

# Comprehensive Immigration Reform Bill of 2011 Summary

## Section 1. Short Title

This Act may be cited as the “Comprehensive Immigration Reform Act of 2011.”

## Section 2. Table of Contents

## Section 3. References to Immigration and Nationality Act

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms as an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Immigration and Nationality Act.

## Section 4. Definitions

### Title I: Immigration

#### Subtitle A: The Registration of Undocumented Individuals, The Dream Act, Family Unity and Agjobs

#### Part 1. Lawful Prospective Immigrant Status

#### Section 111. Lawful Prospective Immigrant Status

This section creates the Lawful Prospective Immigrant (LPI) status category to require aliens to register who are physically present in the U.S., who remained continuously present in the U.S. from September 30, 2011 to the date they are granted status, and who are not inadmissible.

(b)(2) Grounds of Ineligibility: An alien is ineligible for LPI status based on the following grounds:

- Conviction for any offense under Federal or State law punishable with a maximum term of imprisonment of more than one year;
- Conviction for an aggravated felony; domestic violence, stalking, or child abuse; or has violated a protection order;
- Having ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion;
- Illegal entrance into the U.S. after September 30, 2011;
- Other lawful status (i.e., LPR, asylee, nonimmigrant visa, paroled to assist in government proceedings, paroled into the Mariana Islands).

(b)(3) Grounds of Inadmissibility: Additionally, in determining inadmissibility:

- Section 212(a)(5) of the Act does not apply, and paragraphs (6)(A), (6)(B), (6)(C), (6)(D), (6)(F), (6)(G), (7), (9), and (10)(B) of section 212(a) of the Act do not apply in regard to conduct or unlawful presence occurring before the date of application
- The Secretary may not waive INA 212(a)(2) subparagraphs (B), (C), (D)(ii), (E), (H), (I), or (J) (relating to criminals); INA 212(2)(a)(3) (relating to security and related grounds); INA 212(a)(10) subparagraphs (A), (C), or (D) (relating to polygamists and child abductors); or INA 212(a) (6)(A)(i) (relating to entries without inspection) with respect to any entries occurring on or after this Act's enactment.
- The Secretary has discretion to waive the application of other provisions of section 212(a) of the Act not listed above on behalf of an individual alien for humanitarian purposes, to ensure family unity, or if such waiver is otherwise in the public interest.

Application Procedures:

- The DHS Secretary will prescribe by interim final rule published in the Federal Register the procedure for aliens to apply for LPI status, the procedure for aliens granted LPI status to petition for their spouses or dependents, and the evidence to demonstrate eligibility for the status. The Secretary of State will prescribe by regulation in the Federal Register the procedure for aliens overseas who are beneficiaries of petitions to apply for visas or other documentation necessary for travel to the U.S. and the evidence required to establish eligibility for that documentation.
- Applications for LPI status can be filed during the one-year period beginning the October 1st after this Act's enactment. The Secretary has the discretion to extend that period by up to 6 months.
- Aliens who are apprehended between the date of this Act's enactment and the beginning of the filing period who can establish prima facie evidence that they are eligible for LPI status will have the opportunity to file an application.
- Aliens who are in removal, deportation, or exclusion proceedings between the date of this Act's enactment or the end of the filing period will have the opportunity to apply for LPI status and having the proceedings terminated.
- Aliens who are in the U.S. and have been ordered excluded, deported, or removed or ordered to depart voluntarily may apply for LPI status (notwithstanding INA Section 241(a)(5)) and do not have to file a separate motion to reopen, reconsider, or vacate.
- All applicants must submit biometric and biographical data and undergo background security and law enforcement check. Applicants over age 14 shall pay a processing fee.

In addition to fees, applicants over 21 filing an initial application for the first extension of the initial period must pay a \$500 penalty.

- The applicant has the burden of proof for establishing eligibility. If an individual's application is denied, all subsequent applications will be denied as well. Individuals who do not submit requested information will have their applications denied; however, they can still file a new application.

Evidence of Status: Individuals granted LPI status will be issued machine-readable, tamper-resistant documentation of their status that includes a digitized photograph and biometric identifiers. This document can serve as a valid travel and entry document and as a valid work authorization and identity document.

Lawful Prospective Immigrant Dependents: The spouse and children (as defined in INA 101(a)(35) and 101(b)(1), respectively) of Lawful Prospective Immigrants may also receive LPI status following the approval of a petition for such status.

Terms and Conditions of Lawful Prospective Immigrant Status:

- While their applications for LPI status are pending, aliens may receive advance parole for urgent humanitarian reasons, may not be detained unless it is determined that they are ineligible for the status under subsection (b)(2), inadmissible under subsection (b)(1)(B), or removable under INA 237(a)(2)(A)(iii) or INA 237(a)(2)(E)(i) or (ii). Aliens suspected of being ineligible, inadmissible, or removable for those reasons may be detained for up to 48 hours. Thereafter they may be detained as prescribed under INA provisions governing the removal process. Additionally, employed aliens with pending LPI applications may continue work.
- Lawful Prospective Immigrants will be granted employment authorization, and they may travel outside of the U.S. for a period of less than six months and be readmitted if they have adequate documentation of their status and if they can establish that they are not inadmissible under INA 235 unless permitted by subsection (b)(3). They may not be detained unless DHS determines that they are ineligible, inadmissible, or removable or if their status has expired or been revoked. Lawful Prospective Immigrants are required to undergo medical observation and examination.
- The initial period of authorized admission will be at most four years from the date the status was granted. The Secretary has discretion to confer a shorter period for subsets of Lawful Prospective Immigrants. Individuals can file for an extension. The Secretary may not grant any period of authorized admission that extends past the date that is 11 years after the date of enactment. To be eligible for an extension, individuals must continue to demonstrate their eligibility for LPI status. Applications for extensions must be filed before previously authorized LPI status has expired, and applicants for extensions must

undergo renewed security and law enforcement background checks. Denial of an extension is the equivalent of a revocation of LPI status.

- The DHS Secretary can revoke LPI status at any time before the alien becomes a lawful permanent resident if the alien becomes inadmissible or ineligible for the status, knowingly uses documentation for unlawful or fraudulent purposes, or was absent from the U.S. for more than six months at a time since being granted LPI status.

Dissemination of Information: DHS will broadly disseminate information on the new LPI status in the top five principal languages spoken by aliens who qualify for the status.

### **Section 112. Adjustment of Status for Lawful Prospective Immigrants and Administrative Review**

This section outlines the requirements and procedures for aliens with Lawful Prospective Immigrant status to adjust to permanent resident status. Aliens must continue to meet the same eligibility and inadmissibility requirements for the respective Lawful Prospective Immigrant and Lawful Prospective Immigrant Dependent status.

In addition, this section provides for additional requirements. Lawful Prospective Immigrants over the age of 14 must demonstrate basic citizenship and English skills, pay their taxes, maintain a continuous physical presence in the U.S. and register for Military Selective Service if eligible. The “back of the line” provision states that applicants will not be granted permanent resident status until the earlier of a) eight years after enactment or b) 30 days after immigrant visas are available for all approved petitions filed under INA Section 201 or 203 and filed before the date of this Act’s enactment. Additionally, applicants must not file an application for adjustment of status until six years have passed since the individual was granted Lawful Prospective Immigrant status. In addition to paying processing fees, applicants over the age of 21 must also pay a \$1,000 penalty. The Secretary may require applicants to submit to an interview. Applicants shall be required to submit to a renewed security and law enforcement background checks as well.

In addition, this section addresses the review process and removal proceedings procedures for aliens who applied for Lawful Prospective Immigrant Status.

Administrative Review: There will be a single level of administrative appellate review for LPI status determinations under Section 101, petitions for LPI dependent status, and adjustment of status determinations under Section 102. Individuals whose applications were denied or revoked can file only one appeal. Any removal proceedings will be stayed pending administrative review under this section, except for removal for criminal or national security grounds. Review is based on the administrative record established, but the review authority has discretion to consider newly discovered or previously unavailable evidence. Aliens cannot file motions to reconsider or reopen initial decisions and can file one motion to reopen or reconsider appellate decisions.

Self-initiated Removal and Notice Preserving Judicial Review: An alien who receives the denial of an administrative appeal may request to be placed in removal proceedings. The request will serve as notice preserving judicial review of the denial. If that alien is already in removal, deportation, or exclusion proceedings that are not administratively final, the alien may file a notice to preserve judicial review. Or if that alien is already subject to an administratively final order, the alien may also file a notice to preserve judicial review. All requests and notices must be made within 60 days of the date of service of the administrative appellate decision.

Judicial Review: If an alien's administrative appellate review is denied, the alien can seek judicial review in federal district court where he or she resides. Judicial review can be available in conjunction with judicial review of an order of removal, deportation, or exclusion. Review is based on the administrative record, but the court may remand the case to the Secretary for consideration of additional evidence. The district courts have jurisdiction over causes or claims arising from a pattern or practice of the Secretary of Homeland Security. With respect to those claims, the courts may order appropriate relief without regard to non-constitutionally-mandated standing requirements. Aliens seeking judicial review may not be removed until a final decision establishing ineligibility is rendered. There is no judicial review for late filings.

Challenges to Subtitle A: Any claim that this Subtitle or any regulation, guideline, directive, or procedure issued to implement this Title violates U.S. law will be heard in the D.C. District Court. No such actions may be filed after the period of receipt for applications in 101(c)(1) or on behalf of an alien who did not file a timely LPI status application. Any action must be filed within one year after the date of publication or promulgation of the challenged regulation, policy or directive or within one year of enactment (if challenging the Act's validity). Any class actions filed must conform with the Class Action Fairness Act of 2005, and any alien who did not timely file for LPI status may not be a class member. Plaintiffs are not required to exhaust administrative remedies prior to filing.

### **Section 113. Administrative Review, Removal Proceedings, and Judicial Review for Aliens Who Have Applied for Lawful Prospective Immigrant Status**

This section addresses the review process and removal proceedings procedures for aliens who applied for Lawful Prospective Immigrant Status.

Administrative Review: There will be a single level of administrative appellate review for LPI status determinations under Section 101, petitions for LPI dependent status, and adjustment of status determinations under Section 102. Individuals whose applications were denied or revoked can file only one appeal. Any removal proceedings will be stayed pending administrative review under this section, except for removal for criminal or national security grounds. Review is based on the administrative record established, but the review authority has discretion to consider newly discovered or previously unavailable evidence. Aliens cannot file motions to reconsider or reopen initial decisions and can file one motion to reopen or reconsider appellate decisions.

Self-initiated Removal and Notice Preserving Judicial Review: An alien who receives the denial of an administrative appeal may request to be placed in removal proceedings. The request will serve as notice preserving judicial review of the denial. If that alien is already in removal, deportation, or exclusion proceedings that are not administratively final, the alien may file a notice to preserve judicial review. Or if that alien is already subject to an administratively final order, the alien may also file a notice to preserve judicial review. All requests and notices must be made within 60 days of the date of service of the administrative appellate decision.

Judicial Review: If an alien's administrative appellate review is denied, the alien can seek judicial review in federal district court where he or she resides. Judicial review can be available in conjunction with judicial review of an order of removal, deportation, or exclusion. Review is based on the administrative record, but the court may remand the case to the Secretary for consideration of additional evidence. The district courts have jurisdiction over causes or claims arising from a pattern or practice of the Secretary of Homeland Security. With respect to those claims, the courts may order appropriate relief without regard to non-constitutionally-mandated standing requirements. Aliens seeking judicial review may not be removed until a final decision establishing ineligibility is rendered. There is no judicial review for late filings.

Challenges to Title I: Any claim that this Title or any regulation, guideline, directive, or procedure issued to implement this Title violates U.S. law will be heard in the D.C. District Court. No such actions may be filed after the period of receipt for applications in 101(c)(1) or on behalf of an alien who did not file a timely LPI status application. Any action must be filed within one year after the date of publication or promulgation of the challenged regulation, policy or directive or within one year of enactment (if challenging the Act's validity). Any class actions filed must conform with the Class Action Fairness Act of 2005, and any alien who did not timely file for LPI status may not be a class member. Plaintiffs are not required to exhaust administrative remedies prior to filing.

#### **Section 114. Confidentiality of Information**

Except as otherwise provided in this Act, no Federal agency or bureau, or any officer or employee of such agency or bureau, may, without the written consent of the applicant 1) use the information furnished by the applicant pursuant to an application filed under section 101 or 102 of this Subtitle, for any purpose, other than to make a determination on the application, including revocation of an application previously approved; 2) make any publication through which the information furnished by any particular applicant can be identified; or 3) permit anyone other than the sworn officers, employees or contractors of such agency or bureau, to examine individual applications that have been filed. The Secretary of Homeland Security shall provide the information furnished pursuant to an application filed under this title, and any other information derived from such furnished information, to: 1) a federal, state, tribal, or local law enforcement agency, intelligence agency, national security agency, component of the Department of Homeland Security, court, or grand jury in connection with a criminal

investigation or prosecution, a background check conducted pursuant to the Brady Handgun Violence Protection Act, or for homeland security or national security purposes, in each instance about an individual, when such information is requested by such entity or consistent with an information sharing agreement or mechanism; or 2) an official coroner for purposes of affirmatively identifying a deceased individual, whether or not the death of such individual resulted from a crime. The limitations on disclosure of information shall apply only until an application is denied and appeals have been exhausted. The limitations shall not apply when the alien's LPI status has been revoked or has expired, or in any removal proceeding or other criminal or civil case or action relating to an alien whose application has been granted that is based upon any violation of law after such grant.

Information concerning whether the applicant has engaged in fraud in the application for Lawful Prospective Immigrant status or for adjustment of status from Lawful Prospective Immigrant status or at any time committed a crime may be used or released for immigration enforcement, law enforcement, or national security purposes. The Secretary may audit and evaluate information furnished as part of any application filed under section 101 or 102 of this Subtitle for purposes of identifying fraud or fraud schemes, and may use any evidence of fraud detected by means of audits, evaluations, or other means for purposes of investigating, prosecuting or referring for prosecution, denying, or terminating immigration benefits. The Federal Bureau of Investigation may disclose information derived from biometric and biographic checks of the applicant to assist in the apprehension of a person who is the subject of a warrant of arrest, or to notify intelligence agencies of the location of a known or suspected terrorist. Whoever willfully uses, publishes, or permits information to be disclosed in violation of this section shall be subject to appropriate disciplinary action and subject to a civil monetary penalty of not more than \$5,000. The Secretary or the Secretary's designee shall convene an interagency committee to address issues relating to the identification, prevention, investigation, and prosecution of fraud and related conduct in connection with this program.

#### **Section 115. Aliens Not Subject to Direct Numerical Limitations**

This section states that aliens who adjust their status from Lawful Prospective Immigrant status are not subject to direct numerical limitations.

#### **Section 116. Employer Protections**

This section states that any employment information submitted by an alien or the alien's employer in support of a Lawful Prospective Immigrant status application will not be used in a prosecution or investigation of the employer under INA Section 274A or U.S. tax laws for any prior unlawful employment of the alien. This section does not apply to fraudulent employment records.

#### **Section 117. Assignment of Social Security Number**

This section authorizes the Social Security Administration Commissioner to assign Social Security numbers to aliens with Lawful Prospective Immigrant status.

## **Part 2. Implementation**

### **Section 121. Rulemaking**

This section requires the DHS Secretary and Attorney General to issue interim final regulations to implement this Subtitle within nine months of this Act's enactment. Decisions by the Secretary will not be considered major federal actions subject to review under the National Environmental Policy Act of 1969.

### **Section 122. Exemption from Government Contracting and Hiring Rules**

This section exempts DHS from certain government contracting and hiring rules in implementing this Subtitle.

### **Section 123. Authorization to Acquire Leaseholds**

This section authorizes the DHS Secretary to acquire a leasehold interest in real property and to construct or modify facilities on the leased property if necessary for the implementation of this Subtitle.

### **Section 124. Privacy and Civil Liberties**

Under this section, the DHS Secretary will implement safeguards to protect the security of personally identifiable information collected pursuant to Section 101 and 102. The Secretary will also conduct a privacy impact assessment and civil liberties impact assessment of the legalization program established in Sections 101 and 102.

### **Section 125. Statutory Construction**

Except as provided otherwise, nothing in this Subtitle creates any substantive or procedural right that is legally enforceable by any party against the U.S., its agencies, or its officers.

## **Part 3. Miscellaneous**

### **Section 131. Correction of Social Security Records**

Aliens with Lawful Prospective Immigrant status and aliens who adjusted their status from Lawful Prospective Immigrant status will not be penalized for providing false information to the Social Security Commissioner or for causing unauthorized benefit payments if such actions took place before the submission of a Lawful Prospective Immigrant status application.

### **Section 132. Fraud Prevention Program**

The head of each department that administers a program related to this title or that has authority to confer an immigration benefit, relief, or status under immigration law will develop a program to prevent fraud within its program. Each program will provide for fraud prevention training, regular audits of applications, investigation referrals for cases suspected of fraud, the identification of deficiencies in practices that encourage fraud, and the remedy of any identified deficiencies.

### **Section 133. Data Collection Requirements**

Under this section, the head of each department shall also ensure that general demographic data provided by applicants under Subtitle A will be made available in the aggregate on a searchable public database. General demographic data includes gender, country of origin, age, education, annual earnings, employment, state of residence, marital status, date of arrival in the United States, method of entry into the United States, number and ages of children, and birthplace of children. Data collected shall not be recorded in such a way that it violates confidentiality provisions under this Title.

## **Part 4. DREAM Act**

### **Section 141. Short Title**

This Part may be cited as the “Development, Relief, and Education for Alien Minors Act of 2011” or the “DREAM Act of 2011.”

### **Section 142. Definitions**

### **Section 143. Conditional Permanent Resident Status for Certain Long Term Residents Who Entered the United States as Children**

This section permits DHS to cancel removal of and grant lawful permanent resident status to aliens with good moral character who came to the U.S. before the age of 16 at least five years before the date of the bill’s enactment and are younger than 35 years old. Individuals cannot qualify for this relief if they have committed crimes, are a security risk, or are inadmissible or removable on certain other grounds. Individuals are eligible to qualify if they have been accepted to college, received a high school diploma, or received a G.E.D.

### **Section 144. Terms of Conditional Permanent Resident Status**

Eligible individuals first apply for conditional permanent resident status, which is similar to lawful permanent resident status except that it is awarded for a limited duration—six years under normal circumstances—instead of indefinitely. Individuals may lose this status if they no longer meet the requirements, become public charges, or received a dishonorable or other than honorable discharge from the uniformed services.

### **Section 145. Removal of Conditional Basis for Permanent Resident Status**

At the end of the conditional period, unrestricted lawful permanent resident status would be granted if, during the conditional period, the immigrant has maintained good moral character, avoided lengthy trips abroad, and met at least one of the following criteria: (1) graduated from a two-year college or certain vocational colleges, or studied for at least two years toward a B.A. or higher degree, or (2) served in the U.S. armed forces for at least two years. The six-year time period for meeting these requirements would be extendable upon a showing of good cause, and the U.S. Department of Homeland Security would be empowered to waive the requirements altogether if compelling reasons, such as disability, prevent their completion and if removal of

the student would result in exceptional and extremely unusual hardship to the student or to the student's spouse, parent or child.

### **Section 146. Regulations**

This section requires the Secretary to publish regulations implementing this Act within 180 days of enactment. Such regulations shall allow eligible individuals to apply affirmatively for the relief available under section 3 without being placed in removal proceedings. The regulations will be effective immediately upon publication but may be subject to change and revision after public notice and opportunity for a period of public comment within a reasonable amount of time.

### **Section 147. Penalties for False Statements in Application**

Individuals can be fined, imprisoned for up to 5 years, or both for making false statements in an application.

### **Section 148. Confidentiality of Information**

This section guarantees that application information cannot be used to begin removal proceedings against anyone mentioned in the application and cannot be made public. However, information can be provided to law enforcement in connection with investigations or prosecutions of criminal offenses or security risks, as described in INA Section 212(a) paragraphs (2) or (3). It can also be provided to official coroners for the purpose of identifying a deceased. Violations of this subsection are punishable by fines of up to \$10,000.

### **Section 149. Higher Education Assistance**

Individuals who adjust to permanent status under this Subtitle are not eligible for Pell Grants or certain other federal financial aid grants. They would, however, be eligible for federal work study and student loans, and states would not be restricted from providing their own financial aid to these students. This section repeals Section 505 of the Illegal Immigration Reform and Immigrant Responsibility Act to allow states to determine their own residency requirements for high education benefits. Section 505 discourages states from providing in-state tuition or other higher education benefits without regard to immigration status.

## **Part 5. Agricultural Job Opportunities, Benefits and Security**

### **Section 150. Short Title**

This chapter may be cited as the "Agricultural Job Opportunities, Benefits, and Security Act of 2010" or the "AgJOBS Act of 2011."

### **Chapter 1. Blue Card Status**

This chapter establishes a program whereby aliens who can demonstrate a substantial past

commitment to agricultural work in the U.S. are provided an opportunity to adjust their status to that of an alien in “blue card” status and, if they meet the program’s prospective agricultural work requirements and other criteria, adjust their status to that of a lawful permanent resident alien.

### **Section 151. Requirements for Blue Card Status**

**Prior Agricultural Work Requirements:** To be eligible to adjust to blue card status, an alien must demonstrate that he or she performed agricultural employment in the U.S. for at least 863 hours or 150 work days during the 24-month period ending on December 31, 2008. “Work day” is defined as 5.75 or more hours of agricultural employment. Aliens are provided with an 18-month application period beginning on the first day of the seventh month that begins after the date of enactment. To be eligible for blue card status, an alien must be otherwise admissible under the INA and cannot have been convicted of any felony or a misdemeanor, an element of which involves bodily injury, threat to bodily injury, or harm to property in excess of \$500.

**Authorized Travel and Employment:** Aliens who adjust to blue card status are granted employment authorization to work for any employer, as long as they satisfy the prospective agricultural work requirements of Section 103. They are permitted to travel abroad and reenter the United States.

**Termination of Blue Card Status:** Aliens shall be terminated from blue card status if they achieved such status through fraud, committed acts or crimes that make them inadmissible or fail to satisfy the prospective agricultural work requirements.

**Record of Employment:** Each employer of a worker in blue card status must provide a written record of employment to the worker and the Security of the Department of Homeland Security.

**Required Features of Identity Card:** Blue card holders and their spouses and children must receive a card with biometric identifiers and with security features designed to prevent counterfeiting.

**Fine:** An alien granted blue card status shall pay a \$100 fine.

**Maximum Number of Blue Cards:** The number of blue cards issued during the 5-year period beginning on the date of enactment shall not exceed 1,350,000.

**Treatment of Aliens Granted Blue Card Status:** Except as otherwise provided under current law, an alien granted blue card status is not eligible by reason of such status for any form of assistance or benefit described in PRWORA, 8 U.S.C. 1613(a) until 5 years after the date on which the alien adjusts to permanent resident status. Adjusted aliens may not be terminated from employment except for just cause. In the case of complaints of improper termination, a worker can be credited with the days of work lost by providing in his or her application to adjust his status that the hours lost were because he was fired without just cause and that he made a

reasonable effort to find another job. If the alien proved these two requirements, the alien is credited with the days of work lost, similar to when a worker proves he was sick.

### **Section 152. Application for Blue Card Status**

**Submission of Applications:** Applications for blue card status may be filed directly with the Secretary by the alien through an attorney or qualified organization, or through a qualified designated entity. Applications for adjustment of status to permanent resident status are filed directly with the DHS Secretary.

**Proof of Eligibility for Blue Card and Permanent Resident Status:** Applicants may establish eligibility for blue and permanent resident status through government employment records or records provided by employers, collective bargaining organizations and other reliable documentation provided by the alien.

**Burden of Proof:** Applicants have the responsibility of proving by the preponderance of the evidence that they have worked the requisite work days and hours required to meet the criteria for adjustment to blue card and lawful permanent resident status.

**Limitation on Access to Information:** Files and records collected or compiled by a qualified designated entity for the purposes of this section are confidential and the Secretary shall not have access to such a file or record relating to an alien without the consent of the alien, except as allowed by a court order issued pursuant to confidentiality requirements.

**Confidentiality of Information:** Officials of the government may not use information provided in an application by an applicant or an employer for any purpose other than to make a determination on the application.

**Penalties for False Statements in Applications:** If a person files an application for a blue card or for permanent resident status and knowingly and willfully provides false information or provides a false document, the individual is subject to criminal prosecution and, if convicted, is inadmissible under the INA.

**Legal Services Assistance for the Filing of an Application:** A recipient of funds from the Legal Services Corporation may provide assistance directly related to filing an application for blue card or permanent resident status.

**Application Fees:** The DHS Secretary may set a schedule of fees to be charged to individuals applying for blue card and permanent resident status. Such fees may be used by DHS to pay its cost of processing such applications.

### **Section 153. Adjustment to Permanent Residence**

**Qualifying Employment:** Aliens in blue card status may apply for adjustment to lawful permanent resident status if they can provide that they: (1) performed at least 5 years of

agricultural employment for at least 100 work days per year during the 5-year period beginning on the date of enactment; (2) or performed at least 3 years agricultural employment for at least 150 work days per year during the 3-year period beginning on the date of enactment; or (3) during the 4-year period beginning on the date of enactment worked at least 150 work days during 3 years and 100 work days during the remaining year. The period to establish qualifying employment may be extended up to 12 months if the alien can prove through medical and other records that illness, injury, pregnancy, severe weather conditions, or if the alien was terminated without just cause and the alien made a reasonable effort to find another job, prevented him or her from engaging in employment for a significant period of time. Proof of qualifying employment is provided by employer records filed with DHS under Section 101 or other specific records.

**Grounds for Denial of Permanent Resident Status:** Aliens who commit fraud or willful misrepresentation on applications for adjustment, or who have committed an act which makes them inadmissible under the INA, or commit a felony or 3 misdemeanors, or is convicted of an offense which involves bodily, a threat of bodily injury or harm to property in excess of \$500 are denied adjustment to lawful permanent resident status.

**Grounds for Removal:** Aliens in blue card status who do not apply for permanent resident status before the expiration of the application period or who fail to meet the prospective work requirement by the end of the application period are deportable and shall be removed.

**Payment of Taxes:** An alien must establish no later than the date of adjustment to permanent resident status that he or she does not have any federal tax liability for any year during the 5-year period beginning on the date of enactment during which the alien is required to satisfy his or her prospective work obligation.

**Spouses and Minor Children:** Spouses and minor children of blue card aliens who adjust to permanent resident status may obtain such status upon applying for it or if the principal alien included them within his or her application for such status.

#### **Section 154. Other Provisions**

**Waiver of Numerical Limitations and Certain Grounds for Inadmissibility:** Numerical limitations in the INA on the admission of permanent resident aliens do not apply to aliens adjusted under this program. A limited number of grounds for exclusion are also waived. Aliens who file a non-frivolous application for blue card status prior to or during the application period may not be removed and may be granted work authorization in the U.S. until a final determination on the application has been made.

**Administrative and Judicial Review:** A single level of administrative appellate review is provided for determinations of eligibility for blue card and permanent resident status. Judicial review is limited to orders of removal.

Use of Information: Information on the benefits and eligibility requirements of the blue card program shall be broadly disseminated by the DHS Secretary and qualified designated entities no later than the first day of the application period.

Regulations, Effective Date, and Funding: Regulations for the program must be promulgated no later than 7 months after the date of enactment. This section shall take effect on the date regulations are issued – on an interim basis or otherwise. Funding necessary to implement this Subtitle is authorized.

### **Section 155. Correction of Social Security Records**

Social Security records reflecting the employment of aliens prior to their adjustment to blue card status must be corrected.

## **Chapter 2. Reforms of H-2A Worker Program**

### **Section 156. Amendment to the Immigration and Nationality Act**

This subchapter reforms the existing H-2A program for the temporary admission of alien agricultural workers by replacing the existing INA Section 218 with the following new Sections 218, 218A, 218B, 218C, and 218D.

#### Section 218. Applications to the Secretary of Labor

This section provides that employers desiring to employ H-2A aliens must first file an application with the Labor Secretary and a copy of a job offer, including a job description, wage level, and minimum requirements. If the application meets the program requirements and there are not obvious deficiencies, it must be accepted by the Labor Secretary. Applications may be filed by individual employers or by associations on behalf of their employee members.

The application must include the following assurances: (1) that the collective bargaining representative has been notified of the application if the job opportunities for which the application is filed are covered by a collective bargaining agreement; (2) that the job is not due to a strike or lock out; (3) that the position is not for a temporary or seasonal job (maximum duration of 10 months); (4) that the employer has offered or will offer the job to eligible and qualified U.S. workers who applied; and (5) that the employer will provide insurance covering work-related injury and disease if the job opportunity is not covered by the state workers' compensation law.

If the job opportunity is not covered by a collective bargaining agreement, the application must also assure (1) minimum wages, benefits and working conditions required in Section 218A, (2) the non-displacement of U.S. workers, and (3) the recruitment of U.S. workers.

### Section 218A. H-2A Employment Requirements

This section lists the required wages, benefits, and terms and conditions of employment for H-2A employers. Preferential treatment for alien workers is prohibited.

**Housing:** H-2A workers from outside normal commuting distance must be provided with housing that meets federal farm labor camps standards or with rental or public accommodation housing that meets applicable standards. Such housing will be provided at no cost to the worker. In lieu of providing housing, the employer may provide a monetary housing allowance comparable to the HUD Section 8 housing allowance - but only if the state governor has certified to the Labor Secretary that there is sufficient housing in the area for seasonal agricultural workers.

**Transportation:** H-2A workers who live outside normal commuting distance must be reimbursed for reasonable costs for transportation to the job and for subsistence. This transportation allowance is provided to workers who complete 50% of the employment period. Return transportation is also reimbursed for workers who complete 100% of the employment period.

**Wages:** H-2A workers are required to be paid the highest of the federal, state, or local statutory minimum wage, the prevailing wage for the occupation in the area of intended employment or the applicable Adverse Effect Wage Rate (AEWR). The AEWR may not be greater than the applicable AEWR on January 1, 2009. If Congress fails to set a new wage standard for H-2A workers within three years of the date of enactment, subsequent AEWRs will be annually indexed by the percentage change in the Consumer Price Index, with a maximum adjustment of 4 percent annually. During the three years after enactment, the General Accounting Office will conduct a study on the H-2A wage standard and submit a report to Congress. A Congressional commission is also appointed to conduct a study on the topic and make recommendations to Congress.

**Guarantee of Employment:** H-2A workers are guaranteed employment for a minimum of three-quarters of the period of employment for which they were recruited.

**Motor vehicle Safety:** Motor vehicle safety and insurance standards are required for vehicles and drivers used to transport H-2A agricultural workers. These standards are the same as those prescribed by the Labor Secretary under the Migrant and Seasonal Agricultural Worker Protection Act and other federal and state safety standards.

**Compliance with Laws:** H-2A employers must assure compliance with all applicable federal, state, and local labor laws. However, a violation of this Section does not constitute a violation of the Migrant and Seasonal Agricultural Worker Protection Act.

### Section 218B. Procedure for Admission and Extension of Stay of H-2A Workers

**Petition to DHS for admission of aliens:** Employers with valid labor certifications from the Secretary of Labor may petition the DHS Secretary for approval for the admission of aliens to

perform work described on the labor certification, or for the extension of stay of H-2A aliens already in the U.S. who are completing a prior period of authorized H-2A employment. DHS is required to adjudicate the petition within 7 working days.

**Admissible Aliens:** Aliens are eligible for admission as H-2A workers if they are otherwise eligible for admission under the INA and if they have not violated the terms of the H-2A program in the past five years. The debarment provision for unlawful presence in the present INA is waived on a one-time basis for aliens seeking admission as H-2A workers.

**Extension of Stay of Aliens:** H-2A aliens are admitted or extended for the period of employment for an approved labor application not to exceed 10 months. Employers may petition to extend the stay of H-2A aliens for a maximum three years' continuous stay in the U.S. as an H-2A alien. After three consecutive years, the alien must depart the U.S. Before an alien is eligible to be readmitted as an H-2A worker, he or she remain outside of the country for at a period of at least one-fifth of the time the alien was previously in the U.S. as an H-2A alien.

**Abandonment of Employment by Aliens:** Aliens who abandon their employment are required to immediately depart the U.S. and are subject to removal. Employers must report abandonments and early terminations to the DHS Secretary. An employer can replace an alien who abandons employment or who is terminated for a lawful job-related reason.

**Counterfeit Resistant Documents:** H-2A aliens must be provided with a counterfeit resistant identity and employment authorization document.

**Special Rules:** Special rules are provided for aliens employed as shepherders, goat herders, or dairy workers. Such workers may be admitted for an initial period of up to 12 months, and they may have the initial period extended for up to 3 years. Upon completion of a cumulative total of 36 months in such work, the alien, or an employer on the alien's behalf, may apply for adjustment to permanent resident status. The stay of an alien with a pending application for final residence may be extended by the Secretary in 1-year increments until a final determination is made.

#### Section 218C. Worker Protection and Labor Standards Enforcement

**Administrative Enforcement of Program Requirements by the Secretary of Labor:** This section requires the Labor Secretary to establish a process for the receipt, investigation, and disposition of complaints about an employer's failure to meet the conditions of employment specified in Section 218. Complaints may be filed by any aggrieved person or organization no later than 12 months after the alleged failure to comply. If the Labor Secretary finds that a violation has occurred, the employer may be required to pay back pay and civil monetary penalties. The Labor Secretary will also notify the DHS Secretary of such violations, and the DHS Secretary may debar the employer from the program for one year. Additional civil monetary penalties and a 2-year debarment may be imposed on employers who commit willful noncompliance or misrepresentation on an H-2A application.

Private right of Federal Action and Required Mediation: H-2A aliens are provided with a private right of action regarding the housing, transportation, wage, employment guarantee, motor vehicle safety provisions and discrimination provisions of Section 218, as well as the written promises contained in the employer's job offer. Mediation of the complaint is required, if any party requests it, before a lawsuit may proceed. Workers' compensation benefits are the exclusive remedy for losses covered by workers' compensation. Discrimination against a worker who files a complaint or cooperates in an investigation or proceeding in connection with a complaint is prohibited.

Liability of Associations and Association Members for Program Violations: Provisions of current law apply to associations and members of associations employing workers in H-2A certified occupations who commit violations.

#### Section 218D. Definitions

### **Part 6. Miscellaneous Provisions**

#### **Section 161. Determination and Use of User Fees**

The Secretary is authorized to establish fees applicable to employers applying for certification to employ H-2A aliens to cover the actual direct costs of operating the H-2A program.

#### **Section 162. Rulemaking**

Regulations of the Labor Secretary, the DHS Secretary, and the Secretary of State shall be issued no later than one year after the date of enactment.

#### **Section 163. Report to Congress**

No later than September 30 of each year, the Secretary will report to Congress with information compiled during the previous year regarding the use and operation of the H-2A program, as well as the number of workers who applied and were adjusted to blue card and permanent resident status. No later than 180 days after the date of enactment, the Secretary will report to Congress regarding steps taken to implement the program.

#### **Section 164. Promoting Family Unity**

This section increases the government's discretion and flexibility in addressing numerous hardships caused by a provision that bars individuals unlawfully present in the United States from utilizing our legal immigration system. Amends INA Section 212(a)(9)(B) to create one three year bar of inadmissibility for noncitizens who are unlawfully present for more than year. The unlawful presence bar does not apply to an alien for whom an immigrant visa is available or was available on or before the date of the enactment of this Act, and is otherwise admissible to the United States for permanent residence. Any unlawful presence accrued by an alien as of the date of enactment this Act shall not be considered unlawful presence for the purpose of this subparagraph if such alien was as of the date of enactment 1) the beneficiary of a pending or

approved petition for classification as an immediate relative; 2) the beneficiary of a pending or approved family-based or employment based petition or 3) a derivative beneficiary of a pending or approved immediate relative, family based or employment based petition. This section also amends current bars to relief for false claims to citizenship to require a willful violation and it allows the Secretary to consider U.S. citizen children's interests in determining whether a waiver is appropriate.

### **Section 165. Effective Legalization Program Funding**

This section establishes the Department of Homeland Security Legalization Program Account, and allows transfer of funds from the general fund of the Treasury for legalization programs described in this Act.

### **Section 166. Effective Date**

Section 481 and the amendments made by Section 480 shall take effect 1 year after the date of the enactment of this Act.

## **Subtitle B: Worksite Enforcement**

### **Section 171. Unlawful Employment of Aliens**

This section amends INA Section 274A. It includes a mandatory national employment verification system, provisions regarding the employment of unauthorized aliens, the verification of employee work authorization, the requirements and protocols for a national employment verification system (currently, E-Verify), and protections against discriminatory immigration-related employment practices.

**Employing Unauthorized Aliens:** Under this section, it is unlawful for an employer to knowingly or with reckless disregard hire, continue to employ, or use a contract to obtain the labor of an alien who is unauthorized to work. The DHS Secretary may require employers to have written contracts ensuring that their contractors or subcontractors adhere to immigration laws. By complying in good faith with the above requirements and by complying with any applicable requirements regarding the use of an employment verification system, employers will have established an affirmative defense that they have not unlawfully employed an unauthorized worker. This section creates a new legal standard for employment of unauthorized persons: knowingly "or with reckless disregard". Sections 274A (a)(1)(A) and 274(a)(3) refer to the definition of unauthorized alien in subsection (b)(1) but the definition of unauthorized alien is actually in subsection (b)(2). This section gives statutory permission for an employer to either terminate or continue to employ an employee who becomes legally authorized to work. The Secretary may require "by regulation" that employers who use contractors or subcontractors include language in the contract that such entities must comply with immigration laws and use the employment verification "system" (The "System"). The Secretary may create a system that allows general contractors to confirm that a subcontractor has registered and is utilizing the

System. The Secretary may adopt different procedures for employers using contractors based on different employment sectors/industries. Until the Secretary creates a mandatory verification system, or if an employer is voluntarily participating in the System, the “good faith” defense exists without showing that the employer has complied with the System. To establish a defense, the employer must be in compliance with additional requirements which the Secretary may include.

Presumption of “knowledge or reckless disregard:” This provision creates a presumption of knowledge/reckless disregard based on an employer’s failure to comply with any verification requirement established by the Secretary. Adopts by statute a “reasonable person” standard with regard to whether a verification document is genuine and relates to the person presenting it. The language differs slightly from existing law which states “reasonably appears on its face” to be genuine.

Procedures for Verifying that Employees Are Authorized to Work in the United States: This section updates the documents that employees can present for verification of identity and employment authorization. Such documents include a U.S. passport, permanent residence or employment authorization card including biometric data or other identifying information, an enhanced drivers’ license with additional security features, or certain other passports. To establish identity, the document must include at a minimum the individual’s photograph, name, date of birth, gender, and driver’s license or identification card number, and security features to make it resistant to tampering, counterfeiting, and fraudulent use, or for minors, an attestation as to the individual’s identity may be required under penalty of perjury.

To establish employment authorization, the following may be accepted: fraud-resistant Social Security Cards or other documentation required by the Secretary. This section greatly proscribes the types of documents that will be allowed to prove employment authorization.

This section creates stricter requirements for the recordkeeping of employment authorization documentation. Employers must retain a version of the documentation form (currently, Form I-9) and make it available to DHS, DOJ Office of Special Counsel for Immigration-Related Unfair Employment Practices, or the DOL for at least either seven years after the hiring date or two years after the individual’s employment is terminated, whichever is later. The employer must also keep copies of the documentation form in accordance with DHS regulations. It must ensure that these records are used only for employment verification and protect the confidentiality of the employees’ identities and employment eligibility. This section mandates that employers copy all documents presented by individuals and retain such documents with the verification form. Current law states that photocopying verification documents is voluntary. The employer is required to keep a record of any action taken to resolve or clarify any issue relating to the validity of an individual’s identity or employment authorization. No such requirement exists in current law. The Secretary may, based on a “reasonable suspicion” of a violation, require electronic transmission of verification forms and accompanying documentation for inspection. The bill includes a provision for acceptance of a receipt for replacement documentation or temporary evidence of employment authorization for up to one year.

The System: It creates procedures for registering for the employment verification. It provides a graduated timeframe for employers to register; all employees must register within 5 years. All employers within the Executive, Legislative, or Judicial Branches of the Federal Government shall participate in the System on or within 60 days after the date of enactment. Federal contractors shall participate in the System as provided in the final rule published at 73 Federal Register 67,651 (Nov. 14, 2008). Within one year, the Secretary may require any employer or industry which the Secretary determines to be part of the critical infrastructure or directly related to the national security or homeland security of the United States to participate in the System with respect to all newly hired employees and employees with expiring employment authorization. Employers with more than 1000 employees shall participate within 2 years; employers with more than 500 employees within 3 years and employers with more than 100 employees, within 4 years. Additionally, if an employer is found to have violated immigration law, it shall be required to register for the system. Employers may also register on a voluntary basis. Failure to register creates a rebuttable presumption that the employer has hired unauthorized aliens. Employers who are required to participate in the System with regard to new hires, may be required to use the System for its current workforce if found to have violated immigration laws. An employer who is required to register for the System and fails to comply with its requirements creates a rebuttable presumption of a violation of the act. If an employer required to participate in the System violates any immigration law, as determined by the Secretary, it may be required to put all existing employees as well as new hires through the System.

This section outlines the requirements for employers participating in the system. These include required training to ensure proper use and the protection of civil rights, civil liberties, and privacy and required notification to employees stating that the system cannot be used for discriminatory or immigration enforcement purposes. The section allows employers who are required by the Secretary to verify their entire workforce to use the System for initial verification even if the individual was hired before the employer was subject to the System.

The section outlines the confirmation and nonconfirmation process including the issuance of a further action notice which designates when an individual might have to submit additional information; the process for contesting a determination; employee protections; and notice requirements. A confirmation or nonconfirmation must be issued within 15 days where the employee contests the further action notice. The Secretary may extend that period for good cause. Employees must receive notice of the nonconfirmation within 3 business days. Employers are prohibited from employing an individual who received a nonconfirmation following the expiration of the administrative appeal or if a further action notice was not contested. The time to complete the verification in the system is no earlier than the date in which the individual accepts and employment offer and no later than 3 business days after the date employment begins. The employer may not make the individual's start of employment or training date dependent on a receipt of confirmation of identity and employment authorization. Reverification in the system must be initiated no later than 3 business days after the expiration of an employment

authorization document. The Secretary has up to 5 years to create a notification procedure (i.e. notice of confirmation, nonconfirmation, or further action.) Are required to comply with requests from the Secretary for “information” about current and former employees during the new 2 year/7 year time frame previously discussed. The bill provides for \$40 million for purposes of outreach programs to the public and requires that within 3 months of enactment, the Secretary, in consultation with the Secretary of Labor, Agriculture, Social Security, Attorney General, EEOC, Office of Special Counsel, and Administrator of Small Business Administration, commence a campaign to disseminate information to the public about the system. Employers who comply with the system, are not liable for any employment-related action taken with respect to an employee in which the employer relied in good faith on information provided by the system.

**Administrative Review Process:** Individuals who are timely notified of a nonconfirmation have 15 days to file an administrative appeal. U.S. citizens and nationals file appeals with the SSA Commissioner, and aliens file with the DHS Secretary, both of whom will develop procedures for reviewing appeals. Individuals who are improperly received nonconfirmations will be compensated for lost wages (at most \$75,000) except for periods in which the individual was not authorized to work, reasonable costs and attorneys’ fees (at most \$50,000). This section allows the Secretary to establish a self-verification process that permits individuals to verify their own employment eligibility prior to employment or contracting

**Judicial Review Process:** Within 90 days of a final determination on the administrative appeal, an individual may file for judicial review in a civil action in federal district court. The plaintiff has the burden of showing that the administrative order was erroneous. If an erroneous final determination was the result of the system’s rules, processes, or procedures or of information that wasn’t the result of an omission by the plaintiff, the court may award lost wages (up to \$75,000), reasonable costs and attorneys’ fees (up to \$50,000). The burden is on the plaintiff to show that that the administrative decision was erroneous and then to prove by a preponderance of the evidence, that the error was caused by the system’s rules, processes, or procedures or of information that wasn’t the result of an act or omission by the plaintiff. Lost wages, costs, and attorneys fees is the exclusive remedy for a finding that an administrative determination was erroneous by means of negligence or recklessness of the Secretary or Commissioner.

**Private Right of Action:** If the nonconfirmation was caused by the employer’s negligence or misconduct, the employee can seek damages, back pay, reinstatement, and other remedies in a civil action against the employer. The civil action must be commenced in federal district court within 90 days of notice of a final determination on the administrative appeal. No court (except US Supreme Court) has the authority to enjoin or restrain operation of the provisions in this section, other than with respect to application to an individual plaintiff.

**Annual Study and Report:** The U.S. Comptroller General is authorized to conduct an annual study of the employment verification system and to submit a report to Congress and DHS on the findings. The study will determine whether the system demonstrates accuracy in updating information, low error rates and delays in verification, no tendency towards discrimination based

on the system operations, the protection of employees' private information, and adequate staffing and funding.

**Annual Audit and Report:** The DHS Office for Civil Rights and Civil Liberties will conduct annual audits to assess employer compliance with system rules and with the memorandum of understanding between employers and the SSA and DHS.

**Management of the System:** The employment verification system is managed by DHS. DHS will respond to participating employers' inquiries about employee identity and work authorization, it will maintain records of those inquiries and the responses as evidence of employer compliance with their requirements, and it will provide information to and require action by employers and individuals using the system. It will confirm identities and employment authorization using SSA records, state and federal birth and death records, passport and visa records, and state driver's license or identity card information. It will include photographs from such documents, if available. It will be designed to operate efficiently, effectively, with privacy protections, and auditing capabilities.

The DHS Secretary is responsible for maintaining a reliable, secure method for comparing information to confirm identities and work authorization; for issuing confirmations, nonconfirmations, and notices of further action; performing regular audits; providing federal government facilities where individuals and employers - who are otherwise unable - can access the system; establish a program to identify the multiple use of Social Security account numbers, establish a system to reduce identify fraud and other misuses; and conduct regular civil rights and civil liberties assessments of the system. The Secretary of State is responsible for providing access to necessary passport and visa information. The Secretary can "block" from use in the system a social security number that has been compromised (i.e. used multiple times by different individuals) unless an individual can prove that he or she is the legitimate holder of the number. No other agency can use the information from the system for any purpose other than for verification (enforcement and administration of immigration laws).

**Compliance:** The Secretary will also establish procedures for ensuring compliance with the system rules. These include a system for complaints, initiating investigations and hearings, and requiring employers to perform an internal review and to submit a certification of compliance. Additionally, DHS can issue penalties for civil violations of this section. It must first provide written notice of the alleged violation and the penalty sought. The written notice to the employer is referred to as a pre-penalty notice and must include a statement of the violation and the penalty sought to be imposed. Employers have 30 days to respond. Then the DHS Secretary will issue a final determination including the findings of fact and conclusions of law, as well as the penalty claim, which includes monetary fines. Judicial review of a final administrative decision is permitted, and this section outlines the requirements for such review. If a final determination

against the employer is not subject to judicial review, the Attorney General may bring a civil action to enforce compliance. Any employer who does not pay the required fees or penalties is subject to a lien on all property and rights to property. Fines are as follows:

**Hiring or continuing to employ unauthorized aliens:**

- \$2,000-5,000 per unauthorized alien (first offense) (Current law: Knowingly hiring or continuing to employ: First offense—not less than \$275 and not more than \$2,200 for each unauthorized alien with respect to whom the offense occurred before March 27, 2008, and not less than \$375 and not exceeding \$3,200, for each unauthorized alien with respect to whom the offense occurred occurring on or after March 27, 2008)
- \$4,000-\$10,000: second offense (Current law: not less than \$2,200 and not more than \$5,500 for each unauthorized alien with respect to whom the second offense occurred before March 27, 2008, and not less than \$3,200 and not more than \$6,500, for each unauthorized alien with respect to whom the second offense occurred on or after March 27, 2008)
- \$8,000-25,000: more than one prior fine: (Current law: not less than \$3,300 and not more than \$11,000 for each unauthorized alien with respect to whom the third or subsequent offense occurred before March 27, 2008 and not less than \$4,300 and not exceeding \$16,000, for each unauthorized alien with respect to whom the third or subsequent offense occurred on or after March 27, 2008)

**Fines for employment law violations including wage and hour violations:**

Fines of at least \$500, judicial injunction, treble damages on civil money or criminal fines.

**Fines for Recordkeeping or Verification Practices:**

- \$500-\$2000: (first offense): (Current law: not less than \$100 and not more than \$1,000 for each individual with respect to whom such violation occurred before September 29, 1999, and not less than \$110 and not more than \$1,100 for each individual with respect to whom such violation occurred on or after September 29, 1999)
- \$1000-\$4,000 (second offense)(Current law does not have a tiered penalty system for paperwork violations but looks at the history of prior violations as one element in determining the fine)
- \$2,000-\$8,000(more than one prior offense)

**Other penalties:** Cease and desist orders, additional fines including \$10,000 for requiring an employee to post a bond, failure to pay a fine may result in a lien against the employer's property. The lien may be valid for 20 years if the fine remains unpaid.

**Mitigation:** Fines may be mitigated below statutory minimum limit or remit it entirely if there is no prior history of violations. Factors considered: Employer's hiring volume, compliance history, good-faith implementation of a compliance program, voluntary disclosure of violations.

**Prohibition of Indemnity Bonds:** It is unlawful for employers to require a potential employee to post a bond or security or provide a financial guarantee against any potential liability under this section related to hiring that individual. This is punishable by a civil penalty of up to \$10,000 per violation.

**Government Contracts:** If an employer with federal grants, contracts, or cooperative agreements or an employer who reasonably may be expected to submit offers or be awarded a government contract is deemed a repeat violator of this section or is convicted of a crime under this section, it will be subject to disbarment from receiving federal grants, contracts, or cooperative agreements for a period up to 5 years. Indictments for violations of this section or evidence of actions that could be the basis of disbarment are cause for suspension under the Federal Acquisition regulation procedures. Inadvertent violations are not a cause for repeat violator status.

**Preemption:** This section clarifies existing law. In the Immigration Reform and Control Act of 1986 (IRCA), Congress established comprehensive regulation concerning the employment of unauthorized workers that takes into account multiple federal interests and leaves no room for additional state or local legislation. Because the comprehensive nature of federal preemption in this area has been repeatedly misunderstood, this section clarifies the broad preemption in this area, and eliminates a small exception for licensing laws that has been erroneously misinterpreted.

Neither backpay nor any other monetary remedy for unlawful employment practices by an employer, workplace injuries or other causes of action giving rise to liability shall be denied to a present or former employee on account of: the employer's or the employee's failure to comply with the requirements of this section in establishing or maintaining the employment relationship or the employment verification system or the employee's continuing status as an unauthorized alien both during and after termination of employment.

Challenges to the validity of the system is reserved to the D.C. District Court and limited to constitutional challenges and APA-related violations. Also such challenges are limited to 180 days from the date that the System is first implemented. This section provides for a private right of action for businesses against other businesses/employers where the complaining business has been injured due to another's employment of unauthorized aliens. Damages are trebled and include costs and attorneys' fees. Criminal penalties and injunctions for pattern or practice violations (criminal fines and/or jail sentence up to 3 years); knowing hiring/continuing to employ violations. (knowingly hiring/employing 10 or more unauthorized aliens within a 12-month period--criminal fines and/or jail sentence up to 5 years; Wage and Hour violators (min wage and maximum hours-- fines and/or jail sentence up to 10 years). Same sentences apply to persons found guilty of conspiracy. [Another—incorrect reference to (b)(1)—the definition of unauthorized alien is in (b)(2)].

### **Section 172. Compliance by Department of Homeland Security Contractors with Confidentiality Safeguards**

This section amends 26 U.S.C. 6103(p) to provide additional confidentiality safeguards for information disclosed in tax returns. DHS contractors will have access to such information only if there are requirements in place to protect confidentiality, there are on-site reviews every three years to determine compliance with those requirements, and DHS annually certifies that each contractor is in compliance. This section also repeals the current reporting requirements on earnings of aliens who are authorized to work (INA 290(c)) and on fraudulent use of Social Security account numbers (IIRAIRA 414(b)).

### **Section 173. Increasing Security and Integrity of Social Security Cards**

This section requires that within 2 years, only fraud-resistant, tamper-resistant, and wear-resistant Social Security cards will be issued. Any request for a replacement card will be subject to a SSA determination that there is a legitimate purpose behind the request. Additionally, this section amends 42 U.S.C. 208(a) to include criminal penalties for individuals who knowingly use a social security number or card obtained by fraud or false statements, who knowingly uses another person's social security number or card, knowingly sells or intends to sell a social security number or card, or knowingly alters or counterfeits a card and increases the possible jail sentence from 5 to 10 years. The Social Security Commissioner can disclose an individual's Social Security information to law enforcement investigating violations of this section, INA Section 274A, INA Section 274B, or INA Section 274C. *The Commissioner cannot disclose tax return information under this section.*

### **Section 174. Increasing Security and Integrity of Immigration Documents**

No later than one year after this Act's enactment, the DHS Secretary will issue only machine readable, tamper-resistant employment authorization documents that use biometric identifiers. The Secretary will also report to Congress on the use of such documents for nonimmigrant aliens authorized to work with a specific employer.

### **Section 175. Responsibilities of the Social Security Administration**

This section amends the Social Security Act, 42 U.S.C. 405(c)(2). It requires that the Social Security Commissioner create a reliable, secure method of verifying Social Security numbers within the employment authorization system and create a system to identify and correct misinformation in Social Security databases in order to prevent fraud and identity theft. The commissioner may also create a process in which individuals can request, based on an individual's Social Security number, that a confirmation in the employment verification system be precluded until it is reactivated by the individual.

### **Section 176. Antidiscrimination Protections**

This section amends INA Section 274B, which prohibits employment discrimination based citizenship status or national origin. Violations of Section 274B are litigated by Office of Special Counsel in the DOJ Civil Rights Division.

Under this section, the misuse of the employment verification system (currently, E-Verify) is added to the list of unfair immigration-related employment practices. This includes practices such as:

- Terminating an employee while confirmation under the system or the employee's decision to challenge or appeal a system determination is pending;
- Using the system for anyone who is not an employee or for unauthorized purposes;
- Using the system to exclude certain individuals from employment who seem likely to require additional verification in the system;
- Failing to provide timely required notice to employees;
- Using the system to deny benefits or to interfere with labor rights;
- Using the system for discriminatory or retaliatory purposes.

The section identifies discriminatory actions under this section. It adds a new provision outlining the burden of proof for demonstrating discrimination in disparate impact cases and a new provision defining when citizenship status or national origin is considered a motivating factor.

The section also revises the type of relief granted in these discrimination actions. Presiding judges are given more discretion in the equitable relief that they can award. However, judges cannot require the admission or reinstatement of an employee into a union or require the hiring, reinstatement, or promotion of an employee if the employee did not suffer adverse employment action because of his or her citizenship status or national origin. Judges may grant declaratory or injunctive relief – but not damages – if an employer demonstrates that it would have taken the same action in the absence of an impermissible motivating factor. Additionally, this section increases the fines for violations.

Lastly, this section revises some of the Office of Special Counsel's (OSC) responsibilities. It allocates \$40 million for each year between 2011 and 2013 for the purpose of disseminating information to employers and workers. It provides E-Verify transaction and citizenship status data to OSC upon request. It permits OSC to cooperate with state and local agencies that administer of state fair employment practice laws with respect to research and other projects, as well as the processing of charges. Fines for unfair immigration related employment practice violations are increased.

### **Section 177. Immigration Enforcement Support by the Internal Revenue Service and the Social Security Administration**

This section amends Section 6721 of the Internal Revenue Code of 1986 to increase penalties for employers who fail to file correct information returns.

### **Section 178. Enhanced Verification System**

This section authorizes the DHS Secretary to establish procedures to allow an individual to verify his eligibility for employment in the U.S., to review his records in the verification system, and to update any information about himself. This section authorizes the creation of a voluntary Enhanced Verification System which would allow individuals who have reviewed their records to update information in the system, to submit biometric information, and to block the use of their Social Security numbers in the system. The DHS Secretary will submit a report to Congress assessing the Enhanced Verification System and recommending further necessary steps before requiring individuals to participate.

### **Section 179. Authorization of Appropriations**

This section increases the DHS staff dedicated to administering the employment verification system and enforcing compliance with Section 274A, 274B, and 274C by least 4,500 personnel per year for the next five years. It outlines the compliance and monitoring functions required of the new personnel.

## **Title II: Immigration Enforcement and Reform**

### **Subtitle A: Border Enforcement**

#### **Part 1. Additional Assets and Resources**

#### **Section 201. Effective Date Triggers**

Lawful prospective immigrants (as defined by Section 102 of this Act) may not adjust their status to permanent residence until the DHS Secretary certifies that the following measures are established, funded, and operational:

- (A) ICE has a total force of 6,410 agents to investigate violations of criminal law, including document and benefit fraud and cross-border smuggling of aliens, firearms, narcotics and other contraband.
- (B) ICE has a total force of 185 worksite enforcement auditors to support a worksite enforcement strategy that prioritizes developing cases against employers committing serious violations.
- (C) ICE has created and staffed an Immigration Benefit and Document Fraud Task Force in each field office headed by a Special Agent in Charge;
- (D) ICE has nationwide plan in place with benchmarks to dramatically increase the enrollment at a nationwide level of an alternatives to detention program utilizing community-based

nonprofits organizations

- (E) ICE has implemented civil detention standards and requires compliance at each facility detaining immigrants
- (F) CBP has a total force of 21,000 U.S. Border Patrol agents who have been hired, trained, and have reported for duty, including increased numbers of personnel to conduct inspections for drugs, contraband, and immigrants who are unlawfully present at America's ports of entry;
- (G) CBP has a total force of 21,500 officers who have been hired, trained, and have reported for duty at the Office of Field Operations
- (H) CBP has 7 Unmanned Aircraft Systems deployed and operational; Remote Video Surveillance Systems (RVSS) deployed and operational at 300 sites; 200 scope trucks; and 56 Mobile Surveillance Systems (MSS);
- (I) The employment verification system created under title III of this Act is fully operational and mandatory for all employers;
- (J) The Secretary has received, and is processing and adjudicating in a timely manner, applications under title 5 of this Act, including conducting all necessary background and security checks required under that title; and;
- (K) The Attorney General submits a written certification to the President and the Congress that each of the following measures is established, funded, and operational:
  - (1) DOJ has 300 Assistant United States Attorneys in place who prosecute criminal violations at the border; and
  - (2) DOJ has 275 Immigration Judges in place with appropriate support staff.

## **Section 202. Customs and Border Protection Personnel**

This section provides for additional Customs and Border Protection (CBP) officers and personnel in addition to the personnel increases included in the emergency supplemental appropriations for border security passed in August of 2010. This bill allocates \$40 million from the 2010 DHS Appropriations Act to fund 250 new Custom and Border Protection officers and 25 support staff at new ports of entry along the Southwest border. By September 30, 2013, DHS shall hire, train, and assign to duty 2,500 additional CBP officers to serve at ports of entry along the Northern border; 2,500 additional CBP officers to serve at ports of entry along the Southern border; and 350 additional support staff for all U.S. ports of entry.

This section requires DHS to write and submit to Congress within 90 days of enactment of this

Act reports on the Department's plans for (1) placing CBP officers on outbound inspections at all Southern land ports of entry; and (2) the placement of sufficient agriculture specialists at all Southern land ports of entry. This section also authorizes the DHS Secretary to make up to \$55 million in retention payments to qualified CBP port of entry officers in the amount of \$5,000 to \$10,000. This section further outlines the requirements for these retention incentive payments.

### **Section 203. Secure Communication; Equipment; and Grants for Border Personnel**

Each CBP officer shall receive a secure 2-way communication and satellite-enabled device. The device must allow the officer to communicate between ports of entry and inspection stations and with other federal, state, local, and tribal law enforcement. The DHS Secretary shall also establish a program to award grants (\$30 million for 6-years beginning Oct. 1, 2011) for the purchase of mobile, hand-held communication devices and detection equipment for state and local officers serving on the Southern Border.

### **Section 204. Infrastructure Improvements and Expansion of Land Ports of Entry**

This section provides, as part of the American Recovery and Reinvestment Act of 2009, for \$300 million towards infrastructure improvements, expansion, and new construction (or reimbursement for new construction costs incurred during fiscal years 2007 through 2012) at high-volume ports of entry along the Northern and Southern borders regardless of port ownership.

### **Section 205. Additional Authorities for Port of Entry Construction**

This section permits the CBP Commissioner to design, construct, and modify land ports of entry and other structures, to acquire land for the purposes of doing so, and to construct additional ports of entry along the Northern and Southern borders. The DHS Secretary will consult with the Secretary of the Interior, the Secretary of Agriculture, the Secretary of State, the International Boundary and Water Commission, the International Joint Commission, and appropriate representatives of States, local governments, Indian tribes, and property owners to determine the new port of entry locations and to minimize adverse impacts of the ports on the environment, historical and cultural resources, commerce, and residents' quality of life.

### **Section 206. Additional Increases in Immigration Enforcement Personnel**

This section increases the number of full-time active duty ICE investigators each year from 800 additional to 1000 additional for fiscal years 2011-2012. This section also authorizes an increase of at least 50 DHS personnel assigned to investigate alien smuggling per fiscal years 2012-2016.

### **Section 207. Additional Immigration Court Personnel**

This section increases the number of immigration litigation attorneys by at least 50 each year for fiscal years 2012-2016, the number of immigration judges by at least 20 each year for fiscal years 2012-2016, and increases the number of support personnel for these immigration judges by

at least 80 each year for fiscal years 2012-2016. This section also increases the number of staff attorneys at the Board of Immigration Appeals by at least 10 each year for fiscal years 2021-2016 and the number of support personnel for these staff attorneys by at least 10 each year for fiscal years 2012-2016.

### **Section 208. Improved Training for Border and Immigration Enforcement Officers**

This section ensures that CBP agents, Border Patrol agents, ICE agents, and Agricultural Inspectors stationed within 100 miles of all land and marine borders and at ports of entry will receive appropriate training, prepared in collaboration with OCRCL, in 1) identifying and detecting fraudulent travel documents, 2) civil, constitutional, and privacy rights of individuals, (3) limitations on the use of force, and 4) screening, identifying, and addressing vulnerable populations, such as children, crime victims, human trafficking victims, and individuals fleeing persecution or torture.

### **Section 209. Inventory of Assets and Personnel**

The DHS Secretary will identify and inventory DHS's assets, equipment, supplies, and human resources devoted to border security and enforcement before any increases are authorized under this Act. The inventory will be submitted to Congress within 90 days of enactment of the Act.

### **Section 210. Customs Border Patrol and Border Protection Assets**

This section outlines the types of equipment and protective gear that will be issued to each CBP agent, including high quality body armor, reliable and effective weapons, and all necessary uniform items including outerwear, belts, holsters, and protective equipment to. If necessary, the DHS Secretary will increase the number of Border Patrol helicopters and power boats. If necessary, the DHS Secretary will establish a fleet of motor vehicles appropriate for Border Patrol use. This section also provides for panic buttons and emergency GPS systems for all motor vehicles, portable computers for all Border Patrol police-type motor vehicles, encrypted 2-way radio communication devices for law enforcement working in Border Patrol operation areas, and portable night vision devices for Border Patrol agents working during hours of darkness.

### **Section 211. Technological Assets**

The DHS Secretary will procure additional unmanned aerial systems including related equipment like sensors, critical spares, and satellite command and control. The Secretary will acquire aircrafts, cameras, poles, ground sensors, and other necessary technologies to achieve control of land and maritime borders. The DHS Secretary, in consultation with the Attorney General, will conduct a privacy impact assessment and civil liberties impact assessment before deploying the above technologies.

## **Part 2. Enhanced Coordination and Planning for Border Security**

### **Section 216. Annual Report on Improving North American Security Information Exchange**

This section requires the Secretary of State, in coordination with the DHS Secretary and other appropriate federal agency heads, to submit an annual report to Congress on the status of improvements to the effectiveness with which information relating to North American security is exchanged between the Governments of the U.S., Canada, and Mexico. Each report will address the following topics: (1) security clearances and document integrity; joint efforts of the U.S., Canada, and Mexico encourage foreign governments to enact laws that combat alien smuggling and trafficking and the use of fraudulent documents; and efforts made to ensure that other countries meet proper travel document standards; (2) immigration and visa management with respect to progress on information-sharing regarding high-risk individuals who may attempt to enter North America; (3) best practices for visa policy coordination between the countries and immigration security including enhanced consultation between consular officials who issue visas, comparative analysis of U.S. and Canadian visitor visa processing policies and procedures; (4) the North American visitor overstay program; (5) terrorist watch lists; (6) efforts made to combat money laundering, currency smuggling, alien smuggling, trafficking in firearms, and drug trafficking; and (7) law enforcement cooperation.

### **Section 217. Cooperation with the Government of Mexico**

This section outlines steps for increased cooperation of the Secretary of State and federal, state, and local law enforcement with Mexican officials to (1) improve border security and reduce violence and criminal activity; (2) educate Mexican citizens about eligibility for nonimmigrant status; (3) encourage circular migration; and (4) work with affected communities to foster greater understanding of migration issues. The Secretary of State will submit a report to Congress on U.S. and Mexican actions regarding the above issues.

### **Section 218. Expansion of Commerce Security Programs**

This section requires the CBP Commissioner to develop a plan to expand the Customs-Trade Partnership Against Terrorism programs (the Business Anti-Smuggling Coalition, the Carrier Initiative Program, the Americas Counter Smuggling Initiative, the Container Security Initiative, the Free and Secure Trade Initiative, and other industry partnership programs), including adding additional personnel on the borders. Additionally, within 180 days, the Commissioner will implement, on a demonstration basis, a Customs-Trade Partnership Against Terrorism program and establish a demonstration program to develop a cooperative trade security system to improve supply chain security.

### **Section 219. Northern and Southern Border Drug Prosecution Initiative**

The Attorney General will reimburse state and county prosecutors in states along the Northern

and Southern U.S. borders for prosecuting federally initiated and referred drug cases.

### **Section 220. Border Relief Grant Program**

This section authorizes the Attorney General to award grants to law enforcement agencies and institutes of higher education that support law enforcement agencies for the purpose of addressing drug-related criminal activity. Eligible agencies are located in counties within 100 miles of either the Northern or Southern U.S. border or in a jurisdiction designated as a High Intensity Drug Trafficking Area by the Director of the Office of Drug Control Policy, with priority given to counties within 100 miles of the border who are in compliance with Federal and State racial profiling guidelines. Grants may only be used to provide: (1) additional resources to LEAs to address drug-related activity; (2) training and technical assistance related to drug trafficking; (3) resources to combat criminal activities along the border; (4) resources to facilitate information sharing and collaboration; and (5) resources to enhance jails, community corrections, and detention operations. The Attorney General will submit to Congress a bi-annual report assessing the success of the grant program in combating drug-trafficking and drug-related criminal activity, the cost-effectiveness of the program, and future value of the program. For fiscal years 2012-2016, \$100,000,000 is authorized to be appropriated each year.

### **Section 221. Report on Deaths and Strategy Study**

The CBP Commissioner will collect statistics relating to deaths at the U.S.-Mexico border, including on cause of deaths and the total number of deaths, and will publish the statistics on a quarterly basis. The Commissioner will submit to the DHS Secretary an annual report analyzing trends with respect to the statistics and offer recommendations to prevent and reduce the deaths described in the report.

### **Section 222. Immigration and United States-Mexico Border Enforcement Commission**

This section establishes an independent commission – the Immigration and United States-Mexico Border Enforcement Commission. The commission will study overall enforcement strategies and policies along the U.S.-Mexico Border; strengthen relations between communities in the region and DHS, DOJ, and other federal agencies; ensure that federal agency programs and policies protect due process, civil rights, and human rights of individuals near the Southern border; and make recommendations to the President and Congress regarding those programs, strategies, and policies. The commission will be composed of 18 members, including the governors of California, Arizona, New Mexico, and Texas. This section outlines membership requirements and regulations, the commission's duties, and its powers. Duties of the commission include examining the extent to which agency policies and practices protect the civil rights of migrants and border community residents, the effectiveness of human and civil rights training of border enforcement personnel, the effectiveness of the complaints process, the extent of compliance with due process standards and equal protection of the law for individuals at the Southern border, and whether border policies and agencies are accomplishing their stated goals.

The commission is authorized to hold hearings, subpoena testimony, and make recommendations to DHS regarding the disposition of cases of discipline of personnel. Within 2 years of the first meeting, the commission shall submit a report to Congress and the President which includes recommendations regarding border and immigration enforcement policies, strategies, and programs, as well as suggestions for implementation of these recommendations.

### **Section 223. Preemption**

This section clarifies that federal powers over immigration preempt any State or local law that discriminates among persons on the basis of immigration status, or imposes any sanction or liability: 1) on any person based on immigration status, 2) on any person or entity based on the immigration status of its clients, employees, tenants, or other associates; or 3) based on a violation or alleged violation of immigration law.

### **Section 224. Inherent Authority**

This section amends § 287(g)(10) to clarify that the authority to investigate, identify, apprehend, arrest, or detain persons for any violation of the INA is restricted to immigration officers and employees of the DHS.

### **Section 225. Border Protection Strategy**

This section provides for collaborative efforts between the DHS Secretary, Secretary of the Interior, Secretary of Agriculture, the Secretary of Defense, and the Secretary of Commerce to develop and submit to Congress by September 30, 2011 a border protection strategy for U.S. international land borders. The strategy will include a comparative analysis of the levels of operational control achievable through alternative tactical infrastructure and other security measures (e.g. fencing, additional agents, vehicle barriers, remote sensing, and cooperation with Mexican and Canadian law enforcement); a comprehensive analysis of the costs and other impacts of the above security measures; a comprehensive compilation of the fiscal investments to manage public and private lands and waters near the border that have been acquired or managed for conservation purposes; and recommendations for strategic border security management based on the above analyses. Additionally, this section provides for natural resource protection and cultural resource trainings for CBP agents and certain other federal personnel assigned along a U.S. land border.

### **Section 226. Border Communities Liaison Office**

This section requires the Secretary to establish, in consultation with OCRCL, Border Community Liaison Offices in every Border Patrol sector on the Southern and Northern borders. These offices will consult with border communities on agency policies, strategies, and services. They will receive assessments on agency performance from border communities and receive complaints about agency performance and agent conduct.

## **Section 227. Authorization of Appropriations**

This section authorizes the appropriation of funds necessary for fiscal years 2012 to 2016 to carry out projects described in the Declaration on Embracing Technology and Cooperation to Promote the Secure and Efficient Flow of People and Commerce across our Shared Border between the United States and Mexico or the Smart Border Declaration.

### **Subtitle B: Interior Enforcement**

#### **Part 1: Prevention of Unauthorized Entries and Removal**

##### **Chapter 2. Preventing Unauthorized Entries and Ensuring Removal**

###### **Section 235. US-VISIT System**

Within six months, the Secretary shall submit a schedule for equipping all ports of entry with US-VISIT technology, developing and deploying the “exit” component of the technology, and making interoperable all screening systems operated by the Secretary. Within 18 months, the Secretary shall deploy a system capable of recording the departure of nonimmigrants.

###### **Section 236. Illegal Entry and Reentry**

This section amends INA Section 275(b) and INA Section 276. It increases the civil penalties for illegal entry, and it clarifies and increases the fines and penalties regarding the reentry of previously removed aliens, including increasing the penalty for an alien convicted of three felonies before a previous removal or departure to 25 years of imprisonment. Affirmative defenses to a violation of this section apply (1) if, prior to the alleged violation, the alien received consent from the DHS Secretary to reapply for admission; (2) if an alien, who was previously denied admission and removed, was not required to obtain advance consent and complied with all other laws governing admission into the U.S.; (3) the prior removal order was based on charges filed when the alien was under 18. The section also clarifies what constitutes proof of prior convictions, limits collateral attacks on underlying removal orders, and establishes that persons found in the US who were previously removed under INA 241(a)(4) will be incarcerated for the remainder of their sentence. Additionally, an individual is not aiding or abetting a violation of this section by providing humanitarian assistance or transportation to such assistance.

###### **Section 237. Deterring Aliens Ordered Removed from Remaining in the United States Unlawfully**

This section clarifies the language of INA Section 212(a)(9) to enhance enforcement of this provision.

### **Section 238. Biometric Screening**

This section amends INA 212(a)(7) to add that an alien who, through his or her own fault, does not comply with a lawful biometric information request is inadmissible.

### **Section 239. Encouraging Aliens to Depart Voluntarily**

This section revises the procedures for voluntary departure. An alien who chooses to depart before the initiation of removal proceedings has at most 180 days to depart. An alien who chooses to depart after the initiation of removal proceedings but before its completion will have 90 days to depart. Voluntary departure under this section may only be granted as part of an affirmative agreement by the alien. In connection with an agreement, the Secretary of Homeland Security may agree to a reduction in the period of inadmissibility under subparagraphs (A) or (B)(i) of Section 212(a)(9). Agreements relating to voluntary departure granted during or at the conclusion of removal proceedings shall be presented on the record before the immigration judge. The immigration judge shall advise the alien of the consequences of a voluntary departure agreement including the consequences of failing to comply with the agreement before accepting such agreement.

If an alien fails to depart the United States within the time allowed for voluntary departure or fails to comply with any other terms of the agreement (including failure to timely post any required bond), unless the noncompliance is through no fault of the alien, the alien is ineligible for the benefits of the agreement; subject to the penalties described below; and subject to an alternate order of removal if voluntary departure was granted under certain conditions. Except as expressly agreed to by the Secretary in writing in the exercise of the Secretary's discretion before the expiration of the period allowed for voluntary departure, no motion, appeal, application, petition, or petition for review shall affect, reinstate, enjoin, delay, stay, or toll the alien's obligation to depart from the United States during the period agreed to by the alien and the Secretary.

If an alien is permitted to voluntarily depart under this section and fails to voluntarily depart from the United States within the time period specified or otherwise violates the terms of a voluntary departure agreement, the alien shall be liable for a civil penalty of \$1,000. The order allowing voluntary departure shall specify the amount of the penalty, which shall be acknowledged by the alien on the record. If the Secretary thereafter establishes by clear and convincing evidence that the alien failed to depart voluntarily within the time allowed, no further procedure will be necessary to establish the amount of the penalty, and the Secretary may collect the civil penalty at any time thereafter and by whatever means provided by law. An alien will be ineligible for any benefits under this chapter until this civil penalty is paid.

The Secretary may promulgate regulations to limit eligibility or impose additional conditions for voluntary departure.

**Section 240. Cancellation of Visas**

This section amends INA Section 222(g) to improve the enforcement of the cancellation of visas provision in current law.

**Section 241. Penalties Related to Vessels and Aircrafts**

This section increases the civil penalties related to alien stowaways from \$2,000 to \$5,000 for a failure to carry out certain orders and \$5,000 to \$10,000 for a failure to remove an alien stowaway.

**Section 242. Sanctions for Countries that Delay or Prevent Repatriation of Their Citizens and Nationals**

This section includes minor changes to INA Section 243(d) to improve the enforcement of sanctions against countries that delay or prevent repatriation of their citizens.

**Section 243. State Criminal Alien Assistance Program**

This section authorizes the Attorney General to reimburse states for direct and indirect costs incurred for the imprisonment of any unauthorized alien convicted of a felony. Preference will be given to states that share a border with Canada or Mexico.

**Section 244. Procedures Regarding Aliens Apprehended by State and Local Law Enforcement Officers**

This section requires DHS to collect data regarding detainers issued, including information about the individual, the detainer, and the criminal and immigration cases involved. The Secretary must also issue regulations requiring DHS officials to confirm, before issuing a detainer, an individual's alienage and whether the individual is removable from the U.S.

**Section 245. Reform of Passport, Visa, and Immigration Fraud Offenses**

This section addresses penalties for fraud and trafficking related to passports and visas.

18 U.S.C. 1541 is amended to include the following provisions regarding trafficking in passports:

- Individuals who, in a period of three years or less traffic in multiple passports (i.e. by producing 10 or more passports; counterfeiting 10 or more passports; possessing, selling or buying 10 or more passports; or engaging in the submission of 10 or more passport applications) are subject to a fine, imprisonment for up to 20 years, or both.
- Individuals who unlawfully use official material or counterfeit official material to make a passport will be fined, imprisoned for up to 20 years, or both.

18 U.S.C. 1542 is amended to include the following provision regarding false statements:

- Individuals who knowingly make a false representation in a passport application or facilitate the submission of a falsified passport application will be fined, imprisoned for up to 15 years, or both.

18 U.S.C. 1543 is amended to include the following provisions regarding forgery and unlawful passport production:

- Individuals who engage in forgery or transfers a passport that was produced or issued without lawful authority will be fined, imprisoned for up to 15 years, or both.
- Individuals who unlawfully produce, authorize, or verify a passport or transfers a passport to be used by any unauthorized people will be fined, imprisoned for up to 15 years, or both.

18 U.S.C. 1544 is amended to include the following provisions regarding the misuse of passports:

- Individuals who knowingly use another person's passport, use a passport in violation of any laws or regulations, uses, buys, or sells a fraudulent passport, or violates the terms and conditions of any safe conduct duly obtained and issued under the authority of the United States will be fined, imprisoned for up to 15 years, or both.

18 U.S.C. 1545 is amended to include the following provisions regarding schemes to defraud aliens:

- Individuals who knowingly execute a scheme in connection to federal immigration law will be fined, imprisoned for up to 15 years, or both.
- Individuals who misrepresent themselves as an attorney or accredited representative in any federal immigration matter will be fined, imprisoned up to 15 years, or both.

18 U.S.C. 1546 is amended to include the following provisions about immigration and visa fraud:

- Individuals who, in a period of three years or less, unlawfully produce or transfer 10 or more immigration documents, forge 10 or more immigration documents, use or distribute 10 or more unlawful immigration documents, or submit 10 or more false immigration documents will be fined, imprisoned for up to 20 years, or both.
- Individuals who knowingly and unlawfully use official materials to make immigration documents will be fined, imprisoned up to 20 years, or both.
- Individuals who use an identification document that was not lawfully issued to them, an identification document that they know is false, or a false attestation will be fined, imprisoned for up to one year, or both.

18 U.S.C. 1547 is amended to increase the alternative imprisonment maximum for certain offenses.

- The imprisonment maximum for offenses committed to facilitate a drug trafficking crime is now 20 years, instead of 15 years.
- The imprisonment maximum for offenses committed to facilitate an act of international terrorism is now 25 years, instead of 20 years.

A new section, 18 U.S.C. 1548, is added to address attempts and conspiracies.

- It holds that any person who attempts or conspires to violate this Section shall be punished in the same manner as a person who completed a violation of that section.

A new section, 18 U.S.C. 1549, is added to address additional jurisdiction.

- It applies extraterritorial jurisdiction to individuals who commit an offense under this Section if the offense involves a U.S. passport or immigration document; the offense affects foreign commerce; the offense affects U.S. national security; the offense is committed to facilitate an act of international terrorism; the offender is a U.S. national or lawful permanent resident; or the offender is a stateless person whose habitual residence is in the U.S.

A new section, 18 U.S.C. 1550, is added regarding authorized law enforcement activities.

- Nothing in this section prohibits any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or a political subdivision of a State, or an intelligence agency of the United States, or any activity authorized under title V of the Organized Crime Control Act of 1970 (Public Law 91-452; 84 Stat. 933).

18 U.S.C. 3291 is amended regarding immigration, naturalization, and peonage offenses.

- The statute of limitation is 10 years for a violation of chapters 69 (relating to nationality and citizenship offenses), 75 (relating to passport, visa, and immigration offenses), or 77 (relating to peonage, slavery, and trafficking in persons), for an attempt or conspiracy to violate any such section, for a violation of any criminal provision under section 243, 266, 274, 275, 276, 277, or 278 of the Immigration and Nationality Act, or for an attempt or conspiracy to violate any such section.

#### **Section 246. Directives Related to Passport and Document Fraud**

This section requires the United States Sentencing Commission to promulgate and amend sentencing guidelines, policy statements, and commentaries related to passport fraud offenses. This section also requires the Attorney General to create binding prosecutorial guidelines to ensure that any prosecution of aliens seeking entry by fraud is consistent with U.S. treaty

obligations related to asylum seekers. Aliens applying for certain forms of relief shall not be prosecuted under 18 U.S.C. 75, Section 211 of this act, or INA Section 175 or 176 until and unless their application is denied. These include (1) aliens who have filed for asylum, withholding of removal, or relief under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment or indicates an intention to immediately apply for such protection and immediately does so; (2) aliens who are referred for a credible fear interview, a reasonable fear interview or an asylum-only hearing under INA Section 235; or (3) aliens who have filed for status under (15)(T), (15) (U), (27)(J), or (51) of section 101(a) of the Immigration and Nationality Act.

#### **Section 247. Expanding the Definition of Conveyances Subject to Forfeiture**

This section amends 19 U.S.C. 1703 to expand the definition of conveyances that are subject to forfeiture to include vessels, vehicles, and other conveyances and instruments of international traffic. This section also revises what constitutes prima facie evidence that a vessel or vehicle is used in smuggling or defrauding U.S. revenue.

#### **Section 248. Criminal Forfeiture**

This section amends 18 U.S.C. 982 to expand the list of crimes for which the penalty of criminal forfeiture can be imposed.

#### **Section 249. Advance Delivery of Information Including Passenger Manifests**

This section amends INA Section 231 to ensure that lists of alien and citizen passengers are provided for any commercial vessel, commercial vehicle, or aircraft transporting people to or from any U.S. airport or seaport. The Secretary may also share the information contained in the manifests with other federal, state, tribal, local, and foreign government authorities. Fines for inaccurate or insufficient information are increased to \$5,000. Within a year of enactment, the Secretary is required to assess the privacy and civil liberty implications of this section.

#### **Section 250. Unlawful Flight from Immigration or Customs Controls and Disobeyance of Lawful Orders**

This section amends 18 U.S.C. 758 to provide penalties for any person operating a motor vehicle or vessel who knowingly flees or evades a federal law enforcement checkpoint or who knowingly disobeys the lawful command of law enforcement agents.

#### **Section 251. Reducing Illegal Immigration and Alien Smuggling on Tribal Lands**

This section authorizes the DHS Secretary to award grants to Indian tribes whose land is adjacent to a U.S. border and who have been adversely affected by illegal immigration. Within 180 days of enactment, the Secretary is required to submit to Congress a report describing the level of access CBP agents have to tribal lands, what impact improvements to that access would have, and how improved access might be achieved.

#### **Section 252. Diplomatic Security Service**

This section amends 22 U.S.C. 2709(a)(1) to permit Department of State and Foreign Service

special agents to conduct investigations concerning illegal passports or visa issuance or use, identity theft or document fraud affecting the Department of State, violations of federal laws regarding peonage, slavery, and human trafficking, and federal offenses committed within special maritime and territorial jurisdiction defined in 18 U.S.C. 7(9).

### **Section 253. Increased Penalties Barring the Admission of Convicted Sex Offenders Failing to Register and Requiring Deportation of Sex Offenders Failing to Register**

Aliens who are convicted for 18 U.S.C. 2250 provisions related to the failure to register as a sex offender are inadmissible under INA 212(a)(2)(A)(i) and deportable under INA 237(a)(2)(A)(i).

### **Section 254. Aggravated Felony**

This section amends the definition of aggravated felony under INA Section 101(a)(43) to state that the term “aggravated felony” applies to any offense which is a felony described in this paragraph, whether in violation of Federal or State law, for which the individual served one year of imprisonment and to such a felony offense in violation of the law of a foreign country, for which the term of imprisonment was completed within the previous 15 years, and regardless of whether the conviction was entered before, on, or after September 30, 1996.

### **Section 255. Increased Criminal Penalties Related to Gang Violence**

Aliens who have been convicted under 18 USC § 521, related to membership in criminal street gangs, are inadmissible and deportable, and are not eligible for Temporary Protected Status. This section also increases the penalty for individuals ordered deported under INA § 237(a) who willfully refuse to depart or cooperate with their deportation to five years and for individuals on orders of supervision who willfully fail to comply with release conditions to three years imprisonment.

## **Part 2: Detention Reform**

### **Section 261. Definitions**

### **Section 262. Protections for Vulnerable Populations**

This section requires DHS to screen each detainee to determine if the individual is a member of a vulnerable population. Vulnerable populations include individuals with non-frivolous claims to citizenship; pregnant or nursing women; individuals detained with their children; individuals with medical or mental health needs; individuals over 65 years old; children; victims of abuse, crime, or human trafficking; individuals referred for credible fear interviews; individuals seeking asylum, relief under CAT, or withholding of removal; and individuals prima facie eligible for relief under the INA. Members of vulnerable populations are to be released within 72 hours of detention, and they are not subject to electronic monitoring unless DHS demonstrates by a preponderance of the evidence that they are subject to 236(c) or 236A, pose a risk to public safety, or are flight risks. For all other aliens not subject to 236(c) or 236A, the criteria to be

used by the Secretary or the AG to demonstrate that continued detention is necessary is whether the individual is a risk to public safety or a flight risk. DHS custody decisions are subject to immigration judge review. For detained individuals, the Secretary must file the NTA within 48 hours of the individual's detention, and any individual detained for more than 48 hours will receive a custody determination before the immigration judge within 72 hours.

### **Section 263. Apprehension Procedures for Immigration Enforcement-Related Activities Relating to Children**

This section outlines procedures for immigration enforcement actions that involve children. Prior to conducting an action, DHS will notify the Governor of the state, the local child welfare agency, and relevant state and local law enforcement of the approximate number of individuals targeted and the primary language spoken by those individuals. Within six hours after an action, DHS will provide social workers or case managers to screen the apprehended individuals to determine if they are parents, legal guardians, or primary caregivers of any children in the U.S. Within 8 hours, DHS will provide phone calls to apprehended individuals to arrange for the care of their children unless there is a reasonable belief that doing so would endanger public safety or national security. DHS will also provide contact information for legal and social services. It will ensure that the individuals are not interviewed in the presence of their children and that the best interests of the children are considered in decisions or actions related to the individual's detention, release, or transfer. In general, information collected by child welfare agencies or NGOs to determine whether an individual is a parent, legal guardian, or primary caregiver is confidential.

### **Section 264. Detentions of Families**

This section details detention and review procedures for parents who are apprehended with one or more of their children. Families with children will not be separated or taken into custody except in exceptional circumstances or when required by law. In exceptional circumstances, they will live in family units in non-penal facilities without restrictions on movement, internet, library, and personal property possession. The facilities will be managed by staff with expertise in child welfare. Parents will retain fundamental parental rights and responsibilities, and, for families in custody for over three weeks, an immigration judge will review each family's custody status every 30 days. Additionally, this section amends INA § 235(b)(1)(B)(iii) to provide the DHS Secretary with discretion to not detain families who have failed a credible fear determination.

### **Section 265. Access to Children, Local and State Courts, Child Welfare Agencies, and Consular Officials**

This section ensures that all detention facilities will have procedures to ensure that the best interest of the child will be considered in decisions related to the custody of children whose parents or legal guardians are detained. Individuals who are believed to be parents or legal

guardians of children have the right to daily phone calls and regular visits with their children; to participate fully in any family court proceedings affecting the custody of their children; to receive contact information for family courts nationwide; to have free, confidential phone calls to child welfare agencies and family courts; to apply for travel documents for their children using U.S. passport applications; to have time before removal to obtain their passports and necessary travel documents for their children if their children will join them in their country of origin; to obtain birth records and other documents required to obtain passports for their children; and to share travel information with their children, child welfare agencies, or other caregivers prior to their departure from the U.S.

### **Section 266. Memoranda of Understanding**

The DHS Secretary will develop and implement memoranda of understanding with child welfare agencies and NGOs regarding best practices for cooperation in cases involving children whose parents, guardians, or caregivers have been apprehended or detained in an immigration enforcement action.

### **Section 267. Mandatory Training**

This section provides mandatory training for DHS and for state, and local entities acting under agreement with DHS who regularly come into contact with children or parents in the course of conducting immigration enforcement actions.

### **Section 268. Alternatives to Detention**

This section requires the Secretary to establish a secure alternatives program and to contract with NGOs to implement the program. The Secretary may use secure alternatives programs to maintain custody over any alien except aliens detained under INA 236A.

### **Section 269. Detention Conditions**

This section ensures that all individuals detained pursuant to this act are treated humanely and granted certain protections and includes provisions for detention personnel trainings. The DHS Secretary will issue guidelines for ensuring compliance with all detention requirements, which can include the imposition of financial penalties or the termination of a facility's contract with DHS. This section establishes a detention commission which will investigate, evaluate, and report on the compliance of detention facilities with the requirements.

Medical Care: Each detainee shall receive prompt and adequate medical care, a comprehensive medical intake screening, and prescribed medication and medically necessary treatment. Involuntary psychotropic medication can be used only if allowed by law and only in emergency situations as instructed by a physician. This section implements an administrative review and appeals processes for handling the denial and approvals of requests for medical care. Initial decisions must be made by an on-site licensed health care provider within 72 hours, and appeals

must be resolved within 7 days. Upon removal or release, detainees with medical or mental health conditions and pregnant, post-natal or nursing mothers will receive discharge planning to ensure continuity of care for a reasonable period of time. DHS will maintain confidential medical records for each detainee, which will be made available to the detainee within 72 hours upon request, and will facilitate the transfer of those records upon a detainee's transfer to another facility.

**Transfers:** Detainees will receive 72 hour written notice of any transfer to another detention facility, and a detainee's legal representative (or other person designated by the detainee) will be notified of the transfer within 24 hours. Detainees will not be transferred if doing so negatively affects an existing attorney-client relationship, the detainee's legal rights, or the detainee's health.

**Rights:** Detainees shall be free of physical abuse, sexual abuse or harassment, or arbitrary punishment. The use of solitary confinement, shackling, and strip searches will be limited to only emergency situations that present imminent risk to others and cannot be used on pregnant women, nursing mothers, women in labor, or children younger than 18. Detainees shall have at least one hour of indoor and outdoor recreational programs and activities. Detainees have the right to reasonable access to individuals qualified to address religious, cultural, or spiritual considerations, and the right to contact visits from children under 18. Detention facilities will have on-staff translation capabilities for any language spoken by at least 10% of the detainee population. Written notices and materials will be provided in any language spoken by at least 5% of the detainee population. Detention conditions will accommodate the needs of vulnerable populations.

**Access to Legal Information:** By January 2012, all detention facilities should be located within 50 miles of a city or municipality where free or low cost legal services are available. Detainees will have reasonable access to telephones, at a minimum one working phone per 25 detainees, the right to contact – free of charge – legal representatives, certain NGOs, consular offices, applicable federal and state courts, and government immigration agencies and adjudicatory bodies, and the right to privacy of phone conversations related to legal matters. Detainees will have access to legal information through an on-site library and to access computers, printers, copiers, and typewriters. They will have a right to meet privately with legal representatives, interpreters, and legal support staff.

**Short-Term Facilities:** Detainees held at short-term facilities shall receive potable water, food, toiletries, and access to bathrooms, telephones, and licensed health care professionals. For unaccompanied children at ports of entry, the Secretary will provide social workers who will ensure that each child receives emergency medical care, mental health care, adequate nutrition, a safe environment, and three hours per day of indoor and outdoor recreation.

The Secretary of HHS will maintain the privacy and confidentiality of all information gathered in the course providing care and follow-up.

**Death in Custody Reporting Requirements:** The death of a detainee in custody will be reported to the DHS Secretary immediately and to the DHS Office of the Inspector General and the DOJ within 48 hours. DHS will conduct an investigation of each death, and each year a report will be submitted to Congressional committees regarding all such deaths.

### **Section 270. Access to Counsel**

This section permits the Attorney General to appoint counsel to represent aliens in removal proceedings.

### **Section 271. Group Legal Orientation Presentations**

This section establishes a National Legal Orientation Support and Training Center to ensure the quality, consistent implementation of group legal orientation programs. The Center will train nonprofit agencies offering LOPs, develop standards for LOPs, and ensure that all aliens in proceedings under INA 235, 238, 240, and 241(b)(5) receive group legal orientation.

### **Section 272. Protections for Refugees**

This section amends INA Section 209 to prevent refugees from being detained if they have not adjusted their status and allows them to apply for adjustment three months earlier. It authorizes the DHS Secretary to establish quality assurance procedures to ensure the accuracy and verifiability of sworn statements taken pursuant to expedited removal authority, including recording the interview that served as the basis for the sworn statement. It requires that professional fluent interpreters are used when interviewing officers do not speak the language understood by the alien and there is no other government employee available to accurately, effectively, and impartially interpret. It authorizes the U.S. Commission on International Religious Freedom to conduct a study on whether immigration officers are improperly encouraging aliens to withdraw a claim for asylum, incorrectly failing to refer aliens for a credible fear interview, incorrectly removing aliens who may be persecuted, or detaining an alien improperly, and to submit the report to Congress.

### **Section 273. Immigration and Customs Enforcement Ombudsman**

This section amends Title III, Subtitle D, of the Homeland Security Act of 2002 to establish the position of Immigration and Customs Enforcement (ICE) Ombudsman. The ICE Ombudsman will conduct regular and unannounced inspections of detention facilities and local ICE offices to determine whether they comply with relevant policies, procedures, and laws; report findings to the DHS Secretary and ICE Assistant Secretary; develop procedures for detainees to submit written complaints directly to the Ombudsman; investigate and resolve all complaints; conduct reviews or audits related to detention; refer matters to other relevant offices or agencies; propose

changes to ICE policies to improve the treatment of those subject to immigration-related enforcement operations; and establish a public advisory group consisting of NGOs and federal, state, and local government officials with expertise in detention and vulnerable populations to provide the Ombudsman input; and recommend personnel actions to the ICE Assistant Secretary based on any findings of non-compliance. The ICE Ombudsman will submit an annual report to the House and Senate Judiciary Committees on its objectives for the next fiscal year.

#### **Section 274. Elimination of Time Limits on Asylum Applications**

This section eliminates the one-year time limit for filing an asylum claim and permits aliens denied asylum based solely on a failure to meeting the 1-year filing deadline to file a motion to reopen for a two-year period after enactment.

#### **Section 275. Efficient Asylum Determination Process and Detention of Asylum Seekers**

Under this provision, the USCIS asylum office would be given jurisdiction over an asylum application following a positive credible fear determination to conduct a nonadversarial sylum interview. If the asylum officer is unable to grant asylum, the case will be referred to an immigration judge and the asylum seeker for a de novo asylum determination. The section also clarifies detaining asylum seekers who have a positive credible fear determination is at the discretion of the Secretary.

#### **Section 276. Protection of Stateless Persons in the United States**

This section enables individuals who are de jure stateless to obtain lawful status in the United States. *De jure* stateless persons are defined as individuals who are not considered to be citizens under the laws of any country, unless they lost their nationality due to a voluntary action or knowing inaction after arriving in the U.S. The Secretary or AG may, in his or her discretion, provide conditional lawful status to a de jure stateless person, and his or her spouse or children. After 5 years, the alien may apply for lawful permanent residence. Persons eligible for relief under this section may file one motion to reopen proceedings within one year of enactment in order to apply for such relief

#### **Section 277. Authority to Designate Certain Groups of Refugees for Consideration**

This section authorizes President to designate, for humanitarian reasons or if it is otherwise in the national interest, specifically defined groups of aliens who share common characteristics that identify them as targets of persecution, for resettlement as refugees

#### **Section 278. Admission of Refugees in the Absence of the Annual Presidential Determination**

This section provides that if the President does not determine the allocation of refugees for the new fiscal year before the beginning of that fiscal year, in each quarter of the new year, the number of refugees that may be admitted is 25% of the number of refugees admissible during the prior fiscal year.

## **Subtitle C: Reforming America's Legal Immigration System**

### **Part 1. Standing Committee on Foreign Workers, Labor Markets, and the National Interest**

#### **Section 300. Standing Commission on Foreign Workers, Labor Markets, and the National Interest**

This section establishes a new 15-member independent federal agency to establish employment-based immigration policies, facilitate research on the economic impacts of immigration, make recommendations to Congress and the President about the level of employment-based immigration, and analyze the economic, labor, security, and foreign policy impacts of our immigration policies. The Commission will be comprised of seven voting members with relevant experience appointed by the President and eight ex-officio members including the DHS Secretary, Secretary of State, Attorney General, Secretary of Labor, Secretary of Commerce, Secretary of Health and Human Services, Secretary of Agriculture, and the Social Security Commissioner. Among its duties, the Commission will collect, analyze, publish data on demographic trends, the impacts of employment-based immigration, and the development of a new worker H-2C nonimmigrant visa program, and it will submit an annual report to the President and Congress recommending adjustments to visa allocations. It will have the power to establish general policies, hold hearings, and cooperate with other federal, state, and local agencies. It may appoint a staff director and other necessary personnel, and it may use the services of detailees and consultants.

### **Part 2. Family and Employment Visa Reforms**

#### **Chapter 1. Family and Employment Based Immigrant Visas**

##### **Section 301. Recapture of Immigrant Visas Lost to Bureaucratic Delay**

This section recaptures unused employment-based visas and family-sponsored visas from fiscal years 1992–2007. For future fiscal years, unused visa numbers will “roll over” to the next fiscal year. To reduce current backlogs, this section exempts immediate relatives from the cap on the number of immigrant visas. Aliens who are: 1) a derivative beneficiary of an employment-based immigrant; 2) aliens with extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim; 3) aliens who have earned an advanced degree in the sciences (not including the social sciences), technology, engineering, or mathematics from a United States institution of higher education and have been working in a field related to their degree subject in the United States under a nonimmigrant visa during the 2-year period preceding their application for an immigrant visa; 4) alien physicians who have completed service requirements of a waiver or exemption requested by an interested State agency or by an interested Federal agency under section 214(l); 5) aliens who are eligible for adjustment of status under section 245(n)(1) as an alien who described in

section 101(a)(15)(H)(ii)(c). This section also defines the discretionary national interest pool as the number that is the average of the difference between the number of legal immigrant visas issued annually from fiscal year 1995 through fiscal year 2010; and the number of legal immigrant visas issued annually plus unauthorized entries estimated annually by the Secretary of Homeland Security from fiscal year 1995 through fiscal year 2010.

### **Section 302. Reclassification of Spouses and Minor Children of Lawful Permanent Residents as Immediate Relatives**

This section reclassifies spouses and children of lawful permanent residents as “immediate relatives” to promote the efficient reunification of families. This will allow the spouses and children of lawful permanent residents to immediately qualify for a visa. Spouses and children of immediate relatives who are eligible to “accompany” or “follow to join” the primary applicant may use the same visa petition.

To address the fact that some countries face unreasonably long backlogs, this section revises the per country immigration limits for family-based immigration from 7 to 15 percent of total admissions and eliminates the employment-based caps.

### **Section 303. Retention of Priority Date**

This section amends Section 203(h)(3) of the Immigration and Nationality Act so that the priority date for a petition filed by a parent under Section 204 is the original priority date issued upon receipt of the original family or employment-based petition for which either parent was a beneficiary.

### **Section 304. Discretionary Authority with Respect to Removal or Deportation of Citizen and Resident Immediate Family Members**

This section amends Section 240(c)(4) to add Subparagraph D, which provides for judicial discretion in removal proceedings if removal, deportation, or exclusion is against the public interest or would result in hardship to the alien’s U.S. citizen or permanent resident parent, spouse or child. Judicial discretion would not be available for aliens whom the judge determines:

- (1) is described in criminal grounds stated in subparagraphs (B), (C), (D)(ii), (E), (H), (I), or (J) of INA Section 212(a)(2);
- (2) is described in the security related grounds in INA Section 212(a)(3);
- (3) is described in INA Section 212(a)(10) subparagraphs (A), (C), or (D) (a practicing polygamist, international child abductor, or unlawful voter);
- (4) is described in section 237(a)(4) (security threats); or

(5) has engaged in conduct described in paragraph (8) or (9) of Section 103 of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7102).

### **Section 305. Military Families**

This section establishes an adjustment of status process for an alien who is the parent, spouse, child, son, or daughter of a living Armed Forces member or a deceased Armed Forces member who died as a result of an injury or disease incurred in or aggravated by the his or her service. A son or daughter who has a Filipino parent naturalized under Section 405 of the Immigration Act of 1990 may also apply under this section. Armed Forces member is defined as any U.S. citizen or lawful permanent resident who is serving, or has served honorably on or after October 7, 2001, as a member of the National Guard or the Selected Reserve of the Ready Reserve, or in an active-duty status in the military, air, or naval forces of the United States; and if separated from the service described in paragraph, was separated under honorable conditions. Certain waivers of inadmissibility may apply. Aliens who adjust their status under this section do not offset the number of visas available under the INA.

### **Section 306. Equal Treatment for All Stepchildren**

This section equalizes the treatment of step children by allowing step children who are 21 years of age at the time of the parent's marriage to immigrate. The current age limit is 18 years for stepchildren and 21 years for most other children.

### **Section 307. Widows, Widowers, and Orphans**

This section extends the relief given to orphans, widows and widowers in the 2009 DHS Appropriations bill to certain relatives living outside the U.S. It also clarifies naturalization requirements for widows and widowers and clarifies that that orphans, widows and widowers may continue to seek waivers under the Immigration and Nationality Act on the basis of the relationship to the deceased spouse.

### **Section 308. Fiancé Child Status Protection**

This provision allows the DHS Secretary or the Attorney General to adjust the status of an individual immigrating to the United States on a fiancé visa and any accompanying minor children to conditional permanent residence, provided that the marriage occurred within three months of admission and the noncitizen is not inadmissible. A noncitizen who is eligible for a waiver of inadmissibility under current law may still adjust status. An alien who is inadmissible under Section 212(a)(5) having to do with labor certification and 212(a)(7) relating to documentation requirements may still apply.

The age of the noncitizen using a fiancé visa and any minor children will be the date the fiancé petition is filed. The provisions of this section shall be effective as if enacted as part of the Immigration Marriage Fraud Amendments of 1986, Pub. L. 99-639. The provisions will apply to all petitions pending as of the date of enactment as well as past petitions denied that would have

been approvable if this section had been in effect in which case a motion to reopen or reconsider shall be permitted.

### **Section 309. Special Humanitarian Visas**

This section gives the DHS Secretary the discretion to waive any of the requirements of title 8, United States Code, in the case of aliens whose cases involve special humanitarian considerations, in a number not to exceed 1000 in any fiscal year.

### **Section 310. Exemption from Immigrant Visa Limit for Certain Veterans from the Philippines**

This section would exempt the children of certain Filipino World War II veterans from the numerical limitations on immigrant visas.

### **Section 311. Affidavits of Support**

This section changes the affidavit of support requirements to require sponsors to provide support at 100% of poverty level instead of 125% of poverty level.

### **Section 312. Retaining Workers Subject to Green Card Backlog**

This section allows workers who are eligible for adjustment of status to permanent residence but for whom a visa number is not currently available to apply for adjustment. The application is not approved until the visa number is available. Employment authorization documents shall be issued in three-year increments.

## **Chapter 2. Uniting Families Act**

This Chapter incorporates H.R. 2709.

**Section 315. Short Title:** the “Uniting American Families Act of 2011”.

### **Section 316. Definitions of Permanent Partner and Permanent Partnership**

This section defines “permanent partner” and “permanent partnership” as terms of art for inclusion in the INA. This section expands the definition of “child” under the INA to ensure that the biological and/or adopted children of an alien permanent partner can apply to adjust status, consistent with how the INA governs “stepchildren.” This section also expands the definition of derivative status to extends derivative nonimmigrant visa eligibility to “permanent partners” and the children in the following nonimmigrant visa categories: “E,” “F(ii),” “G(i),” “G(ii),” “G(iii);” “G(iv);” “G(v);” “H(iii),” “I,” “J,” “K”; “L,” “M(ii),” “O(iii),” “P(iv),” “Q(ii)(II),” “R,” “S,” “T(ii)(I),” “T(ii)(II);” “U(ii)(I),” “U(ii)(II),” and “V”.

### **Section 317. Availability of Immigrant Visas for Permanent Partners**

Worldwide Level of Immigration: This section modifies the definition of “immediate relatives” to include “permanent partners” and their children, and extends self-petition rights for widowed “permanent partners” to the extent they would be available to widows or widowers.

Numerical Limitations on Individual Foreign States: This section amends per-country immigrant visa quotas such that the “permanent partners” and the children of Lawful Permanent Residents (hereinafter “LPR”) and unmarried sons and daughters will be subject to the appropriate corresponding immigrant visa preference allocations (floors and ceilings), consistent with how these quotas are calculated for LPR spouses, children and unmarried sons and daughters. This section also amends immigrant visa chargeability rules to attribute permanent partners and their children to the appropriate per-country immigrant visa quotas consistent with how these quotas are determined for spouses and their children.

Allocation of Immigrant Visas: This section amends family-based immigrant visa preference allocation such that the “permanent partners” and unmarried sons and daughters of LPRs (or those sons and daughters not having a “permanent partnership”) are allotted from the same immigrant visa preference category as the spouses and unmarried sons and daughters of LPRs. It amends family-based immigrant visa preference allocation to treat sons and daughters with “permanent partners” the same as married sons and daughters of USCs for immigrant visa allocation. It excludes “permanent partners” from being counted as employees for purposes of meeting the employment creation immigrant visa standard of creating full-time employment for at least 10 USCs, LPRs or lawfully authorized immigrants. It accords “permanent partners” the same status and the same order of consideration if accompanying or following to join a “permanent partner” immigrating under family, employment or diversity program preferences, consistent with spouses under the INA.

### **Section 318. Procedure for Granting Immigrant Status**

Subpart (a) of this section extends certain self-petition immigrant rights to “permanent partners” and children that are widows, widowers, victims of bigamists or extreme cruelty, consistent with self-petition rights for spouses under the INA. Subpart (b) of this section prevents immigrant visas from being accorded to “permanent partners” who fraudulently marry to evade immigration laws, consistent with spouses who enter sham marriages.

### **Section 319. Admission of Refugees and Asylees**

This section extends the Attorney General’s discretion to admit the “permanent partners” of refugees to the U.S. or to revoke their refugee status, consistent with the right to admit refugees’ spouses, or revoke their status. It extends asylee status to “permanent partners” and their children, consistent with how spouses and the children of asylees are recognized under the INA. It grants the Secretary of Homeland Security or Attorney General discretion to adjust the status of the “permanent partners” and children of asylees, consistent with how spouses and children of asylees are treated under the INA.

### **Section 320. Inadmissible and Deportable Aliens**

This section includes permanent partners in the exception for exclusion of aliens who were Communists or members of other totalitarian parties, consistent with the exception available to spouses of USCs or LPRs under the INA. It also permits permanent partners of USCs and their

children to adjust status as “immediate relatives,” provided they meet the definition of “permanent partnership” as defined under this bill. This section extends an exception to “permanent partners” who “knowingly have encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the U.S.” consistent with the exception already available to immediate relatives, and it extends a discretionary “extreme hardship” waiver to permanent partners, sons or daughters, who have been unlawfully present, consistent with the waiver already available to spouses, sons or daughters of USCs or LPRs under the INA. Subpart (b) of this section extends discretionary waivers to “permanent partners” and their children that smuggled immediate relatives or committed immigration document fraud, consistent with waivers available to immediate relatives under the INA. Subparts (c-e) of this section extends discretionary waivers to “permanent partners” who are ineligible to adjust status because they pose a risk to national health, have committed certain crimes (including misrepresentation) consistent with waivers available to spouses, unmarried sons or daughters under the INA. Subpart (f) provides the basis to remove “permanent partners” that failed to comply with conditional residence, committed “smuggling,” or committed permanent partnership fraud.

### **Section 321. Nonimmigrant and Conditional Permanent Resident Status**

This section grants nonimmigrant status for permanent partners awaiting the availability of an immigrant visa. It also grant “conditional permanent residence” to “permanent partners,” sons or daughters if a “permanent partnership” is less than 24 months at the time the alien “permanent partner,” son or daughter becomes a permanent resident, consistent with how “conditional permanent residence” is conferred on spouses, sons or daughters under the INA. It This section accords derivative conditional LPR status to the “permanent partners” of alien entrepreneurs, consistent with the same rights and restrictions of spouses of alien entrepreneurs.

### **Section 322. Removal, Cancellation of Removal, and Adjustment of Status**

Removal Proceedings: This section includes “permanent partners” in the battered spouse exception for non-timely filed motions in removal proceedings, consistent with the exception available to battered spouses under the INA. This section also includes “permanent partners” in the definition for “exceptional circumstances” under the removability provision.

Cancellation of Removal and Adjustment of Status: The bill adds “permanent partners” to the list of qualifying relationships eligible for the cancellation of removal defense to removability for extreme hardship or extreme cruelty.

### **Section 323. Application of Criminal Penalties for Misrepresentation and Concealment of Facts Regarding Permanent Partnership**

This section provides a basis for punishing “permanent partners” that engage in fraudulent “permanent partnerships” to evade immigration laws, consistent with the punishment proscribed for marriage fraud.

### **Section 324. Naturalization Requirements**

This section provides certain naturalization residency exceptions to “permanent partners,” consistent with those available to spouses and dependent unmarried sons and daughters. This section allows permanent partners to naturalize three years after gaining lawful permanent residence (instead of five years), if they are in a “permanent partnership” with a U.S. citizen, and provides the same exceptions to naturalization residency requirements for “permanent partners” of certain U.S. citizens, consistent with the rights and exceptions already available to spouses under the INA.

### **Section 325. Application of Family Unity Provisions to Other Laws**

This section adds “permanent partners” to allow them to benefit from the LIFE Act’s family unity provisions

The section includes “permanent partners” in the list of individuals who are eligible for LPR status under the Cuban Adjustment Act, have the right to self-petition for legal status, provided certain conditions have been met, or if they have been battered or subject to extreme cruelty by their permanent partner.

## **Chapter 3. Reforms to Specific Employment-Based Visa Categories**

### **Subchapter A. EB-5 Program Reform**

#### **Section 326. Permanent Reauthorization of the EB-5 Regional Center Program**

This section amends Section 610 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993 to make the EB-5 Regional Center Program permanent.

### **Subchapter B. Adjustments to Other Select Visa Programs**

#### **Section 331. Elimination of Sunset Provisions**

This section amends INA Section 101(a)(27)(C)(ii) to eliminate the September 30, 2012, sunset provision for Special Immigrant Nonminister Religious Worker Program Act. It also amends INA 220(c) to remove the September 30, 2012, sunset provision for the Conrad State 30 Program, which provides visa waivers for medical physicians to work in medically underserved areas.

#### **Section 332. Permanent Authorization of the Nonimmigrant Nurses in Health Professional Shortage Areas Program**

This section permanently authorizes the Nonimmigrant Nurses in Health Professional Shortage Areas Program. Authorizes expeditious implementation of the amendments by suspending the Administrative Procedures Act requirements for notice and publication.

### **Section 333. Incentives for Physicians to Practice in Medically Underserved Communities**

This section states that medical physicians who practice in medically underserved community are not subject to temporary visa limitations (H-1B caps and 6 year status limitation) if a state agency submits a request for exemption and the Secretary of State recommends that the alien be exempted. Allows for an increase in numbers for the Conrad 30 program based on high usage. This section also requires that the alien agrees to begin employment with the health facility or health care organization within 90 days of receiving a waiver, completing medical education or training, or receiving employment authorization, and agrees to work at least three years unless extenuating circumstances exist

### **Section 334. Retaining Physicians in Medically Underserved Communities**

This section amends Section 201(b)(1) of the INA so that aliens who have completed a service requirement are not subject to direct numerical limitations

### **Section 335. Temporary Visas for Individuals from Ireland**

This section creates a new nonimmigrant visa category for Irish nationals who come to the U.S. for employment.

## **Chapter 4. Miscellaneous Employment Visa Reforms**

### **Section 336. Providing Premium Processing of Employment-Based Visa Petitions**

This section authorizes the creation of a premium processing program for employment-based visa petitions and administrative appeals, however timelines are not defined.

### **Section 337. Visa Revalidation**

This section permits nonimmigrant visa holders under 101(a)(15) subparagraphs (E), (H), (I), (L), (O), or (P) to apply for visa renewals within the U.S. if (1) the visa is valid or has been expired for less than a year, (2) the alien is seeking the same type of visa, and (3) the alien has complied with all U.S. immigration laws and regulations.

### **Section 338. Application Fees for Intending Immigrants**

This section removes the P.L. 111-230 \$2,250 filing fees for certain H-visa and L-visa applicants if the applicant is an “intending immigrant” who intends to work and resident permanently in the U.S. and has a pending or approved INA 212(a)(5)(A) petition or INA 203(b) subparagraph (1), (2), or (3) petition.

### **Section 339. Employment of Spouses**

This section amends Section 214(c)(2)(E) of the Immigration and Nationality Act by striking "section 101(a)(15)(L)" and inserting "subparagraph (H) or (L) of section 101(a)(15)", expanding situations in which an alien spouse may engage in employment in the United States and obtain a work permit to include the spouse of a temporary resident as specified in 101(a)(15)(F).

### **Section 340. Time Limits for Nonimmigrants to Depart the United States**

Aliens who are no longer employed by the petitioning employer are granted an additional 60 days to either depart the U.S. or apply for a change or extension of status. This applies to the aliens' spouse and children as well. Also allows the spouse and children of a deceased nonimmigrant principal to remain as a dependent for the later of 1 year or until an adjudication of 204(l) benefits is completed.

## **Chapter 5. POWER Act**

### **Section 341. Short Title**

This chapter may be cited as the "Protect Our Workers from Exploitation and Retaliation Act" or the "POWER Act."

### **Section 342. Victims of Serious Labor and Employment Violations or Crime**

This section expands the U-visa category for aliens who are victims of crimes. INA Section 101(a)(15)(U)(i)(II) is amended to also apply to aliens who are victims of certain workplace labor and employment violations. Section 101(a)(15)(U)(i)(III) now also applies to aliens who are helpful to the Department of Homeland Security, to the Equal Employment Opportunity Commission, to the Department of Labor, to the National Labor Relations Board. This section also creates a temporary protection category for victims of serious labor and employment violations or crime.

### **Section 343. Labor Enforcement Actions**

This section includes retaliation against a nonimmigrant employee as one of the instances in which a certification of compliance with restrictions on disclosure applies. This section also amends INA Section 274A that any aliens arrested in workplace enforcement actions who are necessary for investigating workplace claims of criminal activity are not removed until DHS consults with the law enforcement agency conducting that investigation. Additionally, victims of crime, labor, and employment violations who are in removal proceedings are entitled to a stay of removal until the resolution of the workplace claim or the denial of their U-visa application.

### **Section 344. Authorization of Appropriations**

## **Subtitle D: Immigrant Integration and Other Reforms**

### **Part 1. Strengthen and United Communities with Civics Education and English Skills**

This Subtitle includes Senate Bill 2998, which was sponsored by Senator Gillibrand.

## **Chapter 1. Expanding English Literacy, United States History, and Civics Education**

### **Section 351. Increased Investment in English Literacy, United States History, and Civics Education under the Adult Education and Family Literacy Act**

This section begins by amending Section 203 of the Adult Education and Family Literacy Act (20 U.S.C. 9202) to define “Integrated English Literacy, U.S. History, and Civics Education Program” as one that helps English language learners achieve competence in English through contextualized instruction on the rights and responsibilities of citizenship, naturalization procedures, civil participation, and United States history and government to help such learner acquire the skills and knowledge to be an active and informed parent, worker, and community member.”

### **Section 352. Definitions of English Language Learner**

This section amends the Adult Education and Family Literacy Act to rename “individuals of limited English proficiency” as “English language learners.”

### **Section 353. Credits for Teachers of English Language Learners**

Under this section, teachers who work with immigrants to improve their English skills would receive tax breaks up to \$750 per year for the first five years of their teaching services - and \$500 thereafter for each additional year for up to 10 years. They can also deduct teacher certification expenses required to become certified as a qualified to teach English as a second language.

### **Section 354. Research in Adult Education**

Under this section, the national research and development center for adult literacy, established by the Commissioner for Education Research of the National Center for Education Research pursuant to section 131 of the Education Sciences Reform Act of 2002 (20 U.S.C. 9531) establish, will also be devoted to the research of adult education.

## **Chapter 2. Supporting English Language Acquisition and Adult Education in the Workforce**

### **Section 356. Credit for Employer-Provided Adult English Literacy and Basic Programs**

Under this section, businesses that provide English language and financial literacy training for their employees will receive a 20% tax credit for those expenses - up to \$1,000 per employees.

### **Section 357. Presidential Award for Business Leadership in Promoting United States Citizenship**

This section establishes the Presidential Award for Business Leadership in Promoting United States Citizenship, which will be awarded to companies and other organizations that make extraordinary efforts in assisting their employees and members to learn English and increase their understanding of United States history and civics.

## **Chapter 3. Building Stronger Communities**

### **Section 361. Office of Citizenship and New Americans**

Under this section, the Office of Citizenship within USCIS at DHS is renamed the “Office of Citizenship and New Americans.” The revamped office will enhance efforts to integrate immigrants into U.S. communities, promote instruction and training on citizenship responsibilities, and develop better educational materials for immigrants pursuing citizenship. The office may accept monetary and in-kind donations to support its activities. It will also submit a biennial report on its activities to Congress.

### **Section 362. Grants to States**

Under this section, the Office of Citizenship and New Americans will provide competitive grants to states to form state-based New American Councils. Such councils will be comprised of local business leaders, faith-based and community organization leaders, local elected officials, philanthropists, and educators dedicated to providing better opportunities for immigrant communities. Awarded grants will be between \$500,000 and \$5 million.

### **Section 363. Authorized Activities**

New American Council grants must be used to develop and implement plans to introduce new immigrants into the state, to fund subgrants to local communities, to disseminate best practices related to English acquisition and civics education, and to convene public hearings. Grants may also be used to address challenges of introducing new immigrants to the state, to assist state and local agencies to improve programs related to new Americans, to review long distance learning programs for new Americans, to coordinate with other states, and to develop preparation and outreach materials about the naturalization process.

### **Section 364. Reporting and Evaluation**

Each entity awarded a grant will submit an annual report on its activities and demographics served to the Office of Citizenship and New Americans.

### **Section 365. New Citizens Award Program**

This section establishes a new citizens award program to recognize citizens who - (1) have made an outstanding contribution to the United States; and (2) are naturalized during the 10-year period ending on the date of such recognition.

### **Section 366. Rule of Construction**

Nothing in this title shall be construed to limit the authority of the Secretary of Homeland Security, acting through the Director of United States Citizenship and Immigration Services or such other officials of the Department of Homeland Security as the Secretary of Homeland Security may direct, to manage, direct, and control the activities of the Chief of the Office of Citizenship and New Americans.

### **Section 367: Report to Congress on Fee Increases**

This version section amends Section 286 of the Immigration and Nationality Act to require the Secretary of Homeland Security to report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report on an annual basis that identifies the direct and overhead costs associated with providing immigration services, and describe the extent to which fees set at a level that ensures recovery of those costs,

### **Section 368. Authorization of Appropriations**

There are authorized to be appropriated to carry out this title \$100,000,000 for each of the fiscal years 2010 through 2016.

## **Part 2. Emergency Relief for Certain Populations**

### **Section 371. Adjustment of Status for Certain Haitian Orphans**

This section incorporates Senate Bill 3411 sponsored by Senator Gillibrand (NY). It provides lawful permanent resident status to certain Haitian orphans who were inspected and admitted under the humanitarian parole policy following the 2010 Haitian earthquake. It does not provide any immigration benefits for the birth parents of adopted children who obtain permanent resident status under this section, and it does not affect annual allocation of immigrant visas.

### **Section 372. Adjustment of Status for Certain Liberian Nationals**

This section incorporates Senate Bill 656 sponsored by Senator Reed (RI). It provides lawful permanent resident status to Liberian nationals who have been continuously present in the U.S. since January 1, 2009, and their spouse, child, and unmarried sons or daughters. It would impact Liberian nationals who have received Temporary Protected Status between 1991 and 2007. Individuals subject to a final order of deportation, removal, or exclusion will receive stays based on the filing of an adjustment of status application, and those in proceedings who have applied for adjustment of status will not be removed until a final determination to deny their application has been made. Individuals with pending applications will be authorized to work and will receive documentation of that authorization. Applicants also have the same rights to administrative review as other applicants for adjustment of status and other individuals subject to removal proceedings. However, they do not have a right to judicial review of a final determination. This section does not affect annual allocation of immigrant visas.

## **Part 3. State Court Interpreter Grant Program**

### **Section 381. Findings**

The fair administration of justice depends on all participants in court room proceedings to understand the proceedings, regardless of their English proficiency. Only qualified court

interpreters can ensure that individuals with limited English proficiency can comprehend the proceedings. Currently, forty states have developed, or are developing, qualified court interpreting programs. Federal funds are necessary to assist states in developing effective court interpreter programs.

### **Section 382. State Court Interpreter Program**

The Administrator of the Office of Justice Programs of the Department of Justice will allocate \$500,000 for each fiscal year to establish a court interpreter technical assistance program to assist states receiving grants under this Chapter. Grants will be used to (1) assess regional language demands; (2) develop a court interpreter program for the State courts; (3) develop, institute, and administer language certification examinations; (4) recruit, train, and certify qualified court interpreters; (5) pay for salaries, transportation, and technology necessary to implement the court interpreter program developed under paragraph (2); and (6) engage in other related activities, as prescribed by the Attorney General. Grant applications will be submitted by the highest State court of each state desiring a grant. \$100,000 will be allocated to each state court whose application was approved. \$5 million will be distributed among the state courts whose application was approved and who demonstrate extraordinary need. The balance of grant funds will be allocated based on the number of individuals in the state who speak a language other than English at home.

### **Section 383. Authorization of Appeals**

\$15 million is appropriated for F.Y. 2012 through 2016 to carry out this Chapter.

## **Part 4. Other Matters**

### **Section 391. Adjustment of Status for Certain Victims of Terrorism**

This Chapter incorporates Senate Bill 1736 sponsored by Senator Lautenberg (NJ). It provides lawful permanent resident status to the spouses, children, or unmarried sons or daughters of an alien who died as a direct result of terrorist activity conducted against the U.S. on September 11, 2001, who were deemed to be beneficiaries of the September 11<sup>th</sup> Victim Compensation Fund of 2001 and who made a proffer of information to the DHS Secretary in connection with a request for immigration relief. Eligible aliens must apply within one year of the date of this Act's enactment. The DHS Secretary can authorize such aliens to be authorized to work in the U.S.

### **Section 392. Development of Assessment and Strategy addressing Factors Driving Migration**

The General Accounting Office will develop a baseline assessment of the primary factors driving migration in a prioritized group of ten countries with the highest rates of irregular migration to the United States within six months of the enactment of this Act. The report should, at a minimum, include factors driving migration in the prioritized countries, and any current impact of US Assistance, Trade or Foreign policy on migration trends in the prioritized countries.

The Secretary of State, working with the Administrator of the United States Agency for International Development, shall subsequently submit to the U.S. Senate Committee on Foreign Relations and the U.S. House Committee on Foreign Affairs, a strategy which responds to the identified economic, social and security factors driving high rates of irregular migration from the prioritized countries identified. The strategy should incorporate consultation with the Bureau of Population, Refugees and Migration, the Department of Labor and the Office of the U.S. Trade Representative.

The required strategy shall include the following:

- (A) A summary and evaluation of current assistance provided by the U. S. Government to countries with the highest rates of irregular migration to the United States. Each country report should, at a minimum, identify regions and municipalities experiencing the highest emigration rates and the current level of U.S. aid or investment in these areas.

Recommendations for future U.S. Government assistance and technical support to address key economic, social and development factors identified in the prioritized migration source countries. Such assistance should be designed to ensure appropriate engagement of national and local governments and civil society organizations.

### **SEC. 393. Prioritization of Migration Source Countries By USAID**

This section requires the Administrator of the United States Agency for International Development to expand programming that provides alternatives to emigration, especially with regard to populations that are vulnerable to emigration due to various negative circumstances. Additionally, the section requires the Administration to work with the Committee on Foreign Affairs and the Committee on Appropriations of the House of Representatives and the Committee on Foreign Relations and the Committee on Appropriations of the Senate to increase assistance for these groups.

### **Section 394. Sense of Congress on Increased United States Foreign Policy Coherency in the Western Hemisphere**

It is the sense of Congress that the Secretary of State should review the United States Foreign Policy toward Latin America in order to strengthen hemispheric security through the reduction of poverty and inequality, expansion of equitable trade, support for democratic institutions, citizen security and the rule of law, as essential elements in consolidation of a well-managed regional migration policy.