AMENDMENT TO THE TEXT OF THE CONFERENCE REPORT TO ACCOMPANY H.R. 6157

OFFERED BY M .  __________

Add at the end the following new division:

DIVISION ___—SECURING AMERICA’S FUTURE ACT OF 2018

SECTION 1. SHORT TITLE.

This division may be cited as the “Securing America’s Future Act of 2018”.

SUBDIVISION 1.—LEGAL IMMIGRATION REFORM

TITLE I—IMMIGRANT VISA ALLOCATIONS AND PRIORITIES

SEC. 1101. FAMILY-SPONSORED IMMIGRATION PRIORITIES.

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

(1) in subsection (b)(2)(A)—

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

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

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

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

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

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

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

“(ii) acquired such status during such period
under a provision of law (other than subsection (b))
that exempts adjustment to such status from the nu-
eral limitation on the worldwide level of immigration under this section.”; and

(3) in subsection (f)—

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

(B) by striking paragraph (3);

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

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

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

“(a) SPOUSES AND MINOR CHILDREN OF PERMANENT RESIDENT ALIENS.—Family-sponsored immigrants described in this subsection are qualified immigrants who are the spouse or a child of an alien lawfully admitted for permanent residence. Such immigrants shall be allocated visas in accordance with the number computed under section 201(c).”.

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

(1) by striking “(a)(2)(A)” each place such term appears and inserting “(a)(2)”;
(2) by amending paragraph (1) to read as fol-

ows:

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

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

(4) by inserting after paragraph (1) the fol-

lowing:

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

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

(d) CONFORMING AMENDMENTS.—

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

(2) Numerical limitation to any single foreign state.—Section 202 of such Act (8 U.S.C. 1152) is amended—

(A) in subsection (a)(4)—

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

“(A) 75 percent of family-sponsored immigrants not subject to per country limitation.—Of the visa numbers made available under section 203(a) in any fiscal year, 75 percent shall be issued without regard to the numerical limitation under paragraph (2).

“(B) Treatment of remaining 25 percent for countries subject to subsection (e).—

“(i) In general.—Of the visa numbers made available under section 203(a) in any fiscal year, 25 percent shall be available, in the case of a foreign state or dependent area that is subject to subsection (e) only to the extent that the total number of visas issued in accordance with subparagraph (A) to natives of the foreign
state or dependent area is less than the subsection (e) ceiling.

“(ii) Subsection (e) ceiling defined.—In clause (i), the term ‘subsection (e) ceiling’ means, for a foreign state or dependent area, 77 percent of the maximum number of visas that may be made available under section 203(a) to immigrants who are natives of the state or area, consistent with subsection (e).”; and

(ii) by striking subparagraphs (C) and (D); and

(B) in subsection (e)—

(i) in paragraph (1), by adding “and” at the end;

(ii) by striking paragraph (2);

(iii) by redesignating paragraph (3) as paragraph (2); and

(iv) in the undesigned matter after paragraph (2), as redesignated, by striking “, respectively,” and all that follows and inserting a period.

(3) Procedure for granting immigrant status.—Section 204 of such Act (8 U.S.C. 1154) is amended—
(A) in subsection (a)(1)—

(i) in subparagraph (A)(i), by striking “to classification by reason of a relationship described in paragraph (1), (3), or (4) of section 203(a) or”;

(ii) in subparagraph (B)—

(I) in clause (i), by redesignating the second subclause (I) as subclause (II); and

(II) by striking “203(a)(2)(A)” each place such terms appear and inserting “203(a)”;

(iii) in subparagraph (D)(i)(I), by striking “a petitioner” and all that follows through “section 204(a)(1)(B)(iii).” and inserting “an individual younger than 21 years of age for purposes of adjudicating such petition and for purposes of admission as an immediate relative under section 201(b)(2)(A)(i) or a family-sponsored immigrant under section 203(a), as appropriate, notwithstanding the actual age of the individual.”;

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

(4) Waivers of inadmissibility.—Section 212 of such Act (8 U.S.C. 1182) is amended—

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

and

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

(5) Employment of V nonimmigrants.—Section 214(q)(1)(B)(i) of such Act (8 U.S.C. 1184(q)(1)(B)(i)) is amended by striking “section 203(a)(2)(A)” each place such term appears and inserting “section 203(a)”.

(6) Definition of alien spouse.—Section 216(h)(1)(C) of such Act (8 U.S.C. 1186a(h)(1)(C)) is amended by striking “section 203(a)(2)” and inserting “section 203(a)”.


(c) Creation of nonimmigrant classification for alien parents of adult United States citizens.—
(1) IN GENERAL.—Section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)) is amended—

(A) in subparagraph (T)(ii)(III), by striking the period at the end and inserting a semi-colon;

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

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

(D) by adding at the end the following:

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

“(i) is at least 21 years of age; and

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

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

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

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

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

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

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

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

(f) EFFECTIVE DATE; APPLICABILITY.—

(1) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 2018.
(2) INVALIDITY OF CERTAIN PETITIONS AND APPLICATIONS.—

(A) IN GENERAL.—No person may file, and the Secretary of Homeland Security and the Secretary of State may not accept, adjudicate, or approve any petition under section 204 of the Immigration and Nationality Act (8 U.S.C. 1154) filed on or after the date of enactment of this division seeking classification of an alien under section 201(b)(2)(A)(i) with respect to a parent of a United States citizen, or under section 203(a)(1), (2)(B), (3) or (4) of such Act (8 U.S.C. 1151(b)(2)(A)(i), 1153(a)(1), (2)(B), (3), or (4)). Any application for adjustment of status or an immigrant visa based on such a petition shall be invalid.

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

(3) APPLICABILITY TO WAITLISTED APPLI-
CANTS.—

(A) IN GENERAL.—Notwithstanding the
amendments made by this section, an alien with
regard to whom a petition or application for
status under paragraph (1), (2)(B), (3) or (4)
of section 203(a) of the Immigration and Na-
tonality Act (8 U.S.C. 1153(a)), as in effect on
September 30, 2018, was approved prior to the
date of the enactment of this division, may be
issued a visa pursuant to that paragraph in ac-
cordance with the availability of visas under
subparagraph (B).

(B) AVAILABILITY OF VISAS.—Visas may
be issued to beneficiaries of approved petitions
under each category described in subparagraph
(A), but only until such time as the number of
visas that would have been allocated to that
category in fiscal year 2019, notwithstanding
the amendments made by this section, have
been issued. When the number of visas described in the previous sentence have been issued for each category described in subparagraph (A), no additional visas may be issued for that category.

SEC. 1102. ELIMINATION OF DIVERSITY VISA PROGRAM.

(a) In General.—Section 203 of the Immigration and Nationality Act (8 U.S.C. 1153) is amended by striking subsection (c).

(b) Technical and Conforming Amendments.—

(1) Immigration and Nationality Act.—The Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended—

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

(B) in section 201—

(i) in subsection (a)—

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

(II) by striking paragraph (3);

and

(ii) by striking subsection (e);

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

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

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

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

(I) by striking paragraph (2);

and

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

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

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

and
(vii) in subsection (g), as redesignated—

(I) by striking “(d)” each place such term appears and inserting “(e)”; and

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

(D) in section 204—

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

(ii) in subsection (e), by striking “subsection (a), (b), or (c) of section 203” and inserting “subsection (a) or (b) of section 203”; and

(iii) in subsection (l)(2)—

(I) in subparagraph (B), by striking “section 203 (a) or (d)” and inserting “subsection (a) or (c) of section 203”; and

(II) in subparagraph (C), by striking “section 203(d)” and inserting “section 203(e)”;
(E) in section 214(q)(1)(B)(i), by striking “section 203(d)” and inserting “section 203(c)”;

(F) in section 216(h)(1), in the undesignated matter following subparagraph (C), by striking “section 203(d)” and inserting “section 203(c)”;

and

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

(2) IMMIGRANT INVESTOR PILOT PROGRAM.—

Section 610(d) of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993 (Public Law 102–395) is amended by striking “section 203(e) of such Act (8 U.S.C. 1153(e))” and inserting “section 203(d) of such Act (8 U.S.C. 1153(d))”.

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

1103.

EMPLOYMENT-BASED

2

ITIES.

3

(a) INCREASE

IN

VISAS

FOR

IMMIGRATION

PRIOR-

SKILLED WORKERS.—

4 The Immigration and Nationality Act (8 U.S.C. 1101 et
5 seq.) is amended—
6

(1)

7

in

section

201(d)(1)(A),

by

striking

‘‘140,000’’ and inserting ‘‘195,000’’; and

8

(2) in section 203(b)—

9

(A) in paragraph (1), by striking ‘‘28.6

10

percent of such worldwide level’’ and inserting

11

‘‘58,374’’;

12

(B) in paragraphs (2) and (3), by striking

13

‘‘28.6 percent of such worldwide level’’ each

14

place it appears and inserting ‘‘58,373’’; and

15

(C) by striking ‘‘7.1 percent of such world-

16

wide level’’ each place it appears and inserting

17

‘‘9,940’’.

18

(b) EFFECTIVE DATE.—The amendments made by

19 subsection (a) shall take effect on the first day of fiscal
20 year 2019 and shall apply to the visas made available in
21 that and subsequent fiscal years.
22

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

23

Section 101(a)(15)(B) of the Immigration and Na-

24 tionality Act (8 U.S.C. 1101(a)(15)(B)) is amended by
25 adding before the semicolon at the end the following: ‘‘,
26 and who has waived any right to review or appeal of an
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immigration officer’s determination as to the admissibility
of the alien at the port of entry into the United States,
or to contest, other than on the basis of an application
for asylum, any action for removal of the alien’’.

**TITLE II—AGRICULTURAL WORKER REFORM**

**SEC. 2101. SHORT TITLE.**

This title may be cited as—

(1) the “Agricultural Guestworker Act”; or

(2) the “AG Act”.

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

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

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

“(53) The term ‘agricultural labor or services’ has
the meaning given such term by the Secretary of Agri-
culture in regulations and includes—
“(A) agricultural labor as defined in section 3121(g) of the Internal Revenue Code of 1986;

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

“(C) the handling, planting, drying, packing, packaging, processing, freezing, or grading prior to delivery for storage of any agricultural or horticultural commodity in its unmanufactured state;

“(D) all activities required for the preparation, processing or manufacturing of a product of agriculture (as such term is defined in such section 3(f)) for further distribution;

“(E) forestry-related activities;

“(F) aquaculture activities; and

“(G) the primary processing of fish or shellfish, except that in regard to labor or services consisting of meat or poultry processing, the term ‘agricultural labor or services’ only includes the killing of animals and the breakdown of their carcasses.”.

SEC. 2103. ADMISSION OF TEMPORARY H–2C WORKERS.

(a) PROCEDURE FOR ADMISSION.—Chapter 2 of title II of the Immigration and Nationality Act (8 U.S.C. 1181 et seq.) is amended by inserting after section 218 the following:
“SEC. 218A. ADMISSION OF TEMPORARY H–2C WORKERS.

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

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

“(2) JOB.—The term ‘job’ refers to all positions with an employer that—

“(A) involve essentially the same responsibilities;

“(B) are held by workers with substantially equivalent qualifications and experience; and

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

“(3) EMPLOYER.—The term ‘employer’ includes a single or joint employer, including an association acting as a joint employer with its members, who hires workers to perform agricultural labor or services.

“(4) FORESTRY-RELATED ACTIVITIES.—The term ‘forestry-related activities’ includes tree planting, timber harvesting, logging operations, brush clearing, vegetation management, herbicide application, the maintenance of rights-of-way (including for roads, trails, and utilities), regardless of whether
such right-of-way is on forest land, and the harvesting of pine straw.


“(6) LAY OFF.—

“(A) IN GENERAL.—The term ‘lay off’—

“(i) means to cause a worker’s loss of employment, other than through a discharge for inadequate performance, violation of workplace rules, cause, voluntary departure, voluntary retirement, or the expiration of a grant or contract (other than a temporary employment contract entered into in order to evade a condition described in paragraph (4) of subsection (b)); and

“(ii) does not include any situation in which the worker is offered, as an alternative to such loss of employment, a similar position with the same employer at equivalent or higher wages and benefits than the position from which the employee was discharged, regardless of whether or not the employee accepts the offer.
“(B) CONSTRUCTION.—Nothing in this paragraph is intended to limit an employee’s rights under a collective bargaining agreement or other employment contract.

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

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

“(B) an alien who is lawfully admitted for permanent residence, is admitted as a refugee under section 207, or is granted asylum under section 208.

“(8) SPECIAL PROCEDURES INDUSTRY.—The term ‘special procedures industry’ includes sheep-herding, goat herding, and the range production of livestock, itinerant commercial beekeeping and pollination, itinerant animal shearing, and custom combining and harvesting.

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

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

“(2) **Temporary Labor or Services.**—

“(A) **In General.**—The employer is seek-
ing to employ a specific number of H–2C work-
ers on a temporary basis and will provide com-
ensation to such workers at a wage rate no
less than that set forth in subsection (k)(2).

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

“(3) **Benefits, Wages, and Working Condi-
tions.**—The employer will provide, at a minimum,
the benefits, wages, and working conditions required
by subsection (k) to all workers employed in the job
for which the H–2C workers are sought.

“(4) **Nondisplacement of United States
Workers.**—The employer did not displace and will
not displace United States workers employed by the employer during the period of employment of the H–2C workers and during the 30-day period immediately preceding such period of employment in the job for which the employer seeks approval to employ H–2C workers.

“(5) Recruitment.—

“(A) In general.—The employer—

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

“(ii) was unsuccessful in locating sufficient numbers of willing and qualified United States workers for the job for which the H–2C workers are sought.

“(B) Other requirements.—The recruitment requirement under subparagraph (A) is satisfied if the employer places a local job order with the State workforce agency serving each place of employment, except that nothing in this subparagraph shall require the employer to file an interstate job order under section 653 of title 20, Code of Federal Regulations. The State workforce agency shall post the job order on its official agency website for a minimum of 30 days and not later than 3 days after receipt
using the employment statistics system author-
ized under section 15 of the Wagner-Peyser Act
(29 U.S.C. 49l–2). The Secretary of Labor
shall include links to the official Web sites of all
State workforce agencies on a single webpage of
the official Web site of the Department of
Labor.

“(C) END OF RECRUITMENT REQUIRE-
MENT.—The requirement to recruit United
States workers for a job shall terminate on the
first day that work begins for the H–2C work-
ers.

“(6) OFFERS TO UNITED STATES WORKERS.—
The employer has offered or will offer the job for
which the H–2C workers are sought to any eligible
United States workers who—

“(A) apply;

“(B) are qualified for the job; and

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

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

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

“(8) STRIKE OR LOCKOUT.—The job that is the
subject of the petition is not vacant because the
former workers in that job are on strike or locked
out in the course of a labor dispute.

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

“(d) LIST.—

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

“(A) be sorted by employer; and

“(B) include the number of H–2C workers
sought, the wage rate, the period of employ-
ment, each place of employment, and the date
of need for each alien.
“(2) Availability.—The Secretary of Homeland Security shall make the list available for public examination.

“(e) Petitioning for Admission.—

“(1) Consideration of petitions.—For petitions filed and considered under this subsection—

“(A) the Secretary of Homeland Security may not require such petition to be filed more than 28 days before the first date the employer requires the labor or services of H–2C workers;

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

“(i) approve the petition;

“(ii) reject the petition; or

“(iii) determine that the petition is incomplete or obviously inaccurate or that the employer has not complied with the requirements of subsection (b)(5)(A)(i) (which the Secretary can ascertain by verifying whether the employer has placed a local job order as provider for in subsection (b)(5)(B));

“(C) if the Secretary determines that the petition is incomplete or obviously inaccurate,
or that the employer has not complied with the requirements of subsection (b)(5)(A)(i) (which the Secretary can ascertain by verifying whether the employer has placed a local job order as provider for in subsection (b)(5)(B)), the Secretary shall—

“(i) within 5 business days of receipt of the petition, notify the petitioner of the deficiencies to be corrected by means ensuring same or next day delivery; and

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

“(D) if the Secretary does not determine that the petition is incomplete or obviously inaccurate, the Secretary shall not later than 10 business days after the date on which such petition was filed, either approve or reject the petition and provide the petitioner with notice of such action by means ensuring same or next day delivery.

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

“(f) **Roles of Agricultural Associations.**—

“(1) **Treatment of Associations Acting as
Employers.**—If an association is a joint employer
of workers who perform agricultural labor or serv-
ices, H–2C workers may be transferred among its
members to perform the agricultural labor or serv-
ices on a temporary basis for which the petition was
approved.

“(2) **Treatment of Violations.**—

“(A) **Individual Member.**—If an indi-
vidual member of an association that is a joint
employer commits a violation described in para-
graph (2) or (3) of subsection (i) or subsection
(j)(1), the Secretary of Agriculture shall invoke
penalties pursuant to subsections (i) and (j)
against only that member of the association un-
less the Secretary of Agriculture determines
that the association participated in, had knowledge of, or had reason to know of the violation.

“(B) ASSOCIATION OF AGRICULTURAL EMPLOYERS.—If an association that is a joint employer commits a violation described in subsections (i)(2) and (3) or (j)(1), the Secretary of Agriculture shall invoke penalties pursuant to subsections (i) and (j) against only the association and not any individual members of the association, unless the Secretary determines that the member participated in the violation.

“(g) EXPEDITED ADMINISTRATIVE APPEALS.—The Secretary of Homeland Security shall promulgate regulations to provide for an expedited procedure for the review of a denial of a petition under this section by the Secretary. At the petitioner’s request, the review shall include a de novo administrative hearing at which new evidence may be introduced.

“(h) FEES.—The Secretary of Homeland Security shall require, as a condition of approving the petition, the payment of a fee to recover the reasonable cost of processing the petition.

“(i) ENFORCEMENT.—

“(1) INVESTIGATIONS AND AUDITS.—The Secretary of Agriculture shall be responsible for con-
ducting investigations and audits, including random audits, of employers to ensure compliance with the requirements of the H–2C program. All monetary fines levied against employers shall be paid to the Department of Agriculture and used to enhance the Department of Agriculture’s investigative and auditing abilities to ensure compliance by employers with their obligations under this section.

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

“(A) may impose such administrative remedies (including civil money penalties in an amount not to exceed $1,000 per violation) as the Secretary determines to be appropriate; and

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

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

“(A) may impose such administrative rem-
edies (including civil money penalties in an
amount not to exceed $5,000 per violation, or
not to exceed $15,000 per violation if in the
course of such failure or misrepresentation the
employer displaced one or more United States
workers employed by the employer during the
period of employment of H–2C workers or dur-
ing the 30-day period immediately preceding
such period of employment) in the job the H–
2C workers are performing as the Secretary de-
termines to be appropriate;

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

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

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

“(j) Failure To Pay Wages or Required Bene-
fits.—

“(1) In General.—If the Secretary of Agri-
culture finds, after notice and opportunity for a
hearing, that the employer has failed to provide the
benefits, wages, and working conditions that the em-
ployer has attested that it would provide under this
subsection, the Secretary shall require payment of
back wages, or such other required benefits, due any
United States workers or H–2C workers employed
by the employer.

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

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

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

“(k) Minimum Wages, Benefits, and Working
Conditions.—
‘(1) Preferential Treatment of H–2C Workers Prohibited.—

‘(A) In General.—Each employer seeking to hire United States workers for the job the H–2C workers will perform shall offer such United States workers not less than the same benefits, wages, and working conditions that the employer will provide to the H–2C workers. No job offer may impose on United States workers any restrictions or obligations which will not be imposed on H–2C workers.

‘(B) Interpretation.—Every interpretation and determination made under this section or under any other law, regulation, or interpretative provision regarding the nature, scope, and timing of the provision of these and any other benefits, wages, and other terms and conditions of employment shall be made so that—

“(i) the services of workers to their employers and the employment opportunities afforded to workers by the employers, including those employment opportunities that require United States workers or H–2C workers to travel or relocate in order to accept or perform employment—
“(I) mutually benefit such workers, as well as their families, and employers; and

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

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

“(2) REQUIRED WAGES.—

“(A) In general.—Each employer petitioning for H–2C workers under this subsection (other than in the case of workers who will perform agricultural labor or services consisting of meat or poultry processing) will offer the H–2C workers, during the period of authorized employment as H–2C workers, wages that are at least the greatest of—

“(i) the applicable State or local minimum wage;

“(ii) 115 percent of the Federal minimum wage, or 150 percent of the Federal minimum wage; or

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

“(B) Special rules.—
“(i) ALTERNATE WAGE PAYMENT SYSTEMS.—An employer can utilize a piece rate or other alternative wage payment system so long as the employer guarantees each worker a wage rate that equals or exceeds the amount required under subparagraph (A) for the total hours worked in each pay period. Compensation from a piece rate or other alternative wage payment system shall include time spent during rest breaks, moving from job to job, clean up, or any other nonproductive time, provided that such time does not exceed 20 percent of the total hours in the work day.

“(ii) MEAT OR POULTRY PROCESSING.—Each employer petitioning for H–2C workers under this subsection who will perform agricultural labor or services consisting of meat or poultry processing will offer the H–2C workers, during the period of authorized employment as H–2C workers, wages that are at least the greatest of—

“(I) the applicable State or local minimum wage;
“(II) 115 percent of the Federal minimum wage;
“(III) the prevailing wage level for the occupational classification in the area of employment; or
“(IV) the actual wage level paid by the employer to all other individuals in the job.

“(3) **Employment guarantee.**—

“(A) **In general.**—

“(i) **Requirement.**—Each employer petitioning for workers under this subsection shall guarantee to offer the H–2C workers and United States workers performing the same job employment for the hourly equivalent of not less than 50 percent of the work hours set forth in the work contract.

“(ii) **Failure to meet guarantee.**—If an employer affords the United States workers or the H–2C workers less employment than that required under this subparagraph, the employer shall pay such workers the amount which the workers would have earned if the work-
ers had worked for the guaranteed number of hours.

“(B) Calculation of hours.—Any hours which workers fail to work, up to a maximum of the number of hours specified in the work contract for a work day, when the workers have been offered an opportunity to do so, and all hours of work actually performed (including voluntary work in excess of the number of hours specified in the work contract in a work day) may be counted by the employer in calculating whether the period of guaranteed employment has been met.

“(C) Limitation.—If the workers abandon employment before the end of the work contract period, or are terminated for cause, the workers are not entitled to the 50 percent guarantee described in subparagraph (A).

“(D) Termination of employment.—

“(i) In general.—If, before the expiration of the period of employment specified in the work contract, the services of the workers are no longer required due to any form of natural disaster, including flood, hurricane, freeze, earthquake, fire,
drought, plant or animal disease, pest infestation, regulatory action, or any other reason beyond the control of the employer before the employment guarantee in subparagraph (A) is fulfilled, the employer may terminate the workers’ employment.

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

“(I) fulfill the employment guarantee in subparagraph (A) for the work days that have elapsed during the period beginning on the first work day and ending on the date on which such employment is terminated;

“(II) make efforts to transfer the worker to other comparable employment acceptable to the worker; and

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

“(l) NONDELEGATION.—The Department of Agriculture and the Department of Homeland Security shall
not delegate their investigatory, enforcement, or administrative functions relating to this section or section 218B to other agencies or departments of the Federal Government.

“(m) Compliance With Bio-Security Protocols.—Except in the case of an imminent threat to health or safety, any personnel from a Federal agency or Federal grantee seeking to determine the compliance of an employer with the requirements of this section or section 218B shall, when visiting such employer’s place of employment, make their presence known to the employer and sign-in in accordance with reasonable bio-security protocols before proceeding to any other area of the place of employment.

“(n) Limitation on H–2C Workers’ Stay in Status.—

“(1) Maximum Period.—The maximum continuous period of authorized status as an H–2C worker (including any extensions) is 18 months for workers employed in a job that is of a temporary or seasonal nature. For H–2C workers employed in a job that is not of a temporary or seasonal nature, the initial maximum continuous period of authorized status is 36 months and subsequent maximum continuous periods of authorized status are 18 months.
“(2) Requirement to remain outside the United States.—In the case of H–2C workers who were employed in a job of a temporary or seasonal nature whose maximum continuous period of authorized status as H–2C workers (including any extensions) have expired, the aliens may not again be eligible to be H–2C workers until they remain outside the United States for a continuous period equal to at least 1⁄12 of the duration of their previous period of authorized status as H–2C workers. For H–2C workers who were employed in a job not of a temporary or seasonal nature whose maximum continuous period of authorized status as H–2C workers (including any extensions) have expired, the aliens may not again be eligible to be H–2C workers until they remain outside the United States for a continuous period equal to at least the lesser of 1⁄12 of the duration of their previous period of authorized status as H–2C workers or 45 days.

“(3) Exceptions.—

“(A) The Secretary of Homeland Security shall deduct absences from the United States that take place during an H–2C worker’s period of authorized status from the period that the alien is required to remain outside the United States.
States under paragraph (2), if the alien or the
alien’s employer requests such a deduction, and
provides clear and convincing proof that the
alien qualifies for such a deduction. Such proof
shall consist of evidence such as arrival and de-
parture records, copies of tax returns, and
records of employment abroad.

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

“(o) PERIOD OF ADMISSION.—

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

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

“(B) a period of not more than 14 days
after the conclusion of their authorized employ-
ment for the purpose of departure from the United States or a period of not more than 30 days following the employment for the purpose of seeking a subsequent offer of employment by an employer pursuant to a petition under this section (or pursuant to at-will employment under section 218B during such times as that section is in effect) if they have not reached their maximum continuous period of authorized employment under subsection (n) (subject to the exceptions in subsection (n)(3)) unless they accept subsequent offers of employment as H–2C workers or are otherwise lawfully present.

“(2) FAILURE TO DEPART.—H–2C workers who do not depart the United States within the periods referred to in paragraph (1) will be considered to have failed to maintain nonimmigrant status as H–2C workers and shall be subject to removal under section 237(a)(1)(C)(i). Such aliens shall be considered to be inadmissible pursuant to section 212(a)(9)(B)(i) for having been unlawfully present, with the aliens considered to have been unlawfully present for 181 days as of the 15th day following their period of employment for the purpose of departure or as of the 31st day following their period of
employment for the purpose of seeking subsequent offers of employment.

“(p) ABANDONMENT OF EMPLOYMENT.—

“(1) REPORT BY EMPLOYER.—Not later than 72 hours after an employer learns of the abandonment of employment by H–2C workers before the conclusion of their work contracts, the employer shall notify the Secretary of Agriculture and the Secretary of Homeland Security of such abandonment.

“(2) REPLACEMENT OF ALIENS.—An employer may designate eligible aliens to replace H–2C workers who abandon employment notwithstanding the numerical limitation found in section 214(g)(1)(C).

“(q) CHANGE TO H–2C STATUS.—

“(1) WAIVER.—In the case of an alien described in paragraph (4), the Secretary of Homeland Security shall waive the ground of inadmissibility under paragraphs (6)(C) and (9)(B) of section 212(a) with respect to conduct that occurred prior to the alien first receiving status as an H–2C worker, solely in order to provide the alien with such status.

“(2) ALIEN DESCRIBED.—An alien described in this paragraph is an alien who—
“(A) was unlawfully present in the United States on October 23, 2017;

“(B) performed agricultural labor or services in the United States for at least 5.75 hours during each of at least 180 days during the 2-year period ending on October 23, 2017; and

“(C) has departed the United States within 180 days of the issuance of final rules carrying out the AG Act, and remains outside the United States.

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

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

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

“(A) IN GENERAL.—Notwithstanding the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.) and State and local wage laws, all employers of H–2C workers shall withhold from the wages of all H–2C workers other than those employed as shepherders, goatherders, in the
range production of livestock, or who return to
their permanent residence outside the
United States each day, an amount equivalent
to 10 percent of the gross wages of each worker
in each pay period and, on behalf of each work-
er, transfer such withheld amount to the Trust
Fund.

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

“(3) DISTRIBUTION OF FUNDS.—Amounts paid
into the Trust Fund on behalf of an H–2C worker,
and held pursuant to paragraph (2)(A) and interest
earned thereon, shall be transferred from the Trust
Fund to the Secretary of Homeland Security, who
shall distribute them to the worker if the worker—
“(A) applies to the Secretary of Homeland Security (or the designee of the Secretary) for payment within 120 days of the expiration of the alien’s last authorized stay in the United States as an H–2C worker, for which they seek amounts from the Trust Fund;

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

“(C) once approved by the Secretary of Homeland Security for payment, physically appears at a United States embassy or consulate in the worker’s home country; and

“(D) establishes their identity to the satisfaction of the Secretary of Homeland Security.

“(4) Administrative Expenses.—The amounts paid into the Trust Fund and held pursuant to paragraph (2)(B), and interest earned thereon, shall be distributed annually to the Secretary of Agriculture and the Secretary of Homeland Security in amounts proportionate to the expenses incurred by such officials in the administration and enforcement of the terms of the H–2C program.
“(5) LAW ENFORCEMENT.—Notwithstanding any other provision of law, amounts paid into the Trust Fund under paragraph (2), and interest earned thereon, that are not needed to carry out paragraphs (3) and (4) shall, to the extent provided in advance in appropriations Acts, be made available until expended without fiscal year limitation to the Secretary of Homeland Security to apprehend, detain, and remove aliens inadmissible to or deportable from the United States.

“(6) INVESTMENT OF TRUST FUND.—

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

“(B) CREDITS TO TRUST FUND.—The interest on, and the proceeds from the sale or redemption of, any obligations held in the Trust Fund shall be credited to and form a part of the Trust Fund.
“(C) REPORT TO CONGRESS.—It shall be the duty of the Secretary of the Treasury to hold the Trust Fund, and (after consultation with the Secretary of Homeland Security) to report to the Congress each year on the financial condition and the results of the operations of the Trust Fund during the preceding fiscal year and on its expected condition and operations during the next fiscal year. Such report shall be printed as both a House and a Senate document of the session of the Congress in which the report is made.

“(S) PROCEDURES FOR SPECIAL PROCEDURES INDUSTRIES.—

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

“(A) may include an itinerary; and

“(B) may be subsequently amended at any time by the employer, after notice to the Secretary.
“(2) WAGES.—Notwithstanding subsection (k)(2), the Secretary of Agriculture may establish monthly, weekly, or biweekly wage rates for occupations in a Special Procedures Industry for a State or other geographic area. For an employer in a Special Procedures Industry that typically pays a monthly wage, the Secretary shall require that H–2C workers be paid not less frequently than monthly and at a rate no less than the legally required monthly cash wage in an amount as re-determined annually by the Secretary.

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

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

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

“(a) IN GENERAL.—An employer that is designated as a ‘registered agricultural employer’ pursuant to subsection (c) may employ aliens as H–2C workers. However,
an H–2C worker may only perform labor or services pursuant to this section if the worker is already lawfully present in the United States as an H–2C worker, having been admitted or otherwise provided nonimmigrant status pursuant to section 218A, and has completed the period of employment specified in the job offer the worker accepted pursuant to section 218A or the employer has terminated the worker’s employment pursuant to section 218A(k)(3)(D)(i). An H–2C worker who abandons the employment which was the basis for admission or status pursuant to section 218A may not perform labor or services pursuant to this section until the worker has returned to their home country, been readmitted as an H–2C worker pursuant to section 218A and has completed the period of employment specified in the job offer the worker accepted pursuant to section 218A or the employer has terminated the worker’s employment pursuant to section 218A(k)(3)(D)(i).

(b) Period of Stay.—H–2C workers performing at-will labor or services for a registered agricultural employer are subject to the period of admission, limitation of stay in status, and requirement to remain outside the United States contained in subsections (o) and (n) of section 218A, except that subsection (n)(3)(A) does not apply.
(c) Registered Agricultural Employers.—

The Secretary of Agriculture shall establish a process to accept and adjudicate applications by employers to be designated as registered agricultural employers. The Secretary shall require, as a condition of approving the application, the payment of a fee to recover the reasonable cost of processing the application. The Secretary shall designate an employer as a registered agricultural employer if the Secretary determines that the employer—

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

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

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

“(4) agrees to, if employing H–2C workers pursuant to this section, fulfill the attestations contained in section 218A(b) as if it had submitted a petition making those attestations (excluding subsection (k)(3) of such section) and not to employ H–2C workers who have reached their maximum continuous period of authorized status under section
218A(n) (subject to the exceptions contained in section 218A(n)(3)) or if the workers have complied with the terms of section 218A(n)(2); and

“(5) agrees to notify the Secretary of Agriculture and the Secretary of Homeland Security each time it employs H–2C workers pursuant to this section within 72 hours of the commencement of employment and within 72 hours of the cessation of employment.

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

“(e) ENFORCEMENT.—The Secretary of Agriculture shall be responsible for conducting investigations and audits, including random audits, of employers to ensure compliance with the requirements of this section. All monetary fines levied against employers shall be paid to the Department of Agriculture and used to enhance the Department of Agriculture’s investigatory and audit abilities to ensure
compliance by employers with their obligations under this section and section 218A. The Secretary of Agriculture’s enforcement powers and an employer’s liability described in subsections (i) through (j) of section 218A are applicable to employers employing H–2C workers pursuant to this section.”.

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

(d) NUMERICAL CAP.—Section 214(g)(1) of the Immigration and Nationality Act (8 U.S.C. 1184(g)(1)) is amended—

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

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

(3) by adding at the end the following:

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

“(i) except as otherwise provided under this subparagraph, may not exceed 40,000 for aliens issued visas or otherwise provided non-immigrant status under such section for the purpose of performing agricultural labor or
services consisting or meat or poultry processing;

“(ii) except as otherwise provided under this subparagraph, may not exceed 410,000 for aliens issued visas or otherwise provided non-immigrant status under such section for the purpose of performing agricultural labor or services other than agricultural labor or services consisting of meat or poultry processing;

“(iii) if the base allocation under clause (i) or (ii) is exhausted during any fiscal year, the base allocation under such clause for that and subsequent fiscal years shall be increased by the lesser of 10 percent or a percentage representing the number of petitioned-for aliens (as a percentage of the base allocation) who would be eligible to be issued visas or otherwise provided nonimmigrant status described in that clause during that fiscal year but for the base allocation being exhausted, and if the increased base allocation is itself exhausted during a subsequent fiscal year, the base allocation for that and subsequent fiscal years shall be further increased by the lesser of 10 percent or a percentage representing the number of petitioned-for
aliens (as a percentage of the increased base allocation) who would be eligible to be issued visas or otherwise provided nonimmigrant status described in that clause during that fiscal year but for the increased base allocation being exhausted (subject to clause (iv));

“(iv) if the base allocation under clause (i) or (ii) is not exhausted during any fiscal year, the base allocation under such clause for subsequent fiscal years shall be decreased by the greater of 5 percent or a percentage representing the unutilized portion of the base allocation (as a percentage of the base allocation) during that fiscal year, and if in a subsequent fiscal year the decreased base allocation is itself not exhausted, the base allocation for fiscal years subsequent to that fiscal year shall be further decreased by the greater of 5 percent or a percentage representing the unutilized portion of the decreased base allocation (as a percentage of the decreased base allocation) during that fiscal year (subject to clause (iii) and except that the base allocations under clauses (ii) shall not fall below 410,000);
“(v) the numerical limitations under this subparagraph shall not apply to any alien—

“(I) who—

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

“(bb) performed agricultural labor or services in the United States for at least 5.75 hours during each of at least 180 days during the 2-year period ending on October 23, 2017; or

“(II) who has previously been issued a visa or otherwise provided nonimmigrant status pursuant to subclause (a) or (b) of section 101(a)(15)(H)(ii), but only to the extent that the alien is being petitioned for by an employer pursuant to section 218A(b) who previously employed the alien pursuant to subclause (a) or (b) of section 101(a)(15)(H)(ii) beginning no later than October 23, 2017.”.

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

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

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

SEC. 2104. MEDIATION.

Nonimmigrants having status under section 101(a)(15)(H)(ii)(c) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(c)) may not bring civil actions for damages against their employers, nor may any other attorneys or individuals bring civil actions for damages on behalf of such nonimmigrants against the nonimmigrants’ employers, unless at least 90 days prior to bringing an action a request has been made to the Federal Mediation and Conciliation Service to assist the parties in reaching a satisfactory resolution of all issues involving all parties to the dispute and mediation has been attempted.

SEC. 2105. MIGRANT AND SEASONAL AGRICULTURAL WORKER PROTECTION.

Section 3(8)(B)(ii) of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1802(8)(B)(ii)) is amended by striking “under sections 101(a)(15)(H)(ii)(a) and 214(e) of the Immigration and
Nationality Act.” and inserting “under subclauses (a) and 
(e) of section 101(a)(15)(H)(ii), and section 214(e), of the 
Immigration and Nationality Act.”.

SEC. 2106. BINDING ARBITRATION.

(a) APPLICABILITY.—H–2C workers may, as a condi-
tion of employment with an employer, be subject to man-
datory binding arbitration and mediation of any grievance 
relating to the employment relationship. An employer shall 
provide any such workers with notice of such condition of 
employment at the time it makes job offers.

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

(e) DEFINITIONS.—As used in this section:

(1) The term “condition of employment” means 
a term, condition, obligation, or requirement that is 
part of the job offer, such as the term of employ-
ment, job responsibilities, employee conduct stand-
ards, and the grievance resolution process, and to 
which applicants or prospective H–2C workers must 
consent or accept in order to be hired for the posi-
tion.
The term “H–2C worker” means a non-immigrant described in section 218A(a)(5) of the Immigration and Nationality Act, as added by this title.

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

(a) Health Care Subsidies.—H–2C workers (as defined in section 218A(a)(5) of the Immigration and Nationality Act, as added by this title)—

(1) are not entitled to the premium assistance tax credit authorized under section 36B of the Internal Revenue Code of 1986 and shall be subject to the rules applicable to individuals who are not lawfully present set forth in subsection (e) of such section; and

(2) shall be subject to the rules applicable to individuals who are not lawfully present set forth in section 1402(e) of the Patient Protection and Affordable Care Act (42 U.S.C. 18071(e)).

(b) Refundable Tax Credits.—H–2C workers (as defined in section 218A(a)(5) of the Immigration and Nationality Act, as added by this title), shall not be allowed any credit under sections 24 and 32 of the Internal Revenue Code of 1986. In the case of a joint return, no credit
shall be allowed under either such section if both spouses are such workers or aliens.

(c) REQUIREMENT REGARDING HEALTH INSURANCE COVERAGE.—Notwithstanding the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.) and State and local wage laws, not later than 21 days after being issued a visa or otherwise provided nonimmigrant status under section 101(a)(15)(H)(ii)(c) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(c)), an alien must obtain health insurance coverage accepted in their State or States of employment and residence for the period of employment specified in section 218A(b)(1) of the Immigration and Nationality Act. H–2C workers under sections 218A or 218B of the Immigration and Nationality Act who do not obtain and maintain the required insurance coverage will be considered to have failed to maintain nonimmigrant status under section 101(a)(15)(H)(ii)(c) of the Immigration and Nationality Act and shall be subject to removal under section 237(a)(1)(C)(i) of the Immigration and Nationality Act (8 U.S.C. 1227(a)(1)(C)(i)).

SEC. 2108. STUDY OF ESTABLISHMENT OF AN AGRICULTURAL WORKER EMPLOYMENT POOL.

(a) STUDY.—The Secretary of Agriculture shall conduct a study on the feasibility of establishing an agricultural worker employment pool and an electronic Internet-
based portal to assist H–2C workers (as such term is defined in section 218A of the Immigration and Nationality Act), prospective H–2C workers, and employers to identify job opportunities in the H–2C program and willing, able and available workers for the program, respectively.

(b) CONTENTS.—The study required under subsection (a) shall include an analysis of—

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

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

(3) with respect to H–2C workers and prospective H–2C workers in the pool, the data that would be relevant for employers;

(4) the merits of assisting H–2C workers and employers in identifying job opportunities and willing, able, and available workers, respectively; and

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

(c) REPORT.—Not later than 1 year after the date of the enactment of this division, the Secretary of Agriculture shall submit to the Committees on the Judiciary of the House of Representatives and the Senate a report containing the results of the study required under subsection (a).
SEC. 2109. PREVAILING WAGE.

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

(1) in paragraph (1), by inserting after “subsections (a)(5)(A), (n)(1)(A)(i)(II), and (t)(1)(A)(i)(II)” the following: “of this section and section 218A(k)(2)(B)(ii)”;

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

SEC. 2110. EFFECTIVE DATES; SUNSET; REGULATIONS.

(a) Effective Dates; Regulations.—

(1) In general.—Sections 2102 and 2104 through 2106 of this title, subsections (a) and (e) through (f) of section 2103 of this title, and the amendments made by the sections, shall take effect on the date on which the Secretary issues the rules under paragraph (3), and the Secretary of Homeland Security shall accept petitions pursuant to section 218A of the Immigration and Nationality Act, as inserted by this division, beginning no later than that date. Sections 2107 and 2109 of this title shall take effect on the date of the enactment of this division.
(2) AT-WILL EMPLOYMENT.—Section 2103(b) of this title and the amendments made by that subsection shall take effect when—

(A) it becomes unlawful for all persons or other entities to hire, or to recruit or refer for a fee, for employment in the United States an individual (as provided in section 274A(a)(1) of the Immigration and Nationality Act (8 U.S.C. 1324a(a)(1))) without participating in the E-Verify Program described in section 403(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note) or an employment eligibility verification system patterned on such program’s verification system; and

(B) the E-Verify Program responds to inquiries made by such persons or entities described in subparagraph (A) by providing confirmation, tentative nonconfirmation, and final nonconfirmation of an individual’s identity and employment eligibility in such a way that indicates whether the individual is eligible to be employed in all occupations or only to perform agricultural labor or services under sections 218A and 219B of the Immigration and Nationality
Act, as added by section 2103 of this title, and if the latter, whether the nonimmigrant would be in compliance with their maximum continuous period of authorized status and requirement to remain outside the United States under section 218A(n) of such Act, as added by section 2103(a) of this title, and on what date the alien would cease to be in compliance with their maximum continuous period of authorized status.

(3) **Regulations.**—Notwithstanding any other provision of law, not later than the first day of the seventh month that begins after the date of the enactment of this division, the Secretary of Homeland Security shall issue final rules, on an interim or other basis, to carry out this title.

(b) **Operation and Sunset of the H–2A Program.**—

(1) **Application of existing regulations.**—The Department of Labor H–2A program regulations published at 73 Federal Register 77110 et seq. (2008) shall be in force for all petitions approved under sections 101(a)(15)(H)(ii)(a) and 218 of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(h)(ii)(a); 8 U.S.C. 1188) beginning on
the date of the enactment of this division, except
that the following, as in effect on such date, shall re-
main in effect, and, to the extent that any rule pub-
lished at 73 Federal Register 77110 et seq. is in
conflict, such rule shall have no force and effect:

(A) Paragraph (a) and subparagraphs (1)
and (3) of paragraph (b) of section 655.200 of

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

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

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

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

(F) The Special Procedures Labor Certifi-
cation Process for Employers in the Itinerant
Animal Shearing Industry under the H–2A
Program in effect under the Training and Em-
ployment Guidance Letter No. 17–06, Change
1, Attachment B, Section II, with an effective
date of October 1, 2011.
(2) SUNSET.—Beginning on the date on which employers can file petitions pursuant to section 218A of the Immigration and Nationality Act, as added by section 2103(a) of this title, no new petitions under sections 101(a)(15)(H)(ii)(a) and 218 of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a); 8 U.S.C. 1188) shall be accepted.

SEC. 2111. REPORT ON COMPLIANCE AND VIOLATIONS.

(a) IN GENERAL.—Not later than 1 year after the first day on which employers can file petitions pursuant to section 218A of the Immigration and Nationality Act, as added by section 2103(a) of this title, the Secretary of Homeland Security, in consultation with the Secretary of Agriculture, shall submit to the Committees on the Judiciary of the House of Representatives and the Senate a report on compliance by H–2C workers with the requirements of this title and the Immigration and Nationality Act, as amended by this title. In the case of a violation of a term or condition of the temporary agricultural work visa program established by this title, the report shall identify the provision or provisions of law violated.

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

**TITLE III—VISA SECURITY**

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

(a) **In General.**—Section 222(g) of the Immigration and Nationality Act (8 U.S.C. 1202(g)) is amended—

(1) in paragraph (1)—

(A) by striking “Attorney General” and inserting “Secretary”; and

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

(2) in paragraph (2)(A), by striking “(other than the visa described in paragraph (1)) issued in a consular office located in the country of the alien’s nationality” and inserting “(other than a visa described in paragraph (1)) issued in a consular office located in the country of the alien’s nationality or foreign residence”.

(b) **Effective Date.**—The amendment made by subsection (a) shall take effect on the date of the enactment of this division and shall apply to a visa issued before, on, or after such date.
SEC. 3102. VISA INFORMATION SHARING.

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

(1) by striking “issuance or refusal” and inserting “issuance, refusal, or revocation”;

(2) in paragraph (2), in the matter preceding subparagraph (A), by striking “and on the basis of reciprocity” and all that follows and inserting the following “may provide to a foreign government information in a Department of State computerized visa database and, when necessary and appropriate, other records covered by this section related to information in such database—”;

(3) in paragraph (2)(A)—

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

(B) by inserting “(i)” after “for the purpose of”; and

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

(4) in paragraph (2)(B)—

(A) by inserting at the beginning “on the basis of reciprocity,”;
(B) by striking “in the database” and inserting “such database”;  
(C) by striking “for the purposes” and inserting “for one of the purposes”; and  
(D) by striking “or to deny visas to persons who would be inadmissible to the United States.” and inserting “; or”; and  
(5) in paragraph (2), by adding at the end the following:

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

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

SEC. 3103. RESTRICTING WAIVER OF VISA INTERVIEWS.

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

(1) in paragraph (1)(C), by inserting “, in consultation with the Secretary of Homeland Security,” after “if the Secretary”;  
(2) in paragraph (1)(C)(i), by inserting “, where such national interest shall not include facili-
tation of travel of foreign nationals to the United States, reduction of visa application processing times, or the allocation of consular resources” before the semicolon at the end; and

(3) in paragraph (2)—

(A) by striking “or” at the end of subparagraph (E);

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

(C) by adding at the end the following:

“(G) is an individual—

“(i) determined to be in a class of aliens determined by the Secretary of Homeland Security to be threats to national security;

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

“(iii) applying for a visa in a visa category with respect to which the Secretary of Homeland Security has determined that a waiver of the visa interview would create a high risk of degradation of visa program integrity.”.
SEC. 3104. AUTHORIZING THE DEPARTMENT OF STATE TO
NOT INTERVIEW CERTAIN INELIGIBLE VISA
APPLICANTS.

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

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

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

(1) the number of such denials; and

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

SEC. 3105. VISA REFUSAL AND REVOCATION.

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

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

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

“(1) IN GENERAL.—Notwithstanding section 104(a) of the Immigration and Nationality Act (8 U.S.C. 1104(a)) or any other provision of law, and except as provided in subsection (c) and except for the authority of the Secretary of State under subparagraphs (A) and (G) of section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)), the Secretary—

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

“(B) may refuse or revoke any visa to any alien or class of aliens if the Secretary, or designee, determines that such refusal or revocation is necessary or advisable in the security or foreign policy interests of the United States.
“(2) Effect of Revocation.—The revocation of any visa under paragraph (1)(B)—

“(A) shall take effect immediately; and

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

“(3) Judicial Review.—Notwithstanding any other provision of law, including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title, no court shall have jurisdiction to review a decision by the Secretary of Homeland Security to refuse or revoke a visa, and no court shall have jurisdiction to hear any claim arising from, or any challenge to, such a refusal or revocation.

“(c) Authority of the Secretary of State.—

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

“(2) Limitation.—No decision by the Secretary of State to approve a visa may override a decision by the Secretary of Homeland Security under subsection (b).”.
(2) Authority of the Secretary of State.—Section 221(i) of the Immigration and Nationality Act (8 U.S.C. 1201(i)) is amended by striking “subsection, except in the context of a removal proceeding if such revocation provides the sole ground for removal under section 237(a)(1)(B).” and inserting “subsection.”.

(3) Conforming Amendment.—Section 237(a)(1)(B) of the Immigration and Nationality Act (8 U.S.C. 1227(a)(1)(B)) is amended by striking “under section 221(i)”.

(4) Effective Date.—The amendment made by paragraph (1) shall take effect on the date of the enactment of this division and shall apply to visa refusals and revocations occurring before, on, or after such date.

(b) Technical Corrections to the Homeland Security Act.—Section 428(a) of the Homeland Security Act of 2002 (6 U.S.C. 236(a)) is amended—

(1) by striking “subsection” and inserting “section”; and

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

SEC. 3106. PETITION AND APPLICATION PROCESSING FOR VISAS AND IMMIGRATION BENEFITS.

(a) In General.—Chapter 2 of title II of the Immigration and Nationality Act (8 U.S.C. 1181 et seq.) is amended by inserting after section 211 the following:

"SEC. 211A. PETITION AND APPLICATION PROCESSING.

"(a) Signature Requirement.—

"(1) In General.—No petition or application filed with the Secretary of Homeland Security or with a consular officer relating to the issuance of a visa or to the admission of an alien to the United States as an immigrant or as a nonimmigrant may be approved unless the petition or application is signed by each party required to sign such petition or application.

"(2) Applications for immigrant visas.—Except as may be otherwise prescribed by regulations, each application for an immigrant visa shall be signed by the applicant in the presence of the consular officer, and verified by the oath of the applicant administered by the consular officer.

"(b) Completion Requirement.—No petition or application filed with the Secretary of Homeland Security or with a consular officer relating to the issuance of a visa or to the admission of an alien to the United States as an immigrant or as a nonimmigrant may be approved un-
less each applicable portion of the petition or application has been completed.

“(c) Translation Requirement.—No document submitted in support of a petition or application for a non-immigrant or immigrant visa may be accepted by a consular officer if such document contains information in a foreign language, unless such document is accompanied by a full English translation, which the translator has certified as complete and accurate, and by the translator’s certification that he or she is competent to translate from the foreign language into English.

“(d) Requests for Additional Information.—In the case that the Secretary of Homeland Security or a consular officer requests any additional information relating to a petition or application filed with the Secretary or consular officer relating to the issuance of a visa or to the admission of an alien to the United States as an immigrant or as a nonimmigrant, such petition or application may not be approved unless all of the additional information requested is provided, or is shown to have been previously provided, in complete form and is provided on or before any reasonably established deadline included in the request.”.

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

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

(c) APPLICATION.—The amendments made by this section shall apply with respect to applications and petitions filed after the date of the enactment of this division.

SEC. 3107. FRAUD PREVENTION.

(a) PROSPECTIVE ANALYTICS TECHNOLOGY.—

(1) PLAN FOR IMPLEMENTATION.—Not later than 180 days after the date of the enactment of this division, the Secretary of Homeland Security shall submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate a plan for the use of advanced analytics software to ensure the proactive detection of fraud in immigration benefits applications and petitions and to ensure that any such applicant or petitioner does not pose a threat to national security.

(2) IMPLEMENTATION OF PLAN.—Not later than 1 year after the date of the submission of the plan under paragraph (1), the Secretary of Homeland Security shall begin implementation of the plan.

(b) BENEFITS FRAUD ASSESSMENT.—

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

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

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

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

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

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

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

(G) Applications for adjustment of status
under section 209 of such Act (8 U.S.C. 1159).
(H) Petitions for visas or status under section 201(b) of such Act (8 U.S.C. 1151(b)).

(2) REPORTING ON FINDINGS.—Not later than 30 days after the completion of each benefit fraud assessment under paragraph (1), the Secretary shall submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate such assessment and recommendations on how to reduce the occurrence of instances of fraud identified by the assessment.

SEC. 3108. VISA INELIGIBILITY FOR SPOUSES AND CHILDREN OF DRUG TRAFFICKERS.

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

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

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

SEC. 3109. DNA TESTING.

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

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

Subsection (a) of article V of section 217 of the National Crime Prevention and Privacy Compact Act of 1998 (34 U.S.C. 40316(V)(a)) is amended by inserting “, except for diplomatic visa applications for which only full biographical information is required” before the period at the end.

SEC. 3111. ELIMINATION OF SIGNED PHOTOGRAPH REQUIREMENT FOR VISA APPLICATIONS.

Section 221(b) of the Immigration and Nationality Act (8 U.S.C. 1201(b)) is amended by striking the first sentence and insert the following: “Each alien who applies for a visa shall be registered in connection with his or her application and shall furnish copies of his or her photograph for such use as may be required by regulation.”.
SEC. 3112. ADDITIONAL FRAUD DETECTION AND PREVENTION.

Section 286(v)(2)(A) of the Immigration and Nationality Act (8 U.S.C. 1356(v)(2)(A)) is amended—

(1) in the matter preceding clause (i), by striking “at United States embassies and consulates abroad”;

(2) by amending clause (i) to read as follows: “(i) to increase the number of diplomatic security personnel assigned exclusively or primarily to the function of preventing and detecting visa fraud;”; and

(3) in clause (ii), by striking “, including primarily fraud by applicants for visas described in subparagraph (H)(i), (H)(ii), or (L) of section 101(a)(15)”.

SUBDIVISION 2.—INTERIOR IMMIGRATION ENFORCEMENT

TITLE I—LEGAL WORKFORCE ACT

SEC. 1101. SHORT TITLE.

This title may be cited as the “Legal Workforce Act”.
SEC. 1102. EMPLOYMENT ELIGIBILITY VERIFICATION PROCESS.

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

“(b) EMPLOYMENT ELIGIBILITY VERIFICATION PROCESS.—

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

“(A) ATTESTATION AFTER EXAMINATION OF DOCUMENTATION.—

“(i) ATTESTATION.—During the verification period (as defined in subparagraph (E)), the person or entity shall attest, under penalty of perjury and on a form, including electronic and telephonic formats, designated or established by the Secretary by regulation not later than 6 months after the date of the enactment of the Legal Workforce Act, that it has verified that the individual is not an unauthorized alien by—
“(I) obtaining from the individual the individual’s social security account number or United States passport number and recording the number on the form (if the individual claims to have been issued such a number), and, if the individual does not attest to United States nationality under subparagraph (B), obtaining such identification or authorization number established by the Department of Homeland Security for the alien as the Secretary of Homeland Security may specify, and recording such number on the form; and

“(II) examining—

“(aa) a document relating to the individual presenting it described in clause (ii); or

“(bb) a document relating to the individual presenting it described in clause (iii) and a document relating to the individual presenting it described in clause (iv).
“(ii) DOCUMENTS EVIDENCING EMPLOYMENT AUTHORIZATION AND ESTABLISHING IDENTITY.—A document described in this subparagraph is an individual’s—

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

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

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

“(IV) in the case of a non-immigrant alien authorized to work for a specific employer incident to status, a foreign passport with Form I–94 or Form I–94A, or other documentation as designated by the Secretary specifying the alien’s non-immigrant status as long as the period of status has not yet expired and the proposed employment is not in conflict with any restrictions or limitations identified in the documentation;
“(V) passport from the Federated States of Micronesia (FSM) or the Republic of the Marshall Islands (RMI) with Form I–94 or Form I–94A, or other documentation as designated by the Secretary, indicating nonimmigrant admission under the Compact of Free Association Between the United States and the FSM or RMI; or

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

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

“(bb) is evidence of authorization of employment in the United States; and
“(cc) contains security features to make it resistant to tampering, counterfeiting, and fraudulent use.

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

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

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

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

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

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

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

“(C) RETENTION OF VERIFICATION FORM AND VERIFICATION.—
“(i) IN GENERAL.—After completion of such form in accordance with subparag- 
graphs (A) and (B), the person or entity shall—

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

“(aa) in the case of the recruiting or referral of an individual, 3 years after the date of 
the recruiting or referral; and

“(bb) in the case of the hiring of an individual, the later of 
3 years after the date the verification is completed or one 
year after the date the individ-
ual’s employment is terminated;
and
“(II) during the verification pe-
period (as defined in subparagraph (E)),
make an inquiry, as provided in sub-
section (d), using the verification sys-
tem to seek verification of the identity
and employment eligibility of an indi-

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

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

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

“(V) Consequences of Non-Confirmation.—

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

“(bb) FAILURE TO NOTIFY.—If the person or entity fails to provide notice with respect to an individual as required under item (aa), the failure is deemed to constitute a violation of subsection (a)(1)(A) with respect to that individual.
“(VI) CONTINUED EMPLOYMENT

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

“(D) EFFECTIVE DATES OF NEW PROCEDURES.—

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

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

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

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

“(IV) With respect to employers
having 1 or more employees in the
United States, but less than 20 em-
ployees in the United States, on the
date of the enactment of the Legal
Workforce Act, on the date that is 24
months after the date of the enact-
ment of such Act.

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

“(iii) AGRICULTURAL LABOR OR SERV-
ICES.—With respect to an employee per-
forming agricultural labor or services, this
paragraph shall not apply with respect to
the verification of the employee until the
date that is 18 months after the date of
the enactment of the Legal Workforce Act.
For purposes of the preceding sentence,
the term ‘agricultural labor or services’ has
the meaning given such term by the Sec-
retary of Agriculture in regulations and in-
cludes agricultural labor as defined in sec-
section 3121(g) of the Internal Revenue Code
of 1986, agriculture as defined in section
3(f) of the Fair Labor Standards Act of
1938 (29 U.S.C. 203(f)), the handling,
planting, drying, packing, packaging, proc-
essing, freezing, or grading prior to deliv-
ery for storage of any agricultural or horti-
cultural commodity in its unmanufactured
state, all activities required for the prepa-
ration, processing or manufacturing of a product of agriculture (as such term is defined in such section 3(f)) for further distribution, and activities similar to all the foregoing as they relate to fish or shellfish facilities. An employee described in this clause shall not be counted for purposes of clause (i).

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

“(v) TRANSITION RULE.—Subject to paragraph (4), the following shall apply to a person or other entity hiring, recruiting, or referring an individual for employment in the United States until the effective date or dates applicable under clauses (i) through (iii):
“(I) This subsection, as in effect before the enactment of the Legal Workforce Act.

“(II) Subtitle A of title IV of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note), as in effect before the effective date in section 7(c) of the Legal Workforce Act.

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

“(E) VERIFICATION PERIOD DEFINED.—

“(i) IN GENERAL.—For purposes of this paragraph:
“(I) In the case of recruitment or referral, the term ‘verification period’ means the period ending on the date recruiting or referring commences.

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

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

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

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

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

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

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

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

“(iv) With respect to employers having 1 or more employees in the United States, but less than 20 employees in the United States, on the date of the enactment of the Legal Workforce Act, beginning on the date that is 24 months after the date of the enactment of such Act.

“(B) AGRICULTURAL LABOR OR SERVICES.—With respect to an employee performing agricultural labor or services, or an employee recruited or referred by a farm labor contractor (as defined in section 3 of the Migrant and Seasonal Agricultural Worker Protection Act (29
U.S.C. 1801)), subparagraph (A) shall not apply with respect to the reverification of the employee until the date that is 18 months after the date of the enactment of the Legal Workforce Act. For purposes of the preceding sentence, the term ‘agricultural labor or services’ has the meaning given such term by the Secretary of Agriculture in regulations and includes agricultural labor as defined in section 3121(g) of the Internal Revenue Code of 1986, agriculture as defined in section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)), the handling, planting, drying, packing, packaging, processing, freezing, or grading prior to delivery for storage of any agricultural or horticultural commodity in its unmanufactured state, all activities required for the preparation, processing, or manufacturing of a product of agriculture (as such term is defined in such section 3(f)) for further distribution, and activities similar to all the foregoing as they relate to fish or shellfish facilities. An employee described in this subparagraph shall not be counted for purposes of subparagraph (A).
“(C) Reverification.—Paragraph (1)(C)(ii) shall apply to reverifications pursuant to this paragraph on the same basis as it applies to verifications pursuant to paragraph (1), except that employers shall—

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

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

“(3) Previously hired individuals.—

“(A) On a mandatory basis for certain employees.—

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

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

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

“(II) An employee who requires a
Federal security clearance working in
a Federal, State or local government
building, a military base, a nuclear
energy site, a weapons site, or an air-
port or other facility that requires
workers to carry a Transportation
Worker Identification Credential
(TWIC).
“(III) An employee assigned to perform work in the United States under a Federal contract, except that this subclause—

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

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

“(B) ON A MANDATORY BASIS FOR MULTIPLE USERS OF SAME SOCIAL SECURITY ACCOUNT NUMBER.—In the case of an employer
who is required by this subsection to use the verification system described in subsection (d), or has elected voluntarily to use such system, the employer shall make inquiries to the system in accordance with the following:

“(i) The Commissioner of Social Security shall notify annually employees (at the employee address listed on the Wage and Tax Statement) who submit a social security account number to which more than one employer reports income and for which there is a pattern of unusual multiple use. The notification letter shall identify the number of employers to which income is being reported as well as sufficient information notifying the employee of the process to contact the Social Security Administration Fraud Hotline if the employee believes the employee’s identity may have been stolen. The notice shall not share information protected as private, in order to avoid any recipient of the notice from being in the position to further commit or begin committing identity theft.
“(ii) If the person to whom the social
security account number was issued by the
Social Security Administration has been
identified and confirmed by the Commiss-
ioner, and indicates that the social secu-
rity account number was used without
their knowledge, the Secretary and the
Commissioner shall lock the social security
account number for employment eligibility
verification purposes and shall notify the
employers of the individuals who wrong-
fully submitted the social security account
number that the employee may not be
work eligible.

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

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

“(D) VERIFICATION.—Paragraph (1)(C)(ii) shall apply to verifications pursuant to this paragraph on the same basis as it applies to verifications pursuant to paragraph (1), except that employers shall—
(i) use a form designated or established by the Secretary by regulation for purposes of this paragraph; and

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

(4) Early Compliance.—

(A) Former E-Verify Required Users, Including Federal Contractors.—Notwithstanding the deadlines in paragraphs (1) and (2), beginning on the date of the enactment of the Legal Workforce Act, the Secretary is authorized to commence requiring employers required to participate in the E-Verify Program described in section 403(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note), including
employers required to participate in such pro-
gram by reason of Federal acquisition laws
(and regulations promulgated under those laws,
including the Federal Acquisition Regulation),
to commence compliance with the requirements
of this subsection (and any additional require-
ments of such Federal acquisition laws and reg-
ulation) in lieu of any requirement to partici-
pate in the E-Verify Program.

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

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

“(6) LIMITATION ON USE OF FORMS.—A form designated or established by the Secretary of Homeland Security under this subsection and any information contained in or appended to such form, may not be used for purposes other than for enforcement of this Act and any other provision of Federal criminal law.

“(7) GOOD FAITH COMPLIANCE.—

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

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

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

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

“(iv) the person or entity has not corrected the failure voluntarily within such period.

“(C) Exception for Pattern or Practice Violators.—Subparagraph (A) shall not apply to a person or entity that has or is engaging in a pattern or practice of violations of subsection (a)(1)(A) or (a)(2).

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

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

“(4) DEFINITION OF DATE OF HIRE.—As used in this section, the term ‘date of hire’ means the date of actual commencement of employment for wages or other remuneration, unless otherwise specified.”.

SEC. 1103. EMPLOYMENT ELIGIBILITY VERIFICATION SYSTEM.

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

“(d) EMPLOYMENT ELIGIBILITY VERIFICATION SYSTEM.—

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

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

“(B) maintains records of the inquiries that were made, of verifications provided (or not provided), and of the codes provided to inquirers as evidence of their compliance with their obligations under this section.

“(2) Initial Response.—The verification system shall provide confirmation or a tentative nonconfirmation of an individual’s identity and employment eligibility within 3 working days of the initial inquiry. If providing confirmation or tentative nonconfirmation, the verification system shall provide an appropriate code indicating such confirmation or such nonconfirmation.

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

“(4) DESIGN AND OPERATION OF SYSTEM.—
The verification system shall be designed and operated—

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

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

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

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

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

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

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

“(F) to limit the subjects of verification to the following individuals:
“(i) Individuals hired, referred, or recruited, in accordance with paragraph (1) or (4) of subsection (b).

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

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

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

“(6) RESPONSIBILITIES OF SECRETARY OF HOMELAND SECURITY.—As part of the verification system, the Secretary of Homeland Security (in consultation with any designee of the Secretary selected to establish and administer the verification system), shall establish a reliable, secure method, which, within the time periods specified under paragraphs (2) and (3), compares the name and alien identification or authorization number (or any other information as determined relevant by the Secretary) which are provided in an inquiry against such information maintained or accessed by the Secretary in order to validate (or not validate) the information provided, the correspondence of the name and number, whether the alien is authorized to be employed in the United States, or to the extent that the Secretary determines to be feasible and appropriate, whether the records available to the Secretary verify the identity or status of a national of the United States.
“(7) Updating Information.—The Commissioner of Social Security and the Secretary of Homeland Security shall update their information in a manner that promotes the maximum accuracy and shall provide a process for the prompt correction of erroneous information, including instances in which it is brought to their attention in the secondary verification process described in paragraph (3).

“(8) Limitation On Use of the Verification System and Any Related Systems.—

“(A) No National Identification Card.—Nothing in this section shall be construed to authorize, directly or indirectly, the issuance or use of national identification cards or the establishment of a national identification card.

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

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

SEC. 1104. RECRUITMENT, REFERRAL, AND CONTINUATION OF EMPLOYMENT.

(a) Additional Changes to Rules for Recruitment, Referral, and Continuation of Employment.—Section 274A(a) of the Immigration and Nationality Act (8 U.S.C. 1324a(a)) is amended—

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

(2) in paragraph (1), by amending subparagraph (B) to read as follows:

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

(3) in paragraph (2), by striking “after hiring an alien for employment in accordance with para-
(b) **DEFINITION.**—Section 274A(h) of the Immigration and Nationality Act (8 U.S.C. 1324a(h)), as amended by this title, is further amended by adding at the end the following:

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

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

SEC. 1105. GOOD FAITH DEFENSE.

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

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

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

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

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

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

“(i) Failure to seek verification.—

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

“(II) Special rule for failure of verification mechanism.—

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

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

SEC. 1106. PREEMPTION AND STATES’ RIGHTS.

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

“(2) PREEMPTION.—

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

“(B) STATE ENFORCEMENT OF FEDERAL LAW.—

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

“(ii) GENERAL RULES.—A State, at its own cost, may enforce the provisions of this section, but only insofar as such State follows the Federal regulations imple-
menting this section, applies the Federal penalty structure set out in this section, and complies with all Federal rules and guidance concerning implementation of this section. Such State may collect any fines assessed under this section. An employer may not be subject to enforcement, includ-
ing audit and investigation, by both a Fed-
eral agency and a State for the same viola-
tion under this section. Whichever entity, the Federal agency or the State, is first to initiate the enforcement action, has the right of first refusal to proceed with the enforcement action. The Secretary must provide copies of all guidance, training, and field instructions provided to Federal officials implementing the provisions of this section to each State.”.
SEC. 1107. REPEAL.

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

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

(c) EFFECTIVE DATE.—This section shall take effect on the date that is 24 months after the date of the enactment of this division.

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

SEC. 1108. PENALTIES.

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

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

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

(2) in subsection (e)(4)—

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

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

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

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

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

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

(3) in subsection (e)(5)—

(A) in the paragraph heading, strike “PAPERWORK”;

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

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

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

(E) by adding at the end the following:

“Failure by a person or entity to utilize the employment eligibility verification system as required by law, or providing information to the system that the person or entity knows or reasonably believes to be false, shall be treated as a violation of subsection (a)(1)(A).”;

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

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

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

“(12) Authority to debar employers for certain violations.—

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

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

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

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

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

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

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

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

“(D) that is required to notify the complaining State or local agency of the results of any such investigation conducted; and

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

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

“(1) CRIMINAL PENALTY.—Any person or entity which engages in a pattern or practice of violations of subsection (a)(1) or (2) shall be fined not more than $5,000 for each unauthorized alien with respect to which such a violation occurs, imprisoned for not more than 18 months, or both, notwithstanding the provisions of any other Federal law relating to fine levels.”.
SEC. 1109. FRAUD AND MISUSE OF DOCUMENTS.

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

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

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

SEC. 1110. PROTECTION OF SOCIAL SECURITY ADMINISTRATION PROGRAMS.

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

(1) provide funds to the Commissioner for the full costs of the responsibilities of the Commissioner under section 274A(d) of the Immigration and Nationality Act (8 U.S.C. 1324a(d)), as amended by this title, including (but not limited to)—
(A) acquiring, installing, and maintaining technological equipment and systems necessary for the fulfillment of the responsibilities of the Commissioner under such section 274A(d), but only that portion of such costs that are attributable exclusively to such responsibilities; and

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

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

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

(b) Continuation of Employment Verification in Absence of Timely Agreement.—In any case in which the agreement required under subsection (a) for any
fiscal year beginning on or after October 1, 2019, has not been reached as of October 1 of such fiscal year, the latest agreement between the Commissioner and the Secretary of Homeland Security providing for funding to cover the costs of the responsibilities of the Commissioner under section 274A(d) of the Immigration and Nationality Act (8 U.S.C. 1324a(d)) shall be deemed in effect on an interim basis for such fiscal year until such time as an agreement required under subsection (a) is subsequently reached, except that the terms of such interim agreement shall be modified by the Director of the Office of Management and Budget to adjust for inflation and any increase or decrease in the volume of requests under the employment eligibility verification system. In any case in which an interim agreement applies for any fiscal year under this subsection, the Commissioner and the Secretary shall, not later than October 1 of such fiscal year, notify the Committee on Ways and Means, the Committee on the Judiciary, and the Committee on Appropriations of the House of Representatives and the Committee on Finance, the Committee on the Judiciary, and the Committee on Appropriations of the Senate of the failure to reach the agreement required under subsection (a) for such fiscal year. Until such time as the agreement required under subsection (a) has been reached for such fiscal year, the
Commissioner and the Secretary shall, not later than the end of each 90-day period after October 1 of such fiscal year, notify such Committees of the status of negotiations between the Commissioner and the Secretary in order to reach such an agreement.

SEC. 1111. FRAUD PREVENTION.

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

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

(c) ALLOWING PARENTS TO PREVENT THEFT OF THEIR CHILD’S IDENTITY.—The Secretary of Homeland Security, in consultation with the Commissioner of Social Security, shall establish a program which shall provide a reliable, secure method by which parents or legal guardians may suspend or limit the use of the social security account number or other identifying information of a minor under their care for the purposes of the employment eligibility verification system established under 274A(d) of the Immigration and Nationality Act (8 U.S.C. 1324a(d)), as amended by this title. The Secretary may implement the program on a limited pilot program basis before making it fully available to all individuals.
SEC. 1112. USE OF EMPLOYMENT ELIGIBILITY VERIFICATION PHOTO TOOL.

An employer or entity who uses the photo matching tool, if required by the Secretary as part of the verification system, shall match, either visually, or using facial recognition or other verification technology approved or required by the Secretary, the photo matching tool photograph to the photograph on the identity or employment eligibility document provided by the individual or to the face of the employee submitting the document for employment verification purposes, or both, as determined by the Secretary.

SEC. 1113. IDENTITY AUTHENTICATION EMPLOYMENT ELIGIBILITY VERIFICATION PILOT PROGRAMS.

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

SEC. 1114. INSPECTOR GENERAL AUDITS.

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

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

(2) Children’s social security account numbers
used for work purposes.
(3) Employers whose workers present significant numbers of mismatched social security account numbers or names for wage reporting.

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

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

SEC. 2201. SHORT TITLE.

This title may be cited as the “No Sanctuary for Criminals Act”.
SEC. 2202. STATE NONCOMPLIANCE WITH ENFORCEMENT OF IMMIGRATION LAW.

(a) In General.—Section 642 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1373) is amended—

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

“(a) In General.—Notwithstanding any other provision of Federal, State, or local law, no Federal, State, or local government entity, and no individual, may prohibit or in any way restrict, a Federal, State, or local government entity, official, or other personnel from complying with the immigration laws (as defined in section 101(a)(17) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(17))), or from assisting or cooperating with Federal law enforcement entities, officials, or other personnel regarding the enforcement of these laws.”;

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

“(b) Law Enforcement Activities.—Notwithstanding any other provision of Federal, State, or local law, no Federal, State, or local government entity, and no individual, may prohibit, or in any way restrict, a Federal, State, or local government entity, official, or other personnel from undertaking any of the following law enforcement activities as they relate to information regarding the
citizenship or immigration status, lawful or unlawful, the
inadmissibility or deportability, or the custody status, of
any individual:

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

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

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

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

(4) by adding at the end the following:

“(d) COMPLIANCE.—

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

“(A) any of the funds that would otherwise
be allocated to the State or political subdivision
under section 241(i) of the Immigration and

“(B) any other grant administered by the Department of Justice that is substantially related to law enforcement (including enforcement of the immigration laws), immigration, enforcement of the immigration laws, or naturalization or administered by the Department of Homeland Security that is substantially related to immigration, the enforcement of the immigration laws, or naturalization.

“(2) Transfer of Custody of Aliens Pending Removal Proceedings.—The Secretary, at the Secretary’s discretion, may decline to transfer an alien in the custody of the Department of Homeland Security to a State or political subdivision of a State found not to be in compliance with subsection (a) or
(b), regardless of whether the State or political subdivision of the State has issued a writ or warrant.

“(3) Transfer of Custody of Certain Aliens Prohibited.—The Secretary shall not transfer an alien with a final order of removal pursuant to paragraph (1)(A) or (5) of section 241(a) of the Immigration and Nationality Act (8 U.S.C. 1231(a)) to a State or a political subdivision of a State that is found not to be in compliance with subsection (a) or (b).

“(4) Annual Determination.—The Secretary shall determine for each calendar year which States or political subdivision of States are not in compliance with subsection (a) or (b) and shall report such determinations to Congress by March 1 of each succeeding calendar year.

“(5) Reports.—The Secretary of Homeland Security shall issue a report concerning the compliance with subsections (a) and (b) of any particular State or political subdivision of a State at the request of the House or the Senate Judiciary Committee. Any jurisdiction that is found not to be in compliance shall be ineligible to receive Federal financial assistance as provided in paragraph (1) for a minimum period of 1 year, and shall only become
eligible again after the Secretary of Homeland Security certifies that the jurisdiction has come into compliance.

“(6) REALLOCATION.—Any funds that are not allocated to a State or to a political subdivision of a State due to the failure of the State or of the political subdivision of the State to comply with subsection (a) or (b) shall be reallocated to States or to political subdivisions of States that comply with both such subsections.

“(e) CONSTRUCTION.—Nothing in this section shall require law enforcement officials from States, or from political subdivisions of States, to report or arrest victims or witnesses of a criminal offense.”.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this division, except that subsection (d) of section 642 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1373), as added by this section, shall apply only to prohibited acts committed on or after the date of the enactment of this division.
SEC. 2203. CLARIFYING THE AUTHORITY OF ICE DETAINERS.

(a) In General.—Section 287(d) of the Immigration and Nationality Act (8 U.S.C. 1357(d)) is amended to read as follows:

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

“(1) In General.—In the case of an individual who is arrested by any Federal, State, or local law enforcement official or other personnel for the alleged violation of any criminal or motor vehicle law, the Secretary may issue a detainer regarding the individual to any Federal, State, or local law enforcement entity, official, or other personnel if the Secretary has probable cause to believe that the individual is an inadmissible or deportable alien.

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

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

“(B) the individual who is the subject of the detainer is the subject of ongoing removal
proceedings, including matters where a charging document has already been served;

“(C) the individual who is the subject of the detainer has previously been ordered removed from the United States and such an order is administratively final;

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

“(E) the Secretary otherwise has reasonable grounds to believe that the individual who is the subject of the detainer is an inadmissible or deportable alien.

“(3) TRANSFER OF CUSTODY.—If the Federal, State, or local law enforcement entity, official, or other personnel to whom a detainer is issued complies with the detainer and detains for purposes of transfer of custody to the Department of Homeland Security the individual who is the subject of the detainer, the Department may take custody of the individual within 48 hours (excluding weekends and holidays), but in no instance more than 96 hours, following the date that the individual is otherwise to
be released from the custody of the relevant Federal, State, or local law enforcement entity.’’.

(b) IMMUNITY.—

(1) IN GENERAL.—A State or a political subdivision of a State (and the officials and personnel of the State or subdivision acting in their official capacities), and a nongovernmental entity (and its personnel) contracted by the State or political subdivision for the purpose of providing detention, acting in compliance with a Department of Homeland Security detainer issued pursuant to this section who temporarily holds an alien in its custody pursuant to the terms of a detainer so that the alien may be taken into the custody of the Department of Homeland Security, shall be considered to be acting under color of Federal authority for purposes of determining their liability and shall be held harmless for their compliance with the detainer in any suit seeking any punitive, compensatory, or other monetary damages.

(2) FEDERAL GOVERNMENT AS DEFENDANT.—

In any civil action arising out of the compliance with a Department of Homeland Security detainer by a State or a political subdivision of a State (and the officials and personnel of the State or subdivision
acting in their official capacities), or a nongovernmental entity (and its personnel) contracted by the State or political subdivision for the purpose of providing detention, the United States Government shall be the proper party named as the defendant in the suit in regard to the detention resulting from compliance with the detainer.

(3) BAD FAITH EXCEPTION.—Paragraphs (1) and (2) shall not apply to any mistreatment of an individual by a State or a political subdivision of a State (and the officials and personnel of the State or subdivision acting in their official capacities), or a nongovernmental entity (and its personnel) contracted by the State or political subdivision for the purpose of providing detention.

(c) PRIVATE RIGHT OF ACTION.—

(1) CAUSE OF ACTION.—Any individual, or a spouse, parent, or child of that individual (if the individual is deceased), who is the victim of a murder, rape, or any felony, as defined by the State, for which an alien (as defined in section 101(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(3))) has been convicted and sentenced to a term of imprisonment of at least 1 year, may bring an action against a State or political subdivision of
a State or public official acting in an official capacity in the appropriate Federal court if the State or political subdivision, except as provided in paragraph (3)—

(A) released the alien from custody prior to the commission of such crime as a consequence of the State or political subdivision’s declining to honor a detainer issued pursuant to section 287(d)(1) of the Immigration and Nationality Act (8 U.S.C. 1357(d)(1));

(B) has in effect a statute, policy, or practice not in compliance with section 642 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1373) as amended, and as a consequence of its statute, policy, or practice, released the alien from custody prior to the commission of such crime; or

(C) has in effect a statute, policy, or practice requiring a subordinate political subdivision to decline to honor any or all detainers issued pursuant to section 287(d)(1) of the Immigration and Nationality Act (8 U.S.C. 1357(d)(1)), and, as a consequence of its statute, policy or practice, the subordinate political subdivision declined to honor a detainer issued pursuant to
such section, and as a consequence released the
alien from custody prior to the commission of
such crime.

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

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

(A) from honoring the detainer; or

(B) fully complying with section 642 of the
Illegal Immigration Reform and Immigrant Re-

and, as a consequence of the statute or other legal
requirement of the State or other political subdivi-

paragraph (1) from custody prior to the commission
of the crime referred to in that paragraph, the State
or other political subdivision that enacted the statute
or other legal requirement, shall be deemed to be the
proper defendant in a cause of action under this
subsection, and no such cause of action may be
maintained against the political subdivision which
declined to honor the detainer.

(4) Attorney’s fee and other costs.—In
any action or proceeding under this subsection the
court shall allow a prevailing plaintiff a reasonable
attorneys’ fee as part of the costs, and include ex-
pert fees as part of the attorneys’ fee.

(d) Eligibility for certain grant programs.—

(1) In general.—Except as provided in para-
graph (2), a State or political subdivision of a State
that has in effect a statute, policy or practice pro-
viding that it not comply with any or all Department
of Homeland Security detainers issued pursuant to
section 287(d)(1) of the Immigration and Nation-
ality Act (8 U.S.C. 1357(d)) shall not be eligible to
receive—

(A) any of the funds that would otherwise
be allocated to the State or political subdivision
under section 241(i) of the Immigration and
Nationality Act (8 U.S.C. 1231(i)), the “Cops

(B) any other grant administered by the Department of Justice that is substantially related to law enforcement (including enforcement of the immigration laws), immigration, or naturalization or grant administered by the Department of Homeland Security that is substantially related to immigration, enforcement of the immigration laws, or naturalization.

(2) EXCEPTION.—A political subdivision described in subsection (c)(3) that declines to honor a detainer issued pursuant to section 287(d)(1) of the Immigration and Nationality Act (8 U.S.C. 1357(d)(1)) as a consequence of being required to comply with a statute or other legal requirement of a State or another political subdivision with jurisdiction over that political subdivision, shall remain eligible to receive grant funds described in paragraph
(1). In the case described in the previous sentence, the State or political subdivision that enacted the statute or other legal requirement shall not be eligible to receive such funds.

SEC. 2204. SARAH AND GRANT'S LAW.

(a) DETENTION OF ALIENS DURING REMOVAL PROCEEDINGS.—

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

(B) Section 236(a) of such Act (8 U.S.C. 1226(a)) is amended by inserting “the Secretary of Homeland Security or” before “the Attorney General—”.

(C) Section 236(e) of such Act (8 U.S.C. 1226(e)) is amended by striking “Attorney General’s” and inserting “Secretary of Homeland Security’s”.

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

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

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

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

(A) in subparagraph (C), by striking “or” at the end;

(B) by inserting after subparagraph (D) the following:

“(E) is unlawfully present in the United States and has been convicted for driving while intoxicated (including a conviction for driving while under the influence or impaired by alcohol or drugs) without regard to whether the conviction is classified as a misdemeanor or felony under State law, or

“(F)(i)(I) is inadmissible under section 212(a)(6)(i),
“(II) is deportable by reason of a visa revocation under section 221(i), or

“(III) is deportable under section 237(a)(1)(C)(i), and

“(ii) has been arrested or charged with a particularly serious crime or a crime resulting in the death or serious bodily injury (as defined in section 1365(h)(3) of title 18, United States Code) of another person;”; and

(C) by amending the matter following subparagraph (F) (as added by subparagraph (B) of this paragraph) to read as follows:

“any time after the alien is released, without regard to whether an alien is released related to any activity, offense, or conviction described in this paragraph; to whether the alien is released on parole, supervised release, or probation; or to whether the alien may be arrested or imprisoned again for the same offense. If the activity described in this paragraph does not result in the alien being taken into custody by any person other than the Secretary, then when the alien is brought to the attention of the Secretary or when the Secretary determines it is practical to take such alien into custody, the Secretary shall take such alien into custody.”.
4. **ADMINISTRATIVE REVIEW.**—Section 236 of the Immigration and Nationality Act (8 U.S.C. 1226), as amended by paragraph (2), is further amended by adding at the end the following:

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(g) ADMINISTRATIVE REVIEW.—The Attorney General’s review of the Secretary’s custody determinations under subsection (a) for the following classes of aliens shall be limited to whether the alien may be detained, released on bond (of at least $1,500 with security approved by the Secretary), or released with no bond:

(1) Aliens in exclusion proceedings.

(2) Aliens described in section 212(a)(3) or 237(a)(4).

(3) Aliens described in subsection (c).

(h) RELEASE ON BOND.—

(1) **IN GENERAL.**—An alien detained under subsection (a) may seek release on bond. No bond may be granted except to an alien who establishes by clear and convincing evidence that the alien is not a flight risk or a danger to another person or the community.

(2) **CERTAIN ALIENS INELIGIBLE.**—No alien detained under subsection (e) may seek release on bond.”
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(5) **CLERICAL AMENDMENTS.**—(A) Section 236(a)(2)(B) of the Immigration and Nationality Act (8 U.S.C. 1226(a)(2)(B)) is amended by striking “conditional parole” and inserting “recognizance”.

(B) Section 236(b) of such Act (8 U.S.C. 1226(b)) is amended by striking “parole” and inserting “recognizance”.

(b) **EFFECTIVE DATE.**—The amendments made by subsection (a) shall take effect on the date of the enactment of this division and shall apply to any alien in detention under the provisions of section 236 of the Immigration and Nationality Act (8 U.S.C. 1226), as so amended, or otherwise subject to the provisions of such section, on or after such date.

**SEC. 2205. CLARIFICATION OF CONGRESSIONAL INTENT.**

Section 287(g) of the Immigration and Nationality Act (8 U.S.C. 1357(g)) is amended—

(1) in paragraph (1) by striking “may enter” and all that follows through the period at the end and inserting the following: “shall enter into a written agreement with a State, or any political subdivision of a State, upon request of the State or political subdivision, pursuant to which officers or employees of the State or subdivision, who are determined by
the Secretary to be qualified to perform a function
of an immigration officer in relation to the investiga-
tion, apprehension, or detention of aliens in the
United States (including the transportation of such
aliens across State lines to detention centers), may
carry out such function at the expense of the State
or political subdivision and to the extent consistent
with State and local law. No request from a bona
fide State or political subdivision or bona fide law
enforcement agency shall be denied absent a compell-
ing reason. No limit on the number of agreements
under this subsection may be imposed. The Sec-
retary shall process requests for such agreements
with all due haste, and in no case shall take not
more than 90 days from the date the request is
made until the agreement is consummated.”;

(2) by redesignating paragraph (2) as para-
graph (5) and paragraphs (3) through (10) as para-
graphs (7) through (14), respectively;

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

“(2) An agreement under this subsection shall accom-
modate a requesting State or political subdivision with re-
spect to the enforcement model or combination of models,
and shall accommodate a patrol model, task force model,
jail model, any combination thereof, or any other reasonable model the State or political subdivision believes is best suited to the immigration enforcement needs of its jurisdiction.

“(3) No Federal program or technology directed broadly at identifying inadmissible or deportable aliens shall substitute for such agreements, including those establishing a jail model, and shall operate in addition to any agreement under this subsection.

“(4)(A) No agreement under this subsection shall be terminated absent a compelling reason.

“(B)(i) The Secretary shall provide a State or political subdivision written notice of intent to terminate at least 180 days prior to date of intended termination, and the notice shall fully explain the grounds for termination, along with providing evidence substantiating the Secretary’s allegations.

“(ii) The State or political subdivision shall have the right to a hearing before an administrative law judge and, if the ruling is against the State or political subdivision, to appeal the ruling to the Federal Circuit Court of Appeals and, if the ruling is against the State or political subdivision, to petition the Supreme Court for certiorari.

“(C) The agreement shall remain in full effect during the course of any and all legal proceedings.”; and
by inserting after paragraph (5) (as redesignated) the following:

“(6) The Secretary of Homeland Security shall make training of State and local law enforcement officers available through as many means as possible, including through residential training at the Center for Domestic Preparedness and the Federal Law Enforcement Training Center, onsite training held at State or local police agencies or facilities, online training courses by computer, teleconferencing, and videotape, or the digital video display (DVD) of a training course or courses. Distance learning through a secure, encrypted, distributed learning system that has all its servers based in the United States, is scalable, survivable, and can have a portal in place not later than 30 days after the date of the enactment of the Securing America’s Future Act of 2018, shall be made available by the COPS Office of the Department of Justice and the Federal Law Enforcement Training Center Distributed Learning Program for State and local law enforcement personnel. Preference shall be given to private sector-based, web-based immigration enforcement training programs for which the Federal Government has already provided support to develop.”.
SEC. 2206. PENALTIES FOR ILLEGAL ENTRY OR PRESENCE.

(a) IN GENERAL.—Section 275 of the Immigration and Nationality Act (8 U.S.C. 1325) is amended to read as follows:

"ILLEGAL ENTRY OR PRESENCE

Sec. 275. (a) IN GENERAL.—

(1) ILLEGAL ENTRY OR PRESENCE.—An alien shall be subject to the penalties set forth in paragraph (2) if the alien—

(A) knowingly enters or crosses the border into the United States at any time or place other than as designated by the Secretary of Homeland Security;

(B) knowingly eludes, at any time or place, examination or inspection by an authorized immigration, customs, or agriculture officer (including by failing to stop at the command of such officer);

(C) knowingly enters or crosses the border to the United States and, upon examination or inspection, knowingly makes a false or misleading representation or the knowing concealment of a material fact (including such representation or concealment in the context of arrival, reporting, entry, or clearance require-
ments of the customs laws, immigration laws, agriculture laws, or shipping laws);

“(D) knowingly violates the terms or conditions of the alien’s admission or parole into the United States and has remained in violation for an aggregate period of 90 days or more; or

“(E) knowingly is unlawfully present in the United States (as defined in section 212(a)(9)(B)(ii) subject to the exceptions set forth in section 212(a)(9)(B)(iii)) and has remained in violation for an aggregate period of 90 days or more.

“(2) CRIMINAL PENALTIES.—Any alien who violates any provision under paragraph (1)—

“(A) shall, for the first violation, be fined under title 18, United States Code, imprisoned not more than 6 months, or both;

“(B) shall, for a second or subsequent violation, or following an order of voluntary departure, be fined under such title, imprisoned not more than 2 years (or not more than 6 months in the case of a second or subsequent violation of paragraph (1)(E)), or both;

“(C) if the violation occurred after the alien had been convicted of 3 or more mis-
demeanors or for a felony, shall be fined under such title, imprisoned not more than 10 years, or both;

“(D) if the violation occurred after the alien had been convicted of a felony for which the alien received a term of imprisonment of not less than 30 months, shall be fined under such title, imprisoned not more than 15 years, or both; and

“(E) if the violation occurred after the alien had been convicted of a felony for which the alien received a term of imprisonment of not less than 60 months, such alien shall be fined under such title, imprisoned not more than 20 years, or both.

“(3) PRIOR CONVICTIONS.—The prior convictions described in subparagraphs (C) through (E) of paragraph (2) are elements of the offenses described and the penalties in such subparagraphs shall apply only in cases in which the conviction or convictions that form the basis for the additional penalty are—

“(A) alleged in the indictment or information; and

“(B) proven beyond a reasonable doubt at trial or admitted by the defendant.
“(4) **DURATION OF OFFENSE.**—An offense under this subsection continues until the alien is discovered within the United States by an immigration, customs, or agriculture officer, or until the alien is granted a valid visa or relief from removal.

“(5) **ATTEMPT.**—Whoever attempts to commit any offense under this section shall be punished in the same manner as for a completion of such offense.

“(b) **IMPROPER TIME OR PLACE; CIVIL PENALTIES.**—Any alien who is apprehended while entering, attempting to enter, or knowingly crossing or attempting to cross the border to the United States at a time or place other than as designated by immigration officers shall be subject to a civil penalty, in addition to any criminal or other civil penalties that may be imposed under any other provision of law, in an amount equal to—

“(1) not less than $50 or more than $250 for each such entry, crossing, attempted entry, or attempted crossing; or

“(2) twice the amount specified in paragraph (1) if the alien had previously been subject to a civil penalty under this subsection.”.

(b) **CLERICAL AMENDMENT.**—The table of contents for the Immigration and Nationality Act is amended by
striking the item relating to section 275 and inserting the
following:

“Sec. 275. Illegal entry or presence.”

(c) EFFECTIVE DATES AND APPLICABILITY.—

(1) CRIMINAL PENALTIES.—Section 275(a) of
the Immigration and Nationality Act (8 U.S.C.
1325(a)), as amended by subsection (a), shall take
effect 90 days after the date of the enactment of
this division, and shall apply to acts, conditions, or
violations described in such section 275(a) that
occur or exist on or after such effective date.

(2) CIVIL PENALTIES.—Section 275(b) of the
Immigration and Nationality Act (8 U.S.C.
1325(b)), as amended by subsection (a), shall take
effect on the date of the enactment of this division
and shall apply to acts described in such section
275(b) that occur before, on, or after such date.

TITLE III—CRIMINAL ALIENS

SEC. 3301. PRECLUDING ADMISSIBILITY OF ALIENS CON-
VICTED OF AGGRAVATED FELONIES OR
OTHER SERIOUS OFFENSES.

(a) INADMISSIBILITY ON CRIMINAL AND RELATED
GROUNDS; WAIVERS.—Section 212 of the Immigration
and Nationality Act (8 U.S.C. 1182) is amended—

(1) in subsection (a)(2)(A)(i)—
(A) in subclause (I), by striking “or” at the end;

(B) in subclause (II), by adding “or” at the end; and

(C) by inserting after subclause (II) the following:

“(III) a violation of (or a conspiracy or attempt to violate) an offense described in section 208 of the Social Security Act (42 U.S.C. 408) (relating to social security account numbers or social security cards) or section 1028 of title 18, United States Code (relating to fraud and related activity in connection with identification documents, authentication features, and information),”;

(2) by adding at the end of subsection (a)(2) the following:

“(J) PROCUREMENT OF CITIZENSHIP OR NATURALIZATION UNLAWFULLY.—Any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of, a violation of, or an attempt or a conspiracy to violate, subsection
(a) or (b) of section 1425 of title 18, United States Code (relating to the procurement of citizenship or naturalization unlawfully) is inadmissible.

“(K) Certain firearm offenses.—Any alien who at any time has been convicted under any law of, or who admits having committed or admits committing acts which constitute the essential elements of, purchasing, selling, offering for sale, exchanging, using, owning, possessing, or carrying, or of attempting or conspiring to purchase, sell, offer for sale, exchange, use, own, possess, or carry, any weapon, part, or accessory which is a firearm or destructive device (as defined in section 921(a) of title 18, United States Code) in violation of any law is inadmissible.

“(L) Aggravated felons.—Any alien who has been convicted of an aggravated felony at any time is inadmissible.

“(M) Crimes of domestic violence, stalking, or violation of protection orders, crimes against children.—

“(i) Domestic violence, stalking, and child abuse.—Any alien who at any
time is convicted of, or who admits having
committed or admits committing acts
which constitute the essential elements of,
a crime of domestic violence, a crime of
stalking, or a crime of child abuse, child
neglect, or child abandonment is inadmis-
sible. For purposes of this clause, the term
‘crime of domestic violence’ means any
crime of violence (as defined in section 16
of title 18, United States Code) against a
person committed by a current or former
spouse of the person, by an individual with
whom the person shares a child in com-
mon, by an individual who is cohabiting
with or has cohabited with the person as a
spouse, by an individual similarly situated
to a spouse of the person under the domes-
tic or family violence laws of the jurisdic-
tion where the offense occurs, or by any
other individual against a person who is
protected from that individual’s acts under
the domestic or family violence laws of the
United States or any State, Indian tribal
government, or unit of local or foreign gov-
ernment.
“(ii) Violators of Protection Orders.—Any alien who at any time is enjoined under a protection order issued by a court and whom the court determines has engaged in conduct that violates the portion of a protection order that involves protection against credible threats of violence, repeated harassment, or bodily injury to the person or persons for whom the protection order was issued is inadmissible.

For purposes of this clause, the term ‘protection order’ means any injunction issued for the purpose of preventing violent or threatening acts of domestic violence, including temporary or final orders issued by civil or criminal courts (other than support or child custody orders or provisions) whether obtained by filing an independent action or as a independent order in another proceeding.

“(iii) Waiver Authorized.—The waiver authority available under section 237(a)(7) with respect to section 237(a)(2)(E)(i) shall be available on a
comparable basis with respect to this sub-
paragraph.

“(iv) CLARIFICATION.—If the convic-
tion records do not conclusively establish
whether a crime of domestic violence con-
stitutes a crime of violence (as defined in
section 16 of title 18, United States Code),
the Attorney General may consider other
evidence related to the conviction that es-
tablishes that the conduct for which the
alien was engaged constitutes a crime of
violence.”; and

(3) in subsection (h)—

(A) by striking “The Attorney General
may, in his discretion, waive the application of
subparagraphs (A)(i)(I), (B), (D), and (E) of
subsection (a)(2)” and inserting “The Attorney
General or the Secretary of Homeland Security
may, in the discretion of the Attorney General
or the Secretary, waive the application of sub-
paragraphs (A)(i)(I), (III), (B), (D), (E), (K),
and (M) of subsection (a)(2)”;

(B) by striking “a criminal act involving
torture.” and inserting “a criminal act involving
torture, or has been convicted of an aggravated felony.”;

(C) by striking “if either since the date of such admission the alien has been convicted of an aggravated felony or the alien” and inserting “if since the date of such admission the alien”; and

(D) by inserting “or Secretary of Homeland Security” after “the Attorney General” each place it appears.

(b) DEPORTABILITY; CRIMINAL OFFENSES.—Section 237(a)(3)(B) of the Immigration and Nationality Act (8 U.S.C. 1227(a)(3)(B)) is amended—

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

(2) in clause (iii), by inserting “or” at the end;

and

(3) by inserting after clause (iii) the following:

“(iv) of a violation of, or an attempt or a conspiracy to violate, section 1425(a) or (b) of title 18 (relating to the procurement of citizenship or naturalization unlawfully),”.

(e) DEPORTABILITY; OTHER CRIMINAL OFFENSES.—

Section 237(a)(2) of the Immigration and Nationality Act
(8 U.S.C. 1227(a)(2)) is amended by adding at the end the following:

“(G) FRAUD AND RELATED ACTIVITY ASSOCIATED WITH SOCIAL SECURITY ACT BENEFITS AND IDENTIFICATION DOCUMENTS.—Any alien who at any time after admission has been convicted of a violation of (or a conspiracy or attempt to violate) section 208 of the Social Security Act (42 U.S.C. 408) (relating to social security account numbers or social security cards) or section 1028 of title 18, United States Code (relating to fraud and related activity in connection with identification) is deportable.”.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply—

(1) to any act that occurred before, on, or after the date of the enactment of this division; and

(2) to all aliens who are required to establish admissibility on or after such date, and in all removal, deportation, or exclusion proceedings that are filed, pending, or reopened, on or after such date.

(e) CONSTRUCTION.—The amendments made by subsection (a) shall not be construed to create eligibility for relief from removal under former section 212(c) of the Im-
migration and Nationality Act where such eligibility did not exist before these amendments became effective.

SEC. 3302. INCREASED PENALTIES BARRING THE ADMISSION OF CONVICTED SEX OFFENDERS FAILING TO REGISTER AND REQUIRING DEPORTATION OF SEX OFFENDERS FAILING TO REGISTER.

(a) INADMISSIBILITY.—Section 212(a)(2)(A)(i) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(2)(A)(i)), as amended by this title, is further amended—

(1) in subclause (II), by striking “or” at the end;

(2) in subclause (III), by adding “or” at the end; and

(3) by inserting after subclause (III) the following:

“(IV) a violation of section 2250 of title 18, United States Code (relating to failure to register as a sex offender),”.

(b) DEPORTABILITY.—Section 237(a)(2) of such Act (8 U.S.C. 1227(a)(2)), as amended by this title, is further amended—
(1) in subparagraph (A), by striking clause (v); and

(2) by adding at the end the following:

“(I) FAILURE TO REGISTER AS A SEX OFFENDER.—Any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of a violation of section 2250 of title 18, United States Code (relating to failure to register as a sex offender) is deportable.”.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this division and shall apply to acts that occur before, on, or after the date of the enactment of this division.

SEC. 3303. GROUNDS OF INADMISSIBILITY AND DEPORTABILITY FOR ALIEN GANG MEMBERS.

(a) DEFINITION OF GANG MEMBER.—Section 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)) is amended by adding at the end the following:

“(53) The term ‘criminal gang’ means an ongoing group, club, organization, or association of 5 or more persons that has as one of its primary purposes the commission of 1 or more of the following criminal offenses and the members of which engage, or have engaged within the past 5 years, in a continuing series of such offenses, or
that has been designated as a criminal gang by the Secretary of Homeland Security, in consultation with the Attorney General, as meeting these criteria. The offenses described, whether in violation of Federal or State law or foreign law and regardless of whether the offenses occurred before, on, or after the date of the enactment of this paragraph, are the following:

"(A) A ‘felony drug offense’ (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)).

"(B) A felony offense involving firearms or explosives or in violation of section 931 of title 18, United States Code (relating to purchase, ownership, or possession of body armor by violent felons).

"(C) An offense under section 274 (relating to bringing in and harboring certain aliens), section 277 (relating to aiding or assisting certain aliens to enter the United States), or section 278 (relating to importation of alien for immoral purpose).

"(D) A crime of violence (as defined in section 16 of title 18, United States Code).

"(E) A crime involving obstruction of justice, tampering with or retaliating against a witness, victim, or informant.
“(F) Any conduct punishable under sections 1028A and 1029 of title 18, United States Code (relating to aggravated identity theft or fraud and related activity in connection with identification documents or access devices), sections 1581 through 1594 of such title (relating to peonage, slavery, and trafficking in persons), section 1951 of such title (relating to interference with commerce by threats or violence), section 1952 of such title (relating to interstate and foreign travel or transportation in aid of racketeering enterprises), section 1956 of such title (relating to the laundering of monetary instruments), section 1957 of such title (relating to engaging in monetary transactions in property derived from specified unlawful activity), or sections 2312 through 2315 of such title (relating to interstate transportation of stolen motor vehicles or stolen property).

“(G) A conspiracy to commit an offense described in subparagraphs (A) through (F).”.

(b) INADMISSIBILITY.—Section 212(a)(2) of such Act (8 U.S.C. 1182(a)(2)) is amended by adding at the end the following:

“(J) ALIENS ASSOCIATED WITH CRIMINAL GANGS.—(i) Any alien is inadmissible who a
consular officer, an immigration officer, the Secretary of Homeland Security, or the Attorney General knows or has reason to believe—

“(I) to be or to have been a member of a criminal gang (as defined in section 101(a)(53)); or

“(II) to have participated in the activities of a criminal gang (as defined in section 101(a)(53)), knowing or having reason to know that such activities will promote, further, aid, or support the illegal activity of the criminal gang.

“(ii) Any alien for whom a consular officer, an immigration officer, the Secretary of Homeland Security, or the Attorney General has reasonable grounds to believe has participated in, been a member of, promoted, or conspired with a criminal gang, either inside or outside of the United States, is inadmissible.

“(iii) Any alien for whom a consular officer, an immigration officer, the Secretary of Homeland Security, or the Attorney General has reasonable grounds to believe seeks to enter the United States or has entered the United States in furtherance of the activities of a
criminal gang, either inside or outside of the United States, is inadmissible.”.

(c) Deportability.—Section 237(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1227(a)(2)) is amended by adding at the end the following:

“(G) Aliens Associated with Criminal Gangs.—Any alien is deportable who—

“(i) is or has been a member of a criminal gang (as defined in section 101(a)(53)); or

“(ii) has participated in the activities of a criminal gang (as so defined), knowing or having reason to know that such activities will promote, further, aid, or support the illegal activity of the criminal gang.”.

(d) Designation.—

(1) In General.—Chapter 2 of title II of the Immigration and Nationality Act (8 U.S.C. 1182) is amended by inserting after section 219 the following:

“DESIGNATION OF CRIMINAL GANG

“Sec. 220.

“(a) Designation.—

“(1) In General.—The Secretary of Homeland Security, in consultation with the Attorney General, may designate a group, club, organization, or association of 5
184

or more persons as a criminal gang if the Secretary finds
that their conduct is described in section 101(a)(53).

“(2) Procedure.—

“(A) Notification.—Seven days before making a designation under this subsection, the Secretary shall, by classified communication, notify the Speaker and Minority Leader of the House of Representatives, the President pro tempore, Majority Leader, and Minority Leader of the Senate, and the members of the relevant committees of the House of Representatives and the Senate, in writing, of the intent to designate a group, club, organization, or association of 5 or more persons under this subsection and the factual basis therefor.

“(B) Publication in the Federal Register.—The Secretary shall publish the designation in the Federal Register seven days after providing the notification under subparagraph (A).

“(3) Record.—

“(A) In General.—In making a designation under this subsection, the Secretary shall create an administrative record.

“(B) Classified Information.—The Secretary may consider classified information in making a designation under this subsection. Classified infor-
mation shall not be subject to disclosure for such
time as it remains classified, except that such infor-
mation may be disclosed to a court ex parte and in
camera for purposes of judicial review under sub-
section (c).

“(4) Period of Designation.—

“(A) In General.—A designation under this
subsection shall be effective for all purposes until re-
voked under paragraph (5) or (6) or set aside pursu-
ant to subsection (c).

“(B) Review of Designation upon Peti-
tion.—

“(i) In General.—The Secretary shall re-
view the designation of a criminal gang under
the procedures set forth in clauses (iii) and (iv)
if the designated group, club, organization, or
association of 5 or more persons files a petition
for revocation within the petition period de-
scribed in clause (ii).

“(ii) Petition Period.—For purposes of
clause (i)—

“(I) if the designated group, club, or-
organization, or association of 5 or more per-
sons has not previously filed a petition for
revocation under this subparagraph, the
petition period begins 2 years after the date on which the designation was made; or

“(II) if the designated group, club, organization, or association of 5 or more persons has previously filed a petition for revocation under this subparagraph, the petition period begins 2 years after the date of the determination made under clause (iv) on that petition.

“(iii) Procedures.—Any group, club, organization, or association of 5 or more persons that submits a petition for revocation under this subparagraph of its designation as a criminal gang must provide evidence in that petition that it is not described in section 101(a)(53).

“(iv) Determination.—

“(I) In general.—Not later than 180 days after receiving a petition for revocation submitted under this subparagraph, the Secretary shall make a determination as to such revocation.

“(II) Classified information.—

The Secretary may consider classified information in making a determination in re-
response to a petition for revocation. Classified information shall not be subject to disclosure for such time as it remains classified, except that such information may be disclosed to a court ex parte and in camera for purposes of judicial review under subsection (e).

“(III) Publication of Determination.—A determination made by the Secretary under this clause shall be published in the Federal Register.

“(IV) Procedures.—Any revocation by the Secretary shall be made in accordance with paragraph (6).

“(C) Other Review of Designation.—

“(i) In General.—If in a 5-year period no review has taken place under subparagraph (B), the Secretary shall review the designation of the criminal gang in order to determine whether such designation should be revoked pursuant to paragraph (6).

“(ii) Procedures.—If a review does not take place pursuant to subparagraph (B) in response to a petition for revocation that is filed in accordance with that subparagraph, then the
review shall be conducted pursuant to procedures established by the Secretary. The results of such review and the applicable procedures shall not be reviewable in any court.

“(iii) Publication of results of review.—The Secretary shall publish any determination made pursuant to this subparagraph in the Federal Register.

“(5) Revocation by Act of Congress.—The Congress, by an Act of Congress, may block or revoke a designation made under paragraph (1).

“(6) Revocation Based on Change in Circumstances.—

“(A) In general.—The Secretary may revoke a designation made under paragraph (1) at any time, and shall revoke a designation upon completion of a review conducted pursuant to subparagraphs (B) and (C) of paragraph (4) if the Secretary finds that—

“(i) the group, club, organization, or association of 5 or more persons that has been designated as a criminal gang is no longer described in section 101(a)(53); or
“(ii) the national security or the law enforcement interests of the United States warrants a revocation.

“(B) Procedure.—The procedural requirements of paragraphs (2) and (3) shall apply to a revocation under this paragraph. Any revocation shall take effect on the date specified in the revocation or upon publication in the Federal Register if no effective date is specified.

“(7) Effect of Revocation.—The revocation of a designation under paragraph (5) or (6) shall not affect any action or proceeding based on conduct committed prior to the effective date of such revocation.

“(8) Use of Designation in Trial or Hearing.—If a designation under this subsection has become effective under paragraph (2) an alien in a removal proceeding shall not be permitted to raise any question concerning the validity of the issuance of such designation as a defense or an objection.

“(b) Amendments to a Designation.—

“(1) In General.—The Secretary may amend a designation under this subsection if the Secretary finds that the group, club, organization, or association of 5 or more persons has changed its name, adopted a new alias, dissolved and then reconstit-
tuted itself under a different name or names, or merged with another group, club, organization, or association of 5 or more persons.

“(2) **PROCEDURE.**—Amendments made to a designation in accordance with paragraph (1) shall be effective upon publication in the Federal Register. Paragraphs (2), (4), (5), (6), (7), and (8) of subsection (a) shall also apply to an amended designation.

“(3) **ADMINISTRATIVE RECORD.**—The administrative record shall be corrected to include the amendments as well as any additional relevant information that supports those amendments.

“(4) **CLASSIFIED INFORMATION.**—The Secretary may consider classified information in amending a designation in accordance with this subsection. Classified information shall not be subject to disclosure for such time as it remains classified, except that such information may be disclosed to a court ex parte and in camera for purposes of judicial review under subsection (c) of this section.

“(c) **JUDICIAL REVIEW OF DESIGNATION.**—

“(1) **IN GENERAL.**—Not later than 30 days after publication in the Federal Register of a designation, an amended designation, or a determina-
tion in response to a petition for revocation, the designated group, club, organization, or association of 5 or more persons may seek judicial review in the United States Court of Appeals for the District of Columbia Circuit.

“(2) Basis of review.—Review under this subsection shall be based solely upon the administrative record, except that the Government may submit, for ex parte and in camera review, classified information used in making the designation, amended designation, or determination in response to a petition for revocation.

“(3) Scope of review.—The Court shall hold unlawful and set aside a designation, amended designation, or determination in response to a petition for revocation the court finds to be—

“(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

“(B) contrary to constitutional right, power, privilege, or immunity;

“(C) in excess of statutory jurisdiction, authority, or limitation, or short of statutory right;
“(D) lacking substantial support in the administrative record taken as a whole or in classified information submitted to the court under paragraph (2); or

“(E) not in accord with the procedures required by law.

“(4) JUDICIAL REVIEW INVOKED.—The pendency of an action for judicial review of a designation, amended designation, or determination in response to a petition for revocation shall not affect the application of this section, unless the court issues a final order setting aside the designation, amended designation, or determination in response to a petition for revocation.

“(d) DEFINITIONS.—As used in this section—

“(1) the term ‘classified information’ has the meaning given that term in section 1(a) of the Classified Information Procedures Act (18 U.S.C. App.);

“(2) the term ‘national security’ means the national defense, foreign relations, or economic interests of the United States;

“(3) the term ‘relevant committees’ means the Committees on the Judiciary of the Senate and of the House of Representatives; and
“(4) the term ‘Secretary’ means the Secretary of Homeland Security, in consultation with the Attorney General.”.

(2) CLERICAL AMENDMENT.—The table of contents for such Act is amended by inserting after the item relating to section 219 the following:

“Sec. 220. Designation.”.

(e) MANDATORY DETENTION OF CRIMINAL GANG MEMBERS.—

(1) IN GENERAL.—Section 236(c)(1) of the Immigration and Nationality Act (8 U.S.C. 1226(c)(1)), as amended by this title, is further amended—

(A) in subparagraph (D), by striking “or” at the end;

(B) in subparagraph (E), by inserting “or” at the end; and

(C) by inserting after subparagraph (E) the following:

“(F) is inadmissible under section 212(a)(2)(J) or deportable under section 217(a)(2)(G),”.

(2) ANNUAL REPORT.—Not later than March 1 of each year (beginning 1 year after the date of the enactment of this division), the Secretary of Homeland Security, after consultation with the appro-
priate Federal agencies, shall submit a report to the
Committees on the Judiciary of the House of Rep-
resentatives and of the Senate on the number of
aliens detained under the amendments made by
paragraph (1).

(f) ASYLUM CLAIMS BASED ON GANG AFFILI-
ATION.—

(1) INAPPLICABILITY OF RESTRICTION ON RE-
MOVAL TO CERTAIN COUNTRIES.—Section
241(b)(3)(B) of the Immigration and Nationality
Act (8 U.S.C. 1251(b)(3)(B)) is amended, in the
matter preceding clause (i), by inserting “who is de-
scribed in section 212(a)(2)(J)(i) or section
237(a)(2)(G)(i) or who is” after “to an alien”.

(2) INELIGIBILITY FOR ASYLUM.—Section
208(b)(2)(A) of such Act (8 U.S.C. 1158(b)(2)(A))
is amended—

(A) in clause (v), by striking “or” at the
end;

(B) by redesignating clause (vi) as clause
(vii); and

(C) by inserting after clause (v) the fol-
lowing:
“(vi) the alien is described in section 212(a)(2)(J)(i) or section 237(a)(2)(G)(i); or”.

(g) Temporary Protected Status.—Section 244 of such Act (8 U.S.C. 1254a) is amended—

(1) by striking “Attorney General” each place it appears and inserting “Secretary of Homeland Security”;

(2) in subparagraph (e)(2)(B)—

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

(B) in clause (ii), by striking the period and inserting “; or”; and

(C) by adding at the end the following:

“(iii) the alien is, or at any time has been, described in section 212(a)(2)(J) or section 237(a)(2)(G).”; and

(3) in subsection (d)—

(A) by striking paragraph (3); and

(B) in paragraph (4), by adding at the end the following: “The Secretary of Homeland Security may detain an alien provided temporary protected status under this section whenever appropriate under any other provision of law.”.
(h) **SPECIAL IMMIGRANT JUVENILE VISAS.**—Section 101(a)(27)(J)(iii) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)(J)(iii)) is amended—

1. in subclause (I), by striking “and”;
2. in subclause (II), by adding “and” at the end; and
3. by adding at the end the following:

   “(III) no alien who is, or at any time has been, described in section 212(a)(2)(J) or section 237(a)(2)(G) shall be eligible for any immigration benefit under this subparagraph;”.

(i) **PAROLE.**—An alien described in section 212(a)(2)(J) of the Immigration and Nationality Act, as added by subsection (b), shall not be eligible for parole under section 212(d)(5)(A) of such Act unless—

1. the alien is assisting or has assisted the United States Government in a law enforcement matter, including a criminal investigation; and
2. the alien’s presence in the United States is required by the Government with respect to such assistance.

(j) **EFFECTIVE DATE.**—The amendments made by this section shall take effect on the date of the enactment
of this division and shall apply to acts that occur before, on, or after the date of the enactment of this division.

SEC. 3304. INADMISSIBILITY AND DEPORTABILITY OF DRUNK DRIVERS.

(a) IN GENERAL.—Section 101(a)(43) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(43)), is amended—

(1) in subparagraph (T), by striking “and”;

(2) in subparagraph (U), by striking the period at the end and inserting “; and”; and

(3) by inserting after subparagraph (U) the following:

“(V)(i) a single conviction for driving while intoxicated (including a conviction for driving while under the influence of or impairment by alcohol or drugs), when such impaired driving was a cause of the serious bodily injury or death of another person; or

“(ii) a second or subsequent conviction for driving while intoxicated (including a conviction for driving under the influence of or impaired by alcohol or drugs).”.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the date of the enact-
ment of this division and apply to convictions entered on
or after such date.

SEC. 3305. DEFINITION OF AGGRAVATED FELONY.

(a) DEFINITION OF AGGRAVATED FELONY.—Section
101(a)(43) of the Immigration and Nationality Act (8
U.S.C. 1101(a)(43)), as amended by this title, is further
amended—

(1) by striking “The term ‘aggravated felony’
means—” and inserting “Notwithstanding any other
provision of law, the term ‘aggravated felony’ applies
to an offense described in this paragraph, whether in
violation of Federal or State law, or in violation of
the law of a foreign country for which the term of
imprisonment was completed within the previous 15
years, even if the length of the term of imprisonment
for the offense is based on recidivist or other en-
hancements and regardless of whether the conviction
was entered before, on, or after September 30, 1996,
and means—”;

(2) in subparagraph (A), by striking “murder,
rape, or sexual abuse of a minor;” and inserting “an
offense relating to murder, manslaughter, homicide,
rape (whether the victim was conscious or uncon-
scious), statutory rape, or any offense of a sexual
nature involving a victim under the age of 18 years;”;

(3) in subparagraph (B)—

(A) by inserting “an offense relating to” before “illicit trafficking”; and

(B) by inserting before the semicolon at the end the following: “and any offense under State law relating to a controlled substance (as so classified under State law) which is classified as a felony in that State, regardless of whether the substance is classified as a controlled substance under section 102 of the Controlled Substances Act (8 U.S.C. 802)”;

(4) in subparagraph (C), by inserting “an offense relating to” before “illicit trafficking in firearms”;

(5) in subparagraph (I), by striking “or 2252” and inserting “2252, or 2252A”;

(6) in subparagraph (F), by striking “for which the term of imprisonment is at least one year;” and inserting “, including offenses of assault and battery under State or Federal law, for which the term of imprisonment is at least one year, except that if the conviction records do not conclusively establish whether a crime constitutes a crime of violence, the
Attorney General or the Secretary of Homeland Security, as appropriate, may consider other evidence related to the conviction that establishes that the conduct for which the alien was engaged constitutes a crime of violence;’’;

(7) by striking subparagraph (G) and inserting the following:

“(G) an offense relating to a theft under State or Federal law (including theft by deceit, theft by fraud, and receipt of stolen property) regardless of whether any taking was temporary or permanent, or burglary offense under State or Federal law for which the term of imprisonment is at least one year, except that if the conviction records do not conclusively establish whether a crime constitutes a theft or burglary offense, the Attorney General or Secretary of Homeland Security, as appropriate, may consider other evidence related to the conviction that establishes that the conduct for which the alien was engaged constitutes a theft or burglary offense;’’;

(8) in subparagraph (N)—

(A) by striking “paragraph (1)(A) or (2)
of’’; and

(B) by inserting a semicolon at the end;
(9) in subparagraph (O), by striking “section 275(a) or 276 committed by an alien who was previously deported on the basis of a conviction for an offense described in another subparagraph of this paragraph” and inserting “section 275 or 276 for which the term of imprisonment is at least 1 year”;

(10) in subparagraph (P)—

(A) by striking “(i) which either is falsely making, forging, counterfeiting, mutilating, or altering a passport or instrument in violation of section 1543 of title 18, United States Code, or is described in section 1546(a) of such title (relating to document fraud) and (ii)” and inserting “which is described in any section of chapter 75 of title 18, United States Code, and”;

and

(B) by striking “, except in the case of a first offense for which the alien has affirmatively shown that the alien committed the offense for the purpose of assisting, abetting, or aiding only the alien’s spouse, child, or parent (and no other individual) to violate a provision of this Act”;
in this paragraph” and inserting “attempting or conspiring to commit an offense described in this paragraph, or aiding, abetting, counseling, procuring, commanding, inducing, or soliciting the commission of such an offense”; and

(12) by striking the undesignated matter following subparagraph (U).

(b) EFFECTIVE DATE; APPLICATION OF AMENDMENTS.—

(1) IN GENERAL.—The amendments made by subsection (a)—

(A) shall take effect on the date of the enactment of this division; and

(B) shall apply to any act or conviction that occurred before, on, or after such date.

(2) APPLICATION OF IIRIRA AMENDMENTS.—

The amendments to section 101(a)(43) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(43)) made by section 321 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (division C of Public Law 104–208; 110 Stat. 3009–627) shall continue to apply, whether the conviction was entered before, on, or after September 30, 1996.
SEC. 3306. PRECLUDING WITHHOLDING OF REMOVAL FOR AGGRAVATED FELONS.

(a) In General.—Section 241(b)(3)(B) (8 U.S.C. 1231(b)(3)(B)), is amended by inserting after clause (v) the following:

“(vi) the alien is convicted of an aggravated felony.”.

(b) Effective Date.—The amendment made by subsection (a) shall apply—

(1) to any act that occurred before, on, or after the date of the enactment of this division; and

(2) to all aliens who are required to establish admissibility on or after such date, and in all removal, deportation, or exclusion proceedings that are filed, pending, or reopened on or after such date.

SEC. 3307. PROTECTING IMMIGRANTS FROM CONVICTED SEX OFFENDERS.

(a) Immigrants.—Section 204(a)(1) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)), is amended—

(1) in subparagraph (A), by amending clause (viii) to read as follows:

“(viii) Clause (i) shall not apply to a citizen of the United States who has been convicted of an offense described in subparagraph (A), (I), or (K) of section 101(a)(43), unless the Secretary of Homeland Security,
in the Secretary’s sole and unreviewable discretion, deter-
mines that the citizen poses no risk to the alien with re-
spect to whom a petition described in clause (i) is filed.”;
and

(2) in subparagraph (B)(i)—

(A) by redesignating the second subclause

(I) as subclause (II); and

(B) by amending such subclause (II) to

read as follows:

“(II) Subclause (I) shall not apply in the case of an
alien admitted for permanent residence who has been con-
victed of an offense described in subparagraph (A), (I),
or (K) of section 101(a)(43), unless the Secretary of
Homeland Security, in the Secretary’s sole and
unreviewable discretion, determines that the alien lawfully
admitted for permanent residence poses no risk to the
alien with respect to whom a petition described in sub-
clause (I) is filed.”.

(b) NONIMMIGRANTS.—Section 101(a)(15)(K) of
such Act (8 U.S.C. 1101(a)(15)(K)), is amended by strik-
ing “204(a)(1)(A)(viii)(I)” each place such term appears
and inserting “204(a)(1)(A)(viii))”.

(e) EFFECTIVE DATE.—The amendments made by
this section shall take effect on the date of the enactment
of this division and shall apply to petitions filed on or after such date.

SEC. 3308. CLARIFICATION TO CRIMES OF VIOLENCE AND CRIMES INVOLVING MORAL TURPITUDE.

(a) INADMISSIBLE ALIENS.—Section 212(a)(2)(A) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(2)(A)) is amended by adding at the end the following:

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(iii) CLARIFICATION.—If the conviction records do not conclusively establish whether a crime constitutes a crime involving moral turpitude, the Attorney General or the Secretary of Homeland Security, as appropriate, may consider other evidence related to the conviction that establishes that the conduct for which the alien was engaged constitutes a crime involving moral turpitude.”.
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(b) DEPORTABLE ALIENS.—

(1) GENERAL CRIMES.—Section 237(a)(2)(A) of such Act (8 U.S.C. 1227(a)(2)(A)), as amended by this title, is further amended by inserting after clause (iv) the following:

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(v) CRIMES INVOLVING MORAL TURPITUDE.—If the conviction records do not
conclusively establish whether a crime constitutes a crime involving moral turpitude, the Attorney General or the Secretary of Homeland Security, as appropriate, may consider other evidence related to the conviction that establishes that the conduct for which the alien was engaged constitutes a crime involving moral turpitude.”.

(2) DOMESTIC VIOLENCE.—Section 237(a)(2)(E) of such Act (8 U.S.C. 1227(a)(2)(E)) is amended by adding at the end the following:

“(iii) CRIMES OF VIOLENCE.—If the conviction records do not conclusively establish whether a crime of domestic violence constitutes a crime of violence (as defined in section 16 of title 18, United States Code), the Attorney General or the Secretary of Homeland Security, as appropriate, may consider other evidence related to the conviction that establishes that the conduct for which the alien was engaged constitutes a crime of violence.”.

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment
of this division and shall apply to acts that occur before,
on, or after the date of the enactment of this division.

SEC. 3309. DETENTION OF DANGEROUS ALIENS.

Section 241(a) of the Immigration and Nationality
Act (8 U.S.C. 1231(a)) is amended—

(1) by striking “Attorney General” each place
it appears, except for the first reference in para-
graph (4)(B)(i), and inserting “Secretary of Home-
land Security”;

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

“(B) BEGINNING OF PERIOD.—The re-
moval period begins on the latest of the fol-
lowing:

“(i) The date the order of removal be-
comes administratively final.

“(ii) If the alien is not in the custody
of the Secretary on the date the order of
removal becomes administratively final, the
date the alien is taken into such custody.

“(iii) If the alien is detained or con-
fined (except under an immigration proc-
ess) on the date the order of removal be-
comes administratively final, the date the
alien is taken into the custody of the Sec-
retary, after the alien is released from such
detention or confinement.”;

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

“(C) SUSPENSION OF PERIOD.—

“(i) EXTENSION.—The removal period
shall be extended beyond a period of 90
days and the Secretary may, in the Sec-
retary’s sole discretion, keep the alien in
detention during such extended period if—

“(I) the alien fails or refuses to
make all reasonable efforts to comply
with the removal order, or to fully co-
operate with the Secretary’s efforts to
establish the alien’s identity and carry
out the removal order, including mak-
ing timely application in good faith
for travel or other documents nec-
essary to the alien’s departure or con-
spires or acts to prevent the alien’s
removal that is subject to an order of
removal;

“(II) a court, the Board of Immi-
grant Appeals, or an immigration
judge orders a stay of removal of an
alien who is subject to an administratively final order of removal;

“(III) the Secretary transfers custody of the alien pursuant to law to another Federal agency or a State or local government agency in connection with the official duties of such agency; or

“(IV) a court or the Board of Immigration Appeals orders a remand to an immigration judge or the Board of Immigration Appeals, during the time period when the case is pending a decision on remand (with the removal period beginning anew on the date that the alien is ordered removed on remand).

“(ii) RENEWAL.—If the removal period has been extended under subparagraph (C)(i), a new removal period shall be deemed to have begun on the date—

“(I) the alien makes all reasonable efforts to comply with the removal order, or to fully cooperate with the Secretary’s efforts to establish the
alien’s identity and carry out the re-
moval order;

“(II) the stay of removal is no
longer in effect; or

“(III) the alien is returned to the
custody of the Secretary.

“(iii) MANDATORY DETENTION FOR
CERTAIN ALIENS.—In the case of an alien
described in subparagraphs (A) through
(D) of section 236(c)(1), the Secretary
shall keep that alien in detention during
the extended period described in clause (i).

“(iv) SOLE FORM OF RELIEF.—An
alien may seek relief from detention under
this subparagraph only by filing an appli-
cation for a writ of habeas corpus in ac-
cordance with chapter 153 of title 28,
United States Code. No alien whose period
of detention is extended under this sub-
paragraph shall have the right to seek re-
lease on bond.”;

(4) in paragraph (3)—

(A) by adding after “If the alien does not
leave or is not removed within the removal pe-
riod” the following: “or is not detained pursu-
ant to paragraph (6) of this subsection”; and

(B) by striking subparagraph (D) and in-
serting the following:

“(D) to obey reasonable restrictions on the
alien’s conduct or activities that the Secretary
prescribes for the alien, in order to prevent the
alien from absconding, for the protection of the
community, or for other purposes related to the
enforcement of the immigration laws.”;

(5) in paragraph (4)(A), by striking “paragraph
(2)” and inserting “subparagraph (B)”; and

(6) by striking paragraph (6) and inserting the
following:

“(6) ADDITIONAL RULES FOR DETENTION OR
RELEASE OF CERTAIN ALIENS.—

“(A) DETENTION REVIEW PROCESS FOR
COOPERATIVE ALIENS ESTABLISHED.—For an
alien who is not otherwise subject to mandatory
detention, who has made all reasonable efforts
to comply with a removal order and to cooper-
ate fully with the Secretary of Homeland Secu-

rity’s efforts to establish the alien’s identity and
carry out the removal order, including making
timely application in good faith for travel or
other documents necessary to the alien’s departure, and who has not conspired or acted to prevent removal, the Secretary shall establish an administrative review process to determine whether the alien should be detained or released on conditions. The Secretary shall make a determination whether to release an alien after the removal period in accordance with subparagraph (B). The determination shall include consideration of any evidence submitted by the alien, and may include consideration of any other evidence, including any information or assistance provided by the Secretary of State or other Federal official and any other information available to the Secretary of Homeland Security pertaining to the ability to remove the alien.

“(B) AUTHORITY TO DETAIN BEYOND REMOVAL PERIOD.—

“(i) IN GENERAL.—The Secretary of Homeland Security, in the exercise of the Secretary’s sole discretion, may continue to detain an alien for 90 days beyond the removal period (including any extension of the removal period as provided in paragraph (1)(C)). An alien whose detention is
extended under this subparagraph shall have no right to seek release on bond.

“(ii) SPECIFIC CIRCUMSTANCES.—The Secretary of Homeland Security, in the exercise of the Secretary’s sole discretion, may continue to detain an alien beyond the 90 days authorized in clause (i)—

“(I) until the alien is removed, if the Secretary, in the Secretary’s sole discretion, determines that there is a significant likelihood that the alien—

“(aa) will be removed in the reasonably foreseeable future; or

“(bb) would be removed in the reasonably foreseeable future, or would have been removed, but for the alien’s failure or refusal to make all reasonable efforts to comply with the removal order, or to cooperate fully with the Secretary’s efforts to establish the alien’s identity and carry out the removal order, including making timely application in good faith for travel or other doc-
documents necessary to the alien’s departure, or conspires or acts to prevent removal;
“(II) until the alien is removed, if the Secretary of Homeland Security certifies in writing—
“(aa) in consultation with the Secretary of Health and Human Services, that the alien has a highly contagious disease that poses a threat to public safety;
“(bb) after receipt of a written recommendation from the Secretary of State, that release of the alien is likely to have serious adverse foreign policy consequences for the United States;
“(cc) based on information available to the Secretary of Homeland Security (including classified, sensitive, or national security information, and without regard to the grounds upon which the alien was ordered re-
moved), that there is reason to
believe that the release of the
alien would threaten the national
security of the United States; or
“(dd) that the release of the
alien will threaten the safety of
the community or any person,
conditions of release cannot rea-
sonably be expected to ensure the
safety of the community or any
person, and either (AA) the alien
has been convicted of one or
more aggravated felonies (as de-
defined in section 101(a)(43)(A))
or of one or more crimes identi-
fied by the Secretary of Home-
land Security by regulation, or of
one or more attempts or conspir-
acies to commit any such aggra-
vated felonies or such identified
crimes, if the aggregate term of
imprisonment for such attempts
or conspiracies is at least 5
years; or (BB) the alien has com-
mited one or more crimes of vio-
ence (as defined in section 16 of title 18, United States Code, but not including a purely political offense) and, because of a mental condition or personality disorder and behavior associated with that condition or disorder, the alien is likely to engage in acts of violence in the future; or

“(III) pending a certification under subclause (II), so long as the Secretary of Homeland Security has initiated the administrative review process not later than 30 days after the expiration of the removal period (including any extension of the removal period, as provided in paragraph (1)(C)).

“(iii) NO RIGHT TO BOND HEARING.— An alien whose detention is extended under this subparagraph shall have no right to seek release on bond, including by reason of a certification under clause (ii)(II).

“(C) RENEWAL AND DELEGATION OF CERTIFICATION.—
“(i) RENEWAL.—The Secretary of Homeland Security may renew a certification under subparagraph (B)(ii)(II) every 6 months, after providing an opportunity for the alien to request reconsideration of the certification and to submit documents or other evidence in support of that request. If the Secretary does not renew a certification, the Secretary may not continue to detain the alien under subparagraph (B)(ii)(II).

“(ii) DELEGATION.—Notwithstanding section 103, the Secretary of Homeland Security may not delegate the authority to make or renew a certification described in item (bb), (cc), or (dd) of subparagraph (B)(ii)(II) below the level of the Director of Immigration and Customs Enforcement.

“(iii) HEARING.—The Secretary of Homeland Security may request that the Attorney General or the Attorney General’s designee provide for a hearing to make the determination described in item (dd)(BB) of subparagraph (B)(ii)(II).
“(D) Release on Conditions.—If it is determined that an alien should be released from detention by a Federal court, the Board of Immigration Appeals, or if an immigration judge orders a stay of removal, the Secretary of Homeland Security, in the exercise of the Secretary’s discretion, may impose conditions on release as provided in paragraph (3).

“(E) Redetention.—The Secretary of Homeland Security, in the exercise of the Secretary’s discretion, without any limitations other than those specified in this section, may again detain any alien subject to a final removal order who is released from custody, if removal becomes likely in the reasonably foreseeable future, the alien fails to comply with the conditions of release, or to continue to satisfy the conditions described in subparagraph (A), or if, upon reconsideration, the Secretary, in the Secretary’s sole discretion, determines that the alien can be detained under subparagraph (B). This section shall apply to any alien returned to custody pursuant to this subparagraph, as if the removal period terminated on the day of the redetention.
“(F) Review of Determinations by Secretary.—A determination by the Secretary under this paragraph shall not be subject to review by any other agency.”.

SEC. 3310. TIMELY REPATRIATION.

(a) Listing of Countries.—Beginning on the date that is 6 months after the date of the enactment of this division, and every 6 months thereafter, the Secretary of Homeland Security shall publish a report including the following:

(1) A list of the following:

(A) Countries that have refused or unreasonably delayed repatriation of an alien who is a national of that country since the date of the enactment of this division and the total number of such aliens, disaggregated by nationality.

(B) Countries that have an excessive repatriation failure rate.

(2) A list of each country that was included under subparagraph (B) or (C) of paragraph (1) in both the report preceding the current report and the current report.

(b) Sanctions.—Beginning on the date on which a country is included in a list under subsection (a)(2) and
ending on the date on which that country is not included
in such list, that country shall be subject to the following:

(1) The Secretary of State may not issue visas
under section 101(a)(15)(A)(iii) of the Immigration
to attendants, servants, personal employees, and
members of their immediate families, of the officials
and employees of that country who receive non-
immigrant status under clause (i) or (ii) of section
101(a)(15)(A) of such Act.

(2) Each 6 months thereafter that the country
is included in that list, the Secretary of State shall
reduce the number of visas available under clause (i)
or (ii) of section 101(a)(15)(A) of the Immigration
and Nationality Act in a fiscal year to nationals of
that country by an amount equal to 10 percent of
the baseline visa number for that country. Except as
provided under section 243(d) of the Immigration
and Nationality Act (8 U.S.C. 1253), the Secretary
may not reduce the number to a level below 20 per-
cent of the baseline visa number.

(c) WAIVERS.—

(1) NATIONAL SECURITY WAIVER.—If the Sec-
retary of State submits to Congress a written deter-
mination that significant national security interests
of the United States require a waiver of the sanctions under subsection (b), the Secretary may waive any reduction below 80 percent of the baseline visa number. The Secretary of Homeland Security may not delegate the authority under this subsection.

(2) Temporary Exigent Circumstances.—If the Secretary of State submits to Congress a written determination that temporary exigent circumstances require a waiver of the sanctions under subsection (b), the Secretary may waive any reduction below 80 percent of the baseline visa number during 6-month renewable periods. The Secretary of Homeland Security may not delegate the authority under this subsection.

(d) Exemption.—The Secretary of Homeland Security, in consultation with the Secretary of State, may exempt a country from inclusion in a list under subsection (a)(2) if the total number of nonrepatriations outstanding is less than 10 for the preceding 3-year period.

(e) Unauthorized Visa Issuance.—Any visa issued in violation of this section shall be void.

(f) Notice.—If an alien who has been convicted of a criminal offense before a Federal or State court whose repatriation was refused or unreasonably delayed is to be released from detention by the Secretary of Homeland Sec-
curity, the Secretary shall provide notice to the State and local law enforcement agency for the jurisdictions in which the alien is required to report or is to be released. When possible, and particularly in the case of violent crime, the Secretary shall make a reasonable effort to provide notice of such release to any crime victims and their immediate family members.

(g) DEFINITIONS.—For purposes of this section:

(1) REFUSED OR UNREASONABLY DELAYED.—
A country is deemed to have refused or unreasonably delayed the acceptance of an alien who is a citizen, subject, national, or resident of that country if, not later than 90 days after receiving a request to repatriate such alien from an official of the United States who is authorized to make such a request, the country does not accept the alien or issue valid travel documents.

(2) FAILURE RATE.—The term “failure rate” for a period means the percentage determined by dividing the total number of repatriation requests for aliens who are citizens, subjects, nationals, or residents of a country that that country refused or unreasonably delayed during that period by the total number of such requests during that period.
(3) EXCESSIVE REPATRIATION FAILURE RATE.—The term “excessive repatriation failure rate” means, with respect to a report under subsection (a), a failure rate greater than 10 percent for any of the following:

(A) The period of the 3 full fiscal years preceding the date of publication of the report.

(B) The period of 1 year preceding the date of publication of the report.

(4) NUMBER OF NONREPATRIATIONS OUTSTANDING.—The term “number of nonrepatriations outstanding” means, for a period, the number of unique aliens whose repatriation a country has refused or unreasonably delayed and whose repatriation has not occurred during that period.

(5) BASELINE VISA NUMBER.—The term “baseline visa number” means, with respect to a country, the average number of visas issued each fiscal year to nationals of that country under clauses (i) and (ii) of section 101(a)(15)(A) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(A)) for the 3 full fiscal years immediately preceding the first report under subsection (a) in which that country is included in the list under subsection (a)(2).
(h) GAO REPORT.—On the date that is 1 day after the date that the President submits a budget under section 1105(a) of title 31, United States Code, for fiscal year 2016, the Comptroller General of the United States shall submit a report to Congress regarding the progress of the Secretary of Homeland Security and the Secretary of State in implementation of this section and in making requests to repatriate aliens as appropriate.

SEC. 3311. ILLEGAL REENTRY.

Section 276 of the Immigration and Nationality Act (8 U.S.C. 1326) is amended to read as follows:

“SEC. 276. REENTRY OF REMOVED ALIEN.

“(a) REENTRY AFTER REMOVAL.—

“(1) IN GENERAL.—Any alien who has been denied admission, excluded, deported, or removed, or who has departed the United States while an order of exclusion, deportation, or removal is outstanding, and subsequently enters, attempts to enter, crosses the border to, attempts to cross the border to, or is at any time found in the United States, shall be fined under title 18, United States Code, imprisoned not more than 2 years, or both.

“(2) EXCEPTION.—If an alien sought and received the express consent of the Secretary to reapply for admission into the United States, or, with
respect to an alien previously denied admission and
removed, the alien was not required to obtain such
advance consent under the Immigration and Nation-
ality Act or any prior Act, the alien shall not be sub-
ject to the fine and imprisonment provided for in
paragraph (1).

“(b) REENTRY OF CRIMINAL OFFENDERS.—Not-
withstanding the penalty provided in subsection (a), if an
alien described in that subsection was convicted before
such removal or departure—

“(1) for 3 or more misdemeanors or for a fel-
ony, the alien shall be fined under title 18, United
States Code, imprisoned not more than 10 years, or
both;

“(2) for a felony for which the alien was sen-
tenced to a term of imprisonment of not less than
30 months, the alien shall be fined under such title,
imprisoned not more than 15 years, or both;

“(3) for a felony for which the alien was sen-
tenced to a term of imprisonment of not less than
60 months, the alien shall be fined under such title,
imprisoned not more than 20 years, or both; or

“(4) for murder, rape, kidnapping, or a felony
offense described in chapter 77 (relating to peonage
and slavery) or 113B (relating to terrorism) of such
title, or for 3 or more felonies of any kind, the alien
shall be fined under such title, imprisoned not more
than 25 years, or both.

“(c) Reentry After Repeated Removal.—Any
alien who has been denied admission, excluded, deported,
or removed 3 or more times and thereafter enters, at-
ttempts to enter, crosses the border to, attempts to cross
the border to, or is at any time found in the United States,
shall be fined under title 18, United States Code, impris-
oned not more than 10 years, or both.

“(d) Proof of Prior Convictions.—The prior
convictions described in subsection (b) are elements of the
crimes described, and the penalties in that subsection shall
apply only in cases in which the conviction or convictions
that form the basis for the additional penalty are—

“(1) alleged in the indictment or information;
and

“(2) proven beyond a reasonable doubt at trial
or admitted by the defendant.

“(e) Reentry of Alien Removed Prior to Com-
pletion of Term of Imprisonment.—Any alien re-
moved pursuant to section 241(a)(4) who enters, attempts
to enter, crosses the border to, attempts to cross the bor-
der to, or is at any time found in, the United States shall
be incarcerated for the remainder of the sentence of im-
prisonment which was pending at the time of deportation without any reduction for parole or supervised release un-
less the alien affirmatively demonstrates that the Sec-
retary of Homeland Security has expressly consented to
the alien’s reentry. Such alien shall be subject to such
other penalties relating to the reentry of removed aliens
as may be available under this section or any other provi-
sion of law.

“(f) DEFINITIONS.—For purposes of this section and
section 275, the following definitions shall apply:

“(1) Crosses the border to the United
states.—The term ‘crosses the border’ refers to the
physical act of crossing the border free from official
restraint.

“(2) Official restraint.—The term ‘official
restraint’ means any restraint known to the alien
that serves to deprive the alien of liberty and pre-
vents the alien from going at large into the United
States. Surveillance unbeknownst to the alien shall
not constitute official restraint.

“(3) Felony.—The term ‘felony’ means any
criminal offense punishable by a term of imprison-
ment of more than 1 year under the laws of the
United States, any State, or a foreign government.
“(4) MISDEMEANOR.—The term ‘misdemeanor’ means any criminal offense punishable by a term of imprisonment of not more than 1 year under the applicable laws of the United States, any State, or a foreign government.

“(5) REMOVAL.—The term ‘removal’ includes any denial of admission, exclusion, deportation, or removal, or any agreement by which an alien stipulates or agrees to exclusion, deportation, or removal.

“(6) STATE.—The term ‘State’ means a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.”.

TITLE IV—ASYLUM REFORM

SEC. 4401. CLARIFICATION OF INTENT REGARDING TAX-PAYER-PROVIDED COUNSEL.

Section 292 of the Immigration and Nationality Act (8 U.S.C. 1362) is amended—

(1) by striking “In any removal proceedings before an immigration judge and in any appeal proceedings before the Attorney General from any such removal proceedings” and inserting “In any removal proceedings before an immigration judge, or any other immigration proceedings before the Attorney
General, the Secretary of Homeland Security, or any appeal of such a proceeding”.

(2) by striking “(at no expense to the Government)”; and

(3) by adding at the end the following “Notwithstanding any other provision of law, in no instance shall the Government bear any expense for counsel for any person in proceedings described in this section.”.

SEC. 4402. CREDIBLE FEAR INTERVIEWS.

Section 235(b)(1)(B)(v) of the Immigration and Nationality Act (8 U.S.C. 1225(b)(1)(B)(v)) is amended by striking “claim” and all that follows, and inserting “claim, as determined pursuant to section 208(b)(1)(B)(iii), and such other facts as are known to the officer, that the alien could establish eligibility for asylum under section 1158 of this title, and it is more probable than not that the statements made by, and on behalf of, the alien in support of the alien’s claim are true.”.

SEC. 4403. RECORDING EXPEDITED REMOVAL AND CREDIBLE FEAR INTERVIEWS.

(a) IN GENERAL.—The Secretary of Homeland Security shall establish quality assurance procedures and take steps to effectively ensure that questions by employees of the Department of Homeland Security exercising expe-
dited removal authority under section 235(b) of the Immigration and Nationality Act (8 U.S.C. 1225(b)) are asked in a uniform manner, to the extent possible, and that both these questions and the answers provided in response to them are recorded in a uniform fashion.

(b) FACTORS RELATING TO SWORN STATEMENTS.—
Where practicable, any sworn or signed written statement taken of an alien as part of the record of a proceeding under section 235(b)(1)(A) of the Immigration and Nationality Act (8 U.S.C. 1225(b)(1)(A)) shall be accompanied by a recording of the interview which served as the basis for that sworn statement.

c) INTERPRETERS.—The Secretary shall ensure that a competent interpreter, not affiliated with the government of the country from which the alien may claim asylum, is used when the interviewing officer does not speak a language understood by the alien.

d) RECORDINGS IN IMMIGRATION PROCEEDINGS.—
There shall be an audio or audio visual recording of interviews of aliens subject to expedited removal. The recording shall be included in the record of proceeding and shall be considered as evidence in any further proceedings involving the alien.

e) NO PRIVATE RIGHT OF ACTION.—Nothing in this section shall be construed to create any right, benefit,
trust, or responsibility, whether substantive or procedural, enforceable in law or equity by a party against the United States, its departments, agencies, instrumentalities, entities, officers, employees, or agents, or any person, nor does this section create any right of review in any administrative, judicial, or other proceeding.

SEC. 4404. SAFE THIRD COUNTRY.

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

(1) by striking “Attorney General” each place it appears and inserting “Secretary of Homeland Security”; and

(2) by striking “removed, pursuant to a bilateral or multilateral agreement, to” and inserting “removed to”.

SEC. 4405. RENUNCIATION OF ASYLUM STATUS PURSUANT TO RETURN TO HOME COUNTRY.

(a) IN GENERAL.—Section 208(c) of the Immigration and Nationality Act (8 U.S.C. 1158(c)) is amended by adding at the end the following new paragraph:

“(4) Renunciation of status pursuant to return to home country.—

“(A) In general.—Except as provided in subparagraphs (B) and (C), any alien who is granted asylum status under this Act, who, ab-
sent changed country conditions, subsequently returns to the country of such alien’s nationality or, in the case of an alien having no nationality, returns to any country in which such alien last habitually resided, and who applied for such status because of persecution or a well-founded fear of persecution in that country on account of race, religion, nationality, membership in a particular social group, or political opinion, shall have his or her status terminated.

“(B) WAIVER.—The Secretary has discretion to waive subparagraph (A) if it is established to the satisfaction of the Secretary that the alien had a compelling reason for the return. The waiver may be sought prior to departure from the United States or upon return.

“(C) EXCEPTION FOR CERTAIN ALIENS FROM CUBA.—Subparagraph (A) shall not apply to an alien who is eligible for adjustment to that of an alien lawfully admitted for permanent residence pursuant to the Cuban Adjustment Act of 1966 (Public Law 89–732).”.

(b) CONFORMING AMENDMENT.—Section 208(c)(3) of the Immigration and Nationality Act (8 U.S.C.

232
1158(c)(3)) is amended by inserting after “paragraph
(2)” the following: “or (4)”.

SEC. 4406. NOTICE CONCERNING FRIVOLOUS ASYLUM AP-
PLICATIONS.

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

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

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

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

(4) by adding at the end the following:
“(C) ensure that a written warning ap-
ppears on the asylum application advising the
alien of the consequences of filing a frivolous
application and serving as notice to the alien of
the consequence of filing a frivolous applica-
tion.”.

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

“(A) If the Secretary of Homeland Security or the Attorney General determines that an alien has knowingly made a frivolous application for asylum and the alien has received the notice under paragraph (4)(C), the alien shall be permanently ineligible for any benefits under this chapter, effective as the date of the final determination of such an application;

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

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

“(C) In determining that an application is frivolous, the Secretary or the Attorney General, must be satisfied that the applicant, during the course of the proceedings, has had sufficient opportunity to clarify any discrepancies or implausible aspects of the claim.

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

SEC. 4407. ANTI-FRAUD INVESTIGATIVE WORK PRODUCT.

(a) Asylum Credibility Determinations.—Section 208(b)(1)(B)(iii) of the Immigration and Nationality Act (8 U.S.C. 1158(b)(1)(B)(iii)) is amended by inserting after “all relevant factors” the following: “, including statements made to, and investigative reports prepared by, immigration authorities and other government officials”.

(b) Relief for Removal Credibility Determinations.—Section 240(c)(4)(C) of the Immigration and Nationality Act (8 U.S.C. 1229a(c)(4)(C)) is amended by inserting after “all relevant factors” the following: “,
including statements made to, and investigative reports prepared by, immigration authorities and other government officials’.

SEC. 4408. PENALTIES FOR ASYLUM FRAUD.

Section 1001 of title 18 is amended by inserting at the end of the paragraph—

“(d) Whoever, in any matter before the Secretary of Homeland Security or the Attorney General pertaining to asylum under section 208 of the Immigration and Nationality Act or withholding of removal under section 241(b)(3) of such Act, knowingly and willfully—

“(1) makes any materially false, fictitious, or fraudulent statement or representation; or

“(2) makes or uses any false writings or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry; shall be fined under this title or imprisoned not more than 10 years, or both.”.

SEC. 4409. STATUTE OF LIMITATIONS FOR ASYLUM FRAUD.

Section 3291 of title 18 is amended—

(1) by striking “1544,” and inserting “1544 and 1546,”;

(2) by striking “offense.” and inserting “offense or within 10 years after the fraud is discovered.”.
SEC. 4410. TECHNICAL AMENDMENTS.

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

(1) in subsection (a)—

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

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

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

(3) in subsection (c)—

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

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

(4) in subsection (d)—

(A) in paragraph (1), by inserting “Secretary of Homeland Security or the” before “Attorney General” each place such term appears;
(B) in paragraph (2), by striking “Attorney General” and inserting “Secretary of Homeland Security”; and

(C) in paragraph (5)—

(i) in subparagraph (A), by striking “Attorney General” and inserting “Secretary of Homeland Security”; and

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

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

SEC. 5501. REPATRIATION OF UNACCOMPANIED ALIEN CHILDREN.

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

(1) in subsection (a)—

(A) in paragraph (2)—

(i) by amending the heading to read as follows: “RULES FOR UNACCOMPANIED ALIEN CHILDREN.—”;
(I) in the matter preceding clause (i), by striking “who is a national or habitual resident of a country that is contiguous with the United States’’;

(II) in clause (i), by inserting “and” at the end;

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

(IV) by striking clause (iii);

(iii) in subparagraph (B)—

(I) in the matter preceding clause (i), by striking “(8 U.S.C. 1101 et seq.) may—” and inserting “(8 U.S.C. 1101 et seq.)—”;

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

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

(iv) in subparagraph (C)—

(I) by amending the heading to read as follows: “AGREEMENTS WITH FOREIGN COUNTRIES.—”; and
(II) in the matter preceding clause (i), by striking “The Secretary of State shall negotiate agreements between the United States and countries contiguous to the United States” and inserting “The Secretary of State may negotiate agreements between the United States and any foreign country that the Secretary determines appropriate”;

(B) by redesignating paragraphs (3) through (5) as paragraphs (4) through (6), respectively, and inserting after paragraph (2) the following:

“(3) SPECIAL RULES FOR INTERVIEWING UNACCOMPANIED ALIEN CHILDREN.—An unaccompanied alien child shall be interviewed by a dedicated U.S. Citizenship and Immigration Services immigration officer with specialized training in interviewing child trafficking victims. Such officer shall be in plain clothes and shall not carry a weapon. The interview shall occur in a private room.”; and

(C) in paragraph (6)(D) (as so redesignated)—
(i) in the matter preceding clause (i),
by striking “, except for an unaccompanied
alien child from a contiguous country sub-
ject to exceptions under subsection (a)(2),”
and inserting “who does not meet the cri-
teria listed in paragraph (2)(A)”;

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

(2) in subsection (b)—

(A) in paragraph (2)—

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

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

(B) in paragraph (3), by striking “an un-
accompanied alien child in custody shall” and
all that follows, and inserting the following: “an
unaccompanied alien child in custody—
“(A) in the case of a child who does not meet the criteria listed in subsection (a)(2)(A), shall transfer the custody of such child to the Secretary of Health and Human Services not later than 30 days after determining that such child is an unaccompanied alien child who does not meet such criteria; or

“(B) in the case of child who meets the criteria listed in subsection (a)(2)(A), may transfer the custody of such child to the Secretary of Health and Human Services after determining that such child is an unaccompanied alien child who meets such criteria.”; and

(3) in subsection (e)—

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

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

“(i) INFORMATION TO BE PROVIDED TO HOMELAND SECURITY.—Before placing a child with an individual, the Secretary of Health and Human Services shall provide to the Secretary of Homeland Security, regarding the individual with whom the child will be placed, the following information:
“(I) The name of the individual.
“(II) The social security number of the individual.
“(III) The date of birth of the individual.
“(IV) The location of the individual’s residence where the child will be placed.
“(V) The immigration status of the individual, if known.
“(VI) Contact information for the individual.
“(ii) SPECIAL RULE.—In the case of a child who was apprehended on or after June 15, 2012, and before the date of the enactment of this subparagraph, who the Secretary of Health and Human Services placed with an individual, the Secretary shall provide the information listed in clause (i) to the Secretary of Homeland Security not later than 90 days after such date of enactment.
“(iii) Activities of the Secretary of Homeland Security.—Not later than 30 days after receiving the information
listed in clause (i), the Secretary of Homeland Security shall—

“(I) in the case that the immigration status of an individual with whom a child is placed is unknown, investigate the immigration status of that individual; and

“(II) upon determining that an individual with whom a child is placed is unlawfully present in the United States, initiate removal proceedings pursuant to chapter 4 of title II of the Immigration and Nationality Act (8 U.S.C. 1221 et seq.).”; and

(B) in paragraph (5)—

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

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

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to any unauthorized alien child apprehended on or after June 15, 2012.
SEC. 5502. SPECIAL IMMIGRANT JUVENILE STATUS FOR IMMIGRANTS UNABLE TO REUNITE WITH EITHER PARENT.

Section 101(a)(27)(J)(i) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)(J)(i)) is amended by striking “1 or both of the immigrant’s parents” and inserting “either of the immigrant’s parents”.

SEC. 5503. JURISDICTION OF ASYLUM APPLICATIONS.

Section 208(b)(3) of the Immigration and Nationality Act (8 U.S.C. 1158) is amended by striking subparagraph (C).

SEC. 5504. QUARTERLY REPORT TO CONGRESS.

Not later than January 5, 2019, and every 3 months thereafter—

(1) the Attorney General shall submit a report on—

(A) the total number of asylum cases filed by unaccompanied alien children and completed by an immigration judge during the 3-month period preceding the date of the report, and the percentage of those cases in which asylum was granted; and

(B) the number of unaccompanied alien children who failed to appear for any proceeding before an immigration judge during the
3-month period preceding the date of the report; and

(2) the Secretary of Homeland Security shall submit a report on the total number of applications for asylum, filed by unaccompanied alien children, that were adjudicated during the 3-month period preceding the date of the report and the percentage of those applications that were granted.

SEC. 5505. BIANNUAL REPORT TO CONGRESS.

Not later than January 5, 2019, and every 6 months thereafter, the Attorney General shall submit a report to Congress on each crime for which an unaccompanied alien child is charged or convicted during the previous 6-month period following their release from the custody of the Secretary of Homeland Security pursuant to section 235 of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (8 U.S.C. 1232).

SEC. 5506. CLARIFICATION OF STANDARDS FOR FAMILY DETENTION.

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

“(j) CONSTRUCTION.—
“(1) IN GENERAL.—Notwithstanding any other
provision of law, judicial determination, consent de-
cree, or settlement agreement, the detention of any
alien child who is not an unaccompanied alien child
shall be governed by sections 217, 235, 236, and
241 of the Immigration and Nationality Act (8
U.S.C. 1187, 1225, 1226, and 1231). There exists
no presumption that an alien child who is not an un-
accompanied alien child should not be detained, and
all such determinations shall be in the discretion of
the Secretary of Homeland Security.

“(2) RELEASE OF MINORS OTHER THAN UNAC-
COMPANIED ALIENS.—In no circumstances shall an
alien minor who is not an unaccompanied alien child
be released by the Secretary of Homeland Security
other than to a parent or legal guardian.”.

(b) EFFECTIVE DATE.—The amendment made by
subsection (a) shall take effect on the date of the enact-
ment of this division and shall apply to all actions that
occur before, on, or after the date of the enactment of
this division.
SUBDIVISION 3.—BORDER ENFORCEMENT

SEC. 1100. SHORT TITLE.

This subdivision may be cited as the “Border Security for America Act of 2018”.

TITLE I—BORDER SECURITY

SEC. 1101. DEFINITIONS.

In this title:

(1) Advanced Unattended Surveillance Sensors.—The term “advanced unattended surveillance sensors” means sensors that utilize an onboard computer to analyze detections in an effort to discern between vehicles, humans, and animals, and ultimately filter false positives prior to transmission.

(2) Appropriate Congressional Committee.—The term “appropriate congressional committee” has the meaning given the term in section 2(2) of the Homeland Security Act of 2002 (6 U.S.C. 101(2)).

(3) Commissioner.—The term “Commissioner” means the Commissioner of U.S. Customs and Border Protection.

(4) High Traffic Areas.—The term “high traffic areas” has the meaning given such term in section 102(e)(1) of the Illegal Immigration Reform
and Immigrant Responsibility Act of 1996, as amended by section 1111 of this division.

(5) OPERATIONAL CONTROL.—The term “operational control” has the meaning given such term in section 2(b) of the Secure Fence Act of 2006 (8 U.S.C. 1701 note; Public Law 109–367).

(6) SECRETARY.—The term “Secretary” means the Secretary of Homeland Security.

(7) SITUATIONAL AWARENESS.—The term “situational awareness” has the meaning given such term in section 1092(a)(7) of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328; 6 U.S.C. 223(a)(7)).

(8) SMALL UNMANNED AERIAL VEHICLE.—The term “small unmanned aerial vehicle” has the meaning given the term “small unmanned aircraft” in section 331 of the FAA Modernization and Reform Act of 2012 (Public Law 112–95; 49 U.S.C. 40101 note).

(9) TRANSIT ZONE.—The term “transit zone” has the meaning given such term in section 1092(a)(8) of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328; 6 U.S.C. 223(a)(7)).
(10) **UNMANNED AERIAL SYSTEM.**—The term “unmanned aerial system” has the meaning given the term “unmanned aircraft system” in section 331 of the FAA Modernization and Reform Act of 2012 (Public Law 112–95; 49 U.S.C. 40101 note).

(11) **UNMANNED AERIAL VEHICLE.**—The term “unmanned aerial vehicle” has the meaning given the term “unmanned aircraft” in section 331 of the FAA Modernization and Reform Act of 2012 (Public Law 112–95; 49 U.S.C. 40101 note).

**Subtitle A—Infrastructure and Equipment**

**SEC. 1111. STRENGTHENING THE REQUIREMENTS FOR BARRIERS ALONG THE SOUTHERN BORDER.**

Section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Division C of Public Law 104–208; 8 U.S.C. 1103 note) is amended—

(1) by amending subsection (a) to read as follows:

“(a) **IN GENERAL.**—The Secretary of Homeland Security shall take such actions as may be necessary (including the removal of obstacles to detection of illegal entrants) to design, test, construct, install, deploy, and operate physical barriers, tactical infrastructure, and technology in the vicinity of the United States border to
achieve situational awareness and operational control of
the border and deter, impede, and detect illegal activity
in high traffic areas.”;

(2) in subsection (b)—

(A) in the subsection heading, by striking
“FENCING AND ROAD IMPROVEMENTS” and in-
serting “PHYSICAL BARRIERS”;

(B) in paragraph (1)—

(i) in subparagraph (A)—

(I) by striking “subsection (a)”

and inserting “this section”;

(II) by striking “roads, lighting,
cameras, and sensors” and inserting
“tactical infrastructure, and tech-

ology”; and

(III) by striking “gain” inserting
“achieve situational awareness and”;

and

(ii) by amending subparagraph (B) to

read as follows:

“(B) PHYSICAL BARRIERS AND TACTICAL
INFRASTRUCTURE.—

“(i) IN GENERAL.—Not later than
September 30, 2022, the Secretary of
Homeland Security, in carrying out this
section, shall deploy along the United States border the most practical and effective physical barriers and tactical infrastructure available for achieving situational awareness and operational control of the border.

“(ii) CONSIDERATION FOR CERTAIN PHYSICAL BARRIERS AND TACTICAL INFRASTRUCTURE.—The deployment of physical barriers and tactical infrastructure under this subparagraph shall not apply in any area or region along the border where natural terrain features, natural barriers, or the remoteness of such area or region would make any such deployment ineffective, as determined by the Secretary, for the purposes of achieving situational awareness or operational control of such area or region.”;

(iii) in subparagraph (C)—

(I) by amending clause (i) to read as follows:

“(i) IN GENERAL.—In carrying out this section, the Secretary of Homeland Security shall, before constructing physical
barriers in a specific area or region, consult with the Secretary of the Interior, the Secretary of Agriculture, appropriate representatives of Federal, State, local, and tribal governments, and appropriate private property owners in the United States to minimize the impact on the environment, culture, commerce, and quality of life for the communities and residents located near the sites at which such physical barriers are to be constructed.”;

(II) by redesignating clause (ii) as clause (iii); and

(III) by inserting after clause (i), as amended, the following new clause:

“(ii) NOTIFICATION.—Not later than 60 days after the consultation required under clause (i), the Secretary of Homeland Security shall notify the Committee on Homeland Security of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate of the type of physical barriers, tactical infrastructure, or technology the Secretary has determined is
most practical and effective to achieve situ-
ational awareness and operational control
in a specific area or region and the other
alternatives the Secretary considered be-
fore making such a determination.”; and

(iv) by striking subparagraph (D);

(C) in paragraph (2)—

(i) by striking “Attorney General”
and inserting “Secretary of Homeland Se-
curity”;

(ii) by striking “this subsection” and
inserting “this section”; and

(iii) by striking “construction of
fences” and inserting “the construction of
physical barriers”; and

(D) by amending paragraph (3) to read as
follows:

“(3) AGENT SAFETY.—In carrying out this sec-
tion, the Secretary of Homeland Security, when de-
signing, constructing, and deploying physical bar-
riers, tactical infrastructure, or technology, shall in-
corporate such safety features into such design, con-
struction, or deployment of such physical barriers,
tactical infrastructure, or technology, as the case
may be, that the Secretary determines, in the Sec-
Secretary’s sole discretion, are necessary to maximize
the safety and effectiveness of officers or agents of
the Department of Homeland Security or of any
other Federal agency deployed in the vicinity of such
physical barriers, tactical infrastructure, or techn-
ology.”;

(3) in subsection (c), by amending paragraph
(1) to read as follows:

“(1) In general.—Notwithstanding any other
provision of law, the Secretary of Homeland Security
shall have the authority to waive all legal require-
ments the Secretary, in the Secretary’s sole discre-
dion, determines necessary to ensure the expeditious
design, testing, construction, installation, deploy-
ment, operation, and maintenance of the physical
barriers, tactical infrastructure, and technology
under this section. Any such decision by the Sec-
retary shall be effective upon publication in the Fed-
eral Register.”; and

(4) by adding after subsection (d) the following
new subsections:

“(e) Technology.—Not later than September 30,
2022, the Secretary of Homeland Security, in carrying out
this section, shall deploy along the United States border
the most practical and effective technology available for
achieving situational awareness and operational control of
the border.

“(f) LIMITATION ON REQUIREMENTS.—Nothing in
this section may be construed as requiring the Secretary
of Homeland Security to install tactical infrastructure,
technology, and physical barriers in a particular location
along an international border of the United States, if the
Secretary determines that the use or placement of such
resources is not the most appropriate means to achieve
and maintain situational awareness and operational con-
trol over the international border at such location.

“(g) DEFINITIONS.—In this section:

“(1) HIGH TRAFFIC AREAS.—The term ‘high
traffic areas’ means areas in the vicinity of the
United States border that—

“(A) are within the responsibility of U.S.
Customs and Border Protection; and

“(B) have significant unlawful cross-border
activity, as determined by the Secretary of
Homeland Security.

“(2) OPERATIONAL CONTROL.—The term ‘oper-
alional control’ has the meaning given such term in
section 2(b) of the Secure Fence Act of 2006 (8
“(3) PHYSICAL BARRIERS.—The term ‘physical barriers’ includes reinforced fencing, border wall system, and levee walls.

“(4) SITUATIONAL AWARENESS.—The term ‘situational awareness’ has the meaning given such term in section 1092(a)(7) of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328).

“(5) TACTICAL INFRASTRUCTURE.—The term ‘tactical infrastructure’ includes boat ramps, access gates, checkpoints, lighting, and roads.

“(6) TECHNOLOGY.—The term ‘technology’ includes border surveillance and detection technology, including the following:

“(A) Tower-based surveillance technology.

“(B) Deployable, lighter-than-air ground surveillance equipment.

“(C) Vehicle and Dismount Exploitation Radars (VADER).

“(D) 3-dimensional, seismic acoustic detection and ranging border tunneling detection technology.

“(E) Advanced unattended surveillance sensors.
“(F) Mobile vehicle-mounted and man-portable surveillance capabilities.

“(G) Unmanned aerial vehicles.

“(H) Other border detection, communication, and surveillance technology.

“(7) UNMANNED AERIAL VEHICLES.—The term ‘unmanned aerial vehicle’ has the meaning given the term ‘unmanned aircraft’ in section 331 of the FAA Modernization and Reform Act of 2012 (Public Law 112–95; 49 U.S.C. 40101 note).”.

SEC. 1112. AIR AND MARINE OPERATIONS FLIGHT HOURS.

(a) INCREASED FLIGHT HOURS.—The Secretary, after coordination with the Administrator of the Federal Aviation Administration, shall ensure that not fewer than 95,000 annual flight hours are carried out by Air and Marine Operations of U.S. Customs and Border Protection.

(b) UNMANNED AERIAL SYSTEM.—The Secretary shall ensure that Air and Marine Operations operate unmanned aerial systems on the southern border of the United States for not less than 24 hours per day for five days per week.

(c) CONTRACT AIR SUPPORT AUTHORIZATION.—The Commissioner shall contract for the unfulfilled identified air support mission critical hours, as identified by the Chief of the U.S. Border Patrol.
(d) PRIMARY MISSION.—The Commissioner shall ensure that—

(1) the primary missions for Air and Marine Operations are to directly support U.S. Border Patrol activities along the southern border of the United States and Joint Interagency Task Force South operations in the transit zone; and

(2) the Executive Assistant Commissioner of Air and Marine Operations assigns the greatest priority to support missions established by the Commissioner to carry out the requirements under this division.

(e) HIGH-DEMAND FLIGHT HOUR REQUIREMENTS.—In accordance with subsection (d), the Commissioner shall ensure that U.S. Border Patrol Sector Chiefs—

(1) identify critical flight hour requirements;

and

(2) direct Air and Marine Operations to support requests from Sector Chiefs as their primary mission.

(f) SMALL UNMANNED AERIAL VEHICLES.—

(1) IN GENERAL.—The Chief of the U.S. Border Patrol shall be the executive agent for U.S. Customs and Border Protection’s use of small un-
manned aerial vehicles for the purpose of meeting
the U.S. Border Patrol’s unmet flight hour oper-
tional requirements and to achieve situational
awareness and operational control.

(2) COORDINATION.—In carrying out para-
graph (1), the Chief of the U.S. Border Patrol
shall—

(A) coordinate flight operations with the
Administrator of the Federal Aviation Adminis-
tration to ensure the safe and efficient oper-
ation of the National Airspace System; and

(B) coordinate with the Executive Assist-
ant Commissioner for Air and Marine Oper-
ations of U.S. Customs and Border Protection
to ensure the safety of other U.S. Customs and
Border Protection aircraft flying in the vicinity
of small unmanned aerial vehicles operated by
the U.S. Border Patrol.

(3) CONFORMING AMENDMENT.—Paragraph (3)
of section 411(e) of the Homeland Security Act of
2002 (6 U.S.C. 211(e)) is amended—

(A) in subparagraph (B), by striking
“and” after the semicolon at the end;

(B) by redesignating subparagraph (C) as

subparagraph (D); and
(C) by inserting after subparagraph (B)
the following new subparagraph:

“(C) carry out the small unmanned aerial
vehicle requirements pursuant to subsection (f)
of section 1112 of the Border Security for
America Act of 2018; and”.

(g) SAVING CLAUSE.—Nothing in this section shall
confer, transfer, or delegate to the Secretary, the Commis-

sioner, the Executive Assistant Commissioner for Air and

Marine Operations of U.S. Customs and Border Prote-

tion, or the Chief of the U.S. Border Patrol any authority

of the Secretary of Transportation or the Administrator

of the Federal Aviation Administration relating to the use

of airspace or aviation safety.

SEC. 1113. CAPABILITY DEPLOYMENT TO SPECIFIC SEC-

TORS AND TRANSIT ZONE.

(a) IN GENERAL.—Not later than September 30,

2022, the Secretary, in implementing section 102 of the

Illegal Immigration Reform and Immigrant Responsibility

Act of 1996 (as amended by section 1111 of this division),

and acting through the appropriate component of the De-

partment of Homeland Security, shall deploy to each sec-

tor or region of the southern border and the northern bor-

der, in a prioritized manner to achieve situational aware-
ness and operational control of such borders, the following additional capabilities:

(1) SAN DIEGO SECTOR.—For the San Diego sector, the following:

(A) Tower-based surveillance technology.

(B) Subterranean surveillance and detection technologies.

(C) To increase coastal maritime domain awareness, the following:

(i) Deployable, lighter-than-air surface surveillance equipment.

(ii) Unmanned aerial vehicles with maritime surveillance capability.

(iii) U.S. Customs and Border Protection maritime patrol aircraft.

(iv) Coastal radar surveillance systems.

(v) Maritime signals intelligence capabilities.

(D) Ultralight aircraft detection capabilities.

(E) Advanced unattended surveillance sensors.

(F) A rapid reaction capability supported by aviation assets.
(G) Mobile vehicle-mounted and man-portable surveillance capabilities.

(H) Man-portable unmanned aerial vehicles.

(I) Improved agent communications capabilities.

(2) EL CENTRO SECTOR.—For the El Centro sector, the following:

(A) Tower-based surveillance technology.

(B) Deployable, lighter-than-air ground surveillance equipment.

(C) Man-portable unmanned aerial vehicles.

(D) Ultralight aircraft detection capabilities.

(E) Advanced unattended surveillance sensors.

(F) A rapid reaction capability supported by aviation assets.

(G) Man-portable unmanned aerial vehicles.

(H) Improved agent communications capabilities.

(3) YUMA SECTOR.—For the Yuma sector, the following:
(A) Tower-based surveillance technology.

(B) Deployable, lighter-than-air ground surveillance equipment.

(C) Ultralight aircraft detection capabilities.

(D) Advanced unattended surveillance sensors.

(E) A rapid reaction capability supported by aviation assets.

(F) Mobile vehicle-mounted and man-portable surveillance systems.

(G) Man-portable unmanned aerial vehicles.

(H) Improved agent communications capabilities.

(4) TUCSON SECTOR.—For the Tucson sector, the following:

(A) Tower-based surveillance technology.

(B) Increased flight hours for aerial detection, interdiction, and monitoring operations capability.

(C) Deployable, lighter-than-air ground surveillance equipment.

(D) Ultralight aircraft detection capabilities.
(E) Advanced unattended surveillance sensors.

(F) A rapid reaction capability supported by aviation assets.

(G) Man-portable unmanned aerial vehicles.

(H) Improved agent communications capabilities.

(5) EL PASO SECTOR.—For the El Paso sector, the following:

(A) Tower-based surveillance technology.

(B) Deployable, lighter-than-air ground surveillance equipment.

(C) Ultralight aircraft detection capabilities.

(D) Advanced unattended surveillance sensors.

(E) Mobile vehicle-mounted and man-portable surveillance systems.

(F) A rapid reaction capability supported by aviation assets.

(G) Mobile vehicle-mounted and man-portable surveillance capabilities.

(H) Man-portable unmanned aerial vehicles.
(I) Improved agent communications capabilities.

(6) BIG BEND SECTOR.—For the Big Bend sector, the following:

(A) Tower-based surveillance technology.

(B) Deployable, lighter-than-air ground surveillance equipment.

(C) Improved agent communications capabilities.

(D) Ultralight aircraft detection capabilities.

(E) Advanced unattended surveillance sensors.

(F) A rapid reaction capability supported by aviation assets.

(G) Mobile vehicle-mounted and man-portable surveillance capabilities.

(H) Man-portable unmanned aerial vehicles.

(I) Improved agent communications capabilities.

(7) DEL RIO SECTOR.—For the Del Rio sector, the following:

(A) Tower-based surveillance technology.
(B) Increased monitoring for cross-river dams, culverts, and footpaths.

(C) Improved agent communications capabilities.

(D) Improved maritime capabilities in the Amistad National Recreation Area.

(E) Advanced unattended surveillance sensors.

(F) A rapid reaction capability supported by aviation assets.

(G) Mobile vehicle-mounted and man-portable surveillance capabilities.

(H) Man-portable unmanned aerial vehicles.

(I) Improved agent communications capabilities.

(8) LAREDO SECTOR.—For the Laredo sector, the following:

(A) Tower-based surveillance technology.

(B) Maritime detection resources for the Falcon Lake region.

(C) Increased flight hours for aerial detection, interdiction, and monitoring operations capability.
(D) Increased monitoring for cross-river dams, culverts, and footpaths.

(E) Ultralight aircraft detection capability.

(F) Advanced unattended surveillance sensors.

(G) A rapid reaction capability supported by aviation assets.

(H) Man-portable unmanned aerial vehicles.

(I) Improved agent communications capabilities.

(9) RIO GRANDE VALLEY SECTOR.—For the Rio Grande Valley sector, the following:

(A) Tower-based surveillance technology.

(B) Deployable, lighter-than-air ground surveillance equipment.

(C) Increased flight hours for aerial detection, interdiction, and monitoring operations capability.

(D) Ultralight aircraft detection capability.

(E) Advanced unattended surveillance sensors.

(F) Increased monitoring for cross-river dams, culverts, footpaths.
(G) A rapid reaction capability supported by aviation assets.

(H) Increased maritime interdiction capabilities.

(I) Mobile vehicle-mounted and man-portable surveillance capabilities.

(J) Man-portable unmanned aerial vehicles.

(K) Improved agent communications capabilities.

(10) BLAINE SECTOR.—For the Blaine sector, the following:

(A) Increased flight hours for aerial detection, interdiction, and monitoring operations capability.

(B) Coastal radar surveillance systems.

(C) Increased maritime interdiction capabilities.

(D) Mobile vehicle-mounted and man-portable surveillance capabilities.

(E) Advanced unattended surveillance sensors.

(F) Ultralight aircraft detection capabilities.
(G) Man-portable unmanned aerial vehicles.

(H) Improved agent communications capabilities.

(11) SPOKANE SECTOR.—For the Spokane sector, the following:

(A) Increased flight hours for aerial detection, interdiction, and monitoring operations capability.

(B) Increased maritime interdiction capabilities.

(C) Mobile vehicle-mounted and man-portable surveillance capabilities.

(D) Advanced unattended surveillance sensors.

(E) Ultralight aircraft detection capabilities.

(F) Completion of six miles of the Bog Creek road.

(G) Man-portable unmanned aerial vehicles.

(H) Improved agent communications systems.

(12) HAVRE SECTOR.—For the Havre sector, the following:
(A) Increased flight hours for aerial detection, interdiction, and monitoring operations capability.

(B) Mobile vehicle-mounted and man-portable surveillance capabilities.

(C) Advanced unattended surveillance sensors.

(D) Ultralight aircraft detection capabilities.

(E) Man-portable unmanned aerial vehicles.

(F) Improved agent communications systems.

(13) Grand Forks Sector.—For the Grand Forks sector, the following:

(A) Increased flight hours for aerial detection, interdiction, and monitoring operations capability.

(B) Mobile vehicle-mounted and man-portable surveillance capabilities.

(C) Advanced unattended surveillance sensors.

(D) Ultralight aircraft detection capabilities.
(E) Man-portable unmanned aerial vehicles.

(F) Improved agent communications systems.

(14) DETROIT SECTOR.—For the Detroit sector, the following:

(A) Increased flight hours for aerial detection, interdiction, and monitoring operations capability.

(B) Coastal radar surveillance systems.

(C) Increased maritime interdiction capabilities.

(D) Mobile vehicle-mounted and man-portable surveillance capabilities.

(E) Advanced unattended surveillance sensors.

(F) Ultralight aircraft detection capabilities.

(G) Man-portable unmanned aerial vehicles.

(H) Improved agent communications systems.

(15) BUFFALO SECTOR.—For the Buffalo sector, the following:
(A) Increased flight hours for aerial detection, interdiction, and monitoring operations capability.

(B) Coastal radar surveillance systems.

(C) Increased maritime interdiction capabilities.

(D) Mobile vehicle-mounted and man-portable surveillance capabilities.

(E) Advanced unattended surveillance sensors.

(F) Ultralight aircraft detection capabilities.

(G) Man-portable unmanned aerial vehicles.

(H) Improved agent communications systems.

(16) SWANTON SECTOR.—For the Swanton sector, the following:

(A) Increased flight hours for aerial detection, interdiction, and monitoring operations capability.

(B) Mobile vehicle-mounted and man-portable surveillance capabilities.

(C) Advanced unattended surveillance sensors.
(D) Ultralight aircraft detection capabilities.

(E) Man-portable unmanned aerial vehicles.

(F) Improved agent communications systems.

(17) Houlton Sector.—For the Houlton sector, the following:

(A) Increased flight hours for aerial detection, interdiction, and monitoring operations capability.

(B) Mobile vehicle-mounted and man-portable surveillance capabilities.

(C) Advanced unattended surveillance sensors.

(D) Ultralight aircraft detection capabilities.

(E) Man-portable unmanned aerial vehicles.

(F) Improved agent communications systems.

(18) Transit Zone.—For the transit zone, the following:

(A) Not later than two years after the date of the enactment of this division, an increase in
the number of overall cutter, boat, and aircraft hours spent conducting interdiction operations over the average number of such hours during the preceding three fiscal years.

(B) Increased maritime signals intelligence capabilities.

(C) To increase maritime domain awareness, the following:

(i) Unmanned aerial vehicles with maritime surveillance capability.

(ii) Increased maritime aviation patrol hours.

(D) Increased operational hours for maritime security components dedicated to joint counter-smuggling and interdiction efforts with other Federal agencies, including the Deployable Specialized Forces of the Coast Guard.

(E) Coastal radar surveillance systems with long range day and night cameras capable of providing full maritime domain awareness of the United States territorial waters surrounding Puerto Rico, Mona Island, Desecheo Island, Vieques Island, Culebra Island, Saint Thomas, Saint John, and Saint Croix.
(b) Tactical Flexibility.—

(1) Southern and Northern Land Borders.—

(A) In general.—Beginning on September 30, 2021, or after the Secretary has deployed at least 25 percent of the capabilities required in each sector specified in subsection (a), whichever comes later, the Secretary may deviate from such capability deployments if the Secretary determines that such deviation is required to achieve situational awareness or operational control.

(B) Notification.—If the Secretary exercises the authority described in subparagraph (A), the Secretary shall, not later than 90 days after such exercise, notify the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Homeland Security of the House of Representatives regarding the deviation under such subparagraph that is the subject of such exercise. If the Secretary makes any changes to such deviation, the Secretary shall, not later than 90 days after any such change, notify such committees regarding such change.
(2) TRANSIT ZONE.—

(A) NOTIFICATION.—The Secretary shall notify the Committee on Homeland Security and Governmental Affairs of the Senate, the Committee on Commerce, Science, and Transportation of the Senate, the Committee on Homeland Security of the House of Representatives, and the Committee on Transportation and Infrastructure of the House of Representatives regarding the capability deployments for the transit zone specified in paragraph (18) of subsection (a), including information relating to—

(i) the number and types of assets and personnel deployed; and

(ii) the impact such deployments have on the capability of the Coast Guard to conduct its mission in the transit zone referred to in paragraph (18) of subsection (a).

(B) ALTERATION.—The Secretary may alter the capability deployments referred to in this section if the Secretary—

(i) determines, after consultation with the committees referred to in subpara-
graph (A), that such alteration is necessary; and

(ii) not later than 30 days after making a determination under clause (i), notifies the committees referred to in such subparagraph regarding such alteration, including information relating to—

(I) the number and types of assets and personnel deployed pursuant to such alteration; and

(II) the impact such alteration has on the capability of the Coast Guard to conduct its mission in the transit zone referred to in paragraph (18) of subsection (a).

(e) EXIGENT CIRCUMSTANCES.—

(1) IN GENERAL.—Notwithstanding subsection (b), the Secretary may deploy the capabilities referred to in subsection (a) in a manner that is inconsistent with the requirements specified in such subsection if, after the Secretary has deployed at least 25 percent of such capabilities, the Secretary determines that exigent circumstances demand such an inconsistent deployment or that such an inconsistent
deployment is vital to the national security interests of the United States.

(2) NOTIFICATION.—The Secretary shall notify the Committee on Homeland Security of the House of Representative and the Committee on Homeland Security and Governmental Affairs of the Senate not later than 30 days after making a determination under paragraph (1). Such notification shall include a detailed justification regarding such determination.

SEC. 1114. U.S. BORDER PATROL ACTIVITIES.

The Chief of the U.S. Border Patrol shall prioritize the deployment of U.S. Border Patrol agents to as close to the physical land border as possible, consistent with border security enforcement priorities and accessibility to such areas.

SEC. 1115. BORDER SECURITY TECHNOLOGY PROGRAM MANAGEMENT.

(a) IN GENERAL.—Subtitle C of title IV of the Homeland Security Act of 2002 (6 U.S.C. 231 et seq.) is amended by adding at the end the following new section:

“SEC. 435. BORDER SECURITY TECHNOLOGY PROGRAM MANAGEMENT.

“(a) MAJOR ACQUISITION PROGRAM DEFINED.—In this section, the term ‘major acquisition program’ means an acquisition program of the Department that is esti-
1 mated by the Secretary to require an eventual total ex-
2 penditure of at least $300,000,000 (based on fiscal year
3 2017 constant dollars) over its life cycle cost.

4 “(b) PLANNING DOCUMENTATION.—For each border
5 security technology acquisition program of the Depart-
6 ment that is determined to be a major acquisition pro-
7 gram, the Secretary shall—
8
9 “(1) ensure that each such program has a writ-
10 ten acquisition program baseline approved by the
11 relevant acquisition decision authority;
12
13 “(2) document that each such program is meet-
14 ing cost, schedule, and performance thresholds as
15 specified in such baseline, in compliance with rel-
16 relevant departmental acquisition policies and the Fed-
17 eral Acquisition Regulation; and
18
19 “(3) have a plan for meeting program imple-
20 mentation objectives by managing contractor per-
21 formance.
22
23 “(c) ADHERENCE TO STANDARDS.—The Secretary,
24 acting through the Under Secretary for Management and
25 the Commissioner of U.S. Customs and Border Protection,
26 shall ensure border security technology acquisition pro-
27 gram managers who are responsible for carrying out this
28 section adhere to relevant internal control standards iden-
29 tified by the Comptroller General of the United States.
The Commissioner shall provide information, as needed, to assist the Under Secretary in monitoring management of border security technology acquisition programs under this section.

“(d) PLAN.—The Secretary, acting through the Under Secretary for Management, in coordination with the Under Secretary for Science and Technology and the Commissioner of U.S. Customs and Border Protection, shall submit to the appropriate congressional committees a plan for testing, evaluating, and using independent verification and validation resources for border security technology. Under the plan, new border security technologies shall be evaluated through a series of assessments, processes, and audits to ensure—

“(1) compliance with relevant departmental acquisition policies and the Federal Acquisition Regulation; and

“(2) the effective use of taxpayer dollars.”.

(b) CLERICAL AMENDMENT.—The table of contents in section 1(b) of the Homeland Security Act of 2002 is amended by inserting after the item relating to section 433 the following new item:

“Sec. 435. Border security technology program management.”.

(e) PROHIBITION ON ADDITIONAL AUTHORIZATION OF APPROPRIATIONS.—No additional funds are authorized to be appropriated to carry out section 435 of the
Homeland Security Act of 2002, as added by subsection (a). Such section shall be carried out using amounts otherwise authorized for such purposes.

SEC. 1116. REIMBURSEMENT OF STATES FOR DEPLOYMENT OF THE NATIONAL GUARD AT THE SOUTHERN BORDER.

(a) IN GENERAL.—With the approval of the Secretary and the Secretary of Defense, the Governor of a State may order any units or personnel of the National Guard of such State to perform operations and missions under section 502(f) of title 32, United States Code, along the southern border for the purposes of assisting U.S. Customs and Border Protection to achieve situational awareness and operational control of the border.

(b) ASSIGNMENT OF OPERATIONS AND MISSIONS.—

(1) IN GENERAL.—National Guard units and personnel deployed under subsection (a) may be assigned such operations and missions specified in subsection (c) as may be necessary to secure the southern border.

(2) NATURE OF DUTY.—The duty of National Guard personnel performing operations and missions described in paragraph (1) shall be full-time duty under title 32, United States Code.
(c) RANGE OF OPERATIONS AND MISSIONS.—The operations and missions assigned under subsection (b) shall include the temporary authority to—

(1) construct reinforced fencing or other physical barriers;

(2) operate ground-based surveillance systems;

(3) operate unmanned and manned aircraft;

(4) provide radio communications interoperability between U.S. Customs and Border Protection and State, local, and tribal law enforcement agencies;

(5) construct checkpoints along the Southern border to bridge the gap to long-term permanent checkpoints; and

(6) provide intelligence support.

(d) MATERIAL AND LOGISTICAL SUPPORT.—The Secretary of Defense shall deploy such materiel, equipment, and logistical support as may be necessary to ensure success of the operations and missions conducted by the National Guard under this section.

(e) REIMBURSEMENT REQUIRED.—

(1) IN GENERAL.—The Secretary of Defense shall reimburse States for the cost of the deployment of any units or personnel of the National Guard to perform operations and missions in full-time State
Active Duty in support of a southern border mission.

The Secretary of Defense may not seek reimbursement from the Secretary for any reimbursements paid to States for the costs of such deployments.

(2) LIMITATION.—The total amount of reimbursements under this section may not exceed $35,000,000 for any fiscal year.

SEC. 1117. NATIONAL GUARD SUPPORT TO SECURE THE SOUTHERN BORDER.

(a) IN GENERAL.—The Secretary of Defense, with the concurrence of the Secretary, shall provide assistance to U.S. Customs and Border Protection for purposes of increasing ongoing efforts to secure the southern border.

(b) TYPES OF ASSISTANCE AUTHORIZED.—The assistance provided under subsection (a) may include—

(1) deployment of manned aircraft, unmanned aerial surveillance systems, and ground-based surveillance systems to support continuous surveillance of the southern border; and

(2) intelligence analysis support.

(c) MATERIEL AND LOGISTICAL SUPPORT.—The Secretary of Defense may deploy such materiel, equipment, and logistics support as may be necessary to ensure the effectiveness of the assistance provided under subsection (a).
(d) Authorization of Appropriations.—There are authorized to be appropriated for the Department of Defense $75,000,000 to provide assistance under this section. The Secretary of Defense may not seek reimbursement from the Secretary for any assistance provided under this section.

(e) Reports.—

(1) In general.—Not later than 90 days after the date of the enactment of this division and annually thereafter, the Secretary of Defense shall submit a report to the appropriate congressional defense committees (as defined in section 101(a)(16) of title 10, United States Code) regarding any assistance provided under subsection (a) during the period specified in paragraph (3).

(2) Elements.—Each report under paragraph (1) shall include, for the period specified in paragraph (3), a description of—

(A) the assistance provided;

(B) the sources and amounts of funds used to provide such assistance; and

(C) the amounts obligated to provide such assistance.

(3) Period specified.—The period specified in this paragraph is—
(A) in the case of the first report required under paragraph (1), the 90-day period beginning on the date of the enactment of this division; and

(B) in the case of any subsequent report submitted under paragraph (1), the calendar year for which the report is submitted.

SEC. 1118. PROHIBITIONS ON ACTIONS THAT IMPEDE BORDER SECURITY ON CERTAIN FEDERAL LAND.

(a) Prohibition on Interference With U.S. Customs and Border Protection.—

(1) In general.—The Secretary concerned may not impede, prohibit, or restrict activities of U.S. Customs and Border Protection on covered Federal land to carry out the activities described in subsection (b).

(2) Applicability.—The authority of U.S. Customs and Border Protection to conduct activities described in subsection (b) on covered Federal land applies without regard to whether a state of emergency exists.

(b) Authorized Activities of U.S. Customs and Border Protection.—

(1) In general.—U.S. Customs and Border Protection shall have immediate access to covered
Federal land to conduct the activities described in paragraph (2) on such land to prevent all unlawful entries into the United States, including entries by terrorists, unlawful aliens, instruments of terrorism, narcotics, and other contraband through the southern border or the northern border.

(2) Activities described.—The activities described in this paragraph are—

(A) the execution of search and rescue operations;

(B) the use of motorized vehicles, foot patrols, and horseback to patrol the border area, apprehend illegal entrants, and rescue individuals; and

(C) the design, testing, construction, installation, deployment, and operation of physical barriers, tactical infrastructure, and technology pursuant to section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (as amended by section 1111 of this division).

(c) Clarification relating to waiver authority.—

(1) In general.—The activities of U.S. Customs and Border Protection described in subsection
(b)(2) may be carried out without regard to the provisions of law specified in paragraph (2).

(2) PROVISIONS OF LAW SPECIFIED.—The provisions of law specified in this section are all Federal, State, or other laws, regulations, and legal requirements of, deriving from, or related to the subject of, the following laws:


(C) The Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) (commonly referred to as the “Clean Water Act”).

(D) Division A of subtitle III of title 54, United States Code (54 U.S.C. 300301 et seq.) (formerly known as the “National Historic Preservation Act”).


(F) The Clean Air Act (42 U.S.C. 7401 et seq.).

(H) The Safe Drinking Water Act (42 U.S.C. 300f et seq.).
(J) The Solid Waste Disposal Act (42 U.S.C. 6901 et seq.).
(L) Chapter 3125 of title 54, United States Code (formerly known as the “Archaeological and Historic Preservation Act”).
(M) The Antiquities Act (16 U.S.C. 431 et seq.).
(N) Chapter 3203 of title 54, United States Code (formerly known as the “Historic Sites, Buildings, and Antiquities Act”).
(O) The Wild and Scenic Rivers Act (16 U.S.C. 1271 et seq.).
(Q) The Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.).
(R) The Wilderness Act (16 U.S.C. 1131 et seq.).


(V) The Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.).

(W) Subchapter II of chapter 5, and chapter 7, of title 5, United States Code (commonly known as the “Administrative Procedure Act”).

(X) The Otay Mountain Wilderness Act of 1999 (Public Law 106–145).

(Y) Sections 102(29) and 103 of the California Desert Protection Act of 1994 (Public Law 103–433).

(Z) Division A of subtitle I of title 54, United States Code (formerly known as the “National Park Service Organic Act”).

(AA) The National Park Service General Authorities Act (Public Law 91–383, 16 U.S.C. 1a–1 et seq.).
291

(BB) Sections 401(7), 403, and 404 of the National Parks and Recreation Act of 1978 (Public Law 95–625).

(CC) Sections 301(a) through (f) of the Arizona Desert Wilderness Act (Public Law 101–628).


(EE) The Eagle Protection Act (16 U.S.C. 668 et seq.).


(3) APPLICABILITY OF WAIVER TO SUCCESSOR LAWS.—If a provision of law specified in paragraph (2) was repealed and incorporated into title 54, United States Code, after April 1, 2008, and before
the date of the enactment of this division, the waiver
described in paragraph (1) shall apply to the provi-
sion of such title that corresponds to the provision
of law specified in paragraph (2) to the same extent
the waiver applied to that provision of law.

(4) SAVINGS CLAUSE.—The waiver authority
under this subsection may not be construed as af-
fecting, negating, or diminishing in any manner the
applicability of section 552 of title 5, United States
Code (commonly referred to as the ‘‘Freedom of In-
formation Act’’), in any relevant matter.

(d) PROTECTION OF LEGALUSES.—This section may
not be construed to provide—

(1) authority to restrict legal uses, such as
grazing, hunting, mining, or recreation or the use of
backcountry airstrips, on land under the jurisdiction
of the Secretary of the Interior or the Secretary of
Agriculture; or

(2) any additional authority to restrict legal ac-
cess to such land.

(e) EFFECT ON STATE AND PRIVATE LAND.—This
section shall—

(1) have no force or effect on State lands or
private lands; and
(2) not provide authority on or access to State lands or private lands.

(f) TRIBAL SOVEREIGNTY.—Nothing in this section may be construed to supersede, replace, negate, or diminish treaties or other agreements between the United States and Indian tribes.

(g) MEMORANDA OF UNDERSTANDING.—The requirements of this section shall not apply to the extent that such requirements are incompatible with any memorandum of understanding or similar agreement entered into between the Commissioner and a National Park Unit before the date of the enactment of this division.

(h) DEFINITIONS.—In this section:

(1) COVERED FEDERAL LAND.—The term “covered Federal land” includes all land under the control of the Secretary concerned that is located within 100 miles of the southern border or the northern border.

(2) SECRETARY CONCERNED.—The term “Secretary concerned” means—

(A) with respect to land under the jurisdiction of the Department of Agriculture, the Secretary of Agriculture; and
(B) with respect to land under the jurisdiction of the Department of the Interior, the Secretary of the Interior.

SEC. 1119. LANDOWNER AND RANCHER SECURITY ENHANCEMENT.

(a) ESTABLISHMENT OF NATIONAL BORDER SECURITY ADVISORY COMMITTEE.—The Secretary shall establish a National Border Security Advisory Committee, which—

(1) may advise, consult with, report to, and make recommendations to the Secretary on matters relating to border security matters, including—

(A) verifying security claims and the border security metrics established by the Department of Homeland Security under section 1092 of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328; 6 U.S.C. 223); and

(B) discussing ways to improve the security of high traffic areas along the northern border and the southern border; and

(2) may provide, through the Secretary, recommendations to Congress.

(b) CONSIDERATION OF VIEWS.—The Secretary shall consider the information, advice, and recommendations of
the National Border Security Advisory Committee in form-
ulating policy regarding matters affecting border secu-

(c) MEMBERSHIP.—The National Border Security
Advisory Committee shall consist of at least one member
from each State who—

(1) has at least five years practical experience
in border security operations; or

(2) lives and works in the United States within
80 miles from the southern border or the northern
border.

(d) NONAPPLICABILITY OF FEDERAL ADVISORY
COMMITTEE ACT.—The Federal Advisory Committee Act
(5 U.S.C. App.) shall not apply to the National Border
Security Advisory Committee.

SEC. 1120. ERADICATION OF CARRIZO CANE AND SALT
CEDAR.

(a) IN GENERAL.—Not later than September 30,
2022, the Secretary, after coordinating with the heads of
the relevant Federal, State, and local agencies, shall begin
eradicating the carrizo cane plant and any salt cedar along
the Rio Grande River that impedes border security oper-
ations.

(b) EXTENT.—The waiver authority under subsection
c(e) of section 102 of the Illegal Immigration Reform and
Immigrant Responsibility Act of 1996 (8 U.S.C. 1103 note), as amended by section 1111 of this division, shall extend to activities carried out pursuant to this section.

SEC. 1121. SOUTHERN BORDER THREAT ANALYSIS.

(a) Threat Analysis.—

(1) Requirement.—Not later than 180 days after the date of the enactment of this division, the Secretary shall submit to the Committee on Homeland Security of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate a Southern border threat analysis.

(2) Contents.—The analysis submitted under paragraph (1) shall include an assessment of—

(A) current and potential terrorism and criminal threats posed by individuals and organized groups seeking—

(i) to unlawfully enter the United States through the Southern border; or

(ii) to exploit security vulnerabilities along the Southern border;

(B) improvements needed at and between ports of entry along the Southern border to prevent terrorists and instruments of terror from entering the United States;
(C) gaps in law, policy, and coordination between State, local, or tribal law enforcement, international agreements, or tribal agreements that hinder effective and efficient border security, counterterrorism, and anti-human smuggling and trafficking efforts;

(D) the current percentage of situational awareness achieved by the Department along the Southern border;

(E) the current percentage of operational control achieved by the Department on the Southern border; and

(F) traveler crossing times and any potential security vulnerability associated with prolonged wait times.

(3) Analysis Requirements.—In compiling the Southern border threat analysis required under this subsection, the Secretary shall consider and examine—

(A) the technology needs and challenges, including such needs and challenges identified as a result of previous investments that have not fully realized the security and operational benefits that were sought;
(B) the personnel needs and challenges, including such needs and challenges associated with recruitment and hiring;

(C) the infrastructure needs and challenges;

(D) the roles and authorities of State, local, and tribal law enforcement in general border security activities;

(E) the status of coordination among Federal, State, local, tribal, and Mexican law enforcement entities relating to border security;

(F) the terrain, population density, and climate along the Southern border; and

(G) the international agreements between the United States and Mexico related to border security.

(4) CLASSIFIED FORM.—To the extent possible, the Secretary shall submit the Southern border threat analysis required under this subsection in unclassified form, but may submit a portion of the threat analysis in classified form if the Secretary determines such action is appropriate.

(b) U.S. BORDER PATROL STRATEGIC PLAN.—

(1) IN GENERAL.—Not later than 180 days after the submission of the threat analysis required
under subsection (a) or June 30, 2018, and every five years thereafter, the Secretary, acting through the Chief of the U.S. Border Patrol, shall issue a Border Patrol Strategic Plan.

(2) CONTENTS.—The Border Patrol Strategic Plan required under this subsection shall include a consideration of—

(A) the Southern border threat analysis required under subsection (a), with an emphasis on efforts to mitigate threats identified in such threat analysis;

(B) efforts to analyze and disseminate border security and border threat information between border security components of the Department and other appropriate Federal departments and agencies with missions associated with the Southern border;

(C) efforts to increase situational awareness, including—

(i) surveillance capabilities, including capabilities developed or utilized by the Department of Defense, and any appropriate technology determined to be excess by the Department of Defense; and
(ii) the use of manned aircraft and unmanned aerial systems, including camera and sensor technology deployed on such assets;

(D) efforts to detect and prevent terrorists and instruments of terrorism from entering the United States;

(E) efforts to detect, interdict, and disrupt aliens and illicit drugs at the earliest possible point;

(F) efforts to focus intelligence collection to disrupt transnational criminal organizations outside of the international and maritime borders of the United States;

(G) efforts to ensure that any new border security technology can be operationally integrated with existing technologies in use by the Department;

(H) any technology required to maintain, support, and enhance security and facilitate trade at ports of entry, including nonintrusive detection equipment, radiation detection equipment, biometric technology, surveillance systems, and other sensors and technology that the Secretary determines to be necessary;
(I) operational coordination unity of effort initiatives of the border security components of the Department, including any relevant task forces of the Department;

(J) lessons learned from Operation Jumpstart and Operation Phalanx;

(K) cooperative agreements and information sharing with State, local, tribal, territorial, and other Federal law enforcement agencies that have jurisdiction on the Northern border or the Southern border;

(L) border security information received from consultation with State, local, tribal, territorial, and Federal law enforcement agencies that have jurisdiction on the Northern border or the Southern border, or in the maritime environment, and from border community stakeholders (including through public meetings with such stakeholders), including representatives from border agricultural and ranching organizations and representatives from business and civic organizations along the Northern border or the Southern border;

(M) staffing requirements for all departmental border security functions;
(N) a prioritized list of departmental research and development objectives to enhance the security of the Southern border;

(O) an assessment of training programs, including training programs for—

(i) identifying and detecting fraudulent documents;

(ii) understanding the scope of enforcement authorities and the use of force policies; and

(iii) screening, identifying, and addressing vulnerable populations, such as children and victims of human trafficking;

and

(P) an assessment of how border security operations affect border crossing times.

SEC. 1122. AMENDMENTS TO U.S. CUSTOMS AND BORDER PROTECTION.

(a) DUTIES.—Subsection (c) of section 411 of the Homeland Security Act of 2002 (6 U.S.C. 211) is amended—

(1) in paragraph (18), by striking “and” after the semicolon at the end;

(2) by redesignating paragraph (19) as paragraph (21); and
(3) by inserting after paragraph (18) the following new paragraphs:

“(19) administer the U.S. Customs and Border Protection public private partnerships under subtitle G;


(b) Office of Field Operations Staffing.—

Subparagraph (A) of section 411(g)(5) of the Homeland Security Act of 2002 (6 U.S.C. 211(g)(5)) is amended by inserting before the period at the end the following: “compared to the number indicated by the current fiscal year work flow staffing model”.

(c) Implementation Plan.—Subparagraph (B) of section 814(e)(1) of the Preelection Authorization Act of 2015 (19 U.S.C. 4433(e)(1); enacted as subtitle B of title VIII of the Trade Facilitation and Trade Enforcement Act of 2015; 19 U.S.C. 4301 et seq.) is amended to read as follows:

“(B) a port of entry vacancy rate which compares the number of officers identified in subparagraph (A) with the number of officers
at the port at which such officer is currently as-
signed.”.

(d) DEFINITION.—Subsection (r) of section 411 of the Homeland Security Act of 2002 (6 U.S.C. 211) is amended—

(1) by striking “this section, the terms” and in-
serting the following: “this section:

“(1) the terms”; 

(2) in paragraph (1), as added by subparagraph 
(A), by striking the period at the end and inserting

“; and”; and

(3) by adding at the end the following new

paragraph:

“(2) the term ‘unmanned aerial systems’ has the meaning given the term ‘unmanned aircraft sys-
tem’ in section 331 of the FAA Modernization and Reform Act of 2012 (Public Law 112–95; 49 U.S.C. 40101 note).”.

SEC. 1123. AGENT AND OFFICER TECHNOLOGY USE.

In carrying out section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (as 
amended by section 1111 of this division) and section 
1113 of this division, the Secretary shall, to the greatest extent practicable, ensure that technology deployed to gain situational awareness and operational control of the bor-
der be provided to front-line officers and agents of the Department of Homeland Security.

SEC. 1124. INTEGRATED BORDER ENFORCEMENT TEAMS.

(a) In General.—Subtitle C of title IV of the Homeland Security Act of 2002 (6 U.S.C. 231 et seq.), as amended by section 1115 of this division, is further amended by adding at the end the following new section:

“SEC. 436. INTEGRATED BORDER ENFORCEMENT TEAMS.

“(a) Establishment.—The Secretary shall establish within the Department a program to be known as the Integrated Border Enforcement Team program (referred to in this section as ‘IBET’).

“(b) Purpose.—The Secretary shall administer the IBET program in a manner that results in a cooperative approach between the United States and Canada to—

“(1) strengthen security between designated ports of entry;

“(2) detect, prevent, investigate, and respond to terrorism and violations of law related to border security;

“(3) facilitate collaboration among components and offices within the Department and international partners;

“(4) execute coordinated activities in furtherance of border security and homeland security; and
“(5) enhance information-sharing, including the dissemination of homeland security information among such components and offices.

“(c) COMPOSITION AND LOCATION OF IBETS.—

“(1) COMPOSITION.—IBETs shall be led by the United States Border Patrol and may be comprised of personnel from the following:

“(A) Other subcomponents of U.S. Customs and Border Protection.

“(B) U.S. Immigration and Customs Enforcement, led by Homeland Security Investigations.

“(C) The Coast Guard, for the purpose of securing the maritime borders of the United States.

“(D) Other Department personnel, as appropriate.

“(E) Other Federal departments and agencies, as appropriate.

“(F) Appropriate State law enforcement agencies.

“(G) Foreign law enforcement partners.

“(H) Local law enforcement agencies from affected border cities and communities.
“(I) Appropriate tribal law enforcement agencies.

“(2) LOCATION.—The Secretary is authorized to establish IBETs in regions in which such teams can contribute to IBET missions, as appropriate. When establishing an IBET, the Secretary shall consider the following:

“(A) Whether the region in which the IBET would be established is significantly impacted by cross-border threats.

“(B) The availability of Federal, State, local, tribal, and foreign law enforcement resources to participate in an IBET.

“(C) Whether, in accordance with paragraph (3), other joint cross-border initiatives already take place within the region in which the IBET would be established, including other Department cross-border programs such as the Integrated Cross-Border Maritime Law Enforcement Operation Program established under section 711 of the Coast Guard and Maritime Transportation Act of 2012 (46 U.S.C. 70101 note) or the Border Enforcement Security Task Force established under section 432.
“(3) Duplication of Efforts.—In determining whether to establish a new IBET or to expand an existing IBET in a given region, the Secretary shall ensure that the IBET under consideration does not duplicate the efforts of other existing interagency task forces or centers within such region, including the Integrated Cross-Border Maritime Law Enforcement Operation Program established under section 711 of the Coast Guard and Maritime Transportation Act of 2012 (46 U.S.C. 70101 note) or the Border Enforcement Security Task Force established under section 432.

“(d) Operation.—

“(1) In General.—After determining the regions in which to establish IBETs, the Secretary may—

“(A) direct the assignment of Federal personnel to such IBETs; and

“(B) take other actions to assist Federal, State, local, and tribal entities to participate in such IBETs, including providing financial assistance, as appropriate, for operational, administrative, and technological costs associated with such participation.
“(2) LIMITATION.—Coast Guard personnel assigned under paragraph (1) may be assigned only for the purposes of securing the maritime borders of the United States, in accordance with subsection (c)(1)(C).

“(e) COORDINATION.—The Secretary shall coordinate the IBET program with other similar border security and antiterrorism programs within the Department in accordance with the strategic objectives of the Cross-Border Law Enforcement Advisory Committee.

“(f) MEMORANDA OF UNDERSTANDING.—The Secretary may enter into memoranda of understanding with appropriate representatives of the entities specified in subsection (c)(1) necessary to carry out the IBET program.

“(g) REPORT.—Not later than 180 days after the date on which an IBET is established and biannually thereafter for the following six years, the Secretary shall submit to the appropriate congressional committees, including the Committee on Homeland Security of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate, and in the case of Coast Guard personnel used to secure the maritime borders of the United States, additionally to the Committee on Transportation and Infrastructure of the House of Representatives, a report that—
“(1) describes the effectiveness of IBETs in fulfilling the purposes specified in subsection (b);

“(2) assess the impact of certain challenges on the sustainment of cross-border IBET operations, including challenges faced by international partners;

“(3) addresses ways to support joint training for IBET stakeholder agencies and radio interoperability to allow for secure cross-border radio communications; and

“(4) assesses how IBETs, Border Enforcement Security Task Forces, and the Integrated Cross-Border Maritime Law Enforcement Operation Program can better align operations, including interdiction and investigation activities.”.

(b) CLERICAL AMENDMENT.—The table of contents in section 1(b) of the Homeland Security Act of 2002 is amended by adding after the item relating to section 435 the following new item:

“Sec. 436. Integrated Border Enforcement Teams.”.

SEC. 1125. TUNNEL TASK FORCES.

The Secretary is authorized to establish Tunnel Task Forces for the purposes of detecting and remediating tunnels that breach the international border of the United States.
SEC. 1126. PILOT PROGRAM ON USE OF ELECTROMAGNETIC SPECTRUM IN SUPPORT OF BORDER SECURITY OPERATIONS.

(a) IN GENERAL.—The Commissioner of U.S. Customs and Border Protection, in consultation with the Assistant Secretary of Commerce for Communications and Information, shall conduct a pilot program to test and evaluate the use of electromagnetic spectrum by U.S. Customs and Border Protection in support of border security operations through—

(1) ongoing management and monitoring of spectrum to identify threats such as unauthorized spectrum use, and the jamming and hacking of United States communications assets, by persons engaged in criminal enterprises;

(2) automated spectrum management to enable greater efficiency and speed for U.S. Customs and Border Protection in addressing emerging challenges in overall spectrum use on the United States border; and

(3) coordinated use of spectrum resources to better facilitate interoperability and interagency cooperation and interdiction efforts at or near the United States border.

(b) REPORT TO CONGRESS.—Not later than 180 days after the conclusion of the pilot program conducted under
subsection (a), the Commissioner of U.S. Customs and Border Protection shall submit to the Committee on Homeland Security and the Committee on Energy and Commerce of the House of Representatives and the Committee on Homeland Security and Governmental Affairs and the Committee on Commerce, Science, and Transportation of the Senate a report on the findings and data derived from such program.

SEC. 1127. HOMELAND SECURITY FOREIGN ASSISTANCE.

(a) In General.—Subtitle C of title IV of the Homeland Security Act of 2002 (6 U.S.C. 231 et seq.), as amended by sections 1115 and 1124 of this division, is further amended by adding at the end the following new section:

“SEC. 437. SECURITY ASSISTANCE.

“(a) In General.—The Secretary, with the concurrence of the Secretary of State, may provide to a foreign government, financial assistance and, with or without reimbursement, security assistance, including equipment, training, maintenance, supplies, and sustainment support.

“(b) Determination.—The Secretary may only provide financial assistance or security assistance pursuant to subsection (a) if the Secretary determines that such assistance would enhance the recipient government’s capacity to—
“(1) mitigate the risk or threat of transnational organized crime and terrorism;

“(2) address irregular migration flows that may affect the United States, including any detention or removal operations of the recipient government; or

“(3) protect and expedite legitimate trade and travel.

“(c) LIMITATION ON TRANSFER.—The Secretary may not—

“(1) transfer any equipment or supplies that are designated as a munitions item or controlled on the United States Munitions List, pursuant to section 38 of the Foreign Military Sales Act (22 U.S.C. 2778); or

“(2) transfer any vessel or aircraft pursuant to this section.

“(d) RELATED TRAINING.—In conjunction with a transfer of equipment pursuant to subsection (a), the Secretary may provide such equipment-related training and assistance as the Secretary determines necessary.

“(e) MAINTENANCE OF TRANSFERRED EQUIPMENT.—The Secretary may provide for the maintenance of transferred equipment through service contracts or other means, with or without reimbursement, as the Secretary determines necessary.
“(f) **Reimbursement of Expenses.**—

“(1) **In General.**—The Secretary may collect payment from the receiving entity for the provision of security assistance under this section, including equipment, training, maintenance, supplies, sustainment support, and related shipping costs.

“(2) **Transfer.**—Notwithstanding any other provision of law, to the extent the Secretary does not collect payment pursuant to paragraph (1), any amounts appropriated or otherwise made available to the Department of Homeland Security may be transferred to the account that finances the security assistance provided pursuant to subsection (a).

“(g) **Receipts Credited as Offsetting Collections.**—Notwithstanding section 3302 of title 31, United States Code, any reimbursement collected pursuant to subsection (f) shall—

“(1) be credited as offsetting collections to the account that finances the security assistance under this section for which such reimbursement is received; and

“(2) remain available until expended for the purpose of carrying out this section.
“(h) RULE OF CONSTRUCTION.—Nothing in this section may be construed as affecting, augmenting, or diminishing the authority of the Secretary of State.”.

(b) CLERICAL AMENDMENT.—The table of contents in section 1(b) of the Homeland Security Act of 2002 is amended by inserting after the item relating to section 436 the following new item:

“Sec. 437. Security assistance.”.

Subtitle B—Personnel

SEC. 1131. ADDITIONAL U.S. CUSTOMS AND BORDER PROTECTION AGENTS AND OFFICERS.

(a) BORDER PATROL AGENTS.—Not later than September 30, 2022, the Commissioner shall hire, train, and assign sufficient agents to maintain an active duty presence of not fewer than 26,370 full-time equivalent agents.

(b) CBP OFFICERS.—In addition to positions authorized before the date of the enactment of this division and any existing officer vacancies within U.S. Customs and Border Protection as of such date, the Commissioner shall hire, train, and assign to duty, not later than September 30, 2022—

(1) sufficient U.S. Customs and Border Protection officers to maintain an active duty presence of not fewer than 27,725 full-time equivalent officers; and
(2) 350 full-time support staff distributed among all United States ports of entry.

(c) AIR AND MARINE OPERATIONS.—Not later than September 30, 2022, the Commissioner shall hire, train, and assign sufficient agents for Air and Marine Operations of U.S. Customs and Border Protection to maintain not fewer than 1,675 full-time equivalent agents and not fewer than 264 Marine and Air Interdiction Agents for southern border air and maritime operations.

(d) U.S. CUSTOMS AND BORDER PROTECTION K–9 UNITS AND HANDLERS.—

(1) K–9 UNITS.—Not later than September 30, 2022, the Commissioner shall deploy not fewer than 300 new K–9 units, with supporting officers of U.S. Customs and Border Protection and other required staff, at land ports of entry and checkpoints, on the southern border and the northern border.

(2) USE OF CANINES.—The Commissioner shall prioritize the use of canines at the primary inspection lanes at land ports of entry and checkpoints.

(e) U.S. CUSTOMS AND BORDER PROTECTION HORSEBACK UNITS.—

(1) INCREASE.—Not later than September 30, 2022, the Commissioner shall increase the number of horseback units, with supporting officers of U.S.
Customs and Border Protection and other required staff, by not fewer than 100 officers and 50 horses for security patrol along the Southern border.

(2) HORSEBACK UNIT SUPPORT.—The Commissioner shall construct new stables, maintain and improve existing stables, and provide other resources needed to maintain the health and well-being of the horses that serve in the horseback units of U.S. Customs and Border Protection.

(f) U.S. CUSTOMS AND BORDER PROTECTION SEARCH TRAUMA AND RESCUE TEAMS.—Not later than September 30, 2022, the Commissioner shall increase by not fewer than 50 the number of officers engaged in search and rescue activities along the southern border.

(g) U.S. CUSTOMS AND BORDER PROTECTION TUNNEL DETECTION AND TECHNOLOGY PROGRAM.—Not later than September 30, 2022, the Commissioner shall increase by not fewer than 50 the number of officers assisting task forces and activities related to deployment and operation of border tunnel detection technology and apprehensions of individuals using such tunnels for crossing into the United States, drug trafficking, or human smuggling.

(h) AGRICULTURAL SPECIALISTS.—Not later than September 30, 2022, the Secretary shall hire, train, and
assign to duty, in addition to the officers and agents au-
authorized under subsections (a) through (g), 631 U.S. Cus-
toms and Border Protection agricultural specialists to 
ports of entry along the southern border and the northern 
border.

(i) Office of Professional Responsibility.—
Not later than September 30, 2022, the Commissioner 
shall hire, train, and assign sufficient Office of Profes-
sional Responsibility special agents to maintain an active 
duty presence of not fewer than 550 full-time equivalent 
special agents.

(j) U.S. Customs and Border Protection Of-
rice of Intelligence.—Not later than September 30, 
2022, the Commissioner shall hire, train, and assign suffi-
cient Office of Intelligence personnel to maintain not fewer 
than 700 full-time equivalent employees.

(k) GAO Report.—If the staffing levels required 
under this section are not achieved by September 30, 
2022, the Comptroller General of the United States shall 
conduct a review of the reasons why such levels were not 
achieved.
SEC. 1132. U.S. CUSTOMS AND BORDER PROTECTION RETENTION INCENTIVES.

(a) IN GENERAL.—Chapter 97 of title 5, United States Code, is amended by adding at the end the following:

“§ 9702. U.S. Customs and Border Protection temporary employment authorities

“(a) DEFINITIONS.—In this section—

“(1) the term ‘CBP employee’ means an employee of U.S. Customs and Border Protection described under any of subsections (a) through (h) of section 1131 of the Border Security for America Act of 2018;

“(2) the term ‘Commissioner’ means the Commissioner of U.S. Customs and Border Protection;

“(3) the term ‘Director’ means the Director of the Office of Personnel Management;

“(4) the term ‘Secretary’ means the Secretary of Homeland Security; and

“(5) the term ‘appropriate congressional committees’ means the Committee on Oversight and Government Reform, the Committee on Homeland Security, and the Committee on Ways and Means of the House of Representatives and the Committee on Homeland Security and Governmental Affairs and the Committee on Finance of the Senate.
“(b) DIRECT HIRE AUTHORITY; RECRUITMENT AND
RELOCATION BONUSES; RETENTION BONUSES.—

“(1) STATEMENT OF PURPOSE AND LIMITATION.—The purpose of this subsection is to allow
U.S. Customs and Border Protection to expeditiously meet the hiring goals and staffing levels re-
quired by section 1131 of the Border Security for
America Act of 2018. The Secretary shall not use
this authority beyond meeting the requirements of
such section.

“(2) DIRECT HIRE AUTHORITY.—The Secretary
may appoint, without regard to any provision of sec-
tions 3309 through 3319, candidates to positions in
the competitive service as CBP employees if the Sec-
retary has given public notice for the positions.

“(3) RECRUITMENT AND RELOCATION BON-
USES.—The Secretary may pay a recruitment or
relocation bonus of up to 50 percent of the annual
rate of basic pay to an individual CBP employee at
the beginning of the service period multiplied by the
number of years (including a fractional part of a
year) in the required service period to an individual
(other than an individual described in subsection
(a)(2) of section 5753) if—
“(A) the Secretary determines that conditions consistent with the conditions described in paragraphs (1) and (2) of subsection (b) of such section 5753 are satisfied with respect to the individual (without regard to the regulations referenced in subsection (b)(2)(B(ii)(I) of such section or to any other provision of that section); and

“(B) the individual enters into a written service agreement with the Secretary—

“(i) under which the individual is required to complete a period of employment as a CBP employee of not less than 2 years; and

“(ii) that includes—

“(I) the commencement and termination dates of the required service period (or provisions for the determination thereof);

“(II) the amount of the bonus; and

“(III) other terms and conditions under which the bonus is payable, subject to the requirements of this subsection, including—
“(aa) the conditions under which the agreement may be terminated before the agreed-upon service period has been completed; and

“(bb) the effect of a termination described in item (aa).

“(4) Retention bonuses.—The Secretary may pay a retention bonus of up to 50 percent of basic pay to an individual CBP employee (other than an individual described in subsection (a)(2) of section 5754) if—

“(A) the Secretary determines that—

“(i) a condition consistent with the condition described in subsection (b)(1) of such section 5754 is satisfied with respect to the CBP employee (without regard to any other provision of that section);

“(ii) in the absence of a retention bonus, the CBP employee would be likely to leave—

“(I) the Federal service; or

“(II) for a different position in the Federal service, including a position in another agency or component
of the Department of Homeland Secu-

rity; and

“(B) the individual enters into a written

service agreement with the Secretary—

“(i) under which the individual is re-

quired to complete a period of employment

as a CBP employee of not less than 2

years; and

“(ii) that includes—

“(I) the commencement and termi-

nation dates of the required service

period (or provisions for the deter-

mination thereof);

“(II) the amount of the bonus;

and

“(III) other terms and conditions

under which the bonus is payable,

subject to the requirements of this

subsection, including—

“(aa) the conditions under

which the agreement may be ter-

minated before the agreed-upon

service period has been com-

pleted; and
“(bb) the effect of a termination described in item (aa).

“(5) RULES FOR BONUSES.—

“(A) MAXIMUM BONUS.—A bonus paid to an employee under—

“(i) paragraph (3) may not exceed 100 percent of the annual rate of basic pay of the employee as of the commencement date of the applicable service period; and

“(ii) paragraph (4) may not exceed 50 percent of the annual rate of basic pay of the employee.

“(B) RELATIONSHIP TO BASIC PAY.—A bonus paid to an employee under paragraph (3) or (4) shall not be considered part of the basic pay of the employee for any purpose, including for retirement or in computing a lump-sum payment to the covered employee for accumulated and accrued annual leave under section 5551 or section 5552.

“(C) PERIOD OF SERVICE FOR RECRUITMENT, RELOCATION, AND RETENTION BONUSES.—

“(i) A bonus paid to an employee under paragraph (4) may not be based on
any period of such service which is the
basis for a recruitment or relocation bonus
under paragraph (3).

“(ii) A bonus paid to an employee
under paragraph (3) or (4) may not be
based on any period of service which is the
basis for a recruitment or relocation bonus
under section 5753 or a retention bonus
under section 5754.

“(c) SPECIAL RATES OF PAY.—In addition to the cir-
cumstances described in subsection (b) of section 5305,
the Director may establish special rates of pay in accord-
ance with that section to assist the Secretary in meeting
the requirements of section 1131 of the Border Security
for America Act of 2018. The Director shall prioritize the
consideration of requests from the Secretary for such spe-
cial rates of pay and issue a decision as soon as prac-
ticable. The Secretary shall provide such information to
the Director as the Director deems necessary to evaluate
special rates of pay under this subsection.

“(d) OPM OVERSIGHT.—

“(1) Not later than September 30 of each year,
the Secretary shall provide a report to the Director
on U.S. Customs and Border Protection’s use of au-
thorities provided under subsections (b) and (c). In
each report, the Secretary shall provide such infor-
mation as the Director determines is appropriate to
ensure appropriate use of authorities under such
subsections. Each report shall also include an assess-
ment of—

“(A) the impact of the use of authorities
under subsections (b) and (c) on implementa-
tion of section 1131 of the Border Security for
America Act of 2018;

“(B) solving hiring and retention chal-
lenges at the agency, including at specific loca-
tions;

“(C) whether hiring and retention chal-
lenges still exist at the agency or specific loca-
tions; and

“(D) whether the Secretary needs to con-
tinue to use authorities provided under this sec-
tion at the agency or at specific locations.

“(2) CONSIDERATION.—In compiling a report
under paragraph (1), the Secretary shall consider—

“(A) whether any CBP employee accepted
an employment incentive under subsection (b)
and (c) and then transferred to a new location
or left U.S. Customs and Border Protection;
and
“(B) the length of time that each employee identified under subparagraph (A) stayed at the original location before transferring to a new location or leaving U.S. Customs and Border Protection.

“(3) DISTRIBUTION.—In addition to the Director, the Secretary shall submit each report required under this subsection to the appropriate congressional committees.

“(e) OPM ACTION.—If the Director determines the Secretary has inappropriately used authorities under subsection (b) or a special rate of pay provided under subsection (c), the Director shall notify the Secretary and the appropriate congressional committees in writing. Upon receipt of the notification, the Secretary may not make any new appointments or issue any new bonuses under subsection (b), nor provide CBP employees with further special rates of pay, until the Director has provided the Secretary and the appropriate congressional committees a written notice stating the Director is satisfied safeguards are in place to prevent further inappropriate use.

“(f) IMPROVING CBP HIRING AND RETENTION.—

“(1) EDUCATION OF CBP HIRING OFFICIALS.—

Not later than 180 days after the date of the enactment of this section, and in conjunction with the
Chief Human Capital Officer of the Department of Homeland Security, the Secretary shall develop and implement a strategy to improve the education regarding hiring and human resources flexibilities (including hiring and human resources flexibilities for locations in rural or remote areas) for all employees, serving in agency headquarters or field offices, who are involved in the recruitment, hiring, assessment, or selection of candidates for locations in a rural or remote area, as well as the retention of current employees.

“(2) ELEMENTS.—Elements of the strategy under paragraph (1) shall include the following:

“(A) Developing or updating training and educational materials on hiring and human resources flexibilities for employees who are involved in the recruitment, hiring, assessment, or selection of candidates, as well as the retention of current employees.

“(B) Regular training sessions for personnel who are critical to filling open positions in rural or remote areas.

“(C) The development of pilot programs or other programs, as appropriate, consistent with authorities provided to the Secretary to address
identified hiring challenges, including in rural or remote areas.

“(D) Developing and enhancing strategic recruiting efforts through the relationships with institutions of higher education, as defined in section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002), veterans transition and employment centers, and job placement program in regions that could assist in filling positions in rural or remote areas.

“(E) Examination of existing agency programs on how to most effectively aid spouses and families of individuals who are candidates or new hires in a rural or remote area.

“(F) Feedback from individuals who are candidates or new hires at locations in a rural or remote area, including feedback on the quality of life in rural or remote areas for new hires and their families.

“(G) Feedback from CBP employees, other than new hires, who are stationed at locations in a rural or remote area, including feedback on the quality of life in rural or remote areas for those CBP employees and their families.
“(H) Evaluation of Department of Homeland Security internship programs and the usefulness of those programs in improving hiring by the Secretary in rural or remote areas.

“(3) EVALUATION.—

“(A) IN GENERAL.—Each year, the Secretary shall—

“(i) evaluate the extent to which the strategy developed and implemented under paragraph (1) has improved the hiring and retention ability of the Secretary; and

“(ii) make any appropriate updates to the strategy under paragraph (1).

“(B) INFORMATION.—The evaluation conducted under subparagraph (A) shall include—

“(i) any reduction in the time taken by the Secretary to fill mission-critical positions, including in rural or remote areas;

“(ii) a general assessment of the impact of the strategy implemented under paragraph (1) on hiring challenges, including in rural or remote areas; and

“(iii) other information the Secretary determines relevant.
“(g) Inspector General Review.—Not later than two years after the date of the enactment of this section, the Inspector General of the Department of Homeland Security shall review the use of hiring and pay flexibilities under subsections (b) and (c) to determine whether the use of such flexibilities is helping the Secretary meet hiring and retention needs, including in rural and remote areas.

“(h) Report on Polygraph Requests.—The Secretary shall report to the appropriate congressional committees on the number of requests the Secretary receives from any other Federal agency for the file of an applicant for a position in U.S. Customs and Border Protection that includes the results of a polygraph examination.

“(i) Exercise of Authority.—

“(1) Sole Discretion.—The exercise of authority under subsection (b) shall be subject to the sole and exclusive discretion of the Secretary (or the Commissioner, as applicable under paragraph (2) of this subsection), notwithstanding chapter 71 and any collective bargaining agreement.

“(2) Delegation.—The Secretary may delegate any authority under this section to the Commissioner.
“(j) Rule of Construction.—Nothing in this section shall be construed to exempt the Secretary or the Director from applicability of the merit system principles under section 2301.

“(k) Sunset.—The authorities under subsections (b) and (c) shall terminate on September 30, 2022. Any bonus to be paid pursuant to subsection (b) that is approved before such date may continue until such bonus has been paid, subject to the conditions specified in this section.”.

(b) Technical and Conforming Amendment.—The table of sections for chapter 97 of title 5, United States Code, is amended by adding at the end the following:

“9702. U.S. Customs and Border Protection temporary employment authorities.”.

SEC. 1133. ANTI-BORDER CORRUPTION REAUTHORIZATION ACT.

(a) Short Title.—This section may be cited as the “Anti-Border Corruption Reauthorization Act of 2018”.

(b) Hiring Flexibility.—Section 3 of the Anti-Border Corruption Act of 2010 (6 U.S.C. 221) is amended by striking subsection (b) and inserting the following new subsections:

“(b) Waiver Authority.—The Commissioner of U.S. Customs and Border Protection may waive the application of subsection (a)(1)—
“(1) to a current, full-time law enforcement officer employed by a State or local law enforcement agency who—

“(A) has continuously served as a law enforcement officer for not fewer than three years;

“(B) is authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and has statutory powers for arrest or apprehension;

“(C) is not currently under investigation, has not been found to have engaged in criminal activity or serious misconduct, has not resigned from a law enforcement officer position under investigation or in lieu of termination, and has not been dismissed from a law enforcement officer position; and

“(D) has, within the past ten years, successfully completed a polygraph examination as a condition of employment with such officer’s current law enforcement agency;

“(2) to a current, full-time Federal law enforcement officer who—

“(A) has continuously served as a law enforcement officer for not fewer than three years;

“(B) is authorized to make arrests, conduct investigations, conduct searches, make seizures, carry firearms, and serve orders, warrants, and other processes;

“(C) is not currently under investigation, has not been found to have engaged in criminal activity or serious misconduct, has not resigned from a law enforcement officer position under investigation or in lieu of termination, and has not been dismissed from a law enforcement officer position; and

“(D) holds a current Tier 4 background investigation or current Tier 5 background investigation; and

“(3) to a member of the Armed Forces (or a reserve component thereof) or a veteran, if such individual—

“(A) has served in the Armed Forces for not fewer than three years;

“(B) holds, or has held within the past five years, a Secret, Top Secret, or Top Secret/Sensitive Compartmented Information clearance;
“(C) holds, or has undergone within the past five years, a current Tier 4 background investigation or current Tier 5 background investigation;

“(D) received, or is eligible to receive, an honorable discharge from service in the Armed Forces and has not engaged in criminal activity or committed a serious military or civil offense under the Uniform Code of Military Justice; and

“(E) was not granted any waivers to obtain the clearance referred to subparagraph (B).

“(c) Termination of Waiver Authority.—The authority to issue a waiver under subsection (b) shall terminate on the date that is four years after the date of the enactment of the Border Security for America Act of 2018.”.

(c) Supplemental Commissioner Authority and Definitions.—

(1) Supplemental commissioner authority.—Section 4 of the Anti-Border Corruption Act of 2010 is amended to read as follows:
“SEC. 4. SUPPLEMENTAL COMMISSIONER AUTHORITY.

“(a) NON-EXEMPTION.—An individual who receives a waiver under section 3(b) is not exempt from other hiring requirements relating to suitability for employment and eligibility to hold a national security designated position, as determined by the Commissioner of U.S. Customs and Border Protection.

“(b) BACKGROUND INVESTIGATIONS.—Any individual who receives a waiver under section 3(b) who holds a current Tier 4 background investigation shall be subject to a Tier 5 background investigation.

“(c) ADMINISTRATION OF POLYGRAPH EXAMINATION.—The Commissioner of U.S. Customs and Border Protection is authorized to administer a polygraph examination to an applicant or employee who is eligible for or receives a waiver under section 3(b) if information is discovered before the completion of a background investigation that results in a determination that a polygraph examination is necessary to make a final determination regarding suitability for employment or continued employment, as the case may be.”.

(2) REPORT.—The Anti-Border Corruption Act of 2010, as amended by paragraph (1), is further amended by adding at the end the following new section:
“SEC. 5. REPORTING.

“(a) ANNUAL REPORT.—Not later than one year after the date of the enactment of this section and annually thereafter while the waiver authority under section 3(b) is in effect, the Commissioner of U.S. Customs and Border Protection shall submit to Congress a report that includes, with respect to each such reporting period—

“(1) the number of waivers requested, granted, and denied under section 3(b);

“(2) the reasons for any denials of such waiver;

“(3) the percentage of applicants who were hired after receiving a waiver;

“(4) the number of instances that a polygraph was administered to an applicant who initially received a waiver and the results of such polygraph;

“(5) an assessment of the current impact of the polygraph waiver program on filling law enforcement positions at U.S. Customs and Border Protection; and

“(6) additional authorities needed by U.S. Customs and Border Protection to better utilize the polygraph waiver program for its intended goals.

“(b) ADDITIONAL INFORMATION.—The first report submitted under subsection (a) shall include—

“(1) an analysis of other methods of employment suitability tests that detect deception and could
be used in conjunction with traditional background
investigations to evaluate potential employees for
suitability; and

“(2) a recommendation regarding whether a
test referred to in paragraph (1) should be adopted
by U.S. Customs and Border Protection when the
polygraph examination requirement is waived pursuant
to section 3(b).”.

(3) DEFINITIONS.—The Anti-Border Corruption
Act of 2010, as amended by paragraphs (1) and
(2), is further amended by adding at the end the fol-
lowing new section:

“SEC. 6. DEFINITIONS.

“In this Act:

“(1) FEDERAL LAW ENFORCEMENT OFFICER.—
The term ‘Federal law enforcement officer’ means a
‘law enforcement officer’ defined in section 8331(20)
or 8401(17) of title 5, United States Code.

“(2) SERIOUS MILITARY OR CIVIL OFFENSE.—
The term ‘serious military or civil offense’ means an
offense for which—

“(A) a member of the Armed Forces may
be discharged or separated from service in the
Armed Forces; and
“(B) a punitive discharge is, or would be, authorized for the same or a closely related offense under the Manual for Court-Martial, as pursuant to Army Regulation 635–200 chapter 14–12.

“(3) Tier 4; Tier 5.—The terms ‘Tier 4’ and ‘Tier 5’ with respect to background investigations have the meaning given such terms under the 2012 Federal Investigative Standards.

“(4) Veteran.—The term ‘veteran’ has the meaning given such term in section 101(2) of title 38, United States Code.”.

(d) Polygraph Examiners.—Not later than September 30, 2022, the Secretary shall increase to not fewer than 150 the number of trained full-time equivalent polygraph examiners for administering polygraphs under the Anti-Border Corruption Act of 2010, as amended by this subtitle.

SEC. 1134. TRAINING FOR OFFICERS AND AGENTS OF U.S. CUSTOMS AND BORDER PROTECTION.

(a) In General.—Subsection (l) of section 411 of the Homeland Security Act of 2002 (6 U.S.C. 211) is amended to read as follows:

“(l) Training and Continuing Education.—
“(1) MANDATORY TRAINING.—The Commissioner shall ensure that every agent and officer of U.S. Customs and Border Protection receives a minimum of 21 weeks of training that are directly related to the mission of the U.S. Border Patrol, Air and Marine, and the Office of Field Operations before the initial assignment of such agents and officers.

“(2) FLETC.—The Commissioner shall work in consultation with the Director of the Federal Law Enforcement Training Centers to establish guidelines and curriculum for the training of agents and officers of U.S. Customs and Border Protection under subsection (a).

“(3) CONTINUING EDUCATION.—The Commissioner shall annually require all agents and officers of U.S. Customs and Border Protection who are required to undergo training under subsection (a) to participate in not fewer than eight hours of continuing education annually to maintain and update understanding of Federal legal rulings, court decisions, and Department policies, procedures, and guidelines related to relevant subject matters.

“(4) LEADERSHIP TRAINING.—Not later than one year after the date of the enactment of this sub-
section, the Commissioner shall develop and require
training courses geared towards the development of
leadership skills for mid- and senior-level career em-
employees not later than one year after such employees
assume duties in supervisory roles.”.

(b) REPORT.—Not later than 180 days after the date
of the enactment of this division, the Commissioner shall
submit to the Committee on Homeland Security and the
Committee on Ways and Means of the House of Rep-
resentatives and the Committee on Homeland Security
and Governmental Affairs and the Committee on Finance
of the Senate a report identifying the guidelines and cur-
iculum established to carry out subsection (l) of section
411 of the Homeland Security Act of 2002, as amended
by subsection (a) of this section.

(e) ASSESSMENT.—Not later than four years after
the date of the enactment of this division, the Comptroller
General of the United States shall submit to the Com-
mittee on Homeland Security and the Committee on Ways
and Means of the House of Representatives and the Com-
mittee on Homeland Security and Governmental Affairs
and the Committee on Finance of the Senate a report that
assesses the training and education, including continuing
education, required under subsection (l) of section 411 of
the Homeland Security Act of 2002, as amended by subsection (a) of this section.

**Subtitle C—Grants**

SEC. 1141. OPERATION STONEGARDEN.

(a) In General.—Subtitle A of title XX of the Homeland Security Act of 2002 (6 U.S.C. 601 et seq.) is amended by adding at the end the following new section:

“SEC. 2009. OPERATION STONEGARDEN.

“(a) Establishment.—There is established in the Department a program to be known as ‘Operation Stonegarden’, under which the Secretary, acting through the Administrator, shall make grants to eligible law enforcement agencies, through the State administrative agency, to enhance border security in accordance with this section.

“(b) Eligible Recipients.—To be eligible to receive a grant under this section, a law enforcement agency—

“(1) shall be located in—

“(A) a State bordering Canada or Mexico; or

“(B) a State or territory with a maritime border; and

“(2) shall be involved in an active, ongoing, U.S. Customs and Border Protection operation co-

...
ordinated through a U.S. Border Patrol sector office.

“(c) PERMITTED USES.—The recipient of a grant under this section may use such grant for—

“(1) equipment, including maintenance and sustainment costs;

“(2) personnel, including overtime and backfill, in support of enhanced border law enforcement activities;

“(3) any activity permitted for Operation Stonegarden under the Department of Homeland Security’s Fiscal Year 2017 Homeland Security Grant Program Notice of Funding Opportunity; and

“(4) any other appropriate activity, as determined by the Administrator, in consultation with the Commissioner of U.S. Customs and Border Protection.

“(d) PERIOD OF PERFORMANCE.—The Secretary shall award grants under this section to grant recipients for a period of not less than 36 months.

“(e) REPORT.—For each of fiscal years 2018 through 2022, the Administrator shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Homeland Security of the House of Representatives a report that contains informa-
tion on the expenditure of grants made under this section
by each grant recipient.

“(f) AUTHORIZATION OF APPROPRIATIONS.—There
is authorized to be appropriated $110,000,000 for each
of fiscal years 2018 through 2022 for grants under this
section.”.

(b) CONFORMING AMENDMENT.—Subsection (a) of
U.S.C. 603) is amended to read as follows:

“(a) GRANTS AUTHORIZED.—The Secretary, through
the Administrator, may award grants under sections 2003,
2004, and 2009 to State, local, and tribal governments,
as appropriate.”.

(e) CLERICAL AMENDMENT.—The table of contents
in section 1(b) of the Homeland Security Act of 2002 is
amended by inserting after the item relating to section
2008 the following:

“Sec. 2009. Operation Stonegarden.”.

Subtitle D—Authorization of Appropriations

SEC. 1151. AUTHORIZATION OF APPROPRIATIONS.

In addition to amounts otherwise authorized to be ap-
propriated, there are authorized to be appropriated for
each of fiscal years 2018 through 2022, $24,800,000,000
to implement this title and the amendments made by this
title, of which—
(1) $9,300,000,000 shall be used by the Department of Homeland Security to construct physical barriers pursuant to section 102 of the Illegal Immigration and Immigrant Responsibility Act of 1996, as amended by section 1111 of this division;

(2) $1,000,000,000 shall be used by the Department to improve tactical infrastructure pursuant to such section 102, as amended by such section 1111;

(3) $5,800,000,000 shall be used by the Department to carry out section 1112 of this division;

(4) $200,000,000 shall be used by the Coast Guard for deployments of personnel and assets under paragraph (18) of section 1113(a) of this division; and

(5) $8,500,000,000 shall be used by the Department to carry out section 1131 of this division.

TITLE II—EMERGENCY PORT OF ENTRY PERSONNEL AND INFRASTRUCTURE FUNDING

SEC. 2101. PORTS OF ENTRY INFRASTRUCTURE.

(a) ADDITIONAL PORTS OF ENTRY.—

(1) AUTHORITY.—The Administrator of General Services may, subject to section 3307 of title 40, United States Code, construct new ports of entry
along the northern border and southern border at locations determined by the Secretary.

(2) Consultation.—

(A) Requirement to Consult.—The Secretary and the Administrator of General Services shall consult with the Secretary of State, the Secretary of the Interior, the Secretary of Agriculture, the Secretary of Transportation, and appropriate representatives of State and local governments, and Indian tribes, and property owners in the United States prior to determining a location for any new port of entry constructed pursuant to paragraph (1).

(B) Considerations.—The purpose of the consultations required by subparagraph (A) shall be to minimize any negative impacts of constructing a new port of entry on the environment, culture, commerce, and quality of life of the communities and residents located near such new port.

(b) Expansion and Modernization of High-Priority Southern Border Ports of Entry.—Not later than September 30, 2021, the Administrator of General Services, subject to section 3307 of title 40, United States Code, and in coordination with the Secretary, shall expand
or modernize high-priority ports of entry on the southern border, as determined by the Secretary, for the purposes of reducing wait times and enhancing security.

(c) Port of Entry Prioritization.—Prior to constructing any new ports of entry pursuant to subsection (a), the Administrator of General Services shall complete the expansion and modernization of ports of entry pursuant to subsection (b) to the extent practicable.

(d) Notifications.—

(1) Relating to New Ports of Entry.—Not later than 15 days after determining the location of any new port of entry for construction pursuant to subsection (a), the Secretary and the Administrator of General Services shall jointly notify the Members of Congress who represent the State or congressional district in which such new port of entry will be located, as well as the Committee on Homeland Security and Governmental Affairs, the Committee on Finance, the Committee on Commerce, Science, and Transportation, and the Committee on the Judiciary of the Senate, and the Committee on Homeland Security, the Committee on Ways and Means, the Committee on Transportation and Infrastructure, and the Committee on the Judiciary of the House of Representatives. Such notification shall include in-
formation relating to the location of such new port of entry, a description of the need for such new port of entry and associated anticipated benefits, a description of the consultations undertaken by the Secretary and the Administrator pursuant to paragraph (2) of such subsection, any actions that will be taken to minimize negative impacts of such new port of entry, and the anticipated time-line for construction and completion of such new port of entry.

(2) RELATING TO EXPANSION AND MODERNIZATION OF PORTS OF ENTRY.—Not later than 180 days after enactment of this division, the Secretary and the Administrator of General Services shall jointly notify the Committee on Homeland Security and Governmental Affairs, the Committee on Finance, the Committee on Commerce, Science, and Transportation, and the Committee on the Judiciary of the Senate, and the Committee on Homeland Security, the Committee on Ways and Means, the Committee on Transportation and Infrastructure, and the Committee on the Judiciary of the House of Representatives of the ports of entry on the southern border that are the subject of expansion or modernization pursuant to subsection (b) and the Sec-
Secretary’s and Administrator’s plan for expanding or modernizing each such port of entry.

(e) Rule of Construction.—Nothing in this section may be construed as providing the Secretary new authority related to the construction, acquisition, or renovation of real property.

SEC. 2102. SECURE COMMUNICATIONS.

(a) In General.—The Secretary shall ensure that each U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement officer or agent, if appropriate, is equipped with a secure radio or other two-way communication device, supported by system interoperability, that allows each such officer to communicate—

(1) between ports of entry and inspection stations; and

(2) with other Federal, State, tribal, and local law enforcement entities.

(b) U.S. Border Patrol Agents.—The Secretary shall ensure that each U.S. Border Patrol agent or officer assigned or required to patrol on foot, by horseback, or with a canine unit, in remote mission critical locations, and at border checkpoints, has a multi- or dual-band encrypted portable radio.

(c) LTE Capability.—In carrying out subsection (b), the Secretary shall acquire radios or other devices
with the option to be LTE-capable for deployment in areas
where LTE enhances operations and is cost effective.

SEC. 2103. BORDER SECURITY DEPLOYMENT PROGRAM.

(a) Expansion.—Not later than September 30, 2021, the Secretary shall fully implement the Border Security Deployment Program of the U.S. Customs and Border Protection and expand the integrated surveillance and intrusion detection system at land ports of entry along the southern border and the northern border.

(b) Authorization of Appropriations.—In addition to amounts otherwise authorized to be appropriated for such purpose, there is authorized to be appropriated $33,000,000 for fiscal year 2018 to carry out subsection (a).

SEC. 2104. PILOT AND UPGRADE OF LICENSE PLATE READERS AT PORTS OF ENTRY.

(a) Upgrade.—Not later than one year after the date of the enactment of this division, the Commissioner of U.S. Customs and Border Protection shall upgrade all existing license plate readers on the northern and southern borders on incoming and outgoing vehicle lanes.

(b) Pilot Program.—Not later than 90 days after the date of the enactment of this division, the Commissioner of U.S. Customs and Border Protection shall conduct a one-month pilot program on the southern border...
using license plate readers for one to two cargo lanes at
the top three high-volume land ports of entry or check-
points to determine their effectiveness in reducing cross-
border wait times for commercial traffic and tractor-trail-
ers.

(c) REPORT.—Not later than 180 days after the date
of the enactment of this division, the Secretary shall re-
port to the Committee on Homeland Security and Govern-
mental Affairs, the Committee on the Judiciary, and the
Committee on Finance of the Senate, and the Committee
on Homeland Security, and Committee on the Judiciary,
and the Committee on Ways and Means of the House of
Representatives the results of the pilot program under
subsection (b) and make recommendations for imple-
menting use of such technology on the southern border.

(d) AUTHORIZATION OF APPROPRIATIONS.—In addi-
tion to amounts otherwise authorized to be appropriated
for such purpose, there is authorized to be appropriated
$125,000,000 for fiscal year 2018 to carry out subsection
(a).

SEC. 2105. NON-INTRUSIVE INSPECTION OPERATIONAL
DEMONSTRATION.

(a) IN GENERAL.—Not later than six months after
the date of the enactment of this division, the Commiss-
sioner shall establish a six-month operational demonstra-
tion to deploy a high-throughput non-intrusive passenger
vehicle inspection system at not fewer than three land
ports of entry along the United States-Mexico border with
significant cross-border traffic. Such demonstration shall
be located within the pre-primary traffic flow and should
be scalable to span up to 26 contiguous in-bound traffic
lanes without re-configuration of existing lanes.

(b) REPORT.—Not later than 90 days after the con-
clusion of the operational demonstration under subsection
(a), the Commissioner shall submit to the Committee on
Homeland Security and the Committee on Ways and
Means of the House of Representatives and the Committee
on Homeland Security and Governmental Affairs and the
Committee on Finance of the Senate a report that de-
scribes the following:

(1) The effects of such demonstration on legiti-
mate travel and trade.

(2) The effects of such demonstration on wait
times, including processing times, for non-pedestrian
traffic.

(3) The effectiveness of such demonstration in
combating terrorism and smuggling.

SEC. 2106. BIOMETRIC EXIT DATA SYSTEM.

(a) IN GENERAL.—Subtitle B of title IV of the
is amended by inserting after section 415 the following new section:

“SEC. 416. BIOMETRIC ENTRY-EXIT.

“(a) ESTABLISHMENT.—The Secretary shall—

“(1) not later than 180 days after the date of the enactment of this section, submit to the Committee on Homeland Security and Governmental Affairs and the Committee on the Judiciary of the Senate and the Committee on Homeland Security and the Committee on the Judiciary of the House of Representatives an implementation plan to establish a biometric exit data system to complete the integrated biometric entry and exit data system required under section 7208 of the Intelligence Reform and Terrorism Prevention Act of 2004 (8 U.S.C. 1365b), including—

“(A) an integrated master schedule and cost estimate, including requirements and design, development, operational, and maintenance costs of such a system, that takes into account prior reports on such matters issued by the Government Accountability Office and the Department;

“(B) cost-effective staffing and personnel requirements of such a system that leverages
existing resources of the Department that takes
into account prior reports on such matters
issued by the Government Accountability Office
and the Department;

“(C) a consideration of training programs
necessary to establish such a system that takes
into account prior reports on such matters
issued by the Government Accountability Office
and the Department;

“(D) a consideration of how such a system
will affect arrival and departure wait times that
takes into account prior reports on such matter
issued by the Government Accountability Office
and the Department;

“(E) information received after consulta-
tion with private sector stakeholders, including
the—

“(i) trucking industry;

“(ii) airport industry;

“(iii) airline industry;

“(iv) seaport industry;

“(v) travel industry; and

“(vi) biometric technology industry;

“(F) a consideration of how trusted trav-
eler programs in existence as of the date of the
enactment of this section may be impacted by,
or incorporated into, such a system;

“(G) defined metrics of success and mile-
stones;

“(H) identified risks and mitigation strate-
gies to address such risks;

“(I) a consideration of how other countries
have implemented a biometric exit data system;
and

“(J) a list of statutory, regulatory, or ad-
ministrative authorities, if any, needed to inte-
grate such a system into the operations of the
Transportation Security Administration; and

“(2) not later than two years after the date of
the enactment of this section, establish a biometric
exit data system at the—

“(A) 15 United States airports that sup-
port the highest volume of international air
travel, as determined by available Federal flight
data;

“(B) 10 United States seaports that sup-
port the highest volume of international sea
travel, as determined by available Federal travel
data; and
“(C) 15 United States land ports of entry that support the highest volume of vehicle, pedestrian, and cargo crossings, as determined by available Federal border crossing data.

“(b) IMPLEMENTATION.—

“(1) PILOT PROGRAM AT LAND PORTS OF ENTRY FOR NON-PEDESTRIAN OUTBOUND TRAFFIC.—Not later than six months after the date of the enactment of this section, the Secretary, in collaboration with industry stakeholders, shall establish a six-month pilot program to test the biometric exit data system referred to in subsection (a)(2) on non-pedestrian outbound traffic at not fewer than three land ports of entry with significant cross-border traffic, including at not fewer than two land ports of entry on the southern land border and at least one land port of entry on the northern land border. Such pilot program may include a consideration of more than one biometric mode, and shall be implemented to determine the following:

“(A) How a nationwide implementation of such biometric exit data system at land ports of entry shall be carried out.

“(B) The infrastructure required to carry out subparagraph (A).
“(C) The effects of such pilot program on legitimate travel and trade.

“(D) The effects of such pilot program on wait times, including processing times, for such non-pedestrian traffic.

“(E) The effects of such pilot program on combating terrorism.

“(F) The effects of such pilot program on identifying visa holders who violate the terms of their visas.

“(2) AT LAND PORTS OF ENTRY FOR NON-PEDESTRIAN OUTBOUND TRAFFIC.—

“(A) IN GENERAL.—Not later than five years after the date of the enactment of this section, the Secretary shall expand the biometric exit data system referred to in subsection (a)(2) to all land ports of entry, and such system shall apply only in the case of non-pedestrian outbound traffic.

“(B) EXTENSION.—The Secretary may extend for a single two-year period the date specified in subparagraph (A) if the Secretary certifies to the Committee on Homeland Security and Governmental Affairs and the Committee on the Judiciary of the Senate and the Com-
mittee on Homeland Security and the Committee on the Judiciary of the House of Representatives that the 15 land ports of entry that support the highest volume of passenger vehicles, as determined by available Federal data, do not have the physical infrastructure or characteristics to install the systems necessary to implement a biometric exit data system.

“(3) At Air and Sea Ports of Entry.—Not later than five years after the date of the enactment of this section, the Secretary shall expand the biometric exit data system referred to in subsection (a)(2) to all air and sea ports of entry.

“(4) At Land Ports of Entry for Pedestrians.—Not later than five years after the date of the enactment of this section, the Secretary shall expand the biometric exit data system referred to in subsection (a)(2) to all land ports of entry, and such system shall apply only in the case of pedestrians.

“(c) Effects on Air, Sea, and Land Transportation.—The Secretary, in consultation with appropriate private sector stakeholders, shall ensure that the collection of biometric data under this section causes the least possible disruption to the movement of people or cargo in air, sea, or land transportation, while fulfilling the goals of im-
proving counterterrorism efforts and identifying visa holders who violate the terms of their visas.

“(d) TERMINATION OF PROCEEDING.—Notwithstanding any other provision of law, the Secretary shall, on the date of the enactment of this section, terminate the proceeding entitled ‘Collection of Alien Biometric Data Upon Exit From the United States at Air and Sea Ports of Departure; United States Visitor and Immigrant Status Indicator Technology Program (‘US–VISIT’))’, issued on April 24, 2008 (73 Fed. Reg. 22065).

“(e) DATA-MATCHING.—The biometric exit data system established under this section shall—

“(1) match biometric information for an individual, regardless of nationality, citizenship, or immigration status, who is departing the United States against biometric data previously provided to the United States Government by such individual for the purposes of international travel;

“(2) leverage the infrastructure and databases of the current biometric entry and exit system established pursuant to section 7208 of the Intelligence Reform and Terrorism Prevention Act of 2004 (8 U.S.C. 1365b) for the purpose described in paragraph (1); and
“(3) be interoperable with, and allow matching against, other Federal databases that—

“(A) store biometrics of known or suspected terrorists; and

“(B) identify visa holders who violate the terms of their visas.

“(f) Scope.—

“(1) IN GENERAL.—The biometric exit data system established under this section shall include a requirement for the collection of biometric exit data at the time of departure for all categories of individuals who are required by the Secretary to provide biometric entry data.

“(2) EXCEPTION FOR CERTAIN OTHER INDIVIDUALS.—This section shall not apply in the case of an individual who exits and then enters the United States on a passenger vessel (as such term is defined in section 2101 of title 46, United States Code) the itinerary of which originates and terminates in the United States.

“(3) EXCEPTION FOR LAND PORTS OF ENTRY.—This section shall not apply in the case of a United States or Canadian citizen who exits the United States through a land port of entry.
“(g) COLLECTION OF DATA.—The Secretary may not require any non-Federal person to collect biometric data, or contribute to the costs of collecting or administering the biometric exit data system established under this section, except through a mutual agreement.

“(h) MULTI-MODAL COLLECTION.—In carrying out subsections (a)(1) and (b), the Secretary shall make every effort to collect biometric data using multiple modes of biometrics.

“(i) FACILITIES.—All facilities at which the biometric exit data system established under this section is implemented shall provide and maintain space for Federal use that is adequate to support biometric data collection and other inspection-related activity. For non-federally owned facilities, such space shall be provided and maintained at no cost to the Government. For all facilities at land ports of entry, such space requirements shall be coordinated with the Administrator of General Services.

“(j) NORTHERN LAND BORDER.—In the case of the northern land border, the requirements under subsections (a)(2)(C), (b)(2)(A), and (b)(4) may be achieved through the sharing of biometric data provided to U.S. Customs and Border Protection by the Canadian Border Services Agency pursuant to the 2011 Beyond the Border agreement.
“(k) FAIR AND OPEN COMPETITION.—The Secretary shall procure goods and services to implement this section via fair and open competition in accordance with the Federal Acquisition Regulations.

“(l) OTHER BIOMETRIC INITIATIVES.—Nothing in this section may be construed as limiting the authority of the Secretary to collect biometric information in circumstances other than as specified in this section.

“(m) CONGRESSIONAL REVIEW.—Not later than 90 days after the date of the enactment of this section, the Secretary shall submit to the Committee on Homeland Security and Governmental Affairs of the Senate, the Committee on the Judiciary of the Senate, the Committee on Homeland Security of the House of Representatives, and Committee on the Judiciary of the House of Representatives reports and recommendations regarding the Science and Technology Directorate’s Air Entry and Exit Re-Engineering Program of the Department and the U.S. Customs and Border Protection entry and exit mobility program demonstrations.

“(n) SAVINGS CLAUSE.—Nothing in this section shall prohibit the collection of user fees permitted by section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c).”.
(b) CLERICAL AMENDMENT.—The table of contents in section 1(b) of the Homeland Security Act of 2002 is amended by inserting after the item relating to section 415 the following new item:

"Sec. 416. Biometric entry-exit."

SEC. 2107. SENSE OF CONGRESS ON COOPERATION BETWEEN AGENCIES.

(a) FINDING.—Congress finds that personnel constraints exist at land ports of entry with regard to sanitary and phytosanitary inspections for exported goods.

(b) SENSE OF CONGRESS.—It is the sense of Congress that, in the best interest of cross-border trade and the agricultural community—

(1) any lack of certified personnel for inspection purposes at ports of entry should be addressed by seeking cooperation between agencies and departments of the United States, whether in the form of a memorandum of understanding or through a certification process, whereby additional existing agents are authorized for additional hours to facilitate and expedite the flow of legitimate trade and commerce of perishable goods in a manner consistent with rules of the Department of Agriculture; and

(2) cross designation should be available for personnel who will assist more than one agency or department of the United States at land ports of
entry to facilitate and expedite the flow of increased legitimate trade and commerce.

SEC. 2108. AUTHORIZATION OF APPROPRIATIONS.

In addition to any amounts otherwise authorized to be appropriated for such purpose, there is authorized to be appropriated $1,250,000,000 for each of fiscal years 2018 through 2022 to carry out this title, of which—

(1) $2,000,000 shall be used by the Secretary for hiring additional Uniform Management Center support personnel, purchasing uniforms for CBP officers and agents, acquiring additional motor vehicles to support vehicle mounted surveillance systems, hiring additional motor vehicle program support personnel, and for contract support for customer service, vendor management, and operations management; and

(2) $250,000,000 per year shall be used to implement the biometric exit data system described in section 416 of the Homeland Security Act of 2002, as added by section 2106 of this division.

SEC. 2109. DEFINITION.

In this title, the term “Secretary” means the Secretary of Homeland Security.
TITLE III—VISA SECURITY AND INTEGRITY

SEC. 3101. VISA SECURITY.

(a) Visa Security Units at High-Risk Posts.—

Paragraph (1) of section 428(e) of the Homeland Security Act of 2002 (6 U.S.C. 236(e)) is amended—

(1) by striking “The Secretary” and inserting the following:

“(A) Authorization.—Subject to the minimum number specified in subparagraph (B), the Secretary”;

and

(2) by adding at the end the following new subparagraph:

“(B) Risk-Based Assignments.—

“(i) In General.—In carrying out subparagraph (A), the Secretary shall assign, in a risk-based manner, and considering the criteria described in clause (ii), employees of the Department to not fewer than 75 diplomatic and consular posts at which visas are issued.

“(ii) Criteria Described.—The criteria referred to in clause (i) are the following:
“(I) The number of nationals of a country in which any of the diplomatic and consular posts referred to in clause (i) are located who were identified in United States Government databases related to the identities of known or suspected terrorists during the previous year.

“(II) Information on the cooperation of such country with the counterterrorism efforts of the United States.

“(III) Information analyzing the presence, activity, or movement of terrorist organizations (as such term is defined in section 212(a)(3)(B)(vi) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(vi))) within or through such country.

“(IV) The number of formal objections based on derogatory information issued by the Visa Security Advisory Opinion Unit pursuant to paragraph (10) regarding nationals of a country in which any of the diplomatic
367

and consular posts referred to in clause (i) are located.

“(V) The adequacy of the border and immigration control of such country.

“(VI) Any other criteria the Secretary determines appropriate.

“(iii) RULE OF CONSTRUCTION.—The assignment of employees of the Department pursuant to this subparagraph is solely the authority of the Secretary and may not be altered or rejected by the Secretary of State.”.

(b) COUNTERTERROR VETTING AND SCREENING.—Paragraph (2) of section 428(e) of the Homeland Security Act of 2002 is amended—

(1) by redesignating subparagraph (C) as subparagraph (D); and

(2) by inserting after subparagraph (B) the following new subparagraph:

“(C) Screen any such applications against the appropriate criminal, national security, and terrorism databases maintained by the Federal Government.”.
(c) Training and Hiring.—Subparagraph (A) of section 428(e)(6) of the Homeland Security Act of 2002 is amended by—

(1) striking “The Secretary shall ensure, to the extent possible, that any employees” and inserting “The Secretary, acting through the Commissioner of U.S. Customs and Border Protection and the Director of U.S. Immigration and Customs Enforcement, shall provide training to any employees”; and

(2) striking “shall be provided the necessary training”.

(d) Pre-Adjudicated Visa Security Assistance and Visa Security Advisory Opinion Unit.—Subsection (e) of section 428 of the Homeland Security Act of 2002 is amended by adding at the end the following new paragraphs:

“(9) Remote Pre-Adjudicated Visa Security Assistance.—At the visa-issuing posts at which employees of the Department are not assigned pursuant to paragraph (1), the Secretary shall, in a risk-based manner, assign employees of the Department to remotely perform the functions required under paragraph (2) at not fewer than 50 of such posts.
“(10) VISA SECURITY ADVISORY OPINION UNIT.—The Secretary shall establish within U.S. Immigration and Customs Enforcement a Visa Security Advisory Opinion Unit to respond to requests from the Secretary of State to conduct a visa security review using information maintained by the Department on visa applicants, including terrorism association, criminal history, counter-proliferation, and other relevant factors, as determined by the Secretary.”.

(e) DEADLINES.—The requirements established under paragraphs (1) and (9) of section 428(e) of the Homeland Security Act of 2002 (6 U.S.C. 236(e)), as amended and added by this section, shall be implemented not later than three years after the date of the enactment of this division.

SEC. 3102. ELECTRONIC PASSPORT SCREENING AND BIOMETRIC MATCHING.

(a) IN GENERAL.—Subtitle B of title IV of the Homeland Security Act of 2002 (6 U.S.C. 231 et seq.), as amended by section 2106 of this division, is further amended by adding at the end the following new sections:
SECTION 420. ELECTRONIC PASSPORT SCREENING AND BIOMETRIC MATCHING.

(a) In general.—Not later than one year after the date of the enactment of this section, the Commissioner of U.S. Customs and Border Protection shall—

(1) screen electronic passports at airports of entry by reading each such passport’s embedded chip; and

(2) to the greatest extent practicable, utilize facial recognition technology or other biometric technology, as determined by the Commissioner, to inspect travelers at United States airports of entry.

(b) Applicability.—

(1) Electronic passport screening.—Paragraph (1) of subsection (a) shall apply to passports belonging to individuals who are United States citizens, individuals who are nationals of a program country pursuant to section 217 of the Immigration and Nationality Act (8 U.S.C. 1187), and individuals who are nationals of any other foreign country that issues electronic passports.

(2) Facial recognition matching.—Paragraph (2) of subsection (a) shall apply, at a minimum, to individuals who are nationals of a program country pursuant to section 217 of the Immigration and Nationality Act.
“(c) ANNUAL REPORT.—The Commissioner of U.S. Customs and Border Protection, in collaboration with the Chief Privacy Officer of the Department, shall issue to the Committee on Homeland Security of the House of Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate an annual report through fiscal year 2021 on the utilization of facial recognition technology and other biometric technology pursuant to subsection (a)(2). Each such report shall include information on the type of technology used at each airport of entry, the number of individuals who were subject to inspection using either of such technologies at each airport of entry, and within the group of individuals subject to such inspection at each airport, the number of those individuals who were United States citizens and legal permanent residents. Each such report shall provide information on the disposition of data collected during the year covered by such report, together with information on protocols for the management of collected biometric data, including timeframes and criteria for storing, erasing, destroying, or otherwise removing such data from databases utilized by the Department.
"SEC. 420A. CONTINUOUS SCREENING BY U.S. CUSTOMS AND BORDER PROTECTION.

"The Commissioner of U.S. Customs and Border Protection shall, in a risk based manner, continuously screen individuals issued any visa, and individuals who are nationals of a program country pursuant to section 217 of the Immigration and Nationality Act (8 U.S.C. 1187), who are present, or are expected to arrive within 30 days, in the United States, against the appropriate criminal, national security, and terrorism databases maintained by the Federal Government.".

(b) CLERICAL AMENDMENT.—The table of contents in section 1(b) of the Homeland Security Act of 2002 is amended by inserting after the item relating to section 419 the following new items:

"Sec. 420. Electronic passport screening and biometric matching.
"Sec. 420A. Continuous screening by U.S. Customs and Border Protection.".

SEC. 3103. REPORTING OF VISA OVERSTAYS.

Section 2 of Public Law 105–173 (8 U.S.C. 1376) is amended—

(1) in subsection (a)—

(A) by striking "Attorney General" and inserting "Secretary of Homeland Security"; and

(B) by inserting before the period at the end the following: ", and any additional information that the Secretary determines necessary
for purposes of the report under subsection (b)”; and

(2) by amending subsection (b) to read as follows:

“(b) ANNUAL REPORT.—Not later than June 30, 2018, and not later than June 30 of each year thereafter, the Secretary of Homeland Security shall submit to the Committee on Homeland Security and the Committee on the Judiciary of the House of Representatives and to the Committee on Homeland Security and Governmental Affairs and the Committee on the Judiciary of the Senate a report providing, for the preceding fiscal year, numerical estimates (including information on the methodology utilized to develop such numerical estimates) of—

“(1) for each country, the number of aliens from the country who are described in subsection (a), including—

“(A) the total number of such aliens within all classes of nonimmigrant aliens described in section 101(a)(15) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)); and

“(B) the number of such aliens within each of the classes of nonimmigrant aliens, as well as the number of such aliens within each of the
subclasses of such classes of nonimmigrant aliens, as applicable;

“(2) for each country, the percentage of the total number of aliens from the country who were present in the United States and were admitted to the United States as nonimmigrants who are described in subsection (a);

“(3) the number of aliens described in subsection (a) who arrived by land at a port of entry into the United States;

“(4) the number of aliens described in subsection (a) who entered the United States using a border crossing identification card (as such term is defined in section 101(a)(6) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(6))); and

“(5) the number of Canadian nationals who entered the United States without a visa whose authorized period of stay in the United States terminated during the previous fiscal year, but who remained in the United States.”.

SEC. 3104. STUDENT AND EXCHANGE VISITOR INFORMATION SYSTEM VERIFICATION.

Not later than 90 days after the date of the enactment of this division, the Secretary of Homeland Security shall ensure that the information collected under the pro-
gram established under section 641 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1372) is available to officers of U.S. Customs and Border Protection for the purpose of conducting primary inspections of aliens seeking admission to the United States at each port of entry of the United States.

SEC. 3105. SOCIAL MEDIA REVIEW OF VISA APPLICANTS.

(a) In General.—Subtitle C of title IV of the Homeland Security Act of 2002 (6 U.S.C. 231 et seq.), as amended by sections 1115, 1124, and 1127 of this division, is further amended by adding at the end the following new sections:

“SEC. 438. SOCIAL MEDIA SCREENING.

“(a) In General.—Not later than 180 days after the date of the enactment of this section, the Secretary shall, to the greatest extent practicable, and in a risk based manner and on an individualized basis, review the social media accounts of certain visa applicants who are citizens of, or who reside in, high-risk countries, as determined by the Secretary based on the criteria described in subsection (b).

“(b) High-Risk Criteria Described.—In determining whether a country is high-risk pursuant to subsection (a), the Secretary shall consider the following criteria:
“(1) The number of nationals of the country who were identified in United States Government databases related to the identities of known or suspected terrorists during the previous year.

“(2) The level of cooperation of the country with the counter-terrorism efforts of the United States.

“(3) Any other criteria the Secretary determines appropriate.

“(c) COLLABORATION.—To carry out the requirements of subsection (a), the Secretary may collaborate with—

“(1) the head of a national laboratory within the Department’s laboratory network with relevant expertise;

“(2) the head of a relevant university-based center within the Department’s centers of excellence network; and

“(3) the heads of other appropriate Federal agencies.

“SEC. 439. OPEN SOURCE SCREENING.

“The Secretary shall, to the greatest extent practicable, and in a risk based manner, review open source information of visa applicants.”.
(b) Clerical Amendment.—The table of contents in section 1(b) of the Homeland Security Act of 2002, as amended by this division is further amended by inserting after the item relating to section 437 the following new items:

“Sec. 438. Social media screening.
“Sec. 439. Open source screening.”.

**TITLE IV—TRANSNATIONAL CRIMINAL ORGANIZATION ILLEGIT SPOTTER PREVENTION AND ELIMINATION**

**SEC. 4101. SHORT TITLE.**

This title may be cited as the “Transnational Criminal Organization Illicit Spotter Prevention and Elimination Act”.

**SEC. 4102. UNLAWFULLY HINDERING IMMIGRATION, BORDER, AND CUSTOMS CONTROLS.**

(a) Bringing in and Harboring of Certain Aliens.—Section 274(a) of the Immigration and Nationality Act (8 U.S.C. 1324(a)) is amended—

(1) in subsection (a)(2), by striking “brings to or attempts to” and inserting the following: “brings to or attempts or conspires to”; and

(2) by adding at the end the following:

“(5) In the case of a person who has brought aliens into the United States in violation of this sub-
section, the sentence otherwise provided for may be increased by up to 10 years if that person, at the time of the offense, used or carried a firearm or who, in furtherance of any such crime, possessed a firearm.”.

(b) AIDING OR ASSISTING CERTAIN ALIENS TO ENTER THE UNITED STATES.—Section 277 of the Immigration and Nationality Act (8 U.S.C. 1327) is amended—

(1) by inserting after “knowingly aids or assists” the following: “or attempts to aid or assist”; and

(2) by adding at the end the following: “In the case of a person convicted of an offense under this section, the sentence otherwise provided for may be increased by up to 10 years if that person, at the time of the offense, used or carried a firearm or who, in furtherance of any such crime, possessed a firearm.”.

c) DESTRUCTION OF UNITED STATES BORDER CONTROLS.—Section 1361 of title 18, United States Code, is amended—

(1) by striking “If the damage” and inserting the following:
“(1) Except as otherwise provided in this section, if the damage”; and

(2) by adding at the end the following:

“(2) If the injury or depredation was made or attempted against any fence, barrier, sensor, camera, or other physical or electronic device deployed by the Federal Government to control the border or a port of entry or otherwise was intended to construct, excavate, or make any structure intended to defeat, circumvent, or evade any such fence, barrier, sensor camera, or other physical or electronic device deployed by the Federal Government to control the border or a port of entry, by a fine under this title or imprisonment for not more than 15 years, or both.

“(3) If the injury or depredation was described under paragraph (2) and, in the commission of the offense, the offender used or carried a firearm or, in furtherance of any such offense, possessed a firearm, by a fine under this title or imprisonment for not more than 20 years, or both.”.
SUBDIVISION 4.—LAWFUL STATUS FOR CERTAIN CHILDHOOD ARRIVALS

SEC. 1101. DEFINITIONS.

In this division:

(1) IN GENERAL.—Except as otherwise specifically provided, the terms used in this division have the meanings given such terms in subsections (a) and (b) of section 101 of the Immigration and Nationality Act (8 U.S.C. 1101).

(2) CONTINGENT NONIMMIGRANT.—The term “contingent nonimmigrant” means an alien who is granted contingent nonimmigrant status under this division.

(3) EDUCATIONAL INSTITUTION.—The term “educational institution” means—

(A) an institution that is described in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)) or is a proprietary institution of higher education (as defined in section 102(b) of such Act (20 U.S.C. 1002(b)));

(B) an elementary, primary, or secondary school within the United States; or
(C) an educational program assisting students either in obtaining a high school equivalency diploma, certificate, or its recognized equivalent under State law, or in passing a General Educational Development exam or other equivalent State-authorized exam or other applicable State requirements for high school equivalency.

(4) SECRETARY.—Except as otherwise specifically provided, the term “Secretary” means the Secretary of Homeland Security.

(5) SEXUAL ASSAULT OR HARASSMENT.—The term “sexual assault or harassment” means—

(A) conduct engaged in by an alien 18 years of age or older, which consists of unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature, and—

(i) submission to such conduct is made either explicitly or implicitly a term or condition of an individual’s employment;

(ii) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
(iii) such conduct has the purpose or effect of creating an intimidating, hostile, or offensive environment;

(B) conduct constituting a criminal offense of rape, as described in section 101(a)(43)(A) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(43)(A));

(C) conduct constituting a criminal offense of statutory rape, or any offense of a sexual nature involving a victim under the age of 18 years, as described in section 101(a)(43)(A) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(43)(A));

(D) sexual conduct with a minor who is under 14 years of age, or with a minor under 16 years of age where the alien was at least 4 years older than the minor;

(E) conduct punishable under section 2251 or 2251A (relating to the sexual exploitation of children and the selling or buying of children), or section 2252 or 2252A (relating to certain activities relating to material involving the sexual exploitation of minors or relating to material constituting or containing child pornography) of title 18, United States Code; or
(F) conduct constituting the elements of any other Federal or State sexual offense requiring a defendant, if convicted, to register on a sexual offender registry (except that this provision shall not apply to convictions solely for urinating or defecating in public).

(6) VICTIM.—The term “victim” has the meaning given the term in section 503(e) of the Victims’ Rights and Restitution Act of 1990 (42 U.S.C. 10607(e)).

SEC. 1102. CONTINGENT NONIMMIGRANT STATUS FOR CERTAIN ALIENS WHO ENTERED THE UNITED STATES AS MINORS.

(a) IN GENERAL.—Notwithstanding any other provision of law, the Secretary may grant contingent nonimmigrant status to an alien who—

(1) meets the eligibility requirements set forth in subsection (b);

(2) submits a completed application before the end of the period set forth in subsection (c)(2); and

(3) has paid the fees required under subsection (c)(5).

(b) ELIGIBILITY REQUIREMENTS.—

(1) IN GENERAL.—An alien is eligible for contingent nonimmigrant status if the alien establishes

...
by clear and convincing evidence that the alien meets the requirements set forth in this subsection.

(2) GENERAL REQUIREMENTS.—The requirements under this paragraph are that the alien—

(A) is physically present in the United States on the date on which the alien submits an application for contingent nonimmigrant status;

(B) was physically present in the United States on June 15, 2007;

(C) was younger than 16 years of age on the date the alien initially entered the United States;

(D) is a person of good moral character;

(E) was under 31 years of age on June 15, 2012, and at the time of filing an application under subsection (c);

(F) has maintained continuous physical presence in the United States from June 15, 2012, until the date on which the alien is granted contingent nonimmigrant status under this section;

(G) had no lawful immigration status on June 15, 2012;
(H) has requested the release to the Department of Homeland Security of all records regarding their being adjudicated delinquent in State or local juvenile court proceedings, and the Department has obtained all such records; and

(I) possesses a valid Employment Authorization Document which authorizes the alien to work as of the date of the enactment of this division, which was issued pursuant to the June 15, 2012, U.S. Department of Homeland Security Memorandum entitled, “Exercising Prosecutorial Discretion With Respect to Individuals Who Came to the United States as Children”.

(3) EDUCATION REQUIREMENT.—

(A) IN GENERAL.—An alien may not be granted contingent nonimmigrant status under this section unless the alien establishes by clear and convincing evidence that the alien—

(i) is enrolled in, and is in regular full-time attendance at, an educational institution within the United States; or

(ii) has acquired a diploma from a high school in the United States, has earned a General Educational Development
certificate recognized under State law, or
has earned a recognized high school
equivalency certificate under applicable
State law.

(B) EVIDENCE.—An alien shall dem-
onstrate compliance with clause (i) or (ii) of
subparagraph (A) by providing a valid certified
transcript or diploma from the educational in-
stitution the alien is enrolled in or from which
the alien has acquired a diploma or certificate.

(4) GROUNDS FOR INELIGIBILITY.—An alien is
ineligible for contingent nonimmigrant status if the
Secretary determines that the alien—

(A) has a conviction for—

(i) an offense classified as a felony in
the convicting jurisdiction;

(ii) an aggravated felony;

(iii) an offense classified as a mis-
demeanor in the convicting jurisdiction
which involved—

(I) domestic violence (as defined
in section 40002(a) of the Violence
Against Women Act of 1994 (34
U.S.C. 12291(a)));
(II) child abuse or neglect (as defined in section 40002(a) of the Violence Against Women Act of 1994 (34 U.S.C. 12291(a))); (III) assault resulting in bodily injury (as such term is defined in section 2266 of title 18, United States Code); (IV) the violation of a protection order (as such term is defined in section 2266 of title 18, United States Code); or (V) driving while intoxicated or driving under the influence (as such terms are defined in section 164(a)(2) of title 23, United States Code); (iv) two or more misdemeanor convictions (excluding minor traffic offenses that did not involve driving while intoxicated or driving under the influence, or that did not subject any individual other than the alien to bodily injury); or (v) any offense under foreign law, except for a purely political offense, which, if the offense had been committed in the
United States, would render the alien inadmissible under section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)) or deportable under section 237(a) of such Act (8 U.S.C. 1227(a));

(B) has been adjudicated delinquent in a State or local juvenile court proceeding for an offense equivalent to—

(i) an offense relating to murder, manslaughter, homicide, rape (whether the victim was conscious or unconscious), statutory rape, or any offense of a sexual nature involving a victim under the age of 18 years, as described in section 101(a)(43)(A) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(43)(A));

(ii) a crime of violence, as such term is defined in section 16 of title 18, United States Code; or

(iii) an offense punishable under section 401 of the Controlled Substances Act (21 U.S.C. 841);

(C) has a conviction for any other criminal offense, which regard to which the alien has not satisfied any civil legal judgements awarded to
any victims (or family members of victims) of
the crime;

(D) is described in section 212(a)(2)(J) of
the Immigration and Nationality Act (8 U.S.C.
1882(a)(2)(J)) (relating to aliens associated
with criminal gangs);

(E) has been charged with a felony or mis-
demeanor offense (excluding minor traffic off-
fenses that did not involve driving while intoxi-
cated or driving under the influence, or that did
not subject any individual other than the alien
to bodily injury), and the charge or charges are
still pending;

(F) is inadmissible under section 212(a) of
the Immigration and Nationality Act (8 U.S.C.
1182(a)), except that in determining an alien’s
inadmissibility—

(i) paragraphs (5), (7), and (9)(B) of
such section shall not apply; and

(ii) subparagraphs (A), (D), and (G)
of paragraph (6), and paragraphs
(9)(C)(i)(I) and (10)(B), of such section
shall not apply, except in the case of the
alien unlawfully entering the United States
after June 15, 2007;
(G) is deportable under section 237(a) of the Immigration and Nationality Act (8 U.S.C. 1227(a)), except that in determining an alien’s deportability—

(i) subparagraph (A) of section 237(a)(1) of such Act shall not apply with respect to grounds of inadmissibility that do not apply pursuant to subparagraph (C) of such section; and

(ii) subparagraphs (B) through (D) of section 237(a)(1) and section 237(a)(3)(A) of such Act shall not apply;

(H) was, on the date of the enactment of this division—

(i) an alien lawfully admitted for permanent residence;

(ii) an alien admitted as a refugee under section 207 of the Immigration and Nationality Act (8 U.S.C. 1157), or granted asylum under section 208 of the Immigration and Nationality Act (8 U.S.C. 1157 and 1158); or

(iii) an alien who, according to the records of the Secretary or the Secretary of State, is lawfully present in the United
States in any nonimmigrant status (other than an alien considered to be a non-immigrant solely due to the application of section 244(f)(4) of the Immigration and Nationality Act (8 U.S.C. 1254a(f)(4)) or the amendment made by section 702 of the Consolidated Natural Resources Act of 2008 (Public Law 110–229)), notwithstanding any unauthorized employment or other violation of nonimmigrant status;

(I) has failed to comply with the requirements of any removal order or voluntary departure agreement;

(J) has been ordered removed in absentia pursuant to section 240(b)(5)(A) of the Immigration and Nationality Act (8 U.S.C. 1229a(b)(5)(A));

(K) has failed or refused to attend or remain in attendance at a proceeding to determine the alien’s inadmissibility or deportability;

(L) if over the age of 18, has failed to demonstrate that he or she is able to maintain himself or herself at an annual income that is not less than 125 percent of the Federal poverty level throughout the period of admission as
a contingent nonimmigrant, unless the alien has
demonstrated that the alien is enrolled in, and
is in regular full-time attendance at, an edu-
cational institution within the United States;

(M) is delinquent with respect to any Fed-
eral, State, or local income or property tax li-
ability;

(N) has failed to pay to the Treasury, in
addition to any amounts owed, an amount equal
to the aggregate value of any disbursements re-
ceived by such alien for refunds described in
section 1324(b)(2);

(O) has income that would result in tax li-
ability under section 1 of the Internal Revenue
Code of 1986 and that was not reported to the
Internal Revenue Service; or

(P) has at any time engaged in sexual ass-
ault or harassment.

(c) APPLICATION PROCEDURES.—

(1) IN GENERAL.—An alien may apply for con-
tingent nonimmigrant status by submitting a com-
pleted application form via electronic filing to the
Secretary during the application period set forth in
paragraph (2), in accordance with the interim final
rule made by the Secretary under section 1105.
(2) Application Period.—The Secretary may only accept applications for contingent non-immigrant status from aliens in the United States during the 1-year period beginning on the date on which the interim final rule is published in the Federal Register pursuant to section 1105.

(3) Application Form.—

(A) Required Information.—The application form referred to in paragraph (1) shall collect such information as the Secretary determines to be necessary and appropriate in order to determine whether an alien meets the eligibility requirements set forth in subsection (b).

(B) Interview.—The Secretary shall conduct an in-person interview of each applicant for contingent nonimmigrant status under this section as part of the determination as to whether the alien meets the eligibility requirements set forth in subsection (b).

(4) Documentary Requirements.—An application filed by an alien under this section shall include the following:

(A) One or more of the following documents demonstrating the alien’s identity:
(i) A passport (or national identity
document) from the alien’s country of ori-
gin.

(ii) A certified birth certificate along
with photo identification.

(iii) A State-issued identification card
bearing the alien’s name and photograph.

(iv) An Armed Forces identification
card issued by the Department of Defense.

(v) A Coast Guard identification card
issued by the Department of Homeland Se-
curity.

(B) A certified copy of the alien’s birth
certificate or certified school transcript dem-
onstrating that the alien satisfies the require-
ment of subsection (b)(2)(A)(iii) and (v).

(C) A certified school transcript dem-
onstrating that the alien satisfies the require-
ments of subsection (b)(2)(A)(ii) and (vi).

(D) Immigration records from the Depart-
ment of Homeland Security (demonstrating
that the alien satisfies the requirements under
subsection (b)(2)(A)(i), (ii), and (vi)).

(5) FEES.—

(A) STANDARD PROCESSING FEE.—
(i) IN GENERAL.—Aliens applying for contingent nonimmigrant status under this section shall pay a processing fee to the Department of Homeland Security in an amount determined by the Secretary.

(ii) RECOVERY OF COSTS.—The processing fee authorized under clause (i) shall be set at a level that is, at a minimum, sufficient to recover the full costs of processing the application, including any costs incurred—

(I) to adjudicate the application;

(II) to take and process biometrics;

(III) to perform national security and criminal checks;

(IV) to prevent and investigate fraud; and

(V) to administer the collection of such fee.

(iii) DEPOSIT AND USE OF PROCESSING FEES.—Fees collected under clause (i) shall be deposited into the Immigration Examinations Fee Account pursuant to
section 286(m) of the Immigration and
Nationality Act (8 U.S.C. 1356(m)).

(B) Border security fee.—

(i) In general.—Aliens applying for
contingent nonimmigrant status under this
section shall pay a border security fee to
the Department of Homeland Security in
an amount of $1,000.

(ii) Use of border security
fees.—Fees collected under clause (i)
shall be available, to the extent provided in
advance in appropriation Acts, to the Sec-
etary of Homeland Security for the pur-
poses of carrying out division C, and the
amendments made by that division.

(6) Aliens apprehended before or during
the application period.—If an alien who is ap-
prehended during the period beginning on the date
of the enactment of this division and ending on the
last day of the application period described in para-
graph (2) appears prima facie eligible for contingent
nonimmigrant status, to the satisfaction of the Sec-
retary, the Secretary—
(A) shall provide the alien with a reasonable opportunity to file an application under this section during such application period; and

(B) may not remove the individual until the Secretary has denied the application, unless the Secretary, in the Secretary’s sole and unreviewable discretion, determines that expeditious removal of the alien is in the national security, public safety, or foreign policy interests of the United States, or the Secretary will be required for constitutional reasons or court order to release the alien from detention.

(7) SUSPENSION OF REMOVAL DURING APPLICATION PERIOD.—

(A) ALIENS IN REMOVAL PROCEEDINGS.—

Notwithstanding any other provision of this division, if the Secretary determines that an alien, during the period beginning on the date of the enactment of this division and ending on the last day of the application period described in subsection (c)(2), is in removal, deportation, or exclusion proceedings before the Executive Office for Immigration Review and is prima facie eligible for contingent nonimmigrant status under this section—
(i) the Secretary shall provide the alien with the opportunity to file an application for such status; and

(ii) upon motion by the alien and with the consent of the Secretary, the Executive Office for Immigration Review shall—

(I) provide the alien a reasonable opportunity to apply for such status; and

(II) if the alien applies within the time frame provided, suspend such proceedings until the Secretary has made a determination on the application.

(B) ALIENS ORDERED REMOVED.—If an alien who meets the eligibility requirements set forth in subsection (b) is present in the United States and has been ordered excluded, deported, or removed, or ordered to depart voluntarily from the United States pursuant to section 212(a)(6)(A)(i) or 237(a)(1)(B) or (C) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(6)(A)(i), 1227(a)(1)(B) or (C)), the Secretary shall provide the alien with the opportunity to file an application for contingent non-
immigrant status provided that the alien has not failed to comply with any order issued pursuant to section 239 or 240B of the Immigration and Nationality Act (8 U.S.C. 1229, 1229c).

(C) Period pending adjudication of application.—During the period beginning on the date on which an alien applies for contingent nonimmigrant status under subsection (c) and ending on the date on which the Secretary makes a determination regarding such application, an otherwise removable alien may not be removed from the United States unless—

(i) the Secretary makes a prima facie determination that such alien is, or has become, ineligible for contingent nonimmigrant status under subsection (b); or

(ii) the Secretary, in the Secretary’s sole and unreviewable discretion, determines that removal of the alien is in the national security, public safety, or foreign policy interest of the United States.

(8) Security and law enforcement clearances.—
(A) **BIOMETRIC AND BIOGRAPHIC DATA.**—The Secretary may not grant contingent non-immigrant status to an alien under this section unless such alien submits biometric and biographic data in accordance with procedures established by the Secretary.

(B) **ALTERNATIVE PROCEDURES.**—The Secretary may provide an alternative procedure for applicants who cannot provide the biometric data required under subparagraph (A) due to a physical impairment.

(C) **CLEARANCES.**—

(i) **DATA COLLECTION.**—The Secretary shall collect, from each alien applying for status under this section, biometric, biographic, and other data that the Secretary determines to be appropriate—

(I) to conduct national security and law enforcement checks; and

(II) to determine whether there are any factors that would render an alien ineligible for such status.

(ii) **ADDITIONAL SECURITY SCREENING.**—The Secretary, in consultation with the Secretary of State and the heads of
other agencies as appropriate, shall conduct an additional security screening upon determining, in the Secretary’s opinion based upon information related to national security, that an alien is or was a citizen or resident of a region or country known to pose a threat, or that contains groups or organizations that pose a threat, to the national security of the United States.

(iii) PREREQUISITE.—The required clearances and screenings described in clauses (i)(I) and (ii) shall be completed before the alien may be granted contingent nonimmigrant status.

(9) DURATION OF STATUS AND EXTENSION.—The initial period of contingent nonimmigrant status—

(A) shall be 3 years unless revoked pursuant to subsection (e); and

(B) may be extended for additional 3-year terms if—

(i) the alien remains eligible for contingent nonimmigrant status under subsection (b);
(ii) the alien again passes background checks equivalent to the background checks described in subsection (c)(9); and

(iii) such status was not revoked by the Secretary for any reason.

(d) TERMS AND CONDITIONS OF CONTINGENT NONIMMIGRANT STATUS.—

(1) WORK AUTHORIZATION.—The Secretary shall grant employment authorization to an alien granted contingent nonimmigrant status who requests such authorization.

(2) TRAVEL OUTSIDE THE UNITED STATES.—

(A) IN GENERAL.—The status of a contingent nonimmigrant who is absent from the United States without authorization shall be subject to revocation under subsection (e).

(B) AUTHORIZATION.—The Secretary may authorize a contingent nonimmigrant to travel outside the United States and may grant the contingent nonimmigrant reentry provided that the contingent nonimmigrant—

(i) was not absent from the United States for a period of more than 15 consecutive days, or 90 days in the aggregate during each 3-year period that the alien is
in contingent nonimmigrant status, unless
the contingent nonimmigrant’s failure to
return was due to extenuating cir-
cumstances beyond the individual’s control;
and
(ii) is otherwise admissible to the
United States, except as provided in sub-
section (b)(4)(F).

(C) CLARIFICATION ON ADMISSION.—The
admission to the United States of a contingent
nonimmigrant after such trips as described in
subparagraph (B) shall not be considered an
admission for the purposes of section 245(a) of
the Immigration and Nationality Act (8 U.S.C.
1255(a)).

(3) INELIGIBILITY FOR HEALTH CARE SUB-
SIDIES AND REFUNDABLE TAX CREDITS.—

(A) HEALTH CARE SUBSIDIES.—A contin-
gent nonimmigrant—

(i) is not entitled to the premium as-
sistance tax credit authorized under sec-
tion 36B of the Internal Revenue Code of
1986 and shall be subject to the rules ap-
plicable to individuals who are not lawfully
present set forth in subsection (e) of such section; and

(ii) shall be subject to the rules applicable to individuals who are not lawfully present set forth in section 1402(e) of the Patient Protection and Affordable Care Act (42 U.S.C. 18071(e)).

(B) REFUNDABLE TAX CREDITS.—A contingent nonimmigrant shall not be allowed any credit under sections 24 and 32 of the Internal Revenue Code of 1986.

(4) FEDERAL, STATE, AND LOCAL PUBLIC BENEFITS.—For purposes of title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1601 et seq.), a contingent nonimmigrant shall not be considered a qualified alien under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

(5) CLARIFICATION.—An alien granted contingent nonimmigrant status under this division shall not be considered to have been admitted to the United States for the purposes of section 245(a) of the Immigration and Nationality Act (8 U.S.C. 1255(a)).

(e) REVOCATION.—
(1) IN GENERAL.—The Secretary shall revoke the status of a contingent nonimmigrant at any time if the alien—

(A) no longer meets the eligibility requirements set forth in subsection (b);

(B) knowingly uses documentation issued under this section for an unlawful or fraudulent purpose; or

(C) was absent from the United States at any time without authorization after being granted contingent nonimmigrant status.

(2) ADDITIONAL EVIDENCE.—In determining whether to revoke an alien’s status under paragraph (1), the Secretary may require the alien—

(A) to submit additional evidence; or

(B) to appear for an in-person interview.

(3) INVALIDATION OF DOCUMENTATION.—If an alien’s contingent nonimmigrant status is revoked under paragraph (1), any documentation issued by the Secretary to such alien under this section shall automatically be rendered invalid for any purpose except for departure from the United States.

SEC. 1103. ADMINISTRATIVE AND JUDICIAL REVIEW.

(a) EXCLUSIVE ADMINISTRATIVE REVIEW.—Administrative review of a determination of an application for
status, extension of status, or revocation of status under
this division shall be conducted solely in accordance with
this section.

(b) Administrative Appellate Review.—

(1) Establishment of Administrative Appellate Authority.—The Secretary shall estab-

lish or designate an appellate authority to provide
for a single level of administrative appellate review
of a determination with respect to applications for
status, extension of status, or revocation of status
under this division.

(2) Single Appeal for Each Administrative Decision.—

(A) In General.—An alien in the United
States whose application for status under this
division has been denied or revoked may file
with the Secretary not more than 1 appeal, pur-

suant to this subsection, of each decision to
deny or revoke such status.

(B) Notice of Appeal.—A notice of ap-

peal filed under this subparagraph shall be filed
not later than 30 calendar days after the date
of service of the decision of denial or revocation.
(3) Record for review.—Administrative appellate review under this subsection shall be de novo and based only on—

(A) the administrative record established at the time of the determination on the application; and

(B) any additional newly discovered or previously unavailable evidence.

c Judicial Review.—

(1) Applicable provisions.—Judicial review of an administratively final denial or revocation of, or failure to extend, an application for status under this division shall be governed only by chapter 158 of title 28, except as provided in paragraphs (2) and (3) of this subsection, and except that a court may not order the taking of additional evidence under section 2347(c) of such chapter.

(2) Single appeal for each administrative decision.—An alien in the United States whose application for status under this division has been denied, revoked, or failed to be extended, may file not more than 1 appeal, pursuant to this subsection, of each decision to deny or revoke such status.

(3) Limitation on civil actions.—
(A) **CLASS ACTIONS.**—No court may certify a class under Rule 23 of the Federal Rules of Civil Procedure in any civil action filed after the date of the enactment of this division pertaining to the administration or enforcement of the application for status under this division.

(B) **REQUIREMENTS FOR AN ORDER GRANTING PROSPECTIVE RELIEF AGAINST THE GOVERNMENT.**—If a court determines that prospective relief should be ordered against the Government in any civil action pertaining to the administration or enforcement of the application for status under this division, the court shall—

(i) limit the relief to the minimum necessary to correct the violation of law;

(ii) adopt the least intrusive means to correct the violation of law;

(iii) minimize, to the greatest extent practicable, the adverse impact on national security, border security, immigration administration and enforcement, and public safety;

(iv) provide for the expiration of the relief on a specific date, which allows for
the minimum practical time needed to remedy the violation; and

(v) limit the relief to the case at issue and shall not extend any prospective relief to include any other application for status under this division pending before the Secretary or in a Federal court (whether in the same or another jurisdiction).

SEC. 1104. PENALTIES AND SIGNATURE REQUIREMENTS.

(a) Penalties for False Statements in Applications.—Whoever files an initial or renewal application for contingent nonimmigrant status under this division and knowingly and willfully falsifies, misrepresents, conceals, or covers up a material fact or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, shall be fined in accordance with title 18, United States Code, or imprisoned not more than 5 years, or both.

(b) Signature Requirements.—An applicant under this division shall sign their application, and the signature shall be an original signature. A parent or legal guardian may sign for a child or for an applicant whose physical or developmental disability or mental impairment
prevents the applicant from being competent to sign. In
such a case, the filing shall include evidence of parentage
or legal guardianship.

SEC. 1105. RULEMAKING.
Not later than 1 year after the date of the enactment
of this division, the Secretary shall issue interim final reg-
ulations to implement this division, which shall take effect
immediately upon publication in the Federal Register.

SEC. 1106. STATUTORY CONSTRUCTION.
Except as specifically provided, nothing in this sub-
division may be construed to create any substantive or
procedural right or benefit that is legally enforceable by
any party against the United States or its agencies or offi-
cers or any other person.