

# Section by Section Summary of The Comprehensive Immigration Reform Act of 2010 Senator Robert Menendez (D-NJ) and Senator Patrick Leahy (D-VT)

#### **Section 1. Short Title; Table of Contents**

This Act may be cited as the "Comprehensive Immigration Reform Act of 2010."

### Section 2. References to Immigration and Nationality Act

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms as an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Immigration and Nationality Act.

#### **Section 3. Definitions**

#### Title I. Border Enforcement

#### **Subtitle A. Additional Assets and Resources**

### **Section 101. Effective Date Triggers**

Lawful prospective immigrants (as defined by Section 502 of this Act) may not adjust their status to permanent residence until the DHS Secretary certifies that the following measures are established, funded, and operational:

- (A) ICE has a total force of 6,410 agents to investigate violations of criminal law, including document and benefit fraud and cross-border smuggling of aliens, firearms, narcotics and other contraband.
- (B) ICE has a total force of 185 worksite enforcement auditors to support a worksite enforcement strategy that prioritizes developing cases against employers committing serious violations.
- (C) ICE has created and staffed an Immigration Benefit and Document Fraud Task Force in each field office headed by a Special Agent in Charge;
- (D) ICE has nationwide plan in place with benchmarks to dramatically increase the enrollment at a nationwide level of an alternatives to detention program utilizing community-based nonprofits organizations
- (E) ICE has implemented civil detention standards and requires compliance at each facility detaining immigrants
- (F) CBP has a total force of 21,000 U.S. Border Patrol agents who have been hired, trained,

- and have reported for duty, including increased numbers of personnel to conduct inspections for drugs, contraband, and immigrants who are unlawfully present at America's ports of entry;
- (G) CBP has a total force of 21,500 officers who have been hired, trained, and have reported for duty at the Office of Field Operations
- (H) CBP has 7 Unmanned Aircraft Systems deployed and operational; Remote Video Surveillance Systems (RVSS) deployed and operational at 300 sites; 200 scope trucks; and 56 Mobile Surveillance Systems (MSS);
- (I) The employment verification system created under title III of this Act is fully operational and mandatory for all employers;
- (J) The Secretary has received, and is processing and adjudicating in a timely manner, applications under title 5 of this Act, including conducting all necessary background and security checks required under that title; and;
- (K) The Attorney General submits a written certification to the President and the Congress that each of the following measures is established, funded, and operational:
  - (1) DOJ has 300 Assistant United States Attorneys in place who prosecute criminal violations at the border; and
  - (2) DOJ has 275 Immigration Judges in place with appropriate support staff.

#### Section 102. Customs and Border Protection Personnel

This section provides for additional Customs and Border Protection (CBP) officers and personnel in addition to the personnel increases included in the emergency supplemental appropriations for border security passed in August of 2010. This bill allocates \$40 million from the 2010 DHS Appropriations Act to fund 250 new Custom and Border Protection officers and 25 support staff at new ports of entry along the Southwest border. By September 30, 2013, DHS shall hire, train, and assign to duty 2,500 additional CBP officers to serve at ports of entry along the Northern border; 2,500 additional CBP officers to serve at ports of entry along the Southern border; and 350 additional support staff for all U.S. ports of entry.

This section requires DHS to write and submit to Congress within 90 days of enactment of this Act reports on the Department's plans for (1) placing CBP officers on outbound inspections at all Southern land ports of entry; and (2) the placement of sufficient agriculture specialists at all Southern land ports of entry. This section also authorizes the DHS Secretary to make up to \$55 million in retention payments to qualified CBP port of entry officers in the amount of \$5,000 to \$10,000. This section further outlines the requirements for these retention incentive payments.

### Section 103. Secure Communication; Equipment; and Grants for Border Personnel

Each CBP officer shall receive a secure 2-way communication and satellite-enabled device. The device must allow the officer to communicate between ports of entry and inspection stations and with other federal, state, local, and tribal law enforcement. The DHS Secretary shall also

establish a program to award grants (\$30 million for 6-years beginning Oct. 1, 2011) for the purchase of mobile, hand-held communication devices and detection equipment for state and local officers serving on the Southern Border.

#### Section 104. Infrastructure Improvements and Expansion of Land Ports of Entry

This section provides, as part of the American Recovery and Reinvestment Act of 2009, for \$300 million towards infrastructure improvements, expansion, and new construction (or reimbursement for new construction costs incurred during fiscal years 2007 through 2012) at high-volume ports of entry along the Northern and Southern borders regardless of port ownership.

#### Section 105. Additional Authorities for Port of Entry Construction

This section permits the CBP Commissioner to design, construct, and modify land ports of entry and other structures, to acquire land for the purposes of doing so, and to construct additional ports of entry along the Northern and Southern borders. The DHS Secretary will consult with the Secretary of the Interior, the Secretary of Agriculture, the Secretary of State, the International Boundary and Water Commission, the International Joint Commission, and appropriate representatives of States, local governments, Indian tribes, and property owners to determine the new port of entry locations and to minimize adverse impacts of the ports on the environment, historical and cultural resources, commerce, and residents' quality of life.

### Section 106. Additional Increases in Immigration Enforcement Personnel

This section increases the number of full-time active duty ICE investigators each year from 800 additional to 1000 additional for fiscal years 2011-2012. This section also authorizes an increase of at least 50 DHS personnel assigned to investigate alien smuggling per fiscal years 2011-2015.

#### Section 107. Additional Immigration Court Personnel

This section increases the number of immigration litigation attorneys by at least 50 each year for fiscal years 2011-2015, the number of immigration judges by at least 20 each year for fiscal years 2011-2015, and increases the number of support personnel for these immigration judges by at least 80 each year for fiscal years 2011-2015. This section also increases the number of staff attorneys at the Board of Immigration Appeals by at least 10 each year for fiscal years 2011-2015 and the number of support personnel for these staff attorneys by at least 10 each year for fiscal years 2011-2015.

### Section 108. Improved Training for Border and Immigration Enforcement Officers

This section ensures that CBP agents, Border Patrol agents, ICE agents, and Agricultural Inspectors stationed within 100 miles of all land and marine borders and at ports of entry will receive appropriate training, prepared in collaboration with OCRCL, in 1) identifying and detecting fraudulent travel documents, 2) civil, constitutional, and privacy rights of individuals,

(3) limitations on the use of force, and 4) screening, identifying, and addressing vulnerable populations, such as children, crime victims, human trafficking victims, and individuals fleeing persecution or torture.

#### Section 109. Standards of Professional Conduct

Under this section, the DHS Secretary, within 90 days of enactment, will establish clear standards of professional conduct for interaction with the public for all CBP agents, U.S. Border Patrol agents, ICE agents, and Agricultural Inspectors stationed within 100 miles of all land and marine borders and at ports of entry, including, among others, that these agents: (1) may not engage in any on-duty or off-duty conduct or activities that discredits or impairs the operation of the agency; (3) shall conduct themselves toward the public in a civil and professional manner; (4) shall treat violators and perceived violators with respect and courtesy; (5) shall refrain from an officious or overbearing attitude or language that belittles, ridicules, or intimidates individuals; (6) shall respect the civil rights and protect the well-being of those in their charge; and (7) may not use their authority as Federal agents to resolve personal grievances.

DHS will develop and implement officer and supervisor evaluation plans that apply the above standards, ensure agent responsibility, and protect civil rights by (1) making adherence to the standards a requirement for promotion; (2) holding supervisors responsible for subordinates' adherence to these standards; (3) establishing strong penalties for failure to follow the standards; and (4) not indemnifying agents that violate these standards.

The DHS Secretary will consult with the Office of Civil Rights and Civil Liberties to establish a process for the public regarding complaints of violations of the standards that requires (1) the quick and effective review, investigation, and resolution of complaints; (2) the identification of patterns of abuse; and (3) the creation of a publicly accessible database capable of tracking and analyzing complaints. The DHS Secretary will submit an annual report to Congress analyzing the complaints received including the number of complaints, type, demographics of complainants, investigation results, disciplinary actions taken, and complaint patterns that could be prevented by department changes.

### Section 110. Inventory of Assets and Personnel

The DHS Secretary will identify and inventory DHS's assets, equipment, supplies, and human resources devoted to border security and enforcement before any increases are authorized under this Act. The inventory will be submitted to Congress within 90 days of enactment of the Act.

#### **Section 111. Customs Border Patrol and Border Protection Assets**

This section outlines the types of equipment and protective gear that will be issued to each CBP agent, including high quality body armor, reliable and effective weapons, and all necessary uniform items including outerwear, belts, holsters, and protective equipment to. If necessary, the

DHS Secretary will increase the number of Border Patrol helicopters and power boats. If necessary, the DHS Secretary will establish a fleet of motor vehicles appropriate for Border Patrol use. This section also provides for panic buttons and emergency GPS systems for all motor vehicles, portable computers for all Border Patrol police-type motor vehicles, encrypted 2-way radio communication devices for law enforcement working in Border Patrol operation areas, and portable night vision devices for Border Patrol agents working during hours of darkness.

### **Section 112. Technological Assets**

The DHS Secretary will procure additional unmanned aerial systems including related equipment like sensors, critical spares, and satellite command and control. The Secretary will acquire aircrafts, cameras, poles, ground sensors, and other necessary technologies to achieve control of land and maritime borders. The DHS Secretary, in consultation with the Attorney General, will conduct a privacy impact assessment and civil liberties impact assessment before deploying the above technologies.

#### **Section 113. Surveillance Technologies Programs**

This section details the requirements for DHS surveillance technology programs. The DHS Secretary will continue to fully integrate and use necessary aerial surveillance technologies, including unmanned aerial systems, to enhance the security of the U.S. borders. The section outlines the criteria for assessing changes and improvements to surveillance technologies. The Secretary shall use a variety of aerial surveillance technologies in a variety of topographies and areas for a range of circumstances in order to evaluate the significance of previous experience with such technologies for border security, the cost and effectiveness of various technologies for border security, and the liability, safety, civil liberties, and privacy concerns related to the use of such technologies. During the assessment process, current operation of aerial surveillance technologies can continue and the DHS Secretary can still procure additional equipment and technology to achieve effective control of the U.S. borders and to establish a "virtual fence" security perimeter along the borders. In carrying out this section, the DHS Secretary will ensure to the extent possible – that (1) the technologies used are integrated and function cohesively in an automated fashion; (2) a standard process is used to collect, catalog, and report intrusion and response data collected; (3) future surveillance technology investments and upgrades can be integrated with existing systems; (4) performance measures are developed that can evaluate the program's effectiveness in monitoring and detecting unauthorized intrusions along U.S. borders; (5) plans consistent with U.S. environmental laws and regulations are developed to streamline site selection, site validation, and environmental assessment processes to minimize delays in infrastructure installation; (6) standards are developed to expand the shared use of existing governmental and private structures for installing remotes surveillance technology infrastructure where possible; (7) standards are developed to identify and deploy the use of nonpermanent or mobile surveillance platforms to increase DHS's ability to identify unauthorized border crossings.

# Subtitle B. Enhanced Coordination and Planning for Border Security

Section 121. Annual Report on Improving North American Security Information Exchange This section requires the Secretary of State, in coordination with the DHS Secretary and other appropriate federal agency heads, to submit an annual report to Congress on the status of improvements to the effectiveness with which information relating to North American security is exchanged between the Governments of the U.S., Canada, and Mexico. Each report will address the following topics: (1) security clearances and document integrity; joint efforts of the U.S., Canada, and Mexico encourage foreign governments to enact laws that combat alien smuggling and trafficking and the use of fraudulent documents; and efforts made to ensure that other countries meet proper travel document standards; (2) immigration and visa management with respect to progress on information-sharing regarding high-risk individuals who may attempt to enter North America; (3) best practices for visa policy coordination between the countries and immigration security including enhanced consultation between consular officials who issue visas, comparative analysis of U.S. and Canadian visitor visa processing policies and procedures; (4) the North American visitor overstay program; (5) terrorist watch lists; (6) efforts made to combat money laundering, currency smuggling, alien smuggling, trafficking in firearms, and drug trafficking; and (7) law enforcement cooperation.

#### **Section 122. Cooperation with the Government of Mexico**

This section outlines steps for increased cooperation of the Secretary of State and federal, state, and local law enforcement with Mexican officials to (1) improve border security and reduce violence and criminal activity; (2) educate Mexican citizens about eligibility for nonimmigrant status; (3) encourage circular migration; and (4) work with affected communities to foster greater understanding of migration issues. The Secretary of State will submit a report to Congress on U.S. and Mexican actions regarding the above issues.

#### **Section 123. Enhanced International Cooperation**

This section assigns Bureau of Alcohol, Tobacco, Firearms, and Explosives agents to the U.S. Mission in Mexico to assist Mexican law enforcement investigating firearms trafficking and other criminal enterprises. It provides equipment and technological resources necessary to support investigations and trace firearms recovered in Mexico. This section also supports the training of Mexican law enforcement officers in serial number restoration techniques, canine explosive detection, and anti-trafficking tactics.

# Section 124. Expansion of Commerce Security Programs

This section requires the CBP Commissioner to develop a plan to expand the Customs-Trade Partnership Against Terrorism programs (the Business Anti-Smuggling Coalition, the Carrier Initiative Program, the Americas Counter Smuggling Initiative, the Container Security Initiative, the Free and Secure Trade Initiative, and other industry partnership programs), including adding

additional personnel on the borders. Additionally, within 180 days, the Commissioner will implement, on a demonstration basis, a Customs-Trade Partnership Against Terrorism program and establish a demonstration program to develop a cooperative trade security system to improve supply chain security.

#### Section 125. Northern and Southern Border Drug Prosecution Initiative

The Attorney General will reimburse state and county prosecutors in states along the Northern and Southern U.S. borders for prosecuting federally initiated and referred drug cases.

### **Section 126. Project Gunrunner Initiative**

The Attorney General shall dedicate and expand the resources provided for the Project Gunrunner initiative to identify, investigate, and prosecute individuals involved in the trafficking of firearms between the U.S. and Mexico. The Attorney General shall assign additional ATF agents on the Southern border, establish at least one Project Gunrunner team in each state along the Southern border, and coordinate with federal, state and local law enforcement to address firearms trafficking in a comprehensive manner. Authorizes \$15 million per year for fiscal years 2011 and 2012.

### **Section 127. Operation Streamline Prosecution Initiative**

This section requires the submission of a report by the DHS Secretary, in consultation with the Attorney General, within 180 days of enactment of this Act, and a reevaluation of the program's future viability, including whether to continue or terminate the program, within 180 days of the report's submission. The report will include information describing: (1) the operational goals and oversight mechanisms of the program; (2) the cost of seeking federal prosecution and jail time for all unauthorized entrants; (3) the cost of effectively implementing the program in each Border Patrol sector; (4) the impact of the program on federal prosecutorial initiatives focused on curbing border violence; (5) the impact of the program on discretionary prosecutorial decisions; (6) data during the 3-year period prior to the Act's enactment regarding the cost of prosecuting immigrant offenses under the program, the number of federal prosecutions for other crimes in areas utilizing the program, and conviction and incarceration of individuals arrested under the program; (7) the number of federal convictions obtained under the program including the number of convictions for non-violent immigration offenses; (8) comparison of rates of federal prosecutions and convictions in districts along the Southern border in relation to other districts; and (9) interviews with criminal defense attorneys who have represented defendants charged under the program.

### Section 128. Border Relief Grant Program

This section authorizes the Attorney General to award grants to law enforcement agencies and institutes of higher education that support law enforcement agencies for the purpose of addressing drug-related criminal activity. Eligible agencies are located in counties within 100

miles of either the Northern or Southern U.S. border or in a jurisdiction designated as a High Intensity Drug Trafficking Area by the Director of the Office of Drug Control Policy, with priority given to counties within 100 miles of the border who are in compliance with Federal and State racial profiling guidelines. Grants may only be used to provide: (1) additional resources to LEAs to address drug-related activity; (2) training and technical assistance related to drug trafficking; (3) resources to combat criminal activities along the border; (4) resources to facilitate information sharing and collaboration; and (5) resources to enhance jails, community corrections, and detention operations. The Attorney General will submit to Congress a biannual report assessing the success of the grant program in combating drug-trafficking and drug-related criminal activity, the cost-effectiveness of the program, and future value of the program. For fiscal years 2011-2015, \$100,000,000 is authorized to be appropriated each year.

# Section 129. Report on Deaths and Strategy Study

The CBP Commissioner will collect statistics relating to deaths at the U.S.-Mexico border, including on cause of deaths and the total number of deaths, and will publish the statistics on a quarterly basis. The Commissioner will submit to the DHS Secretary an annual report analyzing trends with respect to the statistics and offer recommendations to prevent and reduce the deaths described in the report. The DHS Secretary will conduct a study on Southwest Border Enforcement operations since 1994 and the relationship to death rates on the U.S.-Mexico border. The study will include (1) an analysis of whether physical barriers, technology, and enforcement programs contributed to migrant deaths along the border; (2) an analysis of the effectiveness of geographical terrain as a natural barrier for entry into the U.S. and its role in contributing to migrant deaths; (3) a consultation with community stakeholders involved in recovering and identifying migrant deaths; and (4) an assessment of existing protocols related to reporting, tracking, and inter-agency communications between CBP and local first responders and consular services.

#### Section 130. Immigration and United States-Mexico Border Enforcement Commission

This section establishes an independent commission – the Immigration and United States-Mexico Border Enforcement Commission. The commission will study overall enforcement strategies and policies along the U.S.-Mexico Border; strengthen relations between communities in the region and DHS, DOJ, and other federal agencies; ensure that federal agency programs and policies protect due process, civil rights, and human rights of individuals near the Southern border; and make recommendations to the President and Congress regarding those programs, strategies, and policies. The commission will be composed of 18 members, including the governors of California, Arizona, New Mexico, and Texas. This section outlines membership requirements and regulations, the commission's duties, and its powers. Duties of the commission include examining the extent to which agency policies and practices protect the civil rights of migrants and border community residents, the effectiveness of human and civil rights training of border enforcement personnel, the effectiveness of the complaints process, the extent

of compliance with due process standards and equal protection of the law for individuals at the Southern border, and whether border policies and agencies are accomplishing their stated goals. The commission is authorized to hold hearings, subpoena testimony, and make recommendations to DHS regarding the disposition of cases of discipline of personnel. Within 2 years of the first meeting, the commission shall submit a report to Congress and the President which includes recommendations regarding border and immigration enforcement policies, strategies, and programs, as well as suggestions for implementation of these recommendations.

#### **Section 131. Preemption**

This section clarifies existing law that federal powers over immigration preempt any State or local law that discriminates among persons on the basis of immigration status or imposes any sanction or liability. Any State or local law that discriminates among persons on the basis of immigration status or imposes a sanction on a person based on: 1) immigration status, 2) the status of his or her clients or employees or 3) other alleged violations of immigration law is preempted by federal law.

# **Section 132. Inherent Authority**

This section amends § 287(g)(10) to clarify that the authority to investigate, identify, apprehend, arrest, or detain persons for any violation of the INA is restricted to immigration officers and employees of the DHS.

### **Section 133. Border Protection Strategy**

This section provides for collaborative efforts between the DHS Secretary, Secretary of the Interior, Secretary of Agriculture, the Secretary of Defense, and the Secretary of Commerce to develop and submit to Congress by September 30, 2011 a border protection strategy for U.S. international land borders. The strategy will include a comparative analysis of the levels of operational control achievable through alternative tactical infrastructure and other security measures (e.g. fencing, additional agents, vehicle barriers, remote sensing, and cooperation with Mexican and Canadian law enforcement); a comprehensive analysis of the costs and other impacts of the above security measures; a comprehensive compilation of the fiscal investments to manage public and private lands and waters near the border that have been acquired or managed for conservation purposes; and recommendations for strategic border security management based on the above analyses. Additionally, this section provides for natural resource protection and cultural resource trainings for CBP agents and certain other federal personnel assigned along a U.S. land border.

#### Section 134. Border Communities Liaison Office

This section requires the Secretary to establish, in consultation with OCRCL, Border Community Liaison Offices in every Border Patrol sector on the Southern and Northern borders. These offices will consult with border communities on agency policies, strategies, and services. They

will receive assessments on agency performance from border communities and receive complaints about agency performance and agent conduct.

# Section 135. Authorization of Appropriations

This section authorizes the appropriation of funds necessary for fiscal years 2011 to 2015 to carry out projects described in the Declaration on Embracing Technology and Cooperation to Promote the Secure and Efficient Flow of People and Commerce across our Shared Border between the United States and Mexico or the Smart Border Declaration.

#### **Title II: Interior Enforcement**

#### Subtitle A: Prevention of Unauthorized Entries and Removal

# Chapter 1. Strengthening the Visa Waiver Program to Secure America and Enforcing Entry and Exit Requirements

This Chapter includes Sen. Feinstein's bill - "the Strengthening the Visa Waiver Program to Secure America Act."

# Section 201. Enforcement of Requirement to Report Lost or Stolen Passports

Within 180 days after the date of the enactment, each Visa Waiver program country shall have in effect an agreement with the United States as required by section 217(c)(2)(D) of the Immigration and Nationality Act. If a program country does not effectuate the required agreement, the Secretary, in consultation with the Secretary of State, shall immediately suspend the program country's participation in the visa waiver program and participation shall not be restored until the country is in compliance with the requirements.

#### Section 202. Enforcement of Requirement for Periodic Evaluations of Program Countries

This section would require a reevaluation of countries designated as Visa Waiver Program before November 17, 2008 and that the Secretary submit a report of the results to Congress within one year of enactment. The reevaluation must include a determination of the current number of overstays in the United States for each country.

#### Section 203. Arrival and Departure Verification

This section would require DHS to compare entry data to available law enforcement records and databases and exit data to determine whether those foreign nationals are still in the U.S. This section mandates that the Administration will lose its authority to designate any new countries as Visa Waiver Program countries if it does not track 97% of those exiting within 6 months from the date of enactment. This section requires the Secretary to conduct an audit of the data collected by the electronic travel system, which includes the number of individuals in each country that the system has discovered to have overstayed their visas and an explanation of any implementation problems encountered during the early stages to better identify the high-risk

travelers and their countries of origin. The Secretary must submit a report with the information from the audit within 6 months of enactment.

# Section 204. Visa Overstay Rates

This section would set the maximum overstay rate for the Visa Waiver Program at 2%, rather than allow DHS and State to set a maximum overstay rate. If the visa overstay rate of a country is more than 2%, the Secretary is required to temporarily suspend the country from participation in the Visa Waiver Program. This section requires current visa waiver countries to share data in order to remain in the visa waiver program and affirmatively requires DHS to temporarily suspend the country's participation in the program if the data sharing agreements are not signed within 3 months of enactment.

#### Section 205. US-VISIT System

Within six months, the Secretary shall submit a schedule for equipping all ports of entry with US-VISIT technology, developing and deploying the "exit" component of the technology, and making interoperable all screening systems operated by the Secretary. Within 18 months, the Secretary shall deploy a system capable of recording the departure of non-immigrants.

#### **Chapter 2. Preventing Unauthorized Entries and Ensuring Removal**

#### Section 211. Illegal Entry and Reentry

This section amends INA Section 275(b) and INA Section 276. It increases the civil penalties for illegal entry, and it clarifies and increases the fines and penalties regarding the reentry of previously removed aliens, including increasing the penalty for an alien convicted of three felonies before a previous removal or departure to 25 years of imprisonment. Affirmative defenses to a violation of this section apply (1) if, prior to the alleged violation, the alien received consent from the DHS Secretary to reapply for admission; (2) if an alien, who was previously denied admission and removed, was not required to obtain advance consent and complied with all other laws governing admission into the U.S.; (3) the prior removal order was based on charges filed when the alien was under 18. The section also clarifies what constitutes proof of prior convictions, limits collateral attacks on underlying removal orders, and establishes that persons found in the US who were previously removed under INA 241(a)(4) will be incarcerated for the remainder of their sentence. Additionally, an individual is not aiding or abetting a violation of this section by providing humanitarian assistance or transportation to such assistance.

# Section 212. Deterring Aliens Ordered Removed from Remaining in the United States Unlawfully

This section clarifies the language of INA Section 212(a)(9) to enhance enforcement of this provision.

#### **Section 213. Biometric Screening**

This section amends INA 212(a)(7) to add that an alien who, through his or her own fault, does not comply with a lawful biometric information request is inadmissible.

### **Section 214. Encouraging Aliens to Depart Voluntarily**

This section revises the procedures for voluntary departure. An alien who chooses to depart before the initiation of removal proceedings has at most 180 days to depart. An alien who chooses to depart after the initiation of removal proceedings but before its completion will have 90 days to depart. Voluntary departure under this section may only be granted as part of an affirmative agreement by the alien. In connection with an agreement, the Secretary of Homeland Security may agree to a reduction in the period of inadmissibility under subparagraphs (A) or (B)(i) of Section 212(a)(9). Agreements relating to voluntary departure granted during or at the conclusion of removal proceedings shall be presented on the record before the immigration judge. The immigration judge shall advise the alien of the consequences of a voluntary departure agreement including the consequences of failing to comply with the agreement before accepting such agreement.

If an alien fails to depart the United States within the time allowed for voluntary departure or fails to comply with any other terms of the agreement (including failure to timely post any required bond), unless the noncompliance is through no fault of the alien, the alien is ineligible for the benefits of the agreement; subject to the penalties described below; and subject to an alternate order of removal if voluntary departure was granted under certain conditions. Except as expressly agreed to by the Secretary in writing in the exercise of the Secretary's discretion before the expiration of the period allowed for voluntary departure, no motion, appeal, application, petition, or petition for review shall affect, reinstate, enjoin, delay, stay, or toll the alien's obligation to depart from the United States during the period agreed to by the alien and the Secretary.

If an alien is permitted to voluntarily depart under this section and fails to voluntarily depart from the United States within the time period specified or otherwise violates the terms of a voluntary departure agreement, the alien shall be liable for a civil penalty of \$1,000. The order allowing voluntary departure shall specify the amount of the penalty, which shall be acknowledged by the alien on the record. If the Secretary thereafter establishes by clear and convincing evidence that the alien failed to depart voluntarily within the time allowed, no further procedure will be necessary to establish the amount of the penalty, and the Secretary may collect the civil penalty at any time thereafter and by whatever means provided by law. An alien will be ineligible for any benefits under this chapter until this civil penalty is paid.

The Secretary may promulgate regulations to limit eligibility or impose additional conditions for voluntary departure.

#### Section 215. Cancellation of Visas

This section amends INA Section 222(g) to improve the enforcement of the cancellation of visas provision in current law.

# Section 216. Mandatory Address Reporting Requirements

This section amends INA Section 265 regarding change of address notice requirements and registration. Aliens shall provide written or electronic notification of an address change to the DHS Secretary. Aliens involved in proceedings before an immigration judge or in an administrative appeal of such a proceeding shall provide the AG with their current address and telephone number. The address provided must be the mailing address of the alien's residence and cannot be a post office box, nonresidential mailing address, or the address of an attorney, representative, labor organization, or employer. An alien in DHS detention is not required to report their address. Additionally, the DHS Secretary can cross-reference the address information with information relating to the address under other federal programs, including certain information from DHS, DOS, DOL, and correctional agencies. The Secretary is required to establish an electronic database to timely record and preserve addresses. An alien's failure to comply with similar provisions prior to enactment will not affect eligibility for benefits under the INA.

#### Section 217. Penalties Related to Vessels and Aircrafts

This section increases the civil penalties related to alien stowaways from \$2,000 to \$5,000 for a failure to carry out certain orders and \$5,000 to \$10,000 for a failure to remove an alien stowaway.

# Section 218. Sanctions for Countries that Delay or Prevent Repatriation of Their Citizens and Nationals

This section includes minor changes to INA Section 243(d) to improve the enforcement of sanctions against countries that delay or prevent repatriation of their citizens.

#### **Section 219. State Criminal Alien Assistance Program**

This section authorizes the Attorney General to reimburse states for direct and indirect costs incurred for the imprisonment of any unauthorized alien convicted of a felony. Preference will be given to states that share a border with Canada or Mexico.

# Section 220. Procedures Regarding Aliens Apprehended by State and Local Law Enforcement Officers

This section requires DHS to collect data regarding detainers issued, including information about the individual, the detainer, and the criminal and immigration cases involved. The Secretary must also issue regulations requiring DHS officials to confirm, before issuing a detainer, an individual's alienage and whether the individual is removable from the U.S.

#### Section 221. Reform of Passport, Visa, and Immigration Fraud Offenses

This section addresses penalties for fraud and trafficking related to passports and visas.

18 U.S.C. 1541 is amended to include the following provisions regarding trafficking in passports:

- Individuals who, in a period of three years or less traffic in multiple passports (i.e. by producing 10 or more passports; counterfeiting 10 or more passports; possessing, selling or buying 10 or more passports; or engaging in the submission of 10 or more passport applications) are subject to a fine, imprisonment for up to 20 years, or both.
- Individuals who unlawfully use official material or counterfeit official material to make a passport will be fined, imprisoned for up to 20 years, or both.

18 U.S.C. 1542 is amended to include the following provision regarding false statements:

• Individuals who knowingly make a false representation in a passport application or facilitate the submission of a falsified passport application will be fined, imprisoned for up to 15 years, or both.

18 U.S.C. 1543 is amended to include the following provisions regarding forgery and unlawful passport production

- Individuals who engage in forgery or transfers a passport that was produced or issued without lawful authority will be fined, imprisoned for up to 15 years, or both.
- Individuals who unlawfully produce, authorize, or verify a passport or transfers a passport to be used by any unauthorized people will be fined, imprisoned for up to 15 years, or both.

18 U.S.C. 1544 is amended to include the following provisions regarding the misuse of passports:

• Individuals who knowingly use another person's passport, use a passport in violation of any laws or regulations, uses, buys, or sells a fraudulent passport, or violates the terms and conditions of any safe conduct duly obtained and issued under the authority of the United States will be fined, imprisoned for up to 15 years, or both.

18 U.S.C. 1545 is amended to include the following provisions regarding schemes to defraud aliens:

- Individuals who knowingly execute a scheme in connection to federal immigration law will be fined, imprisoned for up to 15 years, or both.
- Individuals who misrepresent themselves as an attorney or accredited representative in any federal immigration matter will be fined, imprisoned up to 15 years, or both.

18 U.S.C. 1546 is amended to include the following provisions about immigration and visa fraud:

- Individuals who, in a period of three years or less, unlawfully produce or transfer 10 or more immigration documents, forge 10 or more immigration documents, use or distribute 10 or more unlawful immigration documents, or submit 10 or more false immigration documents will be fined, imprisoned for up to 20 years, or both.
- Individuals who knowingly and unlawfully use official materials to make immigration documents will be fined, imprisoned up to 20 years, or both.
- Individuals who use an identification document that was not lawfully issued to them, an identification document that they know is false, or a false attestation will be fined, imprisoned for up to one year, or both.

18 U.S.C. 1547 is amended to increase the alternative imprisonment maximum for certain offenses.

- The imprisonment maximum for offenses committed to facilitate a drug trafficking crime is now 20 years, instead of 15 years.
- The imprisonment maximum for offenses committed to facilitate an act of international terrorism is now 25 years, instead of 20 years.

A new section, 18 U.S.C. 1548, is added to address attempts and conspiracies.

• It holds that any person who attempts or conspires to violate this Section shall be punished in the same manner as a person who completed a violation of that section.

A new section, 18 U.S.C. 1549, is added to address additional jurisdiction.

• It applies extraterritorial jurisdiction to individuals who commit an offense under this Section if the offense involves a U.S. passport or immigration document; the offense affects foreign commerce; the offense affects U.S. national security; the offense is committed to facilitate an act of international terrorism; the offender is a U.S. national or lawful permanent resident; or the offender is a stateless person whose habitual residence is in the U.S.

A new section, 18 U.S.C. 1550, is added regarding authorized law enforcement activities.

Nothing in this section prohibits any lawfully authorized investigative, protective, or
intelligence activity of a law enforcement agency of the United States, a State, or a
political subdivision of a State, or an intelligence agency of the United States, or any
activity authorized under title V of the Organized Crime Control Act of 1970 (Public Law
91–452; 84 Stat. 933).

18 U.S.C. 3291 is amended regarding immigration, naturalization, and peonage offenses.

• The statute of limitation is 10 years for a violation of chapters 69 (relating to nationality and citizenship offenses), 75 (relating to passport, visa, and immigration offenses), or 77 (relating to peonage, slavery, and trafficking in persons), for an attempt or conspiracy to violate any such section, for a violation of any criminal provision under section 243, 266, 274, 275, 276, 277, or 278 of the Immigration and Nationality Act, or for an attempt or conspiracy to violate any such section.

#### Section 222. Directives Related to Passport and Document Fraud

This section requires the United States Sentencing Commission to promulgate and amend sentencing guidelines, policy statements, and commentaries related to passport fraud offenses. This section also requires the Attorney General to create binding prosecutorial guidelines to ensure that any prosecution of aliens seeking entry by fraud is consistent with U.S. treaty obligations related to asylum seekers. Aliens applying for certain forms of relief shall not be prosecuted under 18 U.S.C. 75, Section 211 of this act, or INA Section 175 or 176 until and unless their application is denied. These include (1) aliens who have filed for asylum, withholding of removal, or relief under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment or indicates an intention to immediately apply for such protection and immediately does so; (2) aliens who are referred for a credible fear interview, a reasonable fear interview or an asylum-only hearing under INA Section 235; or (3) aliens who have filed for status under (15)(T), (15) (U), (27)(J), or (51) of section 101(a) of the Immigration and Nationality Act.

#### Section 223. Expanding the Definition of Conveyances Subject to Forfeiture

This section amends 19 U.S.C. 1703 to expand the definition of conveyances that are subject to forfeiture to include vessels, vehicles, and other conveyances and instruments of international traffic. This section also revises what constitutes prima facie evidence that a vessel or vehicle is used in smuggling or defrauding U.S. revenue.

# Section 224. Prohibitions of the Sale of Firearms to, or the Possession of Firearms by, Certain Aliens

This section amends 18 U.S.C. 922 to prohibit noncitizens who are not lawful permanent residents from buying firearms and engaging in interstate and foreign commerce related to firearms.

#### Section 225. Criminal Forfeiture

This section amends 18 U.S.C. 982 to expand the list of crimes for which the penalty of criminal forfeiture can be imposed.

#### Section 226. Advance Delivery of Information Including Passenger Manifests

This section amends INA Section 231 to ensure that lists of alien and citizen passengers are provided for any commercial vessel, commercial vehicle, or aircraft transporting people to or

from any U.S. airport or seaport. The Secretary may also share the information contained in the manifests with other federal, state, tribal, local, and foreign government authorities. Fines for inaccurate or insufficient information are increased to \$5,000. Within a year of enactment, the Secretary is required to assess the privacy and civil liberty implications of this section.

# Section 227. Unlawful Flight from Immigration or Customs Controls and Disobeyance of Lawful Orders

This section amends 18 U.S.C. 758 to provide penalties for any person operating a motor vehicle or vessel who knowingly flees or evades a federal law enforcement checkpoint or who knowingly disobeys the lawful command of law enforcement agents.

# Section 228. Reducing Illegal Immigration and Alien Smuggling on Tribal Lands

This section authorizes the DHS Secretary to award grants to Indian tribes whose land is adjacent to a U.S. border and who have been adversely affected by illegal immigration. Within 180 days of enactment, the Secretary is required to submit to Congress a report describing the level of access CBP agents have to tribal lands, what impact improvements to that access would have, and how improved access might be achieved.

### Section 229. Diplomatic Security Service

This section amends 22 U.S.C. 2709(a)(1) to permit Department of State and Foreign Service special agents to conduct investigations concerning illegal passports or visa issuance or use, identity theft or document fraud affecting the Department of State, violations of federal laws regarding peonage, slavery, and human trafficking, and federal offenses committed within special maritime and territorial jurisdiction defined in 18 U.S.C. 7(9).

# Section 230. Increased Penalties Barring the Admission of Convicted Sex Offenders Failing to Register and Requiring Deportation of Sex Offenders Failing to Register

Aliens who are convicted for 18 U.S.C. 2250 provisions related to the failure to register as a sex offender are inadmissible under INA 212(a)(2)(A)(i) and deportable under INA 237(a)(2)(A)(i).

### Section 231. Aggravated Felony

This section amends the definition of aggravated felony under INA Section 101(a)(43) to state that the term "aggravated felony" applies to any offense which is a felony described in this paragraph, whether in violation of Federal or State law, for which the individual served one year of imprisonment and to such a felony offense in violation of the law of a foreign country, for which the term of imprisonment was completed within the previous 15 years, and regardless of whether the conviction was entered before, on, or after September 30, 1996.

#### Section 232. Increased Criminal Penalties Related to Gang Violence

Aliens who have been convicted under 18 USC § 521, related to membership in criminal street gangs, are inadmissible and deportable, and are not eligible for Temporary Protected Status. This section also increases the penalty for individuals ordered deported under INA § 237(a) who willfully refuse to depart or cooperate with their deportation to five years and for individuals on

orders of supervision who willfully fail to comply with release conditions to three years imprisonment.

### **Subtitle B: Detention Reform**

#### **Section 241. Definitions**

#### Section 242. Protections for Vulnerable Populations

This section requires DHS to screen each detainee to determine if the individual is a member of a vulnerable population. Vulnerable populations include individuals with non-frivolous claims to citizenship; pregnant or nursing women; individuals detained with their children; individuals with medical or mental health needs; individuals over 65 years old; children; victims of abuse, crime, or human trafficking; individuals referred for credible fear interviews; individuals seeking asylum, relief under CAT, or withholding of removal; and individuals prima facie eligible for relief under the INA. Members of vulnerable populations are to be released within 72 hours of detention, and they are not subject to electronic monitoring unless DHS demonstrates by a preponderance of the evidence that they are subject to 236(c) or 236A, pose a risk to public safety, or are flight risks. For all other aliens not subject to 236(c) or 236A, the criteria to be used by the Secretary or the AG to demonstrate that continued detention is necessary is whether the individual is a risk to public safety or a flight risk. DHS custody decisions are subject to immigration judge review. For detained individuals, the Secretary must file the NTA within 48 hours of the individual's detention, and any individual detained for more than 48 hours will receive a custody determination before the immigration judge within 72 hours.

# Section 243. Apprehension Procedures for Immigration Enforcement-Related Activities Relating to Children

This section outlines procedures for immigration enforcement actions that involve children. Prior to conducting an action, DHS will notify the Governor of the state, the local child welfare agency, and relevant state and local law enforcement of the approximate number of individuals targeted and the primary language spoken by those individuals. Within six hours after an action, DHS will provide social workers or case managers to screen the apprehended individuals to determine if they are parents, legal guardians, or primary caregivers of any children in the U.S. Within 8 hours, DHS will provide phone calls to apprehended individuals to arrange for the care of their children unless there is a reasonable belief that doing so would endanger public safety or national security. DHS will also provide contact information for legal and social services. It will ensure that the individuals are not interviewed in the presence of their children and that the best interests of the children are considered in decisions or actions related to the individual's detention, release, or transfer. In general, information collected by child welfare agencies or NGOs to determine whether an individual is a parent, legal guardian, or primary caregiver is confidential.

#### **Section 244. Detentions of Families**

This section details detention and review procedures for parents who are apprehended with one or more of their children. Families with children will not be separated or taken into custody except in exceptional circumstances or when required by law. In exceptional circumstances, they will live in family units in non-penal facilities without restrictions on movement, internet, library, and personal property possession. The facilities will be managed by staff with expertise in child welfare. Parents will retain fundamental parental rights and responsibilities, and, for families in custody for over three weeks, an immigration judge will review each family's custody status every 30 days. Additionally, this section amends INA § 235(b)(1)(B)(iii) to provide the DHS Secretary with discretion to not detain families who have failed a credible fear determination.

# Section 245. Access to Children, Local and State Courts, Child Welfare Agencies, and Consular Officials

This section ensures that all detention facilities will have procedures to ensure that the best interest of the child will be considered in decisions related to the custody of children whose parents or legal guardians are detained. Individuals who are believed to be parents or legal guardians of children have the right to daily phone calls and regular visits with their children; to participate fully in any family court proceedings affecting the custody of their children; to receive contact information for family courts nationwide; to have free, confidential phone calls to child welfare agencies and family courts; to apply for travel documents for their children using U.S. passport applications; to have time before removal to obtain their passports and necessary travel documents for their children if their children will join them in their country of origin; to obtain birth records and other documents required to obtain passports for their children; and to share travel information with their children, child welfare agencies, or other caregivers prior to their departure from the U.S.

#### Section 246. Memoranda of Understanding

The DHS Secretary will develop and implement memoranda of understanding with child welfare agencies and NGOs regarding best practices for cooperation in cases involving children whose parents, guardians, or caregivers have been apprehended or detained in an immigration enforcement action.

#### **Section 247. Mandatory Training**

This section provides mandatory training for DHS and for state, and local entities acting under agreement with DHS who regularly come into contact with children or parents in the course of conducting immigration enforcement actions.

#### Section 248. Alternatives to Detention

This section requires the Secretary to establish a secure alternatives program and to contract with

NGOs to implement the program. The Secretary may use secure alternatives programs to maintain custody over any alien except aliens detained under INA 236A.

#### **Section 249. Detention Conditions**

This section ensures that all individuals detained pursuant to this act are treated humanely and granted certain protections and includes provisions for detention personnel trainings. The DHS Secretary will issue guidelines for ensuring compliance with all detention requirements, which can include the imposition of financial penalties or the termination of a facility's contract with DHS. This section establishes a detention commission which will investigate, evaluate, and report on the compliance of detention facilities with the requirements.

Medical Care: Each detainee shall receive prompt and adequate medical care, a comprehensive medical intake screening, and prescribed medication and medically necessary treatment. Involuntary psychotropic medication can be used only if allowed by law and only in emergency situations as instructed by a physician. This section implements an administrative review and appeals processes for handling the denial and approvals of requests for medical care. Initial decisions must be made by an on-site licensed health care provider within 72 hours, and appeals must be resolved within 7 days. Upon removal or release, detainees with medical or mental health conditions and pregnant, post-natal or nursing mothers will receive discharge planning to ensure continuity of care for a reasonable period of time. DHS will maintain confidential medical records for each detainee, which will be made available to the detainee within 72 hours upon request, and will facilitate the transfer of those records upon a detainee's transfer to another facility.

Transfers: Detainees will receive 72 hour written notice of any transfer to another detention facility, and a detainee's legal representative (or other person designated by the detainee) will be notified of the transfer within 24 hours. Detainees will not be transferred if doing so negatively affects an existing attorney-client relationship, the detainee's legal rights, or the detainee's health.

Rights: Detainees shall be free of physical abuse, sexual abuse or harassment, or arbitrary punishment. The use of solitary confinement, shackling, and strip searches will be limited to only emergency situations that present imminent risk to others and cannot be used on pregnant women, nursing mothers, women in labor, or children younger than 18. Detainees shall have at least one hour of indoor and outdoor recreational programs and activities. Detainees have the right to reasonable access to individuals qualified to address religious, cultural, or spiritual considerations, and the right to contact visits from children under 18. Detention facilities will have on-staff translation capabilities for any language spoken by at least 10% of the detainee population. Written notices and materials will be provided in any language spoken by at least

5% of the detainee population. Detention conditions will accommodate the needs of vulnerable populations.

Access to Legal Information: By January 2012, all detention facilities should be located within 50 miles of a city or municipality where free or low cost legal services are available. Detainees will have reasonable access to telephones, at a minimum one working phone per 25 detainees, the right to contact – free of charge – legal representatives, certain NGOs, consular offices, applicable federal and state courts, and government immigration agencies and adjudicatory bodies, and the right to privacy of phone conversations related to legal matters. Detainees will have access to legal information through an on-site library and to access computers, printers, copiers, and typewriters. They will have a right to meet privately with legal representatives, interpreters, and legal support staff.

Short-Term Facilities: Detainees held at short-term facilities shall receive potable water, food, toiletries, and access to bathrooms, telephones, and licensed health care professionals. For unaccompanied children at ports of entry, the Secretary will provide social workers who will ensure that each child receives emergency medical care, mental health care, adequate nutrition, a safe environment, and three hours per day of indoor and outdoor recreation.

The Secretary of HHS will maintain the privacy and confidentiality of all information gathered in the course providing care and follow-up.

Death in Custody Reporting Requirements: The death of a detainee in custody will be reported to the DHS Secretary immediately and to the DHS Office of the Inspector General and the DOJ within 48 hours. DHS will conduct an investigation of each death, and each year a report will be submitted to Congressional committees regarding all such deaths.

# Section 250. Access to Counsel

This section permits the Attorney General to appoint counsel to represent aliens in removal proceedings.

# **Section 251. Group Legal Orientation Presentations**

This section establishes a National Legal Orientation Support and Training Center to ensure the quality, consistent implementation of group legal orientation programs. The Center will train nonprofit agencies offering LOPs, develop standards for LOPs, and ensure that all aliens in proceedings under INA 235, 238, 240, and 241(b)(5) receive group legal orientation.

#### Section 252. Protections for Refugees

This section amends INA Section 209 to prevent refugees from being detained if they have not adjusted their status and allows them to apply for adjustment three months earlier. It authorizes the DHS Secretary to establish quality assurance procedures to ensure the accuracy and

verifiability of sworn statements taken pursuant to expedited removal authority, including recording the interview that served as the basis for the sworn statement. It requires that professional fluent interpreters are used when interviewing officers do not speak the language understood by the alien and there is no other government employee available to accurately, effectively, and impartially interpret. It authorizes the U.S. Commission on International Religious Freedom to conduct a study on whether immigration officers are improperly encouraging aliens to withdraw a claim for asylum, incorrectly failing to refer aliens for a credible fear interview, incorrectly removing aliens who may be persecuted, or detaining an alien improperly, and to submit the report to Congress.

#### Section 253. Immigration and Customs Enforcement Ombudsman

This section amends Title III, Subtitle D, of the Homeland Security Act of 2002 to establish the position of Immigration and Customs Enforcement (ICE) Ombudsman. The ICE Ombudsman will conduct regular and unannounced inspections of detention facilities and local ICE offices to determine whether they comply with relevant policies, procedures, and laws; report findings to the DHS Secretary and ICE Assistant Secretary; develop procedures for detainees to submit written complaints directly to the Ombudsman; investigate and resolve all complaints; conduct reviews or audits related to detention; refer matters to other relevant offices or agencies; propose changes to ICE policies to improve the treatment of those subject to immigration-related enforcement operations; and establish a public advisory group consisting of NGOs and federal, state, and local government officials with expertise in detention and vulnerable populations to provide the Ombudsman input; and recommend personnel actions to the ICE Assistant Secretary based on any findings of non-compliance. The ICE Ombudsman will submit an annual report to the House and Senate Judiciary Committees on its objectives for the next fiscal year.

# Section 254. Lawful Permanent Resident Status of Refugees and Asylum Seekers Granted Asylum

This section provides that refugees, their spouses, and their children who are admitted under INA 207(c) shall be lawful permanent residents as of the date of their admittance. This section allows refugees or asylees to petition for their spouse or children at any time after their admission to the US or grant of asylum and regardless of whether they have been granted permanent resident status. A spouse or child admitted to the US as a derivative asylee shall be lawful permanent residents as of the date of admittance. Persons granted asylum or refugee status (as a spouse or child) after their arrival in the U.S. can apply for permanent resident status at any time. All such aliens will be issued documentation of their lawful permanent resident status pursuant to a grant of refugee or asylum status. Subject to certain restrictions, the DHS Secretary or Attorney General may waive inadmissibility or deportability grounds for refugees, asylees, or aliens seeking adjustment of status pursuant to a grant of refugee or asylee status for humanitarian purposes, to ensure family unity, or if it is otherwise in the public interest.

# Section 255. Elimination of Time Limits on Asylum Applications

This section eliminates the one-year time limit for filing an asylum claim and permits aliens denied asylum based solely on a failure to meeting the 1-year filing deadline to file a motion to reopen for a two-year period after enactment.

#### Section 256. Efficient Asylum Determination Process and Detention of Asylum Seekers

Under this provision, the USCIS asylum office would be given jurisdiction over an asylum application following a positive credible fear determination to conduct a non-adversarial asylum interview. If the asylum officer is unable to grant asylum, the case will be referred to an immigration judge and the asylum seeker for a de novo asylum determination. The section also clarifies detaining asylum seekers who have a positive credible fear determination is at the discretion of the Secretary.

#### Section 257. Protection of Stateless Persons in the United States

This section enables individuals who are de jure stateless to obtain lawful status in the United States. *De jure* stateless persons are defined as individuals who are not considered to be citizens under the laws of any country, unless they lost their nationality due to a voluntary action or knowing inaction after arriving in the U.S. The Secretary or AG may, in his or her discretion, provide conditional lawful status to a de jure stateless person, and his or her spouse or children. After 5 years, the alien may apply for lawful permanent residence. Persons eligible for relief under this section may file one motion to reopen proceedings within one year of enactment in order to apply for such relief

### Section 258. Authority to Designate Certain Groups of Refugees for Consideration

This section authorizes President to designate, for humanitarian reasons or if it is otherwise in the national interest, specifically defined groups of aliens who share common characteristics that identify them as targets of persecution, for resettlement as refugees

# Section 259. Admission of Refugees in the Absence of the Annual Presidential Determination

This section provides that if the President does not determine the allocation of refugees for the new fiscal year before the beginning of that fiscal year, in each quarter of the new year, the number of refugees that may be admitted is 25% of the number of refugees admissible during the prior fiscal year.

#### **Title III. Worksite Enforcement**

### Section 301. Unlawful Employment of Aliens

This section amends INA Section 274A. It includes a mandatory national employment verification system, provisions regarding the employment of unauthorized aliens, the verification of employee work authorization, the requirements and protocols for a national employment

verification system (currently, E-Verify), and protections against discriminatory immigration-related employment practices.

Employing Unauthorized Aliens: Under this section, it is unlawful for an employer to knowingly or with reckless disregard hire, continue to employ, or use a contract to obtain the labor of an alien who is unauthorized to work. The DHS Secretary may require employers to have written contracts ensuring that their contractors or subcontractors adhere to immigration laws. By complying in good faith with the above requirements and by complying with any applicable requirements regarding the use of an employment verification system, employers will have established an affirmative defense that they have not unlawfully employed an unauthorized worker. This section creates a new legal standard for employment of unauthorized persons: knowingly "or with reckless disregard". Sections 274A (a)(1)(A) and 274(a)(3) refer to the definition of unauthorized alien in subsection (b)(1) but the definition of unauthorized alien is actually in subsection (b)(2). This section gives statutory permission for an employer to either terminate or continue to employ an employee who becomes legally authorized to work. The Secretary may require "by regulation" that employers who use contractors or subcontractors include language in the contract that such entities must comply with immigration laws and use the employment verification "system" (The "System"). The Secretary may create a system that allows general contractors to confirm that a subcontractor has registered and is utilizing the System. The Secretary may adopt different procedures for employers using contractors based on different employment sectors/industries. Until the Secretary creates a mandatory verification system, or if an employer is voluntarily participating in the System, the "good faith" defense exists without showing that the employer has complied with the System. To establish a defense, the employer must be in compliance with additional requirements which the Secretary may include.

Presumption of "knowledge or reckless disregard": This provision creates a presumption of knowledge/reckless disregard based on an employer's failure to comply with any verification requirement established by the Secretary. Adopts by statute a "reasonable person" standard with regard to whether a verification document is genuine and relates to the person presenting it. The language differs slightly from existing law which states "reasonably appears on its face" to be genuine.

Procedures for Verifying that Employees Are Authorized to Work in the United States: This section updates the documents that employees can present for verification of identity and employment authorization. Such documents include a U.S. passport, permanent residence or employment authorization card including biometric data or other identifying information, an enhanced drivers' license with additional security features, or certain other passports. To establish identity, the document must include at a minimum the individual's photograph, name, date of birth, gender, and driver's license or identification card number, and security features to

make it resistant to tampering, counterfeiting, and fraudulent use, or for minors, an attestation as to the individual's identity may be required under penalty of perjury.

To establish employment authorization, the following may be accepted: fraud-resistant Social Security Cards or other documentation required by the Secretary. This section greatly proscribes the types of documents that will be allowed to prove employment authorization.

This section creates stricter requirements for the recordkeeping of employment authorization documentation. Employers must retain a version of the documentation form (currently, Form I-9) and make it available to DHS, DOJ Office of Special Counsel for Immigration-Related Unfair Employment Practices, or the DOL for at least either seven years after the hiring date or two years after the individual's employment is terminated, whichever is later. The employer must also keep copies of the documentation form in accordance with DHS regulations. It must ensure that these records are used only for employment verification and protect the confidentiality of the employees' identities and employment eligibility. This section mandates that employers copy all documents presented by individuals and retain such documents with the verification form. Current law states that photocopying verification documents is voluntary. The employer is required to keep a record of any action taken to resolve or clarify any issue relating to the validity of an individual's identity or employment authorization. No such requirement exists in current law. The Secretary may, based on a "reasonable suspicion" of a violation, require electronic transmission of verification forms and accompanying documentation for inspection. The bill includes a provision for acceptance of a receipt for replacement documentation or temporary evidence of employment authorization for up to one year.

The System: It creates procedures for registering for the employment verification. It provides a gradated timeframe for employers to register; all employees must register within 5 years. All employers within the Executive, Legislative, or Judicial Branches of the Federal Government shall participate in the System on or within 60 days after the date of enactment. Federal contractors shall participate in the System as provided in the final rule published at 73 Federal Register 67,651 (Nov. 14, 2008). Within one year, the Secretary may require any employer or industry which the Secretary determines to be part of the critical infrastructure or directly related to the national security or homeland security of the United States to participate in the System with respect to all newly hired employees and employees with expiring employment authorization. Employers with more than 1000 employees shall participate within 2 years; employers with more than 500 employees within 3 years and employers with more than 100 employees, within 4 years. Additionally, if an employer is found to have violated immigration law, it shall be required to register for the system. Employers may also register on a voluntary basis. Failure to register creates a rebuttable presumption that the employer has hired unauthorized aliens. Employers who are required to participate in the System with regard to new hires, may be required to use the System for its current workforce if found to have violated

immigration laws. An employer who is required to register for the System and fails to comply with its requirements creates a rebuttable presumption of a violation of the act. If an employer required to participate in the System violates <u>any</u> immigration law, as determined by the Secretary, it may be required to put all existing employees as well as new hires through the System.

This section outlines the requirements for employers participating in the system. These include required training to ensure proper use and the protection of civil rights, civil liberties, and privacy and required notification to employees stating that the system cannot be used for discriminatory or immigration enforcement purposes. The section allows employers who are required by the Secretary to verify their entire workforce to use the System for initial verification even if the individual was hired before the employer was subject to the System.

The section outlines the confirmation and nonconfirmation process including the issuance of a further action notice which designates when an individual might have to submit additional information; the process for contesting a determination; employee protections; and notice requirements. A confirmation or nonconfirmation must be issued within 15 days where the employee contests the further action notice. The Secretary may extend that period for good cause. Employees must receive notice of the nonconfirmation within 3 business days. Employers are prohibited from employing an individual who received a nonconfirmation following the expiration of the administrative appeal or if a further action notice was not contested. The time to complete the verification in the system is no earlier that the date in which the individual accepts and employment offer and no later than 3 business days after the date employment begins. The employer may not make the individual's start of employment or training date dependent on a receipt of confirmation of identity and employment authorization. Reverification in the system must be initiated no later than 3 business days after the expiration of an employment authorization document. The Secretary has up to 5 years to create a notification procedure (i.e. notice of confirmation, nonconfirmation, or further action.) Are required to comply with requests from the Secretary for "information" about current and former employees during the new 2 year/7 year time frame previously discussed. The bill provides for \$40 million for purposes of outreach programs to the public and requires that within 3 months of enactment, the Secretary, in consultation with the Secretary of Labor, Agriculture, Social Security, Attorney General, EEOC, Office of Special Counsel, and Administrator of Small Business Administration, commence a campaign to disseminate information to the public about the system. Employers who comply with the system, are not liable for any employment-related action taken with respect to an employee in which the employer relied in good faith on information provided by the system.

Administrative Review Process: Individuals who are timely notified of a nonconfirmation have 15 days to file an administrative appeal. U.S. citizens and nationals file appeals with the SSA Commissioner, and aliens file with the DHS Secretary, both of whom will develop procedures

for reviewing appeals. Individuals who are improperly received nonconfirmations will be compensated for lost wages (at most \$75,000) except for periods in which the individual was not authorized to work, reasonable costs and attorneys' fees (at most \$50,000). This section allows the Secretary to establish a self-verification process that permits individuals to verify their own employment eligibility prior to employment or contracting

Judicial Review Process: Within 90 days of a final determination on the administrative appeal, an individual may file for judicial review in a civil action in federal district court. The plaintiff has the burden of showing that the administrative order was erroneous. If an erroneous final determination was the result of the system's rules, processes, or procedures or of information that wasn't the result of an omission by the plaintiff, the court may award lost wages (up to \$75,000), reasonable costs and attorneys' fees (up to \$50,000). The burden is on the plaintiff to show that that the administrative decision was erroneous and then to prove by a preponderance of the evidence, that the error was caused by the system's rules, processes, or procedures or of information that wasn't the result of an act or omission by the plaintiff. Lost wages, costs, and attorney's fees is the exclusive remedy for a finding that an administrative determination was erroneous by means of negligence or recklessness of the Secretary or Commissioner.

Private Right of Action: If the nonconfirmation was caused by the employer's negligence or misconduct, the employee can seek damages, back pay, reinstatement, and other remedies in a civil action against the employer. The civil action must be commenced in federal district court within 90 days of notice of a final determination on the administrative appeal. No court (except US Supreme Court) has the authority to enjoin or restrain operation of the provisions in this section, other than with respect to application to an individual plaintiff.

Annual Study and Report: The U.S. Comptroller General is authorized to conduct an annual study of the employment verification system and to submit a report to Congress and DHS on the findings. The study will determine whether the system demonstrates accuracy in updating information, low error rates and delays in verification, no tendency towards discrimination based on the system operations, the protection of employees' private information, and adequate staffing and funding.

Annual Audit and Report: The DHS Office for Civil Rights and Civil Liberties will conduct annual audits to assess employer compliance with system rules and with the memorandum of understanding between employers and the SSA and DHS.

Management of the System: The employment verification system is managed by DHS. DHS will respond to participating employers' inquiries about employee identity and work authorization, it will maintain records of those inquiries and the responses as evidence of employer compliance with their requirements, and it will provide information to and require

action by employers and individuals using the system. It will confirm identities and employment authorization using SSA records, state and federal birth and death records, passport and visa records, and state driver's license or identity card information. It will include photographs from such documents, if available. It will be designed to operate efficiently, effectively, with privacy protections, and auditing capabilities.

The DHS Secretary is responsible for maintaining a reliable, secure method for comparing information to confirm identities and work authorization; for issuing confirmations, nonconfirmations, and notices of further action; performing regular audits; providing federal government facilities where individuals and employers - who are otherwise unable – can access the system; establish a program to identify the multiple use of Social Security account numbers, establish a system to reduce identify fraud and other misuses; and conduct regular civil rights and civil liberties assessments of the system. The Secretary of State is responsible for providing access to necessary passport and visa information. The Secretary can "block" from use in the system a social security number that has been compromised (i.e. used multiple times by different individuals) unless an individual can prove that he or she is the legitimate holder of the number. No other agency can use the information from the system for any purpose other than for verification (enforcement and administration of immigration laws).

Compliance: The Secretary will also establish procedures for ensuring compliance with the system rules. These include a system for complaints, initiating investigations and hearings, and requiring employers to perform an internal review and to submit a certification of compliance. Additionally, DHS can issue penalties for civil violations of this section. It must first provide written notice of the alleged violation and the penalty sought. The written notice to the employer is referred to as a pre-penalty notice and must include a statement of the violation and the penalty sought to be imposed. Employers have 30 days to respond. Then the DHS Secretary will issue a final determination including the findings of fact and conclusions of law, as well as the penalty claim, which includes monetary fines. Judicial review of a final administrative decision is permitted, and this section outlines the requirements for such review. If a final determination against the employer is not subject to judicial review, the Attorney General may bring a civil action to enforce compliance. Any employer who does not pay the required fees or penalties is subject to a lien on all property and rights to property. Fines are as follows:

### Hiring or continuing to employ unauthorized aliens:

- \$2,000-5,000 per unauthorized alien (first offense) (Current law: Knowingly hiring or continuing to employ: First offense—not less than \$275 and not more than \$2,200 for each unauthorized alien with respect to whom the offense occurred before March 27, 2008, and not less than \$375 and not exceeding \$3,200, for each unauthorized alien with respect to whom the offense occurred occurring on or after March 27, 2008)
- \$4,000-\$10,000: second offense (Current law: not less than \$2,200 and not more than \$5,500 for each unauthorized alien with respect to whom the second offense occurred

- before March 27, 2008, and not less than \$3,200 and not more than \$6,500, for each unauthorized alien with respect to whom the second offense occurred on or after March 27, 2008)
- \$8,000-25,000: more than one prior fine: (Current law: not less than \$3,300 and not more than \$11,000 for each unauthorized alien with respect to whom the third or subsequent offense occurred before March 27, 2008 and not less than \$4,300 and not exceeding \$16,000, for each unauthorized alien with respect to whom the third or subsequent offense occurred on or after March 27, 2008)

# Fines for employment law violations including wage and hour violations:

Fines of at least \$500, judicial injunction, treble damages on civil money or criminal fines.

# Fines for Recordkeeping or Verification Practices:

- \$500-\$2000: (first offense): (Current law: not less than \$100 and not more than \$1,000 for each individual with respect to whom such violation occurred before September 29, 1999, and not less than \$110 and not more than \$1,100 for each individual with respect to whom such violation occurred on or after September 29, 1999)
- \$1000-\$4,000 (second offense)(Current law does not have a tiered penalty system for paperwork violations but looks at the history of prior violations as one element in determining the fine)
- \$2,000-\$8,000(more than one prior offense)

**Other penalties:** Cease and desist orders, additional fines including \$10,000 for requiring an employee to post a bond, failure to pay a fine may result in a lien against the employer's property. The lien may be valid for 20 years if the fine remains unpaid.

**Mitigation:** Fines may be mitigated below statutory minimum limit or remit it entirely if there is no prior history of violations. Factors considered: Employer's hiring volume, compliance history, good-faith implementation of a compliance program, voluntary disclosure of violations.

Prohibition of Indemnity Bonds: It is unlawful for employers to require a potential employee to post a bond or security or provide a financial guarantee against any potential liability under this section related to hiring that individual. This is punishable by a civil penalty of up to \$10,000 per violation.

Government Contracts: If an employer with federal grants, contracts, or cooperative agreements or an employer who reasonably may be expected to submit offers or be awarded a government contract is deemed a repeat violator of this section or is convicted of a crime under this section, it will be subject to disbarment from receiving federal grants, contracts, or cooperative agreements for a period up to 5 years. Indictments for violations of this section or evidence of actions that could be the basis of disbarment are cause for suspension under the Federal Acquisition regulation procedures. Inadvertent violations are not a cause for repeat violator status.

Preemption: This section clarifies existing law. In the Immigration Reform and Control Act of 1986 (IRCA), Congress established comprehensive regulation concerning the employment of unauthorized workers that takes into account multiple federal interests and leaves no room for additional state or local legislation. Because the comprehensive nature of federal preemption in this area has been repeatedly misunderstood, this section clarifies the broad preemption in this area, and eliminates a small exception for licensing laws that has been erroneously misinterpreted.

Neither back-pay nor any other monetary remedy for unlawful employment practices by an employer, workplace injuries or other causes of action giving rise to liability shall be denied to a present or former employee on account of: the employer's or the employee's failure to comply with the requirements of this section in establishing or maintaining the employment relationship or the employment verification system or the employee's continuing status as an unauthorized alien both during and after termination of employment.

Challenges to the validity of the system is reserved to the D.C. District Court and limited to constitutional challenges and APA-related violations. Also such challenges are limited to 180 days from the date that the System is first implemented. This section provides for a private right of action for businesses against other businesses/employers where the complaining business has been injured due to another's employment of unauthorized aliens. Damages are trebled and include costs and attorneys' fees. Criminal penalties and injunctions for pattern or practice violations (criminal fines and/or jail sentence up to 3 years); knowing hiring/continuing to employ violations. (knowingly hiring/employing 10 or more unauthorized aliens within a 12-month period--criminal fines and/or jail sentence up to 5 years; Wage and Hour violators (min wage and maximum hours-- fines and/or jail sentence up to 10 years). Same sentences apply to persons found guilty of conspiracy.

# Section 302. Disclosure of Certain Taxpayer Information to Assist in Immigration Enforcement

The Social Security Administration may disclose to DHS certain taxpayer identity information. Any identities disclosed may be used by DHS officers, employees, and contractors only for the purpose of, and to the extent necessary, preventing identity fraud and preventing unauthorized aliens from obtaining continuing employment in the U.S.

# Section 303. Compliance by Department of Homeland Security Contractors with Confidentiality Safeguards

This section amends 26 U.S.C. 6103(p) to provide additional confidentiality safeguards for information disclosed in tax returns. DHS contractors will have access to such information only if there are requirements in place to protect confidentiality, there are on-site reviews every three years to determine compliance with those requirements, and DHS annually certifies that each contractor is in compliance. This section also repeals the current reporting requirements on

earnings of aliens who are authorized to work (INA 290(c)) and on fraudulent use of Social Security account numbers (IIRAIRA 414(b)).

#### Section 304. Increasing Security and Integrity of Social Security Cards

This section requires that within 2 years, only fraud-resistant, tamper-resistant, and wear-resistant Social Security cards will be issued. Any request for a replacement card will be subject to a SSA determination that there is a legitimate purpose behind the request. Additionally, this section amends 42 U.S.C. 208(a) to include criminal penalties for individuals who knowingly use a social security number or card obtained by fraud or false statements, who knowingly uses another person's social security number or card, knowingly sells or intends to sell a social security number or card, or knowingly alters or counterfeits a card and increases the possible jail sentence from 5 to 10 years. The Social Security Commissioner can disclose an individual's Social Security information to law enforcement investigating violations of this section, INA Section 274A, INA Section 274B, or INA Section 274C. *The Commissioner cannot disclose tax return information under this section*.

### Section 305. Increasing Security and Integrity of Immigration Documents

No later than one year after this Act's enactment, the DHS Secretary will issue only machine readable, tamper-resistant employment authorization documents that use biometric identifiers. The Secretary will also report to Congress on the use of such documents for nonimmigrant aliens authorized to work with a specific employer.

#### Section 306. Responsibilities of the Social Security Administration

This section amends the Social Security Act, 42 U.S.C. 405(c)(2). It requires that the Social Security Commissioner create a reliable, secure method of verifying Social Security numbers within the employment authorization system and create a system to identify and correct misinformation in Social Security databases in order to prevent fraud and identity theft. The commissioner may also create a process in which individuals can request, based on an individual's Social Security number, that a confirmation in the employment verification system be precluded until it is reactivated by the individual.

#### **Section 307. Antidiscrimination Protections**

This section amends INA Section 274B, which prohibits employment discrimination based citizenship status or national origin. Violations of Section 274B are litigated by Office of Special Counsel in the DOJ Civil Rights Division.

Under this section, the misuse of the employment verification system (currently, E-Verify) is added to the list of unfair immigration-related employment practices. This includes practices such as:

 Terminating an employee while confirmation under the system or the employee's decision to challenge or appeal a system determination is pending;

- Using the system for anyone who is not an employee or for unauthorized purposes;
- Using the system to exclude certain individuals from employment who seem likely to require additional verification in the system;
- Failing to provide timely required notice to employees;
- Using the system to deny benefits or to interfere with labor rights;
- Using the system for discriminatory or retaliatory purposes.

The section includes revisions to some applicable legal standards and terminology. It adds a new provision outlining the burden of proof for demonstrating discrimination in disparate impact cases and a new provision defining when citizenship status or national origin is considered a motivating factor. It defines "employment agency" as any person or entity or their agent who regularly procures employees for an employer or procures employment opportunities for employees.

The section also revises the type of relief granted in these discrimination actions. Presiding judges are given more discretion in the equitable relief that they can award. However, judges cannot require the admission or reinstatement of an employee into a union or require the hiring, reinstatement, or promotion of an employee if the employee did not suffer adverse employment action because of his or her citizenship status or national origin. Judges may grant declaratory or injunctive relief – but not damages – if an employer demonstrates that it would have taken the same action in the absence of an impermissible motivating factor. Additionally, this section increases the fines for violations.

Lastly, this section revises some of the Office of Special Counsel's (OSC) responsibilities. It allocates \$40 million for each year between 2011 and 2013 for the purpose of disseminating information to employers and workers. It provides E-Verify transaction and citizenship status data to OSC upon request. It permits OSC to cooperate with state and local agencies that administer of state fair employment practice laws with respect to research and other projects, as well as the processing of charges. Fines for unfair immigration related employment practice violations are increased.

# Section 308. Immigration Enforcement Support by the Internal Revenue Service and the Social Security Administration

This section amends Section 6721 of the Internal Revenue Code of 1986 to increase penalties for employers who fail to file correct information returns.

#### Section 309. Enhanced Verification System

This section authorizes the DHS Secretary to establish procedures to allow an individual to verify their eligibility for employment in the U.S., to review their records in the verification

system, and to update any information about themselves. This section authorizes the creation of a voluntary Enhanced Verification System which would allow individuals who have reviewed their records to update information in the system, to submit biometric information, and to block the use of their Social Security numbers in the system. The DHS Secretary will submit a report to Congress assessing the Enhanced Verification System and recommending further necessary steps before requiring individuals to participate.

# Section 310. Authorization of Appropriations

This section increases the DHS staff dedicated to administering the employment verification system and enforcing compliance with Section 274A, 274B, and 274C by least 4,500 personnel per year for the next five years. It outlines the compliance and monitoring functions required of the new personnel.

# Title IV. Reforming America's Legal Immigration System

# Subtitle A. New Worker Program and the Creation of a Standing Commission

# Section 401. Standing Commission on Immigration, Labor Markets, and the National Interest

This section establishes a new 15-member independent federal agency to establish employment-based immigration policies, facilitate research on the economic impacts of immigration, make recommendations to Congress and the President about the level of employment-based immigration, and analyze the economic, labor, security, and foreign policy impacts of our immigration policies. The Commission will be comprised of seven voting members with relevant experience appointed by the President and eight ex-officio members including the DHS Secretary, Secretary of State, Attorney General, Secretary of Labor, Secretary of Commerce, Secretary of Health and Human Services, Secretary of Agriculture, and the Social Security Commissioner. Among its duties, the Commission will collect, analyze, publish data on demographic trends, the impacts of employment-based immigration, and the development of a new worker H-2C nonimmigrant visa program, and it will submit an annual report to the President and Congress recommending adjustments to visa allocations. It will have the power to establish general policies, hold hearings, and cooperate with other federal, state, and local agencies. It may appoint a staff director and other necessary personnel, and it may use the services of detailees and consultants.

# Section 402. H-2C Nonimmigrant Worker Program

This section establishes the new H-2C nonimmigrant visa category for alien workers and their dependents.

This Section amends Chapter 2 of Title II of the INA to include Section 218A regarding the admission of nonimmigrant workers. Under Section 218A, the number of nonimmigrant workers admitted under the H-2C program shall be established by the Commission. To be eligible for an

H-2C visa, an alien must have an employment offer, establish that he or she is qualified, pay a \$100 visa fee, undergo a medical exam and a background check, establish admissibility, and provide information concerning the alien's health, criminal history and gang membership, immigration history, and involvement with groups engaged in terrorism, persecution, genocide, or who seek to overthrow the U.S. government. The H-2C visa is issued for three years and can be renewed once for an additional three-year period. However, aliens can apply for a new H-2C visa if they leave the U.S. and reside elsewhere for at least one year. Visa authorization will be terminated if the alien is unemployed for 60 or more consecutive days unless unemployment is caused by a physical or mental disability protected by the Family Medical Leave Act of 1993 (Section 101), a period of authorized vacation or leave, or temporary employment caused by a major disaster or emergency. H-2C visa holders may travel outside of the U.S., and they will be issued a machine-readable, biometric identification document that – for Canadians and Mexicans - can be used instead of a passport and visa. Aliens who do not depart after their visa expires will be ineligible to be readmitted under INA Section 222(g)(2). Visa holders can accept new employment if the new employer complies with the obligations in INA Section 218B and if the visa holder did not work without authorization.

This section also adds Section 218B which governs employer obligations. Under this section, H-2C employment cannot be agriculture-based, and it must be in areas where the unemployment rate is less than 10% for workers whose who have not completed education beyond a high school diploma. Every employer that seeks to employ an H-2C nonimmigrant must file a petition with the Secretary of Labor and pay an application filing fee for each alien and an initial fee based on the size of the employer (at most \$1,500 for employers with more than 500 employees).

Recruitment of U.S. Workers: Unless the Labor Secretary deems that there is a shortage of U.S. workers in the occupation and area of employment, each employer must demonstrate efforts to recruit workers already authorized to work in the U.S. Each employer must submit a job description to the relevant state employment service agency for publication on the agency's job database website and for distribution to unemployment agencies and appropriate recruiters. It must authorize the agency to notify labor organizations and applicable unions of the job position. It must post the job description in conspicuous locations at the place of employment, advertise the job availability in a high circulation publication for at least 10 days, and possibly advertise in professional, trade, or ethnic publications as well. It must offer the job to any qualified and available U.S. worker.

Attestation: Employers must attest to the following requirements – (1) the employment of an H-2C nonimmigrant will not adversely affect the wages and working conditions of U.S. workers and does not cause a U.S. worker to stop working for the employer within a 180-day period beginning 90 days before an H-2C petition is filed; (2) H-2C nonimmigrants will be paid the actual wage paid to all other similarly situated employees or the prevailing wage level (as determined in accordance with this section); (3) H-2C nonimmigrants will have the same working conditions and benefits as similarly situated employees; (4) there is not a strike, lockout,

or work stoppage in the course of a labor dispute in the occupation at the place of employment at which the H–2C nonimmigrant will be employed; (5) H-2C nonimmigrants who are not covered by workers compensation will receive comparable insurance coverage for injury and disease arising from employment; (6) the employer will provide notice of filing the petition to its employees' bargaining representatives or, if none exists, it will post notice in conspicuous locations at the worksite and electronically disseminate notice to its employees in the same occupational classification as the H-2C job; (7) the employer will make good faith efforts to recruit U.S. workers; (8) the employer is not ineligible; (9) H-2C workers cannot be employed in any construction or metal worker occupation; (10) the job is a bona fide job; (11) copies of any H-2C petitions and supporting documents will be publicly available; (12) the employer will notify DHS and DOL within 3 days of the H-2C worker's separation from employment or transfer to another location; (13) the petition was filed within 60 days of actual need for labor; (14) H-2C immigrants may not be required to waive their rights under this Act; and (15) it is a violation to threaten H-2C workers who exercise rights protected in this Act with withdrawal of the petition.

Ineligibility of Employers: Employers are ineligible for at most three years if, in the attestations, they misrepresent a material fact, make fraudulent statements, or fail to comply with the terms of their attestations or if they fail to cooperate with the required audit process.

Foreign Contractor: H-2C visa holders cannot be treated as independent contractors, and they cannot be denied – because of their nonimmigrant worker status – any remedies under applicable U.S. labor or employment law that would be available to a similarly situated U.S. worker. Employers will comply with all applicable federal, state, and local tax and revenue laws.

Labor Recruiter: Foreign labor contractors or employers who contract for foreign labor must disclose at the time of recruitment to any worker recruited for employment the following information about the job position: the place of employment, compensation and other benefits, description of activities, the period of employment, travel or transportation expense, the existence of any labor organizing activity, the existence of any arrangement in which an individual or entity will receive a commission for providing services to workers, the extent of compensation otherwise for injuries or deaths, any training or education to be provided and whether the training is a condition of employment, and a statement describing protections under this Act for workers recruited abroad. Foreign labor contractors or employers who engage in foreign labor contracting activity cannot provide false or misleading information about the above topics to any workers. The information must be provided in writing in English and if possible the language of the worker being recruited. Recruited workers cannot be assessed a fee for foreign labor contracting activity. The employer will pay the cost of transporting the alien from his or her home residence to the place of employment and back (or to the alien's next place of employment). Employers must notify the Labor Secretary of any foreign labor contractors it uses to recruit workers. Any individual engaged in foreign labor recruitment must be registered with the Secretary of Labor in accordance with specific requirements for certification and

renewal. Violations by foreign labor contractors or employers engaging in such activities will be subject to the same penalties as provided in the rest of this subsection. The Labor Secretary may require that a foreign labor contractor post a bond in an amount sufficient to ensure the protection of individuals recruited by that contractor.

Employee Protections: Employers cannot retaliate, threaten, discharge, or discriminate against an H-2C worker for disclosing information demonstrating violations of this Act or for cooperating in investigations about compliance with this Act. H-2C workers cannot be required to waive their rights under this Act. It is a violation of this Act to threaten H-2C workers who exercise rights protected in this Act with withdrawal of the petition

Enforcement and Penalties: The Labor Secretary will promulgate regulations for investigating and resolving complaints related to violations of this section. Complaints must be filed within one year. The Labor Department will conduct an investigation of the complaint and offer a hearing on the complaint. Violations are subject to administrative remedies and penalties, including back wages, benefits, and civil monetary penalties, which are outlined in this section.

Numerical Limitations: Numerical limitations for H-2C visas cannot exceed the number recommended by the Commission on Immigration, Labor Markets, and the National Interest or, if the Commission fails to make a recommendation, the number designated in the previous fiscal year.

Admission of Nonimmigrants: INA Section 214(b) (presumption of nonimmigrant status) and INA 214(h) (evidence to abandon foreign residence) shall apply to H-2C nonimmigrants.

Rulemaking and Effective Date: The Secretary will promulgate rules within six months of this Act's enactment, and amendments made by Sections 403, 404, and 405 will take effect one year after the date of enactment with regards to aliens in foreign countries.

#### Section 403. Recruitment of United States Workers

The Labor Secretary will establish a public webpage on the DOL website that provides links to each state's workforce agency's statewide electronic job registry. An H-2C employer will attest that it posted the job opportunity at a prevailing wage level and will maintain records for at least a year that describe reasons for not hiring any U.S. workers who applied. Any job opportunities posted to the registries must be accessible (1) to state workforce agencies, which can disseminate the information to other interested parties and (2) through the internet for access by workers, employers, labor organizations, and other interested parties.

#### Section 404. Adjustment to Lawful Permanent Resident Status

An H-2C alien's employer can petition for adjustment of status. The alien can also self-petition if he or she has been employed as an H-2C worker for at least four years. To adjust status, the alien must pay a \$100 application fee and a processing fee, be physically present in the U.S., establish evidence of continuous lawful employment (by providing bank records, business

records, employer records, labor organization records, sworn affidavits, etc.), pursue a course to achieve an understanding of English and U.S. history and government, and meet INA Section 312 requirements. Aliens with pending applications for adjustment of status, labor certification, or immigrant visas will have their H-2C visa status in one-year increments.

# Section 405. Employer Compliance

The Secretary of Labor will annually increase, by at least 2,000, the number of positions for compliance investigators dedicated to enforcing compliance with this title.

Any H-2C employer who is subject to a fine under Section 16 of the Fair Labor Standards Act or Section 17 of the Occupational Safety and Health Act for a violation related to the H-2C worker is required to pay double the fine amount.

This section also amends INA 274A (as amended by Section 301 of this Act) to prohibit U.S. Immigration and Customs Enforcement officials from misrepresenting to employers or employees that they are members with agencies or organizations that provide domestic violence services, enforce health, safety or labor laws, provide health care services, or provide any other services intended to protect life and safety. Additionally, ICE investigations must be coordinated with the appropriate National Labor Relations Board regional office, the Department of Labor, and all relevant state and local agencies that enforce workplace safety standards. Allows for a finding of unfair immigration-related employment practice without a showing of "intent to discriminate".

This section amends section 6(b) of the Occupational Safety and Health Act to require that employers provide employees with required personal protective equipment at no cost to the employee.

# Section 406. Authorization of Appropriations

#### **Subtitle B. Family and Employment Visa Reforms**

## **Chapter 1. Family and Employment Based Immigrant Visas**

# Section 411. Recapture of Immigrant Visas Lost to Bureaucratic Delay

This section recaptures unused employment-based visas and family-sponsored visas from fiscal years 1992–2007. For future fiscal years, unused visa numbers will "roll over" to the next fiscal year. To reduce current backlogs, this section exempts immediate relatives from the cap on the number of immigrant visas. Aliens who are: 1) a derivative beneficiary of an employment-based immigrant; 2) aliens with extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim; 3)aliens who have earned an advanced degree in the sciences (not including the social sciences), technology, engineering, or mathematics from a United States institution of higher education and

have been working in a field related to their degree subject in the United States under a nonimmigrant visa during the 2-year period preceding their application for an immigrant visa; 4) alien physicians who have completed service requirements of a waiver or exemption requested by an interested State agency or by an interested Federal agency under section 214(l); 5) aliens who are eligible for adjustment of status under section 245(n)(1) as an alien who described in section 101(a)(15)(H)(ii)(c). This section also defines the discretionary national interest pool is the number that is the average of the difference between the number of legal immigrant visas issued annually from fiscal year 1995 through fiscal year 2010; and the number of legal immigrant visas issued annually plus unauthorized entries estimated annually by the Secretary of Homeland Security from fiscal year 1995 through fiscal year 2010.

# Section 412. Reclassification of Spouses and Minor Children of Lawful Permanent Residents as Immediate Relatives

This section reclassifies spouses and children of lawful permanent residents as "immediate relatives" to promote the efficient reunification of families. This will allow the spouses and children of lawful permanent residents to immediately qualify for a visa. Spouses and children of immediate relatives who are eligible to "accompany" or "follow to join" the primary applicant may use the same visa petition.

To address the fact that some countries face unreasonably long backlogs, this section revises the per country immigration limits for family-based immigration from 7 to 15 percent of total admissions and eliminates the employment-based caps.

#### **Section 413. Promoting Family Unity**

This section increases the government's discretion and flexibility in addressing numerous hardships caused by a provision that bars individuals unlawfully present in the United States from utilizing our legal immigration system. Amends INA Section 212(a)(9)(B) to create one three year bar of inadmissibility for noncitizens who are unlawfully present for more than year. The unlawful presence bar does not apply to an alien for whom an immigrant visa is available or was available on or before the date of the enactment of this Act, and is otherwise admissible to the United States for permanent residence. Any unlawful presence accrued by an alien as of the date of enactment this Act shall not be considered unlawful presence for the purpose of this subparagraph if such alien was as of the date of enactment 1) the beneficiary of a pending or approved petition for classification as an immediate relative; 2) the beneficiary of a pending or approved family-based or employment based petition or 3) a derivative beneficiary of a pending or approved immediate relative, family based or employment based petition. This section also amends current bars to relief for false claims to citizenship to require a willful violation and it allows the Secretary to consider U.S. citizen children's interests in determining whether a waiver is appropriate.

# Section 414. Discretionary Authority with Respect to Removal or Deportation of Citizen and Resident Immediate Family Members

This section amends Section 240(c)(4) to add Subparagraph D, which provides for judicial discretion in removal proceedings if removal, deportation, or exclusion is against the public interest or would result in hardship to the alien's U.S. citizen or permanent resident parent, spouse or child. Judicial discretion would not be available for aliens whom the judge determines:

- (1) is described in criminal grounds stated in subparagraphs (B), (C), (D)(ii), (E), (H), (I), or (J) of INA Section 212(a)(2);
- (2) is described in the security related grounds in INA Section 212(a)(3);
- (3) is described in INA Section 212(a)(10) subparagraphs (A), (C), or (D) (a practicing polygamist, international child abductor, or unlawful voter);
- (4) is described in section 237(a)(4) (security threats); or
- (5) has engaged in conduct described in paragraph (8) or (9) of Section 103 of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7102).

# **Section 415. Military Families**

This section establishes an adjustment of status process for an alien who is the parent, spouse, child, son, or daughter of a living Armed Forces member or a deceased Armed Forces member who died as a result of an injury or disease incurred in or aggravated by the his or her service. A son or daughter who has a Filipino parent naturalized under Section 405 of the Immigration Act of 1990 may also apply under this section. Armed Forces member is defined as any U.S. citizen of lawful permanent resident who is serving, or has served honorably on or after October 7, 2001, as a member of the National Guard or the Selected Reserve of the Ready Reserve, or in an active-duty status in the military, air, or naval forces of the United States; and if separated from the service described in paragraph, was separated under honorable conditions. Certain waivers of inadmissibility may apply. Aliens who adjust their status under this section do not offset the number of visas available under the INA.

#### Section 416. Equal Treatment for All Stepchildren

This section equalizes the treatment of step children by allowing step children who are 21 years of age at the time of the parent's marriage to immigrate. The current age limit is 18 years for stepchildren and 21 years for most other children.

#### Section 417. Widows, Widowers, and Orphans

This section extends the relief given to orphans, widows and widowers in the 2009 DHS Appropriations bill to certain relatives living outside the U.S. It also clarifies naturalization requirements for widows and widowers and clarifies that that orphans, widows and widowers

may continue to seek waivers under the Immigration and Nationality Act on the basis of the relationship to the deceased spouse.

#### Section 418. Fiancé Child Status Protection

This provision allows the DHS Secretary or the Attorney General to adjust the status of an individual immigrating to the United States on a fiancé visa and any accompanying minor children to conditional permanent residence, provided that the marriage occurred within three months of admission and the noncitizen is not inadmissible. A noncitizen who is eligible for a waiver of inadmissibility under current law may still adjust status. An alien who is inadmissible under Section 212(a)(5) having to do with labor certification and 212(a)(7) relating to documentation requirements may still apply.

The age of the noncitizen using a fiancé visa and any minor children will be the date the fiancé petition is filed. The provisions of this section shall be effective as if enacted as part of the Immigration Marriage Fraud Amendments of 1986, Pub. L. 99-639. The provisions will apply to all petitions pending as of the date of enactment as well as past petitions denied that would have been approvable if this section had been in effect in which case a motion to reopen or reconsider shall be permitted.

## Section 419. Special Humanitarian Visas

This section gives the DHS Secretary the discretion to waive any of the requirements of title 8, United States Code, in the case of aliens whose cases involve special humanitarian considerations, in a number not to exceed 1000 in any fiscal year.

# Section 420. Exemption from Immigrant Visa Limit for Certain Veterans from the Philippines

This section would exempt the children of certain Filipino World War II veterans from the numerical limitations on immigrant visas.

# Section 420A. Determinations Under the Haitian Refugee Immigration Fairness Act of 1998

This section allows applications for adjustment of status and motions to reopen under the Haitian Refugee Immigration Fairness Act of 1998. Allows the age of a child to be calculated as of October 21, 1998.

# Section 420B. Affidavits of Support

This section changes the affidavit of support requirements to require sponsors to provide support at 100% of poverty level instead of 125% of poverty level.

#### Section 420C. Retaining Workers Subject to Green Card Backlog

This section allows workers who are eligible for adjustment of status to permanent residence but for whom a visa number is not currently available to apply for adjustment. The application is not

approved until the visa number is available. Employment authorization documents shall be issued in three-year increments.

# Section 420D. Return of Talent Program

Permits eligible aliens to return to their country of origin for two years if their home country needs talent to help rebuild after a natural disaster or conflict. Allows time spent abroad by lawful permanent residents to be counted toward physical presence and residence requirements for naturalization purposes.

## **Chapter 2. Uniting Families Act**

This Chapter incorporates H.R. 2709.

Section 421. Short Title: the "Uniting American Families Act of 2010".

#### Section 422. Definitions of Permanent Partner and Permanent Partnership

## Section 423. Availability of Immigrant Visas for Permanent Partners

Worldwide Level of Immigration: This section modifies the definition of "immediate relatives" to include "permanent partners" and their children, and extends self-petition rights for widowed "permanent partners" to the extent they would be available to widows or widowers.

Numerical Limitations on Individual Foreign States: This section amends per-country immigrant visa quotas such that the "permanent partners" and the children of Lawful Permanent Residents (hereinafter "LPR") and unmarried sons and daughters will be subject to the appropriate corresponding immigrant visa preference allocations (floors and ceilings), consistent with how these quotas are calculated for LPR spouses, children and unmarried sons and daughters. This section also amends immigrant visa chargeability rules to attribute permanent partners and their children to the appropriate per-country immigrant visa quotas consistent with how these quotas are determined for spouses and their children.

Allocation of Immigrant Visas: This section amends family-based immigrant visa preference allocation such that the "permanent partners" and unmarried sons and daughters of LPRs (or those sons and daughters not having a "permanent partnership") are allotted from the same immigrant visa preference category as the spouses and unmarried sons and daughters of LPRs. It amends family-based immigrant visa preference allocation to treat sons and daughters with

"permanent partners" the same as married sons and daughters of USCs for immigrant visa allocation. It excludes "permanent partners" from being counted as employees for purposes of meeting the employment creation immigrant visa standard of creating full-time employment for at least 10 USCs, LPRs or lawfully authorized immigrants. It accords "permanent partners" the same status and the same order of consideration if accompanying or following to join a "permanent partner" immigrating under family, employment or diversity program preferences, consistent with spouses under the INA.

# Section 423A. Procedure for Granting Immigrant Status

Subpart (a) of this section extends certain self-petition immigrant rights to "permanent partners" and children that are widows, widowers, victims of bigamists or extreme cruelty, consistent with self-petition rights for spouses under the INA. Subpart (b) of this section prevents immigrant visas from being accorded to "permanent partners" who fraudulently marry to evade immigration laws, consistent with spouses who enter sham marriages.

## Section 424. Admission of Refugees and Asylees

This section extends the Attorney General's discretion to admit the "permanent partners" of refugees to the U.S. or to revoke their refugee status, consistent with the right to admit refugees' spouses, or revoke their status. It extends asylee status to "permanent partners" and their children, consistent with how spouses and the children of asylees are recognized under the INA. It grants the Secretary of Homeland Security or Attorney General discretion to adjust the status of the "permanent partners" and children of asylees, consistent with how spouses and children of asylees are treated under the INA.

#### Section 425. Inadmissible and Deportable Aliens

This section includes permanent partners in the exception for exclusion of aliens who were Communists or members of other totalitarian parties, consistent with the exception available to spouses of USCs or LPRs under the INA. It also permits permanent partners of USCs and their children to adjust status as "immediate relatives," provided they meet the definition of "permanent partnership" as defined under this bill. This section extends an exception to "permanent partners" who "knowingly have encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the U.S." consistent with the exception already available to immediate relatives, and it extends a discretionary "extreme hardship" waiver to permanent partners, sons or daughters, who have been unlawfully present, consistent with the waiver already available to spouses, sons or daughters of USCs or LPRs under the INA. Subpart (b) of this section extends discretionary waivers to "permanent partners" and their children that smuggled immediate relatives or committed immigration document fraud, consistent with waivers available to immediate relatives under the INA. Subparts (c-e) of this section extends discretionary waivers to "permanent partners" who are ineligible to adjust status because they pose a risk to national health, have committed certain crimes (including misrepresentation) consistent with waivers available to spouses, unmarried sons or daughters under the INA.

Subpart (f) provides the basis to remove "permanent partners" that failed to comply with conditional residence, committed "smuggling," or committed permanent partnership fraud.

# Section 426. Nonimmigrant and Conditional Permanent Resident Status

This section grants nonimmigrant status for permanent partners awaiting the availability of an immigrant visa. It also grant "conditional permanent residence" to "permanent partners," sons or daughters if a "permanent partnership" is less than 24 months at the time the alien "permanent partner," son or daughter becomes a permanent resident, consistent with how "conditional permanent residence" is conferred on spouses, sons or daughters under the INA. This section accords derivative conditional LPR status to the "permanent partners" of alien entrepreneurs, consistent with the same rights and restrictions of spouses of alien entrepreneurs.

# Section 427. Removal, Cancellation of Removal, and Adjustment of Status

Removal Proceedings: This section includes "permanent partners" in the battered spouse exception for non-timely filed motions in removal proceedings, consistent with the exception available to battered spouses under the INA. This section also includes "permanent partners" in the definition for "exceptional circumstances" under the removability provision.

Cancellation of Removal and Adjustment of Status: The bill adds "permanent partners" to the list of qualifying relationships eligible for the cancellation of removal defense to removability for extreme hardship or extreme cruelty.

# Section 428. Application of Criminal Penalties for Misrepresentation and Concealment of Facts Regarding Permanent Partnership

This section provides a basis for punishing "permanent partners" that engage in fraudulent "permanent partnerships" to evade immigration laws, consistent with the punishment proscribed for marriage fraud.

## **Section 429. Naturalization Requirements**

This section provides certain naturalization residency exceptions to "permanent partners," consistent with those available to spouses and dependent unmarried sons and daughters. This section allows permanent partners to naturalize three years after gaining lawful permanent residence (instead of five years), if they are in a "permanent partnership" with a U.S. citizen, and provides the same exceptions to naturalization residency requirements for "permanent partners" of certain U.S. citizens, consistent with the rights and exceptions already available to spouses under the INA.

#### Section 430. Application of Family Unity Provisions to Other Laws

This section adds "permanent partners" to allow them to benefit from the LIFE Act's family unity provisions

The section includes "permanent partners" in the list of individuals who are eligible for LPR status under the Cuban Adjustment Act, have the right to self-petition for legal status, provided

certain conditions have been met, or if they have been battered or subject to extreme cruelty by their permanent partner.

# Chapter 3. Reforms to Specific Employment-Based Visa Categories

#### Subchapter A. Reforms to the EB-5 Program

## Section 431. EB-5 Regional Center Program Fees

The EB-5 visa program grants visas to aliens who engage in commercial activity that benefit the U.S. economy and create U.S. jobs. This section imposes an additional \$2,500 fee to apply for designation as a regional center. It also establishes a new Treasury account called the "Immigrant Entrepreneur Regional Center Account." This section allows alien investors to guarantee the processing of their EB-5 visa within 60 days by paying an additional \$2,500 fee.

#### Section 432. Adjustment of Status

This section states that EB-5 immigrant visa holders are eligible to adjust their status under INA 245. If, at the time a petition is filed for classification through a regional center under section 203(b)(5), approval of the petition would make a visa immediately available to the alien beneficiary, the alien beneficiary's adjustment application under this section shall be considered to be properly filed whether the application is submitted concurrently with, or subsequent to, the visa petition.

# **Section 433. Set-Aside Programs**

Improved Set-Aside for Targeted Employment Areas: This section amends INA Section 203(b)(5)(B) to redefine "Targeted Employment Area" as (1) a rural area, (2) an area that has experienced high unemployment (of at least 150 percent of the national average rate), (3) a county that has had a 20 percent or more decrease in population since 1970, (4) an area that is within the boundaries established for purposes of a State or Federal economic development incentive program, including areas defined as Enterprise Zones, Renewal Communities and Empowerment Zones, or (5) an area designated by a State agency to which the Governor has delegated the authority to designate targeted employment areas within the State.

Set-Aside of Visas for Regional Center Program: Aliens may invest in USCIS-approved regional centers. This section increases the number of regional centers from 3,000 to 10,000.

#### Section 434. Expansion of EB-5 Program

EB-5 Extension: EB-5 visa holders, their spouses, and children may receive conditional permanent resident status and then apply to have the conditional status removed. This section amends INA 216A(d)(2) to allow them to extend by two years the time permitted to file a petition to remove conditional status.

EB-5 Program Study: The DHS Secretary will conduct a study on (1) current job creation counting methodology and initial projections under INA Section 203(b)(5) and on (2) how best to promote the employment creation program described in such section overseas to potential immigrant investors.

EB-5 Full-Time Equivalents: To qualify for an EB-5 visa, aliens must create 10 full-time jobs. This section amends INA 203(b)(5)(A)(ii) to permit EB-5 visa holders to create full-time or full-time equivalent jobs. It defines "full-time" to mean employment in a position that requires at least 35 hours of service per week at any time, regardless of who fills the position. "Full-time equivalent employment" is defined as employment representing the number of full-time employees that could have been employed if the reported number of hours worked by part-time employees had been worked by full-time employees. This shall be calculated by dividing the part-time hours paid by the standard number of hours for full-time employees.

# Subchapter B. Adjustments to Other Select Visa Programs

#### Section 435. Elimination of Sunset Provisions

This section amends INA Section 101(a)(27)(C)(ii) to eliminate the September 30, 2012, sunset provision for Special Immigrant Nonminister Religious Worker Program Act. It also amends INA 220(c) to remove the September 30, 2012, sunset provision for the Conrad State 30 Program, which provides visa waivers for medical physicians to work in medically underserved areas.

# Section 436. Permanent Authorization of the Nonimmigrant Nurses in Health Professional Shortage Areas Program

This section permanently authorizes the Nonimmigrant Nurses in Health Professional Shortage Areas Program. Authorizes expeditious implementation of the amendments by suspending the Administrative Procedures Act requirements for notice and publication.

Section 437. Incentives for Physicians to Practice in Medically Underserved Communities This section states that medical physicians who practice in medically underserved community are not subject to temporary visa limitations (H-1B caps and 6 year status limitation) if a state agency submits a request for exemption and the Secretary of State recommends that the alien be exempted. Allows for an increase in numbers for the Conrad 30 program based on high usage.

#### Section 438. Student Visa Reform

This section amends INA Section 101(a)(15)(F) to expand eligibility for student visas. Foreign students will be permitted to enter the United States with immigrant intent if they are a bona fide student so long as they pursue a full course of study at an institution of higher education in a field of science, technology, engineering or mathematics. Allows Canadian and Mexican students to be full or part time if commuting. This section increases Optional Practical Training (OPT) work authorization for F-1 students to 24 months. This section also outlines the

requirements for off-campus work authorization for foreign students. Allows off campus work authorization for students working in areas unrelated to the field of study if certain labor protections are in place.

#### Section 439. Temporary Visas for Individuals from Ireland

This section creates a new nonimmigrant visa category for Irish nationals who come to the U.S. for employment.

#### Section 440. S Visas

This section expands the classification for S-visas, a nonimmigrant visa category for aliens who assist law enforcement and courts with critical information regarding criminal organizations or enterprises. Criminal enterprises now include enterprises undertaken by a foreign government, its agents, representatives, or officials. Additionally, the S-visa now also applies to aliens who are "in possession of critical reliable information concerning the activities of governments or organizations, or their agents, representatives, or officials, with respect to weapons of mass destruction and related delivery systems, if such governments or organizations are at risk of developing, selling, or transferring such weapons or related delivery systems" and supply such information to U.S. government officials. S-visas are also limited to 1,000 per year.

# Chapter 4. Protection of H-2B Nonimmigrants and Workers Recruited Abroad

#### Section 441. Definitions

# Section 442. Protections for Workers Recruited Abroad

Individuals who contract for foreign labor must disclose at the time of recruitment to any worker recruited for employment the following information about the job position: the place of employment, compensation and other benefits, description of activities, the period of employment, travel or transportation expense, the existence of any labor organizing activity, the existence of any arrangement in which an individual or entity will receive a commission for providing services to workers, the extent of compensation otherwise for injuries or deaths, any training or education to be provided and whether the training is a condition of employment, and a statement describing protections under this Act for workers recruited abroad. They cannot provide false or misleading information about the above topics to any workers. The information must be provided in writing in English and if possible the language of the worker being recruited. Recruited workers cannot be assessed a fee for foreign labor contracting activity. Employers must pay the cost of transporting H-2B aliens from their home residences to the place of employment and back (or to the aliens' next place of employment), and they cannot discriminate against H-2B employees.

#### **Section 443. Enforcement Provisions**

The Labor Secretary will establish a procedure for handling complaints regarding wage levels, an employer's failure to meet its requirements, or misrepresentation in employer application. Any investigation must be conducted within 12 months of the filing of the complaint. The Labor Secretary may initiate a complaint if it is believed that the employer is not in compliance. If the Labor Secretary believes there to be a reasonable basis for finding a violation, then the Labor Secretary will provide notice for a hearing. If – after a hearing – it is determined that there was a violation, administrative remedies may be imposed on the employer. This includes up to \$10,000 in civil penalties, criminal sanctions, or a ban on approved H-2B petitions for that employer for up to 5 years. This section also prohibits employers from retaliating or discriminating against an H-2B employee for disclosing an employer's violation of this Chapter or for cooperating with the requirements of this Chapter.

# Section 444. Transfer of Forest, Conservation, Nursery, and Logging Workers to the H-2A Agricultural Worker Program

Any farming, fishing, or forestry occupation will be considered agricultural labor for the purposes of employing nonimmigrants described in INA Section101(a)(15)(H)(ii)(a). Any workers currently considered seasonal agricultural workers under the Migrant Seasonal Worker Protection Act (29 USCS 1801 et seq.) will their simultaneous coverage by the Act.

# Section 445. H-2B Nonimmigrant Labor Certification Application Fees

This section establishes an initial \$800 fee for each employer that submits an H-2B petition and an additional \$300 fee per petition. After the initial year, the fee will be determined by the Labor Secretary. Employers are prohibited from accepting reimbursement – directly or indirectly – or any compensation for any part of the petition fee. A violation of that prohibition can result in up to a \$5,000 fine. This section also creates the "H-2B Employment Certification Application Fee Account," in which the fees and penalties will be deposited.

# **Section 446. Labor Agreement Provisions**

Recruitment of U.S. Workers: Subsection (a) of this section requires any employer seeking to petition for an H-2B worker to first recruit U.S. workers for the position. Each employer must submit a job description to the relevant state employment service agency for publication on the agency's job database website and for distribution to unemployment agencies and appropriate recruiters. It must authorize the agency to notify labor organizations and applicable unions of the job position. It must post the job description in conspicuous locations at the place of employment, advertise the job availability in a publication in the relevant labor market. The advertisement must include a job description, the wage rate, and the minimum job requirements. It cannot advertise the job opportunity to U.S. workers using less favorable wages, conditions, and benefits than it would give to nonimmigrant workers.

This subsection also includes a small exemption for 1,000 H-2B visas for employers who can demonstrate that the failure to hire H-2B workers would result in job losses for U.S. workers,

that they cannot meet their employment needs with U.S. workers, that they have not violated applicable employment-related laws and regulations within the past five years, and that they have not violated a material term of any foreign worker program within the past five years. H-2B certification is limited to a maximum of 10 months per employer. Any H-2B visa holder will not be certified for more than five years without returning to his or her country of origin. H-2B visa holders cannot work for any employer who does not have an approved H-2B application filed on their behalf. Employers must offer the job to any qualified and available U.S. worker who applies for a position 30 days prior to the beginning of the H-2B visa holder's employment.

The Labor Secretary will publish online a list of all employers registered in the program, the wage rate, number of H-2B visas sought, period of intended employment, and dates of need. The Labor Secretary will audit at least 5% of H-2B employers on an annual basis and will establish a procedure for investigating and resolving complaints related to the program. The Labor Secretary will also establish a procedure for the receipt, investigation, and disposition of complaints.

Labor Agreements with Unions that Operate Hiring Halls: Subsection (b) of this section addresses hiring halls. If an employer hires an H-2B worker through a union hiring hall, the union must attest that (1) it is a source of employees in the same or substantially equivalent occupational classification in which the employer seeks to employ an H-2B nonimmigrant; (2) it does not have a sufficient number of qualified applicants available for referral in similar occupational classification in which the employer seeks to employ an H-2B nonimmigrant; (3) it advertised the job opportunity for at least five consecutive days in the highest circulation publication in the applicable labor market; (4) the employer is contractually obligated to pay all similarly situated employees, in the same wages and benefits set forth in a labor agreement with the labor organization; and (5) the H-2B worker hired will have the same terms and conditions as found in the employer's labor agreement with the union.

Prevailing Wage: Subsection (c) establishes the prevailing wage levels for H-2B workers. For H-2B workers not covered by a collective bargaining agreement, the wages must not be less than the higher of the wage determined by the Davis-Bacon Act, wage determination, if any, issued pursuant to the Service Contract Act, the median rate of the highest 66% based on the OES survey, or wage that is not less than 150% of the federal minimum wage.

#### Section 447. Enforcement of Federal Labor Laws

H-2B nonagricultural guest workers: Subsection (a) of this section amends INA Section 214(c)(14) to allow H-2B workers to bring civil actions against their employers who violated applicable laws and regulations if their wages and working conditions were directly affected by those violations. The Legal Service Corporation may provide legal services on behalf of such workers. Additionally, the Labor Secretary can seek appropriate remedies for employer violations, including penalties and injunctive relief.

Certification Requirement: Subsection (b) of this section states that employers petitioning for H-2B workers must certify, under penalty of perjury, that they have not been required under law to provide a notice of a mass layoff pursuant to the Worker Adjustment and Retraining Notification Act during the 12-month period immediately preceding the date on which the alien is to be hired. An exemption is available if the total number of the employer's employees in the United States will not be reduced as a result of the mass layoff. If, after hiring H-2B nonimmigrants, an employer is required to provide such notice, the authorization for those nonimmigrant workers expires 60 days from the date of the notice. Employers will pay for or reimburse the cost of the initial transportation to the place of employment and to return to the country or origin or to go to the next place of employment. If an H-2B worker is dismissed before the period of authorization, the employer will also pay for return transportation. Employers will guarantee employment for 100% of total workdays in the work contract. To meet this requirement, employers cannot require employees to work longer hours, work on the employee's Sabbath, or work on a federal holiday. Any agreement by the employee to waive his or her rights under this section is void. Employees can also receive legal services from the Legal Services Corporation.

Report: Subsection (c) of this section states that any employer that hires an H-2B employee must (1) notify the Secretary of Labor not later than 30 days after the conclusion of each such nonimmigrant's term of employment; and (2) submit to the Secretary of Labor employment payroll records and similar documentation showing that the employer complied with the recruitment provisions herein and paid the required prevailing wage and transportation, and other expenses required under this section and section 212.

H -2B Portability: Subsection (d) amends 8 U.S.C. 1184(n) to establish that an H-2B visa holder is authorized to accept new employment if the new employer files for a new petition (unnecessary if an unnamed petition is already in place) or for a temporary new labor certification.

## Chapter 5. H-1B and L-1 Visa Reforms

# Subchapter A. H-1B Employer Application Requirements

## **Section 451. Application Requirements**

Modification of application requirements: Subsection (a) amends INA 212(n)(1)(C) to add a requirement that employers who intend to file H-1B visa petitions must first advertise the job opening online for 30 days. The job description must include the wages, terms of employment, minimum requirements, and application process. Additionally, a petitioning employer cannot place an H-1B visa holder at another employer's website unless the worker is primarily supervised by the petitioning employer and the placement is not a labor-for-hire arrangement.

New Application Requirements: Subsection (b) prohibits petitioning employers from recruiting only potential H-1B nonimmigrants for job positions. The employer must include on its application that it did not advertise that the position was available only to H-1B nonimmigrants or that such immigrants would receive priority. If the employer has 50 or more employees, no more than 50% can be H-1B workers who are not applying for permanent residency. If the employer has more than 1 H-1B worker, it must submit a W-2 for that worker to the IRS.

Application Review Requirements: Subsection (c) amends INA Section 212(n)(1) to ensure that the Labor Secretary will maintain a list of applications that have been filed and publish the list on its website. It adds language stating that the Labor Secretary will review applications for clear indications of fraud that – if discovered – may lead to an investigation or hearing.

# Subchapter B. Investigation and Disposition of Complaints Against H-1B Employers

#### **Section 452. Investigation Procedures**

General Modification of Procedures: Subsection (a) extends the time allowed for investigations – from 12 months after a complaint to 24 months. It also states that Labor Secretary may, in addition to conducting investigations, conduct annual compliance audits of H-1B employers and surveys.

Investigation, Working Conditions, and Penalties: Subsection (b) increases the fines for H-1B employer violations and adds that employers may be liable for lost wages and benefits. Additionally, it explicitly prohibits employers from requiring an H-1B worker to pay a penalty for quitting or for not offering an H-1B worker the same benefits and eligibility for benefits as U.S. workers.

Initiation of Investigations: Subsection (c) amends INA Section 212(n)(2)(G) to add a notice provision, stating that, in the case of an investigation, the Labor Secretary will notify employers of its intent to conduct an investigation and that, if a hearing is necessary, it will notify the parties of the hearing.

Conforming Amendment: Subsection (d) amends INA 212(n)(2) subparagraph (F) to strike "The preceding sentence shall apply to an employer regardless of whether or not the employer is an H-1B-dependent employer."

Information Sharing: Subsection (e) states that the Director of United States Citizenship and Immigration Services shall provide the Secretary of Labor with any information contained in the materials submitted by employers of H-1B nonimmigrants as part of the adjudication process that indicates that the employer is not complying with visa program requirements for H-1B nonimmigrants. The Secretary may initiate and conduct an investigation and hearing under this paragraph after receiving information of noncompliance under this subparagraph.

#### **Subchapter C. Other Protections**

## Section 453. H-1B Government Authority and Requirements

Immigration Documents: Subsection (a) This amends INA Section 204 to require employers to provide employees and beneficiaries, upon written request, with the original or certified copy of all petitions, notices, and correspondence with the Labor Department, DHS, or any other federal agency related to either an immigrant or nonimmigrant petition for that individual. Additionally, it mandates that the Comptroller General produce a report on the accuracy and effectiveness of the Labor Secretary's current job classification and wage determination system.

Report: Within 1 year after the date of the enactment of this Act, the Comptroller General of the United States shall prepare a report analyzing the accuracy and effectiveness of the Secretary of Labor's current job classification and wage determination system.

Minor Violations: For minor violations of the requirements related to the H-1B program, the Attorney General may impose penalties.

Online Postings: Subsection (d) requires that the Labor Secretary establish a free, public, searchable Internet website for posting H-1B and L-1 job openings.

# Section 454. H-1B and L-1 Visa Requirements

This section states that numerical limitations on H-1B visas will not apply to individuals who have been awarded a medical specialty certification based on post-doctoral training and experience in the U.S. It requires that when H-1B and L-1 visa holders are issued their visas, DHS will provide them with a brochure outlining their rights and their employers' obligations under federal law, the contact information for relevant federal agencies, and a copy of the application submitted for them. Also, numerical limits do not apply to nonprofit as opposed to nonprofit research institutions.

# Section 455. Additional Department of Labor Employees

This section authorizes the hiring of 200 additional employees to administer, oversee, investigate, and enforce programs involving H-1B nonimmigrant employees.

#### Section 456. L-1 Employer Petition Requirements

Employment at New Offices: If an L-1 nonimmigrant visa holder will be working at a new office, the L-1 petition may be approved for up to 12 months if the alien has not been the beneficiary of 2 or more such petitions in the past 2 years and if the employer has an adequate business plan, sufficient physical premises, and the financial ability to begin business immediately. This section also outlines the requirements for any extension requests and submission of information about the new office's business, staffing, and financial status.

Cooperation with Secretary of State: Under subsection (b), DHS will cooperate with the Secretary of State to verify the existence of a company or office in the U.S. or in a foreign country.

Investigation and Disposition of Complaints: Subsection (c) amends INA Section 214(c)(2) to state that DHS can investigate L-1 employers for compliance if it receives credible information from a source likely to have knowledge of an employer's practice or employment conditions. The DHS Secretary will develop a complaint procedure. Before beginning an investigation, detailed notice will be provided to the employer. Upon a determination that the employer has not complied with its requirements, DHS will provide notice of a hearing. If after a hearing, DHS determines that the employer violated its requirements, a penalty will be imposed. Additionally, DHS can conduct surveys of employer compliance and conduct an annual compliance audit.

Wage Rate and Working Conditions for L-1 Nonimmigrants: Subsection (d) employers of one or more L-1 visa holders to file a W-2 to the IRS for such employees. Additionally, it prohibits employers from requiring L-1 visa holders to pay a penalty for quitting or from failing to offer L-1 visa holders the same benefits and opportunity for benefits that it offers U.S. workers.

Penalties: Subsection (e) increases the fines for employer violations.

Prohibition on Retaliation against L-1 Nonimmigrants: Subsection (f) prohibits employers from retaliating or discriminating against an L-1 employee for disclosing an employer's violation of this Chapter or for cooperating with the requirements of this Chapter.

#### Section 457. Application

Except as specifically otherwise provided, the amendments made by this section and subchapter C shall apply to applications filed on or after the date of the enactment of this Act.

#### Section 458. Report on L-1 Blanket Process

DHS will submit to Congress a report on the use of blanket petitions under INA Section 214(c)(2)(A).

#### Chapter 6. Miscellaneous Employment Visa Reforms

## Section 461. Providing Premium Processing of Employment-Based Visa Petitions

This section authorizes the creation of a premium processing program for employment-based visa petitions and administrative appeals, however timelines are not defined.

#### Section 462. Visa Revalidation

This section permits nonimmigrant visa holders under 101(a)(15) subparagraphs (E), (H), (I), (L), (O), or (P) to apply for visa renewals within the U.S. if (1) the visa is valid or has been expired for less than a year, (2) the alien is seeking the same type of visa, and (3) the alien has complied with all U.S. immigration laws and regulations.

# **Section 463. Application Fees for Intending Immigrants**

This section removes the P.L. 111-230 \$2,250 filing fees for certain H-visa and L-visa applicants if the applicant is an "intending immigrant" who intends to work and resident permanently in the U.S. and has a pending or approved INA 212(a)(5)(A) petition or INA 203(b) subparagraph (1), (2), or (3) petition.

## Section 464. E-1, E-2 Visas, and L-1 Visas

This section amends the E visa nonimmigrant visa categories. This section adds an E-3 visa category for individuals employed in an enterprise owned at least 50% by nationals of the treaty country and, for E-2 enterprises, is an enterprise in which treaty country nationals have invested, or are actively in the process of investing, a substantial amount of capital. This section also ensures that small companies are not penalized in the determination of L-1 visa approvals.

## Section 465. Time Limits for Nonimmigrants to Depart the United States

Aliens who are no longer employed by the petitioning employer are granted an additional 60 days to either depart the U.S. or apply for a change or extension of status. This applies to the aliens' spouse and children as well. Also allows the spouse and children of a deceased nonimmigrant principal to remain as a dependent for the later of 1 year or until an adjudication of 204(1) benefits is completed.

#### Chapter 7. POWER Act

#### **Section 471. Short Title**

This chapter may be cited as the "Protect Our Workers from Exploitation and Retaliation Act" or the "POWER Act."

#### Section 472. Victims of Serious Labor and Employment Violations or Crime

This section expands the U-visa category for aliens who are victims of crimes. INA Section 101(a)(15)(U)(i)(II) is amended to also apply to aliens who are victims of certain workplace labor and employment violations. Section 101(a)(15)(U)(i)(III) now also applies to aliens who are helpful to the Department of Homeland Security, to the Equal Employment Opportunity Commission, to the Department of Labor, to the National Labor Relations Board. This section also creates a temporary protection category for victims of serious labor and employment violations or crime.

#### Section 473. Labor Enforcement Actions

This section includes retaliation against a nonimmigrant employee as one of the instances in which a certification of compliance with restrictions on disclosure applies. This section also amends INA Section 274A that any aliens arrested in workplace enforcement actions who are necessary for investigating workplace claims of criminal activity are not removed until DHS consults with the law enforcement agency conducting that investigation. Additionally, victims of crime, labor, and employment violations who are in removal proceedings are entitled to a stay of

removal until the resolution of the workplace claim or the denial of their U-visa application.

#### Section 474. Authorization of Appropriations

# Chapter 8. Agricultural Job Opportunities, Benefits and Society Section 475. Short Title

This chapter may be cited as the "Agricultural Job Opportunities, Benefits, and Security Act of 2010" or the "AgJOBS Act of 2010."

# **Subchapter A. Blue Card Status**

This subchapter establishes a program whereby aliens who can demonstrate a substantial past commitment to agricultural work in the U.S. are provided an opportunity to adjust their status to that of an alien in "blue card" status and, if they meet the program's prospective agricultural work requirements and other criteria, adjust their status to that of a lawful permanent resident alien.

## Section 476. Requirements for Blue Card Status

Prior Agricultural Work Requirements: To be eligible to adjust to blue card status, an alien must demonstrate that he or she performed agricultural employment in the U.S. for at least 863 hours or 150 work days during the 24-month period ending on December 31, 2008. "Work day" is defined as 5.75 or more hours of agricultural employment. Aliens are provided with an 18-month application period beginning on the first day of the seventh month that begins after the date of enactment. To be eligible for blue card status, an alien must be otherwise admissible under the INA and cannot have been convicted of any felony or a misdemeanor, an element of which involves bodily injury, threat to bodily injury, or harm to property in access of \$500.

Authorized Travel and Employment: Aliens who adjust to blue card status are granted employment authorization to work for any employer, as long as they satisfy the prospective agricultural work requirements of Section 103. They are permitted to travel abroad and reenter the United States.

Termination of Blue Card Status: Aliens shall be terminated from blue card status if they achieved such status through fraud, committed acts or crimes that make them inadmissible or fail to satisfy the prospective agricultural work requirements.

Record of Employment: Each employer of a worker in blue card status must provide a written record of employment to the worker and the Security of the Department of Homeland Security.

Required Features of Identity Card: Blue card holders and their spouses and children must receive a card with biometric identifiers and with security features designed to prevent counterfeiting.

Fine: An alien granted blue card status shall pay a \$100 fine.

Maximum Number of Blue Cards: The number of blue cards issued during the 5-year period beginning on the date of enactment shall not exceed 1,350,000.

Treatment of Aliens Granted Blue Card Status: Except as otherwise provided under current law, an alien granted blue card status is not eligible by reason of such status for any form of assistance or benefit described in PRWORA, 8 U.S.C. 1613(a) until 5 years after the date on which the alien adjusts to permanent resident status. Adjusted aliens may not be terminated from employment except for just cause. In the case of complaints of improper termination, a worker can be credited with the days of work lost by providing in his or her application to adjust his status that the hours lost were because he was fired without just cause and that he made a reasonable effort to find another job. If the alien proved these two requirements, the alien is credited with the days of work lost, similar to when a worker proves he was sick.

# Section 477. Application for Blue Card Status

Submission of Applications: Applications for blue card status may be filed directly with the Secretary by the alien through an attorney or qualified organization, or through a qualified designated entity. Applications for adjustment of status to permanent resident status are filed directly with the DHS Secretary.

Proof of Eligibility for Blue Card and Permanent Resident Status: Applicants may establish eligibility for blue and permanent resident status through government employment records or records provided by employers, collective bargaining organizations and other reliable documentation provided by the alien.

Burden of Proof: Applicants have the responsibility of proving by the preponderance of the evidence that they have worked the requisite work days and hours required to meet the criteria for adjustment to blue card and lawful permanent resident status.

Limitation on Access to Information: Files and records collected or compiled by a qualified designated entity for the purposes of this section are confidential and the Secretary shall not have access to such a file or record relating to an alien without the consent of the alien, except as allowed by a court order issued pursuant to confidentiality requirements.

Confidentiality of Information: Officials of the government may not use information provided in an application by an applicant or an employer for any purpose other than to make a determination on the application.

Penalties for False Statements in Applications: If a person files an application for a blue card or for permanent resident status and knowingly and willfully provides false information or provides a false document, the individual is subject to criminal prosecution and, if convicted, is inadmissible under the INA.

Legal Services Assistance for the Filing of an Application: A recipient of funds from the Legal

Services Corporation may provide assistance directly related to filing an application for blue card or permanent resident status.

Application Fees: The DHS Secretary may set a schedule of fees to be charged to individuals applying for blue card and permanent resident status. Such fees may be used by DHS to pay its cost of processing such applications.

#### Section 478. Adjustment to Permanent Residence

Qualifying Employment: Aliens in blue card status may apply for adjustment to lawful permanent resident status if they can provide that they: (1) performed at least 5 years of agricultural employment for at least 100 work days per year during the 5-year period beginning on the date of enactment; (2) or performed at least 3 years agricultural employment for at least 150 work days per year during the 3-yaer period beginning on the date of enactment; or (3) during the 4-year period beginning on the date of enactment worked at least 150 work days during 3 years and 100 work days during the remaining year. The period to establish qualifying employment may be extended up to 12 months if the alien can prove through medical and other records that illness, injury, pregnancy, severe weather conditions, or if the alien was terminated without just cause and the alien made a reasonable effort to find another job, prevented him or her from engaging in employment for a significant period of time. Proof of qualifying employment is provided by employer records filed with DHS under Section 101 or other specific records.

Grounds for Denial of Permanent Resident Status: Aliens who commit fraud or willful misrepresentation on applications for adjustment, or who have committed an act which makes them inadmissible under the INA, or commit a felony or 3 misdemeanors, or is convicted of an offense which involves bodily, a threat of bodily injury or harm to property in excess of \$500 are denied adjustment to lawful permanent resident status.

Grounds for Removal: Aliens in blue card status who do not apply for permanent resident status before the expiration of the application period or who fail to meet the prospective work requirement by the end of the application period are deportable and shall be removed.

Payment of Taxes: An alien must establish no later than the date of adjustment to permanent resident status that he or she does not have any federal tax liability for any year during the 5-year period beginning on the date of enactment during which the alien is required to satisfy his or her prospective work obligation.

Spouses and Minor Children: Spouses and minor children of blue card aliens who adjust to permanent resident status may obtain such status upon applying for it or if the principal alien included them within his or her application for such status.

#### Section 479. Other Provisions

Waiver of Numerical Limitations and Certain Grounds for Inadmissibility: Numerical

limitations in the INA on the admission of permanent resident aliens do not apply to aliens adjusted under this program. A limited number of grounds for exclusion are also waived. Aliens who file a non-frivolous application for blue card status prior to or during the application period may not be removed and may be granted work authorization in the U.S. until a final determination on the application has been made.

Administrative and Judicial Review: A single level of administrative appellate review is provided for determinations of eligibility for blue card and permanent resident status. Judicial review is limited to orders of removal.

Use of Information: Information on the benefits and eligibility requirements of the blue card program shall be broadly disseminated by the DHS Secretary and qualified designated entities no later than the first day of the application period.

Regulations, Effective Date, and Funding: Regulations for the program must be promulgated no later than 7 months after the date of enactment. This section shall take effect on the date regulations are issued – on an interim basis or otherwise. Funding necessary to implement this Subtitle is authorized.

## Section 480. Correction of Social Security Records

Social Security records reflecting the employment of aliens prior to their adjustment to blue card status must be corrected.

#### Subchapter B. Reforms of H-2A Worker Program

#### Section 480. Amendment to the Immigration and Nationality Act

This subchapter reforms the existing H-2A program for the temporary admission of alien agricultural workers by replacing the existing INA Section 218 with the following new Sections 218, 218A, 218B, 218C, and 218D.

#### Section 218. Applications to the Secretary of Labor

This section provides that employers desiring to employ H-2A aliens must first file an application with the Labor Secretary and a copy of a job offer, including a job description, wage level, and minimum requirements. If the application meets the program requirements and there are not obvious deficiencies, it must be accepted by the Labor Secretary. Applications may be filed by individual employers or by associations on behalf of their employee members.

The application must include the following assurances: (1) that the collective bargaining representative has been notified of the application if the job opportunities for which the application is filed are covered by a collective bargaining agreement; (2) that the job is not due to a strike or lock out; (3) that the position is not for a temporary or seasonal job (maximum duration of 10 months); (4) that the employer has offered or will offer the job to eligible and qualified U.S. workers who applied; and (5) that the employer will provide insurance covering

work-related injury and disease if the job opportunity is not covered by the state workers' compensation law.

If the job opportunity is not covered by a collective bargaining agreement, the application must also assure (1) minimum wages, benefits and working conditions required in Section 218A, (2) the non-displacement of U.S. workers, and (3) the recruitment of U.S. workers.

#### Section 218A. H-2A Employment Requirements

This section lists the required wages, benefits, and terms and conditions of employment for H-2A employers. Preferential treatment for alien workers is prohibited.

Housing: H-2A workers from outside normal commuting distance must be provided with housing that meets federal farm labor camps standards or with rental or public accommodation housing that meets applicable standards. Such housing will be provided at no cost to the worker. In lieu of providing housing, the employer may provide a monetary housing allowance comparable to the HUD Section 8 housing allowance - but only if the state governor has certified to the Labor Secretary that there is sufficient housing in the area for seasonal agricultural workers.

Transportation: H-2A workers who live outside normal commuting distance must be reimbursed for reasonable costs for transportation to the job and for subsistence. This transportation allowance is provided to workers who complete 50% of the employment period. Return transportation is also reimbursed for workers who complete 100% of the employment period.

Wages: H-2A workers are required to be paid the highest of the federal, state, or local statutory minimum wage, the prevailing wage for the occupation in the area of intended employment or the applicable Adverse Effect Wage Rate (AEWR). The AEWR may not be greater than the applicable AEWR on January 1, 2009. If Congress fails to set a new wage standard for H-2A workers within three years of the date of enactment, subsequent AEWRs will be annually indexed by the percentage change in the Consumer Price Index, with a maximum adjustment of 4 percent annually. During the three years after enactment, the General Accounting Office will conduct a study on the H-2A wage standard and submit a report to Congress. A Congressional commission is also appointed to conduct a study on the topic and make recommendations to Congress.

Guarantee of Employment: H-2A workers are guaranteed employment for a minimum of threequarters of the period of employment for which they were recruited.

Motor vehicle Safety: Motor vehicle safety and insurance standards are required for vehicles and drivers used to transport H-2A agricultural workers. These standards are the same as those prescribed by the Labor Secretary under the Migrant and Seasonal Agricultural Worker Protection Act and other federal and state safety standards.

Compliance with Laws: H-2A employers must assure compliance with all applicable federal, state, and local labor laws. However, a violation of this Section does not constitute a violation of the Migrant and Seasonal Agricultural Worker Protection Act.

## Section 218B. Procedure for Admission and Extension of Stay of H-2A Workers

Petition to DHS for admission of aliens: Employers with valid labor certifications from the Secretary of Labor may petition the DHS Secretary for approval for the admission of aliens to perform work described on the labor certification, or for the extension of stay of H-2A aliens already in the U.S. who are completing a prior period of authorized H-2A employment. DHS is required to adjudicate the petition within 7 working days.

Admissible Aliens: Aliens are eligible for admission at H-2A workers if they are otherwise eligible for admission under the INA and if they have not violated the terms of the H-2A program in the past five years. The debarment provision for unlawful presence in the present INA is waived on a one-time basis for aliens seeking admission as H-2A workers.

Extension of Stay of Aliens: H-2A aliens are admitted or extended for the period of employment for an approved labor application not to exceed 10 months. Employers may petition to extend the stay of H-2A aliens for a maximum three years' continuous stay in the U.S. as an H-2A alien. After three consecutive years, the alien must depart the U.S. Before an alien is eligible to be readmitted an H-2A worker, he or she remain outside of the country for at a period of at least one-fifth of the time the alien was previously in the U.S. as an H-2A alien.

Abandonment of Employment by Aliens: Aliens who abandon their employment are required to immediately depart the U.S. and are subject to removal. Employers must report abandonments and early terminations to the DHS Secretary. An employer can replace an alien who abandons employment or who is terminated for a lawful job-related reason.

Counterfeit Resistant Documents: H-2A aliens must be provided with a counterfeit resistant identity and employment authorization document.

Special Rules: Special rules are provided for aliens employed as sheepherders, goat herders, or dairy workers. Such workers may be admitted for an initial period of up to 12 months, and they may have the initial period extended for up to 3 years. Upon completion of a cumulative total of 36 months in such work, the alien, or an employer on the alien's behalf, may apply for adjustment to permanent resident status. The stay of an alien with a pending application for final residence may be extended by the Secretary in 1-year increments until a final determination is made.

## Section 218C. Worker Protection and Labor Standards Enforcement

Administrative Enforcement of Program Requirements by the Secretary of Labor: This section requires the Labor Secretary to establish a process for the receipt, investigation, and disposition of complaints about an employer's failure to meet the conditions of employment specified in

Section 218. Complaints may be filed by any aggrieved person or organization no later than 12 months after the alleged failure to comply. If the Labor Secretary finds that a violation has occurred, the employer may be required to pay back pay and civil monetary penalties. The Labor Secretary will also notify the DHS Secretary of such violations, and the DHS Secretary may debar the employer from the program for one year. Additional civil monetary penalties and a 2-year debarment may be imposed on employers who commit willful noncompliance or misrepresentation on an H-2A application.

Private right of Federal Action and Required Mediation: H-2A aliens are provided with a private right of action regarding the housing, transportation, wage, employment guarantee, motor vehicle safety provisions and discrimination provisions of Section 218, as well as the written promises contained in the employer's job offer. Mediation of the complaint is required, if any party requests it, before a lawsuit may proceed. Workers' compensation benefits are the exclusive remedy for losses covered by workers' compensation. Discrimination against a worker who files a complaint or cooperates in an investigation or proceeding in connection with a complaint is prohibited.

Liability of Associations and Association Members for Program Violations: Provisions of current law apply to associations and members of associations employing workers in H-2A certified occupations who commit violations.

#### **Section 218D. Definitions**

#### **Subchapter C. Miscellaneous Provisions**

#### Section 481. Determination and Use of User Fees

The Secretary is authorized to establish fees applicable to employers applying for certification to employ H-2A aliens to cover the actual direct costs of operating the H-2A program.

#### Section 482. Rulemaking

Regulations of the Labor Secretary, the DHS Secretary, and the Secretary of State shall be issued no later than one year after the date of enactment.

# **Section 483. Report to Congress**

No later than September 30 of each year, the Secretary will report to Congress with information compiled during the previous year regarding the use and operation of the H-2A program, as well as the number of workers who applied and were adjusted to blue card and permanent resident status. No later than 180 days after the date of enactment, the Secretary will report to Congress regarding steps taken to implement the program.

#### Section 484. Effective Date

Section 481 and the amendments made by Section 480 shall take effect 1 year after the date of the enactment of this Act.

# Title V. Registration of Undocumented Individuals

# Subtitle A. Lawful Prospective Immigrant Status

# Section 501. Lawful Prospective Immigrant Status

This section creates the Lawful Prospective Immigrant (LPI) status category to require aliens to register who are physically present in the U.S., who remained continuously present in the U.S. from September 30, 2010 to the date they are granted status, and who are not inadmissible.

(b)(2) Grounds of Ineligibility: An alien is ineligible for LPI status based on the following grounds:

- Conviction for any offense under Federal or State law punishable with a maximum term of imprisonment of more than one year;
- Conviction for an aggravated felony; domestic violence, stalking, or child abuse; or has violated a protection order;
- Having ordered, incited, assisted, or otherwise participated in the persecution of any
  person on account of race, religion, nationality, membership in a particular social group,
  or political opinion;
- Illegal entrance into the U.S. after September 30, 2010;
- Other lawful status (i.e., LPR, asylee, nonimmigrant visa, paroled to assist in government proceedings, paroled into the Mariana Islands).

(b)(3) Grounds of Inadmissibility: Additionally, in determining inadmissibility:

- Section 212(a)(5) of the Act does not apply, and paragraphs (6)(A), (6)(B), (6)(C), (6)(D), (6)(F), (6)(G), (7), (9), and (10)(B) of section 212(a) of the Act do not apply in regard to conduct or unlawful presence occurring before the date of application
- The Secretary may not waive INA 212(a)(2) subparagraphs (B), (C), (D)(ii), (E), (H), (I), or (J) (relating to criminals); INA 212(2)(a)(3) (relating to security and related grounds); INA 212(a)(10) subparagraphs (A), (C), or (D) (relating to polygamists and child abductors); or INA 212(a) (6)(A)(i) (relating to entries without inspection) with respect to any entries occurring on or after this Act's enactment.
- The Secretary has discretion to waive the application of other provisions of section 212(a) of the Act not listed above on behalf of an individual alien for humanitarian purposes, to ensure family unity, or if such waiver is otherwise in the public interest.

**Application Procedures:** 

- The DHS Secretary will prescribe by interim final rule published in the Federal Register the procedure for aliens to apply for LPI status, the procedure for aliens granted LPI status to petition for their spouses or dependents, and the evidence to demonstrate eligibility for the status. The Secretary of State will prescribe by regulation in the Federal Register the procedure for aliens overseas who are beneficiaries of petitions to apply for visas or other documentation necessary for travel to the U.S. and the evidence required to establish eligibility for that documentation.
- Applications for LPI status can be filed during the one-year period beginning the October 1st after this Act's enactment. The Secretary has the discretion to extend that period by up to 6 months.
- Aliens who are apprehended between the date of this Act's enactment and the beginning of the filing period who can establish prima facie evidence that they are eligible for LPI status will have the opportunity to file an application.
- Aliens who are in removal, deportation, or exclusion proceedings between the date of this
  Act's enactment or the end of the filing period will have the opportunity to apply for LPI
  status and having the proceedings terminated.
- Aliens who are in the U.S. and have been ordered excluded, deported, or removed or ordered to depart voluntarily may apply for LPI status (notwithstanding INA Section 241(a)(5)) and do not have to file a separate motion to reopen, reconsider, or vacate.
- All applicants must submit biometric and biographical data and undergo background security and law enforcement check. Applicants over age 14 shall pay a processing fee.
   In addition to fees, applicants over 21 filing an initial application for the first extension of the initial period must pay a \$500 penalty.
- The applicant has the burden of proof for establishing eligibility. If an individual's application is denied, all subsequent applications will be denied as well. Individuals who do not submit requested information will have their applications denied; however, they can still file a new application.

Evidence of Status: Individuals granted LPI status will be issued machine-readable, tamper-resistant documentation of their status that includes a digitized photograph and biometric identifiers. This document can serve as a valid travel and entry document and as a valid work authorization and identity document.

Lawful Prospective Immigrant Dependents: The spouse and children (as defined in INA 101(a0(35) and 101(b)(1), respectively) of Lawful Prospective Immigrants may also receive LPI status following the approval of a petition for such status.

Terms and Conditions of Lawful Prospective Immigrant Status:

- While their applications for LPI status are pending, aliens may receive advance parole for urgent humanitarian reasons, may not be detained unless it is determined that they are ineligible for the status under subsection (b)(2), inadmissible under subsection (b)(1)(B), or removable under INA 237(a)(2)(A)(iii) or INA 237(a)(2)(E)(i) or (ii). Aliens suspected of being ineligible, inadmissible, or removable for those reasons may be detained for up to 48 hours. Thereafter they may be detained as prescribed under INA provisions governing the removal process. Additionally, employed aliens with pending LPI applications may continue work.
- Lawful Prospective Immigrants will be granted employment authorization, and they may travel outside of the U.S. for a period of less than six months and be readmitted if they have adequate documentation of their status and if they can establish that they are not inadmissible under INA 235 unless permitted by subsection (b)(3). They may not be detained unless DHS determines that they are ineligible, inadmissible, or removable or if their status has expired or been revoked. Lawful Prospective Immigrants are required to undergo medical observation and examination.
- The initial period of authorized admission will be at most four years from the date the status was granted. The Secretary has discretion to confer a shorter period for subsets of Lawful Prospective Immigrants. Individuals can file for an extension. The Secretary may not grant any period of authorized admission that extends past the date that is 11 years after the date of enactment. To be eligible for an extension, individuals must continue to demonstrate their eligibility for LPI status. Applications for extensions must be filed before previously authorized LPI status has expired, and applicants for extensions must undergo renewed security and law enforcement background checks. Denial of an extension is the equivalent of a revocation of LPI status.
- The DHS Secretary can revoke LPI status at any time before the alien becomes a lawful permanent resident if the alien becomes inadmissible or ineligible for the status, knowingly uses documentation for unlawful or fraudulent purposes, or was absent from the U.S. for more than six months at a time since being granted LPI status.

Dissemination of Information: DHS will broadly disseminate information on the new LPI status in the top five principal languages spoken by aliens who qualify for the status.

# Section 502. Adjustment of Status for Lawful Prospective Immigrants

This section outlines the requirements and procedures for aliens with Lawful Prospective Immigrant status to adjust to permanent resident status. Aliens must continue to meet the same eligibility and inadmissibility requirements for the respective Lawful Prospective Immigrant and Lawful Prospective Immigrant Dependent status.

In addition, this section provides for additional requirements. Lawful Prospective Immigrants over the age of 14 must demonstrate basic citizenship and English skills, pay their taxes,

maintain a continuous physical presence in the U.S. and register for Military Selective Service if eligible. The "back of the line" provision states that applicants will not be granted permanent resident status until the earlier of a) eight years after enactment or b) 30 days after immigrant visas are available for all approved petitions filed under INA Section 201 or 203 and filed before the date of this Act's enactment. Additionally, applicants must not file an application for adjustment of status until six years have passed since the individual was granted Lawful Prospective Immigrant status. In addition to paying processing fees, applicants over the age of 21 must also pay a \$1,000 penalty. The Secretary may require applicants to submit to an interview. Applicants shall be required to submit to a renewed security and law enforcement background checks as well.

# Section 503. Administrative Review, Removal Proceedings, and Judicial Review for Aliens Who Have Applied for Lawful Prospective Immigrant Status

This section addresses the review process and removal proceedings procedures for aliens who applied for Lawful Prospective Immigrant Status.

Administrative Review: There will be a single level of administrative appellate review for LPI status determinations under Section 501, petitions for LPI dependent status, and adjustment of status determinations under Section 502. Individuals whose applications were denied or revoked can file only one appeal. Any removal proceedings will be stayed pending administrative review under this section, except for removal for criminal or national security grounds. Review is based on the administrative record established, but the review authority has discretion to consider newly discovered or previously unavailable evidence. Aliens cannot file motions to reconsider or reopen initial decisions and can file one motion to reopen or reconsider appellate decisions.

Self-initiated Removal and Notice Preserving Judicial Review: An alien who receives the denial of an administrative appeal may request to be placed in removal proceedings. The request will serve as notice preserving judicial review of the denial. If that alien is already in removal, deportation, or exclusion proceedings that are not administratively final, the alien may file a notice to preserve judicial review. Or if that alien is already subject to an administratively final order, the alien may also file a notice to preserve judicial review. All requests and notices must be made within 60 days of the date of service of the administrative appellate decision.

Judicial Review: If an alien's administrative appellate review is denied, the alien can seek judicial review in federal district court where he or she resides. Judicial review can be available in conjunction with judicial review of an order of removal, deportation, or exclusion. Review is based on the administrative record, but the court may remand the case to the Secretary for consideration of additional evidence. The district courts have jurisdiction over causes or claims arising from a pattern or practice of the Secretary of Homeland Security. With respect to those claims, the courts may order appropriate relief without regard to non-constitutionally-mandated standing requirements. Aliens seeking judicial review may not be removed until a final decision establishing ineligibility is rendered. There is no judicial review for late filings.

Challenges to Title V: Any claim that this Title or any regulation, guideline, directive, or procedure issued to implement this Title violates U.S. law will be heard in the D.C. District Court. No such actions may be filed after the period of receipt for applications in 501(c)(1) or on behalf of an alien who did not file a timely LPI status application. Any action must be filed within one year after the date of publication or promulgation of the challenged regulation, policy or directive or within one year of enactment (if challenging the Act's validity). Any class actions filed must conform with the Class Action Fairness Act of 2005, and any alien who did not timely file for LPI status may not be a class member. Plaintiffs are not required to exhaust administrative remedies prior to filing.

#### **Section 504. Confidentiality of Information**

Except as otherwise provided in this Act, no Federal agency or bureau, or any officer or employee of such agency or bureau, may, without the written consent of the applicant 1) use the information furnished by the applicant pursuant to an application filed under section 501 or 502 of this title, for any purpose, other than to make a determination on the application, including revocation of an application previously approved; 2) make any publication through which the information furnished by any particular applicant can be identified; or 3) permit anyone other than the sworn officers, employees or contractors of such agency or bureau, to examine individual applications that have been filed. The Secretary of Homeland Security shall provide the information furnished pursuant to an application filed under this title, and any other information derived from such furnished information, to: 1) a federal, state, tribal, or local law enforcement agency, intelligence agency, national security agency, component of the Department of Homeland Security, court, or grand jury in connection with a criminal investigation or prosecution, a background check conducted pursuant to the Brady Handgun Violence Protection Act, or for homeland security or national security purposes, in each instance about an individual, when such information is requested by such entity or consistent with an information sharing agreement or mechanism; or 2) an official coroner for purposes of affirmatively identifying a deceased individual, whether or not the death of such individual resulted from a crime. The limitations on disclosure of information shall apply only until an application is denied and appeals have been exhausted. The limitations shall not apply when the alien's LPI status has been revoked or has expired, or in any removal proceeding or other criminal or civil case or action relating to an alien whose application has been granted that is based upon any violation of law after such grant.

Information concerning whether the applicant has engaged in fraud in the application for Lawful Prospective Immigrant status or for adjustment of status from Lawful Prospective Immigrant status or at any time committed a crime may be used or released for immigration enforcement, law enforcement, or national security purposes. The Secretary may audit and evaluate information furnished as part of any application filed under section 501 or 502 of this title for purposes of identifying fraud or fraud schemes, and may use any evidence of fraud detected by means of audits, evaluations, or other means for purposes of investigating, prosecuting or

referring for prosecution, denying, or terminating immigration benefits. The Federal Bureau of Investigation may disclose information derived from biometric and biographic checks of the applicant to assist in the apprehension of a person who is the subject of a warrant of arrest, or to notify intelligence agencies of the location of a known or suspected terrorist. Whoever willfully uses, publishes, or permits information to be disclosed in violation of this section shall be subject to appropriate disciplinary action and subject to a civil monetary penalty of not more than \$5,000. The Secretary or the Secretary's designee shall convene an interagency committee to address issues relating to the identification, prevention, investigation, and prosecution of fraud and related conduct in connection with this program.

#### Section 505. Aliens Not Subject to Direct Numerical Limitations

This section states that aliens who adjust their status from Lawful Prospective Immigrant status are not subject to direct numerical limitations.

#### **Section 506. Employer Protections**

This section states that any employment information submitted by an alien or the alien's employer in support of a Lawful Prospective Immigrant status application will not be used in a prosecution or investigation of the employer under INA Section 274A or U.S. tax laws for any prior unlawful employment of the alien. This section does not apply to fraudulent employment records.

# Section 507. Assignment of Social Security Number

This section authorizes the Social Security Administration Commissioner to assign Social Security numbers to aliens with Lawful Prospective Immigrant status.

#### **Subtitle B. Implementation**

# Section 511. Rulemaking

This section requires the DHS Secretary and Attorney General to issue interim final regulations to implement this title within nine months of this Act's enactment. Decisions by the Secretary will not be considered major federal actions subject to review under the National Environmental Policy Act of 1969.

# Section 512. Exemption from Government Contracting and Hiring Rules

This section exempts DHS from certain government contracting and hiring rules in implementing this title.

#### Section 513. Authorization to Acquire Leaseholds

This section authorizes the DHS Secretary to acquire a leasehold interest in real property and to construct or modify facilities on the leased property if necessary for the implementation of this Title.

# Section 514. Privacy and Civil Liberties

Under this section, the DHS Secretary will implement safeguards to protect the security of personally identifiable information collected pursuant to Section 501 and 502. The Secretary will also conduct a privacy impact assessment and civil liberties impact assessment of the legalization program established in Sections 501 and 502.

# **Section 515. Statutory Construction**

Except as provided otherwise, nothing in this title creates any substantive or procedural right that is legally enforceable by any party against the U.S., its agencies, or its officers.

# **Subtitle C. Miscellaneous**

#### **Section 521. Correction of Social Security Records**

Aliens with Lawful Prospective Immigrant status and aliens who adjusted their status from Lawful Prospective Immigrant status will not be penalized for providing false information to the Social Security Commissioner or for causing unauthorized benefit payments if such actions took place before the submission of a Lawful Prospective Immigrant status application.

# Section 522. Fraud Prevention Program

The head of each department that administers a program related to this title or that has authority to confer an immigration benefit, relief, or status under immigration law will develop a program to prevent fraud within its program. Each program will provide for fraud prevention training, regular audits of applications, investigation referrals for cases suspected of fraud, the identification of deficiencies in practices that encourage fraud, and the remedy of any identified deficiencies.

#### **Section 523. Data Collection Requirements**

Under this section, the head of each department shall also ensure that general demographic data provided by applicants under Title V will be made available in the aggregate on a searchable public database. General demographic data includes gender, country of origin, age, education, annual earnings, employment, state of residence, marital status, date of arrival in the United States, method of entry into the United States, number and ages of children, and birthplace of children. Data collected shall not be recorded in such a way that it violates confidentiality provisions under this Title.

#### **Subtitle D. DREAM Act**

#### **Section 531. Short Title**

This Subtitle may be cited as the "Development, Relief, and Education for Alien Minors Act of 2009" or the "DREAM Act of 2010."

# **Section 532. Definitions**

# Section 533. Restoration of State Option to Determine Residency for Purposes of Higher Education Benefits

This section repeals Section 505 of the Illegal Immigration Reform and Immigrant Responsibility Act to allow states to determine their own residency requirements for high education benefits. Section 505 discourages states from providing in-state tuition or other higher education benefits without regard to immigration status.

# Section 534. Cancellation of Removal and Adjustment of Status of Certain Long-Term Residents Who Entered the United States as Children

This section permits DHS to cancel removal of and grant lawful permanent resident status to aliens with good moral character who came to the U.S. before the age of 16 at least five years before the date of the bill's enactment and are younger than 35 years old. Individuals cannot qualify for this relief if they have committed crimes, are a security risk, or are inadmissible or removable on certain other grounds. Individuals are eligible to qualify if they have been accepted to college, received a high school diploma, or received a G.E.D.

#### Section 535. Conditional Permanent Resident Status

Eligible individuals first apply for conditional permanent resident status, which is similar to lawful permanent resident status except that it is awarded for a limited duration—six years under normal circumstances—instead of indefinitely. Individuals may lose this status if they no longer meet the requirements, become public charges, or received a dishonorable or other than honorable discharge from the uniformed services. At the end of the conditional period, unrestricted lawful permanent resident status would be granted if, during the conditional period, the immigrant has maintained good moral character, avoided lengthy trips abroad, and met at least one of the following criteria: (1) graduated from a two-year college or certain vocational colleges, or studied for at least two years toward a B.A. or higher degree, or (2) served in the U.S. armed forces for at least two years. The six-year time period for meeting these requirements would be extendable upon a showing of good cause, and the U.S. Department of Homeland Security would be empowered to waive the requirements altogether if compelling reasons, such as disability, prevent their completion and if removal of the student would result in exceptional and extremely unusual hardship to the student or to the student's spouse, parent or child.

#### Section 536. Retroactive Benefits under This Subtitle

These benefits apply to individuals if they have already met the requirements before the date of enactment of this Subtitle.

# Section 537. Exclusive Jurisdiction

The DHS Secretary has exclusive jurisdiction to determine relief under this Subtitle unless the alien is in deportation, exclusion, or removal proceedings, in which case the Attorney General has jurisdiction. The Attorney General will stay the removal of aliens eligible for relief who are at least 12 years old and enrolled in primary or secondary school. Those aliens are eligible to work.

#### **Section 538. Penalties for False Statements in Application**

Individuals can be fined, imprisoned for up to 5 years, or both for making false statements in an application.

## **Section 539. Confidentiality of Information**

This section guarantees that application information cannot be used to begin removal proceedings against anyone mentioned in the application and cannot be made public. However, information can be provided to law enforcement in connection with investigations or prosecutions of criminal offenses or security risks, as described in INA Section 212(a) paragraphs (2) or (3). It can also be provided to official coroners for the purpose of identifying a deceased. Violations of this subsection are punishable by fines of up to \$10,000.

# Section 540. Expedited Processing of Applications; Prohibition on Fees

DREAM applications will be considered on an expedited basis without additional fees charged to the applicant.

## **Section 541. Higher Education Assistance**

Individuals who adjust to permanent status under this Subtitle are not eligible for Pell Grants or certain other federal financial aid grants. They would, however, be eligible for federal work study and student loans, and states would not be restricted from providing their own financial aid to these students.

# Section 542. GAO Report

Within seven years of enactment, the U.S. Comptroller General will submit a report to Congress on the statistics regarding aliens to whom this Subsection applies.

# Subtitle E. Funding for the Department of Homeland Security

#### **Section 550. Effective Funding**

This section establishes specific accounts within the Department of Homeland Security and Department of State to implement and operate the legalization programs described in this Title, including but not limited to -- (1) infrastructure, staffing, and adjudication; (2) outreach; (3) grants to community and faith-based organizations; and (4) anti-fraud programs and actions relating to such legalization programs. DHS and DOS will submit reports on such funds to Congress.

This section also establishes the Immigration Reform Penalty Account where all of the civil penalties collected under INA Section 274 and under this Title will be deposited. Such funds can be used for implementing and operation Title V immigration services program. Any remaining funds will be deposited into the Treasury general fund as repayment for funds transferred to create the Department of Homeland Security Legalization Program Account. Any remaining funds after reimbursing the Treasury will be divided between investigation and fraud prevention costs, immigrant integration program costs, and immigration services and enforcement costs.

# Title VI. Immigrant Integration and Other Reforms

# Subtitle A. Strengthen and United Communities with Civics Education and English Skills

This Subtitle includes Senate Bill 2998, which was sponsored by Senator Gillibrand.

# Chapter 1. Expanding English Literacy, United States History, and Civics Education Section 601. Increased Investment in English Literacy, United States History, and Civics Education under the Adult Education and Family Literacy Act

This section begins by amending Section 203 of the Adult Education and Family Literacy Act (20 U.S.C. 9202) to define "Integrated English Literacy, U.S. History, and Civics Education Program" as one that helps English language learners achieve competence in English through contextualized instruction on the rights and responsibilities of citizenship, naturalization procedures, civil participation, and United States history and government to help such learner acquire the skills and knowledge to be an active and informed parent, worker, and community member."

# Section 602. Definitions of English Language Learner

This section amends the Adult Education and Family Literacy Act to rename "individuals of limited English proficiency" as "English language learners."

# Section 603. Credits for Teachers of English Language Learners

Under this section, teachers who work with immigrants to improve their English skills would receive tax breaks up to \$750 per year for the first five years of their teaching services - and \$500 thereafter for each additional year for up to 10 years. They can also deduct teacher certification expenses required to become certified as a qualified to teach English as a second language.

#### Section 604. Research in Adult Education

Under this section, the national research and development center for adult literacy, established by the Commissioner for Education Research of the National Center for Education Research pursuant to section 131 of the Education Sciences Reform Act of 2002 (20 U.S.C. 9531) establish, will also be devoted to the research of adult education.

# Chapter 2. Supporting English Language Acquisition and Adult Education in the Workforce

Section 611. Credit for Employer-Provided Adult English Literacy and Basic Programs Under this section, businesses that provide English language and financial literacy training for their employees will receive a 20% tax credit for those expenses - up to \$1,000 per employees.

# Section 612. Presidential Award for Business Leadership in Promoting United States Citizenship

This section establishes the Presidential Award for Business Leadership in Promoting United States Citizenship, which will be awarded to companies and other organizations that make

extraordinary efforts in assisting their employees and members to learn English and increase their understanding of United States history and civics.

# **Chapter 3. Building Stronger Communities**

#### Section 621. Office of Citizenship and New Americans

Under this section, the Office of Citizenship within USCIS at DHS is renamed the "Office of Citizenship and New Americans." The revamped office will enhance efforts to integrate immigrants into U.S. communities, promote instruction and training on citizenship responsibilities, and develop better educational materials for immigrants pursuing citizenship. The office may accept monetary and in-kind donations to support its activities. It will also submit a biennial report on its activities to Congress.

#### Section 622. Grants to States

Under this section, the Office of Citizenship and New Americans will provide competitive grants to states to form state-based New American Councils. Such councils will be comprised of local business leaders, faith-based and community organization leaders, local elected officials, philanthropists, and educators dedicated to providing better opportunities for immigrant communities. Awarded grants will be between \$500,000 and \$5 million.

#### Section 623. Authorized Activities

New American Council grants must be used to develop and implement plans to introduce new immigrants into the state, to fund subgrants to local communities, to disseminate best practices related to English acquisition and civics education, and to convene public hearings. Grants may also be used to address challenges of introducing new immigrants to the state, to assist state and local agencies to improve programs related to new Americans, to review long distance learning programs for new Americans, to coordinate with other states, and to develop preparation and outreach materials about the naturalization process.

#### Section 624. Reporting and Evaluation

Each entity awarded a grant will submit an annual report on its activities and demographics served to the Office of Citizenship and New Americans.

# Section 625. New Citizens Award Program

This section establishes a new citizens award program to recognize citizens who - (1) have made an outstanding contribution to the United States; and (2) are naturalized during the 10-year period ending on the date of such recognition.

#### Section 626. Rule of Construction

Nothing in this title shall be construed to limit the authority of the Secretary of Homeland Security, acting through the Director of United States Citizenship and Immigration Services or such other officials of the Department of Homeland Security as the Secretary of Homeland

Security may direct, to manage, direct, and control the activities of the Chief of the Office of Citizenship and New Americans.

# Section 627. Authorization of Appropriations

There are authorized to be appropriated to carry out this title \$100,000,000 for each of the fiscal years 2010 through 2015.

#### **Chapter 4. Grants**

# Section 631. Grants to Support Public Education and Community Training

This section authorizes the Assistant Attorney General, Office of Justice Programs, to award grants to non-profit community organizations to educate, train, and support non-profit agencies, immigrant communities, and other interested entities regarding the provisions of this Act. Grants will be used for providing services related to this Act and educating nonprofit organizations and immigrant communities about the Act, including informing individuals about the following: authorized legal services providers, the dangers associated with using unauthorized providers, the requirements for immigrant representation accreditation, and the process for obtaining benefits under this Act. To the extent possible, the Assistant Attorney General will ensure that grant recipients serve geographically diverse locations and ethnically diverse populations.

## Section 632. Grant Program to Assist Applicants for Naturalization

This section establishes a USCIS grant program – the Initial Entry, Adjustment, and Citizenship Assistance Grant (IEACA) – to fund community-based organizations, including community-based legal services organizations, to develop programs to assist eligible applicants with the naturalization process. Grants may be used for assistance with the initial conditional nonimmigrant application, the adjustment of status process, as well as citizenship rights, requirements, and responsibilities. An initial grant will be awarded for no more than 3 years, but grants can be renewed in 1-year increments. To the extent possible, the DHS Secretary will ensure that grant recipients serve geographically diverse locations and ethnically diverse populations. 50-80% of the funding will be awarded to programs located in the 10 states with the highest percentage of foreign-born residents. The Secretary will also submit a report to Congress about the grant and establish a liaison between USCIS and the community of providers of services.

#### **Subtitle B. Emergency Relief for Certain Populations**

#### Section 641. Adjustment of Status for Certain Haitian Orphans

This section incorporates Senate Bill 3411 sponsored by Senator Gillibrand (NY). It provides lawful permanent resident status to certain Haitian orphans who were inspected and admitted under the humanitarian parole policy following the 2010 Haitian earthquake. It does not provide

any immigration benefits for the birth parents of adopted children who obtain permanent resident status under this section, and it does not affect annual allocation of immigrant visas.

# Section 642. Adjustment of Status for Certain Liberian Nationals

This section incorporates Senate Bill 656 sponsored by Senator Reed (RI). It provides lawful permanent resident status to Liberian nationals who have been continuously present in the U.S. since January 1, 2009, and their spouse, child, and unmarried sons or daughters. It would impact Liberian nationals who have received Temporary Protected Status between 1991 and 2007. Individuals subject to a final order of deportation, removal, or exclusion will receive stays based on the filing of an adjustment of status application, and those in proceedings who have applied for adjustment of status will not be removed until a final determination to deny their application has been made. Individuals with pending applications will be authorized to work and will receive documentation of that authorization. Applicants also have the same rights to administrative review as other applicants for adjustment of status and other individuals subject to removal proceedings. However, they do not have a right to judicial review of a final determination. This section does not affect annual allocation of immigrant visas.

# **Subtitle C. Wartime Treatment Studies**

This Subtitle incorporates Senate Bill 564, sponsored by Senator Feingold (WI). It establishes a commission to study the treatment of European Americans, including German Americans, Italian Americans, and Jewish refugees, by the United States during World War II.

# **Part 1. Commission on Wartime Treatment of Europe Americans**

Section 651. Findings

Section 652. Definitions

# Section 653. Establishment of Commission on Wartime Treatment of European Americans This section details the membership, policies, and procedures for the Commission. Members are

appointed by either the President, Speaker of the House, or Senate Majority Leader, and they have lifetime appointments. They are not compensated for their service.

#### Section 654. Duties of the European American Commission

The Commission will provide a comprehensive report on the U.S. Government's treatment of European Americans and European Latin Americans during World War II. This includes (1) a review of all relevant U.S. laws and directives, presidential proclamations, and policies - including registration requirements, travel and property restriction, internments, deportations, and family policies - and their impacts on European Americans; (2) an assessment of the underlying rationales for those policies, laws, and directives; and (3) a recommendation for appropriate remedies. It will submit a report of its findings and recommendations to Congress within 18 months of its first meeting.

# Section 655. Powers of the European American Commission

The Commission has the authorization to hold hearings, request attendance and testimony, and receive the cooperation of government agencies and departments.

#### Section 656. Administrative Provisions

The Commission can hire appropriate personnel, obtain the services of experts, consultants, and federal government detailees, procure supplies, property, and services, and enter into contracts.

## Section 657. Authorization of Appropriations

#### Section 658. Sunset

The Commission will terminate 60 days after submitting its report.

#### Part II. Commission on Wartime Treatment of Jewish Refugees

#### Section 661. Establishment of Commission on Wartime Treatment of Jewish Refugees

This section establishes a 7-member Commission on Wartime Treatment of Jewish Refugees. Members are appointed by either the President, Speaker of the House, or Senate Majority Leader, and they have lifetime appointments. They are not compensated for their service.

## Section 662. Duties of the Jewish Refugee Commission

The Commission will review the U.S. Government's refusal to allow Jewish and other refugees fleeing persecution or genocide in Europe entry to the U.S. It will hold public hearings in the U.S. and submit a report of its findings and recommendations within 18 months of its first meeting.

# Section 663. Powers of the Jewish Refugee Commission

The Commission has the authorization to hold hearings, request attendance and testimony, and receive the cooperation of government agencies and departments.

#### Section 664. Administrative Provisions

The Commission can hire appropriate personnel, obtain the services of experts, consultants, and federal government detailees, procure supplies, property, and services, and enter into contracts.

## Section 665. Authorization of Appropriations

#### Section 666. Sunset

The Commission will terminate 60 days after submitting its report.

# Part III. Funding Source for the Wartime Study

## **Section 661. Funding Source**

\$1.2 million is appropriated from the funds made available for the Department of Justice by the

Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009 (Public Law 110-329).

# Subtitle D. State Court Interpreter Grant Program

This Subtitle incorporates Senate Bill 1329 sponsored by Senator Kohl (WI).

# Section 681. Findings

The fair administration of justice depends on all participants in court room proceedings to understand the proceedings, regardless of their English proficiency. Only qualified court interpreters can ensure that individuals with limited English proficiency can comprehend the proceedings. Currently, forty states have developed, or are developing, qualified court interpreting programs. Federal funds are necessary to assist states in developing effective court interpreter programs.

# Section 682. State Court Interpreter Program

The Administrator of the Office of Justice Programs of the Department of Justice will allocate \$500,000 for each fiscal year to establish a court interpreter technical assistance program to assist states receiving grants under this Chapter. Grants will be used to (1) assess regional language demands; (2) develop a court interpreter program for the State courts; (3) develop, institute, and administer language certification examinations; (4) recruit, train, and certify qualified court interpreters; (5) pay for salaries, transportation, and technology necessary to implement the court interpreter program developed under paragraph (2); and (6) engage in other related activities, as prescribed by the Attorney General. Grant applications will be submitted by the highest State court of each state desiring a grant. \$100,000 will be allocated to each state court whose application was approved. \$5 million will be distributed among the state courts whose application was approved and who demonstrate extraordinary need. The balance of grant funds will be allocated based on the number of individuals in the state who speak a language other than English at home.

## Section 683. Authorization of Appropriations

\$15 million is appropriated for F.Y. 2010 through 2014 to carry out this Chapter.

#### **Subtitle E. Other Matters**

# Section 691. Adjustment of Status for Certain Victims of Terrorism

This Chapter incorporates Senate Bill 1736 sponsored by Senator Lautenberg (NJ). It provides lawful permanent resident status to the spouses, children, or unmarried sons or daughters of an alien who died as a direct result of terrorist activity conducted against the U.S. on September 11, 2001, who were deemed to be beneficiaries of the September 11<sup>th</sup> Victim Compensation Fund of 2001 and who made a proffer of information to the DHS Secretary in connection with a request for immigration relief. Eligible aliens must apply within one year of the date of this Act's enactment. The DHS Secretary can authorize such aliens to be authorized to work in the U.S.

# Section 692. Development of Assessment and Strategy addressing Factors Driving Migration

The General Accounting Office will develop a baseline assessment of the primary factors driving migration in a prioritized group of ten countries with the highest rates of irregular migration to the United States within six months of the enactment of this Act. The report should, at a minimum, include factors driving migration in the prioritized countries, and any current impact of US Assistance, Trade or Foreign policy on migration trends in the prioritized countries.

The Secretary of State, working with the Administrator of the United States Agency for International Development, shall subsequently submit to the U.S. Senate Committee on Foreign Relations and the U.S. House Committee on Foreign Affairs, a strategy which responds to the identified economic, social and security factors driving high rates of irregular migration from the prioritized countries identified. The strategy should incorporate consultation with the Bureau of Population, Refugees and Migration, the Department of Labor and the Office of the U.S. Trade Representative.

The required strategy shall include the following:

- (A) A summary and evaluation of current assistance provided by the U. S. Government to countries with the highest rates of irregular migration to the United States. Each country report should, at a minimum, identify regions and municipalities experiencing the highest emigration rates and the current level of U.S. aid or investment in these areas.
- (B) Recommendations for future U.S. Government assistance and technical support to address key economic, social and development factors identified in the prioritized migration source countries. Such assistance should be designed to ensure appropriate engagement of national and local governments and civil society organizations.

# Section 682. Sense of Congress on Increased United States Foreign Policy Coherency in the Western Hemisphere

It is the sense of Congress that the Secretary of State should review the United States Foreign Policy toward Latin America in order to strengthen hemispheric security through the reduction of poverty and inequality, expansion of equitable trade, support for democratic institutions, citizen security and the rule of law, as essential elements in consolidation of a well-managed regional migration policy.