109TH CONGRESS
1ST SESSION

S. _____

To improve border security and immigration.

IN THE SENATE OF THE UNITED STATES

Mr. McCAIN (for himself, Mr. KENNEDY, Mr. BROWNBACK, Mr. LIEBERMAN, Mr. GRAHAM, and Mr. SALAZAR) introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To improve border security and immigration.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Secure America and Orderly Immigration Act''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Findings.

TITLE I—BORDER SECURITY

Sec. 101. Definitions.

SUBTITLE A—BORDER SECURITY STRATEGIC PLANNING

Sec. 111. National Strategy for Border Security.

Sec. 112. Reports to Congress.
Sec. 113. Authorization of appropriations.

SUBTITLE B—BORDER INFRASTRUCTURE, TECHNOLOGY INTEGRATION, AND SECURITY ENHANCEMENT

Sec. 121. Border security coordination plan.
Sec. 122. Border security advisory committee.
Sec. 123. Programs on the use of technologies for border security.
Sec. 124. Combating human smuggling.
Sec. 125. Savings clause.

SUBTITLE C—INTERNATIONAL BORDER ENFORCEMENT

Sec. 131. North American Security Initiative.
Sec. 132. Information sharing agreements.
Sec. 133. Improving the security of Mexico's southern border.

TITLE II—STATE CRIMINAL ALIEN ASSISTANCE

Sec. 201. State criminal alien assistance program authorization of appropriations.
Sec. 202. Reimbursement of States for indirect costs relating to the incarceration of illegal aliens.
Sec. 203. Reimbursement of States for pre-conviction costs relating to the incarceration of illegal aliens.

TITLE III—ESSENTIAL WORKER VISA PROGRAM

Sec. 301. Essential workers.
Sec. 302. Admission of essential workers.
Sec. 303. Employer obligations.
Sec. 304. Protection for workers.
Sec. 305. Market-based numerical limitations.
Sec. 306. Adjustment to lawful permanent resident status.
Sec. 307. Essential Worker Visa Program Task Force.
Sec. 308. Willing worker-willing employer electronic job registry.
Sec. 309. Authorization of appropriations.

TITLE IV—ENFORCEMENT

Sec. 401. Document and visa requirements.
Sec. 402. Employment Eligibility Confirmation System.
Sec. 403. Improved entry and exit data system.
Sec. 404. Department of labor investigative authorities.
Sec. 405. Protection of employment rights.
Sec. 406. Increased fines for prohibited behavior.

TITLE V—PROMOTING CIRCULAR MIGRATION PATTERNS

Sec. 501. Labor migration facilitation programs.
Sec. 502. Bilateral efforts with Mexico to reduce migration pressures and costs.

TITLE VI—FAMILY UNITY AND BACKLOG REDUCTION

Sec. 601. Elimination of existing backlogs.
Sec. 602. Country limits.
Sec. 603. Allocation of immigrant visas.

Sec. 604. Relief for children and widows.
Sec. 605. Amending the affidavit of support requirements.
Sec. 606. Discretionary authority.
Sec. 607. Family unity.

TITLE VII—H–5B NONIMMIGRANTS

Sec. 701. H–5B nonimmigrants.
Sec. 702. Adjustment of status for H–5B nonimmigrants.
Sec. 703. Aliens not subject to direct numerical limitations.
Sec. 704. Employer protections.
Sec. 705. Authorization of appropriations.

TITLE VIII—PROTECTION AGAINST IMMIGRATION FRAUD

Sec. 801. Right to qualified representation.
Sec. 802. Protection of witness testimony.

TITLE IX—CIVICS INTEGRATION

Sec. 901. Funding for the Office of Citizenship.
Sec. 902. Civics integration grant program.

TITLE X—PROMOTING ACCESS TO HEALTH CARE

Sec. 1001. Federal reimbursement of emergency health services furnished to undocumented aliens.
Sec. 1002. Prohibition against offset of certain Medicare and Medicaid payments.
Sec. 1003. Prohibition against discrimination against aliens on the basis of employment in hospital-based versus nonhospital-based sites.
Sec. 1004. Binational public health infrastructure and health insurance.

TITLE XI—MISCELLANEOUS

Sec. 1101. Submission to Congress of information regarding H–5A nonimmigrants.
Sec. 1102. H–5 nonimmigrant petitioner account.
Sec. 1103. Anti-discrimination protections.
Sec. 1104. Women and children at risk of harm.
Sec. 1105. Expansion of S visa.
Sec. 1106. Volunteers.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) The Government of the United States has an obligation to its citizens to secure its borders and ensure the rule of law in its communities.

(2) The Government of the United States must strengthen international border security efforts by

dedicating adequate and significant resources for technology, personnel, and training for border region enforcement.

(3) Federal immigration policies must adhere to the United States tradition as a nation of immigrants and reaffirm this Nation's commitment to family unity, economic opportunity, and humane treatment.

(4) Immigrants have contributed significantly to the strength and economic prosperity of the United States and action must be taken to ensure their fair treatment by employers and protection against fraud and abuse.

(5) Current immigration laws and the enforcement of such laws are ineffective and do not serve the people of the United States, the national security interests of the United States, or the economic prosperity of the United States.

(6) The United States cannot effectively carry out its national security policies unless the United States identifies undocumented immigrants and encourages them to come forward and participate legally in the economy of the United States.

(7) Illegal immigration fosters other illegal activity, including human smuggling, trafficking, and

document fraud, all of which undermine the national security interests of the United States.

(8) Illegal immigration burdens States and local communities with hundreds of millions of dollars in uncompensated expenses for law enforcement, health care, and other essential services.

(9) Illegal immigration creates an underclass of workers who are vulnerable to fraud and exploitation.

(10) Fixing the broken immigration system requires a comprehensive approach that provides for adequate legal channels for immigration and strong enforcement of immigration laws which will serve the economic, social, and security interests of the United States.

(11) Foreign governments, particularly those that share an international border with the United States, must play a critical role in securing international borders and deterring illegal entry of foreign nationals into the United States.

(12) Federal immigration policy should foster economic growth by allowing willing workers to be matched with willing employers when no United States worker is available to take a job.

(13) Immigration reform is a key component to achieving effective enforcement and will allow for the best use of security and enforcement resources to be focused on the greatest risks.

(14) Comprehensive immigration reform and strong enforcement of immigration laws will encourage legal immigration, deter illegal immigration, and promote the economic and national security interests of the United States.

TITLE I—BORDER SECURITY

SEC. 101. DEFINITIONS.

In this title:

(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term ''appropriate congressional committees'' means—

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

(B) the Committee on the Judiciary of the Senate;

(C) the Committee on Homeland Security of the House of Representatives; and

(D) the Committee on the Judiciary of the House of Representatives.

(2) INTERNATIONAL BORDER OF THE UNITED STATES.—The term ''international border of the

United States'' means the international border between the United States and Canada and the international border between the United States and Mexico, including points of entry along such international borders.

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

(4) SECURITY PLAN.—The term ''security plan'' means a security plan developed as part of the National Strategy for Border Security set forth under section 111(a) for the Border Patrol and the field offices of the Bureau of Customs and Border Protection of the Department of Homeland Security that has responsibility for the security of any portion of the international border of the United States.

Subtitle A—Border Security Strategic Planning

SEC. 111. NATIONAL STRATEGY FOR BORDER SECURITY.

(a) IN GENERAL.—In conjunction with strategic homeland security planning efforts, the Secretary shall develop, implement, and update, as needed, a National Strategy for Border Security that includes a security plan for the Border Patrol and the field offices of the Bureau of Customs and Border Protection of the Department of

Homeland Security that has responsibility for the security of any portion of the international border of the United States.

(b) CONTENTS.—The National Strategy for Border Security shall include—

(1) the identification and evaluation of the points of entry and all portions of the international border of the United States that, in the interests of national security and enforcement, must be protected from illegal transit;

(2) a description of the most appropriate, practical, and cost-effective means of defending the international border of the United States against threats to security and illegal transit, including intelligence capacities, technology, equipment, personnel, and training needed to address security vulnerabilities within the United States for the Border Patrol and the field offices of the Bureau of Customs and Border Protection that have responsibility for any portion of the international border of the United States;

(3) risk-based priorities for assuring border security and realistic deadlines for addressing security and enforcement needs identified in paragraphs (1) and (2);

(4) a strategic plan that sets out agreed upon roles and missions of Federal, State, regional, local, and tribal authorities, including appropriate coordination among such authorities, to enable security enforcement and border lands management to be carried out in an efficient and effective manner;

(5) a prioritization of research and development objectives to enhance the security of the international border of the United States and enforcement needs to promote such security consistent with the provisions of subtitle B;

(6) an update of the 2001 Port of Entry Infrastructure Assessment Study conducted by the United States Customs Service, in consultation with the General Services Administration;

(7) strategic interior enforcement coordination plans with personnel of Immigration and Customs Enforcement;

(8) strategic enforcement coordination plans with overseas personnel of the Department of Homeland Security and the Department of State to end human smuggling and trafficking activities;

(9) any other infrastructure or security plan or report that the Secretary determines appropriate for inclusion;

(10) the identification of low-risk travelers and how such identification would facilitate cross-border travel; and

(11) ways to ensure that the trade and commerce of the United States is not diminished by efforts, activities, and programs aimed at securing the homeland.

(c) PRIORITY OF NATIONAL STRATEGY.—The National Strategy for Border Security shall be the governing document for Federal security and enforcement efforts related to securing the international border of the United States.

SEC. 112. REPORTS TO CONGRESS.

(a) NATIONAL STRATEGY.—

(1) INITIAL SUBMISSION.—Not later than 1 year after the date of enactment of this Act, the Secretary shall submit the National Strategy for Border Security, including each security plan, to the appropriate congressional committees. Such plans shall include estimated costs of implementation and training from a fiscal and personnel perspective and a cost-benefit analysis of any technological security implementations.

(2) SUBSEQUENT SUBMISSIONS.—After the submission required under paragraph (1), the Sec-

retary shall submit to the appropriate congressional committees any revisions to the National Strategy for Border Security, including any revisions to a security plan, not less frequently than April 1 of each odd-numbered year. The plan shall include estimated costs for implementation and training and a cost-benefit analysis of technological security implementations that take place during the time frame under evaluation.

(b) PERIODIC PROGRESS REPORTS.—

(1) REQUIREMENT FOR REPORT.—Each year, in conjunction with the submission of the budget to Congress under section 1105(a) of title 31, United States Code, the Secretary shall submit to the appropriate congressional committees an assessment of the progress made on implementing the National Strategy for Border Security, including each security plan.

(2) CONTENT.—Each progress report submitted under this subsection shall include any recommendations for improving and implementing the National Strategy for Border Security, including any recommendations for improving and implementing a security plan.

(c) CLASSIFIED MATERIAL.—

(1) IN GENERAL.—Any material included in the National Strategy for Border Security, including each security plan, that includes information that is properly classified under criteria established by Executive order shall be submitted to the appropriate congressional committees in a classified form.

(2) UNCLASSIFIED VERSION.—As appropriate, an unclassified version of the material described in paragraph (1) shall be provided to the appropriate congressional committees.

SEC. 113. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Secretary such sums as may be necessary to carry out this subtitle for each of the 5 fiscal years beginning with the fiscal year after the fiscal year in which this Act was enacted.

Subtitle B—Border Infrastructure, Technology Integration, and Security Enhancement

SEC. 121. BORDER SECURITY COORDINATION PLAN.

(a) IN GENERAL.—The Secretary shall coordinate with Federal, State, local, and tribal authorities on law enforcement, emergency response, and security-related responsibilities with regard to the international border of the United States to develop and implement a plan to ensure

that the security of such international border is not compromised—

(1) when the jurisdiction for providing such security changes from one such authority to another such authority;

(2) in areas where such jurisdiction is shared by more than one such authority; or

(3) by one such authority relinquishing such jurisdiction to another such authority pursuant to a memorandum of understanding.

(b) ELEMENTS OF PLAN.—In developing the plan, the Secretary shall consider methods to—

(1) coordinate emergency responses;

(2) improve data-sharing, communications, and technology among the appropriate agencies;

(3) promote research and development relating to the activities described in paragraphs (1) and (2); and

(4) combine personnel and resource assets when practicable.

(c) REPORT.—Not later than 1 year after implementing the plan developed under subsection (a), the Secretary shall transmit a report to the appropriate congressional committees on the development and implementation of such plan.

SEC. 122. BORDER SECURITY ADVISORY COMMITTEE.

(a) ESTABLISHMENT.—The Secretary is authorized to establish a Border Security Advisory Committee (referred to in this section as the ''Advisory Committee'') to provide advice and recommendations to the Secretary on border security and enforcement issues.

(b) COMPOSITION.—

(1) IN GENERAL.—The members of the Advisory Committee shall be appointed by the Secretary and shall include representatives of—

(A) States that are adjacent to the international border of the United States;

(B) local law enforcement agencies; community officials, and tribal authorities of such States; and

(C) other interested parties.

(2) MEMBERSHIP.—The Advisory Committee shall be comprised of members who represent a broad cross section of perspectives.

SEC. 123. PROGRAMS ON THE USE OF TECHNOLOGIES FOR BORDER SECURITY.

(a) AERIAL SURVEILLANCE TECHNOLOGIES PROGRAM.—

(1) IN GENERAL.—In conjunction with the border surveillance plan developed under section 5201 of the Intelligence Reform and Terrorism Prevention

Act of 2004 (Public Law 108–458), the Secretary, not later than 60 days after the date of enactment of this Act, shall develop and implement a program to fully integrate aerial surveillance technologies to enhance the border security of the United States.

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

(A) consider current and proposed aerial surveillance technologies;

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

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

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

(3) ADDITIONAL REQUIREMENTS.—

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

(i) the significance of previous experiences with such technologies in border security or critical infrastructure protection;

(ii) the cost and effectiveness of various technologies for border security, including varying levels of technical complexity; and

(iii) liability, safety, and privacy concerns relating to the utilization of such technologies for border security.

(B) USE OF UNMANNED AERIAL VEHICLES.—The aerial surveillance technologies utilized in the program shall include unmanned aerial vehicles.

(4) CONTINUED USE OF AERIAL SURVEILLANCE TECHNOLOGIES.—The Secretary may continue the operation of aerial surveillance technologies while as-

sessing the effectiveness of their utilization and until such time the Secretary determines appropriate.

(5) REPORT.—

(A) REQUIREMENT.—Not later than 1 year after implementing the program under this subsection, the Secretary shall submit a report on such program to the appropriate congressional committees.

(B) CONTENT.—The Secretary shall include in the report required by subparagraph (A) a description of the program together with such recommendations as the Secretary finds appropriate for enhancing the program.

(b) DEMONSTRATION PROGRAMS.—The Secretary is authorized, as part of the development and implementation of the National Strategy for Border Security, to establish and carry out demonstration programs to strengthen communication, information sharing, technology, security, intelligence benefits, and enforcement activities that will protect the international border of the United States without diminishing international trade and commerce.

[(c) INSERT CONTINUED USE OF GROUND SURVEILLANCE TECHNOLOGIES.—

SEC. 124. COMBATING HUMAN SMUGGLING.

(a) REQUIREMENT FOR PLAN.—The Secretary shall develop and implement a plan to improve coordination between the Bureau of Immigration and Customs Enforcement and the Bureau of Customs and Border Protection of the Department of Homeland Security and any other Federal, State, local, or tribal authorities, as determined appropriate by the Secretary, to improve coordination efforts to combat human smuggling.

(b) CONTENT.—In developing the plan required by subsection (a), the Secretary shall consider—

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

(2) adequate and effective personnel training;

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

(4) effective utilization of—

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

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

(5) joint measures, with the Secretary of State, to enhance intelligence sharing and cooperation with

foreign governments whose citizens are preyed on by human smugglers; and

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

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

SEC. 125. SAVINGS CLAUSE.

Nothing in this subtitle or subtitle A may be construed to provide to any State or local entity any additional authority to enforce Federal immigration laws.

Subtitle C—International Border Enforcement

SEC. 131. NORTH AMERICAN SECURITY INITIATIVE.

(a) IN GENERAL.—The Secretary of State shall enhance the mutual security and safety of the United States, Canada, and Mexico by providing a framework for better management, communication, and coordination between the Governments of North America.

(b) RESPONSIBILITIES.—In implementing the provisions of this subtitle, the Secretary of State shall carry out all of the activities described in this subtitle.

SEC. 132. INFORMATION SHARING AGREEMENTS.

The Secretary of State, in coordination with the Secretary of Homeland Security and the Government of Mexico, is authorized to negotiate an agreement with Mexico to—

(1) cooperate in the screening of third-country nationals using Mexico as a transit corridor for entry into the United States; and

(2) provide technical assistance to support stronger immigration control at the border with Mexico.

SEC. 133. IMPROVING THE SECURITY OF MEXICO'S SOUTHERN BORDER.

(a) TECHNICAL ASSISTANCE.—The Secretary of State, in coordination with the Secretary of Homeland Security, the Canadian Department of Foreign Affairs, and the Government of Mexico, shall establish a program to—

(1) assess the specific needs of the governments of Central American countries in maintaining the security of the borders of such countries;

(2) use the assessment made under paragraph (1) to determine the financial and technical support needed by the governments of Central American countries from Canada, Mexico, and the United States to meet such needs;

(3) provide technical assistance to the governments of Central American countries to secure issuance of passports and travel documents by such countries; and

(4) encourage the governments of Central American countries to—

(A) control alien smuggling and trafficking;

(B) prevent the use and manufacture of fraudulent travel documents; and

(C) share relevant information with Mexico, Canada, and the United States.

(b) IMMIGRATION.—The Secretary of Homeland Security, in consultation with the Secretary of State and appropriate officials of the governments of Central American countries shall provide robust law enforcement assistance to such governments that specifically addresses migratory issues to increase the ability of such governments to dismantle human smuggling organizations and gain tighter control over the border.

(c) BORDER SECURITY BETWEEN MEXICO AND GUATEMALA OR BELIZE.—The Secretary of State, in consultation with the Secretary of Homeland Security, the Government of Mexico, and appropriate officials of the Governments of Guatemala, Belize, and neighboring contiguous

countries, shall establish a program to provide needed equipment, technical assistance, and vehicles to manage, regulate, and patrol the international border between Mexico and Guatemala and between Mexico and Belize.

(d) TRACKING CENTRAL AMERICAN GANGS.—The Secretary of State, in coordination with the Secretary of Homeland Security, the Director of the Federal Bureau of Investigation, the Government of Mexico, and appropriate officials of the governments of Central American countries, shall—

(1) assess the direct and indirect impact on the United States and Central America on deporting violent criminal aliens;

(2) establish a program and database to track Central American gang activities, focusing on the identification of returning criminal deportees;

(3) devise an agreed-upon mechanism for notification applied prior to deportation and for support for reintegration of these deportees; and

(4) devise an agreement to share all relevant information with the appropriate agencies of Mexico and other Central American countries.

TITLE II—STATE CRIMINAL ALIEN ASSISTANCE

SEC. 201. STATE CRIMINAL ALIEN ASSISTANCE PROGRAM AUTHORIZATION OF APPROPRIATIONS.

Section 241(i) of the Immigration and Nationality Act (8 U.S.C. 1231(i)) is amended by striking paragraphs (5) and (6) and inserting the following:

"(5) AUTHORIZATION OF APPROPRIATIONS.—

"(A) IN GENERAL.—There are authorized to be appropriated to carry out this subsection—

"(i) such sums as may be necessary for fiscal year 2005;

"(ii) $750,000,000 for fiscal year 2006;

"(iii) $850,000,000 for fiscal year 2007; and

"(iv) $950,000,000 for each of the fiscal years 2008 through 2011.

"(B) LIMITATION ON USE OF FUNDS.—Amounts appropriated pursuant to subparagraph (A) that are distributed to a State or political subdivision of a State, including a municipality, may be used only for correctional purposes.".

SEC. 202. REIMBURSEMENT OF STATES FOR INDIRECT COSTS RELATING TO THE INCARCERATION OF ILLEGAL ALIENS.

Section 501 of the Immigration Reform and Control Act of 1986 (8 U.S.C. 1365) is amended—

(1) in subsection (a)—

(A) by striking ''for the costs'' and inserting the following: ''for—

''(1) the costs''; and

(B) by striking ''such State.'' and inserting the following: ''such State; and

''(2) the indirect costs related to the imprisonment described in paragraph (1).''; and

(2) by striking subsections (c) through (e) and inserting the following:

''(c) MANNER OF ALLOTMENT OF REIMBURSEMENTS.—Reimbursements under this section shall be allotted in a manner that gives special consideration for any State that—

''(1) shares a border with Mexico or Canada; or

''(2) includes within the State an area in which a large number of undocumented aliens reside relative to the general population of that area.

''(d) DEFINITIONS.—As used in this section:

''(1) INDIRECT COSTS.—The term 'indirect costs' includes—

"(A) court costs, county attorney costs, detention costs, and criminal proceedings expenditures that do not involve going to trial;

"(B) indigent defense costs; and

"(C) unsupervised probation costs.

"(2) STATE.—The term 'State' has the meaning given such term in section 101(a)(36) of the Immigration and Nationality Act.

"(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated $200,000,000 for each of the fiscal years 2005 through 2011 to carry out subsection (a)(2).".

SEC. 203. REIMBURSEMENT OF STATES FOR PRE-CONVICTION COSTS RELATING TO THE INCARCERATION OF ILLEGAL ALIENS.

Section 241(i)(3)(A) of the Immigration and Nationality Act (8 U.S.C. 1231(i)(3)(a) is amended by inserting "charged with or" before "convicted."

TITLE III—ESSENTIAL WORKER VISA PROGRAM

SEC. 301. ESSENTIAL WORKERS.

Section 101(a)(15)(H) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)) is amended—

(1) by striking "(H) an alien (i)(b)" and inserting the following:

"(H) an alien—

"(i)(b)";

(2) by striking "or (ii)(a)" and inserting the following:

"(ii)(a)";

(3) by striking "or (iii)" and inserting the following:

"(iii)"; and

(4) by adding at the end the following:

"(v)(a) subject to section 218A, having residence in a foreign country, which the alien has no intention of abandoning, who is coming temporarily to the United States to initially perform labor or services (other than those occupation classifications covered under the provisions of clause (i)(b) or (ii)(a) or subparagraph (L), (O), (P), or (R)); or.".

SEC. 302. ADMISSION OF ESSENTIAL WORKERS.

(a) IN GENERAL.—Chapter 2 of title II of the Immigration and Nationality Act (8 U.S.C. 1181 et seq.) is amended by inserting after section 218 the following:

"ADMISSION OF TEMPORARY H–5A WORKERS

"SEC. 218A. (a) The Secretary of State may grant a temporary visa to a nonimmigrant described in section 101(a)(15)(H)(v)(a) who demonstrates an intent to per-

form labor or services in the United States (other than those occupational classifications covered under the provisions of clause (i)(b) or (ii)(a) of section 101(a)(15)(H) or subparagraph (L), (O), (P), or (R)) of section 101(a)(15).

"(b) REQUIREMENTS FOR ADMISSION.—In order to be eligible for nonimmigrant status under section 101(a)(15)(H)(v)(a), an alien shall meet the following requirements:

"(1) ELIGIBILITY TO WORK.—The alien shall establish that the alien is capable of performing the labor or services required for an occupation under section 101(a)(15)(H)(v).

"(2) EVIDENCE OF EMPLOYMENT.—The alien's evidence of employment shall be provided through the Employment Eligibility Confirmation System established under section 274E or in accordance with requirements issued by the Secretary of State, in consultation with the Secretary of Homeland Security. In carrying out this paragraph, the Secretary may consider evidence from employers, employer associations, and labor representatives.

"(3) FEE.—The alien shall pay a $500 application fee to apply for the visa in addition to the cost of processing and adjudicating such application.

Nothing in this paragraph shall be construed to affect consular procedures for charging reciprocal fees.

"(4) MEDICAL EXAMINATION.—The alien shall undergo a medical examination (including a determination of immunization status) at the alien's expense, that conforms to generally accepted standards of medical practice.

"(c) GROUNDS OF INADMISSIBILITY.—

"(1) IN GENERAL.—In determining an alien's admissibility as a nonimmigrant under section 101(a)(15)(H)(v)(a)—

"(A) paragraphs (5), (6) (except for subparagraph (E)), (7), (9), and (10)(B) of section 212(a) may be waived for conduct that occurred before the date on which the Secure America and Orderly Immigration Act was introduced;

"(B) the Secretary of Homeland Security may not waive—

"(i) subparagraph (A), (B), (C), (E), (G), (H), or (I) of section 212(a)(2) (relating to criminals);

"(ii) section 212(a)(3) (relating to security and related grounds); or

"(iii) subparagraph (A) or (C) of section 212(a)(10) (relating to polygamists and child abductors);

"(C) for conduct that occurred before the date on which the Secure America and Orderly Immigration Act was introduced, the Secretary of Homeland Security may waive the application of any provision of section 212(a) not listed in subparagraph (B) on behalf of an individual alien for humanitarian purposes, to ensure family unity, or when such waiver is otherwise in the public interest; and

"(D) nothing in this paragraph shall be construed as affecting the authority of the Secretary of Homeland Security to waive the provisions of section 212(a).

"(2) WAIVER FINE.—An alien who is granted a waiver under subparagraph (1) shall pay a $1,500 fine upon approval of the alien's visa application.

"(3) APPLICABILITY OF OTHER PROVISIONS.—Sections 240B(d) and 241(a)(5) shall not apply to an alien who initially seeks admission as a nonimmigrant under section 101(a)(15)(H)(v)(a).

"(4) RENEWAL OF AUTHORIZED ADMISSION AND SUBSEQUENT ADMISSIONS.—An alien seeking

renewal of authorized admission or subsequent admission as a nonimmigrant under section 101(a)(15)(H)(v)(a) shall establish that the alien is not inadmissible under section 212(a).

"(d) PERIOD OF AUTHORIZED ADMISSION.—

"(1) INITIAL PERIOD.—The initial period of authorized admission as a nonimmigrant described in section 101(a)(15)(H)(v)(a) shall be 3 years.

"(2) RENEWALS.—The alien may seek an extension of the period described in paragraph (1) for 1 additional 3-year period.

"(3) LOSS OF EMPLOYMENT.—

"(A) IN GENERAL.—Subject to subsection (c), the period of authorized admission of a nonimmigrant alien under section 101(a)(15)(H)(v)(a) shall terminate if the nonimmigrant is unemployed for 45 or more consecutive days.

"(B) RETURN TO FOREIGN RESIDENCE.—Any alien whose period of authorized admission terminates under subparagraph (A) shall be required to return to the country of the alien's nationality or last residence.

"(C) PERIOD OF VISA VALIDITY.—Any alien, whose period of authorized admission ter-

minates under subparagraph (A), who returns to the country of the alien's nationality or last residence under subparagraph (B), may reenter the United States on the basis of the same visa to work for an employer, if the alien has complied with the requirements of subsection (b)(1).

"(4) VISITS OUTSIDE UNITED STATES.—

"(A) IN GENERAL.—Under regulations established by the Secretary of Homeland Security, a nonimmigrant alien under section 101(a)(15)(H)(v)(a)—

"(i) may travel outside of the United States; and

"(ii) may be readmitted without having to obtain a new visa if the period of authorized admission has not expired.

"(B) EFFECT ON PERIOD OF AUTHORIZED ADMISSION.—Time spent outside the United States under subparagraph (A) shall not extend the period of authorized admission in the United States.

"(e) PORTABILITY.—A nonimmigrant alien described in this section, who was previously issued a visa or otherwise provided nonimmigrant status under section

101(a)(15)(H)(v)(a), may accept new employment with a subsequent employer.

"(f) WAIVER OF RIGHTS PROHIBITED.—A nonimmigrant alien described in section 101(a)(15)(H)(v)(a) may not be required to waive any rights or protections under the Secure America and Orderly Immigration Act.

"(g) CHANGE OF ADDRESS.—An alien having nonimmigrant status described in section 101(a)(15)(H)(v)(a) shall comply by either electronic or paper notification with the change of address reporting requirements under section 265.

"(h) BAR TO FUTURE VISAS FOR VIOLATIONS.—

"(1) IN GENERAL.—Any alien having the nonimmigrant status described in section 101(a)(15)(H)(v)(a) shall not be eligible to renew such nonimmigrant status if the alien willfully violates any material term or condition of such status.

"(2) WAIVER.—The alien may apply for a waiver of the application of subparagraph (A) for technical violations, inadvertent errors, or violations for which the alien was not at fault.

"(i) COLLECTION OF FEES.—All fees collected under this section shall be deposited in the Treasury in accordance with section 286(w).".

(b) CONFORMING AMENDMENT REGARDING PRESUMPTION OF NONIMMIGRANT STATUS.—Section 214(b) of the Immigration and Nationality Act (8 U.S.C. 1184(b)) is amended by inserting "(H)(v)(a)," after "(H)(i),".

(c) CLERICAL AMENDMENT.—The table of contents for the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended by inserting after the item relating to section 218 the following:

"Sec. 218A. Admission of temporary H–5A workers.".

SEC. 303. EMPLOYER OBLIGATIONS.

Employers employing a nonimmigrant described in section 101(a)(15)(H)(v)(a) of the Immigration and Nationality Act, as added by section 301, shall comply with all applicable Federal, State, and local laws, including—

(1) laws affecting migrant and seasonal agricultural workers; and

(2) the requirements under section 274E of such Act, as added by section 402.

SEC. 304. PROTECTION FOR WORKERS.

Section 218A of the Immigration and Nationality Act, as added by section 302, is amended by adding at the end the following:

"(h) APPLICATION OF LABOR AND OTHER LAWS.—

"(1) DEFINITIONS.—As used in this subsection and in subsections (i) through (k):

"(A) EMPLOY; EMPLOYEE; EMPLOYER.—The terms 'employ', 'employee', and 'employer' have the meanings given such terms in section 3 of the Fair Labor Standards Act of 1938 (29 U.S.C. 203).

"(B) FOREIGN LABOR CONTRACTOR.—The term 'foreign labor contractor' means any person who for any compensation or other valuable consideration paid or promised to be paid, performs any foreign labor contracting activity.

"(C) FOREIGN LABOR CONTRACTING ACTIVITY.—The term 'foreign labor contracting activity' means recruiting, soliciting, hiring, employing, or furnishing, an individual who resides outside of the United States for employment in the United States as a nonimmigrant alien described in section 101(a)(15)(H)(v)(a).

"(2) COVERAGE.—Notwithstanding any other provision of law—

"(A) a nonimmigrant alien described in section 101(a)(15)(H)(v)(a) is prohibited from being treated as an independent contractor; and

"(B) no person may treat a nonimmigrant alien described in section 101(a)(15)(H)(v)(a) as an independent contractor.

"(3) APPLICABILITY OF LAWS.—A nonimmigrant alien described in section 101(a)(15)(H)(v)(a) shall not be denied any right or any remedy under Federal, State, or local labor or employment law that would be applicable to a United States worker employed in a similar position with the employer because of the alien's status as a nonimmigrant worker.

"(4) TAX RESPONSIBILITIES.—With respect to each employed nonimmigrant alien described in section 101(a)(15)(H)(v)(a), an employer shall comply with all applicable Federal, State, and local tax and revenue laws.

"(5) NONDISCRIMINATION IN EMPLOYMENT.—An employer shall provide nonimmigrants issued a visa under this section with the same wages, benefits, and working conditions that are provided by the employer to United States workers similarly employed in the same occupation and the same place of employment.

"(6) NO REPLACEMENT OF STRIKING EMPLOYEES.—An employer may not hire a nonimmigrant alien described in section 101(a)(15)(H)(v)(a) as a replacement worker if there is a strike or lockout in

the course of a labor dispute in the occupational classification at the place of employment.

"(7) WAIVER OF RIGHTS PROHIBITED.—A nonimmigrant alien described in section 101(a)(15)(H)(v)(a) may not be required to waive any rights or protections under the Secure America and Orderly Immigration Act. Nothing under this provision shall be construed to affect the interpretation of other laws.

"(8) NO THREATENING OF EMPLOYEES.—It shall be a violation of this section for an employer who has filed a petition under section 203(b) to threaten the alien beneficiary of such a petition with withdrawal of the application, or to withdraw such a petition in retaliation for the beneficiary's exercise of a right protected by the Secure America and Orderly Immigration Act.

"(9) WHISTLEBLOWER PROTECTION.—It shall be unlawful for an employer or a labor contractor of a nonimmigrant alien described in section 101(a)(15)(H)(v)(a) to intimidate, threaten, restrain, coerce, retaliate, discharge, or in any other manner, discriminate against an employee or former employee because the employee or former employee—

"(A) discloses information to the employer or any other person that the employee or former employee reasonably believes demonstrates a violation of Secure America and Orderly Immigration Act.

"(B) cooperates or seeks to cooperate in an investigation or other proceeding concerning compliance with the requirements of the Secure America and Orderly Immigration Act.

"(i) LABOR RECRUITERS.—

"(1) IN GENERAL.—Each employer that engages in foreign labor contracting activity and each foreign labor contractor shall ascertain and disclose to each such worker who is recruited for employment the following information at the time of the worker's recruitment:

"(A) The place of employment.

"(B) The compensation for the employment.

"(C) A description of employment activities.

"(D) The period of employment.

"(E) Any other employee benefit to be provided and any costs to be charged for each benefit.

"(F) Any travel or transportation expenses to be assessed.

"(G) The existence of any labor organizing effort, strike, lockout, or other labor dispute at the place of employment.

"(H) The existence of any arrangement with any owner, employer, foreign contractor, or its agent where such person receives a commission from the provision of items or services to workers.

"(I) The extent to which workers will be compensated through workers' compensation, private insurance, or otherwise for injuries or death, including work related injuries and death, during the period of employment and, if so, the name of the State workers' compensation insurance carrier or the name of the policyholder of the private insurance, the name and the telephone number of each person who must be notified of an injury or death, and the time period within which such notice must be given.

"(J) Any education or training to be provided or required, including the nature and cost of such training, who will pay such costs, and whether the training is a condition of employ-

ment, continued employment, or future employment.

"(K) A statement, in a form specified by the Secretary of Labor, describing the protections of this Act for workers recruited abroad.

"(2) FALSE OR MISLEADING INFORMATION.—No foreign labor contractor or employer who engages in foreign labor contracting activity shall knowingly provide material false or misleading information to any worker concerning any matter required to be disclosed in paragraph (1).

"(3) LANGUAGES.—The information required to be disclosed under paragraph (1) shall be provided in writing in English or, as necessary and reasonable, in the language of the worker being recruited. The Department of Labor shall make forms available in English, Spanish, and other languages, as necessary, which may be used in providing workers with information required under this section.

"(4) FEES.—A person conducting a foreign labor contracting activity shall not assess any fee to a worker for such foreign labor contracting activity.

"(5) TERMS.—No employer or foreign labor contractor shall, without justification, violate the

terms of any agreement made by that contractor or employer regarding employment under this program.

"(6) TRAVEL COSTS.—If the foreign labor contractor or employer charges the employee for transportation such transportation costs shall be reasonable.

"(7) OTHER WORKER PROTECTIONS.—

"(A) NOTIFICATION.—Every 2 years, each employer shall notify the Secretary of Labor of the identity of any foreign labor contractor engaged by the employer in any foreign labor contractor activity for or on behalf of the employer.

"(B) REGISTRATION OF FOREIGN LABOR CONTRACTORS.—

"(i) IN GENERAL.—No person shall engage in foreign labor recruiting activity unless such person has a certificate of registration from the Secretary of Labor specifying the activities that such person is authorized to perform. An employer who retains the services of a foreign labor contractor shall only use those foreign labor contractors who are registered under this subparagraph.

"(ii) ISSUANCE.—The Secretary shall promulgate regulations to establish an efficient electronic process for the investigation and approval of an application for a certificate of registration of foreign labor contractors not later than 14 days after such application is filed. Such process shall include requirements under paragraphs (1), (4), and (5) of section 1812 of title 29, United States Code, an expeditious means to update registrations and renew certificates and any other requirements the Secretary may prescribe.

"(iii) TERM.—Unless suspended or revoked, a certificate under this subparagraph shall be valid for 2 years.

"(iv) REFUSAL TO ISSUE; REVOCATION; SUSPENSION.—In accordance with regulations promulgated by the Secretary of Labor, the Secretary may refuse to issue or renew, or may suspend or revoke, a certificate of registration under this subparagraph. The justification for such refusal, suspension, or revocation may include the following:

"(I) The application or holder of the certification has knowingly made a material misrepresentation in the application for such certificate.

"(II) The applicant for or holder of the certification is not the real party in interest in the application or certificate of registration and the real party in interest is a person who has been refused issuance or renewal of a certificate, has had a certificate suspended or revoked, or does not qualify for a certificate under this paragraph.

"(III) The applicant for or holder of the certification has failed to comply with the Secure America and Orderly Immigration Act.

"(C) REMEDY FOR VIOLATIONS.—An employer engaging in foreign labor contracting activity and a foreign labor contractor that violates the provisions of this subsection shall be subject to remedies for foreign labor contractor violations under subsections (j) and (k). If a foreign labor contractor acting as an agent of an employer violates any provision of this sub-

section, the employer shall also be subject to remedies under subsections (j) and (k). An employer that violates a provision of this subsection relating to employer obligations shall be subject to remedies under this subsections (j) and (k).

"(D) EMPLOYER NOTIFICATION.—An employer shall notify the Secretary of Labor any time the employer becomes aware of a violation of this subsection by a foreign labor recruiter.

"(E) WRITTEN AGREEMENTS.—No foreign labor contractor shall violate the terms of any written agreements made with an employer relating to any contracting activity or worker protection under this subsection.

"(F) BONDING REQUIREMENT.—The Secretary of Labor may require a foreign labor contractor under this subsection to post a bond in an amount sufficient to ensure the protection of individuals recruited by the foreign labor contractor. The Secretary may consider the extent to which the foreign labor contractor has sufficient ties to the United States to adequately enforce this subsection.

"(j) ENFORCEMENT.—

"(1) IN GENERAL.—The Secretary of Labor shall prescribe regulations for the receipt, investigation, and disposition of complaints by an aggrieved person respecting a violation of this section.

"(2) DEFINITION.—As used in this subsection, an 'aggrieved person' is a person adversely affected by the alleged violation, including—

"(A) a worker whose job, wages, or working conditions are adversely affected by the violation; and

"(B) a representative for workers whose jobs, wages, or working conditions are adversely affected by the violation who brings a complaint on behalf of such worker.

"(3) FILING DEADLINE.—No investigation or hearing shall be conducted on a complaint concerning a violation under this section unless the complaint was filed not later than 12 months after the date of such violation.

"(4) REASONABLE CAUSE.—The Secretary of Labor shall conduct an investigation under this subsection if there is reasonable cause to believe that a violation of this section has occurred. The process established under this subsection shall provide that, not later than 30 days after a complaint is filed, the

Secretary shall determine if there is reasonable cause to find such a violation.

"(5) NOTICE AND HEARING.—

"(A) IN GENERAL.—Not later than 60 days after the Secretary of Labor makes a determination of reasonable cause under paragraph (4), the Secretary shall issue a notice to the interested parties and offer an opportunity for a hearing on the complaint, in accordance with section 556 of title 5, United States Code.

"(B) COMPLAINT.—If the Secretary of Labor, after receiving a complaint under this subsection, does not offer the aggrieved party or organization an opportunity for a hearing under subparagraph (A), the Secretary shall notify the aggrieved party or organization of such determination and the aggrieved party or organization may seek a hearing on the complaint in accordance with such section 556.

"(C) HEARING DEADLINE.—Not later than 60 days after the date of a hearing under this paragraph, the Secretary of Labor shall make a finding on the matter in accordance with paragraph (6).

"(6) ATTORNEYS' FEES.—A complainant who prevails with respect to a claim under this subsection shall be entitled to an award of reasonable attorneys' fees and costs.

"(7) POWER OF THE SECRETARY.—The Secretary may bring an action in any court of competent jurisdiction—

"(A) to seek remedial action, including injunctive relief;

"(B) to recover the damages described in subsection (k); or

"(C) to ensure compliance with terms and conditions described in subsection (i).

"(8) SOLICITOR OF LABOR.—Except as provided in section 518(a) of title 28, United States Code, the Solicitor of Labor may appear for and represent the Secretary of Labor in any civil litigation brought under this subsection. All such litigation shall be subject to the direction and control of the Attorney General.

"(9) PROCEDURES IN ADDITION TO OTHER RIGHTS OF EMPLOYEES.—The rights and remedies provided to workers under this section are in addition to, and not in lieu of, any other contractual or statutory rights and remedies of the workers, and

are not intended to alter or affect such rights and remedies.

"(k) PENALTIES.—

"(1) IN GENERAL.—If, after notice and an opportunity for a hearing, the Secretary of Labor finds a violation of subsection (h) or (i), the Secretary may impose administrative remedies and penalties, including—

"(A) back wages;

"(B) fringe benefits; and

"(C) civil monetary penalties.

"(2) CIVIL PENALTIES.—The Secretary of Labor may impose, as a civil penalty—

"(A) for a violation of subsection (h)—

"(i) a fine in an amount not to exceed $2,000 per violation per affected worker;

"(ii) if the violation was willful violation, a fine in an amount not to exceed $5,000 per violation per affected worker;

"(iii) if the violation was willful and if in the course of such violation a United States worker was harmed, a fine in an amount not to exceed $25,000 per violation per affected worker; and

"(B) for a violation of subsection (i)—

"(i) a fine in an amount not less than $500 and not more than $4,000 per violation per affected worker;

"(ii) if the violation was willful, a fine in an amount not less than $2,000 and not more than $5,000 per violation per affected worker; and

"(iii) if the violation was willful and if in the course of such violation a United States worker was harmed, a fine in an amount not less than $6,000 and not more than $35,000 per violation per affected worker.

"(3) USE OF CIVIL PENALTIES.—All penalties collected under this subsection shall be deposited in the Treasury in accordance with section 286(w).

"(4) CRIMINAL PENALTIES.—If a willful and knowing violation of subsection (i) causes extreme physical or financial harm to an individual, the person in violation of such subsection may be imprisoned for not more than 6 months, fined not more than $35,000 fine, or both.".

SEC. 305. MARKET-BASED NUMERICAL LIMITATIONS.

Section 214(g) of the Immigration and Nationality Act (8 U.S.C. 1184(g)) is amended—

(1) in paragraph (1)—

(A) by striking ''(beginning with fiscal year 1992)'';

(B) in subparagraph (B), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(C) under section 101(a)(15)(H)(v)(a), may not exceed—

''(i) 400,000 for the first fiscal year in which the program is implemented;

''(ii) in any subsequent fiscal year—

''(I) if the total number of visas allocated for that fiscal year are allotted within the first quarter of that fiscal year, then an additional 20 percent of the allocated number shall be made available immediately and the allocated amount for the following fiscal year shall increase by 20 percent of the original allocated amount in the prior fiscal year;

''(II) if the total number of visas allocated for that fiscal year are allotted within the second quarter of that fiscal year, then an additional 15 per-

cent of the allocated number shall be made available immediately and the allocated amount for the following fiscal year shall increase by 15 percent of the original allocated amount in the prior fiscal year;

''(III) if the total number of visas allocated for that fiscal year are allotted within the third quarter of that fiscal year, then an additional 10 percent of the allocated number shall be made available immediately and the allocated amount for the following fiscal year shall increase by 10 percent of the original allocated amount in the prior fiscal year;

''(IV) if the total number of visas allocated for that fiscal year are allotted within the last quarter of that fiscal year, then the allocated amount for the following fiscal year shall increase by 10 percent of the original allocated amount in the prior fiscal year; and

"(V) with the exception of the first subsequent fiscal year to the fiscal year in which the program is implemented, if fewer visas were allotted the previous fiscal year than the number of visas allocated for that year and the reason was not due to processing delays or delays in promulgating regulations, then the allocated amount for the following fiscal year shall decrease by 10 percent of the allocated amount in the prior fiscal year."; and

(2) by adding at the end the following:

"(9)(A) Of the total number of visas allocated for each fiscal year under paragraph (1)(C)—

"(i) 50,000 visas shall be allocated to qualifying counties; and

"(ii) any of the visas allocated under clause (i) that are not issued by June 30 of such fiscal year, may be made available to any qualified applicant.

"(B) In this paragraph, the term 'qualifying county' means any county that—

"(i) that is outside a metropolitan statistical area; and

"(ii) during the 20-year-period ending on the last day of the calendar year preceding the date of enactment of the Secure America and Orderly Immigration Act, experienced a net out-migration of inhabitants from the county of at least 10 percent of the population of the county at the beginning of such period.

"(10) In allocating visas under this subsection, the Secretary of State may take any additional measures necessary to deter illegal immigration.".

SEC. 306. ADJUSTMENT TO LAWFUL PERMANENT RESIDENT STATUS.

Section 245 of the Immigration and Nationality Act (8 U.S.C. 1255) is amended by adding at the end the following:

"(n)(1) For purposes of adjustment of status under subsection (a), employment-based immigrant visas shall be made available to an alien having nonimmigrant status described in section 101(a)(15)(H)(v)(a) upon the filing of a petition for such a visa—

"(A) by the alien's employer; or

"(B) by the alien, if the alien has maintained such nonimmigrant status in the United States for a cumulative total of 4 years.

"(2) An alien having nonimmigrant status described in section 101(a)(15)(H)(v)(a) may not apply for adjustment of status under this section unless the alien—

"(A) is physically present in the United States; and

"(B) the alien establishes that the alien—

"(i) meets the requirements of section 312; or

"(ii) is satisfactorily pursuing a course of study to achieve such an understanding of English and knowledge and understanding of the history and government of the United States.

"(3) An alien who demonstrates that the alien meets the requirements of section 312 may be considered to have satisfied the requirements of that section for purposes of becoming naturalized as a citizen of the United States under title III.

"(4) Filing a petition under paragraph (1) on behalf of an alien or otherwise seeking permanent residence in the United States for such alien shall not constitute evi-

dence of the alien's ineligibility for nonimmigrant status under section 101(a)(15)(H)(v)(a).

"(5) The limitation under section 302(d) regarding the period of authorized stay shall not apply to any alien having nonimmigrant status under section 101(a)(15)(H)(v)(a) if—

"(A) a labor certification petition filed under section 203(b) on behalf of such alien is pending; or

"(B) an immigrant visa petition filed under section 204(b) on behalf of such alien is pending.

"(6) The Secretary of Homeland Security shall extend the stay of an alien who qualifies for an exemption under paragraph (5) in 1-year increments until a final decision is made on the alien's lawful permanent residence.

"(7) Nothing in this subsection shall be construed to prevent an alien having nonimmigrant status described in section 101(a)(15)(H)(v)(a) from filing an application for adjustment of status under this section in accordance with any other provision of law.".

SEC. 307. ESSENTIAL WORKER VISA PROGRAM TASK FORCE.

(a) ESTABLISHMENT OF TASK FORCE.—

(1) IN GENERAL.—There is established a task force to be known as the Essential Worker Visa Pro-

gram Task Force (referred to in this section as the ''Task Force'').

(2) PURPOSES.—The purposes of the Task Force are—

(A) to study the Essential Worker Visa Program (referred to in this section as the ''Program'') established under this title; and

(B) to make recommendations to Congress with respect to such program.

(3) MEMBERSHIP.—The Task Force shall be composed of 10 members, of whom—

(A) 1 shall be appointed by the President and shall serve as chairman of the Task Force;

(B) 1 shall be appointed by the leader of the Democratic Party in the Senate, in consultation with the leader of the Democratic Party in the House of Representatives, and shall serve as vice chairman of the Task Force;

(C) 2 shall be appointed by the majority leader of the Senate;

(D) 2 shall be appointed by the minority leader of the Senate;

(E) 2 shall be appointed by the Speaker of the House of Representatives; and

(F) 2 shall be appointed by the minority leader of the House of Representatives.

(4) QUALIFICATIONS.—

(A) IN GENERAL.—Members of the Task Force shall be—

(i) individuals with expertise in economics, demography, labor, business, or immigration or other pertinent qualifications or experience; and

(ii) representative of a broad cross-section of perspectives within the United States, including the public and private sectors and academia;

(B) POLITICAL AFFILIATION.—Not more than 5 members of the Task Force may be members of the same political party.

(C) NONGOVERNMENTAL APPOINTEES.—An individual appointed to the Task Force may not be an officer or employee of the Federal Government or of any State or local government.

(5) DEADLINE FOR APPOINTMENT.—All members of the Task Force shall be appointed not later than 6 months after the Program has been implemented.

(6) VACANCIES.—Any vacancy in the Task Force shall not affect its powers, but shall be filled in the same manner in which the original appointment was made.

(7) MEETINGS.—

(A) INITIAL MEETING.—The Task Force shall meet and begin the operations of the Task Force as soon as practicable.

(B) SUBSEQUENT MEETINGS.—After its initial meeting, the Task Force shall meet upon the call of the chairman or a majority of its members.

(8) QUORUM.—Six members of the Task Force shall constitute a quorum.

(b) DUTIES.—The Task Force shall examine and make recommendations regarding the Program, including recommendations regarding—

(1) the development and implementation of the Program;

(2) the criteria for the admission of temporary workers under the Program;

(3) the formula for determining the yearly numerical limitations of the Program;

(4) the impact of the Program on immigration;

(5) the impact of the Program on the United States workforce and United States businesses; and

(6) any other matters regarding the Program that the Task Force considers appropriate.

(c) INFORMATION AND ASSISTANCE FROM FEDERAL AGENCIES.—

(1) INFORMATION FROM FEDERAL AGENCIES.—The Task Force may seek directly from any Federal department or agency such information, including suggestions, estimates, and statistics, as the Task Force considers necessary to carry out the provisions of this section. Upon request of the Task Force, the head of such department or agency shall furnish such information to the Task Force.

(2) ASSISTANCE FROM FEDERAL AGENCIES.—The Administrator of General Services shall, on a reimbursable base, provide the Task Force with administrative support and other services for the performance of the Task Force's functions. The departments and agencies of the United States may provide the Task Force with such services, funds, facilities, staff, and other support services as they determine advisable and as authorized by law.

(d) REPORTS.—

(1) INITIAL REPORT.—Not later than 2 years after the Program has been implemented, the Task Force shall submit a report to Congress, the Secretary of State, the Secretary of Labor, and the Secretary of Homeland Security that contains—

(A) findings with respect to the duties of the Task Force;

(B) recommendations for improving the Program; and

(C) suggestions for legislative or administrative action to implement the Task Force recommendations.

(2) FINAL REPORT.—Not later than 4 years after the submission of the initial report under paragraph (1), the Task Force shall submit a final report to Congress, the Secretary of State, the Secretary of Labor, and the Secretary of Homeland Security that contains additional findings, recommendations, and suggestions, as described in paragraph (1).

SEC. 308. WILLING WORKER-WILLING EMPLOYER ELECTRONIC JOB REGISTRY.

(a) ESTABLISHMENT.—The Secretary of Labor shall direct the coordination and modification of the national system of public labor exchange services (commonly known

as ''America's Job Bank'') in existence on the date of enactment of this Act to provide information on essential worker employment opportunities available to United States workers and nonimmigrant workers under section 101(a)(15)(H)(v)(a) of the Immigration and Nationality Act, as added by this Act.

(b) RECRUITMENT OF UNITED STATES WORKERS.—Before the completion of evidence of employment for a potential nonimmigrant worker under section 101(a)(15)(H)(v)(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(v)(a), an employer shall attest that the employer has posted in the Job Registry for not less than 30 days in order to recruit United States workers. An employer shall maintain records for not less than 1 year demonstrating why United States workers who applied were not hired.

(c) OVERSIGHT AND MAINTENANCE OF RECORDS.—The Secretary of Labor shall maintain electronic job registry records, as established by regulation, for the purpose of audit or investigation.

(d) ACCESS TO JOB REGISTRY.—

(1) CIRCULATION IN INTERSTATE EMPLOYMENT SERVICE SYSTEM.—The Secretary of Labor shall ensure that job opportunities advertised on the electronic job registry established under this section are

accessible by the State workforce agencies, which may further disseminate job opportunity information to other interested parties.

(2) INTERNET.—The Secretary of Labor shall ensure that the Internet-based electronic job registry established or approved under this section may be accessed by workers, employers, labor organizations, and other interested parties.

SEC. 309. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Secretary of State such sums as may be necessary to carry out this title and the amendments made by this title for the period beginning on the date of enactment of this Act and ending on the last day of the sixth fiscal year beginning after the effective date of the regulations promulgated by the Secretary to implement this title.

TITLE IV—ENFORCEMENT

SEC. 401. DOCUMENT AND VISA REQUIREMENTS.

(a) IN GENERAL.—Section 221(a) of the Immigration and Nationality Act (8 U.S.C. 1201(a)) is amended by adding at the end the following:

"(3) VISAS AND IMMIGRATION RELATED DOCUMENT REQUIREMENTS.—

"(A) Visas issued by the Secretary of State and immigration related documents issued by the Sec-

retary of State or the Secretary of Homeland Security shall comply with authentication and biometric standards recognized by domestic and international standards organizations.

"(B) Such visas and documents shall—

"(i) be machine-readable and tamper-resistant;

"(ii) use biometric identifiers that are consistent with the requirements of section 303 of the Enhanced Border Security and Visa Entry Reform Act of 2002 (8 U.S.C. 1732), and represent the benefits and status set forth in such section;

"(iii) comply with the biometric and document identifying standards established by the International Civil Aviation Organization; and

"(iv) be compatible with the United States Visitor and Immigrant Status Indicator Technology and the employment verification system established under section 274E.

"(C) The information contained on the visas or immigration related documents described in subparagraph (B) shall include—

"(i) the alien's name, date and place of birth, alien registration or visa number, and, if applicable, social security number;

"(ii) the alien's citizenship and immigration status in the United States; and

"(iii) the date that such alien's authorization to work in the United States expires, if appropriate.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date that is 6 months after the date of enactment of this Act.

SEC. 402. EMPLOYMENT ELIGIBILITY CONFIRMATION SYSTEM.

(a) IN GENERAL.—Chapter 8 of title II of the Immigration and Nationality Act (8 U.S.C. 1321 et seq.) is amended by inserting after section 274D the following:

"EMPLOYMENT ELIGIBILITY

"SEC. 274E. (a) EMPLOYMENT ELIGIBILITY CONFIRMATION SYSTEM.—

"(1) IN GENERAL.—The Commissioner of Social Security, in consultation and coordination with the Secretary of Homeland Security, shall establish an Employment Eligibility Confirmation System (referred to in this section as the 'System') through which the Commissioner responds to inquiries made by employers who have hired individuals concerning

each individual's identity and employment authorization.

"(2) MAINTENANCE OF RECORDS.—The Commissioner shall electronically maintain records by which compliance under the System may be verified.

"(3) OBJECTIVES OF THE SYSTEM.—The System shall—

"(A) facilitate the eventual transition for all businesses from the employer verification system established in section 274A with the System;

"(B) utilize, as a central feature of the System, machine-readable documents that contain encrypted electronic information to verify employment eligibility; and

"(C) provide for the evidence of employment required under section 218A.

"(4) INITIAL RESPONSE.—The System shall provide—

"(A) confirmation or a tentative nonconfirmation of an individual's identity and employment eligibility not later than 1 working day after the initial inquiry; and

"(B) an appropriate code indicating such confirmation or tentative nonconfirmation.

"(5) SECONDARY VERIFICATION PROCESS IN CASE OF TENTATIVE NONCONFIRMATION.—

"(A) ESTABLISHMENT.—For cases of tentative nonconfirmation, the Commissioner of Social Security, in consultation and coordination with the Secretary of Homeland Security, shall establish a secondary verification process. The employer shall make the secondary verification inquiry not later than 10 days after receiving a tentative nonconfirmation.

"(B) DISCREPANCIES.—If an employee chooses to contest a secondary nonconfirmation, the employer shall provide the employee with a referral letter and instruct the employee to visit an office of the Department of Homeland Security or the Social Security Administration to resolve the discrepancy not later than 10 working days after the receipt of such referral letter in order to obtain confirmation.

"(C) FAILURE TO CONTEST.—An individual's failure to contest a confirmation shall not constitute knowledge (as defined in section 274a.1(l) of title 8, Code of Federal Regulations.

"(6) DESIGN AND OPERATION OF SYSTEM.—The System shall be designed, implemented, and operated—

"(A) to maximize its reliability and ease of use consistent with protecting the privacy and security of the underlying information through technical and physical safeguards;

"(B) to allow employers to verify that a newly hired individual is authorized to be employed;

"(C) to permit individuals to—

"(i) view their own records in order to ensure the accuracy of such records; and

"(ii) contact the appropriate agency to correct any errors through an expedited process established by the Commissioner of Social Security, in consultation and coordination with the Secretary of Homeland Security; and

"(D) to prevent discrimination based on national origin or citizenship status under section 274B.

"(7) UNLAWFUL USES OF SYSTEM.—It shall be an unlawful immigration-related employment practice—

"(A) for employers or other third parties to use the System selectively or without authorization;

"(B) to use the System prior to an offer of employment;

"(C) to use the System to exclude certain individuals from consideration for employment as a result of a perceived likelihood that additional verification will be required, beyond what is required for most job applicants;

"(D) to use the System to deny certain employment benefits, otherwise interfere with the labor rights of employees, or any other unlawful employment practice; or

"(E) to take adverse action against any person, including terminating or suspending an employee who has received a tentative nonconfirmation.

"(b) EMPLOYMENT ELIGIBILITY DATABASE.—

"(1) REQUIREMENT.—The Commissioner of Social Security, in consultation and coordination with the Secretary of Homeland Security and other appropriate agencies, shall design, implement, and maintain an Employment Eligibility Database (re-

ferred to in this section as the 'Database') as described in this subsection.

"(2) DATA.—The Database shall include, for each individual who is not a citizen or national of the United States, but is authorized or seeking authorization to be employed in the United States, the individual's—

"(A) country of origin;

"(B) immigration status;

"(C) employment eligibility;

"(D) occupation;

"(E) metropolitan statistical area of employment;

"(F) annual compensation paid;

"(G) period of employment eligibility;

"(H) employment commencement date; and

"(I) employment termination date.

"(3) REVERIFICATION OF EMPLOYMENT ELIGIBILITY.—The Commissioner of Social Security shall prescribe, by regulation, a system to annually reverify the employment eligibility of each individual described in this section—

"(A) by utilizing the machine-readable documents described in section 221(a)(3); or

"(B) if machine-readable documents are not available, by telephonic or electronic communication.

"(4) CONFIDENTIALITY.—

"(A) ACCESS TO DATABASE.—No officer or employee of any agency or department of the United States, other than individuals responsible for the verification of employment eligibility or for the evaluation of the employment verification program at the Social Security Administration, the Department of Homeland Security, and the Department of Labor, may have access to any information contained in the Database.

"(B) PROTECTION FROM UNAUTHORIZED DISCLOSURE.—Information in the Database shall be adequately protected against unauthorized disclosure for other purposes, as provided in regulations established by the Commissioner of Social Security, in consultation with the Secretary of Homeland Security and the Secretary of Labor.

"(5) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums

as may be necessary to design, implement, and maintain the Database.

''(c) GRADUAL IMPLEMENTATION.—The Commissioner of Social Security, in coordination with the Secretary of Homeland Security and the Secretary of Labor shall develop a plan to phase all workers into the Database and phase out the employer verification system established in section 274A over a period of time that the Commissioner determines to be appropriate.

''(d) EMPLOYER RESPONSIBILITIES.—Each employer shall—

''(1) notify employees and prospective employees of the use of the System and that the System may be used for immigration enforcement purposes;

''(2) verify the identification and employment authorization status for newly hired individuals described in section 101(a)(15)(H)(v)(a) not later than 3 days after the date of hire;

''(3) use—

''(A) a machine-readable document described in subsection (a)(3)(B); or

''(B) the telephonic or electronic system to access the Database;

"(4) provide, for each employer hired, the occupation, metropolitan statistical area of employment, and annual compensation paid;

"(5) retain the code received indicating confirmation or nonconfirmation, for use in investigations described in section 212(n)(2); and

"(6) provide a copy of the employment verification receipt to such employees.

"(e) GOOD-FAITH COMPLIANCE.—

"(1) AFFIRMATIVE DEFENSE.—A person or entity that establishes good faith compliance with the requirements of this section with respect to the employment of an individual in the United States has established an affirmative defense that the person or entity has not violated this section.

"(2) LIMITATION.—Paragraph (1) shall not apply if a person or entity engages in an unlawful immigration-related employment practice described in subsection (a)(7).".

(b) INTERIM DIRECTIVE.—Before the implementation of the Employment Eligibility Confirmation System (referred to in this section as the "System") established under section 274E of the Immigration and Nationality Act, as added by subsection (a), the Commissioner of Social Security, in coordination with the Secretary of Home-

land Security, shall, to the maximum extent practicable, implement an interim system to confirm employment eligibility that is consistent with the provisions of such section.

(c) REPORTS.—

(1) IN GENERAL.—Not later than 3 months after the last day of the second year and of the third year that the System is in effect, the Comptroller General of the United States shall submit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report on the System.

(2) CONTENTS.—Each report submitted under paragraph (1) shall include—

(A) an assessment of the impact of the System on the employment of unauthorized workers;

(B) an assessment of the accuracy of the Employment Eligibility Database maintained by the Department of Homeland Security and Social Security Administration databases, and timeliness and accuracy of responses from the Department of Homeland Security and the Social Security Administration to employers;

(C) an assessment of the privacy, confidentiality, and system security of the System;

(D) assess whether the System is being implemented in a nondiscriminatory manner; and

(E) include recommendations on whether or not the System should be modified.

SEC. 403. IMPROVED ENTRY AND EXIT DATA SYSTEM.

Section 110 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1365a) is amended—

(1) by striking ''Attorney General'' each place it appears and inserting ''Secretary of Homeland Security'';

(2) in subsection (b)—

(A) in paragraph (1)(C), by striking ''Justice'' and inserting ''Homeland Security'';

(B) in paragraph (4), by striking ''and'' at the end;

(C) in paragraph (5), by striking the period at the end and inserting ''; and''; and

(D) by adding at the end the following:

''(6) collects the biometric machine-readable information from an alien's visa or immigration-related document described in section 221(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1201(a)(3) at the time an alien arrives in the United States and at the time an alien departs from the

United States to determine if such alien is entering, or is present in, the United States unlawfully.''; and

(3) in subsection (f)(1), by striking ''Departments of Justice and State'' and inserting ''Department of Homeland Security and the Department of State''.

SEC. 404. DEPARTMENT OF LABOR INVESTIGATIVE AUTHORITIES.

Section 212(n)(2) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(2)) is amended—

(1) by redesignating subparagraph (H) as subparagraph (J); and

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

''(H)(i) The Secretary of Labor may initiate an investigation of any employer that employs nonimmigrants described in section 101(a)(15)(H)(v)(a) if the Secretary, or the Secretary's designee—

''(I) certifies that reasonable cause exists to believe that the employer is out of compliance with the Secure America and Orderly Immigration Act or section 274E; and

''(II) approves the commencement of the investigation.

"(ii) In determining whether reasonable cause exists to initiate an investigation under this section, the Secretary shall—

"(I) monitor the Willing Worker-Willing Employer Electronic Job Registry;

"(II) monitor the Employment Eligibility Confirmation System, taking into consideration whether—

"(aa) an employer's submissions to the System generate a high volume of tentative nonconfirmation responses relative to other comparable employers;

"(bb) an employer rarely or never screens hired individuals;

"(cc) individuals employed by an employer rarely or never pursue a secondary verification process as established in section 274E; or

"(dd) any other indicators of illicit, inappropriate or discriminatory use of the System, especially those described in section 274E(a)(6)(D), exist; and

"(III) consider any additional evidence that the Secretary determines appropriate.

"(iii) Absent other evidence of noncompliance, an investigation under this subparagraph should not be initiated for lack of completeness or obvious inaccuracies by the employer in complying with section 101(a)(15)(H)(v)(a).".

SEC. 405. PROTECTION OF EMPLOYMENT RIGHTS.

The Secretary and the Secretary of Homeland Security shall establish a process under which a nonimmigrant worker described in clause (ii)(b) or (v)(a) of section 101(a)(15)(H) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)) who files a nonfrivolous complaint regarding a violation of this section and is otherwise eligible to remain and work in the United States may be allowed to seek other appropriate employment in the United States with an employer for a period not to exceed the maximum period of stay authorized for that nonimmigrant classification.

SEC. 406. INCREASED FINES FOR PROHIBITED BEHAVIOR.

Section 274B(g)(2)(B)(iv) of the Immigration and Nationality Act (8 U.S.C. 1324b(g)(2)(B)(iv)) is amended—

(1) in subclause (I), by striking "not less than $250 and not more than $2,000" and inserting "not less than $500 and not more than $4,000";

(2) in subclause (II), by striking ''not less than $2,000 and not more than $5,000'' and inserting ''not less than $4,000 and not more than $10,000''; and

(3) in subclause (III), by striking ''not less than $3,000 and not more than $10,000'' and inserting ''not less than $6,000 and not more than $20,000''.

TITLE V—PROMOTING CIRCULAR MIGRATION PATTERNS

SEC. 501. LABOR MIGRATION FACILITATION PROGRAMS.

(a) AUTHORITY FOR PROGRAM.—

(1) IN GENERAL.—The Secretary of State is authorized to enter into an agreement to establish and administer a labor migration facilitation program jointly with the appropriate official of a foreign government whose citizens participate in the temporary worker program authorized under section 101(a)(15)(H)(v)(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(v)(a)).

(2) PRIORITY.—In establishing programs under subsection (a), the Secretary of State shall place a priority on establishing such programs with foreign governments that have a large number of nationals working as temporary workers in the United States

under such section 101(a)(15)(H)(v)(a). The Secretary shall enter into such agreements not later than 3 months after the date of enactment of this Act or as soon thereafter as is practicable.

(3) ELEMENTS OF PROGRAM.—A program established under paragraph (1) may provide for—

(A) the Secretary of State, in conjunction with the Secretary of Homeland Security and the Secretary of Labor, to confer with a foreign government—

(i) to establish and implement a program to assist temporary workers from such a country to obtain nonimmigrant status under such section 101(a)(15)(H)(v)(a);

(ii) to establish programs to create economic incentives for aliens to return to their home country.

(B) the foreign government to monitor the participation of its nationals in such a temporary worker program, including departure from and return to a foreign country;

(C) the foreign government to develop and promote a reintegration program available to

such individuals upon their return from the United States;

(D) the foreign government to promote or facilitate travel of such individuals between the country of origin and the United States; and

(E) any other matters that the foreign government and United States find appropriate to enable such individuals to maintain strong ties to their country of origin.

SEC. 502. BILATERAL EFFORTS WITH MEXICO TO REDUCE MIGRATION PRESSURES AND COSTS.

(a) FINDINGS.—Congress makes the following findings:

(1) Migration from Mexico to the United States is directly linked to the degree of economic opportunity and the standard of living in Mexico.

(2) Mexico comprises a prime source of migration to the United States.

(3) Remittances from Mexican citizens working in the United States reached a record high of nearly $17,000,000,000 in 2004.

(4) Migration patterns may be reduced from Mexico to the United States by addressing the degree of economic opportunity available to Mexican citizens.

(5) Many Mexican assets are held extra-legally and cannot be readily used as collateral for loans.

(6) A majority of Mexican businesses are small or medium size with limited access to financial capital.

(7) These factors constitute a major impediment to broad-based economic growth in Mexico.

(8) Approximately 20 percent of Mexico's population works in agriculture, with the majority of this population working on small farms and few on large commercial enterprises.

(9) The Partnership for Prosperity is a bilateral initiative launched jointly by the President of the United States and the President of Mexico in 2001, which aims to boost the social and economic standards of Mexican citizens, particularly in regions where economic growth has lagged and emigration has increased.

(10) The Presidents of Mexico and the United States and the Prime Minister of Canada, at their trilateral summit on March 23, 2005, agreed to promote economic growth, competitiveness, and quality of life in the agreement on Security and Prosperity Partnership of North America.

(b) SENSE OF CONGRESS REGARDING PARTNERSHIP FOR PROSPERITY.—It is the sense of Congress that the United States and Mexico should accelerate the implementation of the Partnership for Prosperity to help generate economic growth and improve the standard of living in Mexico, which will lead to reduced migration, by—

(1) increasing access for poor and under served populations in Mexico to the financial services sector, including credit unions;

(2) assisting Mexican efforts to formalize its extra-legal sector, including the issuance of formal land titles, to enable Mexican citizens to use their assets to procure capital;

(3) facilitating Mexican efforts to establish an effective rural lending system for small- and medium-sized farmers that will—

(A) provide long term credit to borrowers;

(B) develop a viable network of regional and local intermediary lending institutions; and

(C) extend financing for alternative rural economic activities beyond direct agricultural production;

(4) expanding efforts to reduce the transaction costs of remittance flows in order to increase the

pool of savings available to help finance domestic investment in Mexico;

(5) encouraging Mexican corporations to adopt internationally recognized corporate governance practices, including anti-corruption and transparency principles;

(6) enhancing Mexican efforts to strengthen governance at all levels, including efforts to improve transparency and accountability, and to eliminate corruption, which is the single biggest obstacle to development;

(7) assisting the Government of Mexico in implementing all provisions of the Inter-American Convention Against Corruption (ratified by Mexico on May 27, 1997) and urging the Government of Mexico to participate fully in the Convention's formal implementation monitoring mechanism;

(8) helping the Government of Mexico to strengthen education and training opportunities throughout the country, with a particular emphasis on improving rural education; and

(9) encouraging the Government of Mexico to create incentives for persons who have migrated to the United States to return to Mexico.

(c) SENSE OF CONGRESS REGARDING BILATERAL PARTNERSHIP ON HEALTH CARE.—It is the sense of Congress that the Government of the United States and the Government of Mexico should enter into a partnership to examine uncompensated and burdensome health care costs incurred by the United States due to legal and illegal immigration, including—

(1) increasing health care access for poor and under served populations in Mexico;

(2) assisting Mexico in increasing its emergency and trauma health care facilities along the border, with emphasis on expanding prenatal care in the United States–Mexico border region;

(3) facilitating the return of stable, incapacitated workers temporarily employed in the United States to Mexico in order to receive extended, long-term care in their home country; and

(4) helping the Government of Mexico to establish a program with the private sector to cover the health care needs of Mexican nationals temporarily employed in the United States.

TITLE VI—FAMILY UNITY AND BACKLOG REDUCTION

SEC. 601. ELIMINATION OF EXISTING BACKLOGS.

(a) FAMILY-SPONSORED IMMIGRANTS.—Section 201(c) of the Immigration and Nationality Act (8 U.S.C. 1151(c)) is amended to read as follows:

"(c) WORLDWIDE LEVEL OF FAMILY-SPONSORED IMMIGRANTS.—The worldwide level of family-sponsored immigrants under this subsection for a fiscal year is equal to the sum of—

"(1) 480,000;

"(2) the difference between the maximum number of visas authorized to be issued under this subsection during the previous fiscal year and the number of visas issued during the previous fiscal year; and

"(3) the difference between—

"(A) the maximum number of visas authorized to be issued under this subsection during fiscal years 2001 through 2005 minus the number of visas issued under this subsection during those years; and

"(B) the number of visas described in subparagraph (A) that were issued after fiscal year 2005.".

(b) EMPLOYMENT-BASED IMMIGRANTS.—Section 201(d) of the Immigration and Nationality Act (8 U.S.C. 1151(d)) is amended to read as follows:

"(d) WORLDWIDE LEVEL OF EMPLOYMENT-BASED IMMIGRANTS.—The worldwide level of employment-based immigrants under this subsection for a fiscal year is equal to the sum of—

"(1) 290,000;

"(2) the difference between the maximum number of visas authorized to be issued under this subsection during the previous fiscal year and the number of visas issued during the previous fiscal year; and

"(3) the difference between—

"(A) the maximum number of visas authorized to be issued under this subsection during fiscal years 2001 through 2005 and the number of visa numbers issued under this subsection during those years; and

"(B) the number of visas described in subparagraph (A) that were issued after fiscal year 2005.".

SEC. 602. COUNTRY LIMITS.

Section 202(a) of the Immigration and Nationality Act (8 U.S.C. 1152(a)) is amended—

(1) in paragraph (2)—

(A) by striking ", (4), and (5)" and inserting "and (4)"; and

(B) by striking "7 percent (in the case of a single foreign state) or 2 percent" and inserting "10 percent (in the case of a single foreign state) or 5 percent"; and

(2) by striking paragraph (5).

SEC. 603. ALLOCATION OF IMMIGRANT VISAS.

(a) PREFERENCE ALLOCATION FOR FAMILY-SPONSORED IMMIGRANTS.—Section 203(a) of the Immigration and Nationality Act (8 U.S.C. 1153(a)) is amended to read as follows:

"(a) PREFERENCE ALLOCATIONS FOR FAMILY-SPONSORED IMMIGRANTS.—Aliens subject to the worldwide level specified in section 201(c) for family-sponsored immigrants shall be allocated visas as follows:

"(1) UNMARRIED SONS AND DAUGHTERS OF CITIZENS.—Qualified immigrants who are the unmarried sons or daughters of citizens of the United States shall be allocated visas in a quantity not to exceed 10 percent of such worldwide level plus any visas not required for the class specified in paragraph (4).

"(2) SPOUSES AND UNMARRIED SONS AND DAUGHTERS OF PERMANENT RESIDENT ALIENS.—Visas in a quantity not to exceed 50 percent of such worldwide level plus any visas not required for the class specified in paragraph (1) shall be allocated to qualified immigrants—

"(A) who are the spouses or children of an alien lawfully admitted for permanent residence, which visas shall constitute not less than 77 percent of the visas allocated under this paragraph; or

"(B) who are the unmarried sons or daughters of an alien lawfully admitted for permanent residence.

"(3) MARRIED SONS AND DAUGHTERS OF CITIZENS.—Qualified immigrants who are the married sons and daughters of citizens of the United States shall be allocated visas in a quantity not to exceed 10 percent of such worldwide level plus any visas not required for the classes specified in paragraphs (1) and (2).

"(4) BROTHERS AND SISTERS OF CITIZENS.—Qualified immigrants who are the brothers or sisters of citizens of the United States who are at least 21 years of age shall be allocated visas in a quantity

not to exceed 30 percent of the worldwide level plus any visas not required for the classes specified in paragraphs (1) through (3).''.

(b) PREFERENCE ALLOCATION FOR EMPLOYMENT-BASED IMMIGRANTS.—Section 203(b) of the Immigration and Nationality Act (8 U.S.C. 1153(b)) is amended—

(1) in paragraph (1), by striking ''28.6 percent'' and inserting ''20 percent'';

(2) in paragraph (2)(A), by striking ''28.6 percent'' and inserting ''20 percent'';

(3) in paragraph (3)(A)—

(A) by striking ''28.6 percent'' and inserting ''35 percent''; and

(B) by striking clause (iii);

(4) by striking paragraph (4);

(5) by redesignating paragraph (5) as paragraph (4);

(6) in paragraph (4)(A), as redesignated, by striking ''7.1 percent'' and inserting ''5 percent'';

(7) by inserting after paragraph (4), as redesignated, the following:

''(5) OTHER WORKERS.—Visas shall be made available, in a number not to exceed 30 percent of such worldwide level, plus any visa numbers not required for the classes specified in paragraphs (1)

through (4), to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing unskilled labor that is not of a temporary or seasonal nature, for which qualified workers are determined to be unavailable in the United States, or to nonimmigrants under section 101(a)(15)(H)(v)(a).''; and

(8) by striking paragraph (6).

(c) CONFORMING AMENDMENTS.—

(1) DEFINITION OF SPECIAL IMMIGRANT.—Section 101(a)(27)(M) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)(M)) is amended by striking ''subject to the numerical limitations of section 203(b)(4),''.

(2) REPEAL OF TEMPORARY REDUCTION IN WORKERS' VISAS.—Section 203(e) of the Nicaraguan Adjustment and Central American Relief Act (8 U.S.C. 1153 note) is repealed.

SEC. 604. RELIEF FOR CHILDREN AND WIDOWS.

(a) IN GENERAL.—Section 201(b)(2)(A)(i) of the Immigration and Nationality Act (8 U.S.C. 1151(b)(2)(A)(i)) is amended by striking ''spouses, and parents of a citizen of the United States'' and inserting ''(and their children who are accompanying or following to join them), the spouses (and their children who are ac-

companying or following to join them), and the parents of a citizen of the United States (and their children who are accompanying or following to join them)''.

(b) PETITION.—Section 204(a)(1)(A)(ii) of the Immigration and Nationality Act (8 U.S.C. 1154 (a)(1)(A)(ii) is amended by inserting ''or an alien child or alien parent described in the third sentence of section 201(b)(2)(A)(i)'' after ''section 201(b)(2)(A)(i)''.

(c) ADJUSTMENT OF STATUS.—Section 245 of the Immigration and Nationality Act (8 U.S.C. 1255) is amended by adding at the end the following:

''(n) APPLICATIONS FOR ADJUSTMENT OF STATUS BY SURVIVING SPOUSES, CHILDREN, AND PARENTS.—

''(1) IN GENERAL.—Notwithstanding subsections (a) and (c) (except subsection (c)(6)), any alien described in paragraph (2) who applied for adjustment of status prior to the death of the qualifying relative, may have such application adjudicated as if such death had not occurred.

''(2) ALIEN DESCRIBED.—An alien described in this paragraph is an alien who—

''(A) is an immediate relative (as defined in section 201(b)(2)(A)(i));

"(B) is a family-sponsored immigrant (as described in subsection (a) or (d) of section 203);

"(C) is a derivative beneficiary of an employment-based immigrant under section 203(b), as described in section 203(d); or

"(D) is a derivative beneficiary of a diversity immigrant (as described in section 203(c)).".

(d) TRANSITION PERIOD.—Notwithstanding a denial of an application for adjustment of status not more than 2 years before the date of enactment of this Act, in the case of an alien whose qualifying relative died before the date of enactment of this Act, such application may be renewed by the alien through a motion to reopen, without fee, filed not later than 1 year after the date of enactment of this Act.

SEC. 605. AMENDING THE AFFIDAVIT OF SUPPORT REQUIREMENTS.

Section 213A of the Immigration and Nationality Act (8 U.S.C. 1183a) is amended—

(1) in subsection (a)(1)(A), by striking "125" and inserting "100"; and

(2) in subsection (f), by striking "125" each place it appears and inserting "100".

SEC. 606. DISCRETIONARY AUTHORITY.

Section 212(i) of the Immigration and Nationality Act (8 U.S.C. 1182(i)) is amended—

(1) by redesignating paragraph (2) as paragraph (3); and

(2) by inserting after paragraph (1) the following:

''(2)(A) The Secretary of Homeland Security may waive the application of subsection (a)(6)(C)—

''(i) in the case of an immigrant who is the spouse, parent, son, or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if the Secretary of Homeland Security determines that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse, child, son, daughter, or parent of such an alien; or

''(ii) in the case of an alien granted classification under clause (iii) or (iv) of section 204(a)(1)(A) or clause (ii) or (iii) of section 204(a)(1)(B), the alien demonstrates extreme hardship to the alien or the alien's parent or child if, such parent or child is a United States citizen, a lawful permanent resident, or a qualified alien.

"(B) An alien who is granted a waiver under subparagraph (A) shall pay a $2,000 fine.".

SEC. 607. FAMILY UNITY.

Section 212(a)(9) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(9)) is amended—

(1) in subparagraph (B)(iii)(I), by striking "18" and inserting "21"; and

(2) in subparagraph (C)(ii)—

(A) by redesignating subclauses (1) and (2) as subclauses (I) and (II); and

(B) in subclause (II), as redesignated, by redesignating items (A), (B), (C), and (D) as items (aa), (bb), (cc), and (dd); and

(3) by adding at the end the following:

"(D) WAIVER.—

"(i) IN GENERAL.—The Secretary may waive the application of subparagraphs (B) and (C) for an alien who is a beneficiary of a petition filed under sections 201 and 203 if such petition was filed on or before the date of introduction of Secure America and Orderly Immigration Act.

"(ii) FINE.—An alien who is granted a waiver under clause (i) shall pay a $2,000 fine.".

TITLE VII—H–5B NONIMMIGRANTS

SEC. 701. H–5B NONIMMIGRANTS.

(a) IN GENERAL.—Chapter 5 of title II of the Immigration and Nationality Act (8 U.S.C. 1255 et seq.) is amended by adding after section 250 the following:

"H–5B NONIMMIGRANTS

"SEC. 250A. (a) IN GENERAL.—The Secretary of Homeland Security shall adjust the status of an alien to that of a nonimmigrant under section 101(a)(15)(H)(v)(b) if the alien—

"(1) submits an application for such adjustment; and

"(2) meets the requirements of this section.

"(b) PRESENCE IN THE UNITED STATES.—The alien shall establish that the alien—

"(1) was present in the United States before the date on which the Secure America and Orderly Immigration Act was introduced, and has been continuously in the United States since such date; and

"(2) was not legally present in the United States on the date on which the Secure America and

Orderly Immigration Act was introduced under any classification set forth in section 101(a)(15).

"(c) SPOUSES AND CHILDREN.—Notwithstanding any other provision of law, the Secretary of Homeland Security shall, if the person is otherwise eligible under subsection (b)—

"(1) adjust the status to that of a nonimmigrant under section 101(a)(15)(H)(v)(b) for, or provide a nonimmigrant visa to, the spouse or child of an alien who is provided nonimmigrant status under section 101(a)(15)(H)(v)(b); or

"(2) adjust the status to that of a nonimmigrant under section 101(a)(15)(H)(v)(b) for an alien who, before the date on which the Secure America and Orderly Immigration Act was introduced in Congress, was the spouse or child of an alien who is provided nonimmigrant status under section 101(a)(15)(H)(v)(b), or is eligible for such status, if—

"(A) the termination of the qualifying relationship was connected to domestic violence; and

"(B) the spouse or child has been battered or subjected to extreme cruelty by the spouse or

parent alien who is provided nonimmigrant status under section 101(a)(15)(H)(v)(b).

"(d) OTHER CRITERIA.—

"(1) IN GENERAL.—An alien may be granted nonimmigrant status under section 101(a)(15)(H)(v)(b), or granted status as the spouse or child of an alien eligible for such status under subsection (c), if the alien establishes that the alien—

"(A) is not inadmissible to the United States under section 212(a), except as provided in paragraph (2); or

"(B) has not 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.

"(2) GROUNDS OF INADMISSIBILITY.—In determining an alien's admissibility under paragraph (1)(A)—

"(A) paragraphs (5), (6)(A), (6)(B), (6)(C), (6)(F), (6)(G), (7), (9), and (10)(B) of section 212(a) shall not apply for conduct that occurred before the date on which the Secure

America and Orderly Immigration Act was introduced;

"(B) the Secretary of Homeland Security may not waive—

"(i) subparagraph (A), (B), (C), (E), (G), (H), or (I) of section 212(a)(2) (relating to criminals);

"(ii) section 212(a)(3) (relating to security and related grounds); or

"(iii) subparagraph (A) or (C) of section 212(a)(10) (relating to polygamists and child abductors);

"(C) for conduct that occurred before the date on which the Secure America and Orderly Immigration Act was introduced, the Secretary of Homeland Security may waive the application of any provision of section 212(a) not listed in subparagraph (B) on behalf of an individual alien for humanitarian purposes, to ensure family unity, or when such waiver is otherwise in the public interest; and

"(D) nothing in this paragraph shall be construed as affecting the authority of the Secretary of Homeland Security other than under

this paragraph to waive the provisions of section 212(a).

"(3) APPLICABILITY OF OTHER PROVISIONS.—Sections 240B(d) and 241(a)(5) shall not apply to an alien who is applying for adjustment of status in accordance with this title for conduct that occurred before the date on which the Secure America and Orderly Immigration Act was introduced.

"(e) EMPLOYMENT.—

"(1) IN GENERAL.—The Secretary of Homeland Security may not adjust the status of an alien to that of a nonimmigrant under section 101(a)(15)(H)(v)(b) unless the alien establishes that the alien—

"(A) was employed in the United States, whether full time, part time, seasonally, or self-employed, before the date on which the Secure America and Orderly Immigration Act was introduced; and

"(B) has been employed in the United States since that date.

"(2) EVIDENCE OF EMPLOYMENT.—

"(A) CONCLUSIVE DOCUMENTS.—An alien may conclusively establish employment status in compliance with paragraph (1) by submitting to

the Secretary of Homeland Security records demonstrating such employment maintained by—

"(i) the Social Security Administration, Internal Revenue Service, or by any other Federal, State, or local government agency;

"(ii) an employer; or

"(iii) a labor union, day labor center, or an organization that assists workers in matters related to employment.

"(B) OTHER DOCUMENTS.—An alien who is unable to submit a document described in clauses (i) through (iii) of subparagraph (A) may satisfy the requirement in paragraph (1) by submitting to the Secretary at least 2 other types of reliable documents that provide evidence of employment, including—

"(i) bank records;

"(ii) business records;

"(iii) sworn affidavits from nonrelatives who have direct knowledge of the alien's work; or

"(iv) remittance records.

"(3) INTENT OF CONGRESS.—It is the intent of Congress that the requirement in this subsection be interpreted and implemented in a manner that recognizes and takes into account the difficulties encountered by aliens in obtaining evidence of employment due to the undocumented status of the alien.

"(4) BURDEN OF PROOF.—An alien described in paragraph (1) who is applying for adjustment of status under this section has the burden of proving by a preponderance of the evidence that the alien has satisfied the requirements of this subsection. An alien may meet such burden of proof by producing sufficient evidence to demonstrate such employment as a matter of reasonable inference.

"(f) SPECIAL RULES FOR MINORS AND INDIVIDUALS WHO ENTERED AS MINORS.—The employment requirements under this section shall not apply to any alien under 21 years of age.

"(g) EDUCATION PERMITTED.—An alien may satisfy the employment requirements under this section, in whole or in part, by full-time attendance at—

"(1) an institution of higher education (as defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001)); or

"(2) a secondary school (as defined in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801)).

"(h) SECURITY AND LAW ENFORCEMENT BACKGROUND CHECKS.—

"(1) SUBMISSION OF FINGERPRINTS.—An alien may not be granted nonimmigrant status under section 101(a)(15)(H)(v)(b), or granted status as the spouse or child of an alien eligible for such status under subsection (c), unless the alien submits fingerprints in accordance with procedures established by the Secretary of Homeland Security.

"(2) BACKGROUND CHECKS.—The Secretary of Homeland Security shall utilize fingerprints and other data provided by the alien to conduct a background check of such alien relating to criminal, national security, or other law enforcement actions that would render the alien ineligible for adjustment of status as described in this section.

"(3) EXPEDITIOUS PROCESSING.—The background checks required under paragraph (2) shall be conducted as expeditiously as possible.

"(i) PERIOD OF AUTHORIZED STAY AND APPLICATION FEE AND FINE.—

"(1) PERIOD OF AUTHORIZED STAY.—

"(A) IN GENERAL.—The period of authorized stay for a nonimmigrant described in section 101(a)(15)(H)(v)(b) shall be 6 years.

["(B) LIMITATION.—The Secretary of Homeland Security may not authorize a change from such nonimmigrant classification to any other immigrant or nonimmigrant classification until the termination of the 6-year period described in subparagraph (A). The Secretary may only extend such period to accommodate the processing of an application for adjustment of status under section 245B.]

"(2) APPLICATION FEE.—The Secretary of Homeland Security shall impose a fee for filing an application for adjustment of status under this section. Such fee shall be sufficient to cover the administrative and other expenses incurred in connection with the review of such applications.

"(3) FINES.—

"(A) IN GENERAL.—In addition to the fee required under paragraph (2), the Secretary of Homeland Security may accept an application for adjustment of status under this section only if the alien pays a $1,000 fine.

"(B) EXCEPTION.—Fines paid under this paragraph shall not be required from an alien under the age of 21.

"(4) COLLECTION OF FEES AND FINES.—All fees and fines collected under this section shall be deposited in the Treasury in accordance with section 286(w).

"(j) TREATMENT OF APPLICANTS.—

"(1) IN GENERAL.—An alien who files an application under this section, including the alien's spouse or child—

"(A) shall be granted employment authorization pending final adjudication of the alien's application for adjustment of status;

"(B) shall be granted permission to travel abroad;

"(C) may not be detained, determined inadmissible or deportable, or removed pending final adjudication of the alien's application for adjustment of status, unless the alien, through conduct or criminal conviction, becomes ineligible for such adjustment of status; and

"(D) may not be considered an unauthorized alien (as defined in section 274A(h)(3))

until employment authorization under subparagraph (A) is denied.

"(2) BEFORE APPLICATION PERIOD.—If an alien is apprehended after the date of enactment of this section, but before the promulgation of regulations pursuant to this section, and the alien can establish prima facie eligibility as a nonimmigrant under section 101(a)(15)(H)(v)(b), the Secretary of Homeland Security shall provide the alien with a reasonable opportunity, after promulgation of regulations, to file an application for adjustment.

"(3) DURING CERTAIN PROCEEDINGS.—Notwithstanding any provision of this Act, an alien who is in removal proceedings shall have an opportunity to apply for adjustment of status under this title unless a final administrative determination has been made.

"(4) RELATIONSHIPS OF APPLICATION TO CERTAIN ORDERS.—An alien who is present in the United States and has been ordered excluded, deported, removed, or ordered to depart voluntarily from the United States under any provision of this Act may, notwithstanding such order, apply for adjustment of status in accordance with this section. Such an alien shall not be required to file a separate

motion to reopen, reconsider, or vacate the exclusion, deportation, removal, or voluntary departure order. If the Secretary of Homeland Security grants the application, the Secretary shall cancel such order. If the Secretary of Homeland Security renders a final administrative decision to deny the application, such order shall be effective and enforceable to the same extent as if the application had not been made.

"(k) ADMINISTRATIVE AND JUDICIAL REVIEW.—

"(1) ADMINISTRATIVE REVIEW.—

"(A) SINGLE LEVEL OF ADMINISTRATIVE APPELLATE REVIEW.—The Secretary of Homeland Security shall establish an appellate authority within the United States Citizenship and Immigration Services to provide for a single level of administrative appellate review of a determination respecting an application for adjustment of status under this section.

"(B) STANDARD FOR REVIEW.—Administrative appellate review referred to in subparagraph (A) shall be based solely upon the administrative record established at the time of the determination on the application and upon the

presentation of additional or newly discovered evidence during the time of the pending appeal.

"(2) JUDICIAL REVIEW.—

"(A) IN GENERAL.—There shall be judicial review in the Federal courts of appeal of the denial of an application for adjustment of status under this section. Notwithstanding any other provision of law, the standard for review of such a denial shall be governed by subparagraph (B).

"(B) STANDARD FOR JUDICIAL REVIEW.—Judicial review of a denial of an application under this section shall be based solely upon the administrative record established at the time of the review. The findings of fact and other determinations contained in the record shall be conclusive unless the applicant can establish abuse of discretion or that the findings are directly contrary to clear and convincing facts contained in the record, considered as a whole.

"(C) JURISDICTION OF COURTS.—

"(i) IN GENERAL.—Notwithstanding any other provision of law, the district courts of the United States shall have jurisdiction over any cause or claim arising

from a pattern or practice of the Secretary of Homeland Security in the operation or implementation of this section that is arbitrary, capricious, or otherwise contrary to law, and may order any appropriate relief.

"(ii) REMEDIES.—A district court may order any appropriate relief under clause (i) if the court determines that resolution of such cause or claim will serve judicial and administrative efficiency or that a remedy would otherwise not be reasonably available or practicable.

"(3) STAY OF REMOVAL.—Aliens seeking administrative or judicial review under this subsection shall not be removed from the United States until a final decision is rendered establishing ineligibility under this section.

"(l) CONFIDENTIALITY OF INFORMATION.—

"(1) IN GENERAL.—Except as otherwise provided in this subsection, no Federal agency or bureau, nor any officer, employee, or agent of such agency or bureau, may—

"(A) use the information furnished by the applicant pursuant to an application filed under

this section for any purpose other than to make a determination on the application;

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

"(C) permit anyone other than the sworn officers and employees of such agency or bureau to examine individual applications.

"(2) REQUIRED DISCLOSURES.—The Secretary of Homeland Security shall provide the information furnished pursuant to an application filed under this section, and any other information derived from such furnished information, to a duly recognized law enforcement entity in connection with a criminal investigation or prosecution or a national security investigation or prosecution, in each instance about an individual suspect or group of suspects, when such information is requested in writing by such entity.

"(3) CRIMINAL PENALTY.—Any person who knowingly uses, publishes, or permits information to be examined in violation of this subsection shall be fined not more than $10,000.

"(m) PENALTIES FOR FALSE STATEMENTS IN APPLICATIONS.—

"(1) CRIMINAL PENALTY.—

"(A) VIOLATION.—It shall be unlawful for any person—

"(i) to file or assist in filing an application for adjustment of status under this section and knowingly and willfully falsify, misrepresent, conceal, or cover up a material fact or make any false, fictitious, or fraudulent statements or representations, or make or use any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry; or

"(ii) to create or supply a false writing or document for use in making such an application.

"(B) PENALTY.—Any person who violates subparagraph (A) shall be fined in accordance with title 18, United States Code, imprisoned not more than 5 years, or both.

"(2) INADMISSIBILITY.—An alien who is convicted of a crime under paragraph (1) shall be considered to be inadmissible to the United States on the ground described in section 212(a)(6)(C)(i).

"(3) EXCEPTION.—Notwithstanding paragraphs (1) and (2), any alien or other entity (including an

employer or union) that submits an employment record that contains incorrect data that the alien used in order to obtain such employment before the date on which the Secure America and Orderly Immigration Act is introduced, shall not, on that ground, be determined to have violated this section.''.

(b) CLERICAL AMENDMENT.—The table of contents for the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended by inserting after the item relating to section 250 the following:

''Sec. 250A. –5B nonimmigrants.''.

SEC. 702. ADJUSTMENT OF STATUS FOR H–5B NONIMMIGRANTS.

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

''ADJUSTMENT OF STATUS OF FORMER H–5B NONIMMIGRANT TO THAT OF PERSON ADMITTED FOR LAWFUL PERMANENT RESIDENCE

''SEC. 245B. (a) REQUIREMENTS.—The Secretary shall adjust the status of an alien from nonimmigrant status under section 101(a)(15)(H)(v)(b) to that of an alien lawfully admitted for permanent residence under this section if the alien satisfies the following requirements:

"(1) COMPLETION OF EMPLOYMENT OR EDUCATION REQUIREMENT.—The alien establishes that the alien has been employed in the United States, either full time, part time, seasonally, or self-employed, or has met the education requirements of subsection (f) or (g) of section 250A during the period required by section 250A(e).

"(2) RULEMAKING.—The Secretary shall establish regulations for the timely filing and processing of applications for adjustment of status for nonimmigrants under section 101(a)(15)(H)(v)(b).

"(3) APPLICATION AND FEE.—The alien who applies for adjustment of status under this section shall pay the following:

"(A) APPLICATION FEE.—An alien who files an application under section 245B of the Immigration and Nationality Act, shall pay an application fee, set by the Secretary.

"(B) ADDITIONAL FINE.—Before the adjudication of an application for adjustment of status filed under this section, an alien who is at least 21 years of age shall pay a fine of $1,000.

"(4) ADMISSIBLE UNDER IMMIGRATION LAWS.—The alien establishes that the alien is not inadmissible under section 212(a), except for any

provision of that section that is not applicable or waived under section 250A(d)(2).

"(5) MEDICAL EXAMINATION.—The alien shall undergo, at the alien's expense, an appropriate medical examination (including a determination of immunization status) that conforms to generally accepted professional standards of medical practice.

"(6) PAYMENT OF INCOME TAXES.—

"(A) IN GENERAL.—Not later than the date on which status is adjusted under this section, the alien shall establish the payment of all Federal income taxes owed for employment during the period of employment required by section 250A(e) by establishing that—

"(i) no such tax liability exists;

"(ii) all outstanding liabilities have been met; or

"(iii) the alien has entered into an agreement for payment of all outstanding liabilities with the Internal Revenue Service.

"(B) IRS COOPERATION.—The Commissioner of Internal Revenue shall provide documentation to an alien upon request to establish

the payment of all income taxes required by this paragraph.

"(7) BASIC CITIZENSHIP SKILLS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the alien shall establish that the alien—

"(i) meets the requirements of section 312; or

"(ii) is satisfactorily pursuing a course of study to achieve such an understanding of English and knowledge and understanding of the history and government of the United States.

"(B) RELATION TO NATURALIZATION EXAMINATION.—An alien who demonstrates that the alien meets the requirements of section 312 may be considered to have satisfied the requirements of that section for purposes of becoming naturalized as a citizen of the United States under title III.

"(8) SECURITY AND LAW ENFORCEMENT BACKGROUND CHECKS.—The Secretary shall conduct a security and law enforcement background check in accordance with procedures described in section 250A(h).

"(9) MILITARY SELECTIVE SERVICE.—The alien shall establish that if the alien is within the age period required under the Military Selective Service Act (50 U.S.C. App. 451 et seq.), that such alien has registered under that Act.

"(b) TREATMENT OF SPOUSES AND CHILDREN.—

"(1) ADJUSTMENT OF STATUS.—Notwithstanding any other provision of law, the Secretary of Homeland Security shall—

"(A) adjust the status to that of a lawful permanent resident under this section, or provide an immigrant visa to the spouse or child of an alien who adjusts status to that of a permanent resident under this section; or

"(B) adjust the status to that of a lawful permanent resident under this section for an alien who was the spouse or child of an alien who adjusts status or is eligible to adjust status to that of a permanent resident under section 245B in accordance with subsection (a), if—

"(i) the termination of the qualifying relationship was connected to domestic violence; and

"(ii) the spouse or child has been battered or subjected to extreme cruelty by

the spouse or parent who adjusts status to that of a permanent resident under this section.

''(2) APPLICATION OF OTHER LAW.—In acting on applications filed under this subsection with respect to aliens who have been battered or subjected to extreme cruelty, the Secretary of Homeland Security shall apply the provisions of section 204(a)(1)(J) and the protections, prohibitions, and penalties under section 384 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1367).

''(c) JUDICIAL REVIEW; CONFIDENTIALITY; PENALTIES.—Subsections (n), (o), and (p) of section 250A shall apply to this section.''.

(b) CLERICAL AMENDMENT.—The table of contents for the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended by inserting after the item relating to section 245A the following:

''Sec. 245B. Adjustment of status of former H–5B nonimmigrant to that of person admitted for lawful permanent residence.''.

SEC. 703. ALIENS NOT SUBJECT TO DIRECT NUMERICAL LIMITATIONS.

Section 201(b)(1) of the Immigration and Nationality Act (8 U.S.C. 1151(b)(1)) is amended—

(1) in subparagraph (A), by striking ''subparagraph (A) or (B) of''; and

(2) by adding at the end the following:

''(F) Aliens whose status is adjusted from the status described in section 101(a)(15)(H)(v)(b).''.

SEC. 704. EMPLOYER PROTECTIONS.

(a) IMMIGRATION STATUS OF ALIEN.—Employers of aliens applying for adjustment of status under section 245B or 250A of the Immigration and Nationality Act, as added by this title, shall not be subject to civil and criminal tax liability relating directly to the employment of such alien prior to such alien receiving employment authorization under this title.

(b) PROVISION OF EMPLOYMENT RECORDS.—Employers that provide unauthorized aliens with copies of employment records or other evidence of employment pursuant to an application for adjustment of status under section 245B or 250A of the Immigration and Nationality Act or any other application or petition pursuant to any other immigration law, shall not be subject to civil and criminal liability under section 274A of such Act for employing such unauthorized aliens.

(c) APPLICABILITY OF OTHER LAW.—Nothing in this section may be used to shield an employer from liability under section 274B of the Immigration and Nationality

Act (8 U.S.C. 1324b) or any other labor or employment law.

SEC. 705. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There are authorized to be appropriated to the Secretary of Homeland Security such sums as may be necessary to carry out this title and the amendments made by this title.

(b) AVAILABILITY OF FUNDS.—Funds appropriated pursuant subsection (a) shall remain available until expended.

(c) SENSE OF CONGRESS.—It is the sense of Congress that funds authorized to be appropriated under subsection (a) should be directly appropriated so as to facilitate the orderly and timely commencement of the processing of applications filed under sections 245B and 250A of the Immigration and Nationality Act, as added by this Act.

TITLE VIII—PROTECTION AGAINST IMMIGRATION FRAUD

SEC. 801. RIGHT TO QUALIFIED REPRESENTATION.

Section 292 of the Immigration and Nationality Act (8 U.S.C. 1362) is amended to read as follows:

"RIGHT TO QUALIFIED REPRESENTATION IN IMMIGRATION MATTERS

"SEC. 292. (a) AUTHORIZED REPRESENTATIVES IN IMMIGRATION MATTERS.—Only the following individuals

are authorized to represent an individual in an immigration matter before any Federal agency or entity:

"(1) An attorney.

"(2) A law student who is enrolled in an accredited law school, or a graduate of an accredited law school who is not admitted to the bar, if—

"(A) the law student or graduate is appearing at the request of the individual to be represented;

"(B) in the case of a law student, the law student has filed a statement that the law student is participating, under the direct supervision of a faculty member, attorney, or accredited representative, in a legal aid program or clinic conducted by a law school or nonprofit organization, and that the law student is appearing without direct or indirect remuneration from the individual the law student represents;

"(C) in the case of a graduate, the graduate has filed a statement that the graduate is appearing under the supervision of an attorney or accredited representative and that the graduate is appearing without direct or indirect remuneration from the individual the graduate represents; and

"(D) the law student's or graduate's appearance is—

"(i) permitted by the official before whom the law student or graduate wishes to appear; and

"(ii) accompanied by the supervising faculty member, attorney, or accredited representative, to the extent required by such official.

"(3) Any reputable individual, if—

"(A) the individual is appearing on an individual case basis, at the request of the individual to be represented;

"(B) the individual is appearing without direct or indirect remuneration and the individual files a written declaration to that effect, except as described in subparagraph (D);

"(C) the individual has a pre-existing relationship or connection with the individual entitled to representation, such as a relative, neighbor, clergyman, business associate, or personal friend, except that this requirement may be waived, as a matter of administrative discretion, in cases where adequate representation would not otherwise be available; and

"(D) if making a personal appearance on behalf of another individual, the appearance is permitted by the official before whom the individual wishes to appear, except that such permission shall not be granted with respect to any individual who regularly engages in immigration and naturalization practice or preparation, or holds himself or herself out to the public as qualified to do so.

"(4) An individual representing a recognized organization (as described in subsection (f)) who has been approved to serve as an accredited representative by the Board of Immigration Appeals under subsection (f)(2).

"(5) An accredited official, in the United States, of the government to which an alien owes allegiance, if the official appears solely in his or her official capacity and with the consent of the person to be represented.

"(6) An individual who is licensed to practice law and is in good standing in a court of general jurisdiction of the country in which the individual resides and who is engaged in such practice, if the person represents persons only in matters outside the United States and that the official before whom

such person wishes to appear allows such representation, as a matter of discretion.

"(7) An attorney, or an organization represented by an attorney, may appear, on a case-by-case basis, as amicus curiae, if the Board of Immigration Appeals grants such permission and the public interest will be served by such appearance.

"(b) FORMER EMPLOYEES.—No individual previously employed by the Department of Justice, Department of State, Department of Labor, or Department of Homeland Security may be permitted to act as an authorized representative under this section, if such authorization would violate any other applicable provision of Federal law or regulation. In addition, any application for such authorization must disclose any prior employment by or contract with such agencies for services of any nature.

"(c) ADVERTISING.—Only an attorney or an individual approved under subsection (f)(2) as an accredited representative may advertise or otherwise hold themselves out as being able to provide representation in an immigration matter. This provision shall in no way be deemed to diminish any Federal or State law to regulate, control, or enforce laws regarding such advertisement, solicitation, or offer of representation.

"(d) REMOVAL PROCEEDINGS.—In any proceeding for the removal of an individual from the United States and in any appeal proceedings from such proceeding, the individual shall have the privilege, as the individual shall choose, of being represented (at no expense to the Government) by an individual described in subsection (a). Representation by an individual other than a person described in subsection (a) may cause the representative to be subject to civil penalties or such other penalties as may be applicable.

"(e) BENEFITS FILINGS.—In any filing or submission for an immigration related benefit or a determination related to the immigration status of an individual made to the Department of Homeland Security, the Department of Labor, or the Department of State, the individual shall have the privilege, as the individual shall choose, of being represented (at no expense to the Government) by an individual described in subsection (a). Representation by an individual other than an individual described in subsection (a) is cause for the representative to be subject to civil or criminal penalties, as may be applicable.

"(f) RECOGNIZED ORGANIZATIONS AND ACCREDITED REPRESENTATIVES.—

"(1) RECOGNIZED ORGANIZATIONS.—

"(A) IN GENERAL.—The Board of Immigration Appeals may determine that a person is a recognized organization if such person—

"(i) is a nonprofit religious, charitable, social service, or similar organization established in the United States that—

"(I) is recognized by the Board of Immigration Appeals; and

"(II) is authorized to designate a representative to appear in an immigration matter before the Department of Homeland Security or the Executive Office for Immigration Review of the Department of Justice; and

"(ii) demonstrates to the Board that such person—

"(I) makes only nominal charges and assesses no excessive membership dues for individuals given assistance; and

"(II) has at its disposal adequate knowledge, information, and experience.

"(B) BONDING.—The Board, in its discretion, may impose a bond requirement on new organizations seeking recognition.

"(C) REPORTING OBLIGATIONS.—Recognized organizations shall promptly notify the Board when the organization no longer meets the requirements for recognition or when an accredited representative employed by the recognized organization ceases to be employed by the recognized organization.

"(2) ACCREDITED REPRESENTATIVES.—The Board of Immigration Appeals shall approve any qualified individual designated by a recognized organization to serve as an accredited representative. Such individual must be employed by the recognized organization and must meet all requirements set forth in this section and in the accompanying regulations to be authorized to represent individuals in an immigration matter. Accredited representatives, through their recognized organizations, must certify their continuing eligibility for accreditation every 3 years with the Board of Immigration Appeals. Accredited representatives who fail to comply with these requirements shall not have authority to rep-

resent persons in an immigration matter for the recognized organization.

"(g) PROHIBITED ACTS.—An individual, other than an individual authorized to represent an individual under this section, may not—

"(1) directly or indirectly provide or offer representation regarding an immigration matter for compensation or contribution;

"(2) advertise or solicit representation in an immigration matter;

"(3) retain any compensation provided for a prohibited act described in paragraph (1) or (2), regardless of whether any petition, application, or other document was filed with any government agency or entity and regardless of whether a petition, application, or other document was prepared or represented to have been prepared by such individual;

"(4) represent directly or indirectly that the individual is an attorney or supervised by or affiliated with an attorney, when such representation is false; or

"(5) violate any applicable civil or criminal statute or regulation of a State regarding the provision of representation by providing or offering to provide

immigration or immigration-related assistance referenced in this subsection.

"(h) CIVIL ENFORCEMENT.—

"(1) IN GENERAL.—Any person, or any entity acting for the interests of itself, its members, or the general public (including a Federal law enforcement official or agency or law enforcement official or agency of any State or political subdivision of a State), that has reason to believe that any person is being or has been injured by reason of a violation of subsection (g) may commence a civil action in any court of competent jurisdiction.

"(2) REMEDIES.—

"(A) DAMAGES.—In any civil action brought under this subsection, if the court finds that the defendant has violated subsection (g), it shall award actual damages, plus the greater of—

"(i) an amount treble the amount of actual damages; or

"(ii) $1,000 per violation.

"(B) INJUNCTIVE RELIEF.—The court may award appropriate injunctive relief, including temporary, preliminary, or permanent injunctive relief, and restitution. Injunctive relief

may include, where appropriate, an order temporarily or permanently enjoining the defendant from providing any service to any person in any immigration matter. The court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the commission of any act described in subsection (g).

"(C) ATTORNEY'S FEES.—The court shall also grant a prevailing plaintiff reasonable attorney's fees and costs, including expert witness fees.

"(D) CIVIL PENALTIES.—The court may also assess a civil penalty not exceeding $50,000 for a first violation, and not exceeding $100,000 for subsequent violations.

"(E) CUMULATIVE REMEDIES.—Unless otherwise expressly provided, the remedies or penalties provided under this paragraph are cumulative to each other and to the remedies or penalties available under all other Federal laws or laws of the jurisdiction where the violation occurred.

"(3) NONPREEMPTION.—Nothing in this subsection shall be construed to preempt any other pri-

vate right of action or any right of action pursuant to the laws of any jurisdiction.

"(4) DISCOVERY.—Information obtained through discovery in a civil action under this subsection shall not be used in any criminal action. Upon the request of any party to a civil action under this subsection, any part of the court file that makes reference to information discovered in a civil action under this subsection may be sealed.

"(i) NONPREEMPTION OF MORE PROTECTIVE STATE AND LOCAL LAWS.—The provisions of this section supersede laws, regulations, and municipal ordinances of any State only to the extent such laws, regulations, and municipal ordinances impede the application of any provision of this section. Any State or political subdivision of a State may impose requirements supplementing those imposed by this section.

"(j) DEFINITIONS.—As used in this section—

"(1) the term 'attorney' means a person who—

"(A) is a member in good standing of the bar of the highest court of a State; and

"(B) is not under any order of any court suspending, enjoining, restraining, disbarring, or otherwise restricting such person in the practice of law;

"(2) the term 'compensation' means money, property, labor, promise of payment, or any other consideration provided directly or indirectly to an individual

"(3) the term 'immigration matter' means any proceeding, filing, or action affecting the immigration or citizenship status of any person, which arises under any immigration or nationality law, Executive order, Presidential proclamation, or action of any Federal agency;

"(4) the term 'representation', when used with respect to the representation of a person, includes—

"(A) the appearance, either in person or through the preparation or filing of any brief or other document, paper, application, or petition on behalf of another person or client, before any Federal agency or officer; and

"(B) the study of the facts of a case and the applicable laws, coupled with the giving of advice and auxiliary activities, including the incidental preparation of papers; and

"(5) the term 'State' includes a State or an outlying possession of the United States.".

SEC. 802. PROTECTION OF WITNESS TESTIMONY.

(a) DEFINITION.—Section 101(a)(15)(U)(i) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(i)) is amended—

(1) by inserting in subclause (I) after the phrase ''clause (iii)'' the following: ''or has suffered substantial financial, physical, or mental harm as the result of a prohibited act described in section 292;''

(2) by inserting in subclause (II) after the phrase ''clause (iii)'' the following: ''or section 292'';

(3) by inserting in subclause (III) after the phrase ''clause (iii)'' the following: ''or section 292''; and

(4) by inserting in subclause (IV) after the phrase ''clause (iii)'' the following: ''or section 292''.

(b) ADMISSION OF NONIMMIGRANTS.—Section 214(p) of the Immigration and Nationality Act of (8 U.S.C. 1184(p)) is amended—

(1) in paragraph (1), by inserting ''or section 274E'' after ''section 101(a)(15)(U)(iii)'' each place it appears; and

(2) in paragraph (2)(A), by striking ''10,000'' and inserting ''15,000''.

TITLE IX—CIVICS INTEGRATION

SEC. 901. FUNDING FOR THE OFFICE OF CITIZENSHIP.

(a) AUTHORIZATION.—The Secretary of Homeland Security, acting through the Director of the Bureau of Citizenship and Immigration Services, is authorized to establish the United States Citizenship Foundation (referred to in this section as the ''Foundation''), an organization duly incorporated in the District of Columbia, exclusively for charitable and educational purposes to support the functions of the Office of Citizenship (as described in section 451(f)(2) of the Homeland Security Act of 2002 (6 U.S.C. 271(f)(2)).

(b) GIFTS.—

(1) TO FOUNDATION.—The Foundation may solicit, accept, and make gifts of money and other property in accordance with section 501(c)(3) of the Internal Revenue Code of 1986.

(2) FROM FOUNDATION.—The Office of Citizenship may accept gifts from the Foundation to support the functions of the Office.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out the mission of the Office of Citizenship.

SEC. 902. CIVICS INTEGRATION GRANT PROGRAM.

(a) IN GENERAL.—The Secretary of Homeland Security shall establish a competitive grant program to fund—

(1) efforts by entities certified by the Office of Citizenship to provide civics and English as a second language courses; or

(2) other activities approved by the Secretary to promote civics and English as a second language.

(b) ACCEPTANCE OF GIFTS.—The Secretary may accept and use gifts from the United States Citizenship Foundation for grants under this section.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section.

TITLE X—PROMOTING ACCESS TO HEALTH CARE

SEC. 1001. FEDERAL REIMBURSEMENT OF EMERGENCY HEALTH SERVICES FURNISHED TO UNDOCUMENTED ALIENS.

Section 1011 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (42 U.S.C. 1395dd note) is amended—

(1) by striking ''2008'' and inserting ''2011''; and

(2) in subsection (c)(5), by adding at the end the following:

"(D) Nonimmigrants described in section 101(a)(15)(H)(v) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(v)".

SEC. 1002. PROHIBITION AGAINST OFFSET OF CERTAIN MEDICARE AND MEDICAID PAYMENTS.

Payments made under section 1011 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (42 U.S.C. 1395dd note)—

(1) shall not be considered "third party coverage" for the purposes of section 1923 of the Social Security Act (42 U.S.C. 1396r–4); and

(2) shall not impact payments made under such section of the Social Security Act.

SEC. 1003. PROHIBITION AGAINST DISCRIMINATION AGAINST ALIENS ON THE BASIS OF EMPLOYMENT IN HOSPITAL-BASED VERSUS NONHOSPITAL-BASED SITES.

Section 214(l)(1)(C) of the Immigrant and Nationality Act (8 U.S.C. 1184(l)(1)(C) is amended—

(1) in clause (i), by striking "and" at the end; and

(2) by adding at the end the following:

"(iii) such interested Federal agency or interested State agency, in determining which aliens will be eligible for such waiv-

ers, does not utilize selection criteria, other than as described in this subsection, that discriminate on the basis of the alien's employment in a hospital-based versus non-hospital-based facility or organization; and''.

SEC. 1004. BINATIONAL PUBLIC HEALTH INFRASTRUCTURE AND HEALTH INSURANCE.

(a) STUDY.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall contract with the Institute of Medicine of the National Academies (referred to in this section as the ''Institute'') to study binational public health infrastructure and health insurance efforts.

(2) INPUT.—In conducting the study under paragraph (1), the Institute shall solicit input from border health experts and health insurance companies.

(b) REPORT.—

(1) IN GENERAL.—Not later than 1 year after the date on which the Secretary of Health and Human Services enters into a contract under subsection (a), the Institute shall submit a report concerning the study conducted under subsection (a) to

the Secretary of Health and Human Services and the appropriate committees of Congress.

(2) CONTENTS.—The report submitted under paragraph (1) shall include the recommendations of the Institute on ways to expand or improve binational public health infrastructure and health insurance efforts.

TITLE XI—MISCELLANEOUS

SEC. 1101. SUBMISSION TO CONGRESS OF INFORMATION REGARDING H–5A NONIMMIGRANTS.

(a) ENSURING ACCURATE COUNT.—The Secretary of State and the Secretary of Homeland Security shall maintain an accurate count of the number of aliens subject to the numerical limitations under section 214(g)(1)(C) of the Immigration and Nationality Act (8 U.S.C. 1184(g)(1)(C)) who are issued visas or otherwise provided nonimmigrant status.

(b) PROVISION OF INFORMATION.—

(1) QUARTERLY NOTIFICATION.—Beginning with the first fiscal year after regulations are promulgated to implement this Act, the Secretary of State and the Secretary of Homeland Security shall submit quarterly reports to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives containing

the numbers of aliens who were issued visas or otherwise provided nonimmigrant status under section 101(a)(15)(H)(v)(a) of the Immigrant and Nationality Act (8 U.S.C. 1101(a)(15)(H)(v)(a)) during the preceding 3-month period.

(2) ANNUAL SUBMISSION.—Beginning with the first fiscal year after regulations are promulgated to implement this Act, the Secretary of Homeland Security shall submit annual reports to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives, containing information on the countries of origin and occupations of, geographic area of employment in the United States, and compensation paid to, aliens who were issued visas or otherwise provided nonimmigrant status under such section 101(a)(15)(H)(v)(a). The Secretary shall compile such reports based on the data reported by employers to the Employment Eligibility Confirmation System established in section 402.

SEC. 1102. H–5 NONIMMIGRANT PETITIONER ACCOUNT.

Section 286 of the Immigration and Nationality Act (8 U.S.C. 1356) is amended by adding at the end the following:

"(w)(1) There is established in the general fund of the Treasury of the United States an account, which shall be known as the 'H–5 Nonimmigrant Petitioner Account'.

"(2) There shall be deposited as offsetting receipts into the H–5 Nonimmigrant Petitioners Account—

"(A) all fees collected under section 218A; and

"(B) all fines collected under section 212(n)(2)(I).

"(3) Of the fees and fines deposited into the H–5 Nonimmigrant Petitioner Account—

"(A) 53 percent shall remain available to the Secretary of Homeland Security for efforts related to the adjudication and implementation of the H–5 visa programs described in sections 221(a) and 250A and any other efforts necessary to carry out the provisions of the [Secure America and Orderly Immigration Act] and the amendments made by such Act, of which the Secretary shall allocate—

"(i) 10 percent shall remain available to the Secretary of Homeland Security for the border security efforts described in title I of the Secure America and Orderly Immigration Act.

"(ii) not more than 1 percent to promote public awareness of the H–5 visa program, to protect migrants from fraud, and to combat the

unauthorized practice of law described in title III of the Secure America and Orderly Immigration Act;

"(iii) not more than 1 percent to the Office of Citizenship to promote civics integration activities described in section 901 of the Secure America and Orderly Immigration Act; and

"(iv) 2 percent for the Civics Integration Grant Program under section 902 of the Secure America and Orderly Immigration Act.

"(B) 15 percent shall remain available to the Secretary of Labor for the enforcement of labor standards in those geographic and occupational areas in which H–5A visa holders are likely to be employed and for other enforcement efforts under the Secure America and Orderly Immigration Act;

"(C) 15 percent shall remain available to the Commissioner of Social Security for the creation and maintenance of the Employment Eligibility Confirmation System described in section 402 of the Secure America and Orderly Immigration Act;

"(D) 15 percent shall remain available to the Secretary of State to carry out any necessary provisions of the Secure America and Orderly Immigration Act; and

"(E) 2 percent shall remain available to the Secretary of Health and Human Services for the reimbursement of hospitals serving individuals working under programs established in this Act.".

SEC. 1103. ANTI-DISCRIMINATION PROTECTIONS.

Section 274B(a)(3)(B) of the Immigration and Nationality Act (8 U.S.C. 1324b(a)(3)(B)) is amended to read as follows:

"(B) is an alien who is—

"(i) lawfully admitted for permanent residence;

"(ii) granted the status of an alien lawfully admitted for temporary residence under section 210(a) or 245(a)(1);

"(iii) admitted as a refugee under section 207;

"(iv) granted asylum under section 208; or

"(v) granted the status of nonimmigrant under section 101(a)(15)(H)(v).".

SEC. 1104. WOMEN AND CHILDREN AT RISK OF HARM.

(a) CERTAIN CHILDREN AND WOMEN AT RISK OF HARM.—Section 101(a)(27) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)) is amended—

(1) in subparagraph (L), by inserting a semicolon at the end;

(2) in subparagraph (M), by striking the period at the end and inserting "; or"; and

(3) by adding at the end the following:

"(N) subject to subsection (j), an immigrant who is not present in the United States—

"(i) who is—

"(I) referred to a consular, immigration, or other designated official by a United States Government agency, an international organization, or recognized nongovernmental entity designated by the Secretary of State for purposes of such referrals; and

"(II) determined by such official to be a minor under 18 years of age (as determined under subsection (j)(5))—

"(aa) for whom no parent or legal guardian is able to provide adequate care;

"(bb) who faces a credible fear of harm related to his or her age;

"(cc) who lacks adequate protection from such harm; and

"(dd) for whom it has been determined to be in his or her best interests to be admitted to the United States; or

"(ii) who is—

"(I) referred to a consular or immigration official by a United States Government agency, an international organization or recognized nongovernmental entity designated by the Secretary of State for purposes of such referrals; and

"(II) determined by such official to be a female who has—

"(aa) a credible fear of harm related to her sex; and

"(bb) a lack of adequate protection from such harm.".

(b) STATUTORY CONSTRUCTION.—Section 101 of the Immigration and Nationality Act (8 U.S.C. 1101) is amended by adding at the end the following:

"(j)(1) No natural parent or prior adoptive parent of any alien provided special immigrant status under sub-

section (a)(27)(N)(i) shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act.

''(2)(A) No alien who qualifies for a special immigrant visa under subsection (a)(27)(N)(ii) may apply for derivative status or petition for any spouse who is represented by the alien as missing, deceased, or the source of harm at the time of the alien's application and admission. The Secretary of Homeland Security may waive this requirement for an alien who demonstrates that the alien's representations regarding the spouse were bona fide.

''(B) An alien who qualifies for a special immigrant visa under subsection (a)(27)(N) may apply for derivative status or petition for any sibling under the age of 18 years or children under the age of 18 years of any such alien, if accompanying or following to join the alien. For purposes of this subparagraph, a determination of age shall be made using the age of the alien on the date the petition is filed with the Department of Homeland Security.

''(3) An alien who qualifies for a special immigrant visa under subsection (a)(27)(N) shall be treated in the same manner as a refugee solely for purposes of section 412.

''(4) The provisions of paragraphs (4), (5), and (7)(A) of section 212(a) shall not be applicable to any

alien seeking admission to the United States under subsection (a)(27)(N), and the Secretary of Homeland Security may waive any other provision of such section (other than paragraph (2)(C) or subparagraph (A), (B), (C), or (E) of paragraph (3)) with respect to such an alien for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest. Any such waiver by the Secretary of Homeland Security shall be in writing and shall be granted only on an individual basis following an investigation. The Secretary of Homeland Security shall provide for the annual reporting to Congress of the number of waivers granted under this paragraph in the previous fiscal year and a summary of the reasons for granting such waivers.

''(5) For purposes of subsection (a)(27)(N)(i)(II), a determination of age shall be made using the age of the alien on the date on which the alien was referred to the consular, immigration, or other designated official.

''(6) The Secretary of Homeland Security shall waive any application fee for a special immigrant visa for an alien described in section 101(a)(27)(N).''.

(c) ALLOCATION OF SPECIAL IMMIGRANT VISAS.—Section 203(b)(4) of the Immigration Nationality Act (8 U.S.C. 1153(b)(4)) is amended by striking ''(A) or (B) thereof'' and inserting ''(A), (B), or (N) of such section''.

(d) EXPEDITED PROCESS.—Not later than 45 days after the date of referral to a consular, immigration, or other designated official as described in section 101(a)(27)(N) of the Immigration and Nationality Act, as added by subsection (a), special immigrant status shall be adjudicated and, if granted, the alien shall be—

(1) paroled to the United States pursuant to section 212(d)(5) of that Act (8 U.S.C. 1182(d)(5)); and

(2) allowed to apply for adjustment of status to permanent residence under section 245 of that Act (8 U.S.C. 1255) not later than 1 year after the alien's arrival in the United States.

(e) REQUIREMENT PRIOR TO ENTRY INTO THE UNTIED STATES.—

(1) DATABASE SEARCH.—An alien may not be admitted to the United States under this section or an amendment made by this section until the Secretary of Homeland Security has ensured that a search of each database maintained by an agency or department of the United States has been conducted to determine whether such alien is ineligible to be admitted to the Untied States on criminal, security, or related grounds.

(2) COOPERATION AND SCHEDULE.—The Secretary of Homeland Security and the head of each appropriate agency or department of the United States shall work cooperatively to ensure that each database search required by paragraph (1) is completed not later than 45 days after the date on which an alien files a petition seeking a special immigration visa under section 101(a)(27)(N) of the Immigration and Nationality Act, as added by subsection (a).

(f) REQUIREMENT AFTER ENTRY INTO THE UNITED STATES.—

(1) REQUIREMENT TO SUBMIT FINGERPRINTS.—

(A) IN GENERAL.—Not later than 30 days after the date that an alien enters the United States under this section or an amendment made by this section, the alien shall be fingerprinted and submit to the Secretary of Homeland Security such fingerprints and any other personal biometric data required by the Secretary.

(B) OTHER REQUIREMENTS.—The Secretary of Homeland Security may prescribe regulations that permit fingerprints submitted by

an alien under section 262 of the Immigration and Nationality Act (8 U.S.C. 1302) or any other provision of law to satisfy the requirement to submit fingerprints under subparagraph (A).

(2) DATABASE SEARCH.—The Secretary of Homeland Security shall ensure that a search of each database that contains fingerprints that is maintained by an agency or department of the United States be conducted to determine whether such alien is ineligible for an adjustment of status under any provision of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) on criminal, security, or related grounds.

(3) COOPERATION AND SCHEDULE.—The Secretary of Homeland Security and the head of each appropriate agency or department of the United States shall work cooperatively to ensure that each database search required under paragraph (2) is completed not later than 180 days after the date on which the alien enters the United States.

(4) ADMINISTRATIVE AND JUDICIAL REVIEW.—

(A) ADMINISTRATIVE REVIEW.—An alien who is admitted to the United States under this section or an amendment made by this section who is determined to be ineligible for an adjust-

ment of status pursuant to section 212 of the Immigration and Nationality Act (8 U.S.C. 1182) may appeal such a determination through the Administrative Appeals Office of the Bureau of Citizenship and Immigration Services of the Department of Homeland Security. The Secretary of Homeland Security shall ensure that a determination on such appeal is made not later than 60 days after the date on which the appeal is filed.

(B) JUDICIAL REVIEW.—Nothing in this section, or in an amendment made by this section, may preclude application of section 242(a)(2)(B) of the Immigration and Nationality Act (8 U.S.C. 1252(a)(2)(B)).

(g) REPORT TO CONGRESS.—Not later than 1 year after the date of enactment of this Act, the Secretary of Homeland Security shall report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives on the progress of the implementation of this section and the amendments made by this section, including—

(1) data related to the implementation of this section and the amendments made by this section;

(2) data regarding the number of placements of females and children who faces a credible fear of harm as referred to in section 101(a)(27)(N) of the Immigration and Nationality Act, as added by subsection (a); and

(3) any other information that the Secretary of Homeland Security determines to be appropriate.

(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section and the amendments made by this section.

SEC. 1105. EXPANSION OF S VISA.

(a) EXPANSION OF S VISA CLASSIFICATION.—Section 101(a)(15)(S) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(S)) is amended—

(1) in clause (i)—

(A) by striking ''Attorney General'' each place that term appears and inserting ''Secretary of Homeland Security''; and

(B) by striking ''or'' at the end; and

(2) in clause (ii)—

(A) by striking ''Attorney General'' and inserting ''Secretary of Homeland Security''; and

(B) by striking ''1956,'' and all that follows through ''the alien;'' and inserting the following: ''1956; or

''(iii) who the Secretary of Homeland Security and the Secretary of State, in consultation with the Director of Central Intelligence, jointly determine—

''(I) is 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

''(II) is willing to supply or has supplied, fully and in good faith, information described in subclause (I) to appropriate persons within the United States Government;

and, if the Secretary of Homeland Security (or with respect to clause (ii), the Secretary of State and the Secretary of Homeland Security jointly) considers it to be appropriate, the spouse, married and unmarried sons and

daughters, and parents of an alien described in clause (i), (ii), or (iii) if accompanying, or following to join, the alien;''.

(b) NUMERICAL LIMITATION.—Section 214(k)(1) of the Immigration and Nationality Act (8 U.S.C. 1184(k)(1)) is amended to read as follows:

''(1) The number of aliens who may be provided a visa as nonimmigrants under section 101(a)(15)(S) in any fiscal year may not exceed 3,500.''.

SEC. 1106. VOLUNTEERS.

It is not a violation of clauses (ii), (iii), or (iv) of subparagraph (A) for a religious denomination described in section 101(a)(27)(C)(i) or an affiliated religious organization described in section 101(a)(27)(C)(ii)(III), or their agents or officers, to encourage, invite, call, allow, or enable an alien, who is already present in the United States in violation of law to carry on the violation described in section 101(a)(27)(C)(ii)(I), as a volunteer who is not compensated as an employee, notwithstanding the provision of room, board, travel, and other basic living expenses.