

**SUBSTITUTE FOR THE AMENDMENT IN THE
NATURE OF A SUBSTITUTE TO H.R. 5038
OFFERED BY MR. MCCLINTOCK OF CALIFORNIA**

Strike all that follows after the enacting clause and
insert the following:

1 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Securing America’s Future Act of 2019”.

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

Sec. 1. Short title; table of contents.

DIVISION A—LEGAL IMMIGRATION REFORM

TITLE I—IMMIGRANT VISA ALLOCATIONS AND PRIORITIES

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

TITLE II—AGRICULTURAL WORKER REFORM

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

TITLE III—VISA SECURITY

- Sec. 3101. Cancellation of additional visas.

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

DIVISION B—INTERIOR IMMIGRATION ENFORCEMENT

TITLE I—LEGAL WORKFORCE ACT

- Sec. 1101. Short title.
- Sec. 1102. Employment eligibility verification process.
- Sec. 1103. Employment eligibility verification system.
- Sec. 1104. Recruitment, referral, and continuation of employment.
- Sec. 1105. Good faith defense.
- Sec. 1106. Preemption and States' rights.
- Sec. 1107. Repeal.
- Sec. 1108. Penalties.
- Sec. 1109. Fraud and misuse of documents.
- Sec. 1110. Protection of Social Security Administration programs.
- Sec. 1111. Fraud prevention.
- Sec. 1112. Use of employment eligibility verification photo tool.
- Sec. 1113. Identity authentication employment eligibility verification pilot programs.
- Sec. 1114. Inspector General audits.

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

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

TITLE III—CRIMINAL ALIENS

- Sec. 3301. Precluding admissibility of aliens convicted of aggravated felonies or other serious offenses.
- Sec. 3302. Increased penalties barring the admission of convicted sex offenders failing to register and requiring deportation of sex offenders failing to register.
- Sec. 3303. Grounds of inadmissibility and deportability for alien gang members.
- Sec. 3304. Inadmissibility and deportability of drunk drivers.
- Sec. 3305. Definition of aggravated felony.
- Sec. 3306. Precluding withholding of removal for aggravated felons.
- Sec. 3307. Protecting immigrants from convicted sex offenders.

- Sec. 3308. Clarification to crimes of violence and crimes involving moral turpitude.
- Sec. 3309. Detention of dangerous aliens.
- Sec. 3310. Timely repatriation.
- Sec. 3311. Illegal reentry.

TITLE IV—ASYLUM REFORM

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

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

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

DIVISION C—BORDER ENFORCEMENT

- Sec. 1100. Short title.

TITLE I—BORDER SECURITY

- Sec. 1101. Definitions.

Subtitle A—Infrastructure and Equipment

- Sec. 1111. Strengthening the requirements for barriers along the southern border.
- Sec. 1112. Air and Marine Operations flight hours.
- Sec. 1113. Capability deployment to specific sectors and transit zone.
- Sec. 1114. U.S. Border Patrol activities.
- Sec. 1115. Border security technology program management.
- Sec. 1116. Reimbursement of States for deployment of the National Guard at the southern border.
- Sec. 1117. National Guard support to secure the southern border.
- Sec. 1118. Prohibitions on actions that impede border security on certain Federal land.
- Sec. 1119. Landowner and rancher security enhancement.
- Sec. 1120. Eradication of carrizo cane and salt cedar.
- Sec. 1121. Southern border threat analysis.
- Sec. 1122. Amendments to U.S. Customs and Border Protection.
- Sec. 1123. Agent and officer technology use.
- Sec. 1124. Integrated Border Enforcement Teams.

- Sec. 1125. Tunnel Task Forces.
- Sec. 1126. Pilot program on use of electromagnetic spectrum in support of border security operations.
- Sec. 1127. Homeland security foreign assistance.

Subtitle B—Personnel

- Sec. 1131. Additional U.S. Customs and Border Protection agents and officers.
- Sec. 1132. U.S. Customs and Border Protection retention incentives.
- Sec. 1133. Anti-Border Corruption Reauthorization Act.
- Sec. 1134. Training for officers and agents of U.S. Customs and Border Protection.

Subtitle C—Grants

- Sec. 1141. Operation Stonegarden.

Subtitle D—Authorization of Appropriations

- Sec. 1151. Authorization of appropriations.

TITLE II—EMERGENCY PORT OF ENTRY PERSONNEL AND
INFRASTRUCTURE FUNDING

- Sec. 2101. Ports of entry infrastructure.
- Sec. 2102. Secure communications.
- Sec. 2103. Border security deployment program.
- Sec. 2104. Pilot and upgrade of license plate readers at ports of entry.
- Sec. 2105. Non-intrusive inspection operational demonstration.
- Sec. 2106. Biometric exit data system.
- Sec. 2107. Sense of Congress on cooperation between agencies.
- Sec. 2108. Authorization of appropriations.
- Sec. 2109. Definition.

TITLE III—VISA SECURITY AND INTEGRITY

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

TITLE IV—TRANSNATIONAL CRIMINAL ORGANIZATION ILLICIT
SPOTTER PREVENTION AND ELIMINATION

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

DIVISION D—LAWFUL STATUS FOR CERTAIN CHILDHOOD
ARRIVALS

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

1 **DIVISION A—LEGAL**
2 **IMMIGRATION REFORM**
3 **TITLE I—IMMIGRANT VISA**
4 **ALLOCATIONS AND PRIORITIES**

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

6 (a) IMMEDIATE RELATIVE REDEFINED.—Section
7 201 of the Immigration and Nationality Act (8 U.S.C.
8 1151) is amended—

9 (1) in subsection (b)(2)(A)—

10 (A) in clause (i), by striking “children,
11 spouses, and parents of a citizen of the United
12 States, except that, in the case of parents, such
13 citizens shall be at least 21 years of age.” and
14 inserting “children and spouse of a citizen of
15 the United States.”; and

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

19 (2) by striking subsection (c) and inserting the
20 following:

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

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

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

7 “(B)(i) did not acquire the status of an alien
8 lawfully admitted to the United States for perma-
9 nent residence during the two preceding fiscal years;
10 or

11 “(ii) acquired such status during such period
12 under a provision of law (other than subsection (b))
13 that exempts adjustment to such status from the nu-
14 merical limitation on the worldwide level of immigra-
15 tion under this section.”; and

16 (3) in subsection (f)—

17 (A) in paragraph (2), by striking “section
18 203(a)(2)(A)” and inserting “section 203(a)”;

19 (B) by striking paragraph (3);

20 (C) by redesignating paragraph (4) as
21 paragraph (3); and

22 (D) in paragraph (3), as redesignated, by
23 striking “(1) through (3)” and inserting “(1)
24 and (2)”.

1 (b) FAMILY-BASED VISA PREFERENCES.—Section
2 203(a) of the Immigration and Nationality Act (8 U.S.C.
3 1153(a)) is amended to read as follows:

4 “(a) SPOUSES AND MINOR CHILDREN OF PERMA-
5 NENT RESIDENT ALIENS.—Family-sponsored immigrants
6 described in this subsection are qualified immigrants who
7 are the spouse or a child of an alien lawfully admitted
8 for permanent residence. Such immigrants shall be allo-
9 cated visas in accordance with the number computed
10 under section 201(c).”.

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

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

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

17 “(1) IN GENERAL.—Subject to paragraph (2),
18 for purposes of subsections (a)(2) and (d), a deter-
19 mination of whether an alien satisfies the age re-
20 quirement in the matter preceding subparagraph (A)
21 of section 101(b)(1) shall be made using the age of
22 the alien on the date on which a petition is filed with
23 the Secretary of Homeland Security.”.

24 (3) by redesignating paragraphs (2) through
25 (4) as paragraphs (3) through (5), respectively;

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

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

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

11 (d) CONFORMING AMENDMENTS.—

12 (1) DEFINITION OF V NONIMMIGRANT.—Section
13 101(a)(15)(V) of the Immigration and Nationality
14 Act (8 U.S.C. 1101(a)(15)(V)) is amended by strik-
15 ing “section 203(a)(2)(A)” each place such term ap-
16 pears and inserting “section 203(a)”.

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

20 (A) in subsection (a)(4)—

21 (i) by striking subparagraphs (A) and
22 (B) and inserting the following:

23 “(A) 75 PERCENT OF FAMILY-SPONSORED
24 IMMIGRANTS NOT SUBJECT TO PER COUNTRY
25 LIMITATION.—Of the visa numbers made avail-

1 able under section 203(a) in any fiscal year, 75
2 percent shall be issued without regard to the
3 numerical limitation under paragraph (2).

4 “(B) TREATMENT OF REMAINING 25 PER-
5 CENT FOR COUNTRIES SUBJECT TO SUB-
6 SECTION (e).—

7 “(i) IN GENERAL.—Of the visa num-
8 bers made available under section 203(a)
9 in any fiscal year, 25 percent shall be
10 available, in the case of a foreign state or
11 dependent area that is subject to sub-
12 section (e) only to the extent that the total
13 number of visas issued in accordance with
14 subparagraph (A) to natives of the foreign
15 state or dependent area is less than the
16 subsection (e) ceiling.

17 “(ii) SUBSECTION (e) CEILING DE-
18 FINED.—In clause (i), the term ‘subsection
19 (e) ceiling’ means, for a foreign state or
20 dependent area, 77 percent of the max-
21 imum number of visas that may be made
22 available under section 203(a) to immi-
23 grants who are natives of the state or area,
24 consistent with subsection (e).’; and

- 1 (ii) by striking subparagraphs (C) and
2 (D); and
3 (B) in subsection (e)—
4 (i) in paragraph (1), by adding “and”
5 at the end;
6 (ii) by striking paragraph (2);
7 (iii) by redesignating paragraph (3) as
8 paragraph (2); and
9 (iv) in the undesignated matter after
10 paragraph (2), as redesignated, by striking
11 “, respectively,” and all that follows and
12 inserting a period.

13 (3) PROCEDURE FOR GRANTING IMMIGRANT
14 STATUS.—Section 204 of such Act (8 U.S.C. 1154)
15 is amended—

- 16 (A) in subsection (a)(1)—
17 (i) in subparagraph (A)(i), by striking
18 “to classification by reason of a relation-
19 ship described in paragraph (1), (3), or (4)
20 of section 203(a) or”;
21 (ii) in subparagraph (B)—
22 (I) in clause (i), by redesignating
23 the second subclause (I) as subclause
24 (II); and

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

4 (iii) in subparagraph (D)(i)(I), by
5 striking “a petitioner” and all that follows
6 through “section 204(a)(1)(B)(iii).” and
7 inserting “an individual younger than 21
8 years of age for purposes of adjudicating
9 such petition and for purposes of admis-
10 sion as an immediate relative under section
11 201(b)(2)(A)(i) or a family-sponsored im-
12 migrant under section 203(a), as appro-
13 priate, notwithstanding the actual age of
14 the individual.”;

15 (B) in subsection (f)(1), by striking “,
16 203(a)(1), or 203(a)(3), as appropriate”; and

17 (C) by striking subsection (k).

18 (4) WAIVERS OF INADMISSIBILITY.—Section
19 212 of such Act (8 U.S.C. 1182) is amended—

20 (A) in subsection (a)(6)(E)(ii), by striking
21 “section 203(a)(2)” and inserting “section
22 203(a)”; and

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

1 (5) EMPLOYMENT OF V NONIMMIGRANTS.—Sec-
2 tion 214(q)(1)(B)(i) of such Act (8 U.S.C.
3 1184(q)(1)(B)(i)) is amended by striking “section
4 203(a)(2)(A)” each place such term appears and in-
5 serting “section 203(a)”.

6 (6) DEFINITION OF ALIEN SPOUSE.—Section
7 216(h)(1)(C) of such Act (8 U.S.C. 1186a(h)(1)(C))
8 is amended by striking “section 203(a)(2)” and in-
9 serting “section 203(a)”.

10 (7) CLASSES OF DEPORTABLE ALIENS.—Sec-
11 tion 237(a)(1)(E)(ii) of such Act (8 U.S.C.
12 1227(a)(1)(E)(ii)) is amended by striking “section
13 203(a)(2)” and inserting “section 203(a)”.

14 (e) CREATION OF NONIMMIGRANT CLASSIFICATION
15 FOR ALIEN PARENTS OF ADULT UNITED STATES CITI-
16 ZENS.—

17 (1) IN GENERAL.—Section 101(a)(15) of the
18 Immigration and Nationality Act (8 U.S.C.
19 1101(a)(15)) is amended—

20 (A) in subparagraph (T)(ii)(III), by strik-
21 ing the period at the end and inserting a semi-
22 colon;

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

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

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

4 “(W) Subject to section 214(s), an alien
5 who is a parent of a citizen of the United
6 States, if the citizen—

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

8 “(ii) has never received contingent
9 nonimmigrant status under division D of
10 the Securing America’s Future Act.”.

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

14 “(s)(1) The initial period of authorized admission for
15 a nonimmigrant described in section 101(a)(15)(W) shall
16 be 5 years, but may be extended by the Secretary of
17 Homeland Security for additional 5-year periods if the
18 United States citizen son or daughter of the nonimmigrant
19 is still residing in the United States.

20 “(2) A nonimmigrant described in section
21 101(a)(15)(W)—

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

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

1 “(3) Regardless of the resources of a non-
2 immigrant described in section 101(a)(15)(W), the
3 United States citizen son or daughter who sponsored
4 the nonimmigrant parent shall be responsible for the
5 nonimmigrant’s support while the nonimmigrant re-
6 sides in the United States.

7 “(4) An alien is ineligible to receive a visa or
8 to be admitted into the United States as a non-
9 immigrant described in section 101(a)(15)(W) unless
10 the alien provides satisfactory proof that the United
11 States citizen son or daughter has arranged for
12 health insurance coverage for the alien, at no cost to
13 the alien, during the anticipated period of the alien’s
14 residence in the United States.”.

15 (f) EFFECTIVE DATE; APPLICABILITY.—

16 (1) EFFECTIVE DATE.—The amendments made
17 by this section shall take effect on October 1, 2019.

18 (2) INVALIDITY OF CERTAIN PETITIONS AND
19 APPLICATIONS.—

20 (A) IN GENERAL.—No person may file,
21 and the Secretary of Homeland Security and
22 the Secretary of State may not accept, adju-
23 dicate, or approve any petition under section
24 204 of the Immigration and Nationality Act (8
25 U.S.C. 1154) filed on or after the date of enact-

1 ment of this Act seeking classification of an
2 alien under section 201(b)(2)(A)(i) with respect
3 to a parent of a United States citizen, or under
4 section 203(a)(1), (2)(B), (3) or (4) of such Act
5 (8 U.S.C. 1151(b)(2)(A)(i), 1153(a)(1), (2)(B),
6 (3), or (4)). Any application for adjustment of
7 status or an immigrant visa based on such a
8 petition shall be invalid.

9 (B) PENDING PETITIONS.—Neither the
10 Secretary of Homeland Security nor the Sec-
11 retary of State may adjudicate or approve any
12 petition under section 204 of the Immigration
13 and Nationality Act (8 U.S.C. 1154) pending
14 as of the date of enactment of this Act seeking
15 classification of an alien under section
16 201(b)(2)(A)(i) with respect to a parent of a
17 United States citizen, or under section
18 203(a)(1), (2)(B), (3) or (4) of such Act (8
19 U.S.C. 1151(b)(2)(A)(i), 1153(a)(1), (2)(B),
20 (3), or (4)). Any application for adjustment of
21 status or an immigrant visa based on such a
22 petition shall be invalid.

23 (3) APPLICABILITY TO WAITLISTED APPLI-
24 CANTS.—

1 (A) IN GENERAL.—Notwithstanding the
2 amendments made by this section, an alien with
3 regard to whom a petition or application for
4 status under paragraph (1), (2)(B), (3) or (4)
5 of section 203(a) of the Immigration and Na-
6 tionality Act (8 U.S.C. 1153(a)), as in effect on
7 September 30, 2019, was approved prior to the
8 date of the enactment of this Act, may be
9 issued a visa pursuant to that paragraph in ac-
10 cordance with the availability of visas under
11 subparagraph (B).

12 (B) AVAILABILITY OF VISAS.—Visas may
13 be issued to beneficiaries of approved petitions
14 under each category described in subparagraph
15 (A), but only until such time as the number of
16 visas that would have been allocated to that
17 category in fiscal year 2019, notwithstanding
18 the amendments made by this section, have
19 been issued. When the number of visas de-
20 scribed in the previous sentence have been
21 issued for each category described in subpara-
22 graph (A), no additional visas may be issued for
23 that category.

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

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

5 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

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

9 (A) in section 101(a)(15)(V), by striking
10 “section 203(d)” and inserting “section
11 203(c)”;

12 (B) in section 201—

13 (i) in subsection (a)—

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

16 (II) by striking paragraph (3);
17 and

18 (ii) by striking subsection (e);

19 (C) in section 203—

20 (i) in subsection (b)(2)(B)(ii)(IV), by
21 striking “section 203(b)(2)(B)” each place
22 such term appears and inserting “clause
23 (i)”;

24 (ii) by redesignating subsections (d),
25 (e), (f), (g), and (h) as subsections (e), (d),
26 (e), (f), and (g), respectively;

1 (iii) in subsection (c), as redesignated,
2 by striking “subsection (a), (b), or (c)”
3 and inserting “subsection (a) or (b)”;

4 (iv) in subsection (d), as redesignated—
5

6 (I) by striking paragraph (2);

7 and

8 (II) by redesignating paragraph
9 (3) as paragraph (2);

10 (v) in subsection (e), as redesignated,
11 by striking “subsection (a), (b), or (c) of
12 this section” and inserting “subsection (a)
13 or (b)”;

14 (vi) in subsection (f), as redesignated,
15 by striking “subsections (a), (b), and (c)”
16 and inserting “subsections (a) and (b)”;
17 and

18 (vii) in subsection (g), as redesignated—
19

20 (I) by striking “(d)” each place
21 such term appears and inserting
22 “(c)”;

23 (II) in paragraph (2)(B), by
24 striking “subsection (a), (b), or (c)”
25 and inserting “subsection (a) or (b)”;

1 (D) in section 204—

2 (i) in subsection (a)(1), by striking
3 subparagraph (I);

4 (ii) in subsection (e), by striking “sub-
5 section (a), (b), or (c) of section 203” and
6 inserting “subsection (a) or (b) of section
7 203”; and

8 (iii) in subsection (l)(2)—

9 (I) in subparagraph (B), by
10 striking “section 203 (a) or (d)” and
11 inserting “subsection (a) or (c) of sec-
12 tion 203”; and

13 (II) in subparagraph (C), by
14 striking “section 203(d)” and insert-
15 ing “section 203(c)”;

16 (E) in section 214(q)(1)(B)(i), by striking
17 “section 203(d)” and inserting “section
18 203(c)”;

19 (F) in section 216(h)(1), in the undesig-
20 nated matter following subparagraph (C), by
21 striking “section 203(d)” and inserting “section
22 203(c)”;

23 (G) in section 245(i)(1)(B), by striking
24 “section 203(d)” and inserting “section
25 203(c)”.

1 (2) IMMIGRANT INVESTOR PILOT PROGRAM.—
2 Section 610(d) of the Departments of Commerce,
3 Justice, and State, the Judiciary, and Related Agen-
4 cies Appropriations Act, 1993 (Public Law 102–
5 395) is amended by striking “section 203(e) of such
6 Act (8 U.S.C. 1153(e))” and inserting “section
7 203(d) of such Act (8 U.S.C. 1153(d))”.

8 (c) EFFECTIVE DATE.—The amendments made by
9 this section shall take effect on the first day of the first
10 fiscal year beginning on or after the date of the enactment
11 of this Act.

12 **SEC. 1103. EMPLOYMENT-BASED IMMIGRATION PRIOR-**
13 **ITIES.**

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

17 (1) in section 201(d)(1)(A), by striking
18 “140,000” and inserting “195,000”; and

19 (2) in section 203(b)—

20 (A) in paragraph (1), by striking “28.6
21 percent of such worldwide level” and inserting
22 “58,374”;

23 (B) in paragraphs (2) and (3), by striking
24 “28.6 percent of such worldwide level” each
25 place it appears and inserting “58,373”; and

1 (C) by striking “7.1 percent of such world-
2 wide level” each place it appears and inserting
3 “9,940”.

4 (b) **EFFECTIVE DATE.**—The amendments made by
5 subsection (a) shall take effect on the first day of fiscal
6 year 2019 and shall apply to the visas made available in
7 that and subsequent fiscal years.

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

9 Section 101(a)(15)(B) of the Immigration and Na-
10 tionality Act (8 U.S.C. 1101(a)(15)(B)) is amended by
11 adding before the semicolon at the end the following: “,
12 and who has waived any right to review or appeal of an
13 immigration officer’s determination as to the admissibility
14 of the alien at the port of entry into the United States,
15 or to contest, other than on the basis of an application
16 for asylum, any action for removal of the alien”.

17 **TITLE II—AGRICULTURAL**
18 **WORKER REFORM**

19 **SEC. 2101. SHORT TITLE.**

20 This title may be cited as—

21 (1) the “Agricultural Guestworker Act”; or

22 (2) the “AG Act”.

1 **SEC. 2102. H-2C TEMPORARY AGRICULTURAL WORK VISA**
2 **PROGRAM.**

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

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

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

16 “(A) agricultural labor as defined in section
17 3121(g) of the Internal Revenue Code of 1986;

18 “(B) agriculture as defined in section 3(f) of
19 the Fair Labor Standards Act of 1938 (29 U.S.C.
20 203(f));

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

25 “(D) all activities required for the preparation,
26 processing or manufacturing of a product of agri-

1 culture (as such term is defined in such section 3(f))
2 for further distribution;
3 “(E) forestry-related activities;
4 “(F) aquaculture activities; and
5 “(G) the primary processing of fish or shellfish,
6 except that in regard to labor or services consisting
7 of meat or poultry processing, the term ‘agricultural
8 labor or services’ only includes the killing of animals
9 and the breakdown of their carcasses.”.

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

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

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

16 “(a) DEFINITIONS.—In this section and section
17 218B:

18 “(1) DISPLACE.—The term ‘displace’ means to
19 lay off a United States worker from the job for
20 which H–2C workers are sought.

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

23 “(A) involve essentially the same respon-
24 sibilities;

1 “(B) are held by workers with substan-
2 tially equivalent qualifications and experience;
3 and

4 “(C) are located in the same place or
5 places of employment.

6 “(3) EMPLOYER.—The term ‘employer’ includes
7 a single or joint employer, including an association
8 acting as a joint employer with its members, who
9 hires workers to perform agricultural labor or serv-
10 ices.

11 “(4) FORESTRY-RELATED ACTIVITIES.—The
12 term ‘forestry-related activities’ includes tree plant-
13 ing, timber harvesting, logging operations, brush
14 clearing, vegetation management, herbicide applica-
15 tion, the maintenance of rights-of-way (including for
16 roads, trails, and utilities), regardless of whether
17 such right-of-way is on forest land, and the har-
18 vesting of pine straw.

19 “(5) H-2C WORKER.—The term ‘H-2C worker’
20 means a nonimmigrant described in section
21 101(a)(15)(H)(ii)(c).

22 “(6) LAY OFF.—

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

24 “(i) means to cause a worker’s loss of
25 employment, other than through a dis-

1 charge for inadequate performance, viola-
2 tion of workplace rules, cause, voluntary
3 departure, voluntary retirement, or the ex-
4 piration of a grant or contract (other than
5 a temporary employment contract entered
6 into in order to evade a condition described
7 in paragraph (4) of subsection (b)); and

8 “(ii) does not include any situation in
9 which the worker is offered, as an alter-
10 native to such loss of employment, a simi-
11 lar position with the same employer at
12 equivalent or higher wages and benefits
13 than the position from which the employee
14 was discharged, regardless of whether or
15 not the employee accepts the offer.

16 “(B) CONSTRUCTION.—Nothing in this
17 paragraph is intended to limit an employee’s
18 rights under a collective bargaining agreement
19 or other employment contract.

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

22 “(A) a citizen or national of the United
23 States; or

24 “(B) an alien who is lawfully admitted for
25 permanent residence, is admitted as a refugee

1 under section 207, or is granted asylum under
2 section 208.

3 “(8) SPECIAL PROCEDURES INDUSTRY.—The
4 term ‘special procedures industry’ includes sheep-
5 herding, goat herding, and the range production of
6 livestock, itinerant commercial beekeeping and polli-
7 nation, itinerant animal shearing, and custom com-
8 bining and harvesting.

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

13 “(1) OFFER OF EMPLOYMENT.—The employer
14 will offer employment to the aliens on a contractual
15 basis as H–2C workers under this section for a spe-
16 cific period of time during which the aliens may not
17 work on an at-will basis (as provided for in section
18 218B), and such contract shall only be required to
19 include a description of each place of employment,
20 period of employment, wages and other benefits to
21 be provided, and the duties of the positions.

22 “(2) TEMPORARY LABOR OR SERVICES.—

23 “(A) IN GENERAL.—The employer is seek-
24 ing to employ a specific number of H–2C work-
25 ers on a temporary basis and will provide com-

1 pensation to such workers at a wage rate no
2 less than that set forth in subsection (k)(2).

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

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

14 “(4) NONDISPLACEMENT OF UNITED STATES
15 WORKERS.—The employer did not displace and will
16 not displace United States workers employed by the
17 employer during the period of employment of the H-
18 2C workers and during the 30-day period imme-
19 diately preceding such period of employment in the
20 job for which the employer seeks approval to employ
21 H-2C workers.

22 “(5) RECRUITMENT.—

23 “(A) IN GENERAL.—The employer—

24 “(i) conducted adequate recruitment
25 before filing the petition; and

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

5 “(B) OTHER REQUIREMENTS.—The re-
6 cruitment requirement under subparagraph (A)
7 is satisfied if the employer places a local job
8 order with the State workforce agency serving
9 each place of employment, except that nothing
10 in this subparagraph shall require the employer
11 to file an interstate job order under section 653
12 of title 20, Code of Federal Regulations. The
13 State workforce agency shall post the job order
14 on its official agency website for a minimum of
15 30 days and not later than 3 days after receipt
16 using the employment statistics system author-
17 ized under section 15 of the Wagner-Peyser Act
18 (29 U.S.C. 491-2). The Secretary of Labor
19 shall include links to the official Web sites of all
20 State workforce agencies on a single webpage of
21 the official Web site of the Department of
22 Labor.

23 “(C) END OF RECRUITMENT REQUIRE-
24 MENT.—The requirement to recruit United
25 States workers for a job shall terminate on the

1 first day that work begins for the H-2C work-
2 ers.

3 “(6) OFFERS TO UNITED STATES WORKERS.—

4 The employer has offered or will offer the job for
5 which the H-2C workers are sought to any eligible
6 United States workers who—

7 “(A) apply;

8 “(B) are qualified for the job; and

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

11 This requirement shall not apply to United States
12 workers who apply for the job on or after the first
13 day that work begins for the H-2C workers.

14 “(7) PROVISION OF INSURANCE.—If the job for
15 which the H-2C workers are sought is not covered
16 by State workers’ compensation law, the employer
17 will provide, at no cost to the workers unless State
18 law provides otherwise, insurance covering injury
19 and disease arising out of, and in the course of, the
20 workers’ employment, which will provide benefits at
21 least equal to those provided under the State work-
22 ers compensation law for comparable employment.

23 “(8) STRIKE OR LOCKOUT.—The job that is the
24 subject of the petition is not vacant because the

1 former workers in that job are on strike or locked
2 out in the course of a labor dispute.

3 “(c) PUBLIC EXAMINATION.—Not later than 1 work-
4 ing day after the date on which a petition under this sec-
5 tion is filed, the employer shall make the petition available
6 for public examination, at the employer’s principal place
7 of employment.

8 “(d) LIST.—

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

12 “(A) be sorted by employer; and

13 “(B) include the number of H-2C workers
14 sought, the wage rate, the period of employ-
15 ment, each place of employment, and the date
16 of need for each alien.

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

20 “(e) PETITIONING FOR ADMISSION.—

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

23 “(A) the Secretary of Homeland Security
24 may not require such petition to be filed more

1 than 28 days before the first date the employer
2 requires the labor or services of H-2C workers;

3 “(B) within the appropriate time period
4 under subparagraph (C) or (D), the Secretary
5 of Homeland Security shall—

6 “(i) approve the petition;

7 “(ii) reject the petition; or

8 “(iii) determine that the petition is in-
9 complete or obviously inaccurate or that
10 the employer has not complied with the re-
11 quirements of subsection (b)(5)(A)(i)
12 (which the Secretary can ascertain by
13 verifying whether the employer has placed
14 a local job order as provider for in sub-
15 section (b)(5)(B));

16 “(C) if the Secretary determines that the
17 petition is incomplete or obviously inaccurate,
18 or that the employer has not complied with the
19 requirements of subsection (b)(5)(A)(i) (which
20 the Secretary can ascertain by verifying wheth-
21 er the employer has placed a local job order as
22 provider for in subsection (b)(5)(B)), the Sec-
23 retary shall—

24 “(i) within 5 business days of receipt
25 of the petition, notify the petitioner of the

1 deficiencies to be corrected by means en-
2 suring same or next day delivery; and

3 “(ii) within 5 business days of receipt
4 of the corrected petition, approve or reject
5 the petition and provide the petitioner with
6 notice of such action by means ensuring
7 same or next day delivery; and

8 “(D) if the Secretary does not determine
9 that the petition is incomplete or obviously inac-
10 curate, the Secretary shall not later than 10
11 business days after the date on which such peti-
12 tion was filed, either approve or reject the peti-
13 tion and provide the petitioner with notice of
14 such action by means ensuring same or next
15 day delivery.

16 “(2) ACCESS.—By filing an H-2C petition, the
17 petitioner and each employer (if the petitioner is an
18 association that is a joint employer of workers who
19 perform agricultural labor or services) consent to
20 allow access to each place of employment to the De-
21 partment of Agriculture and the Department of
22 Homeland Security for the purpose of investigations
23 and audits to determine compliance with the immi-
24 gration laws (as defined in section 101(a)(17)).

25 “(f) ROLES OF AGRICULTURAL ASSOCIATIONS.—

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

8 “(2) TREATMENT OF VIOLATIONS.—

9 “(A) INDIVIDUAL MEMBER.—If an indi-
10 vidual member of an association that is a joint
11 employer commits a violation described in para-
12 graph (2) or (3) of subsection (i) or subsection
13 (j)(1), the Secretary of Agriculture shall invoke
14 penalties pursuant to subsections (i) and (j)
15 against only that member of the association un-
16 less the Secretary of Agriculture determines
17 that the association participated in, had knowl-
18 edge of, or had reason to know of the violation.

19 “(B) ASSOCIATION OF AGRICULTURAL EM-
20 PLOYERS.—If an association that is a joint em-
21 ployer commits a violation described in sub-
22 sections (i)(2) and (3) or (j)(1), the Secretary
23 of Agriculture shall invoke penalties pursuant
24 to subsections (i) and (j) against only the asso-
25 ciation and not any individual members of the

1 association, unless the Secretary determines
2 that the member participated in the violation.

3 “(g) EXPEDITED ADMINISTRATIVE APPEALS.—The
4 Secretary of Homeland Security shall promulgate regula-
5 tions to provide for an expedited procedure for the review
6 of a denial of a petition under this section by the Sec-
7 retary. At the petitioner’s request, the review shall include
8 a de novo administrative hearing at which new evidence
9 may be introduced.

10 “(h) FEES.—The Secretary of Homeland Security
11 shall require, as a condition of approving the petition, the
12 payment of a fee to recover the reasonable cost of proc-
13 essing the petition.

14 “(i) ENFORCEMENT.—

15 “(1) INVESTIGATIONS AND AUDITS.—The Sec-
16 retary of Agriculture shall be responsible for con-
17 ducting investigations and audits, including random
18 audits, of employers to ensure compliance with the
19 requirements of the H-2C program. All monetary
20 fines levied against employers shall be paid to the
21 Department of Agriculture and used to enhance the
22 Department of Agriculture’s investigative and audit-
23 ing abilities to ensure compliance by employers with
24 their obligations under this section.

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

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

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

14 “(3) WILLFUL VIOLATIONS.—If the Secretary
15 of Agriculture finds, after notice and opportunity for
16 a hearing, a willful failure to fulfill an attestation re-
17 quired by this subsection, or a willful misrepresenta-
18 tion of a material fact in a petition under this sub-
19 section, the Secretary—

20 “(A) may impose such administrative rem-
21 edies (including civil money penalties in an
22 amount not to exceed \$5,000 per violation, or
23 not to exceed \$15,000 per violation if in the
24 course of such failure or misrepresentation the
25 employer displaced one or more United States

1 workers employed by the employer during the
2 period of employment of H-2C workers or dur-
3 ing the 30-day period immediately preceding
4 such period of employment) in the job the H-
5 2C workers are performing as the Secretary de-
6 termines to be appropriate;

7 “(B) may disqualify the employer from the
8 employment of H-2C workers for a period of 2
9 years;

10 “(C) may, for a subsequent failure to fulfill
11 an attestation required by this subsection, or a
12 misrepresentation of a material fact in a peti-
13 tion under this subsection, disqualify the em-
14 ployer from the employment of H-2C workers
15 for a period of 5 years; and

16 “(D) may, for a subsequent willful failure
17 to fulfill an attestation required by this sub-
18 section, or a willful misrepresentation of a ma-
19 terial fact in a petition under this subsection,
20 permanently disqualify the employer from the
21 employment of H-2C workers.

22 “(j) FAILURE TO PAY WAGES OR REQUIRED BENE-
23 FITS.—

24 “(1) IN GENERAL.—If the Secretary of Agri-
25 culture finds, after notice and opportunity for a

1 hearing, that the employer has failed to provide the
2 benefits, wages, and working conditions that the em-
3 ployer has attested that it would provide under this
4 subsection, the Secretary shall require payment of
5 back wages, or such other required benefits, due any
6 United States workers or H-2C workers employed
7 by the employer.

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

10 “(A) shall be equal to the difference be-
11 tween the amount that should have been paid
12 and the amount that was paid to such workers;
13 and

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

16 “(k) MINIMUM WAGES, BENEFITS, AND WORKING
17 CONDITIONS.—

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

20 “(A) IN GENERAL.—Each employer seek-
21 ing to hire United States workers for the job
22 the H-2C workers will perform shall offer such
23 United States workers not less than the same
24 benefits, wages, and working conditions that the
25 employer will provide to the H-2C workers. No

1 job offer may impose on United States workers
2 any restrictions or obligations which will not be
3 imposed on H-2C workers.

4 “(B) INTERPRETATION.—Every interpreta-
5 tion and determination made under this section
6 or under any other law, regulation, or interpre-
7 tive provision regarding the nature, scope,
8 and timing of the provision of these and any
9 other benefits, wages, and other terms and con-
10 ditions of employment shall be made so that—

11 “(i) the services of workers to their
12 employers and the employment opportuni-
13 ties afforded to workers by the employers,
14 including those employment opportunities
15 that require United States workers or H-
16 2C workers to travel or relocate in order to
17 accept or perform employment—

18 “(I) mutually benefit such work-
19 ers, as well as their families, and em-
20 ployers; and

21 “(II) principally benefit neither
22 employer nor employee; and

23 “(ii) employment opportunities within
24 the United States benefit the United
25 States economy.

1 “(2) REQUIRED WAGES.—

2 “(A) IN GENERAL.—Each employer peti-
3 tioning for H–2C workers under this subsection
4 (other than in the case of workers who will per-
5 form agricultural labor or services consisting of
6 meat or poultry processing) will offer the H–2C
7 workers, during the period of authorized em-
8 ployment as H–2C workers, wages that are at
9 least the greatest of—

10 “(i) the applicable State or local min-
11 imum wage;

12 “(ii) 115 percent of the Federal min-
13 imum wage, or 150 percent of the Federal
14 minimum wage; or

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

17 “(B) SPECIAL RULES.—

18 “(i) ALTERNATE WAGE PAYMENT SYS-
19 TEMS.—An employer can utilize a piece
20 rate or other alternative wage payment
21 system so long as the employer guarantees
22 each worker a wage rate that equals or ex-
23 ceeds the amount required under subpara-
24 graph (A) for the total hours worked in
25 each pay period. Compensation from a

1 piece rate or other alternative wage pay-
2 ment system shall include time spent dur-
3 ing rest breaks, moving from job to job,
4 clean up, or any other nonproductive time,
5 provided that such time does not exceed 20
6 percent of the total hours in the work day.

7 “(ii) MEAT OR POULTRY PROC-
8 ESSING.—Each employer petitioning for
9 H-2C workers under this subsection who
10 will perform agricultural labor or services
11 consisting of meat or poultry processing
12 will offer the H-2C workers, during the
13 period of authorized employment as H-2C
14 workers, wages that are at least the great-
15 est of—

16 “(I) the applicable State or local
17 minimum wage;

18 “(II) 115 percent of the Federal
19 minimum wage;

20 “(III) the prevailing wage level
21 for the occupational classification in
22 the area of employment; or

23 “(IV) the actual wage level paid
24 by the employer to all other individ-
25 uals in the job.

1 “(3) EMPLOYMENT GUARANTEE.—

2 “(A) IN GENERAL.—

3 “(i) REQUIREMENT.—Each employer
4 petitioning for workers under this sub-
5 section shall guarantee to offer the H-2C
6 workers and United States workers per-
7 forming the same job employment for the
8 hourly equivalent of not less than 50 per-
9 cent of the work hours set forth in the
10 work contract.

11 “(ii) FAILURE TO MEET GUAR-
12 ANTEE.—If an employer affords the
13 United States workers or the H-2C work-
14 ers less employment than that required
15 under this subparagraph, the employer
16 shall pay such workers the amount which
17 the workers would have earned if the work-
18 ers had worked for the guaranteed number
19 of hours.

20 “(B) CALCULATION OF HOURS.—Any
21 hours which workers fail to work, up to a max-
22 imum of the number of hours specified in the
23 work contract for a work day, when the workers
24 have been offered an opportunity to do so, and
25 all hours of work actually performed (including

1 voluntary work in excess of the number of
2 hours specified in the work contract in a work
3 day) may be counted by the employer in calcu-
4 lating whether the period of guaranteed employ-
5 ment has been met.

6 “(C) LIMITATION.—If the workers aban-
7 don employment before the end of the work
8 contract period, or are terminated for cause,
9 the workers are not entitled to the 50 percent
10 guarantee described in subparagraph (A).

11 “(D) TERMINATION OF EMPLOYMENT.—

12 “(i) IN GENERAL.—If, before the expi-
13 ration of the period of employment speci-
14 fied in the work contract, the services of
15 the workers are no longer required due to
16 any form of natural disaster, including
17 flood, hurricane, freeze, earthquake, fire,
18 drought, plant or animal disease, pest in-
19 festation, regulatory action, or any other
20 reason beyond the control of the employer
21 before the employment guarantee in sub-
22 paragraph (A) is fulfilled, the employer
23 may terminate the workers’ employment.

1 “(ii) REQUIREMENTS.—If a worker’s
2 employment is terminated under clause (i),
3 the employer shall—

4 “(I) fulfill the employment guar-
5 antee in subparagraph (A) for the
6 work days that have elapsed during
7 the period beginning on the first work
8 day and ending on the date on which
9 such employment is terminated;

10 “(II) make efforts to transfer the
11 worker to other comparable employ-
12 ment acceptable to the worker; and

13 “(III) not later than 72 hours
14 after termination, notify the Secretary
15 of Agriculture of such termination
16 and stating the nature of the contract
17 impossibility.

18 “(l) NONDELEGATION.—The Department of Agri-
19 culture and the Department of Homeland Security shall
20 not delegate their investigatory, enforcement, or adminis-
21 trative functions relating to this section or section 218B
22 to other agencies or departments of the Federal Govern-
23 ment.

24 “(m) COMPLIANCE WITH BIO-SECURITY PROTO-
25 COLS.—Except in the case of an imminent threat to health

1 or safety, any personnel from a Federal agency or Federal
2 grantee seeking to determine the compliance of an em-
3 ployer with the requirements of this section or section
4 218B shall, when visiting such employer's place of employ-
5 ment, make their presence known to the employer and
6 sign-in in accordance with reasonable bio-security proto-
7 cols before proceeding to any other area of the place of
8 employment.

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

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

20 “(2) REQUIREMENT TO REMAIN OUTSIDE THE
21 UNITED STATES.—In the case of H-2C workers who
22 were employed in a job of a temporary or seasonal
23 nature whose maximum continuous period of author-
24 ized status as H-2C workers (including any exten-
25 sions) have expired, the aliens may not again be eli-

1 gible to be H-2C workers until they remain outside
2 the United States for a continuous period equal to
3 at least $\frac{1}{12}$ of the duration of their previous period
4 of authorized status as H-2C workers. For H-2C
5 workers who were employed in a job not of a tem-
6 porary or seasonal nature whose maximum contin-
7 uous period of authorized status as H-2C workers
8 (including any extensions) have expired, the aliens
9 may not again be eligible to be H-2C workers until
10 they remain outside the United States for a contin-
11 uous period equal to at least the lesser of $\frac{1}{12}$ of the
12 duration of their previous period of authorized sta-
13 tus as H-2C workers or 45 days.

14 “(3) EXCEPTIONS.—

15 “(A) The Secretary of Homeland Security
16 shall deduct absences from the United States
17 that take place during an H-2C worker’s period
18 of authorized status from the period that the
19 alien is required to remain outside the United
20 States under paragraph (2), if the alien or the
21 alien’s employer requests such a deduction, and
22 provides clear and convincing proof that the
23 alien qualifies for such a deduction. Such proof
24 shall consist of evidence such as arrival and de-

1 parture records, copies of tax returns, and
2 records of employment abroad.

3 “(B) There is no maximum continuous pe-
4 riod of authorized status as set forth in para-
5 graph (1) or a requirement to remain outside
6 the United States as set forth in paragraph (2)
7 for H-2C workers employed as a shepherd,
8 goatherder, in the range production of livestock,
9 or who return to the workers’ permanent resi-
10 dence outside the United States each day.

11 “(o) PERIOD OF ADMISSION.—

12 “(1) IN GENERAL.—In addition to the max-
13 imum continuous period of authorized status, work-
14 ers’ authorized period of admission shall include—

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

19 “(B) a period of not more than 14 days
20 after the conclusion of their authorized employ-
21 ment for the purpose of departure from the
22 United States or a period of not more than 30
23 days following the employment for the purpose
24 of seeking a subsequent offer of employment by
25 an employer pursuant to a petition under this

1 section (or pursuant to at-will employment
2 under section 218B during such times as that
3 section is in effect) if they have not reached
4 their maximum continuous period of authorized
5 employment under subsection (n) (subject to
6 the exceptions in subsection (n)(3)) unless they
7 accept subsequent offers of employment as H-
8 2C workers or are otherwise lawfully present.

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

23 “(p) ABANDONMENT OF EMPLOYMENT.—

24 “(1) REPORT BY EMPLOYER.—Not later than
25 72 hours after an employer learns of the abandon-

1 ment of employment by H-2C workers before the
2 conclusion of their work contracts, the employer
3 shall notify the Secretary of Agriculture and the
4 Secretary of Homeland Security of such abandon-
5 ment.

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

10 “(q) CHANGE TO H-2C STATUS.—

11 “(1) WAIVER.—In the case of an alien de-
12 scribed in paragraph (4), the Secretary of Homeland
13 Security shall waive the ground of inadmissibility
14 under paragraphs (6)(C) and (9)(B) of section
15 212(a) with respect to conduct that occurred prior
16 to the alien first receiving status as an H-2C work-
17 er, solely in order to provide the alien with such sta-
18 tus.

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

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

23 “(B) performed agricultural labor or serv-
24 ices in the United States for at least 5.75 hours

1 during each of at least 180 days during the 2-
2 year period ending on October 23, 2017; and

3 “(C) has departed the United States with-
4 in 180 days of the issuance of final rules car-
5 rying out the AG Act, and remains outside the
6 United States.

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

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

14 “(2) WITHHOLDING OF WAGES; PAYMENT INTO
15 THE TRUST FUND.—

16 “(A) IN GENERAL.—Notwithstanding the
17 Fair Labor Standards Act of 1938 (29 U.S.C.
18 201 et seq.) and State and local wage laws, all
19 employers of H–2C workers shall withhold from
20 the wages of all H–2C workers other than those
21 employed as shepherders, goatherders, in the
22 range production of livestock, or who return to
23 the their permanent residence outside the
24 United States each day, an amount equivalent
25 to 10 percent of the gross wages of each worker

1 in each pay period and, on behalf of each work-
2 er, transfer such withheld amount to the Trust
3 Fund.

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

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

22 “(A) applies to the Secretary of Homeland
23 Security (or the designee of the Secretary) for
24 payment within 120 days of the expiration of
25 the alien’s last authorized stay in the United

1 States as an H-2C worker, for which they seek
2 amounts from the Trust Fund;

3 “(B) establishes to the satisfaction of the
4 Secretary of Homeland Security that they have
5 complied with the terms and conditions of the
6 H-2C program;

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

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

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

21 “(5) LAW ENFORCEMENT.—Notwithstanding
22 any other provision of law, amounts paid into the
23 Trust Fund under paragraph (2), and interest
24 earned thereon, that are not needed to carry out
25 paragraphs (3) and (4) shall, to the extent provided

1 in advance in appropriations Acts, be made available
2 until expended without fiscal year limitation to the
3 Secretary of Homeland Security to apprehend, de-
4 tain, and remove aliens inadmissible to or deportable
5 from the United States.

6 “(6) INVESTMENT OF TRUST FUND.—

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

16 “(B) CREDITS TO TRUST FUND.—The in-
17 terest on, and the proceeds from the sale or re-
18 demption of, any obligations held in the Trust
19 Fund shall be credited to and form a part of
20 the Trust Fund.

21 “(C) REPORT TO CONGRESS.—It shall be
22 the duty of the Secretary of the Treasury to
23 hold the Trust Fund, and (after consultation
24 with the Secretary of Homeland Security) to re-
25 port to the Congress each year on the financial

1 condition and the results of the operations of
2 the Trust Fund during the preceding fiscal year
3 and on its expected condition and operations
4 during the next fiscal year. Such report shall be
5 printed as both a House and a Senate docu-
6 ment of the session of the Congress in which
7 the report is made.

8 “(s) PROCEDURES FOR SPECIAL PROCEDURES IN-
9 DUSTRIES.—

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

16 “(A) may include an itinerary; and

17 “(B) may be subsequently amended at any
18 time by the employer, after notice to the Sec-
19 retary.

20 “(2) WAGES.—Notwithstanding subsection
21 (k)(2), the Secretary of Agriculture may establish
22 monthly, weekly, or biweekly wage rates for occupa-
23 tions in a Special Procedures Industry for a State
24 or other geographic area. For an employer in a Spe-
25 cial Procedures Industry that typically pays a

1 monthly wage, the Secretary shall require that H-
2 2C workers be paid not less frequently than monthly
3 and at a rate no less than the legally required
4 monthly cash wage in an amount as re-determined
5 annually by the Secretary.

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

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

15 **“SEC. 218B. AT-WILL EMPLOYMENT OF TEMPORARY H-2C**
16 **WORKERS.**

17 “(a) IN GENERAL.—An employer that is designated
18 as a ‘registered agricultural employer’ pursuant to sub-
19 section (c) may employ aliens as H-2C workers. However,
20 an H-2C worker may only perform labor or services pur-
21 suant to this section if the worker is already lawfully
22 present in the United States as an H-2C worker, having
23 been admitted or otherwise provided nonimmigrant status
24 pursuant to section 218A, and has completed the period
25 of employment specified in the job offer the worker accept-

1 ed pursuant to section 218A or the employer has termi-
2 nated the worker's employment pursuant to section
3 218A(k)(3)(D)(i). An H-2C worker who abandons the em-
4 ployment which was the basis for admission or status pur-
5 suant to section 218A may not perform labor or services
6 pursuant to this section until the worker has returned to
7 their home country, been readmitted as an H-2C worker
8 pursuant to section 218A and has completed the period
9 of employment specified in the job offer the worker accept-
10 ed pursuant to section 218A or the employer has termi-
11 nated the worker's employment pursuant to section
12 218A(k)(3)(D)(i).

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

20 “(c) REGISTERED AGRICULTURAL EMPLOYERS.—
21 The Secretary of Agriculture shall establish a process to
22 accept and adjudicate applications by employers to be des-
23 ignated as registered agricultural employers. The Sec-
24 retary shall require, as a condition of approving the appli-
25 cation, the payment of a fee to recover the reasonable cost

1 of processing the application. The Secretary shall des-
2 ignate an employer as a registered agricultural employer
3 if the Secretary determines that the employer—

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

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

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

13 “(4) agrees to, if employing H-2C workers pur-
14 suant to this section, fulfill the attestations con-
15 tained in section 218A(b) as if it had submitted a
16 petition making those attestations (excluding sub-
17 section (k)(3) of such section) and not to employ H-
18 2C workers who have reached their maximum con-
19 tinuous period of authorized status under section
20 218A(n) (subject to the exceptions contained in sec-
21 tion 218A(n)(3)) or if the workers have complied
22 with the terms of section 218A(n)(2); and

23 “(5) agrees to notify the Secretary of Agri-
24 culture and the Secretary of Homeland Security
25 each time it employs H-2C workers pursuant to this

1 section within 72 hours of the commencement of em-
2 ployment and within 72 hours of the cessation of
3 employment.

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

13 “(e) ENFORCEMENT.—The Secretary of Agriculture
14 shall be responsible for conducting investigations and au-
15 dits, including random audits, of employers to ensure com-
16 pliance with the requirements of this section. All monetary
17 fines levied against employers shall be paid to the Depart-
18 ment of Agriculture and used to enhance the Department
19 of Agriculture’s investigatory and audit abilities to ensure
20 compliance by employers with their obligations under this
21 section and section 218A. The Secretary of Agriculture’s
22 enforcement powers and an employer’s liability described
23 in subsections (i) through (j) of section 218A are applica-
24 ble to employers employing H-2C workers pursuant to
25 this section.”

1 (c) PROHIBITION ON FAMILY MEMBERS.—Section
2 101(a)(15)(H) of the Immigration and Nationality Act (8
3 U.S.C. 1101(a)(15)(H)) is amended by striking “him;” at
4 the end and inserting “him, except that no spouse or child
5 may be admitted under clause (ii)(c);”.

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

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

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

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

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

15 “(i) except as otherwise provided under
16 this subparagraph, may not exceed 40,000 for
17 aliens issued visas or otherwise provided non-
18 immigrant status under such section for the
19 purpose of performing agricultural labor or
20 services consisting or meat or poultry proc-
21 essing;

22 “(ii) except as otherwise provided under
23 this subparagraph, may not exceed 410,000 for
24 aliens issued visas or otherwise provided non-
25 immigrant status under such section for the

1 purpose of performing agricultural labor or
2 services other than agricultural labor or services
3 consisting of meat or poultry processing;

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

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

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

21 “(I) who—

22 “(aa) was physically present in
23 the United States on October 23,
24 2017; and

1 “(bb) performed agricultural
2 labor or services in the United States
3 for at least 5.75 hours during each of
4 at least 180 days during the 2-year
5 period ending on October 23, 2017; or
6 “(II) who has previously been issued a
7 visa or otherwise provided nonimmigrant
8 status pursuant to subclause (a) or (b) of
9 section 101(a)(15)(H)(ii), but only to the
10 extent that the alien is being petitioned for
11 by an employer pursuant to section
12 218A(b) who previously employed the alien
13 pursuant to subclause (a) or (b) of section
14 101(a)(15)(H)(ii) beginning no later than
15 October 23, 2017.”.

16 (e) INTENT.—Section 214(b) of the Immigration and
17 Nationality Act (8 U.S.C. 1184(b)) is amended by striking
18 “section 101(a)(15)(H)(i) except subclause (b1) of such
19 section” and inserting “clause (i), except subclause (b1),
20 or (ii)(c) of section 101(a)(15)(H)”.

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

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

1 **SEC. 2104. MEDIATION.**

2 Nonimmigrants having status under section
3 101(a)(15)(H)(ii)(c) of the Immigration and Nationality
4 Act (8 U.S.C. 1101(a)(15)(H)(ii)(c)) may not bring civil
5 actions for damages against their employers, nor may any
6 other attorneys or individuals bring civil actions for dam-
7 ages on behalf of such nonimmigrants against the non-
8 immigrants' employers, unless at least 90 days prior to
9 bringing an action a request has been made to the Federal
10 Mediation and Conciliation Service to assist the parties
11 in reaching a satisfactory resolution of all issues involving
12 all parties to the dispute and mediation has been at-
13 tempted.

14 **SEC. 2105. MIGRANT AND SEASONAL AGRICULTURAL**
15 **WORKER PROTECTION.**

16 Section 3(8)(B)(ii) of the Migrant and Seasonal Agri-
17 cultural Worker Protection Act (29 U.S.C.
18 1802(8)(B)(ii)) is amended by striking “under sections
19 101(a)(15)(H)(ii)(a) and 214(c) of the Immigration and
20 Nationality Act.” and inserting “under subclauses (a) and
21 (c) of section 101(a)(15)(H)(ii), and section 214(c), of the
22 Immigration and Nationality Act.”.

23 **SEC. 2106. BINDING ARBITRATION.**

24 (a) **APPLICABILITY.**—H-2C workers may, as a condi-
25 tion of employment with an employer, be subject to man-
26 datory binding arbitration and mediation of any grievance

1 relating to the employment relationship. An employer shall
2 provide any such workers with notice of such condition of
3 employment at the time it makes job offers.

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

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

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

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

1 **SEC. 2107. ELIGIBILITY FOR HEALTH CARE SUBSIDIES AND**
2 **REFUNDABLE TAX CREDITS; REQUIRED**
3 **HEALTH INSURANCE COVERAGE.**

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

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

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

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

24 (c) REQUIREMENT REGARDING HEALTH INSURANCE
25 COVERAGE.—Notwithstanding the Fair Labor Standards
26 Act of 1938 (29 U.S.C. 201 et seq.) and State and local

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

16 **SEC. 2108. STUDY OF ESTABLISHMENT OF AN AGRICUL-**
17 **TURAL WORKER EMPLOYMENT POOL.**

18 (a) STUDY.—The Secretary of Agriculture shall con-
19 duct a study on the feasibility of establishing an agricul-
20 tural worker employment pool and an electronic Internet-
21 based portal to assist H-2C workers (as such term is de-
22 fined in section 218A of the Immigration and Nationality
23 Act), prospective H-2C workers, and employers to identify
24 job opportunities in the H-2C program and willing, able
25 and available workers for the program, respectively.

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

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

4 (2) potential funding sources or mechanisms to
5 support the creation and maintenance of the pool
6 and portal;

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

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

13 (5) other beneficial uses for such a pool and
14 portal.

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

21 **SEC. 2109. PREVAILING WAGE.**

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

24 (1) in paragraph (1), by inserting after “sub-
25 sections (a)(5)(A), (n)(1)(A)(i)(II), and

1 (t)(1)(A)(i)(II)” the following: “of this section and
2 section 218A(k)(2)(B)(ii)”;

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

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

8 (a) **EFFECTIVE DATES; REGULATIONS.**—

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

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

23 (A) it becomes unlawful for all persons or
24 other entities to hire, or to recruit or refer for
25 a fee, for employment in the United States an

1 individual (as provided in section 274A(a)(1) of
2 the Immigration and Nationality Act (8 U.S.C.
3 1324a(a)(1))) without participating in the E-
4 Verify Program described in section 403(a) of
5 the Illegal Immigration Reform and Immigrant
6 Responsibility Act of 1996 (8 U.S.C. 1324a
7 note) or an employment eligibility verification
8 system patterned on such program's verification
9 system; and

10 (B) the E-Verify Program responds to in-
11 quires made by such persons or entities de-
12 scribed in subparagraph (A) by providing con-
13 firmation, tentative nonconfirmation, and final
14 nonconfirmation of an individual's identity and
15 employment eligibility in such a way that indi-
16 cates whether the individual is eligible to be em-
17 ployed in all occupations or only to perform ag-
18 ricultural labor or services under sections 218A
19 and 219B of the Immigration and Nationality
20 Act, as added by section 2103 of this title, and
21 if the latter, whether the nonimmigrant would
22 be in compliance with their maximum contin-
23 uous period of authorized status and require-
24 ment to remain outside the United States under
25 section 218A(n) of such Act, as added by sec-

1 tion 2103(a) of this title, and on what date the
2 alien would cease to be in compliance with their
3 maximum continuous period of authorized sta-
4 tus.

5 (3) REGULATIONS.—Notwithstanding any other
6 provision of law, not later than the first day of the
7 seventh month that begins after the date of the en-
8 actment of this Act, the Secretary of Homeland Se-
9 curity shall issue final rules, on an interim or other
10 basis, to carry out this title.

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

13 (1) APPLICATION OF EXISTING REGULA-
14 TIONS.—The Department of Labor H-2A program
15 regulations published at 73 Federal Register 77110
16 et seq. (2008) shall be in force for all petitions ap-
17 proved under sections 101(a)(15)(H)(ii)(a) and 218
18 of the Immigration and Nationality Act (8 U.S.C.
19 1101(a)(15)(h)(ii)(a); 8 U.S.C. 1188) beginning on
20 the date of the enactment of this Act, except that
21 the following, as in effect on such date, shall remain
22 in effect, and, to the extent that any rule published
23 at 73 Federal Register 77110 et seq. is in conflict,
24 such rule shall have no force and effect:

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

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

7 (C) Paragraphs (c), (d) and (e) of section
8 655.210 of title 20, Code of Federal Regula-
9 tions.

10 (D) Section 655.230 of title 20, Code of
11 Federal Regulations.

12 (E) Section 655.235 of title 20, Code of
13 Federal Regulations.

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

21 (2) SUNSET.—Beginning on the date on which
22 employers can file petitions pursuant to section
23 218A of the Immigration and Nationality Act, as
24 added by section 2103(a) of this title, no new peti-
25 tions under sections 101(a)(15)(H)(ii)(a) and 218 of

1 the Immigration and Nationality Act (8 U.S.C.
2 1101(a)(15)(H)(ii)(a); 8 U.S.C. 1188) shall be ac-
3 cepted.

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

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

18 (b) DEFINITION.—As used in this section, the term
19 “H–2C worker” means a nonimmigrant described in sec-
20 tion 218A(a)(4) of the Immigration and Nationality Act,
21 as added by section 2103(a) of this title.

22 **TITLE III—VISA SECURITY**

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

24 (a) IN GENERAL.—Section 222(g) of the Immigra-
25 tion and Nationality Act (8 U.S.C. 1202(g)) is amended—

1 (1) in paragraph (1)—

2 (A) by striking “Attorney General” and in-
3 serting “Secretary”; and

4 (B) by inserting “and any other non-
5 immigrant visa issued by the United States that
6 is in the possession of the alien” after “such
7 visa”; and

8 (2) in paragraph (2)(A), by striking “(other
9 than the visa described in paragraph (1)) issued in
10 a consular office located in the country of the alien’s
11 nationality” and inserting “(other than a visa de-
12 scribed in paragraph (1)) issued in a consular office
13 located in the country of the alien’s nationality or
14 foreign residence”.

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

19 **SEC. 3102. VISA INFORMATION SHARING.**

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

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

24 (2) in paragraph (2), in the matter preceding
25 subparagraph (A), by striking “and on the basis of

1 reciprocity” and all that follows and inserting the
2 following “may provide to a foreign government in-
3 formation in a Department of State computerized
4 visa database and, when necessary and appropriate,
5 other records covered by this section related to infor-
6 mation in such database—”;

7 (3) in paragraph (2)(A)—

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

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

12 (C) by striking “illicit weapons; or” and
13 inserting “illicit weapons, or (ii) determining a
14 person’s deportability or eligibility for a visa,
15 admission, or other immigration benefit;”;

16 (4) in paragraph (2)(B)—

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

19 (B) by striking “in the database” and in-
20 sserting “such database”;

21 (C) by striking “for the purposes” and in-
22 sserting “for one of the purposes”; and

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

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

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

8 (b) **EFFECTIVE DATE.**—The amendments made by
9 subsection (a) shall take effect 60 days after the date of
10 the enactment of this Act.

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

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

14 (1) in paragraph (1)(C), by inserting “, in con-
15 sultation with the Secretary of Homeland Security,”
16 after “if the Secretary”;

17 (2) in paragraph (1)(C)(i), by inserting “,
18 where such national interest shall not include facili-
19 tation of travel of foreign nationals to the United
20 States, reduction of visa application processing
21 times, or the allocation of consular resources” before
22 the semicolon at the end; and

23 (3) in paragraph (2)—

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

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

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

4 “(G) is an individual—

5 “(i) determined to be in a class of
6 aliens determined by the Secretary of
7 Homeland Security to be threats to na-
8 tional security;

9 “(ii) identified by the Secretary of
10 Homeland Security as a person of concern;

11 or

12 “(iii) applying for a visa in a visa cat-
13 egory with respect to which the Secretary
14 of Homeland Security has determined that
15 a waiver of the visa interview would create
16 a high risk of degradation of visa program
17 integrity.”.

18 **SEC. 3104. AUTHORIZING THE DEPARTMENT OF STATE TO**
19 **NOT INTERVIEW CERTAIN INELIGIBLE VISA**
20 **APPLICANTS.**

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

1 (b) GUIDANCE.—Not later than 90 days after the
2 date of the enactment of this Act, the Secretary of State
3 shall issue guidance to consular officers on the standards
4 and processes for implementing the authority to deny visa
5 applications without interview in cases where the alien is
6 determined by the Secretary of State to be ineligible for
7 a visa based upon review of the application.

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

12 (1) the number of such denials; and

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

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

15 (a) AUTHORITY OF THE SECRETARY OF HOMELAND
16 SECURITY AND THE SECRETARY OF STATE.—

17 (1) IN GENERAL.—Section 428 of the Home-
18 land Security Act of 2002 (6 U.S.C. 236) is amend-
19 ed by striking subsections (b) and (c) and inserting
20 the following:

21 “(b) AUTHORITY OF THE SECRETARY OF HOMELAND
22 SECURITY.—

23 “(1) IN GENERAL.—Notwithstanding section
24 104(a) of the Immigration and Nationality Act (8
25 U.S.C. 1104(a)) or any other provision of law, and

1 except as provided in subsection (c) and except for
2 the authority of the Secretary of State under sub-
3 paragraphs (A) and (G) of section 101(a)(15) of the
4 Immigration and Nationality Act (8 U.S.C.
5 1101(a)(15)), the Secretary—

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

14 “(B) may refuse or revoke any visa to any
15 alien or class of aliens if the Secretary, or des-
16 ignee, determines that such refusal or revoca-
17 tion is necessary or advisable in the security or
18 foreign policy interests of the United States.

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

21 “(A) shall take effect immediately; and

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

24 “(3) JUDICIAL REVIEW.—Notwithstanding any
25 other provision of law, including section 2241 of title

1 28, United States Code, or any other habeas corpus
2 provision, and sections 1361 and 1651 of such title,
3 no court shall have jurisdiction to review a decision
4 by the Secretary of Homeland Security to refuse or
5 revoke a visa, and no court shall have jurisdiction to
6 hear any claim arising from, or any challenge to,
7 such a refusal or revocation.

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

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

14 “(2) LIMITATION.—No decision by the Sec-
15 retary of State to approve a visa may override a de-
16 cision by the Secretary of Homeland Security under
17 subsection (b).”.

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

1 (3) CONFORMING AMENDMENT.—Section
2 237(a)(1)(B) of the Immigration and Nationality
3 Act (8 U.S.C. 1227(a)(1)(B)) is amended by strik-
4 ing “under section 221(i)”.

5 (4) EFFECTIVE DATE.—The amendment made
6 by paragraph (1) shall take effect on the date of the
7 enactment of this Act and shall apply to visa refus-
8 als and revocations occurring before, on, or after
9 such date.

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

13 (1) by striking “subsection” and inserting “sec-
14 tion”; and

15 (2) by striking “consular office” and inserting
16 “consular officer”.

17 **SEC. 3106. PETITION AND APPLICATION PROCESSING FOR**
18 **VISAS AND IMMIGRATION BENEFITS.**

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

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

23 “(a) SIGNATURE REQUIREMENT.—

24 “(1) IN GENERAL.—No petition or application
25 filed with the Secretary of Homeland Security or

1 with a consular officer relating to the issuance of a
2 visa or to the admission of an alien to the United
3 States as an immigrant or as a nonimmigrant may
4 be approved unless the petition or application is
5 signed by each party required to sign such petition
6 or application.

7 “(2) APPLICATIONS FOR IMMIGRANT VISAS.—
8 Except as may be otherwise prescribed by regula-
9 tions, each application for an immigrant visa shall
10 be signed by the applicant in the presence of the
11 consular officer, and verified by the oath of the ap-
12 plicant administered by the consular officer.

13 “(b) COMPLETION REQUIREMENT.—No petition or
14 application filed with the Secretary of Homeland Security
15 or with a consular officer relating to the issuance of a visa
16 or to the admission of an alien to the United States as
17 an immigrant or as a nonimmigrant may be approved un-
18 less each applicable portion of the petition or application
19 has been completed.

20 “(c) TRANSLATION REQUIREMENT.—No document
21 submitted in support of a petition or application for a non-
22 immigrant or immigrant visa may be accepted by a con-
23 sular officer if such document contains information in a
24 foreign language, unless such document is accompanied by
25 a full English translation, which the translator has cer-

1 tified as complete and accurate, and by the translator’s
2 certification that he or she is competent to translate from
3 the foreign language into English.

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

16 (b) CLERICAL AMENDMENT.—The table of contents
17 for the Immigration and Nationality Act (8 U.S.C. 1101
18 et seq.) is amended by inserting after the item relating
19 to section 211 the following:

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

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

23 **SEC. 3107. FRAUD PREVENTION.**

24 (a) PROSPECTIVE ANALYTICS TECHNOLOGY.—

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

12 (2) IMPLEMENTATION OF PLAN.—Not later
13 than 1 year after the date of the submission of the
14 plan under paragraph (1), the Secretary of Home-
15 land Security shall begin implementation of the plan.

16 (b) BENEFITS FRAUD ASSESSMENT.—

17 (1) IN GENERAL.—The Secretary of Homeland
18 Security, acting through the Fraud Detection and
19 Nationality Security Directorate, shall complete a
20 benefit fraud assessment by fiscal year 2021 on each
21 of the following:

22 (A) Petitions by VAWA self-petitioners (as
23 such term is defined in section 101(a)(51) of
24 the Immigration and Nationality Act (8 U.S.C.
25 1101(a)(51)).

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

5 (C) Applications for visas or status under
6 section 101(a)(27)(J) of such Act (8 U.S.C.
7 1101(a)(27)(J)).

8 (D) Applications for visas or status under
9 section 101(a)(15)(U) of such Act (8 U.S.C.
10 1101(a)(15)(U)).

11 (E) Petitions for visas or status under sec-
12 tion 101(a)(27)(C) of such Act (8 U.S.C.
13 1101(a)(27)(C)).

14 (F) Applications for asylum under section
15 208 of such Act (8 U.S.C. 1158).

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

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

20 (2) REPORTING ON FINDINGS.—Not later than
21 30 days after the completion of each benefit fraud
22 assessment under paragraph (1), the Secretary shall
23 submit to the Committee on the Judiciary of the
24 House of Representatives and the Committee on the
25 Judiciary of the Senate such assessment and rec-

1 ommendations on how to reduce the occurrence of
2 instances of fraud identified by the assessment.

3 **SEC. 3108. VISA INELIGIBILITY FOR SPOUSES AND CHIL-**
4 **DREN OF DRUG TRAFFICKERS.**

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

7 (1) in subparagraph (C)(ii), by striking “is the
8 spouse, son, or daughter” and inserting “is or has
9 been the spouse, son, or daughter”; and

10 (2) in subparagraph (H)(ii), by striking “is the
11 spouse, son, or daughter” and inserting “is or has
12 been the spouse, son, or daughter”.

13 **SEC. 3109. DNA TESTING.**

14 Section 222(b) of the Immigration and Nationality
15 Act (8 U.S.C. 1202(b)) is amended by inserting “Where
16 considered necessary, by the consular officer or immigra-
17 tion official, to establish family relationships, the immi-
18 grant shall provide DNA evidence of such a relationship
19 in accordance with procedures established for submitting
20 such evidence. The Secretary and the Secretary of State
21 may, in consultation, issue regulations to require DNA
22 evidence to establish family relationship, from applicants
23 for certain visa classifications.” after “and a certified copy
24 of all other records or documents concerning him or his
25 case which may be required by the consular officer.”.

1 **SEC. 3110. ACCESS TO NCIC CRIMINAL HISTORY DATABASE**
2 **FOR DIPLOMATIC VISAS.**

3 Subsection (a) of article V of section 217 of the Na-
4 tional Crime Prevention and Privacy Compact Act of 1998
5 (34 U.S.C. 40316(V)(a)) is amended by inserting “, ex-
6 cept for diplomatic visa applications for which only full
7 biographical information is required” before the period at
8 the end.

9 **SEC. 3111. ELIMINATION OF SIGNED PHOTOGRAPH RE-**
10 **QUIREMENT FOR VISA APPLICATIONS.**

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

17 **SEC. 3112. ADDITIONAL FRAUD DETECTION AND PREVEN-**
18 **TION.**

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

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

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

25 “(i) to increase the number of diplo-
26 matic security personnel assigned exclu-

1 sively or primarily to the function of pre-
2 venting and detecting visa fraud;” and
3 (3) in clause (ii), by striking “, including pri-
4 marily fraud by applicants for visas described in
5 subparagraph (H)(i), (H)(ii), or (L) of section
6 101(a)(15)”.

7 **DIVISION B—INTERIOR**
8 **IMMIGRATION ENFORCEMENT**
9 **TITLE I—LEGAL WORKFORCE**
10 **ACT**

11 **SEC. 1101. SHORT TITLE.**

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

13 **SEC. 1102. EMPLOYMENT ELIGIBILITY VERIFICATION**
14 **PROCESS.**

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

18 “(b) EMPLOYMENT ELIGIBILITY VERIFICATION
19 PROCESS.—

20 “(1) NEW HIRES, RECRUITMENT, AND REFER-
21 RAL.—The requirements referred to in paragraphs
22 (1)(B) and (3) of subsection (a) are, in the case of
23 a person or other entity hiring, recruiting, or refer-
24 ring an individual for employment in the United
25 States, the following:

1 “(A) ATTESTATION AFTER EXAMINATION
2 OF DOCUMENTATION.—

3 “(i) ATTESTATION.—During the
4 verification period (as defined in subpara-
5 graph (E)), the person or entity shall at-
6 test, under penalty of perjury and on a
7 form, including electronic and telephonic
8 formats, designated or established by the
9 Secretary by regulation not later than 6
10 months after the date of the enactment of
11 the Legal Workforce Act, that it has
12 verified that the individual is not an unau-
13 thorized alien by—

14 “(I) obtaining from the indi-
15 vidual the individual’s social security
16 account number or United States
17 passport number and recording the
18 number on the form (if the individual
19 claims to have been issued such a
20 number), and, if the individual does
21 not attest to United States nationality
22 under subparagraph (B), obtaining
23 such identification or authorization
24 number established by the Depart-
25 ment of Homeland Security for the

1 alien as the Secretary of Homeland
2 Security may specify, and recording
3 such number on the form; and

4 “(II) examining—

5 “(aa) a document relating to
6 the individual presenting it de-
7 scribed in clause (ii); or

8 “(bb) a document relating to
9 the individual presenting it de-
10 scribed in clause (iii) and a docu-
11 ment relating to the individual
12 presenting it described in clause
13 (iv).

14 “(ii) DOCUMENTS EVIDENCING EM-
15 PLOYMENT AUTHORIZATION AND ESTAB-
16 LISHING IDENTITY.—A document de-
17 scribed in this subparagraph is an individ-
18 ual’s—

19 “(I) unexpired United States
20 passport or passport card;

21 “(II) unexpired permanent resi-
22 dent card that contains a photograph;

23 “(III) unexpired employment au-
24 thorization card that contains a pho-
25 tograph;

1 “(IV) in the case of a non-
2 immigrant alien authorized to work
3 for a specific employer incident to sta-
4 tus, a foreign passport with Form I-
5 94 or Form I-94A, or other docu-
6 mentation as designated by the Sec-
7 retary specifying the alien’s non-
8 immigrant status as long as the pe-
9 riod of status has not yet expired and
10 the proposed employment is not in
11 conflict with any restrictions or limita-
12 tions identified in the documentation;

13 “(V) passport from the Fed-
14 erated States of Micronesia (FSM) or
15 the Republic of the Marshall Islands
16 (RMI) with Form I-94 or Form I-
17 94A, or other documentation as des-
18 ignated by the Secretary, indicating
19 nonimmigrant admission under the
20 Compact of Free Association Between
21 the United States and the FSM or
22 RMI; or

23 “(VI) other document designated
24 by the Secretary of Homeland Secu-
25 rity, if the document—

1 “(aa) contains a photograph
2 of the individual and biometric
3 identification data from the indi-
4 vidual and such other personal
5 identifying information relating
6 to the individual as the Secretary
7 of Homeland Security finds, by
8 regulation, sufficient for purposes
9 of this clause;

10 “(bb) is evidence of author-
11 ization of employment in the
12 United States; and

13 “(cc) contains security fea-
14 tures to make it resistant to tam-
15 pering, counterfeiting, and fraud-
16 ulent use.

17 “(iii) DOCUMENTS EVIDENCING EM-
18 PLOYMENT AUTHORIZATION.—A document
19 described in this subparagraph is an indi-
20 vidual’s social security account number
21 card (other than such a card which speci-
22 fies on the face that the issuance of the
23 card does not authorize employment in the
24 United States).

1 “(iv) DOCUMENTS ESTABLISHING
2 IDENTITY OF INDIVIDUAL.—A document
3 described in this subparagraph is—

4 “(I) an individual’s unexpired
5 driver’s license or identification card if
6 it was issued by a State or American
7 Samoa and contains a photograph and
8 information such as name, date of
9 birth, gender, height, eye color, and
10 address;

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

13 “(III) an individual’s unexpired
14 Native American tribal identification
15 document issued by a tribal entity rec-
16 ognized by the Bureau of Indian Af-
17 fairs; or

18 “(IV) in the case of an individual
19 under 18 years of age, a parent or
20 legal guardian’s attestation under
21 penalty of law as to the identity and
22 age of the individual.

23 “(v) AUTHORITY TO PROHIBIT USE OF
24 CERTAIN DOCUMENTS.—If the Secretary of
25 Homeland Security finds, by regulation,

1 that any document described in clause (i),
2 (ii), or (iii) as establishing employment au-
3 thorization or identity does not reliably es-
4 tablish such authorization or identity or is
5 being used fraudulently to an unacceptable
6 degree, the Secretary may prohibit or place
7 conditions on its use for purposes of this
8 paragraph.

9 “(vi) SIGNATURE.—Such attestation
10 may be manifested by either a handwritten
11 or electronic signature.

12 “(B) INDIVIDUAL ATTESTATION OF EM-
13 PLOYMENT AUTHORIZATION.—During the
14 verification period (as defined in subparagraph
15 (E)), the individual shall attest, under penalty
16 of perjury on the form designated or established
17 for purposes of subparagraph (A), that the indi-
18 vidual is a citizen or national of the United
19 States, an alien lawfully admitted for perma-
20 nent residence, or an alien who is authorized
21 under this Act or by the Secretary of Homeland
22 Security to be hired, recruited, or referred for
23 such employment. Such attestation may be
24 manifested by either a handwritten or electronic
25 signature. The individual shall also provide that

1 individual's social security account number or
2 United States passport number (if the indi-
3 vidual claims to have been issued such a num-
4 ber), and, if the individual does not attest to
5 United States nationality under this subpara-
6 graph, such identification or authorization num-
7 ber established by the Department of Homeland
8 Security for the alien as the Secretary may
9 specify.

10 “(C) RETENTION OF VERIFICATION FORM
11 AND VERIFICATION.—

12 “(i) IN GENERAL.—After completion
13 of such form in accordance with subpara-
14 graphs (A) and (B), the person or entity
15 shall—

16 “(I) retain a paper, microfiche,
17 microfilm, or electronic version of the
18 form and make it available for inspec-
19 tion by officers of the Department of
20 Homeland Security, the Department
21 of Justice, or the Department of
22 Labor during a period beginning on
23 the date of the recruiting or referral
24 of the individual, or, in the case of the
25 hiring of an individual, the date on

1 which the verification is completed,
2 and ending—

3 “(aa) in the case of the re-
4 recruiting or referral of an indi-
5 vidual, 3 years after the date of
6 the recruiting or referral; and

7 “(bb) in the case of the hir-
8 ing of an individual, the later of
9 3 years after the date the
10 verification is completed or one
11 year after the date the individ-
12 ual’s employment is terminated;
13 and

14 “(II) during the verification pe-
15 riod (as defined in subparagraph (E)),
16 make an inquiry, as provided in sub-
17 section (d), using the verification sys-
18 tem to seek verification of the identity
19 and employment eligibility of an indi-
20 vidual.

21 “(ii) CONFIRMATION.—

22 “(I) CONFIRMATION RE-
23 CEIVED.—If the person or other entity
24 receives an appropriate confirmation
25 of an individual’s identity and work

1 eligibility under the verification sys-
2 tem within the time period specified,
3 the person or entity shall record on
4 the form an appropriate code that is
5 provided under the system and that
6 indicates a final confirmation of such
7 identity and work eligibility of the in-
8 dividual.

9 “(II) TENTATIVE NONCONFIRMA-
10 TION RECEIVED.—If the person or
11 other entity receives a tentative non-
12 confirmation of an individual’s iden-
13 tity or work eligibility under the
14 verification system within the time pe-
15 riod specified, the person or entity
16 shall so inform the individual for
17 whom the verification is sought. If the
18 individual does not contest the non-
19 confirmation within the time period
20 specified, the nonconfirmation shall be
21 considered final. The person or entity
22 shall then record on the form an ap-
23 propriate code which has been pro-
24 vided under the system to indicate a
25 final nonconfirmation. If the indi-

1 vidual does contest the nonconfirma-
2 tion, the individual shall utilize the
3 process for secondary verification pro-
4 vided under subsection (d). The non-
5 confirmation will remain tentative
6 until a final confirmation or noncon-
7 firmation is provided by the
8 verification system within the time pe-
9 riod specified. In no case shall an em-
10 ployer terminate employment of an in-
11 dividual because of a failure of the in-
12 dividual to have identity and work eli-
13 gibility confirmed under this section
14 until a nonconfirmation becomes final.
15 Nothing in this clause shall apply to a
16 termination of employment for any
17 reason other than because of such a
18 failure. In no case shall an employer
19 rescind the offer of employment to an
20 individual because of a failure of the
21 individual to have identity and work
22 eligibility confirmed under this sub-
23 section until a nonconfirmation be-
24 comes final. Nothing in this subclause
25 shall apply to a rescission of the offer

1 of employment for any reason other
2 than because of such a failure.

3 “(III) FINAL CONFIRMATION OR
4 NONCONFIRMATION RECEIVED.—If a
5 final confirmation or nonconfirmation
6 is provided by the verification system
7 regarding an individual, the person or
8 entity shall record on the form an ap-
9 propriate code that is provided under
10 the system and that indicates a con-
11 firmation or nonconfirmation of iden-
12 tity and work eligibility of the indi-
13 vidual.

14 “(IV) EXTENSION OF TIME.—If
15 the person or other entity in good
16 faith attempts to make an inquiry
17 during the time period specified and
18 the verification system has registered
19 that not all inquiries were received
20 during such time, the person or entity
21 may make an inquiry in the first sub-
22 sequent working day in which the
23 verification system registers that it
24 has received all inquiries. If the
25 verification system cannot receive in-

1 inquiries at all times during a day, the
2 person or entity merely has to assert
3 that the entity attempted to make the
4 inquiry on that day for the previous
5 sentence to apply to such an inquiry,
6 and does not have to provide any ad-
7 ditional proof concerning such inquiry.

8 “(V) CONSEQUENCES OF NON-
9 CONFIRMATION.—

10 “(aa) TERMINATION OR NO-
11 TIFICATION OF CONTINUED EM-
12 PLOYMENT.—If the person or
13 other entity has received a final
14 nonconfirmation regarding an in-
15 dividual, the person or entity
16 may terminate employment of the
17 individual (or decline to recruit
18 or refer the individual). If the
19 person or entity does not termi-
20 nate employment of the indi-
21 vidual or proceeds to recruit or
22 refer the individual, the person or
23 entity shall notify the Secretary
24 of Homeland Security of such
25 fact through the verification sys-

1 tem or in such other manner as
2 the Secretary may specify.

3 “(bb) FAILURE TO NO-
4 TIFY.—If the person or entity
5 fails to provide notice with re-
6 spect to an individual as required
7 under item (aa), the failure is
8 deemed to constitute a violation
9 of subsection (a)(1)(A) with re-
10 spect to that individual.

11 “(VI) CONTINUED EMPLOYMENT
12 AFTER FINAL NONCONFIRMATION.—If
13 the person or other entity continues to
14 employ (or to recruit or refer) an indi-
15 vidual after receiving final noncon-
16 firmation, a rebuttable presumption is
17 created that the person or entity has
18 violated subsection (a)(1)(A).

19 “(D) EFFECTIVE DATES OF NEW PROCE-
20 DURES.—

21 “(i) HIRING.—Except as provided in
22 clause (iii), the provisions of this para-
23 graph shall apply to a person or other enti-
24 ty hiring an individual for employment in
25 the United States as follows:

1 “(I) With respect to employers
2 having 10,000 or more employees in
3 the United States on the date of the
4 enactment of the Legal Workforce
5 Act, on the date that is 6 months
6 after the date of the enactment of
7 such Act.

8 “(II) With respect to employers
9 having 500 or more employees in the
10 United States, but less than 10,000
11 employees in the United States, on
12 the date of the enactment of the
13 Legal Workforce Act, on the date that
14 is 12 months after the date of the en-
15 actment of such Act.

16 “(III) With respect to employers
17 having 20 or more employees in the
18 United States, but less than 500 em-
19 ployees in the United States, on the
20 date of the enactment of the Legal
21 Workforce Act, on the date that is 18
22 months after the date of the enact-
23 ment of such Act.

24 “(IV) With respect to employers
25 having 1 or more employees in the

1 United States, but less than 20 em-
2 ployees in the United States, on the
3 date of the enactment of the Legal
4 Workforce Act, on the date that is 24
5 months after the date of the enact-
6 ment of such Act.

7 “(ii) RECRUITING AND REFERRING.—
8 Except as provided in clause (iii), the pro-
9 visions of this paragraph shall apply to a
10 person or other entity recruiting or refer-
11 ring an individual for employment in the
12 United States on the date that is 12
13 months after the date of the enactment of
14 the Legal Workforce Act.

15 “(iii) AGRICULTURAL LABOR OR SERV-
16 ICES.—With respect to an employee per-
17 forming agricultural labor or services, this
18 paragraph shall not apply with respect to
19 the verification of the employee until the
20 date that is 18 months after the date of
21 the enactment of the Legal Workforce Act.
22 For purposes of the preceding sentence,
23 the term ‘agricultural labor or services’ has
24 the meaning given such term by the Sec-
25 retary of Agriculture in regulations and in-

1 includes agricultural labor as defined in sec-
2 tion 3121(g) of the Internal Revenue Code
3 of 1986, agriculture as defined in section
4 3(f) of the Fair Labor Standards Act of
5 1938 (29 U.S.C. 203(f)), the handling,
6 planting, drying, packing, packaging, proc-
7 essing, freezing, or grading prior to deliv-
8 ery for storage of any agricultural or horti-
9 cultural commodity in its unmanufactured
10 state, all activities required for the prepa-
11 ration, processing or manufacturing of a
12 product of agriculture (as such term is de-
13 fined in such section 3(f)) for further dis-
14 tribution, and activities similar to all the
15 foregoing as they relate to fish or shellfish
16 facilities. An employee described in this
17 clause shall not be counted for purposes of
18 clause (i).

19 “(iv) EXTENSIONS.—Upon request by
20 an employer having 50 or fewer employees,
21 the Secretary shall allow a one-time 6-
22 month extension of the effective date set
23 out in this subparagraph applicable to such
24 employer. Such request shall be made to

1 the Secretary and shall be made prior to
2 such effective date.

3 “(v) TRANSITION RULE.—Subject to
4 paragraph (4), the following shall apply to
5 a person or other entity hiring, recruiting,
6 or referring an individual for employment
7 in the United States until the effective
8 date or dates applicable under clauses (i)
9 through (iii):

10 “(I) This subsection, as in effect
11 before the enactment of the Legal
12 Workforce Act.

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

19 “(III) Any other provision of
20 Federal law requiring the person or
21 entity to participate in the E-Verify
22 Program described in section 403(a)
23 of the Illegal Immigration Reform and
24 Immigrant Responsibility Act of 1996
25 (8 U.S.C. 1324a note), as in effect be-

1 fore the effective date in section 7(c)
2 of the Legal Workforce Act, including
3 Executive Order 13465 (8 U.S.C.
4 1324a note; relating to Government
5 procurement).

6 “(E) VERIFICATION PERIOD DEFINED.—

7 “(i) IN GENERAL.—For purposes of
8 this paragraph:

9 “(I) In the case of recruitment or
10 referral, the term ‘verification period’
11 means the period ending on the date
12 recruiting or referring commences.

13 “(II) In the case of hiring, the
14 term ‘verification period’ means the
15 period beginning on the date on which
16 an offer of employment is extended
17 and ending on the date that is three
18 business days after the date of hire,
19 except as provided in clause (iii). The
20 offer of employment may be condi-
21 tioned in accordance with clause (ii).

22 “(ii) JOB OFFER MAY BE CONDI-
23 TIONAL.—A person or other entity may
24 offer a prospective employee an employ-
25 ment position that is conditioned on final

1 verification of the identity and employment
2 eligibility of the employee using the proce-
3 dures established under this paragraph.

4 “(iii) SPECIAL RULE.—Notwith-
5 standing clause (i)(II), in the case of an
6 alien who is authorized for employment
7 and who provides evidence from the Social
8 Security Administration that the alien has
9 applied for a social security account num-
10 ber, the verification period ends three busi-
11 ness days after the alien receives the social
12 security account number.

13 “(2) REVERIFICATION FOR INDIVIDUALS WITH
14 LIMITED WORK AUTHORIZATION.—

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

1 “(i) With respect to employers having
2 10,000 or more employees in the United
3 States on the date of the enactment of the
4 Legal Workforce Act, beginning on the
5 date that is 6 months after the date of the
6 enactment of such Act.

7 “(ii) With respect to employers having
8 500 or more employees in the United
9 States, but less than 10,000 employees in
10 the United States, on the date of the en-
11 actment of the Legal Workforce Act, be-
12 ginning on the date that is 12 months
13 after the date of the enactment of such
14 Act.

15 “(iii) With respect to employers hav-
16 ing 20 or more employees in the United
17 States, but less than 500 employees in the
18 United States, on the date of the enact-
19 ment of the Legal Workforce Act, begin-
20 ning on the date that is 18 months after
21 the date of the enactment of such Act.

22 “(iv) With respect to employers hav-
23 ing 1 or more employees in the United
24 States, but less than 20 employees in the
25 United States, on the date of the enact-

1 ment of the Legal Workforce Act, begin-
2 ning on the date that is 24 months after
3 the date of the enactment of such Act.

4 “(B) AGRICULTURAL LABOR OR SERV-
5 ICES.—With respect to an employee performing
6 agricultural labor or services, or an employee
7 recruited or referred by a farm labor contractor
8 (as defined in section 3 of the Migrant and Sea-
9 sonal Agricultural Worker Protection Act (29
10 U.S.C. 1801)), subparagraph (A) shall not
11 apply with respect to the reverification of the
12 employee until the date that is 18 months after
13 the date of the enactment of the Legal Work-
14 force Act. For purposes of the preceding sen-
15 tence, the term ‘agricultural labor or services’
16 has the meaning given such term by the Sec-
17 retary of Agriculture in regulations and in-
18 cludes agricultural labor as defined in section
19 3121(g) of the Internal Revenue Code of 1986,
20 agriculture as defined in section 3(f) of the
21 Fair Labor Standards Act of 1938 (29 U.S.C.
22 203(f)), the handling, planting, drying, packing,
23 packaging, processing, freezing, or grading
24 prior to delivery for storage of any agricultural
25 or horticultural commodity in its unmanufac-

1 tured state, all activities required for the prepa-
2 ration, processing, or manufacturing of a prod-
3 uct of agriculture (as such term is defined in
4 such section 3(f)) for further distribution, and
5 activities similar to all the foregoing as they re-
6 late to fish or shellfish facilities. An employee
7 described in this subparagraph shall not be
8 counted for purposes of subparagraph (A).

9 “(C) REVERIFICATION.—Paragraph
10 (1)(C)(ii) shall apply to reverifications pursuant
11 to this paragraph on the same basis as it ap-
12 plies to verifications pursuant to paragraph (1),
13 except that employers shall—

14 “(i) use a form designated or estab-
15 lished by the Secretary by regulation for
16 purposes of this paragraph; and

17 “(ii) retain a paper, microfiche, micro-
18 film, or electronic version of the form and
19 make it available for inspection by officers
20 of the Department of Homeland Security,
21 the Department of Justice, or the Depart-
22 ment of Labor during the period beginning
23 on the date the reverification commences
24 and ending on the date that is the later of
25 3 years after the date of such reverification

1 or 1 year after the date the individual's
2 employment is terminated.

3 “(3) PREVIOUSLY HIRED INDIVIDUALS.—

4 “(A) ON A MANDATORY BASIS FOR CER-
5 TAIN EMPLOYEES.—

6 “(i) IN GENERAL.—Not later than the
7 date that is 6 months after the date of the
8 enactment of the Legal Workforce Act, an
9 employer shall make an inquiry, as pro-
10 vided in subsection (d), using the
11 verification system to seek verification of
12 the identity and employment eligibility of
13 any individual described in clause (ii) em-
14 ployed by the employer whose employment
15 eligibility has not been verified under the
16 E-Verify Program described in section
17 403(a) of the Illegal Immigration Reform
18 and Immigrant Responsibility Act of 1996
19 (8 U.S.C. 1324a note).

20 “(ii) INDIVIDUALS DESCRIBED.—An
21 individual described in this clause is any of
22 the following:

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

1 “(II) An employee who requires a
2 Federal security clearance working in
3 a Federal, State or local government
4 building, a military base, a nuclear
5 energy site, a weapons site, or an air-
6 port or other facility that requires
7 workers to carry a Transportation
8 Worker Identification Credential
9 (TWIC).

10 “(III) An employee assigned to
11 perform work in the United States
12 under a Federal contract, except that
13 this subclause—

14 “(aa) is not applicable to in-
15 dividuals who have a clearance
16 under Homeland Security Presi-
17 dential Directive 12 (HSPD 12
18 clearance), are administrative or
19 overhead personnel, or are work-
20 ing solely on contracts that pro-
21 vide Commercial Off The Shelf
22 goods or services as set forth by
23 the Federal Acquisition Regu-
24 latory Council, unless they are

1 subject to verification under sub-
2 clause (II); and

3 “(bb) only applies to con-
4 tracts over the simple acquisition
5 threshold as defined in section
6 2.101 of title 48, Code of Federal
7 Regulations.

8 “(B) ON A MANDATORY BASIS FOR MUL-
9 TIPLE USERS OF SAME SOCIAL SECURITY AC-
10 COUNT NUMBER.—In the case of an employer
11 who is required by this subsection to use the
12 verification system described in subsection (d),
13 or has elected voluntarily to use such system,
14 the employer shall make inquiries to the system
15 in accordance with the following:

16 “(i) The Commissioner of Social Secu-
17 rity shall notify annually employees (at the
18 employee address listed on the Wage and
19 Tax Statement) who submit a social secu-
20 rity account number to which more than
21 one employer reports income and for which
22 there is a pattern of unusual multiple use.
23 The notification letter shall identify the
24 number of employers to which income is
25 being reported as well as sufficient infor-

1 mation notifying the employee of the proc-
2 ess to contact the Social Security Adminis-
3 tration Fraud Hotline if the employee be-
4 lieves the employee’s identity may have
5 been stolen. The notice shall not share in-
6 formation protected as private, in order to
7 avoid any recipient of the notice from
8 being in the position to further commit or
9 begin committing identity theft.

10 “(ii) If the person to whom the social
11 security account number was issued by the
12 Social Security Administration has been
13 identified and confirmed by the Commis-
14 sioner, and indicates that the social secu-
15 rity account number was used without
16 their knowledge, the Secretary and the
17 Commissioner shall lock the social security
18 account number for employment eligibility
19 verification purposes and shall notify the
20 employers of the individuals who wrong-
21 fully submitted the social security account
22 number that the employee may not be
23 work eligible.

24 “(iii) Each employer receiving such
25 notification of an incorrect social security

1 account number under clause (ii) shall use
2 the verification system described in sub-
3 section (d) to check the work eligibility sta-
4 tus of the applicable employee within 10
5 business days of receipt of the notification.

6 “(C) ON A VOLUNTARY BASIS.—Subject to
7 paragraph (2), and subparagraphs (A) through
8 (C) of this paragraph, beginning on the date
9 that is 30 days after the date of the enactment
10 of the Legal Workforce Act, an employer may
11 make an inquiry, as provided in subsection (d),
12 using the verification system to seek verification
13 of the identity and employment eligibility of any
14 individual employed by the employer. If an em-
15 ployer chooses voluntarily to seek verification of
16 any individual employed by the employer, the
17 employer shall seek verification of all individ-
18 uals employed at the same geographic location
19 or, at the option of the employer, all individuals
20 employed within the same job category, as the
21 employee with respect to whom the employer
22 seeks voluntarily to use the verification system.
23 An employer’s decision about whether or not
24 voluntarily to seek verification of its current
25 workforce under this subparagraph may not be

1 considered by any government agency in any
2 proceeding, investigation, or review provided for
3 in this Act.

4 “(D) VERIFICATION.—Paragraph
5 (1)(C)(ii) shall apply to verifications pursuant
6 to this paragraph on the same basis as it ap-
7 plies to verifications pursuant to paragraph (1),
8 except that employers shall—

9 “(i) use a form designated or estab-
10 lished by the Secretary by regulation for
11 purposes of this paragraph; and

12 “(ii) retain a paper, microfiche, micro-
13 film, or electronic version of the form and
14 make it available for inspection by officers
15 of the Department of Homeland Security,
16 the Department of Justice, or the Depart-
17 ment of Labor during the period beginning
18 on the date the verification commences and
19 ending on the date that is the later of 3
20 years after the date of such verification or
21 1 year after the date the individual’s em-
22 ployment is terminated.

23 “(4) EARLY COMPLIANCE.—

24 “(A) FORMER E-VERIFY REQUIRED USERS,
25 INCLUDING FEDERAL CONTRACTORS.—Notwith-

1 standing the deadlines in paragraphs (1) and
2 (2), beginning on the date of the enactment of
3 the Legal Workforce Act, the Secretary is au-
4 thorized to commence requiring employers re-
5 quired to participate in the E-Verify Program
6 described in section 403(a) of the Illegal Immi-
7 gration Reform and Immigrant Responsibility
8 Act of 1996 (8 U.S.C. 1324a note), including
9 employers required to participate in such pro-
10 gram by reason of Federal acquisition laws
11 (and regulations promulgated under those laws,
12 including the Federal Acquisition Regulation),
13 to commence compliance with the requirements
14 of this subsection (and any additional require-
15 ments of such Federal acquisition laws and reg-
16 ulation) in lieu of any requirement to partici-
17 pate in the E-Verify Program.

18 “(B) FORMER E-VERIFY VOLUNTARY
19 USERS AND OTHERS DESIRING EARLY COMPLI-
20 ANCE.—Notwithstanding the deadlines in para-
21 graphs (1) and (2), beginning on the date of
22 the enactment of the Legal Workforce Act, the
23 Secretary shall provide for the voluntary com-
24 pliance with the requirements of this subsection
25 by employers voluntarily electing to participate

1 in the E-Verify Program described in section
2 403(a) of the Illegal Immigration Reform and
3 Immigrant Responsibility Act of 1996 (8 U.S.C.
4 1324a note) before such date, as well as by
5 other employers seeking voluntary early compli-
6 ance.

7 “(5) COPYING OF DOCUMENTATION PER-
8 MITTED.—Notwithstanding any other provision of
9 law, the person or entity may copy a document pre-
10 sented by an individual pursuant to this subsection
11 and may retain the copy, but only (except as other-
12 wise permitted under law) for the purpose of com-
13 plying with the requirements of this subsection.

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

21 “(7) GOOD FAITH COMPLIANCE.—

22 “(A) IN GENERAL.—Except as otherwise
23 provided in this subsection, a person or entity
24 is considered to have complied with a require-
25 ment of this subsection notwithstanding a tech-

1 nical or procedural failure to meet such require-
2 ment if there was a good faith attempt to com-
3 ply with the requirement.

4 “(B) EXCEPTION IF FAILURE TO CORRECT
5 AFTER NOTICE.—Subparagraph (A) shall not
6 apply if—

7 “(i) the failure is not de minimus;

8 “(ii) the Secretary of Homeland Secu-
9 rity has explained to the person or entity
10 the basis for the failure and why it is not
11 de minimus;

12 “(iii) the person or entity has been
13 provided a period of not less than 30 cal-
14 endar days (beginning after the date of the
15 explanation) within which to correct the
16 failure; and

17 “(iv) the person or entity has not cor-
18 rected the failure voluntarily within such
19 period.

20 “(C) EXCEPTION FOR PATTERN OR PRAC-
21 TICE VIOLATORS.—Subparagraph (A) shall not
22 apply to a person or entity that has or is engag-
23 ing in a pattern or practice of violations of sub-
24 section (a)(1)(A) or (a)(2).

1 “(8) SINGLE EXTENSION OF DEADLINES UPON
2 CERTIFICATION.—In a case in which the Secretary
3 of Homeland Security has certified to the Congress
4 that the employment eligibility verification system
5 required under subsection (d) will not be fully oper-
6 ational by the date that is 6 months after the date
7 of the enactment of the Legal Workforce Act, each
8 deadline established under this section for an em-
9 ployer to make an inquiry using such system shall
10 be extended by 6 months. No other extension of such
11 a deadline shall be made except as authorized under
12 paragraph (1)(D)(iv).”.

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

16 “(4) DEFINITION OF DATE OF HIRE.—As used
17 in this section, the term ‘date of hire’ means the
18 date of actual commencement of employment for
19 wages or other remuneration, unless otherwise speci-
20 fied.”.

21 **SEC. 1103. EMPLOYMENT ELIGIBILITY VERIFICATION SYS-**
22 **TEM.**

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

1 “(d) EMPLOYMENT ELIGIBILITY VERIFICATION SYS-
2 TEM.—

3 “(1) IN GENERAL.—Patterned on the employ-
4 ment eligibility confirmation system established
5 under section 404 of the Illegal Immigration Reform
6 and Immigrant Responsibility Act of 1996 (8 U.S.C.
7 1324a note), the Secretary of Homeland Security
8 shall establish and administer a verification system
9 through which the Secretary (or a designee of the
10 Secretary, which may be a nongovernmental enti-
11 ty)—

12 “(A) responds to inquiries made by per-
13 sons at any time through a toll-free telephone
14 line and other toll-free electronic media con-
15 cerning an individual’s identity and whether the
16 individual is authorized to be employed; and

17 “(B) maintains records of the inquiries
18 that were made, of verifications provided (or
19 not provided), and of the codes provided to in-
20 quirers as evidence of their compliance with
21 their obligations under this section.

22 “(2) INITIAL RESPONSE.—The verification sys-
23 tem shall provide confirmation or a tentative non-
24 confirmation of an individual’s identity and employ-
25 ment eligibility within 3 working days of the initial

1 inquiry. If providing confirmation or tentative non-
2 confirmation, the verification system shall provide an
3 appropriate code indicating such confirmation or
4 such nonconfirmation.

5 “(3) SECONDARY CONFIRMATION PROCESS IN
6 CASE OF TENTATIVE NONCONFIRMATION.—In cases
7 of tentative nonconfirmation, the Secretary shall
8 specify, in consultation with the Commissioner of
9 Social Security, an available secondary verification
10 process to confirm the validity of information pro-
11 vided and to provide a final confirmation or noncon-
12 firmation not later than 10 working days after the
13 date on which the notice of the tentative noncon-
14 firmation is received by the employee. The Secretary,
15 in consultation with the Commissioner, may extend
16 this deadline once on a case-by-case basis for a pe-
17 riod of 10 working days, and if the time is extended,
18 shall document such extension within the verification
19 system. The Secretary, in consultation with the
20 Commissioner, shall notify the employee and em-
21 ployer of such extension. The Secretary, in consulta-
22 tion with the Commissioner, shall create a standard
23 process of such extension and notification and shall
24 make a description of such process available to the
25 public. When final confirmation or nonconfirmation

1 is provided, the verification system shall provide an
2 appropriate code indicating such confirmation or
3 nonconfirmation.

4 “(4) DESIGN AND OPERATION OF SYSTEM.—
5 The verification system shall be designed and oper-
6 ated—

7 “(A) to maximize its reliability and ease of
8 use by persons and other entities consistent
9 with insulating and protecting the privacy and
10 security of the underlying information;

11 “(B) to respond to all inquiries made by
12 such persons and entities on whether individ-
13 uals are authorized to be employed and to reg-
14 ister all times when such inquiries are not re-
15 ceived;

16 “(C) with appropriate administrative, tech-
17 nical, and physical safeguards to prevent unau-
18 thorized disclosure of personal information;

19 “(D) to have reasonable safeguards against
20 the system’s resulting in unlawful discrimina-
21 tory practices based on national origin or citi-
22 zenship status, including—

23 “(i) the selective or unauthorized use
24 of the system to verify eligibility; or

1 “(ii) the exclusion of certain individ-
2 uals from consideration for employment as
3 a result of a perceived likelihood that addi-
4 tional verification will be required, beyond
5 what is required for most job applicants;

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

8 “(F) to limit the subjects of verification to
9 the following individuals:

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

13 “(ii) Employees and prospective em-
14 ployees, in accordance with paragraph (1),
15 (2), (3), or (4) of subsection (b).

16 “(iii) Individuals seeking to confirm
17 their own employment eligibility on a vol-
18 untary basis.

19 “(5) RESPONSIBILITIES OF COMMISSIONER OF
20 SOCIAL SECURITY.—As part of the verification sys-
21 tem, the Commissioner of Social Security, in con-
22 sultation with the Secretary of Homeland Security
23 (and any designee of the Secretary selected to estab-
24 lish and administer the verification system), shall es-
25 tablish a reliable, secure method, which, within the

1 time periods specified under paragraphs (2) and (3),
2 compares the name and social security account num-
3 ber provided in an inquiry against such information
4 maintained by the Commissioner in order to validate
5 (or not validate) the information provided regarding
6 an individual whose identity and employment eligi-
7 bility must be confirmed, the correspondence of the
8 name and number, and whether the individual has
9 presented a social security account number that is
10 not valid for employment. The Commissioner shall
11 not disclose or release social security information
12 (other than such confirmation or nonconfirmation)
13 under the verification system except as provided for
14 in this section or section 205(c)(2)(I) of the Social
15 Security Act.

16 “(6) RESPONSIBILITIES OF SECRETARY OF
17 HOMELAND SECURITY.—As part of the verification
18 system, the Secretary of Homeland Security (in con-
19 sultation with any designee of the Secretary selected
20 to establish and administer the verification system),
21 shall establish a reliable, secure method, which, with-
22 in the time periods specified under paragraphs (2)
23 and (3), compares the name and alien identification
24 or authorization number (or any other information
25 as determined relevant by the Secretary) which are

1 provided in an inquiry against such information
2 maintained or accessed by the Secretary in order to
3 validate (or not validate) the information provided,
4 the correspondence of the name and number, wheth-
5 er the alien is authorized to be employed in the
6 United States, or to the extent that the Secretary
7 determines to be feasible and appropriate, whether
8 the records available to the Secretary verify the
9 identity or status of a national of the United States.

10 “(7) UPDATING INFORMATION.—The Commis-
11 sioner of Social Security and the Secretary of Home-
12 land Security shall update their information in a
13 manner that promotes the maximum accuracy and
14 shall provide a process for the prompt correction of
15 erroneous information, including instances in which
16 it is brought to their attention in the secondary
17 verification process described in paragraph (3).

18 “(8) LIMITATION ON USE OF THE
19 VERIFICATION SYSTEM AND ANY RELATED SYS-
20 TEMS.—

21 “(A) NO NATIONAL IDENTIFICATION
22 CARD.—Nothing in this section shall be con-
23 strued to authorize, directly or indirectly, the
24 issuance or use of national identification cards

1 or the establishment of a national identification
2 card.

3 “(B) CRITICAL INFRASTRUCTURE.—The
4 Secretary may authorize or direct any person or
5 entity responsible for granting access to, pro-
6 tecting, securing, operating, administering, or
7 regulating part of the critical infrastructure (as
8 defined in section 1016(e) of the Critical Infra-
9 structure Protection Act of 2001 (42 U.S.C.
10 5195c(e))) to use the verification system to the
11 extent the Secretary determines that such use
12 will assist in the protection of the critical infra-
13 structure.

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

21 **SEC. 1104. RECRUITMENT, REFERRAL, AND CONTINUATION**
22 **OF EMPLOYMENT.**

23 (a) ADDITIONAL CHANGES TO RULES FOR RECRUIT-
24 MENT, REFERRAL, AND CONTINUATION OF EMPLOY-

1 MENT.—Section 274A(a) of the Immigration and Nation-
2 ality Act (8 U.S.C. 1324a(a)) is amended—

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

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

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

10 (3) in paragraph (2), by striking “after hiring
11 an alien for employment in accordance with para-
12 graph (1),” and inserting “after complying with
13 paragraph (1),”.

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

18 “(5) DEFINITION OF RECRUIT OR REFER.—As
19 used in this section, the term ‘refer’ means the act
20 of sending or directing a person who is in the United
21 States or transmitting documentation or information
22 to another, directly or indirectly, with the intent of
23 obtaining employment in the United States for such
24 person. Only persons or entities referring for remun-
25 eration (whether on a retainer or contingency

1 basis) are included in the definition, except that
2 union hiring halls that refer union members or non-
3 union individuals who pay union membership dues
4 are included in the definition whether or not they re-
5 ceive remuneration, as are labor service entities or
6 labor service agencies, whether public, private, for-
7 profit, or nonprofit, that refer, dispatch, or other-
8 wise facilitate the hiring of laborers for any period
9 of time by a third party. As used in this section, the
10 term ‘recruit’ means the act of soliciting a person
11 who is in the United States, directly or indirectly,
12 and referring the person to another with the intent
13 of obtaining employment for that person. Only per-
14 sons or entities referring for remuneration (whether
15 on a retainer or contingency basis) are included in
16 the definition, except that union hiring halls that
17 refer union members or nonunion individuals who
18 pay union membership dues are included in this defi-
19 nition whether or not they receive remuneration, as
20 are labor service entities or labor service agencies,
21 whether public, private, for-profit, or nonprofit that
22 recruit, dispatch, or otherwise facilitate the hiring of
23 laborers for any period of time by a third party.”.

24 (c) EFFECTIVE DATE.—The amendments made by
25 this section shall take effect on the date that is 1 year

1 after the date of the enactment of this Act, except that
2 the amendments made by subsection (a) shall take effect
3 6 months after the date of the enactment of this Act inso-
4 far as such amendments relate to continuation of employ-
5 ment.

6 **SEC. 1105. GOOD FAITH DEFENSE.**

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

10 “(3) GOOD FAITH DEFENSE.—

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

17 “(i) shall not be liable to a job appli-
18 cant, an employee, the Federal Govern-
19 ment, or a State or local government,
20 under Federal, State, or local criminal or
21 civil law for any employment-related action
22 taken with respect to a job applicant or
23 employee in good-faith reliance on informa-
24 tion provided through the system estab-
25 lished under subsection (d); and

1 “(ii) has established compliance with
2 its obligations under subparagraphs (A)
3 and (B) of paragraph (1) and subsection
4 (b) absent a showing by the Secretary of
5 Homeland Security, by clear and con-
6 vincing evidence, that the employer had
7 knowledge that an employee is an unau-
8 thorized alien.

9 “(B) MITIGATION ELEMENT.—For pur-
10 poses of subparagraph (A)(i), if an employer
11 proves by a preponderance of the evidence that
12 the employer uses a reasonable, secure, and es-
13 tablished technology to authenticate the identity
14 of the new employee, that fact shall be taken
15 into account for purposes of determining good
16 faith use of the system established under sub-
17 section (d).

18 “(C) FAILURE TO SEEK AND OBTAIN
19 VERIFICATION.—Subject to the effective dates
20 and other deadlines applicable under subsection
21 (b), in the case of a person or entity in the
22 United States that hires, or continues to em-
23 ploy, an individual, or recruits or refers an indi-
24 vidual for employment, the following require-
25 ments apply:

1 “(i) FAILURE TO SEEK
2 VERIFICATION.—

3 “(I) IN GENERAL.—If the person
4 or entity has not made an inquiry,
5 under the mechanism established
6 under subsection (d) and in accord-
7 ance with the timeframes established
8 under subsection (b), seeking
9 verification of the identity and work
10 eligibility of the individual, the de-
11 fense under subparagraph (A) shall
12 not be considered to apply with re-
13 spect to any employment, except as
14 provided in subclause (II).

15 “(II) SPECIAL RULE FOR FAIL-
16 URE OF VERIFICATION MECHANISM.—
17 If such a person or entity in good
18 faith attempts to make an inquiry in
19 order to qualify for the defense under
20 subparagraph (A) and the verification
21 mechanism has registered that not all
22 inquiries were responded to during the
23 relevant time, the person or entity can
24 make an inquiry until the end of the
25 first subsequent working day in which

1 the verification mechanism registers
2 no nonresponses and qualify for such
3 defense.

4 “(ii) FAILURE TO OBTAIN
5 VERIFICATION.—If the person or entity
6 has made the inquiry described in clause
7 (i)(I) but has not received an appropriate
8 verification of such identity and work eligi-
9 bility under such mechanism within the
10 time period specified under subsection
11 (d)(2) after the time the verification in-
12 quiry was received, the defense under sub-
13 paragraph (A) shall not be considered to
14 apply with respect to any employment after
15 the end of such time period.”.

16 **SEC. 1106. PREEMPTION AND STATES' RIGHTS.**

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

20 “(2) PREEMPTION.—

21 “(A) SINGLE, NATIONAL POLICY.—The
22 provisions of this section preempt any State or
23 local law, ordinance, policy, or rule, including
24 any criminal or civil fine or penalty structure,
25 insofar as they may now or hereafter relate to

1 the hiring, continued employment, or status
2 verification for employment eligibility purposes,
3 of unauthorized aliens.

4 “(B) STATE ENFORCEMENT OF FEDERAL
5 LAW.—

6 “(i) BUSINESS LICENSING.—A State,
7 locality, municipality, or political subdivi-
8 sion may exercise its authority over busi-
9 ness licensing and similar laws as a pen-
10 alty for failure to use the verification sys-
11 tem described in subsection (d) to verify
12 employment eligibility when and as re-
13 quired under subsection (b).

14 “(ii) GENERAL RULES.—A State, at
15 its own cost, may enforce the provisions of
16 this section, but only insofar as such State
17 follows the Federal regulations imple-
18 menting this section, applies the Federal
19 penalty structure set out in this section,
20 and complies with all Federal rules and
21 guidance concerning implementation of this
22 section. Such State may collect any fines
23 assessed under this section. An employer
24 may not be subject to enforcement, includ-
25 ing audit and investigation, by both a Fed-

1 eral agency and a State for the same viola-
2 tion under this section. Whichever entity,
3 the Federal agency or the State, is first to
4 initiate the enforcement action, has the
5 right of first refusal to proceed with the
6 enforcement action. The Secretary must
7 provide copies of all guidance, training,
8 and field instructions provided to Federal
9 officials implementing the provisions of
10 this section to each State.”.

11 **SEC. 1107. REPEAL.**

12 (a) IN GENERAL.—Subtitle A of title IV of the Illegal
13 Immigration Reform and Immigrant Responsibility Act of
14 1996 (8 U.S.C. 1324a note) is repealed.

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

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

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

8 **SEC. 1108. PENALTIES.**

9 Section 274A of the Immigration and Nationality Act
10 (8 U.S.C. 1324a) is amended—

11 (1) in subsection (e)(1)—

12 (A) by striking “Attorney General” each
13 place such term appears and inserting “Sec-
14 retary of Homeland Security”; and

15 (B) in subparagraph (D), by striking
16 “Service” and inserting “Department of Home-
17 land Security”;

18 (2) in subsection (e)(4)—

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

22 (B) in subparagraph (A)(i), by striking
23 “not less than \$250 and not more than
24 \$2,000” and inserting “not less than \$2,500
25 and not more than \$5,000”;

1 (C) in subparagraph (A)(ii), by striking
2 “not less than \$2,000 and not more than
3 \$5,000” and inserting “not less than \$5,000
4 and not more than \$10,000”;

5 (D) in subparagraph (A)(iii), by striking
6 “not less than \$3,000 and not more than
7 \$10,000” and inserting “not less than \$10,000
8 and not more than \$25,000”; and

9 (E) by moving the margin of the continu-
10 ation text following subparagraph (B) two ems
11 to the left and by amending subparagraph (B)
12 to read as follows:

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

16 (3) in subsection (e)(5)—

17 (A) in the paragraph heading, strike “PA-
18 PERWORK”;

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

21 (C) by striking “\$100” and inserting
22 “\$1,000”;

23 (D) by striking “\$1,000” and inserting
24 “\$25,000”; and

1 (E) by adding at the end the following:

2 “Failure by a person or entity to utilize the em-
3 ployment eligibility verification system as re-
4 quired by law, or providing information to the
5 system that the person or entity knows or rea-
6 sonably believes to be false, shall be treated as
7 a violation of subsection (a)(1)(A).”;

8 (4) by adding at the end of subsection (e) the
9 following:

10 “(10) EXEMPTION FROM PENALTY FOR GOOD
11 FAITH VIOLATION.—In the case of imposition of a
12 civil penalty under paragraph (4)(A) with respect to
13 a violation of subsection (a)(1)(A) or (a)(2) for hir-
14 ing or continuation of employment or recruitment or
15 referral by person or entity and in the case of im-
16 position of a civil penalty under paragraph (5) for a
17 violation of subsection (a)(1)(B) for hiring or re-
18 cruitment or referral by a person or entity, the pen-
19 alty otherwise imposed may be waived or reduced if
20 the violator establishes that the violator acted in
21 good faith.

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

1 “(12) AUTHORITY TO DEBAR EMPLOYERS FOR
2 CERTAIN VIOLATIONS.—

3 “(A) IN GENERAL.—If a person or entity
4 is determined by the Secretary of Homeland Se-
5 curity to be a repeat violator of paragraph
6 (1)(A) or (2) of subsection (a), or is convicted
7 of a crime under this section, such person or
8 entity may be considered for debarment from
9 the receipt of Federal contracts, grants, or co-
10 operative agreements in accordance with the de-
11 barment standards and pursuant to the debar-
12 ment procedures set forth in the Federal Acqui-
13 sition Regulation.

14 “(B) DOES NOT HAVE CONTRACT, GRANT,
15 AGREEMENT.—If the Secretary of Homeland
16 Security or the Attorney General wishes to have
17 a person or entity considered for debarment in
18 accordance with this paragraph, and such an
19 person or entity does not hold a Federal con-
20 tract, grant or cooperative agreement, the Sec-
21 retary or Attorney General shall refer the mat-
22 ter to the Administrator of General Services to
23 determine whether to list the person or entity
24 on the List of Parties Excluded from Federal

1 Procurement, and if so, for what duration and
2 under what scope.

3 “(C) HAS CONTRACT, GRANT, AGREE-
4 MENT.—If the Secretary of Homeland Security
5 or the Attorney General wishes to have a per-
6 son or entity considered for debarment in ac-
7 cordance with this paragraph, and such person
8 or entity holds a Federal contract, grant or co-
9 operative agreement, the Secretary or Attorney
10 General shall advise all agencies or departments
11 holding a contract, grant, or cooperative agree-
12 ment with the person or entity of the Govern-
13 ment’s interest in having the person or entity
14 considered for debarment, and after soliciting
15 and considering the views of all such agencies
16 and departments, the Secretary or Attorney
17 General may refer the matter to any appro-
18 priate lead agency to determine whether to list
19 the person or entity on the List of Parties Ex-
20 cluded from Federal Procurement, and if so, for
21 what duration and under what scope.

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

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

4 “(A) to which State and local government
5 agencies may submit information indicating po-
6 tential violations of subsection (a), (b), or
7 (g)(1) that were generated in the normal course
8 of law enforcement or the normal course of
9 other official activities in the State or locality;

10 “(B) that is required to indicate to the
11 complaining State or local agency within five
12 business days of the filing of such a complaint
13 by identifying whether the Secretary will fur-
14 ther investigate the information provided;

15 “(C) that is required to investigate those
16 complaints filed by State or local government
17 agencies that, on their face, have a substantial
18 probability of validity;

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

22 “(E) that is required to report to the Con-
23 gress annually the number of complaints re-
24 ceived under this paragraph, the States and lo-
25 calities that filed such complaints, and the reso-

1 lution of the complaints investigated by the Sec-
2 retary.”; and

3 (5) by amending paragraph (1) of subsection (f)
4 to read as follows:

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

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

14 Section 1546(b) of title 18, United States Code, is
15 amended—

16 (1) in paragraph (1), by striking “identification
17 document,” and inserting “identification document
18 or document meant to establish work authorization
19 (including the documents described in section
20 274A(b) of the Immigration and Nationality Act),”;
21 and

22 (2) in paragraph (2), by striking “identification
23 document” and inserting “identification document or
24 document meant to establish work authorization (in-

1 including the documents described in section 274A(b)
2 of the Immigration and Nationality Act),”.

3 **SEC. 1110. PROTECTION OF SOCIAL SECURITY ADMINIS-**
4 **TRATION PROGRAMS.**

5 (a) **FUNDING UNDER AGREEMENT.**—Effective for
6 fiscal years beginning on or after October 1, 2019, the
7 Commissioner of Social Security and the Secretary of
8 Homeland Security shall enter into and maintain an
9 agreement which shall—

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

15 (A) acquiring, installing, and maintaining
16 technological equipment and systems necessary
17 for the fulfillment of the responsibilities of the
18 Commissioner under such section 274A(d), but
19 only that portion of such costs that are attrib-
20 utable exclusively to such responsibilities; and

21 (B) responding to individuals who contest
22 a tentative nonconfirmation provided by the em-
23 ployment eligibility verification system estab-
24 lished under such section;

1 (2) provide such funds annually in advance of
2 the applicable quarter based on estimating method-
3 ology agreed to by the Commissioner and the Sec-
4 retary (except in such instances where the delayed
5 enactment of an annual appropriation may preclude
6 such quarterly payments); and

7 (3) require an annual accounting and reconcili-
8 ation of the actual costs incurred and the funds pro-
9 vided under the agreement, which shall be reviewed
10 by the Inspectors General of the Social Security Ad-
11 ministration and the Department of Homeland Secu-
12 rity.

13 (b) CONTINUATION OF EMPLOYMENT VERIFICATION
14 IN ABSENCE OF TIMELY AGREEMENT.—In any case in
15 which the agreement required under subsection (a) for any
16 fiscal year beginning on or after October 1, 2019, has not
17 been reached as of October 1 of such fiscal year, the latest
18 agreement between the Commissioner and the Secretary
19 of Homeland Security providing for funding to cover the
20 costs of the responsibilities of the Commissioner under
21 section 274A(d) of the Immigration and Nationality Act
22 (8 U.S.C. 1324a(d)) shall be deemed in effect on an in-
23 terim basis for such fiscal year until such time as an
24 agreement required under subsection (a) is subsequently
25 reached, except that the terms of such interim agreement

1 shall be modified by the Director of the Office of Manage-
2 ment and Budget to adjust for inflation and any increase
3 or decrease in the volume of requests under the employ-
4 ment eligibility verification system. In any case in which
5 an interim agreement applies for any fiscal year under this
6 subsection, the Commissioner and the Secretary shall, not
7 later than October 1 of such fiscal year, notify the Com-
8 mittee on Ways and Means, the Committee on the Judici-
9 ary, and the Committee on Appropriations of the House
10 of Representatives and the Committee on Finance, the
11 Committee on the Judiciary, and the Committee on Ap-
12 propriations of the Senate of the failure to reach the
13 agreement required under subsection (a) for such fiscal
14 year. Until such time as the agreement required under
15 subsection (a) has been reached for such fiscal year, the
16 Commissioner and the Secretary shall, not later than the
17 end of each 90-day period after October 1 of such fiscal
18 year, notify such Committees of the status of negotiations
19 between the Commissioner and the Secretary in order to
20 reach such an agreement.

21 **SEC. 1111. FRAUD PREVENTION.**

22 (a) **BLOCKING MISUSED SOCIAL SECURITY ACCOUNT**
23 **NUMBERS.**—The Secretary of Homeland Security, in con-
24 sultation with the Commissioner of Social Security, shall
25 establish a program in which social security account num-

1 bers that have been identified to be subject to unusual
2 multiple use in the employment eligibility verification sys-
3 tem established under section 274A(d) of the Immigration
4 and Nationality Act (8 U.S.C. 1324a(d)), as amended by
5 this title, or that are otherwise suspected or determined
6 to have been compromised by identity fraud or other mis-
7 use, shall be blocked from use for such system purposes
8 unless the individual using such number is able to estab-
9 lish, through secure and fair additional security proce-
10 dures, that the individual is the legitimate holder of the
11 number.

12 (b) ALLOWING SUSPENSION OF USE OF CERTAIN SO-
13 CIAL SECURITY ACCOUNT NUMBERS.—The Secretary of
14 Homeland Security, in consultation with the Commis-
15 sioner of Social Security, shall establish a program which
16 shall provide a reliable, secure method by which victims
17 of identity fraud and other individuals may suspend or
18 limit the use of their social security account number or
19 other identifying information for purposes of the employ-
20 ment eligibility verification system established under sec-
21 tion 274A(d) of the Immigration and Nationality Act (8
22 U.S.C. 1324a(d)), as amended by this title. The Secretary
23 may implement the program on a limited pilot program
24 basis before making it fully available to all individuals.

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

14 **SEC. 1112. USE OF EMPLOYMENT ELIGIBILITY**
15 **VERIFICATION PHOTO TOOL.**

16 An employer or entity who uses the photo matching
17 tool, if required by the Secretary as part of the verification
18 system, shall match, either visually, or using facial rec-
19 ognition or other verification technology approved or re-
20 quired by the Secretary, the photo matching tool photo-
21 graph to the photograph on the identity or employment
22 eligibility document provided by the individual or to the
23 face of the employee submitting the document for employ-
24 ment verification purposes, or both, as determined by the
25 Secretary.

1 **SEC. 1113. IDENTITY AUTHENTICATION EMPLOYMENT ELI-**
2 **GIBILITY VERIFICATION PILOT PROGRAMS.**

3 Not later than 24 months after the date of the enact-
4 ment of this Act, the Secretary of Homeland Security,
5 after consultation with the Commissioner of Social Secu-
6 rity and the Director of the National Institute of Stand-
7 ards and Technology, shall establish by regulation not less
8 than 2 Identity Authentication Employment Eligibility
9 Verification pilot programs, each using a separate and dis-
10 tinct technology (the “Authentication Pilots”). The pur-
11 pose of the Authentication Pilots shall be to provide for
12 identity authentication and employment eligibility
13 verification with respect to enrolled new employees which
14 shall be available to any employer that elects to participate
15 in either of the Authentication Pilots. Any participating
16 employer may cancel the employer’s participation in the
17 Authentication Pilot after one year after electing to par-
18 ticipate without prejudice to future participation. The Sec-
19 retary shall report to the Committee on the Judiciary of
20 the House of Representatives and the Committee on the
21 Judiciary of the Senate the Secretary’s findings on the
22 Authentication Pilots, including the authentication tech-
23 nologies chosen, not later than 12 months after com-
24 mencement of the Authentication Pilots.

1 **SEC. 1114. INSPECTOR GENERAL AUDITS.**

2 (a) IN GENERAL.—Not later than 1 year after the
3 date of the enactment of this Act, the Inspector General
4 of the Social Security Administration shall complete audits
5 of the following categories in order to uncover evidence
6 of individuals who are not authorized to work in the
7 United States:

8 (1) Workers who dispute wages reported on
9 their social security account number when they be-
10 lieve someone else has used such number and name
11 to report wages.

12 (2) Children's social security account numbers
13 used for work purposes.

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

17 (b) SUBMISSION.—The Inspector General of the So-
18 cial Security Administration shall submit the audits com-
19 pleted under subsection (a) to the Committee on Ways and
20 Means of the House of Representatives and the Committee
21 on Finance of the Senate for review of the evidence of
22 individuals who are not authorized to work in the United
23 States. The Chairmen of those Committees shall then de-
24 termine information to be shared with the Secretary of
25 Homeland Security so that such Secretary can investigate

1 the unauthorized employment demonstrated by such evi-
2 dence.

3 **TITLE II—SANCTUARY CITIES**
4 **AND STATE AND LOCAL LAW**
5 **ENFORCEMENT COOPERA-**
6 **TION**

7 **SEC. 2201. SHORT TITLE.**

8 This title may be cited as the “No Sanctuary for
9 Criminals Act”.

10 **SEC. 2202. STATE NONCOMPLIANCE WITH ENFORCEMENT**
11 **OF IMMIGRATION LAW.**

12 (a) IN GENERAL.—Section 642 of the Illegal Immi-
13 gration Reform and Immigrant Responsibility Act of 1996
14 (8 U.S.C. 1373) is amended—

15 (1) by striking subsection (a) and inserting the
16 following:

17 “(a) IN GENERAL.—Notwithstanding any other pro-
18 vision of Federal, State, or local law, no Federal, State,
19 or local government entity, and no individual, may prohibit
20 or in any way restrict, a Federal, State, or local govern-
21 ment entity, official, or other personnel from complying
22 with the immigration laws (as defined in section
23 101(a)(17) of the Immigration and Nationality Act (8
24 U.S.C. 1101(a)(17))), or from assisting or cooperating

1 with Federal law enforcement entities, officials, or other
2 personnel regarding the enforcement of these laws.”;

3 (2) by striking subsection (b) and inserting the
4 following:

5 “(b) LAW ENFORCEMENT ACTIVITIES.—Notwith-
6 standing any other provision of Federal, State, or local
7 law, no Federal, State, or local government entity, and no
8 individual, may prohibit, or in any way restrict, a Federal,
9 State, or local government entity, official, or other per-
10 sonnel from undertaking any of the following law enforce-
11 ment activities as they relate to information regarding the
12 citizenship or immigration status, lawful or unlawful, the
13 inadmissibility or deportability, or the custody status, of
14 any individual:

15 “(1) Making inquiries to any individual in order
16 to obtain such information regarding such individual
17 or any other individuals.

18 “(2) Notifying the Federal Government regard-
19 ing the presence of individuals who are encountered
20 by law enforcement officials or other personnel of a
21 State or political subdivision of a State.

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

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

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

5 “(d) COMPLIANCE.—

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

10 “(A) any of the funds that would otherwise
11 be allocated to the State or political subdivision
12 under section 241(i) of the Immigration and
13 Nationality Act (8 U.S.C. 1231(i)), the ‘Cops
14 on the Beat’ program under part Q of title I of
15 the Omnibus Crime Control and Safe Streets
16 Act of 1968 (34 U.S.C. 10381 et seq.), or the
17 Edward Byrne Memorial Justice Assistance
18 Grant Program under subpart 1 of part E of
19 title I of the Omnibus Crime Control and Safe
20 Streets Act of 1968 (34 U.S.C. 10151 et seq.);
21 or

22 “(B) any other grant administered by the
23 Department of Justice that is substantially re-
24 lated to law enforcement (including enforcement
25 of the immigration laws), immigration, enforce-

1 ment of the immigration laws, or naturalization
2 or administered by the Department of Home-
3 land Security that is substantially related to im-
4 migration, the enforcement of the immigration
5 laws, or naturalization.

6 “(2) TRANSFER OF CUSTODY OF ALIENS PEND-
7 ING REMOVAL PROCEEDINGS.—The Secretary, at the
8 Secretary’s discretion, may decline to transfer an
9 alien in the custody of the Department of Homeland
10 Security to a State or political subdivision of a State
11 found not to be in compliance with subsection (a) or
12 (b), regardless of whether the State or political sub-
13 division of the State has issued a writ or warrant.

14 “(3) TRANSFER OF CUSTODY OF CERTAIN
15 ALIENS PROHIBITED.—The Secretary shall not
16 transfer an alien with a final order of removal pur-
17 suant to paragraph (1)(A) or (5) of section 241(a)
18 of the Immigration and Nationality Act (8 U.S.C.
19 1231(a)) to a State or a political subdivision of a
20 State that is found not to be in compliance with sub-
21 section (a) or (b).

22 “(4) ANNUAL DETERMINATION.—The Secretary
23 shall determine for each calendar year which States
24 or political subdivision of States are not in compli-
25 ance with subsection (a) or (b) and shall report such

1 determinations to Congress by March 1 of each suc-
2 ceeding calendar year.

3 “(5) REPORTS.—The Secretary of Homeland
4 Security shall issue a report concerning the compli-
5 ance with subsections (a) and (b) of any particular
6 State or political subdivision of a State at the re-
7 quest of the House or the Senate Judiciary Com-
8 mittee. Any jurisdiction that is found not to be in
9 compliance shall be ineligible to receive Federal fi-
10 nancial assistance as provided in paragraph (1) for
11 a minimum period of 1 year, and shall only become
12 eligible again after the Secretary of Homeland Secu-
13 rity certifies that the jurisdiction has come into com-
14 pliance.

15 “(6) REALLOCATION.—Any funds that are not
16 allocated to a State or to a political subdivision of
17 a State due to the failure of the State or of the po-
18 litical subdivision of the State to comply with sub-
19 section (a) or (b) shall be reallocated to States or to
20 political subdivisions of States that comply with both
21 such subsections.

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

1 (b) EFFECTIVE DATE.—The amendments made by
2 this section shall take effect on the date of the enactment
3 of this Act, except that subsection (d) of section 642 of
4 the Illegal Immigration Reform and Immigrant Responsi-
5 bility Act of 1996 (8 U.S.C. 1373), as added by this sec-
6 tion, shall apply only to prohibited acts committed on or
7 after the date of the enactment of this Act.

8 **SEC. 2203. CLARIFYING THE AUTHORITY OF ICE DETAIN-**
9 **ERS.**

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

13 “(d) DETAINER OF INADMISSIBLE OR DEPORTABLE
14 ALIENS.—

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

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

1 “(A) the individual who is the subject of
2 the detainer matches, pursuant to biometric
3 confirmation or other Federal database records,
4 the identity of an alien who the Secretary has
5 reasonable grounds to believe to be inadmissible
6 or deportable;

7 “(B) the individual who is the subject of
8 the detainer is the subject of ongoing removal
9 proceedings, including matters where a charg-
10 ing document has already been served;

11 “(C) the individual who is the subject of
12 the detainer has previously been ordered re-
13 moved from the United States and such an
14 order is administratively final;

15 “(D) the individual who is the subject of
16 the detainer has made voluntary statements or
17 provided reliable evidence that indicate that
18 they are an inadmissible or deportable alien; or

19 “(E) the Secretary otherwise has reason-
20 able grounds to believe that the individual who
21 is the subject of the detainer is an inadmissible
22 or deportable alien.

23 “(3) TRANSFER OF CUSTODY.—If the Federal,
24 State, or local law enforcement entity, official, or
25 other personnel to whom a detainer is issued com-

1 plies with the detainer and detains for purposes of
2 transfer of custody to the Department of Homeland
3 Security the individual who is the subject of the de-
4 tainer, the Department may take custody of the in-
5 dividual within 48 hours (excluding weekends and
6 holidays), but in no instance more than 96 hours,
7 following the date that the individual is otherwise to
8 be released from the custody of the relevant Federal,
9 State, or local law enforcement entity.”.

10 (b) IMMUNITY.—

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

1 ing any punitive, compensatory, or other monetary
2 damages.

3 (2) FEDERAL GOVERNMENT AS DEFENDANT.—

4 In any civil action arising out of the compliance with
5 a Department of Homeland Security detainer by a
6 State or a political subdivision of a State (and the
7 officials and personnel of the State or subdivision
8 acting in their official capacities), or a nongovern-
9 mental entity (and its personnel) contracted by the
10 State or political subdivision for the purpose of pro-
11 viding detention, the United States Government
12 shall be the proper party named as the defendant in
13 the suit in regard to the detention resulting from
14 compliance with the detainer.

15 (3) BAD FAITH EXCEPTION.—Paragraphs (1)
16 and (2) shall not apply to any mistreatment of an
17 individual by a State or a political subdivision of a
18 State (and the officials and personnel of the State
19 or subdivision acting in their official capacities), or
20 a nongovernmental entity (and its personnel) con-
21 tracted by the State or political subdivision for the
22 purpose of providing detention.

23 (c) PRIVATE RIGHT OF ACTION.—

24 (1) CAUSE OF ACTION.—Any individual, or a
25 spouse, parent, or child of that individual (if the in-

1 dividual is deceased), who is the victim of a murder,
2 rape, or any felony, as defined by the State, for
3 which an alien (as defined in section 101(a)(3) of
4 the Immigration and Nationality Act (8 U.S.C.
5 1101(a)(3))) has been convicted and sentenced to a
6 term of imprisonment of at least 1 year, may bring
7 an action against a State or political subdivision of
8 a State or public official acting in an official capac-
9 ity in the appropriate Federal court if the State or
10 political subdivision, except as provided in paragraph
11 (3)—

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

18 (B) has in effect a statute, policy, or prac-
19 tice not in compliance with section 642 of the
20 Illegal Immigration Reform and Immigrant Re-
21 sponsibility Act of 1996 (8 U.S.C. 1373) as
22 amended, and as a consequence of its statute,
23 policy, or practice, released the alien from cus-
24 tody prior to the commission of such crime; or

1 (C) has in effect a statute, policy, or prac-
2 tice requiring a subordinate political subdivision
3 to decline to honor any or all detainers issued
4 pursuant to section 287(d)(1) of the Immigra-
5 tion and Nationality Act (8 U.S.C. 1357(d)(1)),
6 and, as a consequence of its statute, policy or
7 practice, the subordinate political subdivision
8 declined to honor a detainer issued pursuant to
9 such section, and as a consequence released the
10 alien from custody prior to the commission of
11 such crime.

12 (2) LIMITATIONS ON BRINGING ACTION.—An
13 action may not be brought under this subsection
14 later than 10 years following the occurrence of the
15 crime, or death of a person as a result of such
16 crime, whichever occurs later.

17 (3) PROPER DEFENDANT.—If a political sub-
18 division of a State declines to honor a detainer
19 issued pursuant to section 287(d)(1) of the Immi-
20 gration and Nationality Act (8 U.S.C. 1357(d)) as
21 a consequence of the State or another political sub-
22 division with jurisdiction over the subdivision prohib-
23 iting the subdivision through a statute or other legal
24 requirement of the State or other political subdivi-
25 sion—

1 (A) from honoring the detainer; or
2 (B) fully complying with section 642 of the
3 Illegal Immigration Reform and Immigrant Re-
4 sponsibility Act of 1996 (8 U.S.C. 1373),
5 and, as a consequence of the statute or other legal
6 requirement of the State or other political subdivi-
7 sion, the subdivision released the alien referred to in
8 paragraph (1) from custody prior to the commission
9 of the crime referred to in that paragraph, the State
10 or other political subdivision that enacted the statute
11 or other legal requirement, shall be deemed to be the
12 proper defendant in a cause of action under this
13 subsection, and no such cause of action may be
14 maintained against the political subdivision which
15 declined to honor the detainer.

16 (4) ATTORNEY'S FEE AND OTHER COSTS.—In
17 any action or proceeding under this subsection the
18 court shall allow a prevailing plaintiff a reasonable
19 attorneys' fee as part of the costs, and include ex-
20 pert fees as part of the attorneys' fee.

21 (d) ELIGIBILITY FOR CERTAIN GRANT PROGRAMS.—

22 (1) IN GENERAL.—Except as provided in para-
23 graph (2), a State or political subdivision of a State
24 that has in effect a statute, policy or practice pro-
25 viding that it not comply with any or all Department

1 of Homeland Security detainers issued pursuant to
2 section 287(d)(1) of the Immigration and Nation-
3 ality Act (8 U.S.C. 1357(d)) shall not be eligible to
4 receive—

5 (A) any of the funds that would otherwise
6 be allocated to the State or political subdivision
7 under section 241(i) of the Immigration and
8 Nationality Act (8 U.S.C. 1231(i)), the “Cops
9 on the Beat” program under part Q of title I
10 of the Omnibus Crime Control and Safe Streets
11 Act of 1968 (34 U.S.C. 10301 et seq.), or the
12 Edward Byrne Memorial Justice Assistance
13 Grant Program under subpart 1 of part E of
14 title I of the Omnibus Crime Control and Safe
15 Streets Act of 1968 (34 U.S.C. 10151 et seq.);
16 or

17 (B) any other grant administered by the
18 Department of Justice that is substantially re-
19 lated to law enforcement (including enforcement
20 of the immigration laws), immigration, or natu-
21 ralization or grant administered by the Depart-
22 ment of Homeland Security that is substantially
23 related to immigration, enforcement of the im-
24 migration laws, or naturalization.

1 (2) EXCEPTION.—A political subdivision de-
2 scribed in subsection (c)(3) that declines to honor a
3 detainer issued pursuant to section 287(d)(1) of the
4 Immigration and Nationality Act (8 U.S.C.
5 1357(d)(1)) as a consequence of being required to
6 comply with a statute or other legal requirement of
7 a State or another political subdivision with jurisdic-
8 tion over that political subdivision, shall remain eli-
9 gible to receive grant funds described in paragraph
10 (1). In the case described in the previous sentence,
11 the State or political subdivision that enacted the
12 statute or other legal requirement shall not be eligi-
13 ble to receive such funds.

14 **SEC. 2204. SARAH AND GRANT'S LAW.**

15 (a) DETENTION OF ALIENS DURING REMOVAL PRO-
16 CEEDINGS.—

17 (1) CLERICAL AMENDMENTS.—(A) Section 236
18 of the Immigration and Nationality Act (8 U.S.C.
19 1226) is amended by striking “Attorney General”
20 each place it appears (except in the second place
21 that term appears in section 236(a)) and inserting
22 “Secretary of Homeland Security”.

23 (B) Section 236(a) of such Act (8 U.S.C.
24 1226(a)) is amended by inserting “the Secretary of

1 Homeland Security or” before “the Attorney Gen-
2 eral—”.

3 (C) Section 236(e) of such Act (8 U.S.C.
4 1226(e)) is amended by striking “Attorney Gen-
5 eral’s” and inserting “Secretary of Homeland Secu-
6 rity’s”.

7 (2) LENGTH OF DETENTION.—Section 236 of
8 such Act (8 U.S.C. 1226) is amended by adding at
9 the end the following:

10 “(f) LENGTH OF DETENTION.—

11 “(1) IN GENERAL.—Notwithstanding any other
12 provision of this section, an alien may be detained,
13 and for an alien described in subsection (c) shall be
14 detained, under this section without time limitation,
15 except as provided in subsection (h), during the
16 pendency of removal proceedings.

17 “(2) CONSTRUCTION.—The length of detention
18 under this section shall not affect detention under
19 section 241.”.

20 (3) DETENTION OF CRIMINAL ALIENS.—Section
21 236(c)(1) of such Act (8 U.S.C. 1226(c)(1)) is
22 amended—

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

1 (B) by inserting after subparagraph (D)
2 the following:

3 “(E) is unlawfully present in the United
4 States and has been convicted for driving while
5 intoxicated (including a conviction for driving
6 while under the influence or impaired by alcohol
7 or drugs) without regard to whether the convic-
8 tion is classified as a misdemeanor or felony
9 under State law, or

10 “(F)(i)(I) is inadmissible under section
11 212(a)(6)(i),

12 “(II) is deportable by reason of a visa rev-
13 ocation under section 221(i), or

14 “(III) is deportable under section
15 237(a)(1)(C)(i), and

16 “(ii) has been arrested or charged with a
17 particularly serious crime or a crime resulting
18 in the death or serious bodily injury (as defined
19 in section 1365(h)(3) of title 18, United States
20 Code) of another person;” and

21 (C) by amending the matter following sub-
22 paragraph (F) (as added by subparagraph (B)
23 of this paragraph) to read as follows:

24 “any time after the alien is released, without regard
25 to whether an alien is released related to any activity, of-

1 fense, or conviction described in this paragraph; to wheth-
2 er the alien is released on parole, supervised release, or
3 probation; or to whether the alien may be arrested or im-
4 prisoned again for the same offense. If the activity de-
5 scribed in this paragraph does not result in the alien being
6 taken into custody by any person other than the Secretary,
7 then when the alien is brought to the attention of the Sec-
8 retary or when the Secretary determines it is practical to
9 take such alien into custody, the Secretary shall take such
10 alien into custody.”.

11 (4) ADMINISTRATIVE REVIEW.—Section 236 of
12 the Immigration and Nationality Act (8 U.S.C.
13 1226), as amended by paragraph (2), is further
14 amended by adding at the end the following:

15 “(g) ADMINISTRATIVE REVIEW.—The Attorney Gen-
16 eral’s review of the Secretary’s custody determinations
17 under subsection (a) for the following classes of aliens
18 shall be limited to whether the alien may be detained, re-
19 leased on bond (of at least \$1,500 with security approved
20 by the Secretary), or released with no bond:

21 “(1) Aliens in exclusion proceedings.

22 “(2) Aliens described in section 212(a)(3) or
23 237(a)(4).

24 “(3) Aliens described in subsection (c).

25 “(h) RELEASE ON BOND.—

1 “(1) IN GENERAL.—An alien detained under
2 subsection (a) may seek release on bond. No bond
3 may be granted except to an alien who establishes
4 by clear and convincing evidence that the alien is not
5 a flight risk or a danger to another person or the
6 community.

7 “(2) CERTAIN ALIENS INELIGIBLE.—No alien
8 detained under subsection (c) may seek release on
9 bond.”.

10 (5) CLERICAL AMENDMENTS.—(A) Section
11 236(a)(2)(B) of the Immigration and Nationality
12 Act (8 U.S.C. 1226(a)(2)(B)) is amended by strik-
13 ing “conditional parole” and inserting “recog-
14 nizance”.

15 (B) Section 236(b) of such Act (8 U.S.C.
16 1226(b)) is amended by striking “parole” and in-
17 serting “recognizance”.

18 (b) EFFECTIVE DATE.—The amendments made by
19 subsection (a) shall take effect on the date of the enact-
20 ment of this Act and shall apply to any alien in detention
21 under the provisions of section 236 of the Immigration
22 and Nationality Act (8 U.S.C. 1226), as so amended, or
23 otherwise subject to the provisions of such section, on or
24 after such date.

1 **SEC. 2205. CLARIFICATION OF CONGRESSIONAL INTENT.**

2 Section 287(g) of the Immigration and Nationality
3 Act (8 U.S.C. 1357(g)) is amended—

4 (1) in paragraph (1) by striking “may enter”
5 and all that follows through the period at the end
6 and inserting the following: “shall enter into a writ-
7 ten agreement with a State, or any political subdivi-
8 sion of a State, upon request of the State or political
9 subdivision, pursuant to which officers or employees
10 of the State or subdivision, who are determined by
11 the Secretary to be qualified to perform a function
12 of an immigration officer in relation to the investiga-
13 tion, apprehension, or detention of aliens in the
14 United States (including the transportation of such
15 aliens across State lines to detention centers), may
16 carry out such function at the expense of the State
17 or political subdivision and to the extent consistent
18 with State and local law. No request from a bona
19 fide State or political subdivision or bona fide law
20 enforcement agency shall be denied absent a compel-
21 ling reason. No limit on the number of agreements
22 under this subsection may be imposed. The Sec-
23 retary shall process requests for such agreements
24 with all due haste, and in no case shall take not
25 more than 90 days from the date the request is
26 made until the agreement is consummated.”;

1 (2) by redesignating paragraph (2) as para-
2 graph (5) and paragraphs (3) through (10) as para-
3 graphs (7) through (14), respectively;

4 (3) by inserting after paragraph (1) the fol-
5 lowing:

6 “(2) An agreement under this subsection shall accom-
7 modate a requesting State or political subdivision with re-
8 spect to the enforcement model or combination of models,
9 and shall accommodate a patrol model, task force model,
10 jail model, any combination thereof, or any other reason-
11 able model the State or political subdivision believes is best
12 suited to the immigration enforcement needs of its juris-
13 diction.

14 “(3) No Federal program or technology directed
15 broadly at identifying inadmissible or deportable aliens
16 shall substitute for such agreements, including those es-
17 tablishing a jail model, and shall operate in addition to
18 any agreement under this subsection.

19 “(4)(A) No agreement under this subsection shall be
20 terminated absent a compelling reason.

21 “(B)(i) The Secretary shall provide a State or polit-
22 ical subdivision written notice of intent to terminate at
23 least 180 days prior to date of intended termination, and
24 the notice shall fully explain the grounds for termination,

1 along with providing evidence substantiating the Sec-
2 retary's allegations.

3 “(ii) The State or political subdivision shall have the
4 right to a hearing before an administrative law judge and,
5 if the ruling is against the State or political subdivision,
6 to appeal the ruling to the Federal Circuit Court of Ap-
7 peals and, if the ruling is against the State or political
8 subdivision, to petition the Supreme Court for certiorari.

9 “(C) The agreement shall remain in full effect during
10 the course of any and all legal proceedings.”; and

11 (4) by inserting after paragraph (5) (as redesign-
12 nated) the following:

13 “(6) The Secretary of Homeland Security shall make
14 training of State and local law enforcement officers avail-
15 able through as many means as possible, including
16 through residential training at the Center for Domestic
17 Preparedness and the Federal Law Enforcement Training
18 Center, onsite training held at State or local police agen-
19 cies or facilities, online training courses by computer, tele-
20 conferencing, and videotape, or the digital video display
21 (DVD) of a training course or courses. Distance learning
22 through a secure, encrypted, distributed learning system
23 that has all its servers based in the United States, is scal-
24 able, survivable, and can have a portal in place not later
25 than 30 days after the date of the enactment of the Secur-

1 ing America’s Future Act of 2019, shall be made available
2 by the COPS Office of the Department of Justice and the
3 Federal Law Enforcement Training Center Distributed
4 Learning Program for State and local law enforcement
5 personnel. Preference shall be given to private sector-
6 based, web-based immigration enforcement training pro-
7 grams for which the Federal Government has already pro-
8 vided support to develop.”.

9 **SEC. 2206. PENALTIES FOR ILLEGAL ENTRY OR PRESENCE.**

10 (a) IN GENERAL.—Section 275 of the Immigration
11 and Nationality Act (8 U.S.C. 1325) is amended to read
12 as follows:

13 “ILLEGAL ENTRY OR PRESENCE

14 “SEC. 275. (a) IN GENERAL.—

15 “(1) ILLEGAL ENTRY OR PRESENCE.—An alien
16 shall be subject to the penalties set forth in para-
17 graph (2) if the alien—

18 “(A) knowingly enters or crosses the bor-
19 der into the United States at any time or place
20 other than as designated by the Secretary of
21 Homeland Security;

22 “(B) knowingly eludes, at any time or
23 place, examination or inspection by an author-
24 ized immigration, customs, or agriculture offi-
25 cer (including by failing to stop at the com-
26 mand of such officer);

1 “(C) knowingly enters or crosses the bor-
2 der to the United States and, upon examination
3 or inspection, knowingly makes a false or mis-
4 leading representation or the knowing conceal-
5 ment of a material fact (including such rep-
6 resentation or concealment in the context of ar-
7 rival, reporting, entry, or clearance require-
8 ments of the customs laws, immigration laws,
9 agriculture laws, or shipping laws);

10 “(D) knowingly violates the terms or con-
11 ditions of the alien’s admission or parole into
12 the United States and has remained in violation
13 for an aggregate period of 90 days or more; or

14 “(E) knowingly is unlawfully present in the
15 United States (as defined in section
16 212(a)(9)(B)(ii) subject to the exceptions set
17 forth in section 212(a)(9)(B)(iii)) and has re-
18 mained in violation for an aggregate period of
19 90 days or more.

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

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

1 “(B) shall, for a second or subsequent vio-
2 lation, or following an order of voluntary depar-
3 ture, be fined under such title, imprisoned not
4 more than 2 years (or not more than 6 months
5 in the case of a second or subsequent violation
6 of paragraph (1)(E)), or both;

7 “(C) if the violation occurred after the
8 alien had been convicted of 3 or more mis-
9 demeanors or for a felony, shall be fined under
10 such title, imprisoned not more than 10 years,
11 or both;

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

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

24 “(3) PRIOR CONVICTIONS.—The prior convic-
25 tions described in subparagraphs (C) through (E) of

1 paragraph (2) are elements of the offenses described
2 and the penalties in such subparagraphs shall apply
3 only in cases in which the conviction or convictions
4 that form the basis for the additional penalty are—

5 “(A) alleged in the indictment or informa-
6 tion; and

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

9 “(4) DURATION OF OFFENSE.—An offense
10 under this subsection continues until the alien is dis-
11 covered within the United States by an immigration,
12 customs, or agriculture officer, or until the alien is
13 granted a valid visa or relief from removal.

14 “(5) ATTEMPT.—Whoever attempts to commit
15 any offense under this section shall be punished in
16 the same manner as for a completion of such of-
17 fense.

18 “(b) IMPROPER TIME OR PLACE; CIVIL PEN-
19 ALTIES.—Any alien who is apprehended while entering, at-
20 tempting to enter, or knowingly crossing or attempting to
21 cross the border to the United States at a time or place
22 other than as designated by immigration officers shall be
23 subject to a civil penalty, in addition to any criminal or
24 other civil penalties that may be imposed under any other
25 provision of law, in an amount equal to—

1 “(1) not less than \$50 or more than \$250 for
2 each such entry, crossing, attempted entry, or at-
3 tempted crossing; or

4 “(2) twice the amount specified in paragraph
5 (1) if the alien had previously been subject to a civil
6 penalty under this subsection.”.

7 (b) CLERICAL AMENDMENT.—The table of contents
8 for the Immigration and Nationality Act is amended by
9 striking the item relating to section 275 and inserting the
10 following:

“Sec. 275. Illegal entry or presence.”.

11 (c) EFFECTIVE DATES AND APPLICABILITY.—

12 (1) CRIMINAL PENALTIES.—Section 275(a) of
13 the Immigration and Nationality Act (8 U.S.C.
14 1325(a)), as amended by subsection (a), shall take
15 effect 90 days after the date of the enactment of
16 this Act, and shall apply to acts, conditions, or viola-
17 tions described in such section 275(a) that occur or
18 exist on or after such effective date.

19 (2) CIVIL PENALTIES.—Section 275(b) of the
20 Immigration and Nationality Act (8 U.S.C.
21 1325(b)), as amended by subsection (a), shall take
22 effect on the date of the enactment of this Act and
23 shall apply to acts described in such section 275(b)
24 that occur before, on, or after such date.

1 **TITLE III—CRIMINAL ALIENS**

2 **SEC. 3301. PRECLUDING ADMISSIBILITY OF ALIENS CON-**
3 **VICTED OF AGGRAVATED FELONIES OR**
4 **OTHER SERIOUS OFFENSES.**

5 (a) INADMISSIBILITY ON CRIMINAL AND RELATED
6 GROUND; WAIVERS.—Section 212 of the Immigration
7 and Nationality Act (8 U.S.C. 1182) is amended—

8 (1) in subsection (a)(2)(A)(i)—

9 (A) in subclause (I), by striking “or” at
10 the end;

11 (B) in subclause (II), by adding “or” at
12 the end; and

13 (C) by inserting after subclause (II) the
14 following:

15 “(III) a violation of (or a con-
16 spiracy or attempt to violate) an of-
17 fense described in section 208 of the
18 Social Security Act (42 U.S.C. 408)
19 (relating to social security account
20 numbers or social security cards) or
21 section 1028 of title 18, United States
22 Code (relating to fraud and related
23 activity in connection with identifica-
24 tion documents, authentication fea-
25 tures, and information),”;

1 (2) by adding at the end of subsection (a)(2)
2 the following:

3 “(J) PROCUREMENT OF CITIZENSHIP OR
4 NATURALIZATION UNLAWFULLY.—Any alien
5 convicted of, or who admits having committed,
6 or who admits committing acts which constitute
7 the essential elements of, a violation of, or an
8 attempt or a conspiracy to violate, subsection
9 (a) or (b) of section 1425 of title 18, United
10 States Code (relating to the procurement of
11 citizenship or naturalization unlawfully) is inad-
12 missible.

13 “(K) CERTAIN FIREARM OFFENSES.—Any
14 alien who at any time has been convicted under
15 any law of, or who admits having committed or
16 admits committing acts which constitute the es-
17 sential elements of, purchasing, selling, offering
18 for sale, exchanging, using, owning, possessing,
19 or carrying, or of attempting or conspiring to
20 purchase, sell, offer for sale, exchange, use,
21 own, possess, or carry, any weapon, part, or ac-
22 cessory which is a firearm or destructive device
23 (as defined in section 921(a) of title 18, United
24 States Code) in violation of any law is inadmis-
25 sible.

1 “(L) AGGRAVATED FELONS.—Any alien
2 who has been convicted of an aggravated felony
3 at any time is inadmissible.

4 “(M) CRIMES OF DOMESTIC VIOLENCE,
5 STALKING, OR VIOLATION OF PROTECTION OR-
6 DERS, CRIMES AGAINST CHILDREN.—

7 “(i) DOMESTIC VIOLENCE, STALKING,
8 AND CHILD ABUSE.—Any alien who at any
9 time is convicted of, or who admits having
10 committed or admits committing acts
11 which constitute the essential elements of,
12 a crime of domestic violence, a crime of
13 stalking, or a crime of child abuse, child
14 neglect, or child abandonment is inadmis-
15 sible. For purposes of this clause, the term
16 ‘crime of domestic violence’ means any
17 crime of violence (as defined in section 16
18 of title 18, United States Code) against a
19 person committed by a current or former
20 spouse of the person, by an individual with
21 whom the person shares a child in com-
22 mon, by an individual who is cohabiting
23 with or has cohabited with the person as a
24 spouse, by an individual similarly situated
25 to a spouse of the person under the domes-

1 tie or family violence laws of the jurisdic-
2 tion where the offense occurs, or by any
3 other individual against a person who is
4 protected from that individual's acts under
5 the domestic or family violence laws of the
6 United States or any State, Indian tribal
7 government, or unit of local or foreign gov-
8 ernment.

9 “(ii) VIOLATORS OF PROTECTION OR-
10 DERS.—Any alien who at any time is en-
11 joined under a protection order issued by
12 a court and whom the court determines
13 has engaged in conduct that violates the
14 portion of a protection order that involves
15 protection against credible threats of vio-
16 lence, repeated harassment, or bodily in-
17 jury to the person or persons for whom the
18 protection order was issued is inadmissible.
19 For purposes of this clause, the term ‘pro-
20 tection order’ means any injunction issued
21 for the purpose of preventing violent or
22 threatening acts of domestic violence, in-
23 cluding temporary or final orders issued by
24 civil or criminal courts (other than support
25 or child custody orders or provisions)

1 whether obtained by filing an independent
2 action or as a independent order in an-
3 other proceeding.

4 “(iii) WAIVER AUTHORIZED.—The
5 waiver authority available under section
6 237(a)(7) with respect to section
7 237(a)(2)(E)(i) shall be available on a
8 comparable basis with respect to this sub-
9 paragraph.

10 “(iv) CLARIFICATION.—If the convic-
11 tion records do not conclusively establish
12 whether a crime of domestic violence con-
13 stitutes a crime of violence (as defined in
14 section 16 of title 18, United States Code),
15 the Attorney General may consider other
16 evidence related to the conviction that es-
17 tablishes that the conduct for which the
18 alien was engaged constitutes a crime of
19 violence.”; and

20 (3) in subsection (h)—

21 (A) by striking “The Attorney General
22 may, in his discretion, waive the application of
23 subparagraphs (A)(i)(I), (B), (D), and (E) of
24 subsection (a)(2)” and inserting “The Attorney
25 General or the Secretary of Homeland Security

1 may, in the discretion of the Attorney General
2 or the Secretary, waive the application of sub-
3 paragraphs (A)(i)(I), (III), (B), (D), (E), (K),
4 and (M) of subsection (a)(2)”;

5 (B) by striking “a criminal act involving
6 torture.” and inserting “a criminal act involving
7 torture, or has been convicted of an aggravated
8 felony.”;

9 (C) by striking “if either since the date of
10 such admission the alien has been convicted of
11 an aggravated felony or the alien” and inserting
12 “if since the date of such admission the alien”;
13 and

14 (D) by inserting “or Secretary of Home-
15 land Security” after “the Attorney General”
16 each place it appears.

17 (b) DEPORTABILITY; CRIMINAL OFFENSES.—Section
18 237(a)(3)(B) of the Immigration and Nationality Act (8
19 U.S.C. 1227(a)(3)(B)) is amended—

20 (1) in clause (ii), by striking “or” at the end;

21 (2) in clause (iii), by inserting “or” at the end;

22 and

23 (3) by inserting after clause (iii) the following:

24 “(iv) of a violation of, or an attempt

25 or a conspiracy to violate, section 1425(a)

1 or (b) of title 18 (relating to the procure-
2 ment of citizenship or naturalization un-
3 lawfully),”.

4 (c) DEPORTABILITY; OTHER CRIMINAL OFFENSES.—
5 Section 237(a)(2) of the Immigration and Nationality Act
6 (8 U.S.C. 1227(a)(2)) is amended by adding at the end
7 the following:

8 “(G) FRAUD AND RELATED ACTIVITY AS-
9 SOCIATED WITH SOCIAL SECURITY ACT BENE-
10 FITS AND IDENTIFICATION DOCUMENTS.—Any
11 alien who at any time after admission has been
12 convicted of a violation of (or a conspiracy or
13 attempt to violate) section 208 of the Social Se-
14 curity Act (42 U.S.C. 408) (relating to social
15 security account numbers or social security
16 cards) or section 1028 of title 18, United States
17 Code (relating to fraud and related activity in
18 connection with identification) is deportable.”.

19 (d) EFFECTIVE DATE.—The amendments made by
20 this section shall apply—

21 (1) to any act that occurred before, on, or after
22 the date of the enactment of this Act; and

23 (2) to all aliens who are required to establish
24 admissibility on or after such date, and in all re-

1 ing to failure to register as a sex of-
2 fender),”.

3 (b) DEPORTABILITY.—Section 237(a)(2) of such Act
4 (8 U.S.C. 1227(a)(2)), as amended by this title, is further
5 amended—

6 (1) in subparagraph (A), by striking clause (v);

7 and

8 (2) by adding at the end the following:

9 “(I) FAILURE TO REGISTER AS A SEX OF-
10 FENDER.—Any alien convicted of, or who ad-
11 mits having committed, or who admits commit-
12 ting acts which constitute the essential elements
13 of a violation of section 2250 of title 18, United
14 States Code (relating to failure to register as a
15 sex offender) is deportable.”.

16 (c) EFFECTIVE DATE.—The amendments made by
17 this section shall take effect on the date of the enactment
18 of this Act and shall apply to acts that occur before, on,
19 or after the date of the enactment of this Act.

20 **SEC. 3303. GROUNDS OF INADMISSIBILITY AND DEPORT-**
21 **ABILITY FOR ALIEN GANG MEMBERS.**

22 (a) DEFINITION OF GANG MEMBER.—Section 101(a)
23 of the Immigration and Nationality Act (8 U.S.C.
24 1101(a)) is amended by adding at the end the following:

1 “(53) The term ‘criminal gang’ means an ongoing
2 group, club, organization, or association of 5 or more per-
3 sons that has as one of its primary purposes the commis-
4 sion of 1 or more of the following criminal offenses and
5 the members of which engage, or have engaged within the
6 past 5 years, in a continuing series of such offenses, or
7 that has been designated as a criminal gang by the Sec-
8 retary of Homeland Security, in consultation with the At-
9 torney General, as meeting these criteria. The offenses de-
10 scribed, whether in violation of Federal or State law or
11 foreign law and regardless of whether the offenses oc-
12 curred before, on, or after the date of the enactment of
13 this paragraph, are the following:

14 “(A) A ‘felony drug offense’ (as defined in sec-
15 tion 102 of the Controlled Substances Act (21
16 U.S.C. 802)).

17 “(B) A felony offense involving firearms or ex-
18 plosives or in violation of section 931 of title 18,
19 United States Code (relating to purchase, ownership,
20 or possession of body armor by violent felons).

21 “(C) An offense under section 274 (relating to
22 bringing in and harboring certain aliens), section
23 277 (relating to aiding or assisting certain aliens to
24 enter the United States), or section 278 (relating to
25 importation of alien for immoral purpose).

1 “(D) A crime of violence (as defined in section
2 16 of title 18, United States Code).

3 “(E) A crime involving obstruction of justice,
4 tampering with or retaliating against a witness, vic-
5 tim, or informant.

6 “(F) Any conduct punishable under sections
7 1028A and 1029 of title 18, United States Code (re-
8 lating to aggravated identity theft or fraud and re-
9 lated activity in connection with identification docu-
10 ments or access devices), sections 1581 through
11 1594 of such title (relating to peonage, slavery, and
12 trafficking in persons), section 1951 of such title
13 (relating to interference with commerce by threats or
14 violence), section 1952 of such title (relating to
15 interstate and foreign travel or transportation in aid
16 of racketeering enterprises), section 1956 of such
17 title (relating to the laundering of monetary instru-
18 ments), section 1957 of such title (relating to engag-
19 ing in monetary transactions in property derived
20 from specified unlawful activity), or sections 2312
21 through 2315 of such title (relating to interstate
22 transportation of stolen motor vehicles or stolen
23 property).

24 “(G) A conspiracy to commit an offense de-
25 scribed in subparagraphs (A) through (F).”.

1 (b) INADMISSIBILITY.—Section 212(a)(2) of such Act
2 (8 U.S.C. 1182(a)(2)) is amended by adding at the end
3 the following:

4 “(J) ALIENS ASSOCIATED WITH CRIMINAL
5 GANGS.—(i) Any alien is inadmissible who a
6 consular officer, an immigration officer, the
7 Secretary of Homeland Security, or the Attor-
8 ney General knows or has reason to believe—

9 “(I) to be or to have been a member
10 of a criminal gang (as defined in section
11 101(a)(53)); or

12 “(II) to have participated in the ac-
13 tivities of a criminal gang (as defined in
14 section 101(a)(53)), knowing or having
15 reason to know that such activities will
16 promote, further, aid, or support the illegal
17 activity of the criminal gang.

18 “(ii) Any alien for whom a consular officer,
19 an immigration officer, the Secretary of Home-
20 land Security, or the Attorney General has rea-
21 sonable grounds to believe has participated in,
22 been a member of, promoted, or conspired with
23 a criminal gang, either inside or outside of the
24 United States, is inadmissible.

1 “(iii) Any alien for whom a consular offi-
2 cer, an immigration officer, the Secretary of
3 Homeland Security, or the Attorney General
4 has reasonable grounds to believe seeks to enter
5 the United States or has entered the United
6 States in furtherance of the activities of a
7 criminal gang, either inside or outside of the
8 United States, is inadmissible.”.

9 (c) DEPORTABILITY.—Section 237(a)(2) of the Im-
10 migration and Nationality Act (8 U.S.C. 1227(a)(2)) is
11 amended by adding at the end the following:

12 “(G) ALIENS ASSOCIATED WITH CRIMINAL
13 GANGS.—Any alien is deportable who—

14 “(i) is or has been a member of a
15 criminal gang (as defined in section
16 101(a)(53)); or

17 “(ii) has participated in the activities
18 of a criminal gang (as so defined), knowing
19 or having reason to know that such activi-
20 ties will promote, further, aid, or support
21 the illegal activity of the criminal gang.”.

22 (d) DESIGNATION.—

23 (1) IN GENERAL.—Chapter 2 of title II of the
24 Immigration and Nationality Act (8 U.S.C. 1182) is

1 amended by inserting after section 219 the fol-
2 lowing:

3 “DESIGNATION OF CRIMINAL GANG

4 “SEC. 220.

5 “(a) DESIGNATION.—

6 “(1) IN GENERAL.—The Secretary of Homeland Se-
7 curity, in consultation with the Attorney General, may
8 designate a group, club, organization, or association of 5
9 or more persons as a criminal gang if the Secretary finds
10 that their conduct is described in section 101(a)(53).

11 “(2) PROCEDURE.—

12 “(A) NOTIFICATION.—Seven days before mak-
13 ing a designation under this subsection, the Sec-
14 retary shall, by classified communication, notify the
15 Speaker and Minority Leader of the House of Rep-
16 resentatives, the President pro tempore, Majority
17 Leader, and Minority Leader of the Senate, and the
18 members of the relevant committees of the House of
19 Representatives and the Senate, in writing, of the
20 intent to designate a group, club, organization, or
21 association of 5 or more persons under this sub-
22 section and the factual basis therefor.

23 “(B) PUBLICATION IN THE FEDERAL REG-
24 ISTER.—The Secretary shall publish the designation
25 in the Federal Register seven days after providing
26 the notification under subparagraph (A).

1 “(3) RECORD.—

2 “(A) IN GENERAL.—In making a designation
3 under this subsection, the Secretary shall create an
4 administrative record.

5 “(B) CLASSIFIED INFORMATION.—The Sec-
6 retary may consider classified information in making
7 a designation under this subsection. Classified infor-
8 mation shall not be subject to disclosure for such
9 time as it remains classified, except that such infor-
10 mation may be disclosed to a court ex parte and in
11 camera for purposes of judicial review under sub-
12 section (c).

13 “(4) PERIOD OF DESIGNATION.—

14 “(A) IN GENERAL.—A designation under this
15 subsection shall be effective for all purposes until re-
16 voked under paragraph (5) or (6) or set aside pursu-
17 ant to subsection (c).

18 “(B) REVIEW OF DESIGNATION UPON PETI-
19 TION.—

20 “(i) IN GENERAL.—The Secretary shall re-
21 view the designation of a criminal gang under
22 the procedures set forth in clauses (iii) and (iv)
23 if the designated group, club, organization, or
24 association of 5 or more persons files a petition

1 for revocation within the petition period de-
2 scribed in clause (ii).

3 “(ii) PETITION PERIOD.—For purposes of
4 clause (i)—

5 “(I) if the designated group, club, or
6 organization, or association of 5 or more per-
7 sons has not previously filed a petition for
8 revocation under this subparagraph, the
9 petition period begins 2 years after the
10 date on which the designation was made;
11 or

12 “(II) if the designated group, club, or
13 organization, or association of 5 or more per-
14 sons has previously filed a petition for rev-
15 ocation under this subparagraph, the peti-
16 tion period begins 2 years after the date of
17 the determination made under clause (iv)
18 on that petition.

19 “(iii) PROCEDURES.—Any group, club, or-
20 ganization, or association of 5 or more persons
21 that submits a petition for revocation under
22 this subparagraph of its designation as a crimi-
23 nal gang must provide evidence in that petition
24 that it is not described in section 101(a)(53).

25 “(iv) DETERMINATION.—

1 “(I) IN GENERAL.—Not later than
2 180 days after receiving a petition for rev-
3 ocation submitted under this subpara-
4 graph, the Secretary shall make a deter-
5 mination as to such revocation.

6 “(II) CLASSIFIED INFORMATION.—
7 The Secretary may consider classified in-
8 formation in making a determination in re-
9 sponse to a petition for revocation. Classi-
10 fied information shall not be subject to dis-
11 closure for such time as it remains classi-
12 fied, except that such information may be
13 disclosed to a court *ex parte* and *in camera*
14 for purposes of judicial review under sub-
15 section (c).

16 “(III) PUBLICATION OF DETERMINA-
17 TION.—A determination made by the Sec-
18 retary under this clause shall be published
19 in the Federal Register.

20 “(IV) PROCEDURES.—Any revocation
21 by the Secretary shall be made in accord-
22 ance with paragraph (6).

23 “(C) OTHER REVIEW OF DESIGNATION.—

24 “(i) IN GENERAL.—If in a 5-year period no
25 review has taken place under subparagraph (B),

1 the Secretary shall review the designation of the
2 criminal gang in order to determine whether
3 such designation should be revoked pursuant to
4 paragraph (6).

5 “(ii) PROCEDURES.—If a review does not
6 take place pursuant to subparagraph (B) in re-
7 sponse to a petition for revocation that is filed
8 in accordance with that subparagraph, then the
9 review shall be conducted pursuant to proce-
10 dures established by the Secretary. The results
11 of such review and the applicable procedures
12 shall not be reviewable in any court.

13 “(iii) PUBLICATION OF RESULTS OF RE-
14 VIEW.—The Secretary shall publish any deter-
15 mination made pursuant to this subparagraph
16 in the Federal Register.

17 “(5) REVOCATION BY ACT OF CONGRESS.—The Con-
18 gress, by an Act of Congress, may block or revoke a des-
19 igation made under paragraph (1).

20 “(6) REVOCATION BASED ON CHANGE IN CIR-
21 CUMSTANCES.—

22 “(A) IN GENERAL.—The Secretary may revoke
23 a designation made under paragraph (1) at any
24 time, and shall revoke a designation upon completion
25 of a review conducted pursuant to subparagraphs

1 (B) and (C) of paragraph (4) if the Secretary finds
2 that—

3 “(i) the group, club, organization, or asso-
4 ciation of 5 or more persons that has been des-
5 igned as a criminal gang is no longer de-
6 scribed in section 101(a)(53); or

7 “(ii) the national security or the law en-
8 forcement interests of the United States war-
9 rants a revocation.

10 “(B) PROCEDURE.—The procedural require-
11 ments of paragraphs (2) and (3) shall apply to a
12 revocation under this paragraph. Any revocation
13 shall take effect on the date specified in the revoca-
14 tion or upon publication in the Federal Register if
15 no effective date is specified.

16 “(7) EFFECT OF REVOCATION.—The revocation of a
17 designation under paragraph (5) or (6) shall not affect
18 any action or proceeding based on conduct committed
19 prior to the effective date of such revocation.

20 “(8) USE OF DESIGNATION IN TRIAL OR HEAR-
21 ING.—If a designation under this subsection has become
22 effective under paragraph (2) an alien in a removal pro-
23 ceeding shall not be permitted to raise any question con-
24 cerning the validity of the issuance of such designation
25 as a defense or an objection.

1 “(b) AMENDMENTS TO A DESIGNATION.—

2 “(1) IN GENERAL.—The Secretary may amend
3 a designation under this subsection if the Secretary
4 finds that the group, club, organization, or associa-
5 tion of 5 or more persons has changed its name,
6 adopted a new alias, dissolved and then reconsti-
7 tuted itself under a different name or names, or
8 merged with another group, club, organization, or
9 association of 5 or more persons.

10 “(2) PROCEDURE.—Amendments made to a
11 designation in accordance with paragraph (1) shall
12 be effective upon publication in the Federal Register.
13 Paragraphs (2), (4), (5), (6), (7), and (8) of sub-
14 section (a) shall also apply to an amended designa-
15 tion.

16 “(3) ADMINISTRATIVE RECORD.—The adminis-
17 trative record shall be corrected to include the
18 amendments as well as any additional relevant infor-
19 mation that supports those amendments.

20 “(4) CLASSIFIED INFORMATION.—The Sec-
21 retary may consider classified information in amend-
22 ing a designation in accordance with this subsection.
23 Classified information shall not be subject to disclo-
24 sure for such time as it remains classified, except
25 that such information may be disclosed to a court ex

1 parte and in camera for purposes of judicial review
2 under subsection (c) of this section.

3 “(c) JUDICIAL REVIEW OF DESIGNATION.—

4 “(1) IN GENERAL.—Not later than 30 days
5 after publication in the Federal Register of a des-
6 ignation, an amended designation, or a determina-
7 tion in response to a petition for revocation, the des-
8 ignated group, club, organization, or association of 5
9 or more persons may seek judicial review in the
10 United States Court of Appeals for the District of
11 Columbia Circuit.

12 “(2) BASIS OF REVIEW.—Review under this
13 subsection shall be based solely upon the administra-
14 tive record, except that the Government may submit,
15 for ex parte and in camera review, classified infor-
16 mation used in making the designation, amended
17 designation, or determination in response to a peti-
18 tion for revocation.

19 “(3) SCOPE OF REVIEW.—The Court shall hold
20 unlawful and set aside a designation, amended des-
21 ignation, or determination in response to a petition
22 for revocation the court finds to be—

23 “(A) arbitrary, capricious, an abuse of dis-
24 cretion, or otherwise not in accordance with
25 law;

1 “(B) contrary to constitutional right,
2 power, privilege, or immunity;

3 “(C) in excess of statutory jurisdiction, au-
4 thority, or limitation, or short of statutory
5 right;

6 “(D) lacking substantial support in the ad-
7 ministrative record taken as a whole or in clas-
8 sified information submitted to the court under
9 paragraph (2); or

10 “(E) not in accord with the procedures re-
11 quired by law.

12 “(4) JUDICIAL REVIEW INVOKED.—The pend-
13 ency of an action for judicial review of a designation,
14 amended designation, or determination in response
15 to a petition for revocation shall not affect the appli-
16 cation of this section, unless the court issues a final
17 order setting aside the designation, amended des-
18 ignation, or determination in response to a petition
19 for revocation.

20 “(d) DEFINITIONS.—As used in this section—

21 “(1) the term ‘classified information’ has the
22 meaning given that term in section 1(a) of the Clas-
23 sified Information Procedures Act (18 U.S.C. App.);

1 “(2) the term ‘national security’ means the na-
2 tional defense, foreign relations, or economic inter-
3 ests of the United States;

4 “(3) the term ‘relevant committees’ means the
5 Committees on the Judiciary of the Senate and of
6 the House of Representatives; and

7 “(4) the term ‘Secretary’ means the Secretary
8 of Homeland Security, in consultation with the At-
9 torney General.”.

10 (2) CLERICAL AMENDMENT.—The table of con-
11 tents for such Act is amended by inserting after the
12 item relating to section 219 the following:

“Sec. 220. Designation.”.

13 (e) MANDATORY DETENTION OF CRIMINAL GANG
14 MEMBERS.—

15 (1) IN GENERAL.—Section 236(c)(1) of the Im-
16 migration and Nationality Act (8 U.S.C.
17 1226(c)(1)), as amended by this title, is further
18 amended—

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

21 (B) in subparagraph (E), by inserting “or”
22 at the end; and

23 (C) by inserting after subparagraph (E)
24 the following:

1 “(F) is inadmissible under section
2 212(a)(2)(J) or deportable under section
3 217(a)(2)(G),”.

4 (2) ANNUAL REPORT.—Not later than March 1
5 of each year (beginning 1 year after the date of the
6 enactment of this Act), the Secretary of Homeland
7 Security, after consultation with the appropriate
8 Federal agencies, shall submit a report to the Com-
9 mittees on the Judiciary of the House of Represent-
10 atives and of the Senate on the number of aliens de-
11 tained under the amendments made by paragraph
12 (1).

13 (f) ASYLUM CLAIMS BASED ON GANG AFFILI-
14 ATION.—

15 (1) INAPPLICABILITY OF RESTRICTION ON RE-
16 MOVAL TO CERTAIN COUNTRIES.—Section
17 241(b)(3)(B) of the Immigration and Nationality
18 Act (8 U.S.C. 1251(b)(3)(B)) is amended, in the
19 matter preceding clause (i), by inserting “who is de-
20 scribed in section 212(a)(2)(J)(i) or section
21 237(a)(2)(G)(i) or who is” after “to an alien”.

22 (2) INELIGIBILITY FOR ASYLUM.—Section
23 208(b)(2)(A) of such Act (8 U.S.C. 1158(b)(2)(A))
24 is amended—

1 (A) in clause (v), by striking “or” at the
2 end;

3 (B) by redesignating clause (vi) as clause
4 (vii); and

5 (C) by inserting after clause (v) the fol-
6 lowing:

7 “(vi) the alien is described in section
8 212(a)(2)(J)(i) or section 237(a)(2)(G)(i);
9 or”.

10 (g) TEMPORARY PROTECTED STATUS.—Section 244
11 of such Act (8 U.S.C. 1254a) is amended—

12 (1) by striking “Attorney General” each place
13 it appears and inserting “Secretary of Homeland Se-
14 curity”;

15 (2) in subparagraph (c)(2)(B)—

16 (A) in clause (i), by striking “or” at the
17 end;

18 (B) in clause (ii), by striking the period
19 and inserting “; or”; and

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

21 “(iii) the alien is, or at any time has
22 been, described in section 212(a)(2)(J) or
23 section 237(a)(2)(G).”; and

24 (3) in subsection (d)—

25 (A) by striking paragraph (3); and

1 (B) in paragraph (4), by adding at the end
2 the following: “The Secretary of Homeland Se-
3 curity may detain an alien provided temporary
4 protected status under this section whenever
5 appropriate under any other provision of law.”.

6 (h) SPECIAL IMMIGRANT JUVENILE VISAS.—Section
7 101(a)(27)(J)(iii) of the Immigration and Nationality Act
8 (8 U.S.C. 1101(a)(27)(J)(iii)) is amended—

9 (1) in subclause (I), by striking “and”;

10 (2) in subclause (II), by adding “and” at the
11 end; and

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

13 “(III) no alien who is, or at any
14 time has been, described in section
15 212(a)(2)(J) or section 237(a)(2)(G)
16 shall be eligible for any immigration
17 benefit under this subparagraph;”.

18 (i) PAROLE.—An alien described in section
19 212(a)(2)(J) of the Immigration and Nationality Act, as
20 added by subsection (b), shall not be eligible for parole
21 under section 212(d)(5)(A) of such Act unless—

22 (1) the alien is assisting or has assisted the
23 United States Government in a law enforcement
24 matter, including a criminal investigation; and

1 for driving under the influence of or impaired
2 by alcohol or drugs).”.

3 (b) **EFFECTIVE DATE.**—The amendments made by
4 subsection (a) shall take effect on the date of the enact-
5 ment of this Act and apply to convictions entered on or
6 after such date.

7 **SEC. 3305. DEFINITION OF AGGRAVATED FELONY.**

8 (a) **DEFINITION OF AGGRAVATED FELONY.**—Section
9 101(a)(43) of the Immigration and Nationality Act (8
10 U.S.C. 1101(a)(43)), as amended by this title, is further
11 amended—

12 (1) by striking “The term ‘aggravated felony’
13 means—” and inserting “Notwithstanding any other
14 provision of law, the term ‘aggravated felony’ applies
15 to an offense described in this paragraph, whether in
16 violation of Federal or State law, or in violation of
17 the law of a foreign country for which the term of
18 imprisonment was completed within the previous 15
19 years, even if the length of the term of imprisonment
20 for the offense is based on recidivist or other en-
21 hancements and regardless of whether the conviction
22 was entered before, on, or after September 30, 1996,
23 and means—”;

24 (2) in subparagraph (A), by striking “murder,
25 rape, or sexual abuse of a minor;” and inserting “an

1 offense relating to murder, manslaughter, homicide,
2 rape (whether the victim was conscious or uncon-
3 scious), statutory rape, or any offense of a sexual
4 nature involving a victim under the age of 18
5 years;”;

6 (3) in subparagraph (B)—

7 (A) by inserting “an offense relating to”
8 before “illicit trafficking”; and

9 (B) by inserting before the semicolon at
10 the end the following: “and any offense under
11 State law relating to a controlled substance (as
12 so classified under State law) which is classified
13 as a felony in that State, regardless of whether
14 the substance is classified as a controlled sub-
15 stance under section 102 of the Controlled Sub-
16 stances Act (8 U.S.C. 802)”;

17 (4) in subparagraph (C), by inserting “an of-
18 fense relating to” before “illicit trafficking in fire-
19 arms”;

20 (5) in subparagraph (I), by striking “or 2252”
21 and inserting “2252, or 2252A”;

22 (6) in subparagraph (F), by striking “for which
23 the term of imprisonment is at least one year;” and
24 inserting “, including offenses of assault and battery
25 under State or Federal law, for which the term of

1 imprisonment is at least one year, except that if the
2 conviction records do not conclusively establish
3 whether a crime constitutes a crime of violence, the
4 Attorney General or the Secretary of Homeland Se-
5 curity, as appropriate, may consider other evidence
6 related to the conviction that establishes that the
7 conduct for which the alien was engaged constitutes
8 a crime of violence;”;

9 (7) by striking subparagraph (G) and inserting
10 the following:

11 “(G) an offense relating to a theft under State
12 or Federal law (including theft by deceit, theft by
13 fraud, and receipt of stolen property) regardless of
14 whether any taking was temporary or permanent, or
15 burglary offense under State or Federal law for
16 which the term of imprisonment is at least one year,
17 except that if the conviction records do not conclu-
18 sively establish whether a crime constitutes a theft
19 or burglary offense, the Attorney General or Sec-
20 retary of Homeland Security, as appropriate, may
21 consider other evidence related to the conviction that
22 establishes that the conduct for which the alien was
23 engaged constitutes a theft or burglary offense;”;

24 (8) in subparagraph (N)—

1 (A) by striking “paragraph (1)(A) or (2)
2 of”; and

3 (B) by inserting a semicolon at the end;

4 (9) in subparagraph (O), by striking “section
5 275(a) or 276 committed by an alien who was pre-
6 viously deported on the basis of a conviction for an
7 offense described in another subparagraph of this
8 paragraph” and inserting “section 275 or 276 for
9 which the term of imprisonment is at least 1 year”;
10 (10) in subparagraph (P)—

11 (A) by striking “(i) which either is falsely
12 making, forging, counterfeiting, mutilating, or
13 altering a passport or instrument in violation of
14 section 1543 of title 18, United States Code, or
15 is described in section 1546(a) of such title (re-
16 lating to document fraud) and (ii)” and insert-
17 ing “which is described in any section of chap-
18 ter 75 of title 18, United States Code, and”;
19 and

20 (B) by striking “, except in the case of a
21 first offense for which the alien has affirma-
22 tively shown that the alien committed the of-
23 fense for the purpose of assisting, abetting, or
24 aiding only the alien’s spouse, child, or parent

1 (and no other individual) to violate a provision
2 of this Act”;

3 (11) in subparagraph (U), by striking “an at-
4 tempt or conspiracy to commit an offense described
5 in this paragraph” and inserting “attempting or
6 conspiring to commit an offense described in this
7 paragraph, or aiding, abetting, counseling, pro-
8 curing, commanding, inducing, or soliciting the com-
9 mission of such an offense”; and

10 (12) by striking the undesignated matter fol-
11 lowing subparagraph (U).

12 (b) EFFECTIVE DATE; APPLICATION OF AMEND-
13 MENTS.—

14 (1) IN GENERAL.—The amendments made by
15 subsection (a)—

16 (A) shall take effect on the date of the en-
17 actment of this Act; and

18 (B) shall apply to any act or conviction
19 that occurred before, on, or after such date.

20 (2) APPLICATION OF IIRIRA AMENDMENTS.—

21 The amendments to section 101(a)(43) of the Immi-
22 gration and Nationality Act (8 U.S.C. 1101(a)(43))
23 made by section 321 of the Illegal Immigration Re-
24 form and Immigrant Responsibility Act of 1996 (di-
25 vision C of Public Law 104–208; 110 Stat. 3009–

1 627) shall continue to apply, whether the conviction
2 was entered before, on, or after September 30, 1996.

3 **SEC. 3306. PRECLUDING WITHHOLDING OF REMOVAL FOR**
4 **AGGRAVATED FELONS.**

5 (a) IN GENERAL.—Section 241(b)(3)(B) (8 U.S.C.
6 1231(b)(3)(B)), is amended by inserting after clause (v)
7 the following:

8 “(vi) the alien is convicted of an ag-
9 gravated felony.”.

10 (b) EFFECTIVE DATE.—The amendment made by
11 subsection (a) shall apply—

12 (1) to any act that occurred before, on, or after
13 the date of the enactment of this Act; and

14 (2) to all aliens who are required to establish
15 admissibility on or after such date, and in all re-
16 moval, deportation, or exclusion proceedings that are
17 filed, pending, or reopened on or after such date.

18 **SEC. 3307. PROTECTING IMMIGRANTS FROM CONVICTED**
19 **SEX OFFENDERS.**

20 (a) IMMIGRANTS.—Section 204(a)(1) of the Immigra-
21 tion and Nationality Act (8 U.S.C. 1154(a)(1)), is amend-
22 ed—

23 (1) in subparagraph (A), by amending clause
24 (viii) to read as follows:

1 “(viii) Clause (i) shall not apply to a citizen of the
2 United States who has been convicted of an offense de-
3 scribed in subparagraph (A), (I), or (K) of section
4 101(a)(43), unless the Secretary of Homeland Security,
5 in the Secretary’s sole and unreviewable discretion, deter-
6 mines that the citizen poses no risk to the alien with re-
7 spect to whom a petition described in clause (i) is filed.”;
8 and

9 (2) in subparagraph (B)(i)—

10 (A) by redesignating the second subclause

11 (I) as subclause (II); and

12 (B) by amending such subclause (II) to
13 read as follows:

14 “(II) Subclause (I) shall not apply in the case of an
15 alien admitted for permanent residence who has been con-
16 victed of an offense described in subparagraph (A), (I),
17 or (K) of section 101(a)(43), unless the Secretary of
18 Homeland Security, in the Secretary’s sole and
19 unreviewable discretion, determines that the alien lawfully
20 admitted for permanent residence poses no risk to the
21 alien with respect to whom a petition described in sub-
22 clause (I) is filed.”.

23 (b) NONIMMIGRANTS.—Section 101(a)(15)(K) of
24 such Act (8 U.S.C. 1101(a)(15)(K)), is amended by strik-

1 ing “204(a)(1)(A)(viii)(I)” each place such term appears
2 and inserting “204(a)(1)(A)(viii)”.

3 (c) EFFECTIVE DATE.—The amendments made by
4 this section shall take effect on the date of the enactment
5 of this Act and shall apply to petitions filed on or after
6 such date.

7 **SEC. 3308. CLARIFICATION TO CRIMES OF VIOLENCE AND**
8 **CRIMES INVOLVING MORAL TURPITUDE.**

9 (a) INADMISSIBLE ALIENS.—Section 212(a)(2)(A) of
10 the Immigration and Nationality Act (8 U.S.C.
11 1182(a)(2)(A)) is amended by adding at the end the fol-
12 lowing:

13 “(iii) CLARIFICATION.—If the convic-
14 tion records do not conclusively establish
15 whether a crime constitutes a crime involv-
16 ing moral turpitude, the Attorney General
17 or the Secretary of Homeland Security, as
18 appropriate, may consider other evidence
19 related to the conviction that establishes
20 that the conduct for which the alien was
21 engaged constitutes a crime involving
22 moral turpitude.”.

23 (b) DEPORTABLE ALIENS.—

24 (1) GENERAL CRIMES.—Section 237(a)(2)(A)
25 of such Act (8 U.S.C. 1227(a)(2)(A)), as amended

1 by this title, is further amended by inserting after
2 clause (iv) the following:

3 “(v) CRIMES INVOLVING MORAL TUR-
4 PITUDE.—If the conviction records do not
5 conclusively establish whether a crime con-
6 stitutes a crime involving moral turpitude,
7 the Attorney General or the Secretary of
8 Homeland Security, as appropriate, may
9 consider other evidence related to the con-
10 viction that establishes that the conduct
11 for which the alien was engaged constitutes
12 a crime involving moral turpitude.”.

13 (2) DOMESTIC VIOLENCE.—Section
14 237(a)(2)(E) of such Act (8 U.S.C. 1227(a)(2)(E))
15 is amended by adding at the end the following:

16 “(iii) CRIMES OF VIOLENCE.—If the
17 conviction records do not conclusively es-
18 tablish whether a crime of domestic vio-
19 lence constitutes a crime of violence (as de-
20 fined in section 16 of title 18, United
21 States Code), the Attorney General or the
22 Secretary of Homeland Security, as appro-
23 priate, may consider other evidence related
24 to the conviction that establishes that the

1 conduct for which the alien was engaged
2 constitutes a crime of violence.”.

3 (c) EFFECTIVE DATE.—The amendments made by
4 this section shall take effect on the date of the enactment
5 of this Act and shall apply to acts that occur before, on,
6 or after the date of the enactment of this Act.

7 **SEC. 3309. DETENTION OF DANGEROUS ALIENS.**

8 Section 241(a) of the Immigration and Nationality
9 Act (8 U.S.C. 1231(a)) is amended—

10 (1) by striking “Attorney General” each place
11 it appears, except for the first reference in para-
12 graph (4)(B)(i), and inserting “Secretary of Home-
13 land Security”;

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

16 “(B) BEGINNING OF PERIOD.—The re-
17 moval period begins on the latest of the fol-
18 lowing:

19 “(i) The date the order of removal be-
20 comes administratively final.

21 “(ii) If the alien is not in the custody
22 of the Secretary on the date the order of
23 removal becomes administratively final, the
24 date the alien is taken into such custody.

1 “(iii) If the alien is detained or con-
2 fined (except under an immigration proc-
3 ess) on the date the order of removal be-
4 comes administratively final, the date the
5 alien is taken into the custody of the Sec-
6 retary, after the alien is released from such
7 detention or confinement.”;

8 (3) in paragraph (1), by amending subpara-
9 graph (C) to read as follows:

10 “(C) SUSPENSION OF PERIOD.—

11 “(i) EXTENSION.—The removal period
12 shall be extended beyond a period of 90
13 days and the Secretary may, in the Sec-
14 retary’s sole discretion, keep the alien in
15 detention during such extended period if—

16 “(I) the alien fails or refuses to
17 make all reasonable efforts to comply
18 with the removal order, or to fully co-
19 operate with the Secretary’s efforts to
20 establish the alien’s identity and carry
21 out the removal order, including mak-
22 ing timely application in good faith
23 for travel or other documents nec-
24 essary to the alien’s departure or con-
25 spires or acts to prevent the alien’s

1 removal that is subject to an order of
2 removal;

3 “(II) a court, the Board of Immi-
4 gration Appeals, or an immigration
5 judge orders a stay of removal of an
6 alien who is subject to an administra-
7 tively final order of removal;

8 “(III) the Secretary transfers
9 custody of the alien pursuant to law
10 to another Federal agency or a State
11 or local government agency in connec-
12 tion with the official duties of such
13 agency; or

14 “(IV) a court or the Board of
15 Immigration Appeals orders a remand
16 to an immigration judge or the Board
17 of Immigration Appeals, during the
18 time period when the case is pending
19 a decision on remand (with the re-
20 moval period beginning anew on the
21 date that the alien is ordered removed
22 on remand).

23 “(ii) RENEWAL.—If the removal pe-
24 riod has been extended under subpara-

1 graph (C)(i), a new removal period shall be
2 deemed to have begun on the date—

3 “(I) the alien makes all reason-
4 able efforts to comply with the re-
5 moval order, or to fully cooperate with
6 the Secretary’s efforts to establish the
7 alien’s identity and carry out the re-
8 moval order;

9 “(II) the stay of removal is no
10 longer in effect; or

11 “(III) the alien is returned to the
12 custody of the Secretary.

13 “(iii) MANDATORY DETENTION FOR
14 CERTAIN ALIENS.—In the case of an alien
15 described in subparagraphs (A) through
16 (D) of section 236(c)(1), the Secretary
17 shall keep that alien in detention during
18 the extended period described in clause (i).

19 “(iv) SOLE FORM OF RELIEF.—An
20 alien may seek relief from detention under
21 this subparagraph only by filing an appli-
22 cation for a writ of habeas corpus in ac-
23 cordance with chapter 153 of title 28,
24 United States Code. No alien whose period
25 of detention is extended under this sub-

1 paragraph shall have the right to seek re-
2 lease on bond.”;

3 (4) in paragraph (3)—

4 (A) by adding after “If the alien does not
5 leave or is not removed within the removal pe-
6 riod” the following: “or is not detained pursu-
7 ant to paragraph (6) of this subsection”; and

8 (B) by striking subparagraph (D) and in-
9 serting the following:

10 “(D) to obey reasonable restrictions on the
11 alien’s conduct or activities that the Secretary
12 prescribes for the alien, in order to prevent the
13 alien from absconding, for the protection of the
14 community, or for other purposes related to the
15 enforcement of the immigration laws.”;

16 (5) in paragraph (4)(A), by striking “paragraph
17 (2)” and inserting “subparagraph (B)”; and

18 (6) by striking paragraph (6) and inserting the
19 following:

20 “(6) ADDITIONAL RULES FOR DETENTION OR
21 RELEASE OF CERTAIN ALIENS.—

22 “(A) DETENTION REVIEW PROCESS FOR
23 COOPERATIVE ALIENS ESTABLISHED.—For an
24 alien who is not otherwise subject to mandatory
25 detention, who has made all reasonable efforts

1 to comply with a removal order and to cooper-
2 ate fully with the Secretary of Homeland Secu-
3 rity's efforts to establish the alien's identity and
4 carry out the removal order, including making
5 timely application in good faith for travel or
6 other documents necessary to the alien's depar-
7 ture, and who has not conspired or acted to
8 prevent removal, the Secretary shall establish
9 an administrative review process to determine
10 whether the alien should be detained or released
11 on conditions. The Secretary shall make a de-
12 termination whether to release an alien after
13 the removal period in accordance with subpara-
14 graph (B). The determination shall include con-
15 sideration of any evidence submitted by the
16 alien, and may include consideration of any
17 other evidence, including any information or as-
18 sistance provided by the Secretary of State or
19 other Federal official and any other information
20 available to the Secretary of Homeland Security
21 pertaining to the ability to remove the alien.

22 “(B) AUTHORITY TO DETAIN BEYOND RE-
23 MOVAL PERIOD.—

24 “(i) IN GENERAL.—The Secretary of
25 Homeland Security, in the exercise of the

1 Secretary's sole discretion, may continue to
2 detain an alien for 90 days beyond the re-
3 moval period (including any extension of
4 the removal period as provided in para-
5 graph (1)(C)). An alien whose detention is
6 extended under this subparagraph shall
7 have no right to seek release on bond.

8 “(ii) SPECIFIC CIRCUMSTANCES.—The
9 Secretary of Homeland Security, in the ex-
10 ercise of the Secretary's sole discretion,
11 may continue to detain an alien beyond the
12 90 days authorized in clause (i)—

13 “(I) until the alien is removed, if
14 the Secretary, in the Secretary's sole
15 discretion, determines that there is a
16 significant likelihood that the alien—

17 “(aa) will be removed in the
18 reasonably foreseeable future; or

19 “(bb) would be removed in
20 the reasonably foreseeable future,
21 or would have been removed, but
22 for the alien's failure or refusal
23 to make all reasonable efforts to
24 comply with the removal order,
25 or to cooperate fully with the

1 Secretary's efforts to establish
2 the alien's identity and carry out
3 the removal order, including
4 making timely application in
5 good faith for travel or other doc-
6 uments necessary to the alien's
7 departure, or conspires or acts to
8 prevent removal;

9 “(II) until the alien is removed,
10 if the Secretary of Homeland Security
11 certifies in writing—

12 “(aa) in consultation with
13 the Secretary of Health and
14 Human Services, that the alien
15 has a highly contagious disease
16 that poses a threat to public safe-
17 ty;

18 “(bb) after receipt of a writ-
19 ten recommendation from the
20 Secretary of State, that release
21 of the alien is likely to have seri-
22 ous adverse foreign policy con-
23 sequences for the United States;

24 “(cc) based on information
25 available to the Secretary of

1 Homeland Security (including
2 classified, sensitive, or national
3 security information, and without
4 regard to the grounds upon
5 which the alien was ordered re-
6 moved), that there is reason to
7 believe that the release of the
8 alien would threaten the national
9 security of the United States; or
10 “(dd) that the release of the
11 alien will threaten the safety of
12 the community or any person,
13 conditions of release cannot rea-
14 sonably be expected to ensure the
15 safety of the community or any
16 person, and either (AA) the alien
17 has been convicted of one or
18 more aggravated felonies (as de-
19 fined in section 101(a)(43)(A))
20 or of one or more crimes identi-
21 fied by the Secretary of Home-
22 land Security by regulation, or of
23 one or more attempts or conspir-
24 acies to commit any such aggra-
25 vated felonies or such identified

1 crimes, if the aggregate term of
2 imprisonment for such attempts
3 or conspiracies is at least 5
4 years; or (BB) the alien has com-
5 mitted one or more crimes of vio-
6 lence (as defined in section 16 of
7 title 18, United States Code, but
8 not including a purely political
9 offense) and, because of a mental
10 condition or personality disorder
11 and behavior associated with that
12 condition or disorder, the alien is
13 likely to engage in acts of vio-
14 lence in the future; or

15 “(III) pending a certification
16 under subclause (II), so long as the
17 Secretary of Homeland Security has
18 initiated the administrative review
19 process not later than 30 days after
20 the expiration of the removal period
21 (including any extension of the re-
22 moval period, as provided in para-
23 graph (1)(C)).

24 “(iii) NO RIGHT TO BOND HEARING.—

25 An alien whose detention is extended under

1 this subparagraph shall have no right to
2 seek release on bond, including by reason
3 of a certification under clause (ii)(II).

4 “(C) RENEWAL AND DELEGATION OF CER-
5 TIFICATION.—

6 “(i) RENEWAL.—The Secretary of
7 Homeland Security may renew a certifi-
8 cation under subparagraph (B)(ii)(II)
9 every 6 months, after providing an oppor-
10 tunity for the alien to request reconsider-
11 ation of the certification and to submit
12 documents or other evidence in support of
13 that request. If the Secretary does not
14 renew a certification, the Secretary may
15 not continue to detain the alien under sub-
16 paragraph (B)(ii)(II).

17 “(ii) DELEGATION.—Notwithstanding
18 section 103, the Secretary of Homeland
19 Security may not delegate the authority to
20 make or renew a certification described in
21 item (bb), (cc), or (dd) of subparagraph
22 (B)(ii)(II) below the level of the Director
23 of Immigration and Customs Enforcement.

24 “(iii) HEARING.—The Secretary of
25 Homeland Security may request that the

1 Attorney General or the Attorney General's
2 designee provide for a hearing to make the
3 determination described in item (dd)(BB)
4 of subparagraph (B)(ii)(II).

5 “(D) RELEASE ON CONDITIONS.—If it is
6 determined that an alien should be released
7 from detention by a Federal court, the Board of
8 Immigration Appeals, or if an immigration
9 judge orders a stay of removal, the Secretary of
10 Homeland Security, in the exercise of the Sec-
11 retary's discretion, may impose conditions on
12 release as provided in paragraph (3).

13 “(E) REDETENTION.—The Secretary of
14 Homeland Security, in the exercise of the Sec-
15 retary's discretion, without any limitations
16 other than those specified in this section, may
17 again detain any alien subject to a final re-
18 moval order who is released from custody, if re-
19 moval becomes likely in the reasonably foresee-
20 able future, the alien fails to comply with the
21 conditions of release, or to continue to satisfy
22 the conditions described in subparagraph (A),
23 or if, upon reconsideration, the Secretary, in
24 the Secretary's sole discretion, determines that
25 the alien can be detained under subparagraph

1 (B). This section shall apply to any alien re-
2 turned to custody pursuant to this subpara-
3 graph, as if the removal period terminated on
4 the day of the redetention.

5 “(F) REVIEW OF DETERMINATIONS BY
6 SECRETARY.—A determination by the Secretary
7 under this paragraph shall not be subject to re-
8 view by any other agency.”.

9 **SEC. 3310. TIMELY REPATRIATION.**

10 (a) LISTING OF COUNTRIES.—Beginning on the date
11 that is 6 months after the date of the enactment of this
12 Act, and every 6 months thereafter, the Secretary of
13 Homeland Security shall publish a report including the
14 following:

15 (1) A list of the following:

16 (A) Countries that have refused or unrea-
17 sonably delayed repatriation of an alien who is
18 a national of that country since the date of the
19 enactment of this Act and the total number of
20 such aliens, disaggregated by nationality.

21 (B) Countries that have an excessive repa-
22 triation failure rate.

23 (2) A list of each country that was included
24 under subparagraph (B) or (C) of paragraph (1) in

1 both the report preceding the current report and the
2 current report.

3 (b) SANCTIONS.—Beginning on the date on which a
4 country is included in a list under subsection (a)(2) and
5 ending on the date on which that country is not included
6 in such list, that country shall be subject to the following:

7 (1) The Secretary of State may not issue visas
8 under section 101(a)(15)(A)(iii) of the Immigration
9 and Nationality Act (8 U.S.C. 1101(a)(15)(A)(iii))
10 to attendants, servants, personal employees, and
11 members of their immediate families, of the officials
12 and employees of that country who receive non-
13 immigrant status under clause (i) or (ii) of section
14 101(a)(15)(A) of such Act.

15 (2) Each 6 months thereafter that the country
16 is included in that list, the Secretary of State shall
17 reduce the number of visas available under clause (i)
18 or (ii) of section 101(a)(15)(A) of the Immigration
19 and Nationality Act in a fiscal year to nationals of
20 that country by an amount equal to 10 percent of
21 the baseline visa number for that country. Except as
22 provided under section 243(d) of the Immigration
23 and Nationality Act (8 U.S.C. 1253), the Secretary
24 may not reduce the number to a level below 20 per-
25 cent of the baseline visa number.

1 (c) WAIVERS.—

2 (1) NATIONAL SECURITY WAIVER.—If the Sec-
3 retary of State submits to Congress a written deter-
4 mination that significant national security interests
5 of the United States require a waiver of the sanc-
6 tions under subsection (b), the Secretary may waive
7 any reduction below 80 percent of the baseline visa
8 number. The Secretary of Homeland Security may
9 not delegate the authority under this subsection.

10 (2) TEMPORARY EXIGENT CIRCUMSTANCES.—If
11 the Secretary of State submits to Congress a written
12 determination that temporary exigent circumstances
13 require a waiver of the sanctions under subsection
14 (b), the Secretary may waive any reduction below 80
15 percent of the baseline visa number during 6-month
16 renewable periods. The Secretary of Homeland Secu-
17 rity may not delegate the authority under this sub-
18 section.

19 (d) EXEMPTION.—The Secretary of Homeland Secu-
20 rity, in consultation with the Secretary of State, may ex-
21 empt a country from inclusion in a list under subsection
22 (a)(2) if the total number of nonrepatriations outstanding
23 is less than 10 for the preceding 3-year period.

24 (e) UNAUTHORIZED VISA ISSUANCE.—Any visa
25 issued in violation of this section shall be void.

1 (f) NOTICE.—If an alien who has been convicted of
2 a criminal offense before a Federal or State court whose
3 repatriation was refused or unreasonably delayed is to be
4 released from detention by the Secretary of Homeland Se-
5 curity, the Secretary shall provide notice to the State and
6 local law enforcement agency for the jurisdictions in which
7 the alien is required to report or is to be released. When
8 possible, and particularly in the case of violent crime, the
9 Secretary shall make a reasonable effort to provide notice
10 of such release to any crime victims and their immediate
11 family members.

12 (g) DEFINITIONS.—For purposes of this section:

13 (1) REFUSED OR UNREASONABLY DELAYED.—
14 A country is deemed to have refused or unreasonably
15 delayed the acceptance of an alien who is a citizen,
16 subject, national, or resident of that country if, not
17 later than 90 days after receiving a request to repa-
18 triate such alien from an official of the United
19 States who is authorized to make such a request, the
20 country does not accept the alien or issue valid trav-
21 el documents.

22 (2) FAILURE RATE.—The term “failure rate”
23 for a period means the percentage determined by di-
24 viding the total number of repatriation requests for
25 aliens who are citizens, subjects, nationals, or resi-

1 dents of a country that that country refused or un-
2 reasonably delayed during that period by the total
3 number of such requests during that period.

4 (3) EXCESSIVE REPATRIATION FAILURE
5 RATE.—The term “excessive repatriation failure
6 rate” means, with respect to a report under sub-
7 section (a), a failure rate greater than 10 percent
8 for any of the following:

9 (A) The period of the 3 full fiscal years
10 preceding the date of publication of the report.

11 (B) The period of 1 year preceding the
12 date of publication of the report.

13 (4) NUMBER OF NONREPATRIATIONS OUT-
14 STANDING.—The term “number of nonrepatriations
15 outstanding” means, for a period, the number of
16 unique aliens whose repatriation a country has re-
17 fused or unreasonably delayed and whose repatri-
18 ation has not occurred during that period.

19 (5) BASELINE VISA NUMBER.—The term “base-
20 line visa number” means, with respect to a country,
21 the average number of visas issued each fiscal year
22 to nationals of that country under clauses (i) and
23 (ii) of section 101(a)(15)(A) of the Immigration and
24 Nationality Act (8 U.S.C. 1101(a)(15)(A)) for the 3
25 full fiscal years immediately preceding the first re-

1 port under subsection (a) in which that country is
2 included in the list under subsection (a)(2).

3 (h) GAO REPORT.—On the date that is 1 day after
4 the date that the President submits a budget under sec-
5 tion 1105(a) of title 31, United States Code, for fiscal year
6 2016, the Comptroller General of the United States shall
7 submit a report to Congress regarding the progress of the
8 Secretary of Homeland Security and the Secretary of
9 State in implementation of this section and in making re-
10 quests to repatriate aliens as appropriate.

11 **SEC. 3311. ILLEGAL REENTRY.**

12 Section 276 of the Immigration and Nationality Act
13 (8 U.S.C. 1326) is amended to read as follows:

14 **“SEC. 276. REENTRY OF REMOVED ALIEN.**

15 **“(a) REENTRY AFTER REMOVAL.—**

16 **“(1) IN GENERAL.—**Any alien who has been de-
17 nied admission, excluded, deported, or removed, or
18 who has departed the United States while an order
19 of exclusion, deportation, or removal is outstanding,
20 and subsequently enters, attempts to enter, crosses
21 the border to, attempts to cross the border to, or is
22 at any time found in the United States, shall be
23 fined under title 18, United States Code, imprisoned
24 not more than 2 years, or both.

1 “(2) EXCEPTION.—If an alien sought and re-
2 ceived the express consent of the Secretary to re-
3 apply for admission into the United States, or, with
4 respect to an alien previously denied admission and
5 removed, the alien was not required to obtain such
6 advance consent under the Immigration and Nation-
7 ality Act or any prior Act, the alien shall not be sub-
8 ject to the fine and imprisonment provided for in
9 paragraph (1).

10 “(b) REENTRY OF CRIMINAL OFFENDERS.—Not-
11 withstanding the penalty provided in subsection (a), if an
12 alien described in that subsection was convicted before
13 such removal or departure—

14 “(1) for 3 or more misdemeanors or for a fel-
15 ony, the alien shall be fined under title 18, United
16 States Code, imprisoned not more than 10 years, or
17 both;

18 “(2) for a felony for which the alien was sen-
19 tenced to a term of imprisonment of not less than
20 30 months, the alien shall be fined under such title,
21 imprisoned not more than 15 years, or both;

22 “(3) for a felony for which the alien was sen-
23 tenced to a term of imprisonment of not less than
24 60 months, the alien shall be fined under such title,
25 imprisoned not more than 20 years, or both; or

1 “(4) for murder, rape, kidnapping, or a felony
2 offense described in chapter 77 (relating to peonage
3 and slavery) or 113B (relating to terrorism) of such
4 title, or for 3 or more felonies of any kind, the alien
5 shall be fined under such title, imprisoned not more
6 than 25 years, or both.

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

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

19 “(1) alleged in the indictment or information;
20 and

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

23 “(e) REENTRY OF ALIEN REMOVED PRIOR TO COM-
24 PLETION OF TERM OF IMPRISONMENT.—Any alien re-
25 moved pursuant to section 241(a)(4) who enters, attempts

1 to enter, crosses the border to, attempts to cross the bor-
2 der to, or is at any time found in, the United States shall
3 be incarcerated for the remainder of the sentence of im-
4 prisonment which was pending at the time of deportation
5 without any reduction for parole or supervised release un-
6 less the alien affirmatively demonstrates that the Sec-
7 retary of Homeland Security has expressly consented to
8 the alien's reentry. Such alien shall be subject to such
9 other penalties relating to the reentry of removed aliens
10 as may be available under this section or any other provi-
11 sion of law.

12 “(f) DEFINITIONS.—For purposes of this section and
13 section 275, the following definitions shall apply:

14 “(1) CROSSES THE BORDER TO THE UNITED
15 STATES.—The term ‘crosses the border’ refers to the
16 physical act of crossing the border free from official
17 restraint.

18 “(2) OFFICIAL RESTRAINT.—The term ‘official
19 restraint’ means any restraint known to the alien
20 that serves to deprive the alien of liberty and pre-
21 vents the alien from going at large into the United
22 States. Surveillance unbeknownst to the alien shall
23 not constitute official restraint.

24 “(3) FELONY.—The term ‘felony’ means any
25 criminal offense punishable by a term of imprison-

1 ment of more than 1 year under the laws of the
2 United States, any State, or a foreign government.

3 “(4) MISDEMEANOR.—The term ‘misdemeanor’
4 means any criminal offense punishable by a term of
5 imprisonment of not more than 1 year under the ap-
6 plicable laws of the United States, any State, or a
7 foreign government.

8 “(5) REMOVAL.—The term ‘removal’ includes
9 any denial of admission, exclusion, deportation, or
10 removal, or any agreement by which an alien stipu-
11 lates or agrees to exclusion, deportation, or removal.

12 “(6) STATE.—The term ‘State’ means a State
13 of the United States, the District of Columbia, and
14 any commonwealth, territory, or possession of the
15 United States.”.

16 **TITLE IV—ASYLUM REFORM**

17 **SEC. 4401. CLARIFICATION OF INTENT REGARDING TAX-** 18 **PAYER-PROVIDED COUNSEL.**

19 Section 292 of the Immigration and Nationality Act
20 (8 U.S.C. 1362) is amended—

21 (1) by striking “In any removal proceedings be-
22 fore an immigration judge and in any appeal pro-
23 ceedings before the Attorney General from any such
24 removal proceedings” and inserting “In any removal
25 proceedings before an immigration judge, or any

1 other immigration proceedings before the Attorney
2 General, the Secretary of Homeland Security, or any
3 appeal of such a proceeding”.

4 (2) by striking “(at no expense to the Govern-
5 ment)”;

6 (3) by adding at the end the following “Not-
7 withstanding any other provision of law, in no in-
8 stance shall the Government bear any expense for
9 counsel for any person in proceedings described in
10 this section.”.

11 **SEC. 4402. CREDIBLE FEAR INTERVIEWS.**

12 Section 235(b)(1)(B)(v) of the Immigration and Na-
13 tionality Act (8 U.S.C. 1225(b)(1)(B)(v)) is amended by
14 striking “claim” and all that follows, and inserting “claim,
15 as determined pursuant to section 208(b)(1)(B)(iii), and
16 such other facts as are known to the officer, that the alien
17 could establish eligibility for asylum under section 1158
18 of this title, and it is more probable than not that the
19 statements made by, and on behalf of, the alien in support
20 of the alien’s claim are true.”.

21 **SEC. 4403. RECORDING EXPEDITED REMOVAL AND CRED-
22 IBLE FEAR INTERVIEWS.**

23 (a) IN GENERAL.—The Secretary of Homeland Secu-
24 rity shall establish quality assurance procedures and take
25 steps to effectively ensure that questions by employees of

1 the Department of Homeland Security exercising expedited removal authority under section 235(b) of the Immigration and Nationality Act (8 U.S.C. 1225(b)) are asked in a uniform manner, to the extent possible, and that both these questions and the answers provided in response to them are recorded in a uniform fashion.

7 (b) FACTORS RELATING TO SWORN STATEMENTS.—
8 Where practicable, any sworn or signed written statement taken of an alien as part of the record of a proceeding under section 235(b)(1)(A) of the Immigration and Nationality Act (8 U.S.C. 1225(b)(1)(A)) shall be accompanied by a recording of the interview which served as the basis for that sworn statement.

14 (c) INTERPRETERS.—The Secretary shall ensure that a competent interpreter, not affiliated with the government of the country from which the alien may claim asylum, is used when the interviewing officer does not speak a language understood by the alien.

19 (d) RECORDINGS IN IMMIGRATION PROCEEDINGS.—
20 There shall be an audio or audio visual recording of interviews of aliens subject to expedited removal. The recording shall be included in the record of proceeding and shall be considered as evidence in any further proceedings involving the alien.

1 (e) NO PRIVATE RIGHT OF ACTION.—Nothing in this
2 section shall be construed to create any right, benefit,
3 trust, or responsibility, whether substantive or procedural,
4 enforceable in law or equity by a party against the United
5 States, its departments, agencies, instrumentalities, enti-
6 ties, officers, employees, or agents, or any person, nor does
7 this section create any right of review in any administra-
8 tive, judicial, or other proceeding.

9 **SEC. 4404. SAFE THIRD COUNTRY.**

10 Section 208(a)(2)(A) of the Immigration and Nation-
11 ality Act (8 U.S.C. 1158(a)(2)(A)) is amended—

12 (1) by striking “Attorney General” each place
13 it appears and inserting “Secretary of Homeland Se-
14 curity”; and

15 (2) by striking “removed, pursuant to a bilat-
16 eral or multilateral agreement, to” and inserting
17 “removed to”.

18 **SEC. 4405. RENUNCIATION OF ASYLUM STATUS PURSUANT**
19 **TO RETURN TO HOME COUNTRY.**

20 (a) IN GENERAL.—Section 208(c) of the Immigration
21 and Nationality Act (8 U.S.C. 1158(c)) is amended by
22 adding at the end the following new paragraph:

23 “(4) RENUNCIATION OF STATUS PURSUANT TO
24 RETURN TO HOME COUNTRY.—

1 “(A) IN GENERAL.—Except as provided in
2 subparagraphs (B) and (C), any alien who is
3 granted asylum status under this Act, who, ab-
4 sent changed country conditions, subsequently
5 returns to the country of such alien’s nation-
6 ality or, in the case of an alien having no na-
7 tionality, returns to any country in which such
8 alien last habitually resided, and who applied
9 for such status because of persecution or a well-
10 founded fear of persecution in that country on
11 account of race, religion, nationality, member-
12 ship in a particular social group, or political
13 opinion, shall have his or her status terminated.

14 “(B) WAIVER.—The Secretary has discre-
15 tion to waive subparagraph (A) if it is estab-
16 lished to the satisfaction of the Secretary that
17 the alien had a compelling reason for the re-
18 turn. The waiver may be sought prior to depar-
19 ture from the United States or upon return.

20 “(C) EXCEPTION FOR CERTAIN ALIENS
21 FROM CUBA.—Subparagraph (A) shall not
22 apply to an alien who is eligible for adjustment
23 to that of an alien lawfully admitted for perma-
24 nent residence pursuant to the Cuban Adjust-
25 ment Act of 1966 (Public Law 89–732).”.

1 (b) CONFORMING AMENDMENT.—Section 208(e)(3)
2 of the Immigration and Nationality Act (8 U.S.C.
3 1158(e)(3)) is amended by inserting after “paragraph
4 (2)” the following: “or (4)”.

5 **SEC. 4406. NOTICE CONCERNING FRIVOLOUS ASYLUM AP-**
6 **PLICATIONS.**

7 (a) IN GENERAL.—Section 208(d)(4) of the Immi-
8 gration and Nationality Act (8 U.S.C. 1158(d)(4)) is
9 amended—

10 (1) in the matter preceding subparagraph (A),
11 by inserting “the Secretary of Homeland Security
12 or” before “the Attorney General”;

13 (2) in subparagraph (A), by striking “and of
14 the consequences, under paragraph (6), of knowingly
15 filing a frivolous application for asylum; and” and
16 inserting a semicolon;

17 (3) in subparagraph (B), by striking the period
18 and inserting “; and”; and

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

20 “(C) ensure that a written warning ap-
21 pears on the asylum application advising the
22 alien of the consequences of filing a frivolous
23 application and serving as notice to the alien of
24 the consequence of filing a frivolous applica-
25 tion.”.

1 (b) CONFORMING AMENDMENT.—Section 208(d)(6)
2 of the Immigration and Nationality Act (8 U.S.C.
3 1158(d)(6)) is amended by striking “If the” and all that
4 follows and inserting:

5 “(A) If the Secretary of Homeland Secu-
6 rity or the Attorney General determines that an
7 alien has knowingly made a frivolous applica-
8 tion for asylum and the alien has received the
9 notice under paragraph (4)(C), the alien shall
10 be permanently ineligible for any benefits under
11 this chapter, effective as the date of the final
12 determination of such an application;

13 “(B) An application is frivolous if the Sec-
14 retary of Homeland Security or the Attorney
15 General determines, consistent with subpara-
16 graph (C), that—

17 “(i) it is so insufficient in substance
18 that it is clear that the applicant know-
19 ingly filed the application solely or in part
20 to delay removal from the United States,
21 to seek employment authorization as an
22 applicant for asylum pursuant to regula-
23 tions issued pursuant to paragraph (2), or
24 to seek issuance of a Notice to Appeal in

1 order to pursue Cancellation of Removal
2 under section 240A(b); or

3 “(ii) any of its material elements are
4 deliberately fabricated.

5 “(C) In determining that an application is
6 frivolous, the Secretary or the Attorney Gen-
7 eral, must be satisfied that the applicant, dur-
8 ing the course of the proceedings, has had suffi-
9 cient opportunity to clarify any discrepancies or
10 implausible aspects of the claim.

11 “(D) For purposes of this section, a find-
12 ing that an alien filed a frivolous asylum appli-
13 cation shall not preclude the alien from seeking
14 withholding of removal under section
15 241(b)(3).) or protection pursuant to the Con-
16 vention Against Torture.”.

17 **SEC. 4407. ANTI-FRAUD INVESTIGATIVE WORK PRODUCT.**

18 (a) **ASYLUM CREDIBILITY DETERMINATIONS.**—Sec-
19 tion 208(b)(1)(B)(iii) of the Immigration and Nationality
20 Act (8 U.S.C. 1158(b)(1)(B)(iii)) is amended by inserting
21 after “all relevant factors” the following: “, including
22 statements made to, and investigative reports prepared by,
23 immigration authorities and other government officials”.

24 (b) **RELIEF FOR REMOVAL CREDIBILITY DETER-**
25 **MINATIONS.**—Section 240(c)(4)(C) of the Immigration

1 and Nationality Act (8 U.S.C. 1229a(c)(4)(C)) is amended
2 by inserting after “all relevant factors” the following: “,
3 including statements made to, and investigative reports
4 prepared by, immigration authorities and other govern-
5 ment officials”.

6 **SEC. 4408. PENALTIES FOR ASYLUM FRAUD.**

7 Section 1001 of title 18 is amended by inserting at
8 the end of the paragraph—

9 “(d) Whoever, in any matter before the Secretary of
10 Homeland Security or the Attorney General pertaining to
11 asylum under section 208 of the Immigration and Nation-
12 ality Act or withholding of removal under section
13 241(b)(3) of such Act, knowingly and willfully—

14 “(1) makes any materially false, fictitious, or
15 fraudulent statement or representation; or

16 “(2) makes or uses any false writings or docu-
17 ment knowing the same to contain any materially
18 false, fictitious, or fraudulent statement or entry;

19 shall be fined under this title or imprisoned not more than
20 10 years, or both.”.

21 **SEC. 4409. STATUTE OF LIMITATIONS FOR ASYLUM FRAUD.**

22 Section 3291 of title 18 is amended—

23 (1) by striking “1544,” and inserting “1544
24 and 1546,”;

1 (2) by striking “offense.” and inserting “of-
2 fense or within 10 years after the fraud is discov-
3 ered.”.

4 **SEC. 4410. TECHNICAL AMENDMENTS.**

5 Section 208 of the Immigration and Nationality Act
6 (8 U.S.C. 1158) is amended—

7 (1) in subsection (a)—

8 (A) in paragraph (2)(D), by inserting
9 “Secretary of Homeland Security or the” before
10 “Attorney General”; and

11 (B) in paragraph (3), by inserting “Sec-
12 retary of Homeland Security or the” before
13 “Attorney General”;

14 (2) in subsection (b)(2), by inserting “Secretary
15 of Homeland Security or the” before “Attorney Gen-
16 eral” each place such term appears;

17 (3) in subsection (c)—

18 (A) in paragraph (1), by striking “Attor-
19 ney General” each place such term appears and
20 inserting “Secretary of Homeland Security”;
21 and

22 (B) in paragraph (3), by inserting “Sec-
23 retary of Homeland Security or the” before
24 “Attorney General”; and

25 (4) in subsection (d)—

1 (A) in paragraph (1), by inserting “Sec-
2 retary of Homeland Security or the” before
3 “Attorney General” each place such term ap-
4 pears;

5 (B) in paragraph (2), by striking “Attor-
6 ney General” and inserting “Secretary of
7 Homeland Security”; and

8 (C) in paragraph (5)—

9 (i) in subparagraph (A), by striking
10 “Attorney General” and inserting “Sec-
11 retary of Homeland Security”; and

12 (ii) in subparagraph (B), by inserting
13 “Secretary of Homeland Security or the”
14 before “Attorney General”.

15 **TITLE V—UNACCOMPANIED AND**
16 **ACCOMPANIED ALIEN MI-**
17 **NORS APPREHENDED ALONG**
18 **THE BORDER**

19 **SEC. 5501. REPATRIATION OF UNACCOMPANIED ALIEN**
20 **CHILDREN.**

21 (a) IN GENERAL.—Section 235 of the William Wil-
22 berforce Trafficking Victims Protection Reauthorization
23 Act of 2008 (8 U.S.C. 1232) is amended—

24 (1) in subsection (a)—

25 (A) in paragraph (2)—

- 1 (i) by amending the heading to read
2 as follows: “RULES FOR UNACCOMPANIED
3 ALIEN CHILDREN.—”;
- 4 (ii) in subparagraph (A)—
- 5 (I) in the matter preceding clause
6 (i), by striking “who is a national or
7 habitual resident of a country that is
8 contiguous with the United States”;
- 9 (II) in clause (i), by inserting
10 “and” at the end;
- 11 (III) in clause (ii), by striking “;
12 and” and inserting a period; and
- 13 (IV) by striking clause (iii);
- 14 (iii) in subparagraph (B)—
- 15 (I) in the matter preceding clause
16 (i), by striking “(8 U.S.C. 1101 et
17 seq.) may—” and inserting “(8
18 U.S.C. 1101 et seq.)—”;
- 19 (II) in clause (i), by inserting be-
20 fore “permit such child to withdraw”
21 the following: “may”; and
- 22 (III) in clause (ii), by inserting
23 before “return such child” the fol-
24 lowing: “shall”; and
- 25 (iv) in subparagraph (C)—

1 (I) by amending the heading to
2 read as follows: “AGREEMENTS WITH
3 FOREIGN COUNTRIES.—”; and

4 (II) in the matter preceding
5 clause (i), by striking “The Secretary
6 of State shall negotiate agreements
7 between the United States and coun-
8 tries contiguous to the United States”
9 and inserting “The Secretary of State
10 may negotiate agreements between the
11 United States and any foreign country
12 that the Secretary determines appro-
13 priate”;

14 (B) by redesignating paragraphs (3)
15 through (5) as paragraphs (4) through (6), re-
16 spectively, and inserting after paragraph (2) the
17 following:

18 “(3) SPECIAL RULES FOR INTERVIEWING UNAC-
19 COMPANIED ALIEN CHILDREN.—An unaccompanied
20 alien child shall be interviewed by a dedicated U.S.
21 Citizenship and Immigration Services immigration
22 officer with specialized training in interviewing child
23 trafficking victims. Such officer shall be in plain
24 clothes and shall not carry a weapon. The interview
25 shall occur in a private room.”; and

1 (C) in paragraph (6)(D) (as so redesignated)—
2

3 (i) in the matter preceding clause (i),
4 by striking “, except for an unaccompanied
5 alien child from a contiguous country subject to exceptions under subsection (a)(2),”
6 and inserting “who does not meet the criteria listed in paragraph (2)(A)”; and
7

8 (ii) in clause (i), by inserting before
9 the semicolon at the end the following: “,
10 which shall include a hearing before an immigration judge not later than 14 days
11 after being screened under paragraph (4)”;
12

13 (2) in subsection (b)—
14

15 (A) in paragraph (2)—

16 (i) in subparagraph (A), by inserting
17 before the semicolon the following: “believed not to meet the criteria listed in subsection (a)(2)(A)”; and
18

19 (ii) in subparagraph (B), by inserting
20 before the period the following: “and does not meet the criteria listed in subsection (a)(2)(A)”; and
21

22 (B) in paragraph (3), by striking “an unaccompanied alien child in custody shall” and
23
24
25

1 all that follows, and inserting the following: “an
2 unaccompanied alien child in custody—

3 “(A) in the case of a child who does not
4 meet the criteria listed in subsection (a)(2)(A),
5 shall transfer the custody of such child to the
6 Secretary of Health and Human Services not
7 later than 30 days after determining that such
8 child is an unaccompanied alien child who does
9 not meet such criteria; or

10 “(B) in the case of child who meets the
11 criteria listed in subsection (a)(2)(A), may
12 transfer the custody of such child to the Sec-
13 retary of Health and Human Services after de-
14 termining that such child is an unaccompanied
15 alien child who meets such criteria.”; and

16 (3) in subsection (c)—

17 (A) in paragraph (3), by inserting at the
18 end the following:

19 “(D) INFORMATION ABOUT INDIVIDUALS
20 WITH WHOM CHILDREN ARE PLACED.—

21 “(i) INFORMATION TO BE PROVIDED
22 TO HOMELAND SECURITY.—Before placing
23 a child with an individual, the Secretary of
24 Health and Human Services shall provide
25 to the Secretary of Homeland Security, re-

1 garding the individual with whom the child
2 will be placed, the following information:

3 “(I) The name of the individual.

4 “(II) The social security number
5 of the individual.

6 “(III) The date of birth of the in-
7 dividual.

8 “(IV) The location of the individ-
9 ual’s residence where the child will be
10 placed.

11 “(V) The immigration status of
12 the individual, if known.

13 “(VI) Contact information for
14 the individual.

15 “(ii) SPECIAL RULE.—In the case of a
16 child who was apprehended on or after
17 June 15, 2012, and before the date of the
18 enactment of this subparagraph, who the
19 Secretary of Health and Human Services
20 placed with an individual, the Secretary
21 shall provide the information listed in
22 clause (i) to the Secretary of Homeland
23 Security not later than 90 days after such
24 date of enactment.

1 “(iii) ACTIVITIES OF THE SECRETARY
2 OF HOMELAND SECURITY.—Not later than
3 30 days after receiving the information
4 listed in clause (i), the Secretary of Home-
5 land Security shall—

6 “(I) in the case that the immi-
7 gration status of an individual with
8 whom a child is placed is unknown,
9 investigate the immigration status of
10 that individual; and

11 “(II) upon determining that an
12 individual with whom a child is placed
13 is unlawfully present in the United
14 States, initiate removal proceedings
15 pursuant to chapter 4 of title II of the
16 Immigration and Nationality Act (8
17 U.S.C. 1221 et seq.)”; and

18 (B) in paragraph (5)—

19 (i) by inserting after “to the greatest
20 extent practicable” the following: “(at no
21 expense to the Government)”; and

22 (ii) by striking “have counsel to rep-
23 resent them” and inserting “have access to
24 counsel to represent them”.

1 (b) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to any unauthorized alien child ap-
3 prehended on or after June 15, 2012.

4 **SEC. 5502. SPECIAL IMMIGRANT JUVENILE STATUS FOR IM-**
5 **MIGRANTS UNABLE TO REUNITE WITH EI-**
6 **THIER PARENT.**

7 Section 101(a)(27)(J)(i) of the Immigration and Na-
8 tionality Act (8 U.S.C. 1101(a)(27)(J)(i)) is amended by
9 striking “1 or both of the immigrant’s parents” and in-
10 serting “either of the immigrant’s parents”.

11 **SEC. 5503. JURISDICTION OF ASYLUM APPLICATIONS.**

12 Section 208(b)(3) of the Immigration and Nationality
13 Act (8 U.S.C. 1158) is amended by striking subparagraph
14 (C).

15 **SEC. 5504. QUARTERLY REPORT TO CONGRESS.**

16 Not later than January 5, 2019, and every 3 months
17 thereafter—

18 (1) the Attorney General shall submit a report
19 on—

20 (A) the total number of asylum cases filed
21 by unaccompanied alien children and completed
22 by an immigration judge during the 3-month
23 period preceding the date of the report, and the
24 percentage of those cases in which asylum was
25 granted; and

1 (B) the number of unaccompanied alien
2 children who failed to appear for any pro-
3 ceeding before an immigration judge during the
4 3-month period preceding the date of the re-
5 port; and

6 (2) the Secretary of Homeland Security shall
7 submit a report on the total number of applications
8 for asylum, filed by unaccompanied alien children,
9 that were adjudicated during the 3-month period
10 preceding the date of the report and the percentage
11 of those applications that were granted.

12 **SEC. 5505. BIENNIAL REPORT TO CONGRESS.**

13 Not later than January 5, 2019, and every 6 months
14 thereafter, the Attorney General shall submit a report to
15 Congress on each crime for which an unaccompanied alien
16 child is charged or convicted during the previous 6-month
17 period following their release from the custody of the Sec-
18 retary of Homeland Security pursuant to section 235 of
19 the William Wilberforce Trafficking Victims Protection
20 Reauthorization Act of 2008 (8 U.S.C. 1232).

21 **SEC. 5506. CLARIFICATION OF STANDARDS FOR FAMILY DE-**
22 **TENTION.**

23 (a) IN GENERAL.—Section 235 of the William Wil-
24 berforce Trafficking Victims Protection Reauthorization

1 Act of 2008 (8 U.S.C. 1232) is amended by adding at
2 the end the following:

3 “(j) CONSTRUCTION.—

4 “(1) IN GENERAL.—Notwithstanding any other
5 provision of law, judicial determination, consent de-
6 cree, or settlement agreement, the detention of any
7 alien child who is not an unaccompanied alien child
8 shall be governed by sections 217, 235, 236, and
9 241 of the Immigration and Nationality Act (8
10 U.S.C. 1187, 1225, 1226, and 1231). There exists
11 no presumption that an alien child who is not an un-
12 accompanied alien child should not be detained, and
13 all such determinations shall be in the discretion of
14 the Secretary of Homeland Security.

15 “(2) RELEASE OF MINORS OTHER THAN UNAC-
16 COMPANIED ALIENS.—In no circumstances shall an
17 alien minor who is not an unaccompanied alien child
18 be released by the Secretary of Homeland Security
19 other than to a parent or legal guardian.”.

20 (b) EFFECTIVE DATE.—The amendment made by
21 subsection (a) shall take effect on the date of the enact-
22 ment of this Act and shall apply to all actions that occur
23 before, on, or after the date of the enactment of this Act.

1 **DIVISION C—BORDER**
2 **ENFORCEMENT**

3 **SEC. 1100. SHORT TITLE.**

4 This division may be cited as the “Border Security
5 for America Act of 2019”.

6 **TITLE I—BORDER SECURITY**

7 **SEC. 1101. DEFINITIONS.**

8 In this title:

9 (1) **ADVANCED UNATTENDED SURVEILLANCE**
10 **SENSORS.**—The term “advanced unattended surveil-
11 lance sensors” means sensors that utilize an onboard
12 computer to analyze detections in an effort to dis-
13 cern between vehicles, humans, and animals, and ul-
14 timately filter false positives prior to transmission.

15 (2) **APPROPRIATE CONGRESSIONAL COM-**
16 **MITTEE.**—The term “appropriate congressional com-
17 mittee” has the meaning given the term in section
18 2(2) of the Homeland Security Act of 2002 (6
19 U.S.C. 101(2)).

20 (3) **COMMISSIONER.**—The term “Commis-
21 sioner” means the Commissioner of U.S. Customs
22 and Border Protection.

23 (4) **HIGH TRAFFIC AREAS.**—The term “high
24 traffic areas” has the meaning given such term in
25 section 102(e)(1) of the Illegal Immigration Reform

1 and Immigrant Responsibility Act of 1996, as
2 amended by section 1111 of this division.

3 (5) OPERATIONAL CONTROL.—The term “oper-
4 ational control” has the meaning given such term in
5 section 2(b) of the Secure Fence Act of 2006 (8
6 U.S.C. 1701 note; Public Law 109–367).

7 (6) SECRETARY.—The term “Secretary” means
8 the Secretary of Homeland Security.

9 (7) SITUATIONAL AWARENESS.—The term “sit-
10 uational awareness” has the meaning given such
11 term in section 1092(a)(7) of the National Defense
12 Authorization Act for Fiscal Year 2017 (Public Law
13 114–328; 6 U.S.C. 223(a)(7)).

14 (8) SMALL UNMANNED AERIAL VEHICLE.—The
15 term “small unmanned aerial vehicle” has the mean-
16 ing given the term “small unmanned aircraft” in
17 section 331 of the FAA Modernization and Reform
18 Act of 2012 (Public Law 112–95; 49 U.S.C. 40101
19 note).

20 (9) TRANSIT ZONE.—The term “transit zone”
21 has the meaning given such term in section
22 1092(a)(8) of the National Defense Authorization
23 Act for Fiscal Year 2017 (Public Law 114–328; 6
24 U.S.C. 223(a)(7)).

1 (10) UNMANNED AERIAL SYSTEM.—The term
2 “unmanned aerial system” has the meaning given
3 the term “unmanned aircraft system” in section 331
4 of the FAA Modernization and Reform Act of 2012
5 (Public Law 112–95; 49 U.S.C. 40101 note).

6 (11) UNMANNED AERIAL VEHICLE.—The term
7 “unmanned aerial vehicle” has the meaning given
8 the term “unmanned aircraft” in section 331 of the
9 FAA Modernization and Reform Act of 2012 (Public
10 Law 112–95; 49 U.S.C. 40101 note).

11 **Subtitle A—Infrastructure and** 12 **Equipment**

13 **SEC. 1111. STRENGTHENING THE REQUIREMENTS FOR BAR-** 14 **RIERS ALONG THE SOUTHERN BORDER.**

15 Section 102 of the Illegal Immigration Reform and
16 Immigrant Responsibility Act of 1996 (Division C of Pub-
17 lic Law 104–208; 8 U.S.C. 1103 note) is amended—

18 (1) by amending subsection (a) to read as fol-
19 lows:

20 “(a) IN GENERAL.—The Secretary of Homeland Se-
21 curity shall take such actions as may be necessary (includ-
22 ing the removal of obstacles to detection of illegal en-
23 trants) to design, test, construct, install, deploy, and oper-
24 ate physical barriers, tactical infrastructure, and tech-
25 nology in the vicinity of the United States border to

1 achieve situational awareness and operational control of
2 the border and deter, impede, and detect illegal activity
3 in high traffic areas.”;

4 (2) in subsection (b)—

5 (A) in the subsection heading, by striking
6 “FENCING AND ROAD IMPROVEMENTS” and in-
7 serting “PHYSICAL BARRIERS”;

8 (B) in paragraph (1)—

9 (i) in subparagraph (A)—

10 (I) by striking “subsection (a)”
11 and inserting “this section”;

12 (II) by striking “roads, lighting,
13 cameras, and sensors” and inserting
14 “tactical infrastructure, and tech-
15 nology”; and

16 (III) by striking “gain” inserting
17 “achieve situational awareness and”;
18 and

19 (ii) by amending subparagraph (B) to
20 read as follows:

21 “(B) PHYSICAL BARRIERS AND TACTICAL
22 INFRASTRUCTURE.—

23 “(i) IN GENERAL.—Not later than
24 September 30, 2022, the Secretary of
25 Homeland Security, in carrying out this

1 section, shall deploy along the United
2 States border the most practical and effec-
3 tive physical barriers and tactical infra-
4 structure available for achieving situational
5 awareness and operational control of the
6 border.

7 “(ii) CONSIDERATION FOR CERTAIN
8 PHYSICAL BARRIERS AND TACTICAL INFRA-
9 STRUCTURE.—The deployment of physical
10 barriers and tactical infrastructure under
11 this subparagraph shall not apply in any
12 area or region along the border where nat-
13 ural terrain features, natural barriers, or
14 the remoteness of such area or region
15 would make any such deployment ineffec-
16 tive, as determined by the Secretary, for
17 the purposes of achieving situational
18 awareness or operational control of such
19 area or region.”;

20 (iii) in subparagraph (C)—

21 (I) by amending clause (i) to
22 read as follows:

23 “(i) IN GENERAL.—In carrying out
24 this section, the Secretary of Homeland
25 Security shall, before constructing physical

1 barriers in a specific area or region, con-
2 sult with the Secretary of the Interior, the
3 Secretary of Agriculture, appropriate rep-
4 resentatives of Federal, State, local, and
5 tribal governments, and appropriate pri-
6 vate property owners in the United States
7 to minimize the impact on the environ-
8 ment, culture, commerce, and quality of
9 life for the communities and residents lo-
10 cated near the sites at which such physical
11 barriers are to be constructed.”;

12 (II) by redesignating clause (ii)
13 as clause (iii); and

14 (III) by inserting after clause (i),
15 as amended, the following new clause:

16 “(ii) NOTIFICATION.—Not later than
17 60 days after the consultation required
18 under clause (i), the Secretary of Home-
19 land Security shall notify the Committee
20 on Homeland Security of the House of
21 Representatives and the Committee on
22 Homeland Security and Governmental Af-
23 fairs of the Senate of the type of physical
24 barriers, tactical infrastructure, or tech-
25 nology the Secretary has determined is

1 most practical and effective to achieve situ-
2 ational awareness and operational control
3 in a specific area or region and the other
4 alternatives the Secretary considered be-
5 fore making such a determination.”; and

6 (iv) by striking subparagraph (D);

7 (C) in paragraph (2)—

8 (i) by striking “Attorney General”
9 and inserting “Secretary of Homeland Se-
10 curity”;

11 (ii) by striking “this subsection” and
12 inserting “this section”; and

13 (iii) by striking “construction of
14 fences” and inserting “the construction of
15 physical barriers”; and

16 (D) by amending paragraph (3) to read as
17 follows:

18 “(3) AGENT SAFETY.—In carrying out this sec-
19 tion, the Secretary of Homeland Security, when de-
20 signing, constructing, and deploying physical bar-
21 riers, tactical infrastructure, or technology, shall in-
22 corporate such safety features into such design, con-
23 struction, or deployment of such physical barriers,
24 tactical infrastructure, or technology, as the case
25 may be, that the Secretary determines, in the Sec-

1 retary’s sole discretion, are necessary to maximize
2 the safety and effectiveness of officers or agents of
3 the Department of Homeland Security or of any
4 other Federal agency deployed in the vicinity of such
5 physical barriers, tactical infrastructure, or tech-
6 nology.”;

7 (3) in subsection (c), by amending paragraph
8 (1) to read as follows:

9 “(1) IN GENERAL.—Notwithstanding any other
10 provision of law, the Secretary of Homeland Security
11 shall have the authority to waive all legal require-
12 ments the Secretary, in the Secretary’s sole discre-
13 tion, determines necessary to ensure the expeditious
14 design, testing, construction, installation, deploy-
15 ment, operation, and maintenance of the physical
16 barriers, tactical infrastructure, and technology
17 under this section. Any such decision by the Sec-
18 retary shall be effective upon publication in the Fed-
19 eral Register.”; and

20 (4) by adding after subsection (d) the following
21 new subsections:

22 “(e) TECHNOLOGY.—Not later than September 30,
23 2022, the Secretary of Homeland Security, in carrying out
24 this section, shall deploy along the United States border
25 the most practical and effective technology available for

1 achieving situational awareness and operational control of
2 the border.

3 “(f) LIMITATION ON REQUIREMENTS.—Nothing in
4 this section may be construed as requiring the Secretary
5 of Homeland Security to install tactical infrastructure,
6 technology, and physical barriers in a particular location
7 along an international border of the United States, if the
8 Secretary determines that the use or placement of such
9 resources is not the most appropriate means to achieve
10 and maintain situational awareness and operational con-
11 trol over the international border at such location.

12 “(g) DEFINITIONS.—In this section:

13 “(1) HIGH TRAFFIC AREAS.—The term ‘high
14 traffic areas’ means areas in the vicinity of the
15 United States border that—

16 “(A) are within the responsibility of U.S.
17 Customs and Border Protection; and

18 “(B) have significant unlawful cross-border
19 activity, as determined by the Secretary of
20 Homeland Security.

21 “(2) OPERATIONAL CONTROL.—The term ‘oper-
22 ational control’ has the meaning given such term in
23 section 2(b) of the Secure Fence Act of 2006 (8
24 U.S.C. 1701 note; Public Law 109–367).

1 “(3) PHYSICAL BARRIERS.—The term ‘physical
2 barriers’ includes reinforced fencing, border wall sys-
3 tem, and levee walls.

4 “(4) SITUATIONAL AWARENESS.—The term ‘sit-
5 uational awareness’ has the meaning given such
6 term in section 1092(a)(7) of the National Defense
7 Authorization Act for Fiscal Year 2017 (Public Law
8 114–328).

9 “(5) TACTICAL INFRASTRUCTURE.—The term
10 ‘tactical infrastructure’ includes boat ramps, access
11 gates, checkpoints, lighting, and roads.

12 “(6) TECHNOLOGY.—The term ‘technology’ in-
13 cludes border surveillance and detection technology,
14 including the following:

15 “(A) Tower-based surveillance technology.

16 “(B) Deployable, lighter-than-air ground
17 surveillance equipment.

18 “(C) Vehicle and Dismount Exploitation
19 Radars (VADER).

20 “(D) 3-dimensional, seismic acoustic detec-
21 tion and ranging border tunneling detection
22 technology.

23 “(E) Advanced unattended surveillance
24 sensors.

1 “(F) Mobile vehicle-mounted and man-
2 portable surveillance capabilities.

3 “(G) Unmanned aerial vehicles.

4 “(H) Other border detection, communica-
5 tion, and surveillance technology.

6 “(7) UNMANNED AERIAL VEHICLES.—The term
7 ‘unmanned aerial vehicle’ has the meaning given the
8 term ‘unmanned aircraft’ in section 331 of the FAA
9 Modernization and Reform Act of 2012 (Public Law
10 112–95; 49 U.S.C. 40101 note).”.

11 **SEC. 1112. AIR AND MARINE OPERATIONS FLIGHT HOURS.**

12 (a) INCREASED FLIGHT HOURS.—The Secretary,
13 after coordination with the Administrator of the Federal
14 Aviation Administration, shall ensure that not fewer than
15 95,000 annual flight hours are carried out by Air and Ma-
16 rine Operations of U.S. Customs and Border Protection.

17 (b) UNMANNED AERIAL SYSTEM.—The Secretary
18 shall ensure that Air and Marine Operations operate un-
19 manned aerial systems on the southern border of the
20 United States for not less than 24 hours per day for five
21 days per week.

22 (c) CONTRACT AIR SUPPORT AUTHORIZATION.—The
23 Commissioner shall contract for the unfulfilled identified
24 air support mission critical hours, as identified by the
25 Chief of the U.S. Border Patrol.

1 (d) PRIMARY MISSION.—The Commissioner shall en-
2 sure that—

3 (1) the primary missions for Air and Marine
4 Operations are to directly support U.S. Border Pa-
5 trol activities along the southern border of the
6 United States and Joint Interagency Task Force
7 South operations in the transit zone; and

8 (2) the Executive Assistant Commissioner of
9 Air and Marine Operations assigns the greatest pri-
10 ority to support missions established by the Commis-
11 sioner to carry out the requirements under this Act.

12 (e) HIGH-DEMAND FLIGHT HOUR REQUIRE-
13 MENTS.—In accordance with subsection (d), the Commis-
14 sioner shall ensure that U.S. Border Patrol Sector
15 Chiefs—

16 (1) identify critical flight hour requirements;
17 and

18 (2) direct Air and Marine Operations to sup-
19 port requests from Sector Chiefs as their primary
20 mission.

21 (f) SMALL UNMANNED AERIAL VEHICLES.—

22 (1) IN GENERAL.—The Chief of the U.S. Bor-
23 der Patrol shall be the executive agent for U.S. Cus-
24 toms and Border Protection's use of small un-
25 manned aerial vehicles for the purpose of meeting

1 the U.S. Border Patrol's unmet flight hour oper-
2 ational requirements and to achieve situational
3 awareness and operational control.

4 (2) COORDINATION.—In carrying out para-
5 graph (1), the Chief of the U.S. Border Patrol
6 shall—

7 (A) coordinate flight operations with the
8 Administrator of the Federal Aviation Adminis-
9 tration to ensure the safe and efficient oper-
10 ation of the National Airspace System; and

11 (B) coordinate with the Executive Assist-
12 ant Commissioner for Air and Marine Oper-
13 ations of U.S. Customs and Border Protection
14 to ensure the safety of other U.S. Customs and
15 Border Protection aircraft flying in the vicinity
16 of small unmanned aerial vehicles operated by
17 the U.S. Border Patrol.

18 (3) CONFORMING AMENDMENT.—Paragraph (3)
19 of section 411(e) of the Homeland Security Act of
20 2002 (6 U.S.C. 211(e)) is amended—

21 (A) in subparagraph (B), by striking
22 “and” after the semicolon at the end;

23 (B) by redesignating subparagraph (C) as
24 subparagraph (D); and

1 (C) by inserting after subparagraph (B)
2 the following new subparagraph:

3 “(C) carry out the small unmanned aerial
4 vehicle requirements pursuant to subsection (f)
5 of section 1112 of the Border Security for
6 America Act of 2019; and”.

7 (g) SAVING CLAUSE.—Nothing in this section shall
8 confer, transfer, or delegate to the Secretary, the Commis-
9 sioner, the Executive Assistant Commissioner for Air and
10 Marine Operations of U.S. Customs and Border Protec-
11 tion, or the Chief of the U.S. Border Patrol any authority
12 of the Secretary of Transportation or the Administrator
13 of the Federal Aviation Administration relating to the use
14 of airspace or aviation safety.

15 **SEC. 1113. CAPABILITY DEPLOYMENT TO SPECIFIC SEC-**
16 **TORS AND TRANSIT ZONE.**

17 (a) IN GENERAL.—Not later than September 30,
18 2022, the Secretary, in implementing section 102 of the
19 Illegal Immigration Reform and Immigrant Responsibility
20 Act of 1996 (as amended by section 1111 of this division),
21 and acting through the appropriate component of the De-
22 partment of Homeland Security, shall deploy to each sec-
23 tor or region of the southern border and the northern bor-
24 der, in a prioritized manner to achieve situational aware-

1 ness and operational control of such borders, the following
2 additional capabilities:

3 (1) SAN DIEGO SECTOR.—For the San Diego
4 sector, the following:

5 (A) Tower-based surveillance technology.

6 (B) Subterranean surveillance and detec-
7 tion technologies.

8 (C) To increase coastal maritime domain
9 awareness, the following:

10 (i) Deployable, lighter-than-air surface
11 surveillance equipment.

12 (ii) Unmanned aerial vehicles with
13 maritime surveillance capability.

14 (iii) U.S. Customs and Border Protec-
15 tion maritime patrol aircraft.

16 (iv) Coastal radar surveillance sys-
17 tems.

18 (v) Maritime signals intelligence capa-
19 bilities.

20 (D) Ultralight aircraft detection capabili-
21 ties.

22 (E) Advanced unattended surveillance sen-
23 sors.

24 (F) A rapid reaction capability supported
25 by aviation assets.

1 (G) Mobile vehicle-mounted and man-port-
2 able surveillance capabilities.

3 (H) Man-portable unmanned aerial vehi-
4 cles.

5 (I) Improved agent communications capa-
6 bilities.

7 (2) EL CENTRO SECTOR.—For the El Centro
8 sector, the following:

9 (A) Tower-based surveillance technology.

10 (B) Deployable, lighter-than-air ground
11 surveillance equipment.

12 (C) Man-portable unmanned aerial vehi-
13 cles.

14 (D) Ultralight aircraft detection capabili-
15 ties.

16 (E) Advanced unattended surveillance sen-
17 sors.

18 (F) A rapid reaction capability supported
19 by aviation assets.

20 (G) Man-portable unmanned aerial vehi-
21 cles.

22 (H) Improved agent communications capa-
23 bilities.

24 (3) YUMA SECTOR.—For the Yuma sector, the
25 following:

- 1 (A) Tower-based surveillance technology.
- 2 (B) Deployable, lighter-than-air ground
- 3 surveillance equipment.
- 4 (C) Ultralight aircraft detection capabili-
- 5 ties.
- 6 (D) Advanced unattended surveillance sen-
- 7 sors.
- 8 (E) A rapid reaction capability supported
- 9 by aviation assets.
- 10 (F) Mobile vehicle-mounted and man-port-
- 11 able surveillance systems.
- 12 (G) Man-portable unmanned aerial vehi-
- 13 cles.
- 14 (H) Improved agent communications capa-
- 15 bilities.
- 16 (4) TUCSON SECTOR.—For the Tucson sector,
- 17 the following:
 - 18 (A) Tower-based surveillance technology.
 - 19 (B) Increased flight hours for aerial detec-
 - 20 tion, interdiction, and monitoring operations ca-
 - 21 pability.
 - 22 (C) Deployable, lighter-than-air ground
 - 23 surveillance equipment.
 - 24 (D) Ultralight aircraft detection capabili-
 - 25 ties.

1 (E) Advanced unattended surveillance sen-
2 sors.

3 (F) A rapid reaction capability supported
4 by aviation assets.

5 (G) Man-portable unmanned aerial vehi-
6 cles.

7 (H) Improved agent communications capa-
8 bilities.

9 (5) EL PASO SECTOR.—For the El Paso sector,
10 the following:

11 (A) Tower-based surveillance technology.

12 (B) Deployable, lighter-than-air ground
13 surveillance equipment.

14 (C) Ultralight aircraft detection capabili-
15 ties.

16 (D) Advanced unattended surveillance sen-
17 sors.

18 (E) Mobile vehicle-mounted and man-port-
19 able surveillance systems.

20 (F) A rapid reaction capability supported
21 by aviation assets.

22 (G) Mobile vehicle-mounted and man-port-
23 able surveillance capabilities.

24 (H) Man-portable unmanned aerial vehi-
25 cles.

1 (I) Improved agent communications capa-
2 bilities.

3 (6) BIG BEND SECTOR.—For the Big Bend sec-
4 tor, the following:

5 (A) Tower-based surveillance technology.

6 (B) Deployable, lighter-than-air ground
7 surveillance equipment.

8 (C) Improved agent communications capa-
9 bilities.

10 (D) Ultralight aircraft detection capabili-
11 ties.

12 (E) Advanced unattended surveillance sen-
13 sors.

14 (F) A rapid reaction capability supported
15 by aviation assets.

16 (G) Mobile vehicle-mounted and man-port-
17 able surveillance capabilities.

18 (H) Man-portable unmanned aerial vehi-
19 cles.

20 (I) Improved agent communications capa-
21 bilities.

22 (7) DEL RIO SECTOR.—For the Del Rio sector,
23 the following:

24 (A) Tower-based surveillance technology.

1 (B) Increased monitoring for cross-river
2 dams, culverts, and footpaths.

3 (C) Improved agent communications capa-
4 bilities.

5 (D) Improved maritime capabilities in the
6 Amistad National Recreation Area.

7 (E) Advanced unattended surveillance sen-
8 sors.

9 (F) A rapid reaction capability supported
10 by aviation assets.

11 (G) Mobile vehicle-mounted and man-port-
12 able surveillance capabilities.

13 (H) Man-portable unmanned aerial vehi-
14 cles.

15 (I) Improved agent communications capa-
16 bilities.

17 (8) LAREDO SECTOR.—For the Laredo sector,
18 the following:

19 (A) Tower-based surveillance technology.

20 (B) Maritime detection resources for the
21 Falcon Lake region.

22 (C) Increased flight hours for aerial detec-
23 tion, interdiction, and monitoring operations ca-
24 pability.

1 (D) Increased monitoring for cross-river
2 dams, culverts, and footpaths.

3 (E) Ultralight aircraft detection capability.

4 (F) Advanced unattended surveillance sen-
5 sors.

6 (G) A rapid reaction capability supported
7 by aviation assets.

8 (H) Man-portable unmanned aerial vehi-
9 cles.

10 (I) Improved agent communications capa-
11 bilities.

12 (9) RIO GRANDE VALLEY SECTOR.—For the Rio
13 Grande Valley sector, the following:

14 (A) Tower-based surveillance technology.

15 (B) Deployable, lighter-than-air ground
16 surveillance equipment.

17 (C) Increased flight hours for aerial detec-
18 tion, interdiction, and monitoring operations ca-
19 pability.

20 (D) Ultralight aircraft detection capability.

21 (E) Advanced unattended surveillance sen-
22 sors.

23 (F) Increased monitoring for cross-river
24 dams, culverts, footpaths.

1 (G) A rapid reaction capability supported
2 by aviation assets.

3 (H) Increased maritime interdiction capa-
4 bilities.

5 (I) Mobile vehicle-mounted and man-port-
6 able surveillance capabilities.

7 (J) Man-portable unmanned aerial vehi-
8 cles.

9 (K) Improved agent communications capa-
10 bilities.

11 (10) BLAINE SECTOR.—For the Blaine sector,
12 the following:

13 (A) Increased flight hours for aerial detec-
14 tion, interdiction, and monitoring operations ca-
15 pability.

16 (B) Coastal radar surveillance systems.

17 (C) Increased maritime interdiction capa-
18 bilities.

19 (D) Mobile vehicle-mounted and man-port-
20 able surveillance capabilities.

21 (E) Advanced unattended surveillance sen-
22 sors.

23 (F) Ultralight aircraft detection capabili-
24 ties.

1 (G) Man-portable unmanned aerial vehi-
2 cles.

3 (H) Improved agent communications capa-
4 bilities.

5 (11) SPOKANE SECTOR.—For the Spokane sec-
6 tor, the following:

7 (A) Increased flight hours for aerial detec-
8 tion, interdiction, and monitoring operations ca-
9 pability.

10 (B) Increased maritime interdiction capa-
11 bilities.

12 (C) Mobile vehicle-mounted and man-port-
13 able surveillance capabilities.

14 (D) Advanced unattended surveillance sen-
15 sors.

16 (E) Ultralight aircraft detection capabili-
17 ties.

18 (F) Completion of six miles of the Bog
19 Creek road.

20 (G) Man-portable unmanned aerial vehi-
21 cles.

22 (H) Improved agent communications sys-
23 tems.

24 (12) HAVRE SECTOR.—For the Havre sector,
25 the following:

1 (A) Increased flight hours for aerial detec-
2 tion, interdiction, and monitoring operations ca-
3 pability.

4 (B) Mobile vehicle-mounted and man-port-
5 able surveillance capabilities.

6 (C) Advanced unattended surveillance sen-
7 sors.

8 (D) Ultralight aircraft detection capabili-
9 ties.

10 (E) Man-portable unmanned aerial vehi-
11 cles.

12 (F) Improved agent communications sys-
13 tems.

14 (13) GRAND FORKS SECTOR.—For the Grand
15 Forks sector, the following:

16 (A) Increased flight hours for aerial detec-
17 tion, interdiction, and monitoring operations ca-
18 pability.

19 (B) Mobile vehicle-mounted and man-port-
20 able surveillance capabilities.

21 (C) Advanced unattended surveillance sen-
22 sors.

23 (D) Ultralight aircraft detection capabili-
24 ties.

1 (E) Man-portable unmanned aerial vehi-
2 cles.

3 (F) Improved agent communications sys-
4 tems.

5 (14) DETROIT SECTOR.—For the Detroit sec-
6 tor, the following:

7 (A) Increased flight hours for aerial detec-
8 tion, interdiction, and monitoring operations ca-
9 pability.

10 (B) Coastal radar surveillance systems.

11 (C) Increased maritime interdiction capa-
12 bilities.

13 (D) Mobile vehicle-mounted and man-port-
14 able surveillance capabilities.

15 (E) Advanced unattended surveillance sen-
16 sors.

17 (F) Ultralight aircraft detection capabili-
18 ties.

19 (G) Man-portable unmanned aerial vehi-
20 cles.

21 (H) Improved agent communications sys-
22 tems.

23 (15) BUFFALO SECTOR.—For the Buffalo sec-
24 tor, the following:

1 (A) Increased flight hours for aerial detec-
2 tion, interdiction, and monitoring operations ca-
3 pability.

4 (B) Coastal radar surveillance systems.

5 (C) Increased maritime interdiction capa-
6 bilities.

7 (D) Mobile vehicle-mounted and man-port-
8 able surveillance capabilities.

9 (E) Advanced unattended surveillance sen-
10 sors.

11 (F) Ultralight aircraft detection capabili-
12 ties.

13 (G) Man-portable unmanned aerial vehi-
14 cles.

15 (H) Improved agent communications sys-
16 tems.

17 (16) SWANTON SECTOR.—For the Swanton sec-
18 tor, the following:

19 (A) Increased flight hours for aerial detec-
20 tion, interdiction, and monitoring operations ca-
21 pability.

22 (B) Mobile vehicle-mounted and man-port-
23 able surveillance capabilities.

24 (C) Advanced unattended surveillance sen-
25 sors.

1 (D) Ultralight aircraft detection capabili-
2 ties.

3 (E) Man-portable unmanned aerial vehi-
4 cles.

5 (F) Improved agent communications sys-
6 tems.

7 (17) HOULTON SECTOR.—For the Houlton sec-
8 tor, the following:

9 (A) Increased flight hours for aerial detec-
10 tion, interdiction, and monitoring operations ca-
11 pability.

12 (B) Mobile vehicle-mounted and man-port-
13 able surveillance capabilities.

14 (C) Advanced unattended surveillance sen-
15 sors.

16 (D) Ultralight aircraft detection capabili-
17 ties.

18 (E) Man-portable unmanned aerial vehi-
19 cles.

20 (F) Improved agent communications sys-
21 tems.

22 (18) TRANSIT ZONE.—For the transit zone, the
23 following:

24 (A) Not later than two years after the date
25 of the enactment of this Act, an increase in the

1 number of overall cutter, boat, and aircraft
2 hours spent conducting interdiction operations
3 over the average number of such hours during
4 the preceding three fiscal years.

5 (B) Increased maritime signals intelligence
6 capabilities.

7 (C) To increase maritime domain aware-
8 ness, the following:

9 (i) Unmanned aerial vehicles with
10 maritime surveillance capability.

11 (ii) Increased maritime aviation patrol
12 hours.

13 (D) Increased operational hours for mari-
14 time security components dedicated to joint
15 counter-smuggling and interdiction efforts with
16 other Federal agencies, including the
17 Deployable Specialized Forces of the Coast
18 Guard.

19 (E) Coastal radar surveillance systems
20 with long range day and night cameras capable
21 of providing full maritime domain awareness of
22 the United States territorial waters surrounding
23 Puerto Rico, Mona Island, Desecheo Island,
24 Vieques Island, Culebra Island, Saint Thomas,
25 Saint John, and Saint Croix.

1 (b) TACTICAL FLEXIBILITY.—

2 (1) SOUTHERN AND NORTHERN LAND BOR-
3 DERS.—

4 (A) IN GENERAL.—Beginning on Sep-
5 tember 30, 2021, or after the Secretary has de-
6 ployed at least 25 percent of the capabilities re-
7 quired in each sector specified in subsection (a),
8 whichever comes later, the Secretary may devi-
9 ate from such capability deployments if the Sec-
10 retary determines that such deviation is re-
11 quired to achieve situational awareness or oper-
12 ational control.

13 (B) NOTIFICATION.—If the Secretary exer-
14 cises the authority described in subparagraph
15 (A), the Secretary shall, not later than 90 days
16 after such exercise, notify the Committee on
17 Homeland Security and Governmental Affairs
18 of the Senate and the Committee on Homeland
19 Security of the House of Representatives re-
20 garding the deviation under such subparagraph
21 that is the subject of such exercise. If the Sec-
22 retary makes any changes to such deviation, the
23 Secretary shall, not later than 90 days after
24 any such change, notify such committees re-
25 garding such change.

1 (2) TRANSIT ZONE.—

2 (A) NOTIFICATION.—The Secretary shall
3 notify the Committee on Homeland Security
4 and Governmental Affairs of the Senate, the
5 Committee on Commerce, Science, and Trans-
6 portation of the Senate, the Committee on
7 Homeland Security of the House of Representa-
8 tives, and the Committee on Transportation
9 and Infrastructure of the House of Representa-
10 tives regarding the capability deployments for
11 the transit zone specified in paragraph (18) of
12 subsection (a), including information relating
13 to—

14 (i) the number and types of assets
15 and personnel deployed; and

16 (ii) the impact such deployments have
17 on the capability of the Coast Guard to
18 conduct its mission in the transit zone re-
19 ferred to in paragraph (18) of subsection
20 (a).

21 (B) ALTERATION.—The Secretary may
22 alter the capability deployments referred to in
23 this section if the Secretary—

24 (i) determines, after consultation with
25 the committees referred to in subpara-

1 graph (A), that such alteration is nec-
2 essary; and

3 (ii) not later than 30 days after mak-
4 ing a determination under clause (i), noti-
5 fies the committees referred to in such
6 subparagraph regarding such alteration,
7 including information relating to—

8 (I) the number and types of as-
9 sets and personnel deployed pursuant
10 to such alteration; and

11 (II) the impact such alteration
12 has on the capability of the Coast
13 Guard to conduct its mission in the
14 transit zone referred to in paragraph
15 (18) of subsection (a).

16 (c) EXIGENT CIRCUMSTANCES.—

17 (1) IN GENERAL.—Notwithstanding subsection
18 (b), the Secretary may deploy the capabilities re-
19 ferred to in subsection (a) in a manner that is incon-
20 sistent with the requirements specified in such sub-
21 section if, after the Secretary has deployed at least
22 25 percent of such capabilities, the Secretary deter-
23 mines that exigent circumstances demand such an
24 inconsistent deployment or that such an inconsistent

1 deployment is vital to the national security interests
2 of the United States.

3 (2) NOTIFICATION.—The Secretary shall notify
4 the Committee on Homeland Security of the House
5 of Representative and the Committee on Homeland
6 Security and Governmental Affairs of the Senate not
7 later than 30 days after making a determination
8 under paragraph (1). Such notification shall include
9 a detailed justification regarding such determination.

10 **SEC. 1114. U.S. BORDER PATROL ACTIVITIES.**

11 The Chief of the U.S. Border Patrol shall prioritize
12 the deployment of U.S. Border Patrol agents to as close
13 to the physical land border as possible, consistent with
14 border security enforcement priorities and accessibility to
15 such areas.

16 **SEC. 1115. BORDER SECURITY TECHNOLOGY PROGRAM**
17 **MANAGEMENT.**

18 (a) IN GENERAL.—Subtitle C of title IV of the
19 Homeland Security Act of 2002 (6 U.S.C. 231 et seq.)
20 is amended by adding at the end the following new section:

21 **“SEC. 435. BORDER SECURITY TECHNOLOGY PROGRAM**
22 **MANAGEMENT.**

23 “(a) MAJOR ACQUISITION PROGRAM DEFINED.—In
24 this section, the term ‘major acquisition program’ means
25 an acquisition program of the Department that is esti-

1 mated by the Secretary to require an eventual total ex-
2 penditure of at least \$300,000,000 (based on fiscal year
3 2017 constant dollars) over its life cycle cost.

4 “(b) PLANNING DOCUMENTATION.—For each border
5 security technology acquisition program of the Depart-
6 ment that is determined to be a major acquisition pro-
7 gram, the Secretary shall—

8 “(1) ensure that each such program has a writ-
9 ten acquisition program baseline approved by the
10 relevant acquisition decision authority;

11 “(2) document that each such program is meet-
12 ing cost, schedule, and performance thresholds as
13 specified in such baseline, in compliance with rel-
14 evant departmental acquisition policies and the Fed-
15 eral Acquisition Regulation; and

16 “(3) have a plan for meeting program imple-
17 mentation objectives by managing contractor per-
18 formance.

19 “(c) ADHERENCE TO STANDARDS.—The Secretary,
20 acting through the Under Secretary for Management and
21 the Commissioner of U.S. Customs and Border Protection,
22 shall ensure border security technology acquisition pro-
23 gram managers who are responsible for carrying out this
24 section adhere to relevant internal control standards iden-
25 tified by the Comptroller General of the United States.

1 The Commissioner shall provide information, as needed,
2 to assist the Under Secretary in monitoring management
3 of border security technology acquisition programs under
4 this section.

5 “(d) PLAN.—The Secretary, acting through the
6 Under Secretary for Management, in coordination with
7 the Under Secretary for Science and Technology and the
8 Commissioner of U.S. Customs and Border Protection,
9 shall submit to the appropriate congressional committees
10 a plan for testing, evaluating, and using independent
11 verification and validation resources for border security
12 technology. Under the plan, new border security tech-
13 nologies shall be evaluated through a series of assess-
14 ments, processes, and audits to ensure—

15 “(1) compliance with relevant departmental ac-
16 quisition policies and the Federal Acquisition Regu-
17 lation; and

18 “(2) the effective use of taxpayer dollars.”.

19 (b) CLERICAL AMENDMENT.—The table of contents
20 in section 1(b) of the Homeland Security Act of 2002 is
21 amended by inserting after the item relating to section
22 433 the following new item:

“Sec. 435. Border security technology program management.”.

23 (c) PROHIBITION ON ADDITIONAL AUTHORIZATION
24 OF APPROPRIATIONS.—No additional funds are author-
25 ized to be appropriated to carry out section 435 of the

1 Homeland Security Act of 2002, as added by subsection
2 (a). Such section shall be carried out using amounts other-
3 wise authorized for such purposes.

4 **SEC. 1116. REIMBURSEMENT OF STATES FOR DEPLOYMENT**
5 **OF THE NATIONAL GUARD AT THE SOUTH-**
6 **ERN BORDER.**

7 (a) IN GENERAL.—With the approval of the Sec-
8 retary and the Secretary of Defense, the Governor of a
9 State may order any units or personnel of the National
10 Guard of such State to perform operations and missions
11 under section 502(f) of title 32, United States Code, along
12 the southern border for the purposes of assisting U.S.
13 Customs and Border Protection to achieve situational
14 awareness and operational control of the border.

15 (b) ASSIGNMENT OF OPERATIONS AND MISSIONS.—

16 (1) IN GENERAL.—National Guard units and
17 personnel deployed under subsection (a) may be as-
18 signed such operations and missions specified in sub-
19 section (c) as may be necessary to secure the south-
20 ern border.

21 (2) NATURE OF DUTY.—The duty of National
22 Guard personnel performing operations and missions
23 described in paragraph (1) shall be full-time duty
24 under title 32, United States Code.

1 (c) RANGE OF OPERATIONS AND MISSIONS.—The op-
2 erations and missions assigned under subsection (b) shall
3 include the temporary authority to—

4 (1) construct reinforced fencing or other phys-
5 ical barriers;

6 (2) operate ground-based surveillance systems;

7 (3) operate unmanned and manned aircraft;

8 (4) provide radio communications interoper-
9 ability between U.S. Customs and Border Protection
10 and State, local, and tribal law enforcement agen-
11 cies;

12 (5) construct checkpoints along the Southern
13 border to bridge the gap to long-term permanent
14 checkpoints; and

15 (6) provide intelligence support.

16 (d) MATERIEL AND LOGISTICAL SUPPORT.—The
17 Secretary of Defense shall deploy such materiel, equip-
18 ment, and logistical support as may be necessary to ensure
19 success of the operations and missions conducted by the
20 National Guard under this section.

21 (e) REIMBURSEMENT REQUIRED.—

22 (1) IN GENERAL.—The Secretary of Defense
23 shall reimburse States for the cost of the deployment
24 of any units or personnel of the National Guard to
25 perform operations and missions in full-time State

1 Active Duty in support of a southern border mission.
2 The Secretary of Defense may not seek reimburse-
3 ment from the Secretary for any reimbursements
4 paid to States for the costs of such deployments.

5 (2) LIMITATION.—The total amount of reim-
6 bursements under this section may not exceed
7 \$35,000,000 for any fiscal year.

8 **SEC. 1117. NATIONAL GUARD SUPPORT TO SECURE THE**
9 **SOUTHERN BORDER.**

10 (a) IN GENERAL.—The Secretary of Defense, with
11 the concurrence of the Secretary, shall provide assistance
12 to U.S. Customs and Border Protection for purposes of
13 increasing ongoing efforts to secure the southern border.

14 (b) TYPES OF ASSISTANCE AUTHORIZED.—The as-
15 sistance provided under subsection (a) may include—

16 (1) deployment of manned aircraft, unmanned
17 aerial surveillance systems, and ground-based sur-
18 veillance systems to support continuous surveillance
19 of the southern border; and

20 (2) intelligence analysis support.

21 (c) MATERIEL AND LOGISTICAL SUPPORT.—The Sec-
22 retary of Defense may deploy such materiel, equipment,
23 and logistics support as may be necessary to ensure the
24 effectiveness of the assistance provided under subsection
25 (a).

1 (d) AUTHORIZATION OF APPROPRIATIONS.—There
2 are authorized to be appropriated for the Department of
3 Defense \$75,000,000 to provide assistance under this sec-
4 tion. The Secretary of Defense may not seek reimburse-
5 ment from the Secretary for any assistance provided under
6 this section.

7 (e) REPORTS.—

8 (1) IN GENERAL.—Not later than 90 days after
9 the date of the enactment of this Act and annually
10 thereafter, the Secretary of Defense shall submit a
11 report to the appropriate congressional defense com-
12 mittees (as defined in section 101(a)(16) of title 10,
13 United States Code) regarding any assistance pro-
14 vided under subsection (a) during the period speci-
15 fied in paragraph (3).

16 (2) ELEMENTS.—Each report under paragraph
17 (1) shall include, for the period specified in para-
18 graph (3), a description of—

19 (A) the assistance provided;

20 (B) the sources and amounts of funds used
21 to provide such assistance; and

22 (C) the amounts obligated to provide such
23 assistance.

24 (3) PERIOD SPECIFIED.—The period specified
25 in this paragraph is—

1 (A) in the case of the first report required
2 under paragraph (1), the 90-day period begin-
3 ning on the date of the enactment of this Act;
4 and

5 (B) in the case of any subsequent report
6 submitted under paragraph (1), the calendar
7 year for which the report is submitted.

8 **SEC. 1118. PROHIBITIONS ON ACTIONS THAT IMPEDE BOR-**
9 **DER SECURITY ON CERTAIN FEDERAL LAND.**

10 (a) PROHIBITION ON INTERFERENCE WITH U.S.
11 CUSTOMS AND BORDER PROTECTION.—

12 (1) IN GENERAL.—The Secretary concerned
13 may not impede, prohibit, or restrict activities of
14 U.S. Customs and Border Protection on covered
15 Federal land to carry out the activities described in
16 subsection (b).

17 (2) APPLICABILITY.—The authority of U.S.
18 Customs and Border Protection to conduct activities
19 described in subsection (b) on covered Federal land
20 applies without regard to whether a state of emer-
21 gency exists.

22 (b) AUTHORIZED ACTIVITIES OF U.S. CUSTOMS AND
23 BORDER PROTECTION.—

24 (1) IN GENERAL.—U.S. Customs and Border
25 Protection shall have immediate access to covered

1 Federal land to conduct the activities described in
2 paragraph (2) on such land to prevent all unlawful
3 entries into the United States, including entries by
4 terrorists, unlawful aliens, instruments of terrorism,
5 narcotics, and other contraband through the south-
6 ern border or the northern border.

7 (2) ACTIVITIES DESCRIBED.—The activities de-
8 scribed in this paragraph are—

9 (A) the execution of search and rescue op-
10 erations;

11 (B) the use of motorized vehicles, foot pa-
12 trols, and horseback to patrol the border area,
13 apprehend illegal entrants, and rescue individ-
14 uals; and

15 (C) the design, testing, construction, in-
16 stallation, deployment, and operation of phys-
17 ical barriers, tactical infrastructure, and tech-
18 nology pursuant to section 102 of the Illegal
19 Immigration Reform and Immigrant Responsi-
20 bility Act of 1996 (as amended by section 1111
21 of this division).

22 (c) CLARIFICATION RELATING TO WAIVER AUTHOR-
23 ITY.—

24 (1) IN GENERAL.—The activities of U.S. Cus-
25 toms and Border Protection described in subsection

1 (b)(2) may be carried out without regard to the pro-
2 visions of law specified in paragraph (2).

3 (2) PROVISIONS OF LAW SPECIFIED.—The pro-
4 visions of law specified in this section are all Fed-
5 eral, State, or other laws, regulations, and legal re-
6 quirements of, deriving from, or related to the sub-
7 ject of, the following laws:

8 (A) The National Environmental Policy
9 Act of 1969 (42 U.S.C. 4321 et seq.).

10 (B) The Endangered Species Act of 1973
11 (16 U.S.C. 1531 et seq.).

12 (C) The Federal Water Pollution Control
13 Act (33 U.S.C. 1251 et seq.) (commonly re-
14 ferred to as the “Clean Water Act”).

15 (D) Division A of subtitle III of title 54,
16 United States Code (54 U.S.C. 300301 et seq.)
17 (formerly known as the “National Historic
18 Preservation Act”).

19 (E) The Migratory Bird Treaty Act (16
20 U.S.C. 703 et seq.).

21 (F) The Clean Air Act (42 U.S.C. 7401 et
22 seq.).

23 (G) The Archaeological Resources Protec-
24 tion Act of 1979 (16 U.S.C. 470aa et seq.).

1 (H) The Safe Drinking Water Act (42
2 U.S.C. 300f et seq.).

3 (I) The Noise Control Act of 1972 (42
4 U.S.C. 4901 et seq.).

5 (J) The Solid Waste Disposal Act (42
6 U.S.C. 6901 et seq.).

7 (K) The Comprehensive Environmental
8 Response, Compensation, and Liability Act of
9 1980 (42 U.S.C. 9601 et seq.).

10 (L) Chapter 3125 of title 54, United
11 States Code (formerly known as the “Archae-
12 ological and Historic Preservation Act”).

13 (M) The Antiquities Act (16 U.S.C. 431 et
14 seq.).

15 (N) Chapter 3203 of title 54, United
16 States Code (formerly known as the “Historic
17 Sites, Buildings, and Antiquities Act”).

18 (O) The Wild and Scenic Rivers Act (16
19 U.S.C. 1271 et seq.).

20 (P) The Farmland Protection Policy Act
21 (7 U.S.C. 4201 et seq.).

22 (Q) The Coastal Zone Management Act of
23 1972 (16 U.S.C. 1451 et seq.).

24 (R) The Wilderness Act (16 U.S.C. 1131
25 et seq.).

1 (S) The Federal Land Policy and Manage-
2 ment Act of 1976 (43 U.S.C. 1701 et seq.).

3 (T) The National Wildlife Refuge System
4 Administration Act of 1966 (16 U.S.C. 668dd
5 et seq.).

6 (U) The Fish and Wildlife Act of 1956 (16
7 U.S.C. 742a et seq.).

8 (V) The Fish and Wildlife Coordination
9 Act (16 U.S.C. 661 et seq.).

10 (W) Subchapter II of chapter 5, and chap-
11 ter 7, of title 5, United States Code (commonly
12 known as the “Administrative Procedure Act”).

13 (X) The Otoy Mountain Wilderness Act of
14 1999 (Public Law 106–145).

15 (Y) Sections 102(29) and 103 of the Cali-
16 fornia Desert Protection Act of 1994 (Public
17 Law 103–433).

18 (Z) Division A of subtitle I of title 54,
19 United States Code (formerly known as the
20 “National Park Service Organic Act”).

21 (AA) The National Park Service General
22 Authorities Act (Public Law 91–383, 16 U.S.C.
23 1a–1 et seq.).

1 (BB) Sections 401(7), 403, and 404 of the
2 National Parks and Recreation Act of 1978
3 (Public Law 95–625).

4 (CC) Sections 301(a) through (f) of the
5 Arizona Desert Wilderness Act (Public Law
6 101–628).

7 (DD) The Rivers and Harbors Act of 1899
8 (33 U.S.C. 403).

9 (EE) The Eagle Protection Act (16 U.S.C.
10 668 et seq.).

11 (FF) The Native American Graves Protec-
12 tion and Repatriation Act (25 U.S.C. 3001 et
13 seq.).

14 (GG) The American Indian Religious Free-
15 dom Act (42 U.S.C. 1996).

16 (HH) The Religious Freedom Restoration
17 Act (42 U.S.C. 2000bb).

18 (II) The National Forest Management Act
19 of 1976 (16 U.S.C. 1600 et seq.).

20 (JJ) The Multiple Use and Sustained
21 Yield Act of 1960 (16 U.S.C. 528 et seq.).

22 (3) APPLICABILITY OF WAIVER TO SUCCESSOR
23 LAWS.—If a provision of law specified in paragraph
24 (2) was repealed and incorporated into title 54,
25 United States Code, after April 1, 2008, and before

1 the date of the enactment of this Act, the waiver de-
2 scribed in paragraph (1) shall apply to the provision
3 of such title that corresponds to the provision of law
4 specified in paragraph (2) to the same extent the
5 waiver applied to that provision of law.

6 (4) SAVINGS CLAUSE.—The waiver authority
7 under this subsection may not be construed as af-
8 fecting, negating, or diminishing in any manner the
9 applicability of section 552 of title 5, United States
10 Code (commonly referred to as the “Freedom of In-
11 formation Act”), in any relevant matter.

12 (d) PROTECTION OF LEGAL USES.—This section may
13 not be construed to provide—

14 (1) authority to restrict legal uses, such as
15 grazing, hunting, mining, or recreation or the use of
16 backcountry airstrips, on land under the jurisdiction
17 of the Secretary of the Interior or the Secretary of
18 Agriculture; or

19 (2) any additional authority to restrict legal ac-
20 cess to such land.

21 (e) EFFECT ON STATE AND PRIVATE LAND.—This
22 section shall—

23 (1) have no force or effect on State lands or
24 private lands; and

1 (2) not provide authority on or access to State
2 lands or private lands.

3 (f) TRIBAL SOVEREIGNTY.—Nothing in this section
4 may be construed to supersede, replace, negate, or dimin-
5 ish treaties or other agreements between the United States
6 and Indian tribes.

7 (g) MEMORANDA OF UNDERSTANDING.—The re-
8 quirements of this section shall not apply to the extent
9 that such requirements are incompatible with any memo-
10 randum of understanding or similar agreement entered
11 into between the Commissioner and a National Park Unit
12 before the date of the enactment of this Act.

13 (h) DEFINITIONS.—In this section:

14 (1) COVERED FEDERAL LAND.—The term “cov-
15 ered Federal land” includes all land under the con-
16 trol of the Secretary concerned that is located within
17 100 miles of the southern border or the northern
18 border.

19 (2) SECRETARY CONCERNED.—The term “Sec-
20 retary concerned” means—

21 (A) with respect to land under the jurisdic-
22 tion of the Department of Agriculture, the Sec-
23 retary of Agriculture; and

1 (B) with respect to land under the jurisdic-
2 tion of the Department of the Interior, the Sec-
3 retary of the Interior.

4 **SEC. 1119. LANDOWNER AND RANCHER SECURITY EN-**
5 **HANCEMENT.**

6 (a) ESTABLISHMENT OF NATIONAL BORDER SECU-
7 RITY ADVISORY COMMITTEE.—The Secretary shall estab-
8 lish a National Border Security Advisory Committee,
9 which—

10 (1) may advise, consult with, report to, and
11 make recommendations to the Secretary on matters
12 relating to border security matters, including—

13 (A) verifying security claims and the bor-
14 der security metrics established by the Depart-
15 ment of Homeland Security under section 1092
16 of the National Defense Authorization Act for
17 Fiscal Year 2017 (Public Law 114–328; 6
18 U.S.C. 223); and

19 (B) discussing ways to improve the secu-
20 rity of high traffic areas along the northern
21 border and the southern border; and

22 (2) may provide, through the Secretary, rec-
23 ommendations to Congress.

24 (b) CONSIDERATION OF VIEWS.—The Secretary shall
25 consider the information, advice, and recommendations of

1 the National Border Security Advisory Committee in for-
2 mulating policy regarding matters affecting border secu-
3 rity.

4 (c) MEMBERSHIP.—The National Border Security
5 Advisory Committee shall consist of at least one member
6 from each State who—

7 (1) has at least five years practical experience
8 in border security operations; or

9 (2) lives and works in the United States within
10 80 miles from the southern border or the northern
11 border.

12 (d) NONAPPLICABILITY OF FEDERAL ADVISORY
13 COMMITTEE ACT.—The Federal Advisory Committee Act
14 (5 U.S.C. App.) shall not apply to the National Border
15 Security Advisory Committee.

16 **SEC. 1120. ERADICATION OF CARRIZO CANE AND SALT**
17 **CEDAR.**

18 (a) IN GENERAL.—Not later than September 30,
19 2022, the Secretary, after coordinating with the heads of
20 the relevant Federal, State, and local agencies, shall begin
21 eradicating the carrizo cane plant and any salt cedar along
22 the Rio Grande River that impedes border security oper-
23 ations.

24 (b) EXTENT.—The waiver authority under subsection
25 (c) of section 102 of the Illegal Immigration Reform and

1 Immigrant Responsibility Act of 1996 (8 U.S.C. 1103
2 note), as amended by section 1111 of this division, shall
3 extend to activities carried out pursuant to this section.

4 **SEC. 1121. SOUTHERN BORDER THREAT ANALYSIS.**

5 (a) THREAT ANALYSIS.—

6 (1) REQUIREMENT.—Not later than 180 days
7 after the date of the enactment of this Act, the Sec-
8 retary shall submit to the Committee on Homeland
9 Security of the House of Representatives and the
10 Committee on Homeland Security and Governmental
11 Affairs of the Senate a Southern border threat anal-
12 ysis.

13 (2) CONTENTS.—The analysis submitted under
14 paragraph (1) shall include an assessment of—

15 (A) current and potential terrorism and
16 criminal threats posed by individuals and orga-
17 nized groups seeking—

18 (i) to unlawfully enter the United
19 States through the Southern border; or

20 (ii) to exploit security vulnerabilities
21 along the Southern border;

22 (B) improvements needed at and between
23 ports of entry along the Southern border to pre-
24 vent terrorists and instruments of terror from
25 entering the United States;

1 (C) gaps in law, policy, and coordination
2 between State, local, or tribal law enforcement,
3 international agreements, or tribal agreements
4 that hinder effective and efficient border secu-
5 rity, counterterrorism, and anti-human smug-
6 gling and trafficking efforts;

7 (D) the current percentage of situational
8 awareness achieved by the Department along
9 the Southern border;

10 (E) the current percentage of operational
11 control achieved by the Department on the
12 Southern border; and

13 (F) traveler crossing times and any poten-
14 tial security vulnerability associated with pro-
15 longed wait times.

16 (3) ANALYSIS REQUIREMENTS.—In compiling
17 the Southern border threat analysis required under
18 this subsection, the Secretary shall consider and ex-
19 amine—

20 (A) the technology needs and challenges,
21 including such needs and challenges identified
22 as a result of previous investments that have
23 not fully realized the security and operational
24 benefits that were sought;

1 (B) the personnel needs and challenges, in-
2 cluding such needs and challenges associated
3 with recruitment and hiring;

4 (C) the infrastructure needs and chal-
5 lenges;

6 (D) the roles and authorities of State,
7 local, and tribal law enforcement in general bor-
8 der security activities;

9 (E) the status of coordination among Fed-
10 eral, State, local, tribal, and Mexican law en-
11 forcement entities relating to border security;

12 (F) the terrain, population density, and cli-
13 mate along the Southern border; and

14 (G) the international agreements between
15 the United States and Mexico related to border
16 security.

17 (4) CLASSIFIED FORM.—To the extent possible,
18 the Secretary shall submit the Southern border
19 threat analysis required under this subsection in un-
20 classified form, but may submit a portion of the
21 threat analysis in classified form if the Secretary de-
22 termines such action is appropriate.

23 (b) U.S. BORDER PATROL STRATEGIC PLAN.—

24 (1) IN GENERAL.—Not later than 180 days
25 after the submission of the threat analysis required

1 under subsection (a) or June 30, 2019, and every
2 five years thereafter, the Secretary, acting through
3 the Chief of the U.S. Border Patrol, shall issue a
4 Border Patrol Strategic Plan.

5 (2) CONTENTS.—The Border Patrol Strategic
6 Plan required under this subsection shall include a
7 consideration of—

8 (A) the Southern border threat analysis re-
9 quired under subsection (a), with an emphasis
10 on efforts to mitigate threats identified in such
11 threat analysis;

12 (B) efforts to analyze and disseminate bor-
13 der security and border threat information be-
14 tween border security components of the De-
15 partment and other appropriate Federal depart-
16 ments and agencies with missions associated
17 with the Southern border;

18 (C) efforts to increase situational aware-
19 ness, including—

20 (i) surveillance capabilities, including
21 capabilities developed or utilized by the
22 Department of Defense, and any appro-
23 priate technology determined to be excess
24 by the Department of Defense; and

1 (ii) the use of manned aircraft and
2 unmanned aerial systems, including cam-
3 era and sensor technology deployed on
4 such assets;

5 (D) efforts to detect and prevent terrorists
6 and instruments of terrorism from entering the
7 United States;

8 (E) efforts to detect, interdict, and disrupt
9 aliens and illicit drugs at the earliest possible
10 point;

11 (F) efforts to focus intelligence collection
12 to disrupt transnational criminal organizations
13 outside of the international and maritime bor-
14 ders of the United States;

15 (G) efforts to ensure that any new border
16 security technology can be operationally inte-
17 grated with existing technologies in use by the
18 Department;

19 (H) any technology required to maintain,
20 support, and enhance security and facilitate
21 trade at ports of entry, including nonintrusive
22 detection equipment, radiation detection equip-
23 ment, biometric technology, surveillance sys-
24 tems, and other sensors and technology that the
25 Secretary determines to be necessary;

1 (I) operational coordination unity of effort
2 initiatives of the border security components of
3 the Department, including any relevant task
4 forces of the Department;

5 (J) lessons learned from Operation
6 Jumpstart and Operation Phalanx;

7 (K) cooperative agreements and informa-
8 tion sharing with State, local, tribal, territorial,
9 and other Federal law enforcement agencies
10 that have jurisdiction on the Northern border
11 or the Southern border;

12 (L) border security information received
13 from consultation with State, local, tribal, terri-
14 torial, and Federal law enforcement agencies
15 that have jurisdiction on the Northern border
16 or the Southern border, or in the maritime en-
17 vironment, and from border community stake-
18 holders (including through public meetings with
19 such stakeholders), including representatives
20 from border agricultural and ranching organiza-
21 tions and representatives from business and
22 civic organizations along the Northern border
23 or the Southern border;

24 (M) staffing requirements for all depart-
25 mental border security functions;

1 (N) a prioritized list of departmental re-
2 search and development objectives to enhance
3 the security of the Southern border;

4 (O) an assessment of training programs,
5 including training programs for—

6 (i) identifying and detecting fraudu-
7 lent documents;

8 (ii) understanding the scope of en-
9 forcement authorities and the use of force
10 policies; and

11 (iii) screening, identifying, and ad-
12 dressing vulnerable populations, such as
13 children and victims of human trafficking;
14 and

15 (P) an assessment of how border security
16 operations affect border crossing times.

17 **SEC. 1122. AMENDMENTS TO U.S. CUSTOMS AND BORDER**
18 **PROTECTION.**

19 (a) DUTIES.—Subsection (c) of section 411 of the
20 Homeland Security Act of 2002 (6 U.S.C. 211) is amend-
21 ed—

22 (1) in paragraph (18), by striking “and” after
23 the semicolon at the end;

24 (2) by redesignating paragraph (19) as para-
25 graph (21); and

1 (3) by inserting after paragraph (18) the fol-
2 lowing new paragraphs:

3 “(19) administer the U.S. Customs and Border
4 Protection public private partnerships under subtitle
5 G;

6 “(20) administer preclearance operations under
7 the Preclearance Authorization Act of 2015 (19
8 U.S.C. 4431 et seq.; enacted as subtitle B of title
9 VIII of the Trade Facilitation and Trade Enforce-
10 ment Act of 2015; 19 U.S.C. 4301 et seq.); and”.

11 (b) OFFICE OF FIELD OPERATIONS STAFFING.—
12 Subparagraph (A) of section 411(g)(5) of the Homeland
13 Security Act of 2002 (6 U.S.C. 211(g)(5)) is amended by
14 inserting before the period at the end the following: “com-
15 pared to the number indicated by the current fiscal year
16 work flow staffing model”.

17 (c) IMPLEMENTATION PLAN.—Subparagraph (B) of
18 section 814(e)(1) of the Preclearance Authorization Act
19 of 2015 (19 U.S.C. 4433(e)(1); enacted as subtitle B of
20 title VIII of the Trade Facilitation and Trade Enforce-
21 ment Act of 2015; 19 U.S.C. 4301 et seq.) is amended
22 to read as follows:

23 “(B) a port of entry vacancy rate which
24 compares the number of officers identified in
25 subparagraph (A) with the number of officers

1 at the port at which such officer is currently as-
2 signed.”.

3 (d) DEFINITION.—Subsection (r) of section 411 of
4 the Homeland Security Act of 2002 (6 U.S.C. 211) is
5 amended—

6 (1) by striking “this section, the terms” and in-
7 serting the following: “this section:

8 “(1) the terms”;

9 (2) in paragraph (1), as added by subparagraph
10 (A), by striking the period at the end and inserting
11 “; and”; and

12 (3) by adding at the end the following new
13 paragraph:

14 “(2) the term ‘unmanned aerial systems’ has
15 the meaning given the term ‘unmanned aircraft sys-
16 tem’ in section 331 of the FAA Modernization and
17 Reform Act of 2012 (Public Law 112–95; 49 U.S.C.
18 40101 note).”.

19 **SEC. 1123. AGENT AND OFFICER TECHNOLOGY USE.**

20 In carrying out section 102 of the Illegal Immigration
21 Reform and Immigrant Responsibility Act of 1996 (as
22 amended by section 1111 of this division) and section
23 1113 of this division, the Secretary shall, to the greatest
24 extent practicable, ensure that technology deployed to gain
25 situational awareness and operational control of the bor-

1 der be provided to front-line officers and agents of the De-
2 partment of Homeland Security.

3 **SEC. 1124. INTEGRATED BORDER ENFORCEMENT TEAMS.**

4 (a) IN GENERAL.—Subtitle C of title IV of the
5 Homeland Security Act of 2002 (6 U.S.C. 231 et seq.),
6 as amended by section 1115 of this division, is further
7 amended by adding at the end the following new section:

8 **“SEC. 436. INTEGRATED BORDER ENFORCEMENT TEAMS.**

9 “(a) ESTABLISHMENT.—The Secretary shall estab-
10 lish within the Department a program to be known as the
11 Integrated Border Enforcement Team program (referred
12 to in this section as ‘IBET’).

13 “(b) PURPOSE.—The Secretary shall administer the
14 IBET program in a manner that results in a cooperative
15 approach between the United States and Canada to—

16 “(1) strengthen security between designated
17 ports of entry;

18 “(2) detect, prevent, investigate, and respond to
19 terrorism and violations of law related to border se-
20 curity;

21 “(3) facilitate collaboration among components
22 and offices within the Department and international
23 partners;

24 “(4) execute coordinated activities in further-
25 ance of border security and homeland security; and

1 “(5) enhance information-sharing, including the
2 dissemination of homeland security information
3 among such components and offices.

4 “(c) COMPOSITION AND LOCATION OF IBETs.—

5 “(1) COMPOSITION.—IBETs shall be led by the
6 United States Border Patrol and may be comprised
7 of personnel from the following:

8 “(A) Other subcomponents of U.S. Customs and Border Protection.

10 “(B) U.S. Immigration and Customs Enforcement, led by Homeland Security Investigations.
11
12

13 “(C) The Coast Guard, for the purpose of
14 securing the maritime borders of the United
15 States.

16 “(D) Other Department personnel, as appropriate.
17

18 “(E) Other Federal departments and agencies, as appropriate.
19

20 “(F) Appropriate State law enforcement agencies.
21

22 “(G) Foreign law enforcement partners.

23 “(H) Local law enforcement agencies from
24 affected border cities and communities.

1 “(I) Appropriate tribal law enforcement
2 agencies.

3 “(2) LOCATION.—The Secretary is authorized
4 to establish IBETs in regions in which such teams
5 can contribute to IBET missions, as appropriate.
6 When establishing an IBET, the Secretary shall con-
7 sider the following:

8 “(A) Whether the region in which the
9 IBET would be established is significantly im-
10 pacted by cross-border threats.

11 “(B) The availability of Federal, State,
12 local, tribal, and foreign law enforcement re-
13 sources to participate in an IBET.

14 “(C) Whether, in accordance with para-
15 graph (3), other joint cross-border initiatives al-
16 ready take place within the region in which the
17 IBET would be established, including other De-
18 partment cross-border programs such as the In-
19 tegrated Cross-Border Maritime Law Enforce-
20 ment Operation Program established under sec-
21 tion 711 of the Coast Guard and Maritime
22 Transportation Act of 2012 (46 U.S.C. 70101
23 note) or the Border Enforcement Security Task
24 Force established under section 432.

1 “(3) DUPLICATION OF EFFORTS.—In deter-
2 mining whether to establish a new IBET or to ex-
3 pand an existing IBET in a given region, the Sec-
4 retary shall ensure that the IBET under consider-
5 ation does not duplicate the efforts of other existing
6 interagency task forces or centers within such re-
7 gion, including the Integrated Cross-Border Mari-
8 time Law Enforcement Operation Program estab-
9 lished under section 711 of the Coast Guard and
10 Maritime Transportation Act of 2012 (46 U.S.C.
11 70101 note) or the Border Enforcement Security
12 Task Force established under section 432.

13 “(d) OPERATION.—

14 “(1) IN GENERAL.—After determining the re-
15 gions in which to establish IBETs, the Secretary
16 may—

17 “(A) direct the assignment of Federal per-
18 sonnel to such IBETs; and

19 “(B) take other actions to assist Federal,
20 State, local, and tribal entities to participate in
21 such IBETs, including providing financial as-
22 sistance, as appropriate, for operational, admin-
23 istrative, and technological costs associated with
24 such participation.

1 “(2) LIMITATION.—Coast Guard personnel as-
2 signed under paragraph (1) may be assigned only
3 for the purposes of securing the maritime borders of
4 the United States, in accordance with subsection
5 (c)(1)(C).

6 “(e) COORDINATION.—The Secretary shall coordinate
7 the IBET program with other similar border security and
8 antiterrorism programs within the Department in accord-
9 ance with the strategic objectives of the Cross-Border Law
10 Enforcement Advisory Committee.

11 “(f) MEMORANDA OF UNDERSTANDING.—The Sec-
12 retary may enter into memoranda of understanding with
13 appropriate representatives of the entities specified in sub-
14 section (c)(1) necessary to carry out the IBET program.

15 “(g) REPORT.—Not later than 180 days after the
16 date on which an IBET is established and biannually
17 thereafter for the following six years, the Secretary shall
18 submit to the appropriate congressional committees, in-
19 cluding the Committee on Homeland Security of the
20 House of Representatives and the Committee on Home-
21 land Security and Governmental Affairs of the Senate,
22 and in the case of Coast Guard personnel used to secure
23 the maritime borders of the United States, additionally to
24 the Committee on Transportation and Infrastructure of
25 the House of Representatives, a report that—

1 “(1) describes the effectiveness of IBETs in ful-
2 filling the purposes specified in subsection (b);

3 “(2) assess the impact of certain challenges on
4 the sustainment of cross-border IBET operations,
5 including challenges faced by international partners;

6 “(3) addresses ways to support joint training
7 for IBET stakeholder agencies and radio interoper-
8 ability to allow for secure cross-border radio commu-
9 nications; and

10 “(4) assesses how IBETs, Border Enforcement
11 Security Task Forces, and the Integrated Cross-Bor-
12 der Maritime Law Enforcement Operation Program
13 can better align operations, including interdiction
14 and investigation activities.”.

15 (b) CLERICAL AMENDMENT.—The table of contents
16 in section 1(b) of the Homeland Security Act of 2002 is
17 amended by adding after the item relating to section 435
18 the following new item:

 “Sec. 436. Integrated Border Enforcement Teams.”.

19 **SEC. 1125. TUNNEL TASK FORCES.**

20 The Secretary is authorized to establish Tunnel Task
21 Forces for the purposes of detecting and remediating tun-
22 nels that breach the international border of the United
23 States.

1 **SEC. 1126. PILOT PROGRAM ON USE OF ELECTRO-**
2 **MAGNETIC SPECTRUM IN SUPPORT OF BOR-**
3 **DER SECURITY OPERATIONS.**

4 (a) IN GENERAL.—The Commissioner of U.S. Cus-
5 toms and Border Protection, in consultation with the As-
6 sistant Secretary of Commerce for Communications and
7 Information, shall conduct a pilot program to test and
8 evaluate the use of electromagnetic spectrum by U.S. Cus-
9 toms and Border Protection in support of border security
10 operations through—

11 (1) ongoing management and monitoring of
12 spectrum to identify threats such as unauthorized
13 spectrum use, and the jamming and hacking of
14 United States communications assets, by persons en-
15 gaged in criminal enterprises;

16 (2) automated spectrum management to enable
17 greater efficiency and speed for U.S. Customs and
18 Border Protection in addressing emerging challenges
19 in overall spectrum use on the United States border;
20 and

21 (3) coordinated use of spectrum resources to
22 better facilitate interoperability and interagency co-
23 operation and interdiction efforts at or near the
24 United States border.

25 (b) REPORT TO CONGRESS.—Not later than 180 days
26 after the conclusion of the pilot program conducted under

1 subsection (a), the Commissioner of U.S. Customs and
2 Border Protection shall submit to the Committee on
3 Homeland Security and the Committee on Energy and
4 Commerce of the House of Representatives and the Com-
5 mittee on Homeland Security and Governmental Affairs
6 and the Committee on Commerce, Science, and Transpor-
7 tation of the Senate a report on the findings and data
8 derived from such program.

9 **SEC. 1127. HOMELAND SECURITY FOREIGN ASSISTANCE.**

10 (a) IN GENERAL.—Subtitle C of title IV of the
11 Homeland Security Act of 2002 (6 U.S.C. 231 et seq.),
12 as amended by sections 1115 and 1124 of this division,
13 is further amended by adding at the end the following new
14 section:

15 **“SEC. 437. SECURITY ASSISTANCE.**

16 “(a) IN GENERAL.—The Secretary, with the concur-
17 rence of the Secretary of State, may provide to a foreign
18 government, financial assistance and, with or without re-
19 imbursement, security assistance, including equipment,
20 training, maintenance, supplies, and sustainment support.

21 “(b) DETERMINATION.—The Secretary may only pro-
22 vide financial assistance or security assistance pursuant
23 to subsection (a) if the Secretary determines that such as-
24 sistance would enhance the recipient government’s capac-
25 ity to—

1 “(1) mitigate the risk or threat of transnational
2 organized crime and terrorism;

3 “(2) address irregular migration flows that may
4 affect the United States, including any detention or
5 removal operations of the recipient government; or

6 “(3) protect and expedite legitimate trade and
7 travel.

8 “(c) LIMITATION ON TRANSFER.—The Secretary
9 may not—

10 “(1) transfer any equipment or supplies that
11 are designated as a munitions item or controlled on
12 the United States Munitions List, pursuant to sec-
13 tion 38 of the Foreign Military Sales Act (22 U.S.C.
14 2778); or

15 “(2) transfer any vessel or aircraft pursuant to
16 this section.

17 “(d) RELATED TRAINING.—In conjunction with a
18 transfer of equipment pursuant to subsection (a), the Sec-
19 retary may provide such equipment-related training and
20 assistance as the Secretary determines necessary.

21 “(e) MAINTENANCE OF TRANSFERRED EQUIP-
22 MENT.—The Secretary may provide for the maintenance
23 of transferred equipment through service contracts or
24 other means, with or without reimbursement, as the Sec-
25 retary determines necessary.

1 “(f) REIMBURSEMENT OF EXPENSES.—

2 “(1) IN GENERAL.—The Secretary may collect
3 payment from the receiving entity for the provision
4 of security assistance under this section, including
5 equipment, training, maintenance, supplies,
6 sustainment support, and related shipping costs.

7 “(2) TRANSFER.—Notwithstanding any other
8 provision of law, to the extent the Secretary does not
9 collect payment pursuant to paragraph (1), any
10 amounts appropriated or otherwise made available to
11 the Department of Homeland Security may be trans-
12 ferred to the account that finances the security as-
13 sistance provided pursuant to subsection (a).

14 “(g) RECEIPTS CREDITED AS OFFSETTING COLLEC-
15 TIONS.—Notwithstanding section 3302 of title 31, United
16 States Code, any reimbursement collected pursuant to
17 subsection (f) shall—

18 “(1) be credited as offsetting collections to the
19 account that finances the security assistance under
20 this section for which such reimbursement is re-
21 ceived; and

22 “(2) remain available until expended for the
23 purpose of carrying out this section.

1 “(h) **RULE OF CONSTRUCTION.**—Nothing in this sec-
2 tion may be construed as affecting, augmenting, or dimin-
3 ishing the authority of the Secretary of State.”.

4 (b) **CLERICAL AMENDMENT.**—The table of contents
5 in section 1(b) of the Homeland Security Act of 2002 is
6 amended by inserting after the item relating to section
7 436 the following new item:

“Sec. 437. Security assistance.”.

8 **Subtitle B—Personnel**

9 **SEC. 1131. ADDITIONAL U.S. CUSTOMS AND BORDER PRO-** 10 **TECTION AGENTS AND OFFICERS.**

11 (a) **BORDER PATROL AGENTS.**—Not later than Sep-
12 tember 30, 2022, the Commissioner shall hire, train, and
13 assign sufficient agents to maintain an active duty pres-
14 ence of not fewer than 26,370 full-time equivalent agents.

15 (b) **CBP OFFICERS.**—In addition to positions author-
16 ized before the date of the enactment of this Act and any
17 existing officer vacancies within U.S. Customs and Border
18 Protection as of such date, the Commissioner shall hire,
19 train, and assign to duty, not later than September 30,
20 2022—

21 (1) sufficient U.S. Customs and Border Protec-
22 tion officers to maintain an active duty presence of
23 not fewer than 27,725 full-time equivalent officers;
24 and

1 (2) 350 full-time support staff distributed
2 among all United States ports of entry.

3 (c) AIR AND MARINE OPERATIONS.—Not later than
4 September 30, 2022, the Commissioner shall hire, train,
5 and assign sufficient agents for Air and Marine Oper-
6 ations of U.S. Customs and Border Protection to maintain
7 not fewer than 1,675 full-time equivalent agents and not
8 fewer than 264 Marine and Air Interdiction Agents for
9 southern border air and maritime operations.

10 (d) U.S. CUSTOMS AND BORDER PROTECTION K-9
11 UNITS AND HANDLERS.—

12 (1) K-9 UNITS.—Not later than September 30,
13 2022, the Commissioner shall deploy not fewer than
14 300 new K-9 units, with supporting officers of U.S.
15 Customs and Border Protection and other required
16 staff, at land ports of entry and checkpoints, on the
17 southern border and the northern border.

18 (2) USE OF CANINES.—The Commissioner shall
19 prioritize the use of canines at the primary inspec-
20 tion lanes at land ports of entry and checkpoints.

21 (e) U.S. CUSTOMS AND BORDER PROTECTION
22 HORSEBACK UNITS.—

23 (1) INCREASE.—Not later than September 30,
24 2022, the Commissioner shall increase the number
25 of horseback units, with supporting officers of U.S.

1 Customs and Border Protection and other required
2 staff, by not fewer than 100 officers and 50 horses
3 for security patrol along the Southern border.

4 (2) HORSEBACK UNIT SUPPORT.—The Commis-
5 sioner shall construct new stables, maintain and im-
6 prove existing stables, and provide other resources
7 needed to maintain the health and well-being of the
8 horses that serve in the horseback units of U.S. Cus-
9 toms and Border Protection.

10 (f) U.S. CUSTOMS AND BORDER PROTECTION
11 SEARCH TRAUMA AND RESCUE TEAMS.—Not later than
12 September 30, 2022, the Commissioner shall increase by
13 not fewer than 50 the number of officers engaged in
14 search and rescue activities along the southern border.

15 (g) U.S. CUSTOMS AND BORDER PROTECTION TUN-
16 NEL DETECTION AND TECHNOLOGY PROGRAM.—Not
17 later than September 30, 2022, the Commissioner shall
18 increase by not fewer than 50 the number of officers as-
19 sisting task forces and activities related to deployment and
20 operation of border tunnel detection technology and appre-
21 hensions of individuals using such tunnels for crossing
22 into the United States, drug trafficking, or human smug-
23 gling.

24 (h) AGRICULTURAL SPECIALISTS.—Not later than
25 September 30, 2022, the Secretary shall hire, train, and

1 assign to duty, in addition to the officers and agents au-
2 thorized under subsections (a) through (g), 631 U.S. Cus-
3 toms and Border Protection agricultural specialists to
4 ports of entry along the southern border and the northern
5 border.

6 (i) OFFICE OF PROFESSIONAL RESPONSIBILITY.—
7 Not later than September 30, 2022, the Commissioner
8 shall hire, train, and assign sufficient Office of Profes-
9 sional Responsibility special agents to maintain an active
10 duty presence of not fewer than 550 full-time equivalent
11 special agents.

12 (j) U.S. CUSTOMS AND BORDER PROTECTION OF-
13 FICE OF INTELLIGENCE.—Not later than September 30,
14 2022, the Commissioner shall hire, train, and assign suffi-
15 cient Office of Intelligence personnel to maintain not fewer
16 than 700 full-time equivalent employees.

17 (k) GAO REPORT.—If the staffing levels required
18 under this section are not achieved by September 30,
19 2022, the Comptroller General of the United States shall
20 conduct a review of the reasons why such levels were not
21 achieved.

1 **SEC. 1132. U.S. CUSTOMS AND BORDER PROTECTION RE-**
2 **TENTION INCENTIVES.**

3 (a) IN GENERAL.—Chapter 97 of title 5, United
4 States Code, is amended by adding at the end the fol-
5 lowing:

6 **“§ 9702. U.S. Customs and Border Protection tem-**
7 **porary employment authorities**

8 “(a) DEFINITIONS.—In this section—

9 “(1) the term ‘CBP employee’ means an em-
10 ployee of U.S. Customs and Border Protection de-
11 scribed under any of subsections (a) through (h) of
12 section 1131 of the Border Security for America Act
13 of 2019;

14 “(2) the term ‘Commissioner’ means the Com-
15 missioner of U.S. Customs and Border Protection;

16 “(3) the term ‘Director’ means the Director of
17 the Office of Personnel Management;

18 “(4) the term ‘Secretary’ means the Secretary
19 of Homeland Security; and

20 “(5) the term ‘appropriate congressional com-
21 mittees’ means the Committee on Oversight and
22 Government Reform, the Committee on Homeland
23 Security, and the Committee on Ways and Means of
24 the House of Representatives and the Committee on
25 Homeland Security and Governmental Affairs and
26 the Committee on Finance of the Senate.

1 “(b) DIRECT HIRE AUTHORITY; RECRUITMENT AND
2 RELOCATION BONUSES; RETENTION BONUSES.—

3 “(1) STATEMENT OF PURPOSE AND LIMITA-
4 TION.—The purpose of this subsection is to allow
5 U.S. Customs and Border Protection to expedi-
6 tiously meet the hiring goals and staffing levels re-
7 quired by section 1131 of the Border Security for
8 America Act of 2019. The Secretary shall not use
9 this authority beyond meeting the requirements of
10 such section.

11 “(2) DIRECT HIRE AUTHORITY.—The Secretary
12 may appoint, without regard to any provision of sec-
13 tions 3309 through 3319, candidates to positions in
14 the competitive service as CBP employees if the Sec-
15 retary has given public notice for the positions.

16 “(3) RECRUITMENT AND RELOCATION BO-
17 NUSES.—The Secretary may pay a recruitment or
18 relocation bonus of up to 50 percent of the annual
19 rate of basic pay to an individual CBP employee at
20 the beginning of the service period multiplied by the
21 number of years (including a fractional part of a
22 year) in the required service period to an individual
23 (other than an individual described in subsection
24 (a)(2) of section 5753) if—

1 “(A) the Secretary determines that condi-
2 tions consistent with the conditions described in
3 paragraphs (1) and (2) of subsection (b) of
4 such section 5753 are satisfied with respect to
5 the individual (without regard to the regula-
6 tions referenced in subsection (b)(2)(B(ii)(I) of
7 such section or to any other provision of that
8 section); and

9 “(B) the individual enters into a written
10 service agreement with the Secretary—

11 “(i) under which the individual is re-
12 quired to complete a period of employment
13 as a CBP employee of not less than 2
14 years; and

15 “(ii) that includes—

16 “(I) the commencement and ter-
17 mination dates of the required service
18 period (or provisions for the deter-
19 mination thereof);

20 “(II) the amount of the bonus;
21 and

22 “(III) other terms and conditions
23 under which the bonus is payable,
24 subject to the requirements of this
25 subsection, including—

1 “(aa) the conditions under
2 which the agreement may be ter-
3 minated before the agreed-upon
4 service period has been com-
5 pleted; and

6 “(bb) the effect of a termi-
7 nation described in item (aa).

8 “(4) RETENTION BONUSES.—The Secretary
9 may pay a retention bonus of up to 50 percent of
10 basic pay to an individual CBP employee (other than
11 an individual described in subsection (a)(2) of sec-
12 tion 5754) if—

13 “(A) the Secretary determines that—

14 “(i) a condition consistent with the
15 condition described in subsection (b)(1) of
16 such section 5754 is satisfied with respect
17 to the CBP employee (without regard to
18 any other provision of that section);

19 “(ii) in the absence of a retention
20 bonus, the CBP employee would be likely
21 to leave—

22 “(I) the Federal service; or

23 “(II) for a different position in
24 the Federal service, including a posi-
25 tion in another agency or component

1 of the Department of Homeland Secu-
2 rity; and

3 “(B) the individual enters into a written
4 service agreement with the Secretary—

5 “(i) under which the individual is re-
6 quired to complete a period of employment
7 as a CBP employee of not less than 2
8 years; and

9 “(ii) that includes—

10 “(I) the commencement and ter-
11 mination dates of the required service
12 period (or provisions for the deter-
13 mination thereof);

14 “(II) the amount of the bonus;
15 and

16 “(III) other terms and conditions
17 under which the bonus is payable,
18 subject to the requirements of this
19 subsection, including—

20 “(aa) the conditions under
21 which the agreement may be ter-
22 minated before the agreed-upon
23 service period has been com-
24 pleted; and

1 “(bb) the effect of a termi-
2 nation described in item (aa).

3 “(5) RULES FOR BONUSES.—

4 “(A) MAXIMUM BONUS.—A bonus paid to
5 an employee under—

6 “(i) paragraph (3) may not exceed
7 100 percent of the annual rate of basic pay
8 of the employee as of the commencement
9 date of the applicable service period; and

10 “(ii) paragraph (4) may not exceed 50
11 percent of the annual rate of basic pay of
12 the employee.

13 “(B) RELATIONSHIP TO BASIC PAY.—A
14 bonus paid to an employee under paragraph (3)
15 or (4) shall not be considered part of the basic
16 pay of the employee for any purpose, including
17 for retirement or in computing a lump-sum pay-
18 ment to the covered employee for accumulated
19 and accrued annual leave under section 5551 or
20 section 5552.

21 “(C) PERIOD OF SERVICE FOR RECRUIT-
22 MENT, RELOCATION, AND RETENTION BO-
23 NUSES.—

24 “(i) A bonus paid to an employee
25 under paragraph (4) may not be based on

1 any period of such service which is the
2 basis for a recruitment or relocation bonus
3 under paragraph (3).

4 “(ii) A bonus paid to an employee
5 under paragraph (3) or (4) may not be
6 based on any period of service which is the
7 basis for a recruitment or relocation bonus
8 under section 5753 or a retention bonus
9 under section 5754.

10 “(c) SPECIAL RATES OF PAY.—In addition to the cir-
11 cumstances described in subsection (b) of section 5305,
12 the Director may establish special rates of pay in accord-
13 ance with that section to assist the Secretary in meeting
14 the requirements of section 1131 of the Border Security
15 for America Act of 2019. The Director shall prioritize the
16 consideration of requests from the Secretary for such spe-
17 cial rates of pay and issue a decision as soon as prac-
18 ticable. The Secretary shall provide such information to
19 the Director as the Director deems necessary to evaluate
20 special rates of pay under this subsection.

21 “(d) OPM OVERSIGHT.—

22 “(1) Not later than September 30 of each year,
23 the Secretary shall provide a report to the Director
24 on U.S. Customs and Border Protection’s use of au-
25 thorities provided under subsections (b) and (c). In

1 each report, the Secretary shall provide such infor-
2 mation as the Director determines is appropriate to
3 ensure appropriate use of authorities under such
4 subsections. Each report shall also include an assess-
5 ment of—

6 “(A) the impact of the use of authorities
7 under subsections (b) and (c) on implementa-
8 tion of section 1131 of the Border Security for
9 America Act of 2019;

10 “(B) solving hiring and retention chal-
11 lenges at the agency, including at specific loca-
12 tions;

13 “(C) whether hiring and retention chal-
14 lenges still exist at the agency or specific loca-
15 tions; and

16 “(D) whether the Secretary needs to con-
17 tinue to use authorities provided under this sec-
18 tion at the agency or at specific locations.

19 “(2) CONSIDERATION.—In compiling a report
20 under paragraph (1), the Secretary shall consider—

21 “(A) whether any CBP employee accepted
22 an employment incentive under subsection (b)
23 and (c) and then transferred to a new location
24 or left U.S. Customs and Border Protection;
25 and

1 “(B) the length of time that each employee
2 identified under subparagraph (A) stayed at the
3 original location before transferring to a new lo-
4 cation or leaving U.S. Customs and Border
5 Protection.

6 “(3) DISTRIBUTION.—In addition to the Direc-
7 tor, the Secretary shall submit each report required
8 under this subsection to the appropriate congres-
9 sional committees.

10 “(e) OPM ACTION.—If the Director determines the
11 Secretary has inappropriately used authorities under sub-
12 section (b) or a special rate of pay provided under sub-
13 section (c), the Director shall notify the Secretary and the
14 appropriate congressional committees in writing. Upon re-
15 ceipt of the notification, the Secretary may not make any
16 new appointments or issue any new bonuses under sub-
17 section (b), nor provide CBP employees with further spe-
18 cial rates of pay, until the Director has provided the Sec-
19 retary and the appropriate congressional committees a
20 written notice stating the Director is satisfied safeguards
21 are in place to prevent further inappropriate use.

22 “(f) IMPROVING CBP HIRING AND RETENTION.—

23 “(1) EDUCATION OF CBP HIRING OFFICIALS.—
24 Not later than 180 days after the date of the enact-
25 ment of this section, and in conjunction with the

1 Chief Human Capital Officer of the Department of
2 Homeland Security, the Secretary shall develop and
3 implement a strategy to improve the education re-
4 garding hiring and human resources flexibilities (in-
5 cluding hiring and human resources flexibilities for
6 locations in rural or remote areas) for all employees,
7 serving in agency headquarters or field offices, who
8 are involved in the recruitment, hiring, assessment,
9 or selection of candidates for locations in a rural or
10 remote area, as well as the retention of current em-
11 ployees.

12 “(2) ELEMENTS.—Elements of the strategy
13 under paragraph (1) shall include the following:

14 “(A) Developing or updating training and
15 educational materials on hiring and human re-
16 sources flexibilities for employees who are in-
17 volved in the recruitment, hiring, assessment, or
18 selection of candidates, as well as the retention
19 of current employees.

20 “(B) Regular training sessions for per-
21 sonnel who are critical to filling open positions
22 in rural or remote areas.

23 “(C) The development of pilot programs or
24 other programs, as appropriate, consistent with
25 authorities provided to the Secretary to address

1 identified hiring challenges, including in rural
2 or remote areas.

3 “(D) Developing and enhancing strategic
4 recruiting efforts through the relationships with
5 institutions of higher education, as defined in
6 section 102 of the Higher Education Act of
7 1965 (20 U.S.C. 1002), veterans transition and
8 employment centers, and job placement pro-
9 gram in regions that could assist in filling posi-
10 tions in rural or remote areas.

11 “(E) Examination of existing agency pro-
12 grams on how to most effectively aid spouses
13 and families of individuals who are candidates
14 or new hires in a rural or remote area.

15 “(F) Feedback from individuals who are
16 candidates or new hires at locations in a rural
17 or remote area, including feedback on the qual-
18 ity of life in rural or remote areas for new hires
19 and their families.

20 “(G) Feedback from CBP employees, other
21 than new hires, who are stationed at locations
22 in a rural or remote area, including feedback on
23 the quality of life in rural or remote areas for
24 those CBP employees and their families.

1 “(H) Evaluation of Department of Home-
2 land Security internship programs and the use-
3 fulness of those programs in improving hiring
4 by the Secretary in rural or remote areas.

5 “(3) EVALUATION.—

6 “(A) IN GENERAL.—Each year, the Sec-
7 retary shall—

8 “(i) evaluate the extent to which the
9 strategy developed and implemented under
10 paragraph (1) has improved the hiring and
11 retention ability of the Secretary; and

12 “(ii) make any appropriate updates to
13 the strategy under paragraph (1).

14 “(B) INFORMATION.—The evaluation con-
15 ducted under subparagraph (A) shall include—

16 “(i) any reduction in the time taken
17 by the Secretary to fill mission-critical po-
18 sitions, including in rural or remote areas;

19 “(ii) a general assessment of the im-
20 pact of the strategy implemented under
21 paragraph (1) on hiring challenges, includ-
22 ing in rural or remote areas; and

23 “(iii) other information the Secretary
24 determines relevant.

1 “(g) INSPECTOR GENERAL REVIEW.—Not later than
2 two years after the date of the enactment of this section,
3 the Inspector General of the Department of Homeland Se-
4 curity shall review the use of hiring and pay flexibilities
5 under subsections (b) and (c) to determine whether the
6 use of such flexibilities is helping the Secretary meet hir-
7 ing and retention needs, including in rural and remote
8 areas.

9 “(h) REPORT ON POLYGRAPH REQUESTS.—The Sec-
10 retary shall report to the appropriate congressional com-
11 mittees on the number of requests the Secretary receives
12 from any other Federal agency for the file of an applicant
13 for a position in U.S. Customs and Border Protection that
14 includes the results of a polygraph examination.

15 “(i) EXERCISE OF AUTHORITY.—

16 “(1) SOLE DISCRETION.—The exercise of au-
17 thority under subsection (b) shall be subject to the
18 sole and exclusive discretion of the Secretary (or the
19 Commissioner, as applicable under paragraph (2) of
20 this subsection), notwithstanding chapter 71 and
21 any collective bargaining agreement.

22 “(2) DELEGATION.—The Secretary may dele-
23 gate any authority under this section to the Com-
24 missioner.

1 “(j) **RULE OF CONSTRUCTION.**—Nothing in this sec-
2 tion shall be construed to exempt the Secretary or the Di-
3 rector from applicability of the merit system principles
4 under section 2301.

5 “(k) **SUNSET.**—The authorities under subsections (b)
6 and (c) shall terminate on September 30, 2022. Any bonus
7 to be paid pursuant to subsection (b) that is approved be-
8 fore such date may continue until such bonus has been
9 paid, subject to the conditions specified in this section.”.

10 (b) **TECHNICAL AND CONFORMING AMENDMENT.**—
11 The table of sections for chapter 97 of title 5, United
12 States Code, is amended by adding at the end the fol-
13 lowing:

“9702. U.S. Customs and Border Protection temporary employment authori-
ties.”.

14 **SEC. 1133. ANTI-BORDER CORRUPTION REAUTHORIZATION**
15 **ACT.**

16 (a) **SHORT TITLE.**—This section may be cited as the
17 “Anti-Border Corruption Reauthorization Act of 2019”.

18 (b) **HIRING FLEXIBILITY.**—Section 3 of the Anti-
19 Border Corruption Act of 2010 (6 U.S.C. 221) is amended
20 by striking subsection (b) and inserting the following new
21 subsections:

22 “(b) **WAIVER AUTHORITY.**—The Commissioner of
23 U.S. Customs and Border Protection may waive the appli-
24 cation of subsection (a)(1)—

1 “(1) to a current, full-time law enforcement of-
2 ficer employed by a State or local law enforcement
3 agency who—

4 “(A) has continuously served as a law en-
5 forcement officer for not fewer than three
6 years;

7 “(B) is authorized by law to engage in or
8 supervise the prevention, detection, investiga-
9 tion, or prosecution of, or the incarceration of
10 any person for, any violation of law, and has
11 statutory powers for arrest or apprehension;

12 “(C) is not currently under investigation,
13 has not been found to have engaged in criminal
14 activity or serious misconduct, has not resigned
15 from a law enforcement officer position under
16 investigation or in lieu of termination, and has
17 not been dismissed from a law enforcement offi-
18 cer position; and

19 “(D) has, within the past ten years, suc-
20 cessfully completed a polygraph examination as
21 a condition of employment with such officer’s
22 current law enforcement agency;

23 “(2) to a current, full-time Federal law enforce-
24 ment officer who—

1 “(A) has continuously served as a law en-
2 forcement officer for not fewer than three
3 years;

4 “(B) is authorized to make arrests, con-
5 duct investigations, conduct searches, make sei-
6 zures, carry firearms, and serve orders, war-
7 rants, and other processes;

8 “(C) is not currently under investigation,
9 has not been found to have engaged in criminal
10 activity or serious misconduct, has not resigned
11 from a law enforcement officer position under
12 investigation or in lieu of termination, and has
13 not been dismissed from a law enforcement offi-
14 cer position; and

15 “(D) holds a current Tier 4 background
16 investigation or current Tier 5 background in-
17 vestigation; and

18 “(3) to a member of the Armed Forces (or a re-
19 serve component thereof) or a veteran, if such indi-
20 vidual—

21 “(A) has served in the Armed Forces for
22 not fewer than three years;

23 “(B) holds, or has held within the past five
24 years, a Secret, Top Secret, or Top Secret/Sen-
25 sitive Compartmented Information clearance;

1 “(C) holds, or has undergone within the
2 past five years, a current Tier 4 background in-
3 vestigation or current Tier 5 background inves-
4 tigation;

5 “(D) received, or is eligible to receive, an
6 honorable discharge from service in the Armed
7 Forces and has not engaged in criminal activity
8 or committed a serious military or civil offense
9 under the Uniform Code of Military Justice;
10 and

11 “(E) was not granted any waivers to ob-
12 tain the clearance referred to subparagraph
13 (B).

14 “(c) TERMINATION OF WAIVER AUTHORITY.—The
15 authority to issue a waiver under subsection (b) shall ter-
16 minate on the date that is four years after the date of
17 the enactment of the Border Security for America Act of
18 2019.”.

19 (c) SUPPLEMENTAL COMMISSIONER AUTHORITY AND
20 DEFINITIONS.—

21 (1) SUPPLEMENTAL COMMISSIONER AUTHOR-
22 ITY.—Section 4 of the Anti-Border Corruption Act
23 of 2010 is amended to read as follows:

1 **“SEC. 4. SUPPLEMENTAL COMMISSIONER AUTHORITY.**

2 “(a) NON-EXEMPTION.—An individual who receives
3 a waiver under section 3(b) is not exempt from other hir-
4 ing requirements relating to suitability for employment
5 and eligibility to hold a national security designated posi-
6 tion, as determined by the Commissioner of U.S. Customs
7 and Border Protection.

8 “(b) BACKGROUND INVESTIGATIONS.—Any indi-
9 vidual who receives a waiver under section 3(b) who holds
10 a current Tier 4 background investigation shall be subject
11 to a Tier 5 background investigation.

12 “(c) ADMINISTRATION OF POLYGRAPH EXAMINA-
13 TION.—The Commissioner of U.S. Customs and Border
14 Protection is authorized to administer a polygraph exam-
15 ination to an applicant or employee who is eligible for or
16 receives a waiver under section 3(b) if information is dis-
17 covered before the completion of a background investiga-
18 tion that results in a determination that a polygraph ex-
19 amination is necessary to make a final determination re-
20 garding suitability for employment or continued employ-
21 ment, as the case may be.”.

22 (2) REPORT.—The Anti-Border Corruption Act
23 of 2010, as amended by paragraph (1), is further
24 amended by adding at the end the following new sec-
25 tion:

1 **“SEC. 5. REPORTING.**

2 “(a) ANNUAL REPORT.—Not later than one year
3 after the date of the enactment of this section and annu-
4 ally thereafter while the waiver authority under section
5 3(b) is in effect, the Commissioner of U.S. Customs and
6 Border Protection shall submit to Congress a report that
7 includes, with respect to each such reporting period—

8 “(1) the number of waivers requested, granted,
9 and denied under section 3(b);

10 “(2) the reasons for any denials of such waiver;

11 “(3) the percentage of applicants who were
12 hired after receiving a waiver;

13 “(4) the number of instances that a polygraph
14 was administered to an applicant who initially re-
15 ceived a waiver and the results of such polygraph;

16 “(5) an assessment of the current impact of the
17 polygraph waiver program on filling law enforcement
18 positions at U.S. Customs and Border Protection;
19 and

20 “(6) additional authorities needed by U.S. Cus-
21 toms and Border Protection to better utilize the
22 polygraph waiver program for its intended goals.

23 “(b) ADDITIONAL INFORMATION.—The first report
24 submitted under subsection (a) shall include—

25 “(1) an analysis of other methods of employ-
26 ment suitability tests that detect deception and could

1 be used in conjunction with traditional background
2 investigations to evaluate potential employees for
3 suitability; and

4 “(2) a recommendation regarding whether a
5 test referred to in paragraph (1) should be adopted
6 by U.S. Customs and Border Protection when the
7 polygraph examination requirement is waived pursu-
8 ant to section 3(b).”.

9 (3) DEFINITIONS.—The Anti-Border Corrup-
10 tion Act of 2010, as amended by paragraphs (1) and
11 (2), is further amended by adding at the end the fol-
12 lowing new section:

13 **“SEC. 6. DEFINITIONS.**

14 “In this Act:

15 “(1) FEDERAL LAW ENFORCEMENT OFFICER.—
16 The term ‘Federal law enforcement officer’ means a
17 ‘law enforcement officer’ defined in section 8331(20)
18 or 8401(17) of title 5, United States Code.

19 “(2) SERIOUS MILITARY OR CIVIL OFFENSE.—
20 The term ‘serious military or civil offense’ means an
21 offense for which—

22 “(A) a member of the Armed Forces may
23 be discharged or separated from service in the
24 Armed Forces; and

1 “(1) MANDATORY TRAINING.—The Commis-
2 sioner shall ensure that every agent and officer of
3 U.S. Customs and Border Protection receives a min-
4 imum of 21 weeks of training that are directly re-
5 lated to the mission of the U.S. Border Patrol, Air
6 and Marine, and the Office of Field Operations be-
7 fore the initial assignment of such agents and offi-
8 cers.

9 “(2) FLETC.—The Commissioner shall work
10 in consultation with the Director of the Federal Law
11 Enforcement Training Centers to establish guide-
12 lines and curriculum for the training of agents and
13 officers of U.S. Customs and Border Protection
14 under subsection (a).

15 “(3) CONTINUING EDUCATION.—The Commis-
16 sioner shall annually require all agents and officers
17 of U.S. Customs and Border Protection who are re-
18 quired to undergo training under subsection (a) to
19 participate in not fewer than eight hours of con-
20 tinuing education annually to maintain and update
21 understanding of Federal legal rulings, court deci-
22 sions, and Department policies, procedures, and
23 guidelines related to relevant subject matters.

24 “(4) LEADERSHIP TRAINING.—Not later than
25 one year after the date of the enactment of this sub-

1 section, the Commissioner shall develop and require
2 training courses geared towards the development of
3 leadership skills for mid- and senior-level career em-
4 ployees not later than one year after such employees
5 assume duties in supervisory roles.”.

6 (b) REPORT.—Not later than 180 days after the date
7 of the enactment of this Act, the Commissioner shall sub-
8 mit to the Committee on Homeland Security and the Com-
9 mittee on Ways and Means of the House of Representa-
10 tives and the Committee on Homeland Security and Gov-
11 ernmental Affairs and the Committee on Finance of the
12 Senate a report identifying the guidelines and curriculum
13 established to carry out subsection (l) of section 411 of
14 the Homeland Security Act of 2002, as amended by sub-
15 section (a) of this section.

16 (c) ASSESSMENT.—Not later than four years after
17 the date of the enactment of this Act, the Comptroller
18 General of the United States shall submit to the Com-
19 mittee on Homeland Security and the Committee on Ways
20 and Means of the House of Representatives and the Com-
21 mittee on Homeland Security and Governmental Affairs
22 and the Committee on Finance of the Senate a report that
23 assesses the training and education, including continuing
24 education, required under subsection (l) of section 411 of

1 the Homeland Security Act of 2002, as amended by sub-
2 section (a) of this section.

3 **Subtitle C—Grants**

4 **SEC. 1141. OPERATION STONEGARDEN.**

5 (a) IN GENERAL.—Subtitle A of title XX of the
6 Homeland Security Act of 2002 (6 U.S.C. 601 et seq.)
7 is amended by adding at the end the following new section:

8 **“SEC. 2009. OPERATION STONEGARDEN.**

9 “(a) ESTABLISHMENT.—There is established in the
10 Department a program to be known as ‘Operation
11 Stonegarden’, under which the Secretary, acting through
12 the Administrator, shall make grants to eligible law en-
13 forcement agencies, through the State administrative
14 agency, to enhance border security in accordance with this
15 section.

16 “(b) ELIGIBLE RECIPIENTS.—To be eligible to re-
17 ceive a grant under this section, a law enforcement agen-
18 cy—

19 “(1) shall be located in—

20 “(A) a State bordering Canada or Mexico;

21 or

22 “(B) a State or territory with a maritime
23 border; and

24 “(2) shall be involved in an active, ongoing,
25 U.S. Customs and Border Protection operation co-

1 ordinated through a U.S. Border Patrol sector of-
2 fice.

3 “(c) PERMITTED USES.—The recipient of a grant
4 under this section may use such grant for—

5 “(1) equipment, including maintenance and
6 sustainment costs;

7 “(2) personnel, including overtime and backfill,
8 in support of enhanced border law enforcement ac-
9 tivities;

10 “(3) any activity permitted for Operation
11 Stonegarden under the Department of Homeland
12 Security’s Fiscal Year 2017 Homeland Security
13 Grant Program Notice of Funding Opportunity; and

14 “(4) any other appropriate activity, as deter-
15 mined by the Administrator, in consultation with the
16 Commissioner of U.S. Customs and Border Protec-
17 tion.

18 “(d) PERIOD OF PERFORMANCE.—The Secretary
19 shall award grants under this section to grant recipients
20 for a period of not less than 36 months.

21 “(e) REPORT.—For each of fiscal years 2019 through
22 2022, the Administrator shall submit to the Committee
23 on Homeland Security and Governmental Affairs of the
24 Senate and the Committee on Homeland Security of the
25 House of Representatives a report that contains informa-

1 tion on the expenditure of grants made under this section
2 by each grant recipient.

3 “(f) AUTHORIZATION OF APPROPRIATIONS.—There
4 is authorized to be appropriated \$110,000,000 for each
5 of fiscal years 2019 through 2022 for grants under this
6 section.”.

7 (b) CONFORMING AMENDMENT.—Subsection (a) of
8 section 2002 of the Homeland Security Act of 2002 (6
9 U.S.C. 603) is amended to read as follows:

10 “(a) GRANTS AUTHORIZED.—The Secretary, through
11 the Administrator, may award grants under sections 2003,
12 2004, and 2009 to State, local, and tribal governments,
13 as appropriate.”.

14 (c) CLERICAL AMENDMENT.—The table of contents
15 in section 1(b) of the Homeland Security Act of 2002 is
16 amended by inserting after the item relating to section
17 2008 the following:

“Sec. 2009. Operation Stonegarden.”.

18 **Subtitle D—Authorization of**
19 **Appropriations**

20 **SEC. 1151. AUTHORIZATION OF APPROPRIATIONS.**

21 In addition to amounts otherwise authorized to be ap-
22 propriated, there are authorized to be appropriated for
23 each of fiscal years 2019 through 2022, \$24,800,000,000
24 to implement this title and the amendments made by this
25 title, of which—

1 (1) \$9,300,000,000 shall be used by the De-
2 partment of Homeland Security to construct phys-
3 ical barriers pursuant to section 102 of the Illegal
4 Immigration and Immigrant Responsibility Act of
5 1996, as amended by section 1111 of this division;

6 (2) \$1,000,000,000 shall be used by the De-
7 partment to improve tactical infrastructure pursuant
8 to such section 102, as amended by such section
9 1111;

10 (3) \$5,800,000,000 shall be used by the De-
11 partment to carry out section 1112 of this division;

12 (4) \$200,000,000 shall be used by the Coast
13 Guard for deployments of personnel and assets
14 under paragraph (18) of section 1113(a) of this divi-
15 sion; and

16 (5) \$8,500,000,000 shall be used by the De-
17 partment to carry out section 1131 of this division.

18 **TITLE II—EMERGENCY PORT OF**
19 **ENTRY PERSONNEL AND IN-**
20 **FRASTRUCTURE FUNDING**

21 **SEC. 2101. PORTS OF ENTRY INFRASTRUCTURE.**

22 (a) ADDITIONAL PORTS OF ENTRY.—

23 (1) AUTHORITY.—The Administrator of Gen-
24 eral Services may, subject to section 3307 of title
25 40, United States Code, construct new ports of entry

1 along the northern border and southern border at lo-
2 cations determined by the Secretary.

3 (2) CONSULTATION.—

4 (A) REQUIREMENT TO CONSULT.—The
5 Secretary and the Administrator of General
6 Services shall consult with the Secretary of
7 State, the Secretary of the Interior, the Sec-
8 retary of Agriculture, the Secretary of Trans-
9 portation, and appropriate representatives of
10 State and local governments, and Indian tribes,
11 and property owners in the United States prior
12 to determining a location for any new port of
13 entry constructed pursuant to paragraph (1).

14 (B) CONSIDERATIONS.—The purpose of
15 the consultations required by subparagraph (A)
16 shall be to minimize any negative impacts of
17 constructing a new port of entry on the environ-
18 ment, culture, commerce, and quality of life of
19 the communities and residents located near
20 such new port.

21 (b) EXPANSION AND MODERNIZATION OF HIGH-PRI-
22 ORITY SOUTHERN BORDER PORTS OF ENTRY.—Not later
23 than September 30, 2021, the Administrator of General
24 Services, subject to section 3307 of title 40, United States
25 Code, and in coordination with the Secretary, shall expand

1 or modernize high-priority ports of entry on the southern
2 border, as determined by the Secretary, for the purposes
3 of reducing wait times and enhancing security.

4 (c) PORT OF ENTRY PRIORITIZATION.—Prior to con-
5 structing any new ports of entry pursuant to subsection
6 (a), the Administrator of General Services shall complete
7 the expansion and modernization of ports of entry pursu-
8 ant to subsection (b) to the extent practicable.

9 (d) NOTIFICATIONS.—

10 (1) RELATING TO NEW PORTS OF ENTRY.—Not
11 later than 15 days after determining the location of
12 any new port of entry for construction pursuant to
13 subsection (a), the Secretary and the Administrator
14 of General Services shall jointly notify the Members
15 of Congress who represent the State or congressional
16 district in which such new port of entry will be lo-
17 cated, as well as the Committee on Homeland Secu-
18 rity and Governmental Affairs, the Committee on
19 Finance, the Committee on Commerce, Science, and
20 Transportation, and the Committee on the Judiciary
21 of the Senate, and the Committee on Homeland Se-
22 curity, the Committee on Ways and Means, the
23 Committee on Transportation and Infrastructure,
24 and the Committee on the Judiciary of the House of
25 Representatives. Such notification shall include in-

1 formation relating to the location of such new port
2 of entry, a description of the need for such new port
3 of entry and associated anticipated benefits, a de-
4 scription of the consultations undertaken by the Sec-
5 retary and the Administrator pursuant to paragraph
6 (2) of such subsection, any actions that will be taken
7 to minimize negative impacts of such new port of
8 entry, and the anticipated time-line for construction
9 and completion of such new port of entry.

10 (2) RELATING TO EXPANSION AND MODERNIZA-
11 TION OF PORTS OF ENTRY.—Not later than 180
12 days after enactment of this Act, the Secretary and
13 the Administrator of General Services shall jointly
14 notify the Committee on Homeland Security and
15 Governmental Affairs, the Committee on Finance,
16 the Committee on Commerce, Science, and Trans-
17 portation, and the Committee on the Judiciary of
18 the Senate, and the Committee on Homeland Secu-
19 rity, the Committee on Ways and Means, the Com-
20 mittee on Transportation and Infrastructure, and
21 the Committee on the Judiciary of the House of
22 Representatives of the ports of entry on the south-
23 ern border that are the subject of expansion or mod-
24 ernization pursuant to subsection (b) and the Sec-

1 retary's and Administrator's plan for expanding or
2 modernizing each such port of entry.

3 (e) **RULE OF CONSTRUCTION.**—Nothing in this sec-
4 tion may be construed as providing the Secretary new au-
5 thority related to the construction, acquisition, or renova-
6 tion of real property.

7 **SEC. 2102. SECURE COMMUNICATIONS.**

8 (a) **IN GENERAL.**—The Secretary shall ensure that
9 each U.S. Customs and Border Protection and U.S. Immi-
10 gration and Customs Enforcement officer or agent, if ap-
11 propriate, is equipped with a secure radio or other two-
12 way communication device, supported by system interoper-
13 ability, that allows each such officer to communicate—

14 (1) between ports of entry and inspection sta-
15 tions; and

16 (2) with other Federal, State, tribal, and local
17 law enforcement entities.

18 (b) **U.S. BORDER PATROL AGENTS.**—The Secretary
19 shall ensure that each U.S. Border Patrol agent or officer
20 assigned or required to patrol on foot, by horseback, or
21 with a canine unit, in remote mission critical locations,
22 and at border checkpoints, has a multi- or dual-band
23 encrypted portable radio.

24 (c) **LTE CAPABILITY.**—In carrying out subsection
25 (b), the Secretary shall acquire radios or other devices

1 with the option to be LTE-capable for deployment in areas
2 where LTE enhances operations and is cost effective.

3 **SEC. 2103. BORDER SECURITY DEPLOYMENT PROGRAM.**

4 (a) EXPANSION.—Not later than September 30,
5 2021, the Secretary shall fully implement the Border Se-
6 curity Deployment Program of the U.S. Customs and Bor-
7 der Protection and expand the integrated surveillance and
8 intrusion detection system at land ports of entry along the
9 southern border and the northern border.

10 (b) AUTHORIZATION OF APPROPRIATIONS.—In addi-
11 tion to amounts otherwise authorized to be appropriated
12 for such purpose, there is authorized to be appropriated
13 \$33,000,000 for fiscal year 2019 to carry out subsection
14 (a).

15 **SEC. 2104. PILOT AND UPGRADE OF LICENSE PLATE READ-**
16 **ERS AT PORTS OF ENTRY.**

17 (a) UPGRADE.—Not later than one year after the
18 date of the enactment of this Act, the Commissioner of
19 U.S. Customs and Border Protection shall upgrade all ex-
20 isting license plate readers on the northern and southern
21 borders on incoming and outgoing vehicle lanes.

22 (b) PILOT PROGRAM.—Not later than 90 days after
23 the date of the enactment of this Act, the Commissioner
24 of U.S. Customs and Border Protection shall conduct a
25 one-month pilot program on the southern border using li-

1 cense plate readers for one to two cargo lanes at the top
2 three high-volume land ports of entry or checkpoints to
3 determine their effectiveness in reducing cross-border wait
4 times for commercial traffic and tractor-trailers.

5 (c) REPORT.—Not later than 180 days after the date
6 of the enactment of this Act, the Secretary shall report
7 to the Committee on Homeland Security and Govern-
8 mental Affairs, the Committee on the Judiciary, and the
9 Committee on Finance of the Senate, and the Committee
10 on Homeland Security, and Committee on the Judiciary,
11 and the Committee on Ways and Means of the House of
12 Representatives the results of the pilot program under
13 subsection (b) and make recommendations for imple-
14 menting use of such technology on the southern border.

15 (d) AUTHORIZATION OF APPROPRIATIONS.—In addi-
16 tion to amounts otherwise authorized to be appropriated
17 for such purpose, there is authorized to be appropriated
18 \$125,000,000 for fiscal year 2019 to carry out subsection
19 (a).

20 **SEC. 2105. NON-INTRUSIVE INSPECTION OPERATIONAL**
21 **DEMONSTRATION.**

22 (a) IN GENERAL.—Not later than six months after
23 the date of the enactment of this Act, the Commissioner
24 shall establish a six-month operational demonstration to
25 deploy a high-throughput non-intrusive passenger vehicle

1 inspection system at not fewer than three land ports of
2 entry along the United States-Mexico border with signifi-
3 cant cross-border traffic. Such demonstration shall be lo-
4 cated within the pre-primary traffic flow and should be
5 scalable to span up to 26 contiguous in-bound traffic lanes
6 without re-configuration of existing lanes.

7 (b) REPORT.—Not later than 90 days after the con-
8 clusion of the operational demonstration under subsection
9 (a), the Commissioner shall submit to the Committee on
10 Homeland Security and the Committee on Ways and
11 Means of the House of Representatives and the Committee
12 on Homeland Security and Governmental Affairs and the
13 Committee on Finance of the Senate a report that de-
14 scribes the following:

15 (1) The effects of such demonstration on legiti-
16 mate travel and trade.

17 (2) The effects of such demonstration on wait
18 times, including processing times, for non-pedestrian
19 traffic.

20 (3) The effectiveness of such demonstration in
21 combating terrorism and smuggling.

22 **SEC. 2106. BIOMETRIC EXIT DATA SYSTEM.**

23 (a) IN GENERAL.—Subtitle B of title IV of the
24 Homeland Security Act of 2002 (6 U.S.C. 211 et seq.)

1 is amended by inserting after section 415 the following
2 new section:

3 **“SEC. 416. BIOMETRIC ENTRY-EXIT.**

4 “(a) ESTABLISHMENT.—The Secretary shall—

5 “(1) not later than 180 days after the date of
6 the enactment of this section, submit to the Com-
7 mittee on Homeland Security and Governmental Af-
8 fairs and the Committee on the Judiciary of the
9 Senate and the Committee on Homeland Security
10 and the Committee on the Judiciary of the House of
11 Representatives an implementation plan to establish
12 a biometric exit data system to complete the inte-
13 grated biometric entry and exit data system required
14 under section 7208 of the Intelligence Reform and
15 Terrorism Prevention Act of 2004 (8 U.S.C. 1365b),
16 including—

17 “(A) an integrated master schedule and
18 cost estimate, including requirements and de-
19 sign, development, operational, and mainte-
20 nance costs of such a system, that takes into
21 account prior reports on such matters issued by
22 the Government Accountability Office and the
23 Department;

24 “(B) cost-effective staffing and personnel
25 requirements of such a system that leverages

1 existing resources of the Department that takes
2 into account prior reports on such matters
3 issued by the Government Accountability Office
4 and the Department;

5 “(C) a consideration of training programs
6 necessary to establish such a system that takes
7 into account prior reports on such matters
8 issued by the Government Accountability Office
9 and the Department;

10 “(D) a consideration of how such a system
11 will affect arrival and departure wait times that
12 takes into account prior reports on such matter
13 issued by the Government Accountability Office
14 and the Department;

15 “(E) information received after consulta-
16 tion with private sector stakeholders, including
17 the—

18 “(i) trucking industry;

19 “(ii) airport industry;

20 “(iii) airline industry;

21 “(iv) seaport industry;

22 “(v) travel industry; and

23 “(vi) biometric technology industry;

24 “(F) a consideration of how trusted trav-
25 eler programs in existence as of the date of the

1 enactment of this section may be impacted by,
2 or incorporated into, such a system;

3 “(G) defined metrics of success and mile-
4 stones;

5 “(H) identified risks and mitigation strate-
6 gies to address such risks;

7 “(I) a consideration of how other countries
8 have implemented a biometric exit data system;
9 and

10 “(J) a list of statutory, regulatory, or ad-
11 ministrative authorities, if any, needed to inte-
12 grate such a system into the operations of the
13 Transportation Security Administration; and

14 “(2) not later than two years after the date of
15 the enactment of this section, establish a biometric
16 exit data system at the—

17 “(A) 15 United States airports that sup-
18 port the highest volume of international air
19 travel, as determined by available Federal flight
20 data;

21 “(B) 10 United States seaports that sup-
22 port the highest volume of international sea
23 travel, as determined by available Federal travel
24 data; and

1 “(C) 15 United States land ports of entry
2 that support the highest volume of vehicle, pe-
3 destrian, and cargo crossings, as determined by
4 available Federal border crossing data.

5 “(b) IMPLEMENTATION.—

6 “(1) PILOT PROGRAM AT LAND PORTS OF
7 ENTRY FOR NON-PEDESTRIAN OUTBOUND TRAF-
8 FIC.—Not later than six months after the date of
9 the enactment of this section, the Secretary, in col-
10 laboration with industry stakeholders, shall establish
11 a six-month pilot program to test the biometric exit
12 data system referred to in subsection (a)(2) on non-
13 pedestrian outbound traffic at not fewer than three
14 land ports of entry with significant cross-border traf-
15 fic, including at not fewer than two land ports of
16 entry on the southern land border and at least one
17 land port of entry on the northern land border. Such
18 pilot program may include a consideration of more
19 than one biometric mode, and shall be implemented
20 to determine the following:

21 “(A) How a nationwide implementation of
22 such biometric exit data system at land ports of
23 entry shall be carried out.

24 “(B) The infrastructure required to carry
25 out subparagraph (A).

1 “(C) The effects of such pilot program on
2 legitimate travel and trade.

3 “(D) The effects of such pilot program on
4 wait times, including processing times, for such
5 non-pedestrian traffic.

6 “(E) The effects of such pilot program on
7 combating terrorism.

8 “(F) The effects of such pilot program on
9 identifying visa holders who violate the terms of
10 their visas.

11 “(2) AT LAND PORTS OF ENTRY FOR NON-PE-
12 DESTRIAN OUTBOUND TRAFFIC.—

13 “(A) IN GENERAL.—Not later than five
14 years after the date of the enactment of this
15 section, the Secretary shall expand the biomet-
16 ric exit data system referred to in subsection
17 (a)(2) to all land ports of entry, and such sys-
18 tem shall apply only in the case of non-pedes-
19 trian outbound traffic.

20 “(B) EXTENSION.—The Secretary may ex-
21 tend for a single two-year period the date speci-
22 fied in subparagraph (A) if the Secretary cer-
23 tifies to the Committee on Homeland Security
24 and Governmental Affairs and the Committee
25 on the Judiciary of the Senate and the Com-

1 committee on Homeland Security and the Com-
2 mittee on the Judiciary of the House of Rep-
3 resentatives that the 15 land ports of entry that
4 support the highest volume of passenger vehi-
5 cles, as determined by available Federal data,
6 do not have the physical infrastructure or char-
7 acteristics to install the systems necessary to
8 implement a biometric exit data system.

9 “(3) AT AIR AND SEA PORTS OF ENTRY.—Not
10 later than five years after the date of the enactment
11 of this section, the Secretary shall expand the bio-
12 metric exit data system referred to in subsection
13 (a)(2) to all air and sea ports of entry.

14 “(4) AT LAND PORTS OF ENTRY FOR PEDES-
15 TRIANS.—Not later than five years after the date of
16 the enactment of this section, the Secretary shall ex-
17 pand the biometric exit data system referred to in
18 subsection (a)(2) to all land ports of entry, and such
19 system shall apply only in the case of pedestrians.

20 “(c) EFFECTS ON AIR, SEA, AND LAND TRANSPOR-
21 TATION.—The Secretary, in consultation with appropriate
22 private sector stakeholders, shall ensure that the collection
23 of biometric data under this section causes the least pos-
24 sible disruption to the movement of people or cargo in air,
25 sea, or land transportation, while fulfilling the goals of im-

1 proving counterterrorism efforts and identifying visa hold-
2 ers who violate the terms of their visas.

3 “(d) TERMINATION OF PROCEEDING.—Notwith-
4 standing any other provision of law, the Secretary shall,
5 on the date of the enactment of this section, terminate
6 the proceeding entitled ‘Collection of Alien Biometric Data
7 Upon Exit From the United States at Air and Sea Ports
8 of Departure; United States Visitor and Immigrant Status
9 Indicator Technology Program (“US-VISIT”)', issued on
10 April 24, 2008 (73 Fed. Reg. 22065).

11 “(e) DATA-MATCHING.—The biometric exit data sys-
12 tem established under this section shall—

13 “(1) match biometric information for an indi-
14 vidual, regardless of nationality, citizenship, or im-
15 migration status, who is departing the United States
16 against biometric data previously provided to the
17 United States Government by such individual for the
18 purposes of international travel;

19 “(2) leverage the infrastructure and databases
20 of the current biometric entry and exit system estab-
21 lished pursuant to section 7208 of the Intelligence
22 Reform and Terrorism Prevention Act of 2004 (8
23 U.S.C. 1365b) for the purpose described in para-
24 graph (1); and

1 “(3) be interoperable with, and allow matching
2 against, other Federal databases that—

3 “(A) store biometrics of known or sus-
4 pected terrorists; and

5 “(B) identify visa holders who violate the
6 terms of their visas.

7 “(f) SCOPE.—

8 “(1) IN GENERAL.—The biometric exit data
9 system established under this section shall include a
10 requirement for the collection of biometric exit data
11 at the time of departure for all categories of individ-
12 uals who are required by the Secretary to provide bi-
13 ometric entry data.

14 “(2) EXCEPTION FOR CERTAIN OTHER INDIVID-
15 UALS.—This section shall not apply in the case of an
16 individual who exits and then enters the United
17 States on a passenger vessel (as such term is defined
18 in section 2101 of title 46, United States Code) the
19 itinerary of which originates and terminates in the
20 United States.

21 “(3) EXCEPTION FOR LAND PORTS OF
22 ENTRY.—This section shall not apply in the case of
23 a United States or Canadian citizen who exits the
24 United States through a land port of entry.

1 “(g) COLLECTION OF DATA.—The Secretary may not
2 require any non-Federal person to collect biometric data,
3 or contribute to the costs of collecting or administering
4 the biometric exit data system established under this sec-
5 tion, except through a mutual agreement.

6 “(h) MULTI-MODAL COLLECTION.—In carrying out
7 subsections (a)(1) and (b), the Secretary shall make every
8 effort to collect biometric data using multiple modes of
9 biometrics.

10 “(i) FACILITIES.—All facilities at which the biometric
11 exit data system established under this section is imple-
12 mented shall provide and maintain space for Federal use
13 that is adequate to support biometric data collection and
14 other inspection-related activity. For non-federally owned
15 facilities, such space shall be provided and maintained at
16 no cost to the Government. For all facilities at land ports
17 of entry, such space requirements shall be coordinated
18 with the Administrator of General Services.

19 “(j) NORTHERN LAND BORDER.—In the case of the
20 northern land border, the requirements under subsections
21 (a)(2)(C), (b)(2)(A), and (b)(4) may be achieved through
22 the sharing of biometric data provided to U.S. Customs
23 and Border Protection by the Canadian Border Services
24 Agency pursuant to the 2011 Beyond the Border agree-
25 ment.

1 “(k) FAIR AND OPEN COMPETITION.—The Secretary
2 shall procure goods and services to implement this section
3 via fair and open competition in accordance with the Fed-
4 eral Acquisition Regulations.

5 “(l) OTHER BIOMETRIC INITIATIVES.—Nothing in
6 this section may be construed as limiting the authority of
7 the Secretary to collect biometric information in cir-
8 cumstances other than as specified in this section.

9 “(m) CONGRESSIONAL REVIEW.—Not later than 90
10 days after the date of the enactment of this section, the
11 Secretary shall submit to the Committee on Homeland Se-
12 curity and Governmental Affairs of the Senate, the Com-
13 mittee on the Judiciary of the Senate, the Committee on
14 Homeland Security of the House of Representatives, and
15 Committee on the Judiciary of the House of Representa-
16 tives reports and recommendations regarding the Science
17 and Technology Directorate’s Air Entry and Exit Re-En-
18 gineering Program of the Department and the U.S. Cus-
19 toms and Border Protection entry and exit mobility pro-
20 gram demonstrations.

21 “(n) SAVINGS CLAUSE.—Nothing in this section shall
22 prohibit the collection of user fees permitted by section
23 13031 of the Consolidated Omnibus Budget Reconciliation
24 Act of 1985 (19 U.S.C. 58c).”.

1 (b) CLERICAL AMENDMENT.—The table of contents
2 in section 1(b) of the Homeland Security Act of 2002 is
3 amended by inserting after the item relating to section
4 415 the following new item:

“Sec. 416. Biometric entry-exit.”.

5 **SEC. 2107. SENSE OF CONGRESS ON COOPERATION BE-**
6 **TWEEN AGENCIES.**

7 (a) FINDING.—Congress finds that personnel con-
8 straints exist at land ports of entry with regard to sanitary
9 and phytosanitary inspections for exported goods.

10 (b) SENSE OF CONGRESS.—It is the sense of Con-
11 gress that, in the best interest of cross-border trade and
12 the agricultural community—

13 (1) any lack of certified personnel for inspection
14 purposes at ports of entry should be addressed by
15 seeking cooperation between agencies and depart-
16 ments of the United States, whether in the form of
17 a memorandum of understanding or through a cer-
18 tification process, whereby additional existing agents
19 are authorized for additional hours to facilitate and
20 expedite the flow of legitimate trade and commerce
21 of perishable goods in a manner consistent with
22 rules of the Department of Agriculture; and

23 (2) cross designation should be available for
24 personnel who will assist more than one agency or
25 department of the United States at land ports of

1 entry to facilitate and expedite the flow of increased
2 legitimate trade and commerce.

3 **SEC. 2108. AUTHORIZATION OF APPROPRIATIONS.**

4 In addition to any amounts otherwise authorized to
5 be appropriated for such purpose, there is authorized to
6 be appropriated \$1,250,000,000 for each of fiscal years
7 2019 through 2022 to carry out this title, of which—

8 (1) \$2,000,000 shall be used by the Secretary
9 for hiring additional Uniform Management Center
10 support personnel, purchasing uniforms for CBP of-
11 ficers and agents, acquiring additional motor vehi-
12 cles to support vehicle mounted surveillance systems,
13 hiring additional motor vehicle program support per-
14 sonnel, and for contract support for customer serv-
15 ice, vendor management, and operations manage-
16 ment; and

17 (2) \$250,000,000 per year shall be used to im-
18 plement the biometric exit data system described in
19 section 416 of the Homeland Security Act of 2002,
20 as added by section 2106 of this division.

21 **SEC. 2109. DEFINITION.**

22 In this title, the term “Secretary” means the Sec-
23 retary of Homeland Security.

1 **TITLE III—VISA SECURITY AND**
2 **INTEGRITY**

3 **SEC. 3101. VISA SECURITY.**

4 (a) VISA SECURITY UNITS AT HIGH-RISK POSTS.—

5 Paragraph (1) of section 428(e) of the Homeland Security
6 Act of 2002 (6 U.S.C. 236(e)) is amended—

7 (1) by striking “The Secretary” and inserting
8 the following:

9 “(A) AUTHORIZATION.—Subject to the
10 minimum number specified in subparagraph
11 (B), the Secretary”; and

12 (2) by adding at the end the following new sub-
13 paragraph:

14 “(B) RISK-BASED ASSIGNMENTS.—

15 “(i) IN GENERAL.—In carrying out
16 subparagraph (A), the Secretary shall as-
17 sign, in a risk-based manner, and consid-
18 ering the criteria described in clause (ii),
19 employees of the Department to not fewer
20 than 75 diplomatic and consular posts at
21 which visas are issued.

22 “(ii) CRITERIA DESCRIBED.—The cri-
23 teria referred to in clause (i) are the fol-
24 lowing:

1 “(I) The number of nationals of
2 a country in which any of the diplo-
3 matic and consular posts referred to
4 in clause (i) are located who were
5 identified in United States Govern-
6 ment databases related to the identi-
7 ties of known or suspected terrorists
8 during the previous year.

9 “(II) Information on the coopera-
10 tion of such country with the counter-
11 terrorism efforts of the United States.

12 “(III) Information analyzing the
13 presence, activity, or movement of ter-
14 rorist organizations (as such term is
15 defined in section 212(a)(3)(B)(vi) of
16 the Immigration and Nationality Act
17 (8 U.S.C. 1182(a)(3)(B)(vi))) within
18 or through such country.

19 “(IV) The number of formal ob-
20 jections based on derogatory informa-
21 tion issued by the Visa Security Advi-
22 sory Opinion Unit pursuant to para-
23 graph (10) regarding nationals of a
24 country in which any of the diplomatic

1 and consular posts referred to in
2 clause (i) are located.

3 “(V) The adequacy of the border
4 and immigration control of such coun-
5 try.

6 “(VI) Any other criteria the Sec-
7 retary determines appropriate.

8 “(iii) RULE OF CONSTRUCTION.—The
9 assignment of employees of the Depart-
10 ment pursuant to this subparagraph is
11 solely the authority of the Secretary and
12 may not be altered or rejected by the Sec-
13 retary of State.”.

14 (b) COUNTERTERROR VETTING AND SCREENING.—
15 Paragraph (2) of section 428(e) of the Homeland Security
16 Act of 2002 is amended—

17 (1) by redesignating subparagraph (C) as sub-
18 paragraph (D); and

19 (2) by inserting after subparagraph (B) the fol-
20 lowing new subparagraph:

21 “(C) Screen any such applications against
22 the appropriate criminal, national security, and
23 terrorism databases maintained by the Federal
24 Government.”.

1 (c) TRAINING AND HIRING.—Subparagraph (A) of
2 section 428(e)(6) of the Homeland Security Act of 2002
3 is amended by—

4 (1) striking “The Secretary shall ensure, to the
5 extent possible, that any employees” and inserting
6 “The Secretary, acting through the Commissioner of
7 U.S. Customs and Border Protection and the Direc-
8 tor of U.S. Immigration and Customs Enforcement,
9 shall provide training to any employees”; and

10 (2) striking “shall be provided the necessary
11 training”.

12 (d) PRE-ADJUDICATED VISA SECURITY ASSISTANCE
13 AND VISA SECURITY ADVISORY OPINION UNIT.—Sub-
14 section (e) of section 428 of the Homeland Security Act
15 of 2002 is amended by adding at the end the following
16 new paragraphs:

17 “(9) REMOTE PRE-ADJUDICATED VISA SECUR-
18 RITY ASSISTANCE.—At the visa-issuing posts at
19 which employees of the Department are not assigned
20 pursuant to paragraph (1), the Secretary shall, in a
21 risk-based manner, assign employees of the Depart-
22 ment to remotely perform the functions required
23 under paragraph (2) at not fewer than 50 of such
24 posts.

1 **“SEC. 420. ELECTRONIC PASSPORT SCREENING AND BIO-**
2 **METRIC MATCHING.**

3 “(a) IN GENERAL.—Not later than one year after the
4 date of the enactment of this section, the Commissioner
5 of U.S. Customs and Border Protection shall—

6 “(1) screen electronic passports at airports of
7 entry by reading each such passport’s embedded
8 chip; and

9 “(2) to the greatest extent practicable, utilize
10 facial recognition technology or other biometric tech-
11 nology, as determined by the Commissioner, to in-
12 spect travelers at United States airports of entry.

13 “(b) APPLICABILITY.—

14 “(1) ELECTRONIC PASSPORT SCREENING.—
15 Paragraph (1) of subsection (a) shall apply to pass-
16 ports belonging to individuals who are United States
17 citizens, individuals who are nationals of a program
18 country pursuant to section 217 of the Immigration
19 and Nationality Act (8 U.S.C. 1187), and individ-
20 uals who are nationals of any other foreign country
21 that issues electronic passports.

22 “(2) FACIAL RECOGNITION MATCHING.—Para-
23 graph (2) of subsection (a) shall apply, at a min-
24 imum, to individuals who are nationals of a program
25 country pursuant to section 217 of the Immigration
26 and Nationality Act.

1 “(c) ANNUAL REPORT.—The Commissioner of U.S.
2 Customs and Border Protection, in collaboration with the
3 Chief Privacy Officer of the Department, shall issue to the
4 Committee on Homeland Security of the House of Rep-
5 resentatives and the Committee on Homeland Security
6 and Governmental Affairs of the Senate an annual report
7 through fiscal year 2021 on the utilization of facial rec-
8 ognition technology and other biometric technology pursu-
9 ant to subsection (a)(2). Each such report shall include
10 information on the type of technology used at each airport
11 of entry, the number of individuals who were subject to
12 inspection using either of such technologies at each airport
13 of entry, and within the group of individuals subject to
14 such inspection at each airport, the number of those indi-
15 viduals who were United States citizens and legal perma-
16 nent residents. Each such report shall provide information
17 on the disposition of data collected during the year covered
18 by such report, together with information on protocols for
19 the management of collected biometric data, including
20 timeframes and criteria for storing, erasing, destroying,
21 or otherwise removing such data from databases utilized
22 by the Department.

1 **“SEC. 420A. CONTINUOUS SCREENING BY U.S. CUSTOMS**
2 **AND BORDER PROTECTION.**

3 “The Commissioner of U.S. Customs and Border
4 Protection shall, in a risk based manner, continuously
5 screen individuals issued any visa, and individuals who are
6 nationals of a program country pursuant to section 217
7 of the Immigration and Nationality Act (8 U.S.C. 1187),
8 who are present, or are expected to arrive within 30 days,
9 in the United States, against the appropriate criminal, na-
10 tional security, and terrorism databases maintained by the
11 Federal Government.”.

12 (b) CLERICAL AMENDMENT.—The table of contents
13 in section 1(b) of the Homeland Security Act of 2002 is
14 amended by inserting after the item relating to section
15 419 the following new items:

“Sec. 420. Electronic passport screening and biometric matching.

“Sec. 420A. Continuous screening by U.S. Customs and Border Protection.”.

16 **SEC. 3103. REPORTING OF VISA OVERSTAYS.**

17 Section 2 of Public Law 105–173 (8 U.S.C. 1376)
18 is amended—

19 (1) in subsection (a)—

20 (A) by striking “Attorney General” and in-
21 serting “Secretary of Homeland Security”; and

22 (B) by inserting before the period at the
23 end the following: “, and any additional infor-
24 mation that the Secretary determines necessary

1 for purposes of the report under subsection
2 (b)”; and

3 (2) by amending subsection (b) to read as fol-
4 lows:

5 “(b) ANNUAL REPORT.—Not later than June 30,
6 2019, and not later than June 30 of each year thereafter,
7 the Secretary of Homeland Security shall submit to the
8 Committee on Homeland Security and the Committee on
9 the Judiciary of the House of Representatives and to the
10 Committee on Homeland Security and Governmental Af-
11 fairs and the Committee on the Judiciary of the Senate
12 a report providing, for the preceding fiscal year, numerical
13 estimates (including information on the methodology uti-
14 lized to develop such numerical estimates) of—

15 “(1) for each country, the number of aliens
16 from the country who are described in subsection
17 (a), including—

18 “(A) the total number of such aliens within
19 all classes of nonimmigrant aliens described in
20 section 101(a)(15) of the Immigration and Na-
21 tionality Act (8 U.S.C. 1101(a)(15)); and

22 “(B) the number of such aliens within each
23 of the classes of nonimmigrant aliens, as well as
24 the number of such aliens within each of the

1 subclasses of such classes of nonimmigrant
2 aliens, as applicable;

3 “(2) for each country, the percentage of the
4 total number of aliens from the country who were
5 present in the United States and were admitted to
6 the United States as nonimmigrants who are de-
7 scribed in subsection (a);

8 “(3) the number of aliens described in sub-
9 section (a) who arrived by land at a port of entry
10 into the United States;

11 “(4) the number of aliens described in sub-
12 section (a) who entered the United States using a
13 border crossing identification card (as such term is
14 defined in section 101(a)(6) of the Immigration and
15 Nationality Act (8 U.S.C. 1101(a)(6))); and

16 “(5) the number of Canadian nationals who en-
17 tered the United States without a visa whose author-
18 ized period of stay in the United States terminated
19 during the previous fiscal year, but who remained in
20 the United States.”.

21 **SEC. 3104. STUDENT AND EXCHANGE VISITOR INFORMA-**
22 **TION SYSTEM VERIFICATION.**

23 Not later than 90 days after the date of the enact-
24 ment of this Act, the Secretary of Homeland Security shall
25 ensure that the information collected under the program

1 established under section 641 of the Illegal Immigration
2 Reform and Immigrant Responsibility Act of 1996 (8
3 U.S.C. 1372) is available to officers of U.S. Customs and
4 Border Protection for the purpose of conducting primary
5 inspections of aliens seeking admission to the United
6 States at each port of entry of the United States.

7 **SEC. 3105. SOCIAL MEDIA REVIEW OF VISA APPLICANTS.**

8 (a) IN GENERAL.—Subtitle C of title IV of the
9 Homeland Security Act of 2002 (6 U.S.C. 231 et seq.),
10 as amended by sections 1115, 1124, and 1127 of this divi-
11 sion, is further amended by adding at the end the fol-
12 lowing new sections:

13 **“SEC. 438. SOCIAL MEDIA SCREENING.**

14 “(a) IN GENERAL.—Not later than 180 days after
15 the date of the enactment of this section, the Secretary
16 shall, to the greatest extent practicable, and in a risk
17 based manner and on an individualized basis, review the
18 social media accounts of certain visa applicants who are
19 citizens of, or who reside in, high-risk countries, as deter-
20 mined by the Secretary based on the criteria described in
21 subsection (b).

22 “(b) HIGH-RISK CRITERIA DESCRIBED.—In deter-
23 mining whether a country is high-risk pursuant to sub-
24 section (a), the Secretary shall consider the following cri-
25 teria:

1 “(1) The number of nationals of the country
2 who were identified in United States Government
3 databases related to the identities of known or sus-
4 pected terrorists during the previous year.

5 “(2) The level of cooperation of the country
6 with the counter-terrorism efforts of the United
7 States.

8 “(3) Any other criteria the Secretary deter-
9 mines appropriate.

10 “(c) COLLABORATION.—To carry out the require-
11 ments of subsection (a), the Secretary may collaborate
12 with—

13 “(1) the head of a national laboratory within
14 the Department’s laboratory network with relevant
15 expertise;

16 “(2) the head of a relevant university-based
17 center within the Department’s centers of excellence
18 network; and

19 “(3) the heads of other appropriate Federal
20 agencies.

21 **“SEC. 439. OPEN SOURCE SCREENING.**

22 “The Secretary shall, to the greatest extent prac-
23 ticable, and in a risk based manner, review open source
24 information of visa applicants.”.

1 (b) CLERICAL AMENDMENT.—The table of contents
2 in section 1(b) of the Homeland Security Act of 2002, as
3 amended by this division is further amended by inserting
4 after the item relating to section 437 the following new
5 items:

“Sec. 438. Social media screening.

“Sec. 439. Open source screening.”.

6 **TITLE IV—TRANSNATIONAL**
7 **CRIMINAL ORGANIZATION IL-**
8 **LICIT SPOTTER PREVENTION**
9 **AND ELIMINATION**

10 **SEC. 4101. SHORT TITLE.**

11 This title may be cited as the “Transnational Crimi-
12 nal Organization Illicit Spotter Prevention and Elim-
13 nation Act”.

14 **SEC. 4102. UNLAWFULLY HINDERING IMMIGRATION, BOR-**
15 **DER, AND CUSTOMS CONTROLS.**

16 (a) BRINGING IN AND HARBORING OF CERTAIN
17 ALIENS.—Section 274(a) of the Immigration and Nation-
18 ality Act (8 U.S.C. 1324(a)) is amended—

19 (1) in subsection (a)(2), by striking “brings to
20 or attempts to” and inserting the following: “brings
21 to or attempts or conspires to”; and

22 (2) by adding at the end the following:

23 “(5) In the case of a person who has brought
24 aliens into the United States in violation of this sub-

1 section, the sentence otherwise provided for may be
2 increased by up to 10 years if that person, at the
3 time of the offense, used or carried a firearm or
4 who, in furtherance of any such crime, possessed a
5 firearm.”.

6 (b) AIDING OR ASSISTING CERTAIN ALIENS TO
7 ENTER THE UNITED STATES.—Section 277 of the Immi-
8 gration and Nationality Act (8 U.S.C. 1327) is amend-
9 ed—

10 (1) by inserting after “knowingly aids or as-
11 sists” the following: “or attempts to aid or assist”;
12 and

13 (2) by adding at the end the following: “In the
14 case of a person convicted of an offense under this
15 section, the sentence otherwise provided for may be
16 increased by up to 10 years if that person, at the
17 time of the offense, used or carried a firearm or
18 who, in furtherance of any such crime, possessed a
19 firearm.”.

20 (c) DESTRUCTION OF UNITED STATES BORDER CON-
21 TROLS.—Section 1361 of title 18, United States Code, is
22 amended—

23 (1) by striking “If the damage” and inserting
24 the following:

1 “(1) Except as otherwise provided in this sec-
2 tion, if the damage”; and

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

4 “(2) If the injury or depredation was made or
5 attempted against any fence, barrier, sensor, cam-
6 era, or other physical or electronic device deployed
7 by the Federal Government to control the border or
8 a port of entry or otherwise was intended to con-
9 struct, excavate, or make any structure intended to
10 defeat, circumvent, or evade any such fence, barrier,
11 sensor camera, or other physical or electronic device
12 deployed by the Federal Government to control the
13 border or a port of entry, by a fine under this title
14 or imprisonment for not more than 15 years, or
15 both.

16 “(3) If the injury or depredation was described
17 under paragraph (2) and, in the commission of the
18 offense, the offender used or carried a firearm or, in
19 furtherance of any such offense, possessed a firearm,
20 by a fine under this title or imprisonment for not
21 more than 20 years, or both.”.

1 **DIVISION D—LAWFUL STATUS**
2 **FOR CERTAIN CHILDHOOD**
3 **ARRIVALS**

4 **SEC. 1101. DEFINITIONS.**

5 In this division:

6 (1) **IN GENERAL.**—Except as otherwise specifi-
7 cally provided, the terms used in this division have
8 the meanings given such terms in subsections (a)
9 and (b) of section 101 of the Immigration and Na-
10 tionality Act (8 U.S.C. 1101).

11 (2) **CONTINGENT NONIMMIGRANT.**—The term
12 “contingent nonimmigrant” means an alien who is
13 granted contingent nonimmigrant status under this
14 division.

15 (3) **EDUCATIONAL INSTITUTION.**—The term
16 “educational institution” means—

17 (A) an institution that is described in sec-
18 tion 101(a) of the Higher Education Act of
19 1965 (20 U.S.C. 1001(a)) or is a proprietary
20 institution of higher education (as defined in
21 section 102(b) of such Act (20 U.S.C.
22 1002(b)));

23 (B) an elementary, primary, or secondary
24 school within the United States; or

1 (C) an educational program assisting stu-
2 dents either in obtaining a high school equiva-
3 lency diploma, certificate, or its recognized
4 equivalent under State law, or in passing a
5 General Educational Development exam or
6 other equivalent State-authorized exam or other
7 applicable State requirements for high school
8 equivalency.

9 (4) SECRETARY.—Except as otherwise specifi-
10 cally provided, the term “Secretary” means the Sec-
11 retary of Homeland Security.

12 (5) SEXUAL ASSAULT OR HARASSMENT.—The
13 term “sexual assault or harassment” means—

14 (A) conduct engaged in by an alien 18
15 years of age or older, which consists of unwel-
16 come sexual advances, requests for sexual fa-
17 vors, or other verbal or physical conduct of a
18 sexual nature, and—

19 (i) submission to such conduct is
20 made either explicitly or implicitly a term
21 or condition of an individual’s employment;

22 (ii) submission to or rejection of such
23 conduct by an individual is used as the
24 basis for employment decisions affecting
25 such individual; or

1 (iii) such conduct has the purpose or
2 effect of creating an intimidating, hostile,
3 or offensive environment;

4 (B) conduct constituting a criminal offense
5 of rape, as described in section 101(a)(43)(A)
6 of the Immigration and Nationality Act (8
7 U.S.C. 1101(a)(43)(A));

8 (C) conduct constituting a criminal offense
9 of statutory rape, or any offense of a sexual na-
10 ture involving a victim under the age of 18
11 years, as described in section 101(a)(43)(A) of
12 the Immigration and Nationality Act (8 U.S.C.
13 1101(a)(43)(A));

14 (D) sexual conduct with a minor who is
15 under 14 years of age, or with a minor under
16 16 years of age where the alien was at least 4
17 years older than the minor;

18 (E) conduct punishable under section 2251
19 or 2251A (relating to the sexual exploitation of
20 children and the selling or buying of children),
21 or section 2252 or 2252A (relating to certain
22 activities relating to material involving the sex-
23 ual exploitation of minors or relating to mate-
24 rial constituting or containing child pornog-
25 raphy) of title 18, United States Code; or

1 (F) conduct constituting the elements of
2 any other Federal or State sexual offense re-
3 quiring a defendant, if convicted, to register on
4 a sexual offender registry (except that this pro-
5 vision shall not apply to convictions solely for
6 urinating or defecating in public).

7 (6) VICTIM.—The term “victim” has the mean-
8 ing given the term in section 503(e) of the Victims’
9 Rights and Restitution Act of 1990 (42 U.S.C.
10 10607(e)).

11 **SEC. 1102. CONTINGENT NONIMMIGRANT STATUS FOR CER-**
12 **TAIN ALIENS WHO ENTERED THE UNITED**
13 **STATES AS MINORS.**

14 (a) IN GENERAL.—Notwithstanding any other provi-
15 sion of law, the Secretary may grant contingent non-
16 immigrant status to an alien who—

17 (1) meets the eligibility requirements set forth
18 in subsection (b);

19 (2) submits a completed application before the
20 end of the period set forth in subsection (c)(2); and

21 (3) has paid the fees required under subsection
22 (c)(5).

23 (b) ELIGIBILITY REQUIREMENTS.—

24 (1) IN GENERAL.—An alien is eligible for con-
25 tingent nonimmigrant status if the alien establishes

1 by clear and convincing evidence that the alien
2 meets the requirements set forth in this subsection.

3 (2) GENERAL REQUIREMENTS.—The require-
4 ments under this paragraph are that the alien—

5 (A) is physically present in the United
6 States on the date on which the alien submits
7 an application for contingent nonimmigrant sta-
8 tus;

9 (B) was physically present in the United
10 States on June 15, 2007;

11 (C) was younger than 16 years of age on
12 the date the alien initially entered the United
13 States;

14 (D) is a person of good moral character;

15 (E) was under 31 years of age on June 15,
16 2012, and at the time of filing an application
17 under subsection (c);

18 (F) has maintained continuous physical
19 presence in the United States from June 15,
20 2012, until the date on which the alien is grant-
21 ed contingent nonimmigrant status under this
22 section;

23 (G) had no lawful immigration status on
24 June 15, 2012;

1 (H) has requested the release to the De-
2 partment of Homeland Security of all records
3 regarding their being adjudicated delinquent in
4 State or local juvenile court proceedings, and
5 the Department has obtained all such records;
6 and

7 (I) possesses a valid Employment Author-
8 ization Document which authorizes the alien to
9 work as of the date of the enactment of this
10 Act, which was issued pursuant to the June 15,
11 2012, U.S. Department of Homeland Security
12 Memorandum entitled, “Exercising Prosecu-
13 torial Discretion With Respect to Individuals
14 Who Came to the United States as Children”.

15 (3) EDUCATION REQUIREMENT.—

16 (A) IN GENERAL.—An alien may not be
17 granted contingent nonimmigrant status under
18 this section unless the alien establishes by clear
19 and convincing evidence that the alien—

20 (i) is enrolled in, and is in regular
21 full-time attendance at, an educational in-
22 stitution within the United States; or

23 (ii) has acquired a diploma from a
24 high school in the United States, has
25 earned a General Educational Development

1 certificate recognized under State law, or
2 has earned a recognized high school
3 equivalency certificate under applicable
4 State law.

5 (B) EVIDENCE.—An alien shall dem-
6 onstrate compliance with clause (i) or (ii) of
7 subparagraph (A) by providing a valid certified
8 transcript or diploma from the educational in-
9 stitution the alien is enrolled in or from which
10 the alien has acquired a diploma or certificate.

11 (4) GROUNDS FOR INELIGIBILITY.—An alien is
12 ineligible for contingent nonimmigrant status if the
13 Secretary determines that the alien—

14 (A) has a conviction for—

15 (i) an offense classified as a felony in
16 the convicting jurisdiction;

17 (ii) an aggravated felony;

18 (iii) an offense classified as a mis-
19 demeanor in the convicting jurisdiction
20 which involved—

21 (I) domestic violence (as defined
22 in section 40002(a) of the Violence
23 Against Women Act of 1994 (34
24 U.S.C. 12291(a)));

1 (II) child abuse or neglect (as de-
2 fined in section 40002(a) of the Vio-
3 lence Against Women Act of 1994 (34
4 U.S.C. 12291(a));

5 (III) assault resulting in bodily
6 injury (as such term is defined in sec-
7 tion 2266 of title 18, United States
8 Code);

9 (IV) the violation of a protection
10 order (as such term is defined in sec-
11 tion 2266 of title 18, United States
12 Code); or

13 (V) driving while intoxicated or
14 driving under the influence (as such
15 terms are defined in section 164(a)(2)
16 of title 23, United States Code);

17 (iv) two or more misdemeanor convic-
18 tions (excluding minor traffic offenses that
19 did not involve driving while intoxicated or
20 driving under the influence, or that did not
21 subject any individual other than the alien
22 to bodily injury); or

23 (v) any offense under foreign law, ex-
24 cept for a purely political offense, which, if
25 the offense had been committed in the

1 United States, would render the alien inad-
2 missible under section 212(a) of the Immi-
3 gration and Nationality Act (8 U.S.C.
4 1182(a)) or deportable under section
5 237(a) of such Act (8 U.S.C. 1227(a));

6 (B) has been adjudicated delinquent in a
7 State or local juvenile court proceeding for an
8 offense equivalent to—

9 (i) an offense relating to murder,
10 manslaughter, homicide, rape (whether the
11 victim was conscious or unconscious), stat-
12 utory rape, or any offense of a sexual na-
13 ture involving a victim under the age of 18
14 years, as described in section
15 101(a)(43)(A) of the Immigration and Na-
16 tionality Act (8 U.S.C. 1101(a)(43)(A));

17 (ii) a crime of violence, as such term
18 is defined in section 16 of title 18, United
19 States Code; or

20 (iii) an offense punishable under sec-
21 tion 401 of the Controlled Substances Act
22 (21 U.S.C. 841);

23 (C) has a conviction for any other criminal
24 offense, which regard to which the alien has not
25 satisfied any civil legal judgements awarded to

1 any victims (or family members of victims) of
2 the crime;

3 (D) is described in section 212(a)(2)(J) of
4 the Immigration and Nationality Act (8 U.S.C.
5 1882(a)(2)(J)) (relating to aliens associated
6 with criminal gangs);

7 (E) has been charged with a felony or mis-
8 demeanor offense (excluding minor traffic of-
9 fenses that did not involve driving while intoxi-
10 cated or driving under the influence, or that did
11 not subject any individual other than the alien
12 to bodily injury), and the charge or charges are
13 still pending;

14 (F) is inadmissible under section 212(a) of
15 the Immigration and Nationality Act (8 U.S.C.
16 1182(a)), except that in determining an alien's
17 inadmissibility—

18 (i) paragraphs (5), (7), and (9)(B) of
19 such section shall not apply; and

20 (ii) subparagraphs (A), (D), and (G)
21 of paragraph (6), and paragraphs
22 (9)(C)(i)(I) and (10)(B), of such section
23 shall not apply, except in the case of the
24 alien unlawfully entering the United States
25 after June 15, 2007;

1 (G) is deportable under section 237(a) of
2 the Immigration and Nationality Act (8 U.S.C.
3 1227(a)), except that in determining an alien's
4 deportability—

5 (i) subparagraph (A) of section
6 237(a)(1) of such Act shall not apply with
7 respect to grounds of inadmissibility that
8 do not apply pursuant to subparagraph (C)
9 of such section; and

10 (ii) subparagraphs (B) through (D) of
11 section 237(a)(1) and section 237(a)(3)(A)
12 of such Act shall not apply;

13 (H) was, on the date of the enactment of
14 this Act—

15 (i) an alien lawfully admitted for per-
16 manent residence;

17 (ii) an alien admitted as a refugee
18 under section 207 of the Immigration and
19 Nationality Act (8 U.S.C. 1157), or grant-
20 ed asylum under section 208 of the Immi-
21 gration and Nationality Act (8 U.S.C.
22 1157 and 1158); or

23 (iii) an alien who, according to the
24 records of the Secretary or the Secretary
25 of State, is lawfully present in the United

1 States in any nonimmigrant status (other
2 than an alien considered to be a non-
3 immigrant solely due to the application of
4 section 244(f)(4) of the Immigration and
5 Nationality Act (8 U.S.C. 1254a(f)(4)) or
6 the amendment made by section 702 of the
7 Consolidated Natural Resources Act of
8 2008 (Public Law 110–229)), notwith-
9 standing any unauthorized employment or
10 other violation of nonimmigrant status;

11 (I) has failed to comply with the require-
12 ments of any removal order or voluntary depar-
13 ture agreement;

14 (J) has been ordered removed in absentia
15 pursuant to section 240(b)(5)(A) of the Immi-
16 gration and Nationality Act (8 U.S.C.
17 1229a(b)(5)(A));

18 (K) has failed or refused to attend or re-
19 main in attendance at a proceeding to deter-
20 mine the alien’s inadmissibility or deportability;

21 (L) if over the age of 18, has failed to
22 demonstrate that he or she is able to maintain
23 himself or herself at an annual income that is
24 not less than 125 percent of the Federal pov-
25 erty level throughout the period of admission as

1 a contingent nonimmigrant, unless the alien has
2 demonstrated that the alien is enrolled in, and
3 is in regular full-time attendance at, an edu-
4 cational institution within the United States;

5 (M) is delinquent with respect to any Fed-
6 eral, State, or local income or property tax li-
7 ability;

8 (N) has failed to pay to the Treasury, in
9 addition to any amounts owed, an amount equal
10 to the aggregate value of any disbursements re-
11 ceived by such alien for refunds described in
12 section 1324(b)(2);

13 (O) has income that would result in tax li-
14 ability under section 1 of the Internal Revenue
15 Code of 1986 and that was not reported to the
16 Internal Revenue Service; or

17 (P) has at any time engaged in sexual as-
18 sult or harassment.

19 (c) APPLICATION PROCEDURES.—

20 (1) IN GENERAL.—An alien may apply for con-
21 tingent nonimmigrant status by submitting a com-
22 pleted application form via electronic filing to the
23 Secretary during the application period set forth in
24 paragraph (2), in accordance with the interim final
25 rule made by the Secretary under section 1105.

1 (2) APPLICATION PERIOD.—The Secretary may
2 only accept applications for contingent non-
3 immigrant status from aliens in the United States
4 during the 1-year period beginning on the date on
5 which the interim final rule is published in the Fed-
6 eral Register pursuant to section 1105.

7 (3) APPLICATION FORM.—

8 (A) REQUIRED INFORMATION.—The appli-
9 cation form referred to in paragraph (1) shall
10 collect such information as the Secretary deter-
11 mines to be necessary and appropriate in order
12 to determine whether an alien meets the eligi-
13 bility requirements set forth in subsection (b).

14 (B) INTERVIEW.—The Secretary shall con-
15 duct an in-person interview of each applicant
16 for contingent nonimmigrant status under this
17 section as part of the determination as to
18 whether the alien meets the eligibility require-
19 ments set forth in subsection (b).

20 (4) DOCUMENTARY REQUIREMENTS.—An appli-
21 cation filed by an alien under this section shall in-
22 clude the following:

23 (A) One or more of the following docu-
24 ments demonstrating the alien's identity:

1 (i) A passport (or national identity
2 document) from the alien's country of ori-
3 gin.

4 (ii) A certified birth certificate along
5 with photo identification.

6 (iii) A State-issued identification card
7 bearing the alien's name and photograph.

8 (iv) An Armed Forces identification
9 card issued by the Department of Defense.

10 (v) A Coast Guard identification card
11 issued by the Department of Homeland Se-
12 curity.

13 (B) A certified copy of the alien's birth
14 certificate or certified school transcript dem-
15 onstrating that the alien satisfies the require-
16 ment of subsection (b)(2)(A)(iii) and (v).

17 (C) A certified school transcript dem-
18 onstrating that the alien satisfies the require-
19 ments of subsection (b)(2)(A)(ii) and (vi).

20 (D) Immigration records from the Depart-
21 ment of Homeland Security (demonstrating
22 that the alien satisfies the requirements under
23 subsection (b)(2)(A)(i), (ii), and (vi)).

24 (5) FEES.—

25 (A) STANDARD PROCESSING FEE.—

1 (i) IN GENERAL.—Aliens applying for
2 contingent nonimmigrant status under this
3 section shall pay a processing fee to the
4 Department of Homeland Security in an
5 amount determined by the Secretary.

6 (ii) RECOVERY OF COSTS.—The proc-
7 essing fee authorized under clause (i) shall
8 be set at a level that is, at a minimum,
9 sufficient to recover the full costs of proc-
10 essing the application, including any costs
11 incurred—

12 (I) to adjudicate the application;

13 (II) to take and process bio-
14 metrics;

15 (III) to perform national security
16 and criminal checks;

17 (IV) to prevent and investigate
18 fraud; and

19 (V) to administer the collection
20 of such fee.

21 (iii) DEPOSIT AND USE OF PROC-
22 ESSING FEES.—Fees collected under clause
23 (i) shall be deposited into the Immigration
24 Examinations Fee Account pursuant to

1 section 286(m) of the Immigration and
2 Nationality Act (8 U.S.C. 1356(m)).

3 (B) BORDER SECURITY FEE.—

4 (i) IN GENERAL.—Aliens applying for
5 contingent nonimmigrant status under this
6 section shall pay a border security fee to
7 the Department of Homeland Security in
8 an amount of \$1,000.

9 (ii) USE OF BORDER SECURITY
10 FEES.—Fees collected under clause (i)
11 shall be available, to the extent provided in
12 advance in appropriation Acts, to the Sec-
13 retary of Homeland Security for the pur-
14 poses of carrying out division C, and the
15 amendments made by that division.

16 (6) ALIENS APPREHENDED BEFORE OR DURING
17 THE APPLICATION PERIOD.—If an alien who is ap-
18 prehended during the period beginning on the date
19 of the enactment of this Act and ending on the last
20 day of the application period described in paragraph
21 (2) appears prima facie eligible for contingent non-
22 immigrant status, to the satisfaction of the Sec-
23 retary, the Secretary—

1 (A) shall provide the alien with a reason-
2 able opportunity to file an application under
3 this section during such application period; and

4 (B) may not remove the individual until
5 the Secretary has denied the application, unless
6 the Secretary, in the Secretary's sole and
7 unreviewable discretion, determines that expedi-
8 tious removal of the alien is in the national se-
9 curity, public safety, or foreign policy interests
10 of the United States, or the Secretary will be
11 required for constitutional reasons or court
12 order to release the alien from detention.

13 (7) SUSPENSION OF REMOVAL DURING APPLI-
14 CATION PERIOD.—

15 (A) ALIENS IN REMOVAL PROCEEDINGS.—
16 Notwithstanding any other provision of this di-
17 vision, if the Secretary determines that an
18 alien, during the period beginning on the date
19 of the enactment of this Act and ending on the
20 last day of the application period described in
21 subsection (c)(2), is in removal, deportation, or
22 exclusion proceedings before the Executive Of-
23 fice for Immigration Review and is prima facie
24 eligible for contingent nonimmigrant status
25 under this section—

1 (i) the Secretary shall provide the
2 alien with the opportunity to file an appli-
3 cation for such status; and

4 (ii) upon motion by the alien and with
5 the consent of the Secretary, the Executive
6 Office for Immigration Review shall—

7 (I) provide the alien a reasonable
8 opportunity to apply for such status;
9 and

10 (II) if the alien applies within the
11 time frame provided, suspend such
12 proceedings until the Secretary has
13 made a determination on the applica-
14 tion.

15 (B) ALIENS ORDERED REMOVED.—If an
16 alien who meets the eligibility requirements set
17 forth in subsection (b) is present in the United
18 States and has been ordered excluded, deported,
19 or removed, or ordered to depart voluntarily
20 from the United States pursuant to section
21 212(a)(6)(A)(i) or 237(a)(1)(B) or (C) of the
22 Immigration and Nationality Act (8 U.S.C.
23 1182(a)(6)(A)(i), 1227(a)(1)(B) or (C)), the
24 Secretary shall provide the alien with the oppor-
25 tunity to file an application for contingent non-

1 immigrant status provided that the alien has
2 not failed to comply with any order issued pur-
3 suant to section 239 or 240B of the Immigra-
4 tion and Nationality Act (8 U.S.C. 1229,
5 1229e).

6 (C) PERIOD PENDING ADJUDICATION OF
7 APPLICATION.—During the period beginning on
8 the date on which an alien applies for contin-
9 gent nonimmigrant status under subsection (c)
10 and ending on the date on which the Secretary
11 makes a determination regarding such applica-
12 tion, an otherwise removable alien may not be
13 removed from the United States unless—

14 (i) the Secretary makes a prima facie
15 determination that such alien is, or has be-
16 come, ineligible for contingent non-
17 immigrant status under subsection (b); or

18 (ii) the Secretary, in the Secretary's
19 sole and unreviewable discretion, deter-
20 mines that removal of the alien is in the
21 national security, public safety, or foreign
22 policy interest of the United States.

23 (8) SECURITY AND LAW ENFORCEMENT CLEAR-
24 ANCES.—

1 (A) BIOMETRIC AND BIOGRAPHIC DATA.—

2 The Secretary may not grant contingent non-
3 immigrant status to an alien under this section
4 unless such alien submits biometric and bio-
5 graphic data in accordance with procedures es-
6 tablished by the Secretary.

7 (B) ALTERNATIVE PROCEDURES.—The
8 Secretary may provide an alternative procedure
9 for applicants who cannot provide the biometric
10 data required under subparagraph (A) due to a
11 physical impairment.

12 (C) CLEARANCES.—

13 (i) DATA COLLECTION.—The Sec-
14 retary shall collect, from each alien apply-
15 ing for status under this section, biometric,
16 biographic, and other data that the Sec-
17 retary determines to be appropriate—

18 (I) to conduct national security
19 and law enforcement checks; and

20 (II) to determine whether there
21 are any factors that would render an
22 alien ineligible for such status.

23 (ii) ADDITIONAL SECURITY SCREEN-
24 ING.—The Secretary, in consultation with
25 the Secretary of State and the heads of

1 other agencies as appropriate, shall con-
2 duct an additional security screening upon
3 determining, in the Secretary's opinion
4 based upon information related to national
5 security, that an alien is or was a citizen
6 or resident of a region or country known to
7 pose a threat, or that contains groups or
8 organizations that pose a threat, to the na-
9 tional security of the United States.

10 (iii) PREREQUISITE.—The required
11 clearances and screenings described in
12 clauses (i)(I) and (ii) shall be completed
13 before the alien may be granted contingent
14 nonimmigrant status.

15 (9) DURATION OF STATUS AND EXTENSION.—
16 The initial period of contingent nonimmigrant sta-
17 tus—

18 (A) shall be 3 years unless revoked pursu-
19 ant to subsection (e); and

20 (B) may be extended for additional 3-year
21 terms if—

22 (i) the alien remains eligible for con-
23 tingent nonimmigrant status under sub-
24 section (b);

1 (ii) the alien again passes background
2 checks equivalent to the background checks
3 described in subsection (c)(9); and

4 (iii) such status was not revoked by
5 the Secretary for any reason.

6 (d) TERMS AND CONDITIONS OF CONTINGENT NON-
7 IMMIGRANT STATUS.—

8 (1) WORK AUTHORIZATION.—The Secretary
9 shall grant employment authorization to an alien
10 granted contingent nonimmigrant status who re-
11 quests such authorization.

12 (2) TRAVEL OUTSIDE THE UNITED STATES.—

13 (A) IN GENERAL.—The status of a contin-
14 gent nonimmigrant who is absent from the
15 United States without authorization shall be
16 subject to revocation under subsection (e).

17 (B) AUTHORIZATION.—The Secretary may
18 authorize a contingent nonimmigrant to travel
19 outside the United States and may grant the
20 contingent nonimmigrant reentry provided that
21 the contingent nonimmigrant—

22 (i) was not absent from the United
23 States for a period of more than 15 con-
24 secutive days, or 90 days in the aggregate
25 during each 3-year period that the alien is

1 in contingent nonimmigrant status, unless
2 the contingent nonimmigrant's failure to
3 return was due to extenuating cir-
4 cumstances beyond the individual's control;
5 and

6 (ii) is otherwise admissible to the
7 United States, except as provided in sub-
8 section (b)(4)(F).

9 (C) CLARIFICATION ON ADMISSION.—The
10 admission to the United States of a contingent
11 nonimmigrant after such trips as described in
12 subparagraph (B) shall not be considered an
13 admission for the purposes of section 245(a) of
14 the Immigration and Nationality Act (8 U.S.C.
15 1255(a)).

16 (3) INELIGIBILITY FOR HEALTH CARE SUB-
17 SIDIES AND REFUNDABLE TAX CREDITS.—

18 (A) HEALTH CARE SUBSIDIES.—A contin-
19 gent nonimmigrant—

20 (i) is not entitled to the premium as-
21 sistance tax credit authorized under sec-
22 tion 36B of the Internal Revenue Code of
23 1986 and shall be subject to the rules ap-
24 plicable to individuals who are not lawfully

1 present set forth in subsection (e) of such
2 section; and

3 (ii) shall be subject to the rules appli-
4 cable to individuals who are not lawfully
5 present set forth in section 1402(e) of the
6 Patient Protection and Affordable Care
7 Act (42 U.S.C. 18071(e)).

8 (B) REFUNDABLE TAX CREDITS.—A con-
9 tingent nonimmigrant shall not be allowed any
10 credit under sections 24 and 32 of the Internal
11 Revenue Code of 1986.

12 (4) FEDERAL, STATE, AND LOCAL PUBLIC BEN-
13 EFITS.—For purposes of title IV of the Personal Re-
14 sponsibility and Work Opportunity Reconciliation
15 Act of 1996 (8 U.S.C. 1601 et seq.), a contingent
16 nonimmigrant shall not be considered a qualified
17 alien under the Immigration and Nationality Act (8
18 U.S.C. 1101 et seq.).

19 (5) CLARIFICATION.—An alien granted contin-
20 gent nonimmigrant status under this division shall
21 not be considered to have been admitted to the
22 United States for the purposes of section 245(a) of
23 the Immigration and Nationality Act (8 U.S.C.
24 1255(a)).

25 (e) REVOCATION.—

1 (1) IN GENERAL.—The Secretary shall revoke
2 the status of a contingent nonimmigrant at any time
3 if the alien—

4 (A) no longer meets the eligibility require-
5 ments set forth in subsection (b);

6 (B) knowingly uses documentation issued
7 under this section for an unlawful or fraudulent
8 purpose; or

9 (C) was absent from the United States at
10 any time without authorization after being
11 granted contingent nonimmigrant status.

12 (2) ADDITIONAL EVIDENCE.—In determining
13 whether to revoke an alien’s status under paragraph
14 (1), the Secretary may require the alien—

15 (A) to submit additional evidence; or

16 (B) to appear for an in-person interview.

17 (3) INVALIDATION OF DOCUMENTATION.—If an
18 alien’s contingent nonimmigrant status is revoked
19 under paragraph (1), any documentation issued by
20 the Secretary to such alien under this section shall
21 automatically be rendered invalid for any purpose
22 except for departure from the United States.

23 **SEC. 1103. ADMINISTRATIVE AND JUDICIAL REVIEW.**

24 (a) EXCLUSIVE ADMINISTRATIVE REVIEW.—Admin-
25 istrative review of a determination of an application for

1 status, extension of status, or revocation of status under
2 this division shall be conducted solely in accordance with
3 this section.

4 (b) ADMINISTRATIVE APPELLATE REVIEW.—

5 (1) ESTABLISHMENT OF ADMINISTRATIVE AP-
6 PELLATE AUTHORITY.—The Secretary shall estab-
7 lish or designate an appellate authority to provide
8 for a single level of administrative appellate review
9 of a determination with respect to applications for
10 status, extension of status, or revocation of status
11 under this division.

12 (2) SINGLE APPEAL FOR EACH ADMINISTRA-
13 TIVE DECISION.—

14 (A) IN GENERAL.—An alien in the United
15 States whose application for status under this
16 division has been denied or revoked may file
17 with the Secretary not more than 1 appeal, pur-
18 suant to this subsection, of each decision to
19 deny or revoke such status.

20 (B) NOTICE OF APPEAL.—A notice of ap-
21 peal filed under this subparagraph shall be filed
22 not later than 30 calendar days after the date
23 of service of the decision of denial or revocation.

1 (3) RECORD FOR REVIEW.—Administrative ap-
2 pellate review under this subsection shall be de novo
3 and based only on—

4 (A) the administrative record established
5 at the time of the determination on the applica-
6 tion; and

7 (B) any additional newly discovered or pre-
8 viously unavailable evidence.

9 (c) JUDICIAL REVIEW.—

10 (1) APPLICABLE PROVISIONS.—Judicial review
11 of an administratively final denial or revocation of,
12 or failure to extend, an application for status under
13 this division shall be governed only by chapter 158
14 of title 28, except as provided in paragraphs (2) and
15 (3) of this subsection, and except that a court may
16 not order the taking of additional evidence under
17 section 2347(c) of such chapter.

18 (2) SINGLE APPEAL FOR EACH ADMINISTRA-
19 TIVE DECISION.—An alien in the United States
20 whose application for status under this division has
21 been denied, revoked, or failed to be extended, may
22 file not more than 1 appeal, pursuant to this sub-
23 section, of each decision to deny or revoke such sta-
24 tus.

25 (3) LIMITATION ON CIVIL ACTIONS.—

1 (A) CLASS ACTIONS.—No court may cer-
2 tify a class under Rule 23 of the Federal Rules
3 of Civil Procedure in any civil action filed after
4 the date of the enactment of this Act pertaining
5 to the administration or enforcement of the ap-
6 plication for status under this division.

7 (B) REQUIREMENTS FOR AN ORDER
8 GRANTING PROSPECTIVE RELIEF AGAINST THE
9 GOVERNMENT.—If a court determines that pro-
10 spective relief should be ordered against the
11 Government in any civil action pertaining to the
12 administration or enforcement of the applica-
13 tion for status under this division, the court
14 shall—

15 (i) limit the relief to the minimum
16 necessary to correct the violation of law;

17 (ii) adopt the least intrusive means to
18 correct the violation of law;

19 (iii) minimize, to the greatest extent
20 practicable, the adverse impact on national
21 security, border security, immigration ad-
22 ministration and enforcement, and public
23 safety;

24 (iv) provide for the expiration of the
25 relief on a specific date, which allows for

1 the minimum practical time needed to rem-
2 edy the violation; and

3 (v) limit the relief to the case at issue
4 and shall not extend any prospective relief
5 to include any other application for status
6 under this division pending before the Sec-
7 retary or in a Federal court (whether in
8 the same or another jurisdiction).

9 **SEC. 1104. PENALTIES AND SIGNATURE REQUIREMENTS.**

10 (a) **PENALTIES FOR FALSE STATEMENTS IN APPLI-**
11 **CATIONS.**—Whoever files an initial or renewal application
12 for contingent nonimmigrant status under this division
13 and knowingly and willfully falsifies, misrepresents, con-
14 ceals, or covers up a material fact or makes any false, ficti-
15 tious, or fraudulent statements or representations, or
16 makes or uses any false writing or document knowing the
17 same to contain any false, fictitious, or fraudulent state-
18 ment or entry, shall be fined in accordance with title 18,
19 United States Code, or imprisoned not more than 5 years,
20 or both.

21 (b) **SIGNATURE REQUIREMENTS.**—An applicant
22 under this division shall sign their application, and the sig-
23 nature shall be an original signature. A parent or legal
24 guardian may sign for a child or for an applicant whose
25 physical or developmental disability or mental impairment

1 prevents the applicant from being competent to sign. In
2 such a case, the filing shall include evidence of parentage
3 or legal guardianship.

4 **SEC. 1105. RULEMAKING.**

5 Not later than 1 year after the date of the enactment
6 of this Act, the Secretary shall issue interim final regula-
7 tions to implement this division, which shall take effect
8 immediately upon publication in the Federal Register.

9 **SEC. 1106. STATUTORY CONSTRUCTION.**

10 Except as specifically provided, nothing in this divi-
11 sion may be construed to create any substantive or proce-
12 dural right or benefit that is legally enforceable by any
13 party against the United States or its agencies or officers
14 or any other person.

