

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. _____
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 “Border Security and Enforcement Act of 2023”.

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

Sec. 1. Short title; table of contents.

TITLE I—ASYLUM REFORM AND BORDER PROTECTION

Sec. 101. Short title.
Sec. 102. Safe third country.
Sec. 103. Credible fear interviews.
Sec. 104. Clarification of asylum eligibility.
Sec. 105. Exceptions.
Sec. 106. Employment authorization.
Sec. 107. Asylum fees.
Sec. 108. Rules for determining asylum eligibility.
Sec. 109. Firm resettlement.
Sec. 110. Notice concerning frivolous asylum applications.
Sec. 111. Technical amendments.
Sec. 112. Requirement for procedures relating to certain asylum applications.

TITLE II—BORDER SAFETY AND MIGRANT PROTECTION

Sec. 201. Short title.
Sec. 202. Inspection of applicants for admission.

TITLE III—ENSURING UNITED FAMILIES AT THE BORDER

Sec. 301. Short title.
Sec. 302. Clarification of standards for family detention.

TITLE IV—PROTECTION OF CHILDREN

Sec. 401. Short title.

- Sec. 402. Findings.
- Sec. 403. Repatriation of unaccompanied alien children.
- Sec. 404. Special immigrant juvenile status for immigrants unable to reunite with either parent.

TITLE V—VISA OVERSTAYS PENALTIES

- Sec. 501. Short title.
- Sec. 502. Expanded penalties for illegal entry or presence.

TITLE VI—IMMIGRATION PAROLE REFORM

- Sec. 601. Short title.
- Sec. 602. Immigration parole reform.
- Sec. 603. Implementation.
- Sec. 604. Cause of action.
- Sec. 605. Severability.

TITLE VII—LEGAL WORKFORCE

- Sec. 701. Short title.
- Sec. 702. Employment eligibility verification process.
- Sec. 703. Employment eligibility verification system.
- Sec. 704. Recruitment, referral, and continuation of employment.
- Sec. 705. Good faith defense.
- Sec. 706. Preemption and States' rights.
- Sec. 707. Repeal.
- Sec. 708. Penalties.
- Sec. 709. Fraud and misuse of documents.
- Sec. 710. Protection of Social Security Administration programs.
- Sec. 711. Fraud prevention.
- Sec. 712. Use of employment eligibility verification photo tool.
- Sec. 713. Identity authentication employment eligibility verification pilot programs.
- Sec. 714. Inspector General audits.
- Sec. 715. Agriculture Workforce Study.
- Sec. 716. Repealing regulations.

1 **TITLE I—ASYLUM REFORM AND**
2 **BORDER PROTECTION**

3 **SEC. 101. SHORT TITLE.**

4 This title may be cited as the “Asylum Reform and
5 Border Protection Act of 2023”.

6 **SEC. 102. SAFE THIRD COUNTRY.**

7 Section 208(a)(2)(A) of the Immigration and Nation-
8 ality Act (8 U.S.C. 1158(a)(2)(A)) is amended—

1 (1) by striking “if the Attorney General deter-
2 mines” and inserting “if the Attorney General or the
3 Secretary of Homeland Security determines—”;

4 (2) by striking “that the alien may be removed”
5 and inserting the following:

6 “(i) that the alien may be removed”;

7 (3) by striking “, pursuant to a bilateral or
8 multilateral agreement, to” and inserting “to”;

9 (4) by inserting “or the Secretary, on a case by
10 case basis,” before “finds that”;

11 (5) by striking the period at the end and insert-
12 ing “; or”; and

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

14 “(ii) that the alien entered, attempted to enter,
15 or arrived in the United States after transiting
16 through at least one country outside the alien’s
17 country of citizenship, nationality, or last lawful ha-
18 bitual residence en route to the United States, un-
19 less—

20 “(I) the alien demonstrates that he or she
21 applied for protection from persecution or tor-
22 ture in at least one country outside the alien’s
23 country of citizenship, nationality, or last lawful
24 habitual residence through which the alien
25 transited en route to the United States, and the

1 alien received a final judgment denying the
2 alien protection in each country;

3 “(II) the alien demonstrates that he or she
4 was a victim of a severe form of trafficking in
5 which a commercial sex act was induced by
6 force, fraud, or coercion, or in which the person
7 induced to perform such act was under the age
8 of 18 years; or in which the trafficking included
9 the recruitment, harboring, transportation, pro-
10 vision, or obtaining of a person for labor or
11 services through the use of force, fraud, or coer-
12 cion for the purpose of subjection to involuntary
13 servitude, peonage, debt bondage, or slavery,
14 and was unable to apply for protection from
15 persecution in each country through which the
16 alien transited en route to the United States as
17 a result of such severe form of trafficking; or

18 “(III) the only countries through which the
19 alien transited en route to the United States
20 were, at the time of the transit, not parties to
21 the 1951 United Nations Convention relating to
22 the Status of Refugees, the 1967 Protocol Re-
23 lating to the Status of Refugees, or the United
24 Nations Convention against Torture and Other

1 Cruel, Inhuman or Degrading Treatment or
2 Punishment.”.

3 **SEC. 103. CREDIBLE FEAR INTERVIEWS.**

4 Section 235(b)(1)(B)(v) of the Immigration and Na-
5 tionality Act (8 U.S.C. 1225(b)(1)(B)(v)) is amended by
6 striking “there is a significant possibility” and all that fol-
7 lows, and inserting “, taking into account the credibility
8 of the statements made by the alien in support of the
9 alien’s claim, as determined pursuant to section
10 208(b)(1)(B)(iii), and such other facts as are known to
11 the officer, the alien more likely than not could establish
12 eligibility for asylum under section 208, and it is more
13 likely than not that the statements made by, and on behalf
14 of, the alien in support of the alien’s claim are true.”.

15 **SEC. 104. CLARIFICATION OF ASYLUM ELIGIBILITY.**

16 (a) IN GENERAL.—Section 208(b)(1)(A) of the Im-
17 migration and Nationality Act (8 U.S.C. 1158(b)(1)(A))
18 is amended by inserting after “section 101(a)(42)(A)” the
19 following: “(in accordance with the rules set forth in this
20 section), and is eligible to apply for asylum under sub-
21 section (a)”.

22 (b) PLACE OF ARRIVAL.—Section 208(a)(1) of the
23 Immigration and Nationality Act (8 U.S.C. 1158(a)(1))
24 is amended—

1 (1) by striking “or who arrives in the United
2 States (whether or not at a designated port of ar-
3 rival and including an alien who is brought to the
4 United States after having been interdicted in inter-
5 national or United States waters),”; and

6 (2) by inserting after “United States” the fol-
7 lowing: “and has arrived in the United States at a
8 port of entry (including an alien who is brought to
9 the United States after having been interdicted in
10 international or United States waters),”.

11 **SEC. 105. EXCEPTIONS.**

12 Paragraph (2) of section 208(b) of the Immigration
13 and Nationality Act (8 U.S.C. 1158(b)(2)) is amended to
14 read as follows:

15 “(2) EXCEPTIONS.—

16 “(A) IN GENERAL.—Paragraph (1) shall
17 not apply to an alien if the Secretary of Home-
18 land Security or the Attorney General deter-
19 mines that—

20 “(i) the alien ordered, incited, as-
21 sisted, or otherwise participated in the per-
22 secution of any person on account of race,
23 religion, nationality, membership in a par-
24 ticular social group, or political opinion;

1 “(ii) the alien has been convicted of
2 any felony under Federal, State, tribal, or
3 local law;

4 “(iii) the alien has been convicted of
5 any misdemeanor offense under Federal,
6 State, tribal, or local law involving—

7 “(I) the unlawful possession or
8 use of an identification document, au-
9 thentication feature, or false identi-
10 fication document (as those terms and
11 phrases are defined in the jurisdiction
12 where the conviction occurred), unless
13 the alien can establish that the convic-
14 tion resulted from circumstances
15 showing that—

16 “(aa) the document or fea-
17 ture was presented before board-
18 ing a common carrier;

19 “(bb) the document or fea-
20 ture related to the alien’s eligi-
21 bility to enter the United States;

22 “(cc) the alien used the doc-
23 ument or feature to depart a
24 country wherein the alien has

1 claimed a fear of persecution;
2 and

3 “(dd) the alien claimed a
4 fear of persecution without delay
5 upon presenting himself or her-
6 self to an immigration officer
7 upon arrival at a United States
8 port of entry;

9 “(II) the unlawful receipt of a
10 Federal public benefit (as defined in
11 section 401(e) of the Personal Re-
12 sponsibility and Work Opportunity
13 Reconciliation Act of 1996 (8 U.S.C.
14 1611(e))), from a Federal entity, or
15 the unlawful receipt of similar public
16 benefits from a State, tribal, or local
17 entity; or

18 “(III) possession or trafficking of
19 a controlled substance or controlled
20 substance paraphernalia, as those
21 phrases are defined under the law of
22 the jurisdiction where the conviction
23 occurred, other than a single offense
24 involving possession for one’s own use
25 of 30 grams or less of marijuana (as

1 marijuana is defined under the law of
2 the jurisdiction where the conviction
3 occurred);

4 “(iv) the alien has been convicted of
5 an offense arising under paragraph (1)(A)
6 or (2) of section 274(a), or under section
7 276;

8 “(v) the alien has been convicted of a
9 Federal, State, tribal, or local crime that
10 the Attorney General or Secretary of
11 Homeland Security knows, or has reason
12 to believe, was committed in support, pro-
13 motion, or furtherance of the activity of a
14 criminal street gang (as defined under the
15 law of the jurisdiction where the conviction
16 occurred or in section 521(a) of title 18,
17 United States Code);

18 “(vi) the alien has been convicted of
19 an offense for driving while intoxicated or
20 impaired, as those terms are defined under
21 the law of the jurisdiction where the con-
22 viction occurred (including a conviction for
23 driving while under the influence of or im-
24 paired by alcohol or drugs), without regard
25 to whether the conviction is classified as a

1 misdemeanor or felony under Federal,
2 State, tribal, or local law, in which such in-
3 toxicated or impaired driving was a cause
4 of serious bodily injury or death of another
5 person;

6 “(vii) the alien has been convicted of
7 more than one offense for driving while in-
8 toxicated or impaired, as those terms are
9 defined under the law of the jurisdiction
10 where the conviction occurred (including a
11 conviction for driving while under the in-
12 fluence of or impaired by alcohol or drugs),
13 without regard to whether the conviction is
14 classified as a misdemeanor or felony
15 under Federal, State, tribal, or local law;

16 “(viii) the alien has been convicted of
17 a crime—

18 “(I) that involves conduct
19 amounting to a crime of stalking;

20 “(II) of child abuse, child ne-
21 glect, or child abandonment; or

22 “(III) that involves conduct
23 amounting to a domestic assault or
24 battery offense, including—

1 “(aa) a misdemeanor crime
2 of domestic violence, as described
3 in section 921(a)(33) of title 18,
4 United States Code;

5 “(bb) a crime of domestic vi-
6 olence, as described in section
7 40002(a)(12) of the Violence
8 Against Women Act of 1994 (34
9 U.S.C. 12291(a)(12)); or

10 “(cc) any crime based on
11 conduct in which the alien har-
12 assed, coerced, intimidated, vol-
13 untarily or recklessly used (or
14 threatened to use) force or vio-
15 lence against, or inflicted phys-
16 ical injury or physical pain, how-
17 ever slight, upon a person—

18 “(AA) who is a current
19 or former spouse of the
20 alien;

21 “(BB) with whom the
22 alien shares a child;

23 “(CC) who is cohabi-
24 tating with, or who has

1 cohabitated with, the alien
2 as a spouse;

3 “(DD) who is similarly
4 situated to a spouse of the
5 alien under the domestic or
6 family violence laws of the
7 jurisdiction where the of-
8 fense occurred; or

9 “(EE) who is protected
10 from that alien’s acts under
11 the domestic or family vio-
12 lence laws of the United
13 States or of any State, tribal
14 government, or unit of local
15 government;

16 “(ix) the alien has engaged in acts of
17 battery or extreme cruelty upon a person
18 and the person—

19 “(I) is a current or former
20 spouse of the alien;

21 “(II) shares a child with the
22 alien;

23 “(III) cohabitates or has
24 cohabitated with the alien as a spouse;

1 “(IV) is similarly situated to a
2 spouse of the alien under the domestic
3 or family violence laws of the jurisdic-
4 tion where the offense occurred; or

5 “(V) is protected from that
6 alien’s acts under the domestic or
7 family violence laws of the United
8 States or of any State, tribal govern-
9 ment, or unit of local government;

10 “(x) the alien, having been convicted
11 by a final judgment of a particularly seri-
12 ous crime, constitutes a danger to the com-
13 munity of the United States;

14 “(xi) there are serious reasons for be-
15 lieving that the alien has committed a seri-
16 ous nonpolitical crime outside the United
17 States prior to the arrival of the alien in
18 the United States;

19 “(xii) there are reasonable grounds
20 for regarding the alien as a danger to the
21 security of the United States;

22 “(xiii) the alien is described in sub-
23 clause (I), (II), (III), (IV), or (VI) of sec-
24 tion 212(a)(3)(B)(i) or section
25 237(a)(4)(B) (relating to terrorist activ-

1 ity), unless, in the case only of an alien in-
2 admissible under subclause (IV) of section
3 212(a)(3)(B)(i), the Secretary of Home-
4 land Security or the Attorney General de-
5 termines, in the Secretary's or the Attor-
6 ney General's discretion, that there are not
7 reasonable grounds for regarding the alien
8 as a danger to the security of the United
9 States;

10 “(xiv) the alien was firmly resettled in
11 another country prior to arriving in the
12 United States; or

13 “(xv) there are reasonable grounds for
14 concluding the alien could avoid persecu-
15 tion by relocating to another part of the
16 alien's country of nationality or, in the
17 case of an alien having no nationality, an-
18 other part of the alien's country of last ha-
19 bitual residence.

20 “(B) SPECIAL RULES.—

21 “(i) PARTICULARLY SERIOUS CRIME;
22 SERIOUS NONPOLITICAL CRIME OUTSIDE
23 THE UNITED STATES.—

24 “(I) IN GENERAL.—For purposes
25 of subparagraph (A)(x), the Attorney

1 General or Secretary of Homeland Se-
2 curity, in their discretion, may deter-
3 mine that a conviction constitutes a
4 particularly serious crime based on—

5 “(aa) the nature of the con-
6 viction;

7 “(bb) the type of sentence
8 imposed; or

9 “(cc) the circumstances and
10 underlying facts of the convic-
11 tion.

12 “(II) DETERMINATION.—In mak-
13 ing a determination under subclause
14 (I), the Attorney General or Secretary
15 of Homeland Security may consider
16 all reliable information and is not lim-
17 ited to facts found by the criminal
18 court or provided in the underlying
19 record of conviction.

20 “(III) TREATMENT OF FELO-
21 NIES.—In making a determination
22 under subclause (I), an alien who has
23 been convicted of a felony (as defined
24 under this section) or an aggravated
25 felony (as defined under section

1 101(a)(43)), shall be considered to
2 have been convicted of a particularly
3 serious crime.

4 “(IV) INTERPOL RED NOTICE.—
5 In making a determination under sub-
6 paragraph (A)(xi), an Interpol Red
7 Notice may constitute reliable evi-
8 dence that the alien has committed a
9 serious nonpolitical crime outside the
10 United States.

11 “(ii) CRIMES AND EXCEPTIONS.—

12 “(I) DRIVING WHILE INTOXI-
13 CATED OR IMPAIRED.—A finding
14 under subparagraph (A)(vi) does not
15 require the Attorney General or Sec-
16 retary of Homeland Security to find
17 the first conviction for driving while
18 intoxicated or impaired (including a
19 conviction for driving while under the
20 influence of or impaired by alcohol or
21 drugs) as a predicate offense. The At-
22 torney General or Secretary of Home-
23 land Security need only make a fac-
24 tual determination that the alien pre-
25 viously was convicted for driving while

1 intoxicated or impaired as those terms
2 are defined under the jurisdiction
3 where the conviction occurred (includ-
4 ing a conviction for driving while
5 under the influence of or impaired by
6 alcohol or drugs).

7 “(II) STALKING AND OTHER
8 CRIMES.—In making a determination
9 under subparagraph (A)(viii), includ-
10 ing determining the existence of a do-
11 mestic relationship between the alien
12 and the victim, the underlying conduct
13 of the crime may be considered, and
14 the Attorney General or Secretary of
15 Homeland Security is not limited to
16 facts found by the criminal court or
17 provided in the underlying record of
18 conviction.

19 “(III) BATTERY OR EXTREME
20 CRUELTY.—In making a determina-
21 tion under subparagraph (A)(ix), the
22 phrase ‘battery or extreme cruelty’ in-
23 cludes—

24 “(aa) any act or threatened
25 act of violence, including any

1 forceful detention, which results
2 or threatens to result in physical
3 or mental injury;

4 “(bb) psychological or sexual
5 abuse or exploitation, including
6 rape, molestation, incest, or
7 forced prostitution, shall be con-
8 sidered acts of violence; and

9 “(cc) other abusive acts, in-
10 cluding acts that, in and of them-
11 selves, may not initially appear
12 violent, but that are a part of an
13 overall pattern of violence.

14 “(IV) EXCEPTION FOR VICTIMS
15 OF DOMESTIC VIOLENCE.—An alien
16 who was convicted of an offense de-
17 scribed in clause (viii) or (ix) of sub-
18 paragraph (A) is not ineligible for
19 asylum on that basis if the alien satis-
20 fies the criteria under section
21 237(a)(7)(A).

22 “(C) SPECIFIC CIRCUMSTANCES.—Para-
23 graph (1) shall not apply to an alien whose
24 claim is based on—

1 “(i) personal animus or retribution,
2 including personal animus in which the al-
3 leged persecutor has not targeted, or mani-
4 fested an animus against, other members
5 of an alleged particular social group in ad-
6 dition to the member who has raised the
7 claim at issue;

8 “(ii) the applicant’s generalized dis-
9 approval of, disagreement with, or opposi-
10 tion to criminal, terrorist, gang, guerilla,
11 or other non-state organizations absent ex-
12 pressive behavior in furtherance of a dis-
13 crete cause against such organizations re-
14 lated to control of a State or expressive be-
15 havior that is antithetical to the State or
16 a legal unit of the State;

17 “(iii) the applicant’s resistance to re-
18 cruitment or coercion by guerrilla, crimi-
19 nal, gang, terrorist, or other non-state or-
20 ganizations;

21 “(iv) the targeting of the applicant for
22 criminal activity for financial gain based
23 on wealth or affluence or perceptions of
24 wealth or affluence;

1 “(v) the applicant’s criminal activity;

2 or

3 “(vi) the applicant’s perceived, past or
4 present, gang affiliation.

5 “(D) DEFINITIONS AND CLARIFICA-
6 TIONS.—

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

9 “(I) FELONY.—The term ‘felony’
10 means—

11 “(aa) any crime defined as a
12 felony by the relevant jurisdiction
13 (Federal, State, tribal, or local)
14 of conviction; or

15 “(bb) any crime punishable
16 by more than one year of impris-
17 onment.

18 “(II) MISDEMEANOR.—The term
19 ‘misdemeanor’ means—

20 “(aa) any crime defined as a
21 misdemeanor by the relevant ju-
22 risdiction (Federal, State, tribal,
23 or local) of conviction; or

1 “(bb) any crime not punish-
2 able by more than one year of
3 imprisonment.

4 “(ii) CLARIFICATIONS.—

5 “(I) CONSTRUCTION.—For pur-
6 poses of this paragraph, whether any
7 activity or conviction also may con-
8 stitute a basis for removal is immate-
9 rial to a determination of asylum eli-
10 gibility.

11 “(II) ATTEMPT, CONSPIRACY, OR
12 SOLICITATION.—For purposes of this
13 paragraph, all references to a criminal
14 offense or criminal conviction shall be
15 deemed to include any attempt, con-
16 spiracy, or solicitation to commit the
17 offense or any other inchoate form of
18 the offense.

19 “(III) EFFECT OF CERTAIN OR-
20 DERS.—

21 “(aa) IN GENERAL.—No
22 order vacating a conviction,
23 modifying a sentence, clarifying a
24 sentence, or otherwise altering a
25 conviction or sentence shall have

1 any effect under this paragraph
2 unless the Attorney General or
3 Secretary of Homeland Security
4 determines that—

5 “(AA) the court issuing
6 the order had jurisdiction
7 and authority to do so; and

8 “(BB) the order was
9 not entered for rehabilitative
10 purposes or for purposes of
11 ameliorating the immigra-
12 tion consequences of the
13 conviction or sentence.

14 “(bb) AMELIORATING IMMI-
15 GRATION CONSEQUENCES.—For
16 purposes of item (aa)(BB), the
17 order shall be presumed to be for
18 the purpose of ameliorating im-
19 migration consequences if—

20 “(AA) the order was
21 entered after the initiation
22 of any proceeding to remove
23 the alien from the United
24 States; or

1 “(BB) the alien moved
2 for the order more than one
3 year after the date of the
4 original order of conviction
5 or sentencing, whichever is
6 later.

7 “(cc) AUTHORITY OF IMMI-
8 GRATION JUDGE.—An immigra-
9 tion judge is not limited to con-
10 sideration only of material in-
11 cluded in any order vacating a
12 conviction, modifying a sentence,
13 or clarifying a sentence to deter-
14 mine whether such order should
15 be given any effect under this
16 paragraph, but may consider
17 such additional information as
18 the immigration judge determines
19 appropriate.

20 “(E) ADDITIONAL LIMITATIONS.—The
21 Secretary of Homeland Security or the Attorney
22 General may by regulation establish additional
23 limitations and conditions, consistent with this
24 section, under which an alien shall be ineligible
25 for asylum under paragraph (1).

1 “(F) NO JUDICIAL REVIEW.—There shall
2 be no judicial review of a determination of the
3 Secretary of Homeland Security or the Attorney
4 General under subparagraph (A)(xiii).”.

5 **SEC. 106. EMPLOYMENT AUTHORIZATION.**

6 Paragraph (2) of section 208(d) of the Immigration
7 and Nationality Act (8 U.S.C. 1158(d)) is amended to
8 read as follows:

9 “(2) EMPLOYMENT AUTHORIZATION.—

10 “(A) AUTHORIZATION PERMITTED.—An
11 applicant for asylum is not entitled to employ-
12 ment authorization, but such authorization may
13 be provided under regulation by the Secretary
14 of Homeland Security. An applicant who is not
15 otherwise eligible for employment authorization
16 shall not be granted such authorization prior to
17 the date that is 180 days after the date of filing
18 of the application for asylum.

19 “(B) TERMINATION.—Each grant of em-
20 ployment authorization under subparagraph
21 (A), and any renewal or extension thereof, shall
22 be valid for a period of 6 months, except that
23 such authorization, renewal, or extension shall
24 terminate prior to the end of such 6 month pe-
25 riod as follows:

1 “(i) Immediately following the denial
2 of an asylum application by an asylum offi-
3 cer, unless the case is referred to an immi-
4 gration judge.

5 “(ii) 30 days after the date on which
6 an immigration judge denies an asylum ap-
7 plication, unless the alien timely appeals to
8 the Board of Immigration Appeals.

9 “(iii) Immediately following the denial
10 by the Board of Immigration Appeals of an
11 appeal of a denial of an asylum applica-
12 tion.

13 “(C) RENEWAL.—The Secretary of Home-
14 land Security may not grant, renew, or extend
15 employment authorization to an alien if the
16 alien was previously granted employment au-
17 thorization under subparagraph (A), and the
18 employment authorization was terminated pur-
19 suant to a circumstance described in subpara-
20 graph (B)(i), (ii), or (iii), unless a Federal
21 court of appeals remands the alien’s case to the
22 Board of Immigration Appeals.

23 “(D) INELIGIBILITY.—The Secretary of
24 Homeland Security may not grant employment

1 authorization to an alien under this paragraph
2 if the alien—

3 “(i) is ineligible for asylum under sub-
4 section (b)(2)(A); or

5 “(ii) entered or attempted to enter the
6 United States at a place and time other
7 than lawfully through a United States port
8 of entry.”.

9 **SEC. 107. ASYLUM FEES.**

10 Paragraph (3) of section 208(d) of the Immigration
11 and Nationality Act (8 U.S.C. 1158(d)) is amended to
12 read as follows:

13 “(3) FEES.—

14 “(A) APPLICATION FEE.—A fee of not less
15 than \$50 for each application for asylum shall
16 be imposed. Such fee shall not exceed the cost
17 of adjudicating the application. Such fee shall
18 not apply to an unaccompanied alien child who
19 files an asylum application in proceedings under
20 section 240.

21 “(B) EMPLOYMENT AUTHORIZATION.—A
22 fee may also be imposed for the consideration
23 of an application for employment authorization
24 under this section and for adjustment of status

1 under section 209(b). Such a fee shall not ex-
2 ceed the cost of adjudicating the application.

3 “(C) PAYMENT.—Fees under this para-
4 graph may be assessed and paid over a period
5 of time or by installments.

6 “(D) RULE OF CONSTRUCTION.—Nothing
7 in this paragraph shall be construed to limit the
8 authority of the Attorney General or Secretary
9 of Homeland Security to set adjudication and
10 naturalization fees in accordance with section
11 286(m).”.

12 **SEC. 108. RULES FOR DETERMINING ASYLUM ELIGIBILITY.**

13 Section 208 of the Immigration and Nationality Act
14 (8 U.S.C. 1158) is amended by adding at the end the fol-
15 lowing:

16 “(f) RULES FOR DETERMINING ASYLUM ELIGI-
17 BILITY.—In making a determination under subsection
18 (b)(1)(A) with respect to whether an alien is a refugee
19 within the meaning of section 101(a)(42)(A), the following
20 shall apply:

21 “(1) PARTICULAR SOCIAL GROUP.—The Sec-
22 retary of Homeland Security or the Attorney Gen-
23 eral shall not determine that an alien is a member
24 of a particular social group unless the alien articu-
25 lates on the record, or provides a basis on the record

1 for determining, the definition and boundaries of the
2 alleged particular social group, establishes that the
3 particular social group exists independently from the
4 alleged persecution, and establishes that the alien's
5 claim of membership in a particular social group
6 does not involve—

7 “(A) past or present criminal activity or
8 association (including gang membership);

9 “(B) presence in a country with general-
10 ized violence or a high crime rate;

11 “(C) being the subject of a recruitment ef-
12 fort by criminal, terrorist, or persecutory
13 groups;

14 “(D) the targeting of the applicant for
15 criminal activity for financial gain based on per-
16 ceptions of wealth or affluence;

17 “(E) interpersonal disputes of which gov-
18 ernmental authorities in the relevant society or
19 region were unaware or uninvolved;

20 “(F) private criminal acts of which govern-
21 mental authorities in the relevant society or re-
22 gion were unaware or uninvolved;

23 “(G) past or present terrorist activity or
24 association;

1 “(H) past or present persecutory activity
2 or association; or

3 “(I) status as an alien returning from the
4 United States.

5 “(2) POLITICAL OPINION.—The Secretary of
6 Homeland Security or the Attorney General may not
7 determine that an alien holds a political opinion with
8 respect to which the alien is subject to persecution
9 if the political opinion is constituted solely by gener-
10 alized disapproval of, disagreement with, or opposi-
11 tion to criminal, terrorist, gang, guerilla, or other
12 non-state organizations and does not include expres-
13 sive behavior in furtherance of a cause against such
14 organizations related to efforts by the State to con-
15 trol such organizations or behavior that is antithet-
16 ical to or otherwise opposes the ruling legal entity of
17 the State or a unit thereof.

18 “(3) PERSECUTION.—The Secretary of Home-
19 land Security or the Attorney General may not de-
20 termine that an alien has been subject to persecution
21 or has a well-founded fear of persecution based only
22 on—

23 “(A) the existence of laws or government
24 policies that are unenforced or infrequently en-
25 forced, unless there is credible evidence that

1 such a law or policy has been or would be ap-
2 plied to the applicant personally; or

3 “(B) the conduct of rogue foreign govern-
4 ment officials acting outside the scope of their
5 official capacity.

6 “(4) DISCRETIONARY DETERMINATION.—

7 “(A) ADVERSE DISCRETIONARY FAC-
8 TORS.—The Secretary of Homeland Security or
9 the Attorney General may only grant asylum to
10 an alien if the alien establishes that he or she
11 warrants a favorable exercise of discretion. In
12 making such a determination, the Attorney
13 General or Secretary of Homeland Security
14 shall consider, if applicable, an alien’s use of
15 fraudulent documents to enter the United
16 States, unless the alien arrived in the United
17 States by air, sea, or land directly from the ap-
18 plicant’s home country without transiting
19 through any other country.

20 “(B) FAVORABLE EXERCISE OF DISCRE-
21 TION NOT PERMITTED.—Except as provided in
22 subparagraph (C), the Attorney General or Sec-
23 retary of Homeland Security shall not favorably
24 exercise discretion under this section for any
25 alien who—

1 “(i) has accrued more than one year
2 of unlawful presence in the United States,
3 as defined in sections 212(a)(9)(B)(ii) and
4 (iii), prior to filing an application for asy-
5 lum;

6 “(ii) at the time the asylum applica-
7 tion is filed with the immigration court or
8 is referred from the Department of Home-
9 land Security, has—

10 “(I) failed to timely file (or time-
11 ly file a request for an extension of
12 time to file) any required Federal,
13 State, or local income tax returns;

14 “(II) failed to satisfy any out-
15 standing Federal, State, or local tax
16 obligations; or

17 “(III) income that would result
18 in tax liability under section 1 of the
19 Internal Revenue Code of 1986 and
20 that was not reported to the Internal
21 Revenue Service;

22 “(iii) has had two or more prior asy-
23 lum applications denied for any reason;

1 “(iv) has withdrawn a prior asylum
2 application with prejudice or been found to
3 have abandoned a prior asylum application;

4 “(v) failed to attend an interview re-
5 garding his or her asylum application with
6 the Department of Homeland Security, un-
7 less the alien shows by a preponderance of
8 the evidence that—

9 “(I) exceptional circumstances
10 prevented the alien from attending the
11 interview; or

12 “(II) the interview notice was not
13 mailed to the last address provided by
14 the alien or the alien’s representative
15 and neither the alien nor the alien’s
16 representative received notice of the
17 interview; or

18 “(vi) was subject to a final order of
19 removal, deportation, or exclusion and did
20 not file a motion to reopen to seek asylum
21 based on changed country conditions with-
22 in one year of the change in country condi-
23 tions.

24 “(C) EXCEPTIONS.—If one or more of the
25 adverse discretionary factors set forth in sub-

1 paragraph (B) are present, the Attorney Gen-
2 eral or the Secretary, may, notwithstanding
3 such subparagraph (B), favorably exercise dis-
4 cretion under section 208—

5 “(i) in extraordinary circumstances,
6 such as those involving national security or
7 foreign policy considerations; or

8 “(ii) if the alien, by clear and con-
9 vincing evidence, demonstrates that the de-
10 nial of the application for asylum would re-
11 sult in exceptional and extremely unusual
12 hardship to the alien.

13 “(5) LIMITATION.—If the Secretary or the At-
14 torney General determines that an alien fails to sat-
15 isfy the requirement under paragraph (1), the alien
16 may not be granted asylum based on membership in
17 a particular social group, and may not appeal the
18 determination of the Secretary or Attorney General,
19 as applicable. A determination under this paragraph
20 shall not serve as the basis for any motion to reopen
21 or reconsider an application for asylum or with-
22 holding of removal for any reason, including a claim
23 of ineffective assistance of counsel, unless the alien
24 complies with the procedural requirements for such
25 a motion and demonstrates that counsel’s failure to

1 define, or provide a basis for defining, a formulation
2 of a particular social group was both not a strategic
3 choice and constituted egregious conduct.

4 “(6) STEREOTYPES.—Evidence offered in sup-
5 port of an application for asylum that promotes cul-
6 tural stereotypes about a country, its inhabitants, or
7 an alleged persecutor, including stereotypes based on
8 race, religion, nationality, or gender, shall not be ad-
9 missible in adjudicating that application, except that
10 evidence that an alleged persecutor holds
11 stereotypical views of the applicant shall be admis-
12 sible.

13 “(7) DEFINITIONS.—In this section:

14 “(A) The term ‘membership in a particular
15 social group’ means membership in a group
16 that is—

17 “(i) composed of members who share
18 a common immutable characteristic;

19 “(ii) defined with particularity; and

20 “(iii) socially distinct within the soci-
21 ety in question.

22 “(B) The term ‘political opinion’ means an
23 ideal or conviction in support of the furtherance
24 of a discrete cause related to political control of
25 a state or a unit thereof.

1 “(C) The term ‘persecution’ means the in-
2 fliction of a severe level of harm constituting an
3 exigent threat by the government of a country
4 or by persons or an organization that the gov-
5 ernment was unable or unwilling to control.
6 Such term does not include—

7 “(i) generalized harm or violence that
8 arises out of civil, criminal, or military
9 strife in a country;

10 “(ii) all treatment that the United
11 States regards as unfair, offensive, unjust,
12 unlawful, or unconstitutional;

13 “(iii) intermittent harassment, includ-
14 ing brief detentions;

15 “(iv) threats with no actual effort to
16 carry out the threats, except that particu-
17 larized threats of severe harm of an imme-
18 diate and menacing nature made by an
19 identified entity may constitute persecu-
20 tion; or

21 “(v) non-severe economic harm or
22 property damage.”.

1 **SEC. 109. FIRM RESETTLEMENT.**

2 Section 208 of the Immigration and Nationality Act
3 (8 U.S.C. 1158), as amended by this Act, is further
4 amended by adding at the end the following:

5 “(g) FIRM RESETTLEMENT.—In determining wheth-
6 er an alien was firmly resettled in another country prior
7 to arriving in the United States under subsection
8 (b)(2)(A)(xiv), the following shall apply:

9 “(1) IN GENERAL.—An alien shall be consid-
10 ered to have firmly resettled in another country if,
11 after the events giving rise to the alien’s asylum
12 claim—

13 “(A) the alien resided in a country through
14 which the alien transited prior to arriving in or
15 entering the United States and—

16 “(i) received or was eligible for any
17 permanent legal immigration status in that
18 country;

19 “(ii) resided in such a country with
20 any non-permanent but indefinitely renew-
21 able legal immigration status (including
22 asylee, refugee, or similar status, but ex-
23 cluding status of a tourist); or

24 “(iii) resided in such a country and
25 could have applied for and obtained an im-
26 migration status described in clause (ii);

1 “(B) the alien physically resided volun-
2 tarily, and without continuing to suffer persecu-
3 tion or torture, in any one country for one year
4 or more after departing his country of nation-
5 ality or last habitual residence and prior to ar-
6 rival in or entry into the United States, except
7 for any time spent in Mexico by an alien who
8 is not a native or citizen of Mexico solely as a
9 direct result of being returned to Mexico pursu-
10 ant to section 235(b)(3) or of being subject to
11 metering; or

12 “(C) the alien is a citizen of a country
13 other than the country in which the alien al-
14 leges a fear of persecution, or was a citizen of
15 such a country in the case of an alien who re-
16 nounces such citizenship, and the alien was
17 present in that country after departing his
18 country of nationality or last habitual residence
19 and prior to arrival in or entry into the United
20 States;

21 “(2) BURDEN OF PROOF.—If an immigration
22 judge determines that an alien has firmly resettled
23 in another country under paragraph (1), the alien
24 shall bear the burden of proving the bar does not
25 apply.

1 “(3) FIRM RESETTLEMENT OF PARENT.—An
2 alien shall be presumed to have been firmly resettled
3 in another country if the alien’s parent was firmly
4 resettled in another country, the parent’s resettlement
5 occurred before the alien turned 18 years of
6 age, and the alien resided with such parent at the
7 time of the firm resettlement, unless the alien establishes
8 that he or she could not have derived any permanent
9 legal immigration status or any non-permanent
10 but indefinitely renewable legal immigration
11 status (including asylum, refugee, or similar status,
12 but excluding status of a tourist) from the alien’s
13 parent.”.

14 **SEC. 110. NOTICE CONCERNING FRIVOLOUS ASYLUM AP-**
15 **PLICATIONS.**

16 (a) IN GENERAL.—Section 208(d)(4) of the Immi-
17 gration and Nationality Act (8 U.S.C. 1158(d)(4)) is
18 amended—

19 (1) in the matter preceding subparagraph (A),
20 by inserting “the Secretary of Homeland Security
21 or” before “the Attorney General”;

22 (2) in subparagraph (A), by striking “and of
23 the consequences, under paragraph (6), of knowingly
24 filing a frivolous application for asylum; and” and
25 inserting a semicolon;

1 (3) in subparagraph (B), by striking the period
2 and inserting “; and”; and

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

4 “(C) ensure that a written warning ap-
5 pears on the asylum application advising the
6 alien of the consequences of filing a frivolous
7 application and serving as notice to the alien of
8 the consequence of filing a frivolous applica-
9 tion.”.

10 (b) CONFORMING AMENDMENT.—Section 208(d)(6)
11 of the Immigration and Nationality Act (8 U.S.C.
12 1158(d)(6)) is amended by striking “If the” and all that
13 follows and inserting:

14 “(A) IN GENERAL.—If the Secretary of
15 Homeland Security or the Attorney General de-
16 termines that an alien has knowingly made a
17 frivolous application for asylum and the alien
18 has received the notice under paragraph (4)(C),
19 the alien shall be permanently ineligible for any
20 benefits under this chapter, effective as the date
21 of the final determination of such an applica-
22 tion.

23 “(B) CRITERIA.—An application is frivo-
24 lous if the Secretary of Homeland Security or

1 the Attorney General determines, consistent
2 with subparagraph (C), that—

3 “(i) it is so insufficient in substance
4 that it is clear that the applicant know-
5 ingly filed the application solely or in part
6 to delay removal from the United States,
7 to seek employment authorization as an
8 applicant for asylum pursuant to regula-
9 tions issued pursuant to paragraph (2), or
10 to seek issuance of a Notice to Appear in
11 order to pursue Cancellation of Removal
12 under section 240A(b); or

13 “(ii) any of the material elements are
14 knowingly fabricated.

15 “(C) SUFFICIENT OPPORTUNITY TO CLAR-
16 IFY.—In determining that an application is friv-
17 olous, the Secretary or the Attorney General,
18 must be satisfied that the applicant, during the
19 course of the proceedings, has had sufficient op-
20 portunity to clarify any discrepancies or implau-
21 sible aspects of the claim.

22 “(D) WITHHOLDING OF REMOVAL NOT
23 PRECLUDED.—For purposes of this section, a
24 finding that an alien filed a frivolous asylum
25 application shall not preclude the alien from

1 seeking withholding of removal under section
2 241(b)(3) or protection pursuant to the Con-
3 vention Against Torture.”.

4 **SEC. 111. 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 (B) in paragraph (2), in the matter pre-
22 ceding subparagraph (A), by inserting “Sec-
23 retary of Homeland Security or the” before
24 “Attorney General”; and

1 (C) in paragraph (3), by inserting “Sec-
2 retary of Homeland Security or the” before
3 “Attorney General”; and
4 (4) in subsection (d)—

5 (A) in paragraph (1), by inserting “Sec-
6 retary of Homeland Security or the” before
7 “Attorney General” each place such term ap-
8 pears;

9 (B) in paragraph (2), by striking “Attor-
10 ney General” and inserting “Secretary of
11 Homeland Security”; and

12 (C) in paragraph (5)—

13 (i) in subparagraph (A), by striking
14 “Attorney General” and inserting “Sec-
15 retary of Homeland Security”; and

16 (ii) in subparagraph (B), by inserting
17 “Secretary of Homeland Security or the”
18 before “Attorney General”.

19 **SEC. 112. REQUIREMENT FOR PROCEDURES RELATING TO**
20 **CERTAIN ASYLUM APPLICATIONS.**

21 (a) **IN GENERAL.**—Not later than 30 days after the
22 date of the enactment of this Act, the Attorney General
23 shall establish procedures to expedite the adjudication of
24 asylum applications for aliens—

1 (1) who are subject to removal proceedings
2 under section 240 of the Immigration and Nation-
3 ality Act (8 U.S.C. 1229a); and

4 (2) who are nationals of a Western Hemisphere
5 country sanctioned by the United States, as de-
6 scribed in subsection (b), as of January 1, 2023.

7 (b) WESTERN HEMISPHERE COUNTRY SANCTIONED
8 BY THE UNITED STATES DESCRIBED.—Subsection (a)
9 shall apply only to an asylum application filed by an alien
10 who is a national of a Western Hemisphere country sub-
11 ject to sanctions pursuant to—

12 (1) the Cuban Liberty and Democratic Soli-
13 darity (LIBERTAD) Act of 1996 (22 U.S.C. 6021
14 note);

15 (2) the Reinforcing Nicaragua’s Adherence to
16 Conditions for Electoral Reform Act of 2021 or the
17 RENACER Act (50 U.S.C. 1701 note); or

18 (3) Executive Order 13692 (80 Fed. Reg.
19 12747; declaring a national emergency with respect
20 to the situation in Venezuela).

21 (c) APPLICABILITY.—This section shall only apply to
22 an alien who files an application for asylum after the date
23 of the enactment of this Act.

1 **TITLE II—BORDER SAFETY AND**
2 **MIGRANT PROTECTION**

3 **SEC. 201. SHORT TITLE.**

4 This title may be cited as the “Border Safety and
5 Migrant Protection Act of 2023”.

6 **SEC. 202. INSPECTION OF APPLICANTS FOR ADMISSION.**

7 Section 235 of the Immigration and Nationality Act
8 (8 U.S.C. 1225) is amended—

9 (1) in subsection (b)—

10 (A) in paragraph (1)—

11 (i) in subparagraph (A)—

12 (I) in clauses (i) and (ii), by
13 striking “section 212(a)(6)(C)” in-
14 serting “subparagraph (A) or (C) of
15 section 212(a)(6)”; and

16 (II) by adding at the end the fol-
17 lowing:

18 “(iv) INELIGIBILITY FOR PAROLE.—

19 An alien described in clause (i) or (ii) shall
20 not be eligible for parole except as ex-
21 pressly authorized pursuant to section
22 212(d)(5), or for parole or release pursu-
23 ant to section 236(a).”; and

24 (ii) in subparagraph (B)—

- 1 (I) in clause (ii), by striking
2 “asylum.” and inserting “asylum and
3 shall not be released (including pursu-
4 ant to parole or release pursuant to
5 section 236(a) but excluding as ex-
6 pressly authorized pursuant to section
7 212(d)(5)) other than to be removed
8 or returned to a country as described
9 in paragraph (3).”; and
10 (II) in clause (iii)(IV)—
11 (aa) in the header by strik-
12 ing “DETENTION” and inserting
13 “DETENTION, RETURN, OR RE-
14 MOVAL”; and
15 (bb) by adding at the end
16 the following: “The alien shall
17 not be released (including pursu-
18 ant to parole or release pursuant
19 to section 236(a) but excluding
20 as expressly authorized pursuant
21 to section 212(d)(5)) other than
22 to be removed or returned to a
23 country as described in para-
24 graph (3).”;
25 (B) in paragraph (2)—

1 (i) in subparagraph (A)—

2 (I) by striking “Subject to sub-
3 paragraphs (B) and (C),” and insert-
4 ing “Subject to subparagraph (B) and
5 paragraph (3),”; and

6 (II) by adding at the end the fol-
7 lowing: “The alien shall not be re-
8 leased (including pursuant to parole
9 or release pursuant to section 236(a)
10 but excluding as expressly authorized
11 pursuant to section 212(d)(5)) other
12 than to be removed or returned to a
13 country as described in paragraph
14 (3).”; and

15 (ii) by striking subparagraph (C);

16 (C) by redesignating paragraph (3) as
17 paragraph (6); and

18 (D) by inserting after paragraph (2) the
19 following:

20 “(3) RETURN TO FOREIGN TERRITORY CONTIG-
21 UOUS TO THE UNITED STATES.—

22 “(A) IN GENERAL.—The Secretary of
23 Homeland Security may return to a foreign ter-
24 ritory contiguous to the United States any alien
25 arriving on land from that territory (whether or

1 not at a designated port of entry) pending a
2 proceeding under section 240 or review of a de-
3 termination under subsection (b)(1)(B)(iii)(III).

4 “(B) MANDATORY RETURN.—If at any
5 time the Secretary of Homeland Security can-
6 not—

7 “(i) comply with its obligations to de-
8 tain an alien as required under clause (ii)
9 and (iii)(IV) of subsection (b)(1)(B) and
10 subsection (b)(2)(A); or

11 “(ii) remove an alien to a country de-
12 scribed in section 208(a)(2)(A),

13 the Secretary of Homeland Security shall, with-
14 out exception, including pursuant to parole or
15 release pursuant to section 236(a) but exclud-
16 ing as expressly authorized pursuant to section
17 212(d)(5), return to a foreign territory contig-
18 uous to the United States any alien arriving on
19 land from that territory (whether or not at a
20 designated port of entry) pending a proceeding
21 under section 240 or review of a determination
22 under subsection (b)(1)(B)(iii)(III).

23 “(4) REQUIRED SUSPENSION OF ENTRY OF
24 ALIENS.—Notwithstanding any other provision of
25 law, the Secretary of Homeland Security shall pro-

1 hibit the entry of aliens who are inadmissible under
2 subparagraph (A) or (C) of section 212(a)(6) or
3 under section 212(a)(7) for any period during which
4 the Secretary cannot comply with the requirements
5 under section 235(b)(3)(B).

6 “(5) ENFORCEMENT BY STATE ATTORNEYS
7 GENERAL.—The attorney general of a State, or
8 other authorized State officer, alleging a violation of
9 the detention, return, removal, or suspension re-
10 quirements under paragraph (1), (2), (3), or (4)
11 that affects such State or its residents, may bring
12 an action against the Secretary of Homeland Secu-
13 rity on behalf of the residents of the State in an ap-
14 propriate United States district court to obtain ap-
15 propriate injunctive relief.”; and

16 (2) by adding at the end the following:

17 “(e) AUTHORITY TO PROHIBIT INTRODUCTION OF
18 CERTAIN ALIENS.—If the Secretary of Homeland Security
19 determines, in his discretion, that the prohibition of the
20 introduction of aliens who are inadmissible under subpara-
21 graph (A) or (C) of section 212(a)(6) or under section
22 212(a)(7) at an international land or maritime border of
23 the United States is necessary to achieve operational con-
24 trol (as defined in section 2 of the Secure Fence Act of
25 2006 (8 U.S.C. 1701 note)) of such border, the Secretary

1 may prohibit, in whole or in part, the introduction of such
2 aliens at such border for such period of time as the Sec-
3 retary determines is necessary for such purpose.”.

4 **TITLE III—ENSURING UNITED**
5 **FAMILIES AT THE BORDER**

6 **SEC. 301. SHORT TITLE.**

7 This title may be cited as the “Ensuring United
8 Families at the Border Act”.

9 **SEC. 302. CLARIFICATION OF STANDARDS FOR FAMILY DE-**
10 **TENTION.**

11 (a) IN GENERAL.—Section 235 of the William Wil-
12 berforce Trafficking Victims Protection Reauthorization
13 Act of 2008 (8 U.S.C. 1232) is amended by adding at
14 the end the following:

15 “(j) CONSTRUCTION.—

16 “(1) IN GENERAL.—Notwithstanding any other
17 provision of law, judicial determination, consent de-
18 cree, or settlement agreement, the detention of any
19 alien child who is not an unaccompanied alien child
20 shall be governed by sections 217, 235, 236, and
21 241 of the Immigration and Nationality Act (8
22 U.S.C. 1187, 1225, 1226, and 1231). There is no
23 presumption that an alien child who is not an unac-
24 companied alien child should not be detained.

1 “(2) FAMILY DETENTION.—The Secretary of
2 Homeland Security shall—

3 “(A) maintain the care and custody of an
4 alien, during the period during which the
5 charges described in clause (i) are pending,
6 who—

7 “(i) is charged only with a mis-
8 demeanor offense under section 275(a) of
9 the Immigration and Nationality Act (8
10 U.S.C. 1325(a)); and

11 “(ii) entered the United States with
12 the alien’s child who has not attained 18
13 years of age; and

14 “(B) detain the alien with the alien’s
15 child.”.

16 (b) SENSE OF CONGRESS.—It is the sense of Con-
17 gress that the amendments in this section to section 235
18 of the William Wilberforce Trafficking Victims Protection
19 Reauthorization Act of 2008 (8 U.S.C. 1232) are intended
20 to satisfy the requirements of the Settlement Agreement
21 in *Flores v. Meese*, No. 85–4544 (C.D. Cal), as approved
22 by the court on January 28, 1997, with respect to its in-
23 terpretation in *Flores v. Johnson*, 212 F. Supp. 3d 864
24 (C.D. Cal. 2015), that the agreement applies to accom-
25 panied minors.

1 (c) EFFECTIVE DATE.—The amendment made by
2 subsection (a) shall take effect on the date of the enact-
3 ment of this Act and shall apply to all actions that occur
4 before, on, or after the date of the enactment of this Act.

5 (d) PREEMPTION OF STATE LICENSING REQUIRE-
6 MENTS.—Notwithstanding any other provision of law, ju-
7 dicial determination, consent decree, or settlement agree-
8 ment, no State may require that an immigration detention
9 facility used to detain children who have not attained 18
10 years of age, or families consisting of one or more of such
11 children and the parents or legal guardians of such chil-
12 dren, that is located in that State, be licensed by the State
13 or any political subdivision thereof.

14 **TITLE IV—PROTECTION OF** 15 **CHILDREN**

16 **SEC. 401. SHORT TITLE.**

17 This title may be cited as the “Protection of Children
18 Act of 2023”.

19 **SEC. 402. FINDINGS.**

20 Congress makes the following findings:

21 (1) Implementation of the provisions of the
22 Trafficking Victims Protection Reauthorization Act
23 of 2008 that govern unaccompanied alien children
24 has incentivized multiple surges of unaccompanied

1 alien children arriving at the southwest border in the
2 years since the bill's enactment.

3 (2) The provisions of the Trafficking Victims
4 Protection Reauthorization Act of 2008 that govern
5 unaccompanied alien children treat unaccompanied
6 alien children from countries that are contiguous to
7 the United States disparately by swiftly returning
8 them to their home country absent indications of
9 trafficking or a credible fear of return, but allowing
10 for the release of unaccompanied alien children from
11 noncontiguous countries into the interior of the
12 United States, often to those individuals who paid to
13 smuggle them into the country in the first place.

14 (3) The provisions of the Trafficking Victims
15 Protection Reauthorization Act of 2008 governing
16 unaccompanied alien children have enriched the car-
17 tels, who profit hundreds of millions of dollars each
18 year by smuggling unaccompanied alien children to
19 the southwest border, exploiting and sexually abus-
20 ing many such unaccompanied alien children on the
21 perilous journey.

22 (4) Prior to 2008, the number of unaccom-
23 panied alien children encountered at the southwest
24 border never exceeded 1,000 in a single year.

1 (5) The United States is currently in the midst
2 of the worst crisis of unaccompanied alien children
3 in our nation's history, with over 350,000 such un-
4 accompanied alien children encountered at the
5 southwest border since Joe Biden became President.

6 (6) In 2022, during the Biden Administration,
7 152,057 unaccompanied alien children were encoun-
8 tered, the most ever in a single year and an over
9 400 percent increase compared to the last full fiscal
10 year of the Trump Administration in which 33,239
11 unaccompanied alien children were encountered.

12 (7) The Biden Administration has lost contact
13 with at least 85,000 unaccompanied alien children
14 who entered the United States since Joe Biden took
15 office.

16 (8) The Biden Administration dismantled effec-
17 tive safeguards put in place by the Trump Adminis-
18 tration that protected unaccompanied alien children
19 from being abused by criminals or exploited for ille-
20 gal and dangerous child labor.

21 (9) A recent New York Times investigation
22 found that unaccompanied alien children are being
23 exploited in the labor market and “are ending up in
24 some of the most punishing jobs in the country.”

1 (10) The Times investigation found unaccom-
2 panied alien children, “under intense pressure to
3 earn money” in order to “send cash back to their
4 families while often being in debt to their sponsors
5 for smuggling fees, rent, and living expenses,”
6 feared “that they had become trapped in cir-
7 cumstances they never could have imagined.”

8 (11) The Biden Administration’s Department of
9 Health and Human Services Secretary Xavier
10 Becerra compared placing unaccompanied alien chil-
11 dren with sponsors, to widgets in an assembly line,
12 stating that, “If Henry Ford had seen this in his
13 plant, he would have never become famous and rich.
14 This is not the way you do an assembly line.”

15 (12) Department of Health and Human Serv-
16 ices employees working under Secretary Xavier
17 Becerra’s leadership penned a July 2021 memo-
18 randum expressing serious concern that “labor traf-
19 ficking was increasing” and that the agency had be-
20 come “one that rewards individuals for making quick
21 releases, and not one that rewards individuals for
22 preventing unsafe releases.”

23 (13) Despite this, Secretary Xavier Becerra
24 pressured then-Director of the Office of Refugee Re-
25 settlement Cindy Huang to prioritize releases of un-

1 accompanied alien children over ensuring their safe-
2 ty, telling her “if she could not increase the number
3 of discharges he would find someone who could” and
4 then-Director Huang resigned one month later.

5 (14) In June 2014, the Obama-Biden Adminis-
6 tration requested legal authority to exercise discre-
7 tion in returning and removing unaccompanied alien
8 children from non-contiguous countries back to their
9 home countries.

10 (15) In August 2014, the House of Representa-
11 tives passed H.R. 5320, which included the Protec-
12 tion of Children Act.

13 (16) The Protection of Children Act of 2023
14 ends the disparate policies of the Trafficking Victims
15 Protection Reauthorization Act of 2008 by ensuring
16 the swift return of all unaccompanied alien children
17 to their country of origin if they are not victims of
18 trafficking and do not have a fear of return.

19 **SEC. 403. REPATRIATION OF UNACCOMPANIED ALIEN CHIL-**
20 **DREN.**

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); and
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 (B) in paragraph (5)(D)—

1 (i) in the matter preceding clause (i),
2 by striking “, except for an unaccompanied
3 alien child from a contiguous country sub-
4 ject to the exceptions under subsection
5 (a)(2),” and inserting “who does not meet
6 the criteria listed in paragraph (2)(A)”;
7 and

8 (ii) in clause (i), by inserting before
9 the semicolon at the end the following: “,
10 which shall include a hearing before an im-
11 migration judge not later than 14 days
12 after being screened under paragraph (4)”;

13 (2) in subsection (b)—

14 (A) in paragraph (2)—

15 (i) in subparagraph (A), by inserting
16 before the semicolon the following: “be-
17 lieved not to meet the criteria listed in sub-
18 section (a)(2)(A)”;

19 (ii) in subparagraph (B), by inserting
20 before the period the following: “and does
21 not meet the criteria listed in subsection
22 (a)(2)(A)”;

23 (B) in paragraph (3), by striking “an un-
24 accompanied alien child in custody shall” and

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 a 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, information on—
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; and
13 “(VI) contact information for the
14 individual.
15 “(ii) ACTIVITIES OF THE SECRETARY
16 OF HOMELAND SECURITY.—Not later than
17 30 days after receiving the information
18 listed in clause (i), the Secretary of Home-
19 land Security, upon determining that an
20 individual with whom a child is placed is
21 unlawfully present in the United States
22 and not in removal proceedings pursuant
23 to chapter 4 of title II of the Immigration
24 and Nationality Act (8 U.S.C. 1221 et

1 seq.), shall initiate such removal pro-
2 ceedings.”; and

3 (B) in paragraph (5)—

4 (i) by inserting after “to the greatest
5 extent practicable” the following: “(at no
6 expense to the Government)”; and

7 (ii) by striking “have counsel to rep-
8 resent them” and inserting “have access to
9 counsel to represent them”.

10 (b) **EFFECTIVE DATE.**—The amendments made by
11 this section shall apply to any unaccompanied alien child
12 apprehended on or after the date that is 30 days after
13 the date of enactment of this Act.

14 **SEC. 404. SPECIAL IMMIGRANT JUVENILE STATUS FOR IM-**
15 **MIGRANTS UNABLE TO REUNITE WITH EI-**
16 **THER PARENT.**

17 Section 101(a)(27)(J) of the Immigration and Na-
18 tionality Act (8 U.S.C. 1101(a)(27)(J)) is amended—

19 (1) in clause (i), by striking “, and whose reuni-
20 fication with 1 or both of the immigrant’s parents
21 is not viable due to abuse, neglect, abandonment, or
22 a similar basis found under State law”; and

23 (2) in clause (iii)—

24 (A) in subclause (I), by striking “and” at
25 the end;

1 (B) in subclause (II), by inserting “and”
2 after the semicolon; and

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

4 “(III) an alien may not be grant-
5 ed special immigrant status under this
6 subparagraph if the alien’s reunifica-
7 tion with any one parent or legal
8 guardian is not precluded by abuse,
9 neglect, abandonment, or any similar
10 cause under State law;”.

11 **TITLE V—VISA OVERSTAYS** 12 **PENALTIES**

13 **SEC. 501. SHORT TITLE.**

14 This title may be cited as the “Visa Overstays Pen-
15 alties Act”.

16 **SEC. 502. EXPANDED PENALTIES FOR ILLEGAL ENTRY OR** 17 **PRESENCE.**

18 Section 275 of the Immigration and Nationality Act
19 (8 U.S.C. 1325) is amended—

20 (1) in subsection (a) by inserting after “for a
21 subsequent commission of any such offense” the fol-
22 lowing: “or if the alien was previously convicted of
23 an offense under subsection (e)(2)(A)”;

24 (2) in subsection (b)—

1 (A) in paragraph (1), by striking “at least
2 \$50 and not more than \$250” and inserting
3 “not less than \$500 and not more than
4 \$1,000”; and

5 (B) in paragraph (2), by inserting after
6 “in the case of an alien who has been previously
7 subject to a civil penalty under this subsection”
8 the following: “or subsection (e)(2)(B)”; and
9 (3) by adding at the end the following:

10 “(e) VISA OVERSTAYS.—

11 “(1) IN GENERAL.—An alien who was admitted
12 as a nonimmigrant has violated this paragraph if the
13 alien, for an aggregate of 10 days or more, has
14 failed—

15 “(A) to maintain the nonimmigrant status
16 in which the alien was admitted, or to which it
17 was changed under section 248, including com-
18 plying with the period of stay authorized by the
19 Secretary of Homeland Security in connection
20 with such status; or

21 “(B) to comply otherwise with the condi-
22 tions of such nonimmigrant status.

23 “(2) PENALTIES.—An alien who has violated
24 paragraph (1)—

25 “(A) shall—

1 “(i) for the first commission of such a
2 violation, be fined under title 18, United
3 States Code, or imprisoned not more than
4 6 months, or both; and

5 “(ii) for a subsequent commission of
6 such a violation, or if the alien was pre-
7 viously convicted of an offense under sub-
8 section (a), be fined under such title 18, or
9 imprisoned not more than 2 years, or both;
10 and

11 “(B) in addition to, and not in lieu of, any
12 penalty under subparagraph (A) and any other
13 criminal or civil penalties that may be imposed,
14 shall be subject to a civil penalty of—

15 “(i) not less than \$500 and not more
16 than \$1,000 for each violation; or

17 “(ii) twice the amount specified in
18 clause (i), in the case of an alien who has
19 been previously subject to a civil penalty
20 under this subparagraph or subsection
21 (b).”.

1 **TITLE VI—IMMIGRATION**
2 **PAROLE REFORM**

3 **SEC. 601. SHORT TITLE.**

4 This title may be cited as the “Immigration Parole
5 Reform Act of 2023”.

6 **SEC. 602. IMMIGRATION PAROLE REFORM.**

7 Section 212(d)(5) of the Immigration and Nationality
8 Act (8 U.S.C. 1182(d)(5)) is amended to read as follows:

9 “(5)(A) Except as provided in subparagraphs
10 (B) and (C) and section 214(f), the Secretary of
11 Homeland Security, in the discretion of the Sec-
12 retary, may temporarily parole into the United
13 States any alien applying for admission to the
14 United States who is not present in the United
15 States, under such conditions as the Secretary may
16 prescribe, on a case-by-case basis, and not according
17 to eligibility criteria describing an entire class of po-
18 tential parole recipients, for urgent humanitarian
19 reasons or significant public benefit. Parole granted
20 under this subparagraph may not be regarded as an
21 admission of the alien. When the purposes of such
22 parole have been served in the opinion of the Sec-
23 retary, the alien shall immediately return or be re-
24 turned to the custody from which the alien was pa-
25 roled. After such return, the case of the alien shall

1 be dealt with in the same manner as the case of any
2 other applicant for admission to the United States.

3 “(B) The Secretary of Homeland Security may
4 grant parole to any alien who—

5 “(i) is present in the United States without
6 lawful immigration status;

7 “(ii) is the beneficiary of an approved peti-
8 tion under section 203(a);

9 “(iii) is not otherwise inadmissible or re-
10 movable; and

11 “(iv) is the spouse or child of a member of
12 the Armed Forces serving on active duty.

13 “(C) The Secretary of Homeland Security may
14 grant parole to any alien—

15 “(i) who is a national of the Republic of
16 Cuba and is living in the Republic of Cuba;

17 “(ii) who is the beneficiary of an approved
18 petition under section 203(a);

19 “(iii) for whom an immigrant visa is not
20 immediately available;

21 “(iv) who meets all eligibility requirements
22 for an immigrant visa;

23 “(v) who is not otherwise inadmissible; and

24 “(vi) who is receiving a grant of parole in
25 furtherance of the commitment of the United

1 States to the minimum level of annual legal mi-
2 gration of Cuban nationals to the United States
3 specified in the U.S.–Cuba Joint Communiqué
4 on Migration, done at New York September 9,
5 1994, and reaffirmed in the Cuba-United
6 States: Joint Statement on Normalization of
7 Migration, Building on the Agreement of Sep-
8 tember 9, 1994, done at New York May 2,
9 1995.

10 “(D) The Secretary of Homeland Security may
11 grant parole to an alien who is returned to a contig-
12 uous country under section 235(b)(3) to allow the
13 alien to attend the alien’s immigration hearing. The
14 grant of parole shall not exceed the time required for
15 the alien to be escorted to, and attend, the alien’s
16 immigration hearing scheduled on the same calendar
17 day as the grant, and to immediately thereafter be
18 escorted back to the contiguous country. A grant of
19 parole under this subparagraph shall not be consid-
20 ered for purposes of determining whether the alien
21 is inadmissible under this Act.

22 “(E) For purposes of determining an alien’s eli-
23 gibility for parole under subparagraph (A), an ur-
24 gent humanitarian reason shall be limited to cir-
25 cumstances in which the alien establishes that—

1 “(i)(I) the alien has a medical emergency;

2 and

3 “(II)(aa) the alien cannot obtain necessary
4 treatment in the foreign state in which the alien
5 is residing; or

6 “(bb) the medical emergency is life-threat-
7 ening and there is insufficient time for the alien
8 to be admitted to the United States through the
9 normal visa process;

10 “(ii) the alien is the parent or legal guard-
11 ian of an alien described in clause (i) and the
12 alien described in clause (i) is a minor;

13 “(iii) the alien is needed in the United
14 States in order to donate an organ or other tis-
15 sue for transplant and there is insufficient time
16 for the alien to be admitted to the United
17 States through the normal visa process;

18 “(iv) the alien has a close family member
19 in the United States whose death is imminent
20 and the alien could not arrive in the United
21 States in time to see such family member alive
22 if the alien were to be admitted to the United
23 States through the normal visa process;

24 “(v) the alien is seeking to attend the fu-
25 neral of a close family member and the alien

1 could not arrive in the United States in time to
2 attend such funeral if the alien were to be ad-
3 mitted to the United States through the normal
4 visa process;

5 “(vi) the alien is an adopted child with an
6 urgent medical condition who is in the legal
7 custody of the petitioner for a final adoption-re-
8 lated visa and whose medical treatment is re-
9 quired before the expected award of a final
10 adoption-related visa; or

11 “(vii) the alien is a lawful applicant for ad-
12 justment of status under section 245 and is re-
13 turning to the United States after temporary
14 travel abroad.

15 “(F) For purposes of determining an alien’s eli-
16 gibility for parole under subparagraph (A), a signifi-
17 cant public benefit may be determined to result from
18 the parole of an alien only if—

19 “(i) the alien has assisted (or will assist,
20 whether knowingly or not) the United States
21 Government in a law enforcement matter;

22 “(ii) the alien’s presence is required by the
23 Government in furtherance of such law enforce-
24 ment matter; and

1 “(iii) the alien is inadmissible, does not
2 satisfy the eligibility requirements for admission
3 as a nonimmigrant, or there is insufficient time
4 for the alien to be admitted to the United
5 States through the normal visa process.

6 “(G) For purposes of determining an alien’s eli-
7 gibility for parole under subparagraph (A), the term
8 ‘case-by-case basis’ means that the facts in each in-
9 dividual case are considered and parole is not grant-
10 ed based on membership in a defined class of aliens
11 to be granted parole. The fact that aliens are consid-
12 ered for or granted parole one-by-one and not as a
13 group is not sufficient to establish that the parole
14 decision is made on a ‘case-by-case basis’.

15 “(H) The Secretary of Homeland Security may
16 not use the parole authority under this paragraph to
17 parole an alien into the United States for any reason
18 or purpose other than those described in subpara-
19 graphs (B), (C), (D), (E), and (F).

20 “(I) An alien granted parole may not accept
21 employment, except that an alien granted parole
22 pursuant to subparagraph (B) or (C) is authorized
23 to accept employment for the duration of the parole,
24 as evidenced by an employment authorization docu-
25 ment issued by the Secretary of Homeland Security.

1 “(J) Parole granted after a departure from the
2 United States shall not be regarded as an admission
3 of the alien. An alien granted parole, whether as an
4 initial grant of parole or parole upon reentry into
5 the United States, is not eligible to adjust status to
6 lawful permanent residence or for any other immi-
7 gration benefit if the immigration status the alien
8 had at the time of departure did not authorize the
9 alien to adjust status or to be eligible for such ben-
10 efit.

11 “(K)(i) Except as provided in clauses (ii) and
12 (iii), parole shall be granted to an alien under this
13 paragraph for the shorter of—

14 “(I) a period of sufficient length to accom-
15 plish the activity described in subparagraph
16 (D), (E), or (F) for which the alien was grant-
17 ed parole; or

18 “(II) 1 year.

19 “(ii) Grants of parole pursuant to subparagraph
20 (A) may be extended once, in the discretion of the
21 Secretary, for an additional period that is the short-
22 er of—

23 “(I) the period that is necessary to accom-
24 plish the activity described in subparagraph (E)

1 or (F) for which the alien was granted parole;

2 or

3 “(II) 1 year.

4 “(iii) Aliens who have a pending application to
5 adjust status to permanent residence under section
6 245 may request extensions of parole under this
7 paragraph, in 1-year increments, until the applica-
8 tion for adjustment has been adjudicated. Such pa-
9 role shall terminate immediately upon the denial of
10 such adjustment application.

11 “(L) Not later than 90 days after the last day
12 of each fiscal year, the Secretary of Homeland Secu-
13 rity shall submit to the Committee on the Judiciary
14 of the Senate and the Committee on the Judiciary
15 of the House of Representatives and make available
16 to the public, a report—

17 “(i) identifying the total number of aliens
18 paroled into the United States under this para-
19 graph during the previous fiscal year; and

20 “(ii) containing information and data re-
21 garding all aliens paroled during such fiscal
22 year, including—

23 “(I) the duration of parole;

24 “(II) the type of parole; and

1 “(III) the current status of the aliens
2 so paroled.”.

3 **SEC. 603. IMPLEMENTATION.**

4 (a) IN GENERAL.—Except as provided in subsection
5 (b), this Act and the amendments made by this Act shall
6 take effect on the date that is 30 days after the date of
7 the enactment of this Act.

8 (b) EXCEPTIONS.—Notwithstanding subsection (a),
9 each of the following exceptions apply:

10 (1) Any application for parole or advance parole
11 filed by an alien before the date of the enactment of
12 this Act shall be adjudicated under the law that was
13 in effect on the date on which the application was
14 properly filed and any approved advance parole shall
15 remain valid under the law that was in effect on the
16 date on which the advance parole was approved.

17 (2) Section 212(d)(5)(J) of the Immigration
18 and Nationality Act, as added by section 2, shall
19 take effect on the date of the enactment of this Act.

20 (3) Aliens who were paroled into the United
21 States pursuant to section 212(d)(5)(A) of the Im-
22 migration and Nationality Act (8 U.S.C.
23 1182(d)(5)(A)) before January 1, 2023, shall con-
24 tinue to be subject to the terms of parole that were

1 in effect on the date on which their respective parole
2 was approved.

3 **SEC. 604. CAUSE OF ACTION.**

4 Any person, State, or local government that experi-
5 ences financial harm in excess of \$1,000 due to a failure
6 of the Federal Government to lawfully apply the provisions
7 of this Act or the amendments made by this Act shall have
8 standing to bring a civil action against the Federal Gov-
9 ernment in an appropriate district court of the United
10 States for appropriate relief.

11 **SEC. 605. SEVERABILITY.**

12 If any provision of this Act or any amendment by
13 this Act, or the application of such provision or amend-
14 ment to any person or circumstance, is held to be uncon-
15 stitutional, the remainder of this Act and the application
16 of such provision or amendment to any other person or
17 circumstance shall not be affected.

18 **TITLE VII—LEGAL WORKFORCE**

19 **SEC. 701. SHORT TITLE.**

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

21 **SEC. 702. EMPLOYMENT ELIGIBILITY VERIFICATION PROC-**

22 **ESS.**

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

1 “(b) EMPLOYMENT ELIGIBILITY VERIFICATION
2 PROCESS.—

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

9 “(A) ATTESTATION AFTER EXAMINATION
10 OF DOCUMENTATION.—

11 “(i) ATTESTATION.—During the
12 verification period (as defined in subpara-
13 graph (E)), the person or entity shall at-
14 test, under penalty of perjury and on a
15 form, including electronic format, des-
16 ignated or established by the Secretary by
17 regulation not later than 6 months after
18 the date of the enactment of the Legal
19 Workforce Act, that it has verified that the
20 individual is not an unauthorized alien
21 by—

22 “(I) obtaining from the indi-
23 vidual the individual’s social security
24 account number or United States
25 passport number and recording the

1 number on the form (if the individual
2 claims to have been issued such a
3 number), and, if the individual does
4 not attest to United States nationality
5 under subparagraph (B), obtaining
6 such identification or authorization
7 number established by the Depart-
8 ment of Homeland Security for the
9 alien as the Secretary of Homeland
10 Security may specify, and recording
11 such number on the form; and

12 “(II) examining—

13 “(aa) a document relating to
14 the individual presenting it de-
15 scribed in clause (ii); or

16 “(bb) a document relating to
17 the individual presenting it de-
18 scribed in clause (iii) and a docu-
19 ment relating to the individual
20 presenting it described in clause
21 (iv).

22 “(ii) DOCUMENTS EVIDENCING EM-
23 PLOYMENT AUTHORIZATION AND ESTAB-
24 LISHING IDENTITY.—A document de-

1 scribed in this subparagraph is an individ-
2 ual's—

3 “(I) unexpired United States
4 passport or passport card;

5 “(II) unexpired permanent resi-
6 dent card that contains a photograph;

7 “(III) unexpired employment au-
8 thorization card that contains a pho-
9 tograph;

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

22 “(V) passport from the Fed-
23 erated States of Micronesia (FSM) or
24 the Republic of the Marshall Islands
25 (RMI) with Form I-94 or Form I-

1 94A, or other documentation as des-
2 igned by the Secretary, indicating
3 nonimmigrant admission under the
4 Compact of Free Association Between
5 the United States and the FSM or
6 RMI; or

7 “(VI) other document designated
8 by the Secretary of Homeland Secu-
9 rity, if the document—

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

19 “(bb) is evidence of author-
20 ization of employment in the
21 United States; and

22 “(cc) contains security fea-
23 tures to make it resistant to tam-
24 pering, counterfeiting, and fraud-
25 ulent use.

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

9 “(iv) DOCUMENTS ESTABLISHING
10 IDENTITY OF INDIVIDUAL.—A document
11 described in this subparagraph is—

12 “(I) an individual’s unexpired
13 State issued driver’s license or identi-
14 fication card if it contains a photo-
15 graph and information such as name,
16 date of birth, gender, height, eye
17 color, and address;

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

20 “(III) an individual’s unexpired
21 Native American tribal identification
22 document issued by a tribal entity rec-
23 ognized by the Bureau of Indian Af-
24 fairs; or

1 “(IV) in the case of an individual
2 under 18 years of age, a parent or
3 legal guardian’s attestation under
4 penalty of law as to the identity and
5 age of the individual.

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

17 “(vi) SIGNATURE.—Such attestation
18 may be manifested by either a handwritten
19 or electronic signature.

20 “(B) INDIVIDUAL ATTESTATION OF EM-
21 PLOYMENT AUTHORIZATION.—During the veri-
22 fication period (as defined in subparagraph
23 (E)), the individual shall attest, under penalty
24 of perjury on the form designated or established
25 for purposes of subparagraph (A), that the indi-

1 vidual is a citizen or national of the United
2 States, an alien lawfully admitted for perma-
3 nent residence, or an alien who is authorized
4 under this Act or by the Secretary of Homeland
5 Security to be hired, recruited, or referred for
6 such employment. Such attestation may be
7 manifested by either a handwritten or electronic
8 signature. The individual shall also provide that
9 individual’s social security account number or
10 United States passport number (if the indi-
11 vidual claims to have been issued such a num-
12 ber), and, if the individual does not attest to
13 United States nationality under this subpara-
14 graph, such identification or authorization num-
15 ber established by the Department of Homeland
16 Security for the alien as the Secretary may
17 specify.

18 “(C) RETENTION OF VERIFICATION FORM
19 AND VERIFICATION.—

20 “(i) IN GENERAL.—After completion
21 of such form in accordance with subpara-
22 graphs (A) and (B), the person or entity
23 shall—

24 “(I) retain a paper or electronic
25 version of the form and make it avail-

1 able for inspection by officers of the
2 Department of Homeland Security,
3 the Department of Justice, or the De-
4 partment of Labor during a period be-
5 ginning on the date of the recruiting
6 or referral of the individual, or, in the
7 case of the hiring of an individual, the
8 date on which the verification is com-
9 pleted, and ending—

10 “(aa) in the case of the re-
11 cruiting or referral of an indi-
12 vidual, 3 years after the date of
13 the recruiting or referral; and

14 “(bb) in the case of the hir-
15 ing of an individual, the later of
16 3 years after the date the verifi-
17 cation is completed or one year
18 after the date the individual’s
19 employment is terminated; and

20 “(II) during the verification pe-
21 riod (as defined in subparagraph (E)),
22 make an inquiry, as provided in sub-
23 section (d), using the verification sys-
24 tem to seek verification of the identity

1 and employment eligibility of an indi-
2 vidual.

3 “(ii) CONFIRMATION.—

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

16 “(II) TENTATIVE NONCONFIRMA-
17 TION RECEIVED.—If the person or
18 other entity receives a tentative non-
19 confirmation of an individual’s iden-
20 tity or work eligibility under the
21 verification system within the time pe-
22 riod specified, the person or entity
23 shall so inform the individual for
24 whom the verification is sought. If the
25 individual does not contest the non-

1 confirmation within the time period
2 specified, the nonconfirmation shall be
3 considered final. The person or entity
4 shall then record on the form an ap-
5 propriate code which has been pro-
6 vided under the system to indicate a
7 final nonconfirmation. If the indi-
8 vidual does contest the nonconfirma-
9 tion, the individual shall utilize the
10 process for secondary verification pro-
11 vided under subsection (d). The non-
12 confirmation will remain tentative
13 until a final confirmation or noncon-
14 firmation is provided by the verifica-
15 tion system within the time period
16 specified. In no case shall an employer
17 terminate employment of an individual
18 because of a failure of the individual
19 to have identity and work eligibility
20 confirmed under this section until a
21 nonconfirmation becomes final. Noth-
22 ing in this clause shall apply to a ter-
23 mination of employment for any rea-
24 son other than because of such a fail-
25 ure. In no case shall an employer re-

1 scind the offer of employment to an
2 individual because of a failure of the
3 individual to have identity and work
4 eligibility confirmed under this sub-
5 section until a nonconfirmation be-
6 comes final. Nothing in this subclause
7 shall apply to a rescission of the offer
8 of employment for any reason other
9 than because of such a failure.

10 “(III) FINAL CONFIRMATION OR
11 NONCONFIRMATION RECEIVED.—If a
12 final confirmation or nonconfirmation
13 is provided by the verification system
14 regarding an individual, the person or
15 entity shall record on the form an ap-
16 propriate code that is provided under
17 the system and that indicates a con-
18 firmation or nonconfirmation of iden-
19 tity and work eligibility of the indi-
20 vidual.

21 “(IV) EXTENSION OF TIME.—If
22 the person or other entity in good
23 faith attempts to make an inquiry
24 during the time period specified and
25 the verification system has registered

1 that not all inquiries were received
2 during such time, the person or entity
3 may make an inquiry in the first sub-
4 sequent working day in which the
5 verification system registers that it
6 has received all inquiries. If the
7 verification system cannot receive in-
8 quires at all times during a day, the
9 person or entity merely has to assert
10 that the entity attempted to make the
11 inquiry on that day for the previous
12 sentence to apply to such an inquiry,
13 and does not have to provide any ad-
14 ditional proof concerning such inquiry.

15 “(V) CONSEQUENCES OF NON-
16 CONFIRMATION.—

17 “(aa) TERMINATION OR NO-
18 TIFICATION OF CONTINUED EM-
19 PLOYMENT.—If the person or
20 other entity has received a final
21 nonconfirmation regarding an in-
22 dividual, the person or entity
23 may terminate employment of the
24 individual (or decline to recruit
25 or refer the individual). If the

1 person or entity does not termi-
2 nate employment of the indi-
3 vidual or proceeds to recruit or
4 refer the individual, the person or
5 entity shall notify the Secretary
6 of Homeland Security of such
7 fact through the verification sys-
8 tem or in such other manner as
9 the Secretary may specify.

10 “(bb) FAILURE TO NO-
11 TIFY.—If the person or entity
12 fails to provide notice with re-
13 spect to an individual as required
14 under item (aa), the failure is
15 deemed to constitute a violation
16 of subsection (a)(1)(A) with re-
17 spect to that individual.

18 “(VI) CONTINUED EMPLOYMENT
19 AFTER FINAL NONCONFIRMATION.—If
20 the person or other entity continues to
21 employ (or to recruit or refer) an indi-
22 vidual after receiving final noncon-
23 firmation, a rebuttable presumption is
24 created that the person or entity has
25 violated subsection (a)(1)(A).

1 “(D) EFFECTIVE DATES OF NEW PROCE-
2 DURES.—

3 “(i) HIRING.—Except as provided in
4 clause (iii), the provisions of this para-
5 graph shall apply to a person or other enti-
6 ty hiring an individual for employment in
7 the United States as follows:

8 “(I) With respect to employers
9 having 10,000 or more employees in
10 the United States on the date of the
11 enactment of the Legal Workforce
12 Act, on the date that is 6 months
13 after the date of the enactment of
14 such Act.

15 “(II) With respect to employers
16 having 500 or more employees in the
17 United States, but less than 10,000
18 employees in the United States, on
19 the date of the enactment of the
20 Legal Workforce Act, on the date that
21 is 12 months after the date of the en-
22 actment of such Act.

23 “(III) With respect to employers
24 having 20 or more employees in the
25 United States, but less than 500 em-

1 employees in the United States, on the
2 date of the enactment of the Legal
3 Workforce Act, on the date that is 18
4 months after the date of the enact-
5 ment of such Act.

6 “(IV) With respect to employers
7 having one or more employees in the
8 United States, but less than 20 em-
9 ployees in the United States, on the
10 date of the enactment of the Legal
11 Workforce Act, on the date that is 24
12 months after the date of the enact-
13 ment of such Act.

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

22 “(iii) AGRICULTURAL LABOR OR SERV-
23 ICES.—With respect to an employee per-
24 forming agricultural labor or services, this
25 paragraph shall not apply with respect to

1 the verification of the employee until the
2 date that is 36 months after the date of
3 the enactment of the Legal Workforce Act.
4 For purposes of the preceding sentence,
5 the term ‘agricultural labor or services’ has
6 the meaning given such term by the Sec-
7 retary of Agriculture in regulations and in-
8 cludes agricultural labor as defined in sec-
9 tion 3121(g) of the Internal Revenue Code
10 of 1986, agriculture as defined in section
11 3(f) of the Fair Labor Standards Act of
12 1938 (29 U.S.C. 203(f)), the handling,
13 planting, drying, packing, packaging, proc-
14 essing, freezing, or grading prior to deliv-
15 ery for storage of any agricultural or horti-
16 cultural commodity in its unmanufactured
17 state, all activities required for the prepa-
18 ration, processing or manufacturing of a
19 product of agriculture (as such term is de-
20 fined in such section 3(f)) for further dis-
21 tribution, and activities similar to all the
22 foregoing as they relate to fish or shellfish
23 facilities. An employee described in this
24 clause shall not be counted for purposes of
25 clause (i).

1 “(iv) EXTENSIONS.—

2 “(I) ON REQUEST.—Upon re-
3 quest by an employer having 50 or
4 fewer employees, the Secretary shall
5 allow a one-time 6-month extension of
6 the effective date set out in this sub-
7 paragraph applicable to such em-
8 ployer. Such request shall be made to
9 the Secretary and shall be made prior
10 to such effective date.

11 “(II) FOLLOWING REPORT.—If
12 the study under section 715 of the
13 Legal Workforce Act has been sub-
14 mitted in accordance with such sec-
15 tion, the Secretary of Homeland Secu-
16 rity may extend the effective date set
17 out in clause (iii) on a one-time basis
18 for 12 months.

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

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

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

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

22 “(E) VERIFICATION PERIOD DEFINED.—

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

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

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

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

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

1 for a social security account number, the
2 verification period ends three business days
3 after the alien receives the social security
4 account number.

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

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

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

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

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

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

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

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

1 U.S.C. 1801)), subparagraph (A) shall not
2 apply with respect to the reverification of the
3 employee until the date that is 36 months after
4 the date of the enactment of the Legal Work-
5 force Act. For purposes of the preceding sen-
6 tence, the term ‘agricultural labor or services’
7 has the meaning given such term by the Sec-
8 retary of Agriculture in regulations and in-
9 cludes agricultural labor as defined in section
10 3121(g) of the Internal Revenue Code of 1986,
11 agriculture as defined in section 3(f) of the
12 Fair Labor Standards Act of 1938 (29 U.S.C.
13 203(f)), the handling, planting, drying, packing,
14 packaging, processing, freezing, or grading
15 prior to delivery for storage of any agricultural
16 or horticultural commodity in its unmanufac-
17 tured state, all activities required for the prepa-
18 ration, processing, or manufacturing of a prod-
19 uct of agriculture (as such term is defined in
20 such section 3(f)) for further distribution, and
21 activities similar to all the foregoing as they re-
22 late to fish or shellfish facilities. An employee
23 described in this subparagraph shall not be
24 counted for purposes of subparagraph (A).

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

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

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

20 “(3) PREVIOUSLY HIRED INDIVIDUALS.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 “(4) EARLY COMPLIANCE.—

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

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

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

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

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

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

13 “(7) GOOD FAITH COMPLIANCE.—

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

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

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

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

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

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

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

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

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

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

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

13 **SEC. 703. EMPLOYMENT ELIGIBILITY VERIFICATION SYS-**
14 **TEM.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 **SEC. 704. RECRUITMENT, REFERRAL, AND CONTINUATION**
12 **OF EMPLOYMENT.**

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

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

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

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

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

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

3 (b) DEFINITION.—Section 274A(h) of the Immigra-
4 tion and Nationality Act (8 U.S.C. 1324a(h)), as amended
5 by section 2(b) of this Act, is further amended by adding
6 at the end the following:

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

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

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

20 **SEC. 705. GOOD FAITH DEFENSE.**

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

24 “(3) GOOD FAITH DEFENSE.—

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

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

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

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

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

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

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

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

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

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

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

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

6 **SEC. 706. PREEMPTION AND STATES’ RIGHTS.**

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

10 “(2) PREEMPTION.—

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

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

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

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

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

1 **SEC. 707. REPEAL.**

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

5 (b) REFERENCES.—Any reference in any Federal
6 law, Executive order, rule, regulation, or delegation of au-
7 thority, or any document of, or pertaining to, the Depart-
8 ment of Homeland Security, Department of Justice, or the
9 Social Security Administration, to the employment eligi-
10 bility confirmation system established under section 404
11 of the Illegal Immigration Reform and Immigrant Respon-
12 sibility Act of 1996 (8 U.S.C. 1324a note) is deemed to
13 refer to the employment eligibility confirmation system es-
14 tablished under section 274A(d) of the Immigration and
15 Nationality Act, as amended by section 3 of this Act.

16 (c) EFFECTIVE DATE.—This section shall take effect
17 on the date that is 30 months after the date of the enact-
18 ment of this Act.

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

23 **SEC. 708. PENALTIES.**

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

26 (1) in subsection (e)(1)—

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

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

7 (2) in subsection (e)(4)—

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

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

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

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

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

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

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

6 (3) in subsection (e)(5)—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 **SEC. 709. FRAUD AND MISUSE OF DOCUMENTS.**

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

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

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

15 **SEC. 710. PROTECTION OF SOCIAL SECURITY ADMINISTRA-**
16 **TION PROGRAMS.**

17 (a) **FUNDING UNDER AGREEMENT.**—Effective for
18 fiscal years beginning on or after October 1, 2023, the
19 Commissioner of Social Security and the Secretary of
20 Homeland Security shall enter into and maintain an
21 agreement which shall—

22 (1) provide funds to the Commissioner for the
23 full costs of the responsibilities of the Commissioner
24 under section 274A(d) of the Immigration and Na-
25 tionality Act (8 U.S.C. 1324a(d)), as amended by

1 section 3 of this Act, including (but not limited
2 to)—

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

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

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

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

1 (b) CONTINUATION OF EMPLOYMENT VERIFICATION
2 IN ABSENCE OF TIMELY AGREEMENT.—In any case in
3 which the agreement required under subsection (a) for any
4 fiscal year beginning on or after October 1, 2023, has not
5 been reached as of October 1 of such fiscal year, the latest
6 agreement between the Commissioner and the Secretary
7 of Homeland Security providing for funding to cover the
8 costs of the responsibilities of the Commissioner under
9 section 274A(d) of the Immigration and Nationality Act
10 (8 U.S.C. 1324a(d)) shall be deemed in effect on an in-
11 terim basis for such fiscal year until such time as an
12 agreement required under subsection (a) is subsequently
13 reached, except that the terms of such interim agreement
14 shall be modified by the Director of the Office of Manage-
15 ment and Budget to adjust for inflation and any increase
16 or decrease in the volume of requests under the employ-
17 ment eligibility verification system. In any case in which
18 an interim agreement applies for any fiscal year under this
19 subsection, the Commissioner and the Secretary shall, not
20 later than October 1 of such fiscal year, notify the Com-
21 mittee on Ways and Means, the Committee on the Judici-
22 ary, and the Committee on Appropriations of the House
23 of Representatives and the Committee on Finance, the
24 Committee on the Judiciary, and the Committee on Ap-
25 propriations of the Senate of the failure to reach the

1 agreement required under subsection (a) for such fiscal
2 year. Until such time as the agreement required under
3 subsection (a) has been reached for such fiscal year, the
4 Commissioner and the Secretary shall, not later than the
5 end of each 90-day period after October 1 of such fiscal
6 year, notify such Committees of the status of negotiations
7 between the Commissioner and the Secretary in order to
8 reach such an agreement.

9 **SEC. 711. FRAUD PREVENTION.**

10 (a) **BLOCKING MISUSED SOCIAL SECURITY ACCOUNT**
11 **NUMBERS.**—The Secretary of Homeland Security, in con-
12 sultation with the Commissioner of Social Security, shall
13 establish a program in which social security account num-
14 bers that have been identified to be subject to unusual
15 multiple use in the employment eligibility verification sys-
16 tem established under section 274A(d) of the Immigration
17 and Nationality Act (8 U.S.C. 1324a(d)), as amended by
18 section 3 of this Act, or that are otherwise suspected or
19 determined to have been compromised by identity fraud
20 or other misuse, shall be blocked from use for such system
21 purposes unless the individual using such number is able
22 to establish, through secure and fair additional security
23 procedures, that the individual is the legitimate holder of
24 the number.

1 (b) ALLOWING SUSPENSION OF USE OF CERTAIN SO-
2 CIAL SECURITY ACCOUNT NUMBERS.—The Secretary of
3 Homeland Security, in consultation with the Commis-
4 sioner of Social Security, shall establish a program which
5 shall provide a reliable, secure method by which victims
6 of identity fraud and other individuals may suspend or
7 limit the use of their social security account number or
8 other identifying information for purposes of the employ-
9 ment eligibility verification system established under sec-
10 tion 274A(d) of the Immigration and Nationality Act (8
11 U.S.C. 1324a(d)), as amended by section 3 of this Act.
12 The Secretary may implement the program on a limited
13 pilot program basis before making it fully available to all
14 individuals.

15 (c) ALLOWING PARENTS TO PREVENT THEFT OF
16 THEIR CHILD’S IDENTITY.—The Secretary of Homeland
17 Security, in consultation with the Commissioner of Social
18 Security, shall establish a program which shall provide a
19 reliable, secure method by which parents or legal guard-
20 ians may suspend or limit the use of the social security
21 account number or other identifying information of a
22 minor under their care for the purposes of the employment
23 eligibility verification system established under 274A(d) of
24 the Immigration and Nationality Act (8 U.S.C. 1324a(d)),
25 as amended by section 3 of this Act. The Secretary may

1 implement the program on a limited pilot program basis
2 before making it fully available to all individuals.

3 **SEC. 712. USE OF EMPLOYMENT ELIGIBILITY**
4 **VERIFICATION PHOTO TOOL.**

5 An employer who uses the photo matching tool used
6 as part of the E-Verify System shall match the photo tool
7 photograph to both the photograph on the identity or em-
8 ployment eligibility document provided by the employee
9 and to the face of the employee submitting the document
10 for employment verification purposes.

11 **SEC. 713. IDENTITY AUTHENTICATION EMPLOYMENT ELIGI-**
12 **BILITY VERIFICATION PILOT PROGRAMS.**

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

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

10 **SEC. 714. INSPECTOR GENERAL AUDITS.**

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

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

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

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

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

12 **SEC. 715. AGRICULTURE WORKFORCE STUDY.**

13 Not later than 36 months after the date of enact-
14 ment, the Secretary of the Department of Homeland Secu-
15 rity, in consultation with the Secretary of the Department
16 of Agriculture, shall submit to the Committee on the Judi-
17 ciary of the House of Representatives and the Committee
18 on the Judiciary of the Senate, a report that includes the
19 following:

20 (1) The number of individuals in the agricul-
21 tural workforce.

22 (2) The number of U.S. citizens in the agricul-
23 tural workforce.

1 (3) The number of aliens in the agricultural
2 workforce who are authorized to work in the United
3 States.

4 (4) The number of aliens in the agricultural
5 workforce who are not authorized to work in the
6 United States.

7 (5) Wage growth in each of the previous ten
8 years, disaggregated by agricultural sector.

9 (6) The percentage of total agricultural indus-
10 try costs represented by agricultural labor during
11 each of the last ten years.

12 (7) The percentage of agricultural costs in-
13 vested in mechanization during each of the last ten
14 years.

15 (8) Recommendations, other than a path to
16 legal status for aliens not authorized to work in the
17 United States, for ensuring U.S. agricultural em-
18 ployers have a workforce sufficient to cover industry
19 needs, including recommendations to—

20 (A) increase investments in mechanization;

21 (B) increase the domestic workforce; and

22 (C) reform the H-2A program.

23 **SEC. 716. REPEALING REGULATIONS.**

24 The rules relating to “Temporary Agricultural Em-
25 ployment of H-2A Nonimmigrants in the United States”

1 (87 Fed. Reg. 61660 (Oct. 12, 2022)) and to “Adverse
2 Effect Wage Rate Methodology for the Temporary Em-
3 ployment of H-2A Nonimmigrants in Non-Range Occupa-
4 tions in the United States” (88 Fed. Reg. 12760 (Feb.
5 28, 2023)) shall have no force or effect, may not be re-
6 issued in substantially the same form, and any new rules
7 that are substantially the same as such rules may not be
8 issued.

