Calendar No. _____

109TH CONGRESS
2D SESSION

S. _____

To amend the Immigration and Nationality Act to provide for comprehensive reform and to provide conditional nonimmigrant authorization for employment to undocumented aliens, and for other purposes.

IN THE SENATE OF THE UNITED STATES

_____

Mr. SPECTER from the Committee on _____ reported the following original bill; which was read twice and placed on the calendar

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A BILL

To amend the Immigration and Nationality Act to provide for comprehensive reform and to provide conditional nonimmigrant authorization for employment to undocumented aliens, and for other purposes.

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Comprehensive Immigration Reform Act of 2006''.

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

Sec. 1. Short title; table of contents.
Sec. 2. Reference to the Immigration and Nationality Act.
Sec. 3. Definitions.

TITLE I—BORDER ENFORCEMENT

Subtitle A—Assets for Controlling United States Borders

Sec. 101. Enforcement personnel.
Sec. 102. Technological assets.
Sec. 103. Infrastructure.
Sec. 104. Border patrol checkpoints.
Sec. 105. Ports of entry.

Subtitle B—Border Security Plans, Strategies, and Reports

Sec. 111. Surveillance plan.
Sec. 112. National Strategy for Border Security.
Sec. 113. Reports on improving the exchange of information on North American security.
Sec. 114. Improving the security of Mexico's southern border.

Subtitle C—Other Border Security Initiatives

Sec. 121. Biometric data enhancements.
Sec. 122. Secure communication.
Sec. 123. Border patrol training capacity review.
Sec. 124. US-VISIT System.
Sec. 125. Document fraud detection.
Sec. 126. Improved document integrity.
Sec. 127. Cancellation of visas.
Sec. 128. Biometric entry-exit system.
Sec. 129. Border study.

TITLE II—INTERIOR ENFORCEMENT

Sec. 201. Removal and denial of benefits to terrorist aliens.
Sec. 202. Detention and removal of aliens ordered removed.
Sec. 203. Aggravated felony.
Sec. 204. Terrorist bars.
Sec. 205. Increased criminal penalties related to gang violence, removal, and alien smuggling.
Sec. 206. Illegal entry or unlawful presence of an alien.
Sec. 207. Illegal reentry.
Sec. 208. Reform of passport, visa, and immigration fraud offenses.
Sec. 209. Inadmissibility and removal for passport and immigration fraud offenses.
Sec. 210. Incarceration of criminal aliens.
Sec. 211. Encouraging aliens to depart voluntarily.
Sec. 212. Deterring aliens ordered removed from remaining in the United States unlawfully.
Sec. 213. Prohibition of the sale of firearms to, or the possession of firearms by certain aliens.
Sec. 214. Uniform statute of limitations for certain immigration, naturalization, and peonage offenses.
Sec. 215. Diplomatic security service.
Sec. 216. Completion of background and security checks.

Sec. 217. Denial of benefits to terrorists and criminals.
Sec. 218. State criminal alien assistance program.
Sec. 219. Reducing illegal immigration and alien smuggling on tribal lands.
Sec. 220. Alternatives to detention.
Sec. 221. Conforming amendment.
Sec. 222. Reporting requirements.
Sec. 223. Severability.

TITLE III—UNLAWFUL EMPLOYMENT OF ALIENS

Sec. 301. Unlawful employment of aliens.
Sec. 302. Employer Compliance Fund.
Sec. 303. Additional worksite enforcement and fraud detection agents.
Sec. 304. Clarification of Ineligibility for misrepresentation.

TITLE IV—NONIMMIGRANT AND IMMIGRANT VISA REFORM

Sec. 401. Nonimmigrant temporary worker.
Sec. 402. Admission of nonimmigrant temporary guest workers.
Sec. 403. Employer obligations.
Sec. 404. Alien employment management system.
Sec. 405. Rulemaking; effective date.
Sec. 406. Recruitment of United States workers.
Sec. 407. Temporary guest worker visa program task force.
Sec. 408. Student visas.
Sec. 409. Visas for individuals with advanced degrees.
Sec. 410. Requirements for participating countries.
Sec. 411. Authorization of appropriations.

TITLE V—BACKLOG REDUCTION

Sec. 501. Elimination of existing backlogs.
Sec. 502. Country limits.
Sec. 503. Allocation of immigrant visas.
Sec. 504. Relief for minor children.

TITLE VI—CONDITIONAL NONIMMIGRANT WORKERS

Subtitle A—Conditional Nonimmigrant Work Authorization and Status

Sec. 601. Conditional nonimmigrant work authorization and status.

Subtitle B—Grant Programs to Assist Nonimmigrant Workers

Sec. 611. Grants to support public education and community training.
Sec. 612. Funding for the office of citizenship.
Sec. 613. Civics integration grant program.
Sec. 614. Temporary worker investment account study.

TITLE VII—IMMIGRATION LITIGATION REDUCTION

Subtitle A—Appeals and Review

Sec. 701. Consolidation of immigration appeals.
Sec. 702. Additional immigration personnel.
Sec. 703. Board of immigration appeals removal order authority.
Sec. 704. Judicial review of visa revocation.
Sec. 705. Reinstatement of removal orders.

Sec. 706. Withholding of removal.
Sec. 707. Certificate of reviewability.
Sec. 708. Discretionary decisions on motions to reopen or reconsider.
Sec. 709. Prohibition of attorney fee awards for review of final orders of removal.

Subtitle B—Immigration Review Reform

Sec. 711. Director of the executive office for immigration review.
Sec. 712. Board of immigration appeals.
Sec. 713. Immigration judges.
Sec. 714. Removal and review of judges.
Sec. 715. Legal orientation program.
Sec. 716. Regulations.

TITLE VIII—MISCELLANEOUS

Sec. 801. Technical and conforming amendments.

SEC. 2. REFERENCE TO THE IMMIGRATION AND NATIONALITY ACT.

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

SEC. 3. DEFINITIONS.

In this Act:

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

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

TITLE I—BORDER ENFORCEMENT

Subtitle A—Assets for Controlling United States Borders

SEC. 101. ENFORCEMENT PERSONNEL.

(a) ADDITIONAL PERSONNEL.—

(1) CUSTOMS AND BORDER PROTECTION OFFICERS.—In each of the fiscal years 2007 through 2011, the Secretary shall, subject to the availability of appropriations, increase by not less than 250 the number of positions for full-time active duty Customs and Border Protection officers.

(2) PORT OF ENTRY INSPECTORS.—In each of the fiscal years 2007 through 2011, the Secretary shall, subject to the availability of appropriations, increase by not less than 250 the number of positions for full-time active duty port of entry inspectors and provide appropriate training, equipment, and support to such additional inspectors.

(3) INVESTIGATIVE PERSONNEL.—

(A) IMMIGRATION AND CUSTOMS ENFORCEMENT INSPECTORS.—Section 5203 of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108–458; 118 Stat.

3734) is amended by striking ''800'' and inserting ''1000''.

(B) ADDITIONAL PERSONNEL.—In addition to the positions authorized under section 5203 of the Intelligence Reform and Terrorism Prevention Act of 2004, as amended by subparagraph (A), during each of the fiscal years 2007 through 2011, the Secretary shall, subject to the availability of appropriations, increase by not less than 200 the number of positions for personnel within the Department assigned to investigate alien smuggling.

(b) AUTHORIZATION OF APPROPRIATIONS.—

(1) CUSTOMS AND BORDER PROTECTION OFFICERS.—There are authorized to be appropriated to the Secretary such sums as may be necessary for each of the fiscal years 2007 through 2011 to carry out paragraph (1) of subsection (a).

(2) PORT OF ENTRY INSPECTORS.—There are authorized to be appropriated to the Secretary such sums as may be necessary for each of the fiscal years 2007 through 2011 to carry out paragraph (2) of subsection (a).

(3) BORDER PATROL AGENTS.—There are authorized to be appropriated to the Secretary such

sums as may be necessary for each of fiscal years 2007 through 2011 to carry out section 5202 of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108–458; 118 Stat. 3734).

SEC. 102. TECHNOLOGICAL ASSETS.

(a) ACQUISITION.—Subject to the availability of appropriations, the Secretary shall procure additional unmanned aerial vehicles, cameras, poles, sensors, and other technologies necessary to achieve operational control of the international borders of the United States and to establish a security perimeter known as a ''virtual fence'' along such international borders to provide a barrier to illegal immigration.

(b) INCREASED AVAILABILITY OF EQUIPMENT.—The Secretary and the Secretary of Defense shall develop and implement a plan to use authorities provided to the Secretary of Defense under chapter 18 of title 10, United States Code, to increase the availability and use of Department of Defense equipment, including unmanned aerial vehicles, tethered aerostat radars, and other surveillance equipment, to assist the Secretary in carrying out surveillance activities conducted at or near the international land borders of the United States to prevent illegal immigration.

(c) REPORT.—Not later than 6 months after the date of enactment of this Act, the Secretary and the Secretary of Defense shall submit to Congress a report that contains—

(1) a description of the current use of Department of Defense equipment to assist the Secretary in carrying out surveillance of the international land borders of the United States and assessment of the risks to citizens of the United States and foreign policy interests associated with the use of such equipment;

(2) the plan developed under subsection (b) to increase the use of Department of Defense equipment to assist such surveillance activities; and

(3) a description of the types of equipment and other support to be provided by the Secretary of Defense under such plan during the 1-year period beginning on the date of the submission of the report.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary such sums as may be necessary for each of the fiscal years 2007 through 2011 to carry out subsection (a).

(e) CONSTRUCTION.—Nothing in this section may be construed as altering or amending the prohibition on the use of any part of the Army or the Air Force as a posse

comitatus under section 1385 of title 18, United States Code.

SEC. 103. INFRASTRUCTURE.

(a) CONSTRUCTION OF BORDER CONTROL FACILITIES.—Subject to the availability of appropriations, the Secretary shall construct all-weather roads and acquire additional vehicle barriers and facilities necessary to achieve operational control of the international borders of the United States.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary such sums as may be necessary for each of the fiscal years 2007 through 2011 to carry out subsection (a).

SEC. 104. BORDER PATROL CHECKPOINTS.

The Secretary may 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.

The Secretary is authorized to—

(1) construct additional ports of entry along the international land borders of the United States, at locations to be determined by the Secretary; and

(2) make necessary improvements to the ports of entry in existence on the date of the enactment of this Act.

Subtitle B—Border Security Plans, Strategies, and Reports

SEC. 111. SURVEILLANCE PLAN.

(a) REQUIREMENT FOR PLAN.—The Secretary shall develop a comprehensive plan for the systematic surveillance of the international land and maritime borders of the United States.

(b) CONTENT.—The plan required by subsection (a) shall include the following:

(1) An assessment of existing technologies employed on the international land and maritime borders of the United States.

(2) A description of the compatibility of new surveillance technologies with surveillance technologies in use by the Secretary on the date of the enactment of this Act.

(3) A description of how the Commissioner of the United States Customs and Border Protection of the Department is working, or is expected to work, with the Under Secretary for Science and Technology of the Department to identify and test surveillance technology.

(4) A description of the specific surveillance technology to be deployed.

(5) Identification of any obstacles that may impede such deployment.

(6) A detailed estimate of all costs associated with such deployment and with continued maintenance of such technologies.

(7) A description of how the Secretary is working with the Administrator of the Federal Aviation Administration on safety and airspace control issues associated with the use of unmanned aerial vehicles.

(c) SUBMISSION TO CONGRESS.—Not later than 6 months after the date of the enactment of this Act, the Secretary shall submit to Congress the plan required by this section.

SEC. 112. NATIONAL STRATEGY FOR BORDER SECURITY.

(a) REQUIREMENT FOR STRATEGY.—The Secretary, in consultation with the heads of other appropriate Federal agencies, shall develop a National Strategy for Border Security that describes actions to be carried out to achieve operational control over all ports of entry into the United States and the international land and maritime borders of the United States.

(b) CONTENT.—The National Strategy for Border Security shall include the following:

(1) The implementation schedule for the comprehensive plan for systematic surveillance described in section 111.

(2) An assessment of the threat posed by terrorists and terrorist groups that may try to infiltrate the United States at locations along the international land and maritime borders of the United States.

(3) A risk assessment for all United States ports of entry and all portions of the international land and maritime borders of the United States that includes a description of activities being undertaken—

(A) to prevent the entry of terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband into the United States; and

(B) to protect critical infrastructure at or near such ports of entry or borders.

(4) An assessment of the legal requirements that prevent achieving and maintaining operational control over the entire international land and maritime borders of the United States.

(5) An assessment of the most appropriate, practical, and cost-effective means of defending the

international land and maritime borders of the United States against threats to security and illegal transit, including intelligence capacities, technology, equipment, personnel, and training needed to address security vulnerabilities.

(6) An assessment of staffing needs for all border security functions, taking into account threat and vulnerability information pertaining to the borders and the impact of new security programs, policies, and technologies.

(7) A description of the border security roles and missions of Federal, State, regional, local, and tribal authorities, and recommendations regarding actions the Secretary can carry out to improve coordination with such authorities to enable border security and enforcement activities to be carried out in a more efficient and effective manner.

(8) An assessment of existing efforts and technologies used for border security and the effect of the use of such efforts and technologies on civil rights, personal property rights, and civil liberties, including an assessment of efforts to take into account asylum seekers, trafficking victims, unaccompanied minor aliens, and other vulnerable populations.

(9) A prioritized list of research and development objectives to enhance the security of the international land and maritime borders of the United States.

(10) A description of ways to ensure that the free flow of travel and commerce is not diminished by efforts, activities, and programs aimed at securing the international land and maritime borders of the United States.

(11) An assessment of additional detention facilities and beds that are needed to detain unlawful aliens apprehended at United States ports of entry or along the international land borders of the United States.

(12) A description of the performance metrics to be used to ensure accountability by the bureaus of the Department in implementing such Strategy.

(13) A schedule for the implementation of the security measures described in such Strategy, including a prioritization of security measures, realistic deadlines for addressing the security and enforcement needs, an estimate of the resources needed to carry out such measures, and a description of how such resources should be allocated.

(c) CONSULTATION.—In developing the National Strategy for Border Security, the Secretary shall consult with representatives of—

(1) State, local, and tribal authorities with responsibility for locations along the international land and maritime borders of the United States; and

(2) appropriate private sector entities, nongovernmental organizations, and affected communities that have expertise in areas related to border security.

(d) COORDINATION.—The National Strategy for Border Security shall be consistent with the National Strategy for Maritime Security developed pursuant to Homeland Security Presidential Directive 13, dated December 21, 2004.

(e) SUBMISSION TO CONGRESS.—

(1) STRATEGY.—Not later than 1 year after the date of the enactment of this Act, the Secretary shall submit to Congress the National Strategy for Border Security.

(2) UPDATES.—The Secretary shall submit to Congress any update of such Strategy that the Secretary determines is necessary, not later than 30 days after such update is developed.

(f) IMMEDIATE ACTION.—Nothing in this section or section 111 may be construed to relieve the Secretary of the responsibility to take all actions necessary and appropriate to achieve and maintain operational control over the entire international land and maritime borders of the United States.

SEC. 113. REPORTS ON IMPROVING THE EXCHANGE OF INFORMATION ON NORTH AMERICAN SECURITY.

(a) REQUIREMENT FOR REPORTS.—Not later than 1 year after the date of the enactment of this Act, and annually thereafter, the Secretary of State, in coordination with the Secretary and the heads of other appropriate Federal agencies, shall submit to Congress a report on improving the exchange of information related to the security of North America.

(b) CONTENTS.—Each report submitted under subsection (a) shall contain a description of the following:

(1) SECURITY CLEARANCES AND DOCUMENT INTEGRITY.—The progress made toward the development of common enrollment, security, technical, and biometric standards for the issuance, authentication, validation, and repudiation of secure documents, including—

(A) technical and biometric standards based on best practices and consistent with international standards for the issuance, authentication, validation, and repudiation of travel documents, including—

(i) passports;

(ii) visas; and

(iii) permanent resident cards;

(B) working with Canada and Mexico to encourage foreign governments to enact laws to combat alien smuggling and trafficking, and laws to forbid the use and manufacture of fraudulent travel documents and to promote information sharing;

(C) applying the necessary pressures and support to ensure that other countries meet proper travel document standards and are committed to travel document verification before the citizens of such countries travel internationally, including travel by such citizens to the United States; and

(D) providing technical assistance for the development and maintenance of a national database built upon identified best practices for

biometrics associated with visa and travel documents.

(2) IMMIGRATION AND VISA MANAGEMENT.—The progress of efforts to share information regarding high-risk individuals who may attempt to enter Canada, Mexico, or the United States, including the progress made—

(A) in implementing the Statement of Mutual Understanding on Information Sharing, signed by Canada and the United States in February 2003; and

(B) in identifying trends related to immigration fraud, including asylum and document fraud, and to analyze such trends.

(3) VISA POLICY COORDINATION AND IMMIGRATION SECURITY.—The progress made by Canada, Mexico, and the United States to enhance the security of North America by cooperating on visa policy and identifying best practices regarding immigration security, including the progress made—

(A) in enhancing consultation among officials who issue visas at the consulates or embassies of Canada, Mexico, or the United States throughout the world to share information, trends, and best practices on visa flows;

(B) in comparing the procedures and policies of Canada and the United States related to visitor visa processing, including—

(i) application process;

(ii) interview policy;

(iii) general screening procedures;

(iv) visa validity;

(v) quality control measures; and

(vi) access to appeal or review;

(C) in exploring methods for Canada, Mexico, and the United States to waive visa requirements for nationals and citizens of the same foreign countries;

(D) in providing technical assistance for the development and maintenance of a national database built upon identified best practices for biometrics associated with immigration violators;

(E) in developing and implementing an immigration security strategy for North America that works toward the development of a common security perimeter by enhancing technical assistance for programs and systems to support advance automated reporting and risk targeting of international passengers;

(F) in sharing information on lost and stolen passports on a real-time basis among immigration or law enforcement officials of Canada, Mexico, and the United States; and

(G) in collecting 10 fingerprints from each individual who applies for a visa.

(4) NORTH AMERICAN VISITOR OVERSTAY PROGRAM.—The progress made by Canada and the United States in implementing parallel entry-exit tracking systems that, while respecting the privacy laws of both countries, share information regarding third country nationals who have overstayed their period of authorized admission in either Canada or the United States.

(5) TERRORIST WATCH LISTS.—The progress made in enhancing the capacity of the United States to combat terrorism through the coordination of counterterrorism efforts, including the progress made—

(A) in developing and implementing bilateral agreements between Canada and the United States and between Mexico and the United States to govern the sharing of terrorist watch list data and to comprehensively enu-

merate the uses of such data by the governments of each country;

(B) in establishing appropriate linkages among Canada, Mexico, and the United States Terrorist Screening Center; and

(C) in exploring with foreign governments the establishment of a multilateral watch list mechanism that would facilitate direct coordination between the country that identifies an individual as an individual included on a watch list, and the country that owns such list, including procedures that satisfy the security concerns and are consistent with the privacy and other laws of each participating country.

(6) MONEY LAUNDERING, CURRENCY SMUGGLING, AND ALIEN SMUGGLING.—The progress made in improving information sharing and law enforcement cooperation in combating organized crime, including the progress made—

(A) in combating currency smuggling, money laundering, alien smuggling, and trafficking in alcohol, firearms, and explosives;

(B) in implementing the agreement between Canada and the United States known as the Firearms Trafficking Action Plan;

(C) in determining the feasibility of formulating a firearms trafficking action plan between Mexico and the United States;

(D) in developing a joint threat assessment on organized crime between Canada and the United States;

(E) in determining the feasibility of formulating a joint threat assessment on organized crime between Mexico and the United States;

(F) in developing mechanisms to exchange information on findings, seizures, and capture of individuals transporting undeclared currency; and

(G) in developing and implementing a plan to combat the transnational threat of illegal drug trafficking.

(7) LAW ENFORCEMENT COOPERATION.—The progress made in enhancing law enforcement cooperation among Canada, Mexico, and the United States through enhanced technical assistance for the development and maintenance of a national database built upon identified best practices for biometrics associated with known and suspected criminals or terrorists, including exploring the formation of law enforcement teams that include personnel from the

United States and Mexico, and appropriate procedures for such teams.

SEC. 114. IMPROVING THE SECURITY OF MEXICO'S SOUTHERN BORDER.

(a) TECHNICAL ASSISTANCE.—The Secretary of State, in coordination with the Secretary, shall work to cooperate with the head of Foreign Affairs Canada and the appropriate officials of the Government of Mexico to establish a program—

(1) to assess the specific needs of Guatemala and Belize in maintaining the security of the international borders of such countries;

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

(3) to provide technical assistance to Guatemala and Belize to promote issuance of secure passports and travel documents by such countries; and

(4) to encourage Guatemala and Belize—

(A) to control alien smuggling and trafficking;

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

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

(b) BORDER SECURITY FOR BELIZE, GUATEMALA, AND MEXICO.—The Secretary, in consultation with the Secretary of State, shall work to cooperate—

(1) with the appropriate officials of the Government of Guatemala and the Government of Belize to provide law enforcement assistance to Guatemala and Belize that specifically addresses immigration issues to increase the ability of the Government of Guatemala to dismantle human smuggling organizations and gain additional control over the international border between Guatemala and Belize; and

(2) with the appropriate officials of the Government of Belize, the Government of Guatemala, the Government of Mexico, and the governments of neighboring contiguous countries to establish a program to provide needed equipment, technical assistance, and vehicles to manage, regulate, and patrol the international borders between Mexico and Guatemala and between Mexico and Belize.

(c) TRACKING CENTRAL AMERICAN GANGS.—The Secretary of State, in coordination with the Secretary and the Director of the Federal Bureau of Investigation, shall work to cooperate with the appropriate officials of the

Government of Mexico, the Government of Guatemala, the Government of Belize, and the governments of other Central American countries—

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

(2) to establish a program and database to track individuals involved in Central American gang activities;

(3) to develop a mechanism that is acceptable to the governments of Belize, Guatemala, Mexico, the United States, and other appropriate countries to notify such a government if an individual suspected of gang activity will be deported to that country prior to the deportation and to provide support for the reintegration of such deportees into that country; and

(4) to develop an agreement to share all relevant information related to individuals connected with Central American gangs.

Subtitle C—Other Border Security Initiatives

SEC. 121. BIOMETRIC DATA ENHANCEMENTS.

Not later than October 1, 2007, the Secretary shall—

(1) in consultation with the Attorney General, enhance connectivity between the Automated Biometric Fingerprint Identification System (IDENT) of the Department and the Integrated Automated Fingerprint Identification System (IAFIS) of the Federal Bureau of Investigation to ensure more expeditious data searches; and

(2) in consultation with the Secretary of State, collect all fingerprints from each alien required to provide fingerprints during the alien's initial enrollment in the integrated entry and exit data system described in section 110 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1365a).

SEC. 122. SECURE COMMUNICATION.

The Secretary shall, as expeditiously as practicable, develop and implement a plan to improve the use of satellite communications and other technologies to ensure clear and secure 2-way communication capabilities—

(1) among all Border Patrol agents conducting operations between ports of entry;

(2) between Border Patrol agents and their respective Border Patrol stations;

(3) between Border Patrol agents and residents in remote areas along the international land borders of the United States; and

(4) between all appropriate border security agencies of the Department and State, local, and tribal law enforcement agencies.

SEC. 123. BORDER PATROL TRAINING CAPACITY REVIEW.

(a) IN GENERAL.—The Comptroller General of the United States shall conduct a review of the basic training provided to Border Patrol agents by the Secretary to ensure that such training is provided as efficiently and cost-effectively as possible.

(b) COMPONENTS OF REVIEW.—The review under subsection (a) shall include the following components:

(1) An evaluation of the length and content of the basic training curriculum provided to new Border Patrol agents by the Federal Law Enforcement Training Center, including a description of how such curriculum has changed since September 11, 2001, and an evaluation of language and cultural diversity training programs provided within such curriculum.

(2) A review and a detailed breakdown of the costs incurred by the Bureau of Customs and Border Protection and the Federal Law Enforcement Training Center to train 1 new Border Patrol agent.

(3) A comparison, based on the review and breakdown under paragraph (2), of the costs, effectiveness, scope, and quality, including geographic characteristics, with other similar training programs provided by State and local agencies, nonprofit organizations, universities, and the private sector.

(4) An evaluation of whether utilizing comparable non-Federal training programs, proficiency testing, and long-distance learning programs may affect—

(A) the cost-effectiveness of increasing the number of Border Patrol agents trained per year;

(B) the per agent costs of basic training; and

(C) the scope and quality of basic training needed to fulfill the mission and duties of a Border Patrol agent.

SEC. 124. US-VISIT SYSTEM.

Not later than 6 months after the date of the enactment of this Act, the Secretary, in consultation with the heads of other appropriate Federal agencies, shall submit to Congress a schedule for—

(1) equipping all land border ports of entry of the United States with the U.S.-Visitor and Immi-

grant Status Indicator Technology (US-VISIT) system implemented under section 110 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1365a);

(2) developing and deploying at such ports of entry the exit component of the US-VISIT system; and

(3) making interoperable all immigration screening systems operated by the Secretary.

SEC. 125. DOCUMENT FRAUD DETECTION.

(a) TRAINING.—Subject to the availability of appropriations, the Secretary shall provide all Customs and Border Protection officers with training in identifying and detecting fraudulent travel documents. Such training shall be developed in consultation with the head of the Forensic Document Laboratory of the Bureau of Immigration and Customs Enforcement.

(b) FORENSIC DOCUMENT LABORATORY.—The Secretary shall provide all Customs and Border Protection officers with access to the Forensic Document Laboratory.

(c) ASSESSMENT.—

(1) REQUIREMENT FOR ASSESSMENT.—The Inspector General of the Department shall conduct an independent assessment of the accuracy and reliability of the Forensic Document Laboratory.

(2) REPORT TO CONGRESS.—Not later than 6 months after the date of the enactment of this Act, the Inspector General shall submit to Congress the findings of the assessment required by paragraph (1).

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary such sums as may be necessary for each of fiscal years 2007 through 2011 to carry out this section.

SEC. 126. IMPROVED DOCUMENT INTEGRITY.

(a) IN GENERAL.—Section 303 of the Enhanced Border Security and Visa Entry Reform Act of 2002 (8 U.S.C. 1732) is amended—

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

(2) in the heading, by striking ''**ENTRY AND EXIT DOCUMENTS**'' and inserting ''**TRAVEL AND ENTRY DOCUMENTS AND EVIDENCE OF STATUS**'';

(3) in subsection (b)(1)—

(A) by striking ''Not later than October 26, 2004, the'' and inserting ''The''; and

(B) by striking ''visas and'' both places it appears and inserting ''visas, evidence of status, and'';

(4) by redesignating subsection (d) as subsection (e); and

(5) by inserting after subsection (c) the following:

''(d) OTHER DOCUMENTS.—Not later than October 26, 2007, every document, other than an interim document, issued by the Secretary of Homeland Security, which may be used as evidence of an alien's status as an immigrant, nonimmigrant, parolee, asylee, or refugee, shall be machine-readable and tamper-resistant, and shall incorporate a biometric identifier to allow the Secretary of Homeland Security to verify electronically the identity and status of the alien.''.

SEC. 127. CANCELLATION OF VISAS.

Section 222(g) (8 U.S.C. 1202(g)) is amended—

(1) in paragraph (1)—

(A) by striking ''Attorney General'' and inserting ''Secretary of Homeland Security''; and

(B) by inserting ''and any other nonimmigrant visa issued by the United States that is in the possession of the alien'' after ''such visa''; and

(2) in paragraph (2)(A), by striking ''(other than the visa described in paragraph (1)) issued in a consular office located in the country of the alien's nationality'' and inserting ''(other than a visa described in paragraph (1)) issued in a consular office located in the country of the alien's nationality or foreign residence''.

SEC. 128. BIOMETRIC ENTRY-EXIT SYSTEM.

(a) COLLECTION OF BIOMETRIC DATA FROM ALIENS DEPARTING THE UNITED STATES.—Section 215 (8 U.S.C. 1185) is amended—

(1) by redesignating subsection (c) as subsection (g);

(2) by moving subsection (g), as redesignated by paragraph (1), to the end; and

(3) by inserting after subsection (b) the following:

''(c) The Secretary of Homeland Security is authorized to require aliens departing the United States to provide biometric data and other information relating to their immigration status.''.

(b) INSPECTION OF APPLICANTS FOR ADMISSION.—Section 235(d) (8 U.S.C. 1225(d)) is amended by adding at the end the following:

"(5) AUTHORITY TO COLLECT BIOMETRIC DATA.—In conducting inspections under subsection (b), immigration officers are authorized to collect biometric data from—

"(A) any applicant for admission or alien seeking to transit through the United States; or

"(B) any lawful permanent resident who is entering the United States and who is not regarded as seeking admission pursuant to section 101(a)(13)(C).".

(c) COLLECTION OF BIOMETRIC DATA FROM ALIEN CREWMEN.—Section 252 (8 U.S.C. 1282) is amended by adding at the end the following:

"(d) An immigration officer is authorized to collect biometric data from an alien crewman seeking permission to land temporarily in the United States.".

(d) GROUNDS OF INADMISSIBILITY.—Section 212 (8 U.S.C. 1182) is amended—

(1) in subsection (a)(7), by adding at the end the following:

"(C) WITHHOLDERS OF BIOMETRIC DATA.—Any alien who knowingly fails to comply with a lawful request for biometric data under section 215(c) or 235(d) is inadmissible."; and

(2) in subsection (d), by inserting after paragraph (1) the following:

''(2) The Secretary of Homeland Security shall determine whether a ground for inadmissibility exists with respect to an alien described in subparagraph (C) of subsection (a)(7) and may waive the application of such subparagraph for an individual alien or a class of aliens, at the discretion of the Secretary.''.

(e) IMPLEMENTATION.—Section 7208 of the 9/11 Commission Implementation Act of 2004 (8 U.S.C. 1365b) is amended—

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

''(3) IMPLEMENTATION.—In fully implementing the automated biometric entry and exit data system under this section, the Secretary is not required to comply with the requirements of chapter 5 of title 5, United States Code (commonly referred to as the Administrative Procedure Act) or any other law relating to rulemaking, information collection, or publication in the Federal Register.''; and

(2) in subsection (l)—

(A) by striking ''There are authorized'' and inserting the following:

"(1) IN GENERAL.—There are authorized"; and

(B) by adding at the end the following:

"(2) IMPLEMENTATION AT ALL LAND BORDER PORTS OF ENTRY.—There are authorized to be appropriated such sums as may be necessary for each of 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.

(a) SOUTHERN BORDER STUDY.—The Secretary, in consultation with the Attorney General, the Secretary of the Interior, the Secretary of Agriculture, the Secretary of Defense, the Secretary of Commerce, and the Administrator of the Environmental Protection Agency, shall conduct a study on the construction of a system of physical barriers along the southern international land and maritime border of the United States. The study shall include—

(1) an assessment of the necessity of constructing such a system, including the identification of areas of high priority for the construction of such a system determined after consideration of factors including the amount of narcotics trafficking and the number of illegal immigrants apprehended in such areas;

(2) an assessment of the feasibility of constructing such a system;

(3) an assessment of the international, national, and regional environmental impact of such a system, including the impact on zoning, global climate change, ozone depletion, biodiversity loss, and transboundary pollution;

(4) an assessment of the necessity for ports of entry along such a system;

(5) an assessment of the impact such a system would have on international trade, commerce, and tourism;

(6) an assessment of the effect of such a system on private property rights including issues of eminent domain and riparian rights;

(7) an estimate of the costs associated with building a barrier system, including costs associated with excavation, construction, and maintenance; and

(8) an assessment of the effect of such a system on Indian reservations and units of the National Park System.

(b) REPORT.—Not later than 9 months after the date of the enactment of this Act, the Secretary shall submit to Congress a report on the study described in subsection (a).

TITLE II—INTERIOR ENFORCEMENT

SEC. 201. REMOVAL AND DENIAL OF BENEFITS TO TERRORIST ALIENS.

(a) ASYLUM.—Section 208(b)(2)(A)(v) (8 U.S.C. 1158(b)(2)(A)(v)) is amended by striking ''or (VI)'' and inserting ''(V), (VI), (VII), or (VIII)''.

(b) CANCELLATION OF REMOVAL.—Section 240A(c)(4) (8 U.S.C. 1229b(c)(4)) is amended—

(1) by striking ''inadmissible under'' and inserting ''described in''; and

(2) by striking ''deportable under'' and inserting ''described in''.

(c) VOLUNTARY DEPARTURE.—Section 240B(b)(1)(C) (8 U.S.C. 1229c(b)(1)(C)) is amended by striking ''deportable under section 237(a)(2)(A)(iii) or section 237(a)(4)'' and inserting ''described in paragraph (2)(A)(iii) or (4) of section 237(a)''.

(d) RESTRICTION ON REMOVAL.—Section 241(b)(3)(B) (8 U.S.C. 1231(b)(3)(B)) is amended—

(1) in clause (iii), by striking ''or'' at the end;

(2) in clause (iv) by striking the period at the end and inserting ''; or'';

(3) by inserting after clause (iv) the following:

''(v) the alien is described in—

"(I) subclause (I), (II), (III), (IV), (V), (VI), (VII), or (VIII) of section 212(a)(3)(B)(i); or

"(II) section 237(a)(4)(B) (other than an alien described in section 212(a)(3)(B)(i)(IV)) and the Secretary of Homeland Security determines that there are not reasonable grounds for regarding the alien as a danger to the security of the United States."; and

(4) in the undesignated paragraph, by striking "For purposes of clause (iv), an alien who is described in section 237(a)(4)(B) shall be considered to be an alien with respect to whom there are reasonable grounds for regarding as a danger to the security of the United States.".

(e) RECORD OF ADMISSION.—Section 249 (8 U.S.C. 1259) is amended to read as follows:

"SEC. 249. RECORD OF ADMISSION FOR PERMANENT RESIDENCE IN THE CASE OF CERTAIN ALIENS WHO ENTERED THE UNITED STATES PRIOR TO JANUARY 1, 1972.

"A record of lawful admission for permanent residence may be made, in the discretion of the Secretary of

Homeland Security and under such regulations as the Secretary may prescribe, for any alien, as of the date of the approval of the alien's application or, if entry occurred before July 1, 1924, as of the date of such entry if no such record is otherwise available, if the alien establishes that the alien—

"(1) is not described in section 212(a)(3)(E) or in section 212(a) (insofar as it relates to criminals, procurers, other immoral persons, subversives, violators of the narcotics laws, or smugglers of aliens);

"(2) entered the United States before January 1, 1972;

"(3) has resided in the United States continuously since such entry;

"(4) is a person of good moral character;

"(5) is not ineligible for citizenship; and

"(6) is not described in section 237(a)(4)(B).".

(f) EFFECTIVE DATE AND APPLICATION.—The amendments made by this section shall—

(1) take effect on the date of the enactment of this Act; and

(2) apply to—

(A) any aliens in a removal, deportation, or exclusion proceeding pending on or after the date of the enactment of this Act; and

(B) any act or condition constituting a ground for inadmissibility, excludability, or removal occurring or existing before, on, or after the date of the enactment of this Act.

SEC. 202. DETENTION AND REMOVAL OF ALIENS ORDERED REMOVED.

(a) IN GENERAL.—

(1) AMENDMENTS.—Section 241(a) (8 U.S.C. 1231(a)) is amended—

(A) by striking ''Attorney General'' the first place it appears and inserting ''Secretary of Homeland Security'';

(B) by striking ''Attorney General'' any other place it appears and inserting ''Secretary'';

(C) in paragraph (1)—

(i) in subparagraph (B), by amending clause (ii) to read as follows:

''(ii) If a court, the Board of Immigration Appeals, or an immigration judge orders a stay of the removal of the alien, the expiration date of the stay of removal.''.

(ii) by amending subparagraph (C) to read as follows:

"(C) EXTENSION OF PERIOD.—The removal period shall be extended beyond a period of 90 days and the alien may remain in detention during such extended period if the alien fails or refuses to—

"(i) make all reasonable efforts to comply with the removal order; or

"(ii) fully cooperate with the Secretary's efforts to establish the alien's identity and carry out the removal order, including failing to make timely application in good faith for travel or other documents necessary to the alien's departure, or conspiring or acting to prevent the alien's removal."; and

(iii) by adding at the end the following:

"(D) TOLLING OF PERIOD.—If, at the time described in subparagraph (B), the alien is not in the custody of the Secretary under the authority of this Act, the removal period shall not begin until the alien is taken into such custody. If the Secretary lawfully transfers custody of the alien during the removal period to another Federal agency or to a State or local gov-

ernment agency in connection with the official duties of such agency, the removal period shall be tolled, and shall recommence on the date on which the alien is returned to the custody of the Secretary.'';

(D) in paragraph (2), by adding at the end the following: ''If a court, the Board of Immigration Appeals, or an immigration judge orders a stay of removal of an alien who is subject to an administrative final order of removal, the Secretary, in the exercise of discretion, may detain the alien during the pendency of such stay of removal.'';

(E) in paragraph (3), by amending subparagraph (D) to read as follows:

''(D) to obey reasonable restrictions on the alien's conduct or activities, or to perform affirmative acts, that the Secretary prescribes for the alien—

''(i) to prevent the alien from absconding;

''(ii) for the protection of the community; or

''(iii) for other purposes related to the enforcement of the immigration laws.'';

(F) in paragraph (6), by striking ''removal period and, if released,'' and inserting ''removal period, in the discretion of the Secretary, without any limitations other than those specified in this section, until the alien is removed. If an alien is released, the alien'';

(G) by redesignating paragraph (7) as paragraph (10); and

(H) by inserting after paragraph (6) the following:

''(7) PAROLE.—If an alien detained pursuant to paragraph (6) is an applicant for admission, the Secretary of Homeland Security, in the Secretary's discretion, may parole the alien under section 212(d)(5) and may provide, notwithstanding section 212(d)(5), that the alien shall not be returned to custody unless either the alien violates the conditions of the alien's parole or the alien's removal becomes reasonably foreseeable, provided that in no circumstance shall such alien be considered admitted.

''(8) ADDITIONAL RULES FOR DETENTION OR RELEASE OF ALIENS.—The following procedures shall apply to an alien detained under this section:

''(A) DETENTION REVIEW PROCESS FOR ALIENS WHO HAVE EFFECTED AN ENTRY AND

FULLY COOPERATE WITH REMOVAL.—The Secretary of Homeland Security shall establish an administrative review process to determine whether an alien described in subparagraph (B) should be detained or released after the removal period in accordance with subparagraphs (C) and (E).

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

"(i) has effected an entry into the United States;

"(ii) has made all reasonable efforts to comply with the alien's removal order;

"(iii) has cooperated fully with the Secretary's efforts to establish the alien's identity and to carry out the removal order, including making timely application in good faith for travel or other documents necessary for the alien's departure; and

"(iv) has not conspired or acted to prevent removal.

"(C) EVIDENCE.—In making a determination under subparagraph (A), the Secretary—

"(i) shall consider any evidence submitted by the alien;

"(ii) may consider any other evidence, including—

"(I) any information or assistance provided by the Department of State or other Federal agency; and

"(II) any other information available to the Secretary pertaining to the ability to remove the alien.

"(D) AUTHORITY TO DETAIN FOR 90 DAYS BEYOND REMOVAL PERIOD.—The Secretary, in the exercise of the Secretary's discretion and without any limitations other than those specified in this section, may detain an alien for 90 days beyond the removal period (including any extension of the removal period under paragraph (1)(C)).

"(E) AUTHORITY TO DETAIN FOR ADDITIONAL PERIOD.—The Secretary, in the exercise of the Secretary's discretion and without any limitations other than those specified in this section, may detain an alien beyond the 90-day period authorized under subparagraph (D) until the alien is removed, if the Secretary—

"(i) determines that there is a significant likelihood that the alien will be re-

moved in the reasonably foreseeable future; or

"(ii) certifies in writing—

"(I) in consultation with the Secretary of Health and Human Services, that the alien has a highly contagious disease that poses a threat to public safety;

"(II) after receipt of a written recommendation from the Secretary of State, that the release of the alien would likely have serious adverse foreign policy consequences for the United States;

"(III) based on information available to the Secretary (including classified, sensitive, or national security information, and regardless of the grounds upon which the alien was ordered removed), that there is reason to believe that the release of the alien would threaten the national security of the United States;

"(IV) that—

"(aa) the release of the alien would threaten the safety of the community or any person, and conditions of release cannot reasonably be expected to ensure the safety of the community or any person; and

"(bb) the alien—

"(AA) has been convicted of 1 or more aggravated felonies (as defined in section 101(a)(43)(A)), or of 1 or more attempts or conspiracies to commit any such aggravated felonies or such crimes, for an aggregate term of imprisonment of at least 5 years; or

"(BB) has committed a crime of violence (as defined in section 16 of title 18, United States Code, but not including a purely political offense) and, because of a mental condition or person-

ality disorder and behavior associated with that condition or disorder, is likely to engage in acts of violence in the future; or

"(V) that—

"(aa) the release of the alien would threaten the safety of the community or any person, notwithstanding conditions of release designed to ensure the safety of the community or any person; and

"(bb) the alien has been convicted of 1 or more aggravated felonies (as defined in section 101(a)(43)) for which the alien was sentenced to an aggregate term of imprisonment of not less than 1 year.

"(F) ADMINISTRATIVE REVIEW PROCESS.—The Secretary, without any limitations other than those specified in this section, may detain an alien pending a determination under subparagraph (E)(ii), if the Secretary has initi-

ated the administrative review process identified in subparagraph (A) not later than 30 days after the expiration of the removal period (including any extension of the removal period under paragraph (1)(C)).

"(G) RENEWAL AND DELEGATION OF CERTIFICATION.—

"(i) RENEWAL.—The Secretary may renew a certification under subparagraph (E)(ii) every 6 months, without limitation, after providing the alien with an opportunity to request reconsideration of the certification and to submit documents or other evidence in support of that request. If the Secretary does not renew such certification, the Secretary shall release the alien, pursuant to subparagraph (H).

"(ii) DELEGATION.—Notwithstanding any other provision of law, the Secretary may not delegate the authority to make or renew a certification described in subclause (II), (III), or (V) of subparagraph (E)(ii) to any employee reporting to the Assistant Secretary for Immigration and Customs Enforcement.

"(iii) HEARING.—The Secretary may request that the Attorney General, or a designee of the Attorney General, provide for a hearing to make the determination described in subparagraph (E)(ii)(IV)(bb)(BB).

"(H) RELEASE ON CONDITIONS.—If it is determined that an alien should be released from detention, the Secretary may, in the Secretary's discretion, impose conditions on release in accordance with the regulations prescribed pursuant to paragraph (3).

"(I) REDETENTION.—The Secretary, without any limitations other than those specified in this section, may detain any alien subject to a final removal order who has previously been released from custody if—

"(i) the alien fails to comply with the conditions of release;

"(ii) the alien fails to continue to satisfy the conditions described in subparagraph (B); or

"(iii) upon reconsideration, the Secretary determines that the alien can be detained under subparagraph (E).

"(J) APPLICABILITY.—This paragraph and paragraphs (6) and (7) shall apply to any alien returned to custody under subparagraph (I) as if the removal period terminated on the day of the redetention.

"(K) DETENTION REVIEW PROCESS FOR ALIENS WHO HAVE EFFECTED AN ENTRY AND FAIL TO COOPERATE WITH REMOVAL.—The Secretary shall detain an alien until the alien makes all reasonable efforts to comply with a removal order and to cooperate fully with the Secretary's efforts, if the alien—

"(i) has effected an entry into the United States; and

"(ii)(I) and the alien faces a significant likelihood that the alien will be removed in the reasonably foreseeable future, or would have been removed if the alien had not—

"(aa) failed or refused to make all reasonable efforts to comply with a removal order;

"(bb) failed or refused to fully cooperate with the Secretary's efforts to establish the alien's identity and

carry out the removal order, including the failure to make timely application in good faith for travel or other documents necessary to the alien's departure; or

"(cc) conspired or acted to prevent removal; or

"(II) the Secretary makes a certification as specified in subparagraph (E), or the renewal of a certification specified in subparagraph (G).

"(L) DETENTION REVIEW PROCESS FOR ALIENS WHO HAVE NOT EFFECTED AN ENTRY.—Except as otherwise provided in this subparagraph, the Secretary shall follow the guidelines established in section 241.4 of title 8, Code of Federal Regulations, when detaining aliens who have not effected an entry. The Secretary may decide to apply the review process outlined in this paragraph.

"(9) JUDICIAL REVIEW.—Without regard to the place of confinement, judicial review of any action or decision made pursuant to paragraph (6), (7), or (8) shall be available exclusively in a habeas corpus proceeding instituted in the United States District

Court for the District of Columbia and only if the alien has exhausted all administrative remedies (statutory and nonstatutory) available to the alien as of right.''.

(2) EFFECTIVE DATE.—The amendments made by paragraph (1)—

(A) shall take effect on the date of the enactment of this Act; and

(B) shall apply to—

(i) any alien subject to a final administrative removal, deportation, or exclusion order that was issued before, on, or after the date of the enactment of this Act; and

(ii) any act or condition occurring or existing before, on, or after the date of the enactment of this Act.

(b) CRIMINAL DETENTION OF ALIENS.—Section 3142 of title 18, United States Code, is amended—

(1) in subsection (e)—

(A) by redesignating paragraphs (1), (2), and (3) as subparagraphs (A), (B), and (C), respectively;

(B) by inserting ''(1)'' before ''If, after a hearing'';

(C) in subparagraphs (B) and (C), as redesignated, by striking ''paragraph (1)'' and inserting ''subparagraph (A)''; and

(D) by adding after subparagraph (C), as redesignated, the following:

''(2) Subject to rebuttal by the person, it shall be presumed that no condition or combination of conditions will reasonably assure the appearance of the person as required if the judicial officer finds that there is probable cause to believe that the person—

''(A) is an alien; and

''(B)(i) has no lawful immigration status in the United States;

''(ii) is the subject of a final order of removal; or

''(iii) has committed a felony offense under section 911, 922(g)(5), 1015, 1028, 1425, or 1426 of this title, chapter 75 or 77 of this title, or section 243, 274, 275, 276, 277, or 278 of the Immigration and Nationality Act (8 U.S.C. 1253, 1324, 1325, 1326, 2327, and 1328).''; and

(2) in subsection (g)(3)—

(A) in subparagraph (A), by striking ''and'' at the end;

(B) by adding at the end the following:

"(C) the person's immigration status; and".

SEC. 203. AGGRAVATED FELONY.

Section 101(a)(43) (8 U.S.C. 1101(a)(43)) is amended—

(1) by striking "The term 'aggravated felony' means—" and inserting "Notwithstanding any other provision of law (including any provision providing an effective date), the term 'aggravated felony' applies to an offense described in this paragraph, whether in violation of Federal or State law and to such an offense in violation of the law of a foreign country, for which the term of imprisonment was completed within the previous 15 years, even if the length of the term of imprisonment is based on recidivist or other enhancements and regardless of whether the conviction was entered before, on, or after September 30, 1996, and means—";

(2) in subparagraph (N), by striking "paragraph (1)(A) or (2) of";

(3) in subparagraph (O), by striking "section 275(a) or 276 committed by an alien who was previously deported on the basis of a conviction for an offense described in another subparagraph of this

paragraph'' and inserting ''section 275 or 276 for which the term of imprisonment is at least 1 year'';

(4) in subparagraph (U), by striking ''an attempt or conspiracy to commit an offense described in this paragraph'' and inserting ''aiding or abetting an offense described in this paragraph, or soliciting, counseling, procuring, commanding, or inducing another, attempting, or conspiring to commit such an offense''; and

(5) by striking the undesignated matter following subparagraph (U).

SEC. 204. TERRORIST BARS.

(a) DEFINITION OF GOOD MORAL CHARACTER.—Section 101(f) (8 U.S.C. 1101(f)) is amended—

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

''(2) an alien described in section 212(a)(3) or 237(a)(4), as determined by the Secretary of Homeland Security or Attorney General based upon any relevant information or evidence, including classified, sensitive, or national security information;'';

(2) in paragraph (8), by striking ''(as defined in subsection (a)(43))'' and inserting the following: '', regardless of whether the crime was defined as an

aggravated felony under subsection (a)(43) at the time of the conviction, unless—

"(A) the person completed the term of imprisonment and sentence not later than 10 years before the date of application; and

"(B) the Secretary of Homeland Security or the Attorney General waives the application of this paragraph; or"; and

(3) in the undesignated matter following paragraph (9), by striking "a finding that for other reasons such person is or was not of good moral character" and inserting the following: "a discretionary finding for other reasons that such a person is or was not of good moral character. In determining an applicant's moral character, the Secretary of Homeland Security and the Attorney General may take into consideration the applicant's conduct and acts at any time and are not limited to the period during which good moral character is required.".

(b) PENDING PROCEEDINGS.—Section 204(b) (8 U.S.C. 1154(b)) is amended by adding at the end the following: "A petition may not be approved under this section if there is any administrative or judicial proceeding (whether civil or criminal) pending against the petitioner that could directly or indirectly result in the petitioner's

denaturalization or the loss of the petitioner's lawful permanent resident status.''.

(c) CONDITIONAL PERMANENT RESIDENT STATUS.—

(1) IN GENERAL.—Section 216(e) (8 U.S.C. 1186a(e)) is amended by inserting ''if the alien has had the conditional basis removed pursuant to this section'' before the period at the end.

(2) CERTAIN ALIEN ENTREPRENEURS.—Section 216A(e) (8 U.S.C. 1186b(e)) is amended by inserting ''if the alien has had the conditional basis removed pursuant to this section'' before the period at the end.

(d) JUDICIAL REVIEW OF NATURALIZATION APPLICATIONS.—Section 310(c) (8 U.S.C. 1421(c)) is amended—

(1) by inserting '', not later than 120 days after the Secretary of Homeland Security's final determination,'' after ''may''; and

(2) by adding at the end the following: ''The petitioner shall have the burden of showing that the Secretary's denial of the application was contrary to law. Except in a proceeding under section 340, and notwithstanding any other provision of law, no court shall have jurisdiction to determine, or to review a determination of the Secretary regarding, whether,

for purposes of an application for naturalization, an alien—

"(1) is a person of good moral character;

"(2) understands and is attached to the principles of the Constitution of the United States; or

"(3) is well disposed to the good order and happiness of the United States.".

(e) PERSONS ENDANGERING NATIONAL SECURITY.—Section 316 (8 U.S.C. 1427) is amended by adding at the end the following:

"(g) PERSONS ENDANGERING THE NATIONAL SECURITY.—A person may not be naturalized if the Secretary of Homeland Security determines, based upon any relevant information or evidence, including classified, sensitive, or national security information, that the person was once an alien described in section 212(a)(3) or 237(a)(4).".

(f) CONCURRENT NATURALIZATION AND REMOVAL PROCEEDINGS.—Section 318 (8 U.S.C. 1429) is amended by striking "the Attorney General if" and all that follows and inserting: "the Secretary of Homeland Security or any court if there is pending against the applicant any removal proceeding or other proceeding to determine the applicant's inadmissibility or deportability, or to determine whether the applicant's lawful permanent resident status

should be rescinded, regardless of when such proceeding was commenced. The findings of the Attorney General in terminating removal proceedings or canceling the removal of an alien under this Act shall not be deemed binding in any way upon the Secretary of Homeland Security with respect to the question of whether such person has established eligibility for naturalization in accordance with this title.''.

(g) DISTRICT COURT JURISDICTION.—Section 336(b) (8 U.S.C. 1447(b)) is amended to read as follows:

''(b) REQUEST FOR HEARING BEFORE DISTRICT COURT.—If there is a failure to render a final administrative decision under section 335 before the end of the 180-day period beginning on the date on which the Secretary of Homeland Security completes all examinations and interviews required under such section, the applicant may apply to the district court for the district in which the applicant resides for a hearing on the matter. Such district court shall only have jurisdiction to review the basis for delay and remand the matter to the Secretary of Homeland Security for the Secretary's determination on the application.''.

(h) EFFECTIVE DATE.—The amendments made by this section—

(1) shall take effect on the date of the enactment of this Act;

(2) shall apply to any act that occurred before, on, or after such date of enactment; and

(3) shall apply to any application for naturalization or any other case or matter under the immigration laws pending on, or filed after, such date of enactment.

SEC. 205. INCREASED CRIMINAL PENALTIES RELATED TO GANG VIOLENCE, REMOVAL, AND ALIEN SMUGGLING.

(a) CRIMINAL STREET GANGS.—

(1) INADMISSIBILITY.—Section 212(a)(2) (8 U.S.C. 1182(a)(2)) is amended—

(A) by redesignating subparagraph (F) as subparagraph (J); and

(B) by inserting after subparagraph (E) the following:

"(F) MEMBERS OF CRIMINAL STREET GANGS.—Unless the Secretary of Homeland Security or the Attorney General waives the application of this subparagraph, any alien who a consular officer, the Attorney General, or the Secretary of Homeland Security knows or has reason to believe—

"(i) is, or has been, a member of a criminal street gang (as defined in section 521(a) of title 18, United States Code); or

"(ii) has participated in the activities of a criminal street gang, knowing or having reason to know that such activities promoted, furthered, aided, or supported the illegal activity of the criminal gang,

is inadmissible.".

(2) DEPORTABILITY.—Section 237(a)(2) (8 U.S.C. 1227(a)(2)) is amended by adding at the end the following:

"(F) MEMBERS OF CRIMINAL STREET GANGS.—Unless the Secretary of Homeland Security or the Attorney General waives the application of this subparagraph, any alien who the Secretary of Homeland Security or the Attorney General knows or has reason to believe—

"(i) is, or at any time after admission has been, a member of a criminal street gang (as defined in section 521(a) of title 18, United States Code); or

"(ii) has participated in the activities of a criminal street gang, knowing or having reason to know that such activities pro-

moted, furthered, aided, or supported the illegal activity of the criminal gang,

is deportable.''.

(3) TEMPORARY PROTECTED STATUS.—Section 244 (8 U.S.C. 1254a) is amended—

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

(B) in subsection (b)(3)—

(i) in subparagraph (B), by striking the last sentence and inserting the following: ''Notwithstanding any other provision of this section, the Secretary of Homeland Security may, for any reason (including national security), terminate or modify any designation under this section. Such termination or modification is effective upon publication in the Federal Register, or after such time as the Secretary may designate in the Federal Register.'';

(ii) in subparagraph (C), by striking ''a period of 12 or 18 months'' and inserting ''any other period not to exceed 18 months'';

(C) in subsection (c)—

(i) in paragraph (1)(B), by striking ''The amount of any such fee shall not exceed $50.'';

(ii) in paragraph (2)(B)—

(I) in clause (i), by striking '', or'' at the end;

(II) in clause (ii), by striking the period at the end and inserting ''; or''; and

(III) by adding at the end the following:

''(iii) the alien is, or at any time after admission has been, a member of a criminal street gang (as defined in section 521(a) of title 18, United States Code).''; and

(D) in subsection (d)—

(i) by striking paragraph (3); and

(ii) in paragraph (4), by adding at the end the following: ''The Secretary of Homeland Security may detain an alien provided temporary protected status under this section whenever appropriate under any other provision of law.''.

(b) PENALTIES RELATED TO REMOVAL.—Section 243 (8 U.S.C. 1253) is amended—

(1) in subsection (a)(1)—

(A) in the matter preceding subparagraph (A), by inserting ''212(a) or'' after ''section''; and

(B) in the matter following subparagraph (D)—

(i) by striking ''or imprisoned not more than four years'' and inserting ''and imprisoned for not less than 6 months or more than 5 years''; and

(ii) by striking '', or both''; and

(2) in subsection (b), by striking ''not more than $1000 or imprisoned for not more than one year, or both'' and inserting ''under title 18, United States Code, and imprisoned for not less than 6 months or more than 5 years (or for not more than 10 years if the alien is a member of any of the classes described in paragraphs (1)(E), (2), (3), and (4) of section 237(a)).''.

(c) ALIEN SMUGGLING AND RELATED OFFENSES.—

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

"SEC. 274. ALIEN SMUGGLING AND RELATED OFFENSES.

"(a) CRIMINAL OFFENSES AND PENALTIES.—

"(1) PROHIBITED ACTIVITIES.—Except as provided in paragraph (3), a person shall be punished as provided under paragraph (2), if the person—

"(A) facilitates, encourages, directs, or induces a person to come to or enter the United States, or to cross the border to the United States, knowing or in reckless disregard of the fact that such person is an alien who lacks lawful authority to come to, enter, or cross the border to the United States;

"(B) facilitates, encourages, directs, or induces a person to come to or enter the United States, or to cross the border to the United States, at a place other than a designated port of entry or place other than as designated by the Secretary of Homeland Security, knowing or in reckless disregard of the fact that such person is an alien and regardless of whether such alien has official permission or lawful authority to be in the United States;

"(C) transports, moves, harbors, conceals, or shields from detection a person outside of the United States knowing or in reckless disregard of the fact that such person is an alien

in unlawful transit from 1 country to another or on the high seas, under circumstances in which the alien is seeking to enter the United States without official permission or legal authority;

''(D) encourages or induces a person to reside or remain in the United States, knowing or in reckless disregard of the fact that such person is an alien who lacks lawful authority to reside in or remain in the United States;

''(E) transports or moves a person in the United States, knowing or in reckless disregard of the fact that such person is an alien who lacks lawful authority to enter or be in the United States, if the transportation or movement will further the alien's illegal entry into or illegal presence in the United States;

''(F) harbors, conceals, or shields from detection a person in the United States, knowing or in reckless disregard of the fact that such person is an alien who lacks lawful authority to be in the United States; or

''(G) conspires or attempts to commit any of the acts described in subparagraphs (A) through (F).

"(2) CRIMINAL PENALTIES.—A person who violates any provision under paragraph (1)—

"(A) except as provided in subparagraphs (C) through (G), if the offense was not committed for commercial advantage, profit, or private financial gain, shall be fined under title 18, United States Code, imprisoned for not more than 5 years, or both;

"(B) except as provided in subparagraphs (C) through (G), if the offense was committed for commercial advantage, profit, or private financial gain—

"(i) if the violation is the offender's first violation under this subparagraph, shall be fined under such title, imprisoned for not more than 20 years, or both; or

"(ii) if the violation is the offender's second or subsequent violation of this subparagraph, shall be fined under such title, imprisoned for not less than 3 years or more than 20 years, or both;

"(C) if the offense furthered or aided the commission of any other offense against the United States or any State that is punishable by imprisonment for more than 1 year, shall be

fined under such title, imprisoned for not less than 5 years or more than 20 years, or both;

"(D) shall be fined under such title, imprisoned not less than 5 years or more than 20 years, or both, if the offense created a substantial and foreseeable risk of death, a substantial and foreseeable risk of serious bodily injury (as defined in section 2119(2) of title 18, United States Code), or inhumane conditions to another person, including—

"(i) transporting the person in an engine compartment, storage compartment, or other confined space;

"(ii) transporting the person at an excessive speed or in excess of the rated capacity of the means of transportation; or

"(iii) transporting the person in, harboring the person in, or otherwise subjecting the person to crowded or dangerous conditions;

"(E) if the offense caused serious bodily injury (as defined in section 2119(2) of title 18, United States Code) to any person, shall be fined under such title, imprisoned for not less than 7 years or more than 30 years, or both;

"(F) shall be fined under such title and imprisoned for not less than 10 years or more than 30 years if the offense involved an alien who the offender knew or had reason to believe was—

"(i) engaged in terrorist activity (as defined in section 212(a)(3)(B)); or

"(ii) intending to engage in terrorist activity;

"(G) if the offense caused or resulted in the death of any person, shall be punished by death or imprisoned for a term of years not less than 10 years and up to life, and fined under title 18, United States Code.

"(3) LIMITATION.—It is not a violation of subparagraph (D), (E) or (F) of paragraph (1)—

"(A) for a religious denomination having a bona fide nonprofit, religious organization in the United States, or the agents or officers of such denomination or organization, to encourage, invite, call, allow, or enable an alien who is present in the United States to perform the vocation of a minister or missionary for the denomination or organization in the United States as a volunteer who is not compensated as an

employee, notwithstanding the provision of room, board, travel, medical assistance, and other basic living expenses, provided the minister or missionary has been a member of the denomination for at least 1 year; or

"(B) for an individual to provide an alien with emergency humanitarian assistance, including emergency medical care and food, or to transport the alien to a location where such assistance can be rendered, provided that such assistance is rendered without compensation or the expectation of compensation.

"(4) EXTRATERRITORIAL JURISDICTION.—There is extraterritorial Federal jurisdiction over the offenses described in this subsection.

"(b) EMPLOYMENT OF UNAUTHORIZED ALIENS.—

"(1) CRIMINAL OFFENSE AND PENALTIES.—Any person who, during any 12-month period, knowingly employs 10 or more individuals with actual knowledge or in reckless disregard of the fact that the individuals are aliens described in paragraph (2), shall be fined under title 18, United States Code, imprisoned for not more than 10 years, or both.

"(2) DEFINITION.—An alien described in this paragraph is an alien who—

"(A) is an unauthorized alien (as defined in section 274A(h)(3));

"(B) is present in the United States without lawful authority; and

"(C) has been brought into the United States in violation of this subsection.

"(c) SEIZURE AND FORFEITURE.—

"(1) IN GENERAL.—Any real or personal property used to commit or facilitate the commission of a violation of this section, the gross proceeds of such violation, and any property traceable to such property or proceeds, shall be subject to forfeiture.

"(2) APPLICABLE PROCEDURES.—Seizures and forfeitures under this subsection shall be governed by the provisions of chapter 46 of title 18, United States Code, relating to civil forfeitures, except that such duties as are imposed upon the Secretary of the Treasury under the customs laws described in section 981(d) shall be performed by such officers, agents, and other persons as may be designated for that purpose by the Secretary of Homeland Security.

"(3) PRIMA FACIE EVIDENCE IN DETERMINATIONS OF VIOLATIONS.—In determining whether a violation of subsection (a) has occurred, prima facie evidence that an alien involved in the alleged viola-

tion lacks lawful authority to come to, enter, reside in, remain in, or be in the United States or that such alien had come to, entered, resided in, remained in, or been present in the United States in violation of law shall include—

"(A) any order, finding, or determination concerning the alien's status or lack of status made by a Federal judge or administrative adjudicator (including an immigration judge or immigration officer) during any judicial or administrative proceeding authorized under Federal immigration law;

"(B) official records of the Department of Homeland Security, the Department of Justice, or the Department of State concerning the alien's status or lack of status; and

"(C) testimony by an immigration officer having personal knowledge of the facts concerning the alien's status or lack of status.

"(d) AUTHORITY TO ARREST.—No officer or person shall have authority to make any arrests for a violation of any provision of this section except—

"(1) officers and employees designated by the Secretary of Homeland Security, either individually or as a member of a class; and

"(2) other officers responsible for the enforcement of Federal criminal laws.

"(e) ADMISSIBILITY OF VIDEOTAPED WITNESS TESTIMONY.—Notwithstanding any provision of the Federal Rules of Evidence, the videotaped or otherwise audiovisually preserved deposition of a witness to a violation of subsection (a) who has been deported or otherwise expelled from the United States, or is otherwise unavailable to testify, may be admitted into evidence in an action brought for that violation if—

"(1) the witness was available for cross examination at the deposition by the party, if any, opposing admission of the testimony; and

"(2) the deposition otherwise complies with the Federal Rules of Evidence.

"(f) OUTREACH PROGRAM.—

"(1) IN GENERAL.—The Secretary of Homeland Security, in consultation with the Attorney General and the Secretary of State, as appropriate, shall—

"(A) develop and implement an outreach program to educate people in and out of the United States about the penalties for bringing in and harboring aliens in violation of this section; and

"(B) establish the American Local and Interior Enforcement Needs (ALIEN) Task Force to identify and respond to the use of Federal, State, and local transportation infrastructure to further the trafficking of unlawful aliens within the United States.

"(2) FIELD OFFICES.—The Secretary of Homeland Security, after consulting with State and local government officials, shall establish such field offices as may be necessary to carry out this subsection.

"(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums are necessary for the fiscal years 2007 through 2011 to carry out this subsection.

"(g) DEFINITIONS.—In this section:

"(1) CROSSED THE BORDER INTO THE UNITED STATES.—An alien is deemed to have crossed the border into the United States regardless of whether the alien is free from official restraint.

"(2) LAWFUL AUTHORITY.—The term 'lawful authority' means permission, authorization, or license that is expressly provided for in the immigration laws of the United States or accompanying regulations. The term does not include any such authority secured by fraud or otherwise obtained in

violation of law or authority sought, but not approved. No alien shall be deemed to have lawful authority to come to, enter, reside in, remain in, or be in the United States if such coming to, entry, residence, remaining, or presence was, is, or would be in violation of law.

''(3) PROCEEDS.—The term 'proceeds' includes any property or interest in property obtained or retained as a consequence of an act or omission in violation of this section.

''(4) UNLAWFUL TRANSIT.—The term 'unlawful transit' means travel, movement, or temporary presence that violates the laws of any country in which the alien is present or any country from which the alien is traveling or moving.''.

(2) CLERICAL AMENDMENT.—The table of contents is amended by striking the item relating to section 274 and inserting the following:

''Sec. 274. Alien smuggling and related offenses.''.

(d) PROHIBITING CARRYING OR USING A FIREARM DURING AND IN RELATION TO AN ALIEN SMUGGLING CRIME.—Section 924(c) of title 18, United States Code, is amended—

(1) in paragraph (1)—

(A) in subparagraph (A), by inserting ", alien smuggling crime," after "any crime of violence";

(B) in subparagraph (A), by inserting ", alien smuggling crime," after "such crime of violence";

(C) in subparagraph (D)(ii), by inserting ", alien smuggling crime," after "crime of violence"; and

(2) by adding at the end the following:

"(6) For purposes of this subsection, the term 'alien smuggling crime' means any felony punishable under section 274(a), 277, or 278 of the Immigration and Nationality Act (8 U.S.C. 1324(a), 1327, and 1328).".

SEC. 206. ILLEGAL ENTRY OR UNLAWFUL PRESENCE OF AN ALIEN.

(a) IN GENERAL.—Section 275(a) (8 U.S.C. 1325(a)) is amended to read as follows:

"SEC. 275. ILLEGAL ENTRY OR UNLAWFUL PRESENCE OF AN ALIEN.

"(a) IN GENERAL.—

"(1) CRIMINAL OFFENSES.—An alien shall be subject to the penalties set forth in paragraph (2) if the alien—

"(A) knowingly enters or crosses the border into the United States at any time or place other than as designated by the Secretary of Homeland Security;

"(B) knowingly eludes examination or inspection by an immigration officer;

"(C) knowingly enters or crosses the border to the United States by means of a knowingly false or misleading representation or the knowing concealment of a material fact; or

"(D) is otherwise present in the United States, knowing that such presence violates the terms and conditions of any admission, parole, immigration status, or authorized stay granted the alien under this Act.

"(2) CRIMINAL PENALTIES.—Any alien who violates any provision under paragraph (1)—

"(A) shall, for the first violation, be fined under title 18, United States Code, imprisoned not more than 6 months, or both;

"(B) shall, for a second or subsequent violation, or following an order of voluntary departure, be fined under such title, imprisoned not more than 2 years, or both;

"(C) if the violation occurred after the alien had been convicted of 3 or more misdemeanors or for a felony, shall be fined under such title, imprisoned not more than 10 years, or both;

"(D) if the violation occurred after the alien had been convicted of a felony for which the alien received a term of imprisonment of not less than 30 months, shall be fined under such title, imprisoned not more than 15 years, or both; and

"(E) if the violation occurred after the alien had been convicted of a felony for which the alien received a term of imprisonment of not less than 60 months, such alien shall be fined under such title, imprisoned not more than 20 years, or both.

"(3) PRIOR CONVICTIONS.—The prior convictions described in subparagraphs (C) through (E) of paragraph (2) are elements of the offenses described in that paragraph and the penalties in such subparagraphs shall apply only in cases in which the conviction or convictions that form the basis for the additional penalty are—

"(A) alleged in the indictment or information; and

"(B) proven beyond a reasonable doubt at trial or admitted by the defendant.

"(4) DURATION OF OFFENSE.—An offense under this subsection continues until the alien is discovered within the United States by an immigration officer.

"(b) IMPROPER TIME OR PLACE; CIVIL PENALTIES.—

"(1) IN GENERAL.—Any alien who is apprehended while entering, attempting to enter, or knowingly crossing or attempting to cross the border to the United States at a time or place other than as designated by immigration officers shall be subject to a civil penalty, in addition to any criminal or other civil penalties that may be imposed under any other provision of law, in an amount equal to—

"(A) not less than $50 or more than $250 for each such entry, crossing, attempted entry, or attempted crossing; or

"(B) twice the amount specified in paragraph (1) if the alien had previously been subject to a civil penalty under this subsection.

"(2) CROSSED THE BORDER DEFINED.—In this section, an alien is deemed to have crossed the border if the act was voluntary, regardless of whether the alien was under observation at the time of the crossing.".

(b) CLERICAL AMENDMENT.—The table of contents is amended by striking the item relating to section 275 and inserting the following:

"Sec. 275. Illegal entry or unlawful presence of an alien.".

SEC. 207. ILLEGAL REENTRY.

Section 276 (8 U.S.C. 1326) is amended to read as follows:

"SEC. 276. REENTRY OF REMOVED ALIEN.

"(a) REENTRY AFTER REMOVAL.—Any alien who has been denied admission, excluded, deported, or removed, or who has departed the United States while an order of exclusion, deportation, or removal is outstanding, and subsequently enters, attempts to enter, crosses the border to, attempts to cross the border to, or is at any time found in the United States, shall be fined under title 18, United States Code, imprisoned not more than 2 years, or both.

"(b) REENTRY OF CRIMINAL OFFENDERS.—Notwithstanding the penalty provided in subsection (a), if an alien described in that subsection—

"(1) was convicted for 3 or more misdemeanors or a felony before such removal or departure, the alien shall be fined under title 18, United States Code, imprisoned not more than 10 years, or both;

"(2) was convicted for a felony before such removal or departure for which the alien was sentenced to a term of imprisonment of not less than 30 months, the alien shall be fined under such title, imprisoned not more than 15 years, or both;

"(3) was convicted for a felony before such removal or departure for which the alien was sentenced to a term of imprisonment of not less than 60 months, the alien shall be fined under such title, imprisoned not more than 20 years, or both;

"(4) was convicted for 3 felonies before such removal or departure, the alien shall be fined under such title, imprisoned not more than 20 years, or both; or

"(5) was convicted, before such removal or departure, for murder, rape, kidnaping, or a felony offense described in chapter 77 (relating to peonage and slavery) or 113B (relating to terrorism) of such title, the alien shall be fined under such title, imprisoned not more than 20 years, or both.

"(c) REENTRY AFTER REPEATED REMOVAL.—Any alien who has been denied admission, excluded, deported, or removed 3 or more times and thereafter enters, attempts to enter, crosses the border to, attempts to cross the border to, or is at any time found in the United States, shall be fined under title 18, United States Code, imprisoned not more than 10 years, or both.

"(d) PROOF OF PRIOR CONVICTIONS.—The prior convictions described in subsection (b) are elements of the crimes described in that subsection, and the penalties in that subsection shall apply only in cases in which the conviction or convictions that form the basis for the additional penalty are—

"(1) alleged in the indictment or information; and

"(2) proven beyond a reasonable doubt at trial or admitted by the defendant.

"(e) AFFIRMATIVE DEFENSES.—It shall be an affirmative defense to a violation of this section that—

"(1) prior to the alleged violation, the alien had sought and received the express consent of the Secretary of Homeland Security to reapply for admission into the United States; or

"(2) with respect to an alien previously denied admission and removed, the alien—

"(A) was not required to obtain such advance consent under the Immigration and Nationality Act or any prior Act; and

"(B) had complied with all other laws and regulations governing the alien's admission into the United States.

"(f) LIMITATION ON COLLATERAL ATTACK ON UNDERLYING REMOVAL ORDER.—In a criminal proceeding under this section, an alien may not challenge the validity of any prior removal order concerning the alien unless the alien demonstrates by clear and convincing evidence that—

"(1) the alien exhausted all administrative remedies that may have been available to seek relief against the order;

"(2) the removal proceedings at which the order was issued improperly deprived the alien of the opportunity for judicial review; and

"(3) the entry of the order was fundamentally unfair.

"(g) REENTRY OF ALIEN REMOVED PRIOR TO COMPLETION OF TERM OF IMPRISONMENT.—Any alien removed pursuant to section 241(a)(4) who enters, attempts to enter, crosses the border to, attempts to cross the border to, or is at any time found in, the United States shall

be incarcerated for the remainder of the sentence of imprisonment which was pending at the time of deportation without any reduction for parole or supervised release unless the alien affirmatively demonstrates that the Secretary of Homeland Security has expressly consented to the alien's reentry. Such alien shall be subject to such other penalties relating to the reentry of removed aliens as may be available under this section or any other provision of law.

''(h) LIMITATION.—It is not aiding and abetting a violation of this section for an individual to provide an alien with emergency humanitarian assistance, including emergency medical care and food, or to transport the alien to a location where such assistance can be rendered, provided that such assistance is rendered without compensation or the expectation of compensation.

''(i) DEFINITIONS.—In this section:

''(1) CROSSES THE BORDER.—The term 'crosses the border' applies if an alien acts voluntarily, regardless of whether the alien was under observation at the time of the crossing.

''(2) FELONY.—Term 'felony' means any criminal offense punishable by a term of imprisonment of more than 1 year under the laws of the United States, any State, or a foreign government.

"(3) MISDEMEANOR.—The term 'misdemeanor' means any criminal offense punishable by a term of imprisonment of not more than 1 year under the applicable laws of the United States, any State, or a foreign government.

"(4) REMOVAL.—The term 'removal' includes any denial of admission, exclusion, deportation, or removal, or any agreement by which an alien stipulates or agrees to exclusion, deportation, or removal.

"(5) STATE.—The term 'State' means a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.".

SEC. 208. REFORM OF PASSPORT, VISA, AND IMMIGRATION FRAUD OFFENSES.

(a) IN GENERAL.—Chapter 75 of title 18, United States Code, is amended to read as follows:

"CHAPTER 75—PASSPORT, VISA, AND IMMIGRATION FRAUD

"Sec.
"1541. Trafficking in passports.
"1542. False statement in an application for a passport.
"1543. Forgery and unlawful production of a passport.
"1544. Misuse of a passport.
"1545. Schemes to defraud aliens.
"1546. Immigration and visa fraud.
"1547. Marriage fraud.
"1548. Attempts and conspiracies.
"1549. Alternative penalties for certain offenses.
"1550. Seizure and forfeiture.
"1551. Additional jurisdiction.
"1552. Additional venue.

''1553. Definitions.
''1554. Authorized law enforcement activities.

"§ 1541. Trafficking in passports

''(a) MULTIPLE PASSPORTS.—Any person who, during any 3-year period, knowingly–

''(1) and without lawful authority produces, issues, or transfers 10 or more passports;

''(2) forges, counterfeits, alters, or falsely makes 10 or more passports;

''(3) secures, possesses, uses, receives, buys, sells, or distributes 10 or more passports, knowing the passports to be forged, counterfeited, altered, falsely made, stolen, procured by fraud, or produced or issued without lawful authority; or

''(4) completes, mails, prepares, presents, signs, or submits 10 or more applications for a United States passport (including any supporting documentation), knowing the applications to contain any false statement or representation,

shall be fined under this title, imprisoned not more than 20 years, or both.

''(b) PASSPORT MATERIALS.—Any person who knowingly and without lawful authority produces, counterfeits, secures, possesses, or uses any official paper, seal, hologram, image, text, symbol, stamp, engraving, plate, or other material used to make a passport shall be fined

under this title, imprisoned not more than 20 years, or both.

"§ 1542. False statement in an application for a passport

"Any person who knowingly—

"(1) makes any false statement or representation in an application for a United States passport (including any supporting documentation);

"(2) completes, mails, prepares, presents, signs, or submits an application for a United States passport (including any supporting documentation) knowing the application to contain any false statement or representation; or

"(3) causes or attempts to cause the production of a passport by means of any fraud or false application for a United States passport (including any supporting documentation), if such production occurs or would occur at a facility authorized by the Secretary of State for the production of passports,

shall be fined under this title, imprisoned not more than 15 years, or both.

"§ 1543. Forgery and unlawful production of a passport

"(a) FORGERY.—Any person who—

"(1) knowingly forges, counterfeits, alters, or falsely makes any passport; or

"(2) knowingly transfers any passport knowing it to be forged, counterfeited, altered, falsely made, stolen, or to have been produced or issued without lawful authority,

shall be fined under this title, imprisoned not more than 15 years, or both.

"(b) UNLAWFUL PRODUCTION.—Any person who knowingly and without lawful authority—

"(1) produces, issues, authorizes, or verifies a passport in violation of the laws, regulations, or rules governing the issuance of the passport;

"(2) produces, issues, authorizes, or verifies a United States passport for or to any person not owing allegiance to the United States; or

"(3) transfers or furnishes a passport to a person for use when such person is not the person for whom the passport was issued or designed,

shall be fined under this title, imprisoned not more than 15 years, or both.

"§ 1544. Misuse of a passport

"(a) IN GENERAL.—Any person who—

"(1) knowingly uses any passport issued or designed for the use of another;

"(2) knowingly uses any passport in violation of the conditions or restrictions therein contained, or in violation of the laws, regulations, or rules governing the issuance and use of the passport;

"(3) knowingly secures, possesses, uses, receives, buys, sells, or distributes any passport knowing it to be forged, counterfeited, altered, falsely made, procured by fraud, or produced or issued without lawful authority; or

"(4) knowingly violates the terms and conditions of any safe conduct duly obtained and issued under the authority of the United States,

shall be fined under this title, imprisoned not more than 15 years, or both.

"(b) ENTRY; FRAUD.—Any person who knowingly uses any passport, knowing the passport to be forged, counterfeited, altered, falsely made, procured by fraud, produced or issued without lawful authority, or issued or designed for the use of another—

"(1) to enter or to attempt to enter the United States; or

"(2) to defraud the United States, a State, or a political subdivision of a State,

shall be fined under this title, imprisoned not more than 15 years, or both.

"§ 1545. Schemes to defraud aliens

''(a) IN GENERAL.—Any person who knowingly executes a scheme or artifice, in connection with any matter that is authorized by or arises under Federal immigration laws, or any matter the offender claims or represents is authorized by or arises under Federal immigration laws—

''(1) to defraud any person, or

''(2) to obtain or receive from any person, by means of false or fraudulent pretenses, representations, promises, money or anything else of value,

shall be fined under this title, imprisoned not more than 15 years, or both.

''(b) MISREPRESENTATION.—Any person who knowingly and falsely represents himself to be an attorney in any matter arising under Federal immigration laws shall be fined under this title, imprisoned not more than 15 years, or both.

"§ 1546. Immigration and visa fraud

''(a) IN GENERAL.—Any person who knowingly—

''(1) uses any immigration document issued or designed for the use of another;

''(2) forges, counterfeits, alters, or falsely makes any immigration document;

''(3) completes, mails, prepares, presents, signs, or submits any immigration document knowing it to

contain any materially false statement or representation;

"(4) secures, possesses, uses, transfers, receives, buys, sells, or distributes any immigration document knowing it to be forged, counterfeited, altered, falsely made, stolen, procured by fraud, or produced or issued without lawful authority;

"(5) adopts or uses a false or fictitious name to evade or to attempt to evade the immigration laws; or

"(6) transfers or furnishes an immigration document to a person without lawful authority for use if such person is not the person for whom the immigration document was issued or designed,

shall be fined under this title, imprisoned not more than 15 years, or both.

"(b) MULTIPLE VIOLATIONS.—Any person who, during any 3-year period, knowingly—

"(1) and without lawful authority produces, issues, or transfers 10 or more immigration documents;

"(2) forges, counterfeits, alters, or falsely makes 10 or more immigration documents;

"(3) secures, possesses, uses, buys, sells, or distributes 10 or more immigration documents, know-

ing the immigration documents to be forged, counterfeited, altered, stolen, falsely made, procured by fraud, or produced or issued without lawful authority; or

"(4) completes, mails, prepares, presents, signs, or submits 10 or more immigration documents knowing the documents to contain any materially false statement or representation,

shall be fined under this title, imprisoned not more than 20 years, or both.

"(c) IMMIGRATION DOCUMENT MATERIALS.—Any person who knowingly and without lawful authority produces, counterfeits, secures, possesses, or uses any official paper, seal, hologram, image, text, symbol, stamp, engraving, plate, or other material, used to make an immigration document shall be fined under this title, imprisoned not more than 20 years, or both.

"§ 1547. Marriage fraud

"(a) EVASION OR MISREPRESENTATION.—Any person who—

"(1) knowingly enters into a marriage for the purpose of evading any provision of the immigration laws; or

"(2) knowingly misrepresents the existence or circumstances of a marriage—

"(A) in an application or document authorized by the immigration laws; or

"(B) during any immigration proceeding conducted by an administrative adjudicator (including an immigration officer or examiner, a consular officer, an immigration judge, or a member of the Board of Immigration Appeals),

shall be fined under this title, imprisoned not more than 10 years, or both.

"(b) MULTIPLE MARRIAGES.—Any person who—

"(1) knowingly enters into 2 or more marriages for the purpose of evading any immigration law; or

"(2) knowingly arranges, supports, or facilitates 2 or more marriages designed or intended to evade any immigration law,

shall be fined under this title, imprisoned not more than 20 years, or both.

"(c) COMMERCIAL ENTERPRISE.—Any person who knowingly establishes a commercial enterprise for the purpose of evading any provision of the immigration laws shall be fined under this title, imprisoned for not more than 10 years, or both.

"(d) DURATION OF OFFENSE.—

"(1) IN GENERAL.—An offense under subsection (a) or (b) continues until the fraudulent na-

ture of the marriage or marriages is discovered by an immigration officer.

"(2) COMMERCIAL ENTERPRISE.—An offense under subsection (c) continues until the fraudulent nature of commercial enterprise is discovered by an immigration officer or other law enforcement officer.

"§ 1548. Attempts and conspiracies

"Any person who attempts or conspires to violate any section of this chapter shall be punished in the same manner as a person who completed a violation of that section.

"§ 1549. Alternative penalties for certain offenses

"(a) TERRORISM.—Any person who violates any section of this chapter—

"(1) knowing that such violation will facilitate an act of international terrorism or domestic terrorism (as those terms are defined in section 2331); or

"(2) with the intent to facilitate an act of international terrorism or domestic terrorism,

shall be fined under this title, imprisoned not more than 25 years, or both.

"(b) OFFENSE AGAINST GOVERNMENT.—Any person who violates any section of this chapter—

"(1) knowing that such violation will facilitate the commission of any offense against the United

States (other than an offense in this chapter) or against any State, which offense is punishable by imprisonment for more than 1 year; or

''(2) with the intent to facilitate the commission of any offense against the United States (other than an offense in this chapter) or against any State, which offense is punishable by imprisonment for more than 1 year,

shall be fined under this title, imprisoned not more than 20 years, or both.

"§ 1550. Seizure and forfeiture

''(a) FORFEITURE.—Any property, real or personal, used to commit or facilitate the commission of a violation of any section of this chapter, the gross proceeds of such violation, and any property traceable to such property or proceeds, shall be subject to forfeiture.

''(b) APPLICABLE LAW.—Seizures and forfeitures under this section shall be governed by the provisions of chapter 46 relating to civil forfeitures, except that such duties as are imposed upon the Secretary of the Treasury under the customs laws described in section 981(d) shall be performed by such officers, agents, and other persons as may be designated for that purpose by the Secretary of Homeland Security, the Secretary of State, or the Attorney General.

"§ 1551. Additional jurisdiction

''(a) IN GENERAL.—Any person who commits an offense under this chapter within the special maritime and territorial jurisdiction of the United States shall be punished as provided under this chapter.

''(b) EXTRATERRITORIAL JURISDICTION.—Any person who commits an offense under this chapter outside the United States shall be punished as provided under this chapter if—

''(1) the offense involves a United States immigration document (or any document purporting to be such a document) or any matter, right, or benefit arising under or authorized by Federal immigration laws;

''(2) the offense is in or affects foreign commerce;

''(3) the offense affects, jeopardizes, or poses a significant risk to the lawful administration of Federal immigration laws, or the national security of the United States;

''(4) the offense is committed to facilitate an act of international terrorism (as defined in section 2331) or a drug trafficking crime (as defined in section 929(a)(2)) that affects or would affect the national security of the United States;

"(5) the offender is a national of the United States (as defined in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22))) or an alien lawfully admitted for permanent residence in the United States (as defined in section 101(a)(20) of such Act); or

"(6) the offender is a stateless person whose habitual residence is in the United States.

"§ 1552. Additional venue

"(a) IN GENERAL.—An offense under section 1542 may be prosecuted in—

"(1) any district in which the false statement or representation was made;

"(2) any district in which the passport application was prepared, submitted, mailed, received, processed, or adjudicated; or

"(3) in the case of an application prepared and adjudicated outside the United States, in the district in which the resultant passport was produced.

"(b) SAVINGS CLAUSE.—Nothing in this section limits the venue otherwise available under sections 3237 and 3238.

"§ 1553. Definitions

"As used in this chapter:

"(1) The term 'falsely make' means to prepare or complete an immigration document with knowledge or in reckless disregard of the fact that the document—

"(A) contains a statement or representation that is false, fictitious, or fraudulent;

"(B) has no basis in fact or law; or

"(C) otherwise fails to state a fact which is material to the purpose for which the document was created, designed, or submitted.

"(2) The term a 'false statement or representation' includes a personation or an omission.

"(3) The term 'felony' means any criminal offense punishable by a term of imprisonment of more than 1 year under the laws of the United States, any State, or a foreign government.

"(4) The term 'immigration document'—

"(A) means—

"(i) any passport or visa; or

"(ii) any application, petition, affidavit, declaration, attestation, form, identification card, alien registration document, employment authorization document, border crossing card, certificate, permit, order, license, stamp, authorization, grant

of authority, or other evidentiary document, arising under or authorized by the immigration laws of the United States; and

"(B) includes any document, photograph, or other piece of evidence attached to or submitted in support of an immigration document.

"(5) The term 'immigration laws' includes—

"(A) the laws described in section 101(a)(17) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(17));

"(B) the laws relating to the issuance and use of passports; and

"(C) the regulations prescribed under the authority of any law described in paragraphs (1) and (2).

"(6) The term 'immigration proceeding' includes an adjudication, interview, hearing, or review.

"(7) A person does not exercise 'lawful authority' if the person abuses or improperly exercises lawful authority the person otherwise holds.

"(8) The term 'passport' means a travel document attesting to the identity and nationality of the bearer that is issued under the authority of the Secretary of State, a foreign government, or an inter-

national organization; or any instrument purporting to be the same.

''(9) The term 'produce' means to make, prepare, assemble, issue, print, authenticate, or alter.

''(10) The term 'State' means a State of the United States, the District of Columbia, or any commonwealth, territory, or possession of the United States.

"§ 1554. Authorized law enforcement activities

''Nothing in this chapter shall prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or a political subdivision of a State, or an intelligence agency of the United States, or any activity authorized under title V of the Organized Crime Control Act of 1970 (84 Stat. 933).''.

(b) CLERICAL AMENDMENT.—The table of chapters in title 18, United States Code, is amended by striking the item relating to chapter 75 and inserting the following:

"75. Passport, visa, and immigration fraud ..... 1541".

SEC. 209. INADMISSIBILITY AND REMOVAL FOR PASSPORT AND IMMIGRATION FRAUD OFFENSES.

(a) INADMISSIBILITY.—Section 212(a)(2)(A)(i) (8 U.S.C. 1182(a)(2)(A)(i)) is amended–

(1) in subclause (I), by striking '', or'' at the end and inserting a semicolon;

(2) in subclause (II), by striking the comma at the end and inserting "; or"; and

(3) by inserting after subclause (II) the following:

"(III) a violation of (or a conspiracy or attempt to violate) any provision of chapter 75 of title 18, United States Code,".

(b) REMOVAL.—Section 237(a)(3)(B)(iii) (8 U.S.C. 1227(a)(3)(B)(iii)) is amended to read as follows:

"(iii) of a violation of any provision of chapter 75 of title 18, United States Code,".

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall apply to proceedings pending on or after the date of the enactment of this Act.

SEC. 210. INCARCERATION OF CRIMINAL ALIENS.

(a) INSTITUTIONAL REMOVAL PROGRAM.—

(1) CONTINUATION.—The Secretary shall continue to operate the Institutional Removal Program (referred to in this section as the "Program") or shall develop and implement another program to—

(A) identify removable criminal aliens in Federal and State correctional facilities;

(B) ensure that such aliens are not released into the community; and

(C) remove such aliens from the United States after the completion of their sentences.

(2) EXPANSION.—The Secretary may extend the scope of the Program to all States.

(b) AUTHORIZATION FOR DETENTION AFTER COMPLETION OF STATE OR LOCAL PRISON SENTENCE.—Law enforcement officers of a State or political subdivision of a State may—

(1) hold an illegal alien for a period not to exceed 14 days after the completion of the alien's State prison sentence to effectuate the transfer of the alien to Federal custody if the alien is removable or not lawfully present in the United States; or

(2) issue a detainer that would allow aliens who have served a State prison sentence to be detained by the State prison until authorized employees of the Bureau of Immigration and Customs Enforcement can take the alien into custody.

(c) TECHNOLOGY USAGE.—Technology, such as videoconferencing, shall be used to the maximum extent practicable to make the Program available in remote locations. Mobile access to Federal databases of aliens, such as IDENT, and live scan technology shall be used to the

maximum extent practicable to make these resources available to State and local law enforcement agencies in remote locations.

(d) REPORT TO CONGRESS.—Not later than 6 months after the date of the enactment of this Act, and annually thereafter, the Secretary shall submit a report to Congress on the participation of States in the Program and in any other program authorized under subsection (a).

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary in each of the fiscal years 2007 through 2011 to carry out the Program.

SEC. 211. ENCOURAGING ALIENS TO DEPART VOLUNTARILY.

(a) IN GENERAL.—Section 240B (8 U.S.C. 1229c) is amended—

(1) in subsection (a)—

(A) by amending paragraph (1) to read as follows:

"(1) INSTEAD OF REMOVAL PROCEEDINGS.—If an alien is not described in paragraph (2)(A)(iii) or (4) of section 237(a), the Secretary of Homeland Security may permit the alien to voluntarily depart the United States at the alien's own expense under this

subsection instead of being subject to proceedings under section 240.";

(B) by striking paragraph (3);

(C) by redesignating paragraph (2) as paragraph (3);

(D) by adding after paragraph (1) the following:

"(2) BEFORE THE CONCLUSION OF REMOVAL PROCEEDINGS.—If an alien is not described in paragraph (2)(A)(iii) or (4) of section 237(a), the Attorney General may permit the alien to voluntarily depart the United States at the alien's own expense under this subsection after the initiation of removal proceedings under section 240 and before the conclusion of such proceedings before an immigration judge.";

(E) in paragraph (3), as redesignated—

(i) by amending subparagraph (A) to read as follows:

"(A) INSTEAD OF REMOVAL.—Subject to subparagraph (C), permission to voluntarily depart under paragraph (1) shall not be valid for any period in excess of 120 days. The Secretary may require an alien permitted to voluntarily depart under paragraph (1) to post a voluntary

departure bond, to be surrendered upon proof that the alien has departed the United States within the time specified.'';

(ii) by redesignating subparagraphs (B), (C), and (D) as paragraphs (C), (D), and (E), respectively;

(iii) by adding after subparagraph (A) the following:

''(B) BEFORE THE CONCLUSION OF REMOVAL PROCEEDINGS.—Permission to voluntarily depart under paragraph (2) shall not be valid for any period in excess of 60 days, and may be granted only after a finding that the alien has the means to depart the United States and intends to do so. An alien permitted to voluntarily depart under paragraph (2) shall post a voluntary departure bond, in an amount necessary to ensure that the alien will depart, to be surrendered upon proof that the alien has departed the United States within the time specified. An immigration judge may waive the requirement to post a voluntary departure bond in individual cases upon a finding that the alien has presented compelling evidence that the posting of a bond will pose a serious financial

hardship and the alien has presented credible evidence that such a bond is unnecessary to guarantee timely departure.'';

(iv) in subparagraph (C), as redesignated, by striking ''subparagraphs (C) and(D)(ii)'' and inserting ''subparagraphs (D) and (E)(ii)'';

(v) in subparagraph (D), as redesignated, by striking ''subparagraph (B)'' each place that term appears and inserting ''subparagraph (C)''; and

(vi) in subparagraph (E), as redesignated, by striking ''subparagraph (B)'' each place that term appears and inserting ''subparagraph (C)''; and

(F) in paragraph (4), by striking ''paragraph (1)'' and inserting ''paragraphs (1) and (2)'';

(2) in subsection (b)(2), by striking ''a period exceeding 60 days'' and inserting ''any period in excess of 45 days'';

(3) by amending subsection (c) to read as follows:

''(c) CONDITIONS ON VOLUNTARY DEPARTURE.—

"(1) VOLUNTARY DEPARTURE AGREEMENT.—Voluntary departure may only be granted as part of an affirmative agreement by the alien. A voluntary departure agreement under subsection (b) shall include a waiver of the right to any further motion, appeal, application, petition, or petition for review relating to removal or relief or protection from removal.

"(2) CONCESSIONS BY THE SECRETARY.—In connection with the alien's agreement to depart voluntarily under paragraph (1), the Secretary of Homeland Security may agree to a reduction in the period of inadmissibility under subparagraph (A) or (B)(i) of section 212(a)(9).

"(3) ADVISALS.—Agreements relating to voluntary departure granted during removal proceedings under section 240, or at the conclusion of such proceedings, shall be presented on the record before the immigration judge. The immigration judge shall advise the alien of the consequences of a voluntary departure agreement before accepting such agreement.

"(4) FAILURE TO COMPLY WITH AGREEMENT.—

"(A) IN GENERAL.—If an alien agrees to voluntary departure under this section and fails to depart the United States within the time allowed for voluntary departure or fails to comply with any other terms of the agreement (including failure to timely post any required bond), the alien is—

"(i) ineligible for the benefits of the agreement;

"(ii) subject to the penalties described in subsection (d); and

"(iii) subject to an alternate order of removal if voluntary departure was granted under subsection (a)(2) or (b).

"(B) EFFECT OF FILING TIMELY APPEAL.—If, after agreeing to voluntary departure, the alien files a timely appeal of the immigration judge's decision granting voluntary departure, the alien may pursue the appeal instead of the voluntary departure agreement. Such appeal operates to void the alien's voluntary departure agreement and the consequences of such agreement, but precludes the alien from another grant of voluntary departure while the alien remains in the United States.

"(5) VOLUNTARY DEPARTURE PERIOD NOT AFFECTED.—Except as expressly agreed to by the Secretary in writing in the exercise of the Secretary's discretion before the expiration of the period allowed for voluntary departure, no motion, appeal, application, petition, or petition for review shall affect, reinstate, enjoin, delay, stay, or toll the alien's obligation to depart from the United States during the period agreed to by the alien and the Secretary.";

(4) by amending subsection (d) to read as follows:

"(d) PENALTIES FOR FAILURE TO DEPART.—If an alien is permitted to voluntarily depart under this section and fails to voluntarily depart from the United States within the time period specified or otherwise violates the terms of a voluntary departure agreement, the alien will be subject to the following penalties:

"(1) CIVIL PENALTY.—The alien shall be liable for a civil penalty of $3,000. The order allowing voluntary departure shall specify the amount of the penalty, which shall be acknowledged by the alien on the record. If the Secretary thereafter establishes that the alien failed to depart voluntarily within the time allowed, no further procedure will be necessary to establish the amount of the penalty, and the Sec-

retary may collect the civil penalty at any time thereafter and by whatever means provided by law. An alien will be ineligible for any benefits under this chapter until this civil penalty is paid.

"(2) INELIGIBILITY FOR RELIEF.—The alien shall be ineligible during the time the alien remains in the United States and for a period of 10 years after the alien's departure for any further relief under this section and sections 240A, 245, 248, and 249. The order permitting the alien to depart voluntarily shall inform the alien of the penalties under this subsection.

"(3) REOPENING.—The alien shall be ineligible to reopen the final order of removal that took effect upon the alien's failure to depart, or upon the alien's other violations of the conditions for voluntary departure, during the period described in paragraph (2). This paragraph does not preclude a motion to reopen to seek withholding of removal under section 241(b)(3) or protection against torture, if the motion—

"(A) presents material evidence of changed country conditions arising after the date of the order granting voluntary departure in the country to which the alien would be removed; and

"(B) makes a sufficient showing to the satisfaction of the Attorney General that the alien is otherwise eligible for such protection."; and

(5) by amending subsection (e) to read as follows:

"(e) ELIGIBILITY.—

"(1) PRIOR GRANT OF VOLUNTARY DEPARTURE.—An alien shall not be permitted to voluntarily depart under this section if the Secretary of Homeland Security or the Attorney General previously permitted the alien to depart voluntarily.

"(2) RULEMAKING.—The Secretary may promulgate regulations to limit eligibility or impose additional conditions for voluntary departure under subsection (a)(1) for any class of aliens. The Secretary or Attorney General may by regulation limit eligibility or impose additional conditions for voluntary departure under subsections (a)(2) or (b) of this section for any class or classes of aliens."; and

(6) in subsection (f), by adding at the end the following: "Notwithstanding section 242(a)(2)(D) of this Act, sections 1361, 1651, and 2241 of title 28, United States Code, any other habeas corpus provision, and any other provision of law (statutory or nonstatutory), no court shall have jurisdiction to af-

fect, reinstate, enjoin, delay, stay, or toll the period allowed for voluntary departure under this section.''.

(b) RULEMAKING.—The Secretary shall promulgate regulations to provide for the imposition and collection of penalties for failure to depart under section 240B(d) of the Immigration and Nationality Act (8 U.S.C. 1229c(d)).

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply with respect to all orders granting voluntary departure under section 240B of the Immigration and Nationality Act (8 U.S.C. 1229c) made on or after the date that is 180 days after the enactment of this Act.

(2) EXCEPTION.—The amendment made by subsection (a)(6) shall take effect on the date of the enactment of this Act and shall apply with respect to any petition for review which is filed on or after such date.

SEC. 212. DETERRING ALIENS ORDERED REMOVED FROM REMAINING IN THE UNITED STATES UNLAWFULLY.

(a) INADMISSIBLE ALIENS.—Section 212(a)(9)(A) (8 U.S.C. 1182(a)(9)(A)) is amended—

(1) in clause (i), by striking ''seeks admission within 5 years of the date of such removal (or within 20 years'' and inserting ''seeks admission not later than 5 years after the date of the alien's removal (or not later than 20 years after the alien's removal''; and

(2) in clause (ii), by striking ''seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of'' and inserting ''seeks admission not later than 10 years after the date of the alien's departure or removal (or not later than 20 years after''.

(b) BAR ON DISCRETIONARY RELIEF.—Section 274D (9 U.S.C. 324d) is amended—

(1) in subsection (a), by striking ''Commissioner'' and inserting ''Secretary of Homeland Security''; and

(2) by adding at the end the following:

''(c) INELIGIBILITY FOR RELIEF.—

''(1) IN GENERAL.—Unless a timely motion to reopen is granted under section 240(c)(6), an alien described in subsection (a) shall be ineligible for any discretionary relief from removal (including cancellation of removal and adjustment of status) during the time the alien remains in the United States and for

a period of 10 years after the alien's departure from the United States.

"(2) SAVINGS PROVISION.—Nothing in paragraph (1) shall preclude a motion to reopen to seek withholding of removal under section 241(b)(3) or protection against torture, if the motion—

"(A) presents material evidence of changed country conditions arising after the date of the final order of removal in the country to which the alien would be removed; and

"(B) makes a sufficient showing to the satisfaction of the Attorney General that the alien is otherwise eligible for such protection.".

(c) EFFECTIVE DATES.—The amendments made by this section shall take effect on the date of the enactment of this Act with respect to aliens who are subject to a final order of removal, whether the removal order was entered before, on, or after such date.

SEC. 213. PROHIBITION OF THE SALE OF FIREARMS TO, OR THE POSSESSION OF FIREARMS BY CERTAIN ALIENS.

Section 922 of title 18, United States Code, is amended—

(1) in subsection (d)(5)—

(A) in subparagraph (A), by striking ''or'' at the end;

(B) in subparagraph (B), by striking ''(y)(2)'' and all that follows and inserting ''(y), is in a nonimmigrant classification; or''; and

(C) by adding at the end the following:

''(C) has been paroled into the United States under section 212(d)(5) of the Immigration and Nationality Act (8 U.S.C. 1182(d)(5));''; and

(2) in subsection (g)(5)—

(A) in subparagraph (A), by striking ''or'' at the end;

(B) in subparagraph (B), by striking ''(y)(2)'' and all that follows and inserting ''(y), is in a nonimmigrant classification; or''; and

(C) by adding at the end the following:

''(C) has been paroled into the United States under section 212(d)(5) of the Immigration and Nationality Act (8 U.S.C. 1182(d)(5));''.

(3) in subsection (y)—

(A) in the header, by striking ''ADMITTED UNDER NONIMMIGRANT VISAS'' and inserting ''IN A NONIMMIGRANT CLASSIFICATION'';

(B) in paragraph (1), by amending subparagraph (B) to read as follows:

"(B) the term 'nonimmigrant classification' includes all classes of nonimmigrant aliens described in section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)), or otherwise described in the immigration laws (as defined in section 101(a)(17) of such Act).";

(C) in paragraph (2), by striking "has been lawfully admitted to the United States under a nonimmigrant visa" and inserting "is in a nonimmigrant classification"; and

(D) in paragraph (3)(A), by striking "Any individual who has been admitted to the United States under a nonimmigrant visa may receive a waiver from the requirements of subsection (g)(5)" and inserting "Any alien in a nonimmigrant classification may receive a waiver from the requirements of subsection (g)(5)(B)".

SEC. 214. UNIFORM STATUTE OF LIMITATIONS FOR CERTAIN IMMIGRATION, NATURALIZATION, AND PEONAGE OFFENSES.

(a) IN GENERAL.—Section 3291 of title 18, United States Code, is amended to read as follows:

"§ 3291. Immigration, naturalization, and peonage offenses

''No person shall be prosecuted, tried, or punished for a violation of any section of chapters 69 (relating to nationality and citizenship offenses), 75 (relating to passport, visa, and immigration offenses), or 77 (relating to peonage, slavery, and trafficking in persons), for an attempt or conspiracy to violate any such section, for a violation of any criminal provision under section 243, 266, 274, 275, 276, 277, or 278 of the Immigration and Nationality Act (8 U.S.C. 1253, 1306, 1324, 1325, 1326, 1327, and 1328), or for an attempt or conspiracy to violate any such section, unless the indictment is returned or the information filed not later than 10 years after the commission of the offense.''.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 213 of title 18, United States Code, is amended by striking the item relating to section 3291 and inserting the following:

''3291. Immigration, naturalization, and peonage offenses.''.

SEC. 215. DIPLOMATIC SECURITY SERVICE.

Section 2709(a)(1) of title 22, United States Code, is amended to read as follows:

''(1) conduct investigations concerning—

''(A) illegal passport or visa issuance or use;

"(B) identity theft or document fraud affecting or relating to the programs, functions, and authorities of the Department of State;

"(C) violations of chapter 77 of title 18, United States Code; and

"(D) Federal offenses committed within the special maritime and territorial jurisdiction of the United States (as defined in section 7(9) of title 18, United States Code);".

SEC. 216. COMPLETION OF BACKGROUND AND SECURITY CHECKS.

Section 103 (8 U.S.C. 1103) is amended by adding at the end the following:

"(i) Notwithstanding any other provision of law, appropriate background and security checks, as determined by the Secretary of Homeland Security, shall be completed and assessed and any suspected or alleged fraud relating to the granting of any status (including the granting of adjustment of status), relief, protection from removal, or other benefit under this subsection shall be investigated and resolved before the Secretary or the Attorney General may—

"(1) grant or order the grant of adjustment of status of an alien to that of an alien lawfully admitted for permanent residence;

"(2) grant or order the grant of any other status, relief, protection from removal, or other benefit under the immigration laws; or

"(3) issue any documentation evidencing or related to such grant by the Secretary, the Attorney General, or any court.".

SEC. 217. DENIAL OF BENEFITS TO TERRORISTS AND CRIMINALS.

(a) IN GENERAL.—Chapter 4 of title III (8 U.S.C. 1501 et seq.) is amended by adding at the end the following:

"SEC. 362. CONSTRUCTION.

"(a) IN GENERAL.—Nothing in this Act or in any other provision of law shall be construed to require the Secretary of Homeland Security, the Attorney General, the Secretary of State, the Secretary of Labor, or any other authorized head of any Federal agency to grant any application, approve any petition, or grant or continue any status or benefit under the immigration laws by, to, or on behalf of—

"(1) any alien described in subparagraph (A)(i), (A)(iii), (B), or (F) of section 212(a)(3) or subparagraph (A)(i), (A)(iii), or (B) of section 237(a)(4);

"(2) any alien with respect to whom a criminal or other investigation or case is pending that is ma-

terial to the alien's inadmissibility, deportability, or eligibility for the status or benefit sought; or

"(3) any alien for whom all law enforcement checks, as deemed appropriate by such authorized official, have not been conducted and resolved.

"(b) DENIAL; WITHHOLDING.—An official described in subsection (a) may deny or withhold (with respect to an alien described in subsection (a)(1)) or withhold pending resolution of the investigation, case, or law enforcement checks (with respect to an alien described in paragraph (2) or (3) of subsection (a)) any such application, petition, status, or benefit on such basis.".

(b) CLERICAL AMENDMENT.—The table of contents is amended by inserting after the item relating to section 361 the following:

"Sec. 362. Construction.".

SEC. 218. STATE CRIMINAL ALIEN ASSISTANCE PROGRAM.

(a) REIMBURSEMENT FOR COSTS ASSOCIATED WITH PROCESSING CRIMINAL ILLEGAL ALIENS.—The Secretary of Homeland Security shall reimburse States and units of local government for costs associated with detaining and processing undocumented criminal aliens through the criminal justice system, including—

(1) indigent defense;

(2) criminal prosecution;

(3) autopsies;

(4) translators and interpreters; and

(5) courts costs.

(b) AUTHORIZATION OF APPROPRIATIONS.—

(1) PROCESSING CRIMINAL ILLEGAL ALIENS.—There are authorized to be appropriated $400,000,000 for each of the fiscal years 2007 through 2012 to carry out subsection (a).

(2) COMPENSATION UPON REQUEST.—Section 241(i)(5) (8 U.S.C. 1231(i)) is amended to read as follows:

''(5) There are authorized to be appropriated to carry this subsection—

''(A) such sums as may be necessary for fiscal year 2007;

''(B) $750,000,000 for fiscal year 2008;

''(C) $850,000,000 for fiscal year 2009; and

''(D) $950,000,000 for each of the fiscal years 2010 through 2012.''.

(c) TECHNICAL AMENDMENT.—Section 501 of the Immigration Reform and Control Act of 1986 (8 U.S.C. 1365) is amended by striking ''Attorney General'' each place it appears and inserting ''Secretary of Homeland Security''.

SEC. 219. REDUCING ILLEGAL IMMIGRATION AND ALIEN SMUGGLING ON TRIBAL LANDS.

(a) GRANTS AUTHORIZED.—The Secretary may award grants to Indian tribes with lands adjacent to an international border of the United States that have been adversely affected by illegal immigration.

(b) USE OF FUNDS.—Grants awarded under subsection (a) may be used for—

(1) law enforcement activities;

(2) health care services;

(3) environmental restoration; and

(4) the preservation of cultural resources.

(c) REPORT.—Not later than 180 days after the date of the enactment of this Act, the Secretary shall submit a report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives that—

(1) describes the level of access of Border Patrol agents on tribal lands;

(2) describes the extent to which enforcement of immigration laws may be improved by enhanced access to tribal lands;

(3) contains a strategy for improving such access through cooperation with tribal authorities; and

(4) identifies grants provided by the Department for Indian tribes, either directly or through

State or local grants, relating to border security expenses.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2007 through 2011 to carry out this section.

SEC. 220. ALTERNATIVES TO DETENTION.

The Secretary shall conduct a study of—

(1) the effectiveness of alternatives to detention, including electronic monitoring devices and intensive supervision programs, in ensuring alien appearance at court and compliance with removal orders;

(2) the effectiveness of the Intensive Supervision Appearance Program and the costs and benefits of expanding that program to all States; and

(3) other alternatives to detention, including—

(A) release on an order of recognizance;

(B) appearance bonds; and

(C) electronic monitoring devices.

SEC. 221. CONFORMING AMENDMENT.

Section 101(a)(43)(P) (8 U.S.C. 1101(a)(43)(P)) is amended—

(1) by striking "(i) which either is falsely making, forging, counterfeiting, mutilating, or altering a passport or instrument in violation of section 1543

of title 18, United States Code, or is described in section 1546(a) of such title (relating to document fraud) and (ii)'' and inserting ''which is described in chapter 75 of title 18, United States Code, and''; and

(2) by inserting the following: ''that is not described in section 1548 of such title (relating to increased penalties), and'' (ii) after ''first offense''.

SEC. 222. REPORTING REQUIREMENTS.

(a) CLARIFYING ADDRESS REPORTING REQUIREMENTS.—Section 265 (8 U.S.C. 1305) is amended—

(1) in subsection (a)—

(A) by striking ''notify the Attorney General in writing'' and inserting ''submit written or electronic notification to the Secretary of Homeland Security, in a manner approved by the Secretary,'';

(B) by striking ''the Attorney General may require by regulation'' and inserting ''the Secretary may require''; and

(C) by adding at the end the following: ''If the alien is involved in proceedings before an immigration judge or in an administrative appeal of such proceedings, the alien shall submit to the Attorney General the alien's current ad-

dress and a telephone number, if any, at which the alien may be contacted.''; (2) in subsection (b), by striking ''Attorney General'' each place such term appears and inserting ''Secretary''; (3) in subsection (c), by striking ''given to such parent'' and inserting ''given by such parent''; and (4) by inserting at the end the following:

''(d) ADDRESS TO BE PROVIDED.—

''(1) IN GENERAL.—Except as otherwise provided by the Secretary under paragraph (2), an address provided by an alien under this section shall be the alien's current residential mailing address, and shall not be a post office box or other non-residential mailing address or the address of an attorney, representative, labor organization, or employer.

''(2) SPECIFIC REQUIREMENTS.—The Secretary may provide specific requirements with respect to—

''(A) designated classes of aliens and special circumstances, including aliens who are employed at a remote location; and

''(B) the reporting of address information by aliens who are incarcerated in a Federal, State, or local correctional facility.

"(3) DETENTION.—An alien who is being detained by the Secretary under this Act is not required to report the alien's current address under this section during the time the alien remains in detention, but shall be required to notify the Secretary of the alien's address under this section at the time of the alien's release from detention.

"(e) USE OF MOST RECENT ADDRESS PROVIDED BY THE ALIEN.—

"(1) IN GENERAL.—Notwithstanding any other provision of law, the Secretary may provide for the appropriate coordination and cross referencing of address information provided by an alien under this section with other information relating to the alien's address under other Federal programs, including—

"(A) any information pertaining to the alien, which is submitted in any application, petition, or motion filed under this Act with the Secretary of Homeland Security, the Secretary of State, or the Secretary of Labor;

"(B) any information available to the Attorney General with respect to an alien in a proceeding before an immigration judge or an administrative appeal or judicial review of such proceeding;

"(C) any information collected with respect to nonimmigrant foreign students or exchange program participants under section 641 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1372); and

"(D) any information collected from State or local correctional agencies pursuant to the State Criminal Alien Assistance Program.

"(2) RELIANCE.—The Secretary may rely on the most recent address provided by the alien under this section or section 264 to send to the alien any notice, form, document, or other matter pertaining to Federal immigration laws, including service of a notice to appear. The Attorney General and the Secretary may rely on the most recent address provided by the alien under section 239(a)(1)(F) to contact the alien about pending removal proceedings.

"(3) OBLIGATION.—The alien's provision of an address for any other purpose under the Federal immigration laws does not excuse the alien's obligation to submit timely notice of the alien's address to the Secretary under this section (or to the Attorney General under section 239(a)(1)(F) with respect to an alien in a proceeding before an immigration judge or an administrative appeal of such proceeding).".

(b) CONFORMING CHANGES WITH RESPECT TO REGISTRATION REQUIREMENTS.—Chapter 7 of title II (8 U.S.C. 1301 et seq.) is amended—

(1) in section 262(c), by striking ''Attorney General'' and inserting ''Secretary of Homeland Security'';

(2) in section 263(a), by striking ''Attorney General'' and inserting ''Secretary of Homeland Security''; and

(3) in section 264—

(A) in subsections (a), (b), (c), and (d), by striking ''Attorney General'' each place it appears and inserting ''Secretary of Homeland Security''; and

(B) in subsection (f)—

(i) by striking ''Attorney General is authorized'' and inserting ''Secretary of Homeland Security and Attorney General are authorized''; and

(ii) by striking ''Attorney General or the Service'' and inserting ''Secretary or the Attorney General''.

(c) PENALTIES.—Section 266 (8 U.S.C. 1306) is amended—

(1) by amending subsection (b) to read as follows:

"(b) FAILURE TO PROVIDE NOTICE OF ALIEN'S CURRENT ADDRESS.—

"(1) CRIMINAL PENALTIES.—Any alien or any parent or legal guardian in the United States of any minor alien who fails to notify the Secretary of Homeland Security of the alien's current address in accordance with section 265 shall be fined under title 18, United States Code, imprisoned for not more than 6 months, or both.

"(2) EFFECT ON IMMIGRATION STATUS.—Any alien who violates section 265 (regardless of whether the alien is punished under paragraph (1)) and does not establish to the satisfaction of the Secretary that such failure was reasonably excusable or was not willful shall be taken into custody in connection with removal of the alien. If the alien has not been inspected or admitted, or if the alien has failed on more than 1 occasion to submit notice of the alien's current address as required under section 265, the alien may be presumed to be a flight risk. The Secretary or the Attorney General, in considering any form of relief from removal which may be granted in the discretion of the Secretary or the Attorney

General, may take into consideration the alien's failure to comply with section 265 as a separate negative factor. If the alien failed to comply with the requirements of section 265 after becoming subject to a final order of removal, deportation, or exclusion, the alien's failure shall be considered as a strongly negative factor with respect to any discretionary motion for reopening or reconsideration filed by the alien.";

(2) in subsection (c), by inserting "or a notice of current address" before "containing statements"; and

(3) in subsections (c) and (d), by striking "Attorney General" each place it appears and inserting "Secretary".

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to proceedings initiated on or after the date of the enactment of this Act.

(2) CONFORMING AND TECHNICAL AMENDMENTS.—The amendments made by paragraphs (1)(A), (1)(B), (2) and (3) of subsection (a) are effective as if enacted on March 1, 2003.

SEC. 223. SEVERABILITY.

If any provision of this title, any amendment made by this title, or the application of such provision or amendment to any person or circumstance is held to be invalid for any reason, the remainder of this title, the amendments made by this title, and the application of the provisions of such to any other person or circumstance shall not be affected by such holding.

TITLE III—UNLAWFUL EMPLOYMENT OF ALIENS

SEC. 301. UNLAWFUL EMPLOYMENT OF ALIENS.

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

"SEC. 274A. UNLAWFUL EMPLOYMENT OF ALIENS.

"(a) MAKING EMPLOYMENT OF UNAUTHORIZED ALIENS UNLAWFUL.—

"(1) IN GENERAL.—It is unlawful for an employer—

"(A) to hire, or to recruit or refer for a fee, an alien for employment in the United States knowing, or with reason to know, that the alien is an unauthorized alien with respect to such employment; or

"(B) to hire, or to recruit or refer for a fee, for employment in the United States an in-

dividual unless such employer meets the requirements of subsections (c) and (d).

"(2) CONTINUING EMPLOYMENT.—It is unlawful for an employer, after lawfully hiring an alien for employment, to continue to employ the alien in the United States knowing or with reason to know that the alien is (or has become) an unauthorized alien with respect to such employment.

"(3) USE OF LABOR THROUGH CONTRACT.—In this section, an employer who uses a contract, subcontract, or exchange, entered into, renegotiated, or extended after the date of the enactment of the Comprehensive Immigration Reform Act of 2006, to obtain the labor of an alien in the United States knowing, or with reason to know, that the alien is an unauthorized alien with respect to performing such labor, shall be considered to have hired the alien for employment in the United States in violation of paragraph (1)(A).

"(4) REBUTTABLE PRESUMPTION OF UNLAWFUL HIRING.—If the Secretary determines that an employer has hired more than 10 unauthorized aliens during a calendar year, a rebuttable presumption is created for the purpose of a civil enforcement

proceeding, that the employer knew or had reason to know that such aliens were unauthorized.

"(5) DEFENSE.—

"(A) IN GENERAL.—Subject to subparagraph (B), an employer that establishes that the employer has complied in good faith with the requirements of subsections (c) and (d) has established an affirmative defense that the employer has not violated paragraph (1)(A) with respect to such hiring, recruiting, or referral.

"(B) EXCEPTION.—Until the date that an employer is required to participate in the Electronic Employment Verification System under subsection (d) or is permitted to participate in such System on a voluntary basis, the employer may establish an affirmative defense under subparagraph (A) without a showing of compliance with subsection (d).

"(b) ORDER OF INTERNAL REVIEW AND CERTIFICATION OF COMPLIANCE.—

"(1) AUTHORITY TO REQUIRE CERTIFICATION.—If the Secretary has reasonable cause to believe that an employer has failed to comply with this section, the Secretary is authorized, at any time, to require that the employer certify that the em-

ployer is in compliance with this section, or has instituted a program to come into compliance.

"(2) CONTENT OF CERTIFICATION.—Not later than 60 days after the date an employer receives a request for a certification under paragraph (1) the chief executive officer or similar official of the employer shall certify under penalty of perjury that—

"(A) the employer is in compliance with the requirements of subsections (c) and (d); or

"(B) that the employer has instituted a program to come into compliance with such requirements.

"(3) EXTENSION.—The 60-day period referred to in paragraph (2), may be extended by the Secretary for good cause, at the request of the employer.

"(4) PUBLICATION.—The Secretary is authorized to publish in the Federal Register standards or methods for certification and for specific record keeping practices with respect to such certification, and procedures for the audit of any records related to such certification.

"(c) DOCUMENT VERIFICATION REQUIREMENTS.—An employer hiring, or recruiting or referring for a fee, an individual for employment in the United States shall

take all reasonable steps to verify that the individual is eligible for such employment. Such steps shall include meeting the requirements of subsection (d) and the following paragraphs:

"(1) ATTESTATION BY EMPLOYER.—

"(A) REQUIREMENTS.—

"(i) IN GENERAL.—The employer shall attest, under penalty of perjury and on a form prescribed by the Secretary, that the employer has verified the identity and eligibility for employment of the individual by examining—

"(I) a document described in subparagraph (B); or

"(II) a document described in subparagraph (C) and a document described in subparagraph (D).

"(ii) SIGNATURE REQUIREMENTS.—An attestation required by clause (i) may be manifested by a handwritten or electronic signature.

"(iii) STANDARDS FOR EXAMINATION.—An employer has complied with the requirement of this paragraph with respect to examination of documentation if, based

on the totality of the circumstances, a reasonable person would conclude that the document examined is genuine and establishes the individual's identity and eligibility for employment in the United States.

"(iv) REQUIREMENTS FOR EMPLOYMENT ELIGIBILITY SYSTEM PARTICIPANTS.—A participant in the Electronic Employment Verification System established under subsection (d), regardless of whether such participation is voluntary or mandatory, shall be permitted to utilize any technology that is consistent with this section and with any regulation or guidance from the Secretary to streamline the procedures to comply with the attestation requirement, and to comply with the employment eligibility verification requirements contained in this section.

"(B) DOCUMENTS ESTABLISHING BOTH EMPLOYMENT ELIGIBILITY AND IDENTITY.—A document described in this subparagraph is an individual's—

"(i) United States passport; or

"(ii) permanent resident card or other document designated by the Secretary, if the document—

"(I) contains a photograph of the individual and such other personal identifying information relating to the individual that the Secretary proscribes in regulations is sufficient for the purposes of this subparagraph;

"(II) is evidence of eligibility for employment in the United States; and

"(III) contains security features to make the document resistant to tampering, counterfeiting, and fraudulent use.

"(C) DOCUMENTS EVIDENCING EMPLOYMENT ELIGIBILITY.—A document described in this subparagraph is an individual's—

"(i) social security account number card issued by the Commissioner of Social Security (other than a card which specifies on its face that the issuance of the card does not authorize employment in the United States); or

"(ii) any other documents evidencing eligibility of employment in the United States, if—

"(I) the Secretary has published a notice in the Federal Register stating that such document is acceptable for purposes of this subparagraph; and

"(II) contains security features to make the document resistant to tampering, counterfeiting, and fraudulent use.

"(D) DOCUMENTS ESTABLISHING IDENTITY OF INDIVIDUAL.—A document described in this subparagraph is an individual's—

"(i) driver's license or identity card issued by a State, the Commonwealth of the Northern Mariana Islands, or an outlying possession of the United States that complies with the requirements of the REAL ID Act of 2005 (division B of Public Law 109–13; 119 Stat. 302);

"(ii) driver's license or identity card issued by a State, the Commonwealth of the Northern Mariana Islands, or an out-

lying possession of the United States that is not in compliance with the requirements of the REAL ID Act of 2005, if the license or identity card—

"(I) is not required by the Secretary to comply with such requirements; and

"(II) contains the individual's photograph or information including the individual's name, date of birth, gender, and address; and

"(iii) identification card issued by a Federal agency or department, including a branch of the Armed Forces, or an agency, department, or entity of a State, or a Native American tribal document, provided that such card or document—

"(I) contains the individual's photograph or information including the individual's name, date of birth, gender, eye color, and address; and

"(II) contains security features to make the card resistant to tampering, counterfeiting, and fraudulent use; or

"(iv) in the case of an individual who is under 16 years of age who is unable to present a document described in clause (i), (ii), or (iii) a document of personal identity of such other type that—

"(I) the Secretary determines is a reliable means of identification; and

"(II) contains security features to make the document resistant to tampering, counterfeiting, and fraudulent use.

"(E) AUTHORITY TO PROHIBIT USE OF CERTAIN DOCUMENTS.—

"(i) AUTHORITY.—If the Secretary finds that a document or class of documents described in subparagraph (B), (C), or (D) is not reliable to establish identity or eligibility for employment (as the case may be) or is being used fraudulently to an unacceptable degree, the Secretary is authorized to prohibit, or impose conditions, on the use of such document or class of documents for purposes of this subsection.

"(ii) REQUIREMENT FOR PUBLICATION.—The Secretary shall publish notice

of any findings under clause (i) in the Federal Register.

"(2) ATTESTATION OF EMPLOYEE.—

"(A) REQUIREMENTS.—

"(i) IN GENERAL.—The individual shall attest, under penalty of perjury on the form prescribed by the Secretary, that the individual is a national of the United States, an alien lawfully admitted for permanent residence, or an alien who is authorized under this Act or by the Secretary to be hired, recruited or referred for a fee, in the United States.

"(ii) SIGNATURE FOR EXAMINATION.—An attestation required by clause (i) may be manifested by a handwritten or electronic signature.

"(B) PENALTIES.—An individual who falsely represents that the individual is eligible for employment in the United States in an attestation required by subparagraph (A) shall, for each such violation, be subject to a fine of not more than $5,000, a term of imprisonment not to exceed 3 years, or both.

"(3) RETENTION OF ATTESTATION.—An employer shall retain a paper, microfiche, microfilm, or electronic version of an attestation submitted under paragraph (1) or (2) for an individual and make such attestations available for inspection by an officer of the Department of Homeland Security, any other person designated by the Secretary, the Special Counsel for Immigration-Related Unfair Employment Practices of the Department of Justice, or the Secretary of Labor during a period beginning on the date of the hiring, or recruiting or referring for a fee, of the individual and ending—

"(A) in the case of the recruiting or referral for a fee (without hiring) of an individual, 7 years after the date of the recruiting or referral; or

"(B) in the case of the hiring of an individual the later of—

"(i) 7 years after the date of such hiring;

"(ii) 1 year after the date the individual's employment is terminated; or

"(iii) in the case of an employer or class of employers, a period that is less than the applicable period described in

clause (i) or (ii) if the Secretary reduces such period for such employer or class of employers.

"(4) DOCUMENT RETENTION AND RECORD KEEPING REQUIREMENTS.—

"(A) RETENTION OF DOCUMENTS.—An employer shall retain, for the applicable period described in paragraph (3), the following documents:

"(i) IN GENERAL.—Notwithstanding any other provision of law, the employer shall copy all documents presented by an individual pursuant to this subsection and shall retain paper, microfiche, microfilm, or electronic copies of such documents. Such copies shall reflect the signature of the employer and the individual and the date of receipt of such documents.

"(ii) USE OF RETAINED DOCUMENTS.—An employer shall use copies retained under clause (i) only for the purposes of complying with the requirements of this subsection, except as otherwise permitted under law.

"(B) RETENTION OF SOCIAL SECURITY CORRESPONDENCE.—The employer shall maintain records related to an individual of any no-match notice from the Commissioner of Social Security regarding the individual's name or corresponding social security account number and the steps taken to resolve each issue described in the no-match notice.

"(C) RETENTION OF CLARIFICATION DOCUMENTS.—The employer shall maintain records of any actions and copies of any correspondence or action taken by the employer to clarify or resolve any issue that raises reasonable doubt as to the validity of the individual's identity or eligibility for employment in the United States.

"(D) RETENTION OF OTHER RECORDS.—The Secretary may require that an employer retain copies of additional records related to the individual for the purposes of this section.

"(5) PENALTIES.—An employer that fails to comply with the requirement of this subsection shall be subject to the penalties described in subsection (e)(4)(B).

"(6) NO AUTHORIZATION OF NATIONAL IDENTIFICATION CARDS.—Nothing in this section may be

construed to authorize, directly or indirectly, the issuance, use, or establishment of a national identification card.

"(d) ELECTRONIC EMPLOYMENT VERIFICATION SYSTEM.—

"(1) REQUIREMENT FOR SYSTEM.—The Secretary, in cooperation with the Commissioner of Social Security, shall implement an Electronic Employment Verification System (referred to in this subsection as the 'System') as described in this subsection.

"(2) MANAGEMENT OF SYSTEM.—

"(A) IN GENERAL.—The Secretary shall, through the System—

"(i) provide a response to an inquiry made by an employer through the Internet or other electronic media or over a telephone line regarding an individual's identity and eligibility for employment in the United States;

"(ii) establish a set of codes to be provided through the System to verify such identity and authorization; and

"(iii) maintain a record of each such inquiry and the information and codes provided in response to such inquiry.

"(B) INITIAL RESPONSE.—Not later than 3 days after an employer submits an inquire to the System regarding an individual, the Secretary shall provide, through the System, to the employer—

"(i) if the System is able to confirm the individual's identity and eligibility for employment in the United States, a confirmation notice, including the appropriate codes on such confirmation notice; or

"(ii) if the System is unable to confirm the individual's identity or eligibility for employment in the United States, a tentative nonconfirmation notice, including the appropriate codes for such nonconfirmation notice.

"(C) VERIFICATION PROCESS IN CASE OF A TENTATIVE NONCONFIRMATION NOTICE.—

"(i) IN GENERAL.—If a tentative nonconfirmation notice is issued under subparagraph (B)(ii), not later than 10 days after the date an individual submits infor-

mation to contest such notice under paragraph (7)(C)(ii)(III), the Secretary, through the System, shall issue a final confirmation notice or a final nonconfirmation notice to the employer, including the appropriate codes for such notice.

"(ii) DEVELOPMENT OF PROCESS.—The Secretary shall consult with the Commissioner of Social Security to develop a verification process to be used to provide a final confirmation notice or a final nonconfirmation notice under clause (i).

"(D) DESIGN AND OPERATION OF SYSTEM.—The Secretary, in consultation with the Commissioner of Social Security, shall design and operate the System—

"(i) to maximize reliability and ease of use by employers in a manner that protects and maintains the privacy and security of the information maintained in the System;

"(ii) to respond to each inquiry made by an employer; and

"(iii) to track and record any occurrence when the System is unable to receive such an inquiry;

"(iv) to include appropriate administrative, technical, and physical safeguards to prevent unauthorized disclosure of personal information;

"(v) to allow for monitoring of the use of the System and provide an audit capability; and

"(vi) to have reasonable safeguards, developed in consultation with the Attorney General, to prevent employers from engaging in unlawful discriminatory practices, based on national origin or citizenship status.

"(E) RESPONSIBILITIES OF THE COMMISSIONER OF SOCIAL SECURITY.—The Commissioner of Social Security shall establish a reliable, secure method to provide through the System, within the time periods required by subparagraphs (B) and (C)—

"(i) a determination of whether the name and social security account number provided in an inquiry by an employer

match such information maintained by the Commissioner in order to confirm the validity of the information provided;

"(ii) a determination of whether such social security account number was issued to the named individual;

"(iii) determination of whether such social security account number is valid for employment in the United States; and

"(iv) a confirmation notice or a nonconfirmation notice under subparagraph (B) or (C), in a manner that ensures that other information maintained by the Commissioner is not disclosed or released to employers through the System.

"(F) RESPONSIBILITIES OF THE SECRETARY.—The Secretary shall establish a reliable, secure method to provide through the System, within the time periods required by subparagraphs (B) and (C)—

"(i) a determination of whether the name and alien identification or authorization number provided in an inquiry by an employer match such information main-

tained by the Secretary in order to confirm the validity of the information provided;

"(ii) a determination of whether such number was issued to the named individual;

"(iii) a determination of whether the individual is authorized to be employed in the United States; and

"(iv) any other related information that the Secretary may require.

"(G) UPDATING INFORMATION.—The Commissioner of Social Security and the Secretary shall update the information maintained in the System in a manner that promotes maximum accuracy and shall provide a process for the prompt correction of erroneous information.

"(3) REQUIREMENTS FOR PARTICIPATION.—Except as provided in paragraphs (4) and (5), the Secretary shall require employers to participate in the System as follows:

"(A) CRITICAL EMPLOYERS.—

"(i) REQUIRED PARTICIPATION.—As of the date that is 180 days after the date of the enactment of the Comprehensive Immigration Reform Act of 2006, the Sec-

retary shall require any employer or class of employers to participate in the System, with respect to employees hired by the employer prior to, on, or after such date of enactment, if the Secretary determines, in the Secretary's sole and unreviewable discretion, such employer or class of employer is—

"(I) part of the critical infrastructure of the United States; or

"(II) directly related to the national security or homeland security of the United States.

"(ii) DISCRETIONARY PARTICIPATION.—As of the date that is 180 days after the date of the enactment of the Comprehensive Immigration Reform Act of 2006, the Secretary may require additional any employer or class of employers to participate in the System with respect to employees hired on or after such date if the Secretary designates such employer or class of employers, in the Secretary's sole and unreviewable discretion, as a critical

employer based on immigration enforcement or homeland security needs.

"(B) LARGE EMPLOYERS.—Not later than 2 years after the date of the enactment of the Comprehensive Immigration Reform Act of 2006, the Secretary shall require an employer with more than 5,000 employees in the United States to participate in the System, with respect to all employees hired by the employer after the date the Secretary requires such participation.

"(C) MID-SIZED EMPLOYERS.—Not later than 3 years after the date of enactment of the Comprehensive Immigration Reform Act of 2006, the Secretary shall require an employer with less than 5,000 employees and with more than 1,000 employees in the United States to participate in the System, with respect to all employees hired by the employer after the date the Secretary requires such participation.

"(D) SMALL EMPLOYERS.—Not later than 4 years after the date of the enactment of the Comprehensive Immigration Reform Act of 2006, the Secretary shall require all employers with less than 1,000 employees and with more

than 250 employees in the United States to participate in the System, with respect to all employees hired by the employer after the date the Secretary requires such participation.

"(E) REMAINING EMPLOYERS.—Not later than 5 years after the date of the enactment of the Comprehensive Immigration Reform Act of 2006, the Secretary shall require all employers in the United States to participate in the System, with respect to all employees hired by an employer after the date the Secretary requires such participation.

"(F) REQUIREMENT TO PUBLISH.—The Secretary shall publish in the Federal Register the requirements for participation in the System as described in subparagraphs (A), (B), (C), (D), and (E) prior to the effective date of such requirements.

"(4) OTHER PARTICIPATION IN SYSTEM.—Notwithstanding paragraph (3), the Secretary has the authority, in the Secretary's sole and unreviewable discretion—

"(A) to permit any employer that is not required to participate in the System under para-

graph (3) to participate in the System on a voluntary basis; and

"(B) to require any employer that is required to participate in the System under paragraph (3) with respect to newly hired employees to participate in the System with respect to all employees hired by the employer prior to, on, or after the date of the enactment of the Comprehensive Immigration Reform Act of 2006, if the Secretary has reasonable causes to believe that the employer has engaged in violations of the immigration laws.

"(5) WAIVER.—The Secretary is authorized to waive or delay the participation requirements of paragraph (3) respect to any employer or class of employers if the Secretary provides notice to Congress of such waiver prior to the date such waiver is granted.

"(6) CONSEQUENCE OF FAILURE TO PARTICIPATE.—If an employer is required to participate in the System and fails to comply with the requirements of the System with respect to an individual—

"(A) such failure shall be treated as a violation of subsection (a)(1)(B) of this section with respect to such individual; and

"(B) a rebuttable presumption is created that the employer has violated subsection (a)(1)(A) of this section, however such presumption may not apply to a prosecution under subsection (f)(1).

"(7) SYSTEM REQUIREMENTS.—

"(A) IN GENERAL.—An employer that participates in the System shall, with respect to the hiring, or recruiting or referring for a fee, any individual for employment in the United States, shall—

"(i) obtain from the individual and record on the form designated by the Secretary—

"(I) the individual's social security account number; and

"(II) in the case of an individual who does not attest that the individual is a national of the United States under subsection (c)(2), such identification or authorization number that the Secretary shall require; and

"(ii) retain the original of such form and make such form available for inspec-

tion for the periods and in the manner described in subsection (c)(3).

"(B) SEEKING VERIFICATION.—The employer shall submit an inquiry through the System to seek confirmation of the individual's identity and eligibility for employment in the United States—

"(i) not later than 3 working days (or such other reasonable time as may be specified by the Secretary of Homeland Security) after the date of the hiring, or recruiting or referring for a fee, of the individual (as the case may be); or

"(ii) in the case of an employee hired prior to the date of enactment of the Comprehensive Immigration Reform Act of 2006, at such time as the Secretary shall specify.

"(C) CONFIRMATION OR NONCONFIRMATION.—

"(i) CONFIRMATION UPON INITIAL INQUIRY.—If an employer receives a confirmation notice under paragraph (2)(B)(i) for an individual, the employer shall record, on the form specified by the Sec-

retary, the appropriate code provided in such notice.

"(ii) NONCONFIRMATION AND VERIFICATION.—

"(I) NONCONFIRMATION.—If an employer receives a tentative nonconfirmation notice under paragraph (2)(B)(ii) for an individual, the employer shall inform such individual of the issuances of such notice in writing and the individual may contest such nonconfirmation notice.

"(II) NO CONTEST.—If the individual does not contest the tentative nonconfirmation notice under subclause (I) within 10 days of receiving notice from the individual's employer, the notice shall become final and the employer shall record on the form specified by the Secretary, the appropriate code provided in the nonconfirmation notice.

"(III) CONTEST.—If the individual contests the tentative nonconfirmation notice under subclause (I),

the individual shall submit appropriate information to contest such notice to the System within 10 days of receiving notice from the individual's employer and shall utilize the verification process developed under paragraph (2)(C)(ii).

"(IV) EFFECTIVE PERIOD OF TENTATIVE NONCONFIRMATION.—A tentative nonconfirmation notice shall remain in effect until a final such notice becomes final under clause (II) or a final confirmation notice or final nonconfirmation notice is issued by the System.

"(V) PROHIBITION ON TERMINATION.—An employer may not terminate the employment of an individual based on a tentative nonconfirmation notice until such notice becomes final under clause (II) or a final nonconfirmation notice is issued for the individual by the System. Nothing in this clause shall apply to a termination of employment for any

reason other than because of such a failure.

"(VI) RECORDING OF CONCLUSION ON FORM.—If a final confirmation or nonconfirmation is provided by the System regarding an individual, the employer shall record on the form designated by the Secretary the appropriate code that is provided under the System to indicate a confirmation or nonconfirmation of the identity and employment eligibility of the individual.

"(D) CONSEQUENCES OF NONCONFIRMATION.—

"(i) TERMINATION OF CONTINUED EMPLOYMENT.—If the employer has received a final nonconfirmation regarding an individual, the employer shall terminate the employment, recruitment, or referral of the individual. Such employer shall provide to the Secretary any information relating to the nonconfirmed individual that the Secretary determines would assist the Secretary in enforcing or administering the

immigration laws. If the employer continues to employ, recruit, or refer the individual after receiving final nonconfirmation, a rebuttable presumption is created that the employer has violated subsections (a)(1)(A) and (a)(2). Such presumption may not apply to a prosecution under subsection (f)(1).

"(8) PROTECTION FROM LIABILITY.—No employer that participates in the System shall be liable under any law for any employment-related action taken with respect to an individual in good faith reliance on information provided by the System.

"(9) LIMITATION ON USE OF THE SYSTEM.—Notwithstanding any other provision of law, nothing in this subsection shall be construed to permit or allow any department, bureau, or other agency of the United States to utilize any information, database, or other records used in the System for any purpose other than as provided for under this subsection.

"(10) MODIFICATION AUTHORITY.—The Secretary, after notice is submitted to Congress and provided to the public in the Federal Register, is authorized to modify the requirements of this sub-

section, including requirements with respect to completion of forms, method of storage, attestations, copying of documents, signatures, methods of transmitting information, and other operational and technical aspects to improve the efficiency, accuracy, and security of the System.

"(11) FEES.—The Secretary is authorized to require any employer participating in the System to pay a fee or fees for such participation. The fees may be set at a level that will recover the full cost of providing the System to all participants. The fees shall be deposited and remain available as provided in subsection (m) and (n) of section 286 and the System is providing an immigration adjudication and naturalization service for purposes of section 286(n).

"(12) REPORT.—Not later than 1 year after the date of the enactment of the Comprehensive Immigration Reform Act of 2006, the Secretary shall submit to Congress a report on the capacity, systems integrity, and accuracy of the System.

"(e) COMPLIANCE.—

"(1) COMPLAINTS AND INVESTIGATIONS.—The Secretary shall establish procedures—

"(A) for individuals and entities to file complaints regarding potential violations of subsection (a);

"(B) for the investigation of those complaints that the Secretary deems it appropriate to investigate; and

"(C) for the investigation of such other violations of subsection (a), as the Secretary determines are appropriate.

"(2) AUTHORITY IN INVESTIGATIONS.—

"(A) IN GENERAL.—In conducting investigations and hearings under this subsection, officers and employees of the Department of Homeland Security—

"(i) shall have reasonable access to examine evidence of any employer being investigated; and

"(ii) if designated by the Secretary of Homeland Security, may compel by subpoena the attendance of witnesses and the production of evidence at any designated place in an investigation or case under this subsection.

"(B) FAILURE TO COOPERATE.—In case of refusal to obey a subpoena lawfully issued

under subparagraph (A)(ii), the Secretary may request that the Attorney General apply in an appropriate district court of the United States for an order requiring compliance with such subpoena, and any failure to obey such order may be punished by such court as contempt.

"(C) DEPARTMENT OF LABOR.—The Secretary of Labor shall have the investigative authority provided under section 11(a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 211(a)) to ensure compliance with the provisions of this title, or any regulation or order issued under this title.

"(3) COMPLIANCE PROCEDURES.—

"(A) PRE-PENALTY NOTICE.—If the Secretary has reasonable cause to believe that there has been a violation of a requirement of this section and determines that further proceedings related to such violation are warranted, the Secretary shall issue to the employer concerned a written notice of the Secretary's intention to issue a claim for a fine or other penalty. Such notice shall—

"(i) describe the violation;

"(ii) specify the laws and regulations allegedly violated;

"(iii) disclose the material facts which establish the alleged violation; and

"(iv) inform such employer that the employer shall have a reasonable opportunity to make representations as to why a claim for a monetary or other penalty should not be imposed.

"(B) REMISSION OR MITIGATION OF PENALTIES.—

"(i) PETITION BY EMPLOYER.—Whenever any employer receives written notice of a fine or other penalty in accordance with subparagraph (A), the employer may file within 30 days from receipt of such notice, with the Secretary a petition for the remission or mitigation of such fine or penalty, or a petition for termination of the proceedings. The petition may include any relevant evidence or proffer of evidence the employer wishes to present, and shall be filed and considered in accordance with procedures to be established by the Secretary.

"(ii) REVIEW BY SECRETARY.—If the Secretary finds that such fine or other penalty was incurred erroneously, or finds the existence of such mitigating circumstances as to justify the remission or mitigation of such fine or penalty, the Secretary may remit or mitigate such fine or other penalty on the terms and conditions as the Secretary determines are reasonable and just, or order termination of any proceedings related to the notice. Such mitigating circumstances may include good faith compliance and participation in, or agreement to participate in, the System, if not otherwise required.

"(iii) APPLICABILITY.—This subparagraph may not apply to an employer that has or is engaged in a pattern or practice of violations of paragraph (1)(A), (1)(B), or (2) of subsection (a) or of any other requirements of this section.

"(C) PENALTY CLAIM.—After considering evidence and representations offered by the employer pursuant to subparagraph (B), the Secretary shall determine whether there was a vio-

lation and promptly issue a written final determination setting forth the findings of fact and conclusions of law on which the determination is based and the appropriate penalty.

"(4) CIVIL PENALTIES.—

"(A) HIRING OR CONTINUING TO EMPLOY UNAUTHORIZED ALIENS.—Any employer that violates any provision of paragraph (1)(A) or (2) of subsection (a) shall pay civil penalties as follows:

"(i) Pay a civil penalty of not less than $500 and not more than $4,000 for each unauthorized alien with respect to each such violation.

"(ii) If the employer has previously been fined 1 time under this subparagraph, pay a civil penalty of not less than $4,000 and not more than $10,000 for each unauthorized alien with respect to each such violation.

"(iii) If the employer has previously been fined more than 1 time under this subparagraph or has failed to comply with a previously issued and final order related to any such provision, pay a civil penalty

of not less than $6,000 and not more than $20,000 for each unauthorized alien with respect to each such violation.

"(B) RECORD KEEPING OR VERIFICATION PRACTICES.—Any employer that violates or fails to comply with the requirements of the subsection (b), (c), and (d), shall pay a civil penalty as follows:

"(i) Pay a civil penalty of not less than $200 and not more than $2,000 for each such violation.

"(ii) If the employer has previously been fined 1 time under this subparagraph, pay a civil penalty of not less than $400 and not more than $4,000 for each such violation.

"(iii) If the employer has previously been fined more than 1 time under this subparagraph or has failed to comply with a previously issued and final order related to such requirements, pay a civil penalty of $6,000 for each such violation.

"(C) OTHER PENALTIES.—Notwithstanding subparagraphs (A) and (B), the Secretary may impose additional penalties for vio-

lations, including cease and desist orders, specially designed compliance plans to prevent further violations, suspended fines to take effect in the event of a further violation, and in appropriate cases, the civil penalty described in subsection (g)(2).

"(D) REDUCTION OF PENALTIES.—Notwithstanding subparagraphs (A), (B), and (C), the Secretary is authorized to reduce or mitigate penalties imposed upon employers, based upon factors including the employer's hiring volume, compliance history, good-faith implementation of a compliance program, participation in a temporary worker program, and voluntary disclosure of violations of this subsection to the Secretary.

"(E) ADJUSTMENT FOR INFLATION.—All penalties in this section may be adjusted every 4 years to account for inflation, as provided by law.

"(5) JUDICIAL REVIEW.—An employer adversely affected by a final determination may, within 45 days after the date the final determination is issued, file a petition in the Court of Appeals for the appropriate circuit for review of the order. The filing

of a petition as provided in this paragraph shall stay the Secretary's determination until entry of judgment by the court. The burden shall be on the employer to show that the final determination was not supported by substantial evidence. The Secretary is authorized to require that the petitioner provide, prior to filing for review, security for payment of fines and penalties through bond or other guarantee of payment acceptable to the Secretary.

"(6) ENFORCEMENT OF ORDERS.—If an employer fails to comply with a final determination issued against that employer under this subsection, and the final determination is not subject to review as provided in paragraph (5), the Attorney General may file suit to enforce compliance with the final determination in any appropriate district court of the United States. In any such suit, the validity and appropriateness of the final determination shall not be subject to review.

"(f) CRIMINAL PENALTIES AND INJUNCTIONS FOR PATTERN OR PRACTICE VIOLATIONS.—

"(1) CRIMINAL PENALTY.—An employer that engages in a pattern or practice of knowing violations of subsection (a)(1)(A) or (a)(2) shall be fined not more than $20,000 for each unauthorized alien

with respect to whom such a violation occurs, imprisoned for not more than 6 months for the entire pattern or practice, or both.

"(2) ENJOINING OF PATTERN OR PRACTICE VIOLATIONS.—If the Secretary or the Attorney General has reasonable cause to believe that an employer is engaged in a pattern or practice of employment, recruitment, or referral in violation of paragraph (1)(A) or (2) of subsection (a), the Attorney General may bring a civil action in the appropriate district court of the United States requesting such relief, including a permanent or temporary injunction, restraining order, or other order against the employer, as the Secretary deems necessary.

"(g) PROHIBITION OF INDEMNITY BONDS.—

"(1) PROHIBITION.—It is unlawful for an employer, in the hiring, recruiting, or referring for a fee, of an individual, to require the individual to post a bond or security, to pay or agree to pay an amount, or otherwise to provide a financial guarantee or indemnity, against any potential liability arising under this section relating to such hiring, recruiting, or referring of the individual.

"(2) CIVIL PENALTY.—Any employer which is determined, after notice and opportunity for mitiga-

tion of the monetary penalty under subsection (e), to have violated paragraph (1) of this subsection shall be subject to a civil penalty of $10,000 for each violation and to an administrative order requiring the return of any amounts received in violation of such paragraph to the employee or, if the employee cannot be located, to the Employer Compliance Fund established under section 286(w).

"(h) PROHIBITION ON AWARD OF GOVERNMENT CONTRACTS, GRANTS, AND AGREEMENTS.—

"(1) EMPLOYERS WITH NO CONTRACTS, GRANTS OR AGREEMENTS.—

"(A) IN GENERAL.—If an employer who does not hold a Federal contract, grant, or cooperative agreement is determined by the Secretary to be a repeat violator of this section or is convicted of a crime under this section, the employer shall be debarred from the receipt of a Federal contract, grant, or cooperative agreement for a period of 2 years. The Secretary or the Attorney General shall advise the Administrator of General Services of such a debarment, and the Administrator of General Services shall list the employer on the List of Parties Ex-

cluded from Federal Procurement and Nonprocurement Programs for a period of 2 years.

"(B) WAIVER.—The Administrator of General Services, in consultation with the Secretary and the Attorney General, may waive operation of this subsection or may limit the duration or scope of the debarment.

"(2) EMPLOYERS WITH CONTRACTS, GRANTS, OR AGREEMENTS.—

"(A) IN GENERAL.—An employer who holds a Federal contract, grant, or cooperative agreement and is determined by the Secretary of Homeland Secretary to be a repeat violator of this section or is convicted of a crime under this section, shall be debarred from the receipt of Federal contracts, grants, or cooperative agreements for a period of 2 years.

"(B) NOTICE TO AGENCIES.—Prior to debarring the employer under subparagraph (A), the Secretary, in cooperation with the Administrator of General Services, shall advise any agency or department holding a contract, grant, or cooperative agreement with the employer of the Government's intention to debar the employer from the receipt of new Federal con-

tracts, grants, or cooperative agreements for a period of 2 years.

"(C) WAIVER.—After consideration of the views of any agency or department that holds a contract, grant, or cooperative agreement with the employer, the Secretary may, in lieu of debarring the employer from the receipt of new Federal contracts, grants, or cooperative agreements for a period of 2 years, waive operation of this subsection, limit the duration or scope of the debarment, or may refer to an appropriate lead agency the decision of whether to debar the employer, for what duration, and under what scope in accordance with the procedures and standards prescribed by the Federal Acquisition Regulation. However, any proposed debarment predicated on an administrative determination of liability for civil penalty by the Secretary or the Attorney General shall not be reviewable in any debarment proceeding. The decision of whether to debar or take alternation shall not be judicially reviewed.

"(3) SUSPENSION.—Indictments for violations of this section or adequate evidence of actions that could form the basis for debarment under this sub-

section shall be considered a cause for suspension under the procedures and standards for suspension prescribed by the Federal Acquisition Regulation.

"(i) MISCELLANEOUS PROVISIONS.—

"(1) DOCUMENTATION.—In providing documentation or endorsement of authorization of aliens (other than aliens lawfully admitted for permanent residence) eligible to be employed in the United States, the Secretary shall provide that any limitations with respect to the period or type of employment or employer shall be conspicuously stated on the documentation or endorsement.

"(2) PREEMPTION.—The provisions of this section preempt any State or local law imposing civil or criminal sanctions (other than through licensing and similar laws) upon those who employ, or recruit or refer for a fee for employment, unauthorized aliens.

"(j) DEPOSIT OF AMOUNTS RECEIVED.—Except as otherwise specified, civil penalties collected under this section shall be deposited by the Secretary into the Employer Compliance Fund established under section 286(w).

"(k) DEFINITIONS.—In this section:

"(1) EMPLOYER.—The term 'employer' means any person or entity, including any entity of the Government of the United States, hiring, recruiting,

or referring an individual for employment in the United States.

"(2) NO-MATCH NOTICE.—The term 'no-match notice' means written notice from the Commissioner of Social Security to an employer reporting earnings on a Form W–2 that an employee name or corresponding social security account number fail to match records maintained by the Commissioner.

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

"(4) UNAUTHORIZED ALIEN.—The term 'unauthorized alien' means, with respect to the employment of an alien at a particular time, that the alien is not at that time either—

"(A) an alien lawfully admitted for permanent residence; or

"(B) authorized to be so employed by this Act or by the Secretary.".

(b) CONFORMING AMENDMENT.—

(1) AMENDMENT.—Sections 401, 402, 403, 404, and 405 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (division C of Public Law 104–208; 8 U.S.C. 1324a) are repealed.

(2) CONSTRUCTION.—Nothing in this subsection or in subsection (d) of section 274A , as amended by subsection (a), may be construed to limit the authority of the Secretary to allow or continue to allow the participation of employers who participated in the basic pilot program under such sections 401, 402, 403, 404, and 405 in the Electronic Employment Verification System established pursuant to such subsection (d).

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall take effect on the date that is 180 days after the date of the enactment of this Act.

SEC. 302. EMPLOYER COMPLIANCE FUND.

Section 286 (8 U.S.C. 1356) is amended by adding at the end the following new subsection:

''(w) EMPLOYER COMPLIANCE FUND.—

''(1) IN GENERAL.—There is established in the general fund of the Treasury, a separate account, which shall be known as the 'Employer Compliance Fund' (referred to in this subsection as the 'Fund').

''(2) DEPOSITS.—There shall be deposited as offsetting receipts into the Fund all civil monetary penalties collected by the Secretary of Homeland Security under section 274A.

"(3) PURPOSE.—Amounts refunded to the Secretary from the Fund shall be used for the purposes of enhancing and enforcing employer compliance with section 274A.

"(4) AVAILABILITY OF FUNDS.—Amounts deposited into the Fund shall remain available until expended and shall be refunded out of the Fund by the Secretary of the Treasury, at least on a quarterly basis, to the Secretary of Homeland Security.".

SEC. 303. ADDITIONAL WORKSITE ENFORCEMENT AND FRAUD DETECTION AGENTS.

(a) WORKSITE ENFORCEMENT.—The Secretary shall, subject to the availability of appropriations for such purpose, annually increase, by not less than 2,000, the number of positions for investigators dedicated to enforcing compliance with sections 274 and 274A of the Immigration and Nationality Act (8 U.S.C. 1324, and 1324a) during the 5-year period beginning date of the enactment of this Act.

(b) FRAUD DETECTION.—The Secretary shall, subject to the availability of appropriations for such purpose, increase by not less than 1,000 the number of positions for agents of the Bureau of Immigration and Customs Enforcement dedicated to immigration fraud detection during

the 5-year period beginning date of the enactment of this Act.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary for each of the fiscal years 2007 through 2011 such sums as may be necessary to carry out this section.

SEC. 304. CLARIFICATION OF INELIGIBILITY FOR MISREPRESENTATION.

Section 212(a)(6)(C)(ii)(I) (8 U.S.C. 1182(a)(6)(C)(ii)(I)), is amended by striking ''citizen'' and inserting ''national''.

TITLE IV—NONIMMIGRANT AND IMMIGRANT VISA REFORM

SEC. 401. NONIMMIGRANT TEMPORARY WORKER.

(a) TEMPORARY WORKER CATEGORY.—Section 101(a)(15)(H) (8 U.S.C. 1101(a)(15)(H)) is amended to read as follows:

''(H) an alien—

''(i)(b) subject to section 212(j)(2)—

''(aa) who is coming temporarily to the United States to perform services (other than services described in clause (ii)(a) or subparagraph (O) or (P)) in a specialty occupation de-

scribed in section 214(i)(1) or as a fashion model;

''(bb) who meets the requirements for the occupation specified in section 214(i)(2) or, in the case of a fashion model, is of distinguished merit and ability; and

''(cc) with respect to whom the Secretary of Labor determines and certifies to the Secretary of Homeland Security that the intending employer has filed an application with the Secretary in accordance with section 212(n)(1);

''(b1)(aa) who is entitled to enter the United States under the provisions of an agreement listed in section 214(g)(8)(A);

''(bb) who is engaged in a specialty occupation described in section 214(i)(3); and

''(cc) with respect to whom the Secretary of Labor determines and certifies to the Secretary of Homeland Security and the Secretary of State that the intending employer has filed an attestation with the

Secretary of Labor in accordance with section 212(t)(1); or

"(c)(aa) who is coming temporarily to the United States to perform services as a registered nurse;

"(bb) who meets the qualifications described in section 212(m)(1); and

"(cc) with respect to whom the Secretary of Labor determines and certifies to the Secretary of Homeland Security that an unexpired attestation is on file and in effect under section 212(m)(2) for the facility (as defined in section 212(m)(6)) for which the alien will perform the services; or

"(ii)(a) who—

"(aa) has a residence in a foreign country which the alien has no intention of abandoning; and

"(bb) is coming temporarily to the United States to perform agricultural labor or services (as defined by the Secretary of Labor), including agricultural labor (as defined in section 3121(g) of the Internal Revenue Code

of 1986), agriculture (as defined in section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f))), and the pressing of apples for cider on a farm, of a temporary or seasonal nature;

''(b) who—

''(aa) has a residence in a foreign country which the alien has no intention of abandoning;

''(bb) is coming temporarily to the United States to perform nonagricultural work or services of a temporary or seasonal nature (if unemployed persons capable of performing such work or services cannot be found in the United States), excluding medical school graduates coming to the United States to perform services as members of the medical profession; or

''(c) who—

''(aa) has a residence in a foreign country which the alien has no intention of abandoning;

"(bb) is coming temporarily to the United States to perform temporary labor or services other than the labor or services described in clause (i)(b), (i)(c), (ii)(a), or (iii), or subparagraph (L), (O), (P), or (R) (if unemployed persons capable of performing such labor or services cannot be found in the United States); and

"(cc) meets the requirements of section 218A, including the filing of a petition under such section on behalf of the alien;

"(iii) who—

"(a) has a residence in a foreign country which the alien has no intention of abandoning; and

"(b) is coming temporarily to the United States as a trainee (other than to receive graduate medical education or training) in a training program that is not designed primarily to provide productive employment; or

"(iv) who—

"(a) is the spouse or a minor child of an alien described in clause (iii); and

"(b) is accompanying or following to join such alien.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date which is 1 year after the date of the enactment of this Act and shall apply to aliens, who, on such effective date, are outside of the United States.

SEC. 402. ADMISSION OF NONIMMIGRANT TEMPORARY GUEST WORKERS.

(a) TEMPORARY GUEST WORKERS.—

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

"SEC. 218A. ADMISSION OF H–2C NONIMMIGRANTS.

"(a) AUTHORIZATION.—The Secretary of State may grant a temporary visa to an H–2C nonimmigrant who demonstrates an intent to perform labor or services in the United States (other than those occupational classifications covered under the provisions of clause (i)(b) or (ii)(a) of section 101(a)(15)(H) or subparagraph (L), (O), (P), or (R)) of section 101(a)(15).

"(b) REQUIREMENTS FOR ADMISSION.—An alien shall be eligible for H–2C nonimmigrant status if the alien meets the following requirements:

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

"(2) EVIDENCE OF EMPLOYMENT.—The alien shall establish that the alien has received a job offer from an employer who has complied with the requirements of 218B.

"(3) FEE.—The alien shall pay a $500 visa issuance fee in addition to the cost of processing and adjudicating such application. Nothing in this paragraph shall be construed to affect consular procedures for charging reciprocal fees.

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

"(5) APPLICATION CONTENT AND WAIVER.—

"(A) APPLICATION FORM.—The alien shall submit to the Secretary a completed application, on a form designed by the Secretary of

Homeland Security, including proof of evidence of the requirements under paragraphs (1) and (2).

"(B) CONTENT.—In addition to any other information that the Secretary requires to determine an alien's eligibility for H–2C nonimmigrant status, the Secretary shall require an alien to provide information concerning the alien's—

"(i) physical and mental health;

"(ii) criminal history and gang membership;

"(iii) immigration history; and

"(iv) involvement with groups or individuals that have engaged in terrorism, genocide, persecution, or who seek the overthrow of the United States Government.

"(C) KNOWLEDGE.—The alien shall include with the application submitted under this paragraph a signed certification in which the alien certifies that—

"(i) the alien has read and understands all of the questions and statements on the application form;

"(ii) the alien certifies under penalty of perjury under the laws of the United States that the application, and any evidence submitted with it, are all true and correct; and

"(iii) the applicant authorizes the release of any information contained in the application and any attached evidence for law enforcement purposes.

"(c) GROUNDS OF INADMISSIBILITY.—

"(1) IN GENERAL.—In determining an alien's admissibility as an H–2C nonimmigrant—

"(A) paragraphs (5), (6)(A), (7), (9)(B), and (9)(C) of section 212(a) may be waived for conduct that occurred before the effective date of the Comprehensive Immigration Reform Act of 2006;

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

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

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

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

"(C) for conduct that occurred before the date of the enactment of the Comprehensive Immigration Reform Act of 2006, the Secretary of Homeland Security may waive the application of any provision of section 212(a) not listed in subparagraph (B) on behalf of an individual alien—

"(i) for humanitarian purposes;

"(ii) to ensure family unity; or

"(iii) if such a waiver is otherwise in the public interest.

"(2) RENEWAL OF AUTHORIZED ADMISSION AND SUBSEQUENT ADMISSIONS.—An alien seeking renewal of authorized admission or subsequent admission as an H–2C nonimmigrant shall establish that the alien is not inadmissible under section 212(a).

"(d) BACKGROUND CHECKS.—The Secretary of Homeland Security shall not admit, and the Secretary of State shall not issue a visa to, an alien seeking H–2C nonimmigrant status unless all appropriate background checks have been completed.

"(e) INELIGIBLE TO CHANGE NONIMMIGRANT CLASSIFICATION.—An H–2C nonimmigrant may not change nonimmigrant classification under section 248.

"(f) PERIOD OF AUTHORIZED ADMISSION.—

"(1) AUTHORIZED PERIOD AND RENEWAL.—The initial period of authorized admission as an H–2C nonimmigrant shall be 3 years, and the alien may seek 1 extension for an additional 3-year period.

"(2) FOREIGN RESIDENCY REQUIREMENT.—After the expiration of the authorized period described in paragraph (1), an alien may not reenter the United States as an H–2C nonimmigrant until the alien has resided continuously in the alien's home country for not less than 1 year.

"(3) INTERNATIONAL COMMUTERS.—An alien who resides outside the United States and commutes into the United States to work as an H–2C nonimmigrant, is not subject to the time limitations under paragraphs (1) and (2).

"(4) LOSS OF EMPLOYMENT.—

"(A) IN GENERAL.—Subject to subsection (c), the period of authorized admission of an H–2C nonimmigrant shall terminate if the alien is unemployed for 45 or more consecutive days.

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

"(C) PERIOD OF VISA VALIDITY.—Any alien, whose period of authorized admission terminates under subparagraph (A), who returns to the country of the alien's nationality or last residence under subparagraph (B), may reenter the United States as an H–2C nonimmigrant to work for an employer, if the alien has complied with the requirements of subsections (b) and (f)(2). The Secretary may, in the Secretary's sole and unreviewable discretion, reauthorize such alien for admission as an H–2C nonimmigrant without requiring the alien's departure from the United States.

"(5) VISITS OUTSIDE UNITED STATES.—

"(A) IN GENERAL.—Under regulations established by the Secretary of Homeland Security, an H–2C nonimmigrant—

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

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

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

"(6) BARS TO EXTENSION OR ADMISSION.—An alien may not be granted H–2C nonimmigrant status, or an extension of such status, if—

"(A) the alien has violated any material term or condition of such status granted previously, including failure to comply with the change of address reporting requirements under section 265;

"(B) the alien is inadmissible as a nonimmigrant; or

"(C) the granting of such status or extension of such status would allow the alien to exceed 6 years as an H–2C nonimmigrant, unless the alien has resided and been physically present outside the United States for at least 1 year after the expiration of such H–2C nonimmigrant status.

"(g) EVIDENCE OF NONIMMIGRANT STATUS.—Each H–2C nonimmigrant shall be issued documentary evidence of nonimmigrant status, which—

"(1) shall be machine-readable, tamper-resistant, and allow for biometric authentication;

"(2) shall be designed in consultation with the Forensic Document Laboratory of the Bureau of Immigration and Customs Enforcement;

"(3) shall, during the alien's authorized period of admission under subsection (f), serve as a valid entry document for the purpose of applying for admission to the United States—

"(A) instead of a passport and visa if the alien—

"(i) is a national of a foreign territory contiguous to the United States; and

"(ii) is applying for admission at a land border port of entry; and

"(B) in conjunction with a valid passport, if the alien is applying for admission at an air or sea port of entry;

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

"(5) shall be issued to the H–2C nonimmigrant by the Secretary of Homeland Security promptly after the final adjudication of such alien's application for H–2C nonimmigrant status.

"(h) PENALTY FOR FAILURE TO DEPART.—If an H–2C nonimmigrant fails to depart the United States before the date which is 10 days after the date that the alien's authorized period of admission as an H–2C nonimmigrant terminates, the H–2C nonimmigrant may not apply for or receive any immigration relief or benefit under this Act or any other law, except for relief under sections 208 and 241(b)(3) and relief under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, for an alien who indicates either an intention to apply for asylum under section 208 or a fear of persecution or torture.

"(i) PENALTY FOR ILLEGAL ENTRY OR OVERSTAY.—Any alien who enters, attempts to enter, or crosses the border after the date of the enactment of this section, and is physically present in the United States after such date in violation of this Act or of any other Federal law, may not receive, for a period of 10 years—

"(1) any relief under sections 240A and 240B; or

"(2) nonimmigrant status under section 101(a)(15).

"(j) PORTABILITY.—A nonimmigrant alien described in this section, who was previously issued a visa or otherwise provided H–2C nonimmigrant status, may accept a new offer of employment with a subsequent employer, if—

"(1) the employer complies with section 218B; and

"(2) the alien, after lawful admission to the United States, did not work without authorization.

"(k) DENIAL OF DISCRETIONARY RELIEF.—The Secretary of Homeland Security shall have sole discretion to determine whether an alien is eligible for H–2C nonimmigrant status. Notwithstanding any other provision of law, no court shall have jurisdiction to review—

"(1) any judgment regarding the granting of relief under this section; or

"(2) any other decision or action of the Secretary of Homeland Security, the authority for which is specified under this section to be at the discretion of the Secretary, other than the granting of relief under section 208(a).

"(l) JUDICIAL REVIEW.—

"(1) LIMITATIONS ON RELIEF.—Without regard to the nature of the action or claim and without re-

gard to the identity of the party or parties bringing the action, no court may—

"(A) enter declaratory, injunctive, or other equitable relief in any action pertaining to—

"(i) an order or notice denying an alien H–2C nonimmigrant status or any other benefit arising from such status; or

"(ii) an order of removal, exclusion, or deportation entered against an alien if such order is entered after the termination of the alien's period of authorized admission as an H–2C nonimmigrant; or

"(B) certify a class under Rule 23 of the Federal Rules of Civil Procedure in any action for which judicial review is authorized under this subsection.

"(2) CHALLENGES TO VALIDITY.—

"(A) IN GENERAL.—Subject to subparagraph (B), any right or benefit not otherwise waived or limited under this section shall be available in an action instituted in a United States District Court.

"(B) LIMITATION.—A right or benefit described in subparagraph (A) shall be limited to determinations of—

"(i) whether this section, or any regulation issued to implement this section, violates the Constitution of the United States; or

"(ii) whether a regulation, written policy directive, written policy guideline, or written procedure issued under the authority the Secretary of Homeland Security to implement this section is inconsistent with applicable provisions of this section or is otherwise in violation of law.

"(m) CHANGE OF ADDRESS.—An H–2C nonimmigrant shall comply with the change of address reporting requirements under section 265 through either electronic or paper notification.

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

"(o) ISSUANCE OF H–4 NONIMMIGRANT VISAS FOR SPOUSE AND CHILDREN.—

"(1) IN GENERAL.—The alien spouse and children of an H–2C nonimmigrant (referred to in this section as 'dependent aliens') who are accompanying or following to join the H–2C nonimmigrant may be

issued nonimmigrant visas under section 101(a)(15)(H)(iv).

"(2) REQUIREMENTS FOR ADMISSION.—A dependent alien is eligible for nonimmigrant status under 101(a)(15)(H)(iv) if the dependant alien meets the following requirements:

"(A) ELIGIBILITY.—The dependent alien is admissible as a nonimmigrant and does not fall within a class of aliens ineligible for H–4A nonimmigrant status listed under subsection (c).

"(B) VISA APPLICATION FEE.—A dependent alien applying for a visa under this subsection shall pay a $500 family supplemental application fee, in addition to the costs charged by the Department of State for processing and adjudicating such application. Such fee shall be deposited and remain available as provided under section 286(x). Nothing in this subparagraph shall be construed to affect consular procedures for collection of reciprocity fees for the issuance of the visa.

"(C) MEDICAL EXAMINATION.—Before a nonimmigrant visa is issued to a dependent alien under this subsection, the dependent alien may be required to submit to a medical exam-

ination (including a determination of immunization status) at the alien's expense, that conforms to generally accepted standards of medical practice.

"(D) BACKGROUND CHECKS.—Before a nonimmigrant visa is issued to a dependent alien under this section, the consular officer shall conduct such background checks as the Secretary of State, in consultation with the Secretary of Homeland Security, considers appropriate.

"(E) FINANCIAL SUPPORT.—A dependent alien who is accompanying or following to join an H–2C nonimmigrant is inadmissible under section 212(a)(4) as an alien likely to become a public charge, unless the principal alien demonstrates to the consular officer that the H–2C nonimmigrant will have sufficient financial resources to adequately support the dependent alien during the dependent alien's time in the United States.

"(p) DEFINITIONS.—In this section and sections 218A through 218D:

"(1) AGGRIEVED PERSON.—The term 'aggrieved person' means a person adversely affected by an alleged violation of this section, including—

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

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

"(2) AREA OF EMPLOYMENT.—The terms 'area of employment' and 'area of intended employment' mean the area within normal commuting distance of the worksite or physical location at which the work of the temporary worker is or will be performed. If such worksite or location is within a Metropolitan Statistical Area, any place within such area is deemed to be within the area of employment.

"(3) ELIGIBLE INDIVIDUAL.—The term 'eligible individual' means, with respect to employment, an individual who is not an unauthorized alien (as defined in section 274A(h)(3)) with respect to that employment.

"(4) EMPLOYER.—The term 'employer' means a person, firm, corporation, or other association or organization that—

"(A) allows or permits a person to work;

"(B) has a location within the United States to which United States workers may be referred for employment;

"(C) proposes to employ workers at a place within the United States; and

"(D) has an employer relationship with respect to employees, evidenced by the ability to hire, pay, fire, supervise, or otherwise control the work of any such employee.

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

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

"(7) H–2C NONIMMIGRANT.—The term 'H–2C nonimmigrant' means a nonimmigrant described in section 101(a)(15)(H)(ii)(c).

"(8) SEPARATION FROM EMPLOYMENT.—The term 'separation from employment' means the worker's loss of employment, other than through a discharge for inadequate performance, violation of workplace rules, cause, voluntary departure, voluntary retirement, or the expiration of a grant or contract. The term does not include any situation in which the worker is offered, as an alternative to such loss of employment, a similar employment opportunity with the same employer at equivalent or higher compensation and benefits than the position from which the employee was discharged, regardless of whether the employee accepts the offer. Nothing in this paragraph shall limit an employee's rights under a collective bargaining agreement or other employment contract.

"(9) UNITED STATES WORKER.—The term 'United States worker' means an employee who is—

"(A) a citizen or national of the United States; or

"(B) an alien who is—

"(i) lawfully admitted for permanent residence;

"(ii) admitted as a refugee under section 207;

"(iii) granted asylum under section 208; or

"(iv) otherwise authorized, under this Act or by the Secretary of Homeland Security, to be employed in the United States.".

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

"Sec. 218A. Admission of temporary H–2C workers.".

(b) CREATION OF STATE IMPACT ASSISTANCE ACCOUNT.—Section 286 (8 U.S.C. 1356) is amended by adding at the end the following:

"(x) STATE IMPACT ASSISTANCE ACCOUNT.—There is established in the general fund of the Treasury a separate account, which shall be known as the 'State Impact Aid Account'. Notwithstanding any other provision under this Act, there shall be deposited as offsetting receipts into the account all family supplemental visa and family supplemental extension of status fees collected under sections 218A and 218B.".

SEC. 403. EMPLOYER OBLIGATIONS.

(a) IN GENERAL.—Title II (8 U.S.C. 1201 et seq.) is amended by inserting after section 218A, as added by section 402, the following:

"SEC. 218B. EMPLOYER OBLIGATIONS.

"(a) GENERAL REQUIREMENTS.—Each employer who employs an H–2C nonimmigrant shall—

"(1) file a petition in accordance with subsection (b); and

"(2) pay the appropriate fee, as determined by the Secretary of Labor.

"(b) PETITION.—A petition to hire an H–2C nonimmigrant under this section shall include an attestation by the employer of the following:

"(1) PROTECTION OF UNITED STATES WORKERS.—The employment of an H–2C nonimmigrant—

"(A) will not adversely affect the wages and working conditions of workers in the United States similarly employed; and

"(B) did not and will not cause the separation from employment of a United States worker employed by the employer within the 180-day period beginning 90 days before the date on which the petition is filed.

"(2) WAGES.—

"(A) IN GENERAL.—The H–2C nonimmigrant will be paid not less than the greater of—

"(i) the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question; or

"(ii) the prevailing wage level for the occupational classification in the area of employment, taking into account experience and skill levels of employees.

"(B) CALCULATION.—The wage levels under subparagraph (A) shall be calculated based on the best information available at the time of the filing of the application.

"(C) PREVAILING WAGE LEVEL.—For purposes of subparagraph (A)(ii), the prevailing wage level may be determined through private, independent wage surveys. If the job opportunity is covered by a collective bargaining agreement between a union and the employer, the prevailing wage shall be the wage rate set forth in the collective bargaining agreement. If the job opportunity is not covered by such an agreement, and it is in an occupation that is

covered by a wage determination under a provision of subchapter IV of chapter 31 of title 40, United States Code, the prevailing wage level shall be the appropriate statutory wage.

"(3) WORKING CONDITIONS.—All workers in the occupation at the place of employment at which the H–2C nonimmigrant will be employed will be provided the working conditions and benefits that are normal to workers similarly employed in the area of intended employment.

"(4) LABOR DISPUTE.—There is not a strike, lockout, or work stoppage in the course of a labor dispute in the occupation at the place of employment at which the H–2C nonimmigrant will be employed. If such strike, lockout, or work stoppage occurs following submission of the petition, the employer will provide notification in accordance with regulations promulgated by the Secretary of Labor.

"(5) PROVISION OF INSURANCE.—If the position for which the H–2C nonimmigrant is sought is not covered by the State workers' compensation law, the employer will provide, at no cost to the H–2C nonimmigrant, insurance covering injury and disease arising out of, and in the course of, the worker's employment, which will provide benefits at least equal

to those provided under the State workers' compensation law for comparable employment.

"(6) NOTICE TO EMPLOYEES.—

"(A) IN GENERAL.—The employer has provided notice of the filing of the petition to the bargaining representative of the employer's employees in the occupational classification and area of employment for which the H–2C nonimmigrant is sought.

"(B) NO BARGAINING REPRESENTATIVE.—If there is no such bargaining representative, the employer has—

"(i) posted a notice of the filing of the petition in a conspicuous location at the place or places of employment for which the H–2C nonimmigrant is sought; or

"(ii) electronically disseminated such a notice to the employer's employees in the occupational classification for which the H–2C nonimmigrant is sought.

"(7) RECRUITMENT.—Except where the Secretary of Labor has determined that there is a shortage of United States workers in the occupation and area of intended employment for which the H–2C nonimmigrant is sought—

"(A) there are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services involved in the petition; and

"(B) good faith efforts have been taken to recruit United States workers, in accordance with regulations promulgated by the Secretary of Labor, which efforts included—

"(i) the completion of recruitment during the period beginning on the date that is 90 days before the date on which the petition was filed with the Department of Homeland Security and ending on the date that is 14 days before such filing date; and

"(ii) the actual wage paid by the employer for the occupation in the areas of intended employment was used in conducting recruitment.

"(8) INELIGIBILITY.—The employer is not currently ineligible from using the H–2C nonimmigrant program described in this section.

"(9) BONAFIDE OFFER OF EMPLOYMENT.—The job for which the H–2C nonimmigrant is sought is a bona fide job—

"(A) for which the employer needs labor or services;

"(B) which has been and is clearly open to any United States worker; and

"(C) for which the employer will be able to place the H–2C nonimmigrant on the payroll.

"(10) PUBLIC AVAILABILITY AND RECORDS RETENTION.—A copy of each petition filed under this section and documentation supporting each attestation, in accordance with regulations promulgated by the Secretary of Labor, will—

"(A) be provided to every H–2C nonimmigrant employed under the petition;

"(B) be made available for public examination at the employer's place of business or work site;

"(C) be made available to the Secretary of Labor during any audit; and

"(D) remain available for examination for 5 years after the date on which the petition is filed.

"(11) NOTIFICATION UPON SEPARATION FROM OR TRANSFER OF EMPLOYMENT.—The employer will notify the Secretary of Labor and the Secretary of Homeland Security of a H–2C nonimmigrant's separation from employment or transfer to another employer not more than 3 business days after the date of such separation or transfer, in accordance with regulations promulgated by the Secretary of Homeland Security.

"(12) ACTUAL NEED FOR LABOR OR SERVICES.—The petition was filed not more than 60 days before the date on which the employer needed labor or services for which the H–2C nonimmigrant is sought.

"(c) AUDIT OF ATTESTATIONS.—

"(1) REFERRALS BY SECRETARY OF HOMELAND SECURITY.—The Secretary of Homeland Security shall refer all approved petitions for H–2C nonimmigrants to the Secretary of Labor for potential audit.

"(2) AUDITS AUTHORIZED.—The Secretary of Labor may audit any approved petition referred pursuant to paragraph (1), in accordance with regulations promulgated by the Secretary of Labor.

"(d) INELIGIBLE EMPLOYERS.—

"(1) IN GENERAL.—The Secretary of Homeland Security shall not approve an employer's petitions, applications, certifications, or attestations under any immigrant or nonimmigrant program if the Secretary of Labor determines, after notice and an opportunity for a hearing, that the employer submitting such documents—

"(A) has, with respect to the attestations required under subsection (b)—

"(i) misrepresented a material fact;

"(ii) made a fraudulent statement; or

"(iii) failed to comply with the terms of such attestations; or

"(B) failed to cooperate in the audit process in accordance with regulations promulgated by the Secretary of Labor.

"(2) LENGTH OF INELIGIBILITY.—An employer described in paragraph (1) shall be ineligible to participate in the labor certification programs of the Secretary of Labor for not less than the time period determined by the Secretary, not to exceed 3 years.

"(e) REGULATION OF FOREIGN LABOR CONTRACTORS.—

"(1) COVERAGE.—Notwithstanding any other provision of law, an H–2C nonimmigrant may not be treated as an independent contractor.

"(2) APPLICABILITY OF LAWS.—An H–2C nonimmigrant shall not be denied any right or any remedy under Federal, State, or local labor or employment law that would be applicable to a United States worker employed in a similar position with the employer because of the alien's status as a nonimmigrant worker.

"(3) TAX RESPONSIBILITIES.—With respect to each employed H–2C nonimmigrant, an employer shall comply with all applicable Federal, State, and local tax and revenue laws.

"(f) WHISTLEBLOWER PROTECTION.—It shall be unlawful for an employer or a labor contractor of an H–2C nonimmigrant to intimidate, threaten, restrain, coerce, retaliate, discharge, or in any other manner, discriminate against an employee or former employee because the employee or former employee—

"(1) discloses information to the employer or any other person that the employee or former employee reasonably believes demonstrates a violation of this Act; or

"(2) cooperates or seeks to cooperate in an investigation or other proceeding concerning compliance with the requirements of this Act.

"(g) LABOR RECRUITERS.—

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

"(A) the place of employment;

"(B) the compensation for the employment;

"(C) a description of employment activities;

"(D) the period of employment;

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

"(F) any travel or transportation expenses to be assessed;

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

"(H) the existence of any arrangement with any owner, employer, foreign contractor,

or its agent where such person receives a commission from the provision of items or services to workers;

"(I) the extent to which workers will be compensated through workers' compensation, private insurance, or otherwise for injuries or death, including—

"(i) work related injuries and death during the period of employment;

"(ii) the name of the State workers' compensation insurance carrier or the name of the policyholder of the private insurance;

"(iii) the name and the telephone number of each person who must be notified of an injury or death; and

"(iv) the time period within which such notice must be given;

"(J) any education or training to be provided or required, including—

"(i) the nature and cost of such training;

"(ii) the entity that will pay such costs; and

"(iii) whether the training is a condition of employment, continued employment, or future employment; and

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

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

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

"(4) TERMS.—No employer or foreign labor contractor shall, without justification, violate the terms of any agreement made by that contractor or employer regarding employment under this program.

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

"(6) OTHER WORKER PROTECTIONS.—

"(A) NOTIFICATION.—Not less frequently than once every 2 years, each employer shall notify the Secretary of Labor of the identity of any foreign labor contractor engaged by the employer in any foreign labor contractor activity for, or on behalf of, the employer.

"(B) REGISTRATION OF FOREIGN LABOR CONTRACTORS.—

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

"(ii) ISSUANCE.—The Secretary shall promulgate regulations to establish an efficient electronic process for the investigation and approval of an application for a certificate of registration of foreign labor contractors not later than 14 days after such application is filed, including—

"(I) requirements under paragraphs (1), (4), and (5) of section 102 of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1812);

"(II) an expeditious means to update registrations and renew certificates; and

"(III) any other requirements that the Secretary may prescribe.

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

"(iv) REFUSAL TO ISSUE; REVOCATION; SUSPENSION.—In accordance with regulations promulgated by the Secretary of Labor, the Secretary may refuse to issue or renew, or may suspend or revoke, a certificate of registration under this subparagraph if—

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

"(II) the applicant for, or holder of, the certification is not the real party in interest in the application or certificate of registration and the real party in interest—

"(aa) is a person who has been refused issuance or renewal of a certificate;

"(bb) has had a certificate suspended or revoked; or

"(cc) does not qualify for a certificate under this paragraph; or

"(III) the applicant for or holder of the certification has failed to comply with this Act.

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

remedies under subsections (h) and (i). An employer that violates a provision of this subsection relating to employer obligations shall be subject to remedies under subsections (h) and (i).

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

"(E) WRITTEN AGREEMENTS.—A foreign labor contractor may not violate the terms of any written agreements made with an employer relating to any contracting activity or worker protection under this subsection.

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

"(h) ENFORCEMENT.—

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

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

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

"(4) NOTICE AND HEARING.—

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

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

"(C) HEARING DEADLINE.—Not later than 60 days after the date of a hearing under this paragraph, the Secretary of Labor shall make a finding on the matter in accordance with paragraph (5).

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

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

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

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

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

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

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

"(i) PENALTIES.—

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

"(A) back wages;

"(B) benefits; and

"(C) civil monetary penalties.

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

"(A) for a violation of subsection (e) or (f)—

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

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

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

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

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

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

"(iii) if the violation was willful and if in the course of such violation a United States worker was harmed, a fine in an

amount not less than $6,000 and not more than $35,000 per violation per affected worker.

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

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

(b) CLERICAL AMENDMENT.—The table of contents is amended by inserting after the item relating to section 218A, as added by section 402, the following:

"Sec. 218B. Employer obligations.".

SEC. 404. ALIEN EMPLOYMENT MANAGEMENT SYSTEM.

(a) IN GENERAL.—Title II (8 U.S.C. 1151 et seq.) is amended by inserting after section 218B, as added by section 403, the following:

"SEC. 218C. ALIEN EMPLOYMENT MANAGEMENT SYSTEM.

"(a) ESTABLISHMENT.—The Secretary of Homeland Security, in consultation with the Secretary of Labor, the Secretary of State, and the Commission of Social Security, shall develop and implement a program (referred to in this section as the 'alien employment management system') to

manage and track the employment of aliens described in sections 218A and 218D.

"(b) REQUIREMENTS.—The alien employment management system shall—

"(1) provide employers who seek employees with an opportunity to recruit and advertise employment opportunities available to United States workers before hiring an H–2C nonimmigrant;

"(2) collect sufficient information from employers to enable the Secretary of Homeland Security to determine—

"(A) if the nonimmigrant is employed;

"(B) which employers have hired an H–2C nonimmigrant;

"(C) the number of H–2C nonimmigrants that an employer is authorized to hire and is currently employing;

"(D) the occupation, industry, and length of time that an H–2C nonimmigrant has been employed in the United States;

"(3) allow employers to request approval of multiple H–2C nonimmigrant workers; and

"(4) permit employers to submit applications under this section in an electronic form.".

(b) CLERICAL AMENDMENT.—The table of contents for the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended by inserting after the item relating to section 218B, as added by section 403, the following:

"Sec. 218C. Alien employment management system.".

SEC. 405. RULEMAKING; EFFECTIVE DATE.

(a) RULEMAKING.—Not later than 6 months after the date of enactment of this Act, the Secretary of Labor shall promulgate regulations, in accordance with the notice and comment provisions of section 553 of title 5, United States Code, to carry out the provisions of sections 218A, 218B, and 218C, as added by this Act.

(b) EFFECTIVE DATE.—The amendments made by sections 402, 403, and 404 shall take effect on the date that is 1 year after the date of the enactment of this Act with regard to aliens, who, on such effective date, are in the foreign country where they maintain residence.

SEC. 406. RECRUITMENT OF UNITED STATES WORKERS.

(a) ELECTRONIC JOB REGISTRY.—The Secretary of Labor shall establish a publicly accessible webpage on the Internet website of the Department of Labor that provides a single Internet link to each State workforce agency's statewide electronic registry of jobs available throughout the United States to United States workers.

(b) RECRUITMENT OF UNITED STATES WORKERS.—

(1) POSTING.—An employer shall attest that the employer has posted an employment opportunity in accordance with section 218B(b)(9) of the Immigration and Nationality Act, as added by this Act.

(2) RECORDS.—An employer shall maintain records for not less than 1 year after the date on which an H–2C nonimmigrant is hired that describe the reasons for not hiring any of the United States workers who may have applied for such position.

(c) OVERSIGHT AND MAINTENANCE OF RECORDS.—The Secretary of Labor shall promulgate regulations regarding the maintenance of electronic job registry records for the purpose of audit or investigation.

(d) ACCESS TO ELECTRONIC JOB REGISTRY.—The Secretary of Labor shall ensure that job opportunities advertised on an electronic job registry established under this section are accessible—

(1) by the State workforce agencies, which may further disseminate job opportunity information to other interested parties; and

(2) through the Internet, for access by workers, employers, labor organizations, and other interested parties.

SEC. 407. TEMPORARY GUEST WORKER VISA PROGRAM TASK FORCE.

(a) ESTABLISHMENT.—There is established a task force to be known as the ''Temporary Worker Task Force'' (referred to in this section as the ''Task Force'').

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

(1) to study the impact of the admission of aliens under section 101(a)(15)(ii)(c) on the wages, working conditions, and employment of United States workers; and

(2) to make recommendations to the Secretary of Labor regarding the need for an annual numerical limitation on the number of aliens that may be admitted in any fiscal year under section 101(a)(15)(ii)(c).

(c) MEMBERSHIP.—

(1) IN GENERAL.—The Task Force shall be composed of 10 members, of whom—

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

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

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

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

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

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

(2) DEADLINE FOR APPOINTMENT.—All members of the Task Force shall be appointed not later than 6 months after the date of the enactment of this Act.

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

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

(d) QUALIFICATIONS.—

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

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

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

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

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

(e) MEETINGS.—

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

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

(f) REPORT.—Not later than 18 months after the date of the enactment of this Act, the Task Force shall submit, to Congress, the Secretary of Labor, and the Secretary, a report that contains—

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

(2) recommendations for imposing a numerical limit.

(g) NUMERICAL LIMITATIONS.—

(1) IN GENERAL.—Not later than 6 months after the submission of the report under subsection (f), the Secretary of Labor may impose a numerical limitation on the number of aliens that may be admitted under section 101(a)(15)(ii)(c).

(2) EFFECTIVE DATE.—Any numerical limit imposed pursuant to paragraph (1) shall not become effective until 6 months after the Secretary of Labor submits a report to Congress regarding the imposition of a numerical limit.

SEC. 408. STUDENT VISAS.

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

(1) in clause (i)—

(A) by striking ''he has no intention of abandoning, who is'' and inserting the following: ''except in the case of an alien described in clause (iv), the alien has no intention of abandoning, who is—

''(I)'';

(B) by striking ''consistent with section 214(l)'' and inserting ''(except for a graduate

program described in clause (iv)) consistent with section 214(m)'';

(C) by striking the comma at the end and inserting the following: ''; or

''(II) engaged in temporary employment for optional practical training related to the alien's area of study, which practical training shall be authorized for a period or periods of up to 24 months;'';

(2) in clause (ii)—

(A) by inserting ''or (iv)'' after ''clause (i)''; and

(B) by striking '', and'' and inserting a semicolon;

(3) in clause (iii), by adding ''and'' at the end; and

(4) by adding at the end the following:

''(iv) an alien described in clause (i) who has been accepted and plans to attend an accredited graduate program in mathematics, engineering, technology, or the sciences in the United States for the purpose of obtaining an advanced degree.''.

(b) ADMISSION OF NONIMMIGRANTS.—Section 214(b) (8 U.S.C. 1184(b)) is amended by striking ''sub-

paragraph (L) or (V)'' and inserting ''subparagraph (F)(iv), (L), or (V)''.

(c) REQUIREMENTS FOR F-4 VISA.—Section 214(m) (8 U.S.C. 1184(m)) is amended—

(1) by inserting before paragraph (1) the following:

''(m) NONIMMIGRANT ELEMENTARY, SECONDARY, AND POST-SECONDARY SCHOOL STUDENTS.—''; and

(2) by adding at the end the following:

''(3) A visa issued to an alien under section 101(a)(15)(F)(iv) shall be valid—

''(A) during the intended period of study in a graduate program described in such section;

''(B) for an additional period, not to exceed 1 year after the completion of the graduate program, if the alien is actively pursuing an offer of employment related to the knowledge and skills obtained through the graduate program; and

''(C) for the additional period necessary for the adjudication of any application for labor certification, employment-based immigrant petition, and application under section 245(a)(2) to adjust such alien's status to that of an alien lawfully admitted for permanent residence, if such application for labor certification or employment-based immigrant

petition has been filed not later than 1 year after the completion of the graduate program.''.

(d) OFF CAMPUS WORK AUTHORIZATION FOR FOREIGN STUDENTS.—

(1) IN GENERAL.—Aliens admitted as nonimmigrant students described in section 101(a)(15)(F) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(F)) may be employed in an off-campus position unrelated to the alien's field of study if—

(A) the alien has enrolled full time at the educational institution and is maintaining good academic standing;

(B) the employer provides the educational institution and the Secretary of Labor with an attestation that the employer—

(i) has spent at least 21 days recruiting United States citizens to fill the position; and

(ii) will pay the alien and other similarly situated workers at a rate equal to not less than the greater of—

(I) the actual wage level for the occupation at the place of employment; or

(II) the prevailing wage level for the occupation in the area of employment; and

(C) the alien will not be employed more than—

(i) 20 hours per week during the academic term; or

(ii) 40 hours per week during vacation periods and between academic terms.

(2) DISQUALIFICATION.—If the Secretary of Labor determines that an employer has provided an attestation under paragraph (1)(B) that is materially false or has failed to pay wages in accordance with the attestation, the employer, after notice and opportunity for a hearing, shall be disqualified from employing an alien student under paragraph (1).

(e) ADJUSTMENT OF STATUS.—Section 245(a) (8 U.S.C. 1255(a)) is amended to read as follows:

"(a) AUTHORIZATION.—

"(1) IN GENERAL.—The status of an alien, who was inspected and admitted or paroled into the United States, or who has an approved petition for classification under subparagraph (A)(iii), (A)(iv), (B)(ii), or (B)(iii) of section 204(a)(1), may be adjusted by the Secretary of Homeland Security or the

Attorney General, under such regulations as the Secretary or the Attorney General may prescribe, to that of an alien lawfully admitted for permanent residence if—

"(A) the alien makes an application for such adjustment;

"(B) the alien is eligible to receive an immigrant visa;

"(C) the alien is admissible to the United States for permanent residence; and

"(D) an immigrant visa is immediately available to the alien at the time the application is filed.

"(2) STUDENT VISAS.—Notwithstanding the requirement under paragraph (1)(C), an alien may file an application for adjustment of status under this section if—

"(A) the alien has been issued a visa or otherwise provided nonimmigrant status under section 101(a)(15)(F)(iv), or would have qualified for such nonimmigrant status if section 101(a)(15)(F)(iv) had been enacted before such alien's graduation;

"(B) the alien has earned an advanced degree in the sciences, technology, engineering, or mathematics;

"(C) the alien is the beneficiary of a petition filed under subparagraph (E) or (F) of section 204(a)(1); and

"(D) a fee of $1,000 is remitted to the Secretary on behalf of the alien.

"(3) LIMITATION.—An application for adjustment of status filed under this section may not be approved until an immigrant visa number becomes available.".

(f) USE OF FEES.—

(1) JOB TRAINING; SCHOLARSHIPS.—Section 286(s)(1) (8 U.S.C. 1356(s)(1)) is amended by inserting "and 80 percent of the fees collected under section 245(a)(2)(D)" before the period at the end.

(2) FRAUD PREVENTION AND DETECTION.—Section 286(v)(1) (8 U.S.C. 1356(v)(1)) is amended by inserting "and 20 percent of the fees collected under section 245(a)(2)(D)" before the period at the end.

SEC. 409. VISAS FOR INDIVIDUALS WITH ADVANCED DEGREES.

(a) ALIENS WITH CERTAIN ADVANCED DEGREES NOT SUBJECT TO NUMERICAL LIMITATIONS ON EMPLOYMENT BASED IMMIGRANTS.—

(1) IN GENERAL.—Section 201(b)(1) (8 U.S.C. 1151(b)(1)) is amended by adding at the end the following:

"(F) Aliens who have earned an advanced degree in science, technology, engineering, or math and have been working in a related field in the United States under a nonimmigrant visa during the 3-year period preceding their application for an immigrant visa under section 203(b).

"(G) Aliens described in subparagraph (A) or (B) of section 203(b)(1)(A) or who have received a national interest waiver under section 203(b)(2)(B).

"(H) The spouse and minor children of an alien who is admitted as an employment-based immigrant under section 203(b).".

(2) APPLICABILITY.—The amendment made by paragraph (1) shall apply to any visa application—

(A) pending on the date of the enactment of this Act; or

(B) filed on or after such date of enactment.

(b) LABOR CERTIFICATION.—Section 212(a)(5)(A)(ii) (8 U.S.C. 1182(a)(5)(A)(ii)) is amended—

(1) in subclause (I), by striking ''or'' at the end;

(2) in subclause (II), by striking the period at the end and inserting ''; or''; and

(3) by adding at the end the following:

''(III) has an advanced degree in the sciences, technology, engineering, or mathematics from an accredited university in the United States and is employed in a field related to such degree.''.

(c) TEMPORARY WORKERS.—Section 214(g) (8 U.S.C. 1184(g)) is amended—

(1) in paragraph (1)—

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

(B) in subparagraph (A)—

(i) in clause (vii), by striking ''each succeeding fiscal year; or'' and inserting

"each of fiscal years 2004, 2005, and 2006;"; and

(ii) by adding after clause (vii) the following:

"(viii) 115,000 in the first fiscal year beginning after the date of the enactment of this clause; and

"(ix) the number calculated under paragraph (9) in each fiscal year after the year described in clause (viii); or";

(2) in paragraph (5)—

(A) in subparagraph (B), by striking "or" at the end;

(B) in subparagraph (C), by striking the period at the end and inserting "; or"; and

(C) by adding at the end the following:

"(D) has earned an advanced degree in science, technology, engineering, or math.";

(3) by redesignating paragraphs (9), (10), and (11) as paragraphs (10), (11), and (12), respectively; and

(4) by inserting after paragraph (8) the following:

"(9) If the numerical limitation in paragraph (1)(A)—

"(A) is reached during a given fiscal year, the numerical limitation under paragraph (1)(A)(ix) for the subsequent fiscal year shall be equal to 120 percent of the numerical limitation of the given fiscal year; or

"(B) is not reached during a given fiscal year, the numerical limitation under paragraph (1)(A)(ix) for the subsequent fiscal year shall be equal to the numerical limitation of the given fiscal year.".

(d) APPLICABILITY.—The amendment made by subsection (c)(2) shall apply to any visa application—

(1) pending on the date of the enactment of this Act; or

(2) filed on or after such date of enactment.

SEC. 410. REQUIREMENTS FOR PARTICIPATING COUNTRIES.

(a) IN GENERAL.—The Secretary of State, in cooperation with the Secretary and the Attorney General, shall negotiate with each home country of aliens described in section 101(a)(15)(H)(ii)(c) of the Immigration and Nationality Act, as added by section 401, to enter into a bilateral agreement with the United States that conforms to the requirements under subsection (b).

(b) REQUIREMENTS OF BILATERAL AGREEMENTS.—Each agreement negotiated under subsection (a) shall require the participating home country to—

(1) accept the return of nationals who are ordered removed from the United States within 3 days of such removal;

(2) cooperate with the United States Government to—

(A) identify, track, and reduce gang membership, violence, and human trafficking and smuggling; and

(B) control illegal immigration;

(3) provide the United States Government with—

(A) passport information and criminal records of aliens who are seeking admission to, or are present in, the United States; and

(B) admission and entry data to facilitate United States entry-exit data systems; and

(4) educate nationals of the home country regarding United States temporary worker programs to ensure that such nationals are not exploited; and

(5) evaluate means to provide housing incentives in the alien's home country for returning workers.

SEC. 411. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Secretary such sums as may be necessary to carry out this title and the amendments made by this title for the first fiscal year beginning before the date of enactment of this Act and each of the subsequent fiscal years beginning not more than 7 years after the effective date of the regulations promulgated by the Secretary to implement this title.

TITLE V—BACKLOG REDUCTION

SEC. 501. ELIMINATION OF EXISTING BACKLOGS.

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

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

''(1) 480,000;

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

''(3) the difference between—

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

number of visas issued under this subsection during those fiscal years; and

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

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

"(d) WORLDWIDE LEVEL OF EMPLOYMENT-BASED IMMIGRANTS.—

"(1) IN GENERAL.—Subject to paragraph (2), the worldwide level of employment-based immigrants under this subsection for a fiscal year is equal to the sum of—

"(A) 290,000;

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

"(C) the difference between—

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

this subsection during those fiscal years; and

"(ii) the number of visas calculated under clause (i) that were issued after fiscal year 2005.

"(2) VISAS FOR SPOUSES AND CHILDREN.—Immigrant visas issued on or after October 1, 2004, to spouses and children of employment-based immigrants shall not be counted against the numerical limitation set forth in paragraph (1).".

SEC. 502. COUNTRY LIMITS.

Section 202(a) (8 U.S.C. 1152(a)) is amended—

(1) in paragraph (2)—

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

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

(2) by striking paragraph (5).

SEC. 503. ALLOCATION OF IMMIGRANT VISAS.

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

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

"(1) UNMARRIED SONS AND DAUGHTERS OF CITIZENS.—Qualified immigrants who are the unmarried sons or daughters of citizens of the United States shall be allocated visas in a quantity not to exceed the sum of—

"(A) 10 percent of such worldwide level; and

"(B) any visas not required for the class specified in paragraph (4).

"(2) SPOUSES AND UNMARRIED SONS AND DAUGHTERS OF PERMANENT RESIDENT ALIENS.—

"(A) IN GENERAL.—Visas in a quantity not to exceed 50 percent of such worldwide level plus any visas not required for the class specified in paragraph (1) shall be allocated to qualified immigrants who are—

"(i) the spouses or children of an alien lawfully admitted for permanent residence; or

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

"(B) MINIMUM PERCENTAGE.—Visas allocated to individuals described in subparagraph (A)(i) shall constitute not less than 77 percent of the visas allocated under this paragraph.

"(3) MARRIED SONS AND DAUGHTERS OF CITIZENS.—Qualified immigrants who are the married sons and daughters of citizens of the United States shall be allocated visas in a quantity not to exceed the sum of—

"(A) 10 percent of such worldwide level; and

"(B) any visas not required for the classes specified in paragraphs (1) and (2).

"(4) BROTHERS AND SISTERS OF CITIZENS.—Qualified immigrants who are the brothers or sisters of a citizen of the United States who is at least 21 years of age shall be allocated visas in a quantity not to exceed 30 percent of the worldwide level.".

(b) PREFERENCE ALLOCATION FOR EMPLOYMENT-BASED IMMIGRANTS.—Section 203(b) (8 U.S.C. 1153(b)) is amended—

(1) in paragraph (1), by striking ''28.6 percent'' and inserting ''15 percent'';

(2) in paragraph (2)(A), by striking ''28.6 percent'' and inserting ''15 percent'';

(3) in paragraph (3)(A)—

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

(B) by striking clause (iii);

(4) by striking paragraph (4);

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

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

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

''(5) OTHER WORKERS.—Visas shall be made available, in a number not to exceed 30 percent of such worldwide level, plus any visa numbers not required for the classes specified in paragraphs (1) through (4), to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing unskilled labor that is not of a temporary or seasonal nature, for which qualified workers are determined to be unavailable in the United States.''; and

(8) by striking paragraph (6).

(c) CONFORMING AMENDMENTS.—

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

(2) REPEAL OF TEMPORARY REDUCTION IN WORKERS' VISAS.—Section 203(e) of the Nicaraguan Adjustment and Central American Relief Act (Public Law 105–100; 8 U.S.C. 1153 note) is repealed.

SEC. 504. RELIEF FOR MINOR CHILDREN.

(a) IN GENERAL.—Section 201(b)(2) (8 U.S.C. 1151(b)(2)) is amended to read as follows:

''(2)(A)(i) Aliens admitted under section 211(a) on the basis of a prior issuance of a visa under section 203(a) to their accompanying parent who is an immediate relative.

''(ii) In this subparagraph, the term 'immediate relative' means a child, spouse, or parent of a citizen of the United States (and each child of such child, spouse, or parent who is accompanying or following to join the child, spouse, or parent), except that, in the case of parents, such citizens shall be at least 21 years of age.

"(iii) An alien who was the spouse of a citizen of the United States for not less than 2 years at the time of the citizen's death and was not legally separated from the citizen at the time of the citizen's death, and each child of such alien, shall be considered, for purposes of this subsection, to remain an immediate relative after the date of the citizen's death if the spouse files a petition under section 204(a)(1)(A)(ii) before the earlier of—

"(I) 2 years after such date; or

"(II) the date on which the spouse remarries.

"(iv) In this clause, an alien who has filed a petition under clause (iii) or (iv) of section 204(a)(1)(A) remains an immediate relative if the United States citizen spouse or parent loses United States citizenship on account of the abuse.

"(B) Aliens born to an alien lawfully admitted for permanent residence during a temporary visit abroad.".

(b) PETITION.—Section 204(a)(1)(A)(ii) (8 U.S.C. 1154 (a)(1)(A)(ii)) is amended by striking "in the second sentence of section 201(b)(2)(A)(i) also" and inserting "in section 201(b)(2)(A)(iii) or an alien child or alien parent described in the 201(b)(2)(A)(iv)".

TITLE VI—CONDITIONAL NONIMMIGRANT WORKERS

Subtitle A—Conditional Nonimmigrant Work Authorization and Status

SEC. 601. CONDITIONAL NONIMMIGRANT WORK AUTHORIZATION AND STATUS.

(a) IN GENERAL.—Title II (8 U.S.C. 1151 et seq.) is amended by inserting after section 218C, as added by section 404 of this Act, the following:

"SEC. 218D. CONDITIONAL NONIMMIGRANT WORK AUTHORIZATION AND STATUS.

"(a) IN GENERAL.—The Secretary of Homeland Security may grant conditional nonimmigrant work authorization and status to remain in the United States to aliens, who were employed in the United States on January 4, 2004.

"(b) REQUIREMENTS.—

"(1) PRESENCE; EMPLOYMENT.—An alien may not be granted work authorization and status under subsection (a) unless the alien establishes that the alien was—

"(A) physically present in the United States before January 4, 2004; and

"(B) employed in the United States before January 4, 2004, and has been employed in the United States since that date.

"(2) EVIDENCE OF EMPLOYMENT.—

"(A) CONCLUSIVE DOCUMENTS.—An alien may conclusively establish employment status in compliance with paragraph (1)(B) by submitting to the Secretary of Homeland Security records demonstrating such employment maintained by—

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

"(ii) an employer; or

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

"(B) OTHER DOCUMENTS.—An alien who is unable to submit any of the documents described in subparagraph (A) may comply with paragraph (1)(B) by submitting to the Secretary other types of reliable documents, as determined by the Secretary.

"(3) ADMISSIBILITY.—

"(A) IN GENERAL.—Except as provided in subparagraph (B) and (C), an alien may not be granted work authorization and status under subsection (a) unless the alien establishes that the alien—

"(i) is admissible to the United States; and

"(ii) has not ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion.

"(B) GROUNDS NOT APPLICABLE.—The provisions of paragraphs (5)(A), (6)(A), (7), and (9)(B) of section 212(a) and section 212(d)(3) shall not apply in determining admissibility under this paragraph.

"(C) WAIVER.—The Secretary of Homeland Security may waive any provision of section 212(a), except paragraphs (2), (3), (6)(B), (6)(E), (9)(A), (9)(C)(i)(II), (10)(A), (10)(C), and (10)(E).

"(4) INELIGIBLE.—An alien is ineligible for status under this section if—

"(A) the alien is subject to a final order of removal, deportation, or exclusion;

"(B) the alien failed to depart the United States during the period of a voluntary departure order under section 240B or a prior provision of law;

"(C) the alien willfully fails to comply with any request for information by the Secretary of Homeland Security; or

"(D) a notice to appear was served on the alien or filed with the immigration court before the alien filed an application under this title, except that the Secretary of Homeland Security may waive ineligibility that would otherwise result from the service or filing of a notice to appear under this subparagraph.

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

"(6) PAYMENT OF INCOME TAXES.—

"(A) IN GENERAL.—Not later than the date on which conditional nonimmigrant work

authorization and status is granted under this section, the alien shall establish the payment of all Federal income taxes owed for employment in the United States before January 4, 2004, by establishing that—

"(i) no such tax liability exists;

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

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

"(B) INTERNAL REVENUE SERVICE COOPERATION.—The Commissioner of Internal Revenue shall provide documentation to an alien upon request to establish the payment of all income taxes required under this paragraph.

"(7) TERMINATION.—The Secretary of Homeland Security may terminate an alien's status granted under this section if—

"(A) the Secretary of Homeland Security determines that the alien was not in fact eligible for such status; or

"(B) the alien commits an act that makes the alien removable from the United States.

"(c) IMPLEMENTATION.—

"(1) APPLICATION.—

"(A) IN GENERAL.—An alien may not be granted conditional nonimmigrant work authorization and status under this section unless the Secretary of Homeland Security approves an application that is submitted not later than 1 year after the date of the enactment of the Comprehensive Immigration Reform Act of 2006 on an application form designed by the Secretary that contains, in addition to any other information that the Secretary determines to be required to determine an alien's eligibility under this section, information about the alien's—

"(i) physical and mental health;

"(ii) criminal history and gang membership;

"(iii) immigration history;

"(iv) involvement with groups or individuals that have engaged in terrorism, genocide, persecution, or who seek the overthrow of the United States Government;

"(v) claims to United States citizenship; and

"(vi) tax history.

"(B) WAIVER.—The application submitted under subparagraph (A) shall include an agreement through which the alien, in exchange for the discretionary benefit of obtaining conditional nonimmigrant work authorization and status, agrees to waive any right—

"(i) to administrative or judicial review or appeal of an immigration officer's determination as to the alien's eligibility; or

"(ii) to contest any removal action, other than on the basis of an application for asylum under section 208 or 241(b)(3), or under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

"(C) KNOWLEDGE.—The application submitted under subparagraph (A) shall include a signed statement by the alien certifying, under penalty of perjury, that—

"(i) the alien has read and understood all of the questions and statements on the application form;

"(ii) the application, and any evidence submitted with it, are all true and correct; and

"(iii) the applicant authorizes the release of any information contained in the application and any attached evidence for law enforcement purposes.

"(D) EMPLOYER.—The application shall include a signed affidavit from the alien's employer attesting that the alien is a current employee of the employer.

"(E) SAFE HARBOR.—

"(i) SAFE HARBOR FOR ALIEN.—An alien for whom a nonfrivolous application is filed under this section—

"(I) shall be granted employment authorization pending final adjudication by the Secretary of the application;

"(II) may not be detained, determined inadmissible, or deportable, or removed pending final adjudication of

the application for conditional nonimmigrant work authorization and status, unless the alien commits an act which renders the alien ineligible for such status; and

"(III) may not be considered an unauthorized alien (as defined in section 274A) if the alien is in possession of a copy of the application for conditional status until such application is adjudicated.

"(ii) SAFE HARBOR FOR EMPLOYER.—

"(I) TAX LIABILITY.—An employer that files an affidavit in support of an application for conditional nonimmigrant work authorization and status for an alien shall not be subject to civil and criminal tax liability relating directly to the employment of such alien.

"(II) EMPLOYMENT RECORDS.—An employer that provides an unauthorized alien with copies of employment records or other evidence of em-

ployment pursuant to an application filed under 218D shall not be subject to civil and criminal liability pursuant to section 274A for employing such authorized aliens.

"(F) ACKNOWLEDGMENT.—An alien who applies for conditional nonimmigrant work authorization and status under this section shall submit to the Secretary of Homeland Security—

"(i) an acknowledgment, made in writing and under oath, that the alien—

"(I) is unlawfully present in the United States and subject to removal or deportation, as appropriate, under this Act; and

"(II) understands the terms of being granted conditional nonimmigrant work authorization and status;

"(ii) any Social Security account number or card in the possession of the alien or relied upon by the alien; and

"(iii) any false or fraudulent documents in the alien's possession.

"(G) APPLICATION FEE.—

"(i) EMPLOYER.—An employer seeking to continue to employ an alien that meets the requirements of (b)(1)(B) shall submit an application fee of $500.

"(ii) USE OF FEE.—The fees collected under clause (i) shall be available for use by the Secretary of Homeland Security for activities to identify, locate, or remove illegal aliens and for worksite enforcement.

"(2) PROCESSING.—

"(A) ACCEPTANCE OF APPLICATIONS.—The Secretary of Homeland Security shall begin accepting applications for conditional nonimmigrant work authorization and status not later than 3 months after the date of the enactment of the Comprehensive Immigration Reform Act of 2006.

"(B) INTERVIEW.—The Secretary of Homeland Security may interview an alien to determine eligibility for conditional nonimmigrant work authorization and status.

"(C) COMPLETION OF PROCESSING.—The Secretary of Homeland Security shall ensure that all applications for conditional non-

immigrant work authorization and status are processed not later than 18 months after the date of the enactment of the Comprehensive Immigration Reform Act of 2006.

"(3) SECURITY.—

"(A) IN GENERAL.—The Secretary of Homeland Security shall ensure that the application process under this section—

"(i) is secure;

"(ii) incorporates antifraud protection; and

"(iii) utilizes biometric authentication at time of document issuance.

"(B) SECURITY AND LAW ENFORCEMENT BACKGROUND CHECKS.—An alien may not be granted conditional nonimmigrant work authorization and status unless—

"(i) the alien submits biometric data in accordance with procedures established by the Secretary of Homeland Security; and

"(ii) all appropriate background checks have been completed to the satisfaction of the Secretary.

"(d) FAILURE TO APPLY.—

"(1) IN GENERAL.—Except as provided under subparagraph (B), an alien shall be ineligible for any relief under sections 240A and 240B if the alien—

"(A) was physically present in the United States before January 4, 2004, and was not legally present in the United States under any classification described in section 101(a)(15) on that date; and

"(B) fails to timely apply for conditional nonimmigrant work authorization and status under this section.

"(2) WAIVER.—The Secretary of Homeland Security may waive the application of paragraph (1) if the Secretary determines that the alien could not obtain such status for reasons of age, mental impairment, or physical disability.

"(e) DOCUMENTARY EVIDENCE OF STATUS.—

"(1) DOCUMENT FEATURES.—In designing a document to provide evidence of conditional nonimmigrant work authorization and status, the Secretary of Homeland Security—

"(A) shall ensure that the document is machine-readable, tamper-resistant, and allows for biometric authentication;

"(B) shall consult with the Forensic Document Laboratory; and

"(C) may incorporate integrated-circuit technology into the document.

"(2) DOCUMENT USE.—The document designed under paragraph (1)—

"(A) may serve as a travel, entry, and work authorization document during the period of its validity; and

"(B) may be accepted by an employer as evidence of employment authorization and identity under section 274A(c)(1)(B).

"(f) TERMS OF STATUS.—

"(1) REPORTING.—An alien is not eligible to maintain conditional nonimmigrant work authorization and status unless the alien complies with all of the registration requirements under section 264.

"(2) TRAVEL.—

"(A) UNLAWFUL PRESENCE.—An alien granted conditional nonimmigrant work authorization and status shall not be subject to section 212(a)(9) for any unlawful presence that occurred before the Secretary of Homeland Security granted the alien such authorization and status.

"(B) RULEMAKING.—The Secretary of Homeland Security shall promulgate regulations to—

"(i) authorize aliens granted conditional nonimmigrant work authorization and status to—

"(I) travel outside of the United States; and

"(II) be readmitted if the period of conditional nonimmigrant work authorization and status has not expired; and

"(ii) require each such alien to establish, at the time of application for admission, that the alien is admissible under section 212(a).

"(C) EFFECT ON PERIOD OF AUTHORIZED ADMISSION.—Time spent outside the United States under subparagraph (B)(i)(I) shall not extend the period of conditional nonimmigrant work authorization and status.

"(3) STATUS; BENEFITS.—During the period in which an alien is granted conditional nonimmigrant work authorization and status under this section, the alien—

"(A) shall not be considered to be permanently residing in the United States under the color of law;

"(B) shall be treated as a nonimmigrant admitted under section 214;

"(C) may be deemed ineligible for public assistance by a State or any political subdivision of a State which furnishes such assistance; and

"(D) may not be detained, determined inadmissible or deportable, or removed pending adjudication of the alien's application for conditional nonimmigrant work authorization and status, unless the alien, through conduct or criminal conviction, becomes ineligible for such authorization or status.

"(g) FAMILY MEMBERS.—

"(1) IN GENERAL.—The spouse or child of an alien granted conditional nonimmigrant work authorization and status under this section is subject to the same terms and conditions as the principal alien, but is not authorized to work in the United States.

"(2) APPLICATION FEE.—

"(A) IN GENERAL.—The spouse or child of an alien seeking conditional nonimmigrant work authorization and status shall submit, in addition to any other fee authorized by law, a fee of $100 per family member.

"(B) USE OF FEE.—The fees collected under subparagraph (A) shall be available for use by the Secretary of Homeland Security for activities to identify, locate, or remove aliens who are deportable under section 237.

"(h) EMPLOYMENT.—

"(1) IN GENERAL.—An alien granted conditional nonimmigrant work authorization and status—

"(A) shall be continuously employed while in the United States; and

"(B) may be employed by any United States employer.

"(2) FAILURE TO MAINTAIN EMPLOYMENT.—

"(A) IN GENERAL.—Any alien who fails to be employed for 45 days while in the United States is ineligible to work in the United States until after the alien has departed the United States and reentered.

"(B) WAIVER.—The Secretary of Homeland Security may, in the Secretary's sole and unreviewable discretion, reauthorize an alien for employment without requiring the alien to depart from the United States.

"(3) PORTABILITY.—An alien granted conditional nonimmigrant work authorization and status under this section may accept a new offer of employment with a subsequent employer, if—

"(A) the employer complies with section 218B; and

"(B) the alien did not work without authorization.

"(i) PENALTIES FOR FALSE STATEMENTS IN APPLICATION FOR CONDITIONAL NONIMMIGRANT STATUS.—

"(1) CRIMINAL PENALTY.—

"(A) VIOLATION.—It shall be unlawful for any person, who files, or assists in filing, an application for adjustment of status under this section—

"(i) to knowingly and willfully—

"(I) falsify, misrepresent, conceal, or cover up a material fact;

"(II) make any false, fictitious, or fraudulent statement or representation; or

"(III) make or use any false writing or document, knowing that such writing or document contains any false, fictitious, or fraudulent statement, or entry; or

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

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

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

"(j) WAIVER OF RIGHTS.—An alien is not eligible for conditional nonimmigrant work authorization and status, unless the alien has waived any right to contest, other than on the basis of an application for asylum or protection under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

any action for deportation or removal of the alien that is instituted against the alien subsequent to a grant of conditional nonimmigrant work authorization and status.

"(k) DENIAL OF DISCRETIONARY RELIEF.—The determination of whether an alien is eligible for a grant of conditional nonimmigrant work authorization and status is solely within the discretion of the Secretary of Homeland Security. Notwithstanding any other provision of law, no court shall have jurisdiction to review—

"(1) any judgment regarding the granting of relief under this section; or

"(2) any other decision or action by the Secretary of Homeland Security for which the Secretary is given discretion under this section, other than the granting of relief under section 208(a).

"(l) JUDICIAL REVIEW.—

"(1) LIMITATIONS ON RELIEF.—Without regard to the nature of the action or claim and without regard to the identity of the party or parties bringing the action, no court may—

"(A) enter declaratory, injunctive, or other equitable relief in any action pertaining to—

"(i) an order or notice denying an alien a grant of conditional nonimmigrant

work authorization and status or any other benefit arising from such status; or

"(ii) an order of removal, exclusion, or deportation entered against an alien after a grant of conditional nonimmigrant status; or

"(B) certify a class under rule 23 of the Federal Rules of Civil Procedure in any action for which judicial review is authorized under a subsequent paragraph of this subsection.

"(2) CHALLENGES TO VALIDITY.—

"(A) IN GENERAL.—Subject to subparagraph (B), any right or benefit not otherwise waived or limited under this section is available in an action instituted in a United States District Court.

"(B) LIMITATION.—Judicial review under subparagraph (A) shall be limited to determinations of—

"(i) whether such section, or any regulation issued to implement such section, violates the Constitution of the United States; and

"(ii) whether such a regulation, or a written policy directive, written policy

guideline, or written procedure issued under the authority of the Secretary of Homeland Security to implement such section, is inconsistent with applicable provisions of this section or otherwise violates Federal law.''.

(b) CLERICAL AMENDMENT.—The table of contents is amended by inserting after the item relating to section 218C, as added by this Act, the following:

''Sec. 218D. Conditional nonimmigrant work authorization and status.''.

Subtitle B—Grant Programs to Assist Nonimmigrant Workers

SEC. 611. GRANTS TO SUPPORT PUBLIC EDUCATION AND COMMUNITY TRAINING.

(a) GRANTS AUTHORIZED.—The Assistant Attorney General, Office of Justice Programs, may award grants to qualified non-profit community organizations to educate, train, and support non-profit agencies, immigrant communities, and other interested entities regarding the provisions of this Act and the amendments made by this Act.

(b) USE OF FUNDS.—

(1) IN GENERAL.—Grants awarded under this section shall be used—

(A) for public education, training, technical assistance, government liaison, and all related

costs (including personnel and equipment) incurred by the grantee in providing services related to this Act; and

(B) to educate, train, and support nonprofit organizations, immigrant communities, and other interested parties regarding this Act and the amendments made by this Act and on matters related to its implementation.

(2) EDUCATION.—In addition to the purposes described in paragraph (1), grants awarded under this section shall be used to—

(A) educate immigrant communities and other interested entities regarding—

(i) the individuals and organizations that can provide authorized legal representation in immigration matters under regulations prescribed by the Secretary; and

(ii) the dangers of securing legal advice and assistance from those who are not authorized to provide legal representation in immigration matters;

(B) educate interested entities regarding the requirements for obtaining nonprofit recognition and accreditation to represent immi-

grants under regulations prescribed by the Secretary;

(C) provide nonprofit agencies with training and technical assistance on the recognition and accreditation process; and

(D) educate nonprofit community organizations, immigrant communities, and other interested entities regarding—

(i) the process for obtaining benefits under this Act or under an amendment made by this Act; and

(ii) the availability of authorized legal representation for low-income persons who may qualify for benefits under this Act or under an amendment made by this Act.

(c) DIVERSITY.—The Assistant Attorney General shall ensure, to the extent possible, that the nonprofit community organizations receiving grants under this section serve geographically diverse locations and ethnically diverse populations who may qualify for benefits under the Act.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Office of Justice Programs of the Department of Justice such sums as may

be necessary for each of the fiscal years 2007 through 2009 to carry out this section.

SEC. 612. FUNDING FOR THE OFFICE OF CITIZENSHIP.

(a) AUTHORIZATION.—The Secretary, acting through the Director of the Bureau of Citizenship and Immigration Services, is authorized to establish the United States Citizenship and Immigration Foundation (referred to in this subtitle as the ''Foundation'').

(b) PURPOSE.—The Foundation shall be incorporated in the District of Columbia, exclusively for charitable and educational purposes to support the functions of the Office of Citizenship of the Bureau of Citizenship and Immigration Services.

(c) GIFTS.—

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

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

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

SEC. 613. CIVICS INTEGRATION GRANT PROGRAM.

(a) IN GENERAL.—The Secretary shall establish a competitive grant program to provide financial assistance to nonprofit organizations, including faith-based organizations, to support—

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

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

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

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

SEC. 614. TEMPORARY WORKER INVESTMENT ACCOUNT STUDY.

(a) STUDY.—The Secretary, in consultation with the Commissioner of Social Security and the Secretary of the Treasury shall conduct a study of the feasibility of establishing temporary worker investment accounts for aliens granted conditional nonimmigrant work authorization and status under section 218D of the Immigration and Nationality Act, as added by section 601.

(b) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Secretary shall submit a report to Congress on the results of the study conducted under subsection (a).

TITLE VII—IMMIGRATION LITIGATION REDUCTION

Subtitle A—Appeals and Review

SEC. 701. CONSOLIDATION OF IMMIGRATION APPEALS.

(a) REAPPORTIONMENT OF CIRCUIT COURT JUDGES.—The table in section 44(a) of title 28, United States Code, is amended in the item relating to the Federal Circuit by striking ''12'' and inserting ''15''.

(b) REVIEW OF ORDERS OF REMOVAL.—Section 242(b) (8 U.S.C. 1252(b)) is amended—

(1) in paragraph (2), by striking the first sentence and inserting ''The petition for review shall be filed with the United Sates Court of Appeals for the Federal Circuit.'';

(2) in paragraph (5)(B), by adding at the end the following: ''Any appeal of a decision by the district court under this paragraph shall be filed with the United States Court of Appeals for the Federal Circuit.''; and

(3) in paragraph (7), by amending subparagraph (C) to read as follows:

"(C) CONSEQUENCE OF INVALIDATION AND VENUE OF APPEALS.—

"(i) INVALIDATION.—If the district court rules that the removal order is invalid, the court shall dismiss the indictment for violation of section 243(a).

"(ii) APPEALS.—The United States Government may appeal a dismissal under clause (i) to the United States Court of Appeals for the Federal Circuit within 30 days after the date of the dismissal. If the district court rules that the removal order is valid, the defendant may appeal the district court decision to the United States Court of Appeals for the Federal Circuit within 30 days after the date of completion of the criminal proceeding.".

(c) REVIEW OF ORDERS REGARDING INADMISSABLE ALIENS.—Section 242(e) (8 U.S.C. 1252(e)) is amended by adding at the end the following new paragraph:

"(6) VENUE.—The petition to appeal any decision by the district court pursuant to this subsection shall be filed with the United States Court of Appeals for the Federal Circuit.".

(d) EXCLUSIVE JURISDICTION.—Section 242(g) (8 U.S.C. 1252(g)) is amended—

(1) by striking ''Except''; and inserting the following:

''(1) IN GENERAL.—Except''; and

(2) by adding at the end the following:

''(2) APPEALS.—Notwithstanding any other provision of law, the United States Court of Appeals for the Federal Circuit shall have exclusive jurisdiction to review a district court order arising from any action taken, or proceeding brought, to remove or exclude an alien from the United States, including a district court order granting or denying a petition for writ of habeas corpus.''.

(e) JURISDICTION OF THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT.—

(1) EXCLUSIVE JURISDICTION.—Section 1295(a) of title 28, United States Code, is amended by adding at the end the following new paragraph:

''(15) of an appeal to review a final administrative order or a district court decision arising from any action taken, or proceeding brought, to remove or exclude an alien from the United States.''.

(2) CONFORMING AMENDMENTS.—Such section 1295(a) is further amended—

(A) in paragraph (13), by striking ''and''; and

(B) in paragraph (14), by striking the period at the end and inserting a semicolon and ''and''.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the United States Court of Appeals for the Federal Circuit for each of the fiscal years 2007 through 2011 such sums as may be necessary to carry out this subsection, including the hiring of additional attorneys for the such Court.

(g) EFFECTIVE DATE.—The amendments made by this section shall take effect upon the date of enactment of this Act and shall apply to any final agency order or district court decision entered on or after the date of enactment of this Act.

SEC. 702. ADDITIONAL IMMIGRATION PERSONNEL.

(a) DEPARTMENT OF HOMELAND SECURITY.—

(1) TRIAL ATTORNEYS.—In each of fiscal years 2007 through 2011, the Secretary shall, subject to the availability of appropriations for such purpose, increase the number of positions for attorneys in the Office of General Counsel of the Department who represent the Department in immigration matters by not less than 100 above the number of such posi-

tions for which funds were made available during each preceding fiscal year.

(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary for each of fiscal years 2007 through 2011 such sums as may be necessary to carry out this subsection.

(b) DEPARTMENT OF JUSTICE.—

(1) LITIGATION ATTORNEYS.—In each of fiscal years 2007 through 2011, the Attorney General shall, subject to the availability of appropriations for such purpose, increase by not less than 50 the number of positions for attorneys in the Office of Immigration Litigation of the Department of Justice.

(2) UNITED STATES ATTORNEYS.—In each of fiscal years 2007 through 2011, the Attorney General shall, subject to the availability of appropriations for such purpose, increase by not less than 50 the number of attorneys in the United States Attorneys' office to litigate immigration cases in the Federal courts.

(3) IMMIGRATION JUDGES.—In each of fiscal years 2007 through 2011, the Attorney General shall, subject to the availability of appropriations for such purpose—

(A) increase by not less than 20 the number of full-time immigration judges compared to the number of such positions for which funds were made available during the preceding fiscal year; and

(B) increase by not less than 80 the number of positions for personnel to support the immigration judges described in subparagraph (A) compared to the number of such positions for which funds were made available during the preceding fiscal year.

(4) STAFF ATTORNEYS.—In each of fiscal years 2007 through 2011, the Attorney General shall, subject to the availability of appropriations for such purpose—

(A) increase by not less than 10 the number of positions for full-time staff attorneys in the Board of Immigration Appeals compared to the number of such positions for which funds were made available during the preceding fiscal year; and

(B) increase by not less than 10 the number of positions for personnel to support the staff attorneys described in subparagraph (A) compared to the number of such positions for

which funds were made available during the preceding fiscal year

(5) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Attorney General for each of the fiscal years 2007 through 2011 such sums as may be necessary to carry out this subsection, including the hiring of necessary support staff.

(c) ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS.—In each of the fiscal years 2007 through 2011, the Director of the Administrative Office of the United States Courts shall, subject to the availability of appropriations, increase by not less than 50 the number of attorneys in the Federal Defenders Program who litigate criminal immigration cases in the Federal courts.

SEC. 703. BOARD OF IMMIGRATION APPEALS REMOVAL ORDER AUTHORITY.

(a) IN GENERAL.—Section 101(a)(47) (8 U.S.C. 1101(a)(47)) is amended to read as follows:

"(47)(A)(i) The term 'order of removal' means the order of the immigration judge, the Board of Immigration Appeals, or other administrative officer to whom the Attorney General or the Secretary of Homeland Security has delegated the responsibility

for determining whether an alien is removable, concluding that the alien is removable, or ordering removal.

''(ii) The term 'order of deportation' means the order of the special inquiry officer, immigration judge, the Board of Immigration Appeals, or other such administrative officer to whom the Attorney General has delegated the responsibility for determining whether an alien is deportable, concluding that the alien is deportable, or ordering deportation.

''(B) An order described under subparagraph (A) shall become final upon the earlier of—

''(i) a determination by the Board of Immigration Appeals affirming such order;

''(ii) the entry by the Board of Immigration Appeals of such order;

''(iii) the expiration of the period in which any party is permitted to seek review of such order by the Board of Immigration Appeals;

''(iv) the entry by an immigration judge of such order, if appeal is waived by all parties; or

''(v) the entry by another administrative officer of such order, at the conclusion of a process authorized by law other than under section 240.''.

(b) CONFORMING AMENDMENTS.—The Immigration and Nationality Act is amended—

(1) in section 212(d)(12)(A) (8 U.S.C. 1182(d)(12)(A)), by inserting ''an order of'' before ''removal''; and

(2) in section 245A(g)(2)(B) (8 U.S.C. 1255a(g)(2)(B))—

(A) in the heading, by inserting '', REMOVAL,'' after ''DEPORTATION''; and

(B) in clause (i), by striking ''deportation,'' and inserting ''deportation or an order of removal,''.

SEC. 704. JUDICIAL REVIEW OF VISA REVOCATION.

Section 221(i) (8 U.S.C. 1201(i)) is amended by striking the last sentence and inserting ''Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title, a revocation under this subsection may not be reviewed by any court, and no court shall have jurisdiction to hear any claim arising from, or any challenge to, such a revocation.''.

SEC. 705. REINSTATEMENT OF REMOVAL ORDERS.

(a) REINSTATEMENT.—

(1) IN GENERAL.—Section 241(a)(5) (8 U.S.C. 1231(a)(5)) is amended to read as follows:

"(5) REINSTATEMENT OF REMOVAL ORDERS AGAINST ALIENS ILLEGALLY REENTERING.—

"(A) IN GENERAL.—If the Secretary of Homeland Security finds that an alien has entered the United States illegally after having been removed, deported, or excluded or having departed voluntarily, under an order of removal, deportation, or exclusion, regardless of the date of the original order or the date of the illegal entry—

"(i) the order of removal, deportation, or exclusion is reinstated from its original date and is not subject to being reopened or reviewed notwithstanding section 242(a)(2)(D);

"(ii) the alien is not eligible and may not apply for any relief under this Act, regardless of the date that an application or request for such relief may have been filed or made; and

"(iii) the alien shall be removed under the order of removal, deportation, or exclusion at any time after the illegal entry.

"(B) NO OTHER PROCEEDINGS.—Reinstatement under this paragraph shall not require proceedings under section 240 or other proceedings before an immigration judge.".

(2) CONFORMING AMENDMENT.—Section 242(a)(2)(D) (8 U.S.C. 1252(a)(2)(D)) is amended by striking "section)" and inserting "section or section 241(a)(5))".

(b) JUDICIAL REVIEW.—Section 242 (8 U.S.C. 1252) is amended by adding at the end the following new subsection:

"(h) JUDICIAL REVIEW OF REINSTATEMENT UNDER SECTION 241(a)(5).—

"(1) REVIEW OF REINSTATEMENT.—Judicial review of a determination under section 241(a)(5) is available under subsection (a) of this section.

"(2) NO REVIEW OF ORIGINAL ORDER.—Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title, no court shall have jurisdiction to review any cause or claim, arising from or relating to any challenge to the original order.".

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall take effect as if enacted on April 1, 1997, and shall apply to all orders reinstated on or after that date by the Secretary (or by the Attorney General prior to March 1, 2003), regardless of the date of the original order.

SEC. 706. WITHHOLDING OF REMOVAL.

(a) IN GENERAL.—Section 241(b)(3) (8 U.S.C. 1231(b)(3)) is amended—

(1) in subparagraph (A), by adding at the end ''The burden of proof is on the alien to establish that the alien's life or freedom would be threatened in that country, and that race, religion, nationality, membership in a particular social group, or political opinion would be at least one central reason for such threat.''; and

(2) in subparagraph (C), by striking ''In determining whether an alien has demonstrated that the alien's life or freedom would be threatened for a reason described in subparagraph (A)'' and inserting ''For purposes of this paragraph,''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect as if enacted on May 11, 2005, and shall apply to applications for withholding of removal made on or after such date.

SEC. 707. CERTIFICATE OF REVIEWABILITY.

(a) BRIEFS.—Section 242(b)(3)(C) (8 U.S.C. 1252(b)(3)(C)) is amended to read as follows:

"(C) BRIEFS.—

"(i) ALIEN'S BRIEF.—The alien shall serve and file a brief in connection with a petition for judicial review not later than 40 days after the date on which the administrative record is available. The court may not extend this deadline except upon motion for good cause shown. If an alien fails to file a brief within the time provided in this subparagraph, the court shall dismiss the appeal unless a manifest injustice would result.

"(ii) UNITED STATES BRIEF.—The United States shall not be afforded an opportunity to file a brief in response to the alien's brief until a judge issues a certificate of reviewability as provided in subparagraph (D), unless the court requests the United States to file a reply brief prior to issuing such certification.".

(b) CERTIFICATE OF REVIEWABILITY.—Section 242(b)(3) (8 U.S.C. 1252 (b)(3)) is amended by adding at the end the following new subparagraphs:

"(D) CERTIFICATE OF REVIEWABILITY.—

"(i) After the alien has filed a brief, the petition for review shall be assigned to one judge on the Federal Circuit Court of Appeals.

"(ii) Unless such judge issues a certificate of reviewability, the petition for review shall be denied and the United States may not file a brief.

"(iii) Such judge may not issue a certificate of reviewability under clause (ii) unless the petitioner establishes a prima facie case that the petition for review should be granted.

"(iv) Such judge shall complete all action on such certificate, including rendering judgment, not later than 60 days after the date on which the judge is assigned the petition for review, unless an extension is granted under clause (v).

"(v) Such judge may grant, on the judge's own motion or on the motion of a party, an extension of the 60-day period described in clause (iv) if—

"(I) all parties to the proceeding agree to such extension; or

"(II) such extension is for good cause shown or in the interests of justice, and the judge states the grounds for the extension with specificity.

"(vi) If no certificate of reviewability is issued before the end of the period described in clause (iv), including any extension under clause (v), the petition for review shall be denied, any stay or injunction on petitioner's removal shall be dissolved without further action by the court or the Government, and the alien may be removed.

"(vii) If such judge issues a certificate of reviewability under clause (ii), the Government shall be afforded an opportunity to file a brief in response to the alien's brief. The alien may serve and file a reply brief not later than 14 days after service of the Government brief, and the court may not extend this deadline except upon motion for good cause shown.

"(E) NO FURTHER REVIEW OF DECISION NOT TO ISSUE A CERTIFICATE OF REVIEWABILITY.—The decision of a judge on the Federal Circuit Court of Appeals not to issue a certificate of reviewability or to deny a petition for review, shall be the final decision for the Federal Circuit Court of Appeals and may not be reconsidered, reviewed, or reversed by the such Court through any mechanism or procedure.".

SEC. 708. DISCRETIONARY DECISIONS ON MOTIONS TO REOPEN OR RECONSIDER.

(a) EXERCISE OF DISCRETION.—Section 240(c) (8 U.S.C. 1229a(c)) is amended—

(1) in paragraph (6), by adding at the end the following new subparagraph:

"(D) DISCRETION.—The decision to grant or deny a motion to reconsider is committed to the Attorney General's discretion."; and

(2) in paragraph (7), by adding at the end the following new subparagraph:

"(D) DISCRETION.—The decision to grant or deny a motion to reopen is committed to the Attorney General's discretion.".

(b) ELIGIBILITY FOR PROTECTION FROM REMOVAL TO ALTERNATIVE COUNTRY.—Section 240(c) (8 U.S.C. 1229a(c)), as amended by subsection (a), is further amended by adding at the end of paragraph (7)(C) the following new clause:

"(v) SPECIAL RULE FOR ALTERNATIVE COUNTRIES OF REMOVAL.—The requirements of this paragraph may not apply if—

"(I) the Secretary of Homeland Security is seeking to remove the alien to an alternative or additional country of removal under paragraph (1)(C), 2(D), or 2(E) of section 241(b) that was not considered during the alien's prior removal proceedings;

"(II) the alien's motion to reopen is filed within 30 days after receiving notice of the Secretary's intention to remove the alien to that country; and

"(III) the alien establishes a prima facie case that the alien is entitled by law to withholding of removal under section 241(b)(3) or protection under the Convention Against Torture

and Other Cruel, Inhuman or Degrading Treatment or Punishment, done at New York December 10, 1984, with respect to that particular country.''.

(c) EFFECTIVE DATE.—This amendment made by this section shall apply to motions to reopen or reconsider which are filed on or after the date of the enactment of this Act in removal, deportation, or exclusion proceedings, whether a final administrative order is entered before, on, or after the date of the enactment of this Act.

SEC. 709. PROHIBITION OF ATTORNEY FEE AWARDS FOR REVIEW OF FINAL ORDERS OF REMOVAL.

(a) IN GENERAL.—Section 242 (8 U.S.C. 1252), as amended by section 705(b), is further amended by adding at the end the following new subsection:

''(i) PROHIBITION ON ATTORNEY FEE AWARDS.—Notwithstanding any other provision of law, a court may not award fees or other expenses to an alien based upon the alien's status as a prevailing party in any proceedings relating to an order of removal issued under this Act, unless the court of appeals concludes that the determination of the Attorney General or the Secretary of Homeland Security that the alien was removable under sections 212 and 237 was not substantially justified.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to proceedings relating to an order of removal issued on or after the date of the enactment of this Act, regardless of the date that such fees or expenses were incurred.

Subtitle B—Immigration Review Reform

SEC. 711. DIRECTOR OF THE EXECUTIVE OFFICE FOR IMMIGRATION REVIEW.

(a) APPOINTMENT.—Notwithstanding any other provision of law or regulation, the Director of the Executive Office for Immigration Review of the Department of Justice described in section 1003.0 of title 8, Code of Federal Regulations (or any corresponding similar regulation) shall be appointed by the President with the advice and consent of the Senate.

(b) INITIAL APPOINTMENT.—The individual who is serving as Director of the Executive Office for Immigration Review on the date of the enactment of this Act shall serve as Acting Director of such Office until either—

(1) the individual is appointed as described in paragraph (1); or

(2) a successor has been appointed in such manner.

SEC. 712. BOARD OF IMMIGRATION APPEALS.

(a) COMPOSITION AND APPOINTMENT.—Notwithstanding any other provision of law or regulation, the Board of Immigration Appeals of the Department of Justice described in section 1003.1 of title 8, Code of Federal Regulations (or any corresponding similar regulation) (referred to in this section as the ''Board''), shall be composed of a Chair and 14 other immigration appeals judges, appointed by the Director of the Executive Office for Immigration Review, in consultation with the Attorney General.

(b) TERM OF APPOINTMENT.—The term of appointment of each member of the Board shall be 6 years from the date upon which such person was appointed and qualified. Upon the expiration of a term of office, a Board member may continue to act until a successor has been appointed and qualified, except that no Board member may serve more than 12 years.

(c) CURRENT MEMBERS.—Each individual who is serving as a member of the Board on the date of the enactment of this Act shall be appointed to the Board utilizing a system of staggered terms of appointment based on seniority.

(d) QUALIFICATIONS.—Each member of the Board, including the Chair, shall be an attorney in good standing of a bar of a State or the District of Columbia and shall

have at least 7 years of professional, legal expertise in immigration and nationality law.

(e) DUTIES OF THE CHAIR.—The Chair of the Board, subject to the supervision of the Director, shall—

(1) be responsible, on behalf of the Board, for the administrative operations of the Board and shall have the power to appoint such administrative assistants, attorneys, clerks, and other personnel as may be needed for that purpose;

(2) direct, supervise, and establish internal operating procedures and policies of the Board;

(3) designate a member of the Board to act as Chair if the Chair is absent or unavailable;

(4) adjudicate cases as a member of the Board;

(5) form 3-member panels as provided by subsection (i);

(6) direct that a case be heard en banc as provided by subsection (j); and

(7) exercise such other authorities as the Director may provide.

(f) BOARD MEMBERS DUTIES.—In deciding a case before the Board, the Board—

(1) shall exercise independent judgment and discretion; and

(2) may take any action that is appropriate and necessary for the disposition of such case that is consistent with the authority provided in this section and any regulations established in accordance with this section.

(g) JURISDICTION.—

(1) IN GENERAL.—The Board shall have jurisdiction to hear appeals described in section 1003.1(b) of title 8, Code of Federal Regulations (or any corresponding similar regulation).

(2) LIMITATION.—The Board shall not have jurisdiction to hear an appeal of a decision of an immigration judge for an order of removal entered in absentia.

(h) SCOPE OF REVIEW.—

(1) FINDINGS OR FACT.—The Board shall—

(A) accept findings of fact determined by an immigration judge, including findings as to the credibility of testimony, unless the findings are clearly erroneous; and

(B) give due deference to an immigration judge's application of the law to the facts.

(2) QUESTIONS OF LAW.—The Board shall review de novo questions of law, discretion, and judg-

ment, and all other issues in appeals from decisions of immigration judges.

(3) APPEALS FROM OFFICERS' DECISIONS.—The Board shall review de novo all questions arising in appeals from decisions issued by officers of the Department.

(4)(A) PROHIBITION ON FACT FINDING.—Except for taking administrative notice of commonly known facts such as current events or the contents of official documents, the Board may not engage in fact-finding in the course of deciding appeals.

(B) REMAND.—A party asserting that the Board cannot properly resolve an appeal without further fact-finding shall file a motion for remand. If further fact-finding is needed in a case, the Board shall remand the proceeding to the immigration judge or, as appropriate, to the Secretary.

(i) PANELS.—

(1) IN GENERAL.—Except as provided in paragraph (5) all cases shall be subject to review by a 3-member panel. The Chair shall divide the Board into 3-member panels and designate a presiding member.

(2) AUTHORITY.—Each panel may exercise the appropriate authority of the Board that is necessary for the adjudication of cases before it.

(3) QUORUM.—Two members appointed to a panel shall constitute a quorum for such panel.

(4) CHANGES IN COMPOSITION.—The Chair may from time to time make changes in the composition of a panel and of the presiding member of a panel.

(5) PRESIDING MEMBER DECISIONS.—The presiding member of a panel may act alone on any motion as provided in paragraphs (3) and (4) of subsection (k) and may not otherwise dismiss or determine an appeal as a single Board member.

(j) EN BANC PROCESS.—

(1) IN GENERAL.—The Board may on its own motion, by a majority vote of the Board members, or by direction of the Chair—

(A) consider any case as the full Board en banc; or

(B) reconsider as the full Board en banc any case that has been considered or decided by a 3-member panel or by a limited en banc panel.

(2) QUORUM.—A majority of the Board members shall constitute a quorum of the Board sitting en banc.

(k) DECISIONS OF THE BOARD.—

(1) BINDING DECISIONS.—

(A) IN GENERAL.—A precedent decision of the Board shall be binding on the Secretary and the immigration judges unless such decision is modified or reversed by the Court of Appeals for the Federal Circuit or by the United States Supreme Court.

(B) APPEAL BY THE SECRETARY.—The Secretary, with the concurrence of the Attorney General, may appeal a decision of the Board under this section to the Court of Appeals for the Federal Circuit.

(2) AFFIRMANCE WITHOUT OPINION.—Upon individualized review of a case, the Board may affirm the decision of an immigration judge without opinion only if—

(A) the decision of the immigration judge resolved all issues in the case;

(B) the issue on appeal is squarely controlled by existing Board or Federal court

precedent and does not involve the application of precedent to a novel fact situation;

(C) the factual and legal questions raised on appeal are so insubstantial that the case does not warrant the issuance of a written opinion in the case; and

(D) the Board approves both the result reached in the decision below and all of the reasoning of that decision.

(3) SUMMARY DISMISSAL OF APPEALS.—The 3-member panel or the presiding member acting alone may summarily dismiss any appeal or portion of any appeal in any case which—

(A) the party seeking the appeal fails to specify the reasons for the appeal;

(B) the only reason for the appeal specified by such party involves a finding of fact or a conclusion of law that was conceded by that party at a prior proceeding;

(C) the appeal is from an order that granted such party the relief that had been requested;

(D) the appeal is determined to be filed for an improper purpose, such as to cause unnecessary delay; or

(E) the appeal lacks an arguable basis in fact or in law and is not supported by a good faith argument for extension, modification, or reversal of existing law.

(4) UNOPPOSED DISPOSITIONS.—The 3-member panel or the presiding member acting alone may—

(A) grant an unopposed motion or a motion to withdraw an appeal pending before the Board; or

(B) adjudicate a motion to remand any appeal—

(i) from the decision of an officer of the Department if the appropriate official of the Department requests that the matter be remanded back for further consideration;

(ii) if remand is required because of a defective or missing transcript; or

(iii) if remand is required for any other procedural or ministerial issue.

(5) NOTICE OF RIGHT TO APPEAL.—The decision by the Board shall include notice to the alien of the alien's right to file a petition for review in the United States Court of Appeals for the Federal Circuit within 30 days of the date of the decision.

SEC. 713. IMMIGRATION JUDGES.

(a) APPOINTMENT OF CHIEF IMMIGRATION JUDGE.—Notwithstanding any other provision of law or regulation, the Chief Immigration Judge described in section 1003.9 of title 8, Code of Federal Regulations (or any corresponding similar regulation) shall be appointed by the Director of the Executive Officer for Immigration Review, in consultation with the Attorney General.

(b) APPOINTMENT OF IMMIGRATION JUDGES.—

(1) IN GENERAL.—Immigration judges shall be appointed by the Director of the Executive Office for Immigration Review, in consultation with the Chief Immigration Judge and the Chair of the Board of Immigration Appeals.

(2) TERM OF APPOINTMENT.—The term of appointment of each immigration judge shall be 7 years from the date upon which such person was appointed and qualified. Upon the expiration of a term of office, the immigration judge may continue to act until a successor has been appointed and qualified, except that no immigration judge member may serve more than 14 years.

(3) CURRENT MEMBERS.—Each individual who is serving as an immigration judge on the date of the enactment of this Act shall be appointed as an

immigration judge utilizing a system of staggered terms of appointment based on seniority.

(4) QUALIFICATIONS.—Each immigration judge, including the Chief Immigration Judge, shall be an attorney in good standing of a bar of a State or the District of Columbia and shall have at least 5 years of professional, legal expertise in immigration and nationality law.

(c) JURISDICTION.—An Immigration judge shall have the authority to hear matters related to any removal proceeding pursuant to section 240 of the Immigration and Nationality Act (8 U.S.C. 1229a) described in section 1240.1(a) of title 8, Code of Federal Regulations (or any corresponding similar regulation).

(d) DUTIES OF IMMIGRATION JUDGES.—In deciding a case, an immigration judge—

(1) shall exercise independent judgment and discretion; and

(2) may take any action that is appropriate and necessary for the disposition of such case that is consistent with their authorities under this section and regulations established in accordance with this section.

(e) REVIEW.—Decisions of immigration judges are subject to review by the Board of Immigration Appeals in any case in which the Board has jurisdiction.

SEC. 714. REMOVAL AND REVIEW OF JUDGES.

(a) IN GENERAL.—Immigration judges and members of the Board of Immigration Appeals may be removed from office only for good cause—

(1) by the Director of the Executive Office for Immigration Review, in consultation with the Chair of the Board, in the case of the removal of a member of the Board; or

(2) by the Director, in consultation with the Chief Immigration Judge, in the case of the removal of an immigration judge.

(b) INDEPENDENT JUDGMENT.—No immigration judge or member of the Board may be removed or otherwise subject to disciplinary or adverse action for their exercise of independent judgment and discretion as prescribed by this subtitle.

SEC. 715. LEGAL ORIENTATION PROGRAM.

(a) CONTINUED OPERATION.—The Director of the Executive Office for Immigration Review shall continue to operate a legal orientation program to provide basic information about immigration court procedures for immigra-

tion detainees and shall expand the legal orientation program to provide such information on a nationwide basis.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out such legal orientation program.

SEC. 716. REGULATIONS.

Not later than 180 days after the date of the enactment of this Act, the Attorney General shall issue regulations to implement this subtitle.

TITLE VIII—MISCELLANEOUS

SEC. 801. TECHNICAL AND CONFORMING AMENDMENTS.

The Attorney General, in consultation with the Secretary, shall, as soon as practicable but not later than 90 days after the date of the enactment of this Act, submit to Congress a draft of any technical and conforming changes in the Immigration and Nationality Act which are necessary to reflect the changes in the substantive provisions of law made by the Homeland Security Act of 2002, this Act, or any other provision of law.