

1 **TITLE III—INTERIOR**
2 **ENFORCEMENT**
3 **Subtitle A—Employment**
4 **Verification System**

5 **SEC. 3101. UNLAWFUL EMPLOYMENT OF UNAUTHORIZED**
6 **ALIENS.**

7 (a) IN GENERAL.—Section 274A (8 U.S.C. 1324a)
8 is amended to read as follows:

9 **“SEC. 274A. UNLAWFUL EMPLOYMENT OF ALIENS.**

10 “(a) MAKING EMPLOYMENT OF UNAUTHORIZED
11 ALIENS UNLAWFUL.—

12 “(1) IN GENERAL.—It is unlawful for an em-
13 ployer—

14 “(A) to hire, recruit, or refer for a fee an
15 alien for employment in the United States
16 knowing that the alien is an unauthorized alien
17 with respect to such employment; or

18 “(B) to hire, recruit, or refer for a fee for
19 employment in the United States an individual
20 without complying with the requirements under
21 subsections (c) and (d).

22 “(2) CONTINUING EMPLOYMENT.—

1 “(A) PROHIBITION ON CONTINUED EM-
2 PLOYMENT OF UNAUTHORIZED ALIENS.—It is
3 unlawful for an employer, after hiring an alien
4 for employment, to continue to employ the alien
5 in the United States knowing that the alien is
6 (or has become) an unauthorized alien with re-
7 spect to such employment.

8 “(B) PROHIBITION ON CONSIDERATION OF
9 PREVIOUS UNAUTHORIZED STATUS.—Nothing
10 in this section may be construed to prohibit the
11 employment of an individual who is authorized
12 for employment in the United States if such in-
13 dividual was previously an unauthorized alien.

14 “(3) USE OF LABOR THROUGH CONTRACT.—
15 For purposes of this section, any employer that uses
16 a contract, subcontract, or exchange to obtain the
17 labor of an alien in the United States while knowing
18 that the alien is an unauthorized alien with respect
19 to performing such labor shall be considered to have
20 hired the alien for employment in the United States
21 in violation of paragraph (1)(A).

22 “(4) USE OF STATE EMPLOYMENT AGENCY
23 DOCUMENTATION.—For purposes of paragraphs
24 (1)(B), (5), and (6), an employer shall be deemed to
25 have complied with the requirements under sub-

1 section (c) with respect to the hiring of an individual
2 who was referred for such employment by a State
3 employment agency (as defined by the Secretary) if
4 the employer has and retains (for the period and in
5 the manner described in subsection (c)(3)) appro-
6 priate documentation of such referral by such agen-
7 cy, certifying that such agency has complied with the
8 procedures described in subsection (c) with respect
9 to the individual's referral. An employer that relies
10 on a State agency's certification of compliance with
11 subsection (c) under this paragraph may utilize and
12 retain the State agency's certification of compliance
13 with the procedures described in subsection (d), if
14 any, in the manner provided under this paragraph.

15 “(5) GOOD FAITH DEFENSE.—

16 “(A) DEFENSE.—An employer, person, or
17 entity that hires, employs, recruits, or refers in-
18 dividuals for employment in the United States,
19 or is otherwise obligated to comply with the re-
20 quirements under this section and establishes
21 good faith compliance with the requirements
22 under paragraphs (1) through (4) of subsection
23 (c) and subsection (d)—

24 “(i) has established an affirmative de-
25 fense that the employer, person, or entity

1 has not violated paragraph (1)(A) with re-
2 spect to hiring and employing; and

3 “(ii) has established compliance with
4 its obligations under subparagraph (A) and
5 (B) of paragraph (1) and subsection (c)
6 unless the Secretary demonstrates that the
7 employer had knowledge that an individ-
8 uals hired, employed, recruited, or referred
9 by the employer, person, or entity is an un-
10 authorized alien.

11 “(B) EXCEPTION FOR CERTAIN EMPLOY-
12 ERS.—An employer who is not required to par-
13 ticipate in the System or who is participating in
14 the System on a voluntary basis pursuant to
15 subsection (d)(2)(J) has established an affirma-
16 tive defense under subparagraph (A) and need
17 not demonstrate compliance with the require-
18 ments under subsection (d).

19 “(6) GOOD FAITH COMPLIANCE.—

20 “(A) IN GENERAL.—Except as otherwise
21 provided in this subsection, an employer, per-
22 son, or entity is considered to have complied
23 with a requirement under this subsection not-
24 withstanding a technical or procedural failure

1 to meet such requirement if there was a good
2 faith attempt to comply with the requirement.

3 “(B) EXCEPTION IF FAILURE TO CORRECT
4 AFTER NOTICE.—Subparagraph (A) shall not
5 apply if—

6 “(i) the failure is not de minimis;

7 “(ii) the Secretary of Homeland Secu-
8 rity has explained to the employer, person,
9 or entity the basis for the failure and why
10 it is not de minimis;

11 “(iii) the employer, person, or entity
12 has been provided a period of not less than
13 30 days (beginning after the date of the
14 explanation) to correct the failure; and

15 “(iv) the employer, person, or entity
16 has not corrected the failure voluntarily
17 within such period.

18 “(C) EXCEPTION FOR PATTERN OR PRAC-
19 TICE VIOLATORS.—Subparagraph (A) shall not
20 apply to an employer, person, or entity that has
21 engaged or is engaging in a pattern or practice
22 of violations of paragraph (1)(A) or (2).

23 “(7) PRESUMPTION.—After the date on which
24 an employer is required to participate in the System
25 under subsection (d), the employer is presumed to

1 have acted with knowledge for purposes of para-
2 graph (1)(A) if the employer hires, employs, re-
3 cruits, or refers an employee for a fee and fails to
4 make an inquiry to verify the employment authoriza-
5 tion status of the employee through the System.

6 “(8) CONTINUED APPLICATION OF WORKFORCE
7 AND LABOR PROTECTION REMEDIES DESPITE UNAU-
8 THORIZED EMPLOYMENT.—

9 “(A) IN GENERAL.—Subject only to sub-
10 paragraph (B), all rights and remedies provided
11 under any Federal, State, or local law relating
12 to workplace rights, including but not limited to
13 back pay, are available to an employee de-
14 spite—

15 “(i) the employee’s status as an unau-
16 thorized alien during or after the period of
17 employment; or

18 “(ii) the employer’s or employee’s fail-
19 ure to comply with the requirements of
20 this section.

21 “(B) REINSTATEMENT.—Reinstatement
22 shall be available to individuals who—

23 “(i) are authorized to work in the
24 United States at the time such relief is or-
25 dered or effectuated; or

1 “(ii) lost employment-authorized sta-
2 tus due to the unlawful acts of the em-
3 ployer under this section.

4 “(b) DEFINITIONS.—In this section:

5 “(1) COMMISSIONER.—The term ‘Commis-
6 sioner’ means the Commissioner of Social Security.

7 “(2) DEPARTMENT.—Except as otherwise pro-
8 vided, the term ‘Department’ means the Department
9 of Homeland Security.

10 “(3) EMPLOYER.—The term ‘employer’ means
11 any person or entity, including an agency or depart-
12 ment of a Federal, State, or local government, an
13 agent, or a System service provider acting on behalf
14 of an employer, that hires, employs, recruits, or re-
15 fers for a fee an individual for employment in the
16 United States that is not casual, sporadic, irregular,
17 or intermittent (as defined by the Secretary).

18 “(4) EMPLOYMENT AUTHORIZED STATUS.—The
19 term ‘employment authorized status’ means, with re-
20 spect to an individual, that the individual is author-
21 ized to be employed in the United States under the
22 immigration laws of the United States.

23 “(5) SECRETARY.—Except as otherwise specifi-
24 cally provided, the term ‘Secretary’ means the Sec-
25 retary of Homeland Security.

1 “(6) SYSTEM.—The term ‘System’ means the
2 Employment Verification System established under
3 subsection (d).

4 “(7) UNAUTHORIZED ALIEN.—The term ‘unau-
5 thorized alien’ means an alien who, with respect to
6 employment in the United States at a particular
7 time—

8 “(A) is not lawfully admitted for perma-
9 nent residence; or

10 “(B) is not authorized to be employed
11 under this Act or by the Secretary.

12 “(8) WORKPLACE RIGHTS.—The term ‘work-
13 place rights’ means rights guaranteed under Fed-
14 eral, State, or local labor or employment laws, in-
15 cluding laws concerning wages and hours, benefits
16 and employment standards, labor relations, work-
17 place health and safety, work-related injuries, non-
18 discrimination, and retaliation for exercising rights
19 under such laws.

20 “(c) DOCUMENT VERIFICATION REQUIREMENTS.—
21 Any employer hiring an individual for employment in the
22 United States shall comply with the following require-
23 ments and the requirements under subsection (d) to verify
24 that the individual has employment authorized status.

1 “(1) ATTESTATION AFTER EXAMINATION OF
2 DOCUMENTATION.—

3 “(A) IN GENERAL.—

4 “(i) EXAMINATION BY EMPLOYER.—

5 An employer shall attest, under penalty of
6 perjury on a form prescribed by the Sec-
7 retary, that the employer has verified the
8 identity and employment authorization sta-
9 tus of the individual—

10 “(I) by examining—

11 “(aa) a document specified
12 in subparagraph (C); or

13 “(bb) a document specified
14 in subparagraph (D) and a docu-
15 ment specified in subparagraph
16 (E); and

17 “(II) by utilizing an identity au-
18 thentication mechanism described in
19 clause (iii) or (iv) of subparagraph
20 (F).

21 “(ii) PUBLICATION OF DOCUMENTS.—

22 The Secretary shall publish a picture of
23 each document specified in subparagraphs
24 (C) and (E) on the U.S. Citizenship and
25 Immigration Services website.

1 “(B) REQUIREMENTS.—

2 “(i) FORM.—The form referred to in
3 subparagraph (A)(i)—

4 “(I) shall be prescribed by the
5 Secretary not later than 6 months
6 after the date of the enactment of the
7 Border Security, Economic Oppor-
8 tunity, and Immigration Moderniza-
9 tion Act;

10 “(II) shall be available as—

11 “(aa) a paper form;

12 “(bb) a form that may be
13 completed by an employer via
14 telephone or video conference;

15 “(cc) an electronic form; or

16 “(dd) a form that is inte-
17 grated electronically with the re-
18 quirements under subsection (d).

19 “(ii) ATTESTATION.—Each such form
20 shall require the employer to sign an attes-
21 tation with a handwritten, electronic, or
22 digital pin code signature, according to
23 standards prescribed by the Secretary.

24 “(iii) COMPLIANCE.—An employer has
25 complied with the requirements under this

1 paragraph with respect to examination of
2 the documents included in subclauses (I)
3 and (II) of subparagraph (A)(i) if—

4 “(I) the employer has, in good
5 faith, followed applicable regulations
6 and any written procedures or instruc-
7 tions provided by the Secretary; and

8 “(II) a reasonable person would
9 conclude that the documentation is
10 genuine and relates to the individual
11 presenting such documentation.

12 “(C) DOCUMENTS ESTABLISHING IDEN-
13 TITY AND EMPLOYMENT AUTHORIZED STA-
14 TUS.—A document is specified in this subpara-
15 graph if the document is unexpired (unless the
16 validity of the document is extended by law)
17 and is 1 of the following:

18 “(i) A United States passport or pass-
19 port card issued to an individual pursuant
20 to the Secretary of State’s authority under
21 the Act entitled ‘An Act to regulate the
22 issue and validity of passports, and for
23 other purposes’, approved July 3, 1926 (22
24 U.S.C. 211a).

1 “(ii) A document issued to an alien
2 evidencing that the alien is lawfully admit-
3 ted for permanent residence or another
4 document issued to an individual evidenc-
5 ing the individual’s employment authorized
6 status, as designated by the Secretary, if
7 the document—

8 “(I) contains a photograph of the
9 individual, or such other personal
10 identifying information relating to the
11 individual as the Secretary deter-
12 mines, by regulation, to be sufficient
13 for the purposes of this subparagraph;

14 “(II) is evidence of employment
15 authorized status; and

16 “(III) contains security features
17 to make the document resistant to
18 tampering, counterfeiting, and fraudu-
19 lent use.

20 “(iii) An enhanced driver’s license or
21 identification card issued to a national of
22 the United States by a State, an outlying
23 possession of the United States, or a feder-
24 ally recognized Indian tribe that—

1 “(I) meets the requirements
2 under section 202 of the REAL ID
3 Act of 2005 (division B of Public Law
4 109–13; 49 U.S.C. 30301 note); and

5 “(II) the Secretary has certified
6 by notice published in the Federal
7 Register and through appropriate no-
8 tice directly to employers registered in
9 the System 3 months prior to publica-
10 tion that such enhanced license or
11 card is suitable for use under this
12 subparagraph based upon the accu-
13 racy and security of the issuance proc-
14 ess, security features on the docu-
15 ment, and such other factors as the
16 Secretary may prescribe.

17 “(iv) A passport issued by the appro-
18 priate authority of a foreign country ac-
19 companied by a Form I–94 or Form I–
20 94A (or similar successor record), or other
21 documentation as designated by the Sec-
22 retary that specifies the individual’s status
23 in the United States and the duration of
24 such status if the proposed employment is
25 not in conflict with any restriction or limi-

1 tation specified on such form or docu-
2 mentation.

3 “(v) A passport issued by the Fed-
4 erated States of Micronesia or the Repub-
5 lic of the Marshall Islands with evidence of
6 nonimmigrant admission to the United
7 States under the Compact of Free Associa-
8 tion between the United States and the
9 Federated States of Micronesia or the Re-
10 public of the Marshall Islands.

11 “(D) DOCUMENTS ESTABLISHING IDEN-
12 TITY OF INDIVIDUAL.—A document is specified
13 in this subparagraph if the document is unex-
14 pired (unless the validity of the document is ex-
15 tended by law) and is 1 of the following:

16 “(i) A driver’s license or identity card
17 that is not described in subparagraph
18 (C)(iii) and is issued to an individual by a
19 State or an outlying possession of the
20 United States, a federally recognized In-
21 dian tribe, or an agency (including mili-
22 tary) of the Federal Government if the
23 driver’s license or identity card includes, at
24 a minimum—

1 “(I) the individual’s photograph,
2 name, date of birth, gender, and driv-
3 er’s license or identification card num-
4 ber; and

5 “(II) security features to make
6 the license or card resistant to tam-
7 pering, counterfeiting, and fraudulent
8 use.

9 “(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 parent or legal guardian under penalty of perjury.

24 “(E) DOCUMENTS EVIDENCING EMPLOY-
25 MENT AUTHORIZATION.—A document is speci-

1 fied in this subparagraph if the document is un-
2 expired (unless the validity of the document is
3 extended by law) and is 1 of the following:

4 “(i) A social security account number
5 card issued by the Commissioner, other
6 than a card which specifies on its face that
7 the card is not valid to evidence employ-
8 ment authorized status or has other simi-
9 lar words of limitation.

10 “(ii) Any other documentation evi-
11 dencing employment authorized status that
12 the Secretary determines and publishes in
13 the Federal Register and through appro-
14 priate notice directly to employers reg-
15 istered within the System to be acceptable
16 for purposes of this subparagraph if such
17 documentation, including any electronic se-
18 curity measures linked to such documenta-
19 tion, contains security features to make
20 such documentation resistant to tam-
21 pering, counterfeiting, and fraudulent use.

22 “(F) IDENTITY AUTHENTICATION MECHA-
23 NISM.—

24 “(i) DEFINITIONS.—In this subpara-
25 graph:

1 “(I) COVERED IDENTITY DOCU-
2 MENT.—The term ‘covered identity
3 document’ means a valid—

4 “(aa) United States pass-
5 port, passport card, or a docu-
6 ment evidencing lawful perma-
7 nent residence status or employ-
8 ment authorized status issued to
9 an alien;

10 “(bb) enhanced driver’s li-
11 cense or identity card issued by a
12 participating State or an outlying
13 possession of the United States;
14 or

15 “(cc) photograph and appro-
16 priate identifying information
17 provided by the Secretary of
18 State pursuant to the granting of
19 a visa.

20 “(II) PARTICIPATING STATE.—
21 The term ‘participating State’ means
22 a State that has an agreement with
23 the Secretary to provide the Sec-
24 retary, for purposes of identity
25 verification in the System, with photo-

1 graphs and appropriate identifying in-
2 formation maintained by the State.

3 “(ii) REQUIREMENT FOR IDENTITY
4 AUTHENTICATION.—In addition to
5 verifying the documents specified in sub-
6 paragraph (C), (D), or (E) and utilizing
7 the System under subsection (d), each em-
8 ployer shall use an identity authentication
9 mechanism described in clause (iii) or pro-
10 vided in clause (iv) after it becomes avail-
11 able to verify the identity of each indi-
12 vidual the employer seeks to hire.

13 “(iii) PHOTO TOOL.—

14 “(I) USE REQUIREMENT.—An
15 employer hiring an individual who has
16 a covered identity document shall
17 verify the identity of such individual
18 using the photo tool described in sub-
19 clause (II).

20 “(II) DEVELOPMENT REQUIRE-
21 MENT.—The Secretary shall develop
22 and maintain a photo tool that en-
23 ables employers to match the photo on
24 a covered identity document provided
25 to the employer to a photo maintained

1 by a U.S. Citizenship and Immigra-
2 tion Services database.

3 “(iv) ADDITIONAL SECURITY MEAS-
4 URES.—

5 “(I) USE REQUIREMENT.—An
6 employer seeking to hire an individual
7 whose identity may not be verified
8 using the photo tool described in
9 clause (iii) shall verify the identity of
10 such individual using the additional
11 security measures described in sub-
12 clause (II).

13 “(II) DEVELOPMENT REQUIRE-
14 MENT.—The Secretary shall develop,
15 after publication in the Federal Reg-
16 ister and an opportunity for public
17 comment, specific and effective addi-
18 tional security measures to adequately
19 verify the identity of an individual
20 whose identity may not be verified
21 using the photo tool described in
22 clause (iii). Such additional security
23 measures—

1 “(aa) shall be kept up-to-
2 date with technological advances;
3 and

4 “(bb) shall provide a means
5 of identity authentication in a
6 manner that provides a high level
7 of certainty as to the identity of
8 such individual, using immigra-
9 tion and identifying information
10 that may include review of iden-
11 tity documents or background
12 screening verification techniques
13 using publicly available informa-
14 tion.

15 “(G) AUTHORITY TO PROHIBIT USE OF
16 CERTAIN DOCUMENTS.—If the Secretary deter-
17 mines, after publication in the Federal Register
18 and an opportunity for public comment, that
19 any document or class of documents specified in
20 subparagraph (B), (C), or (D) does not reliably
21 establish identity or that employment author-
22 ized status is being used fraudulently to an un-
23 acceptable degree, the Secretary—

1 “(i) may prohibit or restrict the use of
2 such document or class of documents for
3 purposes of this subsection; and

4 “(ii) shall directly notify all employers
5 registered within the System of the prohi-
6 bition through appropriate means.

7 “(H) AUTHORITY TO ALLOW USE OF CER-
8 TAIN DOCUMENTS.—If the Secretary has deter-
9 mined that another document or class of docu-
10 ments, such as a document issued by a federally
11 recognized Indian tribe, may be used to reliably
12 establish identity or employment authorized sta-
13 tus, the Secretary—

14 “(i) may allow the use of that docu-
15 ment or class of documents for purposes of
16 this subsection after publication in the
17 Federal Register and an opportunity for
18 public comment;

19 “(ii) shall publish a description of any
20 such document or class of documents on
21 the U.S. Citizenship and Immigration
22 Services website; and

23 “(iii) shall directly notify all employ-
24 ers registered within the System of the ad-
25 dition through appropriate means.

1 “(2) INDIVIDUAL ATTESTATION OF EMPLOY-
2 MENT AUTHORIZATION.—An individual, upon com-
3 mencing employment with an employer, shall—

4 “(A) attest, under penalty of perjury, on
5 the form prescribed by the Secretary, that the
6 individual is—

7 “(i) a citizen of the United States;

8 “(ii) an alien lawfully admitted for
9 permanent residence;

10 “(iii) an alien who has employment
11 authorized status; or

12 “(iv) otherwise authorized by the Sec-
13 retary to be hired for such employment;

14 “(B) provide such attestation by a hand-
15 written, electronic, or digital pin code signature;
16 and

17 “(C) provide the individual’s social security
18 account number to the Secretary, unless the in-
19 dividual has not yet been issued such a number,
20 on such form as the Secretary may require.

21 “(3) RETENTION OF VERIFICATION RECORD.—

22 “(A) IN GENERAL.—After completing a
23 form for an individual in accordance with para-
24 graphs (1) and (2), the employer shall retain a
25 version of such completed form and make such

1 form available for inspection by the Secretary
2 or the Office of Special Counsel for Immigra-
3 tion-Related Unfair Employment Practices of
4 the Department of Justice during the period be-
5 ginning on the hiring date of the individual and
6 ending on the later of—

7 “(i) the date that is 3 years after such
8 hiring date; or

9 “(ii) the date that is 1 year after the
10 date on which the individual’s employment
11 with the employer is terminated.

12 “(B) REQUIREMENT FOR ELECTRONIC RE-
13 TENTION.—The Secretary—

14 “(i) shall permit an employer to retain
15 the form described in subparagraph (A) in
16 electronic form; and

17 “(ii) shall permit an employer to re-
18 tain such form in paper, microfiche, micro-
19 film, portable document format, or other
20 media.

21 “(4) COPYING OF DOCUMENTATION AND REC-
22 ORDKEEPING.—The Secretary may promulgate regu-
23 lations regarding—

24 “(A) copying documents and related infor-
25 mation pertaining to employment verification

1 presented by an individual under this sub-
2 section; and

3 “(B) retaining such information during a
4 period not to exceed the required retention pe-
5 riod set forth in paragraph (3).

6 “(5) PENALTIES.—An employer that fails to
7 comply with any requirement under this subsection
8 may be penalized under subsection (e)(4)(B).

9 “(6) PROTECTION OF CIVIL RIGHTS.—

10 “(A) IN GENERAL.—Nothing in this sec-
11 tion may be construed to diminish any rights
12 otherwise protected by Federal law.

13 “(B) PROHIBITION ON DISCRIMINATION.—
14 An employer shall use the procedures for docu-
15 ment verification set forth in this paragraph for
16 all employees without regard to race, color, reli-
17 gion, sex, national origin, or, unless specifically
18 permitted in this section, to citizenship status.

19 “(7) RECEIPTS.—The Secretary may authorize
20 the use of receipts for replacement documents, and
21 temporary evidence of employment authorization by
22 an individual to meet a documentation requirement
23 under this subsection on a temporary basis not to
24 exceed 1 year, after which time the individual shall

1 provide documentation sufficient to satisfy the docu-
2 mentation requirements under this subsection.

3 “(8) NO AUTHORIZATION OF NATIONAL IDENTI-
4 FICATION CARDS.—Nothing in this section may be
5 construed to directly or indirectly authorize the
6 issuance, use, or establishment of a national identi-
7 fication card.

8 “(d) EMPLOYMENT VERIFICATION SYSTEM.—

9 “(1) IN GENERAL.—

10 “(A) ESTABLISHMENT.—The Secretary, in
11 consultation with the Commissioner, shall es-
12 tablish the Employment Verification System.

13 “(B) MONITORING.—The Secretary shall
14 create the necessary processes to monitor—

15 “(i) the functioning of the System, in-
16 cluding the volume of the workflow, the
17 speed of processing of queries, the speed
18 and accuracy of responses;

19 “(ii) the misuse of the System, includ-
20 ing the prevention of fraud or identity
21 theft;

22 “(iii) whether the use of the System
23 results in wrongful adverse actions or dis-
24 crimination based upon a prohibited factor
25 against citizens or nationals of the United

1 States or individuals who have employment
2 authorized status; and

3 “(iv) the security, integrity, and pri-
4 vacy of the System.

5 “(C) PROCEDURES.—The Secretary—

6 “(i) shall create processes to provide
7 an individual with direct access to the indi-
8 vidual’s case history in the System, includ-
9 ing—

10 “(I) the identities of all persons
11 or entities that have queried the indi-
12 vidual through the System;

13 “(II) the date of each such
14 query; and

15 “(III) the System response for
16 each such query; and

17 “(ii) in consultation with the Commis-
18 sioner, shall develop—

19 “(I) protocols to notify an indi-
20 vidual, in a timely manner through
21 the use of electronic correspondence
22 or mail, that a query for the indi-
23 vidual has been processed through the
24 System; or

1 “(II) a process for the individual
2 to submit additional queries to the
3 System or notify the Secretary of po-
4 tential identity fraud.

5 “(2) PARTICIPATION REQUIREMENTS.—

6 “(A) FEDERAL GOVERNMENT.—Except as
7 provided in subparagraph (B), all agencies and
8 departments in the executive, legislative, or ju-
9 dicial branches of the Federal Government shall
10 participate in the System beginning on the ear-
11 lier of—

12 “(i) the date of the enactment of the
13 Border Security, Economic Opportunity,
14 and Immigration Modernization Act, to the
15 extent required under section 402(e)(1) of
16 the Illegal Immigration Reform and Immi-
17 grant Responsibility Act of 1996 (division
18 C of Public Law 104–208; 8 U.S.C.
19 1324a) and as already implemented by
20 each agency or department; or

21 “(ii) the date that is 90 days after the
22 date of the enactment of the Border Secu-
23 rity, Economic Opportunity, and Immigra-
24 tion Modernization Act.

1 “(B) FEDERAL CONTRACTORS.—Federal
2 contractors shall participate in the System as
3 provided in the final rule relating to employ-
4 ment eligibility verification published in the
5 Federal Register on November 14, 2008 (73
6 Fed. Reg. 67,651), or any similar subsequent
7 regulation, for which purpose references to E-
8 Verify in the final rule shall be construed to
9 apply to the System.

10 “(C) CRITICAL INFRASTRUCTURE.—

11 “(i) IN GENERAL.—Beginning on the
12 date that is 1 year after the date on which
13 regulations are published implementing
14 this subsection, the Secretary may author-
15 ize or direct any employer, person, or enti-
16 ty responsible for granting access to, pro-
17 tecting, securing, operating, administering,
18 or regulating part of the critical infrastruc-
19 ture (as defined in section 1016(e) of the
20 Critical Infrastructure Protection Act of
21 2001 (42 U.S.C. 5195c(e))) to participate
22 in the System to the extent the Secretary
23 determines that such participation will as-
24 sist in the protection of the critical infra-
25 structure.

1 “(ii) NOTIFICATION TO EMPLOY-
2 ERS.—The Secretary shall notify an em-
3 ployer required to participate in the Sys-
4 tem under this subparagraph not later
5 than 90 days before the date on which the
6 employer is required to participate.

7 “(D) EMPLOYERS WITH MORE THAN 5,000
8 EMPLOYEES.—Not later than 2 years after reg-
9 ulations are published implementing this sub-
10 section, all employers with more than 5,000 em-
11 ployees shall participate in the System with re-
12 spect to all newly hired employees and employ-
13 ees with expiring temporary employment au-
14 thorization documents.

15 “(E) EMPLOYERS WITH MORE THAN 500
16 EMPLOYEES.—Not later than 3 years after reg-
17 ulations are published implementing this sub-
18 section, all employers with more than 500 em-
19 ployees shall participate in the System with re-
20 spect to all newly hired employees and employ-
21 ees with expiring temporary employment au-
22 thorization documents.

23 “(F) AGRICULTURAL EMPLOYMENT.—Not
24 later than 4 years after regulations are pub-
25 lished implementing this subsection, employers

1 of employees performing agricultural employ-
2 ment (as defined in section 218A of this Act
3 and section 2202 of the Border Security, Eco-
4 nomic Opportunity, and Immigration Mod-
5 ernization Act) shall participate in the System
6 with respect to all newly hired employees and
7 employees with expiring temporary employment
8 authorization documents. An agricultural em-
9 ployee shall not be counted for purposes of sub-
10 paragraph (D) or (E).

11 “(G) ALL EMPLOYERS.—Except as pro-
12 vided in subparagraph (H), not later than 4
13 years after regulations are published imple-
14 menting this subsection, all employers shall par-
15 ticipate in the System with respect to all newly
16 hired employees and employees with expiring
17 temporary employment authorization docu-
18 ments.

19 “(H) TRIBAL GOVERNMENT EMPLOY-
20 ERS.—

21 “(i) RULEMAKING.—In developing
22 regulations to implement this subsection,
23 the Secretary shall—

1 “(I) consider the effects of this
2 section on federally recognized Indian
3 tribes and tribal members; and

4 “(II) consult with the govern-
5 ments of federally recognized Indian
6 tribes.

7 “(ii) REQUIRED PARTICIPATION.—Not
8 later than 5 years after regulations are
9 published implementing this subsection, all
10 employers owned by, or entities of, the gov-
11 ernment of a federally recognized Indian
12 tribe shall participate in the System with
13 respect to all newly hired employees and
14 employees with expiring temporary employ-
15 ment authorization documents.

16 “(I) IMMIGRATION LAW VIOLATORS.—

17 “(i) ORDERS FINDING VIOLATIONS.—
18 An order finding any employer to have vio-
19 lated this section or section 274C may, in
20 the Secretary’s discretion, require the em-
21 ployer to participate in the System with re-
22 spect to newly hired employees and em-
23 ployees with expiring temporary employ-
24 ment authorization documents, if such em-
25 ployer is not otherwise required to partici-

1 pate in the System under this section. The
2 Secretary shall monitor such employer's
3 compliance with System procedures.

4 “(ii) PATTERN OR PRACTICE OF VIO-
5 LATIONS.—The Secretary may require an
6 employer that is required to participate in
7 the System with respect to newly hired em-
8 ployees to participate in the System with
9 respect to the employer's current employ-
10 ees if the employer is determined by the
11 Secretary or other appropriate authority to
12 have engaged in a pattern or practice of
13 violations of the immigration laws of the
14 United States.

15 “(J) VOLUNTARY PARTICIPATION.—The
16 Secretary may permit any employer that is not
17 required to participate in the System under this
18 section to do so on a voluntary basis.

19 “(3) CONSEQUENCE OF FAILURE TO PARTICI-
20 PATE.—

21 “(A) IN GENERAL.—Except as provided in
22 subparagraph (B), the failure, other than a de
23 minimis or inadvertent failure, of an employer
24 that is required to participate in the System to

1 comply with the requirements of the System
2 with respect to an individual—

3 “(i) shall be treated as a violation of
4 subsection (a)(1)(B) with respect to that
5 individual; and

6 “(ii) creates a rebuttable presumption
7 that the employer has violated paragraph
8 (1)(A) or (2) of subsection (a).

9 “(B) EXCEPTION.—

10 “(i) IN GENERAL.—Subparagraph (A)
11 shall not apply in a criminal prosecution.

12 “(ii) USE AS EVIDENCE.—Nothing in
13 this paragraph may be construed to limit
14 the use in the prosecution of a Federal
15 crime, in a manner otherwise consistent
16 with Federal criminal law and procedure,
17 of evidence relating to the employer’s fail-
18 ure to comply with requirements of the
19 System.

20 “(4) PROCEDURES FOR PARTICIPANTS IN THE
21 SYSTEM.—

22 “(A) IN GENERAL.—An employer partici-
23 pating in the System shall register such partici-
24 pation with the Secretary and, when hiring any

1 individual for employment in the United States,
2 shall comply with the following:

3 “(i) REGISTRATION OF EMPLOYERS.—

4 The Secretary, through notice in the Fed-
5 eral Register, shall prescribe procedures
6 that employers shall be required to follow
7 to register with the System.

8 “(ii) UPDATING INFORMATION.—The
9 employer is responsible for providing notice
10 of any change to the information required
11 under subclauses (I), (II), and (III) of
12 clause (v) before conducting any further
13 inquiries within the System, or on such
14 other schedule as the Secretary may pre-
15 scribe.

16 “(iii) TRAINING.—The Secretary shall
17 require employers to undergo such training
18 as the Secretary determines to be nec-
19 essary to ensure proper use, protection of
20 civil rights and civil liberties, privacy, in-
21 tegrity, and security of the System. To the
22 extent practicable, such training shall be
23 made available electronically on the U.S.
24 Citizenship and Immigration Services
25 website.

1 “(iv) NOTIFICATION TO EMPLOY-
2 EES.—The employer shall inform individ-
3 uals hired for employment that the Sys-
4 tem—

5 “(I) will be used by the employer;

6 “(II) may be used for immigra-
7 tion enforcement purposes; and

8 “(III) may not be used to dis-
9 criminate or to take adverse action
10 against a national of the United
11 States or an alien who has employ-
12 ment authorized status.

13 “(v) PROVISION OF ADDITIONAL IN-
14 FORMATION.—The employer shall obtain
15 from the individual (and the individual
16 shall provide) and shall record in such
17 manner as the Secretary may specify—

18 “(I) the individual’s social secu-
19 rity account number;

20 “(II) if the individual does not
21 attest to United States citizenship or
22 status as a national of the United
23 States under subsection (c)(2), such
24 identification or authorization number

1 established by the Department as the
2 Secretary shall specify; and

3 “(III) such other information as
4 the Secretary may require to deter-
5 mine the identity and employment au-
6 thorization of an individual.

7 “(vi) PRESENTATION OF DOCUMENTA-
8 TION.—The employer, and the individual
9 whose identity and employment authorized
10 status are being confirmed, shall fulfill the
11 requirements under subsection (c).

12 “(B) SEEKING CONFIRMATION.—

13 “(i) IN GENERAL.—An employer shall
14 use the System to confirm the identity and
15 employment authorized status of any indi-
16 vidual during—

17 “(I) the period beginning on the
18 date on which the individual accepts
19 an offer of employment and ending 3
20 business days after the date on which
21 employment begins; or

22 “(II) such other reasonable pe-
23 riod as the Secretary may prescribe.

24 “(ii) LIMITATION.—An employer may
25 not make the starting date of an individ-

1 ual’s employment or training or any other
2 term and condition of employment depend-
3 ent on the receipt of a confirmation of
4 identity and employment authorized status
5 by the System.

6 “(iii) REVERIFICATION.—If an indi-
7 vidual has a limited period of employment
8 authorized status, the individual’s em-
9 ployer shall reverify such status through
10 the System not later than 3 business days
11 after the last day of such period.

12 “(iv) OTHER EMPLOYMENT.—For em-
13 ployers directed by the Secretary to par-
14 ticipate in the System under paragraph
15 (2)(C)(i) to protect critical infrastructure
16 or otherwise specified circumstances in this
17 section to verify their entire workforce, the
18 System may be used for initial verification
19 of an individual who was hired before the
20 employer became subject to the System,
21 and the employer shall initiate all required
22 procedures on or before such date as the
23 Secretary shall specify.

24 “(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’).

12 “(II) PROCEDURES.—The Sec-
13 retary shall—

“(aa) directly notify the individual and the employer, by means of electronic correspondence, mail, text message, telephone, or other direct communication, of a nonconfirmation or further action notice;

21 “(bb) provide information
22 about filing an administrative ap-
23 peal under paragraph (6) and a
24 filing for review before an admin-

1 ther action notice at the time of
2 the inquiry; and

3 “(bb) an appropriate code
4 indicating such confirmation or
5 such further action notice.

6 “(II) ALTERNATIVE DEAD-
7 LINE.—If the System is unable to
8 provide immediate confirmation or
9 further action notice for technological
10 reasons or due to unforeseen cir-
11 cumstances, the System shall provide
12 a confirmation or further action notice
13 not later than 3 business days after
14 the initial inquiry.

15 “(ii) CONFIRMATION UPON INITIAL
16 INQUIRY.—If the employer receives an ap-
17 propriate confirmation of an individual’s
18 identity and employment authorized status
19 under the System, the employer shall
20 record the confirmation in such manner as
21 the Secretary may specify.

22 “(iii) FURTHER ACTION NOTICE AND
23 LATER CONFIRMATION OR NONCONFIRMA-
24 TION.—

1 “(I) NOTIFICATION AND AC-
2 KNOWLEDGMENT THAT FURTHER AC-
3 TION IS REQUIRED.—Not later than 3
4 business days after an employer re-
5 ceives a further action notice of an in-
6 dividual’s identity or employment eli-
7 gibility under the System, or during
8 such other reasonable time as the Sec-
9 retary may prescribe, the employer
10 shall notify the individual for whom
11 the confirmation is sought of the fur-
12 ther action notice and any procedures
13 specified by the Secretary for address-
14 ing such notice. The further action
15 notice shall be given to the individual
16 in writing and the employer shall ac-
17 knowledge in the System under pen-
18 alty of perjury that it provided the
19 employee with the further action no-
20 tice. The individual shall affirmatively
21 acknowledge in writing, or in such
22 other manner as the Secretary may
23 specify, the receipt of the further ac-
24 tion notice from the employer. If the
25 individual refuses to acknowledge the

1 receipt of the further action notice, or
2 acknowledges in writing that the indi-
3 vidual will not contest the further ac-
4 tion notice under subclause (II), the
5 employer shall notify the Secretary in
6 such manner as the Secretary may
7 specify.

8 “(II) CONTEST.—Not later than
9 10 business days after receiving noti-
10 fication of a further action notice
11 under subclause (I), the individual
12 shall contact the appropriate Federal
13 agency and, if the Secretary so re-
14 quires, appear in person for purposes
15 of verifying the individual’s identity
16 and employment eligibility. The Sec-
17 retary, in consultation with the Com-
18 missioner and other appropriate Fed-
19 eral agencies, shall specify an avail-
20 able secondary verification procedure
21 to confirm the validity of information
22 provided and to provide a confirma-
23 tion or nonconfirmation. Any proce-
24 dures for reexamination shall not limit

1 in any way an employee's right to ap-
2 peal a nonconfirmation.

3 “(III) NO CONTEST.—If the indi-
4 vidual refuses to acknowledge receipt
5 of the further action notice, acknowl-
6 edges that the individual will not con-
7 test the further action notice as pro-
8 vided in subclause (I), or does not
9 contact the appropriate Federal agen-
10 cy within the period specified in sub-
11 clause (II), following expiration of the
12 period specified in subclause (II), a
13 nonconfirmation shall be issued. The
14 employer shall record the noncon-
15 firmation in such manner as the Sec-
16 retary may specify and terminate the
17 individual's employment. An individ-
18 ual's failure to contest a further ac-
19 tion notice shall not be considered an
20 admission of guilt with respect to any
21 violation of this section or any provi-
22 sion of law.

23 “(IV) CONFIRMATION OR NON-
24 CONFIRMATION.—Unless the period is
25 extended in accordance with this sub-

1 clause, the System shall provide a
2 confirmation or nonconfirmation not
3 later than 10 business days after the
4 date on which the individual contests
5 the further action notice under sub-
6 clause (II). If the Secretary deter-
7 mines that good cause exists, after
8 taking into account adverse impacts
9 to the employer, and including time to
10 permit the individual to obtain and
11 provide needed evidence of identity or
12 employment eligibility, the Secretary
13 shall extend the period for providing
14 confirmation or nonconfirmation for
15 stated periods beyond 10 business
16 days. When confirmation or noncon-
17 firmation is provided, the confirma-
18 tion system shall provide an appro-
19 priate code indicating such confirma-
20 tion or nonconfirmation.

21 “(V) REEXAMINATION.—Nothing
22 in this section shall prevent the Sec-
23 retary from establishing procedures to
24 reexamine a case where a confirma-
25 tion or nonconfirmation has been pro-

1 vided if subsequently received infor-
2 mation indicates that the confirmation
3 or nonconfirmation may not have been
4 correct. Any procedures for reexam-
5 ination shall not limit in any way an
6 employee's right to appeal a noncon-
7 firmation.

8 “(VI) EMPLOYEE PROTEC-
9 TIONS.—An employer may not termi-
10 nate employment or take any other
11 adverse action against an individual
12 solely because of a failure of the indi-
13 vidual to have identity and employ-
14 ment eligibility confirmed under this
15 subsection until—

16 “(aa) a nonconfirmation has
17 been issued;

18 “(bb) if the further action
19 notice was contested, the period
20 to timely file an administrative
21 appeal has expired without an
22 appeal or the contestation to the
23 further action notice is with-
24 drawn; or

1 “(cc) if an appeal before an
2 administrative law judge under
3 paragraph (7) has been filed, the
4 nonconfirmation has been upheld
5 or the appeal has been withdrawn
6 or dismissed.

7 “(iv) NOTICE OF NONCONFIRMA-
8 TION.—Not later than 3 business days
9 after an employer receives a nonconfirma-
10 tion, or during such other reasonable time
11 as the Secretary may provide, the employer
12 shall notify the individual who is the sub-
13 ject of the nonconfirmation, and provide
14 information about filing an administrative
15 appeal pursuant to paragraph (6) and a
16 request for a hearing before an administra-
17 tive law judge pursuant to paragraph (7).
18 The nonconfirmation notice shall be given
19 to the individual in writing and the em-
20 ployer shall acknowledge in the System
21 under penalty of perjury that it provided
22 the notice (or adequately attempted to pro-
23 vide notice, but was unable to do so despite
24 reasonable efforts). The individual shall af-
25 firmatively acknowledge in writing, or in

1 such other manner as the Secretary may
2 prescribe, the receipt of the nonconfirma-
3 tion notice from the employer. If the indi-
4 vidual refuses or fails to acknowledge the
5 receipt of the nonconfirmation notice, the
6 employer shall notify the Secretary in such
7 manner as the Secretary may prescribe.

8 “(D) CONSEQUENCES OF NONCONFIRMA-
9 TION.—

10 “(i) TERMINATION OF CONTINUED
11 EMPLOYMENT.—Except as provided in
12 clause (iii), an employer that has received
13 a nonconfirmation regarding an individual
14 and has made reasonable efforts to notify
15 the individual in accordance with subpara-
16 graph (C)(iv) shall terminate the employ-
17 ment of the individual upon the expiration
18 of the time period specified in paragraph
19 (7).

20 “(ii) CONTINUED EMPLOYMENT
21 AFTER NONCONFIRMATION.—If the em-
22 ployer continues to employ an individual
23 after receiving nonconfirmation and ex-
24 haustion of all appeals or expiration of all
25 rights to appeal if not appealed, in viola-

tion 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 for review with 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).

“(iv) WEEKLY REPORT.—The Director of U.S. Citizenship and Immigration Services shall submit a weekly report to the Assistant Secretary for Immigration and Customs Enforcement that includes, for each individual who receives final nonconfirmation through the System—

1 “(I) the name of such individual;

2 “(II) his or her social security
3 number or alien file number;

4 “(III) the name and contact in-
5 formation for his or her current em-
6 ployer; and

7 “(IV) any other critical informa-
8 tion that the Assistant Secretary de-
9 termines to be appropriate.

10 “(E) OBLIGATION TO RESPOND TO QUE-
11 RIES AND ADDITIONAL INFORMATION.—

12 “(i) IN GENERAL.—Employers shall
13 comply with requests for information from
14 the Secretary and the Special Counsel for
15 Immigration-Related Unfair Employment
16 Practices of the Department of Justice, in-
17 cluding queries concerning current and
18 former employees, within the time frame
19 during which records are required to be
20 maintained under this section regarding
21 such former employees, if such information
22 relates to the functioning of the System,
23 the accuracy of the responses provided by
24 the System, or any suspected misuse, dis-
25 crimination, fraud, or identity theft in the

1 use of the System. Failure to comply with
2 a request under this clause constitutes a
3 violation of subsection (a)(1)(B).

4 “(ii) ACTION BY INDIVIDUALS.—

5 “(I) IN GENERAL.—Individuals
6 being verified through the System
7 may be required to take further action
8 to address questions identified by the
9 Secretary or the Commissioner re-
10 garding the documents relied upon for
11 purposes of subsection (c).

12 “(II) NOTIFICATION.—Not later
13 than 3 business days after the receipt
14 of such questions regarding an indi-
15 vidual, or during such other reason-
16 able time as the Secretary may pre-
17 scribe, the employer shall—

18 “(aa) notify the individual of
19 any such requirement for further
20 actions; and

21 “(bb) record the date and
22 manner of such notification.

23 “(III) ACKNOWLEDGMENT.—The
24 individual shall acknowledge the noti-
25 fication received from the employer

1 under subclause (II) in writing, or in
2 such other manner as the Secretary
3 may prescribe.

4 “(iii) RULEMAKING.—

5 “(I) IN GENERAL.—The Sec-
6 retary, in consultation with the Com-
7 missioner and the Attorney General,
8 is authorized to issue regulations im-
9 plementing, clarifying, and
10 supplementing the requirements under
11 this subparagraph—

12 “(aa) to facilitate the func-
13 tioning, accuracy, and fairness of
14 the System;

15 “(bb) to prevent misuse, dis-
16 crimination, fraud, or identity
17 theft in the use of the System; or

18 “(cc) to protect and main-
19 tain the confidentiality of infor-
20 mation that could be used to lo-
21 cate or otherwise place at risk of
22 harm victims of domestic vio-
23 lence, dating violence, sexual as-
24 sault, stalking, and human traf-
25 ficking, and of the applicant or

1 beneficiary of any petition de-
2 scribed in section 384(a)(2) of
3 the Illegal Immigration Reform
4 and Immigrant Responsibility
5 Act of 1996 (8 U.S.C.
6 1367(a)(2)).

7 “(II) NOTICE.—The regulations
8 issued under subclause (I) shall be—
9 “(aa) published in the Fed-
10 eral Register; and
11 “(bb) provided directly to all
12 employers registered in the Sys-
13 tem.

14 “(F) DESIGNATED AGENTS.—The Sec-
15 retary shall establish a process—

16 “(i) for certifying, on an annual basis
17 or at such times as the Secretary may pre-
18 scribe, designated agents and other System
19 service providers seeking access to the Sys-
20 tem to perform verification queries on be-
21 half of employers, based upon training,
22 usage, privacy, and security standards pre-
23 scribed by the Secretary;

24 “(ii) for ensuring that designated
25 agents and other System service providers

1 are subject to monitoring to the same ex-
2 tent as direct access users; and

3 “(iii) for establishing standards for
4 certification of electronic I–9 programs.

5 “(G) REQUIREMENT TO PROVIDE INFOR-
6 MATION.—

7 “(i) IN GENERAL.—No later than 3
8 months after the date of the enactment of
9 the Border Security, Economic Oppor-
10 tunity, and Immigration Modernization
11 Act, the Secretary, in consultation with the
12 Secretary of Labor, the Secretary of Agri-
13 culture, the Commissioner, the Attorney
14 General, the Equal Employment Oppor-
15 tunity Commission, and the Administrator
16 of the Small Business Administration,
17 shall commence a campaign to disseminate
18 information respecting the procedures,
19 rights, and remedies prescribed under this
20 section.

21 “(ii) CAMPAIGN REQUIREMENTS.—
22 The campaign authorized under clause
23 (i)—

24 “(I) shall be aimed at increasing
25 the knowledge of employers, employ-

1 ees, and the general public concerning
2 employer and employee rights, respon-
3 sibilities, and remedies under this sec-
4 tion; and

5 “(II) shall be coordinated with
6 the public education campaign con-
7 ducted by U.S. Citizenship and Immi-
8 gration Services.

9 “(iii) ASSESSMENT.—The Secretary
10 shall assess the success of the campaign in
11 achieving the goals of the campaign.

12 “(iv) AUTHORITY TO CONTRACT.—In
13 order to carry out and assess the campaign
14 under this subparagraph, the Secretary
15 may, to the extent deemed appropriate and
16 subject to the availability of appropria-
17 tions, contract with public and private or-
18 ganizations for outreach and assessment
19 activities under the campaign.

20 “(v) AUTHORIZATION OF APPROPRIA-
21 TIONS.—There are authorized to be appro-
22 priated to carry out this paragraph
23 \$40,000,000 for each of the fiscal years
24 2014 through 2016.

1 “(H) AUTHORITY TO MODIFY INFORMA-
2 TION REQUIREMENTS.—Based on a regular re-
3 view of the System and the document
4 verification procedures to identify misuse or
5 fraudulent use and to assess the security of the
6 documents and processes used to establish iden-
7 tity or employment authorized status, the Sec-
8 retary, in consultation with the Commissioner,
9 after publication of notice in the Federal Reg-
10 ister and an opportunity for public comment,
11 may modify, if the Secretary determines that
12 the modification is necessary to ensure that the
13 System accurately and reliably determines the
14 identity and employment authorized status of
15 employees and maintain existing protections
16 against misuse, discrimination, fraud, and iden-
17 tity theft—

18 “(i) the information that shall be pre-
19 sented to the employer by an individual;

20 “(ii) the information that shall be pro-
21 vided to the System by the employer; and

22 “(iii) the procedures that shall be fol-
23 lowed by employers with respect to the
24 process of verifying an individual through
25 the System.

1 “(I) SELF-VERIFICATION.—Subject to ap-
2 propriate safeguards to prevent misuse of the
3 system, the Secretary, in consultation with the
4 Commissioner, shall establish a secure self-
5 verification procedure to permit an individual
6 who seeks to verify the individual’s own employ-
7 ment eligibility to contact the appropriate agen-
8 cy and, in a timely manner, correct or update
9 the information contained in the System.

10 “(5) PROTECTION FROM LIABILITY FOR AC-
11 TIONS TAKEN ON THE BASIS OF INFORMATION PRO-
12 VIDED BY THE SYSTEM.—An employer shall not be
13 liable to a job applicant, an employee, the Federal
14 Government, or a State or local government, under
15 Federal, State, or local criminal or civil law for any
16 employment-related action taken with respect to a
17 job applicant or employee in good faith reliance on
18 information provided by the System.

19 “(6) ADMINISTRATIVE APPEAL.—

20 “(A) IN GENERAL.—An individual who is
21 notified of a nonconfirmation may, not later
22 than 10 business days after the date that such
23 notice is received, file an administrative appeal
24 of such nonconfirmation with the Commissioner
25 if the notice is based on records maintained by

1 the Commissioner, or in any other case, with
2 the Secretary. An individual who did not timely
3 contest a further action notice timely received
4 by that individual for which the individual ac-
5 knowledged receipt may not be granted a review
6 under this paragraph.

7 “(B) ADMINISTRATIVE STAY OF NONCON-
8 FIRMATION.—The nonconfirmation shall be
9 automatically stayed upon the timely filing of
10 an administrative appeal, unless the noncon-
11 firmation resulted after the individual acknowl-
12 edged receipt of the further action notice but
13 failed to contact the appropriate agency within
14 the time provided. The stay shall remain in ef-
15 fect until the resolution of the appeal, unless
16 the Secretary or the Commissioner terminates
17 the stay based on a determination that the ad-
18 ministrative appeal is frivolous or filed for pur-
19 poses of delay.

20 “(C) REVIEW FOR ERROR.—The Secretary
21 and the Commissioner shall develop procedures
22 for resolving administrative appeals regarding
23 nonconfirmations based upon the information
24 that the individual has provided, including any
25 additional evidence or argument that was not

1 previously considered. Any such additional evi-
2 dence or argument shall be filed within 10 busi-
3 ness days of the date the appeal was originally
4 filed. Appeals shall be resolved within 20 busi-
5 ness days after the individual has submitted all
6 evidence and arguments the individual wishes to
7 submit, or has stated in writing that there is no
8 additional evidence that the individual wishes to
9 submit. The Secretary and the Commissioner
10 may, on a case by case basis for good cause, ex-
11 tend the filing and submission period in order
12 to ensure accurate resolution of an appeal be-
13 fore the Secretary or the Commissioner.

14 “(D) PREPONDERANCE OF EVIDENCE.—
15 Administrative appeal under this paragraph
16 shall be limited to whether a nonconfirmation
17 notice is supported by a preponderance of the
18 evidence.

19 “(E) DAMAGES, FEES, AND COSTS.—No
20 money damages, fees or costs may be awarded
21 in the administrative appeal process under this
22 paragraph.

23 “(7) REVIEW BY ADMINISTRATIVE LAW
24 JUDGE.—

1 “(A) IN GENERAL.—Not later than 30
2 days after the date an individual receives a final
3 determination on an administrative appeal
4 under paragraph (6), the individual may obtain
5 review of such determination by filing a com-
6 plaint with a Department of Justice administra-
7 tive law judge in accordance with this para-
8 graph.

9 “(B) STAY OF NONCONFIRMATION.—The
10 nonconfirmation related to such final deter-
11 mination shall be automatically stayed upon the
12 timely filing of a complaint under this para-
13 graph, and the stay shall remain in effect until
14 the resolution of the complaint, unless the ad-
15 ministrative law judge determines that the ac-
16 tion is frivolous or filed for purposes of delay.

17 “(C) SERVICE.—The respondent to com-
18 plaint filed under this paragraph is either the
19 Secretary or the Commissioner, but not both,
20 depending upon who issued the administrative
21 order under paragraph (6). In addition to serv-
22 ing the respondent, the plaintiff shall serve the
23 Attorney General.

24 “(D) AUTHORITY OF ADMINISTRATIVE
25 LAW JUDGE.—

1 “(i) RULES OF PRACTICE.—The Sec-
2 retary shall promulgate regulations regard-
3 ing the rules of practice in appeals brought
4 pursuant to this subsection.

5 “(ii) AUTHORITY OF ADMINISTRATIVE
6 LAW JUDGE.—The administrative law
7 judge shall have power to—

8 “(I) terminate a stay of a non-
9 confirmation under subparagraph (B)
10 if the administrative law judge deter-
11 mines that the action is frivolous or
12 filed for purposes of delay;

13 “(II) adduce evidence at a hear-
14 ing;

15 “(III) compel by subpoena the
16 attendance of witnesses and the pro-
17 duction of evidence at any designated
18 place or hearing;

19 “(IV) resolve claims of identity
20 theft; and

21 “(V) enter, upon the pleadings
22 and any evidence adduced at a hear-
23 ing, a decision affirming or reversing
24 the result of the agency, with or with-

1 out remanding the cause for a rehear-
2 ing.

3 “(iii) SUBPOENA.—In case of contu-
4 macy or refusal to obey a subpoena law-
5 fully issued under this section and upon
6 application of the administrative law judge,
7 an appropriate district court of the United
8 States may issue an order requiring com-
9 pliance with such subpoena and any failure
10 to obey such order may be punished by
11 such court as a contempt of such court.

12 “(iv) TRAINING.—An administrative
13 law judge hearing cases shall have special
14 training respecting employment authorized
15 status verification.

16 “(E) ORDER BY ADMINISTRATIVE LAW
17 JUDGE.—

18 “(i) IN GENERAL.—The administra-
19 tive law judge shall issue and cause to be
20 served to the parties in the proceeding an
21 order which may be appealed as provided
22 in subparagraph (G).

23 “(ii) CONTENTS OF ORDER.—Such an
24 order shall uphold or reverse the final de-
25 termination on the request for reconsider-

1 ation and order lost wages and other ap-
2 propriate remedies as provided in subpara-
3 graph (F).

4 “(F) COMPENSATION FOR ERROR.—

5 “(i) IN GENERAL.—In cases in which
6 the administrative law judge reverses the
7 final determination of the Secretary or the
8 Commissioner made under paragraph (6),
9 and the administrative law judge finds
10 that—

11 “(I) the nonconfirmation was due
12 to gross negligence or intentional mis-
13 conduct of the employer, the adminis-
14 trative law judge may order the em-
15 ployer to pay the individual lost
16 wages, and reasonable costs and attor-
17 neys’ fees incurred during administra-
18 tive and judicial review; or

19 “(II) such final determination
20 was erroneous by reason of the neg-
21 ligence of the Secretary or the Com-
22 missioner, the administrative law
23 judge may order the Secretary or the
24 Commissioner to pay the individual
25 lost wages, and reasonable costs and

1 attorneys' fees incurred during the ad-
2 ministrative appeal and the adminis-
3 trative law judge review.

4 “(ii) CALCULATION OF LOST
5 WAGES.—Lost wages shall be calculated
6 based on the wage rate and work schedule
7 that prevailed prior to termination. The in-
8 dividual shall be compensated for wages
9 lost beginning on the first scheduled work
10 day after employment was terminated and
11 ending 120 days after completion of the
12 administrative law judge's review described
13 in this paragraph or the day after the indi-
14 vidual is reinstated or obtains employment
15 elsewhere, whichever occurs first. If the in-
16 dividual obtains employment elsewhere at a
17 lower wage rate, the individual shall be
18 compensated for the difference in wages
19 for the period ending 120 days after com-
20 pletion of the administrative law judge re-
21 view process. No lost wages shall be award-
22 ed for any period of time during which the
23 individual was not in employment author-
24 ized status.

1 “(iii) PAYMENT OF COMPENSATION.—

2 Notwithstanding any other law, payment of
3 compensation for lost wages, costs, and at-
4 torneys’ fees under this paragraph, or com-
5 promise settlements of the same, shall be
6 made as provided by section 1304 of title
7 31, United States Code. Appropriations
8 made available to the Secretary or the
9 Commissioner, accounts provided for under
10 section 286, and funds from the Federal
11 Old-Age and Survivors Insurance Trust
12 Fund or the Federal Disability Insurance
13 Trust Fund shall not be available to pay
14 such compensation.

15 “(G) APPEAL.—No later than 45 days
16 after the entry of such final order, any person
17 adversely affected by such final order may seek
18 review of such order in the United States Court
19 of Appeals for the circuit in which the violation
20 is alleged to have occurred or in which the em-
21 ployer resides or transacts business.

22 “(8) MANAGEMENT OF THE SYSTEM.—

23 “(A) IN GENERAL.—The Secretary is au-
24 thorized to establish, manage, and modify the
25 System, which shall—

1 “(i) respond to inquiries made by par-
2 ticipating employers at any time through
3 the internet, or such other means as the
4 Secretary may designate, concerning an in-
5 dividual’s identity and whether the indi-
6 vidual is in employment authorized status;

7 “(ii) maintain records of the inquiries
8 that were made, of confirmations provided
9 (or not provided), and of the codes pro-
10 vided to employers as evidence of their
11 compliance with their obligations under the
12 System; and

13 “(iii) provide information to, and re-
14 quire action by, employers and individuals
15 using the System.

16 “(B) DESIGN AND OPERATION OF SYS-
17 TEM.—The System shall be designed and oper-
18 ated—

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

24 “(ii) to maximize its ease of use by
25 employees, including direct notification of

1 its use, of results, and ability to challenge
2 results;

3 “(iii) to respond accurately to all in-
4 quires made by employers on whether in-
5 dividuals are authorized to be employed
6 and to register any times when the system
7 is unable to receive inquiries;

8 “(iv) to maintain appropriate adminis-
9 trative, technical, and physical safeguards
10 to prevent unauthorized disclosure of per-
11 sonal information, misuse by employers
12 and employees, and discrimination;

13 “(v) to require regularly scheduled re-
14 fresher training of all users of the System
15 to ensure compliance with all procedures;

16 “(vi) to allow for auditing of the use
17 of the System to detect misuse, discrimina-
18 tion, fraud, and identity theft, to protect
19 privacy and assess System accuracy, and
20 to preserve the integrity and security of
21 the information in all of the System, in-
22 cluding—

23 “(I) to develop and use tools and
24 processes to detect or prevent fraud
25 and identity theft, such as multiple

1 uses of the same identifying informa-
2 tion or documents to fraudulently gain
3 employment;

4 “(II) to develop and use tools
5 and processes to detect and prevent
6 misuse of the system by employers
7 and employees;

8 “(III) to develop tools and proc-
9 esses to detect anomalies in the use of
10 the system that may indicate potential
11 fraud or misuse of the system;

12 “(IV) to audit documents and in-
13 formation submitted by employees to
14 employers, including authority to con-
15 duct interviews with employers and
16 employees, and obtain information
17 concerning employment from the em-
18 ployer;

19 “(vii) to confirm identity and employ-
20 ment authorization through verification
21 and comparison of records as determined
22 necessary by the Secretary;

23 “(viii) to confirm electronically the
24 issuance of the employment authorization
25 or identity document and—

1 “(I) if such photograph is avail-
2 able, to display the digital photograph
3 that the issuer placed on the docu-
4 ment so that the employer can com-
5 pare the photograph displayed to the
6 photograph on the document pre-
7 sented by the employee; or

8 “(II) if a photograph is not avail-
9 able from the issuer, to confirm the
10 authenticity of the document using
11 such alternative procedures as the
12 Secretary may specify; and

13 “(ix) to provide appropriate notifica-
14 tion directly to employers registered with
15 the System of all changes made by the
16 Secretary or the Commissioner related to
17 allowed and prohibited documents, and use
18 of the System.

19 “(C) SAFEGUARDS TO THE SYSTEM.—

20 “(i) REQUIREMENT TO DEVELOP.—
21 The Secretary, in consultation with the
22 Commissioner and other appropriate Fed-
23 eral and State agencies, shall develop poli-
24 cies and procedures to ensure protection of
25 the privacy and security of personally iden-

1 tifiable information and identifiers con-
2 tained in the records accessed or main-
3 tained by the System. The Secretary, in
4 consultation with the Commissioner and
5 other appropriate Federal and State agen-
6 cies, shall develop and deploy appropriate
7 privacy and security training for the Fed-
8 eral and State employees accessing the
9 records under the System.

10 “(ii) PRIVACY AUDITS.—The Sec-
11 retary, acting through the Chief Privacy
12 Officer of the Department, shall conduct
13 regular privacy audits of the policies and
14 procedures established under clause (i), in-
15 cluding any collection, use, dissemination,
16 and maintenance of personally identifiable
17 information and any associated informa-
18 tion technology systems, as well as scope of
19 requests for this information. The Chief
20 Privacy Officer shall review the results of
21 the audits and recommend to the Secretary
22 any changes necessary to improve the pri-
23 vacy protections of the program.

24 “(iii) ACCURACY AUDITS.—

1 “(I) IN GENERAL.—Not later
2 than November 30 of each year, the
3 Inspector General of the Department
4 of Homeland Security shall submit a
5 report to the Secretary, with a copy to
6 the President of the Senate and the
7 Speaker of the House of Representa-
8 tives, that sets forth the error rate of
9 the System for the previous fiscal year
10 and the assessments required to be
11 submitted by the Secretary under sub-
12 paragraphs (A) and (B) of paragraph
13 (10). The report shall describe in de-
14 tail the methodology employed for
15 purposes of the report, and shall make
16 recommendations for how error rates
17 may be reduced.

18 “(II) ERROR RATE DEFINED.—In
19 this clause, the term ‘error rate’
20 means the percentage determined by
21 dividing—

22 “(aa) the number of employ-
23 ment authorized individuals who
24 received further action notices,
25 contested such notices, and were

1 subsequently found to be employ-
2 ment authorized; by

3 “(bb) the number of System
4 inquiries submitted for employ-
5 ment authorized individuals.

6 “(III) REDUCTION OF PENALTIES
7 FOR RECORDKEEPING OR
8 VERIFICATION PRACTICES FOLLOWING
9 PERSISTENT SYSTEM INACCURA-
10 CIES.—Notwithstanding subsection
11 (e)(4)(C)(i), in any calendar year fol-
12 lowing a report by the Inspector Gen-
13 eral under subclause (I) that the Sys-
14 tem had an error rate higher than 0.3
15 percent for the previous fiscal year,
16 the civil penalty assessable by the Sec-
17 retary or an administrative law judge
18 under that subsection for each first-
19 time violation by an employer who has
20 not previously been penalized under
21 this section may not exceed \$1,000.

22 “(iv) RECORDS SECURITY PRO-
23 GRAM.—Any person, including a private
24 third party vendor, who retains document
25 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.

“(v) RECORDS SECURITY PROGRAM.—

In addition to the security measures described in clause (iv), 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

1 information loss, such as power inter-
2 ruptions; and

3 “(II) ensures that employees are
4 trained to minimize the risk of unau-
5 thorized or accidental alteration or
6 erasure of such data in electronic for-
7 mat.

8 “(vi) AUTHORIZED PERSONNEL DE-
9 FINED.—In this subparagraph, the term
10 ‘authorized personnel’ means anyone reg-
11 istered as a System user, or anyone with
12 partial or full responsibility for completion
13 of employment authorization verification or
14 retention of data in connection with em-
15 ployment authorization verification on be-
16 half of an employer.

17 “(D) AVAILABLE FACILITIES AND ALTER-
18 NATIVE ACCOMMODATIONS.—The Secretary
19 shall make appropriate arrangements and de-
20 velop standards to allow employers or employ-
21 ees, including remote hires, who are otherwise
22 unable to access the System to use electronic
23 and telephonic formats (including video confer-
24 encing, scanning technology, and other available
25 technologies), Federal Government facilities,

1 public facilities, or other available locations in
2 order to utilize the System.

3 “(E) RESPONSIBILITIES OF THE SEC-
4 RETARY.—

5 “(i) IN GENERAL.—As part of the
6 System, the Secretary shall maintain a re-
7 liable, secure method, which, operating
8 through the System and within the time
9 periods specified, compares the name, alien
10 identification or authorization number, or
11 other information as determined relevant
12 by the Secretary, provided in an inquiry
13 against such information maintained or
14 accessed by the Secretary in order to con-
15 firm (or not confirm) the validity of the in-
16 formation provided, the correspondence of
17 the name and number, whether the alien
18 has employment authorized status (or, to
19 the extent that the Secretary determines to
20 be feasible and appropriate, whether the
21 records available to the Secretary verify
22 the identity or status of a national of the
23 United States), and such other information
24 as the Secretary may prescribe.

1 “(ii) PHOTOGRAPH DISPLAY.—As part
2 of the System, the Secretary shall establish
3 a reliable, secure method, which, operating
4 through the System, displays the digital
5 photograph described in subparagraph
6 (B)(viii)(I).

7 “(iii) TIMING OF NOTICES.—The Sec-
8 retary shall have authority to prescribe
9 when a confirmation, nonconfirmation, or
10 further action notice shall be issued.

11 “(iv) USE OF INFORMATION.—The
12 Secretary shall perform regular audits
13 under the System, as described in subpara-
14 graph (B)(vi) and shall utilize the informa-
15 tion obtained from such audits, as well as
16 any information obtained from the Com-
17 missioner pursuant to part E of title XI of
18 the Social Security Act (42 U.S.C. 1301 et
19 seq.), for the purposes of this section and
20 to administer and enforce the immigration
21 laws.

22 “(v) IDENTITY FRAUD PROTECTION.—
23 To prevent identity fraud, not later than
24 18 months after the date of the enactment
25 of the Border Security, Economic Oppor-

1 tunity, and Immigration Modernization
2 Act, the Secretary shall—

3 “(I) in consultation with the
4 Commissioner, establish a program to
5 provide a reliable, secure method for
6 an individual to temporarily suspend
7 or limit the use of the individual’s so-
8 cial security account number or other
9 identifying information for verification
10 by the System; and

11 “(II) for each individual being
12 verified through the System—

13 “(aa) notify the individual
14 that the individual has the option
15 to limit the use of the individ-
16 ual’s social security account num-
17 ber or other identifying informa-
18 tion for verification by the Sys-
19 tem; and

20 “(bb) provide instructions to
21 the individuals for exercising the
22 option referred to in item (aa).

23 “(vi) ALLOWING PARENTS TO PRE-
24 VENT THEFT OF THEIR CHILD’S IDEN-
25 TITY.—The Secretary, in consultation with

1 the Commissioner, shall establish a pro-
2 gram that provides a reliable, secure meth-
3 od by which parents or legal guardians
4 may suspend or limit the use of the social
5 security account number or other identi-
6 fying information of a minor under their
7 care for the purposes of the System. The
8 Secretary may implement the program on
9 a limited pilot program basis before mak-
10 ing it fully available to all individuals.

11 “(vii) PROTECTION FROM MULTIPLE
12 USE.—The Secretary and the Commis-
13 sioner shall establish a procedure for iden-
14 tifying and handling a situation in which a
15 social security account number has been
16 identified to be subject to unusual multiple
17 use in the System or is otherwise suspected
18 or determined to have been compromised
19 by identity fraud.

20 “(viii) MONITORING AND COMPLIANCE
21 UNIT.—The Secretary shall establish or
22 designate a monitoring and compliance
23 unit to detect and reduce identity fraud
24 and other misuse of the System.

1 “(ix) CIVIL RIGHTS AND CIVIL LIB-
2 ERTIES ASSESSMENTS.—

3 “(I) REQUIREMENT TO CON-
4 DUCT.—The Secretary shall conduct
5 regular civil rights and civil liberties
6 assessments of the System, including
7 participation by employers, other pri-
8 vate entities, and Federal, State, and
9 local government entities.

10 “(II) REQUIREMENT TO RE-
11 SPOND.—Employers, other private en-
12 tities, and Federal, State, and local
13 entities shall timely respond to any re-
14 quest in connection with such an as-
15 sessment.

16 “(III) ASSESSMENT AND REC-
17 OMMENDATIONS.—The Officer for
18 Civil Rights and Civil Liberties of the
19 Department shall review the results of
20 each such assessment and recommend
21 to the Secretary any changes nec-
22 essary to improve the civil rights and
23 civil liberties protections of the Sys-
24 tem.

25 “(F) GRANTS TO STATES.—

1 “(i) IN GENERAL.—The Secretary
2 shall create and administer a grant pro-
3 gram to help provide funding for States
4 that grant—

5 “(I) the Secretary access to driv-
6 er’s license information as needed to
7 confirm that a driver’s license pre-
8 sented under subsection (c)(1)(D)(i)
9 confirms the identity of the subject of
10 the System check, and that a driver’s
11 license matches the State’s records;
12 and

13 “(II) such assistance as the Sec-
14 retary may request in order to resolve
15 further action notices or nonconfirma-
16 tions relating to such information.

17 “(ii) CONSTRUCTION WITH THE DRIV-
18 ER’S PRIVACY PROTECTION ACT OF 1994.—
19 The provision of a photograph to the Sec-
20 retary as described in clause (i) may not be
21 construed as a violation of section 2721 of
22 title 18, United States Code, and is a per-
23 missible use under subsection (b)(1) of
24 that section.

1 “(iii) AUTHORIZATION OF APPROPRIA-
2 TIONS.—There is authorized to be appro-
3 priated to the Secretary \$250,000,000 to
4 carry out this subparagraph.

5 “(G) RESPONSIBILITIES OF THE SEC-
6 RETARY OF STATE.—As part of the System, the
7 Secretary of State shall provide to the Sec-
8 retary access to passport and visa information
9 as needed to confirm that a passport, passport
10 card, or visa presented under subsection
11 (c)(1)(C) confirms the identity of the subject of
12 the System check, and that a passport, passport
13 card, or visa photograph matches the Secretary
14 of State’s records, and shall provide such assist-
15 ance as the Secretary may request in order to
16 resolve further action notices or nonconfirma-
17 tions relating to such information.

18 “(H) UPDATING INFORMATION.—The
19 Commissioner, the Secretary, and the Secretary
20 of State shall update their information in a
21 manner that promotes maximum accuracy and
22 shall provide a process for the prompt correc-
23 tion of erroneous information.

24 “(9) LIMITATION ON USE OF THE SYSTEM.—
25 Notwithstanding any other provision of law, nothing

1 in this subsection may be construed to permit or
2 allow any department, bureau, or other agency of
3 the United States Government or any other entity to
4 utilize any information, database, or other records
5 assembled under this subsection for any purpose
6 other than for employment verification or to ensure
7 secure, appropriate and nondiscriminatory use of the
8 System.

9 “(10) ANNUAL REPORT AND CERTIFICATION.—
10 Not later than 18 months after the promulgation of
11 regulations to implement this subsection, and annu-
12 ally thereafter, the Secretary shall submit to Con-
13 gress a report that includes the following:

14 “(A) An assessment, as submitted to the
15 Secretary by the Inspector General of the De-
16 partment of Homeland Security pursuant to
17 paragraph (8)(C)(iii)(I), of the accuracy rates
18 of further action notices and other System no-
19 tices provided by employers to individuals who
20 are authorized to be employed in the United
21 States.

22 “(B) An assessment, as submitted to the
23 Secretary by the Inspector General of the De-
24 partment of Homeland Security pursuant to
25 paragraph (8)(C)(iii)(I), of the accuracy rates

1 of further action notices and other System no-
2 tices provided directly (by the System) in a
3 timely fashion to individuals who are not au-
4 thorized to be employed in the United States.

5 “(C) An assessment of any challenges
6 faced by small employers in utilizing the Sys-
7 tem.

8 “(D) An assessment of the rate of em-
9 ployer noncompliance (in addition to failure to
10 provide required notices in a timely fashion) in
11 each of the following categories:

12 “(i) Taking adverse action based on a
13 further action notice.

14 “(ii) Use of the System for non-
15 employees or other individuals before they
16 are offered employment.

17 “(iii) Use of the System to reverify
18 employment authorized status of current
19 employees except if authorized to do so.

20 “(iv) Use of the System selectively,
21 except in cases in which such use is au-
22 thorized.

23 “(v) Use of the System to deny em-
24 ployment or post-employment benefits or
25 otherwise interfere with labor rights.

1 “(vi) Requiring employees or appli-
2 cants to use any self-verification feature or
3 to provide self-verification results.

4 “(vii) Discouraging individuals who
5 receive a further action notice from chal-
6 lenging the further action notice or appeal-
7 ing a determination made by the System.

8 “(E) An assessment of the rate of em-
9 ployee noncompliance in each of the following
10 categories:

11 “(i) Obtaining employment when un-
12 authorized with an employer complying
13 with the System in good faith.

14 “(ii) Failure to provide required docu-
15 ments in a timely manner.

16 “(iii) Attempting to use fraudulent
17 documents or documents not related to the
18 individual.

19 “(iv) Misuse of the administrative ap-
20 peal and judicial review process.

21 “(F) An assessment of the amount of time
22 taken for—

23 “(i) the System to provide the con-
24 firmation or further action notice;

1 “(ii) individuals to contest further ac-
2 tion notices;

3 “(iii) the System to provide a con-
4 firmation or nonconfirmation of a con-
5 tested further action notice;

6 “(iv) individuals to file an administra-
7 tive appeal of a nonconfirmation; and

8 “(v) resolving administrative appeals
9 regarding nonconfirmations.

10 “(11) ANNUAL GAO STUDY AND REPORT.—

11 “(A) REQUIREMENT.—The Comptroller
12 General shall, for each year, undertake a study
13 to evaluate the accuracy, efficiency, integrity,
14 and impact of the System.

15 “(B) REPORT.—Not later than 18 months
16 after the promulgation of regulations to imple-
17 ment this subsection, and yearly thereafter, the
18 Comptroller General shall submit to Congress a
19 report containing the findings of the study car-
20 ried out under this paragraph. Each such re-
21 port shall include, at a minimum, the following:

22 “(i) An assessment of System per-
23 formance with respect to the rate at which
24 individuals who are eligible for employment
25 in the United States are correctly approved

1 within the required periods, including a
2 separate assessment of such rate for natu-
3 ralized United States citizens, nationals of
4 the United States, and aliens.

5 “(ii) An assessment of the privacy and
6 confidentiality of the System and of the
7 overall security of the System with respect
8 to cybertheft and theft or misuse of private
9 data.

10 “(iii) An assessment of whether the
11 System is being implemented in a manner
12 that is not discriminatory or used for retal-
13 iation against employees.

14 “(iv) An assessment of the most com-
15 mon causes for the erroneous issuance of
16 nonconfirmations by the System and rec-
17 ommendations to correct such causes.

18 “(v) The recommendations of the
19 Comptroller General regarding System im-
20 provements.

21 “(vi) An assessment of the frequency
22 and magnitude of changes made to the
23 System and the impact on the ability for
24 employers to comply in good faith.

1 “(vii) An assessment of the direct and
2 indirect costs incurred by employers in
3 complying with the System, including costs
4 associated with retaining potential employ-
5 ees through the administrative appeals
6 process and receiving a nonconfirmation.

7 “(viii) An assessment of any backlogs
8 or delays in the System providing the con-
9 firmation or further action notice and im-
10 pacts to hiring by employers.

11 “(e) COMPLIANCE.—

12 “(1) COMPLAINTS AND INVESTIGATIONS.—The
13 Secretary shall establish procedures—

14 “(A) for individuals and entities to file
15 complaints respecting potential violations of
16 subsections (a) or (f)(1);

17 “(B) for the investigation of those com-
18 plaints which the Secretary deems appropriate
19 to investigate; and

20 “(C) for providing notification to the Spe-
21 cial Counsel for Immigration-Related Unfair
22 Employment Practices of the Department of
23 Justice of potential violations of section 274B.

1 “(2) AUTHORITY IN INVESTIGATIONS.—In con-
2 ducting investigations and proceedings under this
3 subsection—

4 “(A) immigration officers shall have rea-
5 sonable access to examine evidence of the em-
6 ployer being investigated;

7 “(B) immigration officers designated by
8 the Secretary, and administrative law judges
9 and other persons authorized to conduct pro-
10 ceedings under this section, may compel by sub-
11 poena the attendance of relevant witnesses and
12 the production of relevant evidence at any des-
13 ignated place in an investigation or case under
14 this subsection. In case of refusal to fully com-
15 ply with a subpoena lawfully issued under this
16 paragraph, the Secretary may request that the
17 Attorney General apply in an appropriate dis-
18 trict court of the United States for an order re-
19 quiring compliance with the subpoena, and any
20 failure to obey such order may be punished by
21 the court as contempt. Failure to cooperate
22 with the subpoena shall be subject to further
23 penalties, including further fines and the void-
24 ing of any mitigation of penalties or termi-

1 nation of proceedings under paragraph (4)(E);
2 and

3 “(C) the Secretary, in cooperation with the
4 Commissioner and Attorney General, and in
5 consultation with other relevant agencies, shall
6 establish a Joint Employment Fraud Task
7 Force consisting of, at a minimum—

8 “(i) the System’s compliance per-
9 sonnel;

10 “(ii) immigration law enforcement of-
11 ficers;

12 “(iii) personnel of the Office of Spe-
13 cial Counsel for Immigration-Related Un-
14 fair Employment Practices of the Depart-
15 ment of Justice;

16 “(iv) personnel of the Office for Civil
17 Rights and Civil Liberties of the Depart-
18 ment; and

19 “(v) personnel of Office of Inspector
20 General of the Social Security Administra-
21 tion.

22 “(3) COMPLIANCE PROCEDURES.—

23 “(A) PRE-PENALTY NOTICE.—If the Sec-
24 retary has reasonable cause to believe that
25 there has been a civil violation of this section in

1 the previous 3 years, the Secretary shall issue
2 to the employer concerned a written notice of
3 the Department's intention to issue a claim for
4 a monetary or other penalty. Such pre-penalty
5 notice shall—

6 “(i) describe the violation;

7 “(ii) specify the laws and regulations
8 allegedly violated;

9 “(iii) disclose the material facts which
10 establish the alleged violation;

11 “(iv) describe the penalty sought to be
12 imposed; and

13 “(v) inform such employer that such
14 employer shall have a reasonable oppor-
15 tunity to make representations as to why a
16 monetary or other penalty should not be
17 imposed.

18 “(B) EMPLOYER'S RESPONSE.—Whenever
19 any employer receives written pre-penalty notice
20 of a fine or other penalty in accordance with
21 subparagraph (A), the employer may, within 60
22 days from receipt of such notice, file with the
23 Secretary its written response to the notice.
24 The response may include any relevant evidence
25 or proffer of evidence that the employer wishes

1 to present with respect to whether the employer
2 violated this section and whether, if so, the pen-
3 alty should be mitigated, and shall be filed and
4 considered in accordance with procedures to be
5 established by the Secretary.

6 “(C) RIGHT TO A HEARING.—Before
7 issuance of an order imposing a penalty on any
8 employer, person, or entity, the employer, per-
9 son, or entity shall be entitled to a hearing be-
10 fore an administrative law judge, if requested
11 within 60 days of the notice of penalty. The
12 hearing shall be held at the nearest location
13 practicable to the place where the employer,
14 person, or entity resides or of the place where
15 the alleged violation occurred.

16 “(D) ISSUANCE OF ORDERS.—If no hear-
17 ing is so requested, the Secretary’s imposition
18 of the order shall constitute a final and
19 unappealable order. If a hearing is requested
20 and the administrative law judge determines,
21 upon clear and convincing evidence received,
22 that there was a violation, the administrative
23 law judge shall issue the final determination
24 with a written penalty claim. The penalty claim
25 shall specify all charges in the information pro-

1 vided under clauses (i) through (iii) of subpara-
2 graph (A) and any mitigation of the penalty
3 that the administrative law judge deems appro-
4 priate under paragraph (4)(E).

5 “(4) CIVIL PENALTIES.—

6 “(A) HIRING OR CONTINUING TO EMPLOY
7 UNAUTHORIZED ALIENS.—Any employer that
8 violates any provision of subsection (a)(1)(A) or
9 (a)(2) shall—

10 “(i) pay a civil penalty of not less
11 than \$3,500 and not more than \$7,500 for
12 each unauthorized alien with respect to
13 which each violation of either subsection
14 (a)(1)(A) or (a)(2) occurred;

15 “(ii) if the employer has previously
16 been fined as a result of a previous en-
17 forcement action or previous violation
18 under this paragraph, pay a civil penalty of
19 not less than \$5,000 and not more than
20 \$15,000 for each unauthorized alien with
21 respect to which a violation of either sub-
22 section (a)(1)(A) or (a)(2) occurred; and

23 “(iii) if the employer has previously
24 been fined more than once under this para-
25 graph, pay a civil penalty of not less than

1 \$10,000 and not more than \$25,000 for
2 each unauthorized alien with respect to
3 which a violation of either subsection
4 (a)(1)(A) or (a)(2) occurred.

5 “(B) ENHANCED PENALTIES.—After the
6 Secretary certifies to Congress that the System
7 has been established, implemented, and made
8 mandatory for use by all employers in the
9 United States, the Secretary may establish an
10 enhanced civil penalty for an employer who—

11 “(i) fails to query the System to verify
12 the identify and work authorized status of
13 an individual; and

14 “(ii) violates a Federal, State, or local
15 law related to—

16 “(I) the payment of wages;

17 “(II) hours worked by employees;

18 or

19 “(III) workplace health and safe-
20 ty.

21 “(C) RECORDKEEPING OR VERIFICATION
22 PRACTICES.—Any employer that violates or fails
23 to comply with any requirement under sub-
24 section (a)(1)(B), other than a minor or inad-

1 vertent failure, as determined by the Secretary,
2 shall pay a civil penalty of—

3 “(i) not less than \$500 and not more
4 than \$2,000 for each violation;

5 “(ii) if an employer has previously
6 been fined under this paragraph, not less
7 than \$1,000 and not more than \$4,000 for
8 each violation; and

9 “(iii) if an employer has previously
10 been fined more than once under this para-
11 graph, not less than \$2,000 and not more
12 than \$8,000 for each violation.

13 “(D) OTHER PENALTIES.—The Secretary
14 may impose additional penalties for violations,
15 including cease and desist orders, specially de-
16 signed compliance plans to prevent further vio-
17 lations, suspended fines to take effect in the
18 event of a further violation, and in appropriate
19 cases, the remedy provided by paragraph (f)(2).

20 “(E) MITIGATION.—The Secretary or, if
21 an employer requests a hearing, the administra-
22 tive law judge, is authorized, upon such terms
23 and conditions as the Secretary or administra-
24 tive law judge deems reasonable and just and in
25 accordance with such procedures as the Sec-

1 retary may establish or any procedures estab-
2 lished governing the administrative law judge's
3 assessment of penalties, to reduce or mitigate
4 penalties imposed upon employers, based upon
5 factors including, the employer's hiring volume,
6 compliance history, good-faith implementation
7 of a compliance program, the size and level of
8 sophistication of the employer, and voluntary
9 disclosure of violations of this subsection to the
10 Secretary. The Secretary or administrative law
11 judge shall not mitigate a penalty below the
12 minimum penalty provided by this section, ex-
13 cept that the Secretary may, in the case of an
14 employer subject to penalty for recordkeeping
15 or verification violations only who has not pre-
16 viously been penalized under this section, in the
17 Secretary's or administrative law judge's discre-
18 tion, mitigate the penalty below the statutory
19 minimum or remit it entirely. In any case where
20 a civil money penalty has been imposed on an
21 employer under section 274B for an action or
22 omission that is also a violation of this section,
23 the Secretary or administrative law judge shall
24 mitigate any civil money penalty under this sec-

tion 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 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

1 compliance with this section, or has instituted a
2 program to come into compliance.

3 “(B) EMPLOYER CERTIFICATION.—

4 “(i) REQUIREMENT.—Except as pro-
5 vided in subparagraph (C), not later than
6 60 days after receiving a notice from the
7 Secretary requiring a certification under
8 subparagraph (A), an official with respon-
9 sibility for, and authority to bind the com-
10 pany on, all hiring and immigration com-
11 pliance notices shall certify under penalty
12 of perjury that the employer is in conform-
13 ance with the requirements of paragraphs
14 (1) through (4) of subsection (c), per-
15 taining to document verification require-
16 ments, and with subsection (d), pertaining
17 to the System (once the System is imple-
18 mented with respect to that employer ac-
19 cording to the requirements under sub-
20 section (d)(2)), and with any additional re-
21 quirements that the Secretary may promul-
22 gate by regulation pursuant to subsection
23 (c) or (d) or that the employer has insti-
24 tuted a program to come into compliance
25 with these requirements.

1 “(ii) APPLICATION.—Clause (i) shall
2 not apply until the date that the Secretary
3 certifies to Congress that the System has
4 been established, implemented, and made
5 mandatory for use by all employers in the
6 United States.

7 “(C) EXTENSION OF DEADLINE.—At the
8 request of the employer, the Secretary may ex-
9 tend the 60-day deadline for good cause.

10 “(D) STANDARDS OR METHODS.—The Sec-
11 retary is authorized to publish in the Federal
12 Register standards or methods for such certifi-
13 cation, require specific recordkeeping practices
14 with respect to such certifications, and audit
15 the records thereof at any time. This authority
16 shall not be construed to diminish or qualify
17 any other penalty provided by this section.

18 “(6) REQUIREMENTS FOR REVIEW OF A FINAL
19 DETERMINATION.—With respect to judicial review of
20 a final determination or penalty order issued under
21 paragraph (3)(D), the following requirements apply:

22 “(A) DEADLINE.—The petition for review
23 must be filed no later than 30 days after the
24 date of the final determination or penalty order
25 issued under paragraph (3)(D).

1 “(B) VENUE AND FORMS.—The petition
2 for review shall be filed with the court of ap-
3 peals for the judicial circuit where the employ-
4 er’s principal place of business was located
5 when the final determination or penalty order
6 was made. The record and briefs do not have
7 to be printed. The court shall review the pro-
8 ceeding on a typewritten or electronically filed
9 record and briefs.

10 “(C) SERVICE.—The respondent is the
11 Secretary. In addition to serving the respond-
12 ent, the petitioner shall serve the Attorney Gen-
13 eral.

14 “(D) PETITIONER’S BRIEF.—The peti-
15 tioner shall serve and file a brief in connection
16 with a petition for judicial review not later than
17 40 days after the date on which the administra-
18 tive record is available, and may serve and file
19 a reply brief not later than 14 days after serv-
20 ice of the brief of the respondent, and the court
21 may not extend these deadlines, except for good
22 cause shown. If a petitioner fails to file a brief
23 within the time provided in this paragraph, the
24 court shall dismiss the appeal unless a manifest
25 injustice would result.

1 “(E) SCOPE AND STANDARD FOR RE-
2 VIEW.—The court of appeals shall conduct a de
3 novo review of the administrative record on
4 which the final determination was based and
5 any additional evidence that the Court finds
6 was previously unavailable at the time of the
7 administrative hearing.

8 “(F) EXHAUSTION OF ADMINISTRATIVE
9 REMEDIES.—A court may review a final deter-
10 mination under paragraph (3)(C) only if—

11 “(i) the petitioner has exhausted all
12 administrative remedies available to the pe-
13 titioner as of right, including any adminis-
14 trative remedies established by regulation,
15 and

16 “(ii) another court has not decided
17 the validity of the order, unless the review-
18 ing court finds that the petition presents
19 grounds that could not have been pre-
20 sented in the prior judicial proceeding or
21 that the remedy provided by the prior pro-
22 ceeding was inadequate or ineffective to
23 test the validity of the order.

24 “(G) ENFORCEMENT OF ORDERS.—If the
25 final determination issued against the employer

1 under this subsection is not subjected to review
2 as provided in this paragraph, the Attorney
3 General, upon request by the Secretary, may
4 bring a civil action to enforce compliance with
5 the final determination in any appropriate dis-
6 trict court of the United States. The court, on
7 a proper showing, shall issue a temporary re-
8 straining order or a preliminary or permanent
9 injunction requiring that the employer comply
10 with the final determination issued against that
11 employer under this subsection. In any such
12 civil action, the validity and appropriateness of
13 the final determination shall not be subject to
14 review.

15 “(7) CREATION OF LIEN.—If any employer lia-
16 ble for a fee or penalty under this section neglects
17 or refuses to pay such liability after demand and
18 fails to file a petition for review (if applicable) as
19 provided in paragraph (6), the amount of the fee or
20 penalty shall be a lien in favor of the United States
21 on all property and rights to property, whether real
22 or personal, belonging to such employer. If a petition
23 for review is filed as provided in paragraph (6), the
24 lien shall arise upon the entry of a final judgment
25 by the court. The lien continues for 20 years or until

1 the liability is satisfied, remitted, set aside, or termi-
2 nated.

3 “(8) FILING NOTICE OF LIEN.—

4 “(A) PLACE FOR FILING.—The notice of a
5 lien referred to in paragraph (7) shall be filed
6 as described in 1 of the following:

7 “(i) UNDER STATE LAWS.—

8 “(I) REAL PROPERTY.—In the
9 case of real property, in 1 office with-
10 in the State (or the county, or other
11 governmental subdivision), as des-
12 ignated by the laws of such State, in
13 which the property subject to the lien
14 is situated.

15 “(II) PERSONAL PROPERTY.—In
16 the case of personal property, whether
17 tangible or intangible, in 1 office with-
18 in the State (or the county, or other
19 governmental subdivision), as des-
20 ignated by the laws of such State, in
21 which the property subject to the lien
22 is situated, except that State law
23 merely conforming to or reenacting
24 Federal law establishing a national fil-
25 ing system does not constitute a sec-

1 ond office for filing as designated by
2 the laws of such State.

3 “(ii) WITH CLERK OF DISTRICT
4 COURT.—In the office of the clerk of the
5 United States district court for the judicial
6 district in which the property subject to
7 the lien is situated, whenever the State has
8 not by law designated 1 office which meets
9 the requirements of clause (i).

10 “(iii) WITH RECORDER OF DEEDS OF
11 THE DISTRICT OF COLUMBIA.—In the of-
12 fice of the Recorder of Deeds of the Dis-
13 trict of Columbia, if the property subject to
14 the lien is situated in the District of Co-
15 lumbia.

16 “(B) SITUS OF PROPERTY SUBJECT TO
17 LIEN.—For purposes of subparagraph (A),
18 property shall be deemed to be situated as fol-
19 lows:

20 “(i) REAL PROPERTY.—In the case of
21 real property, at its physical location.

22 “(ii) PERSONAL PROPERTY.—In the
23 case of personal property, whether tangible
24 or intangible, at the residence of the tax-
25 payer at the time the notice of lien is filed.

1 “(C) DETERMINATION OF RESIDENCE.—

2 For purposes of subparagraph (B)(ii), the resi-
3 dence of a corporation or partnership shall be
4 deemed to be the place at which the principal
5 executive office of the business is located, and
6 the residence of a taxpayer whose residence is
7 outside the United States shall be deemed to be
8 in the District of Columbia.

9 “(D) EFFECT OF FILING NOTICE OF
10 LIEN.—

11 “(i) IN GENERAL.—Upon filing of a
12 notice of lien in the manner described in
13 this paragraph, the lien shall be valid
14 against any purchaser, holder of a security
15 interest, mechanic’s lien, or judgment lien
16 creditor, except with respect to properties
17 or transactions specified in subsection (b),
18 (c), or (d) of section 6323 of the Internal
19 Revenue Code of 1986 for which a notice
20 of tax lien properly filed on the same date
21 would not be valid.

22 “(ii) NOTICE OF LIEN.—The notice of
23 lien shall be considered a notice of lien for
24 taxes payable to the United States for the
25 purpose of any State or local law providing

1 for the filing of a notice of a tax lien. A
2 notice of lien that is registered, recorded,
3 docketed, or indexed in accordance with
4 the rules and requirements relating to
5 judgments of the courts of the State where
6 the notice of lien is registered, recorded,
7 docketed, or indexed shall be considered
8 for all purposes as the filing prescribed by
9 this section.

10 “(iii) OTHER PROVISIONS.—The pro-
11 visions of section 3201(e) of title 28,
12 United States Code, shall apply to liens
13 filed as prescribed by this paragraph.

14 “(E) ENFORCEMENT OF A LIEN.—A lien
15 obtained through this paragraph shall be con-
16 sidered a debt as defined by section 3002 of
17 title 28, United States Code and enforceable
18 pursuant to chapter 176 of such title.

19 “(9) ATTORNEY GENERAL ADJUDICATION.—
20 The Attorney General shall have jurisdiction to adju-
21 dicate administrative proceedings under this sub-
22 section. Such proceedings shall be conducted in ac-
23 cordance with requirements of section 554 of title 5,
24 United States Code.

1 “(f) CRIMINAL AND CIVIL PENALTIES AND INJUNC-
2 TIONS.—

3 “(1) PROHIBITION OF INDEMNITY BONDS.—It
4 is unlawful for an employer, in the hiring of any in-
5 dividual, to require the individual to post a bond or
6 security, to pay or agree to pay an amount, or other-
7 wise to provide a financial guarantee or indemnity,
8 against any potential liability arising under this sec-
9 tion relating to such hiring of the individual.

10 “(2) CIVIL PENALTY.—Any employer who is de-
11 termined, after notice and opportunity for mitigation
12 of the monetary penalty under subsection (e), to
13 have violated paragraph (1) shall be subject to a
14 civil penalty of \$10,000 for each violation and to an
15 administrative order requiring the return of any
16 amounts received in violation of such paragraph to
17 the employee or, if the employee cannot be located,
18 to the general fund of the Treasury.

19 “(g) GOVERNMENT CONTRACTS.—

20 “(1) CONTRACTORS AND RECIPIENTS.—When-
21 ever an employer who is a Federal contractor (mean-
22 ing an employer who holds a Federal contract,
23 grant, or cooperative agreement, or reasonably may
24 be expected to submit an offer for or be awarded a
25 government contract) is determined by the Secretary

1 to have violated this section on more than 3 occa-
2 sions or is convicted of a crime under this section,
3 the employer shall be considered for debarment from
4 the receipt of Federal contracts, grants, or coopera-
5 tive agreements in accordance with the procedures
6 and standards and for the periods prescribed by the
7 Federal Acquisition Regulation. However, any ad-
8 ministrative determination of liability for civil pen-
9 alty by the Secretary or the Attorney General shall
10 not be reviewable in any debarment proceeding.

11 “(2) INADVERTENT VIOLATIONS.—Inadvertent
12 violations of recordkeeping or verification require-
13 ments, in the absence of any other violations of this
14 section, shall not be a basis for determining that an
15 employer is a repeat violator for purposes of this
16 subsection.

17 “(3) OTHER REMEDIES AVAILABLE.—Nothing
18 in this subsection shall be construed to modify or
19 limit any remedy available to any agency or official
20 of the Federal Government for violation of any con-
21 tractual requirement to participate in the System, as
22 provided in the final rule relating to employment eli-
23 gibility verification published in the Federal Register
24 on November 14, 2008 (73 Fed. Reg. 67,651), or
25 any similar subsequent regulation.

1 “(h) PREEMPTION.—The provisions of this section
2 preempt any State or local law, ordinance, policy, or rule,
3 including any criminal or civil fine or penalty structure,
4 relating to the hiring, continued employment, or status
5 verification for employment eligibility purposes, of unau-
6 thorized aliens. A State, locality, municipality, or political
7 subdivision may exercise its authority over business licens-
8 ing and similar laws as a penalty for failure to use the
9 System.

10 “(i) DEPOSIT OF AMOUNTS RECEIVED.—Except as
11 otherwise specified, civil penalties collected under this sec-
12 tion shall be deposited by the Secretary into the Com-
13 prehensive Immigration Reform Trust Fund established
14 under section 6(a)(1) of the Border Security, Economic
15 Opportunity, and Immigration Modernization Act.

16 “(j) CHALLENGES TO VALIDITY OF THE SYSTEM.—

17 “(1) IN GENERAL.—Any right, benefit, or claim
18 not otherwise waived or limited pursuant to this sec-
19 tion is available in an action instituted in the United
20 States District Court for the District of Columbia,
21 but shall be limited to determinations of—

22 “(A) whether this section, or any regula-
23 tion issued to implement this section, violates
24 the Constitution of the United States; or

1 “(B) whether such a regulation issued by
2 or under the authority of the Secretary to im-
3 plement this section, is contrary to applicable
4 provisions of this section or was issued in viola-
5 tion of chapter 5 of title 5, United States Code.

6 “(2) DEADLINES FOR BRINGING ACTIONS.—

7 Any action instituted under this subsection must be
8 filed no later than 180 days after the date the chal-
9 lenged section or regulation described in subpara-
10 graph (A) or (B) of paragraph (1) becomes effective.
11 No court shall have jurisdiction to review any chal-
12 lenge described in subparagraph (B) after the time
13 period specified in this subsection expires.

14 “(k) CRIMINAL PENALTIES AND INJUNCTIONS FOR
15 PATTERN OR PRACTICE VIOLATIONS.—

16 “(1) PATTERN AND PRACTICE.—Any employer
17 who engages in a pattern or practice of knowing vio-
18 lations of subsection (a)(1)(A) or (a)(2) shall be
19 fined under title 18, United States Code, no more
20 than \$10,000 for each unauthorized alien with re-
21 spect to whom such violation occurs, imprisoned for
22 not more than 2 years for the entire pattern or prac-
23 tice, or both.

24 “(2) TERM OF IMPRISONMENT.—The maximum
25 term of imprisonment of a person convicted of any

1 criminal offense under the United States Code shall
2 be increased by 5 years if the offense is committed
3 as part of a pattern or practice of violations of sub-
4 section (a)(1)(A) or (a)(2).

5 “(3) ENJOINING OF PATTERN OR PRACTICE
6 VIOLATIONS.—Whenever the Secretary or the Attor-
7 ney General has reasonable cause to believe that an
8 employer is engaged in a pattern or practice of em-
9 ployment in violation of subsection (a)(1)(A) or
10 (a)(2), the Attorney General may bring a civil action
11 in the appropriate district court of the United States
12 requesting such relief, including a permanent or
13 temporary injunction, restraining order, or other
14 order against the employer, as the Secretary or At-
15 torney General deems necessary.

16 “(l) CRIMINAL PENALTIES FOR UNLAWFUL AND
17 ABUSIVE EMPLOYMENT.—

18 “(1) IN GENERAL.—Any person who, during
19 any 12-month period, knowingly employs or hires,
20 employs, recruits, or refers for a fee for employment
21 10 or more individuals within the United States who
22 are under the control and supervision of such per-
23 son—

24 “(A) knowing that the individuals are un-
25 authorized aliens; and

1 “(B) under conditions that violate section
2 5(a) of the Occupational Safety and Health Act
3 of 1970 (29 U.S.C. 654(a) (relating to occupa-
4 tional safety and health), section 6 or 7 of the
5 Fair Labor Standards Act of 1938 (29 U.S.C.
6 206 and 207) (relating to minimum wages and
7 maximum hours of employment), section 3142
8 of title 40, United States Code, (relating to re-
9 quired wages on construction contracts), or sec-
10 tions 6703 or 6704 of title 41, United States
11 Code, (relating to required wages on service
12 contracts),

13 shall be fined under title 18, United States Code, or
14 imprisoned for not more than 10 years, or both.

15 “(2) ATTEMPT AND CONSPIRACY.—Any person
16 who attempts or conspires to commit any offense
17 under this section shall be punished in the same
18 manner as a person who completes the offense.”.

19 (b) REPORT ON USE OF THE SYSTEM IN THE AGRI-
20 CULTURAL INDUSTRY.—Not later than 18 months after
21 the date of the enactment of this Act, the Secretary, in
22 consultation with the Secretary of Agriculture, shall sub-
23 mit a report to Congress that assesses implementation of
24 the Employment Verification System established under
25 section 274A(d) of the Immigration and Nationality Act,

1 as amended by subsection (a), in the agricultural industry,
2 including the use of such System technology in agriculture
3 industry hiring processes, user, contractor, and third-
4 party employer agent employment practices, timing and
5 logistics regarding employment verification and
6 reverification processes to meet agriculture industry prac-
7 tices, and identification of potential challenges and modi-
8 fications to meet the unique needs of the agriculture in-
9 dustry. Such report shall review—

10 (1) the modality of access, training and out-
11 reach, customer support, processes for further action
12 notices and secondary verifications for short-term
13 workers, monitoring, and compliance procedures for
14 such System;

15 (2) the interaction of such System with the
16 process to admit nonimmigrant workers pursuant to
17 section 218 or 218A of the Immigration and Nation-
18 ality Act (8 U.S.C. 1188 et seq.) and with enforce-
19 ment of the immigration laws; and

20 (3) the collaborative use of processes of other
21 Federal and State agencies that intersect with the
22 agriculture industry.

23 (c) REPORT ON IMPACT OF THE SYSTEM ON EM-
24 PLOYERS.—Not later than 18 months after the date of

1 the enactment of this Act, the Secretary shall submit to
2 Congress a report that assesses—

3 (1) the implementation of the Employment
4 Verification System established under section
5 274A(d) of the Immigration and Nationality Act, as
6 amended by subsection (a), by employers;

7 (2) any adverse impact on the revenues, busi-
8 ness processes, or profitability of employers required
9 to use such System; and

10 (3) the economic impact of such System on
11 small businesses.

12 (d) GOVERNMENT ACCOUNTABILITY OFFICE STUDY
13 OF THE EFFECTS OF DOCUMENT REQUIREMENTS ON EM-
14 PLOYMENT AUTHORIZED PERSONS AND EMPLOYERS.—

15 (1) STUDY.—The Comptroller General of the
16 United States shall carry out a study of—

17 (A) the effects of the documentary require-
18 ments of section 274A of the Immigration and
19 Nationality Act, as amended by subsection (a),
20 on employers, naturalized United States citi-
21 zens, nationals of the United States, and indi-
22 viduals with employment authorized status; and

23 (B) the challenges such employers, citizens,
24 nationals, or individuals may face in obtaining
25 the documentation required under that section.

1 (2) REPORT.—Not later than 4 years after the
2 date of the enactment of this Act, the Comptroller
3 General shall submit to Congress a report containing
4 the findings of the study carried out under para-
5 graph (1). Such report shall include, at a minimum,
6 the following:

7 (A) An assessment of available information
8 regarding the number of working age nationals
9 of the United States and individuals who have
10 employment authorized status who lack docu-
11 ments required for employment by such section
12 274A.

13 (B) A description of the additional steps
14 required for individuals who have employment
15 authorized status and do not possess the docu-
16 ments required by such section 274A to obtain
17 such documents.

18 (C) A general assessment of the average fi-
19 nancial costs for individuals who have employ-
20 ment authorized status who do not possess the
21 documents required by such section 274A to ob-
22 tain such documents.

23 (D) A general assessment of the average
24 financial costs and challenges for employers
25 who have been required to participate in the

1 Employment Verification System established by
2 subsection (d) of such section 274A.

3 (E) A description of the barriers to indi-
4 viduals who have employment authorized status
5 in obtaining the documents required by such
6 section 274A, including barriers imposed by the
7 executive branch of the Government.

8 (F) Any particular challenges facing indi-
9 viduals who have employment authorized status
10 who are members of a federally recognized In-
11 dian tribe in complying with the provisions of
12 such section 274A.

13 (e) REPEAL OF PILOT PROGRAMS AND E-VERIFY
14 AND TRANSITION PROCEDURES.—

15 (1) REPEAL.—Sections 401, 402, 403, 404,
16 and 405 of the Illegal Immigration Reform and Im-
17 migrant Responsibility Act of 1996 (division C of
18 Public Law 104–208; 8 U.S.C. 1324a note) are re-
19 pealed.

20 (2) TRANSITION PROCEDURES.—

21 (A) CONTINUATION OF E-VERIFY PRO-
22 GRAM.—Notwithstanding the repeals made by
23 paragraph (1), the Secretary shall continue to
24 operate the E-Verify Program as described in
25 section 403 of the Illegal Immigration Reform

1 and Immigrant Responsibility Act of 1996 (di-
2 vision C of Public Law 104–208; 8 U.S.C.
3 1324a note), as in effect the minute before the
4 date of the enactment of this Act, until the
5 transition to the System described in section
6 274A(d) of the Immigration and Nationality
7 Act, as amended by subsection (a), is deter-
8 mined by the Secretary to be complete.

9 (B) TRANSITION TO THE SYSTEM.—Any
10 employer who was participating in the E-Verify
11 Program described in section 403 of the Illegal
12 Immigration Reform and Immigrant Responsi-
13 bility Act of 1996 (division C of Public Law
14 104–208; 8 U.S.C. 1324a note), as in effect the
15 minute before the date of the enactment of this
16 Act, shall participate in the System described in
17 section 274A(d) of the Immigration and Na-
18 tionality Act, as amended by subsection (a), to
19 the same extent and in the same manner that
20 the employer participated in such E-Verify Pro-
21 gram.

22 (3) CONSTRUCTION.—The repeal made by para-
23 graph (1) may not be construed to limit the author-
24 ity of the Secretary to allow or continue to allow the
25 participation in such System of employers who have

1 participated in such E-Verify Program, as in effect
2 on the minute before the date of the enactment of
3 this Act.

4 (f) CONFORMING AMENDMENT.—Section 274(a) (8
5 U.S.C. 1324(a)) is amended—

6 (1) by striking paragraph (3); and

7 (2) by redesignating paragraph (4) as para-
8 graph (3).

9 **SEC. 3102. INCREASING SECURITY AND INTEGRITY OF SO-**
10 **CIAL SECURITY CARDS.**

11 (a) FRAUD-RESISTANT, TAMPER-RESISTANT, WEAR-
12 RESISTANT, AND IDENTITY THEFT-RESISTANT SOCIAL
13 SECURITY CARDS.—

14 (1) ISSUANCE.—

15 (A) PRELIMINARY WORK.—Not later than
16 180 days after the date of the enactment of this
17 Act, the Commissioner of Social Security shall
18 begin work to administer and issue fraud-resist-
19 ant, tamper-resistant, wear-resistant, and iden-
20 tity theft-resistant social security cards.

21 (B) COMPLETION.—Not later than 5 years
22 after the date of the enactment of this Act, the
23 Commissioner of Social Security shall issue only
24 social security cards determined to be fraud-re-

1 sistant, tamper-resistant, wear-resistant, and
2 identity theft-resistant.

3 (2) AMENDMENT.—

4 (A) IN GENERAL.—Section 205(c)(2)(G) of
5 the Social Security Act (42 U.S.C.
6 405(c)(2)(G)) is amended by striking the sec-
7 ond sentence and inserting the following: “The
8 social security card shall be fraud-resistant,
9 tamper-resistant, wear-resistant, and identity
10 theft-resistant.”.

11 (B) EFFECTIVE DATE.—The amendment
12 made by subparagraph (A) shall take effect on
13 the date that is 5 years after the date of the
14 enactment of this Act.

15 (3) AUTHORIZATION OF APPROPRIATION.—
16 There are authorized to be appropriated, from the
17 Comprehensive Immigration Reform Trust Fund es-
18 tablished under section 6(a)(1), such sums as may
19 be necessary to carry out this section and the
20 amendments made by this section.

21 (4) EMERGENCY DESIGNATION FOR CONGRES-
22 SIONAL ENFORCEMENT.—In the Senate, amounts
23 made available under this subsection are designated
24 as an emergency requirement pursuant to section
25 403(a) of S. Con. Res. 13 (111th Congress), the

1 concurrent resolution on the budget for fiscal year
2 2010.

3 (5) EMERGENCY DESIGNATION FOR STATUTORY
4 PAYGO.—Amounts made available under this sub-
5 section are designated as an emergency requirement
6 under section 4(g) of the Statutory Pay-As-You-Go
7 Act of 2010 (Public Law 111–139; 2 U.S.C.
8 933(g)).

9 (b) MULTIPLE CARDS.—Section 205(c)(2)(G) of the
10 Social Security Act (42 U.S.C. 405(c)(2)(G)), as amended
11 by subsection (a)(2), is amended—

12 (1) by inserting “(i)” after “(G)”; and

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

14 “(ii) The Commissioner of Social Security shall re-
15 strict the issuance of multiple replacement social security
16 cards to any individual to 3 per year and 10 for the life
17 of the individual, except that the Commissioner may allow
18 for reasonable exceptions from the limits under this clause
19 on a case-by-case basis in compelling circumstances.”.

20 (c) CRIMINAL PENALTIES.—

21 (1) SOCIAL SECURITY FRAUD.—

22 (A) IN GENERAL.—Chapter 47 of title 18,
23 United States Code, is amended by inserting at
24 the end the following:

1 **“§ 1041. Social security fraud**

2 “Any person who—

3 “(1) knowingly possesses or uses a social secu-
4 rity account number or social security card knowing
5 that the number or card was obtained from the
6 Commissioner of Social Security by means of fraud
7 or false statement;

8 “(2) knowingly and falsely represents a number
9 to be the social security account number assigned by
10 the Commissioner of Social Security to him or her
11 or to another person, when such number is known
12 not to be the social security account number as-
13 signed by the Commissioner of Social Security to
14 him or her or to such other person;

15 “(3) knowingly, and without lawful authority,
16 buys, sells, or possesses with intent to buy or sell a
17 social security account number or a social security
18 card that is or purports to be a number or card
19 issued by the Commissioner of Social Security;

20 “(4) knowingly alters, counterfeits, forges, or
21 falsely makes a social security account number or a
22 social security card;

23 “(5) knowingly uses, distributes, or transfers a
24 social security account number or a social security
25 card knowing the number or card to be intentionally

1 altered, counterfeited, forged, falsely made, or sto-
2 len; or

3 “(6) without lawful authority, knowingly pro-
4 duces or acquires for any person a social security ac-
5 count number, a social security card, or a number
6 or card that purports to be a social security account
7 number or social security card,

8 shall be fined under this title, imprisoned not more than
9 5 years, or both.”.

10 (B) TABLE OF SECTIONS AMENDMENT.—

11 The table of sections for chapter 47 of title 18,
12 United States Code, is amended by adding after
13 the item relating to section 1040 the following:

“Sec. 1041. Social security fraud.”.

14 (2) INFORMATION DISCLOSURE.—

15 (A) IN GENERAL.—Notwithstanding any
16 other provision of law and subject to subpara-
17 graph (B), the Commissioner of Social Security
18 shall disclose for the purpose of investigating a
19 violation of section 1041 of title 18, United
20 States Code, or section 274A, 274B, or 274C
21 of the Immigration and Nationality Act (8
22 U.S.C. 1324a, 1324b, and 1324c), after receiv-
23 ing a written request from an officer in a super-
24 visory position or higher official of any Federal

1 law enforcement agency, the following records
2 of the Social Security Administration:

3 (i) Records concerning the identity,
4 address, location, or financial institution
5 accounts of the holder of a social security
6 account number or social security card.

7 (ii) Records concerning the applica-
8 tion for and issuance of a social security
9 account number or social security card.

10 (iii) Records concerning the existence
11 or nonexistence of a social security account
12 number or social security card.

13 (B) LIMITATION.—The Commissioner of
14 Social Security shall not disclose any tax return
15 or tax return information pursuant to subpara-
16 graph (A) except as authorized by section 6103
17 of the Internal Revenue Code of 1986.

18 **SEC. 3103. INCREASING SECURITY AND INTEGRITY OF IM-**
19 **MIGRATION DOCUMENTS.**

20 Not later than 1 year after the date of the enactment
21 of this Act, the Secretary shall submit a report to Con-
22 gress on the feasibility, advantages, and disadvantages of
23 including, in addition to a photograph, other biometric in-
24 formation on each employment authorization document
25 issued by the Department.

1 **SEC. 3104. RESPONSIBILITIES OF THE SOCIAL SECURITY**
2 **ADMINISTRATION.**

3 Title XI of the Social Security Act (42 U.S.C. 1301
4 et seq.) is amended by adding at the end the following
5 new part:

6 “PART E—EMPLOYMENT VERIFICATION
7 “RESPONSIBILITIES OF THE COMMISSIONER OF SOCIAL
8 SECURITY

9 “SEC. 1186. (a) CONFIRMATION OF EMPLOYMENT
10 VERIFICATION DATA.—As part of the employment
11 verification system established by the Secretary of Home-
12 land Security under the provisions of section 274A of the
13 Immigration and Nationality Act (8 U.S.C. 1324a) (in
14 this section referred to as the ‘System’), the Commissioner
15 of Social Security shall, subject to the provisions of section
16 274A(d) of the Immigration and Nationality Act (8 U.S.C.
17 1324a(d)), establish a reliable, secure method that, oper-
18 ating through the System and within the time periods
19 specified in section 274A(d) of such Act—

20 “(1) compares the name, date of birth, social
21 security account number, and available citizenship
22 information provided in an inquiry against such in-
23 formation maintained by the Commissioner in order
24 to confirm (or not confirm) the validity of the infor-
25 mation provided regarding an individual whose iden-
26 tity and employment eligibility must be confirmed;

1 “(2) determines the correspondence of the
2 name, date of birth, and number;

3 “(3) determines whether the name and number
4 belong to an individual who is deceased according to
5 the records maintained by the Commissioner;

6 “(4) determines whether an individual is a na-
7 tional of the United States, as defined in section
8 101(a)(22) of the Immigration and Nationality Act
9 (8 U.S.C. 1101(a)(22)); and

10 “(5) determines whether the individual has pre-
11 sented a social security account number that is not
12 valid for employment.

13 “(b) PROHIBITION.—The System shall not disclose or
14 release social security information to employers through
15 the confirmation system (other than such confirmation or
16 nonconfirmation, information provided by the employer to
17 the System, or the reason for the issuance of a further
18 action notice).”.

19 **SEC. 3105. IMPROVED PROHIBITION ON DISCRIMINATION**
20 **BASED ON NATIONAL ORIGIN OR CITIZEN-**
21 **SHIP STATUS.**

22 (a) IN GENERAL.—Section 274B(a) (8 U.S.C.
23 1324b(a)) is amended to read as follows:

24 “(a) PROHIBITION ON DISCRIMINATION BASED ON
25 NATIONAL ORIGIN OR CITIZENSHIP STATUS.—

1 “(1) PROHIBITION ON DISCRIMINATION GEN-
2 ERALLY.—It is an unfair immigration-related em-
3 ployment practice for a person, other entity, or em-
4 ployment agency, to discriminate against any indi-
5 vidual (other than an unauthorized alien defined in
6 section 274A(b)) because of such individual’s na-
7 tional origin or citizenship status, with respect to the
8 following:

9 “(A) The hiring of the individual for em-
10 ployment.

11 “(B) The verification of the individual’s
12 eligibility to work in the United States.

13 “(C) The discharging of the individual
14 from employment.

15 “(2) EXCEPTIONS.—Paragraph (1) shall not
16 apply to the following:

17 “(A) A person, other entity, or employer
18 that employs 3 or fewer employees, except for
19 an employment agency.

20 “(B) A person’s or entity’s discrimination
21 because of an individual’s national origin if the
22 discrimination with respect to that employer,
23 person, or entity and that individual is covered
24 under section 703 of the Civil Rights Act of
25 1964 (42 U.S.C. 2000e–2), unless the discrimi-

1 nation is related to an individual's verification
2 of employment authorization.

3 “(C) Discrimination because of citizenship
4 status which—

5 “(i) is otherwise required in order to
6 comply with a provision of Federal, State,
7 or local law related to law enforcement;

8 “(ii) is required by Federal Govern-
9 ment contract; or

10 “(iii) the Secretary or Attorney Gen-
11 eral determines to be essential for an em-
12 ployer to do business with an agency or de-
13 partment of the Federal Government or a
14 State, local, or tribal government.

15 “(3) ADDITIONAL EXCEPTION PROVIDING
16 RIGHT TO PREFER EQUALLY QUALIFIED CITIZENS.—
17 Notwithstanding any other provision of this section,
18 it is not an unfair immigration-related employment
19 practice for an employer (as defined in section
20 274A(b)) to prefer to hire, recruit, or refer for a fee
21 an individual who is a citizen or national of the
22 United States over another individual who is an
23 alien if the 2 individuals are equally qualified.

24 “(4) UNFAIR IMMIGRATION-RELATED EMPLOY-
25 MENT PRACTICES RELATING TO THE SYSTEM.—It is

1 also an unfair immigration-related employment prac-
2 tice for a person, other entity, or employment agen-
3 cy—

4 “(A) to discharge or constructively dis-
5 charge an individual solely due to a further ac-
6 tion notice issued by the Employment
7 Verification System created by section 274A
8 until the administrative appeal described in sec-
9 tion 274A(d)(6) is completed;

10 “(B) to use the System with regard to any
11 person for any purpose except as authorized by
12 section 274A(d);

13 “(C) to use the System to reverify the em-
14 ployment authorization of a current employee,
15 including an employee continuing in employ-
16 ment, other than reverification upon expiration
17 of employment authorization, or as otherwise
18 authorized under section 274A(d) or by regula-
19 tion;

20 “(D) to use the System selectively for em-
21 ployees, except where authorized by law;

22 “(E) to fail to provide to an individual any
23 notice required in section 274A(d) within the
24 relevant time period;

1 “(F) to use the System to deny workers’
2 employment or post-employment benefits;

3 “(G) to misuse the System to discriminate
4 based on national origin or citizenship status;

5 “(H) to require an employee or prospective
6 employee to use any self-verification feature of
7 the System or provide, as a condition of appli-
8 cation or employment, any self-verification re-
9 sults;

10 “(I) to use an immigration status
11 verification system, service, or method other
12 than those described in section 274A for pur-
13 poses of verifying employment eligibility; or

14 “(J) to grant access to document
15 verification or System data, to any individual or
16 entity other than personnel authorized to have
17 such access, or to fail to take reasonable safe-
18 guards to protect against unauthorized loss,
19 use, alteration, or destruction of System data.

20 “(5) PROHIBITION OF INTIMIDATION OR RETAL-
21 IATION.—It is also an unfair immigration-related
22 employment practice for a person, other entity, or
23 employment agency to intimidate, threaten, coerce,
24 or retaliate against any individual—

1 “(A) for the purpose of interfering with
2 any right or privilege secured under this sec-
3 tion; or

4 “(B) because the individual intends to file
5 or has filed a charge or a complaint, testified,
6 assisted, or participated in any manner in an
7 investigation, proceeding, or hearing under this
8 section.

9 “(6) TREATMENT OF CERTAIN DOCUMENTARY
10 PRACTICES AS EMPLOYMENT PRACTICES.—A per-
11 son’s, other entity’s, or employment agency’s re-
12 quest, for purposes of verifying employment eligi-
13 bility, for more or different documents than are re-
14 quired under section 274A, or for specific docu-
15 ments, or refusing to honor documents tendered that
16 reasonably appear to be genuine shall be treated as
17 an unfair immigration-related employment practice.

18 “(7) PROHIBITION OF WITHHOLDING EMPLOY-
19 MENT RECORDS.—It is an unfair immigration-re-
20 lated employment practice for an employer that is
21 required under Federal, State, or local law to main-
22 tain records documenting employment, including
23 dates or hours of work and wages received, to fail
24 to provide such records to any employee upon re-
25 quest.

1 “(8) PROFESSIONAL, COMMERCIAL, AND BUSI-
2 NESS LICENSES.—An individual who is authorized to
3 be employed in the United States may not be denied
4 a professional, commercial, or business license on
5 the basis of his or her immigration status.

6 “(9) EMPLOYMENT AGENCY DEFINED.—In this
7 section, the term ‘employment agency’ means any
8 employer, person, or entity regularly undertaking
9 with or without compensation to procure employees
10 for an employer or to procure for employees oppor-
11 tunities to work for an employer and includes an
12 agent of such employer, person, or entity.”.

13 (b) REFERRAL BY EEOC.—Section 274B(b) (8
14 U.S.C. 1324b(b)) is amended by adding at the end the
15 following:

16 “(3) REFERRAL BY EEOC.—The Equal Employ-
17 ment Opportunity Commission shall refer all matters
18 alleging immigration-related unfair employment
19 practices filed with the Commission, including those
20 alleging violations of paragraphs (1), (4), (5), and
21 (6) of subsection (a) to the Special Counsel for Im-
22 migration-Related Unfair Employment Practices of
23 the Department of Justice.”.

24 (c) AUTHORIZATION OF APPROPRIATIONS.—Section
25 274B(l)(3) (8 U.S.C. 1324b(l)(3)) is amended by striking

1 the period at the end and inserting “and an additional
2 \$40,000,000 for each of fiscal years 2014 through 2016.”.

3 (d) FINES.—

4 (1) IN GENERAL.—Section 274B(g)(2)(B) (8
5 U.S.C. 1324b(g)(2)(B)) is amended by striking
6 clause (iv) and inserting the following:

7 “(iv) to pay any applicable civil pen-
8 alties prescribed below, the amounts of
9 which may be adjusted periodically to ac-
10 count for inflation as provided by law—

11 “(I) except as provided in sub-
12 clauses (II) through (IV), to pay a
13 civil penalty of not less than \$2,000
14 and not more than \$5,000 for each in-
15 dividual subjected to an unfair immi-
16 gration-related employment practice;

17 “(II) except as provided in sub-
18 clauses (III) and (IV), in the case of
19 an employer, person, or entity pre-
20 viously subject to a single order under
21 this paragraph, to pay a civil penalty
22 of not less than \$4,000 and not more
23 than \$10,000 for each individual sub-
24 jected to an unfair immigration-re-
25 lated employment practice;

1 “(III) except as provided in sub-
2 clause (IV), in the case of an em-
3 ployer, person, or entity previously
4 subject to more than 1 order under
5 this paragraph, to pay a civil penalty
6 of not less than \$8,000 and not more
7 than \$25,000 for each individual sub-
8 jected to an unfair immigration-re-
9 lated employment practice; and

10 “(IV) in the case of an unfair im-
11 migration-related employment practice
12 described in paragraphs (4) through
13 (7) of subsection (a), to pay a civil
14 penalty of not less than \$500 and not
15 more than \$2,000 for each individual
16 subjected to an unfair immigration-re-
17 lated employment practice.”.

18 (2) EFFECTIVE DATE.—The amendment made
19 by paragraph (1) shall take effect on the date that
20 is 1 year after the date of the enactment of this Act
21 and apply to violations occurring on or after such
22 date of enactment.

23 **SEC. 3106. RULEMAKING.**

24 (a) INTERIM FINAL REGULATIONS.—

1 (1) IN GENERAL.—Not later than 1 year after
2 the date of the enactment of this Act—

3 (A) the Secretary, shall issue regulations
4 implementing sections 3101 and 3104 and the
5 amendments made by such sections (except for
6 section 274A(d)(7) of the Immigration and Na-
7 tionality Act); and

8 (B) the Attorney General shall issue regu-
9 lations implementing section 274A(d)(7) of the
10 Immigration and Nationality Act, as added by
11 section 3101, section 3105, and the amend-
12 ments made by such sections.

13 (2) EFFECTIVE DATE.—Regulations issued pur-
14 suant to paragraph (1) shall be effective immediately
15 on an interim basis, but are subject to change and
16 revision after public notice and opportunity for a pe-
17 riod for public comment.

18 (b) FINAL REGULATIONS.—Within a reasonable time
19 after publication of the interim regulations under sub-
20 section (a), the Secretary, in consultation with the Com-
21 missioner of Social Security and the Attorney General,
22 shall publish final regulations implementing this subtitle.

1 **SEC. 3107. OFFICE OF THE SMALL BUSINESS AND EM-**
2 **PLOYEE ADVOCATE.**

3 (a) ESTABLISHMENT OF SMALL BUSINESS AND EM-
4 PLOYEE ADVOCATE.—The Secretary shall establish and
5 maintain within U.S. Citizenship and Immigration Serv-
6 ices the Office of the Small Business and Employee Advo-
7 cate (in this section referred to as the “Office”). The pur-
8 pose of the Office shall be to assist small businesses and
9 individuals in complying with the requirements of section
10 274A of the Immigration and Nationality Act (8 U.S.C.
11 1324a), as amended by this Act, including the resolution
12 of conflicts arising in the course of attempted compliance
13 with such requirements.

14 (b) FUNCTIONS.—The functions of the Office shall
15 include, but not be limited to, the following:

16 (1) Informing small businesses and individuals
17 about the verification practices required by section
18 274A of the Immigration and Nationality Act, in-
19 cluding, but not limited to, the document verification
20 requirements and the employment verification sys-
21 tem requirements under subsections (c) and (d) of
22 that section.

23 (2) Assisting small businesses and individuals
24 in addressing allegedly erroneous further action no-
25 tices and nonconfirmations issued under subsection

1 (d) of section 274A of the Immigration and Nation-
2 ality Act.

3 (3) Informing small businesses and individuals
4 of the financial liabilities and criminal penalties that
5 apply to violations and failures to comply with the
6 requirements of section 274A of the Immigration
7 and Nationality Act, including, but not limited to, by
8 issuing best practices for compliance with that sec-
9 tion.

10 (4) To the extent practicable, proposing
11 changes to the Secretary in the administrative prac-
12 tices of the employment verification system required
13 under subsection (d) of section 274A of the Immi-
14 gration and Nationality Act to mitigate the problems
15 identified under paragraph (2).

16 (5) Making recommendations through the Sec-
17 retary to Congress for legislative action to mitigate
18 such problems.

19 (c) AUTHORITY TO ISSUE ASSISTANCE ORDER.—

20 (1) IN GENERAL.—Upon application filed by a
21 small business or individual with the Office (in such
22 form, manner, and at such time as the Secretary
23 shall by regulations prescribe), the Office may issue
24 an assistance order if—

1 (A) the Office determines the small busi-
2 ness or individual is suffering or about to suffer
3 a significant hardship as a result of the manner
4 in which the employment verification laws
5 under subsections (c) and (d) of section 274A
6 of the Immigration and Nationality Act are
7 being administered by the Secretary; or

8 (B) the small business or individual meets
9 such other requirements as are set forth in reg-
10 ulations prescribed by the Secretary.

11 (2) DETERMINATION OF HARDSHIP.—For pur-
12 poses of paragraph (1), a significant hardship shall
13 include—

14 (A) an immediate threat of adverse action;

15 (B) a delay of more than 60 days in resolv-
16 ing employment verification system problems;

17 (C) the incurring by the small business or
18 individual of significant costs if relief is not
19 granted; or

20 (D) irreparable injury to, or a long-term
21 adverse impact on, the small business or indi-
22 vidual if relief is not granted.

23 (3) STANDARDS WHEN ADMINISTRATIVE GUID-
24 ANCE NOT FOLLOWED.—In cases where a U.S. Citi-
25 zenship and Immigration Services employee is not

1 following applicable published administrative guid-
2 ance, the Office shall construe the factors taken into
3 account in determining whether to issue an assist-
4 ance order under this subsection in the manner most
5 favorable to the small business or individual.

6 (4) TERMS OF ASSISTANCE ORDER.—The terms
7 of an assistance order under this subsection may re-
8 quire the Secretary within a specified time period—

9 (A) to determine whether any employee is
10 or is not authorized to work in the United
11 States; or

12 (B) to abate any penalty under section
13 274A of the Immigration and Nationality Act
14 that the Office determines is arbitrary, capri-
15 cious, or disproportionate to the underlying of-
16 fense.

17 (5) AUTHORITY TO MODIFY OR RESCIND.—Any
18 assistance order issued by the Office under this sub-
19 section may be modified or rescinded—

20 (A) only by the Office, the Director or
21 Deputy Director of U.S. Citizenship and Immi-
22 gration Services, or the Secretary or the Sec-
23 retary's designee; and

24 (B) if rescinded by the Director or Deputy
25 Director of U.S. Citizenship and Immigration

1 Services, only if a written explanation of the
2 reasons of such official for the modification or
3 rescission is provided to the Office.

4 (6) SUSPENSION OF RUNNING OF PERIOD OF
5 LIMITATION.—The running of any period of limita-
6 tion with respect to an action described in paragraph
7 (4)(A) shall be suspended for—

8 (A) the period beginning on the date of the
9 small business or individual's application under
10 paragraph (1) and ending on the date of the
11 Office's decision with respect to such applica-
12 tion; and

13 (B) any period specified by the Office in
14 an assistance order issued under this subsection
15 pursuant to such application.

16 (7) INDEPENDENT ACTION OF OFFICE.—Noth-
17 ing in this subsection shall prevent the Office from
18 taking any action in the absence of an application
19 under paragraph (1).

20 (d) ACCESSIBILITY TO THE PUBLIC.—

21 (1) IN PERSON, ONLINE, AND TELEPHONE AS-
22 SISTANCE.—The Office shall provide information
23 and assistance specified in subsection (b) in person
24 at locations designated by the Secretary, online

1 through an Internet website of the Department
2 available to the public, and by telephone.

3 (2) AVAILABILITY TO ALL EMPLOYERS.—In
4 making information and assistance available, the Of-
5 fice shall prioritize the needs of small businesses and
6 individuals. However, the information and assistance
7 available through the Office shall be available to any
8 employer.

9 (e) AVOIDING DUPLICATION THROUGH COORDINA-
10 TION.—In the discharge of the functions of the Office, the
11 Secretary shall consult with the Secretary of Labor, the
12 Secretary of Agriculture, the Commissioner, the Attorney
13 General, the Equal Employment Opportunity Commission,
14 and the Administrator of the Small Business Administra-
15 tion in order to avoid duplication of efforts across the Fed-
16 eral Government.

17 (f) DEFINITIONS.—In this section:

18 (1) The term “employer” has the meaning
19 given that term in section 274A(b) of the Immigra-
20 tion and Nationality Act.

21 (2) The term “small business” means an em-
22 ployer with 49 or fewer employees.

23 (g) FUNDING.—There shall be appropriated, from the
24 Comprehensive Immigration Reform Trust Fund estab-

1 lished by section 6(a)(1) of this Act, such sums as may
2 be necessary to carry out the functions of the Office.

3 **Subtitle B—Protecting United**
4 **States Workers**

5 **SEC. 3201. PROTECTIONS FOR VICTIMS OF SERIOUS VIOLA-**
6 **TIONS OF LABOR AND EMPLOYMENT LAW OR**
7 **CRIME.**

8 (a) IN GENERAL.—Section 101(a)(15)(U) (8 U.S.C.
9 1101(a)(15)(U)) is amended—

10 (1) in clause (i)—

11 (A) by amending subclause (I) to read as
12 follows:

13 “(I) the alien—

14 “(aa) has suffered substantial
15 physical or mental abuse or substan-
16 tial harm as a result of having been a
17 victim of criminal activity described in
18 clause (iii) or of a covered violation
19 described in clause (iv); or

20 “(bb) is a victim of criminal ac-
21 tivity described in clause (iii) or of a
22 covered violation described in clause
23 (iv) and would suffer extreme hard-
24 ship upon removal;”;

1 (B) in subclause (II), by inserting “, or a
2 covered violation resulting in a claim described
3 in clause (iv) that is not the subject of a frivo-
4 lous lawsuit by the alien” before the semicolon
5 at the end; and

6 (C) by amending subclauses (III) and (IV)
7 to read as follows:

8 “(III) the alien (or in the case of an
9 alien child who is younger than 16 years of
10 age, the parent, legal guardian, or next
11 friend of the alien) has been helpful, is
12 being helpful, or is likely to be helpful to—

13 “(aa) a Federal, State, or local
14 law enforcement official, a Federal,
15 State, or local prosecutor, a Federal,
16 State, or local judge, the Department
17 of Homeland Security, the Equal Em-
18 ployment Opportunity Commission,
19 the Department of Labor, or other
20 Federal, State, or local authorities in-
21 vestigating or prosecuting criminal ac-
22 tivity described in clause (iii); or

23 “(bb) any Federal, State, or local
24 governmental agency or judge inves-
25 tigating, prosecuting, or seeking civil

1 remedies for any cause of action,
2 whether criminal, civil, or administra-
3 tive, arising from a covered violation
4 described in clause (iv) and presents a
5 certification from such Federal, State,
6 or local governmental agency or judge
7 attesting that the alien has been help-
8 ful, is being helpful, or is likely to be
9 helpful to such agency in the inves-
10 tigation, prosecution, or adjudication
11 arising from a covered violation de-
12 scribed in clause (iv); and

13 “(IV) the criminal activity described
14 in clause (iii) or the covered violation de-
15 scribed in clause (iv)—

16 “(aa) violated the laws of the
17 United States; or

18 “(bb) occurred in the United
19 States (including Indian country and
20 military installations) or the terri-
21 tories and possessions of the United
22 States;”;

23 (2) in clause (ii)(II), by striking “and” at the
24 end;

25 (3) by moving clause (iii) 2 ems to the left;

1 (4) in clause (iii), by inserting “child abuse;
2 elder abuse;” after “stalking;”;

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

4 “(iv) a covered violation referred to in this
5 clause is—

6 “(I) a serious violation involving 1 or more
7 of the following or any similar activity in viola-
8 tion of any Federal, State, or local law: serious
9 workplace abuse, exploitation, retaliation, or
10 violation of whistleblower protections;

11 “(II) a violation giving rise to a civil cause
12 of action under section 1595 of title 18, United
13 States Code; or

14 “(III) a violation resulting in the depriva-
15 tion of due process or constitutional rights.”.

16 (b) SAVINGS PROVISION.—Nothing in section
17 101(a)(15)(U)(iv)(I) of the Immigration and Nationality
18 Act, as added by subsection (a), may be construed as al-
19 tering the definition of retaliation or discrimination under
20 any other provision of law.

21 (c) TEMPORARY STAY OF REMOVAL.—Section 274A
22 (8 U.S.C. 1324a), as amended by section 3101, is further
23 amended—

24 (1) in subsection (e) by adding at the end the
25 following:

1 “(10) CONDUCT IN ENFORCEMENT ACTIONS.—

2 If the Secretary undertakes an enforcement action
3 at a facility about which a bona fide workplace claim
4 has been filed or is contemporaneously filed, or as
5 a result of information provided to the Secretary in
6 retaliation against employees for exercising their
7 rights related to a bona fide workplace claim, the
8 Secretary shall ensure that—

9 “(A) any aliens arrested or detained who
10 are necessary for the investigation or prosecu-
11 tion of a bona fide workplace claim or criminal
12 activity (as described in subparagraph (T) or
13 (U) of section 101(a)(15)) are not removed
14 from the United States until after the Sec-
15 retary—

16 “(i) notifies the appropriate law en-
17 forcement agency with jurisdiction over
18 such violations or criminal activity; and

19 “(ii) provides such agency with the
20 opportunity to interview such aliens;

21 “(B) no aliens entitled to a stay of removal
22 or abeyance of removal proceedings under this
23 section are removed; and

24 “(C) the Secretary shall stay the removal
25 of an alien who—

1 “(i) has filed a claim regarding a cov-
2 ered violation described in clause (iv) of
3 section 101(a)(15)(U) and is the victim of
4 the same violations under an existing in-
5 vestigation;

6 “(ii) is a material witness in any
7 pending or anticipated proceeding involving
8 a bona fide workplace claim or civil rights
9 claim; or

10 “(iii) has filed for relief under such
11 section if the alien is working with law en-
12 forcement as described in clause (i)(III) of
13 such section.”; and

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

15 “(m) VICTIMS OF CRIMINAL ACTIVITY OR LABOR
16 AND EMPLOYMENT VIOLATIONS.—The Secretary of
17 Homeland Security may permit an alien to remain tempo-
18 rarily in the United States and authorize the alien to en-
19 gage in employment in the United States if the Secretary
20 determines that the alien—

21 “(1) has filed for relief under section
22 101(a)(15)(U); or

23 “(2)(A) has filed, or is a material witness to, a
24 bona fide claim or proceedings resulting from a cov-

1 ered violation (as defined in section
2 101(a)(15)(U)(iv)); and

3 “(B) has been helpful, is being helpful, or is
4 likely to be helpful, in the investigation, prosecution
5 of, or pursuit of civil remedies related to the claim
6 arising from a covered violation, to—

7 “(i) a Federal, State, or local law enforce-
8 ment official;

9 “(ii) a Federal, State, or local prosecutor;

10 “(iii) a Federal, State, or local judge;

11 “(iv) the Department of Homeland Secu-
12 rity;

13 “(v) the Equal Employment Opportunity
14 Commission; or

15 “(vi) the Department of Labor.”.

16 (d) CONFORMING AMENDMENTS.—Section 214(p) (8
17 U.S.C. 1184(p)) is amended—

18 (1) in paragraph (1), by striking “in section
19 101(a)(15)(U)(iii).” both places it appears and in-
20 serting “in clause (iii) of section 101(a)(15)(U) or
21 investigating, prosecuting, or seeking civil remedies
22 for claims resulting from a covered violation de-
23 scribed in clause (iv) of such section.”; and

24 (2) in the first sentence of paragraph (6)—

1 (A) by striking “in section
2 101(a)(15)(U)(iii)” and inserting “in clause
3 (iii) of section 101(a)(15)(U) or claims result-
4 ing from a covered violation described in clause
5 (iv) of such section”; and

6 (B) by inserting “or claim arising from a
7 covered violation” after “prosecution of such
8 criminal activity”.

9 (e) MODIFICATION OF LIMITATION ON AUTHORITY
10 TO ADJUST STATUS FOR VICTIMS OF CRIMES.—Section
11 245(m)(1) (8 U.S.C. 1255(m)(1)) is amended, in the mat-
12 ter before subparagraph (A), by inserting “or an investiga-
13 tion or prosecution regarding a workplace or civil rights
14 claim” after “prosecution”.

15 (f) EXPANSION OF LIMITATION ON SOURCES OF IN-
16 FORMATION THAT MAY BE USED TO MAKE ADVERSE
17 DETERMINATIONS.—

18 (1) IN GENERAL.—Section 384(a)(1) of the Il-
19 legal Immigration Reform and Immigrant Responsi-
20 bility Act of 1996 (8 U.S.C. 1367(a)(1)) is amend-
21 ed—

22 (A) in each of subparagraphs (A) through
23 (D), by striking the comma at the end and in-
24 serting a semicolon;

1 (B) subparagraph (E), by striking “the
2 criminal activity,” and inserting “abuse and the
3 criminal activity or bona fide workplace claim
4 (as defined in subsection (e));”;

5 (C) in subparagraph (F), by striking “, the
6 trafficker or perpetrator,” and inserting “), the
7 trafficker or perpetrator; or”; and

8 (D) by inserting after subparagraph (F)
9 the following:

10 “(G) the alien’s employer; or”.

11 (2) WORKPLACE CLAIM DEFINED.—Section 384
12 of such Act (8 U.S.C. 1367) is amended by adding
13 at the end the following:

14 “(e) WORKPLACE CLAIMS.—

15 “(1) WORKPLACE CLAIMS DEFINED.—

16 “(A) IN GENERAL.—In subsection (a)(1),
17 the term ‘workplace claim’ means any claim, pe-
18 tition, charge, complaint, or grievance filed
19 with, or submitted to, a Federal, State, or local
20 agency or court, relating to the violation of ap-
21 plicable Federal, State, or local labor or employ-
22 ment laws.

23 “(B) CONSTRUCTION.—Subparagraph (A)
24 may not be construed to alter what constitutes

1 retaliation or discrimination under any other
2 provision of law.

3 “(2) PENALTY FOR FALSE CLAIMS.—Any per-
4 son who knowingly presents a false or fraudulent
5 claim to a law enforcement official in relation to a
6 covered violation described in section
7 101(a)(15)(U)(iv) of the Immigration and Nation-
8 ality Act for the purpose of obtaining a benefit
9 under this section shall be subject to a civil penalty
10 of not more than \$1,000.

11 “(3) LIMITATION ON STAY OF ADVERSE DETER-
12 MINATIONS.—In the case of an alien applying for
13 status under section 101(a)(15)(U) of the Immigra-
14 tion and Nationality Act and seeking relief under
15 that section, the prohibition on adverse determina-
16 tions under subsection (a) shall expire on the date
17 that the alien’s application for status under such
18 section is denied and all opportunities for appeal of
19 the denial have been exhausted.”.

20 (g) REMOVAL PROCEEDINGS.—Section 239(e) (8
21 U.S.C. 1229(e)) is amended—

22 (1) in paragraph (1)—

23 (A) by striking “In cases where” and in-
24 serting “If”; and

1 (B) by striking “paragraph (2),” and in-
2 serting “paragraph (2) or as a result of infor-
3 mation provided to the Secretary of Homeland
4 Security in retaliation against individuals for
5 exercising or attempting to exercise their em-
6 ployment rights or other legal rights,”; and
7 (2) in paragraph (2), by adding at the end the
8 following:

9 “(C) At a facility about which a bona fide
10 workplace claim has been filed or is contem-
11 poraneously filed.”.

12 **SEC. 3202. EMPLOYMENT VERIFICATION SYSTEM EDU-**
13 **CATION FUNDING.**

14 (a) DISPOSITION OF CIVIL PENALTIES.—Penalties
15 collected under subsections (e)(4) and (f)(3) of section
16 274A of the Immigration and Nationality Act, amended
17 by section 3101, shall be deposited, as offsetting receipts,
18 into the Comprehensive Immigration Reform Trust Fund
19 established under section 6(a)(1).

20 (b) EXPENDITURES.—Amounts deposited into the
21 Trust Fund under subsection (a) shall be made available
22 to the Secretary and the Attorney General to provide edu-
23 cation to employers and employees regarding the require-
24 ments, obligations, and rights under the Employment
25 Verification System.

1 (c) DETERMINATION OF BUDGETARY EFFECTS.—

2 (1) EMERGENCY DESIGNATION FOR CONGRES-
3 SIONAL ENFORCEMENT.—In the Senate, amounts
4 made available under this section are designated as
5 an emergency requirement pursuant to section
6 403(a) of S. Con. Res. 13 (111th Congress), the
7 concurrent resolution on the budget for fiscal year
8 2010.

9 (2) EMERGENCY DESIGNATION FOR STATUTORY
10 PAYGO.—Amounts made available under this section
11 are designated as an emergency requirement under
12 section 4(g) of the Statutory Pay-As-You-Go Act of
13 2010 (Public Law 111–139; 2 U.S.C. 933(g)).

14 **SEC. 3203. DIRECTIVE TO THE UNITED STATES SEN-**
15 **TENCING COMMISSION.**

16 (a) IN GENERAL.—Pursuant to its authority under
17 section 994 of title 28, United States Code, and in accord-
18 ance with subsection (b), the United States Sentencing
19 Commission shall promulgate sentencing guidelines or
20 amend existing sentencing guidelines to modify, if appro-
21 priate, the penalties imposed on persons convicted of of-
22 fenses under—

23 (1) section 274A of the Immigration and Na-
24 tionality Act (8 U.S.C. 1324a), as amended by sec-
25 tion 3101;

1 (2) section 16 of the Fair Labor Standards Act
2 of 1938 (29 U.S.C. 216); and

3 (3) any other Federal law covering similar con-
4 duct.

5 (b) REQUIREMENTS.—In carrying out subsection (a),
6 the Sentencing Commission shall provide sentencing en-
7 hancements for any person convicted of an offense de-
8 scribed in subsection (a) if such offense involves—

9 (1) the intentional confiscation of identification
10 documents;

11 (2) corruption, bribery, extortion, or robbery;

12 (3) sexual abuse;

13 (4) serious bodily injury;

14 (5) an intent to defraud; or

15 (6) a pattern of conduct involving multiple vio-
16 lations of law that—

17 (A) creates, through knowing and inten-
18 tional conduct, a risk to the health or safety of
19 any victim; or

20 (B) denies payments due to victims for
21 work completed.

22 **Subtitle C—Other Provisions**

23 **SEC. 3301. FUNDING.**

24 (a) ESTABLISHMENT OF THE INTERIOR ENFORCE-
25 MENT ACCOUNT.—There is hereby established in the

1 Treasury of the United States an account which shall be
2 known as the Interior Enforcement Account.

3 (b) APPROPRIATIONS.—There are authorized to be
4 appropriated to the Interior Enforcement Account
5 \$1,000,000,000 to carry out this title and the amend-
6 ments made by this title, including the following appro-
7 priations:

8 (1) In each of the 5 years beginning on the date
9 of the enactment of this Act, the appropriations nec-
10 essary to increase to a level not less than 5,000, by
11 the end of such 5-year period, the total number of
12 personnel of the Department assigned exclusively or
13 principally to an office or offices in U.S. Citizenship
14 and Immigration Services and U.S. Immigration and
15 Customs Enforcement (and consistent with the mis-
16 sions of such agencies), dedicated to administering
17 the System, and monitoring and enforcing compli-
18 ance with sections 274A, 274B, and 274C of the
19 Immigration and Nationality Act (8 U.S.C. 1324a,
20 1324b, and 1324c), including compliance with the
21 requirements of the Electronic Verification System
22 established under section 274A(d) of the Immigra-
23 tion and Nationality Act (8 U.S.C. 1324a(d)), as
24 amended by section 3101. Such personnel shall per-

1 form compliance and monitoring functions, including
2 the following:

3 (A) Verify compliance of employers partici-
4 pating in such System with the requirements
5 for participation that are prescribed by the Sec-
6 retary.

7 (B) Monitor such System for multiple uses
8 of social security account numbers and immi-
9 gration identification numbers that could indi-
10 cate identity theft or fraud.

11 (C) Monitor such System to identify dis-
12 criminatory or unfair practices.

13 (D) Monitor such System to identify em-
14 ployers who are not using such System prop-
15 erly, including employers who fail to make
16 available appropriate records with respect to
17 their queries and any notices of confirmation,
18 nonconfirmation, or further action.

19 (E) Identify instances in which an em-
20 ployee alleges that an employer violated the em-
21 ployee's privacy or civil rights, or misused such
22 System, and create procedures for an employee
23 to report such an allegation.

24 (F) Analyze and audit the use of such Sys-
25 tem and the data obtained through such System

1 to identify fraud trends, including fraud trends
2 across industries, geographical areas, or em-
3 ployer size.

4 (G) Analyze and audit the use of such Sys-
5 tem and the data obtained through such System
6 to develop compliance tools as necessary to re-
7 spond to changing patterns of fraud.

8 (H) Provide employers with additional
9 training and other information on the proper
10 use of such System, including training related
11 to privacy and employee rights.

12 (I) Perform threshold evaluation of cases
13 for referral to the Special Counsel for Immigra-
14 tion-Related Unfair Employment Practices of
15 the Department of Justice or the Equal Em-
16 ployment Opportunity Commission, and other
17 officials or agencies with responsibility for en-
18 forcing anti-discrimination, civil rights, privacy,
19 or worker protection laws, as may be appro-
20 priate.

21 (J) Any other compliance and monitoring
22 activities that the Secretary determines are nec-
23 essary to ensure the functioning of such Sys-
24 tem.

1 (K) Investigate identity theft and fraud de-
2 tected through such System and undertake the
3 necessary enforcement or referral actions.

4 (L) Investigate use of or access to fraudu-
5 lent documents and undertake the necessary en-
6 forcement actions.

7 (M) Perform any other investigations that
8 the Secretary determines are necessary to en-
9 sure the lawful functioning of such System, and
10 undertake any enforcement actions necessary as
11 a result of such investigations.

12 (2) The appropriations necessary to acquire, in-
13 stall, and maintain technological equipment nec-
14 essary to support the functioning of such System
15 and the connectivity between U.S. Citizenship and
16 Immigration Services and U.S. Immigration and
17 Customs Enforcement, the Department of Justice,
18 and other agencies or officials with respect to the
19 sharing of information to support such System and
20 related immigration enforcement actions.

21 (3) The appropriations necessary to establish a
22 robust redress process for employees who wish to ap-
23 peal contested nonconfirmations to ensure the accu-
24 racy and fairness of such System.

1 (4) The appropriations necessary to provide a
2 means by which individuals may access their own
3 employment authorization data to ensure the accu-
4 racy of such data, independent of an individual's em-
5 ployer.

6 (5) The appropriations necessary to carry out
7 the identity authentication mechanisms described in
8 section 274A(c)(1)(F) of the Immigration and Na-
9 tionality Act, as amended by section 3101(a).

10 (6) The appropriations necessary for the Office
11 for Civil Rights and Civil Liberties and the Office of
12 Privacy of the Department to perform the respon-
13 sibilities of such Offices related to such System.

14 (7) The appropriations necessary to make
15 grants to States to support the States in assisting
16 the Federal Government in carrying out the provi-
17 sions of this title and the amendments made by this
18 title.

19 (c) ESTABLISHMENT OF REIMBURSABLE AGREE-
20 MENT BETWEEN THE DEPARTMENT OF HOMELAND SE-
21 curity AND THE SOCIAL SECURITY ADMINISTRATION.—
22 Effective for fiscal years beginning on or after the date
23 of enactment of this Act, the Secretary and the Commis-
24 sioner of Social Security shall enter into and maintain an
25 agreement that—

1 (1) provides funds to the Commissioner for the
2 full costs of the responsibilities of the Commissioner
3 under this section, including—

4 (A) acquiring, installing, and maintaining
5 technological equipment and systems necessary
6 for the fulfillment of the responsibilities of the
7 Commissioner under this section; and

8 (B) responding to individuals who contest
9 a further action notice provided by the employ-
10 ment verification system established under sec-
11 tion 274A of the Immigration and Nationality
12 Act, as amended by section 3101;

13 (2) provides such funds quarterly in advance of
14 the applicable quarter based on estimating method-
15 ology agreed to by the Commissioner and the Sec-
16 retary; and

17 (3) requires an annual accounting and reconcili-
18 ation of the actual costs incurred and the funds pro-
19 vided under the agreement which shall be reviewed
20 by the Office of the Inspector General of the Social
21 Security Administration and the Department.

22 (d) AUTHORIZATION OF APPROPRIATIONS TO THE
23 ATTORNEY GENERAL.—There are authorized to be appro-
24 priated to the Attorney General such sums as may be nec-
25 essary to carry out the provisions of this title and the

1 amendments made by this title, including enforcing com-
2 pliance with section 274B of the Immigration and Nation-
3 ality Act, as amended by section 3105.

4 (e) AUTHORIZATION OF APPROPRIATIONS TO THE
5 SECRETARY OF STATE.—There are authorized to be ap-
6 propriated to the Secretary of State such sums as may
7 be necessary to carry out the provisions of this title and
8 the amendments made by this title.

9 **SEC. 3302. EFFECTIVE DATE.**

10 Except as otherwise specifically provided, this title
11 and the amendments made by this title shall take effect
12 on the date of the enactment of this Act.

13 **SEC. 3303. MANDATORY EXIT SYSTEM.**

14 (a) ESTABLISHMENT.—

15 (1) IN GENERAL.—Not later than December 31,
16 2015, the Secretary shall establish a mandatory exit
17 data system that shall include a requirement for the
18 collection of data from machine-readable visas, pass-
19 ports, and other travel and entry documents for all
20 categories of aliens who are exiting from air and sea
21 ports of entry.

22 (2) BIOMETRIC EXIT DATA SYSTEM.—Not later
23 than 2 years after the date of the enactment of this
24 Act, the Secretary shall establish a mandatory bio-
25 metric exit data system at the 10 United States air-

1 ports that support the highest volume of inter-
2 national air travel, as determined by Department of
3 Transportation international flight departure data.

4 (3) IMPLEMENTATION REPORT.—Not later than
5 60 days after the date of the enactment of this Act,
6 the Secretary shall submit to the Committee on
7 Homeland Security and Governmental Affairs of the
8 Senate and the Committee on Homeland Security of
9 the House of Representatives a report the implemen-
10 tation of the biometric exit data system referred to
11 in paragraph (2), the impact of such system on any
12 additional wait times for travelers, and projections
13 for new officer personnel, including U.S. Customs
14 and Border Protection officers.

15 (4) EFFECTIVENESS REPORT.—Not later than
16 3 years after the date of the enactment of this Act,
17 the Secretary shall submit a report to Congress that
18 analyzes the effectiveness of biometric exit data col-
19 lection at the 10 airports referred to in paragraph
20 (2).

21 (5) MANDATORY BIOMETRIC EXIT DATA SYS-
22 TEM.—Absent intervening action by Congress, the
23 Secretary, not later than 6 years after the date of
24 the enactment of this Act, shall establish a manda-
25 tory biometric exit data system at all the Core 30

1 international airports in the United States, as so
2 designated by the Federal Aviation Administration.

3 (6) EXPANSION OF BIOMETRIC EXIT DATA SYS-
4 TEM TO MAJOR SEA AND LAND PORTS.—Not later
5 than 6 years after the date of the enactment of this
6 Act, the Secretary shall submit a plan to Congress
7 for the expansion of the biometric exit system to
8 major sea and land entry and exit points within the
9 United States based upon—

10 (A) the performance of the program estab-
11 lished pursuant to paragraph (2);

12 (B) the findings of the study conducted
13 pursuant to paragraph (4); and

14 (C) the projected costs to develop and de-
15 ploy an effective biometric exit data system.

16 (7) DATA COLLECTION.—There are authorized
17 to be appropriated, from the Comprehensive Immi-
18 gration Reform Trust Fund established under sec-
19 tion 6(a)(1), such sums as may be necessary to
20 carry out this section

21 (b) INTEGRATION AND INTEROPERABILITY.—

22 (1) INTEGRATION OF DATA SYSTEM.—The Sec-
23 retary shall fully integrate all data from databases
24 and data systems that process or contain informa-
25 tion on aliens, which are maintained by—

1 (A) the Department, at—

2 (i) the U.S. Immigration and Customs
3 Enforcement;

4 (ii) the U.S. Customs and Border
5 Protection; and

6 (iii) the U.S. Citizenship and Immi-
7 gration Services;

8 (B) the Department of Justice, at the Ex-
9 ecutive Office for Immigration Review; and

10 (C) the Department of State, at the Bu-
11 reau of Consular Affairs.

12 (2) INTEROPERABLE COMPONENT.—The fully
13 integrated data system under paragraph (1) shall be
14 an interoperable component of the exit data system.

15 (3) INTEROPERABLE DATA SYSTEM.—The Sec-
16 retary shall fully implement an interoperable elec-
17 tronic data system to provide current and immediate
18 access to information in the databases of Federal
19 law enforcement agencies and the intelligence com-
20 munity that is relevant to determine—

21 (A) whether to issue a visa; or

22 (B) the admissibility or deportability of an
23 alien.

24 (4) TRAINING.—The Secretary shall establish
25 ongoing training modules on immigration law to im-

1 prove adjudications at United States ports of entry,
2 consulates, and embassies.

3 (c) INFORMATION SHARING.—The Secretary shall re-
4 port to the appropriate Federal law enforcement agency,
5 intelligence agency, national security agency, or compo-
6 nent of the Department of Homeland Security any alien
7 who was lawfully admitted into the United States and
8 whose individual data in the integrated exit data system
9 shows that he or she has not departed the country when
10 he or she was legally required to do so, and shall ensure
11 that—

12 (1) if the alien has departed the United States
13 when he or she was legally required to do so, the in-
14 formation contained in the integrated exit data sys-
15 tem is updated to reflect the alien’s departure; or

16 (2) if the alien has not departed the United
17 States when he or she was legally required to do so,
18 reasonably available enforcement resources are em-
19 ployed to locate the alien and to commence removal
20 proceedings against the alien.

1 **SEC. 3304. IDENTITY-THEFT RESISTANT MANIFEST INFOR-**
2 **MATION FOR PASSENGERS, CREW, AND NON-**
3 **CREW ONBOARD DEPARTING AIRCRAFT AND**
4 **VESSELS.**

5 (a) DEFINITIONS.—Except as otherwise specifically
6 provided, in this section:

7 (1) IDENTITY-THEFT RESISTANT COLLECTION
8 LOCATION.—The term “identity-theft resistant col-
9 lection location” means a location within an airport
10 or seaport—

11 (A) within the path of the departing alien,
12 such that the alien would not need to signifi-
13 cantly deviate from that path to comply with
14 exit requirements at which air or vessel carrier
15 employees, as applicable, either presently or
16 routinely are available if an alien needs proc-
17 essing assistance; and

18 (B) which is equipped with technology that
19 can securely collect and transmit identity-theft
20 resistant departure information to the Depart-
21 ment.

22 (2) US-VISIT.—The term “US-VISIT” means
23 the United States-Visitor and Immigrant Status In-
24 dicator Technology system.

25 (b) IDENTITY THEFT RESISTANT MANIFEST INFOR-
26 MATION.—

1 (1) PASSPORT OR VISA COLLECTION REQUIRE-
2 MENT.—Except as provided in subsection (c), an ap-
3 propriate official of each commercial aircraft or ves-
4 sel departing from the United States to any port or
5 place outside the United States shall ensure trans-
6 mission to U.S. Customs and Border Protection of
7 identity-theft resistant departure manifest informa-
8 tion covering alien passengers, crew, and non-crew.
9 Such identity-theft resistant departure manifest in-
10 formation—

11 (A) shall be transmitted to U.S. Customs
12 and Border Protection at the place and time
13 specified in paragraph (3) by means approved
14 by the Secretary; and

15 (B) shall set forth the information speci-
16 fied in paragraph (4) or other information as
17 required by the Secretary.

18 (2) MANNER OF COLLECTION.—Carriers board-
19 ing alien passengers, crew, and noncrew subject to
20 the requirement to provide information upon depar-
21 ture for US-VISIT processing shall collect identity-
22 theft resistant departure manifest information from
23 each alien at an identity-theft resistant collection lo-
24 cation at the airport or seaport before boarding that
25 alien on transportation for departure from the

1 United States, at a time as close to the originally
2 scheduled departure of that passenger's aircraft or
3 sea vessel as practicable.

4 (3) TIME AND MANNER OF SUBMISSION.—

5 (A) IN GENERAL.—The appropriate official
6 specified in paragraph (1) shall ensure trans-
7 mission of the identity-theft resistant departure
8 manifest information required and collected
9 under paragraphs (1) and (2) to the Data Cen-
10 ter or Headquarters of U.S. Customs and Bor-
11 der Protection, or such other data center as
12 may be designated.

13 (B) TRANSMISSION.—The biometric depar-
14 ture information may be transmitted to the De-
15 partment over any means of communication au-
16 thorized by the Secretary for the transmission
17 of other electronic manifest information con-
18 taining personally identifiable information and
19 under transmission standards currently applica-
20 ble to other electronic manifest information.

21 (C) SUBMISSION ALONG WITH OTHER IN-
22 FORMATION.—Files containing the identity-
23 theft resistant departure manifest informa-
24 tion—

- 1 (i) may be sent with other electronic
2 manifest data prior to departure or may be
3 sent separately from any topically related
4 electronic manifest data; and
5 (ii) may be sent in batch mode.

6 (4) INFORMATION REQUIRED.—The identity-
7 theft resistant departure information required under
8 paragraphs (1) through (3) for each covered pas-
9 senger or crew member shall contain alien data from
10 machine-readable visas, passports, and other travel
11 and entry documents issued to the alien.

12 (c) EXCEPTION.—The identity-theft resistant depar-
13 ture information specified in this section is not required
14 for any alien active duty military personnel traveling as
15 passengers on board a departing Department of Defense
16 commercial chartered aircraft.

17 (d) CARRIER MAINTENANCE AND USE OF IDENTITY-
18 THEFT RESISTANT DEPARTURE MANIFEST INFORMA-
19 TION.—Carrier use of identity-theft resistant departure
20 manifest information for purposes other than as described
21 in standards set by the Secretary is prohibited. Carriers
22 shall immediately notify the Chief Privacy Officer of the
23 Department in writing in the event of unauthorized use
24 or access, or breach, of identity-theft resistant departure
25 manifest information.

1 (e) COLLECTION AT SPECIFIED LOCATION.—If the
2 Secretary determines that an air or vessel carrier has not
3 adequately complied with the provisions of this section, the
4 Secretary may, in the Secretary’s discretion, require the
5 air or vessel carrier to collect identity-theft resistant de-
6 parture manifest information at a specific location prior
7 to the issuance of a boarding pass or other document on
8 the international departure, or the boarding of crew, in
9 any port through which the carrier boards aliens for inter-
10 national departure under the supervision of the Secretary
11 for such period as the Secretary considers appropriate to
12 ensure the adequate collection and transmission of biomet-
13 ric departure manifest information.

14 (f) FUNDING.—There shall be appropriated to the In-
15 terior Enforcement Account \$500,000,000 to reimburse
16 carriers for their reasonable actual expenses in carrying
17 out their duties as described in this section.

18 (g) DETERMINATION OF BUDGETARY EFFECTS.—

19 (1) EMERGENCY DESIGNATION FOR CONGRES-
20 SIONAL ENFORCEMENT.—In the Senate, amounts
21 made available under this section are designated as
22 an emergency requirement pursuant to section
23 403(a) of S. Con. Res. 13 (111th Congress), the
24 concurrent resolution on the budget for fiscal year
25 2010.

1 (2) EMERGENCY DESIGNATION FOR STATUTORY
2 PAYGO.—Amounts made available under this section
3 are designated as an emergency requirement under
4 section 4(g) of the Statutory Pay-As-You-Go Act of
5 2010 (Public Law 111–139; 2 U.S.C. 933(g)).

6 **SEC. 3305. PROFILING.**

7 (a) PROHIBITION.—In making routine or sponta-
8 neous law enforcement decisions, such as ordinary traffic
9 stops, Federal law enforcement officers may not use race
10 or ethnicity to any degree, except that officers may rely
11 on race and ethnicity if a specific suspect description ex-
12 ists.

13 (b) EXCEPTIONS.—

14 (1) SPECIFIC INVESTIGATION.—In conducting
15 activities in connection with a specific investigation,
16 Federal law enforcement officers may consider race
17 and ethnicity only to the extent that there is trust-
18 worthy information, relevant to the locality or time
19 frame, that links persons of a particular race or eth-
20 nicity to an identified criminal incident, scheme, or
21 organization. This standard applies even where the
22 use of race or ethnicity might otherwise be lawful.

23 (2) NATIONAL SECURITY.—In investigating or
24 preventing threats to national security or other cata-
25 strophic events (including the performance of duties

1 related to air transportation security), or in enforce-
2 ing laws protecting the integrity of the Nation's bor-
3 ders, Federal law enforcement officers may not con-
4 sider race or ethnicity except to the extent permitted
5 by the Constitution and laws of the United States.

6 (3) DEFINED TERM.—In this section, the term
7 “Federal law enforcement officer” means any offi-
8 cer, agent, or employee of the United States author-
9 ized by law or by a Government agency to engage
10 in or supervise the prevention, detection, investiga-
11 tion, or prosecution of any violation of Federal law.

12 (c) STUDY AND REGULATIONS.—

13 (1) DATA COLLECTION.—Not later than 180
14 days after the date of the enactment of this Act, the
15 Secretary shall begin collecting data regarding the
16 individualized immigration enforcement activities of
17 covered Department officers.

18 (2) STUDY.—Not later than 180 days after
19 data collection under paragraph (1) commences, the
20 Secretary shall complete a study analyzing the data.

21 (3) REGULATIONS.—Not later than 90 days
22 after the date the study required by paragraph (2)
23 is completed, the Secretary, in consultation with the
24 Attorney General, shall issue regulations regarding
25 the use of race, ethnicity, and any other suspect

1 classifications the Secretary deems appropriate by
2 covered Department officers.

3 (4) REPORTS.—Not later than 30 days after
4 completion of the study required by paragraph (2),
5 the Secretary shall submit the study to—

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

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

10 (C) the Committee on Appropriations of
11 the Senate;

12 (D) the Committee on Appropriations of
13 the House of Representatives;

14 (E) the Committee on the Judiciary of the
15 Senate; and

16 (F) the Committee on the Judiciary of the
17 House of Representatives.

18 (5) DEFINED TERM.—In this subsection, the
19 term “covered Department officer” means any offi-
20 cer, agent, or employee of United States Customs
21 and Border Protection, United States Immigration
22 and Customs Enforcement, or the Transportation
23 Security Administration.

1 **SEC. 3306. ENHANCED PENALTIES FOR CERTAIN DRUG OF-**
2 **FENSES ON FEDERAL LANDS.**

3 (a) CULTIVATING OR MANUFACTURING CONTROLLED
4 SUBSTANCES ON FEDERAL PROPERTY.—Section
5 401(b)(5) of the Controlled Substances Act (21 U.S.C.
6 841(b)(5)) is amended by striking “as provided in this
7 subsection” and inserting “for not more than 10 years,
8 in addition to any other term of imprisonment imposed
9 under this subsection,”.

10 (b) USE OF HAZARDOUS SUBSTANCES.—Pursuant to
11 its authority under section 994 of title 28, United States
12 Code, the United States Sentencing Commission shall
13 amend the Federal Sentencing Guidelines and policy state-
14 ments to ensure that the guidelines provide an additional
15 penalty increase of 2 offense levels above the sentence oth-
16 erwise applicable for a violation of section 401(a) of the
17 Controlled Substances Act (21 U.S.C. 841(a)) if the of-
18 fense—

19 (1) includes the use of a poison, chemical, or
20 other hazardous substance to cultivate or manufac-
21 ture controlled substances on Federal property;

22 (2) creates a hazard to humans, wildlife, or do-
23 mestic animals;

24 (3) degrades or harms the environment or nat-
25 ural resources; or

1 (4) pollutes an aquifer, spring, stream, river, or
2 body of water.

3 (c) STREAM DIVERSION OR CLEAR CUTTING ON
4 FEDERAL PROPERTY.—

5 (1) PROHIBITION ON STREAM DIVERSION OR
6 CLEAR CUTTING ON FEDERAL PROPERTY.—Section
7 401(b) of the Controlled Substances Act is amended
8 by adding at the end the following:

9 “(8) DESTRUCTION OF BODIES OF WATER.—
10 Any person who violates subsection (a) in a manner
11 that diverts, redirects, obstructs, or drains an aquifer,
12 spring, stream, river, or body of water or clear
13 cuts timber while cultivating or manufacturing a
14 controlled substance on Federal property shall be
15 fined in accordance with title 18, United States
16 Code.”.

17 (2) FEDERAL SENTENCING GUIDELINES EN-
18 HANCEMENT.—Pursuant to its authority under section
19 994 of title 28, United States Code, the United
20 States Sentencing Commission shall amend the Federal
21 Sentencing Guidelines and policy statements to
22 ensure that the guidelines provide an additional penalty
23 increase of 2 offense levels for above the sentence
24 otherwise applicable for a violation of section
25 401(a) of the Controlled Substances Act (21 U.S.C.

1 841(a)) if the offense involves the diversion, redirec-
2 tion, obstruction, or draining of an aquifer, spring,
3 stream, river, or body of water or the clear cut of
4 timber while cultivating or manufacturing a con-
5 trolled substance on Federal property.

6 (d) BOOBY TRAPS ON FEDERAL LAND.—Section
7 401(d)(1) of the Controlled Substances Act (21 U.S.C.
8 841(d)(1)) is amended by inserting “cultivated,” after “is
9 being”.

10 (e) USE OR POSSESSION OF FIREARMS IN CONNEC-
11 TION WITH DRUG OFFENSES ON FEDERAL LANDS.—Pur-
12 suant to its authority under section 994 of title 28, United
13 States Code, the United States Sentencing Commission
14 shall amend the Federal Sentencing Guidelines and policy
15 statements to ensure that the guidelines provide an addi-
16 tional penalty increase of 2 offense levels above the sen-
17 tence otherwise applicable for a violation of section 401(a)
18 of the Controlled Substances Act (21 U.S.C. 841(a)) if
19 the offense involves the possession of a firearm while culti-
20 vating or manufacturing controlled substances on Federal
21 lands.

1 **Subtitle D—Asylum and Refugee**
2 **Provisions**

3 **SEC. 3400. SHORT TITLE.**

4 This subtitle may be cited as the “Frank R. Lauten-
5 berg Asylum and Refugee Reform Act”.

6 **SEC. 3401. TIME LIMITS AND EFFICIENT ADJUDICATION OF**
7 **GENUINE ASYLUM CLAIMS.**

8 Section 208(a)(2) (8 U.S.C. 1158(a)(2)) is amend-
9 ed—

10 (1) in subparagraph (A), by inserting “or the
11 Secretary of Homeland Security” after “Attorney
12 General” both places such term appears;

13 (2) by striking subparagraphs (B) and (D);

14 (3) by redesignating subparagraph (C) as sub-
15 paragraph (B);

16 (4) in subparagraph (B), as redesignated, by
17 striking “subparagraph (D)” and inserting “sub-
18 paragraphs (C) and (D)”; and

19 (5) by inserting after subparagraph (B), as re-
20 designated, the following:

21 “(C) CHANGED CIRCUMSTANCES.—Not-
22 withstanding subparagraph (B), an application
23 for asylum of an alien may be considered if the
24 alien demonstrates, to the satisfaction of the
25 Attorney General or the Secretary of Homeland

1 Security, the existence of changed cir-
2 cumstances that materially affect the appli-
3 cant's eligibility for asylum.

4 “(D) MOTION TO REOPEN CERTAIN MERI-
5 TORIOUS CLAIMS.—Notwithstanding subpara-
6 graph (B) or section 240(c)(7), an alien may
7 file a motion to reopen an asylum claim during
8 the 2-year period beginning on the date of the
9 enactment of the Border Security, Economic
10 Opportunity, and Immigration Modernization
11 Act if the alien—

12 “(i) was denied asylum based solely
13 upon a failure to meet the 1-year applica-
14 tion filing deadline in effect on the date on
15 which the application was filed;

16 “(ii) was granted withholding of re-
17 moval pursuant to section 241(b)(3) and
18 has not obtained lawful permanent resi-
19 dence in the United States pursuant to any
20 other provision of law;

21 “(iii) is not subject to the safe third
22 country exception under subparagraph (A)
23 or a bar to asylum under subsection (b)(2)
24 and should not be denied asylum as a mat-
25 ter of discretion; and

1 “(iv) is physically present in the
2 United States when the motion is filed.”.

3 **SEC. 3402. REFUGEE FAMILY PROTECTIONS.**

4 (a) CHILDREN OF REFUGEE OR ASYLEE SPOUSES
5 AND CHILDREN.—A child of an alien who qualifies for ad-
6 mission as a spouse or child under section 207(c)(2)(A)
7 or 208(b)(3) of the Immigration and Nationality Act (8
8 U.S.C. 1157(c)(2)(A) and 1158(b)(3)) shall be entitled to
9 the same status as such alien if the child—

10 (1) is accompanying or following to join such
11 alien; and

12 (2) is otherwise eligible under section
13 207(c)(2)(A) or 208(b)(3) of the Immigration and
14 Nationality Act.

15 **SEC. 3403. CLARIFICATION ON DESIGNATION OF CERTAIN**
16 **REFUGEES.**

17 (a) TERMINATION OF CERTAIN PREFERENTIAL
18 TREATMENT IN IMMIGRATION OF AMERASIANS.—Section
19 584 of the Foreign Operations, Export Financing, and Re-
20 lated Programs Appropriations Act, 1988 (8 U.S.C. 1101
21 note) is amended by adding at the end the following:

22 “(f) No visa may be issued under this section if the
23 petition or application for such visa is submitted on or
24 after the date of the enactment of the Border Security,

1 Economic Opportunity, and Immigration Modernization
2 Act.”.

3 (b) REFUGEE DESIGNATION.—Section 207(c)(1) (8
4 U.S.C. 1157(c)(1)) is amended—

5 (1) by inserting “(A)” before “Subject to the
6 numerical limitations”; and

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

8 “(B)(i) The President, upon a recommendation of the
9 Secretary of State made in consultation with the Secretary
10 of Homeland Security, and after appropriate consultation,
11 may designate specifically defined groups of aliens—

12 “(I) whose resettlement in the United States is
13 justified by humanitarian concerns or is otherwise in
14 the national interest; and

15 “(II) who—

16 “(aa) share common characteristics that
17 identify them as targets of persecution on ac-
18 count of race, religion, nationality, membership
19 in a particular social group, or political opinion;
20 or

21 “(bb) having been identified as targets as
22 described in item (aa), share a common need
23 for resettlement due to a specific vulnerability.

24 “(ii) An alien who establishes membership in a group
25 designated under clause (i) to the satisfaction of the Sec-

1 retary of Homeland Security shall be considered a refugee
2 for purposes of admission as a refugee under this section
3 unless the Secretary determines that such alien ordered,
4 incited, assisted, or otherwise participated in the persecu-
5 tion of any person on account of race, religion, nationality,
6 membership in a particular social group, or political opin-
7 ion.

8 “(iii) A designation under clause (i) is for purposes
9 of adjudicatory efficiency and may be revoked by the
10 President at any time after notification to Congress.

11 “(iv) Categories of aliens established under section
12 599D of the Foreign Operations, Export Financing, and
13 Related Programs Appropriations Act, 1990 (Public Law
14 101–167; 8 U.S.C. 1157 note)—

15 “(I) shall be designated under clause (i) until
16 the end of the first fiscal year commencing after the
17 date of the enactment of the Border Security, Eco-
18 nomic Opportunity, and Immigration Modernization
19 Act; and

20 “(II) shall be eligible for designation thereafter
21 at the discretion of the President, considering,
22 among other factors, whether a country under con-
23 sideration has been designated by the Secretary of
24 State as a ‘Country of Particular Concern’ for en-

1 gaging in or tolerating systematic, ongoing, and
2 egregious violations of religious freedom.

3 “(v) A designation under clause (i) shall not influence
4 decisions to grant, to any alien, asylum under section 208,
5 protection under section 241(b)(3), or protection under
6 the Convention Against Torture and Other Cruel, Inhu-
7 man or Degrading Treatment or Punishment, done at
8 New York December 10, 1984.

9 “(vi) A decision to deny admission under this section
10 to an alien who establishes to the satisfaction of the Sec-
11 retary that the alien is a member of a group designated
12 under clause (i) shall—

13 “(I) be in writing; and

14 “(II) state, to the maximum extent feasible, the
15 reason for the denial.

16 “(vii) Refugees admitted pursuant to a designation
17 under clause (i) shall be subject to the number of admis-
18 sions and be admissible under this section.”.

19 **SEC. 3404. ASYLUM DETERMINATION EFFICIENCY.**

20 Section 235(b)(1)(B)(ii) (8 U.S.C. 1225(b)(1)(B)(ii))
21 is amended by striking “asylum.” and inserting “asylum
22 by an asylum officer. The asylum officer, after conducting
23 a nonadversarial asylum interview and seeking supervisory
24 review, may grant asylum to the alien under section 208
25 or refer the case to a designee of the Attorney General,

1 for a de novo asylum determination, for relief under the
2 Convention Against Torture and Other Cruel, Inhuman or
3 Degrading Treatment or Punishment, done at New York
4 December 10, 1984, or for protection under section
5 241(b)(3).”.

6 **SEC. 3405. STATELESS PERSONS IN THE UNITED STATES.**

7 (a) IN GENERAL.—Chapter 1 of title II (8 U.S.C.
8 1151 et seq.) is amended by adding at the end the fol-
9 lowing:

10 **“SEC. 210A. PROTECTION OF CERTAIN STATELESS PER-**
11 **SONS IN THE UNITED STATES.**

12 “(a) STATELESS PERSONS.—

13 “(1) IN GENERAL.—In this section, the term
14 ‘stateless person’ means an individual who is not
15 considered a national under the operation of the
16 laws of any country.

17 “(2) DESIGNATION OF SPECIFIC STATELESS
18 GROUPS.—The Secretary of Homeland Security, in
19 consultation with the Secretary of State, may, in the
20 discretion of the Secretary, designate specific groups
21 of individuals who are considered stateless persons,
22 for purposes of this section.

23 “(b) STATUS OF STATELESS PERSONS.—

24 “(1) RELIEF FOR CERTAIN INDIVIDUALS DE-
25 TERMINED TO BE STATELESS PERSONS.—The Sec-

1 retary of Homeland Security or the Attorney Gen-
2 eral may, in his or her discretion, provide conditional
3 lawful status to an alien who is otherwise inadmis-
4 sible or deportable from the United States if the
5 alien—

6 “(A) is a stateless person present in the
7 United States;

8 “(B) applies for such relief;

9 “(C) has not lost his or her nationality as
10 a result of his or her voluntary action or know-
11 ing inaction after arrival in the United States;

12 “(D) except as provided in paragraphs (2)
13 and (3), is not inadmissible under section
14 212(a); and

15 “(E) is not described in section
16 241(b)(3)(B)(i).

17 “(2) INAPPLICABILITY OF CERTAIN PROVI-
18 SIONS.—The provisions under paragraphs (4), (5),
19 (7), and (9)(B) of section 212(a) shall not apply to
20 any alien seeking relief under paragraph (1).

21 “(3) WAIVER.—The Secretary or the Attorney
22 General may waive any other provisions of such sec-
23 tion, other than subparagraphs (B), (C), (D)(ii),
24 (E), (G), (H), or (I) of paragraph (2), paragraph
25 (3), paragraph (6)(C)(i) (with respect to misrepre-

1 sentations relating to the application for relief under
2 paragraph (1)), or subparagraphs (A), (C), (D), or
3 (E) of paragraph (10) of section 212(a), with re-
4 spect to such an alien for humanitarian purposes, to
5 assure family unity, or if it is otherwise in the public
6 interest.

7 “(4) SUBMISSION OF PASSPORT OR TRAVEL
8 DOCUMENT.—Any alien who seeks relief under this
9 section shall submit to the Secretary of Homeland
10 Security or the Attorney General—

11 “(A) any available passport or travel docu-
12 ment issued at any time to the alien (whether
13 or not the passport or document has expired or
14 been cancelled, rescinded, or revoked); or

15 “(B) an affidavit, sworn under penalty of
16 perjury—

17 “(i) stating that the alien has never
18 been issued a passport or travel document;
19 or

20 “(ii) identifying with particularity any
21 such passport or travel document and ex-
22 plaining why the alien cannot submit it.

23 “(5) WORK AUTHORIZATION.—The Secretary of
24 Homeland Security may authorize an alien who has
25 applied for and is found *prima facie* eligible for or

1 been granted relief under paragraph (1) to engage
2 in employment in the United States.

3 “(6) TRAVEL DOCUMENTS.—The Secretary may
4 issue appropriate travel documents to an alien who
5 has been granted relief under paragraph (1) that
6 would allow him or her to travel abroad and be ad-
7 mitted to the United States upon return, if other-
8 wise admissible.

9 “(7) TREATMENT OF SPOUSE AND CHIL-
10 DREN.—The spouse or child of an alien who has
11 been granted conditional lawful status under para-
12 graph (1) shall, if not otherwise eligible for admis-
13 sion under paragraph (1), be granted conditional
14 lawful status under this section if accompanying, or
15 following to join, such alien if—

16 “(A) the spouse or child is admissible (ex-
17 cept as otherwise provided in paragraphs (2)
18 and (3)) and is not described in section
19 241(b)(3)(B)(i); and

20 “(B) the qualifying relationship to the
21 principal beneficiary existed on the date on
22 which such alien was granted conditional lawful
23 status.

24 “(c) ADJUSTMENT OF STATUS.—

1 “(1) INSPECTION AND EXAMINATION.—At the
2 end of the 1-year period beginning on the date on
3 which an alien has been granted conditional lawful
4 status under subsection (b), the alien may apply for
5 lawful permanent residence in the United States if—

6 “(A) the alien has been physically present
7 in the United States for at least 1 year;

8 “(B) the alien’s conditional lawful status
9 has not been terminated by the Secretary of
10 Homeland Security or the Attorney General,
11 pursuant to such regulations as the Secretary
12 or the Attorney General may prescribe; and

13 “(C) the alien has not otherwise acquired
14 permanent resident status.

15 “(2) REQUIREMENTS FOR ADJUSTMENT OF
16 STATUS.—The Secretary of Homeland Security or
17 the Attorney General, under such regulations as the
18 Secretary or the Attorney General may prescribe,
19 may adjust the status of an alien granted condi-
20 tional lawful status under subsection (b) to that of
21 an alien lawfully admitted for permanent residence
22 if such alien—

23 “(A) is a stateless person;

24 “(B) properly applies for such adjustment
25 of status;

1 “(C) has been physically present in the
2 United States for at least 1 year after being
3 granted conditional lawful status under sub-
4 section (b);

5 “(D) is not firmly resettled in any foreign
6 country; and

7 “(E) is admissible (except as otherwise
8 provided under paragraph (2) or (3) of sub-
9 section (b)) as an immigrant under this chapter
10 at the time of examination of such alien for ad-
11 justment of status.

12 “(3) RECORD.—Upon approval of an applica-
13 tion under this subsection, the Secretary of Home-
14 land Security shall establish a record of the alien’s
15 admission for lawful permanent residence as of the
16 date that is 1 year before the date of such approval.

17 “(4) NUMERICAL LIMITATION.—The number of
18 aliens who may receive an adjustment of status
19 under this section for a fiscal year shall be subject
20 to the numerical limitation of section 203(b)(4).

21 “(d) PROVING THE CLAIM.—In determining an
22 alien’s eligibility for lawful conditional status or adjust-
23 ment of status under this subsection, the Secretary of
24 Homeland Security or the Attorney General shall consider
25 any credible evidence relevant to the application. The de-

1 termination of what evidence is credible and the weight
2 to be given that evidence shall be within the sole discretion
3 of the Secretary or the Attorney General.

4 “(e) REVIEW.—

5 “(1) ADMINISTRATIVE REVIEW.—No appeal
6 shall lie from the denial of an application by the
7 Secretary, but such denial will be without prejudice
8 to the alien’s right to renew the application in pro-
9 ceedings under section 240.

10 “(2) MOTIONS TO REOPEN.—Notwithstanding
11 any limitation imposed by law on motions to reopen
12 removal, deportation, or exclusion proceedings, any
13 individual who is eligible for relief under this section
14 may file a motion to reopen proceedings in order to
15 apply for relief under this section. Any such motion
16 shall be filed within 2 years of the date of the enact-
17 ment of the Border Security, Economic Opportunity,
18 and Immigration Modernization Act.

19 “(f) LIMITATION.—

20 “(1) APPLICABILITY.—The provisions of this
21 section shall only apply to aliens present in the
22 United States.

23 “(2) SAVINGS PROVISION.—Nothing in this sec-
24 tion may be construed to authorize or require—

1 “(A) the admission of any alien to the
2 United States;

3 “(B) the parole of any alien into the
4 United States; or

5 “(C) the grant of any motion to reopen or
6 reconsider filed by an alien after departure or
7 removal from the United States.”.

8 (b) JUDICIAL REVIEW.—Section 242(a)(2)(B)(ii) (8
9 U.S.C. 1252(a)(2)(B)(ii)) is amended by striking
10 “208(a).” and inserting “208(a) or 210A.”.

11 (c) CONFORMING AMENDMENT.—Section 203(b)(4)
12 (8 U.S.C. 1153(b)(4)) is amended by inserting “to aliens
13 granted an adjustment of status under section 210A(c)
14 or” after “level,”.

15 (d) CLERICAL AMENDMENT.—The table of contents
16 for the Immigration and Nationality Act is amended by
17 inserting after the item relating to section 210 the fol-
18 lowing:

“Sec. 210A. Protection of stateless persons in the United States.”.

19 **SEC. 3406. U VISA ACCESSIBILITY.**

20 Section 214(p)(2)(A) (8 U.S.C. 1184(p)(2)(A)) is
21 amended by striking “10,000.” and inserting “18,000, of
22 which not more than 3,000 visas may be issued for aliens
23 who are victims of a covered violation described in section
24 101(a)(15)(U).”.

1 **SEC. 3407. WORK AUTHORIZATION WHILE APPLICATIONS**
2 **FOR U AND T VISAS ARE PENDING.**

3 (a) U VISAS.—Section 214(p) (8 U.S.C. 1184(p)), as
4 amended by section 3406 of this Act, is further amend-
5 ed—

6 (1) in paragraph (6), by striking the last sen-
7 tence; and

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

9 “(7) WORK AUTHORIZATION.—Notwithstanding
10 any provision of this Act granting eligibility for em-
11 ployment in the United States, the Secretary of
12 Homeland Security shall grant employment author-
13 ization to an alien who has filed an application for
14 nonimmigrant status under section 101(a)(15)(U)
15 on the date that is the earlier of—

16 “(A) the date on which the alien’s applica-
17 tion for such status is approved; or

18 “(B) a date determined by the Secretary
19 that is not later than 180 days after the date
20 on which the alien filed the application.”.

21 (b) T VISAS.—Section 214(o) (8 U.S.C. 1184(o)) is
22 amended by adding at the end the following:

23 “(8) Notwithstanding any provision of this Act
24 granting eligibility for employment in the United
25 States, the Secretary of Homeland Security shall
26 grant employment authorization to an alien who has

1 filed an application for nonimmigrant status under
2 section 101(a)(15)(T) on the date that is the earlier
3 of—

4 “(A) the date on which the alien’s applica-
5 tion for such status is approved; or

6 “(B) a date determined by the Secretary
7 that is not later than 180 days after the date
8 on which the alien filed the application.”.

9 **SEC. 3408. REPRESENTATION AT OVERSEAS REFUGEE**
10 **INTERVIEWS.**

11 Section 207(c) (8 U.S.C. 1157(c)) is amended by
12 adding at the end the following:

13 “(5) The adjudicator of an application for ref-
14 ugee status under this section shall consider all rel-
15 evant evidence and maintain a record of the evidence
16 considered.

17 “(6) An applicant for refugee status may be
18 represented, including at a refugee interview, at no
19 expense to the Government, by an attorney or ac-
20 credited representative who—

21 “(A) was chosen by the applicant; and

22 “(B) is authorized by the Secretary of
23 Homeland Security to be recognized as the rep-
24 resentative of such applicant in an adjudication
25 under this section.

1 “(7)(A) A decision to deny an application for
2 refugee status under this section—

3 “(i) shall be in writing; and

4 “(ii) shall provide, to the maximum extent
5 feasible, information on the reason for the de-
6 nial, including—

7 “(I) the facts underlying the deter-
8 mination; and

9 “(II) whether there is a waiver of in-
10 admissibility available to the applicant.

11 “(B) The basis of any negative credibility find-
12 ing shall be part of the written decision.

13 “(8)(A) An applicant who is denied refugee sta-
14 tus under this section may file a request with the
15 Secretary for a review of his or her application not
16 later than 120 days after such denial.

17 “(B) A request filed under subparagraph (A)
18 shall be adjudicated by refugee officers who have re-
19 ceived training on considering requests for review of
20 refugee applications that have been denied.

21 “(C) The Secretary shall publish the standard
22 applied to a request for review.

23 “(D) A request for review may result in the de-
24 cision being granted, denied, or reopened for a fur-
25 ther interview.

1 “(E) A decision on a request for review under
2 this paragraph—

3 “(i) shall be in writing; and

4 “(ii) shall provide, to the maximum extent
5 feasible, information on the reason for the de-
6 nial.”.

7 **SEC. 3409. LAW ENFORCEMENT AND NATIONAL SECURITY**

8 **CHECKS.**

9 (a) REFUGEES.—Section 207(c)(1) (8 U.S.C.
10 1157(c)(1)) is amended by adding at the end the fol-
11 lowing: “No alien shall be admitted as a refugee until the
12 identity of the applicant, including biographic and biomet-
13 ric data, has been checked against all appropriate records
14 or databases maintained by the Secretary of Homeland
15 Security, the Attorney General, the Secretary of State,
16 and other Federal records or databases that the Secretary
17 of Homeland Security considers necessary, to determine
18 any national security, law enforcement, or other grounds
19 on which the alien may be inadmissible to the United
20 States or ineligible to apply for or be granted refugee sta-
21 tus.”.

22 (b) ASYLEES.—Section 208(d)(5)(A)(i) (8 U.S.C.
23 1158(d)(5)(A)(i)) is amended to read as follows:

24 “(i) asylum shall not be granted until
25 the identity of the applicant, using bio-

1 graphic and biometric data, has been
2 checked against all appropriate records or
3 databases maintained by the Secretary of
4 Homeland Security, the Attorney General,
5 the Secretary of State, and other Federal
6 records or databases that the Secretary of
7 Homeland Security considers necessary, to
8 determine any national security, law en-
9 forcement, or other grounds on which the
10 alien may be inadmissible to the United
11 States or ineligible to apply for or be
12 granted asylum;”.

13 **SEC. 3410. TIBETAN REFUGEE ASSISTANCE.**

14 (a) **SHORT TITLE.**—This section may be cited as the
15 “Tibetan Refugee Assistance Act of 2013”.

16 (b) **TRANSITION FOR DISPLACED TIBETANS.**—Not-
17 withstanding the numerical limitations specified in sec-
18 tions 201 and 202 of the Immigration and Nationality Act
19 (8 U.S.C. 1151 and 1152), 5,000 immigrant visas shall
20 be made available to qualified displaced Tibetans described
21 in subsection (c) during the 3-year period beginning on
22 October 1, 2013.

23 (c) **QUALIFIED DISPLACED TIBETAN DESCRIBED.**—

24 (1) **IN GENERAL.**—An individual is a qualified
25 displaced Tibetan if such individual—

1 (A) is a native of Tibet; and

2 (B) has been continuously residing in India
3 or Nepal since before the date of the enactment
4 of this Act.

5 (2) NATIVE OF TIBET DESCRIBED.—For pur-
6 poses of paragraph (1)(A), an individual shall be
7 considered a native of Tibet if such individual—

8 (A) was born in Tibet; or

9 (B) is the son, daughter, grandson, or
10 granddaughter of an individual who was born in
11 Tibet.

12 (d) DERIVATIVE STATUS FOR SPOUSES AND CHIL-
13 DREN.—A spouse or child (as defined in subparagraphs
14 (A), (B), (C), (D), or (E) of section 101(b)(1) of the Im-
15 migration and Nationality Act (8 U.S.C. 1101(b)(1)))
16 shall, if not otherwise entitled to an immigrant status and
17 the immediate issuance of a visa under this section, be
18 entitled to the same status, and the same order of consid-
19 eration, provided under this section, if accompanying, or
20 following to join, the spouse or parent of such spouse or
21 child.

22 (e) DISTRIBUTION OF VISA NUMBERS.—The Sec-
23 retary of State shall ensure that immigrant visas provided
24 under subsection (b) are made available to qualified dis-
25 placed Tibetans described in subsection (c) or (d) in an

1 equitable manner, giving preference to those qualified dis-
2 placed Tibetans who—

3 (1) are not resettled in India or Nepal; or

4 (2) are most likely to be resettled successfully
5 in the United States.

6 **SEC. 3411. TERMINATION OF ASYLUM OR REFUGEE STATUS.**

7 (a) **TERMINATION OF STATUS.**—Except as provided
8 in subsections (b) and (c), any alien who is granted asylum
9 or refugee status under this Act or the Immigration and
10 Nationality Act (8 U.S.C. 1101 et seq.), who, without good
11 cause as determined by the Secretary or the Attorney Gen-
12 eral, subsequently returns to the country of such alien's
13 nationality or, in the case of an alien having no nation-
14 ality, returns to any country in which such alien last habit-
15 ually resided, and who applied for such status because of
16 persecution or a well-founded fear of persecution in that
17 country on account of race, religion, nationality, member-
18 ship in a particular social group, or political opinion, shall
19 have his or her refugee or asylum status terminated.

20 (b) **WAIVER.**—The Secretary has discretion to waive
21 subsection (a) if it is established to the satisfaction of the
22 Secretary or the Attorney General that the alien had good
23 cause for the return. The waiver may be sought prior to
24 departure from the United States or upon return.

1 (c) EXCEPTION FOR CERTAIN ALIENS FROM
2 CUBA.—Subsection (a) shall not apply to an alien who is
3 eligible for adjustment to that of an alien lawfully admit-
4 ted for permanent residence pursuant to the Cuban Ad-
5 justment Act of 1966 (Public Law 89–732).

6 **SEC. 3412. ASYLUM CLOCK.**

7 Section 208(d)(2) (8 U.S.C. 1158(d)(2)) is amended
8 by striking “is not entitled to employment authorization”
9 and all that follows through “prior to 180 days after” and
10 inserting “shall be provided employment authorization
11 180 days after”.

12 **Subtitle E—Shortage of Immigra-**
13 **tion Court Resources for Re-**
14 **moval Proceedings**

15 **SEC. 3501. SHORTAGE OF IMMIGRATION COURT PER-**
16 **SONNEL FOR REMOVAL PROCEEDINGS.**

17 (a) IMMIGRATION COURT JUDGES.—The Attorney
18 General shall increase the total number of immigration
19 judges to adjudicate current pending cases and efficiently
20 process future cases by at least—

- 21 (1) 75 in fiscal year 2014;
22 (2) 75 in fiscal year 2015; and
23 (3) 75 in fiscal year 2016.

24 (b) NECESSARY SUPPORT STAFF FOR IMMIGRATION
25 COURT JUDGES.—The Attorney General shall address the

1 shortage of support staff for immigration judges by ensur-
2 ing that each immigration judge has the assistance of the
3 necessary support staff, including the equivalent of 1 staff
4 attorney or law clerk and 1 legal assistant.

5 (c) ANNUAL INCREASES IN BOARD OF IMMIGRATION
6 APPEALS PERSONNEL.—The Attorney General shall in-
7 crease the number of Board of Immigration Appeals staff
8 attorneys (including the necessary additional support
9 staff) to efficiently process cases by at least—

- 10 (1) 30 in fiscal year 2014;
11 (2) 30 in fiscal year 2015; and
12 (3) 30 in fiscal year 2016.

13 (d) FUNDING.—There shall be appropriated, from
14 the Comprehensive Immigration Reform Trust Fund es-
15 tablished under section 6(a)(1), such sums as may be nec-
16 essary to carry out this section.

17 **SEC. 3502. IMPROVING IMMIGRATION COURT EFFICIENCY**
18 **AND REDUCING COSTS BY INCREASING AC-**
19 **CESS TO LEGAL INFORMATION.**

20 (a) CLARIFICATION REGARDING THE AUTHORITY OF
21 THE ATTORNEY GENERAL TO APPOINT COUNSEL TO
22 ALIENS IN IMMIGRATION PROCEEDINGS.—Section 292 (8
23 U.S.C. 1362) is amended—

- 24 (1) by inserting “(a)” before “In any”;

1 (2) by striking “(at no expense to the Govern-
2 ment)”;

3 (3) by striking “he shall” and inserting “the
4 person shall”; and

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

6 “(b) The Government is not required to provide coun-
7 sel to aliens under subsection (a). However, the Attorney
8 General may, in the Attorney General’s sole and
9 unreviewable discretion, appoint or provide counsel to
10 aliens in immigration proceedings conducted under section
11 240 of this Act.”.

12 (b) APPOINTMENT OF COUNSEL IN CERTAIN CASES;
13 RIGHT TO REVIEW CERTAIN DOCUMENTS IN REMOVAL
14 PROCEEDINGS.—Section 240(b) (8 U.S.C. 1229a(b)) is
15 amended—

16 (1) in paragraph (4)—

17 (A) by redesignating subparagraphs (B)
18 and (C) as subparagraphs (C) and (D), respec-
19 tively;

20 (B) in subparagraph (A), by striking “, at
21 no expense to the Government,”;

22 (C) by inserting after subparagraph (A)
23 the following new subparagraph:

24 “(B) the alien shall, at the beginning of
25 the proceedings or at a reasonable time there-

1 after, automatically receive a complete copy of
2 all relevant documents in the possession of the
3 Department of Homeland Security, including all
4 documents (other than documents protected
5 from disclosure by privilege, including national
6 security information referenced in subparagraph
7 (C), law enforcement sensitive information, and
8 information prohibited from disclosure pursuant
9 to any other provision of law) contained in the
10 file maintained by the Government that in-
11 cludes information with respect to all trans-
12 actions involving the alien during the immigra-
13 tion process (commonly referred to as an ‘A-
14 file’), and all documents pertaining to the alien
15 that the Department of Homeland Security has
16 obtained or received from other government
17 agencies, unless the alien waives the right to re-
18 ceive such documents by executing a knowing
19 and voluntary waiver in a language that he or
20 she understands fluently,”; and

21 (D) by adding at the end the following:

22 “The Government is not required to provide counsel
23 to aliens under this paragraph. However, the Attor-
24 ney General may, in the Attorney General’s sole and
25 unreviewable discretion, appoint or provide counsel

1 at government expense to aliens in immigration pro-
2 ceedings.”; and

3 (2) by adding at the end the following new
4 paragraph:

5 “(8) FAILURE TO PROVIDE ALIEN REQUIRED
6 DOCUMENTS.—In the absence of a waiver under sub-
7 paragraph (B) of paragraph (4), a removal pro-
8 ceeding may not proceed until the alien has received
9 the documents as required under such subpara-
10 graph.”.

11 (c) APPOINTMENT OF COUNSEL FOR UNACCOM-
12 PANIED ALIEN CHILDREN AND ALIENS WITH A SERIOUS
13 MENTAL DISABILITY.—Section 292 (8 U.S.C. 1362), as
14 amended by subsection (a), is further amended by adding
15 at the end the following:

16 “(c) Notwithstanding subsection (b), the Attorney
17 General shall appoint counsel, at the expense of the Gov-
18 ernment if necessary, to represent an alien in a removal
19 proceeding who has been determined by the Secretary to
20 be an unaccompanied alien child, is incompetent to rep-
21 resent himself or herself due to a serious mental disability
22 that would be included in section 3(1) of the Americans
23 with Disabilities Act of 1990 (42 U.S.C. 12102(1)), or is
24 considered particularly vulnerable when compared to other
25 aliens in removal proceedings, such that the appointment

1 of counsel is necessary to help ensure fair resolution and
2 efficient adjudication of the proceedings.”.

3 (d) FUNDING.—There shall be appropriated, from
4 the Comprehensive Immigration Reform Trust Fund es-
5 tablished under section 6(a)(1), such sums as may be nec-
6 essary to carry out this section and the amendments made
7 by this section.

8 **SEC. 3503. OFFICE OF LEGAL ACCESS PROGRAMS.**

9 (a) ESTABLISHMENT OF OFFICE OF LEGAL ACCESS
10 PROGRAMS.—The Attorney General shall maintain, within
11 the Executive Office for Immigration Review, an Office
12 of Legal Access Programs to develop and administer a sys-
13 tem of legal orientation programs to make immigration
14 proceedings more efficient and cost effective by educating
15 aliens regarding administrative procedures and legal
16 rights under United States immigration law and to estab-
17 lish other programs to assist in providing aliens access to
18 legal information.

19 (b) LEGAL ORIENTATION PROGRAMS.—The legal ori-
20 entation programs—

21 (1) shall provide programs to assist detained
22 aliens in making informed and timely decisions re-
23 garding their removal and eligibility for relief from
24 removal in order to increase efficiency and reduce
25 costs in immigration proceedings and Federal cus-

1 today processes and to improve access to counsel and
2 other legal services;

3 (2) may provide services to detained aliens in
4 immigration proceedings under sections 235, 238,
5 240, and 241(a)(5) of the Immigration and Nation-
6 ality Act (8 U.S.C. 1225, 1228, 1229a, and
7 1231(a)(5)) and to other aliens in immigration and
8 asylum proceedings under sections 235, 238, and
9 240 of the Immigration and Nationality Act (8
10 U.S.C. 1225, 1228, and 1229a); and

11 (3) shall identify unaccompanied alien children,
12 aliens with a serious mental disability, and other
13 particularly vulnerable aliens for consideration by
14 the Attorney General pursuant to section 292(c) of
15 the Immigration and Nationality Act, as added by
16 section 3502(c).

17 (c) PROCEDURES.—The Secretary, in consultation
18 with the Attorney General, shall establish procedures that
19 ensure that legal orientation programs are available for
20 all detained aliens within 5 days of arrival into custody
21 and to inform such aliens of the basic procedures of immi-
22 gration hearings, their rights relating to those hearings
23 under the immigration laws, information that may deter
24 such aliens from filing frivolous legal claims, and any
25 other information deemed appropriate by the Attorney

1 General, such as a contact list of potential legal resources
2 and providers.

3 (d) RULE OF CONSTRUCTION.—Nothing in this sub-
4 section shall be construed to create any substantive or pro-
5 cedural right or benefit that is legally enforceable by any
6 party against the United States or its agencies or officers
7 or any other person.

8 (e) FUNDING.—There shall be appropriated, from the
9 Comprehensive Immigration Reform Trust Fund estab-
10 lished under section 6(a)(1), such sums as may be nec-
11 essary to carry out this section.

12 **SEC. 3504. CODIFYING BOARD OF IMMIGRATION APPEALS.**

13 (a) DEFINITION OF BOARD MEMBER.—Section
14 101(a) (8 U.S.C. 1101(a)) is amended by adding at the
15 end the following:

16 “(53) The term ‘Board Member’ means an at-
17 torney whom the Attorney General appoints to serve
18 on the Board of Immigration Appeals within the Ex-
19 ecutive Office of Immigration Review, and is quali-
20 fied to review decisions of immigration judges and
21 other matters within the jurisdiction of the Board of
22 Immigration Appeals.”.

23 (b) BOARD OF IMMIGRATION APPEALS.—Section
24 240(a)(1) (8 U.S.C. 1229a(a)(1)) is amended by adding
25 at the end the following: “The Board of Immigration Ap-

1 peals and its Board Members shall review decisions of im-
2 migration judges under this section.”.

3 (c) APPEALS.—Section 240(b)(4) (8 U.S.C.
4 1229a(b)(4)), as amended by section 3502(b), is further
5 amended—

6 (1) in subparagraph (B), by striking “, and”
7 and inserting a semicolon;

8 (2) in subparagraph (C), by striking the period
9 and inserting “; and”; and

10 (3) by inserting after subparagraph (C) the fol-
11 lowing:

12 “(D) the alien or the Department of
13 Homeland Security may appeal the immigration
14 judge’s decision to a 3-judge panel of the Board
15 of Immigration Appeals.”.

16 (d) DECISION AND BURDEN OF PROOF.—Section
17 240(c)(1)(A) (8 U.S.C. 1229a(c)(1)(A)) is amended to
18 read as follows:

19 “(A) IN GENERAL.—At the conclusion of
20 the proceeding, the immigration judge shall de-
21 cide whether an alien is removable from the
22 United States. The determination of the immi-
23 gration judge shall be based only on the evi-
24 dence produced at the hearing. On appeal, the
25 Board of Immigration Appeals shall issue a

1 written opinion. The opinion shall address all
2 dispositive arguments raised by the parties. The
3 panel may incorporate by reference the opinion
4 of the immigration judge whose decision is
5 being reviewed, provided that the panel also ad-
6 dresses any arguments made by the nonpre-
7 vailing party regarding purported errors of law,
8 fact, or discretion.”.

9 **SEC. 3505. IMPROVED TRAINING FOR IMMIGRATION**
10 **JUDGES AND BOARD MEMBERS.**

11 (a) IN GENERAL.—Section 240 (8 U.S.C. 1229a) is
12 amended by adding at the end the following:

13 “(f) IMPROVED TRAINING.—

14 “(1) IMPROVED TRAINING FOR IMMIGRATION
15 JUDGES AND BOARD MEMBERS.—

16 “(A) IN GENERAL.—In consultation with
17 the Attorney General and the Director of the
18 Federal Judicial Center, the Director of the Ex-
19 ecutive Office for Immigration Review shall re-
20 view and modify, as appropriate, training pro-
21 grams for immigration judges and Board Mem-
22 bers.

23 “(B) ELEMENTS OF REVIEW.—Each such
24 review shall study—

1 “(i) the expansion of the training pro-
2 gram for new immigration judges and
3 Board Members;

4 “(ii) continuing education regarding
5 current developments in the field of immi-
6 gration law; and

7 “(iii) methods to ensure that immigra-
8 tion judges are trained on properly crafting
9 and dictating decisions.

10 “(2) IMPROVED TRAINING AND GUIDANCE FOR
11 STAFF.—The Director of the Executive Office for
12 Immigration Review shall—

13 “(A) modify guidance and training regard-
14 ing screening standards and standards of re-
15 view; and

16 “(B) ensure that Board Members provide
17 staff attorneys with appropriate guidance in
18 drafting decisions in individual cases, consistent
19 with the policies and directives of the Director
20 of the Executive Office for Immigration Review
21 and the Chairman of the Board of Immigration
22 Appeals.”.

23 (b) FUNDING.—There shall be appropriated, from the
24 Comprehensive Immigration Reform Trust Fund estab-
25 lished under section 6(a)(1), such sums as may be nec-

1 essary to carry out this section and the amendment made
2 by this section.

3 **SEC. 3506. IMPROVED RESOURCES AND TECHNOLOGY FOR**
4 **IMMIGRATION COURTS AND BOARD OF IMMI-**
5 **GRATION APPEALS.**

6 (a) **IMPROVED ON-BENCH REFERENCE MATERIALS**
7 **AND DECISION TEMPLATES.**—The Director of the Execu-
8 tive Office for Immigration Review shall ensure that immi-
9 gration judges are provided with updated reference mate-
10 rials and standard decision templates that conform to the
11 law of the circuits in which they sit.

12 (b) **PRACTICE MANUAL.**—The Director of the Execu-
13 tive Office for Immigration Review shall produce a prac-
14 tice manual describing best practices for the immigration
15 courts and shall make such manual available electronically
16 to counsel and litigants who appear before the immigra-
17 tion courts.

18 (c) **RECORDING SYSTEM AND OTHER TECH-**
19 **NOLOGIES.**—

20 (1) **PLAN REQUIRED.**—The Director of the Ex-
21 ecutive Office for Immigration Review shall provide
22 the Attorney General with a plan and a schedule to
23 replace the immigration courts' tape recording sys-
24 tem with a digital recording system that is compat-

1 ible with the information management systems of
2 the Executive Office for Immigration Review.

3 (2) AUDIO RECORDING SYSTEM.—Consistent
4 with the plan described in paragraph (1), the Direc-
5 tor shall pilot a digital audio recording system not
6 later than 1 year after the enactment of this Act,
7 and shall begin nationwide implementation of that
8 system as soon as practicable.

9 (d) IMPROVED TRANSCRIPTION SERVICES.—Not
10 later than 1 year after the enactment of this Act, the Di-
11 rector of the Executive Office for Immigration Review
12 shall report to the Attorney General on the current tran-
13 scription services utilized by the Office and recommend
14 improvements to this system regarding quality and timeli-
15 ness of transcription.

16 (e) IMPROVED INTERPRETER SELECTION.—Not later
17 than 1 year after the enactment of this Act, the Director
18 of the Executive Office for Immigration Review shall re-
19 port to the Attorney General on the current interpreter
20 selection process utilized by the Office and recommend im-
21 provements to this process regarding screening, hiring,
22 certification, and evaluation of staff and contract inter-
23 preters.

24 (f) FUNDING.—There shall be appropriated, from the
25 Comprehensive Immigration Reform Trust Fund estab-

1 lished under section 6(a)(1), such sums as may be nec-
2 essary to carry out this section.

3 **SEC. 3507. TRANSFER OF RESPONSIBILITY FOR TRAF-**
4 **FICKING PROTECTIONS.**

5 (a) TRANSFER OF RESPONSIBILITY.—

6 (1) IN GENERAL.—All unexpended balances ap-
7 propriated or otherwise available to the Department
8 of Health and Human Services and its Office of Ref-
9 ugee Resettlement in connection with the functions
10 provided for in paragraphs (5) and (6) of section
11 235(c) of the William Wilberforce Trafficking Vic-
12 tims Protection Reauthorization Act of 2008 (8
13 U.S.C. 1232(c)), shall, subject to section 202 of the
14 Budget and Accounting Procedures Act of 1950, be
15 transferred to the Department of Justice. Funds
16 transferred pursuant to this paragraph shall remain
17 available until expended and shall be used only for
18 the purposes for which the funds were originally au-
19 thorized and appropriated.

20 (2) CONTRACT AUTHORITY.—The Attorney
21 General may award grants to, and enter into con-
22 tracts to carry out the functions set forth in para-
23 graphs (5) and (6) of Section 235(c) of the William
24 Wilberforce Trafficking Victims Protection Reau-
25 thorization Act of 2008.

1 (b) CONFORMING AMENDMENTS.—Section 235(c) of
2 the William Wilberforce Trafficking Victims Protection
3 Reauthorization Act of 2008 (8 U.S.C. 1232(c)) is amend-
4 ed—

5 (1) in paragraph (5)—

6 (A) by striking “Secretary of Health and
7 Human Services” each place it appears and in-
8 serting “Attorney General”; and

9 (B) by striking the last sentence; and

10 (2) in paragraph (6)—

11 (A) by striking “Secretary of Health and
12 Human Services” each place it appears and in-
13 serting “Attorney General”;

14 (B) in subparagraphs (B)(ii), (D), and
15 (F), by striking “Secretary” each place it ap-
16 pears and inserting “Attorney General”; and

17 (C) in subparagraph (F), by striking “and
18 Human Services”.

19 **Subtitle F—Prevention of Traf-**
20 **ficking in Persons and Abuses**
21 **Involving Workers Recruited**
22 **Abroad**

23 **SEC. 3601. DEFINITIONS.**

24 (a) IN GENERAL.—Except as otherwise provided by
25 this subtitle, the terms used in this subtitle shall have the

1 same meanings, respectively, as are given those terms in
2 section 3 of the Fair Labor Standards Act of 1938 (29
3 U.S.C. 203).

4 (b) OTHER DEFINITIONS.—

5 (1) FOREIGN LABOR CONTRACTOR.—The term
6 “foreign labor contractor” means any person who
7 performs foreign labor contracting activity, including
8 any person who performs foreign labor contracting
9 activity wholly outside of the United States, except
10 that the term does not include any entity of the
11 United States Government.

12 (2) FOREIGN LABOR CONTRACTING ACTIVITY.—
13 The term “foreign labor contracting activity” means
14 recruiting, soliciting, or related activities with re-
15 spect to an individual who resides outside of the
16 United States in furtherance of employment in the
17 United States, including when such activity occurs
18 wholly outside of the United States.

19 (3) PERSON.—The term “person” means any
20 natural person or any corporation, company, firm,
21 partnership, joint stock company or association or
22 other organization or entity (whether organized
23 under law or not), including municipal corporations.

24 (4) WORKER.—The term “worker” means an
25 individual who is the subject of foreign labor con-

1 tracting activity and does not include an exchange
2 visitor (as defined in section 62.2 of title 22, Code
3 of Federal Regulations, or any similar successor reg-
4 ulation).

5 **SEC. 3602. DISCLOSURE.**

6 (a) REQUIREMENT FOR DISCLOSURE.—Any person
7 who engages in foreign labor contracting activity shall as-
8 certain and disclose in writing in English and in the pri-
9 mary language of the worker at the time of the worker's
10 recruitment, the following information:

11 (1) The identity and address of the employer
12 and the identity and address of the person con-
13 ducting the recruiting on behalf of the employer, in-
14 cluding any subcontractor or agent involved in such
15 recruiting.

16 (2) All assurances and terms and conditions of
17 employment, from the prospective employer for
18 whom the worker is being recruited, including the
19 work hours, level of compensation to be paid, the
20 place and period of employment, a description of the
21 type and nature of employment activities, any
22 withholdings or deductions from compensation and
23 any penalties for terminating employment.

24 (3) A signed copy of the work contract between
25 the worker and the employer.

1 (4) The type of visa under which the foreign
2 worker is to be employed, the length of time for
3 which the visa will be valid, the terms and conditions
4 under which the visa may be renewed, and a clear
5 statement of any expenses associated with securing
6 or renewing the visa.

7 (5) An itemized list of any costs or expenses to
8 be charged to the worker and any deductions to be
9 taken from wages, including any costs for housing or
10 accommodation, transportation to and from the
11 worksite, meals, health insurance, workers' com-
12 pensation, costs of benefits provided, medical exami-
13 nations, healthcare, tools, or safety equipment costs.

14 (6) The existence of any labor organizing effort,
15 strike, lockout, or other labor dispute at the place of
16 employment.

17 (7) Whether and the extent to which workers
18 will be compensated through workers' compensation,
19 private insurance, or otherwise for injuries or death,
20 including work-related injuries and death, during the
21 period of employment and, if so, the name of the
22 State workers' compensation insurance carrier or the
23 name of the policyholder of the private insurance,
24 the name and the telephone number of each person

1 who must be notified of an injury or death, and the
2 time period within which such notice must be given.

3 (8) A statement, in a form specified by the Sec-
4 retary—

5 (A) stating that—

6 (i) no foreign labor contractor, agent,
7 or employee of a foreign labor contractor,
8 may lawfully assess any fee (including visa
9 fees, processing fees, transportation fees,
10 legal expenses, placement fees, and other
11 costs) to a worker for any foreign labor
12 contracting activity; and

13 (ii) the employer may bear such costs
14 or fees for the foreign labor contractor, but
15 that these fees cannot be passed along to
16 the worker;

17 (B) explaining that—

18 (i) no additional significant require-
19 ments or changes may be made to the
20 original contract signed by the worker
21 without at least 24 hours to consider such
22 changes and the specific consent of the
23 worker, obtained voluntarily and without
24 threat of penalty; and

1 (ii) any significant changes made to
2 the original contract that do not comply
3 with clause (i) shall be a violation of this
4 subtitle and be subject to the provisions of
5 section 3610 of this Act; and

6 (C) describing the protections afforded the
7 worker by this section and by section 202 of the
8 William Wilberforce Trafficking Victims Protec-
9 tion Reauthorization Act of 2008 (8 U.S.C.
10 1375b) and any applicable visa program, in-
11 cluding—

12 (i) relevant information about the pro-
13 cedure for filing a complaint provided for
14 in section 3610; and

15 (ii) the telephone number for the na-
16 tional human trafficking resource center
17 hotline number.

18 (9) Any education or training to be provided or
19 required, including—

20 (A) the nature, timing, and cost of such
21 training;

22 (B) the person who will pay such costs;

23 (C) whether the training is a condition of
24 employment, continued employment, or future
25 employment; and

1 (D) whether the worker will be paid or re-
2 munerated during the training period, including
3 the rate of pay.

4 (b) RELATIONSHIP TO LABOR AND EMPLOYMENT
5 LAWS.—Nothing in the disclosure required by subsection
6 (a) shall constitute a legal conclusion as to the worker's
7 status or rights under the labor and employment laws.

8 (c) PROHIBITION ON FALSE AND MISLEADING IN-
9 FORMATION.—No foreign labor contractor or employer
10 who engages in any foreign labor contracting activity shall
11 knowingly provide materially false or misleading informa-
12 tion to any worker concerning any matter required to be
13 disclosed under subsection (a). The disclosure required by
14 this section is a document concerning the proper adminis-
15 tration of a matter within the jurisdiction of a department
16 or agency of the United States for the purposes of section
17 1519 of title 18, United States Code.

18 **SEC. 3603. PROHIBITION ON DISCRIMINATION.**

19 (a) IN GENERAL.—It shall be unlawful for an em-
20 ployer or a foreign labor contractor to fail or refuse to
21 hire, discharge, intimidate, threaten, restrain, coerce, or
22 blacklist any individual or otherwise discriminate against
23 an individual with respect to compensation, terms, condi-
24 tions, or privileges of employment, because of such individ-

1 ual's race, color, creed, sex, national origin, religion, age,
2 or disability.

3 (b) DETERMINATIONS OF DISCRIMINATION.—For the
4 purposes of determining the existence of unlawful dis-
5 crimination under subsection (a)—

6 (1) in the case of a claim of discrimination
7 based on race, color, creed, sex, national origin, or
8 religion, the same legal standards shall apply as are
9 applicable under title VII of the Civil Rights Act of
10 1964 (42 U.S.C. 2000e et seq.);

11 (2) in the case of a claim of discrimination
12 based on unlawful discrimination based on age, the
13 same legal standards shall apply as are applicable
14 under the Age Discrimination in Employment Act of
15 1967 (29 U.S.C. 621 et seq.); and

16 (3) in the case of a claim of discrimination
17 based on disability, the same legal standards shall
18 apply as are applicable under title I of the Ameri-
19 cans With Disabilities Act of 1990 (42 U.S.C.
20 12111 et seq.).

21 **SEC. 3604. RECRUITMENT FEES.**

22 No employer, foreign labor contractor, or agent or
23 employee of a foreign labor contractor, shall assess any
24 fee (including visa fees, processing fees, transportation

1 fees, legal expenses, placement fees, and other costs) to
2 a worker for any foreign labor contracting activity.

3 **SEC. 3605. REGISTRATION.**

4 (a) REQUIREMENT TO REGISTER.—

5 (1) IN GENERAL.—Subject to paragraph (2),
6 prior to engaging in any foreign labor contracting
7 activity, any person who is a foreign labor contractor
8 or who, for any money or other valuable consider-
9 ation paid or promised to be paid, performs a for-
10 eign labor contracting activity on behalf of a foreign
11 labor contractor, shall obtain a certificate of reg-
12 istration from the Secretary of Labor pursuant to
13 regulations promulgated by the Secretary under sub-
14 section (c).

15 (2) EXCEPTION FOR CERTAIN EMPLOYERS.—An
16 employer, or employee of an employer, who engages
17 in foreign labor contracting activity solely to find
18 employees for that employer's own use, and without
19 the participation of any other foreign labor con-
20 tractor, shall not be required to register under this
21 section.

22 (b) NOTIFICATION.—

23 (1) ANNUAL EMPLOYER NOTIFICATION.—Each
24 employer shall notify the Secretary, not less fre-
25 quently than once every year, of the identity of any

1 foreign labor contractor involved in any foreign labor
2 contracting activity for, or on behalf of, the em-
3 ployer, including at a minimum, the name and ad-
4 dress of the foreign labor contractor, a description of
5 the services for which the foreign labor contractor is
6 being used, whether the foreign labor contractor is
7 to receive any economic compensation for the serv-
8 ices, and, if so, the identity of the person or entity
9 who is paying for the services.

10 (2) ANNUAL FOREIGN LABOR CONTRACTOR NO-
11 TIFICATION.—Each foreign labor contractor shall
12 notify the Secretary, not less frequently than once
13 every year, of the identity of any subcontractee,
14 agent, or foreign labor contractor employee involved
15 in any foreign labor contracting activity for, or on
16 behalf of, the foreign labor contractor.

17 (3) NONCOMPLIANCE NOTIFICATION.—An em-
18 ployer shall notify the Secretary of the identity of a
19 foreign labor contractor whose activities do not com-
20 ply with this subtitle.

21 (4) AGREEMENT.—Not later than 7 days after
22 receiving a request from the Secretary, an employer
23 shall provide the Secretary with the identity of any
24 foreign labor contractor with which the employer has
25 a contract or other agreement.

1 (c) REGULATIONS.—Not later than 180 days after
2 the date of the enactment of this Act, the Secretary shall
3 promulgate regulations to establish an efficient electronic
4 process for the timely investigation and approval of an ap-
5 plication for a certificate of registration of foreign labor
6 contractors, including—

7 (1) a declaration, subscribed and sworn to by
8 the applicant, stating the applicant’s permanent
9 place of residence, the foreign labor contracting ac-
10 tivities for which the certificate is requested, and
11 such other relevant information as the Secretary
12 may require;

13 (2) a set of fingerprints of the applicant;

14 (3) an expeditious means to update registra-
15 tions and renew certificates;

16 (4) providing for the consent of any foreign
17 labor recruiter to the designation by a court of the
18 Secretary as an agent available to accept service of
19 summons in any action against the applicant, if the
20 applicant has left the jurisdiction in which the action
21 is commenced, otherwise has become unavailable to
22 accept service, or is subject to personal jurisdiction
23 in no State;

24 (5) providing for the consent of any foreign
25 labor recruiter to jurisdiction in the Department or

1 any Federal or State court in the United States for
2 any action brought by any aggrieved individual or
3 worker;

4 (6) providing for cooperation in any investiga-
5 tion by the Secretary or other appropriate authori-
6 ties;

7 (7) providing for consent to the forfeiture of the
8 bond for failure to cooperate with these provisions;

9 (8) providing for consent to be liable for viola-
10 tions of this subtitle by any agents or subcontractees
11 of any level in relation to the foreign labor con-
12 tracting activity of the agent or subcontractee to the
13 same extent as if the foreign labor contractor had
14 committed the violation; and

15 (9) providing for consultation with other appro-
16 priate Federal agencies to determine whether any
17 reason exists to deny registration to a foreign labor
18 contractor.

19 (d) TERM OF REGISTRATION.—Unless suspended or
20 revoked, a certificate under this section shall be valid for
21 2 years.

22 (e) APPLICATION FEE.—

23 (1) REQUIREMENT FOR FEE.—In addition to
24 any other fees authorized by law, the Secretary shall
25 impose a fee, to be deposited in the general fund of

1 the Treasury, on a foreign labor contractor that sub-
2 mits an application for a certificate of registration
3 under this section.

4 (2) AMOUNT OF FEE.—The amount of the fee
5 required by paragraph (1) shall be set at a level that
6 the Secretary determines sufficient to cover the full
7 costs of carrying out foreign labor contract registra-
8 tion activities under this subtitle, including worker
9 education and any additional costs associated with
10 the administration of the fees collected.

11 (f) REFUSAL TO ISSUE; REVOCATION.—In accord-
12 ance with regulations promulgated by the Secretary, the
13 Secretary shall refuse to issue or renew, or shall revoke
14 and debar from eligibility to obtain a certificate of reg-
15 istration for a period of not greater than 5 years, after
16 notice and an opportunity for a hearing, a certificate of
17 registration under this section if—

18 (1) the applicant for, or holder of, the certifi-
19 cation has knowingly made a material misrepresen-
20 tation in the application for such certificate;

21 (2) the applicant for, or holder of, the certifi-
22 cation is not the real party in interest in the applica-
23 tion or certificate of registration and the real party
24 in interest—

1 (A) is a person who has been refused
2 issuance or renewal of a certificate;

3 (B) has had a certificate revoked; or

4 (C) does not qualify for a certificate under
5 this section;

6 (3) the applicant for, or holder of, the certifi-
7 cation has been convicted within the preceding 5
8 years of—

9 (A) any felony under State or Federal law
10 or crime involving robbery, bribery, extortion,
11 embezzlement, grand larceny, burglary, arson,
12 violation of narcotics laws, murder, rape, as-
13 sault with intent to kill, assault which inflicts
14 grievous bodily injury, prostitution, peonage, or
15 smuggling or harboring individuals who have
16 entered the United States illegally; or

17 (B) any crime relating to gambling, or to
18 the sale, distribution or possession of alcoholic
19 beverages, in connection with or incident to any
20 labor contracting activities; or

21 (4) the applicant for, or holder of, the certifi-
22 cation has materially failed to comply with this sec-
23 tion.

24 (g) RE-REGISTRATION OF VIOLATORS.—The Sec-
25 retary shall establish a procedure by which a foreign labor

1 contractor that has had its registration revoked under sub-
2 section (f) may seek to re-register under this subsection
3 by demonstrating to the Secretary's satisfaction that the
4 foreign labor contractor has not violated this subtitle in
5 the previous 5 years and that the foreign labor contractor
6 has taken sufficient steps to prevent future violations of
7 this subtitle.

8 **SEC. 3606. BONDING REQUIREMENT.**

9 (a) IN GENERAL.—The Secretary shall require a for-
10 eign labor contractor to post a bond in an amount suffi-
11 cient to ensure the ability of the foreign labor contractor
12 to discharge its responsibilities and to ensure protection
13 of workers, including wages.

14 (b) REGULATIONS.—The Secretary, by regulation,
15 shall establish the conditions under which the bond
16 amount is determined, paid, and forfeited.

17 (c) RELATIONSHIP TO OTHER REMEDIES.—The bond
18 requirements and forfeiture of the bond under this section
19 shall be in addition to other remedies under 3610 or any
20 other law.

21 **SEC. 3607. MAINTENANCE OF LISTS.**

22 (a) IN GENERAL.—The Secretary shall maintain—

23 (1) a list of all foreign labor contractors reg-
24 istered under this subsection, including—

1 (A) the countries from which the contrac-
2 tors recruit;

3 (B) the employers for whom the contrac-
4 tors recruit;

5 (C) the visa categories and occupations for
6 which the contractors recruit; and

7 (D) the States where recruited workers are
8 employed; and

9 (2) a list of all foreign labor contractors whose
10 certificate of registration the Secretary has revoked.

11 (b) UPDATES; AVAILABILITY.—The Secretary shall—

12 (1) update the lists required by subsection (a)
13 on an ongoing basis, not less frequently than every
14 6 months; and

15 (2) make such lists publicly available, including
16 through continuous publication on Internet websites
17 and in written form at and on the websites of
18 United States embassies in the official language of
19 that country.

20 (c) INTER-AGENCY AVAILABILITY.—The Secretary
21 shall share the information described in subsection (a)
22 with the Secretary of State.

1 **SEC. 3608. AMENDMENT TO THE IMMIGRATION AND NA-**
2 **TIONALITY ACT.**

3 Section 214 (8 U.S.C. 1184) is amended by adding
4 at the end the following:

5 “(s) A visa shall not be issued under the subpara-
6 graph (A)(iii), (B)(i) (but only for domestic servants de-
7 scribed in clause (i) or (ii) of section 274a.12(c)(17) of
8 title 8, Code of Federal Regulations (as in effect on De-
9 cember 4, 2007)), (G)(v), (H), (J), (L), (Q), (R), or (W)
10 of section 101(a)(15) until the consular officer—

11 “(1) has provided to and reviewed with the ap-
12 plicant, in the applicant’s language (or a language
13 the applicant understands), a copy of the informa-
14 tion and resources pamphlet required by section 202
15 of the William Wilberforce Trafficking Victims Pro-
16 tection Reauthorization Act of 2008 (8 U.S.C.
17 1375b); and

18 “(2) has reviewed and made a part of the visa
19 file the foreign labor recruiter disclosures required
20 by section 3602 of the Border Security, Economic
21 Opportunity, and Immigration Modernization Act,
22 including whether the foreign labor recruiter is reg-
23 istered pursuant to that section.”.

24 **SEC. 3609. RESPONSIBILITIES OF SECRETARY OF STATE.**

25 (a) IN GENERAL.—The Secretary of State shall en-
26 sure that each United States diplomatic mission has a per-

1 son who shall be responsible for receiving information
2 from any worker who has been subject to violations of this
3 subtitle.

4 (b) PROVISION OF INFORMATION.—The responsible
5 person referred to in subsection (a) shall ensure that the
6 information received is provided to the Department of Jus-
7 tice, the Department of Labor, or any other relevant Fed-
8 eral agency.

9 (c) MECHANISMS.—The Attorney General and the
10 Secretary shall ensure that there is a mechanism for any
11 actions that need to be taken in response to information
12 received under subsection (a).

13 (d) ASSISTANCE FROM FOREIGN GOVERNMENT.—
14 The person designated for receiving information pursuant
15 to subsection (a) is strongly encouraged to coordinate with
16 governments and civil society organizations in the coun-
17 tries of origin to ensure the worker receives additional sup-
18 port.

19 (e) MAINTENANCE AND AVAILABILITY OF INFORMA-
20 TION.—The Secretary of State shall ensure that con-
21 sulates maintain information regarding the identities of
22 foreign labor contractors and the employers to whom the
23 foreign labor contractors supply workers. The Secretary
24 of State shall make such information publicly available in
25 written form and online, including on the websites of

1 United States embassies in the official language of that
2 country.

3 (f) ANNUAL PUBLIC DISCLOSE.—The Secretary of
4 State shall make publicly available online, on an annual
5 basis, data disclosing the gender, country of origin and
6 state, if available, date of birth, wage, level of training,
7 and occupation category, disaggregated by job and by visa
8 category and subcategory.

9 **SEC. 3610. ENFORCEMENT PROVISIONS.**

10 (a) COMPLAINTS AND INVESTIGATIONS.—The Sec-
11 retary—

12 (1) shall establish a process for the receipt, in-
13 vestigation, and disposition of complaints filed by
14 any person, including complaints respecting a for-
15 eign labor contractor's compliance with this subtitle;
16 and

17 (2) either pursuant to the process required by
18 paragraph (1) or otherwise, may investigate employ-
19 ers or foreign labor contractors, including actions oc-
20 ccurring in a foreign country, as necessary to deter-
21 mine compliance with this subtitle.

22 (b) ENFORCEMENT.—

23 (1) IN GENERAL.—A worker who believes that
24 he or she has suffered a violation of this subtitle
25 may seek relief from an employer by—

1 (A) filing a complaint with the Secretary
2 within 3 years after the date on which the viola-
3 tion occurred or date on which the employee be-
4 came aware of the violation; or

5 (B) if the Secretary has not issued a final
6 decision within 120 days of the filing of the
7 complaint and there is no showing that such
8 delay is due to the bad faith of the claimant,
9 bringing an action at law or equity for de novo
10 review in the appropriate district court of the
11 United States, which shall have jurisdiction
12 over such an action without regard to the
13 amount in controversy.

14 (2) PROCEDURE.—

15 (A) IN GENERAL.—Unless otherwise pro-
16 vided herein, a complaint under paragraph
17 (1)(A) shall be governed under the rules and
18 procedures set forth in paragraphs (1) and
19 (2)(A) of section 42121(b) of title 49, United
20 States Code.

21 (B) EXCEPTION.—Notification of a com-
22 plaint under paragraph (1)(A) shall be made to
23 each person or entity named in the complaint
24 as a defendant and to the employer.

1 (C) STATUTE OF LIMITATIONS.—An action
2 filed in a district court of the United States
3 under paragraph (1)(B) shall be commenced
4 not later than 180 days after the last day of the
5 120-day period referred to in that paragraph.

6 (D) JURY TRIAL.—A party to an action
7 brought under paragraph (1)(B) shall be enti-
8 tled to trial by jury.

9 (c) ADMINISTRATIVE ENFORCEMENT.—

10 (1) IN GENERAL.—If the Secretary finds, after
11 notice and an opportunity for a hearing, any foreign
12 labor contractor or employer failed to comply with
13 any of the requirements of this subtitle, the Sec-
14 retary may impose the following against such con-
15 tractor or employer—

16 (A) a fine in an amount not more than
17 \$10,000 per violation; and

18 (B) upon the occasion of a third violation
19 or a failure to comply with representations, a
20 fine of not more than \$25,000 per violation.

21 (d) AUTHORITY TO ENSURE COMPLIANCE.—The
22 Secretary is authorized to take other such actions, includ-
23 ing issuing subpoenas and seeking appropriate injunctive
24 relief and recovery of damages, as may be necessary to

1 assure compliance with the terms and conditions of this
2 subtitle.

3 (e) BONDING.—Pursuant to the bonding requirement
4 in section 3606, bond liquidation and forfeitures shall be
5 in addition to other remedies under this section or any
6 other law.

7 (f) CIVIL ACTION.—

8 (1) IN GENERAL.—The Secretary or any person
9 aggrieved by a violation of this subtitle may bring a
10 civil action against any foreign labor contractor that
11 does not meet the requirements under subsection
12 (g)(2) in any court of competent jurisdiction—

13 (A) to seek remedial action, including in-
14 junctive relief;

15 (B) to recover damages on behalf of any
16 worker harmed by a violation of this subsection;
17 and

18 (C) to ensure compliance with require-
19 ments of this section.

20 (2) ACTIONS BY THE SECRETARY OF HOME-
21 LAND SECURITY.—

22 (A) SUMS RECOVERED.—Any sums recov-
23 ered by the Secretary on behalf of a worker
24 under paragraph (1) or through liquidation of
25 the bond held pursuant to section 3606 shall be

1 held in a special deposit account and shall be
2 paid, on order of the Secretary, directly to each
3 worker affected. Any such sums not paid to a
4 worker because of inability to do so within a pe-
5 riod of 5 years shall be credited as an offsetting
6 collection to the appropriations account of the
7 Secretary for expenses for the administration of
8 this section and shall remain available to the
9 Secretary until expended or may be used for en-
10 forcement of the laws within the jurisdiction of
11 the wage and hour division or may be trans-
12 ferred to the Secretary of Health and Human
13 Services for the purpose of providing support to
14 programs that provide assistance to victims of
15 trafficking in persons or other exploited per-
16 sons. The Secretary shall work with any attor-
17 ney or organization representing workers to lo-
18 cate workers owed sums under this section.

19 (B) REPRESENTATION.—Except as pro-
20 vided in section 518(a) of title 28, United
21 States Code, the Attorney General may appear
22 for and represent the Secretary in any civil liti-
23 gation brought under this paragraph. All such
24 litigation shall be subject to the direction and
25 control of the Attorney General.

1 (3) ACTIONS BY INDIVIDUALS.—

2 (A) AWARD.—If the court finds in a civil
3 action filed by an individual under this section
4 that the defendant has violated any provision of
5 this subtitle (or any regulation issued pursuant
6 to this subtitle), the court may award—

7 (i) damages, up to and including an
8 amount equal to the amount of actual
9 damages, and statutory damages of up to
10 \$1,000 per plaintiff per violation, or other
11 equitable relief, except that with respect to
12 statutory damages—

13 (I) multiple infractions of a sin-
14 gle provision of this subtitle (or of a
15 regulation under this subtitle) shall
16 constitute only 1 violation for pur-
17 poses of section 3602(a) to determine
18 the amount of statutory damages due
19 a plaintiff; and

20 (II) if such complaint is certified
21 as a class action the court may
22 award—

23 (aa) damages up to an
24 amount equal to the amount of
25 actual damages; and

1 (bb) statutory damages of
2 not more than the lesser of up to
3 \$1,000 per class member per vio-
4 lation, or up to \$500,000; and
5 other equitable relief;

6 (ii) reasonable attorneys' fees and
7 costs; and

8 (iii) such other and further relief, in-
9 cluding declaratory and injunctive relief, as
10 necessary to effectuate the purposes of this
11 subtitle.

12 (B) CRITERIA.—In determining the
13 amount of statutory damages to be awarded
14 under subparagraph (A), the court is author-
15 ized to consider whether an attempt was made
16 to resolve the issues in dispute before the resort
17 to litigation.

18 (C) BOND.—To satisfy the damages, fees,
19 and costs found owing under this clause, the
20 Secretary shall release as much of the bond
21 held pursuant to section 3606 as necessary.

22 (D) APPEAL.—Any civil action brought
23 under this section shall be subject to appeal as
24 provided in chapter 83 of title 28, United
25 States Code (28 U.S.C. 1291 et seq.).

1 (E) ACCESS TO LEGAL SERVICES COR-
2 PORATION.—Notwithstanding any other provi-
3 sion of law, the Legal Services Corporation and
4 recipients of its funding may provide legal as-
5 sistance on behalf of any alien with respect to
6 any provision of this subtitle.

7 (g) AGENCY LIABILITY.—

8 (1) IN GENERAL.—Beginning 180 days after
9 the Secretary has promulgated regulations pursuant
10 to section 3605(c), an employer who retains the
11 services of a foreign labor contractor shall only use
12 those foreign labor contractors who are registered
13 under section 3605.

14 (2) SAFE HARBOR.—An employer shall not have
15 any liability under this section if the employer hires
16 workers referred by a foreign labor contractor that
17 has a valid registration with the Department pursu-
18 ant to section 3604.

19 (3) LIABILITY FOR AGENTS.—Foreign labor
20 contractors shall be subject to the provisions of this
21 section for violations committed by the foreign labor
22 contractor's agents or subcontractees of any level in
23 relation to their foreign labor contracting activity to
24 the same extent as if the foreign labor contractor
25 had committed the violation.

1 (h) RETALIATION.—

2 (1) IN GENERAL.—No person shall intimidate,
3 threaten, restrain, coerce, discharge, or in any other
4 manner discriminate or retaliate against any worker
5 or their family members (including a former em-
6 ployee or an applicant for employment) because such
7 worker disclosed information to any person that the
8 worker reasonably believes evidences a violation of
9 this section (or any rule or regulation pertaining to
10 this section), including seeking legal assistance of
11 counsel or cooperating with an investigation or other
12 proceeding concerning compliance with this section
13 (or any rule or regulation pertaining to this section).

14 (2) ENFORCEMENT.—An individual who is sub-
15 ject to any conduct described in paragraph (1) may,
16 in a civil action, recover appropriate relief, including
17 reasonable attorneys' fees and costs, with respect to
18 that violation. Any civil action under this subpara-
19 graph shall be stayed during the pendency of any
20 criminal action arising out of the violation.

21 (i) WAIVER OF RIGHTS.—Agreements by employees
22 purporting to waive or to modify their rights under this
23 subtitle shall be void as contrary to public policy.

24 (j) PRESENCE DURING PENDENCY OF ACTIONS.—

1 (1) IN GENERAL.—If other immigration relief is
2 not available, the Attorney General and the Sec-
3 retary shall grant advance parole to permit a non-
4 immigrant to remain legally in the United States for
5 time sufficient to fully and effectively participate in
6 all legal proceedings related to any action taken pur-
7 suant to this section.

8 (2) REGULATIONS.—Not later than 180 days
9 after the date of the enactment of this Act, the Sec-
10 retary shall promulgate regulations to carry out
11 paragraph (1).

12 **SEC. 3611. DETECTING AND PREVENTING CHILD TRAF-**
13 **FICKING.**

14 The Secretary shall mandate the live training of all
15 U.S. Customs and Border Protection personnel who are
16 likely to come into contact with unaccompanied alien chil-
17 dren. Such training shall incorporate the services of child
18 welfare professionals with expertise in culturally com-
19 petent, trauma-centered, and developmentally appropriate
20 interviewing skills to assist U.S. Customs and Border Pro-
21 tection in the screening of children attempting to enter
22 the United States.

23 **SEC. 3612. PROTECTING CHILD TRAFFICKING VICTIMS.**

24 (a) SHORT TITLE.—This section may be cited as the
25 “Child Trafficking Victims Protection Act”.

1 (b) DEFINED TERM.—In this section, the term “un-
2 accompanied alien children” has the meaning given such
3 term in section 462 of the Homeland Security Act of 2002
4 (6 U.S.C. 279).

5 (c) CARE AND TRANSPORTATION.—Notwithstanding
6 any other provision of law, the Secretary shall ensure that
7 all unaccompanied alien children who will undergo any im-
8 migration proceedings before the Department or the Exec-
9 utive Office for Immigration Review are duly transported
10 and placed in the care and legal and physical custody of
11 the Office of Refugee Resettlement not later than 72
12 hours after their apprehension absent exceptional cir-
13 cumstances, including a natural disaster or comparable
14 emergency beyond the control of the Secretary or the Of-
15 fice of Refugee Resettlement. The Secretary, to the extent
16 practicable, shall ensure that female officers are continu-
17 ously present during the transfer and transport of female
18 detainees who are in the custody of the Department.

19 (d) QUALIFIED RESOURCES.—

20 (1) IN GENERAL.—The Secretary shall provide
21 adequately trained and qualified staff and resources,
22 including the accommodation of child welfare offi-
23 cials, in accordance with subsection (e), at U.S. Cus-
24 toms and Border Protection ports of entry and sta-
25 tions.

1 (2) CHILD WELFARE PROFESSIONALS.—The
2 Secretary of Health and Human Services, in con-
3 sultation with the Secretary, shall hire, on a full- or
4 part-time basis, child welfare professionals who will
5 provide assistance, either in person or by other ap-
6 propriate methods of communication, in not fewer
7 than 7 of the U.S. Customs and Border Protection
8 offices or stations with the largest number of unac-
9 companied alien child apprehensions in the previous
10 fiscal year.

11 (e) CHILD WELFARE PROFESSIONALS.—

12 (1) IN GENERAL.—The Secretary, in consulta-
13 tion with the Secretary of Health and Human Serv-
14 ices, shall ensure that qualified child welfare profes-
15 sionals with expertise in culturally competent, trau-
16 ma-centered, and developmentally appropriate inter-
17 viewing skills are available at each major port of
18 entry described in subsection (d).

19 (2) DUTIES.—Child welfare professionals de-
20 scribed in paragraph (1) shall—

21 (A) develop guidelines for treatment of un-
22 accompanied alien children in the custody of the
23 Department;

24 (B) conduct screening of all unaccom-
25 panied alien children in accordance with section

1 235(a)(4) of the William Wilberforce Traf-
2 ficking Victims Protection Reauthorization Act
3 of 2008 (8 U.S.C. 1232(a)(4));

4 (C) notify the Department and the Office
5 of Refugee Resettlement of children that poten-
6 tially meet the notification and transfer require-
7 ments set forth in subsections (a) and (b) of
8 section 235 of such Act (8 U.S.C. 1232);

9 (D) interview adult relatives accompanying
10 unaccompanied alien children;

11 (E) provide an initial family relationship
12 and trafficking assessment and recommenda-
13 tions regarding unaccompanied alien children's
14 initial placements to the Office of Refugee Re-
15 settlement, which shall be conducted in accord-
16 ance with the time frame set forth in sub-
17 sections (a)(4) and (b)(3) of section 235 of
18 such Act (8 U.S.C. 1232); and

19 (F) ensure that each unaccompanied alien
20 child in the custody of U.S. Customs and Bor-
21 der Protection—

22 (i) receives emergency medical care
23 when necessary;

24 (ii) receives emergency medical and
25 mental health care that complies with the

1 standards adopted pursuant to section 8(c)
2 of the Prison Rape Elimination Act of
3 2003 (42 U.S.C. 15607(c)) whenever nec-
4 essary, including in cases in which a child
5 is at risk to harm himself, herself, or oth-
6 ers;

7 (iii) is provided with climate appro-
8 priate clothing, shoes, basic personal hy-
9 giene and sanitary products, a pillow, lin-
10 ens, and sufficient blankets to rest at a
11 comfortable temperature;

12 (iv) receives adequate nutrition;

13 (v) enjoys a safe and sanitary living
14 environment;

15 (vi) has access to daily recreational
16 programs and activities if held for a period
17 longer than 24 hours;

18 (vii) has access to legal services and
19 consular officials; and

20 (viii) is permitted to make supervised
21 phone calls to family members.

22 (3) FINAL DETERMINATIONS.—The Office of
23 Refugee Resettlement in accordance with applicable
24 policies and procedures for sponsors, shall submit
25 final determinations on family relationships to the

1 Secretary, who shall consider such adult relatives for
2 community-based support alternatives to detention.

3 (4) REPORT.—Not later than 18 months after
4 the date of the enactment of this Act, and annually
5 thereafter, the Secretary shall submit a report to
6 Congress that—

7 (A) describes the screening procedures
8 used by the child welfare professionals to screen
9 unaccompanied alien children;

10 (B) assesses the effectiveness of such
11 screenings; and

12 (C) includes data on all unaccompanied
13 alien children who were screened by child wel-
14 fare professionals;

15 (f) IMMEDIATE NOTIFICATION.—The Secretary shall
16 notify the Office of Refugee Resettlement of an unaccom-
17 panied alien child in the custody of the Department as
18 soon as practicable, but generally not later than 48 hours
19 after the Department encounters the child, to effectively
20 and efficiently coordinate the child's transfer to and place-
21 ment with the Office of Refugee Resettlement.

22 (g) NOTICE OF RIGHTS AND RIGHT TO ACCESS TO
23 COUNSEL.—

1 (1) IN GENERAL.—The Secretary shall ensure
2 that all unaccompanied alien children, upon appre-
3 hension, are provided—

4 (A) an interview and screening with a child
5 welfare professional described in subsection
6 (e)(1); and

7 (B) an orientation and oral and written
8 notice of their rights under the Immigration
9 and Nationality Act, including—

10 (i) their right to relief from removal;

11 (ii) their right to confer with counsel

12 (as guaranteed under section 292 of such
13 Act (8 U.S.C. 1362)), family, or friends
14 while in the temporary custody of the De-
15 partment; and

16 (iii) relevant complaint mechanisms to
17 report any abuse or misconduct they may
18 have experienced.

19 (2) LANGUAGES.—The Secretary shall ensure
20 that—

21 (A) the video orientation and written no-
22 tice of rights described in paragraph (1) is
23 available in English and in the 5 most common
24 native languages spoken by the unaccompanied

1 children held in custody at that location during
2 the preceding fiscal year; and

3 (B) the oral notice of rights is available in
4 English and in the most common native lan-
5 guage spoken by the unaccompanied children
6 held in custody at that location during the pre-
7 ceding fiscal year.

8 (h) CONFIDENTIALITY.—The Secretary of Health
9 and Human Services shall maintain the privacy and con-
10 fidentiality of all information gathered in the course of
11 providing care, custody, placement, and follow-up services
12 to unaccompanied alien children, consistent with the best
13 interest of the unaccompanied alien child, by not dis-
14 closing such information to other government agencies or
15 nonparental third parties unless such disclosure is—

16 (1) recorded in writing and placed in the child's
17 file;

18 (2) in the child's best interest; and

19 (3)(A) authorized by the child or by an ap-
20 proved sponsor in accordance with section 235 of the
21 William Wilberforce Trafficking Victims Protection
22 Reauthorization Act of 2008 (8 U.S.C. 1232) and
23 the Health Insurance Portability and Accountability
24 Act (Public Law 104–191); or

1 (B) provided to a duly recognized law enforce-
2 ment entity to prevent imminent and serious harm
3 to another individual.

4 (i) OTHER POLICIES AND PROCEDURES.—The Sec-
5 retary shall adopt fundamental child protection policies
6 and procedures—

7 (1) for reliable age determinations of children,
8 developed in consultation with medical and child wel-
9 fare experts, which exclude the use of fallible foren-
10 sic testing of children’s bone and teeth;

11 (2) to utilize all legal authorities to defer the
12 child’s removal if the child faces a risk of life-threat-
13 ening harm upon return including due to the child’s
14 mental health or medical condition; and

15 (3) to ensure, in accordance with the Juvenile
16 Justice and Delinquency Prevention Act of 1974 (42
17 U.S.C. 5601 et seq.), that unaccompanied alien chil-
18 dren, while in detention, are—

19 (A) physically separated from any adult
20 who is not an immediate family member; and

21 (B) separated from—

22 (i) immigration detainees and inmates
23 with criminal convictions;

24 (ii) pretrial inmates facing criminal
25 prosecution; and

1 (iii) inmates exhibiting violent behav-
2 ior.

3 (j) REPATRIATION AND REINTEGRATION PRO-
4 GRAM.—

5 (1) IN GENERAL.—The Administrator of the
6 United States Agency for International Develop-
7 ment, in conjunction with the Secretary, the Sec-
8 retary of Health and Human Services, the Attorney
9 General, international organizations, and nongovern-
10 mental organizations in the United States with ex-
11 pertise in repatriation and reintegration, shall create
12 a multi-year program to develop and implement best
13 practices and sustainable programs in the United
14 States and within the country of return to ensure
15 the safe and sustainable repatriation and reintegra-
16 tion of unaccompanied alien children into their coun-
17 try of nationality or of last habitual residence, in-
18 cluding placement with their families, legal guard-
19 ians, or other sponsoring agencies.

20 (2) REPORT ON REPATRIATION AND RE-
21 INTEGRATION OF UNACCOMPANIED ALIEN CHIL-
22 DREN.—Not later than 18 months after the date of
23 the enactment of this Act, and annually thereafter,
24 the Administrator of the Agency for International
25 Development shall submit a substantive report to the

1 Committee on the Judiciary of the Senate and the
2 Committee on the Judiciary of the House of Rep-
3 resentatives on efforts to improve repatriation and
4 reintegration programs for unaccompanied alien chil-
5 dren.

6 (k) TRANSFER OF FUNDS.—

7 (1) AUTHORIZATION.—The Secretary, in ac-
8 cordance with a written agreement between the Sec-
9 retary and the Secretary of Health and Human
10 Services, shall transfer such amounts as may be nec-
11 essary to carry out the duties described in subsection
12 (f)(2) from amounts appropriated for U.S. Customs
13 and Border Protection to the Department of Health
14 and Human Services.

15 (2) REPORT.—Not later than 15 days before
16 any proposed transfer under paragraph (1), the Sec-
17 retary of Health and Human Services, in consulta-
18 tion with the Secretary, shall submit a detailed ex-
19 penditure plan that describes the actions proposed to
20 be taken with amounts transferred under such para-
21 graph to—

22 (A) the Committee on Appropriations of
23 the Senate; and

24 (B) the Committee on Appropriations of
25 the House of Representatives.

1 SEC. 3613. 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.

5 SEC. 3614. REGULATIONS.

6 The Secretary shall, in consultation with the Sec-
7 retary of Labor, prescribe regulations to implement this
8 subtitle and to develop policies and procedures to enforce
9 the provisions of this subtitle.

10 **Subtitle G—Interior Enforcement**

11 SEC. 3701. CRIMINAL STREET GANGS.

(a) INADMISSIBILITY.—Section 212(a)(2) (8 U.S.C. 1182(a)(2)) is amended by inserting after subparagraph (I) the following:

15 “(J) ALIENS IN CRIMINAL STREET
16 GANGS.—

17 “(i) IN GENERAL.—Any alien is inad-
18 missible—

19 “(I) who has been convicted of
20 an offense for which an element was
21 active participation in a criminal
22 street gang (as defined in section
23 521(a) of title 18, United States
24 Code) and the alien—

25 “(aa) had knowledge that
26 the gang’s members engaged in

1 or have engaged in a continuing
2 series of offenses described in
3 section 521(c) of title 18, United
4 States Code; and

5 “(bb) acted with the inten-
6 tion to promote or further the fe-
7 lonious activities of the criminal
8 street gang or maintain or in-
9 crease his or her position in the
10 gang; or

11 “(II) subject to clause (ii), who is
12 18 years of age or older, who is phys-
13 ically present outside the United
14 States, whom the Secretary deter-
15 mines by clear and convincing evi-
16 dence, based upon law enforcement in-
17 formation deemed credible by the Sec-
18 retary, has, since the age of 18, know-
19 ingly and willingly participated in a
20 criminal street gang with knowledge
21 that such participation promoted or
22 furthered the illegal activity of the
23 gang.

24 “(ii) WAIVER.—The Secretary may
25 waive clause (i)(II) if the alien has re-

1 nounced all association with the criminal
2 street gang, is otherwise admissible, and is
3 not a threat to the security of the United
4 States.”.

5 (b) GROUNDS FOR DEPORTATION.—Section
6 237(a)(2) (8 U.S.C. 1227(a)(2)) is amended by adding at
7 the end the following:

8 “(G) ALIENS ASSOCIATED WITH CRIMINAL
9 STREET GANGS.—Any alien is removable who
10 has been convicted of an offense for which an
11 element was active participation in a criminal
12 street gang (as defined in section 521(a) of title
13 18, United States Code), and the alien—

14 “(i) had knowledge that the gang’s
15 members engaged in or have engaged in a
16 continuing series of offenses described in
17 section 521(c) of title 18, United States
18 Code; and

19 “(ii) acted with the intention to pro-
20 mote or further the felonious activities the
21 criminal street gang or increase his or her
22 position in such gang.”.

23 (c) GROUND OF INELIGIBILITY FOR REGISTERED
24 PROVISIONAL IMMIGRANT STATUS.—

1 (1) IN GENERAL.—An alien who is 18 years of
2 age or older is ineligible for registered provisional
3 immigrant status if the Secretary determines that
4 the alien—

5 (A) has been convicted of an offense for
6 which an element was active participation in a
7 criminal street gang (as defined in section
8 521(a) of title 18, United States Code, and the
9 alien—

10 (i) had knowledge that the gang's
11 members engaged in or have engaged in a
12 continuing series of offenses described in
13 section 521(c) of title 18, United States
14 Code; and

15 (ii) acted with the intention to pro-
16 mote or further the felonious activities of
17 the criminal street gang or maintain or in-
18 crease his or her position in such gang; or

19 (B) subject to paragraph (2), any alien
20 who is 18 years of age or older whom the Sec-
21 retary determines by clear and convincing evi-
22 dence, based upon law enforcement information
23 deemed credible by the Secretary, has, since the
24 age of 18, knowingly and willingly participated
25 in a such gang with knowledge that such par-

1 ticipation promoted or furthered the illegal ac-
2 tivity of such gang.

3 (2) WAIVER.—The Secretary may waive the ap-
4 plication of paragraph (1)(B) if the alien has re-
5 nounced all association with the criminal street
6 gang, is otherwise admissible, and is not a threat to
7 the security of the United States.

8 **SEC. 3702. BANNING HABITUAL DRUNK DRIVERS FROM THE**
9 **UNITED STATES.**

10 (a) **GROUND** **FOR** **INADMISSIBILITY.**—Section
11 212(a)(2) (8 U.S.C. 1182(a)(2)), as amended by section
12 3701(a), is further amended—

13 (1) by redesignating subparagraph (F) as sub-
14 paragraph (L); and

15 (2) by inserting after subparagraph (E) the fol-
16 lowing:

17 “(F) **HABITUAL DRUNK DRIVERS.**—An
18 alien convicted of 3 or more offenses for driving
19 under the influence or driving while intoxicated
20 on separate dates is inadmissible.”.

21 (b) **GROUND** **FOR** **DEPORTATION.**—Section
22 237(a)(2) (8 U.S.C. 1227(a)(2)), as amended by section
23 3701(b), is further amended by adding at the end the fol-
24 lowing:

1 “(H) HABITUAL DRUNK DRIVERS.—An
2 alien convicted of 3 or more offenses for driving
3 under the influence or driving while intoxicated,
4 at least 1 of which occurred after the date of
5 the enactment of the Border Security, Eco-
6 nomic Opportunity, and Immigration Mod-
7 ernization Act, is deportable.”.

8 (c) IN GENERAL.—

9 (1) AGGRAVATED FELONY.—Section
10 101(a)(43)(F) (8 U.S.C. 1101(a)(43)(F)) is amend-
11 ed by striking “for which the term of imprisonment”
12 and inserting “, including a third drunk driving con-
13 viction, for which the term of imprisonment is”.

14 (2) EFFECTIVE DATE AND APPLICATION.—

15 (A) EFFECTIVE DATE.—The amendment
16 made by paragraph (1) shall take effect on the
17 date of the enactment of this Act.

18 (B) APPLICATION.—

19 (i) IN GENERAL.—Except as provided
20 in subparagraph (ii), the amendment made
21 by paragraph (1) shall apply to a convic-
22 tion for drunk driving that occurred be-
23 fore, on, or after such date of enactment.

24 (ii) TWO OR MORE PRIOR CONVIC-
25 TIONS.—An alien who received 2 or more

1 convictions for drunk driving before the
2 date of the enactment of this Act may not
3 be subject to removal for the commission
4 of an aggravated felony pursuant to sec-
5 tion 237(a)(2)(A)(iii) of the Immigration
6 and Nationality Act (8 U.S.C.
7 1227(a)(2)(A)(iii)) on the basis of such
8 convictions until the date on which the
9 alien is convicted of a drunk driving of-
10 fense after such date of enactment.

11 **SEC. 3703. SEXUAL ABUSE OF A MINOR.**

12 Section 101(a)(43)(A) (8 U.S.C. 1101(a)(43)(A)) is
13 amended by striking “murder, rape, or sexual abuse of
14 a minor;” and inserting “murder, rape, or sexual abuse
15 of a minor, whether or not the minority of the victim is
16 established by evidence contained in the record of convic-
17 tion or by credible evidence extrinsic to the record of con-
18 viction;”.

19 **SEC. 3704. ILLEGAL ENTRY.**

20 (a) IN GENERAL.—Section 275 (8 U.S.C. 1325) is
21 amended to read as follows:

22 **“SEC. 275. ILLEGAL ENTRY.**

23 “(a) IN GENERAL.—

1 “(1) CRIMINAL OFFENSES.—An alien shall be
2 subject to the penalties set forth in paragraph (2) if
3 the alien—

4 “(A) enters or crosses the border into the
5 United States at any time or place other than
6 as designated by the Secretary of Homeland Se-
7 curity;

8 “(B) eludes examination or inspection by
9 an immigration officer, or a customs or agri-
10 culture inspection at a port of entry; or

11 “(C) enters or crosses the border to the
12 United States by means of a knowingly false or
13 misleading representation or the concealment of
14 a material fact.

15 “(2) CRIMINAL PENALTIES.—Any alien who
16 violates any provision under paragraph (1)—

17 “(A) shall, for the first violation, be fined
18 under title 18, United States Code, imprisoned
19 not more than 12 months, or both;

20 “(B) shall, for a second or subsequent vio-
21 lation, or following an order of voluntary depar-
22 ture, be fined under such title, imprisoned not
23 more than 3 years, or both;

24 “(C) if the violation occurred after the
25 alien had been convicted of 3 or more mis-

1 demeanors with the convictions occurring on
2 different dates or of a felony for which the alien
3 served a term of imprisonment of 15 days or
4 more, shall be fined under such title, impris-
5 oned not more than 10 years, or both; and

6 “(D) if the violation occurred after the
7 alien had been convicted of a felony for which
8 the alien was sentenced to a term of imprison-
9 ment of not less than 30 months, shall be fined
10 under such title, imprisoned not more than 15
11 years, or both.

12 “(3) PRIOR CONVICTIONS.—The prior convic-
13 tions described in subparagraphs (C) and (D) of
14 paragraph (2) are elements of the offenses described
15 in that paragraph and the penalties in such subpara-
16 graphs shall apply only in cases in which the convic-
17 tion or convictions that form the basis for the addi-
18 tional penalty are—

19 “(A) alleged in the indictment or informa-
20 tion; and

21 “(B) proven beyond a reasonable doubt at
22 trial or admitted by the defendant under oath
23 as part of a plea agreement.

24 “(b) IMPROPER TIME OR PLACE; CIVIL PEN-
25 ALTIES.—Any alien older than 18 years of age who is ap-

1 prehended while knowingly entering, attempting to enter,
2 or crossing or attempting to cross the border to the United
3 States at a time or place other than as designated by im-
4 migration officers shall be subject to a civil penalty, in
5 addition to any criminal or other civil penalties that may
6 be imposed under any other provision of law, in an amount
7 equal to—

8 “(1) not less than \$250 or more than \$5,000
9 for each such entry, crossing, attempted entry, or at-
10 tempted crossing; or

11 “(2) twice the amount specified in paragraph
12 (1) if the alien had previously been subject to a civil
13 penalty under this subsection.

14 “(c) FRAUDULENT MARRIAGE.—An individual who
15 knowingly enters into a marriage for the purpose of evad-
16 ing any provision of the immigration laws shall be impris-
17 oned for not more than 5 years, fined not more than
18 \$250,000, or both.

19 “(d) COMMERCIAL ENTERPRISES.—Any individual
20 who knowingly establishes a commercial enterprise for the
21 purpose of evading any provision of the immigration laws
22 shall be imprisoned for not more than 5 years, fined in
23 accordance with title 18, United States Code, or both.”.

1 (b) CLERICAL AMENDMENT.—The table of contents
2 is amended by striking the item relating to section 275
3 and inserting the following:

“Sec. 275. Illegal entry.”.

4 (c) EFFECTIVE DATE.—The amendments made by
5 this section shall take effect 1 year after the date of the
6 enactment of this Act.

7 **SEC. 3705. REENTRY OF REMOVED ALIEN.**

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

10 **“SEC. 276. REENTRY OF REMOVED ALIEN.**

11 “(a) REENTRY AFTER REMOVAL.—Any alien who
12 has been denied admission, excluded, deported, or re-
13 moved, or who has departed the United States while an
14 order of exclusion, deportation, or removal is outstanding,
15 and subsequently enters, attempts to enter, crosses the
16 border to, attempts to cross the border to, or is at any
17 time found in the United States, shall be fined under title
18 18, United States Code, and imprisoned not more than
19 2 years.

20 “(b) REENTRY OF CRIMINAL OFFENDERS.—Not-
21 withstanding the penalty provided in subsection (a), if an
22 alien described in that subsection—

23 “(1) was convicted for 3 or more misdemeanors,
24 with the convictions occurring on different dates, be-
25 fore such removal or departure, the alien shall be

1 fined under title 18, United States Code, and im-
2 prisoned not more than 10 years, or both;

3 “(2) was convicted for a felony before such re-
4 moval or departure for which the alien was sen-
5 tenced to a term of imprisonment of not less than
6 30 months, the alien shall be fined under such title,
7 and imprisoned not more than 15 years, or both;

8 “(3) was convicted for a felony before such re-
9 moval or departure for which the alien was sen-
10 tenced to a term of imprisonment of not less than
11 60 months, the alien shall be fined under such title,
12 and imprisoned not more than 20 years, or both;

13 “(4) was convicted for 3 felonies, with the con-
14 victions occurring on different dates before such re-
15 moval or departure, the alien shall be fined under
16 such title, and imprisoned not more than 20 years,
17 or both; or

18 “(5) was convicted, before such removal or de-
19 parture, for murder, rape, kidnapping, or a felony
20 offense described in chapter 77 (relating to peonage
21 and slavery) or 113B (relating to terrorism) of such
22 title, the alien shall be fined under such title, and
23 imprisoned not more than 20 years, or both.

24 “(c) REENTRY AFTER REPEATED REMOVAL.—Any
25 alien who has been denied admission, excluded, deported,

1 or removed 3 or more times and thereafter enters, at-
2 tempts to enter, crosses the border to, attempts to cross
3 the border to, or is at any time found in the United States,
4 shall be fined under title 18, United States Code, and im-
5 prisoned not more than 10 years, or both.

6 “(d) PROOF OF PRIOR CONVICTIONS.—The prior
7 convictions described in subsection (b) are elements of the
8 offenses described in that subsection, and the penalties in
9 such subsection shall apply only in cases in which the con-
10 viction or convictions that form the basis for the additional
11 penalty are—

12 “(1) alleged in the indictment or information;
13 and

14 “(2) proven beyond a reasonable doubt at trial
15 or admitted by the defendant under oath as part of
16 a plea agreement.

17 “(e) AFFIRMATIVE DEFENSES.—It shall be an af-
18 firmative defense to a violation of this section that—

19 “(1) prior to the alleged violation, the alien had
20 sought and received the express consent of the Sec-
21 retary of Homeland Security to reapply for admis-
22 sion into the United States; or

23 “(2) at the time of the prior exclusion, deporta-
24 tion, removal, or denial of admission alleged in the
25 violation, the alien had not yet reached 18 years of

1 age and had not been convicted of a crime or adju-
2 dicated a delinquent minor by a court of the United
3 States, or a court of a state or territory, for conduct
4 that would constitute a felony if committed by an
5 adult.

6 “(f) LIMITATION ON COLLATERAL ATTACK ON UN-
7 DERLYING DEPORTATION ORDER.—In a criminal pro-
8 ceeding under this section, an alien may not challenge the
9 validity of the deportation order described in subsection
10 (a) or subsection (c) unless the alien demonstrates that—

11 “(1) the alien exhausted any administrative
12 remedies that may have been available to seek relief
13 against the order;

14 “(2) the deportation proceedings at which the
15 order was issued improperly deprived the alien of the
16 opportunity for judicial review; and

17 “(3) the entry of the order was fundamentally
18 unfair.

19 “(g) REENTRY OF ALIEN REMOVED PRIOR TO COM-
20 PLETION OF TERM OF IMPRISONMENT.—Any alien re-
21 moved pursuant to section 241(a)(4) who enters, attempts
22 to enter, crosses the border to, attempts to cross the bor-
23 der to, or is at any time found in, the United States shall
24 be incarcerated for the remainder of the sentence of im-
25 prisonment which was pending at the time of deportation

1 without any reduction for parole or supervised release un-
2 less the alien affirmatively demonstrates that the Sec-
3 retary of Homeland Security has expressly consented to
4 the alien's reentry or the alien is prima facie eligible for
5 protection from removal. Such alien shall be subject to
6 such other penalties relating to the reentry of removed
7 aliens as may be available under this section or any other
8 provision of law.

9 “(h) LIMITATION.—It is not aiding and abetting a
10 violation of this section for an individual to provide an
11 alien with emergency humanitarian assistance, including
12 emergency medical care and food, or to transport the alien
13 to a location where such assistance can be rendered with-
14 out compensation or the expectation of compensation.

15 “(i) DEFINITIONS.—In this section:

16 “(1) FELONY.—The term ‘felony’ means any
17 criminal offense punishable by a term of imprison-
18 ment of more than 1 year under the laws of the
19 United States, any State, or a foreign government.

20 “(2) MISDEMEANOR.—The term ‘misdemeanor’
21 means any criminal offense punishable by a term of
22 imprisonment of not more than 1 year under the ap-
23 plicable laws of the United States, any State, or a
24 foreign government.

1 “(3) REMOVAL.—The term ‘removal’ includes
2 any denial of admission, exclusion, deportation, or
3 removal, or any agreement by which an alien stipu-
4 lates or agrees to exclusion, deportation, or removal.

5 “(4) STATE.—The term ‘State’ means a State
6 of the United States, the District of Columbia, and
7 any commonwealth, territory, or possession of the
8 United States.”.

9 **SEC. 3706. PENALTIES RELATING TO VESSELS AND AIR-**
10 **CRAFT.**

11 Section 243(c) (8 U.S.C. 1253(c)) is amended—

12 (1) by striking “Attorney General” each place
13 such term appears and inserting “Secretary of
14 Homeland Security”;

15 (2) by striking “Commissioner” each place such
16 term appears and inserting “Secretary of Homeland
17 Security”; and

18 (3) in paragraph (1)—

19 (A) in subparagraph (A), by striking
20 “\$2,000” and inserting “\$5,000”;

21 (B) in subparagraph (B), by striking
22 “\$5,000” and inserting “\$10,000”;

23 (C) by amending subparagraph (C) to read
24 as follows:

1 “(C) COMPROMISE.—The Secretary of
2 Homeland Security, in the Secretary’s
3 unreviewable discretion and upon the receipt of
4 a written request, may mitigate the monetary
5 penalties required under this subsection for
6 each alien stowaway to an amount equal to not
7 less than \$2,000, upon such terms that the Sec-
8 retary determines to be appropriate.”; and

9 (D) by inserting at the end the following:

10 “(D) EXCEPTION.—A person, acting with-
11 out compensation or the expectation of com-
12 pensation, is not subject to penalties under this
13 paragraph if the person is—

14 “(i) providing, or attempting to pro-
15 vide, an alien with humanitarian assist-
16 ance, including emergency medical care or
17 food or water; or

18 “(ii) transporting the alien to a loca-
19 tion where such humanitarian assistance
20 can be rendered without compensation or
21 the expectation of compensation.”.

1 **SEC. 3707. REFORM OF PASSPORT, VISA, AND IMMIGRATION**
2 **FRAUD OFFENSES.**

3 (a) **TRAFFICKING IN PASSPORTS.**—Section 1541 of
4 title 18, United States Code, is amended to read as fol-
5 lows:

6 **“§ 1541. Trafficking in passports**

7 “(a) **MULTIPLE PASSPORTS.**—Subject to subsection
8 (b), any person who, during any period of 3 years or less,
9 knowingly—

10 “(1) and without lawful authority produces,
11 issues, or transfers 3 or more passports;

12 “(2) forges, counterfeits, alters, or falsely
13 makes 3 or more passports;

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

19 “(4) completes, mails, prepares, presents, signs,
20 or submits 3 or more applications for a United
21 States passport, knowing the applications to contain
22 any materially false statement or representation,
23 shall be fined under this title, imprisoned not more than
24 20 years, or both.

25 “(b) **USE IN A TERRORISM OFFENSE.**—Any person
26 who commits an offense described in subsection (a) to fa-

1 cilitate an act of international terrorism (as defined in sec-
2 tion 2331) shall be fined under this title, imprisoned not
3 more than 25 years, or both.

4 “(c) PASSPORT MATERIALS.—Any person who know-
5 ingly and without lawful authority produces, buys, sells,
6 possesses, or uses any official material (or counterfeit of
7 any official material) used to make 10 or more passports,
8 including any distinctive paper, seal, hologram, image,
9 text, symbol, stamp, engraving, or plate, shall be fined
10 under this title, imprisoned not more than 20 years, or
11 both.”.

12 (b) FALSE STATEMENT IN AN APPLICATION FOR A
13 PASSPORTS.—Section 1542 of title 18, United States
14 Code, is amended to read as follows:

15 **“§ 1542. False statement in an application for a pass-**
16 **port**

17 “(a) IN GENERAL.—Any person who knowingly
18 makes any material false statement or representation in
19 an application for a United States passport, or mails, pre-
20 pares, presents, or signs an application for a United
21 States passport knowing the application to contain any
22 material false statement or representation, shall be fined
23 under this title, imprisoned not more than 25 years (if
24 the offense was committed to facilitate an act of inter-
25 national terrorism (as defined in section 2331 of this

1 title)), 20 years (if the offense was committed to facilitate
2 a drug trafficking crime (as defined in section 929(a) of
3 this title)), 15 years (in the case of any other offense),
4 or both.

5 “(b) VENUE.—

6 “(1) IN GENERAL.—An offense under sub-
7 section (a) may be prosecuted in any district—

8 “(A) in which the false statement or rep-
9 resentation was made or the application for a
10 United States passport was prepared or signed;
11 or

12 “(B) in which or to which the application
13 was mailed or presented.

14 “(2) OFFENSES OUTSIDE THE UNITED
15 STATES.—An offense under subsection (a) involving
16 an application prepared and adjudicated outside the
17 United States may be prosecuted in the district in
18 which the resultant passport was or would have been
19 produced.

20 “(c) SAVINGS CLAUSE.—Nothing in this section may
21 be construed to limit the venue otherwise available under
22 sections 3237 and 3238 of this title.”.

23 (c) MISUSE OF A PASSPORT.—Section 1544 of title
24 18, United States Code, is amended to read as follows:

1 **“§ 1544. Misuse of a passport**

2 “Any person who knowingly—

3 “(1) misuses or attempts to misuse for their
4 own purposes any passport issued or designed for
5 the use of another;

6 “(2) uses or attempts to use any passport in
7 violation of the laws, regulations, or rules governing
8 the issuance and use of the passport;

9 “(3) secures, possesses, uses, receives, buys,
10 sells, or distributes or attempts to secure, possess,
11 use, receive, buy, sell, or distribute any passport
12 knowing the passport to be forged, counterfeited, al-
13 tered, falsely made, procured by fraud, or produced
14 or issued without lawful authority; or

15 “(4) substantially violates the terms and condi-
16 tions of any safe conduct duly obtained and issued
17 under the authority of the United States,

18 shall be fined under this title, imprisoned not more than
19 25 years (if the offense was committed to facilitate an act
20 of international terrorism (as defined in section 2331 of
21 this title)), 20 years (if the offense was committed to fa-
22 cilitate a drug trafficking crime (as defined in section
23 929(a) of this title)), 15 years (in the case of any other
24 offense), or both.”.

1 (d) SCHEMES TO PROVIDE FRAUDULENT IMMIGRA-
2 TION SERVICES.—Section 1545 of title 18, United States
3 Code, is amended to read as follows:

4 **“§ 1545. Schemes to provide fraudulent immigration**
5 **services**

6 “(a) IN GENERAL.—Any person who knowingly exe-
7 cutes a scheme or artifice, in connection with any matter
8 that is authorized by or arises under any Federal immigra-
9 tion law or any matter the offender claims or represents
10 is authorized by or arises under any Federal immigration
11 law, to—

12 “(1) defraud any person; or

13 “(2) obtain or receive money or anything else of
14 value from any person by means of false or fraudu-
15 lent pretenses, representations, or promises,

16 shall be fined under this title, imprisoned not more than
17 10 years, or both.

18 “(b) MISREPRESENTATION.—Any person who know-
19 ingly and falsely represents that such person is an attor-
20 ney or an accredited representative (as that term is de-
21 fined in section 1292.1 of title 8, Code of Federal Regula-
22 tions (or any successor regulation)) in any matter arising
23 under any Federal immigration law shall be fined under
24 this title, imprisoned not more than 15 years, or both.”.

1 (e) IMMIGRATION AND VISA FRAUD.—Section 1546
2 of title 18, United States Code, is amended—

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

5 **“§ 1546. Immigration and visa fraud”;**

6 (2) by redesignating subsection (b) as sub-
7 section (d); and

8 (3) by inserting after subsection (a) the fol-
9 lowing new subsections:

10 “(b) TRAFFICKING.—Any person who, during any pe-
11 riod of 3 years or less, knowingly—

12 “(1) and without lawful authority produces,
13 issues, or transfers 3 or more immigration docu-
14 ments;

15 “(2) forges, counterfeits, alters, or falsely
16 makes 3 or more immigration documents;

17 “(3) secures, possesses, uses, buys, sells, or dis-
18 tributes 3 or more immigration documents, knowing
19 the immigration documents to be forged, counter-
20 feited, altered, stolen, falsely made, procured by
21 fraud, or produced or issued without lawful author-
22 ity; or

23 “(4) completes, mails, prepares, presents, signs,
24 or submits 3 or more immigration documents know-

1 ing the documents to contain any materially false
2 statement or representation,
3 shall be fined under this title, imprisoned not more than
4 20 years, or both.

5 “(c) IMMIGRATION DOCUMENT MATERIALS.—Any
6 person who knowingly and without lawful authority pro-
7 duces, buys, sells, possesses, or uses any official material
8 (or counterfeit of any official material) used to make 10
9 or more immigration documents, including any distinctive
10 paper, seal, hologram, image, text, symbol, stamp, engrav-
11 ing, or plate, shall be fined under this title, imprisoned
12 not more than 20 years, or both.”.

13 (f) ALTERNATIVE IMPRISONMENT MAXIMUM FOR
14 CERTAIN OFFENSES.—Section 1547 of title 18, United
15 States Code, is amended—

16 (1) in the matter preceding paragraph (1), by
17 striking “(other than an offense under section
18 1545)”;

19 (2) in paragraph (1), by striking “15” and in-
20 serting “20”; and

21 (3) in paragraph (2), by striking “20” and in-
22 serting “25”.

23 (g) AUTHORIZED LAW ENFORCEMENT ACTIVITIES.—
24 Chapter 75 of title 18, United States Code, is amended
25 by adding after section 1547 the following:

1 **“§ 1548. Authorized law enforcement activities**

2 “Nothing in this chapter may be construed to pro-
3 hibit—

4 “(1) any lawfully authorized investigative, pro-
5 tective, or intelligence activity of a law enforcement
6 agency of the United States, a State, or a political
7 subdivision of a State, or an intelligence agency of
8 the United States; or

9 “(2) any activity authorized under title V of the
10 Organized Crime Control Act of 1970 (Public Law
11 91–452; 84 Stat. 933).”.

12 (h) TABLE OF SECTIONS AMENDMENT.—The table
13 of sections for chapter 75 of title 18, United States Code,
14 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.”.

15 **SEC. 3708. COMBATING SCHEMES TO DEFRAUD ALIENS.**

16 (a) REGULATIONS, FORMS, AND PROCEDURES.—The
17 Secretary and the Attorney General, for matters within
18 their respective jurisdictions arising under the immigra-
19 tion laws, shall promulgate appropriate regulations, forms,
20 and procedures defining the circumstances in which—

1 (1) persons submitting applications, petitions,
2 motions, or other written materials relating to immi-
3 gration benefits or relief from removal under the im-
4 migration laws will be required to identify who
5 (other than immediate family members) assisted
6 them in preparing or translating the immigration
7 submissions; and

8 (2) any person or persons who received com-
9 pensation (other than a nominal fee for copying,
10 mailing, or similar services) in connection with the
11 preparation, completion, or submission of such mate-
12 rials will be required to sign the form as a preparer
13 and provide identifying information.

14 (b) CIVIL INJUNCTIONS AGAINST IMMIGRATION
15 SERVICE PROVIDER.—The Attorney General may com-
16 mence a civil action in the name of the United States to
17 enjoin any immigration service provider from further en-
18 gaging in any fraudulent conduct that substantially inter-
19 feres with the proper administration of the immigration
20 laws or who willfully misrepresents such provider’s legal
21 authority to provide representation before the Department
22 of Justice or the Department.

23 (c) DEFINITIONS.—In this section:

24 (1) IMMIGRATION LAWS.—The term “immigra-
25 tion laws” has the meaning given that term in sec-

tion 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.

14 SEC. 3709. INADMISSIBILITY AND REMOVAL FOR PASSPORT
15 AND IMMIGRATION FRAUD OFFENSES.

16 (a) INADMISSIBILITY.—Section 212(a)(2)(A)(i) (8
17 U.S.C. 1182(a)(2)(A)(i)) is amended—

18 (1) in subclause (I), by striking “, or” at the
19 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 fol-
lowing:

24 “(III) a violation of section 1541,
25 1545, and subsection (b) of section

1 1546 of title 18, United States
2 Code,”.

3 (b) REMOVAL.—Section 237(a)(3)(B)(iii) (8 U.S.C.
4 1227(a)(3)(B)(iii)) is amended to read as follows:

5 “(iii) of a violation of section 1541,
6 1545, and subsection (b) of section 1546
7 of title 18, United States Code,”.

8 (c) EFFECTIVE DATE.—The amendments made by
9 subsections (a) and (b) shall apply to proceedings pending
10 on or after the date of the enactment of this Act, with
11 respect to conduct occurring on or after that date.

12 **SEC. 3710. DIRECTIVES RELATED TO PASSPORT AND DOCU-**
13 **MENT FRAUD.**

14 (a) DIRECTIVE TO THE UNITED STATES SEN-
15 TENCING COMMISSION.—

16 (1) IN GENERAL.—Pursuant to the authority
17 under section 994 of title 28, United States Code,
18 the United States Sentencing Commission shall pro-
19 mulgate or amend the sentencing guidelines, policy
20 statements, and official commentaries, if appro-
21 priate, related to passport fraud offenses, including
22 the offenses described in chapter 75 of title 18,
23 United States Code, as amended by section 3707, to
24 reflect the serious nature of such offenses.

1 (2) REPORT.—Not later than 1 year after the
2 date of the enactment of this Act, the United States
3 Sentencing Commission shall submit a report on the
4 implementation of this subsection to—

5 (A) the Committee on the Judiciary of the
6 Senate; and

7 (B) the Committee on the Judiciary of the
8 House of Representatives.

9 (b) PROTECTION FOR LEGITIMATE REFUGEES AND
10 ASYLUM SEEKERS.—

11 (1) IN GENERAL.—

12 (A) REQUIREMENT FOR GUIDELINES.—

13 The Attorney General, in consultation with the
14 Secretary, shall develop binding prosecution
15 guidelines for Federal prosecutors to ensure
16 that each prosecution of an alien seeking entry
17 into the United States by fraud is consistent
18 with the United States treaty obligations under
19 Article 31(1) of the Convention Relating to the
20 Status of Refugees, done at Geneva July 28,
21 1951 (as made applicable by the Protocol Relat-
22 ing to the Status of Refugees, done at New
23 York January 31, 1967 (19 UST 6223)).

24 (B) NO PRIVATE RIGHT OF ACTION.—The
25 guidelines developed pursuant to subparagraph

1 (A), and any internal office procedures related
2 to such guidelines—

3 (i) are intended solely for the guid-
4 ance of attorneys of the United States; and

5 (ii) are not intended to, do not, and
6 may not be relied upon to, create any right
7 or benefit, substantive or procedural, en-
8 forceable at law by any party in any ad-
9 ministrative, civil, or criminal matter.

10 (2) PROTECTION OF VULNERABLE PERSONS.—

11 A person described in paragraph (3) may not be
12 prosecuted under chapter 75 of title 18, United
13 States Code, or under section 275 or 276 of the Im-
14 migration and Nationality Act (8 U.S.C. 1325 and
15 1326), in connection with the person's entry or at-
16 tempted entry into the United States until after the
17 date on which the person's application for such pro-
18 tection, classification, or status has been adjudicated
19 and denied in accordance with the Immigration and
20 Nationality Act (8 U.S.C. 1101 et seq.).

21 (3) PERSONS SEEKING PROTECTION, CLASSI-
22 FICATION, OR STATUS.—A person described in this
23 paragraph is a person who—

24 (A) is seeking protection, classification, or
25 status; and

1 (B)(i) has filed an application for asylum
2 under section 208 of the Immigration and Na-
3 tionality Act (8 U.S.C. 1158), withholding of
4 removal under section 241(b)(3) of such Act (8
5 U.S.C. 1231(b)(3)), or relief under the Conven-
6 tion against Torture and Other Cruel, Inhuman
7 or Degrading Treatment or Punishment, done
8 at New York, December 10, 1994, pursuant to
9 title 8, Code of Federal Regulations;

10 (ii) indicates immediately after apprehen-
11 sion, that he or she intends to apply for such
12 asylum, withholding of removal, or relief and
13 promptly files the appropriate application;

14 (iii) has been referred for a credible fear
15 interview, a reasonable fear interview, or an
16 asylum-only hearing under section 235 of the
17 Immigration and Nationality Act (8 U.S.C.
18 1225) or part 208 of title 8, Code of Federal
19 Regulations; or

20 (iv) has filed an application for classifica-
21 tion or status under—

22 (I) subparagraph (T) or (U) of para-
23 graph (15), paragraph (27)(J), or para-
24 graph (51) of section 101(a) of the Immi-

1 gration and Nationality Act (8 U.S.C.
2 1101(a)); or
3 (II) section 216(c)(4)(C) or
4 240A(b)(2) of such Act (8 U.S.C.
5 1186a(c)(4)(C) and 1229b(b)(2)).

6 **SEC. 3711. INADMISSIBLE ALIENS.**

7 (a) DETERRING ALIENS ORDERED REMOVED FROM
8 REMAINING IN THE UNITED STATES UNLAWFULLY.—
9 Section 212(a)(9)(A) (8 U.S.C. 1182(a)(9)(A)) is amend-
10 ed—

11 (1) in clause (i), by striking “seeks admission
12 within 5 years of the date of such removal (or within
13 20 years” and inserting “seeks admission not later
14 than 5 years after the date of the alien’s removal (or
15 not later than 20 years after the alien’s removal”;
16 and

17 (2) in clause (ii), by striking “seeks admission
18 within 10 years of the date of such alien’s departure
19 or removal (or within 20 years of” and inserting
20 “seeks admission not later than 10 years after the
21 date of the alien’s departure or removal (or not later
22 than 20 years after”.

23 (b) BIOMETRIC SCREENING.—Section 212 (8 U.S.C.
24 1182) is amended—

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

3 “(C) WITHHOLDING INFORMATION.—Ex-
4 cept as provided in subsection (d)(2), any alien
5 who willfully, through his or her own fault, re-
6 fuses to comply with a lawful request for bio-
7 metric information is inadmissible.”; and

8 (2) in subsection (d), by inserting after para-
9 graph (1) the following:

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

13 (c) PRECLUDING ADMISSIBILITY OF ALIENS CON-
14 VICTED OF SERIOUS CRIMINAL OFFENSES AND DOMESTIC
15 VIOLENCE, STALKING, CHILD ABUSE, AND VIOLATION OF
16 PROTECTION ORDERS.—

17 (1) INADMISSIBILITY ON CRIMINAL AND RE-
18 LATED GROUNDS; WAIVERS.—Section 212 (8 U.S.C.
19 1182), as amended by this Act, is further amend-
20 ed—

21 (A) in subsection (a)(2), as amended by
22 sections 3401 and 3402, is further amended by
23 inserting after subparagraph (J) the following:

1 “(K) CRIMES OF DOMESTIC VIOLENCE,
2 STALKING, OR VIOLATION OF PROTECTIVE OR-
3 DERS; CRIMES AGAINST CHILDREN.—

4 “(i) DOMESTIC VIOLENCE, STALKING,
5 AND CHILD ABUSE.—

6 “(I) IN GENERAL.—Any alien
7 who has been convicted of a crime of
8 domestic violence, a crime of stalking,
9 or a crime of child abuse, child ne-
10 glect, or child abandonment, provided
11 the alien served at least 1 year impris-
12 onment for the crime, or provided the
13 alien was convicted of offenses consti-
14 tuting more than 1 such crime, not
15 arising out of a single scheme of
16 criminal misconduct, is inadmissible.

17 “(II) CRIME OF DOMESTIC VIO-
18 LENCE DEFINED.—In this clause, the
19 term ‘crime of domestic violence’
20 means any crime of violence (as de-
21 fined in section 16 of title 18, United
22 States Code) against a person com-
23 mitted by a current or former spouse
24 of the person, by an individual with
25 whom the person shares a child in

1 common, by an individual who is co-
2 habiting with or has cohabited with
3 the person as a spouse, by an indi-
4 vidual similarly situated to a spouse
5 of the person under the domestic or
6 family violence laws of the jurisdiction
7 where the offense occurs, or by any
8 other individual against a person who
9 is protected from that individual's
10 acts under the domestic or family vio-
11 lence laws of the United States or any
12 State, Indian tribal government, or
13 unit of local or foreign government.

14 “(ii) VIOLATORS OF PROTECTION OR-
15 DERS.—

16 “(I) IN GENERAL.—Any alien
17 who at any time is enjoined under a
18 protection order issued by a court and
19 whom the court determines has en-
20 gaged in conduct that constitutes
21 criminal contempt of the portion of a
22 protection order that involves protec-
23 tion against credible threats of vio-
24 lence, repeated harassment, or bodily
25 injury to the person or persons for

1 whom the protection order was issued,
2 is inadmissible.

3 “(II) PROTECTION ORDER DE-
4 FINED.—In this clause, the term ‘pro-
5 tection order’ means any injunction
6 issued for the purpose of preventing
7 violent or threatening acts of domestic
8 violence, including temporary or final
9 orders issued by civil or criminal
10 courts (other than support or child
11 custody orders or provisions) whether
12 obtained by filing an independent ac-
13 tion or as an independent order in an-
14 other proceeding.

15 “(iii) APPLICABILITY.—This subpara-
16 graph shall not apply to an alien who has
17 been battered or subjected to extreme cru-
18 elty and who is not and was not the pri-
19 mary perpetrator of violence in the rela-
20 tionship, upon a determination by the At-
21 torney General or the Secretary of Home-
22 land Security that—

23 “(I) the alien was acting in self-
24 defense;

1 “(II) the alien was found to have
2 violated a protection order intended to
3 protect the alien; or

4 “(III) the alien committed, was
5 arrested for, was convicted of, or pled
6 guilty to committing a crime that did
7 not result in serious bodily injury.”;
8 and

9 (B) in subsection (h)—

10 (i) by striking “The Attorney General
11 may, in his discretion, waive the applica-
12 tion of subparagraphs (A)(i)(I), (B), (D),
13 and (E) of subsection (a)(2)” and inserting
14 “The Attorney General or the Secretary of
15 Homeland Security may waive the applica-
16 tion of subparagraphs (A)(i)(I), (B), (D),
17 and (E) of subsection (a)(2)”; and

18 (ii) by inserting “or the Secretary of
19 Homeland Security” after “the Attorney
20 General” each place that term appears.

21 (2) EFFECTIVE DATE.—The amendments made
22 by this subsection shall apply to any acts that oc-
23 curred on or after the date of the enactment of this
24 Act.

1 **SEC. 3712. ORGANIZED AND ABUSIVE HUMAN SMUGGLING**
2 **ACTIVITIES.**

3 (a) **ENHANCED PENALTIES.**—

4 (1) **IN GENERAL.**—Title II (8 U.S.C. 1151 et
5 seq.) is amended by adding at the end the following:

6 **“SEC. 295. ORGANIZED HUMAN SMUGGLING.**

7 “(a) **PROHIBITED ACTIVITIES.**—Whoever, while act-
8 ing for profit or other financial gain, knowingly directs
9 or participates in an effort or scheme to assist or cause
10 5 or more persons (other than a parent, spouse, or child
11 of the offender)—

12 “(1) to enter, attempt to enter, or prepare to
13 enter the United States—

14 “(A) by fraud, falsehood, or other corrupt
15 means;

16 “(B) at any place other than a port or
17 place of entry designated by the Secretary; or

18 “(C) in a manner not prescribed by the im-
19 migration laws and regulations of the United
20 States; or

21 “(2) to travel by air, land, or sea toward the
22 United States (whether directly or indirectly)—

23 “(A) knowing that the persons seek to
24 enter or attempt to enter the United States
25 without lawful authority; and

1 “(B) with the intent to aid or further such
2 entry or attempted entry; or

3 “(3) to be transported or moved outside of the
4 United States—

5 “(A) knowing that such persons are aliens
6 in unlawful transit from 1 country to another
7 or on the high seas; and

8 “(B) under circumstances in which the
9 persons are in fact seeking to enter the United
10 States without official permission or legal au-
11 thority;

12 shall be punished as provided in subsection (c) or
13 (d).

14 “(b) CONSPIRACY AND ATTEMPT.—Any person who
15 attempts or conspires to violate subsection (a) of this sec-
16 tion shall be punished in the same manner as a person
17 who completes a violation of such subsection.

18 “(c) BASE PENALTY.—Except as provided in sub-
19 section (d), any person who violates subsection (a) or (b)
20 shall be fined under title 18, imprisoned for not more than
21 20 years, or both.

22 “(d) ENHANCED PENALTIES.—Any person who vio-
23 lates subsection (a) or (b) shall—

24 “(1) in the case of a violation during and in re-
25 lation to which a serious bodily injury (as defined in

1 section 1365 of title 18) occurs to any person, be
2 fined under title 18, imprisoned for not more than
3 30 years, or both;

4 “(2) in the case of a violation during and in re-
5 lation to which the life of any person is placed in
6 jeopardy, be fined under title 18, imprisoned for not
7 more than 30 years, or both;

8 “(3) in the case of a violation involving 10 or
9 more persons, be fined under title 18, imprisoned for
10 not more than 30 years, or both;

11 “(4) in the case of a violation involving the
12 bribery or corruption of a U.S. or foreign govern-
13 ment official, be fined under title 18, imprisoned for
14 not more than 30 years, or both;

15 “(5) in the case of a violation involving robbery
16 or extortion (as those terms are defined in para-
17 graph (1) or (2), respectively, of section 1951(b)) be
18 fined under title 18, imprisoned for not more than
19 30 years, or both;

20 “(6) in the case of a violation during and in re-
21 lation to which any person is subjected to an invol-
22 untary sexual act (as defined in section 2246(2) of
23 title 18), be fined under title 18, imprisoned for not
24 more than 30 years, or both; or

1 “(7) in the case of a violation resulting in the
2 death of any person, be fined under title 18, impris-
3 oned for any term of years or for life, or both.

4 “(e) **LAWFUL AUTHORITY DEFINED.**—

5 “(1) **IN GENERAL.**—In this section, the term
6 ‘lawful authority’—

7 “(A) means permission, authorization, or
8 license that is expressly provided for in the im-
9 migration laws of the United States or accom-
10 panying regulations; and

11 “(B) does not include any such authority
12 secured by fraud or otherwise obtained in viola-
13 tion of law, nor does it include authority
14 sought, but not approved.

15 “(2) **APPLICATION TO TRAVEL OR ENTRY.**—No
16 alien shall be deemed to have lawful authority to
17 travel to or enter the United States if such travel or
18 entry was, is, or would be in violation of law.

19 “(f) **EFFORT OR SCHEME.**—For purposes of this sec-
20 tion, ‘effort or scheme to assist or cause 5 or more per-
21 sons’ does not require that the 5 or more persons enter,
22 attempt to enter, prepare to enter, or travel at the same
23 time so long as the acts are completed within 1 year.

1 **“SEC. 296. UNLAWFULLY HINDERING IMMIGRATION, BOR-**
2 **DER, AND CUSTOMS CONTROLS.**

3 “(a) **ILLICIT SPOTTING.**—Whoever knowingly trans-
4 mits to another person the location, movement, or activi-
5 ties of any Federal, State, or tribal law enforcement agen-
6 cy with the intent to further a Federal crime relating to
7 United States immigration, customs, controlled sub-
8 stances, agriculture, monetary instruments, or other bor-
9 der controls shall be fined under title 18, imprisoned not
10 more than 10 years, or both.

11 “(b) **DESTRUCTION OF UNITED STATES BORDER**
12 **CONTROLS.**—Whoever knowingly and without lawful au-
13 thorization destroys, alters, or damages any fence, barrier,
14 sensor, camera, or other physical or electronic device de-
15 ployed by the Federal Government to control the border
16 or a port of entry or otherwise seeks to construct, exca-
17 vate, or make any structure intended to defeat, circumvent
18 or evade any such fence, barrier, sensor camera, or other
19 physical or electronic device deployed by the Federal gov-
20 ernment to control the border or a port of entry shall be
21 fined under title 18, imprisoned not more than 10 years,
22 or both, and if, at the time of the offense, the person uses
23 or carries a firearm or who, in furtherance of any such
24 crime, possesses a firearm, that person shall be fined
25 under title 18, imprisoned not more than 20 years, or
26 both.

1 “(c) CONSPIRACY AND ATTEMPT.—Any person who
2 attempts or conspires to violate subsection (a) or (b) of
3 this section shall be punished in the same manner as a
4 person who completes a violation of such subsection.”.

5 (2) TABLE OF CONTENTS AMENDMENT.—The
6 table of contents is amended by adding after the
7 item relating to section 294 the following:

“Sec. 295. Organized human smuggling.

“Sec. 296. Unlawfully hindering immigration, border, and customs controls.”.

8 (b) PROHIBITING CARRYING OR USE OF A FIREARM
9 DURING AND IN RELATION TO AN ALIEN SMUGGLING
10 CRIME.—Section 924(c) of title 18, United States Code,
11 is amended—

12 (1) in paragraph (1)—

13 (A) in subparagraph (A), by inserting “,
14 alien smuggling crime,” after “crime of vio-
15 lence” each place that term appears; and

16 (B) in subparagraph (D)(ii), by inserting
17 “, alien smuggling crime,” after “crime of vio-
18 lence”; and

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

20 “(6) For purposes of this subsection, the term ‘alien
21 smuggling crime’ means any felony punishable under sec-
22 tion 274(a), 277, or 278 of the Immigration and Nation-
23 ality Act (8 U.S.C. 1324(a), 1327, and 1328).”.

1 (c) STATUTE OF LIMITATIONS.—Section 3298 of title
2 18, United States Code, is amended by inserting “, 295,
3 296, or 297” after “274(a)”.

4 **SEC. 3713. PREVENTING CRIMINALS FROM RENOUNCING**
5 **CITIZENSHIP DURING WARTIME.**

6 Section 349(a) (8 U.S.C. 1481(a)) is amended—

7 (1) by striking paragraph (6) ; and

8 (2) redesignating paragraph (7) as paragraph
9 (6).

10 **SEC. 3714. DIPLOMATIC SECURITY SERVICE.**

11 Paragraph (1) of section 37(a) of the State Depart-
12 ment Basic Authorities Act of 1956 (22 U.S.C. 2709(a))
13 is amended to read as follows:

14 “(1) conduct investigations concerning—

15 “(A) illegal passport or visa issuance or
16 use;

17 “(B) identity theft or document fraud af-
18 fecting or relating to the programs, functions,
19 and authorities of the Secretary of State;

20 “(C) violations of chapter 77 of title 18,
21 United States Code; and

22 “(D) Federal offenses committed within
23 the special maritime and territorial jurisdiction
24 of the United States (as defined in section 7(9)
25 of title 18, United States Code);”.

1 **SEC. 3715. SECURE ALTERNATIVES PROGRAMS.**

2 (a) IN GENERAL.—The Secretary shall establish se-
3 cure alternatives programs that incorporate case manage-
4 ment services in each field office of the Department to
5 ensure appearances at immigration proceedings and public
6 safety.

7 (b) CONTRACT AUTHORITY.—The Secretary shall
8 contract with nongovernmental community-based organi-
9 zations to conduct screening of detainees, provide appear-
10 ance assistance services, and operate community-based su-
11 pervision programs. Secure alternatives shall offer a con-
12 tinuum of supervision mechanisms and options, including
13 community support, depending on an assessment of each
14 individual’s circumstances. The Secretary may contract
15 with nongovernmental organizations to implement secure
16 alternatives that maintain custody over the alien.

17 (c) INDIVIDUALIZED DETERMINATIONS.—In deter-
18 mining whether to use secure alternatives, the Secretary
19 shall make an individualized determination, and for each
20 individual placed on secure alternatives, shall review the
21 level of supervision on a monthly basis. Secure alternatives
22 shall not be used when release on bond or recognizance
23 is determined to be a sufficient measure to ensure appear-
24 ances at immigration proceedings and public safety.

25 (d) CUSTODY.—The Secretary may use secure alter-
26 natives programs to maintain custody over any alien de-

1 tained under the Immigration and Nationality Act, except
2 for aliens detained under section 236A of such Act (8
3 U.S.C. 1226a). If an individual is not eligible for release
4 from custody or detention, the Secretary shall consider the
5 alien for placement in secure alternatives that maintain
6 custody over the alien, including the use of electronic ankle
7 devices.

8 **SEC. 3716. OVERSIGHT OF DETENTION FACILITIES.**

9 (a) DEFINITIONS.—In this section:

10 (1) APPLICABLE STANDARDS.—The term “ap-
11 plicable standards” means the most recent version of
12 detention standards and detention-related policies
13 issued by the Secretary or the Director of U.S. Im-
14 migration and Customs Enforcement.

15 (2) DETENTION FACILITY.—The term “deten-
16 tion facility” means a Federal, State, or local gov-
17 ernment facility, or a privately owned and operated
18 facility, that is used, in whole or in part, to hold in-
19 dividuals under the authority of the Director of U.S.
20 Immigration and Customs Enforcement, including
21 facilities that hold such individuals under a contract
22 or agreement with the Director.

23 (b) DETENTION REQUIREMENTS.—The Secretary
24 shall ensure that all persons detained pursuant to the Im-
25 migration and Nationality Act (8 U.S.C. 1101 et seq.) are

1 treated humanely and benefit from the protections set
2 forth in this section.

3 (c) OVERSIGHT REQUIREMENTS.—

4 (1) ANNUAL INSPECTION.—All detention facili-
5 ties shall be inspected by the Secretary on a regular
6 basis, but not less than annually, for compliance
7 with applicable detention standards issued by the
8 Secretary and other applicable regulations.

9 (2) ROUTINE OVERSIGHT.—In addition to an-
10 nual inspections, the Secretary shall conduct routine
11 oversight of detention facilities, including unan-
12 nounced inspections.

13 (3) AVAILABILITY OF RECORDS.—All detention
14 facility contracts, memoranda of agreement, and
15 evaluations and reviews shall be considered records
16 for purposes of section 552(f)(2) of title 5, United
17 States Code.

18 (4) CONSULTATION.—The Secretary shall seek
19 input from nongovernmental organizations regarding
20 their independent opinion of specific facilities.

21 (d) COMPLIANCE MECHANISMS.—

22 (1) AGREEMENTS.—

23 (A) NEW AGREEMENTS.—Compliance with
24 applicable standards of the Secretary and all
25 applicable regulations, and meaningful financial

1 penalties for failure to comply, shall be a mate-
2 rial term in any new contract, memorandum of
3 agreement, or any renegotiation, modification,
4 or renewal of an existing contract or agreement,
5 including fee negotiations, executed with deten-
6 tion facilities.

7 (B) EXISTING AGREEMENTS.—Not later
8 than 180 days after the date of the enactment
9 of this Act, the Secretary shall secure a modi-
10 fication incorporating these terms for any exist-
11 ing contracts or agreements that will not be re-
12 negotiated, renewed, or otherwise modified.

13 (C) CANCELLATION OF AGREEMENTS.—
14 Unless the Secretary provides a reasonable ex-
15 tension to a specific detention facility that is
16 negotiating in good faith, contracts or agree-
17 ments with detention facilities that are not
18 modified within 1 year of the date of the enact-
19 ment of this Act will be cancelled.

20 (D) PROVISION OF INFORMATION.—In
21 making modifications under this paragraph, the
22 Secretary shall require that detention facilities
23 provide to the Secretary all contracts, memo-
24 randa of agreement, evaluations, and reviews
25 regarding the facility on a regular basis. The

1 Secretary shall make these materials publicly
2 available.

3 (2) FINANCIAL PENALTIES.—

4 (A) REQUIREMENT TO IMPOSE.—Subject
5 to subparagraph (C), the Secretary shall impose
6 meaningful financial penalties upon facilities
7 that fail to comply with applicable detention
8 standards issued by the Secretary and other ap-
9 plicable regulations.

10 (B) TIMING OF IMPOSITION.—Financial
11 penalties imposed under subparagraph (A) shall
12 be imposed immediately after a facility fails to
13 achieve an adequate or the equivalent median
14 score in any performance evaluation.

15 (C) WAIVER.—The requirements of sub-
16 paragraph (A) may be waived if the facility cor-
17 rects the noted deficiencies and receives an ade-
18 quate score in not more than 90 days.

19 (D) MULTIPLE OFFENDERS.—In cases of
20 persistent and substantial noncompliance, in-
21 cluding scoring less than adequate or the equiv-
22 alent median score in 2 consecutive inspections,
23 the Secretary shall terminate contracts or
24 agreements with such facilities within 60 days,
25 or in the case of facilities operated by the Sec-

1 retary, such facilities shall be closed within 90
2 days.

3 (e) REPORTING REQUIREMENTS.—

4 (1) OBJECTIVES.—Not later than June 30 of
5 each year, the Secretary shall prepare and submit to
6 the Committee on the Judiciary of the Senate and
7 the Committee on the Judiciary of the House of
8 Representatives a report on inspection and oversight
9 activities of detention facilities.

10 (2) CONTENTS.—Each report submitted under
11 paragraph (1) shall include—

12 (A) a description of each detention facility
13 found to be in noncompliance with applicable
14 detention standards issued by the Department
15 and other applicable regulations;

16 (B) a description of the actions taken by
17 the Department to remedy any findings of non-
18 compliance or other identified problems, includ-
19 ing financial penalties, contract or agreement
20 termination, or facility closure; and

21 (C) information regarding whether the ac-
22 tions described in subparagraph (B) resulted in
23 compliance with applicable detention standards
24 and regulations.

1 **SEC. 3717. PROCEDURES FOR BOND HEARINGS AND FILING**
2 **OF NOTICES TO APPEAR.**

3 (a) ALIENS IN CUSTODY.—Section 236 (8 U.S.C.
4 1226) is amended by adding at the end the following:

5 “(f) PROCEDURES FOR CUSTODY HEARINGS.—For
6 any alien taken into custody under any provision of this
7 Act, with the exception of minors being transferred to or
8 in the custody of the Office of Refugee Resettlement, the
9 following shall apply:

10 “(1) The Secretary of Homeland Security shall,
11 without unnecessary delay and not later than 72
12 hours after the alien is taken into custody, file the
13 Notice to Appear or other relevant charging docu-
14 ment with the immigration court having jurisdiction
15 over the location where the alien was apprehended,
16 and serve such notice on the alien.

17 “(2) The Secretary shall immediately determine
18 whether the alien shall remain in custody or be re-
19 leased and, without unnecessary delay and not later
20 than 72 hours after the alien was taken into cus-
21 tody, serve upon the alien the custody decision speci-
22 fying the reasons for continued custody and the
23 amount of bond if any.

24 “(3) The Attorney General shall ensure the
25 alien has the opportunity to appear before an immi-
26 gration judge for a custody determination hearing

1 promptly after service of the Secretary's custody de-
2 cision. The immigration judge may, on the Sec-
3 retary's motion and upon a showing of good cause,
4 postpone a custody redetermination hearing for no
5 more than 72 hours after service of the custody deci-
6 sion, except that in no case shall the hearing occur
7 more than 6 days (including weekends and holidays)
8 after the alien was taken into custody.

9 “(4) The immigration judge shall advise the
10 alien of the right to postpone the custody determina-
11 tion hearing and shall, on the oral or written request
12 of the individual, postpone the custody determina-
13 tion hearing for a period of not more than 14 days.

14 “(5) Except for aliens that the immigration
15 judge has determined are deportable under section
16 236(c) or certified under section 236A, the immigra-
17 tion judge shall review the custody determination de
18 novo and may continue to detain the alien only if the
19 Secretary demonstrates that no conditions, including
20 the use of alternatives to detention that maintain
21 custody over the alien, will reasonably assure the ap-
22 pearance of the alien as required and the safety of
23 any other person and the community. For aliens
24 whom the immigration judge has determined are de-
25 portable 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 ensure the appearance of the alien, as required, and the safety of any other person and the community.

6 “(6) In the case of any alien remaining in cus-
7 tody after a custody determination, the Attorney
8 General shall provide de novo custody determination
9 hearings before an immigration judge every 90 days
10 so long as the alien remains in custody. An alien
11 may also obtain a de novo custody redetermination
12 hearing at any time upon a showing of good cause.

13 “(7) The Secretary shall inform the alien of his
14 or her rights under this paragraph at the time the
15 alien is first taken into custody.”.

16 (b) LIMITATIONS ON SOLITARY CONFINEMENT.—

(1) IN GENERAL.—Section 236(d) (8 U.S.C. 1226(d)) is amended by adding at the end the following:

20 “(3) NATURE OF DETENTION.—

21 “(A) DEFINITIONS.—In this paragraph:

22 “(i) ADMINISTRATIVE SEGREGA-
23 TION.—The term ‘administrative segrega-
24 tion’ means a nonpunitive form of solitary
25 confinement for administrative reasons.

1 “(ii) DISCIPLINARY SEGREGATION.—

2 The term ‘disciplinary segregation’ means
3 a punitive form of solitary confinement for
4 disciplinary reasons.

5 “(iii) SERIOUS MENTAL ILLNESS.—

6 The term ‘serious mental illness’ means a
7 substantial disorder of thought or mood
8 that significantly impairs judgment, behav-
9 ior, capacity to recognize reality, or ability
10 to cope with the ordinary demands of life.

11 “(iv) SOLITARY CONFINEMENT.—The
12 term ‘solitary confinement’ means cell con-
13 finement of 22 hours or more per day.

14 “(B) LIMITATIONS ON SOLITARY CONFINEMENT.—
15

16 “(i) IN GENERAL.—The use of soli-
17 tary confinement of an alien in custody
18 pursuant to this section, section 235, or
19 section 241 shall be limited to situations in
20 which such confinement—

21 “(I) is necessary—

22 “(aa) to control a threat to
23 detainees, staff, or the security of
24 the facility;

1 “(bb) to discipline the alien
2 for a serious disciplinary infrac-
3 tion if alternative sanctions
4 would not adequately regulate
5 the alien’s behavior; or

6 “(cc) for good order during
7 the last 24 hours before an alien
8 is released, removed, or trans-
9 ferred from the facility;

10 “(II) is limited to the briefest
11 term and under the least restrictive
12 conditions practicable and consistent
13 with the rationale for placement and
14 with the progress achieved by the
15 alien; and

16 “(III) complies with the require-
17 ments set forth in this subparagraph.

18 “(ii) CHILDREN.—Children who are
19 younger than 18 years of age may not be
20 placed in solitary confinement.

21 “(iii) SERIOUS MENTAL ILLNESS.—

22 “(I) IN GENERAL.—An alien with
23 a serious mental illness may not be
24 placed in involuntary solitary confine-
25 ment due to mental illness unless—

1 “(aa) such confinement is
2 necessary for the alien’s own pro-
3 tection; or

4 “(bb) if the alien requires
5 emergency stabilization or poses
6 a significant threat to staff or
7 others in general population.

8 “(II) MAXIMUM PERIOD.—An
9 alien diagnosed with serious mental
10 illness may not be placed in solitary
11 confinement for more than 15 days
12 unless the Secretary of Homeland Se-
13 curity determines that—

14 “(aa) any less restrictive al-
15 ternative is more likely than not
16 to cause greater harm to the
17 alien than the solitary confine-
18 ment period imposed; or

19 “(bb) the likely harm to the
20 alien is not substantial and the
21 period of solitary confinement is
22 the least restrictive alternative
23 necessary to protect the alien,
24 other detainees, or others.

25 “(iv) OWN PROTECTION.—

1 “(I) IN GENERAL.—Involuntary
2 solitary confinement for an alien’s
3 own protection may be used only for
4 the least amount of time practicable
5 and if no readily available and less re-
6 strictive alternative will maintain the
7 alien’s safety.

8 “(II) MAXIMUM PERIOD.—An
9 alien may not be placed in involuntary
10 solitary confinement for the alien’s
11 own protection for longer than 15
12 days unless the Secretary of Home-
13 land Security determines that any less
14 restrictive alternative is more likely
15 than not to cause greater harm to the
16 alien than the solitary confinement pe-
17 riod imposed.

18 “(III) PROHIBITED FACTORS.—
19 The Secretary of Homeland Security
20 may not rely solely on an alien’s age,
21 physical disability, sexual orientation,
22 gender identity, race, or religion. The
23 Secretary shall make an individualized
24 assessment in each case.

1 “(v) MEDICAL CARE.—An alien placed
2 in solitary confinement—

3 “(I) shall be visited by a medical
4 professional at least 3 times each
5 week;

6 “(II) shall receive at least weekly
7 mental health monitoring by a li-
8 censed mental health clinician; and

9 “(III) shall be removed from soli-
10 tary confinement if—

11 “(aa) a mental health clini-
12 cian determines that such deten-
13 tion is having a significant nega-
14 tive impact on the alien’s mental
15 health; and

16 “(bb) an appropriate alter-
17 native is available.

18 “(vi) NOTIFICATION; ACCESS TO
19 COUNSEL.—If an alien is placed in solitary
20 confinement, the alien—

21 “(I) shall be informed verbally,
22 and in writing, of the reason for such
23 confinement and the intended dura-
24 tion of such confinement, if specified
25 at the time of initial placement; and

1 “(II) shall be offered access to
2 counsel on the same basis as detainees
3 in the general population.

4 “(vii) LONGER SOLITARY CONFINEMENT PERIODS.—If an alien has been sub-
5 ject to involuntary solitary confinement for
6 more than 14 consecutive days, the Sec-
7 retary of Homeland Security shall conduct
8 a timely review to determine whether con-
9 tinued placement is justified by an extreme
10 disciplinary infraction or is the least re-
11 strictive means of protecting the alien or
12 others. Any alien held in solitary confine-
13 ment for more than 7 days shall be given
14 a reasonable opportunity to challenge such
15 placement with the detention facility ad-
16 ministrator, which will promptly respond to
17 such challenge in writing.

18
19 “(viii) OVERSIGHT.—The Secretary of
20 Homeland Security shall ensure that—

21 “(I) he or she is regularly in-
22 formed about the use of solitary con-
23 finement in all facilities at which
24 aliens are detained; and

1 “(II) the Department fully com-
2 plies with the provisions under this
3 paragraph.

4 “(C) DISCIPLINARY SEGREGATION.—Dis-
5 ciplinary segregation is authorized only pursu-
6 ant to the order of a facility disciplinary panel
7 following a hearing in which the detainee is de-
8 termined to have violated a facility rule.

9 “(D) ADMINISTRATIVE SEGREGATION.—
10 Administrative segregation is authorized only as
11 necessary to ensure the safety of the detainee
12 or others, the protection of property, or the se-
13 curity or good order of the facility. Detainees in
14 administrative segregation shall be offered pro-
15 gramming opportunities and privileges con-
16 sistent with those available in the general popu-
17 lation, except where precluded by safety or se-
18 curity concerns.”.

19 (2) ANNUAL REPORT.—The Secretary shall—

20 (A) collect and compile information regard-
21 ing the prevalence, reasons for, and duration of
22 solitary confinement in all facilities described in
23 paragraph (3);

24 (B) submit an annual report containing
25 the information described in subparagraph (A)

1 to Congress not later than 30 days after the
2 end of the reporting period; and

3 (C) make the data contained in the report
4 submitted under subparagraph (B) publicly
5 available.

6 (3) RULEMAKING.—The Secretary shall adopt
7 regulations or policies to carry out section 236(d)(3)
8 of the Immigration and Nationality Act, as amended
9 by paragraph (1), at all facilities at which aliens are
10 detained pursuant to section 235, 236, or 241 of
11 such Act.

12 (c) STIPULATED REMOVAL.—Section 240(d) (8
13 U.S.C. 1229a) is amended to read as follows:

14 “(d) STIPULATED REMOVAL.—The Attorney General
15 shall provide by regulation for the entry by an immigration
16 judge of an order of removal stipulated to by the alien
17 (or the alien’s representative) and the Service. An immi-
18 gration judge may enter a stipulated removal order only
19 upon a finding at an in-person hearing that the stipulation
20 is voluntary, knowing, and intelligent. A stipulated order
21 shall constitute a conclusive determination of the alien’s
22 removability from the United States.”.

1 **SEC. 3718. SANCTIONS FOR COUNTRIES THAT DELAY OR**
2 **PREVENT REPATRIATION OF THEIR NATION-**
3 **ALS.**

4 Section 243(d) (8 U.S.C. 1253(d)) is amended to
5 read as follows:

6 “(d) DISCONTINUING GRANTING VISAS TO NATION-
7 ALS OF COUNTRIES THAT DENY OR DELAY ACCEPTING
8 ALIENS.—Notwithstanding section 221(c), if the Sec-
9 retary of Homeland Security determines, in consultation
10 with the Secretary of State, that the government of a for-
11 eign country denies or unreasonably delays accepting
12 aliens who are citizens, subjects, nationals, or residents
13 of that country after the Secretary asks whether the gov-
14 ernment will accept an alien under this section, or after
15 a determination that the alien is inadmissible under para-
16 graph (6) or (7) of section 212(a), the Secretary of State
17 shall order consular officers in that foreign country to dis-
18 continue granting visas, or classes of visas, until the Sec-
19 retary of Homeland Security notifies the Secretary of
20 State that the country has accepted the aliens.”.

21 **SEC. 3719. GROSS VIOLATIONS OF HUMAN RIGHTS.**

22 (a) INADMISSIBILITY OF CERTAIN ALIENS.—Section
23 212(a)(3)(E) (8 U.S.C. 1182(a)(3)(E)) is amended by
24 striking clause (iii) and inserting the following:

25 “(iii) COMMISSION OF ACTS OF TOR-
26 TURE, EXTRAJUDICIAL KILLINGS, WAR

1 CRIMES, OR WIDESPREAD OR SYSTEMATIC
2 ATTACKS ON CIVILIANS.—Any alien who
3 planned, ordered, assisted, aided and abet-
4 ted, committed, or otherwise participated,
5 including through command responsibility,
6 in the commission of—

7 “(I) any act of torture (as de-
8 fined in section 2340 of title 18,
9 United States Code);

10 “(II) any extrajudicial killing (as
11 defined in section 3(a) of the Torture
12 Victim Protection Act of 1991 (28
13 U.S.C. 1350 note)) under color of law
14 of any foreign nation;

15 “(III) a war crime (as defined in
16 section 2441 of title 18, United States
17 Code); or

18 “(IV) any of the following acts as
19 a part of a widespread or systematic
20 attack directed against a civilian pop-
21 ulation, with knowledge of the attack:
22 murder, extermination, enslavement,
23 forcible transfer of population, arbi-
24 trary detention, rape, sexual slavery,
25 enforced prostitution, forced preg-

1 nancy, enforced sterilization, or any
2 other form of sexual violence of com-
3 parable gravity; persecution on polit-
4 ical racial, national, ethnic, cultural,
5 religious, or gender grounds; enforced
6 disappearance of persons; or other in-
7 humane acts of a similar character in-
8 tentiously causing great suffering or
9 serious bodily or mental injury,
10 is inadmissible.

11 “(iv) LIMITATION.—Clause (iii) shall
12 not apply to an alien if the Secretary of
13 Homeland Security or the Attorney Gen-
14 eral determine that the actions giving rise
15 to the alien’s inadmissibility under such
16 clause were committed under duress. In
17 determining whether the alien was subject
18 to duress, the Secretary may consider,
19 among relevant factors, the age of the
20 alien at the time such actions were com-
21 mitted.”.

22 (b) DENYING SAFE HAVEN TO FOREIGN HUMAN
23 RIGHTS VIOLATORS.—Section 2(a)(2) of the Torture Vic-
24 tim Protection Act of 1991 (28 U.S.C. 1350 note) is
25 amended—

(1) by inserting after “killing” the following: “,
a war crime (as defined in subsections (c) and (d)
of section 2441 of title 18, United States Code), a
widespread or systematic attack on civilians (as de-
fined in section 212(a)(3)(E)(iii)(IV) of the Immi-
gration and Nationality Act), or genocide (as defined
in section 1091(a) of such title 18)”;

8 (2) by striking “to the individual’s legal rep-
9 representative” and inserting “to that individual or to
10 that individual’s legal representative”.

(c) NONAPPLICABILITY OF CONFIDENTIALITY RE-
QUIREMENT WITH RESPECT TO VISA RECORDS.—The
President may make public, without regard to the require-
ments under section 222(f) of the Immigration and Na-
tionality Act (8 U.S.C. 1202(f)), with respect to confiden-
tiality 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 such Act, as amended by subsection
(a).

21 SEC. 3720. REPORTING AND RECORD KEEPING REQUIRE-
22 MENTS RELATING TO THE DETENTION OF
23 ALIENS.

24 (a) IN GENERAL.—In order for Congress and the
25 public to assess the full costs of apprehending, detaining,

1 processing, supervising, and removing aliens, and how the
2 money Congress appropriates for detention is allocated by
3 Federal agencies, the Assistant Secretary for Immigration
4 and Customs and Enforcement (referred to in this section
5 as the “Assistant Secretary”), the Director of the Execu-
6 tive Office of Immigration Review, and the Commissioner
7 responsible for U.S. Customs and Border Protection (re-
8 ferred to in this section as the “Commissioner”) shall—

9 (1) maintain the information required under
10 subsections (b), (c), and (d); and

11 (2) submit reports on that information to Con-
12 gress and make that information available to the
13 public in accordance with subsection (e).

14 (b) MAINTENANCE OF INFORMATION BY U.S. IMMI-
15 GRATION AND CUSTOMS ENFORCEMENT.—The Assistant
16 Secretary shall record and maintain, in the database of
17 U.S. Immigration and Customs Enforcement relating to
18 detained aliens, the following information with respect to
19 each alien detained pursuant to the Immigration and Na-
20 tionality Act (8 U.S.C. 1101 et seq.):

21 (1) The provision of law that provides specific
22 authority for the alien’s detention and the beginning
23 and end dates of the alien’s detention pursuant to
24 that authority. If the alien’s detention is authorized
25 by different provisions of law during different peri-

1 ods of time, the Assistant Secretary shall record and
2 maintain the provision of law that provides authority
3 for the alien's detention during each such period.

4 (2) The place where the alien was apprehended
5 or where U.S. Immigration and Customs Enforce-
6 ment assumed custody of the alien.

7 (3) Each location where U.S. Immigration and
8 Customs Enforcement detains the alien until the
9 alien is released from custody or removed from the
10 United States, including any period of redetention.

11 (4) The gender and age of each detained alien
12 in the custody of U.S. Immigration and Customs
13 Enforcement.

14 (5) The number of days the alien is detained,
15 including the number of days spent in any given de-
16 tention facility and the total amount of time spent
17 in detention.

18 (6) The immigration charges that are the basis
19 for the alien's removal proceedings.

20 (7) The status of the alien's removal pro-
21 ceedings and each date on which those proceedings
22 progress from 1 stage of proceeding to another.

23 (8) The length of time the alien was detained
24 following a final administrative order of removal and
25 the reasons for the continued detention.

1 (9) The initial custody determination or review
2 made by U.S. Immigration and Customs Enforce-
3 ment, including whether the alien received notice of
4 a custody determination or review and when the cus-
5 tody determination or review took place.

6 (10) The risk assessment results for the alien,
7 including if the alien is subject to mandatory cus-
8 tody or detention.

9 (11) The reason for the alien's release from de-
10 tention and the conditions of release imposed on the
11 alien, if applicable.

12 (c) MAINTENANCE OF INFORMATION BY EXECUTIVE
13 OFFICE OF IMMIGRATION REVIEW.—The Director of the
14 Executive Office of Immigration Review shall record and
15 maintain, in the database of the Executive Office of Immi-
16 gration Review relating to detained aliens in removal pro-
17 ceedings, the following information with respect to each
18 such alien:

19 (1) The immigration charges that are the basis
20 for the alien's removal proceedings, including any re-
21 vision of the immigration charges and the date of
22 each such revision.

23 (2) The gender and age of the alien.

1 (3) The status of the alien's removal pro-
2 ceedings and each date on which those proceedings
3 progress from one stage of proceeding to another.

4 (4) The statutory basis for any bond hearing
5 conducted and the outcomes of the bond hearing.

6 (5) Whether each court hearing is conducted in
7 person, by audio link, or by video conferencing.

8 (6) The date of each attorney entry of appear-
9 ance before an immigration judge using Form
10 EOIR-28 and the scope of the appearance to which
11 the form related.

12 (d) MAINTENANCE OF INFORMATION BY U.S. CUS-
13 TOMS AND BORDER PROTECTION.—The Commissioner
14 shall record and maintain in the database of U.S. Customs
15 and Border Protection relating to detained aliens the fol-
16 lowing information with respect to each alien detained
17 pursuant to the Immigration and Nationality Act (8
18 U.S.C. 1101 et seq.):

19 (1) The provision of law that provides specific
20 authority for the alien's detention and the beginning
21 and end dates of the alien's detention.

22 (2) The place where the alien was apprehended.

23 (3) The gender and age of the alien.

24 (4) Each location where U.S. Customs and Bor-
25 der Protection detains the alien until the alien is re-

1 leased from custody or removed from the United
2 States, including any period of redetention.

3 (5) The number of days that the alien is de-
4 tained in the custody of U.S. Customs and Border
5 Protection.

6 (6) The immigration charges that are the basis
7 for the alien's removal proceedings while the alien is
8 in the custody of U.S. Customs and Border Protec-
9 tion.

10 (7) The initial custody determination by U.S.
11 Customs and Border Protection, including whether
12 the alien received notice of a custody determination
13 or review, when the custody determination or review
14 took place, and whether U.S. Customs and Border
15 Protection offered the option of stipulated removal
16 to a detained alien.

17 (8) The reason for the alien's release from de-
18 tention and the conditions of release to detention im-
19 posed on the alien, if applicable.

20 (e) REPORTING REQUIREMENTS.—

21 (1) PERIODIC REPORTS.—The Assistant Sec-
22 retary, the Director of the Executive Office of Immi-
23 gration Review, and the Commissioner shall periodi-
24 cally, but not less frequently than annually, submit
25 to Congress a report containing a summary of the

1 information required to be maintained by this sec-
2 tion. Each such report shall include summaries of
3 national-level data as well as summaries of the infor-
4 mation required by this section by State and county.

5 (2) OTHER REPORTS.—The Assistant Secretary
6 shall report to Congress not less frequently than an-
7 nually on—

8 (A) the number of aliens detained for more
9 than 3 months, 6 months, 1 year, and 2 years;
10 and

11 (B) the average period of detention before
12 receipt of a final administrative order of re-
13 moval and after receipt of such an order.

14 (3) AVAILABILITY TO PUBLIC.—The reports re-
15 quired under this subsection and the information for
16 each alien on which the reports are based shall be
17 made available to the public without the need to sub-
18 mit a request under section 552 of title 5, United
19 States Code (commonly referred to as the “Freedom
20 of Information Act”).

21 (4) PRIVACY PROTECTIONS.—No alien’s identity
22 may be disclosed when information described in
23 paragraph (3) is made publicly available.

24 (f) DEFINITIONS.—In this section:

1 (1) CASE OUTCOME.—The term “case outcome”
2 includes a grant of relief from deportation under
3 section 240A of the Immigration and Nationality
4 Act (8 U.S.C. 1229b), voluntary departure pursuant
5 to section 240B of that Act (8 U.S.C. 1229c), re-
6 moval pursuant to section 238 of that Act (8 U.S.C.
7 1228), judicial termination of proceedings, termi-
8 nation of proceedings by U.S. Immigration and Cus-
9 toms Enforcement, cancellation of the notice to ap-
10 pear, or permission to withdraw application for ad-
11 mission without any removal order being issued.

12 (2) PLACE WHERE THE ALIEN WAS APPRE-
13 HENDED.—The term “place where the alien was ap-
14 prehended” refers to the city, county, and State
15 where an alien is apprehended.

16 (3) REASON FOR THE ALIEN’S RELEASE FROM
17 DETENTION.—The term “reason for the alien’s re-
18 lease from detention” refers to release on bond, on
19 an alien’s own recognizance, on humanitarian
20 grounds, after grant of relief, or due to termination
21 of proceedings or removal.

22 (4) REMOVAL PROCEEDINGS.—The term “re-
23 moval proceedings” refers to a removal case of any
24 kind, including expedited removal, administrative re-
25 moval, stipulated removal, reinstatement, and vol-

1 untary removal and removals in which an applicant
2 is permitted to withdraw his or her application for
3 admission.

4 (5) STAGE.—The term “stage”, with respect to
5 a proceeding, refers to whether the alien is in pro-
6 ceedings before an immigration judge, the Board of
7 Immigration Appeals, a United States court of ap-
8 peals, or on remand from a United States court of
9 appeals.

10 **SEC. 3721. POWERS OF IMMIGRATION OFFICERS AND EM-**
11 **PLOYEES AT SENSITIVE LOCATIONS.**

12 Section 287 (8 U.S.C. 1357) is amended by adding
13 at the end the following:

14 “(i)(1) In order to ensure individuals’ access to sen-
15 sitive locations, this subsection applies to enforcement ac-
16 tions by officers and agents of U.S. Immigration and Cus-
17 toms Enforcement and officers and agents of U.S. Cus-
18 toms and Border Protection.

19 “(2)(A) An enforcement action may not take place
20 at, or be focused on, a sensitive location, except as follows:

21 “(i) Under exigent circumstances.

22 “(ii) If prior approval is obtained.

23 “(B) If an enforcement action is taking place pursu-
24 ant to subparagraph (A) and the condition permitting the

1 enforcement action ceases, the enforcement action shall
2 cease.

3 “(3)(A) When proceeding with an enforcement action
4 at or near a sensitive location, officers and agents referred
5 to in paragraph (1) shall conduct themselves as discreetly
6 as possible, consistent with officer and public safety, and
7 make every effort to limit the time at or focused on the
8 sensitive location.

9 “(B) If, in the course of an enforcement action that
10 is not initiated at or focused on a sensitive location, offi-
11 cers or agents are led to or near a sensitive location, and
12 no exigent circumstance exists, such officers or agents
13 shall conduct themselves in a discreet manner, maintain
14 surveillance, and immediately consult their supervisor be-
15 fore taking any further enforcement action, in order to
16 determine whether such action should be discontinued.

17 “(C) This section not apply to the transportation of
18 an individual apprehended at or near a land or sea border
19 to a hospital or healthcare provider for the purpose of pro-
20 viding such individual medical care.

21 “(4)(A) Each official specified in subparagraph (B)
22 shall ensure that the employees under the supervision of
23 such official receive annual training on compliance with
24 the requirements of this subsection in enforcement actions
25 at or focused on sensitive locations and enforcement ac-

1 tions that lead officers or agents to or near a sensitive
2 location.

3 “(B) The officials specified in ths subparagraph are
4 the following:

5 “(i) The Chief Counsel of U.S. Immigration
6 and Customs Enforcement.

7 “(ii) The Field Office Directors of U.S. Immi-
8 gration and Customs Enforcement.

9 “(iii) Each Special Agent in Charge of U.S. Im-
10 migration and Customs Enforcement.

11 “(iv) Each Chief Patrol Agent of U.S. Customs
12 and Border Protection.

13 “(v) The Director of Field Operations of U.S.
14 Customs and Border Protection.

15 “(vi) The Director of Air and Marine Oper-
16 ations of U.S. Customs and Border Protection.

17 “(vii) The Internal Affairs Special Agent in
18 Charge of U.S. Customs and Border Protection.

19 “(5)(A) The Director of U.S. Immigration and Cus-
20 toms Enforcement and the Commissioner of U.S. Customs
21 and Border Protection shall each submit to the appro-
22 priate committees of Congress each year a report on the
23 enforcement actions undertaken by U.S. Immigration and
24 Customs Enforcement and U.S. Customs and Border Pro-

1 tion, respectively, during the preceding year that were
2 covered by this subsection.

3 “(B) Each report on an agency for a year under this
4 paragraph shall set forth the following:

5 “(i) The number of enforcement actions at or
6 focused on a sensitive location.

7 “(ii) The number of enforcement actions where
8 officers or agents were subsequently led to or near
9 a sensitive location.

10 “(iii) The date, site, and State, city, and county
11 in which each enforcement action covered by clause
12 (i) or (ii) occurred.

13 “(iv) The component of the agency responsible
14 for each such enforcement action.

15 “(v) A description of the intended target of
16 each such enforcement action.

17 “(vi) The number of individuals, if any, ar-
18 rested or taken into custody through each such en-
19 forcement action.

20 “(vii) The number of collateral arrests, if any,
21 from each such enforcement action and the reasons
22 for each such arrest.

23 “(viii) A certification of whether the location
24 administrator was contacted prior to, during, or
25 after each such enforcement action.

1 “(C) Each report under this paragraph shall be made
2 available to the public without the need to submit a re-
3 quest under section 552 of title 5, United States Code
4 (commonly referred to as the ‘Freedom of Information
5 Act’).

6 “(6) In this subsection:

7 “(A) The term ‘appropriate committees of Con-
8 gress’ means—

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

11 “(ii) the Committee on the Judiciary of the
12 Senate;

13 “(iii) the Committee on Homeland Security
14 of the House of Representatives; and

15 “(iv) the Committee on the Judiciary of
16 the House of Representatives.

17 “(B) The term ‘enforcement action’ means an
18 arrest, interview, search, or surveillance for the pur-
19 poses of immigration enforcement, and includes an
20 enforcement action at, or focused on, a sensitive lo-
21 cation that is part of a joint case led by another law
22 enforcement agency.

23 “(C) The term ‘exigent circumstances’ means a
24 situation involving the following:

1 “(i) The imminent risk of death, violence,
2 or physical harm to any person, including a sit-
3 uation implicating terrorism or the national se-
4 curity of the United States in some other man-
5 ner.

6 “(ii) The immediate arrest or pursuit of a
7 dangerous felon, terrorist suspect, or other indi-
8 vidual presenting an imminent danger or public
9 safety risk.

10 “(iii) The imminent risk of destruction of
11 evidence that is material to an ongoing criminal
12 case.

13 “(D) The term ‘prior approval’ means the fol-
14 lowing:

15 “(i) In the case of officers and agents of
16 U.S. Immigration and Customs Enforcement,
17 prior written approval for a specific, targeted
18 operation from one of the following officials:

19 “(I) The Assistant Director of Oper-
20 ations, Homeland Security Investigations.

21 “(II) The Executive Associate Direc-
22 tor of Homeland Security Investigations.

23 “(III) The Assistant Director for
24 Field Operations, Enforcement, and Re-
25 moval Operations.

1 “(IV) The Executive Associate Direc-
2 tor for Field Operations, Enforcement, and
3 Removal Operations.

4 “(ii) In the case of officers and agents of
5 U.S. Customs and Border Protection, prior
6 written approval for a specific, targeted oper-
7 ation from one of the following officials:

8 “(I) A Chief Patrol Agent.

9 “(II) The Director of Field Oper-
10 ations.

11 “(III) The Director of Air and Marine
12 Operations

13 “(IV) The Internal Affairs Special
14 Agent in Charge.

15 “(E) The term ‘sensitive location’ includes the
16 following:

17 “(i) Hospitals and health clinics.

18 “(ii) Public and private schools (including
19 pre-schools, primary schools, secondary schools,
20 postsecondary schools (including colleges and
21 universities), and other institutions of learning
22 such as vocational or trade schools).

23 “(iii) Organizations assisting children,
24 pregnant women, victims of crime or abuse, or
25 individuals with mental or physical disabilities.

1 “(iv) Churches, synagogues, mosques, and
2 other places of worship, such as buildings
3 rented for the purpose of religious services.

4 “(v) Such other locations as the Secretary
5 of Homeland Security shall specify for purposes
6 of this subsection.”.

7 **Subtitle H—Protection of Children**
8 **Affected by Immigration En-**
9 **forcement**

10 **SEC. 3801. SHORT TITLE.**

11 This subtitle may be cited as the “Humane Enforce-
12 ment and Legal Protections for Separated Children Act”
13 or the “HELP Separated Children Act”.

14 **SEC. 3802. DEFINITIONS.**

15 In this subtitle:

16 (1) APPREHENSION.—The term “apprehension”
17 means the detention or arrest by officials of the De-
18 partment or cooperating entities.

19 (2) CHILD.—The term “child” means an indi-
20 vidual who has not attained 18 years of age.

21 (3) CHILD WELFARE AGENCY.—The term
22 “child welfare agency” means a State or local agen-
23 cy responsible for child welfare services under sub-
24 titles B and E of title IV of the Social Security Act
25 (42 U.S.C. 601 et seq.).

1 (4) COOPERATING ENTITY.—The term “cooper-
2 ating entity” means a State or local entity acting
3 under agreement with the Secretary.

4 (5) DETENTION FACILITY.—The term “deten-
5 tion facility” means a Federal, State, or local gov-
6 ernment facility, or a privately owned and operated
7 facility, that is used, in whole or in part, to hold in-
8 dividuals under the authority of the Director of U.S.
9 Immigration and Customs Enforcement, including
10 facilities that hold such individuals under a contract
11 or agreement with the Director.

12 (6) IMMIGRATION ENFORCEMENT ACTION.—The
13 term “immigration enforcement action” means the
14 apprehension of 1 or more individuals whom the De-
15 partment has reason to believe are removable from
16 the United States by the Secretary or a cooperating
17 entity.

18 (7) PARENT.—The term “parent” means a bio-
19 logical or adoptive parent of a child, whose parental
20 rights have not been relinquished or terminated
21 under State law or the law of a foreign country, or
22 a legal guardian under State law or the law of a for-
23 eign country.

1 **SEC. 3803. APPREHENSION PROCEDURES FOR IMMIGRA-**
2 **TION ENFORCEMENT-RELATED ACTIVITIES.**

3 (a) APPREHENSION PROCEDURES.—In any immigra-
4 tion enforcement action, the Secretary and cooperating en-
5 tities shall—

6 (1) as soon as possible, but generally not later
7 than 2 hours after an immigration enforcement ac-
8 tion, inquire whether an individual is a parent or
9 primary caregiver of a child in the United States
10 and provide any such individuals with—

11 (A) the opportunity to make a minimum of
12 2 telephone calls to arrange for the care of such
13 child in the individual's absence; and

14 (B) contact information for—

15 (i) child welfare agencies and family
16 courts in the same jurisdiction as the child;
17 and

18 (ii) consulates, attorneys, and legal
19 service providers capable of providing free
20 legal advice or representation regarding
21 child welfare, child custody determinations,
22 and immigration matters;

23 (2) notify the child welfare agency with jurisdic-
24 tion over the child if the child's parent or primary
25 caregiver is unable to make care arrangements for

1 the child or if the child is in imminent risk of seri-
2 ous harm;

3 (3) ensure that personnel of the Department
4 and cooperating entities do not, absent medical ne-
5 cessity or extraordinary circumstances, compel or re-
6 quest children to interpret or translate for interviews
7 of their parents or of other individuals who are en-
8 countered as part of an immigration enforcement ac-
9 tion; and

10 (4) ensure that any parent or primary caregiver
11 of a child in the United States—

12 (A) absent medical necessity or extraor-
13 dinary circumstances, is not transferred from
14 his or her area of apprehension until the indi-
15 vidual—

16 (i) has made arrangements for the
17 care of such child; or

18 (ii) if such arrangements are unavail-
19 able or the individual is unable to make
20 such arrangements, is informed of the care
21 arrangements made for the child and of a
22 means to maintain communication with the
23 child;

1 (B) absent medical necessity or extraor-
2 dinary circumstances, and to the extent prac-
3 ticable, is placed in a detention facility either—

4 (i) proximate to the location of appre-
5 hension; or

6 (ii) proximate to the individual's ha-
7 bitual place of residence; and

8 (C) receives due consideration of the best
9 interests of such child in any decision or action
10 relating to his or her detention, release, or
11 transfer between detention facilities.

12 (b) REQUESTS TO STATE AND LOCAL ENTITIES.—
13 If the Secretary requests a State or local entity to hold
14 in custody an individual whom the Department has reason
15 to believe is removable pending transfer of that individual
16 to the custody of the Secretary or to a detention facility,
17 the Secretary shall also request that the State or local en-
18 tity provide the individual the protections specified in
19 paragraphs (1) and (2) of subsection (a), if that individual
20 is found to be the parent or primary caregiver of a child
21 in the United States.

22 (c) PROTECTIONS AGAINST TRAFFICKING PRE-
23 SERVED.—The provisions of this section shall not be con-
24 strued to impede, delay, or in any way limit the obligations
25 of the Secretary, the Attorney General, or the Secretary

1 of Health and Human Services under section 235 of the
2 William Wilberforce Trafficking Victims Protection Reau-
3 thorization Act of 2008 (8 U.S.C. 1232) or section 462
4 of the Homeland Security Act of 2002 (6 U.S.C. 279).

5 **SEC. 3804. ACCESS TO CHILDREN, STATE AND LOCAL**
6 **COURTS, CHILD WELFARE AGENCIES, AND**
7 **CONSULAR OFFICIALS.**

8 At all detention facilities, the Secretary shall—

9 (1) prominently post in a manner accessible to
10 detainees and visitors and include in detainee hand-
11 books information on the protections of this subtitle
12 as well as information on potential eligibility for pa-
13 role or release;

14 (2) absent extraordinary circumstances, ensure
15 that individuals who are detained by the Department
16 and are parents of children in the United States
17 are—

18 (A) permitted regular phone calls and con-
19 tact visits with their children;

20 (B) provided with contact information for
21 child welfare agencies and family courts in the
22 relevant jurisdictions;

23 (C) able to participate fully and, to the ex-
24 tent possible, in person in all family court pro-

1 ceedings and any other proceedings that may
2 impact their right to custody of their children;

3 (D) granted free and confidential telephone
4 calls to relevant child welfare agencies and fam-
5 ily courts as often as is necessary to ensure
6 that the best interest of their children, includ-
7 ing a preference for family unity whenever ap-
8 propriate, can be considered in child welfare
9 agency or family court proceedings;

10 (E) able to fully comply with all family
11 court or child welfare agency orders impacting
12 custody of their children;

13 (F) provided access to United States pass-
14 port applications or other relevant travel docu-
15 ment applications for the purpose of obtaining
16 travel documents for their children;

17 (G) afforded timely access to a notary pub-
18 lic for the purpose of applying for a passport
19 for their children or executing guardianship or
20 other agreements to ensure the safety of their
21 children; and

22 (H) granted adequate time before removal
23 to obtain passports, apostilled birth certificates,
24 travel documents, and other necessary records
25 on behalf of their children if such children will

1 accompany them on their return to their coun-
2 try of origin or join them in their country of or-
3 igin; and

4 (3) where doing so would not impact public
5 safety or national security, facilitate the ability of
6 detained alien parents and primary caregivers to
7 share information regarding travel arrangements
8 with their consulate, children, child welfare agencies,
9 or other caregivers in advance of the detained alien
10 individual's departure from the United States.

11 **SEC. 3805. MANDATORY TRAINING.**

12 The Secretary, in consultation with the Secretary of
13 Health and Human Services, the Secretary of State, the
14 Attorney General, and independent child welfare and fam-
15 ily law experts, shall develop and provide training on the
16 protections required under sections 3803 and 3804 to all
17 personnel of the Department, cooperating entities, and de-
18 tention facilities operated by or under agreement with the
19 Department who regularly engage in immigration enforce-
20 ment actions and in the course of such actions come into
21 contact with individuals who are parents or primary care-
22 givers of children in the United States.

1 **SEC. 3806. RULEMAKING.**

2 Not later than 180 days after the date of the enact-
3 ment of this Act, the Secretary shall promulgate regula-
4 tions to implement sections 3803 and 3804 of this Act.

5 **SEC. 3807. SEVERABILITY.**

6 If any provision of this subtitle or amendment made
7 by this subtitle, or the application of a provision or amend-
8 ment to any person or circumstance, is held to be uncon-
9 stitutional, the remainder of this subtitle and amendments
10 made by this subtitle, and the application of the provisions
11 and amendment to any person or circumstance, shall not
12 be affected by the holding.

13 **Subtitle I—Providing Tools to Ex-**
14 **change Visitors and Exchange**
15 **Visitor Sponsors to Protect Ex-**
16 **change Visitor Program Partici-**
17 **pants and Prevent Trafficking**

18 **SEC. 3901. DEFINITIONS.**

19 (a) IN GENERAL.—Except as otherwise provided by
20 this subtitle, the terms used in this subtitle shall have the
21 same meanings, respectively, as are given those terms in
22 section 3 of the Fair Labor Standards Act of 1938 (29
23 U.S.C. 203), except that the term “employer” shall also
24 include a prospective employer seeking to hire exchange
25 visitors with which the sponsor has a contractual relation-
26 ship.

1 (b) OTHER DEFINITIONS.—

2 (1) EXCHANGE VISITOR.—The term “exchange
3 visitor” means a foreign national who is inquiring
4 about or applying to participate in the exchange vis-
5 itor program or who has successfully applied and
6 has completed or is completing an exchange visitor
7 programs not funded by the United States Govern-
8 ment as governed by sections 2.22, 62.24, 62.30,
9 62.31, and 62.32 of title 22, Code of Federal Regu-
10 lations.

11 (2) EXCHANGE VISITOR PROGRAM.—The term
12 “exchange visitor program” means the international
13 exchange program administered by the Department
14 of State to implement the Mutual Educational and
15 Cultural Exchange Act of 1961 (22 U.S.C. 2451 et
16 seq.), by means of educational and cultural pro-
17 grams.

18 (3) EXCHANGE VISITOR PROGRAM RECRUIT-
19 MENT ACTIVITIES.—The term “exchange visitor pro-
20 gram recruitment activities” means activities related
21 to recruiting, soliciting, transferring, providing, ob-
22 taining, or facilitating participation of individuals
23 who reside outside the United States in an exchange
24 visitor program including when such activity occurs
25 wholly outside the United States.

1 (4) EXCHANGE VISITOR PROGRAM SPONSOR;
2 SPONSOR.—The term “exchange visitor program
3 sponsor” or “sponsor” means a legal entity des-
4 ignated by the Secretary of State, in the Secretary’s
5 discretion, to conduct an exchange visitor program
6 governed by sections 62.22, 62.24, 62.30, 62.31, and
7 62.32 of title 22, Code of Federal Regulations).

8 (5) FOREIGN ENTITY.—The term “foreign enti-
9 ty” means a person contracted by a sponsor to en-
10 gage in exchange visitor program recruitment activi-
11 ties on the sponsor’s behalf and any subcontractors
12 thereof.

13 (6) HOST ENTITY.—The term “host entity”
14 means “host organization”, “primary or secondary
15 accredited educational institution”, “camp facility”,
16 “host family”, or “employer/host employer” as used
17 in sections 62.22, 62.24, 62.30, 62.31, and 62.32 of
18 title 22, Code of Federal Regulations, respectively.

19 (7) REGULATIONS.—Any reference to any pro-
20 vision of regulations shall include any successor pro-
21 vision addressing the same subject matter.

22 **SEC. 3902. DISCLOSURE.**

23 (a) REQUIREMENT FOR DISCLOSURE AT TIME OF
24 EXCHANGE VISITOR PROGRAM RECRUITMENT ACTIV-
25 ITY.—Any person who engages in exchange visitor pro-

1 gram recruitment activity shall develop certain informa-
2 tion, previously approved by and on file with the exchange
3 visitor program sponsor, to be disclosed in writing in
4 English to the exchange visitor before the exchange visitor
5 pays fees described in section 3904, other than refundable
6 fees and a reasonable non-refundable deposit, or otherwise
7 detrimentally relies on information provided by an ex-
8 change program sponsor or foreign entity. This informa-
9 tion shall be made available to the Secretary of State, or
10 an exchange visitor requesting his or her own file, within
11 5 business days of request, consistent with program regu-
12 lations in part 62 of title 22, Code of Federal Regulations.
13 Not later than 18 months after the date of the enactment
14 of this Act, the Secretary of State shall, in consultation
15 with the Secretary of Labor, amend such regulations to
16 reflect the information to be disclosed, including the fol-
17 lowing:

18 (1) The identity and address of the exchange
19 visitor program sponsor, host entity, and any foreign
20 entity with authority to charge fees and costs under
21 section 3904.

22 (2) All assurances and terms and conditions of
23 employment, from the prospective host entity of the
24 exchange visitor, including place and period of em-
25 ployment, job duties, number of work hours, wages

1 and compensation, and any deductions from wages
2 and benefits, including deductions for housing and
3 transportation. Nothing in this paragraph shall be
4 construed to permit any charge, deduction, or ex-
5 pense prohibited by this or any other law.

6 (3) A copy of the prospective agreement be-
7 tween the exchange visitor program sponsor, ex-
8 change visitor, and the host entity.

9 (4) Information regarding the terms and condi-
10 tions of the nonimmigrant status under which the
11 exchange visitor is to be admitted, and the period of
12 stay in the United States allowed for such non-
13 immigrant status.

14 (5) A copy of the fee disclosure form as de-
15 scribed in section 3904(d) listing the mandatory and
16 optional costs or expenses to be charged to the ex-
17 change visitor.

18 (6) The existence of any labor organizing effort,
19 collective bargaining agreement, labor contract,
20 strike, lockout, or other labor dispute at the host en-
21 tity.

22 (7) Whether and the extent to which exchange
23 visitors will be compensated through workers' com-
24 pensation, private insurance, or otherwise for inju-

1 ries or death, including work-related injuries and
2 death, during the period of employment.

3 (8) A description of the sanctions the exchange
4 visitor program sponsor is currently subject to, if
5 any, as imposed by the Department of State.

6 (9) A statement in a form specified by the Sec-
7 retary of State—

8 (A) stating that in accordance with guide-
9 lines and regulations promulgated by the Sec-
10 retary —

11 (i) the costs and fees charged by the
12 exchange program sponsor, foreign entity,
13 and host entity do not exceed those per-
14 mitted by section 3904 and are legal under
15 the laws of the United States and the
16 home country of the exchange visitor; and

17 (ii) the exchange visitor program
18 sponsor, foreign entity, or host entity may
19 bear costs or fees not provided for in sec-
20 tion 3904, but that fees under that section
21 cannot be passed along to the exchange
22 visitor.

23 (10) Any education or training to be provided
24 or required, other than education or training pro-
25 vided in accordance with section 62.10 (b) and (c)

1 of title 22, Code of Federal Regulations, as “pre-ar-
2 rival information” or “orientation” and additional
3 orientation and training requirements as described
4 in each relevant category under sections 62.22,
5 62.24, 62.30, 62.31, and 62.32 of that title.

6 (11) A clear statement explaining that—

7 (A) except as provided in subparagraph
8 (B), no additional significant requirements or
9 significant changes may be made to the original
10 contract signed with a handwritten, electronic,
11 or digital pin code signature by the exchange
12 visitor without at least 24 hours to consider
13 such changes and the specific consent of the ex-
14 change visitor, obtained voluntarily and without
15 threat of penalty; and

16 (B) changes may be made to the conditions
17 of employment contained in the original con-
18 tract even if the exchange visitor has not had
19 24 hours to consider such changes, provided the
20 exchange visitor has specifically consented to
21 the changes, voluntarily and without threat of
22 penalty, and such changes must be implemented
23 without giving the exchange visitor 24 hours to
24 consider them in order to protect the health or
25 welfare of the exchange visitor.

1 (b) REQUIREMENT FOR RULES.—The Secretary of
2 State shall define by rule or guidance what constitutes
3 “refundable fees” and a “reasonable non-refundable de-
4 posit” for the purpose subsection (a).

5 (c) RELATIONSHIP TO LABOR AND EMPLOYMENT
6 LAWS.—Nothing in the disclosure required by subsection
7 (a) shall constitute a legal conclusion as to the exchange
8 visitor’s status or rights under the labor and employment
9 laws.

10 (d) PROHIBITION ON FALSE AND MISLEADING IN-
11 FORMATION AND CERTAIN FEES.—No exchange visitor
12 program sponsor, foreign entity, or host entity who en-
13 gages in any exchange visitor program activity shall know-
14 ingly provide materially false or misleading information to
15 any exchange visitor concerning any matter required to
16 be disclosed under subsection (a). Charging fees for serv-
17 ices not provided or assessing fees that exceed the
18 amounts established by the Secretary of State pursuant
19 to section 3904 is a violation of this section. The dis-
20 closure required by this section is a document concerning the
21 proper administration of a matter within the jurisdiction
22 of a department or agency of the United States for the
23 purposes of section 1519 of title 18, United States Code,
24 and other provisions of such title.

1 (e) PUBLIC AVAILABILITY OF INFORMATION.—The
2 Secretary of State shall amend its regulations at part 62
3 of title 22, Code of Federal Regulations, to require spon-
4 sors to make publicly available, including on their websites
5 and in recruiting materials, information regarding fees,
6 costs, and services associated with their exchange visitor
7 programs, including foreign entity names and contact
8 points, and other factors relevant to exchange visitors’
9 choice of sponsor or foreign entity.

10 **SEC. 3903. PROHIBITION ON DISCRIMINATION.**

11 (a) IN GENERAL.—It shall be unlawful for an ex-
12 change visitor program sponsor, foreign entity, or host en-
13 tity to fail or refuse to select, hire, discharge, intimidate,
14 threaten, restrain, coerce, or blacklist any individual or
15 otherwise discriminate against an individual with respect
16 to compensation, terms, conditions, or privileges of em-
17 ployment, because of such individual’s race, color, creed,
18 sex, national origin, religion, age, or disability.

19 (b) DETERMINATIONS OF DISCRIMINATION.—For the
20 purposes of determining the existence of unlawful dis-
21 crimination under subsection (a)—

22 (1) in the case of a claim of discrimination
23 based on race, color, sex, national origin, or religion,
24 the same legal standards shall apply as are applica-

1 ble under title VII of the Civil Rights Act of 1964
2 (42 U.S.C. 2000e et seq.);

3 (2) in the case of a claim of discrimination
4 based on age, the same legal standards shall apply
5 as are applicable under the Age Discrimination in
6 Employment Act of 1967 (29 U.S.C. 621 et seq.);
7 and

8 (3) in the case of a claim of discrimination
9 based on disability, the same legal standards shall
10 apply as are applicable under title I of the Ameri-
11 cans With Disabilities Act of 1990 as amended (42
12 U.S.C. 12111 et seq.).

13 **SEC. 3904. FEES.**

14 (a) IN GENERAL.—Not later than 2 years after the
15 date of the enactment of this Act, the Secretary of State,
16 in consultation with the Secretary of Labor, shall promul-
17 gate regulations to set limits on the mandatory fees
18 charged by exchange visitor program sponsors, host enti-
19 ties, and their foreign entities to the exchange visitor. In
20 promulgating such regulations, the Secretary of State
21 shall conduct public meetings with exchange visitor pro-
22 gram sponsors, organizations representing exchange visi-
23 tors, and members of the public with expertise in public
24 diplomacy, educational and cultural exchange, labor mar-
25 kets, labor relations, migration, civil rights, human rights,

1 and prohibiting human trafficking. The Secretary of State
2 may, in the Secretary's discretion, consider factors includ-
3 ing what costs are within the control of sponsors, dif-
4 ferences among programs and countries, level and amount
5 of educational and cultural activities included, and services
6 rendered.

7 (b) MAXIMUM FEES.—It shall be unlawful for any
8 person to charge a fee higher than the maximum allowable
9 fee as established by regulations promulgated under sub-
10 section (a), and any person who charges a higher fee shall
11 be liable under this subtitle. If a fee higher than the max-
12 imum is charged by a sponsor or foreign entity, the spon-
13 sor shall be liable. If a fee higher than the maximum allow-
14 able is charged by the host entity or a host entity's agent,
15 the host entity shall be liable.

16 (c) UPDATE OF MAXIMUM FEES.—The Secretary of
17 State shall update the maximum allowable fees described
18 in subsection (a) in response to changing economic condi-
19 tions and other factors as needed.

20 (d) FEE TRANSPARENCY.—The Secretary of State
21 shall amend its regulations at part 62 of title 22, Code
22 of Federal Regulations, to require exchange visitor pro-
23 gram sponsors to—

24 (1) provide the Department of State annually
25 with an itemized list of fees charged to exchange vis-

1 itor program participants including by their foreign
2 entities, subcontractors, or foreign entity's agents;
3 and

4 (2) require a 3-party document signed by the
5 exchange visitor, foreign entity, and sponsor that
6 outlines a basic level fee structure and itemizes man-
7 datory and optional fees.

8 **SEC. 3905. ANNUAL NOTIFICATION.**

9 (a) ANNUAL EXCHANGE VISITOR PROGRAM SPONSOR
10 NOTIFICATION.—

11 (1) IN GENERAL.—Subject to paragraph (2),
12 prior to engaging in any exchange visitor program
13 activity, any person who seeks to be an exchange vis-
14 itor program sponsor shall be designated by the Sec-
15 retary of State pursuant to regulations that the Sec-
16 retary of State has prescribed or shall prescribe
17 after the date of the enactment of this Act.

18 (2) NOTIFICATION.—Each exchange visitor pro-
19 gram sponsor shall notify the Secretary of State, not
20 less frequently than once every year, of the identity
21 of any third party, agent, or exchange visitor pro-
22 gram sponsor employee involved in any exchange vis-
23 itor program recruitment activity for, or on behalf
24 of, the exchange visitor program sponsor.

1 (3) PERSONAL JURISDICTION OVER FOREIGN
2 ENTITIES.—As a condition of initial and continued
3 registration, each program sponsor shall obtain a
4 written and signed agreement from any foreign enti-
5 ty. In that agreement, the foreign entity shall stipu-
6 late and agree, as a condition for receiving any pay-
7 ment or compensation for performing any work or
8 service for the program sponsor, that the laws of the
9 United States shall govern any and all disputes
10 among and between the parties or the United States,
11 including any enforcement actions, and that any dis-
12 pute or enforcement action shall be brought in the
13 United States District Court for the District of Co-
14 lumbia. The agreement shall be in such form and
15 contain such other information as the Secretary of
16 State shall prescribe.

17 (4) NONCOMPLIANCE NOTIFICATION.—An host
18 entity shall notify the Secretary of State upon gain-
19 ing knowledge of noncompliance with this subtitle by
20 an exchange visitor program sponsor. An exchange
21 visitor program sponsor shall notify the Secretary of
22 State upon gaining knowledge of noncompliance with
23 this subtitle by a host entity or foreign entity.

24 (b) REGULATIONS.—Not later than 180 days after
25 the date of the enactment of this Act, the Secretary of

1 State shall amend its regulations at part 62 of title 22,
2 Code of Federal Regulations, regarding the annual ex-
3 change visitor program sponsor notification.

4 (c) REFUSAL TO ISSUE AND REVOCATION OF DES-
5 IGNATION.—The Secretary of State shall amend its regu-
6 lations at part 62 of title 22, Code of Federal Regulations,
7 to include the following bases for refusing to issue or
8 renew, or for revoking a sponsor’s designation for a period
9 of not greater than 5 years:

10 (1) The applicant for, or holder of, the designa-
11 tion has knowingly made a material misrepresenta-
12 tion in the application for such designation.

13 (2) The applicant for, or holder of, the designa-
14 tion has committed any felony under State or Fed-
15 eral law or any crime involving fraud, robbery, brib-
16 ery, extortion, embezzlement, grand larceny, bur-
17 glary, arson, violation of narcotics laws, murder,
18 rape, trafficking in persons, assault with intent to
19 kill, assault which inflicts grievous bodily injury,
20 prostitution, peonage, or smuggling or harboring in-
21 dividuals who have entered the United States ille-
22 gally.

23 (3) The applicant for, or holder of, the designa-
24 tion has committed any crime relating to gambling,
25 or to the sale, distribution, or possession of alcoholic

1 beverages, in connection with or incident to any ex-
2 change visitor recruitment activities.

3 (4) Such other criteria as the Secretary of State
4 may, in the Secretary's discretion, establish.

5 **SEC. 3906. BONDING REQUIREMENT.**

6 (a) IN GENERAL.—The Secretary of State may as-
7 sess a bond amount sufficient to ensure the ability of a
8 sponsor to discharge its responsibilities and to ensure pro-
9 tection of exchange visitors, including wages or stipends.
10 In requiring a sponsor to post the bond, the Secretary of
11 State shall take into account the degree to which the spon-
12 sor's assets can be reached by United States courts.

13 (b) REGULATIONS.—The Secretary of State, by regu-
14 lation, shall establish the conditions under which the bond
15 amount is determined, paid, and forfeited, which shall in-
16 clude the sponsor's history of compliance.

17 (c) RELATIONSHIP TO OTHER REMEDIES.—The bond
18 requirements and forfeiture of the bond under this section
19 shall be in addition to or, pursuant to court order, in con-
20 junction with, other remedies under 3910 or any other
21 provision of law.

22 **SEC. 3907. MAINTENANCE OF LISTS.**

23 (a) IN GENERAL.—The Secretary of State shall work
24 with the Secretary of Homeland Security to ensure that
25 the information described in paragraphs (1) through (4)

1 of subsection (b) is included on the foreign entity list kept
2 and updated pursuant to section 3607 and shall share that
3 list with the Department of Labor.

4 (b) INFORMATION.—Not later than 1 year after the
5 date of the enactment of this Act, each sponsor shall com-
6 pile and share with the Secretary of State on a regular
7 basis a list that includes the following information:

8 (1) The countries from which the sponsor re-
9 cruits.

10 (2) The host entities for whom the sponsor re-
11 cruits.

12 (3) The occupations for which the sponsor re-
13 cruits.

14 (4) The States where recruited exchange visi-
15 tors are employed.

16 (c) LIMITATION ON PUBLIC AVAILABILITY.—Neither
17 the Secretary of State nor the Secretary of Homeland Se-
18 curity shall make the information described in paragraphs
19 (1) through (4) of subsection (b) public as part of the list
20 described in section 3607.

21 **SEC. 3908. AMENDMENT TO THE IMMIGRATION AND NA-**
22 **TIONALITY ACT.**

23 Section 214 (8 U.S.C. 1184), as amended by title IV,
24 is further amended by adding at the end the following:

1 “(bb) A visa shall not be issued under section
2 101(a)(15) until the consular officer—

3 “(1) has confirmed that the applicant has re-
4 ceived, read, and understood the information and re-
5 sources pamphlet required by section 202 of the Wil-
6 liam Wilberforce Trafficking Victims Protection Re-
7 authorization Act of 2008 (8 U.S.C. 1375b); and

8 “(2) has reviewed and made a part of the visa
9 file the exchange visitor program sponsor disclosures
10 required by section 3902 of the Border Security,
11 Economic Opportunity, and Immigration Moderniza-
12 tion Act, including whether the exchange visitor pro-
13 gram sponsor is designated pursuant to that sec-
14 tion.”.

15 **SEC. 3909. RESPONSIBILITIES OF SECRETARY OF STATE.**

16 (a) IN GENERAL.—The Secretary of State shall en-
17 sure that each United States diplomatic mission has a per-
18 son who is responsible for receiving information from any
19 exchange visitor who has been subject to violations of this
20 subtitle.

21 (b) PROVISION OF INFORMATION.—The responsible
22 person referred to in subsection (a) shall ensure that the
23 information received is provided to the Department of
24 State. The Department of State may share that informa-
25 tion as necessary with the Department of Justice, the De-

1 partment of Labor, and any other relevant Federal agen-
2 cy.

3 (c) MECHANISMS.—The Attorney General and the
4 Secretary of State shall ensure that there is a mechanism
5 for any actions that need to be taken in response to infor-
6 mation received under subsection (a).

7 (d) ASSISTANCE FROM FOREIGN GOVERNMENT.—
8 The person designated for receiving information pursuant
9 to subsection (a) is strongly encouraged to coordinate with
10 governments and civil society organizations in the coun-
11 tries of origin to ensure the exchange visitor receives addi-
12 tional support.

13 (e) MAINTENANCE AND AVAILABILITY OF INFORMA-
14 TION.—The Secretary of State shall ensure that con-
15 sulates coordinate with the Department of State to have
16 access to information regarding the identities of sponsors
17 and the foreign entities with whom sponsors contract for
18 exchange visitor program recruitment activities. The Sec-
19 retary of State shall ensure information on the identity
20 of sponsors is publicly available in written form on the
21 Department of State website, and information on the iden-
22 tity of foreign entities in each individual country is pub-
23 licly available on the websites of United States embassies
24 in each of those countries.

1 **SEC. 3910. ENFORCEMENT PROVISIONS.**

2 (a) INVESTIGATIONS.—The Secretary of State shall
3 undertake compliance actions and sanctions against ex-
4 change visitor program sponsors in accordance with part
5 62 of title 22, Code of Federal Regulations.

6 (b) REPRESENTATION.—Except as provided in sec-
7 tion 518(a) of title 28, United States Code, the Attorney
8 General may appear for and represent the Secretary in
9 any civil litigation brought under this paragraph. All such
10 litigation shall be subject to the direction and control of
11 the Attorney General. Exchange visitor sponsors shall be
12 allowed a reasonable period of inquiry and response before
13 civil litigation is initiated.

14 (c) ENFORCEMENT.—The Secretary of State or an
15 exchange visitor who is subject to any violation of this sub-
16 title may bring a civil action against an exchange visitor
17 program sponsor, foreign entity, or host entity in a court
18 of competent jurisdiction and recover appropriate relief,
19 including injunctive relief, damages, reasonable attorneys'
20 fees and costs, and any other remedy that would effectuate
21 the purposes of this subtitle. Any action must be filed
22 within 3 years after the date on which the exchange visitor
23 became aware of the violation, but under no circumstances
24 more than 5 years after the date on which the violation
25 occurred.

1 (d) ACTIONS BY THE SECRETARY OF STATE OR AN
2 EXCHANGE VISITOR.—If the court finds in a civil action
3 filed under this section that the defendant has violated any
4 provision of this subtitle (or any regulation issued pursu-
5 ant to this subtitle), the court may award damages, up
6 to and including an amount equal to the amount of actual
7 damages, and statutory damages of up to \$1,000 per
8 plaintiff per violation, or other equitable relief, except that
9 with respect to statutory damages—

10 (1) multiple infractions of a single provision of
11 this subtitle (or of a regulation under this subtitle)
12 shall constitute only 1 violation for purposes of sec-
13 tion 3902(a) to determine the amount of statutory
14 damages due a plaintiff; and

15 (2) if such complaint is certified as a class ac-
16 tion the court may award—

17 (A) damages up to an amount equal to the
18 amount of actual damages; and

19 (B) statutory damages of not more than
20 the lesser of up to \$1,000 per class member per
21 violation, or up to \$500,000;

22 (C) other equitable relief;

23 (D) reasonable attorneys' fees and costs;

24 and

1 (E) such other and further relief, including
2 declaratory and injunctive relief, as necessary to
3 effectuate the purposes of this subtitle.

4 (e) BOND.—To satisfy the damages, fees, and costs
5 found owing under this section, as much of the bond held
6 pursuant to section 3906 shall be released as necessary.

7 (f) APPEAL.—Any civil action brought under this sec-
8 tion shall be subject to appeal as provided in chapter 83
9 of title 28, United States Code.

10 (g) SAFE HARBOR.—A host entity shall not have any
11 liability under this section for the actions or omissions of
12 an exchange visitor program sponsor that has a valid des-
13 ignation with the State Department pursuant to section
14 3905, unless and to the extent that the host entity has
15 engaged in conduct that violates this subtitle.

16 (h) LIABILITY FOR FOREIGN ENTITIES.—Exchange
17 visitor program sponsors shall be liable for violations of
18 this subtitle by any foreign employees, agents, foreign en-
19 tities, or subcontractees of any level in relation to the ex-
20 change visitor program recruitment activities of the for-
21 eign employees, agents, foreign entities, or subcontractees
22 to the same extent as if the exchange visitor program
23 sponsor had committed the violation, unless the exchange
24 visitor program sponsor—

1 (1) uses reasonable procedures to protect
2 against violations of this subtitle by foreign employ-
3 ees, agents, foreign entities, or subcontractees (in-
4 cluding contractually forbidding in writing any for-
5 eign employees, agents, foreign entities, or
6 subcontractees from seeking or receiving prohibited
7 fees from workers);

8 (2) does not act with reckless disregard of the
9 fact that foreign employees, agents, foreign entities,
10 or subcontractees have violated any provision of this
11 subtitle; and

12 (3) timely reports any potential violations to the
13 Secretary of State.

14 (i) WAIVER OF RIGHTS.—Agreements between ex-
15 change visitors with sponsors, foreign entities, or host en-
16 tities purporting to waive or to modify their rights under
17 this subtitle shall be void as contrary to public policy.

18 (j) RETALIATION.—No person shall intimidate,
19 threaten, restrain, coerce, discharge, or in any other man-
20 ner discriminate or retaliate against any exchange visitor
21 or his or her family members (including a former exchange
22 visitor or an applicant for employment) because such ex-
23 change visitor disclosed information to any person that the
24 exchange visitor reasonably believes evidences a violation
25 of this section (or any rule or regulation pertaining to this

1 section), including speaking with a worker organization,
2 seeking legal assistance of counsel, or cooperating with an
3 investigation or other proceeding concerning compliance
4 with this section (or any regulation pertaining to this sec-
5 tion).

6 (k) PROHIBITION ON RETALIATION.—It shall be un-
7 lawful for an exchange visitor program sponsor or foreign
8 entity to terminate or remove from the exchange visitor
9 program, ban from the program, adversely annotate an ex-
10 change visitor's SEVIS (as defined in section 4902)
11 record, fire, demote, take other adverse employment ac-
12 tion, or evict, or to threaten to take any of such actions
13 against an exchange visitor in retaliation for the act of
14 complaining about program conditions, including housing
15 and job placements, wages, hours, and general treatment,
16 or for disclosing retaliation by an exchange visitor sponsor,
17 exchange visitor foreign entity, or host entity against any
18 exchange visitor.

19 (l) PRESENCE DURING PENDENCY OF ACTIONS.—If
20 other immigration relief is not available to the exchange
21 visitor, the Secretary of Homeland Security may permit,
22 only on the basis of proof, the exchange visitor to remain
23 lawfully in the United States for the time sufficient to
24 allow the exchange visitor to fully and effectively partici-

1 pate in all legal proceedings related to any action taken
2 pursuant to this section.

3 (m) ACCESS TO LEGAL SERVICES CORPORATION.—
4 Notwithstanding any other provision of law, the Legal
5 Services Corporation and recipients of its funding may
6 provide legal assistance on behalf of any alien with respect
7 to any provision of this subtitle.

8 (n) HOST ENTITY VIOLATIONS.—The Secretary, in
9 consultation with the Secretary of Labor, shall maintain
10 a list of host entities against whom there has been a com-
11 plaint substantiated by the Department of State for sig-
12 nificant program violations. Information from that list
13 shall be made available to sponsors upon request.

14 **SEC. 3911. AUDITS AND TRANSPARENCY.**

15 (a) COMPLIANCE AUDITS.—

16 (1) IN GENERAL.—The Secretary of State shall
17 by regulation require audit reports to be filed by ex-
18 change visitor program sponsors operating under the
19 following specific program categories, as described
20 under subpart B of part 62 of title 22, Code of Fed-
21 eral Regulations, and any successor regulations:

- 22 (A) Summer work travel.
- 23 (B) Trainees and interns.
- 24 (C) Camp counselors.
- 25 (D) Au pairs.

1 (E) Teachers.

2 (2) AUDIT REPORTS.—Audit reports shall be
3 filed with the Department of State and be conducted
4 by a certified public accountant, qualified auditor, or
5 licensed attorney pursuant to a format designated by
6 the Secretary of State, attesting to the sponsor's
7 compliance with the regulatory and reporting re-
8 quirements set forth in part 62 of title 22, Code of
9 Federal Regulations. The report shall be conducted
10 at the expense of the sponsor and no more fre-
11 quently than on a biannual basis.

12 (b) ANNUAL REPORT.—Not later than 1 year after
13 the date of the enactment of this Act, and annually there-
14 after, the Secretary of State shall submit to Congress a
15 report on the exchange visitor program, which shall detail
16 for each specific program category—

17 (1) summary data on the number of exchange
18 visitors and countries participating in that category;

19 (2) public diplomacy outcomes; and

20 (3) recent sanctions imposed by the Depart-
21 ment of State.