H. R. ______

To provide for reform of the asylum system and protection of the border.

IN THE HOUSE OF REPRESENTATIVES

Mr. McClintock (for himself and Mr. Biggs) introduced the following bill; which was referred to the Committee on ______

A BILL

To provide for reform of the asylum system and protection of the border.

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Border Security and Enforcement Act of 2023".

(b) TABLE OF CONTENTS.—The table of contents for 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.

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.

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—
9 (1) by striking “if the Attorney General deter-
10 mines” and inserting “if the Attorney General or the
11 Secretary of Homeland Security determines—”;
12 (2) by striking “that the alien may be removed” and inserting the following:
13 “(i) that the alien may be removed”;
14 (3) by striking “, pursuant to a bilateral or
15 multilateral agreement, to” and inserting “to”;
16 (4) by inserting “or the Secretary, on a case by
17 case basis,” before “finds that”;
18 (5) by striking the period at the end and insert-
19 ing “; or”; and
20 (6) by adding at the end the following:
21 “(ii) that the alien entered, attempted to enter,
22 or arrived in the United States after transiting

23
through at least one country outside the alien’s country of citizenship, nationality, or last lawful habitual residence en route to the United States, unless—

“(I) the alien demonstrates that he or she applied for protection from persecution or torture in at least one country outside the alien’s country of citizenship, nationality, or last lawful habitual residence through which the alien transited en route to the United States, and the alien received a final judgment denying the alien protection in each country;

“(II) the alien demonstrates that he or she was a victim of a severe form of trafficking in which a commercial sex act was induced by force, fraud, or coercion, or in which the person induced to perform such act was under the age of 18 years; or in which the trafficking included the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery, and was unable to apply for protection from persecution in each country through which the
alien transited en route to the United States as a result of such severe form of trafficking; or

“(III) the only countries through which the alien transited en route to the United States were, at the time of the transit, not parties to the 1951 United Nations Convention relating to the Status of Refugees, the 1967 Protocol Relating to the Status of Refugees, or the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.”.

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

Section 235(b)(1)(B)(v) of the Immigration and Nationality Act (8 U.S.C. 1225(b)(1)(B)(v)) is amended by striking “there is a significant possibility” and all that follows, and inserting “, taking into account the credibility of the statements made by the alien in support of the alien’s claim, as determined pursuant to section 208(b)(1)(B)(iii), and such other facts as are known to the officer, the alien more likely than not could establish eligibility for asylum under section 208, and it is more likely than not that the statements made by, and on behalf of, the alien in support of the alien’s claim are true.”.
SEC. 104. CLARIFICATION OF ASYLUM ELIGIBILITY.

(a) In General.—Section 208(b)(1)(A) of the Immigration and Nationality Act (8 U.S.C. 1158(b)(1)(A)) is amended by inserting after “section 101(a)(42)(A)” the following: “(in accordance with the rules set forth in this section), and is eligible to apply for asylum under subsection (a)”.

(b) Place of Arrival.—Section 208(a)(1) of the Immigration and Nationality Act (8 U.S.C. 1158(a)(1)) is amended—

(1) by striking “or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters),”; and

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

SEC. 105. EXCEPTIONS.

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

“(2) Exceptions.—
“(A) IN GENERAL.—Paragraph (1) shall not apply to an alien if the Secretary of Homeland Security or the Attorney General determines that—

“(i) the alien ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion;

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

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

“(I) the unlawful possession or use of an identification document, authentication feature, or false identification document (as those terms and phrases are defined in the jurisdiction where the conviction occurred), unless the alien can establish that the conviction resulted from circumstances showing that—
“(aa) the document or feature was presented before boarding a common carrier;

“(bb) the document or feature related to the alien’s eligibility to enter the United States;

“(cc) the alien used the document or feature to depart a country wherein the alien has claimed a fear of persecution; and

“(dd) the alien claimed a fear of persecution without delay upon presenting himself or herself to an immigration officer upon arrival at a United States port of entry;

“(II) the unlawful receipt of a Federal public benefit (as defined in section 401(c) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1611(c))), from a Federal entity, or the unlawful receipt of similar public
benefits from a State, tribal, or local entity; or

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

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

“(v) the alien has been convicted of a Federal, State, tribal, or local crime that the Attorney General or Secretary of Homeland Security knows, or has reason to believe, was committed in support, promotion, or furtherance of the activity of a criminal street gang (as defined under the law of the jurisdiction where the conviction
occurred or in section 521(a) of title 18, United States Code);

“(vi) the alien has been convicted of an offense for driving while intoxicated or impaired, as those terms are defined under the law of the jurisdiction where the conviction occurred (including a conviction for driving while under the influence of or impaired by alcohol or drugs), without regard to whether the conviction is classified as a misdemeanor or felony under Federal, State, tribal, or local law, in which such intoxicated or impaired driving was a cause of serious bodily injury or death of another person;

“(vii) the alien has been convicted of more than one offense for driving while intoxicated or impaired, as those terms are defined under the law of the jurisdiction where the conviction occurred (including a conviction for driving while under the influence of or impaired by alcohol or drugs), without regard to whether the conviction is classified as a misdemeanor or felony under Federal, State, tribal, or local law;
“(viii) the alien has been convicted of a crime—

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

“(II) of child abuse, child neglect, or child abandonment; or

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

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

“(bb) a crime of domestic violence, as described in section 40002(a)(12) of the Violence Against Women Act of 1994 (34 U.S.C. 12291(a)(12)); or

“(cc) any crime based on conduct in which the alien harassed, coerced, intimidated, voluntarily or recklessly used (or threatened to use) force or violence against, or inflicted phys-
12

1  ical injury or physical pain, how-
2  ever slight, upon a person—
3    “(AA) who is a current
4  or former spouse of the
5  alien;
6    “(BB) with whom the
7  alien shares a child;
8    “(CC) who is cohabi-
9  tating with, or who has
10  cohabitated with, the alien
11  as a spouse;
12    “(DD) who is similarly
13  situated to a spouse of the
14  alien under the domestic or
15  family violence laws of the
16  jurisdiction where the of-
17  fense occurred; or
18    “(EE) who is protected
19  from that alien’s acts under
20  the domestic or family vio-
21  lence laws of the United
22  States or of any State, tribal
23  government, or unit of local
24  government;
“(ix) the alien has engaged in acts of battery or extreme cruelty upon a person and the person—

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

“(II) shares a child with the alien;

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

“(IV) is similarly situated to a spouse of the alien under the domestic or family violence laws of the jurisdiction where the offense occurred; or

“(V) is protected from that alien’s acts under the domestic or family violence laws of the United States or of any State, tribal government, or unit of local government;

“(x) the alien, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of the United States;

“(xi) there are serious reasons for believing that the alien has committed a serious nonpolitical crime outside the United
States prior to the arrival of the alien in the United States;

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

“(xiii) the alien is described in sub-clause (I), (II), (III), (IV), or (VI) of section 212(a)(3)(B)(i) or section 237(a)(4)(B) (relating to terrorist activity), unless, in the case only of an alien inadmissible under subclause (IV) of section 212(a)(3)(B)(i), the Secretary of Homeland Security or the Attorney General determines, in the Secretary’s or the Attorney General’s discretion, that there are not reasonable grounds for regarding the alien as a danger to the security of the United States;

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

“(xv) there are reasonable grounds for concluding the alien could avoid persecution by relocating to another part of the alien’s country of nationality or, in the
case of an alien having no nationality, another part of the alien’s country of last habitual residence.

“(B) Special rules.—

“(i) Particularly serious crime; serious nonpolitical crime outside the United States.—

“(I) In general.—For purposes of subparagraph (A)(x), the Attorney General or Secretary of Homeland Security, in their discretion, may determine that a conviction constitutes a particularly serious crime based on—

“(aa) the nature of the conviction;

“(bb) the type of sentence imposed; or

“(cc) the circumstances and underlying facts of the conviction.

“(II) Determination.—In making a determination under subclause (I), the Attorney General or Secretary of Homeland Security may consider all reliable information and is not lim-
ited to facts found by the criminal court or provided in the underlying record of conviction.

“(III) Treatment of Felonies.—In making a determination under subclause (I), an alien who has been convicted of a felony (as defined under this section) or an aggravated felony (as defined under section 101(a)(43)), shall be considered to have been convicted of a particularly serious crime.

“(IV) Interpol Red Notice.—In making a determination under subparagraph (A)(xi), an Interpol Red Notice may constitute reliable evidence that the alien has committed a serious nonpolitical crime outside the United States.

“(ii) Crimes and Exceptions.—

“(I) Driving while Intoxicated or Impaired.—A finding under subparagraph (A)(vi) does not require the Attorney General or Secretary of Homeland Security to find
the first conviction for driving while intoxicated or impaired (including a conviction for driving while under the influence of or impaired by alcohol or drugs) as a predicate offense. The Attorney General or Secretary of Homeland Security need only make a factual determination that the alien previously was convicted for driving while intoxicated or impaired as those terms are defined under the jurisdiction where the conviction occurred (including a conviction for driving while under the influence of or impaired by alcohol or drugs).

“(II) STALKING AND OTHER CRIMES.—In making a determination under subparagraph (A)(viii), including determining the existence of a domestic relationship between the alien and the victim, the underlying conduct of the crime may be considered, and the Attorney General or Secretary of Homeland Security is not limited to facts found by the criminal court or
provided in the underlying record of conviction.

“(III) Battery or extreme cruelty.—In making a determination under subparagraph (A)(ix), the phrase ‘battery or extreme cruelty’ includes—

“(aa) any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury;

“(bb) psychological or sexual abuse or exploitation, including rape, molestation, incest, or forced prostitution, shall be considered acts of violence; and

“(cc) other abusive acts, including acts that, in and of themselves, may not initially appear violent, but that are a part of an overall pattern of violence.

“(IV) Exception for victims of domestic violence.—An alien who was convicted of an offense de-
scribed in clause (viii) or (ix) of sub-
paragraph (A) is not ineligible for
asylum on that basis if the alien satis-
fies the criteria under section
237(a)(7)(A).

“(C) Specific circumstances.—Para-
graph (1) shall not apply to an alien whose
claim is based on—

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

“(ii) the applicant’s generalized dis-
approval of, disagreement with, or opposi-
tion to criminal, terrorist, gang, guerilla,
or other non-state organizations absent ex-
pressive behavior in furtherance of a dis-
crete cause against such organizations re-
lated to control of a State or expressive be-
behavior that is antithetical to the State or
a legal unit of the State;
“(iii) the applicant’s resistance to recruitment or coercion by guerrilla, criminal, gang, terrorist, or other non-state organizations;

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

“(v) the applicant’s criminal activity;

or

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

“(D) Definitions and clarifications.—

“(i) Definitions.—For purposes of this paragraph:

“(I) Felony.—The term ‘felony’ means—

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

“(bb) any crime punishable by more than one year of imprisonment.
“(II) MISDEMEANOR.—The term ‘misdemeanor’ means—

“(aa) any crime defined as a misdemeanor by the relevant jurisdiction (Federal, State, tribal, or local) of conviction; or

“(bb) any crime not punishable by more than one year of imprisonment.

“(ii) CLARIFICATIONS.—

“(I) CONSTRUCTION.—For purposes of this paragraph, whether any activity or conviction also may constitute a basis for removal is immaterial to a determination of asylum eligibility.

“(II) ATTEMPT, CONSPIRACY, OR SOLICITATION.—For purposes of this paragraph, all references to a criminal offense or criminal conviction shall be deemed to include any attempt, conspiracy, or solicitation to commit the offense or any other inchoate form of the offense.
“(III) Effect of Certain Orders.—

“(aa) In General.—No order vacating a conviction, modifying a sentence, clarifying a sentence, or otherwise altering a conviction or sentence shall have any effect under this paragraph unless the Attorney General or Secretary of Homeland Security determines that—

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

“(BB) the order was not entered for rehabilitative purposes or for purposes of ameliorating the immigration consequences of the conviction or sentence.

“(bb) Ameliorating Immigration Consequences.—For purposes of item (aa)(BB), the order shall be presumed to be for
the purpose of ameliorating immigration consequences if—

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

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

“(cc) AUTHORITY OF IMMIGRATION JUDGE.—An immigration judge is not limited to consideration only of material included in any order vacating a conviction, modifying a sentence, or clarifying a sentence to determine whether such order should be given any effect under this paragraph, but may consider such additional information as
the immigration judge determines appropriate.

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

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

SEC. 106. EMPLOYMENT AUTHORIZATION.

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

“(2) EMPLOYMENT AUTHORIZATION.—

“(A) AUTHORIZATION PERMITTED.—An applicant for asylum is not entitled to employment authorization, but such authorization may be provided under regulation by the Secretary of Homeland Security. An applicant who is not otherwise eligible for employment authorization shall not be granted such authorization prior to
the date that is 180 days after the date of filing
of the application for asylum.

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

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

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

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

“(C) RENEWAL.—The Secretary of Home-
land Security may not grant, renew, or extend
employment authorization to an alien if the
alien was previously granted employment au-
Thorization under subparagraph (A), and the employment authorization was terminated pursuant to a circumstance described in subparagraph (B)(i), (ii), or (iii), unless a Federal court of appeals remands the alien’s case to the Board of Immigration Appeals.

“(D) Ineligibility.—The Secretary of Homeland Security may not grant employment authorization to an alien under this paragraph if the alien—

“(i) is ineligible for asylum under subsection (b)(2)(A); or

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

**SEC. 107. ASYLUM FEES.**

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

“(3) Fees.—

“(A) Application fee.—A fee of not less than $50 for each application for asylum shall be imposed. Such fee shall not exceed the cost of adjudicating the application. Such fee shall
not apply to an unaccompanied alien child who files an asylum application in proceedings under section 240.

“(B) Employment Authorization.—A fee may also be imposed for the consideration of an application for employment authorization under this section and for adjustment of status under section 209(b). Such a fee shall not exceed the cost of adjudicating the application.

“(C) Payment.—Fees under this paragraph may be assessed and paid over a period of time or by installments.

“(D) Rule of Construction.—Nothing in this paragraph shall be construed to limit the authority of the Attorney General or Secretary of Homeland Security to set adjudication and naturalization fees in accordance with section 286(m).”.

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

Section 208 of the Immigration and Nationality Act (8 U.S.C. 1158) is amended by adding at the end the following:

“(f) Rules for Determining Asylum Eligibility.—In making a determination under subsection (b)(1)(A) with respect to whether an alien is a refugee...
within the meaning of section 101(a)(42)(A), the following shall apply:

“(1) PARTICULAR SOCIAL GROUP.—The Secretary of Homeland Security or the Attorney General shall not determine that an alien is a member of a particular social group unless the alien articulates on the record, or provides a basis on the record for determining, the definition and boundaries of the alleged particular social group, establishes that the particular social group exists independently from the alleged persecution, and establishes that the alien’s claim of membership in a particular social group does not involve—

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

“(B) presence in a country with generalized violence or a high crime rate;

“(C) being the subject of a recruitment effort by criminal, terrorist, or persecutory groups;

“(D) the targeting of the applicant for criminal activity for financial gain based on perceptions of wealth or affluence;
“(E) interpersonal disputes of which governmental authorities in the relevant society or region were unaware or uninvolved;

“(F) private criminal acts of which governmental authorities in the relevant society or region were unaware or uninvolved;

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

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

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

“(2) POLITICAL OPINION.—The Secretary of Homeland Security or the Attorney General may not determine that an alien holds a political opinion with respect to which the alien is subject to persecution if the political opinion is constituted solely by generalized disapproval of, disagreement with, or opposition to criminal, terrorist, gang, guerilla, or other non-state organizations and does not include expressive behavior in furtherance of a cause against such organizations related to efforts by the State to control such organizations or behavior that is antithetical to or otherwise opposes the ruling legal entity of the State or a unit thereof.
“(3) PERSECUTION.—The Secretary of Homeland Security or the Attorney General may not determine that an alien has been subject to persecution or has a well-founded fear of persecution based only on—

“(A) the existence of laws or government policies that are unenforced or infrequently enforced, unless there is credible evidence that such a law or policy has been or would be applied to the applicant personally; or

“(B) the conduct of rogue foreign government officials acting outside the scope of their official capacity.

“(4) DISCRETIONARY DETERMINATION.—

“(A) ADVERSE DISCRETIONARY FACTORS.—The Secretary of Homeland Security or the Attorney General may only grant asylum to an alien if the alien establishes that he or she warrants a favorable exercise of discretion. In making such a determination, the Attorney General or Secretary of Homeland Security shall consider, if applicable, an alien’s use of fraudulent documents to enter the United States, unless the alien arrived in the United States by air, sea, or land directly from the ap-
applicant’s home country without transiting through any other country.

“(B) FAVORABLE EXERCISE OF DISCRESSION NOT PERMITTED.—Except as provided in subparagraph (C), the Attorney General or Secretary of Homeland Security shall not favorably exercise discretion under this section for any alien who—

“(i) has accrued more than one year of unlawful presence in the United States, as defined in sections 212(a)(9)(B)(ii) and (iii), prior to filing an application for asylum;

“(ii) at the time the asylum application is filed with the immigration court or is referred from the Department of Homeland Security, has—

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

“(II) failed to satisfy any outstanding Federal, State, or local tax obligations; or
“(III) income that would result in tax liability under section 1 of the Internal Revenue Code of 1986 and that was not reported to the Internal Revenue Service;

“(iii) has had two or more prior asylum applications denied for any reason;

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

“(v) failed to attend an interview regarding his or her asylum application with the Department of Homeland Security, unless the alien shows by a preponderance of the evidence that—

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

“(II) the interview notice was not mailed to the last address provided by the alien or the alien’s representative and neither the alien nor the alien’s representative received notice of the interview; or
“(vi) was subject to a final order of removal, deportation, or exclusion and did not file a motion to reopen to seek asylum based on changed country conditions within one year of the change in country conditions.

“(C) EXCEPTIONS.—If one or more of the adverse discretionary factors set forth in subparagraph (B) are present, the Attorney General or the Secretary, may, notwithstanding such subparagraph (B), favorably exercise discretion under section 208—

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

“(ii) if the alien, by clear and convincing evidence, demonstrates that the denial of the application for asylum would result in exceptional and extremely unusual hardship to the alien.

“(5) LIMITATION.—If the Secretary or the Attorney General determines that an alien fails to satisfy the requirement under paragraph (1), the alien may not be granted asylum based on membership in a particular social group, and may not appeal the
determination of the Secretary or Attorney General, as applicable. A determination under this paragraph shall not serve as the basis for any motion to reopen or reconsider an application for asylum or withholding of removal for any reason, including a claim of ineffective assistance of counsel, unless the alien complies with the procedural requirements for such a motion and demonstrates that counsel’s failure to define, or provide a basis for defining, a formulation of a particular social group was both not a strategic choice and constituted egregious conduct.

“(6) STEREOTYPES.—Evidence offered in support of an application for asylum that promotes cultural stereotypes about a country, its inhabitants, or an alleged persecutor, including stereotypes based on race, religion, nationality, or gender, shall not be admissible in adjudicating that application, except that evidence that an alleged persecutor holds stereotypical views of the applicant shall be admissible.

“(7) DEFINITIONS.—In this section:

“(A) The term ‘membership in a particular social group’ means membership in a group that is—
“(i) composed of members who share a common immutable characteristic;

“(ii) defined with particularity; and

“(iii) socially distinct within the society in question.

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

“(C) The term ‘persecution’ means the infliction of a severe level of harm constituting an exigent threat by the government of a country or by persons or an organization that the government was unable or unwilling to control. Such term does not include—

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

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

“(iii) intermittent harassment, including brief detentions;

“(iv) threats with no actual effort to carry out the threats, except that particu-
larized threats of severe harm of an immediate and menacing nature made by an identified entity may constitute persecution; or

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

SEC. 109. FIRM RESETTLEMENT.

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

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

“(1) IN GENERAL.—An alien shall be considered to have firmly resettled in another country if, after the events giving rise to the alien’s asylum claim—

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

“(i) received or was eligible for any permanent legal immigration status in that country;
“(ii) resided in such a country with any non-permanent but indefinitely renewable legal immigration status (including asylee, refugee, or similar status, but excluding status of a tourist); or

“(iii) resided in such a country and could have applied for and obtained an immigration status described in clause (ii);

“(B) the alien physically resided voluntarily, and without continuing to suffer persecution or torture, in any one country for one year or more after departing his country of nationality or last habitual residence and prior to arrival in or entry into the United States, except for any time spent in Mexico by an alien who is not a native or citizen of Mexico solely as a direct result of being returned to Mexico pursuant to section 235(b)(2)(C) or of being subject to metering; or

“(C) the alien is a citizen of a country other than the country in which the alien alleges a fear of persecution, or was a citizen of such a country in the case of an alien who renounces such citizenship, and the alien was present in that country after departing his
country of nationality or last habitual residence and prior to arrival in or entry into the United States;

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

“(3) **FIRM RESETTLMENT OF PARENT.**—An alien shall be presumed to have been firmly resettled in another country if the alien’s parent was firmly resettled in another country, the parent’s resettlement occurred before the alien turned 18 years of age, and the alien resided with such parent at the time of the firm resettlement, unless the alien establishes that he or she could not have derived any permanent legal immigration status or any non-permanent but indefinitely renewable legal immigration status (including asylum, refugee, or similar status, but excluding status of a tourist) from the alien’s parent.”.
SEC. 110. NOTICE CONCERNING FRIVOLOUS ASYLUM APPLICATIONS.

(a) In General.—Section 208(d)(4) of the Immigration and Nationality Act (8 U.S.C. 1158(d)(4)) is amended—

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

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

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

(4) by adding at the end the following:

“(C) ensure that a written warning appears on the asylum application advising the alien of the consequences of filing a frivolous application and serving as notice to the alien of the consequence of filing a frivolous application.”.

(b) Conforming Amendment.—Section 208(d)(6) of the Immigration and Nationality Act (8 U.S.C. 1158(d)(6)) is amended by striking “If the” and all that follows and inserting:
“(A) IN GENERAL.—If the Secretary of Homeland Security or the Attorney General determines that an alien has knowingly made a frivolous application for asylum and the alien has received the notice under paragraph (4)(C), the alien shall be permanently ineligible for any benefits under this chapter, effective as the date of the final determination of such an application.

“(B) CRITERIA.—An application is frivolous if the Secretary of Homeland Security or the Attorney General determines, consistent with subparagraph (C), that—

“(i) it is so insufficient in substance that it is clear that the applicant knowingly filed the application solely or in part to delay removal from the United States, to seek employment authorization as an applicant for asylum pursuant to regulations issued pursuant to paragraph (2), or to seek issuance of a Notice to Appear in order to pursue Cancellation of Removal under section 240A(b); or

“(ii) any of the material elements are knowingly fabricated.
“(C) SUFFICIENT OPPORTUNITY TO CLARIFY.—In determining that an application is frivolous, the Secretary or the Attorney General, must be satisfied that the applicant, during the course of the proceedings, has had sufficient opportunity to clarify any discrepancies or implausible aspects of the claim.

“(D) WITHHOLDING OF REMOVAL NOT PRECLUDED.—For purposes of this section, a finding that an alien filed a frivolous asylum application shall not preclude the alien from seeking withholding of removal under section 241(b)(3) or protection pursuant to the Convention Against Torture.”.

SEC. 111. TECHNICAL AMENDMENTS.

Section 208 of the Immigration and Nationality Act (8 U.S.C. 1158) is amended—

(1) in subsection (a)—

(A) in paragraph (2)(D), by inserting “Secretary of Homeland Security or the” before “Attorney General”; and

(B) in paragraph (3), by inserting “Secretary of Homeland Security or the” before “Attorney General”;
(2) in subsection (b)(2), by inserting “Secretary of Homeland Security or the” before “Attorney General” each place such term appears;

(3) in subsection (c)—

(A) in paragraph (1), by striking “Attorney General” each place such term appears and inserting “Secretary of Homeland Security”; 

(B) in paragraph (2), in the matter preceding subparagraph (A), by inserting “Secretary of Homeland Security or the” before “Attorney General”; and 

(C) in paragraph (3), by inserting “Secretary of Homeland Security or the” before “Attorney General”; and 

(4) in subsection (d)—

(A) in paragraph (1), by inserting “Secretary of Homeland Security or the” before “Attorney General” each place such term appears; 

(B) in paragraph (2), by striking “Attorney General” and inserting “Secretary of Homeland Security”; and 

(C) in paragraph (5)—
(i) in subparagraph (A), by striking “Attorney General” and inserting “Secretary of Homeland Security”; and
(ii) in subparagraph (B), by inserting “Secretary of Homeland Security or the” before “Attorney General”.

SEC. 112. REQUIREMENT FOR PROCEDURES RELATING TO CERTAIN ASYLUM APPLICATIONS.

(a) In General.—Not later than 30 days after the date of the enactment of this Act, the Attorney General shall establish procedures to expedite the adjudication of asylum applications for aliens—

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

(2) who are nationals of a Western Hemisphere country sanctioned by the United States, as described in subsection (b), as of January 1, 2023.

(b) Western Hemisphere Country Sanctioned by the United States Described.—Subsection (a) shall apply only to an asylum application filed by an alien who is a national of a Western Hemisphere country subject to sanctions pursuant to—
(1) the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 (22 U.S.C. 6021 note);

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

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

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

TITLE II—BORDER SAFETY AND MIGRANT PROTECTION

SEC. 201. SHORT TITLE.

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

SEC. 202. INSPECTION OF APPLICANTS FOR ADMISSION.

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

(1) in subsection (b)—

(A) in paragraph (1)—

(i) in subparagraph (A)—

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

(II) by adding at the end the following:

“(iv) INELIGIBILITY FOR PAROLE.— An alien described in clause (i) or (ii) shall not be eligible for parole except as expressly authorized pursuant to section 212(d)(5), or for parole or release pursuant to section 236(a).”; and

(ii) in subparagraph (B)—

(I) in clause (ii), by striking “asylum.” and inserting “asylum and shall not be released (including pursuant to parole or release pursuant to section 236(a) but excluding as expressly authorized pursuant to section 212(d)(5)) other than to be removed or returned to a country as described in paragraph (3).”; and

(II) in clause (iii)(IV)—

(aa) in the header by striking “DETENTION” and inserting “DETENTION, RETURN, OR REMOVAL”; and
(bb) by adding at the end the following: “The alien shall not be released (including pursuant to parole or release pursuant to section 236(a) but excluding as expressly authorized pursuant to section 212(d)(5)) other than to be removed or returned to a country as described in paragraph (3).”;

(B) in paragraph (2)—

(i) in subparagraph (A)—

(I) by striking “Subject to subparagraphs (B) and (C),” and inserting “Subject to subparagraph (B) and paragraph (3),”; and

(II) by adding at the end the following: “The alien shall not be released (including pursuant to parole or release pursuant to section 236(a) but excluding as expressly authorized pursuant to section 212(d)(5)) other than to be removed or returned to a country as described in paragraph (3).”; and
(ii) by striking subparagraph (C);

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

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

“(3) RETURN TO FOREIGN TERRITORY CONTIGUOUS TO THE UNITED STATES.—

“(A) IN GENERAL.—The Secretary of Homeland Security may return to a foreign territory contiguous to the United States any alien arriving on land from that territory (whether or not at a designated port of entry) pending a proceeding under section 240 or review of a determination under subsection (b)(1)(B)(iii)(III).

“(B) MANDATORY RETURN.—If at any time the Secretary of Homeland Security cannot—

“(i) comply with its obligations to detain an alien as required under clause (ii) and (iii)(IV) of subsection (b)(1)(B) and subsection (b)(2)(A); or

“(ii) remove an alien to a country described in section 208(a)(2)(A),

the Secretary of Homeland Security shall, without exception, including pursuant to parole or
release pursuant to section 236(a) but excluding as expressly authorized pursuant to section 212(d)(5), return to a foreign territory contiguous to the United States any alien arriving on land from that territory (whether or not at a designated port of entry) pending a proceeding under section 240 or review of a determination under subsection (b)(1)(B)(iii)(III).

“(4) REQUIRED SUSPENSION OF ENTRY OF ALIENS.—Notwithstanding any other provision of law, the Secretary of Homeland Security shall prohibit the entry of aliens who are inadmissible under subparagraph (A) or (C) of section 212(a)(6) or under section 212(a)(7) for any period during which the Secretary cannot comply with the requirements under section 212(b)(3)(B).

“(5) ENFORCEMENT BY STATE ATTORNEYS GENERAL.—The attorney general of a State, or other authorized State officer, alleging a violation of the detention, return, removal, or suspension requirements under paragraph (1), (2), (3), or (4) that affects such State or its residents, may bring an action against the Secretary of Homeland Security on behalf of the residents of the State in an ap-
propriate United States district court to obtain app-
propriate injunctive relief.”; and
(2) by adding at the end the following:
“(e) AUTHORITY TO PROHIBIT INTRODUCTION OF
CERTAIN ALIENS.—If the Secretary of Homeland Security
determines, in his discretion, that the prohibition of the
introduction of aliens who are inadmissible under subpara-
graph (A) or (C) of section 212(a)(6) or under section
212(a)(7) at an international land or maritime border of
the United States is necessary to achieve operational con-
trol (as defined in section 2 of the Secure Fence Act of
2006 (8 U.S.C. 1701 note)) of such border, the Secretary
may prohibit, in whole or in part, the introduction of such
aliens at such border for such period of time as the Sec-
retary determines is necessary for such purpose.”.

TITLE III—ENSURING UNITED
FAMILIES AT THE BORDER

SEC. 301. SHORT TITLE.
This title may be cited as the “Ensuring United
Families at the Border Act”.

SEC. 302. CLARIFICATION OF STANDARDS FOR FAMILY DE-
TENTION.
(a) IN GENERAL.—Section 235 of the William Wil-
berforce Trafficking Victims Protection Reauthorization
Act of 2008 (8 U.S.C. 1232) is amended by adding at the end the following:

“(j) CONSTRUCTION.—

“(1) IN GENERAL.—Notwithstanding any other provision of law, judicial determination, consent decree, or settlement agreement, the detention of any alien child who is not an unaccompanied alien child shall be governed by sections 217, 235, 236, and 241 of the Immigration and Nationality Act (8 U.S.C. 1187, 1225, 1226, and 1231). There is no presumption that an alien child who is not an unaccompanied alien child should not be detained.

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

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

“(i) is charged only with a misdemeanor offense under section 275(a) of the Immigration and Nationality Act (8 U.S.C. 1325(a)); and

“(ii) entered the United States with the alien’s child who has not attained 18 years of age; and
“(B) detain the alien with the alien’s child.”.

(b) SENSE OF CONGRESS.—It is the sense of Congress that the amendments in this section to section 235 of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (8 U.S.C. 1232) are intended to satisfy the requirements of the Settlement Agreement in Flores v. Meese, No. 85–4544 (C.D. Cal), as approved by the court on January 28, 1997, with respect to its interpretation in Flores v. Johnson, 212 F. Supp. 3d 864 (C.D. Cal. 2015), that the agreement applies to accompanied minors.

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

(d) PREEMPTION OF STATE LICENSING REQUIREMENTS.—Notwithstanding any other provision of law, judicial determination, consent decree, or settlement agreement, no State may require that an immigration detention facility used to detain children who have not attained 18 years of age, or families consisting of one or more of such children and the parents or legal guardians of such children, that is located in that State, be licensed by the State or any political subdivision thereof.
TITLE IV—PROTECTION OF CHILDREN

SEC. 401. SHORT TITLE.
This title may be cited as the “Protection of Children Act of 2023”.

SEC. 402. FINDINGS.
Congress makes the following findings:

(1) Implementation of the provisions of the Trafficking Victims Protection Reauthorization Act of 2008 that govern unaccompanied alien children has incentivized multiple surges of unaccompanied alien children arriving at the southwest border in the years since the bill’s enactment.

(2) The provisions of the Trafficking Victims Protection Reauthorization Act of 2008 that govern unaccompanied alien children treat unaccompanied alien children from countries that are contiguous to the United States disparately by swiftly returning them to their home country absent indications of trafficking or a credible fear of return, but allowing for the release of unaccompanied alien children from noncontiguous countries into the interior of the United States, often to those individuals who paid to smuggle them into the country in the first place.
(3) The provisions of the Trafficking Victims Protection Reauthorization Act of 2008 governing unaccompanied alien children have enriched the cartels, who profit hundreds of millions of dollars each year by smuggling unaccompanied alien children to the southwest border, exploiting and sexually abusing many such unaccompanied alien children on the perilous journey.

(4) Prior to 2008, the number of unaccompanied alien children encountered at the southwest border never exceeded 1,000 in a single year.

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

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

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

(8) The Biden Administration dismantled effective safeguards put in place by the Trump Administration that protected unaccompanied alien children from being abused by criminals or exploited for illegal and dangerous child labor.

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

(10) The Times investigation found unaccompanied alien children, “under intense pressure to earn money” in order to “send cash back to their families while often being in debt to their sponsors for smuggling fees, rent, and living expenses,” feared “that they had become trapped in circumstances they never could have imagined.”

(11) The Biden Administration’s Department of Health and Human Services Secretary Xavier Becerra compared placing unaccompanied alien children with sponsors, to widgets in an assembly line, stating that, “If Henry Ford had seen this in his plant, he would have never become famous and rich. This is not the way you do an assembly line.”
(12) Department of Health and Human Services employees working under Secretary Xavier Becerra’s leadership penned a July 2021 memorandum expressing serious concern that “labor trafficking was increasing” and that the agency had become “one that rewards individuals for making quick releases, and not one that rewards individuals for preventing unsafe releases.”

(13) Despite this, Secretary Xavier Becerra pressured then-Director of the Office of Refugee Resettlement Cindy Huang to prioritize releases of unaccompanied alien children over ensuring their safety, telling her “if she could not increase the number of discharges he would find someone who could” and then-Director Huang resigned one month later.

(14) In June 2014, the Obama-Biden Administration requested legal authority to exercise discretion in returning and removing unaccompanied alien children from non-contiguous countries back to their home countries.

(15) In August 2014, the House of Representatives passed H.R. 5320, which included the Protection of Children Act.

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

SEC. 403. REPATRIATION OF UNACCOMPANIED ALIEN CHILDREN.

(a) IN GENERAL.—Section 235 of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (8 U.S.C. 1232) is amended—

(1) in subsection (a)—

(A) in paragraph (2)—

(i) by amending the heading to read as follows: “RULES FOR UNACCOMPANIED ALIEN CHILDREN.”;

(ii) in subparagraph (A)—

(I) in the matter preceding clause (i), by striking “who is a national or habitual resident of a country that is contiguous with the United States”; (II) in clause (i), by inserting “and” at the end;

(III) in clause (ii), by striking “; and” and inserting a period; and

(IV) by striking clause (iii); and

(iii) in subparagraph (B)—
(I) in the matter preceding clause

(i), by striking “(8 U.S.C. 1101 et seq.) may—” and inserting “(8 U.S.C. 1101 et seq.)—”;

(II) in clause (i), by inserting before “permit such child to withdraw” the following: “may”; and

(III) in clause (ii), by inserting before “return such child” the following: “shall”; and

(B) in paragraph (5)(D)—

(i) in the matter preceding clause (i), by striking “, except for an unaccompanied alien child from a contiguous country subject to the exceptions under subsection (a)(2),” and inserting “who does not meet the criteria listed in paragraph (2)(A)”;

and

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

(2) in subsection (b)—

(A) in paragraph (2)—
(i) in subparagraph (A), by inserting before the semicolon the following: ‘‘be-
lieved not to meet the criteria listed in sub-
section (a)(2)(A)’’; and

(ii) in subparagraph (B), by inserting before the period the following: ‘‘and does not meet the criteria listed in subsection (a)(2)(A)’’; and

(B) in paragraph (3), by striking ‘‘an un- accompanied alien child in custody shall’’ and all that follows, and inserting the following: ‘‘an unaccompanied alien child in custody—

‘‘(A) in the case of a child who does not meet the criteria listed in subsection (a)(2)(A), shall transfer the custody of such child to the Secretary of Health and Human Services not later than 30 days after determining that such child is an unaccompanied alien child who does not meet such criteria; or

‘‘(B) in the case of a child who meets the criteria listed in subsection (a)(2)(A), may transfer the custody of such child to the Sec-
retary of Health and Human Services after de-
termining that such child is an unaccompanied alien child who meets such criteria.’’; and
(3) in subsection (c)—

(A) in paragraph (3), by inserting at the end the following:

“(D) INFORMATION ABOUT INDIVIDUALS WITH WHOM CHILDREN ARE PLACED.—

“(i) INFORMATION TO BE PROVIDED TO HOMELAND SECURITY.—Before placing a child with an individual, the Secretary of Health and Human Services shall provide to the Secretary of Homeland Security, regarding the individual with whom the child will be placed, information on—

“(I) the name of the individual;

“(II) the social security number of the individual;

“(III) the date of birth of the individual;

“(IV) the location of the individual’s residence where the child will be placed;

“(V) the immigration status of the individual, if known; and

“(VI) contact information for the individual.
“(ii) Activities of the Secretary of Homeland Security.—Not later than 30 days after receiving the information listed in clause (i), the Secretary of Homeland Security, upon determining that an individual with whom a child is placed is unlawfully present in the United States and not in removal proceedings pursuant to chapter 4 of title II of the Immigration and Nationality Act (8 U.S.C. 1221 et seq.), shall initiate such removal proceedings.”; and

(B) in paragraph (5)—

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

(ii) by striking “have counsel to represent them” and inserting “have access to counsel to represent them”.

(b) Effective Date.—The amendments made by this section shall apply to any unaccompanied alien child apprehended on or after the date that is 30 days after the date of enactment of this Act.
SEC. 404. SPECIAL IMMIGRANT JUVENILE STATUS FOR IMMIGRANTS UNABLE TO REUNITE WITH EITHER PARENT.


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

(2) in clause (iii)—

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

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

(C) by adding at the end the following:

“(III) an alien may not be granted special immigrant status under this subparagraph if the alien’s reunification with any one parent or legal guardian is not precluded by abuse, neglect, abandonment, or any similar cause under State law;”.

“
TITLE V—VISA OVERSTAYS

PENALTIES

SEC. 501. SHORT TITLE.

This title may be cited as the “Visa Overstays Penalties Act”.

SEC. 502. EXPANDED PENALTIES FOR ILLEGAL ENTRY OR PRESENCE.

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

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

(2) in subsection (b)—

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

(B) in paragraph (2), by inserting after “in the case of an alien who has been previously subject to a civil penalty under this subsection” the following: “or subsection (e)(2)(B)”;

(3) by adding at the end the following:

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

“(A) to maintain the nonimmigrant status in which the alien was admitted, or to which it was changed under section 248, including complying with the period of stay authorized by the Secretary of Homeland Security in connection with such status; or

“(B) to comply otherwise with the conditions of such nonimmigrant status.

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

“(A) shall—

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

“(ii) for a subsequent commission of such a violation, or if the alien was previously convicted of an offense under subsection (a), be fined under such title 18, or imprisoned not more than 2 years, or both; and
“(B) in addition to, and not in lieu of, any penalty under subparagraph (A) and any other criminal or civil penalties that may be imposed, shall be subject to a civil penalty of—

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

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

TITLE VI—IMMIGRATION
PAROLE REFORM

SEC. 601. SHORT TITLE.

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

SEC. 602. IMMIGRATION PAROLE REFORM.

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

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

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

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

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

“(iii) is not otherwise inadmissible or re-
moveable; and

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

“(C) The Secretary of Homeland Security may
grant parole to any alien—
“(i) who is a national of the Republic of Cuba and is living in the Republic of Cuba;

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

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

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

“(v) who is not otherwise inadmissible; and

“(vi) who is receiving a grant of parole in furtherance of the commitment of the United States to the minimum level of annual legal migration of Cuban nationals to the United States specified in the U.S.–Cuba Joint Communiqué on Migration, done at New York September 9, 1994, and reaffirmed in the Cuba-United States: Joint Statement on Normalization of Migration, Building on the Agreement of September 9, 1994, done at New York May 2, 1995.

“(D) The Secretary of Homeland Security may grant parole to an alien who is returned to a contiguous country under section 235(b)(2)(C) to allow the alien to attend the alien’s immigration hearing. The grant of parole shall not exceed the time re-
quired for the alien to be escorted to, and attend, the alien’s immigration hearing scheduled on the same calendar day as the grant, and to immediately thereafter be escorted back to the contiguous country. A grant of parole under this subparagraph shall not be considered for purposes of determining whether the alien is inadmissible under this Act.

“(E) For purposes of determining an alien’s eligibility for parole under subparagraph (A), an urgent humanitarian reason shall be limited to circumstances in which the alien establishes that—

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

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

“(bb) the medical emergency is life-threatening and there is insufficient time for the alien to be admitted to the United States through the normal visa process;

“(ii) the alien is the parent or legal guardian of an alien described in clause (i) and the alien described in clause (i) is a minor;

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

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

“(v) the alien is seeking to attend the funeral of a close family member and the alien could not arrive in the United States in time to attend such funeral if the alien were to be admitted to the United States through the normal visa process;

“(vi) the alien is an adopted child with an urgent medical condition who is in the legal custody of the petitioner for a final adoption-related visa and whose medical treatment is required before the expected award of a final adoption-related visa; or

“(vii) the alien is a lawful applicant for adjustment of status under section 245 and is returning to the United States after temporary travel abroad.
“(F) For purposes of determining an alien’s eligibility for parole under subparagraph (A), a significant public benefit may be determined to result from the parole of an alien only if—

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

“(ii) the alien’s presence is required by the Government in furtherance of such law enforcement matter; and

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

“(G) For purposes of determining an alien’s eligibility for parole under subparagraph (A), the term ‘case-by-case basis’ means that the facts in each individual case are considered and parole is not granted based on membership in a defined class of aliens to be granted parole. The fact that aliens are considered for or granted parole one-by-one and not as a group is not sufficient to establish that the parole decision is made on a ‘case-by-case basis’. 
“(H) The Secretary of Homeland Security may not use the parole authority under this paragraph to parole an alien into the United States for any reason or purpose other than those described in subparagraphs (B), (C), (D), (E), and (F).

“(I) An alien granted parole may not accept employment, except that an alien granted parole pursuant to subparagraph (B) or (C) is authorized to accept employment for the duration of the parole, as evidenced by an employment authorization document issued by the Secretary of Homeland Security.

“(J) Parole granted after a departure from the United States shall not be regarded as an admission of the alien. An alien granted parole, whether as an initial grant of parole or parole upon reentry into the United States, is not eligible to adjust status to lawful permanent residence or for any other immigration benefit if the immigration status the alien had at the time of departure did not authorize the alien to adjust status or to be eligible for such benefit.

“(K)(i) Except as provided in clauses (ii) and (iii), parole shall be granted to an alien under this paragraph for the shorter of—
“(I) a period of sufficient length to accomplish the activity described in subparagraph (D), (E), or (F) for which the alien was granted parole; or

“(II) 1 year.

“(ii) Grants of parole pursuant to subparagraph (A) may be extended once, in the discretion of the Secretary, for an additional period that is the shorter of—

“(I) the period that is necessary to accomplish the activity described in subparagraph (E) or (F) for which the alien was granted parole; or

“(II) 1 year.

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

“(L) Not later than 90 days after the last day of each fiscal year, the Secretary of Homeland Security shall submit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary
of the House of Representatives and make available
to the public, a report—

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

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

“(I) the duration of parole;

“(II) the type of parole; and

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

SEC. 603. IMPLEMENTATION.

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

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

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

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

(3) Aliens who were paroled into the United
States pursuant to section 212(d)(5)(A) of the Im-
migration and Nationality Act (8 U.S.C.
1182(d)(5)(A)) before January 1, 2023, shall con-
tinue to be subject to the terms of parole that were
in effect on the date on which their respective parole
was approved.

SEC. 604. CAUSE OF ACTION.

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

SEC. 605. SEVERABILITY.

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

TITLE VII—LEGAL WORKFORCE

SEC. 701. SHORT TITLE.

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

SEC. 702. EMPLOYMENT ELIGIBILITY VERIFICATION PROCESS.

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

“(b) EMPLOYMENT ELIGIBILITY VERIFICATION PROCESS.—

“(1) NEW HIRES, RECRUITMENT, AND REFERRAL.—The requirements referred to in paragraphs (1)(B) and (3) of subsection (a) are, in the case of a person or other entity hiring, recruiting, or referring an individual for employment in the United States, the following:

“(A) ATTESTATION AFTER EXAMINATION OF DOCUMENTATION.—

“(i) ATTESTATION.—During the verification period (as defined in subparagraph (E)), the person or entity shall attest, under penalty of perjury and on a form, including electronic and telephonic
formats, designated or established by the Secretary by regulation not later than 6 months after the date of the enactment of the Legal Workforce Act, that it has verified that the individual is not an unauthorized alien by—

“(I) obtaining from the individual the individual’s social security account number or United States passport number and recording the number on the form (if the individual claims to have been issued such a number), and, if the individual does not attest to United States nationality under subparagraph (B), obtaining such identification or authorization number established by the Department of Homeland Security for the alien as the Secretary of Homeland Security may specify, and recording such number on the form; and

“(II) examining—

“(aa) a document relating to the individual presenting it described in clause (ii); or
“(bb) a document relating to the individual presenting it described in clause (iii) and a document relating to the individual presenting it described in clause (iv).

“(ii) DOCUMENTS EVIDENCING EMPLOYMENT AUTHORIZATION AND ESTABLISHING IDENTITY.—A document described in this subparagraph is an individual’s—

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

“(II) unexpired permanent resident card that contains a photograph;

“(III) unexpired employment authorization card that contains a photograph;

“(IV) in the case of a non-immigrant alien authorized to work for a specific employer incident to status, a foreign passport with Form I–94 or Form I–94A, or other documentation as designated by the Secretary specifying the alien’s non-
immigrant status as long as the period of status has not yet expired and the proposed employment is not in conflict with any restrictions or limitations identified in the documentation;

“(V) passport from the Federated States of Micronesia (FSM) or the Republic of the Marshall Islands (RMI) with Form I–94 or Form I–94A, or other documentation as designated by the Secretary, indicating nonimmigrant admission under the Compact of Free Association Between the United States and the FSM or RMI; or

“(VI) other document designated by the Secretary of Homeland Security, if the document—

“(aa) contains a photograph of the individual and biometric identification data from the individual and such other personal identifying information relating to the individual as the Secretary of Homeland Security finds, by
regulation, sufficient for purposes of this clause;

“(bb) is evidence of authorization of employment in the United States; and

“(cc) contains security features to make it resistant to tampering, counterfeiting, and fraudulent use.

“(iii) DOCUMENTS EVIDENCING EMPLOYMENT AUTHORIZATION.—A document described in this subparagraph is an individual’s social security account number card (other than such a card which specifies on the face that the issuance of the card does not authorize employment in the United States).

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

“(I) an individual’s unexpired State issued driver’s license or identification card if it contains a photograph and information such as name,
date of birth, gender, height, eye color, and address;

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

“(III) an individual’s unexpired Native American tribal identification document issued by a tribal entity recognized by the Bureau of Indian Affairs; or

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

“(v) AUTHORITY TO PROHIBIT USE OF CERTAIN DOCUMENTS.—If the Secretary of Homeland Security finds, by regulation, that any document described in clause (i), (ii), or (iii) as establishing employment authorization or identity does not reliably establish such authorization or identity or is being used fraudulently to an unacceptable degree, the Secretary may prohibit or place conditions on its use for purposes of this paragraph.
“(vi) SIGNATURE.—Such attestation may be manifested by either a handwritten or electronic signature.

“(B) INDIVIDUAL ATTESTATION OF EMPLOYMENT AUTHORIZATION.—During the verification period (as defined in subparagraph (E)), the individual shall attest, under penalty of perjury on the form designated or established for purposes of subparagraph (A), that the individual is a citizen or national of the United States, an alien lawfully admitted for permanent residence, or an alien who is authorized under this Act or by the Secretary of Homeland Security to be hired, recruited, or referred for such employment. Such attestation may be manifested by either a handwritten or electronic signature. The individual shall also provide that individual’s social security account number or United States passport number (if the individual claims to have been issued such a number), and, if the individual does not attest to United States nationality under this subparagraph, such identification or authorization number established by the Department of Homeland
Security for the alien as the Secretary may specify.

“(C) Retention of verification form and verification.—

“(i) In general.—After completion of such form in accordance with subparagraphs (A) and (B), the person or entity shall—

“(I) retain a paper, microfiche, microfilm, or electronic version of the form and make it available for inspection by officers of the Department of Homeland Security, the Department of Justice, or the Department of Labor during a period beginning on the date of the recruiting or referral of the individual, or, in the case of the hiring of an individual, the date on which the verification is completed, and ending—

“(aa) in the case of the recruiting or referral of an individual, 3 years after the date of the recruiting or referral; and
“(bb) in the case of the hiring of an individual, the later of 3 years after the date the verification is completed or one year after the date the individual’s employment is terminated; and

“(II) during the verification period (as defined in subparagraph (E)), make an inquiry, as provided in subsection (d), using the verification system to seek verification of the identity and employment eligibility of an individual.

“(ii) CONFIRMATION.—

“(I) CONFIRMATION RECEIVED.—If the person or other entity receives an appropriate confirmation of an individual’s identity and work eligibility under the verification system within the time period specified, the person or entity shall record on the form an appropriate code that is provided under the system and that indicates a final confirmation of such
identity and work eligibility of the individual.

“(II) Tentative nonconfirmation received.—If the person or other entity receives a tentative non-confirmation of an individual’s identity or work eligibility under the verification system within the time period specified, the person or entity shall so inform the individual for whom the verification is sought. If the individual does not contest the non-confirmation within the time period specified, the nonconfirmation shall be considered final. The person or entity shall then record on the form an appropriate code which has been provided under the system to indicate a final nonconfirmation. If the individual does contest the nonconfirmation, the individual shall utilize the process for secondary verification provided under subsection (d). The nonconfirmation will remain tentative until a final confirmation or noncon-
firmation is provided by the verification system within the time period specified. In no case shall an employer terminate employment of an individual because of a failure of the individual to have identity and work eligibility confirmed under this section until a nonconfirmation becomes final. Nothing in this clause shall apply to a termination of employment for any reason other than because of such a failure. In no case shall an employer rescind the offer of employment to an individual because of a failure of the individual to have identity and work eligibility confirmed under this subsection until a nonconfirmation becomes final. Nothing in this subclause shall apply to a recission of the offer of employment for any reason other than because of such a failure.

“(III) Final Confirmation or Nonconfirmation Received.—If a final confirmation or nonconfirmation is provided by the verification system
regarding an individual, the person or entity shall record on the form an appropriate code that is provided under the system and that indicates a confirmation or nonconfirmation of identity and work eligibility of the individual.

“(IV) EXTENSION OF TIME.—If the person or other entity in good faith attempts to make an inquiry during the time period specified and the verification system has registered that not all inquiries were received during such time, the person or entity may make an inquiry in the first subsequent working day in which the verification system registers that it has received all inquiries. If the verification system cannot receive inquiries at all times during a day, the person or entity merely has to assert that the entity attempted to make the inquiry on that day for the previous sentence to apply to such an inquiry,
and does not have to provide any additional proof concerning such inquiry.

“(V) Consequences of non-confirmation.—

“(aa) Termination or notification of continued employment.—If the person or other entity has received a final nonconfirmation regarding an individual, the person or entity may terminate employment of the individual (or decline to recruit or refer the individual). If the person or entity does not terminate employment of the individual or proceeds to recruit or refer the individual, the person or entity shall notify the Secretary of Homeland Security of such fact through the verification system or in such other manner as the Secretary may specify.

“(bb) Failure to notify.—If the person or entity fails to provide notice with re-
spect to an individual as required under item (aa), the failure is deemed to constitute a violation of subsection (a)(1)(A) with respect to that individual.

“(VI) CONTINUED EMPLOYMENT AFTER FINAL NONCONFIRMATION.—If the person or other entity continues to employ (or to recruit or refer) an individual after receiving final nonconfirmation, a rebuttable presumption is created that the person or entity has violated subsection (a)(1)(A).

“(D) EFFECTIVE DATES OF NEW PROCEDURES.—

“(i) HIRING.—Except as provided in clause (iii), the provisions of this paragraph shall apply to a person or other entity hiring an individual for employment in the United States as follows:

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

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

“(III) With respect to employers having 20 or more employees in the United States, but less than 500 employees in the United States, on the date of the enactment of the Legal Workforce Act, on the date that is 18 months after the date of the enactment of such Act.

“(IV) With respect to employers having one or more employees in the United States, but less than 20 employees in the United States, on the date of the enactment of the Legal Workforce Act, on the date that is 24
months after the date of the enactment of such Act.

“(ii) Recruiting and Referring.—

Except as provided in clause (iii), the provisions of this paragraph shall apply to a person or other entity recruiting or referring an individual for employment in the United States on the date that is 12 months after the date of the enactment of the Legal Workforce Act.

“(iii) Agricultural Labor or Services.—With respect to an employee performing agricultural labor or services, this paragraph shall not apply with respect to the verification of the employee until the date that is 36 months after the date of the enactment of the Legal Workforce Act.

For purposes of the preceding sentence, the term ‘agricultural labor or services’ has the meaning given such term by the Secretary of Agriculture in regulations and includes agricultural labor as defined in section 3121(g) of the Internal Revenue Code of 1986, agriculture as defined in section 3(f) of the Fair Labor Standards Act of
1938 (29 U.S.C. 203(f)), the handling, planting, drying, packing, packaging, processing, freezing, or grading prior to delivery for storage of any agricultural or horticultural commodity in its unmanufactured state, all activities required for the preparation, processing or manufacturing of a product of agriculture (as such term is defined in such section 3(f)) for further distribution, and activities similar to all the foregoing as they relate to fish or shellfish facilities. An employee described in this clause shall not be counted for purposes of clause (i).

“(iv) EXTENSIONS.—

“(I) ON REQUEST.—Upon request by an employer having 50 or fewer employees, the Secretary shall allow a one-time 6-month extension of the effective date set out in this subparagraph applicable to such employer. Such request shall be made to the Secretary and shall be made prior to such effective date.
“(II) FOLLOWING REPORT.—If the study under section 715 of the Legal Workforce Act has been submitted in accordance with such section, the Secretary of Homeland Security may extend the effective date set out in clause (iii) on a one-time basis for 12 months.

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

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

“(II) Subtitle A of title IV of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note), as in effect before the effective date in section 7(e) of the Legal Workforce Act.
“(III) Any other provision of Federal law requiring the person or entity to participate in the E–Verify Program described in section 403(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note), as in effect before the effective date in section 7(c) of the Legal Workforce Act, including Executive Order 13465 (8 U.S.C. 1324a note; relating to Government procurement).

“(E) VERIFICATION PERIOD DEFINED.—

“(i) In general.—For purposes of this paragraph:

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

“(II) In the case of hiring, the term ‘verification period’ means the period beginning on the date on which an offer of employment is extended and ending on the date that is three business days after the date of hire,
except as provided in clause (iii). The offer of employment may be conditioned in accordance with clause (ii).

“(ii) JOB OFFER MAY BE CONDITIONAL.—A person or other entity may offer a prospective employee an employment position that is conditioned on final verification of the identity and employment eligibility of the employee using the procedures established under this paragraph.

“(iii) SPECIAL RULE.—Notwithstanding clause (i)(II), in the case of an alien who is authorized for employment and who provides evidence from the Social Security Administration that the alien has applied for a social security account number, the verification period ends three business days after the alien receives the social security account number.

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

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

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

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

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

“(iv) With respect to employers hav-

ing one or more employees in the United
States, but less than 20 employees in the
United States, on the date of the enact-
ment of the Legal Workforce Act, begin-
ning on the date that is 24 months after
the date of the enactment of such Act.

“(B) AGRICULTURAL LABOR OR SERV-
ICES.—With respect to an employee performing
agricultural labor or services, or an employee
recruited or referred by a farm labor contractor
(as defined in section 3 of the Migrant and Sea-
sonal Agricultural Worker Protection Act (29
U.S.C. 1801)), subparagraph (A) shall not
apply with respect to the reverification of the
employee until the date that is 36 months after
the date of the enactment of the Legal Work-
force Act. For purposes of the preceding sen-
tence, the term ‘agricultural labor or services’
has the meaning given such term by the Sec-
retary of Agriculture in regulations and in-
cludes agricultural labor as defined in section
3121(g) of the Internal Revenue Code of 1986,
agriculture as defined in section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)), the handling, planting, drying, packing, packaging, processing, freezing, or grading prior to delivery for storage of any agricultural or horticultural commodity in its unmanufactured state, all activities required for the preparation, processing, or manufacturing of a product of agriculture (as such term is defined in such section 3(f)) for further distribution, and activities similar to all the foregoing as they relate to fish or shellfish facilities. An employee described in this subparagraph shall not be counted for purposes of subparagraph (A).

“(C) Reverification.—Paragraph (1)(C)(ii) shall apply to reverifications pursuant to this paragraph on the same basis as it applies to verifications pursuant to paragraph (1), except that employers shall—

“(i) use a form designated or established by the Secretary by regulation for purposes of this paragraph; and

“(ii) retain a paper, microfiche, microfilm, or electronic version of the form and make it available for inspection by officers
of the Department of Homeland Security, 
the Department of Justice, or the Depart-
ment of Labor during the period beginning 
on the date the reverification commences 
and ending on the date that is the later of 
3 years after the date of such reverification 
or 1 year after the date the individual’s 
employment is terminated.

“(3) PREVIOUSLY HIRED INDIVIDUALS.—

“(A) ON A MANDATORY BASIS FOR CER-

TAIN EMPLOYEES.—

“(i) IN GENERAL.—Not later than the 
date that is 6 months after the date of the
enactment of the Legal Workforce Act, an
employer shall make an inquiry, as pro-
vided in subsection (d), using the
verification system to seek verification of
the identity and employment eligibility of
any individual described in clause (ii) em-
ployed by the employer whose employment
eligibility has not been verified under the
E–Verify Program described in section
403(a) of the Illegal Immigration Reform 
and Immigrant Responsibility Act of 1996
“(ii) INDIVIDUALS DESCRIBED.—An individual described in this clause is any of the following:

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

“(II) An employee who requires a Federal security clearance working in a Federal, State, or local government building, a military base, a nuclear energy site, a weapons site, or an airport or other facility that requires workers to carry a Transportation Worker Identification Credential (TWIC).

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

“(aa) is not applicable to individuals who have a clearance under Homeland Security Presidential Directive 12 (HSPD 12 clearance), are administrative or overhead personnel, or are working solely on contracts that pro-
vide Commercial Off The Shelf goods or services as set forth by the Federal Acquisition Regulatory Council, unless they are subject to verification under subclause (II); and

“(bb) only applies to contracts over the simple acquisition threshold as defined in section 2.101 of title 48, Code of Federal Regulations.

“(B) On a mandatory basis for multiple users of same Social Security Account Number.—In the case of an employer who is required by this subsection to use the verification system described in subsection (d), or has elected voluntarily to use such system, the employer shall make inquiries to the system in accordance with the following:

“(i) The Commissioner of Social Security shall notify annually employees (at the employee address listed on the Wage and Tax Statement) who submit a social security account number to which more than one employer reports income and for which
there is a pattern of unusual multiple use. The notification letter shall identify the number of employers to which income is being reported as well as sufficient information notifying the employee of the process to contact the Social Security Administration Fraud Hotline if the employee believes the employee’s identity may have been stolen. The notice shall not share information protected as private, in order to avoid any recipient of the notice from being in the position to further commit or begin committing identity theft.

“(ii) If the person to whom the social security account number was issued by the Social Security Administration has been identified and confirmed by the Commissioner, and indicates that the social security account number was used without their knowledge, the Secretary and the Commissioner shall lock the social security account number for employment eligibility verification purposes and shall notify the employers of the individuals who wrongfully submitted the social security account
number that the employee may not be work eligible.

“(iii) Each employer receiving such notification of an incorrect social security account number under clause (ii) shall use the verification system described in subsection (d) to check the work eligibility status of the applicable employee within 10 business days of receipt of the notification.

“(C) ON A VOLUNTARY BASIS.—Subject to paragraph (2), and subparagraphs (A) through (C) of this paragraph, beginning on the date that is 30 days after the date of the enactment of the Legal Workforce Act, an employer may make an inquiry, as provided in subsection (d), using the verification system to seek verification of the identity and employment eligibility of any individual employed by the employer. If an employer chooses voluntarily to seek verification of any individual employed by the employer, the employer shall seek verification of all individuals employed at the same geographic location or, at the option of the employer, all individuals employed within the same job category, as the employee with respect to whom the employer
seeks voluntarily to use the verification system. An employer’s decision about whether or not voluntarily to seek verification of its current workforce under this subparagraph may not be considered by any government agency in any proceeding, investigation, or review provided for in this Act.

“(D) VERIFICATION.—Paragraph (1)(C)(ii) shall apply to verifications pursuant to this paragraph on the same basis as it applies to verifications pursuant to paragraph (1), except that employers shall—

“(i) use a form designated or established by the Secretary by regulation for purposes of this paragraph; and

“(ii) retain a paper, microfiche, microfilm, or electronic version of the form and make it available for inspection by officers of the Department of Homeland Security, the Department of Justice, or the Department of Labor during the period beginning on the date the verification commences and ending on the date that is the later of 3 years after the date of such verification or
1 year after the date the individual’s em-
ployment is terminated.

“(4) EARLY COMPLIANCE.—

“(A) FORMER E–VERIFY REQUIRED USERS,
including federal contractors.—Notwith-
standing the deadlines in paragraphs (1) and
(2), beginning on the date of the enactment of
the Legal Workforce Act, the Secretary is au-
thorized to commence requiring employers re-
quired to participate in the E–Verify Program
described in section 403(a) of the Illegal Immi-
gration Reform and Immigrant Responsibility
Act of 1996 (8 U.S.C. 1324a note), including
employers required to participate in such pro-
gram by reason of Federal acquisition laws
(and regulations promulgated under those laws,
including the Federal Acquisition Regulation),
to commence compliance with the requirements
of this subsection (and any additional require-
ments of such Federal acquisition laws and reg-
ulation) in lieu of any requirement to partici-
pate in the E–Verify Program.

“(B) FORMER E–VERIFY VOLUNTARY
users and others desiring early compli-
ance.—Notwithstanding the deadlines in para-
graphs (1) and (2), beginning on the date of
the enactment of the Legal Workforce Act, the
Secretary shall provide for the voluntary com-
pliance with the requirements of this subsection
by employers voluntarily electing to participate
in the E–Verify Program described in section
403(a) of the Illegal Immigration Reform and
1324a note) before such date, as well as by
other employers seeking voluntary early compli-
ance.

“(5) Copying of documentation per-
mitted.—Notwithstanding any other provision of
law, the person or entity may copy a document pre-
sented by an individual pursuant to this subsection
and may retain the copy, but only (except as other-
wise permitted under law) for the purpose of com-
plying with the requirements of this subsection.

“(6) Limitation on use of forms.—A form
designated or established by the Secretary of Home-
land Security under this subsection and any infor-
mation contained in or appended to such form, may
not be used for purposes other than for enforcement
of this Act and any other provision of Federal crimi-
nal law.
“(7) GOOD FAITH COMPLIANCE.—

“(A) IN GENERAL.—Except as otherwise provided in this subsection, a person or entity is considered to have complied with a requirement of this subsection notwithstanding a technical or procedural failure to meet such requirement if there was a good faith attempt to comply with the requirement.

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

“(i) the failure is not de minimus;

“(ii) the Secretary of Homeland Security has explained to the person or entity the basis for the failure and why it is not de minimus;

“(iii) the person or entity has been provided a period of not less than 30 calendar days (beginning after the date of the explanation) within which to correct the failure; and

“(iv) the person or entity has not corrected the failure voluntarily within such period.
“(C) Exception for pattern or practice violators.—Subparagraph (A) shall not apply to a person or entity that has or is engaging in a pattern or practice of violations of subsection (a)(1)(A) or (a)(2).

“(8) Single extension of deadlines upon certification.—In a case in which the Secretary of Homeland Security has certified to the Congress that the employment eligibility verification system required under subsection (d) will not be fully operational by the date that is 6 months after the date of the enactment of the Legal Workforce Act, each deadline established under this section for an employer to make an inquiry using such system shall be extended by 6 months. No other extension of such a deadline shall be made except as authorized under paragraph (1)(D)(iv).”.

(b) Date of hire.—Section 274A(h) of the Immigration and Nationality Act (8 U.S.C. 1324a(h)) is amended by adding at the end the following:

“(4) Definition of date of hire.—As used in this section, the term ‘date of hire’ means the date of actual commencement of employment for wages or other remuneration, unless otherwise specified.”.
SEC. 703. EMPLOYMENT ELIGIBILITY VERIFICATION SYSTEM.

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

“(d) EMPLOYMENT ELIGIBILITY VERIFICATION SYSTEM.—

“(1) IN GENERAL.—Patterned on the employment eligibility confirmation system established under section 404 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note), the Secretary of Homeland Security shall establish and administer a verification system through which the Secretary (or a designee of the Secretary, which may be a nongovernmental entity)—

“(A) responds to inquiries made by persons at any time through a toll-free telephone line and other toll-free electronic media concerning an individual’s identity and whether the individual is authorized to be employed; and

“(B) maintains records of the inquiries that were made, of verifications provided (or not provided), and of the codes provided to inquirers as evidence of their compliance with their obligations under this section.
“(2) INITIAL RESPONSE.—The verification system shall provide confirmation or a tentative non-confirmation of an individual’s identity and employment eligibility within 3 working days of the initial inquiry. If providing confirmation or tentative non-confirmation, the verification system shall provide an appropriate code indicating such confirmation or such nonconfirmation.

“(3) SECONDARY CONFIRMATION PROCESS IN CASE OF TENTATIVE NONCONFIRMATION.—In cases of tentative nonconfirmation, the Secretary shall specify, in consultation with the Commissioner of Social Security, an available secondary verification process to confirm the validity of information provided and to provide a final confirmation or nonconfirmation not later than 10 working days after the date on which the notice of the tentative nonconfirmation is received by the employee. The Secretary, in consultation with the Commissioner, may extend this deadline once on a case-by-case basis for a period of 10 working days, and if the time is extended, shall document such extension within the verification system. The Secretary, in consultation with the Commissioner, shall notify the employee and employer of such extension. The Secretary, in consulta-
tion with the Commissioner, shall create a standard process of such extension and notification and shall make a description of such process available to the public. When final confirmation or nonconfirmation is provided, the verification system shall provide an appropriate code indicating such confirmation or nonconfirmation.

“(4) Design and Operation of System.— The verification system shall be designed and operated—

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

“(B) to respond to all inquiries made by such persons and entities on whether individuals are authorized to be employed and to register all times when such inquiries are not received;

“(C) with appropriate administrative, technical, and physical safeguards to prevent unauthorized disclosure of personal information;

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

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

“(ii) the exclusion of certain individuals from consideration for employment as a result of a perceived likelihood that additional verification will be required, beyond what is required for most job applicants;

“(E) to maximize the prevention of identity theft use in the system; and

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

“(i) Individuals hired, referred, or recruited, in accordance with paragraph (1) or (4) of subsection (b).

“(ii) Employees and prospective employees, in accordance with paragraph (1), (2), (3), or (4) of subsection (b).

“(iii) Individuals seeking to confirm their own employment eligibility on a voluntary basis.

“(5) RESPONSIBILITIES OF COMMISSIONER OF SOCIAL SECURITY.—As part of the verification system, the Commissioner of Social Security, in con-
sultation with the Secretary of Homeland Security (and any designee of the Secretary selected to estab-
lish and administer the verification system), shall es-
establish a reliable, secure method, which, within the
time periods specified under paragraphs (2) and (3),
compares the name and social security account num-
ber provided in an inquiry against such information
maintained by the Commissioner in order to validate
(or not validate) the information provided regarding
an individual whose identity and employment eligi-
ability must be confirmed, the correspondence of the
name and number, and whether the individual has
presented a social security account number that is
not valid for employment. The Commissioner shall
not disclose or release social security information
(other than such confirmation or nonconfirmation)
under the verification system except as provided for
in this section or section 205(c)(2)(I) of the Social
Security Act.

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

“(7) UPDATING INFORMATION.—The Commissioner of Social Security and the Secretary of Homeland Security shall update their information in a manner that promotes the maximum accuracy and shall provide a process for the prompt correction of erroneous information, including instances in which it is brought to their attention in the secondary verification process described in paragraph (3).

“(8) LIMITATION ON USE OF THE VERIFICATION SYSTEM AND ANY RELATED SYSTEMS.—
“(A) NO NATIONAL IDENTIFICATION CARD.—Nothing in this section shall be construed to authorize, directly or indirectly, the issuance or use of national identification cards or the establishment of a national identification card.

“(B) CRITICAL INFRASTRUCTURE.—The Secretary may authorize or direct any person or entity responsible for granting access to, protecting, securing, operating, administering, or regulating part of the critical infrastructure (as defined in section 1016(e) of the Critical Infrastructure Protection Act of 2001 (42 U.S.C. 5195c(e))) to use the verification system to the extent the Secretary determines that such use will assist in the protection of the critical infrastructure.

“(9) REMEDIES.—If an individual alleges that the individual would not have been dismissed from a job but for an error of the verification mechanism, the individual may seek compensation only through the mechanism of the Federal Tort Claims Act, and injunctive relief to correct such error. No class action may be brought under this paragraph.”
SEC. 704. RECRUITMENT, REFERRAL, AND CONTINUATION
OF EMPLOYMENT.

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

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

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

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

and

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

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

“(5) DEFINITION OF RECRUIT OR REFER.—As
used in this section, the term ‘refer’ means the act
of sending or directing a person who is in the United
States or transmitting documentation or information
to another, directly or indirectly, with the intent of
obtaining employment in the United States for such person. Only persons or entities referring for remuneration (whether on a retainer or contingency basis) are included in the definition, except that union hiring halls that refer union members or nonunion individuals who pay union membership dues are included in the definition whether or not they receive remuneration, as are labor service entities or labor service agencies, whether public, private, for-profit, or nonprofit, that refer, dispatch, or otherwise facilitate the hiring of laborers for any period of time by a third party. As used in this section, the term ‘recruit’ means the act of soliciting a person who is in the United States, directly or indirectly, and referring the person to another with the intent of obtaining employment for that person. Only persons or entities referring for remuneration (whether on a retainer or contingency basis) are included in the definition, except that union hiring halls that refer union members or nonunion individuals who pay union membership dues are included in this definition whether or not they receive remuneration, as are labor service entities or labor service agencies, whether public, private, for-profit, or nonprofit that
recruit, dispatch, or otherwise facilitate the hiring of laborers for any period of time by a third party.”.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date that is 1 year after the date of the enactment of this Act, except that the amendments made by subsection (a) shall take effect 6 months after the date of the enactment of this Act insofar as such amendments relate to continuation of employment.

SEC. 705. GOOD FAITH DEFENSE.

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

“(3) GOOD FAITH DEFENSE.—

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

“(i) shall not be liable to a job applicant, an employee, the Federal Government, or a State or local government, under Federal, State, or local criminal or civil law for any employment-related action
taken with respect to a job applicant or
employee in good-faith reliance on informa-
tion provided through the system estab-
lished under subsection (d); and

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

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

“(C) FAILURE TO SEEK AND OBTAIN
VERIFICATION.—Subject to the effective dates
and other deadlines applicable under subsection
(b), in the case of a person or entity in the
United States that hires, or continues to employ, an individual, or recruits or refers an individual for employment, the following requirements apply:

“(i) Failure to seek verification.—

“(I) In general.—If the person or entity has not made an inquiry, under the mechanism established under subsection (d) and in accordance with the timeframes established under subsection (b), seeking verification of the identity and work eligibility of the individual, the defense under subparagraph (A) shall not be considered to apply with respect to any employment, except as provided in subclause (II).

“(II) Special rule for failure of verification mechanism.—If such a person or entity in good faith attempts to make an inquiry in order to qualify for the defense under subparagraph (A) and the verification mechanism has registered that not all
inquiries were responded to during the relevant time, the person or entity can make an inquiry until the end of the first subsequent working day in which the verification mechanism registers no nonresponses and qualify for such defense.

“(ii) **Failure to Obtain Verification**.—If the person or entity has made the inquiry described in clause (i)(I) but has not received an appropriate verification of such identity and work eligibility under such mechanism within the time period specified under subsection (d)(2) after the time the verification inquiry was received, the defense under subparagraph (A) shall not be considered to apply with respect to any employment after the end of such time period.”

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

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

“(2) **Preemption.**—
“(A) Single, National Policy.—The provisions of this section preempt any State or local law, ordinance, policy, or rule, including any criminal or civil fine or penalty structure, insofar as they may now or hereafter relate to the hiring, continued employment, or status verification for employment eligibility purposes, of unauthorized aliens.

“(B) State enforcement of federal law.—

“(i) Business licensing.—A State, locality, municipality, or political subdivision may exercise its authority over business licensing and similar laws as a penalty for failure to use the verification system described in subsection (d) to verify employment eligibility when and as required under subsection (b).

“(ii) General rules.—A State, at its own cost, may enforce the provisions of this section, but only insofar as such State follows the Federal regulations implementing this section, applies the Federal penalty structure set out in this section, and complies with all Federal rules and
guidance concerning implementation of this
section. Such State may collect any fines
assessed under this section. An employer
may not be subject to enforcement, includ-
ing audit and investigation, by both a Fed-
eral agency and a State for the same viola-
tion under this section. Whichever entity,
the Federal agency or the State, is first to
initiate the enforcement action, has the
right of first refusal to proceed with the
enforcement action. The Secretary must
provide copies of all guidance, training,
and field instructions provided to Federal
officials implementing the provisions of
this section to each State.”.

SEC. 707. REPEAL.

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

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

(c) EFFECTIVE DATE.—This section shall take effect on the date that is 30 months after the date of the enactment of this Act.

(d) CLERICAL AMENDMENT.—The table of sections, in section 1(d) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, is amended by striking the items relating to subtitle A of title IV.

SEC. 708. PENALTIES.

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

(1) in subsection (e)(1)—

(A) by striking “Attorney General” each place such term appears and inserting “Secretary of Homeland Security”; and

(B) in subparagraph (D), by striking “Service” and inserting “Department of Homeland Security”; 

(2) in subsection (e)(4)—
(A) in subparagraph (A), in the matter before clause (i), by inserting “, subject to paragraph (10),” after “in an amount”;

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

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

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

(E) by moving the margin of the continuation text following subparagraph (B) two ems to the left and by amending subparagraph (B) to read as follows:

“(B) may require the person or entity to take such other remedial action as is appropriate.”;

(3) in subsection (e)(5)—

(A) in the paragraph heading, strike “PAPERWORK”;
(B) by inserting ‘‘, subject to paragraphs (10) through (12),’’ after ‘‘in an amount’’;

(C) by striking ‘‘$100’’ and inserting ‘‘$1,000’’;

(D) by striking ‘‘$1,000’’ and inserting ‘‘$25,000’’; and

(E) by adding at the end the following: ‘‘Failure by a person or entity to utilize the employment eligibility verification system as required by law, or providing information to the system that the person or entity knows or reasonably believes to be false, shall be treated as a violation of subsection (a)(1)(A).’’;

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

‘‘(10) EXEMPTION FROM PENALTY FOR GOOD FAITH VIOLATION.—In the case of imposition of a civil penalty under paragraph (4)(A) with respect to a violation of subsection (a)(1)(A) or (a)(2) for hiring or continuation of employment or recruitment or referral by person or entity and in the case of imposition of a civil penalty under paragraph (5) for a violation of subsection (a)(1)(B) for hiring or recruitment or referral by a person or entity, the penalty otherwise imposed may be waived or reduced if
the violator establishes that the violator acted in
good faith.

“(11) Mitigation Element.—For purposes of
paragraph (4), the size of the business shall be
taken into account when assessing the level of civil
money penalty.

“(12) Authority to Debar Employers for
Certain Violations.—

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

“(B) Does Not Have Contract, Grant,
Agreement.—If the Secretary of Homeland
Security or the Attorney General wishes to have
a person or entity considered for debarment in
accordance with this paragraph, and such a
person or entity does not hold a Federal con-
tract, grant, or cooperative agreement, the Secretary or Attorney General shall refer the matter to the Administrator of General Services to determine whether to list the person or entity on the List of Parties Excluded from Federal Procurement, and if so, for what duration and under what scope.

“(C) HAS CONTRACT, GRANT, AGREEMENT.—If the Secretary of Homeland Security or the Attorney General wishes to have a person or entity considered for debarment in accordance with this paragraph, and such person or entity holds a Federal contract, grant, or cooperative agreement, the Secretary or Attorney General shall advise all agencies or departments holding a contract, grant, or cooperative agreement with the person or entity of the Government’s interest in having the person or entity considered for debarment, and after soliciting and considering the views of all such agencies and departments, the Secretary or Attorney General may refer the matter to any appropriate lead agency to determine whether to list the person or entity on the List of Parties Ex-
cluded from Federal Procurement, and if so, for
what duration and under what scope.

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

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

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

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

“(C) that is required to investigate those
complaints filed by State or local government
agencies that, on their face, have a substantial
probability of validity;
“(D) that is required to notify the complaining State or local agency of the results of any such investigation conducted; and

“(E) that is required to report to the Congress annually the number of complaints received under this paragraph, the States and localities that filed such complaints, and the resolution of the complaints investigated by the Secretary.”; and

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

“(1) CRIMINAL PENALTY.—Any person or entity which engages in a pattern or practice of violations of subsection (a) (1) or (2) shall be fined not more than $5,000 for each unauthorized alien with respect to which such a violation occurs, imprisoned for not more than 18 months, or both, notwithstanding the provisions of any other Federal law relating to fine levels.”.

SEC. 709. FRAUD AND MISUSE OF DOCUMENTS.

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

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

and

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

SEC. 710. PROTECTION OF SOCIAL SECURITY ADMINISTRATION PROGRAMS.

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

(1) provide funds to the Commissioner for the full costs of the responsibilities of the Commissioner under section 274A(d) of the Immigration and Nationality Act (8 U.S.C. 1324a(d)), as amended by section 3 of this Act, including (but not limited to)—

(A) acquiring, installing, and maintaining technological equipment and systems necessary for the fulfillment of the responsibilities of the Commissioner under such section 274A(d), but
only that portion of such costs that are attributable exclusively to such responsibilities; and

(B) responding to individuals who contest a tentative nonconfirmation provided by the employment eligibility verification system established under such section;

(2) provide such funds annually in advance of the applicable quarter based on estimating methodology agreed to by the Commissioner and the Secretary (except in such instances where the delayed enactment of an annual appropriation may preclude such quarterly payments); and

(3) require an annual accounting and reconciliation of the actual costs incurred and the funds provided under the agreement, which shall be reviewed by the Inspectors General of the Social Security Administration and the Department of Homeland Security.

(b) CONTINUATION OF EMPLOYMENT VERIFICATION IN ABSENCE OF TIMELY AGREEMENT.—In any case in which the agreement required under subsection (a) for any fiscal year beginning on or after October 1, 2023, has not been reached as of October 1 of such fiscal year, the latest agreement between the Commissioner and the Secretary of Homeland Security providing for funding to cover the
costs of the responsibilities of the Commissioner under section 274A(d) of the Immigration and Nationality Act (8 U.S.C. 1324a(d)) shall be deemed in effect on an interim basis for such fiscal year until such time as an agreement required under subsection (a) is subsequently reached, except that the terms of such interim agreement shall be modified by the Director of the Office of Management and Budget to adjust for inflation and any increase or decrease in the volume of requests under the employment eligibility verification system. In any case in which an interim agreement applies for any fiscal year under this subsection, the Commissioner and the Secretary shall, not later than October 1 of such fiscal year, notify the Committee on Ways and Means, the Committee on the Judiciary, and the Committee on Appropriations of the House of Representatives and the Committee on Finance, the Committee on the Judiciary, and the Committee on Appropriations of the Senate of the failure to reach the agreement required under subsection (a) for such fiscal year. Until such time as the agreement required under subsection (a) has been reached for such fiscal year, the Commissioner and the Secretary shall, not later than the end of each 90-day period after October 1 of such fiscal year, notify such Committees of the status of negotiations.
between the Commissioner and the Secretary in order to
reach such an agreement.

SEC. 711. FRAUD PREVENTION.

(a) Blocking Misused Social Security Account
Numbers.—The Secretary of Homeland Security, in con-
sultation with the Commissioner of Social Security, shall
establish a program in which social security account num-
bers that have been identified to be subject to unusual
multiple use in the employment eligibility verification sys-
tem established under section 274A(d) of the Immigration
and Nationality Act (8 U.S.C. 1324a(d)), as amended by
section 3 of this Act, or that are otherwise suspected or
determined to have been compromised by identity fraud
or other misuse, shall be blocked from use for such system
purposes unless the individual using such number is able
to establish, through secure and fair additional security
procedures, that the individual is the legitimate holder of
the number.

(b) Allowing Suspension of Use of Certain So-
cial Security Account Numbers.—The Secretary of
Homeland Security, in consultation with the Commissi-
ioner of Social Security, shall establish a program which
shall provide a reliable, secure method by which victims
of identity fraud and other individuals may suspend or
limit the use of their social security account number or
other identifying information for purposes of the employ-
ment eligibility verification system established under sec-
tion 274A(d) of the Immigration and Nationality Act (8
U.S.C. 1324a(d)), as amended by section 3 of this Act.
The Secretary may implement the program on a limited
pilot program basis before making it fully available to all
individuals.

(c) Allowing Parents to Prevent Theft of
Their Child’s Identity.—The Secretary of Homeland
Security, in consultation with the Commissioner of Social
Security, shall establish a program which shall provide a
reliable, secure method by which parents or legal guard-
ians may suspend or limit the use of the social security
account number or other identifying information of a
minor under their care for the purposes of the employment
eligibility verification system established under 274A(d) of
the Immigration and Nationality Act (8 U.S.C. 1324a(d)),
as amended by section 3 of this Act. The Secretary may
implement the program on a limited pilot program basis
before making it fully available to all individuals.

SEC. 712. USE OF EMPLOYMENT ELIGIBILITY
VERIFICATION PHOTO TOOL.

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

SEC. 713. IDENTITY AUTHENTICATION EMPLOYMENT ELIGIBILITY VERIFICATION PILOT PROGRAMS.

Not later than 24 months after the date of the enactment of this Act, the Secretary of Homeland Security,
after consultation with the Commissioner of Social Security and the Director of the National Institute of Standards and Technology, shall establish by regulation not less than 2 Identity Authentication Employment Eligibility Verification pilot programs, each using a separate and distinct technology (the “Authentication Pilots”). The purpose of the Authentication Pilots shall be to provide for identity authentication and employment eligibility verification with respect to enrolled new employees which shall be available to any employer that elects to participate in either of the Authentication Pilots. Any participating employer may cancel the employer’s participation in the Authentication Pilot after one year after electing to participate without prejudice to future participation. The Secretary shall report to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate the Secretary’s findings on the Authentication Pilots, including the authentication tech-
ologies chosen, not later than 12 months after com-
mencement of the Authentication Pilots.

SEC. 714. INSPECTOR GENERAL AUDITS.

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

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

(2) Children’s social security account numbers
used for work purposes.

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

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

SEC. 715. AGRICULTURE WORKFORCE STUDY.

Not later than 36 months after the date of enactment, the Secretary of the Department of Homeland Security, in consultation with the Secretary of the Department of Agriculture, shall submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate, a report that includes the following:

(1) The number of individuals in the agricultural workforce.

(2) The number of U.S. citizens in the agricultural workforce.

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

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

(5) Wage growth in each of the previous ten years, disaggregated by agricultural sector.
(6) The percentage of total agricultural industry costs represented by agricultural labor during each of the last ten years.

(7) The percentage of agricultural costs invested in mechanization during each of the last ten years.

(8) Recommendations, other than a path to legal status for aliens not authorized to work in the United States, for ensuring U.S. agricultural employers have a workforce sufficient to cover industry needs, including recommendations to—

   (A) increase investments in mechanization;

   (B) increase the domestic workforce; and

   (C) reform the H–2A program.