

Section-by-Section Summary of the February 23, 2006, Chairman's Mark of the "Comprehensive Immigration Reform Act of 2006"

UPDATED to Reflect Passage by the Senate Judiciary Committee

- Title I – Border Enforcement
- Title II – Interior Enforcement
- Title III Unlawful Employment of Aliens
- Title IV – Nonimmigrant and Immigrant Visa Reform
- Title V – Backlog Reduction
- Title VI – Work Authorization and Legalization of Undocumented Individuals

Section 1. Short Table; Table of Contents. Section 1(a) establishes the bill's short title as the "Comprehensive Immigration Reform Act of 2006". Section 1(b) sets forth the bill's table of contents.

Sec. 2. References to the Immigration and Nationality Act. Section 2 provides that whenever in the Act an amendment or repeal is expressed in terms of an amendment, to, or repeal, of a section or other provision, the reference shall be considered to be made to a section or provision of the Immigration and Nationality Act.

Sec. 3. Definitions. Section 3 contains several definitions of terms used later in the bill, including "Department" and "Secretary".

Sec. 4. Severability. Section 4 would provide that, if any provision of this Act, any amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be invalid for any reason, such a finding of invalidity would not affect the remainder of the Act (or any amendments made thereto).

TITLE I – BORDER ENFORCEMENT

Subtitle A – Assets for Controlling United States Borders

Sec. 101 – Enforcement Personnel. Sec. 101 would, subject to the availability of appropriations, require the hiring of additional border personnel and authorize funding for such hires.

- Section 101(a) would require in each of fiscal years (FYs) 2007 through 2011 an increase of –
 1. 250 Customs and Border Protection officers
 2. 500 port of entry inspectors
 3. 200 personnel dedicated to the investigation of alien smuggling

- In addition, section 101(a) would require an increase of 1,000 each year (rather than current law, which requires an increase of 800 each year) in the number of full-time active duty investigators within the Department of Homeland Security investigating violations of immigration laws from fiscal years 2006 through 2010.
- Section 101(b) would authorize such sums as may be necessary for fiscal years 2007 through 2011 to carry out the increases in port of entry inspectors set forth in section 101(a)(1). It also would authorize such sums as may be necessary for fiscal years 2007 through 2011 for the increases in border patrol agents required by section 5202 of P.L. 108-458, the “Intelligence Reform and Terrorism Prevention Act of 2004,” and, pursuant to changes made in the Judiciary Committee, amends that section to increase the number of full-time border patrol agents by:¹
 - 2,000 in FY 2006
 - 2,400 in FYs 2007, 2008, 2009, 2010, and 2011.

The amendments to the Intelligence Reform Act made in the Judiciary Committee also require that, for FYs 2006-2011, in addition to the border patrol agents assigned to the northern border during the previous fiscal year, the Secretary of Homeland Security must assign a number of border patrol agents equal to not less than 20 percent of the net increase in border patrol agents during each such fiscal year.

Sec. 102. Technological Assets. Sec. 102 would require an increase in technological assets on the U.S. border, as well as require reporting on the acquisition of such assets and authorize funding for the procurement of them, and authorize funding for the acquisition of such assets.

- Section 102(a) would require the Secretary of Homeland Security to procure additional technological assets so as to establish a security perimeter known as a “virtual fence” along U.S. international borders to provide a barrier to illegal immigration.²
- Section 102(b) would require the Secretary of Homeland Security and Secretary of Defense to develop and implement a plan to increase the use of Department of

¹ This compares to Section 107 of the House-passed version of H.R. 4437, which would require the Secretary of Homeland Security to increase the number of full-time active duty port of entry inspectors by 250 each year beginning in fiscal year 2007 and continuing through fiscal year 2010, subject to the availability of appropriations. Section 107 also would authorize such sums as may be necessary for each such fiscal year to hire, train, equip, and support the additional inspectors.

² This compares to Section 1002 of the House-passed version of H.R. 4437, which would require the Department of Homeland Security to construct an estimated 700 miles of double-layered fencing, along with physical barriers, lighting, roads, cameras, and sensors, in five areas along the southwest border of the United States between the Pacific Ocean to the Gulf of Mexico.

Defense equipment to assist the Secretary in carrying out surveillance conducted at or near U.S. international land borders to prevent illegal immigration.³

- Section 102(c) would require the Secretary of Homeland Security and Secretary of Defense to report to Congress within six months after the date of enactment of the Act to report on the use and planned use of Department of Defense equipment to conduct border surveillance.
- Section 102(d) would authorize such sums as may be necessary for fiscal years 2007 through 2010 to procure the “virtual fence” required by section 102(a)

Sec. 103. Infrastructure. Section 103(a) would require the Secretary of Homeland Security to construct all-weather roads and acquire additional vehicle barriers and facilities necessary to achieve operational control of the international borders of the United States. Section 103(b) would authorize such sums as may be necessary to carry out to carry out section 103(a)²

Sec. 104. Border Patrol Checkpoints. Section 104 would authorize the Secretary of Homeland Security to maintain temporary or permanent checkpoints on roadways in border patrol sectors that are located in proximity to the international border between the United States and Mexico.

Sec. 105. Ports of Entry. Section 105 would authorize the Secretary of Homeland Security to construct additional ports of entry along the U.S. international land border, as the Secretary deems necessary, as well as make improvements.

Sec. 106. Construction of Strategic Border Fencing and Vehicle Barriers. Section 106, added during Judiciary Committee deliberations, aims to prevent illegal pedestrian and vehicular traffic entry across the U.S.-Mexico border in the Tucson and Yuma sectors by mandating that DHS replace all aged, damaged or deteriorating fencing running along this border with double or triple layered fencing. This fencing is to extend no less than two miles beyond the population centers of these sectors. This amendment also requires DHS to build no less than 200 miles of vehicle barriers and all-weather roads in these sectors (150 miles in the Tucson sector; 50 miles in the Yuma sector) running parallel to the international border. DHS must complete these tasks no more than two years after enactment of this Act, and is authorized to appropriate such funds as are necessary for this purpose. The DHS Secretary must report to Congress on the progress of the construction within 1 year of the bill’s enactment.

Subtitle B – Border Security Plans, Strategies, Reports

Sec. 111. Surveillance Plan. Section 111 would require the Secretary of Homeland Security, within six months of the date of enactment, to submit to the appropriate

³ This provision is similar, but not identical, to section 301(a) of the House-passed version of H.R. 4437.

congressional committees a comprehensive plan for the systematic surveillance of the international land and maritime borders of the United States, including a detailed estimate of the costs associated with the implementation, deployment, and maintenance of technologies used for surveillance.⁴

Sec. 112. National Strategy for Border Security. Section 112 would require the Secretary of Homeland Security, within one year of the date of enactment, to submit a National Strategy for Border Security to the appropriate congressional committees, with the goal of achieving operational control over the international land and maritime borders of the United States. The section would require the Strategy to be updated as needed and sent to Congress within 30 days of any update.⁵

Sec. 113. Reports on Improving the Exchange of Information on North American Security. Section 113 would require the Secretary of State, in consultation with the Secretary of Defense, to submit a report to Congress every six months on improving the exchange of information between the United States, Canada, and Mexico related to the security of North America. Required elements in the report would include such subjects as security clearances and document integrity; immigration and visa management; visa policy coordination and immigration security; North American visitor overstayers; terrorist watch lists; money laundering, currency smuggling, and alien smuggling; and law enforcement cooperation.

Sec. 114. Improving the Security of Mexico's Southern Border. Section 114 would require the Secretary of State, in coordination with the Secretary of Homeland Security, to cooperate with Canadian and Mexican officials to establish a program to assess the needs of Guatemala and Belize in securing their international borders and to provide technical assistance to those two countries in securing their borders. It also would require the two secretaries to cooperate with officials in Guatemalan and Belize to increase their ability to dismantle human smuggling organizations and gain additional control of their borders. Finally, it would require the Secretary of State, Secretary of Homeland Security, and FBI to work with the governments of Mexico, Guatemala, Belize, and other Central American countries to share information and coordinate strategies relating to Central American gang members. Any funds made available to carry out this section would be subject to the limitations contained in section 551 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act of 2006 (Pub. L. No. 109-102).

Sec. 115. Combating Human Smuggling. Section 115, added by the Judiciary Committee, would require the DHS to develop and implement a plan to improve coordination between ICE, CBP and any other federal, state, local or tribal authority involved in efforts to combat alien smuggling. This plan must address: interoperability of databases used in anti-smuggling efforts; personnel training; anti-smuggling methods and programs; effective use of visas for trafficking and other crime victims; effective use

⁴ This provision is nearly identical to section 101(a) of the House-passed version of H.R. 4437.

⁵ This provision is similar to section 101(b) of the House-passed version of H.R. 4437.

of methods and programs used to combat international money laundering and other operations that aid alien smuggling; and joint measures with DOS to enhance intelligence sharing and cooperation with foreign governments. A full report of this plan, including recommendations for legislative action, is to be submitted by DHS to Congress, not less than one year after implementation of the plan.

Subtitle C – Other Border Security Initiatives

Sec. 121. Biometric Data Enhancements. Section 121 would require that by October 1, 2007, the Secretary of Homeland Security, in consultation with the Attorney General of the United States, enhance connectivity between the IDENT and IAFIS fingerprint systems to ensure expeditious searches; as well as collect work with the Secretary of State to ensure that all fingers of aliens who must be fingerprinted are collected in the entry-exit system mandated by section 110 of the Illegal Immigration Reform and Immigrant Responsibility Act.⁶

Sec. 122. Secure Communication. Section 122 would require the Secretary of Homeland Security, as expeditiously as possible, to develop and implement a plan to ensure clear and secure two-way communication capabilities, including the specific use of satellite capabilities, among all Border Patrol agents conducting operations between ports of entry, as well as between Border Patrol agents and their respective border patrol stations, between Border Patrol agents and residents in remote areas along the U.S. border who do not have mobile communications, and between all appropriate Department of Homeland Security border security agencies and State, local, and tribal law enforcement agencies.⁷

Sec. 123. Border Patrol Training Capacity Review. Section 123 would require the Government Accountability Office (GAO) to conduct a review of the basic training provided to Border Patrol agents by the Department of Homeland Security to ensure that such training is provided as efficiently and cost-effectively as possible.⁸

Sec. 124. US-VISIT System. Section 124 would require DHS to submit a timeline for equipping all land borders with the US-VISIT entry/exit system, developing and deploying the exit component of the US-VISIT system at all land borders, and making all border screening systems operated by the Department interoperable.⁹

Sec. 125. Document Fraud Detection. Section 125 would require the Secretary of Homeland Security to provide training to CBP officers on identifying and detecting fraudulent travel documents; provide all CBP officers with access to the Forensic Documents Laboratory; require an assessment of and report to Congress on the Forensic

⁶ This provision is nearly identical to section 104 of the House-passed version of H.R. 4437

⁷ This provision is nearly identical to section 106 of the House-passed version of H.R. 4437.

⁸ This provision is nearly identical to section 110 of the House-passed version of H.R. 4437.

⁹ This provision is nearly identical to section 120 of the House-passed version of H.R. 4437.

Document Laboratory; and authorize the appropriation of such sums as may be necessary to carry out the section.

Sec. 126. Improved Document Integrity. Section 126 would require that all documents evidencing immigration status be machine-readable, tamper resistant, and include a biometric identifier.

Sec. 127. Cancellation of Visas. Section 127 would expand the consular authority to re-issue non-immigrant visas of individuals, previously overstayed, to consular posts in other than the country of nationality and to include the country of foreign residence.

Sec. 128. Biometric Entry-Exit System. Section 128 would make a number of changes in requirements and authorities relating to the entry/exit system.

- Section 128(a) would authorize the Secretary of Homeland Security to require biometric data and other information relating to the immigration status of aliens departing the United States.
- Section 128(b) would authorize immigration officers to collect biometric data from aliens who are either seeking admission to the United States or who are seeking to transit through the United States, as well as from lawful permanent residents who are seeking to enter the United States.
- Section 128(c) would authorize immigration officers to collect biometric data from alien crewmen seeking permission to temporarily land in the United States.
- Section 128(d) would make refusal to provide biometric information when it is requested of an alien a ground of inadmissibility but permit the Secretary to waive the ground of inadmissibility.
- Section 128(e) would waive the Administrative Procedure Act and other laws relating to the issuance of regulations with respect to the implementation of an automated entry and exit system. It also would authorize the appropriation of such sums as may be necessary for fiscal years 2007 and 2008 to implement the automated biometric entry and exit data system at all land border ports of entry.

Sec. 129. Border Study. Section 129 would require the Secretary of Homeland Security, in consultation with other officials, to conduct a study of the construction of a system of physical barriers along the southern international land and maritime border of the U.S. The study must include an assessment of:

- the necessity of constructing such a system, including the identification of areas of high priority for such construction, based upon factors such as the amount of drug trafficking and the number of illegal immigrants apprehended in such areas;
- the feasibility of constructing such a system;
- the environmental impact of such a system;

- the necessity for ports of entry along such a system;
- the impact such a system would have on international trade, commerce, and tourism;
- the effect of such a system on private property rights
- the costs associated with building such a barrier system;
- the effect of such a system on Indian reservations and the National Park System;
- the necessity of building such a system after implementation of provisions of this Act relating to guest workers, visa reform, worksite enforcement, and the likely effect of such provisions on the flow of immigration across the border;
- the impact of such a system on diplomatic relations between the U.S. and Mexico, Central, and South America;
- the impact of such a system on the quality of life in border communities;
- the likelihood that such a system would lead to increased violations of the human rights, health and civil rights of individuals in that region;
- the effect such a system would have on violence near the southern border; and
- the effect of such a system on the vulnerability of the U.S. to infiltration by terrorists.

Section 129(c) would require that a report on the above-described study be submitted to Congress within nine months after the date of enactment of the Act.

Sec. 130. Secure Border Initiative Financial Accountability. Section 130, added by the Judiciary Committee, would require the DHS Inspector General (IG) to review each contract related to the Secure Border Initiative having a value of more than \$20 million, to ensure full compliance with cost requirements, performance objectives, program milestones, inclusion of small, minority and women-owned businesses, and time lines. The IG is to complete such review no later than 60 days after initiation of the action; and upon conclusion of the contract. The IG is to submit a report to DHS upon completion of each review, addressing findings regarding: cost overruns; significant delays; lack of contract management; insufficient departmental financial oversight; bundling that limits ability of small businesses to compete; or any high risk business practices. Should improper conduct or wrongdoing be found during review, the IG is to report such findings to the appropriate DHS officials. No more than 30 days after receiving each IG report, DHS must submit a report to the Judiciary Committees of the House and Senate, describing report findings and any steps DHS has taken or plans to take in response to problems. No more than 60 days after initiation of each contract action with a foreign company, DHS must submit reports to the Judiciary Committees of the House and Senate. No more than 30 days after receiving information regarding proposed purchase of contract by foreign company to manage a U.S. port, the Committee on Foreign Investment must submit a report to Congress describing the purchase, any related security concerns, and the measures taken to address these concerns.

Sec. 131. Mandatory Detention for Aliens Apprehended at or Between Ports of Entry. Beginning October 1, 2006, section 131 would require the mandatory detention of aliens apprehended at or between U.S. ports of entry or along the international land and maritime border of the U.S., until removed or a final decision granting admission has been made. Exceptions are made for those who: under INA Sec. 235(a)(4), withdraw application for admission and immediately depart the U.S.; in accordance with INA Sec.

212(d)(5)(A), are paroled into the U.S. for humanitarian reasons or for the public benefit. Between 60 days after the date of enactment of this Act and October 1, 2006, a detained alien may be released with notice to appear if the DHS determines the alien poses no security risk and the alien provides bond of not less than \$5000. This mandatory detention requirement does not apply to those aliens who are natives or citizens of Western Hemisphere countries with which the U.S. does not have full diplomatic relations (currently, Cuba). In addition, the DHS retains authority to release detained aliens if it finds a credible fear of persecution. This provision was added by the Senate Judiciary Committee.

Sec. 132. Evasion of Inspection or During Violation of Arrival, Reporting, Entry, or Clearance Requirements. As added by the Judiciary Committee, section 132 would amend Chapter 27 of Title 18, USC to make it a crime, punishable by up to three years in prison, to attempt to elude or to elude a customs, immigration, or agricultural inspection officer at any port of entry or customs or immigration checkpoint. The offense would be punishable by up to 10 years in prison if the individual attempted to or inflicted bodily injury. If the act resulted in a death, a life sentence or the death penalty could be imposed. Under the amendment, willfully disregarding or disobeying the command of an official charged with enforcing immigration, customs or other laws would be punishable by up to five years in prison. For purposes of seizure and forfeiture under applicable law, in the case of use of a vehicle in the commission of this offense, or in the case of disregarding or disobeying the command of any immigration official, such conduct would constitute prima facie evidence of smuggling aliens or merchandise.

Subtitle D – Border Tunnel Prevention Act
(as added by the Senate Judiciary Committee)

Section 141. Short Table. Section 141 provides that this subtitle may be cited as the “Border Tunnel Prevention Act.

Section 142. Construction of Border Tunnel or Passage. Section 142 would amend Chapter 27 of Title 18 of the USC to provide that any person who knowingly constructs or finances the construction of a cross-border tunnel, other than a lawfully authorized tunnel, will be fined and imprisoned for up to 20 years. In addition, any person who knows or recklessly disregards the construction or use of such a tunnel on land owned or controlled by that person will be fined and imprisoned for up to 10 years. Any person who uses such a tunnel to unlawfully smuggle an alien, goods, controlled substances, weapons of mass destruction, or a member of a terrorist organization (as defined in INA § 212(a)(3)(B)(vi)) will be subject to a maximum term of imprisonment that is twice the maximum term of imprisonment that would have otherwise been applicable had the unlawful activity not made use of such a tunnel. Finally, section 142 would also amend 18 USC, § 982(a)(6) to add the construction of a cross-border tunnel to the list of crimes for which criminal forfeiture will be imposed if the violation was committed in connection with passport or visa issuance or use.

Section 143. Directive to the United States Sentencing Commission. Section 143 would direct the U.S. Sentencing Commission to promulgate or amend sentencing guidelines to provide for increased penalties for persons convicted of the offenses described in this subtitle.

TITLE II -- INTERIOR ENFORCEMENT

Sec. 201. Removal and Denial of Benefits to Terrorist Aliens. Section 201 would amend the INA to deny various immigration benefits, including asylum, cancellation of removal, voluntary departure, withholding of removal, and registry to various classes of non-citizens whom the Attorney General suspects of having engaged in “terrorist activity” or falling within other security-related grounds, and would apply to acts or conditions occurring or existing on or after the date of enactment. The original language making these changes retroactive was stricken during the Senate Judiciary Committee’s markup of the bill.^{10 11 12}

Sec. 202. Detention and Removal of Aliens Ordered Removed. Section 202 would modify the detention and removal procedures of the Department of Homeland Security (“DHS”) after a final removal order has been entered.^{13 14}

Under the modified procedures, DHS would—

- Calculating, Tolling and Extending the 90-Day Removal Period.
 1. calculate the detention and removal period to start at the latest of (1) the date the removal order becomes final; (ii) if a stay of removal has been granted, the date that stay expires; and (iii) if the person is confined (except for immigration purposes), the date of release from that confinement.
 2. extend detention and the removal period beyond 90 days where a person fails to make reasonable efforts to comply with the removal order or fully cooperate with the DHS to execute the removal.

¹⁰ Section 201(a) of H.R. 4437 contains elements of section 601(a)(2) of the House-passed version of H.R. 4437 but is substantively different in some respects.

¹¹ Section 201(b) of the Specter Chairman’s Mark is identical to section 601(a)(3) of the House-passed version of H.R. 4437.

¹² Section 201(c) of the Specter Chairman’s Mark is similar to section 601(a)(4) of the House-passed version of H.R. 4437.

¹³ Section 202(a) of the Specter Chairman’s Mark contains elements of section 602 of the House-passed version of H.R. 4437 but is substantively different in some respects.

¹⁴ Section 202(b) of the Specter Chairman’s Mark is similar to section 214 of the House-passed version of H.R. 4437.

3. freeze the commencement of the removal period until such time that a person is in the actual custody, and remains in such custody, of the DHS.
 4. toll the removal period during any period that DHS transfers custody to another federal or state agency.
- Authorizing Detention Beyond Removal Period.
 1. authorize the DHS to detain an individual with a court issued stay of removal during the pendency of such stay.
 2. authorize DHS to require that an individual on supervised release from removal perform undefined affirmative acts for purposes related to the enforcement of the immigration laws.
 3. authorize the detention of most individuals (those described in INA 241(a)(6) beyond the removal period at the discretion of the DHS “without any limitations other than those specified.”
 4. allow the DHS to parole certain individuals detained beyond the removal period if they are applicants for admission based on humanitarian grounds.
 5. require that a detention review process be established for certain detained individuals with final orders of removal. Individuals eligible for such detention review must have (1) effected an entry into the U.S., (2) made reasonable efforts to comply with removal order, (3) cooperated fully with the DHS’s efforts to carry out removal order and (4) not act to prevent removal.

In the detention review process DHS would have to consider evidence offered by the individual and any other information pertaining to removal. This provision would allow DHS, without limitation, to detain such an individual for 90-days beyond the 90 day removal period and would allow DHS to detain such an individual beyond the removal period and through actual removal, where there is a likelihood of removal in the reasonably foreseeable future or upon DHS written certification that the individual is within certain classes.

This provision would allow the certification to be made based on information available to the Secretary, including classified information. The provision would also authorize DHS to renew detention by certification every six-months, without limitation, and it would authorize the re-detention of individuals on supervised release.

6. require the detention of certain individuals with removal orders where such individual fails to cooperate with the removal process or the DHS certifies the detention.

7. allow DHS, at its discretion, to conduct custody reviews under current regulations or by use of the proposed review process for other individuals.
 8. restrict judicial review of any action or decision regarding detention and review to habeas petitions in the U.S. District Courts and only where all administrative remedies have been satisfied.
- Custody Determinations in Federal Criminal Cases
 1. modify Title 18 U.S. Code, Section 3142 to allow as judicial officer in federal criminal proceedings to consider immigration status when determining whether the defendant is a flight risk or danger to the community, for the purposes of setting bail.
 2. For bail hearings in certain federal criminal cases, modify Title 18 U.S.C. Section 3142 to create a presumption that no conditions of release will assure the defendant's appearance, if the judicial officer has probable cause to believe that the defendant is undocumented; has a final order of removal; or is an "alien" who has committed enumerated federal offenses (including e.g., certain offenses related to document fraud, false representation of citizenship, firearm shipment, illegal entry and reentry, harboring, or presence in violation of immigration laws or conditions (a crime created by section 206 in this bill)).

The amendments made by paragraph (1) of this section will apply to any alien subject to a final administrative removal, deportation, or exclusion order that was issued before, on, or after the date of the bill's enactment, and any act or condition occurring or existing before, on, or after the date of the bill's enactment.

Sec. 203. Aggravated Felons. Section 203 would expand the definition and negative consequences of an aggravated felony.

- Section 203(a)(2) would amend INA § 101(a)(43)(A) to provide that sexual abuse of a minor will be considered an aggravated felony whether or not the minority of the victim is established by evidence contained in the record of conviction or by extrinsic evidence.
- Section 203(a)(3) and (4) would amend the INA definition of "aggravated felony" to add additional conduct broadly relating to participation in the smuggling, movement, and residence of unauthorized non-citizens in the United States (as added by Section 205(c)), and to unlawful entry or unlawful presence or unlawful re-entry of non-citizens in the United States (as added by Sections 206 and 207).¹⁵

¹⁵ Section 203(a) of the Specter Chairman's Mark is similar to section 201 of the House-passed version of H.R. 4437.

- Section 203(a)(5) would amend the definition of “aggravated felony” to add accessory roles in aggravated felony offenses, such as aiding and abetting, soliciting, counseling, procuring, commanding, or inducing another to commit an aggravated felony.
- Section 203(b)(1) provides that the amendments made by this section will take effect on the date of enactment and apply to acts that occur on or after the enactment date. Section 203(b)(2) confirms that the amendments made by section 321 of the IIRIRA to INA § 101(a)(43) will continue to apply retroactively. Section 203(b) was added during the Senate Judiciary Committee’s markup of the bill.

Sec. 204. Terrorist Bars. Section 204 would add “terrorist activity” and security-related grounds for barring a good moral character finding for naturalization and make other changes to the good moral character bars currently existing in the statute. It also would impose limitations on judicial review of naturalization denials.

More specifically --

- Section 204(a) would amend the INA bars on a finding of “good moral character” necessary for naturalization to include non-citizens the Attorney General suspects of having engaged in “terrorist activity” or falling within other security-related grounds; to include non-citizens convicted of an aggravated felony at any time regardless of whether the crime was defined as an aggravated felony at the time of the conviction (unless the person completed his or her sentence no later than 10 years before the date of application for naturalization and obtains a waiver); and to allow the government to take into consideration the applicant’s conduct at any time even before the time period for which good moral character is required to be shown.¹⁶
- Section 204(b) would amend the INA immigrant visa provisions to preclude approval of a visa petition if there is a pending proceeding against the petitioner that could result, directly or indirectly, in his or her denaturalization or the loss of his or her lawful permanent resident status.¹⁷
- Section 204(d), as amended by the Judiciary Committee, would amend the INA provisions relating to federal court review of naturalization denials to impose a statutory 120-day time limit on seeking such review, and to require a person seeking review to show that the Secretary’s determination was contrary to law, except that in any proceeding other than a section 340 (revocation of naturalization) proceeding, the court would review for substantial evidence the administrative record and findings of the Secretary of Homeland Security regarding whether the alien possesses good moral

¹⁶ Section 204(a) of the Specter Chairman’s Mark contains elements of section 612(a) of the House-passed version of H.R. 4437 but is substantively different in some respects.

¹⁷ Section 204(b) of the Specter Chairman’s Mark is similar to section 609(c) of the House-passed version of H.R. 4437.

character, is attached to the principles of the Constitution, or is well disposed to the good order of the U.S.

- Section 204(e) would bar naturalization of any person if the Secretary of Homeland Security determines that the person was once a person engaged in “terrorist activity” or falling within other security-related grounds.¹⁸
- Section 204(g), as amended by the Judiciary Committee, would limit district court jurisdiction in cases of delay.¹⁹ If there is a failure to render a final administrative decision under § 335 before the end of the 180-day period beginning on the date on which the DHS completes all required examinations and interviews, the applicant may apply to the district court. The Secretary of Homeland Security must notify the applicant when all examinations and interviews have been completed, and the district court would only have jurisdiction to review the basis for the delay and remand the matter, with appropriate instructions, to the Secretary for his determination on the application.
- Under section 204(h), these changes would take effect on the date of enactment and apply to acts that occurred on or after such date. (Note that this section previously provided for the retroactive application of these changes. The Senate Judiciary Committee deleted the retroactivity language.)

Sec. 205. Increased Criminal Penalties Related to Gang Violence, Removal, and Alien Smuggling. Section 205 would increase penalties relating to alleged gang membership and association, failure to depart after removal, and alien smuggling, and would also make changes to rules for Temporary Protected Status.

- Section 205(a) would amend the INA inadmissibility and deportability grounds, and the rules and requirements for temporary protected status, to add grounds or bars for alleged members or participants in the activities of “criminal street gangs.”²⁰
- Section 205(a) would also authorize the Secretary of Homeland Security to terminate temporary protected status for national security reasons or any other reason immediately upon publication of notice in the Federal Register, and would strike the current prohibition on immigration detention of non-citizens granted temporary protected status to authorize the Secretary of Homeland Security to detain non-citizens provided temporary protected status whenever appropriate under any other provision of law.

¹⁸ Section 204(e) of the Specter Chairman’s Mark is similar to section 609(a) of the House-passed version of H.R. 4437.

¹⁹ Section 204(g) of the Specter Chairman’s Mark is similar to section 609(e) of the House-passed version of H.R. 4437.

²⁰ Section 205(a) of the Specter Chairman’s Mark contains elements of sections 608(a) and 608(b) of the House-passed version of H.R. 4437 but contains substantive differences.

- Section 205(b) would amend INA 243(a) penalties for failure to depart after removal to extend them to non-citizens found removable based on inadmissibility grounds, and imposes a minimum sentence of imprisonment of six months and a maximum of five years. This Section also imposes a minimum sentence of imprisonment of six months and a maximum of five or ten years for the INA 243(b) offense of willful failure to comply with the terms of release under post-removal order supervised release.²¹ In addition, via amendment during the Senate Judiciary Committee’s markup of the bill, section 205(b) would amend INA 243(d) to provide that the Secretary of Homeland Security, after consultation with DOS, may instruct DOS to deny visas to individuals from countries DHS determines has denied or unreasonably delayed acceptance of a citizen, subject, national or resident of that country, who has been ordered removed from U.S. Visa denials are to remain in effect until that country accepts the individual(s) in question.
- Section 205(c) would expand the scope of the federal criminal code penalties for “alien smuggling” and related offenses to add additional conduct broadly relating to participation in the smuggling, movement, and residence of unauthorized noncitizens in the United States, and adds additional penalties for such offenses, including for the employment of “unauthorized aliens.”²² An amendment made during the Senate Judiciary Committee markup of the bill ameliorated somewhat the scope of section 205(c) and broadened an exception for individuals and organization providing humanitarian assistance, including medical care, housing, counseling, victim services, and food, or transportation to a place where such assistance could be provided.

Sec. 206. Illegal Entry. Section 206 would make knowingly entering the U.S. at a time or place other than as designated by the DHS, or knowingly eluding examination or inspection, or knowingly entering by means of a false or misleading representation or concealment of a material fact punishable by a fine or imprisonment of up to 6 months, or both. A second or subsequent unlawful entry, or a violation following an order of voluntary departure, would be punishable by a fine or imprisonment of up to two years, or both. The penalty for unlawful entry would be further increased to (1) up to 10 years imprisonment if the violation occurred after conviction for 3 or more misdemeanors or a felony; (2) up to 15 years imprisonment if after conviction for a felony for which the sentence imposed was 30 months or more; (3) up to 20 years imprisonment if after conviction for a felony for which the sentence imposed was 60 months or more. The prior convictions would be elements of the crime that must be pled and proven beyond a reasonable doubt or admitted by the defendant. Previously, section 206 would have made unlawful presence in the United States a crime punishable under the same penalty scheme outlined above. However, the Senate Judiciary Committee amended the section to strike that language.

²¹ Section 205(b) of the Specter Chairman’s Mark is similar to section 603 of the House-passed version of H.R. 4437.

²² Section 205(c) of the Specter Chairman’s Mark contains elements of section 202(a) of the House-passed version of H.R. 4437 but is substantively different in some respects.

Sec. 207. Illegal Reentry. Section 207 would amend the current penalty enhancements for the crime of reentry after removal to (1) up to 10 years imprisonment for a person who was previously convicted of 3 or more misdemeanors or a felony; (2) up to 15 years imprisonment for a person who was previously convicted of a felony for which the sentence imposed was 30 months or more; (3) up to 20 years imprisonment for a person who was previously convicted of 3 felonies, or a felony for which the sentence imposed was 60 months or more, or murder, rape, kidnapping, a felony offense described in 18 U.S.C. Chapter 77 (relating to peonage and slavery) or 113B (relating to terrorism). The prior convictions would be elements of the crime that must be pled and proven beyond a reasonable doubt or admitted by the defendant. Section 207 would also provide that in making a collateral attack on the underlying removal order, a defendant would be required to prove by “clear and convincing evidence” his exhaustion of administrative remedies, deprivation of judicial review, and fundamental unfairness of the removal order. It would also mandate, upon a person’s unlawful reentry after removal, the re-incarceration of that person if he had been removed upon release from prison on parole, supervised release, or probation, for the remainder of the sentence of imprisonment which was pending at the time of removal.

Sec. 208. Reform of Passport, Visa, and Immigration Fraud Offenses. Section 208 would amend 18 U.S.C., Chapter 75 to include a host of new passport, document-related, and marriage fraud offenses and, in some instances, would reduce the level of intent required (which, by extension, expands the number of people who can be prosecuted). Examples of the kinds of activities that would be made criminal under this section include:

- knowingly uses any passport to enter or to attempt to enter the United States;
- knowingly uses ANY immigration document issued or designed for the use of another;
- knowingly makes a false statement or representation in an application for a U.S. passport (including supporting documentation); and
- knowingly furnishes a passport to a person for the use when such person is not the person for whom the passport was designed or issued.

Section 208 also would create a new chapter of definitions in chapter 75. For example, “falsely make” would mean to prepare or complete an immigration document with “knowledge or in reckless disregard” of the fact that the document contains a statement that is false. “False statement or representation” would be defined to include “a personation or an omission.”

In addition, section 208 would add new sections to 18 U.S.C., Chapter 75, including “seizures and forfeiture,” “marriage fraud,” and “additional jurisdiction” (punishing anyone who commits a crime within the special maritime and territorial jurisdiction of the United States. Similarly, this section would punish people who commit offenses

outside the U.S. covered in chapter 75 if it relates to an immigration document, commerce, etc.

Finally, read together with Section 222 (a “Conforming Amendment” that would amend INA § 101(a)(43)(P)), Section 208 would expand the definition of “aggravated felony” at INA § 101(a)(43)(P) to include any of the above described offenses that have been added to 18 U.S.C., Chapter 75 for which the term of imprisonment is at least 12 months.²³

A Senate Judiciary Committee amendment would further amend 18 U.S.C., Chapter 75 by adding a new § 1555 to provide a carve-out for refugees and asylees from the document fraud provisions outlined above. The amendment would exempt refugees, asylees and other vulnerable persons from the provisions of Title 18 USC sections 1542, 1544, 1546, and 1548, as amended by section 208. The amendment also would require the Attorney General, in consultation with the Secretary of Homeland Security, to develop binding prosecution guidelines for federal prosecutors to ensure that any prosecution of an alien for seeking entry into the U.S. by fraudulent or unlawful means is consistent with Article 31(1) of the 1951 Convention Relating to the Status of Refugees.

Sec. 209. Inadmissibility and Removal for Passport and Immigration Fraud Offenses. Section 209 would amend the INA inadmissibility and removal grounds to add convictions or admissions of conduct relating to passport, visa, and immigration fraud. (as added by Section 208(a)), and Section 209(c) would make these changes applicable in proceedings pending on or after the date of enactment, with respect to conduct occurring on or after that date.²⁴

Sec. 210. Incarceration of Criminal Aliens. Section 210 would mandate the continuation of the Institutional Removal Program (IRP) or the development of and implementation of another program to identify removable persons in federal and state correctional facilities and detain and remove them upon completion of their sentence. It would authorize expanding the IRP to all 50 states. It would allow state and local enforcement officers to hold a person for up to 14 days after the completion of his state prison sentence if he is removable or not lawfully present in the United States. It would also allow such local law enforcement to issue a detainer to hold aliens beyond the completion of their sentences and until ICE takes them into custody. Section 210 would require the use of technology such as videoconferencing to the maximum extent practicable to make IRP available in remote locations. IRP money would be authorized in “such sums as may be necessary” from 2007 through 2011.²⁵

²³ Section 208 of the Specter Chairman’s Mark contains elements of section 213 of the House-passed version of H.R. 4437 but is substantively different in some respects.

²⁴ Section 209 of the Specter Chairman’s Mark is similar to sections 217 and 218 of the House-passed version of H.R. 4437.

²⁵ Section 210 of the Specter Chairman’s Mark contains elements of section 223 of the House-passed version of H.R. 4437 but is substantively different in some respects.

Sec. 211. Encouraging Aliens to Depart Voluntarily. Section 211 would make a series of changes to voluntary departure. Any voluntary departure agreement would be void if the noncitizen files an appeal, for example, from denial of a motion to terminate proceedings. In addition, section 211 would reduce from 120 days to 60 days the period of voluntary departure that can be granted prior to the conclusion of proceedings; would reduce from 60 to 45 days the period of voluntary departure that can be granted at the conclusion of proceedings; would permit the Secretary of DHS to agree to a reduction of period of inadmissibility under INA 212(a)(9) regarding unlawful presence and persons previously removed; and would require the noncitizen to post a bond absent a finding of compelling evidence that posting the bond would pose serious financial hardship and that the bond is unnecessary to secure a timely departure. For voluntary departure granted after the commencement of proceedings, section 211 would require an advisal by an immigration judge of the consequences of failing to abide by a voluntary departure agreement, including a statement on the record of the amount of the civil penalty. Section 211 would also authorize the Secretary to promulgate regulations imposing additional conditions on voluntary departure.

Section 211 would preclude judicial review affecting or tolling voluntary departure, and contains express language precluding review of legal and constitutional questions under INA 242(a)(2)(D), as well as habeas corpus, mandamus and the All Writs Act.

Section 211 would also establish penalties for failure to comply with a voluntary departure agreement. It would provide that the Secretary can extend voluntary departure, but that no court and no motion of any form can extend the time for voluntary departure. If the terms of the agreement are violated, the noncitizen would be subject to a civil penalty of \$3,000, which can be collected immediately. The noncitizen would also be ineligible for voluntary departure, adjustment, cancellation of removal, change in nonimmigrant classification, or registry for the time that s/he remains in the United States plus an additional ten years. Motions to reopen would be precluded except for motions based on an application for withholding of removal or torture relief if the motion presents material evidence of changed country conditions arising after the order granting voluntary departure and there is a sufficient showing of eligibility for such protection.

This section would apply to voluntary departure orders made on or after 180 days following enactment, except that the portion on judicial review applies to any petition for review “entered” after enactment. It is unclear what this provision means.

The conditions of voluntary departure are also affected by changes to section 206(a)(2), which would penalize reentry following a voluntary departure order with a sentence of up to two years in prison, irrespective of whether the agreement was before an immigration judge or was entered into in lieu of proceedings.²⁶

²⁶ Section 211 of the Specter Chairman’s Mark contains elements of sections 208(a), 208(c)(2), and 208(d) of the House-passed version of H.R. 4437 but is substantively different in some respects.

Sec. 212. Deterring Aliens Ordered Removed from Remaining in the United States Unlawfully. Section 212(b) would amend the INA to bar noncitizens who are subject to a final removal order, and who willfully fail or refuse to depart from the United States, or to make timely application for travel documents necessary for departure, from eligibility for any discretionary relief from removal during the time the non-citizen remains in the United States and for a period of 10 years after the non-citizen's departure from the United States. The only exceptions would be for a non-citizen who has filed a timely motion to reopen under INA 240(c)(6), or who has filed a motion to reopen to seek withholding of removal under INA 241(b)(3) or protection against torture but only if the non-citizen presents proof of changed country conditions arising after the date of the final removal order.²⁷

Sec. 213. Prohibition of Sale of Firearms to, or the Possession of Firearms by Certain Aliens. Section 213 would expand the existing federal crimes of sale of firearms to and possession of firearms by any person unlawfully present or on a non-immigrant visa, to prohibit such sale to or possession by anyone paroled into the United States for urgent humanitarian reasons or significant public benefit.

Sec. 214. Uniform Statute of Limitations for Certain Immigration, Naturalization, and Peonage Offenses. Section 214 would establish a statute of limitations for all immigration crimes, including willful failure to register or to provide a change of address, as well as crimes involving trafficking in persons, of ten years. Section 214 also would extend the same statute of limitations to attempts at such crimes.²⁸

Sec. 215. Diplomatic Security Services. Section 215 would expand the authority of special agents of the Department of State and the Foreign Service to investigate identity theft and document fraud relating to the programs of the Department of State, peonage and slavery and federal offenses committed in the special maritime and territorial jurisdiction of the United States.

Sec. 216. Field Agent Allocation and Background Checks. As amended by the Judiciary Committee, section 216 would amend INA § 103(f) to require the Secretary of Homeland Security to allocate not less than 40 ICE agents and 15 USCIS agents to each state. The Secretary could waive this requirement for any state with a population of less than 2 million, as reported by the Census Bureau. This provision would take effect 90 days after the bill's enactment. Section 216 would also require the Secretary of Homeland Security to complete and assess background and security checks and to investigate and resolve any suspected or alleged fraud before the Secretary or the Attorney General may grant adjustment of status, or other relief, protection from removal, or other benefit or

²⁷ Section 212 of the Specter Chairman's Mark contains elements of section 209(a), 209(b), and 209(d) of the House-passed version of H.R. 4437 but is substantively different in some respects.

²⁸ Section 214 of the Specter Chairman's Mark is similar to section 215 of the House-passed version of H.R. 4437.

documentation under the immigration laws, without any time limit on when such background and security check or investigation must be completed.²⁹

Sec. 217. Construction. Section 217 would amend the INA to provide that nothing in the INA or any other statute shall be construed to require the federal government to grant any application, approve any petition, or grant or continue any status or benefit under the immigration laws to noncitizens suspected of having engaged in “terrorist activity” or falling within other security-related grounds, or with respect to whom a criminal or other investigation or law enforcement check has not been completed.

Sec. 218. State Criminal Alien Assistance Program. Section 218 would provide for reimbursement of state and local governments for costs associated with the prosecution and incarceration of undocumented criminal aliens. “Undocumented criminal aliens” would be defined as persons who have been convicted of a felony or two misdemeanors, and who either entered without inspection or failed to maintain status or comply with the terms of status. At the request of the chief executive of a state or local government, the Secretary of DHS would have to contract to compensate the State or locality for the incarceration or shall take the person into federal custody. Priority would have to be given to persons who have committed aggravated felonies.

Sec. 219. Transportation and Processing of Illegal Aliens Apprehended by State and Local Law Enforcement Officers. Added by the Judiciary Committee, section 219 would require the DHS to provide sufficient transportation and officers in order to transfer undocumented persons from state and local law enforcement custody to a DHS detention facility, and would authorize the DHS to appropriate such sums as may be necessary to do so for FYs 2007-2011.

Sec. 220. Reducing Illegal Immigration and Alien Smuggling on Tribal Lands. Section 220 would authorize grants to Indian tribes with land adjacent to an international border that may have been adversely affected by illegal immigration. The grants may be used for law enforcement, health care, environmental restoration and preserving cultural resources. It would further provide that within 180 days of enactment, the Secretary of DHS shall submit a report, including information on the level of access of Border patrol agents on tribal lands, the extent to which enforcement could be improved through enhanced access, and a strategy for obtaining access and identifying grants provided to Indian tribes that relate to border security.

Sec. 221. Alternatives to Detention. Section 221 would require the Secretary of DHS to conduct a study of the effectiveness of alternatives to detention, the Intensive Supervision Appearance Program, and other alternatives to detention, including release on recognizance, appearance bonds and electronic monitoring devices.

²⁹ Section 216 of the Specter Chairman’s Mark contains elements of section 122 of House-passed version of H.R. 4437 but is substantively different in some respects.

Sec. 222. Conforming Amendment. Section 222 would amend the INA definition of “aggravated felony” to add any passport, visa, and immigration fraud offense listed in chapter 75 of the federal criminal code, and would remove the exemption in certain cases for a first offense that the person committed to help a spouse, child, or parent enter or remain in the country.³⁰

Sec. 223. Reporting Requirements. Section 223 would make changes to the address reporting and registration requirements under the Immigration and Nationality Act, and would impose new and expanded penalties for violations of these requirements.

Sec. 224. State and Local Enforcement of Federal Immigration Laws. Added by the Judiciary Committee, section 224 would amend INA § 287(g) to require the DHS to reimburse state and local governments for costs incurred for training and equipment related to enforcement of Federal immigration laws. Section 224(b) would authorize the necessary appropriations to carry out this section.

Sec. 225. Removal of Drunk Drivers. Added by the Judiciary Committee, section 225 would amend INA § 101(a)(43)(F) to add a third drunken driving conviction to the list of aggravated felonies for which an alien may be deported, regardless of the states in which the convictions occurred or whether the offenses were classified as misdemeanors or felonies under state or federal law. This amendment would apply to convictions entered before, on, or after the date of enactment.

Sec. 226. Medical Services in Underserved Areas. Added by the Judiciary Committee, section 226 would amend § 220(c) of the Immigration and Nationality Technical Corrections Act of 1994 to permanently authorize the J-1 waiver program for foreign doctors working in underserved areas. The program was set to expire on June 1, 2006.

Sec. 227. Expedited Removal. Added by the Judiciary Committee, section 227 would expand expedited removal as follows:

Section 227(a) would amend INA § 238 to provide for the expedited removal of certain criminal aliens. Specifically, section 227(a) would:

- authorize the DHS to impose summary non-hearing proceedings under INA §238(b) for a greatly expanded class of individuals convicted of an offense “described in” the extremely broad aggravated felony deportability ground of INA §237(a)(2)(A)(iii), the firearms deportability ground of INA §237(a)(2)(C) and the miscellaneous deportability ground of INA §237(a)(2)(D)(relating to, among others, espionage, treason and sedition offenses).
- Specifically, allow for the expedited removal of these individuals, whether or not admitted into the United States, and whether or not they may be eligible for any relief from removal.

³⁰ Section 221 of the Specter Chairman’s Mark is similar to section 216 of the House-passed version of H.R. 4437.

- Allow a DHS officer, instead of a trained and impartial immigration judge, to make complicated legal determinations about whether a person is a citizen and is subject to removal.
- Create a conclusive presumption of deportability for anyone deemed by DHS to fall within this new class of people.

Section 227(b) would amend INA § 235(b)(1)(A)(iii) to require the Secretary of Homeland Security to apply expedited removal to aliens who are not nationals of Mexico or Canada, who have not been admitted or paroled into the U.S., and who are apprehended within 100 miles of an international land border and within 14 days of entry. An exception is provided for alien who are natives or citizens of a country in the Western Hemisphere with whose government the U.S. does not have full diplomatic relations and who arrive by aircraft at a port of entry or who are present in the U.S. and arrived in a manner at or between a port of entry.

Section 227(c) would amend INA § 242(f)(2) to provide that no court may stay, whether temporarily or otherwise, the removal of any alien pursuant to a final order under that section unless the alien shows by clear and convincing evidence that the entry or execution of such order is prohibited as a matter of law.

Section 227(d) provides that this section will take effect on the date of enactment and will apply to all aliens apprehended or convicted on or after that date.

Sec. 228. Protecting Immigrants from Convicted Sex Offenders. Added by the Judiciary Committee, section 228 would amend INA § 204(a)(1) to bar individuals convicted of the sex offenses in §§ 101(a)(43)(A), (I) and (K) from sponsoring family members unless the DHS determines that the convicted citizen or permanent resident poses no risk to the alien being sponsored.

Sec. 229. Law Enforcement Authority of States and Political Subdivisions and Transfer to Federal Custody. Added by the Judiciary Committee, section 229 would “affirm” the inherent authority of state and local law enforcement personnel to enforce federal criminal immigration laws during the normal course of carrying out their duties.

Sec. 230. Laundering of Monetary Instruments. Added by the Judiciary Committee, section 230 would amend Title 18 USC, section 1956(c)(7)(D) by inserting “section 1590 (relating to trafficking with respect to peonage, slavery, involuntary servitude, or forced labor),” after “section 1363 (relating to destruction of property within the special maritime and territorial jurisdiction),”; and by inserting “section 274(a) of the INA (relating to bringing in and harboring certain aliens),” after “section 590 of the Tariff Act of 1930.” These changes would add alien smuggling and trafficking to the list of crimes the financial proceeds from which are subject to the money laundering provisions of 18 USC.

Sec. 231. Listing of Immigration Violators in the National Crime Information Center Database. Added by the Judiciary Committee, section 231 would require the Secretary of

Homeland Security, within 180 days of the bill's enactment, to provide information to the National Crime Information Center (NCIC) related to aliens who may have violated certain immigration laws. The head of the NCIC would have to remove promptly any information related to an alien who is granted lawful authority to enter or remain legally in the U.S. In addition, the Secretary of Homeland Security, in consultation with the head of the NCIC, would be required to develop and implement a procedure by which an alien may petition to have erroneous information removed from the database.

Sec. 232. Cooperative Enforcement Programs. Added by the Judiciary Committee, section 232 would require the Secretary of Homeland Security, not later than 2 years after the date of enactment, to negotiate and execute, where practicable, a cooperative enforcement agreement under INA § 287(g) with at least 1 law enforcement agency in each state.

Sec. 233. Increase of Federal Detention Space and the Utilization of Facilities Identified for Closures as a Result of the Defense Base Closure Act of 1990. Added by the Judiciary Committee, section 233 would require the Secretary of Homeland Security to construct or acquire 20 additional detention facilities with the capacity to detain a combined total of at least 10,000 individuals. In acquiring such facilities, the Secretary must consider the transfer of appropriate portions of military installations approved for closure or realignment.

Sec. 234. Determination of Immigration Status of Individuals Charged with Federal Offenses. Added by the Judiciary Committee, section 234 would require the office of a U.S. attorney prosecuting a criminal case in federal court to determine whether each defendant in the case is lawfully present in the U.S., and to notify the court of his or her findings.

TITLE III – NONIMMIGRANT AND IMMIGRANT VISA REFORM

Sec. 301. Unlawful Employment of Aliens. Section 301 would significantly re-write section 274A of the INA, relating to the unlawful employment of aliens, in a number of ways.

- Prohibition on Hiring, Recruiting, and Referring Illegal Aliens. Paragraphs (a)(1) and (2) of the amended section 274A track current law which prohibits the hiring, recruiting, or referral of any alien with knowledge or with reason to know of the alien's illegal status, as well as the hiring of an individual without complying with the identification and employment documentation verification requirements of subsection (c) and the Electronic Employment Verification System requirements of subsection (d).
- Liability for Unlawful Contract Hire of Illegal Alien. Paragraph (a)(3) would make an employer liable for unlawful hiring if the employer uses a contract or subcontract to obtain labor after the date of enactment knowing or having reason to know that the individual is unauthorized.

- Hiring Ten or More Unauthorized Aliens. Paragraph (a)(4) would establish a rebuttable presumption of unlawful hiring if an employer hires more than 10 unauthorized aliens during a calendar year.
- Good Faith Defense. Paragraph (a)(5) tracks current law, providing a defense for employers who comply in good faith with the requirements of subsections (c) and (d) and who voluntarily use the Electronic Employment Verification System.
- Reasonable Cause That Employer Has Failed to Comply. Subsection (b) would provide that if the Secretary has reasonable cause to believe an employer has failed to comply with the requirements of this section, the Secretary would be authorized to require the employer to certify under penalty of perjury within 60 days that the employer is in compliance or has instituted a program to come into compliance. The 60-day period could be extended for good cause.
- Nationwide Expansion of Basic Pilot Program. Subsection (c) would amend the current documentation and verification requirements and would expand the current basic pilot into a nationwide mandatory system for all employers within 5 years.
- Acceptable Documents for I-9s. Paragraph (c)(1) tracks the current I-9 system by requiring employers to attest under penalty of perjury that they have verified the identity and work authorization status of their employees by examining a document establishing both work authorization and identity. It would change current law by establishing a new “totality of the circumstances” test that employers would be required to meet when determining whether documents provided by a new hire are genuine. Paragraph (c)(1) would also reduce the documents that an individual may provide to employers to prove identity. The only acceptable documents would be a U.S. passport, permanent resident card (or other document designated that DHS that proves both identity and employment authorization), driver’s license, military ID, or, for persons under 16, other documents designated by DHS. DHS may further limit this list if the Secretary determines that the documented is unreliable or being used fraudulently.
- Employee Attestation. Paragraph (c)(2) tracks current law by requiring employees to attest to being authorized to work as part of the I-9 system.
- Extension of Time for Mandatory Recordkeeping. Paragraph (c)(3) would lengthen the period that employers must keep records of compliance with the employment verification requirements 7 years. Currently employers must retain documents for only 3 years.
- Social Security No-Match Letters. Paragraph (c)(4) would require employers to maintain records of Social Security no-match letters and steps taken to resolve each issue described in a no-match notice. It would also require employers to maintain

records of any actions or correspondence related to clarifying doubts about an individual's identity or employment authorization.

- Employer Penalties. Paragraph (c)(5) would subject an employer who fails to comply with the documentation, recordkeeping, and other requirements of subsection (c) to penalties pursuant to subsection (e)(4)(B).
- No National ID Card. Paragraph (c)(6) would provide that nothing in this subsection authorizes the issuance or use of a national identification card.
- Mandatory Electronic Employment Verification System. Subsection (d) would create a mandatory Electronic Employment Verification System (EEVS) that would be phased-in over a 5-year period beginning with employers determined to be part of the critical infrastructure or directly related to national security. The initial phase-in would begin 180 days after enactment. Subsequent phases would be rolled-out from large to small employers. All employers would be required to participate within five years after the date of enactment. In general, the EEVS would only apply to new hires; however, employers determined to be part of the critical infrastructure would be required to apply the system to new hires and current employees. The Secretary would also have the authority and unreviewable discretion to require any employer to use the EEVS for current and new employees if DHS has reasonable cause to believe the employer has violated immigration law. Employers who receive a final nonconfirmation regarding an employee's work authorization would be required to provide DHS with any information regarding the individual that would help DHS enforce immigration laws. Employers would also be charged a fee to be determined by DHS to participate in the system.
 1. Social Security Administration and Department of Homeland Security. Paragraph (d)(1) would require the Secretary, in cooperation with the Commissioner of Social Security, to implement an Electronic Employment Verification System (EEVS).
 2. Electronic Operation of System. Paragraph (d)(2) would incorporate existing Basic Pilot program language requiring the Secretary to operate the verification system through electronic media through which participating employers can make inquiries as to whether individuals are work authorized. This paragraph would also require the Secretary to maintain records of inquiries and responses to inquiries and to do so in a manner that safeguards the information. The verification system would be required to provide a confirmation or tentative nonconfirmation of eligibility within 3 days of the submission. If the employer receives a tentative nonconfirmation from the verification system, and the employee contests that finding, the system would be required to produce a final confirmation or nonconfirmation within 10 days.
 3. Requirements for Employer Participation. Paragraph (d)(3) would outline the requirements for employer participation into the System. On the date of

enactment, the Secretary would be authorized through notice in the Federal Register to require participation in the EEVS by employers that the Secretary determines to be part of the critical infrastructure, or directly related to the national, or homeland security needs of the United States. Participation of these employers would apply with respect to both newly hired and currently hired employees. Two years after the date of enactment of this Act, employers with more than 5,000 employees would be required participate in the EEVS. Three years after the date of enactment, employers with less than 5,000 employees and with more than 1,000 employees would be required to participate in the EEVS. Four years after the date of enactment, employers with more than 250 employees and less than 1,000 employees would be required to participate in the EEVS. Five years after the date of enactment, all employers would be required to participate in EEVS.

4. Discretionary Participation of Employers. Paragraph d(4) would provide that the Secretary has the authority to permit participation in EEVS of employers not required to participate. In addition, the Secretary would be permitted to expand the participation of employers who are required to participate if there is reasonable cause to believe that the employer has violated the immigration laws. If such reasonable cause exists, the Secretary would be able to require the employer to use the system for existing workers in addition to new hires.
5. Secretary Authority to Delay or Waive Participation. Paragraph d(5) would provide that the Secretary is authorized to waive or delay the participation in EEVS but must provide notice to Congress of such waiver prior to the date such waiver is granted.
6. Consequences for Failure to Comply. Paragraph (d)(6) would provide that any failure to comply with the EEVS's requirements shall be treated as a violation of subsection (a)(1)(B)'s prohibition against hiring individuals without complying with this section, including the requirements of subsections (c) and (d). Subsection (d)(6) further provides that such failure to comply shall be treated as presumed violations of subsection (a)(1)(A)'s prohibition against the hiring of unauthorized aliens.
7. Procedures for Employer Participation. Paragraph (d)(7) would establish procedures for employers participating in the EEVS, including provision of identity and work authorization information, presentation of documentation, reliance on documentation, requirements for seeking confirmation or resolving nonconfirmations of work authorizations, and consequences of final nonconfirmations. This subsection largely incorporates language identical to that contained in the current Basic Pilot statute. A change from current law is a requirement that employers share information with DHS about employees who receive a final nonconfirmation.

8. Protection from Civil and Criminal Liability. Paragraph (d)(8) would protect from civil and criminal liability any person or entity who relies in good faith on information provided through the EEVS confirmation system. This incorporates existing language applicable to the Basic Pilot program authority.
 9. Prohibition on Other Uses. Paragraph (d)(9) would prohibit use of the EEVS by any Federal agency for any purposes other than enforcement and administration of the immigration laws, the SSA, or the criminal laws.
 10. Secretary Discretion to Modify. Paragraph (d)(10) would authorize the Secretary of Homeland Security to modify the requirements of the EEVS.
 11. Secretary Authority to Set Fees. Paragraph (d)(11) would allow the Secretary to establish, require, and modify fees for employers participating in the EEVS. Such fees may be set at a level that will recover the full cost of providing the EEVS to all participants . This provision further provides that fees are to be deposited and remain available as provided in INA sections 286(m) and (n), and that the EEVS is considered an immigration adjudication service under 286(n). This provision also allows the Secretary to modify the frequency or schedule for payment.
 12. Report to Congress on Accuracy of System. Paragraph (d)(12) requires that the Secretary submit a report to Congress within one year after enactment on the capacity, integrity, and accuracy of the EEVS.
- Compliance.
 1. Paragraph (e)(1) would require the Secretary to establish procedures for the filing of complaints and investigation of possible violations.
 2. Paragraph (e)(2) would ensure that immigration officers have reasonable access to evidence of employers they are investigating. It also authorizes DHS to compel the production of evidence by subpoena and to fine or void any mitigation of penalties available to employers who fail to comply with subpoenas.
 3. Paragraph (e)(3) would authorize the Secretary to issue pre-penalty notices to employers when there is reasonable cause to believe the employer has violated this section. It would provide employers a reasonable opportunity to defend their actions and to petition the Secretary for the remission or mitigation of any fine or penalty or to terminate the proceedings. Mitigating circumstances would include good faith compliance and participation in the EEVS. The paragraph also sets forth the procedures for the Secretary to follow when making a determination of whether there has been a violation and authorizes the Secretary to mitigate penalties or terminate proceedings in appropriate cases.
 4. Paragraph (e)(4) would set forth the civil monetary penalties for unlawfully hiring, recruiting, or referring unauthorized aliens or for continuing to employ an

individual who is unauthorized to work, as well as penalties for recordkeeping or verification practice violations.

5. Paragraph (e)(5) would provide that an employer may appeal an adverse determination within 45 days of the issuance of the final determination.
 6. Paragraph (e)(6) would authorize the Government to file suit in Federal court if an employer fails to comply with a final determination.
- Criminal Penalties. Subsection (f) would establish criminal penalties and injunction procedures for employers who engage in a pattern or practice of knowing violations of subsection (a)(1)(A), which prohibit hiring unauthorized aliens, or paragraph (a)(2), which prohibits continuing to employ unauthorized aliens after employer is aware or has reason to be aware that the alien is not authorized to work. Such employers can be fined up to \$10,000 for each unauthorized alien with respect to whom such a violation occurs, imprisoned up to six months, or both. This subsection further authorizes the Attorney General to bring a civil action requesting such monetary penalties or injunctive relief.
 - Prohibition of Indemnity Bonds. Subsection (g) would prohibit any employer from requiring prospective employees to post a bond or other security indemnifying the employer against liability arising from the employer's violation of this section. Violation of this prohibition is subject to civil penalties, and amounts obtained in the form of such bonds can be ordered to be deposited in the Employer Compliance Fund authorized by INA § 286(w).
 - Bar of Noncompliant Employers. Subsection (h) would bar noncompliant employers from eligibility for Federal contracts.
 - Miscellaneous Provisions. Subsection (i) contains several miscellaneous provisions.
 - Preemption. The provisions of this section would preempt any state or local law imposing civil or criminal sanctions upon those who employ, or recruit, or refer for a fee for employment, unauthorized aliens; or requiring, as a condition of conducting business that the business entity provide, build, fund or maintain a structure or area designed for use by day laborers at or near its place of business.
 - Use of Funds from Penalties. Subsection (j) would direct the deposit of funds paid for civil penalties into the employer compliance fund authorized by INA § 286(w).
 - Definitions. Subsection (k) contains several definitions used in section 274A.

Sec. 302. Employer Compliance Fund. Section 302 would establish a general fund of the Treasury and would name it the “Employer Compliance Fund.” Any offsetting receipts of civil monetary penalties collected under section 274A of the INA (Unlawful Employment of Aliens) would be deposited into the fund, and any amounts refunded would be used to enforce employer compliance with section 274A. Amounts deposited into the fund would remain available until expended and would be refunded, at least on a quarterly basis, to the Secretary of Homeland Security.

Sec. 303. Additional Worksite Enforcement and Fraud Detection Agents. Section 303 would require the Secretary to annually add at least 2,000 investigators dedicated to enforcing unlawful employment of aliens; and section 303(b) would add at least 1,000 Immigration Enforcement Agents dedicated to immigration fraud detection. Both sections 303(a) and 303 (b) would be subject to the availability of appropriations and carried out during the 5-year period beginning on the date of enactment of this Act. Section 303(c) would authorize the necessary appropriations to carry out this section during each of the fiscal years 2007 through 2011.

Sec. 304. Clarification of Ineligibility for Misrepresentation. Section 304 would change “citizen” to “national,” so that it would state that any alien who falsely represents himself or herself to be a national of the United States is inadmissible.

TITLE IV – NONIMMIGRANT AND IMMIGRANT VISA REFORM

Section 401: Immigration Impact Study. Section 401 states that any regulation increasing the number of aliens eligible for legal status can’t take place until 90 days after the date the Census Bureau, in conjunction with various executive branch agencies, submits to Congress a study examining the impacts on the U.S. of the current and proposed annual grants of immigrant and nonimmigrant status, and the impacts of the current level of illegal immigration. This report is to be presented to Congress within 90 days of the enactment of this Act, and is to focus on the impact of immigration on: the size of the US population over the next 50 years; the environment; the employment and wage rates, particularly in industries such as agriculture; health care; and the criminal justice system.

Section 402: Nonimmigrant Temporary Worker. Section 402 amends INA § 101(a)(15)(H) to create a new essential worker category (to be known as “H-2C”) for persons coming temporarily to the U.S. to initially perform labor or services other than those occupation classifications covered under INA § 101(a)(15)(H)(i)(b), (H)(ii)(a), (L), (O), (P), or (R). Spouses and children would be eligible to accompany or follow to join the principal alien.

Section 403: Admission of Nonimmigrant Temporary Guest Workers. Section 403 establishes new section 218A in INA Title II, and authorizes DOS to grant a temporary H-2C visa to an alien who demonstrates to DOS that he or she is capable of and intends to perform the labor or services required for an H-2C occupation. Alien must give proof

to DOS of job offer from employer in U.S., adhering to the requirements set forth in new section 218B below. The nonimmigrant worker is required to pass a criminal and security background check, pay a \$500 application fee, and undergo a medical examination. Certain grounds of inadmissibility may be waived for conduct occurring before enactment of this Act for humanitarian purposes, to ensure family unity, or if waiver is otherwise in public interest.

An H-2C may not change status under section 248, and is to be admitted for a period of 3 years, with one 3-year extension allowed. Period of authorized admission terminates if alien is unemployed for 60 or more consecutive days, at which point alien is required to leave U.S. unless DOS, in its sole and unreviewable discretion, reauthorizes alien for admission without requiring departure. Alien who leaves US due to authorization termination is eligible to work for employer as H-2C, provided alien has complied with all requirements of original entry. Failure to depart within 10 days after H-2C authorization is over is barred from receiving any immigration benefits in the future, outside of relief provided by asylum (section 208), restrictions on removal to a country where alien's life or freedom will be threatened (section 241(b)(3), and the Convention Against Torture. Penalty for illegal entry or overstay is a 10-year bar to reentry. H-2C alien whose period of authorization is still valid may exit and reenter US without obtaining new visa, but time spent outside US does not extend period of authorization.

Alien may not be granted H-2C status, or extension of such status, if alien violates any material term or fails to comply with any requirement of this status, including failure to report change of address. Alien may also be denied H-2C status or extension if the alien is otherwise inadmissible as a nonimmigrant, or if it would allow alien to exceed 6 years as an H-2C, unless alien has been physically present outside US for at least 1 year after expiration of H-2C status.

H-2C alien may accept a new offer of employment, provided new employer has complied with all requirements set forth in new section 218B below. Dependent spouse and children are eligible for nonimmigrant status under 101(a)(15)(H)(iv).

Section 404: Employer Obligations. Section 404 adds to INA Title II new section 218B, requiring employer who hires H-2C nonimmigrant to attest to the fact that such a hire did not and will not adversely affect the wages, working conditions, and employment status of US workers employed by the employer within the 180-day period beginning 90 days before the date on which petition is filed. US employer must also prove that good faith efforts in compliance with DOL regulations have been made to ensure that there are not sufficient US workers willing or available to fill the position. Finally, US employer must prove that H-2C worker is being sought for a bona fide job for which employer needs the labor or services, has been and is clearly open to any US worker, and for which employer will be able to place H-2C worker on the payroll.

Section 404 requires the employer to provide the same wages, benefits, and working conditions to H-2C workers as are provided to similarly employed U.S. workers, including providing the same level of health insurance coverage available to US workers,

at no cost to the H-2C worker. Employers may not hire H-2C workers as replacement workers during a strike or lockout.

DHS is to provide all approved H-2C petitions to DOL for potential audit. A copy of the H-2C petition and documents supporting each attestation also must be made available:

- to every H-2C worker so employed
- for public examination at employer's place of business or work site
- for 5 years after date petition filed

Section 404 requires the employer to notify DOL and DHS of an H-2C's separation from employment or transfer to another employer not more than 3 business days after date of such separation or transfer. Also, section 404 says that DOL shall render ineligible to participate in any labor certification programs any employer who, with respect to attestations, misrepresents, makes fraudulent statements, or otherwise fails to comply with the terms of such attestations.

Beginning 1 year after date of enactment of this Act, DHS may not approve any H-2C petition in areas of the country where the unemployment rate for unskilled and low-skilled workers during the most recent 6-month period averages more than 11%.

Section 404 also states that an H-2C worker may not be treated as an independent contractor, and shall not be denied, as a result of H-2C status, any right or remedy enjoyed by similarly employed US workers with that employer. Also, employer must comply with all applicable Federal, State and local tax laws. Finally, section 404 provides whistleblower protection for H-2C employees.

In addition, Section 404 requires that foreign labor contractors (and employers that engage in foreign labor contracting activity) disclose a variety of information to H-2C workers at the time of their recruitment, including, among other things, the location of employment, a description of the duties, compensation, benefits provided and any associated costs, existence of any labor dispute or labor organizing effort, the extent of any insurance coverage, any education or training required or provided, and a statement describing the protections of this Act. Foreign labor contractors are prohibited from providing false or misleading information and may not assess any fees to the worker for such recruitment. Information is to be provided in English, or, where necessary and reasonable, in the language of the H-2C worker.

Section 404 also states that no less than once every two years, each employer must notify DOL of the identity of any foreign labor contractor engaged by the employer. No person shall engage in foreign labor recruitment without registering with DOL, specifying activities to be performed. DOL shall promulgate regulations establishing an electronic process to investigate and approve an application for registration as a foreign labor contractor no later than 14 days after application is filed. DOL shall also promulgate regulations for the receipt and investigation of complaints regarding foreign labor contractor violations or misrepresentations. No complaint will be investigated if filed more than 12 months after date of violation, and only if DOL sees reasonable cause to

investigate. No later than 60 days after determination of reasonable cause, DOL shall issue a notice to interested parties and offer opportunity for a hearing on the complaint. DOL shall make a finding on the complaint no later than 60 days after the hearing. DOL may bring an action in any court of competent jurisdiction to seek remedial action (including injunctive relief), to recover damages, or to ensure compliance with terms above. DOL may also, after notice and opportunity for a hearing, impose administrative remedies and penalties, including those involving back wages, benefits, and civil monetary penalties. For violations involving the treatment of and H-2C worker as an independent contractor (subsection (e)) and/or whistleblowing (subsection (f)), civil monetary penalties may not exceed \$2000 per violation per affected worker, or \$5000 per violation per affected worker if the violation was willful. If such violation was willful and a US worker was harmed, such penalty may not exceed \$25,000. For labor recruitment violations under subsection (g) (regarding the disclosure of information in the paragraph above), civil monetary penalties may not be less than \$500 and may not exceed \$4000 per violation per affected worker. Penalties for willful subsection (g) violations may not be below \$2000 or above \$5000 per violation per affected worker. If such willful violation caused harm to a US worker, the fine may not be less than \$6000 or exceed \$35,000. Extreme physical or financial harm caused by subsection (g) violations may result in imprisonment for not more than 6 months, and/or a fine not to exceed \$35,000.

Section 405: Alien Employment Management System. Section 405 amends INA Title II (after section 218B, *as added by this Act*), adding section 218C, requiring DHS, in conjunction with DOL, DOS and the Commission of Social Security, to develop and implement a program to manage and track aliens described in INA sections 218A and D (*as added by this Act*). The program requires that employers be provided the opportunity to recruit and advertise employment opportunities available to US workers before hiring an H-2C nonimmigrant. It also requires employers to provide sufficient information to DHS in order to determine: if the nonimmigrant is employed; which employers have hired H-2C nonimmigrants; the number of H-2C nonimmigrants an employer is authorized to hire and is currently employing; and the occupation in which and length of time that an H-2C nonimmigrant has been employed in the US. Finally, the program must allow employers to request approval of multiple H-2C workers, and permit employers to submit applications electronically.

Section 406: Rulemaking; Effective Date. Section 406 requires DOL to set forth regulations no later than 6 months after date of enactment of this Act. Sections 403, 404, and 405 shall take effect the date that is 1 year after the date of enactment for aliens who, on that (latter) date, are in their home country.

Section 407: Recruitment of United States Workers. Section 407 requires that DOL establish a publicly accessible page on the DOL website providing a link to each State workforce agency's statewide electronic registry of jobs available throughout the US to US workers. Employer must attest that employer has posted an employment opportunity in accordance with INA 218B(b)(9) (*as added by this Act*). Employer shall maintain records describing reasons for not hiring US workers who applied for the position for not

less than one year after date of H-2C hire. DOL shall promulgate regulations for maintaining electronic job registries.

Section 408: Temporary Guest Worker Visa Program Task Force. Section 408 calls for the establishment of a task force to be known as the “Temporary Worker Task Force” to study the impact of H-2C aliens under section 101(a)(15)(H)(ii)(c) on the wages, conditions, and employment of US workers and to make recommendations to DOL on the need for an annual numerical limitation on the number of aliens that may be admitted in any fiscal year under that section. Task Force is to be composed of 10 members with expertise in economics, demography, labor, business, immigration, or other relevant fields. Members are to be appointed by the President, as well as the majority and minority leaders of the House and Senate. Individual appointed to Task Force may not be an officer or employee of the Federal Government or any State or local government. Eighteen months after enactment of this Act, Task Force shall submit to Congress, DOL, and DHS a report containing its findings and recommendations for imposing a numerical limit.

INA section 214(g)(1) is amended to set a numerical limitation of 400,000 on the number of aliens admitted for the first fiscal year under the H-2C program (101(a)(15)(H)(ii)(c)), and provides for incremental increases if the total number of visas allotted is reached at certain points before the end of the fiscal year. Similarly, if the total number of visas allotted in the previous fiscal year was not reached, then the number shall decrease by 10% the following fiscal year.

Section 408 amends INA section 245 to provide for adjustment of status to legal permanent residence aliens having nonimmigrant status under 101(a)(15)(H)(ii)(c), either through employer-based petitions or, if the alien has maintained H-2C status in the U.S. for a cumulative total of four years, through self-petition. Applicants for adjustment under this section must be physically present in the U.S. and establish that they meet the requirements of INA section 312 (setting forth the English language and civics requirements for naturalization applicants) or are satisfactorily pursuing a course of study to achieve such knowledge. Aliens will not be deemed ineligible for H-2C nonimmigrant status solely by virtue of the fact that they have filed for adjustment of status or have otherwise sought permanent residence in the U.S.

Section 408 also authorizes the Secretary of Homeland Security to extend the stay of an H-2C nonimmigrant beyond the period of authorized stay if a labor certification or immigrant visa petition filed on behalf of the alien is pending. In such cases, the alien’s stay shall be extended in one-year increments until a final decision is made on his or her lawful permanent residence.

Section 409: Requirements for Participating Countries. This amendment requires DOS, in conjunction with DHS and the Attorney General, to negotiate with the home country of aliens described in INA section 101(a)(15)(H)(ii)(c) (*as added by section 402*) in order to enter into a bilateral agreement with the US. This bilateral agreement is to require the home country to:

- Accept return of nationals ordered removed within 3 days of removal order
- Cooperate with US Government to control illegal immigration, gang membership, violence, and human trafficking and smuggling
- Provide US Government with passport information and criminal records of aliens seeking admission to or who are present in US, and with exit and entry data
- Educate nationals of the home country regarding US temporary worker programs to ensure nationals are not exploited
- Evaluate means to provide housing incentives in home country for returning workers

Section 410: S Visas. This amendment to section 101(a)(15)(S) of the INA would expand the classification of the S visa to include individuals that DHS, in conjunction with the CIA, feels are in possession of and are willing to share with the US Government knowledge regarding governments or organizations “at risk” for developing, selling or transferring weapons of mass destruction and/or related equipment and materials. The number of S visas issued per fiscal year may not exceed 1000. Spouses, unmarried children and parents of S visa holder can follow to join at the joint discretion of DHS and DOS. Reports developed from information provided by S visa holders may be classified in the interest of national security, or the security of those S visa holders. A non-classified version of the report may be submitted by DHS to the Senate and House Judiciary Committees to the extent feasible.

Section 411: L Visa Limitations. This amendment to section 214(c)(2) of the INA says an L visa beneficiary coming to the U.S. to open or be employed in a new facility may be approved for a period not to exceed 12 months only if the employer of such facility has a business plan, sufficient physical premises to carry out the proposed business activities, and the financial ability to start doing business immediately upon petition approval.

Extensions may not be granted until the employer submits to DHS the following:

- Evidence that employer meets all requirements of this subsection and section 101(a)(15)(L), and fully complies with business plan submitted
- Statement summarizing the original petition
- Evidence of truthfulness of representations made in connection with petition and evidence that employer has fully complied with business plan submitted
- Evidence that employer has been doing legitimate business and has taken commercially reasonable steps to establish the new facility as a commercial enterprise during the previous 12 months
- Statement of duties beneficiary has performed at new facility during previous 12 months and will perform over the next extension period
- Detailed information regarding number of employees and types of positions held
- Evidence of wages paid to employees if beneficiary will work in management/executive capacity
- Evidence of financial status of new facility
- Any other evidence DHS requests

If not all requirements above are satisfied, extension may still be granted if employer can demonstrate failure to comply was due to extraordinary circumstances beyond control of employer.

Under this amendment, L visa dependent spouse may not engage in employment in US during initial 9-month period of petition approval. Dependent spouse may be provided employment authorization upon approval of extension above.

DHS is to establish a program to work in conjunction with DOS for purposes of verification of company/facility's existence.

Section 412: Authorization of Appropriations. Section 412 authorizes DHS to appropriate such sums as is necessary to carry out Section 401-411 for the first fiscal year beginning before the date of enactment of this Act and each subsequent fiscal year up to 7 years after the effective date of the related DHS regulations.

Subtitle B—Immigration Injunction Reform

Section 421: Short Title. Subtitle is "Fairness in Immigration Litigation Act of 2006."

Section 422: Appropriate Remedies for Immigration Legislation. Section 422 amends the INA to establish guidelines for limiting the relief ordered against the federal government in any civil action pertaining to the administration or enforcement of immigration laws in the U.S. to the minimum necessary to correct the violation of law. Such relief is to minimize to the greatest extent possible any adverse impact on national security, and is to expire on the earliest date necessary for the Government to remedy the violation. Order granting relief shall be discussed and explained in writing, with sufficient detail so as to be reviewable by another court. Unless court makes determination that injunctive relief should be granted, preliminary injunctive relief is to automatically expire 90 days after date on which preliminary relief was entered. Court must promptly rule on any Government motion to vacate, modify, dissolve, or otherwise terminate order granting relief. Any Government motion to vacate, modify, dissolve or otherwise terminate an order granting prospective relief in any civil action pertaining to immigration law automatically stays the order 15 days after the date on which such motion is filed (unless the motion has previously been granted or denied). Automatic stay remains in effect until court enters order granting or denying Government's motion. Court may postpone automatic stay for 15 days for good cause. Orders attempting to block or delay automatic stay (other than above postponement of 15 days) are to be treated as orders refusing to terminate injunction and are immediately appealable. Nothing in this section prevents parties from entering into private settlement.

Section 423: Effective Date. Section 423 would clarify that all orders granting preliminary injunctive relief in an immigration-related civil action would automatically expire within 90 days unless the court makes the order final before the preliminary expiration. Any Government motion to vacate, modify, dissolve or otherwise terminate an order granting prospective relief in any civil action pertaining to immigration law

automatically stays the order 15 days after the date on which such motion is filed (unless the motion has previously been granted or denied). The stay continues until the court decides on the motion. Orders attempting to block or delay automatic stay are to be treated as orders blocking an automatic stay and are immediately appealable.

TITLE V – BACKLOG REDUCTION³¹

Sec. 501. Elimination of Existing Backlogs. Section 501 would remove immediate relatives (spouses, children, and parents) of U.S. citizens from the annual worldwide ceiling of 480,000 family-based visas and redistribute them elsewhere in the family-based preference system. It also would more than double the ceiling on employment-based visas from 140,000 to 290,000. And it would exempt spouses and children of employment-based immigrants from the limits.

Section 501 would provide for the recapture of both family-based and employment-based visas that go unused because of processing delays.

Sec. 502. Country Limits. Section 502 would increase per-country ceilings for both employment-based and family-based immigrant visas.

Sec. 503. Allocation of Immigrant Visas. Section 503 would redistribute the 480,000 family-based immigrant visas among the existing four family-based preference categories and redistribute the 290,000 employment-based visas, making modifications to the categories.

Sec. 504. Relief for Minor Children. Section 504 would allow an applicant for an immigrant visa who is a child to also bring his or her child with them as a derivative immigrant.

Sec. 505. Shortage Occupations. Added by the Judiciary Committee, section 505 would exempt from the worldwide and per-country numerical limitations aliens seeking entry to fill Schedule A (shortage) occupations including nurses and physical therapists. The exemption would begin on the date of enactment and end on September 30, 2017.

Sec. 506. Relief for Widows and Orphans. Added by the Judiciary Committee, section 506 would codify the Widows and Orphans Act of 2006 to establish a new special immigrant category for certain widows and orphans outside the U.S. who are determined to be at risk of harm.

Sec. 507. Student Visas. Section 507 would amend Section 101(a)(15)(F) of the INA to statutorily authorize 24 months of optional practical training for F-1 students and to

³¹ This title is drawn from provision in the November 9, 2005 Specter Chairman’s Mark. However, dropped from this draft are what were sections 505, “Amending the Affidavit of Support Requirements”; section 506, “Discretionary Authority”; and section 507, “Family Unity” of the November 9, 2005, Chairman’s Mark.

create a new F-4 visa for individuals pursuing an advanced degree in a math, engineering, technology, or a physical sciences program.

This provision also would amend Section 214(m) of the INA to allow students in the newly established F-4 visa classification to be intending immigrants if they plan to seek employment in the U.S. related to the graduate program's field of study. The F-4 visa would be valid for an additional year after completion of the graduate program while the individual seeks full-time employment related to the field of study. All F students would be eligible for off-campus employment unrelated to the field of study if they maintain good academic standing and the employer attests to the educational institution and the Department of Labor that it has spent at least 21 days recruiting U.S. citizens to fill the position and will pay the greater of the actual or prevailing wage. Such off-campus employment is limited to 20 hours per week during the academic term and 40 hours per week during vacation periods and between terms.

This provision also would amend Section 245(a) of the INA to authorize individuals in F-4 status who, after completing the advanced degree program, obtain full-time employment related to the field of study, to immediately adjust their status to permanent resident upon payment of a \$2,000 fee. [this fee was raised from \$1,000 to \$2,000 by an amendment passed by the Senate Judiciary Committee] The fee would be allocated to training and scholarships (80%) and fraud detection and prevention (20%).

Sec. 508. Visas for Individuals with Advanced Degrees. Section 508 would amend Section 201(b)(1) of the INA to exempt from the numerical limitations on employment-based immigration: (1) aliens with advanced degrees in science, technology, engineering, or math who have been working in a related field in the United States on a nonimmigrant visa during the three year period immediately preceding their application for an immigrant visa; and (2) aliens with extraordinary ability, outstanding professors and researchers, and aliens who have received a national interest waiver. This provision also would exempt immediate relatives of individuals who are admitted as employment-based immigrants from the numerical limitations of Section 203(b) of the INA. These amendments would apply to visa applications pending on, or filed after, the date of enactment.

This provision also subjects advanced degree holders in the sciences, technology, engineering, or mathematics from a U.S. university to the more flexible special handling labor certification procedures.

In addition, this provision increases the numbers of H-1B visas available to 115,000 in the first fiscal year following enactment, and adds a market-based escalator mechanism so that the number available annually will fluctuate in response to the demand for such visas in the preceding fiscal year. In addition, it exempts from the H-1B numerical limitation foreign nationals who have earned advanced degrees in science, technology, engineering, or math.

TITLE VI – WORK AUTHORIZATION AND LEGALIZATION OF UNDOCUMENTED INDIVIDUALS

Sec. 601. 218D Conditional Nonimmigrants. Section 601 adds a new INA § 218D to provide for the adjustment to conditional nonimmigrant worker status for an alien who can establish that he or she: (1) was physically present and employed in the U.S. before January 7, 2004; and (2) has been employed in the U.S. since that date, whether full time, part time, seasonally, or self-employed. The alien's spouse and children are also eligible to apply for adjustment of status or to follow to join the alien. An alien may conclusively establish such employment by submission of employment records maintained by: the Social Security Administration, Internal Revenue Service, or by any other federal, state or local government agency; an employer; or a labor union, day labor center, or an organization that assists workers in matters related to employment. Aliens who are unable to submit a document described above may satisfy the requirement of establishing previous employment by submitting at least two of the following types of documents that provide evidence of employment: bank records; business records; sworn affidavits from non-relatives who have direct knowledge of the alien's employment; or remittance records. The employment requirements under this section will not apply to minors under 21 years of age. In addition, an alien may satisfy the employment requirements, in whole or in part, by full-time attendance at either an institution of higher education or a secondary school.

An applicant for 218D status must pay an initial fine of \$1000 in addition to an application fee, submit fingerprints and other data, and undergo criminal and security background checks. An applicant is inadmissible as a 218D conditional nonimmigrant for grounds related to criminal conduct, security reasons, terrorist activity, or participating in the persecution of any person. Practicing polygamists and child abductors are also barred. However, other grounds of inadmissibility related to undocumented status will be waived.

The period of authorized stay for a 218D conditional nonimmigrant is 6 years, during which time the Secretary of Homeland Security may not authorize a change from 218D classification to any other nonimmigrant or immigrant classification. An extension of such status may be granted only to accommodate the processing of an application for adjustment of status under INA §245B, as added by this section.

An alien who files an application for 218D conditional nonimmigrant status (as well as the alien's spouse or child) will be granted employment authorization, permission to travel abroad, and may not be detained, determined inadmissible or deportable, or removed pending final adjudication of the alien's application for 218D status, unless the alien becomes ineligible for such status based upon conduct or criminal conviction. If an alien is apprehended after the date of enactment of this section but before the promulgation of regulations, and the alien can establish prima facie eligibility as a 218D conditional nonimmigrant, the Secretary of Homeland Security must provide the alien with an opportunity, after promulgation of regulations, to file an adjustment application. In addition, aliens in removal proceedings must be provided the opportunity to apply for

adjustment to 218D conditional nonimmigrant status unless a final administrative determination has already been made on such an application. Aliens present in the U.S. who have been ordered excluded, deported, removed, or ordered to depart voluntarily may, notwithstanding such order, apply for adjustment to 218D conditional nonimmigrant status. Such aliens will not be required to file motions to reopen, reconsider or vacate; if the Secretary of Homeland Security grants the application, he must cancel the order. If the application is denied, the original order will be enforceable.

Section 601 also requires the Secretary of Homeland Security to establish an appellate authority within USCIS to provide for a single level of administrative appellate review with respect to applications for adjustment to 218D status and also provides for judicial review in the federal courts.

This section also provides for the confidentiality of information furnished by 218D applicants and provides for criminal penalties for violations of the confidentiality provisions. Criminal penalties are also established for false statements made in connection with a 218D application

Sec. 602. Adjustment of Status for Section 218D Conditional Nonimmigrants. Section 602 adds a new INA § 245B to provide for the adjustment to lawful permanent resident status of a 218D alien if he or she satisfies the following requirements: (1) completes the employment requirement; (2) pays an additional \$1000 fine as well as the application fee; (3) is admissible under the immigration laws; (4) undergoes a medical examination; (5) shows proof of payment of taxes; (6) demonstrates the requisite knowledge of English and U.S. civics; (7) successfully undergoes criminal and security background checks; and (8) registers for military selective service, if applicable. The children and spouse of such an alien may also apply for adjustment.

Sec. 603. Aliens Not Subject to Direct Numerical Limitations. This section exempts from the direct numerical limitations aliens whose status is adjusted from 218D to lawful permanent resident status.

Sec. 604. Employer Protections. Section 604 provides that employers of aliens who apply for adjustment of status under this section (either initially, to 218D status, or from 218D to permanent resident status) shall not be subject to civil or criminal tax liability relating to the employment of the alien prior to his or her receiving employment authorization.

Sec. 605. Limitation on Adjustment of Status for Aliens Granted Conditional Nonimmigrant Work Authorization. Section 605 clarifies that the Secretary of Homeland Security may not grant lawful permanent resident status to Section 218D conditional nonimmigrants until the Secretary determines that the priority dates have become current for the class of aliens whose family-based or employment-based petitions for permanent residence were pending on date of enactment.

Sec. 606. Authorization of Appropriations. This section authorizes funds to the Secretary of Homeland Security to carry out the provisions in this title, and contains a Sense of Congress that such funds should be directly appropriated.

Subtitle B – Agricultural Job Opportunities, Benefits, and Security
[as added by the Senate Judiciary Committee]

Sec. 611. Short Title. This subtitle may be cited as the “Agricultural Job Opportunities, Benefits, and Security Act of 2006” or the “AgJobs Act of 2006.”

Sec. 612. Definitions. Section 612 contains several definitions of terms used later in the subtitle, including “agricultural employment” and “blue card status”.

Chapter 1 – Pilot Program for Earned Adjustment of Agricultural Workers

Sec. 613. Agricultural Workers. Section 613 would set up a “Blue Card Program” for aliens who:

- worked in U.S. agriculture for at least 150 days or 863 hours, whichever is less, during the 24-month period ending December 31, 2005;
- applied for such status during the 18-month period beginning on the first day of the seventh month that begins after the date of enactment;
- are not excluded by certain immigration laws (for example, as to criminal convictions); and
- paid an application fee and a \$100 fine upon obtaining a blue card.

No more than 1.5 million blue cards could be issued during the 5-year period beginning on the date of enactment of the Act.

After obtaining “blue card” status, participants would have to do the following to earn a green card:

- perform agricultural work for at least
 - 100 work days per year or 575 hours (but not less than 575 hours) per year for each year in the 5-year period beginning on the date of enactment of the Act; OR
 - 150 work days per year or 863 hours (but not less than 863 hours) per year for 3 years during the 5-year period beginning on the date of enactment of the Act;
- pay a \$400 fine; and
- establish payment of income taxes by the date of adjustment to lawful permanent status.

Aliens would have to apply for adjustment of status no later than 7 years after the date of enactment. Workers who don't meet these requirements, who are found to have filed a fraudulent application, or who don't apply for permanent status by the seventh year would

lose their “blue card” status and would be required to leave the country. Conviction of a felony, three misdemeanors, or a single crime that involves bodily injury, threat of serious bodily injury or injury to property in excess of \$500 also would end the “blue card” temporary resident status.

When a worker obtains “blue card” status, his/her spouse and minor children can remain in the U.S. and the spouse can also obtain a work permit. The spouse and minor children can also travel outside the U.S., as can the worker. Once the farmworker fulfills the requirements of the earned adjustment program and receives permanent resident status, his/her spouse and minor children also will be granted immigration status as long as they meet other requirements under immigration law.

Sec. 614. Correction of Social Security Records. Section 614 would amend the Social Security Act to provide for the correction of social security records of aliens granted blue card status under this Act.

Chapter 2 – Reform of H-2A Worker Program

Sec. 615. Amendments to the Immigration and Nationality Act. Section 615 would amend INA § 218 to make the following changes to the H-2A Program:

- The program’s application process would be streamlined to become a “labor attestation” program, rather than the current “labor certification” program, to respond to employers’ demands to reduce paperwork, delay and government oversight.
- H-2A employers must provide free housing to non-local U.S. and foreign workers but, under AgJOBS, could choose to provide a monetary housing allowance if the state’s Governor has certified that there is sufficient farmworker housing available in that area.
- Employers would still offer the highest of the “Adverse Effect Wage Rate” (AEWR), the prevailing wage or the federal or state minimum wage. AgJOBS would set the AEWR at the levels that were in effect on January 1, 2003 for a period of 3 years. During this 3-year period, the Congressional General Accountability Office (“GAO”) and a special commission would issue studies and recommendations as to the appropriate wage rate formula. If Congress fails to enact a new formula within 3 years of enactment, the AEWRs will be adjusted by the previous year’s inflation in the consumer price index, and annually thereafter, up to 4% per year.
- H-2A workers would have the right to file a federal lawsuit to enforce their wages, housing benefits, transportation cost reimbursements, minimum-work guarantee, motor vehicle safety protections, and the other terms of the written H-2A job offer.

- Workers employed as shearers, goat herders or dairy workers would be eligible to participate in the H-2A program even when they are year-round workers. Workers would be able to work up to three consecutive years, at which time they would be eligible to apply to adjust status to lawful permanent residency subject to the availability of employment-based visas.

Chapter 3 – Miscellaneous Provisions

Sec. 616. Determination and Use of User Fees. Section 616 requires the Secretary of Homeland Security to establish and periodically adjust a schedule of fees for the employment of aliens under this subtitle. This schedule will reflect a fee rate based on the number of job opportunities indicated in the employer’s application and sufficient to provide for the direct costs of providing services related to an employer’s authorization to employ aliens under this subtitle.

Sec. 617. Regulations. Implementing regulations must be issued no later than 1 year after the date of enactment.

Sec. 618. Report to Congress. Not later than September 30 of each year, the Secretary must submit a report to Congress that identifies for the previous year:

- the number of H-2A job opportunities approved and the number of workers actually admitted;
- the number of such aliens reported to have abandoned employment;
- the number of aliens who departed the U.S. within the period specified;
- the number of aliens who applied for adjustment to blue card status and the number whose status was actually adjusted;
- the number of aliens who applied for adjustment to permanent residence and the number who were approved for that status.

Sec. 619. Effective Date. Except as otherwise noted, sections 615 and 616 will take effect 1 year after the date of enactment. Within 180 days of enactment, the Secretary must report to Congress on the measures being taken to implement AgJobs.

Subtitle C—DREAM Act [as added by the Senate Judiciary Committee]

Section 621: Short Title.

Section 622: Definitions.

Section 623: Restoration of State option to determine residency for purposes of higher education benefits. Section 623 amends the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 to repeal the denial of an unlawful alien's eligibility for higher education benefits based on State residence unless a U.S. national is similarly eligible without regard to such State residence.

Section 624: Cancellation of Removal and adjustment of status of certain long-term residents who entered the United States as children: Section 624 authorizes the Secretary of Homeland Security to cancel the removal of, and adjust to conditional permanent resident status, an alien who: (1) entered the United States prior to his or her sixteenth birthday, and has been present in the United States for at least five years immediately preceding enactment of this Act; (2) is a person of good moral character; (3) is not inadmissible or deportable under specified criminal, security, smuggling, or illegal entrant or immigration violator grounds, with certain age-related exceptions; (4) at the time of application, has been admitted to an institution of higher education, or has earned a U.S. high school or equivalent diploma; and (5) from the age of 16 and older, has never been under a final order of exclusion, deportation, or removal.

Authorizes waiver of certain grounds of deportability or ineligibility for humanitarian, family or public interest reasons. Prohibits removal of an alien whose conditional status application is pending. Sets forth continuous presence provisions.

Section 625: Conditional Permanent Resident Status. Section 625 establishes, and sets forth the conditions for, a six-year conditional permanent resident status, including: (1) termination of status; and (2) removal of status to permanent status.

Requires an alien to file a petition for removal of conditional status which shall attest that such alien has: (1) maintained good moral character; (2) not abandoned his or her U.S. residence; (3) acquired a degree from a U.S. institution of higher education, or has completed at least two years in a U.S. bachelor's or higher degree program, and /or has served in the U.S. armed forces for at least two years and, if discharged, has received an honorable discharge. (Requires the petition to also show all U.S. secondary schools attended.)

Section 626: Retroactive Benefits. Section 626 states that: (1) if, upon the date of enactment of this Act, an alien has satisfied specified requirements under this Act the Secretary may adjust such alien's status to conditional permanent resident; and (2) an alien may petition for permanent resident status at the end of the conditional residence period if such alien has complied with specified requirements during the entire period of conditional residence.

Section 627: Exclusive Jurisdiction: Section 627 grants the DHS exclusive jurisdiction to determine eligibility for relief under this Act, except where an alien has been placed into deportation, exclusion, or removal proceedings in which case the Attorney General shall have exclusive jurisdiction until such proceedings' termination.

Section 627 also directs the Attorney General to stay the removal proceedings of any alien who: (1) meets the requirements for relief under this Act, except for high school graduation; and (2) is at least 12 years old and enrolled full-time in primary or secondary school. Finally, Section 627 permits such an alien to work consistent with appropriate labor laws.

Section 628: Penalties for false statements in application. Section 628 establishes fines and/or up to five years' imprisonment for (willful and knowing) false application statements.

Section 629: Confidentiality of information. Section 629 provides for confidentiality of information, with exceptions for specified law enforcement or coroner's office purposes. Establishes a fine of up to \$10,000 for knowing violations of such confidentiality.

Section 630: Expedited processing of applications; prohibition on fees. Provides for expedited application processing (without additional fees).

Section 631: Higher Education assistance. Section 631 states that an alien who adjusts to lawful permanent resident status under this Act shall be eligible only for the following assistance under title IV of the Higher Education Act of 1965: (1) specified student loans; (2) Federal work-study programs; and (3) other services under such title.

Section 632: GAO Report. Section 632 requires a General Accounting Office report seven years after enactment of this Act respecting the number of aliens: (1) who were eligible for cancellation of removal and adjustment of status; (2) who applied for adjustment of status; (3) who were granted adjustment of status; and (4) whose conditional status was removed.

Subtitle D – Grant Programs to Assist Nonimmigrant Workers

Sec. 641. Grants to Support Public Education and Community Training. Section 641 would provide for grants to qualified nonprofits to help educate the public about their potential eligibility for the conditional nonimmigrant status available under this section.

Sec. 642. Funding for the Office of Citizenship. Section 642 would authorize the Secretary of Homeland Security to establish the United States Citizenship and Immigration Foundation to support the functions of the Office of Citizenship within USCIS. It would authorize the Foundation to accept and make gifts, and authorize such sums as may be necessary to carry out the mission of the Office of Citizenship.

Sec. 643. Civics Integration Grant Program. Section 643 would require the Secretary of Homeland Security to establish a competitive grant program to provide financial assistance to nonprofit organizations, including faith-based organizations, to support entities certified by the Office of Citizenship to provide civics and English as a second language courses and other activities approved by the Secretary to promote civics and English as a second language.

47LE6020 4/12/06