

**SECURITY THROUGH REGULARIZED IMMIGRATION  
AND A VIBRANT ECONOMY (STRIVE) ACT OF  
2007**

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**HEARING**

BEFORE THE

SUBCOMMITTEE ON IMMIGRATION,  
CITIZENSHIP, REFUGEES, BORDER SECURITY,  
AND INTERNATIONAL LAW

OF THE

COMMITTEE ON THE JUDICIARY  
HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

ON

**H.R. 1645**

SEPTEMBER 6, 2007

**Serial No. 110-47**

Printed for the use of the Committee on the Judiciary



Available via the World Wide Web: <http://judiciary.house.gov>

U.S. GOVERNMENT PRINTING OFFICE

37-603 PDF

WASHINGTON : 2007

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**SECURITY THROUGH REGULARIZED IMMIGRATION AND A VIBRANT ECONOMY (STRIVE) ACT OF 2007**

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**THURSDAY, SEPTEMBER 6, 2007**

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP,  
REFUGEES, BORDER SECURITY, AND INTERNATIONAL LAW  
COMMITTEE ON THE JUDICIARY,  
*Washington, DC.*

The Subcommittee met, pursuant to notice, at 2:03 p.m., in Room 2141, Rayburn House Office Building, the Honorable Zoe Lofgren (Chairwoman of the Subcommittee) presiding.

Present: Representatives Lofgren, Gutierrez, Berman, Jackson Lee, Davis, Ellison, King, Gallegly, and Goodlatte.

Also present: Chairman Conyers.

Staff present: Ur Mendoza Jaddou, Chief Counsel; J. Traci Hong, Majority Counsel; George Fishman, Minority Counsel; and Benjamin Staub, Professional Staff Member.

Ms. LOFGREN. Now that the Ranking Member has arrived, the hearing on the Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law will come to order.

I would like to welcome the Immigration Subcommittee Members, our witnesses, and the public to the Committee's continuing discussion regarding comprehensive immigration reform.

First, I would like to apologize to everyone who is here. At exactly 1:00, when the hearing was to begin, the bells rang and we had a series of votes that has delayed us for 1 hour. And that is just one of the risks that we face serving in the House of Representatives. And I am sorry that it has delayed all of you and inconvenienced you.

Today our hearing will specifically address one comprehensive immigration reform bill, H.R.1645, otherwise known as the STRIVE Act, or the Security to Regularized Immigration in a Vibrant Economy Act of 2007. I would like to commend our Subcommittee colleague Representative Luis Gutierrez for not only drafting and introducing this bill, but also for his service on behalf of comprehensive immigration reform in the 110th Congress and in many Congresses before the 110th.

[The text of the bill, H.R. 1645, follows:]

110TH CONGRESS  
1ST SESSION

## H. R. 1645

To provide for comprehensive immigration reform, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 22, 2007

Mr. GUTIERREZ (for himself, Mr. FLAKE, Mr. BACA, Mr. LINCOLN DIAZ-BALART of Florida, Mr. EMANUEL, Mr. RADANOVICH, Ms. JACKSON-LEE of Texas, Mr. LAHOOD, Mr. CROWLEY, Mr. MARIO DIAZ-BALART of Florida, Ms. GIFFORDS, Ms. ROS-LEHTINEN, Ms. SCHAKOWSKY, Mr. FORTUÑO, Mr. BECERRA, Mr. CARDOZA, Mr. CUELLAR, Mr. GONZALEZ, Mr. GRIJALVA, Mr. HINOJOSA, Mrs. NAPOLITANO, Mr. ORTIZ, Mr. PASTOR, Mr. REYES, Mr. RODRIGUEZ, Ms. ROYBAL-ALLARD, Mr. SALAZAR, Mr. SERRANO, Mr. SIRES, and Ms. SOLIS) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Homeland Security, 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

### A BILL

To provide for comprehensive immigration reform, and for other purposes.

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

#### SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Security Through Regularized Immigration and a Vibrant Economy Act of 2007” or as the “STRIVE Act of 2007”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Reference to the Immigration and Nationality Act.
- Sec. 3. Definitions.
- Sec. 4. Severability.
- Sec. 5. Certification requirements prior to implementation of the New Worker Program and the conditional nonimmigrant classification.

#### TITLE I—BORDER ENFORCEMENT

##### Subtitle A—Assets for Controlling United States Borders

- Sec. 101. Enforcement personnel.
- Sec. 102. Technological assets.
- Sec. 103. Infrastructure.
- Sec. 104. Ports of entry.
- Sec. 105. Secure communication.
- Sec. 106. Unmanned aerial vehicles.
- Sec. 107. Surveillance technologies programs.

##### Subtitle B—Border Security Plans, Strategies, and Reports

- Sec. 111. Surveillance plan.
- Sec. 112. National Strategy for Border Security.
- Sec. 113. Reports on improving the exchange of information on North American security.
- Sec. 114. Border Patrol training capacity review.
- Sec. 115. Secure Border Initiative financial accountability.

Subtitle C—Southern Border Security

- Sec. 121. Improving the security of Mexico's southern border.
- Sec. 122. Report on deaths at the United States-Mexico border.
- Sec. 123. Cooperation with the Government of Mexico.
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- Sec. 125. United States-Mexico Border Enforcement Review Commission.

Subtitle D—Secure Entry Initiatives

- Sec. 131. Biometric data enhancements.
- Sec. 132. US-VISIT System.
- Sec. 133. Document fraud detection.
- Sec. 134. Improved document integrity.
- Sec. 135. Biometric entry-exit system.
- Sec. 136. Evasion of inspection or violation of arrival, reporting, entry, or clearance requirements.

Subtitle E—Law Enforcement Relief for States

- Sec. 141. Border relief grant program.
- Sec. 142. Northern and southern border prosecution initiative.

Subtitle F—Rapid Response Measures

- Sec. 151. Deployment of Border Patrol agents.
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- Sec. 153. Electronic equipment.
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- Sec. 161. Definitions.
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- Sec. 176. Office of Detention Oversight.
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- Sec. 179. Authorization of appropriations; effective date.

Subtitle I—Other Border Security Initiatives

- Sec. 181. Combating human smuggling.
- Sec. 182. Screening of municipal solid waste.
- Sec. 183. Border security on certain Federal land.

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- Sec. 201. Incarceration of criminal aliens.
- Sec. 202. Encouraging aliens to depart voluntarily.
- Sec. 203. Deterring aliens ordered removed from remaining in the United States unlawfully.
- Sec. 204. Prohibition of the sale of firearms to, or the possession of firearms by certain aliens.
- Sec. 205. Uniform statute of limitations for certain Immigration, naturalization, and peonage offenses.

- Sec. 206. Expedited removal.
- Sec. 207. Field agent allocation.
- Sec. 208. Streamlined processing of background checks conducted for immigration benefit applications and petitions.
- Sec. 209. State criminal alien assistance program.
- Sec. 210. Transportation and processing of illegal aliens apprehended by State and local law enforcement officers.
- Sec. 211. Reducing illegal immigration and alien smuggling on tribal lands.
- Sec. 212. Mandatory address reporting requirements.
- Sec. 213. State and local Enforcement of Federal Immigration laws.
- Sec. 214. Increased criminal penalties related to drunk driving.
- Sec. 215. Law enforcement authority of States and political subdivisions and transfer to Federal custody.
- Sec. 216. Laundering of monetary instruments.
- Sec. 217. Increase of Federal detention space and the utilization of facilities identified for closures as a result of the Defense Base Closure Realignment Act of 1990.
- Sec. 218. Determination of immigration status of individuals charged with Federal offenses.
- Sec. 219. Expansion of the Justice Prisoner and Alien Transfer System.
- Sec. 220. Cancellation of visas.

#### Subtitle B—Passport and Visa Security

- Sec. 221. Reform of passport fraud offenses.
- Sec. 222. Other immigration reforms.

#### Subtitle C—Detention and Removal of Aliens Who Illegally Enter or Remain in the United States

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- Sec. 233. Aggravated felony.
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- Sec. 402. Admission of nonimmigrant workers.
- Sec. 403. Employer obligations.
- Sec. 404. Alien employment management system.
- Sec. 405. Recruitment of United States workers.
- Sec. 406. Numerical limitations.
- Sec. 407. Adjustment to lawful permanent resident status.
- Sec. 408. Requirements for participating countries.
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- Sec. 631. Higher education assistance.
- Sec. 632. GAO report.

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- Sec. 649. Use of information.
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- Sec. 737. State Impact Assistance Account.
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**SEC. 2. REFERENCE TO THE IMMIGRATION AND NATIONALITY ACT.**

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

**SEC. 3. DEFINITIONS.**

In this Act:

- (1) DEPARTMENT.—Except as otherwise provided, the term “Department” means the Department of Homeland Security.
- (2) SECRETARY.—Except as otherwise provided, the term “Secretary” means the Secretary of Homeland Security.

**SEC. 4. SEVERABILITY.**

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

**SEC. 5. CERTIFICATION REQUIREMENTS PRIOR TO IMPLEMENTATION OF THE NEW WORKER PROGRAM AND THE CONDITIONAL NONIMMIGRANT CLASSIFICATION.**

Notwithstanding any other provision of this Act, the Secretary may not implement the New Worker Program established in the amendments made by title IV or grant conditional nonimmigrant classification under the amendments made by title VI prior to the date that the Secretary submits to the President and Congress a certification that the following conditions have been met:

- (1) SECURE BORDER.—The Secretary has submitted to Congress a report on the status of the implementation of the border surveillance technology improvements described in the Secure Border Initiative, including target dates for the completion of such improvements.
- (2) SECURE DOCUMENTS.—That the systems and infrastructure necessary to carry out the improvements to immigration document security required by this Act and the amendments made by this Act, including documents that will be issued under the New Worker Program and to aliens granted conditional nonimmigrant classification, have been developed, tested for reliability and accuracy, and are ready for use, including systems and infrastructure necessary to permit the Director of the Federal Bureau of Investigation to conduct required background checks.
- (3) FIRST PHASE IMPLEMENTATION OF THE ELECTRONIC EMPLOYMENT ELIGIBILITY VERIFICATION SYSTEM.—The first phase of the Electronic Employment Verification System described in section 274A of the Immigration and Nationality Act, as amended by section 301 of this Act, for critical infrastructure employers described in subsection (c)(10)(i) of such section 274A has been implemented.

## TITLE I—BORDER ENFORCEMENT

### Subtitle A—Assets for Controlling United States Borders

#### SEC. 101. ENFORCEMENT PERSONNEL.

##### (a) PORT OF ENTRY INSPECTORS.—

(1) ADDITIONAL INSPECTORS.—In each of the fiscal years 2008 through 2012, the Secretary shall, subject to the availability of appropriations, increase by not less than 500 the number of positions for full-time active duty port of entry inspectors and provide appropriate training, equipment, and support to such additional inspectors.

(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary such sums as may be necessary for each of the fiscal years 2008 through 2012 to carry out paragraph (1).

(b) BORDER PATROL AGENTS.—Section 5202 of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108–458; 118 Stat. 3734) is amended to read as follows:

#### “SEC. 5202. INCREASE IN FULL-TIME BORDER PATROL AGENTS.

“(a) ANNUAL INCREASES.—The Secretary of Homeland Security shall, subject to the availability of appropriations for such purpose, increase the number of positions for full-time active-duty Border Patrol agents within the Department of Homeland Security (above the number of such positions for which funds were appropriated for the preceding fiscal year), by—

“(1) 2,000 in fiscal year 2008;

“(2) 2,400 in fiscal year 2009;

“(3) 2,400 in fiscal year 2010;

“(4) 2,400 in fiscal year 2011; and

“(5) 2,400 in fiscal year 2012.

“(b) NORTHERN BORDER.—In each of the fiscal years 2008 through 2012, in addition to the Border Patrol agents assigned along the northern border of the United States during the previous fiscal year, the Secretary shall assign a number of Border Patrol agents equal to not less than 20 percent of the net increase in Border Patrol agents during each such fiscal year.

“(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary for each of fiscal years 2008 through 2012 to carry out this section.”.

##### (c) INVESTIGATIVE PERSONNEL.—

(1) IMMIGRATION AND CUSTOMS ENFORCEMENT INVESTIGATORS.—Section 5203 of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108–458; 118 Stat. 3734) is amended by striking “800” and inserting “1000”.

(2) ADDITIONAL PERSONNEL.—In addition to the positions authorized under section 5203 of the Intelligence Reform and Terrorism Prevention Act of 2004, as amended by paragraph (1), during each of the fiscal years 2008 through 2012, the Secretary shall, subject to the availability of appropriations, increase by not less than 200 the number of positions for personnel within the Department assigned to investigate alien smuggling.

(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary such sums as may be necessary for each of the fiscal years 2008 through 2012 to carry out this section.

##### (d) DEPUTY UNITED STATES MARSHALS.—

(1) ADDITIONAL UNITED STATES MARSHALS.—In each of the fiscal years 2008 through 2012, the Attorney General shall, subject to the availability of appropriations, increase by not less than 50 the number of positions for full-time active duty Deputy United States Marshals that investigate criminal matters related to immigration.

(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Attorney General such sums as may be necessary for each of the fiscal years 2008 through 2012 to carry out paragraph (1).

##### (e) RECRUITMENT OF FORMER MEMBERS OF THE ARMED FORCES AND MEMBERS OF RESERVE COMPONENTS OF THE ARMED FORCES.—

(1) REQUIREMENT FOR PROGRAM.—The Secretary, in conjunction with the Secretary of Defense, shall establish a program to actively recruit covered mem-

bers or former members of the Armed Forces to serve in United States Customs and Border Protection.

(2) REPORT ON RECRUITMENT INCENTIVES.—

(A) REQUIREMENT.—Not later than 60 days after the date of enactment of this Act, the Secretary and the Secretary of Defense shall jointly submit to the appropriate committees of Congress a report assessing the desirability and feasibility of offering an incentive to a covered member or former member of the Armed Forces for the purpose of encouraging such member to serve in United States Customs and Border Protection. The Secretary and the Secretary of Defense shall assume that the cost of any such incentive shall be borne by the Secretary.

(B) CONTENT.—The report required by subparagraph (A) shall include—

(i) an assessment of the desirability and feasibility of offering any incentive, including a monetary incentive, that the Secretary and the Secretary of Defense jointly consider appropriate, regardless of whether such incentive is authorized by law or regulations on the date of enactment of this Act;

(ii) a detailed assessment of the desirability and feasibility of such an incentive that would—

(I) encourage service in United States Customs and Border Protection by a covered member or a former member of the Armed Forces who provided border patrol or border security assistance to United States Customs and Border Protection as part of the member's duties as a member of the Armed Forces; and

(II) leverage military training and experience by accelerating training, or allowing credit to be applied to related areas of training, required for service with United States Customs and Border Protection;

(iii) a description of various monetary and non-monetary incentives considered for purposes of the report;

(iv) an assessment of the desirability and feasibility of utilizing any such incentive for the purpose described in subparagraph (A); and

(v) any other matter that the Secretary and the Secretary of Defense jointly consider appropriate.

(3) DEFINITIONS.—In this subsection:

(A) APPROPRIATE COMMITTEES OF CONGRESS.—The term “appropriate committees of Congress” means—

(i) the Committee on Appropriations, the Committee on Armed Services, and the Committee on Homeland Security and Governmental Affairs of the Senate; and

(ii) the Committee on Appropriations, the Committee on Armed Services, and the Committee on Homeland Security of the House of Representatives.

(B) COVERED MEMBER OR FORMER MEMBER OF THE ARMED FORCES.—The term “covered member or former member of the Armed Forces” means an individual—

(i) who is a member of a reserve component of the Armed Forces;

or

(ii) who is a former member of the Armed Forces within 2 years of separation from service in the Armed Forces.

**SEC. 102. TECHNOLOGICAL ASSETS.**

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

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

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

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

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

(c) **UNMANNED AERIAL VEHICLE PILOT PROGRAM.**—During the 1-year period beginning on the date on which the report is submitted under subsection (b), the Secretary shall conduct a pilot program to test unmanned aerial vehicles for border surveillance along the international border between Canada and the United States.

(d) **CONSTRUCTION.**—Nothing in this section may be construed as altering or amending the prohibition on the use of any part of the Army or the Air Force as a posse comitatus under section 1385 of title 18, United States Code.

(e) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated to the Secretary such sums as may be necessary for each of the fiscal years 2008 through 2012 to carry out subsection (a).

**SEC. 103. INFRASTRUCTURE.**

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

(b) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated to the Secretary such sums as may be necessary for each of the fiscal years 2008 through 2012 to carry out subsection (a).

**SEC. 104. PORTS OF ENTRY.**

The Secretary is authorized to—

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

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

**SEC. 105. SECURE COMMUNICATION.**

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

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

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

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

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

**SEC. 106. UNMANNED AERIAL VEHICLES.**

(a) **UNMANNED AERIAL VEHICLES AND ASSOCIATED INFRASTRUCTURE.**—The Secretary shall acquire and maintain unmanned aerial vehicles and related equipment for use to patrol the international borders of the United States, including equipment such as—

(1) additional sensors;

(2) critical spares;

(3) satellite command and control; and

(4) other necessary equipment for operational support.

(b) **AUTHORIZATION OF APPROPRIATIONS.**—

(1) **IN GENERAL.**—There are authorized to be appropriated to the Secretary for each of the fiscal years 2008 and 2009 such sums as may be necessary to carry out subsection (a).

(2) **AVAILABILITY OF FUNDS.**—Amounts appropriated pursuant to the authorization of appropriations in paragraph (1) are authorized to remain available until expended.

**SEC. 107. SURVEILLANCE TECHNOLOGIES PROGRAMS.**

(a) **AERIAL SURVEILLANCE PROGRAM.**—

(1) **IN GENERAL.**—In conjunction with the border surveillance plan developed under section 5201 of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108–458; 8 U.S.C. 1701 note), the Secretary, not later than 90 days after the date of enactment of this Act, shall develop and implement a program to fully integrate and utilize aerial surveillance technologies, including unmanned aerial vehicles, to enhance the security of the international

border between the United States and Canada and the international border between the United States and Mexico. The goal of the program shall be to ensure continuous monitoring of each mile of each such border.

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

(A) consider current and proposed aerial surveillance technologies;

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

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

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

(3) ADDITIONAL REQUIREMENTS.—

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

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

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

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

(4) CONTINUED USE OF AERIAL SURVEILLANCE TECHNOLOGIES.—The Secretary may continue the operation of aerial surveillance technologies while assessing the effectiveness of the utilization of such technologies.

(5) REPORT TO CONGRESS.—Not later than 180 days after implementing the program under this subsection, the Secretary shall submit to Congress a report regarding such program. The Secretary shall include in the report a description of such program together with any recommendations that the Secretary finds appropriate for enhancing the program.

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

(b) INTEGRATED AND AUTOMATED SURVEILLANCE PROGRAM.—

(1) REQUIREMENT FOR PROGRAM.—Subject to the availability of appropriations, the Secretary shall establish a program to procure additional unmanned aerial vehicles, cameras, poles, sensors, satellites, radar coverage, and other technologies necessary to achieve operational control of the international borders of the United States and to establish a security perimeter known as a “virtual fence” along such international borders to provide a barrier to illegal immigration. Such program shall be known as the Integrated and Automated Surveillance Program.

(2) PROGRAM COMPONENTS.—The Secretary shall ensure, to the maximum extent feasible, that—

(A) the technologies utilized in the Integrated and Automated Surveillance Program are integrated and function cohesively in an automated fashion, including the integration of motion sensor alerts and cameras in a manner where a sensor alert automatically activates a corresponding camera to pan and tilt in the direction of the triggered sensor;

(B) cameras utilized in the Program do not have to be manually operated;

(C) such camera views and positions are not fixed;

(D) surveillance video taken by such cameras is able to be viewed at multiple designated communications centers;

(E) a standard process is used to collect, catalog, and report intrusion and response data collected under the Program;

(F) future remote surveillance technology investments and upgrades for the Program can be integrated with existing systems;

(G) performance measures are developed and applied that can evaluate whether the Program is providing desired results and increasing response effectiveness in monitoring and detecting illegal intrusions along the international borders of the United States;

(H) plans are developed under the Program to streamline site selection, site validation, and environmental assessment processes to minimize delays of installing surveillance technology infrastructure;

(I) standards are developed under the Program to expand the shared use of existing private and governmental structures to install remote surveillance technology infrastructure where possible; and

(J) standards are developed under the Program to identify and deploy the use of nonpermanent or mobile surveillance platforms that will increase the Secretary's mobility and ability to identify illegal border intrusions.

(3) REPORT TO CONGRESS.—Not later than 1 year after the initial implementation of the Integrated and Automated Surveillance Program, the Secretary shall submit to Congress a report regarding the Program. The Secretary shall include in the report a description of the Program together with any recommendation that the Secretary finds appropriate for enhancing the program.

(4) EVALUATION OF CONTRACTORS.—

(A) REQUIREMENT FOR STANDARDS.—The Secretary shall develop appropriate standards to evaluate the performance of any contractor providing goods or services to carry out the Integrated and Automated Surveillance Program.

(B) REVIEW BY THE INSPECTOR GENERAL.—

(i) IN GENERAL.—The Inspector General of the Department shall review each new contract related to the Program that has a value of more than \$5,000,000 in a timely manner, to determine whether such contract fully complies with applicable cost requirements, performance objectives, program milestones, and schedules.

(ii) REPORTS.—The Inspector General shall report the findings of each review carried out under clause (i) to the Secretary in a timely manner. Not later than 30 days after the date the Secretary receives a report of findings from the Inspector General, the Secretary shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Homeland Security of the House of Representatives a report of such findings and a description of any the steps that the Secretary has taken or plans to take in response to such findings.

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

## **Subtitle B—Border Security Plans, Strategies, and Reports**

### **SEC. 111. SURVEILLANCE PLAN.**

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

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

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

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

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

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

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

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

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

(8) A description of the program to fully integrate and utilize aerial surveillance technologies developed pursuant to section 107(a).

(9) A description of the Integrated and Automated Surveillance Program established pursuant to section 107(b).



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

**SEC. 112. NATIONAL STRATEGY FOR BORDER SECURITY.**

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

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

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

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

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

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

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

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

(5) An assessment of the most appropriate, practical, and cost-effective means of defending the international land and maritime borders of the United States against threats to security and illegal transit, including intelligence capacities, technology, equipment, personnel, and training needed to address security vulnerabilities.

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

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

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

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

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

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

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

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

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

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

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

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

(e) **SUBMISSION TO CONGRESS.**—

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

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

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

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

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

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

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

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

- (i) passports;
- (ii) visas; and
- (iii) permanent resident cards;

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

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

(D) providing technical assistance for the development and maintenance of a national database built upon identified best practices for biometrics associated with visa and travel documents.

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

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

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

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

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

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

- (i) application process;
- (ii) interview policy;
- (iii) general screening procedures;
- (iv) visa validity;
- (v) quality control measures; and
- (vi) access to appeal or review;

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

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

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

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

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

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

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

(A) in developing and implementing bilateral agreements between Canada and the United States and between Mexico and the United States to govern the sharing of terrorist watch list data and to comprehensively enumerate the uses of such data by the governments of each country;

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

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

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

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

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

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

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

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

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

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

#### SEC. 114. BORDER PATROL TRAINING CAPACITY REVIEW.

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

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

(1) An evaluation of the length and content of the basic training curriculum provided to new Border Patrol agents by the Federal Law Enforcement Training Center, including a description of how such curriculum has changed since Sep-

tember 11, 2001, and an evaluation of language and cultural diversity training programs provided within such curriculum.

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

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

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

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

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

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

**SEC. 115. SECURE BORDER INITIATIVE FINANCIAL ACCOUNTABILITY.**

(a) **IN GENERAL.**—The Inspector General of the Department shall review each contract action relating to the Secure Border Initiative having a value of more than \$20,000,000, to determine whether each such action fully complies with applicable cost requirements, performance objectives, program milestones, inclusion of small, minority, and women-owned business, and time lines. The Inspector General shall complete a review under this subsection with respect to each contract action—

(1) not later than 60 days after the date of the initiation of the action; and

(2) upon the conclusion of the performance of the contract.

(b) **INSPECTOR GENERAL.**—

(1) **ACTION.**—If the Inspector General becomes aware of any improper conduct or wrongdoing in the course of conducting a contract review under subsection (a), the Inspector General shall, as expeditiously as practicable, refer information relating to such improper conduct or wrongdoing to the Secretary, or to another appropriate official of the Department, who shall determine whether to temporarily suspend the contractor from further participation in the Secure Border Initiative.

(2) **REPORT.**—Upon the completion of each review described in subsection (a), the Inspector General shall submit to the Secretary a report containing the findings of the review, including findings regarding—

(A) cost overruns;

(B) significant delays in contract execution;

(C) lack of rigorous departmental contract management;

(D) insufficient departmental financial oversight;

(E) bundling that limits the ability of small businesses to compete; and

(F) other high-risk business practices.

(c) **REPORTS BY THE SECRETARY.**—

(1) **IN GENERAL.**—Not later than 30 days after the receipt of each report required under subsection (b)(2), the Secretary shall submit a report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives, that describes—

(A) the findings of the report received from the Inspector General; and

(B) the steps the Secretary has taken, or plans to take, to address the problems identified in such report.

(2) **CONTRACTS WITH FOREIGN COMPANIES.**—Not later than 60 days after the initiation of each contract action with a company whose headquarters are not based in the United States, the Secretary shall submit a report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives, regarding the Secure Border Initiative.

(d) **REPORTS ON UNITED STATES PORTS.**—Not later than 30 days after receiving information regarding a proposed purchase of a contract to manage the operations of a United States port by a foreign entity, the Committee on Foreign Investment in the United States shall submit a report to Congress that describes—

(1) the proposed purchase;

(2) any security concerns related to the proposed purchase; and

(3) the manner in which such security concerns have been addressed.

(e) **AUTHORIZATION OF APPROPRIATIONS.**—In addition to amounts that are otherwise authorized to be appropriated to the Office of the Inspector General of the Department, there are authorized to be appropriated to the Office, to enable the Office to carry out this section—

- (1) for fiscal year 2008, not less than 5 percent of the overall budget of the Office for such fiscal year;
- (2) for fiscal year 2009, not less than 6 percent of the overall budget of the Office for such fiscal year; and
- (3) for fiscal year 2010, not less than 7 percent of the overall budget of the Office for such fiscal year.

## **Subtitle C—Southern Border Security**

### **SEC. 121. IMPROVING THE SECURITY OF MEXICO'S SOUTHERN BORDER.**

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

- (1) to assess the specific needs of the countries of Central America in maintaining the security of the international borders of such countries;
- (2) to use the assessment made under paragraph (1) to determine the financial and technical support needed by the countries of Central America from Canada, Mexico, and the United States to meet such needs;
- (3) to provide technical assistance to the countries of Central America to promote issuance of secure passports and travel documents by such countries; and
- (4) to encourage the countries of Central America—
  - (A) to control alien smuggling and trafficking;
  - (B) to prevent the use and manufacture of fraudulent travel documents; and
  - (C) to share relevant information with Mexico, Canada, and the United States.

(b) **BORDER SECURITY FOR THE COUNTRIES OF CENTRAL AMERICA.**—The Secretary, in consultation with the Secretary of State, shall work to cooperate—

- (1) with the appropriate officials of the governments of the countries of Central America to provide law enforcement assistance to such countries to specifically address immigration issues to increase the ability of such governments to dismantle human smuggling organizations and gain additional control over the international borders between the countries of Central America; and
- (2) with the appropriate officials of the governments of the countries of Central America to establish a program to provide needed equipment, technical assistance, and vehicles to manage, regulate, and patrol such international borders.

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

- (1) to assess the direct and indirect impact on the United States and Central America of deporting violent criminal aliens;
- (2) to establish a program and database to track individuals involved in Central American gang activities;
- (3) to develop a mechanism that is acceptable to the governments of the countries of Central America and of the United States to notify such a government if an individual suspected of gang activity will be deported to that country prior to the deportation and to provide support for the reintegration of such deportees into that country; and
- (4) to develop an agreement to share all relevant information related to individuals connected with Central American gangs.

(d) **LIMITATIONS ON ASSISTANCE.**—Any funds made available to carry out this section shall be subject to the limitations contained in section 551 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2006 (Public Law 109–102; 119 Stat. 2218).

### **SEC. 122. REPORT ON DEATHS AT THE UNITED STATES-MEXICO BORDER.**

(a) **COLLECTION OF STATISTICS.**—The Commissioner of the United States Customs and Border Protection shall collect statistics relating to deaths occurring at the border between the United States and Mexico, including—

- (1) the causes of the deaths; and
- (2) the total number of deaths.

(b) **REPORT.**—Not later than 1 year after the date of enactment of this Act, and annually thereafter, the Commissioner of United States Customs and Border Protection shall submit to the Secretary a report that—

- (1) analyzes trends with respect to the statistics collected under subsection (a) during the preceding year; and
- (2) recommends actions to reduce the deaths described in subsection (a).

**SEC. 123. COOPERATION WITH THE GOVERNMENT OF MEXICO.**

(a) **COOPERATION REGARDING BORDER SECURITY.**—The Secretary of State, in cooperation with the Secretary and representatives of Federal, State, and local law enforcement agencies that are involved in border security and immigration enforcement efforts, shall work with the appropriate officials from the Government of Mexico to improve coordination between the United States and Mexico regarding—

- (1) improved border security along the international border between the United States and Mexico;
- (2) the reduction of human trafficking and smuggling between the United States and Mexico;
- (3) the reduction of drug trafficking and smuggling between the United States and Mexico;
- (4) the reduction of gang membership in the United States and Mexico;
- (5) the reduction of violence against women in the United States and Mexico; and
- (6) the reduction of other violence and criminal activity.

(b) **COOPERATION REGARDING EDUCATION ON IMMIGRATION LAWS.**—The Secretary of State, in cooperation with other appropriate Federal officials, shall work with the appropriate officials from the Government of Mexico to carry out activities to educate citizens and nationals of Mexico regarding eligibility for status as a non-immigrant under Federal law to ensure that the citizens and nationals are not exploited while working in the United States.

(c) **COOPERATION REGARDING CIRCULAR MIGRATION.**—The Secretary of State, in cooperation with the Secretary of Labor and other appropriate Federal officials, shall work with the appropriate officials from the Government of Mexico to improve coordination between the United States and Mexico to encourage circular migration, including assisting in the development of economic opportunities and providing job training for citizens and nationals in Mexico.

(d) **CONSULTATION REQUIREMENT.**—Federal, State, and local representatives in the United States shall work to cooperate with their counterparts in Mexico concerning border security structures along the international border between the United States and Mexico, as authorized by this title, in order to—

- (1) solicit the views of affected communities;
- (2) lessen tensions; and
- (3) foster greater understanding and stronger cooperation on this and other important security issues of mutual concern.

(e) **ANNUAL REPORT.**—Not later than 180 days after the date of enactment of this Act, and annually thereafter, the Secretary of State shall submit to Congress a report on the actions taken by the United States and Mexico under this section.

**SEC. 124. TEMPORARY NATIONAL GUARD SUPPORT FOR SECURING THE SOUTHERN LAND BORDER OF THE UNITED STATES.**

(a) **AUTHORITY TO PROVIDE ASSISTANCE.**—

(1) **IN GENERAL.**—With the approval of the Secretary of Defense, the Governor of a State may order any units or personnel of the National Guard of such State to perform annual training duty under section 502(a) of title 32, United States Code, to carry out in any State along the southern land border of the United States the activities authorized in subsection (b), for the purpose of securing such border. Such duty shall not exceed 21 days in any year.

(2) **SUPPORT.**—With the approval of the Secretary of Defense, the Governor of a State may order any units or personnel of the National Guard of such State to perform duty under section 502(f) of title 32, United States Code, to provide command, control, and continuity of support for units or personnel performing annual training duty under paragraph (1).

(b) **AUTHORIZED ACTIVITIES.**—The activities authorized by this subsection are any of the following:

- (1) Ground reconnaissance activities.
- (2) Airborne reconnaissance activities.
- (3) Logistical support.
- (4) Provision of translation services and training.
- (5) Administrative support services.
- (6) Technical training services.
- (7) Emergency medical assistance and services.
- (8) Communications services.
- (9) Rescue of aliens in peril.

(10) Construction of roadways, patrol roads, fences, barriers, and other facilities to secure the southern land border of the United States.

(11) Ground and air transportation.

(c) COOPERATIVE AGREEMENTS.—Units and personnel of the National Guard of a State may perform activities in another State under subsection (a) only pursuant to the terms of an emergency management assistance compact or other cooperative arrangement entered into between Governors of such States for purposes of this section, and only with the approval of the Secretary of Defense.

(d) COORDINATION OF ASSISTANCE.—The Secretary of Homeland Security shall, in consultation with the Secretary of Defense and the Governors of the States concerned, coordinate the performance of activities under this section by units and personnel of the National Guard.

(e) ANNUAL TRAINING.—Annual training duty performed by members of the National Guard under subsection (a) shall be appropriate for the units and individual members concerned, taking into account the types of units and military occupational specialties of individual members performing such duty.

(f) DEFINITIONS.—In this section:

(1) The term “Governor of a State” means, in the case of the District of Columbia, the Commanding General of the National Guard of the District of Columbia.

(2) The term “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

(3) The term “State along the southern border of the United States” means each of the following:

- (A) The State of Arizona.
- (B) The State of California.
- (C) The State of New Mexico.
- (D) The State of Texas.

(g) DURATION OF AUTHORITY.—The authority of this section shall expire on January 1, 2009.

(h) PROHIBITION ON DIRECT PARTICIPATION IN LAW ENFORCEMENT.—Activities carried out under the authority of this section shall not include the direct participation of a member of the National Guard in a search, seizure, arrest, or similar activity.

**SEC. 125. UNITED STATES-MEXICO BORDER ENFORCEMENT REVIEW COMMISSION.**

(a) ESTABLISHMENT OF COMMISSION.—

(1) IN GENERAL.—There is established an independent commission to be known as the United States-Mexico Border Enforcement Review Commission (referred to in this section as the “Commission”).

(2) PURPOSES.—The purposes of the Commission are—

- (A) to study the overall enforcement and detention strategies, programs and policies of Federal agencies along the United States-Mexico border; and
- (B) to make recommendations to the President and Congress with respect to such strategies, programs and policies.

(3) MEMBERSHIP.—The Commission shall be composed of 16 voting members, who shall be appointed as follows:

(A) The Governors of the States of California, New Mexico, Arizona, and Texas shall each appoint 4 voting members of whom—

- (i) 1 shall be a local elected official from the State’s border region;
- (ii) 1 shall be a local law enforcement official from the State’s border region; and
- (iii) 2 shall be from the State’s communities of academia, religious leaders, civic leaders or community leaders.

(B) 2 nonvoting members, of whom—

- (i) 1 shall be appointed by the Secretary; and
- (ii) 1 shall be appointed by the Attorney General.

(4) QUALIFICATIONS.—

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

- (i) individuals with expertise in migration, border enforcement and protection, civil and human rights, community relations, cross-border trade and commerce or other pertinent qualifications or experience; and
- (ii) representative of a broad cross section of perspectives from the region along the international border between the United States and Mexico;

(B) POLITICAL AFFILIATION.—Not more than 2 members of the Commission appointed by each Governor under paragraph (3)(A) may be members of the same political party.

(C) NONGOVERNMENTAL APPOINTEES.—An individual appointed as a voting member to the Commission may not be an officer or employee of the Federal Government.

(5) DEADLINE FOR APPOINTMENT.—All members of the Commission shall be appointed not later than 6 months after the enactment of this Act. If any member of the Commission described in paragraph (3)(A) is not appointed by such date, the Commission shall carry out its duties under this section without the participation of such member.

(6) TERM OF SERVICE.—The term of office for members shall be for the life of the Commission, or 3 years, whichever is sooner.

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

(8) MEETINGS.—

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

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

(9) QUORUM.—Nine members of the Commission shall constitute a quorum.

(10) CHAIR AND VICE CHAIR.—The voting members of the Commission shall elect a Chairman and Vice Chairman from among its members. The term of office shall be for the life of the Commission.

(b) DUTIES.—The Commission shall review, examine, and make recommendations regarding border enforcement policies, strategies, and programs, including recommendations regarding—

(1) the protection of human and civil rights of community residents and migrants along the international border between the United States and Mexico;

(2) the adequacy and effectiveness of human and civil rights training of enforcement personnel on such border;

(3) the adequacy of the complaint process within the agencies and programs of the Department that are employed when an individual files a grievance;

(4) the effect of the operations, technology, and enforcement infrastructure along such border on the—

(A) environment;

(B) cross border traffic and commerce; and

(C) the quality of life of border communities;

(5) State and local law enforcement involvement in the enforcement of Federal immigration law;

(6) the adequacy of detention standards and conditions, and the extent to which the standards and conditions are enforced; and

(7) any other matters regarding border enforcement policies, strategies, and programs the Commission determines appropriate.

(c) INFORMATION AND ASSISTANCE FROM FEDERAL AGENCIES.—

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

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

(d) COMPENSATION.—

(1) IN GENERAL.—Members of the Commission shall serve without pay.

(2) REIMBURSEMENT OF EXPENSES.—All members of the Commission shall be reimbursed for reasonable travel expenses and subsistence, and other reasonable and necessary expenses incurred by them in the performance of their duties.

(e) REPORT.—Not later than 2 years after the date of the first meeting called pursuant to (a)(8)(A), the Commission shall submit a report to the President and Congress that contains—

(1) findings with respect to the duties of the Commission;

(2) recommendations regarding border enforcement policies, strategies, and programs;



(3) suggestions for the implementation of the Commission's recommendations; and

(4) a recommendation as to whether the Commission should continue to exist after the date of termination described in subsection (g), and if so, a description of the purposes and duties recommended to be carried out by the Commission after such date.

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

(g) SUNSET.—Unless the Commission is re-authorized by Congress, the Commission shall terminate on the date that is 90 days after the date the Commission submits the report described in subsection (e).

## Subtitle D—Secure Entry Initiatives

### SEC. 131. BIOMETRIC DATA ENHANCEMENTS.

Not later than December 31, 2008, the Secretary shall—

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

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

### SEC. 132. US-VISIT SYSTEM.

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

(1) equipping all land border ports of entry of the United States with the U.S.-Visitor and Immigrant Status Indicator Technology (US-VISIT) system implemented under the authority of section 110 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1365a);

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

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

### SEC. 133. DOCUMENT FRAUD DETECTION.

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

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

(c) ASSESSMENT.—

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

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

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary such sums as may be necessary for each of fiscal years 2008 through 2012 to carry out this section.

### SEC. 134. IMPROVED DOCUMENT INTEGRITY.

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

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

(2) in the heading, by striking “entry and exit documents” and inserting “travel and entry documents and evidence of status”;

(3) in subsection (b)(1)—

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

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

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

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

“(d) OTHER DOCUMENTS.—Not later than December 31, 2008, every document, other than an interim document, issued by the Secretary of Homeland Security which may be used as evidence of an alien’s authorization to travel shall be machine-readable and tamper-resistant, and shall incorporate a biometric identifier to allow the Secretary of Homeland Security to verify electronically the identity and status of the alien.”.

**SEC. 135. BIOMETRIC ENTRY-EXIT SYSTEM.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) in subsection (1)—

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

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

(B) by adding at the end the following:

“(2) IMPLEMENTATION AT ALL LAND BORDER PORTS OF ENTRY.—There are authorized to be appropriated such sums as may be necessary for each of fiscal years 2008 and 2009 to implement the automated biometric entry and exit data system at all land border ports of entry.”.

**SEC. 136. EVASION OF INSPECTION OR VIOLATION OF ARRIVAL, REPORTING, ENTRY, OR CLEARANCE REQUIREMENTS.**

(a) **IN GENERAL.**—Chapter 27 of title 18, United States Code, is amended by adding at the end the following:

**“§ 556. Evasion of inspection or violation of arrival, reporting, entry, or clearance requirements**

“(a) **PROHIBITION.**—A person at a port of entry or customs or immigration checkpoint shall be punished as described in subsection (b) if such person attempts to elude or eludes customs, immigration, or agriculture inspection or fails to stop at the command of an officer or employee of the United States charged with enforcing the immigration, customs, or other laws of the United States at a port of entry or customs or immigration checkpoint.

“(b) **PENALTIES.**—A person who commits an offense described in subsection (a) shall be—

“(1) fined under this title;

“(2)(A) imprisoned for not more than 3 years, or both;

“(B) imprisoned for not more than 10 years, or both, if in commission of this violation, such person attempts to inflict or inflicts bodily injury (as defined in section 1365(h) of this title); or

“(C) imprisoned for any term of years or for life, or both, if death results, and may be sentenced to death; or

“(3) both fined and imprisoned under this subsection.

“(c) **CONSPIRACY.**—If 2 or more persons conspire to commit an offense described in subsection (a), and 1 or more of such persons do any act to effect the object of the conspiracy, each shall be punishable as a principal, except that the sentence of death may not be imposed.

“(d) **PRIMA FACIE EVIDENCE.**—For the purposes of seizure and forfeiture under applicable law, in the case of use of a vehicle or other conveyance in the commission of this offense, or in the case of disregarding or disobeying the lawful authority or command of any officer or employee of the United States under section 111(b) of this title, such conduct shall constitute prima facie evidence of smuggling aliens or merchandise.”

(b) **CONFORMING AMENDMENT.**—The table of sections for chapter 27 of title 18, United States Code, is amended by inserting at the end:

“556. Evasion of inspection or during violation of arrival, reporting, entry, or clearance requirements.”

(c) **FAILURE TO OBEY BORDER ENFORCEMENT OFFICERS.**—Section 111 of title 18, United States Code, is amended by inserting after subsection (b) the following:

“(c) **FAILURE TO OBEY LAWFUL ORDERS OF BORDER ENFORCEMENT OFFICERS.**—Whoever willfully disregards or disobeys the lawful authority or command of any officer or employee of the United States charged with enforcing the immigration, customs, or other laws of the United States while engaged in, or on account of, the performance of official duties shall be fined under this title or imprisoned for not more than 5 years, or both.”

(d) **TECHNICAL AMENDMENTS.**—

(1) **IN GENERAL.**—Chapter 27 of title 18, United States Code, is amended by redesignating the section 554 added by section 551(a) of the Department of Homeland Security Appropriations Act, 2007 (Public Law 109–295; 120 Stat. 1389) (relating to border tunnels and passages) as section 555.

(2) **TABLE OF SECTIONS.**—The table of sections for chapter 27 of title 18, United States Code, is amended—

(A) by striking the following:

“554. Border tunnels and passages.”; and

(B) inserting the following:

“555. Border tunnels and passages.”

(3) **CRIMINAL FORFEITURE.**—Section 982(a)(6)(A) of title 18, United States Code, is amended by striking “554” and inserting “555”.

(4) **DIRECTIVE TO THE UNITED STATES SENTENCING COMMISSION.**—Section 551(d) of the Department of Homeland Security Appropriations Act, 2007 (Public Law 109–295; 120 Stat. 1390) is amended in paragraphs (1) and (2)(A) by striking “554” and inserting “555”.

## Subtitle E—Law Enforcement Relief for States

### SEC. 141. BORDER RELIEF GRANT PROGRAM.

#### (a) GRANTS AUTHORIZED.—

(1) IN GENERAL.—The Secretary is authorized to award grants, subject to the availability of appropriations, to an eligible law enforcement agency to provide assistance to such agency to address—

(A) criminal activity that occurs in the jurisdiction of such agency by virtue of such agency's proximity to the United States border; and

(B) the impact of any lack of security along the United States border.

(2) DURATION.—Grants may be awarded under this subsection during fiscal years 2008 through 2012.

(3) COMPETITIVE BASIS.—The Secretary shall award grants under this subsection on a competitive basis, except that the Secretary shall give priority to applications from any eligible law enforcement agency serving a community with a population of less than 50,000.

(b) USE OF FUNDS.—Grants awarded pursuant to subsection (a) may only be used to provide additional resources for an eligible law enforcement agency to address criminal activity occurring along any such border, including—

(1) to obtain equipment;

(2) to hire additional personnel;

(3) to upgrade and maintain law enforcement technology;

(4) to cover operational costs, including overtime and transportation costs;

and

(5) such other resources as are available to assist that agency.

#### (c) APPLICATION.—

(1) IN GENERAL.—Each eligible law enforcement agency seeking a grant under this section shall submit an application to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may reasonably require.

(2) CONTENTS.—Each application submitted pursuant to paragraph (1) shall—

(A) describe the activities for which assistance under this section is sought; and

(B) provide such additional assurances as the Secretary determines to be essential to ensure compliance with the requirements of this section.

#### (d) DEFINITIONS.—For the purposes of this section:

(1) ELIGIBLE LAW ENFORCEMENT AGENCY.—The term “eligible law enforcement agency” means a tribal, State, or local law enforcement agency—

(A) located in a county that is not more than 100 miles from a United States border with—

(i) Canada; or

(ii) Mexico; or

(B) located in a county more than 100 miles from any such border, but where such county has been certified by the Secretary as a High Impact Area.

(2) HIGH IMPACT AREA.—The term “High Impact Area” means any county designated by the Secretary as such, taking into consideration—

(A) whether local law enforcement agencies in that county have the resources to protect the lives, property, safety, or welfare of the residents of that county;

(B) the relationship between any lack of security along the United States border and the rise, if any, of criminal activity in that county; and

(C) any other unique challenges that local law enforcement face due to a lack of security along the United States border.

#### (e) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated \$50,000,000 for each of fiscal years 2008 through 2012 to carry out the provisions of this section.

(2) DIVISION OF AUTHORIZED FUNDS.—Of the amounts authorized under paragraph (1)—

(A)  $\frac{2}{3}$  shall be set aside for eligible law enforcement agencies located in the 6 States with the largest number of undocumented alien apprehensions; and

(B)  $\frac{1}{3}$  shall be set aside for areas designated as a High Impact Area under subsection (d).

(f) SUPPLEMENT NOT SUPPLANT.—Amounts appropriated for grants under this section shall be used to supplement and not supplant other State and local public funds obligated for the purposes provided under this title.

(g) ENFORCEMENT OF FEDERAL IMMIGRATION LAW.—Nothing in this section shall be construed to authorize State or local law enforcement agencies or their officers to exercise Federal immigration law enforcement authority.

**SEC. 142. NORTHERN AND SOUTHERN BORDER PROSECUTION INITIATIVE.**

(a) REIMBURSEMENT TO STATE AND LOCAL PROSECUTORS FOR PROSECUTING FEDERALLY INITIATED DRUG CASES.—The Attorney General shall, subject to the availability of appropriations, reimburse State and county prosecutors located in States along the Northern or Southern border of the United States for prosecuting federally initiated and referred drug cases.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated \$50,000,000 for each of the fiscal years 2008 through 2013 to carry out subsection (a).

## **Subtitle F—Rapid Response Measures**

**SEC. 151. DEPLOYMENT OF BORDER PATROL AGENTS.**

(a) EMERGENCY DEPLOYMENT OF BORDER PATROL AGENTS.—

(1) IN GENERAL.—If the Governor of a State on an international border of the United States declares an international border security emergency and requests additional agents of the Border Patrol (referred to in this subtitle as “agents”) from the Secretary, the Secretary, subject to paragraphs (2) and (3), may provide the State with not more than 1,000 additional agents for the purpose of patrolling and defending the international border, in order to prevent individuals from crossing the international border into the United States at any location other than an authorized port of entry.

(2) CONSULTATION.—Upon receiving a request for agents under paragraph (1), the Secretary, after consultation with the President, shall grant such request to the extent that providing such agents will not significantly impair the Department’s ability to provide border security for any other State.

(3) COLLECTIVE BARGAINING.—Emergency deployments under this subsection shall be made in accordance with all applicable collective bargaining agreements and obligations.

(b) ELIMINATION OF FIXED DEPLOYMENT OF BORDER PATROL AGENTS.—The Secretary shall ensure that agents are not precluded from performing patrol duties and apprehending violators of law, except in unusual circumstances if the temporary use of fixed deployment positions is necessary.

**SEC. 152. BORDER PATROL MAJOR ASSETS.**

(a) CONTROL OF BORDER PATROL ASSETS.—The Border Patrol shall have complete and exclusive administrative and operational control over all the assets utilized in carrying out its mission, including aircraft, watercraft, vehicles, detention space, transportation, and all of the personnel associated with such assets.

(b) HELICOPTERS AND POWER BOATS.—

(1) HELICOPTERS.—The Secretary shall increase, by not less than 100, the number of helicopters under the control of the Border Patrol. The Secretary shall ensure that appropriate types of helicopters are procured for the various missions being performed.

(2) POWER BOATS.—The Secretary shall increase, by not less than 250, the number of power boats under the control of the Border Patrol. The Secretary shall ensure that the types of power boats that are procured are appropriate for both the waterways in which they are used and the mission requirements.

(3) USE AND TRAINING.—The Secretary shall—

(A) establish an overall policy on how the helicopters and power boats procured under this subsection will be used; and

(B) implement training programs for the agents who use such assets, including safe operating procedures and rescue operations.

(c) MOTOR VEHICLES.—

(1) QUANTITY.—The Secretary shall establish a fleet of motor vehicles appropriate for use by the Border Patrol that will permit a ratio of not less than 1 police-type vehicle for every 3 agents. These police-type vehicles shall be replaced not less often than once every 3 years. The Secretary shall ensure that there are sufficient numbers and types of other motor vehicles to support the mission of the Border Patrol.

- (2) FEATURES.—All motor vehicles purchased for the Border Patrol shall—
- (A) be appropriate for the mission of the Border Patrol; and
  - (B) have a panic button and a global positioning system device that is activated solely in emergency situations to track the location of agents in distress.

**SEC. 153. ELECTRONIC EQUIPMENT.**

(a) PORTABLE COMPUTERS.—The Secretary shall ensure that each police-type motor vehicle in the fleet of the Border Patrol is equipped with a portable computer with access to all necessary law enforcement databases and otherwise suited to the unique operational requirements of the Border Patrol.

(b) RADIO EQUIPMENT.—The Secretary shall augment the existing radio communications system so that all law enforcement personnel working in each area where Border Patrol operations are conducted have clear and encrypted 2-way radio communication capabilities at all times. Each portable communications device shall be equipped with a panic button and a global positioning system device that is activated solely in emergency situations to track the location of agents in distress.

(c) HANDHELD GLOBAL POSITIONING SYSTEM DEVICES.—The Secretary shall ensure that each Border Patrol agent is issued a state-of-the-art handheld global positioning system device for navigational purposes.

(d) NIGHT VISION EQUIPMENT.—The Secretary shall ensure that sufficient quantities of state-of-the-art night vision equipment are procured and maintained to enable each Border Patrol agent working during the hours of darkness to be equipped with a portable night vision device.

**SEC. 154. PERSONAL EQUIPMENT.**

(a) BORDER ARMOR.—The Secretary shall ensure that every agent is issued high-quality body armor that is appropriate for the climate and risks faced by the agent. Each agent shall be permitted to select from among a variety of approved brands and styles. Agents shall be strongly encouraged, but not required, to wear such body armor whenever practicable. All body armor shall be replaced not less often than once every 5 years.

(b) WEAPONS.—The Secretary shall ensure that agents are equipped with weapons that are reliable and effective to protect themselves, their fellow agents, and innocent third parties from the threats posed by armed criminals. The Secretary shall ensure that the policies of the Department authorize all agents to carry weapons that are suited to the potential threats that they face.

(c) UNIFORMS.—The Secretary shall ensure that all agents are provided with all necessary uniform items, including outerwear suited to the climate, footwear, belts, holsters, and personal protective equipment, at no cost to such agents. Such items shall be replaced at no cost to such agents as such items become worn or unserviceable or no longer fit properly.

**SEC. 155. AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated to the Secretary such sums as may be necessary for each of the fiscal years 2008 through 2012 to carry out this subtitle.

## **Subtitle G—Border Infrastructure and Technology Modernization**

**SEC. 161. DEFINITIONS.**

In this subtitle:

(1) COMMISSIONER.—The term “Commissioner” means the Commissioner of United States Customs and Border Protection.

(2) NORTHERN BORDER.—The term “northern border” means the international border between the United States and Canada.

(3) SOUTHERN BORDER.—The term “southern border” means the international border between the United States and Mexico.

**SEC. 162. PORT OF ENTRY INFRASTRUCTURE ASSESSMENT STUDY.**

(a) REQUIREMENT TO UPDATE.—Not later than January 31 of each year, the Administrator of General Services shall update the Port of Entry Infrastructure Assessment Study prepared by United States Customs and Border Protection in accordance with the matter relating to the ports of entry infrastructure assessment that is set out in the joint explanatory statement in the conference report accompanying H.R. 2490 of the 106th Congress, 1st session (House of Representatives Rep. No. 106–319, on page 67) and submit such updated study to Congress.

(b) **CONSULTATION.**—In preparing the updated studies required in subsection (a), the Administrator of General Services shall consult with the Director of the Office of Management and Budget, the Secretary, and the Commissioner.

(c) **CONTENT.**—Each updated study required in subsection (a) shall—

(1) identify port of entry infrastructure and technology improvement projects that would enhance border security and facilitate the flow of legitimate commerce if implemented;

(2) include the projects identified in the National Land Border Security Plan required by section 164; and

(3) prioritize the projects described in paragraphs (1) and (2) based on the ability of a project to—

(A) fulfill immediate security requirements; and

(B) facilitate trade across the borders of the United States.

(d) **PROJECT IMPLEMENTATION.**—The Commissioner shall implement the infrastructure and technology improvement projects described in subsection (c) in the order of priority assigned to each project under paragraph (3) of such subsection.

(e) **DIVERGENCE FROM PRIORITIES.**—The Commissioner may diverge from the priority order if the Commissioner determines that significantly changed circumstances, such as immediate security needs or changes in infrastructure in Mexico or Canada, compellingly alter the need for a project in the United States.

**SEC. 163. NATIONAL LAND BORDER SECURITY PLAN.**

(a) **IN GENERAL.**—Not later than 1 year after the date of enactment of this Act, an annually thereafter, the Secretary, after consultation with representatives of Federal, State, and local law enforcement agencies and private entities that are involved in international trade across the northern border or the southern border, shall submit a National Land Border Security Plan to Congress.

(b) **VULNERABILITY ASSESSMENT.**—

(1) **IN GENERAL.**—The plan required in subsection (a) shall include a vulnerability assessment of each port of entry located on the northern border or the southern border.

(2) **PORT SECURITY COORDINATORS.**—The Secretary may establish 1 or more port security coordinators at each port of entry located on the northern border or the southern border—

(A) to assist in conducting a vulnerability assessment at such port; and

(B) to provide other assistance with the preparation of the plan required in subsection (a).

**SEC. 164. EXPANSION OF COMMERCE SECURITY PROGRAMS.**

(a) **CUSTOMS-TRADE PARTNERSHIP AGAINST TERRORISM.**—

(1) **IN GENERAL.**—Not later than 180 days after the date of enactment of this Act, the Commissioner, in consultation with the Secretary, shall develop a plan to expand the programs of the Customs–Trade Partnership Against Terrorism established pursuant to section 211 of the SAFE Port Act (6 U.S.C. 961), including adding additional personnel for such programs, along the northern border and southern border, including the following programs:

(A) The Business Anti-Smuggling Coalition.

(B) The Carrier Initiative Program.

(C) The Americas Counter Smuggling Initiative.

(D) The Container Security Initiative established pursuant to section 205 of the SAFE Port Act (6 U.S.C. 945).

(E) The Free and Secure Trade Initiative.

(F) Other industry partnership programs administered by the Commissioner.

(2) **SOUTHERN BORDER DEMONSTRATION PROGRAM.**—Not later than 180 days after the date of enactment of this Act, the Commissioner shall implement, on a demonstration basis, at least 1 Customs–Trade Partnership Against Terrorism program, which has been successfully implemented along the northern border, along the southern border.

(b) **DEMONSTRATION PROGRAM.**—Not later than 180 days after the date of enactment of this Act, the Commissioner shall establish a demonstration program to develop a cooperative trade security system to improve supply chain security.

**SEC. 165. PORT OF ENTRY TECHNOLOGY DEMONSTRATION PROGRAM.**

(a) **ESTABLISHMENT.**—The Secretary shall carry out a technology demonstration program to—

(1) test and evaluate new port of entry technologies;

(2) refine port of entry technologies and operational concepts; and

(3) train personnel under realistic conditions.

## (b) TECHNOLOGY AND FACILITIES.—

(1) TECHNOLOGY TESTING.—Under the technology demonstration program, the Secretary shall test technologies that enhance port of entry operations, including operations related to—

- (A) inspections;
- (B) communications;
- (C) port tracking;
- (D) identification of persons and cargo;
- (E) sensory devices;
- (F) personal detection;
- (G) decision support; and
- (H) the detection and identification of weapons of mass destruction.

(2) DEVELOPMENT OF FACILITIES.—At a demonstration site selected pursuant to subsection (c)(2), the Secretary shall develop facilities to provide appropriate training to law enforcement personnel who have responsibility for border security, including—

- (A) cross-training among agencies;
- (B) advanced law enforcement training; and
- (C) equipment orientation.

## (c) DEMONSTRATION SITES.—

(1) NUMBER.—The Secretary shall carry out the demonstration program at not less than 3 sites and not more than 5 sites.

(2) SELECTION CRITERIA.—To ensure that at least 1 of the facilities selected as a port of entry demonstration site for the demonstration program has the most up-to-date design, contains sufficient space to conduct the demonstration program, has a traffic volume low enough to easily incorporate new technologies without interrupting normal processing activity, and is able to efficiently carry out demonstration and port of entry operations, at least 1 port of entry selected as a demonstration site shall—

- (A) have been established not more than 15 years before the date of enactment of this Act;
- (B) consist of not less than 65 acres, with the possibility of expansion to not less than 25 adjacent acres; and
- (C) have serviced an average of not more than 50,000 vehicles per month during the 1-year period ending on the date of enactment of this Act.

(d) RELATIONSHIP WITH OTHER AGENCIES.—The Secretary shall permit personnel from an appropriate Federal or State agency to utilize a demonstration site described in subsection (c) to test technologies that enhance port of entry operations, including technologies described in subparagraphs (A) through (H) of subsection (b)(1).

## (e) REPORT.—

(1) REQUIREMENT.—Not later than 1 year after the date of enactment of this Act, and annually thereafter, the Secretary shall submit to Congress a report on the activities carried out at each demonstration site under the technology demonstration program established under this section.

(2) CONTENT.—The report submitted under paragraph (1) shall include an assessment by the Secretary of the feasibility of incorporating any demonstrated technology for use throughout United States Customs and Border Protection.

**SEC. 166. AUTHORIZATION OF APPROPRIATIONS.**

(a) IN GENERAL.—In addition to any funds otherwise available, there are authorized to be appropriated such sums as may be necessary for the fiscal years 2008 through 2012 to carry out this subtitle.

(b) INTERNATIONAL AGREEMENTS.—Amounts appropriated pursuant to the authorization of appropriations in subsection (a) may be used for the implementation of projects described in the Declaration on Embracing Technology and Cooperation to Promote the Secure and Efficient Flow of People and Commerce across our Shared Border between the United States and Mexico, agreed to March 22, 2002, Monterrey, Mexico or the Smart Border Declaration between the United States and Canada, agreed to December 12, 2001, Ottawa, Canada that are consistent with the provisions of this subtitle.

**Subtitle H—Safe and Secure Detention****SEC. 171. DEFINITIONS.**

In this subtitle:



(1) **ASYLUM SEEKER.**—The term “asylum seeker” means an applicant for asylum under section 208 of the Immigration and Nationality Act (8 U.S.C. 1158) or for withholding of removal under section 241(b)(3) of that Act (8 U.S.C. 1231(b)(3)) or an alien who indicates an intention to apply for relief under either such section and does not include a person with respect to whom a final adjudication denying an application made under either such section has been entered.

(2) **CREDIBLE FEAR OF PERSECUTION.**—The term “credible fear of persecution” has the meaning given that term in section 235(b)(1)(B)(v) of the Immigration and Nationality Act (8 U.S.C. 1225(b)(1)(B)(v)).

(3) **DETAINEE.**—The term “detainee” means an alien in the Department’s custody held in a detention facility.

(4) **DETENTION FACILITY.**—The term “detention facility” means any Federal facility in which an asylum seeker, an alien detained pending the outcome of a removal proceeding, or an alien detained pending the execution of a final order of removal, is detained for more than 72 hours, or any other facility in which such detention services are provided to the Federal Government by contract, and does not include detention at any port of entry in the United States.

(5) **REASONABLE FEAR OF PERSECUTION OR TORTURE.**—The term “reasonable fear of persecution or torture” has the meaning described in section 208.31 of title 8, Code of Federal Regulations.

(6) **STANDARD.**—The term “standard” means any policy, procedure, or other requirement.

(7) **VULNERABLE POPULATIONS.**—The term “vulnerable populations” means classes of aliens subject to the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) who have special needs requiring special consideration and treatment by virtue of their vulnerable characteristics, including experiences of, or risk of, abuse, mistreatment, or other serious harms threatening their health or safety. Vulnerable populations include the following:

(A) Asylum seekers.

(B) Refugees admitted under section 207 of the Immigration and Nationality Act (8 U.S.C. 1157) and individuals seeking such admission.

(C) Aliens whose deportation is being withheld under section 243(h) of the Immigration and Nationality Act (as in effect immediately before the effective date of section 307 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Public Law 104–208; 110 Stat. 3009–612)) or section 241(b)(3) of the Immigration and Nationality Act (8 U.S.C. 1231(b)(3)).

(D) Aliens granted or seeking protection under article 3 of the Convention Against Torture and other Cruel, Inhumane, or Degrading Treatment or Punishment, done at New York, December 10, 1994.

(E) Applicants for relief and benefits under the Immigration and Nationality Act pursuant to the amendments made by the Trafficking Victims Protection Act of 2000 (division A of Public Law 106–386; 114 Stat. 1464), including applicants for nonimmigrant status under subparagraph (T) or (U) of section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)).

(F) Applicants for relief and benefits under the Immigration and Nationality Act pursuant to the amendments made by the Violence Against Women Act of 2000 (division B of Public Law 106–386; 114 Stat. 1491).

(G) Unaccompanied alien children (as defined by 462(g) of the Homeland Security Act of 2002 (6 U.S.C. 279(g))).

**SEC. 172. RECORDING SECONDARY INSPECTION INTERVIEWS.**

(a) **IN GENERAL.**—The Secretary shall establish quality assurance procedures to ensure the accuracy and verifiability of signed or sworn statements taken by employees of the Department exercising expedited removal authority under section 235(b) of the Immigration and Nationality Act (8 U.S.C. 1225(b)).

(b) **FACTORS RELATING TO SWORN STATEMENTS.**—Where practicable, as determined by the sole and unreviewable discretion of the Secretary, the quality assurance procedures established pursuant to this section shall include taped interviews to ensure the accuracy and verifiability of signed or sworn statements taken by employees of the Department.

(c) **INTERPRETERS.**—The Secretary shall ensure that a professional fluent interpreter is used when the interviewing officer does not speak a language understood by the alien and there is no other Federal, State, or local government employee available who is able to interpret effectively, accurately, and impartially.

**SEC. 173. PROCEDURES GOVERNING DETENTION DECISIONS.**

Section 236 (8 U.S.C. 1226) is amended—

(1) in subsection (a)—

(A) in the matter preceding paragraph (1)—

(i) in the first sentence by striking “Attorney General” and inserting “Secretary of Homeland Security”;

(ii) by striking “(c)” and inserting “(d)”; and

(iii) in the second sentence by striking “Attorney General” and inserting “Secretary”;

(B) in paragraph (2)—

(i) in subparagraph (A)—

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

(II) by striking “or” at the end;

(ii) in subparagraph (B), by striking “but” at the end; and

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

“(C) the alien’s own recognizance; or

“(D) a secure alternatives program as provided for in this section; but”;

(2) by redesignating subsections (b), (c), (d), and (e) as subsections (d), (e), (f), and (h), respectively;

(3) by inserting after subsection (a) the following new subsections:

“(b) CUSTODY DECISIONS.—

“(1) IN GENERAL.—In the case of a decision under subsection (a) or (d), the following shall apply:

“(A) The decision shall be made in writing and shall be served upon the alien. A decision to continue detention without bond or parole shall specify in writing the reasons for that decision.

“(B) The decision shall be served upon the alien within 72 hours of the alien’s detention or, in the case of an alien subject to section 235 or 241(a)(5) who must establish a credible fear of persecution or a reasonable fear of persecution or torture in order to proceed in immigration court, within 72 hours of a positive credible fear of persecution or reasonable fear of persecution or torture determination.

“(2) CRITERIA TO BE CONSIDERED.—The criteria to be considered by the Secretary and the Attorney General in making a custody decision shall include—

“(A) whether the alien poses a risk to public safety or national security;

“(B) whether the alien is likely to appear for immigration proceedings;

and

“(C) any other relevant factors.

“(3) CUSTODY REDETERMINATION.—An alien subject to this section may at any time after being served with the Secretary’s decision under subsections (a) or (d) request a redetermination of that decision by an immigration judge. All decisions by the Secretary to detain without bond or parole shall be subject to redetermination by an immigration judge within 2 weeks from the time the alien was served with the decision, unless waived by the alien. The alien may request a further redetermination upon a showing of a material change in circumstances since the last redetermination hearing.

“(c) EXCEPTION FOR MANDATORY DETENTION.—Subsection (b) shall not apply to any alien who is subject to mandatory detention under section 235(b)(1)(B)(iii)(IV), 236(c), or 236A or who has a final order of removal and has no proceedings pending before the Executive Office for Immigration Review.”;

(4) in subsection (d), as redesignated—

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

(B) by striking “or parole” and inserting “, parole, or decision to release.”;

(5) in subsection (e), as redesignated—

(A) by striking “Attorney General” and inserting “Secretary” each place it appears; and

(B) in paragraph (2), by inserting “or for humanitarian reasons,” after “such an investigation.”;

(6) in subsection (f), as redesignated—

(A) in the matter preceding paragraph (1), by striking “Attorney General” and inserting “Secretary”;

(B) in paragraph (1), in subparagraphs (A) and (B), by striking “Service” and inserting “Department of Homeland Security”; and

(C) in paragraph (3), by striking “Service” and inserting “Secretary of Homeland Security”;

(7) by inserting after subsection (f), as redesignated, the following new subparagraph:

“(g) ADMINISTRATIVE REVIEW.—If an immigration judge’s custody decision has been stayed by the action of an officer or employee of the Department of Homeland Security, the stay shall expire in 30 days, unless the Board of Immigration Appeals before that time, and upon motion, enters an order continuing the stay.”; and

(8) in subsection (h), as redesignated—

(A) by striking “Attorney General’s” and inserting “Secretary of Homeland Security’s”; and

(B) by striking “Attorney General” and inserting “Secretary”.

**SEC. 174. LEGAL ORIENTATION PROGRAM.**

(a) IN GENERAL.—The Attorney General, in consultation with the Secretary, shall ensure that all detained aliens in immigration and asylum proceedings receive legal orientation through a program administered and implemented by the Executive Office for Immigration Review of the Department of Justice.

(b) CONTENT OF PROGRAM.—The legal orientation program developed pursuant to this section shall be based on the Legal Orientation Program carried out by the Executive Office for Immigration Review on the date of the enactment of this Act.

(c) EXPANSION OF LEGAL ASSISTANCE.—The Secretary shall ensure the expansion through the United States Citizenship and Immigration Service of public-private partnerships that facilitate pro bono counseling and legal assistance for asylum seekers awaiting a credible fear of persecution interview. The pro bono counseling and legal assistance programs developed pursuant to this subsection shall be based on the pilot program developed in Arlington, Virginia by the United States Citizenship and Immigration Service.

**SEC. 175. CONDITIONS OF DETENTION.**

(a) IN GENERAL.—The Secretary shall ensure that standards governing conditions and procedures at detention facilities are fully implemented and enforced, and that all detention facilities comply with the standards.

(b) PROCEDURES AND STANDARDS.—The Secretary shall promulgate new standards, or modify existing detention standards, to improve conditions in detention facilities. The improvements shall address at a minimum the following policies and procedures:

(1) FAIR AND HUMANE TREATMENT.—Procedures to ensure that detainees are not subject to degrading or inhumane treatment such as verbal or physical abuse or harassment, sexual abuse or harassment, or arbitrary punishment.

(2) LIMITATIONS ON SHACKLING.—Procedures limiting the use of shackling, handcuffing, solitary confinement, and strip searches of detainees to situations where the use of such techniques is necessitated by security interests or other extraordinary circumstances.

(3) INVESTIGATION OF GRIEVANCES.—Procedures for the prompt and effective investigation of grievances raised by detainees, including review of grievances by officials of the Department who do not work at the same detention facility where the detainee filing the grievance is detained.

(4) ACCESS TO TELEPHONES.—Procedures permitting detainees sufficient access to telephones, and the ability to contact, free of charge, legal representatives, the immigration courts, the Board of Immigration Appeals, and the Federal courts through confidential toll-free numbers.

(5) LOCATION OF FACILITIES.—Location of detention facilities, to the extent practicable, near sources of free or low-cost legal representation with expertise in asylum or immigration law.

(6) PROCEDURES GOVERNING TRANSFERS OF DETAINEES.—Procedures governing the transfer of a detainee that take into account—

(A) the detainee’s access to legal representatives; and

(B) the proximity of the facility to the venue of the asylum or removal proceeding.

(7) QUALITY OF MEDICAL CARE.—Prompt and adequate medical care provided at no cost to the detainee, including dental care, eye care, mental health care, individual and group counseling, medical dietary needs, and other medically necessary specialized care. Medical facilities in all detention facilities used by the Department shall maintain current accreditation by the National Commission on Correctional Health Care (NCCHC). Requirements that each medical facility that is not accredited by the Joint Commission on the Accreditation of Health Care Organizations (JCAHO) will seek to obtain such accreditation. Maintenance of complete medical records for every detainee which shall be made available upon request to a detainee, his legal representative, or other authorized individuals.

(8) TRANSLATION CAPABILITIES.—The employment of detention facility staff that, to the extent practicable, are qualified in the languages represented in the population of detainees at a detention facility, and the provision of alternative translation services when necessary.

(9) RECREATIONAL PROGRAMS AND ACTIVITIES.—Daily access to indoor and outdoor recreational programs and activities.

(c) SPECIAL STANDARDS FOR NONCRIMINAL DETAINEES.—The Secretary shall promulgate new standards, or modifications to existing standards, that—

(1) recognize the special characteristics of noncriminal, nonviolent detainees, and ensure that procedures and conditions of detention are appropriate for a noncriminal population; and

(2) ensure that noncriminal detainees are separated from inmates with criminal convictions, pretrial inmates facing criminal prosecution, and those inmates exhibiting violent behavior while in detention.

(d) SPECIAL STANDARDS FOR VULNERABLE POPULATIONS.—The Secretary shall promulgate new standards, or modifications to existing standards, that—

(1) recognize the unique needs of asylum seekers, victims of torture and trafficking, families with children, detainees who do not speak English, detainees with special religious, cultural or spiritual considerations, and other vulnerable populations; and

(2) ensure that procedures and conditions of detention are appropriate for the populations listed in this subsection.

(e) TRAINING OF PERSONNEL.—

(1) IN GENERAL.—The Secretary shall ensure that personnel in detention facilities are given specialized training to better understand and work with the population of detainees held at the facilities where such personnel work. The training should address the unique needs of—

- (A) asylum seekers;
- (B) victims of torture or other trauma; and
- (C) other vulnerable populations.

(2) SPECIALIZED TRAINING.—The training required by this subsection shall be designed to better enable personnel to work with detainees from different countries, and detainees who cannot speak English. The training shall emphasize that many detainees have no criminal records and are being held for civil violations.

#### SEC. 176. OFFICE OF DETENTION OVERSIGHT.

(a) ESTABLISHMENT OF THE OFFICE.—

(1) IN GENERAL.—There shall be established within the Department an Office of Detention Oversight (in this section referred to as the “Office”).

(2) HEAD OF THE OFFICE.—There shall be at the head of the Office an Administrator who shall be appointed by, and shall report to, the Secretary.

(3) SCHEDULE.—The Office shall be established and the Administrator of the Office appointed not later than 6 months after the date of enactment of this Act.

(b) RESPONSIBILITIES OF THE OFFICE.—

(1) INSPECTIONS OF DETENTION CENTERS.—The Administrator of the Office shall—

(A) undertake frequent and unannounced inspections of all detention facilities;

(B) develop a procedure for any detainee or the detainee’s representative to file a written complaint directly with the Office; and

(C) report to the Secretary and to the Assistant Secretary of Homeland Security for United States Immigration and Customs Enforcement all findings of a detention facility’s noncompliance with detention standards.

(2) INVESTIGATIONS.—The Administrator of the Office shall—

(A) initiate investigations, as appropriate, into allegations of systemic problems at detention facilities or incidents that constitute serious violations of detention standards;

(B) report to the Secretary and the Assistant Secretary of Homeland Security for United States Immigration and Customs Enforcement the results of all investigations; and

(C) refer matters, where appropriate, for further action to—

- (i) the Department of Justice;
- (ii) the Office of the Inspector General of the Department;
- (iii) the Office of Civil Rights and Civil Liberties of the Department; or
- (iv) any other relevant office of agency.

## (3) REPORT TO CONGRESS.—

(A) IN GENERAL.—The Administrator of the Office shall submit to the Secretary, the Committee on the Judiciary and the Committee on Homeland Security and Governmental Affairs of the Senate, and the Committee on the Judiciary and the Committee on Homeland Security of the House of Representatives an annual report on the Administrator's findings on detention conditions and the results of the investigations carried out by the Administrator.

(B) CONTENTS OF REPORT.—Each report required by subparagraph (A) shall include—

(i) a description of the actions to remedy findings of noncompliance or other problems that are taken by the Secretary or the Assistant Secretary of Homeland Security for United States Immigration and Customs Enforcement, and each detention facility found to be in noncompliance; and

(ii) information regarding whether such actions were successful and resulted in compliance with detention standards.

(4) REVIEW OF COMPLAINTS BY DETAINEES.—The Administrator of the Office shall establish procedures to receive and review complaints of violations of the detention standards promulgated by the Secretary. The procedures shall protect the anonymity of the claimant, including detainees, employees, or others, from retaliation.

(c) COOPERATION WITH OTHER OFFICES AND AGENCIES.—Whenever appropriate, the Administrator of the Office shall cooperate and coordinate its activities with—

- (1) the Office of the Inspector General of the Department;
- (2) the Office of Civil Rights and Civil Liberties of the Department;
- (3) the Privacy Officer of the Department;
- (4) the Civil Rights Division of the Department of Justice; or
- (5) any other relevant office or agency.

**SEC. 177. SECURE ALTERNATIVES PROGRAM.**

(a) ESTABLISHMENT OF PROGRAM.—The Secretary shall establish a secure alternatives program under which an alien who has been detained may be released under enhanced supervision to prevent the alien from absconding and to ensure that the alien makes appearances related to such detention.

(b) PROGRAM REQUIREMENTS.—

(1) NATIONWIDE IMPLEMENTATION.—The Secretary shall facilitate the development of the secure alternatives program on a nationwide basis, as a continuation of existing pilot programs such as the Intensive Supervision Appearance Program (ISAP) developed by the Department.

(2) UTILIZATION OF ALTERNATIVES.—The secure alternatives program shall utilize a continuum of alternatives based on the alien's need for supervision, including placement of the alien with an individual or organizational sponsor, or in a supervised group home.

(3) ALIENS ELIGIBLE FOR SECURE ALTERNATIVES PROGRAM.—

(A) IN GENERAL.—Aliens who would otherwise be subject to detention based on a consideration of the release criteria in section 236(b)(2), or who are released pursuant to section 236(e)(2), shall be considered for the secure alternatives program.

(B) DESIGN OF PROGRAMS.—Secure alternatives programs shall be designed to ensure sufficient supervision of the population described in subparagraph (A).

(4) CONTRACTS.—The Secretary shall enter into contracts with qualified nongovernmental entities to implement the secure alternatives program.

(5) OTHER CONSIDERATIONS.—In designing such program, the Secretary shall—

(A) consult with relevant experts; and

(B) consider programs that have proven successful in the past, including the Appearance Assistance Program developed by the Vera Institute and the Intensive Supervision Appearance Program (ISAP) developed by the Department.

**SEC. 178. LESS RESTRICTIVE DETENTION FACILITIES.**

(a) CONSTRUCTION.—The Secretary shall facilitate the construction or use of secure but less restrictive detention facilities.

(b) CRITERIA.—In developing detention facilities pursuant to this section, the Secretary shall—

(1) consider the design, operation, and conditions of existing secure but less restrictive detention facilities, such as the Department's detention facilities in Broward County, Florida, and Berks County, Pennsylvania;

(2) to the extent practicable, construct or use detention facilities where—  
 (A) movement within and between indoor and outdoor areas of the facility is subject to minimal restrictions;

(B) detainees have ready access to social, psychological, and medical services;

(C) detainees with special needs, including those who have experienced trauma or torture, have ready access to services and treatment addressing their needs;

(D) detainees have ready access to meaningful programmatic and recreational activities;

(E) detainees are permitted contact visits with legal representatives, family members, and others;

(F) detainees have access to private toilet and shower facilities;

(G) prison-style uniforms or jumpsuits are not required; and

(H) special facilities are provided to families with children.

(c) **FACILITIES FOR FAMILIES WITH CHILDREN.**—For situations where release or secure alternatives programs are not an option, the Secretary shall ensure that special detention facilities are specifically designed to house parents with their minor children, including ensuring that—

(1) procedures and conditions of detention are appropriate for families with minor children; and

(2) living and sleeping quarters for parents and minor children are not physically separated.

(d) **PLACEMENT IN NONPUNITIVE FACILITIES.**—Priority for placement in less restrictive facilities shall be given to asylum seekers, families with minor children, other vulnerable populations, and nonviolent criminal detainees.

(e) **PROCEDURES AND STANDARDS.**—Where necessary, the Secretary shall promulgate new standards, or modify existing detention standards, to promote the development of less restrictive detention facilities.

**SEC. 179. AUTHORIZATION OF APPROPRIATIONS; EFFECTIVE DATE.**

(a) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated such sums as are necessary to carry out this subtitle.

(b) **EFFECTIVE DATE.**—This subtitle and the amendments made by this subtitle shall take effect on the date that is 6 months after the date of enactment of this Act.

## Subtitle I—Other Border Security Initiatives

**SEC. 181. COMBATING HUMAN SMUGGLING.**

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

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

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

(2) adequate and effective personnel training;

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

(4) effective utilization of—

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

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

(5) joint measures, with the Secretary of State, to enhance intelligence sharing and cooperation with foreign governments whose citizens are preyed on by human smugglers; and

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

(c) **REPORT.**—Not later than 1 year after implementing the plan described in subsection (a), the Secretary shall submit to Congress a report on such plan, includ-

ing any recommendations for legislative action to improve efforts to combating human smuggling.

(d) SAVINGS PROVISION.—Nothing in this section may be construed to provide additional authority to any State or local entity to enforce Federal immigration laws.

**SEC. 182. SCREENING OF MUNICIPAL SOLID WASTE.**

(a) DEFINITIONS.—In this section:

(1) COMMERCIAL MOTOR VEHICLE.—The term “commercial motor vehicle” has the meaning given the term in section 31101 of title 49, United States Code.

(2) COMMISSIONER.—The term “Commissioner” means the Commissioner of United States Customs and Border Protection.

(3) MUNICIPAL SOLID WASTE.—The term “municipal solid waste” includes sludge (as defined in section 1004 of the Solid Waste Disposal Act (42 U.S.C. 6903)).

(b) REPORT TO CONGRESS.—Not later than 90 days after the date of enactment of this Act, the Commissioner shall submit to Congress a report that—

(1) indicates whether the methodologies and technologies used by United States Customs and Border Protection to screen for and detect the presence of chemical, nuclear, biological, and radiological weapons in municipal solid waste are as effective as the methodologies and technologies used by United States Customs and Border Protection to screen for such weapons in other items of commerce entering the United States through commercial motor vehicle transport; and

(2) if the report indicates that the methodologies and technologies used to screen municipal solid waste are less effective than the methodologies and technologies used to screen other items of commerce, identifies the actions that United States Customs and Border Protection will take to achieve the same level of effectiveness in the screening of municipal solid waste, including actions necessary to meet the need for additional screening technologies.

(c) IMPACT ON COMMERCIAL MOTOR VEHICLES.—If the Commissioner fails to fully implement an action identified under subsection (b)(2) before the earlier of the date that is 180 days after the date on which the report under subsection (b) is required to be submitted or the date that is 180 days after the date on which the report is submitted, the Secretary shall deny entry into the United States of any commercial motor vehicle carrying municipal solid waste until the Secretary certifies to Congress that the methodologies and technologies used by United States Customs and Border Protection to screen for and detect the presence of chemical, nuclear, biological, and radiological weapons in municipal solid waste are as effective as the methodologies and technologies used by United States Customs and Border Protection to screen for such weapons in other items of commerce entering into the United States through commercial motor vehicle transport.

**SEC. 183. BORDER SECURITY ON CERTAIN FEDERAL LAND.**

(a) DEFINITIONS.—In this section:

(1) PROTECTED LAND.—The term “protected land” means land under the jurisdiction of the Secretary concerned.

(2) SECRETARY CONCERNED.—The term “Secretary concerned” means—

(A) with respect to land under the jurisdiction of the Secretary of Agriculture, the Secretary of Agriculture; and

(B) with respect to land under the jurisdiction of the Secretary of the Interior, the Secretary of the Interior.

(b) SUPPORT FOR BORDER SECURITY NEEDS.—

(1) IN GENERAL.—To gain operational control over the international land borders of the United States and to prevent the entry of terrorists, unlawful aliens, narcotics, and other contraband into the United States, the Secretary, in cooperation with the Secretary concerned, shall provide—

(A) increased United States Customs and Border Protection personnel to secure protected land along the international land borders of the United States;

(B) Federal land resource training for United States Customs and Border Protection agents dedicated to protected land; and

(C) unmanned aerial vehicles, aerial assets, remote video surveillance camera systems, and sensors on protected land that is directly adjacent to the international land border of the United States, with priority given to units of the National Park System.

(2) COORDINATION.—In providing training for United States Customs and Border Protection agents under paragraph (1)(B), the Secretary shall coordinate with the Secretary concerned to ensure that the training is appropriate to the

mission of the National Park Service, the United States Fish and Wildlife Service, the Forest Service, or the relevant agency of the Department of the Interior or the Department of Agriculture to minimize the adverse impact on natural and cultural resources from border protection activities.

(c) **INVENTORY OF COSTS AND ACTIVITIES.**—The Secretary concerned shall develop and submit to the Secretary an inventory of costs incurred by the Secretary concerned relating to illegal border activity, including the cost of equipment, training, recurring maintenance, construction of facilities, restoration of natural and cultural resources, recapitalization of facilities, and operations.

(d) **RECOMMENDATIONS.**—The Secretary shall—

(1) develop joint recommendations with the National Park Service, the United States Fish and Wildlife Service, and the Forest Service for an appropriate cost recovery mechanism relating to items identified in subsection (c); and

(2) not later than March 31, 2008, submit to the Committee on the Judiciary and the Committee on Energy and Natural Resources of the Senate and the Committee on the Judiciary and the Committee on Natural Resources of the House of Representatives the recommendations developed under paragraph (1).

(e) **BORDER PROTECTION STRATEGY.**—The Secretary, the Secretary of the Interior, and the Secretary of Agriculture shall jointly develop a border protection strategy that supports the border security needs of the United States in the manner that best protects—

(1) units of the National Park System;

(2) National Forest System land;

(3) land under the jurisdiction of the United States Fish and Wildlife Service; and

(4) other relevant land under the jurisdiction of the Secretary of the Interior or the Secretary of Agriculture.

## **TITLE II—INTERIOR ENFORCEMENT**

### **Subtitle A—Reducing the Number of Illegal Aliens in the United States**

#### **SEC. 201. INCARCERATION OF CRIMINAL ALIENS.**

(a) **INSTITUTIONAL REMOVAL PROGRAM.**—

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

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

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

(C) remove such aliens from the United States after the completion of their sentences, in accordance with section 241 of the Immigration and Nationality Act (8 U.S.C. 1231), as amended by section 231 of this Act.

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

(b) **TECHNOLOGY USAGE.**—Technology, such as videoconferencing, shall be used to the maximum extent practicable to make the Program available in remote locations. Mobile access to Federal databases of aliens, such as the Automated Biometric Fingerprint Identification System (IDENT), and live scan technology shall be used to the maximum extent practicable to make these resources available to State and local law enforcement agencies in remote locations.

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

(d) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated such sums as may be necessary in each of the fiscal years 2008 through 2012 to carry out this section.

#### **SEC. 202. ENCOURAGING ALIENS TO DEPART VOLUNTARILY.**

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

(1) in subsection (a)—

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



“(1) IN GENERAL.—If an alien is not removable under paragraph (2)(A)(iii) or (4) of section 237(a)—

“(A) the Secretary of Homeland Security may permit the alien to voluntarily depart the United States at the alien’s own expense under this subsection instead of being subject to proceedings under section 240; or

“(B) the Attorney General may permit the alien to voluntarily depart the United States at the alien’s own expense under this subsection after the initiation of removal proceedings under section 240 and before the conclusion of such proceedings before an immigration judge.”;

(B) in paragraph (2), by amending subparagraph (A) to read as follows:

“(A) IN GENERAL.—

“(i) INSTEAD OF REMOVAL.—Subject to subparagraph (B), permission to voluntarily depart under paragraph (1)(A) shall not be valid for any period in excess of 120 days. The Secretary may require an alien permitted to voluntarily depart under paragraph (1)(A) to post a voluntary departure bond, to be surrendered upon proof that the alien has departed the United States within the time specified.”;

“(ii) BEFORE THE CONCLUSION OF REMOVAL PROCEEDINGS.—Permission to voluntarily depart under paragraph (1)(B) shall not be valid for any period longer than 60 days, and may be granted only after a finding that the alien has the means to depart the United States and intends to do so. An immigration judge may require an alien to voluntarily depart under paragraph (1)(B) to post a voluntary departure bond, in an amount necessary to ensure that the alien will depart, to be surrendered upon proof that the alien has departed the United States within the time specified. An immigration judge may waive the requirement to post a voluntary departure bond in individual cases upon a finding that the alien has presented compelling evidence that the posting of a bond will pose a serious financial hardship and the alien has presented credible evidence that such a bond is unnecessary to guarantee timely departure.”; and

(C) by striking paragraph (3);

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

“(c) CONDITIONS ON VOLUNTARY DEPARTURE.—

“(1) VOLUNTARY DEPARTURE AGREEMENT.—Voluntary departure under this section may only be granted as part of an affirmative agreement by the alien.

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

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

“(4) FAILURE TO COMPLY WITH AGREEMENT.—If an alien agrees to voluntary departure under this section and fails to depart the United States within the time allowed for voluntary departure or fails to comply with any other terms of the agreement (including failure to timely post any required bond), the alien is—

“(A) ineligible for the benefits of the agreement;

“(B) subject to the penalties described in subsection (d); and

“(C) subject to an alternate order of removal if voluntary departure was granted under subsection (a)(1)(B) or (b).

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

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

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

“(1) CIVIL PENALTY.—The alien shall be liable for a civil penalty of \$3,000.

The order allowing voluntary departure shall specify the amount of the penalty, which shall be acknowledged by the alien on the record. If the Secretary there-

after establishes that the alien failed to depart voluntarily within the time allowed, no further procedure will be necessary to establish the amount of the penalty, and the Secretary may collect the civil penalty at any time thereafter and by whatever means provided by law. An alien will be ineligible for any benefits under this chapter until this civil penalty is paid.

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

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

“(e) ELIGIBILITY.—

“(1) PRIOR GRANT OF VOLUNTARY DEPARTURE.—An alien shall not be permitted to voluntarily depart under this section if the Secretary of Homeland Security or the Attorney General previously permitted the alien to depart voluntarily under this section on or after the date of the enactment of the STRIVE Act of 2007.

“(2) RULEMAKING.—The Secretary may promulgate regulations to limit eligibility or impose additional conditions for voluntary departure under subsection (a)(1)(A) for any class of aliens.”.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to all orders granting voluntary departure under section 240B of the Immigration and Nationality Act (8 U.S.C. 1229c) made on or after the date that is 180 days after the date of enactment of this Act.

**SEC. 203. DETERRING ALIENS ORDERED REMOVED FROM REMAINING IN THE UNITED STATES UNLAWFULLY.**

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

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

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

**SEC. 204. PROHIBITION OF THE SALE OF FIREARMS TO, OR THE POSSESSION OF FIREARMS BY CERTAIN ALIENS.**

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

(1) in subsection (d)(5)—

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

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

(C) by adding at the end the following:

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

(2) in subsection (g)(5)—

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

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

(C) by adding at the end the following:

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

(3) in subsection (y)—

(A) in the heading, by striking “ADMITTED UNDER NONIMMIGRANT VISAS” and inserting “IN A NONIMMIGRANT CLASSIFICATION”;

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

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

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

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

a nonimmigrant classification may receive a waiver from the requirements of subsection (g)(5)(B)”.

**SEC. 205. UNIFORM STATUTE OF LIMITATIONS FOR CERTAIN IMMIGRATION, NATURALIZATION, AND PEONAGE OFFENSES.**

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

**“§ 3291. Immigration, naturalization, and peonage offenses**

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

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

“3291. Immigration, naturalization, and peonage offenses.”.

**SEC. 206. EXPEDITED REMOVAL.**

(a) IN GENERAL.—Section 238 (8 U.S.C. 1228) is amended—

(1) by striking the section heading and inserting “expedited removal of criminal aliens”;

(2) in subsection (a), by striking the subsection heading and inserting: “EXPEDITED REMOVAL FROM CORRECTIONAL FACILITIES.—”;

(3) in subsection (b), by striking the subsection heading and inserting: “REMOVAL OF CRIMINAL ALIENS.—”;

(4) in subsection (b), by striking paragraphs (1) and (2) and inserting the following:

“(1) IN GENERAL.—The Secretary of Homeland Security may, in the case of an alien described in paragraph (2), determine the deportability of such alien and issue an order of removal pursuant to the procedures set forth in this subsection or section 240.

“(2) ALIENS DESCRIBED.—An alien is described in this paragraph if the alien—

“(A) has not been lawfully admitted to the United States for permanent residence; and

“(B) was convicted of any criminal offense establishing deportability under subparagraph (A)(iii) or (D)(i) of section 237(a)(2).”; and

(5) by redesignating the subsection (c) that relates to judicial removal as subsection (d).

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of enactment of this Act and shall apply to all aliens apprehended or convicted on or after such date.

**SEC. 207. FIELD AGENT ALLOCATION.**

(a) IN GENERAL.—Section 103(f) (8 U.S.C. 1103(f)) is amended to read as follows:

“(f) MINIMUM NUMBER OF AGENTS IN STATES.—

“(1) IN GENERAL.—The Secretary of Homeland Security shall allocate to each State—

“(A) not fewer than 40 full-time active duty agents of the Bureau of Immigration and Customs Enforcement to—

“(i) investigate immigration violations; and

“(ii) ensure the departure of all removable aliens; and

“(B) not fewer than 15 full-time active duty agents of United States Citizenship and Immigration Services to carry out immigration and naturalization adjudication functions.

“(2) WAIVER.—The Secretary may waive the application of paragraph (1) for any State with a population of less than 2,000,000, as most recently reported by the Bureau of the Census.”.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date that is 90 days after the date of the enactment of this Act.

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

**SEC. 208. STREAMLINED PROCESSING OF BACKGROUND CHECKS CONDUCTED FOR IMMIGRATION BENEFIT APPLICATIONS AND PETITIONS.**

(a) INFORMATION SHARING; INTERAGENCY TASK FORCE.—Section 105 (8 U.S.C. 1105) is amended by adding at the end the following:

“(e) INTERAGENCY TASK FORCE.—

“(1) IN GENERAL.—The Secretary of Homeland Security shall establish an interagency task force to resolve cases in which an application or petition for an immigration benefit conferred under this Act has been delayed due to an outstanding background check investigation for more than 2 years after the date on which such application or petition was initially filed.

“(2) MEMBERSHIP.—The interagency task force established under paragraph (1) shall include representatives from Federal agencies with immigration, law enforcement, or national security responsibilities under this Act.”.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Director of the Federal Bureau of Investigation such sums as are necessary for each fiscal year, 2008 through 2012 for enhancements to existing systems for conducting background and security checks necessary to support immigration security and orderly processing of applications.

(c) REPORT ON BACKGROUND AND SECURITY CHECKS.—

(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Director of the Federal Bureau of Investigation shall submit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report on the background and security checks conducted by the Federal Bureau of Investigation on behalf of United States Citizenship and Immigration Services.

(2) CONTENT.—The report required under paragraph (1) shall include—

(A) a description of the background and security check program;

(B) a statistical breakdown of the background and security check delays associated with different types of immigration applications;

(C) a statistical breakdown of the background and security check delays by applicant country of origin; and

(D) the steps that the Director of the Federal Bureau of Investigations is taking to expedite background and security checks that have been pending for more than 180 days.

(d) ENSURING ACCOUNTABILITY IN BACKGROUND CHECK DETERMINATIONS.—

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

**“SEC. 362. CONSTRUCTION.**

“(a) IN GENERAL.—Nothing in this Act (other than section 241(b)(3)) or in any other provision of law (other than the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, done at New York, December 10, 1994, subject to any reservations, understandings, declarations, and provisos contained in the resolution of ratification of the Convention, as implemented by section 2242 of the Foreign Affairs Reform and Restructuring Act of 1998 (Public Law 105–277; 8 U.S.C. 1231 note)) may be construed to require the Secretary of Homeland Security or the Attorney General to grant any application for asylum, adjustment of status, or naturalization, or grant any relief from removal under the immigration laws to—

“(1) any alien with respect to whom a national security, criminal, or other investigation or case is open or pending (including the issuance of an arrest warrant, detainer, or indictment) that is material to the alien’s eligibility for the status or benefit sought; or

“(2) any alien for whom all law enforcement and other background checks have not been conducted and resolved or the information related to such background checks have not provided to or assessed by the reviewing official.

“(b) TIMEFRAMES.—Notwithstanding subsection (a), the Secretary of Homeland Security may not delay adjudication or document issuance beyond 180 days due to an outstanding background or security check unless the Secretary certifies that such background and security check may establish that the alien poses a risk to national security or public safety. The decision to delay shall be reviewed every 180 days, and such decision may not be delegated below the level of Assistant Secretary. An alien has no right to review or appeal the Secretary’s decision to delay adjudication or issuance of documentation under this section, but remains entitled to interim work authorization.”.

(2) RULEMAKING.—The Secretary of Homeland Security shall promulgate regulations that describe the conditions under which interim work authorization under paragraph (1) shall be issued.

(3) ANNUAL REPORT TO CONGRESS.—The Secretary of Homeland Security, the Attorney General, the Secretary of State, and the Secretary of Labor shall submit an annual report to Congress that includes—

(A) the number of cases in which paragraph (1) or (2) of subsection (a) is invoked during the reporting period;

(B) the total number of pending cases in each category at the end of the reporting period;

(C) the resolution of cases finally decided during the reporting period; and

(D) statistics on interim employment authorizations issued under this section.

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

“Sec. 362. Construction.”

(f) ENHANCED TRANSPARENCY OF CLEARANCE PROCESS.—

(1) ESTABLISHMENT.—The Secretary and the Attorney General shall each establish an Office of the Public Advocate for Immigration Clearances within the Department and the Department of Justice, respectively. Each Office shall be headed by a Public Advocate.

(2) DUTIES.—Each Public Advocate shall—

(A) serve as a public liaison for their respective Department for identifying and resolving delays in immigration processing caused by background check investigations; and

(B) serve on the Interagency Task Force established under subsection (e) of section 105 of the Immigration and Nationality Act (8 U.S.C. 1105), as added by subsection (a).

**SEC. 209. STATE CRIMINAL ALIEN ASSISTANCE PROGRAM.**

(a) AUTHORIZATION OF APPROPRIATIONS.—Section 241(i)(5)(C) (8 U.S.C. 1231(i)(5)(C)) is amended by striking “2011” and inserting “2012”.

(b) REIMBURSEMENT OF STATES FOR PRECONVICTION COSTS RELATING TO THE INCARCERATION OF ILLEGAL ALIENS.—Section 241(i)(3)(A) (8 U.S.C. 1231(i)(3)(A)) is amended by inserting “charged with or” before “convicted”.

(c) REIMBURSEMENT OF STATES FOR INDIRECT COSTS RELATING TO THE INCARCERATION OF ILLEGAL ALIENS.—Section 501 of the Immigration Reform and Control Act of 1986 (8 U.S.C. 1365) is amended—

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

“(a) REIMBURSEMENT OF STATES.—Subject to the amounts provided in advance in appropriation Acts, the Secretary of Homeland Security shall reimburse a State for—

“(1) the costs incurred by the State for the imprisonment of any illegal alien or Cuban national who is convicted of a felony by such State; and

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

(2) by amending subsections (c) through (e) to read as follows:

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

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

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

“(d) DEFINITIONS.—In this section:

“(1) INDIRECT COSTS.—The term ‘indirect costs’ includes—

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

“(B) indigent defense costs; and

“(C) unsupervised probation costs.

“(2) STATE.—The term ‘State’ has the meaning given such term in section 101(a)(36) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(36)).

“(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated \$200,000,000 for each of the fiscal years 2008 through 2012 to carry out subsection (a)(2).”

**SEC. 210. TRANSPORTATION AND PROCESSING OF ILLEGAL ALIENS APPREHENDED BY STATE AND LOCAL LAW ENFORCEMENT OFFICERS.**

(a) **IN GENERAL.**—The Secretary shall provide sufficient transportation and officers to take illegal aliens apprehended by State and local law enforcement officers into custody for processing at a detention facility operated by the Department.

(b) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated such sums as may be necessary for each of fiscal years 2008 through 2012 to carry out this section.

**SEC. 211. REDUCING ILLEGAL IMMIGRATION AND ALIEN SMUGGLING ON TRIBAL LANDS.**

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

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

- (1) law enforcement activities;
- (2) health care services;
- (3) environmental restoration; and
- (4) the preservation of cultural resources.

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

- (1) describes the level of access of Border Patrol agents on tribal lands;
- (2) describes the extent to which enforcement of immigration laws may be improved by enhanced access to tribal lands;
- (3) contains a strategy for improving such access through cooperation with tribal authorities; and
- (4) identifies grants provided by the Department for Indian tribes, either directly or through State or local grants, relating to border security expenses.

(d) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2008 through 2012 to carry out this section.

**SEC. 212. MANDATORY ADDRESS REPORTING REQUIREMENTS.**

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

(1) in subsection (a)—

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

(B) by striking “the Attorney General may require” and inserting “the Secretary may require”; and

(C) by adding at the end the following: “If the alien is involved in proceedings before an immigration judge or in an administrative appeal of such proceedings, the alien shall submit to the Attorney General the alien’s current address and a telephone number, if any, at which the alien may be contacted.”;

(2) in subsection (b), by striking “Attorney General” each place such term appears and inserting “Secretary of Homeland Security”;

(3) in subsection (c), by striking “given to such parent” and inserting “given by such parent”; and

(4) by adding at the end the following:

“(d) **ADDRESS TO BE PROVIDED.**—

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

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

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

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

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

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

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

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

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

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

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

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

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

“(f) REQUIREMENT FOR DATABASE.—The Secretary of Homeland Security shall establish an electronic database to timely record and preserve addresses provided under this section.”.

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

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

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

(3) in section 264—

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

(B) in subsection (f)—

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

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

(c) EFFECT ON ELIGIBILITY FOR IMMIGRATION BENEFITS.—If an alien fails to comply with section 262, 263, or 265 of the Immigration and Nationality Act (8 U.S.C. 1302, 1303, and 1305) or section 264.1 of title 8, Code of Federal Regulations, or removal orders or voluntary departure agreements based on any such section for acts committed prior to the enactment of this Act such failure shall not affect the eligibility of the alien to apply for a benefit under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

(d) TECHNICAL AMENDMENTS.—Section 266 (8 U.S.C. 1306 ) is amended by striking “Attorney General” each place it appears and inserting “Secretary of Homeland Security”.

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall take effect on the date of the enactment of this Act.

(2) EXCEPTIONS.—The amendments made by paragraphs (1)(A), (1)(B), (2), and (3) of subsection (a) shall take effect as if enacted on March 1, 2003.

#### SEC. 213. STATE AND LOCAL ENFORCEMENT OF FEDERAL IMMIGRATION LAWS.

(a) IN GENERAL.—Section 287(g) (8 U.S.C. 1357(g)) is amended—

(1) in paragraph (2), by adding at the end “If such training is provided by a State or political subdivision of a State to an officer or employee of such State or political subdivision of a State, the cost of such training (including applicable

overtime costs) shall be reimbursed by the Secretary of Homeland Security.”; and

(2) in paragraph (4), by adding at the end “The cost of any equipment required to be purchased under such written agreement and necessary to perform the functions under this subsection shall be reimbursed by the Secretary of Homeland Security.”.

(b) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated to the Secretary such sums as may be necessary to carry out this section and the amendments made by this section.

**SEC. 214. INCREASED CRIMINAL PENALTIES RELATED TO DRUNK DRIVING.**

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

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

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

“(F) **DRUNK DRIVERS.**—Any alien who has been convicted of 3 offenses for driving under the influence and at least 1 of the offenses is a felony under Federal or State law, for which the alien was sentenced to more than 1 year imprisonment, is inadmissible.”.

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

“(F) **DRUNK DRIVERS.**—Unless the Secretary of Homeland Security or the Attorney General waives the application of this subparagraph, any alien who has been convicted of 3 offenses for driving under the influence and at least 1 of the offenses is a felony under Federal or State law, for which the alien was sentenced to more than 1 year imprisonment, is deportable.”.

(c) **JUDICIAL ADVISAL.**—

(1) **IN GENERAL.**—A court shall not accept a guilty plea for driving under the influence unless the court has administered to the defendant, on the record, the following advisal:

“If you are not a citizen of the United States, you are advised that conviction for driving under the influence, including conviction by entry of any plea, even if the conviction is later expunged, may result in deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.”.

(2) **FAILURE TO ADVISE.**—Upon request, the court shall allow the defendant a reasonable amount of additional time to consider the appropriateness of the plea in light of the advisement set out in paragraph (1). If the court fails to advise the defendant in accordance with paragraph (1) and the defendant shows that conviction of the offense to which the defendant pleaded guilty may result in the defendant’s deportation, exclusion from the United States, or denial of naturalization pursuant to the laws of the United States, the court, upon a motion by the defendant, shall vacate the judgment and permit the defendant to withdraw the plea and enter a plea of not guilty. If the record does not show that the court provided the required advisement, it shall be presumed that the defendant did not receive the advisement. The defendant shall not be required to disclose his or her immigration status at any time.

(d) **CONFORMING AMENDMENT.**—Section 212(h) (8 U.S.C. 1182(h)) is amended—

(1) in the subsection heading, by striking “SUBSECTION (a)(2)(A)(i)(I), (II), (B), (D), AND (E)” and inserting “CERTAIN PROVISIONS IN SUBSECTION (a)(2)”; and

(2) in the matter preceding paragraph (1), by striking “and (E)” and inserting “(E), and (F)”.

(e) **EFFECTIVE DATE.**—The amendments made by this section shall take effect on the date of the enactment of this Act and shall apply to convictions entered on or after such date.

**SEC. 215. LAW ENFORCEMENT AUTHORITY OF STATES AND POLITICAL SUBDIVISIONS AND TRANSFER TO FEDERAL CUSTODY.**

Title II (8 U.S.C. 1151 et seq.) is amended by adding after section 240C the following:

**“SEC. 240D. LAW ENFORCEMENT AUTHORITY OF STATES AND POLITICAL SUBDIVISIONS AND TRANSFER OF ALIENS TO FEDERAL CUSTODY.**

“(a) **AUTHORITY.**—Notwithstanding any other provision of law, law enforcement personnel of a State, or a political subdivision of a State, have the inherent authority of a sovereign entity to investigate, apprehend, arrest, detain, or transfer to Federal custody (including the transportation across State lines to detention centers) an alien for the purpose of assisting in the enforcement of the criminal provisions of the immigration laws of the United States in the normal course of carrying out the



law enforcement duties of such personnel. This State authority has never been displaced or preempted by a Federal law.

“(b) TRANSFER.—If the head of a law enforcement entity of a State (or a political subdivision of the State), exercising authority with respect to the detention of an alien convicted of a criminal offense, submits a request to the Secretary of Homeland Security, the Secretary shall—

“(1) determine the immigration status of the offender; and

“(2) report to the requesting agency whether the Department of Homeland Security intends to take custody of the offender for violations of Federal immigration laws, with an approximate timeframe for the transfer of custody.

“(c) REIMBURSEMENT.—The Secretary of Homeland Security is authorized to use funds appropriated pursuant to the authorization of appropriations in section 241(i)(5) to reimburse a State, or a political subdivision of a State for activities described in subparagraph (a) or (b).

“(d) REQUIREMENT FOR APPROPRIATE SECURITY.—The Secretary of Homeland Security shall ensure that—

“(1) aliens incarcerated in a Federal facility pursuant to this section are held in facilities which provide an appropriate level of security; and

“(2) if practicable, aliens detained solely for civil violations of Federal immigration law are separated within a facility or facilities.

“(e) REQUIREMENT FOR SCHEDULE.—In carrying out this section, the Secretary of Homeland Security shall establish a regular circuit and schedule for the prompt transportation of apprehended aliens from the custody of those States, and political subdivisions of States, which routinely submit requests described in subsection (b), into Federal custody.

“(f) AUTHORITY FOR CONTRACTS.—

“(1) IN GENERAL.—The Secretary of Homeland Security may enter into contracts or cooperative agreements with appropriate State and local law enforcement and detention agencies to implement this section.

“(2) DETERMINATION BY SECRETARY.—Before entering into a contract or cooperative agreement with a State or political subdivision of a State under paragraph (1), the Secretary shall determine whether the State, or if appropriate, the political subdivision in which the agencies are located, has in place any formal or informal policy that violates section 642 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1373). The Secretary shall not allocate any of the funds made available under this section to any State or political subdivision that has in place a policy that violates such section.

“(g) CONSTRUCTION.—Nothing in this section shall be construed to require law enforcement personnel of a State or a political subdivision to assist in the enforcement of the immigration laws of the United States.

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

**SEC. 216. LAUNDERING OF MONETARY INSTRUMENTS.**

Section 1956(c)(7)(D) of title 18, United States Code, is amended—

(1) by inserting “section 1590 (relating to trafficking with respect to peonage, slavery, involuntary servitude, or forced labor),” after “section 1363 (relating to destruction of property within the special maritime and territorial jurisdiction),”; and

(2) by inserting “section 274(a) of the Immigration and Nationality Act (8 U.S.C.1324(a)) (relating to bringing in and harboring certain aliens),” after “section 590 of the Tariff Act of 1930 (19 U.S.C. 1590) (relating to aviation smuggling),”.

**SEC. 217. INCREASE OF FEDERAL DETENTION SPACE AND THE UTILIZATION OF FACILITIES IDENTIFIED FOR CLOSURES AS A RESULT OF THE DEFENSE BASE CLOSURE REALIGNMENT ACT OF 1990.**

(a) CONSTRUCTION OR ACQUISITION OF DETENTION FACILITIES.—

(1) IN GENERAL.—Subject to the availability of appropriations, the Secretary shall construct or acquire, in addition to existing facilities for the detention of aliens, at least 20 detention facilities in the United States that have the capacity to detain a combined total of not less than 20,000 individuals at any time for aliens detained pending removal or a decision on removal of such aliens from the United States.

(2) REQUIREMENT TO CONSTRUCT OR ACQUIRE.—Subject to the availability of appropriations, the Secretary shall construct or acquire additional detention facilities in the United States to accommodate the detention beds required by sec-

tion 5204(a) of the Intelligence Reform and Terrorism Protection Act of 2004 (Public Law 108–458; 118 Stat. 3734).

(3) **USE OF ALTERNATE DETENTION FACILITIES.**—Subject to the availability of appropriations, the Secretary shall fully utilize all possible options to cost effectively increase available detention capacities, and shall utilize detention facilities that are owned and operated by the Federal Government if the use of such facilities is cost effective.

(4) **USE OF INSTALLATIONS UNDER BASE CLOSURE LAWS.**—In acquiring additional detention facilities under this subsection, the Secretary shall consider the transfer of appropriate portions of military installations approved for closure or realignment under the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101–510; 10 U.S.C. 2687 note) for use in accordance with this subsection.

(5) **DETERMINATION OF LOCATION.**—The location of any detention facility constructed or acquired in accordance with this subsection shall be determined, with the concurrence of the Secretary, by the senior officer responsible for Detention and Removal Operations in the Department. The detention facilities shall be located so as to enable the officers and employees of the Department to increase to the maximum extent practicable the annual rate and level of removals of illegal aliens from the United States.

(b) **ANNUAL REPORT TO CONGRESS.**—Not later than 1 year after the date of the enactment of this Act, and annually thereafter, in consultation with the heads of other appropriate Federal agencies, the Secretary shall submit to Congress an assessment of the additional detention facilities and bed space needed to detain unlawful aliens apprehended at the United States ports of entry or along the international land borders of the United States.

(c) **TECHNICAL AND CONFORMING AMENDMENT.**—Section 241(g)(1) (8 U.S.C. 1231(g)(1)) is amended by striking “may expend” and inserting “shall expend”.

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

**SEC. 218. DETERMINATION OF IMMIGRATION STATUS OF INDIVIDUALS CHARGED WITH FEDERAL OFFENSES.**

(a) **RESPONSIBILITY OF UNITED STATES ATTORNEYS.**—Beginning not later than 2 years after the date of enactment of this Act, the office of the United States Attorney that is prosecuting a criminal case in a Federal court—

(1) shall determine, not later than 30 days after filing the initial pleadings in the case, whether each defendant in the case is lawfully present in the United States (subject to subsequent legal proceedings to determine otherwise);

(2)(A) if the defendant is determined to be an alien lawfully present in the United States, shall notify the court in writing of the determination and the current status of the alien under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.); and

(B) if the defendant is determined not to be lawfully present in the United States, shall notify the court in writing of the determination, the defendant’s alien status, and, to the extent possible, the country of origin or legal residence of the defendant;

(3) ensure that the information described in paragraph (2) is included in the case file and the criminal records system of the office of the United States attorney; and

(4) provide notice to the alien and the counsel for the alien of any such determination and any such submission to the court.

(b) **GUIDELINES.**—A determination made under subsection (a)(1) shall be made in accordance with guidelines of the Executive Office for Immigration Review of the Department of Justice.

(c) **RESPONSIBILITIES OF FEDERAL COURTS.**—

(1) **MODIFICATIONS OF RECORDS AND CASE MANagements SYSTEMS.**—Not later than 2 years after the date of enactment of this Act, all Federal courts that hear criminal cases, or appeals of criminal cases, shall modify their criminal records and case management systems, in accordance with guidelines which the Director of the Administrative Office of the United States Courts shall establish, so as to enable accurate reporting of information described in subsection (a)(2).

(2) **DATA ENTRIES.**—Beginning not later than 2 years after the date of enactment of this Act, each Federal court described in paragraph (1) shall enter into its electronic records the information contained in each notification to the court under subsection (a)(2).

(d) CONSTRUCTION.—Nothing in this section may be construed to provide a basis for admitting evidence to a jury or releasing information to the public regarding an alien’s immigration status.

(e) ANNUAL REPORT TO CONGRESS.—The Director of the Administrative Office of the United States Courts shall include, in the annual report filed with Congress under section 604 of title 28, United States Code—

(1) statistical information on criminal trials of aliens in the courts and criminal convictions of aliens in the lower courts and upheld on appeal, including the type of crime in each case and including information on the legal status of the aliens; and

(2) recommendations on whether additional court resources are needed to accommodate the volume of criminal cases brought against aliens in the Federal courts.

(f) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated for each of fiscal years 2008 through 2012, such sums as may be necessary to carry out this section.

(2) AVAILABILITY OF FUNDS.—Funds appropriated pursuant to the authorization of appropriations in this subsection in any fiscal year shall remain available until expended.

**SEC. 219. EXPANSION OF THE JUSTICE PRISONER AND ALIEN TRANSFER SYSTEM.**

Not later than 60 days after the date of enactment of this Act, the Attorney General shall issue a directive to expand the Justice Prisoner and Alien Transfer System so that such System provides additional services with respect to aliens who are illegally present in the United States. Such expansion should include—

(1) increasing the daily operations of such System with buses and air hubs in 3 geographic regions;

(2) allocating a set number of seats for such aliens for each metropolitan area;

(3) allowing metropolitan areas to trade or give some of the seats allocated to the area under such System for such aliens to other areas in their region based on the transportation needs of each area; and

(4) requiring an annual report that analyzes the number of seats that each metropolitan area is allocated under such System for such aliens and modifies such allocation if necessary.

**SEC. 220. CANCELLATION OF VISAS.**

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

(1) in paragraph (1)—

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

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

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

## **Subtitle B—Passport and Visa Security**

**SEC. 221. REFORM OF PASSPORT FRAUD OFFENSES.**

(a) TRAFFICKING IN PASSPORTS.—Section 1541 of title 18, United States Code, is amended to read as follows:

**“§ 1541. Trafficking in passports**

“(a) MULTIPLE PASSPORTS.—Any person who, during any period of 3 years or less, knowingly—

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

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

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

or

“(4) completes, mails, prepares, presents, signs, or submits 10 or more applications for a United States passport, knowing the applications to contain any false statement or representation, shall be fined under this title, imprisoned not more than 20 years, or both.

“(b) PASSPORT MATERIALS.—Any person who knowingly and without lawful authority produces, buys, sells, possesses, or uses any official material (or counterfeit of any official material) used to make a passport, including any distinctive paper, seal, hologram, image, text, symbol, stamp, engraving, or plate, shall be fined under this title, imprisoned not more than 20 years, or both.”.

(b) FALSE STATEMENT IN AN APPLICATION FOR A PASSPORT.—Section 1542 of title 18, United States Code, is amended to read as follows:

**“§ 1542. False statement in an application for a passport**

“(a) IN GENERAL.—Whoever knowingly makes any false statement or representation in an application for a United States passport, or mails, prepares, presents, or signs an application for a United States passport knowing the application to contain any false statement or representation, shall be fined under this title, imprisoned not more than 15 years, or both.

“(b) VENUE.—

“(1) IN GENERAL.—An offense under subsection (a) may be prosecuted in any district—

“(A) in which the false statement or representation was made or the application for a United States passport was prepared or signed; or

“(B) in which or to which the application was mailed or presented.

“(2) ACTS OCCURRING OUTSIDE THE UNITED STATES.—An offense under subsection (a) involving an application for a United States passport prepared and adjudicated outside the United States may be prosecuted in the district in which the resultant passport was or would have been produced.

“(c) SAVINGS CLAUSE.—Nothing in this section may be construed to limit the venue otherwise available under sections 3237 and 3238 of this title.”.

(c) FORGERY AND UNLAWFUL PRODUCTION OF A PASSPORT.—Section 1543 of title 18, United States Code, is amended to read as follows:

**“§ 1543. Forgery and unlawful production of a passport**

“(a) FORGERY.—Any person who knowingly—

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

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

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

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

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

“(2) produces, issues, authorizes, or verifies a United States passport for or to any person knowing or in reckless disregard of the fact that such person is not entitled to receive a passport; or

“(3) transfers or furnishes a passport to any person for use by any person other than the person for whom the passport was issued or designed, shall be fined under this title, imprisoned not more than 15 years, or both.”.

(d) MISUSE OF A PASSPORT.—Section 1544 of title 18, United States Code, is amended to read as follows:

**“§ 1544. Misuse of a passport**

“Any person who knowingly—

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

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

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

“(4) violates the terms and conditions of any safe conduct duly obtained and issued under the authority of the United States, shall be fined under this title, imprisoned not more than 15 years, or both.”.

(e) SCHEMES TO DEFRAUD ALIENS.—Section 1545 of title 18, United States Code, is amended to read as follows:

**“§ 1545. Schemes to defraud aliens**

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

“(1) defraud any person; or

“(2) obtain or receive money or anything else of value from any person by means of false or fraudulent pretenses, representations, or promises, shall be fined under this title, imprisoned not more than 15 years, or both.

“(b) MISREPRESENTATION.—Any person who knowingly and falsely represents that such person is an attorney or an accredited representative (as that term is defined in section 1292.1 of title 8, Code of Federal Regulations (or any successor regulation to such section)) in any matter arising under Federal immigration laws shall be fined under this title, imprisoned not more than 15 years, or both.”.

(f) IMMIGRATION AND VISA FRAUD.—Section 1546 of title 18, United States Code, is amended—

(1) by amending the section heading to read as follows:

**“§ 1546. Immigration and visa fraud”;**

and

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

“(b) IN GENERAL.—Any person who knowingly—

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

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

“(3) completes, mails, prepares, presents, signs, or submits any immigration document knowing it to contain any materially false statement or representation;

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

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

“(6) transfers or furnishes, without lawful authority, an immigration document to another person for use by a person other than the person for whom the passport was issued or designed,

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

“(c) TRAFFICKING.—Any person who, during any period of 3 years or less, knowingly—

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

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

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

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

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

“(d) IMMIGRATION DOCUMENT MATERIALS.—Any person who knowingly and without lawful authority produces, buys, sells, possesses, or uses any official material (or counterfeit of any official material) used to make immigration documents, including any distinctive paper, seal, hologram, image, text, symbol, stamp, engraving, or plate, shall be fined under this title, imprisoned not more than 20 years, or both.

“(e) EMPLOYMENT DOCUMENTS.—Any person who uses—

“(1) an identification document, knowing (or having reason to know) that the document was not issued lawfully for the use of the possessor;

“(2) an identification document knowing (or having reason to know) that the document is false; or

“(3) a false attestation,

for the purpose of satisfying a requirement of section 274A(b) of the Immigration and Nationality Act (8 U.S.C. 1324a(b)), shall be fined under this title, imprisoned not more than 5 years, or both.”.

(g) ALTERNATIVE IMPRISONMENT MAXIMUM FOR CERTAIN OFFENSES.—Section 1547 of title 18, United States Code, is amended—

(1) in the matter preceding paragraph (1), by striking “(other than an offense under section 1545)”;

(2) in paragraph (1), by striking “15” and inserting “20”; and

(3) in paragraph (2), by striking “20” and inserting “25”.

(h) ATTEMPTS, CONSPIRACIES, JURISDICTION, AND DEFINITIONS.—Chapter 75 of title 18, United States Code, is amended by adding after section 1547 the following:

**“§ 1548. Attempts and conspiracies**

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

**“§ 1549. Additional jurisdiction**

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

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

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

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

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

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

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

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

**“§ 1550. Authorized law enforcement activities**

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

**“§ 1551. Definitions**

“As used in this chapter:

“(1) The term ‘application for a United States passport’ includes any document, photograph, or other piece of evidence submitted in support of an application for a United States passport.

“(2) The term ‘immigration document’—

“(A) means any application, petition, affidavit, declaration, attestation, form, visa, identification card, alien registration document, employment authorization document, border crossing card, certificate, permit, order, license, stamp, authorization, grant of authority, or other official document, arising under or authorized by the immigration laws of the United States; and

“(B) includes any document, photograph, or other piece of material evidence attached or submitted in support of an immigration document described in subparagraph (A).

“(3) The term ‘immigration laws’ includes—

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

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

“(C) the regulations prescribed under the authority of any law described in subparagraph (A) or (B).

“(4) A person does not exercise ‘lawful authority’ if the person abuses or improperly exercises lawful authority the person otherwise holds.

“(5) The term ‘passport’ means—

“(A) a travel document attesting to the identity and nationality of the bearer that is issued under the authority of the Secretary of State, a foreign government, or an international organization; or

“(B) any instrument purporting to be a document described in subparagraph (A).

“(6) The term ‘produce’ means to make, prepare, assemble, issue, print, authenticate, or alter.

“(7) The term ‘to present’ means to offer or submit for official processing, examination, or adjudication. Any such presentation continues until the official processing, examination, or adjudication is complete.

“(8) The ‘use’ of a passport or an immigration document referred to in section 1541(a), 1543(b), 1544, 1546(a), and 1546(b) of this chapter includes—

“(A) any officially authorized use;

“(B) use to travel;

“(C) use to demonstrate identity, residence, nationality, citizenship, or immigration status;

“(D) use to seek or maintain employment; or

“(E) use in any matter within the jurisdiction of the Federal government or of a State government.”.

(i) CLERICAL AMENDMENT.—The table of sections for chapter 75 of title 18, United States Code, is amended to read as follows:

“Sec.

“1541. Trafficking in passports.

“1542. False statement in an application for a passport.

“1543. Forgery and unlawful production of a passport.

“1544. Misuse of a passport.

“1545. Schemes to defraud aliens.

“1546. Immigration and visa fraud.

“1547. Alternative imprisonment maximum for certain offenses.

“1548. Attempts and conspiracies.

“1549. Additional jurisdiction.

“1550. Authorized law enforcement activities.

“1551. Definitions.”.

**SEC. 222. OTHER IMMIGRATION REFORMS.**

(a) DIRECTIVE TO THE UNITED STATES SENTENCING COMMISSION.—

(1) IN GENERAL.—Pursuant to the authority under section 994 of title 28, United States Code, the United States Sentencing Commission shall promulgate or amend the sentencing guidelines, policy statements, and official commentaries related to passport fraud offenses, including the offenses described in chapter 75 of title 18, United States Code, as amended by section 221, to reflect the serious nature of such offenses.

(2) REPORT.—Not later than 1 year after the date of the enactment of this Act, the United States Sentencing Commission shall submit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report on the implementation of this subsection.

(b) RELEASE AND DETENTION PRIOR TO DISPOSITION.—

(1) DETENTION.—Section 3142(e) of title 18, United States Code, is amended to read as follows:

“(e) DETENTION.—(1) If, after a hearing pursuant to the provisions of subsection (f) of this section, the judicial officer finds that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community, such judicial officer shall order the detention of the person before trial.

“(2) In a case described in subsection (f)(1) of this section, a rebuttable presumption arises that no condition or combination of conditions will reasonably assure the safety of any other person and the community if such judicial officer finds that—

“(A) the person has been convicted of a Federal offense that is described in subsection (f)(1) of this section, or of a State or local offense that would have been an offense described in subsection (f)(1) of this section if a circumstance giving rise to Federal jurisdiction had existed;

“(B) the offense described in subparagraph (A) of this paragraph was committed while the person was on release pending trial for a Federal, State, or local offense; and

“(C) a period of not more than five years has elapsed since the date of conviction, or the release of the person from imprisonment, for the offense described in subparagraph (A) of this paragraph, whichever is later.

“(3) Subject to rebuttal by the person, it shall be presumed that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of the community if the judicial officer finds that there is probable cause to believe that the person committed an offense for which a maximum term of imprisonment of ten years or more is prescribed in the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46, an offense under section 924(c), 956(a), or 2332b of this title, or an offense listed in section 2332b(g)(5)(B) of this title for which a maximum term of imprisonment of 10 years or more is prescribed, or an offense involving a minor victim under section 1201, 1591, 2241, 2242, 2244(a)(1), 2245, 2251, 2251A, 2252(a)(1), 2252(a)(2), 2252(a)(3), 2252A(a)(1), 2252A(a)(2), 2252A(a)(3), 2252A(a)(4), 2260, 2421, 2422, 2423, or 2425 of this title.”.

(c) PROTECTION FOR LEGITIMATE REFUGEES AND ASYLUM SEEKERS.—

(1) PROTECTION FOR LEGITIMATE REFUGEES AND ASYLUM SEEKERS.—The Attorney General, in consultation with the Secretary of Homeland Security, shall develop binding prosecution guidelines for Federal prosecutors to ensure that any prosecution of an alien seeking entry into the United States by fraud is consistent with the United States treaty obligations under Article 31(1) of the Convention Relating to the Status of Refugees, done at Geneva July 28, 1951 (as made applicable by the Protocol Relating to the Status of Refugees, done at New York January 31, 1967 (19 UST 6223)).

(2) NO PRIVATE RIGHT OF ACTION.—The guidelines developed pursuant to paragraph (1), and any internal office procedures related to such guidelines, are intended solely for the guidance of attorneys of the United States. This subsection, such guidelines, and the process for developing such guidelines are not intended to, do not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter.

(3) WAIVER.—The Secretary may grant a waiver from prosecution under chapter 75 of title 18, United States Code, as amended by section 211 of this Act, to a person—

(A) seeking protection, classification, or status under section 208 or 241(b)(3) of the Immigration and Nationality Act, or relief under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment done at New York, December 10, 1994, pursuant to title 8, Code of Federal Regulations;

(B) referred for a credible fear interview, a reasonable fear interview, or an asylum-only hearing under section 235 of the Immigration and Nationality Act or title 8, Code of Federal Regulations; or

(C) has filed an application for classification or status under paragraph (15)(T), (15)(U), (27)(J), or (51) of section 101(a) of the Immigration and Nationality Act, section 216(c)(4)(C), 240A(b)(2), or section 244(a)(3) of such Act.

(d) DIPLOMATIC SECURITY SERVICE.—Section 37(a)(1) of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2709(a)(1)) is amended to read as follows:

“(1) conduct investigations concerning—

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

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

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

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

## Subtitle C—Detention and Removal of Aliens Who Illegally Enter or Remain in the United States

### SEC. 231. DETENTION AND REMOVAL OF ALIENS ORDERED REMOVED.

(a) IN GENERAL.—Section 241(a) (8 U.S.C. 1231(a)) is amended—

(1) in paragraph (1)(A), by striking “Attorney General” and inserting “Secretary of Homeland Security”;

(2) in paragraphs (3), (4), (5), (6), and (7), by striking “Attorney General” each place it appears and inserting “Secretary”;

(3) in paragraph (1)—

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

“(C) EXTENSION OF REMOVAL PERIOD.—



“(i) IN GENERAL.—The Secretary shall extend the removal period for more than a period of 90 days and the alien may remain in detention during such extended period if, during the removal period—

“(I) the alien—

“(aa) fails or refuses to make timely application in good faith for travel or other documents necessary for the alien to depart the United States; or

“(bb) conspires or acts to prevent the removal of the alien subject to an order of removal; and

“(II) the Secretary makes a certification described in paragraph (8)(B) for such alien.

“(ii) STAY OF REMOVAL.—An alien seeking a stay of removal from an immigration judge, a Federal judge, or the Board of Immigration Appeals shall not be deemed under any provision of law to be conspiring or acting to prevent the removal of the alien.

“(iii) REVIEW.—The procedures described in paragraph (8)(E) shall apply to actions taken under this subparagraph.”; and

(B) by adding at the end the following:

“(D) TOLLING OF PERIOD.—If, at the time described in clause (i), (ii), or (iii) of subparagraph (B), the alien is not in the custody of the Secretary under the authority of this Act, the removal period shall not begin until the alien is taken into such custody. If the Secretary lawfully transfers custody of the alien during the removal period to another Federal agency or to a State or local government agency in connection with the official duties of such agency, the removal period shall be tolled until the date on which the alien is returned to the custody of the Secretary.”;

(4) by amending paragraph (2) to read as follows:

“(2) DETENTION.—During the removal period, the Secretary shall detain the alien. Under no circumstances during the removal period shall the Secretary release an alien who has been found inadmissible under section 212(a)(2) or 212(a)(3)(B) or deportable under section 237(a)(2) or 1227(a)(4)(B). If a court, the Board of Immigration Appeals, or an immigration judge orders a stay of removal of an alien who is subject to an administratively final order of removal, the Secretary, in the exercise of discretion, may detain or supervise the alien during the pendency of such stay of removal, subject to the limitations set forth in subparagraphs (3), (6), and (8).”;

(5) in paragraph (3)—

(A) in the matter preceding subparagraph (A), by striking “If” and inserting “Subject to the requirements of paragraphs (6) and (8), if”; and

(B) by striking subparagraph (D) and inserting the following:

“(D) to obey reasonable restrictions on the alien’s conduct or activities, or to perform affirmative acts prescribed by the Secretary—

“(i) to prevent the alien from absconding; or

“(ii) to protect the community;

“(E) if appropriate—

“(i) to utilize an electronic monitoring device;

“(ii) to complete parole and probation requirements for aliens with outstanding obligations under Federal or State law; and

“(F) to comply with any other conditions of such supervision that the Secretary determines is appropriate.”;

(6) in paragraph (6), by inserting “, subject to the provisions of paragraph (8)” after “beyond the removal period”;

(7) by redesignating paragraph (7) as paragraph (11);

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

“(7) PAROLE.—

“(A) IN GENERAL.—If an alien detained pursuant to paragraph (6) is an applicant for admission and is released from detention, such release shall be considered to be made as an exercise of the Secretary’s parole authority under 212(d)(5). Notwithstanding section 212(d)(5), the Secretary may provide that the alien shall not be returned to custody unless—

“(i) the alien violates the conditions of the alien’s parole under this section;

“(ii) the alien’s removal becomes reasonably foreseeable; or

“(iii) the alien violates the conditions set out in paragraph (3).

“(B) NOT AN ADMISSION.—Under no circumstance shall an alien paroled under this section be considered admitted to the United States.

“(8) ADDITIONAL RULES FOR DETENTION OR RELEASE OF ALIENS BEYOND REMOVAL PERIOD.—

“(A) DETENTION AFTER REMOVAL PERIOD.—The Secretary is authorized to detain an alien who has effected an entry into the United States—

“(i) for not more than 90 days beyond the removal period if the Secretary is seeking to make a certification described in subparagraph (B) for the alien; or

“(ii) for more than 90 days beyond the removal period if the Secretary has made a certification described in subparagraph (B) for the alien, subject to the conditions set out in this paragraph.

“(B) CERTIFICATION.—A certification described in this subparagraph is a written certification made by the Secretary in which the Secretary determines—

“(i) that the alien is significantly likely to be removed in the reasonably foreseeable future;

“(ii) that the alien has failed to make a timely application, in good faith, for travel documents or has otherwise conspired or acted to prevent the removal of the alien;

“(iii) that the alien would have been removed if the alien had not—

“(I) failed or refused to make all reasonable efforts to comply with the removal order;

“(II) failed or refused to fully cooperate with the efforts of the Secretary to establish the alien’s identity and carry out the removal order, including failing to submit a timely application, in good faith, for travel or other documents necessary for the alien’s departure from the United States; or

“(III) conspired or acted to prevent such removal;

“(iv) in consultation with the Secretary of Health and Human Services, that the alien has a highly contagious disease that poses a threat to public safety, in which case the alien may be quarantined in a civil medical facility;

“(v) on the basis of information available to the Secretary (including classified and national security information), regardless of the grounds upon which the alien was ordered removed and pursuant to a written certification under section 236A, that there is reason to believe that the release of the alien would threaten the national security of the United States; or

“(vi) that the release of the alien would threaten the safety of the community, notwithstanding conditions of release designed to ensure the safety of the community or any person and the alien—

“(I) has been convicted of 1 or more aggravated felonies (as defined in section 101(a)(43)(A)), or of 1 or more attempts or conspiracies to commit any such aggravated felonies for which the alien served an aggregate term of imprisonment of at least 5 years and the alien is likely to engage in acts of violence in the future; or

“(II) because of a mental condition or personality disorder (certified under section 232(b)) and behavior associated with that condition or disorder, is likely to engage in acts of violence in the future, in which case the alien may be referred for review and evaluation for civil commitment pursuant to the civil commitment statute of the State in which the alien resides.

“(C) DELEGATION.—Notwithstanding any other provision of law, the Secretary may not delegate the authority to make a certification described in subparagraph (B) to any official lower than the Assistant Secretary for Immigration and Customs Enforcement.

“(D) ADMINISTRATIVE REVIEW.—

“(i) IN GENERAL.—The Secretary shall establish an administrative review process to permit an alien to appeal a decision by the Secretary to detain the alien after the removal period under subparagraph (A) or to extend the removal period for the alien under paragraph (1)(C).

“(ii) REVIEW.—An immigration judge shall review a determination by the Secretary to detain an alien under subparagraph (A) or paragraph (1)(C). An immigration judge shall uphold such determination of the Secretary if the Secretary establishes at a hearing, by clear and convincing evidence, that such detention is authorized under subparagraph (A) or paragraph (1)(C). In making this determination, the court shall disclose, if otherwise discoverable, to the alien, the counsel of the alien, or both, under procedures and standards set forth in the Classified Information Procedures Act (18 U.S.C. App.), any evidence that the Secretary relied on in making a determination under this section un-

less the court finds that such disclosure would not assist in determining any legal or factual issue pertinent to the case. The decision of the immigration judge shall not be subject to appeal, but shall be reviewable in a habeas corpus proceeding under section 2241 of title 28, United States Code.

“(E) RENEWAL OF EXTENDED DETENTION.—

“(i) RENEWAL OF DETENTION.—The Secretary may renew a certification under subparagraph (B) every 180 days after providing the alien with an opportunity to submit documents or other evidence in support of release. Unless the Secretary determines that continued detention under subparagraph (A) or paragraph (1)(C) is warranted, the Secretary shall release the alien subject to the conditions of supervision described in paragraph (3).

“(ii) REVIEW.—Any renewal of a certification under clause (i) shall be subject to review as described in subparagraph (E) and any such review shall be completed before the date that is 180 days after the date the alien’s detention was continued under subparagraph (A) or paragraph (1)(C) or the date of the previous renewal of such detention under clause (i).

“(F) APPLICABILITY.—This paragraph and paragraphs (6) and (7) shall apply to any alien returned to custody under paragraph (9) as if the removal period terminated on the day of the redetention.

“(9) REDETENTION.—The Secretary may not detain any alien subject to a final removal order who has previously been released from custody unless—

“(A) the alien fails to comply with the conditions of departure applicable to the alien;

“(B) the alien fails to continue to satisfy the conditions of supervision under paragraph (3); or

“(C) upon reconsideration, the Secretary makes a certification for the alien described in paragraph (8)(B).

“(10) JUDICIAL REVIEW.—Without regard to the place of confinement, judicial review of any action or decision made pursuant to paragraph (6), (7), or (8) shall be available exclusively in a habeas corpus proceeding brought in a United States district court in the judicial district in which the alien is detained or in which the alien’s removal proceeding was initiated.”

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

- (1) shall take effect on the date of the enactment of this Act; and
- (2) shall apply to—

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

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

**SEC. 232. INCREASED CRIMINAL PENALTIES FOR IMMIGRATION VIOLATIONS.**

(a) PENDING PROCEEDINGS.—Section 204(b) (8 U.S.C. 1154(b)) is amended by adding at the end “A petition may not be approved under this section if the petitioner has been found removable from the United States.”

(b) CONDITIONAL PERMANENT RESIDENT STATUS.—

(1) IN GENERAL.—Section 216(e) (8 U.S.C. 1186a(e)) is amended by inserting “if the alien applied for the removal of condition not less than 90 days before applying for naturalization” before the period at the end.

(2) CERTAIN ALIEN ENTREPRENEURS.—Section 216A(e) (8 U.S.C. 1186b(e)) is amended by inserting “if the alien applied for the removal of condition not less than 90 days before applying for naturalization” before the period at the end.

(c) CONCURRENT NATURALIZATION AND REMOVAL PROCEEDINGS.—Section 318 (8 U.S.C. 1429) is amended to read as follows:

**“SEC. 318. PREREQUISITE TO NATURALIZATION; BURDEN OF PROOF.**

“(a) IN GENERAL.—Except as otherwise provided in this title, no person shall be naturalized unless the person has been lawfully admitted to the United States for permanent residence in accordance with all applicable provisions of this Act. The burden of proof shall be upon such person to show that the person entered the United States lawfully, and the time, place, and manner of such entry into the United States, but in presenting such proof the person shall be entitled to the production of the person’s immigrant visa, if any, or of other entry document, if any, and of any other documents and records, not considered by the Secretary of Homeland Security to be confidential, pertaining to such entry, in the custody of the Department of Homeland Security.

“(b) OTHER PROCEEDINGS.—Notwithstanding the provisions of section 405(b), and except as provided in sections 328 and 329, no person shall be naturalized against whom there is outstanding a final finding of deportability pursuant to a warrant of arrest issued under the provisions of this or any other Act and no application for naturalization shall be considered by the Secretary of Homeland Security or any court if there is pending against the applicant any removal proceeding or other proceeding to determine the applicant’s inadmissibility or deportability, or to determine whether the applicant’s lawful permanent resident status should be rescinded, if the removal proceeding or other proceeding was commenced before a final agency decision on naturalization made pursuant to a hearing requested under section 336(a). The findings of the Secretary in terminating removal proceedings or canceling the removal of an alien under this Act shall not be binding upon the Secretary in determining whether such person has established eligibility for naturalization under this title.”

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

“(b) REQUEST FOR HEARING BEFORE DISTRICT COURT.—If a final administrative decision is not rendered under section 335 before the end of the 180-day period beginning on the date on which the examination is conducted under such section, the applicant may apply to the United States district court for the district in which the applicant resides for a hearing on the matter. Such court has jurisdiction over the matter and may—

“(1) determine the matter; or

“(2) remand the matter, with appropriate instructions, to the Secretary of Homeland Security, to determine the matter.”

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

(1) shall apply to any act that occurred on or after the date of enactment of this Act; and

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

**SEC. 233. AGGRAVATED FELONY.**

(a) DEFINITION OF AGGRAVATED FELONY.—Section 101(a)(43) (8 U.S.C. 1101(a)(43)) is amended—

(1) in the matter preceding subparagraph (A), by striking “The term ‘aggravated felony’ means—” and inserting “Notwithstanding any other provision of law, the term ‘aggravated felony’ applies to an offense described in this paragraph, whether in violation of Federal or State law, and to such an offense in violation of the law of a foreign country for which the term of imprisonment was completed within the previous 15 years, and regardless of whether the conviction was entered before, on, or after September 30, 1996 and means—”;

(2) in subparagraph (N), by striking “paragraph (1)(A) or (2) of” and inserting “paragraph (1)(A), (2), or (4) of”; and

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

(b) EFFECTIVE DATE AND APPLICATION.—

(1) IN GENERAL.—The amendments made by subsection (a) shall—

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

(B) apply to any act that occurred on or after the date of enactment of this Act.

(2) APPLICATION OF HIRAIRA AMENDMENTS.—The amendments to section 101(a)(43) of the Immigration and Nationality Act made by section 321 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (division C of Public Law 104–208; 110 Stat. 3009–627) shall continue to apply, whether the conviction was entered before, on, or after September 30, 1996.

**SEC. 234. INCREASED CRIMINAL PENALTIES RELATED TO GANG VIOLENCE, REMOVAL, AND ALIEN SMUGGLING.**

(a) CRIMINAL STREET GANGS.—

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

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

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

“(F) MEMBERS OF CRIMINAL STREET GANGS.—Unless the Secretary of Homeland Security or the Attorney General waives the application of this subparagraph, any alien who has been convicted of a crime under section 521 of title 18, United States Code, is inadmissible.”

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

“(F) MEMBERS OF CRIMINAL STREET GANGS.—Unless the Secretary of Homeland Security or the Attorney General waives the application of this

subparagraph, any alien who has been convicted of a crime under section 521 of title 18, United States Code, is deportable.”.

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

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

(B) in subsection (c)(2)(B)—

(i) in clause (i), by striking “, or” at the end;

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

(iii) by adding at the end the following:

“(iii) the alien has been convicted of a crime under section 521 of title 18, United States Code.”; and

(C) in subsection (d)—

(i) by striking paragraph (3); and

(ii) in paragraph (4), by adding at the end the following: “The Secretary of Homeland Security shall detain an alien provided temporary protected status under this section if the alien is subject to detention under section 236(c)(1).”.

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

(1) in subsection (a)(1)—

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

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

(i) by striking “or imprisoned not more than four years” and inserting “and imprisoned for not more than 5 years”; and

(ii) by striking “, or both”; and

(2) in subsection (b), by striking “not more than \$1000 or imprisoned for not more than one year, or both” and inserting “under title 18, United States Code, and imprisoned for not more than 5 years (or for not more than 10 years if the alien is removable under paragraph (1)(E), (2), or (4) of section 237(a)).”.

(c) ALIEN SMUGGLING AND RELATED OFFENSES.—

(1) IN GENERAL.—Section 274 (8 U.S.C. 1324) is amended—

(A) by striking the section heading and all that follows through subsection (a)(1)(B)(iii);

(B) by striking subsection (a)(1)(C) and all that follows through the end;

(C) by redesignating subsection (a)(1)(B)(iv) as subparagraph (G) and indenting such subparagraph (G) four ems from the left margin;

(D) by amending subparagraph (G), as redesignated by subparagraph (C), by striking “in the case of a violation of subparagraph (A) (i), (ii), (iii), (iv), or (v) resulting” and inserting “if the offense resulted”;

(E) by inserting before subparagraph (G), as redesignated by subparagraph (C), the following:

“SEC. 274. ALIEN SMUGGLING AND RELATED OFFENSES.

“(a) CRIMINAL OFFENSES AND PENALTIES.—

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

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

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

“(C) transports, moves, harbors, conceals, or shields from detection a person outside of the United States knowing or in reckless disregard of the fact that such person is an alien in unlawful transit from 1 country to another or on the high seas, under circumstances in which the alien is seeking to enter the United States without official permission or legal authority;

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

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

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

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

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

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

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

“(i) if the violation is the offender’s first violation under this subparagraph, shall be fined under such title, imprisoned for not more than 15 years, or both; or

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

“(C) if the offense furthered or aided the commission of any other offense against the United States or any State that is punishable by imprisonment for more than 1 year, shall be fined under such title, imprisoned for not more than 20 years, or both;

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

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

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

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

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

“(F) shall be fined under such title and imprisoned for not more than 30 years if the offense involved an alien who the offender knew was—

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

or

“(ii) intending to engage in terrorist activity; and”

(F) by inserting after subparagraph (G), as redesignated by subparagraph (C), the following:

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

“(A) for a religious denomination having a bona fide nonprofit, religious organization in the United States, or the agents or officers of such denomination or organization, to encourage, invite, call, allow, or enable an alien who is present in the United States to perform the vocation of a minister or missionary for the denomination or organization in the United States as a volunteer who is not compensated as an employee, notwithstanding the provision of room, board, travel, medical assistance, and other basic living expenses, provided the minister or missionary has been a member of the denomination for at least 1 year; or

“(B) for an individual or organization acting without compensation or expectation of compensation and not previously convicted of a violation of this section, to—

“(i) provide, or attempt to provide, an alien who is present in the United States with humanitarian assistance, including medical care, housing, counseling, victim services, and food; or

“(ii) transport the alien to a location where such assistance can be rendered.

“(5) EXTRATERRITORIAL JURISDICTION.—There is extraterritorial Federal jurisdiction over the offenses described in this subsection.”; and

(G) by striking subsections (b) through (e) and inserting the following:“(b) EMPLOYMENT OF UNAUTHORIZED ALIENS.—

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

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

“(A) is an unauthorized alien (as defined in section 274A);

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

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

“(c) SEIZURE AND FORFEITURE.—

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

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

“(3) PRIMA FACIE EVIDENCE IN DETERMINATIONS OF VIOLATIONS.—In determining whether a violation of subsection (a) has occurred, prima facie evidence that an alien involved in the alleged violation lacks lawful authority to come to, enter, or reside in the United States, or that such alien had come to, entered, or resided in the United States in violation of law shall include—

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

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

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

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

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

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

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

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

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

“(f) OUTREACH PROGRAM.—

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

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

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

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

“(3) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums are necessary for the fiscal years 2008 through 2012 to carry out this subsection.”.

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

“Sec. 274. Alien smuggling and related offenses.”

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

(1) in paragraph (1)—

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

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

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

(2) by adding at the end the following:

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

**SEC. 235. ILLEGAL ENTRY.**

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

**“SEC. 275. ILLEGAL ENTRY.**

**“(a) IN GENERAL.—**

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

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

**“(B)** knowingly eludes examination or inspection by an immigration officer (including failing to stop at the command of such officer), or a customs or agriculture inspection at a port of entry; or

**“(C)** knowingly enters or crosses the border to the United States by means of a willfully false or misleading representation or the knowing concealment of a material fact (including such representation or concealment in the context of arrival, reporting, entry, or clearance requirements of the customs laws, immigration laws, agriculture laws, or shipping laws).

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

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

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

**“(C)** if the violation occurred after the alien had been convicted of 3 or more misdemeanors or for a felony, shall be fined under such title, imprisoned not more than 5 years, or both;

**“(D)** if the violation occurred after the alien had been convicted of a felony for which the alien received a term of imprisonment of not less than 30 months, shall be fined under such title, imprisoned not more than 10 years, or both; and

**“(E)** if the violation occurred after the alien had been convicted of a felony for which the alien received a term of imprisonment of not less than 60 months, such alien shall be fined under such title, imprisoned not more than 15 years, or both.

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

**“(A)** alleged in the indictment or information; and

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

**“(4) ATTEMPT.—**Whoever attempts to commit any offense under this section shall be punished in the same manner as for a completion of such offense.

**“(b) IMPROPER TIME OR PLACE; CIVIL PENALTIES.—**Any alien who is apprehended while entering, attempting to enter, or knowingly crossing or attempting to cross the border to the United States at a time or place other than as designated



by immigration officers shall be subject to a civil penalty, in addition to any criminal or other civil penalties that may be imposed under any other provision of law, in an amount equal to—

“(1) not less than \$50 or more than \$250 for each such entry, crossing, attempted entry, or attempted crossing; or

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

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

“Sec. 275. Illegal entry.”.

**SEC. 236. ILLEGAL REENTRY.**

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

**“SEC. 276. REENTRY OF REMOVED ALIENS.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“(A) was not required to obtain such advance consent under this Act or any prior Act; and

“(B) had complied with all other laws and regulations governing the alien’s admission into the United States;

“(3) the prior order of removal was based on charges filed against the alien before the alien reached 18 years of age; or

“(4) the alien has been found eligible for protection from removal pursuant to section 208.

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

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

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

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

“(g) REENTRY OF ALIEN REMOVED PRIOR TO COMPLETION OF TERM OF IMPRISONMENT.—Any alien removed pursuant to section 241(a)(4) who enters, attempts to enter, crosses the border to, attempts to cross the border to, or is at any time found in, the United States shall be incarcerated for the remainder of the sentence of imprisonment which was pending at the time of deportation without any reduction for parole or supervised release unless the alien affirmatively demonstrates that the Secretary of Homeland Security has expressly consented to the alien’s reentry. Such alien shall be subject to such other penalties relating to the reentry of removed aliens as may be available under this section or any other provision of law.

“(h) LIMITATION.—It is not aiding and abetting a violation of this section for an individual, acting without compensation or the expectation of compensation, to—

“(1) provide, or attempt to provide, an alien with humanitarian assistance, including emergency medical care, food; or

“(2) transport the alien to a location where such assistance can be rendered.”.

## TITLE III—EMPLOYMENT VERIFICATION

### SEC. 301. EMPLOYMENT VERIFICATION.

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

#### “SEC. 274A. EMPLOYMENT VERIFICATION.

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

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

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

“(B) to hire in the United States an individual unless such employer meets the requirements of subsections (b) and (c).

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

“(3) USE OF LABOR THROUGH CONTRACT.—An employer who uses a contract, subcontract, or exchange entered into, renegotiated, or extended after the date of the enactment of the STRIVE Act of 2007, to obtain the labor of an alien in the United States knowing or with reckless disregard that the alien is an unauthorized alien with respect to performing such labor, shall be considered to have hired the alien for employment in the United States in violation of paragraph (1)(A).

“(4) ORDER OF INTERNAL REVIEW AND CERTIFICATION OF COMPLIANCE.—

“(A) AUTHORITY TO REQUIRE CERTIFICATION.—If the Secretary has reasonable cause to believe that an employer has failed to comply with this section, the Secretary is authorized, at any time, to require that the employer certify that the employer is in compliance with this section or has instituted a program to come into compliance with the section.

“(B) CONTENT OF CERTIFICATION.—Not later than 60 days after the date an employer receives a request for a certification under subparagraph (A) the employer shall certify under penalty of perjury that—

“(i) the employer is in compliance with the requirements of subsections (b) and (c); or

“(ii) that the employer has instituted a program to come into compliance with such requirements.

“(C) EXTENSION.—The 60-day period referred to in subparagraph (B), may be extended by the Secretary for good cause, at the request of the employer.

“(D) PUBLICATION.—The Secretary is authorized to publish in the Federal Register standards or methods for certification under subparagraph (A)

and for specific recordkeeping practices with respect to such certification, and procedures for the audit of any records related to such certification.

“(5) DEFENSE.—

“(A) IN GENERAL.—Subject to subparagraph (B), an employer that establishes that the employer has complied in good faith, notwithstanding a technical or procedural failure, with the requirements of subsections (b) and (c) with respect to the hiring of an individual has established an affirmative defense that the employer has not violated paragraph (1)(B) with respect to such hiring.

“(B) EXCEPTION.—Until the date that an employer is required to participate in the Electronic Employment Verification System under subsection (c), the employer may establish an affirmative defense under subparagraph (A) without a showing of compliance with subsection (c).

“(6) NO AUTHORIZATION OF NATIONAL IDENTIFICATION CARDS.—Nothing in this title may be construed to authorize, directly or indirectly, the issuance, use, or establishment of a national identification card or a national identification system.

“(b) DOCUMENT VERIFICATION REQUIREMENTS.—An employer hiring an individual for employment in the United States shall verify that the individual is eligible for such employment by meeting the following requirements:

“(1) ATTESTATION BY EMPLOYER.—

“(A) REQUIREMENTS.—

“(i) IN GENERAL.—The employer shall attest, under penalty of perjury and on a form prescribed by the Secretary, that the employer has verified the identity and eligibility for employment of the individual by examining a document described in subparagraph (B).

“(ii) SIGNATURE REQUIREMENTS.—An attestation required by clause (i) may be manifested by a handwritten or electronic signature.

“(iii) STANDARDS FOR EXAMINATION.—An employer has complied with the requirement of this paragraph with respect to examination of a document if the document examined reasonably appears on its face to be genuine and relates to the individual whose identity and eligibility for employment in the United States is being verified. Nothing in this paragraph may be construed as requiring the employer to solicit the production of any other document or as requiring the individual to produce such other document.

“(B) EMPLOYMENT AND IDENTIFICATION DOCUMENTS.—A document described in this subparagraph is—

“(i) in the case of an individual who is a national of the United States—

“(I) a United States passport;

“(II) a biometric, machine readable, tamper-resistant Social Security card, as described in section 205(c)(2)(G) of the Social Security Act (42 U.S.C. 405(c)(2)(G)); or

“(III) a driver’s license or identity card issued by a State, the Commonwealth of the Northern Mariana Islands, or an outlying possession of the United States that satisfies the requirements of Division B of Public Law 109–13 (119 Stat. 302);

“(ii) in the case of an alien who is lawfully admitted for permanent residence in the United States—

“(I) a permanent resident card, as specified by the Secretary;

or

“(II) a biometric, machine readable, tamper-resistant Social Security card, as described in section 205(c)(2)(G) of the Social Security Act (42 U.S.C. 405(c)(2)(G));

“(iii) in the case of an alien who is not lawfully admitted for permanent residence and who is authorized under this Act or by the Secretary to be employed in the United States—

“(I) an employment authorization card, as specified by the Secretary, that—

“(aa) contains a photograph of the individual or other identifying information, including name, date of birth, gender, and address; and

“(bb) contains security features to make the document resistant to tampering, counterfeiting, and fraudulent use; or

“(II) a biometric, machine readable, tamper-resistant Social Security card, as described in section 205(c)(2)(G) of the Social Security Act (42 U.S.C. 405(c)(2)(G));

“(iv) in the case of an individual who is unable to obtain a document described in clause (i), (ii), or (iii), a document designated by the Secretary that—

“(I) contains a photograph of the individual or other identifying information, including name, date of birth, gender, and address; and

“(II) contains security features to make the document resistant to tampering, counterfeiting, and fraudulent use; or

“(v) until the date that an employer is required to participate in the Electronic Employment Verification System under subsection (c) or is participating in such System on a voluntary basis, a document, or a combination of documents, of such type that, as of the date of the enactment of the STRIVE Act of 2007, the Secretary had established by regulation were sufficient for purposes of this section.

“(C) SPECIAL RULE FOR MINORS.—Notwithstanding subparagraph (B), a minor who is under the age of 18 and who is unable to produce an identity document described in clause (i) through (v) of subparagraph (B) is exempt from producing such a document if—

“(i) a parent or legal guardian of the minor completes a form prescribed by the Secretary, and in the space for the minor’s signature, the parent or legal guardian writes the words, ‘minor under age 18’;

“(ii) a parent or legal guardian of the minor completes a form prescribed by the Secretary, the ‘Preparer/Translator certification’; and

“(iii) the employer of the minor writes in a form prescribed by the Secretary, in the space after the words ‘Document Identification #’ the words, ‘minor under age 18’.

“(D) SPECIAL RULE FOR INDIVIDUALS WITH DISABILITIES.—Notwithstanding subparagraph (B), an individual with a disability (as defined in section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102)) who is unable to produce an identity document described in clause (i) through (v) of subparagraph (B), and who is being placed into employment by a nonprofit organization or association or as part of a rehabilitation program, and an individual who demonstrates mental retardation whether or not the individual participates in an employment placement program through a nonprofit organization or association or as part of a rehabilitation program, is exempt from producing such a document if—

“(i) a parent or legal guardian of the individual, or a representative from the nonprofit organization, association, or rehabilitation program placing the individual into a position of employment completes a form prescribed by the Secretary, and in the space for the covered individual’s signature, writes the words, ‘special placement’;

“(ii) a parent or legal guardian of the individual or the program representative, completes a form prescribed by the Secretary, the ‘Preparer/Translator certification’; and

“(iii) the employer of the covered individual writes in a form prescribed by the Secretary, in the space after the words ‘Document Identification #’ the words, ‘special placement’.

“(E) AUTHORITY TO PROHIBIT USE OF CERTAIN DOCUMENTS.—

“(i) AUTHORITY.—If the Secretary finds that a document or class of documents described in clause (i) through (v) of subparagraph (B) is not reliable to establish identity or eligibility for employment (as the case may be) or is being used fraudulently to an unacceptable degree, the Secretary is authorized to prohibit, or impose conditions on, the use of such document or class of documents for purposes of this subsection.

“(ii) REQUIREMENT FOR PUBLICATION.—The Secretary shall publish notice of any findings under clause (i) in the Federal Register.

“(2) ATTESTATION OF INDIVIDUAL.—

“(A) IN GENERAL.—The individual shall attest, under penalty of perjury on a form prescribed by the Secretary, that the individual is—

“(i) a national of the United States;

“(ii) an alien lawfully admitted for permanent residence; or

“(iii) an alien who is authorized under this Act or by the Secretary to be employed in the United States.

“(B) SIGNATURE FOR EXAMINATION.—An attestation required by subparagraph (A) may be manifested by a handwritten or electronic signature.

“(C) PENALTIES.—An individual who falsely represents that the individual is eligible for employment in the United States in an attestation required by subparagraph (A) shall, for each such violation, be subject to a

fine of not more than \$5,000, a term of imprisonment not to exceed 3 years, or both.

“(3) RETENTION OF ATTESTATION.—The employer shall retain an attestation described in paragraph (1) or (2) for an individual, either in electronic, paper, microfiche, or microfilm form, and make such attestations available for inspection by an officer of the Department of Homeland Security, any other person designated by the Secretary, the Special Counsel for Immigration-Related Unfair Employment Practices of the Department of Justice, or the Secretary of Labor—

“(A) during a period beginning on the date of the hiring of the individual and ending on the date that is the later of—

“(i) 3 years after the date of such hiring; or

“(ii) 1 year after the date the individual’s employment is terminated; or

“(B) during a shorter period determined by the Secretary, if the Secretary reduces the period described in subparagraph (A) for the employer or a class of employers that includes the employer.

“(4) DOCUMENT RETENTION AND RECORDKEEPING REQUIREMENTS.—

“(A) RETENTION OF DOCUMENTS.—Notwithstanding any other provision of law, an employer shall retain, for the applicable period described in paragraph (3), the following documents:

“(i) IN GENERAL.—A paper, microfiche, microfilm, or electronic copy of each document described in paragraph (1)(B) presented by an individual that is designated as a copied document.

“(ii) OTHER DOCUMENTS.—A record of any action taken, and copies of any correspondence written or received, with respect to the verification of an individual’s identity or eligibility for employment in the United States, including records received through the Electronic Employment Verification System under subsection (c).

“(B) USE OF RETAINED DOCUMENTS.—An employer shall use copies retained under clause (i) or (ii) of subparagraph (A) only for the purposes of complying with the requirements of this subsection, except as otherwise permitted under law.

“(5) PENALTIES.—An employer that fails to comply with the requirement of this subsection shall be subject to the penalties described in subsection (d)(4)(B).

“(c) ELECTRONIC EMPLOYMENT VERIFICATION SYSTEM.—

“(1) REQUIREMENT FOR SYSTEM.—The Secretary, in cooperation with the Commissioner of Social Security, shall implement an Electronic Employment Verification System (referred to in this subsection as the ‘System’) as described in this subsection.

“(2) TECHNOLOGY STANDARD TO VERIFY EMPLOYMENT ELIGIBILITY.—

“(A) IN GENERAL.—The Secretary based upon recommendations from the Director of the National Institute of Standards and Technology, shall not later than 180 days after the date of the enactment of the STRIVE Act of 2007 develop and certify a technology standard as described in this subparagraph. The Secretary shall have discretion to extend the 180-day period if the Secretary determines that such extension will result in substantial improvement of the System.

“(B) INTEGRATED.—Notwithstanding any other provision of Federal law, the technology standard developed shall be the technological basis for a cross-agency, cross-platform electronic system that is a cost-effective, efficient, fully integrated means to share immigration and Social Security information necessary to confirm the employment eligibility of all individuals seeking employment.

“(C) REPORT.—Not later than 18 months after the date of the enactment of the STRIVE Act of 2007, the Secretary and the Director of the National Institute of Standards and Technology shall jointly submit to Congress a report describing the development, implementation, efficacy, and privacy implications of the technology standard and the System.

“(3) IDENTITY AND EMPLOYMENT ELIGIBILITY VERIFICATION.—An employer shall verify the identity and eligibility for employment of an individual hired by the employer through the System as follows:

“(A) INITIAL INQUIRY.—The employer shall submit an inquiry through the System to seek confirmation of the individual’s identity and eligibility for employment in the United States not later than 5 working days after the date such employment actually commences.

“(B) INITIAL DETERMINATION.—The Secretary, through the System, shall respond to an inquiry described in subparagraph (A) not later than 1 work-

ing day after such inquiry is submitted. Such response shall be a determination that—

“(i) confirms the individual’s identity and eligibility for employment in the United States; or

“(ii) the System is tentatively unable to confirm the individual’s identity or eligibility for employment (referred to in this section as a ‘tentative nonconfirmation’).

“(C) MANUAL VERIFICATION.—

“(i) REQUIREMENT.—If the System provides a tentative nonconfirmation with respect to an individual, the Secretary shall—

“(I) provide the individual an opportunity to submit information to verify the individual’s identity and eligibility for employment as described in subparagraph (D); and

“(II) conduct a manual verification to determine the individual’s identity and eligibility for employment.

“(ii) DETERMINATION.—Not later than 30 days after the last day that an individual may submit information under subparagraph (D) the Secretary, through the System, shall provide to the employer the results of the manual verification required by clause (i). Such results shall be a determination that—

“(I) confirms the individual’s identity and eligibility for employment in the United States; or

“(II) the System is unable to confirm the individual’s identity or eligibility for employment (referred to in this section as a ‘final nonconfirmation’).

“(D) SUBMISSION OF INFORMATION.—An individual who is the subject of a tentative nonconfirmation may submit to the Secretary, through the System, information to confirm such individual’s identity or eligibility for employment or to otherwise contest such tentative nonconfirmation not later than 15 days after the individual receives notice of such tentative nonconfirmation.

“(E) EXTENSION.—The 15-day period referred to in subparagraph (D) may be extended by the Secretary for good cause at the request of the individual.

“(F) DEFAULT CONFIRMATION AND REVOCATION.—If the Secretary, through the System, fails to provide a determination described in clause (i) or (ii) of subparagraph (B) or subclause (I) or (II) of subparagraph (C)(ii) for an individual within the period described in such subparagraph, the Secretary shall, through the System, deem that the individual’s identity and eligibility for employment are confirmed through the System and provide notice of such confirmation to the employer.

“(G) REVOCATION.—In the case of a default confirmation in subclause (F), the Secretary reserves the right to revoke such default confirmation if the Secretary later determines the individual is, in fact, not eligible to work. The Secretary shall provide notice of such revocation and final nonconfirmation to the employer. The individual shall have the right to administrative review under paragraph (19) and judicial review under paragraph (20) of such final nonconfirmation.

“(H) PROHIBITION ON TERMINATION FOR TENTATIVE NONCONFIRMATION.—An employer may not terminate the employment of an individual based on tentative nonconfirmation.

“(I) TERMINATION OF EMPLOYEE.—If an employer receives a final nonconfirmation with respect to an individual, the employer shall terminate the employment of such individual.

“(J) ADMINISTRATIVE AND JUDICIAL REVIEW.—If the Secretary, through the System, provides a final nonconfirmation with respect to an individual, the individual shall have the right to administrative review under paragraph (19) and judicial review under paragraph (20) of such final nonconfirmation.

“(K) RIGHT TO REVIEW AND CORRECT SYSTEM INFORMATION.—The Secretary, in consultation with the Commissioner of Social Security, shall establish procedures to permit an individual to verify the individual’s eligibility for employment in the United States prior to obtaining or changing employment, to view the individual’s own records in the System in order to ensure the accuracy of such records, and to correct or update the information used by the System regarding the individual.

“(L) REVERIFICATION.—

“(i) IN GENERAL.—It is an unfair immigration-related employment practice under section 274B for an employer to reverify an individual’s identity and employment eligibility unless—

“(I) the individual’s work authorization expires as described in section 274a.2(b)(1)(vii) of title 8, Code of Federal Regulation or a subsequent similar regulation, in which case—

“(aa) not later than 30 days prior to the expiration of the individual’s work authorization, the Secretary shall notify the employer of such expiration and of the employer’s need to reverify the individual’s employment eligibility; and

“(bb) the individual may present, and the employer shall accept, a receipt for the application for a replacement document, extension of work authorization, or a document described in clause (i) through (v) of subparagraph (B) of subsection (b)(1) in lieu of the required document by the expiration date in order to comply with any requirement to examine documentation imposed by this section, and the individual shall present the required document within 90 days from the date the employment authorization expires. If the actual document or replacement document is to be issued by United States Citizenship and Immigration Services and the application is still under review 60 days after the employment authorization expiration date, United States Citizenship and Immigration Services shall by the 60th day after the expiration date of the employment authorization, issue a letter for the applicant to take to the employer which shall automatically grant the individual an additional 90 days to present the document or replacement document; and

“(II) the employer has actual or constructive knowledge that the individual is not authorized to work in the United States; or

“(III) unless otherwise required by law.

“(ii) CONTINUING EMPLOYMENT.—An employer may not verify an individual’s employment eligibility if the individual is continuing in his or her employment as described in section 274a.2(b)(1)(viii) of title 8, Code of Federal Regulation or any subsequent similar regulation.

“(iii) SPECIAL RULE FOR CRITICAL INFRASTRUCTURE.—Upon the implementation of the System, the Secretary shall require all agencies and departments of the United States (including the Armed Forces), a State government (including a State employment agency before making a referral), or any other employer if it employs individuals working in a location that is a Federal, State, or local government building, a military base, a nuclear energy site, a weapon site, or an airport, to complete a one time reverification of all individuals current employed at these facilities.

“(4) DESIGN AND OPERATION OF SYSTEM.—The Secretary, in consultation with the Commissioner of Social Security, shall design and operate the System—

“(A) to maximize reliability and ease of use by employers in a manner that protects and maintains the privacy and security of the information maintained in the System;

“(B) to permit an employer to submit an inquiry to the System through the Internet or other electronic media or over a telephone line;

“(C) to respond to each inquiry made by an employer;

“(D) to maintain a record of each such inquiry and each such response;

“(E) to track and record any occurrence when the System is unable to receive such an inquiry;

“(F) to include appropriate administrative, technical, and physical safeguards to prevent unauthorized disclosure of personal information during use, transmission, storage, or disposal of that information, including the use of encryption, carrying out periodic testing of the System to detect, prevent, and respond to vulnerabilities or other failures, and utilizing periodic security updates;

“(G) to allow for monitoring of the use of the System and provide an audit capability;

“(H) to have reasonable safeguards, developed in consultation with the Attorney General, to prevent employers from engaging in unlawful discriminatory practices;

“(I) to permit an employer to submit the attestations required by subsection (b); and

“(J) to permit an employer to utilize any technology that is consistent with this section and with any regulation or guidance from the Secretary to streamline the procedures to comply with the attestation and employment eligibility verification requirements contained in this section.

“(5) LIMITATION ON DATA ELEMENTS STORED.—The System and any databases created by the Commissioner of Social Security or the Secretary for use in the System shall store only the minimum data about each individual for whom an inquiry was made through the System to facilitate the successful operation of the System, and in no case shall the data stored be other than—

“(A) the individual’s full legal name;

“(B) the individual’s date of birth;

“(C) the individual’s social security account number or employment authorization status identification number;

“(D) the address of the employer making the inquiry and the dates of any prior inquiries concerning the identity and authorization of the individual by the employer or any other employer and the address of such employer;

“(E) a record of each prior determination regarding the individual’s identity and employment eligibility issued through the System; and

“(F) in the case of the individual who successfully contested or appealed a tentative nonconfirmation or final nonconfirmation, explanatory information concerning the successful resolution of any erroneous data or confusion regarding the identity or eligibility for employment of the individual, including the source of that error.

“(6) RESPONSIBILITIES OF THE COMMISSIONER OF SOCIAL SECURITY.—The Commissioner of Social Security shall establish a reliable, secure method to provide through the System, within the time periods required by subparagraphs (B) and (C) of paragraph (2)—

“(A) a determination of whether the name and social security account number provided, with respect to an individual, in an inquiry by an employer, match such information maintained by the Commissioner in order to confirm the validity of the information provided;

“(B) a determination of whether such social security account number was issued to the individual;

“(C) a determination of whether such social security account number is valid for employment in the United States; and

“(D) a determination described in subparagraph (B) or (C) of paragraph (2), in a manner that ensures that other information maintained by the Commissioner is not disclosed or released to employers through the System.

“(7) RESPONSIBILITIES OF THE SECRETARY.—The Secretary shall establish a reliable, secure method to provide, through the System, within the time periods required by subparagraphs (B) and (C) of paragraph (2)—

“(A) a determination of whether the name and alien identification or authorization number provided, with respect to an individual, in an inquiry by an employer match such information maintained by the Secretary in order to confirm the validity of the information provided;

“(B) a determination of whether such number was issued to the individual;

“(C) a determination of whether the individual is authorized to be employed in the United States; and

“(D) any other related information that the Secretary determines is appropriate.

“(8) PRIVACY IMPACT ASSESSMENT.—The Commissioner of Social Security and the Secretary shall each complete a privacy impact assessment as described in section 208 of the E-Government Act of 2002 (Public Law 107–347; 44 U.S.C. 3501 note) with regard to the System.

“(9) TRAINING.—The Commissioner of Social Security and the Secretary shall provide appropriate training materials to employers participating in the System to ensure that such employers are able to utilize the System in compliance with the requirements of this section.

“(10) HOTLINE.—The Secretary shall establish a fully staffed 24-hour hotline that shall receive inquiries from individuals or employers concerning determinations made by the System and shall identify for an individual, at the time of inquiry, the particular data that resulted in a determination that the System was unable to verify the individual’s identity or eligibility for employment.

“(11) PARTICIPATION.—

“(A) REQUIREMENTS FOR PARTICIPATION.—Except as provided in subparagraphs (D) and (E), the Secretary shall require employers to participate in the System as follows:

“(i) CRITICAL EMPLOYERS.—Not later than 1 year after the date of enactment of the STRIVE Act of 2007, the Secretary shall require all agencies and departments of the United States (including the Armed



Forces), a State government (including a State employment agency before making a referral), or any other employer if it employs individuals working in a location that is a Federal, State, or local government building, a military base, a nuclear energy site, a weapon site, or an airport, but only to the extent of such individuals, to participate in the System, with respect to all individuals hired after the date the Secretary requires such participation.

“(ii) LARGE EMPLOYERS.—Not later than 2 years after the date of enactment of the STRIVE Act of 2007 the Secretary shall require an employer with 5,000 or more employees in the United States to participate in the System, with respect to all employees hired by the employer after the date the Secretary requires such participation.

“(iii) MID-SIZED EMPLOYERS.—Not later than 3 years after the date of enactment of the STRIVE Act of 2007 the Secretary shall require an employer with less than 5,000 employees and 1,000 or more employees in the United States to participate in the System, with respect to all employees hired by the employer after the date the Secretary requires such participation.

“(iv) SMALL EMPLOYERS.—Not later than 4 years after the date of the enactment of the STRIVE Act of 2007, the Secretary shall require all employers with less than 1,000 employees in the United States to participate in the System, with respect to all employees hired by the employer after the date the Secretary requires such participation.

“(B) REQUIREMENT TO PUBLISH.—The Secretary shall publish in the Federal Register the requirements for participation in the System for employers described in clauses (i) through (iv) of subparagraph (A) prior to the effective date of such requirements.

“(C) OTHER PARTICIPATION IN SYSTEM.—

“(i) VOLUNTARY PARTICIPATION.—Notwithstanding subparagraph (A), the Secretary has the authority to permit any employer that is not required to participate in the System under subparagraph (A) to participate in the System on a voluntary basis.

“(ii) EMPLOYERS NOT REQUIRED TO PARTICIPATE.—Notwithstanding subparagraph (A) employers are not required to verify the identify or employment eligibility through the System for—

“(I) an individual performing casual employment for the employer and who provides domestic service in a private home that is sporadic, irregular, or intermittent;

“(II) a worker provided to the employer by a person providing contract services, such as a temporary agency; or

“(III) an independent contractor, performing services for the employer.

“(iii) RELATIONSHIP TO OTHER REQUIREMENTS.—Nothing in clause (ii) may be construed to effect the requirements for the contracting party who employs a worker referred to in subclause (II) of such clause or an employer of an independent contractor referred to in subclause (III) of such clause to participate in the System with respect to such worker or independent contractor under this subsection.

“(D) WAIVER.—

“(i) AUTHORITY TO PROVIDE A WAIVER.—The Secretary is authorized to waive or delay the participation requirements of subparagraph (A) with respect to any employer or class of employers if the Secretary provides notice to Congress of such waiver prior to the date such waiver is granted.

“(ii) REQUIREMENT TO PROVIDE A WAIVER.—The Secretary shall waive or delay the participation requirements of subparagraph (A) with respect to any employer or class of employers until the date that the Comptroller General of the United States submits the initial certification described in paragraph (17)(E) and shall waive or delay such participation during a year if the Comptroller General fails to submit a certification of paragraph (17)(E) for such year.

“(E) CONSEQUENCE OF FAILURE TO PARTICIPATE.—If an employer is required to participate in the System and fails to comply with the requirements of the System with respect to an individual—

“(i) such failure shall be treated as a violation of subsection (a)(1)(B); and

“(ii) a rebuttable presumption is created that the employer has violated subsection (a)(1)(A), however, such presumption may not apply to a prosecution under subsection (e)(1).

“(12) EMPLOYER REQUIREMENTS.—

“(A) IN GENERAL.—An employer that participates in the System, with respect to the hiring of an individual for employment in the United States, shall—

“(i) notify the individual of the use of the System and that the System may be used for immigration enforcement purposes;

“(ii) obtain from the individual the documents required by subsection (b)(1) and record on the form designated by the Secretary—

“(I) the individual’s social security account number; and

“(II) in the case of an individual who does not attest that the individual is a national of the United States under subsection (b)(2), such identification or authorization number that the Secretary shall require;

“(iii) retain such form in electronic, paper, microfilm, or microfiche form and make such form available for inspection for the periods and in the manner described in subsection (b)(3); and

“(iv) safeguard any information collected for purposes of the System and protect any means of access to such information to ensure that such information is not used for any purpose other than to determine the identity and employment eligibility of the individual and to protect the confidentiality of such information, including ensuring that such information is not provided to any person other than a person that carries out the employer’s responsibilities under this subsection.

“(B) SCHEDULE.—

“(i) REPLACEMENT DOCUMENTS.—An employer shall accept a receipt for the application for a replacement document or a document described in subparagraph (B) of subsection (b)(1) in lieu of the required document in order to comply with any requirement to examine documentation imposed by this section, in the following circumstances:

“(I) The individual is unable to provide the required document within the time specified in this section because the document was lost, stolen, or damaged.

“(II) The individual presents a receipt for the application for the document within the time specified in this section.

“(III) The individual presents the document within 90 days of the hire. If the actual document or replacement document is to be issued by the United States Citizenship and Immigration Services and the application is still under review 60 days after receipt of the application, United States Citizenship and Immigration Services shall, not later than the 60th day after receipt of the application, issue a letter for the applicant to take to the employer which shall automatically grant the individual an additional 90 days from the original deadline in subsection (b)(6)(A)(i)(II) to present the document or replacement document; and

“(ii) PROHIBITION ON ACCEPTANCE OF A RECEIPT FOR SHORT-TERM EMPLOYMENT.—An employer may not accept a receipt in lieu of the required document if the individual is hired for a duration of less than 10 working days.

“(C) CONFIRMATION OR NONCONFIRMATION.—

“(i) RETENTION.—If an employer receives a determination through the System under paragraph (3) for an individual, the employer shall retain either an electronic, paper, or microfiche form record of such confirmation for the period required by subsection (b)(4)(A).

“(ii) NONCONFIRMATION AND VERIFICATION.—

“(I) NONCONFIRMATION.—If an employer receives a tentative nonconfirmation with respect to an individual, the employer shall retain either an electronic or paper record of such nonconfirmation for the period required by subsection (b)(4)(A) and inform such individual not later than 10 working days after the issuance of such notice in the manner prescribed by the Secretary that includes information regarding the individual’s right to submit information to contest the tentative nonconfirmation under paragraph (2)(D) and the address and telephone numbers established by the Commissioner and the Secretary to obtain information on how to submit such information.

“(II) NO CONTEST.—If the individual does not contest the tentative nonconfirmation notice within 15 working days of receiving notice from the individual’s employer, the notice shall become final and the employer shall retain either an electronic or paper record of such final nonconfirmation for the period required by subsection (b)(4)(A). An individual’s failure to contest a tentative nonconfirmation may not be the basis for determining that the employer acted in a knowing (as defined in section 274a.1 of title 8, Code of Federal Regulations, or any corresponding similar regulation) manner.

“(III) CONTEST.—If the individual contests the tentative nonconfirmation notice under subclause (I), the individual shall submit appropriate information to contest such notice to the System within 15 working days of receiving notice from the individual’s employer and shall utilize the verification process developed under paragraph (2)(C)(ii). Such individual shall acknowledge receipt of such notice in writing.

“(IV) EFFECTIVE PERIOD OF TENTATIVE NONCONFIRMATION.—A tentative nonconfirmation notice shall remain in effect until such notice becomes final under clause (II) or a final confirmation notice or final nonconfirmation notice is issued by the System.

“(V) PROHIBITION.—An employer may not terminate the employment of an individual based on a tentative nonconfirmation notice until such notice becomes final under clause (II) or a final nonconfirmation notice is issued for the individual by the System. Nothing in this clause shall apply to termination of employment for any reason other than because of such a tentative nonconfirmation.

“(VI) RECORDING OF CONCLUSION ON FORM.—If a final confirmation or nonconfirmation is provided by the System regarding an individual, the employer shall record on the form designated by the Secretary the appropriate code that is provided under the System to indicate a confirmation or nonconfirmation of the identity and employment eligibility of the individual.

“(D) CONSEQUENCES OF NONCONFIRMATION.—If an employer has received a final nonconfirmation with respect to an individual, the employer shall terminate the employment of the individual. If the employer continues to employ the individual after receiving final nonconfirmation, a rebuttable presumption is created that the employer has violated paragraphs (1)(A) and (2) of subsection (a). Such presumption may not apply to a prosecution under subsection (e)(1).

“(13) PROHIBITION OF UNLAWFUL ACCESSING AND OBTAINING OF INFORMATION.—

“(A) IN GENERAL.—It shall be unlawful for any individual other than an employee of the Social Security Administration or the Department of Homeland Security specifically charged with maintaining the System to intentionally and knowingly—

“(i) access the System or the databases utilized to verify identity or employment eligibility for the System for any purpose other than verifying identity or employment eligibility or modifying the System pursuant to law or regulation; or

“(ii) obtain the information concerning an individual stored in the System or the databases utilized to verify identity or employment eligibility for the System for any purpose other than verifying identity or employment authorization or modifying the System pursuant to law or regulation.

“(B) PENALTIES.—

“(i) UNLAWFUL ACCESS.—Any individual who unlawfully accesses the System or the databases as described in subparagraph (A)(i) shall be fined no more than \$1,000 per individual or sentenced to no more than 6 months imprisonment or both per individual whose file was compromised.

“(ii) UNLAWFUL USE.—Any individual who unlawfully obtains information stored in the System in the database utilized to verify identity or employment eligibility for the System and uses the information to commit identity theft for financial gain or to evade security or to assist another in gaining financially or evading security, shall be fined no more than \$10,000 per individual or sentenced to no more than 1 year of imprisonment or both per individual whose information was obtained and misappropriated.

“(14) PROTECTION FROM LIABILITY.—No employer that participates in the System and complies in good faith with the attestation in subsection (b)(1) shall be liable under any law for any employment-related action taken with respect to an individual in good faith reliance on information provided by the System regarding that individual.

“(15) LIMITATION ON USE OF THE SYSTEM.—Notwithstanding any other provision of law, nothing in this subsection shall be construed to permit or allow any department, bureau, or other agency of the United States to utilize any information, database, or other records used in the System for any purpose other than as provided for under this subsection.

“(16) ACCESS TO DATABASE.—No officer or employee of any agency or department of the United States, other than such an officer or employee who is responsible for the verification of employment eligibility or for the evaluation of an employment eligibility verification program at the Social Security Administration, the Department of Homeland Security, and the Department of Labor, may have access to any information, database, or other records utilized by the System.

“(17) MODIFICATION AUTHORITY.—The Secretary, after notice is submitted to Congress and provided to the public in the Federal Register, is authorized to modify the requirements of this subsection, including requirements with respect to completion of forms, method of storage, attestations, copying of documents, signatures, methods of transmitting information, and other operational and technical aspects to improve the efficiency, accuracy, and security of the System.

“(18) ANNUAL STUDY AND REPORT.—

“(A) REQUIREMENT FOR STUDY.—The Comptroller General of the United States shall conduct an annual study of the System as described in this paragraph.

“(B) PURPOSE OF THE STUDY.—The Comptroller General shall, for each year, undertake a study to determine whether the System meets the following requirements:

“(i) DEMONSTRATED ACCURACY OF THE DATABASES.—New information and information changes submitted by an individual to the System is updated in all of the relevant databases not later than 3 working days after submission in at least 99 percent of all cases.

“(ii) LOW ERROR RATES AND DELAYS IN VERIFICATION.—

“(I) INCORRECT TENTATIVE NONCONFIRMATION NOTICES.—That, during a year, not more than 1 percent of all tentative nonconfirmations provided through the System during such year are incorrect.

“(II) INCORRECT FINAL NONCONFIRMATION NOTICES.—That, during a year, not more than 3 percent of all final nonconfirmations provided through the System during such year are incorrect.

“(III) RATES OF INCORRECT TENTATIVE NONCONFIRMATION NOTICES.—That, during a year, the number of incorrect tentative nonconfirmations provided through the System for individuals who are not nationals of the United States is not more than 300 percent more than the number of such incorrect notices provided for nationals of the United States.

“(IV) RATES OF INCORRECT FINAL NONCONFIRMATION NOTICES.—That, during a year, the number of incorrect final nonconfirmations provided through the System for individuals who are not nationals of the United States is not more than 300 percent more than the number of such incorrect notices provided for nationals of the United States during such year.

“(iii) MEASURABLE EMPLOYER COMPLIANCE WITH SYSTEM REQUIREMENTS.—

“(I) NO DISCRIMINATION BASED ON SYSTEM OPERATIONS.—The System has not and will not result in increased discrimination or cause reasonable employers to conclude that individuals of certain races or ethnicities are more likely to have difficulties when offered employment caused by the operation of the System.

“(II) REQUIREMENT FOR INDEPENDENT STUDY.—The determination described in subclause (I) shall be based on an independent study commissioned by the Comptroller General in each phase of expansion of the System.

“(iv) PROTECTION OF WORKERS’ PRIVATE INFORMATION.—At least 97 percent of employers who participate in the System are in full compliance with the privacy requirements described in this subsection.

“(v) ADEQUATE AGENCY STAFFING AND FUNDING.—The Secretary and Commissioner of Social Security have sufficient funding to meet all of the deadlines and requirements of this subsection.

“(C) CONSULTATION.—In conducting a study under this paragraph, the Comptroller General shall consult with representatives of business, labor, immigrant communities, State governments, privacy advocates, and appropriate departments of the United States.

“(D) REQUIREMENT FOR REPORTS.—Not later than 21 months after the date of the enactment of the STRIVE Act of 2007, and annually thereafter, the Comptroller General shall submit to the Secretary and to Congress a report containing the findings of the study carried out under this paragraph.

“(E) CERTIFICATION.—If the Comptroller General determines that the System meets the requirements set out in clauses (i) through (v) of subparagraph (B) for a year, the Comptroller shall certify such determination and submit such certification to Congress with the report required by subparagraph (D).

“(19) ADMINISTRATIVE REVIEW.—

“(A) IN GENERAL.—An individual who is terminated from employment as a result of a final nonconfirmation may, not later than 60 days after the date of such termination, file an appeal of such final nonconfirmation.

“(B) PROCEDURES.—The Secretary and Commissioner of Social Security shall develop procedures to review appeals filed under subparagraph (A) and to make final determinations on such appeals.

“(C) REVIEW FOR ERRORS.—If a final determination on an appeal filed under subparagraph (A) results in a confirmation of an individual’s eligibility for employment in the United States, the administrative review process shall require the Secretary to determine if the final nonconfirmation issued for the individual was the result of—

“(i) an error or negligence on the part of an employee or official operating or responsible for the System;

“(ii) the decision rules, processes, or procedures utilized by the System; or

“(iii) erroneous system information that was not the result of acts or omissions of the individual.

“(D) COMPENSATION FOR ERROR.—

“(i) IN GENERAL.—If the Secretary makes a determination under subparagraph (C) that the final nonconfirmation issued for an individual was not caused by an act or omission of the individual, the Secretary shall compensate the individual for lost wages.

“(ii) CALCULATION OF LOST WAGES.—Lost wages shall be calculated based on the wage rate and work schedule that prevailed prior to termination. The individual shall be compensated for wages lost beginning on the first scheduled work day after employment was terminated and ending 180 days after completion of the administrative review process described in this paragraph or the day after the individual is reinstated or obtains employment elsewhere, whichever occurs first.

“(E) LIMITATION ON COMPENSATION.—For purposes of determining an individual’s compensation for the loss of employment, such compensation shall not include any period in which the individual was ineligible for employment in the United States.

“(F) SOURCE OF FUNDS.—Compensation or reimbursement provided under this paragraph shall not be provided from funds appropriated in annual appropriations Acts to the Secretary for the Department of Homeland Security.

“(20) JUDICIAL REVIEW.—

“(A) IN GENERAL.—After the Secretary makes a final determination on an appeal filed by an individual under paragraph (19), the individual may obtain judicial review of such determination in a civil action commenced not later than 90 days after notice of such decision, or such further time as the Secretary may allow.

“(B) REPORT.—Not later than 180 days after the date of enactment of the STRIVE Act of 2007, the Director of the Federal Judicial Center shall submit to Congress a report on judicial review of an administrative decision on a final nonconfirmation. The report shall contain recommendations on jurisdiction and procedures that shall be instituted to seek adequate and timely review of such decision.

“(C) COMPENSATION FOR ERROR.—

“(i) IN GENERAL.—In cases in which such judicial review reverses the final determination of the Secretary made under paragraph (19), the court shall compensate the individual for lost wages.

“(ii) CALCULATION OF LOST WAGES.—Lost wages shall be calculated based on the wage rate and work schedule that prevailed prior to termination. The individual shall be compensated for wages lost beginning on the first scheduled work day after employment was terminated and ending 180 days after completion of the judicial review described in this paragraph or the day after the individual is reinstated or obtains employment elsewhere, whichever occurs first.

“(21) ENFORCEMENT OF VIOLATIONS.—No private right of action shall exist for any claim based on a violation of this section. The Government of the United States shall have exclusive enforcement authority over violations of this section and shall use only the powers, penalties, and mechanisms found in this section. This paragraph shall apply to all cases in which a final judgment has not been entered prior to or on the date of enactment of the STRIVE Act of 2007.

“(22) SAFE HARBOR FOR CONTRACTORS.—A person shall not be liable for a violation of paragraph (1)(A), (1)(B), or (2) of subsection (a) with respect to the hiring or continuation of employment of an unauthorized alien by a subcontractor of that person unless the person knew that the subcontractor hired or continued to employ such alien in violation of such a paragraph.

“(23) STATUTORY CONSTRUCTION.—Nothing in this subsection shall affect any existing rights and obligations of employers or employees under other Federal, State, or local laws.

“(d) COMPLIANCE.—

“(1) COMPLAINTS AND INVESTIGATIONS.—The Secretary shall establish procedures—

“(A) for a person to file a complaint regarding a potential violation of paragraph (1)(A), (1)(B), or (2) of subsection (a);

“(B) for the investigation of any such complaint that the Secretary determines is appropriate to investigate; and

“(C) for the investigation of such other violation of paragraph (1)(A), (1)(B), or (2) of subsection (a) that the Secretary determines is appropriate.

“(2) AUTHORITY IN INVESTIGATIONS.—

“(A) IN GENERAL.—In conducting investigations and hearings under this subsection, officers and employees of the Department of Homeland Security, if designated by the Secretary, may compel by subpoena the attendance of witnesses and the production of evidence at any designated place in an investigation or case under this subsection.

“(B) FAILURE TO COOPERATE.—In case of refusal to obey a subpoena lawfully issued under subparagraph (A), the Secretary may request that the Attorney General apply in an appropriate district court of the United States for an order requiring compliance with such subpoena, and any failure to obey such order may be punished by such court as contempt.

“(C) DEPARTMENT OF LABOR.—The Secretary of Labor shall have the investigative authority provided under section 11(a) of the Fair Labor Standards Act of 1938 (29 U.S.C. 211(a)) to ensure compliance with the provisions of this section, or any regulation or order issued under this section.

“(3) COMPLIANCE PROCEDURES.—

“(A) PREPENALTY NOTICE.—If the Secretary has reasonable cause to believe that there has been a violation of a requirement of this section and determines that further proceedings related to such violation are warranted, the Secretary shall issue to the employer concerned a written notice of the Secretary’s intention to issue a claim for a fine or other penalty. Such notice shall—

“(i) describe the violation;

“(ii) specify the laws and regulations allegedly violated;

“(iii) disclose the material facts which establish the alleged violation; and

“(iv) inform such employer that the employer shall have a reasonable opportunity to make representations as to why a claim for a monetary or other penalty should not be imposed.

“(B) REMISSION OR MITIGATION OF PENALTIES.—

“(i) PETITION BY EMPLOYER.—If an employer receives written notice of a fine or other penalty in accordance with subparagraph (A), the employer may file within 45 days from receipt of such notice, with the Secretary a petition for the remission or mitigation of such fine or penalty, or a petition for termination of the proceedings. The petition may in-

clude any relevant evidence or proffer of evidence the employer wishes to present, and shall be filed and considered in accordance with procedures to be established by the Secretary.

“(ii) REVIEW BY SECRETARY.—If the Secretary finds that such fine or other penalty was incurred erroneously, or finds the existence of such mitigating circumstances as to justify the remission or mitigation of such fine or penalty, the Secretary may remit or mitigate such fine or other penalty on the terms and conditions as the Secretary determines are reasonable and just, or order termination of any proceedings related to the notice. Such mitigating circumstances may include good faith compliance and participation in, or agreement to participate in, the System, if not otherwise required.

“(iii) APPLICABILITY.—This subparagraph may not apply to an employer that has or is engaged in a pattern or practice of violations of paragraph (1)(A), (1)(B), or (2) of subsection (a) or of any other requirements of this section.

“(C) PENALTY CLAIM.—After considering evidence and representations offered by the employer pursuant to subparagraph (B), the Secretary shall determine whether there was a violation and promptly issue a written final determination setting forth the findings of fact and conclusions of law on which the determination is based and the appropriate penalty.

“(4) CIVIL PENALTIES.—

“(A) HIRING OR CONTINUING TO EMPLOY UNAUTHORIZED ALIENS.—Any employer that violates paragraph (1)(A) or (2) of subsection (a) shall pay civil penalties as follows:

“(i) Pay a civil penalty of not less than \$500 and not more than \$4,000 for each unauthorized alien with respect to each such violation.

“(ii) If the employer has previously been fined 1 time within the preceding 12 months under this subparagraph, pay a civil penalty of not less than \$4,000 and not more than \$10,000 for each unauthorized alien with respect to each such violation.

“(iii) If the employer has previously been fined more than 1 time within the preceding 12 months under this subparagraph or has failed to comply with a previously issued and final order related to any such provision, pay a civil penalty of not less than \$6,000 and not more than \$20,000 for each unauthorized alien with respect to each such violation.

“(B) RECORD KEEPING OR VERIFICATION PRACTICES.—Any employer that violates or fails to comply with paragraph (1)(B) of subsection (a) shall pay a civil penalty as follows:

“(i) Pay a civil penalty of not less than \$200 and not more than \$2,000 for each such violation or failure.

“(ii) If the employer has previously been fined 1 time within the preceding 12 months under this subparagraph, pay a civil penalty of not less than \$400 and not more than \$4,000 for each such violation or failure.

“(iii) If the employer has previously been fined more than 1 time within the preceding 12 months under this subparagraph or has failed to comply with a previously issued and final order related to such requirements, pay a civil penalty of \$6,000 for each such violation or failure.

“(iv) SPECIAL RULE GOVERNING PAPERWORK VIOLATION.—In the case where an employer commits a violation of this section that is deemed to be purely a paperwork violation where the Secretary fails to establish any intent to hire an individual who is not unauthorized for employment in the United States, the Secretary shall permit the employer to correct such paperwork error within 30 days of receiving notice from the Secretary of such violation.

“(C) OTHER PENALTIES.—Notwithstanding subparagraphs (A) and (B), the Secretary may impose additional penalties for violations, including cease and desist orders, specially designed compliance plans to prevent further violations, suspended fines to take effect in the event of a further violation, and in appropriate cases, the civil penalty described in subsection (f)(2).

“(D) REDUCTION OF PENALTIES.—Notwithstanding subparagraphs (A), (B), and (C), the Secretary is authorized to reduce or mitigate penalties imposed upon employers, based upon factors including the employer’s hiring volume, compliance history, good-faith implementation of a compliance pro-

gram, participation in a temporary worker program, and voluntary disclosure of violations of this subsection to the Secretary.

“(5) JUDICIAL REVIEW.—

“(A) IN GENERAL.—An employer adversely affected by a final determination may, within 45 days after the date the final determination is issued, obtain judicial review of such determination.

“(B) REPORT.—Not later than 180 days after the date of enactment of the STRIVE Act of 2007, the Director of the Federal Judicial Center shall submit to Congress a report on judicial review of a final determination. The report shall contain recommendations on jurisdiction and procedures that shall be instituted to seek adequate and timely review of such decision.

“(6) ENFORCEMENT OF ORDERS.—If an employer fails to comply with a final determination issued against that employer under this subsection, and the final determination is not subject to review as provided in paragraph (5), the Attorney General may file suit to enforce compliance with the final determination, not earlier than 46 days and not later than 90 days, after the date the final determination is issued, in any appropriate district court of the United States. The burden shall remain on the employer to show that the final determination was not supported by a preponderance of the evidence.

“(7) RECOVERY OF COSTS AND ATTORNEYS’ FEES.—In any appeal brought under paragraph (5) or suit brought under paragraph (6), the employer shall be entitled to recover from the Secretary reasonable costs and attorneys’ fees if such employer prevails on the merits of the case. The award of attorneys’ fees shall not exceed \$50,000. Such amount shall be subject to annual inflation adjustments per the United States Consumer Price Index - All Urban Consumers (CPI-U) compiled by the Bureau of Labor Statistics. Any costs and attorneys’ fees assessed against the Secretary shall be charged against the operating expenses of the Department of Homeland Security for the fiscal year in which the assessment is made, and shall not be reimbursed from any other source.

“(e) CRIMINAL PENALTIES AND INJUNCTIONS FOR PATTERN OR PRACTICE VIOLATIONS.—

“(1) CRIMINAL PENALTY.—An employer that engages in a pattern or practice of knowing violations of paragraph (1)(A) or (2) of subsection (a) shall be fined not more than \$20,000 for each unauthorized alien with respect to whom such a violation occurs, imprisoned for not more than 3 years for the entire pattern or practice, or both.

“(2) ENJOINING OF PATTERN OR PRACTICE VIOLATIONS.—If the Secretary or the Attorney General has reasonable cause to believe that an employer is engaged in a pattern or practice of employment in violation of paragraph (1)(A) or (2) of subsection (a), the Attorney General may bring a civil action in the appropriate district court of the United States requesting such relief, including a permanent or temporary injunction, restraining order, or other order against the employer, as the Secretary deems necessary.

“(f) ADJUSTMENT FOR INFLATION.—All penalties and limitations on the recovery of costs and attorney’s fees in this section shall be increased every 4 years beginning January 2010 to reflect the percentage increase in the consumer price index for all urban consumers (all items; United States city average) for the 48 month period ending with September of the year preceding the year such adjustment is made. Any adjustment under this subparagraph shall be rounded to the nearest dollar.

“(g) PROHIBITION OF INDEMNITY BONDS.—

“(1) PROHIBITION.—It is unlawful for an employer, in the hiring of an individual, to require the individual to post a bond or security, to pay or agree to pay an amount, or otherwise to provide a financial guaranty or indemnity, against any potential liability arising under this section relating to such hiring of the individual.

“(2) CIVIL PENALTY.—Any employer which is determined, after notice and opportunity for mitigation of the monetary penalty under subsection (d), to have violated paragraph (1) shall be subject to a civil penalty of \$10,000 for each violation and to an administrative order requiring the return of any amounts received in violation of such paragraph to the individual.

“(h) PROHIBITION ON AWARD OF GOVERNMENT CONTRACTS, GRANTS, AND AGREEMENTS.—

“(1) EMPLOYERS WITH NO CONTRACTS, GRANTS, OR AGREEMENTS.—

“(A) IN GENERAL.—If an employer who does not hold a Federal contract, grant, or cooperative agreement is determined by the Secretary to be a repeat violator of this section the employer shall be debarred from the receipt of a Federal contract, grant, or cooperative agreement for a period of 5 years. The Secretary or the Attorney General shall advise the Adminis-



trator of General Services of such a debarment, and the Administrator of General Services shall list the employer on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs for a period of 5 years.

“(B) WAIVER.—The Administrator of General Services, in consultation with the Secretary and the Attorney General, may waive operation of this subsection or may limit the duration or scope of the debarment.

“(2) EMPLOYERS WITH CONTRACTS, GRANTS, OR AGREEMENTS.—

“(A) IN GENERAL.—An employer who holds a Federal contract, grant, or cooperative agreement and is determined by the Secretary to be a repeat violator of this section or is convicted of a crime under this section, shall be debarred from the receipt of new Federal contracts, grants, or cooperative agreements for a period of 5 years.

“(B) NOTICE TO AGENCIES.—Prior to debarring the employer under subparagraph (A), the Secretary, in cooperation with the Administrator of General Services, shall advise any agency or department holding a contract, grant, or cooperative agreement with the employer of the Government’s intention to debar the employer from the receipt of new Federal contracts, grants, or cooperative agreements for a period of 5 years.

“(C) WAIVER.—After consideration of the views of any agency or department that holds a contract, grant, or cooperative agreement with the employer, the Secretary may, in lieu of debarring the employer from the receipt of new Federal contracts, grants, or cooperative agreements for a period of 5 years, waive operation of this subsection, limit the duration or scope of the debarment, or may refer to an appropriate lead agency the decision of whether to debar the employer, for what duration, and under what scope in accordance with the procedures and standards prescribed by the Federal Acquisition Regulation. However, any proposed debarment predicated on an administrative determination of liability for civil penalty by the Secretary or the Attorney General shall not be reviewable in any debarment proceeding.

“(D) REVIEW.—The decision of whether to debar or take alternate action under this paragraph shall be reviewable pursuant to section 9, Federal Acquisition Regulation.

“(3) SUSPENSION.—Indictments for violations of this section or adequate evidence of actions that could form the basis for debarment under this subsection shall be considered a cause for suspension under the procedures and standards for suspension prescribed by the Federal Acquisition Regulation.

“(4) REPEAT VIOLATOR DEFINED.—In this subsection, the term ‘repeat violator’ means, with respect to an employer, that the employer has violated paragraph (1)(A), (1)(B), or (2) of subsection (a) more than 1 time and that such violations were discovered as a result of more than 1 separate investigation of the employer. A violation of such paragraph (1)(B) that is inadvertent and unrelated to a violation of subsection (a)(1)(A) and (a)(2) may not be considered to be a violation of such paragraph (1)(B) for the purposes of this paragraph.

“(i) MISCELLANEOUS PROVISIONS.—

“(1) DOCUMENTATION.—In providing documentation or endorsement of authorization of aliens (other than aliens lawfully admitted for permanent residence) eligible to be employed in the United States, the Secretary shall provide that any limitations with respect to the period or type of employment or employer shall be conspicuously stated on the documentation or endorsement.

“(2) PREEMPTION.—The provisions of this section preempt any State or local law from—

“(A) imposing civil or criminal sanctions upon employers who employ or otherwise do business with unauthorized aliens;

“(B) requiring, authorizing, or permitting the use of a federally mandated employment verification system for any other purpose other than the one mandated in Federal law, including verifying status of renters, determining eligibility for receipt of benefits, enrollment in school, obtaining or retaining a business license or other license provided by the unit of government, or conducting a background check; and

“(C) requiring employers to use an employment verification system, unless otherwise mandated by Federal law, for purposes such as—

“(i) as a condition of receiving a government contract;

“(ii) as a condition of receiving a business license; or

“(iii) as a penalty.

“(j) DEFINITIONS.—In this section—

“(1) EMPLOYER.—The term ‘employer’ means any person or entity, including any entity of the Government of the United States, hiring an individual for employment in the United States.

“(2) INDEPENDENT CONTRACTOR.—The term ‘independent contractor’ includes a person who carries on independent business, contracts to do a piece of work according to the person’s own means and methods, and are subject to control only as to results. Whether a person is an independent contractor, regardless of any self-designation, will be determined on a case-by-case basis. Factors to be considered in that determination include whether the person—

“(A) supplies the tools or materials;

“(B) makes services available to the general public;

“(C) works for a number of clients at the same time;

“(D) has an opportunity for profit or loss as a result of labor or services provided;

“(E) invests in facilities to carry out the work;

“(F) directs the order or sequence in which the work is to be done; and

“(G) determines the hours during which the work is to be done.

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

“(4) UNAUTHORIZED ALIEN.—The term ‘unauthorized alien’ means, with respect to the employment of an alien at a particular time, that the alien is not at that time either—

“(A) an alien lawfully admitted for permanent residence; or

“(B) authorized to be so employed by this Act or by the Secretary.”.

(b) ANTIFRAUD MEASURES FOR SOCIAL SECURITY CARDS.—

(1) IN GENERAL.—Section 205(c)(2)(G) of the Social Security Act (42 U.S.C. 405(c)(2)(G)) is amended—

(A) by inserting “(i)” after “(G)”;

(B) by striking “banknote paper” and inserting “durable plastic or similar material”; and

(C) by adding at the end the following new clauses:

“(ii) Each social security card issued under this subparagraph shall include an encrypted machine-readable electronic identification strip which shall be unique to the individual to whom the card is issued. The Commissioner shall develop such electronic identification strip in consultation with the Secretary of Homeland Security, so as to enable employers to use such strip in accordance with section 274A(a)(1)(B) of the Immigration and Nationality Act (8 U.S.C. 1324a(a)(1)(B)) to obtain access to the Electronic Employment Verification System established by subsection (c) of this title.

“(iii) Each social security card issued under this subparagraph shall—

“(I) contain physical security features designed to prevent tampering, counterfeiting, or duplication of the card for fraudulent purposes;

“(II) be consistent with the biometric standards for documents described in section 737 of this Act; and

“(III) contain a disclaimer stating the following: ‘This card shall not be used for the purpose of identification.’

“(iv) The Commissioner shall provide for the issuance (or reissuance) to each individual who—

“(I) has been assigned a Social Security account number under subparagraph (B),

“(II) has attained the minimum age applicable, in the jurisdiction in which such individual engages in employment, for legally engaging in such employment, and

“(III) files application for such card under this clause in such form and manner as shall be prescribed by the Commissioner, a Social Security card which meets the preceding requirements of this subparagraph and which includes a recent digitized photograph of the individual to whom the card is issued.

“(v) The Commissioner shall maintain an ongoing effort to develop measures in relation to the Social Security card and the issuance thereof to preclude fraudulent use thereof.”.

(2) SHARING OF INFORMATION WITH THE SECRETARY OF HOMELAND SECURITY.—Section 205(c)(2) of such Act is amended by adding at the end the following new subparagraph:

“(I) Upon the issuance of a Social Security account number under subparagraph (B) to any individual or the issuance of a Social Security card under subparagraph (G) to any individual, the Commissioner of Social Security shall transmit to the Secretary of Homeland Security such information received by the Commissioner in the individual’s application for such number or such card as such Secretary determines necessary and appropriate for administration of the STRIVE Act of 2007. Such information shall be used solely for inclusion in the Electronic Employment Eligibility Verification System established pursuant to title III of such Act.”.

(3) EFFECTIVE DATES.—The amendment made by paragraph (1) shall apply with respect to Social Security cards issued 2 years after the date of the enactment of this Act. The amendment made by paragraph (2) shall apply with respect to the issuance of Social Security account numbers and Social Security cards after 2 years after the date of the enactment of this Act.

(c) CONFORMING AMENDMENTS.—

(1) AMENDMENTS.—

(A) REPEAL OF BASIC PILOT.—Sections 401, 402, 403, 404, and 405 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (division C of Public Law 104–208; 8 U.S.C. 1324a note) are repealed.

(B) REPEAL OF REPORTING REQUIREMENTS.—

(i) REPORT ON EARNINGS OF ALIENS NOT AUTHORIZED TO WORK.—Subsection (c) of section 290 (8 U.S.C. 1360) is repealed.

(ii) REPORT ON FRAUDULENT USE OF SOCIAL SECURITY ACCOUNT NUMBERS.—Subsection (b) of section 414 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (division C of Public Law 104–208; 8 U.S.C. 1360 note) is repealed.

(C) REPEAL OF DEFINITION.—Paragraph (1)(F) of section 1961 of title 18, United States Code, is repealed.

(2) CONSTRUCTION.—Nothing in this subsection or in subsection (c) of section 274A, as amended by subsection (a), may be construed to limit the authority of the Secretary to allow or continue to allow the participation of employers who participated in the basic pilot program under such sections 401, 402, 403, 404, and 405 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (division C of Public Law 104–208; 8 U.S.C. 1324a note) in the Electronic Employment Verification System established pursuant to such subsection (d).

(d) TECHNICAL AMENDMENTS.—

(1) DEFINITION OF UNAUTHORIZED ALIEN.—Sections 218(i)(1) (8 U.S.C. 1188(i)(1)), 245(c)(8) (8 U.S.C. 1255(c)(8)), 274(a)(3)(B)(i) (8 U.S.C. 1324(a)(3)(B)(i)), and 274B(a)(1) (8 U.S.C. 1324b(a)(1)) are amended by striking “274A(h)(3)” and inserting “274A(h)”.

(2) DOCUMENT REQUIREMENTS.—Section 274B (8 U.S.C. 1324b) is amended—

(A) in subsections (a)(6) and (g)(2)(B), by striking “274A(b)” and inserting “274A(d)”; and

(B) in subsection (g)(2)(B)(ii), by striking “274A(b)(5)” and inserting “274A(d)(9)”.

(e) OFFICE OF ELECTRONIC VERIFICATION.—

(1) IN GENERAL.—The Secretary shall establish the Office of Electronic Verification within the Office of Screening Coordination of the Department.

(2) RESPONSIBILITIES.—The head of the Office of Electronic Verification shall work with the Commissioner of Social Security—

(A) to ensure the information maintained in the Electronic Employment Verification System established in subsection (c) of section 274A of the Immigration and Nationality Act, as amended by subsection (a), is updated in a manner that promotes maximum accuracy;

(B) to ensure a process is provided for correcting erroneous information continued in such System;

(C) to ensure that the data received from field offices of United States Customs and Border Protection or from other points of contact between aliens and the Department of Homeland Security is registered in all relevant databases;

(D) to ensure that the data received from field offices of the Social Security Administration and other points of contact between nationals of the United States and the Social Security Administration is registered within all relevant databases;

(E) to ensure that the Department has a sufficient number of personnel to conduct manual verifications described in paragraph (2)(ii) of such subsection (c);

(F) to establish and promote telephone help lines accessible to employers and individuals 24-hours a day that provide information regarding the functioning of such System or specific issues related to the issuance of a tentative nonconfirmations issued by the System;

(G) to establish an outreach and education program to ensure that all new employers are fully informed of their responsibilities under such System;

(H) to conduct random audits of individual's files in the Government's database each year to determine accuracy rates and require corrections of errors in a timely manner; and

(I) to provide to the employer anti-discrimination notices issued by the Office of Special Counsel for Immigration-Related Unfair Employment Practices of the Civil Rights Division of the Department of Justice.

(f) **REQUIREMENT FOR REPORTS.**—Not later than 2 years after the date of enactment of this Act, and annually thereafter, the Comptroller General of the United States shall submit to the Secretary and to Congress a report on the impact of the Electronic Employment Verification System described in section 274A(c) of the Immigration and Nationality Act, as amended by subsection (a), on employers and employees in the United States. Each such report shall include the following:

(1) An assessment of the impact of the System on the employment of aliens who are not eligible for employment in the United States, including whether the System has indirectly caused an increase in exploitation of unauthorized workers.

(2) An assessment of the accuracy of the databases utilized by the System and of the timeliness and accuracy of the responses provided through the System to employers.

(3) An assessment of the privacy and confidentiality of the System and of the overall security of the System with respect to cybertheft and theft or misuse of private data.

(4) An assessment of whether the System is being implemented in a non-discriminatory and nonretaliatory manner.

(5) An assessment of the most common causes for the erroneous issuance of nonconfirmations by the System and recommendations to correct such causes.

(6) Recommendations regarding a funding scheme for the maintenance of the System which may include minimal costs to employers or individuals.

(7) The recommendations of the Comptroller General regarding whether or not the System should be modified prior to further expansion.

(g) **EFFECTIVE DATE.**—The amendments made by subsections (a), (b), and (c) shall take effect on the date that is 180 days after the date of the enactment of this Act.

**SEC. 302. CLARIFICATION OF INELIGIBILITY FOR MISREPRESENTATION.**

Section 212(a)(6)(C)(ii)(I) (8 U.S.C. 1182(a)(6)(C)(ii)(I)), is amended by striking “citizen” and inserting “national”.

**SEC. 303. ANTIDISCRIMINATION PROTECTIONS.**

(a) **APPLICATION OF PROHIBITION OF DISCRIMINATION TO VERIFICATION SYSTEM.**—Section 274B(a)(1) (8 U.S.C. 1324b(a)(1)) is amended by inserting “, the verification of the individual’s eligibility for employment through the Electronic Employment Verification System described in section 274A(c),” after “the individual for employment”.

(b) **CLASSES OF ALIENS AS PROTECTED INDIVIDUALS.**—Section 274B(a)(3)(B) (8 U.S.C. 1324b(a)(3)(B)) is amended to read as follows—

“(B) is an alien who is—

“(i) lawfully admitted for permanent residence;

“(ii) granted the status of an alien lawfully admitted for temporary residence under section 210(a) or 245A(a);

“(iii) admitted as a refugee under section 207;

“(iv) granted asylum under section 208;

“(v) granted the nonimmigrant status under section 101(a)(15)(H)(ii)(c);

“(vi) granted temporary protected status under section 244; or

“(vii) granted parole under section 212(d)(5).”.

(c) **REQUIREMENTS FOR ELECTRONIC EMPLOYMENT VERIFICATION.**—Section 274B(a) (8 U.S.C. 1324b(a)) is amended by adding at the end the following:

“(7) ANTIDISCRIMINATION REQUIREMENTS OF THE ELECTRONIC EMPLOYMENT VERIFICATION SYSTEM.—It is an unfair immigration-related employment practice for a person or other entity, in the course of the Electronic Employment Verification System described in section 274A(c)—

“(A) to terminate the employment of an individual due to a tentative nonconfirmation issued by such System, with respect to that individual;

“(B) to use the System for screening of an applicant for employment prior to making the individual an offer of employment;

“(C) to reverify the employment authorization of current employees beyond the time period set out in 274A(c)(2); or

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

(d) INCREASE IN CIVIL MONEY PENALTIES.—Section 274B(g)(2) (8 U.S.C. 1324b(g)(2)) is amended—

(1) in subparagraph (B)(iv)—

(A) in subclause (I), by striking “\$250 and not more than \$1,000” and inserting “\$2,000 and not more than \$4,000”;

(B) in subclause (II), by striking “\$2,000 and not more than \$5,000” and inserting “\$4,000 and not more than \$10,000”;

(C) in subclause (III), by striking “\$3,000 and not more than \$10,000” and inserting “\$6,000 and not more than \$20,000”;

(D) in subclause (IV), by striking “\$100 and not more than \$1,000” and inserting “\$500 and not more than \$5,000.”

(e) INCREASED FUNDING OF INFORMATION CAMPAIGN.—Section 274B(l)(3) (8 U.S.C. 1324b(l)(3)) is amended by inserting “and an additional \$40,000,000 for each of fiscal years 2008 through 2010” before the period at the end.

(f) EFFECTIVE DATE.—The amendments made by this title shall take effect on the date of the enactment of this Act and shall apply to violations occurring on or after such date.

#### SEC. 304. ADDITIONAL PROTECTIONS.

Section 274B (8 U.S.C. 1324b) is amended—

(1) in subsection (a), by amending paragraph (1) to read as follows:

“(1) IN GENERAL.—It is an unfair immigration-related employment practice for a person or other entity to discriminate against any individual (other than an unauthorized alien defined in section 274A(h)(3)) with respect to—

“(A) the hiring, or recruitment or referral for a fee, of the individual for employment or the discharging of the individual from employment—

“(i) because of such individual’s national origin; or

“(ii) in the case of a protected individual, because of such individual’s citizenship status; or

“(B) the compensation, terms, or conditions of the employment of the individual.”;

(2) in subsection (a)(6), by striking “if made for the purpose or with the intent of discriminating against an individual in violation of paragraph (1)” and inserting “in violation of paragraph (1), subject to additional information and compliance assistance being provided to employers to assist them in complying with the law”;

(3) in subsection (d)—

(A) in paragraph (1), by striking “and, based on such an investigation and subject to paragraph (3), file a complaint before such a judge” and inserting “Any such investigation shall begin not later than 180 days after the alleged discriminatory act. Any such complaint filed with an administrative law judge shall be filed not later than 1 year after the commencement of the independent investigation.”; and

(B) by striking paragraph (3); and

(4) in subsection (g)(2)(B)(iii), by inserting “, and to provide such other relief as the administrative law judge determines appropriate to make the individual whole” before the semicolon at the end.

#### SEC. 305. ADDITIONAL WORKSITE ENFORCEMENT AND FRAUD DETECTION AGENTS.

(a) INCREASE IN NUMBER OF PERSONNEL.—The Secretary shall, subject to the availability of appropriations for such purpose, annually increase, by not less than 2,200, the number of personnel of the Bureau of Immigration and Customs Enforcement during the 5-year period beginning on the date of the enactment of this Act.

(b) USE OF PERSONNEL.—The Secretary shall ensure that not less than 25 percent of all the hours expended by personnel of the Bureau of Immigration and Customs

toms Enforcement shall be used to enforce compliance with sections 274A and 274C of the Immigration and Nationality Act (8 U.S.C. 1324a and 1324c).

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

**SEC. 306. AMENDMENTS TO THE SOCIAL SECURITY ACT AND THE INTERNAL REVENUE CODE.**

(a) SOCIAL SECURITY ACT.—Section 205(c)(2) of the Social Security Act (42 U.S.C. 405(c)(2)) is amended by adding at the end the following new subparagraphs:

“(I)(i) The Commissioner of Social Security shall, subject to the provisions of title III of the STRIVE Act of 2007, establish a reliable, secure method to provide through the Electronic Employment Verification System established pursuant to section 274A(c) of the Immigration and Nationality Act (referred to in this subparagraph as the ‘System’), within the time periods required by such subsection—

“(I) a determination of whether the name, date of birth, employer identification number, and social security account number of an individual provided in an inquiry made to the System by an employer is consistent with such information maintained by the Commissioner in order to confirm the validity of the information provided;

“(II) a determination of the citizenship status associated with such name and social security account number, according to the records maintained by the Commissioner;

“(III) a determination of whether the name and number belongs to an individual who is deceased, according to the records maintained by the Commissioner;

“(IV) a determination of whether the name and number is blocked in accordance with clause (ii); and

“(V) a confirmation or a nonconfirmation described in such subsection (c), in a manner that ensures that other information maintained by the Commissioner is not disclosed or released to employers through the System.

“(ii) The Commissioner of Social Security shall prevent the fraudulent or other misuse of a social security account number by establishing procedures under which an individual who has been assigned a social security account number may block the use of such number under the System and remove such block.

“(J) In assigning social security account numbers to aliens who are authorized to work in the United States under section 218A of the Immigration and Nationality Act, the Commissioner of Social Security shall, to the maximum extent practicable, assign such numbers by employing the enumeration procedure administered jointly by the Commissioner, the Secretary of State, and the Secretary.”

(b) DISCLOSURE OF CERTAIN TAXPAYER IDENTITY INFORMATION.—

(1) IN GENERAL.—Section 6103(l) of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph:

“(21) DISCLOSURE OF CERTAIN TAXPAYER IDENTITY INFORMATION BY SOCIAL SECURITY ADMINISTRATION TO DEPARTMENT OF HOMELAND SECURITY.—

“(A) IN GENERAL.—From taxpayer identity information which has been disclosed to the Social Security Administration and upon written request by the Secretary of Homeland Security, the Commissioner of Social Security shall disclose directly to officers, employees, and contractors of the Department of Homeland Security the following information:

“(i) DISCLOSURE OF EMPLOYER NO-MATCH NOTICES.—Taxpayer identity information of each person who has filed an information return required by reason of section 6051 during calendar year 2006, 2007, or 2008 which contains—

“(I) more than 100 names and taxpayer identifying numbers of employees (within the meaning of such section) that did not match the records maintained by the Commissioner of Social Security; or

“(II) more than 10 names of employees (within the meaning of such section) with the same taxpayer identifying number.

“(ii) DISCLOSURE OF INFORMATION REGARDING USE OF DUPLICATE EMPLOYEE TAXPAYER IDENTIFYING INFORMATION.—Taxpayer identity information of each person who has filed an information return required by reason of section 6051 which the Commissioner of Social Security has reason to believe, based on a comparison with information submitted by the Secretary of Homeland Security, contains evidence of

identity fraud due to the multiple use of the same taxpayer identifying number (assigned under section 6109) of an employee (within the meaning of section 6051).

“(iii) DISCLOSURE OF INFORMATION REGARDING NONPARTICIPATING EMPLOYERS.—Taxpayer identity information of each person who has filed an information return required by reason of section 6051 which the Commissioner of Social Security has reason to believe, based on a comparison with information submitted by the Secretary of Homeland Security, contains evidence of such person’s failure to register and participate in the Electronic Employment Verification System authorized under section 274A(c) of the Immigration and Nationality Act (hereafter in this paragraph referred to as the ‘System’).

“(iv) DISCLOSURE OF INFORMATION REGARDING NEW EMPLOYEES OF NONPARTICIPATING EMPLOYERS.—Taxpayer identity information of all employees (within the meaning of section 6051) hired after the date a person identified in clause (iii) is required to participate in the System under section 274A(c)(10) of the Immigration and Nationality Act.

“(v) DISCLOSURE OF INFORMATION REGARDING EMPLOYEES OF CERTAIN DESIGNATED EMPLOYERS.—Taxpayer identity information of all employees (within the meaning of section 6051) of each person who is required to participate in the System under such section 274A(c)(10) of the Immigration and Nationality Act.

“(vi) DISCLOSURE OF NEW HIRE TAXPAYER IDENTITY INFORMATION.—Taxpayer identity information of each person participating in the System and taxpayer identity information of all employees (within the meaning of section 6051) of such person hired during the period beginning with the later of—

“(I) the date such person begins to participate in the System;

or

“(II) the date of the request immediately preceding the most recent request under this clause, ending with the date of the most recent request under this clause.

“(B) RESTRICTION ON DISCLOSURE.—The Commissioner of Social Security shall disclose taxpayer identity information under subparagraph (A) only for purposes of, and to the extent necessary in—

“(i) establishing and enforcing employer participation in the System;

“(ii) carrying out, including through civil administrative and civil judicial proceedings, of sections 212, 217, 235, 237, 238, 274A, 274B, and 274C of the Immigration and Nationality Act; and

“(iii) the civil operation of the Alien Terrorist Removal Court.

“(C) REIMBURSEMENT.—The Commissioner of Social Security shall prescribe a reasonable fee schedule for furnishing taxpayer identity information under this paragraph and collect such fees in advance from the Secretary of Homeland Security.

“(D) TERMINATION.—This paragraph shall not apply to any request made after the date which is 3 years after the date of the enactment of this paragraph.”

(2) COMPLIANCE BY DHS CONTRACTORS WITH CONFIDENTIALITY SAFEGUARDS.—

(A) IN GENERAL.—Section 6103(p) of such Code is amended by adding at the end the following new paragraph:

“(9) DISCLOSURE TO DHS CONTRACTORS.—Notwithstanding any other provision of this section, no return or return information shall be disclosed to any contractor of the Department of Homeland Security unless the Secretary of Homeland Security, to the satisfaction of the Secretary—

“(A) has requirements in effect which require each such contractor which would have access to returns or return information to provide safeguards (within the meaning of paragraph (4)) to protect the confidentiality of such returns or return information;

“(B) agrees to conduct an on-site review every 3 years (mid-point review in the case of contracts or agreements of less than 1 year in duration) of each contractor to determine compliance with such requirements;

“(C) submits the findings of the most recent review conducted under subparagraph (B) to the Secretary as part of the report required by paragraph (4)(E); and

“(D) certifies to the Secretary for the most recent annual period that such contractor is in compliance with all such requirements.

The certification required by subparagraph (D) shall include the name and address of each contractor, a description of the contract or agreement with such contractor, and the duration of such contract or agreement.”.

(3) CONFORMING AMENDMENTS.—

(A) Section 6103(a)(3) of such Code is amended by striking “or (20)” and inserting “(20), or (21)”.

(B) Section 6103(p)(3)(A) of such Code is amended by adding at the end the following new sentence: “The Commissioner of Social Security shall provide to the Secretary such information as the Secretary may require in carrying out this paragraph with respect to return information inspected or disclosed under the authority of subsection (1)(21).”.

(C) Section 6103(p)(4) of such Code is amended—

(i) by striking “or (17)” both places it appears and inserting “(17), or (21)”; and

(ii) by striking “or (20)” each place it appears and inserting “(20), or (21)”.

(D) Section 6103(p)(8)(B) of such Code is amended by inserting “or paragraph (9)” after “subparagraph (A)”.

(E) Section 7213(a)(2) of such Code is amended by striking “or (20)” and inserting “(20), or (21)”.

(c) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated to the Secretary such sums as are necessary to carry out the amendments made by this section.

(2) LIMITATION ON VERIFICATION RESPONSIBILITIES OF COMMISSIONER OF SOCIAL SECURITY.—The Commissioner of Social Security is authorized to perform activities with respect to carrying out the Commissioner’s responsibilities in this title or the amendments made by this title, but only to the extent the Secretary has provided, in advance, funds to cover the Commissioner’s full costs in carrying out such responsibilities. In no case shall funds from the Federal Old-Age and Survivors Insurance Trust Fund or the Federal Disability Insurance Trust Fund be used to carry out such responsibilities.

(d) EFFECTIVE DATES.—

(1) SOCIAL SECURITY ACT.—The amendments made by subsection (a) shall take effect on the date that is 180 days after the date of the enactment of this Act.

(2) INTERNAL REVENUE CODE.—

(A) IN GENERAL.—The amendments made by subsection (b) shall apply to disclosures made after the date of the enactment of this Act.

(B) CERTIFICATIONS.—The first certification under section 6103(p)(9)(D) of the Internal Revenue Code of 1986, as added by subsection (b)(2), shall be made with respect to calendar year 2007.

## TITLE IV—NEW WORKER PROGRAM

### SEC. 401. NONIMMIGRANT WORKER.

Section 101(a)(15)(H) (8 U.S.C. 1101(a)(15)(H)) is amended to read as follows:

“(H) an alien—

“(i)(b) subject to section 212(j)(2)—

“(aa) who is coming temporarily to the United States to perform services (other than services described in clause (ii)(a) or subparagraph (O) or (P)) in a specialty occupation described in section 214(i)(1) or as a fashion model;

“(bb) who meets the requirements for the occupation specified in section 214(i)(2) or, in the case of a fashion model, is of distinguished merit and ability; and

“(cc) with respect to whom the Secretary of Labor determines and certifies to the Secretary of Homeland Security that the intending employer has filed an application with the Secretary in accordance with section 212(n)(1);

“(b1)(aa) who is entitled to enter the United States under the provisions of an agreement listed in section 214(g)(8)(A);

“(bb) who is engaged in a specialty occupation described in section 214(i)(3); and

“(cc) with respect to whom the Secretary of Labor determines and certifies to the Secretary of Homeland Security and the Secretary of



State that the intending employer has filed an attestation with the Secretary of Labor in accordance with section 212(t)(1); or

“(c)(aa) who is coming temporarily to the United States to perform services as a registered nurse;

“(bb) who meets the qualifications described in section 212(m)(1); and

“(cc) with respect to whom the Secretary of Labor determines and certifies to the Secretary of Homeland Security that an unexpired attestation is on file and in effect under section 212(m)(2) for the facility (as defined in section 212(m)(6)) for which the alien will perform the services; or

“(ii)(a) who—

“(aa) has a residence in a foreign country which the alien has no intention of abandoning; and

“(bb) is coming temporarily to the United States to perform agricultural labor or services (as defined by the Secretary of Labor), including agricultural labor (as defined in section 3121(g) of the Internal Revenue Code of 1986), agriculture (as defined in section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f))), and the pressing of apples for cider on a farm, of a temporary or seasonal nature;

“(b) who—

“(aa) has a residence in a foreign country which the alien has no intention of abandoning;

“(bb) is coming temporarily to the United States to perform nonagricultural work or services of a temporary or seasonal nature (if unemployed persons capable of performing such work or services cannot be found in the United States), excluding medical school graduates coming to the United States to perform services as members of the medical profession; or

“(c) who—

“(aa) is coming temporarily to the United States to initially perform temporary labor or services other than the labor or services described in clause (i)(b), (i)(b1), (i)(c), (ii)(a), or (iii), subparagraph (D), (E), (I), (L), (O), (P), or (R), or section 214(e) (if United States workers who are able, willing, and qualified to perform such labor or services cannot be found in the United States); and

“(bb) meets the requirements of section 218A, including the filing of a petition under such section on behalf of the alien;

“(iii) who—

“(a) has a residence in a foreign country which the alien has no intention of abandoning; and

“(b) is coming temporarily to the United States as a trainee (other than to receive graduate medical education or training) in a training program that is not designed primarily to provide productive employment; or

“(iv) who—

“(a) is the spouse or a minor child of an alien described in this subparagraph; and

“(b) is accompanying or following to join such alien.”.

**SEC. 402. ADMISSION OF NONIMMIGRANT WORKERS.**

(a) **NEW WORKERS.**—Chapter 2 of title II (8 U.S.C. 1181 et seq.) is amended by inserting after section 218 the following:

**“SEC. 218A. ADMISSION OF H-2C NONIMMIGRANTS.**

“(a) **AUTHORIZATION.**—The Secretary of State may grant a temporary visa to an H-2C nonimmigrant who demonstrates an intent to perform labor or services in the United States (other than the labor or services described in clause (i)(b), (i)(b1), (i)(c), (ii)(a), or (iii) of section 101(a)(15)(H), subparagraph (D), (E), (I), (L), (O), (P), or (R) of section 101(a)(15), or section 214(e) (if United States workers who are able, willing, and qualified to perform such labor or services cannot be found in the United States).

“(b) **REQUIREMENTS FOR ADMISSION.**—An alien shall be eligible for H-2C nonimmigrant status if the alien meets the following requirements:

“(1) **ELIGIBILITY TO WORK.**—The alien shall establish that the alien is capable of performing the labor or services required for an occupation described in section 101(a)(15)(H)(ii)(c).

“(2) **EVIDENCE OF EMPLOYMENT OFFER.**—The alien’s evidence of employment shall be provided in accordance with the requirements issued by the Secretary

of State, in consultation with the Secretary of Labor. In carrying out this paragraph, the Secretary may consider evidence from employers, employer associations, and labor representatives.

“(3) FEE.—The alien shall pay a \$500 visa issuance fee in addition to the cost of processing and adjudicating such application. Nothing in this paragraph shall be construed to affect consular procedures for charging reciprocal fees.

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

“(5) APPLICATION CONTENT AND WAIVER.—

“(A) APPLICATION FORM.—The alien shall submit to the Secretary of State a completed application, which contains evidence that the requirements under paragraphs (1) and (2) have been met.

“(B) CONTENT.—In addition to any other information that the Secretary requires to determine an alien’s eligibility for H–2C nonimmigrant status, the Secretary of State shall require an alien to provide information concerning the alien’s—

“(i) physical and mental health;

“(ii) criminal history and gang membership;

“(iii) immigration history; and

“(iv) involvement with groups or individuals that have engaged in terrorism, genocide, persecution, or who seek the overthrow of the United States Government.

“(C) KNOWLEDGE.—The alien shall include with the application submitted under this paragraph a signed certification in which the alien certifies that—

“(i) the alien has read and understands all of the questions and statements on the application form;

“(ii) the alien certifies under penalty of perjury under the laws of the United States that the application, and any evidence submitted with it, are all true and correct; and

“(iii) the applicant authorizes the release of any information contained in the application and any attached evidence for law enforcement purposes.

“(c) GROUNDS OF INADMISSIBILITY.—

“(1) IN GENERAL.—In determining an alien’s admissibility as an H–2C nonimmigrant—

“(A) paragraphs (5), (6) (except subparagraph (E)), (7), (9), and (10)(B) of section 212(a) may not apply with respect to conduct that occurred before the effective date of the STRIVE Act;

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

“(i) subparagraph (A), (B), (C), (D)(ii), (E), (G), (H), or (I) of section 212(a)(2);

“(ii) section 212(a)(3); or

“(iii) subparagraph (A), (C) or (D) of section 212(a)(10);

“(C) the Secretary of State may waive the application of any provision of section 212(a) not listed in subparagraph (B) on behalf of an individual alien—

“(i) for humanitarian purposes;

“(ii) to ensure family unity; or

“(iii) if such a waiver is otherwise in the public interest;

“(D) nothing in this paragraph shall be construed as affecting the authority of the Secretary other than under this paragraph to waive the provisions of section 212(a).

“(2) RENEWAL OF AUTHORIZED ADMISSION AND SUBSEQUENT ADMISSIONS.—An alien seeking renewal of authorized admission or subsequent admission as an H–2C nonimmigrant shall establish that the alien is not inadmissible under section 212(a).

“(3) BACKGROUND CHECKS.—The Secretary of Homeland Security shall not admit, and the Secretary of State shall not issue a visa to, an alien seeking H–2C nonimmigrant status unless all appropriate background checks have been completed.

“(d) PERIOD OF AUTHORIZED ADMISSION.—

“(1) AUTHORIZED PERIOD.—The initial period of authorized admission as an H–2C nonimmigrant shall be 3 years.

“(2) RENEWAL.—Before the expiration of the initial period under paragraph (1), an H–2C nonimmigrant may submit an application to the Secretary of

Homeland Security to extend H-2C nonimmigrant status for 1 additional 3-year period. The Secretary may not require an applicant under this paragraph to depart the United States as a condition for granting such extension.

“(3) INTERNATIONAL COMMUTERS.—An alien who maintains actual residence and place of abode outside the United States and commutes into the United States to work as an H-2C nonimmigrant, is not subject to the time limitations under paragraphs (1) and (2).

“(4) LOSS OF EMPLOYMENT.—

“(A) IN GENERAL.—

“(i) PERIOD OF UNEMPLOYMENT.—Subject to clause (ii) and subsection (c), the period of authorized admission of an H-2C nonimmigrant shall terminate if the alien is unemployed for 60 or more consecutive days.

“(ii) EXCEPTION.—The period of authorized admission of an H-2C nonimmigrant shall not terminate if the alien is unemployed for 60 or more consecutive days if the alien submits documentation to the Secretary of Homeland Security that establishes that such unemployment was caused by—

“(I) a period of physical or mental disability of the alien or the spouse, son, daughter, or parent (as defined in section 101 of the Family and Medical Leave Act of 1993 (29 U.S.C. 2611)) of the alien;

“(II) a period of vacation, medical leave, maternity leave, or similar leave from employment authorized by employer policy, State law, or Federal law; or

“(III) any other period of temporary unemployment that is the direct result of a major disaster or emergency (as defined under section 532 of the STRIVE Act.

“(B) RETURN TO FOREIGN RESIDENCE.—Any alien whose period of authorized admission terminates under subparagraph (A) shall be required to leave the United States.

“(C) PERIOD OF VISA VALIDITY.—Any alien, whose period of authorized admission terminates under subparagraph (A), who leaves the United States under subparagraph (B), may reenter the United States as an H-2C nonimmigrant to work for an employer, if the alien has complied with the requirements of subsection (b).

“(5) VISITS OUTSIDE THE UNITED STATES.—

“(A) IN GENERAL.—Under regulations established by the Secretary of Homeland Security, an H-2C nonimmigrant—

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

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

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

“(6) BARS TO EXTENSION OR ADMISSION.—An alien may not be granted H-2C nonimmigrant status, or an extension of such status, if—

“(A) the alien has violated any material term or condition of such status granted previously, including failure to comply with the change of address reporting requirements under section 265;

“(B) the alien is inadmissible as a nonimmigrant; or

“(C) the granting of such status or extension of such status would allow the alien to exceed 6 years as an H-2C nonimmigrant, unless the alien has resided and been physically present outside the United States for at least 1 year after the expiration of such H-2C nonimmigrant status.

“(e) EVIDENCE OF NONIMMIGRANT STATUS.—Each H-2C nonimmigrant shall be issued documentary evidence of nonimmigrant status, which—

“(1) shall be machine-readable, tamper-resistant, and allow for biometric authentication;

“(2) shall, during the alien’s authorized period of admission under subsection (f), serve as a valid entry document for the purpose of applying for admission to the United States—

“(A) instead of a passport and visa if the alien—

“(i) is a national of a foreign territory contiguous to the United States; and

“(ii) is applying for admission at a land border port of entry; and

“(B) in conjunction with a valid passport, if the alien is applying for admission at an air or sea port of entry;

“(3) may be accepted during the period of its validity by an employer as evidence of employment authorization and identity under section 274A(b)(1)(B); and

“(4) shall be issued to the H-2C nonimmigrant by the Secretary of Homeland Security promptly after final adjudication of such status or, at the discretion of the Secretary of Homeland Security, may be issued by the Secretary of State at a consulate instead of a visa.

“(f) PENALTIES FOR FAILURE TO DEPART.—If an H-2C nonimmigrant fails to depart the United States by the date that the alien’s authorized admission as an H-2C nonimmigrant concludes, the visa of the alien shall be void under section 222(g)(1) and the alien shall be ineligible to be readmitted to the United States under section 222(g)(2). The alien may be removed if found to be within 1 or more of the classes of deportable aliens described in section 237.

“(g) PENALTY FOR ILLEGAL ENTRY OR OVERSTAY.—Any alien who unlawfully enters, attempts to enter, or crosses the border after the date of the enactment of this section, and is physically present in the United States after such date in violation of the immigration laws of the United States, may not receive, for a period of 10 years—

“(1) any relief under section 240A(a), 240A(b)(1), or 240B; or

“(2) nonimmigrant status under section 101(a)(15) (except subparagraphs (T) and (U)).

“(h) PORTABILITY.—A nonimmigrant alien described in this section, who was previously issued a visa or otherwise provided H-2C nonimmigrant status, may accept a new offer of employment with a subsequent employer, if—

“(1) the employer complies with section 218B; and

“(2) the alien, after lawful admission to the United States, did not work without authorization.

“(i) CHANGE OF ADDRESS.—An H-2C nonimmigrant shall comply with the change of address reporting requirements under section 265 through electronic or paper notification.

“(j) COLLECTION OF FEES.—All fees other than the application filing fee collected under this section shall be deposited in the Treasury in accordance with section 286(w).”.

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

“Sec. 218A. Admission of H-2C nonimmigrants.”.

**SEC. 403. EMPLOYER OBLIGATIONS.**

(a) IN GENERAL.—Title II (8 U.S.C. 1201 et seq.) is amended by inserting after section 218A, as added by section 402, the following:

**“SEC. 218B. EMPLOYER OBLIGATIONS.**

“(a) GENERAL REQUIREMENTS.—Each employer who employs an H-2C nonimmigrant shall—

“(1) file a petition in accordance with subsection (b); and

“(2) be required to pay—

“(A) an application filing fee for each alien, based on the cost of carrying out the processing duties under this subsection; and

“(B) a secondary fee, to be deposited in the Treasury in accordance with section 286(w), of—

“(i) \$250, in the case of an employer employing 25 employees or less;

“(ii) \$500, in the case of an employer employing between 26 and 150 employees;

“(iii) \$750, in the case of an employer employing between 151 and 500 employees; or

“(iv) \$1,000, in the case of an employer employing more than 500 employees. pay the appropriate fee.

“(b) REQUIRED PROCEDURE.—Except where the Secretary of Labor has determined that there is a shortage of United States workers in the occupation and area of intended employment to which the H-2C nonimmigrant is sought, each employer of H-2C nonimmigrants shall comply with the following requirements:

“(1) EFFORTS TO RECRUIT UNITED STATES WORKERS.—During the period beginning not later than 90 days before the date on which a petition is filed under subsection (a)(1), and ending on the date that is 14 days before to such filing

date, the employer involved shall recruit United States workers for the position for which the H-2C nonimmigrant is sought under the petition, by—

“(A) submitting a copy of the job opportunity, including a description of the wages and other terms and conditions of employment and the minimum education, training, experience and other requirements of the job, to the State Employment Service Agency that serves the area of employment in the State in which the employer is located;

“(B) authorizing the employment service agency of the State to post the job opportunity on the Internet website established under section 405 of the STRIVE Act, with local job banks, and with unemployment agencies and other labor referral and recruitment sources pertinent to the job involved;

“(C) authorizing the employment service agency of the State to notify—

“(i) labor organizations in the State in which the job is located; and

“(ii) if applicable, the office of the local union which represents the employees in the same or substantially equivalent job classification of the job opportunity;

“(D) posting the availability of the job opportunity for which the employer is seeking a worker in conspicuous locations at the place of employment for all employees to see;

“(E) advertising the availability of the job opportunity for which the employer is seeking a worker in a publication with the highest circulation in the labor market that is likely to be patronized by a potential worker for not fewer than 10 consecutive days; and

“(F) based on recommendations by the local job service, advertising the availability of the job opportunity in professional, trade, or ethnic publications that are likely to be patronized by a potential worker.

“(2) EFFORTS TO EMPLOY UNITED STATES WORKERS.—An employer that seeks to employ an H-2C nonimmigrant shall first offer the job to any eligible United States worker who applies, is qualified for the job and is available at the time of need, notwithstanding any other valid employment criteria.

“(c) PETITION.—A petition to hire an H-2C nonimmigrant under this section shall be filed with the Secretary of Labor and shall include an attestation by the employer of the following:

“(1) PROTECTION OF UNITED STATES WORKERS.—The employment of an H-2C nonimmigrant—

“(A) will not adversely affect the wages and working conditions of workers in the United States similarly employed; and

“(B) did not and will not cause the separation from employment of a United States worker employed by the employer within the 180-day period beginning 90 days before the date on which the petition is filed.

“(2) WAGES.—

“(A) IN GENERAL.—The H-2C nonimmigrant will be paid not less than the greater of—

“(i) the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question; or

“(ii) the prevailing wage level for the occupational classification in the area of employment, taking into account experience and skill levels of employees.

“(B) CALCULATION.—The wage levels under subparagraph (A) shall be calculated based on the best information available at the time of the filing of the application.

“(C) PREVAILING WAGE LEVEL.—For purposes of subparagraph (A)(ii), the prevailing wage level shall be determined in accordance as follows:

“(i) If the job opportunity is covered by a collective bargaining agreement between a union and the employer, the prevailing wage shall be the wage rate set forth in the collective bargaining agreement.

“(ii) If the job opportunity is not covered by such an agreement and it is on a project that is covered by a wage determination under a provision of subchapter IV of chapter 31 of title 40, United States Code, or the Service Contract Act of 1965 (41 U.S.C. 351 et seq.), the prevailing wage level shall be the appropriate statutory wage.

“(iii)(I) If the job opportunity is not covered by such an agreement and it is not on a project that is covered by a wage determination under a provision of subchapter IV of chapter 31 of title 40, United States Code, or the Service Contract Act of 1965 (41 U.S.C. 351 et seq.), the prevailing wage level shall be based on published wage data for the occupation from the Bureau of Labor Statistics, including the Occupa-

tional Employment Statistics survey, Current Employment Statistics data, National Compensation Survey, and Occupational Employment Projections program. If the Bureau of Labor Statistics does not have wage data applicable to such occupation, the employer may base the prevailing wage level on another wage survey approved by the Secretary of Labor.

“(II) The Secretary shall promulgate regulations applicable to approval of such other wage surveys that require, among other things, that the Bureau of Labor Statistics determine such surveys are statistically viable.

“(3) WORKING CONDITIONS.—All workers in the occupation at the place of employment at which the H-2C nonimmigrant will be employed will be provided the working conditions and benefits that are normal to workers similarly employed in the area of intended employment.

“(4) LABOR DISPUTE.—There is not a strike, lockout, or work stoppage in the course of a labor dispute in the occupation at the place of employment at which the H-2C nonimmigrant will be employed. If such strike, lockout, or work stoppage occurs following submission of the petition, the employer will provide notification in accordance with regulations promulgated by the Secretary of Labor.

“(5) PROVISION OF INSURANCE.—If the position for which the H-2C nonimmigrant is sought is not covered by the State workers’ compensation law, the employer will provide, at no cost to the H-2C nonimmigrant, insurance covering injury and disease arising out of, and in the course of, the worker’s employment, which will provide benefits at least equal to those provided under the State workers’ compensation law for comparable employment.

“(6) NOTICE TO EMPLOYEES.—

“(A) IN GENERAL.—The employer has provided notice of the filing of the petition to the bargaining representative of the employer’s employees in the occupational classification and area of employment for which the H-2C nonimmigrant is sought.

“(B) NO BARGAINING REPRESENTATIVE.—If there is no such bargaining representative, the employer has—

“(i) posted a notice of the filing of the petition in a conspicuous location at the place or places of employment for which the H-2C nonimmigrant is sought; or

“(ii) electronically disseminated such a notice to the employer’s employees in the occupational classification for which the H-2C nonimmigrant is sought.

“(7) RECRUITMENT.—Except where the Secretary of Labor has determined that there is a shortage of United States workers in the occupation and area of intended employment for which the H-2C nonimmigrant is sought—

“(A) there are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services involved in the petition; and

“(B) good faith efforts have been taken to recruit United States workers, in accordance with regulations promulgated by the Secretary of Labor, which efforts included—

“(i) the completion of recruitment during the period beginning on the date that is 90 days before the date on which the petition was filed with the Department of Homeland Security and ending on the date that is 14 days before such filing date; and

“(ii) the actual wage paid by the employer for the occupation in the areas of intended employment was used in conducting recruitment.

“(8) INELIGIBILITY.—The employer is not currently ineligible from using the H-2C nonimmigrant program described in this section.

“(9) BONAFIDE OFFER OF EMPLOYMENT.—The job for which the H-2C nonimmigrant is sought is a bona fide job—

“(A) for which the employer needs labor or services;

“(B) which has been and is clearly open to any United States worker;

and

“(C) for which the employer will be able to place the H-2C nonimmigrant on the payroll.

“(10) PUBLIC AVAILABILITY AND RECORDS RETENTION.—A copy of each petition filed under this section and documentation supporting each attestation, in accordance with regulations promulgated by the Secretary of Labor, will—

“(A) be provided to every H-2C nonimmigrant employed under the petition;

“(B) be made available for public examination at the employer’s place of business or work site;

“(C) be made available to the Secretary of Labor during any audit; and

“(D) remain available for examination for 5 years after the date on which the petition is filed.

“(11) NOTIFICATION UPON SEPARATION FROM OR TRANSFER OF EMPLOYMENT.—The employer will notify the Secretary of Labor and the Secretary of Homeland Security of an H–2C nonimmigrant’s separation from employment or transfer to another employer not more than 3 business days after the date of such separation or transfer, in accordance with regulations promulgated by the Secretary of Homeland Security.

“(12) ACTUAL NEED FOR LABOR OR SERVICES.—The petition was filed not more than 60 days before the date on which the employer needed labor or services for which the H–2C nonimmigrant is sought.

“(d) AUDIT OF ATTESTATIONS.—

“(1) REFERRALS BY SECRETARY OF HOMELAND SECURITY.—The Secretary of Homeland Security shall refer all approved petitions for H–2C nonimmigrants to the Secretary of Labor for potential audit.

“(2) AUDITS AUTHORIZED.—The Secretary of Labor may audit any approved petition referred pursuant to paragraph (1), in accordance with regulations promulgated by the Secretary of Labor.

“(e) INELIGIBLE EMPLOYERS.—

“(1) IN GENERAL.—The Secretary of Labor shall not approve an employer’s petitions, applications, certifications, or attestations under any immigrant or nonimmigrant program if the Secretary of Labor determines, after notice and an opportunity for a hearing, that the employer submitting such documents—

“(A) has, with respect to the attestations required under subsection (b)—

“(i) misrepresented a material fact;

“(ii) made a fraudulent statement; or

“(iii) failed to comply with the terms of such attestations; or

“(B) failed to cooperate in the audit process in accordance with regulations promulgated by the Secretary of Labor.

“(2) LENGTH OF INELIGIBILITY.—An employer described in paragraph (1) shall be ineligible to participate in the labor certification programs of the Secretary of Labor for not less than the time period determined by the Secretary, not to exceed 3 years.

“(3) EMPLOYERS IN HIGH UNEMPLOYMENT AREAS.—The Secretary of Labor may not approve any employer’s petition under subsection (b) if the work to be performed by the H–2C nonimmigrant is not agriculture based and is located in a metropolitan or micropolitan statistical area (as defined by the Office of Management and Budget) in which the unemployment rate for workers who have not completed any education beyond a high school diploma during the most recently completed 6-month period averaged more than 9.0 percent.

“(f) REGULATION OF FOREIGN LABOR CONTRACTORS.—

“(1) COVERAGE.—Notwithstanding any other provision of law—

“(A) an H–2C nonimmigrant is prohibited from being treated as an independent contractor; and

“(B) no person may treat an H–2C nonimmigrant as an independent contractor.

“(2) APPLICABILITY OF LAWS.—An H–2C nonimmigrant shall not be denied any right or any remedy under Federal, State, or local labor or employment law that would be applicable to a United States worker employed in a similar position with the employer because of the alien’s status as a nonimmigrant worker.

“(3) TAX RESPONSIBILITIES.—With respect to each employed H–2C nonimmigrant, an employer shall comply with all applicable Federal, State, and local tax and revenue laws.

“(g) WHISTLEBLOWER PROTECTION.—

“(1) PROHIBITED ACTIVITIES.—It shall be unlawful for an employer or a labor contractor of an H–2C nonimmigrant to intimidate, threaten, restrain, coerce, retaliate, discharge, or in any other manner, discriminate against an employee or former employee because the employee or former employee—

“(A) discloses information to the employer or any other person that the employee or former employee reasonably believes demonstrates a violation of this Act, the STRIVE Act, or any other Federal labor or employment law; or

“(B) cooperates or seeks to cooperate in an investigation or other proceeding concerning compliance with the requirements of this Act, the STRIVE Act, or any other Federal labor or employment law.

“(2) RULEMAKING.—The Secretary of Labor and the Secretary of Homeland Security shall jointly promulgate regulations that establish a process by which a nonimmigrant alien described in section 101(a)(15)(H) who files a nonfrivolous complaint (as defined by the Federal Rules of Civil Rules) regarding a violation of this Act, the STRIVE Act, or any other Federal labor or employment law, or any other rule or regulation pertaining to such laws and is otherwise eligible to remain and work in the United States may be allowed to seek other appropriate employment in the United States—

“(A) for a period not to exceed the maximum period of stay authorized for that nonimmigrant classification; or

“(B) until the conclusion of the proceedings governing the complaint.

“(h) LABOR RECRUITERS.—

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

“(A) the place of employment;

“(B) the compensation for the employment;

“(C) a description of employment activities;

“(D) the period of employment;

“(E) any other employee benefit to be provided and any costs to be charged for each benefit;

“(F) any travel or transportation expenses to be assessed;

“(G) the existence of any labor organizing effort, strike, lockout, or other labor dispute at the place of employment;

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

“(I) the extent to which workers will be compensated through workers’ compensation, private insurance, or otherwise for injuries or death, including—

“(i) work related injuries and death during the period of employment;

“(ii) the name of the State workers’ compensation insurance carrier or the name of the policyholder of the private insurance;

“(iii) the name and the telephone number of each person who must be notified of an injury or death; and

“(iv) the time period within which such notice must be given;

“(J) any education or training to be provided or required, including—

“(i) the nature and cost of such training;

“(ii) the entity that will pay such costs; and

“(iii) whether the training is a condition of employment, continued employment, or future employment; and

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

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

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

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

“(5) TERMS.—No employer or foreign labor contractor shall, without justification, violate the terms of any agreement made by that contractor or employer regarding employment under this program.

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

“(7) OTHER WORKER PROTECTIONS.—

“(A) NOTIFICATION.—Not less frequently than once every 2 years, each employer shall notify the Secretary of Labor of the identity of any foreign



labor contractor engaged by the employer in any foreign labor contractor activity for, or on behalf of, the employer.

“(B) REGISTRATION OF FOREIGN LABOR CONTRACTORS.—

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

“(ii) ISSUANCE.—The Secretary shall promulgate regulations to establish an efficient electronic process for the investigation and approval of an application for a certificate of registration of foreign labor contractors not later than 14 days after such application is filed, including—

“(I) requirements under paragraphs (1), (4), and (5) of section 102 of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1812);

“(II) an expeditious means to update registrations and renew certificates; and

“(III) any other requirements that the Secretary may prescribe.

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

“(iv) REFUSAL TO ISSUE; REVOCATION; SUSPENSION.—In accordance with regulations promulgated by the Secretary of Labor, the Secretary may refuse to issue or renew, or may suspend or revoke, a certificate of registration under this subparagraph if—

“(I) the application or holder of the certification has knowingly made a material misrepresentation in the application for such certificate;

“(II) the applicant for, or holder of, the certification is not the real party in interest in the application or certificate of registration and the real party in interest—

“(aa) is a person who has been refused issuance or renewal of a certificate;

“(bb) has had a certificate suspended or revoked; or

“(cc) does not qualify for a certificate under this paragraph; or

“(III) the applicant for or holder of the certification has failed to comply with this Act.

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

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

“(E) WRITTEN AGREEMENTS.—A foreign labor contractor may not violate the terms of any written agreements made with an employer relating to any contracting activity or worker protection under this subsection.

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

“(i) WAIVER OF RIGHTS PROHIBITED.—An H-2C nonimmigrant may not be required to waive any rights or protections under this Act. Nothing under this subsection shall be construed to affect the interpretation of other laws.

“(j) NO THREATENING OF EMPLOYEES.—It shall be a violation of this section for an employer who has filed an attestation with the Department of Labor as part of the petition process under this section to threaten the alien beneficiary of such a petition with the withdrawal of such a petition in retaliation for the beneficiary's exercise of a right protected by this Act.

“(k) ENFORCEMENT.—

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

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

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

“(4) NOTICE AND HEARING.—

“(A) IN GENERAL.—Not later than 60 days after the Secretary of Labor makes a determination of reasonable basis under paragraph (3), the Secretary shall issue a notice to the interested parties and offer an opportunity for a hearing on the complaint, in accordance with section 556 of title 5, United States Code.

“(B) COMPLAINT.—If the Secretary of Labor, after receiving a complaint under this subsection, does not offer the aggrieved person or organization an opportunity for a hearing under subparagraph (A), the Secretary shall notify the aggrieved person or organization of such determination and the aggrieved person or organization may seek a hearing on the complaint under procedures established by the Secretary which comply with the requirements of section 556.

“(C) HEARING DEADLINE.—Not later than 60 days after the date of a hearing under this paragraph, the Secretary of Labor shall make a finding on the matter in accordance with paragraph (5).

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

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

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

“(B) to recover the damages described in subsection (i); or

“(C) to ensure compliance with terms and conditions described in subsection (g).

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

“(8) PROCEDURES IN ADDITION TO OTHER RIGHTS OF EMPLOYEES.—The rights and remedies provided to workers under this section are in addition to any other contractual or statutory rights and remedies of the workers, and are not intended to alter or affect such rights and remedies.

“(I) PENALTIES.—

“(1) IN GENERAL.—If, after notice and an opportunity for a hearing, the Secretary of Labor finds a violation of subsection (b), (e), (f), or (g), the Secretary may impose administrative remedies and penalties, including—

“(A) back wages;

“(B) benefits; and

“(C) civil monetary penalties.

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

“(A) for a violation of any of subsections (b) through (g)—

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

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

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

“(B) for a violation of subsection (h)—

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

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

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

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

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

“(m) INCREASED PENALTIES.—Any employer of an H-2C nonimmigrant that is subject to a fine under section 16 of the Fair Labor Standards Act of 1938 (29 U.S.C. 216) or the Occupational Safety and Health Act of 1970 (29 U.S.C. 666) for a violation affecting such alien, shall be required to pay a fine equal to twice the fine that would otherwise be assessed under such sections.

“(n) DEFINITIONS.—In this section and in sections 218A, 218C, and 218D:

“(1) AGGRIEVED PERSON.—term ‘aggrieved person’ means a person adversely affected by an alleged violation of this section, including—

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

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

“(2) AREA OF EMPLOYMENT.—The terms ‘area of employment’ and ‘area of intended employment’ mean the area within normal commuting distance of the worksite or physical location at which the work of the H-2C worker is or will be performed. If such worksite or location is within a Metropolitan Statistical Area, any place within such area is deemed to be within the area of employment.

“(3) ELIGIBLE INDIVIDUAL.—The term ‘eligible individual’ means, with respect to employment, an individual who is not an unauthorized alien (as defined in section 274A) with respect to that employment.

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

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

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

“(7) H-2C NONIMMIGRANT.—The term ‘H-2C nonimmigrant’ means a nonimmigrant described in section 101(a)(15)(H)(ii)(c).

“(8) SEPARATION FROM EMPLOYMENT.—The term ‘separation from employment’ means the worker’s loss of employment, other than through a discharge for inadequate performance, violation of workplace rules, cause, voluntary departure, voluntary retirement, or the expiration of a grant or contract. The term does not include any situation in which the worker is offered, as an alternative to such loss of employment, a similar employment opportunity with the same employer at equivalent or higher compensation and benefits than the position from which the employee was discharged, regardless of whether the employee accepts the offer. Nothing in this paragraph shall limit an employee’s rights under a collective bargaining agreement or other employment contract.

“(9) UNITED STATES WORKER.—The term ‘United States worker’ means an employee who is—

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

“(B) an alien who is—

“(i) lawfully admitted for permanent residence;

“(ii) admitted as a refugee under section 207;

“(iii) granted asylum under section 208; or

“(iv) otherwise authorized, under this Act or by the Secretary of Homeland Security, to be employed in the United States.”

(b) CLERICAL AMENDMENT.—The table of contents is amended by inserting after the item relating to section 218A, as added by section 402, the following:

“Sec. 218B. Employer obligations.”

**SEC. 404. ALIEN EMPLOYMENT MANAGEMENT SYSTEM.**

(a) IN GENERAL.—Title II (8 U.S.C. 1151 et seq.) is amended by inserting after section 218B, as added by section 403, the following:

**“SEC. 218C. ALIEN EMPLOYMENT MANAGEMENT SYSTEM.**

“(a) ESTABLISHMENT.—The Secretary of Homeland Security, in consultation with the Secretary of Labor, the Secretary of State, and the Commissioner of Social Security, shall develop and implement a program (referred to in this section as the ‘alien employment management system’) to manage and track the employment of aliens described in sections 218A and 218D.

“(b) REQUIREMENTS.—The alien employment management system shall—

“(1) collect sufficient information from employers to enable the Secretary of Homeland Security to determine—

“(A) if the nonimmigrant is employed;

“(B) which employers have hired an H–2C nonimmigrant;

“(C) the number of H–2C nonimmigrants that an employer is authorized to hire and is currently employing;

“(D) the occupation, industry, and length of time that an H–2C nonimmigrant has been employed in the United States;

“(2) allow employers to request approval of multiple H–2C nonimmigrant workers; and

“(3) permit employers to submit applications under this section in an electronic form.”.

(b) CLERICAL AMENDMENT.—The table of contents for the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended by inserting after the item relating to section 218B, as added by section 403, the following:

“Sec. 218C. Alien employment management system.”.

**SEC. 405. RECRUITMENT OF UNITED STATES WORKERS.**

(a) ELECTRONIC JOB REGISTRY.—The Secretary of Labor shall establish a publicly accessible Web page on the Internet website of the Department of Labor that provides a single Internet link to each State workforce agency’s statewide electronic registry of jobs available throughout the United States to United States workers.

(b) RECRUITMENT OF UNITED STATES WORKERS.—

(1) POSTING.—An employer shall attest that the employer has posted an employment opportunity at a prevailing wage level (as described in section 218B(b)(2)(C) of the Immigration and Nationality Act).

(2) RECORDS.—An employer shall maintain records for not less than 1 year after the date on which an H–2C nonimmigrant is hired that describe the reasons for not hiring any of the United States workers who may have applied for such position.

(c) OVERSIGHT AND MAINTENANCE OF RECORDS.—The Secretary of Labor shall promulgate regulations regarding the maintenance of electronic job registry records for the purpose of audit or investigation.

(d) ACCESS TO ELECTRONIC JOB REGISTRY.—The Secretary of Labor shall ensure that job opportunities advertised on an electronic job registry established under this section are accessible—

(1) by the State workforce agencies, which may further disseminate job opportunity information to other interested parties; and

(2) through the Internet, for access by workers, employers, labor organizations, and other interested parties.

**SEC. 406. NUMERICAL LIMITATIONS.**

Section 214(g)(1) (8 U.S.C. 1184(g)) is amended—

(1) by striking “(beginning with fiscal year 1992)”;

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

(3) by adding at the end the following:

“(C) under section 101(a)(15)(H)(ii)(c), may not exceed—

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

“(ii) in any subsequent fiscal year, subject to clause (iii)—

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

“(II) if the total number of visas allocated for that fiscal year are allotted within the second quarter of that fiscal year, then an additional 15 percent of the allocated number shall be made avail-

able immediately and the allocated amount for the following fiscal year shall increase by 15 percent of the original allocated amount in the prior fiscal year;

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

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

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

“(iii) 600,000 for any fiscal year.”

**SEC. 407. ADJUSTMENT TO LAWFUL PERMANENT RESIDENT STATUS.**

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

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

“(A) by the alien’s employer; or

“(B) by the alien, if the alien has been employed as an H-2C nonimmigrant in the United States for a cumulative total of 5 years.

“(2) An alien applying for adjustment of status under paragraph (1)(B) shall—

“(A) pay an application fee of \$500 which shall be credited to the State Impact Assistance Account established under section 286(x), in addition to the fee established by the Secretary of Homeland Security to process an application for adjustment of status;

“(B) be physically present in the United States;

“(C) establish evidence of employment; and

“(D)(i) meet the requirements under section 312; or

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

“(3)(A) Notwithstanding any other provision of this section, an alien described in paragraph (1)(B) shall be considered, at the time of obtaining the status of an alien lawfully admitted for permanent residence, to have obtained such status on a conditional basis for a period not to exceed two years subject to the provisions of this subsection.

“(B) In order for the conditional basis established under this subsection for an alien to be removed, the alien shall submit to the Secretary, during the 90-day period before the second anniversary of the alien’s obtaining the status of lawful admission for permanent residence, a petition which requests the removal of such conditional basis and states, under penalty of perjury, the facts and information described in subparagraph (G).

“(C) In the case of an alien with permanent resident status on a conditional basis under this subsection, if no petition is filed with respect to the alien in accordance with the provisions of this paragraph, status shall be terminated.

“(D) In any removal proceeding with respect to an alien whose permanent resident status is terminated under subparagraph (B), the burden of proof shall be on the alien to establish compliance with the conditions of this subsection.

“(E) If the Secretary determines that such facts and information are true, the Secretary shall so notify the parties involved and shall remove the conditional basis of the party effective as of the second anniversary of the alien’s obtaining the status of lawful admission for permanent residence

“(F) If the Secretary determines that such facts and information are not true, the Secretary shall so notify the parties involved and, shall terminate the permanent resident status of an alien as of the date of the determination.

“(G) Each petition under this paragraph for removal of conditional status shall contain the following facts and information:

“(i) Evidence of continued employment.

“(ii) Evidence of employment in an area that is not a high unemployment area described in section 218B.

“(iii) Evidence of compliance with—

“(I) section 602(g) of the STRIVE Act of 2007, regarding payment of income taxes

“(II) section 602(h) of such Act, regarding basic citizenship skills

“(III) section 602(i) of such Act, regarding security and law enforcement background checks;

“(IV) section 602(j) of such Act, regarding military selective service; and

“(V) section 602(k) of such Act, regarding treatment of conditional non-immigrant dependents.

“(4) An alien shall demonstrate evidence of employment in accordance with section 602(a)(3) of the STRIVE Act. It is the sense of the Congress that the requirement under this paragraph should be interpreted and implemented in a manner that recognizes and takes into account the difficulties encountered by aliens in obtaining evidence of employment. Such alien shall prove, by a preponderance of the evidence, that the alien has satisfied the requirements of this subsection. An alien may meet such burden of proof by producing sufficient evidence to demonstrate such employment as a matter of reasonable inference.

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

“(6) Filing a petition under paragraph (1) on behalf of an alien or otherwise seeking permanent residence in the United States for such alien shall not constitute evidence of the alien’s ineligibility for nonimmigrant status under section 101(a)(15)(H)(ii)(c).

“(7) The limitation regarding the period of authorized stay under section 218D(9)(d) shall not apply to an H-2C nonimmigrant if—

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

“(B) an immigrant visa petition filed under section 204(b) on behalf of such alien is pending; or

“(C) an application for adjustment of status under paragraph (1)(B) is pending.

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

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

**SEC. 408. REQUIREMENTS FOR PARTICIPATING COUNTRIES.**

(a) **IN GENERAL.**—The Secretary of State, in cooperation with the Secretary and the Attorney General, shall negotiate with each home country of aliens described in section 101(a)(15)(H)(ii)(c) of the Immigration and Nationality Act, as added by section 401, to enter into a bilateral agreement with the United States that conforms to the requirements under subsection (b).

(b) **REQUIREMENTS OF BILATERAL AGREEMENTS.**—Each agreement negotiated under subsection (a) shall require the participating home country to—

(1) accept the return of nationals who are ordered removed from the United States within 3 days of such removal;

(2) cooperate with the United States Government to—

(A) identify, track, and reduce gang membership, violence, and human trafficking and smuggling; and

(B) control illegal immigration;

(3) provide the United States Government with—

(A) passport information and criminal records of aliens who are seeking admission to, or are present in, the United States; and

(B) admission and entry data to facilitate United States entry-exit data systems;

(4) educate nationals of the home country regarding United States temporary worker programs to ensure that such nationals are not exploited; and

(5) evaluate means to provide housing incentives in the alien’s home country for returning workers.

**SEC. 409. COMPLIANCE INVESTIGATORS.**

The Secretary of Labor, subject to the availability of appropriations for such purpose, shall annually increase, by not less than 2,000, the number of positions for compliance investigators dedicated to enforcing compliance with this title, and the amendments made by this title.

**SEC. 410. STANDING COMMISSION ON IMMIGRATION AND LABOR MARKETS.****(a) ESTABLISHMENT OF COMMISSION.—**

(1) **IN GENERAL.**—There is established an independent Federal agency within the Executive Branch to be known as the Standing Commission on Immigration and Labor Markets (referred to in this section as the “Commission”).

**(2) PURPOSES.**—The purposes of the Commission are—

(A) to study the new worker program established under this title to admit H–2C nonimmigrants (referred to in this section as the “Program”);

(B) to make recommendations to the President and Congress with respect to the Program.

**(3) MEMBERSHIP.**—The Commission shall be composed of—**(A) 6 voting members—**

(i) who shall be appointed by the President, with the advice and consent of the Senate, not later than 6 months after the establishment of the Program;

(ii) who shall serve for 3-year staggered terms, which can be extended for 1 additional 3-year term;

(iii) who shall select a Chair from among the voting members to serve a 2-year term, which can be extended for 1 additional 2-year term;

(iv) who shall have expertise in economics, demography, labor, business, or immigration or other pertinent qualifications or experience;

(v) who may not be an employee of the Federal Government or of any State or local government; and

(vi) not more than 3 of whom may be members of the same political party.

**(B) 7 ex-officio members, including—**

(i) the Secretary;

(ii) the Secretary of State;

(iii) the Attorney General;

(iv) the Secretary of Labor;

(v) the Secretary of Commerce;

(vi) the Secretary of Health and Human Services; and

(vii) the Secretary of Agriculture.

(4) **VACANCIES.**—Any vacancy in the Commission shall be filled in the same manner as the original appointment.

**(5) MEETINGS.—**

(A) **INITIAL MEETING.**—The Commission shall meet and begin carrying out the duties described in subsection (b) as soon as practicable.

(B) **SUBSEQUENT MEETINGS.**—After its initial meeting, the Commission shall meet upon the call of the Chair or a majority of its members.

(C) **QUORUM.**—Four voting members of the Commission shall constitute a quorum.

**(b) DUTIES OF THE COMMISSION.**—The Commission shall—**(1) examine and analyze—**

(A) the development and implementation of the Program;

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

(C) the formula for determining the annual numerical limitations of the Program;

(D) the impact of the Program on immigration;

(E) the impact of the Program on the economy, unemployment rate, wages, workforce, and businesses of the United States; and

(F) any other matters regarding the Program that the Commission considers appropriate;

(2) not later than February 1, 2009, and every 2 years thereafter, submit a report to the President and Congress that—

(A) contains the findings of the analysis conducted under paragraph (1);

(B) makes recommendations regarding the necessary adjustments to the numerical limits of the Program in section 214(g)(1)(C) of the Immigration and Nationality Act, as added by section 406, to meet the labor market needs of the United States; and

(C) makes other recommendations regarding the Program, including legislative or administrative action, that the Commission determines to be in the national interest.

(3) upon receiving a request from Congress, examine, analyze, and report findings or recommendations regarding any other employment-based immigration and visa program.

(c) INFORMATION AND ASSISTANCE FROM FEDERAL AGENCIES.—

(1) INFORMATION.—The head of any Federal department or agency that receives a request from the Commission for information, including suggestions, estimates, and statistics, as the Commission considers necessary to carry out the provisions of this section, shall furnish such information to the Commission, to the extent allowed by law.

(2) ASSISTANCE.—

(A) GENERAL SERVICES ADMINISTRATION.—The Administrator of General Services shall, on a reimbursable basis, provide the Commission with administrative support and other services for the performance of the Commission's functions.

(B) OTHER FEDERAL AGENCIES.—The departments and agencies of the United States may provide the Commission with such services, funds, facilities, staff, and other support services as the heads of such departments and agencies determine advisable and authorized by law.

(d) PERSONNEL MATTERS.—

(1) STAFF.—

(A) APPOINTMENT AND COMPENSATION.—The Chair, in accordance with rules agreed upon by the Commission, may appoint and fix the compensation of a staff director and such other personnel as may be necessary to enable the Commission to carry out its functions.

(B) FEDERAL EMPLOYEES.—

(i) IN GENERAL.—Except as provided under clause (ii), the executive director and any personnel of the Commission who are employees shall be considered to be employees under section 2105 of title 5, United States Code, for purposes of chapters 63, 81, 83, 84, 85, 87, 89, and 90 of such title.

(ii) COMMISSION MEMBERS.—Clause (i) shall not apply to members of the Commission.

(2) DETAILEES.—Any employee of the Federal Government may be detailed to the Commission without reimbursement from the Commission. Such detailee shall retain the rights, status, and privileges of his or her regular employment without interruption.

(3) CONSULTANT SERVICES.—The Commission may procure the services of experts and consultants in accordance with section 3109 of title 5, United States Code, at rates not to exceed the daily rate paid a person occupying a position at level IV of the Executive Schedule under section 5315 of such title 5.

(e) COMPENSATION AND TRAVEL EXPENSES.—

(1) COMPENSATION.—Each voting member of the Commission may be compensated at a rate not to exceed the daily equivalent of the annual rate of basic pay in effect for a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day during which that member is engaged in the actual performance of the duties of the Commission.

(2) TRAVEL EXPENSES.—Members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

(f) DETERMINATION OF NEW LEVELS OF PROGRAM VISAS.—The numeric levels for visas under the Program shall be set automatically for the first fiscal year beginning after the report is submitted under subsection (b)(2) based on the numeric levels determined in the most recent fiscal year, as adjusted by section 214(g)(1)(C) of the Immigration and Nationality Act, unless Congress enacts legislation before September 30, 2009, that—

(1) establishes the baseline numeric levels of Program visas for such fiscal year; and

(2) makes amendments, as necessary, to such section 214(g)(1)(C).

(g) FUNDING.—Fees and fines deposited into the New Worker and Conditional Nonimmigrants Fee Account under section 286(w)(3)(B) of the Immigration and Nationality Act may be used by the Commission to carry out its duties under this section.



**SEC. 411. ADMISSION OF NONIMMIGRANTS.**

(a) PRESUMPTION OF NONIMMIGRANT STATUS.—Section 214(b) (8 U.S.C. 1184(b)) is amended by striking “and other than” and inserting “a nonimmigrant described in section 101(a)(15)(H)(ii)(c), and”.

(b) EVIDENCE TO ABANDON FOREIGN RESIDENCE.—Section 214(h) (8 U.S.C. 1184(h)) is amended by striking “H(i)(b) or (c),” and inserting “(H)(i)(b), H(i)(c), (H)(ii)(c),”.

**SEC. 412. AGENCY REPRESENTATION AND COORDINATION.**

Section 274A(e) (8 U.S.C. 1324a(e)) is amended—

(1) in paragraph (2)—

(A) in subparagraph (A), by striking the comma at the end and inserting a semicolon;

(B) in subparagraph (B), by striking “, and” and inserting a semicolon;

(C) in subparagraph (C), by striking “paragraph (2).” And inserting “paragraph (1); and”;

(D) by inserting after subparagraph (C) the following:

“(D) United States Immigration and Customs Enforcement officials may not misrepresent to employees or employers that they are a member of any agency or organization that provides domestic violence services, enforces health and safety law or other labor laws, provides health care services, or any other services intended to protect life and safety.”; and

(2) by adding at the end the following:

“(10) COORDINATION.—An investigation under paragraph (1)(C) shall be coordinated with the appropriate regional office of the National Labor Relations Board, the Department of Labor, and all relevant State and local agencies that are charged with enforcing workplace standards. Evidence gathered from such agencies shall be considered in determining whether the entity under investigation has violated subsection (a).”.

**SEC. 413. SENSE OF CONGRESS REGARDING PERSONAL PROTECTIVE EQUIPMENT.**

(a) IN GENERAL.—It is the sense of the Congress that the Secretary of Labor, not later than 90 days after the date of the enactment of this Act, should amend section 1910.132(a) of title 29, Code of Federal Regulations, to require employers to provide personal protective equipment to employees at no cost. Any future regulation promulgated under such section should require such equipment be provided to employees at no cost.

(b) DEFINED TERM.—In this section, the term “personal protective equipment” has the meaning given the term in section 1910.132(a) of title 29, Code of Federal Regulations (or any corresponding similar regulation or ruling).

**SEC. 414. RULEMAKING; EFFECTIVE DATE.**

(a) RULEMAKING.—Not later than 6 months after the date of enactment of the STRIVE Act, the Secretary of Labor shall promulgate regulations, in accordance with the notice and comment provisions of section 553 of title 5, United States Code, to carry out the provisions of sections 218A and 218B of the Immigration and Nationality Act, as added by this title.

(b) EFFECTIVE DATE.—The amendments made by sections 402, 403, and 404 shall take effect on the date that is 1 year after the date of the enactment of this Act with regard to aliens, who, on such effective date, are in the foreign country where they maintain residence.

**SEC. 415. AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated such sums as may be necessary to carry out this title.

## TITLE V—VISA REFORMS

### Subtitle A—Backlog Reduction

**SEC. 501. ELIMINATION OF EXISTING BACKLOGS.**

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

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

“(1) 480,000;

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

“(3) the difference between—

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

“(B) the number of visas calculated under subparagraph (A) that were issued after fiscal year 2005.”.

(b) **EMPLOYMENT-BASED IMMIGRANTS.**—Section 201(d) (8 U.S.C. 1151(d)) is amended to read as follows:

“(d) **WORLDWIDE LEVEL OF EMPLOYMENT-BASED IMMIGRANTS.**—

“(1) **IN GENERAL.**—The worldwide level of employment-based immigrants under this subsection for a fiscal year is equal to the sum of—

“(A) 290,000;

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

“(C) the difference between—

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

“(ii) the number of visas calculated under clause (i) that were issued after fiscal year 2005.

“(2) **VISAS FOR SPOUSES AND CHILDREN.**—

“(A) **IN GENERAL.**—Except as provided in subparagraph (B), immigrant visas issued on or after October 1, 2004, to spouses and children of employment-based immigrants shall not be counted against the numerical limitation set forth in paragraph (1).

“(B) **NUMERICAL LIMITATION.**—The total number of visas issued under paragraph (A) may not exceed 800,000 during any fiscal year.”.

(c) **EXCEPTION TO NONDISCRIMINATION.**—Section 202(a)(1)(A) (8 U.S.C. 1152(a)(1)(A)) is amended by striking “201(b)(2)(A)(i)” and inserting “201(b), 201(d)(2)(A)”.

**SEC. 502. INCREASING COUNTRY LIMITS AND EXEMPTING FAMILY-SPONSORED AND EMPLOYMENT-BASED IMMIGRANTS.**

Section 202(a)(2) (8 U.S.C. 1152(a)(2)) is amended by striking “may not exceed 7 percent” and all that follows and inserting “, except for aliens described in subsections (b) and (d)(2)(A) of section 201, may not exceed 10 percent (in the case of a single foreign state) or 5 percent (in the case of a dependent area) of the total number of such visas made available under such subsections in that fiscal year.”.

**SEC. 503. ALLOCATION OF IMMIGRANT VISAS.**

(a) **PREFERENCE ALLOCATION FOR FAMILY-SPONSORED IMMIGRANTS.**—Section 203(a) (8 U.S.C. 1153(a)) is amended to read as follows:

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

“(1) **UNMARRIED SONS AND DAUGHTERS OF CITIZENS.**—Qualified immigrants who are the unmarried sons or daughters of citizens of the United States shall be allocated visas in a quantity not to exceed the sum of—

“(A) 10 percent of such worldwide level; and

“(B) any visas not required for the class specified in paragraph (4).

“(2) **SPOUSES AND UNMARRIED SONS AND DAUGHTERS OF PERMANENT RESIDENT ALIENS.**—

“(A) **IN GENERAL.**—Visas in a quantity not to exceed 50 percent of such worldwide level plus any visas not required for the class specified in paragraph (1) shall be allocated to qualified immigrants who are—

“(i) the spouses or children of an alien lawfully admitted for permanent residence; or

“(ii) the unmarried sons or daughters of an alien lawfully admitted for permanent residence.

“(B) **MINIMUM PERCENTAGE.**—Visas allocated to individuals described in subparagraph (A)(i) shall constitute not less than 77 percent of the visas allocated under this paragraph.

“(3) MARRIED SONS AND DAUGHTERS OF CITIZENS.—Qualified immigrants who are the married sons and daughters of citizens of the United States shall be allocated visas in a quantity not to exceed the sum of—

“(A) 10 percent of such worldwide level; and

“(B) any visas not required for the classes specified in paragraphs (1) and (2).

“(4) BROTHERS AND SISTERS OF CITIZENS.—Qualified immigrants who are the brothers or sisters of a citizen of the United States who is at least 21 years of age shall be allocated visas in a quantity not to exceed 30 percent of the worldwide level.”.

(b) PREFERENCE ALLOCATION FOR EMPLOYMENT-BASED IMMIGRANTS.—Section 203(b) (8 U.S.C. 1153(b)) is amended—

(1) in paragraph (1), by striking “28.6 percent” and inserting “15 percent”;

(2) in paragraph (2)(A), by striking “28.6 percent” and inserting “15 percent”;

(3) in paragraph (3)(A)—

(A) by striking “28.6 percent” and inserting “35 percent”; and

(B) by striking clause (iii);

(4) by striking paragraph (4);

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

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

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

“(5) OTHER WORKERS.—

“(A) IN GENERAL.—Visas shall be made available, in a number not to exceed 30 percent of such worldwide level, plus any visa numbers not required for the classes specified in paragraphs (1) through (4), to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing unskilled labor that is not of a temporary or seasonal nature, for which qualified workers are determined to be unavailable in the United States.

“(B) PRIORITY IN ALLOCATING VISAS.—In allocating visas under subparagraph (A) for each of the fiscal years 2007 through 2017, the Secretary shall reserve 30 percent of such visas for qualified immigrants who were physically present in the United States before January 7, 2004.”; and

(8) by striking paragraph (6).

(c) SPECIAL IMMIGRANTS NOT SUBJECT TO NUMERICAL LIMITATIONS.—Section 201(b)(1)(A) (8 U.S.C. 1151(b)(1)(A)) is amended by striking “subparagraph (A) or (B) of”.

(d) TEMPORARY INCREASE IN NUMBER OF IRAQI AND AFGHAN TRANSLATORS WHO MAY BE PROVIDED STATUS AS SPECIAL IMMIGRANTS.—Section 1059(c)(1) of the National Defense Authorization Act for Fiscal Year 2006 (8 U.S.C. 1101 note) is amended by striking “during any fiscal year shall not exceed 50.” and inserting the following: “may not exceed—

“(A) 300 during each of the fiscal years 2007, 2008, and 2009; and

“(B) 50 during any subsequent fiscal year.”.

(e) CONFORMING AMENDMENTS.—

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

(2) REPEAL OF TEMPORARY REDUCTION IN WORKERS’ VISAS.—Section 203(e) of the Nicaraguan Adjustment and Central American Relief Act (Public Law 105–100; 8 U.S.C. 1153 note) is repealed.

#### SEC. 504. NURSING SHORTAGE.

(a) EXCEPTION TO DIRECT NUMERICAL LIMITATIONS.—Section 201(b)(1) (8 U.S.C. 1151(b)(1)) is amended by adding at the end the following:

“(F)(i) During the period beginning on the date of the enactment the STRIVE Act and ending on September 30, 2017, an alien—

“(I) who is otherwise described in section 203(b); and

“(II) who is seeking admission to the United States to perform labor in shortage occupations designated by the Secretary of Labor for blanket certification under section 212(a)(5)(A) due to the lack of sufficient United States workers able, willing, qualified, and available for such occupations and for which the employment of aliens will not adversely affect the terms and conditions of similarly employed United States workers.

“(ii) During the period described in clause (i), the spouse or dependents of an alien described in clause (i), if accompanying or following to join such alien.”.

(b) EXCEPTION TO NONDISCRIMINATION REQUIREMENTS.—Section 202(a)(1)(A) (8 U.S.C. 1152(a)(1)(A)) is amended by striking “201(b)(2)(A)(i)” and inserting “201(b)”.

(c) EXCEPTION TO PER COUNTRY LEVELS FOR FAMILY-SPONSORED AND EMPLOYMENT-BASED IMMIGRANTS.—Section 202(a)(2) (8 U.S.C. 1152(a)(2)), as amended by section 502, is further amended by inserting “, except for aliens described in section 201(b),” after “any fiscal year”.

(d) INCREASING THE DOMESTIC SUPPLY OF NURSES AND PHYSICAL THERAPISTS.—Not later than January 1, 2007, the Secretary of Health and Human Services shall—

(1) submit to Congress a report on the source of newly licensed nurses and physical therapists in each State, which report shall—

(A) include the past 3 years for which data are available;

(B) provide separate data for each occupation and for each State;

(C) separately identify those receiving their initial license and those licensed by endorsement from another State;

(D) within those receiving their initial license in each year, identify the number who received their professional education in the United States and those who received such education outside the United States; and

(E) to the extent possible, identify, by State of residence and country of education, the number of nurses and physical therapists who were educated in any of the 5 countries (other than the United States) from which the most nurses and physical therapists arrived;

(F) identify the barriers to increasing the supply of nursing faculty, domestically trained nurses, and domestically trained physical therapists;

(G) recommend strategies to be followed by Federal and State governments that would be effective in removing such barriers, including strategies that address barriers to advancement to become registered nurses for other health care workers, such as home health aides and nurses assistants;

(H) recommend amendments to Federal legislation that would increase the supply of nursing faculty, domestically trained nurses, and domestically trained physical therapists;

(I) recommend Federal grants, loans, and other incentives that would provide increases in nurse educators, nurse training facilities, and other steps to increase the domestic education of new nurses and physical therapists;

(J) identify the effects of nurse emigration on the health care systems in their countries of origin; and

(K) recommend amendments to Federal law that would minimize the effects of health care shortages in the countries of origin from which immigrant nurses arrived;

(2) enter into a contract with the National Academy of Sciences Institute of Medicine to determine the level of Federal investment under titles VII and VIII of the Public Health Service Act necessary to eliminate the domestic nursing and physical therapist shortage not later than 7 years from the date on which the report is published; and

(3) collaborate with other agencies, as appropriate, in working with ministers of health or other appropriate officials of the 5 countries from which the most nurses and physical therapists arrived, to—

(A) address health worker shortages caused by emigration;

(B) ensure that there is sufficient human resource planning or other technical assistance needed to reduce further health worker shortages in such countries.

(e) AUTHORITY OF CONSULAR OFFICER TO GRANT PREFERENCE STATUS.—Section 204(b) of the Immigration and Nationality Act (8 U.S.C. 1154(b)) is amended—

(1) by striking “(b)” and inserting “(b)(1)”; and

(2) by adding at the end the following:

“(2) Notwithstanding paragraph (1), for individual beneficiaries outside of the United States seeking classification under section 203(b) who will perform labor in shortage occupations designated by the Secretary of Labor for blanket certification under section 212(a)(5)(A) as lacking sufficient United States workers able, willing, qualified, and available for such occupations and for which the employment of aliens will not adversely affect the terms and conditions of similarly employed United States workers, a consular officer, upon petition of the importing employer, shall have authority to determine eligibility if the officer determines that the facts stated in the petition are true and the alien is eligible for the preference. The consular officer shall also have authority to grant the preference status.”.

**SEC. 505. EXPEDITED ADJUDICATION OF EMPLOYER PETITIONS FOR ALIENS OF EXTRAORDINARY ARTISTIC ABILITY.**

Section 214(c) (8 U.S.C. 1184(c)) is amended—

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

(2) in paragraph (6)(D)—

(A) by striking “Any person” and inserting “(i) Except as provided in clause (ii), any person”; and

(B) adding at the end the following:

“(ii) The Secretary of Homeland Security shall adjudicate each petition for an alien with extraordinary ability in the arts (as described in section 101(a)(15)(O)(i)), an alien accompanying such an alien (as described in clauses (ii) and (iii) of section 101(a)(15)(O)), or an alien described in section 101(a)(15)(P) not later than 30 days after—

“(I) the date on which the petitioner submits the petition with a written advisory opinion, letter of no objection, or request for a waiver; or

“(II) the date on which the 15-day period described in clause (i) has expired, if the petitioner has had an opportunity, as appropriate, to supply rebuttal evidence.

“(iii) If a petition described in clause (ii) is not adjudicated before the end of the 30-day period described in clause (ii) and the petitioner is a qualified nonprofit organization or an individual or entity petitioning primarily on behalf of a qualified nonprofit organization, the Secretary of Homeland Security shall provide the petitioner with the premium-processing services referred to in section 286(u), without a fee.”

**SEC. 506. POWERLINE WORKERS AND BOILERMAKERS.**

Section 214(e) (8 U.S.C. 1184(e)) is amended by adding at the end the following:

“(7) A citizen of Canada shall be admitted in the same manner and under the same authority as a citizen of Canada described in paragraph (2) if the citizen—

“(A) is a powerline worker or boilermaker;

“(B) has received significant training; and

“(C) seeks admission to the United States to perform powerline repair and maintenance services or boilermaker repair or maintenance services.”

**SEC. 507. H-1B VISAS.**

(a) **IN GENERAL.**—Section 214(g)(5) (8 U.S.C. 1184(g)(5)) is amended—

(1) in subparagraph (B)—

(A) by striking “nonprofit research” and inserting “nonprofit”;

(B) by inserting “Federal, State, or local” before “governmental”; and

(C) by striking “or” at the end;

(2) in subparagraph (C)—

(A) by striking “until the number of aliens who are exempted from such numerical limitation during such fiscal year exceeds 20,000.” and inserting “or has been awarded a medical specialty certification based on post-doctoral training and experience in the United States.”; and

(B) by striking the period at the end and inserting “; or”; and

(3) by adding at the end the following:

“(D) has earned a master’s or higher degree in science, technology, engineering, or mathematics from an institution of higher education outside of the United States.”

(b) **APPLICABILITY.**—The amendments made by subsection (a) shall apply to any petition or visa application pending on the date of enactment of this Act and any petition or visa application filed on or after such date.

(c) **MARKET-BASED VISA LIMITS.**—Section 214(g) (8 U.S.C. 1184(g)) is amended—

(1) in paragraph (1)—

(A) in the matter preceding subparagraph (A), by striking “(beginning with fiscal year 1992)”; and

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

“(A) under section 101(a)(15)(H)(i)(b), may not exceed—

“(i) 115,000 in fiscal year 2007; and

“(ii) the sum of 115,000 and the number calculated under paragraph (9) in fiscal year 2008 and each subsequent fiscal year;”

(2) in paragraph (8)—

(A) in subparagraph (B), by striking clause (iv); and

(B) by striking subparagraph (D);

(3) by redesignating paragraphs (9), (10), and (11) as paragraphs (10), (11), and (12), respectively; and

(4) by inserting after paragraph (8) the following:

“(9) If the numerical limitation in paragraph (1)(A)—

“(A) is reached during a given fiscal year, the numerical limitation under paragraph (1)(A) for the subsequent fiscal year shall be equal to 120 percent of the numerical limitation of the given fiscal year, not to exceed 180,000; or

“(B) is not reached during a given fiscal year, the numerical limitation under paragraph (1)(A) for the subsequent fiscal year shall be equal to the numerical limitation of the given fiscal year.”.

**SEC. 508. UNITED STATES EDUCATED IMMIGRANTS.**

(a) **EXEMPTION FROM NUMERICAL LIMITATIONS.**—

(1) **IN GENERAL.**—Section 201(b)(1) (8 U.S.C. 1151(b)(1)), as amended by section 504(a), is further amended by adding at the end the following:

“(G) Aliens who have earned a master’s or higher degree from an accredited university in the United States.

“(H) Aliens who have been awarded medical specialty certification based on post-doctoral training and experience in the United States preceding their application for an immigrant visa under section 203(b).

“(I) Aliens who will perform labor in shortage occupations designated by the Secretary of Labor for blanket certification under section 212(a)(5)(A) as lacking sufficient United States workers able, willing, qualified, and available for such occupations and for which the employment of aliens will not adversely affect the terms and conditions of similarly employed United States workers.

“(J) Aliens who have earned a master’s degree or higher in science, technology, engineering, or math and have been working in a related field in the United States in a nonimmigrant status during the 3-year period preceding their application for an immigrant visa under section 203(b).

“(K) Aliens described in subparagraph (A) or (B) of section 203(b)(1) or who have received a national interest waiver under section 203(b)(2)(B).

“(L) The spouse and minor children of an alien described in subparagraph (G), (H), (I), (J), or (K).”.

(2) **APPLICABILITY.**—The amendment made by paragraph (1) shall apply to any visa application—

(A) pending on the date of the enactment of this Act; or

(B) filed on or after such date of enactment.

(b) **LABOR CERTIFICATIONS.**—Section 212(a)(5)(A)(ii) (8 U.S.C. 1182(a)(5)(A)(ii)) is amended—

(1) in subclause (I), by striking “, or” and inserting a semicolon;

(2) in subclause (II), by striking the period at the end and inserting “; or”;

and

(3) by adding at the end the following:

“(III) is a member of the professions and has a master’s degree or higher from an accredited university in the United States or has been awarded medical specialty certification based on post-doctoral training and experience in the United States.”.

(c) **ATTESTATION BY HEALTHCARE WORKERS.**—

(1) **REQUIREMENT FOR ATTESTATION.**—Section 212(a)(5) (8 U.S.C. 1182(a)(5)) is amended by adding at the end the following:

“(E) **HEALTHCARE WORKERS WITH OTHER OBLIGATIONS.**—

“(i) **IN GENERAL.**—An alien who seeks to enter the United States for the purpose of performing labor as a physician or other healthcare worker is inadmissible unless the alien submits to the Secretary of Homeland Security or the Secretary of State, as appropriate, an attestation that the alien is not seeking to enter the United States for such purpose during any period in which the alien has an outstanding obligation to the government of the alien’s country of origin or the alien’s country of residence.

“(ii) **OBLIGATION DEFINED.**—In this subparagraph, the term ‘obligation’ means an obligation incurred as part of a valid, voluntary individual agreement in which the alien received financial assistance to defray the costs of education or training to qualify as a physician or other healthcare worker in consideration for a commitment to work as a physician or other healthcare worker in the alien’s country of origin or the alien’s country of residence.

“(iii) **WAIVER.**—The Secretary of Homeland Security may waive a finding of inadmissibility under clause (i) if the Secretary determines that—

“(I) the obligation was incurred by coercion or other improper means;

“(II) the alien and the government of the country to which the alien has an outstanding obligation have reached a valid, voluntary agreement, pursuant to which the alien’s obligation has been deemed satisfied, or the alien has shown to the satisfaction of the Secretary that the alien has been unable to reach such an agreement because of coercion or other improper means; or

“(III) the obligation should not be enforced due to other extraordinary circumstances, including undue hardship that would be suffered by the alien in the absence of a waiver.”

(2) EFFECTIVE DATE AND APPLICATION.—

(A) EFFECTIVE DATE.—The amendment made by paragraph (1) shall become effective 180 days after the date of the enactment of this Act.

(B) APPLICATION BY THE SECRETARY.—The Secretary shall begin to carry out section 212(a)(5)(E) of the Immigration and Nationality Act, as added by paragraph (1), not later than the effective date described in subparagraph (A), including the requirement for the attestation and the granting of a waiver described in such section, regardless of whether regulations to implement such section have been promulgated.

**SEC. 509. STUDENT VISA REFORM.**

(a) IN GENERAL.—

(1) NONIMMIGRANT CLASSIFICATION.—Section 101(a)(15)(F) (8 U.S.C. 1101(a)(15)(F)) is amended to read as follows:

“(F) an alien—

“(i) who—

“(I) is a bona fide student qualified to pursue a full course of study in mathematics, engineering, technology, or the sciences leading to a bachelors or graduate degree and who seeks to enter the United States for the purpose of pursuing such a course of study consistent with section 214(m) at an institution of higher education (as defined by section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a))) in the United States, particularly designated by the alien and approved by the Secretary of Homeland Security, after consultation with the Secretary of Education, which institution or place of study shall have agreed to report to the Secretary the termination of attendance of each non-immigrant student, and if any such institution of learning or place of study fails to make reports promptly the approval shall be withdrawn; or

“(II) is engaged in temporary employment for optional practical training related to such alien’s area of study following completion of the course of study described in subclause (I) for a period or periods of not more than 24 months;

“(ii) who—

“(I) has a residence in a foreign country which the alien has no intention of abandoning, who is a bona fide student qualified to pursue a full course of study, and who seeks to enter the United States temporarily and solely for the purpose of pursuing such a course of study consistent with section 214(m) at an established college, university, seminary, conservatory, academic high school, elementary school, or other academic institution or in a language training program in the United States, particularly designated by the alien and approved by the Secretary of Homeland Security, after consultation with the Secretary of Education, which institution or place of study shall have agreed to report to the Secretary the termination of attendance of each non-immigrant student, and if any such institution of learning or place of study fails to make reports promptly the approval shall be withdrawn; or

“(II) is engaged in temporary employment for optional practical training related to such alien’s area of study following completion of the course of study described in subclause (I) for a period or periods of not more than 24 months;

“(iii) who is the spouse or minor child of an alien described in clause

(i) or (ii) if accompanying or following to join such an alien;

“(iv) who—

“(I) is a national of Canada or Mexico, who maintains actual residence and place of abode in the country of nationality, who is described

in clause (i) or (ii) except that the alien's qualifications for and actual course of study may be full or part-time, and who commutes to the United States institution or place of study from Canada or Mexico; or

“(II) is engaged in temporary employment for optional practical training related to such the student's area of study following completion of the course of study described in subclause (I) for a period or periods of not more than 24 months; or

“(v) who—

“(I) maintains actual residence and place of abode in the alien's country of nationality; and

“(II) is described in clause (i), except that the alien's actual course of study may involve a distance learning program, for which the alien is temporarily visiting the United States for a period of up to 30 days.”.

(2) **ADMISSION.**—Section 214(b) (8 U.S.C. 1184(b)) is amended by inserting “(F)(i),” before “(L) or (V)”.

(3) **CONFORMING AMENDMENT.**—Section 214(m)(1) (8 U.S.C. 1184(m)(1)) is amended, in the matter preceding subparagraph (A), by striking “(i) or (iii)” and inserting “(i), (ii), (iv), or (v)”.

(b) **OFF-CAMPUS WORK AUTHORIZATION FOR FOREIGN STUDENTS.**—

(1) **IN GENERAL.**—Aliens admitted as nonimmigrant students described in section 101(a)(15)(F), as amended by subsection (a), (8 U.S.C. 1101(a)(15)(F)) may be employed in an off-campus position unrelated to the alien's field of study if—

(A) the alien has enrolled full-time at the educational institution and is maintaining good academic standing;

(B) the employer provides the educational institution and the Secretary of Labor with an attestation that the employer—

(i) has spent at least 21 days recruiting United States citizens to fill the position; and

(ii) will pay the alien and other similarly situated workers at a rate equal to not less than the greater of—

(I) the actual wage level for the occupation at the place of employment; or

(II) the prevailing wage level for the occupation in the area of employment; and

(C) the alien will not be employed more than—

(i) 20 hours per week during the academic term; or

(ii) 40 hours per week during vacation periods and between academic terms.

(2) **DISQUALIFICATION.**—If the Secretary of Labor determines that an employer has provided an attestation under paragraph (1)(B) that is materially false or has failed to pay wages in accordance with the attestation, the employer, after notice and opportunity for a hearing, shall be disqualified from employing an alien student under paragraph (1).

**SEC. 510. L-1 VISA HOLDERS SUBJECT TO VISA BACKLOG.**

Section 214(c)(2) (8 U.S.C. 1184(c)(2)) is amended by adding at the end the following:

“(G) The limitations contained in subparagraph (D) with respect to the duration of authorized stay shall not apply to any nonimmigrant alien previously issued a visa or otherwise provided nonimmigrant status under section 101(a)(15)(L) on whose behalf a petition under section 204(b) to accord the alien immigrant status under section 203(b), or an application for labor certification (if such certification is required for the alien to obtain status under such section 203(b)) has been filed, if 365 days or more have elapsed since such filing. The Secretary of Homeland Security shall extend the stay of an alien who qualifies for an exemption under this subparagraph until such time as a final decision is made on the alien's lawful permanent residence.”.

**SEC. 511. RETAINING WORKERS SUBJECT TO GREEN CARD BACKLOG.**

(a) **ADJUSTMENT OF STATUS.**—

(1) **IN GENERAL.**—Section 245 (8 U.S.C. 1255) is amended by adding at the end the following:

“(n) **ADJUSTMENT OF STATUS FOR EMPLOYMENT-BASED IMMIGRANTS.**—

“(1) **ELIGIBILITY.**—The Secretary of Homeland Security shall promulgate regulations to provide for the filing of an application for adjustment of status by an alien (and any eligible dependents of such alien), regardless of whether an immigrant visa is immediately available at the time the application is filed, if the alien—



“(A) has an approved petition under subparagraph (E) or (F) of section 204(a)(1); or

“(B) at the discretion of the Secretary, has a pending petition under subparagraph (E) or (F) of section 204(a)(1).

“(2) VISA AVAILABILITY.—An application filed pursuant to paragraph (1) may not be approved until an immigrant visa becomes available.

“(3) FEES.—If an application is filed pursuant to paragraph (1), the beneficiary of such application shall pay a supplemental fee of \$500. Such fee may not be charged to any dependent accompanying or following to join such beneficiary.

“(4) EXTENSION OF EMPLOYMENT AUTHORIZATION AND ADVANCED PAROLE DOCUMENT.—

“(A) IN GENERAL.—The Secretary of Homeland Security shall provide employment authorization and advanced parole documents, in 3-year increments, to beneficiaries of an application for adjustment of status based on a petition that is filed or, at the discretion of the Secretary, pending, under subparagraph (E) or (F) of section 204(a)(1).

“(B) FEE ADJUSTMENTS.—Application fees under this subsection may be adjusted in accordance with the 3-year period of validity assigned to the employment authorization or advanced parole documents under subparagraph (A).”

(b) USE OF FEES.—Section 286 (8 U.S.C. 1356) is amended—

(1) in subsection (m)—

(A) by striking “Notwithstanding any other provisions of law,” and inserting the following:

“(c) IMMIGRATION EXAMINATIONS FEE ACCOUNT.—

“(1) IN GENERAL.—Notwithstanding any other provision of law, all fees collected under section 245(n)(3) and”;

(B) by striking “: *Provided, however,* That all” and inserting the following:

“(2) VIRGIN ISLANDS; GUAM.—All”; and

(C) by striking “: *Provided further,* That fees” and inserting the following:

“(3) COST RECOVERY.—Fees”.

(2) in subsection (n)—

(A) by striking “(n) All deposits” and inserting the following:

“(4) USE OF FUNDS.—

“(A) IN GENERAL.—Except as provided under subparagraph (B), all deposits”; and

(B) adding at the end the following:

“(C) SUPPLEMENTAL FEE FOR ADJUSTMENT OF STATUS OF EMPLOYMENT-BASED IMMIGRANTS.—Any amounts deposited into the Immigration Examinations Fee Account that were collected under section 245(n)(3) shall remain available until expended by the Secretary of Homeland Security for backlog reduction and clearing security background check delays.”;

(3) in subsection (o), by striking “(o) The Attorney General” and inserting the following:

“(5) ANNUAL FINANCIAL REPORT TO CONGRESS.—The Attorney General”; and

(4) in subsection (p), by striking “(p) The provisions set forth in subsections (m), (n), and (o) of this section” and inserting the following:

“(6) APPLICABILITY.—The provisions set forth in this subsection shall”.

**SEC. 512. STREAMLINING THE ADJUDICATION PROCESS FOR ESTABLISHED EMPLOYERS.**

Section 214(c) (8 U.S.C. 1184) is amended by adding at the end the following:

“(15) Not later than 180 days after the date of the enactment of the STRIVE Act, the Secretary of Homeland Security shall establish a pre-certification procedure for employers who file multiple petitions described in this subsection or section 203(b). Such precertification procedure shall enable an employer to avoid repeatedly submitting documentation that is common to multiple petitions and establish through a single filing criteria relating to the employer and the offered employment opportunity.”.

**SEC. 513. PROVIDING PREMIUM PROCESSING OF EMPLOYMENT-BASED VISA PETITIONS.**

(a) IN GENERAL.—Pursuant to section 286(u) of the Immigration and Nationality Act (8 U.S.C. 1356(u)), the Secretary of Homeland Security shall establish and collect a fee for premium processing of employment-based immigrant petitions.

(b) APPEALS.—Pursuant to such section 286(u), the Secretary of Homeland Security shall establish and collect a fee for premium processing of an administrative appeal of any decision on a permanent employment-based immigrant petition.

**SEC. 514. ELIMINATING PROCEDURAL DELAYS IN LABOR CERTIFICATION PROCESS.****(a) PREVAILING WAGE RATE.—**

(1) **REQUIREMENT TO PROVIDE.**—The Secretary of Labor shall provide prevailing wage determinations to employers seeking a labor certification for aliens pursuant to part 656 of title 20, Code of Federal Regulations (or any successor regulation). The Secretary of Labor may not delegate this function to any agency of a State.

(2) **SCHEDULE FOR DETERMINATION.**—Except as provided in paragraph (3), the Secretary of Labor shall provide a response to an employer's request for a prevailing wage determination not later than 20 calendar days after the date the Secretary of Labor receives such a request. If the Secretary of Labor fails to reply during such 20-day period, the wage proposed by the employer shall be the valid prevailing wage rate.

(3) **USE OF SURVEYS.**—The Secretary of Labor shall accept an alternative wage survey provided by the employer unless the Secretary of Labor determines that the wage component of the Occupational Employment Statistics Survey is more accurate for the occupation in the labor market area.

(b) **PLACEMENT OF JOB ORDER.**—The Secretary of Labor shall maintain a website with links to the official website of each workforce agency of a State, and such official website shall contain instructions on the filing of a job order in order to satisfy the job order requirements of section 656.17(e)(1) of title 20, Code of Federal Regulations (or any successor regulation).

(c) **TECHNICAL CORRECTIONS.**—The Secretary of Labor shall establish a process by which employers seeking certification under section 212(a)(5) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(5)), as amended by section 508(b), may make technical corrections to applications in order to avoid requiring employers to conduct additional recruitment to correct an initial technical error. A technical error shall include any error that would not have a material effect on the validity of the employer's recruitment of able, willing, and qualified United States workers.

(d) **ADMINISTRATIVE APPEALS.**—Motions to reconsider, and administrative appeals of, a denial of a permanent labor certification application, shall be decided by the Secretary of Labor not later than 60 days after the date of the filing of such motion or such appeal.

(e) **APPLICATIONS UNDER PREVIOUS SYSTEM.**—Not later than 180 days after the date of the enactment of this Act, the Secretary of Labor shall process and issue decisions on all applications for permanent alien labor certification that were filed before March 28, 2005.

(f) **EFFECTIVE DATE.**—This section shall take effect 90 days after the date of the enactment of this Act, whether or not the Secretary of Labor has amended the regulations under part 656 of title 20, Code of Federal Regulations, to implement such changes.

**SEC. 515. VISA REVALIDATION.**

(a) **IN GENERAL.**—Section 222 (8 U.S.C. 1202) is amended by adding at the end the following:

“(i) The Secretary of State shall permit an alien granted a nonimmigrant visa under subparagraph (E), (H), (I), (L), (O), or (P) of section 101(a)(15) to apply for a renewal of such visa within the United States if—

“(1) such visa is valid or did not expire more than 12 months before the date of such application;

“(2) the alien is seeking a nonimmigrant visa under the same subparagraph under which the alien had previously received a visa; and

“(3) the alien has complied with the immigration laws and regulations of the United States.”.

(b) **CONFORMING AMENDMENT.**—Section 222(h) of such Act is amended, in the matter preceding subparagraph (1), by inserting “and except as provided under subsection (i),” after “Act”.

**SEC. 516. RELIEF FOR MINOR CHILDREN AND WIDOWS.**

(a) **IN GENERAL.**—Section 201(b)(2) (8 U.S.C. 1151(b)(2)) is amended to read as follows:

“(2)(A)(i) Aliens admitted under section 211(a) on the basis of a prior issuance of a visa under section 203(a) to their accompanying parent who is an immediate relative.

“(ii) In this subparagraph, the term ‘immediate relative’ means a child, spouse, or parent of a citizen of the United States (and each child of such child, spouse, or parent who is accompanying or following to join the child, spouse, or parent), except that, in the case of parents, such citizens shall be at least 21 years of age.

“(iii) An alien who was the spouse of a citizen of the United States for not less than 2 years at the time of the citizen’s death or, if married for less than 2 years at the time of the citizen’s death, proves by a preponderance of the evidence that the marriage was entered into in good faith and not solely for the purpose of obtaining an immigration benefit and was not legally separated from the citizen at the time of the citizen’s death, and each child of such alien, shall be considered, for purposes of this subsection, to remain an immediate relative after the date of the citizen’s death if the spouse files a petition under section 204(a)(1)(A)(ii) before the earlier of—

“(I) 2 years after such date; or

“(II) the date on which the spouse remarries.

“(iv) In this clause, an alien who has filed a petition under clause (iii) or (iv) of section 204(a)(1)(A) remains an immediate relative if the United States citizen spouse or parent loses United States citizenship on account of the abuse.

“(B) Aliens born to an alien lawfully admitted for permanent residence during a temporary visit abroad.”.

(b) PETITION.—Section 204(a)(1)(A)(ii) (8 U.S.C. 1154(a)(1)(A)(ii)) is amended by striking “in the second sentence of section 201(b)(2)(A)(i) also” and inserting “in section 201(b)(2)(A)(iii) or an alien child or alien parent described in the 201(b)(2)(A)(iv)”.

(c) RETENTION OF IMMEDIATE RELATIVE STATUS.—

(1) IN GENERAL.—In applying clause (iii) of section 201(b)(2)(A) of the Immigration and Nationality Act, as added by subsection (a), to an alien whose citizen relative died before the date of the enactment of this Act, the alien relative, notwithstanding the deadlines specified in such clause, may file the classification petition under section 204(a)(1)(A)(ii) of such Act not later than 2 years after the date of the enactment of this Act.

(2) ELIGIBILITY FOR PAROLE.—If an alien was excluded, deported, removed or departed voluntarily before the date of the enactment of this Act based solely upon the alien’s lack of classification as an immediate relative (as defined by 201(b)(2)(A)(ii) of the Immigration and Nationality Act) due to the citizen’s death—

(A) such alien shall be eligible for parole into the United States pursuant to the Attorney General’s discretionary authority under section 212(d)(5) of such Act; and

(B) such alien’s application for adjustment of status shall be considered notwithstanding section 212(a)(9) of such Act.

(d) ADJUSTMENT OF STATUS.—

(1) IN GENERAL.—Section 245 (8 U.S.C. 1255), as amended by sections 407 and 511, is further amended by adding at the end the following:

“(o) APPLICATION FOR ADJUSTMENT OF STATUS BY SURVIVING SPOUSES, PARENTS, AND CHILDREN.—

“(1) IN GENERAL.—Any alien described in paragraph (2) who applies for adjustment of status before the death of the qualifying relative, may have such application adjudicated as if such death had not occurred.

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

“(A) is an immediate relative (as described in section 201(b)(2)(A));

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

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

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

(2) TRANSITION PERIOD.—

(A) IN GENERAL.—Notwithstanding a denial of an application for adjustment of status for an alien whose qualifying relative died before the date of the enactment of this Act, such application may be renewed by the alien through a motion to reopen, without fee, if such motion is filed not later than 2 years after such date of enactment.

(B) ELIGIBILITY FOR PAROLE.—If an alien was excluded, deported, removed or departed voluntarily before the date of the enactment of this Act—

(i) such alien shall be eligible for parole into the United States pursuant to the Attorney General’s discretionary authority under section 212(d)(5) of the Immigration and Nationality Act; and

(ii) such alien’s application for adjustment of status shall be considered notwithstanding section 212(a)(9) of such Act.

## (e) PROCESSING OF IMMIGRANT VISAS.—

(1) IN GENERAL.—Section 204(b) (8 U.S.C. 1154), as amended by section 204(b) of this Act, is further amended—

(A) by striking “After an investigation” and inserting the following:

“(1) IN GENERAL.—After an investigation”; and

(B) by adding at the end the following:

“(2) DEATH OF QUALIFYING RELATIVE.—

“(A) IN GENERAL.—Any alien described in paragraph (2) whose qualifying relative died before the completion of immigrant visa processing may have an immigrant visa application adjudicated as if such death had not occurred. An immigrant visa issued before the death of the qualifying relative shall remain valid after such death.

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

“(i) is an immediate relative (as described in section 201(b)(2)(A));

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

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

“(iv) is a derivative beneficiary of a diversity immigrant (as described in section 203(c)).”

(2) TRANSITION PERIOD.—

(A) IN GENERAL.—Notwithstanding a denial or revocation of an application for an immigrant visa for an alien whose qualifying relative died before the date of the enactment of this Act, such application may be renewed by the alien through a motion to reopen, without fee, if such motion is filed not later than 2 years after such date of enactment.

(B) INAPPLICABILITY OF BARS.—Notwithstanding section 212(a)(9) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(9)), the Secretary shall consider the application for an immigrant visa submitted by an alien who was excluded, deported, removed, or departed voluntarily before the date of the enactment of this Act.

(f) NATURALIZATION.—Section 319(a) (8 U.S.C. 1429(a)) is amended by inserting “(or, if the spouse is deceased, the spouse was a citizen of the United States)” after “citizen of the United States”.

**SEC. 517. RELIEF FOR WIDOWS AND ORPHANS.**

(a) NEW SPECIAL IMMIGRANT CATEGORY.—

(1) CERTAIN CHILDREN AND WOMEN AT RISK OF HARM.—Section 101(a)(27) (8 U.S.C. 1101(a)(27)) is amended—

(A) in subparagraph (L), by adding a semicolon at the end;

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

(C) by adding at the end the following:

“(N) subject to subsection (j), an immigrant who is not present in the United States—

“(i) who is—

“(I) referred to a consular, immigration, or other designated official by a United States Government agency, an international organization, or recognized nongovernmental entity designated by the Secretary of State for purposes of such referrals; and

“(II) determined by such official to be a minor under 18 years of age (as determined under subsection (j)(5))—

“(aa) for whom no parent or legal guardian is able to provide adequate care;

“(bb) who faces a credible fear of harm related to his or her age;

“(cc) who lacks adequate protection from such harm; and

“(dd) for whom it has been determined to be in his or her best interests to be admitted to the United States; or

“(ii) who is—

“(I) referred to a consular or immigration official by a United States Government agency, an international organization or recognized nongovernmental entity designated by the Secretary of State for purposes of such referrals; and

“(II) determined by such official to be a female who has—

“(aa) a credible fear of harm related to her sex; and

“(bb) a lack of adequate protection from such harm.”

(2) STATUTORY CONSTRUCTION.—Section 101 (8 U.S.C. 1101) is amended by adding at the end the following:

“(j)(1) No natural parent or prior adoptive parent of any alien provided special immigrant status under subsection (a)(27)(N)(i) shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act.

“(2)(A) No alien who qualifies for a special immigrant visa under subsection (a)(27)(N)(ii) may apply for derivative status or petition for any spouse who is represented by the alien as missing, deceased, or the source of harm at the time of the alien’s application and admission. The Secretary of Homeland Security may waive this requirement for an alien who demonstrates that the alien’s representations regarding the spouse were bona fide.

“(B) An alien who qualifies for a special immigrant visa under subsection (a)(27)(N) may apply for derivative status or petition for any sibling under the age of 18 years or children under the age of 18 years of any such alien, if accompanying or following to join the alien. For purposes of this subparagraph, a determination of age shall be made using the age of the alien on the date the petition is filed with the Department of Homeland Security.

“(3) An alien who qualifies for a special immigrant visa under subsection (a)(27)(N) shall be treated in the same manner as a refugee solely for purposes of section 412.

“(4) The provisions of paragraphs (4), (5), and (7)(A) of section 212(a) shall not be applicable to any alien seeking admission to the United States under subsection (a)(27)(N), and the Secretary of Homeland Security may waive any other provision of such section (other than paragraph 2(C) or subparagraph (A), (B), (C), or (E) of paragraph (3)) with respect to such an alien for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest. Any such waiver by the Secretary shall be in writing and shall be granted only on an individual basis following an investigation. The Secretary shall submit an annual report to Congress on the number of waivers granted under this paragraph during the previous fiscal year and a summary of the reasons for granting such waivers.

“(5) For purposes of subsection (a)(27)(N)(i)(II), a determination of age shall be made using the age of the alien on the date on which the alien was referred to the consular, immigration, or other designated official.

“(6) The Secretary of Homeland Security shall waive any application fee for a special immigrant visa for an alien described in section 101(a)(27)(N).”.

(3) EXPEDITED PROCESS.—Not later than 45 days after the date of referral to a consular, immigration, or other designated official (as described in section 101(a)(27)(N) of the Immigration and Nationality Act, as added by paragraph (1))—

(A) special immigrant status shall be adjudicated; and

(B) if special immigrant status is granted, the alien shall be paroled into the United States pursuant to section 212(d)(5) of that Act (8 U.S.C. 1182(d)(5)) and allowed to apply for adjustment of status to permanent residence under section 245 of that Act (8 U.S.C. 1255) not later than 1 year after the alien’s arrival in the United States.

(4) REPORT TO CONGRESS.—Not later than 1 year after the date of the enactment of this Act, the Secretary shall submit a report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives that includes—

(A) data related to the implementation of this section and the amendments made by this section;

(B) data regarding the number of placements of females and children who faces a credible fear of harm as referred to in section 101(a)(27)(N) of the Immigration and Nationality Act, as added by paragraph (1); and

(C) any other information that the Secretary considers appropriate.

(5) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this subsection and the amendments made by this subsection.

(b) REQUIREMENTS FOR ALIENS.—

(1) REQUIREMENT BEFORE ENTRY INTO THE UNITED STATES.—

(A) DATABASE SEARCH.—An alien may not be admitted to the United States unless the Secretary has ensured that a search of each database maintained by an agency or department of the United States has been conducted to determine whether such alien is ineligible to be admitted to the United States on criminal, security, or related grounds.

(B) COOPERATION AND SCHEDULE.—The Secretary and the head of each appropriate agency or department of the United States shall cooperate to ensure that each database search required under subparagraph (A) is completed not later than 45 days after the date on which an alien files a peti-

tion seeking a special immigration visa under section 101(a)(27)(N) of the Immigration and Nationality Act, as added by subsection (a)(1).

(2) REQUIREMENT AFTER ENTRY INTO THE UNITED STATES.—

(A) REQUIREMENT TO SUBMIT FINGERPRINTS.—

(i) IN GENERAL.—Not later than 30 days after the date that an alien enters the United States, the alien shall be fingerprinted and submit to the Secretary such fingerprints and any other personal biometric data required by the Secretary.

(ii) OTHER REQUIREMENTS.—The Secretary may prescribe regulations that permit fingerprints submitted by an alien under section 262 of the Immigration and Nationality Act (8 U.S.C. 1302) or any other provision of law to satisfy the requirement to submit fingerprints of clause (i).

(B) DATABASE SEARCH.—The Secretary shall ensure that a search of each database that contains fingerprints that is maintained by an agency or department of the United States be conducted to determine whether such alien is ineligible for an adjustment of status under any provision of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) on criminal, security, or related grounds.

(C) COOPERATION AND SCHEDULE.—The Secretary and the head of each appropriate agency or department of the United States shall work cooperatively to ensure that each database search required by subparagraph (B) is completed not later than 180 days after the date on which the alien enters the United States.

(D) ADMINISTRATIVE AND JUDICIAL REVIEW.—

(i) IN GENERAL.—There may be no review of a determination by the Secretary, after a search required by subparagraph (B), that an alien is ineligible for an adjustment of status, under any provision of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) on criminal, security, or related grounds except as provided in this subparagraph.

(ii) ADMINISTRATIVE REVIEW.—An alien may appeal a determination described in clause (i) through the Administrative Appeals Office of the Bureau of Citizenship and Immigration Services. The Secretary shall ensure that a determination on such appeal is made not later than 60 days after the date that the appeal is filed.

(iii) JUDICIAL REVIEW.—There may be no judicial review of a determination described in clause (i).

**SEC. 518. SONS AND DAUGHTERS OF FILIPINO WORLD WAR II VETERANS.**

Section 201(b)(1) (8 U.S.C. 1151(b)(1)), as amended by sections 504 and 508, is further amended by adding at the end the following:

“(M) Aliens who are eligible for a visa under paragraph (1) or (3) of section 203(a) and are the son or daughter of a citizen of the United States who was naturalized pursuant to section 405 of the Immigration Act of 1990 (8 U.S.C. 1440 note).”.

**SEC. 519. DETERMINATIONS UNDER THE HAITIAN REFUGEE IMMIGRATION FAIRNESS ACT OF 1998.**

(a) IN GENERAL.—Section 902(d) of the Haitian Refugee Immigration Fairness Act of 1998 (8 U.S.C. 1255 note) is amended by adding at the end the following:

“(3) DETERMINATIONS WITH RESPECT TO CHILDREN.—

“(A) USE OF APPLICATION FILING DATE.—Determinations made under this subsection as to whether an individual is a child of a parent shall be made using the age and status of the individual on October 21, 1998.

“(B) APPLICATION SUBMISSION BY PARENT.—Notwithstanding paragraph (1)(C), an application under this subsection filed based on status as a child may be filed for the benefit of such child by a parent or guardian of the child, if the child is physically present in the United States on such filing date.”.

(b) NEW APPLICATIONS AND MOTIONS TO REOPEN.—

(1) NEW APPLICATIONS.—Notwithstanding section 902(a)(1)(A) of the Haitian Refugee Immigration Fairness Act of 1998, an alien who is eligible for adjustment of status under such Act may submit an application for adjustment of status under such Act not later than the later of—

(A) 2 years after the date of the enactment of this Act; or

(B) 1 year after the date on which final regulations are promulgated to implement this section and the amendment made by subsection (a).

(2) MOTIONS TO REOPEN.—The Secretary shall establish procedures for the reopening and reconsideration of applications for adjustment of status under the

Haitian Refugee Immigration Fairness Act of 1998 that are affected by the amendment made by subsection (a).

(3) RELATIONSHIP OF APPLICATION TO CERTAIN ORDERS.—Section 902(a)(3) of the Haitian Refugee Immigration Fairness Act of 1998 shall apply to an alien present in the United States who has been ordered excluded, deported, removed, or ordered to depart voluntarily, and who files an application under paragraph (1) or a motion under paragraph (2), in the same manner as such section 902(a)(3) applied to aliens filing applications for adjustment of status under such Act prior to April 1, 2000.

(c) INADMISSIBILITY DETERMINATION.—Section 902 of the Haitian Refugee Immigration Fairness Act of 1998 (8 U.S.C. 1255 note) is amended in subsections (a)(1)(B) and (d)(1)(D) by inserting “(6)(C)(i),” after “(6)(A),”.

**SEC. 520. S VISAS.**

(a) EXPANSION OF S VISA CLASSIFICATION.—Section 101(a)(15)(S) (8 U.S.C. 1101(a)(15)(S)) is amended—

(1) in clause (i)—

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

(B) in subclause (I), by inserting before the semicolon, “, including a criminal enterprise undertaken by a foreign government, its agents, representatives, or officials”;

(C) in subclause (III), by inserting “if the information concerns a criminal enterprise undertaken by an individual or organization that is not a foreign government, its agents, representatives, or officials,” before “whose”; and

(D) by striking “or” at the end; and

(2) in clause (ii)—

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

(B) by striking “1956,” and all that follows through “the alien;” and inserting the following: “1956; or

“(iii) the Secretary of Homeland Security and the Secretary of State, in consultation with the Director of Central Intelligence, jointly determine—

“(I) is in possession of critical reliable information concerning the activities of governments or organizations, or their agents, representatives, or officials, with respect to weapons of mass destruction and related delivery systems, if such governments or organizations are at risk of developing, selling, or transferring such weapons or related delivery systems; and

“(II) is willing to supply or has supplied, fully and in good faith, information described in subclause (I) to appropriate persons within the United States Government; and

if the Secretary of Homeland Security (or with respect to clause (ii), the Secretary of State and the Secretary of Homeland Security jointly) considers it to be appropriate, the spouse, children, married and unmarried sons and daughters, and parents of an alien described in clause (i), (ii), or (iii) if accompanying, or following to join, the alien;”.

(b) NUMERICAL LIMITATION.—Section 214(k)(1) (8 U.S.C. 1184(k)(1)) is amended to read as follows:

“(1) The number of aliens who may be provided a visa as nonimmigrants under section 101(a)(15)(S) in any fiscal year may not exceed 1,000.”.

(c) REPORTS.—

(1) CONTENT.—Section 214(k)(4) (8 U.S.C. 1184(k)(4)) is amended—

(A) in the matter preceding subparagraph (A)—

(i) by striking “Attorney General” and inserting “Secretary of Homeland Security”; and

(ii) by striking “concerning” and inserting “that includes”;

(B) in subparagraph (D), by striking “and” at the end;

(C) in subparagraph (E), by striking the period at the end and inserting “, and”; and

(D) by adding at the end the following:

“(F) if the total number of such nonimmigrants admitted is fewer than 25 percent of the total number provided for under paragraph (1)—

“(i) the reasons for the reduced number of such nonimmigrants;

“(ii) the efforts made by the Secretary of Homeland Security to admit such nonimmigrants; and

“(iii) any extenuating circumstances that contributed to the reduced number of such nonimmigrants.”

(2) FORM OF REPORT.—Section 214(k) (8 U.S.C. 1184(k)) is amended by adding at the end the following:

“(5) To the extent required by law and if it is in the interests of national security or the security of such nonimmigrants that are admitted, as determined by the Secretary of Homeland Security—

“(A) the information contained in a report described in paragraph (4) may be classified; and

“(B) the Secretary of Homeland Security shall, to the extent feasible, submit a non-classified version of the report to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate.”.

**SEC. 521. L VISA LIMITATIONS.**

Section 214(c)(2) (8 U.S.C. 1184(c)(2)) is amended—

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

(2) in subparagraph (E), by striking “In the case of an alien spouse admitted under section 101(a)(15)(L), who” and inserting “Except as provided in subparagraph (H), if an alien spouse admitted under section 101(a)(15)(L)”;

(3) by adding at the end the following:

“(G)(i) If the beneficiary of a petition under this subsection is coming to the United States to open, or be employed in, a new facility, the petition may be approved for a period not to exceed 12 months only if the employer operating the new facility has—

“(I) a business plan;

“(II) sufficient physical premises to carry out the proposed business activities; and

“(III) the financial ability to commence doing business immediately upon the approval of the petition.

“(ii) An extension of the approval period under clause (i) may not be granted until the importing employer submits to the Secretary of Homeland Security—

“(I) evidence that the importing employer meets the requirements of this subsection;

“(II) evidence that the beneficiary meets the requirements of section 101(a)(15)(L);

“(III) a statement summarizing the original petition;

“(IV) evidence that the importing employer has fully complied with the business plan submitted under clause (i);

“(V) evidence of the truthfulness of any representations made in connection with the filing of the original petition;

“(VI) evidence that the importing employer, during the previous 12 months, has been doing business at the new facility through regular, systematic, and continuous provision of goods or services, or has otherwise been taking commercially reasonable steps to establish the new facility as a commercial enterprise;

“(VII) a statement of the duties the beneficiary has performed at the new facility during the preceding 12-month period and the duties the beneficiary will perform at the new facility during the extension period approved under this clause;

“(VIII) a statement describing the staffing at the new facility, including the number of employees and the types of positions held by such employees;

“(IX) evidence of wages paid to employees if the beneficiary will be employed in a managerial or executive capacity;

“(X) evidence of the financial status of the new facility; and

“(XI) any other evidence or data prescribed by the Secretary.

“(iii) Notwithstanding subclauses (I) through (VI) of clause (ii) and subject to the maximum period of authorized admission set forth in subparagraph (D), the Secretary of Homeland Security may approve a subsequently filed petition on behalf of the beneficiary to continue employment at the facility described in this subsection for a period beyond the initially granted 12-month period if the importing employer demonstrates that the failure to satisfy any of the requirements described in those subclauses was directly caused by extraordinary circumstances beyond the control of the importing employer.

“(H)(i) The Secretary of Homeland Security may not authorize the spouse of an alien described under section 101(a)(15)(L), who is a dependent of a bene-



ficiary under subparagraph (G), to engage in employment in the United States during the initial 12-month period described in subparagraph (G)(i).

“(i) A spouse described in clause (i) may be provided employment authorization upon the approval of an extension under subparagraph (G)(ii).

“(I) For purposes of determining the eligibility of an alien for classification under section 101(a)(15)(L), the Secretary of Homeland Security shall establish a program to work cooperatively with the Secretary of State to verify a company or facility’s existence in the United States and abroad.”

**SEC. 522. ESTABLISHMENT OF NEW FASHION MODEL NONIMMIGRANT CLASSIFICATION.**

(a) IN GENERAL.—

(1) NEW CLASSIFICATION.—Section 101(a)(15)(O) (8 U.S.C. 1101(a)(15)(O)) is amended—

- (A) in clause (i), by striking “or” at the end;
- (B) in clause (ii), by striking “or” at the end;
- (C) by redesignating clause (iii) as clause (iv);
- (D) in clause (iv), as redesignated, by striking “clause (i) or (ii)” and inserting “clause (i), (ii), or (iii)”; and
- (E) by inserting after clause (ii) the following:

“(iii) is a fashion model who is of distinguished merit and ability and who is seeking to enter the United States temporarily to perform fashion modeling services that involve events or productions which have a distinguished reputation or that are performed for an organization or establishment that has a distinguished reputation for, or a record of, utilizing prominent modeling talent; or”.

(2) NUMERICAL LIMITATION.—Section 214(a)(2)(A) (8 U.S.C. 1184(a)(2)(A)) is amended by adding at the end the following: “The number of aliens who may be issued visas or otherwise provided nonimmigrant status under section 101(a)(15)(O)(iii) in any fiscal year may not exceed 1,000.”

(b) ELIMINATION OF H-1B CLASSIFICATION FOR FASHION MODELS.—Section 101(a)(15)(H)(i)(b) (8 U.S.C. 1101(a)(15)(H)(i)(b)) is amended—

- (1) in item (aa), by striking “or as a fashion model”; and
- (2) in item (bb), by striking “or, in the case of a fashion model, is of distinguished merit and ability”.

(c) EFFECTIVE DATES.—

(1) IMPLEMENTATION OF NEW FASHION MODEL NONIMMIGRANT CLASSIFICATION.—Not later than 60 days after the date of the enactment of this Act, the Secretary shall promulgate regulations to carry out the amendments made by subsection (a). Nothing in this section shall be construed as preventing an alien who is a fashion model from obtaining nonimmigrant status under section 101(a)(15)(O)(i) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(O)(i)) if such alien is otherwise qualified for such status.

(2) ELIMINATION OF H-1B CLASSIFICATION FOR FASHION MODELS.—The amendments made by subsection (b)—

- (A) shall apply on the effective date of the regulations promulgated under paragraph (1); and
- (B) shall not apply to the classification of an alien under section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(i)(b)) as a fashion model pursuant to a petition for such classification that was filed before such effective date.

**SEC. 523. EB-5 REGIONAL CENTER PROGRAM.**

(a) CONCURRENT PROCESSING FOR EMPLOYEMENT CREATION IMMIGRANTS.—Section 245 (8 U.S.C. 1255), as amended by section 511, is further amended by adding at the end the following:

“(o) CONCURRENT PROCESSING FOR EMPLOYEMENT CREATION IMMIGRANTS.—If, at the time an alien files a petition for classification under section 203(b)(5), approval of the petition would make a visa immediately available to the alien beneficiary, the alien beneficiary’s application for adjustment of status under this section shall be considered properly filed whether submitted concurrently with, or subsequent to, such petition.”

(b) REGIONAL CENTER DESIGNATION FEES.—Section 610 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993 (8 U.S.C. 1153 note) is amended—

- (1) in subsection (b), by striking “for 15 years”; and
- (2) by adding at the end the following:

“(e) In addition to any other fees authorized by law, the Secretary of Homeland Security shall impose a \$2,500 fee to apply for designation as a regional center under this section. Fees collected under this subsection shall be deposited in the

Treasury in accordance with section 286(w) of the Immigration and Nationality Act (8 U.S.C. 1356(w)).”

(c) IMMIGRANT ENTREPRENEUR REGIONAL CENTER ACCOUNT.—

(1) ESTABLISHMENT.—Section 286 (8 U.S.C. 1356) is amended by adding at the end the following:

“(y) IMMIGRANT ENTREPRENEUR REGIONAL CENTER ACCOUNT.—

“(1) IN GENERAL.—There is established in the general fund of the Treasury a separate account, which shall be known as the ‘Immigrant Entrepreneur Regional Center Account’. Notwithstanding any other provision of law, there shall be deposited as offsetting receipts into the account all fees collected under section 610(e) of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993 (8 U.S.C. 1153 note).

“(2) USE OF FEES.—Fees deposited in the account established under paragraph (1) may only be used to carry out the EB–5 immigrant investor program.”

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

(A) shall take effect on the date on which regulations are published to carry out this section and the amendments made by this section; and

(B) shall apply to regional center applications filed on or after such date.

**SEC. 524. RETURN OF TALENT PROGRAM.**

(a) SHORT TITLE.—This section may be cited as the “Return of Talent Act”.

(b) ESTABLISHMENT.—

(1) IN GENERAL.—Title III (8 U.S.C. 1401 et seq.) is amended by inserting after section 317 the following:

**“SEC. 317A. TEMPORARY ABSENCE OF PERSONS PARTICIPATING IN THE RETURN OF TALENT PROGRAM.**

“(a) IN GENERAL.—The Secretary of Homeland Security, in consultation with the Secretary of State, shall establish the Return of Talent Program to permit eligible aliens to temporarily return to the alien’s country of citizenship in order to make a material contribution to that country if the country is engaged in post-conflict or natural disaster reconstruction activities, for a period not longer than 2 years, unless an exception is granted under subsection (d).

“(b) ELIGIBLE ALIEN.—An alien is eligible to participate in the Return of Talent Program established under subsection (a) if the alien meets the special immigrant description under section 101(a)(27)(N).

“(c) FAMILY MEMBERS.—The spouse, parents, siblings, and any minor children of an alien who participates in the Return of Talent Program established under subsection (a) may return to such alien’s country of citizenship with the alien and reenter the United States with the alien.

“(d) EXTENSION OF TIME.—The Secretary of Homeland Security may extend the 2-year period referred to in subsection (a) upon a showing that circumstances warrant that an extension is necessary for post-conflict or natural disaster reconstruction efforts.

“(e) RESIDENCY REQUIREMENTS.—An immigrant described in section 101(a)(27)(N) who participates in the Return of Talent Program established under subsection (a), and the spouse, parents, siblings, and any minor children who accompany such immigrant to that immigrant’s country of citizenship, shall be considered, during such period of participation in the program—

“(1) for purposes of section 316(a), physically present and residing in the United States for purposes of naturalization within the meaning of that section; and

“(2) for purposes of section 316(b), to meet the continuous residency requirements in that section.

“(f) OVERSIGHT AND ENFORCEMENT.—The Secretary of Homeland Security, in consultation with the Secretary of State, shall oversee and enforce the requirements of this section.”

(2) TABLE OF CONTENTS.—The table of contents (8 U.S.C. 1101 et seq.) is amended by inserting after the item relating to section 317 the following:

“317A. Temporary absence of persons participating in the Return of Talent Program.”

(c) ELIGIBLE IMMIGRANTS.—Section 101(a)(27) (8 U.S.C. 1101(a)(27)) is amended—

(1) in subparagraph (L), by inserting a semicolon after “Improvement Act of 1998”;

(2) in subparagraph (M), by striking the period and inserting “; or”; and

(3) by adding at the end the following:

“(N) an immigrant who—

“(i) has been lawfully admitted to the United States for permanent residence;

“(ii) demonstrates an ability and willingness to make a material contribution to the post-conflict or natural disaster reconstruction in the alien’s country of citizenship; and

“(iii) as determined by the Secretary of State in consultation with the Secretary of Homeland Security—

“(I) is a citizen of a country in which Armed Forces of the United States are engaged, or have engaged in the 10 years preceding such determination, in combat or peacekeeping operations;

“(II) is a citizen of a country where authorization for United Nations peacekeeping operations was initiated by the United Nations Security Council during the 10 years preceding such determination; or

“(III) is a citizen of a country which received, during the preceding 2 years, funding from the Office of Foreign Disaster Assistance of the United States Agency for International Development in response to a declared disaster in such country by the United States Ambassador, the Chief of the U.S. Mission, or the appropriate Assistant Secretary of State, that is beyond the ability of such country’s response capacity and warrants a response by the United States Government.”.

(d) REPORT TO CONGRESS.—Not later than 2 years after the date of the enactment of this Act, the Secretary, in consultation with the Secretary of State, shall submit a report to Congress that describes—

(1) the countries of citizenship of the participants in the Return of Talent Program established under section 317A of the Immigration and Nationality Act, as added by subsection (b);

(2) the post-conflict or natural disaster reconstruction efforts that benefited, or were made possible, through participation in the program; and

(3) any other information that the Secretary determines to be appropriate.

(e) REGULATIONS.—Not later than 6 months after the date of the enactment of this Act, the Secretary shall promulgate regulations to carry out this section and the amendments made by this section.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to United States Citizenship and Immigration Services, such sums as may be necessary to carry out this section and the amendments made by this section.

## **Subtitle B—Preservation of Immigration Benefits for Victims of a Major Disaster or Emergency**

### **SEC. 531. SHORT TITLE.**

This subtitle may be cited as the “Major Disaster and Emergency Victims Immigration Benefits Preservation Act”.

### **SEC. 532. DEFINITIONS.**

In this subtitle:

(1) APPLICATION OF DEFINITIONS FROM THE IMMIGRATION AND NATIONALITY ACT.—Except as otherwise specifically provided in this subtitle, the definitions in the Immigration and Nationality Act shall apply in the administration of this subtitle.

(2) DIRECT RESULT OF A MAJOR DISASTER OR EMERGENCY.—The term “direct result of a major disaster or emergency”—

(A) means physical damage, disruption of communications or transportation, forced or voluntary evacuation, business closures, or other circumstances directly caused by a major disaster or emergency; and

(B) does not include collateral or consequential economic effects in or on the United States or global economies.

(3) EMERGENCY.—The term “emergency” has the meaning given the term in section 102(1) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122(1)).

(4) LAST BUSINESS DAY.—The term “last business day” means the last business day preceding a major disaster or emergency. For purposes of Hurricane Katrina and Hurricane Rita, the last business day is August 26, 2005.

(5) MAJOR DISASTER.—The term “major disaster” has the meaning given the term in section 102(2) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122(2)) and includes Hurricane Katrina and Hurricane Rita.

**SEC. 533. SPECIAL IMMIGRANT STATUS.**

(a) PROVISION OF STATUS.—

(1) IN GENERAL.—For purposes of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), the Secretary may provide an alien described in subsection (b) with the status of a special immigrant under section 101(a)(27) of such Act (8 U.S.C. 1101(a)(27)) if the alien—

(A) files a petition with the Secretary under section 204 of such Act (8 U.S.C. 1154) for classification under section 203(b)(4) of such Act (8 U.S.C. 1153(b)(4));

(B) is otherwise eligible to receive an immigrant visa; and

(C) is otherwise admissible to the United States for permanent residence.

(2) INAPPLICABLE PROVISION.—In determining admissibility under paragraph (1)(C), the grounds for inadmissibility specified in section 212(a)(4) of such Act (8 U.S.C. 1182(a)(4)) shall not apply.

(b) ALIENS DESCRIBED.—

(1) PRINCIPAL ALIENS.—An alien is described in this subsection if—

(A) the alien was the beneficiary of—

(i) a petition that was filed with the Secretary on or before the last business day—

(I) under section 204 of the Immigration and Nationality Act (8 U.S.C. 1154) to classify the alien as a family-sponsored immigrant under section 203(a) of such Act (8 U.S.C. 1153(a)) or as an employment-based immigrant under section 203(b) of such Act (8 U.S.C. 1153(b)); or

(II) under section 214(d) of such Act (8 U.S.C. 1184(d)) to authorize the issuance of a nonimmigrant visa to the alien under section 101(a)(15)(K) of such Act (8 U.S.C. 1101(a)(15)(K)); or

(ii) an application for labor certification under section 212(a)(5)(A) of such Act (8 U.S.C. 1182(a)(5)(A)) that was filed under regulations of the Secretary of Labor on or before the last business day; and

(B) such petition or application was revoked or terminated before or after its approval, solely due to—

(i) the death or disability of the petitioner, applicant, or alien beneficiary as a direct result of a major disaster or emergency; or

(ii) loss of employment as a direct result of a major disaster or emergency.

(2) SPOUSES AND CHILDREN.—

(A) IN GENERAL.—An alien is described in this subsection if—

(i) the alien, as of the last business day, was the spouse or child of a principal alien described in paragraph (1); and

(ii) the alien—

(I) is accompanying such principal alien; or

(II) is following to join such principal alien within a reasonable period after a major disaster or emergency, as determined by the Attorney General.

(B) CONSTRUCTION.—

(i) DEATH DISREGARDED.—In construing the terms “accompanying” and “following to join” in subparagraph (A)(ii), the death of a principal alien described in paragraph (1)(B)(i) shall be disregarded.

(ii) REASONABLE PERIOD.—The reasonable period described in subparagraph (A)(ii)(II), as applied to Hurricane Katrina and Hurricane Rita, shall end 90 days after the date of the enactment of this Act.

(3) GRANDPARENTS OR LEGAL GUARDIANS OF ORPHANS.—An alien is described in this subsection if the alien is a grandparent or legal guardian of a child whose parents died as a direct result of a major disaster or emergency, if either of the deceased parents was, as of the last business day, a citizen or national of the United States or an alien lawfully admitted for permanent residence in the United States.

(c) PRIORITY DATE.—Immigrant visas made available under this section shall be issued to aliens in the order in which a petition on behalf of each such alien is filed with the Secretary under subsection (a)(1), except that if an alien was assigned a

priority date with respect to a petition described in subsection (b)(1)(A)(i), the alien may maintain that priority date.

(d) **NUMERICAL LIMITATIONS.**—In applying sections 201 through 203 of the Immigration and Nationality Act (8 U.S.C. 1151–1153) in any fiscal year, aliens eligible to be provided status under this section shall be treated as special immigrants who are not described in subparagraph (A), (B), (C), or (K) of section 101(a)(27) of such Act (8 U.S.C. 1101(a)(27)).

**SEC. 534. EXTENSION OF FILING OR REENTRY DEADLINES.**

(a) **AUTOMATIC EXTENSION OF NONIMMIGRANT STATUS.**—

(1) **IN GENERAL.**—Notwithstanding section 214 of the Immigration and Nationality Act (8 U.S.C. 1184), an alien described in paragraph (2) who was lawfully present in the United States as a nonimmigrant on the last business day, may, unless otherwise determined by the Secretary in the Secretary’s discretion, lawfully remain in the United States in the same nonimmigrant status until the latest of—

(A) the date on which such lawful nonimmigrant status would have otherwise terminated absent the enactment of this subsection;

(B) 1 year after the death or onset of disability described in paragraph (2); or

(C) 3 months after the date of the enactment of this Act, for victims of Hurricane Katrina or Hurricane Rita.

(2) **ALIENS DESCRIBED.**—

(A) **PRINCIPAL ALIENS.**—An alien is described in this paragraph if the alien was disabled as a direct result of a major disaster or emergency.

(B) **SPOUSES AND CHILDREN.**—An alien is described in this paragraph if the alien, as of the last business day, was the spouse or child of—

(i) a principal alien described in subparagraph (A); or

(ii) an alien who died as a direct result of a major disaster or emergency.

(3) **AUTHORIZED EMPLOYMENT.**—During the period in which a principal alien or alien spouse is in lawful nonimmigrant status under paragraph (1), the alien may be provided an “employment authorized” endorsement or other appropriate document signifying authorization of employment.

(b) **NEW DEADLINES FOR EXTENSION OR CHANGE OF NONIMMIGRANT STATUS.**—

(1) **FILING DELAYS.**—

(A) **IN GENERAL.**—If an alien, who was lawfully present in the United States as a nonimmigrant on the last business day, was prevented from filing a timely application for an extension or change of nonimmigrant status as a direct result of a major disaster or emergency, the alien’s application may be considered timely filed if it is filed within a reasonable period, as determined by the Secretary, after the application would have otherwise been due. For victims of Hurricane Katrina or Hurricane Rita, this period shall end 3 months after the date of the enactment of this Act.

(B) **CIRCUMSTANCES PREVENTING TIMELY ACTION.**—For purposes of subparagraph (A), circumstances preventing an alien from timely acting are—

(i) office closures;

(ii) mail or courier service cessations or delays;

(iii) other closures, cessations, or delays affecting case processing or travel necessary to satisfy legal requirements;

(iv) mandatory evacuation and relocation; or

(v) other circumstances, including medical problems or financial hardship.

(2) **DEPARTURE DELAYS.**—

(A) **IN GENERAL.**—If an alien, who was lawfully present in the United States as a nonimmigrant on the last business day, is unable to timely depart the United States as a direct result of a major disaster or emergency, the alien shall not be considered to have been unlawfully present in the United States during the period beginning on the last business day, and ending on the date of the alien’s departure, if such departure occurred within a reasonable period, as determined by the Secretary. If a victim of Hurricane Katrina or Hurricane Rita departs the United States not later than 3 months after the date of the enactment of this Act, such departure shall be considered to have been within a reasonable period under this subparagraph.

(B) **CIRCUMSTANCES PREVENTING TIMELY ACTION.**—For purposes of subparagraph (A), circumstances preventing an alien from timely acting are—

(i) office closures;

- (ii) transportation cessations or delays;
- (iii) other closures, cessations, or delays affecting case processing or travel necessary to satisfy legal requirements;
- (iv) mandatory evacuation and relocation; or
- (v) other circumstances, including medical problems or financial hardship.

(c) DIVERSITY IMMIGRANTS.—Section 204(a)(1)(I)(ii)(II) (8 U.S.C. 1154(a)(1)(I)(ii)(II)), is amended to read as follows:

“(II) An immigrant visa made available under subsection 203(c) for fiscal year 1998, or for a subsequent fiscal year, may be issued, or adjustment of status under section 245(a) based upon the availability of such visa may be granted, to an eligible qualified alien who has properly applied for such visa or adjustment in the fiscal year for which the alien was selected notwithstanding the end of such fiscal year. Such visa or adjustment of status shall be counted against the worldwide level set forth in subsection 201(e) for the fiscal year for which the alien was selected.”

(d) EXTENSION OF FILING PERIOD.—If an alien is unable to timely file an application to register or reregister for temporary protected status under section 244 of the Immigration and Nationality Act (8 U.S.C. 1254a) as a direct result of a major disaster or emergency, the alien’s application may be considered timely filed if it is filed not later than 90 days after it otherwise would have been due.

(e) VOLUNTARY DEPARTURE.—

(1) IN GENERAL.—Notwithstanding section 240B of the Immigration and Nationality Act (8 U.S.C. 1229c), if a period for voluntary departure under such section expired during the period beginning on the last business day and ending within a reasonable period, as determined by the Attorney General, and the alien was unable to voluntarily depart before the expiration date as a direct result of a major disaster or emergency, such voluntary departure period is deemed to have been extended for an additional 60 days. For purposes of Hurricane Katrina and Hurricane Rita, the reasonable period shall be deemed to have ended on December 31, 2005.

(2) CIRCUMSTANCES PREVENTING DEPARTURE.—For purposes of this subsection, circumstances preventing an alien from voluntarily departing the United States are—

- (A) office closures;
- (B) transportation cessations or delays;
- (C) other closures, cessations, or delays affecting case processing or travel necessary to satisfy legal requirements;
- (D) mandatory evacuation and removal; and
- (E) other circumstances, including medical problems or financial hardship.

(f) CURRENT NONIMMIGRANT VISA HOLDERS.—

(1) IN GENERAL.—An alien, who was lawfully present in the United States on the last business day, as a nonimmigrant under section 101(a)(15)(H) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)) and lost employment as a direct result of a major disaster or emergency may accept new employment upon the filing by a prospective employer of a new petition on behalf of such nonimmigrant not later than 1 year after such major disaster or emergency. For victims of Hurricane Katrina or Hurricane Rita, this period shall be extended until August 29, 2007.

(2) CONTINUATION OF EMPLOYMENT AUTHORIZATION.—Employment authorization shall continue for such alien until the new petition is adjudicated. If the new petition is denied, such employment shall cease.

(3) SAVINGS PROVISION.—Nothing in this subsection shall be construed to limit eligibility for portability under section 214(n) of the Immigration and Nationality Act (8 U.S.C. 1184(n)).

**SEC. 535. HUMANITARIAN RELIEF FOR CERTAIN SURVIVING SPOUSES AND CHILDREN.**

(a) TREATMENT AS IMMEDIATE RELATIVES.—

(1) SPOUSES.—Notwithstanding the second sentence of section 201(b)(2)(A)(i) of the Immigration and Nationality Act (8 U.S.C. 1151(b)(2)(A)(i)), if an alien was the spouse of a citizen of the United States at the time of the citizen’s death and was not legally separated from the citizen at the time of the citizen’s death, and the citizen died as a direct result of a major disaster or emergency, the alien (and each child of the alien) may be considered, for purposes of section 201(b) of such Act, to remain an immediate relative after the date of the citizen’s death if the alien files a petition under section 204(a)(1)(A)(ii) of such Act not later than 2 years after such date and only until the date on which the alien remarries. For purposes of such section

204(a)(1)(A)(ii), an alien granted relief under this paragraph shall be considered an alien spouse described in the second sentence of section 201(b)(2)(A)(i) of such Act.

(2) CHILDREN.—

(A) IN GENERAL.—In the case of an alien who was the child of a citizen of the United States at the time of the citizen's death, if the citizen died as a direct result of a major disaster or emergency, the alien may be considered, for purposes of section 201(b) of the Immigration and Nationality Act (8 U.S.C. 1151(b)), to remain an immediate relative after the date of the citizen's death (regardless of subsequent changes in age or marital status), but only if the alien files a petition under subparagraph (B) not later than 2 years after such date.

(B) PETITIONS.—An alien described in subparagraph (A) may file a petition with the Secretary for classification of the alien under section 201(b)(2)(A)(i) of the Immigration and Nationality Act (8 U.S.C. 1151(b)(2)(A)(i)), which shall be considered a petition filed under section 204(a)(1)(A) of such Act (8 U.S.C. 1154(a)(1)(A)).

(b) SPOUSES, CHILDREN, UNMARRIED SONS AND DAUGHTERS OF LAWFUL PERMANENT RESIDENT ALIENS.—

(1) IN GENERAL.—Any spouse, child, or unmarried son or daughter of an alien described in paragraph (3) who is included in a petition for classification as a family-sponsored immigrant under section 203(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1153(a)(2)), which was filed by such alien before the last business day, may be considered (if the spouse, child, son, or daughter has not been admitted or approved for lawful permanent residence by such date) a valid petitioner for preference status under such section with the same priority date as that assigned before the death described in paragraph (3)(A). No new petition shall be required to be filed. Such spouse, child, son, or daughter may be eligible for deferred action and work authorization.

(2) SELF-PETITIONS.—Any spouse, child, or unmarried son or daughter of an alien described in paragraph (3) who is not a beneficiary of a petition for classification as a family-sponsored immigrant under section 203(a)(2) of the Immigration and Nationality Act may file a petition for such classification with the Secretary, if the spouse, child, son, or daughter was present in the United States on the last business day. Such spouse, child, son, or daughter may be eligible for deferred action and work authorization.

(3) ALIENS DESCRIBED.—An alien is described in this paragraph if the alien—

(A) died as a direct result of a major disaster or emergency; and

(B) on the day of such death, was lawfully admitted for permanent residence in the United States.

(c) APPLICATIONS FOR ADJUSTMENT OF STATUS BY SURVIVING SPOUSES AND CHILDREN OF EMPLOYMENT-BASED IMMIGRANTS.—

(1) IN GENERAL.—Any alien who was, on the last business day, the spouse or child of an alien described in paragraph (2), and who applied for adjustment of status before the death described in paragraph (2)(A), may have such application adjudicated as if such death had not occurred.

(2) ALIENS DESCRIBED.—An alien is described in this paragraph if the alien—

(A) died as a direct result of a major disaster or emergency; and

(B) on the day before such death, was—

(i) an alien lawfully admitted for permanent residence in the United States by reason of having been allotted a visa under section 203(b) of the Immigration and Nationality Act (8 U.S.C. 1153(b)); or

(ii) an applicant for adjustment of status to that of an alien described in clause (i), and admissible to the United States for permanent residence.

(d) APPLICATIONS BY SURVIVING SPOUSES AND CHILDREN OF REFUGEES AND ASYLEES.—

(1) IN GENERAL.—Any alien who, on the last business day, was the spouse or child of an alien described in paragraph (2), may have his or her eligibility to be admitted under section 207(c)(2)(A) or 208(b)(3)(A) of the Immigration and Nationality Act (8 U.S.C. 1157(c)(2)(A), 1158(b)(3)(A)) considered as if the alien's death had not occurred.

(2) ALIENS DESCRIBED.—An alien is described in this paragraph if the alien—

(A) died as a direct result of a major disaster or emergency; and

(B) on the day before such death, was—

(i) an alien admitted as a refugee under section 207 of the Immigration and Nationality Act (8 U.S.C. 1157); or

(ii) granted asylum under section 208 of such Act (8 U.S.C. 1158).

(e) **WAIVER OF PUBLIC CHARGE GROUNDS.**—In determining the admissibility of any alien accorded an immigration benefit under this section, the grounds for inadmissibility specified in section 212(a)(4) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(4)) shall not apply.

**SEC. 536. RECIPIENT OF PUBLIC BENEFITS.**

An alien shall not be inadmissible under section 212(a)(4) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(4)) or deportable under section 237(a)(5) of such Act (8 U.S.C. 1227(a)(5)) on the basis that the alien received any public benefit as a direct result of a major disaster or emergency.

**SEC. 537. AGE-OUT PROTECTION.**

In administering the immigration laws, the Secretary and the Attorney General may grant any application or benefit notwithstanding the applicant or beneficiary (including a derivative beneficiary of the applicant or beneficiary) reaching an age that would render the alien ineligible for the benefit sought, if the alien's failure to meet the age requirement occurred as a direct result of a major disaster or emergency.

**SEC. 538. EMPLOYMENT ELIGIBILITY VERIFICATION.**

(a) **IN GENERAL.**—The Secretary may suspend or modify any requirement under section 274A(b) of the Immigration and Nationality Act (8 U.S.C. 1324a(b)) or subtitle A of title IV of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note), either generally or with respect to particular persons, class of persons, geographic areas, or economic sectors, to the extent to which the Secretary determines necessary or appropriate to respond to major disasters or emergencies.

(b) **NOTIFICATION.**—If the Secretary suspends or modifies any requirement under section 274A(b) of the Immigration and Nationality Act pursuant to subsection (a), the Secretary shall send notice of such decision, including the reasons for the suspension or modification, to—

- (1) the Committee on the Judiciary of the Senate; and
- (2) the Committee on the Judiciary of the House of Representatives.

(c) **SUNSET DATE.**—The authority under subsection (a) shall expire on August 26, 2008.

**SEC. 539. NATURALIZATION.**

The Secretary may, with respect to applicants for naturalization in any district of the United States Citizenship and Immigration Services affected by a major disaster or emergency, administer the provisions of Title III of the Immigration and Nationality Act (8 U.S.C. 1401 et seq.) notwithstanding any provision of such title relating to the jurisdiction of an eligible court to administer the oath of allegiance, or requiring residence to be maintained or any action to be taken in any specific district or State within the United States.

**SEC. 540. DISCRETIONARY AUTHORITY.**

The Secretary or the Attorney General may waive violations of the immigration laws committed by an alien—

- (1) who was in lawful status on the last business day; and
- (2) whose failure to comply with the immigration laws—
  - (A) was a direct result of a major disaster or emergency;
  - (B) occurred within a period to be determined by the Attorney General;

and

- (C) for the victims of Hurricane Katrina or Hurricane Rita, occurred on or before March 1, 2006.

**SEC. 541. EVIDENTIARY STANDARDS AND REGULATIONS.**

The Secretary shall establish appropriate evidentiary standards for demonstrating, for purposes of this subtitle, that a major disaster or emergency directly resulted in—

- (1) death;
- (2) disability; or
- (3) loss of employment due to physical damage to, or destruction of, a business.



**SEC. 542. IDENTIFICATION DOCUMENTS.**

(a) **TEMPORARY IDENTIFICATION.**—The Secretary shall have the authority to instruct any Federal agency to issue temporary identification documents to individuals affected by a major disaster or emergency. Such documents shall be acceptable for identification purposes under any Federal law until 1 year after the relevant major disaster or emergency. For victims of Hurricane Katrina or Hurricane Rita, such documents shall be valid until August 29, 2007.

(b) **ISSUANCE.**—An agency may not issue identity documents under this section after January 1, 2006.

(c) **NO COMPULSION TO ACCEPT OR CARRY IDENTIFICATION DOCUMENTS.**—Nationals of the United States shall not be compelled to accept or carry documents issued under this section.

(d) **NO PROOF OF CITIZENSHIP.**—Identity documents issued under this section shall not constitute proof of citizenship or immigration status.

**SEC. 543. WAIVER OF REGULATIONS.**

The Secretary shall carry out the provisions of this subtitle as expeditiously as possible. The Secretary is not required to promulgate regulations before implementing this subtitle. The requirements of chapter 5 of title 5, United States Code (commonly referred to as the “Administrative Procedure Act”) or any other law relating to rule making, information collection, or publication in the Federal Register, shall not apply to any action to implement this subtitle to the extent the Secretary, the Secretary of Labor, or the Secretary of State determine that compliance with such requirement would impede the expeditious implementation of such Act.

**SEC. 544. NOTICES OF CHANGE OF ADDRESS.**

(a) **IN GENERAL.**—If a notice of change of address otherwise required to be submitted to the Secretary by an alien described in subsection (b) relates to a change of address occurring during the period beginning on the last business day, and ending on a date to be determined by the Secretary, the alien may submit such notice. For victims of Hurricane Katrina or Hurricane Rita, such period shall end on the date of the enactment of this Act.

(b) **ALIENS DESCRIBED.**—An alien is described in this subsection if the alien—

- (1) resided, on the last business day, within a district of the United States that was declared by the President to be affected by a major disaster or emergency; and

- (2) is required, under section 265 of the Immigration and Nationality Act (8 U.S.C. 1305) or any other provision of law, to notify the Secretary in writing of a change of address.

**SEC. 545. FOREIGN STUDENTS AND EXCHANGE PROGRAM PARTICIPANTS.**

(a) **IN GENERAL.**—The nonimmigrant status of an alien described in subsection (b) shall be deemed to have been maintained during the period beginning on the last business day, and ending on a date to be determined by the Attorney General, if on such later date, the alien is enrolled in a course of study, or participating in a designated exchange visitor program, sufficient to satisfy the terms and conditions of the alien’s nonimmigrant status on the last business day. For victims of Hurricane Katrina or Hurricane Rita, the relevant period shall be deemed to have ended on September 15, 2006.

(b) **ALIENS DESCRIBED.**—An alien is described in this subsection if the alien—

- (1) was, on the last business day, lawfully present in the United States in the status of a nonimmigrant described in subparagraph (F), (J), or (M) of section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)); and

- (2) fails to satisfy a term or condition of such status as a direct result of a major disaster or emergency.

## **TITLE VI—LEGALIZATION OF UNDOCUMENTED INDIVIDUALS**

### **Subtitle A—Conditional Nonimmigrants**

**SEC. 601. CONDITIONAL NONIMMIGRANTS.**

(a) **IN GENERAL.**—Notwithstanding any other provision of law, including section 244(h) of the Immigration and Nationality Act (8 U.S.C. 1254a(h)), the Secretary

may classify an alien as a conditional nonimmigrant or conditional nonimmigrant dependent if the alien—

- (1) submits an application for such classification; and
- (2) meets the requirements of this section.

(b) PRESENCE IN THE UNITED STATES.—

(1) IN GENERAL.—The alien shall establish that the alien—

- (A) was present in the United States before June 1, 2006;
- (B) has been continuously present in the United States since the date described in subparagraph (A); and
- (C) was not legally present in the United States on that date under any classification described in section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)) or any other nonimmigrant status made available under a treaty or other multinational agreement that has been ratified by the Senate.

(2) CONTINUOUS PRESENCE.—For purposes of this subsection, an absence from the United States without authorization for a continuous period of more than 180 days between June 1, 2006, and the beginning of the application period for classification as a conditional nonimmigrant shall constitute a break in continuous physical presence.

(c) CONDITIONAL NONIMMIGRANT DEPENDENTS.—Notwithstanding any other provision of law, the Secretary shall classify the spouse or child of a conditional nonimmigrant as a conditional nonimmigrant dependent, or provide the spouse or child with a conditional nonimmigrant dependent visa if—

(1) the spouse or child meets the applicable eligibility requirements under this section; or

(2) the alien was, before the date on which this Act was introduced in Congress, the spouse or child of an alien who was subsequently classified as a conditional nonimmigrant under this section, or is eligible for such classification, if—

- (A) the termination of the relationship with such spouse or parent was connected to domestic violence; and
- (B) the spouse or child has been battered or subjected to extreme cruelty by the spouse or parent who is a conditional nonimmigrant.

(d) OTHER CRITERIA.—

(1) IN GENERAL.—An alien may be classified as a conditional nonimmigrant or conditional nonimmigrant dependent if the Secretary determines that the alien—

(A) is not inadmissible to the United States under section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)), except as provided in paragraph (2);

(B) has not ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion; and

(C) is not an alien—

(i) who has been convicted by final judgment of a particularly serious crime and constitutes a danger to the community of the United States;

(ii) for whom there are reasonable grounds for believing that the alien has committed a particularly serious crime outside the United States before arriving in the United States; or

(iii) for whom there are reasonable grounds for regarding the alien as a danger to the security of the United States; and

(D) has been convicted of a felony or 3 or more misdemeanors under Federal or State law.

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

(A) paragraphs (5), (6) (excluding subparagraph (E)), (7), (9), and (10)(B) of section 212(a) of such Act shall not apply;

(B) the Secretary may not waive—

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

(ii) section 212(a)(3) of such Act (relating to security and related grounds); or

(iii) subparagraph (A), (C), or (D) of section 212(a)(10) of such Act (relating to polygamists and child abductors);

(C) the Secretary may waive the application of any provision of section 212(a) of such Act not listed in subparagraph (B) on behalf of an individual

alien for humanitarian purposes, to ensure family unity, or if such waiver is otherwise in the public interest; and

(D) nothing in this paragraph shall be construed as affecting the authority of the Secretary other than under this paragraph to waive the provisions of section 212(a) of such Act.

(3) APPLICABILITY OF OTHER PROVISIONS.—Sections 240B(d) and 241(a)(5) of the Immigration and Nationality Act (8 U.S.C. 1229c(d) and 1231(a)(5)) shall not apply to an alien who is applying for classification under this section for conduct that occurred before the date on which this Act was introduced in Congress.

(e) ATTESTATION OF EMPLOYMENT.—The Secretary may not classify an alien as a conditional nonimmigrant unless the alien—

(1) attests, under penalty of perjury, that the alien—

(A) was employed full time, part time, or seasonally in the United States or was self-employed before June 1, 2006, and has been employed in the United States since that date; or

(B) was otherwise physically present before June 1, 2006, under the limitations described in subsections (b) and (c) of section 602; and

(2) submits evidence that the Secretary determines to be necessary to establish prima facie evidence of employment or physical presence in the United States.

(f) SECURITY AND LAW ENFORCEMENT BACKGROUND CHECKS.—

(1) SUBMISSION OF FINGERPRINTS.—The Secretary may not classify an alien as a conditional nonimmigrant or a conditional nonimmigrant dependent unless the alien submits fingerprints in accordance with procedures established by the Secretary.

(2) BACKGROUND CHECKS.—The Secretary shall utilize fingerprints and other biometric data provided by the alien to conduct a background check of such alien to search for criminal, national security, or other law enforcement actions that would render the alien ineligible for classification under this section.

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

(g) PERIOD OF AUTHORIZED STAY; APPLICATION FEE AND FINE.—

(1) PERIOD OF AUTHORIZED STAY.—

(A) IN GENERAL.—Except as provided under subparagraph (C), the period of authorized stay for a conditional nonimmigrant or a conditional nonimmigrant dependent shall be 6 years from the date on which such status is conferred.

(B) LIMITATION.—The Secretary may not adjust or change the status of a conditional nonimmigrant or a conditional nonimmigrant dependent to any other immigrant or nonimmigrant classification until the termination of the 6-year period described in subparagraph (A).

(C) EXTENSION.—The Secretary may only extend the period described in subparagraph (A) to accommodate the processing of an application for adjustment of status under section 602.

(2) APPLICATION FEE AND FINES.—

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

(B) FINES.—

(i) IN GENERAL.—Except as provided under clause (ii), an alien filing an application under this section shall submit to the Secretary, in addition to the fee required under subparagraph (A), a fine of \$500.

(ii) EXCEPTION.—An alien who is younger than 21 years of age shall not be required to pay a fine under this paragraph.

(C) DISPOSITION OF FEES AND FINES.—

(i) FEES.—Fees collected under this paragraph shall be deposited into the Immigration Examination Fee Account and remain available as provided under subsections (m) and (n) of section 286.

(ii) FINES.—Fines collected under this paragraph shall be deposited into the New Worker Program and Conditional Nonimmigrant Fee Account established under section 286(w).

(h) TREATMENT OF APPLICANTS.—

(1) IN GENERAL.—An alien who files an application under this section to become a conditional nonimmigrant or a conditional nonimmigrant dependent—

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

(B) shall be granted permission to travel abroad;

(C) may not be detained for immigration purposes, determined inadmissible or deportable, or removed pending final adjudication of the alien's application, unless the alien, due to conduct or criminal conviction, becomes ineligible for conditional nonimmigrant classification; and

(D) may not be considered an unauthorized alien (as defined in section 274A(h)(3) of the Immigration and Nationality Act (8 U.S.C. 1324a(h)(3))) until employment authorization under subparagraph (A) is denied.

(2) DOCUMENT OF AUTHORIZATION.—The Secretary shall provide each alien described in paragraph (1) with a counterfeit-resistant document of authorization that—

(A) meets all current requirements established by the Secretary for travel documents, including the requirements under section 403 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note); and

(B) reflects the benefits and status set forth in paragraph (1).

(3) BEFORE APPLICATION PERIOD.—If an alien is apprehended between the date of the enactment of this Act and the date on which regulations are promulgated to implement this section, and the alien can establish prima facie eligibility as a conditional nonimmigrant or a conditional nonimmigrant dependent, the Secretary shall provide the alien with a reasonable opportunity to file an application under this section after such regulations are promulgated.

(4) DURING CERTAIN PROCEEDINGS.—Notwithstanding any provision of the Immigration and Nationality Act, if an immigration judge determines that an alien who is in removal proceedings has made a prima facie case of eligibility for classification as a conditional nonimmigrant or a conditional nonimmigrant dependent, the judge shall administratively close such proceedings and permit the alien a reasonable opportunity to apply for such classification.

(5) RELATIONSHIPS OF APPLICATION TO CERTAIN ORDERS.—

(A) IN GENERAL.—An alien who is present in the United States and has been ordered excluded, deported, removed, or ordered to depart voluntarily from the United States under any provision of the Immigration and Nationality Act—

(i) notwithstanding such order, may apply for classification as a conditional nonimmigrant or conditional nonimmigrant dependent under this subtitle; and

(ii) shall not be required to file a separate motion to reopen, reconsider, or vacate the exclusion, deportation, removal, or voluntary departure order.

(B) APPLICATION GRANTED.—If the Secretary grants the application described in subparagraph (A)(i), the Secretary shall cancel the order described in subparagraph (A).

(C) APPLICATION DENIED.—If the Secretary renders a final administrative decision to deny the application described in subparagraph (A)(i), the order described in subparagraph (A) shall be effective and enforceable to the same extent as if the application had not been made.

(i) CLASSIFICATION.—If the Secretary determines that an alien is eligible for classification as a conditional nonimmigrant or conditional nonimmigrant dependent, the alien shall be entitled to all benefits described in subsection (h)(1). The Secretary may authorize the use of a document described in subsection (h)(2) as evidence of such classification or may issue additional documentation as evidence of classification as a conditional nonimmigrant or conditional nonimmigrant dependent.

(j) TERMINATION OF BENEFITS.—

(1) IN GENERAL.—Any benefit provided to an alien seeking classification as a conditional nonimmigrant or conditional nonimmigrant dependent, or who is classified as such, under this section shall terminate if—

(A) the Secretary determines that the alien is ineligible for such classification and all review procedures under section 603 have been exhausted or waived by the alien;

(B) the alien is found removable from the United States under section 237 of the Immigration and Nationality Act (8 U.S.C. 1227);

(C) the alien has used documentation issued under this section for unlawful or fraudulent purposes; or

(D) in the case of the spouse or child of an alien applying for classification as a conditional nonimmigrant or classified as a conditional non-

immigrant under this section, the benefits for the principal alien are terminated.

(k) **DISSEMINATION OF INFORMATION ON CONDITIONAL NONIMMIGRANT PROGRAM.**—During the 12-month period immediately after the issuance of regulations implementing this section, the Secretary, in cooperation with entities approved by the Secretary, shall broadly disseminate information respecting conditional nonimmigrant or conditional nonimmigrant dependent classification under this section and the requirements to be satisfied to obtain such classification. The Secretary shall disseminate information to employers and labor unions to advise them of the rights and protections available to them and to workers who file applications under this section. Such information shall be broadly disseminated, in the principal languages, as determined by the Secretary, spoken by aliens who would qualify for classification under this section, including to television, radio, and print media to which such aliens would have access.

**SEC. 602. ADJUSTMENT OF STATUS FOR CONDITIONAL NONIMMIGRANTS.**

(a) **REQUIREMENTS.**—

(1) **IN GENERAL.**—Notwithstanding any other provision of law, including section 244(h) of the Immigration and Nationality Act (8 U.S.C. 1254a(h)), the Secretary may adjust the status of a conditional nonimmigrant or a conditional nonimmigrant dependent to that of an alien lawfully admitted for permanent residence if the conditional nonimmigrant or conditional nonimmigrant dependent satisfies the applicable requirements under this subsection.

(2) **COMPLETION OF EMPLOYMENT OR EDUCATION REQUIREMENT.**—A conditional nonimmigrant applying for adjustment of status under this section shall establish that during the 6-year period immediately preceding the application for adjustment of status, he or she—

(A) has been employed full-time, part-time, or seasonally in the United States;

(B) has been self-employed in the United States; or

(C) has met the education requirements under subsection (c).

(3) **EVIDENCE OF EMPLOYMENT.**—

(A) **CONCLUSIVE DOCUMENTS.**—An alien may conclusively establish employment status in compliance with paragraph (2) by submitting records to the Secretary that demonstrate such employment, and have been maintained by the Social Security Administration, the Internal Revenue Service, or any other Federal, State, or local government agency.

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

(i) bank records;

(ii) business records;

(iii) employer records;

(iv) records of a labor union, day labor center, or organization that assists workers in employment;

(v) sworn affidavits from nonrelatives who have direct knowledge of the alien's work, that contain—

(I) the name, address, and telephone number of the affiant;

(II) the nature and duration of the relationship between the affiant and the alien; and

(III) other verification or information; and

(vi) remittance records.

(C) **ADDITIONAL DOCUMENTS AND RESTRICTIONS.**—The Secretary may—

(i) designate additional documents to evidence employment in the United States; and

(ii) set such terms and conditions on the use of affidavits as is necessary to verify and confirm the identity of any affiant or otherwise prevent fraudulent submissions.

(4) **SENSE OF CONGRESS.**—It is the sense of the Congress that the requirement under this subsection should be interpreted and implemented in a manner that recognizes and takes into account the difficulties encountered by aliens in obtaining evidence of employment due to the undocumented status of the alien.

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

(6) PORTABILITY.—An alien shall not be required to complete the employment requirements under this section with a single employer.

(b) EXCEPTIONS AND SPECIAL RULES.—

(1) EXCEPTIONS BASED ON AGE.—The employment requirements under this section shall not apply—

(A) to any alien who is classified as a conditional nonimmigrant dependent who was younger than 21 years of age on the date of the enactment of this Act; or

(B) to any alien who is 65 years of age or older on the date of the enactment of this Act.

(2) DISABILITIES; PREGNANCY.—The employment requirements under this section shall be reduced for an alien who cannot demonstrate employment based on a physical or mental disability (as defined under section 3(2) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102(2))) or as a result of pregnancy if such condition is evidenced by the submission of documentation prescribed by the Secretary.

(c) APPLICATION PROCEDURE AND FEE.—

(1) IN GENERAL.—The Secretary shall promulgate regulations establishing procedures for submitting an application for adjustment of status under this section. The Secretary shall impose a fee for filing an application for adjustment of status under this section which shall be sufficient to cover the administrative and other expenses incurred in connection with the review of such applications.

(2) FINES.—

(A) IN GENERAL.—Except as provided under subparagraph (B), an alien filing an application for adjustment of status under this section shall pay a \$1500 fine to the Secretary, in addition to the fee required under paragraph (1).

(B) EXCEPTION.—An alien who is classified as a conditional nonimmigrant dependent who was under 21 years of age on the date of enactment of this Act shall not be required to pay a fine under this paragraph.

(3) STATE IMPACT ASSISTANCE FEE.—

(A) IN GENERAL.—In addition to any other amounts required to be paid under this subsection, a conditional nonimmigrant shall submit a State impact assistance fee equal to \$500 with the application for adjustment filed under this section.

(B) USE OF FEE.—Fees collected under subparagraph (A) shall be deposited in the State Impact Assistance Account and shall remain available under 286(x) of the Immigration and Nationality Act.

(4) DEPOSIT OF FEES.—Fees collected under this paragraph shall be deposited into the Immigration Examination Fee Account and shall remain available as provided under subsections (m) and (n) of section 286 of the Immigration and Nationality Act (8 U.S.C. 1356).

(5) DEPOSIT OF FINES.—Fines collected under this paragraph shall be deposited into the New Worker Program and Conditional Nonimmigrant Fee Account and shall remain available as provided under section 286(w) of the Immigration and Nationality Act.

(d) ADMISSIBLE UNDER IMMIGRATION LAWS.—A conditional nonimmigrant or conditional nonimmigrant dependent applying for adjustment of status under this section shall establish that he or she is not inadmissible under section 212(a), except for any provision under that section that is not applicable or waived under paragraph (2) or (3) of section 601(d). For purposes of an application filed under this section, any prior waiver of inadmissibility granted to an alien under section 601(d)(2)(C) shall remain in effect with respect to the specific conduct considered by the Secretary at the time of classification under section 601.

(e) LEGAL REENTRY.—

(1) IN GENERAL.—A conditional nonimmigrant applying for adjustment of status under this section shall physically depart the United States and after such departure, be admitted to the United States as a conditional nonimmigrant or applicant for conditional nonimmigrant status, as evidenced by documentation issued by the Secretary. A record of such admission shall be created by the Secretary through the US-VISIT exit and entry system, or any other system maintained by the Secretary to create a record of a lawful entry.

(2) DEPARTURE AND REENTRY.—A conditional nonimmigrant seeking to establish lawful admission under paragraph (1)(B) may seek admission to the United States at any port of entry at which the US-VISIT exit and entry system, or any other system maintained by the Secretary to record lawful admission, is in operation. Departure and subsequent lawful admission to the United States shall occur not later than 90 days before the conditional nonimmigrant

files an application for adjustment to lawful permanent resident status under this section.

(3) EXEMPTIONS.—Paragraph (2) shall not apply to an alien who, on the date on which the application for adjustment of status is filed under this section—

- (A) has served in the Armed Forces of the United States;
- (B) has a son or daughter who has served or is serving in the Armed Forces of the United States;
- (C) has a pending or approved application under section 244 of the Immigration and Nationality Act (8 U.S.C. 1254a), the Nicaraguan Adjustment and Central American Relief Act (Public Law 105–100), or the Haitian Refugee Immigration Fairness Act of 1998 (Public Law 105–277);
- (D) is at least 65 years of age;
- (E) is younger than 21 years of age;
- (F) suffers from an ongoing physical or mental disability (as defined in section 3(2) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102));
- (G) is a single parent head of household; or
- (H) cannot comply with such paragraph due to extreme hardship to the alien or an immediate family member, as determined by the Secretary.

(4) FAILURE TO ESTABLISH LAWFUL ADMISSION TO THE UNITED STATES.—Unless exempted under paragraph (3), a conditional nonimmigrant who fails to depart and reenter the United States in accordance with paragraph (1) may not become a lawful permanent resident under this section.

(f) MEDICAL EXAMINATION.—A conditional nonimmigrant or a conditional nonimmigrant dependent shall undergo an appropriate medical examination (including a determination of immunization status) that conforms to generally accepted professional standards of medical practice.

(g) PAYMENT OF INCOME TAXES.—

(1) IN GENERAL.—Not later than the date on which status is adjusted under this section, a conditional nonimmigrant or conditional nonimmigrant dependent shall satisfy any applicable Federal tax liability by establishing that—

- (A) no such tax liability exists;
- (B) all outstanding liabilities have been paid; or
- (C) the conditional nonimmigrant has entered into, and is in compliance with, an agreement for payment of all outstanding liabilities with the Internal Revenue Service.

(2) APPLICABLE FEDERAL TAX LIABILITY.—For purposes of paragraph (1), the term “applicable Federal tax liability” means liability for Federal taxes, including penalties and interest, owed for any year during the period of employment required under subsection (a)(2) for which the statutory period for assessment of any deficiency for such taxes has not expired.

(3) IRS COOPERATION.—The Secretary of the Treasury shall establish rules and procedures under which the Commissioner of Internal Revenue shall provide documentation to—

- (A) a conditional nonimmigrant or conditional nonimmigrant dependent, upon request, to establish the payment of all taxes required under this subsection; or
- (B) the Secretary, upon request, regarding the payment of Federal taxes by an alien applying for a benefit under this section.

(4) COMPLIANCE.—The alien may satisfy proof of compliance with this subsection by submitting documentation that establishes that—

- (A) no such tax liability exists;
- (B) all outstanding liabilities have been met; or
- (C) the alien has entered into, and is in compliance with, an agreement for payment of all outstanding liabilities with the Internal Revenue Service.

(h) BASIC CITIZENSHIP SKILLS.—

(1) IN GENERAL.—Except as provided under paragraph (2), a conditional nonimmigrant or conditional nonimmigrant dependent shall establish that he or she—

- (A) meets the requirements under section 312 of the Immigration and Nationality Act (8 U.S.C. 1423); or
- (B) is satisfactorily pursuing a course of study to achieve such an understanding of English and knowledge and understanding of the history and Government of the United States.

(2) RELATION TO NATURALIZATION EXAMINATION.—A conditional nonimmigrant or conditional nonimmigrant dependent who demonstrates that he or she meets the requirements under such section 312 may be considered to have

satisfied the requirements of that section for purposes of becoming naturalized as a citizen of the United States under title III of the Immigration and Nationality Act (8 U.S.C. 1401 et seq.).

(3) EXCEPTIONS.—

(A) MANDATORY.—Paragraph (1) shall not apply to any person who is unable to comply with those requirements because of a physical or developmental disability or mental impairment as described in section 312(b)(1) of the Immigration and Nationality Act.

(B) DISCRETIONARY.—The Secretary may waive all or part of paragraph (1) for a conditional nonimmigrant who is at least 65 years of age on the date on which an application is filed for adjustment of status under this section.

(i) SECURITY AND LAW ENFORCEMENT BACKGROUND CHECKS.—The Secretary shall conduct a security and law enforcement background check in accordance with procedures described in section 601(f).

(j) MILITARY SELECTIVE SERVICE.—If a conditional nonimmigrant or conditional nonimmigrant dependent is within the age period required under the Military Selective Service Act (50 U.S.C. App. 451 et seq.), the conditional nonimmigrant shall establish proof of registration under that Act.

(k) TREATMENT OF CONDITIONAL NONIMMIGRANT DEPENDENTS.—

(1) ADJUSTMENT OF STATUS.—Notwithstanding any other provision of law, the Secretary may—

(A) adjust the status of a conditional nonimmigrant dependent to that of a person admitted for lawful permanent residence if the principal conditional nonimmigrant spouse or parent has been found eligible for adjustment of status under this section;

(B) adjust the status of a conditional nonimmigrant dependent who was the spouse or child of an alien who was classified as a conditional nonimmigrant or was eligible for such classification under section 601, to that of a person admitted for permanent residence if—

(i) the termination of the relationship with such spouse or parent was connected to domestic violence; and

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

(2) APPLICATION OF OTHER LAW.—In processing applications under this subsection on behalf of aliens who have been battered or subjected to extreme cruelty, the Secretary shall apply—

(A) the provisions under section 204(a)(1)(J) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(J)); and

(B) the protections, prohibitions, and penalties under section 384 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1367).

(l) BACK OF THE LINE.—An alien may not adjust status to that of a lawful permanent resident status under the Development, Relief, and Education for Alien Minors Act of 2007 until that earlier of—

(1) 30 days after an immigrant visa becomes available for petitions filed under sections 201, 202, and 203 that were filed before the date of enactment of the STRIVE Act of 2007; or

(2) 8 years after the enactment of the Development, Relief, and Education for Alien Minors Act of 2007.

(m) INELIGIBILITY FOR PUBLIC BENEFITS.—For purposes of section 403 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1613), an alien whose status has been adjusted under this section shall not be eligible for any Federal means-tested public benefit unless the alien meets the alien eligibility criteria for such benefit under title IV of such Act (8 U.S.C. 1601 et seq.).

**SEC. 603. ADMINISTRATIVE AND JUDICIAL REVIEW.**

(a) ADMINISTRATIVE REVIEW.—

(1) SINGLE LEVEL OF ADMINISTRATIVE APPELLATE REVIEW.—The Secretary shall establish an appellate review process within United States Citizenship and Immigration Services to provide for a single level of administrative appellate review of a final determination respecting an application for classification or adjustment of status under this subtitle.

(2) STANDARD FOR REVIEW.—Administrative appellate review under paragraph (1) shall be based solely upon the administrative record established at the time of the determination on the application and upon the presentation of additional or newly discovered evidence during the time of the pending appeal.

(b) JUDICIAL REVIEW.—



(1) **IN GENERAL.**—The circuit courts of appeal of the United States shall have jurisdiction to review the denial of an application for classification or adjustment of status under this subtitle. Notwithstanding any other provision of law, the standard for review of such a denial shall be governed by paragraph (2).

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

(3) **JURISDICTION OF COURTS.**—

(A) **IN GENERAL.**—Notwithstanding any other provision of law, the district courts of the United States shall have jurisdiction over any cause or claim arising from a pattern or practice of the Secretary in the operation or implementation of this subtitle that is arbitrary, capricious, or otherwise contrary to law, and may order any appropriate relief.

(B) **REMEDIES.**—A district court may order any appropriate relief under subparagraph (A) if the court determines that—

(i) resolution of such cause or claim will serve judicial and administrative efficiency; or

(ii) a remedy would otherwise not be reasonably available or practicable.

(c) **STAY OF REMOVAL.**—An alien seeking administrative or judicial review under this section may not be removed from the United States until a final decision is rendered establishing that the alien is ineligible for classification or adjustment of status under this subtitle unless such removal is based on criminal or national security grounds.

**SEC. 604. MANDATORY DISCLOSURE OF INFORMATION.**

(a) **MANDATORY DISCLOSURE.**—The Secretary and the Secretary of State shall provide a duly recognized law enforcement entity that submits a written request with the information furnished pursuant to an application filed under this subtitle, and any other information derived from such furnished information, in connection with a criminal investigation or prosecution or a national security investigation or prosecution, of an individual suspect or group of suspects.

(b) **LIMITATIONS.**—Except as otherwise provided under this section, no Federal agency, or any officer, employee, or agent of such agency, may—

(1) use the information furnished by the applicant pursuant to an application for benefits under this subtitle for any purpose other than to make a determination on the application;

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

(3) permit anyone other than the sworn officers and employees of such agency to examine individual applications.

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

**SEC. 605. PENALTIES FOR FALSE STATEMENTS IN APPLICATIONS.**

(a) **CRIMINAL PENALTY.**—

(1) **VIOLATION.**—It shall be unlawful for any person—

(A) to file, or assist in filing, an application for benefits under this subtitle; and

(i) to knowingly and willfully falsify, misrepresent, conceal, or cover up a material fact;

(ii) to make any false, fictitious, or fraudulent statements or representations; or

(iii) to make or use any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry;

or

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

(2) **PENALTY.**—Any person who violates paragraph (1) shall be fined in accordance with title 18, United States Code, imprisoned not more than 5 years, or both.

(b) **INADMISSIBILITY.**—An alien who is convicted of violating subsection (a) shall be considered to be inadmissible to the United States on the ground described in

section 212(a)(6)(C)(i) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(6)(C)(i)).

(c) EXCEPTION.—Notwithstanding subsections (a) and (b), any alien or other entity (including an employer or union) that submits an employment record that contains incorrect data used by the alien to obtain such employment, shall not, on that ground, be determined to have violated this section.

**SEC. 606. ALIENS NOT SUBJECT TO DIRECT NUMERICAL LIMITATIONS.**

Section 201(b)(1) (8 U.S.C. 1151(b)(1)), as amended by title V, is further amended—

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

(2) by adding at the end the following:

“(N) Aliens whose status is adjusted from that of a conditional nonimmigrant or conditional nonimmigrant dependent.”.

**SEC. 607. EMPLOYER PROTECTIONS.**

(a) IMMIGRATION STATUS OF ALIEN.—Employers of aliens applying for conditional nonimmigrant or conditional nonimmigrant dependent classification or adjustment of status under section 601 or 602 shall not be subject to civil and criminal tax liability relating directly to the employment of such alien before receiving employment authorization under this subtitle.

(b) PROVISION OF EMPLOYMENT RECORDS.—Employers that provide unauthorized aliens with copies of employment records or other evidence of employment pursuant to an application for conditional nonimmigrant or conditional nonimmigrant dependent classification or adjustment of status under section 601 or 602 or any other application or petition pursuant to any other immigration law, shall not be subject to civil and criminal liability under section 274A of the Immigration and Nationality Act (8 U.S.C. 1324a) for employing such unauthorized aliens.

(c) APPLICABILITY OF OTHER LAW.—Nothing in this section may be used to shield an employer from liability under section 274B of the Immigration and Nationality Act (8 U.S.C. 1324b) or any other labor or employment law.

**SEC. 608. LIMITATIONS ON ELIGIBILITY.**

(a) IN GENERAL.—An alien is not ineligible for any immigration benefit under any provision of this title, or any amendment made by this title, solely on the basis that the alien violated section 1543, 1544, or 1546 of title 18, United States Code, or any amendments made by this Act, during the period beginning on the date of the enactment of this Act and ending on the date on which the alien applies for any benefits under this title.

(b) PROSECUTION.—An alien who commits a violation of section 1543, 1544, or 1546 of such title or any amendments made by this Act, during the period beginning on the date of the enactment of this Act and ending on the date that the alien applies for eligibility for such benefit may be prosecuted for the violation if the alien’s application for such benefit is denied.

**SEC. 609. RULEMAKING.**

The Secretary shall promulgate regulations regarding the timely filing and processing of applications for benefits under this subtitle.

**SEC. 610. AUTHORIZATION OF APPROPRIATIONS.**

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

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

(c) SENSE OF CONGRESS.—It is the sense of the Congress that funds authorized to be appropriated under subsection (a) should be directly appropriated so as to facilitate the orderly and timely commencement of the processing of applications filed under sections 601 and 602.

## **Subtitle B—DREAM Act of 2007**

**SEC. 621. SHORT TITLE.**

This subtitle may be cited as the “Development, Relief, and Education for Alien Minors Act of 2007” or the “DREAM Act of 2007”.

**SEC. 622. DEFINITIONS.**

In this subtitle:

(1) INSTITUTION OF HIGHER EDUCATION.—The term “institution of higher education” has the meaning given that term in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001).

(2) UNIFORMED SERVICES.—The term “uniformed services” has the meaning given that term in section 101(a) of title 10, United States Code.

**SEC. 623. RESTORATION OF STATE OPTION TO DETERMINE RESIDENCY FOR PURPOSES OF HIGHER EDUCATION BENEFITS.**

(a) IN GENERAL.—Section 505 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1623) is repealed.

(b) EFFECTIVE DATE.—The repeal under subsection (a) shall take effect as if included in the enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (division C of Public Law 104–208; 110 Stat. 3009–546).

**SEC. 624. CANCELLATION OF REMOVAL AND ADJUSTMENT OF STATUS OF CERTAIN LONG-TERM RESIDENTS WHO ENTERED THE UNITED STATES AS CHILDREN.**

(a) SPECIAL RULE FOR CERTAIN LONG-TERM RESIDENTS WHO ENTERED THE UNITED STATES AS CHILDREN.—

(1) IN GENERAL.—Notwithstanding any other provision of law and except as otherwise provided in this subtitle, the Secretary may cancel removal of, and adjust to the status of an alien lawfully admitted for permanent residence, subject to the conditional basis described in section 625, an alien who is inadmissible or deportable from the United States, if the alien demonstrates that—

(A) the alien has been physically present in the United States for a continuous period of not less than 5 years immediately preceding the date of enactment of this Act, and had not yet reached the age of 16 years at the time of initial entry;

(B) the alien has been a person of good moral character since the time of application;

(C) the alien—

(i) is not inadmissible under paragraph (2), (3), (6)(E), or (10)(C) of section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)); and

(ii) is not deportable under paragraph (1)(E), (2), or (4) of section 237(a) of the Immigration and Nationality Act (8 U.S.C. 1227(a));

(D) the alien, at the time of application, has been admitted to an institution of higher education in the United States, or has earned a high school diploma or obtained a general education development certificate in the United States; and

(E) the alien has never been under a final administrative or judicial order of exclusion, deportation, or removal, unless the alien—

(i) has remained in the United States under color of law after such order was issued; or

(ii) received the order before attaining the age of 16 years.

(2) WAIVER.—Notwithstanding paragraph (1), the Secretary may waive the ground of ineligibility under section 212(a)(6)(E) of the Immigration and Nationality Act and the ground of deportability under paragraph (1)(E) of section 237(a) of that Act for humanitarian purposes or family unity or when it is otherwise in the public interest.

(3) PROCEDURES.—The Secretary shall provide a procedure by regulation allowing eligible individuals to apply affirmatively for the relief available under this subsection without being placed in removal proceedings.

(b) TERMINATION OF CONTINUOUS PERIOD.—For purposes of this section, any period of continuous residence or continuous physical presence in the United States of an alien who applies for cancellation of removal under this section shall not terminate when the alien is served a notice to appear under section 239(a) of the Immigration and Nationality Act (8 U.S.C. 1229(a)).

(c) TREATMENT OF CERTAIN BREAKS IN PRESENCE.—

(1) IN GENERAL.—An alien shall be considered to have failed to maintain continuous physical presence in the United States under subsection (a) if the alien has departed from the United States for any period in excess of 90 days or for any periods in the aggregate exceeding 180 days.

(2) EXTENSIONS FOR EXCEPTIONAL CIRCUMSTANCES.—The Secretary may extend the time periods described in paragraph (1) if the alien demonstrates that the failure to timely return to the United States was due to exceptional circumstances. The exceptional circumstances determined sufficient to justify an extension should be no less compelling than serious illness of the alien, or death or serious illness of a parent, grandparent, sibling, or child.

(d) EXEMPTION FROM NUMERICAL LIMITATIONS.—Nothing in this section may be construed to apply a numerical limitation on the number of aliens who may be eligible for cancellation of removal or adjustment of status under this section.

(e) RULEMAKING.—

(1) PROPOSED REGULATIONS.—Not later than 180 days after the date of enactment of this Act, the Secretary shall publish regulations implementing this section. Such regulations shall be effective immediately on an interim basis, but are subject to change and revision after public notice and opportunity for a period for public comment.

(2) INTERIM, FINAL REGULATIONS.—Within a reasonable time after publication of the interim regulations in accordance with paragraph (1), the Secretary shall publish final regulations implementing this section.

(f) REMOVAL OF ALIEN.—The Secretary may not remove any alien who has a pending application for conditional status under this subtitle.

**SEC. 625. CONDITIONAL PERMANENT RESIDENT STATUS.**

(a) IN GENERAL.—

(1) CONDITIONAL BASIS FOR STATUS.—Notwithstanding any other provision of law, and except as provided in section 626, an alien whose status has been adjusted under section 624 to that of an alien lawfully admitted for permanent residence shall be considered to have obtained such status on a conditional basis subject to the provisions of this section. Such conditional permanent resident status shall be valid for a period of 6 years, subject to termination under subsection (b).

(2) NOTICE OF REQUIREMENTS.—

(A) AT TIME OF OBTAINING PERMANENT RESIDENCE.—At the time an alien obtains permanent resident status on a conditional basis under paragraph (1), the Secretary shall provide for notice to the alien regarding the provisions of this section and the requirements of subsection (c) to have the conditional basis of such status removed.

(B) EFFECT OF FAILURE TO PROVIDE NOTICE.—The failure of the Secretary to provide a notice under this paragraph—

(i) shall not affect the enforcement of the provisions of this Act with respect to the alien; and

(ii) shall not give rise to any private right of action by the alien.

(b) TERMINATION OF STATUS.—

(1) IN GENERAL.—The Secretary shall terminate the conditional permanent resident status of any alien who obtained such status under this subtitle, if the Secretary determines that the alien—

(A) ceases to meet the requirements of subparagraph (B) or (C) of section 624(a)(1);

(B) has become a public charge; or

(C) has received a dishonorable or other than honorable discharge from the uniformed services.

(2) RETURN TO PREVIOUS IMMIGRATION STATUS.—Any alien whose conditional permanent resident status is terminated under paragraph (1) shall return to the immigration status the alien had immediately prior to receiving conditional permanent resident status under this subtitle.

(c) REQUIREMENTS OF TIMELY PETITION FOR REMOVAL OF CONDITION.—

(1) IN GENERAL.—In order for the conditional basis of permanent resident status obtained by an alien under subsection (a) to be removed, the alien shall file with the Secretary, in accordance with paragraph (3), a petition which—

(A) requests the removal of such conditional basis; and

(B) provides, under penalty of perjury, the facts and information needed by the Secretary to make the determination described in paragraph (2)(A).

(2) ADJUDICATION OF PETITION TO REMOVE CONDITION.—

(A) IN GENERAL.—If a petition is filed in accordance with paragraph (1) for an alien, the Secretary shall make a determination as to whether the alien meets the requirements set forth in subparagraphs (A) through (E) of subsection (d)(1).

(B) REMOVAL OF CONDITIONAL BASIS IF FAVORABLE DETERMINATION.—If the Secretary determines that the alien meets such requirements, the Secretary shall notify the alien of such determination and immediately remove the conditional basis of the status of the alien.

(C) TERMINATION IF ADVERSE DETERMINATION.—If the Secretary determines that the alien does not meet such requirements, the Secretary shall

notify the alien of such determination and terminate the conditional permanent resident status of the alien as of the date of the determination.

(3) TIME TO FILE PETITION.—

(A) IN GENERAL.—An alien may petition to remove the conditional basis to lawful resident status during the period beginning 180 days before and ending 2 years after the date that is 6 years after—

(i) the date of the granting of conditional permanent resident status; or

(ii) any other expiration date of the conditional permanent resident status as extended by the Secretary in accordance with this subtitle.

(B) STATUS.—The alien shall be deemed in conditional permanent resident status in the United States during the period in which a petition under subparagraph (A) is pending.

(d) DETAILS OF PETITION.—

(1) CONTENTS OF PETITION.—Each petition for an alien under subsection (c)(1) shall contain information to permit the Secretary to determine whether each of the following requirements is met:

(A) The alien has demonstrated good moral character during the entire period the alien has been a conditional permanent resident.

(B) The alien is in compliance with section 624(a)(1)(C).

(C) The alien has not abandoned the alien's residence in the United States. The Secretary shall presume that the alien has abandoned such residence if the alien is absent from the United States for more than 365 days, in the aggregate, during the period of conditional residence, unless the alien demonstrates that the alien has not abandoned the alien's residence. An alien who is absent from the United States due to active service in the uniformed services has not abandoned the alien's residence in the United States during the period of such service.

(D) The alien has completed at least 1 of the following:

(i) The alien has acquired a degree from an institution of higher education in the United States or has completed at least 2 years, in good standing, in a program for a bachelor's degree or higher degree in the United States.

(ii) The alien has served in the uniformed services for at least 2 years and, if discharged, has received an honorable discharge.

(E) The alien has provided a list of each secondary school (as that term is defined in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801)) that the alien attended in the United States.

(2) HARDSHIP EXCEPTION.—

(A) IN GENERAL.—The Secretary may remove the conditional status of an alien if the alien—

(i) satisfies the requirements of subparagraphs (A), (B), and (C) of paragraph (1);

(ii) demonstrates compelling circumstances for the inability to complete the requirements described in paragraph (1)(D); and

(iii) demonstrates that the alien's removal from the United States would result in exceptional and extremely unusual hardship to the alien or the alien's spouse, parent, or child who is a citizen or a lawful permanent resident of the United States.

(B) EXTENSION.—Upon a showing of good cause, the Secretary may extend the period of conditional resident status for the purpose of completing the requirements described in paragraph (1)(D).

(e) TREATMENT OF PERIOD FOR PURPOSES OF NATURALIZATION.—For purposes of title III of the Immigration and Nationality Act (8 U.S.C. 1401 et seq.), an alien who is in the United States as a lawful permanent resident on a conditional basis under this section shall be considered to have been admitted as an alien lawfully admitted for permanent residence and to be in the United States as an alien lawfully admitted to the United States for permanent residence. The alien may not apply for naturalization until the conditional basis is removed.

**SEC. 626. RETROACTIVE BENEFITS UNDER THIS ACT.**

If, on the date of the enactment of this Act, an alien has satisfied all the requirements of subparagraphs (A) through (E) of section 624(a)(1) and section 625(d)(1)(D), the Secretary may adjust the status of the alien to that of a conditional resident in accordance with section 624. The alien may petition for removal of such condition at the end of the conditional residence period in accordance with section 625(c) if the alien has met the requirements of subparagraphs (A), (B), and (C) of section 625(d)(1) during the entire period of conditional residence.

**SEC. 627. EXCLUSIVE JURISDICTION.**

(a) **IN GENERAL.**—The Secretary shall have exclusive jurisdiction to determine eligibility for relief under this subtitle, except if the alien has been placed into deportation, exclusion, or removal proceedings either prior to or after filing an application for relief under this Act, in which case the Attorney General shall have exclusive jurisdiction and shall assume all the powers and duties of the Secretary until proceedings are terminated, or if a final order of deportation, exclusion, or removal is entered the Secretary shall resume all powers and duties delegated to the Secretary under this subtitle.

(b) **STAY OF REMOVAL OF CERTAIN ALIENS ENROLLED IN PRIMARY OR SECONDARY SCHOOL.**—The Attorney General shall stay the removal proceedings of any alien who—

- (1) meets all the requirements of subparagraphs (A), (B), (C), and (E) of section 624(a)(1);
- (2) is at least 12 years of age; and
- (3) is enrolled full time in a primary or secondary school.

(c) **EMPLOYMENT.**—An alien whose removal is stayed pursuant to subsection (b) may be engaged in employment in the United States consistent with the Fair Labor Standards Act (29 U.S.C. 201 et seq.) and State and local laws governing minimum age for employment.

(d) **LIFT OF STAY.**—The Attorney General shall lift the stay granted pursuant to subsection (b) if the alien—

- (1) is no longer enrolled in a primary or secondary school; or
- (2) ceases to meet the requirements of subsection (b)(1).

**SEC. 628. PENALTIES FOR FALSE STATEMENTS IN APPLICATION.**

Any person who files an application for relief under this subtitle and willfully and knowingly falsifies, misrepresents, or conceals a material fact or makes any false or fraudulent statement or representation, or makes or uses any false writing or document knowing the same to contain any false or fraudulent statement or entry, shall be fined in accordance with title 18, United States Code, imprisoned not more than 5 years, or both.

**SEC. 629. CONFIDENTIALITY OF INFORMATION.**

(a) **PROHIBITION.**—Except as provided in subsection (b), no officer or employee of the United States may—

- (1) use the information furnished by the applicant pursuant to an application filed under this Act to initiate removal proceedings against any persons identified in the application;
- (2) make any publication whereby the information furnished by any particular individual pursuant to an application under this Act can be identified; or
- (3) permit anyone other than an officer or employee of the United States Government or, in the case of applications filed under this Act with a designated entity, that designated entity, to examine applications filed under this Act.

(b) **REQUIRED DISCLOSURE.**—The Secretary or the Attorney General shall provide the information furnished under this section, and any other information derived from such furnished information, to—

- (1) a duly recognized law enforcement entity in connection with an investigation or prosecution of an offense described in paragraph (2) or (3) of section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)), when such information is requested in writing by such entity; or
- (2) an official coroner for purposes of affirmatively identifying a deceased individual (whether or not such individual is deceased as a result of a crime).

(c) **PENALTY.**—Any person who knowingly uses, publishes, or permits information to be examined in violation of this section shall be fined not more than \$10,000.

**SEC. 630. EXPEDITED PROCESSING OF APPLICATIONS; PROHIBITION ON FEES.**

Regulations promulgated under this subtitle shall provide that applications under this subtitle will be considered on an expedited basis and without a requirement for the payment by the applicant of any additional fee for such expedited processing.

**SEC. 631. HIGHER EDUCATION ASSISTANCE.**

Notwithstanding any provision of the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.), with respect to assistance provided under title IV of such Act (20 U.S.C. 1070 et seq.), an alien who adjusts status to that of a lawful permanent resi-

dent under this subtitle shall only be eligible for the following assistance under such title:

- (1) Student loans under parts B, D, and E of such title IV (20 U.S.C. 1071 et seq., 1087a et seq., 1087aa et seq.), subject to the requirements of such parts.
- (2) Federal work-study programs under part C of such title IV (42 U.S.C. 2751 et seq.), subject to the requirements of such part.
- (3) Services under such title IV (20 U.S.C. 1070 et seq.), subject to the requirements for such services.

**SEC. 632. GAO REPORT.**

Not later than 7 years after the date of the enactment of this Act, the Comptroller General of the United States shall submit a report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives that sets forth—

- (1) the number of aliens who were eligible for cancellation of removal and adjustment of status under section 624(a);
- (2) the number of aliens who applied for adjustment of status under section 624(a);
- (3) the number of aliens who were granted adjustment of status under section 624(a); and
- (4) the number of aliens whose conditional permanent resident status was removed under section 625.

## **Subtitle C—AgJOBS Act of 2007**

**SEC. 641. SHORT TITLE.**

This subtitle may be cited as the “Agricultural Job Opportunities, Benefits, and Security Act of 2007” or the “AgJOBS Act of 2007”.

**SEC. 642. DEFINITIONS.**

In this subtitle:

- (1) **AGRICULTURAL EMPLOYMENT.**—The term “agricultural employment” means any service or activity that is considered to be agricultural under section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)) or agricultural labor under section 3121(g) of the Internal Revenue Code of 1986 or the performance of agricultural labor or services described in section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)).
- (2) **BLUE CARD STATUS.**—The term “blue card status” means the status of an alien who has been lawfully admitted into the United States for temporary residence under section 101(a).
- (3) **DEPARTMENT.**—The term “Department” means the Department of Homeland Security.
- (4) **EMPLOYER.**—The term “employer” means any person or entity, including any farm labor contractor and any agricultural association, that employs workers in agricultural employment.
- (5) **SECRETARY.**—Except as otherwise provided, the term “Secretary” means the Secretary of Homeland Security.
- (6) **TEMPORARY.**—A worker is employed on a “temporary” basis when the employment is intended not to exceed 10 months.
- (7) **WORK DAY.**—The term “work day” means any day in which the individual is employed 5.75 or more hours in agricultural employment.

### **CHAPTER 1—PILOT PROGRAM FOR EARNED STATUS ADJUSTMENT OF AGRICULTURAL WORKERS**

#### **Subchapter A—Blue Card Status**

**SEC. 643. REQUIREMENTS FOR BLUE CARD STATUS.**

(a) **REQUIREMENT TO GRANT BLUE CARD STATUS.**—Notwithstanding any other provision of law, the Secretary shall, pursuant to the requirements of this section, grant blue card status to an alien who qualifies under this section if the Secretary determines that the alien—

- (1) has performed agricultural employment in the United States for at least 863 hours or 150 work days during the 24-month period ending on December 31, 2006;

(2) applied for such status during the 18-month application period beginning on the first day of the seventh month that begins after the date of enactment of this Act;

(3) is otherwise admissible to the United States under section 212 of the Immigration and Nationality Act (8 U.S.C. 1182), except as otherwise provided under section 647(b); and

(4) has not been convicted of any felony or a misdemeanor, an element of which involves bodily injury, threat of serious bodily injury, or harm to property in excess of \$500.

(b) **AUTHORIZED TRAVEL.**—An alien who is granted blue card status is authorized to travel outside the United States (including commuting to the United States from a residence in a foreign country) in the same manner as an alien lawfully admitted for permanent residence.

(c) **AUTHORIZED EMPLOYMENT.**—The Secretary shall provide an alien who is granted blue card status an employment authorized endorsement or other appropriate work permit, in the same manner as an alien lawfully admitted for permanent residence.

(d) **TERMINATION OF BLUE CARD STATUS.**—

(1) **IN GENERAL.**—The Secretary may terminate blue card status granted to an alien under this section only if the Secretary determines that the alien is deportable.

(2) **GROUND FOR TERMINATION OF BLUE CARD STATUS.**—Before any alien becomes eligible for adjustment of status under section 645, the Secretary may deny adjustment to permanent resident status and provide for termination of the blue card status granted such alien under paragraph (1) if—

(A) the Secretary finds, by a preponderance of the evidence, that the adjustment to blue card status was the result of fraud or willful misrepresentation (as described in section 212(a)(6)(C)(i) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(6)(C)(i)); or

(B) the alien—

(i) commits an act that makes the alien inadmissible to the United States as an immigrant, except as provided under section 647(b);

(ii) is convicted of a felony or 3 or more misdemeanors committed in the United States;

(iii) is convicted of an offense, an element of which involves bodily injury, threat of serious bodily injury, or harm to property in excess of \$500; or

(iv) fails to perform the agricultural employment required under section 645(a)(1)(A) unless the alien was unable to work in agricultural employment due to the extraordinary circumstances described in section 645(a)(3).

(e) **RECORD OF EMPLOYMENT.**—

(1) **IN GENERAL.**—Each employer of an alien granted blue card status under this section shall annually—

(A) provide a written record of employment to the alien; and

(B) provide a copy of such record to the Secretary.

(2) **SUNSET.**—The obligation under paragraph (1) shall terminate on the date that is 6 years after the date of the enactment of this Act.

(f) **REQUIRED FEATURES OF IDENTITY CARD.**—The Secretary shall provide each alien granted blue card status, and the spouse and any child of each such alien residing in the United States, with a card that contains—

(1) an encrypted, machine-readable, electronic identification strip that is unique to the alien to whom the card is issued;

(2) biometric identifiers, including fingerprints and a digital photograph; and

(3) physical security features designed to prevent tampering, counterfeiting, or duplication of the card for fraudulent purposes.

(g) **FINE.**—An alien granted blue card status shall pay a fine of \$100 to the Secretary.

(h) **MAXIMUM NUMBER.**—The Secretary may not issue more than 1,500,000 blue cards during the 5-year period beginning on the date of the enactment of this Act.

**SEC. 644. TREATMENT OF ALIENS GRANTED BLUE CARD STATUS.**

(a) **IN GENERAL.**—Except as otherwise provided under this section, an alien granted blue card status shall be considered to be an alien lawfully admitted for permanent residence for purposes of any law other than any provision of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).



(b) DELAYED ELIGIBILITY FOR CERTAIN FEDERAL PUBLIC BENEFITS.—An alien granted blue card status shall not be eligible, by reason of such status, for any form of assistance or benefit described in section 403(a) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1613(a)) until 5 years after the date on which the alien is granted an adjustment of status under section 645.

(c) TERMS OF EMPLOYMENT.—

(1) PROHIBITION.—No alien granted blue card status may be terminated from employment by any employer during the period of blue card status except for just cause.

(2) TREATMENT OF COMPLAINTS.—

(A) ESTABLISHMENT OF PROCESS.—The Secretary shall establish a process for the receipt, initial review, and disposition of complaints by aliens granted blue card status who allege that they have been terminated without just cause. No proceeding shall be conducted under this paragraph with respect to a termination unless the Secretary determines that the complaint was filed not later than 6 months after the date of the termination.

(B) INITIATION OF ARBITRATION.—If the Secretary finds that an alien has filed a complaint in accordance with subparagraph (A) and there is reasonable cause to believe that the alien was terminated from employment without just cause, the Secretary shall initiate binding arbitration proceedings by requesting the Federal Mediation and Conciliation Service to appoint a mutually agreeable arbitrator from the roster of arbitrators maintained by such Service for the geographical area in which the employer is located. The procedures and rules of such Service shall be applicable to the selection of such arbitrator and to such arbitration proceedings. The Secretary shall pay the fee and expenses of the arbitrator, subject to the availability of appropriations for such purpose.

(C) ARBITRATION PROCEEDINGS.—The arbitrator shall conduct the proceeding under this paragraph in accordance with the policies and procedures promulgated by the American Arbitration Association applicable to private arbitration of employment disputes. The arbitrator shall make findings respecting whether the termination was for just cause. The arbitrator may not find that the termination was for just cause unless the employer so demonstrates by a preponderance of the evidence. If the arbitrator finds that the termination was not for just cause, the arbitrator shall make a specific finding of the number of days or hours of work lost by the employee as a result of the termination. The arbitrator shall have no authority to order any other remedy, including reinstatement, back pay, or front pay to the affected employee. Not later than 30 days after the date of the conclusion of the arbitration proceeding, the arbitrator shall transmit the findings in the form of a written opinion to the parties to the arbitration and the Secretary. Such findings shall be final and conclusive, and no official or court of the United States shall have the power or jurisdiction to review any such findings.

(D) EFFECT OF ARBITRATION FINDINGS.—If the Secretary receives a finding of an arbitrator that an employer has terminated the employment of an alien who is granted blue card status without just cause, the Secretary shall credit the alien for the number of days or hours of work not performed during such period of termination for the purpose of determining if the alien meets the qualifying employment requirement of section 645(a).

(E) TREATMENT OF ATTORNEY'S FEES.—Each party to an arbitration under this paragraph shall bear the cost of their own attorney's fees for the arbitration.

(F) NONEXCLUSIVE REMEDY.—The complaint process provided for in this paragraph is in addition to any other rights an employee may have in accordance with applicable law.

(G) EFFECT ON OTHER ACTIONS OR PROCEEDINGS.—Any finding of fact or law, judgment, conclusion, or final order made by an arbitrator in the proceeding before the Secretary shall not be conclusive or binding in any separate or subsequent action or proceeding between the employee and the employee's current or prior employer brought before an arbitrator, administrative agency, court, or judge of any State or the United States, regardless of whether the prior action was between the same or related parties or involved the same facts, except that the arbitrator's specific finding of the number of days or hours of work lost by the employee as a result of the employment termination may be referred to the Secretary pursuant to subparagraph (D).

## (3) CIVIL PENALTIES.—

(A) IN GENERAL.—If the Secretary finds, after notice and opportunity for a hearing, that an employer of an alien granted blue card status has failed to provide the record of employment required under section 643(e) or has provided a false statement of material fact in such a record, the employer shall be subject to a civil money penalty in an amount not to exceed \$1,000 per violation.

(B) LIMITATION.—The penalty applicable under subparagraph (A) for failure to provide records shall not apply unless the alien has provided the employer with evidence of employment authorization granted under this section.

**SEC. 645. ADJUSTMENT TO PERMANENT RESIDENCE.**

(a) IN GENERAL.—Except as provided in subsection (b), the Secretary shall adjust the status of an alien granted blue card status to that of an alien lawfully admitted for permanent residence if the Secretary determines that the following requirements are satisfied:

## (1) QUALIFYING EMPLOYMENT.—

(A) IN GENERAL.—Subject to subparagraph (B), the alien has performed at least—

(i) 5 years of agricultural employment in the United States for at least 100 work days per year, during the 5-year period beginning on the date of the enactment of this Act; or

(ii) 3 years of agricultural employment in the United States for at least 150 work days per year, during the 3-year period beginning on the date of the enactment of this Act.

(B) 4-YEAR PERIOD OF EMPLOYMENT.—An alien shall be considered to meet the requirements of subparagraph (A) if the alien has performed 4 years of agricultural employment in the United States for at least 150 work days during 3 years of those 4 years and at least 100 work days during the remaining year, during the 4-year period beginning on the date of the enactment of this Act.

(2) PROOF.—An alien may demonstrate compliance with the requirement under paragraph (1) by submitting—

(A) the record of employment described in section 643(e); or

(B) such documentation as may be submitted under section 646(c).

(3) EXTRAORDINARY CIRCUMSTANCES.—In determining whether an alien has met the requirement of paragraph (1)(A), the Secretary may credit the alien with not more than 12 additional months to meet the requirement of that subparagraph if the alien was unable to work in agricultural employment due to—

(A) pregnancy, injury, or disease, if the alien can establish such pregnancy, disabling injury, or disease through medical records;

(B) illness, disease, or other special needs of a minor child, if the alien can establish such illness, disease, or special needs through medical records; or

(C) severe weather conditions that prevented the alien from engaging in agricultural employment for a significant period of time.

(4) APPLICATION PERIOD.—The alien applies for adjustment of status not later than 7 years after the date of the enactment of this Act.

(5) FINE.—The alien pays a fine of \$400 to the Secretary.

(b) GROUNDS FOR DENIAL OF ADJUSTMENT OF STATUS.—The Secretary may deny an alien granted blue card status an adjustment of status under this section and provide for termination of such blue card status if—

(1) the Secretary finds by a preponderance of the evidence that the adjustment to blue card status was the result of fraud or willful misrepresentation, as described in section 212(a)(6)(C)(i) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(6)(C)(i)); or

(2) the alien—

(A) commits an act that makes the alien inadmissible to the United States under section 212 of the Immigration and Nationality Act (8 U.S.C. 1182), except as provided under section 647(b);

(B) is convicted of a felony or 3 or more misdemeanors committed in the United States; or

(C) is convicted of an offense, an element of which involves bodily injury, threat of serious bodily injury, or harm to property in excess of \$500.

(c) GROUNDS FOR REMOVAL.—Any alien granted blue card status who does not apply for adjustment of status under this section before the expiration of the application period described in subsection (a)(4) or who fails to meet the other require-

ments of subsection (a) by the end of the application period, is deportable and may be removed under section 240 of the Immigration and Nationality Act (8 U.S.C. 1229a).

(d) PAYMENT OF TAXES.—

(1) IN GENERAL.—Not later than the date on which an alien's status is adjusted under this section, the alien shall establish that the alien does not owe any applicable Federal tax liability by establishing that—

(A) no such tax liability exists;

(B) all such outstanding tax liabilities have been paid; or

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

(2) APPLICABLE FEDERAL TAX LIABILITY.—In paragraph (1) the term “applicable Federal tax liability” means liability for Federal taxes, including penalties and interest, owed for any year during the period of employment required under subsection (a)(1) for which the statutory period for assessment of any deficiency for such taxes has not expired.

(3) IRS COOPERATION.—The Secretary of the Treasury shall establish rules and procedures under which the Commissioner of Internal Revenue shall provide documentation to an alien upon request to establish the payment of all taxes required by this subsection.

(e) SPOUSES AND MINOR CHILDREN.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the Secretary shall confer the status of lawful permanent resident on the spouse and minor child of an alien granted any adjustment of status under subsection (a), including any individual who was a minor child on the date such alien was granted blue card status, if the spouse or minor child applies for such status, or if the principal alien includes the spouse or minor child in an application for adjustment of status to that of a lawful permanent resident.

(2) TREATMENT OF SPOUSES AND MINOR CHILDREN.—

(A) GRANTING OF STATUS AND REMOVAL.—The Secretary may grant derivative status to the alien spouse and any minor child residing in the United States of an alien granted blue card status and shall not remove such derivative spouse or child during the period that the alien granted blue card status maintains such status, except as provided in paragraph (3). A grant of derivative status to such a spouse or child under this subparagraph shall not decrease the number of aliens who may receive blue card status under subsection (h) of section 643.

(B) TRAVEL.—The derivative spouse and any minor child of an alien granted blue card status may travel outside the United States in the same manner as an alien lawfully admitted for permanent residence.

(C) EMPLOYMENT.—The derivative spouse of an alien granted blue card status may apply to the Secretary for a work permit to authorize such spouse to engage in any lawful employment in the United States while such alien maintains blue card status.

(3) GROUNDS FOR DENIAL OF ADJUSTMENT OF STATUS AND REMOVAL.—The Secretary may deny an alien spouse or child adjustment of status under paragraph (1) and may remove such spouse or child under section 240 of the Immigration and Nationality Act (8 U.S.C. 1229a) if the spouse or child—

(A) commits an act that makes the alien spouse or child inadmissible to the United States under section 212 of such Act (8 U.S.C. 1182), except as provided under section 647(b);

(B) is convicted of a felony or 3 or more misdemeanors committed in the United States; or

(C) is convicted of an offense, an element of which involves bodily injury, threat of serious bodily injury, or harm to property in excess of \$500.

**SEC. 646. APPLICATIONS.**

(a) SUBMISSION.—The Secretary shall provide that—

(1) applications for blue card status under section 643 may be submitted—

(A) to the Secretary if the applicant is represented by an attorney or a nonprofit religious, charitable, social service, or similar organization recognized by the Board of Immigration Appeals under section 292.2 of title 8, Code of Federal Regulations; or

(B) to a qualified designated entity if the applicant consents to the forwarding of the application to the Secretary; and

(2) applications for adjustment of status under section 645 shall be filed directly with the Secretary.

(b) **QUALIFIED DESIGNATED ENTITY DEFINED.**—In this section, the term “qualified designated entity” means—

(1) a qualified farm labor organization or an association of employers designated by the Secretary; or

(2) any such other person designated by the Secretary if that Secretary determines such person is qualified and has substantial experience, demonstrated competence, and has a history of long-term involvement in the preparation and submission of applications for adjustment of status under section 209, 210, or 245 of the Immigration and Nationality Act (8 U.S.C. 1159, 1160, and 1255), the Act entitled “An Act to adjust the status of Cuban refugees to that of lawful permanent residents of the United States, and for other purposes”, approved November 2, 1966 (Public Law 89–732; 8 U.S.C. 1255 note), Public Law 95–145 (8 U.S.C. 1255 note), or the Immigration Reform and Control Act of 1986 (Public Law 99–603; 100 Stat. 3359) or any amendment made by that Act.

(c) **PROOF OF ELIGIBILITY.**—

(1) **IN GENERAL.**—An alien may establish that the alien meets the requirement of section 643(a)(1) or 645(a)(1) through government employment records or records supplied by employers or collective bargaining organizations, and other reliable documentation as the alien may provide. The Secretary shall establish special procedures to properly credit work in cases in which an alien was employed under an assumed name.

(2) **DOCUMENTATION OF WORK HISTORY.**—

(A) **BURDEN OF PROOF.**—An alien applying for status under section 643(a) or 645(a) has the burden of proving by a preponderance of the evidence that the alien has worked the requisite number of hours or days required under section 643(a)(1) or 645(a)(1), as applicable.

(B) **TIMELY PRODUCTION OF RECORDS.**—If an employer or farm labor contractor employing such an alien has kept proper and adequate records respecting such employment, the alien’s burden of proof under subparagraph (A) may be met by securing timely production of those records under regulations to be promulgated by the Secretary.

(C) **SUFFICIENT EVIDENCE.**—An alien may meet the burden of proof under subparagraph (A) to establish that the alien has performed the days or hours of work required by section 643(a)(1) or 645(a)(1) by producing sufficient evidence to show the extent of that employment as a matter of just and reasonable inference.

(d) **APPLICATIONS SUBMITTED TO QUALIFIED DESIGNATED ENTITIES.**—

(1) **REQUIREMENTS.**—Each qualified designated entity shall agree—

(A) to forward to the Secretary an application submitted to that entity pursuant to subsection (a)(1)(B) if the applicant has consented to such forwarding;

(B) not to forward to the Secretary any such application if the applicant has not consented to such forwarding; and

(C) to assist an alien in obtaining documentation of the alien’s work history, if the alien requests such assistance.

(2) **NO AUTHORITY TO MAKE DETERMINATIONS.**—No qualified designated entity may make a determination required by this subtitle to be made by the Secretary.

(e) **LIMITATION ON ACCESS TO INFORMATION.**—Files and records collected or compiled by a qualified designated entity for the purposes of this section are confidential and the Secretary shall not have access to such a file or record relating to an alien without the consent of the alien, except as allowed by a court order issued pursuant to subsection (f).

(f) **CONFIDENTIALITY OF INFORMATION.**—

(1) **IN GENERAL.**—Except as otherwise provided in this section, the Secretary or any other official or employee of the Department or a bureau or agency of the Department is prohibited from—

(A) using information furnished by the applicant pursuant to an application filed under this subtitle, the information provided by an applicant to a qualified designated entity, or any information provided by an employer or former employer for any purpose other than to make a determination on the application or for imposing the penalties described in subsection (g);

(B) making any publication in which the information furnished by any particular individual can be identified; or

(C) permitting a person other than a sworn officer or employee of the Department or a bureau or agency of the Department or, with respect to applications filed with a qualified designated entity, that qualified designated entity, to examine individual applications.

(2) REQUIRED DISCLOSURES.—The Secretary shall provide the information furnished under this subtitle or any other information derived from such furnished information to—

(A) a duly recognized law enforcement entity in connection with a criminal investigation or prosecution, if such information is requested in writing by such entity; or

(B) an official coroner, for purposes of affirmatively identifying a deceased individual, whether or not the death of such individual resulted from a crime.

(3) CONSTRUCTION.—

(A) IN GENERAL.—Nothing in this subsection shall be construed to limit the use, or release, for immigration enforcement purposes or law enforcement purposes, of information contained in files or records of the Department pertaining to an application filed under this section, other than information furnished by an applicant pursuant to the application, or any other information derived from the application, that is not available from any other source.

(B) CRIMINAL CONVICTIONS.—Notwithstanding any other provision of this subsection, information concerning whether the alien applying for blue card status under section 643 or an adjustment of status under section 645 has been convicted of a crime at any time may be used or released for immigration enforcement or law enforcement purposes.

(4) CRIME.—Any person who knowingly uses, publishes, or permits information to be examined in violation of this subsection shall be subject to a fine in an amount not to exceed \$10,000.

(g) PENALTIES FOR FALSE STATEMENTS IN APPLICATIONS.—

(1) CRIMINAL PENALTY.—Any person who—

(A) files an application for blue card status under section 643 or an adjustment of status under section 645 and knowingly and willfully falsifies, conceals, or covers up a material fact or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry; or

(B) creates or supplies a false writing or document for use in making such an application, shall be fined in accordance with title 18, United States Code, imprisoned not more than 5 years, or both.

(2) INADMISSIBILITY.—An alien who is convicted of a crime under paragraph (1) shall be considered to be inadmissible to the United States on the ground described in section 212(a)(6)(C)(i) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(6)(C)(i)).

(h) ELIGIBILITY FOR LEGAL SERVICES.—Section 504(a)(11) of Public Law 104–134 (110 Stat. 1321–53 et seq.) shall not be construed to prevent a recipient of funds under the Legal Services Corporation Act (42 U.S.C. 2996 et seq.) from providing legal assistance directly related to an application for blue card status under section 643 or an adjustment of status under section 645.

(i) APPLICATION FEES.—

(1) FEE SCHEDULE.—The Secretary shall provide for a schedule of fees that—

(A) shall be charged for the filing of an application for blue card status under section 643 or for an adjustment of status under section 645; and

(B) may be charged by qualified designated entities to help defray the costs of services provided to such applicants.

(2) PROHIBITION ON EXCESS FEES BY QUALIFIED DESIGNATED ENTITIES.—A qualified designated entity may not charge any fee in excess of, or in addition to, the fees authorized under paragraph (1)(B) for services provided to applicants.

(3) DISPOSITION OF FEES.—

(A) IN GENERAL.—There is established in the general fund of the Treasury a separate account, which shall be known as the “Agricultural Worker Immigration Status Adjustment Account”. Notwithstanding any other provision of law, there shall be deposited as offsetting receipts into the account all fees collected under paragraph (1)(A).

(B) USE OF FEES FOR APPLICATION PROCESSING.—Amounts deposited in the “Agricultural Worker Immigration Status Adjustment Account” shall remain available to the Secretary until expended for processing applications for blue card status under section 643 or an adjustment of status under section 645.

**SEC. 647. WAIVER OF NUMERICAL LIMITATIONS AND CERTAIN GROUNDS FOR INADMISSIBILITY.**

(a) **NUMERICAL LIMITATIONS DO NOT APPLY.**—The numerical limitations of sections 201 and 202 of the Immigration and Nationality Act (8 U.S.C. 1151 and 1152) shall not apply to the adjustment of aliens to lawful permanent resident status under section 645.

(b) **WAIVER OF CERTAIN GROUNDS OF INADMISSIBILITY.**—In the determination of an alien's eligibility for status under section 101(a) or an alien's eligibility for adjustment of status under section 645(b)(2)(A) the following rules shall apply:

(1) **GROUNDS OF EXCLUSION NOT APPLICABLE.**—The provisions of paragraphs (5), (6)(A), (7), and (9) of section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)) shall not apply.

(2) **WAIVER OF OTHER GROUNDS.**—

(A) **IN GENERAL.**—Except as provided in subparagraph (B), the Secretary may waive any other provision of such section 212(a) in the case of individual aliens for humanitarian purposes, to ensure family unity, or if otherwise in the public interest.

(B) **GROUNDS THAT MAY NOT BE WAIVED.**—Paragraphs (2)(A), (2)(B), (2)(C), (3), and (4) of such section 212(a) may not be waived by the Secretary under subparagraph (A).

(C) **CONSTRUCTION.**—Nothing in this paragraph shall be construed as affecting the authority of the Secretary other than under this subparagraph to waive provisions of such section 212(a).

(3) **SPECIAL RULE FOR DETERMINATION OF PUBLIC CHARGE.**—An alien is not ineligible for blue card status under section 643 or an adjustment of status under section 645 by reason of a ground of inadmissibility under section 212(a)(4) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(4)) if the alien demonstrates a history of employment in the United States evidencing self-support without reliance on public cash assistance.

(c) **TEMPORARY STAY OF REMOVAL AND WORK AUTHORIZATION FOR CERTAIN APPLICANTS.**—

(1) **BEFORE APPLICATION PERIOD.**—Effective on the date of enactment of this Act, the Secretary shall provide that, in the case of an alien who is apprehended before the beginning of the application period described in section 643(a)(2) and who can establish a nonfrivolous case of eligibility for blue card status (but for the fact that the alien may not apply for such status until the beginning of such period), until the alien has had the opportunity during the first 30 days of the application period to complete the filing of an application for blue card status, the alien—

(A) may not be removed; and

(B) shall be granted authorization to engage in employment in the United States and be provided an employment authorized endorsement or other appropriate work permit for such purpose.

(2) **DURING APPLICATION PERIOD.**—The Secretary shall provide that, in the case of an alien who presents a nonfrivolous application for blue card status during the application period described in section 643(a)(2), including an alien who files such an application within 30 days of the alien's apprehension, and until a final determination on the application has been made in accordance with this section, the alien—

(A) may not be removed; and

(B) shall be granted authorization to engage in employment in the United States and be provided an employment authorized endorsement or other appropriate work permit for such purpose.

**SEC. 648. ADMINISTRATIVE AND JUDICIAL REVIEW.**

(a) **IN GENERAL.**—There shall be no administrative or judicial review of a determination respecting an application for blue card status under section 643 or adjustment of status under section 645 except in accordance with this section.

(b) **ADMINISTRATIVE REVIEW.**—

(1) **SINGLE LEVEL OF ADMINISTRATIVE APPELLATE REVIEW.**—The Secretary shall establish an appellate authority to provide for a single level of administrative appellate review of such a determination.

(2) **STANDARD FOR REVIEW.**—Such administrative appellate review shall be based solely upon the administrative record established at the time of the determination on the application and upon such additional or newly discovered evidence as may not have been available at the time of the determination.

(c) **JUDICIAL REVIEW.**—

(1) **LIMITATION TO REVIEW OF REMOVAL.**—There shall be judicial review of such a determination only in the judicial review of an order of removal under section 242 of the Immigration and Nationality Act (8 U.S.C. 1252).

(2) **STANDARD FOR JUDICIAL REVIEW.**—Such judicial review shall be based solely upon the administrative record established at the time of the review by the appellate authority and the findings of fact and determinations contained in such record shall be conclusive unless the applicant can establish abuse of discretion or that the findings are directly contrary to clear and convincing facts contained in the record considered as a whole.

**SEC. 649. USE OF INFORMATION.**

Beginning not later than the first day of the application period described in section 643(a)(2), the Secretary, in cooperation with qualified designated entities (as that term is defined in section 646(b)), shall broadly disseminate information respecting the benefits that aliens may receive under this subtitle and the requirements that an alien is required to meet to receive such benefits.

**SEC. 650. REGULATIONS, EFFECTIVE DATE, AUTHORIZATION OF APPROPRIATIONS.**

(a) **REGULATIONS.**—The Secretary shall issue regulations to implement this subtitle not later than the first day of the seventh month that begins after the date of enactment of this Act.

(b) **EFFECTIVE DATE.**—This subtitle shall take effect on the date that regulations required by subsection (a) are issued, regardless of whether such regulations are issued on an interim basis or on any other basis.

(c) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated to the Secretary such sums as may be necessary to implement this subtitle, including any sums needed for costs associated with the initiation of such implementation, for fiscal years 2007 and 2008.

**Subchapter B—Correction of Social Security Records**

**SEC. 651. CORRECTION OF SOCIAL SECURITY RECORDS.**

(a) **IN GENERAL.**—Section 208(e)(1) of the Social Security Act (42 U.S.C. 408(e)(1)) is amended—

(1) in subparagraph (B)(ii), by striking “or” at the end;

(2) in subparagraph (C), by inserting “or” at the end;

(3) by inserting after subparagraph (C) the following:

“(D) who is granted blue card status under the Agricultural Job Opportunity, Benefits, and Security Act of 2007.”; and

(4) by striking “1990.” and inserting “1990, or in the case of an alien described in subparagraph (D), if such conduct is alleged to have occurred before the date on which the alien was granted blue card status.”

(b) **EFFECTIVE DATE.**—The amendments made by subsection (a) shall take effect on the first day of the seventh month that begins after the date of the enactment of this Act.

**CHAPTER 2—REFORM OF H-2A WORKER PROGRAM**

**SEC. 652. AMENDMENT TO THE IMMIGRATION AND NATIONALITY ACT.**

(a) **IN GENERAL.**—Title II of the Immigration and Nationality Act (8 U.S.C. 1151 et seq.) is amended by striking section 218 and inserting the following:

**“SEC. 218. H-2A EMPLOYER APPLICATIONS.**

“(a) **APPLICATIONS TO THE SECRETARY OF LABOR.**—

“(1) **IN GENERAL.**—No alien may be admitted to the United States as an H-2A worker, or otherwise provided status as an H-2A worker, unless the employer has filed with the Secretary of Labor an application containing—

“(A) the assurances described in subsection (b);

“(B) a description of the nature and location of the work to be performed;

“(C) the anticipated period (expected beginning and ending dates) for which the workers will be needed; and

“(D) the number of job opportunities in which the employer seeks to employ the workers.

“(2) **ACCOMPANIED BY JOB OFFER.**—Each application filed under paragraph (1) shall be accompanied by a copy of the job offer describing the wages and other terms and conditions of employment and the bona fide occupational qualifications that shall be possessed by a worker to be employed in the job opportunity in question.

“(b) ASSURANCES FOR INCLUSION IN APPLICATIONS.—The assurances referred to in subsection (a)(1) are the following:

“(1) JOB OPPORTUNITIES COVERED BY COLLECTIVE BARGAINING AGREEMENTS.—With respect to a job opportunity that is covered under a collective bargaining agreement:

“(A) UNION CONTRACT DESCRIBED.—The job opportunity is covered by a union contract which was negotiated at arm’s length between a bona fide union and the employer.

“(B) STRIKE OR LOCKOUT.—The specific job opportunity for which the employer is requesting an H–2A worker is not vacant because the former occupant is on strike or being locked out in the course of a labor dispute.

“(C) NOTIFICATION OF BARGAINING REPRESENTATIVES.—The employer, at the time of filing the application, has provided notice of the filing under this paragraph to the bargaining representative of the employer’s employees in the occupational classification at the place or places of employment for which aliens are sought.

“(D) TEMPORARY OR SEASONAL JOB OPPORTUNITIES.—The job opportunity is temporary or seasonal.

“(E) OFFERS TO UNITED STATES WORKERS.—The employer has offered or will offer the job to any eligible United States worker who applies and is equally or better qualified for the job for which the nonimmigrant is, or the nonimmigrants are, sought and who will be available at the time and place of need.

“(F) PROVISION OF INSURANCE.—If the job opportunity is not covered by the State workers’ compensation law, the employer will provide, at no cost to the worker, insurance covering injury and disease arising out of, and in the course of, the worker’s employment which will provide benefits at least equal to those provided under the State’s workers’ compensation law for comparable employment.

“(2) JOB OPPORTUNITIES NOT COVERED BY COLLECTIVE BARGAINING AGREEMENTS.—With respect to a job opportunity that is not covered under a collective bargaining agreement:

“(A) STRIKE OR LOCKOUT.—The specific job opportunity for which the employer has applied for an H–2A worker is not vacant because the former occupant is on strike or being locked out in the course of a labor dispute.

“(B) TEMPORARY OR SEASONAL JOB OPPORTUNITIES.—The job opportunity is temporary or seasonal.

“(C) BENEFIT, WAGE, AND WORKING CONDITIONS.—The employer will provide, at a minimum, the benefits, wages, and working conditions required by section 218A to all workers employed in the job opportunities for which the employer has applied for an H–2A worker under subsection (a) and to all other workers in the same occupation at the place of employment.

“(D) NONDISPLACEMENT OF UNITED STATES WORKERS.—The employer did not displace and will not displace a United States worker employed by the employer during the period of employment and for a period of 30 days preceding the period of employment in the occupation at the place of employment for which the employer has applied for an H–2A worker.

“(E) REQUIREMENTS FOR PLACEMENT OF THE NONIMMIGRANT WITH OTHER EMPLOYERS.—The employer will not place the nonimmigrant with another employer unless—

“(i) the nonimmigrant performs duties in whole or in part at 1 or more worksites owned, operated, or controlled by such other employer;

“(ii) there are indicia of an employment relationship between the nonimmigrant and such other employer; and

“(iii) the employer has inquired of the other employer as to whether, and has no actual knowledge or notice that, during the period of employment and for a period of 30 days preceding the period of employment, the other employer has displaced or intends to displace a United States worker employed by the other employer in the occupation at the place of employment for which the employer seeks approval to employ H–2A workers.

“(F) STATEMENT OF LIABILITY.—The application form shall include a clear statement explaining the liability under subparagraph (E) of an employer if the other employer described in such subparagraph displaces a United States worker as described in such subparagraph.

“(G) PROVISION OF INSURANCE.—If the job opportunity is not covered by the State workers’ compensation law, the employer will provide, at no cost to the worker, insurance covering injury and disease arising out of and in



the course of the worker's employment which will provide benefits at least equal to those provided under the State's workers' compensation law for comparable employment.

“(H) EMPLOYMENT OF UNITED STATES WORKERS.—

“(i) RECRUITMENT.—The employer has taken or will take the following steps to recruit United States workers for the job opportunities for which the H-2A nonimmigrant is, or H-2A nonimmigrants are, sought:

“(I) CONTACTING FORMER WORKERS.—The employer shall make reasonable efforts through the sending of a letter by United States Postal Service mail, or otherwise, to contact any United States worker the employer employed during the previous season in the occupation at the place of intended employment for which the employer is applying for workers and has made the availability of the employer's job opportunities in the occupation at the place of intended employment known to such previous workers, unless the worker was terminated from employment by the employer for a lawful job-related reason or abandoned the job before the worker completed the period of employment of the job opportunity for which the worker was hired.

“(II) FILING A JOB OFFER WITH THE LOCAL OFFICE OF THE STATE EMPLOYMENT SECURITY AGENCY.—Not later than 28 days before the date on which the employer desires to employ an H-2A worker in a temporary or seasonal agricultural job opportunity, the employer shall submit a copy of the job offer described in subsection (a)(2) to the local office of the State employment security agency which serves the area of intended employment and authorize the posting of the job opportunity on ‘America's Job Bank’ or other electronic job registry, except that nothing in this subclause shall require the employer to file an interstate job order under section 653 of title 20, Code of Federal Regulations.

“(III) ADVERTISING OF JOB OPPORTUNITIES.—Not later than 14 days before the date on which the employer desires to employ an H-2A worker in a temporary or seasonal agricultural job opportunity, the employer shall advertise the availability of the job opportunities for which the employer is seeking workers in a publication in the local labor market that is likely to be patronized by potential farm workers.

“(IV) EMERGENCY PROCEDURES.—The Secretary of Labor shall, by regulation, provide a procedure for acceptance and approval of applications in which the employer has not complied with the provisions of this subparagraph because the employer's need for H-2A workers could not reasonably have been foreseen.

“(ii) JOB OFFERS.—The employer has offered or will offer the job to any eligible United States worker who applies and is equally or better qualified for the job for which the nonimmigrant is, or nonimmigrants are, sought and who will be available at the time and place of need.

“(iii) PERIOD OF EMPLOYMENT.—The employer will provide employment to any qualified United States worker who applies to the employer during the period beginning on the date on which the H-2A worker departs for the employer's place of employment and ending on the date on which 50 percent of the period of employment for which the H-2A worker who is in the job was hired has elapsed, subject to the following requirements:

“(I) PROHIBITION.—No person or entity shall willfully and knowingly withhold United States workers before the arrival of H-2A workers in order to force the hiring of United States workers under this clause.

“(II) COMPLAINTS.—Upon receipt of a complaint by an employer that a violation of subclause (I) has occurred, the Secretary of Labor shall immediately investigate. The Secretary of Labor shall, within 36 hours of the receipt of the complaint, issue findings concerning the alleged violation. If the Secretary of Labor finds that a violation has occurred, the Secretary of Labor shall immediately suspend the application of this clause with respect to that certification for that date of need.

“(III) PLACEMENT OF UNITED STATES WORKERS.—Before referring a United States worker to an employer during the period de-

scribed in the matter preceding subclause (I), the Secretary of Labor shall make all reasonable efforts to place the United States worker in an open job acceptable to the worker, if there are other job offers pending with the job service that offer similar job opportunities in the area of intended employment.

“(iv) STATUTORY CONSTRUCTION.—Nothing in this subparagraph shall be construed to prohibit an employer from using such legitimate selection criteria relevant to the type of job that are normal or customary to the type of job involved so long as such criteria are not applied in a discriminatory manner.

“(c) APPLICATIONS BY ASSOCIATIONS ON BEHALF OF EMPLOYER MEMBERS.—

“(1) IN GENERAL.—An agricultural association may file an application under subsection (a) on behalf of 1 or more of its employer members that the association certifies in its application has or have agreed in writing to comply with the requirements of this section and sections 218A, 218B, and 218C.

“(2) TREATMENT OF ASSOCIATIONS ACTING AS EMPLOYERS.—If an association filing an application under paragraph (1) is a joint or sole employer of the temporary or seasonal agricultural workers requested on the application, the certifications granted under subsection (e)(2)(B) to the association may be used for the certified job opportunities of any of its producer members named on the application, and such workers may be transferred among such producer members to perform the agricultural services of a temporary or seasonal nature for which the certifications were granted.

“(d) WITHDRAWAL OF APPLICATIONS.—

“(1) IN GENERAL.—An employer may withdraw an application filed pursuant to subsection (a), except that if the employer is an agricultural association, the association may withdraw an application filed pursuant to subsection (a) with respect to 1 or more of its members. To withdraw an application, the employer or association shall notify the Secretary of Labor in writing, and the Secretary of Labor shall acknowledge in writing the receipt of such withdrawal notice. An employer who withdraws an application under subsection (a), or on whose behalf an application is withdrawn, is relieved of the obligations undertaken in the application.

“(2) LIMITATION.—An application may not be withdrawn while any alien provided status under section 101(a)(15)(H)(ii)(a) pursuant to such application is employed by the employer.

“(3) OBLIGATIONS UNDER OTHER STATUTES.—Any obligation incurred by an employer under any other law or regulation as a result of the recruitment of United States workers or H-2A workers under an offer of terms and conditions of employment required as a result of making an application under subsection (a) is unaffected by withdrawal of such application.

“(e) REVIEW AND APPROVAL OF APPLICATIONS.—

“(1) RESPONSIBILITY OF EMPLOYERS.—The employer shall make available for public examination, within 1 working day after the date on which an application under subsection (a) is filed, at the employer’s principal place of business or worksite, a copy of each such application (and such accompanying documents as are necessary).

“(2) RESPONSIBILITY OF THE SECRETARY OF LABOR.—

“(A) COMPILATION OF LIST.—The Secretary of Labor shall compile, on a current basis, a list (by employer and by occupational classification) of the applications filed under subsection (a). Such list shall include the wage rate, number of workers sought, period of intended employment, and date of need. The Secretary of Labor shall make such list available for examination in the District of Columbia.

“(B) REVIEW OF APPLICATIONS.—The Secretary of Labor shall review such an application only for completeness and obvious inaccuracies. Unless the Secretary of Labor finds that the application is incomplete or obviously inaccurate, the Secretary of Labor shall certify that the intending employer has filed with the Secretary of Labor an application as described in subsection (a). Such certification shall be provided within 7 days of the filing of the application.”

“SEC. 218A. H-2A EMPLOYMENT REQUIREMENTS.

“(a) PREFERENTIAL TREATMENT OF ALIENS PROHIBITED.—Employers seeking to hire United States workers shall offer the United States workers no less than the same benefits, wages, and working conditions that the employer is offering, intends to offer, or will provide to H-2A workers. Conversely, no job offer may impose on

United States workers any restrictions or obligations which will not be imposed on the employer's H-2A workers.

“(b) MINIMUM BENEFITS, WAGES, AND WORKING CONDITIONS.—Except in cases where higher benefits, wages, or working conditions are required by the provisions of subsection (a), in order to protect similarly employed United States workers from adverse effects with respect to benefits, wages, and working conditions, every job offer which shall accompany an application under section 218(b)(2) shall include each of the following benefit, wage, and working condition provisions:

“(1) REQUIREMENT TO PROVIDE HOUSING OR A HOUSING ALLOWANCE.—

“(A) IN GENERAL.—An employer applying under section 218(a) for H-2A workers shall offer to provide housing at no cost to all workers in job opportunities for which the employer has applied under that section and to all other workers in the same occupation at the place of employment, whose place of residence is beyond normal commuting distance.

“(B) TYPE OF HOUSING.—In complying with subparagraph (A), an employer may, at the employer's election, provide housing that meets applicable Federal standards for temporary labor camps or secure housing that meets applicable local standards for rental or public accommodation housing or other substantially similar class of habitation, or in the absence of applicable local standards, State standards for rental or public accommodation housing or other substantially similar class of habitation. In the absence of applicable local or State standards, Federal temporary labor camp standards shall apply.

“(C) FAMILY HOUSING.—If it is the prevailing practice in the occupation and area of intended employment to provide family housing, family housing shall be provided to workers with families who request it.

“(D) WORKERS ENGAGED IN THE RANGE PRODUCTION OF LIVESTOCK.—The Secretary of Labor shall issue regulations that address the specific requirements for the provision of housing to workers engaged in the range production of livestock.

“(E) LIMITATION.—Nothing in this paragraph shall be construed to require an employer to provide or secure housing for persons who were not entitled to such housing under the temporary labor certification regulations in effect on June 1, 1986.

“(F) CHARGES FOR HOUSING.—

“(i) CHARGES FOR PUBLIC HOUSING.—If public housing provided for migrant agricultural workers under the auspices of a local, county, or State government is secured by an employer, and use of the public housing unit normally requires charges from migrant workers, such charges shall be paid by the employer directly to the appropriate individual or entity affiliated with the housing's management.

“(ii) DEPOSIT CHARGES.—Charges in the form of deposits for bedding or other similar incidentals related to housing shall not be levied upon workers by employers who provide housing for their workers. An employer may require a worker found to have been responsible for damage to such housing which is not the result of normal wear and tear related to habitation to reimburse the employer for the reasonable cost of repair of such damage.

“(G) HOUSING ALLOWANCE AS ALTERNATIVE.—

“(i) IN GENERAL.—If the requirement set out in clause (ii) is satisfied, the employer may provide a reasonable housing allowance instead of offering housing under subparagraph (A). Upon the request of a worker seeking assistance in locating housing, the employer shall make a good faith effort to assist the worker in identifying and locating housing in the area of intended employment. An employer who offers a housing allowance to a worker, or assists a worker in locating housing which the worker occupies, pursuant to this clause shall not be deemed a housing provider under section 203 of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1823) solely by virtue of providing such housing allowance. No housing allowance may be used for housing which is owned or controlled by the employer.

“(ii) CERTIFICATION.—The requirement of this clause is satisfied if the Governor of the State certifies to the Secretary of Labor that there is adequate housing available in the area of intended employment for migrant farm workers and H-2A workers who are seeking temporary housing while employed in agricultural work. Such certification shall expire after 3 years unless renewed by the Governor of the State.

“(iii) AMOUNT OF ALLOWANCE.—

“(I) NONMETROPOLITAN COUNTIES.—If the place of employment of the workers provided an allowance under this subparagraph is a nonmetropolitan county, the amount of the housing allowance under this subparagraph shall be equal to the statewide average fair market rental for existing housing for nonmetropolitan counties for the State, as established by the Secretary of Housing and Urban Development pursuant to section 8(c) of the United States Housing Act of 1937 (42 U.S.C. 1437f(c)), based on a 2-bedroom dwelling unit and an assumption of 2 persons per bedroom.

“(II) METROPOLITAN COUNTIES.—If the place of employment of the workers provided an allowance under this paragraph is in a metropolitan county, the amount of the housing allowance under this subparagraph shall be equal to the statewide average fair market rental for existing housing for metropolitan counties for the State, as established by the Secretary of Housing and Urban Development pursuant to section 8(c) of the United States Housing Act of 1937 (42 U.S.C. 1437f(c)), based on a 2-bedroom dwelling unit and an assumption of 2 persons per bedroom.

“(2) REIMBURSEMENT OF TRANSPORTATION.—

“(A) TO PLACE OF EMPLOYMENT.—A worker who completes 50 percent of the period of employment of the job opportunity for which the worker was hired shall be reimbursed by the employer for the cost of the worker’s transportation and subsistence from the place from which the worker came to work for the employer (or place of last employment, if the worker traveled from such place) to the place of employment.

“(B) FROM PLACE OF EMPLOYMENT.—A worker who completes the period of employment for the job opportunity involved shall be reimbursed by the employer for the cost of the worker’s transportation and subsistence from the place of employment to the place from which the worker, disregarding intervening employment, came to work for the employer, or to the place of next employment, if the worker has contracted with a subsequent employer who has not agreed to provide or pay for the worker’s transportation and subsistence to such subsequent employer’s place of employment.

“(C) LIMITATION.—

“(i) AMOUNT OF REIMBURSEMENT.—Except as provided in clause (ii), the amount of reimbursement provided under subparagraph (A) or (B) to a worker or alien shall not exceed the lesser of—

“(I) the actual cost to the worker or alien of the transportation and subsistence involved; or

“(II) the most economical and reasonable common carrier transportation charges and subsistence costs for the distance involved.

“(ii) DISTANCE TRAVELED.—No reimbursement under subparagraph (A) or (B) shall be required if the distance traveled is 100 miles or less, or the worker is not residing in employer-provided housing or housing secured through an allowance as provided in paragraph (1)(G).

“(D) EARLY TERMINATION.—If the worker is laid off or employment is terminated for contract impossibility (as described in paragraph (4)(D)) before the anticipated ending date of employment, the employer shall provide the transportation and subsistence required by subparagraph (B) and, notwithstanding whether the worker has completed 50 percent of the period of employment, shall provide the transportation reimbursement required by subparagraph (A).

“(E) TRANSPORTATION BETWEEN LIVING QUARTERS AND WORKSITE.—The employer shall provide transportation between the worker’s living quarters and the employer’s worksite without cost to the worker, and such transportation will be in accordance with applicable laws and regulations.

“(3) REQUIRED WAGES.—

“(A) IN GENERAL.—An employer applying for workers under section 218(a) shall offer to pay, and shall pay, all workers in the occupation for which the employer has applied for workers, not less (and is not required to pay more) than the greater of the prevailing wage in the occupation in the area of intended employment or the adverse effect wage rate. No worker shall be paid less than the greater of the hourly wage prescribed under section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) or the applicable State minimum wage.

“(B) LIMITATION.—Effective on the date of the enactment of the Agricultural Job Opportunities, Benefits, and Security Act of 2007 and continuing

for 3 years thereafter, no adverse effect wage rate for a State may be more than the adverse effect wage rate for that State in effect on January 1, 2003, as established by section 655.107 of title 20, Code of Federal Regulations.

“(C) REQUIRED WAGES AFTER 3-YEAR FREEZE.—

“(i) FIRST ADJUSTMENT.—If Congress does not set a new wage standard applicable to this section before the first March 1 that is not less than 3 years after the date of enactment of this section, the adverse effect wage rate for each State beginning on such March 1 shall be the wage rate that would have resulted if the adverse effect wage rate in effect on January 1, 2003, had been annually adjusted, beginning on March 1, 2006, by the lesser of—

“(I) the 12-month percentage change in the Consumer Price Index for All Urban Consumers between December of the second preceding year and December of the preceding year; and

“(II) 4 percent.

“(ii) SUBSEQUENT ANNUAL ADJUSTMENTS.—Beginning on the first March 1 that is not less than 4 years after the date of enactment of this section, and each March 1 thereafter, the adverse effect wage rate then in effect for each State shall be adjusted by the lesser of—

“(I) the 12-month percentage change in the Consumer Price Index for All Urban Consumers between December of the second preceding year and December of the preceding year; and

“(II) 4 percent.

“(D) DEDUCTIONS.—The employer shall make only those deductions from the worker’s wages that are authorized by law or are reasonable and customary in the occupation and area of employment. The job offer shall specify all deductions not required by law which the employer will make from the worker’s wages.

“(E) FREQUENCY OF PAY.—The employer shall pay the worker not less frequently than twice monthly, or in accordance with the prevailing practice in the area of employment, whichever is more frequent.

“(F) HOURS AND EARNINGS STATEMENTS.—The employer shall furnish to the worker, on or before each payday, in 1 or more written statements—

“(i) the worker’s total earnings for the pay period;

“(ii) the worker’s hourly rate of pay, piece rate of pay, or both;

“(iii) the hours of employment which have been offered to the worker (broken out by hours offered in accordance with and over and above the  $\frac{3}{4}$  guarantee described in paragraph (4);

“(iv) the hours actually worked by the worker;

“(v) an itemization of the deductions made from the worker’s wages; and

“(vi) if piece rates of pay are used, the units produced daily.

“(G) REPORT ON WAGE PROTECTIONS.—Not later than December 31, 2009, the Comptroller General of the United States shall prepare and transmit to the Secretary of Labor, the Committee on the Judiciary of the Senate, and Committee on the Judiciary of the House of Representatives, a report that addresses—

“(i) whether the employment of H-2A or unauthorized aliens in the United States agricultural workforce has depressed United States farm worker wages below the levels that would otherwise have prevailed if alien farm workers had not been employed in the United States;

“(ii) whether an adverse effect wage rate is necessary to prevent wages of United States farm workers in occupations in which H-2A workers are employed from falling below the wage levels that would have prevailed in the absence of the employment of H-2A workers in those occupations;

“(iii) whether alternative wage standards, such as a prevailing wage standard, would be sufficient to prevent wages in occupations in which H-2A workers are employed from falling below the wage level that would have prevailed in the absence of H-2A employment;

“(iv) whether any changes are warranted in the current methodologies for calculating the adverse effect wage rate and the prevailing wage; and

“(v) recommendations for future wage protection under this section.

“(H) COMMISSION ON WAGE STANDARDS.—

“(i) ESTABLISHMENT.—There is established the Commission on Agricultural Wage Standards under the H-2A program (in this subparagraph referred to as the ‘Commission’).

“(ii) COMPOSITION.—The Commission shall consist of 10 members as follows:

“(I) Four representatives of agricultural employers and 1 representative of the Department of Agriculture, each appointed by the Secretary of Agriculture.

“(II) Four representatives of agricultural workers and 1 representative of the Department of Labor, each appointed by the Secretary of Labor.

“(iii) FUNCTIONS.—The Commission shall conduct a study that shall address—

“(I) whether the employment of H-2A or unauthorized aliens in the United States agricultural workforce has depressed United States farm worker wages below the levels that would otherwise have prevailed if alien farm workers had not been employed in the United States;

“(II) whether an adverse effect wage rate is necessary to prevent wages of United States farm workers in occupations in which H-2A workers are employed from falling below the wage levels that would have prevailed in the absence of the employment of H-2A workers in those occupations;

“(III) whether alternative wage standards, such as a prevailing wage standard, would be sufficient to prevent wages in occupations in which H-2A workers are employed from falling below the wage level that would have prevailed in the absence of H-2A employment;

“(IV) whether any changes are warranted in the current methodologies for calculating the adverse effect wage rate and the prevailing wage rate; and

“(V) recommendations for future wage protection under this section.

“(iv) FINAL REPORT.—Not later than December 31, 2009, the Commission shall submit a report to the Congress setting forth the findings of the study conducted under clause (iii).

“(v) TERMINATION DATE.—The Commission shall terminate upon submitting its final report.

“(4) GUARANTEE OF EMPLOYMENT.—

“(A) OFFER TO WORKER.—The employer shall guarantee to offer the worker employment for the hourly equivalent of at least  $\frac{3}{4}$  of the work days of the total period of employment, beginning with the first work day after the arrival of the worker at the place of employment and ending on the expiration date specified in the job offer. For purposes of this subparagraph, the hourly equivalent means the number of hours in the work days as stated in the job offer and shall exclude the worker’s Sabbath and Federal holidays. If the employer affords the United States or H-2A worker less employment than that required under this paragraph, the employer shall pay such worker the amount which the worker would have earned had the worker, in fact, worked for the guaranteed number of hours.

“(B) FAILURE TO WORK.—Any hours which the worker fails to work, up to a maximum of the number of hours specified in the job offer for a work day, when the worker has been offered an opportunity to do so, and all hours of work actually performed (including voluntary work in excess of the number of hours specified in the job offer in a work day, on the worker’s Sabbath, or on Federal holidays) may be counted by the employer in calculating whether the period of guaranteed employment has been met.

“(C) ABANDONMENT OF EMPLOYMENT, TERMINATION FOR CAUSE.—If the worker voluntarily abandons employment before the end of the contract period, or is terminated for cause, the worker is not entitled to the  $\frac{3}{4}$  guarantee described in subparagraph (A).

“(D) CONTRACT IMPOSSIBILITY.—If, before the expiration of the period of employment specified in the job offer, the services of the worker are no longer required for reasons beyond the control of the employer due to any form of natural disaster, including a flood, hurricane, freeze, earthquake, fire, drought, plant or animal disease or pest infestation, or regulatory drought, before the guarantee in subparagraph (A) is fulfilled, the employer may terminate the worker’s employment. In the event of such termination,

the employer shall fulfill the employment guarantee in subparagraph (A) for the work days that have elapsed from the first work day after the arrival of the worker to the termination of employment. In such cases, the employer will make efforts to transfer the United States worker to other comparable employment acceptable to the worker. If such transfer is not effected, the employer shall provide the return transportation required in paragraph (2)(D).

<sup>(5)</sup> MOTOR VEHICLE SAFETY.—

“(A) MODE OF TRANSPORTATION SUBJECT TO COVERAGE.—

“(i) IN GENERAL.—Except as provided in clauses (iii) and (iv), this subsection applies to any H-2A employer that uses or causes to be used any vehicle to transport an H-2A worker within the United States.

“(ii) DEFINED TERM.—In this paragraph, the term ‘uses or causes to be used’—

“(I) applies only to transportation provided by an H-2A employer to an H-2A worker, or by a farm labor contractor to an H-2A worker at the request or direction of an H-2A employer; and

“(II) does not apply to—

“(aa) transportation provided, or transportation arrangements made, by an H-2A worker, unless the employer specifically requested or arranged such transportation; or

“(bb) car pooling arrangements made by H-2A workers themselves, using 1 of the workers’ own vehicles, unless specifically requested by the employer directly or through a farm labor contractor.

“(iii) CLARIFICATION.—Providing a job offer to an H-2A worker that causes the worker to travel to or from the place of employment, or the payment or reimbursement of the transportation costs of an H-2A worker by an H-2A employer, shall not constitute an arrangement of, or participation in, such transportation.

“(iv) AGRICULTURAL MACHINERY AND EQUIPMENT EXCLUDED.—This subsection does not apply to the transportation of an H-2A worker on a tractor, combine, harvester, picker, or other similar machinery or equipment while such worker is actually engaged in the planting, cultivating, or harvesting of agricultural commodities or the care of livestock or poultry or engaged in transportation incidental thereto.

“(v) COMMON CARRIERS EXCLUDED.—This subsection does not apply to common carrier motor vehicle transportation in which the provider holds itself out to the general public as engaging in the transportation of passengers for hire and holds a valid certification of authorization for such purposes from an appropriate Federal, State, or local agency.

“(B) APPLICABILITY OF STANDARDS, LICENSING, AND INSURANCE REQUIREMENTS.—

“(i) IN GENERAL.—When using, or causing to be used, any vehicle for the purpose of providing transportation to which this subparagraph applies, each employer shall—

“(I) ensure that each such vehicle conforms to the standards prescribed by the Secretary of Labor under section 401(b) of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1841(b)) and other applicable Federal and State safety standards;

“(II) ensure that each driver has a valid and appropriate license, as provided by State law, to operate the vehicle; and

“(III) have an insurance policy or a liability bond that is in effect which insures the employer against liability for damage to persons or property arising from the ownership, operation, or causing to be operated, of any vehicle used to transport any H-2A worker.

“(ii) AMOUNT OF INSURANCE REQUIRED.—The level of insurance required shall be determined by the Secretary of Labor pursuant to regulations to be issued under this subsection.

“(iii) EFFECT OF WORKERS’ COMPENSATION COVERAGE.—If the employer of any H-2A worker provides workers’ compensation coverage for such worker in the case of bodily injury or death as provided by State law, the following adjustments in the requirements of subparagraph (B)(i)(III) relating to having an insurance policy or liability bond apply:

“(I) No insurance policy or liability bond shall be required of the employer, if such workers are transported only under circumstances for which there is coverage under such State law.

“(II) An insurance policy or liability bond shall be required of the employer for circumstances under which coverage for the transportation of such workers is not provided under such State law.

“(c) COMPLIANCE WITH LABOR LAWS.—An employer shall assure that, except as otherwise provided in this section, the employer will comply with all applicable Federal, State, and local labor laws, including laws affecting migrant and seasonal agricultural workers, with respect to all United States workers and alien workers employed by the employer, except that a violation of this assurance shall not constitute a violation of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1801 et seq.).

“(d) COPY OF JOB OFFER.—The employer shall provide to the worker, not later than the day the work commences, a copy of the employer’s application and job offer described in section 218(a), or, if the employer will require the worker to enter into a separate employment contract covering the employment in question, such separate employment contract.

“(e) RANGE PRODUCTION OF LIVESTOCK.—Nothing in this section, section 218, or section 218B shall preclude the Secretary of Labor and the Secretary from continuing to apply special procedures and requirements to the admission and employment of aliens in occupations involving the range production of livestock.

**“SEC. 218B. PROCEDURE FOR ADMISSION AND EXTENSION OF STAY OF H-2A WORKERS.**

“(a) PETITIONING FOR ADMISSION.—An employer, or an association acting as an agent or joint employer for its members, that seeks the admission into the United States of an H-2A worker may file a petition with the Secretary. The petition shall be accompanied by an accepted and currently valid certification provided by the Secretary of Labor under section 218(e)(2)(B) covering the petitioner.

“(b) EXPEDITED ADJUDICATION BY THE SECRETARY.—The Secretary shall establish a procedure for expedited adjudication of petitions filed under subsection (a) and within 7 working days shall, by fax, cable, or other means assuring expedited delivery, transmit a copy of notice of action on the petition to the petitioner and, in the case of approved petitions, to the appropriate immigration officer at the port of entry or United States consulate (as the case may be) where the petitioner has indicated that the alien beneficiary (or beneficiaries) will apply for a visa or admission to the United States.

“(c) CRITERIA FOR ADMISSIBILITY.—

“(1) IN GENERAL.—An H-2A worker shall be considered admissible to the United States if the alien is otherwise admissible under this section, section 218, and section 218A, and the alien is not ineligible under paragraph (2).

“(2) DISQUALIFICATION.—An alien shall be considered inadmissible to the United States and ineligible for nonimmigrant status under section 101(a)(15)(H)(ii)(a) if the alien has, at any time during the past 5 years—

“(A) violated a material provision of this section, including the requirement to promptly depart the United States when the alien’s authorized period of admission under this section has expired; or

“(B) otherwise violated a term or condition of admission into the United States as a nonimmigrant, including overstaying the period of authorized admission as such a nonimmigrant.

“(3) WAIVER OF INELIGIBILITY FOR UNLAWFUL PRESENCE.—

“(A) IN GENERAL.—An alien who has not previously been admitted into the United States pursuant to this section, and who is otherwise eligible for admission in accordance with paragraphs (1) and (2), shall not be deemed inadmissible by virtue of section 212(a)(9)(B). If an alien described in the preceding sentence is present in the United States, the alien may apply from abroad for H-2A status, but may not be granted that status in the United States.

“(B) MAINTENANCE OF WAIVER.—An alien provided an initial waiver of ineligibility pursuant to subparagraph (A) shall remain eligible for such waiver unless the alien violates the terms of this section or again becomes ineligible under section 212(a)(9)(B) by virtue of unlawful presence in the United States after the date of the initial waiver of ineligibility pursuant to subparagraph (A).

“(d) PERIOD OF ADMISSION.—

“(1) IN GENERAL.—The alien shall be admitted for the period of employment in the application certified by the Secretary of Labor pursuant to section 218(e)(2)(B), not to exceed 10 months, supplemented by a period of not more than 1 week before the beginning of the period of employment for the purpose of travel to the worksite and a period of 14 days following the period of employ-



ment for the purpose of departure or extension based on a subsequent offer of employment, except that—

“(A) the alien is not authorized to be employed during such 14-day period except in the employment for which the alien was previously authorized; and

“(B) the total period of employment, including such 14-day period, may not exceed 10 months.

“(2) CONSTRUCTION.—Nothing in this subsection shall limit the authority of the Secretary to extend the stay of the alien under any other provision of this Act.

“(e) ABANDONMENT OF EMPLOYMENT.—

“(1) IN GENERAL.—An alien admitted or provided status under section 101(a)(15)(H)(ii)(a) who abandons the employment which was the basis for such admission or status shall be considered to have failed to maintain non-immigrant status as an H-2A worker and shall depart the United States or be subject to removal under section 237(a)(1)(C)(i).

“(2) REPORT BY EMPLOYER.—The employer, or association acting as agent for the employer, shall notify the Secretary not later than 7 days after an H-2A worker prematurely abandons employment.

“(3) REMOVAL BY THE SECRETARY.—The Secretary shall promptly remove from the United States any H-2A worker who violates any term or condition of the worker’s nonimmigrant status.

“(4) VOLUNTARY TERMINATION.—Notwithstanding paragraph (1), an alien may voluntarily terminate his or her employment if the alien promptly departs the United States upon termination of such employment.

“(f) REPLACEMENT OF ALIEN.—

“(1) IN GENERAL.—Upon presentation of the notice to the Secretary required by subsection (e)(2), the Secretary of State shall promptly issue a visa to, and the Secretary shall admit into the United States, an eligible alien designated by the employer to replace an H-2A worker—

“(A) who abandons or prematurely terminates employment; or

“(B) whose employment is terminated after a United States worker is employed pursuant to section 218(b)(2)(H)(iii), if the United States worker voluntarily departs before the end of the period of intended employment or if the employment termination is for a lawful job-related reason.

“(2) CONSTRUCTION.—Nothing in this subsection is intended to limit any preference required to be accorded United States workers under any other provision of this Act.

“(g) IDENTIFICATION DOCUMENT.—

“(1) IN GENERAL.—Each alien authorized to be admitted under section 101(a)(15)(H)(ii)(a) shall be provided an identification and employment eligibility document to verify eligibility for employment in the United States and verify the alien’s identity.

“(2) REQUIREMENTS.—No identification and employment eligibility document may be issued which does not meet the following requirements:

“(A) The document shall be capable of reliably determining whether—

“(i) the individual with the identification and employment eligibility document whose eligibility is being verified is in fact eligible for employment;

“(ii) the individual whose eligibility is being verified is claiming the identity of another person; and

“(iii) the individual whose eligibility is being verified is authorized to be admitted into, and employed in, the United States as an H-2A worker.

“(B) The document shall be in a form that is resistant to counterfeiting and to tampering.

“(C) The document shall—

“(i) be compatible with other databases of the Secretary for the purpose of excluding aliens from benefits for which they are not eligible and determining whether the alien is unlawfully present in the United States; and

“(ii) be compatible with law enforcement databases to determine if the alien has been convicted of criminal offenses.

“(h) EXTENSION OF STAY OF H-2A ALIENS IN THE UNITED STATES.—

“(1) EXTENSION OF STAY.—If an employer seeks approval to employ an H-2A alien who is lawfully present in the United States, the petition filed by the employer or an association pursuant to subsection (a), shall request an extension of the alien’s stay and a change in the alien’s employment.

“(2) LIMITATION ON FILING A PETITION FOR EXTENSION OF STAY.—A petition may not be filed for an extension of an alien’s stay—

“(A) for a period of more than 10 months; or

“(B) to a date that is more than 3 years after the date of the alien’s last admission to the United States under this section.

“(3) WORK AUTHORIZATION UPON FILING A PETITION FOR EXTENSION OF STAY.—

“(A) IN GENERAL.—An alien who is lawfully present in the United States may commence the employment described in a petition under paragraph (1) on the date on which the petition is filed.

“(B) DEFINITION.—For purposes of subparagraph (A), the term ‘file’ means sending the petition by certified mail via the United States Postal Service, return receipt requested, or delivered by guaranteed commercial delivery which will provide the employer with a documented acknowledgment of the date of receipt of the petition.

“(C) HANDLING OF PETITION.—The employer shall provide a copy of the employer’s petition to the alien, who shall keep the petition with the alien’s identification and employment eligibility document as evidence that the petition has been filed and that the alien is authorized to work in the United States.

“(D) APPROVAL OF PETITION.—Upon approval of a petition for an extension of stay or change in the alien’s authorized employment, the Secretary shall provide a new or updated employment eligibility document to the alien indicating the new validity date, after which the alien is not required to retain a copy of the petition.

“(4) LIMITATION ON EMPLOYMENT AUTHORIZATION OF ALIENS WITHOUT VALID IDENTIFICATION AND EMPLOYMENT ELIGIBILITY DOCUMENT.—An expired identification and employment eligibility document, together with a copy of a petition for extension of stay or change in the alien’s authorized employment that complies with the requirements of paragraph (1), shall constitute a valid work authorization document for a period of not more than 60 days beginning on the date on which such petition is filed, after which time only a currently valid identification and employment eligibility document shall be acceptable.

“(5) LIMITATION ON AN INDIVIDUAL’S STAY IN STATUS.—

“(A) MAXIMUM PERIOD.—The maximum continuous period of authorized status as an H-2A worker (including any extensions) is 3 years.

“(B) REQUIREMENT TO REMAIN OUTSIDE THE UNITED STATES.—

“(i) IN GENERAL.—Subject to clause (ii), in the case of an alien outside the United States whose period of authorized status as an H-2A worker (including any extensions) has expired, the alien may not again apply for admission to the United States as an H-2A worker unless the alien has remained outside the United States for a continuous period equal to at least  $\frac{1}{6}$  the duration of the alien’s previous period of authorized status as an H-2A worker (including any extensions).

“(ii) EXCEPTION.—Clause (i) shall not apply in the case of an alien if the alien’s period of authorized status as an H-2A worker (including any extensions) was for a period of not more than 10 months and such alien has been outside the United States for at least 2 months during the 12 months preceding the date the alien again is applying for admission to the United States as an H-2A worker.

“(i) SPECIAL RULES FOR ALIENS EMPLOYED AS SHEEPHERDERS, GOAT HERDERS, OR DAIRY WORKERS.—Notwithstanding any provision of the Agricultural Job Opportunities, Benefits, and Security Act of 2007, an alien admitted under section 101(a)(15)(H)(ii)(a) for employment as a shepherd, goat herder, or dairy worker—

“(1) may be admitted for an initial period of 12 months;

“(2) subject to subsection (j)(5), may have such initial period of admission extended for a period of up to 3 years; and

“(3) shall not be subject to the requirements of subsection (h)(5) (relating to periods of absence from the United States).

“(j) ADJUSTMENT TO LAWFUL PERMANENT RESIDENT STATUS FOR ALIENS EMPLOYED AS SHEEPHERDERS, GOAT HERDERS, OR DAIRY WORKERS.—

“(1) ELIGIBLE ALIEN.—For purposes of this subsection, the term ‘eligible alien’ means an alien—

“(A) having nonimmigrant status under section 101(a)(15)(H)(ii)(a) based on employment as a shepherd, goat herder, or dairy worker;

“(B) who has maintained such nonimmigrant status in the United States for a cumulative total of 36 months (excluding any period of absence from the United States); and

“(C) who is seeking to receive an immigrant visa under section 203(b)(3)(A)(iii).

“(2) CLASSIFICATION PETITION.—In the case of an eligible alien, the petition under section 204 for classification under section 203(b)(3)(A)(iii) may be filed by—

“(A) the alien’s employer on behalf of the eligible alien; or

“(B) the eligible alien.

“(3) NO LABOR CERTIFICATION REQUIRED.—Notwithstanding section 203(b)(3)(C), no determination under section 212(a)(5)(A) is required with respect to an immigrant visa described in paragraph (1)(C) for an eligible alien.

“(4) EFFECT OF PETITION.—The filing of a petition described in paragraph (2) or an application for adjustment of status based on the approval of such a petition shall not constitute evidence of an alien’s ineligibility for nonimmigrant status under section 101(a)(15)(H)(ii)(a).

“(5) EXTENSION OF STAY.—The Secretary shall extend the stay of an eligible alien having a pending or approved classification petition described in paragraph (2) in 1-year increments until a final determination is made on the alien’s eligibility for adjustment of status to that of an alien lawfully admitted for permanent residence.

“(6) CONSTRUCTION.—Nothing in this subsection shall be construed to prevent an eligible alien from seeking adjustment of status in accordance with any other provision of law.

**“SEC. 218C. WORKER PROTECTIONS AND LABOR STANDARDS ENFORCEMENT.**

“(a) ENFORCEMENT AUTHORITY.—

“(1) INVESTIGATION OF COMPLAINTS.—

“(A) AGGRIEVED PERSON OR THIRD-PARTY COMPLAINTS.—The Secretary of Labor shall establish a process for the receipt, investigation, and disposition of complaints respecting a petitioner’s failure to meet a condition specified in section 218(b), or an employer’s misrepresentation of material facts in an application under section 218(a). Complaints may be filed by any aggrieved person or organization (including bargaining representatives). No investigation or hearing shall be conducted on a complaint concerning such a failure or misrepresentation unless the complaint was filed not later than 12 months after the date of the failure, or misrepresentation, respectively. The Secretary of Labor shall conduct an investigation under this subparagraph if there is reasonable cause to believe that such a failure or misrepresentation has occurred.

“(B) DETERMINATION ON COMPLAINT.—Under such process, the Secretary of Labor shall provide, within 30 days after the date such a complaint is filed, for a determination as to whether or not a reasonable basis exists to make a finding described in subparagraph (C), (D), (E), or (G). If the Secretary of Labor determines that such a reasonable basis exists, the Secretary of Labor shall provide for notice of such determination to the interested parties and an opportunity for a hearing on the complaint, in accordance with section 556 of title 5, United States Code, within 60 days after the date of the determination. If such a hearing is requested, the Secretary of Labor shall make a finding concerning the matter not later than 60 days after the date of the hearing. In the case of similar complaints respecting the same applicant, the Secretary of Labor may consolidate the hearings under this subparagraph on such complaints.

“(C) FAILURES TO MEET CONDITIONS.—If the Secretary of Labor finds, after notice and opportunity for a hearing, a failure to meet a condition of paragraph (1)(A), (1)(B), (1)(D), (1)(F), (2)(A), (2)(B), or (2)(G) of section 218(b), a substantial failure to meet a condition of paragraph (1)(C), (1)(E), (2)(C), (2)(D), (2)(E), or (2)(H) of section 218(b), or a material misrepresentation of fact in an application under section 218(a)—

“(i) the Secretary of Labor shall notify the Secretary of such finding and may, in addition, impose such other administrative remedies (including civil money penalties in an amount not to exceed \$1,000 per violation) as the Secretary of Labor determines to be appropriate; and

“(ii) the Secretary may disqualify the employer from the employment of aliens described in section 101(a)(15)(H)(ii)(a) for a period of 1 year.

“(D) WILLFUL FAILURES AND WILLFUL MISREPRESENTATIONS.—If the Secretary of Labor finds, after notice and opportunity for hearing, a willful failure to meet a condition of section 218(b), a willful misrepresentation of a

material fact in an application under section 218(a), or a violation of subsection (d)(1)—

“(i) the Secretary of Labor shall notify the Secretary of such finding and may, in addition, impose such other administrative remedies (including civil money penalties in an amount not to exceed \$5,000 per violation) as the Secretary of Labor determines to be appropriate;

“(ii) the Secretary of Labor may seek appropriate legal or equitable relief to effectuate the purposes of subsection (d)(1); and

“(iii) the Secretary may disqualify the employer from the employment of H-2A workers for a period of 2 years.

“(E) DISPLACEMENT OF UNITED STATES WORKERS.—If the Secretary of Labor finds, after notice and opportunity for hearing, a willful failure to meet a condition of section 218(b) or a willful misrepresentation of a material fact in an application under section 218(a), in the course of which failure or misrepresentation the employer displaced a United States worker employed by the employer during the period of employment on the employer’s application under section 218(a) or during the period of 30 days preceding such period of employment—

“(i) the Secretary of Labor shall notify the Secretary of such finding and may, in addition, impose such other administrative remedies (including civil money penalties in an amount not to exceed \$15,000 per violation) as the Secretary of Labor determines to be appropriate; and

“(ii) the Secretary may disqualify the employer from the employment of H-2A workers for a period of 3 years.

“(F) LIMITATIONS ON CIVIL MONEY PENALTIES.—The Secretary of Labor shall not impose total civil money penalties with respect to an application under section 218(a) in excess of \$90,000.

“(G) FAILURES TO PAY WAGES OR REQUIRED BENEFITS.—If the Secretary of Labor finds, after notice and opportunity for a hearing, that the employer has failed to pay the wages, or provide the housing allowance, transportation, subsistence reimbursement, or guarantee of employment, required under section 218A(b), the Secretary of Labor shall assess payment of back wages, or other required benefits, due any United States worker or H-2A worker employed by the employer in the specific employment in question. The back wages or other required benefits under section 218A(b) shall be equal to the difference between the amount that should have been paid and the amount that actually was paid to such worker.

“(2) STATUTORY CONSTRUCTION.—Nothing in this section shall be construed as limiting the authority of the Secretary of Labor to conduct any compliance investigation under any other labor law, including any law affecting migrant and seasonal agricultural workers, or, in the absence of a complaint under this section, under section 218 or 218A.

“(b) RIGHTS ENFORCEABLE BY PRIVATE RIGHT OF ACTION.—H-2A workers may enforce the following rights through the private right of action provided in subsection (c), and no other right of action shall exist under Federal or State law to enforce such rights:

“(1) The providing of housing or a housing allowance as required under section 218A(b)(1).

“(2) The reimbursement of transportation as required under section 218A(b)(2).

“(3) The payment of wages required under section 218A(b)(3) when due.

“(4) The benefits and material terms and conditions of employment expressly provided in the job offer described in section 218(a)(2), not including the assurance to comply with other Federal, State, and local labor laws described in section 218A(c), compliance with which shall be governed by the provisions of such laws.

“(5) The guarantee of employment required under section 218A(b)(4).

“(6) The motor vehicle safety requirements under section 218A(b)(5).

“(7) The prohibition of discrimination under subsection (d)(2).

“(c) PRIVATE RIGHT OF ACTION.—

“(1) MEDIATION.—Upon the filing of a complaint by an H-2A worker aggrieved by a violation of rights enforceable under subsection (b), and within 60 days of the filing of proof of service of the complaint, a party to the action may file a request with the Federal Mediation and Conciliation Service to assist the parties in reaching a satisfactory resolution of all issues involving all parties to the dispute. Upon a filing of such request and giving of notice to the parties, the parties shall attempt mediation within the period specified in subparagraph (B).

“(A) MEDIATION SERVICES.—The Federal Mediation and Conciliation Service shall be available to assist in resolving disputes arising under subsection (b) between H-2A workers and agricultural employers without charge to the parties.

“(B) 90-DAY LIMIT.—The Federal Mediation and Conciliation Service may conduct mediation or other nonbinding dispute resolution activities for a period not to exceed 90 days beginning on the date on which the Federal Mediation and Conciliation Service receives the request for assistance unless the parties agree to an extension of this period of time.

“(C) AUTHORIZATION.—

“(i) IN GENERAL.—Subject to clause (ii), there are authorized to be appropriated to the Federal Mediation and Conciliation Service \$500,000 for each fiscal year to carry out this section.

“(ii) MEDIATION.—Notwithstanding any other provision of law, the Director of the Federal Mediation and Conciliation Service is authorized to conduct the mediation or other dispute resolution activities from any other appropriated funds available to the Director and to reimburse such appropriated funds when the funds are appropriated pursuant to this authorization, such reimbursement to be credited to appropriations currently available at the time of receipt.

“(2) MAINTENANCE OF CIVIL ACTION IN DISTRICT COURT BY AGGRIEVED PERSON.—An H-2A worker aggrieved by a violation of rights enforceable under subsection (b) by an agricultural employer or other person may file suit in any district court of the United States having jurisdiction over the parties, without regard to the amount in controversy, without regard to the citizenship of the parties, and without regard to the exhaustion of any alternative administrative remedies under this Act, not later than 3 years after the date the violation occurs.

“(3) ELECTION.—An H-2A worker who has filed an administrative complaint with the Secretary of Labor may not maintain a civil action under paragraph (2) unless a complaint based on the same violation filed with the Secretary of Labor under subsection (a)(1) is withdrawn before the filing of such action, in which case the rights and remedies available under this subsection shall be exclusive.

“(4) PREEMPTION OF STATE CONTRACT RIGHTS.—Nothing in this Act shall be construed to diminish the rights and remedies of an H-2A worker under any other Federal or State law or regulation or under any collective bargaining agreement, except that no court or administrative action shall be available under any State contract law to enforce the rights created by this Act.

“(5) WAIVER OF RIGHTS PROHIBITED.—Agreements by employees purporting to waive or modify their rights under this Act shall be void as contrary to public policy, except that a waiver or modification of the rights or obligations in favor of the Secretary of Labor shall be valid for purposes of the enforcement of this Act. The preceding sentence may not be construed to prohibit agreements to settle private disputes or litigation.

“(6) AWARD OF DAMAGES OR OTHER EQUITABLE RELIEF.—

“(A) If the court finds that the respondent has intentionally violated any of the rights enforceable under subsection (b), it shall award actual damages, if any, or equitable relief.

“(B) Any civil action brought under this section shall be subject to appeal as provided in chapter 83 of title 28, United States Code.

“(7) WORKERS’ COMPENSATION BENEFITS; EXCLUSIVE REMEDY.—

“(A) Notwithstanding any other provision of this section, where a State’s workers’ compensation law is applicable and coverage is provided for an H-2A worker, the workers’ compensation benefits shall be the exclusive remedy for the loss of such worker under this section in the case of bodily injury or death in accordance with such State’s workers’ compensation law.

“(B) The exclusive remedy prescribed in subparagraph (A) precludes the recovery under paragraph (6) of actual damages for loss from an injury or death but does not preclude other equitable relief, except that such relief shall not include back or front pay or in any manner, directly or indirectly, expand or otherwise alter or affect—

“(i) a recovery under a State workers’ compensation law; or

“(ii) rights conferred under a State workers’ compensation law.

“(8) TOLLING OF STATUTE OF LIMITATIONS.—If it is determined under a State workers’ compensation law that the workers’ compensation law is not applicable to a claim for bodily injury or death of an H-2A worker, the statute of limitations for bringing an action for actual damages for such injury or death under

subsection (c) shall be tolled for the period during which the claim for such injury or death under such State workers' compensation law was pending. The statute of limitations for an action for actual damages or other equitable relief arising out of the same transaction or occurrence as the injury or death of the H-2A worker shall be tolled for the period during which the claim for such injury or death was pending under the State workers' compensation law.

"(9) PRECLUSIVE EFFECT.—Any settlement by an H-2A worker and an H-2A employer or any person reached through the mediation process required under subsection (c)(1) shall preclude any right of action arising out of the same facts between the parties in any Federal or State court or administrative proceeding, unless specifically provided otherwise in the settlement agreement.

"(10) SETTLEMENTS.—Any settlement by the Secretary of Labor with an H-2A employer on behalf of an H-2A worker of a complaint filed with the Secretary of Labor under this section or any finding by the Secretary of Labor under subsection (a)(1)(B) shall preclude any right of action arising out of the same facts between the parties under any Federal or State court or administrative proceeding, unless specifically provided otherwise in the settlement agreement.

"(d) DISCRIMINATION PROHIBITED.—

"(1) IN GENERAL.—It is a violation of this subsection for any person who has filed an application under section 218(a), to intimidate, threaten, restrain, coerce, blacklist, discharge, or in any other manner discriminate against an employee (which term, for purposes of this subsection, includes a former employee and an applicant for employment) because the employee has disclosed information to the employer, or to any other person, that the employee reasonably believes evidences a violation of section 218 or 218A or any rule or regulation pertaining to section 218 or 218A, or because the employee cooperates or seeks to cooperate in an investigation or other proceeding concerning the employer's compliance with the requirements of section 218 or 218A or any rule or regulation pertaining to either of such sections.

"(2) DISCRIMINATION AGAINST H-2A WORKERS.—It is a violation of this subsection for any person who has filed an application under section 218(a), to intimidate, threaten, restrain, coerce, blacklist, discharge, or in any manner discriminate against an H-2A employee because such worker has, with just cause, filed a complaint with the Secretary of Labor regarding a denial of the rights enumerated and enforceable under subsection (b) or instituted, or caused to be instituted, a private right of action under subsection (c) regarding the denial of the rights enumerated under subsection (b), or has testified or is about to testify in any court proceeding brought under subsection (c).

"(e) AUTHORIZATION TO SEEK OTHER APPROPRIATE EMPLOYMENT.—The Secretary of Labor and the Secretary shall establish a process under which an H-2A worker who files a complaint regarding a violation of subsection (d) and is otherwise eligible to remain and work in the United States may be allowed to seek other appropriate employment in the United States for a period not to exceed the maximum period of stay authorized for such nonimmigrant classification.

"(f) ROLE OF ASSOCIATIONS.—

"(1) VIOLATION BY A MEMBER OF AN ASSOCIATION.—An employer on whose behalf an application is filed by an association acting as its agent is fully responsible for such application, and for complying with the terms and conditions of sections 218 and 218A, as though the employer had filed the application itself. If such an employer is determined, under this section, to have committed a violation, the penalty for such violation shall apply only to that member of the association unless the Secretary of Labor determines that the association or other member participated in, had knowledge, or reason to know, of the violation, in which case the penalty shall be invoked against the association or other association member as well.

"(2) VIOLATIONS BY AN ASSOCIATION ACTING AS AN EMPLOYER.—If an association filing an application as a sole or joint employer is determined to have committed a violation under this section, the penalty for such violation shall apply only to the association unless the Secretary of Labor determines that an association member or members participated in or had knowledge, or reason to know of the violation, in which case the penalty shall be invoked against the association member or members as well.

"SEC. 218D. DEFINITIONS.

"For purposes of this section and section 218, 218A, 218B, and 218C:

"(1) AGRICULTURAL EMPLOYMENT.—The term 'agricultural employment' means any service or activity that is considered to be agricultural under section

3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)) or agricultural labor under section 3121(g) of the Internal Revenue Code of 1986 or the performance of agricultural labor or services described in section 101(a)(15)(H)(ii)(a).

“(2) BONA FIDE UNION.—The term ‘bona fide union’ means any organization in which employees participate and which exists for the purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other terms and conditions of work for agricultural employees. Such term does not include an organization formed, created, administered, supported, dominated, financed, or controlled by an employer or employer association or its agents or representatives.

“(3) DISPLACE.—The term ‘displace’, in the case of an application with respect to 1 or more H-2A workers by an employer, means laying off a United States worker from a job for which the H-2A worker or workers is or are sought.

“(4) ELIGIBLE.—The term ‘eligible’, when used with respect to an individual, means an individual who is not an unauthorized alien (as defined in section 274A).

“(5) EMPLOYER.—The term ‘employer’ means any person or entity, including any farm labor contractor and any agricultural association, that employs workers in agricultural employment.

“(6) H-2A EMPLOYER.—The term ‘H-2A employer’ means an employer who seeks to hire 1 or more nonimmigrant aliens described in section 101(a)(15)(H)(ii)(a).

“(7) H-2A WORKER.—The term ‘H-2A worker’ means a nonimmigrant described in section 101(a)(15)(H)(ii)(a).

“(8) JOB OPPORTUNITY.—The term ‘job opportunity’ means a job opening for temporary or seasonal full-time employment at a place in the United States to which United States workers can be referred.

“(9) LAYING OFF.—

“(A) IN GENERAL.—The term ‘laying off’, with respect to a worker—

“(i) means to cause the worker’s loss of employment, other than through a discharge for inadequate performance, violation of workplace rules, cause, voluntary departure, voluntary retirement, contract impossibility (as described in section 218A(b)(4)(D)), or temporary suspension of employment due to weather, markets, or other temporary conditions; but

“(ii) does not include any situation in which the worker is offered, as an alternative to such loss of employment, a similar employment opportunity with the same employer (or, in the case of a placement of a worker with another employer under section 218(b)(2)(E), with either employer described in such section) at equivalent or higher compensation and benefits than the position from which the employee was discharged, regardless of whether or not the employee accepts the offer.

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

“(10) REGULATORY DROUGHT.—The term ‘regulatory drought’ means a decision subsequent to the filing of the application under section 218 by an entity not under the control of the employer making such filing which restricts the employer’s access to water for irrigation purposes and reduces or limits the employer’s ability to produce an agricultural commodity, thereby reducing the need for labor.

“(11) SEASONAL.—Labor is performed on a ‘seasonal’ basis if—

“(A) ordinarily, it pertains to or is of the kind exclusively performed at certain seasons or periods of the year; and

“(B) from its nature, it may not be continuous or carried on throughout the year.

“(12) SECRETARY.—Except as otherwise provided, the term ‘Secretary’ means the Secretary of Homeland Security.

“(13) TEMPORARY.—A worker is employed on a ‘temporary’ basis where the employment is intended not to exceed 10 months.

“(14) UNITED STATES WORKER.—The term ‘United States worker’ means any worker, whether a national of the United States, an alien lawfully admitted for permanent residence, or any other alien, who is authorized to work in the job opportunity within the United States, except an alien admitted or otherwise provided status under section 101(a)(15)(H)(ii)(a).”.

(b) TABLE OF CONTENTS.—The table of contents of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended by striking the item relating to section 218 and inserting the following:

- “Sec. 218. H–2A employer applications.
- “Sec. 218A. H–2A employment requirements.
- “Sec. 218B. Procedure for admission and extension of stay of H–2A workers.
- “Sec. 218C. Worker protections and labor standards enforcement.
- “Sec. 218D. Definitions.”

### CHAPTER 3—MISCELLANEOUS PROVISIONS

#### SEC. 653. DETERMINATION AND USE OF USER FEES.

(a) SCHEDULE OF FEES.—The Secretary shall establish and periodically adjust a schedule of fees for the employment of aliens pursuant to the amendment made by section 652(a) of this Act and a collection process for such fees from employers. Such fees shall be the only fees chargeable to employers for services provided under such amendment.

(b) DETERMINATION OF SCHEDULE.—

(1) IN GENERAL.—The schedule under subsection (a) shall reflect a fee rate based on the number of job opportunities indicated in the employer’s application under section 218 of the Immigration and Nationality Act, as amended by section 652 of this Act, and sufficient to provide for the direct costs of providing services related to an employer’s authorization to employ aliens pursuant to the amendment made by section 652(a) of this Act, to include the certification of eligible employers, the issuance of documentation, and the admission of eligible aliens.

(2) PROCEDURE.—

(A) IN GENERAL.—In establishing and adjusting such a schedule, the Secretary shall comply with Federal cost accounting and fee setting standards.

(B) PUBLICATION AND COMMENT.—The Secretary shall publish in the Federal Register an initial fee schedule and associated collection process and the cost data or estimates upon which such fee schedule is based, and any subsequent amendments thereto, pursuant to which public comment shall be sought and a final rule issued.

(c) USE OF PROCEEDS.—Notwithstanding any other provision of law, all proceeds resulting from the payment of the fees pursuant to the amendment made by section 652(a) of this Act shall be available without further appropriation and shall remain available without fiscal year limitation to reimburse the Secretary, the Secretary of State, and the Secretary of Labor for the costs of carrying out sections 218 and 218B of the Immigration and Nationality Act, as amended and added, respectively, by section 652 of this Act, and the provisions of this Act.

#### SEC. 654. REGULATIONS.

(a) REQUIREMENT FOR THE SECRETARY TO CONSULT.—The Secretary shall consult with the Secretary of Labor and the Secretary of Agriculture during the promulgation of all regulations to implement the duties of the Secretary under this Act and the amendments made by this Act.

(b) REQUIREMENT FOR THE SECRETARY OF STATE TO CONSULT.—The Secretary of State shall consult with the Secretary, the Secretary of Labor, and the Secretary of Agriculture on all regulations to implement the duties of the Secretary of State under this Act and the amendments made by this Act.

(c) REQUIREMENT FOR THE SECRETARY OF LABOR TO CONSULT.—The Secretary of Labor shall consult with the Secretary of Agriculture and the Secretary on all regulations to implement the duties of the Secretary of Labor under this Act and the amendments made by this Act.

(d) DEADLINE FOR ISSUANCE OF REGULATIONS.—All regulations to implement the duties of the Secretary, the Secretary of State, and the Secretary of Labor created under sections 218, 218A, 218B, 218C, and 218D of the Immigration and Nationality Act, as amended or added by section 652 of this Act, shall take effect on the effective date of section 652 and shall be issued not later than 1 year after the date of enactment of this Act.

#### SEC. 655. REPORTS TO CONGRESS.

(a) ANNUAL REPORT.—Not later than September 30 of each year, the Secretary shall submit a report to Congress that identifies, for the previous year—



(1) the number of job opportunities approved for employment of aliens admitted under section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)), and the number of workers actually admitted, disaggregated by State and by occupation;

(2) the number of such aliens reported to have abandoned employment pursuant to subsection 218B(e)(2) of such Act;

(3) the number of such aliens who departed the United States within the period specified in subsection 218B(d) of such Act;

(4) the number of aliens who applied for adjustment of status pursuant to section 643(a);

(5) the number of such aliens whose status was adjusted under section 643(a);

(6) the number of aliens who applied for permanent residence pursuant to section 643(c); and

(7) the number of such aliens who were approved for permanent residence pursuant section 645(c).

(b) IMPLEMENTATION REPORT.—Not later than 180 days after the date of the enactment of this Act, the Secretary shall prepare and submit to Congress a report that describes the measures being taken and the progress made in implementing this Act.

**SEC. 656. EFFECTIVE DATE.**

Except as otherwise provided, sections 652 and 653 shall take effect 1 year after the date of the enactment of this Act.

## **Subtitle D—Programs to Assist Nonimmigrant Workers**

**SEC. 661. GRANTS TO SUPPORT PUBLIC EDUCATION AND COMMUNITY TRAINING.**

(a) GRANTS AUTHORIZED.—The Assistant Attorney General, Office of Justice Programs, may award grants to qualified non-profit community organizations to educate, train, and support non-profit agencies, immigrant communities, and other interested entities regarding the provisions of this Act and the amendments made by this Act.

(b) USE OF FUNDS.—

(1) IN GENERAL.—Grants awarded under this section shall be used—

(A) for public education, training, technical assistance, government liaison, and all related costs (including personnel and equipment) incurred by the grantee in providing services related to this Act; and

(B) to educate, train, and support nonprofit organizations, immigrant communities, and other interested parties regarding this Act and the amendments made by this Act and on matters related to its implementation.

(2) EDUCATION.—In addition to the purposes described in paragraph (1), grants awarded under this section shall be used to—

(A) educate immigrant communities and other interested entities regarding—

(i) the individuals and organizations that can provide authorized legal representation in immigration matters under regulations prescribed by the Secretary; and

(ii) the dangers of securing legal advice and assistance from those who are not authorized to provide legal representation in immigration matters;

(B) educate interested entities regarding the requirements for obtaining nonprofit recognition and accreditation to represent immigrants under regulations prescribed by the Secretary;

(C) provide nonprofit agencies with training and technical assistance on the recognition and accreditation process; and

(D) educate nonprofit community organizations, immigrant communities, and other interested entities regarding—

(i) the process for obtaining benefits under this Act or under an amendment made by this Act; and

(ii) the availability of authorized legal representation for low-income persons who may qualify for benefits under this Act or under an amendment made by this Act.

(c) DIVERSITY.—The Assistant Attorney General shall ensure, to the extent possible, that the nonprofit community organizations receiving grants under this section serve geographically diverse locations and ethnically diverse populations who may qualify for benefits under the Act.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Office of Justice Programs of the Department of Justice such sums as may be necessary for each of the fiscal years 2008 through 2010 to carry out this section.

**SEC. 662. GRANT PROGRAM TO ASSIST APPLICANTS FOR NATURALIZATION.**

(a) PURPOSE.—The purpose of this section is to establish a grant program within United States Citizenship and Immigration Services that provides funding to community-based organizations, including community-based legal service organizations, as appropriate, to develop and implement programs to assist eligible applicants for naturalization.

(b) DEFINITIONS.—In this section:

(1) COMMUNITY-BASED ORGANIZATION.—The term “community-based organization” means a nonprofit, tax-exempt organization, including a faith-based organization, whose staff has experience and expertise in meeting the legal, social, educational, cultural educational, or cultural needs of immigrants, refugees, persons granted asylum, or persons applying for such statuses.

(2) IEACA GRANT.—The term “IEACA grant” means an Initial Entry, Adjustment, and Citizenship Assistance Grant authorized under subsection (c).

(c) ESTABLISHMENT OF INITIAL ENTRY, ADJUSTMENT, AND CITIZENSHIP ASSISTANCE GRANT PROGRAM.—

(1) GRANTS AUTHORIZED.—The Secretary, working through the Director of United States Citizenship and Immigration Services, may award IEACA grants to community-based organizations.

(2) USE OF FUNDS.—Grants awarded under this section may be used for the design and implementation of programs to provide the following services:

(A) INITIAL APPLICATION.—Assistance and instruction, including legal assistance, to aliens making initial application for conditional nonimmigrant or conditional nonimmigrant dependent classification under section 601. Such assistance may include assisting applicants in—

(i) screening to assess prospective applicants’ potential eligibility for participating in such program;

(ii) filling out applications for such program;

(iii) gathering proof of identification, employment, residence, and tax payment;

(iv) gathering proof of relationships of eligible family members;

(v) applying for any waivers for which applicants and qualifying family members may be eligible; and

(vi) any other assistance that the Secretary or grantee considers useful to aliens who are interested in filing applications for treatment under section 601.

(B) ADJUSTMENT OF STATUS.—Assistance and instruction, including legal assistance, to aliens seeking to adjust their status in accordance with section 602 of this Act or section 245 of the Immigration and Nationality Act (8 U.S.C. 1255).

(C) CITIZENSHIP.—Assistance and instruction to applicants on—

(i) the rights and responsibilities of United States citizenship;

(ii) English as a second language;

(iii) civics; or

(iv) applying for United States citizenship.

(3) DURATION AND RENEWAL.—

(A) DURATION.—Subject to subparagraph (B), each grant awarded under this section shall be awarded for a period of not more than 3 years.

(B) RENEWAL.—The Secretary may renew any grant awarded under this section in 1-year increments.

(4) APPLICATION FOR GRANTS.—Each entity desiring an IEACA grant under this section shall submit an application to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may require.

(5) ELIGIBLE ORGANIZATIONS.—A community-based organization applying for a grant under this section to provide services described in subparagraph (A), (B), or (C)(iv) of paragraph (2) may not receive such a grant unless the organization is—

(A) recognized by the Board of Immigration Appeals under section 292.2 of title 8, Code of Federal Regulations; or

(B) otherwise directed by an attorney.

(6) SELECTION OF GRANTEEES.—Grants awarded under this section shall be awarded on a competitive basis.

(7) GEOGRAPHIC DISTRIBUTION OF GRANTS.—The Secretary shall approve applications under this section in a manner that ensures, to the greatest extent practicable, that—

(A) not less than 50 percent of the funding for grants under this section are awarded to programs located in the 10 States with the highest percentage of residents who were born in foreign countries; and

(B) not less than 20 percent of the funding for grants under this section are awarded to programs located in States that are not described in subparagraph (A).

(8) ETHNIC DIVERSITY.—The Secretary shall ensure that community-based organizations receiving grants under this section provide services to an ethnically diverse population, to the greatest extent possible.

(d) LIAISON BETWEEN USCIS AND GRANTEEES.—The Secretary shall establish a liaison between United States Citizenship and Immigration Services and the community of providers of services under this section to assure quality control, efficiency, and greater client willingness to come forward.

(e) REPORTS TO CONGRESS.—Not later than 180 days after the date of enactment of this Act, and July 1 of each subsequent year, the Secretary shall submit a report to Congress that includes information regarding—

(1) the status of the implementation of this section;

(2) the grants issued pursuant to this section; and

(3) the activities carried out with such grants.

(f) SOURCE OF GRANT FUNDS.—

(1) APPLICATION FEES.—The Secretary may use funds made available under section 601(g)(2)(A) of this Act and section 218A(b)(3) of the Immigration and Nationality Act, as added by this Act, to carry out this section.

(2) AUTHORIZATION OF APPROPRIATIONS.—

(A) AMOUNTS AUTHORIZED.—In addition to the amounts made available under paragraph (1), there are authorized to be appropriated such additional sums as may be necessary for each of fiscal years 2008 through 2012 to carry out this section.

(B) AVAILABILITY.—Any amounts appropriated pursuant to the authorization of appropriations in subparagraph (A) shall remain available until expended.

(g) DISTRIBUTION OF FEES AND FINES.—

(1) H-2C VISA FEES.—Notwithstanding section 218A(j) of the Immigration and Nationality Act, as added by section 402, 2 percent of the fees collected under section 218A of such Act shall be made available for grants under the Initial Entry, Adjustment, and Citizenship Assistance Grant Program established under this section.

(2) CONDITIONAL NONIMMIGRANT VISA FEES AND FINES.—Notwithstanding section 601(g)(2), 2 percent of the fees and fines collected under section 601 shall be made available for grants under the Initial Entry, Adjustment, and Citizenship Assistance Grant Program established under this section.

#### SEC. 663. STRENGTHENING AMERICAN CITIZENSHIP.

(a) SHORT TITLE.—This section may be cited as the “Strengthening American Citizenship Act of 2007”.

(b) DEFINITIONS.—In this section:

(1) LEGAL RESIDENT.—The term “legal resident” means a lawful permanent resident or a lawfully admitted alien who, in order to adjust status to that of a lawful permanent resident, demonstrates a knowledge of the English language or satisfactory pursuit of a course of study to acquire such knowledge of the English language.

(2) OATH OF ALLEGIANCE.—The term “Oath of Allegiance” means the binding oath (or affirmation) of allegiance required to be naturalized as a citizen of the United States.

(c) ENGLISH FLUENCY.—

(1) EDUCATION GRANTS.—

(A) ESTABLISHMENT.—The Chief of the Office of Citizenship of the Department (referred to in this paragraph as the “Chief”) shall establish a grant program to provide grants, in an amount not to exceed \$500, to assist legal residents of the United States who declare an intent to apply for citizenship in the United States to meet the requirements under section 312 of the Immigration and Nationality Act (8 U.S.C. 1423).

(B) USE OF FUNDS.—Grant funds awarded under this paragraph shall be paid directly to an accredited institution of higher education or other qualified educational institution (as determined by the Chief) for tuition, fees, books, and other educational resources required by a course on the English language in which the legal resident is enrolled.

(C) APPLICATION.—A legal resident desiring a grant under this paragraph shall submit an application to the Chief at such time, in such manner, and accompanied by such information as the Chief may reasonably require.

(D) PRIORITY.—If insufficient funds are available to award grants to all qualified applicants, the Chief shall give priority based on the financial need of the applicants.

(E) NOTICE.—The Secretary, upon relevant registration of a legal resident with the Department, shall notify such legal resident of the availability of grants under this paragraph for legal residents who declare an intent to apply for United States citizenship.

(2) FASTER CITIZENSHIP FOR ENGLISH FLUENCY.—Section 316 (8 U.S.C. 1427) is amended by adding at the end the following:

“(g) A lawful permanent resident of the United States who demonstrates English fluency, in accordance with regulations prescribed by the Secretary of Homeland Security, in consultation with the Secretary of State, will satisfy the residency requirement under subsection (a) upon the completion of 4 years of continuous legal residency in the United States.”.

(3) SAVINGS PROVISION.—Nothing in this subsection shall be construed to—

(A) modify the English language requirements for naturalization under section 312(a)(1) of the Immigration and Nationality Act (8 U.S.C. 1423(a)(1)); or

(B) influence the naturalization test redesign process of the Office of Citizenship (except for the requirement under subsection (h)(2)).

(d) AMERICAN CITIZENSHIP GRANT PROGRAM.—

(1) IN GENERAL.—The Secretary shall establish a competitive grant program to provide financial assistance for—

(A) efforts by entities (including veterans and patriotic organizations) certified by the Office of Citizenship to promote the patriotic integration of prospective citizens into the American way of life by providing civics, history, and English as a second language courses, with a specific emphasis on attachment to principles of the Constitution of the United States, the heroes of American history (including military heroes), and the meaning of the Oath of Allegiance; and

(B) other activities approved by the Secretary to promote the patriotic integration of prospective citizens and the implementation of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), including grants—

(i) to promote an understanding of the form of government and history of the United States; and

(ii) to promote an attachment to the principles of the Constitution of the United States and the well being and happiness of the people of the United States.

(2) ACCEPTANCE OF GIFTS.—The Secretary may accept and use gifts from the United States Citizenship Foundation, if the foundation is established under subsection (e), for grants under this subsection.

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

(e) FUNDING FOR THE OFFICE OF CITIZENSHIP.—

(1) AUTHORIZATION.—The Secretary, acting through the Director of the Bureau of Citizenship and Immigration Services, may establish the United States Citizenship Foundation (referred to in this subsection as the “Foundation”), an organization duly incorporated in the District of Columbia, exclusively for charitable and educational purposes to support the functions of the Office of Citizenship.

(2) DEDICATED FUNDING.—

(A) IN GENERAL.—Not less than 1.5 percent of the funds made available to the Bureau of Citizenship and Immigration Services from fees shall be dedicated to the functions of the Office of Citizenship, which shall include the patriotic integration of prospective citizens into—

(i) American common values and traditions, including an understanding of American history and the principles of the Constitution of the United States; and

- (ii) civic traditions of the United States, including the Pledge of Allegiance, respect for the flag of the United States, and voting in public elections.
- (B) SENSE OF CONGRESS.—It is the sense of the Congress that dedicating increased funds to the Office of Citizenship should not result in an increase in fees charged by the Bureau of Citizenship and Immigration Services.
- (3) GIFTS.—
- (A) TO FOUNDATION.—The Foundation may solicit, accept, and make gifts of money and other property in accordance with section 501(c)(3) of the Internal Revenue Code of 1986.
- (B) FROM FOUNDATION.—The Office of Citizenship may accept gifts from the Foundation to support the functions of the Office.
- (4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out the mission of the Office of Citizenship, including the functions described in paragraph (2)(A).
- (f) RESTRICTION ON USE OF FUNDS.—No funds appropriated to carry out a program under subsection (d) or (e) may be used to organize individuals for the purpose of political activism or advocacy.
- (g) REPORTING REQUIREMENT.—
- (1) IN GENERAL.—The Chief of the Office of Citizenship shall submit an annual report to the Committee on Health, Education, Labor, and Pensions of the Senate, the Committee on the Judiciary of the Senate, the Committee on Education and Labor of the House of Representatives, and the Committee on the Judiciary of the House of Representatives.
- (2) CONTENTS.—The report submitted under paragraph (1) shall include—
- (A) a list of the entities that have received funds from the Office of Citizenship during the reporting period under this section and the amount of funding received by each such entity;
- (B) an evaluation of the extent to which grants received under this section successfully promoted an understanding of—
- (i) the English language; and
- (ii) American history and government, including the heroes of American history, the meaning of the Oath of Allegiance, and an attachment to the principles of the Constitution of the United States; and
- (C) information about the number of legal residents who were able to achieve the knowledge described under paragraph (2) as a result of the grants provided under this section.
- (h) ESTABLISHMENT OF NEW CITIZENS AWARD PROGRAM.—
- (1) ESTABLISHMENT.—There is established a new citizens award program to recognize citizens who—
- (A) have made an outstanding contribution to the United States; and
- (B) were naturalized during the 10-year period ending on the date of such recognition.
- (2) PRESENTATION AUTHORIZED.—
- (A) IN GENERAL.—The President is authorized to present a medal, in recognition of outstanding contributions to the United States, to citizens described in paragraph (1).
- (B) MAXIMUM NUMBER OF AWARDS.—Not more than 10 citizens may receive a medal under this subsection in any calendar year.
- (3) DESIGN AND STRIKING.—The Secretary of the Treasury shall strike a medal with suitable emblems, devices, and inscriptions, to be determined by the President.
- (4) NATIONAL MEDALS.—The medals struck pursuant to this subsection are national medals for purposes of chapter 51 of title 31, United States Code.
- (i) NATURALIZATION CEREMONIES.—
- (1) IN GENERAL.—The Secretary, in consultation with the Director of the National Park Service, the Archivist of the United States, and other appropriate Federal officials, shall develop and implement a strategy to enhance the public awareness of naturalization ceremonies.
- (2) VENUES.—In developing the strategy under this subsection, the Secretary shall consider the use of outstanding and historic locations as venues for select naturalization ceremonies.
- (3) REPORTING REQUIREMENT.—The Secretary shall submit an annual report to Congress that includes—
- (A) the content of the strategy developed under this subsection; and
- (B) the progress made towards the implementation of such strategy.

**SEC. 664. ADDRESSING POVERTY IN MEXICO.**

(a) **FINDINGS.**—Congress finds the following:

(1) There is a strong correlation between economic freedom and economic prosperity.

(2) Trade policy, fiscal burden of government, government intervention in the economy, monetary policy, capital flows and foreign investment, banking and finance, wages and prices, property rights, regulation, and informal market activity are key factors in economic freedom.

(3) Poverty in Mexico, including rural poverty, can be mitigated through strengthened economic freedom within Mexico.

(4) Strengthened economic freedom in Mexico can be a major influence in mitigating illegal immigration.

(5) Advancing economic freedom within Mexico is an important part of any comprehensive plan to understanding the sources of poverty and the path to economic prosperity.

(b) **GRANT AUTHORIZED.**—The Secretary of State may award a grant to a land grant university in the United States to establish a national program for a broad, university-based, Mexican rural poverty mitigation program.

(c) **FUNCTIONS OF MEXICAN RURAL POVERTY MITIGATION PROGRAM.**—The program established pursuant to subsection (b) shall—

(1) match a land grant university in the United States with the lead Mexican public university in each of Mexico's 31 states to provide state-level coordination of rural poverty programs in Mexico;

(2) establish relationships and coordinate programmatic ties between universities in the United States and universities in Mexico to address the issue of rural poverty in Mexico;

(3) establish and coordinate relationships with key leaders in the United States and Mexico to explore the effect of rural poverty on illegal immigration of Mexicans into the United States; and

(4) address immigration and border security concerns through a university-based, binational approach for long-term institutional change.

(d) **USE OF FUNDS.**—

(1) **AUTHORIZED USES.**—Grant funds awarded under this section may be used—

(A) for education, training, technical assistance, and any related expenses (including personnel and equipment) incurred by the grantee in implementing a program described in subsection (a); and

(B) to establish an administrative structure for such program in the United States.

(2) **LIMITATIONS.**—Grant funds awarded under this section may not be used for activities, responsibilities, or related costs incurred by entities in Mexico.

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

## **TITLE VII—MISCELLANEOUS**

### **Subtitle A—Increasing Court Personnel**

**SEC. 701. ADDITIONAL IMMIGRATION PERSONNEL.**

(a) **DEPARTMENT OF HOMELAND SECURITY.**—In each of fiscal years 2008 through 2012, the Secretary shall, subject to the availability of appropriations for such purpose, increase by not less than 100 the number of positions for attorneys in the Office of General Counsel of the Department to represent the Department in immigration matters.

(b) **DEPARTMENT OF JUSTICE.**—

(1) **LITIGATION ATTORNEYS.**—In each of fiscal years 2008 through 2012, the Attorney General shall, subject to the availability of appropriations for such purpose, increase by not less than 50 the number of positions for attorneys in the Office of Immigration Litigation of the Department of Justice.

(2) **UNITED STATES ATTORNEYS.**—In each of fiscal years 2008 through 2012, the Attorney General shall, subject to the availability of appropriations for such purpose, increase by not less than 50 the number of positions for attorneys in the United States Attorneys' office to litigate immigration cases in the Federal courts.

(3) IMMIGRATION JUDGES.—In each of fiscal years 2008 through 2012, the Attorney General shall, subject to the availability of appropriations for such purpose—

(A) increase by not less than 20 the number of positions for full-time immigration judges; and

(B) increase by not less than 80 the number of positions for personnel to support the immigration judges described in subparagraph (A).

(4) STAFF ATTORNEYS.—In each of fiscal years 2008 through 2012, the Attorney General shall, subject to the availability of appropriations for such purpose—

(A) increase by not less than 10 the number of positions for full-time staff attorneys in the Board of Immigration Appeals; and

(B) increase by not less than 10 the number of positions for personnel to support the staff attorneys described in subparagraph (A).

(c) ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS.—In each of the fiscal years 2008 through 2012, the Director of the Administrative Office of the United States Courts shall, subject to the availability of appropriations, increase by not less than 50 the number of positions for attorneys in the Federal Defenders Program to litigate criminal immigration cases in the Federal courts.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for each of fiscal years 2008 through 2012 such sums as may be necessary to carry out this section.

**SEC. 702. SENIOR JUDGE PARTICIPATION IN THE SELECTION OF MAGISTRATES.**

Section 631(a) of title 28, United States Code, is amended by striking “Northern Mariana Islands” the first place it appears and inserting “Northern Mariana Islands, including any judge in regular active service and any judge who has retired from regular active service under section 371(b) of this title,”.

**SEC. 703. STUDY ON THE APPELLATE PROCESS FOR IMMIGRATION APPEALS.**

(a) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Director of the Federal Judicial Center shall conduct a study on the appellate process for immigration appeals.

(b) REQUIREMENTS.—In conducting the study under subsection (a), the Director shall consider the possibility of consolidating all appeals from the Board of Immigration Appeals and habeas corpus petitions in immigration cases into 1 United States Court of Appeals.

(c) FACTORS TO CONSIDER.—In conducting the study under subsection (a), the Director, in consultation with the Attorney General, the Secretary, and the Judicial Conference of the United States, shall consider—

(1) the resources needed for each alternative, including judges, attorneys, and other support staff, case management techniques, including technological requirements, physical infrastructure, and other procedural and logistical issues as appropriate;

(2) the impact of each alternative on various circuits, including the caseload of each circuit and the caseload per panel in each circuit;

(3) the possibility of utilizing case management techniques to reduce the impact of any consolidation option, such as requiring certificates of reviewability, similar to procedures employed in habeas corpus proceedings and existing summary dismissal procedures in local rules of the Courts of Appeals;

(4) the effect of the reforms made by this subtitle on the ability of the circuit courts to adjudicate such appeals;

(5) potential impact, if any, on litigants; and

(6) other reforms to improve adjudication of immigration matters, including appellate review of motions to reopen and reconsider, and attorney fee awards with respect to review of final orders of removal.

**SEC. 704. SENSE OF CONGRESS REGARDING THE ESTABLISHMENT OF AN IMMIGRATION COURT SYSTEM.**

(a) FINDING.—The Congress finds that the United States tradition as a nation of laws and a nation of immigrants is best served by an effective, fair, and well-staffed immigration court system that upholds the rule of law and ensures that individuals and families receive fair treatment.

(b) SENSE OF CONGRESS.—It is the sense of the Congress that an effective and fair immigration court system should be established.

## **Subtitle B—Citizenship Assistance for Members of the Armed Services**

### **SEC. 711. WAIVER OF REQUIREMENT FOR FINGERPRINTS FOR MEMBERS OF THE ARMED FORCES.**

Notwithstanding any other provision of law or any regulation, the Secretary shall use the fingerprints provided by an individual at the time the individual enlists in the Armed Forces to satisfy any requirement for fingerprints as part of an application to become a naturalized citizen of the United States, if the individual—

- (1) may be naturalized pursuant to section 328 or 329 of the Immigration and Nationality Act (8 U.S.C. 1439 and 1440);
- (2) was fingerprinted in accordance with the requirements of the Secretary of Defense at the time the individual enlisted in the Armed Forces; and
- (3) submits the application to become a naturalized citizen of the United States not later than 12 months after the date the individual enlisted in the Armed Forces.

### **SEC. 712. NONCITIZEN MEMBERSHIP IN THE ARMED FORCES.**

Section 329 (8 U.S.C. 1440) is amended—

- (1) in subsection (b), by striking “subsection (a)” and inserting “subsection (a), (d), or (e)”; and
- (2) by adding at the end the following:

“(d)(1) Notwithstanding any other provision of law, except for provisions relating to revocation of citizenship under subsection (c), an individual who is not a citizen of the United States shall not be denied the opportunity to apply for membership in the United States Armed Forces. Such an individual who becomes an active duty member of the United States Armed Forces shall, consistent with this section and with the approval of the individual’s commanding officer, be granted United States citizenship after performing at least 2 years of honorable and satisfactory service on active duty. Not later than 90 days after such requirements are met with respect to an individual, such individual shall be granted United States citizenship.

“(2) An individual described in paragraph (1) shall be naturalized without regard to the requirements of this title, if the individual—

“(A) filed an application for naturalization in accordance with such procedures to carry out this subsection as may be established by regulation by the Secretary of Homeland Security or the Secretary of Defense;

“(B) demonstrates to the individual’s commanding officer proficiency in the English language, good moral character, and knowledge of the Federal Government and United States history, consistent with the requirements of this Act; and

“(C) takes the oath required under section 337 and participates in an oath administration ceremony in accordance with this Act.

“(e) Notwithstanding any other provision of law, except for provisions relating to revocation of citizenship under subsection (c), an individual who is not a citizen of the United States who serves under orders on active duty as an enlisted member or warrant officer of the Armed Forces of the United States in a combat zone (as that term is defined in section 112(c) of the Internal Revenue Code of 1986) shall be granted United States citizenship effective as of the commencement of such service in the combat zone without regard to the requirements of this title if the individual files an application for naturalization in accordance with such procedures to carry out this subsection as may be established by regulation by the Secretary of Homeland Security and Secretary of Defense.”.

### **SEC. 713. PROVISION OF INFORMATION ON NATURALIZATION TO MEMBERS OF THE ARMED FORCES.**

The Secretary shall—

- (1) provide information to members of the Armed Forces and the families of such members through a dedicated toll-free telephone service related to naturalization pursuant to section 328 or 329 of the Immigration and Nationality Act (8 U.S.C. 1439 and 1440), including the status of an application for such naturalization;
- (2) ensure that the telephone service required by paragraph (1) is operated by employees of the Department who—
  - (A) have received specialized training on the naturalization process for members of the Armed Forces and the families of such members; and



(B) are physically located in the same unit as the military processing unit that adjudicates applications for naturalization pursuant to such section 328 or 329; and

(3) implement a quality control program to monitor, on a regular basis, the accuracy and quality of information provided by the employees who operate the telephone service required by paragraph (1), including the breadth of the knowledge related to the naturalization process of such employees.

**SEC. 714. PROVISION OF INFORMATION ON NATURALIZATION TO THE PUBLIC.**

Not later than 30 days after the date that a modification to any law or regulation related to the naturalization process becomes effective, the Secretary shall update the appropriate application form for naturalization, the instructions and guidebook for obtaining naturalization, and the Internet website maintained by the Secretary to reflect such modification.

**SEC. 715. REPORTS.**

(a) **ADJUDICATION PROCESS.**—Not later than 120 days after the date of enactment of this Act, the Comptroller General of the United States shall submit to the appropriate congressional committees a report on the entire process for the adjudication of an application for naturalization filed pursuant to section 328 or 329 of the Immigration and Nationality Act (8 U.S.C. 1439 and 1440), including the process that begins at the time the application is mailed to, or received by the Secretary, regardless of whether the Secretary determines that such application is complete, through the final disposition of such application. Such report shall include a description of—

(1) the methods of the Secretary to process and adjudicate such applications;

(2) the effectiveness of the chain of authority, supervision, and training of employees of the Government or of other entities, including contract employees, who have any role in such process or adjudication; and

(3) the ability of the Secretary to use technology to facilitate or accomplish any aspect of such process or adjudication.

(b) **IMPLEMENTATION.**—

(1) **STUDY.**—The Comptroller General of the United States shall conduct a study on the implementation of this subtitle by the Secretary, including studying any technology that may be used to improve the efficiency of the naturalization process for members of the Armed Forces.

(2) **REPORT.**—Not later than 180 days after the date that the Comptroller General submits the report required by subsection (a), the Comptroller General shall submit to the appropriate congressional committees a report on the study required by paragraph (1). The report shall include any recommendations of the Comptroller General for improving the implementation of this subtitle by the Secretary.

(c) **APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.**—In this section, the term “appropriate congressional committees” means—

(1) the Committee on Armed Services and the Committee on the Judiciary of the Senate; and

(2) the Committee on Armed Services and the Committee on the Judiciary of the House of Representatives.

## **Subtitle C—Family Humanitarian Relief**

**SEC. 721. ADJUSTMENT OF STATUS FOR CERTAIN NONIMMIGRANT VICTIMS OF TERRORISM.**

(a) **ADJUSTMENT OF STATUS.**—

(1) **IN GENERAL.**—The status of any alien described in subsection (b) shall be adjusted by the Secretary to that of an alien lawfully admitted for permanent residence, if the alien—

(A) applies for such adjustment not later than 2 years after the date on which the Secretary promulgates final regulations to implement this section; and

(B) is otherwise admissible to the United States for permanent residence, except in determining such admissibility the grounds for inadmissibility specified in paragraphs (4), (5), (6)(A), (7)(A), and (9)(B) of section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)) shall not apply.

(2) **RULES IN APPLYING CERTAIN PROVISIONS.**—In the case of an alien described in subsection (b) who is applying for adjustment of status under this section—

(A) the provisions of section 241(a)(5) of the Immigration and Nationality Act (8 U.S.C. 1231(a)(5)) shall not apply; and

(B) the Secretary may grant the alien a waiver on the grounds of inadmissibility under subparagraphs (A) and (C) of section 212(a)(9) of such Act (8 U.S.C. 1182(a)(9)).

(3) **RELATIONSHIP OF APPLICATION TO CERTAIN ORDERS.**—

(A) **APPLICATION PERMITTED.**—An alien present in the United States who has been ordered excluded, deported, removed, or ordered to depart voluntarily from the United States under any provision of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) may, notwithstanding such order, apply for adjustment of status under paragraph (1).

(B) **MOTION NOT REQUIRED.**—An alien described in subparagraph (A) may not be required, as a condition of submitting or granting such application, to file a separate motion to reopen, reconsider, or vacate such order.

(C) **EFFECT OF DECISION.**—If the Secretary adjusts the status of an alien described in subparagraph (A) under paragraph (1), the Secretary shall cancel the order referred to in subparagraph (A) with respect to such alien. If the Secretary renders a final administrative decision to deny such alien's application for an adjustment of status under paragraph (1), the order referred to in subparagraph (A) with respect to such alien shall be effective and enforceable to the same extent as if the application had not been made.

(b) **ALIENS ELIGIBLE FOR ADJUSTMENT OF STATUS.**—A alien described in this subsection is an alien who—

(1) was lawfully present in the United States as a nonimmigrant alien described in section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)) on September 10, 2001;

(2) was, on such date, the spouse, child, dependent son, or dependent daughter of an alien who—

(A) was lawfully present in the United States as a nonimmigrant alien described in such section 101(a)(15) on such date; and

(B) died as a direct result of a specified terrorist activity; and

(3) was deemed to be a beneficiary under the September 11th Victim Compensation Fund of 2001 (49 U.S.C. 40101 note; title IV of Public Law 107–42).

(c) **STAY OF REMOVAL AND WORK AUTHORIZATION.**—

(1) **IN GENERAL.**—The Secretary shall establish, by regulation, a process by which an alien subject to a final order of removal may seek a stay of such order based on the filing of an application under subsection (a).

(2) **DURING CERTAIN PROCEEDINGS.**—Notwithstanding any provision of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), the Secretary shall not order any alien to be removed from the United States, if the alien is in removal proceedings under any provision of such Act and has applied for adjustment of status under subsection (a), except where the Secretary has rendered a final administrative determination to deny the application.

(3) **WORK AUTHORIZATION.**—The Secretary shall authorize an alien who has applied for adjustment of status under subsection (a) to engage in employment in the United States during the pendency of such application.

(d) **AVAILABILITY OF ADMINISTRATIVE REVIEW.**—The Secretary shall provide to applicants for adjustment of status under subsection (a) the same right to, and procedures for, administrative review as are provided to—

(1) applicants for adjustment of status under section 245 of the Immigration and Nationality Act (8 U.S.C. 1255); or

(2) aliens subject to removal proceedings under section 240 of such Act (8 U.S.C. 1229a).

**SEC. 722. CANCELLATION OF REMOVAL FOR CERTAIN IMMIGRANT VICTIMS OF TERRORISM.**

(a) **IN GENERAL.**—Subject to the provisions of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), other than subsections (b)(1), (d)(1), and (e) of section 240A of such Act (8 U.S.C. 1229b), the Secretary shall, under such section 240A, cancel the removal of, and adjust to the status of an alien to that of an alien lawfully admitted for permanent residence, an alien described in subsection (b), if the alien applies for such relief.

(b) **ALIENS ELIGIBLE FOR CANCELLATION OF REMOVAL.**—An alien described in subsection (a) is an alien who—

(1) was, on September 10, 2001, the spouse, child, dependent son, or dependent daughter of an alien who died as a direct result of a specified terrorist activity; and

(2) was deemed to be a beneficiary under the September 11th Victim Compensation Fund of 2001 (49 U.S.C. 40101 note; title IV of Public Law 107–42).

(c) STAY OF REMOVAL; WORK AUTHORIZATION.—

(1) IN GENERAL.—The Secretary shall provide by regulation for an alien subject to a final order of removal to seek a stay of such order based on the filing of an application under subsection (a).

(2) WORK AUTHORIZATION.—The Secretary shall authorize an alien who has applied for cancellation of removal under subsection (a) to engage in employment in the United States during the pendency of such application.

(d) MOTIONS TO REOPEN REMOVAL PROCEEDINGS.—

(1) IN GENERAL.—Notwithstanding any limitation imposed by law on motions to reopen removal proceedings (except limitations premised on an alien's conviction of an aggravated felony (as defined in section 101(a)(43) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(43))), any alien who has become eligible for cancellation of removal as a result of enactment of this section may file 1 motion to reopen removal proceedings to apply for such relief.

(2) FILING PERIOD.—The Secretary shall designate a specific time period in which all such motions to reopen are required to be filed. The period shall begin not later than 60 days after the date of enactment of this Act and shall extend for a period not to exceed 240 days.

#### SEC. 723. EXCEPTIONS.

Notwithstanding any other provision of this subtitle, an alien may not be provided relief under this subtitle if the alien is—

(1) inadmissible under paragraph (2) or (3) of section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)), or deportable under paragraph (2) or (4) of section 237(a) of such Act (8 U.S.C. 1227(a)), including any individual culpable for a specified terrorist activity; or

(2) a family member of an alien described in paragraph (1).

#### SEC. 724. EVIDENCE OF DEATH.

For purposes of this subtitle, the Secretary shall use the standards established under section 426 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001 (115 Stat. 362) to determine whether the death of an individual occurred as a direct result of a specified terrorist activity.

#### SEC. 725. DEFINITIONS.

(a) APPLICATION OF IMMIGRATION AND NATIONALITY ACT DEFINITIONS.—Except as otherwise specifically provided in this subtitle, the definitions used in the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), other than the definitions applicable exclusively to title III of such Act, shall apply in the administration of this subtitle.

(b) SPECIFIED TERRORIST ACTIVITY DEFINED.—In this subtitle, the term “specified terrorist activity” means any terrorist activity conducted against the Government or the people of the United States on September 11, 2001.

## Subtitle D—Other Matters

#### SEC. 731. OFFICE OF INTERNAL CORRUPTION INVESTIGATION.

(a) INTERNAL CORRUPTION AND BENEFITS FRAUD.—Section 453 of the Homeland Security Act of 2002 (6 U.S.C. 273) is amended—

(1) by striking “the Bureau of” each place it appears and inserting “United States”;

(2) in subsection (a)—

(A) by striking paragraph (1) and inserting the following:

“(1) establishing the Office of Internal Corruption Investigation, which shall—

“(A) receive, process, administer, and investigate criminal and non-criminal allegations of misconduct, corruption, and fraud involving any employee or contract worker of United States Citizenship and Immigration Services that are not subject to investigation by the Inspector General for the Department;

“(B) ensure that all complaints alleging any violation described in subparagraph (A) are handled and stored in a manner appropriate to their sensitivity;

“(C) have access to all records, reports, audits, reviews, documents, papers, recommendations, or other material available to United States Citizenship and Immigration Services, which relate to programs and operations for which the Director is responsible under this Act;

“(D) request such information or assistance from any Federal, State, or local government agency as may be necessary for carrying out the duties and responsibilities under this section;

“(E) require the production of all information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence necessary to carry out the functions under this section—

“(i) by subpoena, which shall be enforceable, in the case of contumacy or refusal to obey, by order of any appropriate United States district court; or

“(ii) through procedures other than subpoenas if obtaining documents or information from Federal agencies;

“(F) administer to, or take from, any person an oath, affirmation, or affidavit, as necessary to carry out the functions under this section, which oath, affirmation, or affidavit, if administered or taken by or before an agent of the Office of Internal Corruption Investigation shall have the same force and effect as if administered or taken by or before an officer having a seal;

“(G) investigate criminal allegations and noncriminal misconduct;

“(H) acquire adequate office space, equipment, and supplies as necessary to carry out the functions and responsibilities under this section; and

“(I) be under the direct supervision of the Director.”;

(B) in paragraph (2), by striking “and” at the end;

(C) in paragraph (3), by striking the period at the end and inserting “; and”; and

(D) by adding at the end the following:

“(4) establishing the Office of Immigration Benefits Fraud Investigation, which shall—

“(A) conduct administrative investigations, including site visits, to address immigration benefit fraud;

“(B) assist United States Citizenship and Immigration Services provide the right benefit to the right person at the right time;

“(C) track, measure, assess, conduct pattern analysis, and report fraud-related data to the Director; and

“(D) work with counterparts in other Federal agencies on matters of mutual interest or information-sharing relating to immigration benefit fraud.”; and

(3) by adding at the end the following:

“(c) ANNUAL REPORT.—The Director, in consultation with the Office of Internal Corruption Investigations, shall submit an annual report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives that describes—

“(1) the activities of the Office, including the number of investigations began, completed, pending, turned over to the Inspector General for criminal investigations, and turned over to a United States Attorney for prosecution; and

“(2) the types of allegations investigated by the Office during the 12-month period immediately preceding the submission of the report that relate to the misconduct, corruption, and fraud described in subsection (a)(1).”.

(b) USE OF IMMIGRATION FEES TO COMBAT FRAUD.—Section 286(v)(2)(B) (8 U.S.C. 1356(v)(2)(B)) is amended by adding at the end the following: “Not less than 20 percent of the funds made available under this subparagraph shall be used for activities and functions described in paragraphs (1) and (4) of section 453(a) of the Homeland Security Act of 2002 (6 U.S.C. 273(a)).”.

**SEC. 732. ADJUSTMENT OF STATUS FOR CERTAIN PERSECUTED RELIGIOUS MINORITIES.**

(a) IN GENERAL.—The Secretary shall adjust the status of an alien to that of an alien lawfully admitted for permanent residence if the alien—

(1) is a persecuted religious minority;

(2) is admissible to the United States as an immigrant, except as provided in subsection (b);

(3) had an application for asylum pending on May 1, 2003;

(4) applies for such adjustment of status;

(5) was physically present in the United States on the date the application for such adjustment is filed; and

(6) pays a fee, in an amount determined by the Secretary, for the processing of such application.

(b) **WAIVER OF CERTAIN GROUNDS FOR INADMISSIBILITY.**—

(1) **INAPPLICABLE PROVISION.**—Section 212(a)(7) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(7)) shall not apply to any adjustment of status under this section.

(2) **WAIVER.**—The Secretary may waive any other provision of section 212(a) of such Act (except for paragraphs (2) and (3)) if extraordinary and compelling circumstances warrant such an adjustment for humanitarian purposes, to ensure family unity, or if it is otherwise in the public interest.

**SEC. 733. ELIGIBILITY OF AGRICULTURAL AND FORESTRY WORKERS FOR CERTAIN LEGAL ASSISTANCE.**

Section 305 of the Immigration Reform and Control Act of 1986 (8 U.S.C. 1101 note; Public Law 99-603) is amended—

(1) by striking “section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a))” and inserting “item (a) or (b) of section 101(a)(15)(H)(ii) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii))”; and

(2) by inserting “or forestry” after “agricultural”.

**SEC. 734. STATE COURT INTERPRETER GRANTS.**

(a) **GRANTS AUTHORIZED.**—

(1) **IN GENERAL.**—The Administrator of the Office of Justice Programs of the Department of Justice (referred to in this section as the “Administrator”) shall make grants, in accordance with such regulations as the Attorney General may prescribe, to State courts to develop and implement programs to assist individuals with limited English proficiency to access and understand State court proceedings in which they are a party.

(2) **TECHNICAL ASSISTANCE.**—The Administrator shall allocate, for each fiscal year, \$500,000 of the amount appropriated pursuant to the authorization of appropriation in subsection (f) to be used to establish a court interpreter technical assistance program to assist State courts receiving grants under this section.

(b) **USE OF GRANTS.**—Grants awarded pursuant to subsection (a) may be used by State courts to—

- (1) assess regional language demands;
- (2) develop a court interpreter program for the State courts;
- (3) develop, institute, and administer language certification examinations;
- (4) recruit, train, and certify qualified court interpreters;
- (5) pay for salaries, transportation, and technology necessary to implement the court interpreter program developed under paragraph (2); and
- (6) engage in other related activities, as prescribed by the Attorney General.

(c) **APPLICATION.**—

(1) **IN GENERAL.**—The highest State court of each State desiring a grant under this section shall submit an application to the Administrator at such time, in such manner, and accompanied by such information as the Administrator may reasonably require.

(2) **STATE COURTS.**—The highest State court of each State submitting an application under paragraph (1) shall include in the application—

- (A) an identification of each State court in that State which would receive funds from the grant;
- (B) the amount of funds each State court identified under subparagraph (A) would receive from the grant; and
- (C) the procedures the highest State court would use to directly distribute grant funds to State courts identified under subparagraph (A).

(d) **STATE COURT ALLOTMENTS.**—

(1) **BASE ALLOTMENT.**—From amounts appropriated for each fiscal year pursuant to the authorization of appropriations in subsection (f), the Administrator shall allocate \$100,000 to each of the highest State court of each State, which has an application approved under subsection (c).

(2) **DISCRETIONARY ALLOTMENT.**—From amounts appropriated for each fiscal year pursuant to the authorization of appropriations in subsection (f), the Administrator shall allocate a total of \$5,000,000 to the highest State court of States that have extraordinary needs that must be addressed in order to develop, implement, or expand a State court interpreter program.

(3) **ADDITIONAL ALLOTMENT.**—In addition to the allocations made under paragraphs (1) and (2), the Administrator shall allocate to each of the highest State court of each State, which has an application approved under subsection (c), an amount equal to the product reached by multiplying—

(A) the unallocated balance of the amount appropriated for each fiscal year pursuant to the authorization of appropriations in subsection (f); and

(B) the ratio between the number of people over 5 years of age who speak a language other than English at home in the State and the number of people over 5 years of age who speak a language other than English at home in all the States that receive an allocation under paragraph (1), as those numbers are determined by the Bureau of the Census.

(e) **TREATMENT OF THE DISTRICT OF COLUMBIA.**—For purposes of this section—

(1) the District of Columbia shall be treated as a State; and

(2) the District of Columbia Court of Appeals shall be the highest State court of the District of Columbia.

(f) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated such sums as may be necessary for each of the fiscal years 2008 through 2012 to carry out this section.

**SEC. 735. ADEQUATE NOTICE FOR ALTERNATE COUNTRY OF REMOVAL.**

Section 241(b)(2) (8 U.S.C. 1231(b)(2)) is amended by adding at the end the following new subparagraph:

“(G) **NOTICE OF COUNTRY OF REMOVAL.**—If the Secretary of Homeland Security determines that an alien will be removed to a country that was not designated by the alien under subparagraph (A)(i) of section 241 as amended at the time of the removal hearing, the Secretary shall provide notice of such determination to the alien and provide the alien an opportunity for a hearing before an immigration judge to request protection from removal to that country on the basis that the alien would face persecution or torture in that country.”.

**SEC. 736. STANDARDS FOR BIOMETRIC DOCUMENTS.**

Any visa issued by the Secretary of State and any immigration-related document issued by the Secretary of State or the Secretary shall—

(1) comply with authentication and biometric standards recognized by domestic and international standards organizations;

(2) be machine-readable and tamper-resistant;

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

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

(5) meet other requirements determined to be necessary by the Secretary of State and the Secretary.

**SEC. 737. STATE IMPACT ASSISTANCE ACCOUNT.**

Section 286 (8 U.S.C. 1356), as amended by this Act, is further amended by adding at the end the following new subsection:

“(x) **STATE IMPACT ASSISTANCE ACCOUNT.**—

“(1) **ESTABLISHMENT.**—There is established in the general fund of the Treasury an account, which shall be known as the ‘State Impact Assistance Account’.

“(2) **SOURCE OF FUNDS.**—Notwithstanding any other provision under this Act, there shall be deposited as offsetting receipts into the State Impact Assistance Account all State impact assistance fees collected under sections 407 and 602 of this Act.

“(3) **USE OF FUNDS.**—Amounts deposited into the State Impact Assistance Account may only be used to carry out the State Impact Assistance Grant Program established under paragraph (4).

“(4) **STATE IMPACT ASSISTANCE GRANT PROGRAM.**—

“(A) **ESTABLISHMENT.**—The Secretary of Health and Human Services, in consultation with the Secretary of Education, shall establish the State Impact Assistance Grant Program (referred to in this section as the ‘Program’), under which the Secretary of Health and Human may award grants to States to provide health and education services to noncitizens in accordance with this paragraph.

“(B) **STATE ALLOCATIONS.**—The Secretary of Health and Human Services shall annually allocate the amounts available in the State Impact Assistance Account among the States as follows:

“(i) NONCITIZEN POPULATIONS.—Eighty percent of such amounts shall be allocated so that each State receives the greater of—

“(I) \$5,000,000; or

“(II) after adjusting for allocations under subclause (I), the percentage of the amount to be distributed under this clause that is equal to the noncitizen resident population of the State divided by the noncitizen resident population of all States, based on the most recent data available from the Bureau of the Census.

“(ii) HIGH GROWTH RATES.—Twenty percent of such amounts shall be allocated among the 20 States with the largest growth rates in noncitizen resident population, as determined by the Secretary of Health and Human Services, so that each such State receives the percentage of the amount distributed under this clause that is equal to—

“(I) the growth rate in the noncitizen resident population of the State during the most recent 3-year period for which data is available from the Bureau of the Census; divided by

“(II) the average growth rate in noncitizen resident population for the 20 States during such 3-year period.

“(iii) LEGISLATIVE APPROPRIATIONS.—The use of grant funds allocated to States under this paragraph shall be subject to appropriation by the legislature of each State in accordance with the terms and conditions under this paragraph.

“(C) FUNDING FOR LOCAL GOVERNMENT.—

“(i) DISTRIBUTION CRITERIA.—Grant funds received by States under this paragraph shall be distributed to units of local government based on need and function.

“(ii) MINIMUM DISTRIBUTION.—Except as provided in clause (iii), a State shall distribute not less than 30 percent of the grant funds received under this paragraph to units of local government not later than 180 days after receiving such funds.

“(iii) EXCEPTION.—If an eligible unit of local government that is available to carry out the activities described in subparagraph (D) cannot be found in a State, the State does not need to comply with clause (ii).

“(iv) UNEXPENDED FUNDS.—Any grant funds distributed by a State to a unit of local government that remain unexpended as of the end of the grant period shall revert to the State for redistribution to another unit of local government.

“(D) USE OF FUNDS.—States and units of local government shall use grant funds received under this paragraph to provide health services, educational services, and related services to noncitizens within their jurisdiction directly, or through contracts with eligible services providers, including—

“(i) health care providers;

“(ii) local educational agencies; and

“(iii) charitable and religious organizations.

“(E) STATE DEFINED.—In this paragraph, the term ‘State’ means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

“(F) CERTIFICATION.—In order to receive a payment under this section, the State shall provide the Secretary of Health and Human Services with a certification that the State’s proposed uses of the fund are consistent with (D).

“(G) ANNUAL NOTICE TO STATES.—The Secretary of Health and Human Services shall inform the States annually of the amount of funds available to each State under the Program.”.

**SEC. 738. NEW WORKER PROGRAM AND CONDITIONAL NONIMMIGRANT FEE ACCOUNT.**

Section 286 (8 U.S.C. 1356), as amended by this Act, is further amended by adding at the end the following new subsection:

“(y) NEW WORKER PROGRAM AND CONDITIONAL NONIMMIGRANT FEE ACCOUNT.—

“(1) ESTABLISHMENT.—There is established in the general fund of the Treasury an account, which shall be known as the ‘New Worker Program and Conditional Nonimmigrant Fee Account’.

“(2) DEPOSITS.—Notwithstanding any other provision of this Act, there shall be deposited as offsetting receipts into the New Worker Program and Conditional Nonimmigrant Fee Account—

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

“(B) all fines collected under section 601(g)(2)(B).

“(3) USE OF FUNDS.—Of the fees and fines deposited into the New Worker Program and Conditional Nonimmigrant Fee Account—

“(A) 53 percent shall remain available to the Secretary of Homeland Security for efforts related to the adjudication and implementation of the New Worker program and the program for conditional nonimmigrants and any other efforts necessary to carry out the provisions of the STRIVE Act of 2007 and the amendments made by such Act, of which the Secretary shall allocate—

“(i) 10 percent for the border security efforts described in title I of the STRIVE Act of 2007;

“(ii) not more than 1 percent for promotion of public awareness of the program for conditional nonimmigrants;

“(iii) not more than 1 percent for the Office of Citizenship to promote civics integration activities described in section 663 of the STRIVE Act of 2007; and

“(iv) 2 percent for the American Citizenship Grant Program under section 663 of the STRIVE Act of 2007;

“(B) 15 percent shall remain available to the Secretary of Labor for the enforcement of labor standards in the geographic and occupational areas in which H–2C visa holders are likely to be employed and for other enforcement efforts under the STRIVE Act of 2007, or any amendment made by that Act, including targeted audits of employers that participate in the H–2C program;

“(C) 15 percent shall remain available to the Commissioner of Social Security and the Secretary of Homeland Security for the creation and maintenance of the Employment Eligibility Verification System described in section 274A(c);

“(D) 15 percent shall remain available to the Secretary of State to carry out any necessary provisions of the STRIVE Act of 2007, or any amendments made by that Act; and

“(E) 2 percent shall remain available to the Secretary of Health and Human Services for the reimbursement of hospitals serving H–2C workers and conditional nonimmigrants established in the STRIVE Act of 2007 and the amendments made by such Act.”.



Ms. LOFGREN. Since Representative Gutierrez became a Member of Congress in 1992, he has been a champion for immigration reform.

I was personally enormously disappointed when the Senate was unable to proceed on comprehensive reform this spring. We were prepared on the House side to tackle this important issue, but because of Senate inaction we didn't get the chance to proceed on hearings or a markup on the STRIVE Act.

The details matter, though, and today we will get information and details on the STRIVE Act. We can't know what the future will hold for comprehensive reform, but we can be armed with knowledge about the leading legislation in the House to meet the immigration challenge.

Because this hearing is about his bill, I would like to yield the balance of my time to my colleague from Illinois that he may properly introduce the subject of our hearing today, after which we will recognize the Ranking Member for his opening statement.

[The prepared statement of Ms. Lofgren follows:]



PREPARED STATEMENT OF THE HONORABLE ZOE LOFGREN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA, AND CHAIRWOMAN, SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP, REFUGEES, BORDER SECURITY, AND INTERNATIONAL LAW

I would like to welcome the Immigration Subcommittee Members, our witnesses, and the public to the Subcommittee's continuing discussion regarding comprehensive immigration reform. Today, our hearing will specifically address one comprehensive immigration reform bill, H.R. 1645, otherwise known as the STRIVE Act or the Security Through Regularized Immigration and a Vibrant Economy Act of 2007.

I would like to commend our Subcommittee colleague, Representative Luis Gutierrez, for not only drafting and introducing H.R. 1645, but also for his service on behalf of comprehensive immigration reform in the 110th Congress and in many Congresses before the 110th. Since Representative Gutierrez became a Member of Congress in 1992, he has been a champion for immigration reform.

I was personally enormously disappointed when the Senate was unable to proceed on comprehensive reform this Spring. We were prepared on the House side to tackle this important issue. But, because of Senate inaction, we didn't get the chance to proceed on hearings or a mark-up on the STRIVE Act.

The details matter, and today we will get information and details on the Strive Act. We can't know what the future will hold for comprehensive reform, but we can be armed with knowledge about the leading legislation in the House to meet the immigration challenge.

Because this hearing is about his bill, I would like to yield the balance of my time to my colleague from Illinois so that he may properly introduce the subject of our hearing today.

Ms. LOFGREN. Mr. Gutierrez?

Mr. GUTIERREZ. I want to thank you, Chairwoman Zoe Lofgren, for calling this hearing and for all of your hard work and efforts to get comprehensive immigration reform passed.

I also want to thank the witnesses for being here and for the support many of you in the audience have shown for the STRIVE Act and comprehensive immigration reform. I want to especially recognize Tony Wasilewski and Eduardo Gonzalez for sharing their personal and heart-wrenching experiences with our broken immigration system. You are brave to testify and you are doing a great service to your family, to other American families facing similar challenges, and to our Nation.

The U.S. Congress cannot and should not ignore the growing immigration crisis in our country. Despite unprecedented resources and daily deaths in the desert, we are still unable to control our borders. We hold family values as important and vital to the moral health of our country, and yet as a Congress we are unmoved by the destruction of good families at the hands of our Nation's broken immigration system.

We have a better-educated and retiring workforce, coupled with a growing demand for workers, but we have no system in place to fill the gaps in our labor force. We also have an estimated 12 million or more undocumented immigrants who risk life and limb to come to America, are working, contributing and assimilating with their families into our communities. In the absence of real reform, it appears that some in Congress believe that the best strategy is to hope that the undocumented will disappear on their own or through by patchwork enforcement measures aimed at making life difficult for them. This is hardly a workable national security strategy or a sensible, fair, just immigration policy.

It should be no surprise to us that what Congress has done and not done over the last several years has resulted in total and utter

failure on all fronts. In fact, we should be ashamed of ourselves for using immigration as a political prop and for not fulfilling our constitutional responsibility to take charge of U.S. immigration policy. We have failed the American people. No wonder state and local communities are struggling to come up with their own solutions.

I can think of few substantive bills that are perfectly drafted on the date of introduction. And the 697 pages of the STRIVE Act is no exception. However, the STRIVE Act is the best place to start as it is bipartisan, has broad support of stakeholders invested in real reform and all of the essential components of a comprehensive solution that will work to clean up the chaos of our current immigration system.

To my colleagues in Congress I say we need to roll up our sleeves, engage friends on both sides of the aisle committed to real reform and negotiate a workable solution to the immigration crisis that only worsens as we ignore it.

As to the first panel, I would like to thank my friends for coming here. Congressman Flake, who I have enjoyed immensely working with in drafting the STRIVE Act. I thank him for being here to testify. To Congressman Baca, thank you for all of your leadership in the Hispanic Congressional Caucus and the Democratic Caucus. And to someone who when then history is written about comprehensive immigration reform, Congressman Ray LaHood, my colleague, I am proud to say, from the State of Illinois. Thank you so much.

Congressman Bilbray, welcome to you, too. We are on opposite sides of this issue, but I hope that one day through honest discussion and negotiation of this issue, you and I and others can come together to solve what we know is a broken immigration system.

I yield back the balance of my time to the gentlelady, the Chairwoman, and I thank her profusely for allowing me to speak and address this very august body.

[The prepared statement of Mr. Gutierrez follows:]

PREPARED STATEMENT OF THE HONORABLE LUIS V. GUTIERREZ, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS, AND MEMBER, SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP, REFUGEES, BORDER SECURITY, AND INTERNATIONAL LAW

I want to thank the Chairwoman for calling this hearing. I also want to thank the witnesses for being here and for the support many of you have shown for the STRIVE Act and comprehensive immigration reform. I want to especially recognize Tony Wasilewski and Eduardo Gonzalez for sharing their personal and heart wrenching experiences with our broken immigration system. You are brave to testify and are doing a great service to your families, to other American families facing similar challenges, and to our nation.

The U.S. Congress cannot and should not ignore the growing immigration crisis in our country. Despite unprecedented resources and daily deaths in the desert, we are still unable to control our borders. We hold family values as important and vital to the moral health of our country, and yet, as a Congress, we are unmoved by the destruction of good families at the hands of our nation's broken immigration system. We have a better educated and retiring workforce, coupled with a growing demand for workers, but we have no system in place to fill the gaps in our labor force.

We also have an estimated twelve million or more undocumented immigrants who risked life and limb to come to America, are working, contributing and assimilating with their families into our communities. In the absence of real reform, it appears that some in Congress believe that the best strategy is to hope that the undocumented will disappear on their own, forced out by patchwork enforcement measures aimed at making life difficult for them.

This is hardly a workable national security strategy or sensible immigration policy. It should be no surprise to us that what Congress has done, and not done, over

the last several years has resulted in total and utter failure on all fronts. In fact, we should be ashamed of ourselves for using immigration as a political prop and for not fulfilling our constitutional responsibility to take charge of U.S. immigration policy. We have failed the American people. No wonder state and local communities are struggling to come up with their own solutions.

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To my colleagues in Congress, I say we need to roll up our sleeves, engage friends on both sides of the aisle committed to real reform, and negotiate a workable solution to the immigration crisis that only worsens as we ignore it.

Thank you again, Madam Chair, and I look forward to the witnesses' testimony.

Ms. LOFGREN. Thank you.

The gentleman yields back.

I now recognize the Ranking Member for his opening 5-minute statement.

Mr. KING. Thank you, Madam Chair.

My first reflection, I had to listen twice to see if Congressman Bilbray was being welcomed to YouTube rather than "to you, too."

That is part of the reality of our life today, and what we are doing here is taking up an issue that I had believed twice had been resolved in the Senate this year. I was a bit surprised when I received the notice of the hearing on a piece of immigration legislation that clearly constitutes amnesty.

The American people have spoken so forcefully against amnesty that the Senate was forced to reject it earlier this summer. The 697 pages of legislative text that make up the STRIVE Act contain some provisions that are interesting, some that beg for more explanation, and some that are troubling, to say the least.

For instance, I am concerned that the bill provides mass amnesty for most of the 12 million to 20 million illegal immigrants currently in the U.S. It is a two-step process in which the illegal immigrants first become conditional non-immigrants and then after 6 years of work in the U.S. they and their spouses and children, who have also been illegally in the U.S., become permanent residents.

I am troubled that supporters of the bill claim that it is not amnesty because illegal immigrants are required to pay fines and sit through English classes before they can become permanent residents, and then with a path to citizenship.

When a 1986 law had similar requirements, everyone agreed it was amnesty, including Ronald Reagan. In fact, even Black's Law Dictionary states that the 1986 Immigration Reform and Control Act provided amnesty for undocumented aliens already present in the country. Yet, IRCA itself required illegal immigrants to wait, pay a monetary fine, and learn English.

The STRIVE Act sells U.S. citizenship for a grand total of \$2,500. That is within the price range of paying a coyote to smuggle the illegal aliens into America in the first place.

Supporters also claim that STRIVE is not an amnesty because conditional illegal immigrants are required to touch back at U.S. border port of entry in order to apply for permanent residence. Such a scenic bus trip does not erase the fact that illegal immigrants have violated the rule of law and have received amnesty.

Current immigration law provides that illegal immigrants cannot return to the U.S. for 10 years if they have been here illegally for over a year. A provision that waives this penalty in order to let illegal immigrants symbolically touch back is in and of itself amnesty.

And, of course, even the bill's touchback requirement can be waived for a multitude of reasons, including extreme hardship.

I have heard many times in this Subcommittee and on the floor that no one wants to repeat the mistakes of 1986, the 1986 Immigration Reform and Control Act. But the STRIVE Act does just that in many different ways. The bill will help create the cottage industry for fraudulent documents and promote the same systemic fraud that followed IRCA. The STRIVE Act allows illegal immigrants who seek amnesty to show fraudulent pay stubs, time sheets and even sworn affidavits and remittance records and records of day labor centers to prove that they have worked for 6 years as conditional non-immigrants in the United States.

Affidavits are invitations to lie, and pay stubs and time sheets are easily forged. That has been proven. In fact, when it seemed earlier this year that the Senate would pass an amnesty, counterfeit document makers were boasting that they could easily supply the requisite documents.

So, so far I have concentrated only on the amnesty component, but there are other components. For instance, the recipients of this would receive Social Security benefits based on the time they worked in the U.S. illegally. Those who receive amnesty will jump to the front of the line and will get to stay legally in the United States before and ahead of in line the three million people who are waiting outside the United States to legally enter.

Legal immigrant numbers will be dramatically increased, nearly doubled, by this bill. A guest worker program will bring in 400,000 new workers and their spouses and children in the first year, a number that could rise to 600,000 in subsequent years. And those guest workers can get green cards at any point, as long as their employer is willing to apply for them.

I mentioned several problematic provisions of the STRIVE Act and could mention many more. For now, I look forward to the witnesses' testimony, but I would ask this question: Why do the proponents of this bill persist in claiming that it is not amnesty? Could we just agree that it is and move on with the debate of the bill? That is what has held up this debate in America now for probably about 4 years.

And I would just define amnesty. We have done so consistently in this Committee. To grant amnesty is to grant a pardon to immigration lawbreakers and reward them with the objective of their crime. A simple definition. It is solid, it holds up under scrutiny.

And as long as we are talking about the same thing here, I do think that we have to have this debate, but I would like to have it after the next election because the Senate has spoken. This bill has no chance of moving through this, I don't believe through this floor. And if it did, I don't believe it has any chance of being taken up by the Senate. And so I would identify this as a piece of legislation that—it is here for vetting, but it is not here for processing.

We will hear what the witnesses have to say.

I thank you, Madam Chair, and I yield back the balance of my time.

Ms. LOFGREN. The gentleman's time is expired.

I would now ask if the Chairman of the full Committee, Chairman Conyers, wishes to make an opening statement?

Mr. CONYERS. Thank you, Chairwoman Lofgren.

There are a number of reasons why this is a very important hearing. The first is that the Chairman of the Agriculture Committee just approached me earlier this morning to tell me about the crisis that is going on in farming.

I don't know if my friends, the witnesses, have heard about it, but he says there is an absolute crisis among farmers. And you can check with your own States and areas.

That is that they don't have anybody to deal with the huge agricultural production that we engage in in this country. And the prices of fruit and vegetables may likely go up 100 percent because of our failure to take this positive action. And so he has asked, Madam Chairwoman and Mr. King, that we have joint hearings with Agriculture and Judiciary on this subject of the crisis in the farm community. And I am sorry I didn't get a chance to raise it with both of you before now.

The second thing is that the American people haven't spoken about reformed immigration because what happened in the Senate is that they did not reach cloture to cut off debate. That is a little bit different from the substance of what has happened. We need to take that into consideration.

Number three, we have got this 60-day no-match letter, which is going to drive a lot of people—if your Social Security number and everything don't match up, you are out. And that is going to drive a lot of people who won't have time to get it corrected within a 60-day period—it is likely to drive them underground.

Finally, I would just like to point out that this term "amnesty" has been misused more times in this debate over the subject matter than any other word I can remember being misused over this long a period of time. Amnesty can't mean that you pay fines, that you pass a national security check, that you have worked for 6 years, that you end up at the end of the line to come back. That is not amnesty. That is working your way back into reentry.

And I close with the observation that in 1986, was it the Senate—both houses passed a reformed immigration bill. So now that you have had my corrective information that clears your head, to begin to approach this matter as impartially as you can. I have never noticed so much unnecessary anti-immigrant bias.

We need to enforce immigration laws, true. But we also need to realize that we are a Nation of immigrations and it is in that spirit that I commend the gentlelady, Chairperson Lofgren, for holding this hearing. And I thank her for this opportunity.

[The prepared statement of Mr. Conyers follows:]

PREPARED STATEMENT OF THE HONORABLE JOHN CONYERS, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN, CHAIRMAN, COMMITTEE ON THE JUDICIARY, AND MEMBER, SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP, REFUGEES, BORDER SECURITY, AND INTERNATIONAL LAW

Since the Senate failed to move comprehensive immigration reform, the white-hot rhetoric of the debate has cooled off a little bit in the ensuing months. Yet, the failure of others to act does not absolve us from the following undeniable facts:

- Our Nation's immigration system is still in disarray.
- Families coming to our shores looking for a better life are still caught in a tangle of confusing requirements and traps for the unwary.
- Employers still risk serious business disruptions from unannounced round-ups of their employees while our citizens fear the deportation of loved ones living in the United States without documents.
- Businesses that pay good wages still have to compete with disreputable companies that get unfair advantage from underground wages and substandard working conditions.

We cannot close our eyes to these problems. And, so we must continue the long and arduous process toward immigration reform. Admittedly, this process will not always be easy and it may not happen quickly. Nevertheless, immigration reform is something that needs to be addressed whether comprehensively or in its component pieces.

Today, we continue this process by considering the STRIVE Act, a bipartisan measure that seeks to strike the right balance on immigration reform—the realities of the Senate with what the Administration initially said it needed. The bill that failed cloture in the Senate was not nearly as progressive as the STRIVE Act, and that bill was still attacked as being an “amnesty” bill. My colleague, Luis Gutierrez, the co-author of the STRIVE Act, along with my colleague on the other side of the aisle, Jeff Flake, have walked a delicate balance between the ideals of the various immigration constituencies and pragmatic legislative realities. Their efforts remind us of the moral imperative of the real people—the men, women, and children—behind the debate.

It is because of these real people that we must continue to construct an immigration system that is fair, orderly, and controlled.

It is because of these real people that we must keep families and communities foremost in our minds as we carry out our legislative and oversight functions.

And, it is because of those real people that we must look beyond the rhetoric, the fear, and the policy battles, and think about the America that we can become.

Ms. LOFGREN. I thank the Chairman.

And in the interest of proceeding to our witnesses, mindful of our busy schedules, I would ask that other Members submit their statements for the record within five legislative days. And without objection, all opening statements will be placed into the record. And without objection, the Chair is authorized to declare a recess of the hearing at any time.

[The prepared statement of Ms. Jackson Lee follows:]

PREPARED STATEMENT OF THE HONORABLE SHEILA JACKSON LEE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS, AND MEMBER, SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP, REFUGEES, BORDER SECURITY, AND INTERNATIONAL LAW

I thank Chairwoman Lofgren for convening this important hearing regarding H.R. 1645, the “Security through Regularized Immigration and a Vibrant Economy Act of 2007.” The hearing comes at a critical time for our nations when the failure of comprehensive immigration reform efforts in the US Senate earlier this year has produced disastrous, social, economic, and legal and security consequences I and other strong advocates of comprehensive immigration reform have warned about in the past. In addition, this hearing comes at a time when our nation is facing a moral dilemma which is beginning to even divide families and communities because of the very sensitive nature of the immigration debate and how it is portrayed by its detractors.

Madam Chair, as one of the principal and long-standing supporters of comprehensive immigration reform in the US Congress and an author of a comprehensive immigration reform bill, the SAVE AMERICA Act, I do hope that today's hearing will

serve as a catalyst for pro-reform forces in the US Congress and indeed our nation and provide impetus for a prompt revival of a vigorous immigration debate that simply could no longer be postponed.

Madam Chair, I should note that the STRIVE Act is a good effort to address the complexities and extraordinary challenges a genuine immigration reform presents us with. It does so with its provisions for increased border protection and interior enforcement, stricter penalties for immigration and criminal law violators along with and attempt to improve the existing broken employee verification system. It also addresses the ever changing needs of our dynamic economy with its foreign worker provisions, along with the path to earned legalization for those illegally here but who meet the strict eligibility requirements. Last but not least, it attempts to preserve essential American values as reunification of families which could accomplish with its revisions to the family visa categories.

Yet the STRIVE Act is but one step in the right direction. The recent failure to pass workable comprehensive immigration reform legislation has caused and will continue to cause, the most undesired consequences for our economy and for individual businesses and families.

The federal government's failure to enact a comprehensive response to the immigration problem has fueled the growing frustration of state and local governments and resulted in a hodge-podge of state laws and local ordinances relating to immigration. As of July 2007, more than 1400 immigration-related bills have been introduced in the legislatures of the several states. Since January of this year, 170 of these bills have become law in 41 states and another 12 await gubernatorial signature.

In some instances, as in the case with the Arizona legislature, states have passed laws that severely penalize employers who exhibit the highest good faith in the hiring of employees. No doubt these new laws will be challenged in the courts on the grounds that they violate federal or state constitutional provisions.

Exacerbating the chaos caused by increased state involvement in the immigration field is the recent announcement that Immigration and Customs Enforcement (ICE) and other federal agencies will focus almost exclusively on the "enforcement" leg of what thoughtful observers recognize as the three-legged comprehensive immigration stool.

The building of walls and concentrating border patrol agents in large metropolitan areas have forced unscrupulous human smugglers to shift their routes to isolated desert areas where forbidding terrain and merciless heat has caused a spike in human death and injury. Escalating the number of raids on businesses and immigrant communities has resulted in economic dislocation and the disruption of community life, including thousands of minor children being left without proper care and vulnerable to disease and neglect.

In reaction to these disturbing developments I recently wrote a letter to President Bush drawing his attention to the fact that the raids on communities and businesses are causing the destruction of innocent families and small business with disastrous economic, social and moral consequences for our communities. I called on President Bush's leadership in helping delay the implementation of Immigration and Customs Enforcement's final rule on "Safe Harbor Procedures for Employers who receive no-match letters." Important stake-holders in the immigration debate subsequently reacted in their own way in an attempt to block the increased worrisome emphasis on enforcement action. Only few days ago, AFL-CIO secured a Temporary Restraining Order from the Courts against the implementation of the same rule.

This new rule is a dramatic shift in the responsibilities and burdens placed on employers. Prior to this new rule, employers were not required to respond to "no match" letters and indeed were advised not to take action against these employees since these letters were designed to be informational rather than for enforcement. Now, however, the new regulation requires employers to not only respond to "no match" letters, but also to do so within a specified timeframe to avoid liability. Failure to respond in such a manner run the risk that DHS could impute onto the employer constructive knowledge of employing an unauthorized immigrant, which could subject the employer to sanctions, civil fines and even criminal prosecution. However, acting quicker than the timeframes codified by the safe-harbor procedures could subject employers to national origin discrimination and wrongful termination claims under the Civil Rights Act of 1964.

Many of the businesses in my district, among them restaurants, hotels, agro-businesses, and construction and landscaping companies depend for their survival on the employment of immigrants. Some have estimated that employers will seek protection from prosecution under the new regulation by terminating hundreds of thousands of workers. However, this final regulation was announced despite over-

whelming and nearly unanimous opposition from business and labor organizations alike, which submitted most of the 5,000 comments the Department of Homeland Security (DHS) received regarding this proposed rule.

I should stress that I am not against raids and proper enforcement of our immigration laws but the current enforcement regime is doing our nation more harm than good, diverting attention and resources from our efforts to combat counterterrorism and protect our communities from serious crime. Worse yet, the vacuum created by the lack of comprehensive reform risks fomenting racism, animosity and violence toward persons of Hispanic origin even in regions of our country where they were welcomed less than a generation ago. In short, the “enforcement-only” approach” will not solve the immigration crisis.

The only effective solution is comprehensive immigration reform. I have introduced a bill that would provide such reform, the Save America Comprehensive Immigration Act, H.R. 750. It requires the Secretary of Homeland Security to impose a 10% surcharge on fees collected for employment-based visa petitions. These funds would be used to establish much needed employment training programs for our rural and urban areas.

It has three legalization programs. It would require the Secretary of Labor to conduct a national study of American workplaces on the exploitation of undocumented alien workers by their employers. It also provides the Border Patrol with the personnel, resources, and equipment that it needs to secure the border. Our borders will continue to be out of control until we have immigration reform that provides more opportunities for immigrants to come to this country legally.

I know that many Americans of goodwill have a different view of the problem and advocate different solutions to the immigration challenge facing America. That does not make them bad people. It simply means we must redouble our efforts to get our message out. It means we need to work harder at rebutting the disinformation that is spread by right-wing pundits, commentators, and politicians. As President John Kennedy famously noted:

“The great enemy of the truth is very often not the lie—deliberate, contrived and dishonest, but the myth, persistent, persuasive, and unrealistic. Belief in myths allows the comfort of opinion without the discomfort of thought.”

Opponents of comprehensive immigration reform after managing to defeat the reform efforts in the US Senate have brought the nation to a crisis point which demands the immediate attention and intervention of a wide spectrum of stake holders in the reform effort. Now more than ever, a comprehensive reform is a necessity and not a luxury for our nation.

The STRIVE Act is a good step in the right direction and hope that today’s hearing will indeed serve as a catalyst for those of who have invested so much in the effort to produce a comprehensive immigration reform rally our forces again.

I support comprehensive immigration reform because only a comprehensive solution to the immigration can achieve the multi-faceted goals of a humane immigration system. At its best, American immigration policy should strengthen the nation’s economy, secure its borders, protect American workers, and reflect the nation’s values and historic role as the beacon of hope and opportunity for the world. I welcome the opportunity to engage in meaningful dialogue about immigration reform. After all, that it what it is going to take to find the common ground necessary to move America forward.

Thank you again, Madam Chair, for convening this meeting and I look forward to hearing from our distinguished witnesses. I yield back the balance of my time.

Ms. LOFGREN. We are honored to have four of our colleagues as witnesses today. We know you well, but not everyone here in the witness room necessarily knows you, so I am going to introduce each distinguished person.

Seated first on the panel is Congressman Jeff Flake, who is serving his fourth term in Congress representing Arizona’s 6th Congressional District. Before serving in the House, Mr. Flake was the Executive Director of the Foundation for Democracy, a foundation monitoring the south African nation of Namibia’s independence process. Following his work at the foundation, he was named the executive director of the Goldwater Institute. He graduated from Brigham Young University where he received his bachelor’s degree in international relations and a master’s degree in political science.



Along with Congressman Gutierrez, Congressman Flake is the principal co-author of the STRIVE Act. He and his wife Cheryl have five children.

I would next like to welcome my co-Californian Congressman Joe Baca, who has represented California's 43rd District since 1999. Congressman Baca served as an Army paratrooper between 1966 and 1968, after which he earned his bachelor's degree from California State University—L.A.

Congressman Baca and his wife Barbara opened their own business in San Bernardino in 1989, while raising four children. First elected to the California State Assembly in 1992 and State Senate in 1998, we of course know Congressman Baca as a leader on the Agricultural and Financial Services Committees. He serves now as the distinguished Chairman of the Congressional Hispanic Caucus.

It is also my pleasure to introduce Congressman Ray LaHood, serving his 7th term as the Representative from Illinois' 18th District. The grandson of a Lebanese immigrant, Congressman LaHood earned his bachelor's degree in education and sociology from Bradley University. He began his professional career as a junior high school teacher, and after serving in the Illinois State House in 1982, he served as the Chief of Staff to House Republican leader Bob Michel. A Member of the Appropriations Committee, Congressman LaHood and his wife, Kathy, have four children and seven grandchildren. And all of us are sad to know that Ray has said that this is his last term with us here, and it has been a pleasure to serve with him these many years.

And finally, I am pleased to recognize another co-Californian, the minority's witness, Congressman Brian Bilbray, the Representative from California's 50th District since June of 2006. Congressman Bilbray was first elected to Congress in 1994 but co-chaired the Federation for American Immigration Reform between 2001 and his 2006 re-election. In addition to his work on the Committee on Oversight and Government Reform, Veterans Affairs, and Science and Technology, he is a member of the Republican Policy Committee and chairs the Immigration Reform Caucus. A native of San Diego, Congressman Bilbray has served San Diego County for over two decades as a mayor, as a county supervisor, and as a Member of Congress. And I would note that I first met Brian when we served on our respective county boards of supervisors, myself in Santa Clara and he in San Diego. He and his wife Karen have five children and six grandchildren. Lucky you.

So we will begin with your testimony. You know the drill on the lights and the 5-minute rule. Obviously, we will not have a heavy gavel.

And we would ask Congressman Flake if you would begin.

**TESTIMONY OF THE HONORABLE JEFF FLAKE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARIZONA**

Mr. FLAKE. I thank the Chair. I thank the Chair and Committee Members for holding this important hearing.

I am glad to be back in the Judiciary Committee, if not on the Judiciary Committee. I received the equivalent of a no-match letter in January. So unfortunately I have to be on this side.

I think all of us watched with a lot of frustration the process this year, particularly in the Senate, where they discussed, came up with a plan, and then came away not being able to pass anything to come here to the House. I think that we will all, the longer we go, be rueful that nothing—that we did no comprehensive reform this year.

When you look across the country, you recognize that there have been 1,400 immigration bills introduced out there across the country; 170 laws have been enacted in 41 States, including my home state of Arizona. As mentioned, it is kind of a patchwork of laws that simply aren't going to work very well because, as we know, immigration and labor law is largely Federal, and it is inescapable that it has to be the Congress that moves here, whether it is the Administration enacting new regulations or States moving forward. Until you have comprehensive immigration reform of our laws, it is going to be difficult to have any semblance of meaningful, workable immigration reform.

Let me just respond to a little of what was said before about why don't you just call this an amnesty, that is what it is, it is just like the 1986 law. It is not like the 1986 law. There are many differences between what is proposed here and the 1986 law. The 1986 law had no fines at all. There were some processing fees, I think, attached, but no fines.

There were no work requirements with the 1986 law. Here under this piece of legislation, you have to work for 6 years. There were no requirements to exit the country and then reenter legally. There are those requirements here.

Most importantly, the 1986 law was not comprehensive. We either failed to recognize or failed to have the political wherewithal to know that we would need a temporary worker program going forward, so we didn't enact one. Therefore, the 1986 law was out of date the day it was signed into law and we didn't have a mechanism for legal workers to come in the country in any meaningful number. And so they came illegally.

And we would have that same problem today if we enacted all the enforcement measures we could do without a meaningful temporary worker program going forward. That is why this legislation was careful to be comprehensive, to have enforcement measures, tough border enforcement, tough interior enforcement, biometric cards, identifiers that we simply don't have today. Employers simply don't have the tools to meaningfully enforce the law today unless the Congress moves ahead and makes some changes, and that is what this is all about.

And that is why I am glad that this Committee has seen fit to hold this hearing and try to move forward.

Let me just say that out there in the States, we are in a very difficult problem. I don't blame my home state of Arizona, the State legislature, or others who are moving ahead and enacting their own laws and trying to get a handle on this situation.

We are in a bad way in Arizona. We bear a disproportionate burden of the Federal Government's failure to have rational immigration law and to enforce the law that we have. Healthcare, education hit us particularly hard and that is not going to change until we have comprehensive reform here.

That is what this legislation was supposed to do. I say was supposed to do, as if the time is passed. I am glad this hearing is being held and I hope that we can move forward to markup and actually get it this year, but I know it is unlikely, frankly, and I think that that is too bad.

Let me just give very briefly the high points of this legislation. I will just sum up.

As I mentioned, it is tough border enforcement. There is interior enforcement with biometric cards so employers will finally have the tools, and it sets up a new worker program for low skill workers.

We know when you look at demographics, we are going to need a labor force in the future that we simply don't have. And when I hear people talk about amnesty, it strikes me that those who say let us simply enforce current law are counting on the fact that we simply can't enforce this law very quickly.

Five percent of the workforce out there, about 7 million people, are undocumented. That means if you remove them from the workforce, there would be severe dislocations and you would have severe problems. Everyone on either side of this issue knows that. But those who say we can simply enforce the law are counting on the fact that it would take years to actually remove those who are here, because if you remove them immediately, you would have severe dislocation.

So this notion that this is an amnesty when simply not enforcing the current law is not an amnesty strikes me as inconsistent. I just don't get the distinction there.

With that, I will go ahead and yield back and wait for questions. I thank the Chair.

[The prepared statement of Mr. Flake follows:]

PREPARED STATEMENT OF THE HONORABLE JEFF FLAKE, A REPRESENTATIVE IN  
CONGRESS FROM THE STATE OF ARIZONA

Thank you, Madam Chairwoman, for holding this important hearing to examine The Security Through Regularized Immigration and a Vibrant Economy Act of 2007 (STRIVE Act), introduced by Congressman Gutierrez and myself. I am pleased that the Immigration Subcommittee has turned its attention to both this important bill and the important issue of comprehensive immigration reform.

Earlier this year, it was with great disappointment that I watched the negotiations on a bipartisan and comprehensive approach to immigration reform in the Senate take crucial steps forward only to be ground to a halt in June. However, the sentiment that I expressed at the time remains all the more valid today—inaction is a victory for no one on this issue. When it comes to reforming our broken federal immigration system, Congress failing to act is simply not an option.

This subcommittee is integrally familiar with the many facets of the problems caused by our broken immigration system. Our current immigration laws are not realistic and there are insurmountable obstacles to their enforcement. Among other consequences, our approach to immigration policy has yielded a steady stream of immigrants crossing the border without inspection or overstaying their visas, an estimated 12 million undocumented immigrants within the U.S., a bureaucratic and ineffective temporary worker program that is little help to a consistent worker shortage, and embarrassing visa processing backlogs. While many agree on the problems, Congress has been unable to agree upon a solution. With state and local governments stepping up and the Administration's upcoming pressure on employers, Congress' prolonged inaction is making a bad situation worse.

STATE AND LOCAL OFFICIALS STEPPING IN DUE TO CONGRESSIONAL INACTION

According to a recent analysis, the first half of 2007 saw more than 1,400 bills dealing with immigration introduced in state legislatures, with 170 laws enacted in 41 states. While the Immigration Reform and Control Act of 1986 made it illegal

for employers to knowingly hire, recruit, or refer for a fee, or continue to employ an alien who is not authorized to be so employed, enforcing this prohibition has been all but impossible due to the prevalence of fraudulent documents and the ease with which undocumented workers could obtain them. Tired of waiting for Congress to act, states are trying to take matters into their own hands, including my home state of Arizona.

State laws dealing with immigration issues have generally followed a strategy of attempting to encourage immigrants, particularly those without proper documentation, to leave the state by making life for them untenable. Additionally, state immigration laws also often seek to target employers that are suspected of hiring workers that are not authorized to work in the U.S. or those providing housing to illegal immigrants with strict penalties and sanctions.

These state immigration laws are being consistently challenged, however, with opponents charging violations of the separation of powers, federal commerce clause, or due process. Along with court challenges, many that are dealing with strict state immigration laws, attempting to do what Congress should, have fears that they will lead to widespread discrimination by employers. It is unfortunate that an increase in penalties for hiring undocumented workers is often not coupled with the appropriate tools that employers could use to accurately identify those that are authorized to work in the U.S.

There is no disputing that the responsibility of crafting immigration policy falls on the shoulders of Congress, not the states. When Congress fails to act, we run the risk of what we are seeing currently: a patchwork of differing state laws that will be ineffective at providing a comprehensive solution. Rather than encouraging them to leave the country, this inconsistent and segmented approach simply provides those in the country illegally a long menu of options from which to choose instead of complying with federal immigration law. Rather than fifty attempts to handle the problem, Congress should move forward with a national approach to immigration reform.

#### THE ADMINISTRATION'S REFORMS ARE AN INCOMPLETE STEP

Not to be outdone by state and local governments stepping into the immigration fray due to Congressional inaction, the Administration has also announced an aggressive plan to increase border security and immigration law enforcement. On August 9th, the Administration announced twenty-six specific policy reforms in a number of areas, including: border security, interior enforcement, worksite enforcement, the guest worker programs, existing immigration, and assimilation. While the Administration is to be commended for doing what they can with the immigration problem and for attacking the issue in as comprehensive manner as possible, these reforms are severely limited in scope because they all fall within the bounds of the existing immigration laws. One of the new provisions in particular, while an aggressive measure intended to enforce the law prohibiting the employment of unauthorized workers, could have significant and negative unintended consequences as well.

While still attempting to clear legal hurdles, the Administration has finalized regulations proposed in 2006 and held until Congress faltered on moving ahead with comprehensive immigration reform. The Department of Homeland Security is planning on sending some 140,000 employers so-called social security "no match letters." These "no match letters" are generated by the Social Security Administration when an employee's name and social security number are not consistent. Under the finalized regulations, employers will have ninety days to resolve any discrepancies that have resulted in the "no match letter" or terminate the employee. Otherwise, they will be considered to have knowingly hired an unauthorized worker. With an estimated seven million unauthorized workers making up roughly five percent of the civilian workforce and consistent reports of worker shortages, the business community is rightfully wary of stepped up worksite enforcement that is not part of a comprehensive solution to our broken immigration system.

While having to operate within the bounds of existing law, the Administration is arguably using the wrong tool for the right problem. Outside of questions regarding whether the Department of Homeland Security has the necessary authority to require employers to deal with "no match letters," the Social Security Administration's "no match letters" were never intended to play a primary role in worksite enforcement of immigration laws. As such, there is considerable concern about whether the Social Security Administration's database and information is up to the challenge, given what is at stake for both workers and employers.

Even if the Social Security Administration's databases and information could be used for worksite enforcement with some degree of confidence, "no match letters" would remain a dubious policy option for immigration law enforcement. The "no

match letter” approach targets so-called “good actor” employers—employers that are doing their paperwork and paying their taxes. An approach to worksite enforcement such as this makes trying to follow the rules and obey the law a disincentive for employers, who would have a reduced risk of being snared in immigration violations or discrimination lawsuits if they simply filed no paperwork at all. In addition, this approach is too far into the hiring process to be effective for either the employee or the employer. Rather than providing a workable and accurate employee verification system for employers to use, this approach relies on the employee being hired and paperwork being submitted to the Social Security Administration before a problem could be detected.

I would submit that these are the kinds of problems one would expect when the agencies are tasked with bootstrapping existing and ineffective regulatory tools to fix a problem that demands a Congressional solution. More troubling are the persistent rumors that the “no match letter” approach has been pursued as a likely approach that will put U.S. industry in the worst situation possible and thus make the immigration issue one that Congress simply cannot ignore. For those of us that live near the border, it is hard to believe there are still those within the U.S. that believe the situation could get any worse.

#### COMPREHENSIVE IMMIGRATION REFORM IS THE ONLY VIABLE SOLUTION

Rather than fifty individual and inconsistent approaches to immigration reform muddying the waters or ineffective regulatory tools that run the risk of ineffectively addressing only one piece of a complex problem, Congress must act. I wholly support enforcing our existing laws, but we simply have to face the fact that our existing immigration policies have insurmountable obstacles that individual state laws or selective regulatory approaches cannot fix and that demand Congressional action. The legislation introduced by Congressman Gutierrez and myself is a comprehensive approach to fixing our immigration system and includes provisions dealing with border security, interior enforcement, worker verification, a new worker program, visa backlogs, and legalizing the undocumented population.

The Gutierrez-Flake bill would increase border enforcement through increasing enforcement personnel on the border and requiring a thorough evaluation of information-sharing, international and federal-state-local coordination, technology, anti-smuggling, and other border security initiatives to ensure that we are doing everything possible to bolster border security. The STRIVE Act would strengthen interior enforcement by increasing penalties for crimes committed by immigrants, including those related to smuggling and gang activities. The bill also sets up an employment verification system whereby employers would be required to confirm each potential employee’s eligibility to work.

The STRIVE Act would also set up a new worker program for low-skilled workers, when a U.S. worker cannot be found to fill a needed job. It addresses the failures and problems with past worker programs and charts a new course that better protects workers, while more effectively and efficiently meeting the needs of employers. The STRIVE Act also would overhaul the family-based and employment-based immigration system to reduce backlogs and inefficiencies. Finally, under this legislation, undocumented workers who pay a fine and pass extensive and thorough background examinations would be eligible for conditional status with work and travel authorization for six years, with the conditional ability to adjust their status if they leave the country and re-enter legally.

Madam Chairwoman, I appreciate the opportunity to testify on the need for comprehensive immigration reform. I hope that I have made clear that whether Congress acts or not, the immigration issue continues to progress. For Congress, it is as simple as asking whether we want to fix the problem . . . or continue to allow it to get worse.

Ms. LOFGREN. Thank you.  
Congressman Baca?

#### TESTIMONY OF THE HONORABLE JOE BACA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. BACA. Thank you very much, and thank you for allowing me to say a few words.

As Chair of the Congressional Hispanic Caucus, the CHC, under the leadership of our immigration task force, the chair, Mr. Gutierrez,

rez, has a long and a proud history of working on immigration. We thank you.

I, and the Caucus particularly, want to say thank you for your services to us, to our country, and to those 12 million undocumented.

I also want to thank you, Madam Chair, and the Subcommittee for having this important hearing today on this vital important issue.

Immigration is critically important not only to the CHC but to every immigrant, whether you are Italian, Irish, Black, Asian. Our constituents across the country are very much concerned that we take action. Whether it is a Hispanic small business owner, the family struggling to stay together while living in fear or individuals who dream of life in the United States only to be confronted with unrealistic processes fraught with delays, the communities we represent care about immigration reform.

Our immigration system is broken, and I state our immigration system is broken. People are suffering. People are suffering. As a result, this is an issue much more than a Hispanic or immigrant issue. This issue is about an American issue. The fact is, our broken immigration system is hurting our economy and making our Nation less secure.

As such, CHC stands in willingness and responsibility to roll up our sleeves and get to work in a bipartisan fashion to make real headway for the good of all Americans. We offer our help, expertise, and commitment to lead the immigration issue on behalf of the community and our constituents.

As we believe the STRIVE Act is a comprehensive solution, and it is a comprehensive solution that best fits immigration problems and the political reality that we are in. STRIVE is a comprehensive bill that addresses employers, business' needs, holds employers accountable, protects employees rights, and provides for strong border security.

STRIVE also addresses a need of farmers through the Ag provision. It sets up an employee verification system to help our businesses better comply with immigration laws. It benefits families by giving more children access to education through the Dream Act. It also makes our Nation safer by increasing enforcement personnel on the borders and increasing penalties for crimes committed by immigrants.

STRIVE provides a pathway to legalization for qualified hardworking immigrants only, and I say hardworking immigrants only. It is critically important to emphasize that this is not an amnesty, as the gentleman indicated before. Any attempt to brand it as such is empty rhetoric and designed to play politics with our security.

It calls for real penalties, for real sacrifices. In fact, many of our members who are supportive of the immigrants' community might personally wish for a different bill, but at the end of the day we feel STRIVE offers the best chance for real reform.

STRIVE helps families stay together and many of us have to look at many of the cases in our districts who know the heartbreaking realities facing immigrant families who want to play by the rules to adjust their status, but are facing unrealistic backlogs and inefficiencies in our current visa system and are also living in fear.

Congress has the responsibility to deal with the broken immigration system and we cannot ignore the immigration crisis, that it will go away or it will solve itself. And that is not the solution to the problem. We have to address the problem. It is the responsibility of Congress. It is not the responsibility of the States. It is ours and we must take action. That is why the President of the United States was supporting and is supporting comprehensive immigration reform.

Congress needs to take action and the STRIVE Act offers the best solution. It is time to solve the crisis. I urge the Subcommittee and Congress to strongly consider the STRIVE Act, a solution that is fair and realistic. It is important for our security and to help businesses and protect our Nation and our proud immigrant history.

I thank you, and I yield back the balance of my time.  
[The prepared statement of Mr. Baca follows:]

PREPARED STATEMENT OF THE HONORABLE JOE BACA, A REPRESENTATIVE IN  
CONGRESS FROM THE STATE OF CALIFORNIA

- Good morning and thank you for allowing me to speak today, as the Chair of the Congressional Hispanic Caucus.
- The CHC, under the leadership of our Immigration Task Force Chair, Rep. Gutierrez, has a long and proud history of working on immigration. I particularly want to thank Rep. Gutierrez for his service.
- I also thank Chairwoman Lofgren and the Subcommittee for this important hearing today and for their leadership on this vital issue.
- Immigration is critically important to the CHC and our constituents across the country. Whether it is the Hispanic small business owner, the family struggling to stay together while living in fear, or the individual who dreams of a life in the US only to confront an unrealistic process fraught with delays—the communities we represent care about immigration reform.
- Our immigration system is broken, and people are suffering. And as a result, this issue is much more than a “Hispanic” or “immigrant” issue. This issue has become an American issue.
- The fact is our broken immigration system is hurting our economy, and making our nation less secure.
- As such, the CHC stands with willingness and responsibility to roll up our sleeves and get to work in a bipartisan fashion to make real headway, for the good of all Americans.
- We offer our help, expertise, and commitment to lead on the immigration issue on behalf of our community and our constituents.
- And we believe that the STRIVE Act is the compromise solution that best fits the immigration problem and the political reality we are in.
- STRIVE is a *comprehensive* bill that addresses employers and business’ needs, holds employers accountable, protects employees’ rights, and provides for strong border security.
- STRIVE addresses the needs of farmers through the Ag Jobs provision. It sets up an employment verification system to help our businesses better comply with immigration laws. It benefits families by giving more children access to education through the DREAM Act.
- It also makes our nation safer by increasing enforcement personnel on the border and increasing penalties for crimes committed by immigrants.
- STRIVE provides a pathway to legalization for qualified, hard-working immigrants only.
- It is critically important to emphasize that this is not amnesty. Any attempt to brand it as such is empty rhetoric designed to play politics with our security.
- It calls for real penalties and for real sacrifice. In fact, many of our Members who are supportive of the immigrant community might personally wish for a different bill.

- But, at the end of the day, we feel STRIVE offers our best chance at real reform.
- STRIVE helps families stay together. Many of us only have to look at the case work in our district offices to know the heartbreaking realities facing immigrant families who want to play by the rules to adjust their status, but are facing the unreasonable backlogs and inefficiencies of our current visa system.
- Congress has a responsibility to deal with our broken immigration system, and we cannot ignore the immigration crisis in hopes that it will go away or solve itself.
- Congress needs to take action, and the STRIVE Act offers the best solution.
- It is time to solve this crisis. I urge the Subcommittee and the Congress to strongly consider the STRIVE Act as a solution that is fair and realistic.
- It promotes security, helps business, and protects our nation's proud immigrant history. Thank you.

Ms. LOFGREN. Thank you, Congressman Baca.  
Congressman LaHood?

**TESTIMONY OF THE HONORABLE RAY LAHOOD, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS**

Mr. LAHOOD. Thank you, Madam Chair.

I want to say a special thanks to Congressman Gutierrez for announcing that he is running for reelection. I know that he wants to be back here and have the opportunity to be a key player in immigration reform.

Luis, I know people in Illinois are thrilled with the fact that you will be running for reelection.

I want to congratulate Congressman Flake for his leadership on this issue against real tough odds and a lot of opposition from people in his own State.

The STRIVE Act, I believe, does strike the right balance between strengthening borders, increasing penalties for violators, rewarding those documented guest workers who have navigated the legal channels to be here, and giving a conditional path to citizenship to those here illegally.

Some of you know that my grandparents came here from what is now Lebanon. They came in 1895. They settled in Peoria, Illinois. They didn't speak one word of English. What they did is they played by the rules, and they worked hard.

This will give those that are here now that same kind of opportunity, to play by the rules. We need to create some rules that will allow people to stay here, because they have either been brought here by what are known as coyotes, or have come across the border seeking opportunities.

Frankly, the idea that 12 million to 20 million illegals will be sent back to the country from which they came is nonsense. Anyone who proposes that is living in La La Land. These people are here doing jobs that Americans don't want. They are working in meatpacking plants that I represent in Central Illinois. They are working on farms that I represent in Central Illinois. They are picking fruits and vegetables; they are doing landscaping work; they are building homes in many of the States that we represent.

We have to provide some kind of legal opportunity for people to be able to play by the rules and that opportunity does not exist today.

Look, this is a comprehensive approach. The idea that you can throw out these code words, and you think if you say amnesty loud



enough and often enough people are going to believe you. This is a comprehensive approach and it goes beyond the code words that people like to use that they think are going to really influence people's opinions.

But in Congress, we have done things in a comprehensive way. Bankruptcy—it took 6 years. Welfare reform, 6 years. The WRDA bill, which is about ready to come out of a conference report—it has taken us 6 years to do that. Sarbanes-Oxley—it took us 2 years. The transportation bill that we passed 2 years ago. The Ag Bill, the farm policy that is being crafted—all in a comprehensive way, where people come together, they reach a consensus, they don't try and use threatening language. They don't try and intimidate other people. They come together to work together to solve problems. That is what people sent us here to do.

The STRIVE Act is a good first step to allow us to get to a comprehensive approach and to send a message to not only employers but people who are living here, "We are going to deal with this problem, we can deal with it." And if we set aside all of the kind of machinations that go on around here and work together, I believe this can happen. I believe it will happen. And I think principled people can talk about their differences and come together, and I hope that we will do that.

Again, I want to thank those who have provided the leadership and ask those who have differences about how we get to the end in terms of providing workers to do those jobs and do it in a comprehensive way, put aside the kind of code words and threatening language and let us work together to make this happen.

I thank you, Madam Chair, for the opportunity. I thank you for holding this hearing. I believe this jumpstarts our opportunity. Because the Senate hasn't done it has never stopped us in the House before. It shouldn't stop us now. Let us move ahead.

[The prepared statement of Mr. LaHood follows:]

PREPARED STATEMENT OF THE HONORABLE JEFF LAHOOD, A REPRESENTATIVE IN  
CONGRESS FROM THE STATE OF ILLINOIS

Chairwoman Lofgren, Ranking Member King, members of the subcommittee, thank you for allowing me to testify in support of an important piece of legislation, H.R. 1645, the STRIVE Act. While the national debate on immigration is not at the forefront as it was earlier this summer, this is still a very significant issue, and I appreciate the opportunity to speak before the subcommittee.

As you are aware, I am a descendent of Lebanese immigrants. My grandparents came to this country in search of better opportunities, and settled happily alongside fellow Lebanese immigrants in Central Illinois. The fact that I am here, testifying before you today as a Member of Congress, exemplifies the contributions immigrants are making to the United States. If this nation is accepting of those who wish to contribute to society with their skills and knowledge, as it has been in the past, it is our duty to provide an appropriate and functional process for the transition and assimilation of immigrants.

I believe we are in agreement about the need to reform our immigration laws and enforcement procedures. It is clear we must assure the smooth entry of legal immigrants, better target and enforce existing visa programs addressing labor shortages, and more effectively prevent people from entering our country illegally. We have been strengthened by waves of immigrants throughout our history, and we must keep the door open and the melting pot working. However, in this era of terrorism, we must have far better control of our borders, both to protect ourselves from violence and to protect taxpayers from undue burdens. We must clarify our immigration policy, laws and procedures, and fund the resources to effectively and fairly implement it.

I believe this legislation at hand—the STRIVE Act—provides a realistic and comprehensive approach when dealing with our immigration system, which is why I support it. This bill strikes a good balance between tackling border enforcement, making the visa system manageable, and giving those who have worked hard for a life in the United States the opportunity to become US Citizens.

First, it is important that we secure our borders and stop the flood of illegal aliens who come into this country every day. This bill will help control this issue by alleviating much of the stress which has currently been placed on our borders. In order to strengthen our security presence, the STRIVE Act increases the number of border agents stationed at our borders by over 11,000 agents. It also increases other border personnel, such as port of entry inspectors, immigration and customs enforcement investigators, and U.S. Marshals by almost 4,000 officers. The STRIVE Act even requires the development and implementation of new border surveillance technology such as constant monitoring by unmanned aerial vehicles. We must remain vigilant in the war on terror, and that includes keeping a close eye on our own borders.

Concurrently, this legislation requires the development of a system for employers to electronically verify the legality of their employees, to ensure the labor they use is of valid origins and does not come from illegal aliens using forged documents. The STRIVE Act also strengthens penalties for employers who knowingly violate this system and hire illegals as employees. With the enforcement of these laws, employers will find more incentive to work through the legal channels and it will be easier to track documented workers in the United States.

While it is recognized that most immigrants come to the United States with a desire to improve life for themselves and their families, we cannot ignore the crime generated from some of the illegal aliens living here. Accordingly, this legislation also increases penalties for those who illegally enter this country or participate in gang-related activity. With further increases in penalties for those who refuse to leave voluntarily or violate the terms of their stays, the STRIVE Act then authorizes a new immigration court system and new positions for DHS attorneys.

One key reason I am supporting this bill is for the guest worker program it establishes. In order to deal with the number of aliens who seek any means possible into the United States, this bill sets up a program consisting of 400,000 new temporary guest worker visas. This will encourage both employers and immigrants to seek a lawful way into the United States. Farmers, landscapers, and the service industry will benefit greatly from this aspect of the legislation, as they often have a difficult time finding Americans who are willing to do the work and the jobs that immigrants so eagerly and diligently seek. Too many times I have had constituents in my office, asking for help to reform the guest worker programs because they cannot find employees from within the community and therefore rely on foreign workers.

Perhaps most importantly, however, this bill addresses the millions of immigrants who are currently living and working in this country but do not have a path to citizenship. Many of the aliens currently here entered the U.S. legally, but have overstayed their visas or gotten lost in the application process. These are hard workers who contribute to the economy and call the United States home. For those who have been here for several years, they have the option to get in line and apply for permanent residency. After a rigorous process of paying fines, back taxes, providing past documentation, and returning home to their country of origin, many will be considered as candidates for citizenship. To send all these guest workers and laborers back home immediately would be devastating to our economy. Finding a good compromise between awarding citizenship and imposing penalties is important, and this bill does just that.

I believe this legislation strikes the right balance between strengthening our borders, increasing the penalties for violators, rewarding those documented guest workers who have gone through the legal channels to be here, and requiring those who entered our country illegally to first return home and wait before being considered for citizenship. The vast majority of people who come to America do so out of a desire to improve their lives and are neither criminals nor a threat to our society. While we are beginning to make progress, more needs to be done promptly, both to enforce our laws against illegal immigration and to ensure the smooth entry of legal immigrants and guest workers. It is my hope that we will continue to work together for a comprehensive solution to an ever-present issue.

Thank you, Madame Chairwoman, and Ranking Member King for inviting me to present my testimony on behalf of H.R. 1645. I urge the subcommittee to support this bill.

Ms. LOFGREN. Thank you, Congressman LaHood.  
Congressman Bilbray?

**TESTIMONY OF THE HONORABLE BRIAN BILBRAY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA**

Mr. BILBRAY. Thank you very much, Madam Chair. I appreciate the chance to testify today.

Madam Chair, as you know I grew up in a border community. I literally was raised in a home that had two houses between us and the border. I have spent my whole life watching what happens at the border when people in Washington, meaning well, make stupid mistakes when it comes to immigration control.

I served as a lifeguard along the border. I would challenge anyone that I am probably the only Member of Congress that has rescued illegals when they are drowning, sadly recovered their bodies when they didn't make it. And, frankly, as a County Supervisor later, watching them being slaughtered on the freeways while they did what we call "Bonsai Charges" up the middle of the freeway after the last piece of legislation that was called "comprehensive."

I served as a small mayor along that border, as a County Supervisor along with you; in fact, a county of 3 million people. And I now serve as Chairman of the Immigration Caucus.

Let me just tell you, though, we have spent the 1986—since the 1986 amnesty proposal, when I was a County Supervisor and saw what happened along the border, we have had more people die trying to enter this country illegally every year than that was killed in the Oklahoma City explosion. Every year we have lost more than that. And that started in 1986 with the concept that we were going to reward illegal behavior by giving them amnesty at that time.

And that is why I have been so strong on this. I have seen the human costs. It is not an abstract to me. I don't live 2,000 or 3,000 miles from the border. I have seen the real life impact when it comes to what we do here in Washington.

I also want to point out that I am proud that I am a child of a first generation immigrant: my mother. She was a war bride that came here in 1944, played by the rules, got her citizenship as quickly as humanly possible. And believe me, every time I go home and go upstairs to mom, she is always there to remind me that she played by the rules and everyone else should learn by example that this is a Nation of legal immigrants, Madam Chair, and legal means a lot in a Nation of laws.

Now, since—you know, the other thing that a lot of people may not know, let me just say, I probably spend more time in Latin America than any other Member of Congress. I would be interested to talk about this. But I see this issue from the South looking up, and that is why I feel so strongly on it.

The border is not an abstract to me. Immigration is not something that affects just one little community. It affects the entire region. And I would just ask you, with this bill, what do you want to accomplish with it? Do you want to stop illegal immigration? Because if you want to stop illegal immigration, Madam Chair, you do not start off the process of stopping illegal behavior by rewarding it.

And for those who say this is not a reward, I ask you, under the STRIVE Act, the proposal that you allow somebody who is illegal

in the country to enter the program and go through a program, are you going to allow everyone in the country, I mean in the world, who have never broken our immigration laws, to have the same option?

Actually, the STRIVE Act has an interesting situation with the touchback. Now, think about the logic of this. Someone shows up from El Salvador and says, "I have never broken your laws, I have never come into your country legally, but I would like to come in now." We say, "Sorry. We have a process that you have to do."

But if someone shows up there from Guatemala who says, "I have been in your country illegally for 10 years. Here is my proof. I have broken your laws." You say, "Fine, you get to qualify for this program, and only if you can show that you have broken the law do you qualify for this program."

Madam Chair, when you give a special program and special status for someone based on the fact they have violated the law, like it or not, it is amnesty. And that is what the American people take it as, no matter how much we talk here.

If it is not amnesty, then offer it to the hundred million people out there that would love to come to this country legally. But that is not what is being proposed here today.

Now, there are challenges that we can work on, but rather than talk about a 600-page document, why don't we talk about a common ground we can work on. H.R.98 by Silvestre Reyes and David Dreier talks about—is included in this bill. Let us take that part and work on those things that we can find common ground on rather than playing to the extremes. Let us remember the mainstream of America that says let us make it simple for people to know who is illegally in this country and let us go to the source of illegal immigration, and that is illegal employment, and crack down on the illegal employers.

And I challenge the majority. Here is your chance to crack down on those people that have been profiteering by the blood, sweat and I say the deaths of illegal immigrants, crackdown on the employers. And H.R.98 is the bill supported by the men and women of the Border Patrol who you and I hire and vest with the responsibility.

And I would ask that we consider bringing the Border Patrol agents here, and I would admonish both sides here. This is an immigration bill. Why don't we bring in the people that would have to enforce the law? Would we do an education bill without ever talking to an educator? Would we do a military bill without every talking to somebody who is a general in the military? I ask you that we bring in that.

So, Madam Chair, this is not the bill at this place. If you want to see what happened in the Senate happen again, bring this to the floor and see what the American people say. But I appreciate the chance.

But I say again, let us join together, work on H.R.98, and then we can talk about moving the agenda together.

I yield back.

[The prepared statement of Mr. Bilbray follows:]

PREPARED STATEMENT OF THE HONORABLE BRIAN BILBRAY, A REPRESENTATIVE IN  
CONGRESS FROM THE STATE OF CALIFORNIA

Chairwoman Lofgren, Ranking Member King, members of the subcommittee, thank you for allowing me to participate in today's hearing regarding H.R. 1645, the STRIVE Act.

As you may know, I grew up in a border community—just a few block's away from the intersection of the US/Mexico border and the Pacific Ocean. My comments today are based on many years of watching our changing immigration policy from the perspective of: a local kid growing up along the border, a former small town mayor, the former Chairman of the Board of County Supervisors in San Diego County, and as the Chairman of the Immigration Reform Caucus. I also speak today as the son of a legal immigrant. My mother was a war bride, emigrating from Australia following World War II. My mother followed the legal process, applying for a visa and then waited to receive permission to come to the United States.

Since the beginning of this Congress, the membership of the Immigration Reform Caucus has increased by more than 20 percent to 111 Members. The IRC is a bipartisan organization with more and more Members from both parties joining each month. I believe the growth of our Caucus this year reflects the concern that Members of Congress have with amnesty proposals advocated by President Bush, the Senate and the STRIVE Act.

There is no reason why Congress should not take immediate action to secure our borders, strengthen our immigration laws, implement true interior enforcement and establish a working employer verification system. The immigration status quo is intolerable. Not because our immigration laws are broken, but because *they are not vigorously enforced*. Immigration enforcement has failed primarily because Administrations for 20 years have not enforced sanctions on employers who hire illegal immigrants. The Administration needs to enforce employer sanctions systematically, not just sporadically. The Administration claims we have a de facto amnesty now. That is true and it is the result of the Administration's own lack of determination to enforce the law. We do not need amnesty to enforce current law; we need to enforce the law to eliminate the need for amnesty. The practice of rewarding illegal behavior and ignoring current immigration laws must come to an end. No one believes that you can grant an amnesty first and enforce the law second.

The STRIVE Act and similar plans have failed to gain wide support from the American people for a very simple reason: Americans do not believe that we should reward people for breaking our laws. While I believe there are MANY problems with the STRIVE Act, I will highlight a few of them.

The STRIVE Act would grant amnesty to nearly all of the 12 to 20 million illegal aliens in the United States via many different routes not just one amnesty. The bill would grant amnesty to illegal aliens by giving those here illegally and continuously since June 1, 2006, "conditional nonimmigrant" status lasting for six years of work here in the United States, and would then allow them and their illegal alien spouses and children to become lawful permanent residents (LPRs).

In order to adjust from illegal to legal status the illegal immigrant would simply have to pay a fine, undergo a medical exam, pass a security background check, agree to pay back taxes for any period, complete English language and U.S. history and civics requirements, and complete a "touching back" (i.e., leaving the United States and being readmitted at a port of entry properly equipped) before being granted LPR status (the bill allows for several exceptions). These requirements are remarkable similar to those required during the 1986 Amnesty. Despite these requirements, the citizens of the United State will see this legislation for what it is . . . AMNESTY. Additionally the STRIVE Act includes the AgJobs bill and DREAM Act with more amnesty provisions.

While the STRIVE Act does make improvements in the area of border security such as increased personnel, improved equipment and infrastructure, I have concerns that it would undermine the sovereignty of the United States. I am concerned that the bill would require the State Department and Department of Homeland Security to report annually to Congress on the progress made toward "developing and implementing an immigration security strategy for North America that works toward the development of a common security perimeter" for the United States, Canada, and Mexico. Additionally, the STRIVE Act requires the establishment of a U.S. Mexico Border Enforcement Review Commission, which would be charged with making recommendations regarding "the protection of human and civil rights of community residents and migrants along the international border," the "adequacy and effectiveness of human and civil rights training of enforcement personnel on . . . the border," the effect of border enforcement efforts on the environment and the quality of life of border communities, and whether state and local law enforcement should

cooperate in immigration enforcement. Furthermore, many provisions included in the legislation which seem to bolster enforcement and border security are already on the books under current laws such as the US-VISIT program and the building of a longer, more secure fence and infrastructure. These should already be in place under the Secure Fence Act of 2006, the Intelligence Reform and Terrorism Prevention Act of 2004 and the Enhanced Border Security and Visa Entry Reform Act of 2002.

The STRIVE Act also concerns me because of the overall costs of a massive amnesty. While most illegal immigrants are unable to receive benefits and welfare programs due to their illegal status, once they have their status adjusted they will be able to receive benefits exceeding any possible taxes being paid into the system. Outside organizations such as the Heritage Foundation have estimated the costs of a massive amnesty on the U.S. taxpayer could be around \$30 billion a fiscal year.

Rather than rewarding lawbreakers and punishing potential immigrants who are following the law, the Immigration Reform Caucus has been working with Congressmen Lamar Smith and Peter King on two border security and immigration initiatives—a comprehensive border security and immigration reform bill (H.R. 2954, The Secure Borders FIRST ACT) and a resolution calling for full enforcement of all current immigration laws (H. Res 499, Resolution calling for the Enforcement of our Current Laws). These two measures represent a strong ‘Security First-No Amnesty’ alternative to the Kennedy-Bush Senate Amnesty bill and the STRIVE ACT. The Secure Borders FIRST (For Integrity, Reform, Safety and anti-Terrorism) Act of 2007 will mandate operational control of all our borders and ensure better enforcement of current U.S. immigration laws. The bill also reforms the H-2A Visa program to allow for a market-based number of temporary agricultural workers each year. The legislation does not provide amnesty, or the legalization of aliens illegally residing in the United States. By reforming the H-2A program we already have in place, we can better enforce our immigration laws while ensuring American farmers have the workforce they need.

The resolution calls for the enforcement of all immigration laws and points out a number of current laws that are not fully enforced. This includes implementing both the entry and exit portions of the U.S. VISIT program, enforcing the employer sanctions that were enacted as part of the Immigration Reform and Control Act of 1986, and increasing the number of Border Patrol agents, detention beds and immigration investigators. I believe that these are common sense measures the Congress should embrace.

In conclusion, I would just like to remind all Members of Congress that in San Diego and Southern California and in many border regions, the impact of illegal immigration is very large and growing. Localities across the country from Hazelton, Pennsylvania to Escondido, California, in my district, have been attempting to deal with the problems of illegal immigration on their own due to the failures of the Congress to address the problem. Effective enforcement of our current laws is vital to our ability to regain control of our country’s borders and our neighborhoods across the United States. I urge the Committee to conduct vigorous oversight of the Administration’s efforts to enforce of our immigration laws and to take under consideration the two thoughtful proposals advanced by Congressmen Smith and King. Thank you again for inviting me to participate in today’s hearing. I look forward to your questions.

Ms. LOFGREN. Thank you.

Thanks to all of you.

I don’t know—we are an hour late. And I know that because all of us have busy schedules, you may, too. So I want to ask you whether you are able to stay for questions, and if any of you are unable to, I am sure the Committee will understand.

If not, I will start.

I wonder, Congressman LaHood, if I could start with you, because you represent a district that is rural and in the center of the country. You reference the no-match letters. I am just wondering, if we do nothing, given the new enforcement efforts and the no-match letters that are going on—and, actually, the reports we have received from the Border Patrol is that we have really tightened up on the border and the number of unauthorized crossings is dropping.

What do you see happening in the economy and in the country if there isn't some movement on some of these issues?

Mr. LAHOOD. Well, we know that in the agricultural community, there is a huge shortage right now, and for those that are now in the field trying to harvest the crops that they have produced throughout the spring and summer, that there is going to be a great deal of difficulty. People are worried about the kind of talk that goes on here in Washington and people are concerned about it.

What I have tried to explain to the people back home is that we have done a lot on enforcement. The previous majority of which I was a Member, obviously, passed an awful lot of penalties and tried to address some of the issues having to do with illegals, employers who brought people here illegally, and some of the other issues.

But frankly, people in the landscaping business, the agricultural business the meatpacking business, want us to do something so they will have the workforce available to them in a legal way, so they can continue to do the things that they know how to do so well.

Ms. LOFGREN. I would like to ask Congressman Flake, we all know Arizona is, as you said, sort of ground zero for undocumented immigration issues, and yet Arizona elected officials have had a fairly forthright stand on coming up with comprehensive solutions, yourself, your Senator, Mr. McCain, your Governor. And I think about the two hotly contested races where immigration was the major issue and Mr. Mitchell and Ms. Giffords got elected on the more of the "We need to have a comprehensive-type solution."

So what is unique about Arizona that is allowing, even in the face of, you know, tremendous challenges that you described in your testimony, the elected officials to come forward to say we can come up with a solution?

Mr. FLAKE. I think in Arizona, because we are on the frontline, we understand that it needs to be comprehensive. I think in Arizona we understand that even if you were to seal the border completely, we would remember that, you know, over 40 percent of those who are here illegally didn't sneak across it. They came legally and have overstayed.

So it has got to be at the employer level that this is going to succeed. And I think we understand there, as well, that you have got to give employers the tools if you want real enforcement.

And, lastly, as I mentioned, in Arizona probably more than elsewhere, you know, across the country it is 5 percent of the workforce is illegal or undocumented, 5 percent, representing about 7 million people. Nobody that I have heard—I have not seen one deportation bill introduced by anyone saying let us go round them up and deport them all tomorrow, and those who say that we can move forward, we don't need the labor, are counting on the fact that we simply can't enforce the current law quickly at all. It will take years to do so.

And so I think in Arizona we recognize that it has got to be a comprehensive solution that involves certainly more border security, but also employer enforcement and interior enforcement, and

then a meaningful temporary worker program that actually gives employers access to legal workers who are coming.

Ms. LOFGREN. Finally, Mr. Baca, I would note at our very first hearing, in Ellis Island, we had the chief of the Border Patrol as a witness, and in his testimony he said you will never secure the border if you don't have comprehensive immigration reform. That was his testimony to us there.

As Chair of the Hispanic Caucus, I mean, you are not sharing the border effort, but the caucuses have the same strong commitment to comprehensive reform.

Can you share with us why this is such a priority for the Caucus and the people the Caucus represents?

Mr. BACA. Thank you, Madam Chair.

First of all, this bill actually helps immigrants currently in the United States legally by legalizing the undocumented immigrants that are more likely to earn wages that are competitive with today's legal immigrants. Current undocumented immigrants would have to go back of the line to earn legalization, so they can't jump the line, so it would help overall.

And finally, many legal immigrants today, including Hispanics, are struggling to keep their families together in the U.S. Parents are being deported while the U.S. citizen children are left behind and families across the U.S. are being torn apart and are waiting through years of delay to be reunited.

STRIVE helps them and family reunification for hardworking, taxpaying families, including legal immigrants here in the United States. And many of the individuals that are here come here for a better way of life. We know that the enforcement is not the answer, the border is not the answer. Comprehensive is the answer to many of the individuals that want to be here. And for anybody to say that they are going to go in front of the line, no, no one is going to go in front of the line.

We also realize that many of the undocumented have spent approximately \$57 million for Social Security, they continue to pay taxes any time they go to anyone of our stores and revenues into our area. They help build our economy.

By allowing a comprehensive immigration legislation, we allow individuals to become taxpayers and pay into our system and have the kind of security that we want for our Nation. We will know who is here legally and who is not here legally. We will know who our neighbors are and should be here. Our country would be a lot safer.

Ms. LOFGREN. Thank you, Mr. Baca.

I note that my time has expired, and I will try to be better in the future.

So I turn now to Ranking Member, Mr. King, for his questions.

Mr. KING. Thank you, Madam Chair. I make no such pledge.

No, certainly I appreciate the rhythm that this Committee has had and there are times when it is important to hear the balance of the response, and you do so with discretion and I appreciate that.

I am just going to go back up through a number of the comments that were made by the witnesses, and maybe I will get to a ques-



tion. I am going to point this out, that legalizing people that are here illegally doesn't guarantee any kind of security.

Right now we have border crossers who cross when they choose to do so. Now we would give them under this bill one more option to cross the border, and that would be now you can cross it legally, where today you might be crossing it illegally, multiple times.

I just ask you, if you are smuggling drugs and you happen to be one who has also met these other qualifications, would you cross the border more or less if you become regularized as this bill proposes to do? And I would submit more. It has more options to cross the border, more options to cross the border with more contraband.

I have never understood the Administration's position or the proponents of this bill as to why we would have more security simply by labeling 12 million to 20 million as now legal that today are not legal. And the—and I go to Mr. Flake's statement. Five percent of the workforce and 7 million people. I agree with those numbers.

But I think to put it in perspective, it works like this, that those 7 million people are also matched up against the 69 million people that are simply not in the workforce. They are between the ages of 16 and 74. There are 69 million nonworking Americans if you add up the unemployed, those on welfare and those that just simply aren't registered to work. That would be a working age that we pay unemployment in.

There are 9.3 million nonworking teenagers in America that would easily replace the numbers of the 7 million working illegals that are here, and the percentage of work that is being done that would be 5 percent of the workforce is the illegal workforce, but they are doing 2.2 percent of the work because these are low-skilled jobs and we match that up to their contribution to the GDP.

And so 2.2 percent of the work amounts to about 11 minutes out of an 8-hour day. You could just shorten your coffee breaks to pick up the slack.

If you wanted to look at the United States from a macro view, certainly there are industries that have become so dependent on illegal labor that they would be in a crisis if tomorrow everybody woke up in a bed where they were legal to work in that country.

I pose this question, I think, to Mr. LaHood. We have something in common, Ray, and that is that our grandparents came here legally in the United States and abided by the laws of the United States. And I have something that troubles me greatly about this, because I was raised in a law-enforcement family. The Constitution and the Code of Iowa was in our house many times, a reverence put down by my father, and I followed his fingers along those lines, a reverence for the rule of law. And I think that is consistent with the oath we all take.

And I have a real concern about what message this says about reverence for the rule of law. And I happen to have interviewed a number of people who live in my district who are beneficiaries of the 1986 Amnesty Act. And they are invariably in favor of another amnesty act because it was good for them and it was good for their family. And their family members also support an amnesty of one version or another because they believe that that is the path of success for their family. And I understand the tone that you bring to this, and I think I share a lot of that.

But if we grant, and I am going to call it amnesty because I don't know how else we would define it, but if we waive the law for 12 million to 20 million people, and they and their family members and their descendants hear the advocacy for how good that was for them, what does that do to the essential, most central pillar of America exceptionalism, which is the rule of law? How would we ever have a culture in the United States of respect for the rule of law if a mass of people of that number were rewarded for breaking the law?

Mr. LAHOOD. Well, the answer to the question is very simple, Mr. King. And that is this: We are not going to waive the rule of law and we are not going to give them amnesty. We are going to say, number one, you admit you are here illegally. You pay a fine. You go back to the country from which you came. You touch back. And at that point, you are admitting that you are here illegally, you are paying a penalty for doing that and there is no amnesty. You are pleading guilty to the fact, "I am here illegally, I am paying a fine, I am going back, I am touching back to the country from which I came."

That is in the STRIVE Act. Those are provisions that, if this were passed, would be a part of it.

Mr. KING. I appreciate that—

Mr. LAHOOD. I think at that point people do admit that they are here illegally, and there is no amnesty because they are paying a fine.

Mr. KING. You understand, my definition is to grant a pardon and reward them with the objective of their crime, and that is really what it is. And the penalty is a less consequence than paying a coyote to come into the United States.

But I would just in turn ask Mr. Flake, how would you define amnesty?

Mr. LAHOOD. Well, let me just say this about the fine. \$2,500 is a lot of money. It may not be a lot of money to a coyote, but it is a lot of money to somebody who is here making \$12 an hour. That is a lot of money, Steve. It is not insignificant.

It may be to some employer who has got a lot of money, but it is not to somebody who has to touch back and pay the fine.

Mr. FLAKE. Let me answer that.

Amnesty in the dictionary, I think Webster's, is "an unconditional pardon for a breach of law." Now, this is not an unconditional pardon. And if your definition is that they are ultimately rewarded with the object of their desire, the other day I was driving to Home Depot, and I got a ticket. I paid the fine, but I still got to drive to Home Depot. In the end, I got the object of my desire. It wasn't very pleasant, but I did.

Mr. KING. Don't forget about YouTube.

Mr. FLAKE. Did I get an amnesty? No. I paid a fine.

And I just—unless you are willing to say we are going to deport everyone here tomorrow who is here illegally, I don't know how you draw distinction between de facto amnesty that that is, and with a process, a laborious process that people have to go through in this bill.

So that would be my answer. Thank you.

Mr. KING. Thanks, Madam Chair.

It is interesting to have Members of Congress as witnesses here. I appreciate your testimony.

Ms. LOFGREN. The gentleman from Illinois, Mr. Gutierrez, is recognized for his 5 minutes.

Mr. GUTIERREZ. Thank you. Thank you very much.

I want to thank, again, the gentlelady from California, the Chairwoman, for conducting this hearing.

I guess I just want to make a few points about what I have heard from this wonderful, distinguished panel. Number one, when we heard earlier from my friend from California, Mr. Bilbray, about Silvestre Reyes, well, Silvestre Reyes now is an original sponsor of the STRIVE Act, because he feels that that is the way to do—

Ms. LOFGREN. And David Drier isn't, but he has still got—

Mr. GUTIERREZ. I understand that. But Silvestre Reyes is a cosponsor, an original cosponsor. He came to testify here before this Committee saying, "That was my position last year, this is my position today."

I would like to also say that in mentioning the question of the Chairwoman, we did invite the Chief of the Border Patrol to our first hearing, the first hearing ever on comprehensive immigration reform under the leadership of Zoe Lofgren, and we went to Ellis Island and we invited him.

And so the chief of Border Patrol said to us, "If you want to stop and control the borders, you need to have a new worker program." This is the chief of Border Patrol, the man who is in charge of defending our borders each and every day and supervising thousands of others who do the same kind of work each and every day.

He said, "You need to take care of the backlog." He said to us, "You need to take care of the backlog. The waits are too long." There are some people waiting for their son from the Philippines, 15, 16, 22 years. It is too long. So people come.

He also addressed the issue to say to us, listen, it was only like 3 or 4 percent of the people that he catches that he finds are engaged in criminal activity. He said the other millions that he turns away are people that are coming here to look for work, to be reunited with their family.

That was the chief of Border Patrol. And we said, well, do we make ourselves safer. Do we make ourselves safer in this country by approving the STRIVE Act? I think we do because we have 12 million people, we don't know where they live, we really don't have their fingerprints. They have all kinds of identification which really isn't theirs.

Let us legalize their status, and now we know who they are, because at the current rate, going back to what Congressman Flake and Congressman LaHood stated earlier, at the current rate, last year we had an unprecedented deportation from ICE agents. So they deported 180,000 people last year. That is unprecedented.

Well, if there are 10 million, or as I suggest 10 million to 12 million, and up to 20 million, as Mr. Bilbray and others suggest, it would take us about 80 years at the current rate, at this unprecedented rate, to get rid of the undocumented workers. That is with no new ones coming into the country.

So really, we are for safety, because we want to stop new undocumented—we want to end illegal immigration. We want to end it once and for all.

And I would just add, the last thing that I thought was curious, that if we got rid of all of the undocumented today, it would be easy, because it would just take 11 minutes out of every other workers time. Well, I guess we are going to start a new national service program where I and everyone else contribute to America's economy, where I take out 11 minutes to go pick grapes and do some butchering somewhere and do something, and if all of us contribute those 11 minutes—and I think it is just a misnomer to talk about things that way.

That isn't going to happen. The good thing is, my mom and dad, as I am sure everybody's parents probably—you know, my mom and dad didn't finish high school, but I got to go to college. My kids, one already graduated and the other one—that is the American tradition.

I am going to be very blunt. Who in this country really wants their kids to go back into the fields, pesticide-ridden fields? Who really wants their kids to go do the kind of work immigrants do each and every day in meatpacking plants in this country, in hotel rooms, and washing dishes? I am not saying it is not honorable work. I am not saying it is not good work. But is that really the American tradition, that we take our children and say, okay, listen, as part of your national service you need to go do these jobs. No.

The great American tradition is that we allow people to come to this country, to do the kind of work at the bottom rung and work their way up, so that future generations can go on to become Members of Congress, can go on to become doctors and lawyers. So that is the great American tradition, much as Mr. LaHood spoke about his immigrant background from Lebanon and where his grandson went to.

So I think that is the spirit in which we should deal with this issue, and I thank the gentlelady and return the balance of my time.

Ms. LOFGREN. The gentleman yields back.

The gentleman from California, my colleague Mr. Gallegly?

Mr. GALLEGLY. Thank you very much, Madam Chairman.

Ray, I listened with great interest to your testimony. Clearly, we all understand we are a Nation of laws. We are a Nation of immigrants. In fact, most people in this room can't go back more than two or three, maybe four generations at the most, and find that their roots come from foreign soil.

But I found it interesting that you prefaced your remarks and you were very proud, or appeared to be very proud, of the fact that your grandparents, to quote Ray LaHood, "played by the rules."

Now, Ray, the folks you are talking about here today did not play by the rules. We have millions of people waiting in line, some 8, 10, 12 years. Our office does more work processing immigration cases than all the rest of the cases combined that we do in our district office. We have folks that play by the rules for many years.

What kind of a message does it send to those that have waited in line, like your grandparents, and played by the rules, what message does it send to them? Why should we play by the rules if

someone whose violated the rules long enough, they get a fine of \$2,500 and touch back. Do they have to touch back for 10 years, 8 years, 6 years? Or for 20 minutes?

What kind of a message does that send, Ray?

Mr. LAHOOD. Well, Mr. Gallegly, I will say this. The reason I am supporting the STRIVE Act is that it allows for people to play by the rules, to create a set of rules that allows people to admit guilt, illegality, to pay a fine, to go back, to touch back for whatever period of time. And at that point, there is a system whereby they can say, "Hey, I violated the rules, I am going to pay my fine, I am going to play by the rules now." That is what the STRIVE Act does—

Mr. GALLEGLY. Well, pardon me, Ray, though, that—

Mr. LAHOOD [continuing]. It gives people an opportunity to play by the rules. Right now—

Mr. GALLEGLY. That doesn't answer the question.

Mr. LAHOOD [continuing]. Part of the answer to the question is, many of the people, as Congressman Flake said, came here legally. They have over stayed their time now, and—

Mr. GALLEGLY [continuing]. And are illegal.

Mr. LAHOOD. That is exactly right. And we want to give them an opportunity, because they are contributing to America, to the fiber of America, to the employment, to the economy of America.

Look, if you send all these people back, what is it going to do to America? Part of the American economy is going to collapse, particularly the agricultural economy, the meatpacking economy, the service economy, because there aren't going to be enough Americans to do these jobs.

Mr. BILBRAY. Congressman, I think the issue is, what are the rules? What are the rules that we are setting up?

Mr. GALLEGLY. Reclaiming my time.

We are a Nation of laws. And clearly you are changing the rules, but you are changing the rules for people that weren't playing by the rules, to say that you now can play by the rules, and it does send a wrong message.

Let me get back to my good friend Jeff from Arizona. Jeff says we don't—in fact, Luis says it would take 80 years to remove those that are illegally in the country today through due process, and we don't even know who they are.

I have a novel concept. Maybe I am out in the woods, and maybe you can steer me straight, Jeff. We know where there are over 10 million people in this country. Social Security service has the name, phone number, and probably shoe size of over 10 million people that are working with an invalid Social Security number. What would be wrong with sending a letter to that employer saying, clarify the Social Security number, make sure it is valid so they are working legally, or you are going to be responsible for terminating that employee. That employee doesn't have a job, has no other means of support.

Most of these folks didn't come to the country illegally because of our beaches. They came because of economic opportunity. Just like we have tens of millions waiting in line right now to come to this country legally for those opportunities.

Explain to me what would be wrong with that concept of enforcing the law or, perhaps, give us your definition of the rule of law.

Mr. FLAKE. Well, that, to a certain extent, is being done right now. And part of the issue is employers now only have a couple of programs to rely on. One is Basic Pilot. Basic Pilot does a decent job of telling the employer if a Social Security number is valid, but it can't tell the employer with great accuracy if it is being used 500 times. And so the employer has to wait for the Federal Government to go back and forth.

And as Congressman Gutierrez said, right now, given the resources we have out there, it would take years and years and years—maybe not 60 years. Maybe we double it or maybe 40 years. What is acceptable? And why is that any less of an amnesty for those who are here illegally now than a process by which they have to come forward, pay a fine, register in the program, go to the back of the line, go back to their home country, register, have 6 years of work and then qualify for a green card? I just don't see—

Mr. GALLEGLY. Thank you very much, Madam Chairman.

Don't quite put me to the maybe list yet.

I yield back.

Ms. LOFGREN. The gentleman yields back.

The gentlelady from Texas, Ms. Jackson Lee, is recognized for 5 minutes.

Ms. JACKSON LEE. I thank the gentlelady as well, and I thank her for moving forward.

I agree with Congressman LaHood, that I believe the American people want this body to address this question.

I was home in the district, and I can assure you that this whole question of immigration has not left the minds of the American people, and there are goodwill people on both sides of the aisles looking for a solution.

And so I am delighted to be a cosponsor of the STRIVE Act. I look forward to this Committee moving on a hearing on the Save America Comprehensive Immigration Reform Bill, because I think it is important that we say to the American people that we are doing a thorough study.

And I thank Congressman Gutierrez for his persistence, and I likewise add my real appreciation for his additional commitment to this body for another 2 years. We are going to get this done.

I am holding a Constitution in my hands, and I know that the next questioner will probably use it in a different way. We are a country of laws. But we have been a country of immigrants. In fact, I think it is important that we take our history much further than the 20th century and the 21st century, for it was immigrants who came to this country who found or sought a better way, oppressed from political oppression, religious oppression.

I am not sure whether they were legal or not. I don't know what kind of structure was here to give them their documentation, but they did come. And when they wrote the Constitution, there were a number of important comments. One of them is, "The sacred rights of mankind are not to be hidden. They are written as with a sunbeam in the whole volume of human nature."

So I think what we have is a moral question as well. How do we address individuals who have come to this country, undocumented,

but for an economic opportunity. And unlike other countries, where we bring people in as indentured servants and otherwise, and so it is an individual man or an individual woman, we have families here. I mean, that is the value system of America. We don't necessarily bring the man in or the woman in to bring a domestic and then tell them that there is no family part that can come in, that they can't access, if you will, their family members.

Might I also say that some of the undocumented persons are overstays. Some of them are family members who have been begging for years to be reunited with their family.

So I think we have to look at this question as a potpourri. Haitians, Africans, Indians from India, Pakistani, individuals in addition to those who come from the southern border.

So I want to lay this groundwork and just ask one question. I don't think we can do a piecemeal response to immigration. That is what we have been doing. And so that is why we have raids on labor sites. And one day there is going to be a violent act. It is going to be violent because the ICE officers have their right to do their job. They are enforcing the law. But there are people who are frightened and may be put in a situation untoward, or the employer may be put in a situation that results in a violent action. Is that what we are trying to promote?

And then now we are talking about the employer verification. I don't think we should be unsympathetic to small restaurants across America who are literally falling apart because they want to do right, they want to abide by the law, but you will close them down. You will close janitorial services down. You will close hotels down. You certainly have already begun to impinge upon the agricultural industry. You will close contractors down.

And I am committed to full employment for America. I don't think we should put immigration reform in place without saying to America, every American that wants to work, you have the first choice of employment. That is the key.

And I certainly don't want to be castigated as some have done for some of us, Congressman Baca, who believe in comprehensive immigration reform, that we are supporting criminals. The crime in New Jersey was horrific and we stand against it. And it is a shame that a convicted or a charged predator was not already incarcerated. I dare anyone to suggest to me that we affirm that. We mourn for those whose lives were lost.

But my question to you, Congressman Baca, is how do we bridge this divisiveness? This is not the civil rights question of the 1960s. It was a different historical basis. But this is the human rights question of the 21st century. And the same divisiveness that was used to pit one America against another America in the race question of the 1960s and 1950s is now being used to divide those of us who want to join together, who want to work, with Anglos and Hispanics, African Americans, Asians and others. It is a divisive effort.

Could you share with me how we can bridge that, making sure every American works, making sure criminals are incarcerated, and have us not be charged with supporting that when we talk about comprehensive immigration reform?

Mr. BACA. Thank you very much for the question.

First of all, Hispanics are very patriotic to this country. They are willing to serve this country, willing to fight for this country, willing to die for this country, and there is no way in the world that you can take 12 million people or above out of this country.

People want a better way of life. They want to live in harmony, like other individuals who have come here, because if we really assess who are the true Americans, Native Americans are the true Americans who are here. The rest of us are all immigrants.

We have a responsibility to live with our neighbors, an opportunity to give these individuals who come to this country and want a better way of life the same opportunities that others have had. If we truly are Christians, we truly believe in Christianity, we would allow individuals who want to come here whether it is for employment, education or family unification, and we want it for national security.

It is important. When people said, wait a minute, this will be national security, we will know who is here legally and who is not legal and who has committed a crime. People want to comply with the law. They will not be breaking the laws. They will be given an opportunity to comply with those laws.

And it is important that we bridge that gap, that we don't have hatred amongst one another, and what we will end up doing, if we don't do anything, we will ultimately get into profiling of individuals, whether you carry a document that says if you are brown or you are Black or you are a different kind of color, you may have to show ID while somebody else will not.

It is important that we work together. I think the STRIVE Act goes in that direction and we have that opportunity, and we have all got to come together. And it is the responsibility of Congress to come up with legislation. That is why laws were made.

When you talked about the Constitution, those were laws that were created. Those weren't laws that were there before. It allowed them. We have the same responsibility to create laws now, and we need to in addressing this issue.

Ms. JACKSON LEE. Thank you.

Ms. LOFGREN. The gentlelady's time has expired.

Ms. JACKSON LEE. I thank you. Yield back.

Ms. LOFGREN. And all time has expired.

I would like to thank these four Members of Congress for taking time out of days that I know are hectic and sharing their expertise and their thoughts with us.

I know that we will continue to discuss these items and I just feel enormously blessed that you have given us this time this afternoon.

Mr. BILBRAY. Madam Chair, I appreciate the chance for us all to participate, and I would just encourage everyone here to, as we discuss this and it goes down, I just realize how few of us participate in things like parliamentary meetings with Mexico and the Latin American countries. And I encourage everyone to spend more time, talk to the people down there and see it from their perception. It really is eye opening.

Ms. LOFGREN. Mr. King and I just came back from Mexico and Mr. Berman, also.

Thank you very much.



We will now ask our next panel to come forward.

As we have our next panel coming forward, I know that one of our witnesses has already told us that she has a plane to catch at 4:00 and is going to have to leave at that time, that is Cassandra Butts, who we have known for so many years when she worked here on the Hill.

So I just wanted to announce that in advance. When the magic hour comes, Cassandra is heading for the airport.

I am going to begin the introduction of our witnesses, and thank you again for taking time to be with us here today. People don't realize when they watch these hearings that these are individuals who, really, out of the goodness of their heart have come here to share their information, their experiences, to inform the Congress, and it is a great donation to your Government, and we appreciate it a great deal.

Seated first on the panel we have Tony Wasilewski, a small business owner from suburban Chicago. Raised on his family's farm in Poland, Mr. Wasilewski fled Poland's Communist regime in 1989. He married his wife, Janina, here in the United States in 1993, and they are proud parents of their six-year-old son, Brian. The family has made their home in Schiller Park, IL, where they own a janitorial contracting business. After Janina was deported earlier this year, Mr. Wasilewski became active with several immigrant advocacy organizations. Later this month, on September 18 to be precise, Mr. Wasilewski will take the oath of allegiance and officially become a United States citizen.

Next we are pleased to have Eduardo Gonzalez join us. Serving his fourth year in the U.S. Navy as a helicopter mechanic, born in Mexico in 1983, Mr. Gonzalez came to the United States as a child with his mother and two brothers. After participating in ROTC and graduating from high school in 2001, Mr. Gonzalez earned an associates degree in occupational studies. The proud father of 22-month-old Eduardo, Jr., Mr. Gonzalez became a U.S. citizen on July 21, 2005. He has completed two tours of duty in the Middle East and is in preparation for his third deployment. On behalf of Congress and the American people, Mr. Gonzalez, we owe you and your family our most genuine gratitude for your service.

I am pleased next to introduce the Reverend Luis Cortés, Jr., the president and CEO of Esperanza USA. In addition to his work with Esperanza, Reverend Cortés serves on the board of the Federal Home Loan Bank in Pittsburg and was appointed to the Pennsylvania Minority Business Authority in Philadelphia, a workforce investment board. He is one of the founders of the United Bank, Pennsylvania's first African American-owned commercial bank. Raised in Spanish Harlem, Reverend Cortés graduated with honors from City College in New York with a master's of Divinity from Union Theology Seminary and with a master's degree from New Hampshire College.

It is my pleasure to next introduce Joshua Hoyt, director of the Illinois Coalition for Immigrant & Refugee Rights. Mr. Hoyt has worked for nearly 30 years as a social justice advocate in both the United States and abroad. Before assuming the directorship of the Coalition in 2002, Mr. Hoyt served for 4 years as the Executive Director of the Organization of the Northeast in Chicago, as Presi-

dent of Illinois' largest consumer organization—the Citizen's Utility Board, and as Associate Director of the United Power for Action and Justice in Chicago. Mr. Hoyt is a graduate of the University of Illinois and the Central University of Barcelona in Spain.

I would also like to extend our welcome to Cassandra Q. Butts, the senior vice president for domestic policy at the Center for American Progress, or CAP. Prior to her work at CAP, Ms. Butts served as senior adviser to former Democratic leader and presidential candidate Richard Gephardt and as an adviser to Senator Barack Obama. She has practiced law as an assistant counsel for the NAACP's Legal Defense and Education Fund and she served as an international observer during Zimbabwe's 2000 parliamentary elections. She earned her bachelor's degree from the University of North Carolina at Chapel Hill and her law degree from Harvard University.

It is my pleasure next to introduce Michael Barrera, the president and CEO of the United States Hispanic Chamber of Commerce. Due to a last minute scheduling conflict, Mr. Barrera will be reading the testimony prepared by his colleague David Lizarraga, the chairman of the board of directors at the Hispanic Chamber. Prior to his selection as president, Mr. Barrera was appointed by President Bush in 2001 to serve as the National Ombudsman for the United States Small Business Administration. A native of Kansas City, Missouri, Mr. Barrera earned his bachelor's degree from Kansas State University and his law degree from the University of Texas. He co-founded two law firms in Kansas City and served as an assistant prosecutor in Jackson County, Missouri.

Finally, I would like to welcome the minority's two witnesses, the first of whom is Julie Kirchner, the Director of Government Relations at FAIR, the Federation for American Immigration Reform. Prior to joining FAIR, Ms. Kirchner worked as counsel at the Minnesota House of Representatives while she staffed the Judiciary and Civil Law Committees. In addition to her legislative experience, Ms. Kirchner has worked both as a private litigator and a criminal prosecutor. She earned her bachelor's degree from Yale University and her law degree with high distinction from the University of Iowa College of Law.

And finally, I am pleased to welcome Corey Stewart, the chairman at-large for the Prince William County Board of Supervisors in Virginia. Chairman Stewart was elected in 2006 after serving for 3 years on the Board as the District Supervisor from Occoquan. He earned his B.S. from Georgetown University School of Foreign Service and his law degree with honors from William Mitchell College of Law. He also practices law as an international trade attorney with the Washington firm of Foley and Lardner.

Now, each of your statements will be made part of our record in their entirety, so we would ask that you testify, summarize if necessary, for 5 minutes.

We have these little machines on the table. When the light turns yellow, it means you have got 1 minute left. I know, it always seems faster than possible. And when the red light goes on, it means you have actually used up your 5 minutes and we would ask you to please summarize and conclude, because we have a lot of witnesses and we want to hear from all of you.

So that is how we will proceed, and we will start with Mr. Wasilewski, and I hope I am not mispronouncing your name too severely.

**TESTIMONY OF TONY WASILEWSKI, SMALL BUSINESS OWNER,  
SCHILLER PARK, IL**

Mr. WASILEWSKI. Thank you. Yes, that is correct.

Hello. My name is Tony Wasilewski. I am an immigrant from Poland, a long-time resident of the Chicago area, and in another 2 weeks, a proud citizen of the United States. I am also a husband and father.

I have been married to my wife Janina for 14 years and never had been separated from her. However, since June 8 of this year, I am living by myself because my wife was deported to Poland.

Janina came to the United States in 1989. Fleeing communist Poland, she immediately applied for political asylum. In 1993, September 25, we got married. Later that year, she lost her asylum case and received an order for deportation instead.

In 1995, during an immigration court hearing, Janina was ordered to voluntarily depart the United States. However, she did not understand what happened at the hearing. There was no one there to translate the proceedings and the judge never addressed her directly or explained to her the consequence of not going through with the voluntary departure.

Not knowing what happened or was going to happen, we decided that Janina would stay with me. I was starting the process of getting my green card through work sponsorship, and hoped that Janina could get hers with me. Another reason why Janina did not leave the United States was that she was undergoing fertility treatment.

Here, in the United States, my wife received adequate care, which would not have been available to her in Poland at that time. During this time we suffered three miscarriages. Finally, 6 years ago, our son Brian was born.

We tried to get Janina's case reopened and reviewed. In 2005, the Seventh Circuit Court of Appeals ruled that it was unable to review her case under a law passed in 1996.

Meanwhile, we became an example of a model immigrant family. We learned English, bought a house in suburban Chicago, and started our own business. We were living the American dream.

On March 8 of this year, the dream turned into a nightmare when Janina received her final order of deportation. She was to report to the immigration office ready for deportation.

We were able to postpone the deportation in hopes of finding a solution for this difficult situation. Janina was able to stay and see our son's kindergarten graduation, June 5, just 2 or 3 days before her deportation on June 8. But despite huge support from the community, our church, and local officials, we were not able to keep Janina in the United States for good.

After 18 years in the United States, we have nothing in Poland. Janina had nothing to go back to and I would have nothing there, either.

We decided that Brian, our son, would go with his mom to Poland, because a small child needs his mother. I stayed to wait for

my citizenship interview, take care of our house, and run our business, which is the only source of my family income. This was the hardest decision of my life. I had to see my family go without me, and to let Brian think that he was just going on a vacation.

We don't know what the future holds for us, and particularly for the child that Janina and I wanted with so much love for so many years.

I feel like my life was destroyed. I am the father. I am the husband. Now, I feel lost. My only chance to get them back is to get a waiver for Janina; otherwise, she is barred from returning to the United States for 10 years.

Our community and local officials have already offered their help with the complicated process of applying for this waiver. Will that support help? Will my pain be enough hardship for immigration officers to grant Janina a waiver? I can pray for it.

I hope this hearing and my testimony will help all the separated families so they can be united again. I also hope that my testimony will move you, Members of this Committee, to fix our immigration laws so that no more families need to be torn apart.

Thank you.

[The prepared statement of Mr. Wasilewski follows:]

PREPARED STATEMENT OF TONY WASILEWSKI

My name is Tony Wasilewski. I am an immigrant from Poland, a long-time resident of the Chicago area, and in another two weeks, a proud citizen of the United States.

I am also a husband and father. Unfortunately, my family is one of the many families who suffer due to irrational immigration law in our country.

I have been married to my wife Janina for 14 years and never had been separated from her. However, since June 8 of this year, I am living by myself because my wife was deported to Poland. Despite my legal status and the support of our community, I was not able to stop her deportation.

Janina came to the United States in 1989 fleeing communist Poland. She immediately applied for political asylum. In 1993, we got married. Later that year, she lost her asylum case and received an order for deportation instead.

In 1995, during an immigration court hearing, Janina was ordered to "voluntarily depart" the United States. However, she did not understand what happened at the hearing. There was no one there to translate the proceedings. And the judge never addressed her directly or explained to her the consequence of not going through with the voluntary departure.

Not knowing what happened or was going to happen, we decided that Janina would stay with me. I was starting the process of getting my green card through work sponsorship, and hoped that Janina could get hers with me. Another reason why Janina did not leave the United States was that she was undergoing fertility treatment. Here, in the United States, my wife received adequate care, which would not have been available to her in Poland at that time. During this time we suffered three miscarriages. Finally, six years ago, our son Brian was born.

We tried to get Janina's case reopened and reviewed. In 2005, the Seventh Circuit Court of Appeals ruled that it was unable to review her case under a law passed in 1996.

Meanwhile, we became an example of a model immigrant family. We learned English, bought a house in suburban Chicago, and started our own business. We were living the American dream.

On March 8 of this year, the dream turned into a nightmare when Janina received her final order of deportation. She was to report to the immigration office ready for deportation. She could bring a maximum of 44 pounds of baggage with her. At that moment, we learned that after 18 years of living the American dream, her life in this country would be reduced to 44 pounds.

We were able to postpone the deportation in hope finding a solution for this difficult situation. Janina was able to stay and see our son's kindergarten graduation, just two days before her deportation. But despite huge support from the community,

our church, and local officials, we were not able to keep Janina in the United States for good.

Immigration officials said she broke the law. But my wife has never done anything wrong in here; she has no criminal record, not even a parking ticket. And it was because Janina tried to follow the legal procedures for staying in the US by applying for political asylum, she exposed herself to the immigration system and was deported.

After 18 years in the United States, we have nothing in Poland. Janina had nothing to go back to. And I would have nothing there, either.

We decided that Brian would go with his mom to Poland, because a small child needs his mother. I stayed to wait for my citizenship interview, take care of our house, and run our business, which is the only source of my family income.

This was the hardest decision of my life. I had to see my family go without me, and to let Brian think that he was just going on a vacation. We don't know what the future holds for us, and particularly for the child that Janina and I wanted with so much love for so many years. Will Brian lose his country, his friends, and his school? Will he have to grow up to become a teenager in a country that is not his own, without his father by his side? Will I have to continue to struggle to travel back and forth in hopes of keeping my family united? This outcome has been devastating to Brian.

I feel like my life was destroyed.

I am the father. I am the husband. Now, I feel lost.

My only chance to get them back is to get a waiver for Janina; otherwise, she is barred from returning to the United States for ten years. Our community and local officials have already offered their help with the complicated process of applying for this waiver. Will that support help? Will my pain be enough "hardship" for immigration officers to grant Janina a waiver? We can only pray for that.

I feel obligated not only to share my story but also to be a voice of countless broken families who suffer due to our irrational immigration laws. I wonder whether our country any safer or any better now that Janina is gone. What good has been done from my family being broken up?

I hope this hearing and my testimony will help all the separated families so they can be united again. I also hope that my testimony will move you, members of this committee, to fix our immigration laws so that no more families need to be torn apart. Thank you.

Ms. LOFGREN. Thank you very much for sharing that story.  
Mr. Gonzalez?

**TESTIMONY OF PETTY OFFICER SECOND CLASS  
EDUARDO GONZALEZ, U.S. NAVY, JACKSONVILLE, FL**

Mr. GONZALEZ. Chairwoman Lofgren, Ranking Member King, Members of the Committee, special guests, good afternoon. My name is Eduardo Gonzalez. I am enlisted in the United States Navy. My rank is Petty Officer Second Class.

I enlisted in the Navy in 2003. I graduated high school in 2001 and then continued my education by earning my Associate's degree in occupational studies. I had many choices, but after September 11, I decided to make this a better country for my family.

Since my enlistment I have been deployed two times; the first, on June 7th, 2004, on board the *USS John F. Kennedy* in support of Operation Enduring Freedom. The second time was on November 28, 2005, when I was deployed to Camp Beuhring, Kuwait in support of Operation Iraqi Freedom.

I am now preparing for my third deployment to begin this November on board the *USS Harry Truman* for a tour of the Gulf region.

I am proud of the service that I provide to my country. I enjoy every second of it. In fact, I plan to reenlist.

I met my wife, Mildred Gonzalez, in November 2001. On May 28, 2004, we decided to get married. Mildred's mother had come to the United States——

Ms. LOFGREN. Mr. Gonzalez, just take a minute. We are not going to rush you. Just take a minute. Take a deep breath.

Mr. GONZALEZ. Mildred's mother had come to the United States from Guatemala in 1989, without documents, when Mildred was only 5 years old. Mildred's mother applied for asylum/NACARA in September of 2000 and included Mildred on her application.

Her mother was eventually granted legal status in July 2004. Because Mildred was included on her mother's application, Mildred also should have been granted lawful status in July of 2004. However we were unaware of the repercussions of our decision to get married 6 weeks earlier. Our marriage cancelled out Mildred's ability to obtain status through her mother, because she was no longer an unmarried daughter under 21 years old.

At the time we got married, we did not know that Mildred and her mother would have an appointment with an immigration official in July of 2004. After all, they had been waiting for 4 years.

Mildred attended the immigration appointment, with her mother and brother, and Mildred was denied her request to obtain legal status, solely due to her change in marital status. At the time of her immigration interview, I was deployed and only being able to communicate once in a while. I found out that she was disapproved.

Mildred's case was then sent to an immigration court for removal proceedings and her first court appearance was on September 16, 2004. The judge was generous because of our situation and decided to reset her court date to June 14, 2007.

We were all hoping for immigration reform by that time, hoping that the law would change. However, that did not happen and on June 14, 2007, Mildred and I appeared in court, fully expecting that Mildred was going to have to leave the United States within 120 days.

I was in uniform and the judge, knowing that I was about to deploy and knowing that we have a 22-month old son, gave Mildred a 12-month extension. We recognize that Mildred has been fortunate to get these extensions. However, these extensions do not solve our problem, they only prolong them.

On June 8, 2008, if Mildred's legal status does not change, she will have 60 days to voluntarily depart the United States, or she will be deported.

Since she has not been to Guatemala since she was 5 years old, she is not familiar with the culture, language, or society. She has no family there, and I feel that this would be very difficult for us and perhaps even dangerous for her.

Mildred has spent 18 years of her life in this country, and to us and our child, the United States is her home.

Our son, Eduardo Gonzalez, Jr., was born on December 9, 2005, 2 weeks after I was deployed to Kuwait on my second tour. Missing my first-born child's birth, was a sacrifice in itself. Yet, I had to perform my duties as a member of a team of mechanics that I am a part of.

I am about to go on deployment once again, and knowing that my wife might not be here when I return, or where my son might end up if I don't return before her court date. Sometimes I find it difficult to concentrate on my duties, but as a citizen of the United States of America, sometimes it makes me wonder. If I can die for my country, why can't I just be with my family?

Every time I go somewhere, my wife worries about me not coming home one day, but now she also has to worry about leaving home, a country where she feels safe.

I want to serve my country 100 percent, but with these issues in the back of my mind, I feel I can't do that.

I am not asking for anything, I am just bringing these issue to your attention. As you may already know, my family is not the only one going through this situation. Many will not come forward and speak about it because they fear that they will have to pay the consequences.

Mildred and I also worry that this might have a negative impact on us, but given this opportunity, we feel that if we tell our story we might be helping out others in this situation.

I come before you not only as a United States Navy sailor, but as a husband, a father and an American citizen. I am hoping that my testimony helps and something positive comes out of it.

Thank you very much.

[The prepared statement of Mr. Gonzalez follows:]

PREPARED STATEMENT OF EDUARDO GONZALEZ

Chairwoman Lofgren, Ranking Member King, Members of the Committee, Special Guests: Good afternoon. My name is Eduardo Gonzalez. I am enlisted in the United States Navy and my rank is Petty Officer Second Class Air warfare. I enlisted in the Navy in 2003. I graduated high school in 2001, and then continued my education by earning my Associate's degree in occupational studies. I had many choices, but after September 11, 2001, I decided to make this a better country for my family. Since my enlistment, I have been deployed 2 times: first on June 7th, 2004 on board the U.S.S. John F. Kennedy, in support of Operation Enduring Freedom. The second time was on November 28, 2005, when I was deployed to Camp Beuhring Kuwait in support of Operation Iraqi Freedom. I am now preparing for my third deployment, to begin this November on board the U.S.S. Harry S. Truman for a tour of the Gulf region. I am proud of my service to this country and have enjoyed every second of my four-year enlistment. In fact, I plan to re-enlist when my current commitment is up.

I met my wife, Mildred Gonzalez, in November 2001. On May 28, 2004, we decided to get married. Mildred's mother had come to the United States from Guatemala in 1989, without documents, when Mildred was only 5 years old. Mildred's mother applied for asylum/NACARA in September of 2000 and included Mildred on her application. Her mother was eventually granted legal status in July 2004. Because Mildred was included on her mother's application, Mildred also should have been granted lawful status in July of 2004. However we were unaware of the repercussions of our decision to get married six weeks earlier—our marriage cancelled out Mildred's ability to obtain status through her mother because she was no longer an unmarried daughter under 21 years old. At the time we got married, we did not know that Mildred and her mother would have an appointment with immigration in July of 2004. After all, they had already been waiting for 4 years for an appointment at that time.

Mildred attended the immigration appointment, with her mother and brother. Mildred's was denied her request to obtain legal status, solely due to her change in marital status. At the time of her immigration interview, I was deployed and only being able to communicate once in a while, I found out that she didn't get approved.

Mildred's case was then sent to an immigration court for removal proceedings and her first court appearance was on September 16, 2004. The judge was generous because of our situation and decided to reset her court date to June 14, 2007. We were all hoping for immigration reform by that time, hoping that the law would change.

However, that did not happen and on June 14, 2007, Mildred and I appeared in court fully expecting that Mildred was going to have to leave the United States within 120 days, maximum. I was in uniform and the judge, knowing that I was about to deploy and knowing that we have a 20-month-old son, gave Mildred a 12-month extension. We recognize that Mildred has been fortunate to get extensions. These extensions do not solve our problem, but only prolong it. On June 8, 2008, if Mildred's legal status does not change she will have 60 days to voluntarily depart the United States or she will be deported.

Since she has not been to Guatemala since she was 5 years old, she is not familiar with the culture, language or society. She has no family there and I feel this would be very difficult for us and perhaps even dangerous for Mildred. Mildred has spent 18 years of her life in this country, and to us and our child, the United States is her home.

Our son Eduardo Gonzalez, was born on December 9th, 2005, two weeks after I was deployed to Kuwait on my second tour. Missing my first-born child's birth, was a sacrifice in itself. Yet, I had to perform my duties as a member of a team of helicopter mechanics. We are in charge of maintaining and repairing a squadron of eight helicopters, whose mission is to transport personnel, cargo, and injured people. I consider my job very crucial in maintaining the Navy's mission readiness and I readily made the sacrifice.

I am about to go on deployment once again, knowing that my wife might not be here when I return, or where my son might end up if Mildred has to leave before I return. Sometimes I find it difficult to concentrate on my duties. As a citizen of the United States of America, it makes me wonder "If I can die for my country, then why am I not allowed to just be with my family?" Every time I go somewhere with my squadron, my wife worries about me not coming home one day, but now she also has to worry about leaving a home, a country, where she feels safe.

I want to serve my country one hundred percent. But with this issue in the back of my mind, I feel I can't do that. I am not asking for anything, I am just bringing this issue to your attention. As you may already know, my family is not the only one going through the same situation. Many will not come forward and speak about it because they fear they might have to pay the consequences. Mildred and I also worry that this might have a negative impact on us, but given this opportunity, we feel that if we tell our story we might be helping out others in same situation. I come before you not only as a United States Navy sailor, but as a husband, a father and an American citizen. I am hoping that my testimony helps, and something positive will come out of this. Thank you.

Ms. LOFGREN. Reverend Cortés?

**TESTIMONY OF REVEREND LUIS CORTÉS, JR.,  
PRESIDENT, ESPERANZA USA**

Mr. CORTÉS. Thank you, Madam Chair, Mr. King and Members of the Subcommittee for the opportunity to appear before you today.

Since immigration legislation failed in the Senate this summer, hundreds of State and local enforcement initiatives have been enacted and thousands more are pending.

In these cities and States, a fundamental value of American jurisprudence, the presumption of innocence, is gone. For thousands of third, fourth, and even fifth generation American citizens, their skin color now defines the limit of their rights.

The color of our skin or the sound of our accent now provides us the privilege of being detained, harassed, or accosted in an effort to determine our status. Even I wonder whether I need to carry my passport.

Criminal elements are now beginning to prey upon innocent, law-abiding, hardworking members of our community. Many of them, in fact, are American citizens. American citizens are now afraid to call the police. American citizens are deciding it is easier to let certain crimes go, to not get involved as witnesses, than to fall victim



to over-aggressive law enforcement when they have a family member who is undocumented.

The country needs immigration reform legislation enacted now more than ever. With the Senate's failure, we look to the House for leadership. The House needs to show the same leadership and ability to resolve differences as was demonstrated 10 years ago when Congress passed comprehensive welfare reform. The welfare reform debate was heated and full of conflict and controversy, and yet this Congress and this country came together and solved one of the biggest domestic problems facing our country in the mid-Nineties.

I have faith that Congress can rise to this similar challenge today. The House has an opportunity to show wisdom and courage and permanently fix our broken immigration system. Now is the time to lead, to educate constituencies influenced more by rhetoric than reality. Now is the time for leaders of both parties to teach their junior members by example.

Faith leaders are called to ground their conduct in treatment of others in our reading and understanding of scripture. So too for guidance on immigration policy we turn first to scripture. Our support for comprehensive immigration reform comes from the Biblical mandate to advocate on behalf of the stranger in one's land, a practice that is noted in the Old Testament.

As in Leviticus 19:33-34, when an alien resides with you in your land, you shall not repress the alien. The alien who resides with you shall be with you as the citizen among you.

In Matthew 25:35, which is in the New Testament, Christ calls on all his followers to treat immigrants with fairness, justice, and hospitality. "I was hungry, and you gave me something to eat. I was thirsty, and you gave me something to drink. I was a stranger, and you invited me in."

One of my continuing frustrations is the gross distortion of the word "amnesty." As Christians, we understand amnesty. Amnesty is what Christ provided us as forgiveness for our sins when he paid for our sins with his life. This is true amnesty, unconditional and without penalty.

The Merriam-Webster Dictionary defines amnesty as a pardon. A pardon is defined as the excusing of an offense without penalty.

Amnesty is a free pass and a place in front of the line. The STRIVE Act, as well as recent Senate bills, are in fact not amnesty.

I congratulate Congressman Gutierrez and Congressman Flake for their leadership and hard work that went into writing the STRIVE Act. I commend you on the rising above political rhetoric and polarization and working to bring a just solution to a current crisis. We believe today, as strongly as we did last year, that for an immigration proposal to permanently fix our immigration system, it must accomplish four objectives.

First, it must be compassionate, just, and true to our heritage as a Nation of families built by immigrants and to our heritage as a welcoming Nation.

Second, it must secure our borders.

Third, it must secure our economy by providing safe, secure systems to meet current and future workforce requirements.

And, fourth, it must be a permanent, lasting, sustainable fix, rather than one 20 years from now that will land us right back where we are today.

We believe the STRIVE Act is a fair, workable, and just solution to our disastrous immigration system and meets these four objectives.

In survey after survey, 65 percent of Republicans and 72 percent of Democrats consistently support legal status with a path to citizenship for illegal immigrants who get in back of the line and pay penalties, learn English, et cetera.

If the House could find the courage to have the debate, to educate their junior members and their constituencies, we might solve our biggest domestic issue of the decade.

Most Americans and most Members of Congress recognize that the vast majority of the 12 million people who are here undocumented are good people caught in a bad system, victims of one of the worst public policy failures of our time.

Forty percent who are currently in this country legally, 4.8 million people, entered legally. They couldn't get through our system.

We are a Nation of laws; 12 million people live here illegally and for that there should be penalties. But just as we are a Nation of laws, we are also a Nation that believes that the punishment should fit the crime. These are not violent crimes, these are not violent criminals. Don't take the easy road and pass pieces of legislation for which there is already consensus among members. Let us have the debate in a national discussion and let us take the vote.

In the end, you are either those that work on behalf of the harassed and the helpless or those that refuse to set the law of the land that will direct its citizenry and show the moral fortitude that is lacking today in our public discourse.

Thank you, Madam Chair, and Members of the Subcommittee.

[The prepared statement of Mr. Cortés follows:]

PREPARED STATEMENT OF LUIS CORTÉS, JR.

Thank you, Madam Chair, Mr. King and Members of the Subcommittee, for the opportunity to appear before you today. I am encouraged by this hearing and by information gathered in preparation for this hearing that the House and this Committee may actually move immigration legislation this fall.

I appear before you today representing Esperanza's national network of over 10,000 Hispanic congregations, faith and community based agencies. As the nation's largest Hispanic faith-based organization, throughout the immigration debate and legislative process, we have engaged and informed our community, educating and activating our considerable constituency on the nuances of this most important issue.

Since the President first announced his immigration policy in January 2004, Esperanza has worked closely with Members of Congress of both parties, the White House and the Administration to see comprehensive immigration reform become law. Every year before the National Hispanic Prayer Breakfast, Esperanza sends hundreds of Hispanic pastors and church leaders to Capitol Hill to meet with their Members of Congress. Since 2004, immigration has been a priority topic.

RULE OF LAW TURNED UPSIDE DOWN

Since comprehensive immigration reform legislation failed to pass the Senate this summer, hundreds of state and local enforcement initiatives have been enacted and thousands more are pending.

In these cities and states, a fundamental value of American jurisprudence—the presumption of innocence—is gone. Law abiding residents simply thought to be illegal are being detained. For thousands of third, fourth and even fifth generation American citizens their color now defines the limits of their rights. The color of our

skin or the sound of their accent now provides us the privilege of being detained, harassed or accosted in an effort to determine our status.

EVEN I WONDER WHETHER I NEED TO CARRY MY PASSPORT.

Should the House fail as the Senate has failed, you will send our country back in time, back to the pre-1960's world of "separate but equal." What of my parents who are a little darker, speak English less refined and may swallow an occasional vowel or letter? What happens to those tried and true American citizens that bleed red white and blue but look a little different and talk a little different—will they be afforded equal treatment under the law or will the law create a wedge, an opening that will lead to the mistreatment of those that don't fit the American ideal of citizenship?

If unchecked, criminal elements will continue to prey on innocent, law abiding, hardworking residents of our communities, most of them American citizens, now afraid to call the police. American citizens now must consider the cost of police involvement for them and their families and now chose not to subject themselves to exploitation and abuse. It is easier to let certain crimes go, to not get involved as witnesses, than to fall victim to over aggressive law enforcement still learning the ropes of immigration enforcement.

CALL FOR LEADERSHIP

The country needs immigration reform legislation to become law now more than ever. With Senate failure, we look to the House for leadership. Our clergy looks to you, Madam Chair, your expertise and your ability to bring people together. We look to Mr. King to find areas of consensus, to find common ground and workable solutions.

Our clergy calls on Speaker Pelosi, Judiciary Committee Chairman Conyers, Ranking Chairman Smith and Minority Leader Boehner to show the same leadership, commitment and ability to resolve differences as this Congress demonstrated 10 years ago when Congress passed comprehensive welfare reform. The welfare reform debate was heated and full of conflict and controversy. And yet this Congress and this country came together and solved one of the biggest problems facing our country in the mid 90's. All except Mr. King were here during the welfare reform debate. I have faith you can rise to this similar challenge today.

The Senate has made their choice. Now the House has an opportunity to show wisdom and courage to fix our broken immigration system once and for all. Now is the time to lead—to educate constituencies influenced more by rhetoric than reality. Now is the time to do what is right, to stand up for what is right. Win the arguments and back down the bullies. Now is the time for leaders of both parties to teach their junior members by example.

In the book of Matthew we are told that Jesus had compassion for the people of his day as they were "harassed and helpless, like sheep without a shepherd," because their leaders abdicated their responsibility. Those called to set the law of the land and direct the citizenry did not have the moral fortitude to provide for their people. The people were worn out and tired. Constantly running up against a wall with no place to go, they were demoralized and helpless as their government failed to provide the most basic necessities of life. Because leaders abdicated their role as leaders, turned their back on the people of their day, Jesus' response was to heal them and make them whole.

We stand ready to work with anyone and everyone with the strength and courage to lead this country toward a compassionate, merciful, workable solution.

THEOLOGY & IMMIGRATION POLICY

You invited me here today in my role as a religious leader, to share thoughts and analysis of the STRIVE Act from our perspective as religious and community leaders. As faith leaders, we are called to ground our conduct and treatment of others in our reading and understanding of Scripture. So, too, for guidance on immigration policy we turn first to Scripture. Our support for comprehensive immigration reform comes from the biblical mandate to advocate on behalf of the stranger in one's land, a practice as ancient as the Old Testament.

As written in Leviticus 19:33-34, "When an alien resides with you in your land, you shall not oppress the alien. The alien who resides with you shall be to you as the citizen among you; you shall love the alien as yourself, for you were aliens in the land of Egypt: I am the Lord your God." In Matthew 25:35, Christ calls on all his followers to treat immigrants with fairness, justice and hospitality, "For I was hungry and you gave me something to eat, I was thirsty and you gave me something to drink. I was a stranger and you invited me in."

Our call for Congress to pass comprehensive immigration reform is our call for Congress to recognize our history as a nation of justice, mercy, and compassion. These genuinely American principles must not be abandoned in any new immigration reform.

One of the continuing distortions in this debate is the definition of “amnesty.” I am frustrated that we must continue to deal with those who choose to distort the real meaning of amnesty.

As Christians we understand amnesty: Amnesty is what Christ provided for us as forgiveness for our sins when he paid for our sins with his life. This is true amnesty—unconditional and without penalty.

The Merriam-Webster dictionary defines amnesty as “the act of an authority (as a government) by which pardon is granted to a large group of individuals.” A pardon is defined as “the excusing of an offense without exacting a penalty” (emphasis added).

For politicians to distort the meaning of amnesty is a travesty. Those who persist should be ashamed. As religious leaders we call on the RNC and DNC to deal honestly and righteously with this issue. We ask the Chairmen of both parties to publicly ask their members to refrain from seeking political gain on the backs of the powerless and instead, work toward just solutions.

#### THE STRIVE ACT

I congratulate Congressman Gutierrez and Congressman Flake for their leadership, dedication, commitment and all the hard work that went into developing the STRIVE Act. I commend you on rising above political rhetoric and polarization and working to bring a just solution to the current crisis.

Esperanza evaluates all immigration legislation against Esperanza’s Statement of Principles. Esperanza’s Principles were released in March, 2006 and still hold true today. They are included as an attachment to this testimony.

We believe today as strongly as we did last year that for an immigration proposal to permanently fix our badly broken immigration system, it must accomplish four objectives: First, it must be compassionate, just and true to our heritage as a nation of families built by immigrants, to our heritage as a welcoming nation. Second, it must secure our borders. Third, it must secure our economy by providing safe, secure systems to meet current and future workforce requirements. And, fourth it must be a permanent, lasting, sustainable fix rather than one that, 20 years from now, will land us right back where we are today.

We believe the STRIVE Act is a fair, workable and just solution to our disastrous immigration system. We also believe implementation of the STRIVE Act would be a permanent fix as it provides workable methods to secure our borders, to secure our economy with avenues for current and future workforce requirements. The STRIVE Act also keeps intact our nation’s value on family unification. We would welcome the opportunity to work with you and your staff to see the STRIVE Act become the law of the land.

We understand there is consideration being given about moving immigration legislation in pieces rather than one comprehensive bill. While our strong preference is to pass a comprehensive bill, we would also support and work closely towards passage of separate pieces of legislation. Since the American people understand and support in large majorities all the basic components of the STRIVE Act (see attachment), by debating each title separately, it just might be possible to avoid the rhetoric and distortion that ended with the collapse of the Senate bill.

Should the decision be made to move legislative pieces rather than a comprehensive bill, I respectfully encourage you to include in the debate legislation, such as Title VI of the STRIVE Act, that provides legal status for the 12 million undocumented who get in the back of the line pass English and citizenship classes, pay fines and back taxes and whatever other requirements seem just penalty for entering or remaining in our country illegally.

Border security alone ignores the plight of 12 million hard working, law abiding members of our communities. Border security alone does not address the needs of employers that often find themselves in moral and legal dilemmas unaddressed by the current direction provided in our current immigration system. This is the path to fix the problem we as Americans created with faulty policy, weak enforcement and no moral courage to make it right.

Don’t just take the easy road and pass the pieces for which there is already consensus among Members. Let’s have the debate and a national discussion. Let’s take a vote.

## FOR CONSIDERATION: ESSENTIAL ROLE FOR THE HISPANIC FAITH COMMUNITY

As the STRIVE Act moves forward, I encourage you to include language on the considerable role the Hispanic faith community can play implementing the legislation.

In order to be successful, all proposals, regardless of specific details, will require massive education efforts in Hispanic communities across the nation to educate folks about the new legislation, to provide greatly expanded English as a Second Language and citizenship classes.

The success of all proposals also depends on the willingness of the undocumented to come forward. Once we reach a just solution, the Hispanic faith community is prepared to partner with the federal government to serve as processing centers, the first place where the undocumented will come forward. All initial processing can take place at churches, faith and community-based agencies in coordination with other federal agencies, such as the FBI and Homeland Security, who will control all steps in processing background checks, employment verification, etc.

So many undocumented simply will not go to Federal offices. As the trusted voice and primary social infrastructure, the Hispanic church can reach deep into the community and serve as safe harbors. We can work with the federal agencies not just on procedures and processes but also to ensure that those meeting with our people are culturally and linguistically sensitive, assuring smooth transitions from shadows and fear into the daylight of legal status.

## THE PEOPLE, ONCE AGAIN, AHEAD OF THE POLITICIANS

The American people understand immigration reform and the available options. Although public opinion research is all over the map on immigration reform, one set of questions, repeated by three different polling companies over an 8 month period all yielded the same response—65% of Republicans and 70% of Democrats support proposals that provide legal status with a path to citizenship for undocumented workers who pay fines and back taxes, learn English and pass citizenship classes.

A Quinnipiac University poll taken last November 16th-19th found 66 percent of Republicans and 72 percent of Democrats support allowing illegal immigrants into a guest worker program with a path to citizenship over a period of several years.

In April, 2007, the bi-partisan polling team of The Tarrance Group and Lake Research survey found the American people of all parties, of all demographic groups continue to support proposals that allow illegal immigrants to come forward, register and receive temporary worker permits with a multi-year path to citizenship if they get to the back of the line, learn English, pay taxes, etc.

In June, a Bloomberg/Los Angeles Times poll found a majority of Americans supported offering undocumented immigrants a path to citizenship and a program for temporary workers.

## BUSINESS LEADERS &amp; FAITH LEADERS JOIN HANDS

Immigration reform reaches far beyond Hispanic communities. American businesses need workers, and current American workforce projections fall significantly short of future requirements. American agriculture and landscape industries, building, trades, and construction, as well as the entire hotel, restaurant, resort, and most service industries are struggling today to find willing, capable workers. America's productivity tomorrow will be weakened without comprehensive immigration reform.

America's free trade policy failed to recognize that the free flow of labor must accompany the free flow of goods and services. Failure to adjust our immigration system to meet increasing labor requirements has created this badly broken system and unjust situation. Ironically, it is the same free trade conservatives who, failing to understand this economic reality, call to deport 12 million undocumented workers.

We are joined in our efforts by an impressive cross section of: 1> business and industry, 2> policy and 3> religious organizations. The US Chamber of Commerce, the National Restaurant Association, the American Hotel and Lodging Association, the American Farm Bureaus, the Catholic Bishops, the American Health Care Association, and the National Association of Home Builders are a few of the national organizations working with us in our efforts.

When crafting categories of legal status for the undocumented as well as for temporary guest worker programs, we must take care not to create a closed, homogeneous society that exploits the low-skilled and less-educated among us, treating them more as a disposable commodity than as brothers and sisters. Rather, for their willingness to serve us by doing jobs we would not want our children to do, they earn

the opportunity to grow and become Americans. This is the American dream—that the grandchild of today’s avocado picker could someday be a member of Congress of the United States.

#### CRIME & PUNISHMENT

Most Americans—and most members of Congress—recognize that the vast majority of the 12 million are good people caught in a bad system, victims of one of the worst public-policy failures of our time. Forty percent (40%) of those currently in the country illegally—4.8 million people—entered legally. Millions await review for legal status and are simply caught up in a bureaucratic nightmare. The legal system views their “crime” as nothing more than a civil infraction, with penalties less severe than those for a misdemeanor.

Families throughout our community are composed of a patchwork of immigration status. Around the family dinner table, American citizens sit with green card applicants, student visas and undocumented workers:

- In 6.6 million families either the head of household or the spouse is undocumented.
- 3.1 million American children live in families with one undocumented parent.
- 64 percent of the children living in undocumented families were born here and are legal U.S. citizens. (Source: Pew Hispanic Center)

We are a nation of laws, and 12 million people live here illegally. For that there should be penalties. But just as we are a nation of laws, we are also a nation that believes the punishment should fit the crime.

Entering the country illegally is a federal misdemeanor. Should the penalty for misdemeanors and civil infractions be ruptured families, destroyed businesses, and lost homes? Are we prepared for the father next door, for the mother of our child’s best friend, for those who pray with us in church every Sunday to be deported?

These are not violent crimes. These are not violent criminals. Their biggest “crime” is coming to America looking for available work. We should not inflict cruel and unusual punishment simply to rectify the policy failures of the past. At Esperanza, we suggest that the payment of fines and back taxes, together with background checks, English fluency and citizenship classes are rational responses to an emotional and difficult situation—responses that will meet our national security interests and workforce requirements while maintaining our

history—as embodied in the Statue of Liberty—as a compassionate nation. These measures can work if their intention is to truly integrate our people into society and not to be hurdles created to intentionally trip individuals into deportation.

As we move forward with this legislation let us recall the words of Jesus on the question of leadership. You are the leaders of today. You are called to move this country forward and make the hard moral choices. The choice on comprehensive immigration reform is morally right. It is good business and (begins to) creates the security American needs.

In the end you are either those that work on behalf of the harassed and helpless or those that to refuse to set the law of the land that will direct the citizenry and show the moral fortitude that is so lacking in our public discourse. We commit to work on the higher road of morally good business and American security with you on behalf of all Americans. To fashion law that elevates our country and tells the world how we care for those that embrace our ideals of hard work, family and country.

Thank you, Madam Chair and Members of the Sub-Committee, for the opportunity to appear before you today. I look forward to working with you and your staff in the days and weeks ahead.

ATTACHMENT



WEDNESDAY MARCH 15, 2006  
4:00 P.M.

FOR FURTHER INFORMATION CONTACT:  
KRISTA POPLAU (215) 324-0746

*Rev. Luis Cortés, Jr.*  
*On behalf of Hispanic Evangelical and Protestant Churches*  
*To US Senators: Principles for Effective, Workable Immigration*  
*Reform*

Esperanza USA is the largest Hispanic faith-based community development corporation in the country. With a national network of 10,000 faith and community-based agencies, Esperanza is one of the leading voices for Hispanics in America.

Rev. Luis Cortés Jr., president of Esperanza USA, urges the Senate to incorporate the following principles for effective, comprehensive, workable immigration reform:

**BORDER SECURITY**

America's Borders Must Be Secured.

We are a nation of laws and we respect the rule of law. We are a peaceful people. The terrorist attacks of 9/11 unite us all in efforts to protect and secure the borders.

In our zealotness to be secure, however, we urge caution on two key points:

Border Security Must Remain Solely a Federal Responsibility

Hispanic clergy work closely with state and local law enforcement: on substance abuse, domestic violence, education and helping kids when they first get in trouble to make sure they stay out of trouble. Including state and local law enforcement in border security will instantly transform this cooperative relationship into an adversarial one.

Avoid Criminalizing Clergy

Efforts to shut down human trafficking and criminalize smuggling operations are critically important and we support them. However, language contained in H.R. 4437 assessing criminal penalties for those who "assist" those who are here illegally would instantly transform all Hispanic clergy and many non-Hispanic clergy from community leaders to federal criminals. All clergy must remain free to provide spiritual counsel, humanitarian aid and comfort based on their religious principles.

## TEMPORARY / GUEST/ RESIDENT WORKER PROGRAMS

Millions arrived in America legally to unite with family and to seek a better life. To keep families together, they have remained here unknown and undocumented to federal authorities. Millions more risked everything to begin a new life. For people to come out of the shadows, if reforms are to work, they must have real, permanent advantages. Fixing this broken system for legal entry and residence must correct the flaws of the past and reflect current and future economic and workforce requirements.

Toward this end, we recommend three new categories for legal entry and residence:

- Temporary Worker Status for those who want to come and go frequently such as agricultural workers and day laborers.
- Guest Worker Status for those currently not living here who wish to come here to live and work for an extended period of time.
- Resident Worker Status for those who have lived here over an extended period of time and, although currently undocumented, have been steadily employed, paid taxes and have no criminal record.

"Send- Back" Provisions

If our national security objectives are to be met, if immigration reform is to facilitate the tracking of terrorists and those who would do us harm, it is imperative that immigration reforms result in having the millions of undocumented workers leading peaceful, productive lives come out of the shadows and counted as legal residents.

Provisions that require undocumented workers to return to their country of origin before being granted legal status simply will not work. Millions of hard-working heads of households risked everything to build a life in our country. They are working hard and living clean, productive lives as contributing members of society. They will not "come out of the shadows" for a weak, distant promise dependant on bureaucratic clearances.

The only type of "send-back" provision that could work is a requirement to return to the country of origin to file required paperwork and fulfill administrative requirements. Such provisions would require only short-term stays in country and allow for immediate return without loss of employment.

Path to Citizenship

Not all immigrants are interested in becoming American citizens. For those that do, once the requirements of legal residency have been met and fulfilled, they should be allowed to "get in line" --- apply for citizenship knowing their application will be considered only after all others who have previously filed.





American Voters (Once Again) Ahead of the Politicians  
Three Polling Firms over Eight Months Find  
65% of Republicans, 70% of Democrats  
Support Legal Status *with a Path to Citizenship*

Quinnipiac University: Post 2006 Election

November 21, 2006 - Let Illegal Immigrants Become Citizens, U.S. Voters Tell  
Quinnipiac University National Poll; But Do More To Tighten The Borders,  
Voters Say

By a 69 - 27 percent margin, American voters say illegal immigrants should be allowed into a guest worker program with the ability to work toward citizenship over a period of several years, according to a Quinnipiac University national poll released today.

Republicans support the guest worker to citizenship path 66 - 31 percent, while Democrats back it 73 - 23 percent and independent voters back it 71 - 24 percent, the independent Quinnipiac (KWIN-uh-pe-ack) University poll finds.

The Tarrance Group and Lake Research: April 15-19, 2007

Support for Comprehensive Immigration Reform Includes a Path to Citizenship

Likely voters are read a proposal for comprehensive immigration reform that is described as follows:

- Provide resources to greatly increase border security,
- Impose much tougher penalties on employers who hire illegal workers,
- Allow additional foreign workers to come to the United States to work for a temporary period,
- Create a system in which illegal immigrants could come forward and register, pay a fine, and receive a temporary worker permit
- Provide these temporary workers with a multi-year path to earned citizenship, if they get to the end of the line and meet certain requirements like living crime free, learning English, paying taxes

After this description, seventy-five percent (75%) of likely voters favor passage of this legislation. This represents a four point increase of support for this legislation since July 2006.

*Support for this legislation crosses all racial and partisan/ideological lines* with whites (75%), African Americans (70%), and Hispanics (74%) all strong favoring passage and with strong Republicans (76%), very conservative voters (74%), strong Democrats (74%) and liberals (75%) ... There is also strong support ... among white conservative Christians (78%), born again Christians (75%), and weekly church attendees (76%). In fact, there is even strong support for passage among those who listen to talk radio on a daily basis (76%).

In examining some likely criticisms of this legislation: a majority (52%) of likely voters do not ... this is .. amnesty for illegal immigrants. (When given) ... options of doing nothing ... or passage of legislation (with) ... a path to citizenship “that some will call amnesty,” a strong majority (64%) of likely voters select the passage of legislation that includes a path to citizenship.

Los Angeles Times / Bloomberg (June 7 – 10, 2007)

- 63% - Respondents were asked if they would support a proposal that would “allow undocumented immigrants who have been living and working in the United States for a number of years, and who do not have a criminal record, to start on a path to citizenship by registering that they are in the country, paying a fine, getting fingerprinted, and learning English, among other requirements.” Nearly two-thirds of the public (63%) supports such a proposal. Among registered voters, support is slightly higher (65%). Support extends across the political spectrum, including 58% among self-described conservatives. By contrast, only 23% of the public opposes such a proposal.
- The public is very concerned about the issue of illegal immigration. A very large majority (86%) believe it is an “important” problem, including 31% who believe it is the “most important” problem facing the country.
- A plurality of the public, 49%, supports a “guest worker” program, verses 26% who oppose such a program.
- The bill being considered by the Senate would change our immigration system so that immigrants would be chosen on a point system. A plurality of respondents in this survey did not know enough about this proposal to have an opinion (43%). Of those who had an opinion about the point system, 34% supported, and 23% opposed such a system.

Ms. LOFGREN. Thank you.  
Mr. Hoyt?

**TESTIMONY OF JOSHUA HOYT, EXECUTIVE DIRECTOR,  
ILLINOIS COALITION FOR IMMIGRANT AND REFUGEE RIGHTS**

Mr. HOYT. Good afternoon. My name is Joshua Hoyt.

As I begin my testimony on this polarized issue of immigration, I would like to quote the great statesman from the beautiful state of Illinois, Everett Dirksen, a Senate Republican who said, "I have heard many a speech that changed my mind, but not one that changed my vote."

So thank you for the opportunity, and I will do my best to both change minds and votes.

Our immigration system should reflect our Nation's values of family and hard work. And our elected officials should have the courage and wisdom to bring our laws in line with both our values and with economic and demographic reality. Unfortunately, neither has happened.

Our country is now dealing with the consequences of more than 20 years of half-baked immigration policies from both parties. Whether we like it or not, our Nation relies heavily on immigrant workers, many from Mexico.

Our workforce is aging. In 20 years, when I am 71, the ratio of seniors to workers in the United States will have jumped from the current 24 per 100 to 41 seniors per 100 workers. The answer to the Beatle's existential question "Who will still need me, who will still feed me, when I'm 64?" is simple. It is immigrants.

We offer few legal channels for these needed workers, especially for low skilled workers, to come to the United States. The laws of supply and demand ensure that immigrant workers will come and many stay.

The half measures of the past have only made the problems worse. The 1986 reform did not account for future labor needs, employer sanctions were ignored, NAFTA increased trade but did not address the increased flow of workers. Border enforcement pushed immigrants into the desert, and as a result, those who are now here stayed put. And the 1996 reform makes it impossible for even productive, well-established undocumented immigrants to get legal status.

So here we are in 2007. We have the untenable situation of an undocumented population of 12 million people, overwhelmingly productively working, yet vulnerable to exploitation. We have 200 deaths on the border already this year, and we have no workable system for our future labor needs.

Our immigration enforcement policies are severely out of alignment with our trade policies, our economic needs, and our Nation's values. The half steps have not worked. And that is why a solution to this mess must be a comprehensive reform, and ICIRR supports the STRIVE Act introduced by representatives Gutierrez and Flake.

With legal status and earned citizenship for undocumented workers, increases in visa allocations to cut the long backlogs, temporary worker provisions with worker protections for our future labor needs and enforcement provisions that are generally reason-

able and targeted. There are provisions we don't like, but we applaud Representative Gutierrez and Representative Flake for seeking a solid middle ground.

Chest thumping, racially-charged get-tough enforcement, deportation and workforce enforcement strategies that do not address our underlying labor market demands are doomed to failure. Meanwhile, the human cost of breaking up families, like Tony's and Petty Officer Gonzalez's, are tragic, and the economic cost of churning our workforce are incalculable.

The current political strategy of those who bully the vulnerable undocumented and pander to the most bigoted in their political base is both un-American and politically suicidal. President Bush proved that both parties can compete among Latino and immigrant voters, but in the current climate, they are just driven into the arms of the Democrats. And there are those in the majority party who seem to believe that if they just sit back and allow others to do the immigrant bashing, then Latinos will be satisfied with lip service.

Shame on demagogues and opportunists and on political cynics. What we need are real reforms that will benefit, not just the immigrants and their families, but our whole Nation.

We hope that this Committee, this Congress, and this Administration will take such leadership and pass the STRIVE Act. Thank you.

[The prepared statement of Mr. Hoyt follows:]

PREPARED STATEMENT OF JOSHUA W. HOYT

Good afternoon. My name is Joshua Hoyt. I am the executive director of the Illinois Coalition for Immigrant and Refugee Rights. ICIRR is a coalition of more than 100 member organizations through the state of Illinois that works to build the power and capacity of immigrant and refugee communities and to advocate for policies that will move immigrants and refugees toward full participation in our society. Thank you for the opportunity to speak before this subcommittee.

Our nation's immigration system should reflect our nation's values of family, hard work, and fairness. And our elected officials should have the courage and wisdom to bring our laws in line with our values. Unfortunately, neither has been the case.

Our country is now dealing with the consequences of more than 20 years of half-baked immigration policies from Administrations and Congresses led by both parties. Whether we like to admit it or not, our nation relies heavily on immigrant workers, largely but not exclusively from Mexico. In Illinois alone, our workforce is aging and nearing retirement. Without new immigrant workers, our workforce would have shrunk from 2000 to 2005. Instead, our workforce grew by 2.7%, due to a 23% increase in foreign-born workers. These workers filled 27.7% of the 21,000 new health diagnosis jobs, 42.4% of the 53,000 new food preparation and serving jobs and 100% of the new managerial jobs in our state.

Our workforce is aging and baby-boomers are retiring. After decades of stability, our senior ratio is poised to skyrocket. From roughly 24 seniors per 100 working age residents, the ratio will surge in the coming decade to 32 and in the decade after that will hit 41. Absorbing this sudden 30% jump in the senior ratio in a single decade will be a terrific jolt. But the jump is repeated in TWO consecutive decades, testing America like never before. Who will replace our aging workforce? Immigrants.

Yet we offer few legal channels for these workers to come to the United States. Permanent employment visas are limited to 140,000 per year, and involve employers going through an arduous, multi-year process with the Department of Labor and the Department of Homeland Security. Temporary worker programs involve similar hurdles that discourage farms and other employers from participating.

But these workers still come, and many stay. Back in 1986, the Reagan Administration tried to address the unheard-of undocumented population of 3 million by enacting the Immigration Reform and Control Act. Many of the former undocumented

immigrants who gained legal status under that law are leaders in their communities, and indeed throughout our coalition.

But IRCA failed to provide any legal way for migrant workers to come to our country to work. Even worse, it outsourced immigration enforcement to employers, who now needed to check their workers' documents. The federal government, in both Democratic and Republican administrations, has paid only lip service to workplace enforcement. The number of employers prosecuted for unlawfully employing immigrants dropped from 182 in 1999 to four in 2003, and fines collected declined from \$3.6 million to \$212,000. In 1999, the United States initiated fines against 417 companies. In 2004, it issued fine notices to three. ICE fines on employers across the U.S. from FY02 to FY05 ranged between \$6,00 and \$73,000, hardly a serious enforcement plan. As the economic reality of our labor needs sank in and workforce enforcement tailed off, so did the incentives for employers to take immigration sanctions seriously.

In the mid-1990s, the North American Free Trade Agreement and internal reforms in Mexico further drove Mexican migration northward. Farmers saw the market for their crops undercut by cheaper US corn were also displaced from the land by agricultural reforms. NAFTA sought to integrate economies of US, Canada, and Mexico, but did not integrate labor markets. At the same time, however, the Clinton Administration was cracking down on the Mexican border, massing resources in heavily-trafficked areas like El Paso and San Diego in Operation Gate Keeper. These operations didn't stop people from coming; they only drove migrants to less patrolled, more remote, and more dangerous areas in the desert, especially in Arizona. The numbers of deaths on the border skyrocketed, as did the prices that smugglers could charge. And the incentives for those migrants who made it across to go back, only to endure another, still more dangerous crossing, evaporated. Instead, undocumented migrants settled in the US, and increasingly have brought their families with them.

Further complicating the mix were such laws as the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA), which closed off many legal avenues for undocumented immigrants to gain legal status, such as suspension of deportation, even if they have been in the US for many years and have strong family ties here. IIRAIRA furthermore set up bars and traps that prevent many otherwise eligible immigrants from getting green cards, including the ten-year bar that now prevents Tony Wasilewski's wife from returning to the US.

So here we are in 2007. As a result of failed policies on both sides of the border, our nation's undocumented population has ballooned to 12 million people. These are people who work hard in crucial sectors of our economy, who own homes and businesses, who are raising families and paying taxes. Yet for all their work and all their contributions, they cannot even get driver's licenses in most states and are under constant threat of deportation and separation.

We have immigration policies that are severely out of alignment with our trade policies and economic needs. We have enforcement policies that clearly are not working and seemed designed to fail. As documented by Princeton Professor Douglas Massey, our border enforcement budget increased tenfold from 1987 to 2002, and our Border Patrol personnel tripled, yet the likelihood of someone getting caught at the border has plummeted. Yet Congress and the Bush Administration want to spend still more money on controlling the border and even build a border fence, fool's errands that will accomplish nothing without real reform of our immigration policies. And, in the absence of any real federal resolution to this situation, we have local communities trying to figure out what to do with their new immigrant populations—all too often polarizing against them, to the detriment of the whole community.

ICIRR supports a comprehensive approach to addressing our immigration crisis. For a complex issue like immigration, only comprehensive reform can meet our labor needs, enhance our national security, reunite our families, address the underlying motivations for migration, and uphold our nation's values. ICIRR worked with other immigrant advocacy groups throughout the nation on a series of principles for any real reform to our immigration crisis. These principles call for the following:

- **Providing a Path to Permanent Resident Status and Citizenship for All Members of Our Communities.** Our immigration policy needs to be consistent with reality. Most immigrants are encouraged to come to the United States by economic forces they do not control. Immigrants bring prosperity to this country, yet many are kept in legal limbo. Legalization of the undocumented members of our communities would benefit both immigrants and their families and the U.S.-born, by raising the floor for all and providing all with equal labor protections.

- **Reuniting Families and Reduce Backlogs.** Immigration reform will not be successful until we harmonize public policy with one of the main factors driving migration: family unity. Currently families are separated by visa waiting periods and processing delays that can last decades. Comprehensive immigration reform must strengthen the family preference system, by increasing both the number of visas available both overall and within each category. In addition, the bars to reentry must be eliminated, so that no one who is eligible for an immigrant visa is punished by being separated from their family for many years.
- **Providing Opportunities for Safe Future Migration and Maintaining Worker Protections.** With respect to worker visas, we need a “break-the-mold” program. Such a program must include: legal visas for workers and their families; full labor rights (such as the right to organize and independent enforcement rights); the right to change jobs; and a path to permanent residence and citizenship. A regulated worker visa process must meet clearly defined labor market needs, and must not resemble current or historic temporary worker programs. The new system must create a legal and safe alternative for migrants, facilitate and enforce equal rights for all workers, and minimize the opportunities for abuse by unscrupulous employers and others.
- **Respecting the Safety and Security of All in Immigration Law Enforcement.** Fair enforcement practices are key to rebuilding trust among immigrant communities and protecting the security of all. Any immigration law enforcement should be conducted with professionalism, accountability, and respect. Furthermore, there should be effective enforcement of laws against human trafficking and worker exploitation.
- **Recognizing Immigrants’ Full Humanity.** Immigrants are more than just workers. Immigrants are neighbors, family members, students, members of our society, and an essential part of the future of the United States. Our immigration policies should provide immigrants with opportunities to learn English, naturalize, lead prosperous lives, engage in cultural expression, and receive equitable access to needed services and higher education. Support for immigrants must also include adequate resources to provide for decent, safe and affordable housing to help meet the critical housing needs of the 2.2 million—one in five—immigrant families residing in the U.S.
- **Restoring Fundamental Civil Rights of Immigrants.** Since September 11, 2001, implementation of sweeping law enforcement policies have not only failed to make us safer from future attacks, but undermined our security, while eroding fundamental civil liberties. Failure to protect these fundamental rights goes against the core values of a democracy, and, therefore, the United States. For the benefit of everyone, and not just immigrants, these basic rights must be restored and protected.
- **Protecting the Rights of Refugees and Asylees.** The United States has always been viewed as a safe haven for those fleeing persecution. Yet, since September 11, 2001, significantly fewer refugees have been admitted. The U.S. government has an obligation to remove barriers to admission and save the lives of thousands of people across the world who are fleeing for their lives. In addition, our current policies treat many asylees unequally based on their country of origin. Our country must ensure fair and equal treatment of individuals and their family members seeking asylum, and end the inhumane detention and warehousing of asylum seekers.

In the House, Rep. Luis Gutierrez, Rep. Jeff Flake, and former Rep. Jim Kolbe have worked with their Senate counterparts, Sen. Edward Kennedy and Sen. John McCain, to craft legislation that would incorporate these basic elements. During the last Congress they introduced the Secure America and Orderly Immigration Act.

This past March, Reps. Gutierrez and Flake followed up by introducing H.R. 1645, the STRIVE Act. Like Secure America, STRIVE included many of the crucial provisions that must go into comprehensive reform:

- A pathway for undocumented immigrants who are contributing to our economy and community to earn legal status and eventually US citizenship—a pathway that would have enabled Janina Wasilewski to apply, reopen her deportation case, and gain legal status—as well as the DREAM Act for undocumented students and the AgJOBS bill for agricultural workers;
- Increases in visa allocations that would cut through the long backlogs that many would-be legal immigrants now face;

- Temporary worker provisions that would enable those who want to come to the US to work an orderly process to match up with the employers who need them, but that would also protect these workers and all workers in our country from abuse and exploitation;
- Grant programs to assist immigrants in learning English and preparing for citizenship, and to assist local communities with the impact of new immigration;
- Enforcement provisions that are generally reasonable and targeted at those who would do harm to our communities and our nation.

We would have preferred that several sections not have been included in STRIVE, including the “touch-back” requirements for legalizing immigrants, the vast expansion of detention beds, and the authorization of local police to enforce federal criminal immigration laws. Still, we understand the need for compromise so that a comprehensive bill can gain broad support, and we applaud Rep. Gutierrez and Rep. Flake for seeking a solid middle ground for effective and humane immigration reform.

But in addition to the right policies, we need our federal government to show true courage and, to quote Texas Governor Rick Perry, “maturity” in facing up to this issue and putting real solutions into place. Neither party can afford to continue on their current path.

In my opinion, the fear-mongering and immigrant-bashing of last year contributed to the electoral disaster of Republicans last fall, and those who choose to pander to restrictionists and continue to alienate Latino and other immigrant voters will doom themselves to defeat. Last year, ICIRR and the Center for Community Change published a report, “Today We March, Tomorrow We Vote,” documenting the potential growth of immigrant voting populations all across the country. More than 14 million potential new citizens or children of immigrants reaching voting age could participate in next year’s elections. In at least 11 swing states these potential voters are greater in number than the difference between President Bush and Senator Kerry’s vote totals. And already USCIS saw record numbers of immigrants, buoyed by last year’s marches, applying for US citizenship so that they can fully participate as voters.

The Democratic Leadership can also not afford to just sit by, assume that the Minority will drive immigrant voters toward Democrats, and do nothing beyond paying lip service. Our votes cannot be taken for granted—we need real reforms that will benefit not just us and our families, but our whole nation.

Now is time for both parties to show leadership and resolve our immigration crisis. We hope that this committee, this Congress, and this Administration, will take such leadership. Thank you.

## ATTACHMENT 1

**Our Principles****We Seek a Comprehensive Approach that Makes Immigration Sense for America and its Newcomers**

The United States Should Stand for the Principles of Justice and Equity. Yet our immigration laws fail on both counts. It is time to reform our laws and strengthen these traditions.

**The Status Quo is Broken.**

Current immigration policies leave millions of immigrants in the shadows, vulnerable to abuse because they lack legal documentation, and unable to fully participate in a country they help build. The mismatch between outdated policies and the economic realities of our country has led thousands of deaths at the border and to millions of immigrants being denied basic rights.

**We Need to Restore Integrity, Equity, and Effectiveness to our Immigration System.**

It is possible to have an immigration system that respects the rights of all, protects individuals fleeing persecution, makes us all more secure, and acknowledges the economic, social, and cultural contributions of immigrants. We need an approach to immigration that is safe, efficient, and accountable.

**The Solution:**

A Comprehensive Approach that Makes Immigration Sense for America and its Newcomers

**\* Provide a Path to Permanent Resident Status and Citizenship for All Members of Our Communities.** Our immigration policy needs to be consistent with reality. Most immigrants are encouraged to come to the United States by economic forces they do not control. Immigrants bring prosperity to this country, yet many are kept in legal limbo. Legalization of the undocumented members of our communities would benefit both immigrants and their families and the U.S.-born, by raising the floor for all and providing all with equal labor protections.

**\* Reunite Families and Reduce Backlogs.** Immigration reform will not be successful until we harmonize public policy with one of the main factors driving migration: family unity. Currently families are separated by visa waiting periods and processing delays that can last decades. Comprehensive immigration reform must strengthen the family preference system, by increasing both the number of visas available both overall and within each category. In addition, the bars to re-entry, must be eliminated, so that no one who is eligible for an immigrant visa is punished by being separated from their family for many years.



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Despite increased enforcement at the U.S.-Mexican border beginning in the 1980s, the number of foreign-born workers entering the United States illegally each year has not diminished.

### Introduction

One of the most important and challenging problems facing the 109th Congress will be immigration reform. Despite increased enforcement at the U.S.-Mexican border beginning in the 1980s, the number of foreign-born workers entering the United States illegally each year has not diminished. Today an estimated 10 million or more people reside in the United States without legal documentation, and that number continues to grow by 400,000 or more each year.<sup>1</sup>

In his State of the Union message on February 2, 2005, President Bush challenged Congress to fix the problem:

America's immigration system is . . . outdated, unsuited to the needs of our economy and to the values of our country. We should not be content with laws that punish hardworking people who want only to provide for their families and deny businesses willing workers and invite chaos at our border. It is time for an immigration policy that permits temporary guest workers to fill jobs Americans will not take, that rejects amnesty, that tells us who is entering and leaving our country, and that closes the border to drug dealers and terrorists.<sup>2</sup>

The issue of immigration reform has been simmering throughout the Bush presidency. When the president first assumed office four years ago, it was already clear to most observers that U.S. immigration policy toward Mexico was not working. Despite a massive buildup of enforcement resources along the border, Mexican immigration continued apace throughout the 1990s, and the undocumented population grew at an unprecedented rate, enabling Hispanics to overtake African Americans as the nation's largest minority much sooner than Census Bureau demographers had predicted.<sup>3</sup> It was not surprising, therefore, that early in its first term the Bush administration began high-level talks on immigration reform with officials in the newly

elected government of Mexican president Vicente Fox.

By the summer of 2001, the discussions were inching toward a consensus that involved some kind of legalization program and a temporary work visa for Mexican citizens.<sup>4</sup> The terrorist attacks of September 11, 2001, however, pushed immigration reform and Mexico to the back burner of administration concerns. The inability of President Fox to negotiate a labor accord with the United States undermined his political position domestically, led to the early resignation of his foreign minister, and contributed to electoral losses for his party during the midterm elections of 2003. Meanwhile, the problems associated with undocumented migration continued to fester.

The Bush administration finally returned to the issue of immigration reform in 2004. In a January 7, 2004, speech at the White House, the president proposed creating a large temporary worker program to legalize present undocumented migrants and accommodate new entrants in the future. He would grant renewable three-year work visas to employers, which would enable them to hire workers from Mexico and other countries when suitable U.S. workers could not be found. Undocumented migrants living in the United States would be required to pay a one-time registration fee to be eligible for the visa, but those who were still abroad could register free of charge. The three-year visa would be renewable, and, if in the course of working in the United States a worker accumulated ties and characteristics that qualified him or her for permanent residence, he or she could apply for a green card conferring permanent resident status. Although the supply of residence visas would be increased to handle such applications, special credits and incentives would be implemented to encourage the return of temporary workers.<sup>5</sup>

The president's proposal did not contain specifics on the number of temporary worker visas or new green cards to be authorized, but his announcement set in motion a flurry of alternative proposals for reform, including bills introduced by Sens. McCain, Kennedy, Hagel, Daschle, Craig, and Cornyn, as well as Reps.

Pelosi, Cannon, Flake, Kolbe, and Gutierrez.<sup>6</sup> Although none of those proposals made progress in 2004, after the elections President Bush restated his commitment to achieving immigration reform in his second term.

To lay the groundwork for a reasoned consideration of policy options, this study describes how the United States got into its current predicament with respect to Mexican immigration. It then outlines the sorts of policies that that must be implemented if we are to get out.

### Roots of the Current Problem

The year 1986 was pivotal for the political economy of North America. Two things happened in that year that signaled the end of one era and the beginning of another. In Mexico, a new political elite succeeded in overcoming historical opposition within the ruling party to secure the country's entry into the General Agreement on Tariffs and Trade (GATT). Building on that initiative, President Carlos Salinas approached the United States in 1988 to make the economic reforms permanent by forging a continentwide alliance to create a free trade zone stretching from Central America to the Arctic, which ultimately resulted in the North American Free Trade Agreement (NAFTA).<sup>7</sup>

While trade liberalization took a step forward in 1986, labor market mobility took a step backward. Even as U.S. officials worked with Mexican authorities to integrate North American markets for goods, capital, information, raw materials, and services, they simultaneously acted to prevent the integration of Mexican and American labor markets. Rather than incorporating the movement of workers into the new free trade agreement, the U.S. government sought to unilaterally restrict the movement of workers. To underscore its resolve, in 1986 Congress passed the Immigration Reform and Control Act, which criminalized the hiring of undocumented workers by U.S. employers and increased funding for the U.S. Border Patrol. Then, in 1993, Border Patrol officials launched Operation Blockade in El

Paso, followed by Operation Gatekeeper in San Diego. Those operations mobilized massive resources in two border sectors to prevent undocumented border crossings.<sup>8</sup>

Thereafter the United States pursued an increasingly contradictory set of policies, moving toward integration while insisting on separation, moving headlong toward the consolidation of all North American markets save one: labor. In order to maintain the pretense that such selective integration could be achieved and to demonstrate that the border was "under control," the U.S. government devoted increasing financial and human resources to a show of force along the Mexico-U.S. border, a repressive impulse that only increased in the wake of September 11. Unfortunately, those measures have not deterred Mexicans from coming to the United States or prevented them from settling here.<sup>9</sup>

#### Moving toward Integration

The adoption of economic reforms in Mexico in 1986 accelerated cross-border flows of all sorts, and those flows increased dramatically after NAFTA took effect in 1994. Consider, for example, trends in total trade between Mexico and the United States. From 1986 to 2003 total trade between the two nations increased by a factor of eight, reaching \$235 billion.<sup>10</sup> Over the same period, the number of Mexicans entering the United States on business visas more than tripled, from 128,000 to 438,000 annually, while the number of intra-company transferees rose even more rapidly, from 4,300 to 16,000. From just 73 Mexican "treaty investors" in 1986 the number grew exponentially to 4,700 persons in 2003. (Treaty investors manage operations of an enterprise within the United States in which they are an active investor.)<sup>11</sup>

This growth of trade and business migration was accompanied by an expansion of other cross-border movements. Over the same period, the number of Mexican tourists entering the United States increased six-fold to 3.6 million, while the number entering the United States as students doubled to 22,500, and the number of educational and cultural exchange visitors more than doubled, from about 3,000 to 6,600.<sup>12</sup> The

**Even as U.S. officials worked with Mexican authorities to integrate North American markets, they simultaneously acted to prevent the integration of Mexican and American labor markets.**

Between 1986 and 1996, Congress and the president undertook a remarkable series of actions to reassure citizens that they were working hard to "regain control" of the U.S.-Mexican border.

total number of individual border crossings by car, bus, train, and on foot also grew rapidly, rising from 114 million in 1986 to more than 290 million in 2000. Owing to the events of September 11, 2001, and the U.S. economic recession, the number of border crossings fell between 2000 and 2002, but they were still 1.7 times higher than their level in 1986.<sup>13</sup>

#### Insisting on Separation

As the foregoing figures indicate, evidence for the ongoing integration of the North American economy is abundant, concrete, and compelling. As envisioned by the proponents of NAFTA, cross-border movements of people, goods, and services have grown rapidly along a variety of fronts. Although the United States has committed itself to integrating most markets in North America, however, it has paradoxically sought to prevent the integration of its labor markets. Indeed, since 1986 the United States has embarked on a determined effort to restrict Mexican immigration and tighten border enforcement, an effort that intensified around 1994, just as NAFTA took effect.

During the 1990s, border control was framed by U.S. politicians as an issue of "national security," and illegal migration was portrayed as an "alien invasion." As a result, between 1986 and 1996, the Congress and the president undertook a remarkable series of actions to reassure citizens that they were working hard to "regain control" of the U.S.-Mexican border.<sup>14</sup> The arrival of the new era was heralded by the passage of the Immigration Reform and Control Act in October 1986.

As advocated by its proponents, IRCA sought to combat undocumented migration in four ways. To eliminate the attraction of U.S. jobs, it imposed sanctions on employers who hired undocumented workers. To deter undocumented migrants from entering the country, it allocated additional resources to the Border Patrol. To wipe the slate clean and begin afresh, it authorized an amnesty for undocumented migrants who could prove five years of continuous residence in the United States and a legalization program for migrant farm workers. Finally, IRCA gave the president new authori-

ty to declare an "immigration emergency" if large numbers of undocumented migrants had embarked or were soon expected to embark for the United States.<sup>15</sup>

Despite expectations that IRCA would somehow slow unsanctioned Mexican immigration, both legal and illegal migration from Mexico still rose, and Congress returned to the drawing board in 1990 to pass another revision of U.S. immigration law. That legislation focused strongly on border control and authorized funds for the hiring of additional Border Patrol officers.<sup>16</sup> Early in the Clinton administration (1993-94), the Immigration and Naturalization Service developed a new border strategy that took full advantage of this increased funding. Known as "prevention through deterrence," the strategy aimed to prevent Mexicans from crossing the border so that they would not have to be deported later. The strategy had its origins in September 1993, when the Border Patrol chief in El Paso launched "Operation Blockade"—an all-out effort to prevent illegal border crossing within that sector.<sup>17</sup> Within a few months, immigrants had been induced to go around the imposing wall of enforcement, and traffic through El Paso itself was reduced to a trickle.<sup>18</sup>

Officials in Washington took note of the favorable outcome in El Paso and incorporated the operation into the Border Patrol's national strategic plan for 1994. In October of that year, a second border mobilization was authorized for the busiest sector in San Diego. "Operation Gatekeeper" installed high-intensity floodlights to illuminate the border day and night and built an eight-foot steel fence along 14 miles of border from the Pacific Ocean to the foothills of the Coastal Range. Border Patrol officers were stationed every few hundred yards behind this formidable steel wall, and a new array of sophisticated hardware was deployed in the no man's land it faced.<sup>19</sup>

This buildup of enforcement resources was further accelerated by Congress when it passed the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. Once again, the legislation focused heavily on deterrence, authorizing funds for the construction of two additional

layers of fencing in San Diego and enacting tougher penalties for smugglers, undocumented migrants, and visitors who entered the country legally but then overstayed their visas. It also included funding for the purchase of new military technology and provided funds for hiring 1,000 Border Patrol agents per year through 2001 to bring the total strength of the Border Patrol up to 10,000 officers.<sup>20</sup>

In 1986 the budget of the Immigration and Naturalization Service stood at just \$474 million, and that of the Border Patrol was \$151 million. IRCA began a modest acceleration of funding for border enforcement, but it was the innovation of border blockades in 1993 that really opened the spigot of money. By 2002 the Border Patrol's budget had reached \$1.6 billion and that of the INS stood at \$6.2 billion, 10 and 13 times their 1986 values, respectively. With this additional revenue, more Border Patrol officers were hired. Between 1986 and 2002 the number of Border Patrol officers tripled, and the number of hours they spent patrolling the border ("linewatch hours") grew by a factor of about eight.<sup>21</sup>

### The Consequences of Contradiction

As the foregoing data clearly show, the 1990s were a period of growing self-contradiction in U.S. policy toward Mexico. On the one hand, under NAFTA the United States committed itself to lowering barriers to the cross-border movement of goods, capital, raw materials, information, and services. As a result, the volume of binational trade increased dramatically as did cross-border movements of people. On the other hand, the United States attempted to harden the border against the movement of labor by criminalizing the hiring of undocumented workers and fortifying the frontier with massive increases in money, personnel, and equipment. By 2002 the Border Patrol was the largest arms-bearing branch of the U.S. government next to the military itself.<sup>22</sup>

Few in Washington stopped to consider the fundamental contradiction involved in militarizing a long border with a friendly, peaceful nation

that posed no conceivable strategic threat to the country and was, in fact, an ally and a large trading partner. Despite the fact that politicians sold NAFTA as a way for Mexico "to export goods and not people,"<sup>23</sup> everything that occurs in the course of integrating the North American market makes the cross-border movement of people—including workers—more rather than less likely in the short and medium run. The expanding binational network of transportation and communication that evolves to facilitate trade also makes the movement of people easier and cheaper. The interpersonal connections formed between Mexicans and Americans in the course of daily business transactions create a social infrastructure of friendship and kinship that encourage migration, and facilitate further movement.

Moreover, it is not as if there were no movements of migrants across the border when NAFTA took effect. Large-scale migration from Mexico has been a fact of life in North America since 1942, when the United States initiated the *bracero* guest worker program that lasted 22 years.<sup>24</sup> That program ultimately sponsored the short-term entry of nearly five million workers, and when it was shut down in 1964, movement continued through other channels. Thousands of former guest workers simply adjusted status to acquire permanent resident visas, and a growing number migrated without documents. From 1942 to the present, the circulation of labor between Mexico and the United States has been widespread and continuous. By the end of the 20th century, two-thirds of all Mexicans knew someone who had been to the United States and almost 60 percent were socially connected to someone living in the United States.<sup>25</sup>

This huge stock of social capital connecting people in Mexico to destinations in the United States, combined with the acceleration of economic integration along multiple fronts, presents a huge obstacle for U.S. efforts to seal the border selectively with respect to the movement of workers. That the policy would fail was almost preordained and should not be surprising to anyone who understands the nature of markets and their integration over time and across international borders. What many do

**Few in Washington stopped to consider the fundamental contradiction involved in militarizing a long border with a friendly, peaceful nation that posed no conceivable strategic threat to the country.**

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not realize, however, is that U.S. policies have not simply failed: they have backfired—bringing about outcomes precisely opposite those they originally sought to achieve. Not only have U.S. policies failed to deter Mexicans from migrating to the United States, they have promoted a more rapid growth of the nation's undocumented population.

#### Failed Deterrence

The fundamental weakness of blockading particular sectors of the Mexican border is that there are always other, less-defended sectors within which to cross. The mobilization of enforcement resources in El Paso and San Diego simply diverted the flows into Arizona, causing U.S. authorities to launch new blockades there, which channeled movement into New Mexico and the Rio Grande Valley of Texas, bringing about a mobilization of enforcement resources in those sectors.<sup>36</sup> Because the border is 2,000 miles long, systematically blockading this length in the manner of San Diego or El Paso would be prohibitively expensive.

Ultimately, the net effect of the border blockades has been to push undocumented Mexican migrants into crossing at more remote and less accessible locations in mountains, deserts, and untamed sections of the Rio Grande River. The tragic result for undocumented migrants has been a tripling of their death rate during entry.<sup>27</sup> But if migrants are more likely to die while crossing remote sectors of the border, they are also less likely to be caught, and a less-known consequence of U.S. border policy has been that it has decreased the odds that undocumented Mexican migrants are apprehended while attempting to enter the United States.<sup>28</sup>

Since 1982 the Mexican Migration Project (now based at Princeton University) has undertaken representative surveys of Mexican communities and their U.S. destination areas to create a database of detailed information on the characteristics and behavior of documented and undocumented migrants. At present, the MMP database contains surveys of 93 binational communities, yielding detailed information on 16,840 households.<sup>29</sup> Each head of household with migratory experience in the United States

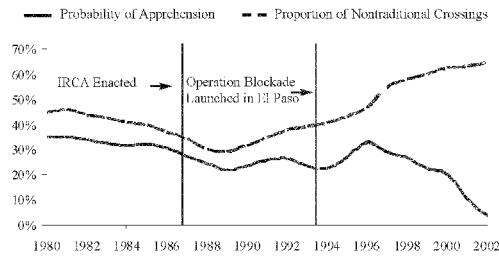
is interviewed to obtain a complete history of border crossings, where the crossings occurred, and the number of attempted entries and apprehensions that took place.

Figure 1 draws on these data to show trends in the locations of border crossings and the probability of apprehension among undocumented Mexican migrations from 1980 to 2002, the latest year for which reliable estimates are available.<sup>30</sup> From 1980 through 1987, the proportion of migrants crossing in either Tijuana-San Diego or Juarez-El Paso increased. By 1988 around 70 percent of all border crossings occurred within these two "traditional" sectors. The increased enforcement at the border begun by IRCA in 1986 was naturally aimed at those high-volume points of entry, a tendency that was amplified in 1993-94 with the launching of various blockades. As a result, beginning in 1988 the proportion of migrants crossing at nontraditional sectors along the border rose steadily from 29 percent to reach 64 percent in 2002. Undocumented migrants simply went around the hardened sectors of the border.

Through the 1970s and early 1980s, the probability of apprehension along the border was relatively steady, averaging about 33 percent.<sup>31</sup> Thereafter, the probability of apprehension fell into the 20 to 30 percent range, and following the implementation of Blockade and Gatekeeper in 1993 and 1994, the likelihood of arrest plummeted. By 2002 the probability of apprehension had reached an all-time low of just 5 percent. Rather than increasing the odds of apprehension, U.S. border policies have reduced them to record lows.

Given this fact, it is not surprising that U.S. border policies have had little detectable effect in deterring undocumented migrants from leaving for the United States in the first place. According to MMP data on the probability that Mexican men and women took a first trip to the United States from 1980 onward, there is little evidence in either series that the border buildup has dissuaded undocumented Mexicans from heading northward. There is considerable temporal variation in the trend for males, whose probabilities of making a first attempt to enter

**Figure 1**  
Trends in Use of Nontraditional Crossing Points and Probability of Apprehension, 1980–2002



Douglas S. Massey, Jorge Durand, and Nolan J. Malone, *Beyond Smoke and Mirrors: Mexican Immigration in an Era of Economic Integration* (New York: Russell Sage Foundation, 2002), pp. 107 and 128; and computations by the author using Mexican Migration Project data.

the United States illegally fluctuate between 1.5 and 2.5 percent, with variations being closely tied to economic conditions on both sides of the border.<sup>37</sup> Although the likelihood of female migration is much lower, the trend is virtually flat.

The available data thus indicate that the inflow of undocumented migrants from Mexico continues apace, albeit with variations linked to economic cycles, but that once they are at the border the odds of being apprehended are much lower. As a result, more undocumented migrants are gaining entry to the United States than ever before. Over the same time period, legal immigration from Mexico has also grown, despite measures enacted by Congress to make it more difficult to qualify for documents and to reduce the rights and privileges of legal immigrants once they are here.

#### Wasted Money

Thus, although the size of the Border Patrol's budget increased by a factor of 10 between 1986 and 2002, and the number of Border Patrol agents has tripled, more Mexican migrants—both documented and undocumented—are arriv-

ing than ever before. The combination of huge budget increases with rising migration rates suggests a marked deterioration in the efficiency of U.S. border enforcement operations. American taxpayers are spending vastly more to achieve little in the way of deterrence and much less in the way of arrests along the border.

One measure of the efficiency of enforcement is the cost of arresting one undocumented migrant, estimated by dividing the Border Patrol's annual budget by the number of apprehensions achieved along the Mexico-U.S. border. Before 1986 the cost of one apprehension was roughly constant at around \$100 per arrest. Beginning with the passage of IRCA in 1986, however, the cost of enforcement began to rise, tripling to around \$300 per arrest in 1989 before stabilizing for a time. Beginning with the launching of operations Blockade and Gatekeeper in 1993 and 1994, however, the cost of making one arrest immediately jumped to more than \$400 and then gradually trended upward to reach \$600 in 1999. The events of September 11, 2001, brought another huge infusion of resources to the Border Patrol that was in no way connected to the threat of either terrorism or undocumented migration

**Rather than increasing the odds of apprehension, U.S. border policies have reduced them to record lows.**



Whereas the cost of making one arrest along the border stood at just \$300 in 1992, 10 years later it reached \$1,700, an increase of 467 percent in just a decade.

emanating from south of the border, and the marginal cost of apprehension skyrocketed. Whereas the cost of making one arrest along the border stood at just \$300 in 1992, 10 years later it reached \$1,700, an increase of 467 percent in just a decade.<sup>33</sup>

If this increase in the cost of enforcement, high as it was, had slowed the flow of undocumented migrants, one might consider it money well spent. But as we have already seen, in 2002 the probability of apprehension was lower than at any point in the modern history of Mexico-U.S. migration, and the number of Mexicans entering the United States was greater than ever. Whatever one thinks about the goal of reducing migration from Mexico, U.S. policies toward that end have clearly failed, and at great cost to U.S. taxpayers. The allocation of funds to border enforcement since 1986 has resulted in the waste of billions of dollars.

Data presented so far have shown that despite massive increases in the personnel and budget devoted to border enforcement and congressional actions undertaken to discourage legal immigration, the number of legal and illegal entries from Mexico has continued to grow, implying the waste of billions of dollars (not to mention hundreds of lives each year) in the futile effort to prevent the movement of labor within a rapidly integrating North American economy. As grim as this assessment may be, it gets worse. Not only have U.S. policies failed to reduce the inflow of people from Mexico, they have perversely reduced the outflow to produce an unprecedented increase in the undocumented population of the United States.<sup>34</sup> America's unilateral effort to prevent a decades-old flow from continuing has paradoxically transformed a circular flow of Mexican workers into a settled population of families and dependents.

#### More Settlement

The unilateral militarization of the U.S.-Mexican border has been successful in achieving one outcome: it has dramatically increased the costs and risks of border crossing. By channeling undocumented flows into remote and more hazardous regions of the border, the border blockades have tripled the risk of death

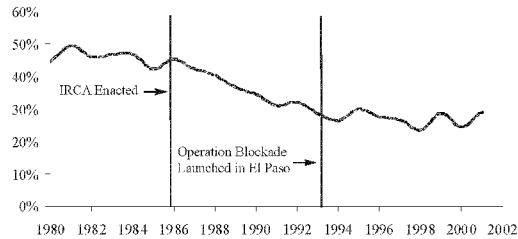
during crossing. The increased mortal danger was offset, however, by a declining likelihood of apprehension, so that few migrants were deterred from making the attempt.

Rather than choosing not to enter the United States illegally, undocumented migrants quite rationally invested more money to minimize the risks and maximize the odds of a successful border crossing. As U.S. authorities deployed a more formidable array of personnel and materiel at key points along the border, smugglers on the Mexican side upgraded the package of services they offered. Instead of simply accompanying small parties of undocumented migrants on foot across well-trod pathways from Tijuana to San Diego and delivering them to an anonymous urban setting, smugglers now had to transport people to remote sectors of the border, guide them across, and have them met on the other side by personnel who would arrange transport to destinations throughout the United States.

The net effect of U.S. policies, in other words, was to increase the quality but also the price of border-smuggling services.<sup>35</sup> After the various blockades were launched, undocumented migrants faced rising out-of-pocket costs to ensure a successful border crossing. The extent of this increase is indicated by estimates of the average amount of money that undocumented migrants paid someone to smuggle them into the United States by year.<sup>36</sup> From 1980 to 1992 the cost of hiring a *coyote*, or *pallero* (as smugglers are colloquially labeled) was relatively flat, averaging around \$400 per crossing. With the launching of the new strategy of prevention through deterrence in 1993, however, the cost of purchasing a smuggler's services rose to around \$1,200 in 1999, before leveling off.

Compared to 1990 and before, in other words, by the year 2000 it cost undocumented migrants three times as much to gain entry to the United States. If the first order of business on any trip to the United States is to recover that cost, then holding constant the rate of remuneration and hours worked per week, the stay would have to be three times as long. Although beefing up the Border Patrol may not have reduced the inflow, therefore, it did

**Figure 2**  
Probability of Returning to Mexico within 12 Months of Entry, 1980-2001



Source: Computations by author from Mexican Migration Project data, [mmp.princeton.edu/](http://mmp.princeton.edu/).

substantially increase the length of trips to reduce the outflow. Another way of viewing the increase in trip lengths is in terms of a decline in the probability of return migration: fewer migrants return within one year of their original entry. This fact is illustrated in Figure 2, which uses MMP data to compute the raw probability of returning to Mexico within 12 months of entry.

As can be seen, before IRCA the annual likelihood of return migration fluctuated between 40 percent and 50 percent with no clear trend. After 1986, however, there was a steady, sustained decline in the likelihood of return migration, which bottoms out at 24 percent in 1996 and begins to oscillate. Roughly speaking, the average probability of return migration went from around 45 percent before IRCA to around 25 percent today. If 1,000 migrants were to enter the United States each year at the former rate, 950 (or 95 percent) would be back in Mexico within five years and the average length of trip would be 1.7 years. At the latter rate, of 1,000 migrants who entered the United States within a given year, only 763 (or 76 percent) would have returned to Mexico within five years, and the average trip duration would have grown to 3.5 years.

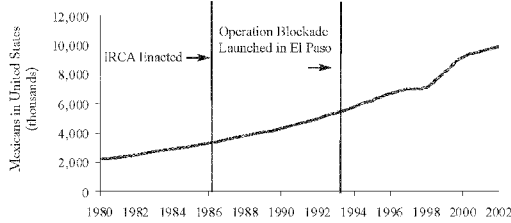
If the number of undocumented Mexicans

entering the United States each year after 1986 remained constant or was increasing, as the evidence suggests, and probability of return migration was simultaneously falling, then only one outcome is possible: a sharp increase in the size of the undocumented population living in the United States at any point in time. In demographic terms, if the number of entries to a population persists or grows while the number of exits falls, the size of that population can only grow.

The growth in the size of the Mexican population of the United States as recorded by the U.S. Bureau of the Census is shown in Figure 3. From 1980 through the mid 1990s, the Mexican population of the United States grew at a steady if rapid rate, roughly tripling in the 15 years from 1980 to 1995. After 1990 the trend accelerated, with the population growing from 7 million in 1997 to around 10 million in 2002, an increase of 43 percent in just five years. After results from the 2000 U.S. census were published, it was evident that Hispanics had overtaken blacks to become the nation's largest minority far earlier than most demographers had predicted. Ironically, the U.S. government's concerted effort to stop Mexican migration at the border has been a major contributor to that development.

The average probability of return migration went from around 45 percent before IRCA to around 25 percent today.

**Figure 3**  
**Number of Mexicans in the United States, 1980–2002**



Source: U.S. Census Bureau, Foreign Born Population Database.

### How to Curb Illegal Immigration

President Bush's policy proposals are a step in the right direction, but a tentative step. Moreover, the proposals are vague about the numbers of immigrants eligible for the various programs of legalization and temporary labor. But there is a set of policies that could reduce the disincentives that prevent Mexicans from returning to their home country, minimize the costs of migration to U.S. citizens, maximize the potential of migrant remittances to promote economic growth in Mexico, and reduce the cost in lives and money of U.S. border enforcement.<sup>37</sup>

Specifically, in order to bring current flows of Mexican labor into the open, Congress should create a new category of temporary visa that permits the bearer to enter, live, and work in the country without restriction for two years, with an option for renewal once in the lifetime of the migrant, but only after he or she has returned home. The visas would be issued to persons and not tied to specific jobs. Such a program would guarantee the rights of temporary migrants, protect the interests of American workers, and satisfy the demands of employers by moving toward a relatively free and open North American labor market.

These new visas should be generously available to residents of Canada and Mexico. If

300,000 two-year visas were issued annually, there would be 600,000 temporary migrants working in the United States at any time, a small share of the U.S. workforce but a large fraction of undocumented migrants. Moreover, the U.S. government should charge a \$400 fee to migrants for each visa issued, to be paid upfront in cash or in low-interest installments from the migrant's U.S. earnings. This money could be used for the benefit of the migrants themselves, in ways described below. The data presented above indicate that migrants are perfectly willing to pay this amount to gain entry to the United States, but until now the money has gone into the pockets of border smugglers rather than toward more beneficial purposes. A \$400 fee paid by 300,000 temporary migrants per year would yield annual revenues of \$120 million.

As an additional source of revenue, the government could earmark federal taxes (Social Security, Medicare, and income taxes) withheld from the paychecks of temporary migrants for immigration-related initiatives. If 600,000 temporary migrants were to earn annual incomes of just \$15,000 and have taxes withheld at a rate of 25 percent, the annual revenues would be \$225 million per year. Additional resources could be freed by reducing the personnel and resources devoted to border enforcement. There is no evidence whatsoever that the costly expansion of Border Patrol personnel has raised the odds of

President Bush's policy proposals are a step in the right direction, but a tentative step.

apprehension or prevented the entry of undocumented migrants, but the human costs in terms of injury and death have been great. The Border Patrol would be equally effective, more efficient, and violate fewer human rights with a smaller number of officers assigned to the border. If workers could enter the United States through an orderly and legal process at the traditional urban entry points, Border Patrol personnel could train a higher share of their remaining resources on apprehending criminals, potential terrorists, and others who would try to sneak across the border rather than enter legally.

It is also imperative to increase the number of permanent resident visas available to Mexicans to 100,000 per year. The current quota of 20,000 visas for a nation to which we are so closely bound by history, geography, and treaty is absurdly low, yielding excessively long waiting times for many legally qualified immigrants and virtually guaranteeing undocumented movement. At the same time, however, the U.S. government should eliminate the preference category that confers rights of entry on brothers and sisters of U.S. citizens, an unnecessary provision that is more responsible than any other feature of U.S. immigration law for reinforcing the process of chain migration that propels so much of the immigration from Mexico.

Any legislation to reform immigration will be incomplete if it does not address the estimated 10 million or more people already living in the United States who do not have legal documents. Adults who made a willful decision to violate U.S. immigration laws and enter the United States do not deserve a blanket amnesty, but neither do they deserve summary deportation. Violations of U.S. immigration law are civil infractions, not criminal acts, and most violators are guilty only of seeking to improve the welfare of themselves and their families by taking jobs that few Americans want. Since arriving in the United States, many have become parents of U.S. citizens and their continued illegality acts as a hindrance to their children's prospects in the country of their birth. For undocumented migrants who entered as adults, some kind of earned legalization pro-

gram is in order. Undocumented migrants who have stayed out of trouble and lack a criminal record would be allowed to come forward and register for temporary legal status and then allocated points for number of years spent in the United States, taxes paid, public services rendered, U.S. children born, and so on. Those accumulating a certain threshold of points at the time of legalization or at some point in the future would be admitted into permanent resident status.

Among the undocumented population are some 2 to 3 million children of undocumented migrants who entered as minors and are guilty of nothing more than obeying their parents and remaining loyal to their families. The overwhelming majority of these people have grown up in the United States, attended U.S. schools, and stayed out of trouble. Such people deserve an immediate amnesty so that they can pursue their lives in the United States as Americans. Undocumented status constitutes an impermeable barrier to mobility, blocking access to good jobs and higher education for people who have grown up American and broken no law. The longer the children of unauthorized migrants languish without documents, the more problems we create for ourselves down the road.

The foregoing suggestions go beyond what President Bush has proposed but are not so distant from reforms broached by senators and representatives in the wake of the president's announcement. If enacted, these policy reforms will not eliminate undocumented migration from Mexico, of course, nor solve all of the problems associated with it. They will, however, reverse the deleterious consequences of our current policies by eliminating the black market in immigrant labor, minimizing the long-term settlement of Mexican immigrants, encouraging the repatriation of capital and people to Mexico, promoting economic growth within migrant-sending communities, and overcoming the prevailing weaknesses in Mexican capital, credit, and insurance markets.

In the short run, the disruptions that follow from the consolidation of the North American market will continue to produce migrants to the United States, but long-term economic

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The record of the past two decades demonstrates that merely enforcing current U.S. immigration law is bound to fail.

growth and development within Mexico will gradually eliminate most of the incentives for international migration. We should seek not to stamp out the inevitable migratory flows but to help Mexico get over what Philip Martin at the University of California at Davis calls the "migration hump" as quickly and painlessly as possible. This will move North America toward a more balanced economy in which fewer Mexicans will experience the need to migrate northward.<sup>38</sup>

### Conclusion

If the United States had set out to design a dysfunctional immigration policy, it could hardly have done a better job than what it did between 1986 and the present. U.S. citizens have seen billions of their tax dollars wasted on fruitless efforts at border enforcement as the efficiency of Border Patrol operations reached all-time lows. Despite its extravagance, the expensive post-IRCA enforcement regime had no detectable effect either in deterring undocumented migrants from coming to the United States or raising their probability of apprehension at the border. Indeed, the probability of apprehension has never been lower.

The record of the past two decades demonstrates that merely enforcing current U.S. immigration law is bound to fail. Current law itself is fundamentally at odds with the reality of the North American economy and labor market. As long as that remains true, enforcement alone will fail to stem the flow and growth of illegal immigration to the United States.

U.S. policies have been effective, however, in causing hundreds of migrant deaths each year and dramatically increasing the out-of-pocket monetary costs of border crossing. These "successes," however, have not had the desired effect. They have only increased the length of trips to the United States and lowered the probability of return migration, thereby transforming a circular movement of workers into a settled population of families. Fueled by plummeting rates of return, migration

among undocumented migrants, and the rapid growth of legal immigration sponsored by newly naturalized citizens, the Mexican population in the United States grew at unprecedented rates during the past decade.

Thus, repressive U.S. immigration and border policies toward Mexico have backfired, producing more rather than less Mexican population growth in the United States. This paradoxical outcome stems from the unwillingness of the United States to accept the reality of North American integration. In NAFTA the nation committed itself to a joint framework for the continentwide integration of markets for goods, capital, information, commodities, and services; but since then it has refused to recognize the inevitable fact that labor markets will also merge in an integrated economy. In practical if not logical terms, it is impossible to create a single North American market characterized by the free movement of all factors of production except one.

Rather than bringing labor migration into the open and managing the inevitable flows in ways that might maximize the benefits and minimize the costs, the United States has employed increasingly repressive means and growing amounts of money to drive the flows underground to maintain the illusion of a "controlled" border—one that is miraculously porous with respect to all movements except those of labor. Maintaining this pretense, however, has become increasingly costly. The time is thus ripe for the United States to abandon its illusions and to accept the reality, indeed the necessity, of North American integration.

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## “Today We March, Tomorrow We Vote!”

### The Untapped Power of over 14 Million Potential New Immigrant Voters in 2008

This report finds that there are 14.25 million potential voters among legal immigrants who are currently eligible to naturalize and the 16 - 24 year old U.S. born children of immigrants. This includes 12.4 million potential new voters who can be eligible to participate in the 2008 elections.

The current Republican-led legislative attacks on immigrants and the red-hot anti-immigrant demagoguery which sparked the spring 2006 immigrant rights marches are currently driving record increases in citizenship applications by legal immigrants. They are also likely to drive increases in the registration and voting rates of U.S. born children of immigrants. This could dramatically – and negatively – affect the outcome of the 2008 Presidential and state elections.

#### **PRESS EMBARGO To Noon E.S.T. June 29, 2006**

Author Joshua Hoyt & Policy Fred Tsao, Illinois Coalition for Immigrant & Refugee Rights;  
Research Rob Paral & Associates;  
Released by the Center for Community Change, June 29, 2006

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## “Today We March, Tomorrow We Vote!”

**Written by:** Joshua Hoyt, Executive Director  
Illinois Coalition for Immigrant and Refugee Rights

**Data Estimates by:** Rob Paral and Associates, Chicago, IL

**Policy Background by:** Fred Tsao, Policy Director  
Illinois Coalition for Immigrant and Refugee Rights

**Released by:** Center for Community Change, June 29, 2006

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**Section 1: "Today We March, Tomorrow We Vote"**  
**Executive Summary**

As millions of immigrants marched across the U.S. in the historic mobilizations for immigration reform this past spring, they chanted: "Today We March, Tomorrow We Vote". Skeptics dismissed the marchers, pointing out that neither the undocumented nor legal permanent residents (green card holders) can vote. **This report finds that there are 14.25 million potential voters among legal immigrants who are currently eligible to naturalize and the 16 - 24 year old U.S. born children of immigrants. This includes 12.4 million potential new voters who can be eligible to participate in the 2008 elections.**

The current Republican-led legislative attacks on immigrants and red-hot anti-immigrant demagoguery sparked the spring 2006 immigrant rights marches and are currently driving record increases in citizenship applications by legal immigrants. They are also likely to drive increases in the registration and voting rates of U.S. born children of immigrants. This could dramatically – and negatively – affect the outcome of the 2008 Presidential election for the Republican Party, as well as Republican prospects in numerous state elections.

**Findings and Implications:**

There are 14.25 million potential voters among immigrant legal permanent residents (green card holders) who are currently eligible for citizenship and 16 – 24 year old U.S. born children of immigrants who will be eligible to vote in the 2008 elections. (See Tables 1 and 2 below.) This number includes:

- Nearly nine and a half million immigrants who are currently eligible to naturalize, become U.S. citizens, and vote.
- Almost two million U.S.-born children of immigrants between the ages of 18 and 24 years who are not currently registered to vote.
- The almost two million U.S.-born children of immigrants between the ages of 18 – 24 who are already registered to vote.
- Another one million U.S.-born children of immigrants who are not yet voting age, but will reach 18 years of age by the time of the 2008 elections, and will be eligible to register and to vote.
- There are over 2.6 million Mexican immigrants who are currently eligible to become U.S. citizens. (Table 3, Column 1)

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These numbers reveal a massive population whose entry into the electorate holds the potential to substantially and quickly alter the political status quo:

- There are 16 states where the number of immigrants eligible for citizenship and unregistered young U.S. born children of immigrants in 2008 total more than the vote differential between George Bush and John Kerry in 2004. This includes 11 states considered presidential "swing states" (Arizona, Colorado, Florida, Hawaii, Iowa, Michigan, Nevada, New Mexico, Ohio, Oregon, and Wisconsin.)
- There are 27 states where the numbers of immigrants eligible to become citizens and vote and unregistered young U.S. born children of immigrants who could vote in the 2008 election cycle total more than 50,000 potential new voters.
- There are 17 states with gubernatorial races in 2006 where the voting potential of the 4.25 million children of immigrants is either large enough to be a significant voting block, or where the race is close enough (according to the Cook Political Report) for the immigrant vote to be a determinative "swing". (Arizona, California, Colorado, Connecticut, Florida, Hawaii, Illinois, Iowa, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, Ohio, Oregon, Pennsylvania, Texas, and Wisconsin)
- The harsh anti-immigrant rhetoric and legislation initiated by some Republican legislators is already pushing these potential voters to march and has spurred close to a 20% increase in citizenship filings.
- It appears that the Bush administration and some Republican legislators understand and are threatened by the large numbers of immigrants who might become citizens. They are **creating numerous new walls to deny citizenship to legal immigrants, and thereby delay democracy**. New barriers that prevent legal immigrants from becoming U.S. citizens include: higher citizenship fees, more bureaucracy, electronic pre-applications, and a substantially more difficult citizenship exam.

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**Why does it matter?**

Humane, decent immigration reform with a path to citizenship, family reunification, and civil and worker's rights matters because it directly affects the lives of millions of people living and working in the United States. It affects the lives of their family members, their congregations, and their communities.



But arguments of justice, decency, faith, and humanity engender derisive snarls from the political class. So let's talk "rocks are hard, water is wet" cold political numbers.

Exit polling showed that the Republican outreach strategy to Latinos in 2004 was successful. President George Bush won 40% of the Latino vote, up from an average of 28% in the four previous elections. Even more significantly, among *immigrant Latinos* Bush got a 40% higher vote than he did among U.S.-born Latinos. Appealed to correctly the Latino vote, especially the *immigrant Latino* vote is a true swing vote.

Similar nuances are important when examining the Asian vote, as well. The Bush percentage of the Asian vote ran from a high of 82% of the Vietnamese vote to a low of 27% of the Asian Indian vote. He won 57% of the Korean vote; 55% of the Filipino vote; 42% of the Japanese vote; and 37% of the Chinese vote. Clearly, the "Asian Vote" cannot be taken for granted by either the Republicans or the Democrats.

However the aggressive approach and harsh tone in the immigration debate taken by Republican leaders has galvanized the Latino and immigrant community. What will be the effect of a Latino electorate alienated from the Republican Party? Let us quote two renowned Republican strategists:

*"We can't afford to do to the Hispanics what we did to the Catholics in the late nineteenth century: tell them we don't like them and lose their vote for a hundred years."* **Grover Norquist, Americans for Tax Reform, The New Yorker, 4-10-2006**

*"We can't survive as a party without getting more of the Hispanic vote."* **Matthew Dowd, Bush Campaign Strategist, Chicago Tribune, January 27, 2006**

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**Section 2: “The Awakening Giant”  
Immigrants and Citizenship and the 2008 Elections**

The immigrant population in the United States in 2005 is estimated by the U.S. Census Bureau to be just under 40 million. Of this total an estimated 11 to 12 million are undocumented immigrants and another 14 million are naturalized citizens. In addition there are some 13 million legal permanent residents living in the United States, that is, “green card holders” who are legal immigrants with the right to apply for citizenship. (Another almost 4 million legal immigrants are either temporary residents or have refugee status).

Of these legal permanent resident immigrants there are 9,400,000 who are currently eligible to apply for citizenship, including 2.6 million Mexican immigrants. (See Table 1, Column A; Table 3, Column A.) This number has increased substantially since the most recent study that showed these numbers to be 7,900,000 in 2002.<sup>1</sup> Immigrants are currently naturalizing at a rate of 600,000 per year.<sup>2</sup>)

**Immigrants are realizing the power of citizenship.** In the wake of anti-immigrant legislation passed last December by Republican House leaders, including Speaker Dennis Hastert and Rep. James Sensenbrenner, **interest in citizenship has surged during the past few months**<sup>3</sup>:

- US Citizenship and Immigration Services (USCIS) website received a record 6.6 million hits in March 2006.
- Downloads of the N-400 naturalization form and other forms from the website jumped from 1.8 million in February to 2.2 million in March.
- In May immigrants downloaded 140,000 citizenship applications, almost twice as many as a year earlier.
- Citizenship applications have also surged. Between January and March The U.S. Department of Homeland Security received over 185,000 citizenship applications, a 19% increase over the same period a year ago.
- The Congressional Hispanic Caucus has named July 1, 2006 “National Citizenship Day” and the “We Are America Alliance” has launched the “New Americans Democracy Summer” of citizenship and voter registration. Over 60 events are being held nationally to encourage citizenship and voting.

Immigrants are not just marching—they are becoming citizens and gaining the right to vote.



Table 1: Potential Impact of New Citizens and the U.S.-Born Children of Immigrants on the 2008 Election

	A		B		C		Total: A+B+C	Differential	Winner in 2004
	Estimated Immigrants Eligible to Naturalize	U.S.-Born, 18-24 Year Old Children of Immigrants: Not Registered	U.S.-Born Children of Immigrants Becoming Voting Age by 2008 Election	U.S.-Born Children of Immigrants Becoming Voting Age by 2008 Election	Bush-Kerry Vote				
Alabama	14,000	5,500	2,900	22,300	482,461	Bush			
Alaska	11,000	4,700	2,400	18,100	79,884	Bush			
Arizona	217,000	55,300	31,300	303,600	210,770	Bush			
Arkansas	36,000	3,800	1,900	41,700	102,845	Bush			
California	3,202,000	639,400	346,000	4,187,400	1,235,659	Kerry			
Colorado	72,000	25,500	14,700	112,200	99,523	Bush			
Connecticut	75,000	18,100	11,700	104,800	183,662	Kerry			
Delaware	5,000	1,900	1,000	7,900	28,452	Kerry			
District of Columbia	17,000	2,800	1,400	21,200	181,714	Kerry			
Florida	721,000	147,000	77,200	945,200	380,978	Bush			
Georgia	82,000	29,400	14,900	126,300	548,105	Bush			
Hawaii	46,000	14,400	7,400	67,800	37,517	Kerry			
Idaho	30,000	5,800	3,000	38,800	228,137	Bush			
Illinois	404,000	81,200	41,300	526,500	545,604	Kerry			
Indiana	23,000	10,500	7,100	40,600	510,427	Bush			
Iowa	33,000	3,800	2,800	39,400	10,059	Bush			
Kansas	23,000	5,300	3,600	31,900	301,453	Bush			
Kentucky	15,000	7,300	3,700	26,000	358,708	Bush			
Louisiana	27,000	7,600	3,800	38,400	281,670	Bush			
Maine	17,000	3,200	2,100	22,300	88,641	Kerry			
Maryland	118,000	34,800	17,900	168,400	309,790	Kerry			
Massachusetts	213,000	35,300	22,800	271,100	732,691	Kerry			
Michigan	137,000	27,300	18,500	182,800	185,437	Kerry			
Minnesota	56,000	13,300	9,000	78,300	98,319	Kerry			
Mississippi	7,000	2,600	1,300	10,900	228,857	Bush			
Missouri	31,000	9,200	6,200	46,400	196,542	Bush			
Montana	4,000	2,000	1,000	7,000	92,353	Bush			
Nebraska	21,000	3,700	2,500	27,200	258,496	Bush			
Nevada	82,000	22,500	11,500	116,000	21,500	Bush			
New Hampshire	20,000	3,300	2,100	25,400	9,274	Kerry			
New Jersey	443,000	52,800	34,000	529,800	241,427	Kerry			
New Mexico	48,000	18,500	8,100	72,600	8,888	Bush			
New York	1,346,000	147,100	108,000	1,601,100	1,351,713	Kerry			
North Carolina	82,000	26,400	13,400	121,800	435,317	Bush			
North Dakota	2,000	800	500	3,300	85,599	Bush			
Ohio	99,000	15,900	10,000	125,700	118,001	Bush			
Oklahoma	37,000	9,500	4,800	51,300	455,826	Bush			
Oregon	75,000	21,600	11,100	107,700	76,332	Kerry			
Pennsylvania	137,000	23,100	14,900	175,000	144,248	Kerry			
Rhode Island	42,000	6,900	4,500	53,400	80,719	Kerry			
South Carolina	32,000	9,200	4,700	45,900	276,275	Bush			
South Dakota	2,000	800	500	3,300	85,340	Bush			
Tennessee	33,000	10,600	5,300	48,900	347,898	Bush			
Texas	910,000	280,000	133,800	1,303,800	1,694,213	Bush			
Utah	46,000	14,100	7,200	67,300	422,543	Bush			
Vermont	8,000	1,300	900	9,200	82,887	Kerry			
Virginia	100,000	35,600	18,000	153,600	282,217	Bush			
Washington	135,000	32,700	16,800	184,500	205,307	Kerry			
West Virginia	4,000	2,200	1,100	7,300	97,237	Bush			
Wisconsin	53,000	10,200	6,900	70,100	11,384	Kerry			
Wyoming	1,000	1,000	500	2,500	98,853	Bush			
USA	9,400,000	1,924,800	1,077,900	12,402,600	3,012,193	Bush			

Source: Estimates by Rob Patel and Associates. See Methodology Section for important information on these data.

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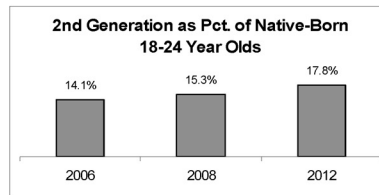


**“The Awakening Giant”  
Children of Immigrants and the 2008 Elections**

During the immigrant rights marches in the Spring of 2006 many of the marchers were youth, including large numbers of high school students. Some of the young marchers were undocumented and many of their parents certainly are, but a large and rapidly growing sector of the electorate in the U.S. are the children of immigrants, born in the U.S. and eligible to vote. (See Table 1, Columns B & C, Chart 1, and Table 3 below.) **If the energy of the marches and the high school walkouts begins to translate into voter registration and voting, the political impact will be fast and dramatic.**

- There are currently close to 2 million children of immigrants aged 18-24 who are not registered to vote.
- There are over 1 million children of immigrants who are currently aged 16 and 17 who will be eligible to vote by the 2008 elections.
- There are 1,765,000 U.S. born Latino children of immigrants who are currently unregistered but will be eligible to vote in 2008. (See Table 3 below.)
- There are 1.85 million children of immigrants currently registered to vote, including 792,000 Latino children of immigrants. (See Tables 2 and 3.)
- There are 19 states with over 30,000 16 – 24 year old children of immigrants unregistered and eligible to vote by 2008 and there are 11 states with over 50,000.
- There are 5 states with over 100,000 16 – 24 year old children of immigrants who could be new voters in 2008, including California with almost 1 million, Florida with 224,000, Illinois with 122,500, New York with 255,000, and Texas with 394,000.

The rapid growth of the children of immigrants as a percent of the young adult vote is detailed in Chart 1, below. In the six years from 2006 to 2012 the children of immigrants will grow from 14% of the native born youth to almost 18%. As the children of the immigrants who arrived in the 1990's come of age, this percent will increase even further. [Chart 1:](#)



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**Table 2: Potential Impact of U.S.-Born Children of Immigrants on the 2008 Elections**

	A	B	C	
	U.S.-Born, 18-24 Year Old Children of Immigrants Registered in 2006	U.S.-Born, 18-24 Year Old Children of Immigrants Not Registered in 2006	U.S.-Born Children of Immigrants Becoming Voting Age by 2008 Election	Total A+B+C
Alabama	4,244	5,500	2,800	12,544
Alaska	3,745	4,700	2,400	10,845
Arizona	54,208	55,300	31,300	140,808
Arkansas	2,924	3,800	1,900	8,624
California	571,553	639,400	346,000	1,556,953
Colorado	25,864	25,500	14,700	66,064
Connecticut	22,752	18,100	11,700	52,552
Delaware	1,492	1,900	1,000	4,392
District of Columbia	2,150	2,800	1,400	6,350
Florida	123,248	147,000	77,200	347,448
Georgia	22,627	23,400	14,900	60,927
Hawaii	11,376	14,400	7,400	33,176
Idaho	4,588	5,800	3,000	13,388
Illinois	63,274	81,200	41,300	185,774
Indiana	14,316	10,500	7,100	31,916
Iowa	5,175	3,800	2,600	11,575
Kansas	7,196	5,300	3,600	16,096
Kentucky	5,599	7,300	3,700	16,599
Louisiana	5,814	7,600	3,800	17,214
Maine	4,056	3,200	2,100	9,356
Maryland	26,773	34,800	17,600	79,173
Massachusetts	44,376	35,300	22,800	102,476
Michigan	37,416	27,300	18,500	83,216
Minnesota	18,150	13,300	9,000	40,450
Mississippi	1,984	2,600	1,300	5,884
Missouri	12,540	9,200	6,200	27,940
Montana	1,607	2,000	1,000	4,607
Nebraska	5,051	3,700	2,500	11,251
Nevada	17,826	22,500	11,500	51,826
New Hampshire	4,096	3,300	2,100	9,496
New Jersey	66,368	52,800	34,000	153,168
New Mexico	11,881	16,500	8,100	36,481
New York	230,979	147,100	108,000	486,079
North Carolina	20,334	26,400	13,400	60,134
North Dakota	1,095	800	500	2,395
Ohio	21,777	15,900	10,800	48,477
Oklahoma	7,280	9,500	4,800	21,580
Oregon	17,105	21,600	11,100	49,805
Pennsylvania	28,049	23,100	14,900	67,049
Rhode Island	8,727	6,900	4,500	20,127
South Carolina	7,088	9,200	4,700	20,988
South Dakota	1,028	800	500	2,328
Tennessee	8,141	10,600	5,300	24,041
Texas	208,443	260,000	133,800	602,243
Utah	11,180	14,100	7,200	32,480
Vermont	1,664	1,300	900	3,864
Virginia	27,418	35,600	18,300	81,018
Washington	25,918	32,700	16,800	75,418
West Virginia	1,675	2,200	1,100	4,975
Wisconsin	13,948	10,200	6,900	31,048
Wyoming	823	1,000	500	2,323
USA	1,847,953	1,924,800	1,077,800	4,850,553

Source: Estimates by Rob Peral and Associates. See Methodology Section for important information on these data.

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**Table 3: Potential Impact of Mexican New Citizens and U.S.-Born Latino Children of Immigrants on the 2008 Elections**

	Estimated Mexican Immigrants Eligible to Naturalize	18-24 Year Old Latino Children of Immigrants: NOT Registered	18-24 Year Old Latino Children of Immigrants: Registered	Latino Children of Immigrants Becoming Voting Age by 2008 Election
Alabama	14,100	1,000	700	500
Alaska	2,100	600	400	300
Arizona	130,500	36,800	27,900	18,500
Arkansas	15,400	1,400	1,100	700
California	816,300	419,300	317,600	210,500
Colorado	61,100	13,500	10,300	6,800
Connecticut	5,500	4,200	4,100	2,400
Delaware	2,500	300	300	200
District of Columbia	300	1,100	800	500
Florida	68,100	68,400	53,100	34,700
Georgia	70,700	7,200	5,600	3,700
Hawaii	2,400	600	400	300
Idaho	15,200	2,900	2,200	1,500
Illinois	186,900	34,000	39,000	20,900
Indiana	28,300	1,800	2,100	1,100
Iowa	10,800	1,600	1,800	1,000
Kansas	27,900	1,500	1,700	900
Kentucky	9,100	1,200	1,000	600
Louisiana	4,700	1,900	1,500	1,000
Maine	200	200	200	100
Maryland	6,400	4,700	3,700	2,400
Massachusetts	3,600	6,300	6,100	3,500
Michigan	23,000	3,900	4,400	2,400
Minnesota	15,400	600	700	400
Mississippi	6,300	100	100	100
Missouri	11,500	2,500	2,800	1,500
Montana	300	400	300	200
Nebraska	14,700	2,200	2,500	1,300
Nevada	59,100	11,900	9,000	6,000
New Hampshire	1,000	400	400	200
New Jersey	19,900	16,200	15,900	9,200
New Mexico	34,500	13,600	10,300	6,800
New York	41,200	58,400	57,200	33,000
North Carolina	70,400	5,600	4,400	2,900
North Dakota	200	100	200	100
Ohio	11,600	2,500	2,800	1,500
Oklahoma	26,600	3,200	2,500	1,600
Oregon	33,300	8,300	6,300	4,200
Pennsylvania	15,200	5,200	5,100	2,900
Rhode Island	800	2,000	1,900	1,100
South Carolina	13,700	1,000	800	500
South Dakota	600	200	200	100
Tennessee	21,500	1,400	1,100	700
Texas	610,400	212,800	165,200	108,000
Utah	24,400	4,200	3,200	2,100
Vermont	300	100	100	100
Virginia	12,400	7,500	5,600	3,800
Washington	55,900	6,000	4,600	3,000
West Virginia	600	200	100	100
Wisconsin	23,100	2,000	2,300	1,200
Wyoming	1,500	400	300	200
USA	2,631,700	983,500	792,100	507,400

Source: Estimates by Rob Paral and Associates. See Methodology Section for important information on these data.

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### The Challenge of Voter Registration Among Children of Immigrants

A central challenge of the immigrant rights movement over the next two years will be to increase the registration rates among children of immigrants. As Tables 2, 3, and 4 below show, the current registration rates of immigrant youth as a whole, and of Latino youth in particular, are among the lowest in the nation.

**Table 4: National Voter Registration Rates: 2004**

	Adult Citizen Population	Percent Registered to Vote
All Citizens	197,005,361	72.1%
Whites	148,158,512	75.1%
African Americans	22,866,151	69.0%
Asians	6,269,000	51.8%
Latinos	16,088,003	57.9%
Latino Native Born	12,061,883	57.1%
Latino Children of Immigrants	4,163,448	54.8%
Latino Children of Immigrants, Aged 18-24	1,408,904	42.1%

Source: Estimates by Rob Paral and Associates. See Methodology Section for important information on these data.

**Table 5: Registration Rates of Children of Immigrants, Aged 18-24 Years**

USA	48.9%
Northeast exc. NY	55.7%
New York	61.1%
Midwest exc. IL	57.8%
Illinois	43.8%
South exc. FL&TX	43.5%
Florida	45.6%
Texas	44.5%
West exc. AZ, CA, CO, NM	44.2%
Arizona	49.5%
California	47.2%
Colorado	50.4%
New Mexico	41.8%

**Table 6: Registration Rates of Latinos Aged 18-24 Years**

USA	45.0%
Northeast	49.5%
Midwest	53.4%
South	43.7%
West	43.1%

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### Section 3: New Barriers to Citizenship – A second "Wall"?

Full citizenship of the immigrants living in the U.S. should be a goal for all in our Republic. Citizenship makes our Democracy real, ensuring that all who live, work, contribute, worship, and raise families in our land have equal rights and responsibilities. It enables all to participate fully in our civic life. "Americans by choice, not by chance" implies an affirmative commitment to our nation and our democracy. Growing numbers of both undocumented and legal non-citizens create the risks of a European-style alienated immigrant underclass, something America has successfully avoided to date. **Citizenship delayed is Democracy denied.**

Legal permanent residents are eligible to apply for citizenship if they have lived in the United States for 4 years and 9 months, or for 2 years and 9 months if they are married to a U.S. citizen. To apply for U.S. citizenship, a legal permanent resident must fill out the 10-page N-400 application; pay fees currently totaling \$400; and be photographed and fingerprinted for a criminal background check. After a processing wait that currently averages 5 - 6 months, the applicant is invited to a citizenship interview. There they must show their knowledge of basic English and of U.S. government and history by passing a written and oral exam. The English requirement is waived if the applicant is elderly and has lived in the U.S. for at least 15 years, and for the disabled unable to learn English.

A full list of the requirements to become a U.S. citizen can be found at [www.newamericans-il.org](http://www.newamericans-il.org) on the website of the **New Americans Initiative**, a partnership between the **Illinois Coalition for Immigrant and Refugee Rights** and the **State of Illinois**.

If the applicant passes the citizenship exam, the final step is the Oath Ceremony, where the applicant swears "to support and defend the Constitution and laws of the United States of America" and becomes a U.S. citizen with the full rights and responsibilities of all Americans, including the right to vote.

Although eligible for citizenship after five years in the U.S. many legal permanent residents do not take this final step towards full civic participation in the U.S. The reasons may range from a desire to return to their native land to a lack of information about the process. But increasingly the obstacles to American citizenship are those created by the U.S. government.

**Over the last several years the Bush Administration and Republican elected officials have proposed and implemented numerous barriers that make U.S. citizenship much more difficult to obtain, especially for the poorer legal immigrants with less English and less education. These measures affect Mexican immigrants disproportionately.**

**Increased fees:** The costs to apply for citizenship have gone up dramatically over the past decade. In 1998, it cost \$95 to file an N-400 citizenship application. Now it costs \$400, including a \$70 fee for fingerprints. USCIS has set up automatic fee increases (not subject to public comment) each year based on the inflation rate, and has commissioned a study about increasing the costs still further. Citizenship will continue to get more expensive, and many Mexican and other lower-income immigrants will find it increasingly difficult to pay.

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In a remark unbelievably insensitive to those working poor immigrants who would like to become U.S. citizens, United States Citizenship and Immigration Services Director Emilio Gonzalez told reporters, "American citizenship is priceless. I think people will pay."<sup>19</sup>

**A longer application form:** In 2002, the N-400 form ballooned from four pages with two additional pages of instructions to ten pages with six pages of instructions. The form now includes ridiculous questions, such as whether the applicant has any titles of nobility, and questions about the previous spouses of the applicant's spouse.

**A corrupt process to make the citizenship test harder:** Since 2001, the immigration service has been working to make the citizenship test more "meaningful." During this time it has:

- hired and fired as its test design contractor Metritech, a company with no experience or competence with testing adult learners;
- then hired and fired the objective National Academy of Sciences, which it had brought in to provide objective guidance on test re-design;
- and then taken the process away from professional immigration service staff and placed it under the control of political appointees; and
- presented a draft test (prepared by Metritech) that included obscure and poorly-worded questions (such as "What social idea was important to people living in the 13 American colonies?") and difficult essays.

By January 2007, USCIS plans to unveil a new test that could put citizenship out of reach for many. Immigrants with less education already struggle with English and studying for a formal test.

**Even more costs and bureaucracy:** USCIS has proposed a new **electronic pre-application system** for immigration applications. This proposed new system would be effective by the end of 2006. Under this system, applicants must:

- pay an additional \$100 to set up an account with USCIS, and
- fill out a 19-page electronic pre-application form that asks detailed questions regarding criminal history, moral character, past and present marriages, and other personal information.

This system would cut off citizenship applicants who lack the additional money to set up an account. It would also worsen the consequences of the digital divide that many poorer immigrants already face. Community organizations and volunteers would need to fill out the citizenship application AND the new electronic pre-application form for each applicant. This would make it extremely difficult for these organizations to conduct citizenship workshops.

**Delaying procedures that target Muslim applicants:** On top of all these measures, USCIS is also checking the names of all citizenship applicants against FBI databases. USCIS will not proceed with an application unless the FBI clears the applicant's name. These name checks are disproportionately delaying the applications of applicants who emigrated from predominantly Muslim nations. As documented by the Council on American Islamic Relations-Chicago, at least 80 Muslim citizenship applicants in the Chicago area have faced extraordinarily long delays. So far USCIS and the FBI have not provided any explanation of how this problem can be rectified.

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### Senate "English as National Language" Amendment: Closing the Door on Citizenship

An amendment to the recently passed Senate comprehensive immigration bill (S 2611) offered by Sen. James Inhofe of Oklahoma would make English the "national language" of the US. Buried in the legislation are provisions that drastically raise the bar for immigrants who want to become US citizens. The Senate approved the amendment on May 18, 2006, by a vote of 63-34.

#### Cutting off immigrants from citizenship

The amendment would require that the immigration service develop a new citizenship test by January 1, 2008. The amendment would mandate that any such test demand that applicants "demonstrate an understanding of the history of the United States, including the key events, key persons, key ideas, and key documents that shaped the institutions and democratic heritage of the United States." But the amendment goes even further by specifying some of the items that applicants must know about: the Federalist Papers, the Emancipation Proclamation, major court decisions and legislation, pioneers, entrepreneurs, and artists.

All of this specific content would **drastically add to the knowledge load** we expect of citizenship applicants. Indeed, one has to wonder how well native-born US citizens, even elected officials, know this information. Sen. Inhofe and his allies would demand this knowledge of would-be citizens, including many immigrants who struggle with the current citizenship test due to their limited education.

This amendment represents a **massive legislative intervention** in the naturalization test redesign. The redesign process has already been going on for five years, and is already severely flawed and politicized. Significant consultation with and input from adult educators and community leaders would be discarded if this amendment becomes law.

This amendment is yet **another brick in the wall blocking immigrants from citizenship**. The Inhofe amendment continues the trend of closing off the dream of US citizenship for hardworking, patriotic legal immigrants and preventing them from becoming full, voting members of American society.

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**Section 4:****Recommendations:****For immigrant leadership**

- **Move legal immigrants toward citizenship:** If the power of the immigrant vote is to be realized, immigrants must first gain the right to vote by become citizens. We need to undertake a sustained campaign to promote citizenship and help eligible immigrants move through the naturalization process. Immigrant leaders must encourage eligible immigrants to start the process, through media, word-of-mouth, and other promotions. We should also offer assistance to those immigrants who need help with their naturalization applications, through workshops and if necessary, referrals to classes and immigration service providers.
- **Register new citizens and children of immigrants as voters and mobilize them to vote:** Citizenship alone, however, is not enough. We need to make sure that these new citizens, and children of immigrants who are citizens, are registered to vote and turn out to the polls. Immigrant leaders should identify and register prospective new voters, educate these new voters regarding issues of concern to them, and build get-out-the-vote operations to enable them to get to their polling places on election day.

**For the federal government**

- **Conduct a fair and impartial test redesign:** If the naturalization test is to be redesigned, the process must be conducted fairly and professionally. It must incorporate input from adult educators and immigrant community leaders, people who work with immigrants and refugees on a daily basis. The process must also be impartial and insulated from political influence. Any redesign must also pay heed to the meaningful amounts of time and energy that immigrants spend in preparing for the citizenship test, and must not result in undue burdens placed on citizenship applicants. If these objectives cannot be met, USCIS should leave the test alone.
- **Invest in English and citizenship:** The Inhofe amendment tries to force immigrants to learn English, but provides no additional resources for English classes. At the same time, the State of Illinois by itself devotes more funding to promoting citizenship than the entire budget for the federal Office of Citizenship. The federal government needs to step up its funding levels for English education and for promotion of citizenship, rather than leaving it to state and local governments to fill the gaps left by its lack of leadership.
- **Fund citizenship services.** Full citizenship of the immigrants living in the U.S. should be a goal for all in our Republic. Citizenship makes our Democracy real, ensuring that all who live, work, contribute, worship, and raise families in our land have equal rights and responsibilities. It enables all to participate fully in our civic life. **"Americans by choice, not by chance"** implies an affirmative commitment to our nation and our democracy.

Under federal law, USCIS is supposed to be self-funding, its entire operations paid for through application fees. This law has resulted in drastic increases in the cost of citizenship and other immigration benefits. Congress should show that it is serious about providing quality immigration service and maintaining immigration access to these services. It should change this law and provide regular appropriations to help underwrite immigration operations, reduce fees, and lessen the burden on applicants for citizenship and other immigration benefits.

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**Resources:**

New Americans Initiative website, [www.newamericans-ii.org](http://www.newamericans-ii.org)

The New Americans Initiative is a partnership between ICIRR and the State of Illinois to assist legal permanent residents become citizens. This web-site contains citizenship support info in English and Spanish, a "how-to" manual on citizenship workshops, and links to the N-400 citizenship application form.

Congressional Hispanic Caucus National Citizenship Packet,  
<http://luisquierrez.house.gov/ndf/citguide2.pdf>

US Citizenship and Immigration Services, [www.uscis.gov](http://www.uscis.gov)

US Census Bureau website: [www.census.gov](http://www.census.gov)

US Department of Homeland Security Office of Immigration Statistics:  
[www.uscis.gov/graphics/shared/statistics/index.htm](http://www.uscis.gov/graphics/shared/statistics/index.htm)

"Trends in Naturalization," by Michael Fix, Jeffrey Passel and Kenneth Sucher, Urban Institute, September 2003, [www.urban.org/UploadedPDF/310847\\_trends\\_in\\_naturalization.pdf](http://www.urban.org/UploadedPDF/310847_trends_in_naturalization.pdf)

"Denying the Dream: How the Proposed Changes to the US Naturalization Test Would Prevent Immigrants From Becoming Citizens," by Leslie da Mota, Illinois Coalition for Immigrant and Refugee Rights, September 2003, [www.icirr.org/publications/denyingthedream.pdf](http://www.icirr.org/publications/denyingthedream.pdf)

**Immigrant Rights Organizations and Coalitions:**

Fair Immigration Reform Movement (FIRM), [www.fairimmigration.org](http://www.fairimmigration.org)

We Are America Alliance, [www.weareamericaalliance.org](http://www.weareamericaalliance.org)

New Americans Opportunity Campaign, [www.cimnow.org](http://www.cimnow.org)

National Immigration Forum, [www.immigrationforum.org](http://www.immigrationforum.org)

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## Methodology

### Population Estimates

For this report, basic population estimates for four race/Latino categories and four citizenship categories were created for the November 2006 election day. This involved establishing control totals for the voting-age population in each state based on U.S. Census Bureau data. Data on race/Latino and citizenship categories were derived from the American Community Survey (ACS) of 2001-2004. Age, race/Latino and citizenship categories from the ACS were forwarded to November 2004, and then adjusted to conform to the control totals.

### Registration Rates

Registration rates were derived from the U.S. Census Bureau Voting and Registration in 2004 file. Rates were calculated for each of four race/Latino and four citizenship categories for each state. Given small sample sizes, however, the estimated registration rate used in this report for 18-24 year old second-generation immigrants was based on both second-generation individuals at the regional level, (Northeast, Midwest, South and West) except for those states where a sufficient sample was available: New York, Illinois, Florida, Texas, Arizona, California, Colorado and New Mexico. For Latinos, sample-size considerations required that registration rates of 18-24 year old second-generation persons be based on regional rates of both second and third and later generations of Latinos.

### Estimated Immigrants Eligible to Naturalize

These estimates are based on the work of Fix, Passel and Sucher. They calculated the number of immigrants eligible to naturalize by state in 2003. (The report can be found at: [http://www.urban.org/UploadedPDF/310847\\_trends\\_in\\_naturalization.pdf](http://www.urban.org/UploadedPDF/310847_trends_in_naturalization.pdf).)

For this report, the 2003 estimate of Fix, Passel and Sucher was forwarded to November 2006 based on immigration and naturalization in the intervening period. The resulting number was then distributed across states based on their representation in the 2003 numbers. The estimate of Mexican immigrants eligible to naturalize is based on Fix et. al's estimate that 28 percent of immigrants eligible to naturalize were of Mexican origin. This rate was applied to the updated, 2006 estimate, and distributed across states based on the immigration of Mexican origin persons in the 1990s.

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### Bios and Endnotes

**Joshua Hoyt** has been the director of the Illinois Coalition for Immigrant and Refugee Rights since May of 2002. During that time the Coalition has fought vigorously for citizenship for the undocumented and to protect civil liberties in the wake of the attacks of September 11, 2001. The Coalition has helped to make Illinois one of the most immigrant friendly states in the U.S.

Mr. Hoyt has worked a total of 29 years as an organizer for social justice in Chicago, Baltimore, and in the countries of Spain, Peru, and Panama. Josh was educated at the University of Illinois and the Universidad Central de Barcelona, Spain, and received his Master's from the University of Chicago. He has testified before Congress; spoken to such national media as the Lehrer News Hour, the O'Reilly Factor, and the New York Times; written numerous articles; and directed political campaigns. He speaks fluent Spanish and limited Portuguese. His e-mail is: [jhoyt@icirr.org](mailto:jhoyt@icirr.org).

**Rob Paral** is a consultant and writer specializing in public policy, demographic and human services-related issues involving immigrants, Latinos, and other populations. He is Principal of Rob Paral and Associates, is a fellow with the Institute for Latino Studies at Notre Dame University, and is a Research Fellow with the American Immigration Law Foundation in Washington, DC.

Mr. Paral has published numerous analyses of immigration and its economic and social impacts. His recent publications include reports and book chapters on Mexican immigrant integration in Chicago, the role of Mexican immigrant workers in the national labor force, immigrant use of welfare, and poverty trends in Illinois. His e-mail is: [rob@robparal.com](mailto:rob@robparal.com).

**Fred Tsao** is the Policy Director at the Illinois Coalition for Immigrant and Refugee Rights. In this position, he provides technical support, trainings, and presentations on immigration-related topics to service providers, immigrant community organizations, and others who work with immigrants. He also provides updates and analysis of changes in immigration policies and procedures to ICIRR members and allies, and assists with the coalition's legislative advocacy efforts.

A self-described "recovering attorney," Mr. Tsao practiced law at the Rockford office of Prairie State Legal Services, where he worked after receiving his law degree from the University of Michigan. He has also worked with the American Civil Liberties Union of Illinois, the Chicago Anti-Hunger Federation, and the Missouri Public Interest Research Group. A native of Chicago, Fred is the son of immigrants from China, and has had a lifelong concern with immigration issues. His e-mail is [ftsao@icirr.org](mailto:ftsao@icirr.org).

<sup>1</sup> "Trends in Naturalization," Fix, Passel and Suher, the Urban Institute, September 2003.

[www.urban.org/UploadedPDF/310847\\_trends\\_in\\_naturalization.pdf](http://www.urban.org/UploadedPDF/310847_trends_in_naturalization.pdf)

<sup>2</sup> "Naturalizations in the United States: 2005" U.S. Department of Homeland Security Office of Immigration Statistics, [www.uscis.gov/graphics/s/hsred/statistics/publications/2005NatFlowRpt.pdf](http://www.uscis.gov/graphics/s/hsred/statistics/publications/2005NatFlowRpt.pdf).

<sup>3</sup> Wall Street Journal, 4-10-06, B1; Newsweek, 5-22-06, p. 36.; Washington Post 6-9-06

<sup>4</sup> Associated Press, 6-1-06.

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**Today we march, tomorrow we vote!**

**Illinois Coalition for Immigrant and Refugee Rights (ICIRR):**

ICIRR was founded in 1986, and is dedicated to promoting the rights of immigrants and refugees to full and equal participation in the civic, cultural, social, and political life of our diverse society. In partnership with our member organizations, the Coalition educates and organizes immigrant and refugee communities to assert their rights; promotes citizenship and civic participation; monitors, analyzes, and advocates on immigrant-related issues; and, informs the general public about the contributions of immigrants and refugees.

**The Center for Community Change:**

The Center, founded in 1968, grew out of a powerful combination of ideas and events in the 1960s. Throughout our history, the Center has provided policy and organizing expertise on a range of issue areas, including: community reinvestment, affordable and public housing, transportation, income support and job creation, economic development and housing production, hunger and malnutrition, immigrant rights and legislation, and community monitoring efforts to hold government agencies accountable to residents.

The Center helps low-income people, especially people of color, build powerful, effective organizations through which they can change their communities and public policies for the better.

**Center for Community Change**  
 1536 U Street NW, Washington, DC 20009  
 (202) 339-9300 | toll-free: (877) 777-1536 | [info@communitychange.org](mailto:info@communitychange.org)



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Ms. LOFGREN. Thank you very much.  
Ms. Butts? Good to see you again.

**TESTIMONY OF CASSANDRA Q. BUTTS, SENIOR VICE PRESIDENT FOR DOMESTIC POLICY, CENTER FOR AMERICAN PROGRESS**

Ms. BUTTS. Very good to see you again, Madam Chair, and thank you for the opportunity to come and speak with you on this important issue.

My name is Cassandra Butts, and I am senior vice president for domestic policy of the Center for American Progress.

When marchers took to the streets this past year in support of immigrant rights and the passage of comprehensive immigration reform in cities and towns across the country, images hearkened back to the civil rights movement and the struggle more than a half century ago against prejudice and discrimination. The struggle for immigrant rights and civil rights are as intertwined today as they have been at any time in the history of the United States.

We stand tall as a Nation by welcoming more immigrants than any other country in the world. The welcoming torch of the Statute of Liberty, which beckoned “huddled masses yearning to be free,” or the U.S. Government motto “E Pluribus Unum,” “Out of Many, One,” are more than symbols of our Nation. They embody the fundamental principles of our democracy.

When we have honored these principles in the past, our immigration laws have reflected the best America has to offer. But too often that generosity was in conflict with our domestic struggle with race and our immigration policies were tainted with the same stains of discrimination and intolerance that divided the Nation.

For almost a century beginning in the 1880s, U.S. immigration laws excluded or significantly limited groups of ethnic and racial minorities from entering the U.S. These increasingly restrictive immigration laws projected to the world increasingly intolerable conditions for ethnic and racial minorities in the U.S. who shared a common heritage with the disfavored immigrant groups.

The 1960s represented a historic turning point that forever linked the fates of ethnic and racial minorities in the U.S. regardless of their immigration status. Heavily influenced by the fight for racial justice and equal opportunity represented by the civil rights movement, Congress passed the Immigration and Nationality Act Amendments of 1965, which eliminated the national origins quota system and racial exclusions. This new law became the third great pillar of civil rights laws of that era, joining the Civil Rights Act of 1964 and the Voting Rights Act of 1965 as beacons of freedom to the world, realizing America’s founding principles.

As a result of the 1965 Act, people of color now make up the majority of the approximately 24 million legal immigrants in the U.S. today. The growing diversity has reached every State and metro area in the Nation, and the Census projects the United States will become a “majority minority” country by 2060 largely based on this growth.

But as our immigration patterns have shifted to reflect greater diversity and the demands of a globalized economy, U.S. immigration laws have not been modernized to address these trends. One

result has been the growth of a significant undocumented immigrant population estimated at 12 million.

As a result, we have witnessed the resurfacing of historic hostilities toward immigrants and efforts to once again legislate intolerance and discrimination into our immigration laws. If this effort prevails and Congress fails to pass comprehensive immigration reform such as the STRIVE Act, the implications could be far reaching.

The choice before us is one that would either define our society as clinging to the past in fear of changing demographics or as one prepared to take a progressive step forward toward a society rooted in the principles of racial equality and justice that has marked our progress since the 1960s.

We are once again at a historic crossroads and the path we choose to take could have as profound an impact on our future as the civil rights movement. Congressional inaction has already led to the patchwork of State and local anti-immigrant actions.

Recent examples of such efforts provide few answers to the problems posed by our broken immigration system and raise more concerns about the safety of immigrant communities amid the specter of civil rights violations.

The first case in point is Hazleton, Pa., which was in the forefront in enacting a local ordinance in 2006 that broadly defined "illegal aliens" to include lawful residents and naturalized citizens. The ordinance imposed a \$1,000 fine on landlords who rented to illegal immigrants, and leveled a 5-year ban on businesses that hired undocumented workers, and designated Hazleton as an English-only city.

In a legal challenge by local immigrants and business owners represented by civil rights advocates, a Federal district court recently ruled Hazleton's ordinance unconstitutional. But the court's strong decision in the Hazleton case has not deterred other localities, such as Prince William County, Virginia, from taking similarly disturbing actions.

In addition, State and local law enforcement have sought to fill the breach left by Federal inaction by enforcing Federal immigration Laws, and these efforts also run the risk of encouraging racial profiling and other civil rights violations.

Today the link between immigrant rights and civil rights could not be racial profiling and other civil rights violations. Today, the link between immigrant rights and civil rights could not be more apparent. Supporters of comprehensive immigration reform like the STRIVE Act seek to restore a basic sense of justice and fairness to our immigration policy and recognize the common humanity of all the residents of the United States regardless of their immigration status.

We, as a people, still believe in the principles that defined our fight for civil rights and the principles that have defined our American democracy. Congress should honor those principles by passing comprehensive immigration reform.

Thank you.

[The prepared statement of Ms. Butts follows:]

PREPARED STATEMENT OF CASSANDRA Q. BUTTS

# Center for American Progress



Statement of Cassandra Q. Butts,  
Senior Vice President for Domestic Policy, Center for American Progress

Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International  
Law Hearing on H.R. 1645, the “Security Through Regularized Immigration and a  
Vibrant Economy Act of 2007 (STRIVE Act)”  
September 6, 2007

When marchers took to the streets this past year in support of immigrant rights and the passage of comprehensive immigration reform in cities and towns across the U.S., the images hearkened back to the Civil Rights Movement and the struggle more than a half century ago against prejudice and discrimination. Those protests, of course, culminated in the civil rights laws of today, which is why the current struggle against intolerance among opponents of comprehensive immigration reform is very much an outgrowth of the Civil Rights Movement.

In fact, the struggle for immigrant rights and civil rights are as intertwined today as they have been at any time in the history of the United States. We stand tall as a nation by welcoming to our shore more immigrants seeking a better way of life than any other country in the world. The welcoming torch of the Statute of Liberty, which beckoned more than a century ago to “huddled masses yearning to be free,” or the U.S. government motto *E Pluribus Unum*. “Out of Many, One,” are more than symbols of our nation. They embody the fundamental principles of our democracy.

When we have honored these principles in the past our immigration laws have reflected the best America has to offer. But too often that generosity was in conflict with our domestic struggle with race—and our immigration policies were tainted with the same stains of discrimination and intolerance that divided the nation. For almost a century beginning in the 1880s, U.S. immigration laws excluded or significantly limited groups of ethnic and racial minorities from entering the U.S.

The Chinese Exclusion Act of 1882 marked the start of rising racial intolerance in our immigration laws by prohibiting the entry of Chinese immigrants. The 1921 Emergency Quota Act significantly restricted immigration from Southern and Eastern Europe and developing countries based on population quotas, and excluded the immigration of East Asian and Asian Indians. The Immigration Act of 1924 further limited immigration based on population quotas and further prohibited the immigration of Asians to the U.S. The Acts of 1921 and 1924 combined also placed significant limitations on immigration of Africans to the U.S.

These increasingly restrictive immigration laws projected to the world increasingly intolerable conditions for ethnic and racial minorities in the U.S. who shared a common



heritage with the disfavored immigrant groups. Hostility towards Chinese workers was rampant from the late 19<sup>th</sup> century through the early 20<sup>th</sup> century. And in the 1923 case of *U.S. v. Bhagat Singh Thind*, the Supreme Court prohibited Asian Indians from becoming naturalized citizens because U.S. law limited naturalized citizenship to free whites.

Almost twenty years later, Executive Order 9066 in 1942 authorized the removal of over 100,000 persons of Japanese descent to internment camps from 1942 to 1945, two thirds of whom were U.S. citizens. Discrimination against Mexican Americans in the 1930s and 1940s was defined by repatriation campaigns that forced numerous immigrants back to Mexico. Added to this litany were the lingering indignities of slavery that left African Americans segregated and subjected to brutal Jim Crow laws and the harsh, historic mistreatment of indigenous Americans.

The 1960s represented a historic turning point that forever linked the fates of ethnic and racial minorities in the U.S. regardless of immigration status. Heavily influenced by the fight for racial justice and equal opportunity represented by the Civil Rights Movement, Congress passed the Immigration and Nationality Act Amendments of 1965, which eliminated the national origins quota system and racial exclusions that previously had barred many ethnic minorities from immigrating to the U.S. This new law became the third great pillar of civil rights laws of that era, joining the Civil Rights Act of 1964 and the Voting Rights Act of 1965 as beacons of freedom to the world and realizing America's founding principles.

The Immigration Act of 1965 would have a profound impact in shaping a more racially and ethnically diverse future for the United States. With the elimination of race-based categories for admission into the U.S., people of color now make up the majority of the approximately 24 million legal immigrants in the U.S. today. The growing diversity has reached every state and metropolitan area in the nation, and the Census projects the United States will become a "majority minority" country by 2060 largely based on this growth.

But as our immigration patterns have shifted to reflect the elimination of racial and ethnic barriers and the demands of a globalized economy, U.S. immigration laws have not been modernized to address these trends. One result has been the growth of a significant undocumented immigrant population estimated at 12 million. As a result, we have witnessed the resurfacing of historic hostilities towards immigrants and efforts to once again legislate intolerance and discrimination into our immigration laws.

If this effort prevails and Congress fails to pass comprehensive immigration reform such as the STRIVE Act, the implications could be far reaching. The choice before us is one that would either define our society as clinging to the past in fear of changing demographics or as one prepared to take a progressive step forward towards a society rooted in the principles of racial equality and justice that has marked our progress since the 1960s.

We are once again at a historic crossroads and the path we choose to take could have as profound an impact on our future as the Civil Rights Movement. Congressional inaction

has already led to a patchwork of state and local anti-immigrant actions. Recent examples of such efforts—estimated to number at more than one hundred—provide few answers to the problems posed by undocumented immigration and our broken immigration system and raise more questions and concerns about the safety and security of immigrant communities amid the specter of civil rights violations.

The first case in point is Hazelton, Pa., which was in the forefront in enacting a local ordinance in 2006 that broadly defined “illegal aliens” to include lawful residents and naturalized citizens. The ordinance imposed a \$1,000 fine on landlords who rented to illegal immigrants, leveled a five-year ban on businesses that hired undocumented workers, and designated Hazelton as an “English-only” city. The measure divided the city and created a hostile environment that threatened immigrant residents and Latino citizens alike.

In a legal challenge by local immigrants and business owners represented by civil rights advocates, a federal district court recently ruled the Hazelton ordinance unconstitutional. In ruling that the ordinance violated the U.S. Constitution's Supremacy Clause by overriding exclusive federal power over immigration, the due process rights of business owners and the First Amendment rights of Hazelton residents to free speech, Judge James M. Munley wrote:

*We cannot say clearly enough that persons who enter this country without legal authorization are not stripped immediately of all their rights because of this single act ... The United States Supreme Court has consistently interpreted [the 14<sup>th</sup> Amendment] to apply to all people present in the United States, whether they were born here, immigrated here through legal means, or violated federal law to enter the country.*

But the court's strong decision in the Hazelton case has not deterred other localities, such as Prince William County, Virginia, which recently passed an ordinance that would deny undocumented immigrants access to a broad range of public benefits that extend beyond existing federal prohibitions. In a similar vein, state and local law enforcement have sought to fill the breach left by federal inaction by enforcing federal civil immigration laws in an uncoordinated and consequently haphazard manner.

Since the terrorist attacks of 9/11, there have been efforts by Department of Justice and the Department of Homeland Security to extend the reach of state and local police to play a more active role in enforcing U.S. immigration laws—a role that some states and localities have embraced, but others have rejected. These efforts contradict a history of enforcement of U.S. immigration laws that has been the exclusive province of federal law enforcement, with assistance by state and local law enforcement on criminal matters.

Essentially deputizing state and local police officers as immigration agents creates an inherent conflict with the public safety responsibilities of state and local law enforcement by fostering hostilities within immigrant communities—both legal and illegal—and by wrongly identifying ethnic minority citizens as immigrants. Anyone who views state and local police as hostile agents of deportation is far less likely to report abuse and other

criminal activities in their communities. In addition, much like the state and local anti-immigrant ordinances, enlisting state and local police as immigration officers encourages racial profiling and other civil rights violations.

Today, the link between immigrant rights and civil rights could not be more apparent. Supporters of comprehensive immigration reform, including supporters of the STRIVE Act, seek to restore a basic sense of justice and fairness to our immigration policy and recognize the common humanity of all the residents of the United States regardless of their immigration status.

Public opinion polls and the most recent congressional elections show that Americans overwhelmingly support tough but fair immigration reform. We as a people still believe in the principles that defined our fight for civil rights and the principles that have defined our American democracy. Congress should honor those principles by passing comprehensive immigration reform.

Ms. LOFGREN. Thank you very much.  
Mr. Barrera?

**TESTIMONY OF MICHAEL L. BARRERA, PRESIDENT AND CEO,  
UNITED STATES HISPANIC CHAMBER OF COMMERCE, ON  
BEHALF OF MR. DAVID LIZARRAGA, CHAIRMAN OF THE  
BOARD OF DIRECTORS, UNITED STATES HISPANIC CHAM-  
BER OF COMMERCE**

Mr. BARRERA. Good afternoon. It is late in the afternoon, and I appreciate everybody staying here.

Chairman Lofgren, Ranking Member King, Members of the Subcommittee, fellow panelists, and, of course, the hardworking staff. My name is Michael Barrera, and I am president and CEO of the United States Hispanic Chamber of Commerce, which represents the interests of two million Hispanic-owned businesses in the U.S.

I appreciate the opportunity to testify before the Subcommittee, on behalf of our Chairman, David Lizarraga, who could not with us here today.

Chairman Lizarraga is the son of immigrants from Mexico, and I am the proud grandson of Mexican immigrants. We have been blessed with immigrant virtues of hard work and dedication to achieve the American dream. We owe our success in business and our commitment to the economic development of our communities, not just to the Hispanic community, but our communities and these same virtues.

I dare say that most of us in this room owe much of their success to their immigrant roots and are immensely proud of their immigrant heritage. It is the strength of these immigrant roots that has made this country great.

That is why I am deeply troubled that demonizing immigrants by closing our borders to them jeopardizes our economic future.

Therefore, please accept the support of the United States Hispanic Chamber of Commerce for comprehensive immigration reform and for the STRIVE Act as a vehicle that accomplishes this goal.

The employer community is fully committed to comprehensive reform, even more so due to the Administration's imposition of a proposed enforcement initiative that may displace as many as 1.4 million workers in the coming months, and these just aren't illegal immigrant workers. These are overall workers in the U.S. economy.

We also support a lawsuit filed by the AFL-CIO which seeks to freeze this enforcement initiative. In fact, the court issued a TRO on this. This lawsuit references a letter signed by the USHCC and other employer associations expressing strong reservations about these proposed regulations.

It is not every day that I think I would ever be here proposing and supporting a lawsuit by the AFL-CIO, but right now we have labor unions and business joining together to fight bad policy, which arose in the vacuum left by Congress' inability to reform our broken immigration laws.

The failure to pass immigration reform has also spurred, as many people have talked about, a flood of conflicting, fragmented, and often intolerant State and local ordinances on immigration.

Comprehensive immigration reform is needed now if we are to put an end to the more than 1,400 State and local laws, which are being hostile to immigrants and also over-burdensome to small business, that have been introduced or past in the last 2 years.

The legal patchwork is creating havoc for residents, businesses and immigrants across the Nation.

Global economic integration is a fact of life. Labor jobs go where labor is available, and that is why we need to allow a steady and regulated stream of immigrant labor into our country. The choice is between further offshoring of American industries and jobs or maintaining a productive and legal immigrant workforce that can fill the gaps of our labor supply.

Immigrants fulfill a critical part of the U.S. labor force by performing jobs that Americans simply don't want to take or perform. The Cato Institute came to the same conclusion when it found that immigrant workers filled segments in the U.S. job market where Americans are either over or under qualified.

But if you really want a great example, when is the last time you tried to get a teenager to mow your yard? It just doesn't happen anymore.

As someone that works with both businesses and the Hispanic community, I call on Congress to pass comprehensive immigration reform for the sake of small businesses and the countless families that are being ripped apart with every workplace raid, with every misdemeanor that is being reclassified as an aggravated felony, and with the erosion of judicial review.

I also urge reform for the sake of legal immigrant families that are being forced to pay steeper immigration fees and will soon be forced to navigate a bureaucratic maze of Government regulations to renew all green cards in 120 days. This also hurts business.

Madam Chair, Ranking Member King, and Members of the Subcommittee, every person in this room owes their origins to our immigrant forefathers and mothers, many who weathered seemingly impossible odds in a strange land to come to the U.S. to achieve the American dream.

This is not the time to close the door to others that dare to pursue the American dream. We must lend a hand to those immigrant families that are here contributing to this Nation's strength and our economy.

We urge this Subcommittee to remain steadfast in passing comprehensive immigration reform.

Please note that for the sake of brevity, I did not reference thoughts related to the STRIVE Act itself, but those can be found in the written testimony submitted for the record.

Thank you once again for allowing me to serve as a witness today. I look forward to your questions.

[The prepared statement of Mr. Lazarraga follows:]

PREPARED STATEMENT OF DAVID LIZARRAGA

Chairwoman Lofgren, Ranking Member King, members of the subcommittee, fellow panelists and staff,

As Chairman of the U.S Hispanic Chamber of Commerce, I am very appreciative of having this opportunity to testify before the subcommittee.

I am the son of immigrants from Mexico. I have been blessed with my immigrant family's virtue of hard work and dedication to achieve the American Dream. I owe

my success as a businessman and my commitment to the economic development of my community to these same virtues. I dare say that most of those in this room owe much of their success to their immigrant roots and are immensely proud of their immigrant heritage. It is the strength of these immigrant roots that has made America a great nation.

That is why I am deeply troubled that demonizing immigrants and closing our hearts and borders to them jeopardizes our own future. Therefore, please accept the support of the United States Hispanic Chamber of Commerce for comprehensive immigration reform, and for the STRIVE Act as a vehicle that accomplishes this goal.

The STRIVE Act provides for increased border security and interior enforcement, revamping the employment verification system, a new worker program, a legalization program for undocumented workers, and reforming the current manner in which green cards are provided for both the family and employment-based categories so as to eliminate lengthy processing delays.

Madam Chair, I would like to respectfully offer a few observations and recommendations on the STRIVE Act. We commend that the third title of the bill, which focuses on employment verification, is a vast improvement over current regulations, especially the ones currently being proposed through rulemaking. One of the highlights of Title III is how it rolls out the Electronic Employee Verification System over a period of 6 years based on the size of the employer—one year for critical employers; large employers at 2 years; mid-size employers at 3 years; and small employers at 4 years. This is a fair approach given the difficulty that small businesses have in adjusting to new and complicated regulations.

Moreover, this legislation recognizes the economic reality of shortages in labor and that we must establish an immigrant worker program. We are further encouraged that the program is structured in such a way that some immigrant workers can earn permanent residency in the United States.

In addition, we recommend that the Subcommittee take into account that not all employers in a high unemployment area require the same type of workers. It is our position that the legislation should take into account the variances in education and skills required of certain jobs. We believe it is appropriate to allow for a waiver process for jobs deemed to be in shortage for a particular metropolitan statistical area. Therefore, on behalf of our membership, we ask you not to punish businesses that require workers with special skills or education in sectors where shortages exist.

The employer community is fully committed to comprehensive reform, and even more so due to the Administration's imposition of a proposed enforcement initiative that may displace as many as 1.4 million workers in the coming months. We also support the lawsuit filed by the AFL-CIO, which seeks to freeze this enforcement initiative. This lawsuit references a letter signed by the USHCC and other employer associations expressing strong reservations about these proposed regulations. It is not everyday that labor unions and businesses join together to fight bad policy, which arose in the vacuum left by Congress' inability to reform our broken immigration laws.

The failure to pass comprehensive reform has also spurred a flood of state and local conflicting, fragmented and often intolerant state and local ordinances on immigration. Comprehensive immigration reform is needed now if we are to put an end to the more than 1,400 state and local laws—most being hostile to immigrants—that have been introduced or passed in the last two years. This legal patchwork is creating havoc for residents, businesses and immigrants across the nation.

For example, the recently passed amendment to the Illinois Human Rights Act will require businesses in Illinois to defy the proposed federal requirement to use the Basic Pilot verification system. In other cases, like Arizona's Fair and Legal Employment Act, businesses that are cited more than once for employing an undocumented immigrant are permanently barred from receiving a business license in the state. This Arizona law threatens entire business chains with penalties if a single location is cited and applies to hospitals and power plants.

Thankfully the *Lozano vs. Hazelton* decision, wherein the court stopped local anti-immigrant ordinances in a Pennsylvania town, makes for good precedent to stop similar local laws. But, the legal costs of fighting each of these local ordinances constitute an enormous economic burden on employers.

The USHCC believes that the weight of the economic and demographic evidence provides overwhelming support for comprehensive reform.

Immigrants—legal and illegal—fill a vital role in the American economy comprising 14 percent of our workers.

Immigrants hold 70 percent of agriculture jobs in the United States, 33 percent in building and grounds maintenance, 22 percent in food preparation and 22 percent in construction. The agriculture industry alone would suffer \$12 billion in losses

without immigrant labor, and as much as one-third of the production would shift to other countries.

Global economic integration is a fact of life. Labor jobs go where labor is available, and that is why we need to allow a steady and regulated stream of immigrant labor into our country. The choice is between the further off-shoring of American industries and jobs or maintaining a productive and legal immigrant workforce that can fill the gaps in our labor supply.

Immigrants fulfill a critical part of the U.S. labor force by performing jobs that Americans simply don't want to take or perform. The CATO institute came to this same conclusion when it found that immigrant workers fill segments in the U.S. job market where Americans are either over or under qualified.

Furthermore, there are also very compelling demographic arguments for immigration reform. The current concern with the solvency of Social Security is based on a demographic problem—a high ratio of retirees to contributors. As such, we must assume that driving millions of workers out of the country or into the underground economy accelerates this insolvency to the tune of \$500 billion by 2022 and takes billions more out of the national treasury that would have otherwise been collected in taxes.

As someone that works with both businesses and the Hispanic community, I also call on Congress to pass comprehensive immigration reform for the sake of the countless families that are being ripped apart with every workplace raid, with every misdemeanor that is reclassified as an aggravated felony, and with the erosion of judicial review. I also urge reform for the sake of legal immigrant families that are being forced to pay steeper immigration fees, and will be soon be forced to navigate the bureaucratic maze of our government to renew all greencards in 120 days.

It is unfortunate that we have once again as a nation fallen into an unreasoned nativist response to addressing the status of immigrants. As you may be aware, as far back as the birth of our nation, Benjamin Franklin himself spoke against allowing German immigrants into the United States and how their lack of education, sanitation and assimilation would doom our nation.

The language and arguments that were used in the past have changed very little, and it is our hope that we, as a nation, can rise above the rhetoric to see the facts and weigh the national interest. Comprehensive immigration reform is necessary for our economy, our communities and our future prosperity.

Madam Chair, Ranking Member King, and members of the subcommittee, every person in this room owes their origin to our immigrant forefathers, many who weathered seemingly impossible odds in a strange land, and came to the U.S. to achieve the American Dream.

This is not the time to close the door to others that dare to pursue the American Dream, and we must lend a hand to the immigrant families that are here contributing to this nation's strength and economy.

We urge this subcommittee to remain steadfast in passing comprehensive immigration reform.

Thank you once again for allowing me to serve as a witness today.

Ms. LOFGREN. Thank you very much.

Ms. Kirchner?

**TESTIMONY OF JULIE KIRCHNER, DIRECTOR OF GOVERNMENT RELATIONS, FEDERATION FOR AMERICAN IMMIGRATION REFORM**

Ms. KIRCHNER. Thank you very much, Madam Chair, Ranking Member King, and Members of the Subcommittee. Thank you for this opportunity to present the position of the Federation for American Immigration Reform with respect to the STRIVE Act and the policy considerations behind it.

My name is Julie Kirchner, and I am FAIR's Government Relations Director.

FAIR is a nonprofit, public interest organization advocating an immigrant policy that best serves the national interest. Our organization has over 300,000 members and activists in 49 States and is affiliated with over 50 immigration reform organizations across the country.

Madam Chair, on June 28 of this year, after an extensive national debate, the motion to invoke cloture on the Senate comprehensive immigration reform bill failed. It failed because the American people recognized that the legislation did not embody meaningful reform. Instead, they saw that through amnesties and guest worker programs, the legislation rewarded illegal activity, undermined the American worker, and only made a bad situation worse. And the American people said “no” with a voice that is rarely heard in politics.

Madam Chair, one of the most compelling lessons we learned from the Senate debate is that before the American public will even consider amnesty or guest worker legislation, the Government must restore credibility to an immigration system that has long lost the confidence of the American people.

However, upon examination of the STRIVE Act, it is clear that H.R. 1645 does not restore credibility to our immigration system, but instead only replicates and, in many cases, exacerbates the very same problems in the Senate bill.

Madam Chair, Members, there have been several Members, honorable, distinguished Members who have testified today that they consider the STRIVE Act to be the solution, the best solution. I most respectfully disagree, FAIR disagrees.

FAIR believes that the STRIVE Act really, in fact, fails to fulfill its purposed policy goals.

First, the STRIVE Act will not end illegal immigration. On the contrary, by granting amnesty through so-called conditional, non-immigrant status, blue cards and the DREAM Act, the legislation rewards those who break the law and only encourages more illegal immigration.

Second, the STRIVE Act will not improve the economic standing of the American worker. Instead, by creating a massive new H-2C guest worker program, and more than doubling the employment-based immigrant visas, the legislation floods the market with foreign workers willing to work for less and eager to compete with U.S. workers.

The STRIVE Act does not guarantee a crackdown on employers who hire illegal aliens. The STRIVE Act does require that employers use an employment eligibility verification system and does increase civil and criminal penalties for employers who hire illegal aliens.

However, all of this is undercut by provisions permitting the Department of Homeland Security to delay implementation of the verification system and to exercise its discretion to exempt entire classes of employers from its use.

In addition, employees who hire independent contractors do not have to participate, and homeland security has the discretion to reduce penalties for illegal hiring practices.

Fourth, the STRIVE Act will not improve the quality of life in the United States. Indeed, it may improve the plight of individual immigrants, but this comes at a cost to society in the form of increased public services, often borne by State and local governments, increased strain on the environment, and staggering population growth.



FAIR estimates that the passage of the STRIVE Act would result in an additional 50 million people being added to the 2050 population projection. This means that instead of the U.S. population growing to 461 million by the year 2050, it will soar to approximately 513 million.

Finally, the STRIVE Act will not satisfy the American public's demand for meaningful immigration reform. Indeed, in poll after poll, the American people have shown that they overwhelmingly oppose such legislation.

For example, a June Rasmussen poll of over 800 voters found that only 22 percent of Americans supported the bill considered by the Senate earlier this summer.

Madam Chair, like the Senate amnesty bill, the STRIVE Act promises only to compound rather than ease our immigration crisis. Moreover, granting amnesty that rewards illegal activity and creating massive new guest worker programs that hurt the American worker simply does not make sense when there are other viable alternatives out there.

One need only look to the Jordan Commission of the mid-1990s, the bipartisan Jordan Commission, may I add, to see that many sound reforms have yet to be implemented. These reforms should not be held hostage to amnesty and guest worker programs.

And, Madam Chair, I would just like to say, in closing, today there have been many comments on the issues of fairness and justice, and FAIR does believe that immigration policy should not discriminate on race, color, religion, or any particular background. It should be fair to all immigrants and there many hundreds of millions of immigrants all over the world, who I believe would probably like to participate in the American dream.

And to reward those who come illegally rather than reward those who play by the rules, who wait their turn in line, is, in our opinion, unfair and unjust. And while there are some who say, "Well, there are the people who would participate in this conditional non-immigrant status," this amnesty, as we call it, are penalized for paying some money, the difference is that the slate is wiped clean.

Unlike people who are prosecuted and convicted of crimes in the U.S., there is no conviction on their record. It has never happened, and I think, Madam Chair, there is a very important difference.

They get to start over. They get to act like it has never happened. Immigrants from all over the world, from Asia, Africa, South America, you name it, there are many, many who want to come and we should be fair to all of them.

Thank you, Madam Chair.

[The prepared statement of Ms. Kirchner follows:]

#### PREPARED STATEMENT OF JULIE KIRCHNER

This statement addresses the effectiveness of the STRIVE Act as a legislative response to illegal immigration and border security in the United States.

#### INTRODUCTION

Madam Chair and members of the Committee, thank you for this opportunity to present the position of the Federation for American Immigration Reform with respect to the STRIVE Act and the policy considerations behind it. My name is Julie Kirchner, and I am FAIR's Government Relations Director. FAIR is a public interest organization advocating a just immigration policy that takes as paramount the national interest and the interests of American citizens. Our organization has over

300,000 members and activists in 49 states and is affiliated with over 50 immigration reform organizations across the country. FAIR does not receive any federal grants, contracts or subcontracts.

Madam Chair, on June 28, 2007, the motion to invoke cloture on the Senate's comprehensive immigration reform legislation failed. It failed because the American public saw that it was created to serve special interests by perpetuating the status quo. They saw the unrelenting violation of the nation's borders, the skyrocketing illegal alien population, and the disappearance of jobs and depression of wages as employers exploited low-paid guest workers or simply used illegal alien labor. They then saw the Bush Administration join with a handful of Senators to offer legislation that granted amnesty and created massive new guest worker programs to appease big business. They realized that this legislation rewarded law breakers, undermined the American worker, and only made a bad situation worse. And the American people said "no."<sup>1</sup>

Madam Chair, the American people not only said "no" to the Bush-Kennedy amnesty bill (S.1639), they said "no" with a voice rarely heard in politics. And, as Senators of both parties listened to why ordinary Americans overwhelmingly opposed the bill, they began to realize that before them was an immigration bill with so many flaws and failings, no political compromise could save it. Indeed, on the day of the final cloture vote the volume of phone calls from those who opposed the bill was so great, it shut down the Capitol switchboard. Within hours, 37 Republicans joined with 16 Democrats (including one Independent) to vote against the Bush-Kennedy Amnesty Bill and the cloture motion failed, 46–53.

Turning our attention today to the STRIVE Act (H.R. 1645), it is clear that H.R. 1645 only replicates, and in many cases exacerbates, the problems in the Senate bill. It grants mass amnesty in multiple forms, creates huge new guest worker programs, increases the annual number of foreign workers who may permanently stay in the U.S. The effects of such legislation, if passed, would have devastating effects on U.S. taxpayers, the American worker, the environment and, most importantly, the rule of law.

#### AMNESTY

The STRIVE Act contains not one, but three amnesty programs. First, the bill allows an illegal alien—and an illegal alien only—to apply for "conditional nonimmigrant status" if he can establish continuous physical presence in the U.S. since June 1, 2006. The alien must also submit fingerprints, undergo a background check, and pay a \$500 fine. After six years, the conditional nonimmigrant can obtain lawful permanent residence by establishing employment; paying taxes; paying \$2000 in fees and fines; passing a background check; meeting a minimal English course study requirement; and touching the border. This last requirement, called a "touchback" provision, only requires that during the six-year period, the alien return to the border and reenter the United States as a conditional nonimmigrant—the status he or she already has. There is no requirement that the alien actually return to his or her home country, undergo any new scrutiny, obtain any new documentation, or spend any meaningful time outside of the U.S.

The second amnesty provision is in the AgJOBS section of the bill which gives "blue cards" to agricultural workers. This provision allows nearly 1.5 million illegal alien agricultural workers, plus their spouses and children, to obtain legal status so long as they have been engaged in regular agricultural employment for the two years ending December 31, 2006. Three years after receiving a blue card, the alien can adjust to lawful permanent resident status and then obtain U.S. citizenship. This provision is reminiscent of the Seasonal Agricultural Worker amnesty provision enacted in 1986 that is now considered one of the most fraud-ridden immigration provisions ever adopted.

The third amnesty program is contained in the DREAM Act portion of the legislation. Under the DREAM Act, any individual who entered the U.S. before turning 16 years old, remained in the country five years, and has enrolled in primary or secondary school will receive a stay of removal and work authorization. An illegal alien who finishes high school will receive conditional immigrant status and may adjust to lawful permanent resident status upon completion of a two-year degree program.

<sup>1</sup>According to a Rasmussen poll, only 22 percent of Americans supported the comprehensive immigration reform bill considered by the Senate earlier this summer. This lack of support was bi-partisan, with only 22 percent of Democrats and 22 percent of Republicans favoring it ([www.rasmussenreports.com](http://www.rasmussenreports.com), June 25, 2007).

## GUEST WORKER PROGRAMS

The STRIVE Act increases the ease with which employers can import guest workers into the country by creating a massive new guest worker program and expanding existing guest worker programs. First, the STRIVE Act creates a new H-2C guest worker program that allows illegal aliens to stay and work in the U.S. for up to 6 years as long as they can show employment; pass a background check; pass a medical examination; and pay a \$500 fee. Under the H-2C program, these “guest workers” and their dependents are permitted to apply for permanent residency status and eventual citizenship. The program has an annual cap of 400,000 guest workers with an automatic escalator that can inflate the number to as many as 600,000 guest workers per year. This will permit employers to import up to a total of 3.6 million additional foreign workers into the U.S. at any one time—not counting their immediate relatives—to compete for American jobs in construction, service or other areas of the economy at lower wages and with arguably fewer protections.

In addition, the STRIVE Act dramatically increases the number of H-1B visas from 65,000 to 115,000 for 2007, with possible yearly increases of 20 percent until a ceiling of 180,000 is reached. It also exempts from the H-1B cap aliens with graduate degrees in science, engineering, math, etc. and broadens the exemption from the cap for aliens who earned graduate degrees in the U.S. These provisions are a serious threat to high-tech workers in the U.S., including legal immigrants who have patiently waited their turn to take part in the American dream.

## LEGAL IMMIGRATION

In addition to importing up to 600,000 guest workers annually (plus family members) who will be put on a path to citizenship, the STRIVE Act more than doubles the annual number of employment-based immigrants allowed into the U.S. by raising the cap from 140,000 to 290,000. The legislation also reverses current law by exempting spouses and children-up to 800,000 annually—from the employment-based cap. This provision further doubles admissions since currently about half of the quota is used for family members. Finally, the bill exempts from the cap aliens who come to take positions in what the Department of Labor certifies as “shortage occupations.” This last provision in particular will do nothing more than create an ongoing incentive for big business to lobby Washington to classify every imaginable sector of the workforce to as a “shortage occupation.”

## ENFORCEMENT

Finally, Madam Chair, the STRIVE Act has some positive enforcement provisions. However, these enforcement provisions, much like the 1986 amnesty, are designed to fail as they are undermined by numerous loopholes.

First, the STRIVE Act mandates that employers use an employment eligibility verification system set up by the Department of Homeland Security and the Social Security Administration (SSA) within five years and requires SSA to share information with the Department of Homeland Security (DHS). It increases the civil and criminal penalties for employers who knowingly hire illegal aliens. However, all of this is undercut by provisions permitting DHS to delay implementation of the employment eligibility verification system and exercise its discretion to excuse classes of employers from its use. In addition, employers who hire “independent contractors” do not have to participate and DHS has the discretion to reduce penalties for illegal hiring practices.

With respect to border security, the STRIVE Act increases the number of Border Patrol agents and Immigration and Customs Enforcement (ICE) agents. It affirms the power of state and local law enforcement to carry out criminal (but not civil) immigration laws and increases the number of detention beds available. Increasing resources for border security requires funding, however, and the STRIVE Act provides none. But even if it did, increasing law enforcement capabilities is meaningless if the federal government continues to turn a blind eye to violations of the law and amnesty is to be the new immigration policy of the United States.

## POLICY CONSIDERATIONS

Madam Chair, both supporters and opponents of recent mass-legalization and border enforcement efforts can agree on many of the facts that have recently brought issues of immigration and border security to the fore. A conservative estimate of the number of aliens illegally in the United States is around 12 million according to a

recent Department of Homeland Security study.<sup>2</sup> Other estimates put the population figure as high as 20 million.

These individuals do not just happen to be here; they did not wake up one morning on the wrong side of the border. They intentionally break the law by illegally crossing the border or overstaying their visas. And while most of those who enter the U.S. illegally do so to improve their economic situation, they do so at the expense of others—citizens and legal immigrants—clogging the court systems, straining government services, depressing wages of workers and exacerbating the strain on the environment. Most disheartening, illegal aliens by definition benefit from undermining the rule of law. Yet, despite the fact that illegal immigration impacts virtually every American and our quality of life, these effects are rarely discussed in policy debates on Capitol Hill.

Madam Chair, while some in Congress feel that the best course of action is to grant amnesty and otherwise adjust the law to accommodate illegal activity, FAIR believes there are many other alternatives that uphold the rule of law and better serve the long-term interests of our nation. During the 1990s, for example, the bipartisan U.S. Commission on Immigration Reform (commonly known as the Jordan Commission) released at least three reports full of sound recommendations for reforming of our immigration system.

With respect to illegal immigration, the Jordan Commission recommended improving border security, eliminating the jobs magnet, including a computerized registry to verify work eligibility, and mitigating the costs to state and local governments. With respect to legal immigration, the Jordan Commission recommended simplifying immigration categories; reducing legal immigration (with overall annual cap of 550,000); prioritizing immediate family members over extended family; prioritizing skilled workers over unskilled workers; reducing the ceiling for employment-sponsored immigration; and increasing interior enforcement. The Commission also stressed enforcement of immigration limits, enforcement of sponsor responsibility, and protection of American workers as basic principles essential to an effective immigration policy.

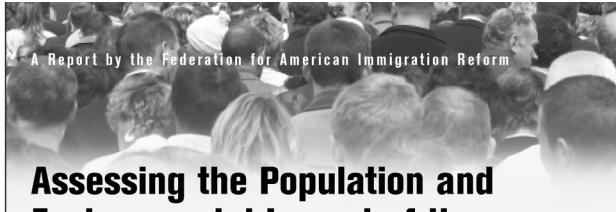
Madam Chair, the Jordan Commission recommended these reforms to our immigration system over a decade ago and yet few of them have been implemented. It seems that the Bush Administration and many in Congress prefer to ignore them and skip straight to the politically expedient alternatives—amnesty and guest worker programs. But traveling this course will only perpetuate the status quo and lead to the further deterioration of our immigration system. FAIR believes that the reforms recommended by the Jordan Commission offer an exponentially better and genuine solution to our immigration crisis.

#### CONCLUSION

Madam Chair, for all of the reasons above, FAIR believes that the STRIVE Act compounds, rather than eases, the problems of our broken immigration system. By granting amnesty to illegal aliens, Congress rewards those who openly break our immigration laws and encourages more illegal immigration. Furthermore, the creation of massive new guest worker programs coupled with the expansion of existing programs serves only to subsidize corporate greed and undermine the status of the American worker. Finally, when the amnesties, guest worker programs, and special loopholes and exceptions of the STRIVE Act are combined, the resulting increase to the U.S. population is staggering. FAIR estimates that the passage of the STRIVE Act would result in an additional 50 million people being added to the 2050 population projection. This means that instead of the U.S. population growing to 461 million by 2050, it will soar to approximately 513 million.<sup>3</sup> Looking at these devastating effects, FAIR believes passage of the STRIVE Act would be a mistake of historic proportions.

<sup>2</sup>Department of Homeland Security, Office of Immigration Statistics, *Estimates of the Unauthorized Immigrant Populations Residing in the United States: January 2006* at 2 (August 2007).

<sup>3</sup>Federation for American Immigration Reform, *Report: Assessing the Population and Environmental Impact of the Gutierrez-Flake Bill (H.R. 1645)* (May 2007), see attachment.



## Assessing the Population and Environmental Impact of the Gutierrez-Flake Bill (H.R.1645)

by Jack Martin, Director of Special Projects

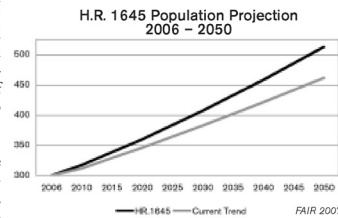
### ■ Summary

Legislation that significantly adds to the U.S. population should forthrightly describe what the population impact will likely be as a result. Because change in the size of the U.S. population is a major factor impacting the environment, any such proposed changes should be evaluated in terms of the likely environmental impact.

H.R. 1645, introduced by Reps. Gutierrez and Flake in March 2007 would: 1) result in a major increase in the U.S. population by the addition of immigrant visas for foreigners sponsored by both family members and by employers; 2) expand guest worker provisions that would increase the presence of long-term U.S. residents; and 3) undercut efforts to combat illegal immigration by including an amnesty for those already here — which would perpetuate the belief abroad that illegal immigration to the United States will be accepted.

The cumulative effects of these proposed changes to the immigration law, if they were adopted, would likely increase the U.S. population by more than an additional 50 million people above the already fast-growing population between now and 2050. Instead of a population of 461 million in 2050, that would likely result with continued mass immigration, the population would soar to about 513 million.

If H.R.1645 were enacted, this proposed legislation would add even more to the U.S. population than the Kennedy-McCain bill proposed last year — that we projected would cause the population to surge to about 500 million in 2050.



### ■ Background

The United States already has the fastest growing population among industrialized countries. Between 2000 and 2006, the population grew by an estimated 2.9 million residents per year. That is a growth rate of nearly one percent per, and a one percent per year population growth rate implies a population doubling in just 70 years. Needless to say, adding nearly an additional 300 million residents to our population over the next 70 years would have an enormous environmental impact on the U.S. contribution to climate change, urban sprawl, energy consumption, traffic congestion, and dwindling ground water resources, to name just a few of the impacts.

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Immigration is the most significant factor influencing U.S. population growth. When the estimated illegal immigrant influx is added to legally admitted immigration, it accounts for about an additional 1.8 million residents each year. The Census Bureau estimates that this is reduced to a net increase of about 1.2 million immigrants per year by return migration and Americans leaving to live abroad. But, that is not the total of the population impact from immigration, because it does not include the children born to the immigrants after they arrive in the United States.

Because so many of the immigrants are young adults and because they often come from societies with high birth rates, immigrants tend to also have a disproportionate impact on population increase from natural change (births less deaths). Though the foreign-born population amounts to about one-eighth of the U.S. population at present, it accounts for nearly double that share of U.S. births. With births to immigrants added, the population impact from immigration adds to about two-thirds of the annual increase, with some estimates putting this impact as high as four-fifths of the current population increase.

In a population projection we did in 2005 looking at the population effects of the then proposed Kennedy-McCain immigration proposal, we found that if that proposal were enacted it would cause the U.S. population to rise to about 500 million persons by 2050.<sup>1</sup> That result was nearly 40 million more people in the country than under the highest scenario based on the current trend with no change in the immigration law.

We did not do a study of the impact of the Hegel-Martinez legislation that was eventually passed in the Senate, but analyses by others suggested that legislation would have resulted in a still larger increase in the U.S. population than under the Kennedy-McCain legislation.

**Population Effects of the Gutierrez-Flake Bill**

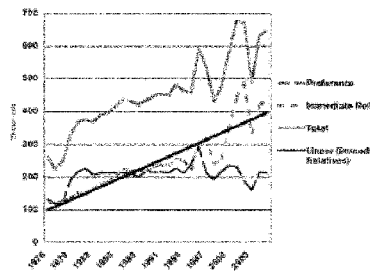
The STRIVE bill — H.R.1645 — is bulky, intricate, and convoluted, which makes analysis of its effects tricky. We have, however, identified what appear to be the key components that would affect change in the immigrant flow into the country. Those changes fall into three primary categories:

- ▷ expansion of family-sponsored immigration,
- ▷ expansion of employment-based immigration, and
- ▷ increase in long-term temporary workers.

**Family-sponsored immigration** falls into two categories: those limited by a cap (family preference visas) and those

unlimited (immediate relatives). The combination of these two categories has been a trend of steadily rising admissions since the current system was adopted in 1965, and it will continue to increase without any change because of the unlimited admission of immediate relatives.

Family Sponsored Immigration



H.R.1645 increases both categories of family-sponsored immigration. The increased ceiling for the capped visas would add more than an additional 11 million immigrants by 2050. An increase in immigrant entries in the immediate relative category would result because, in the legislation, the definition of who may qualify for one of these visas is expanded. The result is that we could expect at least an additional 4.3 million immigrants to arrive through 2050. Thus, the combined effect of increased family-reunification policy changes would be about 15.4 million more U.S. residents by 2050 if the Gutierrez-Flake legislation were enacted.

**Employment-related immigration** is also significantly expanded in the legislation. Perhaps even more significantly, the composition of that immigration is restructured to admit a much larger share of unskilled immigrants. This obviously would have a significant impact on the job prospects for our most vulnerable citizens, the already worsening trend in growing income inequality and a shrinking middle class, and the burden on the U.S. taxpayer of public assistance programs aimed at combating poverty, but those impacts are outside the scope of this demographic analysis.

Our evaluation of the effects of H.R.1645 is that, if adopted, it would add an additional about 4.5 million employment-based immigrants each decade. Cumulatively, that would mean an addition of a further about 19.4 million additional residents by 2050.

**Temporary worker change** would add about an additional three million people to our population as early as 2013 and continue to replenish that amount through the middle of this century. This increase in H-1B visa temporary workers is included in this population impact projection because these workers are admitted for up to 6 years and their presence has the same population impact as that of permanent residents during the period they are in the country.

Our analysis of the new provision for H-1B entry suggests that H.R.1645, if enacted, would add half a million additional workers per year to the population. These temporary workers eventually would be processed as immigrants or would leave and return to their home countries, but they would be annually replaced by new H-1B workers, so the population effect should persist indefinitely after the initial surge.

**The total of the direct population increases from H.R.1645 described above would add about 38 million additional persons in our population by 2050, and that rate of increased population impact would continue to climb indefinitely.**

The **illegal immigration effects** also should be considered. The Gutierrez-Flake bill includes several provisions billed as measures to combat illegal immigration as well as provisions to offer legal residence to those currently in the country illegally, i.e., amnesty. While measures to restrict illegal immigration might be expected to impede the flow — if fully funded and implemented — the measures designed to accommodate those already here illegally are likely to have the opposite effect. The process of again enacting yet another amnesty program would likely encourage continuing efforts to establish illegal residence in the expectation that further amnesties will be forthcoming.

As a result of these contradictory messages being sent abroad, we conclude that, despite the possibility of increased enforcement measures, illegal immigration would continue undiminished if H.R.1645 were enacted.

**Secondary effects** from these population increases would result from the fact that the additional immigrants would bear children after their arrival. Evaluation of the secondary effect requires an estimate of likely births minus likely deaths among this additional 38 million residents. As a large share of the projected addition of foreign residents in all three of the categories above — family-sponsored, employment-related, and temporary workers — would be in their child-bearing years and come from cultures where larger families are the norm, this population addition would also have a disproportionate secondary effect on natural population increase.

In our projection, using reasonable demographic assumptions (see appendix), we estimate that this additional secondary population effect would add about a further 13.5 million persons to the U.S. population through 2050. The combination of the direct and indirect effects of adoption of the STRIVE legislation would result in more than 50 million additional people in our population in 2050 above the highest projection based on current immigration law and practice.

The resulting projected U.S. population in 2050 would be 513 million people compared with our earlier high trend projection of 461.5 million residents at mid-century. Compared to our current population of just over 300 million, this would represent an addition of about 213 million people to the population. That is comparable to adding about six more Californias — our most populous state.

#### ■ **Environmental Consequences?**

Consideration of the population effects of proposed legislation is not simply an exercise in contemplating the number of new living quarters that may be needed to accommodate population growth. There are very wide-ranging and important impacts on the environment associated with the size of our population. The absolute change in population has a major impact on the environment we leave to future generations apart from the issue of patterns of consumption.

***Our Shrinking Country***—Advocates for open border immigration policies point to calculations that the population of the world could fit into Texas. Most people recognize the absurdity of that argument, but people have only a vague notion of how crowded the United States is becoming aside from resenting the bumper-to-bumper traffic on highways or the back-to-belly crowding in mass transit during rush hours.

The land area of the United States is a bit more than 3.5 million square miles. That area and a U.S. population of 300 million residents in 2006 mean there are now nearly 85 persons per square mile or more than 7.5 acres per person. But that does not take into consideration other essential land use.

There are currently about 1.47 million square miles in agricultural production. Of course some of the crop raised on that land is exported, but we also are importing as much food in value as we are exporting. So, available land for habitation is reduced to closer to 2 million square miles. But, we presumably are not ready to start expanding our cities into national parks and forests, so we must also deduct about 1.17 million square miles of forest and park land. With that reservation, the land available for our population to spread out in is less than a million square miles.

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So far we have not considered other land usage that limits residential use. For example, there are about 30,000 square miles paved over for our transportation needs. That doesn't include parking lots. Also not considered is the amount of land dedicated to shopping malls, golf courses, football baseball and soccer fields, office buildings, landfills and other commercial and municipal uses.

Even without trying to calculate the land area consumed by those additional uses, the estimates above have effectively reduced national available land area to about 870,000 square miles — more than 500,000 of which are in Alaska. That would mean that our current population, if spread evenly, would have to share one square mile among 345 people — which is the same as about 1.9 acres per person. There are about 1.3 acres in a football field (inside the lines), so we now have about a football field for each person to occupy.

And if people did not want to move to Alaska, the number that would be sharing that one square mile would be 860 people. And, that football field would be occupied by one and one-third person. All of a sudden those empty spaces in our country are shrinking.

It should also be kept in mind that there are large areas of desert, mountains, and inhospitable terrain that are not in national parks but are not suitable for agriculture or development. An example would be the 50 square miles of Utah's Bonneville Salt Flats.

Our current population growth rate suggests a possible doubling of our population in about 70 years. The about one and one-third people in the football field will become about two and two-thirds persons. If we expand the rate of immigration, as currently being urged in Congress, we project that our population will reach more than one billion people before the end of this century — more than tripling. The about two and two-thirds people in the football field would become more than eight persons.

Keep in mind that to accommodate that growth, we will need to pave over three times as many square miles for our transportation needs, and build out our cities more in terms of malls and parking lots and offices and recreation facilities. Can we accommodate a tripling of our population without tripling the agricultural land to feed us? That is where we find a major resource constraint. We don't have enough spare land area to triple the acreage for agricultural production. This fact, more than any other, demonstrates that we cannot expect to expand our population indefinitely. Slowing, stopping, and reversing population growth cannot happen overnight. Significant demographic change happens only over several generations.

4

This is why decisions must be made today rather than waiting until land constraints have become more acute than they are today.

**Land Use**—Land development is the only U.S. land-use category that has increased significantly (by 47%) in the last two decades.<sup>2</sup> By the late 1990s, 1.7 acres of land were developed for every new person added to the U.S. population. This was up from 0.8 acres a decade earlier.<sup>3</sup> This demonstrates that land development is growing both as population increases and in more expansive use per capita — a trend associated with urban sprawl.

If the current rate of land development per capita were to continue, our projection of 463 million people in 2050 given current trends would imply the development of an additional 433,000 sq. mi. of developed land — an amount of land greater than the land area of the states of Texas and California combined. The additional 50 million population increase projected to result if H.R.1645 were enacted would result in the development of a further 133,000 sq. mi. of land — an area greater than the combined land area of Pennsylvania, Maryland, Washington, DC, Virginia and West Virginia.

Furthermore, if the trend in more expansive land use per capita were to continue, future population-related demands for land development would become even greater.

**Traffic Jams**—Because of rising population and the growth of cars on the roads exceeding additional lane-miles of roads, traffic jams are an increasing phenomenon, especially in large metropolitan areas. The average U.S. traveler now spends 47 hours each year stuck in traffic delays during rush hour, compared to just 16 hours two decades ago. There are also now ten times more urban areas (51) with more than 20 hours of annual rush hour delays.<sup>4</sup>

The time spent idling in bumper-to-bumper in traffic jams is also related to consumption of dwindling fossil fuels and production of greenhouse gasses. An estimated 2.3 billion gallons of fuel are wasted every year from idling in traffic, nearly 80 percent more than in the early 1990s.<sup>5</sup>

**Water Resources**—U.S. residents depend on the daily use on average of about 1,500 gallons of water per person for consumption, recreation, energy (cooling power plants), food production, and industry.<sup>6</sup> About one-tenth of that amount is personal use, i.e., bathing, sanitation, laundry, cooking, consumption, etc.<sup>6</sup> Even though water can be reused and is replenished by rainfall, it is not an infinite resource. As global warming contributes to receding glaciers and smaller snow melts that replenish streams, water shortages that already exist in many



## Assessing the Population and Environmental Impact of the Gutierrez-Flake Bill (H.R. 1645)

areas of the country will become even more acute.

Areas of the country that depend largely on ground water resources have the most serious looming crises. The Ogallala aquifer is the largest of those resources, and one of the largest in the world. It stretches under Colorado, Kansas, Nebraska, New Mexico, Oklahoma, South Dakota, Texas and Wyoming and is tapped for water supplies throughout that area. About a third of the aquifer's water volume, which supports 20 percent of all irrigated land in the United States, has already been depleted, and pumping rates already far exceed natural replenishment. As a result, the water level has been dropping about a foot per year since the 1970s.<sup>9</sup>

To the west of those states, large parts of California, Utah, Nevada, New Mexico and Arizona (as well as northwestern Mexico) rely on water from the Colorado River for both agricultural use and urban populations. However, that resource is already fully committed, so future increases in population-related consumption mean competition among the users of this resource or finding new sources of water.

Based on the estimate of personal use of water resources, the additional 163 million residents likely to be added to our population given the current trend would consume an additional 244.5 billion gallons of water per day in 2050. If H.R.1645 were enacted and an additional 50 million people were added to our population over the next 43 years, the additional demands on the finite water resources of the nation would be a further 75 billion gallons per day. Combining those two estimates of daily use, the annual increased demand on water resources would be 320 billion gallons per year.

As noted above, water usage overall, including the industrial and agricultural needs to support the population, is much greater than for personal use. Using the larger estimate of total needs of about 1,500 gallons per person per day and our projection of the rising population if immigration is expanded — overall annual water consumption in 2050 — would be large enough to completely deplete the Ogallala aquifer in four years — if that were the only resource available.<sup>10</sup>

Other water-related issues linked to population size are pollution from industrial chemical discharges, lawn chemicals, storm overflow of sewage systems, etc. and the impact of population growth on wetland loss, estimated on the basis of our current population to be consuming more than 100,000 acres per year.<sup>11</sup>

**Aquatic Resources**—Today's population size and our consumption of fish and other aquatic resources is already responsible for threatened stocks of certain species and for generating

the pollutants that are responsible for decimating others.

Domestic fish farms are expanding to meet the needs of U.S. consumers. What is generally forgotten when looking to these farms as a solution to help meet consumption needs is that the fish farms produce pollution — fecal matter — and they consume fish resources at the same time that they are producing them. Wild fish that are harvested to provide food for farmed species are consumed at a rate of 2 to 3 pounds for every pound of farmed shrimp or salmon produced.<sup>12</sup> This fact suggests that fish farming should not be thought of as a new food resource, but rather one that is simply more susceptible to resource management.

**Food Resources**—The food consumption needs of the U.S. population have grown significantly as the population and food consumption per capita have grown. At the same time farm land acreage has been reduced by urban sprawl. Over the past two decades, crop acreage has declined by more than 50 million acres and acreage on privately owned land for livestock grazing has dropped by more than 30 million acres.<sup>13</sup>

As a result of the shrinking land resource and the expanding consumption requirement, agriculture has undergone a major transition from primarily family-run farms to agribusiness. Accompanying this shift, and the effort to produce greater crop yields on fewer acres, has been both decreased crop rotation as well as the increased use of pesticides, herbicides, and fertilizers which have long-term negative environmental implications as well as increasing our dependence on foreign petroleum imports for producing the chemicals. This trend has also been accompanied by increased irrigation, which increases competition for this increasingly overtaxed resource.

The competition for land between food producers and developers is highlighted in California, the largest agricultural producer in the country. California is also a state that has had an enormous population growth — the largest share of which has been due to immigration. Between 1970 and 2000 the population of the state increased by nearly 14 million residents — a nearly 70 percent increase. More than half of that population increase was accounted for by the growth of the immigrant population, which soared by more than 400 percent over the same three decades. Census Bureau projections point to the continuation of this population growth trend, especially in prime agricultural areas such as the Central Valley, whose population is projected to more than double by 2040.

**Energy**—U.S. energy consumption has been rising steadily as the population has increased and as per capital consumption has grown. Some of that increase has resulted from longer commute distances as urban areas have sprawled outward, and

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greater traffic congestion resulting in energy consumed idling. Increases have resulted as well in climate control energy usage as populations have expanded most rapidly in areas that use air conditioning for extended periods of the year.

Once the world's leading fossil fuel producer, the U.S. fuel reserves have dwindled as non-renewable fossil fuels (coal, oil and natural gas) have been increasingly consumed. The United States now depends on foreign sources for 60 percent of the oil it consumes and 20 percent of the natural gas. U.S. coal supplies, which also are finite, remain abundant, but represent a serious problem in efforts to reduce CO<sub>2</sub> emissions that have major environmental implications. To date, despite significant advances in alternative fuel sources, none of them currently hold the prospect of ending our dependence on fossil fuels for the energy needs of our current population, let alone for a population that is rapidly increasing.

According to a report of the National Commission on Energy Policy, U.S. consumption of oil is projected to rise by 43 percent and associated greenhouse gasses by 43 percent by 2025.<sup>14</sup> This increased usage will be in part a result of increased consumption per capita and in part because of our rising population. We estimate that the U.S. population will have grown by 21 percent by 2025 given the current trend, and it would rise by about 28 percent if H.R.1645 were enacted.

One of the looming trade-off crunches associated with our rising population and rising energy needs is the competition for agricultural produce between food consumption and fuel production. Ethanol and bio-diesel offer an alternative source of energy, but not without the cost of removing the corn, soy or other grain from food supplies. This is already pointed to as responsible for a recent rapid doubling the cost of tortillas in Mexico and for fast rising grain prices in the United States.

**Trash**—Americans today produce on average about 5 pounds of trash daily. That means for every 10 million residents added to our population, the nation's trash production rises by 9,125,000 tons per year. This however is not a static figure, as the waste production per capita has been rising over time. In 1960, average trash production per capita was 3 pounds, 60% of the current level.

If immigration is allowed to further increase population growth by 50 million people, as H.R.1645 would do, this would mean an increase of about 64 million additional tons of waste per year by 2050 and a cumulative addition of more than 215 million tons between now and then assuming the current trend in trash production. If the per capita rate of trash production also continues to increase, that total could be as great as 260 million tons over the next 43 years.

## ■ Conclusion

There are two major reasons for focusing on the rapidly rising U.S. population. The first is the crowding issue, and the second is the consumption-environmental impact. Our ancestors left us a very large and roomy country to grow up in, but it is fast becoming less roomy. And, because land is a finite resource, crowding for our succeeding generations will become a still more serious problem. Secondly, a growing population means growth in consumption of food, energy and finite resources and greater production of waste and harmful byproducts of our consumption.

Both of these effects of population growth merit in themselves serious consideration as to how the rate of population growth can be stopped or reversed in the interests of improving not only the conditions that we leave for future generations of Americans, but also in the interests in lessening the environmental impact for the rest of the planet's inhabitants.

The federal government, which has the obvious responsibility for considering these future population and resource trends, inexplicably has no population policy. If it had a population policy, it would have to consider the effects on that policy of changes in immigration policy.

Given the daunting prospects of our already fast-growing population on land use and on our environment, it is grossly irresponsible that the nation's policymakers would contemplate accelerating that population growth by enacting a significant increase in immigration as is contemplated in H.R.1645 and in the outline of an immigration plan being advocated by President Bush, and as was adopted in the Senate last year (S.2611).

The pressure to increase immigration is coming from a broad array of narrowly focused special interest groups ranging from certain employers — using immigration to control their labor costs — to ethnic and institutional interests — that seek to expand a consumer and constituent base. These interests are pursuing parochial objectives at the expense of our national health.

The American public has the right to expect their elected representatives to keep the long-term best interests of the country in sight when enacting new policies. Before adopting any new policies, the population implications should be thoroughly studied and explained to the public.

**APPENDIX**

**Appendix: Projection Assumptions**

**Family Reunification**

The Gutierrez-Flake legislation (H.R.1645) expands family reunification in two major ways.

- ▷ The number of family sponsored visas is expanded.
- ▷ The definition of “immediate relative” is changed to include additional extended family members.

**Family sponsored visas** for those who do not qualify for immediate relative status currently have an effective limit of 226,000 visas as part of a pierceable cap of 480,000 visas per year.<sup>15</sup> Under H.R.1645, the floor becomes a ceiling of 480,000 — more than doubling the rate of admissions. The bill also contains a provision for an additional about 125,000 visas to recapture a shortfall in admissions during the post-9/11 period.

**Over the 43-year period up to 2050, the expansion in the cap on family reunification visas is projected to add an additional 255,000 immigrants per year.**

**Immediate relative visas** to family members of U.S. citizens — usually immigrants who have naturalized — have been steadily increasing by an average of about 10,000 per year. These visas are uncapped — unlike other family sponsored immigrants.

Under H.R.1645 the growth in immediate relative visas will accelerate as a result of the fact that they are uncapped and due to the effects of a major change in definition of who qualifies for such visas.

Those currently eligible for one of these uncapped visas are the spouse, minor children and parents of a U.S. citizen. Under the new definition, these visas become available under certain conditions to the sponsors’ siblings, grandchildren, and in-laws.<sup>16</sup> These are persons who currently are eligible for visas under the currently backlogged numerically capped family reunification provisions.

How many of these persons who are newly made eligible to enter without limit would exercise this option is open to conjecture. However, it is reasonable to expect that large numbers of siblings and adult children — who would face extended waits for one of the numerically limited visas under the current system — would take advantage of the opportunity to immigrate immediately along with other family members.

**The assumption used in this projection of the effects of H.R. 1645 is that, on average, the rate of increase in immediate**

**relative immigrant admissions would approximately double from about 100,000 per year to 200,000 per year.**

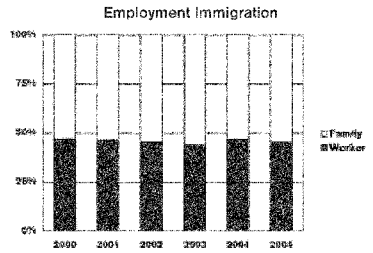
Over the period of the projection, the level of both immigrant admissions and immigrants becoming naturalized U.S. citizens will be increasing, and the sponsorship of family members may also be expected to increase. So the expansion of immediate relative admissions in practice may be expected to be lower in the early years and higher in the later years of the period. Nevertheless, we have assumed a straight-line increase over the period of the projection on the assumption that the population effects will not be significantly different.

**Combining the population effects of both forms of increase in family reunification visas, and with the added visa recapture provision, results in an estimated annual increase of nearly 1.8 million persons per year — a total increase of about 15.4 million people by 2050.**

**Employment-Sponsored Admissions**

H.R.1645 contains a major expansion in immigrant visas for foreign workers and their accompanying family members.

At present, these visas are capped at 140,000 per year, and this limit includes accompanying family members. On average, accompanying family members account for a bit more than half (54.3% since 2000) of the annual admissions (see chart).



The provisions of H.R.1645 increase the admission of job-related immigration in two ways:

- ▷ The ceiling on these visas is raised from the current level of 140,000 to 290,000 per year.
- ▷ The share of these visas currently used for accompanying family members is freed up for additional immigrant workers by exempting the family members from the ceiling.

The population effect of this proposed increase would be to raise the intake from the current 140,000 visas (about 64,000 workers and 76,000 accompanying nuclear family members) to 290,000 visas for workers plus their accompanying nuclear family members — who, based on the current trend, would represent about an additional 300,000 immigrants. The total of 590,000 employment-related immigrants would be an increase of more than four times the current level.

The legislation provides for a ceiling on the accompanying family members of 800,000 per year, although that would be unlikely to be used unless workers began to bring larger families — a possibility that could arise from the much greater intake of unskilled immigrants whose family demographics could differ significantly from the current profile.

The legislation also contains a one-time adjustment provision for recapture of visas that were not used because of the slowed down processing time resulting from the security checks following the 9/11 terrorist attacks.

**The assumption in this population projection is that the increased ceiling for employment-related immigration of 290,000 would be fully utilized from the outset of the larger number of visas becoming available and that the uncapped accompanying family members would average about 300,000 per year for an average annual admission of 590,000 immigrants. That is more than 4 times the current level of admissions. This provision is projected to add 450,000 immigrants per year for a total of about 19.4 million people by 2050.**

#### Temporary Workers

H.R.1645 also provides for a major increase in the number of foreign workers entering on nonimmigrant visas. Many among this increased flow of workers and accompanying family members will end up as permanent residents and are accounted for in the projection as part of the increased immigrant flow. However, they also constitute an increase to the population during the time that they are residing in the country as non-immigrants. The Census Bureau counts these resident aliens as part of the U.S. population in the decennial Census.

At present, skilled and professional workers in the H-1B program are capped at 65,000 visas per year with workers able to stay for up to 6 years — and beyond that period if they have a pending application for permanent residence. However, the cap has exceptions for 20,000 foreign graduates with advanced degrees from U.S. universities and for those who take jobs at U.S. universities, associated research institutions or with gov-

ernment agencies. The number of visas issued has been more than 110,000 as a result of these exceptions. They are accompanied by about 25-30,000 family members.

H.R.1645 would add 50,000 visas annually (to 115,000) plus extend the categories of exemptions from the cap and include an escalator provision that would allow the number to rise to 180,000 per year. The provision that provides for the greatest increase in the admission of professional workers is one that changes the 20,000 exemption for advanced degree graduates of U.S. universities to an open-ended entitlement to a visa — without any limit — and expands it to advanced degree earners from anywhere in the world.<sup>17</sup> The number of such graduates annually certainly exceeds a million in countries with a lower standard of living than in the United States.

The population effect of opening up U.S. job opportunities to foreign advanced degree earners from around the world — apart from diminishing the attraction of obtaining such a degree from a U.S. university — could result in H-1B workers surging into the country at a level as high as there are job opportunities to absorb them. The recently closed window (which was open for only two days) for employers to apply for H-1B workers in fiscal year 2008 resulted in about 130,000 applications. Many of those applications will have included multiple employees, so it is not unreasonable to assume that if the application process had remained open all year the number of foreign workers offered employment opportunities would have exceeded one million persons. However, the U.S. Bureau of Labor Statistics projects job growth in professional and related careers of about 6 million over ten years.<sup>18</sup> While it is unlikely that given an expanded availability of foreign graduate degreed workers that they would be hired for all new professional jobs, it must be kept in mind that at the present time employers are not only free to replace U.S. professional workers with H-1B workers, but they are doing so.

**The assumption in this study is that the vastly expanded availability of H-1B VISAS would lead to an increased intake of as many as 400 thousand workers per year above and beyond the current level of H-1B workers entering the U.S. workforce.**

In addition to the enormous surge in possible H-1B workers, there would be an increase in accompanying family members. H-1B workers are often single, or if they are U.S. university graduates they may be married to a U.S. citizen or legal resident. On average the number of visas allocated at present to spouses and children of H-1B workers is about one-fourth of the level of the number of principals. Therefore, **when the spouses and children of the surge in H-1B workers are**

**included, the annual increase in long-term nonimmigrant residents would be about half a million residents above the current level. With the possibility to stay in the country for 6 years, the population impact of this increased intake of foreign workers would be about 3 million additional persons.<sup>19</sup>**

#### Illegal Aliens

H.R.1645 contains provisions designed to combat illegal immigration. However, at the same time, it offers the possibility of legal residence and a path to U.S. citizenship for those currently in the country illegally, i.e. amnesty.

The nation's experience with the amnesty in 1986 has been that, rather than reducing illegal immigration, it exacerbated it. The dynamic that is most important in this context is the message that is sent abroad to future would-be illegal immigrants. The message that is sent by the adoption of amnesty measures is that the United States is prepared to periodically accommodate those who have illegally entered and/or remained in our country.

**As a result, it is reasonable to assume that the population effect of an amnesty will not diminish the amount of illegal immigration.**

That view is apparently shared by the Mexican government. Mexico's new ambassador to the United States, Arturo Sarukhan, in public remarks in April 2007 commented that even if a measure such as H.R.1645 becomes the law, "...waves of immigration will continue, because Mexico is failing to provide adequate opportunities for its people."<sup>20</sup>

#### Total Population Impact of H.R.1645

The above analysis of the population impacts of H.R.1645 as a result of increased family-sponsored immigration, employer-sponsored immigration, and temporary long-term work visas suggests the following additions to U.S. population growth between 2007 and 2050 if the legislation were to be enacted:

- ▷ An estimated 15.4 million people would be added as a result of family reunification.
- ▷ An estimated 19.4 million people would be added as a result of employment visas.
- ▷ An estimated 3 million people would be added from nonimmigrant employment visas.

This total of about 38 million people would not constitute the total impact because a large share of these additional foreigners will be in their child-bearing years — especially the employment-based immigrant and nonimmigrant workers. Using standard demographic assumptions for this population, the additional millions to our population would likely account for approximately 32 million more births than deaths among these new residents over the next 43 years.

As a result of these assumptions, we project that the U.S. population — that is already rapidly rising, and is already projected to add an additional 161 million people by 2050 to the 300 million we had in 2006 — would add a total of a further 50 million persons if the Gutierrez-Flake bill were enacted.

## Assessing the Population and Environmental Impact of the Gutierrez-Flake Bill (H.R. 1645)


## ENDNOTES

- 1 Martin, Jack and Stanley Fogel, "Projecting the U.S. Population to 2050: Four Immigration Scenarios," FAIR, 2006.
- 2 The data and analysis in this section draw heavily on the invaluable research effort of the Center for Environment & Population, see Merikam, Victoria D., *U.S. National Report on Population and the Environment*, 2006. (<http://www.cepnet.org/documents/USNatlReptFinal.pdf>), accessed 2007.
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- 4 Thome, Sarah and Dan Sundquist, 2001. *New Hampshire's Vanishing Forests*. Concord: Society for the Protection of New Hampshire Forests.
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- 8 The estimate is based on national use of about 37 billion gallons of water per day and a population of 250 million – the population size in 1990. "Water Conservation," Western Basin Municipal Water District. (<http://www.westbasin.com/waterconservation.html>), accessed 2007. Estimates vary. Another estimate from the San Diego Metropolitan Water District puts a family's average daily water consumption at 450 gallons per day for personal consumption. *Norfolk County Times*, "Rates rising faster than supplies," April 12, 2007, [http://www.nctimes.com/articles/2007/04/13/opinion/editorials/18\\_14\\_854\\_12\\_07.txt](http://www.nctimes.com/articles/2007/04/13/opinion/editorials/18_14_854_12_07.txt).
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- 11 Fletcher, Robert. *Loss of Wetlands: How are Bird Communities Affected?* ActionBioScience.org, October 2003 (accessed 2007).
- 12 Goldberg, Rebecca, et al., "Marine Aquaculture in the United States: Environmental Impacts and Policy Options," 2002, Pew Oceans Commission.
- 13 U.S. Department of Agriculture, "Land Use, Natural Resources Inventory 2002," 2004.
- 14 National Commission on Energy Policy, "Ending the Energy Stalemate: A Bipartisan Strategy to Meet America's Energy Challenges," 2004.
- 15 The numerically-capped family preference categories in theory can exceed 226,000 visas per year, but only if immediate relative visas, which have higher priority, use less than the other 254,000 allotted visas. Immediate relative visas have exceeded that number every year since 1996. The 480,000 cap is perceivable because the number of immediate relative visas is uncapped and there is a "floor" of 226,000 visas for the other family-sponsored visas.
- 16 "In this subparagraph, the term 'immediate relative' means a child, spouse, or parent of a citizen of the United States (and each child of such child, spouse, or parent who is accompanying or following to join the child, spouse, or parent), except that, in the case of parents, such citizens shall be at least 21 years of age." (H.R. 1645 § 516).
- 17 Sec. 507(a)(3) of H.R. 1645 provides for the expansion of the exemption for foreigners who have earned a master's or higher degree from a U.S. university to others who have similar degrees, "...in science, technology, engineering, or mathematics from an institution of higher education outside of the United States."
- 18 "Occupational Employment Growth by Occupational Group," (2004-2014) Bureau of Labor Statistics. <http://www.bls.gov/opub/ooq/2005/winter/art02.pdf>.
- 19 While it is clear that not all H-1B visa recipients will stay in the United States for 6 years, a large majority of them may be expected to do so, and those sponsored for a green card are able to stay for periods in excess of 6 years if necessary to wait in line for an adjustment to immigrant status. Thus the average length of time in the U.S. for H-1B workers is not limited to 6 years.
- 20 "Mexico envoy backs U.S. plans but says migration won't stop: Leader says reform won't diminish number of border-crossers," April 10, 2007. Martin, Jack and Stanley Fogel, "Projecting the U.S. Population to 2050: Four Immigration Scenarios," FAIR, 2006.

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Federation for American Immigration Reform  
1666 Connecticut Avenue, NW | Suite 400 | Washington, DC 20009 | (202) 828-7004 | (202) 847-9887 (fax) | info@fairus.org | www.fairus.org



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ISBN 978-0-9797192-0-2

Ms. LOFGREN. Thank you.  
And last, but certainly not least, Mr. Stewart.

**TESTIMONY OF THE HONORABLE COREY STEWART, CHAIRMAN AT-LARGE, PRINCE WILLIAM COUNTY BOARD OF SUPERVISORS**

Mr. STEWART. Thank you, Madam Chair, Ranking Member King, Members of the Subcommittee.

I am Corey Stewart, chairman of the Board of County Supervisors, Prince William County, VA.

As I am sure some of you know, Prince William County is located approximately 25 miles south of here. At 400,000 residents, we are the second largest county in the Commonwealth of Virginia. We are also the seventh wealthiest county in the United States.

This economic prosperity and economic opportunity and high quality of life in Prince William has drawn talent from all over the United States and, in fact, the world. We welcome the increasing diversity in our community. We welcome legal immigration in our community, and I better say that, since my own wife is a legal immigrant from Sweden.

What we do not welcome is unlawful, illegal immigration in our community. Illegal immigration is degrading the quality of life in our community.

According to Immigration and Customs Enforcement, approximately one-third of the gang members in Northern Virginia are illegal immigrants, people that should not have been here in the first place. At last check, fully one-fifth of our inmates in our local adult detention center were illegal immigrants.

In a sick twist of fate, one of the suspects in the brutal execution-style murders of three American college students in New Jersey is, in fact, a resident of Prince William County, Virginia. And just this morning, Madam Chair, if you will allow me, a murder committed by an illegal immigrant, twice deported from the United States, another murder by an illegal immigrant in Prince William County. The suspect here was twice deported and allowed to come back to the United States.

We are on the front line of this problem. The localities and the citizens and the local taxpayers have to pay for the problem. But what caused the problem was you, the Federal Government failing to enforce the law, and this is the problem.

We are asking for your support to crack down on illegal immigration. The Federal Government has failed to secure the border. The Federal Government has also failed to support communities such as Prince William County that are dealing with the effects of illegal immigration.

So what do we do as a community? We use our limited resources and our limited legal authority to crack down locally. We have successfully teamed with Immigration and Customs Enforcement to implement the 287(g) program. And I want to thank certain Members of this Committee who supported that in 1996.

In the first month of implementation this past July, we initiated deportation proceedings on 52 illegal immigrant criminals—illegal immigrants who, on top of being illegal, entered our community and committed crimes. Those 52, at least for the time being, will

not be committing crimes such as this and threatening the lives and the property of Prince William County residents.

What we would ask, however, is that you enforce the laws at the Federal level. Failing that, we ask that you give us more authority to do so at the local level. We ask that you give us the authority to detain and arrest suspected illegal immigrants based solely upon a civil detainer.

We also ask that you give us the authority to, as Hazelton, Pennsylvania did, fine landlords who house and harbor illegal immigrants.

We also ask that you give us the authority to fine employers who hire and exploit illegal immigrants.

The law must be enforced. It is degrading our quality of life. If you are not going to enforce them at the Federal level, we ask that you give us the tools at the local level to do so, and we will.

Thank you.

[The prepared statement of Mr. Stewart follows:]

PREPARED STATEMENT OF HONORABLE COREY A. STEWART

Madam Chair, Ranking Member King and members of the Subcommittee, I am Corey A. Stewart, Chairman of the Prince William, Virginia Board of County Supervisors. I have served in this Countywide elected position since November 2006. Previously, I served as the Occoquan Magisterial District Supervisor starting in January 2004 until assuming my current position.

Prince William County is located in Northern Virginia approximately 25 miles south of Capitol Hill on I-95 or 30 miles west on I-66. Approximately two-thirds of our employed residents commute to jobs outside the County in the District of Columbia, Maryland, or Northern Virginia. The major job centers in the County include Marine Corps Base Quantico, Potomac Mills, and the Innovation Technology Park which includes a campus of George Mason University.

Prince William County has a population of approximately 400,000 and has grown by nearly 100,000 residents in the last 7 years. The County is the seventh wealthiest large locality in the United States. We are also a diverse and cosmopolitan community. Among the fastest growing groups in the County is the foreign born population. From 2000 to 2005, according to the US Census Bureau, the percentage of our population that is foreign born rose from 6.2% to 19.4%. Approximately one-third of this group is naturalized.

Prince William's high quality of life and economic opportunity has drawn talent from around the world, and legal immigration has been a tremendous asset to Prince William County. Many businesses are owned and operated by naturalized citizens and legal immigrants. One research institution located in the county specializing in the life sciences employs scientists of the former Soviet Union in an effort to prevent the spread of deadly bio-terror toxins. A local chain of supermarkets catering to the Hispanic population was recently honored by the Virginia Chamber of Commerce as one of the "Fantastic 50" Companies. We are very proud of the contribution they have made to our community and to our nation.

Like a lot of other communities throughout the country, the County has been facing the issue of illegal immigration and its secondary impacts upon our community. A serious problem the County is facing is the presence of criminal street gangs. The County has been partnering with Immigration and Customs Enforcement (ICE) and other local law enforcement agencies through the Northern Virginia Regional Gang Task Force to combat this problem. The Congress has appropriated federal funds for this task force due to the efforts of Congressmen Frank R. Wolf, Tom Davis and Jim Moran. Our law enforcement partners at ICE estimate that 18% to 30% of criminal gang members in Northern Virginia are illegal aliens. Over the three and a half years of the task force 368 gang members who are illegal aliens have been placed in deportation proceedings.

At last count, the percentage of inmates in our regional jail who are here illegally was 21%. These inmates are incarcerated for a variety of crimes ranging from murder and rape to drunken driving and drunk in public. While the jail receives some reimbursement from the Federal Government through the State Criminal Alien Assistance Program, it only accounts for 10% of those costs.

The number of informal “day laborer” sites around the County in parking lots and convenience stores has grown over the last several years. We have received many complaints from store owners and residents about these sites. Oftentimes, customers have to navigate among crowds of men seeking work or drinking in public to get into the stores. Many such stores have lost business. After one enforcement action to close down one of these sites, some of those arrested were found to be in the country illegally.

As a result of these issues—as well as residential overcrowding and crowded schools and emergency rooms—citizens in our community have become enraged about the impact of illegal immigration and the effect that it is having on the County and their quality of life. My constituents believe that the Administration should enforce U.S. immigration laws. Because the Federal Government has failed to do this, the Board of County Supervisors has been forced to take bolder action on what is essentially a federal responsibility.

Locally, the County has taken a number of steps to address illegal immigration. The Prince William-Manassas Regional Jail Board, with the express urging of the Board of County Supervisors and the Manassas City Council, entered into a 287 (g) agreement with Immigration and Customs Enforcement (ICE) to turn over inmates who had been determined to be in this country illegally and completed their sentences to ICE for deportation proceedings. Since entering this agreement in mid-July, the jail has turned over 52 inmates to ICE. Another 59 inmates will be turned over once their sentences are complete while 47 others are under investigation for possible immigration violations. The Board of County Supervisors recently budgeted and appropriated \$1.4 million for this local effort. Most of these funds will be used to secure additional jail space and the remainder for training.

The County is also examining whether the County can lawfully prevent illegal aliens from receiving County services. There are some services that the federal government and Commonwealth of Virginia have already legislated that illegal aliens cannot receive such as Food Stamps. Other services must be provided to all regardless of their immigration status such as those provided through the Older Americans Act. Then there are a group of services that the County may have the option of restricting to legal residents. The Board will be considering whether to require those who receive this last group of services to provide documentation they are in this country legally.

We respectfully request that Congress broaden the powers of local governments to enforce federal immigration law. Federal legislation needs to clearly enunciate our roles and the relevant authority. The following policy issues should be addressed:

*Authority to enforce federal immigration law:* The federal government must clearly state to what extent state and local governments may enforce federal immigration law. In particular, we request that Congress state explicitly that local law enforcement personnel may arrest persons based solely upon an immigration violation, whether civil or criminal. Local governments and law enforcement agencies need the greatest level of immunity afforded by both the federal and State governments to enforce federal immigration law.

*State Criminal Alien Assistance Program (SCAAP):* The federal government needs to budget and appropriate a greater level of resources for SCAAP so that more than 10% of local government costs incurred in housing illegal aliens may be recovered.

*ICE 287 (g) Program:* Congress needs to budget and appropriate a greater level of resources, both human and otherwise, so that ICE may receive inmates identified as illegal aliens immediately upon the completion of local detention. ICE’s limited detention capacity has resulted in severe limitations on this County’s access to deportation resources. If this continues, the County will continue to incur tremendous costs to house illegal aliens. Furthermore, resources should be provided to deport illegal aliens who have completed local detention but whose crimes are not deemed to be among the “worst of the worst.” These individuals are returned to the community upon completion of detention. Funding also needs to be provided for training of local law enforcement agencies.

*Northern Virginia Gang Task Force:* Federal funding for this and similar programs should increase substantially. The proposed FY 2008 budget passed by the House of Representatives in July provides \$1.5 million. This is \$1 million less than what was appropriated for FY 2006.

Madam Chair, thank you for inviting me to provide a local perspective on federal immigration issues and how these affect our community. I would be glad to stand for questions.

Ms. LOFGREN. Thank you, and thank you all for your testimony.

It has been a long afternoon, but I think it has been an instructive one. We will have just a set of questions and then we will adjourn, and I will begin, if I may.

Mr. Wasilewski and Petty Officer Gonzalez, it seems to me, if I am hearing you correctly, that you are both in the case—you are a U.S. citizen, you are a legal resident about to become a U.S. citizen, and that your wives would have been permitted under existing immigration law to get a legal visa, except for a change we made in the law in 1996 on this 3 and 10-year bar.

Is that your understanding, that that is the only thing that is really standing in the way at this point?

Mr. WASILEWSKI. Yes, Chairwoman. Immigration officers said she broke the law. But my wife has never done anything wrong here in the United States. She has no criminal record, not even a parking ticket.

And it was because Janina, she tried to follow the legal procedures for staying in the United States by applying for political asylum. She exposed herself to the immigration system and was deported.

Ms. LOFGREN. So she thought she was trying to follow the rules and got caught in this trap.

Mr. WASILEWSKI. Yes.

Ms. LOFGREN. Petty Officer Gonzalez, this 3 and 10-year bar, is that really what is the issue? Because you are an American—I mean, not only an American, but we thank you once again for your service to our country.

The rule is that if you are an American citizen, you can apply for your spouse. I mean, we are not trying to choose who Americans marry, but it is this 3 and 10-year bar issue, isn't it?

Mr. GONZALEZ. No, ma'am. When we got together, me and my wife, she had already applied for asylum under NACARA.

Ms. LOFGREN. Under the NACARA.

Mr. GONZALEZ. Right. And she was already in her process. Now, when we got married, that changed her status and she could no longer be granted status under those set of rules.

Ms. LOFGREN. Under the NACARA, right.

Mr. GONZALEZ. Right. And so now since she didn't get it, so now she got sent to removal proceedings because she was exposed, also.

Ms. LOFGREN. Well, I just think, if I can, the old immigration lawyer in me and old immigration law professor in me tells me that this is a massive bill, and a lot of the attention has been focused on the 12 million undocumented, and that is appropriate. It is an enormously important challenge for those individuals, for our country and for the economy and the like.

But, also, within it are elements of—it is an intricate law and under ordinary principles, I mean, the rule has always been in modern history that the Federal Government doesn't tell Americans who they get to marry. I mean, we are not going to make that selection and Americans get to—you are an American citizen. You get to have your spouse stay here with you.

We changed the rules on that, well, 11 years ago. And in the STRIVE Act, that is made an issue and maybe that is one of the things that we should be attending to in addition to some of the issues that have gotten more attention.

I am just wondering, Mr. Gonzalez, or Petty Officer Gonzalez, I mean, you are in service to our country and you are in this situation. I don't think most Americans would think that is a very good situation. I don't think most people would—they would be surprised that an American serviceman would be in this situation.

Have you run into other people in military service who have a similar problem?

Mr. GONZALEZ. Yes, ma'am, I have countless people that are in the same situation as I am, to where they try to play by the rules and when we play by the rules and we no longer qualify by the rules, we get exposed and then we have to go to the next step, which is removal proceedings.

And there are many people in my shoes and I am speaking for a lot of them and they are in the same situation I am. They just don't want to say anything about it.

Ms. LOFGREN. I guess, I thank you, because I understand we announced that earlier.

I would like to ask, Reverend Cortés, you have been here before to testify, and we always look forward to listening to your wonderful voice. But in your written testimony, you talk about law abiding individuals living in fear, and I know that that is the case.

What can we do to eliminate this climate of fear that is occurring in our neighborhoods that you described?

Mr. CORTÉS. Well, law abiding people, by that, I include both clergy, of which we are an association of clergy, a national network, clergy and individual families who are citizens, but they all know someone who is undocumented.

So the climate of fear that has been created is on two sides. On one side, you have racial profiling, and we know of the cases now where American citizens who happen to have Hispanic surnames and happen to be working in a place that has a raid are being arrested legally.

So on one side, you have that issue of fear. On the other side, you have the fear that if you call a police officer and they are empowered and one cousin or an uncle or someone in the neighborhood is undocumented, clergy now, for the first time, have to make a decision whether we work with the police, which traditionally, in inner city communities, ministers have been at the forefront with police departments fighting issues of—fighting all the issues of crime, specifically drug interdiction and others.

On June 23, I participated in a process where 56 police chiefs were represented by Sylvester Johnson, the Philadelphia Chief of Police, and all of them said that they did not want their officers to begin to track down undocumented immigrants, because in Hispanic communities, as well as in Middle Eastern communities and African communities, it was going to raise havoc between good citizens, good law abiding citizens, and the police department when they have a family member or a friend who was undocumented.

Ms. LOFGREN. Thank you. My time has expired.

So I will turn to the Ranking Member for his questions.

Mr. KING. Thank you, Madam Chair. I do appreciate the testimony of the witnesses.

First, I would ask, as I looked through your testimony and listened, Petty Officer Gonzalez, I didn't hear you testify as to your place of birth and your status as to citizenship.

Mr. GONZALEZ. As you can tell, I am real shaky. I was born in Mexico City in 1983 and my mother, who followed the rules, came over here with the working permit, and then she applied for residency. She got her residency and she applied with us as minors, and we got our residency, and I feel that I owe something to this country. So I enlisted in the Navy.

My brother, who is 1 year younger than me, enlisted in the Marine Corps. And we are a good family.

Mr. KING. And you have a rivalry between brothers.

Mr. GONZALEZ. Sometimes.

Mr. KING. Then you received your citizenship when?

Mr. GONZALEZ. 2005, February, I believe.

Mr. KING. Congratulations.

Mr. GONZALEZ. Thank you.

Mr. KING. And I want to also say that as I listen to the cases of Mr. Wasilewski and yourself, Petty Officer Gonzalez, I am not going to be specific about the paths that I think you have under current law, but I believe a year from today, if you follow current law, both of you will have a lot better expression on your face than you have today. And I believe your families will be united and they will stay united without fear of being divided, and I believe that can happen under current law.

And so I encourage you to follow that, and I congratulate you for the paths that you have followed down the legal path.

Then I wanted to say to Mr. Barrera, Congressman LaHood sat in the chair next to you in the previous panel and testified that his grandparents came here from Lebanon in 1896. And you are a third generation and I am a third generation, too, but I don't get any credit for that. I am kind of missing out here.

I would say that my father's family, they were raised on a different path and it was a path of throwing themselves into this greater overall American culture, and I don't hear that coming out of the witnesses on the panel about how valuable it is that we have a greater American culture.

It is an umbrella that sits over the top of everything within this country, and it is tied together by a common history, which we share, all of us today share this, and a common language and a common sense of destiny and a common sense of purpose.

And I would like to hear that reiterated more and more rather than less and less, and I would like to see us identified more as Americans first. I point that out because it seems to be missing in this testimony that is here. I know it probably isn't missing in your heart, certainly not with our gentleman in the Navy uniform.

But I make that point because I think it needs to be made. And the another point, another distinction that if there were, let me say, an abstract anthropologist that were sitting here listening to this that didn't have their memory clouded with all of this debate that we have had, they were trying to determine the difference between legal and illegal immigration, they would also have a nearly impossible time defining that difference. Because many of the wit-

nesses don't want to talk about the difference between the two, and I want to emphasize the difference.

And I want to point out, also, that a Nation, to be a Nation, has to have borders, and it has to have the rule of law, and that is the most essential pillar of this Nation of American exceptionalism. And I saw you raise your hand, Reverend Cortés, but you quoted from the Bible and I am going to quote back to you, and it is about Nations.

This is Act 17, Verse 26, and I will quote it this way, "God made all nations who live on Earth and he decided when and where every nation would be."

Yes, I think our destiny is directed in that fashion and I would believe that you would, too. And as I listened to your testimony, I can't help but conclude that borders mean less to you than they do to me.

Mr. CORTÉS. No, sir, you are wrong.

Mr. KING. And I am drawing this conclusion now and I am getting ready to ask my question—

Mr. CORTÉS. Read my testimony.

Mr. KING [continuing]. Here in a minute. And I listened carefully to your testimony, and I hope that you would respect my statement, as well.

But I can't draw a conclusion to anything otherwise. If we are going to grant a path to citizenship for almost all of 12 to 20 million people and reward that violation of the law and wipe the slate clean, as Ms. Kirchner said, then what will those descendants have to say about the rule of law? What will they have to say about that essential pillar, that central pillar of American exceptionalism?

And I think rather than go to hear more of this, I would turn it over to the supervisor, Chairman Stewart, and ask him, can you list for us again the tools you would like to have to enforce the rule of law?

Mr. STEWART. Sure. Thank you very much, Congressman. First of all, I wanted to thank you again for the 287(g) authority which passed in 1996. And I understand, I believe it is Mr. Smith that authored that bill.

What we would like is greater authority. We are willing to do it. We ask for three specific things at this point. First, we would ask that our law enforcement officials be allowed to detain and arrest illegal immigrants based solely upon the immigration charge. Right now, we cannot do that, unless they have committed some other underlying crime.

Secondly, we would like the authority to fine landlords who house illegal immigrants and, third and more important, the ability to fine employers who are hiring illegal immigrants.

And I have listened to some of the testimony here today from other Members and they mentioned that these are jobs that Americans don't want to do. That is just simply not the case. These are skilled and unskilled jobs, especially in the construction industry.

And if you are a contractor and you are trying to obey the rules and do the right thing, it is very difficult to compete when you have got unethical, unscrupulous contractors who are hiring illegal immigrants, not paying them any benefits, paying them below wage.



And when those illegal immigrants become sick, as most of us eventually do, where do they go? When they don't have benefits, they go to our emergency rooms and our hospitals, and that has been a problem, as well.

So those are the three things we would actually ask for.

Mr. KING. Thank you. Thank you, Madam Chair. I yield back.

Mr. CORTÉS. Madam Chair? Madam Chair, may I have a statement? May I make a statement, please?

Ms. LOFGREN. I think what we need to do is go to Mr. Gutierrez, under the 5-minute rule, and he may want to let you speak first as part of his questioning.

Mr. Gutierrez?

Mr. GUTIERREZ. I was immediately going to go to Reverend Cortés because I think it is unfair to make an accusation of a panel member and then not allow that panel member to respond to the accusation. I think that is fundamentally un-American, as far as I am concerned.

And while my parents only spoke Spanish, I was blessed with some use of the English language, limited as it might be.

So, Reverend Cortés, please feel free to answer.

Mr. CORTÉS. Thank you.

Mr. King, I want to raise the fact that if you would have read my testimony, you would have seen that in the testimony, I stated clearly that we need to close the border and that the United States, as a sovereign Nation, has a right to do on its border what it pleases.

So I never said that we were one country or open borders. That has never been the position of the clergy in this country.

Secondly, I want to raise a question about the issue of rule of law. Rule of law, under the rule of law, Jesus Christ was crucified. It was the law of the land at the time. Separate and equal was also part of the law in this country. It didn't mean it was a stupid law. It just meant it was the law.

We have 12 million who are here. They are here, and unless you want to start a program of some sort and trace them down and chase 12 million people with their three million American children, if you want to do that, then you just say it.

But to hide behind the statement of rule of law is wrong.

Mr. KING. Madam Chair, this is going beyond the bounds.

Ms. LOFGREN. The gentleman from Illinois controls the time.

Mr. GUTIERREZ. Thank you.

Thank you very much for your answer.

Let me just say that I think that when we have a debate and we have people come here, like Mr. Wasilewski, who has come here, who has talked about—you are going to become an American citizen.

He speaks English. He came here to this country, developed a business, he speaks English. He is going to become an American citizen.

And then we have Petty Officer Gonzalez, who is going to give his third term, his third time, his third deployment back to Iraq.

And then to come to question and to say to the panelists, "By god, you didn't mention that you love America, you didn't mention that you want to learn English, you didn't mention how great this

country is." What greater sacrifice and what greater tax can a citizen pay than the tax of their body and the tax of their blood, as Petty Officer Gonzalez has done and continues to do for each and every one of us?

Shame on any institution that has a panel such as this and then questions their Americanism, questions the kinds of right to say "I love this country." We say that each and every day.

Mr. Wasilewski, I look forward to when you raise your hand up. I want you to raise your hand up with your wife. I want her to be there with you, with your American citizen children.

Petty Officer Gonzalez, I want you to do it. Yes, there are more. I remember and I have the name of Army Specialist Alex Jimenez. Do you know how many hundreds of his comrades went out there in harm's way to find him when he was taken prisoner? And he hasn't shown up yet.

And while he is taken prisoner, what does his wife in Massachusetts get? An order for deportation from the United States of America.

So these aren't isolated cases. So when you are looking for the undocumented, remember, when a county, a municipality, a village goes out hunting for the undocumented, saying they shouldn't have housing, saying they shouldn't have healthcare, remember, you are going to come across the wives of servicemen who are out in Iraq.

Be careful what you wish for, because it will truly be an un-American experience to have such an individual as Mr. Gonzalez, Petty Officer Gonzalez come here and then, all of a sudden, he decides, well, he is going to live in this county and this county wants to enforce a certain law and you don't have papers, "Out of my county, arrested, I am sending you to deportation."

Be careful. The community is an interwoven community. Truly they are my neighbors. Their children play with my children. And I want to know that if harm comes to my child, that that undocumented child will feel the freedom to call the police so that we can get rid of the criminals together.

We are not for criminals here on this Committee or those who support comprehensive immigration reform.

And I would like to go lastly to my friend from Illinois. What do you think we need to do, Josh, politically? Where do you think we are politically right now and what steps do you think we need to take here in the Congress of the United States?

Mr. HOYT. I think there needs to be a decision by both parties that we have to look for solutions. The idea that we can scapegoat people and use racially charged political organizing tactics to try and save our political skins I think is repugnant, and the idea that we can hide behind lip service and not address this issue I think is cowardly.

I think we really need Congress to put on its long pants and act like grownups and fix a problem that is crisis for this country.

Mr. GUTIERREZ. And I would just like to say that, look, people are going to die in the desert, they are going to continue to die in the desert. Servicemen are going to continue to be separated from their spouses. There is going to continue to be pain in this country.

And I would just like to say, from my side of the aisle, Democrats, we are in the majority. We got elected to lead. Let us lead

on this issue, and let us figure out comprehensive immigration reform.

And I just want everybody to understand, the first panel, there were three Republicans and one Democrat on the first panel. We invited them to come forward.

I understand this needs to be done in a comprehensive and in a bipartisan manner.

And I thank, Reverend Cortés, thank you for the work. I am sorry you didn't get to answer your question. I am happy I had the time to give you.

Thank you so much to all of the panel.

Ms. LOFGREN. The gentleman's time has expired.

The gentlelady from Texas, Ms. Sheila Jackson Lee, is recognized for 5 minutes.

Ms. JACKSON LEE. Thank you very much, Madam Chair. And let me thank the witnesses.

The work we do in this Congress warrants overlapping hearings and meetings and Rules Committee, and so to those who have given their testimony, let me offer an apology for not hearing all of your testimony. But I would almost say, without any effort at providing any greater knowledge than others, you know that I have been around this barn before.

And I think it is extremely important that we take the challenge that was given to us by the previous panel, that this House can move forward. This House can move in a bipartisan manner. This House, the people's House, can move and be responsive to a number of issues that rarely generate, I think, the divisiveness immigration reform has generated.

I remember last August we were on a round robin visiting all over the country, and there was an attempt to bring us back in September with the divide of the country even wider than we have ever seen it before.

Interestingly enough, the proponents of immigration reform were not to be daunted. They were there and they were a wide range of individuals, a wide range of Americans, strongly, the faith community, businesspersons, average citizens, people of goodwill, small businesses, and people who look at this from a practical perspective.

Just a few weeks ago, I had to intervene on two religious workers who were getting ready to be deported because of an inconsistency in understanding whether or not the Assemblies of God equaled a nondenominational church. They were religious workers, they were legitimate, but they were on the road of deportation because of a fine line of inconsistency in the law.

So I am troubled by people who don't think that we need to fix the law in order for people to abide by the law.

And I want to go after this issue of whether or not this is amnesty. Go back to the 1980s and you will know what amnesty was all about.

This is, in fact, an earned access to legalization—I want to go back to the old terminology—which means that you have several hurdles to cross over before you can be, in essence, on the pathway to earning access to legalization. And I think we divide if we con-

tinue to use that term, because it is, in essence, a word of divisiveness.

No one likes to see someone get something for nothing. But when you take an American on an individual basis, they understand equity and they understand fairness.

Let me quickly pose questions and I would appreciate it.

Mr. Wasilewski, you have experienced the fear and the fright of deportation, is that not—

Mr. WASILEWSKI. Yes.

Ms. JACKSON LEE. Do you expect it to be reasonable to divide families and to expect the deportation minimally of seven million people?

Mr. WASILEWSKI. I have experience with deportation. I feel we lost with the system. The immigration system now is sick. What is really important is my goal, what I would change is—if a family is together, our accounts were overthrown.

We can't just separate the family. I am from the country, from Poland, where we had communism for 45 years. We had the second World War. It was war, but for me, in America, we need those people. We need those people. We need to let people just to work in restaurants and hotels and we need to document them, not amnesty, not green cards, but documents.

Ms. JACKSON LEE. Something to fix the system.

Mr. WASILEWSKI. Yes.

Ms. JACKSON LEE. So you are not here sitting here saying let us flaunt against the law, let us break the law forever. You are asking for the Congress to accept its duty of fixing the system. Is that what you are saying?

Mr. WASILEWSKI. Yes, begging the Congress.

Ms. JACKSON LEE. And will you adhere to a fixed system? Will you get in line and make the new laws work by giving you an opportunity to earn access to legalization?

Mr. WASILEWSKI. Yes.

Ms. JACKSON LEE. I thank you. I thank you.

Ensign, is it correct? Petty Officer Second Class Gonzalez, let me thank you for your service. And I did not hear your testimony, but let me not go directly to your testimony, sir, and to say you are wearing a uniform. And I imagine, in that uniform, you took an oath to adhere to the laws of the United States.

Mr. GONZALEZ. Yes, ma'am.

Ms. JACKSON LEE. And you would not openly violate those laws.

Mr. GONZALEZ. Under the United States Code of Military Justice, I am not allowed to answer that question.

Ms. JACKSON LEE. All right. Then I will simply say that you want to abide by laws as much as you can, is that true?

Mr. GONZALEZ. Yes.

Ms. JACKSON LEE. And in thanking you for your service, would you view a fixed immigration system to be helpful to you and your family members and others?

Mr. GONZALEZ. Yes, ma'am.

Ms. JACKSON LEE. And you would look forward to that reform.

Mr. GONZALEZ. Yes, as promptly as possible.

Ms. JACKSON LEE. I thank the distinguished members of the panel.

Ms. LOFGREN. Thank you. The gentlelady's time has expired.

Without objection, I will place into the record a statement from Congresswoman Hilda Solis that she has asked to be made a part of the record.

[The statement of Ms. Solis is inserted in the Appendix.]

And I would like to thank all of you for sticking with us on this lengthy day. I think that the testimony we have heard today is significant and important. I believe that we need to reform our laws from A to Z and maybe we start at M, but we have got to get this job done at some point and how we tackle it is a challenge, but I think having this hearing is going to help us.

It will be a foundation for moving forward and your testimony will help, as well.

So thank you all very, very much.

This hearing is adjourned. We have 5 legislative days to submit additional questions and if we do have additional questions, we ask that you answer them as promptly as possible.

[Whereupon, at 4:34 p.m., the Subcommittee was adjourned.]



## A P P E N D I X

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### MATERIAL SUBMITTED FOR THE HEARING RECORD

PREPARED STATEMENT OF THE HONORABLE HILDA L. SOLIS, A REPRESENTATIVE IN  
CONGRESS FROM THE STATE OF CALIFORNIA

I am pleased that the Subcommittee is holding this hearing on H.R. 1645, the STRIVE Act. The United States needs effective, comprehensive immigration reform that strikes a balance between national security and a path to legal permanency for hard-working immigrants. This legislation provides the important framework to begin overhauling our broken immigration system by protecting and enforcing our borders while respecting the hard work and contributions of immigrants to our country.

Throughout our nation's history, our country has welcomed immigrants, recognizing the enormous economic and cultural contributions that immigrants have made to this nation. It is important that we continue to honor this tradition. Unfortunately, our immigration system is broken, leaving hard working and law abiding individuals in the shadows of society. For this reason, I strongly support comprehensive immigration reform which provides for family reunification, earned legalization, educational opportunities, and honors our tradition as a nation of immigrants.

Whether it is a family member, a friend, the person who sits next to us in church, or the person who picks the fruits and vegetables we eat everyday, we are all touched by immigrants and affected by the lack of comprehensive and realistic immigration reform.

I am hopeful that this Congress will have the opportunity to consider the Strive Act, as it represents a critical first step to fixing our fragile immigration system in a comprehensive manner.

PREPARED STATEMENT OF THE UNITED STATES COMMISSION ON  
INTERNATIONAL RELIGIOUS FREEDOM**Statement of the United States Commission on International Religious Freedom  
on H.R. 1645 (the STRIVE Act)**

The United States Commission on International Religious Freedom (USCIRF or the Commission) notes that H.R. 1645 includes several provisions based on recommendations from the Commission's 2005 study on the treatment of asylum seekers in Expedited Removal. These are:

- Requiring procedures to ensure the accuracy and verifiability of statements taken by Customs and Border Patrol employees exercising Expedited Removal authority, including by videotaping interviews;
- Requiring that detained aliens receive legal orientation from the Department of Justice's Executive Office of Immigration Review;
- Directing the expansion of the US Citizenship and Immigration Service's public-private partnership that facilitates pro bono legal assistance to asylum seekers awaiting credible fear interviews; and
- Requiring new standards to improve conditions of detention for non-criminal detainees, including the use of secure but less restrictive facilities.

Congress intended Expedited Removal, written into law in 1996, to protect U.S. borders and bona fide asylum seekers. However, the USCIRF study showed that, as the program is being implemented, asylum seekers are being put at risk of being returned to countries where they face persecution, and they are being detained under inappropriate conditions.

The study made 18 recommendations to the Departments of Homeland Security (DHS) and Justice (DOJ), the agencies responsible for implementing the Expedited Removal program. The recommendations were all designed to further both the aims of protecting U.S. borders and ensuring fair and humane treatment for bona fide asylum seekers. Regrettably, more than two years later, the problems the study identified remain, and the majority of its recommendations have not been implemented. Moreover, contrary to the Commission's overarching recommendation, DHS has expanded Expedited Removal from a port-of-entry program to one that covers the entire land and sea borders of the United States.

For more detail on the study's recommendations and their implementation status see the February 2007 report card, which is attached to this statement. The full study is available on the Commission's website, [www.uscirf.gov](http://www.uscirf.gov).





UNITED STATES COMMISSION ON  
INTERNATIONAL RELIGIOUS FREEDOM

**Expedited Removal Study<sup>1</sup> Report Card: 2 Years Later**

**Why a report card?** The United States Commission on International Religious Freedom (USCIRF or Commission) published its *Report on Asylum Seekers in Expedited Removal* (Study) on February 8, 2005. Congress authorized the Commission to do the Study and posed four questions on how well the responsible agencies were implementing U.S. law regarding the protection of asylum seekers. Despite the passage of two years, most of the Study's recommendations have yet to be implemented; Senators Joseph I. Lieberman (ID-CT) and Sam Brownback (R-KS) recently asked the Commission to report on progress made by the Departments of Justice (DOJ) and Homeland Security (DHS). Today, the Commission issues this report card assessing how well these Federal Government agencies have implemented the Study's recommendations, to assure that Congressional safeguards for *bona fide* asylum seekers are translated into practice.

**What is Expedited Removal?** Congress included Expedited Removal in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 to provide for the prompt removal of aliens arriving without proper documents. Such aliens can be returned to their country of origin without delay, but also without the safeguard of a hearing before an immigration judge. Concerned by the obvious risk that refugees—who often travel without proper documents—might mistakenly be returned to their persecutors, Congress put in place special procedures for their protection. Asylum seekers are detained while a preliminary assessment (the “credible fear determination”) is made as to whether his or her case warrants consideration by an Immigration Judge (IJ). If so, they are allowed to appear before an IJ, and may, at the government's discretion, be paroled while their asylum case is pending. If not, they are put back in the regular Expedited Removal process, and removed promptly.

**Who is responsible?** At least five separate entities play a role in Expedited Removal. Within DHS, Customs and Border Protection (CBP) first encounters aliens, either at a port-of-entry or anywhere within 100 miles of U.S. land or sea borders, and is responsible for identifying those subject to Expedited Removal, and from that group, those seeking asylum. Immigration and Customs Enforcement (ICE) is responsible for detaining asylum seekers until Citizenship and Immigration Services (USCIS) makes the credible fear determination. For those asylum seekers found to have a credible fear, the DOJ's Executive Office for Immigration Review (EOIR) takes over: Immigration Judges hear

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<sup>1</sup> U.S. Commission on International Religious Freedom, *Report on Asylum Seekers in Expedited Removal* (2005), vols. I & II. The findings and recommendations are in Vol. I, pp. 50-62 and 63-76, respectively. The experts' reports are in vol. II, pp. 1-443. Also available at [www.uscirf.gov](http://www.uscirf.gov).

the cases, and the Board of Immigration Appeals (BIA or Board) reviews any appeals. With so many immigration officers involved in so many locations, coordination has been and remains a major challenge within DHS, and between DHS and DOJ.

**The Study—questions and methodology:** Congress asked the Commission to answer four questions about whether immigration officers exercising Expedited Removal authority are:

- improperly encouraging asylum seekers to withdraw applications for admission;
- incorrectly failing to refer asylum seekers for a credible fear interview;
- incorrectly removing asylum seekers to countries where they may face persecution; and
- detaining asylum seekers improperly or under inappropriate conditions.

Both DHS and DOJ cooperated with the Commission, whose designated experts had unrestricted access to the internal workings of Expedited Removal. For more than 15 months, the Study team observed more than 400 inspections at seven ports of entry, analyzed more than 900 case files, surveyed all eight asylum offices, and conducted site visits and/or surveyed 25 detention facilities, including two juvenile facilities.

**Overall findings:** The Study found that Expedited Removal was intended by Congress to protect the integrity of our borders while also protecting *bona fide* asylum seekers. The Study, however, identified serious implementing flaws which place asylum seekers at risk of being returned from the U.S. to countries where they may face persecution. The Study also found that asylum seekers were detained inappropriately, under prison-like conditions and in actual jails. A summary of the specific findings and recommendations is set out below, along with the grades given to each agency two years later.

**Two years later:** The Study received extensive media coverage and—because of the unprecedented access that Study experts had to this largely opaque process—has proved an invaluable resource for policymakers and scholars. Commissioners had very positive follow up meetings in 2005 with the Secretary of Homeland Security and with the Director of EOIR to brief these officials directly on the Study's findings and recommendations.

However, two years later, most of the Study's recommendations have not been implemented. The Commission's overarching recommendation was that Expedited Removal not be expanded until the serious problems identified by the Study—which place vulnerable asylum seekers at risk—were resolved. Despite this recommendation, and the failure to resolve the problems cited in the study, DHS has in fact expanded Expedited Removal from a port-of-entry program to one that covers the entire land and sea border of the United States. DHS has also moved to expand Expedited Removal to include most Salvadorans who are otherwise entitled to special procedural protections at the border due to a long-standing court injunction in the *Orantes v Gonzales* case.

**Department of Homeland Security:** DHS has not made any public response to the Study, despite a 2005 request from the Senate Appropriations Committee in Report 109-083 to consult with EOIR and report by February 2006 on various aspects of the agency's implementation of Study recommendations. The House of Representatives Appropriations Committee in Report 109-79 also urged DHS to consider implementation of specific Study recommendations. It should be emphasized that none of the Study's recommendations require action by Congress. However, because of concern over the agencies' failures to address the Study, Senators Lieberman and Brownback prepared legislation in 2006 that would mandate implementation of a number of the Commission's recommendations.

The Commission has repeatedly invited DHS to respond to the Study, most recently in January 2007 to assist in the preparation of this report card. Despite its lack of response to Congress and the Commission, DHS has shed some light on its responses to the Study's recommendations in the context of the *Orantes* litigation, information which will be noted where relevant in this report card.

**Department of Justice:** At the invitation of EOIR, Commission staff participated in a video briefing to all Immigration Judges on the Study's findings. In addition, Commission staff and Study experts briefed the DOJ review team that examined the Immigration Courts and the Board of Immigration Appeals in 2006. That DOJ review led to the Attorney General's announcement in August 2006 of 22 measures to improve the performance of the immigration court system, which respond in part to the Commission's recommendations. The Commission was also pleased to receive information from EOIR in preparation of this report card.

**The report card:** The report card is organized by agency starting with Customs and Border Protection, then moving on to Immigration and Customs Enforcement, Citizenship and Immigration Services, DHS as a whole, then DOJ/ Executive Office for Immigration Review, and finishing with DHS and DOJ jointly. In each case, the report card provides the question that Congress posed, a summary of the Study's findings and Commission recommendations, and the implementation grade along with the Commission's explanation.

### CBP (inspections and the border): Overall Grade F

**Congress' question:** *Are immigration officers incorrectly failing to refer asylum seekers for a credible fear interview?*

**Study findings:** DHS procedures require that immigration officers read a script to all aliens in Expedited Removal advising them that they should ask for protection without delay if they have any reason to fear being returned home. Yet in more than 50 percent of the Expedited Removal interviews observed during the Study, this information was not given.

DHS procedures require that an asylum seeker review the sworn statement taken by the immigration officer, make any necessary corrections for errors in interpretation, etc., and then sign the statement. The Study found, however, that 72 percent of the time, the asylum seeker signs the sworn statement without the opportunity to review it.

The Study found that sworn statements taken by officers are not verbatim, are not verifiable, often indicate that information was conveyed to the asylum seeker which was never, in fact, conveyed, and sometimes contain questions that were never asked. Sworn statements look like verbatim transcripts but are not. The Study found that these unreliable documents are often used against asylum seekers when their cases go before an Immigration Judge.

DHS regulations also require that, when an asylum seeker expresses a fear of return, he or she must be referred to an Asylum Officer to determine whether the fear is "credible." Yet, in nearly 15 percent of the cases which Study experts observed directly and in person, asylum seekers who expressed a fear of return were nevertheless removed without a referral to an Asylum Officer. Of those cases, nearly half of the files indicated that the asylum seeker had not expressed any fear.

**RECOMMENDATIONS TO CBP**

**Expand existing videotape systems to all ports of entry and border patrol stations; have 'testers' verify that procedures are correctly followed.**

**F**

**Reconcile conflicting field guidance to clarify the requirement that any alien expressing fear be referred for a credible fear interview.**

**F**

**Inform Immigration Judges that forms used at ports of entry and the border are not verbatim transcripts of the alien's entire asylum claim, despite their appearance, so that they can be given the proper weight.**

**F**

**Save scarce detention resources by not placing asylum seekers with valid travel documents in Expedited Removal.**

**F**

**Improve monitoring so that existing border procedures are correctly followed.**

**F**

DHS has not provided the Commission with a response to its request for information on steps taken by CBP to address these five recommendations, nor does publicly available information indicate that any of them have been implemented. Furthermore, information regarding border procedures recently disclosed by DHS during the course of the *Orantes* litigation reveals that supervisors continue to rely almost exclusively on file reviews of Expedited Removal orders, and that the DHS officials involved had no knowledge of DHS adopting USCIRF's recommendations.

<b>ICE (detention): Overall Grade D</b>
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**Congress' question:** *Are immigration officers detaining asylum seekers improperly or under inappropriate conditions?*

**Study findings:** Although DHS has established national criteria to determine when asylum seekers in Expedited Removal should be released from detention pending their asylum hearing, the Study found no evidence that these criteria are actually being implemented. There are wide variations in release rates across the country. For example, New Orleans released only 0.5 percent of asylum seekers, New Jersey released less than 4 percent, and New York, 8 percent. Yet San Antonio released 94 percent of asylum seekers, Harlingen 98 percent, and Chicago 81 percent. The average asylum seeker with a credible fear of persecution is detained at government expense for 60 days; one-third are held for 90 days or more.

Congress also asked whether asylum seekers are detained under inappropriate conditions. Based on extensive site visits and a survey, the Study found that the facilities where asylum seekers are detained resemble, in every essential respect, conventional jails. Many facilities are, in fact, jails and prisons, and in some of these facilities, asylum seekers sleep alongside U.S. citizen convicts serving criminal sentences or criminal aliens—even though ICE detention standards do not permit non-criminal detainees to be co-mingled with criminals. ICE has experimented with alternatives to detention, and has opened one secure facility—in Broward County, Florida—which does not resemble a penal institution. Broward, unfortunately, remains the exception. The overwhelming majority of asylum seekers referred for credible fear are detained – for weeks or months and occasionally years – in penal or penitentiary-like facilities.

**RECOMMENDATIONS TO ICE**

**Train detention center personnel to work with non-criminal, psychologically vulnerable asylum-seekers.**

**C**

DHS has not provided the Commission with a response to its request for information on steps taken by ICE to address this recommendation. However, in January 2007, the Director of the DHS Office of Civil Rights and Civil Liberties confirmed earlier unofficial statements by ICE that they had jointly developed new training modules for ICE personnel on cultural awareness and asylum issues. No time frame was given for the completion of the modules or their implementation, nor have copies been made available.

**Work with the Immigration Courts to ensure that detained aliens in Expedited Removal, including those who have not been referred for a credible fear determination, have access to legal service providers.**

**D**

See recommendations to DHS and DOJ together.

**Change detention standards so that non-criminal asylum seekers are not detained under penal conditions.**

**F**

DHS has not provided the Commission with a response to its request for information on steps taken by ICE to address this recommendation, nor does publicly available information indicate that it has been implemented. To the contrary, a December 2006 Audit Report by the DHS Office of the Inspector General (OIG) found instances of non-compliance with existing ICE Detention Standards at all five of the facilities surveyed, three of which were also included in the Commission's Study. In addition, an April 2006 DHS OIG Audit Report recommended that ICE expedite the development of alternatives to detention.

**Codify existing parole criteria into regulations.**

**F**

DHS has not provided the Commission with a response to its request for information on steps taken by ICE to address this recommendation, nor does publicly available information indicate that it has been implemented.

**Ensure consistent and correct parole decisions by developing standardized forms and national review procedures to ensure their proper application.**

**F**

DHS has not provided the Commission with a response to its request for information on steps taken by ICE to address this recommendation, nor does publicly available information indicate that it has been implemented. The April 2006 DHS OIG Audit Report recommended that ICE improve its data management systems to have the capability to track information on the rationale underlying parole decisions.

**USCIS (Asylum Office): Overall grade B**

**Congress' question:** *Are immigration officers incorrectly removing asylum seekers to countries where they may face persecution?*

**Study findings:** The Study found that, despite their expertise, Asylum Officers play only a limited role in Expedited Removal. This is so even though Asylum Officers have the authority to grant asylum outside the context of Expedited Removal, in the affirmative asylum process. Credible fear determinations are made in a brief interview and are not intended to document the asylum seeker's entire claim. The Study found a high rate of positive credible fear determinations, reflecting the deliberately generous preliminary screening standard used in order to assure that a refugee is not mistakenly returned. The Study did note, however, that review procedures for negative credible fear determinations were more onerous, and might have the unintended consequence of encouraging positive determinations.

The Study also found that the partnership between the Arlington, Va. Asylum Office and the Capital Area Immigrants Rights Coalition to ensure legal advice for credible fear determinations was a success worth replicating. It not only provides detained asylum

seekers with legal advice, but has also improved efficiency by increasing the number of asylum seekers who, after consulting with counsel, chose not to pursue their claims.

**RECOMMENDATIONS TO USCIS**

**Subject both positive and negative credible fear findings to similar review procedures.**

**A**

USCIS took action on this recommendation in April 2006 by issuing a memorandum regarding the increase of quality assurance review for positive credible fear determinations as well as by releasing an updated Asylum Officer Basic Training Course Lesson Plan.

**Expand the existing *pro bono* program for the credible fear process to all eight Asylum Offices.**

**B**

USCIS announced in December 2006 that it welcomes approaches by the NGO community to expand this model to the other seven Asylum Office cities. As in Arlington, Va., NGOs will need to secure the necessary funding themselves.

**Allow Asylum Officers to grant asylum at the credible fear stage.**

**F**

See recommendations to DHS and DOJ together.

**DHS (agency-wide coordination):  
Overall grade D**

**Congress' questions:** *All Study questions are relevant to DHS in its coordinating role.*

**Study findings:** The Study found extensive problems with overall management and coordination of the Expedited Removal process. Quality assurance practices are insufficient; data management systems are inadequate, and indeed posed a major challenge for the conduct of the Study itself; communication between the necessary DHS bureaus is lacking; and there was no mechanism to address system-wide issues.

**RECOMMENDATIONS TO DHS AGENCY-WIDE**

**Create a high-level Refugee Coordinator position.**

**C**

DHS appointed a Senior Advisor for Refugee and Asylum Policy in February 2006, but has not made information publicly available on his authority, responsibilities, or the resources at his disposal.

In a June 2006 meeting, the Senior Adviser informed the Commission that his four areas of responsibility were: coordination within the agency; provision of policy advice to the Assistant Secretary for Policy and through him to the Secretary and Deputy Secretary; relationship with other government entities and NGOs; and temporary responsibility for overall immigration policy.

The Commission recommended that this position have three main functions:

**(1) Ensuring consistent asylum policy and legal interpretations Department-wide.**

DHS has not provided the Commission with a response to its request for information on steps taken to address this aspect of the recommendation, nor does publicly available information indicate that it has been implemented.

**(2) Coordinating implementation of necessary changes set forth in the Study's recommendations.**

The Senior Adviser for Refugee and Asylum Policy informed the Commission in June 2006 that DHS was in the process of internal discussions regarding a formal response to the Study, but that no decision had been made at that time. No further information has been made available, and information obtained in November 2006 in the course of the *Orantes* litigation indicates that Study recommendations have not been carried out. A third inquiry to DHS in January 2007 did not produce a response.

**(3) Monitoring the system on an agency-wide basis to see that changes take hold and that emerging problems are addressed as they arise.**

Based on available information about the Senior Adviser's reporting lines and the resources at his disposal, as well as his additional responsibilities for matters other than refugee policy coordination, it appears that the post has not been given a sufficient level of authority to serve the purpose intended by the Commission's recommendation.

The Commission is concerned that the study recommendations cannot be implemented unless the Senior Adviser, supported by a fully staffed office, has sufficient authority within the Department to carry forward the changes that are necessary.

The grade given for this recommendation relates to an assessment of the position as created, and not the performance of the office-holder.

**Address implementation and coordination issues before expanding Expedited Removal.**



Since the Commission released its Study in February 2005, Expedited Removal has been expanded from a port-of-entry program to one that covers the entire perimeter of the United States, land and sea, to a line 100 miles from the border. DHS also moved to dissolve the *Orantes* injunction, which currently exempts most Salvadorans who entered the United States without inspection from Expedited Removal. Yet as this report card shows, the vast majority of the Study's recommendations remain unaddressed and unimplemented.

**Create a reliable data management system that allows for real-time information on asylum seekers in Expedited Removal.**



DHS has not provided the Commission with a response to its request for information on steps taken to address this recommendation, nor does publicly available information indicate that it has been implemented. To the contrary, the DHS OIG Audit Report found in April 2006 that ICE lacks data analysis capabilities to manage the detention and removal



program in an efficient and effective manner, and recommended that the Detention and Removal Office expedite developing, testing and implementing a data management system that is capable of meeting ICE's requirements.

**Allow Asylum Officers to grant asylum at the credible fear stage.**



See recommendations to DHS and DOJ together.

<p><b>DOJ/EOIR (immigration adjudication):</b> <b>Overall grade C+</b></p>
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**Congress' question:** *Are immigration officers incorrectly removing asylum seekers to countries where they may face persecution?*

**Study findings:** As noted above, the Study found that sworn statements taken at ports of entry and the border are inaccurate and incomplete, and that credible fear determinations are not intended to document the asylum seeker's entire claim. Nevertheless, IJs relied heavily on these incomplete and/or unreliable records to assess credibility. In 57 percent of all cases, sworn statements and/or credible fear determination records were used to impeach the asylum seeker. In 39 percent of all cases, the IJ cited these documents in denying the claim.

In addition, the Study found that whether or not an asylum seeker is granted asylum depends largely on whether he or she is able to find *pro bono* counsel. One in four asylum seekers who are represented are granted asylum, whereas only one in 40 unrepresented asylum seekers succeed. The outcome of the asylum seeker's case also seemed to depend largely on chance; namely, the IJ who is assigned to hear the case. Among IJs sitting in the same city who hear a significant number of asylum cases, some grant close to zero percent of applications while others grant 80 percent.

While asylum seekers can appeal, one cannot rely on the appeal process to correct these disparities among IJs—the BIA reverses IJs in only two to four percent of asylum cases. A particular concern is the use of "summary affirmances without opinion" whereby a single Board member can endorse the result reached by an IJ without providing a reasoned written opinion discussing the issues raised on appeal. This practice, while allowing the Board to work through some of its backlog, can reduce confidence in the rigor of the Board's review and has led to an increase in appeals of BIA decisions to federal circuit courts. Another drawback of summary affirmances is that they do not provide any guidance to IJs, since any errors short of requiring reversal of the decision are not caught or corrected by the Board.

**RECOMMENDATIONS TO DOJ/EOIR****Reinstate funding for Immigration Judge training.****A**

As noted above, in 2005 at the invitation of EOIR, Commission staff participated in a video briefing to all Immigration Judges on the Study's findings. The Commission notes that the Attorney General announced 22 measures in August 2006 to improve immigration adjudication. In January 2007, EOIR advised the Commission that it is expanding and improving training for all IJs. A five-day training conference for IJs in August 2006 included a presentation on religious freedom by USCIRF and the Department of State's Office of International Religious Freedom. IJs also attended a mandatory workshop concerning asylum law and procedures, as well as a workshop on improving oral decisions. Another training conference for all IJs will be held in August 2007. Circuit-specific reference materials were provided to all IJs at the August 2006 conference and have been updated since. In November 2006, all IJs received an in-depth outline on asylum credibility and corroborating evidence in the federal Courts of Appeals, and will continue to receive timely and relevant resource materials.

A one-week training course for new IJs in March 2007 will include lectures on asylum, withholding of removal and protection under the Convention against Torture; a discussion of credibility developments under the REAL-ID Act; and a mock asylum hearing. Judges will continue to be provided materials on the International Religious Freedom Act of 1998 and will certify that they have read such materials.

**Expand the Legal Orientation Program (LOP), conducted by NGOs under EOIR's direction, in order to provide legal information to detained aliens, improve their access to *pro bono* counsel, reduce detention costs, and increase Immigration Court efficiency.**

**B**

In January 2007, EOIR advised the Commission that the number of LOP program sites doubled from six to 12 in FY06, with an additional four pilot sites for unaccompanied minors in the custody of the Office of Refugee Resettlement. Funding increased from \$1 million in FY05 to \$2 million in FY06 and is expected to remain at that level in FY07 and FY08. The program aims to reach one-third of detained aliens in Immigration Court proceedings. In addition, as part of the Attorney General's measures to improve immigration adjudication, EOIR has formed a Committee on Pro Bono to oversee the expansion and improvement of its *pro bono* programs.

**Improve the quality of Immigration Court decisions.****C**

The Commission notes that the Attorney General announced 22 measures in August 2006 to improve immigration adjudication. EOIR advised the Commission in January 2007 that it anticipates that additional training and materials will foster greater consistency without compromising adjudicatory independence.

EOIR further advised that DOJ and EOIR are continuing to explore mechanisms to address the Commission's recommendation that EOIR consider the implementation of "quality assurance procedures (i.e. peer review) to address the significant variations in approval and denial rates among immigration judges." At this time, this process remains under internal review within the Department.

**Work with ICE to ensure that detained aliens in Expedited Removal, including those who have not been referred for a credible fear determination, have access to legal service providers.**

C

See recommendations to DHS and DOJ together.

**Improve administrative review of asylum appeals.**

C-

The Commission notes that the Attorney General announced 22 measures in August 2006 to improve immigration adjudication. In January 2007, EOIR advised the Commission the BIA has decreased the number of summary affirmances dramatically, from 36 percent of all Board decisions in FY03 to 15 percent in FY06, and 10 percent in the first quarter of FY07. EOIR also noted that when four new Board members are added to the existing 11, as planned, the Board will have greater resources to write longer decisions where appropriate.

EOIR further advised that it is drafting a rule to allow the Board to increase the number of written opinions, to allow Board members to refer difficult cases to three-Board-member panels, and to facilitate the publication of more cases. However, the Commission notes that this does not respond directly to the Study's recommendation that all asylum appeals receive written decisions.

**Allow Asylum Officers to grant asylum at the credible fear stage.**

F

See recommendations to DHS and DOJ together.

**DHS and DOJ Together: Grades from C-F**

**Congress' question:** *Are immigration officers incorrectly removing asylum seekers to countries where they may face persecution?*

**Study findings:** The Study found a need for DHS and DOJ to work together to improve the fairness and efficiency of dealing with asylum seekers in Expedited Removal.

**RECOMMENDATIONS TO DHS AND DOJ TOGETHER**

**ICE and EOIR should work together to ensure that detained aliens in Expedited Removal, including those who have not been referred for a credible fear determination, have access to legal service providers.**

C (EOIR)

D (ICE)

EOIR's Statement of Work for the Legal Orientation Program provides a basis for this recommendation to be carried out, in that it calls for their NGO contractors to offer group orientations to all detained aliens who are, or may, be placed in immigration removal proceedings. However, in January 2007, EOIR advised the Commission that it had experienced limited success in implementing this recommendation, and explained that efforts have been dependent upon the detention facility's logistical capabilities (i.e.

identifying those in Expedited Removal proceedings and bringing them to a suitable space on a regular schedule), as well as staff resources at the non-profit organization carrying out such programs.

DHS has not provided the Commission with a response to its request for information on steps taken by ICE to address this recommendation.

**Allow Asylum Officers to grant asylum at the credible fear stage.**



(shared by DHS, USCIS, and EOIR)

This recommendation requires consultation between, and action by, USCIS and DHS in its coordinating function as well as by EOIR. Neither DHS nor EOIR has provided the Commission with a response to its request for information on steps taken to address this recommendation, nor does publicly available information indicate that it has been implemented.

**Grading Key:** Recommendation, or similar action to address the issue which was the objective of the recommendation, has been:

- |          |   |
|----------|---|
| <b>A</b> | Adopted and implemented.  |
| <b>B</b> | Largely adopted with progress in implementation.  |
| <b>C</b> | Largely adopted with little progress, or only partially adopted and implemented - with evidence that some efforts to address the objective of the recommendation continue to be underway. |
| <b>D</b> | Minimally addressed, but with little or no demonstration of an ongoing commitment to address the objective of the recommendation.   |
| <b>F</b> | Rejected, or there is no evidence of meaningful action being taken to address the objective of the recommendation.  |

**Table of Abbreviations**

BIA	Board of Immigration Appeals, part of DOJ within EOIR
CBP	Customs and Border Protection, part of DHS
DHS	Department of Homeland Security
DOJ	Department of Justice
EOIR	Executive Office for Immigration Review, part of DOJ
ICE	Immigration and Customs Enforcement, part of DHS
IJ	Immigration Judge
LOP	Legal Orientation Program, within EOIR
OIG	Office of the Inspector General, part of DHS
<i>Orantes</i>	<i>Orantes-Hernandez v Gonzalez</i> , No. 82-1107KN (C.D.Cal.)
USCIRF	U.S. Commission on International Religious Freedom
USCIS	U.S. Citizenship and Immigration Services, part of DHS

PREPARED STATEMENT OF THE NATIONAL COUNCIL OF LA RAZA (NCLR)



Statement by the National Council of La Raza

Submitted for the Record  
To the House Committee on the Judiciary  
Subcommittee on Immigration, Citizenship, Refugees, Border Security,  
and International Law  
Hearing on the "STRIVE Act of 2007"  
Thursday, September 6, 2007

### Introduction

The National Council of La Raza (NCLR) – the largest national Hispanic civil rights and advocacy organization in the United States – is a private, nonprofit, nonpartisan, tax-exempt organization established in 1968 to reduce poverty and discrimination and improve opportunities for Hispanic Americans.

We very much appreciate the opportunity to submit testimony for this hearing on the “Security Through Regularized Immigration and a Vibrant Economy (STRIVE) Act of 2007.” We had hoped that this committee would be marking up the “STRIVE Act,” or some other comprehensive immigration reform bill this fall. Unfortunately, after months of negotiating, comprehensive immigration reform failed to pass the Senate, and many fear the debate is dead for this Congress. Yet the debate over undocumented immigration continues to occupy Congress in the form of amendments, the Administration continues to advance new immigration enforcement measures. Most recently the Administration released a document entitled “Improving Border Security and Immigration Within Existing Law” that lists 26 measures they intend to take without Congress passing any new legislation. Perhaps the most troubling of these is the implementation of a new Social Security No-Match rule. Under the new rules, employers have new legal obligations upon receipt of a Social Security no-match letter. If the employer does not follow the suggested procedure, the U.S. Immigration and Customs Enforcement (ICE) can use the no-match letter as evidence that the employer hired or continued to employ an unauthorized worker. Unfortunately, NCLR fears that the new no-match rules will hurt Latinos and other workers who are legally authorized to work. Many U.S. citizens and legal immigrants will get no-match letters because of errors in the Social Security Administration (SSA) database, and will have to spend time and resources trying to correct the problem and in some instances may result in those workers unjustly being fired from their jobs. Discrimination is likely to increase as some employers will refuse to hire workers who look or sound “foreign” because they fear penalties for hiring undocumented workers. Other employers may choose to fire all workers with a no-match, or fire those who appear “suspicious.” Some employers may use the no-match letters to retaliate against immigrant workers who try to organize a union or file complaints about unpaid wages, poor working conditions, or other problems.

Of course, as is the case with the vast majority of these new enforcement proposals, the new SSA no-match rules are not a solution to our broken immigration system. Undocumented workers who receive a no-match letter will probably not leave the U.S. Instead, undocumented workers and exploitative employers will move into the underground cash economy. Because they will be working “off the books” in an unregulated market, this means unfair competition for law-abiding employers, and an increase in abuse and exploitation by unscrupulous employers. It also means the federal, state, and local governments will lose billions of dollars in tax revenues.

In addition to the activity at the federal level, states and localities across the United States are attempting to fill the vacuum left by Congress with record numbers of immigration-related bills and local ordinances. The National Conference of State Legislatures (NCSL) reported that as of July 2, 2007 at least 1,404 bills related to immigrants and immigration were introduced in state legislatures – 2.5 times more than in 2006. Between January and July 2, 2007, 170 were passed

into law in 41 states.<sup>1</sup> The content of these proposals includes the denial of benefits to immigrants, creating additional burdensome documentation requirements, involving state and local police in the enforcement of federal immigration law, and creating new penalties for employers who hire undocumented workers.

Many of these new proposals and policies are harmful, not only to undocumented immigrants, but to legal immigrants, and the entire Latino community. Because immigration law is complicated and subject to frequent changes, mistakes by untrained, inexperienced persons implementing new laws are likely, and many legal immigrants and even U.S. citizens are likely to be caught up in new enforcement policies. Profiling and discriminatory treatment of Latinos and other minorities are also probable when immigrants are targets. Furthermore, because many immigrants live in "mixed-status" families, meaning that U.S. citizens, legal immigrants, and undocumented immigrants often live within the same households, citizens and lawful residents are directly affected when their undocumented parents, spouses, and family members are targeted.

NCLR strongly believes that comprehensive immigration reform is still the appropriate way to proceed. We understand that passing such legislation may take time, but we also believe it is critical at this moment to have an affirmative agenda in response to the multiple threats we must fight daily. We look to this Subcommittee, as well as the entire Congress, to provide much-needed leadership on this issue and to continue to push for the reasonable, comprehensive, realistic approach epitomized by the "STRIVE Act."

**The current immigration system is badly broken.** While the current immigration system appears generous and reasonable on paper, it is not in tune with current economic or social realities. Immigrants with work or family needs feel pressure to enter the U.S. without visas for several reasons: Employers continue to hire undocumented labor, there are few legal channels for needed workers who do not fit into the employment-based immigration preference system to come to the U.S., and the system separates close family members for long periods of time. As a result, there are approximately 12 million undocumented immigrants living in the U.S. today. Despite years of increased immigration enforcement both at the border and in the interior of the country, immigrants are paying large sums to smugglers and risking their lives to work and be reunited with their families in the U.S. Operation Blockade and Operation Gatekeeper, initiated in 1993 and 1994, respectively, and other enhanced border enforcement measures have succeeded in closing off the traditional ports of entry and have diverted migrants into more dangerous crossing areas. Because the number of immigrants attempting to enter the U.S. has not decreased, the probability of death or injury as the result of drowning, heat exhaustion, suffocation, and exposure has increased. Data show that the number of border deaths has increased dramatically in recent years, now reaching an average of more than one death per day.

Those lucky enough to survive the journey to the U.S. are living and working in the U.S., filling essential gaps in the labor market while enduring low wages and poor working conditions. These workers are particularly vulnerable to abuse in the workplace, and are less likely to be able

<sup>1</sup> National Conference of State Legislatures. "2007 Enacted State Legislation Related to Immigrants and Immigration. August 6, 2007." [www.ncsl.org/programs/immig/2007ImmigrationUpdate.html](http://www.ncsl.org/programs/immig/2007ImmigrationUpdate.html).



to address dangerous, unhealthy, or exploitive job conditions because of the fear that employers will retaliate by contacting immigration authorities. This results in some alarming trends. In the mid-1990s, Mexican workers in the U.S. were about 30% more likely to die on the job than native-born workers; now they are about 80% more likely.<sup>2</sup> The annual death rate for Mexicans in the workforce is now one in 16,000 workers, while the rate for the average U.S.-born worker is one in 28,000. While Mexicans represent one in 24 workers in the U.S., they constitute one in 14 workplace deaths. Furthermore, Mexicans are nearly twice as likely as the rest of the immigrant population to die at work.<sup>3</sup>

The broken immigration system also has negative ramifications on the security of our neighborhoods and nation. Undocumented workers live in the shadows of society, often using false identification documents, and fearful of reporting crimes to the police. In the post-9/11 world, the public is understandably concerned about national security, yet as a result of the broken immigration system, there are 12 million people in the U.S. who cannot obtain valid government-issued identification documents and rely upon fraudulent documents on the black market or misuse the documents of others. Americans cannot be secure under a system in which smugglers and traffickers, rather than the U.S. government, decide who enters the country.

As for the legal immigration system, millions of close family members remain in visa backlogs for years, waiting to be reunited with their families. U.S. citizens who petition for unmarried children over 21 years old from Mexico must wait as long as nine years to be reunited. Legal permanent residents from Mexico who petition for their immediate family members (spouses and minor unmarried children) may wait as long as seven years. Because of the strict laws regarding issuance of temporary visas, many spouses and children do not qualify for tourist visas to the U.S. because immigration officials fear they will overstay the visa and remain in the U.S. Rather than endure long waiting periods, some family members choose to risk their lives and come to the U.S. without a visa to be reunited with loved ones, thereby adding to the undocumented population. The current allocation of visas in the family preference system is clearly inadequate to account for the millions of immigrants attempting to play by the rules to enter the U.S. legally.

**Effective and workable comprehensive immigration reform is urgently needed.** NCLR is deeply aware of the continuing impact of the broken immigration system. Each day that passes another person dies on the U.S.-Mexico border, another American child is separated from her immigrant parents due to workplace raids, another worker is exploited in the workplace, and another Hispanic American encounters hostility or worse as a result of tension over this issue. We have 12 million undocumented immigrants living and working in the United States – this number will only increase unless Congress acts. An effective solution is urgently needed.

For this reason, we have been working for nearly a decade on formulating a policy that can effectively bring order and fairness to our nation's immigration laws. We understand that such a formulation must include enforcement at the border and in the interior, but we will insist that such enforcement be conducted in a way which respects human and civil rights. We believe that for an enforcement regime to be workable, it must be accompanied with a policy that provides a

<sup>2</sup> Pritchard, Justin, "Mexican-Born Workers More Likely to Die on Job," *Associated Press*, March 14, 2004.

<sup>3</sup> *Ibid.*

path to citizenship for the 12 million undocumented immigrants now living and working in the United States. In addition, over many years, we reached the conclusion that for our immigration system to work it should include a new pathway for migrants who come in the future.

We did not come to this conclusion lightly; much has been made of the possibility of creating a guestworker program to meet this particular need. NCLR opposes guestworker programs because of their long history of abuse and exploitation against vulnerable workers. We are, however, willing to consider creating a new kind of temporary worker program to replace the undocumented stream with an equivalent number of workers who would be able to enter legally, have full job portability once they get here, be fully covered under labor laws including prevailing wage protections, and have the ability to earn their way to permanent residence and citizenship over time. These conditions are extremely important; while we acknowledge that such a program might be a successful alternative to undocumented migration, we will not consent to a program which legislates exploitation for workers, particularly one which forbids them the ability to put down roots and become Americans if they choose.

We have been as clear as possible with policy-makers: Our desire for immigration reform does not mean that our community will accept any legislation. Last Congress, the House of Representatives passed an enforcement-focused piece of legislation that was so harsh it inspired the largest peaceful demonstrations in our country's history. Enforcement only is not a solution. A bad guestworker program that results in the displacement of American workers and creates a vulnerable, exploitable class of workers is not a solution. A legalization program structured in a way that discourages undocumented immigrants to participate is not a solution. A realistic and effective solution must be comprehensive and must get at the root causes of undocumented immigration and must replace our current system with an immigration system that is safe, legal, and workable. NCLR supports comprehensive immigration reform that includes the following principles: 1) A reduction of family immigration backlogs; 2) a path to citizenship for the current undocumented population; and 3) the creation of new legal channels for future immigrant workers. By legalizing immigrants who live, work, and contribute to life in the U.S., the U.S. could deal fairly with hardworking people who have responded to an economic reality ignored by the law. At the same time, the U.S. can become more secure by enforcing the new law and by allowing undocumented immigrants to come out of the shadows and participate fully in their communities.

#### **Elements of comprehensive immigration reform:**

**1. Reduce family backlogs.** We recognize that the current backlogs in the family-based immigration system either separate close family members for long periods of time or encourage family members to enter the U.S. before their paperwork is completed, adding to the total undocumented population. To be truly comprehensive, immigration reforms must address the family backlogs and ensure that those who have waited to immigrate to the U.S. legally are first in line to receive their green cards. However, reducing the backlogs must not be done by simply nullifying the petitions of any group of people. Every person that has filed a petition, paid an application fee, and structured his life to prepare for the arrival of a family member must have his petition honored.

**2. Pathway to citizenship for undocumented workers.** The first step in any comprehensive immigration reform is to create a realistic pathway for undocumented immigrants currently in the U.S. to earn their way to permanent residence and ultimately U.S. citizenship. This is not an amnesty. Immigrants who can prove that they have been living and working in the U.S. for a specified period of time, have paid their taxes, have otherwise obeyed the law, and who undergo background checks and are proven not to be threats to the U.S. would be eligible to apply for earned legalization. Furthermore, applicants would have to pay an application fee and a fine to qualify for the program. Legalizing current undocumented immigrants would bring them out from the shadows, allow them to work in the formal economy thereby generating more annual tax revenues, allow these workers to obtain lawful and valid identification documents, and allow them to travel to and from their home countries. In addition, legalization would greatly diminish the “haystack” of suspicious individuals, meaning that the Department of Homeland Security (DHS) could focus its enforcement resources and concentrate on finding the dangerous “needles,” including terrorists, smugglers, traffickers, and unscrupulous employers.

It is crucial that an earned legalization program be workable and encourage participation. The tensions surrounding the presence of a sizeable undocumented workforce will not be alleviated if Congress creates a program that leaves millions unwilling or unable to participate. Any new system that discourages undocumented immigrants from coming forward because of extremely high fees, fear of immigration enforcement, lack of guaranteed legal status, or need to leave the country for lengthy periods of time is unlikely to be workable. Moreover, sufficient resources must be made available to the DHS and any other agency involved in the process so that the legalization program may be fully implemented.

**3. Worker visa program.** NCLR recognizes that legalizing all of the undocumented immigrants already in the U.S. would not stop future migrants from entering the country without visas. Since the overwhelming majority of undocumented immigrants come to the U.S. to work, creating legal channels for needed workers is an important pillar of comprehensive immigration reform. However, the Latino population has a long history with temporary worker programs like the *Bracero* program and has suffered abuse and exploitation as a result. Any new worker visa program must be markedly different than past or present programs, must protect both U.S. and immigrant workers, and must provide a path to permanent residency for those who desire it. The following principles are critical to the success of any new temporary worker program:

- *Wages and benefits.* It would be insufficient and, indeed, catastrophic for U.S. workers (including immigrants with permanent visas) if the only requirement was that employers observe all federal, state, and local laws regarding minimum wage. Should a temporary worker program be enacted without a more stringent wage requirement, foreign workers will be left vulnerable, and wages and benefits of U.S. workers will be reduced as foreign workers may come to the U.S. willing to work long hours at minimum wage and without benefits, even in the most dangerous industries. We support a prevailing wage provision to ensure that foreign workers who come to a particular industry be paid the prevailing wage in that industry; this prevents the erosion of wages for U.S. workers in that industry who may be making more than minimum wage.

- *Job portability.* Foreign workers must not be tied to a particular employer for the entire length of the program. Past experience has shown that tying workers to a particular employer allows unscrupulous employers to exploit those workers who have no alternative but to accept bad working conditions and wages or leave the program and return to their home country. Such a situation is bad for both immigrant and U.S. workers.
- *Labor protections, including the right to organize.* All workers must be granted the same workplace conditions and protections – not doing so is harmful to vulnerable foreign workers and to their U.S. coworkers. To the extent that foreign workers have different and fewer rights in the workplace than U.S. workers, unscrupulous, and even honest, employers will seek to lower their employee costs by relying on foreign workers rather than U.S. domestic workers. Unscrupulous employers cannot be allowed to hire vulnerable foreign workers with few rights at the expense of U.S. workers. Labor protections must go beyond minimum wage and must include protection from sexual harassment and discrimination of any kind, workers' compensation, health and safety laws, a mechanism for these workers to accrue benefits under Social Security for work performed during their participation in the program, and the right to organize. It is also absolutely necessary that protections afforded to foreign workers be enforceable.
- *Path to legal permanent residency and citizenship.* Without a path to citizenship, temporary foreign workers will forever remain vulnerable, second-tier workers without the ability to attain the full rights of U.S. citizenship and full participation in U.S. society. Guestworker programs in Europe and even here in the United States have shown that this is not desirable. Foreign workers must have the option after a reasonable and specific time period to choose to become lawful permanent residents of this country. Some will choose not to become permanent residents, preferring to work in this country for a period of time and ultimately choosing to return to their country of origin, but others will eventually like to become U.S. citizens. They must have that choice.
- *Family unity.* Any foreign-worker program that contemplates bringing in workers for more than just a few months must also allow such workers to bring in their spouses and minor children during the period of the program. Not only is it inhumane to separate nuclear families for long periods of time, but the lack of family unity provisions may inadvertently lead to more unauthorized entries of family members who do not wish to remain separated.

We believe that the “STRIVE Act” includes the key elements necessary to fix the broken immigration system: A path to citizenship for undocumented immigrants, a new worker visa program so that future immigrants can arrive legally, a reduction in family immigration backlogs which allows American families to unite in a reasonable time period, and smart enforcement mechanisms to ensure that the new system remains viable.

**Other issues.** In addition to these three basic pillars of comprehensive immigration reform, there are several elements to the debate which have begun to take place in the Senate which are important for the House to consider.

**Decreases to the family immigration system.** NCLR was alarmed to find that the Senate bill considered earlier this year would have made dramatic changes to the family and employment-sponsored immigration systems. These changes, which would eliminate most of the categories under the preference system, would favor a merit-based point system that privileges individuals with high levels of education and English language ability. We object to these changes for multiple reasons, not the least of which is our objection to the argument that the proposal preserves reunification of “nuclear” families at the expense of “extended” family. By eliminating the categories under which U.S. citizens reunite with their adult sons and daughters, and severely restricting the category under which citizens reunite with their parents, this proposal directly attacks the ability of Americans to reunite with their nuclear families. There has been a great deal of commentary about ethnic communities’ expansive definitions of family in describing our response to this proposal, though I have yet to encounter an American who believes that children become “extended” family when they turn 21.

The family immigration system has recently come under attack again as the fear of “chain migration” encourages restrictions on family unification. But an examination of the evidence reveals that “chain migration” is a myth. This concept purports that immigrants sponsor an uncontrollable number of family members. In reality, only immigrants who have already gained legal permanent residency or U.S. citizenship can sponsor relatives. On average, they only sponsor 1.2 family members.<sup>4</sup> Since there are already highly restrictive caps on family reunification visas and because of the lengthy waiting times before a visa becomes available, there is virtually no opportunity for “chain migration” to occur. Only children, spouses, parents, and siblings qualify for such sponsorship – cousins, aunts, uncles, grandparents, and other extended family members cannot come to the United States through the family system.<sup>5</sup> To prevent dependence on public benefits, to sponsor a family member, a U.S. citizen or legal permanent resident (LPR) must already prove they have a stable income and commit to financially support their family members, so they do not rely on social services.

Reuniting close family members of U.S. citizens and LPRs has been a cornerstone of the U.S. immigration system since 1965, and it has served the country very well. In addition to strengthening families, family unification has a positive impact on the economy and on immigrant integration. It is inaccurate to suggest that family immigrants do not serve the economic needs of the country; indeed the bulk of immigrants participating successfully in our economy came here through the family preference system. In addition, by relying on employers and family members to petition for immigrants, the United States has essentially made them the cornerstone of an immigrant integration strategy; family members and employers help immigrants from the moment of their arrival, finding homes, jobs, and other resources that enable them to make a successful transition to life as future Americans. A point system that is aimed at anyone with particular skills or language abilities will likely be swamped with

<sup>4</sup> Lowell, Lindsay and Micah Bump. *Projecting Immigrant Visas: Report on an Experts Meeting*. 2006. < <http://www12.georgetown.edu/sfs/isim/Event%20Summaries&Speeches/Lowell,%20ProjectionsWorkshop.pdf>>.  
<sup>5</sup> *Immigration Through a Family Member*. U.S. Citizenship and Immigration Services. <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=07756677067d010VgnVCM10000048f3d6a1RCRD&vgnnextchannel=4f719c7755cb9010VgnVCM10000045f3d6a1RCRD>

applicants, and provide no mechanism for the integration of these immigrants. To undo decades of sound policy for an experiment like this would be a mistake.

**Employment verification system.** NCLR has long been concerned about our nation's ability to implement and administer employer sanctions in a way that would be effective without engendering employment discrimination. The results of the 1986 law, from our perspective, represent the worst possible outcome. Employer sanctions have clearly been ineffective; nevertheless, there is abundant documentation that the policy has caused discrimination on the basis of nationality and citizenship status.<sup>6</sup> Yet, various amendments have already passed which would greatly expand the current Basic Pilot program, and we understand that there are various proposals to create a mandatory, universal employment verification system.

A mandatory electronic employment verification system (EEVS) such as the one contemplated in the "STRIVE Act" and the current Senate bill will impact every single person who works in the United States. Because of its broad scope and strong impact – the potential to wrongfully deny employment to authorized workers – a new EEVS must be well designed and implemented. Any mandatory universal verification system must be implemented incrementally, with vigorous performance evaluations taking place prior to any expansion; contain strong antidiscrimination protections; insist upon updated and accurate databases; allow for every work-authorized worker to provide adequate documentation; contain adequate administrative and judicial review in case an error occurs in the system; and contain strong privacy protections.

**Social Security benefits.** We are particularly alarmed that the Senate bill would have denied legalizing immigrants' credit for the earnings they have paid into the Social Security system, and we are deeply concerned that this idea has already arisen in another context. It is well established that undocumented immigrants have paid hundreds of billions of dollars into the Social Security system; indeed the Social Security Administration's Earnings Suspense File (ESF) has more than \$420 billion of cumulative earnings paid by employees who never claim benefits,<sup>7</sup> the vast majority of which is likely to be the taxes paid by undocumented immigrants using false social security numbers that they must use in order to work.

The Ensign amendment, which was part of the Senate immigration bill and has been proposed as an amendment to other legislation in the Senate, would not only prevent legalizing immigrants from collecting Social Security benefits for past work performed once they legalize their status, but would require the SSA to verify the entire work history of every foreign-born person. This extraordinary and extreme proposal treats even long-term naturalized U.S. citizens with suspicion, and would deny the credit for earnings they paid into the system unless they can prove that they were never undocumented. This is an extraordinary example of the extent to which an immigration debate which purports to be about control of undocumented immigration has

<sup>6</sup> See *Statement of the National Council of La Raza to the House Committee on the Judiciary Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law Hearing on Proposals to Improve the Electronic Employment Verification and Worksite Enforcement System*, Thursday, April 26, 2007.

<sup>7</sup> *Testimony on the "ITIN" and Social Security Number Misuse*, presented by Patrick P. O'Carroll, Jr., Social Security Administration, Office of the Inspector General, to the House Committee on Ways and Means, Subcommittee on Oversight, Subcommittee on Social Security, U.S. House of Representatives, Washington, DC, March 24, 2004, [www.ssa.gov/oig/communications/testimony\\_speeches/03102004testimony.htm](http://www.ssa.gov/oig/communications/testimony_speeches/03102004testimony.htm).

extended its negative impact to legal residents and even naturalized citizens; this is a source of extreme concern for the nation's Latinos.

**Official English.** Contrary to common myths, Latino immigrants do learn English. According to the 2000 Census, of the people who report speaking Spanish at home, 72% report speaking English "well" or "very well." This proportion for speakers of Asian languages is more than 77%. The research on the second and third generations consistently shows adherence to the three-generation pattern that immigrants have followed for more than a century. For example, a recent report on language assimilation by the Lewis Mumford Center for Comparative Urban and Regional Research at Albany found that the second generation is largely bilingual; 92% of Hispanics speak English "well" as do 96% of the Asians, though most also speak another language at home. By the third generation, the pattern is English monolingualism. The study also finds that even recent high immigration levels have not changed the pattern. Today's immigrants are adopting English as fast as – or faster than – previous cohorts.

Immigrant adults want to learn English, but have few opportunities to do so. According to the Center for Adult English Language Acquisition, almost half of the 1.2 million adults in federally funded adult education programs are there to learn English. Perhaps more telling, waiting lists for classroom slots are often so long that some immigrants wait months or years before getting a space. Studies by the National Center for Education Statistics suggest a pool of three million or more adults who are interested in English as a second language (ESL) classes but are not enrolled for a variety of reasons, especially the fact that they are oversubscribed.

The bill passed by the Senate in 2006 and the bill that was debated in the Senate this year contained provisions making English the official language of the United States. Various state laws and local ordinances across the country contain similar provisions. While we strongly believe that immigrant integration must be a critical element of the U.S.'s overall immigration policy, declaring English as the official language and simply requiring English knowledge will do little to actually assist immigrants in making the transition to English. An effective integration policy would provide sufficient resources and sufficient opportunities for immigrants to learn English.

**"DREAM Act" and "AgJOBS."** We strongly support inclusion of the "Development, Relief, and Education for Alien Minors (DREAM) Act" (S. 774, H.R. 1275) and "Agricultural Job Opportunity, Benefits, and Security Act" ("AgJOBS" S. 340, H.R. 371) legislation. These bills enjoy strong bipartisan support, and given the probability that comprehensive immigration reform will not pass this Congress, it is important that passage of the "DREAM Act" and "AgJOBS" be made a priority for Congress.

#### **Conclusion**

It is clear that the current U.S. immigration system is not meeting the nation's economic, social, or security needs. Increased enforcement of our current immigration laws at the national, state, and local levels by itself will not bring order to our broken system, while the enforcement choices being made by the Administration and by local governments have the potential to cause great harm that extends well beyond the immigrant community into the workforce and general population as a whole. Reforming our immigration laws in a comprehensive manner and creating a safe, orderly, and fair immigration system that makes legal immigration the norm is

possible and essential to our country's well-being. NCLR looks forward to working with you to ensure that effective, workable immigration reform is enacted in the near future.

