately prior to the initial filing date of the petition under which the nonimmigrant is a beneficiary.~~

~~"(ii) United states doctoral institution of higher education.—In this subparagraph, the term 'United States doctoral institution of higher education' means an institution that—~~

~~* 5 "(I) is described in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)) or is a proprietary institution of higher education (as defined in section 102(b) of such Act (20 U.S.C. 1002(b)));~~

~~* 6 "(II) was classified by the Carnegie Foundation for the Advancement of Teaching on January 1, 2012, as a doctorate-granting university with a very high or high level of research activity or classified by the National Science Foundation after the date of enactment of this paragraph, pursuant to an application by the institution, as having equivalent research activity to those institutions that had been classified by the Carnegie Foundation as being doctorate-granting universities with a very high or high level of research activity; and~~

~~* 7 "(III) is accredited by an accrediting body that is itself accredited either by the Department of Education or by the Council for Higher Education Accreditation.~~

~~"(C) Waiver of job offer.—~~

"(i) NATIONAL INTEREST WAIVER.—Subject to clause (ii), the Secretary of Homeland Security may, if the Secretary deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

"(ii) PHYSICIANS WORKING IN SHORTAGE AREAS OR VETERANS FACILITIES.—

"(I) IN GENERAL.—The Secretary shall grant a national interest waiver pursuant to clause (i) on behalf of any alien physician with respect to whom a petition for preference classification has been filed under subparagraph (A) if—

"(aa) the alien physician agrees to work **on a** full- time ~~as a physician~~ **basis** practicing primary care, specialty medicine, or a combination thereof, in an area or areas designated by the Secretary of Health and Human Services as having a shortage of health care professionals or at a health care facility under the jurisdiction of the Secretary of Veterans Affairs; or

"(bb) the alien physician is pursuing such waiver based upon service at a facility or facilities that serve patients who reside in a geographic area or areas designated by the Secretary of Health and Human Services as having a shortage of health care professionals (without regard to whether such facility or facilities are located within such an area) and a Federal agency or a local, county, regional, or State department of public health determines that the alien physician's work at such facility was or will be in the public interest.

"(II) PROHIBITION.—

"(aa) No permanent resident visa may be issued to an alien physician described in subclause (I) by the Secretary of State under section 204(b), and the Secretary of Homeland Security may not adjust the status of such an alien physician from that of a nonimmigrant alien to that of a permanent resident alien under section 245, until such time as the alien has worked full time as a physician for an aggregate of 5 years (not including the time served in the status of an alien described in section 101(a)(15)(J)), in an area or areas designated by the Secretary of Health and Human Services as having a shortage of health care professionals or at a health care facility under the jurisdiction of the Secretary of Veterans Affairs; or at a facility or facilities meeting the requirements of subclause (I)(bb).

"(bb) The 5-year service requirement of item (aa) shall be counted from the date the alien physician begins work in the shortage area in any legal status and not the date an immigrant visa petition is filed or approved. Such service shall be aggregated without regard to when such service began and without regard to whether such service began during or in conjunction with a course of graduate medical education.

"(cc) An alien physician shall not be required to submit an employment contract with a term exceeding the balance of the 5-year commitment yet to be served, nor an employment contract dated within a minimum time period prior to filing of a visa petition pursuant to this subsection.

"(dd) An alien physician shall not be required to file additional immigrant visa petitions upon a change of work location from the location approved in the original national interest immigrant petition.

"(III) STATUTORY CONSTRUCTION.—Nothing in this subparagraph may be construed to prevent the filing of a petition with the Secretary of Homeland Security for classification under section 204(a), by an alien physician described in subclause (I) prior to the date by which such alien physician has completed the service described in subclause (II) or in section 214(l).".

~~* 8 (4) Exception from labor certification requirement for stem immigrants.—Section 212(a)(5)(D) (8 U.S.C. 1182(a)(5)(D)) is amended to read as follows:~~

~~"(D) Application of grounds.—~~

~~* 9 "(i) In general.—Except as provided in clause (ii), the grounds for inadmissibility of aliens under subparagraphs (A) and (B) shall apply to immigrants seeking admission or adjustment of status under paragraph (2) or (3) of section 203(b).~~

~~* 10 "(ii) Special rule for stem immigrants.—The grounds for inadmissibility of aliens under subparagraph (A) shall not apply to an immigrant seeking admission or adjustment of status under paragraph (2)(A)(ii) of section 203(b).".~~

~~(5)~~**(3)** SKILLED WORKERS, PROFESSIONALS, AND OTHER WORKERS.—

(A) IN GENERAL.—Section 203(b)(3)(A) (8 U.S.C. 1153(b)(3)(A)) is amended by striking "in a number not to exceed 28.6 percent of such worldwide level, plus any visas not required for the classes specified in paragraphs (1) and (2)," and inserting " in a number not to exceed 40 percent of the worldwide level authorized in section 201(d), plus any visas not required for the class specified in paragraph (2),".

(B) MEDICAL LICENSE REQUIREMENTS.—Section 214(i)(2)(A) (8 U.S.C. 1184(i)(2)(A)) is amended by adding at the end "including in the case of a medical doctor, the licensure required to practice medicine in the United States,".

(C) REPEAL OF LIMITATION ON OTHER WORKERS.—Section 203(b)(3) (8 U.S.C. 1153(b)(3)) is amended—

(i) by striking subparagraph (B); and

(ii) redesignated subparagraph (C) as subparagraph (B).

~~(6)~~**(4)** CERTAIN SPECIAL IMMIGRANTS.—Section 203(b)(4) (8 U.S.C. 1153(b)(4)) is amended by striking "in a number not to exceed 7.1 percent of such worldwide level," and inserting "in a number not to exceed 10 percent of the worldwide level authorized in section 201(d), plus any visas not required for the class specified in paragraph (3),".

~~(7)~~**(5)** EMPLOYMENT CREATION.—Section 203(b)(5)(A) (8 U.S.C. 1153(b)(5)(A)) is amended by striking "in a number not to exceed 7.1 percent of such worldwide level," and inserting " in a number not to exceed 10 percent of the worldwide level authorized in section 201(d), plus any visas not required for the class specified in paragraph (4),".

SEC. 2308. V NONIMMIGRANT VISAS.

(a) Nonimmigrant Eligibility.—Subparagraph (V) of section 101(a)(15) (8 U.S.C. 1101(a)(15)) is amended to read as follows:

"(V)(i) subject to section 214(q)(1) and section 212(a)(4), an alien who is the beneficiary of an approved petition under section 203(a) as—

"(I) the unmarried son or unmarried daughter of a citizen of the United States;

"(II) the unmarried son or unmarried daughter of an alien lawfully admitted for permanent residence; or

"(III) the married son or married daughter of a citizen of the United States and who is ~~under~~ 31 years of age ~~;~~ or **younger; or**

"(ii) subject to section 214(q)(2), an alien who is—

"(I) the sibling of a citizen of the United States; or

"(II) the married son or married daughter of a citizen of the United States and who is ~~over~~ **older than** 31 years of ~~age."~~ **age;"**.

(b) Employment and Period of Admission of Nonimmigrants Described in Section 101(a)(15)(V).—Section 214(q) (8 U.S.C. 1184(q)) is amended to read as follows:

"(q) Nonimmigrants Described in Section 101(a)(15)(V).—

"(1) CERTAIN SONS AND DAUGHTERS.—

"(A) EMPLOYMENT AUTHORIZATION.—The Secretary shall—

"(i) authorize a nonimmigrant admitted pursuant to section 101(a)(15)(V)(i) to engage in employment in the United States during the period of such nonimmigrant's authorized admission; and

"(ii) provide such a nonimmigrant with an 'employment authorized' endorsement or other appropriate document signifying authorization of employment.

"(B) TERMINATION OF ADMISSION.—The period of authorized admission for such a nonimmigrant shall terminate 30 days after the date on which—

"(i) such nonimmigrant's application for an immigrant visa pursuant to the approval of a petition under subsection (a) or (c) of section 203 is denied; or

"(ii) such nonimmigrant's application for adjustment of status under section 245 pursuant to the approval of such a petition is denied.

"(2) SIBLINGS AND SONS AND DAUGHTERS OF CITIZENS.—

"(A) EMPLOYMENT AUTHORIZATION.—The Secretary may not authorize a nonimmigrant admitted pursuant to section 101(a)(15)(V)(ii) to engage in employment in the United States.

"(B) PERIOD OF ADMISSION.—The period of authorized admission as such a nonimmigrant may not exceed 60 days per fiscal year.

"(C) TREATMENT OF PERIOD OF ADMISSION.—An alien admitted under section 101(a)(15)(V) may not ~~received~~ **receive** an allocation of points pursuant to section 211 of this Act which is section 201(e) as amended for residence in the United States while admitted as such a nonimmigrant.".

(c) Public Benefits.—A noncitizen who is lawfully present in the United States pursuant to section 101(a)(15)(V) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(V)) is not eligible for any means-tested public benefits (as such term is defined in section 403 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1613)). A noncitizen admitted under this section is—

(1) not entitled to the premium assistance tax credit authorized under section 36B of the Internal Revenue Code of 1986 **for his or her coverage**;

(2) shall be subject to the rules applicable to individuals not lawfully present that are set forth in subsection (e) of such section; ~~and~~

(3) shall be subject to the rules applicable to individuals not lawfully present that are set forth in section 1402(e) of the Patient Protection and Affordable Care Act (42 U.S.C. 18071)**; and**

(4) shall be subject to the rules applicable to individuals not lawfully present set forth in section 5000A(d)(3) of the Internal Revenue Code of 1986.~~.~~

(d) Effective Date.—The amendments made by this section shall take effect on the first day of the first fiscal year beginning after the date of the enactment of this Act.

SEC. 2309. FIANCE1E AND FIANCE1 CHILD STATUS PROTECTION.

(a) Definition.—Section 101(a)(15)(K) (8 U.S.C. 1101(a)(15)(K)(i) is amended—

(1) in clause (i), **as amended by section 2305(d)(6)(B)(i)(I),** by inserting "or of an alien

lawfully admitted for permanent residence" after ~~"204(a)(1)(A)(viii)(I))"~~**"204(a)(1)(H)(i))"**;

(2) in clause (ii), by inserting "or of an alien lawfully admitted for permanent residence" after ~~"204(a)(1)(A)(viii)(I))";~~**"204(a)(1)(H)(i))";** and

(3) in clause (iii), by striking the semicolon and inserting ", provided that a determination of the age of such child is made using the age of the alien on the date on which the fiance1, fiance1e, or immigrant visa petition is filed with the Secretary of Homeland Security to classify the alien's parent as the fiance1e or fiance1 of a United States citizen or of an alien lawfully admitted for permanent residence (in the case of an alien parent described in clause (i)) or as the spouse of a citizen of the United States or of an alien lawfully admitted to permanent residence under section 201(b)(2)(A)~~(i)~~ (in the case of an alien parent described in clause (ii));".

(b) Adjustment of Status Authorized.—Section 214(d) (8 U.S.C. 1184(d)) is amended—

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

(2) in paragraph (1), by striking "In the event" and all that follows through the end; and

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

"(2)(A) If an alien does not marry the petitioner under paragraph (1) within 3 months after the alien and the alien's children are admitted into the United States, the visa previously issued under the provisions of section 1101(a)(15)(K)(i) shall automatically expire and such alien and children shall be required to depart from the United States. If such aliens fail to depart from the United States, they shall be placed in proceedings in accordance with sections 240 and 241.

"(B) Subject to subparagraphs (C) and (D), if an alien marries the petitioner described in section 101(a)(15)(K)(i) within 90 days after the alien is admitted into the United States, the Secretary or the Attorney General, subject to the provisions of section 245(d), may adjust the status of the alien, and any children accompanying or following to join the alien, to that of an alien lawfully admitted for permanent residence on a conditional basis under section 216 if the alien and any such children apply for such adjustment and are not determined to be inadmissible to the United States. If the alien does not apply for such adjustment within 6 months after the marriage, the visa issued under the provisions of section 1101(a)(15)(K) shall automatically expire.

"(C) Paragraphs (5) and (7)(A) of section 212(a) shall not apply to an alien who is eligible to apply for adjustment of the alien's status to an alien lawfully admitted for permanent residence under this section.

"(D) An alien eligible for a waiver of inadmissibility as otherwise authorized under this Act or the Border Security, Economic Opportunity, and Immigration Modernization Act shall be permitted to apply for adjustment of the alien's status to that of an alien lawfully admitted for permanent residence under this section.".

(c) Age Determination.—Section 245(d) (8 U.S.C. 1255(d)) is amended—

(1) ~~by inserting "(1)" before "The Attorney General"~~ by striking "The Attorney General" and inserting "(1) The Secretary of Homeland Security";

(2) in paragraph (1), as ~~designated under paragraph (1) of this subsection~~ **redesignated**, by striking "Attorney General" and inserting "Secretary"; and

(3) by adding at the end the following:

"(2) A determination of the age of an alien admitted to the United States under section 101(a)(15)(K)(iii) shall be made, for purposes of adjustment to the status of an alien lawfully admitted for permanent residence on a conditional basis under section 216, using the age of the alien on the date on which the fiance1, fiance1e, or immigrant visa petition was filed with the Secretary of Homeland Security to classify the alien's parent as the fiance1e or fiance1 of a United States citizen or of an alien lawfully admitted to permanent residence (in the case of an alien parent admitted to the United States under section 101(a)(15)(K)(i)) or as the spouse of a United States citizen or of an alien lawfully admitted to permanent residence under section 201(b)(2)(A)~~(i)~~ (in the case of an alien parent admitted to the United States under section 101(a)(15)(K)(ii)).".

(d) Applicability.—The amendments made by this section shall apply to all petitions or applications described in such amendments that are pending as of the date of the enactment of the Border Security, Economic Opportunity, and Immigration Modernization Act.

(e) Technical and Conforming Amendments.—

(1) DEFINITIONS.—Section 101(a)(15)(K) (8 U.S.C. 1101(a)(15)(K)), as amended by subsection (a), ~~if~~ **is** further amended—

(A) in clause (ii), by striking "section 201(b)(2)(A)(i)" and inserting "section 201(b)(2)"; and

(B) in clause (iii), by striking "section 201(b)(2)(A)(i)" and inserting "section 201(b)(2)".

(2) AGE ~~DETERMINATION.—SECTION PARAGRAPH~~ **DETERMINATION.—Paragraph** (2) of section 245(d) (8 U.S.C. 1255(d)), as ~~add~~ **added** by subsection (c), is ~~further~~ amended by striking section "201(b)(2)(A)(i)" and inserting "201(b)(2)".

(3) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on the first day of the first fiscal year beginning no earlier than 1 year after the date of the enactment of this Act.

SEC. 2310. EQUAL TREATMENT FOR ALL STEPCHILDREN.

Section 101(b)(1)(B) (8 U.S.C. 1101(b)(1)(B)) is amended by striking "eighteen years" and inserting "21 years".

SEC. 2311. ~~INTERNATIONAL ADOPTION HARMONIZATION.~~ **MODIFICATION OF ADOPTION AGE REQUIREMENTS.**

~~(a) Modification of Adoption Age Requirements.—Section~~ **Section** 101(b)(1) (8 U.S.C. 1101(b)(1)) ~~is~~ **, as amended by section 2310, is further** amended—

(1) in subparagraph (E)—

(A) by striking "(E)(i)" and inserting "(E)";

(B) by striking ~~"sixteen" and inserting "18";~~**"under the age of sixteen years" and inserting "younger than 18 years of age, or a child adopted when 18 years of age or older if the adopting parent or parents initiated the legal adoption process before the child reached 18 years of age";**

(C) by striking "; or" and inserting a semicolon; and

(D) by striking clause (ii);

(2) in subparagraph (F)—

(A) by striking "(F)(i)" and inserting "(F)";

(B) by striking "sixteen" and inserting "18";

(C) by striking "Attorney General" and inserting "Secretary of Homeland Security"; and

(D) by striking clause (ii); and

(3) in subparagraph (G), by striking "16" and inserting "18".

~~(b) Harmonizing Adoptions Between Hague Convention and Non-Hague-Convention Countries.—Section 212(a)(1)(C)(ii) (8 U.S.C. 1182(a)(1)(C)(ii)) is amended by striking "section 101(b)(1)(F)," and inserting "subparagraph (F) or (G) of section 101(b)(1),".~~

SEC. 2312. RELIEF FOR ORPHANS, WIDOWS, AND WIDOWERS.

(a) In General.—

(1) SPECIAL RULE FOR ORPHANS AND SPOUSES.—In applying clauses (iii) and (iv) of section ~~201(b)(2)(A)~~ **201(b)(2)(B)** of the Immigration and Nationality Act, as added by section ~~102(a)~~ **2305(a)** of this Act, to an alien whose citizen or lawful permanent resident relative died before the date of the enactment of this Act, the alien relative may file the classification petition under section 204(a)(1)(A)(ii) of such Act~~, as amended by section 102(c)(4)(A)(i)(II) of this Act,~~ not later than 2 years after the date of the enactment of this Act.

(2) ELIGIBILITY FOR PAROLE.—If an alien was excluded, deported, removed, or departed voluntarily before the date of the enactment of this Act based solely upon the alien's lack of classification as an immediate relative (as defined in section ~~201(b)(2)(A)(iv)~~ **201(b)(2)(B)(iv)** of the Immigration and Nationality Act, as amended by section ~~102(a)~~ **2305(a)** of this Act) due to the death of such citizen or resident—

(A) such alien shall be eligible for parole into the United States pursuant to the Secretary's discretionary authority under section 212(d)(5) of such Act (8 U.S.C. 1182(d)(5)); and

(B) such alien's application for adjustment of status shall be considered **by the Secretary** notwithstanding section 212(a)(9) of such Act (8 U.S.C. 1182(a)(9)).

(3) ELIGIBILITY FOR PAROLE.—If an alien described in section 204(l) of the Immigration and Nationality Act (8 U.S.C. 1154(l)), was excluded, deported, removed, or departed voluntarily before the date of the enactment of this Act—

(A) such alien shall be eligible for parole into the United States pursuant to the Secretary's discretionary authority under section 212(d)(5) of such Act (8 U.S.C. 1182(d)(5)); and

(B) such alien's application for adjustment of status shall be considered **by the Secretary** notwithstanding section 212(a)(9) of such Act (8 U.S.C. 1182(a)(9)).

(b) Processing of Immigrant Visas and Derivative Petitions.—

(1) IN GENERAL.—Section 204(b) (8 U.S.C. 1154(b)) is amended—

(A) by striking "After an investigation" and inserting "(1) After an investigation"; and

(B) by adding at the end the following:

"(2)(A) Any alien described in subparagraph (B) whose qualifying relative died before the completion of immigrant visa processing may have an immigrant visa application adjudicated as if such death had not occurred. An immigrant visa issued before the death of the qualifying relative shall remain valid after such death.

"(B) An alien described in this subparagraph is an alien who—

"(i) is an immediate relative (as described in section ~~201(b)(2)(A))~~ **201(b)(2)(B))**;

"(ii) is a family-sponsored immigrant (as described in subsection (a) or (d) of section 203);

"(iii) is a derivative beneficiary of an employment-based immigrant under section 203(b) (as described in section 203(d)); or

"(iv) is the spouse or child of a refugee (as described in section 207(c)(2)) or an asylee (as described in section 208(b)(3)).".

(2) TRANSITION PERIOD.—

(A) IN GENERAL.—Notwithstanding a denial or revocation of an application for an immigrant visa for an alien ~~whose~~ **due to the death of the** qualifying relative ~~died~~ before the date of the enactment of this Act, such application may be renewed by the alien through a motion to reopen, without fee.

(B) INAPPLICABILITY OF BARS TO ENTRY.—Notwithstanding section 212(a)(9) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(9)), an alien's application for an immigrant visa shall be considered if the alien was excluded, deported, removed, or departed voluntarily before the date of the enactment of this Act.

(c) Naturalization.—Section 319(a) (8 U.S.C. 1430(a)) is amended by striking "States," and inserting "States (or if the spouse is deceased, the spouse was a citizen of the United States),".

(d) Waivers of Inadmissibility.—Section 212 (8 U.S.C. 1182) is amended by adding at the end

the following:

"(v) Continued Waiver Eligibility for Widows, Widowers, and Orphans.—In the case of an alien who would have been statutorily eligible for any waiver of inadmissibility under this Act but for the death of a qualifying relative, the eligibility of such alien shall be preserved as if the death had not occurred and the death of the qualifying relative shall be the functional equivalent of hardship for purposes of any waiver of inadmissibility which requires a showing of hardship.".

(e) Surviving Relative Consideration for Certain Petitions and Applications.—Section 204(l)(1) (8 U.S.C. 1154(l)(1)) is amended—

(1) by striking "who resided in the United States at the time of the death of the qualifying relative and who continues to reside in the United States"; and

(2) by striking "related applications," and inserting "related applications (including affidavits of support),".

(f) ~~Immediate Relatives.—Section 201(b)(2)(A)(i) (8 U.S.C. 1151(b)(2)(A)(i)) is amended by striking "within 2 years after such date".~~

~~(g)~~ Family-sponsored Immigrants.—Section 212(a)(4)(C)(i) (8 U.S.C. 1182(a)(4)(C)(i))**, as amended by section 2305(d)(6)(B)(iii) is further amended** ~~is amended—~~

~~(1) in subclause (I), by striking ", or" and inserting a semicolon;~~

~~(2) in subclause (II), by striking "or" at the end; and~~

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

~~"(IV)~~**"(III)** the status as a surviving relative under 204(l); or".

SEC. 2313. DISCRETIONARY AUTHORITY WITH RESPECT TO REMOVAL, DEPORTATION, OR INADMISSIBILITY OF CITIZEN AND RESIDENT IMMEDIATE FAMILY MEMBERS.

(a) Applications for Relief From Removal.—Section 240(c)(4) (8 U.S.C. 1229a(c)(4)) is amended by adding at the end the following:

"(D) JUDICIAL DISCRETION.—In the case of an alien subject to removal, deportation, or ~~exclusion~~ **inadmissibility**, the immigration judge may exercise discretion to decline to order the alien ~~removed, deported or excluded~~ **removable, deportable or inadmissible** from the United States and terminate proceedings if the judge determines that such removal, deportation, or ~~exclusion~~ **inadmissibility** is against the public interest or would result in hardship to the alien's United States citizen or **lawful** permanent resident parent ~~of a child~~, spouse, or child, or the judge determines the alien is prima facie eligible for naturalization except that this subparagraph shall not apply to an alien whom the judge determines—

"(i) is ~~described in—~~ **inadmissible or deportable under—**

"(I) subparagraph (B), (C), (D)(ii), (E), (H), (I), or (J) of section 212(a)(2);

"(II) section 212(a)(3);

"(III) subparagraph (A), (C), or (D) of section 212(a)(10); or

"(IV) paragraph (2)(A)(ii), (2)(A)(v), (2)(F), (4), or (6) of section 237(a); or

"(ii) has—

"(I) engaged in conduct described in paragraph (8) or (9) of section 103 of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7102); or

"(II) a felony conviction described in section 101(a)(43) that would have been classified as an aggravated felony at the time of conviction.".

(b) Secretary's Discretion.—Section 212 (8 U.S.C. 1182), as amended by section 2312(d), is further amended by adding at the end the following:

"(w) Secretary's Discretion.—In the case of an alien **who is** inadmissible under this section **or deportable under section 237**, the Secretary of Homeland Security may exercise discretion to waive a ground of inadmissibility **or deportability** if the Secretary determines that such **removal or** refusal of admission is against the public interest or would result in hardship to the alien's United States citizen or permanent resident parent, spouse, or child ~~except that this subparagraph~~**. This subsection** shall not apply to an alien whom the Secretary determines—

"(1) is ~~described in~~ **inadmissible or deportable under—**

"(A) subparagraph (B), (C), (D)(ii), (E), (H), (I), **or (J)** of subsection (a)(2);

"(B) subsection (a)(3);

"(C) subparagraph (A), (C), or (D) of subsection (a)(10);

"(D) paragraphs (2)(A)(ii), (2)(A)(v), (2)(F), or (6) of section 237(a); or

"(E) section 240(c)(4)(D)(ii)(II); or

"(2) has—

"(A) engaged in conduct described in paragraph (8) or (9) of section 103 of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7102); or

"(B) a felony conviction described in section 101(a)(43) that would have been classified as an aggravated felony at the time of conviction.".

(c) Reinstatement of Removal Orders.—Section 241(a)(5) (8 U.S.C. 1231(a)(5)) is amended by striking the period at the end and inserting ", unless the alien reentered prior to attaining the age of 18 years, or reinstatement of the prior order of removal would not be in the public interest or would result in hardship to the alien's United States citizen or permanent resident parent, spouse, or child.".

SEC. 2314. WAIVERS OF INADMISSIBILITY.

(a) Aliens Who Entered as Children.—Section 212(a)(9)(B)(iii) (8 U.S.C. 1182(a)(9)(B)(iii)) is amended by adding at the end the following:

"(VI) ALIENS WHO ENTERED AS CHILDREN.—Clause (i) shall not apply to an alien who is the beneficiary of an approved petition under 101(a)(15)(H) and who has earned a baccalaureate or higher degree from a United States

institution of higher education (as defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)), and had not yet reached the age of 16 years at the time of initial entry to the United States.”.

(b) Aliens Unlawfully Present.—Section 212(a)(9)(B)(v) (8 U.S.C. 1181(a)(9)(B)(v) is amended—

(1) by striking “spouse or son or daughter” and inserting “spouse, son, daughter, or parent”; ~~and~~

(2) by striking “extreme”**; and**

(3) by inserting “, child,” after “lawfully resident spouse”.~~.~~

(c) Previous Immigration Violations.—Section 212(a)(9)(C)(i) (8 U.S.C. 1182(a)(9)(C)(i)) is amended by adding “, other than an alien described in clause (iii) or (iv) of subparagraph (B),” after “Any alien”.

(d) False Claims.—

(1) INADMISSIBILITY.—

(A) IN GENERAL.—Section 212(a)(6)(C) (8 U.S.C. 1182(a)(6)(C)) is amended to read as follows:

“(C) MISREPRESENTATION.—

“(i) IN GENERAL.—Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or within the last 3 years has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

“(ii) FALSELY CLAIMING CITIZENSHIP.—

“(I) INADMISSIBILITY.—Subject to subclause (II), any alien who knowingly misrepresents himself or herself to be a citizen of the United States for any purpose or benefit under this chapter (including section 274A) or any other Federal or State law is inadmissible.

“(II) SPECIAL RULE FOR CHILDREN.—An alien shall not be inadmissible under this clause if the misrepresentation described in subclause (I) was made by the alien when the alien—

“(aa) was under 18 years of age; or

“(bb) otherwise lacked the mental competence to knowingly misrepresent a claim of United States citizenship.

“(iii) WAIVER.—The Attorney General or the Secretary of Homeland Security may, in the discretion of the Attorney General or the Secretary, waive the application of clause (i) or (ii)(I) for an alien, regardless whether the alien is within or outside the United States, if the Attorney General or the Secretary find that a determination of inadmissibility to the United States for such alien would—

“(I) result in extreme hardship to the alien or to the alien’s parent, spouse,

son, or daughter who is a citizen of the United States or an alien lawfully admitted for permanent residence; or

"(II) in the case of a VAWA self-petitioner, result in significant hardship to the alien or a parent or child of the alien who is a citizen of the United States, an alien lawfully admitted for permanent residence, or a qualified alien (as defined in section 431 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1641(b)).

"(iv) LIMITATION ON REVIEW.—No court shall have jurisdiction to review a decision or action of the Attorney General or the Secretary regarding a waiver under clause (iii).".

(B) CONFORMING AMENDMENT.—Section 212 (8 U.S.C. 1182) is amended by striking subsection (i).

(2) DEPORTABILITY.—Section 237(a)(3)(D) (8 U.S.C. 1227(a)(3)(D)) is amended to read as follows:

"(D) FALSELY CLAIMING CITIZENSHIP.—Any alien described in section 212(a)(6)(C)(ii) is deportable.".

SEC. 2315. CONTINUOUS PRESENCE.

Section 240A(d)(1) (8 U.S.C. 1229b(d)(1)) is amended to read as follows:

"(1) TERMINATION OF CONTINUOUS PERIOD.—For purposes of this section, any period of continuous residence or continuous physical presence in the United States shall be deemed to end, except in the case of an alien who applies for cancellation of removal under subsection (b)(2), on the date that a notice to appear is filed with the Executive Office for Immigration Review pursuant to section 240.".

SEC. 2316. GLOBAL HEALTH CARE COOPERATION.

(a) Temporary Absence of Aliens Providing Health Care in Developing Countries.—

(1) IN GENERAL.—Title III (8 U.S.C. 1401 et seq.) is amended by inserting after section 317 the following:

"SEC. 317A. TEMPORARY ABSENCE OF ALIENS PROVIDING HEALTH CARE IN DEVELOPING COUNTRIES.

"(a) In General.—Notwithstanding any other provision of this Act, the Secretary of Homeland Security shall allow an eligible alien and the spouse or child of such alien to reside in a candidate country during the period that the eligible alien is working as a physician or other health care worker in a candidate country. During such period the eligible alien and such spouse or child shall be considered—

"(1) to be physically present and residing in the United States for purposes of naturalization under section 316(a); and

"(2) to meet the continuous residency requirements under section 316(b).

"(b) Definitions.—In this section:

"(1) CANDIDATE COUNTRY.—The term 'candidate country' means a country that the Secretary of State determines to be—

"(A) eligible for assistance from the International Development Association, in which the per capita income of the country is equal to or less than the historical ceiling of the International Development Association for the applicable fiscal year, as defined by the International Bank for Reconstruction and Development;

"(B) classified as a lower middle income country in the then most recent edition of the World Development Report for Reconstruction and Development published by the International Bank for Reconstruction and Development and having an income greater than the historical ceiling for International Development Association eligibility for the applicable fiscal year; or

"(C) qualified to be a candidate country due to special circumstances, including natural disasters or public health emergencies.

"(2) ELIGIBLE ALIEN.—The term 'eligible alien' means an alien who—

"(A) has been lawfully admitted to the United States for permanent residence; and

"(B) is a physician or other healthcare worker.

"(c) Consultation.—The Secretary of Homeland Security shall consult with the Secretary of State in carrying out this section.

"(d) Publication.—The Secretary of State shall publish—

"(1) not later than 180 days after the date of the enactment of the Border Security, Economic Opportunity, and Immigration Modernization Act, a list of candidate countries;

"(2) an updated version of the list required by paragraph (1) not less often than once each year; and

"(3) an amendment to the list required by paragraph (1) at the time any country qualifies as a candidate country due to special circumstances under subsection (b)(1)(C).".

(2) RULEMAKING.—

(A) REQUIREMENT.—Not later than 180 days after the date of the enactment of this Act, the Secretary shall promulgate regulations to carry out the amendments made by this subsection.

(B) CONTENT.—The regulations promulgated pursuant to subparagraph (A) shall—

(i) permit an eligible alien (as defined in section 317A of the Immigration and Nationality Act, as added by subsection (a)) and the spouse or child of the eligible alien to reside in a foreign country to work as a physician or other healthcare worker as described in subsection (a) of such section 317A for not less than a 12-month period and not more than a 24-month period, and shall permit the Secretary to extend such period for an additional period not to exceed 12 months, if the Secretary determines that such country has a continuing need for such a physician

or other healthcare worker;

(ii) provide for the issuance of documents by the Secretary to such eligible alien, and such spouse or child, if appropriate, to demonstrate that such eligible alien, and such spouse or child, if appropriate, is authorized to reside in such country under such section 317A; and

(iii) provide for an expedited process through which the Secretary shall review applications for such an eligible alien to reside in a foreign country pursuant to subsection (a) of such section 317A if the Secretary of State determines a country is a candidate country pursuant to subsection (b)(1)(C) of such section 317A.

(3) TECHNICAL AND CONFORMING AMENDMENTS.—

(A) DEFINITION.—Section 101(a)(13)(C)(ii) (8 U.S.C. 1101(a)(13)(C)(ii)) is amended by adding "except in the case of an eligible alien, or the spouse or child of such alien, who is authorized to be absent from the United States under section 317A," at the end.

(B) DOCUMENTARY REQUIREMENTS.—Section 211(b) (8 U.S.C. 1181(b)) is amended by inserting ", including an eligible alien authorized to reside in a foreign country under section 317A and the spouse or child of such eligible alien, if appropriate," after "101(a)(27)(A),".

(C) INELIGIBLE ALIENS.—Section 212(a)(7)(A)(i)(I) (8 U.S.C. 1182(a)(7)(A)(i)(I)) is amended by inserting "other than an eligible alien authorized to reside in a foreign country under section 317A and the spouse or child of such eligible alien, if appropriate," after "Act,".

(4) CLERICAL AMENDMENT.—The table of contents of such Act is amended by inserting after the item relating to section 317 the following:

"Sec.317A.Temporary absence of aliens providing health care in developing countries.".

(b) Attestation by Health Care Workers.—

(1) ATTESTATION REQUIREMENT.—Section 212(a)(5) (8 U.S.C. 1182(a)(5)) is amended by adding at the end the following:

"(E) HEALTH CARE WORKERS WITH OTHER OBLIGATIONS.—

"(i) IN GENERAL.—An alien who seeks to enter the United States for the purpose of performing labor as a physician or other health care worker is inadmissible unless the alien submits to the Secretary of Homeland Security or the Secretary of State, as appropriate, an attestation that the alien is not seeking to enter the United States for such purpose during any period in which the alien has an outstanding obligation to the government of the alien's country of origin or the alien's country of residence.

"(ii) OBLIGATION DEFINED.—In this subparagraph, the term 'obligation' means an obligation incurred as part of a valid, voluntary individual agreement in which the alien received financial assistance to defray the costs of education or training to qualify as a physician or other health care worker in consideration for a commitment to work as a physician or other health care worker in the alien's

country of origin or the alien's country of residence.

"(iii) WAIVER.—The Secretary of Homeland Security may waive a finding of inadmissibility under clause (i) if the Secretary determines that—

"(I) the obligation was incurred by coercion or other improper means;

"(II) the alien and the government of the country to which the alien has an outstanding obligation have reached a valid, voluntary agreement, pursuant to which the alien's obligation has been deemed satisfied, or the alien has shown to the satisfaction of the Secretary that the alien has been unable to reach such an agreement because of coercion or other improper means; or

"(III) the obligation should not be enforced due to other extraordinary circumstances, including undue hardship that would be suffered by the alien in the absence of a waiver.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect on the date that is 180 days after the date of the enactment of this Act.

(3) APPLICATION.—Not later than the effective date described in paragraph (2), the Secretary ~~of Homeland Security~~ shall begin to carry out subparagraph (E) of section 212(a)(5) of the Immigration and Nationality Act, as added by paragraph (1), including the requirement for the attestation and the granting of a waiver described in clause (iii) of such subparagraph (E), regardless of whether regulations to implement such subparagraph have been promulgated.

SEC. 2317. EXTENSION AND IMPROVEMENT OF THE IRAQI SPECIAL IMMIGRANT VISA PROGRAM.

The Refugee Crisis in Iraq Act of 2007 (8 U.S.C. 1157 note) is amended—

(1) in section 1242, by ~~amended~~ **amending** subsection (c) to read as follows:

"(c) Improved Application Process.—Not later than 120 days after the date of the enactment of the Border Security, Economic Opportunity, and Immigration Modernization Act, the Secretary of State and the Secretary of Homeland Security, in consultation with the Secretary of Defense, shall improve the efficiency by which applications for special immigrant visas under section 1244(a) are processed so that all steps incidental to the issuance of such visas, including required screenings and background checks, are completed not later than 9 months after the date on which an eligible alien applies for such visa.";~~ and~~

(2) in section 1244—

(A) subsection (b)—

(i) in paragraph (1)—

(I) by amending subparagraph (B) to read as follows:

"(B) was or is employed in Iraq on or after March 20, 2003, for not less than 1 year, by, or on behalf of—

"(i) the United States Government;

"(ii) a media or nongovernmental organization headquartered in the United States; or

"(iii) an organization or entity closely associated with the United States mission in Iraq that has received United States Government funding through an official and documented contract, award, grant, or cooperative agreement;";

(II) in subparagraph (C), by striking "United States Government" and inserting "an entity or organization described in subparagraph (B)"; and

(III) in subparagraph (D), by striking by striking "United States Government." and inserting "such entity or organization.";

(ii) in paragraph (4)—

(I) by striking "A recommendation" and inserting the following:

"(A) IN GENERAL.—Except as provided under subparagraph (B), a recommendation";

(II) by striking "United States Government prior" and inserting "an entity or organization described in paragraph (1)(B) prior"; and

(III) by adding at the end the following:

"(B) REVIEW PROCESS FOR DENIAL BY CHIEF OF MISSION.—

"(i) IN GENERAL.—An applicant who has been denied Chief of Mission approval required by subparagraph (A) shall—

"(I) receive a written decision; and

"(II) be provided 120 days from the date of the decision to request reopening of the decision to provide additional information, clarify existing information, or explain any unfavorable information.

"(ii) SENIOR COORDINATOR.—The Secretary of State shall designate, in the Embassy of the United States in Baghdad, Iraq, a senior coordinator responsible for overseeing the efficiency and integrity of the processing of special immigrant visas under this section, who shall be given—

"(I) sufficiently high security clearance to review Chief of Mission denials in cases that appear to have relied upon insufficient or incorrect information; and

"(II) responsibility for ensuring that an applicant described in clause (i) receives the information described in clause (i)(I).”; and

(B) in subsection (c)(3), by adding at the end the following:

"(C) SUBSEQUENT FISCAL YEARS.—Notwithstanding subparagraphs (A) and (B), and consistent with subsection (b), any unused balance of the total number of principal aliens who may be provided special immigrant status under this section in fiscal years 2008 through 2012 may be carried forward and provided through the end of fiscal year 2018.”; and

(3) in section 1248, by adding at the end the following:

"(f) Report on Improvements.—

"(1) IN GENERAL.—Not later than 120 days after the date of the enactment of the Border Security, Economic Opportunity, and Immigration Modernization Act, the Secretary of State and the Secretary of Homeland Security, in consultation with the Secretary of Defense, shall submit a report, with a classified annex, if necessary, to—

"(A) the Committee on the Judiciary of the Senate;

"(B) the Committee on Foreign Relations of the Senate;

"(C) the Committee on the Judiciary of the House of Representatives; and

"(D) the Committee on Foreign Affairs of the House of Representatives.

"(2) CONTENTS.—The report submitted under paragraph (1) shall describe the implementation of improvements to the processing of applications for special immigrant visas under section 1244(a), including information relating to—

"(A) enhancing existing systems for conducting background and security checks of persons applying for special immigrant status, which shall—

"(i) support immigration security; and

"(ii) provide for the orderly processing of such applications without delay;

"(B) the financial, security, and personnel considerations and resources necessary to carry out this subtitle;

"(C) the number of aliens who have applied for special immigrant visas under section 1244 during each month of the preceding fiscal year;

"(D) the reasons for the failure to expeditiously process any applications that have been pending for longer than 9 months;

"(E) the total number of applications that are pending due to the failure—

"(i) to receive approval from the Chief of Mission;

"(ii) for U.S. Citizenship and Immigration Services to complete the adjudication of the Form I–360;

"(iii) to conduct a visa interview; or

"(iv) to issue the visa to an eligible alien;

"(F) the average wait times for an applicant at each of the stages described in subparagraph (E);

"(G) the number of denials or rejections at each of the stages described in subparagraph (E); and

"(H) a breakdown of reasons for denials at by the Chief of Mission based on the categories already made available to denied special immigrant visa applicants in the denial letter sent to them by the Chief of Mission.

"(g) Public Quarterly Reports .—Not later than 120 days after the date of the enactment of the

Border Security, Economic Opportunity, and Immigration Modernization Act, and every 3 months thereafter, the Secretary of State and the Secretary of Homeland Security, in consultation with the Secretary of Defense, shall publish a report on the website of the Department of State that describes the efficiency improvements made in the process by which applications for special immigrant visas under section 1244(a) are processed, including information described in subparagraphs (C) through (H) of subsection (f)(2).".

SEC. 2318. EXTENSION AND IMPROVEMENT OF THE AFGHAN SPECIAL IMMIGRANT VISA PROGRAM.

Section 602(b) of the Afghan Allies Protection Act of 2009 (8 U.S.C. 1101 note) is amended—

(1) in paragraph (2)—

(A) in subparagraph (A)—

(i) by amending clause (ii) to read as follows:

"(ii) was or is employed in Afghanistan on or after October 7, 2001, for not less than 1 year, by, or on behalf of—

"(I) the United States Government;

"(II) a media or nongovernmental organization headquartered in the United States; or

"(III) an organization or entity closely associated with the United States mission in Afghanistan that has received United States Government funding through an official and documented contract, award, grant, or cooperative agreement;";

(ii) in clause (iii), by striking "United States Government" and inserting "an entity or organization described in clause (ii)"; and

(iii) in clause (iv), by striking by striking "United States Government." and inserting "such entity or organization.";

(B) by amending subparagraph (B) to read as follows:

"(B) FAMILY MEMBERS.—An alien is described in this subparagraph if the alien is—

"(i) the spouse or minor child of a principal alien described in subparagraph (A) who is accompanying or following to join the principal alien in the United States; or

"(ii)(I) the spouse, child, parent or sibling of a principal alien described in subparagraph (A), whether or not accompanying or following to join; and

"(II) has experienced or is experiencing an ongoing serious threat as a consequence of the qualifying employment of a principal alien described in subparagraph (A).."; and

(C) in subparagraph (D)—

(i) by striking "A recommendation" and inserting the following:

"(i) IN GENERAL.—Except as provided under clause (ii), a recommendation";

(ii) by striking "United States Government prior" and inserting "an entity or organization described in paragraph (2)(A)(ii) prior"; and

(iii) by adding at the end the following:

"(ii) REVIEW PROCESS FOR DENIAL BY CHIEF OF MISSION.—

"(I) IN GENERAL.—An applicant who has been denied Chief of Mission approval shall—

"(aa) receive a written decision; and

"(bb) be provided 120 days from the date of receipt of such opinion to request reconsideration of the decision to provide additional information, clarify existing information, or explain any unfavorable information..

"(II) SENIOR COORDINATOR.—The Secretary of State shall designate, in the Embassy of the United States in Kabul, Afghanistan, a senior coordinator responsible for overseeing the efficiency and integrity of the processing of special immigrant visas under this section, who shall be given—

"(aa) sufficiently high security clearance to review Chief of Mission denials in cases that appear to have relied upon insufficient or incorrect information; and

"(bb) responsibility for ensuring that an applicant described in subclause (I) receives the information described in subclause (I)(aa).";

(2) in paragraph (3)(C), by amending clause (iii) to read as follows:

"(iii) FISCAL YEARS 2014 THROUGH 2018.—For each of the fiscal years 2014 through 2018, the total number of principal aliens who may be provided special immigrant status under this section may not exceed the sum of—

"(I) 5,000;

"(II) the difference between the number of special immigrant visas allocated under this section for fiscal years 2009 through 2013 and the number of such allocated visas that were issued; and

"(III) any unused balance of the total number of principal aliens who may be provided special immigrant status in fiscal years 2014 through 2018 that have been carried forward.";

(3) in paragraph (4)—

(A) in the heading, by striking "PROHIBITION ON FEES.—"and inserting "APPLICATION PROCESS.—";

(B) by striking "The Secretary" and inserting the following:

"(A) IN GENERAL.—Not later than 120 days after the date of enactment of the Border Security, Economic Opportunity, and Immigration Modernization Act, the Secretary of State and the Secretary of Homeland Security, in consultation with the Secretary of

Defense, shall improve the efficiency by which applications for special immigrant visas under paragraph (1) are processed so that all steps incidental to the issuance of such visas, including required screenings and background checks, are completed not later than 6 months after the date on which an eligible alien applies for such visa.

"(B) PROHIBITION ON FEES.—The Secretary"; and

(4) by adding at the end the following:

"(12) REPORT ON IMPROVEMENTS.—Not later than 120 days after the date of the enactment of the Border Security, Economic Opportunity, and Immigration Modernization Act, the Secretary of State and the Secretary of Homeland Security, in consultation with the Secretary of Defense, shall submit to the appropriate committees a report, with a classified annex, if necessary, that describes the implementation of improvements to the processing of applications for special immigrant visas under this subsection, including information relating to—

"(A) enhancing existing systems for conducting background and security checks of persons applying for special immigrant status, which shall—

"(i) support immigration security; and

"(ii) provide for the orderly processing of such applications without delay;

"(B) the financial, security, and personnel considerations and resources necessary to carry out this section;

"(C) the number of aliens who have applied for special immigrant visas under this subsection during each month of the preceding fiscal year;

"(D) the reasons for the failure to expeditiously process any applications that have been pending for longer than 9 months;

"(E) the total number of applications that are pending due to the failure—

"(i) to receive approval from the Chief of Mission;

"(ii) for U.S. Citizenship and Immigration Services to complete the adjudication of the Form I–360;

"(iii) to conduct a visa interview; or

"(iv) to issue the visa to an eligible alien;

"(F) the average wait times for an applicant at each of the stages described in subparagraph (E);

"(G) the number of denials or rejections at each of the stages described in subparagraph (E); and

"(H) a breakdown of reasons for denials by the Chief of Mission based on the categories already made available to denied special immigrant visa applicants in the denial letter sent to them by the Chief of Mission.

"(13) PUBLIC QUARTERLY REPORTS .—Not later than 120 days after the date of the enactment of the Border Security, Economic Opportunity, and Immigration Modernization Act, and every 3 months thereafter, the Secretary of State and the Secretary of Homeland

Security, in consultation with the Secretary of Defense, shall publish a report on the website of the Department of State that describes the efficiency improvements made in the process by which applications for special immigrant visas under this subsection are processed, including information described in subparagraph (C) through (H) of paragraph (12).”.

SEC. 2319. ELIMINATION OF SUNSETS FOR CERTAIN VISA PROGRAMS.

(a) Special Immigrant Nonminister Religious Worker Program.—Section 101(a)(27)(C)(ii) (8 U.S.C. 1101 (a)(27)(C)(ii)) is amended in subclauses (II) and (III) by striking “before September 30, 2015,” both places such term appears.

(b) ~~EB–5~~ **EB–5** Regional Center Program.—Section 610(b) of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993 (Public Law 102–395; 8 U.S.C. 1153 note) is amended by striking “until September 30, 2015”.

Subtitle D—Conrad State 30 and Physician Access

SEC. 2401. CONRAD STATE 30 PROGRAM.

Section 220(c) of the Immigration and Nationality Technical Corrections Act of 1994 (Public Law 103–416; 8 U.S.C. 1182 note) is amended by striking “and before September 30, 2015”.

SEC. 2402. RETAINING PHYSICIANS WHO HAVE PRACTICED IN MEDICALLY UNDERSERVED COMMUNITIES.

~~* 18 Section 201(b)(1) (8 U.S.C. 1151(b)(1)), as amended by section 217(b), is further amended by adding at the end the following:~~

Section 201(b)(1) (8 U.S.C. 1151(b)(1)), as amended by sections 2103(c), 2212(d)(2), and 2307(b), is further amended by adding at the end the following:

~~“(L)(i)~~**“(O)(i)** Alien physicians who have completed service requirements of a waiver requested under section 203(b)(2)(B)(ii), including alien physicians who completed such service before the date of the enactment of the Border Security, Economic Opportunity, and Immigration Modernization Act and any spouses or children of such alien physicians.

“(ii) Nothing in this subparagraph may be construed—

“(I) to prevent the filing of a petition with the Secretary of Homeland Security for classification under section 204(a) or the filing of an application for adjustment of status under section 245 by an alien physician described in this subparagraph prior to the date by which such alien physician has completed the service described in section 214(l) or worked full-time as a physician for an aggregate of 5 years at the location identified in the section 214(l) waiver or in an area or areas designated by the Secretary of Health and Human Services as having a shortage of health care professionals; or

“(II) to permit the Secretary of Homeland Security to grant such a petition or

application until the alien has satisfied all the requirements of the waiver received under section 214(l).”.

SEC. 2403. EMPLOYMENT PROTECTIONS FOR PHYSICIANS.

(a) In General.—Section 214(l)(1)(C) (8 U.S.C. 1184(l)(1)(C)) is amended by striking clauses (i) and (ii) and inserting the following:

“(i) the alien demonstrates a bona fide offer of full-time employment, at a health care organization, which employment has been determined by the Secretary of Homeland Security to be in the public interest; and

“(ii) the alien agrees to begin employment with the health facility or health care organization in a geographic area or areas which are designated by the Secretary of Health and Human Services as having a shortage of health care professionals by the later of the date that is 90 days after receiving such waiver, 90 days after completing graduate medical education or training under a program approved pursuant to section 212(j)(1), or 90 days after receiving nonimmigrant status or employment authorization, **provided that the alien or the alien’s employer petitions for such nonimmigrant status or employment authorization within 90 days of completing graduate medical or training** and agrees to continue to work for a total of not less than 3 years in any status authorized for such employment under this subsection**,** unless—

“(I) the Secretary determines that extenuating circumstances exist that justify a lesser period of employment at such facility or organization, in which case the alien shall demonstrate another bona fide offer of employment at a health facility or health care organization, for the remainder of such 3-year period;

“(II) the interested ~~State~~ agency that requested the waiver attests that extenuating circumstances exist that justify a lesser period of employment at such facility or organization in which case the alien shall demonstrate another bona fide offer of employment at a health facility or health care organization so designated by the Secretary of Health and Human Services, for the remainder of such 3-year period; or

“(III) if the alien elects not to pursue a determination of extenuating circumstances pursuant to subclause (I) or (II), the alien terminates the alien’s employment relationship with such facility or organization, in which case the alien shall be employed for the remainder of such 3-year period, and 1 additional year for each termination, at another health facility or health care organization in a geographic area or areas which are designated by the Secretary of Health and Human Services as having a shortage of health care professionals; and”.

(b) Contract Requirements.—Section 214(l) (8 U.S.C. 1184(l)) is amended by adding at the end the following:

“(4) An alien granted a waiver under paragraph (1)(C) shall enter into an employment agreement with the contracting health facility or health care organization that—

“(A) specifies the maximum number of on-call hours per week (which may be a monthly

average) that the alien will be expected to be available and the compensation the alien will receive for on-call time;

"(B) specifies whether the contracting facility or organization will pay for the alien's malpractice insurance premiums, including whether the employer will provide malpractice insurance and, if so, the amount of such insurance that will be provided;

"(C) describes all of the work locations that the alien will work and a statement that the contracting facility or organization will not add additional work locations without the approval of the Federal agency or State agency that requested the waiver; and

"(D) does not include a non-compete provision.

"(5) An alien granted a waiver under paragraph (1)(C) whose employment relationship with a health facility or health care organization terminates during the 3-year service period required by such paragraph—

"(A) shall have a period of 120 days beginning on the date of such termination of employment to submit to the Secretary of Homeland Security applications or petitions to commence employment with another contracting health facility or health care organization in a geographic area or areas which are designated by the Secretary of Health and Human Services as having a shortage of health care professionals;~~ and~~

"(B) shall be considered to be maintaining lawful status in an authorized stay during the 120-day period referred to in subsection ~~(A).".~~

(A); and

"(C) shall not be considered to be fulfilling the 3-year term of service during the 120-day period referred to in subparagraph (A).".

SEC. 2404. ALLOTMENT OF CONRAD 30 WAIVERS.

(a) In General.—Section 214(l) (8 U.S.C. 1184(l)), as amended by section 333(b), is further amended by adding at the end the following:

"(6)(A)(i) All States shall be allotted a total of 35 waivers under paragraph (1)(B) for a fiscal year if 90 percent of the waivers available to the States receiving at least 5 waivers were used in the previous fiscal year.

"(ii) When an allocation has occurred under clause (i), all States shall be allotted an additional 5 waivers under paragraph (1)(B) for each subsequent fiscal year if 90 percent of the waivers available to the States receiving at least 5 waivers were used in the previous fiscal year. If the States are allotted 45 or more waivers for a fiscal year, the States will only receive an additional increase of 5 waivers the following fiscal year if 95 percent of the waivers available to the States receiving at least 1 waiver were used in the previous fiscal year.

"(B) Any increase in allotments under subparagraph (A) shall be maintained indefinitely, unless in a fiscal year, the total number of such waivers granted is 5 percent lower than in the last year in which there was an increase in the number of waivers allotted pursuant to this paragraph, in which case—

"(i) the number of waivers allotted shall be decreased by 5 for all States beginning in the next fiscal year; and

"(ii) each additional 5 percent decrease in such waivers granted from the last year in which there was an increase in the allotment, shall result in an additional decrease of 5 waivers allotted for all States, provided that the number of waivers allotted for all States shall not drop below 30.".

(b) Academic Medical Centers.—Section 214(l)(1)(D) (8 U.S.C. 1184(l)(1)(D)) is amended—

(1) in clause (ii), by striking "and" at the end;

(2) in clause (iii), by striking the period at the end and inserting "; and"; and

(3) by adding at the end the following:

"(iv) in the case of a request by an interested State agency—

"(I) the head of such agency determines that the alien is to practice medicine in, or be on the faculty of a residency program at, an academic medical center (as that term is defined in section 411.355(e)(2) of title 42, Code of Federal Regulation, or similar successor regulation), without regard to whether such facility is located within an area designated by the Secretary of Health and Human Services as having a shortage of health care professionals; and

"(II) the head of such agency determines that—

"(aa) the alien physician's work is in the public interest; and

"(bb) the grant of such waiver would not cause the number of the waivers granted on behalf of aliens for such State for a fiscal year (within the limitation in subparagraph (B) and subject to paragraph (6)) in accordance with the conditions of this clause to exceed 3.".

SEC. 2405. AMENDMENTS TO THE PROCEDURES, DEFINITIONS, AND OTHER PROVISIONS RELATED TO PHYSICIAN IMMIGRATION.

(a) Dual Intent for Physicians Seeking Graduate Medical Training.—Section 214(b) (8 U.S.C. 1184(b)) is amended by striking "(other than a nonimmigrant described in subparagraph (L) or (V) of section 101(a)(15), and other than a nonimmigrant described in any provision of section 101(a)(15)(H)(i) except subclause (b1) of such section)" and inserting "(other than a nonimmigrant described in subparagraph (L) or (V) of section 101(a)(15), a nonimmigrant described in any provision of section 101(a)(15)(H)(i), except subclause (b1) of such section, and an alien coming to the United States to receive graduate medical education or training as described in section 212(j) or to take examinations required to receive graduate medical education or training as described in section 212(j))".

(b) Allowable Visa Status for Physicians Fulfilling Waiver Requirements in Medically Underserved Areas.—Section 214(l)(2)(A) (8 U.S.C. 1184(l)(2)(A)) is amended by striking "an alien described in section 101(a)(15)(H)(i)(b)." and inserting "any status authorized for employment under this Act.".

(c)~~ Physician National Interest Waiver Clarifications.—Section 203(b)(2)(B)(ii)(I) (8 U.S.C. 1153(b)(2)(B)(ii)(I)) is amended by striking items (aa) and (bb) and inserting the following:~~

~~"(aa) the alien physician agrees to work on a full-time basis practicing primary care, specialty medicine, or a combination thereof, in an area or areas designated by the Secretary of Health and Human Services as having a shortage of health care professionals, or at a health care facility under the jurisdiction of the Secretary of Veterans Affairs; or~~

~~"(bb) the alien physician is pursuing such waiver based upon service at a facility or facilities that serve patients who reside in a geographic area or areas designated by the Secretary of Health and Human Services as having a shortage of health care professionals (without regard to whether such facility or facilities are located within such an area) and a Federal agency, or a local, county, regional, or State department of public health determines the alien physician's work was or will be in the public interest.".~~

~~(d)~~ Short Term Work Authorization for Physicians Completing Their Residencies.—A physician completing graduate medical education or training as described in section 212(j) of the Immigration and Nationality Act (8 U.S.C. 1182(j)) as a nonimmigrant described section 101(a)(15)(H)(i) of such Act (8 U.S.C. 1101(a)(15)(H)(i)) shall have such nonimmigrant status automatically extended until October 1 of the fiscal year for which a petition for a continuation of such nonimmigrant status has been submitted in a timely manner and where the employment start date for the beneficiary of such petition is October 1 of that fiscal year. Such physician shall be authorized to be employed incident to status during the period between the filing of such petition and October 1 of such fiscal year. However, the physician's status and employment authorization shall terminate 30 days from the date such petition is rejected, denied or revoked. A physician's status and employment authorization will automatically extend to October 1 of the next fiscal year if all visas as described in such section 101(a)(15)(H)(i) authorized to be issued for the fiscal year have been issued.

~~(e)~~**(d)** Applicability of Section 212(e) to Spouses and Children of J–1 Exchange Visitors.—A spouse or child of an exchange visitor described in section 101(a)(15)(J) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(J)) shall not be subject to the requirements of section 212(e) of the Immigration and Nationality Act (8 U.S.C. 1182(e)).

Subtitle E—Integration

SEC. 2501. DEFINITIONS.

In this subtitle:

(1) CHIEF.—The term "Chief" means the Chief of the Office.

(2) FOUNDATION.—The term "Foundation" means the United States Citizenship Foundation established pursuant to section 2531.

(3) IEACA GRANTS.—The term "IEACA grants" means Initial Entry, Adjustment, and Citizenship Assistance grants authorized under section 2537.

(4) IMMIGRANT INTEGRATION.—The term "immigrant integration" means the process by which immigrants—

(A) join the mainstream of civic life by engaging and sharing ownership in their

local community, the United States, and the principles of the Constitution;

(B) attain financial self-sufficiency and upward economic mobility for themselves and their family members; and

(C) acquire English language skills and related cultural knowledge necessary to effectively participate in their community.

(5) LINGUISTIC INTEGRATION.—The term "linguistic integration" means the acquisition, by limited English proficient individuals, of English language skills and related cultural knowledge necessary to meaningfully and effectively fulfill their roles as community members, family members, and workers.

(6) OFFICE.—The term "Office" means the Office of Citizenship and New Americans established in U.S. Citizenship and Immigration Services under section 2511.

(7) RECEIVING COMMUNITIES.—The term "receiving communities" means the long-term residents of the communities in which immigrants settle.

(8) TASK FORCE.—The term "Task Force" means the Task Force on New Americans established pursuant to section 2521.

(9) USCF COUNCIL.—The term "USCF Council" means the Council of Directors of the Foundation.

CHAPTER 1—CITIZENSHIP AND NEW AMERICANS

Subchapter A—Office of Citizenship and New Americans

SEC. 2511. OFFICE OF CITIZENSHIP AND NEW AMERICANS.

(a) Renaming Office of Citizenship.—

(1) IN GENERAL.—Beginning on the date of the enactment of this Act, the Office of Citizenship in U.S. Citizenship and Immigration Services shall be referred to as the "Office of Citizenship and New Americans".

(2) REFERENCES.—Any reference in a law, regulation, document, paper, or other record of the United States to the Office of Citizenship in U.S. Citizenship and Immigration Services shall be deemed to be a reference to the Office of Citizenship and New Americans.

(3) TECHNICAL AND CONFORMING AMENDMENTS.—Section 451 of the Homeland Security Act of 2002 (6 U.S.C. 271) is amended—

(A) in the section heading, by striking "bureau of" and inserting "u.s.";

(B) in subsection (a)(1), by striking "the 'Bureau of" and inserting "'U.S.";

(C) by striking "the Bureau of" each place such terms appears and inserting "U.S."; and

(D) in subsection (f)—

(i) by amending the subsection heading to read as follows: "Office of

Citizenship and New Americans"; and

(ii) by striking paragraph (1) and inserting the following:

"(1) CHIEF.—The Office of Citizenship and New Americans shall be within U.S. Citizenship and Immigration Services and shall be headed by the Chief of the Office of Citizenship and New Americans.".

(b) Functions.—Section 451(f) of such Act (6 U.S.C. 271(f)), as amended by subsection (a)(3)(D), is further amended by striking paragraph (2) and inserting the following:

"(2) FUNCTIONS.—The Chief of the Office of Citizenship and New Americans shall—

"(A) promote institutions and **provide** training on citizenship responsibilities for aliens interested in becoming naturalized citizens of the United States, including the development of educational materials for such aliens;

"(B) provide general leadership, consultation, and coordination of the immigrant integration programs across the Federal Government and with State and local entities;

"(C) **in coordination with the Task Force on New Americans established under section 2521 of the Border Security, Economic Opportunity, and Immigration Modernization Act—**

"(i) advise the Director of U.S. Citizenship and Immigration Services, the Secretary of Homeland Security, and the Domestic Policy Council**,** on—

~~"(i)~~**"(I)** the challenges and opportunities relating to the linguistic, economic, and civic integration of immigrants and their young children and progress in meeting integration goals and indicators; and

~~"(ii)~~**"(II)** immigrant integration considerations relating to Federal budgets;

~~"(D)~~**"(ii)** establish national goals for introducing new immigrants into the United States and measure the degree to which such goals are met;

~~"(E)~~**"(iii)** evaluate the scale, quality, and effectiveness of Federal Government efforts in immigrant integration and provide advice on appropriate actions; **and**

"(iv)~~"(F)~~ identify the integration implications of new or proposed immigration policies and provide recommendations for addressing such implications;

~~"(G) continue the efforts of the Task Force on New Americans established by Executive Order 13404 (71 Fed. Reg. 33593);~~

~~"(H)~~**"(D)** serve as a liaison and intermediary with State and local governments and other entities to assist in establishing local goals, task forces, and councils to assist in—

"(i) introducing immigrants into the United States; and

"(ii) promoting citizenship education and awareness among aliens interested in becoming naturalized citizens of the United States;

~~"(I)~~**"(E)** coordinate with other Federal agencies to provide information to State and local governments on the demand for existing Federal and State English ~~acquisition and citizenship~~ education programs and best practices for immigrants who recently

arrived in the United States;

~~"(J)~~**"(F)** assist States in coordinating the activities of the grant programs authorized under sections 2537 and 2538 of the Border Security, Economic Opportunity, and Immigration Modernization Act;

~~"(K)~~**"(G)** submit a biennial report to the appropriate congressional committees that describes the activities of the Office of Citizenship and New Americans; and

~~"(L)~~**"(H)** carry out such other functions and activities as Secretary may assign.".

(c) Effective Date.—The amendments made by subsections (a) and (b) shall take effect on the date that is 1 year after the date of the enactment of this Act.

Subchapter B—Task Force on New Americans

SEC. 2521. ESTABLISHMENT.

(a) In General.—The Secretary shall establish a Task Force on New Americans.

(b) Fully Functional.—The Task Force shall be fully functional not later than 18 months after the date of the enactment of this Act.

SEC. 2522. PURPOSE.

The purposes of the Task Force are—

(1) to establish a coordinated Federal program and policy response to immigrant integration issues; and

(2) to advise and assist the ~~Secretary~~ **Federal Government** in identifying and fostering policies to carry out the policies and goals established under this chapter.

SEC. 2523. MEMBERSHIP.

(a) In General.—The Task Force shall be comprised of—

(1) the Secretary, who shall serve as Chair of the Task Force;

(2) the Secretary of the Treasury;

(3) the Attorney General;

(4) the Secretary of Commerce;

(5) the Secretary of Labor;

(6) the Secretary of Health and Human Services;

(7) the Secretary of Housing and Urban Development;

(8) the Secretary of Transportation;

(9) the Secretary of Education;

(10) the Director of the Office of Management and Budget;

(11) the Administrator of the Small Business Administration;

(12) the Director of the Domestic Policy Council; ~~and~~

(13) the Director of the National Economic Council**; and**

(14) the National Security Advisor.~~.~~

(b) Delegation.—A member of the Task Force may delegate a senior official, at the Assistant Secretary, Deputy Administrator, Deputy Director, or Assistant Attorney General level to perform the functions of a Task Force member described in section 2524.

SEC. 2524. FUNCTIONS.

(a) Meetings; Functions.—The Task Force shall—

(1) meet at the call of the Chair; and

(2) perform such functions as the Secretary may prescribe.

(b) Coordinated Response.—The Task Force shall work with executive branch agencies—

(1) to provide a coordinated Federal response to issues that impact the lives of new immigrants and receiving communities, including—

(A) access to youth and adult education programming;

(B) workforce training;

(C) health care policy;

(D) access to naturalization; and

(E) community development challenges; and

(2) to ensure that Federal programs and policies adequately address such impacts.

(c) Liaisons.—Members of the Task Force shall serve as liaisons to their respective agencies to ensure the quality and timeliness of their agency's participation in activities of the Task Force, including—

(1) creating integration goals and indicators;

(2) implementing the biannual consultation process with the agency's State and local counterparts; and

(3) reporting on agency data collection, policy, and program efforts relating to achieving the goals and indicators referred to in paragraph (1).

(d) Recommendations.—Not later than 18 months after the end of the period specified in section 2521(b), the Task Force shall—

(1) provide recommendations to the Domestic Policy Council and the Secretary on the effects of pending legislation and executive branch policy proposals;

(2) suggest changes to Federal programs or policies to address issues of special importance to new immigrants and receiving communities;

(3) review and recommend changes to policies that have a distinct impact on new immigrants and receiving communities; and

(4) assist in the development of legislative and policy proposals of special importance to new immigrants and receiving communities.

CHAPTER 2—PUBLIC-PRIVATE PARTNERSHIP

SEC. 2531. ESTABLISHMENT OF UNITED STATES CITIZENSHIP FOUNDATION.

The Secretary, acting through the Director of U.S. Citizenship and Immigration Services, is authorized to establish a nonprofit corporation **or a not-for-profit, public benefit, or similar entity**, which shall be known as the "United States Citizenship Foundation".

SEC. 2532. FUNDING.

(a) Gifts to Foundation.—In order to carry out the purposes set forth in section 2533, the Foundation may—

(1) solicit, accept, and make gifts of money and other property in accordance with section 501(c)(3) of the Internal Revenue Code of 1986;

(2) engage in coordinated work with the Department, including the Office and U.S. Citizenship and Immigration Services; and

(3) accept, hold, administer, invest, and spend any gift, devise, or bequest of real or personal property made to the Foundation.

(b) Gifts to Office of Citizenship and New Americans.—The Office may accept gifts from the Foundation to support the functions of the Office.

SEC. 2533. PURPOSES.

The purposes of the Foundation are—

(1) to expand citizenship preparation programs for **lawful** permanent residents;

(2) to provide direct assistance for aliens seeking provisional immigrant status, legal permanent resident status, or naturalization as a United States citizen; and

(3) to coordinate immigrant integration with State and local entities.

SEC. 2534. AUTHORIZED ACTIVITIES.

The Foundation shall carry out its purpose by—

(1) making United States citizenship instruction and naturalization application services accessible to low-income and other underserved **lawful** permanent resident populations;

(2) developing, identifying, and sharing best practices in United States citizenship preparation;

(3) supporting innovative and creative solutions to barriers faced by those seeking naturalization;

(4) increasing the use of, and access to, technology in United States citizenship preparation programs;

(5) engaging receiving communities in the United States citizenship and civic integration process;

(6) administering the New Citizens Award Program to recognize, in each calendar year, not more than 10 United States citizens who—

(A) have made outstanding contributions to the United States; and

(B) have been naturalized during the 10-year period ending on the date of such recognition;

(7) fostering public education and awareness;

(8) coordinate its immigrant integration efforts with the Office;

(9) awarding grants to eligible public or private nonprofit organizations under section 2537.

(10) awarding grants to State and local governments under section 2538.

SEC. 2535. COUNCIL OF DIRECTORS.

(a) ~~Members.—The~~ **Members.—To the extent consistent with section 501(c)(3) of the Internal Revenue Code of 1986, the** Foundation shall have a Council of Directors, which shall be comprised of—

(1) the Director of U.S. Citizenship and Immigration Services;

(2) the Chief of the Office of Citizenship and New Americans; and

(3) 10 directors, appointed by the ex-officio directors designated in paragraphs (1) and (2), from national community-based organizations that promote and assist permanent residents with naturalization.

(b) Appointment of Executive Director.—The USCF Council shall appoint an Executive Director, who shall oversee the day-to-day operations of the Foundation.

SEC. 2536. POWERS.

The Executive Director is authorized to carry out the purposes set forth in section 2533 on behalf of the Foundation by—

(1) accepting, holding, administering, investing, and spending any gift, devise, or bequest of real or personal property made to the Foundation;

(2) entering into contracts and other financial assistance agreements with individuals, public or private organizations, professional societies, and government agencies to carry out the functions of the Foundation;

(3) entering into such other contracts, leases, cooperative agreements, and other transactions as the Executive Director considers appropriate to carry out the activities of the Foundation; and

(4) charging such fees for professional services furnished by the Foundation as the

Executive Director determines reasonable and appropriate.

SEC. 2537. INITIAL ENTRY, ADJUSTMENT, AND CITIZENSHIP ASSISTANCE GRANT PROGRAM.

(a) Authorization.—The Secretary, acting through the Director of U.S. Citizenship and Immigration Services, may award Initial Entry, Adjustment, and Citizenship Assistance grants to eligible public or private, nonprofit organizations.

(b) Use of Grant Funds.—IEACA grants shall be used for the design and implementation of programs that provide direct assistance, within the scope of the authorized practice of immigration law—

(1) to aliens who are preparing an initial application for registered provisional immigrant status under section 245B of the Immigration and Nationality Act~~, as added by section 2101 of this Act~~ **and to aliens who are preparing an initial application for blue card status under section 2211**, including assisting applicants in—

(A) screening to assess prospective applicants' potential eligibility or lack of eligibility;

(B) completing applications;

(C) gathering proof of identification, employment, residence, and tax payment;

(D) gathering proof of relationships of eligible family members;

(E) applying for any waivers for which applicants and qualifying family members may be eligible; and

(F) any other assistance that the Secretary or grantee considers useful to aliens who are interested in applying for registered provisional immigrant status;

(2) to aliens seeking to adjust their status under ~~section2211 or 2212 of this Act or~~ section 245, 245B, ~~or~~ 245C**, or 245F** of the Immigration and Nationality Act;

(3) to legal permanent residents seeking to become naturalized United States citizens; and

(4) to applicants on—

(A) the rights and responsibilities of United States citizenship;

(B) civics-based English as a second language;

(C) civics, with a special emphasis on common values and traditions of Americans, including an understanding of the history of the United States and the principles of the Constitution; and

(D) applying for United States citizenship.

SEC. 2538. PILOT PROGRAM TO PROMOTE IMMIGRANT INTEGRATION AT STATE AND LOCAL LEVELS.

(a) Grants Authorized.—The Chief shall establish a pilot program through which the Chief may award grants, on a competitive basis, to States and local governments or other qualifying

entities, in collaboration with State and local governments —

(1) to establish New Immigrant Councils to carry out programs to integrate new immigrants; or

(2) to carry out programs to integrate new immigrants.

(b) Application.—A State or local government desiring a grant under this section shall submit an application to the Chief at such time, in such manner, and containing such information as the Chief may reasonably require, including—

(1) a proposal to meet an objective or combination of objectives set forth in subsection (d)(3);

(2) the number of new immigrants in the applicant's jurisdiction; and

(3) a description of the challenges in introducing and integrating new immigrants into the State or local community.

(c) Priority.—In awarding grants under this section, the Chief shall give priority to States and local governments or other qualifying entities that—

(1) use matching funds from non-Federal sources, which may include in-kind contributions;

(2) demonstrate collaboration with public and private entities to achieve the goals of the comprehensive plan developed pursuant to subsection (d)(3);

(3) are 1 of the 10 States with the highest rate of foreign-born residents; or

(4) have experienced a large increase in the population of immigrants during the most recent 10-year period relative to past migration patterns, based on data compiled by the Office of Immigration Statistics or the United States Census Bureau.

(d) Authorized Activities.—A grant awarded under this subsection may be used—

(1) to form a New Immigrant Council, which shall—

(A) consist of between 15 and 19 individuals, inclusive, from the State, local government, or qualifying organization;

(B) include, to the extent practicable, representatives from—

(i) business;

(ii) faith-based organizations;

(iii) civic organizations;

(iv) philanthropic organizations;

(v) nonprofit organizations, including those with **legal and advocacy** experience working with immigrant communities;

(vi) key education stakeholders, such as State educational agencies, local educational agencies, community colleges, and teachers;

(vii) State adult education offices;

(viii) State or local public libraries; and

(ix) State or local governments; and

(C) meet not less frequently than once each quarter;

(2) to provide subgrants to local communities, city governments, municipalities, nonprofit organizations (including veterans' and patriotic organizations) or other qualifying entities;

(3) to develop, implement, expand, or enhance a comprehensive plan to introduce and integrate new immigrants into the State by—

(A) improving English language skills;

(B) engaging caretakers with limited English proficiency in their child's education through interactive parent and child literacy activities;

(C) improving and expanding access to workforce training programs;

(D) teaching United States history, civics education, citizenship rights, and responsibilities;

(E) promoting an understanding of the form of government and history of the United States and the principles of the Constitution;

(F) improving financial literacy; and

(G) focusing on other key areas of importance to integration in our society; and

(4) to engage receiving communities in the citizenship and civic integration process by—

(A) increasing local service capacity;

(B) building meaningful connections between newer immigrants and long-time residents;

(C) communicating the contributions of receiving communities and new immigrants; and

(D) engaging leaders from all sectors of the community.

(e) Reporting and Evaluation.—

(1) ANNUAL REPORT.—Each grant recipient shall submit an annual report to the Office that describes—

(A) the activities undertaken by the grant recipient, including how such activities meet the goals of the Office, the Foundation, and the comprehensive plan described in subsection (d)(3);

(B) the geographic areas being served;

(C) the number of immigrants in such areas; and

(D) the primary languages spoken in such areas.

(2) ANNUAL EVALUATION.—The Chief shall conduct an annual evaluation of the grant program established under this section—

(A) to assess and improve the effectiveness of such grant program;

(B) to assess the future needs of immigrants and of State and local governments related to immigrants; and

(C) to ensure that grantees recipients and subgrantees are acting within the scope and purpose of this subchapter.

SEC. 2539. NATURALIZATION CEREMONIES.

(a) In General.—The Chief, in consultation with the Director of the National Park Service, the Archivist of the United States, and other appropriate Federal officials, shall develop and implement a strategy to enhance the public awareness of naturalization ceremonies.

(b) Venues.—In developing the strategy under subsection (a), the Secretary shall consider the use of outstanding and historic locations as venues for select naturalization ceremonies.

(c) Reporting Requirement.—The Secretary shall annually submit a report to Congress that contains—

(1) the content of the strategy developed under subsection (a); and

(2) the progress made towards the implementation of such strategy.

CHAPTER 3—FUNDING

SEC. 2541. AUTHORIZATION OF APPROPRIATIONS.

(a) Office of Citizenship and New Americans.—In addition to any amounts otherwise made available to the Office, there are authorized to be appropriated to carry out the functions described in section 451(f)(2) of the Homeland Security Act of 2002 (6 U.S.C. 271(f)(2)), as amended by section 2511(b)—

(1) $10,000,000 for the 5-year period ending on September 30, 2018; and

(2) such sums as may be necessary for fiscal year 2019 and subsequent fiscal years.

(b) Grant Programs.—There are authorized to be appropriated to implement the grant programs authorized under sections 2537 and 2538, and to implement the strategy under section 2539—

(1) $100,000,000 for the 5-year period ending on September 30, 2018; and

(2) such sums as may be necessary for fiscal year 2019 and subsequent fiscal years.

CHAPTER 4—REDUCE BARRIERS TO NATURALIZATION

SEC. 2551. WAIVER OF ENGLISH REQUIREMENT FOR SENIOR NEW AMERICANS.

Section 312 (8 U.S.C. 1423) is amended by striking subsection (b) and inserting the following:

“(b) The requirements under subsection (a) shall not apply to any person who—

"(1) is unable to comply with such requirements because of physical or **mental disability, including** developmental **or intellectual** disability ~~or mental impairment;~~**;** or

"(2) on the date on which the person's application for naturalization is filed under section 334—

"(A) is older than 65 years of age; and

"(B) has been living in the United States for periods totaling at least 5 years after being lawfully admitted for permanent residence.

"(c) The requirement under subsection (a)(1) shall not apply to any person who, on the date on which the person's application for naturalization is filed under section 334—

"(1) is older than 50 years of age and has been living in the United States for periods totaling at least 20 years after being lawfully admitted for permanent residence;

"(2) is older than 55 years of age and has been living in the United States for periods totaling at least 15 years after being lawfully admitted for permanent residence; or

"(3) is older than 60 years of age and has been living in the United States for periods totaling at least 10 years after being lawfully admitted for permanent residence.

"(d) The Secretary of Homeland Security may waive, on a case-by-case basis, the requirement under subsection (a)(2) on behalf of any person who, on the date on which the person's application for naturalization is filed under section 334—

"(1) is older than 60 years of age; and

"(2) has been living in the United States for periods totaling at least 10 years after being lawfully admitted for permanent residence.".

SEC. 2552. FILING OF APPLICATIONS NOT REQUIRING REGULAR INTERNET ACCESS.

(a) Electronic Filing Not Required.—

(1) IN GENERAL.—The Secretary may not require that an applicant or petitioner for permanent residence or citizenship of the United States use an electronic method to file any application, or access to a customer account.

(2) SUNSET DATE.—This subsection shall cease to be effective on October 1, 2020.

(b) Notification Requirement.—Beginning on October 1, 2020, the Secretary may not require that an applicant or petitioner for permanent residence or citizenship of the United States use an electronic method to file any application, or access to a customer account unless the Secretary notifies the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Homeland Security of the House of Representatives of such requirement not later than 30 days before the effective date of such requirement.

TITLE III—INTERIOR ENFORCEMENT

Subtitle A—Employment Verification System

SEC. 3101. UNLAWFUL EMPLOYMENT OF UNAUTHORIZED ALIENS.

(a) In General.—Section 274A (8 U.S.C. 1324a) is amended to read as follows:

"SEC. 274A. UNLAWFUL EMPLOYMENT OF ALIENS.

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

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

"(A) to hire, recruit, or refer for a fee an alien for employment in the United States knowing that the alien is an unauthorized alien with respect to such employment; or

"(B) to hire, recruit, or refer for a fee for employment in the United States an individual without complying with the requirements under subsections (c) and (d).

"(2) CONTINUING EMPLOYMENT.—

"(A) PROHIBITION ON CONTINUED EMPLOYMENT OF UNAUTHORIZED ALIENS.—It is unlawful for an employer, after hiring an alien for employment, to continue to employ the alien in the United States knowing that the alien is (or has become) an unauthorized alien with respect to such employment.

"(B) PROHIBITION ON CONSIDERATION OF PREVIOUS UNAUTHORIZED STATUS.—Nothing in this section may be construed to prohibit the employment of an individual who is authorized for employment in the United States if such individual was previously an unauthorized alien.

"(3) USE OF LABOR THROUGH CONTRACT.—For purposes of this section, any employer that uses a contract, subcontract, or exchange to obtain the labor of an alien in the United States while knowing that the alien is an unauthorized alien with respect to performing such labor shall be considered to have hired the alien for employment in the United States in violation of paragraph (1)(A).

"(4) USE OF STATE EMPLOYMENT AGENCY DOCUMENTATION.—For purposes of paragraphs (1)(B), (5), and (6), an employer shall be deemed to have complied with the requirements under subsection (c) with respect to the hiring of an individual who was referred for such employment by a State employment agency (as defined by the Secretary) if the employer has and retains (for the period and in the manner described in subsection (c)(3)) appropriate documentation of such referral by such agency, certifying that such agency has complied with the procedures described in subsection (c) with respect to the individual's referral. An employer that relies on a State agency's certification of compliance with subsection (c) under this paragraph may utilize and retain the State agency's certification of compliance with the procedures described in subsection (d), if any, in the manner provided under this paragraph.

"(5) GOOD FAITH DEFENSE.—

"(A) DEFENSE.—An employer, person, or entity that hires, employs, recruits, or refers individuals for employment in the United States, or is otherwise obligated to comply with the requirements under this section and establishes good faith compliance

with the requirements under paragraphs (1) through (4) of subsection (c) and subsection (d)—

"(i) has established an affirmative defense that the employer, person, or entity has not violated paragraph (1)(A) with respect to hiring and employing; and

"(ii) has established compliance with its obligations under subparagraph (A) and (B) of paragraph (1) and subsection (c) unless the Secretary demonstrates that the employer had knowledge that an individuals hired, employed, recruited, or referred by the employer, person, or entity is an ~~authorized alien.~~ **unauthorized alien.**

~~"(B) Failure to obtain verification.—An employer that has made the inquiry under subsection (d) with respect to an individual, but has not received an appropriate verification of the identity and work eligibility of such individual from the System within the time period specified in subsection (d)(4)(C) may retain the defense under subparagraph (A) if the employer timely records in the System the reasons the employer continues to employ the individual.~~

~~"(C)~~**"(B)** EXCEPTION FOR CERTAIN EMPLOYERS.—An employer who is not required to participate in the System or who is participating in the System on a voluntary basis pursuant to subsection ~~(d)(2)(I)~~**(d)(2)(J)** has established an affirmative defense under subparagraph (A) and need not demonstrate compliance with the requirements under subsection (d).

"(6) GOOD FAITH COMPLIANCE.—

"(A) IN GENERAL.—Except as otherwise provided in this subsection, an employer, person, or entity is considered to have complied with a requirement under this subsection notwithstanding a technical or procedural failure to meet such requirement if there was a good faith attempt to comply with the requirement.

"(B) EXCEPTION IF FAILURE TO CORRECT AFTER NOTICE.—Subparagraph (A) shall not apply if—

"(i) the failure is not de minimis;

"(ii) the Secretary of Homeland Security has explained to the employer, person, or entity the basis for the failure and why it is not de minimis;

"(iii) the employer, person, or entity has been provided a period of not less than 30 days (beginning after the date of the explanation) to correct the failure; and

"(iv) the employer, person, or entity has not corrected the failure voluntarily within such period.

"(C) EXCEPTION FOR PATTERN OR PRACTICE VIOLATORS.—Subparagraph (A) shall not apply to an employer, person, or entity that has engaged or is engaging in a pattern or practice of violations of paragraph (1)(A) or (2).

"(7) PRESUMPTION.—After the date on which an employer is required to participate in the System under subsection (d), the employer is presumed to have acted with knowledge for purposes of paragraph (1)(A) if the employer hires, employs, recruits, or refers an employee **for a fee** and fails to make an inquiry to verify the employment authorization status of the

employee through the System.

"(8) CONTINUED APPLICATION OF WORKFORCE AND LABOR PROTECTION REMEDIES DESPITE UNAUTHORIZED ~~EMPLOYMENT.—AN EMPLOYER MAY NOT DENY AN EMPLOYEE BACK PAY OR ANY OTHER REMEDY~~ **EMPLOYMENT.—**

"(A) IN GENERAL.—Subject only to subparagraph (B), all rights and remedies provided under any Federal, State, or local law relating to workplace rights, ~~and a court may not prohibit an employee from pursuing other causes of action giving rise to liability, except any reinstatement remedy prohibited by Federal law, on account of~~ **including but not limited to back pay, are available to an employee despite—**

"(i) the employee's status as an unauthorized alien~~, either~~ during or after the period of employment ~~by the employer.~~**; or**

"(ii) the employer's or employee's failure to comply with the requirements of this section.

"(B) REINSTATEMENT.—Reinstatement shall be available to individuals who—

"(i) are authorized to work in the United States at the time such relief is ordered or effectuated; or

"(ii) lost employment-authorized status due to the unlawful acts of the employer under this section.

"(9) AVAILABILITY OF REINSTATEMENT AND RELIEF.—Reinstatement and all other appropriate relief shall be available to individuals who—

"(A) are lawfully present in the United States at the time such relief is requested; and

"(B) lost employment authorized status due to the unlawful acts of the employer and for whom reinstatement would restore such status.

"(b) Definitions.—In this section:

"(1) COMMISSIONER.—The term 'Commissioner' means the Commissioner of Social Security.

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

"(3) EMPLOYER.—The term 'employer' means any person or entity, including an agency or department of a Federal, State, or local government, an agent, or a System service provider **acting on behalf of an employer**, that hires, employs, recruits, or refers for a fee an individual for employment in the United States that is not casual, sporadic, irregular, or intermittent (as defined by the Secretary).

"(4) EMPLOYMENT AUTHORIZED STATUS.—The term 'employment authorized status' means, with respect to an individual, that the individual is authorized to be employed in the United States under the immigration laws of the United States.

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

"(6) SYSTEM.—The term 'System' means the Employment Verification System established under subsection (d).

"(7) UNAUTHORIZED ALIEN.—The term 'unauthorized alien' means an alien who, with respect to employment in the United States at a particular time—

"(A) is not lawfully admitted for permanent residence; or

"(B) is not authorized to be employed under this Act or by the Secretary.

"(8) WORKPLACE RIGHTS.—The term 'workplace rights' means rights guaranteed under Federal, State, or local labor or employment laws, including laws concerning wages and hours, benefits and employment standards, labor relations, workplace health and safety, work-related injuries, nondiscrimination, and retaliation for exercising rights under such laws.

"(c) Document Verification Requirements.—Any employer hiring an individual for employment in the United States shall comply with the following requirements and the requirements under subsection (d) to verify that the individual has employment authorized status:

"(1) ATTESTATION AFTER EXAMINATION OF DOCUMENTATION.—

"(A) IN GENERAL.—

"(i) EXAMINATION BY EMPLOYER.—An employer shall attest, under penalty of perjury on a form prescribed by the Secretary, that the employer has verified the identity and employment authorization status of the individual—

"(I) by examining—

"(aa) a document specified in subparagraph (C); or

"(bb) a document specified in subparagraph (D) and a document specified in subparagraph (E); and

"(II) by utilizing an identity authentication mechanism described in clause (iii) or (iv) of subparagraph (F).

"(ii) PUBLICATION OF DOCUMENTS.—The Secretary shall publish a picture of each document specified in subparagraphs (C) and (E) on the U.S. Citizenship and Immigration Services' website.

"(B) REQUIREMENTS.—

"(i) FORM.—The form referred to in subparagraph (A)(i)—

"(I) shall be prescribed by the Secretary not later than 6 months after the date of the enactment of the Border Security, Economic Opportunity, and Immigration Modernization Act;

"(II) shall be available as—

"(aa) a paper form;

"(bb) a form that may be completed by an employer via telephone **or video conference**;

"(cc) an electronic form; or

"(dd) a form that is integrated electronically with the requirements under subsection (d).

"(ii) ATTESTATION.—Each such form shall require the employer to sign an attestation with a handwritten, electronic, or digital pin code signature, according to standards prescribed by the Secretary.

"(iii) COMPLIANCE.—An employer has complied with the requirements under this paragraph with respect to examination of the documents included in subclauses (I) and (II) of subparagraph (A)(i) if—

"(I) the employer has, in good faith, followed applicable regulations and any written procedures or instructions provided by the Secretary; and

"(II) a reasonable person would conclude that the documentation is genuine and relates to the individual presenting such documentation.

"(C) DOCUMENTS ESTABLISHING IDENTITY AND EMPLOYMENT AUTHORIZED STATUS.—A document is specified in this subparagraph if the document is unexpired (unless the validity of the document is extended by law) and is 1 of the following:

"(i) A United States passport or passport card issued to an individual pursuant to the Secretary of State's authority under the Act entitled 'An Act to regulate the issue and validity of passports, and for other purposes', approved July 3, 1926 (22 U.S.C. 211a).

"(ii) A document issued to an alien evidencing that the alien is lawfully admitted for permanent residence or another document issued to an individual evidencing the individual's employment authorized status, as designated by the Secretary, if the document—

"(I) contains a photograph of the individual, or such other personal identifying information relating to the individual as the Secretary determines, by regulation, to be sufficient for the purposes of this subparagraph;

"(II) is evidence of employment authorized status; and

"(III) contains security features to make the document resistant to tampering, counterfeiting, and fraudulent use.

"(iii) An enhanced driver's license or identification card issued to a national of the United States by a State**, an outlying possession of the United States,** or a federally recognized Indian tribe that—

"(I) meets the requirements under section 202 of the REAL ID Act of 2005 (division B of Public Law 109–13; 49 U.S.C. 30301 note); and

"(II) the Secretary has certified by notice published in the Federal Register and through appropriate notice directly to employers registered in the System 3 months prior to publication that such enhanced license or card is suitable for use under this subparagraph based upon the accuracy and security of the issuance process, security features on the document, and such other factors as the Secretary may prescribe.

"(iv) A passport issued by the appropriate authority of a foreign country accompanied by a Form I–94 or Form ~~I-94A~~ **I–94A** (or similar successor ~~form)~~ **record)**, or other documentation as designated by the Secretary that specifies the individual's status in the United States and the duration of such status if the proposed employment is not in conflict with any restriction or limitation specified on such form or documentation.

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

"(D) DOCUMENTS ESTABLISHING IDENTITY OF INDIVIDUAL.—A document is specified in this subparagraph if the document is unexpired (unless the validity of the document is extended by law) and is 1 of the following:

"(i) A driver's license or identity card that is not described in subparagraph (C)(iii) and is issued to an individual by a State or an outlying possession of the United States, a federally recognized Indian tribe, or an agency (including military) of the Federal Government if the driver's license or identity card includes, at a minimum—

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

"(II) security features to make the license or card resistant to tampering, counterfeiting, and fraudulent use.

"(ii) A voter registration card.

"(iii) A document that complies with the requirements under section 7209(b)(1) of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108–458; 8 U.S.C. 1185 note).

"(iv) For individuals under 18 years of age who are unable to present a document listed in clause (i) or (ii), documentation of personal identity of such other type as the Secretary determines will provide a reliable means of identification, which may include an attestation as to the individual's identity by a person 21 years of age or older under penalty of perjury.

"(E) DOCUMENTS EVIDENCING EMPLOYMENT AUTHORIZATION.—A document is specified in this subparagraph if the document is unexpired (unless the validity of the document is extended by law) and is 1 of the following:

"(i) A social security account number card issued by the Commissioner, other than a card which specifies on its face that the card is not valid to evidence employment authorized status or has other similar words of limitation.

"(ii) Any other documentation evidencing employment authorized status that the Secretary determines and publishes in the Federal Register and through appropriate notice directly to employers registered within the System to be acceptable for purposes of this subparagraph if such documentation, including any electronic security measures linked to such documentation, contains security

features to make such documentation resistant to tampering, counterfeiting, and fraudulent use.

"(F) IDENTITY AUTHENTICATION MECHANISM.—

"(i) DEFINITIONS.—In this subparagraph:

"(I) COVERED IDENTITY DOCUMENT.—The term 'covered identity document' means a valid—

"(aa) United States passport, passport card, or a document evidencing lawful permanent residence status or employment authorized status issued to an alien;

"(bb) enhanced driver's license or identity card issued by a participating State ~~;~~ **or an outlying possession of the United States;** or

"(cc) photograph and appropriate identifying information provided by the Secretary of State pursuant to the granting of a visa.

"(II) PARTICIPATING STATE.—The term 'participating State' means a State that has an agreement with the Secretary to provide the Secretary, for purposes of identity verification in the System, with photographs and appropriate identifying information maintained by the State.

"(ii) REQUIREMENT FOR IDENTITY AUTHENTICATION.—In addition to verifying the documents specified in subparagraph (C), (D), or (E) and utilizing the System under subsection (d), each employer shall use an identity authentication mechanism described in clause (iii) or provided in clause (iv) after it becomes available to verify the identity of each individual the employer seeks to hire.

"(iii) PHOTO TOOL.—

"(I) USE REQUIREMENT.—An employer seeking ~~to hire~~ **hiring** an individual who has a covered identity document shall verify the identity of such individual using the photo tool described in subclause (II).

"(II) DEVELOPMENT REQUIREMENT.—The Secretary shall develop and maintain a photo tool that enables employers to match the photo on a covered identity document provided to the employer to a photo maintained by a U.S. Citizenship and Immigration Services database.

"(iv) ADDITIONAL SECURITY MEASURES.—

"(I) USE REQUIREMENT.—An employer seeking to hire an individual whose identity may not be verified using the photo tool described in clause (iii) shall verify the identity of such individual using the additional security measures described in subclause (II).

"(II) DEVELOPMENT REQUIREMENT.—The Secretary shall develop, after publication in the Federal Register and an opportunity for public comment, specific and effective additional security measures to adequately verify the identity of an individual whose identity may not be verified using the photo tool described in clause (iii). Such additional security measures—

"(aa) shall be kept up-to-date with technological advances; and

"(bb) shall provide a means of identity authentication in a manner that provides a high level of certainty as to the identity of such individual, using immigration and identifying information that may include review of identity documents or background screening verification techniques using publicly available information.

"(G) AUTHORITY TO PROHIBIT USE OF CERTAIN DOCUMENTS.—If the Secretary determines, after publication in the Federal Register and an opportunity for public commit, that any document or class of documents specified in subparagraph (B), (C), or (D) does not reliably establish identity or that employment authorized status is being used fraudulently to an unacceptable degree, the Secretary—

"(i) may prohibit or restrict the use of such document or class of documents for purposes of this subsection; and

"(ii) shall directly notify all employers registered within the System of the prohibition through appropriate means.

"(H) AUTHORITY TO ALLOW USE OF CERTAIN DOCUMENTS.—If the Secretary has determined that another document or class of documents, such as a document issued by a federally recognized Indian tribe, may be used to reliably establish identity or employment authorized status, the Secretary—

"(i) may allow the use of that document or class of documents for purposes of this subsection after publication in the Federal Register and an opportunity for public comment;

"(ii) shall publish a description of any such document or class of documents on the U.S. Citizenship and Immigration Services' website; and

"(iii) shall directly notify all employers registered within the System of the ~~prohibition~~ **addition** through appropriate means.

"(2) INDIVIDUAL ATTESTATION OF EMPLOYMENT AUTHORIZATION.—An individual, upon commencing employment with an employer, shall—

"(A) attest, under penalty of perjury, on the form prescribed by the Secretary, that the individual is—

"(i) a ~~national~~ **citizen** of the United States;

"(ii) an alien lawfully admitted for permanent residence;

"(iii) an alien who has employment authorized status; or

"(iv) otherwise authorized by the Secretary to be hired for such employment;

"(B) provide such attestation by a handwritten, electronic, or digital pin code signature; and

"(C) provide the individual's social security account number to the Secretary, unless the individual has not yet been issued such a number, on such form as the Secretary may require.

"(3) RETENTION OF VERIFICATION RECORD.—

"(A) IN GENERAL.—After completing a form for an individual in accordance with paragraphs (1) and (2), the employer shall retain a version of such completed form and make such form available for inspection by the Secretary or the Office of Special Counsel for Immigration-Related Unfair Employment Practices of the Department of Justice during the period beginning on the hiring date of the individual and ending on the later of—

"(i) the date that is 3 years after such hiring date; or

"(ii) the date that is 1 year after the date on which the individual's employment with the employer is terminated.

"(B) REQUIREMENT FOR ELECTRONIC RETENTION.—The Secretary—

"(i) shall permit an employer to retain the form described in subparagraph (A) in electronic form; and

"(ii) ~~may~~ **shall** permit an employer to retain such form in paper, microfiche, microfilm, **portable document format,** or other media.

"(4) COPYING OF DOCUMENTATION AND RECORDKEEPING.—The Secretary may promulgate regulations regarding—

"(A) copying documents and related information pertaining to employment verification presented by an individual under this subsection; and

"(B) retaining such information during a period not to exceed the required retention period set forth in paragraph (3).

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

"(6) PROTECTION OF CIVIL RIGHTS.—

"(A) IN GENERAL.—Nothing in this section may be construed to diminish any rights otherwise protected by Federal law.

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

"(7) RECEIPTS.—The Secretary may authorize the use of receipts for replacement documents, and temporary evidence of employment authorization by an individual to meet a documentation requirement under this subsection on a temporary basis not to exceed 1 year, after which time the individual shall provide documentation sufficient to satisfy the documentation requirements under this subsection.

"(8) NO AUTHORIZATION OF NATIONAL IDENTIFICATION CARDS.—Nothing in this section may be construed to directly or indirectly authorize the issuance, use, or establishment of a national identification card.

"(d) Employment Verification System.—

"(1) IN GENERAL.—

"(A) ESTABLISHMENT.—The Secretary, in consultation with the Commissioner, shall establish the Employment Verification System.

"(B) MONITORING.—The Secretary shall create the necessary processes to monitor—

"(i) the functioning of the System, including the volume of the workflow, the speed of processing of queries, the speed and accuracy of responses;

"(ii) the misuse of the System, including the prevention of fraud or identity theft;

"(iii) whether the use of the System results in wrongful adverse actions or discrimination based upon a prohibited factor against **citizens or** nationals of the United States or individuals who have employment authorized status; and

"(iv) the security, integrity, and privacy of the System.

"(C) PROCEDURES.—The Secretary—

"(i) shall create processes to provide an individual with direct access to the individual's case history in the System, including—

"(I) the identities of all persons or entities that have queried the individual through the System;

"(II) the date of each such query; and

"(III) the System response for each such query; and

"(ii) in consultation with the Commissioner, may develop—

"(I) protocols to notify an individual, in a timely manner through the use of electronic correspondence or mail, that a query for the individual has been processed through the System; or

"(II) a process for the individual to submit additional queries to the System or notify the Secretary of potential identity fraud.

"(2) PARTICIPATION REQUIREMENTS.—

"(A) FEDERAL GOVERNMENT.—Except as provided in ~~clause (ii)~~ **subparagraph (B)**, all agencies and departments in the executive, legislative, or judicial branches of the Federal Government shall participate in the System beginning on the earlier of—

"(i) the date of the enactment of the Border Security, Economic Opportunity, and Immigration Modernization Act, to the extent required under section 402(e)(1) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (division C of Public Law 104–208; 8 U.S.C. 1324a) and as already implemented by each agency or department; or

"(ii) the date that is 90 days after the date of the enactment of the Border Security, Economic Opportunity, and Immigration Modernization Act.

"(B) FEDERAL CONTRACTORS.—Federal contractors shall participate in the System

as provided in the final rule relating to employment eligibility verification published in the Federal Register on November 14, 2008 (73 Fed. Reg. 67,651), or any similar subsequent regulation, for which purpose references to E-Verify in the final rule shall be construed to apply to the System.

"(C) CRITICAL INFRASTRUCTURE.—

"(i) IN GENERAL.—Beginning on the date that is 1 year after the date on which regulations are published implementing this subsection, the Secretary may authorize or direct any employer, person, or entity responsible for granting access to, protecting, securing, operating, administering, or regulating part of the critical infrastructure (as defined in section 1016(e) of the Critical Infrastructure Protection Act of 2001 (42 U.S.C. 5195c(e))) to participate in the System to the extent the Secretary determines that such participation will assist in the protection of the critical infrastructure.

"(ii) NOTIFICATION TO EMPLOYERS.—The Secretary shall notify an employer required to participate in the System under this subparagraph not later than 90 days before the date on which the employer is required to participate.

"(D) EMPLOYERS WITH MORE THAN 5,000 EMPLOYEES.—Not later than 2 years after regulations are published implementing this subsection, all employers with more than 5,000 employees shall participate in the System with respect to all newly hired employees and employees with expiring temporary employment authorization documents.

"(E) EMPLOYERS WITH MORE THAN 500 EMPLOYEES.—Not later than 3 years after regulations are published implementing this subsection, all employers with more than 500 employees shall participate in the System with respect to all newly hired employees and employees with expiring temporary employment authorization documents.

"(F) AGRICULTURAL ~~LABOR OR SERVICES.—WITH RESPECT TO AN EMPLOYEE PERFORMING AGRICULTURAL LABOR OR SERVICES (AS DEFINED FOR PURPOSES OF SECTION 101(A)(15)(H)(II)(A)), THIS PARAGRAPH SHALL NOT APPLY WITH RESPECT TO THE VERIFICATION OF THE EMPLOYEE UNTIL THE DATE THAT IS 4 YEARS AFTER THE DATE OF THE ENACTMENT OF THE LEGAL WORKFORCE ACT. AN EMPLOYEE DESCRIBED IN THIS CLAUSE~~ **EMPLOYMENT.—Not later than 4 years after regulations are published implementing this subsection, employers of employees performing agricultural employment (as defined in section 218A of this Act and section 2202 of the Border Security, Economic Opportunity, and Immigration Modernization Act) shall participate in the System with respect to all newly hired employees and employees with expiring temporary employment authorization documents. An agricultural employee** shall not be counted for purposes of subparagraph (D) or (E).

"(G) ALL EMPLOYERS.—Except as provided in subparagraph ~~(I)~~**(H)**, not later than 4 years after regulations are published implementing this subsection, all employers shall participate in the System with respect to all newly hired employees and employees with expiring temporary employment authorization documents.

"(H) TRIBAL GOVERNMENT EMPLOYERS.—

"(i) RULEMAKING.—In developing regulations to implement this subsection, the Secretary shall—

"(I) consider the effects of this section on federally recognized Indian tribes and tribal members; and

"(II) consult with the governments of federally recognized Indian tribes.

"(ii) REQUIRED PARTICIPATION.—Not later than 5 years after regulations are published implementing this subsection, all employers owned by, or entities of, the government of a federally recognized Indian tribe shall participate in the System with respect to all newly hired employees **and employees** with expiring temporary employment authorization documents.

"(I) IMMIGRATION LAW VIOLATORS.—

"(i) ORDERS FINDING VIOLATIONS.—An order finding any employer to have violated this section or section 274C may, in the Secretary's discretion, require the employer to participate in the System with respect to newly hired employees and employees with expiring temporary employment authorization documents, if such employer is not otherwise required to participate in the System under this section. The Secretary shall monitor such employer's compliance with System procedures.

"(ii) PATTERN OR PRACTICE OF VIOLATIONS.—The Secretary may require an employer that is required to participate in the System with respect to newly hired employees to participate in the System with respect to the employer's current employees if the employer is determined by the Secretary or other appropriate authority to have engaged in a pattern or practice of violations of the immigration laws of the United States.

"(J) VOLUNTARY PARTICIPATION.—The Secretary may permit any employer that is not required to participate in the System under this section to do so on a voluntary basis.

"(3) CONSEQUENCE OF FAILURE TO PARTICIPATE.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the failure, other than a de minimis or inadvertent failure, of an employer that is required to participate in the System to comply with the requirements of the System with respect to an individual—

"(i) shall be treated as a violation of subsection (a)(1)(B) with respect to that individual; and

"(ii) creates a rebuttable presumption that the employer has violated paragraph (1)(A) or (2) of subsection (a).

"(B) EXCEPTION.—

"(i) IN GENERAL.—Subparagraph (A) shall not apply in a criminal prosecution.

"(ii) USE AS EVIDENCE.—Nothing in this paragraph may be construed to limit the use in the prosecution of a Federal crime, in a manner otherwise consistent with Federal criminal law and procedure, of evidence relating to the employer's

failure to comply with requirements of the System.

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

"(A) IN GENERAL.—An employer participating in the System shall register such participation with the Secretary and, when hiring any individual for employment in the United States, shall comply with the following:

"(i) REGISTRATION OF EMPLOYERS.—The Secretary, through notice in the Federal Register, shall prescribe procedures that employers shall be required to follow to register with the System.

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

"(iii) TRAINING.—The Secretary shall require employers to undergo such training as the Secretary determines to be necessary to ensure proper use, protection of civil rights and civil liberties, privacy, integrity, and security of the System. To the extent practicable, such training shall be made available electronically on the U.S. Citizenship and Immigration Services' website.

"(iv) NOTIFICATION TO EMPLOYEES.—The employer shall inform individuals hired for employment that the System—

"(I) will be used by the employer;

"(II) may be used for immigration enforcement purposes; and

"(III) may not be used to discriminate or to take adverse action against a national of the United States or an alien who has employment authorized status.

"(v) PROVISION OF ADDITIONAL INFORMATION.—The employer shall obtain from the individual (and the individual shall provide) and shall record in such manner as the Secretary may specify—

"(I) the individual's social security account number;

"(II) if the individual does not attest to United States citizenship or ~~noncitizen nationality~~ **status as a national of the United States** under subsection (c)(2), such identification or authorization number established by the Department as the Secretary shall specify; and

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

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

"(B) SEEKING CONFIRMATION.—

"(i) IN GENERAL.—An employer shall use the System to confirm the identity and employment authorized status of any individual during—

"(I) the period beginning on the date on which the individual accepts an offer of employment and ending 3 business days after the date on which employment begins; or

"(II) such other reasonable period as the Secretary may prescribe.

"(ii) LIMITATION.—An employer may not make the starting date of an individual's employment or training or any other term and condition of employment dependent on the receipt of a confirmation of identity and employment authorized status by the System.

"(iii) REVERIFICATION.—If an individual has a limited period of employment authorized status, the individual's employer shall reverify such status through the System not later than 3 business days after the last day of such period.

"(iv) OTHER EMPLOYMENT.—For employers directed by the Secretary to participate in the System under paragraph (2)(C)(i) to protect critical infrastructure or otherwise specified circumstances in this section to verify their entire workforce, the System may be used for initial verification of an individual who was hired before the employer became subject to the System, and the employer shall initiate all required procedures on or before such date as the Secretary shall specify.

"(v) NOTIFICATION.—

"(I) IN GENERAL.—The Secretary shall provide, and the employer shall utilize, as part of the System, a method of notifying employers of a confirmation or nonconfirmation of an individual's identity and employment authorized status, or a notice that further action is required to verify such identity or employment eligibility (referred to in this subsection as a 'further action notice').

"(II) PROCEDURES.—The Secretary shall establish procedures—

"(aa) to directly notify the individual and the employer of a confirmation, nonconfirmation, or further action notice; and

"(bb) to provide information about filing an administrative appeal under paragraph (6) and a ~~hearing~~ **filing for review** before an administrative law judge under paragraph (7).

"(III) IMPLEMENTATION.—The Secretary may provide for a phased-in implementation of the notification requirements under this clause, as appropriate. The notification system shall cover all inquiries not later than 1 year from the date of the enactment of the Border Security, Economic Opportunity, and Immigration Modernization Act.

"(C) CONFIRMATION OR NONCONFIRMATION.—

"(i) INITIAL RESPONSE.—

"(I) IN GENERAL.—Except as provided in subclause (II), the System shall provide—

"(aa) a confirmation of an individual's identity and employment authorized status or a further action notice at the time of the inquiry; and

"(bb) an appropriate code indicating such confirmation or such further action notice.

"(II) ALTERNATIVE DEADLINE.—If the System is unable to provide immediate confirmation or further action notice for technological reasons or due to unforeseen circumstances, the System shall provide a confirmation or further action notice not later than 3 business days after the initial inquiry.

"(ii) CONFIRMATION UPON INITIAL INQUIRY.—If the employer receives an appropriate confirmation of an individual's identity and employment authorized status under the System, the employer shall record the confirmation in such manner as the Secretary may specify.

"(iii) FURTHER ACTION NOTICE AND LATER CONFIRMATION OR NONCONFIRMATION.—

"(I) NOTIFICATION AND ACKNOWLEDGMENT THAT FURTHER ACTION IS REQUIRED.—Not later than 3 business days after an employer receives a further action notice of an individual's identity or employment eligibility under the System, or during such other reasonable time as the Secretary may prescribe, the employer shall notify the individual for whom the confirmation is sought of the further action notice and any procedures specified by the Secretary for addressing such notice. The further action notice shall be given to the individual in writing and the employer shall acknowledge in the System under penalty of perjury that it provided the employee with the further action notice. The individual shall affirmatively acknowledge in writing, or in such other manner as the Secretary may specify, the receipt of the further action notice from the employer. If the individual refuses to acknowledge the receipt of the further action notice, or acknowledges in writing that the individual will not contest the further action notice under subclause (II), the employer shall notify the Secretary in such manner as the Secretary may specify.

"(II) CONTEST.—Not later than 10 business days after receiving notification of a further action notice under subclause (I), the individual shall contact the appropriate Federal agency and, if the Secretary so requires, appear in person for purposes of verifying the individual's identity and employment eligibility. The Secretary, in consultation with the Commissioner and other appropriate Federal agencies, shall specify an available secondary verification procedure to confirm the validity of information provided and to provide a confirmation or nonconfirmation. Any procedures for reexamination shall not limit in any way an employee's right to appeal a nonconfirmation.

"(III) NO CONTEST.—If the individual refuses to acknowledge receipt of the further action notice, acknowledges that the individual will not contest

the further action notice as provided in subclause (I), or does not contact the appropriate Federal agency within the period specified in subclause (II), following expiration of the period specified in subclause (II), a nonconfirmation shall be issued. The employer shall record the nonconfirmation in such manner as the Secretary may specify and terminate the individual's employment. An individual's failure to contest a further action notice shall not be considered an admission of guilt with respect to any violation of this section or any provision of law.

"(IV) CONFIRMATION OR NONCONFIRMATION.—Unless the period is extended in accordance with this subclause, the System shall provide a confirmation or nonconfirmation not later than 10 business days after the date on which the individual contests the further action notice under subclause (II). If the Secretary determines that good cause exists, after taking into account adverse impacts to the employer, and including time to permit the individual to obtain and provide needed evidence of identity or employment eligibility, the Secretary shall extend the period for providing confirmation or nonconfirmation for stated periods beyond 10 business days. When confirmation or nonconfirmation is provided, the confirmation system shall provide an appropriate code indicating such confirmation or nonconfirmation.

"(V) REEXAMINATION.—Nothing in this section shall prevent the Secretary from establishing procedures to reexamine a case where a confirmation or nonconfirmation has been provided if subsequently received information indicates that the confirmation or nonconfirmation may not have been correct. Any procedures for reexamination shall not limit in any way an employee's right to appeal a nonconfirmation.

"(VI) EMPLOYEE PROTECTIONS.—An employer may not terminate employment or take any other adverse action against an individual solely because of a failure of the individual to have identity and employment eligibility confirmed under this subsection until—

"(aa) a nonconfirmation has been issued;

"(bb) if the further action notice was contested, the period to timely file an administrative appeal has expired without an appeal **or the contest to the further action notice is withdrawn**; or

"(cc) if an **appeal before an** administrative ~~appeal~~ **law judge under paragraph (7)** has been filed, the nonconfirmation has been upheld **or the appeal has been withdrawn or dismissed**.

"(iv) NOTICE OF NONCONFIRMATION.—Not later than 3 business days after an employer receives a nonconfirmation, or during such other reasonable time as the Secretary may provide, the employer shall notify the individual who is the subject of the nonconfirmation, and provide information about filing an administrative appeal pursuant to paragraph (6) and request for a hearing before an administrative law judge pursuant to paragraph (7). The nonconfirmation notice

shall be given to the individual in writing and the employer shall acknowledge in the System under penalty of perjury that it provided the notice (or adequately attempted to provide notice, but was unable to do so despite reasonable efforts). The individual shall affirmatively acknowledge in writing, or in such other manner as the Secretary may prescribe, the receipt of the nonconfirmation notice from the employer. If the individual refuses or fails to acknowledge the receipt of the nonconfirmation notice, the employer shall notify the Secretary in such manner as the Secretary may prescribe.

"(D) CONSEQUENCES OF NONCONFIRMATION.—

"(i) TERMINATION OF CONTINUED EMPLOYMENT.—Except as provided in clause (iii), an employer that has received a nonconfirmation regarding an individual and has made reasonable efforts to notify the individual in accordance with subparagraph (C)(iv) shall terminate the employment of the individual upon the expiration of the time period specified in paragraph ~~(6)(A) for filing an administrative appeal and paragraph (7)(A) for requesting a hearing before an administrative law judge.~~**(7).**

"(ii) CONTINUED EMPLOYMENT AFTER NONCONFIRMATION.—If the employer continues to employ an individual after receiving nonconfirmation and exhaustion of all appeals or expiration of all rights to appeal if not appealed, in violation of clause (i), a rebuttable presumption is created that the employer has violated paragraphs (1)(A) and (2) of subsection (a). Such presumption shall not apply in any prosecution under subsection (k)(1).

"(iii) EFFECT OF ADMINISTRATIVE APPEAL OR REVIEW BY ADMINISTRATIVE LAW JUDGE.—If an individual files an administrative appeal of the nonconfirmation within the time period specified in paragraph (6)(A), or **files a petition for** review by an administrative law judge specified in paragraph (7)(A), the employer shall not terminate the individual's employment under this subparagraph prior to the resolution of the administrative appeal unless the Secretary or Commissioner terminates the stay under paragraph (6)(B) or (7)(B).

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

"(i) IN GENERAL.—Employers shall comply with requests for information from the Secretary and the Special Counsel for Immigration-Related Unfair Employment Practices of the Department of Justice, including queries concerning current and former employees, within the time frame during which records are required to be maintained under this section regarding such former employees, if such information relates to the functioning of the System, the accuracy of the responses provided by the System, or any suspected misuse, discrimination, fraud, or identity theft in the use of the System. Failure to comply with a request under this clause constitutes a violation of subsection (a)(1)(B).

"(ii) ACTION BY INDIVIDUALS.—

"(I) IN GENERAL.—Individuals being verified through the System may be required to take further action to address questions identified by the Secretary or the Commissioner regarding the documents relied upon for

purposes of subsection (c).

"(II) NOTIFICATION.—Not later than 3 business days after the receipt of such questions regarding an individual, or during such other reasonable time as the Secretary may prescribe, the employer shall—

"(aa) notify the individual of any such requirement for further actions; and

"(bb) shall record the date and manner of such notification.

"(III) ACKNOWLEDGMENT.—The individual shall acknowledge the notification received from the employer under subclause (II) in writing, or in such other manner as the Secretary may prescribe.

"(iii) RULEMAKING.—

"(I) IN GENERAL.—The Secretary, in consultation with the Commissioner **and the Attorney General**, is authorized to issue regulations implementing, clarifying, and supplementing the requirements under this subparagraph—

"(aa) to facilitate the functioning, accuracy, and fairness of the System;~~ or~~

"(bb) to prevent misuse, discrimination, fraud, or identity theft in the use of the System**; or**

"(cc) to protect and maintain the confidentiality of information that could be used to locate or otherwise place at risk of harm victims of domestic violence, dating violence, sexual assault, stalking, and human trafficking, and of the applicant or beneficiary of any petition described in section 384(a)(2) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1367(a)(2)).~~.~~

"(II) NOTICE.—The regulations issued under subclause (I)—

"(aa) shall be published in the Federal Register; and

"(bb) provide directly to all employers registered in the System.

"(F) DESIGNATED AGENTS.—The Secretary shall establish a process—

"(i) for certifying, on an annual basis or at such times as the Secretary may prescribe, designated agents and other System service providers seeking access to the System to perform verification queries on behalf of employers, based upon training, usage, privacy, and security standards prescribed by the Secretary;~~ and~~

"(ii) for ensuring that designated agents and other System service providers are subject to monitoring to the same extent as direct access users**; and**

"(iii) for establishing standards for certification of electronic I–9 programs.~~.~~

"(G) REQUIREMENT TO PROVIDE INFORMATION.—

"(i) IN GENERAL.—No later than 3 months after the date of the enactment of the Border Security, Economic Opportunity, and Immigration Modernization Act, the Secretary, in consultation with the Secretary of Labor, the Secretary of Agriculture, the Commissioner, the Attorney General, the Equal Employment Opportunity Commission, and the Administrator of the Small Business Administration, shall commence a campaign to disseminate information respecting the procedures, rights, and remedies prescribed under this section.

"(ii) CAMPAIGN REQUIREMENTS.—The campaign authorized under clause (i)—

"(I) shall be aimed at increasing the knowledge of employers, employees, and the general public concerning employer and employee rights, responsibilities, and remedies under this section; and

"(II) shall be coordinated with the public education campaign conducted by U.S. Citizenship and Immigration Services.

"(iii) ASSESSMENT.—The Secretary shall assess the success of the campaign in achieving the goals of the campaign.

"(iv) AUTHORITY TO CONTRACT.—In order to carry out and assess the campaign under this subparagraph, the Secretary may, to the extent deemed appropriate and subject to the availability of appropriations, contract with public and private organizations for outreach and assessment activities under the campaign.

"(v) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this paragraph $40,000,000 for each of the fiscal years 2014 through 2016.

"(H) AUTHORITY TO MODIFY INFORMATION REQUIREMENTS.—Based on a regular review of the System and the document verification procedures to identify misuse or fraudulent use and to assess the security of the documents and processes used to establish identity or employment authorized status, the Secretary, in consultation with the Commissioner, after publication of notice in the Federal Register and an opportunity for public comment, may modify, if the Secretary determines that the modification is necessary to ensure that the System accurately and reliably determines the identity and employment authorized status of employees and maintain existing protections against misuse, discrimination, fraud, and identity theft—

"(i) the information that shall be presented to the employer by ~~a worker~~ **an** individual;

"(ii) the information that shall be provided to the System by the employer; and

"(iii) the procedures that shall be followed by employers with respect to the process of verifying an individual through the System.

"(I) SELF-VERIFICATION.—Subject to appropriate safeguards to prevent misuse of the system, the Secretary, in consultation with the Commissioner, shall establish a secure self-verification procedure to permit an individual who seeks to verify the individual's own employment eligibility to contact the appropriate agency and, in a timely manner, correct or update the information contained in the System.

"(5) PROTECTION FROM LIABILITY FOR ACTIONS TAKEN ON THE BASIS OF INFORMATION PROVIDED BY THE SYSTEM.—An employer shall not be liable to a job applicant, an employee, the Federal Government, or a State or local government, under Federal, State, or local criminal or civil law for any employment-related action taken with respect to a job applicant or employee in good-faith reliance on information provided by the System.

"(6) ADMINISTRATIVE APPEAL.—

"(A) IN GENERAL.—An individual who is notified of a nonconfirmation may, not later than 10 business days after the date that such notice is received, file an administrative appeal of such nonconfirmation with the Commissioner if the notice is based on records maintained by the Commissioner, or in any other case, with the Secretary. An individual who did not timely contest a further action notice timely received by that individual for which the individual acknowledged receipt may not be granted a review under this paragraph.

"(B) ADMINISTRATIVE STAY OF NONCONFIRMATION.—The nonconfirmation shall be automatically stayed upon the timely filing of an administrative appeal, unless the nonconfirmation resulted after the individual acknowledged receipt of the further action notice but failed to contact the appropriate agency within the time provided. The stay shall remain in effect until the resolution of the appeal, unless the Secretary or the Commissioner terminates the stay based on a determination that the administrative appeal is frivolous or filed for purposes of delay.

"(C) REVIEW FOR ERROR.—The Secretary and the Commissioner shall develop procedures for resolving administrative appeals regarding nonconfirmations based upon the information that the individual has provided, including any additional evidence or argument that was not previously considered. Any such additional evidence or argument shall be filed within 10 business days of the date the appeal was originally filed. Appeals shall be resolved within 20 business days after the individual has submitted all evidence and arguments the individual wishes to submit, or has stated in writing that there is no additional evidence that the individual wishes to submit. The Secretary and the Commissioner may, on a case by case basis for good cause, extend the filing and submission period in order to ensure accurate resolution of an appeal before the Secretary or the Commissioner.

"(D) PREPONDERANCE OF EVIDENCE.—Administrative appeal under this paragraph shall be limited to whether a nonconfirmation notice is supported by a preponderance of the evidence.

"(E) DAMAGES, FEES, AND COSTS.—No money damages, fees or costs may be awarded in the administrative appeal process under this paragraph.

"(7) REVIEW BY ADMINISTRATIVE LAW JUDGE.—

"(A) IN GENERAL.—Not later than 30 days after the date an individual receives a

final determination on an administrative appeal under paragraph (6), the individual may obtain review of such determination by filing a complaint with ~~an~~ **a Department of Justice** administrative law judge in accordance with this paragraph.

"(B) STAY OF NONCONFIRMATION.—The nonconfirmation related to such final determination shall be automatically stayed upon the timely filing of a complaint under this paragraph, and the stay shall remain in effect until the resolution of the complaint, unless the administrative law judge determines that the action is frivolous or filed for purposes of delay.

"(C) SERVICE.—The respondent to complaint filed under this paragraph is either the Secretary or the Commissioner, but not both, depending upon who issued the administrative order under paragraph (6). In addition to serving the respondent, the plaintiff shall serve the Attorney General.

"(D) AUTHORITY OF ADMINISTRATIVE LAW JUDGE.—

"(i) RULES OF PRACTICE.—The Secretary shall promulgate regulations regarding the rules of practice in appeals brought pursuant to this subsection.

"(ii) AUTHORITY OF ADMINISTRATIVE LAW JUDGE.—The administrative law judge shall have power to—

"(I) terminate a stay of a nonconfirmation under subparagraph (B) if the administrative law judge determines that the action is frivolous or filed for purposes of delay;

"(II) adduce evidence at a hearing;

"(III) compel by subpoena the attendance of witnesses and the production of evidence at any designated place or hearing;

"(IV) resolve claims of identity theft; and

"(V) enter, upon the pleadings and any evidence adduced at a hearing, a decision affirming or reversing the result of the agency, with or without remanding the cause for a rehearing.

"(iii) SUBPOENA.—In case of contumacy or refusal to obey a subpoena lawfully issued under this section and upon application of the administrative law judge, an appropriate district court of the United States may issue an order requiring compliance with such subpoena and any failure to obey such order may be punished by such court as a contempt of such court.

"(iv) TRAINING.—An administrative law judge hearing cases shall have special training respecting employment authorized status verification.

"(E) ORDER BY ADMINISTRATIVE LAW JUDGE.—

"(i) IN GENERAL.—The administrative law judge shall issue and cause to be served to the parties in the proceeding an order which may be appealed as provided in subparagraph (G).

"(ii) CONTENTS OF ORDER.—Such an order shall uphold or reverse the final determination on the request for reconsideration and order lost wages and other

appropriate remedies as provided in subparagraph (F).

"(F) COMPENSATION FOR ERROR.—

"(i) IN GENERAL.—In cases in which the administrative law judge reverses the final determination of the Secretary or the Commissioner made under paragraph (6), and the administrative law judge finds that—

"(I) the nonconfirmation was due to gross negligence or intentional misconduct of the employer, the administrative law judge may order the employer to pay the individual lost wages, and reasonable costs and attorneys' fees incurred during administrative and judicial review; or

"(II) such final determination was erroneous by reason of the negligence of the Secretary or the Commissioner, the administrative law judge may order the Secretary or the Commissioner to pay the individual lost wages, and reasonable costs and attorneys' fees incurred during administrative ~~and judicial review~~ **appeal and administrative law judge**.

"(ii) CALCULATION OF LOST WAGES.—Lost wages shall be calculated based on the wage rate and work schedule that prevailed prior to termination. The individual shall be compensated for wages lost beginning on the first scheduled work day after employment was terminated and ending 120 days after completion of the administrative law judge's review described in this paragraph or the day after the individual is reinstated or obtains employment elsewhere, whichever occurs first. If the individual obtains employment elsewhere at a lower wage rate, the individual shall be compensated for the difference in wages for the period ending 120 days after completion of the administrative law judge review process. No lost wages shall be awarded for any period of time during which the individual was not in employment authorized status.

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

"(G) APPEAL.—No later than 45 days after the entry of such final order, any person adversely affected by such final order may seek review of such order in the United States Court of Appeals for the circuit in which the violation is alleged to have occurred or in which the employer resides or transacts business.

"(8) MANAGEMENT OF THE SYSTEM.—

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

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

status;

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

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

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

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

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

"(iii) to respond accurately to all inquiries made by employers on whether individuals are authorized to be employed and to register any times when the system is unable to receive inquiries;

"(iv) to maintain appropriate administrative, technical, and physical safeguards to prevent unauthorized disclosure of personal information, misuse by employers and employees, and discrimination;

"(v) to require regularly scheduled refresher training of all users of the System to ensure compliance with all procedures;

"(vi) to allow for auditing of the use of the System to detect misuse, discrimination, fraud, and identity theft, and to preserve the integrity and security of the information in all of the System, including—

"(I) to develop and use tools and processes to detect or prevent fraud and identity theft, such as multiple uses of the same identifying information or documents to fraudulently gain employment;

"(II) to develop and use tools and processes to detect and prevent misuse of the system by employers and employees;

"(III) to develop tools and processes to detect anomalies in the use of the system that may indicate potential fraud or misuse of the system;

"(IV) to audit documents and information submitted by employees to employers, including authority to conduct interviews with employers and employees, and obtain information concerning employment from the employer;

"(vii) to confirm identity and employment authorization through verification and comparison of records as determined necessary by the Secretary;

"(viii) to confirm electronically the issuance of the employment authorization or identity document and—

"(I) if such photograph is available, to display the digital photograph that

the issuer placed on the document so that the employer can compare the photograph displayed to the photograph on the document presented by the employee; or

"(II) if a photograph is not available from the issuer, to confirm the authenticity of the document using such alternative procedures as the Secretary may specify; and

"(ix) to provide appropriate notification directly to employers registered with the System of all changes made by the Secretary or the Commissioner related to allowed and prohibited documents, and use of the System.

"(C) SAFEGUARDS TO THE SYSTEM.—

"(i) REQUIREMENT TO DEVELOP.—The Secretary, in consultation with the Commissioner and other appropriate Federal and State agencies, shall develop policies and procedures to ensure protection of the privacy and security of personally identifiable information and identifiers contained in the records accessed or maintained by the System. The Secretary, in consultation with the Commissioner and other appropriate Federal and State agencies, shall develop and deploy appropriate privacy and security training for the Federal and State employees accessing the records under the System.

"(ii) PRIVACY AUDITS.—The Secretary, acting through the Chief Privacy Officer of the Department, shall conduct regular privacy audits of the policies and procedures established under clause (i), including any collection, use, dissemination, and maintenance of personally identifiable information and any associated information technology systems, as well as scope of requests for this information. The Chief Privacy Officer shall review the results of the audits and recommend to the Secretary any changes necessary to improve the privacy protections of the program.

"(iii) RECORDS SECURITY PROGRAM.—Any person, including a private third party vendor, who retains document verification or System data pursuant to this section shall implement an effective records security program that—

"(I) ensures that only authorized personnel have access to document verification or System data; and

"(II) ensures that whenever such data is created, completed, updated, modified, altered, or corrected in electronic format, a secure and permanent record is created that establishes the date of access, the identity of the individual who accessed the electronic record, and the particular action taken.

"(iv) RECORDS SECURITY PROGRAM.—In addition to the security measures described in clause (iii), a private third party vendor who retains document verification or System data pursuant to this section shall implement an effective records security program that—

"(I) provides for backup and recovery of any records maintained in electronic format to protect against information loss, such as power

interruptions; and

"(II) ensures that employees are trained to minimize the risk of unauthorized or accidental alteration or erasure of such data in electronic format.

"(v) AUTHORIZED PERSONNEL DEFINED.—In this subparagraph, the term 'authorized personnel' means anyone registered as a System user, or anyone with partial or full responsibility for completion of employment authorization verification or retention of data in connection with employment authorization verification on behalf of an employer.

**** 11** ~~"(v)~~**"(D)** AVAILABLE FACILITIES AND ALTERNATIVE ACCOMMODATIONS.—The Secretary shall make appropriate arrangements and develop standards to allow employers or employees, including remote hires, who are otherwise unable to access the System to use electronic and telephonic formats (including video conferencing, scanning technology, and other available technologies), Federal Government facilities, public facilities, or other available locations in order to utilize the System.

~~"(D)~~**"(E)** RESPONSIBILITIES OF THE SECRETARY.—

"(i) IN GENERAL.—As part of the System, the Secretary shall maintain a reliable, secure method, which, operating through the System and within the time periods specified, compares the name, alien identification or authorization number, or other information as determined relevant by the Secretary, provided in an inquiry against such information maintained or accessed by the Secretary in order to confirm (or not confirm) the validity of the information provided, the correspondence of the name and number, whether the alien has employment authorized status (or, to the extent that the Secretary determines to be feasible and appropriate, whether the records available to the Secretary verify the identity or status of a national of the United States), and such other information as the Secretary may prescribe.

"(ii) PHOTOGRAPH DISPLAY.—As part of the System, the Secretary shall establish a reliable, secure method, which, operating through the System, displays the digital photograph described in subparagraph (B)(viii)(I).

"(iii) TIMING OF NOTICES.—The Secretary shall have authority to prescribe when a confirmation, nonconfirmation, or further action notice shall be issued.

"(iv) USE OF INFORMATION.—The Secretary shall perform regular audits under the System, as described in subparagraph (B)(vi) and shall utilize the information obtained from such audits, as well as any information obtained from the Commissioner pursuant to part E of title XI of the Social Security Act (42 U.S.C. 1301 et seq.), for the purposes of this section and to administer and enforce the immigration laws.

~~* 11 "(v) Available facilities and alternative accommodations.—The Secretary shall make appropriate arrangements and develop standards to allow employers or employees, including remote hires, who are otherwise unable to access the~~

~~System to use electronic and telephonic formats (including video conferencing, scanning technology, and other available technologies), Federal Government facilities, public facilities, or other available locations in order to utilize the System.~~

~~"(vi)~~**"(v)** IDENTITY FRAUD PROTECTION.—To prevent identity fraud, not later than 18 months after the date of the enactment of the Border Security, Economic Opportunity, and Immigration Modernization Act, the Secretary shall—

"(I) in consultation with the Commissioner, establish a program to provide a reliable, secure method for an individual to temporarily suspend or limit the use of the individual's social security account number or other identifying information for verification by the System; and

"(II) for each individual being verified through the System—

"(aa) notify the individual that the individual has the option to limit the use of the individual's social security account number or other identifying information for verification by the System; and

"(bb) provide instructions to the individuals for exercising the option referred to in item (aa).

~~"(vii)~~**"(vi)** PROTECTION FROM MULTIPLE USE.—The Secretary and the Commissioner shall establish a procedure for identifying and handling a situation in which a social security account number has been identified to be subject to unusual multiple use in the System or is otherwise suspected or determined to have been compromised by identity fraud.

~~"(viii)~~**"(vii)** MONITORING AND COMPLIANCE UNIT.—The Secretary shall establish or designate a monitoring and compliance unit to detect and reduce identity fraud and other misuse of the System.

~~"(ix)~~**"(viii)** CIVIL RIGHTS AND CIVIL LIBERTIES ASSESSMENTS.—

"(I) REQUIREMENT TO CONDUCT.—The Secretary shall conduct regular civil rights and civil liberties assessments of the System, including participation by employers, other private entities, and Federal, State, and local government entities.

"(II) REQUIREMENT TO RESPOND.—Employers, other private entities, and Federal, State, and local entities shall timely respond to any request in connection with such an assessment.

"(III) ASSESSMENT AND RECOMMENDATIONS.—The Officer for Civil Rights and Civil Liberties of the Department shall review the results of each such assessment and recommend to the Secretary any changes necessary to improve the civil rights and civil liberties protections of the System.

~~"(E)~~**"(F)** GRANTS TO STATES.—

"(i) IN GENERAL.—The Secretary shall create and administer a grant program to help provide funding for States that grant—

"(I) the Secretary access to driver's license information as needed to confirm that a driver's license presented under subsection ~~(c)(1)(C)(i)~~**(c)(1)(D)(i)** confirms the identity of the subject of the System check, and that a driver's license matches the State's records; and

"(II) such assistance as the Secretary may request in order to resolve further action notices or nonconfirmations relating to such information.

"(ii) CONSTRUCTION WITH THE DRIVER'S PRIVACY PROTECTION ACT OF 1994.—The provision of a photograph to the Secretary as described in clause (i) may not be construed as a violation of section 2721 of title 18, United States Code, and is a permissible use under subsection (b)(1) of that section.

"(iii) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Secretary $250,000,000 to carry out this subparagraph.

~~"(F)~~**"(G)** RESPONSIBILITIES OF THE SECRETARY OF STATE.—As part of the System, the Secretary of State shall provide to the Secretary access to passport and visa information as needed to confirm that a passport, passport card, or visa presented under subsection ~~(c)(1)(B)~~**(c)(1)(C)** confirms the identity of the subject of the System check, and that a passport, passport card, or visa photograph matches the Secretary of State's records, and shall provide such assistance as the Secretary may request in order to resolve further action notices or nonconfirmations relating to such information.

~~"(G)~~**"(H)** UPDATING INFORMATION.—The Commissioner, the Secretary, and the Secretary of State shall update their information in a manner that promotes maximum accuracy and shall provide a process for the prompt correction of erroneous information.

"(9) LIMITATION ON USE OF THE SYSTEM.—Notwithstanding any other provision of law, nothing in this subsection may be construed to permit or allow any department, bureau, or other agency of the United States Government or any other entity to utilize any information, database, or other records assembled under this subsection for any purpose other than for employment verification or to ensure secure, appropriate and nondiscriminatory use of the System.

"(10) ANNUAL REPORT AND CERTIFICATION.—Not later than 18 months after the promulgation of regulations to implement this subsection, and annually thereafter, the Secretary shall submit to Congress a report that includes the following:

"(A) An assessment of the accuracy rates of further action notices and other System notices provided by employers to individuals who are authorized to be employed in the United States.

"(B) An assessment of the accuracy rates of further action notices and other System notices provided directly (by the System) in a timely fashion to individuals who are not authorized to be employed in the United States.

"(C) An assessment of any challenges faced by small employers in utilizing the System.

"(D) An assessment of the rate of employer noncompliance (in addition to failure to provide required notices in a timely fashion) in each of the following categories:

"(i) Taking adverse action based on a further action notice.

"(ii) Use of the System for nonemployees or other individuals before they are offered employment.

"(iii) Use of the System to reverify employment authorized status of current employees except if authorized to do so.

"(iv) Use of the System selectively, except in cases in which such use is authorized.

"(v) Use of the System to deny employment or post-employment benefits or otherwise interfere with labor rights.

"(vi) Requiring employees or applicants to use any self-verification feature or to provide self-verification results.

"(vii) Discouraging individuals who receive a further action notice from challenging the further action notice or appealing a determination made by the System.

"(E) An assessment of the rate of employee noncompliance in each of the following categories:

"(i) Obtaining employment when unauthorized with an employer complying with the System in good faith.

"(ii) Failure to provide required documents in a timely manner.

"(iii) Attempting to use fraudulent documents or documents not related to the individual.

"(iv) Misuse of the administrative appeal and judicial review process.

"(F) An assessment of the amount of time taken for—

"(i) the System to provide the confirmation or further action notice;

"(ii) individuals to contest further action notices;

"(iii) the System to provide a confirmation or nonconfirmation of a contested further action notice;

"(iv) individuals to file an administrative appeal of a nonconfirmation; and

"(v) resolving administrative appeals regarding nonconfirmations.

"(11) ANNUAL GAO STUDY AND REPORT.—

"(A) REQUIREMENT.—The Comptroller General shall, for each year, undertake a study to evaluate the accuracy, efficiency, integrity, and impact of the System.

"(B) REPORT.—Not later than 18 months after the promulgation of regulations to implement this subsection, and yearly thereafter, the Comptroller General shall submit to Congress a report containing the findings of the study carried out under this paragraph. Each such report shall include, at a minimum, the following:

"(i) An assessment of System performance with respect to the rate at which

individuals who are eligible for employment in the United States are correctly approved within the required periods, including a separate assessment of such rate for **naturalized United States citizens,** nationals **of the United States,** and aliens.

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

"(iii) An assessment of whether the System is being implemented in a manner that is not discriminatory or used for retaliation against employees.

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

"(v) The recommendations of the Comptroller General regarding System improvements.

"(vi) An assessment of the frequency and magnitude of changes made to the System and the impact on the ability for employers to comply in good faith.

"(vii) An assessment of the direct and indirect costs incurred by employers in complying with the System, including costs associated with retaining potential employees through the administrative appeals process and receiving a nonconfirmation.

"(viii) An assessment of any backlogs or delays in the System providing the confirmation or further action notice and impacts to hiring by employers.

"(e) Compliance.—

"(1) COMPLAINTS AND INVESTIGATIONS.—The Secretary shall establish procedures—

"(A) for individuals and entities to file complaints respecting potential violations of subsections (a) or (f)(1);

"(B) for the investigation of those complaints which the Secretary deems appropriate to investigate; and

"(C) for providing notification to the Special Counsel for Immigration-Related Unfair Employment Practices of the Department of Justice of potential violations of section 274B.

"(2) AUTHORITY IN INVESTIGATIONS.—In conducting investigations and proceedings under this subsection—

"(A) immigration officers shall have reasonable access to examine evidence of the employer being investigated;

"(B) immigration officers designated by the Secretary, and administrative law judges and other persons authorized to conduct proceedings under this section, may compel by subpoena the attendance of relevant witnesses and the production of relevant evidence at any designated place in an investigation or case under this subsection. In case of refusal to fully comply with a subpoena lawfully issued under this paragraph, the Secretary may request that the Attorney General apply in an

appropriate district court of the United States for an order requiring compliance with the subpoena, and any failure to obey such order may be punished by the court as contempt. Failure to cooperate with the subpoena shall be subject to further penalties, including ~~but not limited to~~ further fines and the voiding of any mitigation of penalties or termination of proceedings under paragraph ~~(4)(D);~~**(4)(E);** and

"(C) the Secretary, in cooperation with the Commissioner and Attorney General, and in consultation with other relevant agencies, shall establish a Joint Employment Fraud Task Force consisting of, at a minimum—

"(i) the System's compliance personnel;

"(ii) immigration law enforcement officers;

"(iii) personnel of the Office of Special Counsel for Immigration-Related Unfair Employment Practices of the Department of Justice;

"(iv) personnel of the Office for Civil Rights and Civil Liberties of the Department; and

"(v) personnel of Office of Inspector General of the Social Security Administration.

"(3) COMPLIANCE PROCEDURES.—

"(A) PRE-PENALTY NOTICE.—If the Secretary has reasonable cause to believe that there has been a civil violation of this section **in the previous 3 years**, the Secretary shall issue to the employer concerned a written notice of the Department's intention to issue a claim for a monetary or other penalty. Such pre-penalty notice ~~shall:~~ **shall—**

"(i) describe the violation;

"(ii) specify the laws and regulations allegedly violated;

"(iii) disclose the material facts which establish the alleged violation;

"(iv) describe the penalty sought to be imposed; and

"(v) inform such employer that such employer shall have a reasonable opportunity to make representations as to why a monetary or other penalty should not be imposed.

"(B) EMPLOYER'S RESPONSE.—Whenever any employer receives written pre-penalty notice of a fine or other penalty in accordance with subparagraph (A), the employer may, within 60 days from receipt of such notice, file with the Secretary its written response to the notice. The response may include any relevant evidence or proffer of evidence that the employer wishes to present with respect to whether the employer violated this section and whether, if so, the penalty should be mitigated, and shall be filed and considered in accordance with procedures to be established by the Secretary.

"(C) RIGHT TO A HEARING.—Before issuance of an order imposing a penalty on any employer, person, or entity, the employer, person, or entity shall be entitled to a hearing before an administrative law judge, if requested within 60 days of the notice of penalty. The hearing shall be held at the nearest location practicable to the place where the employer, person, or entity resides or of the place where the alleged violation

occurred.

"(D) ISSUANCE OF ORDERS.—If no hearing is so requested, the Secretary's imposition of the order shall constitute a final and unappealable order. If a hearing is requested and the administrative law judge determines, upon clear and convincing evidence received, that there was a violation, the administrative law judge shall issue the final determination with a written penalty claim. The penalty claim shall specify all charges in the information provided under clauses (i) through (iii) of subparagraph (A) and any mitigation of the penalty that the administrative law judge deems appropriate under paragraph ~~(4)(D)~~**(4)(E)**.

"(4) CIVIL PENALTIES.—

"(A) HIRING OR CONTINUING TO EMPLOY UNAUTHORIZED ALIENS.—Any employer that violates any provision of subsection (a)(1)(A) or (a)(2) shall—

"(i) pay a civil penalty of not less than $3,500 and not more than $7,500 for each unauthorized alien with respect to which each violation of either subsection (a)(1)(A) or (a)(2) occurred;

"(ii) if the employer has previously been fined as a result of a previous enforcement action or previous violation under this paragraph, pay a civil penalty of not less than $5,000 and not more than $15,000 for each unauthorized alien with respect to which a violation of either subsection (a)(1)(A) or (a)(2) occurred; and

"(iii) if the employer has previously been fined more than once under this paragraph, pay a civil penalty of not less than $10,000 and not more than $25,000 for each unauthorized alien with respect to which a violation of either subsection (a)(1)(A) or (a)(2) occurred.

"(B) ENHANCED PENALTIES.—After the Secretary certifies to Congress that the System has been established, implemented, and made mandatory for use by all employers in the United States, the Secretary may establish an enhanced civil penalty for an employer who—

"(i) fails to query the System to verify the identify and work authorized status of an individual; and

"(ii) violates a Federal, State, or local law related to—

"(I) the payment of wages;

"(II) hours worked by employees; or

"(III) workplace health and safety.

"(C) RECORDKEEPING OR VERIFICATION PRACTICES.—Any employer that violates or fails to comply with any requirement under subsection (a)(1)(B), other than a minor or inadvertent failure, as determined by the Secretary, shall pay a civil penalty of—

"(i) not less than $500 and not more than $2,000 for each violation;

"(ii) if an employer has previously been fined under this paragraph, not less than $1,000 and not more than $4,000 for each violation; and

"(iii) if an employer has previously been fined more than once under this paragraph, not less than $2,000 and not more than $8,000 for each violation.

"(D) OTHER PENALTIES.—The Secretary may impose additional penalties for violations, including cease and desist orders, specially designed compliance plans to prevent further violations, suspended fines to take effect in the event of a further violation, and in appropriate cases, the remedy provided by paragraph (f)(2).

"(E) MITIGATION.—The Secretary or, if an employer requests a hearing, the administrative law judge, is authorized, upon such terms and conditions as the Secretary or administrative law judge deems reasonable and just and in accordance with such procedures as the Secretary may establish or any procedures established governing the administrative law judge's assessment of penalties, to reduce or mitigate penalties imposed upon employers, based upon factors including, the employer's hiring volume, compliance history, good-faith implementation of a compliance program, the size and level of sophistication of the employer, and voluntary disclosure of violations of this subsection to the Secretary. The Secretary or administrative law judge shall not mitigate a penalty below the minimum penalty provided by this section, except that the Secretary may, in the case of an employer subject to penalty for recordkeeping or verification violations only who has not previously been penalized under this section, in the Secretary's or administrative law judge's discretion, mitigate the penalty below the statutory minimum or remit it entirely. In any case where a civil money penalty has been imposed on an employer under section 274B for an action or omission that is also a violation of this section, the Secretary or administrative law judge shall mitigate any civil money penalty under this section by the amount of the penalty imposed under section 274B.

"(F) EFFECTIVE DATE.—The civil money penalty amounts and the enhanced penalties provided by subparagraphs (A), (B), and (C) of this paragraph and by subsection (f)(2) shall apply to violations of this section committed on or after the date that is 1 year after the date of the enactment of the Border Security, Economic Opportunity, and Immigration Modernization Act. For violations committed prior to such date of enactment, the civil money penalty amounts provided by regulations implementing this section as in effect the ~~day~~ **minute** before such date of enactment with respect to knowing hiring or continuing employment, verification, or indemnity bond violations, as appropriate, shall apply.

"(5) ORDER OF INTERNAL REVIEW AND CERTIFICATION OF COMPLIANCE.—

"(A) EMPLOYER COMPLIANCE.—If the Secretary has reasonable cause to believe that an employer has failed to comply with this section, the Secretary is authorized, at any time, to require that the employer certify that it is in compliance with this section, or has instituted a program to come into compliance.

"(B) EMPLOYER CERTIFICATION.—

"(i) REQUIREMENT.—Except as provided in subparagraph (C), not later than 60 days after receiving a notice from the Secretary requiring a certification under subparagraph (A), an official with responsibility for, and authority to bind the company on, all hiring and immigration compliance notices shall certify under

penalty of perjury that the employer is in conformance with the requirements of paragraphs (1) through (4) of subsection (c), pertaining to document verification requirements, and with subsection (d), pertaining to the System (once the System is implemented with respect to that employer according to the requirements ~~of~~ **under** subsection ~~(d)(1))~~**(d)(2))**, and with any additional requirements that the Secretary may promulgate by regulation pursuant to subsection (c) or (d) or that the employer has instituted a program to come into compliance with these requirements.

"(ii) APPLICATION.—Clause (i) shall not apply until the date that the Secretary certifies to Congress that the System has been established, implemented, and made mandatory for use by all employers in the United States.

"(C) EXTENSION OF DEADLINE.—At the request of the employer, the Secretary may extend the 60-day deadline for good cause.

"(D) STANDARDS OR METHODS.—The Secretary is authorized to publish in the Federal Register standards or methods for such certification, require specific recordkeeping practices with respect to such certifications, and audit the records thereof at any time. This authority shall not be construed to diminish or qualify any other penalty provided by this section.

"(6) REQUIREMENTS FOR REVIEW OF A FINAL DETERMINATION.—With respect to judicial review of a final determination or penalty ~~claim~~ **order** issued under paragraph ~~(3)(C)~~**(3)(D)**, the following requirements apply:

"(A) DEADLINE.—The petition for review must be filed no later than 30 days after the date of the final determination or penalty ~~claim~~ **order** issued under paragraph ~~(3)(C)~~**(3)(D)**.

"(B) VENUE AND FORMS.—The petition for review shall be filed with the court of appeals for the judicial circuit where the employer's principal place of business was located when the final determination or penalty ~~claim~~ **order** was made. The record and briefs do not have to be printed. The court shall review the proceeding on a typewritten or electronically filed record and briefs.

"(C) SERVICE.—The respondent is the Secretary. In addition to serving the respondent, the petitioner shall serve the Attorney General.

"(D) PETITIONER'S BRIEF.—The petitioner shall serve and file a brief in connection with a petition for judicial review not later than 40 days after the date on which the administrative record is available, and may serve and file a reply brief not later than 14 days after service of the brief of the respondent, and the court may not extend these deadlines, except for good cause shown. If a petitioner fails to file a brief within the time provided in this paragraph, the court shall dismiss the appeal unless a manifest injustice would result.

"(E) SCOPE AND STANDARD FOR REVIEW.—The court of appeals shall conduct a de novo review of the administrative record on which the final determination was based and any additional evidence that the Court finds was previously unavailable at the time of the administrative hearing.

"(F) EXHAUSTION OF ADMINISTRATIVE REMEDIES.—A court may review a final determination under paragraph (3)(C) only if—

"(i) the petitioner has exhausted all administrative remedies available to the petitioner as of right, including any administrative remedies established by regulation, and

"(ii) another court has not decided the validity of the order, unless the reviewing court finds that the petition presents grounds that could not have been presented in the prior judicial proceeding or that the remedy provided by the prior proceeding was inadequate or ineffective to test the validity of the order.

"(G) ENFORCEMENT OF ORDERS.—If the final determination issued against the employer under this subsection is not subjected to review as provided in this paragraph, the Attorney General, upon request by the Secretary, may bring a civil action to enforce compliance with the final determination in any appropriate district court of the United States. The court, on a proper showing, shall issue a temporary restraining order or a preliminary or permanent injunction requiring that the employer comply with the final determination issued against that employer under this subsection. In any such civil action, the validity and appropriateness of the final determination shall not be subject to review

"(7) CREATION OF LIEN.—If any employer liable for a fee or penalty under this section neglects or refuses to pay such liability after demand and fails to file a petition for review (if applicable) as provided in paragraph (6), the amount of the fee or penalty shall be a lien in favor of the United States on all property and rights to property, whether real or personal, belonging to such employer. If a petition for review is filed as provided in paragraph (6), the lien shall arise upon the entry of a final judgment by the court. The lien continues for 20 years or until the liability is satisfied, remitted, set aside, or terminated.

"(8) FILING NOTICE OF LIEN.—

"(A) PLACE FOR FILING.—The notice **of a lien** referred to in paragraph (7) shall be filed as described in 1 of the following:

"(i) UNDER STATE LAWS.—

"(I) REAL PROPERTY.—In the case of real property, in 1 office within the State (or the county, or other governmental subdivision), as designated by the laws of such State, in which the property subject to the lien is situated.

"(II) PERSONAL PROPERTY.—In the case of personal property, whether tangible or intangible, in 1 office within the State (or the county, or other governmental subdivision), as designated by the laws of such State, in which the property subject to the lien is situated, except that State law merely conforming to or reenacting Federal law establishing a national filing system does not constitute a second office for filing as designated by the laws of such State.

"(ii) WITH CLERK OF DISTRICT COURT.—In the office of the clerk of the United States district court for the judicial district in which the property subject to the lien is situated, whenever the State has not by law designated 1 office which

meets the requirements of clause (i).

"(iii) WITH RECORDER OF DEEDS OF THE DISTRICT OF COLUMBIA.—In the office of the Recorder of Deeds of the District of Columbia, if the property subject to the lien is situated in the District of Columbia.

"(B) SITUS OF PROPERTY SUBJECT TO LIEN.—For purposes of subparagraph (A), property shall be deemed to be situated as follows:

"(i) REAL PROPERTY.—In the case of real property, at its physical location.

"(ii) PERSONAL PROPERTY.—In the case of personal property, whether tangible or intangible, at the residence of the taxpayer at the time the notice of lien is filed.

"(C) DETERMINATION ~~OR~~ **OF** RESIDENCE.—For purposes of subparagraph ~~(A)(ii)~~**(B)(ii)**, the residence of a corporation or partnership shall be deemed to be the place at which the principal executive office of the business is located, and the residence of a taxpayer whose residence is outside the United States shall be deemed to be in the District of Columbia.

"(D) EFFECT OF FILING NOTICE OF LIEN.—

"(i) IN GENERAL.—Upon filing of a notice of lien in the manner described in this paragraph, the lien shall be valid against any purchaser, holder of a security interest, mechanic's lien, or judgment lien creditor, except with respect to properties or transactions specified in subsection (b), (c), or (d) of section 6323 of the Internal Revenue Code of 1986 for which a notice of tax lien properly filed on the same date would not be valid.

"(ii) NOTICE OF LIEN.—The notice of lien shall be considered a notice of lien for taxes payable to the United States for the purpose of any State or local law providing for the filing of a notice of a tax lien. A notice of lien that is registered, recorded, docketed, or indexed in accordance with the rules and requirements relating to judgments of the courts of the State where the notice of lien is registered, recorded, docketed, or indexed shall be considered for all purposes as the filing prescribed by this section.

"(iii) OTHER PROVISIONS.—The provisions of section 3201(e) of title 28, United States Code, shall apply to liens filed as prescribed by this paragraph.

"(E) ENFORCEMENT OF A LIEN.—A lien obtained through this paragraph shall be considered a debt as defined by section 3002 of title 28, United States Code and enforceable pursuant to chapter 176 of such title.

"(9) ATTORNEY GENERAL ADJUDICATION.—The Attorney General shall have jurisdiction to adjudicate administrative proceedings under this subsection. Such proceedings shall be conducted in accordance with requirements of section 554 of title 5, United States Code.

"(f) Criminal and Civil Penalties and Injunctions.—

"(1) PROHIBITION OF INDEMNITY BONDS.—It is unlawful for an employer, in the hiring of any individual, to require the individual to post a bond or security, to pay or agree to pay an amount, or otherwise to provide a financial guarantee or indemnity, against any potential liability arising under this section relating to such hiring of the individual.

"(2) CIVIL PENALTY.—Any employer who is determined, after notice and opportunity for mitigation of the monetary penalty under subsection (e), to have violated paragraph (1) shall be subject to a civil penalty of $10,000 for each violation and to an administrative order requiring the return of any amounts received in violation of such paragraph to the employee or, if the employee cannot be located, to the general fund of the Treasury.

"(g) Government Contracts.—

"(1) CONTRACTORS AND RECIPIENTS.—Whenever an employer who is a Federal contractor (meaning an employer who holds a Federal contract, grant, or cooperative agreement, or reasonably may be expected to submit an offer for or be awarded a government contract) is determined by the Secretary to have violated ~~of~~ this section **on** more than 3 occasions or is convicted of a crime under this section, the employer shall be considered for debarment from the receipt of Federal contracts, grants, or cooperative agreements in accordance with the procedures and standards and for the periods prescribed by the Federal Acquisition Regulation. However, any administrative determination of liability for civil penalty by the Secretary or the Attorney General shall not be reviewable in any debarment proceeding.

"(2) INADVERTENT VIOLATIONS.—Inadvertent violations of recordkeeping or verification requirements, in the absence of any other violations of this section, shall not be a basis for determining that an employer is a repeat violator for purposes of this subsection.

"(3) OTHER REMEDIES AVAILABLE.—Nothing in this subsection shall be construed to modify or limit any remedy available to any agency or official of the Federal Government for violation of any contractual requirement to participate in the System, as provided in the final rule relating to employment eligibility verification published in the Federal Register on November 14, 2008 (73 Fed. Reg. 67,651), or any similar subsequent regulation.

"(h) Preemption.—The provisions of this section preempt any State or local law, ordinance, policy, or rule, including any criminal or civil fine or penalty structure, relating to the hiring, continued employment, or status verification for employment eligibility purposes, of unauthorized aliens. A State, locality, municipality, or political subdivision may exercise its authority over business licensing and similar laws as a penalty for failure to use the System.

"(i) Deposit of Amounts Received.—Except as otherwise specified, civil penalties collected under this section shall be deposited by the Secretary into the Comprehensive Immigration Reform Trust Fund established under section 6**(a)(1)** of the Border Security, Economic Opportunity, and Immigration Modernization Act.

"(j) Challenges to Validity of the System.—

"(1) IN GENERAL.—Any right, benefit, or claim not otherwise waived or limited pursuant to this section is available in an action instituted in the United States District Court for the District of Columbia, but shall be limited to determinations of—

"(A) whether this section, or any regulation issued to implement this section, violates the Constitution of the United States; or

"(B) whether such a regulation issued by or under the authority of the Secretary to implement this section, is contrary to applicable provisions of this section or was issued in violation of ~~title 5,~~ chapter **5 of title** 5, United States Code.

"(2) DEADLINES FOR BRINGING ACTIONS.—Any action instituted under this subsection must be filed no later than 180 days after the date the challenged section or regulation described in subparagraph (A) or (B) of paragraph (1) becomes effective. No court shall have jurisdiction to review any challenge described in subparagraph (B) after the time period specified in this subsection expires.

"(k) Criminal Penalties and Injunctions for Pattern or Practice Violations.—

"(1) PATTERN AND PRACTICE.—Any employer who engages in a pattern or practice of knowing violations of subsection (a)(1)(A) or (a)(2) shall be fined under title 18, United States Code, no more than $10,000 for each unauthorized alien with respect to whom such violation occurs, imprisoned for not more than 2 years for the entire pattern or practice, or both.

"(2) TERM OF IMPRISONMENT.—The maximum term of imprisonment of a person convicted of any criminal offense under the United States Code shall be increased by 5 years if the offense is committed as part of a pattern or practice of violations of subsection (a)(1)(A) or (a)(2).

"(3) ENJOINING OF PATTERN OR PRACTICE VIOLATIONS.—Whenever the Secretary or the Attorney General has reasonable cause to believe that an employer is engaged in a pattern or practice of employment in violation of subsection (a)(1)(A) or (a)(2), the Attorney General may bring a civil action in the appropriate district court of the United States requesting such relief, including a permanent or temporary injunction, restraining order, or other order against the employer, as the Secretary or Attorney General deems necessary.

"(l) Criminal Penalties for Unlawful and Abusive Employment.—

"(1) IN GENERAL.—Any person who, during any 12-month period, knowingly employs or hires, employs, recruits, or refers **for a fee** for employment 10 or more individuals within the United States who are under the control and supervision of such person—

"(A) knowing that the individuals are unauthorized aliens; and

"(B) under conditions that violate section 5(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 654(a) (relating to occupational safety and health), section 6 or 7 of the Fair Labor Standards Act of 1938 (29 U.S.C. 206 and 207) (relating to minimum wages and maximum hours of employment), section 3142 of title 40, United States Code, (relating to required wages on construction contracts), or sections 6703 or 6704 of title 41, United States Code, (relating to required wages on service contracts)**,**

shall be fined under title 18, United States Code, or imprisoned for not more than 10 years, or both.

"(2) ATTEMPT AND CONSPIRACY.—Any person who attempts or conspires to commit any offense under this section shall be punished in the same manner as a person who completes the offense.".

(b) Report on Use of the System in the Agricultural Industry.—Not later than 18 months after the date of the enactment of this Act, the Secretary**, in consultation with the Secretary of Agriculture,** shall submit **a report** to Congress ~~a report~~ that assesses implementation of the Employment Verification System established under section 274A(d) of the Immigration and Nationality Act, as amended by subsection (a), in the agricultural industry, including the use of

such System technology in agriculture industry hiring processes, user, contractor, and third-party employer agent employment practices, timing and logistics regarding employment verification and reverification processes to meet agriculture industry practices, and identification of potential challenges and modifications to meet the unique needs of the agriculture industry. Such report shall review—

(1) the modality of access, training and outreach, customer support, processes for further action notices and secondary verifications for short-term workers, monitoring, and compliance procedures for such System;

(2) the interaction of such System with the process to admit nonimmigrant workers pursuant to section 218 or 218A of the Immigration and Nationality Act (8 U.S.C. 1188 et seq.) and with enforcement of the immigration laws; and

(3) the collaborative use of processes of other Federal and State agencies that intersect with the agriculture industry.

(c) Report on Impact of the System on Employers.—Not later than 18 months after the date of the enactment of this Act, the Secretary shall submit to Congress a report that assesses—

(1) the implementation of the Employment Verification System established under section 274A(d) of the Immigration and Nationality Act, as amended by subsection (a), by employers;

(2) any adverse impact on the revenues, business processes, or profitability of employers required to use such System; and

(3) the economic impact of such System on small businesses.

(d) Government Accountability Office Study of the Effects of Document Requirements on Employment Authorized Persons and Employers.—

(1) STUDY.—The Comptroller General of the United States shall carry out a study ~~of~~ **of—**

(A) the effects of the documentary requirements of section 274A of the Immigration and Nationality Act, as amended by subsection (a), on employers, **naturalized United States citizens,** nationals of the United States**,** and individuals with employment authorized status~~,~~**;** and

(B) the challenges such employers, **citizens,** nationals**,** or individuals may face in obtaining the documentation required ~~by~~ **under** that section.

(2) REPORT.—Not later than 4 years after the **date of the** enactment of this Act, the Comptroller General shall submit to Congress a report containing the findings of the study carried out under paragraph (1). Such report shall include, at a minimum, the following:

(A) An assessment of available information regarding the number of working age nationals of the United States and individuals who have employment authorized status who lack documents required for employment by such section 274A.

(B) A description of the additional steps required for individuals who have employment authorized status and do not possess the documents required by such section 274A to obtain such documents.

(C) A general assessment of the average financial costs for individuals who have

employment authorized status who do not possess the documents required by such section 274A to obtain such documents.

(D) A general assessment of the average financial costs and challenged for employers who have been required to participate in the Employment Verification System established by subsection (d) of such section 274A.

(E) A description of the barriers to individuals who have employment authorized status in obtaining the documents required by such section 274A, including barriers imposed by the executive branch of the Government.

(F) Any particular challenges facing individuals who have employment authorized status who are members of a federally recognized Indian tribe in complying with the provisions of such section 274A.

(e) Repeal of Pilot Programs and E-Verify and Transition Procedures.—

(1) REPEAL.—Sections 401, 402, 403, 404, and 405 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (division C of Public Law 104–208; 8 U.S.C. 1324a note) are repealed.

(2) TRANSITION ~~PROCEDURES.—ANY~~ **PROCEDURES.—**

(A) CONTINUATION OF E-VERIFY PROGRAM.—Notwithstanding the repeals made by paragraph (1), the Secretary shall continue to operate the E-Verify Program as described in section 403 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (division C of Public Law 104–208; 8 U.S.C. 1324a note), as in effect the minute before the date of the enactment of this Act, until the transition to the System described in section 274A(d) of the Immigration and Nationality Act, as amended by subsection (a), is determined by the Secretary to be complete.

(B) TRANSITION TO THE SYSTEM.—Any employer who was participating in the E-Verify Program described in section 403 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (division C of Public Law 104–208; 8 U.S.C. 1324a note), as in effect ~~on~~ the minute before the date of the enactment of this Act, shall participate in the System described in ~~subsection (d) of~~ section 274A**(d)** of the Immigration and Nationality Act, as amended by subsection (a)**,** to the same extent and in the same manner that the employer participated in such E-Verify Program.

(3) CONSTRUCTION.—The repeal made by paragraph (1) may not be construed to limit the authority of the Secretary to allow or continue to allow the participation in such System of employers who have participated in such E-Verify Program, as in effect on the ~~day~~ **minute** before the date of the enactment of this Act.

(f) Conforming ~~Amendment.—Paragraph (3) of section~~ **Amendment.—Section** 274(a) (8 U.S.C. 1324(a)) is ~~repealed.~~ **amended—**

(1) by striking paragraph (3); and

(2) by redesignating paragraph (4) as paragraph (3).

SEC. 3102. INCREASING SECURITY AND INTEGRITY OF

SOCIAL SECURITY CARDS.

(a) Fraud-resistant, Tamper-resistant, Wear-resistant, and Identity Theft-resistant Social Security Cards.—

(1) ISSUANCE.—

(A) PRELIMINARY WORK.—Not later than 180 days after the date of the enactment of this title, the Commissioner of Social Security shall begin work to administer and issue fraud-resistant, tamper-resistant, wear-resistant, and identity theft-resistant social security cards.

(B) COMPLETION.—Not later than 5 years after the date of enactment of this title, the Commissioner of Social Security shall issue only social security cards determined to be fraud-resistant, tamper-resistant, wear-resistant, and identity theft-resistant social security cards.

(2) ~~AMENDMENT.—SECTION~~ **AMENDMENT.—**

(A) IN GENERAL.—Section 205(c)(2)(G) of the Social Security Act (42 U.S.C. 405(c)(2)(G)) is amended by striking the second sentence and inserting the following: "The social security card shall be fraud-resistant, tamper-resistant, wear-resistant, and identity theft-resistant.".

(B) EFFECTIVE DATE.—The amendment made by subparagraph (A) shall take effect on the date that is 5 years after the date of the enactment of this Act.

(3) AUTHORIZATION OF APPROPRIATION.—There are authorized to be appropriated, from the Comprehensive Immigration Reform Trust Fund established under section 6(a)(1), such sums as may be necessary to carry out this section and~~(3) Appropriation.—Out of any money in the Treasury of the United States not otherwise appropriated, there is appropriated to the Commissioner of Social Security an additional amount for "Limitation on Administrative Expenses" for the purpose of carrying out~~ the amendments made by this ~~subsection, $1,000,000,000 for fiscal year 2014, to remain available until expended.~~ **section.**

(4) EMERGENCY DESIGNATION FOR CONGRESSIONAL ENFORCEMENT.—In the Senate, amounts made available under this subsection are designated as an emergency requirement pursuant to section 403(a) of S. Con. Res. 13 (111th Congress), the concurrent resolution on the budget for fiscal year 2010.

(5) EMERGENCY DESIGNATION FOR STATUTORY PAYGO.—Amounts made available under this subsection are designated as an emergency requirement under section 4(g) of the Statutory Pay-As-You-Go Act of 2010 (Public Law 111–139; 2 U.S.C. 933(g)).

(b) Multiple Cards.—Section 205(c)(2)(G) of the Social Security Act (42 U.S.C. 405(c)(2)(G)), as amended by subsection (a)(2), is amended—

(1) by inserting "(i)" after "(G)"; and

(2) by adding at the end the following:

"(ii) The Commissioner of Social Security shall restrict the issuance of multiple replacement social security cards to any individual to 3 per year and 10 for the life of the individual, except

that the Commissioner may allow for reasonable exceptions from the limits under this clause on a case-by-case basis in compelling circumstances.”.

(c) Criminal Penalties.—

(1) SOCIAL SECURITY FRAUD.—

(A) IN GENERAL.—Chapter 47 of title 18, United States Code, is amended by inserting at the end the following:

“1041. Social security fraud~~.~~

“Any person who—

“(1) knowingly possesses or uses a social security account number or social security card knowing that the number or card was obtained from the Commissioner of Social Security by means of fraud or false statement;

“(2) knowingly and falsely represents a number to be the social security account number assigned by the Commissioner of Social Security to him or her or to another person, when such number is known not to be the social security account number assigned by the Commissioner of Social Security to him or her or to such other person;

“(3) knowingly, and without lawful authority, buys, sells, or possesses with intent to buy or sell a social security account number or a social security card that is or purports to be a number or card issued by the Commissioner of Social Security;

“(4) knowingly alters, counterfeits, forges, or falsely makes a social security account number or a social security card;

“(5) knowingly uses, distributes, or transfers a social security account number or a social security card knowing the number or card to be intentionally altered, counterfeited, forged, falsely made, or stolen; or

“(6) without lawful authority, knowingly produces or acquires for any person a social security account number, a social security card, or a number or card that purports to be a social security account number or social security card,

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

(B) TABLE OF SECTIONS AMENDMENT.—The table of sections for chapter 47 of title 18, United States Code, is amended by adding after the item relating to section 1040 the following:

“Sec.1041.Social security fraud.”.

(2) INFORMATION DISCLOSURE.—

(A) IN GENERAL.—Notwithstanding any other provision of law and subject to subparagraph (B), the Commissioner of Social Security shall disclose for the purpose of investigating a violation of section 1041 of title 18, United States Code, or section 274A, ~~section~~ 274B, or ~~section~~ 274C of the Immigration and Nationality Act (8 U.S.C. 1324a, 1324b, **and** 1324c), ~~provided that such~~ **after receiving a written** request ~~is in writing and~~ from an officer in a supervisory position or higher official **of any Federal law enforcement agency**, the following records of the Social Security Administration

~~to any Federal law enforcement agency that requests such records~~:

(i) Records concerning the identity, address, location, or financial institution accounts of the holder of a social security account number or social security card.

(ii) Records concerning the application for and issuance of a social security account number or social security card.

(iii) Records concerning the existence or nonexistence of a social security account number or social security card.

(B) LIMITATION.—The Commissioner of Social Security shall not disclose any tax return or tax return information pursuant to subparagraph (A) except as authorized by section 6103 of the Internal Revenue Code of 1986.

SEC. 3103. INCREASING SECURITY AND INTEGRITY OF IMMIGRATION DOCUMENTS.

Not later than 1 year after the date of the enactment of this Act, the Secretary shall submit a report to Congress on the feasibility, advantages, and disadvantages of including, in addition to a photograph, other biometric information on each employment authorization document issued by the Department.

SEC. 3104. RESPONSIBILITIES OF THE SOCIAL SECURITY ADMINISTRATION.

Title XI of the Social Security Act (42 U.S.C. 1301 et seq.) is amended by adding at the end the following new part:

"Part E—Employment Verification

"responsibilities of the commissioner of social security

"Sec. 1186. (a) Confirmation of Employment Verification Data.—As part of the employment verification system established by the Secretary of Homeland Security under the provisions of section 274A of the Immigration and Nationality Act (8 U.S.C. 1324a) (in this section referred to as the 'System'), the Commissioner of Social Security shall, subject to the provisions of section 274A(d) of the Immigration and Nationality Act (8 U.S.C. 1324a(d)), establish a reliable, secure method that, operating through the System and within the time periods specified in section 274A(d) of such Act—

"(1) compares the name, date of birth, social security account number, and available citizenship information provided in an inquiry against such information maintained by the Commissioner in order to confirm (or not confirm) the validity of the information provided regarding an individual whose identity and employment eligibility must be confirmed;

"(2) determines the correspondence of the name, date of birth, and number;

"(3) determines whether the name and number belong to an individual who is deceased according to the records maintained by the Commissioner;

"(4) determines whether an individual is a national of the United States, as defined in

section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)); and

"(5) determines whether the individual has presented a social security account number that is not valid for employment.

"(b) Prohibition.—The System shall not disclose or release social security information to employers through the confirmation system (other than such confirmation or nonconfirmation, information provided by the employer to the System, or the reason for the issuance of a further action notice).".

SEC. 3105. IMPROVED PROHIBITION ON DISCRIMINATION BASED ON NATIONAL ORIGIN OR CITIZENSHIP STATUS.

(a) In General.—Section 274B(a) (8 U.S.C. 1324b~~)~~**(a))** is amended to read as follows:

"(a) Prohibition on Discrimination Based on National Origin or Citizenship Status.—

"(1) PROHIBITION ON DISCRIMINATION GENERALLY.—It is an unfair immigration-related employment practice for a person, other entity, or employment agency, to discriminate against any individual (other than an unauthorized alien defined in section 274A(b)) because of such individual's national origin or citizenship status, with respect to the following:

"(A) The hiring of the individual for employment.

"(B) The verification of the individual's eligibility to work in the United States.

"(C) The discharging of the individual from employment.

"(2) EXCEPTIONS.—Paragraph (1) shall not apply to the following:

"(A) A person, other entity, or employer that employs ~~5~~ **3** or fewer employees, except for an employment agency.

"(B) A person's or entity's discrimination because of an individual's national origin if the discrimination with respect to that employer, person, or entity and that individual is covered under section 703 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–2), unless the discrimination is related to an individual's verification of employment authorization.

"(C) Discrimination because of citizenship status which—

"(i) is otherwise required in order to comply with a provision of Federal, State, or local law related to law enforcement;

"(ii) is required by Federal Government contract; or

"(iii) the Secretary or Attorney General determines to be essential for an employer to do business with an agency or department of the Federal Government or a State, local, or tribal government.

"(3) ADDITIONAL EXCEPTION PROVIDING RIGHT TO PREFER EQUALLY QUALIFIED CITIZENS.—Notwithstanding any other provision of this section, it is not an unfair immigration-related employment practice for an employer (as defined in section 274A(b))

to prefer to hire, recruit, or refer **for a fee** an individual who is a citizen or national of the United States over another individual who is an alien if the 2 individuals are equally qualified.

"(4) UNFAIR IMMIGRATION-RELATED EMPLOYMENT PRACTICES RELATING TO THE SYSTEM.—It is also an unfair immigration-related employment practice for a person, other entity, or employment agency—

"(A) to discharge or constructively discharge an individual solely due to a further action notice issued by the Employment Verification System created by section 274A until the administrative appeal described in section 274A(d)(6) is completed;

"(B) to use the System with regard to any person for any purpose except as authorized by section 274A(d);

"(C) to use the System to reverify the employment authorization of a current employee, including an employee continuing in employment, other than ~~reverification in a situation authorized by regulation on the date of the enactment of the Border Security, Economic Opportunity, and Immigration Modernization Act,~~ reverification upon expiration of employment authorization, or as otherwise authorized under section 274A(d) or by regulation;

"(D) to use the System selectively for employees, except where authorized by law;

"(E) to fail to provide to an individual any notice required in section 274A(d) within the relevant time period;

"(F) to use the System to deny workers' employment or post-employment benefits;

"(G) to misuse the System to discriminate based on national origin or citizenship status;

"(H) to require an employee or prospective employee to use any self-verification feature of the System or provide, as a condition of application or employment, any self-verification results;

"(I) to use an immigration status verification system, service, or method other than those described in section 274A for purposes of verifying employment eligibility; or

"(J) to grant access to document verification or System data, to any individual or entity other than personnel authorized to have such access, or to fail to take reasonable safeguards to protect against unauthorized loss, use, alteration, or destruction of System data.

"(5) PROHIBITION OF INTIMIDATION OR RETALIATION.—It is also an unfair immigration-related employment practice for a person, other entity, or employment agency to intimidate, threaten, coerce, or retaliate against any individual—

"(A) for the purpose of interfering with any right or privilege secured under this section; or

"(B) because the individual intends to file or has filed a charge or a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this section.

"(6) TREATMENT OF CERTAIN DOCUMENTARY PRACTICES AS EMPLOYMENT PRACTICES.—A person's, other entity's, or employment agency's request, for purposes of verifying employment eligibility, for more or different documents than are required under section 274A, or for specific documents, or refusing to honor documents tendered that reasonably appear to be genuine shall be treated as an unfair immigration-related employment practice.

"(7) EMPLOYMENT AGENCY DEFINED.—In this section, the term 'employment agency' means any employer, person, or entity regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer and includes an agent of such employer, person, or entity.".

(b) Referral by EEOC.—Section 274B(b) (8 U.S.C. 1324b(b)) is amended by adding at the end the following:

"(3) REFERRAL BY EEOC.—The Equal Employment Opportunity Commission shall refer all matters alleging immigration-related unfair employment practices filed with the Commission, including those alleging violations of paragraphs (1), (4), (5), and (6) of subsection (a) to the Special Counsel for Immigration-Related Unfair Employment Practices of the Department of Justice.";

(c) Authorization of Appropriations.—Section 274B(l)(3) (8 U.S.C. 1324b(l)(3))~~,~~ is amended by striking the period at the end and inserting "and an additional $40,000,000 for each of fiscal years 2014 through 2016.".

(d) Fines.—

(1) IN GENERAL.—Section 274B(g)(2)(B) (8 U.S.C. 1324b(g)(2)(B)) is amended by striking clause ~~(vi)~~**(iv)** and inserting the following:

"(iv) to pay any applicable civil penalties prescribed below, the amounts of which may be adjusted periodically to account for inflation as provided by law—

"(I) except as provided in subclauses (II) through (IV), to pay a civil penalty of not less than $2,000 and not more than $5,000 for each individual subjected to an unfair immigration-related employment practice;

"(II) except as provided in subclauses (III) and (IV), in the case of an employer, person, or entity previously subject to a single order under this paragraph, to pay a civil penalty of not less than $4,000 and not more than $10,000 for each individual subjected to an unfair immigration-related employment practice;

"(III) except as provided in subclause (IV), in the case of an employer, person, or entity previously subject to more than 1 order under this paragraph, to pay a civil penalty of not less than $8,000 and not more than $25,000 for each individual subjected to an unfair immigration-related employment practice; and

"(IV) in the case of an unfair immigration-related employment practice described in paragraphs (4) through (6) of subsection (a), to pay a civil penalty of not less than $500 and not more than $2,000 for each individual subjected to an unfair immigration-related employment practice.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect on the date that is 1 year after the date of the enactment of this Act and apply to violations occurring on or after such date of enactment.

SEC. 3106. RULEMAKING.

(a) Interim Final Regulations.—

(1) IN GENERAL.—Not later than 1 year after the date of the enactment of this Act—

(A) the Secretary, shall issue regulations implementing sections 3101~~,~~ **and** 3104~~, and 3105,~~ and the amendments made by such sections **(except for section 274A(d)(7) of the Immigration and Nationality Act)**; and

(B) the Attorney General shall issue regulations implementing section ~~3102 and the amendment~~ **274A(d)(7), as added by section 3101, section 3105, and the amendments** made by such section.

(2) EFFECTIVE DATE.—Regulations issued pursuant to paragraph (1) shall be effective immediately on an interim basis, but are subject to change and revision after public notice and opportunity for a period for public comment.

(b) Final Regulations.—Within a reasonable time after publication of the interim regulations under subsection (a), the Secretary, in consultation with the Commissioner of Social Security and the Attorney General, shall publish final regulations implementing this subtitle.

Subtitle B—Protecting United States Workers

SEC. 3201. PROTECTIONS FOR VICTIMS OF SERIOUS VIOLATIONS OF LABOR AND EMPLOYMENT LAW OR CRIME.

(a) In General.—Section 101(a)(15)(U) (8 U.S.C. 1101(a)(15)(U)) is amended—

(1) in clause (i)—

(A) by amending subclause (I) to read as follows:

"(I) the alien—

"(aa) has suffered substantial physical or mental abuse or substantial harm as a result of having been a victim of criminal activity described in clause (iii) or of a covered violation described in clause (iv); or

"(bb) is a victim of criminal activity described in clause (iii) or of a covered violation described in clause (iv) and would suffer extreme hardship upon removal;";

(B) in subclause (II), by inserting ", or a covered violation resulting in a claim described in clause (iv) that is not the subject of a frivolous lawsuit by the alien" before the semicolon at the end; and

(C) by amending subclauses (III) and (IV) to read as follows:

"(III) the alien (or in the case of an alien child who is younger than 16 years of age, the parent, **legal** guardian, or next friend of the alien) has been helpful, is being helpful, or is likely to be helpful to—

"(aa) a Federal, State, or local law enforcement official, a Federal, State, or local prosecutor, a Federal, State, or local judge, the Department of Homeland Security, the Equal Employment Opportunity Commission, the Department of Labor, or other Federal or, State, or local authorities investigating or prosecuting criminal activity described in clause (iii); or

"(bb) any Federal, State, or local governmental agency **or judge** investigating, prosecuting, or seeking civil remedies for any cause of action, whether criminal, civil, or administrative, arising from a covered violation described in clause (iv) and presents a certification from such Federal, State, or local governmental agency **or judge** attesting that the alien has been helpful, is being helpful, or is likely to be helpful to such agency in the investigation, prosecution, or adjudication arising from a covered violation described in clause (iv); and

"(IV) the criminal activity described in clause (iii) or the covered violation described in clause (iv)—

"(aa) violated the laws of the United States; or

"(bb) occurred in the United States (including Indian country and military installations) or the territories and possessions of the United States;";

(2) in clause (ii)(II), by striking "and" at the end;

(3) by moving clause (iii) 2 ems to the left;

(4) in clause **(iii), by inserting "child abuse;" after "stalking;";**~~(iii)—~~

~~(A) by inserting "stalking, child abuse when the alien is a minor;" after "sexual exploitation;";~~

~~(B) by inserting "fraud in foreign labor contracting;" before "peonage;"; and~~

~~(C) by striking "or" at the end and inserting "and"; and~~

(5) by adding at the end the following:

"(iv) a covered violation referred to in this clause is—

"(I) a serious violation involving 1 or more of the following or any similar activity in violation of any Federal, State, or local law~~,~~**:** serious workplace abuse, exploitation, retaliation, or violation of whistleblower protections;

"(II) a violation giving rise to a civil cause of action under section 1595 of title 18, United States Code; or

"(III) a violation resulting in the deprivation of due process or constitutional rights.".

(b) Savings Provision.—Nothing in section ~~101(a)(15)(U)(iv)(III)~~ **101(a)(15)(U)(iv)(I)** of the Immigration and Nationality Act, as added by subsection (a), may be construed as altering the definition of retaliation or discrimination under any other provision of law.

(c) Temporary Stay of Removal.—Section 274A (8 U.S.C. 1324a), as amended by section 3101, is further amended—

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

"(10) CONDUCT IN ENFORCEMENT ACTIONS.—If the Secretary undertakes an enforcement action at a facility about which a bona fide workplace claim has been filed or is contemporaneously filed, or as a result of information provided to the Secretary in retaliation against employees for exercising their rights related to a bona fide workplace claim, the Secretary shall ensure that—

"(A) any aliens arrested or detained who are necessary for the investigation or prosecution of a bona fide workplace claim ~~violations~~ or criminal activity (as described in subparagraph (T) or (U) of section 101(a)(15)) are not removed from the United States until after the Secretary—

"(i) notifies the appropriate law enforcement agency with jurisdiction over such violations or criminal activity; and

"(ii) provides such agency with the opportunity to interview such aliens;

"(B) no aliens entitled to a stay of removal or abeyance of removal proceedings under this section are removed; and

"(C) the Secretary shall stay the removal of an alien who—

"(i) has filed **a claim regarding** a covered violation described in clause (iv) of section 101(a)(15)(U) and is the victim of the same violations under an existing investigation;

"(ii) is a material witness in any pending or anticipated proceeding involving a bona fide workplace claim or civil rights claim; or

"(iii) has filed for relief under such section if the alien ~~has~~ is working with law enforcement as described in clause (i)(III) of such section."; and

(2) by adding at the end the following:

"(m) Victims of Criminal Activity or Labor and Employment Violations.—The Secretary of Homeland Security may permit an alien to remain temporarily in the United States and authorize the alien to engage in employment in the United States if the Secretary determines that the alien—

"(1) has filed for relief under section 101(a)(15)(U); or

"(2)(A) has filed, or is a material witness to, a bona fide claim or proceedings resulting from a covered violation (as defined in section 101(a)(15)(U)(iv)); and

"(B) has been helpful, is being helpful, or is likely to be helpful, in the investigation, prosecution of, or pursuit of civil remedies related to the claim arising from a covered violation, to—

"(i) a Federal, State, or local law enforcement official;

"(ii) a Federal, State, or local prosecutor;

"(iii) a Federal, State, or local judge;

"(iv) the Department of Homeland Security;

"(v) the Equal Employment Opportunity Commission; or

"(vi) the Department of Labor.".

(d) Conforming Amendments.—Section 214(p) (8 U.S.C. 1184(p)) is amended—

(1) in paragraph (1), by striking "in section 101(a)(15)(U)(iii)." both places it appears and inserting "in clause (iii) of section 101(a)(15)(U) or investigating, prosecuting, or seeking civil remedies for claims resulting from a covered violation described in clause (iv) of such section."; and

(2) in the first sentence of paragraph (6)—

(A) by striking "in section 101(a)(15)(U)(iii)" and inserting "in clause (iii) of section 101(a)(15)(U) or claims resulting from a covered violation described in clause (iv) of such section"; and

(B) by inserting "or claim arising from a covered violation" after "prosecution of such criminal activity".

(e) Modification of Limitation on Authority To Adjust Status for Victims of Crimes.—Section 245(m)(1) (8 U.S.C. 1255(m)(1)) is amended, in the matter before subparagraph (A), by inserting "or an investigation or prosecution regarding a workplace or civil rights claim" after "prosecution".

(f) Expansion of Limitation on Sources of Information That May Be Used To Make Adverse Determinations.—

(1) IN GENERAL.—Section 384(a)(1) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1367(a)(1)) is amended—

(A) in each of subparagraphs (A) through (D), by striking the comma at the end and inserting a semicolon;

(B) subparagraph (E), by striking "the criminal activity," and inserting "abuse and the criminal activity or bona fide workplace claim (as defined in subsection (e));";

(C) in subparagraph (F), by striking ", the trafficker or perpetrator," and inserting "), the trafficker or perpetrator; or"; and

(D) by inserting after subparagraph (F) the following:

"(G) the alien's employer,".

(2) WORKPLACE CLAIM DEFINED.—Section 384 of ~~the Illegal Immigration Reform and Immigrant Responsibility Act of 1996~~ **such Act** (8 U.S.C. 1367) is amended by adding at the end the following:

"(e) Workplace Claims.—

"(1) WORKPLACE CLAIMS DEFINED.—

"(A) IN GENERAL.—In ~~section~~ **subsection** (a)(1), the term 'workplace claim' means any claim, petition, charge, complaint, or grievance filed with, or submitted to, a Federal, State, or local agency or court, relating to the violation of applicable Federal,

State, or local labor or employment laws.

"(B) ~~CONSTRUCTIONS.—SUBPARAGRAPH~~ **CONSTRUCTION.—Subparagraph** (A) may not be construed to alter what constitutes retaliation or discrimination under any other provision of law.

"(2) PENALTY FOR FALSE CLAIMS.—Any person who knowingly presents a false or fraudulent claim to a law enforcement official in relation to a covered violation **described in section 101(a)(15)(U)(iv) of the Immigration and Nationality Act** for the purpose of obtaining a benefit under this section shall be subject to a civil penalty of not more than $1,000.

"(3) LIMITATION ON STAY OF ADVERSE DETERMINATIONS.—In the case of an alien applying for status under section 101(a)(15)(U) of the Immigration and Nationality Act and seeking relief under ~~this~~ **that** section, the prohibition on adverse determinations under subsection (a) shall expire on the date that the alien's application for status under such section is denied and all opportunities for appeal of the denial have been exhausted.".

(g) Removal Proceedings.—Section 239(e) (8 U.S.C. 1229(e)) is amended—

(1) in paragraph (1)—

(A) by striking "In cases where" and inserting "If"; and

(B) by striking "paragraph (2)," and inserting "paragraph (2) or as a result of information provided to the Secretary of Homeland Security in retaliation against individuals for exercising or attempting to exercise their employment rights or other legal rights,"; and

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

"(C) At a facility about which a bona fide workplace claim has been filed or is contemporaneously filed.".

SEC. 3202. EMPLOYMENT VERIFICATION SYSTEM EDUCATION FUNDING.

(a) Disposition of Civil Penalties.—Penalties collected under subsections (e)(4) and (f)(3) of section 274A of the Immigration and Nationality Act, amended by section 3101, shall be deposited, as offsetting receipts, into the Comprehensive Immigration Reform Trust Fund established under section 6(a)(1).

(b) Expenditures.—Amounts deposited into the Trust Fund under subsection (a) shall be made available to the Secretary **and the Attorney General** to provide education to employers and employees regarding the requirements, obligations, and rights under the Employment Verification System.

(c) Determination of Budgetary Effects.—

(1) EMERGENCY DESIGNATION FOR CONGRESSIONAL ENFORCEMENT.—In the Senate, amounts made available under this section are designated as an emergency requirement pursuant to section 403(a) of S. Con. Res. 13 (111th Congress), the concurrent resolution on the budget for fiscal year 2010.

(2) EMERGENCY DESIGNATION FOR STATUTORY PAYGO.—Amounts made available under this section are designated as an emergency requirement under section 4(g) of the Statutory Pay-As-You-Go Act of 2010 (Public Law 111–139; 2 U.S.C. 933(g)).

SEC. 3203. DIRECTIVE TO THE UNITED STATES SENTENCING COMMISSION.

(a) In General.—Pursuant to its authority under section 994 of title 28, United States Code, and in accordance with subsection (b), the United States Sentencing Commission shall promulgate sentencing guidelines or amend existing sentencing guidelines to modify, if appropriate, the penalties imposed on persons convicted of offenses under—

(1) section 274A of the Immigration and Nationality Act (8 U.S.C. 1324a), as amended by section 3101;

(2) section 16 of the Fair Labor Standards Act of 1938 (29 U.S.C. 216); and

(3) any other Federal law covering similar conduct.

(b) Requirements.—In carrying out subsection (a), the Sentencing Commission shall provide sentencing enhancements for any person convicted of an offense described in subsection (a) if such offense involves—

(1) the intentional confiscation of identification documents;

(2) corruption, bribery, extortion, or robbery;

(3) sexual abuse;

(4) serious bodily injury;

(5) an intent to defraud; or

(6) a pattern of conduct involving multiple violations of law that—

(A) creates, through knowing and intentional conduct, a risk to the health or safety of any victim; or

(B) denies payments due to victims for work completed.

~~SEC. 3204. CONFIDENTIALITY FOR VICTIMS OF CRIME.~~

~~Section 384 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1367) is amended—~~

~~(1) in subsection (a)—~~

~~(A) in the matter preceding paragraph (1)—~~

~~(i) by striking "in no case may"; and~~

~~(ii) by inserting "or, with respect to subparagraphs (E) and (F) and paragraph (2), any other official or employee of a certifying~~

~~agency, may not" after "Departments)"; and~~

~~(B) in paragraph (2), by striking "who is a beneficiary of an application" and inserting "applying for"; and~~

~~(2) in subsection (b)—~~

~~(A) in paragraph (4), by striking "battered"; and~~

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

~~"(8)(A) Subsection (a)(2) may not be construed to prevent the disclosure of—~~

~~"(i) information that prosecutors are constitutionally obligated to disclose to provide statements by witnesses and certain other documents to defendants in a pending Federal criminal proceeding; or~~

~~"(ii) information in a civil proceeding in which a judge orders that such information be disclosed in connection with a witness testifying in such proceeding.~~

~~"(B) All information disclosed during litigation pursuant to the exception set forth in this paragraph for any purpose other than the purpose ordered in the proceeding—~~

~~"(i) may not be disclosed to any nonrequired party;~~

~~"(ii) shall be filed under seal, with all personally identifying information redacted except the witness's first name; and~~

~~"(iii) shall be returned to the disclosing party at the conclusion of the proceeding.".~~

Subtitle C—Other Provisions

SEC. 3301. FUNDING.

(a) Establishment of the Interior Enforcement Account.—There is hereby established in the Treasury of the United States an account which shall be known as the Interior Enforcement Account.

(b) Appropriations.—There are authorized to be appropriated to the Interior Enforcement Account $1,000,000,000 to carry out this title and the amendments made by this title, including the following appropriations:

(1) In each of the 5 years beginning on the date of the enactment of this Act, the appropriations necessary to increase to a level not less than 5,000, by the end of such 5-year period, the total number of personnel of the Department assigned exclusively or principally to an office or offices in U.S. Citizenship and Immigration Services and U.S. Immigration and Customs Enforcement (and consistent with the missions of such agencies), dedicated to administering the System, and monitoring and enforcing compliance with sections 274A, 274B, and 274C of the Immigration and Nationality Act (8 U.S.C. 1324a, 1324b, and 1324c), including compliance with the requirements of the Electronic Verification System established under section 274A(d) of the Immigration and Nationality Act (8 U.S.C. 1324a(d)), as amended by section 3101. Such personnel shall perform compliance and monitoring functions, including the following:

(A) Verify compliance of employers participating in such System with the requirements for participation that are prescribed by the Secretary.

(B) Monitor such System for multiple uses of social security account numbers and immigration identification numbers that could indicate identity theft or fraud.

(C) Monitor such System to identify discriminatory or unfair practices.

(D) Monitor such System to identify employers who are not using such System properly, including employers who fail to make available appropriate records with respect to their queries and any notices of confirmation, nonconfirmation, or further action.

(E) Identify instances in which an employee alleges that an employer violated the employee's privacy or civil rights, or misused such System, and create procedures for an employee to report such an allegation.

(F) Analyze and audit the use of such System and the data obtained through such System to identify fraud trends, including fraud trends across industries, geographical areas, or employer size.

(G) Analyze and audit the use of such System and the data obtained through such System to develop compliance tools as necessary to respond to changing patterns of fraud.

(H) Provide employers with additional training and other information on the proper use of such System, including training related to privacy and employee rights.

(I) Perform threshold evaluation of cases for referral to the Special Counsel for Immigration-Related Unfair Employment Practices of the Department of Justice or the Equal Employment Opportunity Commission, and other officials or agencies with responsibility for enforcing anti-discrimination, civil rights, privacy, or worker protection laws, as may be appropriate.

(J) Any other compliance and monitoring activities that the Secretary determines are necessary to ensure the functioning of such System.

(K) Investigate identity theft and fraud detected through such System and undertake the necessary enforcement or referral actions.

(L) Investigate use of or access to fraudulent documents and undertake the necessary enforcement actions.

(M) Perform any other investigations that the Secretary determines are necessary to ensure the lawful functioning of such System, and undertake any enforcement actions necessary as a result of such investigations.

(2) The appropriations necessary to acquire, install, and maintain technological equipment necessary to support the functioning of such System and the connectivity between U.S. Citizenship and Immigration Services and U.S. Immigration and Customs Enforcement, the Department of Justice, and other agencies or officials with respect to the sharing of information to support such System and related immigration enforcement actions.

(3) The appropriations necessary to establish a robust redress process for employees who wish to appeal contested nonconfirmations to ensure the accuracy and fairness of such System.

(4) The appropriations necessary to provide a means by which individuals may access their own employment authorization data to ensure the accuracy of such data, independent of an individual's employer.

(5) To carry out the identity authentication mechanisms described in section 274A(c)(1)(F) of the Immigration and Nationality Act, as amended by section 3101(a).

(6) The appropriations necessary for the Office for Civil Rights and Civil Liberties and the Office of Privacy of the Department to perform the responsibilities of such Offices related to such System.

(7) The appropriations necessary to make grants to States to support the States in assisting the Federal Government in carrying out the provisions of this title and the amendments made by this title.

(c) ~~Authorization of Appropriations to the Commissioner of Social Security.—~~ **Establishment of Reimbursable Agreement Between the Department of Homeland Security and the Social Security Administration.—**

~~(1) In general.—There are authorized to be appropriated to~~**(1) IN GENERAL.—Effective for fiscal years beginning on or after the date of enactment of this Act, the Secretary and** the Commissioner of Social Security ~~such sums as may be necessary to carry out the provisions of this title and the amendments made by this title.~~ **shall enter into and maintain an agreement that—**

~~(2) Prohibition on use of trust funds.—In no case shall the Commissioner expend funds from the Old Age and Survivors Trust Fund or the Disability Trust Fund for expenses related to administration of this title or the amendments made by this title.~~**(A) provides funds to the Commissioner for the full costs of the responsibilities of the Commissioner under this section, including—**

(i) acquiring, installing, and maintaining technological equipment and systems necessary for the fulfillment of the responsibilities of the

Commissioner under this section; and

(ii) responding to individuals who contest a further action notice or provided by the employment verification system established under section 274A of the Immigration and Nationality Act, as amended by section 3101;

(B) provides such funds quarterly in advance of the applicable quarter based on estimating methodology agreed to by the Commissioner and the Secretary; and

(C) requires an annual accounting and reconciliation of the actual costs incurred and the funds provided under the agreement which shall be reviewed by the Office of the Inspector General of the Social Security Administration and the Department.

(d) Authorization of Appropriations to the Attorney General.—There are authorized to be appropriated to the Attorney General such sums as may be necessary to carry out the provisions of this title and the amendments made by this title, including enforcing compliance with section 274B of the Immigration and Nationality Act, as amended by section 3105 ~~of this Act~~.

(e) Authorization of Appropriations to the Secretary of State.—There are authorized to be appropriated to the Secretary of State such sums as may be necessary to carry out the provisions of this title and the amendments made by this title.

(f) Determination of Budgetary Effects.—

**** 12** (1) EMERGENCY DESIGNATION FOR CONGRESSIONAL ENFORCEMENT.—In the Senate, amounts made available under this section are designated as an emergency requirement pursuant to section 403(a) of S. Con. Res. 13 (111th Congress), the concurrent resolution on the budget for fiscal year 2010.

**** 13** (2) EMERGENCY DESIGNATION FOR STATUTORY PAYGO.—Amounts made available under this section are designated as an emergency requirement under section 4(g) of the Statutory Pay-As-You-Go Act of 2010 (Public Law 111–139; 2 U.S.C. 933(g)).

SEC. 3302. EFFECTIVE DATE.

Except as otherwise specifically provided, this title and the amendments made by this title shall take effect on the date of the enactment of this Act.

SEC. 3303. MANDATORY EXIT SYSTEM.

(a) Establishment.—Not later than December 31, 2015, the Secretary shall establish a mandatory exit data system that shall include a requirement for the collection of data from machine-readable visas, passports, and other travel and entry documents for all categories of aliens who are exiting from air and sea ports of entry.

(b) Integration and Interoperability.—

(1) INTEGRATION OF DATA SYSTEM.—The Secretary shall fully integrate all data from databases and data systems that process or contain information on aliens, which are maintained by—

(A) the Department, at—

(i) the U.S. Immigration and Customs Enforcement;

(ii) the U.S. Customs and Border Protection; and

(iii) the U.S. Citizenship and Immigration Services;

(B) the Department of Justice, at the Executive Office for Immigration Review; and

(C) the Department of State, at the Bureau of Consular Affairs.

(2) INTEROPERABLE COMPONENT.—The fully integrated data system under paragraph (1) shall be an interoperable component of the exit data system.

(3) INTEROPERABLE DATA SYSTEM.—The Secretary shall fully implement an interoperable electronic data system to provide current and immediate access to information in the databases of Federal law enforcement agencies and the intelligence community that is relevant to determine—

(A) whether to issue a visa; or

(B) the admissibility or deportability of an alien.

(4) TRAINING.—The Secretary shall establish ongoing training modules on immigration law to improve adjudications at United States ports of entry, consulates, and embassies.

SEC. 3304. IDENTITY-THEFT RESISTANT MANIFEST INFORMATION FOR PASSENGERS, CREW, AND NON-CREW ONBOARD DEPARTING AIRCRAFT AND VESSELS.

(a) Definitions.—Except as otherwise specifically provided, in this section:

(1) IDENTITY-THEFT RESISTANT COLLECTION LOCATION.—The term "identity-theft resistant collection location" means a location within an airport or seaport—

(A) within the path of the departing alien, such that the alien would not need to significantly deviate from that path to comply with exit requirements at which air or vessel carrier employees, as applicable, either ~~present~~ **presently** or routinely **are** available if an alien needs processing assistance; and

(B) which is equipped with technology that ~~is able to~~ **can** securely **collect and** transmit identity-theft resistant departure ~~manifest~~ information to the Department.

(2) US-VISIT.—The term "US-VISIT" means the United States-Visitor and Immigrant Status Indicator Technology system.

(b) Identity Theft Resistant Manifest Information.—

(1) PASSPORT OR VISA COLLECTION REQUIREMENT.—Except as provided in ~~paragraph~~ **subsection** (c), an appropriate official of each commercial aircraft or vessel departing from the United States to any port or place outside the United States shall ensure transmission to U.S. Customs and Border Protection of identity-theft resistant departure manifest information covering alien passengers, crew, and non-crew. Such identity-theft resistant departure manifest information—

(A) shall be transmitted to U.S. Customs and Border Protection at the place and time specified in ~~subparagraph~~ **paragraph** (3) by means approved by the Secretary; and

(B) shall set forth the information specified in paragraph (4) or other information as required by the Secretary.

(2) MANNER OF COLLECTION.—Carriers boarding alien passengers, crew, and non-crew subject to the requirement to provide information upon departure **for** US-VISIT processing shall collect identity-theft resistant departure manifest information from each alien at ~~a~~ **an identity-theft resistant** collection location at the airport or seaport before boarding that alien on transportation for departure from the United States, at a time **as** close to the originally scheduled departure of that passenger's aircraft or sea vessel as practicable.

(3) TIME AND MANNER OF SUBMISSION.—

(A) IN GENERAL.—The appropriate official specified in paragraph (1) shall ensure transmission of the identity-theft resistant departure manifest information required and collected under paragraphs (1) and (2) to the Data Center or Headquarters **of** U.S. Customs and Border Protection, or such other data center as may be designated.

(B) TRANSMISSION.—The biometric departure information may be transmitted to the Department over any means of communication authorized by the Secretary for the transmission of other electronic manifest information containing personally identifiable information and under transmission standards currently applicable to other electronic manifest information.

(C) SUBMISSION ALONG WITH OTHER INFORMATION.—Files containing the identity-theft resistant departure manifest information—

(i) may be sent with other electronic manifest data prior to departure or may be sent separately from any topically related electronic manifest data; and

(ii) may be sent in batch mode.

(4) INFORMATION REQUIRED.—The identity-theft resistant departure information required under paragraphs (1) through (3) for each covered passenger or crew member shall contain alien data from machine-readable visas, passports, and other travel and entry documents issued to the alien.

(c) Exception.—The identity-theft resistant departure ~~manifest~~ information specified in this section is not required for any alien active duty military personnel traveling as passengers on board a departing Department of Defense commercial chartered aircraft.

(d) Carrier Maintenance and Use of Identity-~~theft~~ **Theft** Resistant Departure Manifest Information.—Carrier use of identity-theft resistant departure manifest information for purposes other than as described in standards set by the Secretary is prohibited. Carriers shall immediately notify the Chief Privacy Officer of the Department in writing in **the** event of unauthorized use or access, or breach, of identity-theft resistant departure manifest information.

(e) Collection at Specified Location.—If the Secretary determines that an air or vessel carrier has not adequately complied with the provisions of this section, the Secretary may, in the Secretary's discretion, require the air or vessel carrier to collect identity-theft resistant departure manifest information at a specific location prior to the issuance of a boarding pass or other

document on the international departure, or the boarding of crew, in any port through which the carrier boards aliens for international departure under the supervision of the Secretary for such period as the Secretary considers appropriate to ensure the adequate collection and transmission of biometric departure manifest information.

(f) Funding.—There shall be appropriated to the Interior Enforcement Account $500,000,000 to reimburse carriers for their reasonable actual expenses in carrying out their duties as described in this section.

(g) Determination of Budgetary Effects.—

(1) EMERGENCY DESIGNATION FOR CONGRESSIONAL ENFORCEMENT.—In the Senate, amounts made available under this section are designated as an emergency requirement pursuant to section 403(a) of S. Con. Res. 13 (111th Congress), the concurrent resolution on the budget for fiscal year 2010.

(2) EMERGENCY DESIGNATION FOR STATUTORY PAYGO.—Amounts made available under this section are designated as an emergency requirement under section 4(g) of the Statutory Pay-As-You-Go Act of 2010 (Public Law 111–139; 2 U.S.C. 933(g)).

SEC. 3305. PROFILING.

(a) Prohibition.—In making routine or spontaneous law enforcement decisions, such as ordinary traffic stops, Federal law enforcement officers may not use race or ethnicity to any degree, except that officers may rely on race and ethnicity if a specific suspect description exists.

(b) Exceptions.—

(1) ~~IN~~ **SPECIFIC INVESTIGATION.—In** conducting activities in connection with a specific investigation, Federal law enforcement officers may consider race and ethnicity only to the extent that there is trustworthy information, relevant to the locality or time frame, that links persons of a particular race or ethnicity to an identified criminal incident, scheme, or organization. This standard applies even where the use of race or ethnicity might otherwise be lawful.

(2) ~~IN~~ **NATIONAL SECURITY.—In** investigating or preventing threats to national security or other catastrophic events (including the performance of duties related to air transportation security), or in enforcing laws protecting the integrity of the Nation's borders, Federal law enforcement officers may not consider race or ethnicity except to the extent permitted by the Constitution and laws of the United States.

(3) DEFINED TERM.—In this section, the term ~~"Federal~~ **"Federal** law enforcement ~~officer"~~ **officer"** means any officer, agent, or employee of the United States authorized by law or by a Government agency to engage in or supervise the prevention, detection, investigation, or prosecution of any violation of Federal law.

~~(b)~~**(c)** Study and Regulations.—

(1) DATA COLLECTION.—Not later than 180 days after the date of the enactment of this Act, the Secretary shall begin collecting data regarding the individualized immigration enforcement activities of covered Department ~~of Homeland Security~~ officers.

(2) STUDY.—Not later than 180 days after data collection under paragraph (1)

commences, the Secretary shall complete a study analyzing the data.

(3) REGULATIONS.—Not later than 90 days after the date the study required by paragraph (2) is completed, the Secretary, in consultation with the Attorney General, shall issue regulations regarding the use of race, ethnicity, and any other suspect classifications the Secretary deems appropriate by covered Department ~~of Homeland Security~~ officers.

(4) REPORTS.—Not later than 30 days after completion of the study required by paragraph (2), the Secretary shall submit the study to—

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

(B) the Committee on Homeland Security of the House of Representatives;

(C) the Committee on Appropriations of the Senate;

(D) the Committee on Appropriations of the House of Representatives;

(E) the Committee on the Judiciary of the Senate; and

(F) the Committee on the Judiciary of the House of Representatives.

(5) DEFINED TERM.—In this subsection, the term "covered Department ~~of Homeland Security~~ officer" means any officer, agent, or employee of United States Customs and Border Protection, United States Immigration and Customs Enforcement, or the Transportation Security Administration.

Subtitle D—Asylum and Refugee Provisions

SEC. 3401. TIME LIMITS AND EFFICIENT ADJUDICATION OF GENUINE ASYLUM CLAIMS.

Section 208(a)(2) (8 U.S.C. 1158(a)(2)) is amended—

(1) in subparagraph (A), by inserting "or the Secretary of Homeland Security" after "Attorney General" both places such term appears;

(2) by striking subparagraphs (B) and (D);

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

(4) in subparagraph (B), as redesignated, by striking "subparagraph (D)" and inserting "subparagraphs (C) and (D)"; and

(5) by inserting after subparagraph (B), as redesignated, the following:

"(C) CHANGED CIRCUMSTANCES.—Notwithstanding subparagraph (B), an application for asylum of an alien may be considered if the alien demonstrates, to the satisfaction of the Attorney General or the Secretary of Homeland Security, the existence of changed circumstances that materially affect the applicant's eligibility for asylum.

"(D) MOTION TO REOPEN CERTAIN MERITORIOUS CLAIMS.—Notwithstanding subparagraph (B) or section 240(c)(7), an alien may file a motion to reopen an asylum claim during the 2-year period beginning on the date of the enactment of the Border Security, Economic Opportunity, and Immigration Modernization Act if the alien—

"(i) was denied asylum based solely upon a failure to meet the 1-year application filing deadline in effect on the date on which the application was filed;

"(ii) was granted withholding of removal pursuant to section 241(b)(3) and has not obtained lawful permanent residence in the United States pursuant to any other provision of law;

"(iii) is not subject to the safe third country exception ~~in subsection (a)(2)~~ **under subparagraph** (A) or a bar to asylum under subsection (b)(2) and should not be denied asylum as a matter of discretion; and

"(iv) is physically present in the United States when the motion is filed.".

SEC. 3402. REFUGEE FAMILY PROTECTIONS.

(a) Children of Refugee or Asylee Spouses and Children.—A child of an alien who qualifies for admission as a spouse or child under section 207(c)(2)(A) or 208(b)(3) of the Immigration and Nationality Act (8 U.S.C. 1157(c)(2)(A) and 1158(b)(3)) shall be entitled to the same ~~admission~~ status as such alien if the child—

(1) is accompanying or following to join such alien; and

(2) is otherwise eligible under section 207(c)(2)(A) or 208(b)(3) of the Immigration and Nationality Act.

SEC. 3403. CLARIFICATION ON DESIGNATION OF CERTAIN REFUGEES.

Section 207(c)(1) (8 U.S.C. 1157(c)(1)) is amended—

(1) by inserting "(A)" before "Subject to the numerical limitations"; and

(2) by adding at the end the following:

"(B)(i) The President, upon a recommendation of the Secretary of State made in consultation with the Secretary of Homeland Security, and after appropriate consultation, may designate specifically defined groups of aliens—

"(I) whose resettlement in the United States is justified by humanitarian concerns or is otherwise in the national interest; and

"(II) who—

"(aa) share common characteristics that identify them as targets of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion; or

"(bb) having been identified as targets as described in item (aa), share a common need for resettlement due to a specific vulnerability.

"(ii) An alien who establishes membership in a group designated under clause (i) to the satisfaction of the Secretary of Homeland Security shall be considered a refugee for purposes of admission as a refugee under this section unless the Secretary determines that such alien ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion.

"(iii) A designation under clause (i) is for purposes of adjudicatory efficiency and may be revoked by the President at any time after notification to Congress.

"(iv) Categories of aliens established under section 599D of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1990 (Public Law 101–167; 8 U.S.C. 1157 note)—

"(I) shall be designated under clause (i) until the end of the first fiscal year commencing after the date of the enactment of the Border Security, Economic Opportunity, and Immigration Modernization Act; and

"(II) shall be eligible for designation thereafter at the discretion of the President, considering, among other factors, whether a country under consideration has been designated by the Secretary of State as a 'Country of Particular Concern' for engaging in or tolerating systematic, ongoing, and egregious violations of religious freedom.

"(v) A designation under clause (i) shall not influence decisions to grant, to any alien, asylum under section 208, protection under section 241(b)(3), or protection under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, done at New York December 10, 1984.

"(vi) A decision to deny admission under this section to an alien who establishes to the satisfaction of the Secretary that the alien is a member of a group designated under clause (i) shall—

"(I) be in writing; and

"(II) state, to the maximum extent feasible, the reason for the denial.

"(vii) Refugees admitted pursuant to a designation under clause (i) shall be subject to the number of admissions **and be admissible** under this section.".

SEC. 3404. ASYLUM DETERMINATION EFFICIENCY.

Section 235(b)(1)(B)(ii) (8 U.S.C. 1225(b)(1)(B)(ii)) is **amended** ~~amended—~~

~~(1)~~ by striking "asylum." and inserting "asylum by an asylum officer. The asylum officer, after conducting a nonadversarial asylum interview and seeking supervisory review, may grant asylum to the alien under section 208 or refer the case to a designee of the Attorney General, for a de novo asylum determination, for relief under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, done at New York December 10, 1984, or for protection under section 241(b)(3).".

SEC. 3405. STATELESS PERSONS IN THE UNITED STATES.

(a) In General.—Chapter 1 of title II (8 U.S.C. 1151 et seq.) is amended by adding at the end the following:

"SEC. 210A. PROTECTION OF CERTAIN STATELESS PERSONS IN THE UNITED STATES.

"(a) Stateless Persons.—

"(1) IN GENERAL.—In this section, the term 'stateless person' means an individual who is not considered a national under the operation of the laws of any country.

"(2) DESIGNATION OF SPECIFIC STATELESS GROUPS.—The Secretary of Homeland Security, in consultation with the Secretary of State, may, in the discretion of the Secretary, designate specific groups of individuals who are considered stateless persons, for purposes of this section.

"(b) Status of Stateless Persons.—

"(1) RELIEF FOR CERTAIN INDIVIDUALS DETERMINED TO BE STATELESS PERSONS.—The Secretary of Homeland Security or the Attorney General may, in his or her discretion, provide conditional lawful status to an alien who is otherwise inadmissible or deportable from the United States if the alien—

"(A) is a stateless person present in the United States;

"(B) applies for such relief;

"(C) has not lost his or her nationality as a result of his or her voluntary action or knowing inaction after arrival in the United States;

"(D) except as provided in paragraphs (2) and (3), is not inadmissible under section 212(a); and

"(E) is not described in section 241(b)(3)(B)(i).

"(2) INAPPLICABILITY OF CERTAIN PROVISIONS.—The provisions under paragraphs (4), (5), (7), and (9)(B) of section 212(a) shall not apply to any alien seeking relief under paragraph (1).

"(3) WAIVER.—The Secretary or the Attorney General may waive any other provisions of such section, other than subparagraphs (B), (C), (D)(ii), (E), (G), (H), or (I) of paragraph (2), paragraph (3), paragraph (6)(C)(i) (with respect to misrepresentations relating to the application for relief under paragraph (1)), or subparagraphs (A), (C), (D), or (E) of paragraph (10) of section 212(a), with respect to such an alien for humanitarian purposes, to assure family unity, or if it is otherwise in the public interest.

"(4) SUBMISSION OF PASSPORT OR TRAVEL DOCUMENT.—Any alien who seeks relief under this section shall submit to the Secretary of Homeland Security or the Attorney General—

"(A) any available passport or travel document issued at any time to the alien (whether or not the passport or document has expired or been cancelled, rescinded, or revoked); or

"(B) an affidavit, sworn under penalty of perjury—

"(i) stating that the alien has never been issued a passport or travel document; or

"(ii) identifying with particularity any such passport or travel document and explaining why the alien cannot submit it.

"(5) WORK AUTHORIZATION.—The Secretary of Homeland Security may authorize an

alien who has applied for and is found prima facie eligible for or been granted relief under paragraph (1) to engage in employment in the United States.

"(6) TRAVEL DOCUMENTS.—The Secretary may issue appropriate travel documents to an alien who has been granted relief under paragraph (1) that would allow him or her to travel abroad and be admitted to the United States upon return, if otherwise admissible.

"(7) TREATMENT OF SPOUSE AND CHILDREN.—The spouse or child of an alien who has been granted conditional lawful status under paragraph (1) shall, if not otherwise eligible for admission under paragraph (1), be granted conditional lawful status under this section if accompanying, or following to join, such alien if—

"(A) the spouse or child is admissible (except as otherwise provided in paragraphs (2) and (3)) and is not described in section 241(b)(3)(B)(i); and

"(B) the qualifying relationship to the principal beneficiary existed on the date on which such alien was granted conditional lawful status.

"(c) Adjustment of Status.—

"(1) INSPECTION AND EXAMINATION.—At the end of the 1-year period beginning on the date on which an alien has been granted conditional lawful status under subsection (b), the alien may apply for lawful permanent residence in the United States if—

"(A) the alien has been physically present in the United States for at least 1 year;

"(B) the alien's conditional lawful status has not been terminated by the Secretary of Homeland Security or the Attorney General, pursuant to such regulations as the Secretary or the Attorney General may prescribe; and

"(C) the alien has not otherwise acquired permanent resident status.

"(2) REQUIREMENTS FOR ADJUSTMENT OF STATUS.—The Secretary of Homeland Security or the Attorney General, under such regulations as the Secretary or the Attorney General may prescribe, may adjust the status of an alien granted conditional lawful status under subsection (b) to that of an alien lawfully admitted for permanent residence if such alien—

"(A) is a stateless person;

"(B) properly applies for such adjustment of status;

"(C) has been physically present in the United States for at least 1 year after being granted conditional lawful status under subsection (b);

"(D) is not firmly resettled in any foreign country; and

"(E) is admissible (except as otherwise provided under paragraph (2) or (3) of subsection (b)) as an immigrant under this chapter at the time of examination of such alien for adjustment of status.

"(3) RECORD.—Upon approval of an application under this subsection, the Secretary of Homeland Security ~~or the Attorney General~~ shall establish a record of the alien's admission for lawful permanent residence as of the date that is 1 year before the date of such approval.

"(4) NUMERICAL LIMITATION.—The number of aliens who may receive an adjustment of status under this section for a fiscal year shall be subject to the numerical limitation of

section 203(b)(4).

"(d) Proving the Claim.—In determining an alien's eligibility for lawful conditional status or adjustment of status under this subsection, the Secretary of Homeland Security or the Attorney General shall consider any credible evidence relevant to the application. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Secretary or the Attorney General.

"(e) Review.—

"(1) ADMINISTRATIVE REVIEW.—No appeal shall lie from the denial of an application by the Secretary, but such denial will be without prejudice to the alien's right to renew the application in proceedings under section 240.

"(2) MOTIONS TO REOPEN.—Notwithstanding any limitation imposed by law on motions to reopen removal, deportation, or exclusion proceedings, any individual who is eligible for relief under this section may file a motion to reopen proceedings in order to apply for relief under this section. Any such motion shall be filed within 2 years of the date of the enactment of the Border Security, Economic Opportunity, and Immigration Modernization Act.

"(f) Limitation.—

"(1) APPLICABILITY.—The provisions of this section shall only apply to aliens present in the United States.

"(2) SAVINGS PROVISION.—Nothing in this section may be construed to authorize or require—

"(A) the admission of any alien to the United States;

"(B) the parole of any alien into the United States; or

"(C) the grant of any motion to reopen or reconsider filed by an alien after departure or removal from the United States.".

(b) Judicial Review.—Section 242(a)(2)(B)(ii) (8 U.S.C. 1252(a)(2)(B)(ii)) is amended by striking "208(a)." and inserting "208(a) or 210A.".

(c) Conforming Amendment.—Section 203(b)(4) (8 U.S.C. 1153(b)(4)) is amended by inserting "to aliens granted an adjustment of status under section 210A(c) or" after "level,".

(d) Clerical Amendment.—The table of contents for the Immigration and Nationality Act is amended by inserting after the item relating to section 210 the following:

"Sec.210A.Protection of stateless persons in the United States.".

SEC. 3406. U VISA ACCESSIBILITY.

Section 214(p)(2)(A) (8 U.S.C. 1184(p)(2)(A)) is amended by striking "10,000." and inserting "18,000, of which not more than 3,000 visas may be issued for aliens who are victims of a covered violation described in section 101(a)(15)(U).".

SEC. 3407. REPRESENTATION AT OVERSEAS REFUGEE INTERVIEWS.

Section 207(c) (8 U.S.C. 1157(c)) is amended by adding at the end the following:

"(5) The adjudicator of an application for refugee status under this section shall consider all relevant evidence and maintain a record of the evidence considered.

"(6) An applicant for refugee status may be represented, including at a refugee interview, at no expense to the Government, by an attorney or accredited representative who—

"(A) was chosen by the applicant; and

"(B) is authorized by the Secretary of Homeland Security to be recognized as the representative of such applicant in an adjudication under this section.

"(7)(A) A decision to deny an application for refugee status under this section—

"(i) shall be in writing; and

"(ii) shall provide, to the maximum extent feasible, information on the reason for the denial, including—

"(I) the facts underlying the determination; and

"(II) whether there is a waiver of inadmissibility available to the applicant.

"(B) The basis of any negative credibility finding shall be part of the written decision.

"(8)(A) An applicant who is denied refugee status under this section may file a request with the Secretary for a review of his or her application not later than 120 days after such denial.

"(B) A request filed under subparagraph (A) shall be adjudicated by refugee officers who have received training on considering requests for review of refugee applications that have been denied.

"(C) The Secretary shall publish the standard applied to a request for review.

"(D) A request for review may result in the decision being granted, denied, or reopened for a further interview.

"(E) A decision on a request for review under this paragraph—

"(i) shall be in writing; and

"(ii) shall provide, to the maximum extent feasible, information on the reason for the denial.".

Subtitle E—Shortage of Immigration Court Resources for Removal Proceedings

SEC. 3501. SHORTAGE OF IMMIGRATION COURT PERSONNEL FOR REMOVAL PROCEEDINGS.

(a) Immigration Court Judges.—The Attorney General shall increase the total number of immigration judges to adjudicate current pending cases and efficiently process future cases by at least—

(1) 75 in fiscal year 2014;

(2) 75 in fiscal year 2015; and

(3) 75 in fiscal year 2016.

(b) Necessary Support Staff for Immigration Court Judges.—The Attorney General shall address the shortage of support staff for immigration judges by ensuring that each immigration judge has the assistance of the necessary support staff, including the equivalent of 1 staff attorney or law clerk and 1 legal assistant.

(c) Annual Increases in Board of Immigration Appeals Personnel.—The Attorney General shall increase the number of Board of Immigration Appeals staff attorneys (including the necessary additional support staff) to efficiently process cases by at least—

(1) 30 in fiscal year 2014;

(2) 30 in fiscal year 2015; and

(3) 30 in fiscal year 2016.

(d) Funding.—There shall be appropriated, from the Comprehensive Immigration Reform Trust Fund established under section 6(a)(1), such sums as may be necessary to carry out this section.

SEC. 3502. IMPROVING IMMIGRATION COURT EFFICIENCY AND REDUCING COSTS BY INCREASING ACCESS TO LEGAL INFORMATION.

(a) Clarification Regarding the Authority of the Attorney General to Appoint Counsel to Aliens in Immigration Proceedings.—Section 292 (8 U.S.C. 1362) is amended—

(1) by inserting “(a)” before “In any”;

(2) by striking “(at no expense to the Government)”;

(3) by striking “he shall” and inserting “the person shall”; and

(4) by adding at the end the following:

“(b) The Government is not required to provide counsel to aliens under subsection (a). However, the Attorney General may, in the Attorney General’s sole and unreviewable discretion, appoint or provide counsel to aliens in immigration proceedings conducted under section 240 of this Act.”.

(b) Appointment of Counsel in Certain Cases.—Section 240(b)(4) (8 U.S.C. 1229a(b)(4)) is amended—

(1) in subparagraph (A), by striking “, at no expense to the Government,”; and

(2) by adding at the end the following: “The Government is not required to provide counsel to aliens under this paragraph. However, the Attorney General may, in the Attorney General’s sole and unreviewable discretion, appoint or provide counsel at government expense to aliens in immigration proceedings.”.

(c) Appointment of Counsel for Unaccompanied Alien Children and Aliens With a Serious

Mental Disability.—Section 292 (8 U.S.C. 1362), as amended by subsection (a), is further amended by adding at the end the following:

"(c) Notwithstanding subsection (b), the Attorney General shall appoint counsel, at the expense of the Government~~,~~ if necessary, to represent an alien in a removal proceeding who has been determined by the Secretary to be an unaccompanied alien child, is incompetent to represent himself or herself due to a serious mental disability that would be included in section 3(2) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102(2)), or is considered particularly vulnerable when compared to other aliens in removal proceedings, such that the appointment of counsel is necessary to help ensure fair resolution and efficient adjudication of the proceedings.".

(d) Funding.—There shall be appropriated, from the Comprehensive Immigration Reform Trust Fund established under section 6(a)(1), such sums as may be necessary to carry out this section and the amendments made by this section.

SEC. 3503. OFFICE OF LEGAL ACCESS PROGRAMS.

(a) Establishment of Office of Legal Access Programs.—The Attorney General shall ~~establish~~ **maintain,** within the Executive Office for Immigration Review**,** an Office of Legal Access Programs to develop and administer a system of legal orientation programs to make immigration proceedings more efficient and cost effective by educating aliens regarding administrative procedures and legal rights under United States immigration law and to establish other programs to assist in providing aliens access to legal information.

(b) Legal Orientation Programs.—The legal orientation programs—

(1) shall provide programs to assist detained aliens in making informed and timely decisions regarding their removal and eligibility for relief from removal in order to increase efficiency and reduce costs in immigration proceedings and Federal custody processes and to improve access to counsel and other legal services;

(2) may provide services to detained aliens in immigration proceedings under sections 235, 238, 240, and 241(a)(5) of the Immigration and Nationality Act (8 U.S.C. 1225, 1228, 1229a, and 1231(a)(5)) and to other aliens in immigration and asylum proceedings under sections 235, 238, and 240 of the Immigration and Nationality Act (8 U.S.C. 1225, 1228, and 1229a); and

(3) shall identify unaccompanied alien children, aliens with a serious mental disability, and other particularly vulnerable aliens for consideration by the Attorney General pursuant to section 292(c) of the Immigration and Nationality Act, as added by section 3502(c).

(c) Procedures.—The Secretary**, in consultation with the Attorney General,** shall establish procedures that ensure that legal orientation programs are available for all detained aliens within 5 days of arrival into custody and to inform such aliens of the basic procedures of immigration hearings, their rights relating to those hearings under the immigration laws, information that may deter such aliens from filing frivolous legal claims, and any other information deemed appropriate by the Attorney General, such as a contact list of potential legal resources and providers.

(d) Rule of Construction.—Nothing in this subsection shall be construed to create any substantive or procedural right or benefit that is legally enforceable by any party against the

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

(e) Funding.—There shall be appropriated, from the Comprehensive Immigration Reform Trust Fund established under section 6(a)(1), such sums as may be necessary to carry out this section.

SEC. 3504. CODIFYING BOARD OF IMMIGRATION APPEALS.

(a) Definition of Board Member.—Section 101(a) (8 U.S.C. 1101(a)) is amended by adding at the end the following:

"(53) The term 'Board Member' means an attorney whom the Attorney General appoints ~~as an administrative judge within the Executive Office for Immigration Review~~ to serve on the Board of Immigration Appeals~~,~~ **within the Executive Office of Immigration Review, and is** qualified to review decisions of immigration judges and other matters within the jurisdiction of the Board of Immigration Appeals.".

(b) Board of Immigration Appeals.—Section 240(a)(1) (8 U.S.C. 1229a(a)(1)) is amended by adding at the end the following: "The Board of Immigration Appeals and its Board Members shall review decisions of immigration judges under this section.".

(c) Appeals.—Section 240(b)(4) (8 U.S.C. 1229a(b)(4)), as amended by section 3502(b), is further amended—

(1) in subparagraph (B), by striking ", and" and inserting a semicolon;

(2) in subparagraph (C), by striking the period and inserting "; and"; and

(3) by inserting after subparagraph (C) the following:

"(D) the alien **or the Department of Homeland Security** may appeal the immigration judge's decision to a 3-judge panel of the Board of Immigration Appeals.".

(d) Decision and Burden of Proof.—Section 240(c)(1)(A) (8 U.S.C. 1229a(c)(1)(A)) is amended to read as follows:

"(A) IN GENERAL.—At the conclusion of the proceeding, the immigration judge shall decide whether an alien is removable from the United States. The determination of the immigration judge shall be based only on the evidence produced at the hearing. On appeal, the Board of Immigration Appeals shall issue a written opinion. The opinion shall address all dispositive arguments raised by the parties. The panel may incorporate by reference the opinion of the immigration judge whose decision is being reviewed, provided that the panel also addresses any arguments made by the nonprevailing party regarding purported errors of law, fact, or discretion.".

SEC. 3505. IMPROVED TRAINING FOR IMMIGRATION JUDGES AND BOARD MEMBERS.

(a) In General.—Section 240 (8 U.S.C. 1229a) is amended by adding at the end the following:

"(f) Improved Training.—

"(1) IMPROVED TRAINING FOR IMMIGRATION JUDGES AND BOARD MEMBERS.—

"(A) IN GENERAL.—In consultation with the Attorney General and the Director of the Federal Judicial Center, the Director of the Executive Office for Immigration Review shall review and modify, as appropriate, training programs for immigration judges and Board Members.

"(B) ELEMENTS OF REVIEW.—Each such review shall study—

"(i) the expansion of the training program for new immigration judges and Board Members;

"(ii) continuing education regarding current developments in the field of immigration law; and

"(iii) methods to ensure that immigration judges are trained on properly crafting and dictating decisions.

"(2) IMPROVED TRAINING AND GUIDANCE FOR STAFF.—The Director of the Executive Office for Immigration Review shall—

"(A) modify guidance and training regarding screening standards and standards of review; and

"(B) ensure that Board Members provide staff attorneys with appropriate guidance in drafting decisions in individual cases, consistent with the policies and directives of the Director of the Executive Office for Immigration Review and the Chairman of the Board of Immigration Appeals.".

(b) Funding.—There shall be appropriated, from the Comprehensive Immigration Reform Trust Fund established under section 6(a)(1), such sums as may be necessary to carry out this section and the amendment made by this section.

SEC. 3506. IMPROVED RESOURCES AND TECHNOLOGY FOR IMMIGRATION COURTS AND BOARD OF IMMIGRATION APPEALS.

(a) Improved On-bench Reference Materials and Decision Templates.—The Director of the Executive Office for Immigration Review shall ensure that immigration judges are provided with updated reference materials and standard decision templates that conform to the law of the circuits in which they sit.

(b) Practice Manual.—The Director of the Executive Office for Immigration Review shall produce a practice manual describing best practices for the immigration courts and shall make such manual available electronically to counsel and litigants who appear before the immigration courts.

(c) Recording System and Other Technologies.—

(1) PLAN REQUIRED.—The Director of the Executive Office for Immigration Review shall provide the Attorney General with a plan and a schedule to replace the immigration courts' tape recording system with a digital recording system that is compatible with the information management systems of the Executive Office for Immigration Review.

(2) AUDIO RECORDING SYSTEM.—Consistent with the plan described in paragraph (1), the Director shall pilot a digital audio recording system not later than 1 year after the enactment of this Act, and shall begin nationwide implementation of that system as soon as practicable.

(d) Improved Transcription Services.—Not later than 1 year after the enactment of this Act, the Director of the Executive Office for Immigration Review shall report to the Attorney General on the current transcription services utilized by the Office and recommend improvements to this system regarding quality and timeliness of transcription.

(e) Improved Interpreter Selection.—Not later than 1 year after the enactment of this Act, the Director of the Executive Office for Immigration Review shall report to the Attorney General on the current interpreter selection process utilized by the Office and recommend improvements to this process regarding screening, hiring, certification, and evaluation of staff and contract interpreters.

(f) Funding.—There shall be appropriated, from the Comprehensive Immigration Reform Trust Fund established under section 6(a)(1), such sums as may be necessary to carry out this section.

Subtitle F—Prevention of Trafficking in Persons and Abuses Involving Workers Recruited Abroad

SEC. 3601. DEFINITIONS.

(a) In General.—Except as otherwise provided by this subtitle, the terms used in this subtitle shall have the same meanings, respectively, as are given those terms in section 3 of the Fair Labor Standards Act of 1938 (29 U.S.C. 203).

(b) Other Definitions.—

(1) FOREIGN LABOR CONTRACTOR.—The term "foreign labor contractor" means any person who performs ~~any~~ foreign labor contracting activity, including any person who performs foreign labor contracting activity wholly outside of the United States, except that the term does not include any entity of the United States Government.

(2) FOREIGN LABOR CONTRACTING ACTIVITY.—The term "foreign labor contracting activity" means recruiting, soliciting, ~~hiring, employing, sponsoring, managing, furnishing, processing visa applications for, transporting, or housing~~ **or related activities with respect to** an individual who resides outside of the United States in furtherance of employment in the United States, including when such activity occurs wholly outside of the United States.

(3) PERSON.—The term "person" means any natural person or any corporation, company, firm, partnership, joint stock company or association or other organization or entity (whether organized under law or not), including municipal corporations.

(4) ~~Secretary.—The term the "Secretary" means the Secretary of Labor.~~

~~(5)~~ WORKER.—the term "worker" means an individual or exchange visitor who is the subject of foreign labor contracting activity.

SEC. 3602. DISCLOSURE.

(a) Requirement for Disclosure.—Any person who engages in foreign labor contracting activity shall ascertain and disclose in writing in English and in the primary language of the worker at the time of the worker's recruitment, the following information:

(1) The identity and address of the employer and the identity and address of the person conducting the recruiting on behalf of the employer, including any subcontractor or agent involved in such recruiting.

(2) ~~All~~ **Unless such disclosure is otherwise required under this Act, all** assurances and terms and conditions of employment, from the prospective employer for whom the worker is being recruited, including the work hours, level of compensation to be paid, the place and period of employment, a description of the type and nature of employment activities, any withholdings or deductions from compensation and any penalties for terminating employment.

(3) ~~A~~ **Unless otherwise required under this Act, a** signed copy of the work contract between the worker and the employer.

(4) The type of visa under which the foreign worker is to be employed, the length of time for which the visa will be valid ~~and the terms and conditions under which this visa will be renewed with a clear statement of whether the employer will secure renewal of this visa or if renewal must be obtained by the worker and any expenses associated with securing or renewing the visa.~~**.**

~~(5) An~~**(5) Unless otherwise required under this Act, an** itemized list of any costs or expenses to be charged to the worker and any deductions to be taken from wages, including any costs for housing or accommodation, transportation to and from the worksite, meals, health insurance, workers' compensation, costs of benefits provided, medical examinations, healthcare, tools, or safety equipment costs.

(6) The existence of any labor organizing effort, strike, lockout, or other labor dispute at the place of employment.

(7) Whether and the extent to which workers will be compensated through workers' compensation, private insurance, or otherwise for injuries or death, including work related injuries and death, during the period of employment and, if so, the name of the State workers' compensation insurance carrier or the name of the policyholder of the private insurance, the name and the telephone number of each person who must be notified of an injury or death, and the time period within which such notice must be given.

(8) A statement, in a form specified by the Secretary—

(A) stating that—

(i) no foreign labor contractor, agent, or employee of a foreign labor contractor, may lawfully assess any fee (including visa fees, processing fees, transportation fees, legal expenses, placement fees, and other costs) to a worker for any foreign labor contracting activity; and

(ii) the employer may bear such costs or fees for the foreign labor contractor, but that these fees cannot be passed along to the worker; and

(B) ~~explaining that—~~

~~(i) no additional requirements or changes may be made from the terms of the contract originally signed by the worker unless the worker is provided at least 48 hours to review and consider the additional requirements or changes;~~

~~(ii) no such additional requirements or changes may be made to the original contract signed by the worker without the specific consent of the worker to each such additional requirement or change; and~~

~~(iii) such consent shall be obtained voluntarily and without threat of penalty and if not so obtained will be a violation of law subject to the provisions of section 3611;~~

~~(C)~~ describing the protections afforded the worker by this section and by section 202 of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (8 U.S.C. 1375b) and any applicable visa program, including—

(i) relevant information about the procedure for filing a complaint provided for in section 3611**;** and

(ii) the telephone number for the national human trafficking resource center hotline number.

(9) Any education or training to be provided or required, including the nature, timing and cost of such training and the person who will pay such costs, whether the training is a condition of employment, continued employment, or future employment; and whether the worker will be paid or remunerated during the training period, including the rate of pay.

~~(10) Any other information that the Secretary may require by regulation.~~

(b) Relationship to Labor and Employment Laws.—Nothing in the disclosure required by subsection (a) shall constitute a legal conclusion as to the worker's status or rights under the labor and employment laws.

(c) Prohibition on False and Misleading Information.—No foreign labor contractor or employer who engages in any foreign labor contracting activity shall knowingly provide materially false or misleading information to any worker concerning any matter required to be disclosed under ~~section~~ **subsection** (a). The disclosure required by this section is a document concerning the proper administration of a matter within the jurisdiction of a department or agency of the United States for the purposes of section 1519 of title 18, United States Code.

SEC. 3603. PROHIBITION ON DISCRIMINATION.

(a) In General.—It shall be unlawful for an employer or a foreign labor contractor to fail or refuse to hire, discharge, intimidate, threaten, restrain, coerce, or blacklist any individual or otherwise discriminate against an individual with respect to compensation, terms, conditions, or privileges of employment, because of such individual's race, color, creed, sex, national origin, religion, age, or disability.

(b) Determinations of Discrimination.—For the purposes of determining the existence of unlawful discrimination under subsection (a)—

(1) in the case of a claim of discrimination based on race, color, creed, sex, national origin, or religion, the same legal standards shall apply as are applicable under title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.);

(2) in the case of a claim of discrimination based on unlawful discrimination based on age, the same legal standards shall apply as are applicable under the Age Discrimination in Employment Act of 1967 (29 U.S.C. 621 et seq.); and

(3) in the case of a claim of discrimination based on disability, the same legal standards shall apply as are applicable under title I of the Americans With Disabilities Act of 1990 (42 U.S.C. 12111 et seq.).

SEC. 3604. RECRUITMENT FEES.

No employer, foreign labor contractor, or agent or employee of a foreign labor contractor, shall assess any fee (including visa fees, processing fees, transportation fees, legal expenses, placement fees, and other costs) to a worker for any foreign labor contracting activity.

SEC. 3605. REGISTRATION.

(a) Requirement to Register.—

(1) IN GENERAL.—Subject to paragraph (2), prior to engaging in any foreign labor contracting activity, any person who is a foreign labor contractor or who, for any money or other valuable consideration paid or promised to be paid, performs a foreign labor contracting activity on behalf of a foreign labor contractor, shall obtain a certificate of registration from the Secretary of Labor pursuant to regulations promulgated by the Secretary under subsection (c).

(2) EXCEPTION FOR CERTAIN EMPLOYERS.—An employer, or employee of an employer, who engages in foreign labor contracting activity solely to find employees for that employer's own use, and without the participation of any other foreign labor contractor, shall not be required to register under this section. ~~Notwithstanding the preceding sentence, such an employer shall be subject to the requirements of subsections (a) and (c) of section 3602 and sections 3603 and 3604 and shall be subject to the remedies under section 3610 for all violations stemming from the employer's own foreign labor contracting activity.~~

(b) Notification.—

(1) ANNUAL EMPLOYER NOTIFICATION.—Each employer shall notify the Secretary, not less frequently than once every year, of the identity of any foreign labor contractor involved in any foreign labor contracting activity for, or on behalf of, the employer, including at a minimum, the name and address of the foreign labor contractor and a description of the services.

(2) ANNUAL FOREIGN LABOR CONTRACTOR NOTIFICATION.—Each foreign labor contractor shall notify the Secretary, not less frequently than once every year, of the identity of any subcontractee, agent, or foreign labor contractor employee involved in any foreign labor contracting activity for, or on behalf of, the foreign labor contractor.

(3) NONCOMPLIANCE NOTIFICATION.—An employer shall notify the Secretary of the identity of a foreign labor contractor whose activities do not comply with this subtitle.

(4) AGREEMENT.—Not later than ~~48 hours~~ **7 days** after receiving a request from the Secretary, an employer shall provide the Secretary with the identity of any foreign labor contractor with which the employer has a contract or other agreement.

(c) Regulations.—Not later than 180 days after the date of the enactment of this Act, the Secretary shall promulgate regulations to establish an efficient electronic process for the timely investigation and approval of an application for a certificate of registration of foreign labor contractors, including—

(1) a declaration, subscribed and sworn to by the applicant, stating the applicant's permanent place of residence, the foreign labor contracting activities for which the certificate is requested, and such other relevant information as the Secretary may require;

(2) a set of fingerprints of the applicant;

(3) an expeditious means to update registrations and renew certificates;

(4) providing for the consent of any foreign labor recruiter to the designation by a court of the Secretary as an agent available to accept service of summons in any action against the applicant, if the applicant has left the jurisdiction in which the action is commenced, otherwise has become unavailable to accept service or is subject to personal jurisdiction in no State;

(5) providing for the consent of any foreign labor recruiter to jurisdiction in the Department ~~of Labor~~ or any ~~state or~~ Federal **or State** court ~~of~~ **in** the United States for any action brought by any aggrieved individual or worker;

(6) providing for cooperation in any investigation by the Secretary or other appropriate authorities;

(7) providing for consent to the forfeiture of the bond for failure to cooperate with these provisions;

(8) providing for consent to be liable for violations of this subtitle by any agents or subcontractees of any level in relation to the foreign labor contracting activity of the agent or subcontractee to the same extent as if the foreign labor contractor had committed the violation; **and**

(9) providing for consultation with other appropriate Federal agencies to determine whether any reason exists to deny registration to a foreign labor contractor**.**~~; and~~

~~(10) any other requirements that the Secretary may prescribe.~~

(d) Term of Registration.—Unless suspended or revoked, a certificate under this section shall be valid for 2 years.

(e) Application Fee.—

(1) REQUIREMENT FOR FEE.—In addition to any other fees authorized by law, the Secretary shall impose a fee, to be deposited in the general fund of the Treasury, on a foreign labor contractor that submits an application for a certificate of registration under this section.

(2) AMOUNT OF FEE.—The amount of the fee required by paragraph (1) shall be set at a level that the Secretary determines sufficient to cover the full costs of carrying out foreign labor contract registration activities under this subtitle, including worker education and any additional costs associated with the administration of the fees collected.

(f) Refusal to Issue; Revocation.—In accordance with regulations promulgated by the

Secretary, the Secretary shall refuse to issue or renew, or shall revoke and debar from eligibility to obtain a certificate of registration for a period of not greater than 5 years, after notice and an opportunity for a hearing, a certificate of registration under this section if—

(1) the applicant for, or holder of, the certification has knowingly made a material misrepresentation in the application for such certificate;

(2) the applicant for, or holder of, the certification is not the real party in interest in the application or certificate of registration and the real party in interest—

(A) is a person who has been refused issuance or renewal of a certificate;

(B) has had a certificate revoked; or

(C) does not qualify for a certificate under this section;

(3) the applicant for, or holder of, the certification has been convicted within the preceding 5 years ~~of—~~ **of—**

(A) any felony under State or Federal law or crime involving robbery, bribery, extortion, embezzlement, grand larceny, burglary, arson, violation of narcotics laws, murder, rape, assault with intent to kill, assault which inflicts grievous bodily injury, prostitution, peonage, or smuggling or harboring individuals who have entered the United States illegally; or

(B) any crime relating to gambling, or to the sale, distribution or possession of alcoholic beverages, in connection with or incident to any labor contracting activities.

(4) the applicant for, or holder of, the certification has materially failed to comply with this section.

(g) Re-registration of Violators.—The Secretary shall establish a procedure by which a foreign labor contractor that has had its registration revoked under subsection (f) may seek to re-register under this subsection by demonstrating to the Secretary's satisfaction that the foreign labor contractor has not violated this subtitle in the previous 5 years and that the foreign labor contractor has taken sufficient steps to prevent future violations of this subtitle.

SEC. 3606. BONDING REQUIREMENT.

(a) In General.—The Secretary shall require a foreign labor contractor to post a bond in an amount sufficient to ensure the ability of the foreign labor contractor to discharge its responsibilities and to ensure protection of workers, including wages.

(b) Regulations.—The Secretary, by regulation, shall establish the conditions under which the bond amount is determined, paid, and forfeited.

(c) Relationship to Other Remedies.—The bond requirements and forfeiture of the bond under this section shall be in addition to other remedies under 3610 or any other law.

SEC. 3607. MAINTENANCE OF LISTS.

(a) In General.—The Secretary shall maintain—

(1) a list of all foreign labor contractors registered under this subsection, including—

(A) the countries from which the contractors recruit;

(B) the employers for whom the contractors recruit;

(C) the visa categories and occupations for which the contractors recruit; and

(D) the States where recruited workers are employed; and

(2) a list of all foreign labor contractors whose certificate of registration the Secretary has revoked.

(b) Updates; Availability.—The Secretary shall—

(1) update the lists required by subsection (a) on an ongoing basis, not less frequently than every 6 months; and

(2) make such lists publicly available, including through continuous publication on Internet websites and in written form at and on the websites of United States embassies in the official language of that country.

(c) Inter-agency Availability.—The Secretary shall share the information described in subsection (a) with the Secretary of State**.**

SEC. 3608. AMENDMENT TO THE IMMIGRATION AND NATIONALITY ACT.

Section 214 (8 U.S.C. 1184) is amended by adding at the end the following:

"(s) A visa shall not be issued under the subparagraph (A)(iii), (B)(i) (but only for domestic servants described in clause (i) or (ii) of section 274a.12(c)(17) of title 8, Code of Federal Regulations (as in effect on December 4, 2007)), (G)(v), (H), (J), (L), (Q), (R) ~~or add any new immigration subsections~~**, or (W)** of section 101(a)(15) until the consular officer—

"(1) has provided to and reviewed with the applicant, in the applicant's language (or a language the applicant understands), a copy of the information and resources pamphlet required by section 202 of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (8 U.S.C. 1375b); and

"(2) has reviewed and made a part of the visa file the foreign labor recruiter disclosures required by section 3602 of the Border Security, Economic Opportunity, and Immigration Modernization Act, including whether the foreign labor recruiter is registered pursuant to that section.".

SEC. 3609. RESPONSIBILITIES OF SECRETARY OF STATE.

(a) In General.—The Secretary of State shall ensure that each United States diplomatic mission has a person who shall be responsible for receiving information from any worker who has been subject to violations of this subtitle.

(b) Provision of Information.—The responsible person referred to in subsection (a) shall ensure that the information received is provided to the Department of Justice, the Department of Labor, or any other relevant Federal agency.

(c) Mechanisms.—The Attorney General and the Secretary shall ensure that there is a mechanism for any actions that need to be taken in response to information received under

subsection (a).

(d) Assistance From Foreign Government.—The person designated for receiving information pursuant to ~~this~~ subsection **(a)** is strongly encouraged to coordinate with governments and civil society organizations in the countries of origin to ensure the worker receives additional support.

(e) Maintenance and Availability of Information.—The Secretary of State shall ensure that consulates maintain information regarding the identities of foreign labor contractors and the employers to whom the foreign labor contractors supply workers. The Secretary of State shall make such information publically available in written form and on-line, including on the websites of United States embassies in the official language of that country.

(f) Annual Public Disclose.—The Secretary of State shall make publically available on-line, on an annual basis, data disclosing the gender, country of origin and state, if available, date of birth, wage, level of training, and occupation category, disaggregated by job and by visa category.

SEC. 3610. ENFORCEMENT PROVISIONS.

(a) Complaints and Investigations.—The Secretary—

(1) shall establish a process for the receipt, investigation, and disposition of complaints filed by any person, including complaints respecting a foreign labor contractor's compliance with this subtitle; and

(2) either pursuant to the process required by paragraph (1) or otherwise, may investigate employers or foreign labor contractors, including actions occurring in a foreign country, as necessary to determine compliance with this subtitle.

(b) Administrative Enforcement.—

(1) IN GENERAL.—If the Secretary finds, after notice and an opportunity for a hearing, any foreign labor contractor or employer failed to comply with any of the requirements of this subtitle, the Secretary may impose the following against such contractor or employer—

(A) a fine in an amount not more than $10,000 per violation; and

(B) upon the occasion of a third violation or a failure to comply with representations, a fine of not more than $25,000 per violation.

(c) Authority to Ensure Compliance.—The Secretary is authorized to take other such actions, including issuing subpoenas and seeking appropriate injunctive relief and recovery of damages, as may be necessary to assure compliance with the terms and conditions of this subtitle.

(d) Bonding.—Pursuant to the bonding requirement in section 3606, bond liquidation and forfeitures shall be in addition to other remedies under this section or any other law.

(e) Civil Action.—

(1) IN GENERAL.—The Secretary or any person aggrieved by a violation of this subtitle may bring a civil action against any foreign labor contractor ~~or employer~~ that does not meet the requirements ~~of section~~ **under subsection** (f)(2) in any court of competent jurisdiction—

(A) to seek remedial action, including injunctive relief;

(B) to recover damages on behalf of any worker harmed by a violation of this subsection; and,

(C) to ensure compliance with requirements of this section.

(2) ACTIONS BY THE SECRETARY OF ~~LABOR.—~~ **HOMELAND SECURITY.—**

(A) SUMS RECOVERED.—Any sums recovered by the Secretary on behalf of a worker under paragraph (1) or through liquidation of the bond held pursuant to section 3606 shall be held in a special deposit account and shall be paid, on order of the Secretary, directly to each worker affected. Any such sums not paid to a worker because of inability to do so within a period of 5 years shall be credited as an offsetting collection to the appropriations account of the Secretary for expenses for the administration of this section and shall remain available to the Secretary until expended or may be used for enforcement of the laws within the jurisdiction of the wage and hour division or may be transferred to the Secretary of Health and Human Services for the purpose of providing support to programs that provide assistance to victims of trafficking in persons or other exploited persons. The Secretary shall work with any attorney or organization representing workers to locate workers owed sums under this section.

(B) REPRESENTATION.—Except as provided in section 518(a) of title 28, United States Code, the ~~Solicitor of Labor~~ **Attorney General** may appear for and represent the Secretary in any civil litigation brought under this paragraph. All such litigation shall be subject to the direction and control of the Attorney General.

(3) ACTIONS BY INDIVIDUALS.—

(A) AWARD.—If the court finds in a civil action filed by an individual under this section that the defendant has violated any provision of this subtitle (or any regulation issued pursuant to this subtitle), the court may award—

(i) damages, up to and including an amount equal to the amount of actual damages, and statutory damages of up to $1,000 per plaintiff per violation, or other equitable relief, except that with respect to statutory damages—

(I) multiple infractions of a single provision of this subtitle (or of a regulation under this subtitles) shall constitute only 1 violation for purposes of section 3602(a) to determine the amount of statutory damages due a plaintiff; and

(II) if such complaint is certified as a class action the court may award—

(aa) damages up to an amount equal to the amount of actual damages; and

(bb) statutory damages of no more than the lesser of up to $1,000 per class member per violation, or up to $500,000; and other equitable relief;

(ii) reasonable attorneys' fees and costs; and

(iii) such other and further relief, including declaratory and injunctive relief, as necessary to effectuate the purposes of this subtitle.

(B) CRITERIA.—In determining the amount of statutory damages to be awarded under subparagraph (A), the court is authorized to consider whether an attempt was made to resolve the issues in dispute before the resort to litigation.

(C) BOND.—To satisfy the damages, fees, and costs found owing under this clause, the Secretary shall release as much of the bond held pursuant to section 3606 as necessary.

(D) APPEAL.—Any civil action brought under this section shall be subject to appeal as provided in chapter 83 of title 28, United States Code (28 U.S.C. 1291 et seq.).

(E) ACCESS TO LEGAL SERVICES CORPORATION.—Notwithstanding any other provision of law, the Legal Services Corporation and recipients of its funding may provide legal assistance on behalf of any alien with respect to any provision of this subtitle.

(f) Agency Liability.—

(1) IN GENERAL.—Beginning 180 days after the Secretary ~~of Labor~~ has promulgated regulations pursuant to section 3605(c), an employer who retains the services of a foreign labor contractor shall only use those foreign labor contractors who are registered under section 3605.

~~An employer who uses a foreign labor contractor who is not registered under section 3605 after such time period, or who uses~~**(2) SAFE HARBOR.—An employer shall not have any liability under this section if the employer—**

(A) hires workers referred by a foreign labor contractor that has ~~violated any provision of this subsection, shall be subject to the provisions of this subsection for violations committed by such foreign labor contractor to the same extent as if the employer were the foreign labor contractor who had committed the violation.~~

~~(2) Safe harbor.—An employer shall not have any liability under this section if the employer hires workers referred by a foreign labor contractor that has~~ a valid registration with the Department ~~of Labor~~ pursuant to section ~~3605, the employer~~ **3604;**

(B) does not act with reckless disregard of the fact that the foreign labor contractor has violated any provision ~~of this section, and if the employer obtained knowledge of a violation of the provisions of this section, it immediately reported the violation to the Secretary.~~ **under this section; and**

(C) reported any violation of a provision under this section after obtaining knowledge of such violation.

(3) LIABILITY FOR AGENTS.—Foreign labor contractors shall be subject to the provisions of this section for violations committed by the foreign labor contractor's agents or subcontractees of any level in relation to their foreign labor contracting activity to the same extent as if the foreign labor contractor had committed the violation.

(g) Retaliation.—

(1) IN GENERAL.—No person shall intimidate, threaten, restrain, coerce, discharge or in any other manner discriminate or retaliate against any worker or their family members

(including a former employee or an applicant for employment) because such worker disclosed information to any person that the worker reasonably believes evidences a violation of this section (or any rule or regulation pertaining to this section), including seeking legal assistance of counsel or cooperating with an investigation or other proceeding concerning compliance with this section (or any rule or regulation pertaining to this section).

(2) ENFORCEMENT.—An individual who is subject to any conduct described in paragraph (1) may, in a civil action, recover appropriate relief, including reasonable attorneys' fees and costs, with respect to that violation. Any civil action under this subparagraph shall be stayed during the pendency of any criminal action arising out of the violation.

(h) Waiver of Rights.—Agreements by employees purporting to waive or to modify their rights under this subtitle shall be void as contrary to public policy.

(i) Presence During Pendency of Actions.—

(1) IN GENERAL.—If other immigration relief is not available, the Attorney General and the Secretary ~~of Homeland Security~~ shall grant advance parole to permit a nonimmigrant to remain legally in the United States for time sufficient to fully and effectively participate in all legal proceedings related to any action taken pursuant to this section.

(2) REGULATIONS.—Not later than 180 days after the date of the enactment of this Act, the Secretary shall promulgate regulations to carry out paragraph (1).

SEC. 3611. RULE OF CONSTRUCTION.

Nothing in this subtitle shall be construed to preempt or alter any other rights or remedies, including any causes of action, available under any other Federal or State law.

SEC. 3612. REGULATIONS.

The Secretary shall prescribe such regulations as may be necessary to carry out this subtitle.

Subtitle G—Interior Enforcement

SEC. 3701. CRIMINAL STREET GANGS.

(a) Inadmissibility.—Section 212(a)(2) (8 U.S.C. 1182(a)(2)) is **amended** ~~amended—~~

~~(1) by redesignating subparagraph (F) as subparagraph (L); and~~

~~(2)~~ by inserting after subparagraph ~~(E)~~**(I)** the following:

~~"(F)~~**"(J)** ALIENS IN CRIMINAL STREET GANGS.—

"(i) IN GENERAL.—Any alien is inadmissible—

"(I) who has been convicted of an offense for which an element was active participation in a criminal street gang (as defined in section 521(a) of title 18, United States Code) and the alien—

"(aa) had knowledge that the gang's members engaged in or have engaged in a continuing series of offenses described in section 521(c) of title 18, United States Code; and

"(bb) acted with the intention to promote or further the felonious activities of the criminal street gang or maintain or increase his or her position in the gang; or

"(II) subject to clause (ii), who is 18 years of age or older, who is physically present outside the United States, whom the Secretary determines by clear and convincing evidence, based upon law enforcement information deemed credible by the Secretary, has, since the age of 18, knowingly and willingly participated in a criminal street gang with knowledge that such participation promoted or furthered the illegal activity of the gang.

"(ii) WAIVER.—The Secretary may waive clause (i)(II) if the alien has renounced all association with the criminal street gang, is otherwise admissible, and is not a threat to the security of the United States.".

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

"(G) ALIENS ASSOCIATED WITH CRIMINAL STREET GANGS.—Any alien is removable who has been convicted of an offense for which an element was active participation in a criminal street gang (as defined in section 521(a) of title 18, United States Code), and the alien—

"(i) had knowledge that the gang's members engaged in or have engaged in a continuing series of offenses described in section 521(c) of title 18, United States Code; and

"(ii) acted with the intention to promote or further the felonious activities the criminal street gang or increase his or her position in such gang.".

(c) Ground of Ineligibility for Registered Provisional Immigrant Status.—

(1) IN GENERAL.—An alien who is 18 years of age or older is ineligible for registered provisional immigrant status if the Secretary determines that the alien—

(A) has been convicted of an offense for which an element was active participation in a criminal street gang (as defined in section 521(a) of title 18, United States Code and the alien—

(i) had knowledge that the gang's members engaged in or have engaged in a continuing series of offenses described in section 521(c) of title 18, United States Code; and

(ii) acted with the intention to promote or further the felonious activities of the criminal street gang or maintain or increase his or her position in such gang; or

(B) subject to paragraph (2), any alien who is 18 years of age or older whom the Secretary determines by clear and convincing evidence, based upon law enforcement information deemed credible by the Secretary, has, since the age of 18, knowingly and willingly participated in a such gang with knowledge that such participation promoted or furthered the illegal activity of such gang.

(2) WAIVER.—The Secretary may waive ~~this~~ **the application of** paragraph (1)(B) if the alien has renounced all association with the criminal street gang, is otherwise admissible,

and is not a threat to the security of the United States.

SEC. 3702. BANNING HABITUAL DRUNK DRIVERS FROM THE UNITED STATES.

(a) Grounds for Inadmissibility.—Section 212(a)(2) (8 U.S.C. 1182~~)~~**(a)(2))**, as amended by section ~~3401, is further amended~~ **3701(a), is further amended—**

(1) by redesignating subparagraph (F) as subparagraph (L); and

(2) by inserting after subparagraph ~~(I)~~**(E)** the following:

~~"(J)~~**"(F)** HABITUAL DRUNK DRIVERS.—An alien convicted of 3 or more offenses ~~on separate dates, at least 1 of which occurred after the date of the enactment of the Border Security, Economic Opportunity, and Immigration Modernization Act, related to~~ **for** driving under the influence or driving while intoxicated ~~is inadmissable."~~ **on separate dates is inadmissible."**.

(b) Grounds for Deportation.—Section 237(a)(2) (8 U.S.C. 1227(a)(2)) ~~is~~ **, as amended by section 3701(b), is further** amended by adding at the end the following:

~~"(G)~~**"(H)** HABITUAL DRUNK DRIVERS.—An alien convicted of 3 or more offenses ~~on separate dates related to~~ **for** driving under the influence or driving while intoxicated**, at least 1 of which occurred after the date of the enactment of the Border Security, Economic Opportunity, and Immigration Modernization Act,** is deportable.".

SEC. 3703. SEXUAL ABUSE OF A MINOR.

Section 101(a)(43)(A) (8 U.S.C. 1101(a)(43)(A)) is amended by striking "murder, rape, or sexual abuse of a minor;" and inserting "murder, rape, or sexual abuse of a minor, whether or not the minority of the victim is established by evidence contained in the record of conviction or by credible evidence extrinsic to the record of conviction;"~~;~~**.**

SEC. 3704. ILLEGAL ENTRY.

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

"SEC. 275. ILLEGAL ENTRY.

"(a) In General.—

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

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

"(B) eludes examination or inspection by an immigration officer, or a customs or agriculture inspection at a port of entry; or

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

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

"(A) shall, for the first violation, be fined under title 18, United States Code, imprisoned not more than 12 months, or both;

"(B) shall, for a second or subsequent violation, or following an order of voluntary departure, be fined under such title, imprisoned not more than 3 years, or both;

"(C) if the violation occurred after the alien had been convicted of 3 or more misdemeanors with the convictions occurring on different dates or of a felony for which the alien served a term of imprisonment of 15 days or more, shall be fined under such title, imprisoned not more than 10 years, or both; and

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

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

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

"(B) proven beyond a reasonable doubt at trial or admitted by the defendant under oath as part of a plea agreement.

"(b) Improper Time or Place; Civil Penalties.—Any alien older than 18 years of age who is apprehended while knowingly entering, attempting to enter, or crossing or attempting to cross the border to the United States at a time or place other than as designated by immigration officers shall be subject to a civil penalty, in addition to any criminal or other civil penalties that may be imposed under any other provision of law, in an amount equal to—

"(1) not less than $250 or more than ~~$5000~~ **$5,000** for each such entry, crossing, attempted entry, or attempted crossing; or

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

subsection.

"(c) Fraudulent Marriage.—An individual who knowingly enters into a marriage for the purpose of evading any provision of the immigration laws shall be imprisoned for not more than 5 years, fined not more than $250,000, or both.

"(d) Commercial Enterprises.—Any individual who knowingly establishes a commercial enterprise for the purpose of evading any provision of the immigration laws shall be imprisoned for not more than 5 years, fined in accordance with title 18, United States Code, or both.".

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

"Sec.275.Illegal entry.".

(c) Effective Date.—The amendments made by this section shall take effect ~~one~~ **1** year after the date of the enactment of this Act.

SEC. 3705. REENTRY OF REMOVED ALIEN.

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

"SEC. 276. REENTRY OF REMOVED ALIEN.

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

"(b) Reentry of Criminal Offenders.—Notwithstanding the penalty provided in subsection (a), if an alien described in that subsection—

"(1) was convicted for 3 or more misdemeanors, with the convictions occurring on different dates, before such removal or departure, the alien shall be fined under title 18, United States Code, and imprisoned not more than 10 years, or both;

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

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

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

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

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

"(d) Proof of Prior Convictions.—The prior convictions described in subsection (b) are elements of the offenses described in that subsection, and the penalties in such subsection shall apply only in cases in which the conviction or convictions that form the basis for the additional penalty are—

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

"(2) proven beyond a reasonable doubt at trial or admitted by the defendant under oath as part of a plea agreement.

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

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

"(2) at the time of the prior exclusion, deportation, removal, or denial of admission alleged in the violation, the alien had not yet reached 18 years of age and had not been convicted of a crime or adjudicated a delinquent minor by a court of the United States, or a court of a state or territory, for conduct that would constitute a felony if committed by an adult.

"(f) Limitation on Collateral Attack on Underlying Deportation Order.—In a criminal proceeding under this section, an alien may not challenge the validity of the deportation order described in subsection (a) or subsection (c) unless the alien demonstrates that—

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

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

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

"(g) Reentry of Alien Removed Prior to Completion of Term of Imprisonment.—Any alien removed pursuant to section 241(a)(4) who enters, attempts to enter, crosses the border to, attempts to cross the border to, or is at any time found in, the United States shall be incarcerated for the remainder of the sentence of imprisonment which was pending at the time of deportation without any reduction for parole or supervised release unless the alien affirmatively demonstrates that the Secretary of Homeland Security has expressly consented to the alien's reentry or the alien is prima facie eligible for protection from removal. Such alien shall be subject to such other penalties relating to the reentry of removed aliens as may be available under this section or any other provision of law.

"(h) Limitation.—It is not aiding and abetting a violation of this section for an individual to provide an alien with emergency humanitarian assistance, including emergency medical care and food, or to transport the alien to a location where such assistance can be rendered without compensation or the expectation of compensation.

"(i) Definitions.—In this section:

"(1) FELONY.—The term 'felony' means any criminal offense punishable by a term of imprisonment of more than 1 year under the laws of the United States, any State, or a foreign government.

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

"(3) REMOVAL.—The term 'removal' includes any denial of admission, exclusion, deportation, or removal, or any agreement by which an alien stipulates or agrees to exclusion, deportation, or removal.

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

SEC. 3706. PENALTIES RELATED TO REMOVAL.

(a) Penalties Relating to Vessels and Aircraft.—Section 243(c) (8 U.S.C. 1253(c)) is amended—

(1) by striking "Attorney General" each place such term appears and inserting "Secretary of Homeland Security"; and

(2) by striking "Commissioner" each place such term appears and inserting "Secretary of Homeland Security"; and

(3) in paragraph (1)—

(A) in subparagraph (A), by striking "$2,000" and inserting "$5,000";

(B) in subparagraph (B), by striking "$5,000" and inserting "$10,000";

(C) by amending ~~paragraph (1)~~ **subparagraph** (C) to read as follows:

"(C) COMPROMISE.—The Secretary of Homeland Security, in the Secretary's unreviewable discretion and upon the receipt of a written request, may mitigate the monetary penalties required under this subsection for each alien stowaway to an amount equal to not less than $2,000, upon such terms that the Secretary determines to be appropriate."; and

(D) by inserting at the end the following:

"(D) EXCEPTION.—A person, acting without compensation or the expectation of compensation, is not subject to penalties under this paragraph if the person is—

"(i) providing, or attempting to provide, an alien with humanitarian assistance, including emergency medical care or food or water; or

"(ii) transporting the alien to a location where such humanitarian assistance can be rendered without compensation or the expectation of compensation.".

SEC. 3707. REFORM OF PASSPORT, VISA, AND IMMIGRATION FRAUD OFFENSES.

(a) Trafficking in Passports.—Section 1541 of title 18, United States Code, is amended to read as follows:

"1541. Trafficking in passports

"(a) Multiple Passports.—Subject to subsection (b), any person who, during any period of 3 years or less, knowingly—

"(1) and without lawful authority produces, issues, or transfers 3 or more passports;

"(2) forges, counterfeits, alters, or falsely makes 3 or more passports;

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

"(4) completes, mails, prepares, presents, signs, or submits 3 or more applications for a

United States passport, knowing the applications to contain any materially false statement or representation,

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

"(b) Use in a Terrorism Offense.—Any person who commits an offense described in subsection (a) to facilitate an act of international terrorism (as defined in section 2331) shall be fined under this title, imprisoned not more than 25 years, or both.

"(c) Passport Materials.—Any person who knowingly and without lawful authority produces, buys, sells, possesses, or uses any official material (or counterfeit of any official material) used to make 10 or more passports, including any distinctive paper, seal, hologram, image, text, symbol, stamp, engraving, or plate, shall be fined under this title, imprisoned not more than 20 years, or both.".

(b) False Statement in an Application for a Passports.—Section 1542 of title 18, United States Code, is amended to read as follows:

"1542. False statement in an application for a passport

"(a) In General.—Any person who knowingly makes any material false statement or representation in an application for a United States passport, or mails, prepares, presents, or signs an application for a United States passport knowing the application to contain any material false statement or representation, shall be fined under this title, imprisoned not more than 25 years (if the offense was committed to facilitate an act of international terrorism (as defined in section 2331 of this title)), 20 years (if the offense was committed to facilitate a drug trafficking crime (as defined in section 929(a) of this title)), or 15 years (in the case of any other offense) or both.

"(b) Venue.—

"(1) IN GENERAL.—An offense under subsection (a) may be prosecuted in any district—

"(A) in which the false statement or representation was made or the application for a United States passport was prepared or signed; or

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

"(2) OFFENSES OUTSIDE THE UNITED STATES.—An offense under subsection (a) involving an application prepared and adjudicated outside the United States may be prosecuted in the district in which the resultant passport was or would have been produced.

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

(c) Misuse of a Passport.—Section 1544 of title 18, United States Code, is amended to read as follows:

"1544. Misuse of a passport

"Any person who knowingly—

"(1) misuses for their own purposes any passport issued or designed for the use of another;

"(2) uses any passport in violation of the laws, regulations, or rules governing the

issuance and use of the passport;

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

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

shall be fined under this title, imprisoned not more than 25 years (if the offense was committed to facilitate an act of international terrorism (as defined in section 2331 of this title)), 20 years (if the offense was committed to facilitate a drug trafficking crime (as defined in section 929(a) of this title)) or 15 years (in the case of any other offense), or both.".

(d) Schemes to Provide Fraudulent Immigration Services.—Section 1545 of title 18, United States Code, is amended to read as follows:

"1545. Schemes to provide fraudulent immigration services

"(a) In General.—Any person who knowingly executes a scheme or artifice, in connection with any matter that is authorized by or arises under any Federal immigration law or any matter the offender claims or represents is authorized by or arises under any Federal immigration law, to—

"(1) defraud any person; or

"(2) obtain or receive money or anything else of value from any person by means of false or fraudulent pretenses, representations, or promises,

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

"(b) Misrepresentation.—Any person who knowingly and falsely represents that such person is an attorney or an accredited representative (as that term is defined in section 1292.1 of title 8, Code of Federal Regulations (or any successor regulation)) in any matter arising under any Federal immigration law shall be fined under this title, imprisoned not more than 15 years, or both.".

(e) Immigration and Visa Fraud.—Section 1546 of title 18, United States Code, is amended—

(1) by amending the section heading to read as follows:

"1546. Immigration and visa fraud";

and

(2) by striking subsections (b) and (c) and inserting the following:

"(b) Trafficking.—Any person who, during any period of 3 years or less, knowingly—

"(1) and without lawful authority produces, issues, or transfers 3 or more immigration documents;

"(2) forges, counterfeits, alters, or falsely makes 3 or more immigration documents;

"(3) secures, possesses, uses, buys, sells, or distributes 3 or more immigration documents, knowing the immigration documents to be forged, counterfeited, altered, stolen, falsely

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

"(4) completes, mails, prepares, presents, signs, or submits 3 or more immigration documents knowing the documents to contain any materially false statement or representation,

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

"(c) Immigration Document Materials.—Any person who knowingly and without lawful authority produces, buys, sells, possesses, or uses any official material (or counterfeit of any official material) used to make 10 or more immigration documents, including any distinctive paper, seal, hologram, image, text, symbol, stamp, engraving, or plate, shall be fined under this title, imprisoned not more than 20 years, or both.".

(f) Alternative Imprisonment Maximum for Certain Offenses.—Section 1547 of title 18, United States Code, is amended—

(1) in the matter preceding paragraph (1), by striking "(other than an offense under section 1545)";

(2) in paragraph (1), by striking "15" and inserting "20"; and

(3) in paragraph (2), by striking "20" and inserting "25".

(g) Authorized Law Enforcement Activities.—Chapter 75 of title 18, United States Code, is amended by adding after section 1547 the following:

"1548. Authorized law enforcement activities

"Nothing in this chapter may be construed to prohibit—

"(1) any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or a political subdivision of a State, or an intelligence agency of the United States; or

"(2) any activity authorized under title V of the Organized Crime Control Act of 1970 (Public Law 91–452; 84 Stat. 933).".

(h) Table of Sections Amendment.—The table of sections for chapter 75 of title 18, United States Code, is amended to read as follows:

"Sec.

"1541. Trafficking in passports.

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

"1543. Forgery or false use of a passport.

"1544. Misuse of a passport.

"1545. Schemes to provide fraudulent immigration services.

"1546. Immigration and visa fraud.

"1547. Alternative imprisonment maximum for certain offenses.

"1548. Authorized law enforcement activities.".

SEC. 3708. COMBATING SCHEMES TO DEFRAUD ALIENS.

(a) Regulations, Forms, and Procedures.—The Secretary and the Attorney General, for matters within their respective jurisdictions arising under the immigration laws, shall promulgate appropriate regulations, forms, and procedures defining the circumstances in which—

(1) persons submitting applications, petitions, motions, or other written materials relating to immigration benefits or relief from removal under the immigration laws will be required to identify who (other than immediate family members) assisted them in preparing or translating the immigration submissions; and

(2) any person or persons who received compensation (other than a nominal fee for copying, mailing, or similar services) in connection with the preparation, completion, or submission of such materials will be required to sign the form as a preparer and provide identifying information.

(b) Civil Injunctions Against Immigration Service Provider.—The Attorney General may commence a civil action in the name of the United States to enjoin any immigration service provider from further engaging in any fraudulent conduct that substantially interferes with the proper administration of the immigration laws or who willfully misrepresents such provider's legal authority to provide representation before the Department of Justice or Department.

(c) Definitions.—In this section:

(1) IMMIGRATION LAWS.—The term "immigration laws" has the meaning given that term in section 101(a)(17) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(17)).

(2) IMMIGRATION SERVICE PROVIDER.—The term "immigration service provider" means any individual or entity (other than an attorney or individual otherwise authorized to provide representation in immigration proceedings as provided in Federal regulation) who, for a fee or other compensation, provides any assistance or representation to aliens in relation to any filing or proceeding relating to the alien which arises, or which the provider claims to arise, under the immigration laws, executive order, or presidential proclamation.

SEC. 3709. INADMISSIBILITY AND REMOVAL FOR PASSPORT AND IMMIGRATION FRAUD OFFENSES.

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

(1) in subclause (I), by striking ", or" at the end and inserting a semicolon;

(2) in subclause (II), by striking the comma at the end and inserting "; or"; and

(3) by inserting after subclause (II) the following:

"(III) a violation of section 1541, 1545, and subsection (b) of section 1546 of title 18, United States Code,".

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

~~"(ii)~~**"(iii) of** a violation of section 1541, 1545, and subsection (b) of section

1546 of title 18, United States Code,".

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

SEC. 3710. DIRECTIVES RELATED TO PASSPORT AND DOCUMENT FRAUD.

(a) Directive to the United States Sentencing Commission.—

(1) IN GENERAL.—Pursuant to the authority under section 994 of title 28, United States Code, the United States Sentencing Commission shall promulgate or amend the sentencing guidelines, policy statements, and official commentaries, if appropriate, related to passport fraud offenses, including the offenses described in chapter 75 of title 18, United States Code, as amended by section 3407, to reflect the serious nature of such offenses.

(2) REPORT.—Not later than 1 year after the date of the enactment of this Act, the United States Sentencing Commission shall submit a report on the implementation of this subsection to—

(A) the Committee on the Judiciary of the Senate; and

(B) the Committee on the Judiciary of the House of Representatives.

(b) Protection for Legitimate Refugees and Asylum Seekers.—

(1) IN GENERAL.—

(A) REQUIREMENT FOR GUIDELINES.—The Attorney General, in consultation with the Secretary, shall develop binding prosecution guidelines for Federal prosecutors to ensure that each prosecution of an alien seeking entry into the United States by fraud is consistent with the United States treaty obligations under Article 31(1) of the Convention Relating to the Status of Refugees, done at Geneva July 28, 1951 (as made applicable by the Protocol Relating to the Status of Refugees, done at New York January 31, 1967 (19 UST 6223)).

(B) NO PRIVATE RIGHT OF ACTION.—The guidelines developed pursuant to subparagraph (A), and any internal office procedures related to such guidelines—

(i) are intended solely for the guidance of attorneys of the United States; and

(ii) are not intended to, do not, and may not be relied upon to, create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter.

(2) PROTECTION OF VULNERABLE PERSONS.—A person described in paragraph (3) may not be prosecuted under chapter 75 of title 18, United States Code, or under section 275 or 276 of the Immigration and Nationality Act (8 U.S.C. 1325 and 1326), in connection with the person's entry or attempted entry into the United States until after the date on which the person's application for such protection, classification, or status has been adjudicated and denied in accordance with the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

(3) PERSONS SEEKING PROTECTION, CLASSIFICATION, OR STATUS.—A person described in

this paragraph is a person who—

(A) is seeking protection, classification, or status; and

(B)(i) has filed an application for asylum under section 208 of the Immigration and Nationality Act (8 U.S.C. 1158), withholding of removal under section 241(b)(3) of such Act (8 U.S.C. 1231(b)(3)), or relief under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, done at New York, December 10, 1994, pursuant to title 8, Code of Federal Regulations;

(ii) indicates immediately after apprehension, that he or she intends to apply for such asylum, withholding of removal, or relief and promptly files the appropriate application;

(iii) has been referred for a credible fear interview, a reasonable fear interview, or an asylum-only hearing under section 235 of the Immigration and Nationality Act (8 U.S.C. 1225) or **part 208 of** title 8, Code of Federal Regulations; or

(iv) has filed an application for classification or status under—

(I) subparagraph (T) or (U) of paragraph (15), paragraph (27)(J), or paragraph (51) of section 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)); or

(II) section 216(c)(4)(C) or 240A(b)(2)~~,~~ of such Act (8 U.S.C. 1186a(c)(4)(C) and 1229b(b)(2)).

SEC. 3711. INADMISSIBLE ALIENS.

(a) Deterring Aliens Ordered Removed From Remaining in the United States Unlawfully.—Section 212(a)(9)(A) (8 U.S.C. 1182(a)(9)(A)) is amended—

(1) in clause (i), by striking “seeks admission within 5 years of the date of such removal (or within 20 years” and inserting “seeks admission not later than 5 years after the date of the alien’s removal (or not later than 20 years after the alien’s removal”; and

(2) in clause (ii), by striking “seeks admission within 10 years of the date of such alien’s departure or removal (or within 20 years of” and inserting “seeks admission not later than 10 years after the date of the alien’s departure or removal (or not later than 20 years after”.

(b) Biometric Screening.—Section 212 (8 U.S.C. 1182) is amended—

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

“(C) WITHHOLDING INFORMATION.—Except as provided in subsection (d)(2), any alien who willfully, through his or her own fault, refuses to comply with a lawful request for biometric information is inadmissible.”; and

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

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

(c) Precluding Admissibility of Aliens Convicted of Serious Criminal Offenses and Domestic Violence, Stalking, Child Abuse and Violation of Protection Orders.—

(1) INADMISSIBILITY ON CRIMINAL AND RELATED GROUNDS; WAIVERS.—Section 212 (8 U.S.C. 1182), as amended by section 3302, is further amended—

(A) in subsection (a)(2), as amended by sections 3401 and 3402, is further amended by inserting after subparagraph (J) the following:

"(K) CRIMES OF DOMESTIC VIOLENCE, STALKING, OR VIOLATION OF PROTECTIVE ORDERS; CRIMES AGAINST CHILDREN.—

"(i) DOMESTIC VIOLENCE, STALKING, AND CHILD ABUSE.—

"(I) IN GENERAL.—Any alien who has been convicted of a crime of domestic violence, a crime of stalking, or a crime of child abuse, child neglect, or child abandonment, provided the alien served at least 1 year imprisonment for the crime, or provided the alien was convicted of offenses constituting more than 1 such crime, not arising out of a single scheme of criminal misconduct, is inadmissible.

"(II) CRIME OF DOMESTIC VIOLENCE DEFINED.—In this clause, the term 'crime of domestic violence' means any crime of violence (as defined in section 16 of title 18, United States Code) against a person committed by a current or former spouse of the person, by an individual with whom the person shares a child in common, by an individual who is cohabiting with or has cohabited with the person as a spouse, by an individual similarly situated to a spouse of the person under the domestic or family violence laws of the jurisdiction where the offense occurs, or by any other individual against a person who is protected from that individual's acts under the domestic or family violence laws of the United States or any State, Indian tribal government, or unit of local or foreign government.

"(ii) VIOLATORS OF PROTECTION ORDERS.—

"(I) IN GENERAL.—Any alien who at any time is enjoined under a protection order issued by a court and whom the court determines has engaged in conduct that constitutes criminal contempt of the portion of a protection order that involves protection against credible threats of violence, repeated harassment, or bodily injury to the person or persons for whom the protection order was issued, is inadmissible.

"(II) PROTECTION ORDER DEFINED.—In this clause, the term 'protection order' means any injunction issued for the purpose of preventing violent or threatening acts of domestic violence, including temporary or final orders issued by civil or criminal courts (other than support or child custody orders or provisions) whether obtained by filing an independent action or as an independent order in another proceeding.

"(iii) APPLICABILITY.—This subparagraph shall not apply to an alien who has been battered or subjected to extreme cruelty and who is not and was not the primary perpetrator of violence in the relationship, upon a determination by the Attorney General or the Secretary of Homeland Security that—

"(I) the alien was acting in self-defense;

"(II) the alien was found to have violated a protection order intended to protect the alien; or

"(III) the alien committed, was arrested for, was convicted of, or pled guilty to committing a crime that did not result in serious bodily injury.";

(B) in subsection (h)—

(i) by striking "The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I), (B), (D), and (E) of subsection (a)(2)" and inserting "The Attorney General or the Secretary of Homeland Security may waive the application of subparagraphs (A)(i)(I), (B), (D), **and** (E)~~,~~ of subsection (a)(2)"; and

(ii) by inserting "or **the** Secretary of Homeland Security" after "the Attorney General" each place that term appears.

(2) EFFECTIVE DATE.—The amendments made by this subsection shall apply to any acts that occurred on or after the date of the enactment of this Act.

SEC. 3712. ORGANIZED AND ABUSIVE HUMAN SMUGGLING ACTIVITIES.

(a) Enhanced Penalties.—

(1) IN GENERAL.—Title II (8 U.S.C. 1151 et seq.) is amended by adding at the end the following:

"SEC. 295. ORGANIZED HUMAN SMUGGLING.

"(a) Prohibited Activities.—Whoever, while acting for profit or other financial gain, knowingly directs or participates in an effort or scheme to assist or cause 5 or more persons (other than a parent, spouse or child of the offender)—

"(1) to enter, attempt to enter, or prepare to enter the United States—

"(A) by fraud, falsehood, or other corrupt means;

"(B) at any place other than a port or place of entry designated by the Secretary; or

"(C) in a manner not prescribed by the immigration laws and regulations of the United States; or

"(2) to travel by air, land, or sea toward the United States (whether directly or indirectly)—

"(A) knowing that the persons seek to enter or attempt to enter the United States without lawful authority; and

"(B) with the intent to aid or further such entry or attempted entry; or

"(3) to be transported or moved outside of the United States—

"(A) knowing that such persons are aliens in unlawful transit from ~~one~~ **1** country to another or on the high seas; and

"(B) under circumstances in which the persons are in fact seeking to enter the United States without official permission or legal authority;

shall be punished as provided in subsection (c) or (d).

"(b) Conspiracy and Attempt.—Any person who attempts or conspires to violate subsection (a) of this section shall be punished in the same manner as a person who completes a violation of such subsection.

"(c) Base Penalty.—Except as provided in subsection (d), any person who violates subsection (a) or (b) shall be fined under title 18, imprisoned for not more than 20 years, or both.

"(d) Enhanced Penalties.—Any person who violates subsection (a) or (b) shall—

"(1) in the case of a violation during and in relation to which a serious bodily injury (as defined in section 1365 of title 18) occurs to any person, be fined under title 18, imprisoned for not more than 30 years, or both;

"(2) in the case of a violation during and in relation to which the life of any person is placed in jeopardy, be fined under title 18, imprisoned for not more than 30 years, or both;

"(3) in the case of a violation involving 10 or more persons, be fined under title 18, imprisoned for not more than 30 years, or both;

"(4) in the case of a violation involving the bribery or corruption of a U.S. or foreign government official, be fined under title 18, imprisoned for not more than 30 years, or both; ~~"~~.

"(5) in the case of a violation involving robbery or extortion (as those terms are defined in paragraph (1) or (2), respectively, of section 1951(b)) be fined under title 18, imprisoned for not more than 30 years, or both;

"(6) in the case of a violation during and in relation to which any person is subjected to an involuntary sexual act (as defined in section 2246(2) of title 18), be fined under title 18, imprisoned for not more than 30 years, or both; or

"(7) in the case of a violation resulting in the death of any person, be fined under title 18, imprisoned for ~~or~~ any term of years or for life, or both.

"(e) Lawful Authority Defined.—

"(1) IN GENERAL.—In this section, the term 'lawful authority'—

"(A) means permission, authorization, or license that is expressly provided for in the immigration laws of the United States or accompanying regulations~~:~~**;** and

"(B) does not include any such authority secured by fraud or otherwise obtained in violation of law~~;~~**,** nor does it include authority sought, but not approved.

"(2) APPLICATION TO TRAVEL OR ENTRY.—No alien shall be deemed to have lawful authority to travel to or enter the United States if such travel or entry was, is, or would be in violation of law.

"(f) Effort or Scheme.—For purposes of this section, 'effort or scheme to assist or cause 5 or more persons' does not require that the 5 or more persons enter, attempt to enter, prepare to enter, or travel at the same time so long as the acts are completed within 1 year.

"SEC. 296. UNLAWFULLY HINDERING IMMIGRATION, BORDER, AND CUSTOMS CONTROLS.

"(a) Illicit Spotting.—Whoever knowingly transmits to another person the location, movement, or activities of any Federal, State, or tribal law enforcement agency with the intent to further a Federal crime relating to United States immigration, customs, controlled substances, agriculture, monetary instruments, or other border controls shall be fined under title 18, imprisoned not more than 10 years, or both.

"(b) Destruction of United States Border Controls.—Whoever knowingly and without lawful authorization destroys, alters, or damages any fence, barrier, sensor, camera, or other physical or electronic device deployed by the Federal government to control the border or a port of entry or otherwise seeks to construct, excavate, or make any structure intended to defeat, circumvent or evade any such fence, barrier, sensor camera, or other physical or electronic device deployed by the Federal government to control the border or a port of entry shall be fined under title 18, imprisoned not more than 10 years, or both, and if, at the time of the offense, the person uses or carries a firearm or who, in furtherance of any such crime, possesses a firearm, that person shall be fined under ~~Title~~ **title** 18, imprisoned not more than 20 years, or both**.**

"(c) Conspiracy and Attempt.—Any person who attempts or conspires to violate subsection (a) or (b) of this section shall be punished in the same manner as a person who completes a violation of such subsection.".

(2) TABLE OF CONTENTS AMENDMENT.—The table of contents is amended by adding after the item relating to section 294 the following:

"Sec.295.Organized human smuggling.

"Sec.296.Unlawfully hindering immigration, border, and customs controls.".

(b) Prohibiting Carrying or Use of a Firearm During and in Relation to an Alien Smuggling Crime.—Section 924(c) of title 18, United States Code, is amended—

(1) in paragraph (1)—

(A) in subparagraph (A), by inserting ", alien smuggling crime," after "crime of violence" each place that term appears; and

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

(2) by adding at the end the following:

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

(c) Statute of Limitations.—Section 3298 of title 18, United States Code, is amended by inserting ", 295, 296, or 297" after "274(a)".

SEC. 3713. PREVENTING CRIMINALS FROM RENOUNCING CITIZENSHIP DURING WARTIME.

Section 349(a) (8 U.S.C. 1481(a)**)** is amended—

(1) by striking paragraph (6) ; and

(2) redesignating paragraph (7) as paragraph (6).

SEC. 3714. DIPLOMATIC SECURITY SERVICE.

Paragraph (1) of section 37(a) of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2709(a)) is amended to read as follows:

"(1) conduct investigations concerning—

"(A) illegal passport or visa issuance or use;

"(B) identity theft or document fraud affecting or relating to the programs, functions, and authorities of the Secretary of State;

"(C) violations of chapter 77 of title 18, United States Code; and

"(D) Federal offenses committed within the special maritime and territorial jurisdiction of the United States (as defined in section 7(9) of title 18, United States Code);".

SEC. 3715. SECURE ALTERNATIVES PROGRAMS.

(a) In General.—The Secretary shall establish secure alternatives programs that incorporate case management services in each field office of the Department to ensure appearances at immigration proceedings and public safety.

(b) Contract Authority.—The Secretary shall contract with nongovernmental community based organizations to conduct screening of detainees, provide appearance assistance services, and operate community-based supervision programs. Secure alternatives shall offer a continuum of supervision mechanisms and options including community support, depending on an assessment of each individual's circumstances. The Secretary may contract with nongovernmental organizations to implement secure alternatives that maintain custody over the alien.

(c) Individualized Determinations.—In determining whether to use secure alternatives, the Secretary shall make an individualized determination, and for each individual placed on secure alternatives shall review the level of supervision on a monthly basis. Secure alternatives shall not be used when release on ~~bail~~ **bond** or recognizance is determined to be a sufficient measure to ensure appearances at immigration proceedings and public safety.

(d) Custody.—The Secretary may use secure alternatives programs to maintain custody over any alien detained under this Act except for aliens detained under section 236A of the Immigration and Nationality Act (8 U.S.C. 1226a). If an individual is not eligible for release from custody or detention, the Secretary shall consider the alien for placement in secure alternatives that maintain custody over the alien ~~to serve as detention~~, including the use of electronic ankle devices.

SEC. 3716. OVERSIGHT OF DETENTION FACILITIES.

(a) Definitions.—In this section:

(1) APPLICABLE STANDARDS.—The term "applicable standards" means the most recent version of detention standards and detention-related policies issued by the Secretary or the Director of U.S. Immigration and Customs Enforcement.

(2) DETENTION FACILITY.—The term "detention facility" means a Federal, State, or local government facility, or a privately owned and operated facility, that is used, in whole or in part, to hold individuals under the authority of the Director of U.S. Immigration and Customs Enforcement, including facilities that hold such individuals under a contract or agreement with the Director.

(b) Detention Requirements.—The Secretary shall ensure that all persons detained pursuant to the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) are treated humanely and benefit from the protections set forth in this section.

(c) Oversight Requirements.—

(1) ANNUAL INSPECTION.—All detention facilities shall be inspected by the Secretary on a regular basis, but not less than annually, for compliance with applicable detention standards issued by the Secretary and other applicable regulations.

(2) ROUTINE OVERSIGHT.—In addition to annual inspections, the Secretary shall conduct routine oversight of detention facilities, including unannounced inspections.

(3) AVAILABILITY OF RECORDS.—All detention facility contracts, memoranda of agreement, and evaluations and reviews shall be considered records for purposes of section 552(f)(2) of title 5, United States Code.

(4) CONSULTATION.—The Secretary shall seek input from nongovernmental organizations regarding their independent opinion of specific facilities.

(d) Compliance Mechanisms.—

(1) AGREEMENTS.—

(A) NEW AGREEMENTS.—Compliance with applicable standards of the Secretary and all applicable regulations, and meaningful financial penalties for failure to comply, shall be a material term in any new contract, memorandum of agreement, or any renegotiation, modification, or renewal of an existing contract or agreement, including fee negotiations, executed with detention facilities.

(B) EXISTING AGREEMENTS.—Not later than 180 days after the date of the enactment of this Act, the Secretary shall secure a modification incorporating these terms for any existing contracts or agreements that will not be renegotiated, renewed, or otherwise modified.

(C) CANCELLATION OF AGREEMENTS.—Unless the Secretary provides a reasonable extension to a specific detention facility that is negotiating in good faith, contracts or agreements with detention facilities that are not modified within 1 year of the date of the enactment of this Act will be cancelled.

(D) PROVISION OF INFORMATION.—In making modifications under this paragraph, the Secretary shall require that detention facilities provide to the Secretary all contracts, memoranda of agreement, evaluations, and reviews regarding the facility on a regular basis. The Secretary shall make these materials publicly available.

(2) FINANCIAL PENALTIES.—

(A) REQUIREMENT TO IMPOSE.—Subject to subparagraph (C), the Secretary shall impose meaningful financial penalties upon facilities that fail to comply with applicable detention standards issued by the Secretary and other applicable regulations.

(B) TIMING OF IMPOSITION.—Financial penalties imposed under subparagraph (A) shall be imposed immediately after a facility fails to achieve an adequate or the equivalent median score in any performance evaluation.

(C) WAIVER.—The requirements of subparagraph (A) may be waived if the facility corrects the noted deficiencies and receives an adequate score in not more than 90 days.

(D) MULTIPLE OFFENDERS.—In cases of persistent and substantial non-compliance, including scoring less than adequate or the equivalent median score in 2 consecutive inspections, the Secretary shall terminate contracts or agreements with such facilities within 60 days, or in the case of facilities operated by the Secretary, such facilities shall be closed within 90 days.

(e) Reporting Requirements.—

(1) OBJECTIVES.—Not later than June 30 of each year, the Secretary shall prepare and submit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report on inspection and oversight activities of detention facilities.

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

(A) a description of each detention facility found to be in noncompliance with applicable detention standards issued by the Department and other applicable regulations;

(B) a description of the actions taken by the Department to remedy any findings of noncompliance or other identified problems, including financial penalties, contract or agreement termination, or facility closure; and

(C) information regarding whether the actions described in subparagraph (B) resulted in compliance with applicable detention standards and regulations.

SEC. 3717. PROCEDURES FOR BOND HEARINGS AND FILING OF NOTICES TO APPEAR.

(a) Aliens in Custody.—Section 236 (8 U.S.C. 1226) is amended by adding at the end the following:

"(f) Procedures for Custody Hearings.—For any alien taken into custody under any provision of this Act, with the exception of minors being transferred to or in the custody of the Office of Refugee Resettlement, the following shall apply:

"(1) The Secretary of Homeland Security shall, without unnecessary delay and not later than 72 hours after the alien is taken into custody, file the Notice to Appear or other relevant charging document with the immigration court having jurisdiction over the location where

the alien was apprehended, and serve such notice on the alien.

"(2) The Secretary shall immediately determine whether the alien shall remain in custody or be released and, without unnecessary delay and not later than 72 hours after the alien was taken into custody, serve upon the alien the custody decision specifying the reasons for continued custody and the amount of bond if any.

"(3) The Attorney General shall ensure the alien has the opportunity to appear before an immigration judge for a custody determination hearing promptly after service of the Secretary's custody decision. The immigration judge may, on the Secretary's motion and upon a showing of good cause, postpone a custody ~~determination~~ **redetermination** hearing for no more than 72 hours after service of the custody decision, except that in no case shall the hearing occur more than ~~seven~~ **6** days (including weekends and holidays) after the alien was taken into custody.

"(4) The immigration judge shall advise the alien of the right to postpone the custody determination hearing and shall, on the oral or written request of the individual, postpone the custody determination hearing for a period of no more than 14 days.

"(5) Except for aliens that the immigration judge has determined are deportable ~~as described in section 236A and 236(c)~~ **under section 236(c) or certified under section 236A**, the immigration judge shall review the custody determination de novo and may **continue to** detain the alien only if the Secretary demonstrates that no conditions, including the use of alternatives to detention that maintain custody over the alien, will reasonably assure the appearance of the alien as required and the safety of any other person and the community. For aliens ~~detained under~~ **who the immigration judge has determined are deportable under section** 236(c), the immigration judge may review the custody determination if the Secretary agrees the alien is not a danger to the community and alternatives to detention exist that assure the appearance of the alien as required and the safety of any other person and the community.

"(6) In the case of any alien remaining in custody after a custody determination, the Attorney General shall provide de novo custody determination hearings before an immigration judge every 90 days so long as the alien remains in custody. ~~The~~ **An** alien may **also** obtain a de novo custody redetermination hearing **at any time** upon a showing of good cause.

"(7) The Secretary shall inform the alien of his or her rights under this paragraph at the time the alien is first taken into custody.".

(b) Stipulated Removal.—Section 240(d) (8 U.S.C. 1229a) is amended to read as follows:

"(d) Stipulated Removal.—The Attorney General shall provide by regulation for the entry by an immigration judge of an order of removal stipulated to by the alien (or the alien's representative) and the Service. An immigration judge may enter a stipulated removal order only upon a finding at an in-person hearing that the stipulation is voluntary, knowing and intelligent. A stipulated order shall constitute a conclusive determination of the alien's removability from the United States.".

SEC. 3718. SANCTIONS FOR COUNTRIES THAT DELAY OR PREVENT REPATRIATION OF THEIR NATIONALS.

Section 243(d) (8 U.S.C. 1253(d)) is amended to read as follows:

"(d) Discontinuing Granting Visas to Nationals of Countries That Deny or Delay Accepting Aliens.—Notwithstanding section 221(c), if the Secretary of Homeland Security determines, in consultation with the Secretary of State, that the government of a foreign country denies or unreasonably delays accepting aliens who are citizens, subjects, nationals, or residents of that country after the Secretary asks whether the government will accept an alien under this section, or after a determination that the alien is inadmissible under paragraph (6) or (7) of section 212(a), the Secretary of State shall order consular officers in that foreign country to discontinue granting visas, or classes of visas until the Secretary of Homeland Security notifies the Secretary of State that the country has accepted the aliens.".

SEC. 3719. GROSS VIOLATIONS OF HUMAN RIGHTS.

(a) Inadmissibility of Certain Aliens.—Section 212(a)(3)(E) ~~(iii) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(E)(iii)) is amended to read as follows:~~**(8 U.S.C. 1182(a)(3)(E)) is amended by striking clause (iii) and inserting the following:**

"(iii) COMMISSION OF ACTS OF TORTURE, EXTRAJUDICIAL KILLINGS, WAR CRIMES, OR WIDESPREAD OR SYSTEMATIC ATTACKS ON CIVILIANS.—Any alien who planned, ordered, assisted, aided and abetted, committed, or otherwise participated, including through command responsibility, in the commission of—

"(I) any act of torture (as defined in section 2340 of title 18, United States Code);

"(II) any extrajudicial killing (as defined in section 3(a) of the Torture Victim Protection Act of 1991 (28 U.S.C. 1350 note)) under color of law of any foreign nation;

"(III) a war crime (as defined in section 2441 of title 18, United States Code); or

"(IV) **any of the following acts as a part of** a widespread or systematic attack directed against a civilian population, with knowledge of the attack~~,~~**:** murder, extermination, enslavement, forcible transfer of population, arbitrary detention, rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;

~~"(V)~~ persecution on political racial, national, ethnic, cultural, religious, or gender grounds;

~~"(VI)~~ enforced disappearance of persons; or

~~"(VII)~~ other inhumane acts of a similar character intentionally causing great suffering or serious bodily or mental injury,

is ~~in admissible.".~~ **inadmissible.**

"(iv) LIMITATION.—Clause (iii) shall not apply to an alien if the Secretary of Homeland Security or the Attorney General determine that the actions giving rise to the alien's inadmissibility under such clause were committed

under duress. In determining whether the alien was subject to duress, the Secretary may consider, among relevant factors, the age of the alien at the time such actions were committed.”.

(b) Nonapplicability of Confidentiality Requirement With Respect to Visa Records.—The President may make public, without regard to the requirements under section 222(f) of the Immigration and Nationality Act (8 U.S.C. 1202(f)), with respect to confidentiality of records pertaining to the issuance or refusal of visas or permits to enter the United States, the names of aliens deemed inadmissible on the basis of section 212(a)(3)(E)(iii) of ~~the Immigration and Nationality~~ **such** Act, as amended by subsection (a).

TITLE IV—REFORMS TO NONIMMIGRANT VISA PROGRAMS

Subtitle A—Employment-based Nonimmigrant Visas

SEC. 4101. MARKET-BASED H–1B VISA LIMITS.

(a) In General.—Section 214(g) (8 U.S.C. 1184(g)) is amended—

(1) in paragraph (1)—

(A) in the matter preceding subparagraph (A), by striking “(beginning with fiscal year 1992)”; and

(B) by amending subparagraph (A) to read as follows:

“(A) under section 101(a)(15)(H)(i)(b) may not exceed—

“(i) 110,000 for the first fiscal year beginning after the date of the enactment **of** the Border Security, Economic Opportunity, and Immigration Modernization Act; and

“(ii) the number calculated under paragraph (9) for **the** succeeding fiscal year; or”;

(2) by redesignating paragraph (10) as subparagraph (D) of paragraph (9);

(3) by redesignating paragraph (9) as paragraph (10); and

(4) by inserting after paragraph (8) the following:

“(9)(A) Except as provided in subparagraphs (B) and (C), the allocation of nonimmigrant visas under section 101(a)(15)(H)(i)(b) for each fiscal year after the first fiscal year beginning after the date of the enactment of the Border Security, Economic Opportunity, and Immigration Modernization Act shall be equal to the sum of—

“(i) the allocation of such visas for the most recently completed fiscal year; and

“(ii) the product of—

“(I) the allocation of such visas for the most recently completed fiscal year; multiplied by

“(II) the High Skilled Jobs Demand Index for such fiscal year calculated under

subparagraph (C).

"(B)(i) The number of visas calculated under subparagraph (A) for any fiscal year shall not be less than 110,000 or more than 180,000.

"(ii) The number of visas calculated under subparagraph (A) for any fiscal year may not be more than 10,000 more than, or less than 10,000 less than, the allocation of such visas for the previous fiscal year.

"(C) The High Skilled Jobs Demand Index calculated under this subparagraph for a fiscal year is the percentage equal to the sum of—

"(i) \1/2\ of a fraction—

"(I) the numerator of which is the number of nonimmigrant visas under section 101(a)(15)(H)(i)(b) petitioned for during the previous fiscal year minus the numerical limitation of such visas determined under paragraph (1) for the previous fiscal year; and

"(II) the denominator of which is the numerical limitation of such visas determined under paragraph (1) for the previous fiscal year; and

"(ii) \1/2\ of a fraction—

"(I) the numerator of which is the average number of specified unemployed persons for the previous fiscal year minus the average number of specified unemployed persons for such fiscal year; and

"(II) the denominator of which is the average number of specified unemployed persons for such fiscal year.

"(D) If the actual number of visas under section 101(a)(15)(H)(i)(b) applied for during a previous fiscal year is not available at the time the Secretary determines the numerical limitation under subparagraph (C) for the following fiscal year, the Secretary may estimate such number based on a statistical extrapolation of the number of applications for such visas received at the time such estimate is made.

"(E) For purposes of subparagraph (C), the term 'specified unemployed persons' means, with respect to any fiscal year, the number of unemployed persons in the 'management, professional, and related occupations' category of the employment report released by the Bureau of Labor Statistics.".

(b) Increase in Allocation for STEM Nonimmigrants.—Section 214(g)(5)(C) (8 U.S.C. 1184(g)(5)(C)) is amended to read as follows:

"(C) has earned a master's or higher **degree**, in a field of science, technology, engineering, or math included in the Department of Education's Classification of Instructional Programs taxonomy within the summary groups of computer and information sciences and support services, engineering, mathematics and statistics, **biological and biomedical sciences,** and physical sciences, from a United States institution of higher education (as defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)) until the number of aliens who are exempted from such numerical limitation during such year exceed 25,000.".

(c) Publication.—

(1) DATA SUMMARIZING PETITIONS.—The Secretary shall timely upload to a public website data that summarizes the adjudication of nonimmigrant petitions under section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(i)(b)) during each fiscal year.

(2) ANNUAL NUMERICAL LIMITATION.—As soon as practicable and no later than March 2 of each fiscal year, the Secretary shall publish in the Federal Register the numerical limitation determined under section 214(g)(1)(A) for such fiscal year.

(d) Effective Date and Application.—The amendments made by subsection (a) shall take effect on the first day of the first fiscal year beginning after the date of the enactment of this Act and apply to applications for nonimmigrant visas under section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(i)(b)) for such fiscal year.

SEC. 4102. EMPLOYMENT AUTHORIZATION FOR DEPENDENTS OF EMPLOYMENT-BASED NONIMMIGRANTS.

Section 214(c) (8 U.S.C. 1184(c)) is amended—

(1) by striking “Attorney General” each place such term appears and inserting “Secretary of Homeland Security”; and

(2) in paragraph (2), by amending subparagraph (E) to read as follows:

“(E)(i) In the case of an alien spouse admitted under section 101(a)(15)(L), who is accompanying or following to join a principal alien admitted under such section, the Secretary of Homeland Security shall—

“(I) authorize the alien spouse to engage in employment in the United States; and

“(II) provide the spouse with an ‘employment authorized’ endorsement or other appropriate work permit.

“(ii) In the case of an alien spouse admitted under section 101(a)(15)(H)(i)**(b)**, who is accompanying or following to join a principal alien admitted under such section, the Secretary of Homeland Security shall—

“(I) authorize the alien spouse to engage in employment in the United States only if such spouse is a national of a foreign country that permits reciprocal employment; and

“(II) provide such a spouse with an ‘employment authorized’ endorsement or other appropriate work permit, if appropriate.

“(iii)(I) In clause (ii), the term ‘foreign country that permits reciprocal employment’ means a foreign country that permits a spouse who is a national of the United States and is accompanying or following to join the employment-based nonimmigrant husband or wife of such spouse to be employed in such foreign country based on that status.

“(II) In subclause (I), the term ‘employment-based nonimmigrant’ means an individual who is admitted to a foreign country to perform employment similar to the employment described in

section 101(a)(15)(H)(i)(b).”.

SEC. 4103. ELIMINATING IMPEDIMENTS TO WORKER MOBILITY.

(a) Deference to Prior Approvals.—Section 214(c) (8 U.S.C. 1184(c)), as amended by section 4102, is further amended by adding at the end the following:

“(15) Subject to paragraph (2)(D) and subsection (g) and section 104(c) and subsections (a) and (b) of section 106 of the American Competitiveness in the Twenty-first Century Act of 2000 (Public Law 106–313; 8 U.S.C. 1184 note), the Secretary of Homeland Security shall give deference to a prior approval of a petition in reviewing a petition to extend the status of a nonimmigrant admitted under subparagraph (H)(i)(b) or (L) of section 101(a)(15) if the petition involves the same alien and petitioner unless the Secretary determines that—

“(A) there was a material error with regard to the previous petition approval;

“(B) a substantial change in circumstances has taken place;

“(C) new material information has been discovered that adversely impacts the eligibility of the employer or the nonimmigrant; or

“(D) in the Secretary’s discretion, such extension should not be approved.”.

(b) Effect of Employment Termination.—Section 214(n) (8 U.S.C. 1184(n)) is amended by adding at the end the following:

“(3) A nonimmigrant admitted under section 101(a)(15)(H)(i)(b) whose employment relationship terminates before the expiration of the nonimmigrant’s period of authorized admission shall be deemed to have retained such legal status throughout the entire 60-day period beginning on the date such employment is terminated. A nonimmigrant who files a petition to extend, change, or adjust their status at any point during such period shall be deemed to have lawful status under section 101(a)(15)(H)(i)(b) while that petition is pending.”.

(c) Visa Revalidation.—Section 222(c) (8 U.S.C. 1202(c)) is amended—

(1) by inserting “(1)” before “Every alien”; and

(2) by adding at the end the following:

“(2) The Secretary of State may, at the Secretary’s discretion, renew in the United States the visa of an alien admitted under subparagraph (A), (E), (G), (H), (I), (L), (N), (O), (P), (R), or (W) **of** section 101(a)(15) if the alien has remained eligible for such status and qualifies for a waiver of interview as provided for in subsection (h)(1)(D).”.

(d) Interview Waivers for Low Risk Visa Applicants.—Section 222(h)(1) (8 U.S.C. 1202(h)(1)) is amended—

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

(2) in subparagraph (C)(ii), by striking “and” at the end and inserting “or”; and

(3) by adding at the end the following:

“(D) by the Secretary of State, in consultation with the Secretary of Homeland Security, for such aliens or classes of aliens—

"(i) that the Secretary determines generally represent a low security risk;

"(ii) for which an in-person interview would not add material benefit to the adjudication process;

"(iii) unless the Secretary of State, after a review of all standard database and biometric checks, the visa application, and other supporting documents, determines that an interview is unlikely to reveal derogatory information; and

"(iv) except that in every case, the Secretary of State retains the right to require an applicant to appear for an interview; and".

SEC. 4104. STEM EDUCATION AND TRAINING.

(a) Fee.—Section 212(a)(5)(A) (8 U.S.C. 1182(a)(5)(A)) is amended by adding at the end the following:

"(v) FEE.—An employer shall submit, along with an application for a certification under this subparagraph, a fee of $500 which shall be deposited in the STEM Education and Training Account established by section 286(s).".

(b) Use of Fee.—Section 286(s) (8 U.S.C. 1356(s)) is amended to read as follows:

"(s) STEM Education and Training Account.—

"(1) IN GENERAL.—There is established in the general fund of the Treasury a separate account, which shall be known as the 'STEM Education and Training Account'. Notwithstanding any other section of this title, there shall be deposited as offsetting receipts into the account all fees collected under section 212(a)(5)(A)(v).

"(2) LOW-INCOME STEM SCHOLARSHIP ~~PROGRAM.—SIXTY~~ **PROGRAM.—**

"(A) IN GENERAL.—Fifty-two percent of the amounts deposited into the STEM Education and Training Account shall remain available to the Director of the National Science Foundation until expended for scholarships described in section 414(d) of the American Competitiveness and Workforce Improvement Act of 1998 (42 U.S.C. 1869c) for low-income students enrolled in a program of study leading to a degree in science, technology, engineering, or mathematics.

"(B) STEM EDUCATION FOR UNDERREPRESENTED.—The Director shall work in consultation with, or direct scholarship funds through, national non-profit organizations that primarily focus on science, technology, engineering, or mathematics education for underrepresented groups such as women and minorities.

"(C) LOAN FORGIVENESS.—The Director may expend funds from the Account for purposes of loan forgiveness or repayment of student loans which led to a low-income student obtaining a degree in science, technology, engineering, mathematics, or other high demand fields.

"(3) NATIONAL SCIENCE FOUNDATION ~~COMPETITIVE~~ GRANT PROGRAM FOR K–12 SCIENCE, TECHNOLOGY, ENGINEERING AND MATHEMATICS EDUCATION.—

"(A) IN GENERAL.—Fifteen percent of the amounts deposited into the STEM

Education and Training Account shall remain available to the Director of the National Science Foundation until expended to carry out a direct or matching grant program to support improvement in K–12 education, including through private-public partnerships. **Such grants shall include formula based grants that target lower income populations with a focus on reaching women and minorities.**

"(B) TYPES OF PROGRAMS COVERED.—The Director shall award grants to such programs, including those which support the development and implementation of standards-based instructional materials models and related student assessments that enable K–12 students to acquire an understanding of science, technology, engineering, and mathematics, as well as to develop critical thinking skills; provide systemic improvement in training K–12 teachers and education for students in science, technology, engineering, and mathematics, including by supporting efforts to promote gender-equality among students receiving such instruction; support the professional development of K–12 science, technology, engineering and mathematics teachers in the use of technology in the classroom; stimulate system-wide K–12 reform of science, technology, engineering, and mathematics in **urban,** rural, **and** economically disadvantaged regions of the United States; provide externships and other opportunities for students to increase their appreciation and understanding of science, technology, engineering, and mathematics (including summer institutes sponsored by an institution of higher education for students in grades 7–12 that provide instruction in such fields); involve partnerships of industry, educational institutions, and **national or regional** community **based** organizations ~~to address~~ **with demonstrated experience addressing** the educational needs of disadvantaged communities; provide college preparatory support to expose and prepare students for careers in science, technology, engineering, and mathematics; and provide for carrying out systemic reform activities under section 3(a)(1) of the National Science Foundation Act of 1950 (42 U.S.C. 1862(a)(1)).

"(4) STEM CAPACITY BUILDING AT MINORITY-SERVING INSTITUTIONS.—

"(A) IN ~~GENERAL.—TWELVE~~ **GENERAL.—Twenty** percent of the amounts deposited into the STEM Education and Training Account shall remain available to the Director of the National Science Foundation until expended to establish or expand programs to award grants ~~on a competitive, merit-reviewed basis~~ **to institutions as described in subparagraph (C)** to enhance the quality of undergraduate science, technology, engineering, and mathematics education at ~~minority-serving~~ institutions ~~of higher education~~ **as described in subparagraph (C)** and to increase the retention and graduation rates of students pursuing degrees in such fields at such institutions.

"(B) TYPES OF PROGRAMS COVERED.—Grants awarded under this paragraph shall be awarded to—

"(i) minority-serving institutions of higher education for—

"(I) activities to improve courses and curriculum in science, technology, engineering, and mathematics;

"(II) efforts to promote gender equality among students enrolled in such courses;

"(III) faculty development;

"(IV) stipends for undergraduate students participating in research; and

"(V) other activities consistent with subparagraph (A), as determined by the Director; and

"(ii) to other institutions of higher education to partner with the institutions described in clause (i) for—

"(I) faculty and student development and exchange;

"(II) research infrastructure development;

"(III) joint research projects; and

"(IV) identification and development of minority and low-income candidates for graduate studies in science, technology, engineering and mathematics degree programs.

"(C) INSTITUTIONS INCLUDED.—In this paragraph, the term ~~'minority-serving institutions of higher education'~~ **'institutions'** shall include—

"(i) colleges eligible to receive funds under the Act of August 30, 1890 (7 U.S.C. 321–326a and 328), including Tuskegee University;

"(ii) 1994 Institutions, as defined in section 532 of the Equity in Educational Land-Grant Status Act of 1994 (7 U.S.C. 301 note); and

"(iii) Hispanic-serving institutions, as defined in section 502(a)(5) of the Higher Education Act of 1965 (20 U.S.C. 1101a(a)(5)).

"(D) GRANTING OF BONDING AUTHORITY.—A recipient of a grant awarded under this subsection is authorized to utilize such funds for the issuance of bonds to fund research infrastructure development

"(5) STEM JOB TRAINING.—Ten percent of amounts deposited into the STEM Education and Training Account shall remain available to the Secretary of Labor until expended for—

"(A) demonstration programs and projects described in section 414(c) of the American Competitiveness and Workforce Improvement Act of 1998 **(29 U.S.C. 2916a(c))**; and

"(B) training programs in the fields of science, technology, engineering, and mathematics for persons who have served honorably in the Armed Forces of the United States and have retired or are retiring from such service.

"(6) USE OF FEES FOR DUTIES RELATING TO PETITIONS.—One and one-half percent of the amounts deposited into the STEM Education and Training Account shall remain available to the Secretary of Homeland Security until expended to carry out duties under paragraphs (1) (E) or (F) of section 204(a) (related to petitions for immigrants described in section 203(b)) and under paragraphs (1) and (9) of section 214(c) (related to petitions made for nonimmigrants described in section 101(a)(15)(H)(i)(b)).

"(7) USE OF FEES FOR APPLICATION PROCESSING AND ENFORCEMENT.—One and one-half percent of the amounts deposited into the STEM Education and Training Account shall

remain available to the Secretary of Labor until expended for decreasing the processing time for applications under section 212(a)(5)(A) and section 212(n)(1).”.

SEC. 4105. H–1B AND L VISA FEES.

Section 281 (8 U.S.C. 1351) is amended—

(1) by striking “The fees” and inserting the following:

“(a) In General.—The fees”;

(2) by striking “: Provided, That nonimmigrant visas” and inserting the following: ".

“(b) United Nations Visitors.—Nonimmigrant visas”;

(3) by striking “Subject to” and inserting the following:

“(c) Fee Waivers or Reductions.—Subject to”; and

(4) by adding at the end the following:

“(d) H–1B and L Visa Fees.—In addition to the fees authorized under subsection (a), the Secretary of Homeland Security shall collect, from each employer (except for nonprofit research institutions and nonprofit educational institutions) filing a petition to hire nonimmigrants described in subparagraph (H)(i)(B) or (L) of section 101(a)(15), a fee in an amount equal to—

“(1) $1,250 for each such petition filed by any employer with not more than 25 full-time equivalent employees in the United States; and

“(2) $2,500 for each such petition filed by any employer with more than 25 such employees.”.

Subtitle B—H–1B Visa Fraud and Abuse Protections

CHAPTER 1—H–1B EMPLOYER APPLICATION REQUIREMENTS

SEC. 4211. MODIFICATION OF APPLICATION REQUIREMENTS.

(a) General Application Requirements.—

(1) WAGE RATES.—

(A) IN GENERAL.—Section 212(n)(1)(A) (8 U.S.C. 1182(n)(1)(A)) is amended—

(i) clause (i)—

(I) in the matter preceding subclause (I), by inserting “if the employer is not an H–1B-dependent employer,” before “is offering”;

(II) in subclause (I), by striking “question, or” and inserting “question; or”;

(III) in subclause (II), by striking "employment," and inserting "employment;" and

(IV) in the undesignated material following subclause (II), by striking "application, and" and inserting "application;"; and

(ii) by striking clause (ii) and inserting the following:

"(ii) if the employer is an H–1B-dependent employer, is offering and will offer to H–1B nonimmigrants, during the period of authorized employment for each H–1B nonimmigrant, wages that are not less than the level 2 wages set out in subsection (p); and

"(iii) will provide working conditions for H–1B nonimmigrants that will not adversely affect the working conditions of other workers similarly employed.".

(2) STRENGTHENING THE PREVAILING WAGE SYSTEM.—

(A) IN GENERAL.—Section 212(p) (8 U.S.C. 1182(p)) is amended to read as follows:

"(p) Computation of Prevailing Wage Level.—

"(1) IN GENERAL.—

"(A) SURVEYS.—For employers of nonimmigrants admitted pursuant to section 101(a)(15)(H)(i)(b), the Secretary of Labor shall make available to employers a governmental survey to determine the prevailing wage for each occupational classification by metropolitan statistical area in the United States. Such survey, or other survey approved by the Secretary of Labor, shall provide 3 levels of wages commensurate with experience, education, and level of supervision. Such wage levels shall be determined as follows:

"(i) The first level shall be the mean of the lowest two-thirds of wages surveyed, but in no case less than 80 percent of the mean of the wages surveyed.

"(ii) The second level shall be the mean of wages surveyed.

"(iii) The third level shall be the mean of the highest two-thirds of wages surveyed.

"(B) EDUCATIONAL, NONPROFIT, RESEARCH, AND GOVERNMENTAL ENTITIES.—In computing the prevailing wage level for an occupational classification in an area of employment for purposes of section 203(b)(1)(D) and subsections (a)(5)(A), (n)(1)(A)(i)(II), and (t)(1)(A)(i)(II) of this section in the case of an employee of—

"(i) an institution of higher education, or a related or affiliated nonprofit entity; or

"(ii) a nonprofit research organization or a governmental research organization;

the prevailing wage level shall only take into account employees at such institutions and organizations in the area of employment.

"(2) PAYMENT OF PREVAILING WAGE.—The prevailing wage level required to be paid pursuant to section 203(b)(1)(D) and subsections (a)(5)(A), (n)(1)(A)(i)(II), and (t)(1)(A)(i)(II) of this section shall be 100 percent of the wage level determined pursuant to

those sections.

"(3) PROFESSIONAL ATHLETE.—With respect to a professional athlete (as defined in subsection (a)(5)(A)(iii)(II)) when the job opportunity is covered by professional sports league rules or regulations, the wage set forth in those rules or regulations shall be considered as not adversely affecting the wages of United States workers similarly employed and be considered the prevailing wage.

"(4) WAGES FOR H–2B EMPLOYEES.—

"(A) IN GENERAL.—The wages paid to H–2B nonimmigrants employed by the employer will be the greater of—

"(i) the actual wage level paid by the employer to other employees with similar experience and qualifications for such position; or

"(ii) the prevailing wage level for the occupational classification of the position in the geographic area of the employment, based on the best information available as of the time of filing the application.

"(B) BEST INFORMATION AVAILABLE.—In subparagraph (A), the term 'best information available', with respect to determining the prevailing wage for a position, means—

"(i) a controlling collective bargaining agreement or Federal contract wage, if applicable;

"(ii) if there is no applicable wage under clause (i), the wage level commensurate with the experience, training, and supervision required for the job based on Bureau of Labor Statistics data; or

"(iii) if the data referred to in clause (ii) is not available, a legitimate and recent private survey of the wages paid for such positions in the metropolitan statistical area.".

(3) WAGES FOR EDUCATIONAL, NONPROFIT, RESEARCH, AND GOVERNMENTAL ENTITIES.—Section 212 ~~is~~ **(8 U.S.C. 1182), as amended by sections 2312 and 2313, is further** amended by adding at the end the following:

~~"(v)~~**"(x)** Determination of Prevailing Wage.—In the case of a nonprofit institution of higher education (as defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a))**)**, a related or affiliated nonprofit entity, a nonprofit research organization, or a Governmental research organization, the Secretary of Labor shall determine such wage levels as follows:

"(1) If the Secretary of Labor uses, or makes available to employers, a governmental survey to determine the prevailing wage, such survey shall provide at least 4 levels of wages commensurate with experience, education, and the level of supervision.

"(2) If an existing government survey has only 2 levels, 2 intermediate levels may be created by dividing by 3, the difference between the 2 levels offered, adding the quotient thus obtained to the first level and subtracting that quotient from the second level .

"(3) For institutions of higher education, only teaching positions and research positions

may be paid using this special educational wage ~~level.”.~~

level.

“(4) In computing the prevailing wage level for an occupational classification in an area of employment for purposes of subsections (a)(5)(A), (n)(1)(A)(i)(II), and (t)(1)(A)(i)(II) and section 203(b)(1)(D) for an employee of an institution of higher education, or a related or affiliated nonprofit entity or a nonprofit research organization or a governmental research organization, the prevailing wage level shall only take into account employees at such institutions and organizations in the area of employment.”.

(b) Internet Posting Requirement.—Section 212(n)(1)(C) (8 U.S.C. 1182(n)(1)(C)) is amended—

(1) by redesignating clause (ii) as subclause (II);

(2) by striking “(i) has provided” and inserting the following:

“(ii)(I) has provided”; and

(3) by striking “sought, or” and inserting “sought; or”;

(4) by inserting before clause (ii), as redesignated by paragraph (2), the following:

“(i) has advertised on the Internet website maintained by the Secretary of Labor for the purpose of such advertising, for at least 30 calendar days, a detailed description of each position for which a nonimmigrant is sought that includes a description of—

“(I) the wage ranges and other terms and conditions of employment;

“(II) the minimum education, training, experience, and other requirements for the position; and

“(III) the process for applying for the position; and”.

(c) Application of Requirements to All Employers.—

(1) NONDISPLACEMENT.—Section 212(n)(1)(E) (8 U.S.C. 1182(n)(1)(E)) is amended to read as follows:

“(E)(i)(I) Subject to subclause (II), in the case of an application filed by an employer that is not an H–1B-dependent employer, the employer did not displace and will not displace a United States worker (as defined in paragraph (4)) employed by the employer within the period beginning 90 days before and ending 90 days after the date of filing of any visa petition supported by the application.

“(II) An employer who is not an H–1B-dependent employer shall not be subject to clause (i) if the number of United States workers employed by such employer in the same job zone as the H–1B nonimmigrant has not decreased during the 1-year period ending on the date of the labor condition application filed by the employer.

“(ii)(I) In the case of an application filed by an H–1B-dependent employer, the employer did not displace and will not displace a United States worker (as defined in paragraph (4)) employed by the employer within the period beginning 180 days before and ending 180 days after the date of the filing of any visa petition supported by the application.

"(II) An application described in this clause is an application filed on or after the date final regulations are first promulgated to carry out this subparagraph, and before by an H–1B-dependent employer (as defined in paragraph (3)) or by an employer that has been found, on or after the date of the enactment of the American Competitiveness and Workforce Improvement Act of 1998, under paragraph (2)(C) or (5) to have committed a willful failure or misrepresentation during the 5-year period preceding the filing of the application.

"(iii) In this subparagraph, the term' job zone' means a zone assigned to an occupation by—

"(I) the Occupational Information Network Database (O*NET) on the date of the enactment of this Act; or

"(II) such Database or a similar successor database, as designated by the Secretary of Labor, after the date of the enactment of this Act.".

(2) RECRUITMENT.—Section 212(n)(1)(G) (8 U.S.C. 1182(n)(1)(G)) is amended to read as follows:

"(G) An employer, prior to filing the application—

"(i) has advertised the job on an Internet website maintained by the Secretary of Labor for the purpose of such advertising;

"(ii) has offered the job to any United States worker who applies and is equally or better qualified for the job for which the nonimmigrant or nonimmigrants is or are sought; and

"(iii) if the employer is an H–1B-dependent employer, has taken good faith steps to recruit, in the United States using procedures that meet industry-wide standards and offering compensation that is at least as great as that required to be offered to H–1B nonimmigrants under subparagraph (A), United States workers for the job for which the nonimmigrant or nonimmigrants is or are sought.".

(d) Outplacement.—Section 212(n)(1)(F) (8 U.S.C. 1182(n)(1)(F)) is amended to read as follows:

"(F)(i) An H-1B-dependent employer may not place, outsource, lease, or otherwise contract for the services or placement of an H–1B nonimmigrant employee.

"(ii) An employer that is not an H-1B-dependent employer and not described in paragraph (3)(A)(i) may not place, outsource, lease, or otherwise contract for the services or placement of an H–1B nonimmigrant employee unless the employer pays a fee of $500 **per outplaced worker**.

"(iii) A fee collected under clause (ii) shall be deposited in the Comprehensive Immigration Reform Trust Fund established under section 6 of the Border Security, Economic Opportunity, and Immigration Modernization Act.".

(e) H–1B-dependent Employer Defined.—Section 212(n)(3) (8 U.S.C. 1182(n)(3)) is amended to read as follows:

"(3)(A) For purposes of complying with the requirements related to outplacement of an

employee, the term 'H–1B-dependent employer' means an employer that—

"(i) is not a nonprofit institution of higher education, a nonprofit research organization, or an employer whose primary line of business is healthcare and who is petitioning for a physician, a nurse, or physical therapist or a substantially equivalent healthcare occupation; and

"(ii)(I) in the case of an employer that has 25 or fewer full-time equivalent employees who are employed in the United States, employs more than 7 H-1B nonimmigrants;

"(II) in the case of an employer that has at least 26 but not more than 50 full-time equivalent employees who are employed in the United States, employs more than 12 H-1B nonimmigrant; or

"(III) in the case of an employer that has at least 51 full-time equivalent employees who are employed in the United States, employs H-1B nonimmigrants in a number that is equal to at least 15 percent of the number of such full-time equivalent employees.

"(B) In determining the number of employees who are H–1B nonimmigrants under subparagraph (A)(ii), an intending immigrant employee shall not count toward such number".

(f) Intending Immigrants Defined.—Section 101(a) (8 U.S.C. 1101(a)) ~~is~~ **, as amended by section 3504(a), is further** amended by adding at the end the following:

~~"(53)(A)~~**"(54)(A)** The term 'intending immigrant' means, with respect to the number of aliens employed by an employer, an alien who intends to work and reside permanently in the United States, as evidenced by—

"(i) ~~for a covered employer, an~~ **a pending or** approved application for a labor certification ~~or an application that has been pending for longer than 1 year;~~ **filed for such alien by a covered employer;** or

"(ii) a pending or approved immigrant status petition filed for such alien.

"(B) In this paragraph:

"(i) The term 'covered employer' means an employer of an alien that, during the 1-year period ending on the date the employer files an application for the labor certification for such alien, has filed an immigrant status petition for not less than 90 percent of the aliens for whom the employer filed an application for a labor certification during such period. Labor certification applications that have been pending for longer than 1 year may be treated for this calculation as if the employer filed an immigrant status petition

"(ii) The term 'labor certification' means an employment certification under section 212(a)(5)(A).

"(iii) The term 'immigrant status petition' means a petition filed under paragraph (1), (2), or (3) of section 203(b).

"(C) Notwithstanding any other provision of ~~law, for all~~ **law**~~—~~

"(i) **for all** calculations under this Act**,** of the number of aliens admitted pursuant to subparagraph (H)(i)(b) or (L) of paragraph (15)**,** an intending immigrant shall be counted as an alien lawfully admitted for permanent residence and shall not be counted

as an employee admitted pursuant to such a subparagraph; and

"(ii) **for all** determinations of the number of employees or United States workers employed by an employer, all of the employees in any group treated as a single employer under subsection (b), (c), (m), or (o) of section 414 of the Internal Revenue Code of 1986 shall be counted.".

SEC. 4212. REQUIREMENTS FOR ADMISSION OF NONIMMIGRANT NURSES IN HEALTH PROFESSIONAL SHORTAGE AREAS.

(a) Extension of Period of Authorized Admission.—Section 212(m)(3) (8 U.S.C. 1182(m)(3)) is amended to read as follows:

"(3) The initial period of authorized admission as a nonimmigrant under section 101(a)(15)(H)(i)(c) shall be 3 years, and may be extended once for an additional 3-year period.".

(b) Number of Visas.—Section 212(m)(4) (8 U.S.C. 1182(m)(4)) is amended by striking "500." and inserting "300.".

(c) Portability.—Section 214(n) (8 U.S.C. 1184(n)), as amended by section 4103(b), is further amended by adding at the end the following:

"(4)(A) A nonimmigrant alien described in subparagraph (B) who was previously issued a visa or otherwise provided nonimmigrant status under section 101(a)(15)(H)(i)(c) is authorized to accept new employment performing services as a registered nurse for a facility described in section 212(m)(6) upon the filing by the prospective employer of a new petition on behalf of such nonimmigrant as provided under subsection (c). Employment authorization shall continue for such alien until the new petition is adjudicated. If the new petition is denied, such authorization shall cease.

"(B) A nonimmigrant alien described in this paragraph is a nonimmigrant alien—

"(i) who has been lawfully admitted into the United States;

"(ii) on whose behalf an employer has filed a nonfrivolous petition for new employment before the date of expiration of the period of stay authorized by the Secretary of Homeland Security, except that, if a nonimmigrant described in section 101(a)(15)(H)(i)(c) is terminated or laid off by the nonimmigrant's employer, or otherwise ceases employment with the employer, such petition for new employment shall be filed during the ~~45~~ **60**-day period beginning on the date of such termination, lay off, or cessation; and

"(iii) who, subsequent to such lawful admission, has not been employed without authorization in the United States before the filing of such petition.".

(d) Applicability.—

(1) IN GENERAL.—Beginning on the commencement date described in paragraph (2), the amendments made by section 2 of the Nursing Relief for Disadvantaged Areas Act of 1999 (Public Law 106–95; 113 Stat. 1313), and the amendments made by this section, shall apply to classification petitions filed for nonimmigrant status. This period shall be in addition to the period described in section 2(e) of the Nursing Relief for Disadvantaged Areas Act of

1999 (8 U.S.C. 1182 note).

(2) COMMENCEMENT DATE.—Not later than 60 days after the date of the enactment of this Act, the Secretary shall determine whether regulations are necessary to implement the amendments made by this section. If the Secretary determines that no such regulations are necessary, the commencement date described in this paragraph shall be the date of such determination. If the Secretary determines that regulations are necessary to implement any amendment made by this section, the commencement date described in this paragraph shall be the date on which such regulations (in final form) take effect.

SEC. 4213. NEW APPLICATION REQUIREMENTS.

Section 212(n)(1) (8 U.S.C. 1182(n)(1)) is amended by inserting after clause (iii) of subparagraph (G) , as amended by section 4211(c)(2),the following:

"(H)(i) The employer has not advertised any available position specified in the application in an advertisement that states or indicates that—

"(I) such position is only available to an individual who is or will be an H–1B nonimmigrant or an alien participating in optional practical training pursuant to section 101(a)(15)(F)(i); or

"(II) an individual who is or will be an H–1B nonimmigrant or participant in such optional practical training shall receive priority or a preference in the hiring process for such position.

"(ii) The employer has not solely recruited individuals who are or who will be H–1B nonimmigrants or participants in optional practical training pursuant to section 101(a)(15)(F)(i) to fill such position.

"(I)(i) If the employer (other than an educational or research employer) employs 50 or more employees in the United States, the sum of the number of such employees who are H–1B nonimmigrants plus the number of such employees who are nonimmigrants described in section 101(a)(15)(L) may not exceed—

"(I) 75 percent of the total number of employees, for fiscal year 2015;

"(II) 65 percent of the total number of employees, for fiscal year 2016; and

"(III) 50 percent of the total number of employees, for each fiscal year after fiscal year 2016.

"(ii) In this subparagraph:

"(I) The term 'educational or research employer' means an employer that is a nonprofit institution of higher education or a nonprofit research organization described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from taxation under 501(a) of that Code.

"(II) The term 'H–1B nonimmigrant' means an alien admitted as a nonimmigrant pursuant to section 101(a)(15)(H)(i)(b).

"(III) The term 'L nonimmigrant' means an alien admitted as a nonimmigrant pursuant to section 101(a)(15)(L) to provide services to his or her employer involving

specialized knowledge.

"(iii) In determining the percentage of employees of an employer that are H–1B nonimmigrants or L nonimmigrants under clause (i), an intending immigrant employee shall not count toward such percentage.

"(J) The employer shall submit to the Secretary of Homeland Security an annual report that includes the Internal Revenue Service Form W–2 Wage and Tax Statement filed by the employer for each H–1B nonimmigrant employed by the employer during the previous year.".

SEC. 4214. APPLICATION REVIEW REQUIREMENTS.

(a) Technical Amendment.—Section 212(n)(1) (8 U.S.C. 1182(n)(1)), as amended by section 4213, is further amended in the undesignated paragraph at the end, by striking "The employer" and inserting the following:

"(K) The employer".

(b) Application Review Requirements.—Subparagraph (K) of such section 212(n)(1), as designated by subsection (a), is amended—

(1) by inserting "and through the Department of Labor's website, without charge." after "D.C.";

(2) by striking "only for completeness" and inserting "for completeness and evidence of fraud or misrepresentation of material fact,";

(3) by striking "or obviously inaccurate" and inserting ", presents evidence of fraud or misrepresentation of material fact, or is obviously inaccurate";

(4) by striking "within 7 days of the" and inserting "not later than 14 after"; and

(5) by adding at the end the following: "If the Secretary's review of an application identifies evidence of fraud or misrepresentation of material fact, the Secretary may conduct an investigation and hearing in accordance with paragraph (2).".

(c) Filing of Petition for Nonimmigrant Worker.—Section 212(n)(1) (8 U.S.C. 1182(n)(1)), as amended by section 4213, is further amended by adding at the end the following:

"(L) An I–129 Petition for Nonimmigrant Worker (or similar successor form)—

"(i) may be filed by an employer with the Secretary of Homeland Security prior to the date the employer receives an approved certification described in section 101(a)(15)(H)(i)(b) from the Secretary of Labor; and

"(ii) may not be approved by the Secretary of Homeland Security until the date such certification is approved.".

CHAPTER 2— INVESTIGATION AND DISPOSITION OF COMPLAINTS AGAINST H–1B EMPLOYERS

SEC. 4221. GENERAL MODIFICATION OF PROCEDURES FOR INVESTIGATION AND DISPOSITION.

Subparagraph (A) of section 212(n)(2) (8 U.S.C. 1182(n)(2)) is amended—

(1) by striking "(A) Subject" and inserting "(A)(i) Subject";

(2) by striking "12 months" and inserting "24 months";

(3) by striking the last sentence; and

(4) by adding at the end the following:

"(ii)(I) Upon the receipt of such a complaint, the Secretary may initiate an investigation to determine if such a failure or misrepresentation has occurred.

"(II) The Secretary may conduct voluntary surveys of the degree to which employers comply with the requirements of this subsection.

"(III) The Secretary shall—

"(aa) conduct annual compliance audits of each employer with more than 100 employees who work in the United States if more than 15 percent of such employees are H–1B nonimmigrants; and

"(bb) make available to the public an executive summary or report describing the general findings of the audits carried out pursuant to this subclause.".

SEC. 4222. INVESTIGATION, WORKING CONDITIONS, AND PENALTIES.

Subparagraph (C) of section 212(n)(2) (8 U.S.C. 1182(n)(2)) is amended—

(1) in clause (i)—

(A) in the matter preceding subclause (I)—

(i) by striking "a condition of paragraph (1)(B), (1)(E), or (1)(F)" and inserting "a condition under subparagraph (A), (B), (C)(i), (E), (F), (G)~~(i)(I)~~, (H), (I), or (J) of paragraph (1)"; and

(ii) by striking "(1)(C)" and inserting "(1)(C)(ii)";

(B) in subclause (I)—

(i) by striking "$1,000" and inserting "$2,000"; and

(ii) by striking "and" at the end;

(C) in subclause (II), by striking the period at the end and inserting a semicolon and "and"; and

(D) by adding at the end the following:

"(III) an employer that violates such subparagraph (A) shall be liable to any employee harmed by such violations for lost wages and benefits."; and

(2) in clause (ii)—

(A) in subclause (I)—

(i) by striking "may" and inserting "shall"; and

(ii) by striking "$5,000" and inserting "$10,000";

(B) in subclause (II), by striking the period at the end and inserting a semicolon and "and"; and

(C) by adding at the end the following:

"(III) an employer that violates such subparagraph (A) shall be liable to any employee harmed by such violations for lost wages and benefits.";

(3) in clause (iii)—

(A) in the matter preceding subclause (I), by striking "90 days" both places it appears and inserting "180 days";

(B) in subclause (I)—

(i) by striking "may" and inserting "shall"; and

(ii) by striking "and" at the end;

(C) in subclause (II), by striking the period at the end and inserting a semicolon and "and"; and

(D) by adding at the end the following:

"(III) an employer that violates subparagraph (A) of such paragraph shall be liable to any employee harmed by such violations for lost wages and benefits.";

(4) in clause (iv)—

(A) by inserting "to take, or threaten to take, a personnel action, or" before "to intimidate";

(B) by inserting "(I)" after "(iv)"; and

(C) by adding at the end the following:

"(II) An employer that violates this clause shall be liable to any ~~H1B nonimmigrant~~ employee harmed by such violation for lost wages and benefits."; and

(5) in clause (vi)—

(A) by amending subclause (I) to read as follows:

"(I) It is a violation of this clause for an employer who has filed an application under this subsection—

"(aa) to require an H–1B nonimmigrant to pay a penalty for ceasing employment with the employer prior to a date agreed to by the nonimmigrant and the employer (the Secretary shall determine whether a required payment is a penalty, and not liquidated damages, pursuant to relevant State law); and

"(bb) to fail to offer to an H–1B nonimmigrant, during the nonimmigrant's period of authorized employment, on the same basis, and in accordance with the same criteria, as the employer offers to similarly situated United States workers, benefits and eligibility for benefits, including—

"(AA) the opportunity to participate in health, life, disability, and other

insurance plans;

"(BB) the opportunity to participate in retirement and savings plans; and

"(CC) cash bonuses and noncash compensation, such as stock options (whether or not based on performance).”; and

(B) in subclause (III), by striking “$1,000” and inserting “$2,000”.

SEC. 4223. INITIATION OF INVESTIGATIONS.

Subparagraph (G) of section 212(n)(2) (8 U.S.C. 1182(n)(2)) is amended—

(1) in clause (i), by striking “if the Secretary” and all that follows and inserting “with regard to the employer’s compliance with the requirements of this subsection.”;

(2) in clause (ii), by striking “and whose identity” and all that follows through “failure or failures.” and inserting “the Secretary of Labor may conduct an investigation into the employer’s compliance with the requirements of this subsection.”;

(3) in clause (iii), by striking the last sentence;

(4) by striking clauses (iv) and (v);

(5) by redesignating clauses (vi), (vii), and (viii) as clauses (iv), (v), and (vi), respectively;

(6) in clause (iv), as so redesignated, by striking “meet a condition described in clause (ii), unless the Secretary of Labor receives the information not later than 12 months” and inserting “comply with the requirements under this subsection, unless the Secretary of Labor receives the information not later than 24 months”;

(7) by amending clause (v), as so redesignated, to read as follows:

"(v) The Secretary of Labor shall provide notice to an employer of the intent to conduct an investigation. The notice shall be provided in such a manner, and shall contain sufficient detail, to permit the employer to respond to the allegations before an investigation is commenced. The Secretary is not required to comply with this clause if the Secretary determines that such compliance would interfere with an effort by the Secretary to investigate or secure compliance by the employer with the requirements of this subsection. A determination by the Secretary under this clause shall not be subject to judicial review.”;

(8) in clause (vi), as so redesignated, by striking “An investigation” and all that follows through “the determination.” and inserting “If the Secretary of Labor, after an investigation under clause (i) or (ii), determines that a reasonable basis exists to make a finding that the employer has failed to comply with the requirements under this subsection, the Secretary shall provide interested parties with notice of such determination and an opportunity for a hearing in accordance with section 556 of title 5, United States Code, not later than 120 days after the date of such determination.”; and

(9) by adding at the end the following:

"(vii) If the Secretary of Labor, after a hearing, finds a reasonable basis to believe that the employer has violated the requirements under this subsection, the Secretary shall impose a penalty under subparagraph (C).”.

SEC. 4224. INFORMATION SHARING.

~~Subparagraph (H) of section~~ **Section** 212(n)(2) (8 U.S.C. 1182(n)(2)) ~~is amended to read as follows:~~**, as amended by sections 4222 and 4223, is further amended by adding at the end the following:**

~~"(H) The Director of United States~~**"(J) The Director of U.S.** Citizenship and Immigration Services shall provide the Secretary of Labor with any information contained in the materials submitted by employers of H–1B nonimmigrants as part of the adjudication process that indicates that the employer is not complying with visa program requirements for H–1B nonimmigrants. The Secretary **of Labor** may initiate and conduct an investigation related to H–1B nonimmigrants and hearing under this paragraph after receiving information of noncompliance under this subparagraph. This subparagraph may not be construed to prevent the Secretary of Labor from taking action related to wage and hour and workplace safety laws.".

CHAPTER 3—OTHER PROTECTIONS

SEC. 4231. POSTING AVAILABLE POSITIONS THROUGH THE DEPARTMENT OF LABOR.

(a) Department of Labor Website.—Section 212(n) (8 U.S.C. 1182(n)) is amended by adding at the end following:

"(6)(A) Not later than 90 days after the date of the enactment of the Border Security, Economic Opportunity, and Immigration Modernization Act, the Secretary of Labor shall establish a searchable Internet website for posting positions as required by paragraph (1)(C). Such website shall be available to the public without charge.

"(B) The Secretary may work with private companies or nonprofit organizations to develop and operate the Internet website described in subparagraph (A).

"(C) The Secretary may promulgate rules, after notice and a period for comment, to carry out the requirements of this paragraph.".

(b) Requirement for Publication.—The Secretary of Labor shall submit to Congress and publish in the Federal Register and other appropriate media a notice of the date that the Internet website required by paragraph (6) of section 212(n) of such Act, as amended by subsection (a), will be operational.

(c) Application.—The amendments made by subsection (a) shall apply to an application filed on or after the date that is 30 days after the date described in subsection (b).

~~SEC. 4232. H1B GOVERNMENT AUTHORITY AND REQUIREMENTS.~~

~~(a) Immigration Documents. Section 204 (8 U.S.C. 1154) is amended by adding at the end the following:~~

~~"(m) Employer To Provide Immigration Paperwork Exchanged~~

~~With Federal Agencies.~~

~~* 14 “(1) In general. Not later than 30 days after a Labor Condition Application is filed, an employer shall provide an employee or beneficiary of such Application who is or seeking to be an nonimmigrant described in subparagraph (H)(i)(b) of (L) of section 101(a)(15) with a copy the original of all applications and petitions filed by the employer with the Department of Labor or the Department of Homeland Security for such employee or beneficiary.~~

~~* 15 “(2) Withholding of financial or proprietary information. If a document required to be provided to an employee or beneficiary under paragraph (1) includes any financial or propriety information of the employer, the employer may redact such information from the copies provided to such employee or beneficiary.”.~~

~~* 16 (b) Report on Job Classification and Wage Determinations. Not later than 1 year after the date of the enactment of this Act, the Comptroller General of the United States shall prepare a report analyzing the accuracy and effectiveness of the Secretary of Labor’s current job classification and wage determination system. The report shall~~

~~* 17 (1) specifically address whether the systems in place accurately reflect the complexity of current job types as well as geographic wage differences; and~~

~~(2) make recommendations concerning necessary updates and modifications.~~

~~SEC. 4233~~ **SEC. 4232**. REQUIREMENTS FOR INFORMATION FOR H–1B AND L NONIMMIGRANTS.

~~Section~~**(a) In General.—Section** 214 (8 U.S.C. 1184), as amended by section 3608, is further amended by adding at the end the following:

"(t) Requirements for Information for H–1B and L Nonimmigrants.—

"(1) IN GENERAL.—Upon issuing a visa to an applicant for nonimmigrant status pursuant to subparagraph (H)(i)(b) or (L) of section 101(a)(15) who is outside the United States, the issuing office shall provide the applicant with—

"(A) a brochure outlining the obligations of the applicant's employer and the rights of the applicant with regard to employment under Federal law, including labor and wage protections; and

"(B) the contact information for appropriate Federal agencies or departments that offer additional information or assistance in clarifying such obligations and rights.

"(2) PROVISION OF MATERIAL.—Upon the approval of an application of an applicant referred to in paragraph (1), the applicant shall be provided with the material described in subparagraphs (A) and (B) of paragraph (1)—

"(A) by the issuing officer of the Department of Homeland Security, if the applicant is inside the United States; or

"(B) by the appropriate official of the Department of State, if the applicant is outside the United ~~States.".~~

States.

"(3) EMPLOYER TO PROVIDE IMMIGRATION PAPERWORK EXCHANGED WITH FEDERAL AGENCIES.—

**** 14** ~~"(1)~~**"(A)** IN GENERAL.—Not later than 30 days after a ~~Labor Condition Application is filed~~ **labor condition application is filed under section 212(n)(1)**, an employer shall provide an employee or beneficiary of such ~~Application~~ **application** who is or seeking ~~to be an~~ nonimmigrant ~~described in~~ **status under** subparagraph (H)(i)(b) ~~of~~ **or** (L) of section 101(a)(15) with a copy the original of all applications and petitions filed by the employer with the Department of Labor or the Department of Homeland Security for such employee or beneficiary.

**** 15** ~~"(2)~~**"(B)** WITHHOLDING OF FINANCIAL OR PROPRIETARY INFORMATION.—If a document required to be provided to an employee or beneficiary under ~~paragraph (1)~~ **subparagraph (A)** includes any financial or propriety information of the employer, the employer may redact such information from the copies provided to such employee or beneficiary.".

**** 16** (b) Report on Job Classification and Wage Determinations.—Not later than 1 year after

the date of the enactment of this Act, the Comptroller General of the United States shall prepare a report analyzing the accuracy and effectiveness of the Secretary of Labor's current job classification and wage determination system. The report shall—

**** 17** (1) specifically address whether the systems in place accurately reflect the complexity of current job types as well as geographic wage differences; and

(2) make recommendations concerning necessary updates and modifications.

SEC. 4233 ~~SEC. 4234~~. FILING FEE FOR H–1B-DEPENDENT EMPLOYERS.

(a) In General.—Notwithstanding any other provision of law, there shall be a fee required to be submitted by an employer with an application for admission of an H–1B nonimmigrant as follows:

(1) For each ~~of the fiscal years 2015 through 2024~~ **fiscal year beginning in fiscal year 2015**, $5,000 for applicants that employ 50 or more employees in the United States if more than 30 percent and less than 50 percent of the applicant's employees are H–1B nonimmigrants or L nonimmigrants.

(2) For each of the fiscal years 2015 through 2017, $10,000 for applicants that employ 50 or more employees in the United States if more than 50 percent and less than 75 percent of the applicant's employees are H–1B nonimmigrants or L nonimmigrants. **Fees collected under this paragraph shall be deposited in the Comprehensive Immigration Reform Trust Fund established under section 6(a)(1).**

(b) Definitions.—In this section:

(1) EMPLOYER.—The term "employer"—

(A) means any entity or entities treated as a single employer under subsection (b), (c), (m), or (o) of section 414 of the Internal Revenue Code of 1986; and

(B) does not include a nonprofit institution of higher education or a nonprofit research organization described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from taxation under 501(a) of that Code that is—

(i) an institution of higher education (as defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a))); or

(ii) a research organization.

(2) H–1B NONIMMIGRANT.—The term "H–1B nonimmigrant" means an alien admitted as a nonimmigrant pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(i)(b)).

(3) INTENDING IMMIGRANT.—The term "intending immigrant" has the meaning given that term in paragraph ~~(53)~~**(54)(A)** of section 101(a)**(54)(A)** of the Immigration and Nationality Act (8 U.S.C. 1101(a)).

(4) L NONIMMIGRANT.—The term "L nonimmigrant" means an alien admitted as a nonimmigrant pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(L)) to provide services to the alien's employer involving specialized

knowledge.

(c) Exception for Intending Immigrants.—In determining the percentage of employees of an employer that are H–1B nonimmigrants or L nonimmigrants under subsection (a), an intending immigrant employee shall not count toward such percentage.

(d) Conforming Amendment.—Section 402 of the Act entitled "An Act making emergency supplemental appropriations for border security for the fiscal year ending September 30, 2010, and for other purposes", approved August 13, 2010 (Public Law 111–230; 8 U.S.C. 1101 note) is amended by striking subsection (b).

SEC. ~~4235~~ **4234**. PROVIDING PREMIUM PROCESSING OF EMPLOYMENT-BASED VISA PETITIONS.

Pursuant to section 286(u) of the Immigration and Nationality Act (8 U.S.C. 1356(u)), the Secretary shall establish and collect—

(1) a fee for premium processing of employment-based immigrant petitions; and

(2) a fee for premium processing of an administrative appeal of any decision on a permanent employment-based immigrant petition.

SEC. ~~4236~~ **4235**. TECHNICAL CORRECTION.

Section 212 (8 U.S.C. 1182) is amended by redesignating the second subsection (t), as added by section 1(b)(2)(B) of the Act entitled "An Act to amend and extend the Irish Peace Process Cultural and Training Program Act of 1998" (Public Law 108–449 (118 Stat. 3470)), as subsection (u).

SEC. ~~4237.~~ **4236.** APPLICATION.

Except as specifically otherwise provided, the amendments made by this subtitle shall apply to applications filed on or after the date of the enactment of this Act.

Subtitle C—L Visa Fraud and Abuse Protections

SEC. 4301. PROHIBITION ON OUTPLACEMENT OF L NONIMMIGRANTS.

Subparagraph (F) of section 214(c)(2) (8 U.S.C. 1184(c)(2)) is amended to read as follows:

"(F) The employer of an alien described in section 101(a)(15)(L) shall not place, outsource, lease, or otherwise contract for the services or placement of such alien with another employer unless—

"(i)~~ the other employer is an affiliate, subsidiary, or parent entity of the petitioning employer;~~

~~"(ii)~~ such alien will not be controlled or supervised principally by the employer with whom such alien would be placed;

~~"(iii)~~**"(ii)** the placement of such alien at the worksite of the other employer~~, who is not described in clause (i),~~ is not essentially an arrangement to provide labor for hire for the

other employer; and

~~"(iv)~~**"(iii)** the other employer attests that the other employer has not displaced and will not displace a United States worker during the period beginning 90 days prior to and 90 days after the date the employer files the application.".

SEC. 4302. L EMPLOYER PETITION REQUIREMENTS FOR EMPLOYMENT AT NEW OFFICES.

Section 214(c)(2) (8 U.S.C. 1184(c)(2)) is amended by adding at the end the following:

"(G)(i) If the beneficiary of a petition under this paragraph is coming to the United States to open, or be employed in, a new office, the petition may be approved for up to 12 months only if—

"(I) the alien has not been the beneficiary of 2 or more petitions under this subparagraph during the immediately preceding 2 years; and

"(II) the employer operating the new office has—

"(aa) an adequate business plan;

"(bb) sufficient physical premises to carry out the proposed business activities; and

"(cc) the financial ability to commence doing business immediately upon the approval of the petition.

"(ii) An extension of the approval period under clause (i) may not be granted until the importing employer submits an application to the Secretary of Homeland Security that contains—

"(I) evidence that the importing employer meets the requirements of this subsection;

"(II) evidence that the beneficiary of the petition is eligible for nonimmigrant status under section 101(a)(15)(L);

"(III) a statement summarizing the original petition;

"(IV) evidence that the importing employer has complied with the business plan submitted under clause (i)(I);

"(V) evidence of the truthfulness of any representations made in connection with the filing of the original petition;

"(VI) evidence that the importing employer has been doing business at the new office through regular, systematic, and continuous provision of goods and services;

"(VII) a statement of the duties the beneficiary has performed at the new office during the approval period under clause (i) and the duties the beneficiary will perform at the new office during the extension period granted under this clause;

"(VIII) a statement describing the staffing at the new office, including the number of employees and the types of positions held by such employees;

"(IX) evidence of wages paid to employees;

"(X) evidence of the financial status of the new office; and

"(XI) any other evidence or data prescribed by the Secretary.

"(iii) A new office employing the beneficiary of an L–1 petition approved under this paragraph shall do business only through regular, systematic, and continuous provision of goods and services.

"(iv) Notwithstanding clause (ii), and subject to the maximum period of authorized admission set forth in subparagraph (D), the Secretary of Homeland Security, in the Secretary's discretion, may approve a subsequently filed petition on behalf of the beneficiary to continue employment at the office described in this subparagraph for a period beyond the initially granted 12-month period if the importing employer has been doing business at the new office through regular, systematic, and continuous provision of goods and services for the 6 months immediately preceding the date of extension of petition filing and demonstrates that the failure to satisfy any of the requirements described in those subclauses was directly caused by extraordinary circumstances, as determined by the Secretary in the Secretary's discretion.".

SEC. 4303. COOPERATION WITH SECRETARY OF STATE.

Section 214(c)(2) (8 U.S.C. 1184(c)(2)), as amended by section 4302, is further amended by adding at the end the following:

"(H) For purposes of approving petitions under this paragraph, the Secretary of Homeland Security shall work cooperatively with the Secretary of State to verify the existence or continued existence of a company or office in the United States or in a foreign country.".

SEC. 4304. LIMITATION ON EMPLOYMENT OF L NONIMMIGRANTS.

Section 214(c)(2) (8 U.S.C. 1184(c)(2)), as amended by sections 4302 and 4303, is further amended by adding at the end the following:

"(I)(i) If the employer employs 50 or more employees in the United States, the sum of the number of such employees who are H–1B nonimmigrants plus the number of such employees who are L nonimmigrants may not exceed—

"(I) 75 percent of the total number of employees, for fiscal year 2015;

"(II) 65 percent of the total number of employees, for fiscal year 2016; and

"(III) 50 percent of the total number of employees, for each fiscal year after fiscal year 2016.

"(ii) In this subparagraph:

"(I) The term 'employer' does not include a nonprofit institution of higher education or a nonprofit research ~~organization/an~~ organization described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from taxation under 501(a) of that Code that is—

"(aa) an institution of higher education (as defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a))); or

"(bb) a research organization.

"(II) The term 'H–1B nonimmigrant' means an alien admitted as a nonimmigrant pursuant to section 101(a)(15)(H)(i)(b).

"(III) The term 'L nonimmigrant' means an alien admitted as a nonimmigrant pursuant to section 101(a)(15)(L) to provide services to the alien's employer involving specialized knowledge.

"(iii) In determining the percentage of employees of an employer that are H–1B nonimmigrants or L nonimmigrants under clause (i), an intending immigrant employee shall not count toward such percentage.".

SEC. 4305. FILING FEE FOR L NONIMMIGRANTS.

(a) In General.—Notwithstanding any other provision of law, the filing fee for an application for admission of an L nonimmigrant shall be as follows:

(1) For each of the fiscal years ~~2014 through 2024~~ **beginning in fiscal year 2014**, $5,000 for applicants that employ 50 or more employees in the United States if more than 30 percent and less than 50 percent of the applicant's employees are H–1B nonimmigrants or L nonimmigrants.

(2) For each of the fiscal years 2014 through 2017, $10,000 for applicants that employ 50 or more employees in the United States if more than 50 percent and less than 75 percent of the applicant's employees are H–1B nonimmigrants or L nonimmigrants. **Fees collected under this paragraph shall be deposited in the Comprehensive Immigration Reform Trust Fund established under section 6(a)(1).**

(b) Definitions.—In this section:

(1) EMPLOYER.—The term "employer" does not include a nonprofit institution of higher education or a nonprofit research ~~organization/an~~ organization described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from taxation under 501(a) of that Code that is—

(A) an institution of higher education (as defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a))); or

(B) a research organization.

(2) H–1B NONIMMIGRANT.—The term "H–1B nonimmigrant" means an alien admitted as a nonimmigrant pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(i)(b)).

(3) L NONIMMIGRANT.—The term "L nonimmigrant" means an alien admitted as a nonimmigrant pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(L)) to provide services to the alien's employer involving specialized knowledge.

(c) Exception for Intending Immigrants.—In determining the percentage of employees of an employer that are H–1B nonimmigrants or L nonimmigrants under subsection (a), an intending immigrant employee **(as defined in section 101(a)(54)(A) of the Immigration and Nationality Act** shall not count toward such percentage.

(d) Conforming Amendment.—Section 402 of the Act entitled "An Act making emergency

supplemental appropriations for border security for the fiscal year ending September 30, 2010, and for other purposes", approved August 13, 2010 (Public Law 111–230; 8 U.S.C. 1101 note), as amended by section ~~4234(d)~~ **4233(d)**, is further amended by striking subsections (a) and (c).

SEC. 4306. INVESTIGATION AND DISPOSITION OF COMPLAINTS AGAINST L NONIMMIGRANT EMPLOYERS.

Section 214(c)(2) (8 U.S.C. 1184(c)(2)), as amended by sections 4302, 4303, and 4304 is further amended by adding at the end the following:

"(J)(i) The Secretary of Homeland Security may initiate an investigation of any employer that employs nonimmigrants described in section 101(a)(15)(L) with regard to the employer's compliance with the requirements of this subsection.

"(ii)(I) If the Secretary receives specific credible information from a source who is likely to have knowledge of an employer's practices, employment conditions, or compliance with the requirements under this subsection, the Secretary may conduct an investigation into the employer's compliance with the requirements of this subsection.

"(II) The Secretary may withhold the identity of a source referred to in subclause (I) from an employer and the identity of such source shall not be subject to disclosure under section 552 of title 5, United States Code.

"(iii) The Secretary shall establish a procedure for any person desiring to provide to the Secretary information described in clause (ii)(I) that may be used, in whole or in part, as the basis for the commencement of an investigation described in such clause, to provide the information in writing on a form developed and provided by the Secretary and completed by or on behalf of the person.

"(iv) No investigation described in clause (ii)(I) (or hearing described in clause (vi) based on such investigation) may be conducted with respect to information about a failure to comply with the requirements under this subsection, unless the Secretary receives the information not later than 24 months after the date of the alleged failure.

"(v)(I) Subject to subclause (III), before commencing an investigation of an employer under clause (i) or (ii), the Secretary shall provide notice to the employer of the intent to conduct such investigation.

"(II) The notice required by subclause (I) shall be provided in such a manner, and shall contain sufficient detail, to permit the employer to respond to the allegations before an investigation is commenced.

"(III) The Secretary is not required to comply with this clause if the Secretary determines that to do so would interfere with an effort by the Secretary to investigate or secure compliance by the employer with the requirements of this subsection.

"(IV) There shall be no judicial review of a determination by the Secretary under this clause.

"(vi) If the Secretary, after an investigation under clause (i) or (ii), determines that a reasonable basis exists to make a finding that the employer has failed to comply with the requirements under this subsection, the Secretary shall provide the interested parties with notice

of such determination and an opportunity for a hearing in accordance with section 556 of title 5, United States Code, not later than 120 days after the date of such determination. If such a hearing is requested, the Secretary shall make a finding concerning the matter by not later than 120 days after the date of the hearing.

"(vii) If the Secretary, after a hearing, finds a reasonable basis to believe that the employer has violated the requirements under this subsection, the Secretary shall impose a penalty under subparagraph (K).

"(viii)(I) The Secretary may conduct **voluntary** surveys of the degree to which employers comply with the requirements under this section.

"(II) The Secretary shall—

"(aa) conduct annual compliance audits of each employer with more than 100 employees who work in the United States if more than 15 percent of such employees are nonimmigrants described in 101(a)(15)(L); and

"(bb) make available to the public an executive summary or report describing the general findings of the audits carried out pursuant to this subclause.".

SEC. 4307. PENALTIES.

Section 214(c)(2) (8 U.S.C. 1184(c)(2)), as amended by sections 4302, 4303, 4304, and 4306, is further amended by adding at the end the following:

"(K)(i) If the Secretary of Homeland Security finds, after notice and an opportunity for a hearing, a failure by an employer to meet a condition under subparagraph (F), (G), or (L) or a misrepresentation of material fact in a petition to employ 1 or more aliens as nonimmigrants described in section 101(a)(15)(L)—

"(I) the Secretary shall impose such administrative remedies (including civil monetary penalties in an amount not to exceed $2,000 per violation) as the Secretary determines to be appropriate;

"(II) the Secretary may not, during a period of at least 1 year, approve a petition for that employer to employ 1 or more aliens as such nonimmigrants; and

"(III) in the case of a violation of subparagraph (J), the employer shall be liable to the employees harmed by such violation for lost wages and benefits.

"(ii) If the Secretary finds, after notice and an opportunity for a hearing, a willful failure by an employer to meet a condition under subparagraph (F), (G), or (L) or a willful misrepresentation of material fact in a petition to employ 1 or more aliens as nonimmigrants described in section 101(a)(15)(L)—

"(I) the Secretary shall impose such administrative remedies (including civil monetary penalties in an amount not to exceed $10,000 per violation) as the Secretary determines to be appropriate;

"(II) the Secretary may not, during a period of at least 2 years, approve a petition filed for that employer to employ 1 or more aliens as such nonimmigrants; and

"(III) in the case of a violation of subparagraph (J), the employer shall be liable to the

employees harmed by such violation for lost wages and benefits.”.

SEC. 4308. PROHIBITION ON RETALIATION AGAINST L NONIMMIGRANTS.

Section 214(c)(2) (8 U.S.C. 1184(c)(2)), as amended by sections 4302, 4303, 4303, 4306, and 4307, is further amended by adding at the end the following:

“(L)(i) It is a violation of this subparagraph for an employer who has filed a petition to import 1 or more aliens as nonimmigrants described in section 101(a)(15)(L) to take, fail to take, or threaten to take or fail to take, a personnel action, or to intimidate, threaten, restrain, coerce, blacklist, discharge, or discriminate in any other manner against an employee because the employee—

“(I) has disclosed information that the employee reasonably believes evidences a violation of this subsection, or any rule or regulation pertaining to this subsection; or

“(II) cooperates or seeks to cooperate with the requirements of this subsection, or any rule or regulation pertaining to this subsection.

“(ii) In this subparagraph, the term ‘employee’ includes—

“(I) a current employee;

“(II) a former employee; and

“(III) an applicant for employment.”.

SEC. 4309. REPORTS ON L NONIMMIGRANTS.

Section 214(c)(8) (8 U.S.C. 1184(c)(8)) is amended by inserting “(L),” after “(H),”.

SEC. 4310. APPLICATION.

The amendments made by this subtitle shall apply to applications filed on or after the date of the enactment of this Act.

SEC. 4311. REPORT ON L BLANKET PETITION PROCESS.

(a) Requirement for Report.—Not later than 6 months after the date of the enactment of this Act, the Inspector General of the Department ~~of Homeland Security~~ shall submit to the appropriate committees of Congress a report regarding the use of blanket petitions under section 214(c)(2)(A) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(2)(A)). Such report shall assess the efficiency and reliability of the process for reviewing such blanket petitions, including whether the process includes adequate safeguards against fraud and abuse.

(b) Appropriate Committees of Congress.—In this section the term “appropriate committees of Congress” means—

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

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

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

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

Subtitle D—Other Nonimmigrant Visas

SEC. 4401. NONIMMIGRANT VISAS FOR STUDENTS.

(a) Authorization of Dual Intent for F Nonimmigrants Seeking Bachelor's or Graduate Degrees.—

(1) IN GENERAL.—Section 101(a)(15)(F) (8 U.S.C. 1101(a)(15)(F)) is amended to read as follows:

"(F)(i) an alien having a residence in a foreign country who is a bona fide student qualified to pursue a full course of study and who seeks to enter the United States temporarily and solely for the purpose of pursuing such a course of study consistent with section 214(m) at an accredited college, university, or language training program, or at an established seminary, conservatory, academic high school, elementary school, or other academic institution in the United States, particularly designated by the alien and approved by the Secretary of Homeland Security after consultation with the Secretary of Education, which institution or place of study shall have agreed to report to the Secretary of Homeland Security the termination of attendance of each nonimmigrant student, and if any such institution of learning or place of study fails to make reports promptly the approval shall be withdrawn, except that such an alien who is not seeking to pursue a degree that is a bachelor's degree or a graduate degree shall have a residence in a foreign country that the alien has no intention of abandoning;

"(ii) the alien spouse and minor children of any alien described in clause (i) if accompanying or following to join such an alien; and

"(iii) an alien who is a national of Canada or Mexico, who maintains actual residence and place of abode in the country of nationality, who is described in clause (i) except that the alien's qualifications for and actual course of study may be full or part-time, and who commutes to the United States institution or place of study from Canada or Mexico.".

(2) PRESUMPTION OF STATUS; INTENTION TO ABANDON FOREIGN RESIDENCE.—Section 214 (8 U.S.C. 1184) is amended—

(A) in subsection (b), **as amended by section 2405(a),** by striking "(L) or (V)" and inserting "(F), (L), or (V)"; and

(B) in subsection (h), by striking "(H)(i)(b) or (c)," and inserting "(F), (H)(i)(b), (H)(i)(c),".

(b) Accreditation Requirement for Colleges and Universities.—Section 101(a)(52) (8 U.S.C. 1101(a)(52)) is amended to read as follows:

"(52) Except as provided in section 214(m)(4), the term 'accredited college, university, or language training program' means a college, university, or language training program that is accredited by an accrediting agency recognized by the Secretary of Education.".

(c) Other Requirements for Academic Institutions.—Section 214(m) (8 U.S.C. 1184(m)) is amended by adding at the end the following:

"(3) The Secretary of Homeland Security, in the Secretary's discretion, may require accreditation of an academic institution (except for seminaries or other religious institutions) for purposes of section 101(a)(15)(F) if—

"(A) that institution is not already required to be accredited under section 101(a)(15)(F)(i);

"(B) an appropriate accrediting agency recognized by the Secretary of Education is able to provide such accreditation; and

"(C) the institution has or will have 25 or more alien students accorded status as nonimmigrants under clause (i) or (iii) of section 101(a)(15)(F) pursuing a course of study at that institution.

"(4) The Secretary of Homeland Security, in the Secretary's discretion, may waive the accreditation requirement in section 101(a)(15)(F)(i) with respect to an established college, university, or language training program if the academic institution—

"(A) is otherwise in compliance with the requirements of such section; and

"(B) is making a good faith effort to satisfy the accreditation requirement.

"(5)(A) No person convicted of an offense referred to in subparagraph (B) shall be permitted by any academic institution having authorization for attendance by nonimmigrant students under section 101(a)(15)(F)(i) to be involved with the institution as its principal, owner, officer, board member, general partner, or other similar position of substantive authority for the operations or management of the institution, including serving as an individual designated by the institution to maintain records required by the Student and Exchange Visitor Information System established under section 641 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1372).

"(B) An offense referred to in this subparagraph includes a violation, punishable by a term of imprisonment of more than 1 year, of any of the following:

"(i) Chapter 77 of title 18, United States Code (relating to peonage, slavery and trafficking in persons).

"(ii) Chapter 117 of title 18, United States Code (relating to transportation for illegal sexual activity and related crimes).

"(iii) Section 274 of the Immigration and Nationality Act (8 U.S.C. 1324) (relating to unlawful bringing of aliens into the United States).

"(iv) Section 1546 of title 18, United States Code (relating to fraud and misuse of visas, permits, and other documents) relating to an academic institution's participation in the Student and Exchange Visitor Program.".

(d) Conforming Amendment.—Section 212(a)(6)(G) (8 U.S.C. 1182(a)(6)(G)) is amended by striking "section 214(l)" and inserting "section 214(m)".

(e) Effective Date.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by subsections (a), (b), and (c)—

(A) shall take effect on the date that is 180 days after the date of the enactment of

this Act; and

(B) shall apply with respect to applications for a nonimmigrant visa under section 101(a)(15)(F)(i) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(F)(i)) that are filed on or after the effective date described in subparagraph (A).

(2) TEMPORARY EXCEPTION.—

(A) IN GENERAL.—During the 3-year period beginning on the date of the enactment of this Act, an alien seeking to enter the United States to pursue a course of study at a college or university that has been certified by the Secretary may be granted a nonimmigrant visa under clause (i) or clause (iii) of section 101(a)(15)(F) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(F)) without regard to whether or not that college or university has been accredited or been denied accreditation by an entity described in section 101(a)(52) of such Act (8 U.S.C. 1101(a)(52)), as amended by subsection (b).

(B) ADDITIONAL REQUIREMENT.—An alien may not be granted a nonimmigrant visa under subparagraph (A) if the college or university to which the alien seeks to enroll does not—

(i) submit an application for the accreditation of such institution to a regional or national accrediting agency recognized by the Secretary of Education on or before the date that is 1 year after the effective date described in paragraph (1)(A); and

(ii) comply with the applicable accrediting requirements of such agency.

SEC. 4402. CLASSIFICATION FOR SPECIALTY OCCUPATION WORKERS FROM FREE TRADE COUNTRIES.

(a) Nonimmigrant Status.—Section 101(a)(15)(E)(8 U.S.C. 1101(a)(15)(E)) is amended—

(1) in the matter preceding clause (i), by inserting “, bilateral investment treaty, or free trade agreement” after “treaty of commerce and navigation”;

(2) in clause (ii), by striking “or” at the end; and

(3) by adding at the end the following:

“(iv) solely to perform services in a specialty occupation in the United States if the alien is a national of a country, other than Chile, Singapore, or Australia, with which the United States has entered into a free trade agreement (regardless of whether such an agreement is a treaty of commerce and navigation) and with respect to whom the Secretary of Labor determines and certifies to the Secretary of Homeland Security and the Secretary of State that the intending employer has filed with the Secretary of Labor an attestation under section 212(t); or

“(v) solely to perform services in a specialty occupation in the United States if the alien is a national of the Republic of Korea and with respect to whom the Secretary of Labor determines and certifies to the Secretary of Homeland Security and the Secretary of State that the intending employer has filed with the Secretary

of Labor an attestation under section 212(t);".

(b) Free Trade Agreements.—Section 214(g) (8 U.S.C. 1184(g)) is amended by adding at the end the following:

"(12)(A) The free trade agreements referred to in section 101(a)(15)(E)(iv) are defined as any free trade agreement designated by the Secretary of Homeland Security with the concurrence of the United States Trade Representative and the Secretary of State.

"(B) The Secretary of State may not approve a number of initial applications submitted for aliens described in **clause (iv) or (v) of** section 101(a)(15)(E)~~(iv)~~ that is more than 5,000 per fiscal year for each country with which the United States has entered into a Free Trade Agreement.

"(C) The applicable numerical limitation referred to in subparagraph (A) shall apply only to principal aliens and not to the spouses or children of such aliens.".

(c) Nonimmigrant Professionals.—Section 212(t) (8 U.S.C. 1182(t)) is amended by striking "section 101(a)(15)(E)(iii)" each place that term appears and inserting "clause ~~(iii) or~~(iv) **or (v)** of section 101(a)(15)(E)".

SEC. 4403. E–VISA REFORM.

(a) Nonimmigrant Category.—Section 101(a)(15)(E)(iii) (8 U.S.C. 1101(a)(15)(E)(iii)) is amended by inserting ", or solely to perform services as an employee and who has at least a high school education or its equivalent, or has, within 5 years, at least 2 years of work experience in an occupation which requires at least 2 years of training or experience if the alien is a national of the Republic of Ireland," after "Australia".

(b) Temporary Admission.—Section 212(d)(3)(A) (8 U.S.C. 1182(d)(3)(A)) is amended to read as follows:

"(A) Except as otherwise provided in this subsection—

"(i) an alien who is applying for a nonimmigrant visa and who the consular officer knows or believes to be ineligible for such visa under subsection (a) (other than subparagraphs (A)(i)(I), (A)(ii), (A)(iii), (C), (E)(i), and (E)(ii) of paragraph (3) of such subsection)—

"(I) after approval by the Secretary of Homeland Security of a recommendation by the Secretary of State or by the consular officer that the alien be admitted temporarily despite the alien's inadmissibility, may be granted such a visa and may be admitted into the United States temporarily as a nonimmigrant, in the discretion of the Secretary of Homeland Security; or

"(II) absent such recommendation and approval, be granted a nonimmigrant visa pursuant to section 101(a)(15)(E) if such ineligibility is based solely on conduct in violation of paragraph (6), (7), or (9) of section 212(a) that occurred before the date of the enactment of the Border Security, Economic Opportunity, and Immigration Modernization Act; and

"(ii) an alien who is inadmissible under subsection (a) (other than subparagraphs (A)(i)(I), (A)(ii), (A)(iii), (C), (E)(i), and (E)(ii) of paragraph (3) of such subsection), is

in possession of appropriate documents or was granted a waiver from such document requirement, and is seeking admission, may be admitted into the United States temporarily as a nonimmigrant, in the discretion of the Secretary of Homeland Security, who shall prescribe conditions, including exaction of such bonds as may be necessary, to control and regulate the admission and return of inadmissible aliens applying for temporary admission under this paragraph.".

(c) Numerical Limitation.—Section 214(g)(11)(B) (8 U.S.C. 1184(g)(11)(B)) is amended by striking the period at the end and inserting "for each of the nationalities identified under section 101(a)(15)(E)(iii).".

SEC. 4404. OTHER CHANGES TO NONIMMIGRANT VISAS.

(a) Portability.—Paragraphs (1) and (2) of section 214(n) (8 U.S.C. 1184(n)) are amended to read as follows:

"(1) A nonimmigrant alien described in paragraph (2) who was previously issued a visa or otherwise provided nonimmigrant status under section 101(a)(15)(H)(i)(b) or 101(a)(15)(O)(i) is authorized to accept new employment pursuant to such section upon the filing by the prospective employer of a new petition on behalf of such nonimmigrant as provided under subsection (a). Employment authorization shall continue for such alien until the new petition is adjudicated. If the new petition is denied, such authorization shall cease.

"(2) A nonimmigrant alien described in this paragraph is a nonimmigrant alien—

"(A) who has been lawfully admitted into the United States;

"(B) on whose behalf an employer has filed a nonfrivolous petition for new employment before the date of expiration of the period of stay authorized by the Secretary of Homeland Security; and

"(C) who, subsequent to such lawful admission, has not been employed without authorization in the United States before the filing of such petition.".

(b) Waiver.—The undesignated material at the end of section 214(c)(3) (8 U.S.C. 1184(c)(3)) is amended to read as follows:

"The Secretary of Homeland Security shall provide by regulation for the waiver of the consultation requirement under subparagraph (A) in the case of aliens who have been admitted as nonimmigrants under section 101(a)(15)(O)(i) because of extraordinary ability in the arts or extraordinary achievement in motion picture or television production and who seek readmission to perform similar services within 3 years after the date of a consultation under such subparagraph provided that, in the case of aliens admitted because of extraordinary achievement in motion picture or television production, such waiver shall apply only if the prior consultations by the appropriate union and management organization were favorable or raised no objection to the approval of the petition. Not later than 5 days after such a waiver is provided, the Secretary shall forward a copy of the petition and all supporting documentation to the national office of an appropriate labor ~~organization.".~~ **organization. In the case of an alien seeking entry for a motion picture or television production (i) any opinion under the previous sentence shall only be advisory; (ii) any such opinion that recommends denial must be in writing; (iii) in**

making the decision the Attorney General shall consider the exigencies and scheduling of the production; (iv) the Attorney General shall append to the decision any such opinion; and (v) upon making the decision, the Attorney General shall immediately provide a copy of the decision to the consulting labor and management organizations.".

SEC. 4405. TREATMENT OF NONIMMIGRANTS DURING ADJUDICATION OF APPLICATION.

Section 214 (8 U.S.C. 1184), as amended by sections 3609 and 4233, is further amended by adding at the end the following:

"(u) Treatment of Nonimmigrants During Adjudication of Application.—A nonimmigrant alien granted employment authorization pursuant to sections 101(a)(15)(A), 101(a)(15)(E), 101(a)(15)(G), 101(a)(15)(H), 101(a)(15)(I), 101(a)(15)(J), 101(a)(15)(L), 101(a)(15)(O), 101(a)(15)(P), 101(a)(15)(Q), 101(a)(15)(R), 214(e), and such other sections as the Secretary of Homeland Security may by regulations prescribe whose status has expired but who has, or whose sponsoring employer or authorized agent has, filed a timely application or petition for an extension of such employment authorization and nonimmigrant status as provided under subsection (a) is authorized to continue employment with the same employer until the application or petition is adjudicated. Such authorization shall be subject to the same conditions and limitations as the initial grant of employment authorization.".

SEC. 4406. NONIMMIGRANT ELEMENTARY AND SECONDARY SCHOOL STUDENTS.

Section 214(m)(1)(B) (8 U.S.C. 1184(m)(1)(B)) is amended striking "unless—" and all that follows through "(ii)" and inserting "unless".

SEC. 4407. J–1 VISA EXCHANGE VISITOR PROGRAM FEE.

**** 18** Section ~~201(b)(1)~~ **281** (8 U.S.C. ~~1151(b)(1))~~ **1351)**, as amended by section ~~217(b)~~ **4105**, is further amended by adding at the end the following:

"(e) J–1 Visa Exchange Visitor Program Fee.—In addition to the fees authorized under subsection (a), the Secretary of State shall collect, from employers, a $500 fee for each nonimmigrant for whom the employer submits a petition under the exchange visitor program described in section 101(a)(15)(J). Fees collected under this subsection shall be deposited into the Comprehensive Immigration Reform Trust Fund established under section 6(a)(1) of the Border Security, Economic Opportunity, and Immigration Modernization Act.".

SEC. 4408. F–1 VISA FEE.

Section 281 (8 U.S.C. 1351), as amended by sections 4105 and 4407, is further amended by adding at the end the following:

"(f) F–1 Visa Fee.—

"(1) IN GENERAL.—In addition to the fees authorized under subsection (a), the

Secretary of Homeland Security shall collect a $100 fee from each nonimmigrant admitted under section 101(a)(15)(F)(i). Fees collected under this subsection shall be deposited into the Comprehensive Immigration Reform Trust Fund established under section 6(a)(1) of the Border Security, Economic Opportunity, and Immigration Modernization Act.

"(2) RULEMAKING.—The Secretary of Homeland Security, in conjunction with the Secretary of State, shall promulgate regulations to ensure that—

"(A) the fee authorized under paragraph (1) is paid on behalf of all J–1 nonimmigrants seeking entry into the United States;

"(B) a fee related to the hiring of a J–1 nonimmigrant is not deducted from the wages or other compensation paid to the J–1 nonimmigrant; and

"(C) not more than 1 fee is collected per J–1 nonimmigrant.".

Subtitle E—JOLT Act

SEC. 4501. SHORT TITLES.

This subtitle may be cited as the "Jobs Originated through Launching Travel Act of 2013" or the "JOLT Act of 2013".

SEC. 4502. PREMIUM PROCESSING.

Section 221 (8 U.S.C. 1201) is amended by inserting at the end the following:

"(j) Premium Processing.—

"(1) PILOT PROCESSING SERVICE.—Recognizing that the best solution for expedited processing is low interview wait times for all applicants, the Secretary of State shall nevertheless establish, on a limited, pilot basis only, a fee-based premium processing service to expedite interview appointments. In establishing a pilot processing service, the Secretary may—

"(A) determine the consular posts at which the pilot service will be available;

"(B) establish the duration of the pilot service;

"(C) define the terms and conditions of the pilot service, with the goal of expediting visa appointments and the interview process for those electing to pay said fee for the service; and

"(D) resources permitting, during the pilot service, consider the addition of consulates in locations advantageous to foreign policy objectives or in highly populated locales.

"(2) FEES.—

"(A) AUTHORITY TO COLLECT.—The Secretary of State is authorized to collect, and set the amount of, a fee imposed for the premium processing service. The Secretary of State shall set the fee based on all relevant considerations including, the cost of expedited service.

"(B) USE OF FEES.—Fees collected under the authority of subparagraph (A) shall be deposited as an offsetting collection to any Department of State appropriation, to recover the costs of providing consular services. Such fees shall remain available for obligation until expended.

"(C) RELATIONSHIP TO OTHER FEES.—Such fee is in addition to any existing fee currently being collected by the Department of State.

"(D) NONREFUNDABLE.—Such fee will be nonrefundable to the applicant.

"(3) DESCRIPTION OF PREMIUM PROCESSING.—Premium processing pertains solely to the expedited scheduling of a visa interview. Utilizing the premium processing service for an expedited interview appointment does not establish the applicant's eligibility for a visa. The Secretary of State shall, if possible, inform applicants utilizing the premium processing of potential delays in visa issuance due to additional screening requirements, including necessary security-related checks and clearances.

"(4) REPORT TO CONGRESS.—

"(A) REQUIREMENT FOR REPORT.—Not later than 18 months after the date of the enactment of the JOLT Act of 2013, the Secretary of State shall submit to the appropriate committees of Congress a report on the results of the pilot service carried out under this section.

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

"(i) the Committee on the Judiciary, the Committee on Foreign Relations, and the Committee on Appropriations of the Senate; and

"(ii) the Committee on the Judiciary, the Committee on Foreign Affairs, and the Committee on Appropriations of the House of Representatives.".

SEC. 4503. ENCOURAGING CANADIAN TOURISM TO THE UNITED STATES.

Section 214 (8 U.S.C. 1184), as amended by sections 3609, 4233, and 4405, is further amended by adding at the end the following:

"(v) Canadian Retirees.—

"(1) IN GENERAL.—The Secretary of Homeland Security may admit as a visitor for pleasure as described in section 101(a)(15)(B) any alien for a period not to exceed 240 days, if the alien demonstrates, to the satisfaction of the Secretary, that the alien—

"(A) is a citizen of Canada;

"(B) is at least 55 years of age;

"(C) maintains a residence in Canada;

"(D) owns a residence in the United States or has signed a rental agreement for accommodations in the United States for the duration of the alien's stay in the United States;

"(E) is not inadmissible under section 212;

"(F) is not described in any ground of deportability under section 237;

"(G) will not engage in employment or labor for hire in the United States; and

"(H) will not seek any form of assistance or benefit described in section 403(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1613(a)).

"(2) SPOUSE.—The spouse of an alien described in paragraph (1) may be admitted under the same terms as the principal alien if the spouse satisfies the requirements of paragraph (1), other than ~~subparagraph~~ **subparagraphs (B) and** (D).

"(3) IMMIGRANT INTENT.—In determining eligibility for admission under this subsection, maintenance of a residence in the United States shall not be considered evidence of intent by the alien to abandon the alien's residence in Canada.

"(4) PERIOD OF ADMISSION.—During any single 365-day period, an alien may be admitted as described in section 101(a)(15)(B) pursuant to this subsection for a period not to exceed 240 days, beginning on the date of admission. ~~Periods~~ **Unless an extension is approved by the Secretary, periods** of time spent outside the United States during such 240-day period shall not toll the expiration of such 240-day period.".

SEC. 4504. RETIREE VISA.

(a) Nonimmigrant Status.—Section 101(a)(15)**, as amended,** is **further** amended by inserting after subparagraph ~~(W)~~**(X)** the following:

"(Y) subject to section 214(w), an alien who, after the date of the enactment of the JOLT Act of 2013—

"(i)(I) uses at least $500,000 in cash to purchase 1 or more residences in the United States, which each sold for more than 100 percent of the most recent appraised value of such residence, as determined by the property assessor in the city or county in which the residence is located;

"(II) maintains ownership of residential property in the United States worth at least $500,000 during the entire period the alien remains in the United States as a nonimmigrant described in this subparagraph; and

"(III) resides for more than 180 days per year in a residence in the United States that is worth at least $250,000; and

"(ii) the alien spouse and children of the alien described in clause (i) if accompanying or following to join the alien.".

(b) Visa Application Procedures.—Section 214 (8 U.S.C. 1184), as amended by sections 3609, 4233, 4405, and 4503, is further amended by adding at the end the following:

"(w) Visas of Nonimmigrants Described in Section 101(a)(15)(Y).—

"(1) The Secretary of Homeland Security shall authorize the issuance of a nonimmigrant visa to any alien described in section 101(a)(15)(Y) who submits a petition to the Secretary ~~that~~ **that—**

"(A) demonstrates, to the satisfaction of the Secretary, that the alien—

~~"(A)~~**"(i)** has purchased a residence in the United States that meets the criteria set forth in section 101(a)(15)(Y)(i);

~~"(B)~~**"(ii)** is at least 55 years of age;

~~"(C)~~**"(iii)** possesses health insurance coverage;

~~"(D)~~**"(iv)** is not inadmissible under section 212; and

~~"(E)~~**"(v)** will comply with the terms set forth in paragraph (2)**; and**

"(B) includes payment of a fee in an amount equal to $1,000.~~.~~

"(2) An alien who is issued a visa under this subsection—

"(A) shall reside in the United States at a residence that meets the criteria set forth in section 101(a)(15)(Y)(i) for more than 180 days per year;

"(B) is not authorized to engage in employment in the United States, except for employment that is directly related to the management of the residential property described in section 101(Y)(i)(II);

"(C) is not eligible for any form of assistance or benefit described in section 403(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1613(a)); and

"(D) may renew such visa every 3 years under the same terms and conditions.".

(c) Use of Fee.—Fees collected under section 214(w)(1)(B) of the Immigration and Nationality Act, as added by subsection (b), shall be deposited in the Comprehensive Immigration Reform Trust Fund established under section 6(a)(1).

SEC. 4505. INCENTIVES FOR FOREIGN VISITORS VISITING THE UNITED STATES DURING LOW PEAK SEASONS.

The Secretary of State shall make publically available, on a monthly basis, historical data, for the previous 2 years, regarding the availability of visa appointments for each visa processing post, to allow applicants to identify periods of low demand, when wait times tend to be lower.

SEC. 4506. VISA WAIVER PROGRAM ENHANCED SECURITY AND REFORM.

(a) Definitions.—Section 217(c)(1) (8 U.S.C. 1187(c)(1)) is amended to read as follows:

"(1) AUTHORITY TO DESIGNATE; DEFINITIONS.—

"(A) AUTHORITY TO DESIGNATE.—The Secretary of Homeland Security, in consultation with the Secretary of State, may designate any country as a program country if that country meets the requirements under paragraph (2).

"(B) DEFINITIONS.—In this subsection:

"(i) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term 'appropriate congressional committees' means—

"(I) the Committee on Foreign Relations, the Committee on Homeland Security and Governmental Affairs, and the Committee on the Judiciary of the Senate; and

"(II) the Committee on Foreign Affairs, the Committee on Homeland Security, and the Committee on the Judiciary of the House of Representatives.

"(ii) OVERSTAY RATE.—

"(I) INITIAL DESIGNATION.—The term 'overstay rate' means, with respect to a country being considered for designation in the program, the ratio of—

"(aa) the number of nationals of that country who were admitted to the United States on the basis of a nonimmigrant visa under section 101(a)(15)(B) whose periods of authorized stay ended during a fiscal year but who remained unlawfully in the United States beyond such periods; to

"(bb) the number of nationals of that country who were admitted to the United States on the basis of a nonimmigrant visa under section 101(a)(15)(B) whose periods of authorized stay ended during that fiscal year.

"(II) CONTINUING DESIGNATION.—The term 'overstay rate' means, for each fiscal year after initial designation under this section with respect to a country, the ratio of—

"(aa) the number of nationals of that country who were admitted to the United States under this section or on the basis of a nonimmigrant visa under section 101(a)(15)(B) whose periods of authorized stay ended during a fiscal year but who remained unlawfully in the United States beyond such periods; to

"(bb) the number of nationals of that country who were admitted to the United States under this section or on the basis of a nonimmigrant visa under section 101(a)(15)(B) whose periods of authorized stay ended during that fiscal year.

"(III) COMPUTATION OF OVERSTAY RATE.—In determining the overstay rate for a country, the Secretary of Homeland Security may utilize information from any available databases to ensure the accuracy of such rate.

"(iii) PROGRAM COUNTRY.—The term 'program country' means a country designated as a program country under subparagraph (A).".

(b) Technical and Conforming Amendments.—Section 217 (8 U.S.C. 1187) is amended—

(1) by striking "Attorney General" each place the term appears (except in subsection

(c)(11)(B)) and inserting "Secretary of Homeland Security"; and

(2) in subsection (c)—

(A) in paragraph (2)(C)(iii), by striking "Committee on the Judiciary and the Committee on International Relations of the House of Representatives and the Committee on the Judiciary and the Committee on Foreign Relations of the Senate" and inserting "appropriate congressional committees";

(B) in paragraph (5)(A)(i)(III), by striking "Committee on the Judiciary, the Committee on Foreign Affairs, and the Committee on Homeland Security, of the House of Representatives and the Committee on the Judiciary, the Committee on Foreign Relations, and the Committee on Homeland Security and Governmental Affairs of the Senate" and inserting "appropriate congressional committees"; and

(C) in paragraph (7), by striking subparagraph (E).

(c) Designation of Program Countries Based on Overstay Rates.—

(1) IN GENERAL.—Section 217(c)(2)(A) (8 U.S.C. 1187(c)(2)(A)) is amended to read as follows:

"(A) GENERAL NUMERICAL LIMITATIONS.—

"(i) LOW NONIMMIGRANT VISA REFUSAL RATE.—The percentage of nationals of that country refused nonimmigrant visas under section 101(a)(15)(B) during the previous full fiscal year was not more than 3 percent of the total number of nationals of that country who were granted or refused nonimmigrant visas under such section during such year.

"(ii) LOW NONIMMIGRANT OVERSTAY RATE.—The overstay rate for that country was not more than 3 percent during the previous fiscal year.".

(2) QUALIFICATION CRITERIA.—Section 217(c)(3) (8 U.S.C. 1187(c)(3)) is amended to read as follows:

"(3) QUALIFICATION CRITERIA.—After designation as a program country under section 217(c)(2), a country may not continue to be designated as a program country unless the Secretary of Homeland Security, in consultation with the Secretary of State, determines, pursuant to the requirements under paragraph (5), that the designation will be continued.".

(3) INITIAL PERIOD.—Section 217(c) ~~is further~~**(8 U.S.C. 1187(c)) is** amended by striking paragraph (4).

(4) CONTINUING DESIGNATION.—Section 217(c)(5)(A)(i)(II) (8 U.S.C. 1187(c)(5)(A)(i)(II)) is amended to read as follows:

"(II) shall determine, based upon the evaluation in subclause (I), whether any such designation under subsection (d) or (f), or probation under subsection (f), ought to be continued or terminated;".

(5) COMPUTATION OF VISA REFUSAL RATES; JUDICIAL REVIEW.—Section 217(c)(6) (8 U.S.C. 1187(c)(6)) is amended to read as follows:

"(6) COMPUTATION OF VISA REFUSAL RATES AND JUDICIAL REVIEW.—

"(A) COMPUTATION OF VISA REFUSAL RATES.—For purposes of determining the eligibility of a country to be designated as a program country, the calculation of visa refusal rates shall not include any visa refusals which incorporate any procedures based on, or are otherwise based on, race, sex, or disability, unless otherwise specifically authorized by law or regulation.

"(B) JUDICIAL REVIEW.—No court shall have jurisdiction under this section to review any visa refusal, the Secretary of State's computation of a visa refusal rate, the Secretary of Homeland Security's computation of an overstay rate, or the designation or nondesignation of a country as a program country.".

(6) VISA WAIVER INFORMATION.—Section 217(c)(7) (8 U.S.C. 1187(c)(7)) ~~is~~ **, as amended by subsection (b)(2)(C), is further** amended—

(A) by striking subparagraphs (B) through (D); and

(B) by striking "WAIVER INFORMATION.—" and all that follows through "In refusing" and inserting "WAIVER INFORMATION.—In refusing".

(7) WAIVER AUTHORITY.—Section 217(c)(8) (8 U.S.C. 1187(c)(8)) is amended to read as follows:

"(8) WAIVER AUTHORITY.—The Secretary of Homeland Security, in consultation with the Secretary of State, may waive the application of paragraph (2)(A)(i) for a country if—

"(A) the country meets all other requirements of paragraph (2);

"(B) the Secretary of Homeland Security determines that the totality of the country's security risk mitigation measures provide assurance that the country's participation in the program would not compromise the law enforcement, security interests, or enforcement of the immigration laws of the United States;

"(C) there has been a general downward trend in the percentage of nationals of the country refused nonimmigrant visas under section 101(a)(15)(B);

"(D) the country consistently cooperated with the Government of the United States on counterterrorism initiatives, information sharing, preventing terrorist travel, and extradition to the United States of individuals (including the country's own nationals) who commit crimes that violate United States law before the date of its designation as a program country, and the Secretary of Homeland Security and the Secretary of State assess that such cooperation is likely to continue; and

"(E) the percentage of nationals of the country refused a nonimmigrant visa under section 101(a)(15)(B) during the previous full fiscal year was not more than 10 percent of the total number of nationals of that country who were granted or refused such nonimmigrant visas.".

(d) Termination of Designation; Probation.—Section 217(f) (8 U.S.C. 1187(f)) is amended to read as follows:

"(f) Termination of Designation; Probation.—

"(1) DEFINITIONS.—In this subsection:

"(A) PROBATIONARY PERIOD.—The term 'probationary period' means the fiscal year

in which a probationary country is placed in probationary status under this subsection.

"(B) PROGRAM COUNTRY.—The term 'program country' has the meaning given that term in subsection (c)(1)(B).

"(2) DETERMINATION, NOTICE, AND INITIAL PROBATIONARY PERIOD.—

"(A) DETERMINATION OF PROBATIONARY STATUS AND NOTICE OF NONCOMPLIANCE.—As part of each program country's periodic evaluation required by subsection (c)(5)(A), the Secretary of Homeland Security shall determine whether a program country is in compliance with the program requirements under subparagraphs (A)(ii) through (F) of subsection (c)(2).

"(B) INITIAL PROBATIONARY PERIOD.—If the Secretary of Homeland Security determines that a program country is not in compliance with the program requirements under subparagraphs (A)(ii) through (F) of subsection (c)(2), the Secretary of Homeland Security shall place the program country in probationary status for the fiscal year following the fiscal year in which the periodic evaluation is completed.

"(3) ACTIONS AT THE END OF THE INITIAL PROBATIONARY PERIOD.—At the end of the initial probationary period of a country under paragraph (2)(B), the Secretary of Homeland Security shall take 1 of the following actions:

"(A) COMPLIANCE DURING INITIAL PROBATIONARY PERIOD.—If the Secretary determines that all instances of noncompliance with the program requirements under subparagraphs (A)(ii) through (F) of subsection (c)(2) that were identified in the latest periodic evaluation have been remedied by the end of the initial probationary period, the Secretary shall end the country's probationary period.

"(B) NONCOMPLIANCE DURING INITIAL PROBATIONARY PERIOD.—If the Secretary determines that any instance of noncompliance with the program requirements under subparagraphs (A)(ii) through (F) of subsection (c)(2) that were identified in the latest periodic evaluation has not been remedied by the end of the initial probationary period—

"(i) the Secretary may terminate the country's participation in the program; or

"(ii) on an annual basis, the Secretary may continue the country's probationary status if the Secretary, in consultation with the Secretary of State, determines that the country's continued participation in the program is in the national interest of the United States.

"(4) ACTIONS AT THE END OF ADDITIONAL PROBATIONARY PERIODS.—At the end of all probationary periods granted to a country pursuant to paragraph (3)(B)(ii), the Secretary shall take 1 of the following actions:

"(A) COMPLIANCE DURING ADDITIONAL PERIOD.—The Secretary shall end the country's probationary status if the Secretary determines during the latest periodic evaluation required by subsection (c)(5)(A) that the country is in compliance with the program requirements under subparagraphs (A)(ii) through (F) of subsection (c)(2).

"(B) NONCOMPLIANCE DURING ADDITIONAL PERIODS.—The Secretary shall terminate the country's participation in the program if the Secretary determines during the latest

periodic evaluation required by subsection (c)(5)(A) that the program country continues to be in noncompliance with the program requirements under subparagraphs (A)(ii) through (F) of subsection (c)(2).

"(5) EFFECTIVE DATE.—The termination of a country's participation in the program under paragraph (3)(B) or (4)(B) shall take effect on the first day of the first fiscal year following the fiscal year in which the Secretary determines that such participation shall be terminated. Until such date, nationals of the country shall remain eligible for a waiver under subsection (a).

"(6) TREATMENT OF NATIONALS AFTER TERMINATION.—For purposes of this subsection and subsection (d)—

"(A) nationals of a country whose designation is terminated under paragraph (3) or (4) shall remain eligible for a waiver under subsection (a) until the effective date of such termination; and

"(B) a waiver under this section that is provided to such a national for a period described in subsection (a)(1) shall not, by such termination, be deemed to have been rescinded or otherwise rendered invalid, if the waiver is granted prior to such termination.

"(7) CONSULTATIVE ROLE OF THE SECRETARY OF STATE.—In this subsection, references to subparagraphs (A)(ii) through (F) of subsection (c)(2) and subsection (c)(5)(A) carry with them the consultative role of the Secretary of State as provided in those provisions.".

(e) Review of Overstay Tracking Methodology.—Not later than 180 days after the date of the enactment of this Act, the Comptroller General of the United States shall conduct a review of the methods used by the Secretary—

(1) to track aliens entering and exiting the United States; and

(2) to detect any such alien who stays longer than such alien's period of authorized admission.

(f) Evaluation of Electronic System for Travel Authorization.—Not later than 90 days after the date of the enactment of this Act, the Secretary shall submit to Congress—

(1) an evaluation of the security risks of aliens who enter the United States without an approved Electronic System for Travel Authorization verification; and

(2) a description of any improvements needed to minimize the number of aliens who enter the United States without the verification described in paragraph (1).

(g) Sense of Congress on Priority for Review of Program Countries.—It is the sense of Congress that the Secretary, in the process of conducting evaluations of countries participating in the visa waiver program under section 217 of the Immigration and Nationality Act (8 U.S.C. 1187), should prioritize the reviews of countries in which circumstances indicate that such a review is necessary or desirable.

SEC. 4507. EXPEDITING ENTRY FOR PRIORITY VISITORS.

Section 7208(k)(4) of the Intelligence Reform and Terrorism Prevention Act of 2004 (8 U.S.C. 1365b(k)(4)) is amended to read as follows:

"(4) EXPEDITING ENTRY FOR PRIORITY VISITORS.—

"(A) IN GENERAL.—The Secretary of Homeland Security may expand the enrollment across registered traveler programs to include eligible individuals employed by international organizations, selected by the Secretary, which maintain strong working relationships with the United States.

"(B) REQUIREMENTS.—An individual may not be enrolled in a registered traveler program unless—

"(i) the individual is sponsored by an international organization selected by the Secretary under subparagraph (A); and

"(ii) the government that issued the passport that the individual is using has entered into a Trusted Traveler Arrangement with the Department of Homeland Security to participate in a registered traveler program.

"(C) SECURITY REQUIREMENTS.—An individual may not be enrolled in a registered traveler program unless the individual has successfully completed all applicable security requirements established by the Secretary, including cooperation from the applicable foreign government, to ensure that the individual does not pose a risk to the United States.

"(D) DISCRETION.—Except as provided in subparagraph (E), the Secretary shall retain unreviewable discretion to offer or revoke enrollment in a registered traveler program to any individual.

"(E) INELIGIBLE TRAVELERS.—An individual who is a citizen of a state sponsor of terrorism (as defined in section 301(13) of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (22 U.S.C. 8541(13)) may not be enrolled in a registered traveler program.".

SEC. 4508. VISA PROCESSING.

(a) In General.—Notwithstanding any other provision of law and not later than 90 days after the date of the enactment of this Act, the Secretary of State shall—

(1) require United States diplomatic and consular missions—

(A) to conduct visa interviews for nonimmigrant visa applications determined to require a consular interview in an expeditious manner, consistent with national security requirements, and in recognition of resource allocation considerations, such as the need to ensure provision of consular services to citizens of the United States;

(B) to set a goal of interviewing 80 percent of all nonimmigrant visa applicants, worldwide, within 3 weeks of receipt of application, subject to the conditions outlined in subparagraph (A); and

(C) to explore expanding visa processing capacity in China and Brazil, with the goal of maintaining interview wait times under 15 work days on a consistent, year-round basis, recognizing that demand can spike suddenly and unpredictably and that the first

priority of United States missions abroad is the protection of citizens of the United States; and

(2) submit to the appropriate committees of Congress a detailed strategic plan that describes the resources needed to carry out paragraph (1)(A).

(b) Appropriate Committees of Congress.—In this section, the term "appropriate committees of Congress" means—

(1) the Committee on the Judiciary, the Committee on Foreign Relations, and the Committee on Appropriations of the Senate; and

(2) the Committee on the Judiciary, the Committee on Foreign Affairs, and the Committee on Appropriations of the House of Representatives.

(c) Semi-Annual Report.—Not later than 30 days after the end of the first 6 months after the implementation of subsection (a), and not later than 30 days after the end of each subsequent quarter, the Secretary of State shall submit to the appropriate committees of Congress a report that provides—

(1) data substantiating the efforts of the Secretary of State to meet the requirements and goals described in subsection (a);

(2) any factors that have negatively impacted the efforts of the Secretary to meet such requirements and goals; and

(3) any measures that the Secretary plans to implement to meet such requirements and goals.

(d) Savings Provision.—

(1) IN GENERAL.—Nothing in subsection (a) may be construed to affect a consular officer's authority—

(A) to deny a visa application under section 221(g) of the Immigration and Nationality Act (8 U.S.C. 1201(g)); or

(B) to initiate any necessary or appropriate security-related check or clearance.

(2) SECURITY CHECKS.—The completion of a security-related check or clearance shall not be subject to the time limits set out in subsection (a).

SEC. 4509. B VISA FEE.

Section 281 (8 U.S.C. 1351), as amended by sections 4105, 4407, and 4408, is further amended by adding at the end the following:

"(g) B Visa Fee.—In addition to the fees authorized under subsection (a), the Secretary of Homeland Security shall collect a $5 fee from each nonimmigrant admitted under section 101(a)(15)(B). Fees collected under this subsection shall be deposited into the Comprehensive Immigration Reform Trust Fund established under section 6(a)(1) of the Border Security, Economic Opportunity, and Immigration Modernization Act.".

Subtitle F—Reforms to the H–2B Visa Program

SEC. 4601. EXTENSION OF RETURNING WORKER EXEMPTION TO H–2B NUMERICAL LIMITATION.

(a) In General.—

(1) IN GENERAL.—Subparagraph (A) of paragraph (10) of section 214(g) (8 U.S.C. 1184(g)), as redesignated by section 4101(a)(3), is amended by striking "fiscal year 2004, 2005, or ~~2006"~~ **2006 shall not again be counted toward such limitation during fiscal year 2007."** and inserting "fiscal year 2013 shall not again be counted toward such limitation during fiscal years 2014 through 2018.".

(2) EFFECTIVE PERIOD.—The amendment made by paragraph (1) shall be effective during the period beginning on the effective date described in subsection (c) and ending on September 30, 2018.

(b) Technical and Clarifying Amendments.—

(1) NONIMMIGRANT STATUS.—Section 101(a)(15)(P) (8 U.S.C. 1101(a)(15)(P)) is amended—

(A) in clause (iii), by striking "or" at the end;

(B) in clause (iv), by striking "clause (i), (ii), or (iii)," and inserting "clause (i), (ii), (iii), or (iv)";

(C) by redesignating ~~"clause (iv)" as "clause (v)"~~ **clause (iv) as clause (v)**; and

(D) by inserting after ~~"clause (iii)"~~ **clause (iii)** the following ~~new clause~~:

"(iv) is a ski instructor**, who has been certified as a level I, II, or III ski and snowboard instructor by the Professional Ski Instructors of America or the American Association of Snowboard Instructors, or received an equivalent certification in the alien's country of origin, and is** seeking to enter the United States temporarily to perform instructing services; or".

(2) AUTHORIZED PERIOD OF STAY; NUMERICAL LIMITATION.—Section 214(a)(2)(B) (8 U.S.C. 1184(a)(2)(B)) is amended in the second sentence—

(A) by inserting "or ski instructors" after "athletes"; and

(B) by inserting "or ski instructor" after "athlete".

(3) CONSTRUCTION.—Nothing in the amendments made by this subsection may be construed as preventing an alien who is a ski instructor from obtaining nonimmigrant status under section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(b)) if such alien is otherwise qualified for such status.

(c) Effective Date.—The amendment made by subsection (a) shall take effect as if enacted on January 1, 2013.

SEC. 4602. OTHER REQUIREMENTS FOR H–2B EMPLOYERS.

(a) In General.—Section 214 (8 U.S.C. 1184), as amended by sections 3609, 4233, 4405,

4503, and 4504, is further amended by adding at the end the following:

"(x) Requirements for H–2B Employers.—

"(1) H–2B NONIMMIGRANT DEFINED.—In this subsection the term 'H–2B nonimmigrant' means an alien admitted to the United States pursuant to section 101(a)(15)(H)(ii)(B).

"(2) NON-DISPLACEMENT OF UNITED STATES WORKERS.—An employer who seeks to employ an H–2B nonimmigrant admitted in an occupational classification shall certify and attest that the employer did not displace and will not displace a United States worker employed by the employer in the same metropolitan statistical area where such nonimmigrant will be hired within the period beginning 90 days before the start date and ending on the end date for which the employer is seeking the services of such nonimmigrant as specified on an application for labor certification under this Act.

"(3) TRANSPORTATION COSTS.—The employer shall pay the transportation costs, including reasonable subsistence costs during the period of travel, for an H–2B nonimmigrant hired by the employer—

"(A) from the place of recruitment to the place of such nonimmigrant's employment; and

"(B) from the place of employment to such nonimmigrant's place of permanent residence or a subsequent worksite.

"(4) PAYMENT OF FEES.—A fee related to the hiring of an H-2B nonimmigrant required to be paid by an employer under this Act shall be paid by the employer and may not be deducted from the wages or other compensation paid to an H-2B nonimmigrant.

"(5) H–2B NONIMMIGRANT LABOR CERTIFICATION APPLICATION ~~FEES.—~~ **FEE.—**

"(A) IN GENERAL.—To recover costs of carrying out labor certification activities under the H-2B program, the Secretary of Labor shall impose a $500 fee on an employer that submits an application for an employment certification for aliens granted H–2B nonimmigrant status to the Secretary of Labor under this subparagraph on or after the date that is 30 days after the date of enactment of the Border Security, Economic Opportunity, and Immigration Modernization Act.".

"(B) USE OF FEES.—The fees collected under subparagraph (A) shall be deposited in the Comprehensive Immigration Reform Trust Fund established under section 6 of the Border Security, Economic Opportunity, and Immigration Modernization Act.".

SEC. 4603. EXECUTIVES AND MANAGERS.

Section~~(b) Executives and Managers.—Section~~ 214 (8 U.S.C. 1184) is ~~amended as follows:~~ **amended—**

(1) in subsection (a)(1), by adding at the end **the following:** "Aliens admitted under section 101(a)(15) should include—

"(A) executives and managers employed by a firm or corporation or other legal entity or an affiliate or subsidiary thereof who are principally stationed abroad and who seek to enter the United States for periods of 90 days or less to oversee and observe the United States operations of their related companies, and establish strategic objectives when needed; or

"(B) employees of multinational corporations who enter the United States to observe the operations of a related United States company and participate in select leadership and development training activities, whether or not the activity is part of a formal or classroom training program for a period not to exceed 180 days.

Nonimmigrant aliens admitted pursuant to section 101(a)(15) and engaged in the activities described in the subparagraph (A) or (B) may not receive a salary from a United States source, except for incidental expenses for meals, travel, lodging and other basic services.".

SEC. 4604. HONORARIA.

Section~~(c) Honoraria.—Section~~ 212(q) (8 U.S.C. 1182(q)) is amended to read as follows:

"(q)(1) Any alien admitted under section 101(a)(15)(B) may accept an honorarium payment and associated incidental expenses, for a usual academic activity or activities (lasting not longer than 9 days at any single institution), as defined by the Attorney General in consultation with the Secretary of Education, or for a performance, appearance and participation in United States based programming, including scripted or unscripted programming (with services not rendered for more than 60 days in a 6 month period) if the alien has received a letter of invitation from the institution, organization, or media outlet, such payment is offered by an institution, organization, or media outlet described in paragraph (2) and is made for services conducted for the benefit of that institution, entity or media outlet and if the alien has not accepted such payment or expenses from more than 5 institutions, organizations, or media outlets in the previous 6-month period. Any alien who is admitted under section 101(a)(15)(B) or any other valid visa may perform services under this section without reentering the United States and without a letter of invitation, if the alien does not receive any remuneration including an honorarium payment or incidental expenses, but may receive prize money.

"(2) An institution, organization, or media outlet described in this paragraph—

"(A) an institution of higher education (as defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a))) or a related or affiliated nonprofit entity;

"(B) a nonprofit research organization or a Governmental research organization; and

"(C) a broadcast network, cable entity, production company, new media, internet and mobile based companies, who create or distribute programming content.".

SEC. ~~4603~~ **4605**. NONIMMIGRANTS PARTICIPATING IN RELIEF OPERATIONS.

Section 214 (8 U.S.C. 1184), as amended by sections 3609, 4233, 4405, 4503, 4504, and 4602, is further amended by adding at the end following:

"(y) Nonimmigrants Participating in Relief Operations.—

"(1) IN GENERAL.—An alien coming individually, or aliens coming as a group, to participate in relief operations, including critical infrastructure repairs or improvements, needed in response to a Federal or State declared emergency or disaster, may be admitted to the United States pursuant to section 101(a)(15)(B) for a period of not more than 90 days if each such alien has been employed in a foreign country by 1 employer for not less than 1 year prior to the date the alien is so admitted.

"(2) PROHIBITION ON INCOME FROM A UNITED STATES SOURCE.—During a period of admission pursuant to paragraph (1), an alien may not receive income from a United States source, except for incidental expenses for meals, travel, lodging, and other basic services.".

SEC. ~~4604~~ **4606**. NONIMMIGRANTS PERFORMING MAINTENANCE ON COMMON CARRIERS.

Section 214 (8 U.S.C. 1184), as amended by sections 3609, 4233, 4405, 4503, 4504, 4602, and 4603, is further amended by adding at the end following:

"(z) Nonimmigrants Performing Maintenance on Common Carrier.—

"(1) IN GENERAL.—An alien coming individually, or aliens coming as a group, who possess specialized knowledge to perform maintenance or repairs for common carriers, including to airlines, cruise lines, and railways, if such maintenance or repairs are occurring to equipment or machinery manufactured outside of the United States and are needed for purposes relating to life, health, and safety, may be admitted to the United States pursuant to section 101(a)(15)(B) for a period of not more than 90 days if each such alien has been employed in a foreign country by 1 employer for not less than 1 year prior to the date the alien is so admitted.

"(2) PROHIBITION ON INCOME FROM A UNITED STATES SOURCE.—During a period of admission pursuant to paragraph (1), an alien may not receive a income from a United States source, except for incidental expenses for meals, travel, lodging, and other basic services.

"(3) FEE.—

"(A) IN GENERAL.—An alien admitted pursuant to paragraph (1) shall pay a fee of $500 **in addition to in addition to any fee assessed to cover the costs to process an application under this subsection**.

"(B) USE OF FEE.—The fees collected under subparagraph (A) shall be deposited in the Comprehensive Immigration Reform Trust Fund established under section 6**(a)(1)** of the Border Security, Economic Opportunity, and Immigration Modernization ~~Act"~~ **Act."**.

Subtitle G—W Nonimmigrant Visas

SEC. 4701. BUREAU OF IMMIGRATION AND LABOR MARKET RESEARCH.

(a) Definitions.—In this section:

(1) BUREAU.—Except as otherwise specifically provided, the term "Bureau" means the Bureau of Immigration and Labor Market Research established under subsection (b).

(2) COMMISSIONER.—The term "Commissioner" means the Commissioner of the Bureau.

(3) CONSTRUCTION OCCUPATION.—The term "construction occupation" means an occupation ~~defined~~ **classified** by the Bureau of Labor Statistics as being within the construction industry for the purposes of publishing the Bureau's workforce statistics.

(4) METROPOLITAN STATISTICAL AREA.—The term "metropolitan statistical area" means a geographic area designated as a metropolitan statistical area by the Director of the Office of Management and Budget.

(5) SHORTAGE OCCUPATION.—The term "shortage occupation" means an occupation that the Commissioner determines is experiencing a shortage of labor—

(A) throughout the United States; or

(B) in a specific metropolitan statistical area.

(6) W VISA PROGRAM.—The term "W ~~visa program"~~ **Visa Program"** means the program for the admission of nonimmigrant aliens described in subparagraph (W)(i) of section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)), as added by section 4702.

(7) ZONE 1 OCCUPATION.—The term "zone 1 occupation" means an occupation that requires little or no preparation and is classified as a zone 1 occupation on—

(A) the Occupational Information Network Database (O*NET) on the date of the enactment of this Act; or

(B) such Database or a similar successor database, as designated by the Secretary of Labor, after the date of the enactment of this Act.

(8) ZONE 2 OCCUPATION.—The term "zone 2 occupation" means an occupation that requires some preparation and is classified as a zone 2 occupation on—

(A) the Occupational Information Network Database (O*NET) on the date of the enactment of this Act; or

(B) such Database or a similar successor database, as designated by the Secretary of Labor, after the date of the enactment of this Act.

(9) ZONE 3 OCCUPATION.—The term "zone 3 occupation" means an occupation that requires medium preparation and is classified as a zone 3 occupation on—

(A) the Occupational Information Network Database (O*NET) on the date of the enactment of this Act; or

(B) such Database or a similar successor database, as designated by the Secretary of Labor, after the date of the enactment of this Act.

(b) Establishment.—There is established a Bureau of Immigration and Labor Market Research as an independent statistical agency within U.S. Citizenship and Immigration Services.

(c) Commissioner.—The head of the Bureau of Immigration and Labor Market Research is the Commissioner, who shall be appointed by the President, by and with the advice and consent of the Senate.

(d) Duties.—The duties of the Commissioner are limited to the following:

(1) To devise a methodology subject to publication in the Federal Register and an opportunity for public comment ~~to determine the annual change to the numerical limitation for nonimmigrant aliens described in subparagraph (W)(i) of section 101(a)(15)~~ **regarding the calculation for the index referred to in section 220(g)(2)(C)** of the Immigration and

Nationality Act~~(8 U.S.C. 1101(a)(15))~~, as added by section ~~4702~~ **4703**.

(2) To determine and to publish in the Federal Register the annual change to the numerical limitation for nonimmigrant aliens described in subparagraph (W)(i) of section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)), as added by section 4702.

(3) With respect to the W ~~visa program~~ **Visa Program**, to supplement the recruitment methods employers may use to attract ~~such~~ **United States workers and current** nonimmigrant aliens **described in paragraph (2)**.

(4) With respect to the W ~~visa program~~ **Visa Program**, to devise a methodology subject to publication in the Federal Register and an opportunity for public comment to designate shortage occupations in zone 1 occupations, zone 2 occupations, and zone 3 occupations.

(5) With respect to the W ~~visa program~~ **Visa Program**, to designate shortage occupations in any zone 1 occupation, zone 2 occupation, or zone 3 occupation and publish such occupations in the Federal Register.

(6) With respect to the W ~~visa program~~ **Visa Program**, to conduct a survey once every 3 months of the unemployment rate of zone 1 occupations, zone 2 occupations, or zone 3 occupations that are construction occupations in each metropolitan statistical area.

(7) To study and report to Congress on employment-based immigrant and nonimmigrant visa programs in the United States and to make annual recommendations to improve such programs.

(8) To carry out any functions required to carry out the duties described in paragraphs (1) through (7).

(e) Determination of Changes to Numerical Limitations.—The methodology required under subsection (d)(1) shall be published in the Federal Register not later than 18 months after the date of the enactment of this Act.

(f) Designation of Shortage Occupations.—

(1) METHODS TO DETERMINE.—The Commissioner shall—

(A) establish the methodology to designate shortage occupations under subsection (d)(4); and

(B) publish such methodology in the Federal Register not later than 18 months after the date of the enactment of this Act.

(2) PETITION BY EMPLOYER.—The methodology established under paragraph (1) shall permit an employer to petition the Commissioner for a determination that a particular occupation in a particular metropolitan statistical area is a shortage occupation.

(3) REQUIREMENT FOR NOTICE AND COMMENT.—The methodology established under paragraph (1) shall be effective only after publication in the Federal Register and an opportunity for public comment.

(g) Employee Expertise.—The employees of the Bureau shall have the expertise necessary to identify labor shortages in the United States and make recommendations to the Commissioner on the impact of immigrant and nonimmigrant aliens on labor markets in the United States,

including expertise in economics, labor markets, demographics and methods of recruitment of United States workers.

(h) Interagency Cooperation.—At the request of the Commissioner, the Secretary of Commerce, the Director of the Bureau of the Census, the Secretary of Labor, and the Commissioner of the Bureau of Labor Statistics shall—

(1) provide data to the Commissioner;

(2) conduct appropriate surveys; and

(3) assist the Commissioner in preparing the recommendations referred to subsection (d)(5).

(i) Budget.—

(1) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Director of U.S. Citizenship and Immigration Services shall submit to Congress a report of the estimated budget that the Bureau will need to carry out the duties described in subsection (d).

(2) AUDIT.—The Comptroller General of the United States shall submit to Congress a report that is an audit of the budget prepared by the Director under paragraph (1).

(j) Funding.—

(1) APPROPRIATION OF FUNDS.—There is hereby appropriated, out of any money in the Treasury not otherwise appropriated, $20,000,000 to establish the Bureau.

(2) USE OF W NONIMMIGRANT FEES.—The amounts collected for fees under section 220(e)(6)(B) of the Immigration and Nationality Act, as added by section 4703, shall be used to establish and fund the Bureau.

(3) OTHER FEES.—The Secretary may establish other fees **for the sole purpose of funding the W Visa Program that are** related to the hiring of alien workers ~~and use such fees to fund the Bureau~~.

SEC. 4702. NONIMMIGRANT CLASSIFICATION FOR W NONIMMIGRANTS.

Section 101(a)(15)(W), as added by section 2211, is amended by inserting before clause (iii) the following:

"(i) to perform services or labor for a registered **non-agricultural** employer in a registered position (as those terms are defined in section 220(a)) in accordance with the requirements under section 220;

"(ii) to accompany or follow to join such an alien described in clause (i) as the spouse or child of such alien;".

SEC. 4703. ADMISSION OF W NONIMMIGRANT WORKERS.

(a) Admission of W Nonimmigrant Workers.—

(1) IN ~~GENERAL.—TITLE~~ **GENERAL.—Chapter 2 of title** II (8 U.S.C. ~~1151~~ **1181** et seq.) is amended by adding at the end the following:

"SEC. 220. ADMISSION OF W NONIMMIGRANT WORKERS.

"(a) Definitions.—In this section:

"(1) BUREAU.—The term 'Bureau' means the Bureau of Immigration and Labor Market Research established by section 4701 of the Border Security, Economic Opportunity, and Immigration Modernization Act.

"(2) CERTIFIED ALIEN.—The term 'certified alien' means an alien that the Secretary of State has certified is eligible to be a W nonimmigrant if the alien is hired by a registered employer for a registered position.

"(3) COMMISSIONER.—The term 'Commissioner' means the Commissioner of the Bureau.

"(4) CONSTRUCTION OCCUPATION.—The term 'construction occupation' means an occupation defined by the Bureau of Labor Statistics as being within the construction industry for the purposes of publishing the Bureau's workforce statistics.

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

"(6) ELIGIBLE OCCUPATION.—The term 'eligible occupation' means an eligible occupation described in subsection (e)(3).

"(7) EMPLOYER.—

"(A) IN GENERAL.—The term 'employer' means any person or entity hiring an individual for employment in the United States.

"(B) TREATMENT OF SINGLE EMPLOYER.—For purposes of determining the number of employees or United States workers employed by an employer, a single entity shall be treated as 1 employer.

"(8) EXCLUDED GEOGRAPHIC LOCATION.—The term 'excluded geographic location' means an excluded geographic location described in subsection (f).

"(9) METROPOLITAN STATISTICAL AREA.—The term 'metropolitan statistical area' means a geographic area designated as a metropolitan statistical area by the Director of the Office of Management and Budget.

"(10) REGISTERED EMPLOYER.—The term 'registered employer' means ~~an~~ **a non-agricultural** employer that the Secretary has designated as a registered employer under subsection (d).

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

"(12) SINGLE ENTITY.—The term 'single entity' means any group treated as a single employer under subsection (b), (c), (m), or (o) of section 414 of the Internal Revenue Code of 1986.

"(13) SHORTAGE OCCUPATION.—The term 'shortage occupation' means a shortage occupation designated by the Commissioner pursuant to section 4701(d)(4) of the Border Security, Economic Opportunity, and Immigration Modernization Act.

"(14) SMALL BUSINESS.—The term 'small business' means an employer that employs 25 or fewer full-time equivalent employees.

"(15) UNITED STATES WORKER.—The term 'United States worker' means an individual who is—

"(A) employed or seeking employment in the United States; and

"(B)(i) a national of the United States;

"(ii) an alien lawfully admitted for permanent residence;

"(iii) an alien in Registered Provisional Immigrant Status; or

"(iv) any other alien authorized to work in the United States with no limitation as to the alien's employer.

"(16) W NONIMMIGRANT.—The term 'W nonimmigrant' means an alien admitted as a nonimmigrant pursuant to section 101(a)(15)(W)(i).

"(17) W VISA PROGRAM.—The term 'W ~~visa program'~~ **Visa Program'** means the program for the admission of nonimmigrant aliens described in section 101(a)(15)(W)(i).

"(18) ZONE 1 OCCUPATION.—The term 'zone 1 occupation' means an occupation that requires little or no preparation and is classified as a zone 1 occupation on—

"(A) the Occupational Information Network Database (O*NET) on the date of the enactment of the Border Security, Economic Opportunity, and Immigration Modernization Act; or

"(B) such Database or a similar successor database, as designated by the Secretary of Labor, after the date of the enactment of the Border Security, Economic Opportunity, and Immigration Modernization Act.

"(19) ZONE 2 OCCUPATION.—The term 'zone 2 occupation' means an occupation that requires some preparation and is classified as a zone 2 occupation on—

"(A) the Occupational Information Network Database (O*NET) on the date of the enactment of the Border Security, Economic Opportunity, and Immigration Modernization Act; or

"(B) such Database or a similar successor database, as designated by the Secretary of Labor, after the date of the enactment of the Border Security, Economic Opportunity, and Immigration Modernization Act.

"(20) ZONE 3 OCCUPATION.—The term 'zone 3 occupation' means an occupation that requires medium preparation and is classified as a zone 3 occupation on—

"(A) the Occupational Information Network Database (O*NET) on the date of the enactment of the Border Security, Economic Opportunity, and Immigration Modernization Act; or

"(B) such Database or a similar successor database, as designated by the Secretary

of Labor, after the date of the enactment of the Border Security, Economic Opportunity, and Immigration Modernization Act.

"(b) Admission Into the United States.—

"(1) W NONIMMIGRANTS.—Subject to this section, a certified alien is eligible to be admitted to the United States as a W nonimmigrant if the alien is hired by a registered employer for employment in a registered position in a location that is not an excluded geographic location.

"(2) SPOUSE AND MINOR ~~CHILDREN. THE~~ **CHILDREN.—The—**

"(A) alien spouse and minor children of a W **nonimmigrant** ~~nonimmigrant—~~

~~"(A)~~ may be admitted to the United States pursuant to clause (ii) of section 101(a)(15)(W) during the period of the principal W nonimmigrant's admission; **and**

"(B) such alien spouse shall be—

"(i)~~"(B) is~~ authorized to engage in employment in the United States during such period of admission; and

~~"(C) shall be~~**"(ii)** provided with **an** employment authorization **document, stamp,** or other appropriate work permit.

"(c) W Nonimmigrants.—

"(1) CERTIFIED ALIEN.—

"(A) APPLICATION.—An alien seeking to be a W nonimmigrant shall apply to the Secretary of State at a United States embassy or consulate in a foreign country to be a certified alien.

"(B) CRITERIA.—An alien is eligible to be a certified alien if the alien—

"(i) is not inadmissible under this Act;

"(ii) passes a criminal background check;

"(iii) agrees to accept only registered positions in the United States; and

"(iv) meets other criteria as established by the Secretary.

"(2) W NONIMMIGRANT STATUS.—Only an alien that is a certified alien may be admitted to the United States as a W nonimmigrant.

"(3) INITIAL EMPLOYMENT.—A W nonimmigrant shall report to such nonimmigrant's initial employment in a registered position not later than 14 days after such nonimmigrant is admitted to the United States.

"(4) TERM OF ADMISSION.—

"(A) INITIAL TERM.—A certified alien may be granted W nonimmigrant status for an initial period of 3 years.

"(B) RENEWAL.—A W nonimmigrant may renew his or her status as a W nonimmigrant for additional 3-year periods. Such a renewal may be made while the W nonimmigrant is in the United States and shall not require the alien to depart the

United States.

"(5) PERIODS OF UNEMPLOYMENT.—A W nonimmigrant—

"(A) may be unemployed for a period of not more than 60 consecutive days; and

"(B) shall depart the United States if such W nonimmigrant is unable to obtain ~~such~~ employment during such period.

"(6) TRAVEL.—A W nonimmigrant may travel outside the United States and be readmitted to the United States. Such travel may not extend the period of authorized admission of such W nonimmigrant.

"(d) Registered Employer.—

"(1) APPLICATION.—An employer seeking to be a registered employer shall submit an application to the Secretary. Each such application shall include the following:

"(A) Documentation to establish that the employer is a bona-fide employer.

"(B) The employer's Federal tax identification number or employer identification number ~~registered with~~ **issued by** the Internal Revenue Service.

"(C) The number of W nonimmigrants the employer estimates it will seek to employ annually.

"(2) REFERRAL FOR FRAUD INVESTIGATION.—The Secretary may refer an application submitted under paragraph (1) or subsection (e)(1)(A) to the Fraud Detection and National Security Directorate of U.S. Citizenship and Immigration Services if there is evidence of fraud for potential investigation.

"(3) INELIGIBLE EMPLOYERS.—

"(A) IN GENERAL.—Notwithstanding any other applicable penalties under law, the Secretary may deny an employer's application to be a registered employer if the Secretary determines, after notice and an opportunity for a hearing, that the employer submitting such application—

"(i) has, with respect to the application required under paragraph (1), including any attestations required by law—

"(I) knowingly misrepresented a material fact;

"(II) knowingly made a fraudulent statement; or

"(III) knowingly failed to comply with the terms of such attestations; or

"(ii) failed to cooperate in the audit process in accordance with regulations promulgated by the Secretary;

"(iii) has been convicted of an offense set out in chapter 77 of title 18, United States Code, or any conspiracy to commit such offenses, or any human trafficking offense under State or territorial law;

"(iv) has, within 2 years prior to the date of application—

"(I) received a final adjudication of having committed any hazardous occupation orders violation resulting in injury or death under the child labor

provisions contained in section 12 of the Fair Labor Standards Act of 1938 (29 U.S.C. 211) and any pertinent regulation;

"(II) received a final adjudication assessing a civil money penalty for any repeated or willful violation of the minimum wage provisions of section 6 of the Fair Labor Standards Act of 1938 (29 U.S.C. 206); or

"(III) received a final adjudication assessing a civil money penalty for any ~~repeated or~~ willful violation of the overtime provisions of section 7 of the Fair Labor Standards Act of 1938 or any regulations thereunder~~, other than a repeated violation that is self-reported (29 U.S.C. 207)~~; or

"(v) has, within 2 years prior to the date of application, received a final adjudication for a willful violation or repeated serious violations involving injury or death—

"(I) of section 5 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 654);

"(II) of any standard, rule, or order promulgated pursuant to section 6 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655); or

"(III) of a plan approved under section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667).

"(B) LENGTH OF INELIGIBILITY.—

"(i) TEMPORARY INELIGIBILITY.—An employer described in subparagraph (A) may be ineligible to be a registered employer for a period that is not less than the time period determined by the Secretary and not more than 3 years.

"(ii) PERMANENT INELIGIBILITY.—An employer who has been convicted of any offense set out in chapter 77 of title 18, United States Code, or any conspiracy to commit such offenses, or any human trafficking offense under State or territorial law shall be permanently ineligible to be a registered employer.

"(4) TERM OF REGISTRATION.—The Secretary shall approve applications meeting the criteria of this subsection for a term of 3 years.

"(5) RENEWAL.—An employer may submit an application to renew the employer's status as a registered employer for additional 3-year periods.

"(6) FEE.—At the time an employer's application to be a registered employer or to renew such status is approved, such employer shall pay a fee in an amount determined by the Secretary to be sufficient to cover the costs of the registry of such employers.

"(7) CONTINUED ELIGIBILITY.—Each registered employer shall submit to the Secretary an annual report that demonstrates that the registered employer has provided the wages and working conditions the registered employer agreed to provide to its employees.

"(e) Registered Positions.—

"(1) IN GENERAL.—

"(A) APPLICATION.—Each registered employer shall submit to the Secretary an application to designate a position for which the employer is seeking a W

nonimmigrant as a registered position. **The Secretary is authorized to determine if the wage paid by the employer complies with subparagraph (B)(iv).** Each such application shall include a description of each such position.

"(B) ATTESTATION.—An application submitted under subparagraph (A) shall include an attestation of the following:

"(i) The number of **full-time equivalent** employees of the employer.

"(ii) The occupational category, as classified by the Secretary of Labor, for which the registered position is sought.

"(iii) Whether the occupation for which the registered position is sought is a shortage occupation.

"(iv) ~~The~~ **Except as provided in subsection (g)(4)(C), the** wages to be paid to W nonimmigrants employed by the employer in the registered position, including a position in a shortage occupation, will be the greater of—

"(I) the actual wage level paid by the employer to other employees with similar experience and qualifications for such position; or

"(II) the prevailing wage level for the occupational classification of the position in the metropolitan statistical area of the employment, based on the best information available as of the time of filing the application.

"(v) The working conditions for W nonimmigrants will not adversely affect the working conditions of other workers employed in similar positions.

"(vi) The employer has carried out the recruiting activities required by paragraph (2)(B).

"(vii) There is no qualified United States worker who has applied for the position and who is ready, willing, and able to fill such position pursuant to the requirements in subparagraphs (B) and (C) of paragraph (2).

"(viii) There is not a strike, lockout, or work stoppage in the course of a labor dispute in the occupation at the place of employment at which the W nonimmigrant will be employed. If such strike, lockout, or work stoppage occurs following submission of the application, the employer will provide notification in accordance with all applicable regulations.

"(ix)(I) The employer has not laid off and will not layoff a United States worker during the period beginning 90 days prior to and ending 90 days after the date the employer files an application for designation of a position for which the W nonimmigrant is sought or hires such W nonimmigrant, unless the employer has notified such United States worker of the position and documented the legitimate reasons that such United States worker is not qualified or available for the position.

"(II) A United States worker is not laid off for purposes of this subparagraph if, at the time such worker's employment is terminated, such worker is not employed in the same occupation and in the same metropolitan statistical area where the registered position referred to in subclause (I) is located.

"(x) The employer has agreed to substantially comply with all applicable labor and employment laws related to the W nonimmigrant's employment.

"(C) BEST INFORMATION AVAILABLE.—In subparagraph (B)(iv)(II), the term 'best information available', with respect to determining the prevailing wage for a position, means—

"(i) a controlling collective bargaining agreement or Federal contract wage, if applicable;

"(ii) if there is no applicable wage under clause (i), the wage level commensurate with the experience, training, and supervision required for the job based on Bureau of Labor Statistics data; or

"(iii) if the data referred to in clause (ii) is not available, a legitimate and recent private survey of the wages paid for such positions in the metropolitan statistical area.

"(D) PERMIT.—The Secretary shall provide each registered employer whose application submitted under subparagraph (A) is approved with a permit that includes the number and description of such employer's approved registered positions.

"(E) TERM OF REGISTRATION.—The approval of a registered position under subparagraph (A) is for a term that begins on the date of such approval and ends on the earlier of—

"(i) the date the employer's status as a registered employer is terminated;

"(ii) three years after the date of such approval; or

"(iii) upon proper termination of the registered position by the employer.

"(2) REQUIREMENTS.—

"(A) ELIGIBLE OCCUPATION.—Each registered position shall be for a position in an eligible occupation as described in paragraph (3).

"(B) RECRUITMENT OF UNITED STATES WORKERS.—

"(i) REQUIREMENTS.—A position may not be a registered position unless the registered employer—

"(I) advertises the position for a period of 30 days, including the wage range, location, and proposed start date—

"(aa) on the Internet website maintained by the Secretary of Labor for the purpose of such advertising; and

"(bb) with the workforce agency of the State where the position will be located; and

"(II) **except as provided for in subsection (g)(4)(A)(ii),** carries out not less than 3 of the recruiting activities described in subparagraph (C).

"(ii) DURATION OF ADVERTISING.—The 30 day periods required by item (aa) of (bb) of clause (i)(I) may occur at the same time.

"(C) RECRUITING ACTIVITIES.—The recruiting activities described in this subparagraph, with respect to a position for which the employer is seeking a W nonimmigrant, shall consist of any combination of the following as defined by the Secretary of Homeland Security:

"(i) Advertising such position at job fairs.

"(ii) Advertising such position on the employer's external website.

"(iii) Advertising such position on job search Internet websites.

"(iv) Advertising such position using presentations or postings at vocational, career technical schools, community colleges, high schools, or other educational or training sites.

"(v) Posting such position with trade associations.

"(vi) Utilizing a search firm to seek applicants for such position.

"(vii) Advertising such position through recruitment programs with placement offices at vocational schools, career technical schools, community colleges, high schools, or other educational or training sites.

"(viii) Advertising such position through advertising or postings with local libraries, journals, or newspapers.

"(ix) Seeking a candidate for such position through an employee referral program with incentives.

"(x) Advertising such position ~~through advertising~~ on radio or television.

"(xi) Advertising such position through advertising, postings, or presentations with newspapers, Internet websites, job fairs, or community events targeted to constituencies designed to increase employee diversity.

"(xii) Advertising such position through career day presentations at local high schools or community organizations.

"(xiii) Providing in-house training.

"(xiv) Providing third-party training.

"(xv) Advertising such position through recruitment, educational, or other cooperative programs offered by the employer and a local economic development authority.

"(xvi) Advertising such position twice in the Sunday ads in the primary daily circulation newspaper in the area.

"(xvii) Any other recruitment activities determined to be appropriate to be added by the Commissioner.

"(3) ELIGIBLE OCCUPATION.—

"(A) IN GENERAL.—An occupation is an eligible occupation if the occupation—

"(i) is a zone 1 occupation, a zone 2 occupation, or zone 3 occupation; and

"(ii) is not an excluded occupation under subparagraph (B).

"(B) EXCLUDED OCCUPATIONS.—

"(i) OCCUPATIONS REQUIRING COLLEGE DEGREES.—An occupation that is listed in the Occupational Outlook Handbook published by the Bureau of Labor Statistics (or similar successor publication) that is classified as requiring an individual with a bachelor's degree or higher level of education may not be an eligible occupation.

"(ii) COMPUTER OCCUPATIONS.—An occupation in the field of computer operation, computer programming, or computer repair may not be an eligible occupation.

"(C) PUBLICATION.—The Secretary of Labor shall publish the eligible occupations, designated as zone 1 occupations, zone 2 occupations, or zone 3 occupations, on an on-going basis on a publicly available website.

"(4) FILLING OF VACANCIES.—If a W nonimmigrant terminates employment in a registered position or is terminated from such employment by the registered employer, such employer may fill that vacancy by hiring—

"(A) a certified alien;

"(B) a W nonimmigrant; **or**

"(C) a United States worker**.**~~; or~~

~~"(D) an alien who is the beneficiary of a petition for a visa described in section 203(b)(3).~~

"(5) PERIOD OF APPROVAL.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), a registered position shall be approved by the Secretary for a period of 3 years.

"(B) ~~INTENDING IMMIGRANTS.—~~ **RETURNING W NONIMMIGRANTS.—**

"(i) EXTENSION OF PERIOD.—A registered position shall continue to be a registered position at the end of the 3-year period referred to in subparagraph (A) if the W nonimmigrant hired for such position is the beneficiary of a petition for immigrant status filed by the registered employer pursuant to this Act **or is returning to the same registered employer**.

"(ii) TERMINATION OF PERIOD.—The term of a registration position extended under clause (i) shall terminate on the date that is the earlier of—

"(I) the date ~~the~~ **an application or** petition ~~referred to in clause (i)~~ **by or** for a W nonimmigrant **to obtain immigrant status** is approved or denied by the Secretary; or

"(II) the date of the termination of such W nonimmigrant's employment with the registered employer.

"(6) FEES.—

"(A) REGISTRATION FEE.—

"(i) IN GENERAL.—At the time a registered position is approved for a registered employer, such employer shall pay a registration fee in an amount determined by the Secretary.

"(ii) USE OF FEE.—A fee collected under clause (i) shall be used to fund any aspect of the operation of the W ~~visa program~~ **Visa Program**.

"(B) ADDITIONAL FEE.—

"(i) IN GENERAL.—In addition to the fee required by subparagraph (A), a registered employer shall pay an additional fee for each approved registered position as follows:

"(I) A fee of $1,750 for the registered position if the registered employer is a small business and more than 50 percent and less than 75 percent of the employees of the registered ~~employees~~ **employer** are not United States workers.

"(II) A fee of $3,500 for the registered position if the registered employer is a small business and more than 75 percent of the employees of the registered ~~employees~~ **employer** are not United States workers.

"(III) A fee of $3,500 for the registered position if the registered employer is not a small business and more than 15 percent and less than 30 percent of the employees of the registered ~~employees~~ **employer** are not United States workers.

"(ii) USE OF FEE.—A fee collected under clause (i) shall be used to fund the operations of the Bureau.

"(C) PROHIBITION ON OTHER FEES.—A registered employer may not be required to pay an additional fee ~~under subparagraph (B)~~ **other than any fees specified in this Act** if the registered employer is a small business.

"(7) PROHIBITION ON REGISTERED POSITIONS FOR CERTAIN EMPLOYERS.—The Secretary may not approve an application for a registered position for an employer if the employer is not a small business and 30 percent or more of the employees of the employer are not United States workers.

"(f) Excluded Geographic Location.—No ~~W nonimmigrant may be hired~~ **application for a registered position filed** by a registered employer for an eligible occupation **may be approved if the registered position is** located in a metropolitan statistical area that has an unemployment rate that is more than 8 \1/2\ percent as reported in the most recent month preceding the date that the application is submitted to the Secretary unless—

"(1) the Commissioner has identified the eligible occupation as a shortage occupation; or

"(2) the Secretary approves the registered position under subsection (g)(4).

"(g) Numerical Limitation.—

"(1) REGISTERED POSITIONS.—

"(A) IN GENERAL.—Subject to paragraphs (3) and (4), the maximum number of registered positions that may be approved by the Secretary for a year is as follows:

"(i) For the first year aliens are admitted as W nonimmigrants, 20,000.

"(ii) For the second such year, 35,000.

"(iii) For the third such year, 55,000.

"(iv) For the fourth such year, 75,000.

"(v) For each year after the fourth such year, the level calculated for that year under paragraph (2).

"(B) DATES.—The first year referred to in subparagraph (A)(i) shall begin on April 1, 2015 and end on March 31, 2016, unless the Secretary determines that such first year shall begin on October 1, 2015 and end on September 30, 2016.

"(2) YEARS AFTER YEAR 4.—

"(A) CURRENT YEAR AND PRECEDING YEAR.—In this paragraph—

"(i) the term 'current year' shall refer to the 12-month period for which the calculation of the numerical limits under this paragraph is being performed; and

"(ii) the term 'preceding year' shall refer to the 12-month period immediately preceding the current year.

"(B) NUMERICAL LIMITATION.—Subject to subparagraph (D), the number of registered positions that may be approved by the Secretary for a year after the fourth year referred to in paragraph (1)(A)(iv) shall be equal to the sum of—

"(i) the number of such registered positions available under this paragraph for the preceding year; and

"(ii) the product of—

"(I) the number of such registered positions available under this paragraph for the preceding year; multiplied by

"(II) the index for the current year calculated under subparagraph (C).

"(C) INDEX.—The index calculated under this subparagraph for a current year equals 1 plus the sum of—

"(i) one-fifth of a fraction—

"(I) the numerator of which is the number of registered positions that registered employers applied to have approved under subsection (e)(1) for the preceding year minus the number of registered positions approved under subsection (e) for the preceding year; and

"(II) the denominator of which is the number of registered positions approved under subsection (e) for the preceding year;

"(ii) one-fifth of a fraction—

"(I) the numerator of which is the number of registered positions the Commissioner recommends be available under this subparagraph for the current year minus the number of registered positions available under this subsection for the preceding year; and

"(II) the denominator of which is the number of registered positions available under this subsection for the preceding year;

"(iii) three-tenths of a fraction—

"(I) the numerator of which is the number of unemployed United States workers for the preceding year minus the number of unemployed United States workers for the current year; and

"(II) the denominator of which is the number of unemployed United States workers for the preceding year; and

"(iv) three-tenths of a fraction—

"(I) the numerator of which is the number of job openings as set out in the Job Openings and Labor Turnover Survey of the Bureau of Labor Statistics for the current year minus such number of job openings for the preceding year; and

"(II) the denominator of which is the number of such job openings for the preceding year;

"(D) MINIMUM AND MAXIMUM LEVELS.—The number of registered positions calculated under subparagraph (B) for a 12-month period may not be less than 20,000 or more than 200,000.

"(3) ADDITIONAL REGISTERED POSITIONS FOR SHORTAGE OCCUPATIONS.—In addition to the number of registered positions made available for a year under paragraph (1), the Secretary shall make available for a year an additional number of registered positions for shortage occupations in a particular metropolitan statistical area.

"(4) SPECIAL ALLOCATIONS OF REGISTERED POSITIONS.—

"(A) AUTHORITY TO MAKE AVAILABLE.—In addition to the number of registered positions made available for a year under paragraph (1) or (3), the Secretary shall make additional registered positions available for the year for a specific registered employer if—

"(i)(I) the maximum number of registered positions available under paragraph (1) have been approved for the year and none remain available for allocation; or

"(II) such registered employer is located in a metropolitan statistical area that has an unemployment rate that is more than 8 \1/2\ percent as reported in the most recent month preceding the date that the application is submitted to the Secretary; and

"(ii) such registered employer has carried out not less than 7 of the recruiting activities described in subsection (e)(2)(C) and posts the position, including the wage range, location, and initial date of employment, for not less than 30 days—

"(I) on the Internet website maintained by the Secretary of Labor for the purpose of such advertising; and

"(II) with the workforce agency of the State where the position will be located.

"(B) DURATION OF POSTING.—The 30 day periods required by subclauses (I) or (II) of subparagraph (A)(iii) may occur at the same time.

"(C) WAGES.—A W nonimmigrant hired to perform an eligible occupation pursuant to a registered position made available under this paragraph may not be paid less than the greater of—

"(i) the level 4 wage set out in the Foreign Labor Certification Data Center Online Wage Library (or similar successor website) maintained by the Secretary of Labor for such occupation in that metropolitan statistical area; or

"(ii) the mean of the highest two-thirds of wages surveyed for such occupation in that metropolitan statistical area.

"(D) REDUCTION OF FUTURE REGISTERED POSITIONS.—Each registered position made available for a year under this paragraph shall reduce by 1 the number of registered positions made available under paragraph (g)(1) for the following year or the earliest possible year for which a registered position is available. The limitation contained in paragraph (h)(4) shall not be reduced by any registered position made available under this paragraph.

"(5) OTHER CONSIDERATION.—In no event shall the number of visas issued under section 101(a)(15)(W)(i) exceed the number of registered positions in existence.

"(h) Allocation of Registered Positions.—

"(1) IN GENERAL.—

"(A) FIRST 6-MONTH PERIOD.—The number of registered positions available for the 6-month period beginning on the first day of a year is 50 percent of the maximum number of registered positions available for such year under subsection (g)(1). Such registered positions shall be allocated as described in this subsection.

"(B) SECOND 6-MONTH PERIOD.—The number of registered positions available for the 6-month period ending on the last day of a year is the maximum number of registered positions available for such year under subsection (g)(1) minus the number of registered positions approved during the 6-month period referred to in subsection (A). Such registered positions shall be allocated as described in this subsection.

"(2) SHORTAGE OCCUPATIONS.—

"(A) IN GENERAL.—For the first month of each 6-month period referred to in subparagraph (A) or (B) of paragraph (1) a registered position may not be created in an occupation that is not a shortage occupation.

"(B) INITIAL DESIGNATIONS.—Subparagraph (A) shall not apply in any period for which the Commissioner has not designated any shortage occupations.

"(3) SMALL BUSINESSES.—During the second, third, and fourth months of each 6-month period referred to in subparagraph (A) or (B) of paragraph (1), one-third of the number of registered positions allocated for such period shall be approved only for a registered employer that is a small business. Any such registered positions not approved for such small businesses during such months shall be available for any registered employer during the last 2 months of each such 6-month period.

"(4) ~~MEAT, POULTRY, AND FISH CUTTERS AND TRIMMERS.—IN~~ **ANIMAL PRODUCTION SUBSECTORS.—In** addition to the number of registered positions made available for a year under paragraph (1) or (3) of such section (g), the Secretary shall make additional registered positions available for the year for occupations designated by the Secretary of Labor as ~~Meat, Poultry, and Fish Cutters and Trimmers~~ **Animal Production Subsectors**. The numerical limitation for such additional registered positions shall be no more than 10 percent of the annual numerical limitation provided for in such paragraph (1).

"(5) LIMITATION FOR CONSTRUCTION OCCUPATIONS.—

"(A) IN GENERAL.—Subject to subparagraph (B), not more than 33 percent of the registered positions made available under subsection (g)(1) for a year may be granted to perform work in a construction occupation.

"(B) MAXIMUM LEVEL.—Notwithstanding subparagraph (A), the number of registered positions granted to perform work in a construction occupation under subsection (g)(1) may not exceed 15,000 for a year and 7,500 for any 6-month period.

"(C) PROHIBITION FOR OCCUPATIONS WITH HIGH UNEMPLOYMENT.—

"(i) IN GENERAL.—A registered employer may not hire a certified alien for a registered position to perform work in a construction occupation if the unemployment rate for construction occupations in the corresponding occupational job zone in that metropolitan statistical area was more than 8\1/2\ percent.

"(ii) DETERMINATION OF UNEMPLOYMENT RATE.—The unemployment rate used in clause (i) shall be determined—

"(I) using the most recent survey taken by the Bureau; or

"(II) if a survey referred to in subclause (I) is not available, a recent and legitimate private survey.

"(i) Portability.—A W nonimmigrant who is admitted to the United States for employment by a registered employer may—

"(1) terminate such employment for any reason; and

"(2) seek and accept employment with another registered employer in any other registered position within the terms and conditions of the W nonimmigrants visa.

"(j) Promotion.—A registered employer ~~who has applied for a registered position in a shortage occupation may promote the W nonimmigrant hired for that registered position to a registered position in an occupation that is not a shortage occupation~~ **may promote a W nonimmigrant** if the W nonimmigrant has been employed with that employer for a period of not less than 12 months. Such a promotion shall not increase the total number of registered positions available to that employer.

"(k) Prohibition on Outplacement.—A registered employer may not place, outsource, lease, or otherwise contract for the services or placement of a W nonimmigrant employee with another employer if more than 15 percent of the employees of the registered employer are W nonimmigrants.

"(l) W Nonimmigrant Protections.—

"(1) APPLICABILITY OF LAWS.—A W nonimmigrant shall not be denied any right or any remedy under Federal, State, or local labor or employment law that would be applicable to a United States worker employed in a similar position with the employer because of the alien's status as a nonimmigrant worker.

"(2) WAIVER OF RIGHTS PROHIBITED.—

"(A) IN GENERAL.—A W nonimmigrant may not be required to waive any substantive rights or protections under this Act.

"(B) CONSTRUCTION.—Nothing under this paragraph may be construed to affect the interpretation of any other law.

"(3) PROHIBITION ON TREATMENT AS INDEPENDENT CONTRACTORS.—

"(A) IN GENERAL.—Notwithstanding any other provision of law—

"(i) a W nonimmigrant is prohibited from being treated as an independent contractor under any Federal or State law; and

"(ii) no person, including an employer or labor contractor and any persons who are affiliated with or contract with an employer or labor contractor, may treat a W nonimmigrant as an independent contractor.

"(B) CONSTRUCTION.—Subparagraph (A) may not be construed to prevent registered employers who operate as independent contractors from employing W nonimmigrants.

"(4) PAYMENT OF FEES.—

"(A) IN GENERAL.—A fee related to the hiring of a W nonimmigrant required to be paid by an employer under this Act shall be paid by the employer and may not be deducted from the wages or other compensation paid to a W nonimmigrant.

"(B) EXCLUDED COSTS.—The cost of round trip transportation from a certified alien's home to the location of a registered position and the cost of obtaining a foreign passport are not fees required to be paid by the employer.

"(5) TAX RESPONSIBILITIES.—An employer shall comply with all applicable Federal, State, and local tax laws with respect to each W nonimmigrant employed by the employer.

"(6) WHISTLEBLOWER PROTECTION.—

"(A) PROHIBITED ACTIVITIES.—It shall be unlawful for an employer of a W nonimmigrant to intimidate, threaten, restrain, coerce, retaliate, discharge, or in any other manner, discriminate against an employee or former employee because the employee or former employee—

"(i) discloses information to the employer or any other person that the employee or former employee reasonably believes demonstrates a violation of this section; or

"(ii) cooperates or seeks to cooperate in an investigation or other proceeding concerning compliance with the requirements of this section.

"(m) Complaint Process.—The Secretary shall establish a process for the receipt, investigation, and disposition of complaints **by any person** with respect to—

"(1) the failure of a registered employer to meet a condition of this section; or

"(2) the lay off or non-hiring of a United States worker as ~~required by~~ **prohibited under** this section.

"(n) Enforcement.—

"(1) IN GENERAL.—The Secretary shall promulgate regulations for the receipt, investigation, and disposition of complaints by an aggrieved W nonimmigrant respecting a violation of this section.

"(2) FILING DEADLINE.—No investigation or hearing shall be conducted on a complaint concerning a violation under this section unless the complaint was filed not later than 6 months after the date of such violation.

"(3) REASONABLE BASIS.—The Secretary shall conduct an investigation under this subsection if there is reasonable basis to believe that a violation of this section has occurred. The process established under this subsection shall provide that, not later than 30 days after a complaint is filed, the Secretary shall determine if there is reasonable cause to find such a violation.

"(4) NOTICE AND HEARING.—

"(A) IN GENERAL.—Not later than 60 days after the Secretary makes a determination of reasonable basis under paragraph (3), the Secretary shall issue a notice to the interested parties and offer an opportunity for a hearing on the complaint, in accordance with section 556 of title 5, United States Code.

"(B) HEARING DEADLINE.—Not later than 60 days after the date of a hearing under this paragraph, the Secretary shall make a finding on the matter.

"(5) ATTORNEY'S FEES.—

"(A) AWARD.—A complainant who prevails in an action under this subsection with respect to a claim related to wages or compensation for employment, or a claim for a violation of subsection (l) or (m), shall be entitled to an award of reasonable attorney's fees and costs.

"(B) FRIVOLOUS COMPLAINTS.—A complainant who files a frivolous complaint for an improper purpose under this subsection shall be liable for the reasonable attorney's fees and costs of the person named in the complaint.

"(6) POWER OF THE SECRETARY.—The Secretary may bring an action in any court of competent jurisdiction—

"(A) to seek remedial action, including injunctive relief;

"(B) to recover the damages described in this subsection and subsection (o); or

"(C) to ensure compliance with terms and conditions described in subsection (l)(6).

"(7) ~~PROCEDURES IN ADDITION TO OTHER~~ **OTHER** RIGHTS OF EMPLOYEES.—The rights and remedies provided to W nonimmigrants under this section are in addition to any other

contractual or statutory rights and remedies of the workers, and are not intended to alter or affect such rights and remedies.

"(o) Penalties.—

"(1) IN GENERAL.—If, after notice and an opportunity for a hearing, the Secretary finds a violation of this section, the Secretary may impose administrative remedies and penalties, including—

"(A) back wages;

"(B) benefits; and

"(C) civil monetary penalties.

"(2) CIVIL PENALTIES.—The Secretary may impose, as a civil penalty—

"(A) for a violation of this subsection—

"(i) a fine in an amount not more than $2,000 per violation per affected worker and $4,000 per violation per affected worker for each subsequent violation;

"(ii) if the violation was willful, a fine in an amount not more than $5,000 per violation per affected worker;

"(iii) if the violation was willful and if in the course of such violation a United States worker was harmed, a fine in an amount not more than $25,000 per violation per affected worker; or

"(B) for knowingly failing to materially comply with the terms of representations made in petitions, applications, certifications, or attestations under this section—

"(i) a fine in an amount not more than $4,000 per aggrieved worker; and

"(ii) upon the occasion of a third offense of failure to comply with representations, a fine in an amount not to exceed $5,000 per affected worker and designation as an ineligible employer, recruiter, or broker for purposes of any immigrant or nonimmigrant program.

"(3) CRIMINAL PENALTY.—Any person who **knowingly** misrepresents the number of full-time equivalent employees of an employer or the number of employees of a person who are United States workers for the purpose of reducing a fee under subsection (e)(6) or avoiding the limitation in subsection (e)(7), shall be fined in accordance with title 18, United States Code, in an amount up to $25,000 or imprisoned not more than 1 year, or both.

"(p) Monitoring.—

"(1) REQUIREMENT TO MONITOR.—The Secretary shall monitor the movement of W nonimmigrants in registered positions through—

"(A) the Employment Verification System described in section 274A(d); and

"(B) the electronic monitoring system described in paragraph (2).

"(2) ELECTRONIC MONITORING SYSTEM.—The Secretary, through U.S. Citizenship and Immigration Services, shall implement an electronic monitoring system to monitor presence and employment of W nonimmigrants. Such system shall be modeled on the Student and

Exchange Visitor Information System (SEVIS) and SEVIS II tracking system of U.S. Immigration and Customs Enforcement.".

(2) TABLE OF CONTENTS AMENDMENT.—The table of contents in the first section (8 U.S.C. 1101 et seq.) is amended by adding after the item relating to section 219 the following:

"Sec.220.Admission of W nonimmigrant workers.".

(b) Intention to Abandon Foreign Residence.—Section 214(h) (8 U.S.C. 1184(h)) is amended by striking "or (V)" and inserting "(V), or (W)".

Subtitle H—Investing in New Venture, Entrepreneurial Startups, and Technologies

SEC. 4801. NONIMMIGRANT INVEST VISAS.

(a) INVEST Nonimmigrant Category.—Section 101(a)(15) (8 U.S.C. 1101(a)(15)), as amended by sections 2231, **2308, 2309, 3201, 4402,** 4504, **4601,** and 4702, is further amended by inserting after ~~the material added by section 2231,~~ **subparagraph (W)** the following:

"(X) ~~subject to~~ **in accordance with** the definitions in section 203(b)(6)~~, is~~**(A),** a qualified entrepreneur who has demonstrated **that**, during the 3-year period ending on the date on which the alien filed an initial petition for nonimmigrant status described in this ~~clause that—~~ **clause—**

"(i) a qualified venture capitalist, a qualified super angel investor, a qualified government entity, a qualified community development financial institution, or such other **type of** entity or ~~set of~~ investors, as determined by the Secretary, has ~~devoted~~ **made** a qualified investment of not less than $100,000 ~~to~~ **in** the alien's United States business entity; or

"(ii) the alien's United States business entity has created no fewer than 3 qualified jobs and during the 2-year period ending on such date has generated not less than $250,000 in annual revenue **arising from business conducted** in the United ~~States."~~ **States; or"**.

(b) Admission of INVEST Nonimmigrants.—Section 214 (8 U.S.C. 1184) is amended by adding at the end the following:

"(s) INVEST Nonimmigrant Visas.—

"(1) DEFINITIONS.—The definitions in section 203(b)(6)(A) apply ~~in~~ **to** this subsection.

"(2) INITIAL PERIOD OF AUTHORIZED ADMISSION.—The **initial** period of authorized status as a nonimmigrant described in section 101(a)(15)(X) shall be for an initial 3-year period.

"(3) RENEWAL OF ADMISSION.—Subject to paragraph (4), the initial period of authorized nonimmigrant status described in paragraph (2) may be renewed for additional 3-year periods if during the most recent 3-year period that the alien was granted such status—

"(A) the alien's United States business entity has created no fewer than 3 qualified jobs and a qualified venture capitalist, a qualified super angel investor, a qualified

government entity, a qualified community development financial institution, or such other **type of** entity or ~~set of~~ investors**,** as determined by the Secretary, has ~~devoted~~ **made** a qualified investment of not less than $250,000 to the alien's United States business entity; or

"(B) the alien's United States business entity has created no fewer than 3 qualified jobs and, during the 2 year period ending on the date that the alien petitioned for an extension, has generated not less than ~~$200,000~~ **$250,000** in annual revenue **arising from business conducted** within the United States.

"(4) WAIVER OF RENEWAL REQUIREMENTS.—The Secretary may renew an alien's status as a nonimmigrant described in section 101(a)(15)(X) for ~~up to two 1-year periods~~ **not more than 1 year at a time, up to an aggregate of 2 years** if the alien—

"(A) does not meet the criteria of paragraph (3); and

"(B) meets the criteria established by the Secretary, in consultation with the Secretary of Commerce, for approving renewals under this subclause which shall include finding that—

"(i) the alien has made substantial progress in meeting such criteria; and

"(ii) such renewal that is economically beneficial to the United States.

"(5) ATTESTATION.—The Secretary may require an alien seeking status ~~under~~ **as a nonimmigrant described in** section 101(a)(15)(X) to attest, under ~~penalties of perjury, to the alien's qualifications.".~~ **penalty of perjury, that the alien meets the application criteria.**

"(6) X–1 VISA FEE.—In addition to processing fees, the Secretary shall collect a $1,000 fee from each nonimmigrant admitted under section 101(a)(15)(X). Fees collected under this paragraph shall be deposited into the Comprehensive Immigration Reform Trust Fund established under section 6(a)(1) of the Border Security, Economic Opportunity, and Immigration Modernization Act.".

SEC. 4802. INVEST IMMIGRANT VISA.

~~(a) Establishment of INVEST Nonimmigrant Visa.—Section~~ **Section** 203(b) (8 U.S.C. 1153(b)) is amended—

(1) by redesignating paragraph (6) as paragraph (7); and

(2) by inserting after paragraph (5) the following:

"(6) INVEST IMMIGRANTS.—

"(A) DEFINITIONS.—In this paragraph, section 101(a)(15)(X), and section 214(s):

"(i) QUALIFIED COMMUNITY DEVELOPMENT FINANCIAL INSTITUTION.—The term 'qualified community development financial institution' is defined as provided under section 1805.201 45D(c) of title 12, Code of Federal Regulations, or any similar successor regulations.

"(ii) QUALIFIED ENTREPRENEUR.—The term 'qualified entrepreneur' means an individual who—

"(I) has a significant ownership interest, which need not constitute a majority interest, in a United States business entity;

"(II) is employed in a senior executive position of such United States business entity;

"(III) submits a business plan to U.S. Citizenship and Immigration Services; and

"(IV) had a substantial role in the founding or early-stage growth and development of such United States business entity.

"(iii) QUALIFIED GOVERNMENT ENTITY.—The term 'qualified government entity' means an agency or instrumentality of the United States or of a State, local, or tribal government.

"(iv) QUALIFIED INVESTMENT.—The term 'qualified investment'—

"(I) means an investment in a qualified entrepreneur's United States business entity that is—

"(aa) ~~an equity purchase;~~ **a purchase from the United States business entity or equity or convertible debt issued by such entity;**

"(bb) a secured loan;

"(cc) a convertible debt note;

"(dd) a public securities offering;

"(ee) a research and development award from a qualified government entity **to the United States entity**;

"(ff) other investment determined appropriate by the Secretary; or

"(gg) a combination of the investments described in items (aa) through (ff); and

"(II) may not include an investment from such qualified entrepreneur, the parents, spouse, son or daughter of such qualified entrepreneur, or from any corporation, company, association, firm, partnership, society, or joint stock company over which such qualified entrepreneur has a substantial ownership interest.

"(v) QUALIFIED JOB.—The term 'qualified job' means a full-time position of United States business entity owned by a qualified entrepreneur that—

"(I) is located in the United States;

"(II) has been filled by an individual who is not the qualified entrepreneur or the spouse, son, or daughter of the qualified entrepreneur for at least 2 years; and

"(III) pays a wage that is not less than 250 percent of the Federal minimum wage.

"(vi) QUALIFIED SUPER ANGEL INVESTOR.—The term 'qualified super angel

investor' means an individual or organized group of individuals investing directly or through a legal entity—

"(I) each of whom is an accredited investor, as defined in section 230.501(a) of title 17, Code of Federal Regulations, or any similar successor regulation, investing the funds owned by such individual or organized group in a qualified entrepreneur's United States business entity;

"(II)(aa) if an individual, is a citizen of the United States or an alien lawfully admitted for permanent residence; or

"(bb) if an organized group or legal entity, a majority of the individuals investing through such group or entity are citizens of the United States or aliens lawfully admitted for permanent residence; and

"(III) each of whom in the previous 3 years has made qualified investments in a total amount determined to be appropriate by the Secretary, that is not less than $50,000, in United States business entities which are less than 5 years old.

"(vii) QUALIFIED VENTURE CAPITALIST.—The term 'qualified venture capitalist' means an entity—

"(I) that—

"(aa) is a venture capital operating company, as defined in section 2510.3-~~110(d)~~ **101(d)** of title 29, Code of Federal Regulations (or any successor thereto); or

"(bb) has management rights, as defined in, and to the extent required by, such section 2510.3-~~110 (d)~~ **101(d)** (or successor thereto), in its portfolio companies;

"(II) ~~that~~ has capital commitments of not less than $10,000,000; and

"(III) the investment adviser, ~~as defined in section 202 of~~ **that is registered under** the Investment Advisers Act of 1940 (15 U.S.C. 80b-2), for which—

"(aa) has its primary office location in the United States;

"(bb) is owned, directly or indirectly, by individuals, the majority of whom are citizens of the United States or aliens lawfully admitted for permanent residence in the United States;

"(cc) has been advising such entity or other similar funds or entities for at least 2 years; and

"(dd) has ~~made, on behalf of~~ **advised** such entity or a similar fund or entity~~,~~ **with respect to** at least 2 investments of not less than $500,000 **made by such entity or similar fund or entity** during each of the most recent 2 years.

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

"(ix) SENIOR EXECUTIVE POSITION.—The term 'senior executive position' includes the position of chief executive officer, chief technology officer, and chief operating officer.

"(x) UNITED STATES BUSINESS ENTITY.—The term ~~'business~~ **'United States business** entity' means any corporation, company, association, firm, partnership, society, or joint stock company that is organized under the laws of the United States or any State and that conducts business in the United States that is not—

"(I) a private fund, as defined in 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2);

"(II) a commodity pool, as defined in section 1a of the Commodity Exchange Act (7 U.S.C. 1a);

"(III) an investment company, as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a-3); or

"(IV) an issuer that would be an investment company but for an exemption provided in—

"(aa) section 3(c) of the Investment Company Act of 1940 (15 U.S.C. 80a-3(c); or

"(bb) section 270.3a-7 of title 17 of the Code of Federal Regulations or any similar successor regulation.

"(B) IN GENERAL.—Visas shall be available, in a number not to exceed 10,000 for each fiscal year, to qualified immigrants seeking to enter the United States for the purpose of creating new businesses, as described in this paragraph.

"(C) ELIGIBILITY.—An alien is eligible for a visa under this paragraph if—

"(i)(I) the alien is a qualified entrepreneur;

"(II) the alien maintained valid nonimmigrant status in the United States for at least 2 years;

"(III) during the 3-year period ending on the date the alien files an initial petition for such status under this section—

"(aa)(AA) the alien has a significant ownership in a United States business entity that has created no fewer than 5 qualified jobs; and

"(BB) a qualified venture capitalist, a qualified super angel investor, a qualified government entity, a qualified community development financial institution, or such other entity or ~~set~~ **type** of investors, as determined by the Secretary, has devoted a qualified investment of not less than $500,000 to the alien's United States business entity; or

"(bb)(AA) the alien has a significant ownership interest in a United States business entity that has created no fewer than 5 qualified jobs; and

"(BB) during the 2-year period ending on such date has generated not less than $750,000 in annual revenue within the United States; and

"(IV) no more than 2 other aliens have received nonimmigrant status under this section on the basis of an alien's ownership of such **United States** business entity;

"(ii)(I) the alien is a qualified entrepreneur;

"(II) the alien maintained valid nonimmigrant status in the United States for at least 3 years prior to the date of filing an application for such status;

"(III) the alien holds an advanced degree in a field of science, technology, engineering, ~~and~~ **or** mathematics, approved by the Secretary; and

"(IV) during the 3-year period ending on the date the alien files an initial petition for such status under this section—

"(aa)(AA) the alien has a significant ownership interest in a United States business entity that has created no fewer than 4 qualified jobs; and

"(BB) a qualified venture capitalist, a qualified super angel investor, a qualified government entity, a qualified community development financial institution, or such other entity or ~~set~~ **type** of investors, as determined by the Secretary, has devoted a qualified investment of not less than $500,000 to the alien's United States business entity; or

"(bb)(AA) the alien has a significant ownership interest in a United States business entity that has created no fewer than 3 qualified jobs; and

"(BB) during the 2-year period ending on such date has generated not less than $500,000 in annual revenue within the United States; and

"(V) no more than 3 other aliens have received nonimmigrant status under this section on the basis of an alien's ownership of such **United States** business entity.

"(D) ATTESTATION.—The Secretary may require an alien seeking visa under this paragraph to attest, under penalties of perjury, to the alien's qualifications.".

~~(b) Petition.—Section 204(a)(1)(H) (8 U.S.C. 1154(a)(1)(H)) is amended—~~

~~(1) by striking "203(b)(5)" and inserting "paragraph (5) or (6) of section 203(b)"; and~~

~~(2) by striking "Attorney General" and inserting "Secretary of Homeland Security".~~

SEC. 4803. ADMINISTRATION AND OVERSIGHT.

(a) Regulations.—Not later than 16 months after the date of the enactment of this Act, the Secretary, in consultation with the Secretary of Commerce, the Administrator of the Small Business Administration, and other heads of other relevant Federal agencies and department, shall promulgate regulations to carry out the amendments made by this subtitle. Such regulations shall ensure that such amendments are implemented in a manner that is consistent with the

protection of national security and promotion **of** United States economic growth, job creation, and competitiveness.

(b) Modification of Dollar Amounts.—

(1) IN GENERAL.—The Secretary may from time to time prescribe regulations increasing or decreasing any dollar amount specified in ~~paragraph (6) of~~ section 203(b)**(6)** of the Immigration and Nationality Act, as added by section ~~2, subparagraph (X) of~~ **4802,** section 101(a)(15)**(X)** of such Act, as added by section 4801, or ~~subsection (s) of~~ section 214**(s)**, as added by ~~4802~~ **section 4801**.

(2) AUTOMATIC ADJUSTMENT.—Unless a dollar amount referred to in paragraph (1) is adjusted by the Secretary under paragraph (1), such dollar amounts shall automatically adjust on January 1, 2016 by the percentage change in the Consumer Price Index (CPI–U) during fiscal year 2015, and on every fifth subsequent January 1 by the percentage change in the CPI-U during the previous ~~five~~ **5** fiscal years, for any petition filed to classify an alien under this paragraph on or after the date of each automatic adjustment.

(c) Other Authority.—The Secretary, in the Secretary's unreviewable discretion, may deny or revoke the approval of a petition seeking classification of an alien under ~~this paragraph~~ **paragraph (6) of section 203(b) of the Immigration and Nationality Act, as added by section 4802,** or any other petition, application, or benefit based upon the previous or concurrent filing or approval of a petition for classification of an alien under ~~this~~ **such** paragraph **(6)**, if the Secretary determines, in the Secretary's sole and unreviewable discretion, that the approval or continuation of such petition, application, or benefit is contrary to the national interest of the United States or for other good cause.

(d) Reports.—Once every 3 years, the Secretary shall submit to Congress a report on this subtitle and the amendments made by this subtitle. Each such report shall include—

(1) the number and percentage of entrepreneurs able to meet thresholds for nonimmigrant renewal and adjustment to green card status under the amendments made by this subtitle;

(2) an analysis of the program's economic impact including job and revenue creation, increased investments and growth within business sectors and regions;

(3) a description and breakdown of types of businesses that entrepreneurs granted nonimmigrant or immigrant status are creating;

(4) for each reports following the Secretary's initial report submitted under this subsection, a description of the percentage of the businesses initially created by the entrepreneurs granted immigrant and nonimmigrant status under this subtitle and the amendments made by this subtitle, that are still in operation;

(5) any recommendations for improving the program established by this subtitle and the amendments made by this subtitle.