

111TH CONGRESS
1ST SESSION

H. R. 264

To amend the Immigration and Nationality Act to comprehensively reform immigration law, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 7, 2009

Ms. JACKSON-LEE of Texas introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committees on Homeland Security and Oversight and Government Reform, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Immigration and Nationality Act to comprehensively reform immigration law, and for other purposes.

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

3 **SECTION 1. SHORT TITLE; REFERENCES TO ACT.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Save America Comprehensive Immigration Act of 2009”.

6 (b) REFERENCES TO THE IMMIGRATION AND NA-
7 TIONALITY ACT.—Except as otherwise expressly provided,
8 whenever in this Act an amendment or repeal is expressed

1 in terms of an amendment to, or repeal of, a section or
2 other provision, the reference shall be considered to be
3 made to a section or other provision of the Immigration
4 and Nationality Act.

5 **TITLE I—FACILITATING FAMILY-**
6 **BASED IMMIGRATION**

7 **SEC. 101. INCREASING THE ALLOCATION OF FAMILY-BASED**
8 **IMMIGRANT VISAS.**

9 Section 201(c) (8 U.S.C. 115(c)) is amended to read
10 as follows:

11 “(c) **WORLDWIDE LEVEL OF FAMILY-SPONSORED**
12 **IMMIGRANTS.**—The worldwide level of family-sponsored
13 immigrants under this subsection for a fiscal year shall
14 be no more than 960,000.”.

15 **SEC. 102. PROTECTION AGAINST PROCESSING DELAYS.**

16 (a) **AGE-OUT PROTECTION FOR CHILDREN.**—

17 (1) **IN GENERAL.**—Chapter 1 of title IV (8
18 U.S.C. 1101 note) is amended by adding at the end
19 the following:

20 “**AGE-OUT PROTECTION FOR CHILDREN**

21 “**SEC. 408. (a) IN GENERAL.**—In the case of an ap-
22 plication initially to grant a benefit under this Act (other
23 than an application for naturalization) that otherwise
24 would be granted only after a determination that the bene-
25 ficiary of the application is a child (such as classification
26 as an immediate relative under section 201(b)(2)(A)(i)),

1 if the application is neither approved nor denied (on proce-
2 dural or substantive grounds) during the 90-day period
3 beginning on the date of the filing of the application, the
4 beneficiary shall be considered to be a child for all pur-
5 poses related to the receipt of the benefit if the beneficiary
6 was a child on the last day of such 90-day period, and
7 the beneficiary shall not otherwise be prejudiced with re-
8 spect to such determination by such delay, and shall be
9 considered to be a child under this Act for all purposes
10 related to such application.

11 “(b) TERMINATION OF BENEFIT.—Subsection (a)
12 shall remain in effect until the termination of the 1-year
13 period beginning on the date on which the application de-
14 scribed in such paragraph is approved.”.

15 (2) CLERICAL AMENDMENT.—The table of con-
16 tents is amended by inserting after the item relating
17 to section 407 the following:

“Sec. 408. Age-out protection for children.”.

18 (b) TIMELINESS OF ADOPTION FOR IMMIGRATION
19 PURPOSES.—

20 (1) IN GENERAL.—Section 101(b)(1)(E)(i) (8
21 U.S.C. 1101(b)(1)(E)(i)) is amended by striking “a
22 child adopted while under the age of sixteen years”
23 and inserting “a child, under the age of 16 when
24 adoption proceedings were initiated,”.

1 (2) SPECIAL RULE FOR SIBLINGS.—Section
 2 101(b)(1)(E)(ii)(III) (8 U.S.C.
 3 1101(b)(1)(E)(ii)(III)) is amended by striking
 4 “adopted while under the age of 18 years” and in-
 5 serting “under the age of 18 when adoption pro-
 6 ceedings were initiated”.

7 **SEC. 103. TEMPORARY STATUS PENDING RECEIPT OF PER-**
 8 **MANENT RESIDENT STATUS.**

9 (a) CLASSES OF NONIMMIGRANT ALIENS.—Section
 10 101(a)(15)(K) (8 U.S.C. 1101(a)(15)(K)) is amended—

11 (1) by striking “or” at the end of clause (ii);

12 (2) by adding “or” at the end of clause (iii);

13 and

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

15 “(iv)(I) has concluded a valid mar-
 16 riage with an alien lawfully admitted for
 17 permanent residence, is the parent of a cit-
 18 izen of the United States, or is the child,
 19 son, or daughter of an alien lawfully ad-
 20 mitted for permanent residence or a citizen
 21 of the United States; (II) is the beneficiary
 22 of an approved petition to accord immi-
 23 grant status on the basis of such family re-
 24 lationship that was filed under section 204
 25 by such family member; (III) has available

1 to the alien an immigrant visa number;
2 (IV) has waited more than 6 months for
3 the issuance of an immigrant visa based
4 upon an application made by the alien; and
5 (V) seeks to enter the United States to
6 await such issuance;”.

7 (b) ADMISSION OF NONIMMIGRANTS.—Section
8 214(d) (8 U.S.C. 1184(d)) is amended—

9 (1) by striking “(d)” and inserting “(d)(1)”;

10 and

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

12 **SEC. 104. ELIMINATION OF AFFIDAVIT OF SUPPORT RE-**
13 **QUIREMENT.**

14 (a) GROUNDS FOR INELIGIBILITY FOR ADMISSION.—
15 Section 212(a)(4) (8 U.S.C. 1182(a)(4)) is amended—

16 (1) by amending subparagraph (B)(ii) to read
17 as follows:

18 “(ii) If an alien submits an affidavit of
19 support described in section 213A, in addition
20 to the factors under clause (i), the consular of-
21 ficer or the Attorney General shall also consider
22 such affidavit in determining whether the alien
23 is inadmissible under this paragraph.”; and

24 (2) by striking subparagraphs (C) and (D).

1 (b) REQUIREMENTS FOR SPONSOR'S AFFIDAVIT OF
2 SUPPORT.—Subsections (a)(1)(A), (f)(1)(E), and
3 (f)(4)(B)(i) of section 213A (8 U.S.C. 1183a(a)(1)(A),
4 (f)(1)(E), and (f)(4)(B)(i)) are amended by striking
5 “125” and inserting “100”.

6 “(2) A visa shall not be issued under the provisions
7 of section 101(a)(15)(K)(iv) until the consular officer has
8 received a petition filed in the United States by the lawful
9 permanent resident or citizen relative of the applying alien
10 and approved by the Secretary of Homeland Security. The
11 petition shall be in such form and contain such informa-
12 tion as the Secretary shall, by regulation, prescribe.”.

13 **TITLE II—ESTABLISHMENT OF A**
14 **BOARD OF VISA APPEALS FOR**
15 **FAMILY-BASED VISAS**

16 **SEC. 201. ESTABLISHMENT OF A BOARD OF VISA APPEALS.**

17 (a) IN GENERAL.—The Immigration and Nationality
18 Act is amended by inserting after section 224 the following
19 new section:

20 “BOARD OF VISA APPEALS

21 “SEC. 225. (a) ESTABLISHMENT.—The Secretary of
22 State shall establish within the Department of State a
23 Board of Family-based Visa Appeals. The Board shall be
24 composed of 5 members who shall be appointed by the
25 Secretary. Not more than 2 members of the Board may

1 be consular officers. The Secretary shall designate a mem-
2 ber who shall be chairperson of the Board.

3 “(b) AUTHORITY AND FUNCTIONS.—The Board shall
4 have authority to review any discretionary decision of a
5 consular officer with respect to an alien concerning the
6 denial, revocation, or cancellation of an immigrant visa of
7 someone who has the immediate relative status described
8 in section 201(2)(A)(i) and (ii); or a preference classifica-
9 tion described in section 203(a). The review of the Board
10 shall be made upon the record for decision of the consular
11 officer, including all documents, notes, and memoranda
12 filed with the consular officer, supplemented by affidavits
13 and other writings if offered by the consular officer or
14 alien. Upon a showing that the decision of the consular
15 official is contrary to the preponderance of the evidence,
16 the Board shall have authority to overrule, or remand for
17 further consideration, the decision of such consular officer.

18 “(c) PROCEDURE.—Proceedings before the Board
19 shall be in accordance with such regulations, not incon-
20 sistent with this Act and sections 556 and 557 of title
21 5, United States Code, as the Secretary of State shall pre-
22 scribe. Such regulations shall include requirements that
23 provide that—

24 “(1) at the time of any decision of a consular
25 officer under subsection (b), the interested party de-

1 fined in subsection (d) shall be given notice of the
2 availability of the review process and the necessary
3 steps to request such review;

4 “(2) a written record of the proceedings and de-
5 cision of the consular officer (in accordance with sec-
6 tions 556 and 557 of title 5, United States Code)
7 shall be available to the Board, and on payment of
8 lawfully prescribed costs, shall be made available to
9 the alien;

10 “(3) upon receipt of request for review under
11 this section, the Board shall, within 30 days, notify
12 the consular officer with respect to whose decision
13 review is sought, and, upon receipt of such notice,
14 such officer shall promptly (but in no event more
15 than 30 days after such receipt) forward to the
16 Board the record of proceeding as described in sub-
17 section (b);

18 “(4) the appellant shall be given notice, reason-
19 able under all the circumstances of the time and
20 place at which the Board proceedings will be held;

21 “(5) the appellant may be represented (at no
22 expense to the Government) by such counsel, author-
23 ized to practice in such proceedings, as the appellant
24 shall choose; and

1 “(6) a request for review under this section
2 must be made in writing to the Board within 60
3 days after receipt of notice of the denial, revocation,
4 or cancellation.

5 “(d) INTERESTED PARTIES.—The Board shall review
6 each decision described in subsection (b) upon request by
7 the petitioner of an immigrant visa petition approved
8 under section 201(2)(A)(i) and (ii) or 203(a).

9 “(e) CONSTRUCTION.—This section may not be con-
10 strued to restrict any right to further administrative or
11 judicial review established under any other provision of
12 law.

13 “(f) FEES.—The Secretary of State shall charge, and
14 collect, an appropriate fee associated with a request to the
15 Board for a review. Such fee shall be sufficient to cover
16 the cost of the administration of this section.”.

17 (b) TECHNICAL AMENDMENTS.—

18 (1) Section 222(f) (8 U.S.C. 1202(f)) is amend-
19 ed by adding at the end: “An interested party under
20 section 225(d) or court shall be permitted to inspect
21 the record of proceeding as described in subsections
22 (c)(2) and (c)(3) of section 225.”.

23 (2) Section 104(a)(1) (8 U.S.C. 1104(a)(1)) is
24 amended by striking the “except” and inserting “in-
25 cluding”.

1 (3) The table of contents is amended by insert-
 2 ing after the item relating to section 224 the fol-
 3 lowing new item:

“Sec. 225. Board of Visa Appeals.”.

4 **TITLE III—ELIMINATION OF**
 5 **UNFAIR RESTRICTIONS**

6 **SEC. 301. ACQUISITION OF CITIZENSHIP FOR CHILDREN**
 7 **BORN ABROAD AND OUT OF WEDLOCK TO A**
 8 **UNITED STATES CITIZEN FATHER.**

9 (a) REQUIREMENTS FOR CITIZENSHIP ELIGI-
 10 BILITY.—Section 309(a) (8 U.S.C. 1409(a)) is amended—

11 (1) in paragraph (2), by adding “and” at the
 12 end;

13 (2) by striking paragraph (3);

14 (3) in paragraph (4), by striking “while the
 15 person is under the age of 18 years—” and inserting
 16 “at any time—”; and

17 (4) by redesignating paragraph (4) as para-
 18 graph (3).

19 (b) CLARIFICATION REGARDING DECEASED PAR-
 20 ENTS OF CHILDREN BORN ABROAD AND OUT OF WED-
 21 LOCK.—Section 309 (8 U.S.C. 1409) is amended by add-
 22 ing at the end the following:

23 “(d) Nothing in this section shall be construed to pre-
 24 clude a person who is a citizen or national of the United
 25 States by virtue of a provision of this section from estab-

1 lishing such status under this title after the death of the
2 person’s father, mother, or parents.”.

3 (c) APPLICATION OF CITIZENSHIP PROVISIONS.—

4 The amendments made by this Act shall apply to persons
5 born out of wedlock who are alive on or after the date
6 of the enactment of this Act.

7 **SEC. 302. ALLOW AUNTS AND UNCLES OR GRANDPARENTS**
8 **TO ADOPT ORPHANED OR ABANDONED CHIL-**
9 **DREN OF THE DECEASED RELATIVE.**

10 Section 101(b) is amended by—

11 (1) striking “or” at the end of subparagraph
12 (E) and inserting a semicolon;

13 (2) striking the period at the end of subpara-
14 graph (F) and inserting “; or”; and

15 (3) by inserting the following subparagraph:

16 “(G) a child adopted in the United States
17 or abroad or who is coming to the United
18 States for adoption by a grandparent, aunt or
19 uncle while under the age of eighteen years,
20 who has suffered the death or disappearance of,
21 abandonment or desertion by, or separation or
22 loss from, both parents, or for whom the sole or
23 surviving parent is incapable of providing prop-
24 er care and has consented in writing to the
25 adoption, if the Secretary of Homeland Security

1 is satisfied that proper care will be furnished
2 the child if admitted to the United States. No
3 natural parent or prior adoptive parent of any
4 such child shall thereafter, by virtue of such
5 parentage, be accorded any right, privilege, or
6 status under this Act. Nothing in this sub-
7 section shall be construed to require the child to
8 be released to an orphanage as a prerequisite
9 for eligibility.”.

10 **SEC. 303. RELIEF FOR SURVIVING SPOUSES, CHILDREN**
11 **AND PARENTS.**

12 (a) IN GENERAL.—The second sentence of section
13 201(b)(2)(A)(i) of the Immigration and Nationality Act
14 (8 U.S.C. 1151(b)(2)(A)(i)) is amended by striking “for
15 at least 2 years” and inserting “, and if married for less
16 than two years at the time of the citizen’s death proves
17 by a preponderance of the evidence that the marriage was
18 entered into in good faith and not solely for the purpose
19 of obtaining an immigration benefit,” after “within 2
20 years after such date”; and by inserting the following sen-
21 tence after the sentence ending with “remarries”: “In the
22 case of an alien who was the child or parent of a citizen
23 of the United States at the time of the citizen’s death,
24 the alien shall be considered, for purposes of this sub-
25 section, to remain an immediate relative after the date of

1 the citizen's death but only if the alien files a petition
2 under section 204(a)(1)(A)(ii), as amended, within two
3 years after such date in the case of a parent, or prior to
4 reaching the age of 21 in the case of a child.”.

5 (b) PETITION.—Section 204(a)(1)(A)(ii) of the Im-
6 migration and Nationality Act (8 U.S.C.
7 1154(a)(1)(A)(ii)) is amended by inserting “or an alien
8 child or alien parent described in the third sentence of sec-
9 tion 201(b)(2)(A)(i)” after “section 201(b)(2)(A)(i)”.

10 (c) TRANSITION PERIOD.—In applying section
11 201(b)(2)(A)(i) of the Immigration and Nationality Act,
12 as amended, in the case of an alien whose citizen relative
13 died before the date of the enactment of this Act, the alien
14 relative may (notwithstanding the deadlines specified in
15 such subsection) file the classification petition referred to
16 in such subsection within 2 years after the date of the
17 enactment of this Act. In the case of an alien who was
18 excluded, deported, removed or departed voluntarily before
19 the date of the enactment of this Act, such alien shall be
20 eligible for parole into the United States pursuant to the
21 Attorney General's authority under section 212(d)(5), and
22 such alien's application for adjustment of status shall be
23 considered notwithstanding section 212(a)(9).

1 (d) ADJUSTMENT OF STATUS.—Section 245 (8
2 U.S.C. 1255) of the Immigration and Nationality Act is
3 amended by adding at the end the following:

4 “(n) APPLICATIONS FOR ADJUSTMENT OF STATUS
5 BY SURVIVING SPOUSES, CHILDREN AND PARENTS.—

6 “(1) IN GENERAL.—Any alien described in
7 paragraph (2) who applied for adjustment of status
8 prior to the death of the qualifying relative, may
9 have such application adjudicated as if such death
10 had not occurred.

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

13 “(A) is an immediate relative as described
14 in section 201(b)(2)(A)(i);

15 “(B) is a family-sponsored immigrant as
16 described in section 203(a) or (d);

17 “(C) is a derivative beneficiary of an em-
18 ployment-based immigrant under section
19 203(b), as described in section 203(d); or

20 “(D) is a derivative beneficiary of a diver-
21 sity immigrant as described in section 203(c).”.

22 (e) TRANSITION PERIOD.—Notwithstanding a denial
23 of an application for adjustment of status, in the case of
24 an alien whose qualifying relative died before the date of
25 the enactment of this Act, such application may be re-

1 newed by the alien through a motion to reopen, without
2 fee, filed within two years after the date of the enactment
3 of this Act. In the case of an alien who was excluded, de-
4 ported, removed or departed voluntarily before the date
5 of the enactment of this Act, such alien shall be eligible
6 for parole into the United States pursuant to the Attorney
7 General's authority under section 212(d)(5), and such
8 alien's application for adjustment of status shall be consid-
9 ered notwithstanding section 212(a)(9).

10 (f) STATE DEPARTMENT PROCESSING OF IMMIGRANT
11 VISAS.—Section 204(b) of the Immigration and Nation-
12 ality Act (8 U.S.C. 1154) is amended by adding at the
13 end the following:

14 “(7) EFFECT OF DEATH.—

15 “(A) IN GENERAL.—Any alien described in
16 subparagraph (B) whose qualifying relative died
17 prior to completion of immigrant visa proc-
18 essing may have an immigrant visa application
19 adjudicated as if such death had not occurred,
20 and any immigrant visa issued prior to the
21 death of the qualifying relative shall remain
22 valid.

23 “(B) ALIEN DESCRIBED.—An alien de-
24 scribed in this subparagraph is an alien who—

1 “(i) is an immediate relative as de-
2 scribed in section 201(b)(2)(A)(i);

3 “(ii) is a family-sponsored immigrant
4 as described in section 203(a) or (d);

5 “(iii) is a derivative beneficiary of an
6 employment-based immigrant under section
7 203(b), as described in section 203(d); or

8 “(iv) is a derivative beneficiary of a
9 diversity immigrant as described in section
10 203(c).”.

11 (g) TRANSITION PERIOD.—Notwithstanding a denial
12 or revocation of an application for an immigrant visa, in
13 the case of an alien whose qualifying relative died before
14 the date of the enactment of this Act, such application
15 may be renewed by the alien through a motion to reopen,
16 without fee, filed within two years after the date of the
17 enactment of this Act. In the case of an alien who was
18 excluded, deported, removed or departed voluntarily before
19 the date of the enactment of this Act, such alien’s applica-
20 tion for an immigrant visa shall be considered notwith-
21 standing section 212(a)(9).

22 (h) NATURALIZATION.—Section 319(a) of the Immi-
23 gration and Nationality Act (8 U.S.C. 1429(a)) is amend-
24 ed by inserting “or, if the spouse is deceased, the spouse

1 was a citizen of the United States,” after “(a) Any person
2 whose spouse is a citizen of the United States,”.

3 **SEC. 304. ELIMINATING THE WIDOWED PERMANENT RESI-**
4 **DENT’S NATURALIZATION PENALTY.**

5 Section 319(a) (8 U.S.C. 1429(a)) is amended by in-
6 serting “or, if the spouse is deceased, the spouse was a
7 citizen of the United States,” after “(a) Any person whose
8 spouse is a citizen of the United States,”.

9 **TITLE IV—PREVENTING SEX OF-**
10 **FENDERS FROM USING OUR**
11 **IMMIGRATION LAWS TO**
12 **BRING INNOCENT,**
13 **UNSUSPECTING VICTIMS**
14 **INTO THE UNITED STATES**

15 **SEC. 401. FINDINGS.**

16 The Congress finds the following:

17 (1) Immigration law allows citizens and aliens
18 lawfully admitted for permanent residence to bring
19 foreign family members to the United States on the
20 basis of immediate relative status or a preference
21 classification.

22 (2) Immediate relative status and preference
23 classifications are obtained by filing petitions with
24 the Secretary of Homeland Security.

1 (3) For national security purposes, the Sec-
2 retary of Homeland Security conducts background
3 checks on the beneficiaries of such petitions and,
4 since September 11, 2001, on the petitioners as well.

5 (4) The Government Accountability Office
6 (GAO) has determined that, in fiscal year 2005, at
7 least 398 of the petitioners who filed family-based
8 visa petitions were on the National Sex Offender
9 Registry maintained by the Federal Bureau of In-
10 vestigations.

11 (5) GAO was only able to ascertain the nature
12 of the sex offense for 194 of the 398 petitioners.

13 (6) GAO was able to ascertain, however, that
14 119 of the convictions were for sex assault, 35 for
15 child fondling, 9 for strong arm rape, 9 for carnal
16 abuse combined with a sexual assault, 7 were for
17 statutory rape, 4 for crimes against persons, 3 for
18 indecent exposure, 2 for kidnapping, 2 for obscene
19 material possession, 1 for exploitation of a minor
20 with photographs, 1 for incest with a minor, 1 for
21 sodomizing a boy, and 1 for restricting movement.

22 (7) At least 14 of the 398 petitioners were clas-
23 sified as “sexual predators”, which means a deter-
24 mination had been made that they are likely to com-
25 mit additional sex offenses.

1 (8) At least 45 of the petitioners were convicted
2 of sex offenses against children.

3 (9) The Immigration and Nationality Act does
4 not provide the Secretary of Homeland Security with
5 authorization to deny family-based petitions on the
6 basis of a petitioner's conviction for a sex offense,
7 even when the conviction record indicates that a
8 spouse or a child beneficiary may be in grave dan-
9 ger.

10 **SEC. 402. DISCRETIONARY AUTHORITY TO DENY FAMILY-**
11 **SPONSORED CLASSIFICATION PETITION BY**
12 **PETITIONER LISTED ON NATIONAL SEX OF-**
13 **FENDER REGISTRY.**

14 Section 204 of the Immigration and Nationality Act
15 (8 U.S.C. 1154) is amended by adding at the end the fol-
16 lowing:

17 “(1) AUTHORITY TO DENY FAMILY-BASED PETITION
18 BY PETITIONER LISTED ON NATIONAL SEX OFFENDER
19 REGISTRY.—

20 “(1) IN GENERAL.—The Secretary Homeland
21 Security may, in the discretion of the Secretary,
22 deny a petition under subsection (a) for classifica-
23 tion of a spouse or child if—

24 “(A) the Secretary has confirmed that the
25 petitioner is on the national sex offender reg-

1 istry maintained by the Federal Bureau of In-
2 vestigation for a conviction that individually
3 (disregarding any aggregation due to any other
4 conviction) resulted in incarceration for more
5 than 1 year;

6 “(B) the petitioner has been given at least
7 90 days to establish that the petitioner is not
8 the person named on the registry or that the
9 conviction did not result in incarceration for
10 more than 1 year and has failed to establish
11 such fact; and

12 “(C) the Secretary finds that granting the
13 petition would put a primary or derivative
14 spouse or child beneficiary in grave danger of
15 being sexually abused.

16 “(2) DETERMINING DANGER.—In making the
17 determination under paragraph (1)(C), the Secretary
18 shall use the following principles:

19 “(A) NATURE OF THE RELATIONSHIP.—In
20 evaluating a petitioner who has filed a petition
21 for a spouse, consideration should be given to
22 indications of how well the petitioner and the
23 spouse know each other. Petitions filed on the
24 basis of marriages between men and women
25 who have had little direct, personal contact with

1 each other should be viewed with suspicion. In
2 cases where the petitioner and the spouse have
3 had little direct, personal contact with each
4 other, evidence should be submitted to establish
5 that they have gotten to know each other in
6 some other way.

7 “(B) NATURE OF THE SEX OFFENSE.—
8 Consideration should be given to when each of-
9 fense occurred for which the petitioner was in-
10 carcerated for more than a year, how serious it
11 was, the sentence that was imposed, how long
12 the petitioner was incarcerated, the age of the
13 petitioner when it was committed, and the char-
14 acteristics of the victim.

15 “(C) REHABILITATION.—Evidence of reha-
16 bilitation should be evaluated with respect to
17 whether it diminishes the risk of sexual abuse
18 to the primary or derivative spouse or child
19 beneficiaries.

20 “(D) PREVIOUS VISA PETITIONS.—The
21 records for any previous petitions shall be ex-
22 amined to determine whether they provide or
23 might lead to evidence that is pertinent to de-
24 termining whether granting the petition would
25 put a primary or derivative spouse or child ben-

1 beneficiary in grave danger of being sexually
2 abused.

3 “(3) REBUTTAL.—If the Secretary intends to
4 deny a petition under paragraph (1), the Secretary
5 shall provide the petitioner with a notice that states
6 the reasons for the intended denial and provides the
7 petitioner with at least 90 days to submit rebuttal
8 evidence. Rebuttal should focus primarily on the fac-
9 tors that led the Secretary to believe that granting
10 the petition would put a primary or derivative
11 spouse or child beneficiary in grave danger of being
12 sexually abused.

13 “(4) POST-DENIAL REMEDIES.—

14 “(A) APPEAL.—All final denials under
15 paragraph (1) may be appealed to the Board of
16 Immigration Appeals.

17 “(B) NEW PETITION.—The petitioner may
18 file a new petition whenever the petitioner has
19 additional evidence that the petitioner believes
20 might be sufficient to warrant granting the new
21 petition.

22 “(5) DISCLOSURE BY THE SECRETARY OF
23 HOMELAND SECURITY TO BENEFICIARIES.—In all
24 cases in which it has been confirmed that the name
25 of a petitioner under subsection (a) is listed on the

1 national sex offender registry maintained by the
2 Federal Bureau of Investigation, and regardless of
3 whether the Secretary may exercise discretion under
4 paragraph (1), the Secretary shall give the petitioner
5 at least 90 days to establish that the petitioner is
6 not the person named on the registry. If the peti-
7 tioner fails to establish that the petitioner is not the
8 person named on the registry within the time allot-
9 ted, the Secretary shall provide the beneficiaries with
10 a written copy of the information on the registry
11 that is available to the public before making a deci-
12 sion on the petition. The beneficiary shall be in-
13 formed that the registry information is based on
14 available records and may not be complete.

15 “(6) DISCLOSURE TO DEPARTMENT OF
16 STATE.—In all cases in which it has been confirmed
17 that the name of a petitioner under subsection (a)
18 is listed on the national sex offender registry main-
19 tained by the Federal Bureau of Investigation, and
20 regardless of whether the Secretary may exercise
21 discretion under paragraph (1), the Secretary shall
22 provide the Secretary of State with—

23 “(A) a separate document with information
24 about the record on the national sex offender
25 registry that is available to the public;

1 “(B) any additional information it has that
2 raises concern that a primary or derivative
3 spouse or child beneficiary may be subject to
4 sexual abuse, including information from the
5 registry that is not available to the public; and

6 “(C) information about any previous peti-
7 tions under subsection (a) filed by the peti-
8 tioner.

9 “(7) DISCLOSURE BY CONSULAR OFFICER TO
10 BENEFICIARIES.—When a petition under subsection
11 (a) is granted, if the petition is filed by a petitioner
12 who has failed to make the demonstration of mis-
13 identification described in paragraph (5), the con-
14 sular officer shall conduct an interview with the pri-
15 mary or derivative spouse or child beneficiary of the
16 petition before issuing a visa to the beneficiary. At
17 least part of the interview must be held without the
18 presence of the petitioner. During the private part of
19 the interview, the beneficiary will be given a written
20 copy of the information about the petitioner from
21 the registry that is available to the public. This doc-
22 ument must be written in the beneficiary’s primary
23 language. The consular officer is required to advise
24 the beneficiary that approval of the visa petition

1 does not mean that there are no reasons to be con-
2 cerned about his or her safety.

3 “(8) ADDITIONAL RESPONSIBILITIES OF CON-
4 SULAR OFFICER.—The consular officer may return
5 files to the Secretary of Homeland Security for fur-
6 ther consideration in cases where the consular offi-
7 cer is concerned that granting the visa might put a
8 primary or derivative spouse or child beneficiary in
9 grave danger of being sexually abused. When return-
10 ing a file under the previous sentence, the consular
11 officer may add any additional information or obser-
12 vations the officer has that might have a bearing on
13 whether the visa should be granted, including the re-
14 sults of any field examination that has been con-
15 ducted.”.

16 **SEC. 403. REMOVAL OF CONDITIONAL PERMANENT RESI-**
17 **DENT STATUS.**

18 (a) IDENTIFY AND PROVIDE ASSISTANCE FOR
19 SPOUSES AND CHILDREN WHO ARE SUBJECT TO SEXUAL
20 ABUSE OR RELATED TYPES OF HARM.—Section
21 216(d)(3) of the Immigration and Nationality Act (8
22 U.S.C. 1186a(d)(3)) is amended—

23 (1) by inserting before “The interview” the fol-
24 lowing:

1 “(A) IN GENERAL.—Subject to subpara-
2 graph (B), the interview”;

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

4 “(B) PETITIONER LISTED ON NATIONAL
5 SEX OFFENDER REGISTRY.—In all cases where
6 the Secretary of Homeland Security has con-
7 firmed that a petitioning spouse is listed on the
8 national sex offender registry maintained by the
9 Federal Bureau of Investigation, an interview
10 with the alien spouse, and any alien sons or
11 daughters, shall be required prior to removal of
12 the conditional status, and at least part of the
13 interview shall be held without the presence of
14 the petitioning spouse. During the private por-
15 tion of the interview, questions will be asked to
16 determine whether an investigation should be
17 conducted regarding the welfare of the alien
18 spouse, or any alien son or daughter. If it is de-
19 termined that any alien spouse, son, or daugh-
20 ter is being abused or harmed by the peti-
21 tioning spouse, the victim shall be offered what-
22 ever assistance is appropriate, including infor-
23 mation on ways to remain in the United State
24 that do not depend on continuing the qualifying
25 marriage.”.

1 (b) HARDSHIP WAIVER IN CASES WHERE THE ALIEN
2 SPOUSE OR CHILD IS SUBJECT TO SEXUAL ABUSE.—Sec-
3 tion 216(c)(4) of the Immigration and Nationality Act (8
4 U.S.C. 1186a(c)(4)) is amended—

5 (1) in subparagraph (B), by striking “or” at
6 the end;

7 (2) in subparagraph (C), by striking the period
8 at the end and inserting “, or”; and

9 (3) by inserting after subparagraph (C) the fol-
10 lowing:

11 “(D) the qualifying marriage was entered
12 into in good faith by the alien spouse and dur-
13 ing the marriage the alien spouse, or a son or
14 daughter of the spouse, was sexually abused
15 and the alien was not at fault in failing to meet
16 the requirements of paragraph (1).”.

17 **SEC. 404. SPECIAL TASK FORCE TO IDENTIFY PEOPLE**
18 **NAMED ON THE NATIONAL SEX OFFENDER**
19 **REGISTRY WHO HAVE FILED FAMILY-BASED**
20 **CLASSIFICATION PETITIONS.**

21 (a) IN GENERAL.—The Secretary of Homeland Secu-
22 rity shall establish a task force, to be known as the “Task
23 Force to Rescue Immigrant Victims of American Sex Of-
24 fenders”. The task force shall consist of officials from
25 Federal, State, and local law enforcement agencies with

1 experience in domestic violence, sex crimes, immigration
2 law, trafficking in humans, organized crime, or any other
3 area of experience which may be useful in completing the
4 duties described in subsection (b).

5 (b) DUTIES.—The duties of the task force shall be
6 the following:

7 (1) Working back in time from the date of the
8 establishment of the task force, identifying individ-
9 uals on the Federal Bureau of Investigation’s sex of-
10 fender registry who have filed family-based petitions
11 under section 204(a) of the Immigration and Na-
12 tionality Act. When a confirmed match has been
13 made with the sex offender registry, the task force
14 should ascertain whether the petitioner filed previous
15 petitions.

16 (2) Maintaining the information about the peti-
17 tioners in a comprehensive database.

18 (3) Prioritizing the information according to
19 the likelihood that primary or derivative spouse or
20 child beneficiaries are in danger of sexual abuse.

21 (4) Developing a system for investigating the
22 cases in which beneficiaries may be at risk and pro-
23 viding them with information on how to seek assist-
24 ance if they are abused.

1 (5) Except for information on the registry that
2 is available to the public, protecting the information
3 produced by its investigations in accordance with the
4 privacy rights of everyone involved in the investiga-
5 tion.

6 (6) Taking whatever other actions as are rea-
7 sonable and appropriate when investigations lead to
8 information about sexual abuse or other criminal ac-
9 tivities, including notifying State and local police de-
10 partments, government offices, public organizations
11 that provide assistance to victims of sexual abuse,
12 and religious organizations.

13 (c) REPORT TO CONGRESS.—Not later than 270 days
14 after the date of the enactment of this Act, the Secretary
15 shall submit to the Congress a report on the findings and
16 recommendations of the task force. The report shall in-
17 clude the following:

18 (1) An analysis of the information obtained in
19 searching visa petition and national sex offender reg-
20 istry records.

21 (2) The results of any investigations conducted
22 by the task force.

23 (3) Recommendations on administrative and
24 legislative actions that would assist in identifying

1 and protecting immigrant victims of sexual abuse or
2 related harm.

3 **SEC. 405. AUTHORIZATION OF APPROPRIATIONS.**

4 There are authorized to be appropriated such sums
5 as may be necessary to carry out the provisions of this
6 Act. Amounts appropriated under this section shall remain
7 available until expended.

8 **SEC. 406. REGULATIONS.**

9 Regulations implementing this Act shall be promul-
10 gated in final form not later than 180 days after the date
11 of the enactment of this Act.

12 **TITLE V—LEGALIZATION FOR**
13 **LONG-TERM RESIDENTS**

14 **SEC. 501. EARNED ACCESS TO LEGALIZATION.**

15 (a) IN GENERAL.—Chapter 5 of title II (8 U.S.C.
16 1255 et seq.) is amended by inserting after section 245A
17 the following:

18 “ADJUSTMENT OF STATUS ON THE BASIS OF EARNED
19 ACCESS TO LEGALIZATION

20 “SEC. 245B. (a) IN GENERAL.—The Secretary of
21 Homeland Security may adjust the status of an alien to
22 that of an alien lawfully admitted for permanent residence
23 if the alien—

24 “(1) was physically present in the United
25 States for a continuous period of not less than 5
26 years immediately preceding the date on which this

1 provision was enacted and has maintained contin-
2 uous physical presence since then;

3 “(2) has at all times been a person of good
4 moral character;

5 “(3) has never been convicted of a criminal of-
6 fense in the United States;

7 “(4) in the case of an alien who is 18 years of
8 age or older, but who is not over the age of 65, has
9 successfully completed a course on reading, writing,
10 and speaking words in ordinary usage in the English
11 language, unless unable to do so on account of phys-
12 ical or developmental disability or mental impair-
13 ment;

14 “(5) in the case of an alien 18 years of age or
15 older, has accepted the values and cultural life of the
16 United States; and

17 “(6) in the case of an alien 18 years of age or
18 older, has performed at least 40 hours of community
19 service.

20 “(b) TREATMENT OF BRIEF, CASUAL, AND INNO-
21 CENT ABSENCES.—An alien shall not be considered to
22 have failed to maintain a continuous presence in the
23 United States for purposes of subsection (a)(1) by virtue
24 of brief, casual, and innocent absences from the United
25 States.

1 “(c) ADMISSIBLE AS IMMIGRANT.—

2 “(1) IN GENERAL.—The alien shall establish
3 that the alien is admissible to the United States as
4 immigrant, except as otherwise provided in para-
5 graph (2).

6 “(2) EXCEPTIONS.—The provisions of para-
7 graphs (5), (6)(A), (6)(B), (6)(C), (6)(F), (6)(G),
8 (7)(A), (9)(B), and (9)(C)(i)(I) of section 212(a)
9 shall not apply in the determination of an alien’s ad-
10 missibility under this section.

11 “(d) SECURITY AND LAW ENFORCEMENT CLEAR-
12 ANCES.—The alien, if over 15 years of age, shall submit
13 fingerprints in accordance with procedures established by
14 the Secretary of Homeland Security. Such fingerprints
15 shall be submitted to relevant Federal agencies to be
16 checked against existing databases for information relat-
17 ing to criminal, national security, or other law enforce-
18 ment actions that would render the alien ineligible for ad-
19 justment of status under this section. The Secretary of
20 Homeland Security shall provide a process for challenging
21 the accuracy of matches that result in a finding of ineligi-
22 bility for adjustment of status.

23 “(e) INAPPLICABILITY OF NUMERICAL LIMITA-
24 TIONS.—When an alien is granted lawful permanent resi-
25 dent status under this subsection, the number of immi-

1 grant visas authorized to be issued under any provision
 2 of this Act shall not be reduced. The numerical limitations
 3 of sections 201 and 202 shall not apply to adjustment of
 4 status under this section.

5 “(f) TERMINATION OF PROCEEDINGS.—The Sec-
 6 retary of Homeland Security may terminate removal pro-
 7 ceedings without prejudice pending the outcome of an
 8 alien’s application for adjustment of status under this sec-
 9 tion on the basis of a prima facie showing of eligibility
 10 for relief under this section.”.

11 (b) CLERICAL AMENDMENT.—The table of contents
 12 is amended by inserting after the item relating to section
 13 245A the following:

“Sec. 245B. Adjustment of status on the basis of earned access to legaliza-
 tion.”.

14 **SEC. 502. LEGALIZATION PROVISIONS FOR CHILDREN.**

15 (a) IN GENERAL.—Chapter 5 of title II (8 U.S.C.
 16 1255 et seq.), as amended by section 201, is further
 17 amended by inserting after section 245B the following:

18 “ADJUSTMENT OF STATUS FOR CERTAIN CHILDREN

19 “SEC. 245C. (a) IN GENERAL.—The Secretary of
 20 Homeland Security may adjust the status of an alien to
 21 that of an alien lawfully admitted for permanent residence
 22 if the alien is a child at the time of filing the application
 23 for such adjustment and establishes that the alien, at such
 24 time—

1 “(1) has been physically present and enrolled in
2 school in the United States for a continuous period
3 of not less than 5 years immediately preceding the
4 date of such application, and during that period has
5 been a person of good moral character;

6 “(2) has fully integrated into life in the United
7 States;

8 “(3) has learned English or is satisfactorily
9 pursuing a course of study to achieve an under-
10 standing of English;

11 “(4) is successfully pursuing an elementary
12 school, middle school, high school, or college-level
13 education; and

14 “(5) if older than 13 years of age, has per-
15 formed at least 60 hours of community service.

16 “(b) TREATMENT OF BRIEF, CASUAL, AND INNO-
17 CENT ABSENCES.—An alien shall not be considered to
18 have failed to maintain a continuous presence in the
19 United States for purposes of subsection (a)(1) by virtue
20 of brief, casual, and innocent absences from the United
21 States.

22 “(c) ADMISSIBLE AS IMMIGRANT.—

23 “(1) IN GENERAL.—The alien shall establish
24 that the alien is admissible to the United States as

1 an immigrant, except as otherwise provided in para-
2 graph (2).

3 “(2) APPLICABILITY OF CERTAIN PROVI-
4 SIONS.—

5 “(A) GROUNDS OF INADMISSIBILITY NOT
6 APPLIED.—The provisions of paragraphs (5),
7 (6)(A), (6)(B), (6)(C), (6)(F), (6)(G), (7)(A),
8 (9)(B), and (9)(C) of section 212(a) shall not
9 apply in the determination of an alien’s admis-
10 sibility under this section.

11 “(B) WAIVER OF OTHER GROUNDS.—

12 “(i) IN GENERAL.—Except as pro-
13 vided in clause (ii), the Secretary of Home-
14 land Security may waive any other provi-
15 sion of section 212(a) in the case of an in-
16 dividual alien for humanitarian purposes,
17 to assure family unity, or when it is other-
18 wise in the public interest.

19 “(ii) GROUNDS THAT MAY NOT BE
20 WAIVED.—The following provisions of sec-
21 tion 212(a) may not be waived by the Sec-
22 retary under clause (i):

23 “(I) Paragraphs (2)(A) and
24 (2)(B) (relating to criminals).

1 “(II) Paragraph (2)(C) (relating
2 to drug offenses), except for so much
3 of such paragraph as relates to a sin-
4 gle offense of simple possession of 30
5 grams or less of marijuana.

6 “(III) Paragraph (3) (relating to
7 security and related grounds).

8 “(d) NO NUMERICAL LIMITATIONS.—The numerical
9 limitations of sections 201 and 202 shall not apply to ad-
10 justment of status under this section.

11 “(e) CONFIDENTIALITY OF INFORMATION.—Except
12 as provided in this section, neither the Secretary of Home-
13 land Security, nor any other official or employee of the
14 Department of Homeland Security, may—

15 “(1) use information furnished by applicant for
16 an application filed under this section for any pur-
17 pose other than to make a determination on the ap-
18 plication;

19 “(2) make any publication whereby the infor-
20 mation furnished by any particular applicant can be
21 identified; or

22 “(3) permit anyone other than the sworn offi-
23 cers and employees of the Department, the appli-
24 cant, or a representative of the applicant to examine
25 individual applications.

1 “(f) DISSEMINATION OF INFORMATION.—The Sec-
2 retary of Homeland Security shall broadly disseminate in-
3 formation respecting the benefits which aliens may receive
4 under this section and the requirements to obtain such
5 benefits.”.

6 (b) CLERICAL AMENDMENT.—The table of contents,
7 as amended by section 201, is amended further by insert-
8 ing after the item relating to section 245B the following:

9 **SEC. 503. UPDATED REGISTRY PROVISION.**

10 (a) IN GENERAL.—Section 249 (8 U.S.C. 1259) is
11 amended—

12 (1) in the section heading by striking “1972”
13 and inserting “1986”; and

14 (2) in paragraph (a), by striking “1972” and
15 inserting “1986”.

16 (b) CLERICAL AMENDMENT.—The table of sections
17 is amended in the item relating to section 249 by striking
18 “1972” and inserting “1986”.

“Sec. 245C. Adjustment of status for certain children.”.

1 **TITLE VI—BORDER SECURITY**
2 **PROVISIONS**

3 **Subtitle A—Rapid Response**
4 **Measures**

5 **SEC. 601. EMERGENCY DEPLOYMENT OF UNITED STATES**
6 **BORDER PATROL AGENTS.**

7 (a) **IN GENERAL.**—If the Governor of a State on an
8 international border of the United States declares an
9 international border security emergency and requests ad-
10 ditional United States Border Patrol agents from the Sec-
11 retary of Homeland Security, the Secretary is authorized,
12 subject to subsections (b) and (c), to provide the State
13 with up to 1,000 additional United States Border Patrol
14 agents for the purpose of patrolling and defending the
15 international border, in order to prevent individuals from
16 crossing the international border and entering the United
17 States at any location other than an authorized port of
18 entry.

19 (b) **CONSULTATION.**—The Secretary of Homeland
20 Security shall consult with the President upon receipt of
21 a request under subsection (a), and shall grant it to the
22 extent that providing the requested assistance will not sig-
23 nificantly impair the Department of Homeland Security’s
24 ability to provide border security for any other State.

1 (c) COLLECTIVE BARGAINING.—Emergency deploy-
2 ments under this section shall be made in conformance
3 with all collective bargaining agreements and obligations.

4 **SEC. 602. ELIMINATION OF FIXED DEPLOYMENT OF UNITED**
5 **STATES BORDER PATROL AGENTS.**

6 The Secretary of Homeland Security shall ensure
7 that no United States Border Patrol agent is precluded
8 from performing patrol duties and apprehending violators
9 of law, except in unusual circumstances where the tem-
10 porary use of fixed deployment positions is necessary.

11 **SEC. 603. HELICOPTERS AND POWER BOATS.**

12 (a) IN GENERAL.—The Secretary of Homeland Secu-
13 rity shall increase by not less than 100 the number of
14 United States Border Patrol helicopters, and shall in-
15 crease by not less than 250 the number of United States
16 Border Patrol power boats. The Secretary of Homeland
17 Security shall ensure that appropriate types of helicopters
18 are procured for the various missions being performed.
19 The Secretary of Homeland Security also shall ensure that
20 the types of power boats that are procured are appropriate
21 for both the waterways in which they are used and the
22 mission requirements.

23 (b) USE AND TRAINING.—The Secretary of Home-
24 land Security shall establish an overall policy on how the
25 helicopters and power boats described in subsection (a)

1 will be used and implement training programs for the
2 agents who use them, including safe operating procedures
3 and rescue operations.

4 **SEC. 604. CONTROL OF UNITED STATES BORDER PATROL**
5 **ASSETS.**

6 The United States Border Patrol shall have complete
7 and exclusive administrative and operational control over
8 all the assets utilized in carrying out its mission, includ-
9 ing, aircraft, watercraft, vehicles, detention space, trans-
10 portation, and all of the personnel associated with such
11 assets.

12 **SEC. 605. MOTOR VEHICLES.**

13 The Secretary of Homeland Security shall establish
14 a fleet of motor vehicles appropriate for use by the United
15 States Border Patrol that will permit a ratio of at least
16 one police-type vehicle per every 3 United States Border
17 Patrol agents. Additionally, the Secretary of Homeland
18 Security shall ensure that there are sufficient numbers
19 and types of other motor vehicles to support the mission
20 of the United States Border Patrol. All vehicles will be
21 chosen on the basis of appropriateness for use by the
22 United States Border Patrol, and each vehicle shall have
23 a “panic button” and a global positioning system device
24 that is activated solely in emergency situations for the
25 purpose of tracking the location of an agent in distress.

1 The police-type vehicles shall be replaced at least every
2 3 years.

3 **SEC. 606. PORTABLE COMPUTERS.**

4 The Secretary of Homeland Security shall ensure
5 that each police-type motor vehicle in the fleet of the
6 United States Border Patrol is equipped with a portable
7 computer with access to all necessary law enforcement
8 databases and otherwise suited to the unique operational
9 requirements of the United States Border Patrol.

10 **SEC. 607. RADIO COMMUNICATIONS.**

11 The Secretary of Homeland Security shall augment
12 the existing radio communications system so all law en-
13 forcement personnel working in every area where United
14 States Border Patrol operations are conducted have clear
15 and encrypted two-way radio communication capabilities
16 at all times. Each portable communications device shall
17 be equipped with a “panic button” and a global posi-
18 tioning system device that is activated solely in emergency
19 situations for the purpose of tracking the location of the
20 agent in distress.

21 **SEC. 608. HAND-HELD GLOBAL POSITIONING SYSTEM DE-**
22 **VICES.**

23 The Secretary of Homeland Security shall ensure
24 that each United States Border Patrol agent is issued a

1 state-of-the-art hand-held global positioning system device
2 for navigational purposes.

3 **SEC. 609. NIGHT VISION EQUIPMENT.**

4 The Secretary of Homeland Security shall ensure
5 that sufficient quantities of state-of-the-art night vision
6 equipment are procured and maintained to enable each
7 United States Border Patrol agent working during the
8 hours of darkness to be equipped with a portable night
9 vision device.

10 **SEC. 610. BORDER ARMOR.**

11 The Secretary of Homeland Security shall ensure
12 that every United States Border Patrol agent is issued
13 high-quality body armor that is appropriate for the climate
14 and risks faced by the individual officer. Each officer shall
15 be allowed to select from among a variety of approved
16 brands and styles. Officers shall be strongly encouraged,
17 but not mandated, to wear such body armor whenever
18 practicable. All body armor shall be replaced at least every
19 5 years.

20 **SEC. 611. WEAPONS.**

21 The Secretary of Homeland Security shall ensure
22 that United States Border Patrol agents are equipped
23 with weapons that are reliable and effective to protect
24 themselves, their fellow officers, and innocent third parties
25 from the threats posed by armed criminals. In addition,

1 the Secretary shall ensure that the Department's policies
2 allow all such officers to carry weapons that are suited
3 to the potential threats that they face.

4 **SEC. 612. UNIFORMS.**

5 The Secretary of Homeland Security shall ensure
6 that all United States Border Patrol agents are provided
7 with all necessary uniform items, including outerwear suit-
8 ed to the climate, footwear, belts, holsters, and personal
9 protective equipment, at no cost to such agents. Such
10 items shall be replaced at no cost to such agents as they
11 become worn, unserviceable, or no longer fit properly.

12 **Subtitle B—Detention Pending**
13 **Removal**

14 **SEC. 621. DETENTION FACILITIES FOR ALIENS ARRESTED**
15 **FOR ILLEGAL ENTRY.**

16 The Secretary of Homeland Security shall make ar-
17 rangements for the availability of 100,000 additional beds
18 for detaining aliens taken into custody by immigration of-
19 ficials. Some of these beds shall be rented from Federal,
20 State, and local detention facilities. The remainder of the
21 100,000 shall be constructed to meet this demand on a
22 temporary basis and then converted to other use when
23 they are no longer needed as detention facilities.

1 **SEC. 622. EXPANSION AND EFFECTIVE MANAGEMENT OF**
2 **DETENTION FACILITIES.**

3 (a) IN GENERAL.—Subject to the availability of ap-
4 propriations, the Secretary of Homeland Security shall
5 fully utilize—

6 (1) all available detention facilities operated or
7 contracted by the Department of Homeland Secu-
8 rity;

9 (2) all possible options to cost effectively in-
10 crease available detention capacities, including the
11 use of State and local correctional facilities, private
12 space, and secure alternatives to detention; and

13 (3) the Department's Office of Civil Rights and
14 Civil Liberties shall monitor all facilities that are
15 being used to hold detainees for more than 72 hours.

16 The monitoring will include an evaluation of whether there
17 is compliance with the requirements of the Department's
18 Detention Operations Manual.

19 (b) SECURE ALTERNATIVES TO DETENTION PRO-
20 GRAM.—

21 (1) NATURE OF THE PROGRAM.—For purposes
22 of this section, the secure alternatives to detention
23 referred to in subsection (a) is a program under
24 which eligible aliens are released to the custody of
25 suitable individual or organizational sponsors who
26 will supervise them, use appropriate safeguards to

1 prevent them from absconding, and ensure that they
2 make required appearances.

3 (2) PROGRAM DEVELOPMENT.—The program
4 shall be developed in accordance with the following
5 guidelines:

6 (A) The Secretary shall design the pro-
7 gram in consultation with nongovernmental or-
8 ganizations and academic experts in both the
9 immigration and the criminal justice fields.
10 Consideration should be given to methods that
11 have proven successful in appearance assistance
12 programs, such as the appearance assistance
13 program developed by the Vera Institute and
14 the Department of Homeland Security’s Inten-
15 sive Supervision Appearance Program.

16 (B) The program shall utilize a continuum
17 of alternatives based on the alien’s need for su-
18 pervision, including placement of the alien with
19 an individual or organizational sponsor, a su-
20 pervised group home, or in a supervised, non-
21 penal community setting that has guards sta-
22 tioned along its perimeter.

23 (C) The Secretary shall enter into con-
24 tracts with nongovernmental organizations and

1 individuals to implement the secure alternatives
2 to detention program.

3 (c) ELIGIBILITY AND OPERATIONS.—

4 (1) SELECTION OF PARTICIPANTS.—The Sec-
5 retary shall select aliens to participate in the pro-
6 gram from designated groups specified in paragraph
7 (4) if the Secretary determines that such aliens are
8 not flight risks or dangers to the community.

9 (2) VOLUNTARY PARTICIPATION.—An alien's
10 participation in the program is voluntary and shall
11 not confer any rights or benefits to the alien under
12 the Immigration and Nationality Act (8 U.S.C. 1101
13 et seq.).

14 (3) LIMITATION ON PARTICIPATION.—

15 (A) IN GENERAL.—Only aliens who are in
16 expedited removal proceedings under section
17 236 of the Immigration and Nationality Act (8
18 U.S.C. 1226) may participate in the program.

19 (B) RULES OF CONSTRUCTION.—

20 (i) ALIENS APPLYING FOR ASYLUM.—
21 Aliens who have established a credible fear
22 of persecution and have been referred to
23 the Executive Office for Immigration Re-
24 view for an asylum hearing shall not be
25 considered to be in expedited removal pro-

1 ceedings and the custody status of such
2 aliens after service of a Notice to Appear
3 shall be determined in accordance with the
4 procedures governing aliens in removal
5 proceedings under section 240 of such Act
6 (8 U.S.C. 1229a).

7 (ii) UNACCOMPANIED ALIEN CHIL-
8 DREN.—Unaccompanied alien children (as
9 defined in section 462(g)(2) of the Home-
10 land Security Act (6 U.S.C. 279(g)(2)))
11 shall be considered to be in the care and
12 exclusive custody of the Department of
13 Health and Human Services and shall not
14 be subject to expedited removal and shall
15 not be permitted to participate in the pro-
16 gram.

17 (4) DESIGNATED GROUPS.—The designated
18 groups referred to in paragraph (1) are the fol-
19 lowing:

20 (A) Alien parents who are being detained
21 with one or more of their children, and their de-
22 tained children.

23 (B) Aliens who have serious medical or
24 mental health needs.

1 (C) Aliens who are mentally retarded or
2 autistic.

3 (D) Pregnant alien women.

4 (E) Elderly aliens who are over the age of
5 65.

6 (F) Aliens placed in expedited removal pro-
7 ceedings after being rescued from trafficking or
8 criminal operations by Government authorities.

9 (G) Other groups designated in regulations
10 promulgated by the Secretary.

11 (5) IMPLEMENTING REGULATIONS.—Not later
12 than 180 days after the date of the enactment of
13 this Act, the Secretary shall promulgate regulations
14 to implement the secure alternatives to detention
15 program and to standardize the care and treatment
16 of aliens in immigration custody based on the Deten-
17 tion Operations Manual of the Department of
18 Homeland Security.

19 (6) DECISIONS REGARDING PROGRAM NOT RE-
20 VIEWABLE.—The decisions of the Secretary regard-
21 ing when to utilize the program and to what extent
22 and the selection of aliens to participate in the pro-
23 gram shall not be subject to administrative or judi-
24 cial review.

1 (d) REPORTING REQUIREMENTS.—Not later than
2 180 days after the date of the enactment of this Act and
3 annually thereafter, the Secretary shall submit to the
4 Committee on Homeland Security of the House of Rep-
5 resentatives, the Committee on the Judiciary of the House
6 of Representatives, the Committee on Homeland Security
7 and Governmental Affairs of the Senate, and the Com-
8 mittee on the Judiciary of the Senate a report that details
9 all policies, regulations, and actions taken to comply with
10 the provisions in this section, including maximizing deten-
11 tion capacity and increasing the cost-effectiveness of de-
12 tention by implementing the secure alternatives to deten-
13 tion program, and a description of efforts taken to ensure
14 that all aliens in expedited removal proceedings are resid-
15 ing under conditions that are safe, secure, and healthy.

16 (e) AUTHORIZATION OF APPROPRIATIONS.—There
17 are authorized to be appropriated to the Secretary of
18 Homeland Security such sums as may be necessary to
19 carry out this section. Amounts appropriated pursuant to
20 this section shall remain available until expended.

1 **Subtitle C—Recruitment and Re-**
2 **tention of Additional Immigra-**
3 **tion Law Enforcement Per-**
4 **sonnel**

5 **SEC. 631. ADDITIONAL UNITED STATES BORDER PATROL**
6 **AGENTS.**

7 The Secretary of Homeland Security shall increase
8 the number of United States Border Patrol agents by—

9 (1) 2,500 in fiscal year 2010;

10 (2) 2,750 in fiscal year 2011;

11 (3) 3,000 in fiscal year 2012;

12 (4) 3,250 in fiscal year 2013; and

13 (5) 3,500 in fiscal year 2014.

14 **SEC. 632. PROVISIONS RELATING TO THE EXERCISE OF**
15 **CERTAIN APPOINTMENT AND OTHER SIMI-**
16 **LAR AUTHORITIES WITH RESPECT TO THE**
17 **UNITED STATES BORDER PATROL.**

18 (a) **IN GENERAL.**—Notwithstanding any other provi-
19 sion of law—

20 (1) all authority described in subsection (b)
21 that (but for this section) would otherwise be vested
22 in the Secretary of Homeland Security shall instead
23 be vested in the head of the United States Border
24 Patrol;

1 (2) an individual may not be appointed or con-
2 tinue to serve as the head of the United States Bor-
3 der Patrol if, at the time of appointment, such indi-
4 vidual has not completed at least 20 years of service,
5 within the competitive service (as defined by section
6 2102 of title 5, United States Code), as a United
7 States Border Patrol agent; and

8 (3) all activities described in subsection (b)
9 shall be considered inherently Governmental func-
10 tions and may not be carried out by any persons
11 other than employees of the United States Border
12 Patrol.

13 (b) AUTHORITIES DESCRIBED.—This section applies
14 with respect to any authority relating to the recruitment,
15 selection, and appointment of applicants (including the
16 conducting of any investigation necessary to approve or
17 grant security clearances) for United States Border Patrol
18 agents, law enforcement officers (other than United States
19 Border Patrol agents), and such other positions within the
20 United States Border Patrol as the head of the United
21 States Border Patrol may by regulation determine.

22 (c) REGULATIONS.—The head of the United States
23 Border Patrol shall by regulation identify the specific au-
24 thorities, including citations to the relevant provisions of
25 law, rule, or regulation, to which this section applies.

1 **SEC. 633. TRAINING FACILITIES.**

2 The Secretary of Homeland Security shall ensure
3 that the training facilities used to train newly-hired
4 United States Border Patrol agents are sufficiently spa-
5 cious and modern to ensure that all recruits are afforded
6 the highest possible quality training, as well as reasonably
7 comfortable living conditions. All dormitories shall be con-
8 structed so that each trainee is housed in separate quar-
9 ters. Moreover, the Secretary shall ensure that the train-
10 ing sites selected contains adequate housing for all perma-
11 nent and temporary instructors within the local com-
12 muniting area.

13 **SEC. 634. OPERATIONAL FACILITIES.**

14 The Secretary of Homeland Security shall ensure
15 that all operational facilities of the United States Border
16 Patrol are well-equipped and sufficiently spacious and
17 modern to enable all of the personnel assigned to such fa-
18 cilities to efficiently accomplish the agency's mission.

19 **SEC. 635. MAXIMUM STUDENT LOAN REPAYMENTS FOR**
20 **UNITED STATES BORDER PATROL AGENTS.**

21 Section 5379(b) of title 5, United States Code, is
22 amended by adding at the end the following:

23 “(4) In the case of an employee (otherwise eligible
24 for benefits under this section) who is serving as a full-
25 time active-duty United States Border Patrol agent within
26 the Department of Homeland Security—

1 “(A) paragraph (2)(A) shall be applied by sub-
2 stituting ‘\$20,000’ for ‘\$10,000’; and

3 “(B) paragraph (2)(B) shall be applied by sub-
4 stituting ‘\$80,000’ for ‘\$60,000’.”.

5 **SEC. 636. RECRUITMENT AND RELOCATION BONUSES AND**
6 **RETENTION ALLOWANCES FOR PERSONNEL**
7 **OF THE DEPARTMENT OF HOMELAND SECU-**
8 **RITY.**

9 The Secretary of Homeland Security shall ensure
10 that the authority to pay recruitment and relocation bo-
11 nuses under section 5753 of title 5, United States Code,
12 the authority to pay retention bonuses under section 5754
13 of such title, and any other similar authorities available
14 under any other provision of law, rule, or regulation, are
15 exercised to the fullest extent allowable in order to encour-
16 age service in the Department of Homeland Security.

17 **SEC. 637. REPEAL OF THE DEPARTMENT OF HOMELAND SE-**
18 **CURITY HUMAN RESOURCES MANAGEMENT**
19 **SYSTEM.**

20 (a) REPEAL.—

21 (1) IN GENERAL.—Effective as of the date
22 specified in section 4 of the Homeland Security Act
23 of 2002 (6 U.S.C. 101 note), chapter 97 of title 5,
24 United States Code (as added by section 841(a)(2)
25 of such Act), section 841(b)(3) of such Act, and sub-

1 sections (c) and (e) of section 842 of such Act are
2 repealed.

3 (2) REGULATIONS.—Any regulations prescribed
4 under authority of chapter 97 of title 5, United
5 States Code, are void ab initio.

6 (b) NULLIFICATION OF PREVIOUS EXCLUSIONS.—
7 Effective as of the date of the enactment of this Act, all
8 previous determinations as to whether—

9 (1) an agency or subdivision of the Department
10 of Homeland Security (or a predecessor agency or
11 subdivision transferred into the Department) is ex-
12 cluded from coverage under chapter 71 of title 5,
13 United States Code,

14 (2) a unit or subdivision of a unit within the
15 Department of Homeland Security (or a predecessor
16 agency or subdivision transferred into the Depart-
17 ment) is not appropriate for representation by a
18 labor organization under such chapter, or

19 (3) an employee or position within the Depart-
20 ment of Homeland Security (or a predecessor agency
21 or subdivision transferred into the Department) is
22 within a unit that is not appropriate for representa-
23 tion by a labor organization under such chapter,

24 are null and void, except to the extent that such deter-
25 minations were made in accordance with the criteria out-

1 lined in paragraph (1), (2), (3), (4), or (7) of section
2 7112(b) of such title 5.

3 (c) CLERICAL AMENDMENT.—The table of chapters
4 for part III of title 5, United States Code, is amended
5 by striking the item relating to chapter 97.

6 **SEC. 638. ESTABLISHMENT OF SPECIALIZED INSPECTOR**
7 **OCCUPATIONS.**

8 The Secretary of Homeland Security shall establish
9 within the Bureau of Customs and Border Protection 3
10 distinct inspectional occupations: immigration, customs,
11 and agriculture. These divisions shall coordinate closely
12 with each other under the direction of a high-level official
13 within the Bureau, but shall report to separate operational
14 chains of command.

15 **SEC. 639. INCREASE IN INSPECTORS AT AIRPORT AND**
16 **LAND BORDER INSPECTION STATIONS.**

17 In each of the fiscal years 2010 through 2014, the
18 Secretary of Homeland Security shall increase by not less
19 than 1,000 the number of positions for full-time active
20 duty immigration inspectors at airport and land border in-
21 spection stations within the Department of Homeland Se-
22 curity above the number of such positions for which funds
23 were allotted for the preceding fiscal year.

1 **SEC. 640. LAW ENFORCEMENT RETIREMENT COVERAGE**
2 **FOR INSPECTION OFFICERS AND OTHER EM-**
3 **PLOYEES.**

4 (a) AMENDMENTS.—

5 (1) FEDERAL EMPLOYEES' RETIREMENT SYS-
6 TEM.—

7 (A) Paragraph (17) of section 8401 of title
8 5, United States Code, is amended by striking
9 “and” at the end of subparagraph (C), and by
10 adding at the end the following:

11 “(E) an employee (not otherwise covered
12 by this paragraph)—

13 “(i) the duties of whose position in-
14 clude the investigation or apprehension of
15 individuals suspected or convicted of of-
16 fenses against the criminal laws of the
17 United States; and

18 “(ii) who is authorized to carry a fire-
19 arm; and

20 “(F) an employee of the Internal Revenue
21 Service, the duties of whose position are pri-
22 marily the collection of delinquent taxes and the
23 securing of delinquent returns;”.

24 (B) CONFORMING AMENDMENT.—Section
25 8401(17)(C) of title 5, United States Code, is

1 amended by striking “(A) and (B)” and insert-
2 ing “(A), (B), (E), and (F)”.

3 (2) CIVIL SERVICE RETIREMENT SYSTEM.—
4 Paragraph (20) of section 8331 of title 5, United
5 States Code, is amended by inserting after “posi-
6 tion.” (in the matter before subparagraph (A)) the
7 following: “For the purpose of this paragraph, the
8 employees described in the preceding provision of
9 this paragraph (in the matter before ‘including’)
10 shall be considered to include an employee, not oth-
11 erwise covered by this paragraph, who satisfies
12 clauses (i)–(ii) of section 8401(17)(E) and an em-
13 ployee of the Internal Revenue Service the duties of
14 whose position are as described in section
15 8401(17)(F).”.

16 (3) EFFECTIVE DATE.—Except as provided in
17 subsection (b), the amendments made by this sub-
18 section shall take effect on the date of the enactment
19 of this Act, and shall apply only in the case of any
20 individual first appointed (or seeking to be first ap-
21 pointed) as a law enforcement officer (within the
22 meaning of those amendments) on or after such
23 date.

24 (b) TREATMENT OF SERVICE PERFORMED BY IN-
25 CUMBENTS.—

1 (1) LAW ENFORCEMENT OFFICER AND SERVICE
2 DESCRIBED.—

3 (A) LAW ENFORCEMENT OFFICER.—Any
4 reference to a law enforcement officer described
5 in this paragraph refers to an individual who
6 satisfies the requirements of section 8331(20)
7 or 8401(17) of title 5, United States Code (re-
8 lating to the definition of a law enforcement of-
9 ficer) by virtue of the amendments made by
10 subsection (a).

11 (B) SERVICE.—Any reference to service
12 described in this paragraph refers to service
13 performed as a law enforcement officer (as de-
14 scribed in this paragraph).

15 (2) INCUMBENT DEFINED.—For purposes of
16 this subsection, the term “incumbent” means an in-
17 dividual who—

18 (A) is first appointed as a law enforcement
19 officer (as described in paragraph (1)) before
20 the date of the enactment of this Act; and

21 (B) is serving as such a law enforcement
22 officer on such date.

23 (3) TREATMENT OF SERVICE PERFORMED BY
24 INCUMBENTS.—

1 (A) IN GENERAL.—Service described in
2 paragraph (1) which is performed by an incum-
3 bent on or after the date of the enactment of
4 this Act shall, for all purposes (other than those
5 to which subparagraph (B) pertains), be treated
6 as service performed as a law enforcement offi-
7 cer (within the meaning of section 8331(20) or
8 8401(17) of title 5, United States Code, as ap-
9 propriate), irrespective of how such service is
10 treated under subparagraph (B).

11 (B) RETIREMENT.—Service described in
12 paragraph (1) which is performed by an incum-
13 bent before, on, or after the date of the enact-
14 ment of this Act shall, for purposes of sub-
15 chapter III of chapter 83 and chapter 84 of
16 title 5, United States Code, be treated as serv-
17 ice performed as a law enforcement officer
18 (within the meaning of such section 8331(20)
19 or 8401(17), as appropriate), but only if an ap-
20 propriate written election is submitted to the
21 Office of Personnel Management within 5 years
22 after the date of the enactment of this Act or
23 before separation from Government service,
24 whichever is earlier.

1 (4) INDIVIDUAL CONTRIBUTIONS FOR PRIOR
2 SERVICE.—

3 (A) IN GENERAL.—An individual who
4 makes an election under paragraph (3)(B) may,
5 with respect to prior service performed by such
6 individual, contribute to the Civil Service Re-
7 tirement and Disability Fund the difference be-
8 tween the individual contributions that were ac-
9 tually made for such service and the individual
10 contributions that should have been made for
11 such service if the amendments made by sub-
12 section (a) had then been in effect.

13 (B) EFFECT OF NOT CONTRIBUTING.—If
14 no part of or less than the full amount required
15 under subparagraph (A) is paid, all prior serv-
16 ice of the incumbent shall remain fully cred-
17 itable as law enforcement officer service, but
18 the resulting annuity shall be reduced in a man-
19 ner similar to that described in section
20 8334(d)(2) of title 5, United States Code, to
21 the extent necessary to make up the amount
22 unpaid.

23 (C) PRIOR SERVICE DEFINED.—For pur-
24 poses of this subsection, the term “prior serv-
25 ice” means, with respect to any individual who

1 makes an election under paragraph (3)(B),
2 service (described in paragraph (1)) performed
3 by such individual before the date as of which
4 appropriate retirement deductions begin to be
5 made in accordance with such election.

6 (5) GOVERNMENT CONTRIBUTIONS FOR PRIOR
7 SERVICE.—

8 (A) IN GENERAL.—If an incumbent makes
9 an election under paragraph (3)(B), the agency
10 in or under which that individual was serving at
11 the time of any prior service (referred to in
12 paragraph (4)) shall remit to the Office of Per-
13 sonnel Management, for deposit in the Treasury
14 of the United States to the credit of the Civil
15 Service Retirement and Disability Fund, the
16 amount required under subparagraph (B) with
17 respect to such service.

18 (B) AMOUNT REQUIRED.—The amount an
19 agency is required to remit is, with respect to
20 any prior service, the total amount of additional
21 Government contributions to the Civil Service
22 Retirement and Disability Fund (above those
23 actually paid) that would have been required if
24 the amendments made by subsection (a) had
25 then been in effect.

1 (C) CONTRIBUTIONS TO BE MADE RAT-
2 ABLY.—Government contributions under this
3 paragraph on behalf of an incumbent shall be
4 made by the agency ratably (on at least an an-
5 nual basis) over the 10-year period beginning
6 on the date referred to in paragraph (4)(C).

7 (6) EXEMPTION FROM MANDATORY SEPARA-
8 TION.—Nothing in section 8335(b) or 8425(b) of
9 title 5, United States Code, shall cause the involun-
10 tary separation of a law enforcement officer (as de-
11 scribed in paragraph (1)) before the end of the 3-
12 year period beginning on the date of the enactment
13 of this Act.

14 (7) REGULATIONS.—The Office shall prescribe
15 regulations to carry out this section, including—

16 (A) provisions in accordance with which in-
17 terest on any amount under paragraph (4) or
18 (5) shall be computed, based on section 8334(e)
19 of title 5, United States Code; and

20 (B) provisions for the application of this
21 subsection in the case of—

22 (i) any individual who—

23 (I) satisfies subparagraph (A)
24 (but not subparagraph (B)) of para-
25 graph (2); and

1 (II) serves as a law enforcement
2 officer (as described in paragraph (1))
3 after the date of the enactment of this
4 Act; and

5 (ii) any individual entitled to a sur-
6 vivor annuity (based on the service of an
7 incumbent, or of an individual under
8 clause (i), who dies before making an elec-
9 tion under paragraph (3)(B)), to the ex-
10 tent of any rights that would then be avail-
11 able to the decedent (if still living).

12 (8) RULE OF CONSTRUCTION.—Nothing in this
13 subsection shall be considered to apply in the case
14 of a reemployed annuitant.

15 **SEC. 641. REESTABLISHMENT OF THE UNITED STATES BOR-**
16 **DER PATROL ANTI-SMUGGLING UNIT.**

17 The Secretary of Homeland Security shall reestablish
18 the Anti-Smuggling Unit within the Office of United
19 States Border Patrol, and shall immediately staff such of-
20 fice with a minimum of 500 criminal investigators selected
21 from within the ranks of the United States Border Patrol.
22 Staffing levels shall be adjusted upward periodically in ac-
23 cordance with workload requirements.

1 **SEC. 642. ESTABLISHMENT OF SPECIALIZED CRIMINAL IN-**
2 **VESTIGATOR OCCUPATIONS.**

3 The Secretary of Homeland Security shall establish
4 specialized Criminal Investigator occupations within the
5 Department: one for the investigation of violations of im-
6 migration laws, another for customs laws, and a third for
7 agriculture laws. These divisions shall coordinate closely
8 with each other under the direction of a high-level official
9 within the Department, but shall report to separate oper-
10 ational chains of command.

11 **SEC. 643. ESTABLISHMENT OF CAREER PATHS TO CRIMI-**
12 **NAL INVESTIGATOR POSITIONS.**

13 The Secretary of Homeland Security shall ensure
14 that all persons selected for criminal investigator positions
15 within the Department of Homeland Security possess a
16 minimum of 3 years of field experience within the Depart-
17 ment or its predecessor agencies in the specialized area
18 of law that will be investigated.

19 **SEC. 644. ADDITIONAL IMMIGRATION ENFORCEMENT**
20 **AGENTS.**

21 In each of fiscal years 2010 through 2014, the Sec-
22 retary of Homeland Security shall increase by not less
23 than 500 the number of positions for full-time active duty
24 immigration enforcement agents responsible for trans-
25 porting and guarding detained aliens above the number

1 of such positions for which funds were allotted for the pre-
2 ceding fiscal year.

3 **SEC. 645. INCREASE UNITED STATES BORDER PATROL**
4 **AGENT AND INSPECTOR PAY.**

5 (a) IN GENERAL.—Effective as of the first day of the
6 first applicable pay period beginning on or after the date
7 of the enactment of this Act, the rate of basic pay for
8 all employees of the Department of Homeland Security de-
9 scribed in subsection (b) shall be increased in accordance
10 with subsection (c).

11 (b) EMPLOYEES DESCRIBED.—This section applies
12 to any individual who, as of the date of the enactment
13 of this Act—

14 (1) is a journey level United States Border Pa-
15 trol agent or immigration, customs, or agriculture
16 inspector within the Department of Homeland Secu-
17 rity, whose primary duties consist of enforcing the
18 immigration, customs, or agriculture laws of the
19 United States;

20 (2) has completed at least one year of service
21 as a United States Border Patrol agent or inspector
22 (whether as an employee of the Department of
23 Homeland Security, the Department of Justice, or
24 both agencies combined); and

1 (3) is receiving an annual rate of basic pay for
2 positions at GS–11 of the General Schedule under
3 section 5332 of title 5, United States Code.

4 (c) INCREASE DESCRIBED.—The basic rate of pay for
5 the employees described in this subsection shall increase
6 from the annual rate of basic pay for positions at GS–
7 11 of the General Schedule to the annual rate of basic
8 pay for positions at GS–13 of such schedule.

9 **SEC. 646. FAIR LABOR STANDARDS ACT OVERTIME.**

10 Notwithstanding any other provision of law, all over-
11 time hours worked on and after the date of the enactment
12 of this Act by all employees of the Department of Home-
13 land Security who are at or below the second-line level of
14 field supervision shall be compensated in accordance with
15 the provisions of the Fair Labor Standards Act.

16 **Subtitle D—Enforcement Tools to**
17 **Diminish Entries Using Fraudu-**
18 **lent Documents and Commer-**
19 **cial Alien Smuggling**

20 **SEC. 651. FOREIGN LANGUAGE TRAINING.**

21 The Secretary of Homeland Security shall require all
22 officers of the Department of Homeland Security who
23 come into contact with aliens who have crossed the border
24 illegally to take Spanish and other appropriate foreign lan-

1 guage training courses to facilitate communication with
2 the aliens.

3 **SEC. 652. FOREIGN LANGUAGE AWARDS.**

4 (a) SPECIAL RULES.—The Secretary of Homeland
5 Security shall apply section 4523 of title 5, United States
6 Code, in conformance with the following:

7 (1) Any law enforcement officer within the De-
8 partment of Homeland Security whose primary du-
9 ties involve—

10 (A) the enforcement of the immigration
11 laws of the United States,

12 (B) the detention or transportation of vio-
13 lators of the immigration laws of the United
14 States, or

15 (C) both,

16 shall, for purposes of such section 4523, be pre-
17 sumed to make substantial use of a foreign language
18 in the performance of such officer's official duties.

19 (2)(A) Any individual who successfully com-
20 pletes a foreign language program as part of their
21 agency-sponsored or agency-approved training shall
22 be deemed to possess the foreign language pro-
23 ficiency necessary to qualify for an award under
24 such section for so long as such individual serves as

1 a law enforcement officer within the Department of
2 Homeland Security.

3 (B) Nothing in this paragraph shall, in the case
4 of any individual who does not satisfy subparagraph
5 (A), prevent such individual from being allowed to
6 demonstrate foreign language proficiency in accord-
7 ance with the criteria and procedures that would
8 otherwise apply under such section.

9 (3) For purposes of applying subsection (a) of
10 such section 4523, substitute “equal to” for “up to”.

11 (b) DEFINITION.—For purposes of this section, the
12 term “law enforcement officer” has the meaning given
13 such term by section 4521 of such title 5.

14 **SEC. 653. ADDITIONAL PERSONNEL FOR INVESTIGATION OF**
15 **FRAUDULENT SCHEMES AND DOCUMENT**
16 **FRAUD.**

17 The Secretary of Homeland Security shall hire at
18 least 1000 additional investigators for investigating fraud-
19 ulent schemes, including benefit application schemes, and
20 fraudulent documents used to enter or remain in the
21 United States unlawfully.

1 **SEC. 654. ESTABLISH A SPECIAL TASK FORCE FOR COORDI-**
2 **NATING AND DISTRIBUTING INFORMATION**
3 **ON FRAUDULENT IMMIGRATION DOCU-**
4 **MENTS.**

5 (a) IN GENERAL.—The Secretary of Homeland Secu-
6 rity shall establish a Fraudulent Documents Task Force
7 to carry out the following:

8 (1) Collect information from Federal, State,
9 and local law enforcement agencies, and foreign gov-
10 ernments on the production, sale, distribution and
11 use of fraudulent documents intended to be used to
12 enter, travel or remain within the United States un-
13 lawfully.

14 (2) Maintain the information described in sub-
15 part (1) in a comprehensive database.

16 (3) Maintain a repository of genuine and fraud-
17 ulent travel and identity document exemplars.

18 (4) Convert the information collected into re-
19 ports that provide guidance to government officials
20 in identifying fraudulent documents being used to
21 enter into, travel within or remain in the United
22 States.

23 (5) Develop a system for distributing these re-
24 ports on an ongoing basis to appropriate Federal,
25 State, and local law enforcement agencies.

1 (b) DISTRIBUTION OF INFORMATION.—The task
2 force will distribute the reports to appropriate Federal,
3 State, and local law enforcement agencies on an ongoing
4 basis.

5 **SEC. 655. NEW NONIMMIGRANT VISA CLASSIFICATION TO**
6 **ENABLE INFORMANTS TO ENTER THE**
7 **UNITED STATES AND REMAIN TEMPORARILY.**

8 (a) IN GENERAL.—Section 101(a)(15)(S) (8 U.S.C.
9 1101(a)(15)(S)) is amended—

10 (1) in clause (i), by striking “or” at the end;

11 (2) in clause (ii), by striking the comma at the
12 end and inserting “; or”;

13 (3) by inserting after clause (ii) the following:

14 “(iii) who the Secretary of Homeland
15 Security, the Secretary of State, or the At-
16 torney General determines—

17 “(I) is in possession of critical re-
18 liable information concerning a com-
19 mercial alien smuggling organization
20 or enterprise or a commercial oper-
21 ation for making or trafficking in doc-
22 uments to be used for entering or re-
23 maining in the United States unlaw-
24 fully;

1 “(II) is willing to supply or has
2 supplied such information to a Fed-
3 eral or State court; or

4 “(III) whose presence in the
5 United States the Secretary of Home-
6 land Security, the Secretary of State,
7 or the Attorney General determines is
8 essential to the success of an author-
9 ized criminal investigation, the suc-
10 cessful prosecution of an individual in-
11 volved in the commercial alien smug-
12 gling organization or enterprise, or
13 the disruption of such organization or
14 enterprise or a commercial operation
15 for making or trafficking in docu-
16 ments to be used for entering or re-
17 maining in the United States unlaw-
18 fully.”;

19 (4) by inserting “, or with respect to clause
20 (iii), the Secretary of Homeland Security, the Sec-
21 retary of State, or the Attorney General” after
22 “jointly”; and

23 (5) by striking “(i) or (ii)” and inserting “(i),
24 (ii), or (iii)”.

1 (b) ADMISSION OF NONIMMIGRANTS.—Section
2 214(k) (8 U.S.C. 1184(k)) is amended—

3 (1) by adding at the end of paragraph (1) the
4 following: “The number of aliens who may be pro-
5 vided a visa as nonimmigrants under section
6 101(a)(15)(S)(iii) in any fiscal year may not exceed
7 400.”; and

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

9 “(5) If the Secretary of Homeland Security, the
10 Secretary of State, or the Attorney General deter-
11 mines that a nonimmigrant described in clause (iii)
12 of section 101(a)(15)(S), or that of any family mem-
13 ber of such a nonimmigrant who is provided non-
14 immigrant status pursuant to such section, must be
15 protected, such official may take such lawful action
16 as the official considers necessary to effect such pro-
17 tection.”.

18 **SEC. 656. ADJUSTMENT OF STATUS WHEN NEEDED TO PRO-**
19 **TECT INFORMANTS.**

20 Section 245(j) (8 U.S.C. 1255(j)) is amended—

21 (1) in paragraph (3), by striking “(1) or (2),”
22 and inserting “(1), (2), (3), or (4),”;

23 (2) by redesignating paragraph (3) as para-
24 graph (5);

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

3 “(3) if, in the opinion of the Secretary of
4 Homeland Security, the Secretary of State, or the
5 Attorney General—

6 “(A) a nonimmigrant admitted into the
7 United States under section 101(a)(15)(S)(iii)
8 has supplied information described in subclause
9 (I) of such section; and

10 “(B) the provision of such information has
11 substantially contributed to the success of a
12 commercial alien smuggling investigation or an
13 investigation of the sale or production of fraud-
14 ulent documents to be used for entering or re-
15 maining in the United States unlawfully, the
16 disruption of such an enterprise, or the pros-
17 ecution of an individual described in subclause
18 (III) of that section,

19 the Secretary of Homeland Security may adjust the
20 status of the alien (and the spouse, children, mar-
21 ried and unmarried sons and daughters, and parents
22 of the alien if admitted under that section) to that
23 of an alien lawfully admitted for permanent resi-
24 dence if the alien is not described in section
25 212(a)(3)(E).

1 “(4) The Secretary of Homeland Security may
2 adjust the status of a nonimmigrant admitted into
3 the United States under section 101(a)(15)(S)(iii)
4 (and the spouse, children, married and unmarried
5 sons and daughters, and parents of the non-
6 immigrant if admitted under that section) to that of
7 an alien lawfully admitted for permanent residence
8 on the basis of a recommendation of the Secretary
9 of State or the Attorney General.”; and

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

11 “(6) If the Secretary of Homeland Security, the
12 Secretary of State, or the Attorney General deter-
13 mines that a person whose status is adjusted under
14 this subsection must be protected, such official may
15 take such lawful action as the official considers nec-
16 essary to effect such protection.”.

17 **SEC. 657. REWARDS PROGRAM.**

18 (a) REWARDS PROGRAM.—Section 274 (8 U.S.C.
19 1324) is amended by adding at the end the following:

20 “(e) REWARDS PROGRAM.—

21 “(1) IN GENERAL.—There is established in the
22 Department of Homeland Security a program for
23 the payment of rewards to carry out the purposes of
24 this section.

1 “(2) PURPOSE.—The rewards program shall be
2 designed to assist in the elimination of commercial
3 operations to produce or sell fraudulent documents
4 to be used for entering or remaining in the United
5 States unlawfully and to assist in the investigation,
6 prosecution, or disruption of a commercial alien
7 smuggling operation.

8 “(3) ADMINISTRATION.—The rewards program
9 shall be administered by the Secretary of Homeland
10 Security, in consultation, as appropriate, with the
11 Attorney General and the Secretary of State.

12 “(4) REWARDS AUTHORIZED.—In the sole dis-
13 cretion of the Secretary of Homeland Security, such
14 Secretary, in consultation, as appropriate, with the
15 Attorney General and the Secretary of State, may
16 pay a reward to any individual who furnishes infor-
17 mation or testimony leading to—

18 “(A) the arrest or conviction of any indi-
19 vidual conspiring or attempting to produce or
20 sell fraudulent documents to be used for enter-
21 ing or remaining in the United States unlaw-
22 fully or to commit an act of commercial alien
23 smuggling involving the transportation of
24 aliens;

1 “(B) the arrest or conviction of any indi-
2 vidual committing such an act;

3 “(C) the arrest or conviction of any indi-
4 vidual aiding or abetting the commission of
5 such an act;

6 “(D) the prevention, frustration, or favor-
7 able resolution of such an act, including the dis-
8 mantling of an operation to produce or sell
9 fraudulent documents to be used for entering or
10 remaining in the United States, or commercial
11 alien smuggling operations, in whole or in sig-
12 nificant part; or

13 “(E) the identification or location of an in-
14 dividual who holds a key leadership position in
15 an operation to produce or sell fraudulent docu-
16 ments to be used for entering or remaining in
17 the United States unlawfully or a commercial
18 alien smuggling operation involving the trans-
19 portation of aliens.

20 “(5) AUTHORIZATION OF APPROPRIATIONS.—
21 There are authorized to be appropriated such sums
22 as may be necessary to carry out this subsection.
23 Amounts appropriated under this paragraph shall
24 remain available until expended.

1 “(6) INELIGIBILITY.—An officer or employee of
2 any Federal, State, local, or foreign government
3 who, while in performance of his or her official du-
4 ties, furnishes information described in paragraph
5 (4) shall not be eligible for a reward under this sub-
6 section for such furnishing.

7 “(7) PROTECTION MEASURES.—If the Secretary
8 of Homeland Security, the Secretary of State, or the
9 Attorney General determines that an individual who
10 furnishes information or testimony described in
11 paragraph (4), or any spouse, child, parent, son, or
12 daughter of such an individual, must be protected,
13 such official may take such lawful action as the offi-
14 cial considers necessary to effect such protection.

15 “(8) LIMITATIONS AND CERTIFICATION.—

16 “(A) MAXIMUM AMOUNT.—No reward
17 under this subsection may exceed \$100,000, ex-
18 cept as personally authorized by the Secretary
19 of Homeland Security.

20 “(B) APPROVAL.—Any reward under this
21 subsection exceeding \$50,000 shall be person-
22 ally approved by the Secretary of Homeland Se-
23 curity.

24 “(C) CERTIFICATION FOR PAYMENT.—Any
25 reward granted under this subsection shall be

1 certified for payment by the Secretary of Home-
2 land Security.”.

3 **SEC. 658. OUTREACH PROGRAM.**

4 Section 274 (8 U.S.C. 1324), as amended by sub-
5 section (a), is further amended by adding at the end the
6 following:

7 “(f) OUTREACH PROGRAM.—The Secretary of Home-
8 land Security, in consultation, as appropriate, with the At-
9 torney General and the Secretary of State, shall develop
10 and implement an outreach program to educate the public
11 in the United States and abroad about—

12 “(1) the penalties for—

13 “(A) bringing in and harboring aliens in
14 violation of this section; and

15 “(B) participating in a commercial oper-
16 ation for making, or trafficking in, documents
17 to be used for entering or remaining in the
18 United States unlawfully; and

19 “(2) the financial rewards and other incentives
20 available for assisting in the investigation, disrup-
21 tion, or prosecution of a commercial smuggling oper-
22 ation or a commercial operation for making, or traf-
23 ficking in, documents to be used for entering or re-
24 maining in the United States unlawfully.”.

1 **TITLE VII—EMPLOYMENT-BASED**
2 **IMMIGRATION**

3 **SEC. 701. UNFAIR IMMIGRATION-RELATED EMPLOYMENT**
4 **PRACTICES.**

5 Section 274B (8 U.S.C. 1324b) is amended—

6 (1) in subsection (a)(5)—

7 (A) by amending the paragraph heading to
8 read “PROHIBITION OF INTIMIDATION, RETAL-
9 LATION, OR UNLAWFUL DISCRIMINATION IN
10 EMPLOYMENT”;

11 (B) by moving the text down and to the
12 right 2 ems;

13 (C) by inserting before such text the fol-
14 lowing: “(A) IN GENERAL.—”; and

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

16 “(B) FEDERAL LABOR OR EMPLOYMENT
17 LAWS.—It is an unfair employment practice for
18 any employer to directly or indirectly threaten
19 any individual with removal or any other ad-
20 verse consequences pertaining to that individ-
21 ual’s immigration status or employment bene-
22 fits for the purpose of intimidating, pressuring,
23 or coercing any such individual not to exercise
24 any right protected by State or Federal labor or
25 employment law (including section 7 of the Na-

1 tional Labor Relations Act (29 U.S.C. 157)), or
2 for the purpose of retaliating against any such
3 individual for having exercised or having stated
4 an intention to exercise any such right.

5 “(C) DISCRIMINATION BASED ON IMMIGRA-
6 TION STATUS.—It is an unfair employment
7 practice for any employer, except to the extent
8 specifically authorized or required by law, to
9 discriminate in any term or condition of em-
10 ployment against any individual employed by
11 such employer on the basis of such individual’s
12 immigration status.”; and

13 (2) in subsection (c)(2), by adding at the end
14 the following: “The Special Counsel shall not dis-
15 close to the Secretary of Homeland Security or any
16 other government agency or employee, and shall not
17 cause to be published in a manner that discloses to
18 the Secretary of Homeland Security or any other
19 government agency or employee, any information ob-
20 tained by the Special Counsel in any manner con-
21 cerning the immigration status of any individual who
22 has filed a charge under this section, or the identity
23 of any individual or entity that is a party or witness
24 to a proceedings brought pursuant to such charge.
25 The Secretary of Homeland Security may not rely,

1 in whole or in part, in any enforcement action or re-
2 moval proceeding, upon any information obtained as
3 a result of the filing or prosecution of an unfair im-
4 migration-related employment practice charge. For
5 purposes of this paragraph, the term ‘Special Coun-
6 sel’ includes individuals formerly appointed to the
7 position of Special Counsel and any current or
8 former employee of the office of the Special Counsel.
9 Whoever knowingly uses, publishes, or permits infor-
10 mation to be used in violation of this paragraph
11 shall be fined not more than \$10,000.’’.

12 **SEC. 702. DEPARTMENT OF LABOR TASK FORCE.**

13 The Secretary of Labor, in consultation with the At-
14 torney General and the Secretary of Homeland Security,
15 shall conduct a national study of American workplaces to
16 determine the causes, extent, circumstances, and con-
17 sequences, of exploitation of undocumented alien workers
18 by their employers. As part of this study, the Secretary
19 of Labor shall create a plan for targeted review of Federal
20 labor law enforcement in industries with a substantial im-
21 migrant workforce, for the purpose of identifying, moni-
22 toring, and deterring frequent or egregious violators of
23 wage and hour, antidiscrimination, National Labor Rela-
24 tions Act, and workplace safety and health requirements.
25 Not later than 18 months after the date of the enactment

1 of this Act, the Secretary of Labor shall submit to the
2 Congress a report describing the results of the study and
3 the Secretary's recommendations based on the study.

4 **SEC. 703. RECRUITMENT OF AMERICAN WORKERS.**

5 Section 214 is amended—

6 (1) by redesignating subsections (m) (as added
7 by section 105 of Public Law 106–313), (n) (as
8 added by section 107(e) of Public Law 106–386),
9 (o) (as added by section 1513(c) of Public Law 106–
10 386), (o) (as added by section 1102(b) of the Legal
11 Immigration Family Equity Act), and (p) (as added
12 by section 1503(b) of the Legal Immigration Family
13 Equity Act) as subsections (n), (o), (p), (q), and (r),
14 respectively; and

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

16 “(s)(1) No petition to accord employment status
17 under the nonimmigrant classifications described in sec-
18 tions 101(a)(15)(E)(iii) and (H) shall be granted in the
19 absence of an affidavit from the petitioner describing the
20 efforts that were made to recruit an alien lawfully admit-
21 ted for permanent residence or a citizen of the United
22 States before resorting to a petition to obtain a foreign
23 employee. The recruitment efforts must have included sub-
24 stantial attempts to find employees in minority commu-
25 nities. Recruitment efforts in minority communities should

1 include at least one of the following, if appropriate for the
2 employment being advertised:

3 “(A) Advertise the availability of the job oppor-
4 tunity for which the employer is seeking a worker in
5 local newspapers in the labor market that is likely
6 to be patronized by a potential worker for at least
7 5 consecutive days.

8 “(B) Undertake efforts to advertise the avail-
9 ability of the job opportunity for which the employer
10 is seeking a worker through advertisements in public
11 transportation systems.

12 “(C) To the extent permitted by local laws and
13 regulations, engage in recruitment activities in sec-
14 ondary schools, recreation centers, community cen-
15 ters, and other places throughout the communities
16 within 50 miles of the job site that serve minorities.

17 “(2)(A) The Secretary of Homeland Security shall
18 impose a 10 percent surcharge on all fees collected for pe-
19 titions to accord employment status and shall use these
20 funds to establish an employment training program which
21 will include unemployed workers in the United States who
22 need to be trained or retrained. The purpose of this pro-
23 gram shall be to increase the number of lawful permanent
24 residents and citizens of the United States who are avail-
25 able for employment in the occupations that are the sub-

1 jects of such petitions. At least 50 percent of the funds
2 generated by this provision must be used to train Amer-
3 ican workers in rural and inner-city areas.

4 “(B) The Secretary of Homeland Security shall re-
5 serve and make available to the Secretary of Labor a por-
6 tion of the funds collected under this paragraph. Such
7 funds shall be used by the Secretary of Labor to establish
8 an ‘Office to Preserve American Jobs’ within the Depart-
9 ment of Labor. The purpose of this office shall be to estab-
10 lish policies intended to ensure that employers in the
11 United States will hire available workers in the United
12 States before resorting to foreign labor, giving substantial
13 emphasis to hiring minority workers in the United
14 States.”.

15 **TITLE VIII—FAIRNESS IN** 16 **REMOVAL PROCEEDINGS**

17 **SEC. 801. RIGHT TO COUNSEL.**

18 Section 292 (8 U.S.C. 1362) is amended by striking
19 the matter after the section designation and inserting the
20 following: “In any bond, custody, detention, or removal
21 proceedings before the Attorney General and in any appeal
22 proceedings before the Attorney General from any such
23 proceedings, the person concerned shall have the privilege
24 of being represented (at no expense to the government)
25 by such counsel, authorized to practice in such pro-

1 ceedings, as he shall choose. With consent of their clients,
2 counsel may enter appearances limited to bond, custody,
3 or other specific proceedings.”.

4 **SEC. 802. PRESUMPTION IN FAVOR OF WITHDRAWAL OF AP-**
5 **PLICATION FOR ADMISSION.**

6 Section 235(a)(4) (8 U.S.C. 1225(a)(4)) is amended
7 to read as follows:

8 “(4) WITHDRAWAL OF APPLICATION FOR AD-
9 MISSION.—

10 “(A) PRESUMPTION IN FAVOR OF WITH-
11 DRAWAL.—The Attorney General shall permit
12 an alien applying for admission to withdraw the
13 application and depart immediately from the
14 United States at any time, unless an immigra-
15 tion judge has rendered a decision with respect
16 to the admissibility of the alien, except that the
17 Attorney General may deny permission for the
18 withdrawal when warranted by unusual cir-
19 cumstances.

20 “(B) PERMISSIVE WITHDRAWAL.—Except
21 as provided in subparagraph (A), an alien ap-
22 plying for admission may, in the discretion of
23 the Attorney General and at any time after a
24 decision described in such subparagraph has
25 been rendered, be permitted to withdraw the

1 application and depart immediately from the
2 United States.”.

3 **SEC. 803. ABSENCES OUTSIDE THE CONTROL OF THE**
4 **ALIEN.**

5 Section 101(a)(13)(C) (8 U.S.C. 1101(a)(13)(C)) is
6 amended by amending clause (ii) to read as follows:

7 “(ii) has been absent from the United
8 States for a continuous period in excess of
9 one year unless the alien’s return was im-
10 peded by emergency or extenuating cir-
11 cumstances outside the control of the
12 alien,”.

13 **SEC. 804. REINSTATEMENT OF REMOVAL ORDERS AGAINST**
14 **ALIENS ILLEGALLY REENTERING.**

15 Section 241(a)(5) (8 U.S.C. 1231(a)(5)) is amend-
16 ed—

17 (1) by inserting “, after a hearing by an immi-
18 gration judge,” after “If”;

19 (2) by inserting “, on or after September 30,
20 1996,” after “alien has”;

21 (3) by striking “is reinstated” and inserting
22 “may be deemed to be reinstated”;

23 (4) by striking “and is not subject” and all that
24 follows through “under this Act”; and

1 (5) by striking the period at the end and insert-
2 ing the following: “subject to reopening and review
3 of the previous order. Nothing in this section shall
4 preclude an alien from applying for any relief from
5 removal under this Act.”.

6 **SEC. 805. PERMANENT APPLICATION OF SECTION 245(i).**

7 Section 245(i) (8 U.S.C. 1255(i)) is amended—

8 (1) by inserting “and” at the end of paragraph
9 (1)(A);

10 (2) by amending paragraph (1)(B) to read as
11 follows:

12 “(B) who is the beneficiary (including a
13 spouse or child of the principal alien) of—

14 “(i) a petition for classification under
15 section 204; or

16 “(ii) an application for a labor certifi-
17 cation under section 212(a)(5)(A);”;

18 (3) by striking paragraph (1)(C); and

19 (4) by striking “Attorney General” each place
20 such term appears and inserting “Secretary of
21 Homeland Security”.

1 **SEC. 806. DISCRETIONARY WAIVER OF INADMISSIBILITY**
2 **BASED ON UNLAWFUL PRESENCE, FAILURE**
3 **TO ATTEND REMOVAL PROCEEDINGS, AND**
4 **MISREPRESENTATIONS.**

5 (a) IN GENERAL.—Section 212(i) (8 U.S.C. 1182(i))
6 is amended to read as follows:

7 “(i) The Secretary of Homeland Security may waive
8 the application of subparagraph (A)(i) or (B), or clause
9 (i) or (ii) of subparagraph (C), of subsection (a)(6) in the
10 case of an immigrant who is the parent, spouse, child, son,
11 or daughter of a United States citizen or of an alien law-
12 fully admitted to the United States for permanent resi-
13 dence, if it is established to the satisfaction of the Sec-
14 retary that the refusal of admission to the United States
15 of such immigrant would result in hardship to the immi-
16 grant or to such citizen or lawful permanent resident par-
17 ent, spouse, child, son, or daughter.”.

18 (b) CONFORMING AMENDMENTS.—Section 212(a)(6)
19 (8 U.S.C. 1182(a)(6)) is amended—

20 (1) in subparagraph (A), by adding at the end
21 the following:

22 “(iii) WAIVER AUTHORIZED.—For a
23 provision authorizing the waiver of clause
24 (i), see subsection (i).”;

25 (2) in subparagraph (B)—

1 (A) by inserting “(i)” after the subpara-
2 graph heading; and

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

4 “(ii) WAIVER AUTHORIZED.—For a
5 provision authorizing the waiver of clause
6 (i), see subsection (i).”; and

7 (3) in subparagraph (C)(iii), by inserting “or
8 (ii)” after “(i)”.

9 **SEC. 807. WAIVER OF INADMISSIBILITY FOR MINOR CRIMI-**
10 **NAL OFFENSES.**

11 Section 212(h) (8 U.S.C. 1182(h)) is amended—

12 (1) in the matter preceding paragraph (1), by
13 striking “offense of simple possession of 30 grams or
14 less of marijuana” and inserting “controlled sub-
15 stance offense for which the alien was not incarcer-
16 ated for a period exceeding 1 year”; and

17 (2) by striking the final two sentences.

18 **SEC. 808. GENERAL WAIVER FOR ALIENS PREVIOUSLY RE-**
19 **MOVED AND FOR THE UNLAWFUL PRESENCE**
20 **BARS.**

21 (a) IN GENERAL.—Section 212(d) (8 U.S.C.
22 1182(d)) is amended by adding at the end the following:

23 “(14) The Secretary of Homeland Security may, in
24 the discretion of the Secretary, for humanitarian purposes,
25 to assure family unity, or when it is otherwise in the public

1 interest, waive the application of subparagraph (A) or
2 (B)(i) of subsection (a)(9).”.

3 (b) CONFORMING AMENDMENT.—Section
4 212(a)(9)(B) of such Act (8 U.S.C. 1182(a)(9)(B)) is
5 amended by striking clause (v).

6 **SEC. 809. WAIVER OF AGGRAVATED FELONY CON-**
7 **SEQUENCES.**

8 Section 101 (8 U.S.C. 1101) is amended by adding
9 at the end the following:

10 “(j) For purposes of this Act, and notwithstanding
11 subsection (a)(43), the Secretary of Homeland Security
12 may treat any conviction that did not result in incarcer-
13 ation for more than 1 year as if such conviction were not
14 a conviction for an aggravated felony. This discretion may
15 be exercised for humanitarian purposes, to assure family
16 unity, or when it is otherwise in the public interest.”.

17 **SEC. 810. DISCRETIONARY WAIVER TO ADMIT PERSONS IN**
18 **UNUSUAL CIRCUMSTANCES.**

19 (a) NEW GENERAL WAIVER.—Section 212(d) (8
20 U.S.C. 1182(d)) is amended by adding at the end the fol-
21 lowing:

22 “(13) The Secretary of Homeland Security
23 may, in the discretion of such Secretary for humani-
24 tarian purposes, to assure family unity, or when it
25 is otherwise in the public interest, waive the applica-

1 tion of subparagraph (B) or (G) of subsection
2 (a)(6), clause (i) or (ii) of subsection (a)(9)(A), or
3 subsection (a)(9)(B)(i), in unusual circumstances.
4 For purposes of the preceding sentence, an instance
5 of battering or extreme cruelty is deemed to con-
6 stitute unusual circumstances in the case where it is
7 inflicted on an alien (or a child of an alien) by the
8 alien’s United States citizen or lawful permanent
9 resident spouse, parent, child, son, or daughter.”.

10 (b) WAIVER FOR ALIENS PREVIOUSLY REMOVED.—

11 (1) CERTAIN ALIENS PREVIOUSLY REMOVED.—

12 Section 212(a)(9)(A) (8 U.S.C. 1182(a)(9)(A)) is
13 amended by adding at the end the following:

14 “(iv) WAIVER AUTHORIZED.—For
15 provision authorizing waiver of clause (i)
16 or (ii), see subsection (d)(13).”.

17 (2) ALIENS UNLAWFULLY PRESENT.—Section

18 212(a)(9)(B)(v) (8 U.S.C. 1182(A)(9)(B)(v)) is
19 amended to read as follows:

20 “(v) WAIVER AUTHORIZED.—For pro-
21 vision authorizing waiver of clause (i), see
22 subsection (d)(13).”.

1 **SEC. 811. RESTORATION OF SUSPENSION OF DEPORA-**
2 **TION.**

3 (a) CANCELLATION OF REMOVAL.—Section
4 240A(a)(3) (8 U.S.C. 1229b(a)(3)) is amended to read as
5 follows:

6 “(3) has not been convicted of an aggravated
7 felony for which the sentence imposed is five years
8 or more.”.

9 (b) REPEAL OF RULE FOR TERMINATION OF CON-
10 TINUOUS PERIOD.—

11 (1) Section 240A(d)(1) (8 U.S.C. 1229b(d)(1))
12 (8 U.S.C. 1229b(a)) is repealed.

13 (2) Section 240A(d) (8 U.S.C. 1229b) is
14 amended—

15 (A) by redesignating paragraphs (2) and
16 (3) as paragraphs (1) and (2), respectively; and

17 (B) by inserting before the period at the
18 end of paragraph (1) (as redesignated) the fol-
19 lowing: “, unless the alien’s departure from the
20 United States was due to a temporary trip
21 abroad required by emergency or extenuating
22 circumstances outside the control of the alien”.

23 (c) CANCELLATION OF REMOVAL AND ADJUSTMENT
24 FOR CERTAIN NONPERMANENT RESIDENTS.—Section
25 240A(b)(1) (8 U.S.C. 1229b(b)(1)) is amended to read as
26 follows:

1 “(1) IN GENERAL.—The Attorney General may
2 cancel removal in the case of an alien who is inad-
3 missible or deportable from the United States if the
4 alien—

5 “(A) has been physically present in the
6 United States for a continuous period of—

7 “(i) 7 years immediately preceding the
8 date of application in the case of an
9 alien—

10 “(I) who is deportable on any
11 ground other than a ground specified
12 in clause (ii)(I); and

13 “(II) whose deportation would, in
14 the opinion of the Attorney General,
15 result in extreme hardship to the alien
16 or the alien’s spouse, child, parent,
17 son, or daughter, who is a citizen of
18 the United States or an alien lawfully
19 admitted for permanent residence; or

20 “(ii) 10 years immediately preceding
21 the date of application in the case of an
22 alien—

23 “(I) who is deportable for convic-
24 tion of an offense under section

1 212(a)(2), 237(a)(2), or 237(a)(3);
2 and

3 “(II) whose deportation would, in
4 the opinion of the Attorney General,
5 result in exceptional and extremely
6 unusual hardship to the alien or the
7 alien’s spouse, parent, child, son, or
8 daughter, who is a citizen of the
9 United States or an alien lawfully ad-
10 mitted for permanent residence; and

11 “(B) has been a person of good moral
12 character during such period.”.

13 (d) ELIMINATION OF ANNUAL LIMITATION.—Section
14 240A (8 U.S.C. 1229b) is amended by striking subsection
15 (e).

16 **TITLE IX—REMOVAL GROUNDS**
17 **BASED ON CRIMINAL OFFENSES**

18 **SEC. 901. DEFINITION OF MORAL TURPITUDE.**

19 (a) EQUITABLE DEFINITION OF “MORAL TURPI-
20 TUDE”.—

21 (1) CONVICTION OF CERTAIN CRIMES.—Section
22 212(a)(2)(A)(i) (8 U.S.C. 1182(a)(2)(A)(i)) is
23 amended by striking “of, or who admits having com-
24 mitted, or who admits committing acts which con-

1 stitute the essential elements of—” and inserting
2 “of—”.

3 (2) EXCEPTION.—Section 212(a)(2)(A)(ii)(II)
4 (8 U.S.C. 1182(a)(2)(A)(ii)(II)) is amended—

5 (A) by striking “the maximum” and all
6 that follows through “such crime,”; and

7 (B) by striking “6 months” and inserting
8 “1 year”.

9 (b) EQUITABLE DEFINITION OF “CRIMES OF MORAL
10 TURPITUDE”.—Section 237(a)(2)(A)(i)(II) (8 U.S.C.
11 1227(a)(2)(A)(i)(II)) is amended to read as follows:

12 “(II) for which the alien has been
13 incarcerated for a period exceeding
14 one year,”.

15 **SEC. 902. “AGGRAVATED FELONY” DEFINITIONS.**

16 (a) IN GENERAL.—Section 101(a)(43) (8 U.S.C.
17 1101(a)(43)) is amended by striking “The term ‘aggra-
18 vated felony’ means” and inserting “Aggravated felony
19 means a felony”.

20 (b) ILLICIT TRAFFICKING.—Section 101(a)(43)(B)
21 (8 U.S.C. 1101(a)(43)(B)) is amended by striking
22 “Code;” and inserting “Code), except it does not include
23 simple possession of a controlled substance;”.

24 (c) CRIMES OF VIOLENCE AND THEFT OFFENSES.—
25 Subparagraphs (F), (G), (R), and (S) of section

1 101(a)(43) (8 U.S.C. 1101(a)(43)(F), (G), (R), and (S))
2 are each amended by striking “imprisonment” and all that
3 follows through the semicolon and inserting “imprison-
4 ment of more than five years;”.

5 (d) CORRUPT ORGANIZATIONS AND GAMBLING OF-
6 FENSES.—Section 101(a)(43)(J) is amended by inserting
7 “more than five years” after the words “sentence of”.

8 (e) ALIEN SMUGGLING.—Section 101(a)(43)(N) (8
9 U.S.C. 101(a)(43)(N)) is amended—

10 (1) by inserting “committed for the purpose of
11 commercial advantage,” after “smuggling,”; and

12 (2) by adding at the end a semicolon.

13 (f) DISCRETIONARY WAIVER IN CASES OF OTHER
14 MINOR FELONIES.—Section 101 (8 U.S.C. 1101) is
15 amended by adding at the end the following:

16 **SEC. 903. DEFINITIONS OF “CONVICTION” AND “TERM OF**
17 **IMPRISONMENT”.**

18 Section 101(a)(48) (8 U.S.C. 1101(a)(48)) is amend-
19 ed—

20 (1) in subparagraph (A), by striking “court”
21 and all that follows through the period at the end
22 and inserting “court. An adjudication or judgment
23 of guilt that has been expunged, deferred, annulled,
24 invalidated, withheld, or vacated, an order of proba-
25 tion without entry of judgment, or any similar dis-

1 position shall not be considered a conviction for pur-
2 poses of this Act.”; and

3 (2) in subparagraph (B)—

4 (A) by inserting “only” after “deemed to
5 include”; and

6 (B) by striking “court of law” and all that
7 follows through the period at the end and in-
8 serting “court of law. Any such reference shall
9 not be deemed to include any suspension of the
10 imposition or execution of that imprisonment or
11 sentence in whole or in part.”.

12 “(i) For purposes of this Act, and notwithstanding
13 subsection (a)(43), the Attorney General may treat any
14 conviction that did not result in incarceration for more
15 than 1 year as if such conviction were not a conviction
16 for an aggravated felony.”.

17 **SEC. 904. ELIMINATING RETROACTIVE CHANGES IN RE-**
18 **MOVAL GROUNDS.**

19 (a) APPLICATION OF AGGRAVATED FELONY DEFINI-
20 TION.—The last sentence of section 101(a)(43) (8 U.S.C.
21 1101(a)(43)) is amended to read as follows: “The term
22 shall not apply to any offense that was not covered by
23 the term on the date on which the offense occurred.”.

1 (b) GROUNDS OF DEPORTABILITY.—Section 237 (8
2 U.S.C. 1227) is amended by adding at the end the fol-
3 lowing new subsection:

4 “(d) Notwithstanding any other provision of this sec-
5 tion, an alien is not deportable by reason of committing
6 any offense that was not a ground of deportability on the
7 date the offense occurred.”.

8 (c) GROUNDS OF INADMISSIBILITY.—Section 212 (8
9 U.S.C. 1182) is amended by adding at the end the fol-
10 lowing new subsection:

11 “(p) Notwithstanding any other provision of this sec-
12 tion, an alien is not inadmissible by reason of committing
13 any offense that was not a ground of inadmissibility on
14 the date the offense occurred.”.

15 **SEC. 905. ELIMINATING UNFAIR RETROACTIVE CHANGES IN**
16 **REMOVAL RULES FOR PERSONS PREVIOUSLY**
17 **REMOVED.**

18 (a) IN GENERAL.—The Attorney General shall estab-
19 lish a process by which an alien described in subsection
20 (b) may apply for reopening a proceeding so as to seek
21 relief from exclusion, deportation, or removal under sec-
22 tion 212(e) of the Immigration and Nationality Act, as
23 such section was in effect prior to the enactment of the
24 Antiterrorism and Effective Death Penalty Act of 1996,

1 or section 240A of the Immigration and Nationality Act,
2 as amended by this Act.

3 (b) ALIEN DESCRIBED.—An alien referred to in sub-
4 section (a) is an alien who received a final order of exclu-
5 sion, deportation, or removal, or a decision on a petition
6 for review or petition for habeas corpus, on or after Sep-
7 tember 30, 1996, and who was—

8 (1) excluded, deported, or removed from the
9 United States by reason of having committed a
10 criminal offense that was not a basis for removal,
11 exclusion, or deportation on the date on which the
12 offense was committed;

13 (2) excluded, deported, or removed from the
14 United States by reason of having committed a
15 criminal offense that is not a basis for removal, ex-
16 clusion, or deportation on the date of enactment of
17 this Act; or

18 (3) excluded, deported, or removed from the
19 United States by reason of having committed a
20 criminal offense prior to April 24, 1996, for which
21 there was relief from exclusion, deportation, or re-
22 moval available prior to such date.

23 (c) PAROLE.—The Attorney General may in her dis-
24 cretion exercise the parole authority under section
25 212(d)(5)(A) of the Immigration and Nationality Act (8

1 U.S.C. 1182(d)(5)(A)) for the purpose of permitting
2 aliens excluded, deported, or removed from the United
3 States to participate in the process established under sub-
4 section (a), if the alien establishes prima facie eligibility
5 for the relief.

6 **TITLE X—DIVERSITY VISAS**

7 **SEC. 1001. INCREASE IN WORLDWIDE LEVEL OF DIVERSITY** 8 **IMMIGRANTS.**

9 Section 201(e) (8 U.S.C. 1151(e)) is amended by
10 striking “55,000” and inserting “110,000”.

11 **TITLE XI—HAITIAN PARITY**

12 **SEC. 1101. ADJUSTMENT OF STATUS FOR HAITIANS.**

13 (a) IN GENERAL.—Chapter 5 of title II (8 U.S.C.
14 1255 et seq.), as amended by section 202, is further
15 amended by inserting after section 245C the following:

16 “ADJUSTMENT OF STATUS OF CERTAIN HAITIAN
17 NATIONALS

18 “SEC. 245D. Notwithstanding the provisions of sec-
19 tion 245(c), the status of any alien who is a national or
20 citizen of Haiti, and who has been physically present in
21 the United States for at least one year, may be adjusted
22 by the Secretary of Homeland Security, in the Secretary’s
23 discretion and under such regulations as the Secretary
24 may prescribe, to that of an alien lawfully admitted for
25 permanent residence, if the alien makes an application for
26 such adjustment and the alien is eligible to receive an im-

1 migrant visa and is admissible to the United States for
2 permanent residence. Upon approval of such an applica-
3 tion for adjustment of status, the Secretary shall create
4 a record of the alien’s admission for permanent residence
5 as of a date 30 months prior to the filing of such an appli-
6 cation or the date of the alien’s last arrival into the United
7 States, whichever date is later. The provisions of this Act
8 shall be applicable to the spouse and child of any alien
9 described in this section, regardless of their citizenship
10 and place of birth, if the spouse or child is residing with
11 such alien in the United States.”.

12 (b) CLERICAL AMENDMENT.—The table of contents
13 as amended by section 202, is further amended by insert-
14 ing after the item relating to section 245C the following:

“Sec. 245D. Adjustment of status of certain Haitian nationals.”.

15 (c) SUNSET.—The amendments made by this section
16 shall cease to be effective on the date that is 3 years after
17 the date of the enactment of this Act.

18 **SEC. 1102. LIMITATION OF ATTORNEY GENERAL’S BOND**
19 **DISCRETION.**

20 Section 236 (8 U.S.C. 1226) is amended by adding
21 at the end the following:

22 “(f) EXERCISE OF AUTHORITY FOR ARREST, DETEN-
23 TION, AND RELEASE.—The Secretary of Homeland Secu-
24 rity shall exercise the discretion afforded under subsection
25 (a) on a case-by-case basis. If bond is to be denied on

1 the ground that the alien’s release would give rise to ad-
 2 verse consequences for national security or national immi-
 3 gration policy, the finding of such adverse consequences
 4 shall be based on circumstances pertaining to the indi-
 5 vidual alien whose release is being considered.”.

6 **SEC. 1103. ELIMINATION OF MANDATORY DETENTION IN**
 7 **EXPEDITED REMOVAL PROCEEDINGS.**

8 Section 235(b)(1)(B)(iii)(IV) (8 U.S.C.
 9 1225(b)(1)(B)(iii)(IV)) is amended to read as follows:

10 “(IV) DETENTION.—Aliens sub-
 11 ject to the procedures under this
 12 clause shall be detained in accordance
 13 with section 236.”.

14 **SEC. 1104. AMENDMENTS TO HAITIAN AND IMMIGRANT**
 15 **FAIRNESS ACT OF 1998.**

16 (a) GROUND FOR INADMISSIBILITY FOR DOCUMENT
 17 FRAUD DOES NOT APPLY.—The Haitian Refugee Immi-
 18 gration Fairness Act of 1998 (8 U.S.C. 1255 note) is
 19 amended in subsections (a)(1)(B) and (d)(1)(D) of section
 20 902 by inserting “(6)(C)(i),” after “(6)(A),”.

21 (b) DETERMINATIONS WITH RESPECT TO CHIL-
 22 DREN.—Section 902(d) of such Act is amended by adding
 23 at the end the following:

24 “(3) DETERMINATIONS WITH RESPECT TO
 25 CHILDREN.—

1 “(A) USE OF APPLICATION FILING
2 DATE.—Determinations made under this sub-
3 section as to whether an individual is a child of
4 a parent shall be made using the age and status
5 of the individual on the date of the enactment
6 of this section.

7 “(B) APPLICATION SUBMISSION BY PAR-
8 ENT.—Notwithstanding paragraph (1)(C), an
9 application under this subsection filed based on
10 status as a child may be filed for the benefit of
11 such child by a parent or guardian of the child,
12 if the child is physically present in the United
13 States on such filing date.”.

14 **SEC. 1105. NEW APPLICATIONS AND MOTIONS TO REOPEN.**

15 (a) NEW APPLICATIONS.—Notwithstanding section
16 902(a)(1)(A) of the Haitian and Immigrant Fairness Act
17 of 1998, an alien who is eligible for adjustment of status
18 under such Act, as amended by section 804 of this Act,
19 may submit an application for adjustment of status under
20 such Act not later than the later of—

21 (1) 2 years after the date of the enactment of
22 this Act; and

23 (2) 1 year after the date on which final regula-
24 tions implementing section 804 are promulgated.

1 (b) MOTIONS TO REOPEN.—The Secretary of Home-
2 land Security shall establish procedures for the reopening
3 and reconsideration of applications for adjustment of sta-
4 tus under the Haitian Refugee Immigration Fairness Act
5 of 1998 that are affected by the amendments under sec-
6 tion 804 of this Act.

7 (c) RELATIONSHIP OF APPLICATION TO CERTAIN OR-
8 DERS.—Section 902(a)(3) of the Haitian and Immigrant
9 Fairness Act of 1998 shall apply to an alien present in
10 the United States who has been ordered excluded, de-
11 ported, removed, or ordered to depart voluntarily, and who
12 files an application under subsection (a), or a motion
13 under subsection (b), in the same manner as such section
14 902(a)(3) applied to aliens filing applications for adjust-
15 ment of status under such Act before April 1, 2000.

16 **SEC. 1106. TEMPORARY PROTECTED STATUS FOR HAI-**
17 **TIANS.**

18 It is the sense of the Congress that the Secretary of
19 Homeland Security should be more liberal with respect to
20 Haiti in deciding whether to designate that country for
21 temporary protected status under section 244(b)(1)(A) of
22 the Immigration and Nationality (8 U.S.C.
23 1254(b)(1)(A)). It is the sense of the Congress that this
24 decision has sometimes been made without due regard to
25 the serious threat to personal safety that results from

1 sending Haitians back to Haiti during a period of ongoing
2 armed conflict in that country.

3 **TITLE XII—FAIRNESS IN ASYLUM**
4 **AND REFUGEE PROCEEDINGS**

5 **SEC. 1201. REFUGEE STATUS FOR UNMARRIED SONS AND**
6 **DAUGHTERS OF REFUGEES.**

7 Section 207(c)(2) (8 U.S.C. 1157(c)(2)) is amended
8 by adding at the end the following:

9 “(C) When warranted by unusual cir-
10 cumstances or to preserve family unity, the At-
11 torney General may, in the Attorney General’s
12 discretion, consider an unmarried son or daugh-
13 ter of a refugee to be a child of the refugee for
14 purposes of this paragraph.”.

15 **SEC. 1202. ASYLEE STATUS FOR UNMARRIED SONS AND**
16 **DAUGHTERS OF ASYLEES.**

17 Section 208(b)(3) (8 U.S.C. 1158(b)(3)) is amended
18 by adding at the end the following:

19 “(C) When warranted by unusual cir-
20 cumstances or to preserve family unity, the At-
21 torney General may, in the Attorney General’s
22 discretion, consider an unmarried son or daugh-
23 ter of an alien who is granted asylum under
24 this subsection to be a child of the alien for
25 purposes of this paragraph.”.

1 **SEC. 1203. ELIMINATION OF ARBITRARY TIME LIMITS ON**
2 **ASYLUM APPLICATIONS.**

3 Section 208(a)(2) (8 U.S.C. 1158(a)(2)) is amend-
4 ed—

5 (1) by striking subparagraph (B);

6 (2) in subparagraph (C), by striking “(D),” and
7 inserting “(C),”;

8 (3) in subparagraph (D)—

9 (A) by striking “subparagraphs (B) and
10 (C),” and inserting “subparagraph (B),”;

11 (B) by striking “either”; and

12 (C) by striking “asylum or extraordinary”
13 and all that follows through the period at the
14 end and inserting “asylum.”; and

15 (4) by redesignating subparagraphs (C) and
16 (D) as subparagraphs (B) and (C), respectively.

17 **SEC. 1204. GENDER-BASED PERSECUTION.**

18 (a) TREATMENT AS REFUGEE.—Section 101(a)(42)
19 (8 U.S.C. 1101(a)(42)) is amended by adding at the end
20 the following:

21 “(C) For purposes of determinations under
22 this Act, a person who establishes that he or
23 she suffered persecution in the past, or has a
24 well-founded fear of persecution, on account of
25 gender shall be considered to have suffered per-
26 secution, or to have a well-founded fear of per-

1 secution, on account of membership in a par-
2 ticular social group.”.

3 (b) RESTRICTION ON REMOVAL TO COUNTRY WHERE
4 ALIEN WOULD BE THREATENED.—Section 241(b)(3) of
5 such Act (8 U.S.C. 1231(b)(3)) is amended by adding at
6 the end the following:

7 “(C) GENDER-BASED PERSECUTION.—For
8 purposes of determinations under this para-
9 graph, an alien who establishes that the alien’s
10 life or freedom would be threatened in a coun-
11 try on account of gender shall be considered to
12 have established that the alien’s life or freedom
13 would be threatened in that country on account
14 of membership in a particular social group.”.

15 **TITLE XIII—TEMPORARY**
16 **PROTECTED STATUS**

17 **SEC. 1301. ADJUSTMENT OF STATUS FOR CERTAIN RECIPI-**
18 **ENTS OF TEMPORARY PROTECTED STATUS.**

19 (a) IN GENERAL.—Section 245 (8 U.S.C. 1255) is
20 amended by adding at the end the following:

21 “(n)(1) If, in the opinion of the Secretary of the
22 Homeland Security Department, a person granted tem-
23 porary protected status under section 244—

1 “(A) has been physically present in the United
2 States in that status for a continuous period of at
3 least 5 years;

4 “(B) has at all times been a person of good
5 moral character;

6 “(C) has never been convicted of a criminal of-
7 fense in the United States;

8 “(D) in the case of an alien who is 18 years of
9 age or older, but who is not over the age of 65, has
10 successfully completed a course on reading, writing,
11 and speaking words in ordinary usage in the English
12 language, unless unable to do so on account of phys-
13 ical or developmental disability or mental impair-
14 ment;

15 “(E) in the case of an alien 18 years of age or
16 older, has accepted the values and cultural life of the
17 United States; and

18 “(F) in the case of an alien 18 years of age or
19 older, has performed at least 40 hours of community
20 service;

21 the Secretary may adjust the status of the alien to that
22 of an alien lawfully admitted for permanent residence.

23 “(2) An alien shall not be considered to have failed
24 to maintain a continuous presence in the United States

1 for purposes of subsection (a)(1) by virtue of brief, casual,
2 and innocent absences from the United States.

3 “(3)(A) The alien shall establish that the alien is ad-
4 missible to the United States as immigrant, except as oth-
5 erwise provided in paragraph (2).

6 “(B) The provisions of paragraphs (5), (6)(A),
7 (6)(B), (6)(C), (6)(F), (6)(G), (7)(A), (9)(B), and
8 (9)(C)(i)(I) of section 212(a) shall not apply in the deter-
9 mination of an alien’s admissibility under this section.

10 “(4) When an alien is granted lawful permanent resi-
11 dent status under this subsection, the number of immi-
12 grant visas authorized to be issued under any provision
13 of this Act shall not be reduced. The numerical limitations
14 of sections 201 and 202 shall not apply to adjustment of
15 status under this section.

16 “(5) The Secretary of Homeland Security may termi-
17 nate removal proceedings without prejudice pending the
18 outcome of an alien’s application for adjustment of status
19 under this section on the basis of a prima facie showing
20 of eligibility for relief under this section.”.

21 (b) LIMITATION ON CONSIDERATION IN THE SENATE
22 OF LEGISLATION ADJUSTING STATUS.—Section 244 (8
23 U.S.C. 1254a) is amended by striking subsection (h) and
24 redesignating subsection (i) as subsection (h).

1 **SEC. 1302. FOREIGN STATE DESIGNATIONS.**

2 Section 244(b)(1)(C) (8 U.S.C. 1254a(b)(1)(C)) is
3 amended to change the following phrase “the Attorney
4 General finds that there exist extraordinary and tem-
5 porary conditions in the foreign state that prevent aliens
6 who are nationals of the state from returning to the state
7 in safety,” so that it reads as follows: “the Secretary of
8 Homeland Security finds that extraordinary and tem-
9 porary conditions in the foreign state make returning
10 aliens to the state undesirable for humanitarian reasons,”.

11 **TITLE XIV—MISCELLANEOUS**
12 **PROVISIONS**

13 **SEC. 1401. NATURALIZATION PROVISIONS.**

14 (a) **PHYSICAL PRESENCE REQUIREMENT.**—Section
15 316(a) (8 U.S.C. 1427) is amended by adding at the end
16 the following:

17 “(g) When warranted by extraordinary cir-
18 cumstances, the Secretary of Homeland Security may re-
19 duce, by not more than 90 days, the physical presence re-
20 quirement described in the preceding sentence.”.

21 (b) **ABSENCES FROM THE UNITED STATES.**—Section
22 316(b) (8 U.S.C. 1427(b)) is amended—

23 (1) in the first sentence, by striking “one year”
24 and inserting “18 months”; and

1 (2) in the second sentence, by striking “contin-
2 uous period of one year” and inserting “continuous
3 period of 18 months”.

4 **SEC. 1402. PREVENTING INAPPROPRIATE STATE AND**
5 **LOCAL GOVERNMENT INVOLVEMENT IN THE**
6 **ENFORCEMENT OF CIVIL IMMIGRATION PRO-**
7 **VISIONS UNDER THE IMMIGRATION AND NA-**
8 **TIONALITY ACT.**

9 (a) **ELIMINATION OF BAN ON STATE AND LOCAL**
10 **GOVERNMENTS FROM PREVENTING COMMUNICATIONS**
11 **WITH THE DEPARTMENT OF HOMELAND SECURITY.—**

12 (1) **IN GENERAL.—**Section 642 of the Illegal
13 Immigration Reform and Immigrant Responsibility
14 Act of 1996 (8 U.S.C. 1373) is repealed.

15 (2) **VERIFICATION OF ELIGIBILITY FOR FED-**
16 **ERAL PUBLIC BENEFITS.—**Section 432 of the Per-
17 sonal Responsibility and Work Opportunity Rec-
18 onciliation Act of 1996 (8 U.S.C. 1642) is repealed.

19 (b) **ELIMINATION OF AUTHORITY TO PERMIT STATE**
20 **PERSONNEL TO CARRY OUT IMMIGRATION OFFICER**
21 **FUNCTIONS.—**Section 287(g) (8 U.S.C. 1357(g)) is re-
22 pealed.

1 **SEC. 1403. NONIMMIGRANT CATEGORY FOR FASHION MOD-**
2 **ELS.**

3 (a) **ELIMINATION OF H-1B CLASSIFICATION FOR**
4 **FASHION MODELS.**—Section 101(a)(15)(H)(i)(b) of the
5 Immigration and Nationality Act (8 U.S.C.
6 1101(a)(15)(H)(i)(b)) is amended—

- 7 (1) by striking “or as a fashion model”; and
8 (2) by striking “or, in the case of a fashion
9 model, is of distinguished merit and ability”.

10 (b) **NEW CLASSIFICATION.**—Section 101(a)(15)(O)
11 of the Immigration and Nationality Act (8 U.S.C.
12 1101(a)(15)(O)) is amended—

- 13 (1) in clause (iii), by striking “clause (i) or (ii)”
14 and inserting “clause (i), (ii), or (iii)” and by redesh-
15 ignating clause (iii) as clause (iv); and
16 (2) by inserting after clause (ii) the following
17 new clause:

18 “(iii) is a fashion model who is of distin-
19 guished merit and ability and who is seeking to
20 enter the United States temporarily to perform
21 fashion modeling services that involve events or
22 productions which have a distinguished reputa-
23 tion or that are performed for an organization
24 or establishment that has a distinguished rep-
25 utation for, or a record of, utilizing prominent
26 modeling talent; or”.

1 (c) EFFECTIVE DATE AND IMPLEMENTATION.—

2 (1) IN GENERAL.—The amendments made by
3 this section shall take effect on the date of the en-
4 actment of this Act.

5 (2) REGULATIONS, GUIDELINES, AND PRECE-
6 DENTS.—The regulations, guidelines, and precedents
7 in effect on the date of the enactment of this Act for
8 the adjudication of petitions for fashion models
9 under section 101(a)(15)(H)(i)(b) of the Immigra-
10 tion and Nationality Act (8 U.S.C.
11 1101(a)(15)(H)(i)(b)) shall be applied to petitions
12 for fashion model under section 101(a)(15)(O)(iii) of
13 the Immigration and Nationality Act (8 U.S.C.
14 1101(a)(15)(O)(iii)), as added by this section, except
15 that the duration of status approvals shall be based
16 on regulations applicable to other occupations under
17 section 101(a)(15)(O) of the Immigration and Na-
18 tionality Act (8 U.S.C. 1101(a)(15)(O)).

19 (3) CONSTRUCTION.—Nothing in this section,
20 or the amendments made by this section, shall be
21 construed as preventing an alien who is a fashion
22 model from obtaining nonimmigrant status under
23 section 101(a)(15)(O)(i) of the Immigration and Na-
24 tionality Act (8 U.S.C. 1101(a)(15)(O)(i)) if such
25 alien is otherwise qualified for such status.

1 (4) TREATMENT OF PENDING PETITIONS.—Pe-
2 titions filed on behalf of fashion models under sec-
3 tion 101(a)(15)(H)(i)(b) of the Immigration and
4 Nationality Act (8 U.S.C. 1101(a)(15)(H)(i)(b))
5 that are pending on the date of the enactment of
6 this Act shall be treated as if they had been filed
7 under section 101(a)(15)(O)(iii) of the Immigration
8 and Nationality Act (8 U.S.C. 1101(a)(15)(O)(iii)),
9 as added by this section.

10 (5) VISA VALIDITY PERIOD.—The validity pe-
11 riod for visas issued to beneficiaries of petitions filed
12 under section 101(a)(15)(O)(iii) of the Immigration
13 and Nationality Act (8 U.S.C. 1101(a)(15)(O)(iii))
14 shall be for the full period of approval notwith-
15 standing the reciprocity validity periods that would
16 otherwise be applicable.

○