

115TH CONGRESS  
2D SESSION

# H. R. 4760

To amend the immigration laws and the homeland security laws, and for  
other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 10, 2018

Mr. GOODLATTE (for himself, Mr. McCAUL, Mr. LABRADOR, Ms. MCSALLY, Mr. SENSENBRENNER, and Mr. CARTER of Texas) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committees on Education and the Workforce, Homeland Security, Foreign Affairs, Ways and Means, Armed Services, Oversight and Government Reform, Agriculture, Transportation and Infrastructure, and Natural Resources, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend the immigration laws and the homeland security  
laws, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Securing America’s Future Act of 2018”.

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

Sec. 1. Short title; table of contents.

## DIVISION A—LEGAL IMMIGRATION REFORM

### TITLE I—IMMIGRANT VISA ALLOCATIONS AND PRIORITIES

Sec. 1101. Family-sponsored immigration priorities.  
 Sec. 1102. Elimination of diversity visa program.  
 Sec. 1103. Employment-based immigration priorities.  
 Sec. 1104. Waiver of rights by B visa nonimmigrants.

### TITLE II—AGRICULTURAL WORKER REFORM

Sec. 2101. Short title.  
 Sec. 2102. H–2C temporary agricultural work visa program.  
 Sec. 2103. Admission of temporary H–2C workers.  
 Sec. 2104. Mediation.  
 Sec. 2105. Migrant and seasonal agricultural worker protection.  
 Sec. 2106. Binding arbitration.  
 Sec. 2107. Eligibility for health care subsidies and refundable tax credits; required health insurance coverage.  
 Sec. 2108. Study of establishment of an agricultural worker employment pool.  
 Sec. 2109. Prevailing wage.  
 Sec. 2110. Effective dates; sunset; regulations.  
 Sec. 2111. Report on compliance and violations.

### TITLE III—VISA SECURITY

Sec. 3101. Cancellation of additional visas.  
 Sec. 3102. Visa information sharing.  
 Sec. 3103. Restricting waiver of visa interviews.  
 Sec. 3104. Authorizing the Department of State to not interview certain ineligible visa applicants.  
 Sec. 3105. Visa refusal and revocation.  
 Sec. 3106. Petition and application processing for visas and immigration benefits.  
 Sec. 3107. Fraud prevention.  
 Sec. 3108. Visa ineligibility for spouses and children of drug traffickers.  
 Sec. 3109. DNA testing.  
 Sec. 3110. Access to NCIC criminal history database for diplomatic visas.  
 Sec. 3111. Elimination of signed photograph requirement for visa applications.  
 Sec. 3112. Additional fraud detection and prevention.

## DIVISION B—INTERIOR IMMIGRATION ENFORCEMENT

### TITLE I—LEGAL WORKFORCE ACT

Sec. 1101. Short title.  
 Sec. 1102. Employment eligibility verification process.  
 Sec. 1103. Employment eligibility verification system.  
 Sec. 1104. Recruitment, referral, and continuation of employment.  
 Sec. 1105. Good faith defense.  
 Sec. 1106. Preemption and States' rights.  
 Sec. 1107. Repeal.  
 Sec. 1108. Penalties.  
 Sec. 1109. Fraud and misuse of documents.  
 Sec. 1110. Protection of Social Security Administration programs.

- Sec. 1111. Fraud prevention.
- Sec. 1112. Use of employment eligibility verification photo tool.
- Sec. 1113. Identity authentication employment eligibility verification pilot programs.
- Sec. 1114. Inspector General audits.

## TITLE II—SANCTUARY CITIES AND STATE AND LOCAL LAW ENFORCEMENT COOPERATION

- Sec. 2201. Short title.
- Sec. 2202. State noncompliance with enforcement of immigration law.
- Sec. 2203. Clarifying the authority of ice detainers.
- Sec. 2204. Sarah and Grant’s law.
- Sec. 2205. Clarification of congressional intent.
- Sec. 2206. Penalties for illegal entry or presence.

## TITLE III—CRIMINAL ALIENS

- Sec. 3301. Precluding admissibility of aliens convicted of aggravated felonies or other serious offenses.
- Sec. 3302. Increased penalties barring the admission of convicted sex offenders failing to register and requiring deportation of sex offenders failing to register.
- Sec. 3303. Grounds of inadmissibility and deportability for alien gang members.
- Sec. 3304. Inadmissibility and deportability of drunk drivers.
- Sec. 3305. Definition of aggravated felony.
- Sec. 3306. Precluding withholding of removal for aggravated felons.
- Sec. 3307. Protecting immigrants from convicted sex offenders.
- Sec. 3308. Clarification to crimes of violence and crimes involving moral turpitude.
- Sec. 3309. Detention of dangerous aliens.
- Sec. 3310. Timely repatriation.
- Sec. 3311. Illegal reentry.

## TITLE IV—ASYLUM REFORM

- Sec. 4401. Clarification of intent regarding taxpayer-provided counsel.
- Sec. 4402. Credible fear interviews.
- Sec. 4403. Recording expedited removal and credible fear interviews.
- Sec. 4404. Safe third country.
- Sec. 4405. Renunciation of asylum status pursuant to return to home country.
- Sec. 4406. Notice concerning frivolous asylum applications.
- Sec. 4407. Anti-fraud investigative work product.
- Sec. 4408. Penalties for asylum fraud.
- Sec. 4409. Statute of limitations for asylum fraud.
- Sec. 4410. Technical amendments.

## TITLE V—UNACCOMPANIED AND ACCOMPANIED ALIEN MINORS APPREHENDED ALONG THE BORDER

- Sec. 5501. Repatriation of unaccompanied alien children.
- Sec. 5502. Special immigrant juvenile status for immigrants unable to reunite with either parent.
- Sec. 5503. Jurisdiction of asylum applications.
- Sec. 5504. Quarterly report to Congress.
- Sec. 5505. Biannual report to Congress.
- Sec. 5506. Clarification of standards for family detention.

## DIVISION C—BORDER ENFORCEMENT

Sec. 1100. Short title.

## TITLE I—BORDER SECURITY

Sec. 1101. Definitions.

## Subtitle A—Infrastructure and Equipment

Sec. 1111. Strengthening the requirements for barriers along the southern border.

Sec. 1112. Air and Marine Operations flight hours.

Sec. 1113. Capability deployment to specific sectors and transit zone.

Sec. 1114. U.S. Border Patrol activities.

Sec. 1115. Border security technology program management.

Sec. 1116. Reimbursement of States for deployment of the National Guard at the southern border.

Sec. 1117. National Guard support to secure the southern border.

Sec. 1118. Prohibitions on actions that impede border security on certain Federal land.

Sec. 1119. Landowner and rancher security enhancement.

Sec. 1120. Eradication of carrizo cane and salt cedar.

Sec. 1121. Southern border threat analysis.

Sec. 1122. Amendments to U.S. Customs and Border Protection.

Sec. 1123. Agent and officer technology use.

Sec. 1124. Integrated Border Enforcement Teams.

Sec. 1125. Tunnel Task Forces.

Sec. 1126. Pilot program on use of electromagnetic spectrum in support of border security operations.

Sec. 1127. Homeland security foreign assistance.

## Subtitle B—Personnel

Sec. 1131. Additional U.S. Customs and Border Protection agents and officers.

Sec. 1132. U.S. Customs and Border Protection retention incentives.

Sec. 1133. Anti-Border Corruption Reauthorization Act.

Sec. 1134. Training for officers and agents of U.S. Customs and Border Protection.

## Subtitle C—Grants

Sec. 1141. Operation Stonegarden.

## Subtitle D—Authorization of Appropriations

Sec. 1151. Authorization of appropriations.

## TITLE II—EMERGENCY PORT OF ENTRY PERSONNEL AND INFRASTRUCTURE FUNDING

Sec. 2101. Ports of entry infrastructure.

Sec. 2102. Secure communications.

Sec. 2103. Border security deployment program.

Sec. 2104. Pilot and upgrade of license plate readers at ports of entry.

Sec. 2105. Non-intrusive inspection operational demonstration.

Sec. 2106. Biometric exit data system.

Sec. 2107. Sense of Congress on cooperation between agencies.

- Sec. 2108. Authorization of appropriations.  
 Sec. 2109. Definition.

### TITLE III—VISA SECURITY AND INTEGRITY

- Sec. 3101. Visa security.  
 Sec. 3102. Electronic passport screening and biometric matching.  
 Sec. 3103. Reporting of visa overstays.  
 Sec. 3104. Student and exchange visitor information system verification.  
 Sec. 3105. Social media review of visa applicants.

### TITLE IV—TRANSNATIONAL CRIMINAL ORGANIZATION ILLICIT SPOTTER PREVENTION AND ELIMINATION

- Sec. 4101. Short title.  
 Sec. 4102. Unlawfully hindering immigration, border, and customs controls.

### DIVISION D—LAWFUL STATUS FOR CERTAIN CHILDHOOD ARRIVALS

- Sec. 1101. Definitions.  
 Sec. 1102. Contingent nonimmigrant status for certain aliens who entered the  
     United States as minors.  
 Sec. 1103. Administrative and judicial review.  
 Sec. 1104. Penalties and signature requirements.  
 Sec. 1105. Rulemaking.  
 Sec. 1106. Statutory construction.

# **DIVISION A—LEGAL**

## **IMMIGRATION REFORM**

### **TITLE I—IMMIGRANT VISA**

### **ALLOCATIONS AND PRIORITIES**

#### **SEC. 1101. FAMILY-SPONSORED IMMIGRATION PRIORITIES.**

(a) IMMEDIATE RELATIVE REDEFINED.—Section  
 201 of the Immigration and Nationality Act (8 U.S.C.  
 1151) is amended—

(1) in subsection (b)(2)(A)—

(A) in clause (i), by striking “children,  
 spouses, and parents of a citizen of the United  
 States, except that, in the case of parents, such  
 citizens shall be at least 21 years of age.” and

1 inserting “children and spouse of a citizen of  
2 the United States.”; and

3 (B) in clause (ii), by striking “such an im-  
4 mediate relative” and inserting “the immediate  
5 relative spouse of a United States citizen”;

6 (2) by striking subsection (c) and inserting the  
7 following:

8 “(c) WORLDWIDE LEVEL OF FAMILY-SPONSORED  
9 IMMIGRANTS.—(1) The worldwide level of family-spon-  
10 sored immigrants under this subsection for a fiscal year  
11 is equal to 87,934 minus the number computed under  
12 paragraph (2).

13 “(2) The number computed under this paragraph for  
14 a fiscal year is the number of aliens who were paroled into  
15 the United States under section 212(d)(5) in the second  
16 preceding fiscal year who—

17 “(A) did not depart from the United States  
18 (without advance parole) within 365 days; and

19 “(B)(i) did not acquire the status of an alien  
20 lawfully admitted to the United States for perma-  
21 nent residence during the two preceding fiscal years;  
22 or

23 “(ii) acquired such status during such period  
24 under a provision of law (other than subsection (b))  
25 that exempts adjustment to such status from the nu-

1       merical limitation on the worldwide level of immigra-  
2       tion under this section.”; and

3               (3) in subsection (f)—

4                       (A) in paragraph (2), by striking “section  
5       203(a)(2)(A)” and inserting “section 203(a)”;

6                       (B) by striking paragraph (3);

7                       (C) by redesignating paragraph (4) as  
8       paragraph (3); and

9                       (D) in paragraph (3), as redesignated, by  
10       striking “(1) through (3)” and inserting “(1)  
11       and (2)”.

12       (b) FAMILY-BASED VISA PREFERENCES.—Section  
13       203(a) of the Immigration and Nationality Act (8 U.S.C.  
14       1153(a)) is amended to read as follows:

15       “(a) SPOUSES AND MINOR CHILDREN OF PERMA-  
16       NENT RESIDENT ALIENS.—Family-sponsored immigrants  
17       described in this subsection are qualified immigrants who  
18       are the spouse or a child of an alien lawfully admitted  
19       for permanent residence. Such immigrants shall be allo-  
20       cated visas in accordance with the number computed  
21       under section 201(c).”.

22       (c) AGING OUT.—Section 203(h) of the Immigration  
23       and Nationality Act (8 U.S.C. 1153(h)) is amended—

24               (1) by striking “(a)(2)(A)” each place such  
25       term appears and inserting “(a)(2)”;

1           (2) by amending paragraph (1) to read as fol-  
 2       lows:

3           “(1) IN GENERAL.—Subject to paragraph (2),  
 4       for purposes of subsections (a)(2) and (d), a deter-  
 5       mination of whether an alien satisfies the age re-  
 6       quirement in the matter preceding subparagraph (A)  
 7       of section 101(b)(1) shall be made using the age of  
 8       the alien on the date on which a petition is filed with  
 9       the Secretary of Homeland Security.”.

10          (3) by redesignating paragraphs (2) through  
 11       (4) as paragraphs (3) through (5), respectively;

12          (4) by inserting after paragraph (1) the fol-  
 13       lowing:

14          “(2) LIMITATION.—Notwithstanding the age of  
 15       an alien on the date on which a petition is filed, an  
 16       alien who marries or turns 25 years of age prior to  
 17       being issued a visa pursuant to subsection (a)(2) or  
 18       (d), no longer satisfies the age requirement de-  
 19       scribed in paragraph (1).”; and

20          (5) in paragraph (5), as so redesignated, by  
 21       striking “(3)” and inserting “(4)”.

22       (d) CONFORMING AMENDMENTS.—

23          (1) DEFINITION OF V NONIMMIGRANT.—Section  
 24       101(a)(15)(V) of the Immigration and Nationality  
 25       Act (8 U.S.C. 1101(a)(15)(V)) is amended by strik-



1       ing “section 203(a)(2)(A)” each place such term ap-  
2       pears and inserting “section 203(a)”.

3               (2) NUMERICAL LIMITATION TO ANY SINGLE  
4       FOREIGN STATE.—Section 202 of such Act (8  
5       U.S.C. 1152) is amended—

6                       (A) in subsection (a)(4)—

7                               (i) by striking subparagraphs (A) and  
8                       (B) and inserting the following:

9               “(A) 75 PERCENT OF FAMILY-SPONSORED  
10       IMMIGRANTS NOT SUBJECT TO PER COUNTRY  
11       LIMITATION.—Of the visa numbers made avail-  
12       able under section 203(a) in any fiscal year, 75  
13       percent shall be issued without regard to the  
14       numerical limitation under paragraph (2).

15               “(B) TREATMENT OF REMAINING 25 PER-  
16       CENT FOR COUNTRIES SUBJECT TO SUB-  
17       SECTION (e).—

18                       “(i) IN GENERAL.—Of the visa num-  
19       bers made available under section 203(a)  
20       in any fiscal year, 25 percent shall be  
21       available, in the case of a foreign state or  
22       dependent area that is subject to sub-  
23       section (e) only to the extent that the total  
24       number of visas issued in accordance with  
25       subparagraph (A) to natives of the foreign

1 state or dependent area is less than the  
2 subsection (e) ceiling.

3 “(ii) SUBSECTION (e) CEILING DE-  
4 FINED.—In clause (i), the term ‘subsection  
5 (e) ceiling’ means, for a foreign state or  
6 dependent area, 77 percent of the max-  
7 imum number of visas that may be made  
8 available under section 203(a) to immi-  
9 grants who are natives of the state or area,  
10 consistent with subsection (e).”; and

11 (ii) by striking subparagraphs (C) and  
12 (D); and  
13 (B) in subsection (e)—

14 (i) in paragraph (1), by adding “and”  
15 at the end;

16 (ii) by striking paragraph (2);

17 (iii) by redesignating paragraph (3) as  
18 paragraph (2); and

19 (iv) in the undesignated matter after  
20 paragraph (2), as redesignated, by striking  
21 “, respectively,” and all that follows and  
22 inserting a period.

23 (3) PROCEDURE FOR GRANTING IMMIGRANT  
24 STATUS.—Section 204 of such Act (8 U.S.C. 1154)  
25 is amended—

1 (A) in subsection (a)(1)—

2 (i) in subparagraph (A)(i), by striking  
3 “to classification by reason of a relation-  
4 ship described in paragraph (1), (3), or (4)  
5 of section 203(a) or”;

6 (ii) in subparagraph (B)—

7 (I) in clause (i), by redesignating  
8 the second subclause (I) as subclause  
9 (II); and

10 (II) by striking “203(a)(2)(A)”  
11 each place such terms appear and in-  
12 serting “203(a)”;

13 (iii) in subparagraph (D)(i)(I), by  
14 striking “a petitioner” and all that follows  
15 through “section 204(a)(1)(B)(iii).” and  
16 inserting “an individual younger than 21  
17 years of age for purposes of adjudicating  
18 such petition and for purposes of admis-  
19 sion as an immediate relative under section  
20 201(b)(2)(A)(i) or a family-sponsored im-  
21 migrant under section 203(a), as appro-  
22 priate, notwithstanding the actual age of  
23 the individual.”;

24 (B) in subsection (f)(1), by striking “,  
25 203(a)(1), or 203(a)(3), as appropriate”; and

1 (C) by striking subsection (k).

2 (4) WAIVERS OF INADMISSIBILITY.—Section  
3 212 of such Act (8 U.S.C. 1182) is amended—

4 (A) in subsection (a)(6)(E)(ii), by striking  
5 “section 203(a)(2)” and inserting “section  
6 203(a)”; and

7 (B) in subsection (d)(11), by striking  
8 “(other than paragraph (4) thereof)”.

9 (5) EMPLOYMENT OF V NONIMMIGRANTS.—Sec-  
10 tion 214(q)(1)(B)(i) of such Act (8 U.S.C.  
11 1184(q)(1)(B)(i)) is amended by striking “section  
12 203(a)(2)(A)” each place such term appears and in-  
13 serting “section 203(a)”.

14 (6) DEFINITION OF ALIEN SPOUSE.—Section  
15 216(h)(1)(C) of such Act (8 U.S.C. 1186a(h)(1)(C))  
16 is amended by striking “section 203(a)(2)” and in-  
17 serting “section 203(a)”.

18 (7) CLASSES OF DEPORTABLE ALIENS.—Sec-  
19 tion 237(a)(1)(E)(ii) of such Act (8 U.S.C.  
20 1227(a)(1)(E)(ii)) is amended by striking “section  
21 203(a)(2)” and inserting “section 203(a)”.

22 (e) CREATION OF NONIMMIGRANT CLASSIFICATION  
23 FOR ALIEN PARENTS OF ADULT UNITED STATES CITI-  
24 ZENS.—

1           (1) IN GENERAL.—Section 101(a)(15) of the  
2       Immigration and Nationality Act (8 U.S.C.  
3       1101(a)(15)) is amended—

4           (A) in subparagraph (T)(ii)(III), by strik-  
5       ing the period at the end and inserting a semi-  
6       colon;

7           (B) in subparagraph (U)(iii), by striking  
8       “or” at the end;

9           (C) in subparagraph (V)(ii)(II), by striking  
10       the period at the end and inserting “; or”; and

11          (D) by adding at the end the following:

12          “(W) Subject to section 214(s), an alien  
13       who is a parent of a citizen of the United  
14       States, if the citizen—

15               “(i) is at least 21 years of age; and

16               “(ii) has never received contingent  
17       nonimmigrant status under division D of  
18       the Securing America’s Future Act.”.

19          (2) CONDITIONS ON ADMISSION.—Section 214  
20       of such Act (8 U.S.C. 1184) is amended by adding  
21       at the end the following:

22          “(s)(1) The initial period of authorized admission for  
23       a nonimmigrant described in section 101(a)(15)(W) shall  
24       be 5 years, but may be extended by the Secretary of  
25       Homeland Security for additional 5-year periods if the

1 United States citizen son or daughter of the nonimmigrant  
2 is still residing in the United States.

3 “(2) A nonimmigrant described in section  
4 101(a)(15)(W)—

5 “(A) is not authorized to be employed in  
6 the United States; and

7 “(B) is not eligible for any Federal, State,  
8 or local public benefit.

9 “(3) Regardless of the resources of a non-  
10 immigrant described in section 101(a)(15)(W), the  
11 United States citizen son or daughter who sponsored  
12 the nonimmigrant parent shall be responsible for the  
13 nonimmigrant’s support while the nonimmigrant re-  
14 sides in the United States.

15 “(4) An alien is ineligible to receive a visa or  
16 to be admitted into the United States as a non-  
17 immigrant described in section 101(a)(15)(W) unless  
18 the alien provides satisfactory proof that the United  
19 States citizen son or daughter has arranged for  
20 health insurance coverage for the alien, at no cost to  
21 the alien, during the anticipated period of the alien’s  
22 residence in the United States.”.

23 (f) EFFECTIVE DATE; APPLICABILITY.—

24 (1) EFFECTIVE DATE.—The amendments made  
25 by this section shall take effect on October 1, 2018.

1           (2) INVALIDITY OF CERTAIN PETITIONS AND  
2       APPLICATIONS.—

3           (A) IN GENERAL.—No person may file,  
4       and the Secretary of Homeland Security and  
5       the Secretary of State may not accept, adju-  
6       dicate, or approve any petition under section  
7       204 of the Immigration and Nationality Act (8  
8       U.S.C. 1154) filed on or after the date of enact-  
9       ment of this Act seeking classification of an  
10      alien under section 201(b)(2)(A)(i) with respect  
11      to a parent of a United States citizen, or under  
12      section 203(a)(1), (2)(B), (3) or (4) of such Act  
13      (8 U.S.C. 1151(b)(2)(A)(i), 1153(a)(1), (2)(B),  
14      (3), or (4)). Any application for adjustment of  
15      status or an immigrant visa based on such a  
16      petition shall be invalid.

17          (B) PENDING PETITIONS.—Neither the  
18      Secretary of Homeland Security nor the Sec-  
19      retary of State may adjudicate or approve any  
20      petition under section 204 of the Immigration  
21      and Nationality Act (8 U.S.C. 1154) pending  
22      as of the date of enactment of this Act seeking  
23      classification of an alien under section  
24      201(b)(2)(A)(i) with respect to a parent of a  
25      United States citizen, or under section

1           203(a)(1), (2)(B), (3) or (4) of such Act (8  
2           U.S.C. 1151(b)(2)(A)(i), 1153(a)(1), (2)(B),  
3           (3), or (4)). Any application for adjustment of  
4           status or an immigrant visa based on such a  
5           petition shall be invalid.

6           (3) APPLICABILITY TO WAITLISTED APPLI-  
7           CANTS.—

8                   (A) IN GENERAL.—Notwithstanding the  
9                   amendments made by this section, an alien with  
10                  regard to whom a petition or application for  
11                  status under paragraph (1), (2)(B), (3) or (4)  
12                  of section 203(a) of the Immigration and Na-  
13                  tionality Act (8 U.S.C. 1153(a)), as in effect on  
14                  September 30, 2018, was approved prior to the  
15                  date of the enactment of this Act, may be  
16                  issued a visa pursuant to that paragraph in ac-  
17                  cordance with the availability of visas under  
18                  subparagraph (B).

19                  (B) AVAILABILITY OF VISAS.—Visas may  
20                  be issued to beneficiaries of approved petitions  
21                  under each category described in subparagraph  
22                  (A), but only until such time as the number of  
23                  visas that would have been allocated to that  
24                  category in fiscal year 2019, notwithstanding  
25                  the amendments made by this section, have



1           been issued. When the number of visas de-  
 2           scribed in the previous sentence have been  
 3           issued for each category described in subpara-  
 4           graph (A), no additional visas may be issued for  
 5           that category.

6 **SEC. 1102. ELIMINATION OF DIVERSITY VISA PROGRAM.**

7           (a) IN GENERAL.—Section 203 of the Immigration  
 8           and Nationality Act (8 U.S.C. 1153) is amended by strik-  
 9           ing subsection (c).

10          (b) TECHNICAL AND CONFORMING AMENDMENTS.—

11               (1) IMMIGRATION AND NATIONALITY ACT.—The  
 12           Immigration and Nationality Act (8 U.S.C. 1101 et  
 13           seq.) is amended—

14                       (A) in section 101(a)(15)(V), by striking  
 15                       “section 203(d)” and inserting “section  
 16                       203(c)”;

17                       (B) in section 201—

18                               (i) in subsection (a)—

19                                       (I) in paragraph (1), by adding  
 20                                       “and” at the end; and

21                                       (II) by striking paragraph (3);

22                                       and

23                               (ii) by striking subsection (e);

24                       (C) in section 203—

1 (i) in subsection (b)(2)(B)(ii)(IV), by  
2 striking “section 203(b)(2)(B)” each place  
3 such term appears and inserting “clause  
4 (i)”;

5 (ii) by redesignating subsections (d),  
6 (e), (f), (g), and (h) as subsections (c), (d),  
7 (e), (f), and (g), respectively;

8 (iii) in subsection (c), as redesignated,  
9 by striking “subsection (a), (b), or (c)”  
10 and inserting “subsection (a) or (b)”;

11 (iv) in subsection (d), as redesign-  
12 nated—

13 (I) by striking paragraph (2);

14 and

15 (II) by redesignating paragraph  
16 (3) as paragraph (2);

17 (v) in subsection (e), as redesignated,  
18 by striking “subsection (a), (b), or (c) of  
19 this section” and inserting “subsection (a)  
20 or (b)”;

21 (vi) in subsection (f), as redesignated,  
22 by striking “subsections (a), (b), and (c)”  
23 and inserting “subsections (a) and (b)”;  
24 and

1 (vii) in subsection (g), as redesign-  
2 nated—

3 (I) by striking “(d)” each place  
4 such term appears and inserting  
5 “(c)”; and

6 (II) in paragraph (2)(B), by  
7 striking “subsection (a), (b), or (c)”  
8 and inserting “subsection (a) or (b)”;  
9 (D) in section 204—

10 (i) in subsection (a)(1), by striking  
11 subparagraph (I);

12 (ii) in subsection (e), by striking “sub-  
13 section (a), (b), or (c) of section 203” and  
14 inserting “subsection (a) or (b) of section  
15 203”; and

16 (iii) in subsection (l)(2)—

17 (I) in subparagraph (B), by  
18 striking “section 203 (a) or (d)” and  
19 inserting “subsection (a) or (c) of sec-  
20 tion 203”; and

21 (II) in subparagraph (C), by  
22 striking “section 203(d)” and insert-  
23 ing “section 203(c)”;

1 (E) in section 214(q)(1)(B)(i), by striking  
2 “section 203(d)” and inserting “section  
3 203(c)”;

4 (F) in section 216(h)(1), in the undesig-  
5 nated matter following subparagraph (C), by  
6 striking “section 203(d)” and inserting “section  
7 203(c)”;

8 (G) in section 245(i)(1)(B), by striking  
9 “section 203(d)” and inserting “section  
10 203(c)”.

11 (2) IMMIGRANT INVESTOR PILOT PROGRAM.—  
12 Section 610(d) of the Departments of Commerce,  
13 Justice, and State, the Judiciary, and Related Agen-  
14 cies Appropriations Act, 1993 (Public Law 102–  
15 395) is amended by striking “section 203(e) of such  
16 Act (8 U.S.C. 1153(e))” and inserting “section  
17 203(d) of such Act (8 U.S.C. 1153(d))”.

18 (c) EFFECTIVE DATE.—The amendments made by  
19 this section shall take effect on the first day of the first  
20 fiscal year beginning on or after the date of the enactment  
21 of this Act.

1 **SEC. 1103. EMPLOYMENT-BASED IMMIGRATION PRIOR-**  
2 **ITIES.**

3 (a) INCREASE IN VISAS FOR SKILLED WORKERS.—  
4 The Immigration and Nationality Act (8 U.S.C. 1101 et  
5 seq.) is amended—

6 (1) in section 201(d)(1)(A), by striking  
7 “140,000” and inserting “195,000”; and

8 (2) in section 203(b)—

9 (A) in paragraph (1), by striking “28.6  
10 percent of such worldwide level” and inserting  
11 “58,374”;

12 (B) in paragraphs (2) and (3), by striking  
13 “28.6 percent of such worldwide level” each  
14 place it appears and inserting “58,373”; and

15 (C) by striking “7.1 percent of such world-  
16 wide level” each place it appears and inserting  
17 “9,940”.

18 (b) EFFECTIVE DATE.—The amendments made by  
19 subsection (a) shall take effect on the first day of fiscal  
20 year 2019 and shall apply to the visas made available in  
21 that and subsequent fiscal years.

22 **SEC. 1104. WAIVER OF RIGHTS BY B VISA NONIMMIGRANTS.**

23 Section 101(a)(15)(B) of the Immigration and Na-  
24 tionality Act (8 U.S.C. 1101(a)(15)(B)) is amended by  
25 adding before the semicolon at the end the following: “,  
26 and who has waived any right to review or appeal of an

1 immigration officer’s determination as to the admissibility  
2 of the alien at the port of entry into the United States,  
3 or to contest, other than on the basis of an application  
4 for asylum, any action for removal of the alien”.

## 5 **TITLE II—AGRICULTURAL** 6 **WORKER REFORM**

### 7 **SEC. 2101. SHORT TITLE.**

8 This title may be cited as—

- 9 (1) the “Agricultural Guestworker Act”; or  
10 (2) the “AG Act”.

### 11 **SEC. 2102. H-2C TEMPORARY AGRICULTURAL WORK VISA** 12 **PROGRAM.**

13 (a) IN GENERAL.—Section 101(a)(15)(H) of the Im-  
14 migration and Nationality Act (8 U.S.C. 1101(a)(15)(H))  
15 is amended by striking “; or (iii)” and inserting “, or (c)  
16 having a residence in a foreign country which he has no  
17 intention of abandoning who is coming temporarily to the  
18 United States to perform agricultural labor or services; or  
19 (iii)”.

20 (b) DEFINITION.—Section 101(a) of such Act (8  
21 U.S.C. 1101(a)) is amended by adding at the end the fol-  
22 lowing:

23 “(53) The term ‘agricultural labor or services’ has  
24 the meaning given such term by the Secretary of Agri-  
25 culture in regulations and includes—

1           “(A) agricultural labor as defined in section  
2           3121(g) of the Internal Revenue Code of 1986;

3           “(B) agriculture as defined in section 3(f) of  
4           the Fair Labor Standards Act of 1938 (29 U.S.C.  
5           203(f));

6           “(C) the handling, planting, drying, packing,  
7           packaging, processing, freezing, or grading prior to  
8           delivery for storage of any agricultural or horti-  
9           cultural commodity in its unmanufactured state;

10          “(D) all activities required for the preparation,  
11          processing or manufacturing of a product of agri-  
12          culture (as such term is defined in such section 3(f))  
13          for further distribution;

14          “(E) forestry-related activities;

15          “(F) aquaculture activities; and

16          “(G) the primary processing of fish or shellfish,  
17          except that in regard to labor or services consisting  
18          of meat or poultry processing, the term ‘agricultural  
19          labor or services’ only includes the killing of animals  
20          and the breakdown of their carcasses.”.

21   **SEC. 2103. ADMISSION OF TEMPORARY H-2C WORKERS.**

22          (a) **PROCEDURE FOR ADMISSION.**—Chapter 2 of title  
23   II of the Immigration and Nationality Act (8 U.S.C. 1181  
24   et seq.) is amended by inserting after section 218 the fol-  
25   lowing:

1 **“SEC. 218A. ADMISSION OF TEMPORARY H-2C WORKERS.**

2 “(a) DEFINITIONS.—In this section and section  
3 218B:

4 “(1) DISPLACE.—The term ‘displace’ means to  
5 lay off a United States worker from the job for  
6 which H-2C workers are sought.

7 “(2) JOB.—The term ‘job’ refers to all posi-  
8 tions with an employer that—

9 “(A) involve essentially the same respon-  
10 sibilities;

11 “(B) are held by workers with substan-  
12 tially equivalent qualifications and experience;  
13 and

14 “(C) are located in the same place or  
15 places of employment.

16 “(3) EMPLOYER.—The term ‘employer’ includes  
17 a single or joint employer, including an association  
18 acting as a joint employer with its members, who  
19 hires workers to perform agricultural labor or serv-  
20 ices.

21 “(4) FORESTRY-RELATED ACTIVITIES.—The  
22 term ‘forestry-related activities’ includes tree plant-  
23 ing, timber harvesting, logging operations, brush  
24 clearing, vegetation management, herbicide applica-  
25 tion, the maintenance of rights-of-way (including for  
26 roads, trails, and utilities), regardless of whether



1       such right-of-way is on forest land, and the har-  
2       vesting of pine straw.

3               “(5) H-2C WORKER.—The term ‘H-2C worker’  
4       means a nonimmigrant described in section  
5       101(a)(15)(H)(ii)(c).

6               “(6) LAY OFF.—

7                       “(A) IN GENERAL.—The term ‘lay off’—

8                               “(i) means to cause a worker’s loss of  
9                               employment, other than through a dis-  
10                              charge for inadequate performance, viola-  
11                              tion of workplace rules, cause, voluntary  
12                              departure, voluntary retirement, or the ex-  
13                              piration of a grant or contract (other than  
14                              a temporary employment contract entered  
15                              into in order to evade a condition described  
16                              in paragraph (4) of subsection (b)); and

17                             “(ii) does not include any situation in  
18                             which the worker is offered, as an alter-  
19                             native to such loss of employment, a simi-  
20                             lar position with the same employer at  
21                             equivalent or higher wages and benefits  
22                             than the position from which the employee  
23                             was discharged, regardless of whether or  
24                             not the employee accepts the offer.

1           “(B) CONSTRUCTION.—Nothing in this  
2           paragraph is intended to limit an employee’s  
3           rights under a collective bargaining agreement  
4           or other employment contract.

5           “(7) UNITED STATES WORKER.—The term  
6           ‘United States worker’ means any worker who is—

7                   “(A) a citizen or national of the United  
8           States; or

9                   “(B) an alien who is lawfully admitted for  
10          permanent residence, is admitted as a refugee  
11          under section 207, or is granted asylum under  
12          section 208.

13          “(8) SPECIAL PROCEDURES INDUSTRY.—The  
14          term ‘special procedures industry’ includes sheep-  
15          herding, goat herding, and the range production of  
16          livestock, itinerant commercial beekeeping and polli-  
17          nation, itinerant animal shearing, and custom com-  
18          bining and harvesting.

19          “(b) PETITION.—An employer that seeks to employ  
20          aliens as H–2C workers under this section shall file with  
21          the Secretary of Homeland Security a petition attesting  
22          to the following:

23                 “(1) OFFER OF EMPLOYMENT.—The employer  
24          will offer employment to the aliens on a contractual  
25          basis as H–2C workers under this section for a spe-

1 cific period of time during which the aliens may not  
2 work on an at-will basis (as provided for in section  
3 218B), and such contract shall only be required to  
4 include a description of each place of employment,  
5 period of employment, wages and other benefits to  
6 be provided, and the duties of the positions.

7 “(2) TEMPORARY LABOR OR SERVICES.—

8 “(A) IN GENERAL.—The employer is seek-  
9 ing to employ a specific number of H-2C work-  
10 ers on a temporary basis and will provide com-  
11 pensation to such workers at a wage rate no  
12 less than that set forth in subsection (k)(2).

13 “(B) DEFINITION.—For purposes of this  
14 paragraph, a worker is employed on a tem-  
15 porary basis if the employer intends to employ  
16 the worker for no longer than the time period  
17 set forth in subsection (n)(1) (subject to the ex-  
18 ceptions in subsection (n)(3)).

19 “(3) BENEFITS, WAGES, AND WORKING CONDI-  
20 TIONS.—The employer will provide, at a minimum,  
21 the benefits, wages, and working conditions required  
22 by subsection (k) to all workers employed in the job  
23 for which the H-2C workers are sought.

24 “(4) NONDISPLACEMENT OF UNITED STATES  
25 WORKERS.—The employer did not displace and will

1 not displace United States workers employed by the  
2 employer during the period of employment of the H-  
3 2C workers and during the 30-day period imme-  
4 diately preceding such period of employment in the  
5 job for which the employer seeks approval to employ  
6 H-2C workers.

7 “(5) RECRUITMENT.—

8 “(A) IN GENERAL.—The employer—

9 “(i) conducted adequate recruitment  
10 before filing the petition; and

11 “(ii) was unsuccessful in locating suf-  
12 ficient numbers of willing and qualified  
13 United States workers for the job for  
14 which the H-2C workers are sought.

15 “(B) OTHER REQUIREMENTS.—The re-  
16 cruitment requirement under subparagraph (A)  
17 is satisfied if the employer places a local job  
18 order with the State workforce agency serving  
19 each place of employment, except that nothing  
20 in this subparagraph shall require the employer  
21 to file an interstate job order under section 653  
22 of title 20, Code of Federal Regulations. The  
23 State workforce agency shall post the job order  
24 on its official agency website for a minimum of  
25 30 days and not later than 3 days after receipt

1 using the employment statistics system author-  
2 ized under section 15 of the Wagner-Peyser Act  
3 (29 U.S.C. 491–2). The Secretary of Labor  
4 shall include links to the official Web sites of all  
5 State workforce agencies on a single webpage of  
6 the official Web site of the Department of  
7 Labor.

8 “(C) END OF RECRUITMENT REQUIRE-  
9 MENT.—The requirement to recruit United  
10 States workers for a job shall terminate on the  
11 first day that work begins for the H–2C work-  
12 ers.

13 “(6) OFFERS TO UNITED STATES WORKERS.—  
14 The employer has offered or will offer the job for  
15 which the H–2C workers are sought to any eligible  
16 United States workers who—

17 “(A) apply;

18 “(B) are qualified for the job; and

19 “(C) will be available at the time, at each  
20 place, and for the duration, of need.

21 This requirement shall not apply to United States  
22 workers who apply for the job on or after the first  
23 day that work begins for the H–2C workers.

24 “(7) PROVISION OF INSURANCE.—If the job for  
25 which the H–2C workers are sought is not covered

1 by State workers' compensation law, the employer  
 2 will provide, at no cost to the workers unless State  
 3 law provides otherwise, insurance covering injury  
 4 and disease arising out of, and in the course of, the  
 5 workers' employment, which will provide benefits at  
 6 least equal to those provided under the State work-  
 7 ers compensation law for comparable employment.

8 “(8) STRIKE OR LOCKOUT.—The job that is the  
 9 subject of the petition is not vacant because the  
 10 former workers in that job are on strike or locked  
 11 out in the course of a labor dispute.

12 “(c) PUBLIC EXAMINATION.—Not later than 1 work-  
 13 ing day after the date on which a petition under this sec-  
 14 tion is filed, the employer shall make the petition available  
 15 for public examination, at the employer's principal place  
 16 of employment.

17 “(d) LIST.—

18 “(1) IN GENERAL.—The Secretary of Homeland  
 19 Security shall maintain a list of the petitions filed  
 20 under this subsection, which shall—

21 “(A) be sorted by employer; and

22 “(B) include the number of H-2C workers  
 23 sought, the wage rate, the period of employ-  
 24 ment, each place of employment, and the date  
 25 of need for each alien.

1           “(2) AVAILABILITY.—The Secretary of Home-  
2       land Security shall make the list available for public  
3       examination.

4       “(e) PETITIONING FOR ADMISSION.—

5           “(1) CONSIDERATION OF PETITIONS.—For peti-  
6       tions filed and considered under this subsection—

7           “(A) the Secretary of Homeland Security  
8       may not require such petition to be filed more  
9       than 28 days before the first date the employer  
10      requires the labor or services of H-2C workers;

11          “(B) within the appropriate time period  
12      under subparagraph (C) or (D), the Secretary  
13      of Homeland Security shall—

14           “(i) approve the petition;

15           “(ii) reject the petition; or

16           “(iii) determine that the petition is in-  
17      complete or obviously inaccurate or that  
18      the employer has not complied with the re-  
19      quirements of subsection (b)(5)(A)(i)  
20      (which the Secretary can ascertain by  
21      verifying whether the employer has placed  
22      a local job order as provider for in sub-  
23      section (b)(5)(B));

24          “(C) if the Secretary determines that the  
25      petition is incomplete or obviously inaccurate,

1 or that the employer has not complied with the  
2 requirements of subsection (b)(5)(A)(i) (which  
3 the Secretary can ascertain by verifying wheth-  
4 er the employer has placed a local job order as  
5 provider for in subsection (b)(5)(B)), the Sec-  
6 retary shall—

7 “(i) within 5 business days of receipt  
8 of the petition, notify the petitioner of the  
9 deficiencies to be corrected by means en-  
10 suring same or next day delivery; and

11 “(ii) within 5 business days of receipt  
12 of the corrected petition, approve or reject  
13 the petition and provide the petitioner with  
14 notice of such action by means ensuring  
15 same or next day delivery; and

16 “(D) if the Secretary does not determine  
17 that the petition is incomplete or obviously inac-  
18 curate, the Secretary shall not later than 10  
19 business days after the date on which such peti-  
20 tion was filed, either approve or reject the peti-  
21 tion and provide the petitioner with notice of  
22 such action by means ensuring same or next  
23 day delivery.

24 “(2) ACCESS.—By filing an H-2C petition, the  
25 petitioner and each employer (if the petitioner is an



1 association that is a joint employer of workers who  
2 perform agricultural labor or services) consent to  
3 allow access to each place of employment to the De-  
4 partment of Agriculture and the Department of  
5 Homeland Security for the purpose of investigations  
6 and audits to determine compliance with the immi-  
7 gration laws (as defined in section 101(a)(17)).

8 “(f) ROLES OF AGRICULTURAL ASSOCIATIONS.—

9 “(1) TREATMENT OF ASSOCIATIONS ACTING AS  
10 EMPLOYERS.—If an association is a joint employer  
11 of workers who perform agricultural labor or serv-  
12 ices, H-2C workers may be transferred among its  
13 members to perform the agricultural labor or serv-  
14 ices on a temporary basis for which the petition was  
15 approved.

16 “(2) TREATMENT OF VIOLATIONS.—

17 “(A) INDIVIDUAL MEMBER.—If an indi-  
18 vidual member of an association that is a joint  
19 employer commits a violation described in para-  
20 graph (2) or (3) of subsection (i) or subsection  
21 (j)(1), the Secretary of Agriculture shall invoke  
22 penalties pursuant to subsections (i) and (j)  
23 against only that member of the association un-  
24 less the Secretary of Agriculture determines

1           that the association participated in, had knowl-  
2           edge of, or had reason to know of the violation.

3           “(B) ASSOCIATION OF AGRICULTURAL EM-  
4           PLOYERS.—If an association that is a joint em-  
5           ployer commits a violation described in sub-  
6           sections (i)(2) and (3) or (j)(1), the Secretary  
7           of Agriculture shall invoke penalties pursuant  
8           to subsections (i) and (j) against only the asso-  
9           ciation and not any individual members of the  
10          association, unless the Secretary determines  
11          that the member participated in the violation.

12          “(g) EXPEDITED ADMINISTRATIVE APPEALS.—The  
13          Secretary of Homeland Security shall promulgate regula-  
14          tions to provide for an expedited procedure for the review  
15          of a denial of a petition under this section by the Sec-  
16          retary. At the petitioner’s request, the review shall include  
17          a de novo administrative hearing at which new evidence  
18          may be introduced.

19          “(h) FEES.—The Secretary of Homeland Security  
20          shall require, as a condition of approving the petition, the  
21          payment of a fee to recover the reasonable cost of proc-  
22          essing the petition.

23          “(i) ENFORCEMENT.—

24                  “(1) INVESTIGATIONS AND AUDITS.—The Sec-  
25          retary of Agriculture shall be responsible for con-

ducting investigations and audits, including random audits, of employers to ensure compliance with the requirements of the H-2C program. All monetary fines levied against employers shall be paid to the Department of Agriculture and used to enhance the Department of Agriculture's investigative and auditing abilities to ensure compliance by employers with their obligations under this section.

“(2) VIOLATIONS.—If the Secretary of Agriculture finds, after notice and opportunity for a hearing, a failure to fulfill an attestation required by this subsection, or a material misrepresentation of a material fact in a petition under this subsection, the Secretary—

“(A) may impose such administrative remedies (including civil money penalties in an amount not to exceed \$1,000 per violation) as the Secretary determines to be appropriate; and

“(B) may disqualify the employer from the employment of H-2C workers for a period of 1 year.

“(3) WILLFUL VIOLATIONS.—If the Secretary of Agriculture finds, after notice and opportunity for a hearing, a willful failure to fulfill an attestation required by this subsection, or a willful misrepresenta-

1       tion of a material fact in a petition under this sub-  
2       section, the Secretary—

3               “(A) may impose such administrative rem-  
4       edies (including civil money penalties in an  
5       amount not to exceed \$5,000 per violation, or  
6       not to exceed \$15,000 per violation if in the  
7       course of such failure or misrepresentation the  
8       employer displaced one or more United States  
9       workers employed by the employer during the  
10      period of employment of H–2C workers or dur-  
11      ing the 30-day period immediately preceding  
12      such period of employment) in the job the H–  
13      2C workers are performing as the Secretary de-  
14      termines to be appropriate;

15              “(B) may disqualify the employer from the  
16      employment of H–2C workers for a period of 2  
17      years;

18              “(C) may, for a subsequent failure to fulfill  
19      an attestation required by this subsection, or a  
20      misrepresentation of a material fact in a peti-  
21      tion under this subsection, disqualify the em-  
22      ployer from the employment of H–2C workers  
23      for a period of 5 years; and

24              “(D) may, for a subsequent willful failure  
25      to fulfill an attestation required by this sub-

1 section, or a willful misrepresentation of a ma-  
2 terial fact in a petition under this subsection,  
3 permanently disqualify the employer from the  
4 employment of H-2C workers.

5 “(j) FAILURE TO PAY WAGES OR REQUIRED BENE-  
6 FITS.—

7 “(1) IN GENERAL.—If the Secretary of Agri-  
8 culture finds, after notice and opportunity for a  
9 hearing, that the employer has failed to provide the  
10 benefits, wages, and working conditions that the em-  
11 ployer has attested that it would provide under this  
12 subsection, the Secretary shall require payment of  
13 back wages, or such other required benefits, due any  
14 United States workers or H-2C workers employed  
15 by the employer.

16 “(2) AMOUNT.—The back wages or other re-  
17 quired benefits described in paragraph (1)—

18 “(A) shall be equal to the difference be-  
19 tween the amount that should have been paid  
20 and the amount that was paid to such workers;  
21 and

22 “(B) shall be distributed to the workers to  
23 whom such wages or benefits are due.

24 “(k) MINIMUM WAGES, BENEFITS, AND WORKING  
25 CONDITIONS.—

1           “(1) PREFERENTIAL TREATMENT OF H-2C  
2 WORKERS PROHIBITED.—

3           “(A) IN GENERAL.—Each employer seek-  
4 ing to hire United States workers for the job  
5 the H-2C workers will perform shall offer such  
6 United States workers not less than the same  
7 benefits, wages, and working conditions that the  
8 employer will provide to the H-2C workers. No  
9 job offer may impose on United States workers  
10 any restrictions or obligations which will not be  
11 imposed on H-2C workers.

12           “(B) INTERPRETATION.—Every interpreta-  
13 tion and determination made under this section  
14 or under any other law, regulation, or interpre-  
15 tative provision regarding the nature, scope,  
16 and timing of the provision of these and any  
17 other benefits, wages, and other terms and con-  
18 ditions of employment shall be made so that—

19           “(i) the services of workers to their  
20 employers and the employment opportuni-  
21 ties afforded to workers by the employers,  
22 including those employment opportunities  
23 that require United States workers or H-  
24 2C workers to travel or relocate in order to  
25 accept or perform employment—

1 “(I) mutually benefit such work-  
2 ers, as well as their families, and em-  
3 ployers; and

4 “(II) principally benefit neither  
5 employer nor employee; and

6 “(ii) employment opportunities within  
7 the United States benefit the United  
8 States economy.

9 “(2) REQUIRED WAGES.—

10 “(A) IN GENERAL.—Each employer peti-  
11 tioning for H-2C workers under this subsection  
12 (other than in the case of workers who will per-  
13 form agricultural labor or services consisting of  
14 meat or poultry processing) will offer the H-2C  
15 workers, during the period of authorized em-  
16 ployment as H-2C workers, wages that are at  
17 least the greatest of—

18 “(i) the applicable State or local min-  
19 imum wage;

20 “(ii) 115 percent of the Federal min-  
21 imum wage, or 150 percent of the Federal  
22 minimum wage; or

23 “(iii) the actual wage level paid by the  
24 employer to all other individuals in the job.

25 “(B) SPECIAL RULES.—

1           “(i) ALTERNATE WAGE PAYMENT SYS-  
2           TEMS.—An employer can utilize a piece  
3           rate or other alternative wage payment  
4           system so long as the employer guarantees  
5           each worker a wage rate that equals or ex-  
6           ceeds the amount required under subpara-  
7           graph (A) for the total hours worked in  
8           each pay period. Compensation from a  
9           piece rate or other alternative wage pay-  
10          ment system shall include time spent dur-  
11          ing rest breaks, moving from job to job,  
12          clean up, or any other nonproductive time,  
13          provided that such time does not exceed 20  
14          percent of the total hours in the work day.

15          “(ii) MEAT OR POULTRY PROC-  
16          ESSING.—Each employer petitioning for  
17          H-2C workers under this subsection who  
18          will perform agricultural labor or services  
19          consisting of meat or poultry processing  
20          will offer the H-2C workers, during the  
21          period of authorized employment as H-2C  
22          workers, wages that are at least the great-  
23          est of—

24                       “(I) the applicable State or local  
25                       minimum wage;



1 “(II) 115 percent of the Federal  
2 minimum wage;

3 “(III) the prevailing wage level  
4 for the occupational classification in  
5 the area of employment; or

6 “(IV) the actual wage level paid  
7 by the employer to all other individ-  
8 uals in the job.

9 “(3) EMPLOYMENT GUARANTEE.—

10 “(A) IN GENERAL.—

11 “(i) REQUIREMENT.—Each employer  
12 petitioning for workers under this sub-  
13 section shall guarantee to offer the H-2C  
14 workers and United States workers per-  
15 forming the same job employment for the  
16 hourly equivalent of not less than 50 per-  
17 cent of the work hours set forth in the  
18 work contract.

19 “(ii) FAILURE TO MEET GUAR-  
20 ANTEE.—If an employer affords the  
21 United States workers or the H-2C work-  
22 ers less employment than that required  
23 under this subparagraph, the employer  
24 shall pay such workers the amount which  
25 the workers would have earned if the work-

1           ers had worked for the guaranteed number  
2           of hours.

3           “(B) CALCULATION OF HOURS.—Any  
4           hours which workers fail to work, up to a max-  
5           imum of the number of hours specified in the  
6           work contract for a work day, when the workers  
7           have been offered an opportunity to do so, and  
8           all hours of work actually performed (including  
9           voluntary work in excess of the number of  
10          hours specified in the work contract in a work  
11          day) may be counted by the employer in calcu-  
12          lating whether the period of guaranteed employ-  
13          ment has been met.

14          “(C) LIMITATION.—If the workers aban-  
15          don employment before the end of the work  
16          contract period, or are terminated for cause,  
17          the workers are not entitled to the 50 percent  
18          guarantee described in subparagraph (A).

19          “(D) TERMINATION OF EMPLOYMENT.—

20                 “(i) IN GENERAL.—If, before the expi-  
21                 ration of the period of employment speci-  
22                 fied in the work contract, the services of  
23                 the workers are no longer required due to  
24                 any form of natural disaster, including  
25                 flood, hurricane, freeze, earthquake, fire,

1 drought, plant or animal disease, pest in-  
2 festation, regulatory action, or any other  
3 reason beyond the control of the employer  
4 before the employment guarantee in sub-  
5 paragraph (A) is fulfilled, the employer  
6 may terminate the workers' employment.

7 “(ii) REQUIREMENTS.—If a worker's  
8 employment is terminated under clause (i),  
9 the employer shall—

10 “(I) fulfill the employment guar-  
11 antee in subparagraph (A) for the  
12 work days that have elapsed during  
13 the period beginning on the first work  
14 day and ending on the date on which  
15 such employment is terminated;

16 “(II) make efforts to transfer the  
17 worker to other comparable employ-  
18 ment acceptable to the worker; and

19 “(III) not later than 72 hours  
20 after termination, notify the Secretary  
21 of Agriculture of such termination  
22 and stating the nature of the contract  
23 impossibility.

24 “(l) NONDELEGATION.—The Department of Agri-  
25 culture and the Department of Homeland Security shall

1 not delegate their investigatory, enforcement, or adminis-  
2 trative functions relating to this section or section 218B  
3 to other agencies or departments of the Federal Govern-  
4 ment.

5 “(m) COMPLIANCE WITH BIO-SECURITY PROTO-  
6 COLS.—Except in the case of an imminent threat to health  
7 or safety, any personnel from a Federal agency or Federal  
8 grantee seeking to determine the compliance of an em-  
9 ployer with the requirements of this section or section  
10 218B shall, when visiting such employer’s place of employ-  
11 ment, make their presence known to the employer and  
12 sign-in in accordance with reasonable bio-security proto-  
13 cols before proceeding to any other area of the place of  
14 employment.

15 “(n) LIMITATION ON H-2C WORKERS’ STAY IN STA-  
16 TUS.—

17 “(1) MAXIMUM PERIOD.—The maximum con-  
18 tinuous period of authorized status as an H-2C  
19 worker (including any extensions) is 18 months for  
20 workers employed in a job that is of a temporary or  
21 seasonal nature. For H-2C workers employed in a  
22 job that is not of a temporary or seasonal nature,  
23 the initial maximum continuous period of authorized  
24 status is 36 months and subsequent maximum con-  
25 tinuous periods of authorized status are 18 months.

1           “(2) REQUIREMENT TO REMAIN OUTSIDE THE  
2           UNITED STATES.—In the case of H–2C workers who  
3           were employed in a job of a temporary or seasonal  
4           nature whose maximum continuous period of author-  
5           ized status as H–2C workers (including any exten-  
6           sions) have expired, the aliens may not again be eli-  
7           gible to be H–2C workers until they remain outside  
8           the United States for a continuous period equal to  
9           at least  $\frac{1}{12}$  of the duration of their previous period  
10          of authorized status an H–2C workers. For H–2C  
11          workers who were employed in a job not of a tem-  
12          porary or seasonal nature whose maximum contin-  
13          uous period of authorized status as H–2C workers  
14          (including any extensions) have expired, the aliens  
15          may not again be eligible to be H–2C workers until  
16          they remain outside the United States for a contin-  
17          uous period equal to at least the lesser of  $\frac{1}{12}$  of the  
18          duration of their previous period of authorized sta-  
19          tus as H–2C workers or 45 days.

20           “(3) EXCEPTIONS.—

21           “(A) The Secretary of Homeland Security  
22           shall deduct absences from the United States  
23           that take place during an H–2C worker’s period  
24           of authorized status from the period that the  
25           alien is required to remain outside the United

1 States under paragraph (2), if the alien or the  
2 alien's employer requests such a deduction, and  
3 provides clear and convincing proof that the  
4 alien qualifies for such a deduction. Such proof  
5 shall consist of evidence such as arrival and de-  
6 parture records, copies of tax returns, and  
7 records of employment abroad.

8 “(B) There is no maximum continuous pe-  
9 riod of authorized status as set forth in para-  
10 graph (1) or a requirement to remain outside  
11 the United States as set forth in paragraph (2)  
12 for H-2C workers employed as a sheepherder,  
13 goatherder, in the range production of livestock,  
14 or who return to the workers' permanent resi-  
15 dence outside the United States each day.

16 “(o) PERIOD OF ADMISSION.—

17 “(1) IN GENERAL.—In addition to the max-  
18 imum continuous period of authorized status, work-  
19 ers' authorized period of admission shall include—

20 “(A) a period of not more than 7 days  
21 prior to the beginning of authorized employ-  
22 ment as H-2C workers for the purpose of travel  
23 to the place of employment; and

24 “(B) a period of not more than 14 days  
25 after the conclusion of their authorized employ-

1           ment for the purpose of departure from the  
2           United States or a period of not more than 30  
3           days following the employment for the purpose  
4           of seeking a subsequent offer of employment by  
5           an employer pursuant to a petition under this  
6           section (or pursuant to at-will employment  
7           under section 218B during such times as that  
8           section is in effect) if they have not reached  
9           their maximum continuous period of authorized  
10          employment under subsection (n) (subject to  
11          the exceptions in subsection (n)(3)) unless they  
12          accept subsequent offers of employment as H–  
13          2C workers or are otherwise lawfully present.

14          “(2) FAILURE TO DEPART.—H–2C workers  
15          who do not depart the United States within the peri-  
16          ods referred to in paragraph (1) will be considered  
17          to have failed to maintain nonimmigrant status as  
18          H–2C workers and shall be subject to removal under  
19          section 237(a)(1)(C)(i). Such aliens shall be consid-  
20          ered to be inadmissible pursuant to section  
21          212(a)(9)(B)(i) for having been unlawfully present,  
22          with the aliens considered to have been unlawfully  
23          present for 181 days as of the 15th day following  
24          their period of employment for the purpose of depar-  
25          ture or as of the 31st day following their period of

1 employment for the purpose of seeking subsequent  
2 offers of employment.

3 “(p) ABANDONMENT OF EMPLOYMENT.—

4 “(1) REPORT BY EMPLOYER.—Not later than  
5 72 hours after an employer learns of the abandon-  
6 ment of employment by H-2C workers before the  
7 conclusion of their work contracts, the employer  
8 shall notify the Secretary of Agriculture and the  
9 Secretary of Homeland Security of such abandon-  
10 ment.

11 “(2) REPLACEMENT OF ALIENS.—An employer  
12 may designate eligible aliens to replace H-2C work-  
13 ers who abandon employment notwithstanding the  
14 numerical limitation found in section 214(g)(1)(C).

15 “(q) CHANGE TO H-2C STATUS.—

16 “(1) WAIVER.—In the case of an alien de-  
17 scribed in paragraph (4), the Secretary of Homeland  
18 Security shall waive the ground of inadmissibility  
19 under paragraphs (6)(C) and (9)(B) of section  
20 212(a) with respect to conduct that occurred prior  
21 to the alien first receiving status as an H-2C work-  
22 er, solely in order to provide the alien with such sta-  
23 tus.

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



1           “(A) was unlawfully present in the United  
2 States on October 23, 2017;

3           “(B) performed agricultural labor or serv-  
4 ices in the United States for at least 5.75 hours  
5 during each of at least 180 days during the 2-  
6 year period ending on October 23, 2017; and

7           “(C) has departed the United States with-  
8 in 180 days of the issuance of final rules car-  
9 rying out the AG Act, and remains outside the  
10 United States.

11       “(r) TRUST FUND TO ASSURE WORKER RETURN.—

12           “(1) ESTABLISHMENT.—There is established in  
13 the Treasury of the United States a trust fund (in  
14 this section referred to as the ‘Trust Fund’) for the  
15 purpose of providing a monetary incentive for H–2C  
16 workers to return to their country of origin upon ex-  
17 piration of their visas.

18           “(2) WITHHOLDING OF WAGES; PAYMENT INTO  
19 THE TRUST FUND.—

20           “(A) IN GENERAL.—Notwithstanding the  
21 Fair Labor Standards Act of 1938 (29 U.S.C.  
22 201 et seq.) and State and local wage laws, all  
23 employers of H–2C workers shall withhold from  
24 the wages of all H–2C workers other than those  
25 employed as shepherders, goatherders, in the

1 range production of livestock, or who return to  
2 the their permanent residence outside the  
3 United States each day, an amount equivalent  
4 to 10 percent of the gross wages of each worker  
5 in each pay period and, on behalf of each work-  
6 er, transfer such withheld amount to the Trust  
7 Fund.

8 “(B) JOBS THAT ARE NOT OF A TEM-  
9 PORARY OR SEASONAL NATURE.—Employers of  
10 H–2C workers employed in jobs that are not of  
11 a temporary or seasonal nature, other than  
12 those employed as a sheepherder, goatherder, or  
13 in the range production of livestock, shall also  
14 pay into the Trust Fund an amount equivalent  
15 to the Federal tax on the wages paid to H–2C  
16 workers that the employer would be obligated to  
17 pay under chapters 21 and 23 of the Internal  
18 Revenue Code of 1986 had the H–2C workers  
19 been subject to such chapters.

20 “(3) DISTRIBUTION OF FUNDS.—Amounts paid  
21 into the Trust Fund on behalf of an H–2C worker,  
22 and held pursuant to paragraph (2)(A) and interest  
23 earned thereon, shall be transferred from the Trust  
24 Fund to the Secretary of Homeland Security, who  
25 shall distribute them to the worker if the worker—

1           “(A) applies to the Secretary of Homeland  
2           Security (or the designee of the Secretary) for  
3           payment within 120 days of the expiration of  
4           the alien’s last authorized stay in the United  
5           States as an H–2C worker, for which they seek  
6           amounts from the Trust Fund;

7           “(B) establishes to the satisfaction of the  
8           Secretary of Homeland Security that they have  
9           complied with the terms and conditions of the  
10          H–2C program;

11          “(C) once approved by the Secretary of  
12          Homeland Security for payment, physically ap-  
13          pears at a United States embassy or consulate  
14          in the worker’s home country; and

15          “(D) establishes their identity to the satis-  
16          faction of the Secretary of Homeland Security.

17          “(4)       ADMINISTRATIVE       EXPENSES.—The  
18          amounts paid into the Trust Fund and held pursu-  
19          ant to paragraph (2)(B), and interest earned there-  
20          on, shall be distributed annually to the Secretary of  
21          Agriculture and the Secretary of Homeland Security  
22          in amounts proportionate to the expenses incurred  
23          by such officials in the administration and enforce-  
24          ment of the terms of the H–2C program.

1           “(5) LAW ENFORCEMENT.—Notwithstanding  
2           any other provision of law, amounts paid into the  
3           Trust Fund under paragraph (2), and interest  
4           earned thereon, that are not needed to carry out  
5           paragraphs (3) and (4) shall, to the extent provided  
6           in advance in appropriations Acts, be made available  
7           until expended without fiscal year limitation to the  
8           Secretary of Homeland Security to apprehend, de-  
9           tain, and remove aliens inadmissible to or deportable  
10          from the United States.

11          “(6) INVESTMENT OF TRUST FUND.—

12                 “(A) IN GENERAL.—It shall be the duty of  
13                 the Secretary of the Treasury to invest such  
14                 portion of the Trust Fund as is not, in the Sec-  
15                 retary’s judgment, required to meet current  
16                 withdrawals. Such investments may be made  
17                 only in interest-bearing obligations of the  
18                 United States or in obligations guaranteed as to  
19                 both principal and interest by the United  
20                 States.

21                 “(B) CREDITS TO TRUST FUND.—The in-  
22                 terest on, and the proceeds from the sale or re-  
23                 demption of, any obligations held in the Trust  
24                 Fund shall be credited to and form a part of  
25                 the Trust Fund.

1           “(C) REPORT TO CONGRESS.—It shall be  
2           the duty of the Secretary of the Treasury to  
3           hold the Trust Fund, and (after consultation  
4           with the Secretary of Homeland Security) to re-  
5           port to the Congress each year on the financial  
6           condition and the results of the operations of  
7           the Trust Fund during the preceding fiscal year  
8           and on its expected condition and operations  
9           during the next fiscal year. Such report shall be  
10          printed as both a House and a Senate docu-  
11          ment of the session of the Congress in which  
12          the report is made.

13          “(s) PROCEDURES FOR SPECIAL PROCEDURES IN-  
14 DUSTRIES.—

15           “(1) WORK LOCATIONS.—The Secretary of  
16          Homeland Security shall permit an employer in a  
17          Special Procedures Industry that does not operate at  
18          a single fixed place of employment to provide, as  
19          part of its petition, a list of places of employment,  
20          which—

21                   “(A) may include an itinerary; and

22                   “(B) may be subsequently amended at any  
23          time by the employer, after notice to the Sec-  
24          retary.

“(3) ALLERGY LIMITATION.—An employer engaged in the commercial beekeeping or pollination services industry may require that job applicants be free from bee-related allergies, including allergies to pollen and bee venom.”.

(b) AT-WILL EMPLOYMENT.—Chapter 2 of title II of the Immigration and Nationality Act (8 U.S.C. 1181 et seq.) is amended by inserting after section 218A (as inserted by subsection (a) of this section) the following:

21 "SEC. 218B. AT-WILL EMPLOYMENT OF TEMPORARY H-2C  
22 WORKERS.

23           “(a) IN GENERAL.—An employer that is designated  
24 as a ‘registered agricultural employer’ pursuant to sub-  
25 section (c) may employ aliens as H-2C workers. However,

1 an H-2C worker may only perform labor or services pur-  
2 suant to this section if the worker is already lawfully  
3 present in the United States as an H-2C worker, having  
4 been admitted or otherwise provided nonimmigrant status  
5 pursuant to section 218A, and has completed the period  
6 of employment specified in the job offer the worker accept-  
7 ed pursuant to section 218A or the employer has termi-  
8 nated the worker's employment pursuant to section  
9 218A(k)(3)(D)(i). An H-2C worker who abandons the em-  
10 ployment which was the basis for admission or status pur-  
11 suant to section 218A may not perform labor or services  
12 pursuant to this section until the worker has returned to  
13 their home country, been readmitted as an H-2C worker  
14 pursuant to section 218A and has completed the period  
15 of employment specified in the job offer the worker accept-  
16 ed pursuant to section 218A or the employer has termi-  
17 nated the worker's employment pursuant to section  
18 218A(k)(3)(D)(i).

19 “(b) PERIOD OF STAY.—H-2C workers performing  
20 at-will labor or services for a registered agricultural em-  
21 ployer are subject to the period of admission, limitation  
22 of stay in status, and requirement to remain outside the  
23 United States contained in subsections (o) and (n) of sec-  
24 tion 218A, except that subsection (n)(3)(A) does not  
25 apply.

1       “(c) REGISTERED AGRICULTURAL EMPLOYERS.—  
2   The Secretary of Agriculture shall establish a process to  
3   accept and adjudicate applications by employers to be des-  
4   ignated as registered agricultural employers. The Sec-  
5   retary shall require, as a condition of approving the appli-  
6   cation, the payment of a fee to recover the reasonable cost  
7   of processing the application. The Secretary shall des-  
8   ignate an employer as a registered agricultural employer  
9   if the Secretary determines that the employer—

10           “(1) employs (or plans to employ) individuals  
11       who perform agricultural labor or services;

12           “(2) has not been subject to debarment from  
13       receiving temporary agricultural labor certifications  
14       pursuant to section 101(a)(15)(H)(ii)(a) within the  
15       last three years;

16           “(3) has not been subject to disqualification  
17       from the employment of H-2C workers within the  
18       last five years;

19           “(4) agrees to, if employing H-2C workers pur-  
20       suant to this section, fulfill the attestations con-  
21       tained in section 218A(b) as if it had submitted a  
22       petition making those attestations (excluding sub-  
23       section (k)(3) of such section) and not to employ H-  
24       2C workers who have reached their maximum con-  
25       tinuous period of authorized status under section



1       218A(n) (subject to the exceptions contained in sec-  
2       tion 218A(n)(3)) or if the workers have complied  
3       with the terms of section 218A(n)(2); and

4               “(5) agrees to notify the Secretary of Agri-  
5       culture and the Secretary of Homeland Security  
6       each time it employs H-2C workers pursuant to this  
7       section within 72 hours of the commencement of em-  
8       ployment and within 72 hours of the cessation of  
9       employment.

10       “(d) LENGTH OF DESIGNATION.—An employer’s des-  
11      ignation as a registered agricultural employer shall be  
12      valid for 3 years, and the Secretary may extend such des-  
13      ignation for additional 3-year terms upon the reapplication  
14      of the employer. The Secretary shall revoke a designation  
15      before the expiration of its 3-year term if the employer  
16      is subject to disqualification from the employment of H-  
17      2C workers subsequent to being designated as a registered  
18      agricultural employer.

19       “(e) ENFORCEMENT.—The Secretary of Agriculture  
20      shall be responsible for conducting investigations and au-  
21      dits, including random audits, of employers to ensure com-  
22      pliance with the requirements of this section. All monetary  
23      fines levied against employers shall be paid to the Depart-  
24      ment of Agriculture and used to enhance the Department  
25      of Agriculture’s investigatory and audit abilities to ensure

1 compliance by employers with their obligations under this  
 2 section and section 218A. The Secretary of Agriculture’s  
 3 enforcement powers and an employer’s liability described  
 4 in subsections (i) through (j) of section 218A are applica-  
 5 ble to employers employing H-2C workers pursuant to  
 6 this section.”.

7 (c) PROHIBITION ON FAMILY MEMBERS.—Section  
 8 101(a)(15)(H) of the Immigration and Nationality Act (8  
 9 U.S.C. 1101(a)(15)(H)) is amended by striking “him;” at  
 10 the end and inserting “him, except that no spouse or child  
 11 may be admitted under clause (ii)(c);”.

12 (d) NUMERICAL CAP.—Section 214(g)(1) of the Im-  
 13 migration and Nationality Act (8 U.S.C. 1184(g)(1)) is  
 14 amended—

15 (1) in subparagraph (A), by striking “or” at  
 16 the end;

17 (2) in subparagraph (B), by striking the period  
 18 at the end and inserting “; or”; and

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

20 “(C) under section 101(a)(15)(H)(ii)(c)—

21 “(i) except as otherwise provided under  
 22 this subparagraph, may not exceed 40,000 for  
 23 aliens issued visas or otherwise provided non-  
 24 immigrant status under such section for the  
 25 purpose of performing agricultural labor or

1 services consisting of meat or poultry proc-  
2 essing;

3 “(ii) except as otherwise provided under  
4 this subparagraph, may not exceed 410,000 for  
5 aliens issued visas or otherwise provided non-  
6 immigrant status under such section for the  
7 purpose of performing agricultural labor or  
8 services other than agricultural labor or services  
9 consisting of meat or poultry processing;

10 “(iii) if the base allocation under clause (i)  
11 or (ii) is exhausted during any fiscal year, the  
12 base allocation under such clause for that and  
13 subsequent fiscal years shall be increased by the  
14 lesser of 10 percent or a percentage rep-  
15 resenting the number of petitioned-for aliens  
16 (as a percentage of the base allocation) who  
17 would be eligible to be issued visas or otherwise  
18 provided nonimmigrant status described in that  
19 clause during that fiscal year but for the base  
20 allocation being exhausted, and if the increased  
21 base allocation is itself exhausted during a sub-  
22 sequent fiscal year, the base allocation for that  
23 and subsequent fiscal years shall be further in-  
24 creased by the lesser of 10 percent or a percent-  
25 age representing the number of petitioned-for

1       aliens (as a percentage of the increased base al-  
2       location) who would be eligible to be issued  
3       visas or otherwise provided nonimmigrant sta-  
4       tus described in that clause during that fiscal  
5       year but for the increased base allocation being  
6       exhausted (subject to clause (iv));

7               “(iv) if the base allocation under clause (i)  
8       or (ii) is not exhausted during any fiscal year,  
9       the base allocation under such clause for subse-  
10      quent fiscal years shall be decreased by the  
11      greater of 5 percent or a percentage rep-  
12      resenting the unutilized portion of the base allo-  
13      cation (as a percentage of the base allocation)  
14      during that fiscal year, and if in a subsequent  
15      fiscal year the decreased base allocation is itself  
16      not exhausted, the base allocation for fiscal  
17      years subsequent to that fiscal year shall be  
18      further decreased by the greater of 5 percent or  
19      a percentage representing the unutilized portion  
20      of the decreased base allocation (as a percent-  
21      age of the decreased base allocation) during  
22      that fiscal year (subject to clause (iii) and ex-  
23      cept that the base allocations under clauses (ii)  
24      shall not fall below 410,000);

1 “(v) the numerical limitations under this  
2 subparagraph shall not apply to any alien—

3 “(I) who—

4 “(aa) was physically present in  
5 the United States on October 23,  
6 2017; and

7 “(bb) performed agricultural  
8 labor or services in the United States  
9 for at least 5.75 hours during each of  
10 at least 180 days during the 2-year  
11 period ending on October 23, 2017; or

12 “(II) who has previously been issued a  
13 visa or otherwise provided nonimmigrant  
14 status pursuant to subclause (a) or (b) of  
15 section 101(a)(15)(H)(ii), but only to the  
16 extent that the alien is being petitioned for  
17 by an employer pursuant to section  
18 218A(b) who previously employed the alien  
19 pursuant to subclause (a) or (b) of section  
20 101(a)(15)(H)(ii) beginning no later than  
21 October 23, 2017.”.

22 (e) INTENT.—Section 214(b) of the Immigration and  
23 Nationality Act (8 U.S.C. 1184(b)) is amended by striking  
24 “section 101(a)(15)(H)(i) except subclause (b1) of such

1 section” and inserting “clause (i), except subclause (b1),  
 2 or (ii)(c) of section 101(a)(15)(H)”.

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

“Sec. 218B. At-will employment of temporary H-2C workers.”.

7 **SEC. 2104. MEDIATION.**

8 Nonimmigrants having status under section  
 9 101(a)(15)(H)(ii)(c) of the Immigration and Nationality  
 10 Act (8 U.S.C. 1101(a)(15)(H)(ii)(c)) may not bring civil  
 11 actions for damages against their employers, nor may any  
 12 other attorneys or individuals bring civil actions for dam-  
 13 ages on behalf of such nonimmigrants against the non-  
 14 immigrants’ employers, unless at least 90 days prior to  
 15 bringing an action a request has been made to the Federal  
 16 Mediation and Conciliation Service to assist the parties  
 17 in reaching a satisfactory resolution of all issues involving  
 18 all parties to the dispute and mediation has been at-  
 19 tempted.

20 **SEC. 2105. MIGRANT AND SEASONAL AGRICULTURAL**  
 21 **WORKER PROTECTION.**

22 Section 3(8)(B)(ii) of the Migrant and Seasonal Agri-  
 23 cultural Worker Protection Act (29 U.S.C.  
 24 1802(8)(B)(ii)) is amended by striking “under sections  
 25 101(a)(15)(H)(ii)(a) and 214(c) of the Immigration and

1 Nationality Act.” and inserting “under subclauses (a) and  
2 (c) of section 101(a)(15)(H)(ii), and section 214(c), of the  
3 Immigration and Nationality Act.”.

4 **SEC. 2106. BINDING ARBITRATION.**

5 (a) APPLICABILITY.—H–2C workers may, as a condi-  
6 tion of employment with an employer, be subject to man-  
7 datory binding arbitration and mediation of any grievance  
8 relating to the employment relationship. An employer shall  
9 provide any such workers with notice of such condition of  
10 employment at the time it makes job offers.

11 (b) ALLOCATION OF COSTS.—Any cost associated  
12 with such arbitration and mediation process shall be  
13 equally divided between the employer and the H–2C work-  
14 ers, except that each party shall be responsible for the cost  
15 of its own counsel, if any.

16 (c) DEFINITIONS.—As used in this section:

17 (1) The term “condition of employment” means  
18 a term, condition, obligation, or requirement that is  
19 part of the job offer, such as the term of employ-  
20 ment, job responsibilities, employee conduct stand-  
21 ards, and the grievance resolution process, and to  
22 which applicants or prospective H–2C workers must  
23 consent or accept in order to be hired for the posi-  
24 tion.

1           (2) The term “H-2C worker” means a non-  
 2           immigrant described in section 218A(a)(5) of the  
 3           Immigration and Nationality Act, as added by this  
 4           title.

5   **SEC. 2107. ELIGIBILITY FOR HEALTH CARE SUBSIDIES AND**  
 6                   **REFUNDABLE TAX CREDITS; REQUIRED**  
 7                   **HEALTH INSURANCE COVERAGE.**

8           (a) HEALTH CARE SUBSIDIES.—H-2C workers (as  
 9           defined in section 218A(a)(5) of the Immigration and Na-  
 10          tionality Act, as added by this title)—

11           (1) are not entitled to the premium assistance  
 12          tax credit authorized under section 36B of the Inter-  
 13          nal Revenue Code of 1986 and shall be subject to  
 14          the rules applicable to individuals who are not law-  
 15          fully present set forth in subsection (e) of such sec-  
 16          tion; and

17           (2) shall be subject to the rules applicable to in-  
 18          dividuals who are not lawfully present set forth in  
 19          section 1402(e) of the Patient Protection and Af-  
 20          fordable Care Act (42 U.S.C. 18071(e)).

21           (b) REFUNDABLE TAX CREDITS.—H-2C workers (as  
 22          defined in section 218A(a)(5) of the Immigration and Na-  
 23          tionality Act, as added by this title), shall not be allowed  
 24          any credit under sections 24 and 32 of the Internal Rev-  
 25          enue Code of 1986. In the case of a joint return, no credit



1 shall be allowed under either such section if both spouses  
2 are such workers or aliens.

3 (c) REQUIREMENT REGARDING HEALTH INSURANCE  
4 COVERAGE.—Notwithstanding the Fair Labor Standards  
5 Act of 1938 (29 U.S.C. 201 et seq.) and State and local  
6 wage laws, not later than 21 days after being issued a  
7 visa or otherwise provided nonimmigrant status under sec-  
8 tion 101(a)(15)(H)(ii)(c) of the Immigration and Nation-  
9 ality Act (8 U.S.C. 1101(a)(15)(H)(ii)(c)), an alien must  
10 obtain health insurance coverage accepted in their State  
11 or States of employment and residence for the period of  
12 employment specified in section 218A(b)(1) of the Immi-  
13 gration and Nationality Act. H-2C workers under sections  
14 218A or 218B of the Immigration and Nationality Act  
15 who do not obtain and maintain the required insurance  
16 coverage will be considered to have failed to maintain non-  
17 immigrant status under section 101(a)(15)(H)(ii)(c) of  
18 the Immigration and Nationality Act and shall be subject  
19 to removal under section 237(a)(1)(C)(i) of the Immigra-  
20 tion and Nationality Act (8 U.S.C. 1227(a)(1)(C)(i)).

21 **SEC. 2108. STUDY OF ESTABLISHMENT OF AN AGRICUL-**  
22 **TURAL WORKER EMPLOYMENT POOL.**

23 (a) STUDY.—The Secretary of Agriculture shall con-  
24 duct a study on the feasibility of establishing an agricul-  
25 tural worker employment pool and an electronic Internet-

1 based portal to assist H–2C workers (as such term is de-  
2 fined in section 218A of the Immigration and Nationality  
3 Act), prospective H–2C workers, and employers to identify  
4 job opportunities in the H–2C program and willing, able  
5 and available workers for the program, respectively.

6 (b) CONTENTS.—The study required under sub-  
7 section (a) shall include an analysis of—

8 (1) the cost of creating such a pool and portal;

9 (2) potential funding sources or mechanisms to  
10 support the creation and maintenance of the pool  
11 and portal;

12 (3) with respect to H–2C workers and prospec-  
13 tive H–2C workers in the pool, the data that would  
14 be relevant for employers;

15 (4) the merits of assisting H–2C workers and  
16 employers in identifying job opportunities and will-  
17 ing, able, and available workers, respectively; and

18 (5) other beneficial uses for such a pool and  
19 portal.

20 (c) REPORT.—Not later than 1 year after the date  
21 of the enactment of this Act, the Secretary of Agriculture  
22 shall submit to the Committees on the Judiciary of the  
23 House of Representatives and the Senate a report con-  
24 taining the results of the study required under subsection  
25 (a).

1 **SEC. 2109. PREVAILING WAGE.**

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

4 (1) in paragraph (1), by inserting after “sub-  
5 sections (a)(5)(A), (n)(1)(A)(i)(II), and  
6 (t)(1)(A)(i)(II)” the following: “of this section and  
7 section 218A(k)(2)(B)(ii)”;

8 (2) in paragraph (3), by inserting after “sub-  
9 sections (a)(5)(A), (n)(1)(A)(i)(II), and  
10 (t)(1)(A)(i)(II)” the following: “of this section and  
11 section 218A(k)(2)(B)(ii)”.

12 **SEC. 2110. EFFECTIVE DATES; SUNSET; REGULATIONS.**

13 (a) EFFECTIVE DATES; REGULATIONS.—

14 (1) IN GENERAL.—Sections 2102 and 2104  
15 through 2106 of this title, subsections (a) and (c)  
16 through (f) of section 2103 of this title, and the  
17 amendments made by the sections, shall take effect  
18 on the date on which the Secretary issues the rules  
19 under paragraph (3), and the Secretary of Home-  
20 land Security shall accept petitions pursuant to sec-  
21 tion 218A of the Immigration and Nationality Act,  
22 as inserted by this Act, beginning no later than that  
23 date. Sections 2107 and 2109 of this title shall take  
24 effect on the date of the enactment of this Act.

1           (2) AT-WILL EMPLOYMENT.—Section 2103(b)  
2       of this title and the amendments made by that sub-  
3       section shall take effect when—

4           (A) it becomes unlawful for all persons or  
5       other entities to hire, or to recruit or refer for  
6       a fee, for employment in the United States an  
7       individual (as provided in section 274A(a)(1) of  
8       the Immigration and Nationality Act (8 U.S.C.  
9       1324a(a)(1))) without participating in the E-  
10      Verify Program described in section 403(a) of  
11      the Illegal Immigration Reform and Immigrant  
12      Responsibility Act of 1996 (8 U.S.C. 1324a  
13      note) or an employment eligibility verification  
14      system patterned on such program’s verification  
15      system; and

16           (B) the E-Verify Program responds to in-  
17      quiries made by such persons or entities de-  
18      scribed in subparagraph (A) by providing con-  
19      firmation, tentative nonconfirmation, and final  
20      nonconfirmation of an individual’s identity and  
21      employment eligibility in such a way that indi-  
22      cates whether the individual is eligible to be em-  
23      ployed in all occupations or only to perform ag-  
24      ricultural labor or services under sections 218A  
25      and 219B of the Immigration and Nationality

1 Act, as added by section 2103 of this title, and  
2 if the latter, whether the nonimmigrant would  
3 be in compliance with their maximum contin-  
4 uous period of authorized status and require-  
5 ment to remain outside the United States under  
6 section 218A(n) of such Act, as added by sec-  
7 tion 2103(a) of this title, and on what date the  
8 alien would cease to be in compliance with their  
9 maximum continuous period of authorized sta-  
10 tus.

11 (3) REGULATIONS.—Notwithstanding any other  
12 provision of law, not later than the first day of the  
13 seventh month that begins after the date of the en-  
14 actment of this Act, the Secretary of Homeland Se-  
15 curity shall issue final rules, on an interim or other  
16 basis, to carry out this title.

17 (b) OPERATION AND SUNSET OF THE H-2A PRO-  
18 GRAM.—

19 (1) APPLICATION OF EXISTING REGULA-  
20 TIONS.—The Department of Labor H-2A program  
21 regulations published at 73 Federal Register 77110  
22 et seq. (2008) shall be in force for all petitions ap-  
23 proved under sections 101(a)(15)(H)(ii)(a) and 218  
24 of the Immigration and Nationality Act (8 U.S.C.  
25 1101(a)(15)(h)(ii)(a); 8 U.S.C. 1188) beginning on

1 the date of the enactment of this Act, except that  
2 the following, as in effect on such date, shall remain  
3 in effect, and, to the extent that any rule published  
4 at 73 Federal Register 77110 et seq. is in conflict,  
5 such rule shall have no force and effect:

6 (A) Paragraph (a) and subparagraphs (1)  
7 and (3) of paragraph (b) of section 655.200 of  
8 title 20, Code of Federal Regulations.

9 (B) Section 655.201 of title 20, Code of  
10 Federal Regulations, except the paragraphs en-  
11 titled “Production of Livestock” and “Range”.

12 (C) Paragraphs (c), (d) and (e) of section  
13 655.210 of title 20, Code of Federal Regula-  
14 tions.

15 (D) Section 655.230 of title 20, Code of  
16 Federal Regulations.

17 (E) Section 655.235 of title 20, Code of  
18 Federal Regulations.

19 (F) The Special Procedures Labor Certifi-  
20 cation Process for Employers in the Itinerant  
21 Animal Shearing Industry under the H-2A  
22 Program in effect under the Training and Em-  
23 ployment Guidance Letter No. 17-06, Change  
24 1, Attachment B, Section II, with an effective  
25 date of October 1, 2011.

1           (2) SUNSET.—Beginning on the date on which  
2           employers can file petitions pursuant to section  
3           218A of the Immigration and Nationality Act, as  
4           added by section 2103(a) of this title, no new peti-  
5           tions under sections 101(a)(15)(H)(ii)(a) and 218 of  
6           the Immigration and Nationality Act (8 U.S.C.  
7           1101(a)(15)(H)(ii)(a); 8 U.S.C. 1188) shall be ac-  
8           cepted.

9   **SEC. 2111. REPORT ON COMPLIANCE AND VIOLATIONS.**

10          (a) IN GENERAL.—Not later than 1 year after the  
11          first day on which employers can file petitions pursuant  
12          to section 218A of the Immigration and Nationality Act,  
13          as added by section 2103(a) of this title, the Secretary  
14          of Homeland Security, in consultation with the Secretary  
15          of Agriculture, shall submit to the Committees on the Ju-  
16          diciary of the House of Representatives and the Senate  
17          a report on compliance by H-2C workers with the require-  
18          ments of this title and the Immigration and Nationality  
19          Act, as amended by this title. In the case of a violation  
20          of a term or condition of the temporary agricultural work  
21          visa program established by this title, the report shall  
22          identify the provision or provisions of law violated.

23          (b) DEFINITION.—As used in this section, the term  
24          “H-2C worker” means a nonimmigrant described in sec-

tion 218A(a)(4) of the Immigration and Nationality Act,  
as added by section 2103(a) of this title.

### **TITLE III—VISA SECURITY**

#### **SEC. 3101. CANCELLATION OF ADDITIONAL VISAS.**

(a) IN GENERAL.—Section 222(g) of the Immigration and Nationality Act (8 U.S.C. 1202(g)) is amended—

(1) in paragraph (1)—

(A) by striking “Attorney General” and inserting “Secretary”; and

(B) by inserting “and any other non-immigrant 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”.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act and shall apply to a visa issued before, on, or after such date.



1 **SEC. 3102. VISA INFORMATION SHARING.**

2 (a) IN GENERAL.—Section 222(f) of the Immigration  
3 and Nationality Act (8 U.S.C. 1202(f)(2)) is amended—

4 (1) by striking “issuance or refusal” and insert-  
5 ing “issuance, refusal, or revocation”;

6 (2) in paragraph (2), in the matter preceding  
7 subparagraph (A), by striking “and on the basis of  
8 reciprocity” and all that follows and inserting the  
9 following “may provide to a foreign government in-  
10 formation in a Department of State computerized  
11 visa database and, when necessary and appropriate,  
12 other records covered by this section related to infor-  
13 mation in such database—”;

14 (3) in paragraph (2)(A)—

15 (A) by inserting at the beginning “on the  
16 basis of reciprocity,”;

17 (B) by inserting “(i)” after “for the pur-  
18 pose of”; and

19 (C) by striking “illicit weapons; or” and  
20 inserting “illicit weapons, or (ii) determining a  
21 person’s deportability or eligibility for a visa,  
22 admission, or other immigration benefit,”;

23 (4) in paragraph (2)(B)—

24 (A) by inserting at the beginning “on the  
25 basis of reciprocity,”;

1 (B) by striking “in the database” and in-  
2 serting “such database”;

3 (C) by striking “for the purposes” and in-  
4 serting “for one of the purposes”; and

5 (D) by striking “or to deny visas to per-  
6 sons who would be inadmissible to the United  
7 States.” and inserting “; or”; and

8 (5) in paragraph (2), by adding at the end the  
9 following:

10 “(C) with regard to any or all aliens in the  
11 database specified data elements from each  
12 record, if the Secretary of State determines that  
13 it is in the national interest to provide such in-  
14 formation to a foreign government.”.

15 (b) EFFECTIVE DATE.—The amendments made by  
16 subsection (a) shall take effect 60 days after the date of  
17 the enactment of this Act.

18 **SEC. 3103. RESTRICTING WAIVER OF VISA INTERVIEWS.**

19 Section 222(h) of the Immigration and Nationality  
20 Act (8 U.S.C. 1202(h)(1)(B)) is amended—

21 (1) in paragraph (1)(C), by inserting “, in con-  
22 sultation with the Secretary of Homeland Security,”  
23 after “if the Secretary”;

24 (2) in paragraph (1)(C)(i), by inserting “,  
25 where such national interest shall not include facili-

1       tation of travel of foreign nationals to the United  
2       States, reduction of visa application processing  
3       times, or the allocation of consular resources” before  
4       the semicolon at the end; and

5           (3) in paragraph (2)—

6                (A) by striking “or” at the end of subpara-  
7                graph (E);

8                (B) by striking the period at the end of  
9                subparagraph (F) and inserting “; or”; and

10               (C) by adding at the end the following:

11               “(G) is an individual—

12                   “(i) determined to be in a class of  
13                   aliens determined by the Secretary of  
14                   Homeland Security to be threats to na-  
15                   tional security;

16                   “(ii) identified by the Secretary of  
17                   Homeland Security as a person of concern;  
18                   or

19                   “(iii) applying for a visa in a visa cat-  
20                   egory with respect to which the Secretary  
21                   of Homeland Security has determined that  
22                   a waiver of the visa interview would create  
23                   a high risk of degradation of visa program  
24                   integrity.”.

1 **SEC. 3104. AUTHORIZING THE DEPARTMENT OF STATE TO**  
2 **NOT INTERVIEW CERTAIN INELIGIBLE VISA**  
3 **APPLICANTS.**

4 (a) IN GENERAL.—Section 222(h)(1) of the Immi-  
5 gration and Nationality Act (8 U.S.C. 1202(h)(1)) is  
6 amended by inserting “the alien is determined by the Sec-  
7 retary of State to be ineligible for a visa based upon review  
8 of the application or” after “unless”.

9 (b) GUIDANCE.—Not later than 90 days after the  
10 date of the enactment of this Act, the Secretary of State  
11 shall issue guidance to consular officers on the standards  
12 and processes for implementing the authority to deny visa  
13 applications without interview in cases where the alien is  
14 determined by the Secretary of State to be ineligible for  
15 a visa based upon review of the application.

16 (c) REPORTS.—Not less frequently than once each  
17 quarter, the Secretary of State shall submit to the Con-  
18 gress a report on the denial of visa applications without  
19 interview, including—

20 (1) the number of such denials; and

21 (2) a post-by-post breakdown of such denials.

22 **SEC. 3105. VISA REFUSAL AND REVOCATION.**

23 (a) AUTHORITY OF THE SECRETARY OF HOMELAND  
24 SECURITY AND THE SECRETARY OF STATE.—

25 (1) IN GENERAL.—Section 428 of the Home-  
26 land Security Act of 2002 (6 U.S.C. 236) is amend-

1 ed by striking subsections (b) and (c) and inserting  
2 the following:

3 “(b) AUTHORITY OF THE SECRETARY OF HOMELAND  
4 SECURITY.—

5 “(1) IN GENERAL.—Notwithstanding section  
6 104(a) of the Immigration and Nationality Act (8  
7 U.S.C. 1104(a)) or any other provision of law, and  
8 except as provided in subsection (c) and except for  
9 the authority of the Secretary of State under sub-  
10 paragraphs (A) and (G) of section 101(a)(15) of the  
11 Immigration and Nationality Act (8 U.S.C.  
12 1101(a)(15)), the Secretary—

13 “(A) shall have exclusive authority to issue  
14 regulations, establish policy, and administer and  
15 enforce the provisions of the Immigration and  
16 Nationality Act (8 U.S.C. 1101 et seq.) and all  
17 other immigration or nationality laws relating  
18 to the functions of consular officers of the  
19 United States in connection with the granting  
20 and refusal of a visa; and

21 “(B) may refuse or revoke any visa to any  
22 alien or class of aliens if the Secretary, or des-  
23 ignee, determines that such refusal or revoca-  
24 tion is necessary or advisable in the security or  
25 foreign policy interests of the United States.

1           “(2) EFFECT OF REVOCATION.—The revocation  
2 of any visa under paragraph (1)(B)—

3                   “(A) shall take effect immediately; and

4                   “(B) shall automatically cancel any other  
5 valid visa that is in the alien’s possession.

6           “(3) JUDICIAL REVIEW.—Notwithstanding any  
7 other provision of law, including section 2241 of title  
8 28, United States Code, or any other habeas corpus  
9 provision, and sections 1361 and 1651 of such title,  
10 no court shall have jurisdiction to review a decision  
11 by the Secretary of Homeland Security to refuse or  
12 revoke a visa, and no court shall have jurisdiction to  
13 hear any claim arising from, or any challenge to,  
14 such a refusal or revocation.

15          “(c) AUTHORITY OF THE SECRETARY OF STATE.—

16                  “(1) IN GENERAL.—The Secretary of State may  
17 direct a consular officer to refuse a visa requested  
18 by an alien if the Secretary of State determines such  
19 refusal to be necessary or advisable in the security  
20 or foreign policy interests of the United States.

21                  “(2) LIMITATION.—No decision by the Sec-  
22 retary of State to approve a visa may override a de-  
23 cision by the Secretary of Homeland Security under  
24 subsection (b).”.

1           (2) AUTHORITY OF THE SECRETARY OF  
2       STATE.—Section 221(i) of the Immigration and Na-  
3       tionality Act (8 U.S.C. 1201(i)) is amended by strik-  
4       ing “subsection, except in the context of a removal  
5       proceeding if such revocation provides the sole  
6       ground for removal under section 237(a)(1)(B).”  
7       and inserting “subsection.”.

8           (3) CONFORMING AMENDMENT.—Section  
9       237(a)(1)(B) of the Immigration and Nationality  
10      Act (8 U.S.C. 1227(a)(1)(B)) is amended by strik-  
11      ing “under section 221(i)”.

12          (4) EFFECTIVE DATE.—The amendment made  
13      by paragraph (1) shall take effect on the date of the  
14      enactment of this Act and shall apply to visa refus-  
15      als and revocations occurring before, on, or after  
16      such date.

17      (b) TECHNICAL CORRECTIONS TO THE HOMELAND  
18      SECURITY ACT.—Section 428(a) of the Homeland Secu-  
19      rity Act of 2002 (6 U.S.C. 236(a)) is amended—

20          (1) by striking “subsection” and inserting “sec-  
21      tion”; and

22          (2) by striking “consular office” and inserting  
23      “consular officer”.

1 **SEC. 3106. PETITION AND APPLICATION PROCESSING FOR**  
2 **VISAS AND IMMIGRATION BENEFITS.**

3 (a) IN GENERAL.—Chapter 2 of title II of the Immi-  
4 gration and Nationality Act (8 U.S.C. 1181 et seq.) is  
5 amended by inserting after section 211 the following:

6 **“SEC. 211A. PETITION AND APPLICATION PROCESSING.**

7 “(a) SIGNATURE REQUIREMENT.—

8 “(1) IN GENERAL.—No petition or application  
9 filed with the Secretary of Homeland Security or  
10 with a consular officer relating to the issuance of a  
11 visa or to the admission of an alien to the United  
12 States as an immigrant or as a nonimmigrant may  
13 be approved unless the petition or application is  
14 signed by each party required to sign such petition  
15 or application.

16 “(2) APPLICATIONS FOR IMMIGRANT VISAS.—  
17 Except as may be otherwise prescribed by regula-  
18 tions, each application for an immigrant visa shall  
19 be signed by the applicant in the presence of the  
20 consular officer, and verified by the oath of the ap-  
21 plicant administered by the consular officer.

22 “(b) COMPLETION REQUIREMENT.—No petition or  
23 application filed with the Secretary of Homeland Security  
24 or with a consular officer relating to the issuance of a visa  
25 or to the admission of an alien to the United States as  
26 an immigrant or as a nonimmigrant may be approved un-



1 less each applicable portion of the petition or application  
2 has been completed.

3 “(c) TRANSLATION REQUIREMENT.—No document  
4 submitted in support of a petition or application for a non-  
5 immigrant or immigrant visa may be accepted by a con-  
6 sular officer if such document contains information in a  
7 foreign language, unless such document is accompanied by  
8 a full English translation, which the translator has cer-  
9 tified as complete and accurate, and by the translator’s  
10 certification that he or she is competent to translate from  
11 the foreign language into English.

12 “(d) REQUESTS FOR ADDITIONAL INFORMATION.—  
13 In the case that the Secretary of Homeland Security or  
14 a consular officer requests any additional information re-  
15 lating to a petition or application filed with the Secretary  
16 or consular officer relating to the issuance of a visa or  
17 to the admission of an alien to the United States as an  
18 immigrant or as a nonimmigrant, such petition or applica-  
19 tion may not be approved unless all of the additional infor-  
20 mation requested is provided, or is shown to have been  
21 previously provided, in complete form and is provided on  
22 or before any reasonably established deadline included in  
23 the request.”.

24 (b) CLERICAL AMENDMENT.—The table of contents  
25 for the Immigration and Nationality Act (8 U.S.C. 1101

1 et seq.) is amended by inserting after the item relating  
 2 to section 211 the following:

“Sec. 211A. Petition and application processing.”.

3 (c) APPLICATION.—The amendments made by this  
 4 section shall apply with respect to applications and peti-  
 5 tions filed after the date of the enactment of this Act.

6 **SEC. 3107. FRAUD PREVENTION.**

7 (a) PROSPECTIVE ANALYTICS TECHNOLOGY.—

8 (1) PLAN FOR IMPLEMENTATION.—Not later  
 9 than 180 days after the date of the enactment of  
 10 this Act, the Secretary of Homeland Security shall  
 11 submit to the Committee on the Judiciary of the  
 12 House of Representatives and the Committee on the  
 13 Judiciary of the Senate a plan for the use of ad-  
 14 vanced analytics software to ensure the proactive de-  
 15 tection of fraud in immigration benefits applications  
 16 and petitions and to ensure that any such applicant  
 17 or petitioner does not pose a threat to national secu-  
 18 rity.

19 (2) IMPLEMENTATION OF PLAN.—Not later  
 20 than 1 year after the date of the submission of the  
 21 plan under paragraph (1), the Secretary of Home-  
 22 land Security shall begin implementation of the plan.

23 (b) BENEFITS FRAUD ASSESSMENT.—

24 (1) IN GENERAL.—The Secretary of Homeland  
 25 Security, acting through the Fraud Detection and

1       Nationality Security Directorate, shall complete a  
2       benefit fraud assessment by fiscal year 2021 on each  
3       of the following:

4               (A) Petitions by VAWA self-petitioners (as  
5               such term is defined in section 101(a)(51) of  
6               the Immigration and Nationality Act (8 U.S.C.  
7               1101(a)(51)).

8               (B) Applications or petitions for visas or  
9               status under section 101(a)(15)(K) of such Act  
10              or under section 201(b)(2) of such Act, in the  
11              case of spouses (8 U.S.C. 1101(a)(15)(K)).

12              (C) Applications for visas or status under  
13              section 101(a)(27)(J) of such Act (8 U.S.C.  
14              1101(a)(27)(J)).

15              (D) Applications for visas or status under  
16              section 101(a)(15)(U) of such Act (8 U.S.C.  
17              1101(a)(15)(U)).

18              (E) Petitions for visas or status under sec-  
19              tion 101(a)(27)(C) of such Act (8 U.S.C.  
20              1101(a)(27)(C)).

21              (F) Applications for asylum under section  
22              208 of such Act (8 U.S.C. 1158).

23              (G) Applications for adjustment of status  
24              under section 209 of such Act (8 U.S.C. 1159).

1 (H) Petitions for visas or status under sec-  
 2 tion 201(b) of such Act (8 U.S.C. 1151(b)).

3 (2) REPORTING ON FINDINGS.—Not later than  
 4 30 days after the completion of each benefit fraud  
 5 assessment under paragraph (1), the Secretary shall  
 6 submit to the Committee on the Judiciary of the  
 7 House of Representatives and the Committee on the  
 8 Judiciary of the Senate such assessment and rec-  
 9 ommendations on how to reduce the occurrence of  
 10 instances of fraud identified by the assessment.

11 **SEC. 3108. VISA INELIGIBILITY FOR SPOUSES AND CHIL-**  
 12 **DREN OF DRUG TRAFFICKERS.**

13 Section 202(a)(2) of the Immigration and Nationality  
 14 Act (8 U.S.C. 1182(a)(2)) is amended—

15 (1) in subparagraph (C)(ii), by striking “is the  
 16 spouse, son, or daughter” and inserting “is or has  
 17 been the spouse, son, or daughter”; and

18 (2) in subparagraph (H)(ii), by striking “is the  
 19 spouse, son, or daughter” and inserting “is or has  
 20 been the spouse, son, or daughter”.

21 **SEC. 3109. DNA TESTING.**

22 Section 222(b) of the Immigration and Nationality  
 23 Act (8 U.S.C. 1202(b)) is amended by inserting “Where  
 24 considered necessary, by the consular officer or immigra-  
 25 tion official, to establish family relationships, the immi-

1 grant shall provide DNA evidence of such a relationship  
 2 in accordance with procedures established for submitting  
 3 such evidence. The Secretary and the Secretary of State  
 4 may, in consultation, issue regulations to require DNA  
 5 evidence to establish family relationship, from applicants  
 6 for certain visa classifications.” after “and a certified copy  
 7 of all other records or documents concerning him or his  
 8 case which may be required by the consular officer.”.

9 **SEC. 3110. ACCESS TO NCIC CRIMINAL HISTORY DATABASE**  
 10 **FOR DIPLOMATIC VISAS.**

11 Subsection (a) of article V of section 217 of the Na-  
 12 tional Crime Prevention and Privacy Compact Act of 1998  
 13 (34 U.S.C. 40316(V)(a)) is amended by inserting “, ex-  
 14 cept for diplomatic visa applications for which only full  
 15 biographical information is required” before the period at  
 16 the end.

17 **SEC. 3111. ELIMINATION OF SIGNED PHOTOGRAPH RE-**  
 18 **QUIREMENT FOR VISA APPLICATIONS.**

19 Section 221(b) of the Immigration and Nationality  
 20 Act (8 U.S.C. 1201(b)) is amended by striking the first  
 21 sentence and insert the following: “Each alien who applies  
 22 for a visa shall be registered in connection with his or her  
 23 application and shall furnish copies of his or her photo-  
 24 graph for such use as may be required by regulation.”.

1 **SEC. 3112. ADDITIONAL FRAUD DETECTION AND PREVEN-**  
 2 **TION.**

3 Section 286(v)(2)(A) of the Immigration and Nation-  
 4 ality Act (8 U.S.C. 1356(v)(2)(A)) is amended—

5 (1) in the matter preceding clause (i), by strik-  
 6 ing “at United States embassies and consulates  
 7 abroad”;

8 (2) by amending clause (i) to read as follows:

9 “(i) to increase the number of diplo-  
 10 matic security personnel assigned exclu-  
 11 sively or primarily to the function of pre-  
 12 venting and detecting visa fraud;”; and

13 (3) in clause (ii), by striking “, including pri-  
 14 marily fraud by applicants for visas described in  
 15 subparagraph (H)(i), (H)(ii), or (L) of section  
 16 101(a)(15)”.

17 **DIVISION B—INTERIOR**  
 18 **IMMIGRATION ENFORCEMENT**  
 19 **TITLE I—LEGAL WORKFORCE**  
 20 **ACT**

21 **SEC. 1101. SHORT TITLE.**

22 This title may be cited as the “Legal Workforce Act”.

1 **SEC. 1102. EMPLOYMENT ELIGIBILITY VERIFICATION**  
2 **PROCESS.**

3 (a) IN GENERAL.—Section 274A(b) of the Immigra-  
4 tion and Nationality Act (8 U.S.C. 1324a(b)) is amended  
5 to read as follows:

6 “(b) EMPLOYMENT ELIGIBILITY VERIFICATION  
7 PROCESS.—

8 “(1) NEW HIRES, RECRUITMENT, AND REFER-  
9 RAL.—The requirements referred to in paragraphs  
10 (1)(B) and (3) of subsection (a) are, in the case of  
11 a person or other entity hiring, recruiting, or refer-  
12 ring an individual for employment in the United  
13 States, the following:

14 “(A) ATTESTATION AFTER EXAMINATION  
15 OF DOCUMENTATION.—

16 “(i) ATTESTATION.—During the  
17 verification period (as defined in subpara-  
18 graph (E)), the person or entity shall at-  
19 test, under penalty of perjury and on a  
20 form, including electronic and telephonic  
21 formats, designated or established by the  
22 Secretary by regulation not later than 6  
23 months after the date of the enactment of  
24 the Legal Workforce Act, that it has  
25 verified that the individual is not an unau-  
26 thorized alien by—

1           “(I) obtaining from the indi-  
2           vidual the individual’s social security  
3           account number or United States  
4           passport number and recording the  
5           number on the form (if the individual  
6           claims to have been issued such a  
7           number), and, if the individual does  
8           not attest to United States nationality  
9           under subparagraph (B), obtaining  
10          such identification or authorization  
11          number established by the Depart-  
12          ment of Homeland Security for the  
13          alien as the Secretary of Homeland  
14          Security may specify, and recording  
15          such number on the form; and

16               “(II) examining—

17                   “(aa) a document relating to  
18                   the individual presenting it de-  
19                   scribed in clause (ii); or

20                   “(bb) a document relating to  
21                   the individual presenting it de-  
22                   scribed in clause (iii) and a docu-  
23                   ment relating to the individual  
24                   presenting it described in clause  
25                   (iv).



1                   “(ii) DOCUMENTS EVIDENCING EM-  
2                   PLOYMENT AUTHORIZATION AND ESTAB-  
3                   LISHING IDENTITY.—A document de-  
4                   scribed in this subparagraph is an individ-  
5                   ual’s—

6                   “(I) unexpired United States  
7                   passport or passport card;

8                   “(II) unexpired permanent resi-  
9                   dent card that contains a photograph;

10                  “(III) unexpired employment au-  
11                  thorization card that contains a pho-  
12                  tograph;

13                  “(IV) in the case of a non-  
14                  immigrant alien authorized to work  
15                  for a specific employer incident to sta-  
16                  tus, a foreign passport with Form I-  
17                  94 or Form I-94A, or other docu-  
18                  mentation as designated by the Sec-  
19                  retary specifying the alien’s non-  
20                  immigrant status as long as the pe-  
21                  riod of status has not yet expired and  
22                  the proposed employment is not in  
23                  conflict with any restrictions or limita-  
24                  tions identified in the documentation;

1 “(V) passport from the Fed-  
2 erated States of Micronesia (FSM) or  
3 the Republic of the Marshall Islands  
4 (RMI) with Form I-94 or Form I-  
5 94A, or other documentation as des-  
6 ignated by the Secretary, indicating  
7 nonimmigrant admission under the  
8 Compact of Free Association Between  
9 the United States and the FSM or  
10 RMI; or

11 “(VI) other document designated  
12 by the Secretary of Homeland Secu-  
13 rity, if the document—

14 “(aa) contains a photograph  
15 of the individual and biometric  
16 identification data from the indi-  
17 vidual and such other personal  
18 identifying information relating  
19 to the individual as the Secretary  
20 of Homeland Security finds, by  
21 regulation, sufficient for purposes  
22 of this clause;

23 “(bb) is evidence of author-  
24 ization of employment in the  
25 United States; and

1                   “(cc) contains security fea-  
2                   tures to make it resistant to tam-  
3                   pering, counterfeiting, and fraud-  
4                   ulent use.

5                   “(iii) DOCUMENTS EVIDENCING EM-  
6                   PLOYMENT AUTHORIZATION.—A document  
7                   described in this subparagraph is an indi-  
8                   vidual’s social security account number  
9                   card (other than such a card which speci-  
10                  fies on the face that the issuance of the  
11                  card does not authorize employment in the  
12                  United States).

13                  “(iv) DOCUMENTS ESTABLISHING  
14                  IDENTITY OF INDIVIDUAL.—A document  
15                  described in this subparagraph is—

16                         “(I) an individual’s unexpired  
17                         driver’s license or identification card if  
18                         it was issued by a State or American  
19                         Samoa and contains a photograph and  
20                         information such as name, date of  
21                         birth, gender, height, eye color, and  
22                         address;

23                         “(II) an individual’s unexpired  
24                         U.S. military identification card;

1 “(III) an individual’s unexpired  
2 Native American tribal identification  
3 document issued by a tribal entity rec-  
4 ognized by the Bureau of Indian Af-  
5 fairs; or

6 “(IV) in the case of an individual  
7 under 18 years of age, a parent or  
8 legal guardian’s attestation under  
9 penalty of law as to the identity and  
10 age of the individual.

11 “(v) AUTHORITY TO PROHIBIT USE OF  
12 CERTAIN DOCUMENTS.—If the Secretary of  
13 Homeland Security finds, by regulation,  
14 that any document described in clause (i),  
15 (ii), or (iii) as establishing employment au-  
16 thorization or identity does not reliably es-  
17 tablish such authorization or identity or is  
18 being used fraudulently to an unacceptable  
19 degree, the Secretary may prohibit or place  
20 conditions on its use for purposes of this  
21 paragraph.

22 “(vi) SIGNATURE.—Such attestation  
23 may be manifested by either a handwritten  
24 or electronic signature.

1           “(B) INDIVIDUAL ATTESTATION OF EM-  
2           PLOYMENT AUTHORIZATION.—During the  
3           verification period (as defined in subparagraph  
4           (E)), the individual shall attest, under penalty  
5           of perjury on the form designated or established  
6           for purposes of subparagraph (A), that the indi-  
7           vidual is a citizen or national of the United  
8           States, an alien lawfully admitted for perma-  
9           nent residence, or an alien who is authorized  
10          under this Act or by the Secretary of Homeland  
11          Security to be hired, recruited, or referred for  
12          such employment. Such attestation may be  
13          manifested by either a handwritten or electronic  
14          signature. The individual shall also provide that  
15          individual’s social security account number or  
16          United States passport number (if the indi-  
17          vidual claims to have been issued such a num-  
18          ber), and, if the individual does not attest to  
19          United States nationality under this subpara-  
20          graph, such identification or authorization num-  
21          ber established by the Department of Homeland  
22          Security for the alien as the Secretary may  
23          specify.

24           “(C) RETENTION OF VERIFICATION FORM  
25          AND VERIFICATION.—

1 “(i) IN GENERAL.—After completion  
2 of such form in accordance with subpara-  
3 graphs (A) and (B), the person or entity  
4 shall—

5 “(I) retain a paper, microfiche,  
6 microfilm, or electronic version of the  
7 form and make it available for inspec-  
8 tion by officers of the Department of  
9 Homeland Security, the Department  
10 of Justice, or the Department of  
11 Labor during a period beginning on  
12 the date of the recruiting or referral  
13 of the individual, or, in the case of the  
14 hiring of an individual, the date on  
15 which the verification is completed,  
16 and ending—

17 “(aa) in the case of the re-  
18 cruiting or referral of an indi-  
19 vidual, 3 years after the date of  
20 the recruiting or referral; and

21 “(bb) in the case of the hir-  
22 ing of an individual, the later of  
23 3 years after the date the  
24 verification is completed or one  
25 year after the date the individ-

1                   ual’s employment is terminated;  
2                   and

3                   “(II) during the verification pe-  
4                   riod (as defined in subparagraph (E)),  
5                   make an inquiry, as provided in sub-  
6                   section (d), using the verification sys-  
7                   tem to seek verification of the identity  
8                   and employment eligibility of an indi-  
9                   vidual.

10                  “(ii) CONFIRMATION.—

11                         “(I)         CONFIRMATION         RE-  
12                   CEIVED.—If the person or other entity  
13                   receives an appropriate confirmation  
14                   of an individual’s identity and work  
15                   eligibility under the verification sys-  
16                   tem within the time period specified,  
17                   the person or entity shall record on  
18                   the form an appropriate code that is  
19                   provided under the system and that  
20                   indicates a final confirmation of such  
21                   identity and work eligibility of the in-  
22                   dividual.

23                         “(II) TENTATIVE NONCONFIRMA-  
24                   TION RECEIVED.—If the person or  
25                   other entity receives a tentative non-

1 confirmation of an individual's iden-  
2 tity or work eligibility under the  
3 verification system within the time pe-  
4 riod specified, the person or entity  
5 shall so inform the individual for  
6 whom the verification is sought. If the  
7 individual does not contest the non-  
8 confirmation within the time period  
9 specified, the nonconfirmation shall be  
10 considered final. The person or entity  
11 shall then record on the form an ap-  
12 propriate code which has been pro-  
13 vided under the system to indicate a  
14 final nonconfirmation. If the indi-  
15 vidual does contest the nonconfirma-  
16 tion, the individual shall utilize the  
17 process for secondary verification pro-  
18 vided under subsection (d). The non-  
19 confirmation will remain tentative  
20 until a final confirmation or noncon-  
21 firmation is provided by the  
22 verification system within the time pe-  
23 riod specified. In no case shall an em-  
24 ployer terminate employment of an in-  
25 dividual because of a failure of the in-



1           dividual to have identity and work eli-  
2           gibility confirmed under this section  
3           until a nonconfirmation becomes final.  
4           Nothing in this clause shall apply to a  
5           termination of employment for any  
6           reason other than because of such a  
7           failure. In no case shall an employer  
8           rescind the offer of employment to an  
9           individual because of a failure of the  
10          individual to have identity and work  
11          eligibility confirmed under this sub-  
12          section until a nonconfirmation be-  
13          comes final. Nothing in this subclause  
14          shall apply to a rescission of the offer  
15          of employment for any reason other  
16          than because of such a failure.

17               “(III) FINAL CONFIRMATION OR  
18               NONCONFIRMATION RECEIVED.—If a  
19               final confirmation or nonconfirmation  
20               is provided by the verification system  
21               regarding an individual, the person or  
22               entity shall record on the form an ap-  
23               propriate code that is provided under  
24               the system and that indicates a con-  
25               firmation or nonconfirmation of iden-

1           tity and work eligibility of the indi-  
2           vidual.

3           “(IV) EXTENSION OF TIME.—If  
4           the person or other entity in good  
5           faith attempts to make an inquiry  
6           during the time period specified and  
7           the verification system has registered  
8           that not all inquiries were received  
9           during such time, the person or entity  
10          may make an inquiry in the first sub-  
11          sequent working day in which the  
12          verification system registers that it  
13          has received all inquiries. If the  
14          verification system cannot receive in-  
15          quiries at all times during a day, the  
16          person or entity merely has to assert  
17          that the entity attempted to make the  
18          inquiry on that day for the previous  
19          sentence to apply to such an inquiry,  
20          and does not have to provide any ad-  
21          ditional proof concerning such inquiry.

22          “(V) CONSEQUENCES OF NON-  
23          CONFIRMATION.—

24                 “(aa) TERMINATION OR NO-  
25                 TIFICATION OF CONTINUED EM-

1           EMPLOYMENT.—If the person or  
2           other entity has received a final  
3           nonconfirmation regarding an in-  
4           dividual, the person or entity  
5           may terminate employment of the  
6           individual (or decline to recruit  
7           or refer the individual). If the  
8           person or entity does not termi-  
9           nate employment of the indi-  
10          vidual or proceeds to recruit or  
11          refer the individual, the person or  
12          entity shall notify the Secretary  
13          of Homeland Security of such  
14          fact through the verification sys-  
15          tem or in such other manner as  
16          the Secretary may specify.

17               “(bb) FAILURE TO NO-  
18               TIFY.—If the person or entity  
19               fails to provide notice with re-  
20               spect to an individual as required  
21               under item (aa), the failure is  
22               deemed to constitute a violation  
23               of subsection (a)(1)(A) with re-  
24               spect to that individual.

1 “(VI) CONTINUED EMPLOYMENT  
2 AFTER FINAL NONCONFIRMATION.—If  
3 the person or other entity continues to  
4 employ (or to recruit or refer) an indi-  
5 vidual after receiving final noncon-  
6 firmation, a rebuttable presumption is  
7 created that the person or entity has  
8 violated subsection (a)(1)(A).

9 “(D) EFFECTIVE DATES OF NEW PROCE-  
10 DURES.—

11 “(i) HIRING.—Except as provided in  
12 clause (iii), the provisions of this para-  
13 graph shall apply to a person or other enti-  
14 ty hiring an individual for employment in  
15 the United States as follows:

16 “(I) With respect to employers  
17 having 10,000 or more employees in  
18 the United States on the date of the  
19 enactment of the Legal Workforce  
20 Act, on the date that is 6 months  
21 after the date of the enactment of  
22 such Act.

23 “(II) With respect to employers  
24 having 500 or more employees in the  
25 United States, but less than 10,000

1 employees in the United States, on  
2 the date of the enactment of the  
3 Legal Workforce Act, on the date that  
4 is 12 months after the date of the en-  
5 actment of such Act.

6 “(III) With respect to employers  
7 having 20 or more employees in the  
8 United States, but less than 500 em-  
9 ployees in the United States, on the  
10 date of the enactment of the Legal  
11 Workforce Act, on the date that is 18  
12 months after the date of the enact-  
13 ment of such Act.

14 “(IV) With respect to employers  
15 having 1 or more employees in the  
16 United States, but less than 20 em-  
17 ployees in the United States, on the  
18 date of the enactment of the Legal  
19 Workforce Act, on the date that is 24  
20 months after the date of the enact-  
21 ment of such Act.

22 “(ii) RECRUITING AND REFERRING.—  
23 Except as provided in clause (iii), the pro-  
24 visions of this paragraph shall apply to a  
25 person or other entity recruiting or refer-

1 ring an individual for employment in the  
2 United States on the date that is 12  
3 months after the date of the enactment of  
4 the Legal Workforce Act.

5 “(iii) AGRICULTURAL LABOR OR SERV-  
6 ICES.—With respect to an employee per-  
7 forming agricultural labor or services, this  
8 paragraph shall not apply with respect to  
9 the verification of the employee until the  
10 date that is 18 months after the date of  
11 the enactment of the Legal Workforce Act.  
12 For purposes of the preceding sentence,  
13 the term ‘agricultural labor or services’ has  
14 the meaning given such term by the Sec-  
15 retary of Agriculture in regulations and in-  
16 cludes agricultural labor as defined in sec-  
17 tion 3121(g) of the Internal Revenue Code  
18 of 1986, agriculture as defined in section  
19 3(f) of the Fair Labor Standards Act of  
20 1938 (29 U.S.C. 203(f)), the handling,  
21 planting, drying, packing, packaging, proc-  
22 essing, freezing, or grading prior to deliv-  
23 ery for storage of any agricultural or horti-  
24 cultural commodity in its unmanufactured  
25 state, all activities required for the prepa-

1           ration, processing or manufacturing of a  
2           product of agriculture (as such term is de-  
3           fined in such section 3(f)) for further dis-  
4           tribution, and activities similar to all the  
5           foregoing as they relate to fish or shellfish  
6           facilities. An employee described in this  
7           clause shall not be counted for purposes of  
8           clause (i).

9           “(iv) EXTENSIONS.—Upon request by  
10          an employer having 50 or fewer employees,  
11          the Secretary shall allow a one-time 6-  
12          month extension of the effective date set  
13          out in this subparagraph applicable to such  
14          employer. Such request shall be made to  
15          the Secretary and shall be made prior to  
16          such effective date.

17          “(v) TRANSITION RULE.—Subject to  
18          paragraph (4), the following shall apply to  
19          a person or other entity hiring, recruiting,  
20          or referring an individual for employment  
21          in the United States until the effective  
22          date or dates applicable under clauses (i)  
23          through (iii):

1           “(I) This subsection, as in effect  
2 before the enactment of the Legal  
3 Workforce Act.

4           “(II) Subtitle A of title IV of the  
5 Illegal Immigration Reform and Im-  
6 migrant Responsibility Act of 1996 (8  
7 U.S.C. 1324a note), as in effect be-  
8 fore the effective date in section 7(c)  
9 of the Legal Workforce Act.

10          “(III) Any other provision of  
11 Federal law requiring the person or  
12 entity to participate in the E-Verify  
13 Program described in section 403(a)  
14 of the Illegal Immigration Reform and  
15 Immigrant Responsibility Act of 1996  
16 (8 U.S.C. 1324a note), as in effect be-  
17 fore the effective date in section 7(c)  
18 of the Legal Workforce Act, including  
19 Executive Order 13465 (8 U.S.C.  
20 1324a note; relating to Government  
21 procurement).

22          “(E) VERIFICATION PERIOD DEFINED.—

23           “(i) IN GENERAL.—For purposes of  
24 this paragraph:



1           “(I) In the case of recruitment or  
2           referral, the term ‘verification period’  
3           means the period ending on the date  
4           recruiting or referring commences.

5           “(II) In the case of hiring, the  
6           term ‘verification period’ means the  
7           period beginning on the date on which  
8           an offer of employment is extended  
9           and ending on the date that is three  
10          business days after the date of hire,  
11          except as provided in clause (iii). The  
12          offer of employment may be condi-  
13          tioned in accordance with clause (ii).

14          “(ii) JOB OFFER MAY BE CONDI-  
15          TIONAL.—A person or other entity may  
16          offer a prospective employee an employ-  
17          ment position that is conditioned on final  
18          verification of the identity and employment  
19          eligibility of the employee using the proce-  
20          dures established under this paragraph.

21          “(iii) SPECIAL RULE.—Notwith-  
22          standing clause (i)(II), in the case of an  
23          alien who is authorized for employment  
24          and who provides evidence from the Social  
25          Security Administration that the alien has

1 applied for a social security account num-  
2 ber, the verification period ends three busi-  
3 ness days after the alien receives the social  
4 security account number.

5 “(2) REVERIFICATION FOR INDIVIDUALS WITH  
6 LIMITED WORK AUTHORIZATION.—

7 “(A) IN GENERAL.—Except as provided in  
8 subparagraph (B), a person or entity shall  
9 make an inquiry, as provided in subsection (d),  
10 using the verification system to seek  
11 reverification of the identity and employment  
12 eligibility of all individuals with a limited period  
13 of work authorization employed by the person  
14 or entity during the three business days after  
15 the date on which the employee’s work author-  
16 ization expires as follows:

17 “(i) With respect to employers having  
18 10,000 or more employees in the United  
19 States on the date of the enactment of the  
20 Legal Workforce Act, beginning on the  
21 date that is 6 months after the date of the  
22 enactment of such Act.

23 “(ii) With respect to employers having  
24 500 or more employees in the United  
25 States, but less than 10,000 employees in

1 the United States, on the date of the en-  
2 actment of the Legal Workforce Act, be-  
3 ginning on the date that is 12 months  
4 after the date of the enactment of such  
5 Act.

6 “(iii) With respect to employers hav-  
7 ing 20 or more employees in the United  
8 States, but less than 500 employees in the  
9 United States, on the date of the enact-  
10 ment of the Legal Workforce Act, begin-  
11 ning on the date that is 18 months after  
12 the date of the enactment of such Act.

13 “(iv) With respect to employers hav-  
14 ing 1 or more employees in the United  
15 States, but less than 20 employees in the  
16 United States, on the date of the enact-  
17 ment of the Legal Workforce Act, begin-  
18 ning on the date that is 24 months after  
19 the date of the enactment of such Act.

20 “(B) AGRICULTURAL LABOR OR SERV-  
21 ICES.—With respect to an employee performing  
22 agricultural labor or services, or an employee  
23 recruited or referred by a farm labor contractor  
24 (as defined in section 3 of the Migrant and Sea-  
25 sonal Agricultural Worker Protection Act (29

1 U.S.C. 1801)), subparagraph (A) shall not  
2 apply with respect to the reverification of the  
3 employee until the date that is 18 months after  
4 the date of the enactment of the Legal Work-  
5 force Act. For purposes of the preceding sen-  
6 tence, the term ‘agricultural labor or services’  
7 has the meaning given such term by the Sec-  
8 retary of Agriculture in regulations and in-  
9 cludes agricultural labor as defined in section  
10 3121(g) of the Internal Revenue Code of 1986,  
11 agriculture as defined in section 3(f) of the  
12 Fair Labor Standards Act of 1938 (29 U.S.C.  
13 203(f)), the handling, planting, drying, packing,  
14 packaging, processing, freezing, or grading  
15 prior to delivery for storage of any agricultural  
16 or horticultural commodity in its unmanufac-  
17 tured state, all activities required for the prepa-  
18 ration, processing, or manufacturing of a prod-  
19 uct of agriculture (as such term is defined in  
20 such section 3(f)) for further distribution, and  
21 activities similar to all the foregoing as they re-  
22 late to fish or shellfish facilities. An employee  
23 described in this subparagraph shall not be  
24 counted for purposes of subparagraph (A).

1                   “(C)           REVERIFICATION.—Paragraph  
2                   (1)(C)(ii) shall apply to reverifications pursuant  
3                   to this paragraph on the same basis as it ap-  
4                   plies to verifications pursuant to paragraph (1),  
5                   except that employers shall—

6                   “(i) use a form designated or estab-  
7                   lished by the Secretary by regulation for  
8                   purposes of this paragraph; and

9                   “(ii) retain a paper, microfiche, micro-  
10                  film, or electronic version of the form and  
11                  make it available for inspection by officers  
12                  of the Department of Homeland Security,  
13                  the Department of Justice, or the Depart-  
14                  ment of Labor during the period beginning  
15                  on the date the reverification commences  
16                  and ending on the date that is the later of  
17                  3 years after the date of such reverification  
18                  or 1 year after the date the individual’s  
19                  employment is terminated.

20                  “(3) PREVIOUSLY HIRED INDIVIDUALS.—

21                  “(A) ON A MANDATORY BASIS FOR CER-  
22                  TAIN EMPLOYEES.—

23                  “(i) IN GENERAL.—Not later than the  
24                  date that is 6 months after the date of the  
25                  enactment of the Legal Workforce Act, an

1 employer shall make an inquiry, as pro-  
2 vided in subsection (d), using the  
3 verification system to seek verification of  
4 the identity and employment eligibility of  
5 any individual described in clause (ii) em-  
6 ployed by the employer whose employment  
7 eligibility has not been verified under the  
8 E-Verify Program described in section  
9 403(a) of the Illegal Immigration Reform  
10 and Immigrant Responsibility Act of 1996  
11 (8 U.S.C. 1324a note).

12 “(ii) INDIVIDUALS DESCRIBED.—An  
13 individual described in this clause is any of  
14 the following:

15 “(I) An employee of any unit of  
16 a Federal, State, or local government.

17 “(II) An employee who requires a  
18 Federal security clearance working in  
19 a Federal, State or local government  
20 building, a military base, a nuclear  
21 energy site, a weapons site, or an air-  
22 port or other facility that requires  
23 workers to carry a Transportation  
24 Worker Identification Credential  
25 (TWIC).

1 “(III) An employee assigned to  
2 perform work in the United States  
3 under a Federal contract, except that  
4 this subclause—

5 “(aa) is not applicable to in-  
6 dividuals who have a clearance  
7 under Homeland Security Presi-  
8 dential Directive 12 (HSPD 12  
9 clearance), are administrative or  
10 overhead personnel, or are work-  
11 ing solely on contracts that pro-  
12 vide Commercial Off The Shelf  
13 goods or services as set forth by  
14 the Federal Acquisition Regu-  
15 latory Council, unless they are  
16 subject to verification under sub-  
17 clause (II); and

18 “(bb) only applies to con-  
19 tracts over the simple acquisition  
20 threshold as defined in section  
21 2.101 of title 48, Code of Federal  
22 Regulations.

23 “(B) ON A MANDATORY BASIS FOR MUL-  
24 TIPLE USERS OF SAME SOCIAL SECURITY AC-  
25 COUNT NUMBER.—In the case of an employer

1           who is required by this subsection to use the  
2           verification system described in subsection (d),  
3           or has elected voluntarily to use such system,  
4           the employer shall make inquiries to the system  
5           in accordance with the following:

6                   “(i) The Commissioner of Social Secu-  
7                   rity shall notify annually employees (at the  
8                   employee address listed on the Wage and  
9                   Tax Statement) who submit a social secu-  
10                  rity account number to which more than  
11                  one employer reports income and for which  
12                  there is a pattern of unusual multiple use.  
13                  The notification letter shall identify the  
14                  number of employers to which income is  
15                  being reported as well as sufficient infor-  
16                  mation notifying the employee of the proc-  
17                  ess to contact the Social Security Adminis-  
18                  tration Fraud Hotline if the employee be-  
19                  lieves the employee’s identity may have  
20                  been stolen. The notice shall not share in-  
21                  formation protected as private, in order to  
22                  avoid any recipient of the notice from  
23                  being in the position to further commit or  
24                  begin committing identity theft.



1           “(ii) If the person to whom the social  
2           security account number was issued by the  
3           Social Security Administration has been  
4           identified and confirmed by the Commis-  
5           sioner, and indicates that the social secu-  
6           rity account number was used without  
7           their knowledge, the Secretary and the  
8           Commissioner shall lock the social security  
9           account number for employment eligibility  
10          verification purposes and shall notify the  
11          employers of the individuals who wrong-  
12          fully submitted the social security account  
13          number that the employee may not be  
14          work eligible.

15          “(iii) Each employer receiving such  
16          notification of an incorrect social security  
17          account number under clause (ii) shall use  
18          the verification system described in sub-  
19          section (d) to check the work eligibility sta-  
20          tus of the applicable employee within 10  
21          business days of receipt of the notification.

22          “(C) ON A VOLUNTARY BASIS.—Subject to  
23          paragraph (2), and subparagraphs (A) through  
24          (C) of this paragraph, beginning on the date  
25          that is 30 days after the date of the enactment

1 of the Legal Workforce Act, an employer may  
2 make an inquiry, as provided in subsection (d),  
3 using the verification system to seek verification  
4 of the identity and employment eligibility of any  
5 individual employed by the employer. If an em-  
6 ployer chooses voluntarily to seek verification of  
7 any individual employed by the employer, the  
8 employer shall seek verification of all individ-  
9 uals employed at the same geographic location  
10 or, at the option of the employer, all individuals  
11 employed within the same job category, as the  
12 employee with respect to whom the employer  
13 seeks voluntarily to use the verification system.  
14 An employer's decision about whether or not  
15 voluntarily to seek verification of its current  
16 workforce under this subparagraph may not be  
17 considered by any government agency in any  
18 proceeding, investigation, or review provided for  
19 in this Act.

20 “(D) VERIFICATION.—Paragraph  
21 (1)(C)(ii) shall apply to verifications pursuant  
22 to this paragraph on the same basis as it ap-  
23 plies to verifications pursuant to paragraph (1),  
24 except that employers shall—

1 “(i) use a form designated or estab-  
2 lished by the Secretary by regulation for  
3 purposes of this paragraph; and

4 “(ii) retain a paper, microfiche, micro-  
5 film, or electronic version of the form and  
6 make it available for inspection by officers  
7 of the Department of Homeland Security,  
8 the Department of Justice, or the Depart-  
9 ment of Labor during the period beginning  
10 on the date the verification commences and  
11 ending on the date that is the later of 3  
12 years after the date of such verification or  
13 1 year after the date the individual’s em-  
14 ployment is terminated.

15 “(4) EARLY COMPLIANCE.—

16 “(A) FORMER E-VERIFY REQUIRED USERS,  
17 INCLUDING FEDERAL CONTRACTORS.—Notwith-  
18 standing the deadlines in paragraphs (1) and  
19 (2), beginning on the date of the enactment of  
20 the Legal Workforce Act, the Secretary is au-  
21 thorized to commence requiring employers re-  
22 quired to participate in the E-Verify Program  
23 described in section 403(a) of the Illegal Immi-  
24 gration Reform and Immigrant Responsibility  
25 Act of 1996 (8 U.S.C. 1324a note), including

1 employers required to participate in such pro-  
2 gram by reason of Federal acquisition laws  
3 (and regulations promulgated under those laws,  
4 including the Federal Acquisition Regulation),  
5 to commence compliance with the requirements  
6 of this subsection (and any additional require-  
7 ments of such Federal acquisition laws and reg-  
8 ulation) in lieu of any requirement to partici-  
9 pate in the E-Verify Program.

10 “(B) FORMER E-VERIFY VOLUNTARY  
11 USERS AND OTHERS DESIRING EARLY COMPLI-  
12 ANCE.—Notwithstanding the deadlines in para-  
13 graphs (1) and (2), beginning on the date of  
14 the enactment of the Legal Workforce Act, the  
15 Secretary shall provide for the voluntary com-  
16 pliance with the requirements of this subsection  
17 by employers voluntarily electing to participate  
18 in the E-Verify Program described in section  
19 403(a) of the Illegal Immigration Reform and  
20 Immigrant Responsibility Act of 1996 (8 U.S.C.  
21 1324a note) before such date, as well as by  
22 other employers seeking voluntary early compli-  
23 ance.

24 “(5) COPYING OF DOCUMENTATION PER-  
25 MITTED.—Notwithstanding any other provision of

1 law, the person or entity may copy a document pre-  
2 sented by an individual pursuant to this subsection  
3 and may retain the copy, but only (except as other-  
4 wise permitted under law) for the purpose of com-  
5 plying with the requirements of this subsection.

6 “(6) LIMITATION ON USE OF FORMS.—A form  
7 designated or established by the Secretary of Home-  
8 land Security under this subsection and any infor-  
9 mation contained in or appended to such form, may  
10 not be used for purposes other than for enforcement  
11 of this Act and any other provision of Federal crimi-  
12 nal law.

13 “(7) GOOD FAITH COMPLIANCE.—

14 “(A) IN GENERAL.—Except as otherwise  
15 provided in this subsection, a person or entity  
16 is considered to have complied with a require-  
17 ment of this subsection notwithstanding a tech-  
18 nical or procedural failure to meet such require-  
19 ment if there was a good faith attempt to com-  
20 ply with the requirement.

21 “(B) EXCEPTION IF FAILURE TO CORRECT  
22 AFTER NOTICE.—Subparagraph (A) shall not  
23 apply if—

24 “(i) the failure is not de minimus;

1           “(ii) the Secretary of Homeland Secu-  
2           rity has explained to the person or entity  
3           the basis for the failure and why it is not  
4           de minimus;

5           “(iii) the person or entity has been  
6           provided a period of not less than 30 cal-  
7           endar days (beginning after the date of the  
8           explanation) within which to correct the  
9           failure; and

10          “(iv) the person or entity has not cor-  
11          rected the failure voluntarily within such  
12          period.

13          “(C) EXCEPTION FOR PATTERN OR PRAC-  
14          TICE VIOLATORS.—Subparagraph (A) shall not  
15          apply to a person or entity that has or is engag-  
16          ing in a pattern or practice of violations of sub-  
17          section (a)(1)(A) or (a)(2).

18          “(8) SINGLE EXTENSION OF DEADLINES UPON  
19          CERTIFICATION.—In a case in which the Secretary  
20          of Homeland Security has certified to the Congress  
21          that the employment eligibility verification system  
22          required under subsection (d) will not be fully oper-  
23          ational by the date that is 6 months after the date  
24          of the enactment of the Legal Workforce Act, each  
25          deadline established under this section for an em-

1        ployer to make an inquiry using such system shall  
 2        be extended by 6 months. No other extension of such  
 3        a deadline shall be made except as authorized under  
 4        paragraph (1)(D)(iv).”.

5        (b) DATE OF HIRE.—Section 274A(h) of the Immi-  
 6        gration and Nationality Act (8 U.S.C. 1324a(h)) is  
 7        amended by adding at the end the following:

8                “(4) DEFINITION OF DATE OF HIRE.—As used  
 9        in this section, the term ‘date of hire’ means the  
 10       date of actual commencement of employment for  
 11       wages or other remuneration, unless otherwise speci-  
 12       fied.”.

13       **SEC. 1103. EMPLOYMENT ELIGIBILITY VERIFICATION SYS-**  
 14                **TEM.**

15        Section 274A(d) of the Immigration and Nationality  
 16       Act (8 U.S.C. 1324a(d)) is amended to read as follows:

17        “(d) EMPLOYMENT ELIGIBILITY VERIFICATION SYS-  
 18       TEM.—

19                “(1) IN GENERAL.—Patterned on the employ-  
 20       ment eligibility confirmation system established  
 21       under section 404 of the Illegal Immigration Reform  
 22       and Immigrant Responsibility Act of 1996 (8 U.S.C.  
 23       1324a note), the Secretary of Homeland Security  
 24       shall establish and administer a verification system  
 25       through which the Secretary (or a designee of the

1 Secretary, which may be a nongovernmental enti-  
2 ty)—

3 “(A) responds to inquiries made by per-  
4 sons at any time through a toll-free telephone  
5 line and other toll-free electronic media con-  
6 cerning an individual’s identity and whether the  
7 individual is authorized to be employed; and

8 “(B) maintains records of the inquiries  
9 that were made, of verifications provided (or  
10 not provided), and of the codes provided to in-  
11 quirers as evidence of their compliance with  
12 their obligations under this section.

13 “(2) INITIAL RESPONSE.—The verification sys-  
14 tem shall provide confirmation or a tentative non-  
15 confirmation of an individual’s identity and employ-  
16 ment eligibility within 3 working days of the initial  
17 inquiry. If providing confirmation or tentative non-  
18 confirmation, the verification system shall provide an  
19 appropriate code indicating such confirmation or  
20 such nonconfirmation.

21 “(3) SECONDARY CONFIRMATION PROCESS IN  
22 CASE OF TENTATIVE NONCONFIRMATION.—In cases  
23 of tentative nonconfirmation, the Secretary shall  
24 specify, in consultation with the Commissioner of  
25 Social Security, an available secondary verification



1 process to confirm the validity of information pro-  
2 vided and to provide a final confirmation or noncon-  
3 firmation not later than 10 working days after the  
4 date on which the notice of the tentative noncon-  
5 firmation is received by the employee. The Secretary,  
6 in consultation with the Commissioner, may extend  
7 this deadline once on a case-by-case basis for a pe-  
8 riod of 10 working days, and if the time is extended,  
9 shall document such extension within the verification  
10 system. The Secretary, in consultation with the  
11 Commissioner, shall notify the employee and em-  
12 ployer of such extension. The Secretary, in consulta-  
13 tion with the Commissioner, shall create a standard  
14 process of such extension and notification and shall  
15 make a description of such process available to the  
16 public. When final confirmation or nonconfirmation  
17 is provided, the verification system shall provide an  
18 appropriate code indicating such confirmation or  
19 nonconfirmation.

20 “(4) DESIGN AND OPERATION OF SYSTEM.—

21 The verification system shall be designed and oper-  
22 ated—

23 “(A) to maximize its reliability and ease of  
24 use by persons and other entities consistent

1 with insulating and protecting the privacy and  
2 security of the underlying information;

3 “(B) to respond to all inquiries made by  
4 such persons and entities on whether individ-  
5 uals are authorized to be employed and to reg-  
6 ister all times when such inquiries are not re-  
7 ceived;

8 “(C) with appropriate administrative, tech-  
9 nical, and physical safeguards to prevent unau-  
10 thorized disclosure of personal information;

11 “(D) to have reasonable safeguards against  
12 the system’s resulting in unlawful discrimina-  
13 tory practices based on national origin or citi-  
14 zenship status, including—

15 “(i) the selective or unauthorized use  
16 of the system to verify eligibility; or

17 “(ii) the exclusion of certain individ-  
18 uals from consideration for employment as  
19 a result of a perceived likelihood that addi-  
20 tional verification will be required, beyond  
21 what is required for most job applicants;

22 “(E) to maximize the prevention of iden-  
23 tity theft use in the system; and

24 “(F) to limit the subjects of verification to  
25 the following individuals:

1 “(i) Individuals hired, referred, or re-  
2 cruited, in accordance with paragraph (1)  
3 or (4) of subsection (b).

4 “(ii) Employees and prospective em-  
5 ployees, in accordance with paragraph (1),  
6 (2), (3), or (4) of subsection (b).

7 “(iii) Individuals seeking to confirm  
8 their own employment eligibility on a vol-  
9 untary basis.

10 “(5) RESPONSIBILITIES OF COMMISSIONER OF  
11 SOCIAL SECURITY.—As part of the verification sys-  
12 tem, the Commissioner of Social Security, in con-  
13 sultation with the Secretary of Homeland Security  
14 (and any designee of the Secretary selected to estab-  
15 lish and administer the verification system), shall es-  
16 tablish a reliable, secure method, which, within the  
17 time periods specified under paragraphs (2) and (3),  
18 compares the name and social security account num-  
19 ber provided in an inquiry against such information  
20 maintained by the Commissioner in order to validate  
21 (or not validate) the information provided regarding  
22 an individual whose identity and employment eligi-  
23 bility must be confirmed, the correspondence of the  
24 name and number, and whether the individual has  
25 presented a social security account number that is

1 not valid for employment. The Commissioner shall  
2 not disclose or release social security information  
3 (other than such confirmation or nonconfirmation)  
4 under the verification system except as provided for  
5 in this section or section 205(c)(2)(I) of the Social  
6 Security Act.

7 “(6) RESPONSIBILITIES OF SECRETARY OF  
8 HOMELAND SECURITY.—As part of the verification  
9 system, the Secretary of Homeland Security (in con-  
10 sultation with any designee of the Secretary selected  
11 to establish and administer the verification system),  
12 shall establish a reliable, secure method, which, with-  
13 in the time periods specified under paragraphs (2)  
14 and (3), compares the name and alien identification  
15 or authorization number (or any other information  
16 as determined relevant by the Secretary) which are  
17 provided in an inquiry against such information  
18 maintained or accessed by the Secretary in order to  
19 validate (or not validate) the information provided,  
20 the correspondence of the name and number, wheth-  
21 er the alien is authorized to be employed in the  
22 United States, or to the extent that the Secretary  
23 determines to be feasible and appropriate, whether  
24 the records available to the Secretary verify the  
25 identity or status of a national of the United States.

1           “(7) UPDATING INFORMATION.—The Commis-  
2           sioner of Social Security and the Secretary of Home-  
3           land Security shall update their information in a  
4           manner that promotes the maximum accuracy and  
5           shall provide a process for the prompt correction of  
6           erroneous information, including instances in which  
7           it is brought to their attention in the secondary  
8           verification process described in paragraph (3).

9           “(8) LIMITATION ON USE OF THE  
10          VERIFICATION SYSTEM AND ANY RELATED SYS-  
11          TEMS.—

12                 “(A) NO NATIONAL IDENTIFICATION  
13          CARD.—Nothing in this section shall be con-  
14          strued to authorize, directly or indirectly, the  
15          issuance or use of national identification cards  
16          or the establishment of a national identification  
17          card.

18                 “(B) CRITICAL INFRASTRUCTURE.—The  
19          Secretary may authorize or direct any person or  
20          entity responsible for granting access to, pro-  
21          tecting, securing, operating, administering, or  
22          regulating part of the critical infrastructure (as  
23          defined in section 1016(e) of the Critical Infra-  
24          structure Protection Act of 2001 (42 U.S.C.  
25          5195c(e))) to use the verification system to the

1 extent the Secretary determines that such use  
 2 will assist in the protection of the critical infra-  
 3 structure.

4 “(9) REMEDIES.—If an individual alleges that  
 5 the individual would not have been dismissed from  
 6 a job but for an error of the verification mechanism,  
 7 the individual may seek compensation only through  
 8 the mechanism of the Federal Tort Claims Act, and  
 9 injunctive relief to correct such error. No class ac-  
 10 tion may be brought under this paragraph.”.

11 **SEC. 1104. RECRUITMENT, REFERRAL, AND CONTINUATION**  
 12 **OF EMPLOYMENT.**

13 (a) ADDITIONAL CHANGES TO RULES FOR RECRUIT-  
 14 MENT, REFERRAL, AND CONTINUATION OF EMPLOY-  
 15 MENT.—Section 274A(a) of the Immigration and Nation-  
 16 ality Act (8 U.S.C. 1324a(a)) is amended—

17 (1) in paragraph (1)(A), by striking “for a fee”;

18 (2) in paragraph (1), by amending subpara-  
 19 graph (B) to read as follows:

20 “(B) to hire, continue to employ, or to re-  
 21 cruit or refer for employment in the United  
 22 States an individual without complying with the  
 23 requirements of subsection (b).”; and

24 (3) in paragraph (2), by striking “after hiring  
 25 an alien for employment in accordance with para-

1 graph (1),” and inserting “after complying with  
2 paragraph (1),”.

3 (b) DEFINITION.—Section 274A(h) of the Immigra-  
4 tion and Nationality Act (8 U.S.C. 1324a(h)), as amended  
5 by this title, is further amended by adding at the end the  
6 following:

7 “(5) DEFINITION OF RECRUIT OR REFER.—As  
8 used in this section, the term ‘refer’ means the act  
9 of sending or directing a person who is in the United  
10 States or transmitting documentation or information  
11 to another, directly or indirectly, with the intent of  
12 obtaining employment in the United States for such  
13 person. Only persons or entities referring for remu-  
14 nation (whether on a retainer or contingency  
15 basis) are included in the definition, except that  
16 union hiring halls that refer union members or non-  
17 union individuals who pay union membership dues  
18 are included in the definition whether or not they re-  
19 ceive remuneration, as are labor service entities or  
20 labor service agencies, whether public, private, for-  
21 profit, or nonprofit, that refer, dispatch, or other-  
22 wise facilitate the hiring of laborers for any period  
23 of time by a third party. As used in this section, the  
24 term ‘recruit’ means the act of soliciting a person  
25 who is in the United States, directly or indirectly,

1       and referring the person to another with the intent  
2       of obtaining employment for that person. Only per-  
3       sons or entities referring for remuneration (whether  
4       on a retainer or contingency basis) are included in  
5       the definition, except that union hiring halls that  
6       refer union members or nonunion individuals who  
7       pay union membership dues are included in this defi-  
8       nition whether or not they receive remuneration, as  
9       are labor service entities or labor service agencies,  
10      whether public, private, for-profit, or nonprofit that  
11      recruit, dispatch, or otherwise facilitate the hiring of  
12      laborers for any period of time by a third party.”.

13      (c) EFFECTIVE DATE.—The amendments made by  
14      this section shall take effect on the date that is 1 year  
15      after the date of the enactment of this Act, except that  
16      the amendments made by subsection (a) shall take effect  
17      6 months after the date of the enactment of this Act inso-  
18      far as such amendments relate to continuation of employ-  
19      ment.

20      **SEC. 1105. GOOD FAITH DEFENSE.**

21      Section 274A(a)(3) of the Immigration and Nation-  
22      ality Act (8 U.S.C. 1324a(a)(3)) is amended to read as  
23      follows:

24               “(3) GOOD FAITH DEFENSE.—



1           “(A) DEFENSE.—An employer (or person  
2           or entity that hires, employs, recruits, or refers  
3           (as defined in subsection (h)(5)), or is otherwise  
4           obligated to comply with this section) who es-  
5           tablishes that it has complied in good faith with  
6           the requirements of subsection (b)—

7                   “(i) shall not be liable to a job appli-  
8                   cant, an employee, the Federal Govern-  
9                   ment, or a State or local government,  
10                  under Federal, State, or local criminal or  
11                  civil law for any employment-related action  
12                  taken with respect to a job applicant or  
13                  employee in good-faith reliance on informa-  
14                  tion provided through the system estab-  
15                  lished under subsection (d); and

16                  “(ii) has established compliance with  
17                  its obligations under subparagraphs (A)  
18                  and (B) of paragraph (1) and subsection  
19                  (b) absent a showing by the Secretary of  
20                  Homeland Security, by clear and con-  
21                  vincing evidence, that the employer had  
22                  knowledge that an employee is an unau-  
23                  thorized alien.

24           “(B) MITIGATION ELEMENT.—For pur-  
25           poses of subparagraph (A)(i), if an employer

1 proves by a preponderance of the evidence that  
2 the employer uses a reasonable, secure, and es-  
3 tablished technology to authenticate the identity  
4 of the new employee, that fact shall be taken  
5 into account for purposes of determining good  
6 faith use of the system established under sub-  
7 section (d).

8 “(C) FAILURE TO SEEK AND OBTAIN  
9 VERIFICATION.—Subject to the effective dates  
10 and other deadlines applicable under subsection  
11 (b), in the case of a person or entity in the  
12 United States that hires, or continues to em-  
13 ploy, an individual, or recruits or refers an indi-  
14 vidual for employment, the following require-  
15 ments apply:

16 “(i) FAILURE TO SEEK  
17 VERIFICATION.—

18 “(I) IN GENERAL.—If the person  
19 or entity has not made an inquiry,  
20 under the mechanism established  
21 under subsection (d) and in accord-  
22 ance with the timeframes established  
23 under subsection (b), seeking  
24 verification of the identity and work  
25 eligibility of the individual, the de-

1           fense under subparagraph (A) shall  
2           not be considered to apply with re-  
3           spect to any employment, except as  
4           provided in subclause (II).

5           “(II) SPECIAL RULE FOR FAIL-  
6           URE OF VERIFICATION MECHANISM.—  
7           If such a person or entity in good  
8           faith attempts to make an inquiry in  
9           order to qualify for the defense under  
10          subparagraph (A) and the verification  
11          mechanism has registered that not all  
12          inquiries were responded to during the  
13          relevant time, the person or entity can  
14          make an inquiry until the end of the  
15          first subsequent working day in which  
16          the verification mechanism registers  
17          no nonresponses and qualify for such  
18          defense.

19          “(ii) FAILURE TO OBTAIN  
20          VERIFICATION.—If the person or entity  
21          has made the inquiry described in clause  
22          (i)(I) but has not received an appropriate  
23          verification of such identity and work eligi-  
24          bility under such mechanism within the  
25          time period specified under subsection

1 (d)(2) after the time the verification in-  
 2 quiry was received, the defense under sub-  
 3 paragraph (A) shall not be considered to  
 4 apply with respect to any employment after  
 5 the end of such time period.”.

6 **SEC. 1106. PREEMPTION AND STATES’ RIGHTS.**

7 Section 274A(h)(2) of the Immigration and Nation-  
 8 ality Act (8 U.S.C. 1324a(h)(2)) is amended to read as  
 9 follows:

10 “(2) PREEMPTION.—

11 “(A) SINGLE, NATIONAL POLICY.—The  
 12 provisions of this section preempt any State or  
 13 local law, ordinance, policy, or rule, including  
 14 any criminal or civil fine or penalty structure,  
 15 insofar as they may now or hereafter relate to  
 16 the hiring, continued employment, or status  
 17 verification for employment eligibility purposes,  
 18 of unauthorized aliens.

19 “(B) STATE ENFORCEMENT OF FEDERAL  
 20 LAW.—

21 “(i) BUSINESS LICENSING.—A State,  
 22 locality, municipality, or political subdivi-  
 23 sion may exercise its authority over busi-  
 24 ness licensing and similar laws as a pen-  
 25 alty for failure to use the verification sys-

1           tem described in subsection (d) to verify  
2           employment eligibility when and as re-  
3           quired under subsection (b).

4           “(ii) GENERAL RULES.—A State, at  
5           its own cost, may enforce the provisions of  
6           this section, but only insofar as such State  
7           follows the Federal regulations imple-  
8           menting this section, applies the Federal  
9           penalty structure set out in this section,  
10          and complies with all Federal rules and  
11          guidance concerning implementation of this  
12          section. Such State may collect any fines  
13          assessed under this section. An employer  
14          may not be subject to enforcement, includ-  
15          ing audit and investigation, by both a Fed-  
16          eral agency and a State for the same viola-  
17          tion under this section. Whichever entity,  
18          the Federal agency or the State, is first to  
19          initiate the enforcement action, has the  
20          right of first refusal to proceed with the  
21          enforcement action. The Secretary must  
22          provide copies of all guidance, training,  
23          and field instructions provided to Federal  
24          officials implementing the provisions of  
25          this section to each State.”.

1   **SEC. 1107. REPEAL.**

2           (a) IN GENERAL.—Subtitle A of title IV of the Illegal  
3   Immigration Reform and Immigrant Responsibility Act of  
4   1996 (8 U.S.C. 1324a note) is repealed.

5           (b) REFERENCES.—Any reference in any Federal  
6   law, Executive order, rule, regulation, or delegation of au-  
7   thority, or any document of, or pertaining to, the Depart-  
8   ment of Homeland Security, Department of Justice, or the  
9   Social Security Administration, to the employment eligi-  
10   bility confirmation system established under section 404  
11   of the Illegal Immigration Reform and Immigrant Respon-  
12   sibility Act of 1996 (8 U.S.C. 1324a note) is deemed to  
13   refer to the employment eligibility confirmation system es-  
14   tablished under section 274A(d) of the Immigration and  
15   Nationality Act, as amended by this title.

16          (c) EFFECTIVE DATE.—This section shall take effect  
17   on the date that is 24 months after the date of the enact-  
18   ment of this Act.

19          (d) CLERICAL AMENDMENT.—The table of sections,  
20   in section 1(d) of the Illegal Immigration Reform and Im-  
21   migrant Responsibility Act of 1996, is amended by strik-  
22   ing the items relating to subtitle A of title IV.

23   **SEC. 1108. PENALTIES.**

24          Section 274A of the Immigration and Nationality Act  
25   (8 U.S.C. 1324a) is amended—

26               (1) in subsection (e)(1)—

1 (A) by striking “Attorney General” each  
2 place such term appears and inserting “Sec-  
3 retary of Homeland Security”; and

4 (B) in subparagraph (D), by striking  
5 “Service” and inserting “Department of Home-  
6 land Security”;

7 (2) in subsection (e)(4)—

8 (A) in subparagraph (A), in the matter be-  
9 fore clause (i), by inserting “, subject to para-  
10 graph (10),” after “in an amount”;

11 (B) in subparagraph (A)(i), by striking  
12 “not less than \$250 and not more than  
13 \$2,000” and inserting “not less than \$2,500  
14 and not more than \$5,000”;

15 (C) in subparagraph (A)(ii), by striking  
16 “not less than \$2,000 and not more than  
17 \$5,000” and inserting “not less than \$5,000  
18 and not more than \$10,000”;

19 (D) in subparagraph (A)(iii), by striking  
20 “not less than \$3,000 and not more than  
21 \$10,000” and inserting “not less than \$10,000  
22 and not more than \$25,000”; and

23 (E) by moving the margin of the continu-  
24 ation text following subparagraph (B) two ems

1 to the left and by amending subparagraph (B)  
2 to read as follows:

3 “(B) may require the person or entity to  
4 take such other remedial action as is appro-  
5 priate.”;

6 (3) in subsection (e)(5)—

7 (A) in the paragraph heading, strike “PA-  
8 PERWORK”;

9 (B) by inserting “, subject to paragraphs  
10 (10) through (12),” after “in an amount”;

11 (C) by striking “\$100” and inserting  
12 “\$1,000”;

13 (D) by striking “\$1,000” and inserting  
14 “\$25,000”; and

15 (E) by adding at the end the following:  
16 “Failure by a person or entity to utilize the em-  
17 ployment eligibility verification system as re-  
18 quired by law, or providing information to the  
19 system that the person or entity knows or rea-  
20 sonably believes to be false, shall be treated as  
21 a violation of subsection (a)(1)(A).”;

22 (4) by adding at the end of subsection (e) the  
23 following:

24 “(10) EXEMPTION FROM PENALTY FOR GOOD  
25 FAITH VIOLATION.—In the case of imposition of a



1 civil penalty under paragraph (4)(A) with respect to  
2 a violation of subsection (a)(1)(A) or (a)(2) for hir-  
3 ing or continuation of employment or recruitment or  
4 referral by person or entity and in the case of impo-  
5 sition of a civil penalty under paragraph (5) for a  
6 violation of subsection (a)(1)(B) for hiring or re-  
7 cruitment or referral by a person or entity, the pen-  
8 alty otherwise imposed may be waived or reduced if  
9 the violator establishes that the violator acted in  
10 good faith.

11 “(11) MITIGATION ELEMENT.—For purposes of  
12 paragraph (4), the size of the business shall be  
13 taken into account when assessing the level of civil  
14 money penalty.

15 “(12) AUTHORITY TO DEBAR EMPLOYERS FOR  
16 CERTAIN VIOLATIONS.—

17 “(A) IN GENERAL.—If a person or entity  
18 is determined by the Secretary of Homeland Se-  
19 curity to be a repeat violator of paragraph  
20 (1)(A) or (2) of subsection (a), or is convicted  
21 of a crime under this section, such person or  
22 entity may be considered for debarment from  
23 the receipt of Federal contracts, grants, or co-  
24 operative agreements in accordance with the de-  
25 barment standards and pursuant to the debar-

1           ment procedures set forth in the Federal Acqui-  
2           sition Regulation.

3           “(B) DOES NOT HAVE CONTRACT, GRANT,  
4           AGREEMENT.—If the Secretary of Homeland  
5           Security or the Attorney General wishes to have  
6           a person or entity considered for debarment in  
7           accordance with this paragraph, and such an  
8           person or entity does not hold a Federal con-  
9           tract, grant or cooperative agreement, the Sec-  
10          retary or Attorney General shall refer the mat-  
11          ter to the Administrator of General Services to  
12          determine whether to list the person or entity  
13          on the List of Parties Excluded from Federal  
14          Procurement, and if so, for what duration and  
15          under what scope.

16          “(C) HAS CONTRACT, GRANT, AGREE-  
17          MENT.—If the Secretary of Homeland Security  
18          or the Attorney General wishes to have a per-  
19          son or entity considered for debarment in ac-  
20          cordance with this paragraph, and such person  
21          or entity holds a Federal contract, grant or co-  
22          operative agreement, the Secretary or Attorney  
23          General shall advise all agencies or departments  
24          holding a contract, grant, or cooperative agree-  
25          ment with the person or entity of the Govern-

1           ment’s interest in having the person or entity  
2           considered for debarment, and after soliciting  
3           and considering the views of all such agencies  
4           and departments, the Secretary or Attorney  
5           General may refer the matter to any appro-  
6           priate lead agency to determine whether to list  
7           the person or entity on the List of Parties Ex-  
8           cluded from Federal Procurement, and if so, for  
9           what duration and under what scope.

10           “(D) REVIEW.—Any decision to debar a  
11           person or entity in accordance with this para-  
12           graph shall be reviewable pursuant to part 9.4  
13           of the Federal Acquisition Regulation.

14           “(13) OFFICE FOR STATE AND LOCAL GOVERN-  
15           MENT COMPLAINTS.—The Secretary of Homeland  
16           Security shall establish an office—

17           “(A) to which State and local government  
18           agencies may submit information indicating po-  
19           tential violations of subsection (a), (b), or  
20           (g)(1) that were generated in the normal course  
21           of law enforcement or the normal course of  
22           other official activities in the State or locality;

23           “(B) that is required to indicate to the  
24           complaining State or local agency within five  
25           business days of the filing of such a complaint

1 by identifying whether the Secretary will fur-  
2 ther investigate the information provided;

3 “(C) that is required to investigate those  
4 complaints filed by State or local government  
5 agencies that, on their face, have a substantial  
6 probability of validity;

7 “(D) that is required to notify the com-  
8 plaining State or local agency of the results of  
9 any such investigation conducted; and

10 “(E) that is required to report to the Con-  
11 gress annually the number of complaints re-  
12 ceived under this paragraph, the States and lo-  
13 calities that filed such complaints, and the reso-  
14 lution of the complaints investigated by the Sec-  
15 retary.”; and

16 (5) by amending paragraph (1) of subsection (f)  
17 to read as follows:

18 “(1) CRIMINAL PENALTY.—Any person or enti-  
19 ty which engages in a pattern or practice of viola-  
20 tions of subsection (a)(1) or (2) shall be fined not  
21 more than \$5,000 for each unauthorized alien with  
22 respect to which such a violation occurs, imprisoned  
23 for not more than 18 months, or both, notwith-  
24 standing the provisions of any other Federal law re-  
25 lating to fine levels.”.

1 **SEC. 1109. FRAUD AND MISUSE OF DOCUMENTS.**

2 Section 1546(b) of title 18, United States Code, is  
3 amended—

4 (1) in paragraph (1), by striking “identification  
5 document,” and inserting “identification document  
6 or document meant to establish work authorization  
7 (including the documents described in section  
8 274A(b) of the Immigration and Nationality Act),”;  
9 and

10 (2) in paragraph (2), by striking “identification  
11 document” and inserting “identification document or  
12 document meant to establish work authorization (in-  
13 cluding the documents described in section 274A(b)  
14 of the Immigration and Nationality Act),”.

15 **SEC. 1110. PROTECTION OF SOCIAL SECURITY ADMINIS-**  
16 **TRATION PROGRAMS.**

17 (a) **FUNDING UNDER AGREEMENT.**—Effective for  
18 fiscal years beginning on or after October 1, 2019, the  
19 Commissioner of Social Security and the Secretary of  
20 Homeland Security shall enter into and maintain an  
21 agreement which shall—

22 (1) provide funds to the Commissioner for the  
23 full costs of the responsibilities of the Commissioner  
24 under section 274A(d) of the Immigration and Na-  
25 tionality Act (8 U.S.C. 1324a(d)), as amended by  
26 this title, including (but not limited to)—

1           (A) acquiring, installing, and maintaining  
2           technological equipment and systems necessary  
3           for the fulfillment of the responsibilities of the  
4           Commissioner under such section 274A(d), but  
5           only that portion of such costs that are attrib-  
6           utable exclusively to such responsibilities; and

7           (B) responding to individuals who contest  
8           a tentative nonconfirmation provided by the em-  
9           ployment eligibility verification system estab-  
10          lished under such section;

11          (2) provide such funds annually in advance of  
12          the applicable quarter based on estimating method-  
13          ology agreed to by the Commissioner and the Sec-  
14          retary (except in such instances where the delayed  
15          enactment of an annual appropriation may preclude  
16          such quarterly payments); and

17          (3) require an annual accounting and reconcili-  
18          ation of the actual costs incurred and the funds pro-  
19          vided under the agreement, which shall be reviewed  
20          by the Inspectors General of the Social Security Ad-  
21          ministration and the Department of Homeland Secu-  
22          rity.

23          (b) CONTINUATION OF EMPLOYMENT VERIFICATION  
24          IN ABSENCE OF TIMELY AGREEMENT.—In any case in  
25          which the agreement required under subsection (a) for any

1 fiscal year beginning on or after October 1, 2019, has not  
2 been reached as of October 1 of such fiscal year, the latest  
3 agreement between the Commissioner and the Secretary  
4 of Homeland Security providing for funding to cover the  
5 costs of the responsibilities of the Commissioner under  
6 section 274A(d) of the Immigration and Nationality Act  
7 (8 U.S.C. 1324a(d)) shall be deemed in effect on an in-  
8 terim basis for such fiscal year until such time as an  
9 agreement required under subsection (a) is subsequently  
10 reached, except that the terms of such interim agreement  
11 shall be modified by the Director of the Office of Manage-  
12 ment and Budget to adjust for inflation and any increase  
13 or decrease in the volume of requests under the employ-  
14 ment eligibility verification system. In any case in which  
15 an interim agreement applies for any fiscal year under this  
16 subsection, the Commissioner and the Secretary shall, not  
17 later than October 1 of such fiscal year, notify the Com-  
18 mittee on Ways and Means, the Committee on the Judici-  
19 ary, and the Committee on Appropriations of the House  
20 of Representatives and the Committee on Finance, the  
21 Committee on the Judiciary, and the Committee on Ap-  
22 propriations of the Senate of the failure to reach the  
23 agreement required under subsection (a) for such fiscal  
24 year. Until such time as the agreement required under  
25 subsection (a) has been reached for such fiscal year, the

1 Commissioner and the Secretary shall, not later than the  
2 end of each 90-day period after October 1 of such fiscal  
3 year, notify such Committees of the status of negotiations  
4 between the Commissioner and the Secretary in order to  
5 reach such an agreement.

6 **SEC. 1111. FRAUD PREVENTION.**

7       (a) **BLOCKING MISUSED SOCIAL SECURITY ACCOUNT**  
8 **NUMBERS.**—The Secretary of Homeland Security, in con-  
9 sultation with the Commissioner of Social Security, shall  
10 establish a program in which social security account num-  
11 bers that have been identified to be subject to unusual  
12 multiple use in the employment eligibility verification sys-  
13 tem established under section 274A(d) of the Immigration  
14 and Nationality Act (8 U.S.C. 1324a(d)), as amended by  
15 this title, or that are otherwise suspected or determined  
16 to have been compromised by identity fraud or other mis-  
17 use, shall be blocked from use for such system purposes  
18 unless the individual using such number is able to estab-  
19 lish, through secure and fair additional security proce-  
20 dures, that the individual is the legitimate holder of the  
21 number.

22       (b) **ALLOWING SUSPENSION OF USE OF CERTAIN SO-**  
23 **CIAL SECURITY ACCOUNT NUMBERS.**—The Secretary of  
24 Homeland Security, in consultation with the Commis-  
25 sioner of Social Security, shall establish a program which



1 shall provide a reliable, secure method by which victims  
2 of identity fraud and other individuals may suspend or  
3 limit the use of their social security account number or  
4 other identifying information for purposes of the employ-  
5 ment eligibility verification system established under sec-  
6 tion 274A(d) of the Immigration and Nationality Act (8  
7 U.S.C. 1324a(d)), as amended by this title. The Secretary  
8 may implement the program on a limited pilot program  
9 basis before making it fully available to all individuals.

10 (c) ALLOWING PARENTS TO PREVENT THEFT OF  
11 THEIR CHILD'S IDENTITY.—The Secretary of Homeland  
12 Security, in consultation with the Commissioner of Social  
13 Security, shall establish a program which shall provide a  
14 reliable, secure method by which parents or legal guard-  
15 ians may suspend or limit the use of the social security  
16 account number or other identifying information of a  
17 minor under their care for the purposes of the employment  
18 eligibility verification system established under 274A(d) of  
19 the Immigration and Nationality Act (8 U.S.C. 1324a(d)),  
20 as amended by this title. The Secretary may implement  
21 the program on a limited pilot program basis before mak-  
22 ing it fully available to all individuals.

1 **SEC. 1112. USE OF EMPLOYMENT ELIGIBILITY**  
2 **VERIFICATION PHOTO TOOL.**

3 An employer or entity who uses the photo matching  
4 tool, if required by the Secretary as part of the verification  
5 system, shall match, either visually, or using facial rec-  
6 ognition or other verification technology approved or re-  
7 quired by the Secretary, the photo matching tool photo-  
8 graph to the photograph on the identity or employment  
9 eligibility document provided by the individual or to the  
10 face of the employee submitting the document for employ-  
11 ment verification purposes, or both, as determined by the  
12 Secretary.

13 **SEC. 1113. IDENTITY AUTHENTICATION EMPLOYMENT ELI-**  
14 **GIBILITY VERIFICATION PILOT PROGRAMS.**

15 Not later than 24 months after the date of the enact-  
16 ment of this Act, the Secretary of Homeland Security,  
17 after consultation with the Commissioner of Social Secu-  
18 rity and the Director of the National Institute of Stand-  
19 ards and Technology, shall establish by regulation not less  
20 than 2 Identity Authentication Employment Eligibility  
21 Verification pilot programs, each using a separate and dis-  
22 tinct technology (the “Authentication Pilots”). The pur-  
23 pose of the Authentication Pilots shall be to provide for  
24 identity authentication and employment eligibility  
25 verification with respect to enrolled new employees which  
26 shall be available to any employer that elects to participate

1 in either of the Authentication Pilots. Any participating  
2 employer may cancel the employer's participation in the  
3 Authentication Pilot after one year after electing to par-  
4 ticipate without prejudice to future participation. The Sec-  
5 retary shall report to the Committee on the Judiciary of  
6 the House of Representatives and the Committee on the  
7 Judiciary of the Senate the Secretary's findings on the  
8 Authentication Pilots, including the authentication tech-  
9 nologies chosen, not later than 12 months after com-  
10 mencement of the Authentication Pilots.

11 **SEC. 1114. INSPECTOR GENERAL AUDITS.**

12 (a) IN GENERAL.—Not later than 1 year after the  
13 date of the enactment of this Act, the Inspector General  
14 of the Social Security Administration shall complete audits  
15 of the following categories in order to uncover evidence  
16 of individuals who are not authorized to work in the  
17 United States:

18 (1) Workers who dispute wages reported on  
19 their social security account number when they be-  
20 lieve someone else has used such number and name  
21 to report wages.

22 (2) Children's social security account numbers  
23 used for work purposes.

1           (3) Employers whose workers present signifi-  
2           cant numbers of mismatched social security account  
3           numbers or names for wage reporting.

4           (b) SUBMISSION.—The Inspector General of the So-  
5           cial Security Administration shall submit the audits com-  
6           pleted under subsection (a) to the Committee on Ways and  
7           Means of the House of Representatives and the Committee  
8           on Finance of the Senate for review of the evidence of  
9           individuals who are not authorized to work in the United  
10          States. The Chairmen of those Committees shall then de-  
11          termine information to be shared with the Secretary of  
12          Homeland Security so that such Secretary can investigate  
13          the unauthorized employment demonstrated by such evi-  
14          dence.

15   **TITLE    II—SANCTUARY    CITIES**  
16   **AND STATE AND LOCAL LAW**  
17   **ENFORCEMENT        COOPERA-**  
18   **TION**

19   **SEC. 2201. SHORT TITLE.**

20          This title may be cited as the “No Sanctuary for  
21          Criminals Act”.

1 **SEC. 2202. STATE NONCOMPLIANCE WITH ENFORCEMENT**  
2 **OF IMMIGRATION LAW.**

3 (a) IN GENERAL.—Section 642 of the Illegal Immi-  
4 gration Reform and Immigrant Responsibility Act of 1996  
5 (8 U.S.C. 1373) is amended—

6 (1) by striking subsection (a) and inserting the  
7 following:

8 “(a) IN GENERAL.—Notwithstanding any other pro-  
9 vision of Federal, State, or local law, no Federal, State,  
10 or local government entity, and no individual, may prohibit  
11 or in any way restrict, a Federal, State, or local govern-  
12 ment entity, official, or other personnel from complying  
13 with the immigration laws (as defined in section  
14 101(a)(17) of the Immigration and Nationality Act (8  
15 U.S.C. 1101(a)(17))), or from assisting or cooperating  
16 with Federal law enforcement entities, officials, or other  
17 personnel regarding the enforcement of these laws.”;

18 (2) by striking subsection (b) and inserting the  
19 following:

20 “(b) LAW ENFORCEMENT ACTIVITIES.—Notwith-  
21 standing any other provision of Federal, State, or local  
22 law, no Federal, State, or local government entity, and no  
23 individual, may prohibit, or in any way restrict, a Federal,  
24 State, or local government entity, official, or other per-  
25 sonnel from undertaking any of the following law enforce-  
26 ment activities as they relate to information regarding the

1 citizenship or immigration status, lawful or unlawful, the  
2 inadmissibility or deportability, or the custody status, of  
3 any individual:

4           “(1) Making inquiries to any individual in order  
5 to obtain such information regarding such individual  
6 or any other individuals.

7           “(2) Notifying the Federal Government regard-  
8 ing the presence of individuals who are encountered  
9 by law enforcement officials or other personnel of a  
10 State or political subdivision of a State.

11           “(3) Complying with requests for such informa-  
12 tion from Federal law enforcement entities, officials,  
13 or other personnel.”;

14           (3) in subsection (c), by striking “Immigration  
15 and Naturalization Service” and inserting “Depart-  
16 ment of Homeland Security”; and

17           (4) by adding at the end the following:

18           “(d) COMPLIANCE.—

19           “(1) ELIGIBILITY FOR CERTAIN GRANT PRO-  
20 GRAMS.—A State, or a political subdivision of a  
21 State, that is found not to be in compliance with  
22 subsection (a) or (b) shall not be eligible to receive—

23           “(A) any of the funds that would otherwise  
24 be allocated to the State or political subdivision  
25 under section 241(i) of the Immigration and

1           Nationality Act (8 U.S.C. 1231(i)), the ‘Cops  
2           on the Beat’ program under part Q of title I of  
3           the Omnibus Crime Control and Safe Streets  
4           Act of 1968 (34 U.S.C. 10381 et seq.), or the  
5           Edward Byrne Memorial Justice Assistance  
6           Grant Program under subpart 1 of part E of  
7           title I of the Omnibus Crime Control and Safe  
8           Streets Act of 1968 (34 U.S.C. 10151 et seq.);  
9           or

10           “(B) any other grant administered by the  
11           Department of Justice that is substantially re-  
12           lated to law enforcement (including enforcement  
13           of the immigration laws), immigration, enforce-  
14           ment of the immigration laws, or naturalization  
15           or administered by the Department of Home-  
16           land Security that is substantially related to im-  
17           migration, the enforcement of the immigration  
18           laws, or naturalization.

19           “(2) TRANSFER OF CUSTODY OF ALIENS PEND-  
20           ING REMOVAL PROCEEDINGS.—The Secretary, at the  
21           Secretary’s discretion, may decline to transfer an  
22           alien in the custody of the Department of Homeland  
23           Security to a State or political subdivision of a State  
24           found not to be in compliance with subsection (a) or

1 (b), regardless of whether the State or political sub-  
2 division of the State has issued a writ or warrant.

3 “(3) TRANSFER OF CUSTODY OF CERTAIN  
4 ALIENS PROHIBITED.—The Secretary shall not  
5 transfer an alien with a final order of removal pur-  
6 suant to paragraph (1)(A) or (5) of section 241(a)  
7 of the Immigration and Nationality Act (8 U.S.C.  
8 1231(a)) to a State or a political subdivision of a  
9 State that is found not to be in compliance with sub-  
10 section (a) or (b).

11 “(4) ANNUAL DETERMINATION.—The Secretary  
12 shall determine for each calendar year which States  
13 or political subdivision of States are not in compli-  
14 ance with subsection (a) or (b) and shall report such  
15 determinations to Congress by March 1 of each suc-  
16 ceeding calendar year.

17 “(5) REPORTS.—The Secretary of Homeland  
18 Security shall issue a report concerning the compli-  
19 ance with subsections (a) and (b) of any particular  
20 State or political subdivision of a State at the re-  
21 quest of the House or the Senate Judiciary Com-  
22 mittee. Any jurisdiction that is found not to be in  
23 compliance shall be ineligible to receive Federal fi-  
24 nancial assistance as provided in paragraph (1) for  
25 a minimum period of 1 year, and shall only become



1 eligible again after the Secretary of Homeland Secu-  
2 rity certifies that the jurisdiction has come into com-  
3 pliance.

4 “(6) REALLOCATION.—Any funds that are not  
5 allocated to a State or to a political subdivision of  
6 a State due to the failure of the State or of the po-  
7 litical subdivision of the State to comply with sub-  
8 section (a) or (b) shall be reallocated to States or to  
9 political subdivisions of States that comply with both  
10 such subsections.

11 “(e) CONSTRUCTION.—Nothing in this section shall  
12 require law enforcement officials from States, or from po-  
13 litical subdivisions of States, to report or arrest victims  
14 or witnesses of a criminal offense.”.

15 (b) EFFECTIVE DATE.—The amendments made by  
16 this section shall take effect on the date of the enactment  
17 of this Act, except that subsection (d) of section 642 of  
18 the Illegal Immigration Reform and Immigrant Responsi-  
19 bility Act of 1996 (8 U.S.C. 1373), as added by this sec-  
20 tion, shall apply only to prohibited acts committed on or  
21 after the date of the enactment of this Act.

1 **SEC. 2203. CLARIFYING THE AUTHORITY OF ICE DETAIN-**  
2 **ERS.**

3 (a) IN GENERAL.—Section 287(d) of the Immigra-  
4 tion and Nationality Act (8 U.S.C. 1357(d)) is amended  
5 to read as follows:

6 “(d) DETAINER OF INADMISSIBLE OR DEPORTABLE  
7 ALIENS.—

8 “(1) IN GENERAL.—In the case of an individual  
9 who is arrested by any Federal, State, or local law  
10 enforcement official or other personnel for the al-  
11 leged violation of any criminal or motor vehicle law,  
12 the Secretary may issue a detainer regarding the in-  
13 dividual to any Federal, State, or local law enforce-  
14 ment entity, official, or other personnel if the Sec-  
15 retary has probable cause to believe that the indi-  
16 vidual is an inadmissible or deportable alien.

17 “(2) PROBABLE CAUSE.—Probable cause is  
18 deemed to be established if—

19 “(A) the individual who is the subject of  
20 the detainer matches, pursuant to biometric  
21 confirmation or other Federal database records,  
22 the identity of an alien who the Secretary has  
23 reasonable grounds to believe to be inadmissible  
24 or deportable;

25 “(B) the individual who is the subject of  
26 the detainer is the subject of ongoing removal

1 proceedings, including matters where a charg-  
2 ing document has already been served;

3 “(C) the individual who is the subject of  
4 the detainer has previously been ordered re-  
5 moved from the United States and such an  
6 order is administratively final;

7 “(D) the individual who is the subject of  
8 the detainer has made voluntary statements or  
9 provided reliable evidence that indicate that  
10 they are an inadmissible or deportable alien; or

11 “(E) the Secretary otherwise has reason-  
12 able grounds to believe that the individual who  
13 is the subject of the detainer is an inadmissible  
14 or deportable alien.

15 “(3) TRANSFER OF CUSTODY.—If the Federal,  
16 State, or local law enforcement entity, official, or  
17 other personnel to whom a detainer is issued com-  
18 plies with the detainer and detains for purposes of  
19 transfer of custody to the Department of Homeland  
20 Security the individual who is the subject of the de-  
21 tainer, the Department may take custody of the in-  
22 dividual within 48 hours (excluding weekends and  
23 holidays), but in no instance more than 96 hours,  
24 following the date that the individual is otherwise to

1 be released from the custody of the relevant Federal,  
2 State, or local law enforcement entity.”.

3 (b) IMMUNITY.—

4 (1) IN GENERAL.—A State or a political sub-  
5 division of a State (and the officials and personnel  
6 of the State or subdivision acting in their official ca-  
7 pacities), and a nongovernmental entity (and its per-  
8 sonnel) contracted by the State or political subdivi-  
9 sion for the purpose of providing detention, acting in  
10 compliance with a Department of Homeland Secu-  
11 rity detainer issued pursuant to this section who  
12 temporarily holds an alien in its custody pursuant to  
13 the terms of a detainer so that the alien may be  
14 taken into the custody of the Department of Home-  
15 land Security, shall be considered to be acting under  
16 color of Federal authority for purposes of deter-  
17 mining their liability and shall be held harmless for  
18 their compliance with the detainer in any suit seek-  
19 ing any punitive, compensatory, or other monetary  
20 damages.

21 (2) FEDERAL GOVERNMENT AS DEFENDANT.—

22 In any civil action arising out of the compliance with  
23 a Department of Homeland Security detainer by a  
24 State or a political subdivision of a State (and the  
25 officials and personnel of the State or subdivision

1 acting in their official capacities), or a nongovern-  
2 mental entity (and its personnel) contracted by the  
3 State or political subdivision for the purpose of pro-  
4 viding detention, the United States Government  
5 shall be the proper party named as the defendant in  
6 the suit in regard to the detention resulting from  
7 compliance with the detainer.

8 (3) BAD FAITH EXCEPTION.—Paragraphs (1)  
9 and (2) shall not apply to any mistreatment of an  
10 individual by a State or a political subdivision of a  
11 State (and the officials and personnel of the State  
12 or subdivision acting in their official capacities), or  
13 a nongovernmental entity (and its personnel) con-  
14 tracted by the State or political subdivision for the  
15 purpose of providing detention.

16 (c) PRIVATE RIGHT OF ACTION.—

17 (1) CAUSE OF ACTION.—Any individual, or a  
18 spouse, parent, or child of that individual (if the in-  
19 dividual is deceased), who is the victim of a murder,  
20 rape, or any felony, as defined by the State, for  
21 which an alien (as defined in section 101(a)(3) of  
22 the Immigration and Nationality Act (8 U.S.C.  
23 1101(a)(3))) has been convicted and sentenced to a  
24 term of imprisonment of at least 1 year, may bring  
25 an action against a State or political subdivision of

1 a State or public official acting in an official capac-  
2 ity in the appropriate Federal court if the State or  
3 political subdivision, except as provided in paragraph  
4 (3)—

5 (A) released the alien from custody prior  
6 to the commission of such crime as a con-  
7 sequence of the State or political subdivision's  
8 declining to honor a detainer issued pursuant to  
9 section 287(d)(1) of the Immigration and Na-  
10 tionality Act (8 U.S.C. 1357(d)(1));

11 (B) has in effect a statute, policy, or prac-  
12 tice not in compliance with section 642 of the  
13 Illegal Immigration Reform and Immigrant Re-  
14 sponsibility Act of 1996 (8 U.S.C. 1373) as  
15 amended, and as a consequence of its statute,  
16 policy, or practice, released the alien from cus-  
17 tody prior to the commission of such crime; or

18 (C) has in effect a statute, policy, or prac-  
19 tice requiring a subordinate political subdivision  
20 to decline to honor any or all detainers issued  
21 pursuant to section 287(d)(1) of the Immigra-  
22 tion and Nationality Act (8 U.S.C. 1357(d)(1)),  
23 and, as a consequence of its statute, policy or  
24 practice, the subordinate political subdivision  
25 declined to honor a detainer issued pursuant to

1           such section, and as a consequence released the  
2           alien from custody prior to the commission of  
3           such crime.

4           (2) LIMITATIONS ON BRINGING ACTION.—An  
5           action may not be brought under this subsection  
6           later than 10 years following the occurrence of the  
7           crime, or death of a person as a result of such  
8           crime, whichever occurs later.

9           (3) PROPER DEFENDANT.—If a political sub-  
10          division of a State declines to honor a detainer  
11          issued pursuant to section 287(d)(1) of the Immi-  
12          gration and Nationality Act (8 U.S.C. 1357(d)) as  
13          a consequence of the State or another political sub-  
14          division with jurisdiction over the subdivision prohib-  
15          iting the subdivision through a statute or other legal  
16          requirement of the State or other political subdivi-  
17          sion—

18                       (A) from honoring the detainer; or

19                       (B) fully complying with section 642 of the  
20          Illegal Immigration Reform and Immigrant Re-  
21          sponsibility Act of 1996 (8 U.S.C. 1373),

22          and, as a consequence of the statute or other legal  
23          requirement of the State or other political subdivi-  
24          sion, the subdivision released the alien referred to in  
25          paragraph (1) from custody prior to the commission

1 of the crime referred to in that paragraph, the State  
2 or other political subdivision that enacted the statute  
3 or other legal requirement, shall be deemed to be the  
4 proper defendant in a cause of action under this  
5 subsection, and no such cause of action may be  
6 maintained against the political subdivision which  
7 declined to honor the detainer.

8 (4) ATTORNEY'S FEE AND OTHER COSTS.—In  
9 any action or proceeding under this subsection the  
10 court shall allow a prevailing plaintiff a reasonable  
11 attorneys' fee as part of the costs, and include ex-  
12 pert fees as part of the attorneys' fee.

13 (d) ELIGIBILITY FOR CERTAIN GRANT PROGRAMS.—

14 (1) IN GENERAL.—Except as provided in para-  
15 graph (2), a State or political subdivision of a State  
16 that has in effect a statute, policy or practice pro-  
17 viding that it not comply with any or all Department  
18 of Homeland Security detainers issued pursuant to  
19 section 287(d)(1) of the Immigration and Nation-  
20 ality Act (8 U.S.C. 1357(d)) shall not be eligible to  
21 receive—

22 (A) any of the funds that would otherwise  
23 be allocated to the State or political subdivision  
24 under section 241(i) of the Immigration and  
25 Nationality Act (8 U.S.C. 1231(i)), the "Cops



1 on the Beat” program under part Q of title I  
2 of the Omnibus Crime Control and Safe Streets  
3 Act of 1968 (34 U.S.C. 10301 et seq.), or the  
4 Edward Byrne Memorial Justice Assistance  
5 Grant Program under subpart 1 of part E of  
6 title I of the Omnibus Crime Control and Safe  
7 Streets Act of 1968 (34 U.S.C. 10151 et seq.);  
8 or

9 (B) any other grant administered by the  
10 Department of Justice that is substantially re-  
11 lated to law enforcement (including enforcement  
12 of the immigration laws), immigration, or natu-  
13 ralization or grant administered by the Depart-  
14 ment of Homeland Security that is substantially  
15 related to immigration, enforcement of the im-  
16 migration laws, or naturalization.

17 (2) EXCEPTION.—A political subdivision de-  
18 scribed in subsection (c)(3) that declines to honor a  
19 detainer issued pursuant to section 287(d)(1) of the  
20 Immigration and Nationality Act (8 U.S.C.  
21 1357(d)(1)) as a consequence of being required to  
22 comply with a statute or other legal requirement of  
23 a State or another political subdivision with jurisdic-  
24 tion over that political subdivision, shall remain eli-  
25 gible to receive grant funds described in paragraph

1       (1). In the case described in the previous sentence,  
2       the State or political subdivision that enacted the  
3       statute or other legal requirement shall not be eligi-  
4       ble to receive such funds.

5   **SEC. 2204. SARAH AND GRANT'S LAW.**

6       (a) DETENTION OF ALIENS DURING REMOVAL PRO-  
7   CEEDINGS.—

8           (1) CLERICAL AMENDMENTS.—(A) Section 236  
9       of the Immigration and Nationality Act (8 U.S.C.  
10      1226) is amended by striking “Attorney General”  
11      each place it appears (except in the second place  
12      that term appears in section 236(a)) and inserting  
13      “Secretary of Homeland Security”.

14          (B) Section 236(a) of such Act (8 U.S.C.  
15      1226(a)) is amended by inserting “the Secretary of  
16      Homeland Security or” before “the Attorney Gen-  
17      eral—”.

18          (C) Section 236(e) of such Act (8 U.S.C.  
19      1226(e)) is amended by striking “Attorney Gen-  
20      eral’s” and inserting “Secretary of Homeland Secu-  
21      rity’s”.

22          (2) LENGTH OF DETENTION.—Section 236 of  
23      such Act (8 U.S.C. 1226) is amended by adding at  
24      the end the following:

25      “(f) LENGTH OF DETENTION.—

1           “(1) IN GENERAL.—Notwithstanding any other  
2           provision of this section, an alien may be detained,  
3           and for an alien described in subsection (c) shall be  
4           detained, under this section without time limitation,  
5           except as provided in subsection (h), during the  
6           pendency of removal proceedings.

7           “(2) CONSTRUCTION.—The length of detention  
8           under this section shall not affect detention under  
9           section 241.”.

10           (3) DETENTION OF CRIMINAL ALIENS.—Section  
11           236(c)(1) of such Act (8 U.S.C. 1226(c)(1)) is  
12           amended—

13                   (A) in subparagraph (C), by striking “or”  
14                   at the end;

15                   (B) by inserting after subparagraph (D)  
16                   the following:

17                           “(E) is unlawfully present in the United  
18                           States and has been convicted for driving while  
19                           intoxicated (including a conviction for driving  
20                           while under the influence or impaired by alcohol  
21                           or drugs) without regard to whether the convic-  
22                           tion is classified as a misdemeanor or felony  
23                           under State law, or

24                           “(F)(i)(I) is inadmissible under section  
25                           212(a)(6)(i),

1           “(II) is deportable by reason of a visa rev-  
2           ocation under section 221(i), or

3           “(III) is deportable under section  
4           237(a)(1)(C)(i), and

5           “(ii) has been arrested or charged with a  
6           particularly serious crime or a crime resulting  
7           in the death or serious bodily injury (as defined  
8           in section 1365(h)(3) of title 18, United States  
9           Code) of another person;”; and

10           (C) by amending the matter following sub-  
11           paragraph (F) (as added by subparagraph (B)  
12           of this paragraph) to read as follows:

13           “any time after the alien is released, without regard  
14           to whether an alien is released related to any activity, of-  
15           fense, or conviction described in this paragraph; to wheth-  
16           er the alien is released on parole, supervised release, or  
17           probation; or to whether the alien may be arrested or im-  
18           prisoned again for the same offense. If the activity de-  
19           scribed in this paragraph does not result in the alien being  
20           taken into custody by any person other than the Secretary,  
21           then when the alien is brought to the attention of the Sec-  
22           retary or when the Secretary determines it is practical to  
23           take such alien into custody, the Secretary shall take such  
24           alien into custody.”.

1           (4) ADMINISTRATIVE REVIEW.—Section 236 of  
2       the Immigration and Nationality Act (8 U.S.C.  
3       1226), as amended by paragraph (2), is further  
4       amended by adding at the end the following:

5       “(g) ADMINISTRATIVE REVIEW.—The Attorney Gen-  
6       eral’s review of the Secretary’s custody determinations  
7       under subsection (a) for the following classes of aliens  
8       shall be limited to whether the alien may be detained, re-  
9       leased on bond (of at least \$1,500 with security approved  
10      by the Secretary), or released with no bond:

11           “(1) Aliens in exclusion proceedings.

12           “(2) Aliens described in section 212(a)(3) or  
13       237(a)(4).

14           “(3) Aliens described in subsection (c).

15       “(h) RELEASE ON BOND.—

16           “(1) IN GENERAL.—An alien detained under  
17       subsection (a) may seek release on bond. No bond  
18       may be granted except to an alien who establishes  
19       by clear and convincing evidence that the alien is not  
20       a flight risk or a danger to another person or the  
21       community.

22           “(2) CERTAIN ALIENS INELIGIBLE.—No alien  
23       detained under subsection (c) may seek release on  
24       bond.”.

1           (5) CLERICAL AMENDMENTS.—(A) Section  
2       236(a)(2)(B) of the Immigration and Nationality  
3       Act (8 U.S.C. 1226(a)(2)(B)) is amended by strik-  
4       ing “conditional parole” and inserting “recogn-  
5       nizance”.

6           (B) Section 236(b) of such Act (8 U.S.C.  
7       1226(b)) is amended by striking “parole” and in-  
8       serting “recognizance”.

9       (b) EFFECTIVE DATE.—The amendments made by  
10      subsection (a) shall take effect on the date of the enact-  
11      ment of this Act and shall apply to any alien in detention  
12      under the provisions of section 236 of the Immigration  
13      and Nationality Act (8 U.S.C. 1226), as so amended, or  
14      otherwise subject to the provisions of such section, on or  
15      after such date.

16   **SEC. 2205. CLARIFICATION OF CONGRESSIONAL INTENT.**

17       Section 287(g) of the Immigration and Nationality  
18      Act (8 U.S.C. 1357(g)) is amended—

19           (1) in paragraph (1) by striking “may enter”  
20       and all that follows through the period at the end  
21       and inserting the following: “shall enter into a writ-  
22       ten agreement with a State, or any political subdivi-  
23       sion of a State, upon request of the State or political  
24       subdivision, pursuant to which officers or employees  
25       of the State or subdivision, who are determined by

1 the Secretary to be qualified to perform a function  
2 of an immigration officer in relation to the investiga-  
3 tion, apprehension, or detention of aliens in the  
4 United States (including the transportation of such  
5 aliens across State lines to detention centers), may  
6 carry out such function at the expense of the State  
7 or political subdivision and to the extent consistent  
8 with State and local law. No request from a bona  
9 fide State or political subdivision or bona fide law  
10 enforcement agency shall be denied absent a compel-  
11 ling reason. No limit on the number of agreements  
12 under this subsection may be imposed. The Sec-  
13 retary shall process requests for such agreements  
14 with all due haste, and in no case shall take not  
15 more than 90 days from the date the request is  
16 made until the agreement is consummated.”;

17 (2) by redesignating paragraph (2) as para-  
18 graph (5) and paragraphs (3) through (10) as para-  
19 graphs (7) through (14), respectively;

20 (3) by inserting after paragraph (1) the fol-  
21 lowing:

22 “(2) An agreement under this subsection shall accom-  
23 modate a requesting State or political subdivision with re-  
24 spect to the enforcement model or combination of models,  
25 and shall accommodate a patrol model, task force model,

1 jail model, any combination thereof, or any other reason-  
2 able model the State or political subdivision believes is best  
3 suited to the immigration enforcement needs of its juris-  
4 diction.

5 “(3) No Federal program or technology directed  
6 broadly at identifying inadmissible or deportable aliens  
7 shall substitute for such agreements, including those es-  
8 tablishing a jail model, and shall operate in addition to  
9 any agreement under this subsection.

10 “(4)(A) No agreement under this subsection shall be  
11 terminated absent a compelling reason.

12 “(B)(i) The Secretary shall provide a State or polit-  
13 ical subdivision written notice of intent to terminate at  
14 least 180 days prior to date of intended termination, and  
15 the notice shall fully explain the grounds for termination,  
16 along with providing evidence substantiating the Sec-  
17 retary’s allegations.

18 “(ii) The State or political subdivision shall have the  
19 right to a hearing before an administrative law judge and,  
20 if the ruling is against the State or political subdivision,  
21 to appeal the ruling to the Federal Circuit Court of Ap-  
22 peals and, if the ruling is against the State or political  
23 subdivision, to petition the Supreme Court for certiorari.

24 “(C) The agreement shall remain in full effect during  
25 the course of any and all legal proceedings.”; and



1           (4) by inserting after paragraph (5) (as redesignated) the following:

3           “(6) The Secretary of Homeland Security shall make  
4 training of State and local law enforcement officers available through as many means as possible, including  
5 through residential training at the Center for Domestic  
6 Preparedness and the Federal Law Enforcement Training  
7 Center, onsite training held at State or local police agencies or facilities, online training courses by computer, teleconferencing, and videotape, or the digital video display  
8 (DVD) of a training course or courses. Distance learning  
9 through a secure, encrypted, distributed learning system  
10 that has all its servers based in the United States, is scalable, survivable, and can have a portal in place not later  
11 than 30 days after the date of the enactment of the Securing America’s Future Act of 2018, shall be made available  
12 by the COPS Office of the Department of Justice and the  
13 Federal Law Enforcement Training Center Distributed  
14 Learning Program for State and local law enforcement  
15 personnel. Preference shall be given to private sector-based, web-based immigration enforcement training programs for which the Federal Government has already provided support to develop.”.

1 **SEC. 2206. PENALTIES FOR ILLEGAL ENTRY OR PRESENCE.**

2 (a) IN GENERAL.—Section 275 of the Immigration  
3 and Nationality Act (8 U.S.C. 1325) is amended to read  
4 as follows:

5 “ILLEGAL ENTRY OR PRESENCE

6 “SEC. 275. (a) IN GENERAL.—

7 “(1) ILLEGAL ENTRY OR PRESENCE.—An alien  
8 shall be subject to the penalties set forth in para-  
9 graph (2) if the alien—

10 “(A) knowingly enters or crosses the bor-  
11 der into the United States at any time or place  
12 other than as designated by the Secretary of  
13 Homeland Security;

14 “(B) knowingly eludes, at any time or  
15 place, examination or inspection by an author-  
16 ized immigration, customs, or agriculture offi-  
17 cer (including by failing to stop at the com-  
18 mand of such officer);

19 “(C) knowingly enters or crosses the bor-  
20 der to the United States and, upon examination  
21 or inspection, knowingly makes a false or mis-  
22 leading representation or the knowing conceal-  
23 ment of a material fact (including such rep-  
24 resentation or concealment in the context of ar-  
25 rival, reporting, entry, or clearance require-

ments of the customs laws, immigration laws, agriculture laws, or shipping laws);

“(D) knowingly violates the terms or conditions of the alien’s admission or parole into the United States and has remained in violation for an aggregate period of 90 days or more; or

“(E) knowingly is unlawfully present in the United States (as defined in section 212(a)(9)(B)(ii) subject to the exceptions set forth in section 212(a)(9)(B)(iii)) and has remained in violation for an aggregate period of 90 days or more.

“(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 not more than 6 months in the case of a second or subsequent violation of paragraph (1)(E)), or both;

“(C) if the violation occurred after the alien had been convicted of 3 or more mis-

1           demeanors or for a felony, shall be fined under  
2           such title, imprisoned not more than 10 years,  
3           or both;

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

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

16          “(3) PRIOR CONVICTIONS.—The prior convic-  
17          tions described in subparagraphs (C) through (E) of  
18          paragraph (2) are elements of the offenses described  
19          and the penalties in such subparagraphs shall apply  
20          only in cases in which the conviction or convictions  
21          that form the basis for the additional penalty are—

22                 “(A) alleged in the indictment or informa-  
23                 tion; and

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

1           “(4) DURATION OF OFFENSE.—An offense  
2           under this subsection continues until the alien is dis-  
3           covered within the United States by an immigration,  
4           customs, or agriculture officer, or until the alien is  
5           granted a valid visa or relief from removal.

6           “(5) ATTEMPT.—Whoever attempts to commit  
7           any offense under this section shall be punished in  
8           the same manner as for a completion of such of-  
9           fense.

10          “(b) IMPROPER TIME OR PLACE; CIVIL PEN-  
11          ALTIES.—Any alien who is apprehended while entering, at-  
12          tempting to enter, or knowingly crossing or attempting to  
13          cross the border to the United States at a time or place  
14          other than as designated by immigration officers shall be  
15          subject to a civil penalty, in addition to any criminal or  
16          other civil penalties that may be imposed under any other  
17          provision of law, in an amount equal to—

18               “(1) not less than \$50 or more than \$250 for  
19               each such entry, crossing, attempted entry, or at-  
20               tempted crossing; or

21               “(2) twice the amount specified in paragraph  
22               (1) if the alien had previously been subject to a civil  
23               penalty under this subsection.”.

24          (b) CLERICAL AMENDMENT.—The table of contents  
25          for the Immigration and Nationality Act is amended by

1 striking the item relating to section 275 and inserting the  
 2 following:

“Sec. 275. Illegal entry or presence.”.

3 (c) EFFECTIVE DATES AND APPLICABILITY.—

4 (1) CRIMINAL PENALTIES.—Section 275(a) of  
 5 the Immigration and Nationality Act (8 U.S.C.  
 6 1325(a)), as amended by subsection (a), shall take  
 7 effect 90 days after the date of the enactment of  
 8 this Act, and shall apply to acts, conditions, or viola-  
 9 tions described in such section 275(a) that occur or  
 10 exist on or after such effective date.

11 (2) CIVIL PENALTIES.—Section 275(b) of the  
 12 Immigration and Nationality Act (8 U.S.C.  
 13 1325(b)), as amended by subsection (a), shall take  
 14 effect on the date of the enactment of this Act and  
 15 shall apply to acts described in such section 275(b)  
 16 that occur before, on, or after such date.

## 17 **TITLE III—CRIMINAL ALIENS**

18 **SEC. 3301. PRECLUDING ADMISSIBILITY OF ALIENS CON-**  
 19 **VICTED OF AGGRAVATED FELONIES OR**  
 20 **OTHER SERIOUS OFFENSES.**

21 (a) INADMISSIBILITY ON CRIMINAL AND RELATED  
 22 GROUNDS; WAIVERS.—Section 212 of the Immigration  
 23 and Nationality Act (8 U.S.C. 1182) is amended—

24 (1) in subsection (a)(2)(A)(i)—

1 (A) in subclause (I), by striking “or” at  
2 the end;

3 (B) in subclause (II), by adding “or” at  
4 the end; and

5 (C) by inserting after subclause (II) the  
6 following:

7 “(III) a violation of (or a con-  
8 spiracy or attempt to violate) an of-  
9 fense described in section 208 of the  
10 Social Security Act (42 U.S.C. 408)  
11 (relating to social security account  
12 numbers or social security cards) or  
13 section 1028 of title 18, United States  
14 Code (relating to fraud and related  
15 activity in connection with identifica-  
16 tion documents, authentication fea-  
17 tures, and information),”;

18 (2) by adding at the end of subsection (a)(2)  
19 the following:

20 “(J) PROCUREMENT OF CITIZENSHIP OR  
21 NATURALIZATION UNLAWFULLY.—Any alien  
22 convicted of, or who admits having committed,  
23 or who admits committing acts which constitute  
24 the essential elements of, a violation of, or an  
25 attempt or a conspiracy to violate, subsection

1 (a) or (b) of section 1425 of title 18, United  
2 States Code (relating to the procurement of  
3 citizenship or naturalization unlawfully) is inad-  
4 missible.

5 “(K) CERTAIN FIREARM OFFENSES.—Any  
6 alien who at any time has been convicted under  
7 any law of, or who admits having committed or  
8 admits committing acts which constitute the es-  
9 sential elements of, purchasing, selling, offering  
10 for sale, exchanging, using, owning, possessing,  
11 or carrying, or of attempting or conspiring to  
12 purchase, sell, offer for sale, exchange, use,  
13 own, possess, or carry, any weapon, part, or ac-  
14 cessory which is a firearm or destructive device  
15 (as defined in section 921(a) of title 18, United  
16 States Code) in violation of any law is inadmis-  
17 sible.

18 “(L) AGGRAVATED FELONS.—Any alien  
19 who has been convicted of an aggravated felony  
20 at any time is inadmissible.

21 “(M) CRIMES OF DOMESTIC VIOLENCE,  
22 STALKING, OR VIOLATION OF PROTECTION OR-  
23 DERS, CRIMES AGAINST CHILDREN.—

24 “(i) DOMESTIC VIOLENCE, STALKING,  
25 AND CHILD ABUSE.—Any alien who at any



1 time is convicted of, or who admits having  
2 committed or admits committing acts  
3 which constitute the essential elements of,  
4 a crime of domestic violence, a crime of  
5 stalking, or a crime of child abuse, child  
6 neglect, or child abandonment is inadmis-  
7 sible. For purposes of this clause, the term  
8 ‘crime of domestic violence’ means any  
9 crime of violence (as defined in section 16  
10 of title 18, United States Code) against a  
11 person committed by a current or former  
12 spouse of the person, by an individual with  
13 whom the person shares a child in com-  
14 mon, by an individual who is cohabiting  
15 with or has cohabited with the person as a  
16 spouse, by an individual similarly situated  
17 to a spouse of the person under the domes-  
18 tic or family violence laws of the jurisdic-  
19 tion where the offense occurs, or by any  
20 other individual against a person who is  
21 protected from that individual’s acts under  
22 the domestic or family violence laws of the  
23 United States or any State, Indian tribal  
24 government, or unit of local or foreign gov-  
25 ernment.

1                   “(ii) VIOLATORS OF PROTECTION OR-  
2                   DERS.—Any alien who at any time is en-  
3                   joined under a protection order issued by  
4                   a court and whom the court determines  
5                   has engaged in conduct that violates the  
6                   portion of a protection order that involves  
7                   protection against credible threats of vio-  
8                   lence, repeated harassment, or bodily in-  
9                   jury to the person or persons for whom the  
10                  protection order was issued is inadmissible.  
11                  For purposes of this clause, the term ‘pro-  
12                  tection order’ means any injunction issued  
13                  for the purpose of preventing violent or  
14                  threatening acts of domestic violence, in-  
15                  cluding temporary or final orders issued by  
16                  civil or criminal courts (other than support  
17                  or child custody orders or provisions)  
18                  whether obtained by filing an independent  
19                  action or as a independent order in an-  
20                  other proceeding.

21                  “(iii) WAIVER AUTHORIZED.—The  
22                  waiver authority available under section  
23                  237(a)(7) with respect to section  
24                  237(a)(2)(E)(i) shall be available on a

1 comparable basis with respect to this sub-  
2 paragraph.

3 “(iv) CLARIFICATION.—If the convic-  
4 tion records do not conclusively establish  
5 whether a crime of domestic violence con-  
6 stitutes a crime of violence (as defined in  
7 section 16 of title 18, United States Code),  
8 the Attorney General may consider other  
9 evidence related to the conviction that es-  
10 tablishes that the conduct for which the  
11 alien was engaged constitutes a crime of  
12 violence.”; and

13 (3) in subsection (h)—

14 (A) by striking “The Attorney General  
15 may, in his discretion, waive the application of  
16 subparagraphs (A)(i)(I), (B), (D), and (E) of  
17 subsection (a)(2)” and inserting “The Attorney  
18 General or the Secretary of Homeland Security  
19 may, in the discretion of the Attorney General  
20 or the Secretary, waive the application of sub-  
21 paragraphs (A)(i)(I), (III), (B), (D), (E), (K),  
22 and (M) of subsection (a)(2)”;

23 (B) by striking “a criminal act involving  
24 torture.” and inserting “a criminal act involving

1 torture, or has been convicted of an aggravated  
2 felony.”;

3 (C) by striking “if either since the date of  
4 such admission the alien has been convicted of  
5 an aggravated felony or the alien” and inserting  
6 “if since the date of such admission the alien”;  
7 and

8 (D) by inserting “or Secretary of Home-  
9 land Security” after “the Attorney General”  
10 each place it appears.

11 (b) DEPORTABILITY; CRIMINAL OFFENSES.—Section  
12 237(a)(3)(B) of the Immigration and Nationality Act (8  
13 U.S.C. 1227(a)(3)(B)) is amended—

14 (1) in clause (ii), by striking “or” at the end;

15 (2) in clause (iii), by inserting “or” at the end;

16 and

17 (3) by inserting after clause (iii) the following:

18 “(iv) of a violation of, or an attempt  
19 or a conspiracy to violate, section 1425(a)  
20 or (b) of title 18 (relating to the procure-  
21 ment of citizenship or naturalization un-  
22 lawfully),”.

23 (c) DEPORTABILITY; OTHER CRIMINAL OFFENSES.—  
24 Section 237(a)(2) of the Immigration and Nationality Act

1 (8 U.S.C. 1227(a)(2)) is amended by adding at the end  
2 the following:

3                   “(G) FRAUD AND RELATED ACTIVITY AS-  
4                   SOCIATED WITH SOCIAL SECURITY ACT BENE-  
5                   FITS AND IDENTIFICATION DOCUMENTS.—Any  
6                   alien who at any time after admission has been  
7                   convicted of a violation of (or a conspiracy or  
8                   attempt to violate) section 208 of the Social Se-  
9                   curity Act (42 U.S.C. 408) (relating to social  
10                  security account numbers or social security  
11                  cards) or section 1028 of title 18, United States  
12                  Code (relating to fraud and related activity in  
13                  connection with identification) is deportable.”.

14           (d) EFFECTIVE DATE.—The amendments made by  
15 this section shall apply—

16                   (1) to any act that occurred before, on, or after  
17                   the date of the enactment of this Act; and

18                   (2) to all aliens who are required to establish  
19                   admissibility on or after such date, and in all re-  
20                   moval, deportation, or exclusion proceedings that are  
21                   filed, pending, or reopened, on or after such date.

22           (e) CONSTRUCTION.—The amendments made by sub-  
23 section (a) shall not be construed to create eligibility for  
24 relief from removal under former section 212(c) of the Im-

1 migration and Nationality Act where such eligibility did  
 2 not exist before these amendments became effective.

3 **SEC. 3302. INCREASED PENALTIES BARRING THE ADMIS-**  
 4 **SION OF CONVICTED SEX OFFENDERS FAIL-**  
 5 **ING TO REGISTER AND REQUIRING DEPORTA-**  
 6 **TION OF SEX OFFENDERS FAILING TO REG-**  
 7 **ISTER.**

8 (a) INADMISSIBILITY.—Section 212(a)(2)(A)(i) of  
 9 the Immigration and Nationality Act (8 U.S.C.  
 10 1182(a)(2)(A)(i)), as amended by this title, is further  
 11 amended—

12 (1) in subclause (II), by striking “or” at the  
 13 end;

14 (2) in subclause (III), by adding “or” at the  
 15 end; and

16 (3) by inserting after subclause (III) the fol-  
 17 lowing:

18 “(IV) a violation of section 2250  
 19 of title 18, United States Code (relat-  
 20 ing to failure to register as a sex of-  
 21 fender),”.

22 (b) DEPORTABILITY.—Section 237(a)(2) of such Act  
 23 (8 U.S.C. 1227(a)(2)), as amended by this title, is further  
 24 amended—

1 (1) in subparagraph (A), by striking clause (v);  
2 and

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

4 “(I) FAILURE TO REGISTER AS A SEX OF-  
5 FENDER.—Any alien convicted of, or who ad-  
6 mits having committed, or who admits commit-  
7 ting acts which constitute the essential elements  
8 of a violation of section 2250 of title 18, United  
9 States Code (relating to failure to register as a  
10 sex offender) is deportable.”.

11 (c) EFFECTIVE DATE.—The amendments made by  
12 this section shall take effect on the date of the enactment  
13 of this Act and shall apply to acts that occur before, on,  
14 or after the date of the enactment of this Act.

15 **SEC. 3303. GROUNDS OF INADMISSIBILITY AND DEPORT-**  
16 **ABILITY FOR ALIEN GANG MEMBERS.**

17 (a) DEFINITION OF GANG MEMBER.—Section 101(a)  
18 of the Immigration and Nationality Act (8 U.S.C.  
19 1101(a)) is amended by adding at the end the following:

20 “(53) The term ‘criminal gang’ means an ongoing  
21 group, club, organization, or association of 5 or more per-  
22 sons that has as one of its primary purposes the commis-  
23 sion of 1 or more of the following criminal offenses and  
24 the members of which engage, or have engaged within the  
25 past 5 years, in a continuing series of such offenses, or

1 that has been designated as a criminal gang by the Sec-  
2 retary of Homeland Security, in consultation with the At-  
3 torney General, as meeting these criteria. The offenses de-  
4 scribed, whether in violation of Federal or State law or  
5 foreign law and regardless of whether the offenses oc-  
6 curred before, on, or after the date of the enactment of  
7 this paragraph, are the following:

8           “(A) A ‘felony drug offense’ (as defined in sec-  
9 tion 102 of the Controlled Substances Act (21  
10 U.S.C. 802)).

11           “(B) A felony offense involving firearms or ex-  
12 plosives or in violation of section 931 of title 18,  
13 United States Code (relating to purchase, ownership,  
14 or possession of body armor by violent felons).

15           “(C) An offense under section 274 (relating to  
16 bringing in and harboring certain aliens), section  
17 277 (relating to aiding or assisting certain aliens to  
18 enter the United States), or section 278 (relating to  
19 importation of alien for immoral purpose).

20           “(D) A crime of violence (as defined in section  
21 16 of title 18, United States Code).

22           “(E) A crime involving obstruction of justice,  
23 tampering with or retaliating against a witness, vic-  
24 tim, or informant.



1           “(F) Any conduct punishable under sections  
2       1028A and 1029 of title 18, United States Code (re-  
3       lating to aggravated identity theft or fraud and re-  
4       lated activity in connection with identification docu-  
5       ments or access devices), sections 1581 through  
6       1594 of such title (relating to peonage, slavery, and  
7       trafficking in persons), section 1951 of such title  
8       (relating to interference with commerce by threats or  
9       violence), section 1952 of such title (relating to  
10      interstate and foreign travel or transportation in aid  
11      of racketeering enterprises), section 1956 of such  
12      title (relating to the laundering of monetary instru-  
13      ments), section 1957 of such title (relating to engag-  
14      ing in monetary transactions in property derived  
15      from specified unlawful activity), or sections 2312  
16      through 2315 of such title (relating to interstate  
17      transportation of stolen motor vehicles or stolen  
18      property).

19           “(G) A conspiracy to commit an offense de-  
20      scribed in subparagraphs (A) through (F).”.

21      (b) INADMISSIBILITY.—Section 212(a)(2) of such Act  
22      (8 U.S.C. 1182(a)(2)) is amended by adding at the end  
23      the following:

24           “(J) ALIENS ASSOCIATED WITH CRIMINAL  
25      GANGS.—(i) Any alien is inadmissible who a

1 consular officer, an immigration officer, the  
2 Secretary of Homeland Security, or the Attor-  
3 ney General knows or has reason to believe—

4 “(I) to be or to have been a member  
5 of a criminal gang (as defined in section  
6 101(a)(53)); or

7 “(II) to have participated in the ac-  
8 tivities of a criminal gang (as defined in  
9 section 101(a)(53)), knowing or having  
10 reason to know that such activities will  
11 promote, further, aid, or support the illegal  
12 activity of the criminal gang.

13 “(ii) Any alien for whom a consular officer,  
14 an immigration officer, the Secretary of Home-  
15 land Security, or the Attorney General has rea-  
16 sonable grounds to believe has participated in,  
17 been a member of, promoted, or conspired with  
18 a criminal gang, either inside or outside of the  
19 United States, is inadmissible.

20 “(iii) Any alien for whom a consular offi-  
21 cer, an immigration officer, the Secretary of  
22 Homeland Security, or the Attorney General  
23 has reasonable grounds to believe seeks to enter  
24 the United States or has entered the United  
25 States in furtherance of the activities of a

1 criminal gang, either inside or outside of the  
 2 United States, is inadmissible.”.

3 (c) DEPORTABILITY.—Section 237(a)(2) of the Im-  
 4 migration and Nationality Act (8 U.S.C. 1227(a)(2)) is  
 5 amended by adding at the end the following:

6 “(G) ALIENS ASSOCIATED WITH CRIMINAL  
 7 GANGS.—Any alien is deportable who—

8 “(i) is or has been a member of a  
 9 criminal gang (as defined in section  
 10 101(a)(53)); or

11 “(ii) has participated in the activities  
 12 of a criminal gang (as so defined), knowing  
 13 or having reason to know that such activi-  
 14 ties will promote, further, aid, or support  
 15 the illegal activity of the criminal gang.”.

16 (d) DESIGNATION.—

17 (1) IN GENERAL.—Chapter 2 of title II of the  
 18 Immigration and Nationality Act (8 U.S.C. 1182) is  
 19 amended by inserting after section 219 the fol-  
 20 lowing:

21 “DESIGNATION OF CRIMINAL GANG

22 “SEC. 220.

23 “(a) DESIGNATION.—

24 “(1) IN GENERAL.—The Secretary of Homeland Se-  
 25 curity, in consultation with the Attorney General, may  
 26 designate a group, club, organization, or association of 5

1 or more persons as a criminal gang if the Secretary finds  
2 that their conduct is described in section 101(a)(53).

3 “(2) PROCEDURE.—

4 “(A) NOTIFICATION.—Seven days before mak-  
5 ing a designation under this subsection, the Sec-  
6 retary shall, by classified communication, notify the  
7 Speaker and Minority Leader of the House of Rep-  
8 resentatives, the President pro tempore, Majority  
9 Leader, and Minority Leader of the Senate, and the  
10 members of the relevant committees of the House of  
11 Representatives and the Senate, in writing, of the  
12 intent to designate a group, club, organization, or  
13 association of 5 or more persons under this sub-  
14 section and the factual basis therefor.

15 “(B) PUBLICATION IN THE FEDERAL REG-  
16 ISTER.—The Secretary shall publish the designation  
17 in the Federal Register seven days after providing  
18 the notification under subparagraph (A).

19 “(3) RECORD.—

20 “(A) IN GENERAL.—In making a designation  
21 under this subsection, the Secretary shall create an  
22 administrative record.

23 “(B) CLASSIFIED INFORMATION.—The Sec-  
24 retary may consider classified information in making  
25 a designation under this subsection. Classified infor-

1       mation shall not be subject to disclosure for such  
2       time as it remains classified, except that such infor-  
3       mation may be disclosed to a court ex parte and in  
4       camera for purposes of judicial review under sub-  
5       section (c).

6       “(4) PERIOD OF DESIGNATION.—

7               “(A) IN GENERAL.—A designation under this  
8       subsection shall be effective for all purposes until re-  
9       voked under paragraph (5) or (6) or set aside pursu-  
10      ant to subsection (c).

11              “(B) REVIEW OF DESIGNATION UPON PETI-  
12      TION.—

13                      “(i) IN GENERAL.—The Secretary shall re-  
14      view the designation of a criminal gang under  
15      the procedures set forth in clauses (iii) and (iv)  
16      if the designated group, club, organization, or  
17      association of 5 or more persons files a petition  
18      for revocation within the petition period de-  
19      scribed in clause (ii).

20                      “(ii) PETITION PERIOD.—For purposes of  
21      clause (i)—

22                              “(I) if the designated group, club, or-  
23      ganization, or association of 5 or more per-  
24      sons has not previously filed a petition for  
25      revocation under this subparagraph, the

petition period begins 2 years after the date on which the designation was made; or

“(II) if the designated group, club, organization, or association of 5 or more persons has previously filed a petition for revocation under this subparagraph, the petition period begins 2 years after the date of the determination made under clause (iv) on that petition.

“(iii) PROCEDURES.—Any group, club, organization, or association of 5 or more persons that submits a petition for revocation under this subparagraph of its designation as a criminal gang must provide evidence in that petition that it is not described in section 101(a)(53).

“(iv) DETERMINATION.—

“(I) IN GENERAL.—Not later than 180 days after receiving a petition for revocation submitted under this subparagraph, the Secretary shall make a determination as to such revocation.

“(II) CLASSIFIED INFORMATION.—The Secretary may consider classified information in making a determination in re-

1           sponse to a petition for revocation. Classi-  
2           fied information shall not be subject to dis-  
3           closure for such time as it remains classi-  
4           fied, except that such information may be  
5           disclosed to a court ex parte and in camera  
6           for purposes of judicial review under sub-  
7           section (c).

8           “(III) PUBLICATION OF DETERMINA-  
9           TION.—A determination made by the Sec-  
10          retary under this clause shall be published  
11          in the Federal Register.

12          “(IV) PROCEDURES.—Any revocation  
13          by the Secretary shall be made in accord-  
14          ance with paragraph (6).

15          “(C) OTHER REVIEW OF DESIGNATION.—

16               “(i) IN GENERAL.—If in a 5-year period no  
17          review has taken place under subparagraph (B),  
18          the Secretary shall review the designation of the  
19          criminal gang in order to determine whether  
20          such designation should be revoked pursuant to  
21          paragraph (6).

22               “(ii) PROCEDURES.—If a review does not  
23          take place pursuant to subparagraph (B) in re-  
24          sponse to a petition for revocation that is filed  
25          in accordance with that subparagraph, then the

1 review shall be conducted pursuant to proce-  
2 dures established by the Secretary. The results  
3 of such review and the applicable procedures  
4 shall not be reviewable in any court.

5 “(iii) PUBLICATION OF RESULTS OF RE-  
6 VIEW.—The Secretary shall publish any deter-  
7 mination made pursuant to this subparagraph  
8 in the Federal Register.

9 “(5) REVOCATION BY ACT OF CONGRESS.—The Con-  
10 gress, by an Act of Congress, may block or revoke a des-  
11 ignation made under paragraph (1).

12 “(6) REVOCATION BASED ON CHANGE IN CIR-  
13 CUMSTANCES.—

14 “(A) IN GENERAL.—The Secretary may revoke  
15 a designation made under paragraph (1) at any  
16 time, and shall revoke a designation upon completion  
17 of a review conducted pursuant to subparagraphs  
18 (B) and (C) of paragraph (4) if the Secretary finds  
19 that—

20 “(i) the group, club, organization, or asso-  
21 ciation of 5 or more persons that has been des-  
22 ignated as a criminal gang is no longer de-  
23 scribed in section 101(a)(53); or



1           “(ii) the national security or the law en-  
2           forcement interests of the United States war-  
3           rants a revocation.

4           “(B) PROCEDURE.—The procedural require-  
5           ments of paragraphs (2) and (3) shall apply to a  
6           revocation under this paragraph. Any revocation  
7           shall take effect on the date specified in the revoca-  
8           tion or upon publication in the Federal Register if  
9           no effective date is specified.

10          “(7) EFFECT OF REVOCATION.—The revocation of a  
11          designation under paragraph (5) or (6) shall not affect  
12          any action or proceeding based on conduct committed  
13          prior to the effective date of such revocation.

14          “(8) USE OF DESIGNATION IN TRIAL OR HEAR-  
15          ING.—If a designation under this subsection has become  
16          effective under paragraph (2) an alien in a removal pro-  
17          ceeding shall not be permitted to raise any question con-  
18          cerning the validity of the issuance of such designation  
19          as a defense or an objection.

20          “(b) AMENDMENTS TO A DESIGNATION.—

21                 “(1) IN GENERAL.—The Secretary may amend  
22                 a designation under this subsection if the Secretary  
23                 finds that the group, club, organization, or associa-  
24                 tion of 5 or more persons has changed its name,  
25                 adopted a new alias, dissolved and then reconsti-

1       tuted itself under a different name or names, or  
2       merged with another group, club, organization, or  
3       association of 5 or more persons.

4               “(2) PROCEDURE.—Amendments made to a  
5       designation in accordance with paragraph (1) shall  
6       be effective upon publication in the Federal Register.  
7       Paragraphs (2), (4), (5), (6), (7), and (8) of sub-  
8       section (a) shall also apply to an amended designa-  
9       tion.

10              “(3) ADMINISTRATIVE RECORD.—The adminis-  
11       trative record shall be corrected to include the  
12       amendments as well as any additional relevant infor-  
13       mation that supports those amendments.

14              “(4) CLASSIFIED INFORMATION.—The Sec-  
15       retary may consider classified information in amend-  
16       ing a designation in accordance with this subsection.  
17       Classified information shall not be subject to disclo-  
18       sure for such time as it remains classified, except  
19       that such information may be disclosed to a court ex  
20       parte and in camera for purposes of judicial review  
21       under subsection (c) of this section.

22              “(c) JUDICIAL REVIEW OF DESIGNATION.—

23              “(1) IN GENERAL.—Not later than 30 days  
24       after publication in the Federal Register of a des-  
25       ignation, an amended designation, or a determina-

1       tion in response to a petition for revocation, the des-  
2       ignated group, club, organization, or association of 5  
3       or more persons may seek judicial review in the  
4       United States Court of Appeals for the District of  
5       Columbia Circuit.

6               “(2) BASIS OF REVIEW.—Review under this  
7       subsection shall be based solely upon the administra-  
8       tive record, except that the Government may submit,  
9       for ex parte and in camera review, classified infor-  
10      mation used in making the designation, amended  
11      designation, or determination in response to a peti-  
12      tion for revocation.

13              “(3) SCOPE OF REVIEW.—The Court shall hold  
14      unlawful and set aside a designation, amended des-  
15      ignation, or determination in response to a petition  
16      for revocation the court finds to be—

17                      “(A) arbitrary, capricious, an abuse of dis-  
18                      cretion, or otherwise not in accordance with  
19                      law;

20                      “(B) contrary to constitutional right,  
21                      power, privilege, or immunity;

22                      “(C) in excess of statutory jurisdiction, au-  
23                      thority, or limitation, or short of statutory  
24                      right;

1           “(D) lacking substantial support in the ad-  
2           ministrative record taken as a whole or in clas-  
3           sified information submitted to the court under  
4           paragraph (2); or

5           “(E) not in accord with the procedures re-  
6           quired by law.

7           “(4) JUDICIAL REVIEW INVOKED.—The pend-  
8           ency of an action for judicial review of a designation,  
9           amended designation, or determination in response  
10          to a petition for revocation shall not affect the appli-  
11          cation of this section, unless the court issues a final  
12          order setting aside the designation, amended des-  
13          ignation, or determination in response to a petition  
14          for revocation.

15          “(d) DEFINITIONS.—As used in this section—

16               “(1) the term ‘classified information’ has the  
17               meaning given that term in section 1(a) of the Clas-  
18               sified Information Procedures Act (18 U.S.C. App.);

19               “(2) the term ‘national security’ means the na-  
20               tional defense, foreign relations, or economic inter-  
21               ests of the United States;

22               “(3) the term ‘relevant committees’ means the  
23               Committees on the Judiciary of the Senate and of  
24               the House of Representatives; and

1           “(4) the term ‘Secretary’ means the Secretary  
2 of Homeland Security, in consultation with the At-  
3 torney General.”.

4           (2) CLERICAL AMENDMENT.—The table of con-  
5 tents for such Act is amended by inserting after the  
6 item relating to section 219 the following:

“Sec. 220. Designation.”.

7           (e) MANDATORY DETENTION OF CRIMINAL GANG  
8 MEMBERS.—

9           (1) IN GENERAL.—Section 236(c)(1) of the Im-  
10 migration and Nationality Act (8 U.S.C.  
11 1226(c)(1)), as amended by this title, is further  
12 amended—

13                   (A) in subparagraph (D), by striking “or”  
14 at the end;

15                   (B) in subparagraph (E), by inserting “or”  
16 at the end; and

17                   (C) by inserting after subparagraph (E)  
18 the following:

19                           “(F) is inadmissible under section  
20 212(a)(2)(J) or deportable under section  
21 217(a)(2)(G),”.

22           (2) ANNUAL REPORT.—Not later than March 1  
23 of each year (beginning 1 year after the date of the  
24 enactment of this Act), the Secretary of Homeland  
25 Security, after consultation with the appropriate

1 Federal agencies, shall submit a report to the Com-  
2 mittees on the Judiciary of the House of Represent-  
3 atives and of the Senate on the number of aliens de-  
4 tained under the amendments made by paragraph  
5 (1).

6 (f) ASYLUM CLAIMS BASED ON GANG AFFILI-  
7 ATION.—

8 (1) INAPPLICABILITY OF RESTRICTION ON RE-  
9 MOVAL TO CERTAIN COUNTRIES.—Section  
10 241(b)(3)(B) of the Immigration and Nationality  
11 Act (8 U.S.C. 1251(b)(3)(B)) is amended, in the  
12 matter preceding clause (i), by inserting “who is de-  
13 scribed in section 212(a)(2)(J)(i) or section  
14 237(a)(2)(G)(i) or who is” after “to an alien”.

15 (2) INELIGIBILITY FOR ASYLUM.—Section  
16 208(b)(2)(A) of such Act (8 U.S.C. 1158(b)(2)(A))  
17 is amended—

18 (A) in clause (v), by striking “or” at the  
19 end;

20 (B) by redesignating clause (vi) as clause  
21 (vii); and

22 (C) by inserting after clause (v) the fol-  
23 lowing:

1 “(vi) the alien is described in section  
2 212(a)(2)(J)(i) or section 237(a)(2)(G)(i);  
3 or”.

4 (g) TEMPORARY PROTECTED STATUS.—Section 244  
5 of such Act (8 U.S.C. 1254a) is amended—

6 (1) by striking “Attorney General” each place  
7 it appears and inserting “Secretary of Homeland Se-  
8 curity”;

9 (2) in subparagraph (c)(2)(B)—

10 (A) in clause (i), by striking “or” at the  
11 end;

12 (B) in clause (ii), by striking the period  
13 and inserting “; or”; and

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

15 “(iii) the alien is, or at any time has  
16 been, described in section 212(a)(2)(J) or  
17 section 237(a)(2)(G).”; and

18 (3) in subsection (d)—

19 (A) by striking paragraph (3); and

20 (B) in paragraph (4), by adding at the end  
21 the following: “The Secretary of Homeland Se-  
22 curity may detain an alien provided temporary  
23 protected status under this section whenever  
24 appropriate under any other provision of law.”.

1 (h) SPECIAL IMMIGRANT JUVENILE VISAS.—Section  
2 101(a)(27)(J)(iii) of the Immigration and Nationality Act  
3 (8 U.S.C. 1101(a)(27)(J)(iii)) is amended—

4 (1) in subclause (I), by striking “and”;

5 (2) in subclause (II), by adding “and” at the  
6 end; and

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

8 “(III) no alien who is, or at any  
9 time has been, described in section  
10 212(a)(2)(J) or section 237(a)(2)(G)  
11 shall be eligible for any immigration  
12 benefit under this subparagraph;”.

13 (i) PAROLE.—An alien described in section  
14 212(a)(2)(J) of the Immigration and Nationality Act, as  
15 added by subsection (b), shall not be eligible for parole  
16 under section 212(d)(5)(A) of such Act unless—

17 (1) the alien is assisting or has assisted the  
18 United States Government in a law enforcement  
19 matter, including a criminal investigation; and

20 (2) the alien’s presence in the United States is  
21 required by the Government with respect to such as-  
22 sistance.

23 (j) EFFECTIVE DATE.—The amendments made by  
24 this section shall take effect on the date of the enactment



1 of this Act and shall apply to acts that occur before, on,  
2 or after the date of the enactment of this Act.

3 **SEC. 3304. INADMISSIBILITY AND DEPORTABILITY OF**  
4 **DRUNK DRIVERS.**

5 (a) IN GENERAL.—Section 101(a)(43) of the Immi-  
6 gration and Nationality Act (8 U.S.C. 1101(a)(43)), is  
7 amended—

8 (1) in subparagraph (T), by striking “and”;

9 (2) in subparagraph (U), by striking the period  
10 at the end and inserting “; and”; and

11 (3) by inserting after subparagraph (U) the fol-  
12 lowing:

13 “(V)(i) a single conviction for driving while  
14 intoxicated (including a conviction for driving  
15 while under the influence of or impairment by  
16 alcohol or drugs), when such impaired driving  
17 was a cause of the serious bodily injury or  
18 death of another person; or

19 “(ii) a second or subsequent conviction for  
20 driving while intoxicated (including a conviction  
21 for driving under the influence of or impaired  
22 by alcohol or drugs).”.

23 (b) EFFECTIVE DATE.—The amendments made by  
24 subsection (a) shall take effect on the date of the enact-

1 ment of this Act and apply to convictions entered on or  
2 after such date.

3 **SEC. 3305. DEFINITION OF AGGRAVATED FELONY.**

4 (a) DEFINITION OF AGGRAVATED FELONY.—Section  
5 101(a)(43) of the Immigration and Nationality Act (8  
6 U.S.C. 1101(a)(43)), as amended by this title, is further  
7 amended—

8 (1) by striking “The term ‘aggravated felony’  
9 means—” and inserting “Notwithstanding any other  
10 provision of law, the term ‘aggravated felony’ applies  
11 to an offense described in this paragraph, whether in  
12 violation of Federal or State law, or in violation of  
13 the law of a foreign country for which the term of  
14 imprisonment was completed within the previous 15  
15 years, even if the length of the term of imprisonment  
16 for the offense is based on recidivist or other en-  
17 hancements and regardless of whether the conviction  
18 was entered before, on, or after September 30, 1996,  
19 and means—”;

20 (2) in subparagraph (A), by striking “murder,  
21 rape, or sexual abuse of a minor;” and inserting “an  
22 offense relating to murder, manslaughter, homicide,  
23 rape (whether the victim was conscious or uncon-  
24 scious), statutory rape, or any offense of a sexual

1 nature involving a victim under the age of 18  
2 years;”;

3 (3) in subparagraph (B)—

4 (A) by inserting “an offense relating to”  
5 before “illicit trafficking”; and

6 (B) by inserting before the semicolon at  
7 the end the following: “and any offense under  
8 State law relating to a controlled substance (as  
9 so classified under State law) which is classified  
10 as a felony in that State, regardless of whether  
11 the substance is classified as a controlled sub-  
12 stance under section 102 of the Controlled Sub-  
13 stances Act (8 U.S.C. 802)”;

14 (4) in subparagraph (C), by inserting “an of-  
15 fense relating to” before “illicit trafficking in fire-  
16 arms”;

17 (5) in subparagraph (I), by striking “or 2252”  
18 and inserting “2252, or 2252A”;

19 (6) in subparagraph (F), by striking “for which  
20 the term of imprisonment is at least one year;” and  
21 inserting “, including offenses of assault and battery  
22 under State or Federal law, for which the term of  
23 imprisonment is at least one year, except that if the  
24 conviction records do not conclusively establish  
25 whether a crime constitutes a crime of violence, the

1 Attorney General or the Secretary of Homeland Se-  
2 curity, as appropriate, may consider other evidence  
3 related to the conviction that establishes that the  
4 conduct for which the alien was engaged constitutes  
5 a crime of violence;”;

6 (7) by striking subparagraph (G) and inserting  
7 the following:

8 “(G) an offense relating to a theft under State  
9 or Federal law (including theft by deceit, theft by  
10 fraud, and receipt of stolen property) regardless of  
11 whether any taking was temporary or permanent, or  
12 burglary offense under State or Federal law for  
13 which the term of imprisonment is at least one year,  
14 except that if the conviction records do not conclu-  
15 sively establish whether a crime constitutes a theft  
16 or burglary offense, the Attorney General or Sec-  
17 retary of Homeland Security, as appropriate, may  
18 consider other evidence related to the conviction that  
19 establishes that the conduct for which the alien was  
20 engaged constitutes a theft or burglary offense;”;

21 (8) in subparagraph (N)—

22 (A) by striking “paragraph (1)(A) or (2)  
23 of”; and

24 (B) by inserting a semicolon at the end;

1           (9) in subparagraph (O), by striking “section  
2       275(a) or 276 committed by an alien who was pre-  
3       viously deported on the basis of a conviction for an  
4       offense described in another subparagraph of this  
5       paragraph” and inserting “section 275 or 276 for  
6       which the term of imprisonment is at least 1 year”;

7           (10) in subparagraph (P)—

8           (A) by striking “(i) which either is falsely  
9       making, forging, counterfeiting, mutilating, or  
10      altering a passport or instrument in violation of  
11      section 1543 of title 18, United States Code, or  
12      is described in section 1546(a) of such title (re-  
13      lating to document fraud) and (ii)” and insert-  
14      ing “which is described in any section of chap-  
15      ter 75 of title 18, United States Code, and”;  
16      and

17          (B) by striking “, except in the case of a  
18      first offense for which the alien has affirma-  
19      tively shown that the alien committed the of-  
20      fense for the purpose of assisting, abetting, or  
21      aiding only the alien’s spouse, child, or parent  
22      (and no other individual) to violate a provision  
23      of this Act”;

24          (11) in subparagraph (U), by striking “an at-  
25      tempt or conspiracy to commit an offense described

1 in this paragraph” and inserting “attempting or  
2 conspiring to commit an offense described in this  
3 paragraph, or aiding, abetting, counseling, pro-  
4 curing, commanding, inducing, or soliciting the com-  
5 mission of such an offense”; and

6 (12) by striking the undesignated matter fol-  
7 lowing subparagraph (U).

8 (b) EFFECTIVE DATE; APPLICATION OF AMEND-  
9 MENTS.—

10 (1) IN GENERAL.—The amendments made by  
11 subsection (a)—

12 (A) shall take effect on the date of the en-  
13 actment of this Act; and

14 (B) shall apply to any act or conviction  
15 that occurred before, on, or after such date.

16 (2) APPLICATION OF IIRIRA AMENDMENTS.—

17 The amendments to section 101(a)(43) of the Immi-  
18 gration and Nationality Act (8 U.S.C. 1101(a)(43))  
19 made by section 321 of the Illegal Immigration Re-  
20 form and Immigrant Responsibility Act of 1996 (di-  
21 vision C of Public Law 104–208; 110 Stat. 3009–  
22 627) shall continue to apply, whether the conviction  
23 was entered before, on, or after September 30, 1996.

1 **SEC. 3306. PRECLUDING WITHHOLDING OF REMOVAL FOR**  
2 **AGGRAVATED FELONS.**

3 (a) IN GENERAL.—Section 241(b)(3)(B) (8 U.S.C.  
4 1231(b)(3)(B)), is amended by inserting after clause (v)  
5 the following:

6 “(vi) the alien is convicted of an ag-  
7 gravated felony.”.

8 (b) EFFECTIVE DATE.—The amendment made by  
9 subsection (a) shall apply—

10 (1) to any act that occurred before, on, or after  
11 the date of the enactment of this Act; and

12 (2) to all aliens who are required to establish  
13 admissibility on or after such date, and in all re-  
14 moval, deportation, or exclusion proceedings that are  
15 filed, pending, or reopened on or after such date.

16 **SEC. 3307. PROTECTING IMMIGRANTS FROM CONVICTED**  
17 **SEX OFFENDERS.**

18 (a) IMMIGRANTS.—Section 204(a)(1) of the Immigra-  
19 tion and Nationality Act (8 U.S.C. 1154(a)(1)), is amend-  
20 ed—

21 (1) in subparagraph (A), by amending clause  
22 (viii) to read as follows:

23 “(viii) Clause (i) shall not apply to a citizen of the  
24 United States who has been convicted of an offense de-  
25 scribed in subparagraph (A), (I), or (K) of section  
26 101(a)(43), unless the Secretary of Homeland Security,

1 in the Secretary’s sole and unreviewable discretion, deter-  
2 mines that the citizen poses no risk to the alien with re-  
3 spect to whom a petition described in clause (i) is filed.”;  
4 and

5 (2) in subparagraph (B)(i)—

6 (A) by redesignating the second subclause  
7 (I) as subclause (II); and

8 (B) by amending such subclause (II) to  
9 read as follows:

10 “(II) Subclause (I) shall not apply in the case of an  
11 alien admitted for permanent residence who has been con-  
12 victed of an offense described in subparagraph (A), (I),  
13 or (K) of section 101(a)(43), unless the Secretary of  
14 Homeland Security, in the Secretary’s sole and  
15 unreviewable discretion, determines that the alien lawfully  
16 admitted for permanent residence poses no risk to the  
17 alien with respect to whom a petition described in sub-  
18 clause (I) is filed.”.

19 (b) NONIMMIGRANTS.—Section 101(a)(15)(K) of  
20 such Act (8 U.S.C. 1101(a)(15)(K)), is amended by strik-  
21 ing “204(a)(1)(A)(viii)(I))” each place such term appears  
22 and inserting “204(a)(1)(A)(viii))”.

23 (c) EFFECTIVE DATE.—The amendments made by  
24 this section shall take effect on the date of the enactment



1 of this Act and shall apply to petitions filed on or after  
2 such date.

3 **SEC. 3308. CLARIFICATION TO CRIMES OF VIOLENCE AND**  
4 **CRIMES INVOLVING MORAL TURPITUDE.**

5 (a) INADMISSIBLE ALIENS.—Section 212(a)(2)(A) of  
6 the Immigration and Nationality Act (8 U.S.C.  
7 1182(a)(2)(A)) is amended by adding at the end the fol-  
8 lowing:

9 “(iii) CLARIFICATION.—If the convic-  
10 tion records do not conclusively establish  
11 whether a crime constitutes a crime involv-  
12 ing moral turpitude, the Attorney General  
13 or the Secretary of Homeland Security, as  
14 appropriate, may consider other evidence  
15 related to the conviction that establishes  
16 that the conduct for which the alien was  
17 engaged constitutes a crime involving  
18 moral turpitude.”.

19 (b) DEPORTABLE ALIENS.—

20 (1) GENERAL CRIMES.—Section 237(a)(2)(A)  
21 of such Act (8 U.S.C. 1227(a)(2)(A)), as amended  
22 by this title, is further amended by inserting after  
23 clause (iv) the following:

24 “(v) CRIMES INVOLVING MORAL TUR-  
25 PITUDE.—If the conviction records do not

1 conclusively establish whether a crime con-  
2 stitutes a crime involving moral turpitude,  
3 the Attorney General or the Secretary of  
4 Homeland Security, as appropriate, may  
5 consider other evidence related to the con-  
6 viction that establishes that the conduct  
7 for which the alien was engaged constitutes  
8 a crime involving moral turpitude.”.

9 (2) DOMESTIC VIOLENCE.—Section  
10 237(a)(2)(E) of such Act (8 U.S.C. 1227(a)(2)(E))  
11 is amended by adding at the end the following:

12 “(iii) CRIMES OF VIOLENCE.—If the  
13 conviction records do not conclusively es-  
14 tablish whether a crime of domestic vio-  
15 lence constitutes a crime of violence (as de-  
16 fined in section 16 of title 18, United  
17 States Code), the Attorney General or the  
18 Secretary of Homeland Security, as appro-  
19 priate, may consider other evidence related  
20 to the conviction that establishes that the  
21 conduct for which the alien was engaged  
22 constitutes a crime of violence.”.

23 (c) EFFECTIVE DATE.—The amendments made by  
24 this section shall take effect on the date of the enactment

1 of this Act and shall apply to acts that occur before, on,  
2 or after the date of the enactment of this Act.

3 **SEC. 3309. DETENTION OF DANGEROUS ALIENS.**

4 Section 241(a) of the Immigration and Nationality  
5 Act (8 U.S.C. 1231(a)) is amended—

6 (1) by striking “Attorney General” each place  
7 it appears, except for the first reference in para-  
8 graph (4)(B)(i), and inserting “Secretary of Home-  
9 land Security”;

10 (2) in paragraph (1), by amending subpara-  
11 graph (B) to read as follows:

12 “(B) BEGINNING OF PERIOD.—The re-  
13 moval period begins on the latest of the fol-  
14 lowing:

15 “(i) The date the order of removal be-  
16 comes administratively final.

17 “(ii) If the alien is not in the custody  
18 of the Secretary on the date the order of  
19 removal becomes administratively final, the  
20 date the alien is taken into such custody.

21 “(iii) If the alien is detained or con-  
22 fined (except under an immigration proc-  
23 ess) on the date the order of removal be-  
24 comes administratively final, the date the  
25 alien is taken into the custody of the Sec-

1           retary, after the alien is released from such  
2           detention or confinement.”;

3           (3) in paragraph (1), by amending subpara-  
4       graph (C) to read as follows:

5           “(C) SUSPENSION OF PERIOD.—

6           “(i) EXTENSION.—The removal period  
7           shall be extended beyond a period of 90  
8           days and the Secretary may, in the Sec-  
9           retary’s sole discretion, keep the alien in  
10          detention during such extended period if—

11           “(I) the alien fails or refuses to  
12           make all reasonable efforts to comply  
13           with the removal order, or to fully co-  
14           operate with the Secretary’s efforts to  
15           establish the alien’s identity and carry  
16           out the removal order, including mak-  
17           ing timely application in good faith  
18           for travel or other documents nec-  
19           essary to the alien’s departure or con-  
20           spires or acts to prevent the alien’s  
21           removal that is subject to an order of  
22           removal;

23           “(II) a court, the Board of Immi-  
24           gration Appeals, or an immigration  
25           judge orders a stay of removal of an

1 alien who is subject to an administra-  
2 tively final order of removal;

3 “(III) the Secretary transfers  
4 custody of the alien pursuant to law  
5 to another Federal agency or a State  
6 or local government agency in connec-  
7 tion with the official duties of such  
8 agency; or

9 “(IV) a court or the Board of  
10 Immigration Appeals orders a remand  
11 to an immigration judge or the Board  
12 of Immigration Appeals, during the  
13 time period when the case is pending  
14 a decision on remand (with the re-  
15 moval period beginning anew on the  
16 date that the alien is ordered removed  
17 on remand).

18 “(ii) RENEWAL.—If the removal pe-  
19 riod has been extended under subpara-  
20 graph (C)(i), a new removal period shall be  
21 deemed to have begun on the date—

22 “(I) the alien makes all reason-  
23 able efforts to comply with the re-  
24 moval order, or to fully cooperate with  
25 the Secretary’s efforts to establish the

1 alien's identity and carry out the re-  
2 moval order;

3 “(II) the stay of removal is no  
4 longer in effect; or

5 “(III) the alien is returned to the  
6 custody of the Secretary.

7 “(iii) MANDATORY DETENTION FOR  
8 CERTAIN ALIENS.—In the case of an alien  
9 described in subparagraphs (A) through  
10 (D) of section 236(c)(1), the Secretary  
11 shall keep that alien in detention during  
12 the extended period described in clause (i).

13 “(iv) SOLE FORM OF RELIEF.—An  
14 alien may seek relief from detention under  
15 this subparagraph only by filing an appli-  
16 cation for a writ of habeas corpus in ac-  
17 cordance with chapter 153 of title 28,  
18 United States Code. No alien whose period  
19 of detention is extended under this sub-  
20 paragraph shall have the right to seek re-  
21 lease on bond.”;

22 (4) in paragraph (3)—

23 (A) by adding after “If the alien does not  
24 leave or is not removed within the removal pe-

1           riod” the following: “or is not detained pursu-  
2           ant to paragraph (6) of this subsection”; and

3                   (B) by striking subparagraph (D) and in-  
4           serting the following:

5                   “(D) to obey reasonable restrictions on the  
6           alien’s conduct or activities that the Secretary  
7           prescribes for the alien, in order to prevent the  
8           alien from absconding, for the protection of the  
9           community, or for other purposes related to the  
10          enforcement of the immigration laws.”;

11          (5) in paragraph (4)(A), by striking “paragraph  
12          (2)” and inserting “subparagraph (B)”; and

13          (6) by striking paragraph (6) and inserting the  
14          following:

15                 “(6) ADDITIONAL RULES FOR DETENTION OR  
16          RELEASE OF CERTAIN ALIENS.—

17                   “(A) DETENTION REVIEW PROCESS FOR  
18          COOPERATIVE ALIENS ESTABLISHED.—For an  
19          alien who is not otherwise subject to mandatory  
20          detention, who has made all reasonable efforts  
21          to comply with a removal order and to cooper-  
22          ate fully with the Secretary of Homeland Secu-  
23          rity’s efforts to establish the alien’s identity and  
24          carry out the removal order, including making  
25          timely application in good faith for travel or

1 other documents necessary to the alien's depar-  
2 ture, and who has not conspired or acted to  
3 prevent removal, the Secretary shall establish  
4 an administrative review process to determine  
5 whether the alien should be detained or released  
6 on conditions. The Secretary shall make a de-  
7 termination whether to release an alien after  
8 the removal period in accordance with subpara-  
9 graph (B). The determination shall include con-  
10 sideration of any evidence submitted by the  
11 alien, and may include consideration of any  
12 other evidence, including any information or as-  
13 sistance provided by the Secretary of State or  
14 other Federal official and any other information  
15 available to the Secretary of Homeland Security  
16 pertaining to the ability to remove the alien.

17 “(B) AUTHORITY TO DETAIN BEYOND RE-  
18 MOVAL PERIOD.—

19 “(i) IN GENERAL.—The Secretary of  
20 Homeland Security, in the exercise of the  
21 Secretary's sole discretion, may continue to  
22 detain an alien for 90 days beyond the re-  
23 moval period (including any extension of  
24 the removal period as provided in para-  
25 graph (1)(C)). An alien whose detention is



1 extended under this subparagraph shall  
2 have no right to seek release on bond.

3 “(ii) SPECIFIC CIRCUMSTANCES.—The  
4 Secretary of Homeland Security, in the ex-  
5 ercise of the Secretary’s sole discretion,  
6 may continue to detain an alien beyond the  
7 90 days authorized in clause (i)—

8 “(I) until the alien is removed, if  
9 the Secretary, in the Secretary’s sole  
10 discretion, determines that there is a  
11 significant likelihood that the alien—

12 “(aa) will be removed in the  
13 reasonably foreseeable future; or

14 “(bb) would be removed in  
15 the reasonably foreseeable future,  
16 or would have been removed, but  
17 for the alien’s failure or refusal  
18 to make all reasonable efforts to  
19 comply with the removal order,  
20 or to cooperate fully with the  
21 Secretary’s efforts to establish  
22 the alien’s identity and carry out  
23 the removal order, including  
24 making timely application in  
25 good faith for travel or other doc-

1                   uments necessary to the alien’s  
2                   departure, or conspires or acts to  
3                   prevent removal;

4                   “(II) until the alien is removed,  
5                   if the Secretary of Homeland Security  
6                   certifies in writing—

7                               “(aa) in consultation with  
8                               the Secretary of Health and  
9                               Human Services, that the alien  
10                              has a highly contagious disease  
11                              that poses a threat to public safe-  
12                              ty;

13                             “(bb) after receipt of a writ-  
14                             ten recommendation from the  
15                             Secretary of State, that release  
16                             of the alien is likely to have seri-  
17                             ous adverse foreign policy con-  
18                             sequences for the United States;

19                             “(cc) based on information  
20                             available to the Secretary of  
21                             Homeland Security (including  
22                             classified, sensitive, or national  
23                             security information, and without  
24                             regard to the grounds upon  
25                             which the alien was ordered re-

1 moved), that there is reason to  
2 believe that the release of the  
3 alien would threaten the national  
4 security of the United States; or

5 “(dd) that the release of the  
6 alien will threaten the safety of  
7 the community or any person,  
8 conditions of release cannot rea-  
9 sonably be expected to ensure the  
10 safety of the community or any  
11 person, and either (AA) the alien  
12 has been convicted of one or  
13 more aggravated felonies (as de-  
14 fined in section 101(a)(43)(A))  
15 or of one or more crimes identi-  
16 fied by the Secretary of Home-  
17 land Security by regulation, or of  
18 one or more attempts or conspir-  
19 acies to commit any such aggra-  
20 vated felonies or such identified  
21 crimes, if the aggregate term of  
22 imprisonment for such attempts  
23 or conspiracies is at least 5  
24 years; or (BB) the alien has com-  
25 mitted one or more crimes of vio-

1                   lence (as defined in section 16 of  
2                   title 18, United States Code, but  
3                   not including a purely political  
4                   offense) and, because of a mental  
5                   condition or personality disorder  
6                   and behavior associated with that  
7                   condition or disorder, the alien is  
8                   likely to engage in acts of vio-  
9                   lence in the future; or

10                  “(III) pending a certification  
11                  under subclause (II), so long as the  
12                  Secretary of Homeland Security has  
13                  initiated the administrative review  
14                  process not later than 30 days after  
15                  the expiration of the removal period  
16                  (including any extension of the re-  
17                  moval period, as provided in para-  
18                  graph (1)(C)).

19                  “(iii) NO RIGHT TO BOND HEARING.—  
20                  An alien whose detention is extended under  
21                  this subparagraph shall have no right to  
22                  seek release on bond, including by reason  
23                  of a certification under clause (ii)(II).

24                  “(C) RENEWAL AND DELEGATION OF CER-  
25                  TIFICATION.—

1           “(i) RENEWAL.—The Secretary of  
2           Homeland Security may renew a certifi-  
3           cation under subparagraph (B)(ii)(II)  
4           every 6 months, after providing an oppor-  
5           tunity for the alien to request reconsider-  
6           ation of the certification and to submit  
7           documents or other evidence in support of  
8           that request. If the Secretary does not  
9           renew a certification, the Secretary may  
10          not continue to detain the alien under sub-  
11          paragraph (B)(ii)(II).

12          “(ii) DELEGATION.—Notwithstanding  
13          section 103, the Secretary of Homeland  
14          Security may not delegate the authority to  
15          make or renew a certification described in  
16          item (bb), (cc), or (dd) of subparagraph  
17          (B)(ii)(II) below the level of the Director  
18          of Immigration and Customs Enforcement.

19          “(iii) HEARING.—The Secretary of  
20          Homeland Security may request that the  
21          Attorney General or the Attorney General’s  
22          designee provide for a hearing to make the  
23          determination described in item (dd)(BB)  
24          of subparagraph (B)(ii)(II).

1           “(D) RELEASE ON CONDITIONS.—If it is  
2           determined that an alien should be released  
3           from detention by a Federal court, the Board of  
4           Immigration Appeals, or if an immigration  
5           judge orders a stay of removal, the Secretary of  
6           Homeland Security, in the exercise of the Sec-  
7           retary’s discretion, may impose conditions on  
8           release as provided in paragraph (3).

9           “(E) REDETENTION.—The Secretary of  
10          Homeland Security, in the exercise of the Sec-  
11          retary’s discretion, without any limitations  
12          other than those specified in this section, may  
13          again detain any alien subject to a final re-  
14          moval order who is released from custody, if re-  
15          moval becomes likely in the reasonably foresee-  
16          able future, the alien fails to comply with the  
17          conditions of release, or to continue to satisfy  
18          the conditions described in subparagraph (A),  
19          or if, upon reconsideration, the Secretary, in  
20          the Secretary’s sole discretion, determines that  
21          the alien can be detained under subparagraph  
22          (B). This section shall apply to any alien re-  
23          turned to custody pursuant to this subpara-  
24          graph, as if the removal period terminated on  
25          the day of the redetention.

1                   “(F) REVIEW OF DETERMINATIONS BY  
2                   SECRETARY.—A determination by the Secretary  
3                   under this paragraph shall not be subject to re-  
4                   view by any other agency.”.

5   **SEC. 3310. TIMELY REPATRIATION.**

6           (a) LISTING OF COUNTRIES.—Beginning on the date  
7   that is 6 months after the date of the enactment of this  
8   Act, and every 6 months thereafter, the Secretary of  
9   Homeland Security shall publish a report including the  
10   following:

11           (1) A list of the following:

12                   (A) Countries that have refused or unrea-  
13                   sonably delayed repatriation of an alien who is  
14                   a national of that country since the date of the  
15                   enactment of this Act and the total number of  
16                   such aliens, disaggregated by nationality.

17                   (B) Countries that have an excessive repa-  
18                   triation failure rate.

19           (2) A list of each country that was included  
20   under subparagraph (B) or (C) of paragraph (1) in  
21   both the report preceding the current report and the  
22   current report.

23           (b) SANCTIONS.—Beginning on the date on which a  
24   country is included in a list under subsection (a)(2) and

1 ending on the date on which that country is not included  
2 in such list, that country shall be subject to the following:

3 (1) The Secretary of State may not issue visas  
4 under section 101(a)(15)(A)(iii) of the Immigration  
5 and Nationality Act (8 U.S.C. 1101(a)(15)(A)(iii))  
6 to attendants, servants, personal employees, and  
7 members of their immediate families, of the officials  
8 and employees of that country who receive non-  
9 immigrant status under clause (i) or (ii) of section  
10 101(a)(15)(A) of such Act.

11 (2) Each 6 months thereafter that the country  
12 is included in that list, the Secretary of State shall  
13 reduce the number of visas available under clause (i)  
14 or (ii) of section 101(a)(15)(A) of the Immigration  
15 and Nationality Act in a fiscal year to nationals of  
16 that country by an amount equal to 10 percent of  
17 the baseline visa number for that country. Except as  
18 provided under section 243(d) of the Immigration  
19 and Nationality Act (8 U.S.C. 1253), the Secretary  
20 may not reduce the number to a level below 20 per-  
21 cent of the baseline visa number.

22 (c) WAIVERS.—

23 (1) NATIONAL SECURITY WAIVER.—If the Sec-  
24 retary of State submits to Congress a written deter-  
25 mination that significant national security interests



1 of the United States require a waiver of the sanc-  
2 tions under subsection (b), the Secretary may waive  
3 any reduction below 80 percent of the baseline visa  
4 number. The Secretary of Homeland Security may  
5 not delegate the authority under this subsection.

6 (2) TEMPORARY EXIGENT CIRCUMSTANCES.—If  
7 the Secretary of State submits to Congress a written  
8 determination that temporary exigent circumstances  
9 require a waiver of the sanctions under subsection  
10 (b), the Secretary may waive any reduction below 80  
11 percent of the baseline visa number during 6-month  
12 renewable periods. The Secretary of Homeland Secu-  
13 rity may not delegate the authority under this sub-  
14 section.

15 (d) EXEMPTION.—The Secretary of Homeland Secu-  
16 rity, in consultation with the Secretary of State, may ex-  
17 empt a country from inclusion in a list under subsection  
18 (a)(2) if the total number of nonrepatriations outstanding  
19 is less than 10 for the preceding 3-year period.

20 (e) UNAUTHORIZED VISA ISSUANCE.—Any visa  
21 issued in violation of this section shall be void.

22 (f) NOTICE.—If an alien who has been convicted of  
23 a criminal offense before a Federal or State court whose  
24 repatriation was refused or unreasonably delayed is to be  
25 released from detention by the Secretary of Homeland Se-

1 curity, the Secretary shall provide notice to the State and  
2 local law enforcement agency for the jurisdictions in which  
3 the alien is required to report or is to be released. When  
4 possible, and particularly in the case of violent crime, the  
5 Secretary shall make a reasonable effort to provide notice  
6 of such release to any crime victims and their immediate  
7 family members.

8 (g) DEFINITIONS.—For purposes of this section:

9 (1) REFUSED OR UNREASONABLY DELAYED.—

10 A country is deemed to have refused or unreasonably  
11 delayed the acceptance of an alien who is a citizen,  
12 subject, national, or resident of that country if, not  
13 later than 90 days after receiving a request to repa-  
14 triate such alien from an official of the United  
15 States who is authorized to make such a request, the  
16 country does not accept the alien or issue valid trav-  
17 el documents.

18 (2) FAILURE RATE.—The term “failure rate”  
19 for a period means the percentage determined by di-  
20 viding the total number of repatriation requests for  
21 aliens who are citizens, subjects, nationals, or resi-  
22 dents of a country that that country refused or un-  
23 reasonably delayed during that period by the total  
24 number of such requests during that period.

1           (3)   EXCESSIVE   REPATRIATION   FAILURE  
2   RATE.—The term “excessive repatriation failure  
3   rate” means, with respect to a report under sub-  
4   section (a), a failure rate greater than 10 percent  
5   for any of the following:

6           (A) The period of the 3 full fiscal years  
7       preceding the date of publication of the report.

8           (B) The period of 1 year preceding the  
9       date of publication of the report.

10          (4)   NUMBER   OF   NONREPATRIATIONS   OUT-  
11   STANDING.—The term “number of nonrepatriations  
12   outstanding” means, for a period, the number of  
13   unique aliens whose repatriation a country has re-  
14   fused or unreasonably delayed and whose repatri-  
15   ation has not occurred during that period.

16          (5)   BASELINE VISA NUMBER.—The term “base-  
17   line visa number” means, with respect to a country,  
18   the average number of visas issued each fiscal year  
19   to nationals of that country under clauses (i) and  
20   (ii) of section 101(a)(15)(A) of the Immigration and  
21   Nationality Act (8 U.S.C. 1101(a)(15)(A)) for the 3  
22   full fiscal years immediately preceding the first re-  
23   port under subsection (a) in which that country is  
24   included in the list under subsection (a)(2).

1 (h) GAO REPORT.—On the date that is 1 day after  
2 the date that the President submits a budget under sec-  
3 tion 1105(a) of title 31, United States Code, for fiscal year  
4 2016, the Comptroller General of the United States shall  
5 submit a report to Congress regarding the progress of the  
6 Secretary of Homeland Security and the Secretary of  
7 State in implementation of this section and in making re-  
8 quests to repatriate aliens as appropriate.

9 **SEC. 3311. ILLEGAL REENTRY.**

10 Section 276 of the Immigration and Nationality Act  
11 (8 U.S.C. 1326) is amended to read as follows:

12 **“SEC. 276. REENTRY OF REMOVED ALIEN.**

13 **“(a) REENTRY AFTER REMOVAL.—**

14 **“(1) IN GENERAL.—**Any alien who has been de-  
15 nied admission, excluded, deported, or removed, or  
16 who has departed the United States while an order  
17 of exclusion, deportation, or removal is outstanding,  
18 and subsequently enters, attempts to enter, crosses  
19 the border to, attempts to cross the border to, or is  
20 at any time found in the United States, shall be  
21 fined under title 18, United States Code, imprisoned  
22 not more than 2 years, or both.

23 **“(2) EXCEPTION.—**If an alien sought and re-  
24 ceived the express consent of the Secretary to re-  
25 apply for admission into the United States, or, with

1       respect to an alien previously denied admission and  
2       removed, the alien was not required to obtain such  
3       advance consent under the Immigration and Nation-  
4       ality Act or any prior Act, the alien shall not be sub-  
5       ject to the fine and imprisonment provided for in  
6       paragraph (1).

7       “(b) REENTRY OF CRIMINAL OFFENDERS.—Not-  
8       withstanding the penalty provided in subsection (a), if an  
9       alien described in that subsection was convicted before  
10      such removal or departure—

11           “(1) for 3 or more misdemeanors or for a fel-  
12          ony, the alien shall be fined under title 18, United  
13          States Code, imprisoned not more than 10 years, or  
14          both;

15           “(2) for a felony for which the alien was sen-  
16          tenced to a term of imprisonment of not less than  
17          30 months, the alien shall be fined under such title,  
18          imprisoned not more than 15 years, or both;

19           “(3) for a felony for which the alien was sen-  
20          tenced to a term of imprisonment of not less than  
21          60 months, the alien shall be fined under such title,  
22          imprisoned not more than 20 years, or both; or

23           “(4) for murder, rape, kidnapping, or a felony  
24          offense described in chapter 77 (relating to peonage  
25          and slavery) or 113B (relating to terrorism) of such

1 title, or for 3 or more felonies of any kind, the alien  
2 shall be fined under such title, imprisoned not more  
3 than 25 years, or both.

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

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

16 “(1) alleged in the indictment or information;  
17 and

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

20 “(e) REENTRY OF ALIEN REMOVED PRIOR TO COM-  
21 PLETION OF TERM OF IMPRISONMENT.—Any alien re-  
22 moved pursuant to section 241(a)(4) who enters, attempts  
23 to enter, crosses the border to, attempts to cross the bor-  
24 der to, or is at any time found in, the United States shall  
25 be incarcerated for the remainder of the sentence of im-

1   prisonment which was pending at the time of deportation  
2   without any reduction for parole or supervised release un-  
3   less the alien affirmatively demonstrates that the Sec-  
4   retary of Homeland Security has expressly consented to  
5   the alien's reentry. Such alien shall be subject to such  
6   other penalties relating to the reentry of removed aliens  
7   as may be available under this section or any other provi-  
8   sion of law.

9       “(f) DEFINITIONS.—For purposes of this section and  
10   section 275, the following definitions shall apply:

11           “(1) CROSSES THE BORDER TO THE UNITED  
12       STATES.—The term ‘crosses the border’ refers to the  
13       physical act of crossing the border free from official  
14       restraint.

15           “(2) OFFICIAL RESTRAINT.—The term ‘official  
16       restraint’ means any restraint known to the alien  
17       that serves to deprive the alien of liberty and pre-  
18       vents the alien from going at large into the United  
19       States. Surveillance unbeknownst to the alien shall  
20       not constitute official restraint.

21           “(3) FELONY.—The term ‘felony’ means any  
22       criminal offense punishable by a term of imprison-  
23       ment of more than 1 year under the laws of the  
24       United States, any State, or a foreign government.

1           “(4) MISDEMEANOR.—The term ‘misdemeanor’  
 2           means any criminal offense punishable by a term of  
 3           imprisonment of not more than 1 year under the ap-  
 4           plicable laws of the United States, any State, or a  
 5           foreign government.

6           “(5) REMOVAL.—The term ‘removal’ includes  
 7           any denial of admission, exclusion, deportation, or  
 8           removal, or any agreement by which an alien stipu-  
 9           lates or agrees to exclusion, deportation, or removal.

10          “(6) STATE.—The term ‘State’ means a State  
 11          of the United States, the District of Columbia, and  
 12          any commonwealth, territory, or possession of the  
 13          United States.”.

## 14       **TITLE IV—ASYLUM REFORM**

### 15   **SEC. 4401. CLARIFICATION OF INTENT REGARDING TAX-** 16                           **PAYER-PROVIDED COUNSEL.**

17          Section 292 of the Immigration and Nationality Act  
 18   (8 U.S.C. 1362) is amended—

19               (1) by striking “In any removal proceedings be-  
 20               fore an immigration judge and in any appeal pro-  
 21               ceedings before the Attorney General from any such  
 22               removal proceedings” and inserting “In any removal  
 23               proceedings before an immigration judge, or any  
 24               other immigration proceedings before the Attorney



1 General, the Secretary of Homeland Security, or any  
2 appeal of such a proceeding”.

3 (2) by striking “(at no expense to the Govern-  
4 ment)”;

5 (3) by adding at the end the following “Not-  
6 withstanding any other provision of law, in no in-  
7 stance shall the Government bear any expense for  
8 counsel for any person in proceedings described in  
9 this section.”.

10 **SEC. 4402. CREDIBLE FEAR INTERVIEWS.**

11 Section 235(b)(1)(B)(v) of the Immigration and Na-  
12 tionality Act (8 U.S.C. 1225(b)(1)(B)(v)) is amended by  
13 striking “claim” and all that follows, and inserting “claim,  
14 as determined pursuant to section 208(b)(1)(B)(iii), and  
15 such other facts as are known to the officer, that the alien  
16 could establish eligibility for asylum under section 1158  
17 of this title, and it is more probable than not that the  
18 statements made by, and on behalf of, the alien in support  
19 of the alien’s claim are true.”.

20 **SEC. 4403. RECORDING EXPEDITED REMOVAL AND CRED-**  
21 **IBLE FEAR INTERVIEWS.**

22 (a) IN GENERAL.—The Secretary of Homeland Secu-  
23 rity shall establish quality assurance procedures and take  
24 steps to effectively ensure that questions by employees of  
25 the Department of Homeland Security exercising expe-

1 dited removal authority under section 235(b) of the Immi-  
2 gration and Nationality Act (8 U.S.C. 1225(b)) are asked  
3 in a uniform manner, to the extent possible, and that both  
4 these questions and the answers provided in response to  
5 them are recorded in a uniform fashion.

6 (b) FACTORS RELATING TO SWORN STATEMENTS.—  
7 Where practicable, any sworn or signed written statement  
8 taken of an alien as part of the record of a proceeding  
9 under section 235(b)(1)(A) of the Immigration and Na-  
10 tionality Act (8 U.S.C. 1225(b)(1)(A)) shall be accom-  
11 panied by a recording of the interview which served as the  
12 basis for that sworn statement.

13 (c) INTERPRETERS.—The Secretary shall ensure that  
14 a competent interpreter, not affiliated with the govern-  
15 ment of the country from which the alien may claim asy-  
16 lum, is used when the interviewing officer does not speak  
17 a language understood by the alien.

18 (d) RECORDINGS IN IMMIGRATION PROCEEDINGS.—  
19 There shall be an audio or audio visual recording of inter-  
20 views of aliens subject to expedited removal. The recording  
21 shall be included in the record of proceeding and shall be  
22 considered as evidence in any further proceedings involv-  
23 ing the alien.

24 (e) NO PRIVATE RIGHT OF ACTION.—Nothing in this  
25 section shall be construed to create any right, benefit,

1 trust, or responsibility, whether substantive or procedural,  
 2 enforceable in law or equity by a party against the United  
 3 States, its departments, agencies, instrumentalities, enti-  
 4 ties, officers, employees, or agents, or any person, nor does  
 5 this section create any right of review in any administra-  
 6 tive, judicial, or other proceeding.

7 **SEC. 4404. SAFE THIRD COUNTRY.**

8 Section 208(a)(2)(A) of the Immigration and Nation-  
 9 ality Act (8 U.S.C. 1158(a)(2)(A)) is amended—

10 (1) by striking “Attorney General” each place  
 11 it appears and inserting “Secretary of Homeland Se-  
 12 curity”; and

13 (2) by striking “removed, pursuant to a bilat-  
 14 eral or multilateral agreement, to” and inserting  
 15 “removed to”.

16 **SEC. 4405. RENUNCIATION OF ASYLUM STATUS PURSUANT**  
 17 **TO RETURN TO HOME COUNTRY.**

18 (a) IN GENERAL.—Section 208(c) of the Immigration  
 19 and Nationality Act (8 U.S.C. 1158(c)) is amended by  
 20 adding at the end the following new paragraph:

21 “(4) RENUNCIATION OF STATUS PURSUANT TO  
 22 RETURN TO HOME COUNTRY.—

23 “(A) IN GENERAL.—Except as provided in  
 24 subparagraphs (B) and (C), any alien who is  
 25 granted asylum status under this Act, who, ab-

1 sent changed country conditions, subsequently  
2 returns to the country of such alien's nation-  
3 ality or, in the case of an alien having no na-  
4 tionality, returns to any country in which such  
5 alien last habitually resided, and who applied  
6 for such status because of persecution or a well-  
7 founded fear of persecution in that country on  
8 account of race, religion, nationality, member-  
9 ship in a particular social group, or political  
10 opinion, shall have his or her status terminated.

11 “(B) WAIVER.—The Secretary has discre-  
12 tion to waive subparagraph (A) if it is estab-  
13 lished to the satisfaction of the Secretary that  
14 the alien had a compelling reason for the re-  
15 turn. The waiver may be sought prior to depar-  
16 ture from the United States or upon return.

17 “(C) EXCEPTION FOR CERTAIN ALIENS  
18 FROM CUBA.—Subparagraph (A) shall not  
19 apply to an alien who is eligible for adjustment  
20 to that of an alien lawfully admitted for perma-  
21 nent residence pursuant to the Cuban Adjust-  
22 ment Act of 1966 (Public Law 89–732).”.

23 (b) CONFORMING AMENDMENT.—Section 208(c)(3)  
24 of the Immigration and Nationality Act (8 U.S.C.

1 1158(c)(3)) is amended by inserting after “paragraph  
2 (2)” the following: “or (4)”.

3 **SEC. 4406. NOTICE CONCERNING FRIVOLOUS ASYLUM AP-**  
4 **PLICATIONS.**

5 (a) IN GENERAL.—Section 208(d)(4) of the Immi-  
6 gration and Nationality Act (8 U.S.C. 1158(d)(4)) is  
7 amended—

8 (1) in the matter preceding subparagraph (A),  
9 by inserting “the Secretary of Homeland Security  
10 or” before “the Attorney General”;

11 (2) in subparagraph (A), by striking “and of  
12 the consequences, under paragraph (6), of knowingly  
13 filing a frivolous application for asylum; and” and  
14 inserting a semicolon;

15 (3) in subparagraph (B), by striking the period  
16 and inserting “; and”; and

17 (4) by adding at the end the following:

18 “(C) ensure that a written warning ap-  
19 pears on the asylum application advising the  
20 alien of the consequences of filing a frivolous  
21 application and serving as notice to the alien of  
22 the consequence of filing a frivolous applica-  
23 tion.”.

24 (b) CONFORMING AMENDMENT.—Section 208(d)(6)  
25 of the Immigration and Nationality Act (8 U.S.C.

1 1158(d)(6)) is amended by striking “If the” and all that  
2 follows and inserting:

3           “(A) If the Secretary of Homeland Secu-  
4           rity or the Attorney General determines that an  
5           alien has knowingly made a frivolous applica-  
6           tion for asylum and the alien has received the  
7           notice under paragraph (4)(C), the alien shall  
8           be permanently ineligible for any benefits under  
9           this chapter, effective as the date of the final  
10          determination of such an application;

11          “(B) An application is frivolous if the Sec-  
12          retary of Homeland Security or the Attorney  
13          General determines, consistent with subpara-  
14          graph (C), that—

15               “(i) it is so insufficient in substance  
16               that it is clear that the applicant know-  
17               ingly filed the application solely or in part  
18               to delay removal from the United States,  
19               to seek employment authorization as an  
20               applicant for asylum pursuant to regula-  
21               tions issued pursuant to paragraph (2), or  
22               to seek issuance of a Notice to Appeal in  
23               order to pursue Cancellation of Removal  
24               under section 240A(b); or

1 “(ii) any of its material elements are  
2 deliberately fabricated.

3 “(C) In determining that an application is  
4 frivolous, the Secretary or the Attorney Gen-  
5 eral, must be satisfied that the applicant, dur-  
6 ing the course of the proceedings, has had suffi-  
7 cient opportunity to clarify any discrepancies or  
8 implausible aspects of the claim.

9 “(D) For purposes of this section, a find-  
10 ing that an alien filed a frivolous asylum appli-  
11 cation shall not preclude the alien from seeking  
12 withholding of removal under section  
13 241(b)(3).) or protection pursuant to the Con-  
14 vention Against Torture.”.

15 **SEC. 4407. ANTI-FRAUD INVESTIGATIVE WORK PRODUCT.**

16 (a) ASYLUM CREDIBILITY DETERMINATIONS.—Sec-  
17 tion 208(b)(1)(B)(iii) of the Immigration and Nationality  
18 Act (8 U.S.C. 1158(b)(1)(B)(iii)) is amended by inserting  
19 after “all relevant factors” the following: “, including  
20 statements made to, and investigative reports prepared by,  
21 immigration authorities and other government officials”.

22 (b) RELIEF FOR REMOVAL CREDIBILITY DETER-  
23 MINATIONS.—Section 240(c)(4)(C) of the Immigration  
24 and Nationality Act (8 U.S.C. 1229a(c)(4)(C)) is amended  
25 by inserting after “all relevant factors” the following: “,

1 including statements made to, and investigative reports  
2 prepared by, immigration authorities and other govern-  
3 ment officials”.

4 **SEC. 4408. PENALTIES FOR ASYLUM FRAUD.**

5 Section 1001 of title 18 is amended by inserting at  
6 the end of the paragraph—

7 “(d) Whoever, in any matter before the Secretary of  
8 Homeland Security or the Attorney General pertaining to  
9 asylum under section 208 of the Immigration and Nation-  
10 ality Act or withholding of removal under section  
11 241(b)(3) of such Act, knowingly and willfully—

12 “(1) makes any materially false, fictitious, or  
13 fraudulent statement or representation; or

14 “(2) makes or uses any false writings or docu-  
15 ment knowing the same to contain any materially  
16 false, fictitious, or fraudulent statement or entry;  
17 shall be fined under this title or imprisoned not more than  
18 10 years, or both.”.

19 **SEC. 4409. STATUTE OF LIMITATIONS FOR ASYLUM FRAUD.**

20 Section 3291 of title 18 is amended—

21 (1) by striking “1544,” and inserting “1544  
22 and 1546,”;

23 (2) by striking “offense.” and inserting “of-  
24 fense or within 10 years after the fraud is discov-  
25 ered.”.



1 **SEC. 4410. TECHNICAL AMENDMENTS.**

2 Section 208 of the Immigration and Nationality Act  
3 (8 U.S.C. 1158) is amended—

4 (1) in subsection (a)—

5 (A) in paragraph (2)(D), by inserting  
6 “Secretary of Homeland Security or the” before  
7 “Attorney General”; and

8 (B) in paragraph (3), by inserting “Sec-  
9 retary of Homeland Security or the” before  
10 “Attorney General”;

11 (2) in subsection (b)(2), by inserting “Secretary  
12 of Homeland Security or the” before “Attorney Gen-  
13 eral” each place such term appears;

14 (3) in subsection (c)—

15 (A) in paragraph (1), by striking “Attor-  
16 ney General” each place such term appears and  
17 inserting “Secretary of Homeland Security”;  
18 and

19 (B) in paragraph (3), by inserting “Sec-  
20 retary of Homeland Security or the” before  
21 “Attorney General”; and

22 (4) in subsection (d)—

23 (A) in paragraph (1), by inserting “Sec-  
24 retary of Homeland Security or the” before  
25 “Attorney General” each place such term ap-  
26 pears;

(B) in paragraph (2), by striking “Attorney General” and inserting “Secretary of Homeland Security”; and

(C) in paragraph (5)—

(i) in subparagraph (A), by striking “Attorney General” and inserting “Secretary of Homeland Security”; and

(ii) in subparagraph (B), by inserting “Secretary of Homeland Security or the” before “Attorney General”.

## **TITLE V—UNACCOMPANIED AND ACCOMPANIED ALIEN MI- NORS APPREHENDED ALONG THE BORDER**

### **SEC. 5501. REPATRIATION OF UNACCOMPANIED ALIEN CHILDREN.**

(a) IN GENERAL.—Section 235 of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (8 U.S.C. 1232) is amended—

(1) in subsection (a)—

(A) in paragraph (2)—

(i) by amending the heading to read as follows: “RULES FOR UNACCOMPANIED ALIEN CHILDREN.—”;

(ii) in subparagraph (A)—

1 (I) in the matter preceding clause  
2 (i), by striking “who is a national or  
3 habitual resident of a country that is  
4 contiguous with the United States”;

5 (II) in clause (i), by inserting  
6 “and” at the end;

7 (III) in clause (ii), by striking “;  
8 and” and inserting a period; and

9 (IV) by striking clause (iii);  
10 (iii) in subparagraph (B)—

11 (I) in the matter preceding clause  
12 (i), by striking “(8 U.S.C. 1101 et  
13 seq.) may—” and inserting “(8  
14 U.S.C. 1101 et seq.)—”;

15 (II) in clause (i), by inserting be-  
16 fore “permit such child to withdraw”  
17 the following: “may”; and

18 (III) in clause (ii), by inserting  
19 before “return such child” the fol-  
20 lowing: “shall”; and

21 (iv) in subparagraph (C)—

22 (I) by amending the heading to  
23 read as follows: “AGREEMENTS WITH  
24 FOREIGN COUNTRIES.—”; and

1 (II) in the matter preceding  
2 clause (i), by striking “The Secretary  
3 of State shall negotiate agreements  
4 between the United States and coun-  
5 tries contiguous to the United States”  
6 and inserting “The Secretary of State  
7 may negotiate agreements between the  
8 United States and any foreign country  
9 that the Secretary determines appro-  
10 priate”;

11 (B) by redesignating paragraphs (3)  
12 through (5) as paragraphs (4) through (6), re-  
13 spectively, and inserting after paragraph (2) the  
14 following:

15 “(3) SPECIAL RULES FOR INTERVIEWING UNAC-  
16 COMPANIED ALIEN CHILDREN.—An unaccompanied  
17 alien child shall be interviewed by a dedicated U.S.  
18 Citizenship and Immigration Services immigration  
19 officer with specialized training in interviewing child  
20 trafficking victims. Such officer shall be in plain  
21 clothes and shall not carry a weapon. The interview  
22 shall occur in a private room.”; and

23 (C) in paragraph (6)(D) (as so redesign-  
24 nated)—

1 (i) in the matter preceding clause (i),  
2 by striking “, except for an unaccompanied  
3 alien child from a contiguous country sub-  
4 ject to exceptions under subsection (a)(2),”  
5 and inserting “who does not meet the cri-  
6 teria listed in paragraph (2)(A)”; and

7 (ii) in clause (i), by inserting before  
8 the semicolon at the end the following: “,  
9 which shall include a hearing before an im-  
10 migration judge not later than 14 days  
11 after being screened under paragraph (4)”;

12 (2) in subsection (b)—

13 (A) in paragraph (2)—

14 (i) in subparagraph (A), by inserting  
15 before the semicolon the following: “be-  
16 lieved not to meet the criteria listed in sub-  
17 section (a)(2)(A)”; and

18 (ii) in subparagraph (B), by inserting  
19 before the period the following: “and does  
20 not meet the criteria listed in subsection  
21 (a)(2)(A)”; and

22 (B) in paragraph (3), by striking “an un-  
23 accompanied alien child in custody shall” and  
24 all that follows, and inserting the following: “an  
25 unaccompanied alien child in custody—

1           “(A) in the case of a child who does not  
2           meet the criteria listed in subsection (a)(2)(A),  
3           shall transfer the custody of such child to the  
4           Secretary of Health and Human Services not  
5           later than 30 days after determining that such  
6           child is an unaccompanied alien child who does  
7           not meet such criteria; or

8           “(B) in the case of child who meets the  
9           criteria listed in subsection (a)(2)(A), may  
10          transfer the custody of such child to the Sec-  
11          retary of Health and Human Services after de-  
12          termining that such child is an unaccompanied  
13          alien child who meets such criteria.”; and

14          (3) in subsection (c)—

15                 (A) in paragraph (3), by inserting at the  
16                 end the following:

17                 “(D) INFORMATION ABOUT INDIVIDUALS  
18                 WITH WHOM CHILDREN ARE PLACED.—

19                         “(i) INFORMATION TO BE PROVIDED  
20                         TO HOMELAND SECURITY.—Before placing  
21                         a child with an individual, the Secretary of  
22                         Health and Human Services shall provide  
23                         to the Secretary of Homeland Security, re-  
24                         garding the individual with whom the child  
25                         will be placed, the following information:

1 “(I) The name of the individual.

2 “(II) The social security number  
3 of the individual.

4 “(III) The date of birth of the in-  
5 dividual.

6 “(IV) The location of the individ-  
7 ual’s residence where the child will be  
8 placed.

9 “(V) The immigration status of  
10 the individual, if known.

11 “(VI) Contact information for  
12 the individual.

13 “(ii) SPECIAL RULE.—In the case of a  
14 child who was apprehended on or after  
15 June 15, 2012, and before the date of the  
16 enactment of this subparagraph, who the  
17 Secretary of Health and Human Services  
18 placed with an individual, the Secretary  
19 shall provide the information listed in  
20 clause (i) to the Secretary of Homeland  
21 Security not later than 90 days after such  
22 date of enactment.

23 “(iii) ACTIVITIES OF THE SECRETARY  
24 OF HOMELAND SECURITY.—Not later than  
25 30 days after receiving the information

1 listed in clause (i), the Secretary of Home-  
2 land Security shall—

3 “(I) in the case that the immi-  
4 gration status of an individual with  
5 whom a child is placed is unknown,  
6 investigate the immigration status of  
7 that individual; and

8 “(II) upon determining that an  
9 individual with whom a child is placed  
10 is unlawfully present in the United  
11 States, initiate removal proceedings  
12 pursuant to chapter 4 of title II of the  
13 Immigration and Nationality Act (8  
14 U.S.C. 1221 et seq.).”; and

15 (B) in paragraph (5)—

16 (i) by inserting after “to the greatest  
17 extent practicable” the following: “(at no  
18 expense to the Government)”; and

19 (ii) by striking “have counsel to rep-  
20 resent them” and inserting “have access to  
21 counsel to represent them”.

22 (b) EFFECTIVE DATE.—The amendments made by  
23 this section shall apply to any unauthorized alien child ap-  
24 prehended on or after June 15, 2012.



1 **SEC. 5502. SPECIAL IMMIGRANT JUVENILE STATUS FOR IM-**  
2 **MIGRANTS UNABLE TO REUNITE WITH EI-**  
3 **THER PARENT.**

4 Section 101(a)(27)(J)(i) of the Immigration and Na-  
5 tionality Act (8 U.S.C. 1101(a)(27)(J)(i)) is amended by  
6 striking “1 or both of the immigrant’s parents” and in-  
7 serting “either of the immigrant’s parents”.

8 **SEC. 5503. JURISDICTION OF ASYLUM APPLICATIONS.**

9 Section 208(b)(3) of the Immigration and Nationality  
10 Act (8 U.S.C. 1158) is amended by striking subparagraph  
11 (C).

12 **SEC. 5504. QUARTERLY REPORT TO CONGRESS.**

13 Not later than January 5, 2019, and every 3 months  
14 thereafter—

15 (1) the Attorney General shall submit a report  
16 on—

17 (A) the total number of asylum cases filed  
18 by unaccompanied alien children and completed  
19 by an immigration judge during the 3-month  
20 period preceding the date of the report, and the  
21 percentage of those cases in which asylum was  
22 granted; and

23 (B) the number of unaccompanied alien  
24 children who failed to appear for any pro-  
25 ceeding before an immigration judge during the

1           3-month period preceding the date of the re-  
2           port; and

3           (2) the Secretary of Homeland Security shall  
4           submit a report on the total number of applications  
5           for asylum, filed by unaccompanied alien children,  
6           that were adjudicated during the 3-month period  
7           preceding the date of the report and the percentage  
8           of those applications that were granted.

9   **SEC. 5505. BIENNIAL REPORT TO CONGRESS.**

10          Not later than January 5, 2019, and every 6 months  
11       thereafter, the Attorney General shall submit a report to  
12       Congress on each crime for which an unaccompanied alien  
13       child is charged or convicted during the previous 6-month  
14       period following their release from the custody of the Sec-  
15       retary of Homeland Security pursuant to section 235 of  
16       the William Wilberforce Trafficking Victims Protection  
17       Reauthorization Act of 2008 (8 U.S.C. 1232).

18   **SEC. 5506. CLARIFICATION OF STANDARDS FOR FAMILY DE-**  
19                               **TENTION.**

20          (a) IN GENERAL.—Section 235 of the William Wil-  
21       berforce Trafficking Victims Protection Reauthorization  
22       Act of 2008 (8 U.S.C. 1232) is amended by adding at  
23       the end the following:

24          “(j) CONSTRUCTION.—

1           “(1) IN GENERAL.—Notwithstanding any other  
2           provision of law, judicial determination, consent de-  
3           cree, or settlement agreement, the detention of any  
4           alien child who is not an unaccompanied alien child  
5           shall be governed by sections 217, 235, 236, and  
6           241 of the Immigration and Nationality Act (8  
7           U.S.C. 1187, 1225, 1226, and 1231). There exists  
8           no presumption that an alien child who is not an un-  
9           accompanied alien child should not be detained, and  
10          all such determinations shall be in the discretion of  
11          the Secretary of Homeland Security.

12          “(2) RELEASE OF MINORS OTHER THAN UNAC-  
13          COMPANIED ALIENS.—In no circumstances shall an  
14          alien minor who is not an unaccompanied alien child  
15          be released by the Secretary of Homeland Security  
16          other than to a parent or legal guardian.”.

17          (b) EFFECTIVE DATE.—The amendment made by  
18          subsection (a) shall take effect on the date of the enact-  
19          ment of this Act and shall apply to all actions that occur  
20          before, on, or after the date of the enactment of this Act.

21                   **DIVISION C—BORDER**  
22                   **ENFORCEMENT**

23   **SEC. 1100. SHORT TITLE.**

24          This division may be cited as the “Border Security  
25          for America Act of 2018”.

# **1        TITLE I—BORDER SECURITY**

## **2    SEC. 1101. DEFINITIONS.**

3        In this title:

4            (1) **ADVANCED UNATTENDED SURVEILLANCE**  
5        **SENSORS.**—The term “advanced unattended surveil-  
6        lance sensors” means sensors that utilize an onboard  
7        computer to analyze detections in an effort to dis-  
8        cern between vehicles, humans, and animals, and ul-  
9        timately filter false positives prior to transmission.

10          (2) **APPROPRIATE CONGRESSIONAL COM-**  
11        **MITTEE.**—The term “appropriate congressional com-  
12        mittee” has the meaning given the term in section  
13        2(2) of the Homeland Security Act of 2002 (6  
14        U.S.C. 101(2)).

15          (3) **COMMISSIONER.**—The term “Commis-  
16        sioner” means the Commissioner of U.S. Customs  
17        and Border Protection.

18          (4) **HIGH TRAFFIC AREAS.**—The term “high  
19        traffic areas” has the meaning given such term in  
20        section 102(e)(1) of the Illegal Immigration Reform  
21        and Immigrant Responsibility Act of 1996, as  
22        amended by section 1111 of this division.

23          (5) **OPERATIONAL CONTROL.**—The term “oper-  
24        ational control” has the meaning given such term in

1 section 2(b) of the Secure Fence Act of 2006 (8  
2 U.S.C. 1701 note; Public Law 109–367).

3 (6) SECRETARY.—The term “Secretary” means  
4 the Secretary of Homeland Security.

5 (7) SITUATIONAL AWARENESS.—The term “sit-  
6 uational awareness” has the meaning given such  
7 term in section 1092(a)(7) of the National Defense  
8 Authorization Act for Fiscal Year 2017 (Public Law  
9 114–328; 6 U.S.C. 223(a)(7)).

10 (8) SMALL UNMANNED AERIAL VEHICLE.—The  
11 term “small unmanned aerial vehicle” has the mean-  
12 ing given the term “small unmanned aircraft” in  
13 section 331 of the FAA Modernization and Reform  
14 Act of 2012 (Public Law 112–95; 49 U.S.C. 40101  
15 note).

16 (9) TRANSIT ZONE.—The term “transit zone”  
17 has the meaning given such term in section  
18 1092(a)(8) of the National Defense Authorization  
19 Act for Fiscal Year 2017 (Public Law 114–328; 6  
20 U.S.C. 223(a)(7)).

21 (10) UNMANNED AERIAL SYSTEM.—The term  
22 “unmanned aerial system” has the meaning given  
23 the term “unmanned aircraft system” in section 331  
24 of the FAA Modernization and Reform Act of 2012  
25 (Public Law 112–95; 49 U.S.C. 40101 note).

1           (11) UNMANNED AERIAL VEHICLE.—The term  
2       “unmanned aerial vehicle” has the meaning given  
3       the term “unmanned aircraft” in section 331 of the  
4       FAA Modernization and Reform Act of 2012 (Public  
5       Law 112–95; 49 U.S.C. 40101 note).

6       **Subtitle A—Infrastructure and**  
7       **Equipment**

8       **SEC. 1111. STRENGTHENING THE REQUIREMENTS FOR BAR-**  
9       **RIERS ALONG THE SOUTHERN BORDER.**

10       Section 102 of the Illegal Immigration Reform and  
11       Immigrant Responsibility Act of 1996 (Division C of Pub-  
12       lic Law 104–208; 8 U.S.C. 1103 note) is amended—

13           (1) by amending subsection (a) to read as fol-  
14       lows:

15       “(a) IN GENERAL.—The Secretary of Homeland Se-  
16       curity shall take such actions as may be necessary (includ-  
17       ing the removal of obstacles to detection of illegal en-  
18       trants) to design, test, construct, install, deploy, and oper-  
19       ate physical barriers, tactical infrastructure, and tech-  
20       nology in the vicinity of the United States border to  
21       achieve situational awareness and operational control of  
22       the border and deter, impede, and detect illegal activity  
23       in high traffic areas.”;

24           (2) in subsection (b)—

(A) in the subsection heading, by striking “FENCING AND ROAD IMPROVEMENTS” and inserting “PHYSICAL BARRIERS”;

(B) in paragraph (1)—

(i) in subparagraph (A)—

(I) by striking “subsection (a)” and inserting “this section”;

(II) by striking “roads, lighting, cameras, and sensors” and inserting “tactical infrastructure, and technology”; and

(III) by striking “gain” inserting “achieve situational awareness and”; and

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

“(B) PHYSICAL BARRIERS AND TACTICAL INFRASTRUCTURE.—

“(i) IN GENERAL.—Not later than September 30, 2022, the Secretary of Homeland Security, in carrying out this section, shall deploy along the United States border the most practical and effective physical barriers and tactical infrastructure available for achieving situational

1 awareness and operational control of the  
2 border.

3 “(ii) CONSIDERATION FOR CERTAIN  
4 PHYSICAL BARRIERS AND TACTICAL INFRA-  
5 STRUCTURE.—The deployment of physical  
6 barriers and tactical infrastructure under  
7 this subparagraph shall not apply in any  
8 area or region along the border where nat-  
9 ural terrain features, natural barriers, or  
10 the remoteness of such area or region  
11 would make any such deployment ineffec-  
12 tive, as determined by the Secretary, for  
13 the purposes of achieving situational  
14 awareness or operational control of such  
15 area or region.”;

16 (iii) in subparagraph (C)—

17 (I) by amending clause (i) to  
18 read as follows:

19 “(i) IN GENERAL.—In carrying out  
20 this section, the Secretary of Homeland  
21 Security shall, before constructing physical  
22 barriers in a specific area or region, con-  
23 sult with the Secretary of the Interior, the  
24 Secretary of Agriculture, appropriate rep-  
25 resentatives of Federal, State, local, and



1 tribal governments, and appropriate pri-  
2 vate property owners in the United States  
3 to minimize the impact on the environ-  
4 ment, culture, commerce, and quality of  
5 life for the communities and residents lo-  
6 cated near the sites at which such physical  
7 barriers are to be constructed.”;

8 (II) by redesignating clause (ii)  
9 as clause (iii); and

10 (III) by inserting after clause (i),  
11 as amended, the following new clause:

12 “(ii) NOTIFICATION.—Not later than  
13 60 days after the consultation required  
14 under clause (i), the Secretary of Home-  
15 land Security shall notify the Committee  
16 on Homeland Security of the House of  
17 Representatives and the Committee on  
18 Homeland Security and Governmental Af-  
19 fairs of the Senate of the type of physical  
20 barriers, tactical infrastructure, or tech-  
21 nology the Secretary has determined is  
22 most practical and effective to achieve situ-  
23 ational awareness and operational control  
24 in a specific area or region and the other

1 alternatives the Secretary considered be-  
2 fore making such a determination.”; and

3 (iv) by striking subparagraph (D);  
4 (C) in paragraph (2)—

5 (i) by striking “Attorney General”  
6 and inserting “Secretary of Homeland Se-  
7 curity”;

8 (ii) by striking “this subsection” and  
9 inserting “this section”; and

10 (iii) by striking “construction of  
11 fences” and inserting “the construction of  
12 physical barriers”; and

13 (D) by amending paragraph (3) to read as  
14 follows:

15 “(3) AGENT SAFETY.—In carrying out this sec-  
16 tion, the Secretary of Homeland Security, when de-  
17 signing, constructing, and deploying physical bar-  
18 riers, tactical infrastructure, or technology, shall in-  
19 corporate such safety features into such design, con-  
20 struction, or deployment of such physical barriers,  
21 tactical infrastructure, or technology, as the case  
22 may be, that the Secretary determines, in the Sec-  
23 retary’s sole discretion, are necessary to maximize  
24 the safety and effectiveness of officers or agents of  
25 the Department of Homeland Security or of any

1 other Federal agency deployed in the vicinity of such  
2 physical barriers, tactical infrastructure, or tech-  
3 nology.”;

4 (3) in subsection (c), by amending paragraph  
5 (1) to read as follows:

6 “(1) IN GENERAL.—Notwithstanding any other  
7 provision of law, the Secretary of Homeland Security  
8 shall have the authority to waive all legal require-  
9 ments the Secretary, in the Secretary’s sole discre-  
10 tion, determines necessary to ensure the expeditious  
11 design, testing, construction, installation, deploy-  
12 ment, operation, and maintenance of the physical  
13 barriers, tactical infrastructure, and technology  
14 under this section. Any such decision by the Sec-  
15 retary shall be effective upon publication in the Fed-  
16 eral Register.”; and

17 (4) by adding after subsection (d) the following  
18 new subsections:

19 “(e) TECHNOLOGY.—Not later than September 30,  
20 2022, the Secretary of Homeland Security, in carrying out  
21 this section, shall deploy along the United States border  
22 the most practical and effective technology available for  
23 achieving situational awareness and operational control of  
24 the border.

1       “(f) LIMITATION ON REQUIREMENTS.—Nothing in  
2 this section may be construed as requiring the Secretary  
3 of Homeland Security to install tactical infrastructure,  
4 technology, and physical barriers in a particular location  
5 along an international border of the United States, if the  
6 Secretary determines that the use or placement of such  
7 resources is not the most appropriate means to achieve  
8 and maintain situational awareness and operational con-  
9 trol over the international border at such location.

10       “(g) DEFINITIONS.—In this section:

11               “(1) HIGH TRAFFIC AREAS.—The term ‘high  
12 traffic areas’ means areas in the vicinity of the  
13 United States border that—

14                       “(A) are within the responsibility of U.S.  
15 Customs and Border Protection; and

16                       “(B) have significant unlawful cross-border  
17 activity, as determined by the Secretary of  
18 Homeland Security.

19               “(2) OPERATIONAL CONTROL.—The term ‘oper-  
20 ational control’ has the meaning given such term in  
21 section 2(b) of the Secure Fence Act of 2006 (8  
22 U.S.C. 1701 note; Public Law 109–367).

23               “(3) PHYSICAL BARRIERS.—The term ‘physical  
24 barriers’ includes reinforced fencing, border wall sys-  
25 tem, and levee walls.

1           “(4) SITUATIONAL AWARENESS.—The term ‘sit-  
2           uational awareness’ has the meaning given such  
3           term in section 1092(a)(7) of the National Defense  
4           Authorization Act for Fiscal Year 2017 (Public Law  
5           114–328).

6           “(5) TACTICAL INFRASTRUCTURE.—The term  
7           ‘tactical infrastructure’ includes boat ramps, access  
8           gates, checkpoints, lighting, and roads.

9           “(6) TECHNOLOGY.—The term ‘technology’ in-  
10          cludes border surveillance and detection technology,  
11          including the following:

12               “(A) Tower-based surveillance technology.

13               “(B) Deployable, lighter-than-air ground  
14               surveillance equipment.

15               “(C) Vehicle and Dismount Exploitation  
16               Radars (VADER).

17               “(D) 3-dimensional, seismic acoustic detec-  
18               tion and ranging border tunneling detection  
19               technology.

20               “(E) Advanced unattended surveillance  
21               sensors.

22               “(F) Mobile vehicle-mounted and man-  
23               portable surveillance capabilities.

24               “(G) Unmanned aerial vehicles.

1                   “(H) Other border detection, communica-  
2                   tion, and surveillance technology.

3                   “(7) UNMANNED AERIAL VEHICLES.—The term  
4                   ‘unmanned aerial vehicle’ has the meaning given the  
5                   term ‘unmanned aircraft’ in section 331 of the FAA  
6                   Modernization and Reform Act of 2012 (Public Law  
7                   112–95; 49 U.S.C. 40101 note).”.

8   **SEC. 1112. AIR AND MARINE OPERATIONS FLIGHT HOURS.**

9                   (a) INCREASED FLIGHT HOURS.—The Secretary,  
10                  after coordination with the Administrator of the Federal  
11                  Aviation Administration, shall ensure that not fewer than  
12                  95,000 annual flight hours are carried out by Air and Ma-  
13                  rine Operations of U.S. Customs and Border Protection.

14                  (b) UNMANNED AERIAL SYSTEM.—The Secretary  
15                  shall ensure that Air and Marine Operations operate un-  
16                  manned aerial systems on the southern border of the  
17                  United States for not less than 24 hours per day for five  
18                  days per week.

19                  (c) CONTRACT AIR SUPPORT AUTHORIZATION.—The  
20                  Commissioner shall contract for the unfulfilled identified  
21                  air support mission critical hours, as identified by the  
22                  Chief of the U.S. Border Patrol.

23                  (d) PRIMARY MISSION.—The Commissioner shall en-  
24                  sure that—

1           (1) the primary missions for Air and Marine  
2       Operations are to directly support U.S. Border Pa-  
3       trol activities along the southern border of the  
4       United States and Joint Interagency Task Force  
5       South operations in the transit zone; and

6           (2) the Executive Assistant Commissioner of  
7       Air and Marine Operations assigns the greatest pri-  
8       ority to support missions established by the Commis-  
9       sioner to carry out the requirements under this Act.

10       (e) HIGH-DEMAND FLIGHT HOUR REQUIRE-  
11   MENTS.—In accordance with subsection (d), the Commis-  
12   sioner shall ensure that U.S. Border Patrol Sector  
13   Chiefs—

14           (1) identify critical flight hour requirements;  
15       and

16           (2) direct Air and Marine Operations to sup-  
17       port requests from Sector Chiefs as their primary  
18       mission.

19       (f) SMALL UNMANNED AERIAL VEHICLES.—

20           (1) IN GENERAL.—The Chief of the U.S. Bor-  
21       der Patrol shall be the executive agent for U.S. Cus-  
22       toms and Border Protection’s use of small un-  
23       manned aerial vehicles for the purpose of meeting  
24       the U.S. Border Patrol’s unmet flight hour oper-

1        ational requirements and to achieve situational  
2        awareness and operational control.

3            (2) COORDINATION.—In carrying out para-  
4        graph (1), the Chief of the U.S. Border Patrol  
5        shall—

6            (A) coordinate flight operations with the  
7        Administrator of the Federal Aviation Adminis-  
8        tration to ensure the safe and efficient oper-  
9        ation of the National Airspace System; and

10          (B) coordinate with the Executive Assist-  
11        ant Commissioner for Air and Marine Oper-  
12        ations of U.S. Customs and Border Protection  
13        to ensure the safety of other U.S. Customs and  
14        Border Protection aircraft flying in the vicinity  
15        of small unmanned aerial vehicles operated by  
16        the U.S. Border Patrol.

17          (3) CONFORMING AMENDMENT.—Paragraph (3)  
18        of section 411(e) of the Homeland Security Act of  
19        2002 (6 U.S.C. 211(e)) is amended—

20            (A) in subparagraph (B), by striking  
21        “and” after the semicolon at the end;

22            (B) by redesignating subparagraph (C) as  
23        subparagraph (D); and

24            (C) by inserting after subparagraph (B)  
25        the following new subparagraph:



1           “(C) carry out the small unmanned aerial  
2           vehicle requirements pursuant to subsection (f)  
3           of section 1112 of the Border Security for  
4           America Act of 2018; and”.

5           (g) SAVING CLAUSE.—Nothing in this section shall  
6           confer, transfer, or delegate to the Secretary, the Commis-  
7           sioner, the Executive Assistant Commissioner for Air and  
8           Marine Operations of U.S. Customs and Border Protec-  
9           tion, or the Chief of the U.S. Border Patrol any authority  
10          of the Secretary of Transportation or the Administrator  
11          of the Federal Aviation Administration relating to the use  
12          of airspace or aviation safety.

13   **SEC. 1113. CAPABILITY DEPLOYMENT TO SPECIFIC SEC-**  
14           **TORS AND TRANSIT ZONE.**

15          (a) IN GENERAL.—Not later than September 30,  
16          2022, the Secretary, in implementing section 102 of the  
17          Illegal Immigration Reform and Immigrant Responsibility  
18          Act of 1996 (as amended by section 1111 of this division),  
19          and acting through the appropriate component of the De-  
20          partment of Homeland Security, shall deploy to each sec-  
21          tor or region of the southern border and the northern bor-  
22          der, in a prioritized manner to achieve situational aware-  
23          ness and operational control of such borders, the following  
24          additional capabilities:

1           (1) SAN DIEGO SECTOR.—For the San Diego  
2 sector, the following:

3                   (A) Tower-based surveillance technology.

4                   (B) Subterranean surveillance and detec-  
5 tion technologies.

6                   (C) To increase coastal maritime domain  
7 awareness, the following:

8                           (i) Deployable, lighter-than-air surface  
9 surveillance equipment.

10                           (ii) Unmanned aerial vehicles with  
11 maritime surveillance capability.

12                           (iii) U.S. Customs and Border Protec-  
13 tion maritime patrol aircraft.

14                           (iv) Coastal radar surveillance sys-  
15 tems.

16                           (v) Maritime signals intelligence capa-  
17 bilities.

18                   (D) Ultralight aircraft detection capabili-  
19 ties.

20                   (E) Advanced unattended surveillance sen-  
21 sors.

22                   (F) A rapid reaction capability supported  
23 by aviation assets.

24                   (G) Mobile vehicle-mounted and man-port-  
25 able surveillance capabilities.

1                   (H) Man-portable unmanned aerial vehi-  
2                   cles.

3                   (I) Improved agent communications capa-  
4                   bilities.

5                   (2) EL CENTRO SECTOR.—For the El Centro  
6                   sector, the following:

7                   (A) Tower-based surveillance technology.

8                   (B) Deployable, lighter-than-air ground  
9                   surveillance equipment.

10                  (C) Man-portable unmanned aerial vehi-  
11                  cles.

12                  (D) Ultralight aircraft detection capabili-  
13                  ties.

14                  (E) Advanced unattended surveillance sen-  
15                  sors.

16                  (F) A rapid reaction capability supported  
17                  by aviation assets.

18                  (G) Man-portable unmanned aerial vehi-  
19                  cles.

20                  (H) Improved agent communications capa-  
21                  bilities.

22                  (3) YUMA SECTOR.—For the Yuma sector, the  
23                  following:

24                  (A) Tower-based surveillance technology.

1 (B) Deployable, lighter-than-air ground  
2 surveillance equipment.

3 (C) Ultralight aircraft detection capabili-  
4 ties.

5 (D) Advanced unattended surveillance sen-  
6 sors.

7 (E) A rapid reaction capability supported  
8 by aviation assets.

9 (F) Mobile vehicle-mounted and man-port-  
10 able surveillance systems.

11 (G) Man-portable unmanned aerial vehi-  
12 cles.

13 (H) Improved agent communications capa-  
14 bilities.

15 (4) TUCSON SECTOR.—For the Tucson sector,  
16 the following:

17 (A) Tower-based surveillance technology.

18 (B) Increased flight hours for aerial detec-  
19 tion, interdiction, and monitoring operations ca-  
20 pability.

21 (C) Deployable, lighter-than-air ground  
22 surveillance equipment.

23 (D) Ultralight aircraft detection capabili-  
24 ties.

1 (E) Advanced unattended surveillance sen-  
2 sors.

3 (F) A rapid reaction capability supported  
4 by aviation assets.

5 (G) Man-portable unmanned aerial vehi-  
6 cles.

7 (H) Improved agent communications capa-  
8 bilities.

9 (5) EL PASO SECTOR.—For the El Paso sector,  
10 the following:

11 (A) Tower-based surveillance technology.

12 (B) Deployable, lighter-than-air ground  
13 surveillance equipment.

14 (C) Ultralight aircraft detection capabili-  
15 ties.

16 (D) Advanced unattended surveillance sen-  
17 sors.

18 (E) Mobile vehicle-mounted and man-port-  
19 able surveillance systems.

20 (F) A rapid reaction capability supported  
21 by aviation assets.

22 (G) Mobile vehicle-mounted and man-port-  
23 able surveillance capabilities.

24 (H) Man-portable unmanned aerial vehi-  
25 cles.

1 (I) Improved agent communications capa-  
2 bilities.

3 (6) BIG BEND SECTOR.—For the Big Bend sec-  
4 tor, the following:

5 (A) Tower-based surveillance technology.

6 (B) Deployable, lighter-than-air ground  
7 surveillance equipment.

8 (C) Improved agent communications capa-  
9 bilities.

10 (D) Ultralight aircraft detection capabili-  
11 ties.

12 (E) Advanced unattended surveillance sen-  
13 sors.

14 (F) A rapid reaction capability supported  
15 by aviation assets.

16 (G) Mobile vehicle-mounted and man-port-  
17 able surveillance capabilities.

18 (H) Man-portable unmanned aerial vehi-  
19 cles.

20 (I) Improved agent communications capa-  
21 bilities.

22 (7) DEL RIO SECTOR.—For the Del Rio sector,  
23 the following:

24 (A) Tower-based surveillance technology.

1           (B) Increased monitoring for cross-river  
2 dams, culverts, and footpaths.

3           (C) Improved agent communications capa-  
4 bilities.

5           (D) Improved maritime capabilities in the  
6 Amistad National Recreation Area.

7           (E) Advanced unattended surveillance sen-  
8 sors.

9           (F) A rapid reaction capability supported  
10 by aviation assets.

11          (G) Mobile vehicle-mounted and man-port-  
12 able surveillance capabilities.

13          (H) Man-portable unmanned aerial vehi-  
14 cles.

15          (I) Improved agent communications capa-  
16 bilities.

17          (8) LAREDO SECTOR.—For the Laredo sector,  
18 the following:

19           (A) Tower-based surveillance technology.

20           (B) Maritime detection resources for the  
21 Falcon Lake region.

22           (C) Increased flight hours for aerial detec-  
23 tion, interdiction, and monitoring operations ca-  
24 pability.

1 (D) Increased monitoring for cross-river  
2 dams, culverts, and footpaths.

3 (E) Ultralight aircraft detection capability.

4 (F) Advanced unattended surveillance sen-  
5 sors.

6 (G) A rapid reaction capability supported  
7 by aviation assets.

8 (H) Man-portable unmanned aerial vehi-  
9 cles.

10 (I) Improved agent communications capa-  
11 bilities.

12 (9) RIO GRANDE VALLEY SECTOR.—For the Rio  
13 Grande Valley sector, the following:

14 (A) Tower-based surveillance technology.

15 (B) Deployable, lighter-than-air ground  
16 surveillance equipment.

17 (C) Increased flight hours for aerial detec-  
18 tion, interdiction, and monitoring operations ca-  
19 pability.

20 (D) Ultralight aircraft detection capability.

21 (E) Advanced unattended surveillance sen-  
22 sors.

23 (F) Increased monitoring for cross-river  
24 dams, culverts, footpaths.



1 (G) A rapid reaction capability supported  
2 by aviation assets.

3 (H) Increased maritime interdiction capa-  
4 bilities.

5 (I) Mobile vehicle-mounted and man-port-  
6 able surveillance capabilities.

7 (J) Man-portable unmanned aerial vehi-  
8 cles.

9 (K) Improved agent communications capa-  
10 bilities.

11 (10) BLAINE SECTOR.—For the Blaine sector,  
12 the following:

13 (A) Increased flight hours for aerial detec-  
14 tion, interdiction, and monitoring operations ca-  
15 pability.

16 (B) Coastal radar surveillance systems.

17 (C) Increased maritime interdiction capa-  
18 bilities.

19 (D) Mobile vehicle-mounted and man-port-  
20 able surveillance capabilities.

21 (E) Advanced unattended surveillance sen-  
22 sors.

23 (F) Ultralight aircraft detection capabili-  
24 ties.

1 (G) Man-portable unmanned aerial vehi-  
2 cles.

3 (H) Improved agent communications capa-  
4 bilities.

5 (11) SPOKANE SECTOR.—For the Spokane sec-  
6 tor, the following:

7 (A) Increased flight hours for aerial detec-  
8 tion, interdiction, and monitoring operations ca-  
9 pability.

10 (B) Increased maritime interdiction capa-  
11 bilities.

12 (C) Mobile vehicle-mounted and man-port-  
13 able surveillance capabilities.

14 (D) Advanced unattended surveillance sen-  
15 sors.

16 (E) Ultralight aircraft detection capabili-  
17 ties.

18 (F) Completion of six miles of the Bog  
19 Creek road.

20 (G) Man-portable unmanned aerial vehi-  
21 cles.

22 (H) Improved agent communications sys-  
23 tems.

24 (12) HAVRE SECTOR.—For the Havre sector,  
25 the following:

1           (A) Increased flight hours for aerial detec-  
2           tion, interdiction, and monitoring operations ca-  
3           pability.

4           (B) Mobile vehicle-mounted and man-port-  
5           able surveillance capabilities.

6           (C) Advanced unattended surveillance sen-  
7           sors.

8           (D) Ultralight aircraft detection capabili-  
9           ties.

10          (E) Man-portable unmanned aerial vehi-  
11          cles.

12          (F) Improved agent communications sys-  
13          tems.

14          (13) GRAND FORKS SECTOR.—For the Grand  
15          Forks sector, the following:

16           (A) Increased flight hours for aerial detec-  
17           tion, interdiction, and monitoring operations ca-  
18           pability.

19           (B) Mobile vehicle-mounted and man-port-  
20           able surveillance capabilities.

21           (C) Advanced unattended surveillance sen-  
22           sors.

23           (D) Ultralight aircraft detection capabili-  
24           ties.

1                   (E) Man-portable unmanned aerial vehi-  
2                   cles.

3                   (F) Improved agent communications sys-  
4                   tems.

5                   (14) DETROIT SECTOR.—For the Detroit sec-  
6                   tor, the following:

7                   (A) Increased flight hours for aerial detec-  
8                   tion, interdiction, and monitoring operations ca-  
9                   pability.

10                  (B) Coastal radar surveillance systems.

11                  (C) Increased maritime interdiction capa-  
12                  bilities.

13                  (D) Mobile vehicle-mounted and man-port-  
14                  able surveillance capabilities.

15                  (E) Advanced unattended surveillance sen-  
16                  sors.

17                  (F) Ultralight aircraft detection capabili-  
18                  ties.

19                  (G) Man-portable unmanned aerial vehi-  
20                  cles.

21                  (H) Improved agent communications sys-  
22                  tems.

23                  (15) BUFFALO SECTOR.—For the Buffalo sec-  
24                  tor, the following:

1 (A) Increased flight hours for aerial detec-  
2 tion, interdiction, and monitoring operations ca-  
3 pability.

4 (B) Coastal radar surveillance systems.

5 (C) Increased maritime interdiction capa-  
6 bilities.

7 (D) Mobile vehicle-mounted and man-port-  
8 able surveillance capabilities.

9 (E) Advanced unattended surveillance sen-  
10 sors.

11 (F) Ultralight aircraft detection capabili-  
12 ties.

13 (G) Man-portable unmanned aerial vehi-  
14 cles.

15 (H) Improved agent communications sys-  
16 tems.

17 (16) SWANTON SECTOR.—For the Swanton sec-  
18 tor, the following:

19 (A) Increased flight hours for aerial detec-  
20 tion, interdiction, and monitoring operations ca-  
21 pability.

22 (B) Mobile vehicle-mounted and man-port-  
23 able surveillance capabilities.

24 (C) Advanced unattended surveillance sen-  
25 sors.

1 (D) Ultralight aircraft detection capabili-  
2 ties.

3 (E) Man-portable unmanned aerial vehi-  
4 cles.

5 (F) Improved agent communications sys-  
6 tems.

7 (17) HOULTON SECTOR.—For the Houlton sec-  
8 tor, the following:

9 (A) Increased flight hours for aerial detec-  
10 tion, interdiction, and monitoring operations ca-  
11 pability.

12 (B) Mobile vehicle-mounted and man-port-  
13 able surveillance capabilities.

14 (C) Advanced unattended surveillance sen-  
15 sors.

16 (D) Ultralight aircraft detection capabili-  
17 ties.

18 (E) Man-portable unmanned aerial vehi-  
19 cles.

20 (F) Improved agent communications sys-  
21 tems.

22 (18) TRANSIT ZONE.—For the transit zone, the  
23 following:

24 (A) Not later than two years after the date  
25 of the enactment of this Act, an increase in the

1           number of overall cutter, boat, and aircraft  
2           hours spent conducting interdiction operations  
3           over the average number of such hours during  
4           the preceding three fiscal years.

5           (B) Increased maritime signals intelligence  
6           capabilities.

7           (C) To increase maritime domain aware-  
8           ness, the following:

9                 (i) Unmanned aerial vehicles with  
10                maritime surveillance capability.

11               (ii) Increased maritime aviation patrol  
12               hours.

13           (D) Increased operational hours for mari-  
14           time security components dedicated to joint  
15           counter-smuggling and interdiction efforts with  
16           other Federal agencies, including the  
17           Deployable Specialized Forces of the Coast  
18           Guard.

19           (E) Coastal radar surveillance systems  
20           with long range day and night cameras capable  
21           of providing full maritime domain awareness of  
22           the United States territorial waters surrounding  
23           Puerto Rico, Mona Island, Desecheo Island,  
24           Vieques Island, Culebra Island, Saint Thomas,  
25           Saint John, and Saint Croix.

1 (b) TACTICAL FLEXIBILITY.—

2 (1) SOUTHERN AND NORTHERN LAND BOR-  
3 DERS.—

4 (A) IN GENERAL.—Beginning on Sep-  
5 tember 30, 2021, or after the Secretary has de-  
6 ployed at least 25 percent of the capabilities re-  
7 quired in each sector specified in subsection (a),  
8 whichever comes later, the Secretary may devi-  
9 ate from such capability deployments if the Sec-  
10 retary determines that such deviation is re-  
11 quired to achieve situational awareness or oper-  
12 ational control.

13 (B) NOTIFICATION.—If the Secretary exer-  
14 cises the authority described in subparagraph  
15 (A), the Secretary shall, not later than 90 days  
16 after such exercise, notify the Committee on  
17 Homeland Security and Governmental Affairs  
18 of the Senate and the Committee on Homeland  
19 Security of the House of Representatives re-  
20 garding the deviation under such subparagraph  
21 that is the subject of such exercise. If the Sec-  
22 retary makes any changes to such deviation, the  
23 Secretary shall, not later than 90 days after  
24 any such change, notify such committees re-  
25 garding such change.



1 (2) TRANSIT ZONE.—

2 (A) NOTIFICATION.—The Secretary shall  
3 notify the Committee on Homeland Security  
4 and Governmental Affairs of the Senate, the  
5 Committee on Commerce, Science, and Trans-  
6 portation of the Senate, the Committee on  
7 Homeland Security of the House of Representa-  
8 tives, and the Committee on Transportation  
9 and Infrastructure of the House of Representa-  
10 tives regarding the capability deployments for  
11 the transit zone specified in paragraph (18) of  
12 subsection (a), including information relating  
13 to—

14 (i) the number and types of assets  
15 and personnel deployed; and

16 (ii) the impact such deployments have  
17 on the capability of the Coast Guard to  
18 conduct its mission in the transit zone re-  
19 ferred to in paragraph (18) of subsection  
20 (a).

21 (B) ALTERATION.—The Secretary may  
22 alter the capability deployments referred to in  
23 this section if the Secretary—

24 (i) determines, after consultation with  
25 the committees referred to in subpara-

graph (A), that such alteration is necessary; and

(ii) not later than 30 days after making a determination under clause (i), notifies the committees referred to in such subparagraph regarding such alteration, including information relating to—

(I) the number and types of assets and personnel deployed pursuant to such alteration; and

(II) the impact such alteration has on the capability of the Coast Guard to conduct its mission in the transit zone referred to in paragraph (18) of subsection (a).

(c) EXIGENT CIRCUMSTANCES.—

(1) IN GENERAL.—Notwithstanding subsection (b), the Secretary may deploy the capabilities referred to in subsection (a) in a manner that is inconsistent with the requirements specified in such subsection if, after the Secretary has deployed at least 25 percent of such capabilities, the Secretary determines that exigent circumstances demand such an inconsistent deployment or that such an inconsistent

1 deployment is vital to the national security interests  
2 of the United States.

3 (2) NOTIFICATION.—The Secretary shall notify  
4 the Committee on Homeland Security of the House  
5 of Representative and the Committee on Homeland  
6 Security and Governmental Affairs of the Senate not  
7 later than 30 days after making a determination  
8 under paragraph (1). Such notification shall include  
9 a detailed justification regarding such determination.

10 **SEC. 1114. U.S. BORDER PATROL ACTIVITIES.**

11 The Chief of the U.S. Border Patrol shall prioritize  
12 the deployment of U.S. Border Patrol agents to as close  
13 to the physical land border as possible, consistent with  
14 border security enforcement priorities and accessibility to  
15 such areas.

16 **SEC. 1115. BORDER SECURITY TECHNOLOGY PROGRAM**  
17 **MANAGEMENT.**

18 (a) IN GENERAL.—Subtitle C of title IV of the  
19 Homeland Security Act of 2002 (6 U.S.C. 231 et seq.)  
20 is amended by adding at the end the following new section:

21 **“SEC. 435. BORDER SECURITY TECHNOLOGY PROGRAM**  
22 **MANAGEMENT.**

23 “(a) MAJOR ACQUISITION PROGRAM DEFINED.—In  
24 this section, the term ‘major acquisition program’ means  
25 an acquisition program of the Department that is esti-

1 mated by the Secretary to require an eventual total ex-  
2 penditure of at least \$300,000,000 (based on fiscal year  
3 2017 constant dollars) over its life cycle cost.

4 “(b) PLANNING DOCUMENTATION.—For each border  
5 security technology acquisition program of the Depart-  
6 ment that is determined to be a major acquisition pro-  
7 gram, the Secretary shall—

8 “(1) ensure that each such program has a writ-  
9 ten acquisition program baseline approved by the  
10 relevant acquisition decision authority;

11 “(2) document that each such program is meet-  
12 ing cost, schedule, and performance thresholds as  
13 specified in such baseline, in compliance with rel-  
14 evant departmental acquisition policies and the Fed-  
15 eral Acquisition Regulation; and

16 “(3) have a plan for meeting program imple-  
17 mentation objectives by managing contractor per-  
18 formance.

19 “(c) ADHERENCE TO STANDARDS.—The Secretary,  
20 acting through the Under Secretary for Management and  
21 the Commissioner of U.S. Customs and Border Protection,  
22 shall ensure border security technology acquisition pro-  
23 gram managers who are responsible for carrying out this  
24 section adhere to relevant internal control standards iden-  
25 tified by the Comptroller General of the United States.

1 The Commissioner shall provide information, as needed,  
2 to assist the Under Secretary in monitoring management  
3 of border security technology acquisition programs under  
4 this section.

5 “(d) PLAN.—The Secretary, acting through the  
6 Under Secretary for Management, in coordination with  
7 the Under Secretary for Science and Technology and the  
8 Commissioner of U.S. Customs and Border Protection,  
9 shall submit to the appropriate congressional committees  
10 a plan for testing, evaluating, and using independent  
11 verification and validation resources for border security  
12 technology. Under the plan, new border security tech-  
13 nologies shall be evaluated through a series of assess-  
14 ments, processes, and audits to ensure—

15 “(1) compliance with relevant departmental ac-  
16 quisition policies and the Federal Acquisition Regu-  
17 lation; and

18 “(2) the effective use of taxpayer dollars.”.

19 (b) CLERICAL AMENDMENT.—The table of contents  
20 in section 1(b) of the Homeland Security Act of 2002 is  
21 amended by inserting after the item relating to section  
22 433 the following new item:

“Sec. 435. Border security technology program management.”.

23 (c) PROHIBITION ON ADDITIONAL AUTHORIZATION  
24 OF APPROPRIATIONS.—No additional funds are author-  
25 ized to be appropriated to carry out section 435 of the

1 Homeland Security Act of 2002, as added by subsection  
2 (a). Such section shall be carried out using amounts other-  
3 wise authorized for such purposes.

4 **SEC. 1116. REIMBURSEMENT OF STATES FOR DEPLOYMENT**  
5 **OF THE NATIONAL GUARD AT THE SOUTH-**  
6 **ERN BORDER.**

7 (a) IN GENERAL.—With the approval of the Sec-  
8 retary and the Secretary of Defense, the Governor of a  
9 State may order any units or personnel of the National  
10 Guard of such State to perform operations and missions  
11 under section 502(f) of title 32, United States Code, along  
12 the southern border for the purposes of assisting U.S.  
13 Customs and Border Protection to achieve situational  
14 awareness and operational control of the border.

15 (b) ASSIGNMENT OF OPERATIONS AND MISSIONS.—

16 (1) IN GENERAL.—National Guard units and  
17 personnel deployed under subsection (a) may be as-  
18 signed such operations and missions specified in sub-  
19 section (c) as may be necessary to secure the south-  
20 ern border.

21 (2) NATURE OF DUTY.—The duty of National  
22 Guard personnel performing operations and missions  
23 described in paragraph (1) shall be full-time duty  
24 under title 32, United States Code.

1 (c) RANGE OF OPERATIONS AND MISSIONS.—The op-  
2 erations and missions assigned under subsection (b) shall  
3 include the temporary authority to—

4 (1) construct reinforced fencing or other phys-  
5 ical barriers;

6 (2) operate ground-based surveillance systems;

7 (3) operate unmanned and manned aircraft;

8 (4) provide radio communications interoper-  
9 ability between U.S. Customs and Border Protection  
10 and State, local, and tribal law enforcement agen-  
11 cies;

12 (5) construct checkpoints along the Southern  
13 border to bridge the gap to long-term permanent  
14 checkpoints; and

15 (6) provide intelligence support.

16 (d) MATERIEL AND LOGISTICAL SUPPORT.—The  
17 Secretary of Defense shall deploy such materiel, equip-  
18 ment, and logistical support as may be necessary to ensure  
19 success of the operations and missions conducted by the  
20 National Guard under this section.

21 (e) REIMBURSEMENT REQUIRED.—

22 (1) IN GENERAL.—The Secretary of Defense  
23 shall reimburse States for the cost of the deployment  
24 of any units or personnel of the National Guard to  
25 perform operations and missions in full-time State

1 Active Duty in support of a southern border mission.  
2 The Secretary of Defense may not seek reimburse-  
3 ment from the Secretary for any reimbursements  
4 paid to States for the costs of such deployments.

5 (2) LIMITATION.—The total amount of reim-  
6 bursements under this section may not exceed  
7 \$35,000,000 for any fiscal year.

8 **SEC. 1117. NATIONAL GUARD SUPPORT TO SECURE THE**  
9 **SOUTHERN BORDER.**

10 (a) IN GENERAL.—The Secretary of Defense, with  
11 the concurrence of the Secretary, shall provide assistance  
12 to U.S. Customs and Border Protection for purposes of  
13 increasing ongoing efforts to secure the southern border.

14 (b) TYPES OF ASSISTANCE AUTHORIZED.—The as-  
15 sistance provided under subsection (a) may include—

16 (1) deployment of manned aircraft, unmanned  
17 aerial surveillance systems, and ground-based sur-  
18 veillance systems to support continuous surveillance  
19 of the southern border; and

20 (2) intelligence analysis support.

21 (c) MATERIEL AND LOGISTICAL SUPPORT.—The Sec-  
22 retary of Defense may deploy such materiel, equipment,  
23 and logistics support as may be necessary to ensure the  
24 effectiveness of the assistance provided under subsection  
25 (a).



1       (d) AUTHORIZATION OF APPROPRIATIONS.—There  
2 are authorized to be appropriated for the Department of  
3 Defense \$75,000,000 to provide assistance under this sec-  
4 tion. The Secretary of Defense may not seek reimburse-  
5 ment from the Secretary for any assistance provided under  
6 this section.

7       (e) REPORTS.—

8           (1) IN GENERAL.—Not later than 90 days after  
9 the date of the enactment of this Act and annually  
10 thereafter, the Secretary of Defense shall submit a  
11 report to the appropriate congressional defense com-  
12 mittees (as defined in section 101(a)(16) of title 10,  
13 United States Code) regarding any assistance pro-  
14 vided under subsection (a) during the period speci-  
15 fied in paragraph (3).

16          (2) ELEMENTS.—Each report under paragraph  
17 (1) shall include, for the period specified in para-  
18 graph (3), a description of—

19               (A) the assistance provided;

20               (B) the sources and amounts of funds used  
21 to provide such assistance; and

22               (C) the amounts obligated to provide such  
23 assistance.

24          (3) PERIOD SPECIFIED.—The period specified  
25 in this paragraph is—

1 (A) in the case of the first report required  
2 under paragraph (1), the 90-day period begin-  
3 ning on the date of the enactment of this Act;  
4 and

5 (B) in the case of any subsequent report  
6 submitted under paragraph (1), the calendar  
7 year for which the report is submitted.

8 **SEC. 1118. PROHIBITIONS ON ACTIONS THAT IMPEDE BOR-**  
9 **DER SECURITY ON CERTAIN FEDERAL LAND.**

10 (a) PROHIBITION ON INTERFERENCE WITH U.S.  
11 CUSTOMS AND BORDER PROTECTION.—

12 (1) IN GENERAL.—The Secretary concerned  
13 may not impede, prohibit, or restrict activities of  
14 U.S. Customs and Border Protection on covered  
15 Federal land to carry out the activities described in  
16 subsection (b).

17 (2) APPLICABILITY.—The authority of U.S.  
18 Customs and Border Protection to conduct activities  
19 described in subsection (b) on covered Federal land  
20 applies without regard to whether a state of emer-  
21 gency exists.

22 (b) AUTHORIZED ACTIVITIES OF U.S. CUSTOMS AND  
23 BORDER PROTECTION.—

24 (1) IN GENERAL.—U.S. Customs and Border  
25 Protection shall have immediate access to covered

1 Federal land to conduct the activities described in  
2 paragraph (2) on such land to prevent all unlawful  
3 entries into the United States, including entries by  
4 terrorists, unlawful aliens, instruments of terrorism,  
5 narcotics, and other contraband through the south-  
6 ern border or the northern border.

7 (2) ACTIVITIES DESCRIBED.—The activities de-  
8 scribed in this paragraph are—

9 (A) the execution of search and rescue op-  
10 erations;

11 (B) the use of motorized vehicles, foot pa-  
12 trols, and horseback to patrol the border area,  
13 apprehend illegal entrants, and rescue individ-  
14 uals; and

15 (C) the design, testing, construction, in-  
16 stallation, deployment, and operation of phys-  
17 ical barriers, tactical infrastructure, and tech-  
18 nology pursuant to section 102 of the Illegal  
19 Immigration Reform and Immigrant Responsi-  
20 bility Act of 1996 (as amended by section 1111  
21 of this division).

22 (c) CLARIFICATION RELATING TO WAIVER AUTHOR-  
23 ITY.—

24 (1) IN GENERAL.—The activities of U.S. Cus-  
25 toms and Border Protection described in subsection

1 (b)(2) may be carried out without regard to the pro-  
2 visions of law specified in paragraph (2).

3 (2) PROVISIONS OF LAW SPECIFIED.—The pro-  
4 visions of law specified in this section are all Fed-  
5 eral, State, or other laws, regulations, and legal re-  
6 quirements of, deriving from, or related to the sub-  
7 ject of, the following laws:

8 (A) The National Environmental Policy  
9 Act of 1969 (42 U.S.C. 4321 et seq.).

10 (B) The Endangered Species Act of 1973  
11 (16 U.S.C. 1531 et seq.).

12 (C) The Federal Water Pollution Control  
13 Act (33 U.S.C. 1251 et seq.) (commonly re-  
14 ferred to as the “Clean Water Act”).

15 (D) Division A of subtitle III of title 54,  
16 United States Code (54 U.S.C. 300301 et seq.)  
17 (formerly known as the “National Historic  
18 Preservation Act”).

19 (E) The Migratory Bird Treaty Act (16  
20 U.S.C. 703 et seq.).

21 (F) The Clean Air Act (42 U.S.C. 7401 et  
22 seq.).

23 (G) The Archaeological Resources Protec-  
24 tion Act of 1979 (16 U.S.C. 470aa et seq.).

1           (H) The Safe Drinking Water Act (42  
2           U.S.C. 300f et seq.).

3           (I) The Noise Control Act of 1972 (42  
4           U.S.C. 4901 et seq.).

5           (J) The Solid Waste Disposal Act (42  
6           U.S.C. 6901 et seq.).

7           (K) The Comprehensive Environmental  
8           Response, Compensation, and Liability Act of  
9           1980 (42 U.S.C. 9601 et seq.).

10          (L) Chapter 3125 of title 54, United  
11          States Code (formerly known as the “Archae-  
12          ological and Historic Preservation Act”).

13          (M) The Antiquities Act (16 U.S.C. 431 et  
14          seq.).

15          (N) Chapter 3203 of title 54, United  
16          States Code (formerly known as the “Historic  
17          Sites, Buildings, and Antiquities Act”).

18          (O) The Wild and Scenic Rivers Act (16  
19          U.S.C. 1271 et seq.).

20          (P) The Farmland Protection Policy Act  
21          (7 U.S.C. 4201 et seq.).

22          (Q) The Coastal Zone Management Act of  
23          1972 (16 U.S.C. 1451 et seq.).

24          (R) The Wilderness Act (16 U.S.C. 1131  
25          et seq.).

1           (S) The Federal Land Policy and Manage-  
2           ment Act of 1976 (43 U.S.C. 1701 et seq.).

3           (T) The National Wildlife Refuge System  
4           Administration Act of 1966 (16 U.S.C. 668dd  
5           et seq.).

6           (U) The Fish and Wildlife Act of 1956 (16  
7           U.S.C. 742a et seq.).

8           (V) The Fish and Wildlife Coordination  
9           Act (16 U.S.C. 661 et seq.).

10          (W) Subchapter II of chapter 5, and chap-  
11          ter 7, of title 5, United States Code (commonly  
12          known as the “Administrative Procedure Act”).

13          (X) The Otoy Mountain Wilderness Act of  
14          1999 (Public Law 106–145).

15          (Y) Sections 102(29) and 103 of the Cali-  
16          fornia Desert Protection Act of 1994 (Public  
17          Law 103–433).

18          (Z) Division A of subtitle I of title 54,  
19          United States Code (formerly known as the  
20          “National Park Service Organic Act”).

21          (AA) The National Park Service General  
22          Authorities Act (Public Law 91–383, 16 U.S.C.  
23          1a–1 et seq.).

1 (BB) Sections 401(7), 403, and 404 of the  
2 National Parks and Recreation Act of 1978  
3 (Public Law 95–625).

4 (CC) Sections 301(a) through (f) of the  
5 Arizona Desert Wilderness Act (Public Law  
6 101–628).

7 (DD) The Rivers and Harbors Act of 1899  
8 (33 U.S.C. 403).

9 (EE) The Eagle Protection Act (16 U.S.C.  
10 668 et seq.).

11 (FF) The Native American Graves Protec-  
12 tion and Repatriation Act (25 U.S.C. 3001 et  
13 seq.).

14 (GG) The American Indian Religious Free-  
15 dom Act (42 U.S.C. 1996).

16 (HH) The Religious Freedom Restoration  
17 Act (42 U.S.C. 2000bb).

18 (II) The National Forest Management Act  
19 of 1976 (16 U.S.C. 1600 et seq.).

20 (JJ) The Multiple Use and Sustained  
21 Yield Act of 1960 (16 U.S.C. 528 et seq.).

22 (3) APPLICABILITY OF WAIVER TO SUCCESSOR  
23 LAWS.—If a provision of law specified in paragraph  
24 (2) was repealed and incorporated into title 54,  
25 United States Code, after April 1, 2008, and before

1 the date of the enactment of this Act, the waiver de-  
2 scribed in paragraph (1) shall apply to the provision  
3 of such title that corresponds to the provision of law  
4 specified in paragraph (2) to the same extent the  
5 waiver applied to that provision of law.

6 (4) SAVINGS CLAUSE.—The waiver authority  
7 under this subsection may not be construed as af-  
8 fecting, negating, or diminishing in any manner the  
9 applicability of section 552 of title 5, United States  
10 Code (commonly referred to as the “Freedom of In-  
11 formation Act”), in any relevant matter.

12 (d) PROTECTION OF LEGAL USES.—This section may  
13 not be construed to provide—

14 (1) authority to restrict legal uses, such as  
15 grazing, hunting, mining, or recreation or the use of  
16 backcountry airstrips, on land under the jurisdiction  
17 of the Secretary of the Interior or the Secretary of  
18 Agriculture; or

19 (2) any additional authority to restrict legal ac-  
20 cess to such land.

21 (e) EFFECT ON STATE AND PRIVATE LAND.—This  
22 section shall—

23 (1) have no force or effect on State lands or  
24 private lands; and



1           (2) not provide authority on or access to State  
2       lands or private lands.

3       (f) TRIBAL SOVEREIGNTY.—Nothing in this section  
4       may be construed to supersede, replace, negate, or dimin-  
5       ish treaties or other agreements between the United States  
6       and Indian tribes.

7       (g) MEMORANDA OF UNDERSTANDING.—The re-  
8       quirements of this section shall not apply to the extent  
9       that such requirements are incompatible with any memo-  
10      randum of understanding or similar agreement entered  
11      into between the Commissioner and a National Park Unit  
12      before the date of the enactment of this Act.

13      (h) DEFINITIONS.—In this section:

14           (1) COVERED FEDERAL LAND.—The term “cov-  
15      ered Federal land” includes all land under the con-  
16      trol of the Secretary concerned that is located within  
17      100 miles of the southern border or the northern  
18      border.

19           (2) SECRETARY CONCERNED.—The term “Sec-  
20      retary concerned” means—

21                (A) with respect to land under the jurisdic-  
22                tion of the Department of Agriculture, the Sec-  
23                retary of Agriculture; and

1 (B) with respect to land under the jurisdic-  
2 tion of the Department of the Interior, the Sec-  
3 retary of the Interior.

4 **SEC. 1119. LANDOWNER AND RANCHER SECURITY EN-**  
5 **HANCEMENT.**

6 (a) ESTABLISHMENT OF NATIONAL BORDER SECU-  
7 RITY ADVISORY COMMITTEE.—The Secretary shall estab-  
8 lish a National Border Security Advisory Committee,  
9 which—

10 (1) may advise, consult with, report to, and  
11 make recommendations to the Secretary on matters  
12 relating to border security matters, including—

13 (A) verifying security claims and the bor-  
14 der security metrics established by the Depart-  
15 ment of Homeland Security under section 1092  
16 of the National Defense Authorization Act for  
17 Fiscal Year 2017 (Public Law 114–328; 6  
18 U.S.C. 223); and

19 (B) discussing ways to improve the secu-  
20 rity of high traffic areas along the northern  
21 border and the southern border; and

22 (2) may provide, through the Secretary, rec-  
23 ommendations to Congress.

24 (b) CONSIDERATION OF VIEWS.—The Secretary shall  
25 consider the information, advice, and recommendations of

1 the National Border Security Advisory Committee in for-  
2 mulating policy regarding matters affecting border secu-  
3 rity.

4 (c) MEMBERSHIP.—The National Border Security  
5 Advisory Committee shall consist of at least one member  
6 from each State who—

7 (1) has at least five years practical experience  
8 in border security operations; or

9 (2) lives and works in the United States within  
10 80 miles from the southern border or the northern  
11 border.

12 (d) NONAPPLICABILITY OF FEDERAL ADVISORY  
13 COMMITTEE ACT.—The Federal Advisory Committee Act  
14 (5 U.S.C. App.) shall not apply to the National Border  
15 Security Advisory Committee.

16 **SEC. 1120. ERADICATION OF CARRIZO CANE AND SALT**  
17 **CEDAR.**

18 (a) IN GENERAL.—Not later than September 30,  
19 2022, the Secretary, after coordinating with the heads of  
20 the relevant Federal, State, and local agencies, shall begin  
21 eradicating the carrizo cane plant and any salt cedar along  
22 the Rio Grande River that impedes border security oper-  
23 ations.

24 (b) EXTENT.—The waiver authority under subsection  
25 (c) of section 102 of the Illegal Immigration Reform and

1 Immigrant Responsibility Act of 1996 (8 U.S.C. 1103  
2 note), as amended by section 1111 of this division, shall  
3 extend to activities carried out pursuant to this section.

4 **SEC. 1121. SOUTHERN BORDER THREAT ANALYSIS.**

5 (a) THREAT ANALYSIS.—

6 (1) REQUIREMENT.—Not later than 180 days  
7 after the date of the enactment of this Act, the Sec-  
8 retary shall submit to the Committee on Homeland  
9 Security of the House of Representatives and the  
10 Committee on Homeland Security and Governmental  
11 Affairs of the Senate a Southern border threat anal-  
12 ysis.

13 (2) CONTENTS.—The analysis submitted under  
14 paragraph (1) shall include an assessment of—

15 (A) current and potential terrorism and  
16 criminal threats posed by individuals and orga-  
17 nized groups seeking—

18 (i) to unlawfully enter the United  
19 States through the Southern border; or

20 (ii) to exploit security vulnerabilities  
21 along the Southern border;

22 (B) improvements needed at and between  
23 ports of entry along the Southern border to pre-  
24 vent terrorists and instruments of terror from  
25 entering the United States;

1 (C) gaps in law, policy, and coordination  
2 between State, local, or tribal law enforcement,  
3 international agreements, or tribal agreements  
4 that hinder effective and efficient border secu-  
5 rity, counterterrorism, and anti-human smug-  
6 gling and trafficking efforts;

7 (D) the current percentage of situational  
8 awareness achieved by the Department along  
9 the Southern border;

10 (E) the current percentage of operational  
11 control achieved by the Department on the  
12 Southern border; and

13 (F) traveler crossing times and any poten-  
14 tial security vulnerability associated with pro-  
15 longed wait times.

16 (3) ANALYSIS REQUIREMENTS.—In compiling  
17 the Southern border threat analysis required under  
18 this subsection, the Secretary shall consider and ex-  
19 amine—

20 (A) the technology needs and challenges,  
21 including such needs and challenges identified  
22 as a result of previous investments that have  
23 not fully realized the security and operational  
24 benefits that were sought;

1 (B) the personnel needs and challenges, in-  
2 cluding such needs and challenges associated  
3 with recruitment and hiring;

4 (C) the infrastructure needs and chal-  
5 lenges;

6 (D) the roles and authorities of State,  
7 local, and tribal law enforcement in general bor-  
8 der security activities;

9 (E) the status of coordination among Fed-  
10 eral, State, local, tribal, and Mexican law en-  
11 forcement entities relating to border security;

12 (F) the terrain, population density, and cli-  
13 mate along the Southern border; and

14 (G) the international agreements between  
15 the United States and Mexico related to border  
16 security.

17 (4) CLASSIFIED FORM.—To the extent possible,  
18 the Secretary shall submit the Southern border  
19 threat analysis required under this subsection in un-  
20 classified form, but may submit a portion of the  
21 threat analysis in classified form if the Secretary de-  
22 termines such action is appropriate.

23 (b) U.S. BORDER PATROL STRATEGIC PLAN.—

24 (1) IN GENERAL.—Not later than 180 days  
25 after the submission of the threat analysis required

1 under subsection (a) or June 30, 2018, and every  
2 five years thereafter, the Secretary, acting through  
3 the Chief of the U.S. Border Patrol, shall issue a  
4 Border Patrol Strategic Plan.

5 (2) CONTENTS.—The Border Patrol Strategic  
6 Plan required under this subsection shall include a  
7 consideration of—

8 (A) the Southern border threat analysis re-  
9 quired under subsection (a), with an emphasis  
10 on efforts to mitigate threats identified in such  
11 threat analysis;

12 (B) efforts to analyze and disseminate bor-  
13 der security and border threat information be-  
14 tween border security components of the De-  
15 partment and other appropriate Federal depart-  
16 ments and agencies with missions associated  
17 with the Southern border;

18 (C) efforts to increase situational aware-  
19 ness, including—

20 (i) surveillance capabilities, including  
21 capabilities developed or utilized by the  
22 Department of Defense, and any appro-  
23 priate technology determined to be excess  
24 by the Department of Defense; and

1                   (ii) the use of manned aircraft and  
2                   unmanned aerial systems, including cam-  
3                   era and sensor technology deployed on  
4                   such assets;

5                   (D) efforts to detect and prevent terrorists  
6                   and instruments of terrorism from entering the  
7                   United States;

8                   (E) efforts to detect, interdict, and disrupt  
9                   aliens and illicit drugs at the earliest possible  
10                  point;

11                  (F) efforts to focus intelligence collection  
12                  to disrupt transnational criminal organizations  
13                  outside of the international and maritime bor-  
14                  ders of the United States;

15                  (G) efforts to ensure that any new border  
16                  security technology can be operationally inte-  
17                  grated with existing technologies in use by the  
18                  Department;

19                  (H) any technology required to maintain,  
20                  support, and enhance security and facilitate  
21                  trade at ports of entry, including nonintrusive  
22                  detection equipment, radiation detection equip-  
23                  ment, biometric technology, surveillance sys-  
24                  tems, and other sensors and technology that the  
25                  Secretary determines to be necessary;



1           (I) operational coordination unity of effort  
2 initiatives of the border security components of  
3 the Department, including any relevant task  
4 forces of the Department;

5           (J) lessons learned from Operation  
6 Jumpstart and Operation Phalanx;

7           (K) cooperative agreements and informa-  
8 tion sharing with State, local, tribal, territorial,  
9 and other Federal law enforcement agencies  
10 that have jurisdiction on the Northern border  
11 or the Southern border;

12           (L) border security information received  
13 from consultation with State, local, tribal, terri-  
14 torial, and Federal law enforcement agencies  
15 that have jurisdiction on the Northern border  
16 or the Southern border, or in the maritime en-  
17 vironment, and from border community stake-  
18 holders (including through public meetings with  
19 such stakeholders), including representatives  
20 from border agricultural and ranching organiza-  
21 tions and representatives from business and  
22 civic organizations along the Northern border  
23 or the Southern border;

24           (M) staffing requirements for all depart-  
25 mental border security functions;

1 (N) a prioritized list of departmental re-  
2 search and development objectives to enhance  
3 the security of the Southern border;

4 (O) an assessment of training programs,  
5 including training programs for—

6 (i) identifying and detecting fraudu-  
7 lent documents;

8 (ii) understanding the scope of en-  
9 forcement authorities and the use of force  
10 policies; and

11 (iii) screening, identifying, and ad-  
12 dressing vulnerable populations, such as  
13 children and victims of human trafficking;  
14 and

15 (P) an assessment of how border security  
16 operations affect border crossing times.

17 **SEC. 1122. AMENDMENTS TO U.S. CUSTOMS AND BORDER**  
18 **PROTECTION.**

19 (a) DUTIES.—Subsection (c) of section 411 of the  
20 Homeland Security Act of 2002 (6 U.S.C. 211) is amend-  
21 ed—

22 (1) in paragraph (18), by striking “and” after  
23 the semicolon at the end;

24 (2) by redesignating paragraph (19) as para-  
25 graph (21); and

1           (3) by inserting after paragraph (18) the fol-  
2       lowing new paragraphs:

3           “(19) administer the U.S. Customs and Border  
4       Protection public private partnerships under subtitle  
5       G;

6           “(20) administer preclearance operations under  
7       the Preclearance Authorization Act of 2015 (19  
8       U.S.C. 4431 et seq.; enacted as subtitle B of title  
9       VIII of the Trade Facilitation and Trade Enforce-  
10      ment Act of 2015; 19 U.S.C. 4301 et seq.); and”.

11      (b) OFFICE OF FIELD OPERATIONS STAFFING.—  
12   Subparagraph (A) of section 411(g)(5) of the Homeland  
13   Security Act of 2002 (6 U.S.C. 211(g)(5)) is amended by  
14   inserting before the period at the end the following: “com-  
15   pared to the number indicated by the current fiscal year  
16   work flow staffing model”.

17      (c) IMPLEMENTATION PLAN.—Subparagraph (B) of  
18   section 814(e)(1) of the Preclearance Authorization Act  
19   of 2015 (19 U.S.C. 4433(e)(1); enacted as subtitle B of  
20   title VIII of the Trade Facilitation and Trade Enforce-  
21   ment Act of 2015; 19 U.S.C. 4301 et seq.) is amended  
22   to read as follows:

23           “(B) a port of entry vacancy rate which  
24           compares the number of officers identified in  
25           subparagraph (A) with the number of officers

1           at the port at which such officer is currently as-  
2           signed.”.

3           (d) DEFINITION.—Subsection (r) of section 411 of  
4 the Homeland Security Act of 2002 (6 U.S.C. 211) is  
5 amended—

6           (1) by striking “this section, the terms” and in-  
7           serting the following: “this section:

8           “(1) the terms”;

9           (2) in paragraph (1), as added by subparagraph  
10          (A), by striking the period at the end and inserting  
11          “; and”; and

12          (3) by adding at the end the following new  
13          paragraph:

14          “(2) the term ‘unmanned aerial systems’ has  
15          the meaning given the term ‘unmanned aircraft sys-  
16          tem’ in section 331 of the FAA Modernization and  
17          Reform Act of 2012 (Public Law 112–95; 49 U.S.C.  
18          40101 note).”.

19 **SEC. 1123. AGENT AND OFFICER TECHNOLOGY USE.**

20          In carrying out section 102 of the Illegal Immigration  
21 Reform and Immigrant Responsibility Act of 1996 (as  
22 amended by section 1111 of this division) and section  
23 1113 of this division, the Secretary shall, to the greatest  
24 extent practicable, ensure that technology deployed to gain  
25 situational awareness and operational control of the bor-

1 der be provided to front-line officers and agents of the De-  
2 partment of Homeland Security.

3 **SEC. 1124. INTEGRATED BORDER ENFORCEMENT TEAMS.**

4 (a) IN GENERAL.—Subtitle C of title IV of the  
5 Homeland Security Act of 2002 (6 U.S.C. 231 et seq.),  
6 as amended by section 1115 of this division, is further  
7 amended by adding at the end the following new section:

8 **“SEC. 436. INTEGRATED BORDER ENFORCEMENT TEAMS.**

9 “(a) ESTABLISHMENT.—The Secretary shall estab-  
10 lish within the Department a program to be known as the  
11 Integrated Border Enforcement Team program (referred  
12 to in this section as ‘IBET’).

13 “(b) PURPOSE.—The Secretary shall administer the  
14 IBET program in a manner that results in a cooperative  
15 approach between the United States and Canada to—

16 “(1) strengthen security between designated  
17 ports of entry;

18 “(2) detect, prevent, investigate, and respond to  
19 terrorism and violations of law related to border se-  
20 curity;

21 “(3) facilitate collaboration among components  
22 and offices within the Department and international  
23 partners;

24 “(4) execute coordinated activities in further-  
25 ance of border security and homeland security; and

1 “(5) enhance information-sharing, including the  
2 dissemination of homeland security information  
3 among such components and offices.

4 “(c) COMPOSITION AND LOCATION OF IBETs.—

5 “(1) COMPOSITION.—IBETs shall be led by the  
6 United States Border Patrol and may be comprised  
7 of personnel from the following:

8 “(A) Other subcomponents of U.S. Customs and Border Protection.

10 “(B) U.S. Immigration and Customs Enforcement, led by Homeland Security Investigations.  
12

13 “(C) The Coast Guard, for the purpose of  
14 securing the maritime borders of the United  
15 States.

16 “(D) Other Department personnel, as appropriate.  
17

18 “(E) Other Federal departments and agencies, as appropriate.  
19

20 “(F) Appropriate State law enforcement  
21 agencies.

22 “(G) Foreign law enforcement partners.

23 “(H) Local law enforcement agencies from  
24 affected border cities and communities.

1           “(I) Appropriate tribal law enforcement  
2           agencies.

3           “(2) LOCATION.—The Secretary is authorized  
4           to establish IBETs in regions in which such teams  
5           can contribute to IBET missions, as appropriate.  
6           When establishing an IBET, the Secretary shall con-  
7           sider the following:

8           “(A) Whether the region in which the  
9           IBET would be established is significantly im-  
10          pacted by cross-border threats.

11          “(B) The availability of Federal, State,  
12          local, tribal, and foreign law enforcement re-  
13          sources to participate in an IBET.

14          “(C) Whether, in accordance with para-  
15          graph (3), other joint cross-border initiatives al-  
16          ready take place within the region in which the  
17          IBET would be established, including other De-  
18          partment cross-border programs such as the In-  
19          tegrated Cross-Border Maritime Law Enforce-  
20          ment Operation Program established under sec-  
21          tion 711 of the Coast Guard and Maritime  
22          Transportation Act of 2012 (46 U.S.C. 70101  
23          note) or the Border Enforcement Security Task  
24          Force established under section 432.

1           “(3) DUPLICATION OF EFFORTS.—In deter-  
2           mining whether to establish a new IBET or to ex-  
3           pand an existing IBET in a given region, the Sec-  
4           retary shall ensure that the IBET under consider-  
5           ation does not duplicate the efforts of other existing  
6           interagency task forces or centers within such re-  
7           gion, including the Integrated Cross-Border Mari-  
8           time Law Enforcement Operation Program estab-  
9           lished under section 711 of the Coast Guard and  
10          Maritime Transportation Act of 2012 (46 U.S.C.  
11          70101 note) or the Border Enforcement Security  
12          Task Force established under section 432.

13          “(d) OPERATION.—

14               “(1) IN GENERAL.—After determining the re-  
15               gions in which to establish IBETs, the Secretary  
16               may—

17                       “(A) direct the assignment of Federal per-  
18                       sonnel to such IBETs; and

19                       “(B) take other actions to assist Federal,  
20                       State, local, and tribal entities to participate in  
21                       such IBETs, including providing financial as-  
22                       sistance, as appropriate, for operational, admin-  
23                       istrative, and technological costs associated with  
24                       such participation.



1           “(2) LIMITATION.—Coast Guard personnel as-  
2           signed under paragraph (1) may be assigned only  
3           for the purposes of securing the maritime borders of  
4           the United States, in accordance with subsection  
5           (c)(1)(C).

6           “(e) COORDINATION.—The Secretary shall coordinate  
7           the IBET program with other similar border security and  
8           antiterrorism programs within the Department in accord-  
9           ance with the strategic objectives of the Cross-Border Law  
10          Enforcement Advisory Committee.

11          “(f) MEMORANDA OF UNDERSTANDING.—The Sec-  
12          retary may enter into memoranda of understanding with  
13          appropriate representatives of the entities specified in sub-  
14          section (c)(1) necessary to carry out the IBET program.

15          “(g) REPORT.—Not later than 180 days after the  
16          date on which an IBET is established and biannually  
17          thereafter for the following six years, the Secretary shall  
18          submit to the appropriate congressional committees, in-  
19          cluding the Committee on Homeland Security of the  
20          House of Representatives and the Committee on Home-  
21          land Security and Governmental Affairs of the Senate,  
22          and in the case of Coast Guard personnel used to secure  
23          the maritime borders of the United States, additionally to  
24          the Committee on Transportation and Infrastructure of  
25          the House of Representatives, a report that—

1 “(1) describes the effectiveness of IBETs in ful-  
2 filling the purposes specified in subsection (b);

3 “(2) assess the impact of certain challenges on  
4 the sustainment of cross-border IBET operations,  
5 including challenges faced by international partners;

6 “(3) addresses ways to support joint training  
7 for IBET stakeholder agencies and radio interoper-  
8 ability to allow for secure cross-border radio commu-  
9 nications; and

10 “(4) assesses how IBETs, Border Enforcement  
11 Security Task Forces, and the Integrated Cross-Bor-  
12 der Maritime Law Enforcement Operation Program  
13 can better align operations, including interdiction  
14 and investigation activities.”.

15 (b) CLERICAL AMENDMENT.—The table of contents  
16 in section 1(b) of the Homeland Security Act of 2002 is  
17 amended by adding after the item relating to section 435  
18 the following new item:

“Sec. 436. Integrated Border Enforcement Teams.”.

19 **SEC. 1125. TUNNEL TASK FORCES.**

20 The Secretary is authorized to establish Tunnel Task  
21 Forces for the purposes of detecting and remediating tun-  
22 nels that breach the international border of the United  
23 States.

1 **SEC. 1126. PILOT PROGRAM ON USE OF ELECTRO-**  
2 **MAGNETIC SPECTRUM IN SUPPORT OF BOR-**  
3 **DER SECURITY OPERATIONS.**

4 (a) IN GENERAL.—The Commissioner of U.S. Cus-  
5 toms and Border Protection, in consultation with the As-  
6 sistant Secretary of Commerce for Communications and  
7 Information, shall conduct a pilot program to test and  
8 evaluate the use of electromagnetic spectrum by U.S. Cus-  
9 toms and Border Protection in support of border security  
10 operations through—

11 (1) ongoing management and monitoring of  
12 spectrum to identify threats such as unauthorized  
13 spectrum use, and the jamming and hacking of  
14 United States communications assets, by persons en-  
15 gaged in criminal enterprises;

16 (2) automated spectrum management to enable  
17 greater efficiency and speed for U.S. Customs and  
18 Border Protection in addressing emerging challenges  
19 in overall spectrum use on the United States border;  
20 and

21 (3) coordinated use of spectrum resources to  
22 better facilitate interoperability and interagency co-  
23 operation and interdiction efforts at or near the  
24 United States border.

25 (b) REPORT TO CONGRESS.—Not later than 180 days  
26 after the conclusion of the pilot program conducted under

1 subsection (a), the Commissioner of U.S. Customs and  
2 Border Protection shall submit to the Committee on  
3 Homeland Security and the Committee on Energy and  
4 Commerce of the House of Representatives and the Com-  
5 mittee on Homeland Security and Governmental Affairs  
6 and the Committee on Commerce, Science, and Transpor-  
7 tation of the Senate a report on the findings and data  
8 derived from such program.

9 **SEC. 1127. HOMELAND SECURITY FOREIGN ASSISTANCE.**

10 (a) IN GENERAL.—Subtitle C of title IV of the  
11 Homeland Security Act of 2002 (6 U.S.C. 231 et seq.),  
12 as amended by sections 1115 and 1124 of this division,  
13 is further amended by adding at the end the following new  
14 section:

15 **“SEC. 437. SECURITY ASSISTANCE.**

16 “(a) IN GENERAL.—The Secretary, with the concur-  
17 rence of the Secretary of State, may provide to a foreign  
18 government, financial assistance and, with or without re-  
19 imbursement, security assistance, including equipment,  
20 training, maintenance, supplies, and sustainment support.

21 “(b) DETERMINATION.—The Secretary may only pro-  
22 vide financial assistance or security assistance pursuant  
23 to subsection (a) if the Secretary determines that such as-  
24 sistance would enhance the recipient government’s capac-  
25 ity to—

1 “(1) mitigate the risk or threat of transnational  
2 organized crime and terrorism;

3 “(2) address irregular migration flows that may  
4 affect the United States, including any detention or  
5 removal operations of the recipient government; or

6 “(3) protect and expedite legitimate trade and  
7 travel.

8 “(c) LIMITATION ON TRANSFER.—The Secretary  
9 may not—

10 “(1) transfer any equipment or supplies that  
11 are designated as a munitions item or controlled on  
12 the United States Munitions List, pursuant to sec-  
13 tion 38 of the Foreign Military Sales Act (22 U.S.C.  
14 2778); or

15 “(2) transfer any vessel or aircraft pursuant to  
16 this section.

17 “(d) RELATED TRAINING.—In conjunction with a  
18 transfer of equipment pursuant to subsection (a), the Sec-  
19 retary may provide such equipment-related training and  
20 assistance as the Secretary determines necessary.

21 “(e) MAINTENANCE OF TRANSFERRED EQUIP-  
22 MENT.—The Secretary may provide for the maintenance  
23 of transferred equipment through service contracts or  
24 other means, with or without reimbursement, as the Sec-  
25 retary determines necessary.

1 “(f) REIMBURSEMENT OF EXPENSES.—

2 “(1) IN GENERAL.—The Secretary may collect  
3 payment from the receiving entity for the provision  
4 of security assistance under this section, including  
5 equipment, training, maintenance, supplies,  
6 sustainment support, and related shipping costs.

7 “(2) TRANSFER.—Notwithstanding any other  
8 provision of law, to the extent the Secretary does not  
9 collect payment pursuant to paragraph (1), any  
10 amounts appropriated or otherwise made available to  
11 the Department of Homeland Security may be trans-  
12 ferred to the account that finances the security as-  
13 sistance provided pursuant to subsection (a).

14 “(g) RECEIPTS CREDITED AS OFFSETTING COLLEC-  
15 TIONS.—Notwithstanding section 3302 of title 31, United  
16 States Code, any reimbursement collected pursuant to  
17 subsection (f) shall—

18 “(1) be credited as offsetting collections to the  
19 account that finances the security assistance under  
20 this section for which such reimbursement is re-  
21 ceived; and

22 “(2) remain available until expended for the  
23 purpose of carrying out this section.

1 “(h) RULE OF CONSTRUCTION.—Nothing in this sec-  
2 tion may be construed as affecting, augmenting, or dimin-  
3 ishing the authority of the Secretary of State.”.

4 (b) CLERICAL AMENDMENT.—The table of contents  
5 in section 1(b) of the Homeland Security Act of 2002 is  
6 amended by inserting after the item relating to section  
7 436 the following new item:

“Sec. 437. Security assistance.”.

## 8 **Subtitle B—Personnel**

### 9 **SEC. 1131. ADDITIONAL U.S. CUSTOMS AND BORDER PRO-** 10 **TECTION AGENTS AND OFFICERS.**

11 (a) BORDER PATROL AGENTS.—Not later than Sep-  
12 tember 30, 2022, the Commissioner shall hire, train, and  
13 assign sufficient agents to maintain an active duty pres-  
14 ence of not fewer than 26,370 full-time equivalent agents.

15 (b) CBP OFFICERS.—In addition to positions author-  
16 ized before the date of the enactment of this Act and any  
17 existing officer vacancies within U.S. Customs and Border  
18 Protection as of such date, the Commissioner shall hire,  
19 train, and assign to duty, not later than September 30,  
20 2022—

21 (1) sufficient U.S. Customs and Border Protec-  
22 tion officers to maintain an active duty presence of  
23 not fewer than 27,725 full-time equivalent officers;  
24 and

1           (2) 350 full-time support staff distributed  
2           among all United States ports of entry.

3           (c) AIR AND MARINE OPERATIONS.—Not later than  
4 September 30, 2022, the Commissioner shall hire, train,  
5 and assign sufficient agents for Air and Marine Oper-  
6 ations of U.S. Customs and Border Protection to maintain  
7 not fewer than 1,675 full-time equivalent agents and not  
8 fewer than 264 Marine and Air Interdiction Agents for  
9 southern border air and maritime operations.

10          (d) U.S. CUSTOMS AND BORDER PROTECTION K–9  
11 UNITS AND HANDLERS.—

12           (1) K–9 UNITS.—Not later than September 30,  
13 2022, the Commissioner shall deploy not fewer than  
14 300 new K–9 units, with supporting officers of U.S.  
15 Customs and Border Protection and other required  
16 staff, at land ports of entry and checkpoints, on the  
17 southern border and the northern border.

18           (2) USE OF CANINES.—The Commissioner shall  
19 prioritize the use of canines at the primary inspec-  
20 tion lanes at land ports of entry and checkpoints.

21          (e) U.S. CUSTOMS AND BORDER PROTECTION  
22 HORSEBACK UNITS.—

23           (1) INCREASE.—Not later than September 30,  
24 2022, the Commissioner shall increase the number  
25 of horseback units, with supporting officers of U.S.



1 Customs and Border Protection and other required  
2 staff, by not fewer than 100 officers and 50 horses  
3 for security patrol along the Southern border.

4 (2) HORSEBACK UNIT SUPPORT.—The Commis-  
5 sioner shall construct new stables, maintain and im-  
6 prove existing stables, and provide other resources  
7 needed to maintain the health and well-being of the  
8 horses that serve in the horseback units of U.S. Cus-  
9 toms and Border Protection.

10 (f) U.S. CUSTOMS AND BORDER PROTECTION  
11 SEARCH TRAUMA AND RESCUE TEAMS.—Not later than  
12 September 30, 2022, the Commissioner shall increase by  
13 not fewer than 50 the number of officers engaged in  
14 search and rescue activities along the southern border.

15 (g) U.S. CUSTOMS AND BORDER PROTECTION TUN-  
16 NEL DETECTION AND TECHNOLOGY PROGRAM.—Not  
17 later than September 30, 2022, the Commissioner shall  
18 increase by not fewer than 50 the number of officers as-  
19 sisting task forces and activities related to deployment and  
20 operation of border tunnel detection technology and appre-  
21 hensions of individuals using such tunnels for crossing  
22 into the United States, drug trafficking, or human smug-  
23 gling.

24 (h) AGRICULTURAL SPECIALISTS.—Not later than  
25 September 30, 2022, the Secretary shall hire, train, and

1 assign to duty, in addition to the officers and agents au-  
2 thorized under subsections (a) through (g), 631 U.S. Cus-  
3 toms and Border Protection agricultural specialists to  
4 ports of entry along the southern border and the northern  
5 border.

6 (i) OFFICE OF PROFESSIONAL RESPONSIBILITY.—  
7 Not later than September 30, 2022, the Commissioner  
8 shall hire, train, and assign sufficient Office of Profes-  
9 sional Responsibility special agents to maintain an active  
10 duty presence of not fewer than 550 full-time equivalent  
11 special agents.

12 (j) U.S. CUSTOMS AND BORDER PROTECTION OF-  
13 FICE OF INTELLIGENCE.—Not later than September 30,  
14 2022, the Commissioner shall hire, train, and assign suffi-  
15 cient Office of Intelligence personnel to maintain not fewer  
16 than 700 full-time equivalent employees.

17 (k) GAO REPORT.—If the staffing levels required  
18 under this section are not achieved by September 30,  
19 2022, the Comptroller General of the United States shall  
20 conduct a review of the reasons why such levels were not  
21 achieved.

1 **SEC. 1132. U.S. CUSTOMS AND BORDER PROTECTION RE-**  
2 **TENTION INCENTIVES.**

3 (a) IN GENERAL.—Chapter 97 of title 5, United  
4 States Code, is amended by adding at the end the fol-  
5 lowing:

6 **“§ 9702. U.S. Customs and Border Protection tem-**  
7 **porary employment authorities**

8 “(a) DEFINITIONS.—In this section—

9 “(1) the term ‘CBP employee’ means an em-  
10 ployee of U.S. Customs and Border Protection de-  
11 scribed under any of subsections (a) through (h) of  
12 section 1131 of the Border Security for America Act  
13 of 2018;

14 “(2) the term ‘Commissioner’ means the Com-  
15 missioner of U.S. Customs and Border Protection;

16 “(3) the term ‘Director’ means the Director of  
17 the Office of Personnel Management;

18 “(4) the term ‘Secretary’ means the Secretary  
19 of Homeland Security; and

20 “(5) the term ‘appropriate congressional com-  
21 mittees’ means the Committee on Oversight and  
22 Government Reform, the Committee on Homeland  
23 Security, and the Committee on Ways and Means of  
24 the House of Representatives and the Committee on  
25 Homeland Security and Governmental Affairs and  
26 the Committee on Finance of the Senate.

1       “(b) DIRECT HIRE AUTHORITY; RECRUITMENT AND  
2 RELOCATION BONUSES; RETENTION BONUSES.—

3               “(1) STATEMENT OF PURPOSE AND LIMITA-  
4 TION.—The purpose of this subsection is to allow  
5 U.S. Customs and Border Protection to expedi-  
6 tiously meet the hiring goals and staffing levels re-  
7 quired by section 1131 of the Border Security for  
8 America Act of 2018. The Secretary shall not use  
9 this authority beyond meeting the requirements of  
10 such section.

11              “(2) DIRECT HIRE AUTHORITY.—The Secretary  
12 may appoint, without regard to any provision of sec-  
13 tions 3309 through 3319, candidates to positions in  
14 the competitive service as CBP employees if the Sec-  
15 retary has given public notice for the positions.

16              “(3) RECRUITMENT AND RELOCATION BO-  
17 NUSES.—The Secretary may pay a recruitment or  
18 relocation bonus of up to 50 percent of the annual  
19 rate of basic pay to an individual CBP employee at  
20 the beginning of the service period multiplied by the  
21 number of years (including a fractional part of a  
22 year) in the required service period to an individual  
23 (other than an individual described in subsection  
24 (a)(2) of section 5753) if—

1           “(A) the Secretary determines that condi-  
2           tions consistent with the conditions described in  
3           paragraphs (1) and (2) of subsection (b) of  
4           such section 5753 are satisfied with respect to  
5           the individual (without regard to the regula-  
6           tions referenced in subsection (b)(2)(B(ii)(I) of  
7           such section or to any other provision of that  
8           section); and

9           “(B) the individual enters into a written  
10          service agreement with the Secretary—

11               “(i) under which the individual is re-  
12               quired to complete a period of employment  
13               as a CBP employee of not less than 2  
14               years; and

15               “(ii) that includes—

16                       “(I) the commencement and ter-  
17                       mination dates of the required service  
18                       period (or provisions for the deter-  
19                       mination thereof);

20                       “(II) the amount of the bonus;  
21                       and

22                       “(III) other terms and conditions  
23                       under which the bonus is payable,  
24                       subject to the requirements of this  
25                       subsection, including—

1 “(aa) the conditions under  
2 which the agreement may be ter-  
3 minated before the agreed-upon  
4 service period has been com-  
5 pleted; and

6 “(bb) the effect of a termi-  
7 nation described in item (aa).

8 “(4) RETENTION BONUSES.—The Secretary  
9 may pay a retention bonus of up to 50 percent of  
10 basic pay to an individual CBP employee (other than  
11 an individual described in subsection (a)(2) of sec-  
12 tion 5754) if—

13 “(A) the Secretary determines that—

14 “(i) a condition consistent with the  
15 condition described in subsection (b)(1) of  
16 such section 5754 is satisfied with respect  
17 to the CBP employee (without regard to  
18 any other provision of that section);

19 “(ii) in the absence of a retention  
20 bonus, the CBP employee would be likely  
21 to leave—

22 “(I) the Federal service; or

23 “(II) for a different position in  
24 the Federal service, including a posi-  
25 tion in another agency or component

1 of the Department of Homeland Secu-  
2 rity; and

3 “(B) the individual enters into a written  
4 service agreement with the Secretary—

5 “(i) under which the individual is re-  
6 quired to complete a period of employment  
7 as a CBP employee of not less than 2  
8 years; and

9 “(ii) that includes—

10 “(I) the commencement and ter-  
11 mination dates of the required service  
12 period (or provisions for the deter-  
13 mination thereof);

14 “(II) the amount of the bonus;  
15 and

16 “(III) other terms and conditions  
17 under which the bonus is payable,  
18 subject to the requirements of this  
19 subsection, including—

20 “(aa) the conditions under  
21 which the agreement may be ter-  
22 minated before the agreed-upon  
23 service period has been com-  
24 pleted; and

1 “(bb) the effect of a termi-  
2 nation described in item (aa).

3 “(5) RULES FOR BONUSES.—

4 “(A) MAXIMUM BONUS.—A bonus paid to  
5 an employee under—

6 “(i) paragraph (3) may not exceed  
7 100 percent of the annual rate of basic pay  
8 of the employee as of the commencement  
9 date of the applicable service period; and

10 “(ii) paragraph (4) may not exceed 50  
11 percent of the annual rate of basic pay of  
12 the employee.

13 “(B) RELATIONSHIP TO BASIC PAY.—A  
14 bonus paid to an employee under paragraph (3)  
15 or (4) shall not be considered part of the basic  
16 pay of the employee for any purpose, including  
17 for retirement or in computing a lump-sum pay-  
18 ment to the covered employee for accumulated  
19 and accrued annual leave under section 5551 or  
20 section 5552.

21 “(C) PERIOD OF SERVICE FOR RECRUIT-  
22 MENT, RELOCATION, AND RETENTION BO-  
23 NUSES.—

24 “(i) A bonus paid to an employee  
25 under paragraph (4) may not be based on



1           any period of such service which is the  
2           basis for a recruitment or relocation bonus  
3           under paragraph (3).

4           “(ii) A bonus paid to an employee  
5           under paragraph (3) or (4) may not be  
6           based on any period of service which is the  
7           basis for a recruitment or relocation bonus  
8           under section 5753 or a retention bonus  
9           under section 5754.

10       “(c) SPECIAL RATES OF PAY.—In addition to the cir-  
11 cumstances described in subsection (b) of section 5305,  
12 the Director may establish special rates of pay in accord-  
13 ance with that section to assist the Secretary in meeting  
14 the requirements of section 1131 of the Border Security  
15 for America Act of 2018. The Director shall prioritize the  
16 consideration of requests from the Secretary for such spe-  
17 cial rates of pay and issue a decision as soon as prac-  
18 ticable. The Secretary shall provide such information to  
19 the Director as the Director deems necessary to evaluate  
20 special rates of pay under this subsection.

21       “(d) OPM OVERSIGHT.—

22           “(1) Not later than September 30 of each year,  
23 the Secretary shall provide a report to the Director  
24 on U.S. Customs and Border Protection’s use of au-  
25 thorities provided under subsections (b) and (c). In

1 each report, the Secretary shall provide such infor-  
2 mation as the Director determines is appropriate to  
3 ensure appropriate use of authorities under such  
4 subsections. Each report shall also include an assess-  
5 ment of—

6 “(A) the impact of the use of authorities  
7 under subsections (b) and (c) on implementa-  
8 tion of section 1131 of the Border Security for  
9 America Act of 2018;

10 “(B) solving hiring and retention chal-  
11 lenges at the agency, including at specific loca-  
12 tions;

13 “(C) whether hiring and retention chal-  
14 lenges still exist at the agency or specific loca-  
15 tions; and

16 “(D) whether the Secretary needs to con-  
17 tinue to use authorities provided under this sec-  
18 tion at the agency or at specific locations.

19 “(2) CONSIDERATION.—In compiling a report  
20 under paragraph (1), the Secretary shall consider—

21 “(A) whether any CBP employee accepted  
22 an employment incentive under subsection (b)  
23 and (c) and then transferred to a new location  
24 or left U.S. Customs and Border Protection;  
25 and

1           “(B) the length of time that each employee  
2           identified under subparagraph (A) stayed at the  
3           original location before transferring to a new lo-  
4           cation or leaving U.S. Customs and Border  
5           Protection.

6           “(3) DISTRIBUTION.—In addition to the Direc-  
7           tor, the Secretary shall submit each report required  
8           under this subsection to the appropriate congres-  
9           sional committees.

10          “(e) OPM ACTION.—If the Director determines the  
11       Secretary has inappropriately used authorities under sub-  
12       section (b) or a special rate of pay provided under sub-  
13       section (c), the Director shall notify the Secretary and the  
14       appropriate congressional committees in writing. Upon re-  
15       ceipt of the notification, the Secretary may not make any  
16       new appointments or issue any new bonuses under sub-  
17       section (b), nor provide CBP employees with further spe-  
18       cial rates of pay, until the Director has provided the Sec-  
19       retary and the appropriate congressional committees a  
20       written notice stating the Director is satisfied safeguards  
21       are in place to prevent further inappropriate use.

22          “(f) IMPROVING CBP HIRING AND RETENTION.—

23               “(1) EDUCATION OF CBP HIRING OFFICIALS.—  
24       Not later than 180 days after the date of the enact-  
25       ment of this section, and in conjunction with the

1 Chief Human Capital Officer of the Department of  
2 Homeland Security, the Secretary shall develop and  
3 implement a strategy to improve the education re-  
4 garding hiring and human resources flexibilities (in-  
5 cluding hiring and human resources flexibilities for  
6 locations in rural or remote areas) for all employees,  
7 serving in agency headquarters or field offices, who  
8 are involved in the recruitment, hiring, assessment,  
9 or selection of candidates for locations in a rural or  
10 remote area, as well as the retention of current em-  
11 ployees.

12 “(2) ELEMENTS.—Elements of the strategy  
13 under paragraph (1) shall include the following:

14 “(A) Developing or updating training and  
15 educational materials on hiring and human re-  
16 sources flexibilities for employees who are in-  
17 volved in the recruitment, hiring, assessment, or  
18 selection of candidates, as well as the retention  
19 of current employees.

20 “(B) Regular training sessions for per-  
21 sonnel who are critical to filling open positions  
22 in rural or remote areas.

23 “(C) The development of pilot programs or  
24 other programs, as appropriate, consistent with  
25 authorities provided to the Secretary to address

1 identified hiring challenges, including in rural  
2 or remote areas.

3 “(D) Developing and enhancing strategic  
4 recruiting efforts through the relationships with  
5 institutions of higher education, as defined in  
6 section 102 of the Higher Education Act of  
7 1965 (20 U.S.C. 1002), veterans transition and  
8 employment centers, and job placement pro-  
9 gram in regions that could assist in filling posi-  
10 tions in rural or remote areas.

11 “(E) Examination of existing agency pro-  
12 grams on how to most effectively aid spouses  
13 and families of individuals who are candidates  
14 or new hires in a rural or remote area.

15 “(F) Feedback from individuals who are  
16 candidates or new hires at locations in a rural  
17 or remote area, including feedback on the qual-  
18 ity of life in rural or remote areas for new hires  
19 and their families.

20 “(G) Feedback from CBP employees, other  
21 than new hires, who are stationed at locations  
22 in a rural or remote area, including feedback on  
23 the quality of life in rural or remote areas for  
24 those CBP employees and their families.

1           “(H) Evaluation of Department of Home-  
2           land Security internship programs and the use-  
3           fulness of those programs in improving hiring  
4           by the Secretary in rural or remote areas.

5           “(3) EVALUATION.—

6           “(A) IN GENERAL.—Each year, the Sec-  
7           retary shall—

8                   “(i) evaluate the extent to which the  
9                   strategy developed and implemented under  
10                  paragraph (1) has improved the hiring and  
11                  retention ability of the Secretary; and

12                   “(ii) make any appropriate updates to  
13                  the strategy under paragraph (1).

14           “(B) INFORMATION.—The evaluation con-  
15           ducted under subparagraph (A) shall include—

16                   “(i) any reduction in the time taken  
17                   by the Secretary to fill mission-critical po-  
18                   sitions, including in rural or remote areas;

19                   “(ii) a general assessment of the im-  
20                   pact of the strategy implemented under  
21                   paragraph (1) on hiring challenges, includ-  
22                   ing in rural or remote areas; and

23                   “(iii) other information the Secretary  
24                  determines relevant.

1       “(g) INSPECTOR GENERAL REVIEW.—Not later than  
2 two years after the date of the enactment of this section,  
3 the Inspector General of the Department of Homeland Se-  
4 curity shall review the use of hiring and pay flexibilities  
5 under subsections (b) and (c) to determine whether the  
6 use of such flexibilities is helping the Secretary meet hir-  
7 ing and retention needs, including in rural and remote  
8 areas.

9       “(h) REPORT ON POLYGRAPH REQUESTS.—The Sec-  
10 retary shall report to the appropriate congressional com-  
11 mittees on the number of requests the Secretary receives  
12 from any other Federal agency for the file of an applicant  
13 for a position in U.S. Customs and Border Protection that  
14 includes the results of a polygraph examination.

15       “(i) EXERCISE OF AUTHORITY.—

16               “(1) SOLE DISCRETION.—The exercise of au-  
17 thority under subsection (b) shall be subject to the  
18 sole and exclusive discretion of the Secretary (or the  
19 Commissioner, as applicable under paragraph (2) of  
20 this subsection), notwithstanding chapter 71 and  
21 any collective bargaining agreement.

22               “(2) DELEGATION.—The Secretary may dele-  
23 gate any authority under this section to the Com-  
24 missioner.

5       “(k) SUNSET.—The authorities under subsections (b)  
6   and (c) shall terminate on September 30, 2022. Any bonus  
7   to be paid pursuant to subsection (b) that is approved be-  
8   fore such date may continue until such bonus has been  
9   paid, subject to the conditions specified in this section.”.

(b) TECHNICAL AND CONFORMING AMENDMENT.—

The table of sections for chapter 97 of title 5, United States Code, is amended by adding at the end the following:

“9702. U.S. Customs and Border Protection temporary employment authori-  
ties.”.

14 SEC. 1133. ANTI-BORDER CORRUPTION REAUTHORIZATION  
15 ACT.

16 (a) SHORT TITLE.—This section may be cited as the  
17 “Anti-Border Corruption Reauthorization Act of 2018”.

(b) **HIRING FLEXIBILITY.**—Section 3 of the Anti-Border Corruption Act of 2010 (6 U.S.C. 221) is amended by striking subsection (b) and inserting the following new subsections:

22 “(b) WAIVER AUTHORITY.—The Commissioner of  
23 U.S. Customs and Border Protection may waive the appli-  
24 cation of subsection (a)(1)—



1           “(1) to a current, full-time law enforcement of-  
2           ficer employed by a State or local law enforcement  
3           agency who—

4                   “(A) has continuously served as a law en-  
5           forcement officer for not fewer than three  
6           years;

7                   “(B) is authorized by law to engage in or  
8           supervise the prevention, detection, investiga-  
9           tion, or prosecution of, or the incarceration of  
10          any person for, any violation of law, and has  
11          statutory powers for arrest or apprehension;

12                   “(C) is not currently under investigation,  
13          has not been found to have engaged in criminal  
14          activity or serious misconduct, has not resigned  
15          from a law enforcement officer position under  
16          investigation or in lieu of termination, and has  
17          not been dismissed from a law enforcement offi-  
18          cer position; and

19                   “(D) has, within the past ten years, suc-  
20          cessfully completed a polygraph examination as  
21          a condition of employment with such officer’s  
22          current law enforcement agency;

23           “(2) to a current, full-time Federal law enforce-  
24          ment officer who—

1           “(A) has continuously served as a law en-  
2           forcement officer for not fewer than three  
3           years;

4           “(B) is authorized to make arrests, con-  
5           duct investigations, conduct searches, make sei-  
6           zures, carry firearms, and serve orders, war-  
7           rants, and other processes;

8           “(C) is not currently under investigation,  
9           has not been found to have engaged in criminal  
10          activity or serious misconduct, has not resigned  
11          from a law enforcement officer position under  
12          investigation or in lieu of termination, and has  
13          not been dismissed from a law enforcement offi-  
14          cer position; and

15          “(D) holds a current Tier 4 background  
16          investigation or current Tier 5 background in-  
17          vestigation; and

18          “(3) to a member of the Armed Forces (or a re-  
19          serve component thereof) or a veteran, if such indi-  
20          vidual—

21                 “(A) has served in the Armed Forces for  
22                 not fewer than three years;

23                 “(B) holds, or has held within the past five  
24                 years, a Secret, Top Secret, or Top Secret/Sen-  
25                 sitive Compartmented Information clearance;

1           “(C) holds, or has undergone within the  
2           past five years, a current Tier 4 background in-  
3           vestigation or current Tier 5 background inves-  
4           tigation;

5           “(D) received, or is eligible to receive, an  
6           honorable discharge from service in the Armed  
7           Forces and has not engaged in criminal activity  
8           or committed a serious military or civil offense  
9           under the Uniform Code of Military Justice;  
10          and

11          “(E) was not granted any waivers to ob-  
12          tain the clearance referred to subparagraph  
13          (B).

14          “(c) TERMINATION OF WAIVER AUTHORITY.—The  
15          authority to issue a waiver under subsection (b) shall ter-  
16          minate on the date that is four years after the date of  
17          the enactment of the Border Security for America Act of  
18          2018.”.

19          (c) SUPPLEMENTAL COMMISSIONER AUTHORITY AND  
20          DEFINITIONS.—

21                 (1) SUPPLEMENTAL COMMISSIONER AUTHOR-  
22          ITY.—Section 4 of the Anti-Border Corruption Act  
23          of 2010 is amended to read as follows:

1   **“SEC. 4. SUPPLEMENTAL COMMISSIONER AUTHORITY.**

2       “(a) NON-EXEMPTION.—An individual who receives  
3 a waiver under section 3(b) is not exempt from other hir-  
4 ing requirements relating to suitability for employment  
5 and eligibility to hold a national security designated posi-  
6 tion, as determined by the Commissioner of U.S. Customs  
7 and Border Protection.

8       “(b) BACKGROUND INVESTIGATIONS.—Any indi-  
9 vidual who receives a waiver under section 3(b) who holds  
10 a current Tier 4 background investigation shall be subject  
11 to a Tier 5 background investigation.

12       “(c) ADMINISTRATION OF POLYGRAPH EXAMINA-  
13 TION.—The Commissioner of U.S. Customs and Border  
14 Protection is authorized to administer a polygraph exam-  
15 ination to an applicant or employee who is eligible for or  
16 receives a waiver under section 3(b) if information is dis-  
17 covered before the completion of a background investiga-  
18 tion that results in a determination that a polygraph ex-  
19 amination is necessary to make a final determination re-  
20 garding suitability for employment or continued employ-  
21 ment, as the case may be.”.

22       (2) REPORT.—The Anti-Border Corruption Act  
23 of 2010, as amended by paragraph (1), is further  
24 amended by adding at the end the following new sec-  
25 tion:

1   **“SEC. 5. REPORTING.**

2           “(a) ANNUAL REPORT.—Not later than one year  
3 after the date of the enactment of this section and annu-  
4 ally thereafter while the waiver authority under section  
5 3(b) is in effect, the Commissioner of U.S. Customs and  
6 Border Protection shall submit to Congress a report that  
7 includes, with respect to each such reporting period—

8                   “(1) the number of waivers requested, granted,  
9           and denied under section 3(b);

10                   “(2) the reasons for any denials of such waiver;

11                   “(3) the percentage of applicants who were  
12           hired after receiving a waiver;

13                   “(4) the number of instances that a polygraph  
14           was administered to an applicant who initially re-  
15           ceived a waiver and the results of such polygraph;

16                   “(5) an assessment of the current impact of the  
17           polygraph waiver program on filling law enforcement  
18           positions at U.S. Customs and Border Protection;  
19           and

20                   “(6) additional authorities needed by U.S. Cus-  
21           toms and Border Protection to better utilize the  
22           polygraph waiver program for its intended goals.

23           “(b) ADDITIONAL INFORMATION.—The first report  
24 submitted under subsection (a) shall include—

25                   “(1) an analysis of other methods of employ-  
26           ment suitability tests that detect deception and could

1 be used in conjunction with traditional background  
2 investigations to evaluate potential employees for  
3 suitability; and

4 “(2) a recommendation regarding whether a  
5 test referred to in paragraph (1) should be adopted  
6 by U.S. Customs and Border Protection when the  
7 polygraph examination requirement is waived pursu-  
8 ant to section 3(b).”.

9 (3) DEFINITIONS.—The Anti-Border Corrup-  
10 tion Act of 2010, as amended by paragraphs (1) and  
11 (2), is further amended by adding at the end the fol-  
12 lowing new section:

13 **“SEC. 6. DEFINITIONS.**

14 “In this Act:

15 “(1) FEDERAL LAW ENFORCEMENT OFFICER.—  
16 The term ‘Federal law enforcement officer’ means a  
17 ‘law enforcement officer’ defined in section 8331(20)  
18 or 8401(17) of title 5, United States Code.

19 “(2) SERIOUS MILITARY OR CIVIL OFFENSE.—  
20 The term ‘serious military or civil offense’ means an  
21 offense for which—

22 “(A) a member of the Armed Forces may  
23 be discharged or separated from service in the  
24 Armed Forces; and

1           “(B) a punitive discharge is, or would be,  
2           authorized for the same or a closely related of-  
3           fense under the Manual for Court-Martial, as  
4           pursuant to Army Regulation 635–200 chapter  
5           14–12.

6           “(3) TIER 4; TIER 5.—The terms ‘Tier 4’ and  
7           ‘Tier 5’ with respect to background investigations  
8           have the meaning given such terms under the 2012  
9           Federal Investigative Standards.

10          “(4) VETERAN.—The term ‘veteran’ has the  
11          meaning given such term in section 101(2) of title  
12          38, United States Code.”.

13          (d) POLYGRAPH EXAMINERS.—Not later than Sep-  
14          tember 30, 2022, the Secretary shall increase to not fewer  
15          than 150 the number of trained full-time equivalent poly-  
16          graph examiners for administering polygraphs under the  
17          Anti-Border Corruption Act of 2010, as amended by this  
18          subtitle.

19       **SEC. 1134. TRAINING FOR OFFICERS AND AGENTS OF U.S.**  
20               **CUSTOMS AND BORDER PROTECTION.**

21          (a) IN GENERAL.—Subsection (l) of section 411 of  
22          the Homeland Security Act of 2002 (6 U.S.C. 211) is  
23          amended to read as follows:

24          “(l) TRAINING AND CONTINUING EDUCATION.—

1           “(1) MANDATORY TRAINING.—The Commis-  
2           sioner shall ensure that every agent and officer of  
3           U.S. Customs and Border Protection receives a min-  
4           imum of 21 weeks of training that are directly re-  
5           lated to the mission of the U.S. Border Patrol, Air  
6           and Marine, and the Office of Field Operations be-  
7           fore the initial assignment of such agents and offi-  
8           cers.

9           “(2) FLETC.—The Commissioner shall work  
10          in consultation with the Director of the Federal Law  
11          Enforcement Training Centers to establish guide-  
12          lines and curriculum for the training of agents and  
13          officers of U.S. Customs and Border Protection  
14          under subsection (a).

15          “(3) CONTINUING EDUCATION.—The Commis-  
16          sioner shall annually require all agents and officers  
17          of U.S. Customs and Border Protection who are re-  
18          quired to undergo training under subsection (a) to  
19          participate in not fewer than eight hours of con-  
20          tinuing education annually to maintain and update  
21          understanding of Federal legal rulings, court deci-  
22          sions, and Department policies, procedures, and  
23          guidelines related to relevant subject matters.

24          “(4) LEADERSHIP TRAINING.—Not later than  
25          one year after the date of the enactment of this sub-



1       section, the Commissioner shall develop and require  
2       training courses geared towards the development of  
3       leadership skills for mid- and senior-level career em-  
4       ployees not later than one year after such employees  
5       assume duties in supervisory roles.”.

6       (b) REPORT.—Not later than 180 days after the date  
7       of the enactment of this Act, the Commissioner shall sub-  
8       mit to the Committee on Homeland Security and the Com-  
9       mittee on Ways and Means of the House of Representa-  
10      tives and the Committee on Homeland Security and Gov-  
11      ernmental Affairs and the Committee on Finance of the  
12      Senate a report identifying the guidelines and curriculum  
13      established to carry out subsection (l) of section 411 of  
14      the Homeland Security Act of 2002, as amended by sub-  
15      section (a) of this section.

16      (c) ASSESSMENT.—Not later than four years after  
17      the date of the enactment of this Act, the Comptroller  
18      General of the United States shall submit to the Com-  
19      mittee on Homeland Security and the Committee on Ways  
20      and Means of the House of Representatives and the Com-  
21      mittee on Homeland Security and Governmental Affairs  
22      and the Committee on Finance of the Senate a report that  
23      assesses the training and education, including continuing  
24      education, required under subsection (l) of section 411 of

1 the Homeland Security Act of 2002, as amended by sub-  
 2 section (a) of this section.

### 3 **Subtitle C—Grants**

#### 4 **SEC. 1141. OPERATION STONEGARDEN.**

5 (a) IN GENERAL.—Subtitle A of title XX of the  
 6 Homeland Security Act of 2002 (6 U.S.C. 601 et seq.)  
 7 is amended by adding at the end the following new section:

#### 8 **“SEC. 2009. OPERATION STONEGARDEN.**

9 “(a) ESTABLISHMENT.—There is established in the  
 10 Department a program to be known as ‘Operation  
 11 Stonegarden’, under which the Secretary, acting through  
 12 the Administrator, shall make grants to eligible law en-  
 13 forcement agencies, through the State administrative  
 14 agency, to enhance border security in accordance with this  
 15 section.

16 “(b) ELIGIBLE RECIPIENTS.—To be eligible to re-  
 17 ceive a grant under this section, a law enforcement agen-  
 18 cy—

19 “(1) shall be located in—

20 “(A) a State bordering Canada or Mexico;

21 or

22 “(B) a State or territory with a maritime  
 23 border; and

24 “(2) shall be involved in an active, ongoing,  
 25 U.S. Customs and Border Protection operation co-

1       ordinated through a U.S. Border Patrol sector of-  
2       fice.

3       “(c) PERMITTED USES.—The recipient of a grant  
4 under this section may use such grant for—

5           “(1) equipment, including maintenance and  
6       sustainment costs;

7           “(2) personnel, including overtime and backfill,  
8       in support of enhanced border law enforcement ac-  
9       tivities;

10          “(3) any activity permitted for Operation  
11       Stonegarden under the Department of Homeland  
12       Security’s Fiscal Year 2017 Homeland Security  
13       Grant Program Notice of Funding Opportunity; and

14          “(4) any other appropriate activity, as deter-  
15       mined by the Administrator, in consultation with the  
16       Commissioner of U.S. Customs and Border Protec-  
17       tion.

18       “(d) PERIOD OF PERFORMANCE.—The Secretary  
19 shall award grants under this section to grant recipients  
20 for a period of not less than 36 months.

21       “(e) REPORT.—For each of fiscal years 2018 through  
22 2022, the Administrator shall submit to the Committee  
23 on Homeland Security and Governmental Affairs of the  
24 Senate and the Committee on Homeland Security of the  
25 House of Representatives a report that contains informa-

tion on the expenditure of grants made under this section  
by each grant recipient.

“(f) AUTHORIZATION OF APPROPRIATIONS.—There  
is authorized to be appropriated \$110,000,000 for each  
of fiscal years 2018 through 2022 for grants under this  
section.”.

(b) CONFORMING AMENDMENT.—Subsection (a) of  
section 2002 of the Homeland Security Act of 2002 (6  
U.S.C. 603) is amended to read as follows:

“(a) GRANTS AUTHORIZED.—The Secretary, through  
the Administrator, may award grants under sections 2003,  
2004, and 2009 to State, local, and tribal governments,  
as appropriate.”.

(c) CLERICAL AMENDMENT.—The table of contents  
in section 1(b) of the Homeland Security Act of 2002 is  
amended by inserting after the item relating to section  
2008 the following:

“Sec. 2009. Operation Stonegarden.”.

## **Subtitle D—Authorization of Appropriations**

### **SEC. 1151. AUTHORIZATION OF APPROPRIATIONS.**

In addition to amounts otherwise authorized to be ap-  
propriated, there are authorized to be appropriated for  
each of fiscal years 2018 through 2022, \$24,800,000,000  
to implement this title and the amendments made by this  
title, of which—

1           (1) \$9,300,000,000 shall be used by the De-  
2       partment of Homeland Security to construct phys-  
3       ical barriers pursuant to section 102 of the Illegal  
4       Immigration and Immigrant Responsibility Act of  
5       1996, as amended by section 1111 of this division;

6           (2) \$1,000,000,000 shall be used by the De-  
7       partment to improve tactical infrastructure pursuant  
8       to such section 102, as amended by such section  
9       1111;

10          (3) \$5,800,000,000 shall be used by the De-  
11       partment to carry out section 1112 of this division;

12          (4) \$200,000,000 shall be used by the Coast  
13       Guard for deployments of personnel and assets  
14       under paragraph (18) of section 1113(a) of this divi-  
15       sion; and

16          (5) \$8,500,000,000 shall be used by the De-  
17       partment to carry out section 1131 of this division.

18 **TITLE II—EMERGENCY PORT OF**  
19 **ENTRY PERSONNEL AND IN-**  
20 **FRASTRUCTURE FUNDING**

21 **SEC. 2101. PORTS OF ENTRY INFRASTRUCTURE.**

22       (a) ADDITIONAL PORTS OF ENTRY.—

23           (1) AUTHORITY.—The Administrator of Gen-  
24       eral Services may, subject to section 3307 of title  
25       40, United States Code, construct new ports of entry

1 along the northern border and southern border at lo-  
2 cations determined by the Secretary.

3 (2) CONSULTATION.—

4 (A) REQUIREMENT TO CONSULT.—The  
5 Secretary and the Administrator of General  
6 Services shall consult with the Secretary of  
7 State, the Secretary of the Interior, the Sec-  
8 retary of Agriculture, the Secretary of Trans-  
9 portation, and appropriate representatives of  
10 State and local governments, and Indian tribes,  
11 and property owners in the United States prior  
12 to determining a location for any new port of  
13 entry constructed pursuant to paragraph (1).

14 (B) CONSIDERATIONS.—The purpose of  
15 the consultations required by subparagraph (A)  
16 shall be to minimize any negative impacts of  
17 constructing a new port of entry on the environ-  
18 ment, culture, commerce, and quality of life of  
19 the communities and residents located near  
20 such new port.

21 (b) EXPANSION AND MODERNIZATION OF HIGH-PRI-  
22 ORITY SOUTHERN BORDER PORTS OF ENTRY.—Not later  
23 than September 30, 2021, the Administrator of General  
24 Services, subject to section 3307 of title 40, United States  
25 Code, and in coordination with the Secretary, shall expand

1 or modernize high-priority ports of entry on the southern  
2 border, as determined by the Secretary, for the purposes  
3 of reducing wait times and enhancing security.

4 (c) PORT OF ENTRY PRIORITIZATION.—Prior to con-  
5 structing any new ports of entry pursuant to subsection  
6 (a), the Administrator of General Services shall complete  
7 the expansion and modernization of ports of entry pursu-  
8 ant to subsection (b) to the extent practicable.

9 (d) NOTIFICATIONS.—

10 (1) RELATING TO NEW PORTS OF ENTRY.—Not  
11 later than 15 days after determining the location of  
12 any new port of entry for construction pursuant to  
13 subsection (a), the Secretary and the Administrator  
14 of General Services shall jointly notify the Members  
15 of Congress who represent the State or congressional  
16 district in which such new port of entry will be lo-  
17 cated, as well as the Committee on Homeland Secu-  
18 rity and Governmental Affairs, the Committee on  
19 Finance, the Committee on Commerce, Science, and  
20 Transportation, and the Committee on the Judiciary  
21 of the Senate, and the Committee on Homeland Se-  
22 curity, the Committee on Ways and Means, the  
23 Committee on Transportation and Infrastructure,  
24 and the Committee on the Judiciary of the House of  
25 Representatives. Such notification shall include in-

1       formation relating to the location of such new port  
2       of entry, a description of the need for such new port  
3       of entry and associated anticipated benefits, a de-  
4       scription of the consultations undertaken by the Sec-  
5       retary and the Administrator pursuant to paragraph  
6       (2) of such subsection, any actions that will be taken  
7       to minimize negative impacts of such new port of  
8       entry, and the anticipated time-line for construction  
9       and completion of such new port of entry.

10           (2) RELATING TO EXPANSION AND MODERNIZA-  
11       TION OF PORTS OF ENTRY.—Not later than 180  
12       days after enactment of this Act, the Secretary and  
13       the Administrator of General Services shall jointly  
14       notify the Committee on Homeland Security and  
15       Governmental Affairs, the Committee on Finance,  
16       the Committee on Commerce, Science, and Trans-  
17       portation, and the Committee on the Judiciary of  
18       the Senate, and the Committee on Homeland Secu-  
19       rity, the Committee on Ways and Means, the Com-  
20       mittee on Transportation and Infrastructure, and  
21       the Committee on the Judiciary of the House of  
22       Representatives of the ports of entry on the south-  
23       ern border that are the subject of expansion or mod-  
24       ernization pursuant to subsection (b) and the Sec-



1       retary's and Administrator's plan for expanding or  
2       modernizing each such port of entry.

3       (e) RULE OF CONSTRUCTION.—Nothing in this sec-  
4       tion may be construed as providing the Secretary new au-  
5       thority related to the construction, acquisition, or renova-  
6       tion of real property.

7       **SEC. 2102. SECURE COMMUNICATIONS.**

8       (a) IN GENERAL.—The Secretary shall ensure that  
9       each U.S. Customs and Border Protection and U.S. Immi-  
10      gration and Customs Enforcement officer or agent, if ap-  
11      propriate, is equipped with a secure radio or other two-  
12      way communication device, supported by system interoper-  
13      ability, that allows each such officer to communicate—

14               (1) between ports of entry and inspection sta-  
15      tions; and

16               (2) with other Federal, State, tribal, and local  
17      law enforcement entities.

18      (b) U.S. BORDER PATROL AGENTS.—The Secretary  
19      shall ensure that each U.S. Border Patrol agent or officer  
20      assigned or required to patrol on foot, by horseback, or  
21      with a canine unit, in remote mission critical locations,  
22      and at border checkpoints, has a multi- or dual-band  
23      encrypted portable radio.

24      (c) LTE CAPABILITY.—In carrying out subsection  
25      (b), the Secretary shall acquire radios or other devices

1 with the option to be LTE-capable for deployment in areas  
2 where LTE enhances operations and is cost effective.

3 **SEC. 2103. BORDER SECURITY DEPLOYMENT PROGRAM.**

4 (a) EXPANSION.—Not later than September 30,  
5 2021, the Secretary shall fully implement the Border Se-  
6 curity Deployment Program of the U.S. Customs and Bor-  
7 der Protection and expand the integrated surveillance and  
8 intrusion detection system at land ports of entry along the  
9 southern border and the northern border.

10 (b) AUTHORIZATION OF APPROPRIATIONS.—In addi-  
11 tion to amounts otherwise authorized to be appropriated  
12 for such purpose, there is authorized to be appropriated  
13 \$33,000,000 for fiscal year 2018 to carry out subsection  
14 (a).

15 **SEC. 2104. PILOT AND UPGRADE OF LICENSE PLATE READ-**  
16 **ERS AT PORTS OF ENTRY.**

17 (a) UPGRADE.—Not later than one year after the  
18 date of the enactment of this Act, the Commissioner of  
19 U.S. Customs and Border Protection shall upgrade all ex-  
20 isting license plate readers on the northern and southern  
21 borders on incoming and outgoing vehicle lanes.

22 (b) PILOT PROGRAM.—Not later than 90 days after  
23 the date of the enactment of this Act, the Commissioner  
24 of U.S. Customs and Border Protection shall conduct a  
25 one-month pilot program on the southern border using li-

1 cense plate readers for one to two cargo lanes at the top  
2 three high-volume land ports of entry or checkpoints to  
3 determine their effectiveness in reducing cross-border wait  
4 times for commercial traffic and tractor-trailers.

5 (c) REPORT.—Not later than 180 days after the date  
6 of the enactment of this Act, the Secretary shall report  
7 to the Committee on Homeland Security and Govern-  
8 mental Affairs, the Committee on the Judiciary, and the  
9 Committee on Finance of the Senate, and the Committee  
10 on Homeland Security, and Committee on the Judiciary,  
11 and the Committee on Ways and Means of the House of  
12 Representatives the results of the pilot program under  
13 subsection (b) and make recommendations for imple-  
14 menting use of such technology on the southern border.

15 (d) AUTHORIZATION OF APPROPRIATIONS.—In addi-  
16 tion to amounts otherwise authorized to be appropriated  
17 for such purpose, there is authorized to be appropriated  
18 \$125,000,000 for fiscal year 2018 to carry out subsection  
19 (a).

20 **SEC. 2105. NON-INTRUSIVE INSPECTION OPERATIONAL**  
21 **DEMONSTRATION.**

22 (a) IN GENERAL.—Not later than six months after  
23 the date of the enactment of this Act, the Commissioner  
24 shall establish a six-month operational demonstration to  
25 deploy a high-throughput non-intrusive passenger vehicle

1 inspection system at not fewer than three land ports of  
2 entry along the United States-Mexico border with signifi-  
3 cant cross-border traffic. Such demonstration shall be lo-  
4 cated within the pre-primary traffic flow and should be  
5 scalable to span up to 26 contiguous in-bound traffic lanes  
6 without re-configuration of existing lanes.

7 (b) REPORT.—Not later than 90 days after the con-  
8 clusion of the operational demonstration under subsection  
9 (a), the Commissioner shall submit to the Committee on  
10 Homeland Security and the Committee on Ways and  
11 Means of the House of Representatives and the Committee  
12 on Homeland Security and Governmental Affairs and the  
13 Committee on Finance of the Senate a report that de-  
14 scribes the following:

15 (1) The effects of such demonstration on legiti-  
16 mate travel and trade.

17 (2) The effects of such demonstration on wait  
18 times, including processing times, for non-pedestrian  
19 traffic.

20 (3) The effectiveness of such demonstration in  
21 combating terrorism and smuggling.

22 **SEC. 2106. BIOMETRIC EXIT DATA SYSTEM.**

23 (a) IN GENERAL.—Subtitle B of title IV of the  
24 Homeland Security Act of 2002 (6 U.S.C. 211 et seq.)

1 is amended by inserting after section 415 the following  
2 new section:

3 **“SEC. 416. BIOMETRIC ENTRY-EXIT.**

4 “(a) ESTABLISHMENT.—The Secretary shall—

5 “(1) not later than 180 days after the date of  
6 the enactment of this section, submit to the Com-  
7 mittee on Homeland Security and Governmental Af-  
8 fairs and the Committee on the Judiciary of the  
9 Senate and the Committee on Homeland Security  
10 and the Committee on the Judiciary of the House of  
11 Representatives an implementation plan to establish  
12 a biometric exit data system to complete the inte-  
13 grated biometric entry and exit data system required  
14 under section 7208 of the Intelligence Reform and  
15 Terrorism Prevention Act of 2004 (8 U.S.C. 1365b),  
16 including—

17 “(A) an integrated master schedule and  
18 cost estimate, including requirements and de-  
19 sign, development, operational, and mainte-  
20 nance costs of such a system, that takes into  
21 account prior reports on such matters issued by  
22 the Government Accountability Office and the  
23 Department;

24 “(B) cost-effective staffing and personnel  
25 requirements of such a system that leverages

1 existing resources of the Department that takes  
2 into account prior reports on such matters  
3 issued by the Government Accountability Office  
4 and the Department;

5 “(C) a consideration of training programs  
6 necessary to establish such a system that takes  
7 into account prior reports on such matters  
8 issued by the Government Accountability Office  
9 and the Department;

10 “(D) a consideration of how such a system  
11 will affect arrival and departure wait times that  
12 takes into account prior reports on such matter  
13 issued by the Government Accountability Office  
14 and the Department;

15 “(E) information received after consulta-  
16 tion with private sector stakeholders, including  
17 the—

18 “(i) trucking industry;

19 “(ii) airport industry;

20 “(iii) airline industry;

21 “(iv) seaport industry;

22 “(v) travel industry; and

23 “(vi) biometric technology industry;

24 “(F) a consideration of how trusted trav-  
25 eler programs in existence as of the date of the

1 enactment of this section may be impacted by,  
2 or incorporated into, such a system;

3 “(G) defined metrics of success and mile-  
4 stones;

5 “(H) identified risks and mitigation strate-  
6 gies to address such risks;

7 “(I) a consideration of how other countries  
8 have implemented a biometric exit data system;  
9 and

10 “(J) a list of statutory, regulatory, or ad-  
11 ministrative authorities, if any, needed to inte-  
12 grate such a system into the operations of the  
13 Transportation Security Administration; and

14 “(2) not later than two years after the date of  
15 the enactment of this section, establish a biometric  
16 exit data system at the—

17 “(A) 15 United States airports that sup-  
18 port the highest volume of international air  
19 travel, as determined by available Federal flight  
20 data;

21 “(B) 10 United States seaports that sup-  
22 port the highest volume of international sea  
23 travel, as determined by available Federal travel  
24 data; and

1           “(C) 15 United States land ports of entry  
2           that support the highest volume of vehicle, pe-  
3           destrian, and cargo crossings, as determined by  
4           available Federal border crossing data.

5           “(b) IMPLEMENTATION.—

6           “(1) PILOT PROGRAM AT LAND PORTS OF  
7           ENTRY FOR NON-PEDESTRIAN OUTBOUND TRAF-  
8           FIC.—Not later than six months after the date of  
9           the enactment of this section, the Secretary, in col-  
10          laboration with industry stakeholders, shall establish  
11          a six-month pilot program to test the biometric exit  
12          data system referred to in subsection (a)(2) on non-  
13          pedestrian outbound traffic at not fewer than three  
14          land ports of entry with significant cross-border traf-  
15          fic, including at not fewer than two land ports of  
16          entry on the southern land border and at least one  
17          land port of entry on the northern land border. Such  
18          pilot program may include a consideration of more  
19          than one biometric mode, and shall be implemented  
20          to determine the following:

21               “(A) How a nationwide implementation of  
22               such biometric exit data system at land ports of  
23               entry shall be carried out.

24               “(B) The infrastructure required to carry  
25               out subparagraph (A).



1           “(C) The effects of such pilot program on  
2 legitimate travel and trade.

3           “(D) The effects of such pilot program on  
4 wait times, including processing times, for such  
5 non-pedestrian traffic.

6           “(E) The effects of such pilot program on  
7 combating terrorism.

8           “(F) The effects of such pilot program on  
9 identifying visa holders who violate the terms of  
10 their visas.

11           “(2) AT LAND PORTS OF ENTRY FOR NON-PE-  
12 DESTRIAN OUTBOUND TRAFFIC.—

13           “(A) IN GENERAL.—Not later than five  
14 years after the date of the enactment of this  
15 section, the Secretary shall expand the biomet-  
16 ric exit data system referred to in subsection  
17 (a)(2) to all land ports of entry, and such sys-  
18 tem shall apply only in the case of non-pedes-  
19 trian outbound traffic.

20           “(B) EXTENSION.—The Secretary may ex-  
21 tend for a single two-year period the date speci-  
22 fied in subparagraph (A) if the Secretary cer-  
23 tifies to the Committee on Homeland Security  
24 and Governmental Affairs and the Committee  
25 on the Judiciary of the Senate and the Com-

1           mittee on Homeland Security and the Com-  
2           mittee on the Judiciary of the House of Rep-  
3           resentatives that the 15 land ports of entry that  
4           support the highest volume of passenger vehi-  
5           cles, as determined by available Federal data,  
6           do not have the physical infrastructure or char-  
7           acteristics to install the systems necessary to  
8           implement a biometric exit data system.

9           “(3) AT AIR AND SEA PORTS OF ENTRY.—Not  
10          later than five years after the date of the enactment  
11          of this section, the Secretary shall expand the bio-  
12          metric exit data system referred to in subsection  
13          (a)(2) to all air and sea ports of entry.

14          “(4) AT LAND PORTS OF ENTRY FOR PEDES-  
15          TRIANS.—Not later than five years after the date of  
16          the enactment of this section, the Secretary shall ex-  
17          pand the biometric exit data system referred to in  
18          subsection (a)(2) to all land ports of entry, and such  
19          system shall apply only in the case of pedestrians.

20          “(c) EFFECTS ON AIR, SEA, AND LAND TRANSPOR-  
21          TATION.—The Secretary, in consultation with appropriate  
22          private sector stakeholders, shall ensure that the collection  
23          of biometric data under this section causes the least pos-  
24          sible disruption to the movement of people or cargo in air,  
25          sea, or land transportation, while fulfilling the goals of im-

1 proving counterterrorism efforts and identifying visa hold-  
2 ers who violate the terms of their visas.

3 “(d) TERMINATION OF PROCEEDING.—Notwith-  
4 standing any other provision of law, the Secretary shall,  
5 on the date of the enactment of this section, terminate  
6 the proceeding entitled ‘Collection of Alien Biometric Data  
7 Upon Exit From the United States at Air and Sea Ports  
8 of Departure; United States Visitor and Immigrant Status  
9 Indicator Technology Program (“US-VISIT”)', issued on  
10 April 24, 2008 (73 Fed. Reg. 22065).

11 “(e) DATA-MATCHING.—The biometric exit data sys-  
12 tem established under this section shall—

13 “(1) match biometric information for an indi-  
14 vidual, regardless of nationality, citizenship, or im-  
15 migration status, who is departing the United States  
16 against biometric data previously provided to the  
17 United States Government by such individual for the  
18 purposes of international travel;

19 “(2) leverage the infrastructure and databases  
20 of the current biometric entry and exit system estab-  
21 lished pursuant to section 7208 of the Intelligence  
22 Reform and Terrorism Prevention Act of 2004 (8  
23 U.S.C. 1365b) for the purpose described in para-  
24 graph (1); and

1           “(3) be interoperable with, and allow matching  
2           against, other Federal databases that—

3                   “(A) store biometrics of known or sus-  
4                   pected terrorists; and

5                   “(B) identify visa holders who violate the  
6                   terms of their visas.

7           “(f) SCOPE.—

8                   “(1) IN GENERAL.—The biometric exit data  
9                   system established under this section shall include a  
10                  requirement for the collection of biometric exit data  
11                  at the time of departure for all categories of individ-  
12                  uals who are required by the Secretary to provide bi-  
13                  ometric entry data.

14                  “(2) EXCEPTION FOR CERTAIN OTHER INDIVID-  
15                  UALS.—This section shall not apply in the case of an  
16                  individual who exits and then enters the United  
17                  States on a passenger vessel (as such term is defined  
18                  in section 2101 of title 46, United States Code) the  
19                  itinerary of which originates and terminates in the  
20                  United States.

21                  “(3) EXCEPTION FOR LAND PORTS OF  
22                  ENTRY.—This section shall not apply in the case of  
23                  a United States or Canadian citizen who exits the  
24                  United States through a land port of entry.

1       “(g) COLLECTION OF DATA.—The Secretary may not  
2       require any non-Federal person to collect biometric data,  
3       or contribute to the costs of collecting or administering  
4       the biometric exit data system established under this sec-  
5       tion, except through a mutual agreement.

6       “(h) MULTI-MODAL COLLECTION.—In carrying out  
7       subsections (a)(1) and (b), the Secretary shall make every  
8       effort to collect biometric data using multiple modes of  
9       biometrics.

10       “(i) FACILITIES.—All facilities at which the biometric  
11       exit data system established under this section is imple-  
12       mented shall provide and maintain space for Federal use  
13       that is adequate to support biometric data collection and  
14       other inspection-related activity. For non-federally owned  
15       facilities, such space shall be provided and maintained at  
16       no cost to the Government. For all facilities at land ports  
17       of entry, such space requirements shall be coordinated  
18       with the Administrator of General Services.

19       “(j) NORTHERN LAND BORDER.—In the case of the  
20       northern land border, the requirements under subsections  
21       (a)(2)(C), (b)(2)(A), and (b)(4) may be achieved through  
22       the sharing of biometric data provided to U.S. Customs  
23       and Border Protection by the Canadian Border Services  
24       Agency pursuant to the 2011 Beyond the Border agree-  
25       ment.

1       “(k) FAIR AND OPEN COMPETITION.—The Secretary  
2 shall procure goods and services to implement this section  
3 via fair and open competition in accordance with the Fed-  
4 eral Acquisition Regulations.

5       “(l) OTHER BIOMETRIC INITIATIVES.—Nothing in  
6 this section may be construed as limiting the authority of  
7 the Secretary to collect biometric information in cir-  
8 cumstances other than as specified in this section.

9       “(m) CONGRESSIONAL REVIEW.—Not later than 90  
10 days after the date of the enactment of this section, the  
11 Secretary shall submit to the Committee on Homeland Se-  
12 curity and Governmental Affairs of the Senate, the Com-  
13 mittee on the Judiciary of the Senate, the Committee on  
14 Homeland Security of the House of Representatives, and  
15 Committee on the Judiciary of the House of Representa-  
16 tives reports and recommendations regarding the Science  
17 and Technology Directorate’s Air Entry and Exit Re-En-  
18 gineering Program of the Department and the U.S. Cus-  
19 toms and Border Protection entry and exit mobility pro-  
20 gram demonstrations.

21       “(n) SAVINGS CLAUSE.—Nothing in this section shall  
22 prohibit the collection of user fees permitted by section  
23 13031 of the Consolidated Omnibus Budget Reconciliation  
24 Act of 1985 (19 U.S.C. 58c).”.

1 (b) CLERICAL AMENDMENT.—The table of contents  
2 in section 1(b) of the Homeland Security Act of 2002 is  
3 amended by inserting after the item relating to section  
4 415 the following new item:

“Sec. 416. Biometric entry-exit.”.

5 **SEC. 2107. SENSE OF CONGRESS ON COOPERATION BE-**  
6 **TWEEN AGENCIES.**

7 (a) FINDING.—Congress finds that personnel con-  
8 straints exist at land ports of entry with regard to sanitary  
9 and phytosanitary inspections for exported goods.

10 (b) SENSE OF CONGRESS.—It is the sense of Con-  
11 gress that, in the best interest of cross-border trade and  
12 the agricultural community—

13 (1) any lack of certified personnel for inspection  
14 purposes at ports of entry should be addressed by  
15 seeking cooperation between agencies and depart-  
16 ments of the United States, whether in the form of  
17 a memorandum of understanding or through a cer-  
18 tification process, whereby additional existing agents  
19 are authorized for additional hours to facilitate and  
20 expedite the flow of legitimate trade and commerce  
21 of perishable goods in a manner consistent with  
22 rules of the Department of Agriculture; and

23 (2) cross designation should be available for  
24 personnel who will assist more than one agency or  
25 department of the United States at land ports of

1 entry to facilitate and expedite the flow of increased  
2 legitimate trade and commerce.

3 **SEC. 2108. AUTHORIZATION OF APPROPRIATIONS.**

4 In addition to any amounts otherwise authorized to  
5 be appropriated for such purpose, there is authorized to  
6 be appropriated \$1,250,000,000 for each of fiscal years  
7 2018 through 2022 to carry out this title, of which—

8 (1) \$2,000,000 shall be used by the Secretary  
9 for hiring additional Uniform Management Center  
10 support personnel, purchasing uniforms for CBP of-  
11 ficers and agents, acquiring additional motor vehi-  
12 cles to support vehicle mounted surveillance systems,  
13 hiring additional motor vehicle program support per-  
14 sonnel, and for contract support for customer serv-  
15 ice, vendor management, and operations manage-  
16 ment; and

17 (2) \$250,000,000 per year shall be used to im-  
18 plement the biometric exit data system described in  
19 section 416 of the Homeland Security Act of 2002,  
20 as added by section 2106 of this division.

21 **SEC. 2109. DEFINITION.**

22 In this title, the term “Secretary” means the Sec-  
23 retary of Homeland Security.



1     **TITLE III—VISA SECURITY AND**  
2                     **INTEGRITY**

3     **SEC. 3101. VISA SECURITY.**

4             (a) VISA SECURITY UNITS AT HIGH-RISK POSTS.—

5     Paragraph (1) of section 428(e) of the Homeland Security  
6     Act of 2002 (6 U.S.C. 236(e)) is amended—

7             (1) by striking “The Secretary” and inserting  
8     the following:

9                     “(A) AUTHORIZATION.—Subject to the  
10             minimum number specified in subparagraph  
11             (B), the Secretary”; and

12             (2) by adding at the end the following new sub-  
13     paragraph:

14                     “(B) RISK-BASED ASSIGNMENTS.—

15                             “(i) IN GENERAL.—In carrying out  
16             subparagraph (A), the Secretary shall as-  
17             sign, in a risk-based manner, and consid-  
18             ering the criteria described in clause (ii),  
19             employees of the Department to not fewer  
20             than 75 diplomatic and consular posts at  
21             which visas are issued.

22                             “(ii) CRITERIA DESCRIBED.—The cri-  
23             teria referred to in clause (i) are the fol-  
24             lowing:

1           “(I) The number of nationals of  
2           a country in which any of the diplo-  
3           matic and consular posts referred to  
4           in clause (i) are located who were  
5           identified in United States Govern-  
6           ment databases related to the identi-  
7           ties of known or suspected terrorists  
8           during the previous year.

9           “(II) Information on the coopera-  
10          tion of such country with the counter-  
11          terrorism efforts of the United States.

12          “(III) Information analyzing the  
13          presence, activity, or movement of ter-  
14          rorist organizations (as such term is  
15          defined in section 212(a)(3)(B)(vi) of  
16          the Immigration and Nationality Act  
17          (8 U.S.C. 1182(a)(3)(B)(vi))) within  
18          or through such country.

19          “(IV) The number of formal ob-  
20          jections based on derogatory informa-  
21          tion issued by the Visa Security Advi-  
22          sory Opinion Unit pursuant to para-  
23          graph (10) regarding nationals of a  
24          country in which any of the diplomatic

1 and consular posts referred to in  
2 clause (i) are located.

3 “(V) The adequacy of the border  
4 and immigration control of such coun-  
5 try.

6 “(VI) Any other criteria the Sec-  
7 retary determines appropriate.

8 “(iii) RULE OF CONSTRUCTION.—The  
9 assignment of employees of the Depart-  
10 ment pursuant to this subparagraph is  
11 solely the authority of the Secretary and  
12 may not be altered or rejected by the Sec-  
13 retary of State.”.

14 (b) COUNTERTERROR VETTING AND SCREENING.—  
15 Paragraph (2) of section 428(e) of the Homeland Security  
16 Act of 2002 is amended—

17 (1) by redesignating subparagraph (C) as sub-  
18 paragraph (D); and

19 (2) by inserting after subparagraph (B) the fol-  
20 lowing new subparagraph:

21 “(C) Screen any such applications against  
22 the appropriate criminal, national security, and  
23 terrorism databases maintained by the Federal  
24 Government.”.

1 (c) TRAINING AND HIRING.—Subparagraph (A) of  
2 section 428(e)(6) of the Homeland Security Act of 2002  
3 is amended by—

4 (1) striking “The Secretary shall ensure, to the  
5 extent possible, that any employees” and inserting  
6 “The Secretary, acting through the Commissioner of  
7 U.S. Customs and Border Protection and the Direc-  
8 tor of U.S. Immigration and Customs Enforcement,  
9 shall provide training to any employees”; and

10 (2) striking “shall be provided the necessary  
11 training”.

12 (d) PRE-ADJUDICATED VISA SECURITY ASSISTANCE  
13 AND VISA SECURITY ADVISORY OPINION UNIT.—Sub-  
14 section (e) of section 428 of the Homeland Security Act  
15 of 2002 is amended by adding at the end the following  
16 new paragraphs:

17 “(9) REMOTE PRE-ADJUDICATED VISA SEC-  
18 RITY ASSISTANCE.—At the visa-issuing posts at  
19 which employees of the Department are not assigned  
20 pursuant to paragraph (1), the Secretary shall, in a  
21 risk-based manner, assign employees of the Depart-  
22 ment to remotely perform the functions required  
23 under paragraph (2) at not fewer than 50 of such  
24 posts.

1           “(10) VISA SECURITY ADVISORY OPINION  
2           UNIT.—The Secretary shall establish within U.S.  
3           Immigration and Customs Enforcement a Visa Secu-  
4           rity Advisory Opinion Unit to respond to requests  
5           from the Secretary of State to conduct a visa secu-  
6           rity review using information maintained by the De-  
7           partment on visa applicants, including terrorism as-  
8           sociation, criminal history, counter-proliferation, and  
9           other relevant factors, as determined by the Sec-  
10          retary.”.

11          (e) DEADLINES.—The requirements established  
12          under paragraphs (1) and (9) of section 428(e) of the  
13          Homeland Security Act of 2002 (6 U.S.C. 236(e)), as  
14          amended and added by this section, shall be implemented  
15          not later than three years after the date of the enactment  
16          of this Act.

17      **SEC. 3102. ELECTRONIC PASSPORT SCREENING AND BIO-**  
18                              **METRIC MATCHING.**

19          (a) IN GENERAL.—Subtitle B of title IV of the  
20          Homeland Security Act of 2002 (6 U.S.C. 231 et seq.),  
21          as amended by section 2106 of this division, is further  
22          amended by adding at the end the following new sections:

1 **“SEC. 420. ELECTRONIC PASSPORT SCREENING AND BIO-**  
2 **METRIC MATCHING.**

3 “(a) IN GENERAL.—Not later than one year after the  
4 date of the enactment of this section, the Commissioner  
5 of U.S. Customs and Border Protection shall—

6 “(1) screen electronic passports at airports of  
7 entry by reading each such passport’s embedded  
8 chip; and

9 “(2) to the greatest extent practicable, utilize  
10 facial recognition technology or other biometric tech-  
11 nology, as determined by the Commissioner, to in-  
12 spect travelers at United States airports of entry.

13 “(b) APPLICABILITY.—

14 “(1) ELECTRONIC PASSPORT SCREENING.—  
15 Paragraph (1) of subsection (a) shall apply to pass-  
16 ports belonging to individuals who are United States  
17 citizens, individuals who are nationals of a program  
18 country pursuant to section 217 of the Immigration  
19 and Nationality Act (8 U.S.C. 1187), and individ-  
20 uals who are nationals of any other foreign country  
21 that issues electronic passports.

22 “(2) FACIAL RECOGNITION MATCHING.—Para-  
23 graph (2) of subsection (a) shall apply, at a min-  
24 imum, to individuals who are nationals of a program  
25 country pursuant to section 217 of the Immigration  
26 and Nationality Act.

1       “(c) ANNUAL REPORT.—The Commissioner of U.S.  
2 Customs and Border Protection, in collaboration with the  
3 Chief Privacy Officer of the Department, shall issue to the  
4 Committee on Homeland Security of the House of Rep-  
5 resentatives and the Committee on Homeland Security  
6 and Governmental Affairs of the Senate an annual report  
7 through fiscal year 2021 on the utilization of facial rec-  
8 ognition technology and other biometric technology pursu-  
9 ant to subsection (a)(2). Each such report shall include  
10 information on the type of technology used at each airport  
11 of entry, the number of individuals who were subject to  
12 inspection using either of such technologies at each airport  
13 of entry, and within the group of individuals subject to  
14 such inspection at each airport, the number of those indi-  
15 viduals who were United States citizens and legal perma-  
16 nent residents. Each such report shall provide information  
17 on the disposition of data collected during the year covered  
18 by such report, together with information on protocols for  
19 the management of collected biometric data, including  
20 timeframes and criteria for storing, erasing, destroying,  
21 or otherwise removing such data from databases utilized  
22 by the Department.

1 **“SEC. 420A. CONTINUOUS SCREENING BY U.S. CUSTOMS**  
 2 **AND BORDER PROTECTION.**

3 “The Commissioner of U.S. Customs and Border  
 4 Protection shall, in a risk based manner, continuously  
 5 screen individuals issued any visa, and individuals who are  
 6 nationals of a program country pursuant to section 217  
 7 of the Immigration and Nationality Act (8 U.S.C. 1187),  
 8 who are present, or are expected to arrive within 30 days,  
 9 in the United States, against the appropriate criminal, na-  
 10 tional security, and terrorism databases maintained by the  
 11 Federal Government.”.

12 (b) CLERICAL AMENDMENT.—The table of contents  
 13 in section 1(b) of the Homeland Security Act of 2002 is  
 14 amended by inserting after the item relating to section  
 15 419 the following new items:

“Sec. 420. Electronic passport screening and biometric matching.

“Sec. 420A. Continuous screening by U.S. Customs and Border Protection.”.

16 **SEC. 3103. REPORTING OF VISA OVERSTAYS.**

17 Section 2 of Public Law 105–173 (8 U.S.C. 1376)  
 18 is amended—

19 (1) in subsection (a)—

20 (A) by striking “Attorney General” and in-  
 21 serting “Secretary of Homeland Security”; and

22 (B) by inserting before the period at the  
 23 end the following: “, and any additional infor-  
 24 mation that the Secretary determines necessary



1           for purposes of the report under subsection  
2           (b)”; and

3           (2) by amending subsection (b) to read as fol-  
4       lows:

5       “(b) ANNUAL REPORT.—Not later than June 30,  
6   2018, and not later than June 30 of each year thereafter,  
7   the Secretary of Homeland Security shall submit to the  
8   Committee on Homeland Security and the Committee on  
9   the Judiciary of the House of Representatives and to the  
10   Committee on Homeland Security and Governmental Af-  
11   fairs and the Committee on the Judiciary of the Senate  
12   a report providing, for the preceding fiscal year, numerical  
13   estimates (including information on the methodology uti-  
14   lized to develop such numerical estimates) of—

15           “(1) for each country, the number of aliens  
16       from the country who are described in subsection  
17       (a), including—

18               “(A) the total number of such aliens within  
19               all classes of nonimmigrant aliens described in  
20               section 101(a)(15) of the Immigration and Na-  
21               tionality Act (8 U.S.C. 1101(a)(15)); and

22               “(B) the number of such aliens within each  
23               of the classes of nonimmigrant aliens, as well as  
24               the number of such aliens within each of the

1 subclasses of such classes of nonimmigrant  
2 aliens, as applicable;

3 “(2) for each country, the percentage of the  
4 total number of aliens from the country who were  
5 present in the United States and were admitted to  
6 the United States as nonimmigrants who are de-  
7 scribed in subsection (a);

8 “(3) the number of aliens described in sub-  
9 section (a) who arrived by land at a port of entry  
10 into the United States;

11 “(4) the number of aliens described in sub-  
12 section (a) who entered the United States using a  
13 border crossing identification card (as such term is  
14 defined in section 101(a)(6) of the Immigration and  
15 Nationality Act (8 U.S.C. 1101(a)(6))); and

16 “(5) the number of Canadian nationals who en-  
17 tered the United States without a visa whose author-  
18 ized period of stay in the United States terminated  
19 during the previous fiscal year, but who remained in  
20 the United States.”.

21 **SEC. 3104. STUDENT AND EXCHANGE VISITOR INFORMA-**  
22 **TION SYSTEM VERIFICATION.**

23 Not later than 90 days after the date of the enact-  
24 ment of this Act, the Secretary of Homeland Security shall  
25 ensure that the information collected under the program

1 established under section 641 of the Illegal Immigration  
2 Reform and Immigrant Responsibility Act of 1996 (8  
3 U.S.C. 1372) is available to officers of U.S. Customs and  
4 Border Protection for the purpose of conducting primary  
5 inspections of aliens seeking admission to the United  
6 States at each port of entry of the United States.

7 **SEC. 3105. SOCIAL MEDIA REVIEW OF VISA APPLICANTS.**

8 (a) IN GENERAL.—Subtitle C of title IV of the  
9 Homeland Security Act of 2002 (6 U.S.C. 231 et seq.),  
10 as amended by sections 1115, 1124, and 1127 of this divi-  
11 sion, is further amended by adding at the end the fol-  
12 lowing new sections:

13 **“SEC. 438. SOCIAL MEDIA SCREENING.**

14 “(a) IN GENERAL.—Not later than 180 days after  
15 the date of the enactment of this section, the Secretary  
16 shall, to the greatest extent practicable, and in a risk  
17 based manner and on an individualized basis, review the  
18 social media accounts of certain visa applicants who are  
19 citizens of, or who reside in, high-risk countries, as deter-  
20 mined by the Secretary based on the criteria described in  
21 subsection (b).

22 “(b) HIGH-RISK CRITERIA DESCRIBED.—In deter-  
23 mining whether a country is high-risk pursuant to sub-  
24 section (a), the Secretary shall consider the following cri-  
25 teria:

1           “(1) The number of nationals of the country  
2           who were identified in United States Government  
3           databases related to the identities of known or sus-  
4           pected terrorists during the previous year.

5           “(2) The level of cooperation of the country  
6           with the counter-terrorism efforts of the United  
7           States.

8           “(3) Any other criteria the Secretary deter-  
9           mines appropriate.

10          “(c) COLLABORATION.—To carry out the require-  
11       ments of subsection (a), the Secretary may collaborate  
12       with—

13               “(1) the head of a national laboratory within  
14               the Department’s laboratory network with relevant  
15               expertise;

16               “(2) the head of a relevant university-based  
17               center within the Department’s centers of excellence  
18               network; and

19               “(3) the heads of other appropriate Federal  
20               agencies.

21       **“SEC. 439. OPEN SOURCE SCREENING.**

22               “The Secretary shall, to the greatest extent prac-  
23       ticable, and in a risk based manner, review open source  
24       information of visa applicants.”.

(b) CLERICAL AMENDMENT.—The table of contents in section 1(b) of the Homeland Security Act of 2002, as amended by this division is further amended by inserting after the item relating to section 437 the following new items:

“Sec. 438. Social media screening.

“Sec. 439. Open source screening.”.

## **TITLE IV—TRANSNATIONAL CRIMINAL ORGANIZATION IL- LICIT SPOTTER PREVENTION AND ELIMINATION**

### **SEC. 4101. SHORT TITLE.**

This title may be cited as the “Transnational Criminal Organization Illicit Spotter Prevention and Elimination Act”.

### **SEC. 4102. UNLAWFULLY HINDERING IMMIGRATION, BORDER, AND CUSTOMS CONTROLS.**

(a) BRINGING IN AND HARBORING OF CERTAIN ALIENS.—Section 274(a) of the Immigration and Nationality Act (8 U.S.C. 1324(a)) is amended—

(1) in subsection (a)(2), by striking “brings to or attempts to” and inserting the following: “brings to or attempts or conspires to”; and

(2) by adding at the end the following:

“(5) In the case of a person who has brought aliens into the United States in violation of this sub-

1 section, the sentence otherwise provided for may be  
2 increased by up to 10 years if that person, at the  
3 time of the offense, used or carried a firearm or  
4 who, in furtherance of any such crime, possessed a  
5 firearm.”.

6 (b) AIDING OR ASSISTING CERTAIN ALIENS TO  
7 ENTER THE UNITED STATES.—Section 277 of the Immi-  
8 gration and Nationality Act (8 U.S.C. 1327) is amend-  
9 ed—

10 (1) by inserting after “knowingly aids or as-  
11 sists” the following: “or attempts to aid or assist”;  
12 and

13 (2) by adding at the end the following: “In the  
14 case of a person convicted of an offense under this  
15 section, the sentence otherwise provided for may be  
16 increased by up to 10 years if that person, at the  
17 time of the offense, used or carried a firearm or  
18 who, in furtherance of any such crime, possessed a  
19 firearm.”.

20 (c) DESTRUCTION OF UNITED STATES BORDER CON-  
21 TROLS.—Section 1361 of title 18, United States Code, is  
22 amended—

23 (1) by striking “If the damage” and inserting  
24 the following:

1           “(1) Except as otherwise provided in this sec-  
2           tion, if the damage”; and

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

4           “(2) If the injury or depredation was made or  
5           attempted against any fence, barrier, sensor, cam-  
6           era, or other physical or electronic device deployed  
7           by the Federal Government to control the border or  
8           a port of entry or otherwise was intended to con-  
9           struct, excavate, or make any structure intended to  
10          defeat, circumvent, or evade any such fence, barrier,  
11          sensor camera, or other physical or electronic device  
12          deployed by the Federal Government to control the  
13          border or a port of entry, by a fine under this title  
14          or imprisonment for not more than 15 years, or  
15          both.

16          “(3) If the injury or depredation was described  
17          under paragraph (2) and, in the commission of the  
18          offense, the offender used or carried a firearm or, in  
19          furtherance of any such offense, possessed a firearm,  
20          by a fine under this title or imprisonment for not  
21          more than 20 years, or both.”.

1 **DIVISION D—LAWFUL STATUS**  
2 **FOR CERTAIN CHILDHOOD**  
3 **ARRIVALS**

4 **SEC. 1101. DEFINITIONS.**

5 In this division:

6 (1) IN GENERAL.—Except as otherwise specifi-  
7 cally provided, the terms used in this division have  
8 the meanings given such terms in subsections (a)  
9 and (b) of section 101 of the Immigration and Na-  
10 tionality Act (8 U.S.C. 1101).

11 (2) CONTINGENT NONIMMIGRANT.—The term  
12 “contingent nonimmigrant” means an alien who is  
13 granted contingent nonimmigrant status under this  
14 division.

15 (3) EDUCATIONAL INSTITUTION.—The term  
16 “educational institution” means—

17 (A) an institution that is described in sec-  
18 tion 101(a) of the Higher Education Act of  
19 1965 (20 U.S.C. 1001(a)) or is a proprietary  
20 institution of higher education (as defined in  
21 section 102(b) of such Act (20 U.S.C.  
22 1002(b)));

23 (B) an elementary, primary, or secondary  
24 school within the United States; or



1 (C) an educational program assisting stu-  
2 dents either in obtaining a high school equiva-  
3 lency diploma, certificate, or its recognized  
4 equivalent under State law, or in passing a  
5 General Educational Development exam or  
6 other equivalent State-authorized exam or other  
7 applicable State requirements for high school  
8 equivalency.

9 (4) SECRETARY.—Except as otherwise specifi-  
10 cally provided, the term “Secretary” means the Sec-  
11 retary of Homeland Security.

12 (5) SEXUAL ASSAULT OR HARASSMENT.—The  
13 term “sexual assault or harassment” means—

14 (A) conduct engaged in by an alien 18  
15 years of age or older, which consists of unwel-  
16 come sexual advances, requests for sexual fa-  
17 vors, or other verbal or physical conduct of a  
18 sexual nature, and—

19 (i) submission to such conduct is  
20 made either explicitly or implicitly a term  
21 or condition of an individual’s employment;

22 (ii) submission to or rejection of such  
23 conduct by an individual is used as the  
24 basis for employment decisions affecting  
25 such individual; or

1 (iii) such conduct has the purpose or  
2 effect of creating an intimidating, hostile,  
3 or offensive environment;

4 (B) conduct constituting a criminal offense  
5 of rape, as described in section 101(a)(43)(A)  
6 of the Immigration and Nationality Act (8  
7 U.S.C. 1101(a)(43)(A));

8 (C) conduct constituting a criminal offense  
9 of statutory rape, or any offense of a sexual na-  
10 ture involving a victim under the age of 18  
11 years, as described in section 101(a)(43)(A) of  
12 the Immigration and Nationality Act (8 U.S.C.  
13 1101(a)(43)(A));

14 (D) sexual conduct with a minor who is  
15 under 14 years of age, or with a minor under  
16 16 years of age where the alien was at least 4  
17 years older than the minor;

18 (E) conduct punishable under section 2251  
19 or 2251A (relating to the sexual exploitation of  
20 children and the selling or buying of children),  
21 or section 2252 or 2252A (relating to certain  
22 activities relating to material involving the sex-  
23 ual exploitation of minors or relating to mate-  
24 rial constituting or containing child pornog-  
25 raphy) of title 18, United States Code; or

1 (F) conduct constituting the elements of  
 2 any other Federal or State sexual offense re-  
 3 quiring a defendant, if convicted, to register on  
 4 a sexual offender registry (except that this pro-  
 5 vision shall not apply to convictions solely for  
 6 urinating or defecating in public).

7 (6) VICTIM.—The term “victim” has the mean-  
 8 ing given the term in section 503(e) of the Victims’  
 9 Rights and Restitution Act of 1990 (42 U.S.C.  
 10 10607(e)).

11 **SEC. 1102. CONTINGENT NONIMMIGRANT STATUS FOR CER-**  
 12 **TAIN ALIENS WHO ENTERED THE UNITED**  
 13 **STATES AS MINORS.**

14 (a) IN GENERAL.—Notwithstanding any other provi-  
 15 sion of law, the Secretary may grant contingent non-  
 16 immigrant status to an alien who—

17 (1) meets the eligibility requirements set forth  
 18 in subsection (b);

19 (2) submits a completed application before the  
 20 end of the period set forth in subsection (c)(2); and

21 (3) has paid the fees required under subsection  
 22 (c)(5).

23 (b) ELIGIBILITY REQUIREMENTS.—

24 (1) IN GENERAL.—An alien is eligible for con-  
 25 tingent nonimmigrant status if the alien establishes

1 by clear and convincing evidence that the alien  
2 meets the requirements set forth in this subsection.

3 (2) GENERAL REQUIREMENTS.—The require-  
4 ments under this paragraph are that the alien—

5 (A) is physically present in the United  
6 States on the date on which the alien submits  
7 an application for contingent nonimmigrant sta-  
8 tus;

9 (B) was physically present in the United  
10 States on June 15, 2007;

11 (C) was younger than 16 years of age on  
12 the date the alien initially entered the United  
13 States;

14 (D) is a person of good moral character;

15 (E) was under 31 years of age on June 15,  
16 2012, and at the time of filing an application  
17 under subsection (c);

18 (F) has maintained continuous physical  
19 presence in the United States from June 15,  
20 2012, until the date on which the alien is grant-  
21 ed contingent nonimmigrant status under this  
22 section;

23 (G) had no lawful immigration status on  
24 June 15, 2012;

1 (H) has requested the release to the De-  
2 partment of Homeland Security of all records  
3 regarding their being adjudicated delinquent in  
4 State or local juvenile court proceedings, and  
5 the Department has obtained all such records;  
6 and

7 (I) possesses a valid Employment Author-  
8 ization Document which authorizes the alien to  
9 work as of the date of the enactment of this  
10 Act, which was issued pursuant to the June 15,  
11 2012, U.S. Department of Homeland Security  
12 Memorandum entitled, “Exercising Prosecu-  
13 torial Discretion With Respect to Individuals  
14 Who Came to the United States as Children”.

15 (3) EDUCATION REQUIREMENT.—

16 (A) IN GENERAL.—An alien may not be  
17 granted contingent nonimmigrant status under  
18 this section unless the alien establishes by clear  
19 and convincing evidence that the alien—

20 (i) is enrolled in, and is in regular  
21 full-time attendance at, an educational in-  
22 stitution within the United States; or

23 (ii) has acquired a diploma from a  
24 high school in the United States, has  
25 earned a General Educational Development

1 certificate recognized under State law, or  
2 has earned a recognized high school  
3 equivalency certificate under applicable  
4 State law.

5 (B) EVIDENCE.—An alien shall dem-  
6 onstrate compliance with clause (i) or (ii) of  
7 subparagraph (A) by providing a valid certified  
8 transcript or diploma from the educational in-  
9 stitution the alien is enrolled in or from which  
10 the alien has acquired a diploma or certificate.

11 (4) GROUNDS FOR INELIGIBILITY.—An alien is  
12 ineligible for contingent nonimmigrant status if the  
13 Secretary determines that the alien—

14 (A) has a conviction for—

15 (i) an offense classified as a felony in  
16 the convicting jurisdiction;

17 (ii) an aggravated felony;

18 (iii) an offense classified as a mis-  
19 demeanor in the convicting jurisdiction  
20 which involved—

21 (I) domestic violence (as defined  
22 in section 40002(a) of the Violence  
23 Against Women Act of 1994 (34  
24 U.S.C. 12291(a)));

1 (II) child abuse or neglect (as de-  
2 fined in section 40002(a) of the Vio-  
3 lence Against Women Act of 1994 (34  
4 U.S.C. 12291(a)));

5 (III) assault resulting in bodily  
6 injury (as such term is defined in sec-  
7 tion 2266 of title 18, United States  
8 Code);

9 (IV) the violation of a protection  
10 order (as such term is defined in sec-  
11 tion 2266 of title 18, United States  
12 Code); or

13 (V) driving while intoxicated or  
14 driving under the influence (as such  
15 terms are defined in section 164(a)(2)  
16 of title 23, United States Code);

17 (iv) two or more misdemeanor convic-  
18 tions (excluding minor traffic offenses that  
19 did not involve driving while intoxicated or  
20 driving under the influence, or that did not  
21 subject any individual other than the alien  
22 to bodily injury); or

23 (v) any offense under foreign law, ex-  
24 cept for a purely political offense, which, if  
25 the offense had been committed in the

1 United States, would render the alien inad-  
2 missible under section 212(a) of the Immi-  
3 gration and Nationality Act (8 U.S.C.  
4 1182(a)) or deportable under section  
5 237(a) of such Act (8 U.S.C. 1227(a));

6 (B) has been adjudicated delinquent in a  
7 State or local juvenile court proceeding for an  
8 offense equivalent to—

9 (i) an offense relating to murder,  
10 manslaughter, homicide, rape (whether the  
11 victim was conscious or unconscious), stat-  
12 utory rape, or any offense of a sexual na-  
13 ture involving a victim under the age of 18  
14 years, as described in section  
15 101(a)(43)(A) of the Immigration and Na-  
16 tionality Act (8 U.S.C. 1101(a)(43)(A));

17 (ii) a crime of violence, as such term  
18 is defined in section 16 of title 18, United  
19 States Code; or

20 (iii) an offense punishable under sec-  
21 tion 401 of the Controlled Substances Act  
22 (21 U.S.C. 841);

23 (C) has a conviction for any other criminal  
24 offense, which regard to which the alien has not  
25 satisfied any civil legal judgements awarded to



1 any victims (or family members of victims) of  
2 the crime;

3 (D) is described in section 212(a)(2)(J) of  
4 the Immigration and Nationality Act (8 U.S.C.  
5 1882(a)(2)(J)) (relating to aliens associated  
6 with criminal gangs);

7 (E) has been charged with a felony or mis-  
8 demeanor offense (excluding minor traffic of-  
9 fenses that did not involve driving while intoxi-  
10 cated or driving under the influence, or that did  
11 not subject any individual other than the alien  
12 to bodily injury), and the charge or charges are  
13 still pending;

14 (F) is inadmissible under section 212(a) of  
15 the Immigration and Nationality Act (8 U.S.C.  
16 1182(a)), except that in determining an alien's  
17 inadmissibility—

18 (i) paragraphs (5), (7), and (9)(B) of  
19 such section shall not apply; and

20 (ii) subparagraphs (A), (D), and (G)  
21 of paragraph (6), and paragraphs  
22 (9)(C)(i)(I) and (10)(B), of such section  
23 shall not apply, except in the case of the  
24 alien unlawfully entering the United States  
25 after June 15, 2007;

1 (G) is deportable under section 237(a) of  
2 the Immigration and Nationality Act (8 U.S.C.  
3 1227(a)), except that in determining an alien's  
4 deportability—

5 (i) subparagraph (A) of section  
6 237(a)(1) of such Act shall not apply with  
7 respect to grounds of inadmissibility that  
8 do not apply pursuant to subparagraph (C)  
9 of such section; and

10 (ii) subparagraphs (B) through (D) of  
11 section 237(a)(1) and section 237(a)(3)(A)  
12 of such Act shall not apply;

13 (H) was, on the date of the enactment of  
14 this Act—

15 (i) an alien lawfully admitted for per-  
16 manent residence;

17 (ii) an alien admitted as a refugee  
18 under section 207 of the Immigration and  
19 Nationality Act (8 U.S.C. 1157), or grant-  
20 ed asylum under section 208 of the Immi-  
21 gration and Nationality Act (8 U.S.C.  
22 1157 and 1158); or

23 (iii) an alien who, according to the  
24 records of the Secretary or the Secretary  
25 of State, is lawfully present in the United

1 States in any nonimmigrant status (other  
2 than an alien considered to be a non-  
3 immigrant solely due to the application of  
4 section 244(f)(4) of the Immigration and  
5 Nationality Act (8 U.S.C. 1254a(f)(4)) or  
6 the amendment made by section 702 of the  
7 Consolidated Natural Resources Act of  
8 2008 (Public Law 110–229)), notwith-  
9 standing any unauthorized employment or  
10 other violation of nonimmigrant status;

11 (I) has failed to comply with the require-  
12 ments of any removal order or voluntary depar-  
13 ture agreement;

14 (J) has been ordered removed in absentia  
15 pursuant to section 240(b)(5)(A) of the Immi-  
16 gration and Nationality Act (8 U.S.C.  
17 1229a(b)(5)(A));

18 (K) has failed or refused to attend or re-  
19 main in attendance at a proceeding to deter-  
20 mine the alien’s inadmissibility or deportability;

21 (L) if over the age of 18, has failed to  
22 demonstrate that he or she is able to maintain  
23 himself or herself at an annual income that is  
24 not less than 125 percent of the Federal pov-  
25 erty level throughout the period of admission as

1 a contingent nonimmigrant, unless the alien has  
2 demonstrated that the alien is enrolled in, and  
3 is in regular full-time attendance at, an edu-  
4 cational institution within the United States;

5 (M) is delinquent with respect to any Fed-  
6 eral, State, or local income or property tax li-  
7 ability;

8 (N) has failed to pay to the Treasury, in  
9 addition to any amounts owed, an amount equal  
10 to the aggregate value of any disbursements re-  
11 ceived by such alien for refunds described in  
12 section 1324(b)(2);

13 (O) has income that would result in tax li-  
14 ability under section 1 of the Internal Revenue  
15 Code of 1986 and that was not reported to the  
16 Internal Revenue Service; or

17 (P) has at any time engaged in sexual as-  
18 sault or harassment.

19 (c) APPLICATION PROCEDURES.—

20 (1) IN GENERAL.—An alien may apply for con-  
21 tingent nonimmigrant status by submitting a com-  
22 pleted application form via electronic filing to the  
23 Secretary during the application period set forth in  
24 paragraph (2), in accordance with the interim final  
25 rule made by the Secretary under section 1105.

1           (2) APPLICATION PERIOD.—The Secretary may  
2           only accept applications for contingent non-  
3           immigrant status from aliens in the United States  
4           during the 1-year period beginning on the date on  
5           which the interim final rule is published in the Fed-  
6           eral Register pursuant to section 1105.

7           (3) APPLICATION FORM.—

8                   (A) REQUIRED INFORMATION.—The appli-  
9                   cation form referred to in paragraph (1) shall  
10                  collect such information as the Secretary deter-  
11                  mines to be necessary and appropriate in order  
12                  to determine whether an alien meets the eligi-  
13                  bility requirements set forth in subsection (b).

14                  (B) INTERVIEW.—The Secretary shall con-  
15                  duct an in-person interview of each applicant  
16                  for contingent nonimmigrant status under this  
17                  section as part of the determination as to  
18                  whether the alien meets the eligibility require-  
19                  ments set forth in subsection (b).

20           (4) DOCUMENTARY REQUIREMENTS.—An appli-  
21           cation filed by an alien under this section shall in-  
22           clude the following:

23                   (A) One or more of the following docu-  
24                   ments demonstrating the alien's identity:

1 (i) A passport (or national identity  
2 document) from the alien's country of ori-  
3 gin.

4 (ii) A certified birth certificate along  
5 with photo identification.

6 (iii) A State-issued identification card  
7 bearing the alien's name and photograph.

8 (iv) An Armed Forces identification  
9 card issued by the Department of Defense.

10 (v) A Coast Guard identification card  
11 issued by the Department of Homeland Se-  
12 curity.

13 (B) A certified copy of the alien's birth  
14 certificate or certified school transcript dem-  
15 onstrating that the alien satisfies the require-  
16 ment of subsection (b)(2)(A)(iii) and (v).

17 (C) A certified school transcript dem-  
18 onstrating that the alien satisfies the require-  
19 ments of subsection (b)(2)(A)(ii) and (vi).

20 (D) Immigration records from the Depart-  
21 ment of Homeland Security (demonstrating  
22 that the alien satisfies the requirements under  
23 subsection (b)(2)(A)(i), (ii), and (vi)).

24 (5) FEES.—

25 (A) STANDARD PROCESSING FEE.—

1 (i) IN GENERAL.—Aliens applying for  
2 contingent nonimmigrant status under this  
3 section shall pay a processing fee to the  
4 Department of Homeland Security in an  
5 amount determined by the Secretary.

6 (ii) RECOVERY OF COSTS.—The proc-  
7 essing fee authorized under clause (i) shall  
8 be set at a level that is, at a minimum,  
9 sufficient to recover the full costs of proc-  
10 essing the application, including any costs  
11 incurred—

12 (I) to adjudicate the application;

13 (II) to take and process bio-  
14 metrics;

15 (III) to perform national security  
16 and criminal checks;

17 (IV) to prevent and investigate  
18 fraud; and

19 (V) to administer the collection  
20 of such fee.

21 (iii) DEPOSIT AND USE OF PROC-  
22 ESSING FEES.—Fees collected under clause  
23 (i) shall be deposited into the Immigration  
24 Examinations Fee Account pursuant to

1 section 286(m) of the Immigration and  
2 Nationality Act (8 U.S.C. 1356(m)).

3 (B) BORDER SECURITY FEE.—

4 (i) IN GENERAL.—Aliens applying for  
5 contingent nonimmigrant status under this  
6 section shall pay a border security fee to  
7 the Department of Homeland Security in  
8 an amount of \$1,000.

9 (ii) USE OF BORDER SECURITY  
10 FEES.—Fees collected under clause (i)  
11 shall be available, to the extent provided in  
12 advance in appropriation Acts, to the Sec-  
13 retary of Homeland Security for the pur-  
14 poses of carrying out division C, and the  
15 amendments made by that division.

16 (6) ALIENS APPREHENDED BEFORE OR DURING  
17 THE APPLICATION PERIOD.—If an alien who is ap-  
18 prehended during the period beginning on the date  
19 of the enactment of this Act and ending on the last  
20 day of the application period described in paragraph  
21 (2) appears prima facie eligible for contingent non-  
22 immigrant status, to the satisfaction of the Sec-  
23 retary, the Secretary—



1 (A) shall provide the alien with a reason-  
2 able opportunity to file an application under  
3 this section during such application period; and

4 (B) may not remove the individual until  
5 the Secretary has denied the application, unless  
6 the Secretary, in the Secretary's sole and  
7 unreviewable discretion, determines that expedi-  
8 tious removal of the alien is in the national se-  
9 curity, public safety, or foreign policy interests  
10 of the United States, or the Secretary will be  
11 required for constitutional reasons or court  
12 order to release the alien from detention.

13 (7) SUSPENSION OF REMOVAL DURING APPLI-  
14 CATION PERIOD.—

15 (A) ALIENS IN REMOVAL PROCEEDINGS.—

16 Notwithstanding any other provision of this di-  
17 vision, if the Secretary determines that an  
18 alien, during the period beginning on the date  
19 of the enactment of this Act and ending on the  
20 last day of the application period described in  
21 subsection (c)(2), is in removal, deportation, or  
22 exclusion proceedings before the Executive Of-  
23 fice for Immigration Review and is prima facie  
24 eligible for contingent nonimmigrant status  
25 under this section—

1 (i) the Secretary shall provide the  
2 alien with the opportunity to file an appli-  
3 cation for such status; and

4 (ii) upon motion by the alien and with  
5 the consent of the Secretary, the Executive  
6 Office for Immigration Review shall—

7 (I) provide the alien a reasonable  
8 opportunity to apply for such status;  
9 and

10 (II) if the alien applies within the  
11 time frame provided, suspend such  
12 proceedings until the Secretary has  
13 made a determination on the applica-  
14 tion.

15 (B) ALIENS ORDERED REMOVED.—If an  
16 alien who meets the eligibility requirements set  
17 forth in subsection (b) is present in the United  
18 States and has been ordered excluded, deported,  
19 or removed, or ordered to depart voluntarily  
20 from the United States pursuant to section  
21 212(a)(6)(A)(i) or 237(a)(1)(B) or (C) of the  
22 Immigration and Nationality Act (8 U.S.C.  
23 1182(a)(6)(A)(i), 1227(a)(1)(B) or (C)), the  
24 Secretary shall provide the alien with the oppor-  
25 tunity to file an application for contingent non-

1 immigrant status provided that the alien has  
2 not failed to comply with any order issued pur-  
3 suant to section 239 or 240B of the Immigra-  
4 tion and Nationality Act (8 U.S.C. 1229,  
5 1229c).

6 (C) PERIOD PENDING ADJUDICATION OF  
7 APPLICATION.—During the period beginning on  
8 the date on which an alien applies for contin-  
9 gent nonimmigrant status under subsection (c)  
10 and ending on the date on which the Secretary  
11 makes a determination regarding such applica-  
12 tion, an otherwise removable alien may not be  
13 removed from the United States unless—

14 (i) the Secretary makes a prima facie  
15 determination that such alien is, or has be-  
16 come, ineligible for contingent non-  
17 immigrant status under subsection (b); or

18 (ii) the Secretary, in the Secretary's  
19 sole and unreviewable discretion, deter-  
20 mines that removal of the alien is in the  
21 national security, public safety, or foreign  
22 policy interest of the United States.

23 (8) SECURITY AND LAW ENFORCEMENT CLEAR-  
24 ANCES.—

1 (A) BIOMETRIC AND BIOGRAPHIC DATA.—

2 The Secretary may not grant contingent non-  
3 immigrant status to an alien under this section  
4 unless such alien submits biometric and bio-  
5 graphic data in accordance with procedures es-  
6 tablished by the Secretary.

7 (B) ALTERNATIVE PROCEDURES.—The  
8 Secretary may provide an alternative procedure  
9 for applicants who cannot provide the biometric  
10 data required under subparagraph (A) due to a  
11 physical impairment.

12 (C) CLEARANCES.—

13 (i) DATA COLLECTION.—The Sec-  
14 retary shall collect, from each alien apply-  
15 ing for status under this section, biometric,  
16 biographic, and other data that the Sec-  
17 retary determines to be appropriate—

18 (I) to conduct national security  
19 and law enforcement checks; and

20 (II) to determine whether there  
21 are any factors that would render an  
22 alien ineligible for such status.

23 (ii) ADDITIONAL SECURITY SCREEN-  
24 ING.—The Secretary, in consultation with  
25 the Secretary of State and the heads of

1 other agencies as appropriate, shall con-  
2 duct an additional security screening upon  
3 determining, in the Secretary's opinion  
4 based upon information related to national  
5 security, that an alien is or was a citizen  
6 or resident of a region or country known to  
7 pose a threat, or that contains groups or  
8 organizations that pose a threat, to the na-  
9 tional security of the United States.

10 (iii) PREREQUISITE.—The required  
11 clearances and screenings described in  
12 clauses (i)(I) and (ii) shall be completed  
13 before the alien may be granted contingent  
14 nonimmigrant status.

15 (9) DURATION OF STATUS AND EXTENSION.—

16 The initial period of contingent nonimmigrant sta-  
17 tus—

18 (A) shall be 3 years unless revoked pursu-  
19 ant to subsection (e); and

20 (B) may be extended for additional 3-year  
21 terms if—

22 (i) the alien remains eligible for con-  
23 tingent nonimmigrant status under sub-  
24 section (b);

1 (ii) the alien again passes background  
2 checks equivalent to the background checks  
3 described in subsection (c)(9); and

4 (iii) such status was not revoked by  
5 the Secretary for any reason.

6 (d) TERMS AND CONDITIONS OF CONTINGENT NON-  
7 IMMIGRANT STATUS.—

8 (1) WORK AUTHORIZATION.—The Secretary  
9 shall grant employment authorization to an alien  
10 granted contingent nonimmigrant status who re-  
11 quests such authorization.

12 (2) TRAVEL OUTSIDE THE UNITED STATES.—

13 (A) IN GENERAL.—The status of a contin-  
14 gent nonimmigrant who is absent from the  
15 United States without authorization shall be  
16 subject to revocation under subsection (e).

17 (B) AUTHORIZATION.—The Secretary may  
18 authorize a contingent nonimmigrant to travel  
19 outside the United States and may grant the  
20 contingent nonimmigrant reentry provided that  
21 the contingent nonimmigrant—

22 (i) was not absent from the United  
23 States for a period of more than 15 con-  
24 secutive days, or 90 days in the aggregate  
25 during each 3-year period that the alien is

1 in contingent nonimmigrant status, unless  
2 the contingent nonimmigrant's failure to  
3 return was due to extenuating cir-  
4 cumstances beyond the individual's control;  
5 and

6 (ii) is otherwise admissible to the  
7 United States, except as provided in sub-  
8 section (b)(4)(F).

9 (C) CLARIFICATION ON ADMISSION.—The  
10 admission to the United States of a contingent  
11 nonimmigrant after such trips as described in  
12 subparagraph (B) shall not be considered an  
13 admission for the purposes of section 245(a) of  
14 the Immigration and Nationality Act (8 U.S.C.  
15 1255(a)).

16 (3) INELIGIBILITY FOR HEALTH CARE SUB-  
17 SIDIES AND REFUNDABLE TAX CREDITS.—

18 (A) HEALTH CARE SUBSIDIES.—A contin-  
19 gent nonimmigrant—

20 (i) is not entitled to the premium as-  
21 sistance tax credit authorized under sec-  
22 tion 36B of the Internal Revenue Code of  
23 1986 and shall be subject to the rules ap-  
24 plicable to individuals who are not lawfully

1 present set forth in subsection (e) of such  
2 section; and

3 (ii) shall be subject to the rules appli-  
4 cable to individuals who are not lawfully  
5 present set forth in section 1402(e) of the  
6 Patient Protection and Affordable Care  
7 Act (42 U.S.C. 18071(e)).

8 (B) REFUNDABLE TAX CREDITS.—A con-  
9 tingent nonimmigrant shall not be allowed any  
10 credit under sections 24 and 32 of the Internal  
11 Revenue Code of 1986.

12 (4) FEDERAL, STATE, AND LOCAL PUBLIC BEN-  
13 EFITS.—For purposes of title IV of the Personal Re-  
14 sponsibility and Work Opportunity Reconciliation  
15 Act of 1996 (8 U.S.C. 1601 et seq.), a contingent  
16 nonimmigrant shall not be considered a qualified  
17 alien under the Immigration and Nationality Act (8  
18 U.S.C. 1101 et seq.).

19 (5) CLARIFICATION.—An alien granted contin-  
20 gent nonimmigrant status under this division shall  
21 not be considered to have been admitted to the  
22 United States for the purposes of section 245(a) of  
23 the Immigration and Nationality Act (8 U.S.C.  
24 1255(a)).

25 (e) REVOCATION.—



1           (1) IN GENERAL.—The Secretary shall revoke  
2           the status of a contingent nonimmigrant at any time  
3           if the alien—

4                   (A) no longer meets the eligibility require-  
5                   ments set forth in subsection (b);

6                   (B) knowingly uses documentation issued  
7                   under this section for an unlawful or fraudulent  
8                   purpose; or

9                   (C) was absent from the United States at  
10                  any time without authorization after being  
11                  granted contingent nonimmigrant status.

12           (2) ADDITIONAL EVIDENCE.—In determining  
13           whether to revoke an alien’s status under paragraph  
14           (1), the Secretary may require the alien—

15                   (A) to submit additional evidence; or

16                   (B) to appear for an in-person interview.

17           (3) INVALIDATION OF DOCUMENTATION.—If an  
18           alien’s contingent nonimmigrant status is revoked  
19           under paragraph (1), any documentation issued by  
20           the Secretary to such alien under this section shall  
21           automatically be rendered invalid for any purpose  
22           except for departure from the United States.

23 **SEC. 1103. ADMINISTRATIVE AND JUDICIAL REVIEW.**

24           (a) EXCLUSIVE ADMINISTRATIVE REVIEW.—Admin-  
25           istrative review of a determination of an application for

1 status, extension of status, or revocation of status under  
2 this division shall be conducted solely in accordance with  
3 this section.

4 (b) ADMINISTRATIVE APPELLATE REVIEW.—

5 (1) ESTABLISHMENT OF ADMINISTRATIVE AP-  
6 PELLATE AUTHORITY.—The Secretary shall estab-  
7 lish or designate an appellate authority to provide  
8 for a single level of administrative appellate review  
9 of a determination with respect to applications for  
10 status, extension of status, or revocation of status  
11 under this division.

12 (2) SINGLE APPEAL FOR EACH ADMINISTRA-  
13 TIVE DECISION.—

14 (A) IN GENERAL.—An alien in the United  
15 States whose application for status under this  
16 division has been denied or revoked may file  
17 with the Secretary not more than 1 appeal, pur-  
18 suant to this subsection, of each decision to  
19 deny or revoke such status.

20 (B) NOTICE OF APPEAL.—A notice of ap-  
21 peal filed under this subparagraph shall be filed  
22 not later than 30 calendar days after the date  
23 of service of the decision of denial or revocation.

1           (3) RECORD FOR REVIEW.—Administrative ap-  
2       pellate review under this subsection shall be de novo  
3       and based only on—

4           (A) the administrative record established  
5       at the time of the determination on the applica-  
6       tion; and

7           (B) any additional newly discovered or pre-  
8       viously unavailable evidence.

9       (c) JUDICIAL REVIEW.—

10           (1) APPLICABLE PROVISIONS.—Judicial review  
11       of an administratively final denial or revocation of,  
12       or failure to extend, an application for status under  
13       this division shall be governed only by chapter 158  
14       of title 28, except as provided in paragraphs (2) and  
15       (3) of this subsection, and except that a court may  
16       not order the taking of additional evidence under  
17       section 2347(c) of such chapter.

18           (2) SINGLE APPEAL FOR EACH ADMINISTRA-  
19       TIVE DECISION.—An alien in the United States  
20       whose application for status under this division has  
21       been denied, revoked, or failed to be extended, may  
22       file not more than 1 appeal, pursuant to this sub-  
23       section, of each decision to deny or revoke such sta-  
24       tus.

25           (3) LIMITATION ON CIVIL ACTIONS.—

1 (A) CLASS ACTIONS.—No court may cer-  
2 tify a class under Rule 23 of the Federal Rules  
3 of Civil Procedure in any civil action filed after  
4 the date of the enactment of this Act pertaining  
5 to the administration or enforcement of the ap-  
6 plication for status under this division.

7 (B) REQUIREMENTS FOR AN ORDER  
8 GRANTING PROSPECTIVE RELIEF AGAINST THE  
9 GOVERNMENT.—If a court determines that pro-  
10 spective relief should be ordered against the  
11 Government in any civil action pertaining to the  
12 administration or enforcement of the applica-  
13 tion for status under this division, the court  
14 shall—

15 (i) limit the relief to the minimum  
16 necessary to correct the violation of law;

17 (ii) adopt the least intrusive means to  
18 correct the violation of law;

19 (iii) minimize, to the greatest extent  
20 practicable, the adverse impact on national  
21 security, border security, immigration ad-  
22 ministration and enforcement, and public  
23 safety;

24 (iv) provide for the expiration of the  
25 relief on a specific date, which allows for

1 the minimum practical time needed to rem-  
2 edy the violation; and

3 (v) limit the relief to the case at issue  
4 and shall not extend any prospective relief  
5 to include any other application for status  
6 under this division pending before the Sec-  
7 retary or in a Federal court (whether in  
8 the same or another jurisdiction).

9 **SEC. 1104. PENALTIES AND SIGNATURE REQUIREMENTS.**

10 (a) **PENALTIES FOR FALSE STATEMENTS IN APPLI-**  
11 **CATIONS.**—Whoever files an initial or renewal application  
12 for contingent nonimmigrant status under this division  
13 and knowingly and willfully falsifies, misrepresents, con-  
14 ceals, or covers up a material fact or makes any false, ficti-  
15 tious, or fraudulent statements or representations, or  
16 makes or uses any false writing or document knowing the  
17 same to contain any false, fictitious, or fraudulent state-  
18 ment or entry, shall be fined in accordance with title 18,  
19 United States Code, or imprisoned not more than 5 years,  
20 or both.

21 (b) **SIGNATURE REQUIREMENTS.**—An applicant  
22 under this division shall sign their application, and the sig-  
23 nature shall be an original signature. A parent or legal  
24 guardian may sign for a child or for an applicant whose  
25 physical or developmental disability or mental impairment

1 prevents the applicant from being competent to sign. In  
2 such a case, the filing shall include evidence of parentage  
3 or legal guardianship.

4 **SEC. 1105. RULEMAKING.**

5 Not later than 1 year after the date of the enactment  
6 of this Act, the Secretary shall issue interim final regula-  
7 tions to implement this division, which shall take effect  
8 immediately upon publication in the Federal Register.

9 **SEC. 1106. STATUTORY CONSTRUCTION.**

10 Except as specifically provided, nothing in this divi-  
11 sion may be construed to create any substantive or proce-  
12 dural right or benefit that is legally enforceable by any  
13 party against the United States or its agencies or officers  
14 or any other person.

○