Center for Immigration Studies
Low-immigration, Pro-immigrant

COMPENDIUM OF LEGISLATIVE OPTIONS TO REFORM FEDERAL IMMIGRATION LAW

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- Worldwide Numerical Limitation on Family-Sponsored Immigrants
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A. Fencing

- **Construction of Fencing and Security Improvements in Border Area from Pacific Ocean to Gulf of Mexico.** Restores the original border fencing requirement of the "Secure Fence Act", before subsequently being watered down by the Hutchison amendment. DHS shall provide for least 2 layers of reinforced fencing along delineated areas of the southern border.

- **Border Wall System Construction.** Mandates that DHS immediately resume all activities related to the construction of the border wall system along the southern border that was underway or planned for prior to January 20, 2021, DHS may not cancel any relevant contracts entered into on or before that date, and DHS must expend all funds appropriated or obligated for such construction that were appropriated or obligated beginning on October 1, 2016.

B. Staffing

- **Additional Border Patrol Agents.** Subject to appropriations, requires CBP to hire, train, and assign sufficient Border Patrol agents to maintain an active duty presence of not fewer than [25,000] full-time equivalent agents, and will determine the rate at which the additional agents will be added with due regard to filling the positions as expeditiously as possible without making any compromises in the selection or the training of the additional officers.

C. Entry-Exit System

- **Biometric Exit Data System.** A unfulfilled requirement to electronically track entry and exit from the country has been in place for more than 25 years. Provision mandates that DHS complete and implement a biometric exit system at all air, land and sea ports of entry within a definitive timeline.

D. Miscellaneous

- **Migrant Protection Protocols.** Requires that DHS implement the Migrant Protection Protocols in accordance with the memorandum of then Secretary of Homeland Security Nielsen.

- **Prohibitions on Actions that Impede Border Security on Certain Federal Land.** Prohibits the Departments of the Interior or Agriculture from impeding, prohibiting, or restricting CBP activities on federal land located within 100 miles of the southern border to execute search and rescue operations and to prevent all unlawful entries into the U.S.

- **Border Crossing Fee.** Requires DHS to impose a fee at the time of entry into the U.S. at any land border port of entry in an amount sufficient to make the total of such fees substantially equal to the cost of maintaining and operating the facilities and services utilized. All fees shall be deposited as offsetting receipts in a separate account within the general fund of the U.S Treasury to be used to offset expenses incurred in providing inspection services at land border POEs.

- **Written Notice of Removal Proceeding.** Prohibits DHS from granting parole or release from detention to applicants for admission without their being provided written notice that they are required to appear for removal proceedings and identifying the specific date of the proceedings. Absent exceptional circumstances, failure to appear will result in immediate termination of an alien's parole, deferred action, TPS, or other immigration status and any associated employment authorization.

- **Use of Army and Air Force to Secure the Border.** Except under circumstances expressly authorized by the Constitution or Act of Congress, it is illegal to willfully use any part of the Army or the Air Force as a posse comitatus or otherwise to execute the laws. The provision provides that this bar does not apply when the Army or Air Force are used at or near the border in order to prevent aliens, terrorists, and drug smugglers from entering.

II. VISA SECURITY

- **Background and Security Checks.** Prohibits DHS, DOJ and courts from granting (or ordering the grant or adjudication of) an application for adjustment of status to permanent residence, U.S. citizenship or any other status, relief, protection from removal, employment authorization, or other benefit under the immigration laws, or any immigrant or nonimmigrant petition, until such background and security checks as DHS may require have been completed or updated to its satisfaction, and denies courts any jurisdiction to require any such grants or adjudications to be completed by a certain time or award any relief for delay in completing such acts. Prohibits DHS, DOJ, DOS, or DOL from being required to grant any application, approve any petition, or grant or continue any relief, protection from removal, employment authorization, or any other status or benefit under the immigration laws to, or on behalf of, any alien described in the security and terrorism grounds of removal, or any alien with respect to whom a criminal or other proceeding or

investigation is open or pending, where such proceeding or investigation is deemed material to the alien's eligibility for the status or benefit sought.

- **Visa Security Units.** The ICE Visa Security Program interdicts criminals, terrorists, and other individuals who seek to exploit the visa process to enter the United States by assigning Visa Security Units to embassies and consulates around the world to vet visa applications. The provision expands VSUs to the 75 most high-risk posts worldwide, enhances counterterrorism vetting and screening, provides additional training to CBP and ICE personnel at international posts, and establishes the Visa Security Advisory Opinion Unit.

- **Social Media Review of Visa Applicants.** Requires DHS to review the social media accounts of visa applicants who are citizens of, or reside in, high-risk (of terrorism) countries).

- **Visa Revocation.** While visa revocations are usually not subject to judicial review, revocations are reviewable if they are the sole basis for an order of removal for an alien present in the U.S. Such review can disclose sensitive information that the ground of removal is intended to protect. The provision provides that such visa revocations are not subject to judicial review.

- **Visa Information Sharing.** Current law provides that visa records relating to the issuance, denial or revocation of visas must be considered confidential and may be used only for the formulation, amendment, administration, or enforcement of the immigration, nationality, and other laws of the U.S. (with limited exceptions). The provision provides the Federal government with additional flexibility to release certain data in visa records, such as biographic information, to foreign governments and clarifies that DOS may share visa records with a foreign government on a case-by-case basis for the purpose of determining removability or eligibility for a visa, admission, or other immigration benefits or when otherwise in the national interest.

- **Disclosure of Information for National Security Purposes.** DHS, DOJ, and DOS officials currently may not permit the use by or disclosure to anyone (other than officials of the agencies for legitimate agency purposes) of any information which relates to aliens who are the beneficiaries of applications for U and T visas, self-petitions for permanent residence, applicants for cancellation of removal as battered aliens, and for certain other immigration benefits, with certain exceptions including for the provision of information to law enforcement officials for law enforcement purposes. The provision allows officials to disclosure information to national security officials to be used solely for a national security purpose in a manner that protects the confidentiality of such information.

- **Visa Interviews**

    - **Restricting Waiver of Visa Interviews.** Ensures that the "national interest" waiver for otherwise required visa interviews can be exercised only in consultation with DHS, cannot be used to waive interviews for persons of national security concern or where

such waiver would create a high risk of degradation of visa program integrity, and cannot be based on mere travel facilitation or reducing the workload of consular officers.

- **Authorization of Waiver of Visa Interviews for Certain Ineligible Applicants.** Currently, DOS must conduct in-person interviews of nonimmigrant visa applicants even where it is evident to the consular officer, based solely on the content of the application, that the applicant is ineligible. The provision clarifies that DOS does not have to conduct interviews of in these instances.

- **DNA Testing:**

  - **(Option 1 – Voluntary)** Grants DHS and DOS the authority to require DNA verification of family relationships on a case-by-case basis or of classes or subclasses of applicants.

  - **(Option 2 -- Mandatory)** Mandates that DHS and DOS require DNA verification of family relationships before the issuance of immigrant visas predicated on biological relationships.

- **Denial of Admission to Nationals of Countries Denying or Delaying Accepting Aliens Ordered Removed.** Current law requires the States Department to discontinue granting visas to nationals of countries that deny or unreasonably delay accepting the return of their nationals subject to deportation by the U.S. The provision creates a more flexible sanction authorizing DHS to deny admission to any national of a country that declines to accept the prompt repatriation of its nationals ordered removed.

III. EXPEDITED REMOVAL

- **Expansion of Expedited Removal.** Currently, DHS shall place into expedited removal proceedings certain arriving aliens and may place into ER certain aliens who have not been admitted who have not been physically present in the U.S. continuously for two years. The provision requires DHS to utilize ER for certain aliens who have not been admitted who have not been physically present continuously for five years.

- **Expedited Removal for Aliens Inadmissible on Criminal or Security Grounds.** Allows DHS to use the same expedited procedures that are available for the removal of aggravated felons to remove other inadmissible criminal aliens who entered illegally and who are otherwise ineligible for relief.

IV. TOLERANCE/CIVICS/LOYALTY

A. The "Tolerant Society Act"

- **Ground of Inadmissibility on Account of Intolerance.** Makes inadmissible any alien who orders/incites/advocates/assists/believes in: 1) genocide, 2) punishment on account of apostasy/blasphemy, 3) the establishment of any governmentally-enforced religious law in the U.S. (whether applying to all persons or only those of a particular religious faith), 4) the persecution of, or willful causing bodily injury to, any person on account of race/religion/national origin/political opinion, or 5) female genital mutilation.

- **Ineligibility for Immigration Relief and Benefits on Account of Intolerance.** Provides that aliens described in the ground of inadmissibility on account of intolerance are ineligible for parole, refugee status, asylum, withholding of removal, temporary protected status, cancellation of removal, naturalization and certain other relief and immigration benefits.

- **Effective Date.** Provides generally that the above provisions shall apply to all aliens, regardless of whether they arrived in the United States or received immigrant or nonimmigrant status before, on, or after the date of enactment.

B. Allegiance to the United States

- **Civics Education.** Requires that the Office of Citizenship in DHS make educational materials concerning the Declaration of Independence, the Federalist Papers and United States Constitution easily accessible to aliens, that shall emphasize that 1) legitimate government is based on the consent of the governed, 2) all persons are created equal and endowed with unalienable rights, 3) because the accumulation of all powers, legislative, executive, and judiciary, in the same hands, results in tyranny, the separation of the Federal government's powers among the three separate branches is central to our Constitution, 4) federalism, the allocation of power between the federal government and these states, is central to our Constitution, and 5) all the rights enshrined in the Constitution and the amendments are vital to the preservation of liberty.

- **Oath of Renunciation and Allegiance.** Requires that the text of the naturalization oath be that currently provided for federal regulations, requires that, upon the naturalization of a new citizen, DHS notify the embassy of the country of which the new citizen was a citizen that such person has renounced allegiance and sworn allegiance to the U.S., and requires that naturalization applicants understand the oath of allegiance.

- **Ineligibility for Immigrant Status on Account of Not Satisfying Selected Naturalization Criteria**. Provides that to be eligible for immigrant visas or adjustment of status to permanent residence, aliens must be of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States.

- **Revocation of Immigrant Status on Account of Not Satisfying Selected Naturalization Criteria.** Provides that a lawful permanent resident, shall forfeit such status if at any point they cease to be of good moral character, attached to the principles of the Constitution of the United States, or well disposed to the good order and happiness of the United States.

V. SANCTUARY CITIES

- **State Noncompliance with Enforcement of Immigration Laws.** Provides that no government entity or individual may prohibit a government entity or official from: 1) complying with the immigration laws or assisting or cooperating with law enforcement regarding immigration laws, 2) making inquiries regarding immigration and custody status of any individuals, and 3) notifying, or complying with requests from, the Federal government regarding the presence of individuals encountered based on immigration and custody status. Restricts certain federal law enforcement grants to, a nd allows DHS to decline to transfer aliens in its custody to, offending jurisdictions. Regarding certain serious crimes committed by aliens following their release from custody by sanctuary jurisdictions, provides the victims, or their families, a private right of action against the offending jurisdictions.

VI. STATE/LOCAL LAW ENFORCEMENT

A. ICE Detainers

- **Clarifying the Authority of ICE Detainers.** Clarifies the probable cause required for the issuance of a detainer and provides that ICE must effect a transfer of custody of the alien subject to the detainer within 48 hours (excluding weekends and holidays) and in no case more than 96 hours from the time that the alien is due to be released from the custody of the relevant law enforcement entity.

- **Immunity and Indemnification.** Provides that a governmental or nongovernmental entity (and its personnel) acting in compliance with a DHS detainer who temporarily holds an alien in its custody pursuant to the terms of a detainer so that DHS may take custody, shall be held harmless for their compliance with the detainer in any suit seeking any punitive, compensatory, or other monetary damages, and requires the federal government substitute itself as the defendant, except if the entity mistreated the alien.

B. States and Local Enforcement of the Immigration Laws.

- **Authorization for States and Localities to Enact and Enforce Their Own Immigration Laws.** Consistent with the Supreme Court's decision in *Arizona v. U.S.*, grants States and localities specific Congressional authorization to enact and enforce their own immigration

laws to the extent they are consistent with the Federal immigration laws, and to assist in the enforcement of the Federal immigration laws.

- **Rights of States and Localities to Enter into 287(g) Agreements.** Amends section 287(g) of the INA (which allows DHS to enter into cooperative agreements with States and localities to assist in the enforcement of Federal immigration laws) to 1) require DHS to accept a request from a State or locality to enter into an agreement absent a compelling reason not to, 2) prohibit DHS from setting a limit on the number of agreements, 3) require DHS to process requests for such agreements with all due haste, and in no case more than 90 days from the date that the request is made, and 4) require DHS to accommodate a requesting State or political subdivision with respect to the enforcement model of their choosing. Prohibits DHS from terminating a 287(g) agreement absent a compelling reason and requires DHS to provide written notice of its intent to terminate at least 180 days prior to date of intended termination that fully explains the grounds for termination, along with evidence substantiating DHS's allegations, and providing the State or locality the right to a hearing before an administrative law judge.

VII. CRIMINAL ALIENS

A. The "Alien Gang Removal Act"

- **Grounds of Inadmissibility and Deportability for Alien Criminal Gang Members.** Establishes grounds of inadmissibility/deportability for criminal gang members, includes a definition of "criminal gang", and sets procedures for DHS to designate criminal street gangs for purposes of the immigration laws modeled after those used by DOS to designate foreign terrorist organizations. Subjects any alien charged in immigration court proceedings as a criminal gang member to mandatory detention during the pendency of the proceeding. Makes criminal gang members ineligible for asylum, special immigrant juvenile state, and TPS and prohibits their parole unless actively assisting in a law enforcement matter.

B. Aggravated Felonies/Crimes of Violence

- **Definition of Aggravated Felony.** Modifies the definition of "aggravated felony" to address Supreme Court decisions that have limited its applicability in removal proceedings, including by eliminating the reliance on the Title 18 definition of "crime of violence" as that definition was partially invalidated by the Supreme Court. Adds manslaughter, certain harboring crimes, felony marriage fraud and immigration-related entrepreneurship fraud, and offenses for improper entry and reentry where the alien was sentenced to one year or more of incarceration, as aggravated felonies. Clarifies that theft offenses include any federal or state theft offenses including theft by deceit or fraud and that all inchoate offenses are considered conspiracies.

- **Adding Certain Serious Juvenile Crimes to the Definition of Aggravated Felony.** Makes an aggravated felon for immigration law purposes an alien who has been adjudicated delinquent in a State or local juvenile court proceeding for an offense equivalent to an offense relating to murder, manslaughter, homicide, rape, or any offense of a sexual nature involving a victim under the age of 18 years, a crime of violence, or an offense punishable under section 401 of the Controlled Substances Act. An alien who was physically present in the United States at any time prior to the age of 18 may not apply for the adjustment of status to permanent residence unless they have requested the release to DHS of all records regarding their being adjudicated delinquent in State or local juvenile court proceedings, and DHS has obtained all such records.

- **Definition of Crime of Violence.** Defines "crime of violence" for immigration law purposes by listing enumerated offenses that would qualify (while maintaining the current offenses that have "as an element the use, attempted use, or threatened use of physical force against the person or property of another"). Provides that when a definition references the federal code, an offense under state, tribal, or the Uniform Code of Military Justice qualifies as a crime of violence despite not containing the federal jurisdiction element (such as interstate commerce).

- **Precluding Admissibility of Aliens Convicted of Aggravated Felonies or Other Serious Offenses.** Under current law, aggravated felony convictions render an admitted alien deportable, but do not render an alien who entered without inspection inadmissible (unless the conviction also falls within one of the existing grounds of inadmissibility). Certain additional grounds of deportability, such as firearms offenses and crimes of domestic violence, are also not currently grounds of inadmissibility. The provision makes convictions for aggravated felonies and certain other offenses independent grounds of inadmissibility. Amends both the inadmissibility and deportability grounds to include crimes relating to Social Security fraud and the unlawful procurement of citizenship. Clarifies that an alien convicted of an aggravated felony is ineligible for a discretionary waiver of certain criminal inadmissibility grounds.

- **Inadmissibility and Deportability of Drunk Drivers.** Makes a second or subsequent conviction for driving while intoxicated an aggravated felony for immigration purposes, and makes a single conviction an aggravated felony when the impaired driving led to the death or serious bodily injury of another person.

- **Precluding Withholding of Removal for Aggravated Felons.** Bars aliens convicted of aggravated felonies from eligibility for withholding of removal.

C. Sex Offenders

- **Barring the Admission of Convicted Sex Offenders Failing to Register and Requiring Deportation of Such Sex Offenders.** Renders a convicted sex offender who has failed to register as required by law inadmissible/deportable.

- **Protecting Immigrants from Convicted Sex Offenders.** Bars convicted sex offenders from petitioning for relatives (and fiancées and fiancés) for permanent resident status unless DHS determines the petitioner poses no risk to the beneficiary.

D. Convictions and Post-Conviction Relief

- **Clarification of Authority Regarding Determinations of Convictions.** Under current case law, immigration judges must rely only on the elements of a criminal statute and usually cannot consider the circumstances of the particular crime. Clarifies that extrinsic evidence contained in a record of conviction may be used in determining whether an alien has been convicted of a deportable crime.

- **Post-Conviction Relief.** Provides that any reversal, vacatur, expungement, or modification to a conviction, sentence, or conviction record that was granted to ameliorate the consequences of the conviction, sentence, or conviction record, or was granted for rehabilitative purposes, or for failure to advise the alien of the immigration consequences of a guilty plea or a determination of guilt, shall have no effect on the immigration consequences resulting from the original conviction. The alien shall have the burden of demonstrating that any reversal, vacatur, expungement, or modification was not granted for such reasons. Provides that a pardon shall have no effect on the immigration consequences resulting from the original conviction if the pardon was granted in whole or in part to eliminate that alien's condition of deportability.

E. Access to Databases

- **Department of Homeland Security Access to Crime Information Databases.** Grants DHS access to crime information databases including NCIC, ensuring that USCIS officers have access arrest and conviction records for applicants for immigration benefits.

F. Increased Federal Penalties

- **Increased Penalties for Certain Crimes Committed by Illegal Aliens.** Provides that any alien unlawfully present in the United States, who commits, or conspires or attempts to commit, a crime of violence or a drug trafficking offense), shall be fined and sentenced to not less than five years in prison, that if such alien was previously ordered removed for having committed a crime, the alien shall be sentenced to not less than 15 years in prison, and a sentence imposed pursuant to this provision shall run consecutively to any other sentence of imprisonment imposed for any other crime.

- **Increased Criminal Penalties Related to Removal.** Any alien against whom a final order of removal is outstanding by reason of being deportable who willfully 1) fails or refuses to depart from the U.S. within 90 days from the final order (or if judicial review is had, then

from the final order of the court), fails or refuses to make timely application in good faith for travel or other documents necessary for departure, 3) prevents or hampers their departure pursuant to such, or 4) fails or refuses to present themselves for removal as required is subject to criminal penalties. The provision increases the criminal penalties and adds mandatory minimum penalties.

- **Criminal Penalties Related to the Employment of Unauthorized Aliens.** Provides that any person who, during any 12-month period, knowingly employs 10 or more individuals with actual knowledge or in reckless disregard of the fact that they are both unauthorized to work and unlawfully present, shall be subject to fine and imprisonment for not more than 10 years.

- **Identity Theft Offenses.** Clarifies that the Federal crime of knowingly transferring, possessing, or using, without lawful authority, a means of identification of another person with the intent to commit a violation of Federal law, or a State or local felony, and the enhanced penalties for certain federal identity theft crimes, including those relating to mail, bank, and wire fraud, nationality and citizenship, passports or visas, various immigration offenses, and false statements relating to Social Security programs, are applicable if an individual knows the identification is not their own, regardless of whether it is fictitious or belongs to another person.

- **Increased Criminal Penalties for Document Fraud.** Whoever commits certain Federal document fraud offenses, including knowingly forging, counterfeiting, or altering any visa or other document prescribed for entry into or as evidence of authorized stay or employment in the U.S., or uses such document, knowing it to be forged, counterfeited, altered, or falsely made, or to have been procured by fraud or unlawfully obtained, is subject to Federal criminal penalties. The provision increases such penalties.

- **Laundering of Monetary Instruments.** Certain Federal racketeering offenses, including attempting to conduct financial transactions knowing that the property involved represents the proceeds of specified unlawful activity, is subject to Federal criminal penalties. The provision adds to the list of specified unlawful activity offenses relating to human trafficking and alien smuggling.

- **Conforming Amendment to the Definition of Racketeering Activity.** Makes all passport and visa fraud a racketeering activity for purposes of Federal criminal law.

- **Penalties for Misusing Social Security Numbers or Filing False Information with Social Security Administration.** Attaches the Federal criminal penalties for Social Security fraud to additional offenses, including 1) with intent to deceive, discloses, sells, or transfers their own social security account number to any person, and 2) being an officer or employee of any Federal, State or local executive, legislative, or judicial agency in possession of any individual's social security account number, willfully acts or fails to act so as to cause certain violations of Federal law.

- **Minimum Fines for Illegal Entry and Overstay.** Increases the available fines for aliens who illegally enter the U.S. and creating a new fine for aliens who become unlawfully present after overstaying a visa.

G. New Grounds of Inadmissibility and Deportability

- **Immigration Consequences of Trade Secret Theft and Economic Espionage.** Provides that an alien who the government knows or has reasonable grounds to believe has engaged in, is engaging in, or is seeking admission to the U.S. to engage in any activity that violates or evades any law prohibiting the export of goods, technology, or sensitive information, violates any law relating to the theft or misappropriation of trade secrets or economic espionage, or has been convicted of conspiracy related to any such activity is inadmissible.

VIII. Alien Terrorists

- **Expanded Inapplicability of Restriction on Removal.** Bars aliens inadmissible or deportable on terrorism grounds from eligibility for withholding of removal (unless, in certain instances, DHS determines that there are not reasonable grounds for regarding the alien as a danger to the security of the United States).

- **Naturalization Reform.** The provision 1) bars alien terrorists from eligibility to naturalize, 2) bars district court consideration of naturalization applications while applicants are in removal proceedings, 3) holds in abeyance petitions to grant status for relatives filed by individuals who are, themselves, facing denaturalization, 4) limits the relief a district court can grant regarding the delayed adjudication of naturalization applications, and 5) limits court review of DHS's findings with respect to whether a naturalization applicant has good moral character, understands and is attached to the principles of the Constitution, and is well disposed to the good order and happiness of the United States.

- **Denaturalization of Terrorists.** This provision authorizes DHS to revoke the naturalization of terrorists.

- **Bar to Finding of Good Moral Character.** Applicants for certain immigration benefits, including naturalization, voluntary departure, and cancellation of removal, must demonstrate ``good moral character.'' The current definition does not expressly exclude aliens who are terrorists. The provision bars terrorist aliens from showing good moral character. In addition, because the term's definition does not, and could never, cover all situations in which applicants could be shown not to have good moral character, the provision gives DHS and DOJ discretionary authority to make good moral character determinations in situations not specifically set forth, and these determinations may be based upon actions that did not occur within the requisite period of time for which good moral character must be established.

- **Revocation or Denial of Passports and Passport Cards to Terrorists.** Provides that DOS may decline to issue a passport or passport card to any national of the U.S. who has been convicted of certain terrorism offenses or would be described, if they were an alien, of certain terrorism-related grounds of inadmissibility, and that, for such nationals, DOS may revoke passports or passport cards previously issued. Also provides that if DOS declines to issue a passport or passport card, or revokes a card previously issued, to a national who is not physically present in the U.S., it shall issue, at the national's request, a passport or passport card only valid for direct return to the United States, and that if a national is denied issuance of a passport or passport card, or has their passport or card revoked, they may request a due process hearing.

- **Clarification of Terrorism Definition.** Provides that engaging in terrorist activity includes 1) committing or inciting terrorist activity under circumstances indicating an intention to cause substantial damage to property, in addition to the current "death or serious bodily injury", and 2) to threaten, attempt, or conspire to do any of the acts considered engaging in terrorist activity.

IX. DETENTION

A. Facilities

- **Federal Detention Facilities.** Subject to appropriations, requires DHS to construct or acquire, in addition to existing facilities for the detention of aliens, detention facilities for aliens detained pending removal or a decision regarding such removal, and to increase the number of available detention beds to at least [X] beds before the end of fiscal year 202[X].

B. Flores Settlement Agreement Issues

- **Clarification of Standards for Family Detention.** Under a settlement agreement reached in the 1990s, unaccompanied alien minors (UACs) in custody must be given a detention hearing in which they are presumed to be releasable. The district court judge in the 9th Circuit subsequently and very questionably extended the reach of the decision to cover minors who entered the U.S. with one or both of their parents. The provision provides that, notwithstanding any judicial determination, consent decree, or settlement agreement, there is no presumption that a UAC should not be detained, and that 1) DHS may in its discretion detain any alien minor (other than a UAC) who is inadmissible/deportable pending the completion of their removal proceedings (regardless of whether previously a UAC), 2) DHS shall determine the conditions of detention applicable to such alien minors, and 3) DHS's decision to detain or release such minor shall not be governed by standards, requirements, restrictions, or procedures contained in a judicial decree or settlement relating to the authority to detain or release alien minors and shall not be subject to judicial review. Provides that DHS shall maintain the custody of aliens charged with an illegal entry offense along with their children (rather than transferring the adult aliens to DOJ

custody during the pendency of the criminal matter), except that an alien charged with a felony shall not be detained along with children.

Provides that, notwithstanding any judicial determination, consent decree, or settlement agreement, no State may require that an immigration detention facility used to detain minors, or families consisting of one or more of such minors and parents or legal guardians, that is located in that State be licensed by the State or any political subdivision.

Provides that any conduct or activity that was subject to any restriction or obligation imposed by the "Flores Settlement Agreement" or imposed by any amendment of that agreement or judicial determination based on that agreement shall henceforth be subject to the restrictions and obligations contained in the provision rather than the restrictions and the obligations imposed by such settlement agreement or judicial determination and that in any civil action with respect to the conditions of detention of alien minors, the court shall not enter or approve a settlement agreement or consent decree unless in compliance with this provision.

C. Mandatory Detention

- **Clarification and Reinforcement of the Preexisting Requirement that the Executive Branch Enforce the Immigration Laws of the United States as Set Forth in Statute.** The INA provides that that alien applicants for admission to the U.S. shall be detained for removal proceedings if the examining immigration officer determines that they are not clearly and beyond a doubt entitled to be admitted, and that aliens placed into expedited removal proceedings who claim a fear of return shall be detained until removal if found not to have a credible fear of persecution and detained for further consideration of an application for asylum if they are determined to have a credible fear of persecution. Administrations have long considered Congress's direction to detain as discretionary, often by releasing on parole aliens subject to mandatory detention.

    - **(Option 1)** Clarifies the mandatory nature of the detention provisions referenced above by stating that "under no circumstances shall the alien be released (including pursuant to parole under section 212(d)(5))."

    - **(Option 2)** Clarifies the mandatory nature of all Congressional commands of "shall" in part IV of subchapter II of chapter 12 of title 8 of the U.S. Code by adding in each case "without exception."

    - **(Option 3)** Combines the first two options by stating "without exception" where appropriate and "under no circumstances shall the alien be released (including pursuant to parole under section 212(d)(5))" where appropriate throughout part IV of subchapter II of chapter 12 of title 8 of the U.S. Code.

D. Detention of Dangerous Aliens

- **Detention of Dangerous Aliens.** Provides a statutory basis for DHS to detain as long as necessary specified dangerous aliens under orders of removal who cannot be removed. authorizes DHS to detain a nonremovable alien beyond six months if 1) the alien will be removed in the reasonably foreseeable future, 2) the alien would have been removed but for their refusal to make all reasonable efforts to comply and cooperate with DHS's removal efforts, 3) the alien has a highly contagious disease, 4) release would have serious adverse foreign policy consequences, 5) release would threaten national security, or 6) release would threaten the safety of the community or any person, conditions of release cannot be expected to ensure public safety, and the alien is either an aggravated felon or has been convicted of certain other crimes or has committed a crime of violence and has a mental condition that will likely lead to acts of violence in the future.

E. Detention of Criminal Aliens

- **Sarah and Grant's Law.** Provides for the mandatory detention of any alien who is 1) unlawfully present in the U.S. and has been convicted of driving under the influence of alcohol regardless of whether a misdemeanor or felony, 2) in removal proceedings after being arrested or charged with a particularly serious crime or a crime resulting in the serious bodily injury or death of another where the alien is unlawfully present or deportable pursuant to visa revocation or by reason of failing to comply with the conditions of a visa.

X. ALIEN SMUGGLING

- **Increased Criminal Penalties Related to Alien Smuggling:**
    - **(Option 1)** Clarifies the language of the INA's alien smuggling provision (§ 274, 8 U.S.C. 1324) to prohibit any action that:

> facilitates, encourages, directs, or induces a person to come to or enter the [U.S.] . . . knowing or in reckless disregard of the fact that such person is an alien who lacks lawful authority to [do so] . . . facilitates, encourages, directs, or induces a person to come to or enter the [U.S.] . . . at a place other than a designated port of entry or place other[wise] . . . designated . . . knowing or in reckless disregard of the fact that such person is an alien . . . transports, moves, harbors, conceals, or shields from detection a person outside of the [U.S.] knowing or in reckless disregard of the fact that such person is an alien in unlawful transit from 1 country to another or on the high seas, under circumstances in which the alien is seeking to enter the [U.S.] without official permission or legal authority . . . encourages or induces a person to reside or remain in the [U.S.], knowing or in reckless disregard of the fact that such person is an alien who lacks lawful authority to [do so] . . . transports or moves a person in the [U.S], knowing or in reckless disregard of the fact that such person is

> an alien who lacks lawful authority to . . . be in the [U.S.] if the transportation or movement will further the alien's illegal entry into or illegal presence in the United States [, or] harbors, conceals, or shields from detection a person in the [U.S.], knowing or in reckless disregard of the fact that such person is an alien who lacks lawful authority to [be in the U.S.].

The provision also increases associated Federal criminal penalties and adds mandatory minimum penalties in certain instances.

(Option 2) The provision increases the Federal criminal penalties for alien smuggling, adds mandatory minimum penalties in certain instances, and requires the United States Sentencing Commission to promulgate sentencing guidelines or amend existing guidelines for alien smuggling offenses so as to increase the minimum terms of imprisonment.

- **Revised Penalties for Illegal Entry or Presence.** Makes the knowing unlawful presence and the knowing violation of the terms or conditions of admission or parole federal misdemeanors after an aggregate period of 90 days in violation.

- **Increased Penalties for Illegal Reentry.** Provides strengthened penalties for aliens convicted of illegal reentry who have a serious criminal record: aliens convicted of 3 or more misdemeanors or a felony prior to reentry (if convicted of illegal reentry) are subject to a maximum sentence of 10 year; those convicted of a felony and sentenced to at least 30 months (60 months) will be subject to a maximum sentence of 15 years (20 years), and those convicted of certain crimes including murder, rape, or kidnapping will be subject to a maximum penalty of 25 years.

- **Prohibiting Carrying or Using a Firearm During and in Relation to an Alien Smuggling Crime.** Federal law provides that:

> Except to the extent that a greater minimum sentence is otherwise provided . . . any person who, during and in relation to any crime of violence or drug trafficking crime . . . for which the person may be prosecuted in a court of the [U.S.], uses or carries a firearm, or who, in furtherance of any such crime, possesses a firearm, shall, in addition to the punishment provided for such crime [be subject to additional criminal penalties. N]o term of imprisonment imposed [herein] shall run concurrently with any other term of imprisonment imposed on the person . . . .

The provision applies this provision to alien smuggling crimes.

XI. INTERIOR ENFORCEMENT

A. Structure and Staffing

- **Bureau of Immigration Enforcement.** Establishes at DHS a "Bureau of Immigration Enforcement" which shall perform only the following functions transferred from the Immigration and Naturalization Service pursuant to the Homeland Security Act of 2002: the Border Patrol program, the detention and removal program, the intelligence program, the investigations program, and the inspections program, and shall specifically not perform the functions of other transferred programs, including those of United States Customs Service, the Transportation Security Administration, and the Federal Protective Service.

- **ICE Deportation Officers and Support Staff.** Subject to appropriations, DHS shall increase the number of positions for ICE deportation officers by [10,000] above the number of positions for which funds were appropriated for fiscal year 202[2], and will determine the rate at which the additional officers will be added with due regard to filling the positions as expeditiously as possible without making any compromises in the selection or the training of the additional officers. DHS shall increase the number of positions for support staff for the deportation officers by [700] above the number of full-time positions for which funds were appropriated for fiscal year 20[22].

- **ICE Detention Enforcement Officers.** Subject to appropriations, DHS shall increase the number of positions for ICE detention enforcement officers by [2,500] above the number of positions for which funds were appropriated for fiscal year 202[2], and shall determine the rate at which the additional officers will be added with due regard to filling positions as expeditiously as possible without making any compromises in the selection or the training of the additional officers.

- **ICE Prosecutors and Support Staff.** Subject to appropriations, DHS shall increase the number of positions trial attorneys working for ICE by [60] above the number of positions for which funds were appropriated for fiscal year 202[2], and will determine the rate at which the additional trial attorneys will be added with due regard to filling positions as expeditiously as possible without making any compromises in the selection or the training of the additional attorneys. DHS shall also increase the number of positions for support staff for the trial attorneys by [X] above the number of positions for which funds were appropriated for fiscal year 202[2].

B. Miscellaneous

- **Penalties for Failure to Obey Removal Orders.** The INA provides criminal penalties for aliens with final orders of removal (based on grounds of inadmissibility) who willfully fail or refuse to 1) depart within 90 days, 2) make timely application in good faith for travel or other documents necessary for departure, or 3) present themselves for removal at the time and place required, and for those who connive or conspire, or take any other action, designed to prevent or hamper the alien's departure. The provision subjects aliens to these penalties who have final orders of removal based on grounds of deportability.

- **Encouraging Aliens to Depart Voluntarily.** The provision strengthens the requirements for voluntary departure in lieu of formal removal by adding violators of security and related grounds of removal to the class of aliens ineligible for voluntary departure, allowing aliens less time to complete a voluntary departure, requiring a bond to ensure departure, increasing the penalties an alien will be subject to for failing to timely depart, and restricting the ability of an alien to reopen their case or receive a future immigration benefit if they fail to timely depart.

- **Deterring Aliens Ordered Removed from Remaining in the United States Unlawfully.** Applies the bar on admissibility for aliens removed from the U.S. to those with final removal orders who unlawfully remain here and provides that any alien who absconds after receiving a final order of removal is ineligible for future discretionary immigration relief until 10 years after the alien departs.

- **Additional Removal Authorities.** Grants DHS more power to remove aliens to specific countries, including by allowing DHS to remove aliens to countries of which they are nationals and giving DHS the flexibility not to return aliens to countries when this would be prejudicial to the U.S. (such as by allowing an alien the freedom to engage in terrorism).

XII. Employment Eligibility

A. Discretionary Grants of Employment Authorization

- **Definition of Unauthorized Worker.** Under the INA, an "unauthorized" alien "means, with respect to the employment of an alien at a particular time, that the alien is not at that time either (A) an alien lawfully admitted for permanent residence, or (B) authorized to be so employed by this chapter or by the [Secretary of Homeland Security]." Administrations have interpreted "authorized to be so employed by . . . the [Secretary]" to allow DHS to grant employment authorization to any illegal alien, or any class of illegal aliens, at its unfettered discretion. The provision strikes "or by the [Secretary of Homeland Security]", thus reserving for Congress the authority to permit aliens to be employed.

B. The "Legal Workforce Act"/Employment Eligibility Verification

- **Employment Eligibility Verification Process.** Requires that employers attest that they have verified the employment eligibility of individuals seeking employment by obtaining their Social Security Numbers or immigrant identification numbers and examining acceptable documents presented to establish work eligibility and identity. Requires that an employer use E-Verify to check work eligibility. Reduces the number of acceptable documents acceptable for proof of work eligibility and identity. Requires that an employer retain a copy of the attestation form for the later of three years or one year after the date of

employment termination. Requires an employer to record the E-Verify verification code for employees when they receive a confirmation or final nonconfirmation of work authorization. Allows an employee who receives a tentative nonconfirmation to use the secondary verification process in place under E-Verify. Provides that an employer may terminate employment of individuals who receive a final nonconfirmation and if they do not terminate employment they must notify DHS of the decision not to do so (which creates a rebuttable presumption of noncompliance). Allows an employer to check the employment eligibility of a prospective employee between the date of the offer of a job and three days after the date of hire. Allows an employer to condition a job offer on an E-Verify confirmation. Phases-in mandatory E-Verify participation for new hires in six month increments beginning on the date six months after enactment, with businesses having more than 10,000 employees. Twelve months after enactment, businesses having 500 to 9,999 employees are required to use E-Verify, as are recruiters and referrers. Eighteen months after enactment, businesses having 20 to 499 employees must use E-Verify, and businesses having 1 to 19 employees must after 24 months. Those employers who are currently required by Federal law to use E-Verify (certain federal contractors, the Executive Branch, the Legislative Branch) will continue to be required to use E-Verify on the date of enactment. Requires that new employees performing agricultural labor or services are required to be checked by E-Verify within 18 months of the date of enactment. Allows an employer having 50 or fewer employees to request a one-time extension of the implementation deadline, which DHS shall grant upon request. Allows DHS to issue a one-time six month extension of the implementation deadlines if the Secretary within six months of the date of enactment certifies to Congress that the system will not be ready.

Requires employers to verify the work eligibility of individuals with temporary work visas within three business days of the expiration of the work authorization (phased in over 24 months). Requires the work eligibility of a current employee to be verified if they 1) work for the Federal government, a State or local government, a critical infrastructure site, or on a Federal or State contract (unless already checked by E-Verify), or 2) submit a SSN that DHS determines has a pattern of unusual multiple use. Allows employers to voluntarily verify the work authorization of their current workforce as long as all employees in the same geographic location or employed within the same job category as the employee for whom verification is sought are also verified.

Provides that an employer who has made a good faith attempt to comply with the procedures shall be considered to have complied. This safe harbor does not apply to an employer who has engaged in a pattern or practice of violations.

- **Employment Eligibility Verification System.** Requires DHS to create an employment eligibility verification system (patterned on E-Verify) that is accessible by telephone and internet. The system must provide a confirmation or tentative nonconfirmation within three working days of the employer's initial inquiry. The system must provide a secondary process in cases of a tentative nonconfirmation so that the employer receives a final confirmation or nonconfirmation within ten working days of the notice to the employee that there is a tentative nonconfirmation. Allows DHS to extend that deadline once on a case by case basis for a period of ten working days, but it must notify the employer and

employee of such extension. Requires the system to include safeguards for privacy, against unlawful discriminatory practices and against unauthorized disclosure of personal information. Reiterates that the system is not a national ID card. Requires the Social Security Administration (SSA) and DHS to update relevant databases in a prompt manner to promote maximum accuracy. Allows DHS to require critical infrastructure employers to use E-Verify. Provides that if a work eligible individual claims to have been wrongly fired due to an incorrect E-Verify non-confirmation, they may seek remedies under the Federal Tort Claims Act (but prohibits class actions).

- **Recruitment, Referral, and Continuation of Employment.** Requires union hiring halls, day labor sites and State workforce agencies to use E-Verify when recruiting or referring an individual for employment.

- **Good Faith Defense.** Provides a safe harbor for employers who use E-Verify in good faith and that if an employer uses a reasonable, secure and established technology to authenticate the identity of a new employee, that fact shall be taken into consideration for purposes of determining good faith use.

- **Preemption and States' Rights.** Preempts State laws mandating E-Verify use but gives States a role in enforcing E-Verify by allowing them to investigate violations and enforce its provisions. Incentivizes State assistance in E-Verify enforcement by allowing States to retain the fines assessed. Provides that an employer may be subject to only either a State or a Federal investigation and enforcement action for the same violation of E-Verify. Retains States' and localities' ability to condition the approval of business licenses on an employer's use of E-Verify.

- **Repeal.** Repeals Subtitle A of title IV of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (which created E-Verify as a pilot program).

- **Penalties.** Increases the civil and criminal penalties for employers who violate the laws prohibiting illegal hiring and employment. Allows DHS to bar a business from receiving federal contracts and grants if it repeatedly violates E-Verify requirements (while considing the views of the agency with which it has a contract or grant). Creates an office within ICE to respond to and investigate State complaints about businesses hiring and/or employing illegal aliens.

- **Fraud and Misuse of Documents.** Ensures that employers or prospective employees who submit for work eligibility purposes an SSN or documents related to identity or work authorization, knowing that the number or documents do not belong to the person presenting them, are subject to criminal penalties.

- **Protection of Social Security Administration Programs.** Requires DHS to enter into an annual agreement with SSA to reimburse it for the costs incurred in operating its part of E-Verify.

- **Fraud Prevention.** In order to combat identity theft, requires DHS to "lock" a SSN that is subject to unusual multiple use (to alert its true owner that their SSN may have been compromised). Requires DHS to allow individuals to "lock" their own SSNs (against use to verify work eligibility) and parents/legal guardians to "lock" the SSNs of their minor children.

- **Use of Employment Eligibility Verification Photo Tool.** Requires that an employer who utilizes the photo matching tool that is part of E-Verify match the photo tool photograph to the picture on the identity or employment eligibility document provided by the employee or to the face of the employee submitting the document for employment eligibility purposes.

- **Identity Authentication Employment Eligibility Verification Pilot Programs.** Requires DHS to create a pilot program that allows employers to use an identity authentication-based identification program for work eligibility verification purposes.

- **Inspector General Audits.** Requires SSA's Inspector General to complete audits of certain categories of SSNs for which there is a likelihood of use by unauthorized workers.

- **Mandatory Notification of Social Security Account Number Mismatches and Multiple Uses.** Provides that the Commissioner of Social Security shall notify on an annual basis each employer with one or more employees whose SSN does not match the employee's name or date of birth in the Commissioner's records, instructing the employer to notify the listed employees that they have 10 business days to correct the mismatch with SSA or the employer will be required to terminate their employment. Provides that prior to crediting any individual with concurrent earnings from more than one employer, the Commissioner shall notify the individual that earnings from two or more employers are being reported under their SSN, including the name and location of each employer, and shall direct the individual to contact SSA to present proof that the individual is the person to whom the SSN was issued.

XIII. MINORS

A. Unaccompanied Alien Children

- **Repatriation of Unaccompanied Alien Children.** The Trafficking Victims Protection Reauthorization Act of 2008 created two rules regarding apprehended UACs – those from contiguous countries (Mexico/Canada) can be immediately returned (if they consent, have not been trafficked and don't have a credible fear of persecution), while UACs from other countries must be placed in removal proceedings in immigration court (during which they are usually released into the U.S.). The provision applies the contiguous country rule to UACs from all countries. Also provides that before HHS releases a UAC to the custody of an individual (very often the illegal alien parent who paid for child's smuggling), HHS shall provide to DHS information regarding the custodial individual including name, SSN,

date of birth, location of the residence where the child will be placed, immigration status, and contact information.

- **Rescission of Preferential Availability for Asylum for Unaccompanied Alien Children.** Currently, UACs to get two "bites of the apple" regarding their asylum applications (before an asylum officer and before an immigration judge), rather than the one opportunity available to other applicants. The provision ends this practice.

- **Definition of Unaccompanied Alien Child.** Defines a UAC as a illegal alien under the age of 18 for whom there is no parent/legal guardian, sibling over 18 years of age, aunt, uncle, grandparent, or cousin over 18 years of age available to provide care and physical custody in the U.S., and that a minor will cease to be a UAC if such relative/guardian is found and is available to provide care and physical custody.

B. Special Immigrant Juvenile Status

- **Special Immigrant Juvenile Status for Immigrants Unable to Reunite with Either Parent.** Due to a drafting error in current law, juveniles are able to obtain permanent residence as Special Immigrant Juveniles if they can show they have been abandoned by a one parent even where the other parent is present in the U.S. and able and willing to provide care. Clarifies that such status is available only to juveniles who have lost or been abandoned by both parents.

XIV. Reform of Humanitarian Relief

A. Expedited Removal

- **Country of Removal.** Clarifies that if an alien placed into expedited removal proceedings who expresses a fear of return but has not demonstrated a credible fear of persecution nevertheless seeks withholding (on the basis of persecution or torture) or deferral (on the basis of torture) of removal, DHS may either place such an alien into removal proceedings in immigration court or remove the alien to a third country without determining or adjudicating the alien's eligibility for withholding or deferral if, after being notified of the identity of the prospective third country of removal and provided an opportunity to demonstrate that they are more likely than not to be tortured in that third country, the alien fails to make such a demonstration.

- **Credible Fear Standard.** Provides that in order to find an alien to have a credible fear, the asylum officer must determine that it is more probable than not that the statements made by the alien in support of their claim are true, and must determine that the alien is not subject to any of the statutory or regulatory mandatory bars to being able to apply for asylum or to eligibility for asylum.

- **Recording Expedited Removal and Credible Fear Interviews.** Requires DHS to establish quality assurance procedures and take steps to ensure that questions by employees exercising expedited removal authority and those involving credible fear determinations are asked in a standard manner, and that both these questions and the responsive answers are recorded in a uniform fashion.

- **Failure to Seek Review.** Clarifies that if an asylum officer determines that an alien does not to have a credible fear, if the alien does not indicate a desire for review by an immigration judge, DHS shall consider such nonresponse as a decision to decline review.

- **Limitation on Asylum Appeals.** Provides that an alien determined to have a credible fear shall be referred to an immigration judge for an adjudication limited to a determination as to whether the alien is eligible for asylum (and merits a grant of asylum in the exercise of discretion), withholding of removal or deferral of removal.

B. Asylum Reform

- **Safe Third Countries.** Allows DHS to remove asylum seekers to safe third countries where they would have access to a full and fair procedure for applying for asylum without the current necessity for bilateral agreements with those countries.

- **Standard of Review for Corroborating Evidence.** Precludes judicial reversal of determinations concerning the availability of corroborating evidence unless the court finds that a reasonable adjudicator was compelled to conclude that such corroborating evidence was unavailable.

- **Renunciation of Asylum Status Pursuant to Return to Home Country.** Terminates an alien's asylee status should the alien return to the home country from which they sought asylum, absent a change in country conditions or a compelling reason.

- **Notice Concerning Frivolous Asylum Applications.** Clarifies that notice of the consequences of filing a frivolous asylum application contained on the application provides legally sufficient notice once signed. Clarifies what DHS and DOJ must determine in order to sustain a frivolity finding and bars an alien found to have filed a frivolous application from receiving any future immigration benefits.

- **Anti-Fraud Investigative Work Product.** Authorizes the trier of fact in an asylum matter (usually an immigration judge) to consider statements made to, and investigative reports prepared by, immigration authorities and other government officials.

- **Penalties for Asylum Fraud.** Provides for enhanced penalties for aliens making false statements or representations in their asylum applications and adjudications, including providing false documentation to DHS or the immigration court.

- **Statute of Limitations for Asylum Fraud.** Increases the statute of limitations for violations of 18 USC 1546 (relating to fraud and misuse of visas, permits, and other documents) from 5 years to 10 years and clarifies that the 10 year period is from the time of the commission of the offense or within 10 years after the fraud is discovered.

- **Bar to Asylum Eligibility for Aliens Who Fail to Apply for Protection from Persecution in at Least One Third Country Through Which They Transit En Route to the United States.** Establishes a bar to asylum eligibility for aliens who enter the U.S. after failing to apply for protection from persecution or torture in at least one third country through which they transited en route here (except if they were a victim of a severe form of human trafficking or if the only countries through which they transited are not parties to UN treaties relating to refugees or torture).

- **Definition of Particular Social Group.** For purposes of adjudicating an application for asylum or withholding of removal (persecution), a particular social group must be one that is based on an immutable or fundamental characteristic, defined with particularity, recognized as socially distinct in the society at question, and that exists independently of the alleged persecutory acts/harms that form the basis of the claim (and cannot be defined exclusively by the alleged acts/harms). Additionally, a particular social group cannot consist of or be defined by the following circumstances: past or present criminal activity or association (including gang membership), presence in a country with generalized violence or a high crime rate, being the subject of a recruitment effort by criminal, terrorist, or persecutory groups, the targeting of the applicant for criminal activity for financial gain based on perceptions of wealth or affluence, interpersonal disputes of which governmental authorities were unaware or uninvolved, private criminal acts of which governmental authorities were unaware or uninvolved, past or present terrorist activity or association, past or present persecutory activity or association, or status as an alien returning from the U.S. Provides that the substance of the proposed group, rather than the precise form of its delineation, shall be considered in determining whether it falls within one of the aforementioned categories.

- **Definition of Persecution.** For purposes of screening or adjudicating an application for asylum or withholding of removal (persecution), persecution requires an intent to target a belief or characteristic, a severe level of harm, and the infliction of a severe level of harm by the government of a country or by persons or an organization that the government was unable or unwilling to control. For purposes of evaluating the severity of the level of harm, persecution shall be considered an extreme concept involving a severe level of harm that includes actions so severe that they constitute an exigent threat, shall not be considered to encompass the generalized harm that arises out of civil, criminal, or military strife in a country, all treatment that we regard as unfair, offensive, unjust, or unlawful or unconstitutional, and shall not be considered to encompass intermittent harassment, including brief detentions, threats with no actual effort to carry out the threats (except that particularized threats of severe harm of an immediate and menacing nature made by an identified entity may constitute persecution), or non-severe economic harm or property damage. The existence of laws or government policies that are unenforced or infrequently

enforced shall not, by themselves, constitute persecution, unless there is credible evidence that those laws or policies have been or would be applied to an applicant personally.

- **Definition of Nexus.** For purposes of adjudicating an application for asylum or withholding of removal (persecution), a person shall not be considered to have been persecuted on account of race, religion, nationality, membership in a particular social group, or political opinion, and a person shall not be considered to have a well founded fear of persecution on account of such characteristics, based on the following circumstances: 1) interpersonal animus or retribution, 2) interpersonal animus in which the alleged persecutor has not targeted, or manifested an animus against, other members of an alleged particular social group in addition to the member who has raised the claim at issue, 3) resistance to recruitment or coercion by guerilla, criminal, gang, terrorist or other non-state organizations, 4) the targeting of the applicant for criminal activity for financial gain based on wealth or affluence or perceptions of wealth or affluence, 5) criminal activity, 7) past or present gang affiliation or perceived gang affiliation, or 8) gender.

- **Definition of Firm Resettlement.**

  - **(Option 1)** Clarifies the "firm resettlement" bar to asylum eligibility by providing that an alien shall be considered firmly resettled in a country they lived in before coming to the U.S. if they could live in such country (in any legal status) without fear of persecution.

  - **(Option 2)** Provides that an alien shall be considered firmly resettled if, after the events giving rise to the alien's asylum claim, the alien 1) resided in a country through which the alien transited prior to arriving in or entering the U.S. and received or was eligible for any permanent legal immigration status in that country, 2) resided in such a country with any non-permanent but indefinitely renewable legal immigration status (including asylee, refugee, or similar status but excluding status such as of a tourist), 3) resided in such a country and could have applied for and obtained any non-permanent but indefinitely renewable legal immigration status in that country, 4) resided voluntarily, and without continuing to suffer persecution or torture, in any one country for one year or more after departing their country of nationality and prior to arrival in the U.S. (other than if they were returned to Mexico by the U.S. government pending removal proceedings), or 5) is a citizen of a country other than the one where the alien alleges a fear of persecution (or was one prior to renouncing their citizenship) and was present in that country after departing the country of alleged persecution and prior to arrival in the U.S.

- **Definition of Internal Relocation.** Provides that in determining whether an alien should be considered ineligible for asylum on account of not having avoided persecution by relocating, where reasonable to do so, within their country of nationality, adjudicators should consider the totality of the relevant circumstances regarding an applicant's prospects for relocation, including the size of the country, the geographic locus of the alleged persecution, the size, reach, or numerosity of the alleged persecutor, and the applicant's demonstrated ability to relocate to the U.S. to apply for asylum.

- **Discretionary Factors in the Grant of Asylum.** Provides that a decision-maker shall consider as significant adverse discretionary factors in determining whether an alien merits a grant of asylum in the exercise of discretion: an alien's unlawful entry into the U.S. (unless made in immediate flight from persecution in a contiguous country or made by an alien under the age of 18), or use of fraudulent documents to enter the U.S. (unless arriving in the U.S. by air, sea, or land directly from their home country without transiting through any other country).

C. Reform of Convention Against Torture (CAT) Relief

- **Officials Designated to Determine Eligibility for Convention Against Torture Relief.** Provides that only officials designated by the Secretary of DHS may make determinations as to eligibility for CAT relief, and that there shall be no administrative or judicial review of such determinations.

- **Exception to Convention Against Torture Relief for Certain Aliens Terrorists and Criminals.** Requires DHS to revise the regulations issued pursuant to the legislation implementing the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment in order to 1) exclude from the protection of such regulations aliens who are ineligible for withholding of removal (such as for certain criminal or terrorist acts), and 2) place the burden on the applicant for CAT relief to establish by clear and convincing evidence that he or she would be tortured if removed to the proposed country of removal. No court shall have jurisdiction to review such revised regulations.

- **Definition of Torture and Acquiescence of a Public Official.** Clarifies that an act is considered torture for purposes of eligibility for CAT relief by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from them or a third person information or a confession, punishing them for an act they or a third person has committed or is suspected of having committed, or intimidating or coercing them or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of, or with the consent or acquiescence of, a public official acting in an official capacity or other person acting in an official capacity. Clarifies that pain or suffering inflicted by a public official who is not acting under color of law shall not constitute such pain or suffering, although a different public official acting in an official capacity or other person acting in an official capacity could instigate, consent to, or acquiesce in the pain or suffering inflicted by the public official who is not acting under color of law.

  Clarifies that acquiescence of a public official for purposes of eligibility for CAT relief requires that the official, prior to the activity constituting torture, have awareness (including willful blindness) of such activity and thereafter breaches their legal responsibility to intervene to prevent such activity. Clarifies that in order for an official to breach their legal responsibility to intervene, the official must have been charged with

preventing the activity as part of their duties and have failed to intervene (being unable to intervene or unable to prevent the activity upon intervention are not sufficient to breach such responsibility).

D. Temporary Protected Status

- **Temporary Protected Status Designation:**

  - **(Option 1)** Provides that if DHS determines that a foreign state whose initial designation for TPS is expiring continues to meet the condition for designation, DHS may submit a recommendation to the Congress to extend the period of designation for not more than 18 months that sets forth the justification for the extension, including the humanitarian concerns, or how the extension otherwise is in the national interest. If, 90 days after the submission of the recommendation, the President has not signed into law legislation passed by the House and the Senate extending the designation, the designation shall be terminated. Also provides that a beneficiary of TPS shall not be thereby considered "admitted".

  - **(Option 2)** Tightens the eligibility standards for aliens to be beneficiaries of a country's TPS designation, including by making unlawfully present aliens ineligible unless specifically authorized by Congress. Modifies the eligibility standards for a country (outside of the context of armed conflict) from:

    > DHS finds that there has been an earthquake, flood, drought, epidemic, or other environmental disaster in the state resulting in a substantial, but temporary, disruption of living conditions in the area affected AND the foreign state is unable, temporarily, to handle adequately the return to the state of aliens who are nationals of the state AND the foreign state officially has requested designation, OR DHS finds that or there exist extraordinary and temporary conditions in the foreign state that prevent aliens who are nationals of the state from returning to the state in safety, unless the Attorney General finds that permitting the aliens to remain temporarily in the United States is contrary to the national interest of the United States.

    to:

    > DHS finds that there has been an earthquake, flood, drought, epidemic, or other environmental disaster in the state resulting in a substantial, but temporary, physical destruction of homes and businesses in the area affected AND the foreign state is unable, temporarily, to house and employ the aliens who are nationals of the state residing in the United States, but has a specific plan to repatriate such nationals in a short and specified period of time AND the foreign state officially has requested designation.

Provides that a beneficiary shall lose their TPS status if they travel, no matter how briefly, to the foreign state the designation of which was the basis of the alien being granted status.

XV. Expulsion of Aliens Under Title 8

- **Averting or Curtailing a Mass Migration Event.** Provides that whenever the Secretary of Homeland Security determines that an actual or anticipated mass migration of aliens en route to, or arriving off the coast of, the U.S. presents urgent circumstances requiring an immediate Federal response, the Secretary may make, subject to the approval of the President, rules and regulations prohibiting, in whole or in part, the introduction of persons from such countries or places as he or she shall designate in order to avert or curtail such mass migration, and for such period of time as deemed necessary, including through the expulsion of such aliens. Provides that notwithstanding any other provision of law, when the Secretary makes such a determination and then promulgates, subject to the approval of the President, such rules and regulations, the Secretary shall have the authority to waive all legal requirements of Title 8 that he or she, in their sole discretion, determines necessary in order to avert or curtail the mass migration.

XVI. Refugee Reform

- **Annual Adjustment of the Number of Admissible Refugees.** Provides that the number of annual refugee admissions designated by the President may not exceed 60,000 in any fiscal year unless Congress authorizes a higher number.

- **Termination of Refugee Status.** Provides that the refugee status of an alien who returns to the country that formed the basis for such status shall be terminated absent changed country conditions.

- **Priority Consideration of Certain Applications for Refugee Status.** Provides that DHS shall, when processing refugee applications from individuals seeking refuge from a "country of particular concern", grant priority to applicants of a minority religion whose claims are based on persecution because of their religion.

- **Recurrent Security Monitoring.** Provides that DHS may conduct recurrent background security checks on an admitted refugee until the refugee adjusts to permanent resident status.

- **Adjustment of Status of Refugees.** Modifies requirements for a refugee to adjust status to permanent residence, including by requiring U.S. residency of three years rather than one year and an in-person interview and providing that grounds of deportability (other than the public charge ground) shall be grounds for refusal of adjustment of status.

- **State of Resettlement.** Provides that resettlement of a refugee may not be made in any state or locality where the governor, chief executive, or legislature has taken action disapproving such resettlement.

- **Document Fraud Detection Program.** Requires DHS to establish a program to detect the use of fraudulent documents in refugee admissions applications, including by placement of fraud detection officers at screening locations.

XVII. Parole Reform

- **Reform of Humanitarian and Significant Public Benefit Parole Standards:**

  - **(Option 1)** Allows DHS to parole an alien based on an urgent humanitarian reason only if the alien 1) has a medical emergency and cannot obtain necessary treatment in the foreign state in which the alien is residing or the medical emergency is life-threatening and there is insufficient time for the alien to be admitted through the normal visa process, 2) is needed in the US. in order to donate an organ or other tissue for transplant to a close family member, or 3) has a close family member in the U.S. whose death is imminent and the alien could not arrive in time to see such family member if the alien were to be admitted through the normal visa process. Allows DHS to parole an alien based on a reason strictly in the public interest only if the alien has assisted the U.S. Government in a matter, such as a criminal investigation, espionage, or other similar law enforcement activity, and either the alien's presence in the is required by the Government or the alien's life would be threatened if the alien were not permitted to come to the U.S., or if the alien is to be prosecuted for a crime.

  - **(Option 2)** Allows DHS to parole an alien based on an urgent humanitarian reason only if the alien 1) has a medical emergency and cannot obtain necessary treatment in the foreign state in which the alien is residing or the medical emergency is life-threatening and there is insufficient time for the alien to be admitted through the normal visa process, 2) is the legal guardian or otherwise has legal authority to make medical decisions on behalf of an alien described above, 3) is needed in the U.S. in order to donate an organ or other tissue for transplant into an immediate family member and there is insufficient time for the alien to be admitted through the normal visa process, 4) has an immediate family member in the U.S. whose death is imminent and the alien could not arrive in the United States in time to see such family member alive if the alien were to be admitted through the normal visa process, 5) is a lawful applicant for adjustment of status, or 6) was lawfully granted refugee or asylee status. Allows DHS to parole an alien based on a reason strictly in the public for a significant public benefit if 1) the presence of the alien is necessary in a matter such as a criminal investigation or prosecution, espionage activity, or other similar law enforcement or intelligence-related activity or in a civil matter concerning the termination of parental rights, 2) the alien has previously assisted the U.S. Government in a law enforcement or intelligence-

related activity described above and the life of the alien would be threatened if the alien were not permitted to enter the U.S, or 3) in the case of an alien returned to a foreign contiguous territory to await removal proceedings, the alien needs to attend such proceeding.

- **Limitation of Parole to Aliens Not Physically Present in the United States.** Provides that DHS cannot parole an alien already physically present in the U.S.

- **Inclusion in World-Wide Level of Family-Sponsored Immigrants.** The annual cap on family-sponsored green cards for a fiscal year shall be reduced by the number of aliens who received parole in the second preceding fiscal year and who did not depart within 365 days.

XVIII. Litigation Reform

- **Waiver of Rights in Nonimmigrant Visa Issuance.** Provides that nonimmigrants entering the U.S. must waive their right to review or appeal any determination as to their admissibility or to contest any action for removal other than through an application for asylum or withholding of removal (as Visa Waiver Program participants must currently do).

- **Judicial Review of Orders of Removal.** Denies aliens judicial review of removal orders or the denial of specified discretionary relief (including CAT relief) through habeas corpus, mandamus, or other extraordinary petitions, except for circuit court review of constitutional claims or pure questions of law.

- **Consolidation of Appeals.** Requires all petitions for review of removal orders to be filed in the U.S. Court of Appeals for the Federal Circuit.

- **Certificate of Reviewability.** Establishes a screening process for aliens' appeals of Board of Immigration Appeals decisions under which appeals will be referred to a single circuit court judge for initial review and if that judge decides that the alien has made a substantial showing that the alien's petition for review is likely to be granted, the judge will issue a "certificate of reviewability" allowing the case to proceed to a three-judge panel.

- **Clarification of Jurisdiction on Review.** Strengthens the bar to judicial review of the denial of discretionary relief by DHS.

- **Continuance Reform.** Prohibit immigration judges from abusing their ability to grant continuances by doing so to permit an alien to become eligible for relief.

- **Reinstatement of Removal Orders.** The Ninth Circuit has held that aliens are entitled to have their reinstatement cases adjudicated by immigration judges.In fiscal year 2004, prior to the Ninth Circuit's decision, DHS removed 42,886 aliens in that circuit through reinstatement. Under the Ninth Circuit's decision, immigration judges now must hear tens

of thousands of additional cases annually from aliens ineligible for relief. This is a waste of extremely limited resources. . . .\270\This section ``is meant to preserve judicial resources, and to close the revolving door of illegal reentry by

Reestablishes DHS's ability to deport aliens who have illegally reentered the U.S. after removal without having to obtain a new removal order from an immigration judge. Courts may not review the original removal orders.

- **Prohibition of Attorney Fee Awards for Review of Final Orders of Removal.** Provides that a court may not award fees or other expenses to an alien based upon the alien's being a prevailing party in any proceedings relating to an order of removal unless a court of appeals concludes that the determination of DHS or DOJ that the alien was removable was not substantially justified.

XIX. Office of Security and Investigations

- **Findings.**

- **Structure of Office of Security and Investigations.** Provides that the Director of the Office of Security and Investigations shall report directly to the Director of United States Citizenship and Immigration Services.

- **Authority of the Office of Security and Investigations to Investigate Internal Corruption.** Provides that the Director has sole authority to investigate any criminal or noncriminal violations of the INA or title 18, United States Code, that are alleged to have been committed by any officer, agent, employee, or contract worker of United States Citizenship and Immigration Services by DHS's Office of the Inspector General. Provides subpoena and other powers to the Director.

- **Authority of the Office of Security and Investigations to Detect and Investigate Immigration Benefit Fraud.** Provides the Office authority to conduct fraud detection operations, including data mining and analysis to investigate any criminal or noncriminal allegations of violations of the INA or title 18, United States Code, that U.S. Immigration and Customs Enforcement declines to investigate, and to turn over to a United States Attorney for prosecution evidence that tends to establish such violations.

- **Office of Security and Investigations Personnel.** Provides that the Director shall, subject to the availability of subject to the availability of security fees, increase the number of investigators and intelligence research specialists, along with support personnel and equipment.

- **Elimination of the Fraud Detection and National Security Office.** Provides for the elimination of USCIS's Fraud Detection and National Security Office and the transfer of its authority to the Office of Security and Investigations.

- **Security Fee.** Requires DHS to charge each alien who files an application for adjustment of status or an extension of stay a security fee of $[50], and each alien who files an application for an immigrant or nonimmigrant visa a security fee of $[10], which shall be made available to the Office of Security and Investigations to conduct investigations into allegations of internal corruption and benefits fraud.

XX. Identification Documents

A. Individual Taxpayer Identification Numbers

- **Reducing Individual Taxpayer Identification Number Abuse.** Requires that any identifying number assigned by the Treasury Department be visually distinguishable from and will not be mistaken for a SSN. Requires that prior to issuing any identifying number, Treasury shall verify with DHS that the applicant is lawfully present in the U.S. and shall disclose to DHS the identity of each taxpayer who has been assigned an individual taxpayer identification number.

B. Improved Security for Birth Certificates

- **Definitions.**

- **Applicability of Minimum Standards to Local Governments.** Provides that the minimum standards applicable to birth certificates issued by a State shall also apply to those issued by a local government in the State and that it shall be the responsibility of the State to ensure that local governments comply.

- **Minimum Standards for Federal Recognition.** Provides that no Federal agency may accept for any official purpose a birth certificate issued by a State or locality unless meeting specified requirements including the use of safety paper, the seal of the issuing custodian of record, and such other features DHS deems necessary to prevent tampering, counterfeiting, and otherwise duplicating the birth certificate for fraudulent purposes. Provides that to meet the requirements of this provision, States and localities must also require and verify from the requestor before issuing an authenticated copy of a birth certificate: 1) the name on the birth certificate, 2) the date and location of the birth, 3) the mother's maiden name, and 4) proof of the requestor's identity, and that in the case of a request by a person not named on the birth certificate, the presentation of legal authorization to request the birth certificate before issuance, and establish central databases that can provide inter-operative data exchange with other States and with Federal agencies, ensure that birth and death records are matched in a comprehensive and timely manner, and ensure that all electronic/paper birth records/certificates of decedents are marked "deceased".

- **Establishment of Electronic Birth and Death Registration Systems.** Requires DHS to work with the States to establish a common data set and common data exchange protocol for electronic birth registration systems and death registration systems, coordinate requirements for such systems, ensure that fraud prevention is built in, establish uniform field requirements for State birth registries, and, within three years of the establishment of such databases, require States to record and retain electronic records of pertinent identification information collected from requestors who are not the registrants.

- **Electronic Verification of Vital Events.** Provides that DHS shall lead the implementation of electronic verification of a person's birth and death and issue regulations to establish a means by which authorized Federal and State agency users with a single interface will be able to generate an electronic query to any participating vital records jurisdiction throughout the U.S. to verify the contents of a paper birth certificate.

- **Grants to States.** DHS may make grants to a State to assist it in conforming to the standards set forth.

- **Authority.** Provides that all authority to issue regulations, certify standards, and issue grants under this chapter shall be carried out by DHS, with the concurrence of the Secretary of Health and Human Services and in consultation with State vital statistics offices and appropriate Federal agencies.

C. Improved Security for Social Security Account Numbers

- **Prohibition of the Display of Social Security Account Numbers on Driver's Licenses or Motor Vehicle Registrations.** Requires that States and political subdivisions not display SSNs on driver's licenses or include on any such license, registration, or other document a magnetic strip or bar code which conveys such number.

- **Independent Verification of Birth Records Provided in Support of Applications for Social Security Account Numbers.** Requires that with respect to an application for a SSN, other than for purposes of enumeration at birth, SSA require independent verification of any birth record provided.

- **Enumeration at Birth.** Requires that SSA make improvements to the enumeration at birth program for the issuance of SSNs to newborns designed to prevent the assignment to unnamed children, the issuance of more than one SSN to the same child, and other opportunities for fraudulently obtaining a SSN.

- **Study Relating to Use of Photographic Identification in Connection with Applications for Benefits, Social Security Account Numbers, and Social Security Cards.** Requires SSA to undertake a study to determine the best method of requiring and obtaining photographic identification of applicants for old-age, survivors, and disability insurance benefits, for SSNs, or for a replacement social security card.

- **Restrictions on Issuance of Multiple Replacement Social Security Cards.** Requires SSA to restrict the issuance of multiple replacement social security cards to any individual to three per year and to 10 for the life of the individual, except in any case in which SSA determines there is minimal opportunity for fraud.

- **Study Relating to Modification of the Social Security Account Numbering System to Show Work Authorization Status.** Requires SSA to undertake a study to examine the best method of modifying the SSNs assigned to aliens who are not legal permanent residents and not authorized to work in the U.S. so as to include an indication of such lack of authorization to work.

D. Foreign Identification Documents

- **Alien Identification Standards.** Bars the federal government from accepting identification documents presented by aliens other than ones issued by DHS or DOJ pursuant to the immigration laws, or unexpired foreign passports; thus bars the acceptance of consular identification cards, pioneered by the Mexican Government and called "matricula consulars", generally presented by illegal aliens. The matricula not only facilitates illegal presence in the U.S., but is vulnerable to fraud as issuance standards are low and cards are vulnerable to forgery, allowing foreign nationals to create well-documented, but fictitious, identities in the U.S.

- **Foreign-Issued Forms of Identification Prohibited as Proof of Identity to Open Accounts at Financial Institutions.** The USA PATRIOT Act required the Treasury Department to promulgate regulations setting forth minimum standards for financial institutions regarding the identity of any person seeking to open an account. The regulations actually promulgated by the Treasury permit banks to accept identification cards issued by foreign governments from customers opening new accounts, including matricula consular, designed to give identification documents to illegal aliens. The provision provides that financial institutions can only accept identification cards presented by aliens that are issued by DHS or DOJ pursuant to the immigration laws, or unexpired foreign passports, and requires that aliens provide proof of legal presence.

XXI. Biden Administration Abuses

- **Suspension of Certain Authorities Subject to Abuse.** Suspends, until January 21, 2025, DHS's ability to 1) waive inadmissibility for aliens unlawfully present, 2) cancel removal and adjust status to permanent residence for certain non-permanent residents, (3) parole aliens into the U.S., except for certain specified purposes, (4) designate a country for TPS, and 5) grant deferred action or extended voluntary departure to any alien, except for certain specified purposes. Also suspends DHS's ability to grant work authorization to any alien or class of aliens it desires, and to certain aliens pursuant to current regulations.

- **Reports to Congress on the Exercise and Abuse of Prosecutorial Discretion.** Requires DHS and DOJ to each provide an annual report to Congress on aliens who were (1) apprehended or arrested by State or local law enforcement agencies who had been identified by DHS in the previous fiscal year and for whom DHS did not issue detainers and did not take into custody despite finding that the aliens were removable, (2) applicants for admission in the previous fiscal year not clearly and beyond a doubt entitled to be admitted who were not detained, (3) found by DHS officials in the previous fiscal year to be removable who were not issued notices to appear or placed into removal proceedings, (4) issued notices to appear that were cancelled in the previous fiscal year despite DHS finding that they were removable, (5) placed into removal proceedings, whose proceedings were terminated in the previous fiscal year prior to their conclusion, (6) granted parole, and (7) granted deferred action, extended voluntary departure or any other type of relief from removal not specified in the INA. The reports shall include 1) a listing of each such alien and the reason why each was granted the type of prosecutorial discretion received, and 2) FBI criminal histories.

XXII. Public Benefits

A. Eligibility of Classes of Aliens for Public Benefits

- **Definition of Federal Means-Tested Public Benefit.** Provides that the term "Federal means-tested public benefit" means any public benefit (including cash, medical, housing, food, and social services) provided or funded in whole or in part by the Federal Government in which the eligibility of an individual, household, or family eligibility unit for the benefit or the amount of the benefit, or both, are determined on the basis of income, resources, or financial need of the individual, household, or unit.

- **Ineligibility for Health Care Subsidies.** Provides that aliens who are not "qualified aliens" (e.g., legal permanent residents and refugees) shall be ineligible for healthcare premium assistance and shall be subject to the rules applicable to aliens not lawfully present set forth in the Patient Protection and Affordable Care Act ("Obamacare").

- **Aliens Who Are Not Qualified Aliens or Nonimmigrants Ineligible for State and Local Public Benefits.** Rescinds the authority of States to enact laws that affirmatively provide that aliens who are not lawfully present in the U.S. are eligible for any State or local public benefit.

- **Federal Public Benefits for Asylees.** Under current law, refugees and aliens granted asylum are eligible for Federal means-tested public benefits on a more generous basis than are other "qualified aliens" (such as legal permanent residents). For seven years after being admitted as refugees or being granted asylum, they are eligible for benefits not available to LPRs generally (Supplemental Security Income and Food Stamps), or only at the discretion of the States (such as Temporary Assistance for Needy Families and Medicaid). The provision rescinds asylees' preferential eligibility for Federal public benefits over LPRs.

- **Making Unauthorized Aliens Ineligible for Unemployment Benefits**. Provides that aliens are ineligible for unemployment benefits payable in whole or in part out of Federal funds to the extent such benefits are attributable to any employment for which the alien were not authorized to work. Benefits providers must make such inquiries necessary to ensure applicant eligibility.

- **Payment of Public Assistance Benefits.** Provides that the payment of certain Federal means-tested benefits shall be made only through an individual or person who is eligible to receive them (i.e., not to an illegal alien parent).

- **Eligibility for Child Tax Credit.** Provides that an individual is not eligible for the child tax credit unless they include their and their child's SSNs on their tax return.

- **Eligibility for Earned Income Tax Credit.** Provides that an individual is not eligible for the earned income tax credit unless they include a "work-eligible" SSN on their tax return.

B. Verification of Eligibility for Public Benefits

- **Requiring Proof of Identity for Federal Contracts, Grants, Loans, Licenses, and Public Assistance.** Requires Federal agencies to require applicants to provide sufficient proof of identity to receive a Federal contract, grant, loan, or license, supplemental security income (SSI), Aid to Families with Dependent Children (AFDC), social services block grants, Medicaid, Food Stamps, or housing assistance, including the showing of one the following documents: a U.S. passport, a resident alien card, or a State driver's license or identity card, if presented with the individual's Social Security card.

- **Verification Requirement for Nonprofit Charitable Organizations.** Under current law, in providing any Federal public benefit or any State or local public benefit, a nonprofit charitable organization is not required to determine, verify, or otherwise require proof of eligibility of any applicant for such benefits. The provisions eliminates this exemption.

- **Verification of Eligibility for Housing Assistance.** Under current law, public housing agencies can elect to not verify eligibility before providing housing assistance. The provision requires public housing agencies to verify eligibility prior to providing housing assistance. Also under current law, while illegal aliens are not eligible for Federal housing assistance, if the eligibility of at least one family member has been established while the eligibility of one or more family members has not been established, financial assistance made available to that family is prorated. The provision provides that no Federal housing assistance can be made available until the eligibility of all members of the family has been established.

C. Public Charge Ground of Deportability

- **Ground for Deportation.** Currently, an alien is deportable who becomes a public charge within seven years of admission from causes arising before entry or admission. The provision provides that an alien is deportable as a public charge regardless of when the cause arose, except that the public charge ground will not apply to refugees, asylees, or, in the case of aliens who entered the U.S. as immigrants or nonimmigrants, if the cause arose after entry and is a physical illness or injury so serious the alien cannot work or a mental disability that requires continuous institutionalization. Provides that an alien shall be considered a public charge who receives, with certain exceptions such as for public health immunizations, benefits under (1) Supplemental Security Income, (2) Aid to Families with Dependent Children, (3) Medicaid, (4) Food Stamps, (5) State General Assistance or (6) certain Federal housing assistance, for an aggregate period of at least 12 months within 7 years of becoming a legal permanent resident.

D. Naturalization

- **Ineligibility to Naturalize for Aliens Deportable as Public Charges.** No alien who is deportable as a public charge may be naturalized.

- **Settlement of Claims Prior to Naturalization.** No person shall be naturalized who has received assistance under a Federal or State means-tested public benefit program with respect to which outstanding amounts are owed under an affidavit of support.

E. Miscellaneous

- **Limitation on Eligibility for Preferential Treatment of Aliens Not Lawfully Present on Basis of Residence for Higher Education Benefits.** Current law provides that an alien who is not lawfully present in the U.S. shall not be eligible on the basis of residence within a State for any postsecondary education benefit ("in-state tuition") unless a U.S. citizen is eligible for such benefit without regard to whether a resident. States have evaded this bar by providing eligibility to illegal aliens on a basis other than residence. The provision provides that States may not provide in-state tuition to illegal aliens regardless of the basis on which they would qualify.

- **Requirements for Sponsor's Affidavit of Support.** Provides that sponsors must demonstrate, through a certified copy of a tax return, the means to maintain an annual income equal to at least 200 percent of the poverty level for the sponsor, the sponsor's family, and the sponsored alien and the alien's nuclear family, who arrive with the alien at the time of the alien's admission – rather than the current 125 percent.

- **No Social Security Credit for Work Performed While Unlawfully Present.** Modifies the Social Security Protection Act to provide that any work performed by an alien while not authorized to be employed is not creditable for Social Security benefits

XXIII. Finance Reform

E. Reimbursement for the Costs of Illegal Immigration

- **Reimbursements for States and Political Subdivisions for Expenses Related to the Presence of Illegal Aliens.** Requires that the Department of the Treasury establish a program to reimburse States and political subdivisions for expenses required to be incurred related to the presence of illegal aliens, such as public elementary and secondary education, incarceration and detention, and emergency medical care and disaster relief.

- **Border Landowner Compensation and Security Grant Program.** Requires that the Federal Emergency Management Administration establish a Border Landowner Security Grant Program to provide grants to individuals who own real property within the border zone that has experienced theft or damage caused by aliens entering the U.S. illegally (in order to cover loss or damage to property), and to individuals who own property within the border zone that they reasonably believe to be at risk of experiencing theft or damage caused by such aliens (to order to improve the security of certain property).

- **Reimbursement to Agricultural Producers for Losses Sustained Due to Illegal Immigration.** Requires that the Department of Agriculture establish a program to reimburse agriculture producers for qualified damages due to illegal immigration including livestock loss and damage, crop loss and damage, damage to perimeter fences, damage to physical structures and property loss and damage.

- **Reimbursement of Additional Costs Relating to the Incarceration of Illegal Aliens.** Modifies the State Criminal Alien Assistance Program to authorize reimbursement for additional costs incurred by States and political subdivision for the incarceration of illegal aliens including 1) medical expenses, 2) incarceration after having been charged with crimes, and 3) expenses incurred for aliens whose immigration status cannot be verified by DHS.

- **Reimbursement of Indirect Costs Relating to the Incarceration of Illegal Aliens.** Modifies SCAAP to authorize reimbursement for indirect costs incurred by States and political subdivisions for the incarceration of illegal aliens including costs relating to court proceedings, attorneys for units of local government, indigent defense, prosecution, autopsies, and translation and interpreter services.

- **Reimbursement for Costs of Incarcerating Juvenile Aliens.** Modifies SCAAP to authorize reimbursement for the costs incurred by States and political subdivisions related to illegal juvenile aliens who have been adjudicated delinquent or committed to juvenile correctional facilities by such States or localities.

- **Border Relief Grant Program.** Provides that DHS can award grants, subject to the availability of appropriations, to law enforcement agencies located in counties not more

than 100 miles from the U.S. border with Canada or Mexico or located in counties that have been certified as High Impact Areas (taking into consideration whether local law enforcement has the resources to protect the lives, property, safety, or welfare of residents, the relationship between any lack of security along the border and the rise, if any, of criminal activity in the county, and any other unique challenges that local law enforcement faces due to a lack of security along the border. Funds may only be used to provide additional resources for an eligible law enforcement agency to address criminal activity, including to obtain equipment, hire additional personnel, upgrade and maintain law enforcement technology, cover operational costs, including overtime and transportation costs; and to provide such other resources as are available to assist that agency.

F. Remittances

- **Fees for Certain Remittance Transfers** Provides that when the recipient of a remittance transfer is located in a specified foreign country, the transfer provider shall collect from the sender a fee equal to [X] percent of the dollar amount to be transferred, which shall be deposited in the Treasury to be expended for the construction or acquisition of DHS detention facilities and the construction of reinforced border fencing.

XXIV. Verification of Citizenship of Voters in Federal Elections

Provides States and political subdivisions a means to identify noncitizens attempting to register to vote in Federal elections or who have already registered.

- **Option 1 (Mandatory)/Option 2 (Voluntary)**

  Establishment of Program. Requires that DHS, in consultation with SSA, establish a Citizenship Verification Program that responds to inquiries made by the chief election official of any State to verify the U.S. citizenship of an individual applying to register to vote, or registered to vote, in Federal elections. The official may/shall provide the name, date of birth, and SSN of an individual and require that they furnish their SSN. To the extent practicable, DHS shall rely on the E-Verify system. If voluntary, the program shall be designed and operated to be used on a voluntary basis by Federal, State, and local election officials for the purpose of assessing the eligibility of voter registration applicants, and administering voter registration, through verification of U.S. citizenship.

  Responses to Inquiries. Requires that the program provide for a verification or nonverification of citizenship as soon as practicable. If the election official receives a notice of nonverification, the official shall provide the individual a written notice including a description of the individual's right to use a process for the prompt correction of erroneous information. If the official receives a notice of

nonverification of an applicant for registration, they shall reject the application (subject to the right to reapply), but only if a 30-day period from the date notice of nonverification was provided has elapsed, and the official did not receive adequate verification of citizenship pursuant to a new inquiry upon receipt of information that erroneous or incomplete material information has been updated, supplemented, or corrected. If the official receives a notice of nonverification of an individual already registered to vote, they shall remove the individual from the list of eligible voters (subject to the right to reapply), but only if a 30-day period from the date notice of nonverification was provided has elapsed, and the official did not receive adequate verification of citizenship pursuant to a new inquiry upon receipt of information that erroneous or incomplete material information has been updated, supplemented, or corrected.

[Requiring] Verification of Citizenship of Registered Voters and Applicants. Requires/Allows the chief election official of each State to submit a citizenship verification inquiry with respect to each individual who is registered to vote in elections for Federal office in the State and remove from the list of individuals eligible to vote in Federal elections anyone who is the subject of an inquiry whose citizenship is not verified, and shall/may submit a citizenship verification inquiry with respect to each individual who applies to register to vote in Federal elections [and may not accept an application when citizenship is not verified (if mandatory)].

Provides that in the case of a State which permits an individual to register to vote fewer than 60 days before the date of the election (including at the polling place), the individual shall be permitted to register to vote and vote. On the day after election day, the official shall/may submit a citizenship verification inquiry and, if an inquiry is submitted, the ballot shall be set aside until the individual's citizenship can be verified. Upon verification, the individual's vote shall be tabulated.

Responsibilities of Federal Officials. Requires that SSA establish a reliable, secure method which compares the name, date of birth, and SSN provided in an inquiry against such information it maintains, in order to verify (or not verify) whether the individual is a U.S. citizen. SSA shall not disclose or release social security information. Requires that DHS likewise establish a reliable, secure method relying on information it maintains in order to verify whether the individual is a citizen. SSA and DHS shall each update the information in a manner that promotes maximum accuracy and shall each provide a process for the prompt correction of erroneous information.

Limitation on Use of the Program and Any Related Systems. Provides that no department, bureau, or other agency of the Federal government may utilize any information, data base, or other records assembled under the Program for any other purpose other than as provided. Nothing shall be construed to authorize, directly or indirectly, the issuance or use of national identification cards or the establishment of a national identification card.

Enforcement. Provides that DOJ may bring a civil action in district court for such declaratory or injunctive relief as is necessary to carry out the Program. A person who is aggrieved by a violation may provide written notice of the violation to the chief election official of the State involved. If the violation is not corrected within a set period, the person may bring a civil action in district court for declaratory or injunctive relief. If the violation occurred within 30 days before the date of a Federal election, the aggrieved person need not provide notice to the chief election official before bringing a civil action.

Chief Election Official Defined. Provides that the term "chief election official" means the individual designated by the State to be responsible for coordination of the State's responsibilities under such National Voter Registration Act.

Authorization of Appropriations. Provides that here are authorized to be appropriated to DHS and SSA such sums as may be necessary to carry out the Program.

Permitting States to Require Applicants Registering to Vote to Provide Social Security Number. Amends the Social Security Act to allow States to require applicants registering to vote to provide SSNs.

XXV. Legal Immigration Reform

A. Fraud/National Security Risks

- **Background and Security Checks.** Provides that neither DHS or DOJ, nor any court, may grant or adjudicate, or order the grant or adjudication of, any immigrant or nonimmigrant petition, application for adjustment of status to permanent residence, U.S. citizenship or any other status, relief, protection from removal, employment authorization, or other benefit under the immigration laws, until such background and security checks as DHS may require have been completed or updated to the Secretary's satisfaction, and no court shall have jurisdiction to require any such grants or adjudications to be completed by a certain time or award any relief for failure to complete or delay in completion of such acts. Provides that DHS, DOJ, DOS, and DOL shall not be required to grant any application, approve any petition, or grant or continue any relief, protection from removal, employment authorization, or any other status or benefit under the immigration laws by, to, or on behalf of any alien described in the security and terrorism grounds of removal, or any alien with respect to whom a criminal or other proceeding or investigation is open or pending, where such proceeding or investigation is deemed material to the alien's eligibility for the status or benefit sought.

- **Investigation of Fraud to Precede Immigration Benefits Grant.** Provides that DHS, DOJ and courts may not grant or order the grant of adjustment of status to that of an alien lawfully admitted for permanent residence, grant or order the grant of any other status,

relief, protection from removal, or other benefit under the immigration laws, or issue any documentation evidencing or related to such grant by DHS, DOJ, or any court, until any suspected or alleged fraud relating to the benefit application has been fully investigated and found to be unsubstantiated.

- **Fraud Prevention Initiatives.** Illegal aliens can apply for cancellation of removal and become legal permanent residents if they have been battered or subjected to extreme cruelty by a U.S. citizen or permanent resident spouse or parent, have lived in the U.S. for three years, have been of good moral character, and if their removal would result in extreme hardship to the alien, the alien's child, or the alien's parent. The provision provides that in acting on such a cancellation application, an immigration judge shall consider any credible evidence, including that submitted by the U.S. citizen or permanent resident accused of abuse.

  U.S. citizens and legal permanent residents can petition for alien spouses to receive permanent residence. In instances where the aliens (or the aliens' children) have been battered or subjected to extreme cruelty, the aliens can petition for permanent residence on their own ("self-petition"). Abused children of citizens and permanent residents and abused parents of U.S. citizens can also self-petition. The provision provides that self-petitions are to be adjudicated by local USCIS offices, who shall interview in-person and under oath the self-petitioner and may interview the U.S. citizens or permanent residents accused of abuse and other persons (if they consent to be interviewed) and may gather other evidence. All credible evidence shall be considered.

  The provision provides that the USCIS office shall not approve a self-petition unless it finds in writing and with particularity that all statutory have been proven by clear and convincing evidence. The office shall also determine whether any law enforcement agency has undertaken an investigation or prosecution of the alleged abuse, and if so, shall obtain as much information as possible about the investigation or prosecution and shall consider such information in adjudicating the self-petition. If no investigation or prosecution has been undertaken, the local office shall take this into consideration in adjudicating the self-petition. If an investigation or prosecution is pending, the office shall stay adjudication of the self-petition pending its conclusion.

  Provides that if the local office makes a written finding that the self-petitioner has made a material misrepresentation, the petition shall be denied, the alien shall be removed from the U.S. on an expedited basis, shall be permanently ineligible for any lawful immigration status or benefits, and shall have any public benefits terminated. The office shall refer the matter to the FBI.

  Provides that if a self-petition has been denied, any obligation under an affidavit of support previously filed by the U.S. citizen or permanent resident accused of abuse shall be terminated.

- **Information on Foreign Crimes.** Requires that Prior to adjusting the status of an alien to legal permanent residence, DHS or DOJ must have has thoroughly examined the records

of the alien's countries of prior residence to determine whether the alien has committed a crime that would renders the alien inadmissible.

- **Antifraud Fee.** Requires that DHS impose a $100 antifraud fee on immigration and nonimmigrant visa petitions. Establishes in the general fund of the Treasury an "Antifraud Account" into which fees collected will be deposited. Twenty percent of amounts deposited shall be utilized to eliminate fraud with respect to visa petitions, 20 percent to remove aliens deportable for having, by fraud or willfully misrepresenting a material fact, procured a visa or admission to the U.S., 40 percent to DOS to eliminate fraud by petitioners and beneficiaries, and 20 percent to DHS and DOS jointly to eliminate such fraud.

- **Removal of Aliens Who Make Misrepresentations to Procure Benefits.** Provides that any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the U.S. or other benefit under the INA for themselves or any other alien, is deportable.

- **Good Moral Character.** Provides that any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the U.S. or other benefit under the INA, shall be found not to possess good moral character.

B. Immigrant Visas

Family-Sponsored Green Cards

Under current law, adult U.S. citizens can petition for immigrant visas for their spouses, minor children and parents as "immediate relatives", for which here are no numerical limitations on the number of green cards that can be issued each year. Under current law, there are five family-sponsored immigrant visa preference categories: the 1st preference category (unmarried adult children of U.S. citizens and their minor children), the 2nd preference "A" (spouses and minor children of legal permanent residents and their minor children) and "B" (unmarried adult children of legal permanent residents and their minor children) subcategories, the 3rd preference category (married children of U.S. citizens and their spouses and minor children), and the 4th preference category (siblings of U.S. citizens and their spouses and minor children).

In 2019, 65,236 green cards were issued to parents of U.S. citizens. The 1st preference category is generally allotted up to 23,400 green cards a year, and in 2019, 20,779 green cards were issued. There are 291,645 (as of 11/1/21) beneficiaries of approved 1st preference petitions on a waiting list for green cards, and green cards are now available, depending on the country of nationality, for aliens whose petitions were filed from 2000 to 2014. The 2nd preference categories are generally allotted up to 114,200 green cards a year, at least 87,934 of which are reserved for the "A" subcategory, leaving no more than 26,266 for the "B" subcategory. There are 390,489 beneficiaries of approved "A" petitions on a waiting list, and green cards are now available, depending on the country of nationality, for aliens whose petitions were filed from 2019 to currently. There are 408,591 beneficiaries of approved "B" petitions on a waiting list,

and green cards are now available, depending on the country of nativity, for aliens whose petitions were filed from 2001 to 2015. The 3rd preference category is generally allotted up to 23,400 green cards a year, and in 2019, 22,850 3rd green cards were issued. There are 638,590 beneficiaries of approved 3rd preference petitions on a waiting list, and green cards are now available, depending on the country of nativity, for aliens whose petitions were filed from 1997 to 2008. The 4th preference category is generally allotted up to 65,000 green cards a year, and in 2019, 56,017 green cards were issued. There are 2,240,258 beneficiaries of approved 4th petitions on a waiting list, and green cards are now available, depending on the country of nativity, for aliens whose petitions were filed from 2000 to 2007.

(Option 1) Worldwide Numerical Limitation on Family-Sponsored Immigrants./Limitation of Immediate Relatives to Spouses and Children./Change in Family-Sponsored Classification./Miscellaneous Conforming Amendments.

Spouses of U.S. Citizens: No change from current law.

Minor Children of U.S. Citizens: No change from current law other than that the determination as to whether sons and daughters are considered minors shall be made using the age of the aliens on the dates on which their green card petitions were filed.

Parents of U.S. Citizens: Parents will no longer eligible for immediate relative status, but rather will be allocated green cards in an amount not less than 25,000 and not in excess of the lesser of 50,000 or the number by which the family-sponsored green card worldwide level exceeds 85,000. Provides that at least one half of the parent's sons and daughters be U.S. nationals or legal permanent residents lawfully residing in the U.S. and that parents must demonstrate that they will have adequate health insurance comparable to that provided under the Medicare program and long-term health coverage comparable to that provided under the Medicaid program.

Adult Married Children of U.S. Citizens: Category rescinded.

Adult Unmarried Children of U.S. Citizens: Category rescinded.

Siblings of U.S. Citizens: Category rescinded.

Spouses of Permanent Residents: The number of green cards allotted to the spouses and minor children of legal permanent residents would not go below 85,000.

Minor Children of Permanent Residents: The number of green cards allotted to the spouses and minor children of legal permanent residents would not go below 85,000. Determination as to whether sons and daughters are considered minors shall be made using the age of the aliens on the date on which their green card petitions were filed.

Adult Children of Permanent Residents: Category rescinded.

(Option 2) Family-Sponsored Immigration Priorities.

Spouses of U.S. Citizens: No change from current law.

Minor Children of U.S. Citizens: No change from current law other than that the determination as to whether sons and daughters are considered minors shall be made using the age of the aliens on the dates on which their green card petitions were filed (except that if an alien marries or turns 25 years of age).

Parents of U.S. Citizens: Parents will no longer eligible for immediate relative status, but will be eligible for a new "W" nonimmigrant visa category for parents sponsored by adult U.S. citizen sons and daughters. The initial period of authorized admission will be five years, but may be extended for additional five year periods if the sponsoring sons and daughters are still residing in the U.S. W visa recipients will not be authorized to be employed and will be ineligible for any Federal, State, or local public benefits. Regardless of the resources of the parents, the sponsoring sons and daughters will be responsible for their support while in the U.S. and the parents must provide proof that their sponsoring sons and daughters have arranged for their health insurance coverage (at no cost to the parents) during the anticipated period of residence.

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Adult Married Children of U.S. Citizens: Category rescinded.

Adult Unmarried Children of U.S. Citizens: Category rescinded.

Siblings of U.S. Citizens: Category rescinded.

Spouses of Permanent Residents: The number of green cards allotted to the spouses and minor children of legal permanent residents would be 87,934.

Minor Children of Permanent Residents: The number of green cards allotted to the spouses and minor children of legal permanent residents would be 87,934. Determination as to whether sons and daughters are considered minors shall be made using the age of the aliens on the date on which their green card petitions were filed (except that if an alien marries or turns 25 years of age).

Adult Children of Permanent Residents: Category rescinded.

Diversity Visa Green Card Program

- **Elimination of Diversity Visa Program.** Provides that the program is rescinded.

C. Nonimmigrant Visas

B Visas

- **Birth Tourism.**

(Option 1) Provides that travel to the U.S. with the purpose of obtaining U.S. citizenship for a child by giving birth here is an impermissible basis for the issuance of a B visa and requires consular officers to deny B visas to an aliens for whom this is the primary purpose of travel.

(Option 2) Requires that consular officers shall deny B visas to aliens who the officers have reason to believe will give birth during their stays in the U.S.

- **Medical Care.** Provides that any visa applicant who seeks medical treatment in the U.S. must establish to the satisfaction of a consular officer of a legitimate reason why the applicant wishes to travel to the United States for medical treatment, and that a medical practitioner or facility in the U.S. has agreed to provide treatment, the applicant has reasonably estimated the duration of the visit and all associated costs, and the applicant has the means derived from lawful sources and intent to pay for the medical treatment and all incidental expenses, including transportation and living expenses, either independently or with the pre-arranged assistance of others.

- **B Visa in Lieu of H-1B Visa.** Clarifies that aliens coming to the U.S. to perform work in specialty occupations are ineligible for B visas, and rather must utilize H-1B visas.

E-2 Visas

- **Employees of E-2 Visa Principals.** Provides that employees of E-2 treaty investors are only eligible for E-2 visas if they have the nationality of the treaty country and are coming solely to develop and direct the operations of the enterprise.

F/I/J/M Visas

- **Length of Visa Term for F, I and J Visas.** Unlike aliens in most nonimmigrant categories whose authorized period of stay lasts until a specific departure date, F (academic students), J (exchange visitors), and I (representatives of foreign information media) nonimmigrants are admitted for an unspecified period of time to engage in activities authorized under their respective classifications -- "duration of status." For F visa holders, this is generally for the period during which they are pursuing a full course of study at educational institutions approved by DHS (or engaging in practical training following completion of studies), for J visa holders, this is the period during which they are participating in authorized programs, and for I visa holders this is generally the duration of their employment.

  The provision provides that aliens seeking F visa status may be admitted for up to the length of their program (including any period of post-completion optional practical training), not to exceed 4 years; those seeking J visa status may be admitted for the duration of the exchange visitor program, not to exceed a period of 4 years; and those seeking I visa status may be admitted for a period of time necessary to complete their planned activities or assignments, not to exceed 240 days. At the end of these periods, such aliens can apply for extensions of stay.

- **Optional Practical Training for Foreign Students.** As to foreign students working in post-graduation optional practical training programs: Applies the H-1B program's wage and working condition requirement. Provides DOL the same investigatory and enforcement powers as it has in the H-1B program.

    - **(Option 1)** Provides that an employer may provide optional practical training to an alien who has been issued a visa or otherwise provided nonimmigrant status under subparagraph (F) or (M) of section 101(a)(15) only if it is directly related to the student's major area of study and if the employer pays wages that are at least the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question or the prevailing wage level for the occupational classification in the area of employment, whichever is greater, and provides working conditions that will not adversely affect the working conditions of workers similarly employed.

    - **(Option 2)** Provides that an employer may provide OPT only during such periods when the student is currently enrolled and in no instance can occur after completion of the student's course of study (or, if a thesis or equivalent is required for a bachelor's, master's, or doctoral degree, after completion of all course requirements for the degree).

    - **(Option 3)** No foreign student on an F visa may be authorized to be employed following the date of completion of their course of studies unless they have enrolled in a new course of studies.

- **Eligible Institutions.** Provides that a F, J, or M visa cannot be issued for postsecondary study at an educational institution that is not an eligible institution for the purpose of a program authorized under title IV of the Higher Education Act of 1965.

- **Tracking Courses of Study Through the Program to Collect Information Relating to Foreign Students.** Requires that the SEVIS foreign student tracking system track each course of study taken by a foreign student.

H-1B Visas:

- **Protection of Displacement of United States Workers.** Under current law, H-1B dependent employers (generally, those 15 percent or more of whose U.S. workforces are composed of workers on H-1B visas) and employers who have committed willful violations of the H-1B program must attest that the will not displace an equivalent U.S. worker within the period beginning 90 days prior to the filing of an H-1B petition and ending 90 days after such filing and must attest, if they place H-1B workers with third-party employers, that the third-party employer does not intend to displace a U.S. worker within this period.

    - **(Option 1)** Extends the non-displacement attestations to all H-1B employers and extends the non-displacement period to the entirety of the H-1B worker's employment

for the employer on an H-1B visa (and the entire period in which the H-1B worker is placed with the third-party employer). Prohibits the petitioning employer from placing an H-1B worker at worksites of a third-party employer where there are indicia of an employment relationship between the worker and the third-party employer unless the employer has inquired of the other employer as to whether, and has no knowledge that, within the period beginning 90 days before the date of the placement of the nonimmigrant with the other employer and ending at the conclusion of such placement, the other employer has displaced or intends to displace a United States worker employed by the other employer.

- **(Option 2)** Forthcoming.

- **Recruitment of United States Workers Prior to Seeking Nonimmigrant Workers.** Under current law, H-1B dependent employers and employers who have committed willful violations of the H-1B program must attest that they have taken good faith steps to recruit U.S. workers and offered the job to any U.S. worker who applies and is equally or better qualified for the job than the petitioned-for H-1B worker.

  - **(Option 1)** Extends the recruitment attestations to all H-1B employers.

  - **(Option 2)** Forthcoming.

- **No Preference for H-1B Workers Over American Workers.** Prohibits employers petitioning for H-1B workers from having advertised the position specified in a manner indicating that it is only available to H–1B workers or that such workers shall receive any preference in the hiring process, and from primarily recruiting among aliens who are or will be H-1B workers.

- **Wages to Be Paid to H-1B Workers.** Under current law, employers must pay H-1B workers wages that are at least the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question, or the prevailing wage level for the occupational classification in the area of employment, whichever is greater.

  - **(Option 1)** The provision requires that the employer pay H–1B workers wages that are the greater of the annual wage that was paid to the United States worker who did identical or similar work during the 2 prior years or $110,000 (with inflation adjustments in the future).

  - **(Option 2)** The provision requires that employers pay H-1B workers wages that are not less than the highest of the locally determined prevailing wage level for the occupational classification in the area of employment, the median wage for all workers in the occupational classification in the area of employment; and the median wage for skill level 2 in the occupational classification found in the most recent Occupational Employment Statistics survey. It also requires that the employer post on the Internet

for at least 30 days a detailed description of each position for which an H-1B worker is sought including a description of the wages and other terms and conditions of employment, the minimum education, training, experience, and other requirements for the position, and the process for applying for the position.

- **Wages Paid by H-1B Dependent Employers.** Forthcoming.

- **Allocation of H-1B Visas.** Under current law, H-1B visas are allocated on a first come, first serve basis, and if the general numerical cap will be hit (or the allocation of 20,000 visas a year for aliens with advanced degrees that are not counted against the cap will be exhausted), on a random basis.

  - **(Option 1)** Provides that if a sufficient number of H-1B petitions are filed that are projected to exceed the fiscal year's cap, USCIS shall rank petitions as follows: 1) aliens who will receive wages greater than or equal to 200 percent of the level 3 prevailing wage (assuming that the current four-tiered prevailing wage system is collapsed to three tiers) for the occupational classification in the area of employment, then 150 percent, then 100 percent, 2), aliens who will receive wages greater than or equal to 200 percent of the level 2 prevailing wage, then 150 percent, then 100 percent, and 3), aliens who will receive wages greater than or equal to 200 percent of the level 1 prevailing wage, then 150 percent, then 100 percent.

  - **(Option 2)** Provides that if a sufficient number of H-1B petitions are filed that are projected to exceed the fiscal year's cap, USCIS shall rank petitions on the basis of the highest wage level that the proffered wage equals or exceeds for the relevant Standard Occupational Classification code and area of intended employment, beginning with Occupational Employment Statistics wage level 4 and proceeding in descending order with wage levels 3, 2, and 1.

  - **(Option 3)** Provides that if a sufficient number of H-1B petitions are filed that are projected to exceed the fiscal year's cap, USCIS shall rank petitions in the following order: 1) petitions for foreign students who have earned an advanced degree in a field of science, technology, engineering, or mathematics from a U.S. institution of higher education, 2), petitions for aliens who will receive wages of at least the median wage for OES level 4 in the occupational classification, 3), petitions for foreign students who have earned other advanced degrees from a U.S. institution of higher education, 4) petitions for aliens who will receive wages of at least the median wage for OES level 3 in the occupational classification, 5) petitions for foreign students who have earned a bachelor's degree in a field of science, technology, engineering, or mathematics from a U.S. institution of higher education, 6) petitions for foreign students who have earned other bachelor's degrees from a U.S. institution of higher education, 7) petitions for aliens who will be working in shortage occupations listed in Group I of DOL's Schedule A, 8) petitions filed by employers who are participating in the E-Verify program, are not under investigation by any Federal agency for violation of the

immigration or labor laws, have not been determined by a federal agency in the preceding five years as having violated the immigration or labor laws, during each of the preceding three years have had at least 90 percent of their H-1B petitions approved, and have filed employment-based immigrant petitions for at least 90 percent of the H-1B they imported during the preceding three years, and 9) any other petitions.

- **(Option 4)** Provides that if a sufficient number of H-1B petitions are filed that are projected to exceed the fiscal year's cap, USCIS shall rank petitions on the basis of the highest proffered wage level.

- **Random Investigations.** Under current law, DOL can generally launch an investigation of an employer's adherence to the terms of the H-1B program only if 1) the Secretary personally certifies that they have reasonable cause to believe that the employer has committed a violation, or 2) DOL receives specific credible information from a source likely to have knowledge of the employer's practices, employment conditions or compliance with the program, the source's identity is known to DOL, and such information provides reasonable cause to believe that the employer has committed a specified violation. DOL can perform random audits of employers found to have committed willful violations of the program for a period of up to five years. The provisions authorizes DOL to conduct random investigations of all H-1B dependent employers.

- **Fee on H-1B Dependent Employers.** Forthcoming.

- **Definition of "Exempt" H-1B Workers.** Forthcoming.

- **Curtailing H-1B Fraud.** Under current law, to be eligible for an H-1B visa, a job must generally be in an occupation that requires attainment of a bachelor's or higher degree, or its equivalent, in the specific specialty as a minimum for entry into the occupation in the U.S. The provision provides that the degree requirement can be met only with a foreign degree that is a recognized foreign equivalent of a U.S. degree. In the case of prospective workers with foreign degrees, DOS shall determine the equivalence of the degree to a U.S. degree and verify the authenticity of the degree.

  Requires that employer (except for institutions of higher education or governmental or nonprofit entities) maintain places of business in the U.S. that are licensed in accordance with any applicable State or local business licensing requirements and are used exclusively for business purposes. Requires that non-governmental employers have assets of not less than $50,000 or (to allow start-ups to participate in the H-1B program) provide DHS with documentation of business activity.

  Authorizes DOL to take such actions, including issuing subpoenas and seeking appropriate injunctive relief and specific performance of contractual obligations, as may be necessary to ensure employer compliance with the terms and conditions of the H-1B program.

- **Bar to Majority H-1B/L Visa Workforces.** Provides, regarding employers of 50 or more employees in the U.S., that the sum of their U.S. employees who are H–1B and L visa workers cannot exceed 50 percent of the total number of employees.

- **Application Review Requirements.** Under current law, DOL can only review H-1B labor condition applications (containing the petitioning employer's attestations) "for completeness and obvious inaccuracies" and must certify the applications unless finding them incomplete or obviously inaccurate. The provision also requires DOL to review applications for "indicators of fraud or misrepresentation of material fact" and provides that upon finding such, may conduct an investigation.

- **Specialty Occupation to Require a Degree.** Under current law, to be eligible for an H-1B visa, a job must be in an occupation that requires attainment of a bachelor's or higher degree, or its equivalent in terms of experience, in the specific specialty as a minimum for entry into the occupation in the U.S., or full state licensure to practice in the occupation where such licensure is required to practice in the occupation. The provision strikes the equivalency language, thus requiring an actual degree or full state licensure.

- **Labor Condition Application Fee.** Provides that DOL shall require employers seeking H-1B workers to pay a reasonable application processing fee, with the fees deposited in an "H–1B Administration, Oversight, Investigation, and Enforcement Account" and then used by DOL for salaries and related expenses associated with the administration, oversight, investigation, and enforcement of the H–1B program.

- **Limitation on Extension of H-1B Petition.** Under current law, H-1B workers can generally stay in H-1B status for up to six years before having to return home. The provision provides that the length of stay cannot exceed three years except for H-1B workers who are the beneficiaries of approved employment-based immigrant petition, who may generally stay for up to six years.

- **General Modification of Procedures for Investigation and Disposition.** Provides that DOL may, upon the receipt of a complaint regarding an employer's compliance with the H-1B program, in conducting an investigation conduct surveys of the degree to which H-1B employers comply with the program's requirements and conduct compliance audits of H-1B employers. Requires that DOL conduct annual compliance audits of not fewer than 1 percent of H-1B employers and of each H-1B dependent employer with more than 100 employees in the U.S., and make available to the public an executive summary or report describing the general findings of the audits.

- **Investigation, Working Conditions, and Penalties.** Increases monetary penalties for an employer's noncompliance with the H-1B program, strengthens whistleblower protections and prohibits an employer from requiring an H-1B worker to pay liquidated damages for ceasing employment before a certain date.

- **Initiation of Investigations.** Makes it easier for DOL to initiate an investigation as to whether an employer is complying with the terms of the H-1B program in the absence of a complaint.

- **Information Sharing.** Provides that USCIS shall provide DOL with any information contained in the materials submitted by H-1B employers as part of the petition adjudication process that indicates that the employer is not complying with program requirements. DOL may initiate and conduct an investigation after receiving such information.

- **Posting Available Positions Through the Department of Labor.** Provides that DOL shall establish a searchable website for posting job openings for which employers are seeking H-1B workers that is available to the public without charge.

H-1B1/E-3/TN Visas

- **Wages and Working Conditions for Mexican and Canadian Professionals and Associated Enforcement Powers.** Applies the H-1B program's wage and working condition requirements to Mexican and Canadian "TN" professionals under the North American Free Trade Agreement) and grants DOL the same investigatory and enforcement powers as in the H-1B program.

- **H-1B1 and E-3 Visa Programs Enforcement Powers.** Provides that DOL may, on a case-by-case basis, subject employers of Singaporean, Chilean, and Australian workers under the H-1B1 and E-3 specialty worker visa programs to random investigations and authorized DOL to take such actions, including issuing subpoenas and seeking appropriate injunctive relief and specific performance of contractual obligations, as may be necessary to ensure employer compliance with the terms and conditions of the programs.

K Visas

- **Protections for Fiances or Fiancees of Citizens.** Provides that before DOS can issue a nonimmigrant "K" visa to the fiancé or spouse of a U.S. citizen, that the citizen's petition must include information on any specified crimes (or attempted crimes) for which the citizen has been convicted and on any permanent protection or restraining orders issued against the citizen.

L Visas

- **Wages and Working Conditions for L Visa Workers.** Under current law, there is no prevailing wage requirement for L intracompany transferee workers.

    - **(Option 1)** Applies the H-1B program's wage requirements to the L visa program. An employer may keep an L worker on their home country payroll, and may take into account the value of wages paid by the employer to the alien in the currency of the alien's home country, the value of benefits paid by the employer to the alien in the alien's home country, employer-provided housing or housing allowances, employer-

provided vehicles or transportation allowances, and other benefits provided to the alien as an incident of the assignment in the United States.

- **(Option 2)** Requires that an employer that employs an L worker for a cumulative period of more than one year shall provide wages not less than the highest of the locally determined prevailing wage level for the occupational classification in the area of employment, the median wage for all workers in the occupational classification in the area of employment, and the median wage for skill level 2 in the OES occupational classification.

  Prohibits L visa employers from requiring L workers from such a nonimmigrant paying liquidated damages for ceasing employment before a certain time with the employer before a date mutually agreed to by the nonimmigrant and the employer.

- **Specialized Knowledge.** Under current law, L visas are available for workers who, within the three previous years, have been employed continuously for one year by a firm and who seeks to work for the firm in the U.S. in a capacity that is managerial, executive, or involves specialized knowledge. The provision defines "specialized knowledge" to mean knowledge possessed by an individual whose advanced level of expertise and proprietary knowledge of the employer's product, service, research, equipment, techniques, management, or other interests of the employer are not readily available in the United States labor market, is clearly different from those held by others employed in the same or similar occupations, and does not apply to persons who have general knowledge or expertise which enables them merely to produce a product or provide a service. The worker shall be a key person with knowledge that is critical for performance of the job duties and is protected from disclosure through patent, copyright, or company policy. Different procedures are not considered proprietary knowledge unless the entire system and philosophy behind the procedures are clearly different from those of other firms, are relatively complex, are protected from disclosure to competition.

- **Prohibition on Replacement of United States Workers and Restricting Outplacement of L-1 Workers.** Provides that unless an employer receives a waiver, it may not employ an L worker for a cumulative period exceeding one year who will serve in a capacity involving specialized knowledge who will be stationed primarily at the worksite of another employer (including pursuant to an outsourcing, leasing, or other contracting agreement). Provides that DOL may grant a waiver if the employer has established that the employer with which the worker will be placed will not at any time replace a U.S. worker with an L worker and has not displaced and does not intend to displace U.S. workers employed by the employer within the period from 180 days before placement through 180 days after placement, and that the placement is not essentially an arrangement to provide labor for hire, but rather is in connection with the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary.

  Provides that an employer of L workers may not at any time replace a U.S. worker with an L worker and may not displace a U.S. worker during the period from 180 days before through the period 180 days after the date of the placement.

- **L-1 Employer Petition Requirements for Employment at New Offices.** Provides that if an L worker is coming to the U.S. to open, or to be employed in, a new office, the petition may be approved for up to 12 months only if the alien has not been the beneficiary of two or more L visa petitions during the immediately preceding two years, the employer has an adequate business plan, sufficient physical premises to carry out the proposed business activities, and the financial ability to commence doing business immediately upon the approval of the petition. Provides that the new office shall do business only through regular, systematic, and continuous provision of goods and services for the entire period for which the L worker is sought.

  Provides that an extension generally may not be granted unless the employer submits an application to DHS that contains information including evidence that the employer has fully complied with the business plan and has been doing business at the new office through regular, systematic, and continuous provision of goods and service, a statement of the duties the worker has performed at the new office and the duties they will perform during the extension period, and evidence of the financial status of the new office.

- **Investigation and Disposition of Complaints Against L-1 Employers.**

  - **(Option 1)** Provides that DOL shall have the same investigatory and enforcement powers to ensure compliance as with the H-1B program.

  - **(Option 2)** Provides that in addition to investigatory and enforcement powers similar to those under the H-1B program, DHS may conduct surveys of the degree to which employers comply with the requirements of the L visa program and shall conduct annual compliance audits of not less than 1 percent of employers of L workers and conduct annual audits of each employer of L workers with more than 100 employees in the U.S. if more than 15 percent of such employees are L workers, and make available to the public an executive summary or report describing the general findings of the audits.

    Provides that DHS is authorized to take other such actions, including issuing subpoenas and seeking appropriate injunctive relief and specific performance of contractual obligations, as may be necessary to assure employer compliance with the terms and conditions of the program.

- **Penalties.** Provides that if DHS determines, after notice and an opportunity for a hearing, that an employer failed to meet a condition of the program or misrepresented a material fact in a petition, DHS shall impose administrative remedies, including civil monetary penalties, and may not, for a certain period, approve the employer's L visa petition, and in certain cases the employer shall be liable to the employees harmed by such violation for lost wages and benefits.

- **Prohibition on Retaliation Against L-1 Workers.** Prohibits an employer that has petitioned for L workers from intimidating, threatening, restraining, coercing, blacklisting,

discharging, or discriminating in any other manner against an employee or applicant because they have disclosed information that they reasonably believe evidences a program violation.

T/U Visas

- **Clarification of the Requirements Applicable to T Visas.** T visas are temporary visas available to aliens, generally those illegally present, who were victims of human trafficking. The provision makes aliens ineligible for T visas where there is substantial reason to believe that they voluntarily came to the U.S., except that if they have been a victim of sex trafficking, they shall be eligible unless they knew or reasonably should have known that they would be expected to perform commercial sex acts.

- **Clarification of the Requirements Applicable to U Visas.** U visas are temporary visas available to aliens, generally those illegally present, who are victims of certain specified criminal activity in the U.S. and who are certified by a Federal, State, or local law enforcement official, prosecutor, judge or other official investigating the crime, or certain DHS officials, as having been, are, or are likely to be, helpful in the investigation or prosecution of the criminal activity. The provision requires that the certifying official confirm under oath that the relevant criminal activity is actively under investigation or that a prosecution has commenced and that the alien seeking a U visa has actually provided information that will assist in identifying the responsible criminals (unless their identity is already known).

- **Temporary Nature of U Visa Status.** Under current law, DHS can grant U visa recipients permanent residence once they have had U visa status for three years and it is determined that their continued presence in the U.S. would be justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest. The provision rescinds the authority to grant permanent residence to U visa recipients.

- **Annual Report on Immigration Applications Made by Victims of Abuse.** Provides that DHS shall report to Congress each year on the U and T visa programs and the self-petition process for battered aliens, including information on processing times and efforts to reduce them while ensuring safe and competent processing and combating fraud and ensuring program integrity, and with information on each type of criminal activity by reason of which aliens received U visas.

Miscellaneous

- **Transparency.** Provides that after receiving a written request from a former, current, or prospective employee who is the beneficiary of an employment-based immigrant or nonimmigrant petition filed by the employer, such employer shall provide such employee or beneficiary with a certified copy of all petitions, notices, and other written communication exchanged between the employer and DOL, DHS or any other Federal agency or department that is related to the petition filed by the employer for such employee

or beneficiary. The employer may redact any sensitive financial or proprietary information from the copies provided to such person.

- **Requirements for Information for H-1B and L-1 Workers.** Requires that upon issuing an H-1B or L visa or providing such status, DOS or DHS, as appropriate, shall provide the beneficiary with a brochure outlining the obligations of the employer and the rights of the worker with regard to employment under Federal law, including labor and wage protections, the contact information for appropriate Federal agencies or departments that offer additional information or assistance in clarifying such obligations and rights, and a copy of the submitted petition.

XXVI. Prevailing Wages

Under current law, in computing the prevailing wage level for an occupational classification in an area of employment required to be paid an alien worker for purposes of for the labor certification process for employment-based green cards, and for applicable nonimmigrant visa programs, such as the H-1B program, when DOL uses, or makes available to employers, a governmental wage survey, such survey shall provide at least four levels of wages commensurate with experience, education, and the level of supervision.

- **Clarification of the Prevailing Wage.** Provides that DOL shall make available to employers a governmental survey to determine the prevailing wage for each occupational classification by metropolitan statistical area. That survey, or other DOL-approved survey, shall provide three levels of wages commensurate with experience, education, and level of supervision -- the first level shall be the mean of the lowest two-thirds of wages surveyed, but in no case less than 80 percent of the mean of the wages surveyed, the second level shall be the mean of wages surveyed, and the third level shall be the mean of the highest two-thirds of wages surveyed.

- **Entry-Level Prevailing Wage Can Only Be Paid to Recent Graduates of U.S. Institutions of Higher Education.** Provides that in the case of an alien who does not begin work with their employer within one year of graduation from an institution of higher education in the U.S., the employer may pay only the second and third level prevailing wages, depending on the alien's experience, education, and level of supervision – the first "entry level" wage level may not be used. In the case of an alien who does begin work within one year of graduation from such an institution, the prevailing wage level shall be the applicable first, second, or third, level.

XXVII. Amnesty Amendments

- **Grounds of Ineligibility.** Provides that an alien is ineligible for amnesty/legalization who:

1) has been convicted of criminal offenses including any felony, domestic violence, child abuse or neglect, assault resulting in bodily injury, the violation of a protection order, DUI, two or more misdemeanors, or an offense in a foreign country that would render the alien inadmissible or deportable under the INA,
2) has been adjudicated delinquent by a state or local juvenile court based on the commission of a serious offense,
3) has not satisfied civil legal judgements arising out of criminal convictions,
4) is a member of a criminal gang,
5) has pending felony or misdemeanor charges,
6) is subject to most grounds of inadmissibility or deportability,
7) has already obtained lawful immigration status in the U.S. as of the date of enactment,
8) has failed to comply with any removal order or voluntary departure agreement,
9) has been ordered removed in absentia,
11) has refused to attend or remain in attendance at a removal proceeding,
12) if over the age of 18, cannot demonstrate financial independence,
13) is delinquent in paying any Federal or State tax liability,
14) has failed to settle any debts with the U.S. Treasury,
15) has unreported income that would result in tax liability, or
16) has engaged in sexual harassment or assault.

- **Records Regarding Juvenile Court Proceedings.** Provides that an applicant for amnesty/legalization must request the release to DHS of all records regarding their being adjudicated delinquent in State or local juvenile court proceedings, and DHS must obtain all such records.

- **Ineligibility of the Parents of Legalization Beneficiaries to Be Sponsored for Green Cards.** Provides that the parent of a beneficiary of amnesty/legalization cannot be sponsored by the beneficiary for a green card should the beneficiary become a naturalized citizen.

- **Documentary Requirements.** Requires certain documents that an alien must submit in order to demonstrate that they meet the eligibility requirements for amnesty/legalization.

- **Fees.** Requires that DHS charge a processing fee covering the complete cost associated with adjudication of an amnesty/legalization application and a [$1000] fee to go toward border security.

- **Ineligibility for Certain Public Benefits.** Provides that a beneficiary of amnesty/legalization shall not be considered a "qualified alien" (e.g., a legal permanent resident or refugee) for purposes of eligibility for Federal public assistance, not be eligible for any refundable tax credit, and not be eligible for healthcare premium assistance and shall be subject to the rules applicable to aliens not lawfully present set forth in the Patient Protection and Affordable Care Act/Obamacare.

- **Not Considered Admitted to the United States.** Provides that the grant of amnesty/legalization shall not constitute an admission for purposes of adjustment of status to legal permanent residence.

- **Administrative and Judicial Review.** Provides a single level of de novo administrative appellate review of a denial of an amnesty/legalization application or of revocation of amnesty/legalization. An appeal must be filed within 30 days. Provides a single judicial appeal of a final administrative determination regarding denial or revocation. Prohibits class action lawsuits regarding denial or revocation. Sets out parameters for courts when granting relief against the government.

- **Penalties for False Statements in Applications.** Provides a criminal penalty of up to five years for knowingly and willfully providing false information on an amnesty/legalization application.

COMPENDIUM OF LEGISLATIVE PROVISIONS[1]

I: Border Security

A. Fencing

SEC. X. CONSTRUCTION OF FENCING AND SECURITY IMPROVEMENTS IN BORDER AREA FROM PACIFIC OCEAN TO GULF OF MEXICO.

Section 102(b)(1) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1103 note), as amended, is further amended—

(1) by amending subparagraph (A) to read as follows:

"(A) Reinforced Fencing. In carrying out subsection (a), the Secretary of Homeland Security shall provide for least 2 layers of reinforced fencing, the installation of additional physical barriers, roads, lighting, cameras, and sensors—

"(i) extending from 10 miles west of the Tecate, California, port of entry to 10 miles east of the Tecate, California, port of entry;

"(ii) extending from 10 miles west of the Calexico, California, port of entry to 5 miles east of the Douglas, Arizona, port of entry;

"(iii) extending from 5 miles west of the Columbus, New Mexico, port of entry to 10 miles east of El Paso, Texas;

"(iv) extending from 5 miles northwest of the Del Rio, Texas, port of entry to 5 miles southeast of the Eagle Pass, Texas, port of entry; and

"(v) extending 15 miles northwest of the Laredo, Texas, port of entry to the Brownsville, Texas, port of entry.".

[1] Where a legislative source is provided, in some instances the source language is used verbatim, in some instances it has been updated to reflect the passage of time or revised statutory citations, in some instances it has been modified, and in some instances it was simply used as inspiration.

(2) by amending subparagraph (D) to read as follows:

"(D) Exception. If the topography of a specific area has an elevation grade that exceeds 10 percent, the Secretary may use other means to secure such area, including the use of surveillance and barrier tools.".

(source: § 3 of Pub. L. No. 109-367)

SEC. X. BORDER WALL SYSTEM CONSTRUCTION.

(a)(1) IMMEDIATELY RESUME BORDER WALL SYSTEM CONSTRUCTION.—Not later than 24 hours after the date of the enactment of this Act, the Secretary of Homeland Security shall resume all activities related to the construction of the border barrier system (also known as, and referred to in this Act as, the "border wall system") along the international border between the United States and Mexico that were underway or being planned for prior to January 20, 2021.

(2) NO CANCELLATIONS.—The Secretary of Homeland Security may not cancel any contract for activities related to border wall system construction referred to in paragraph (1) that was entered into on or before January 20, 2021.

(3) USE OF FUNDS.—The Secretary of Homeland Security shall expend all funds appropriated or explicitly obligated for border wall system construction referred to in paragraph (1) that were appropriated or obligated, as the case may be, beginning on October 1, 2016, to carry out this Act.

(4) IMPLEMENTATION PLAN FOR BORDER WALL SYSTEM.—Not later than 30 days after the date of enactment of this Act, the Secretary of Homeland Security shall submit to the appropriate congressional committees an implementation plan to complete, by not later than September 30, 2024, border wall system construction referred to in paragraph (1) and funded in accordance with paragraph (3).

(b) PLAN TO COMPLETE TACTICAL INFRASTRUCTURE AND TECHNOLOGY ELEMENTS OF BORDER WALL SYSTEM.—Not later than 90 days after the date of the enactment of this Act, the Secretary of Homeland Security shall submit to the appropriate congressional committees an implementation plan, including quarterly benchmarks and cost estimates, for satisfying all requirements of border wall system construction referred to in subsection (a)(1), including tactical infrastructure, technology, and other elements as identified by the Department of Homeland Security prior to January 20, 2021, through the expenditure of funds appropriated or explicitly obligated, as the case may be, for use beginning on October 1, 2016, as well as any future funds appropriated by Congress.

(c) UPHOLD NEGOTIATED AGREEMENTS.—The Secretary of Homeland Security shall ensure that all agreements executed in writing between the Department of Homeland Security and private citizens, State, local, and with Tribal governments, and other stakeholders are honored

by the Department relating to current and future border wall system construction as required by such agreements.

(d) DEFINITIONS.—In this section:

(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term "appropriate congressional committees" means the Committee on Homeland Security and the Committee on Appropriations of the House of Representatives and the Committee on Homeland Security and Governmental Affairs and the Committee on Appropriations of the Senate.

(2) TACTICAL INFRASTRUCTURE.—The term with "tactical infrastructure" includes boat ramps, access gates, checkpoints, lighting, and roads associated with a border wall system.

(3) TECHNOLOGY.—The term "technology" includes border surveillance and detection technology, including linear ground detection systems, associated with a border wall system.

(source: § 2 of H.R. 2729 (Clay Higgins), 117th Cong.)

B. Staffing

SEC. X. ADDITIONAL BORDER PATROL AGENTS.

Not later than [X], the Commissioner of U.S. Customs and Border Protection shall hire, train, and assign sufficient Border Patrol agents to maintain an active duty presence of not fewer than 25,000 full-time equivalent agents. The Secretary will determine the rate at which the additional agents will be added with due regard to filling the positions as expeditiously as possible without making any compromises in the selection or the training of the additional officers.

(sources: § 1131 of H.R. 4760 (Bob Goodlatte), 115th Cong.; § 506 of H.R. 2431 (Raul Labrador), 115th Cong.)

C. Entry-Exit System

SEC. X. BIOMETRIC EXIT DATA SYSTEM.

(a) IN GENERAL.—Subtitle B of title IV of the Homeland Security Act of 2002 (6 U.S.C. 211 et seq.) 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 consultation 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 traveler 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 milestones;

"(H) identified risks and mitigation strategies 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 administrative authorities, if any, needed to integrate 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 support the highest volume of international air travel, as determined by available Federal flight data;

"(B) 10 United States seaports that support 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 Committee 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 improving 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.".

(source: § 2106 of H.R. 4760 (Bob Goodlatte), 115th Cong.)

D: Miscellaneous

SEC. X. MIGRANT PROTECTION PROTOCOLS.

Notwithstanding any other provision of law, the Secretary of Homeland Security shall implement the Migrant Protection Protocols in accordance with the memorandum of Secretary of Homeland Security Nielsen entitled "Policy Guidance for Implementation of the Migrant Protection Protocols", dated January 25, 2019.

(source: § 2 of H.R. 1259 (Matthew Rosendale), 117th Cong.)

SEC. X. 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) carrying out 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), as amended by section 1111 of this division;

(B) the execution of search and rescue operations;

(C) the use of motorized vehicles, foot patrols, and horseback to patrol the border area, apprehend illegal entrants, and rescue individuals; and

(D) the remediation of tunnels used to facilitate unlawful immigration or other illicit activities.

(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:

(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 Act, the waiver described in paragraph (1) shall apply to the provision 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 affecting, negating, or diminishing in any manner the applicability of section 552 of title 5, United States Code (commonly referred to as the "Freedom of Information Act"), in any relevant matter.

(d) PROTECTION OF LEGAL USES.—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 access 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) MEMORANDUM 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 Act.

(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.

(source: § 1117 of H.R. 6136 (Bob Goodlatte), 115th Cong.)

SEC. X. BORDER CROSSING FEE.

(a) LAND BORDER USE FEE ACCOUNT.—Section 286(q) of the Immigration and Nationality Act (8 U.S.C. 1356(q)) is amended to read as follows:

"(q) LAND BORDER USE FEE ACCOUNT.—

"(1) The Secretary of Homeland Security, after consultation with the Secretary of State, shall institute a policy of imposing a fee at the time of any person's entry into the United States at a land border port of entry for the person's use of border facilities or services of the Department of Homeland Security in an amount necessary to make the total of such fees substantially equal to the cost of maintaining and operating such facilities and services.

"(2) All fees collected under paragraph (1) shall be deposited as offsetting receipts in a separate account within the general fund of the Treasury of the United States and shall remain available until expended. Such account shall be known as the 'Land Border User Fee Account'.

"(3) (A) The Secretary of the Treasury shall refund out of the Land Border User Fee Account, at least on a quarterly basis, amounts to any appropriations for expenses incurred in providing inspection services at land border points of entry. Such expenses shall include—

"(i) the cost of providing inspection services;

"(ii) the cost of operating and maintaining inspection facilities at land border points of entry;

"(iii) the cost of expanding, operating, and maintaining information systems for nonimmigrant control;

"(iv) the cost of employing additional permanent and temporary inspectors;

"(v) the minor construction costs associated with adding new traffic lanes (with the concurrence of the General Services Administration), including the establishment of commuter lanes to be made available to qualified United States citizens and aliens, as determined by the Secretary of Homeland Security;

"(vi) the cost of detecting fraudulent documents used by passengers traveling to the United States; and

"(vii) the cost of administering the Land Border User Fee Account.

"(B) Beginning with the fiscal year which begins after the effective date of this subsection, amounts required to be refunded in any fiscal year shall be refunded in accordance with estimates made in the budget request of the Secretary of Homeland Security for that fiscal year. Any proposed change in an amount specified in such budget request shall only be made after notification to the Committees on Appropriations of the House of Representatives and the Senate and only if the Committees on the Judiciary of the House of Representatives and the Senate are notified at least fifteen days in advance.

"(4) Beginning two years after the date of enactment of this Act, and every two years thereafter, the Secretary of Homeland Security shall prepare and submit to the Congress a report containing—

"(A) a statement of the financial condition of the Land Border Use Fee Account, including the beginning account balance, revenues, withdrawals, and ending account balance and projection for the next two fiscal years; and

"(B) a recommendation, if necessary, regarding any adjustment in the prescribed fee that may be required to ensure that the receipts collected from the fee charged for the succeeding two-year period equal, as closely as possible, the cost of providing the facilities and services described in paragraph (1).".

(b) SUBMISSION OF PLAN.—Not later than ninety days after the date of enactment of this Act, the Secretary of Homeland Security shall submit in writing to the Committees on the Judiciary and the Committees on Appropriations of the House of Representatives and of the Senate a plan detailing the proposed implementation of section 286(q) of the Immigration and Nationality Act (as amended by this Act).

(source: § 211 of S. 269 (Alan Simpson), 104th Cong.)

SEC. X. WRITTEN NOTICE OF REMOVAL PROCEEDINGS.

(a) IN GENERAL.—Section 235(b) of the Immigration and Nationality Act (8 U.S.C. 1225(b)) is amended by adding at the end the following:

"(4) WRITTEN NOTICE.—An alien described in this subsection shall not be granted parole or released from detention by the Attorney General or the Secretary of Homeland Security without having been provided a written notice under paragraph (1) or (2) of section 239(a) that—

"(A) informs the alien that he or she is required to appear before an immigration judge for removal proceedings; and

"(B) identifies the specific date on which such proceedings will take place.".

(b) CONSEQUENCES FOR FAILURE TO ATTEND HEARING.—Section 240(b)(5)(A) of the Immigration and Nationality Act (8 U.S.C. 1229a(b)(5)(A)) is amended—

(1) by striking "Any alien" and inserting the following:

"(i) REMOVAL.—Any alien";

(2) by striking "the Service" and inserting "U.S. Immigration and Customs Enforcement"; and

(3) by adding at the end the following:

"(ii) ADDITIONAL CONSEQUENCES FOR FAILURE TO ATTEND PROCEEDING.— Absent exceptional circumstances, the failure of an alien to attend a proceeding referred to in clause (i) shall result in the immediate termination of the alien's—

"(I) parole;

"(II) deferred action;

"(III) temporary protected status under section 244;

"(IV) other immigration status; and

"(V) employment authorization associated with any status set forth in subclauses (I) through (IV).".

(c) SAVINGS PROVISION.—None of the amendments made by this section may be construed as authorizing the parole or release of any alien if such parole or release is not otherwise expressly authorized by law.

(source: § 1 of S. 1007 (Tommy Tuberville), 117th Cong.)

SEC. X. USE OF ARMY AND AIR FORCE TO SECURE THE BORDER.

Section 1385 of title 18, United States Code, is amended by inserting after "execute the laws" the following: "other than at or near a border of the United States in order to prevent aliens, terrorists, and drug smugglers from entering the United States".

(source: § 113 of H.R. 5013 (George Gekas), 107th Cong.)

II. Visa Security

SEC. X. BACKGROUND AND SECURITY CHECKS.

(a) REQUIREMENT TO COMPETE BACKGROUND AND SECURITY CHECKS.—Section 103 of the Immigration and Nationality Act (8 U.S.C. 1103) is amended by adding at the end the following:

"(h) Notwithstanding any other provision of law (statutory or nonstatutory), including but not limited to section 309 of Public Law 107–173, sections 1361 and 1651 of title 28, United States Code, and section 706(1) of title 5, United States Code, neither the Secretary of Homeland Security, the Attorney General, nor any court may—

"(1) grant, or order the grant of or adjudication of an application for adjustment of status to that of an alien lawfully admitted for permanent residence;

"(2) grant, or order the grant of or adjudication of an application for United States citizenship or any other status, relief, protection from removal, employment authorization, or other benefit under the immigration laws;

"(3) grant, or order the grant of or adjudication of, any immigrant or nonimmigrant petition; or

"(4) issue or order the issuance of any documentation evidencing or related to any such grant, until such background and security checks as the Secretary may in his discretion require have been completed or updated to the satisfaction of the Secretary.

"(i) Notwithstanding any other provision of law (statutory or nonstatutory), including but not limited to section 309 of Public Law 107–173, sections 1361 and 1651 of title 28, United States Code, and section 706(1) of title 5, United States Code, neither the Secretary of Homeland Security nor the Attorney General may be required to—

"(1) grant, or order the grant of or adjudication of an application for adjustment of status to that of an alien lawfully admitted for permanent residence;

"(2) grant, or order the grant of or adjudication of an application for United States citizenship or any other status, relief, protection from removal, employment authorization, or other benefit under the immigration laws;

"(3) grant, or order the grant of or adjudication of, any immigrant or nonimmigrant petition; or

"(4) issue or order the issuance of any documentation evidencing or related to any such grant, until any suspected or alleged materially false information, material misrepresentation or omission, concealment of a material fact, fraud or forgery, counterfeiting, or alteration, or falsification of a document, as determined by the Secretary, relating to the adjudication of an application or petition for any status (including the

granting of adjustment of status), relief, protection from removal, or other benefit under this subsection has been investigated and resolved to the Secretary's satisfaction.

"(j) Notwithstanding any other provision of law (statutory or nonstatutory), including section 309 of the Enhanced Border Security and Visa Entry Reform Act (8 6 U.S.C. 1738), sections 1361 and 1651 of title 28, United States Code, and section 706(1) of title 5, United States 8 Code, no court shall have jurisdiction to require any of the acts in subsections (h) or (i) to be completed by a certain time or award any relief for failure to complete or delay in completing such acts.".

(b) CONSTRUCTION.—

(1) IN GENERAL.—Chapter 4 of title III of the Immigration and Nationality Act (8 U.S.C. 1501 et seq.) is amended by adding at the end the following:

"CONSTRUCTION

"SEC. 362.

"(a) IN GENERAL.—Nothing in this Act or any other law, except as provided in subsection (d), shall be construed to require the Secretary of Homeland Security, the Attorney General, the Secretary of State, the Secretary of Labor, or a consular officer to grant any application, approve any petition, or grant or continue any relief, protection from removal, employment authorization, or any other status or benefit under the immigration laws by, to, or on behalf of—

"(1) any alien deemed by the Secretary to be described in section 212(a)(3) or section 237(a)(4); or

"(2) any alien with respect to whom a criminal or other proceeding or investigation is open or pending (including, but not limited to, issuance of an arrest warrant, detainer, or indictment), where such proceeding or investigation is deemed by the official described in subsection (a) to be material to the alien's eligibility for the status or benefit sought.

"(b) DENIAL OR WITHHOLDING OF ADJUDICATION.—An official described in subsection (a) may, in the discretion of the official, deny (with respect to an alien described in paragraph (1) or (2) of subsection (a)) or withhold adjudication of pending resolution of the investigation or case (with respect to an alien described in subsection (a)(2)) any application, petition, relief, protection from removal, employment authorization, status or benefit.

"(c) JURISDICTION.—Notwithstanding any other provision of law (statutory or nonstatutory), including section 309 of the Enhanced Border Security and Visa Entry Reform Act (8 U.S.C. 1738), sections 1361 and 1651 of title 28, United States Code, and

section 706(1) of title 5, United States Code, no court shall have jurisdiction to review a decision to deny or withhold adjudication pursuant to subsection (b) of this section.

"(d) WITHHOLDING OF REMOVAL AND TORTURE CONVENTION.—This section does not limit or modify the applicability of section 241(b)(3) or the regulations issued pursuant to the implementing legislation of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment with respect to an alien otherwise eligible for protection under such provisions.".

(2) CLERICAL AMENDMENT.—The table of contents for such Act is amended by inserting after the item relating to section 361 the following:

"Sec. 362. Construction.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of [X] and shall apply to applications for immigration benefits pending on or after such date.

(sources: § 206 of H.R. 2431 (Raul Labrador), 115th Cong.); § 206 of H.R. 2278 (Trey Gowdy), 113th Cong.)

SEC. X. VISA SECURITY UNITS.

(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 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) 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.".

(d) 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 [X].

(source: § 3101 of H.R. 4760 (Bob Goodlatte), 115th Cong.)

SEC. X. 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, 1123, and 1126 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, in consultation with the Secretary of State, 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.

"(d) WAIVER.—The Secretary, in collaboration with the Secretary of State, is authorized to waive the requirements of subsection (a) as necessary to comply with international obligations of the United States.

"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.".

(source: § 3105 of H.R. 6136 (Bob Goodlatte), 115th Cong.)

SEC. X. VISA REVOCATION.

Section 221(i) of the Immigration and Nationality Act (8 U.S.C. 1201(i) is amended by striking "except in the context of a removal proceeding if such revocation provides the sole ground for removal under section 1227(a)(1)(B) of this title."

(source: § 3008 of H.R. 10 (Dennis Hastert), 108th Cong.)

SEC. X. 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 Act.

(source: § 3105 of H.R. 6136 (Bob Goodlatte), 115th Cong.)

SEC. X. DISCLOSURE OF INFORMATION FOR NATIONAL SECURITY PURPOSES.

(a) INFORMATION SHARING.—Section 384(b) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1367(b)) is amended—

(1) in paragraph (1)—

(A) by inserting "Secretary of Homeland Security or the" before "Attorney General may"; and

(B) by inserting "Secretary's or the" before "Attorney General's discretion";

(2) in paragraph (2)—

(A) by inserting "Secretary of Homeland Security or the" before "Attorney General may";

(B) by inserting "Secretary or the" before "Attorney General for"; and

(C) by inserting "in a manner that protects the confidentiality of such information" after "law enforcement purpose";

(3) in paragraph (5), by striking "Attorney General is" and inserting "Secretary of Homeland Security and the Attorney General are"; and

(4) by adding at the end a new paragraph as follows:

"(8) Notwithstanding subsection (a)(2), the Secretary of Homeland Security, the Secretary of State, or the Attorney General may provide in the discretion of either such Secretary or the Attorney General for the disclosure of information to national security officials to be used solely for a national security purpose in a manner that protects the confidentiality of such information.".

(b) GUIDELINES.—Subsection (d) (as added by section 817(4) of the Violence Against Women and Department of Justice Reauthorization Act of 2005) of section 384 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1367(d)) is amended by inserting "and severe forms of trafficking in persons or criminal activity listed in section 101(a)(15)(U) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(u))" after "domestic violence".

(c) IMPLEMENTATION.—Not later than 180 days after the date of enactment of this Act, the Attorney General and Secretary of Homeland Security shall provide the guidance required by section 384(d) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1367(d)), consistent with the amendments made by subsections (a) and (b).

(d) CLERICAL AMENDMENT.—Section 384(a)(1) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 is amended by striking "241(a)(2)" in the matter following subparagraph (F) and inserting "237(a)(2)

(source: § 812, H.R. 4970 (Sandy Adams), 112th Cong.)

SEC. X. 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 facilitation 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.".

(source: § 3108 of H.R. 6136 (Bob Goodlatte), 115th Cong.)

SEC. X. AUTHORIZATION OF WAIVER OF VISA INTERVIEWS FOR CERTAIN INELIGIBLE APPLICANTS.

(a) IN GENERAL.—Section 222(h)(1) of the Immigration and Nationality Act (8 U.S.C. 1202(h)(1)) is amended by inserting "the alien is determined by the Secretary 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 Act, 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 Congress 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.

(source: § 3109 of H.R. 6136 (Bob Goodlatte), 115th Cong.)

SEC. X. DNA TESTING.

OPTION 1 (Discretionary)

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 immigrant 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.".

(source: § 3109 of H.R. 6136 (Bob Goodlatte), 115th Cong.)

OPTION 2 (Mandatory)

(a) IN GENERAL.—Section 221(d) of the Immigration and Nationality Act (8 U.S.C. 1201(d)) is amended—

(1) by striking "(d)" and inserting "(d)(1)"; and

(2) by adding at the end the following new paragraph:

"(2) Prior to the issuance of an immigrant visa to an alien that is predicated on a biological relationship to a family member, the consular officer shall require such alien to submit the results of DNA testing in order to confirm that the purported biological relationship is not inconsistent with the results.".

(b) AUTHORIZATION OF FEES.—The Secretary of Homeland Security is authorized to adjust the fees collected from aliens described in section 221(d)(2) of the Immigration and Nationality Act, as added by subsection (a)(2), in order to carry out such section.

(c) TESTING FACILITIES.—The Secretary of Homeland Security, in consultation with the Secretary of State, shall promulgate regulations with respect to the facilities where DNA testing is authorized to be performed, as required by section 221(d)(2) of the Immigration and Nationality Act, as added by subsection (a)(2).

SEC. X. DENIAL OF ADMISSION TO NATIONALS OF COUNTRIES DENYING OR DELAYING ACCEPTING ALIEN ORDERED REMOVED.

Section 243(d) of the Immigration and Nationality Act (8 U.S.C. 1253(d)) is amended to read as follows:

"(d) DENIAL OF ADMISSION TO NATIONALS OF COUNTRIES DENYING OR DELAYING ACCEPTING ALIENS.—Whenever the Secretary of Homeland Security determines that the government of a foreign country has denied or unreasonably delayed accepting an alien who is a citizen, subject, national, or resident of that country after the alien has been ordered removed, the Secretary, after consultation with the Secretary of State, may deny admission to any citizen, subject, national, or resident of that country until the country accepts the alien who was ordered removed.".

(source: § 404 of H.R. 4437 (F. James Sensenbrenner, Jr.), 109th Cong., as passed by the House)

III: Expedited Removal

SEC. X. EXPANSION OF EXPEDITED REMOVAL.

Section 235(b)(1)(A) of the Immigration and Nationality Act (8 U.S.C. 1225(b)(1)(A)) is amended by striking clauses (i) through (iii) and inserting the following:

"(i) IN GENERAL.—If an immigration officer determines that an alien (other than an alien described in subparagraph (F)) who is arriving in the United States, or who has not been admitted or paroled into the United States and has not been physically present in the United States continuously for the 5-year period immediately prior to the date of the determination of inadmissibility under this paragraph, is inadmissible under section 212(a)(6)(C) or 212(a)(7), the officer shall order the alien removed from the United States without further hearing or review, unless--

"(I) the alien has been charged with a crime, is in criminal proceedings, or is serving a criminal sentence; or

"(II) the alien indicates an intention to apply for asylum under section 208 or a fear of persecution and the officer determines that the alien has been physically present in the United States for less than 1 year.

"(ii) Claims for asylum.—If an immigration officer determines that an alien (other than an alien described in subparagraph (F)) who is arriving in the United States, or who has not been admitted or paroled into the United States and has not been physically present in the United States continuously for the 5-year period immediately prior to the date of the determination of inadmissibility under this paragraph, is inadmissible under section 212(a)(6)(C) or 212(a)(7), and

the alien indicates either an intention to apply for asylum under section 208 or a fear of persecution, the officer shall refer the alien for an interview by an asylum officer under subparagraph (B) if the officer determines that the alien has been physically present in the United States for less than 1 year.".

(source: § 3006, H.R. 10 (Dennis Hastert), 108th Cong.)

SEC. X. EXPEDITED REMOVAL FOR ALIENS INADMISSIBLE ON CRIMINAL OR SECURITY GROUNDS.

(a) IN GENERAL.—Section 238(b) of the Immigration and Nationality Act (8 U.S.C. 1228(b)) is amended-

(1) in paragraph (1)--

(A) by striking "Attorney General" and inserting "Secretary of Homeland Security in the exercise of discretion"; and

(B) by striking "set forth in this subsection or" and inserting "set forth in this subsection, in lieu of removal proceedings under";

(2) in paragraph (3), by striking "paragraph (1) until 14 calendar days" and inserting "paragraph (1) or (3) until 7 calendar days";

(3) by striking ``Attorney General'' each place it appears in paragraphs (3) and (4) and inserting "Secretary of Homeland Security";

(4) in paragraph (5)--

(A) by striking "described in this section" and inserting "described in paragraph (1) or (2)"; and

(B) by striking "the Attorney General may grant in the Attorney General's discretion" and inserting "the Secretary of Homeland Security or the Attorney General may grant, in the discretion of the Secretary or Attorney General, in any proceeding";

(5) by redesignating paragraphs (3), (4), and (5) as paragraphs (4), (5), and (6), respectively; and

(6) by inserting after paragraph (2) the following new paragraph:

"(3) The Secretary of Homeland Security in the exercise of discretion may determine inadmissibility under section 212(a)(2) (relating to criminal offenses) and issue

an order of removal pursuant to the procedures set forth in this subsection, in lieu of removal proceedings under section 240, with respect to an alien who

"(A) has not been admitted or paroled;

"(B) has not been found to have a credible fear of persecution pursuant to the procedures set forth in section 235(b)(1)(B); and

"(C) is not eligible for a waiver of inadmissibility or relief from removal.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the date of the enactment of this Act but shall not apply to aliens who are in removal proceedings under section 240 of the Immigration and Nationality Act as of such date

(source: § 610 of H.R. 4437 (F. James Sensenbrenner, Jr.), 109th Cong., as passed by the House)

IV. Tolerance/Civics/Loyalty

A. The "Tolerant Society Act"

SEC. X. GROUND OF INADMISSIBILITY ON ACCOUNT OF INTOLERANCE.

(a) IN GENERAL.—Add a new section 212(a)(10) of the Immigration and Nationality Act (8 USC 1182(a)(10)) as follows (and redesignate current paragraph (10) accordingly):

"(a)(10) INTOLERANCE.—

"(A) IN GENERAL.—Any alien who orders, incites or advocates for (including, but not limited to, by writing or publishing or causing to be written or published, or by knowingly circulating, distributing, printing, or displaying, or by knowingly causing to be circulated, distributed, printed, published, or displayed, or by knowingly having in their possession for the purpose of circulation, publication, distribution, or display, any written (including written through electronic means, such as but not limited to the Internet and electronic mail) or printed matter for the purpose, in whole or in part, of such incitement or advocacy), assists, otherwise participates in, or believes in:

"(i) genocide, as defined in section 1091(a) of Title 18;

"(ii) the civil or criminal punishment of a person on account, in whole or in part, of their actual or perceived religious apostasy;

"(iii) the civil or criminal punishment of a person on account, in whole or in part, of their actual or perceived religious blasphemy;

"(iv) the establishment of any governmentally-enforced religious law in the United States applying to:

"(I) all persons in the United States; or

"(II) persons of a particular religious faith in the United States (regardless of whether adherence to such law is voluntary or mandatory) that would operate in place of or in addition to federal, state, or local civil or criminal law;

"(v) the persecution of any person on account, in whole or in part, of race, religion, national origin, or political opinion;

"(vi) the practice of female genital mutilation, as defined in section 1374(c) of Title 8; or

"(vii) the willful causing of bodily injury to any person or, through the use of fire, a firearm, a dangerous weapon, or an explosive or incendiary device, the attempt to cause bodily injury to any person, on account, in whole or in part, of that person's actual or perceived race, color, religion, national origin, gender, sexual orientation, gender identity, or disability; is inadmissible (except as provided in subparagraph (C)).

"(B) MEMBERSHIP IN INTOLERANT ORGANIZATIONS.—Any alien who is or was a member of or affiliated with any organization that carries out or carried out one or more of the actions described in clauses (i)-(vii) of subparagraph (A) when the alien is or was a member of or affiliated with the organization, is inadmissible.

"(C) EXCEPTIONS.—

"(i) RENUNCIATION.—Any alien who in the past had advocated for or believed in one or more of the actions described in clauses (i)-(vii) of subparagraph (A) or who had been a member of or affiliated with any organization that advocated for or believed in one or more of such actions, and who has been determined, in the sole and unreviewable discretion of the Secretary of Homeland Security, to have fully and sincerely renounced their belief in such action or actions, shall not be inadmissible solely because of their prior advocacy or belief or their prior membership or affiliation.

"(ii) FOREIGN OFFICIALS AND CANDIDATES FOR ELECTED OFFICE.—An alien who is an official of a foreign government or a purported government, or who is a candidate for election to a foreign government office during the period immediately preceding the election for that office, shall not be inadmissible into the United States under this paragraph solely because of the alien's past, current, or expected advocacy, beliefs, or membership or affiliation

with an organization, if such advocacy, beliefs, membership or affiliation would be lawful within the United States.

"(iii) UNITED NATIONS ACTIVITIES.—An alien otherwise inadmissible into the United States solely on account of this paragraph shall not be inadmissible solely on account of this paragraph to the minimum extent necessary to comply with United States obligations under the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations, signed at Lake Success June 26, 1947, and entered into force November 21, 1947, or under the Convention on Consular Relations, done at Vienna April 24, 1963, and entered into force March 19, 1967, or under other international agreements of the United States that entered into force before the date of enactment of this legislation.

"(iv) FOREIGN DIPLOMATS.—An alien otherwise inadmissible into the United States solely on account of this paragraph shall, for purposes of being granted nonimmigrant status under section 101(a)(15)(A), not be inadmissible solely on account of this paragraph except to the extent that the alien is described in paragraph (3)(E) as it existed immediately before the enactment of X".

(b) CONFORMING CHANGE.—Amend section 212(a)(3)(E) of the Immigration and Nationality Act (8 USC 1182(a)(3)(E)) to read:

"(E) PARTICIPANTS IN THE COMMISSION OF ANY ACT OF TORTURE OR EXTRAJUDICIAL KILLING.—Any alien who, outside the United States, has committed, ordered, incited, assisted, or otherwise participated in the commission of –

"(i) Any act of torture, as defined in section 2340 of Title 18; or

"(ii) under color of law of any foreign nation, any extrajudicial killing, as defined in section 3(a) of the Torture Victim Protection Act of 1991 (28 USC 1350 note), is inadmissible. Section 3. Ground of Deportability on Account of Intolerance Amend section 237 of the Immigration and Nationality Act (8 USC 1227) by adding a new subsection (a)(8) as follows:

"(8) INTOLERANCE.—Any alien who is described in section 212(a)(10)(A) or (B) (subject to subparagraph (C) of such paragraph) is deportable."

SEC. X. INELIGIBILITY FOR IMMIGRATION RELIEF AND BENEFITS ON ACCOUNT OF INTOLERANCE.

(a) INELIGIBILITY FOR PAROLE.—Amend section 212(d)(5)(B) of the Immigration and Nationality Act (8 USC 1182(d)(5)(B)) by:

(1) including the language contained in the current subparagraph beginning with "a refugee unless" in a new clause (i); and

(2) by adding a new clause (ii) as follows:

"(ii) described in subsection (a)(10)(A) or (B) (subject to subparagraph (C) of such paragraph).".

(b) INELIGIBILITY FOR REFUGEE STATUS.—Amend section 207(c)(3) of the Immigration and Nationality Act (8 USC 1157(c)(3)) by adding "or paragraph (10)" after "paragraph (3)".

(c) INELIGIBILITY FOR ASYLUM.—Amend section 208(b)(2)(A) of the Immigration and Nationality Act (8 USC 1158(b)(2)(A)) by striking "or" at the end of clause (v), striking the period at the end of clause (vi) and replacing it with "; or", and by adding a new clause (vii) as follows:

"(vii) the alien is described in section 212(a)(10)(A) or (B) (subject to subparagraph (C) of such paragraph)."

(d) INELIGIBILITY FOR WITHHOLDING OF REMOVAL.—Amend section 241(b)(3)(B) of the Immigration and Nationality Act (8 USC 1231(b)(3)(B)) by striking "or" at the end of clause (iii), striking the period at the end of clause (iv) and replacing it with "; or", and by adding a new clause (v) as follows:

"(v) the alien is described in section 212(a)(10)(A) or (B) (subject to subparagraph (C) of such paragraph)."

(e) INELIGIBILITY FOR TEMPORARY PROTECTED STATUS.—Amend section 244(c)(2)(B) of the Immigration and Nationality Act (8 USC 1254a(c)(2)(B)) by striking "or" at the end of clause (i), striking the period at the end of clause (ii) and replacing it with ", or", and by adding a new clause (iii) as follows: "(iii) the alien is described in section 212(a)(10)(A) or (B) (subject to subparagraph (C) of such paragraph)."

(f) INELIGIBILIY FOR CANCELLATION OF REMOVAL.—Amend section 240A of the Immigration and Nationality Act (8 USC 1229b) by:

(1) amending subsection (a) by striking "and" at the end of paragraph (2), striking the period at the end of paragraph (3) and replacing it with ", or", and by adding a new paragraph (4) as follows:

"(4) is not described in section 212(a)(10)(A) or (B) (subject to subparagraph (C) of such paragraph)."; and

(2) amending subsection (b)(1) by striking "and" at the end of subparagraph (C), striking the period at the end of subparagraph (D) and replacing it with "; and", and by adding a new subparagraph (E) as follows:

"(E) is not described in section 212(a)(10)(A) or (B) (subject to subparagraph (C) of such paragraph).".

(g) INELIGIBILITY FOR NON-STATUTORILY-BASED RELIEF FROM REMOVAL.—Any alien who is described in section 212(a)(10)(A) or (B) of the Immigration and Nationality Act (8 USC 1182(a)(10)(A) or (B)) (subject to subparagraph (C) of such paragraph) may not be granted deferred action or extended voluntary departure or any other non-statutorilybased form of relief from removal except to the extent the Constitution of the United States may guarantee the Executive Branch the ability to grant such relief.

(h) INELIGIBILITY FOR RELIEF UNDER THE REGULATIONS ISSUED PURSUANT TO THE LEGISLATION IMPLEMENTING THE CONVENTION AGAINST TORTURE.—Not later than 120 days after the date of the enactment of this Act, the Secretary of Homeland Security shall revise the regulations prescribed by the Secretary to implement the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment, done at New York on December 10, 1984. The revision shall:

(1) exclude from the protection of such regulations aliens described in section 212(a)(10)(A) or (B) of the Immigration and Nationality Act (8 USC 1182(a)(10)(A) or (B)) (subject to subparagraph (C) of such paragraph), including rendering such aliens ineligible for withholding or deferral of removal under the Convention; and

(2) ensure that the revised regulations operate so as to—

(A) allow for the reopening of determinations made under the regulations before the effective date of the revision; and

(B) apply to acts and conditions constituting grounds of ineligibility for an alien's protection under such regulations, as revised, regardless of when such acts or conditions occurred.

(i) INELGIBILITY FOR WAIVERS OF GROUNDS OF INADMISSIBILITY.—

(I) INELIGIBILITY FOR WAIVER OF GROUNDS OF INADMISSIBILITY FOR THE TEMPORARY ADMISSION OF NONIMMIGRANTS.—

(aa) Amend section 212(d)(1) of the Immigration and Nationality Act (8 USC 1182(d)(1)) by striking "paragraph (3)(E)" and replacing it with "for aliens described in paragraph (3)(E) as it existed immediately before the enactment of X.

(bb) Amend section 212(d)(3)(A) of the Immigration and Nationality Act (8 USC 1182(d)(3)(A)) by striking "and" after "(3)(C)," each place it appears and by adding ", and paragraph (10)" after "paragraph (3)(E)" each place it appears.

(II) INELIGIBILTY FOR WAIVER OF GROUNDS OF INADMISSIBILITY FOR T VISAS.—Amend section 212(d)(13)(B)(ii) of the Immigration and Nationality Act

(8 USC 1182(d)(13)(B)(ii)) by striking "(10)(C), and (10(E)" and replacing it with "(10) and (11)(C) and (E)".

(III) INELIGIBILITY FOR WAIVER OF GROUNDS OF INADMISSIBILITY FOR UY VISAS.—Amend section 212(d)(14) of the Immigration and Nationality Act (8 USC 1182(d)(14)) by striking "paragraph (3)(E)" and replacing it with "paragraphs (3)(E) or (10)".

(j) NATURALIZATION.—

(1) INELIGIBILITY FOR NATURALIZATION.— Amend section 313 of the Immigration and Nationality Act (8 USC 1424) by:

(A) amending the title by striking "or" before "who", and by adding ", or are intolerant" at the end;

(B) amending subsection (a) by striking "or" at the end of paragraph (5),

(C) striking the period at the end of paragraph (6) and replacing it with "; or", and

(D) by adding a new paragraph (7) as follows: "(7) who is described in section 212(a)(10)(A) or (B) (subject to subparagraph (C) of such paragraph)."

(2) REVOCATION OF NATURALIZATION.—Amend section 340(c) of the Immigration and Nationality Act (8 USC 1451(c)) by:

(A) amending the title to read "Prima facie evidence"; and

(B) adding "or become described in section 212(a)(10)(A) or (B) (subject to subparagraph (C) of such paragraph)," after "section 1424 of this title,".

(k) SPONSORSHIP.—Section 204 of the Immigration and Nationality Act (8 U.S.C. 1154) is amended by adding at the end the following new paragraph:

"(m) INTOLERANCE.—No person who is described in section [X] shall be permitted to file an application or petition or submit an affidavit of support, on behalf of an alien under any provision of the immigration laws, nor shall such person be permitted to assume custodial care for an unaccompanied alien child (as defined in section 462(g)(2) of the Homeland Security Act of 2002)."

SEC. X. EFFECTIVE DATE

Sections [X] of this Act and the amendments made by such sections shall be effective on the date of enactment of this Act and shall apply to all aliens, regardless of whether they arrived

in the United States or received immigrant or nonimmigrant status before, on, or after the date of enactment. Section [X] and the amendments made by section [X] shall be effective on the date of enactment of this Act and shall apply commencing with all aliens whose naturalization applications are pending on the date of enactment and to all citizens who are naturalized on the date of enactment.

B. Allegiance to the United States

SEC. X. CIVICS EDUCATION.

Section 451(f) of the Homeland Security Act of 2002 (6 U.S.C. 271(f)) is amended by adding a new paragraph (3) as follows:

"(3) The Office of Citizenship shall make educational materials concerning the Declaration of Independence, the Federalist Papers and United States Constitution easily accessible to aliens, that shall emphasize that--

"(A) legitimate government is based on the consent of the governed,

"(B) all persons are created equal and endowed with unalienable rights,

"(C) because the accumulation of all powers, legislative, executive, and judiciary, in the same hands, results in tyranny, the separation of the Federal government's powers among the three separate branches is central to our Constitution,

"(D) federalism, the allocation of power between the federal government and these states, is central to our Constitution, and

"(E) all the rights enshrined in the Constitution and the amendments are vital to the preservation of liberty.".

SEC. X. OATH OF RENUNCIATION AND ALLEGIANCE.

(a) IN GENERAL.—

(1) Section 337(a) of the Immigration and Nationality Act (8 U.S.C. 1448(a)) is amended by inserting after the fourth sentence the following: "The oath referred to in this section shall be the oath provided for in paragraph (a) or (b) of section 337.1 of title 8, Code of Federal Regulations, as in effect on the date of enactment of X.".

(2) NOTICE TO FOREIGN EMBASSIES.--Upon the naturalization of a new citizen, the Secretary of Homeland Security, in cooperation with the Secretary of State, shall notify the embassy of the country of which the new citizen was a citizen or subject that such citizen has--

(A) renounced allegiance to that foreign country; and

(B) sworn allegiance to the United States.

(3) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date that is 6 months after the date of the enactment of this Act.

(b) REQUIRING APPLICANTS FOR NATURALIZATION TO UNDERSTAND OATH

(1) REQUIREMENTS FOR NATURALIZATION.—Section 312(a) (8 U.S.C. 1423(a)) is amended—

(A) in paragraph (1), by striking "and" at the end;

(B) in paragraph (2), by striking the period at the end and inserting "; and"; and

(C) by adding at the end the following:

"(3) an understanding of the oath of allegiance required under section 337(a)".

(2) EXAMINATION.—Section 332(a) (8 U.S.C. 1443(a)) is amended by inserting before "ability" the following:

"understanding of the oath of allegiance required under section 337(a)".

(source: § 1201 of H.R. 4437 (F. James Sensenbrenner, Jr.), 109th Cong., as passed by the House)

SEC. X. INELIGIBILITY FOR IMMIGRANT STATUS ON ACCOUNT OF NOT SATISFYING SELECTED NATURALIZATION CRITERIA.

Add a new subsection (m) to section 204 of the Immigration and Nationality Act (8 USC 1154(m)) as follows:

"(m) PROHIBITION AGAINST APPROVAL FOR ALIENS NOT SATISFYING SELECTED NATURALIZATION CRITERIA.—Notwithstanding the provisions of subsections (a) and (b) of this section, no petition may be approved unless the alien beneficiary is a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States.".

(j) INELIGIBI.ITY FOR ADJUSTMENT OF STATUS.—Amend section 245(c) of the Immigration and Nationality Act (8 USC 1255(c)) by striking "or" at the end of item (7), and by striking the period at the end of item (8) and replacing it with "; or (9) an alien who is not a person

of good moral character, attached to the principles of the Constitution of the United States, or well disposed to the good order and happiness of the United States."

SEC. X. REVOCATION OF IMMIGRANT STATUS ON ACCOUNT OF NOT SATISFYING SELECTED NATURALIZATION CRITERIA.

Amend section 204 of the Immigration and Nationality Act (8 USC 1154)) by adding a new subsection (n) as follows:

"(n) REVOCATION OF IMMIGRANT STATUS ON ACCOUNT OF NOT SATISFYING SELECTED NATURALIZATION CRITERIA.—An alien lawfully admitted for permanent residence, as defined in section 101(a)(20), shall forfeit such status if at any point the alien ceases to be a person of good moral character, attached to the principles of the Constitution of the United States, or well disposed to the good order and happiness of the United States.".

V. Sanctuary Cities

SEC. X. STATE NONCOMPLIANCE WITH ENFORCEMENT OF IMMIGRATION LAWS.

(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 regarding 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 information from Federal law enforcement entities, officials, or other personnel.";

(3) in subsection (c), by striking "Immigration and Naturalization Service" and inserting "Department of Homeland Security"; and

(4) by adding at the end the following:

"(d) COMPLIANCE.—

"(1) ELIGIBILITY FOR CERTAIN GRANT PROGRAMS.—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 Nationality Act (8 U.S.C. 1231(i)), the 'Cops on the Beat' program under part Q of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (34 U.S.C. 10381 et seq.), or the Edward Byrne Memorial Justice Assistance Grant Program under subpart 1 of part E of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (34 U.S.C. 10151 et seq.); or

"(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 Act, 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 Act.

(c) PRIVATE 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 subdivision of a State declines to honor a detainer issued pursuant to section 287(d)(1) of the Immigration and Nationality Act (8 U.S.C. 1357(d)) as a consequence of the State or another political subdivision with jurisdiction over the subdivision prohibiting the subdivision through a statute or other legal requirement of the State or other political subdivision—

(A) from honoring the detainer; or

(B) fully complying with section 642 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1373), and, as a consequence of the statute or other legal requirement of the State or other political subdivision, the subdivision released the alien referred to in 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 expert fees as part of the attorneys" fee.

(d) ELIGIBILITY FOR CERTAIN GRANT PROGRAMS.—

(1) IN GENERAL.—Except as provided in paragraph (2), a State or political subdivision of a State that has in effect a statute, policy or practice providing that it not comply with any or all Department of Homeland Security detainers issued pursuant to section 287(d)(1) of the Immigration and Nationality 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 on the Beat" program under part Q of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (34 U.S.C. 10301 et seq.), or the Edward Byrne Memorial Justice Assistance Grant Program under subpart 1 of part E of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (34 U.S.C. 10151 et seq.); or

(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.

(source: §§ 2202-03 of H.R. 4760 (Bob Goodlatte), 115th Cong.)

VI: State and Local Law Enforcement

A: ICE Detainers

SEC. X. CLARIFYING THE AUTHORITY OF ICE DETAINERS.

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.".

(source: § 2203 of H.R. 4760 (Bob Goodlatte, 115th Cong.)

SEC. X. IMMUNITY AND INDEMNIFICATION

(a) 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.

(b) 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.

(c) BAD FAITH EXCEPTION.—Subsections (a) and (b) 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.

(source: § 2203 of H.R. 4760 (Bob Goodlatte, 115th Cong.)

B: State and Local Enforcement of the Immigration Laws

SEC. X. AUTHORIZATION FOR STATES AND LOCALITIES TO ENACT AND ENFORCE THEIR OWN IMMIGRATION LAWS.

(a) IN GENERAL.—Subject to section 274A(h)(2) of the Immigration and Nationality Act (8 U.S.C. 1324a(h)(2)), States, or political subdivisions of States, may enact, implement and enforce criminal penalties that penalize the same conduct that is prohibited in the criminal provisions of immigration laws (as defined in section 101(a)(17) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(17))), as long as the criminal penalties do not exceed the relevant Federal criminal penalties (without regard to ancillary issues such as the availability of probation or pardon). States, or political subdivisions of States, may enact, implement and enforce civil penalties that penalize the same conduct that is prohibited in the civil provisions of immigration laws (as defined in such section 101(a)(17)), as long as the civil penalties do not exceed the relevant Federal civil penalties.

(b) LAW ENFORCEMENT PERSONNEL.—Law enforcement personnel of a State, or of a political subdivision of a State, may investigate, identify, apprehend, arrest, detain, or transfer to Federal custody aliens for the purposes of enforcing the immigration laws of the United States to the same extent as Federal law enforcement personnel. Law enforcement personnel of a State, or of a political subdivision of a State, may also investigate, identify, apprehend, arrest, or detain aliens for the purposes of enforcing the immigration laws of a State or of a political subdivision of State, as long as those immigration laws are permissible under this section. Law enforcement personnel of a State, or of a political subdivision of a State, may not remove aliens from the United States.

(source: § 102 of H.R. 2278 (Trey Gowdy), 113th Cong.)

SEC. X. RIGHT OF STATES AND LOCALITIES TO ENTER INTO 287(g) AGREEMENTS.

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 investigation, 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 compelling reason. No limit on the number of agreeSments under this subsection may be imposed. The Secretary 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 paragraph (5) and paragraphs (3) through (10) as paragraphs (7) through (14), respectively;

(3) by inserting after paragraph (1) the following:

"(2) An agreement under this subsection shall accommodate a requesting State or political subdivision with respect 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

(4) 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 [X] 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.".

(source: § 2205 of H.R. 4760 (Bob Goodlatte), 115th Cong.)

VII: Criminal Aliens

A: The "Alien Gang Removal Act"

SEC. X. GROUNDS OF INADMISSIBILITY AND DEPORTABILITY FOR ALIEN CRIMINAL 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 inserting after paragraph (52) the following:

"(53) (A) The term 'criminal gang' means an ongoing group, club, organization, or association of 5 or more persons—

"(i) that has as one of its primary purposes the commission of 1 or more of the criminal offenses described in subparagraph (B) and the members of which engage, or have engaged within the past 5 years, in a continuing series of such offenses; or

"(ii) that has been designated as a criminal gang by the Secretary of Homeland Security, in consultation with the Attorney General, as meeting these criteria.

"(B) 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:

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

"(ii) 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).

"(iii) 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), except that this clause does not apply in the case of an organization described in section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 501(c)(3)) which is exempt from taxation under section 501(a) of such Code.

"(iv) A violent crime described in section 101(a)(43)(F).

"(v) A crime involving obstruction of justice, tampering with or retaliating against a witness, victim, or informant, or perjury or subornation of perjury.

"(vi) 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).

"(vii) An attempt or conspiracy to commit an offense described in this paragraph or aiding, abetting, counseling, procuring, commanding, inducing, facilitating, or soliciting the commission of an offense described in clauses (i) through (vi).".

(b) INADMISSIBILITY.—Section 212(a)(2) of such Act (8 U.S.C. 1182(a)(2)) is amended—

(1) in subparagraph (A)(i)—

(A) in subclause (I), by striking "or" at the end; and

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

"(III) a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to participation or membership in a criminal gang, or

"(IV) any felony or misdemeanor offense for which the alien received a sentencing enhancement predicated on gang membership or conduct that promoted, furthered, aided, or supported the illegal activity of the criminal gang,".

(2) by adding at the end the following:

"(N) ALIENS ASSOCIATED WITH CRIMINAL GANGS.—

"(i) ALIENS NOT PHYSICALLY PRESENT IN THE UNITED STATES.—In the case of an alien who is not physically present in the United States:

"(I) That alien is inadmissible if a consular officer, an immigration officer, the Secretary of Homeland Security, or the Attorney General knows or has reason to believe—

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

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

"(III) That alien is inadmissible if 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.

"(ii) ALIENS PHYSICALLY PRESENT IN THE UNITED STATES.—In the case of an alien who is physically present in the United States, that alien is inadmissible if the alien—

"(I) is 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 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.".

(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:

"(H) 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));

"(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;

"(iii) has been convicted of a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to participation or membership in a criminal gang; or

"(iv) any felony or misdemeanor offense for which the alien received a sentencing enhancement predicated on gang membership or conduct that promoted, furthered, aided, or supported 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 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 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).

"(4) PERIOD OF DESIGNATION.—

"(A) IN GENERAL.—A designation under this subsection shall be effective for all purposes until revoked under paragraph (5) or (6) or set aside pursuant to subsection (c).

"(B) REVIEW OF DESIGNATION UPON PETITION.—

"(i) IN GENERAL.—The Secretary shall review 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 described in clause (ii).

"(ii) PETITION PERIOD.—For purposes of clause (i)—

"(I) if the designated group, club, organization, or association of 5 or more persons 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 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 (c).

"(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 reconstituted 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 determination 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 division, is further amended—

(A) in subparagraph (E), by striking "or" at the end;

(B) in subparagraph (F), by inserting "or" at the end; and

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

"(G) is inadmissible under section 212(a)(2)(N) or deportable under section 237(a)(2)(H),".

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

(f) ADMISSIBILITY OF VIDEOTAPED WITNESS TESTIMONY.—Notwithstanding any provision of the Federal Rules of Evidence, the videotaped or otherwise audiovisually preserved deposition of a witness to a violation of this section who has been deported or otherwise expelled from the United States, or is otherwise unavailable to testify, may be admitted into evidence in an action brought for that violation if—

(1) the witness was available for cross examination at the deposition by the party, if any, opposing admission of the testimony; and

(2) the deposition otherwise complies with the Federal Rules of Evidence.

(g) ASYLUM CLAIMS BASED ON GANG AFFILIATION.—

(1) INAPPLICABILITY OF RESTRICTION ON REMOVAL 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 described in section 212(a)(2)(N)(i) or section 237(a)(2)(H)(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 following:

"(vi) the alien is described in section 212(a)(2)(N)(i) or section 237(a)(2)(H)(i); or".

(h) 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 (c)(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)(N) or section 237(a)(2)(H)."; 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.".

(i) 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)(N) or section 237(a)(2)(H) shall be eligible for any immigration benefit under this subparagraph;".

(j) PAROLE.—An alien described in section 212(a)(2)(N) 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.

(k) NATURALIZATION.— Section 318 of the Immigration and Nationality Act (8 U.S.C. 1429) is amended—

(1) By striking "Attorney General" each place it appears and inserting "Secretary of Homeland Security"; and

(2) by adding ", or if the applicant is described in section [237(a)(2)(G)]:" before ": Provided,".

(l) SPONSORSHIP.— Section 204 of the Immigration and Nationality Act (8 U.S.C. 1154) is amended by adding at the end the following new paragraph:

"(m) GANG MEMBERS.—No person who is described in section [212(a)(2)(J)] or section [237(a)(2)(G)] shall be permitted to file an application or petition or submit an affidavit of support, on behalf of an alien under any provision of the immigration laws, nor shall such person be permitted to assume custodial care for an unaccompanied alien child (as defined in section 462(g)(2) of the Homeland Security Act of 2002)."

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

(source: § 3106 of H.R. 6136, Bob Goodlatte), 115th Cong.)

B: Aggravated Felonies/Crimes of Violence

SEC. X. DEFINITION OF AGGRAVATED FELONY.

(a) IN GENERAL.—Section 101(a)(43) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(43)) is amended to read as follows:

"(43) Notwithstanding any other provision of law, the term 'aggravated felony' means any offense, whether in violation of Federal, State, or foreign law, that is described in this paragraph. An offense described in this paragraph is—

"(A) homicide (including murder in any degree, manslaughter, and vehicular manslaughter), rape (whether the victim was conscious or unconscious), statutory rape, sexual assault or battery, or any offense of a sexual nature involving an intended victim under the age of 18 years (including offenses in which the intended victim was a law enforcement officer);

"(B) (i) illicit trafficking in a controlled substance (as defined in section 102 of the Controlled Substances Act), including a drug trafficking crime (as defined in section 924(c) of title 18, United States Code); or

"(ii) 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 (21 U.S.C. 802);

"(C) illicit trafficking in firearms or destructive devices (as defined in section 921 of title 18, United States Code) or in explosive materials (as defined in section 841(c) of that title);

"(D) an offense described in section 1956 of title 18, United States Code (relating to laundering of monetary instruments) or section 1957 of that title (relating to engaging in monetary transactions in property derived from specific unlawful activity) if the amount of the funds exceeded $10,000;

"(E) an offense described in—

"(i) section 842 or 844 of title 18, United States Code (relating to explosive materials offenses);

"(ii) section 922 or 924 of title 18, United States Code (relating to firearms offenses); or

"(iii) section 5861 of the Internal Revenue Code of 1986 (relating to firearms offenses);

"(F) a violent crime for which the term of imprisonment is at least 1 year, including—

"(i) any offense that has an element the use, attempted use, or threatened use of physical force against the person or property of another; or

"(ii) any other offense in which the record of conviction establishes that the offender used physical force against the person or property of another in the course of committing the offense;

"(G) (i) theft (including theft by deceit, theft by fraud, embezzlement, motor vehicle theft, unauthorized use of a vehicle, or receipt of stolen property), regardless of whether the intended deprivation was temporary or permanent, for which the term of imprisonment is at least 1 year; or

"(ii) burglary for which the term of imprisonment is at least 1 year;

"(H) an offense described in section 875, 876, 877, or 1202 of title 18, United States Code (relating to the demand for or receipt of ransom);

"(I) an offense involving child pornography or sexual exploitation of a minor (including any offense described in section 2251, 2251A, or 2252 of title 18, United States Code);

"(J) an offense described in section 1962 of title 18, United States Code (relating to racketeer influenced corrupt organizations), or an offense described in section 1084 (if it is a second or subsequent offense) or 1955 of that title (relating to gambling offenses);

"(K) an offense that—

"(i) relates to the owning, controlling, managing, or supervising of a prostitution business;

"(ii) is described in section 2421, 2422, or 2423 of title 18, United States Code (relating to transportation for the purpose of prostitution) if committed for commercial advantage; or

"(iii) is described in any of sections 1581–1585 or 1588–1591 of title 18, United States Code (relating to peonage, slavery, involuntary servitude, and trafficking in persons);

"(L) an offense described in—

"(i) section 793 (relating to gathering or transmitting national defense information), 798 (relating to disclosure of classified information), 2153 (relating to sabotage) or 2381 or 2382 (relating to treason) of title 18, United States Code;

"(ii) section 601 of the National Security Act of 1947 (50 U.S.C. 421) (relating to protecting the identity of undercover intelligence agents);

"(iii) section 601 of the National Security Act of 1947 (relating to protecting the identity of undercover agents);

"(iv) section 175 (relating to biological weapons) of title 18, United States Code;

"(v) sections 792 (harboring or concealing persons who violated sections 793 or 794 of title 18, United States Code), 794 (gathering or delivering defense information to aid foreign government), 795 (photographing and sketching defense installations), 796 (use of aircraft for photographing defense installations), 797 (publication and sale of photographs of defense installations), 799 (violation of NASA regulations for protection of facilities) of title 18, United States Code;

"(vi) sections 831 (prohibited transactions involving nuclear materials) and 832 (participation in nuclear and weapons of mass destruction threats to the United States) of title 18, United States Code;

"(vii) sections 2332a-d, f-h (relating to terrorist activities) of title 18, United States Code;

"(viii) sections 2339 (relating to harboring or concealing terrorists), 2339A (relating to material support to terrorists), 2339B (relating to material support or resources to designated foreign terrorist organizations), 2339C (relating to financing of terrorism), 2339D (relating to receiving military-type training from a terrorist organization) of title 18, United States Code;

"(ix) section 1705 of the International Emergency Economic Powers Act (50 U.S.C. 1705); or

"(x) section 38 of the Arms Export Control Act (22 U.S.C. 2778);

"(M) an offense that—

"(i) involves fraud or deceit in which the loss to the victim or victims exceeds $10,000; or

"(ii) is described in section 7201 of the Internal Revenue Code of 1986 (relating to tax evasion) in which the revenue loss to the Government exceeds $10,000;

"(N) an offense described in section 274(a) (relating to alien smuggling), 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;

"(O) an offense described in section 275 or 276 for which the term of imprisonment is at least 1 year;

"(P) an offense which is described in chapter 75 of title 18, United States Code, and for which the term of imprisonment is at least 1 year;

"(Q) an offense relating to a failure to appear by a defendant for service of sentence if the underlying offense is punishable by imprisonment for a term of 5 years or more;

"(R) an offense relating to commercial bribery, counterfeiting, forgery, or trafficking in vehicles the identification numbers of which have been altered for which the term of imprisonment is at least one year;

"(S) an offense relating to obstruction of justice, perjury or subornation of perjury, or bribery of a witness;

"(T) an offense relating to a failure to appear before a court pursuant to a court order to answer to or dispose of a charge of a felony for which a sentence of 2 years' imprisonment or more may be imposed;

"(U) any offense for which the term of imprisonment imposed was 2 years or more;

"(V) an offense relating to terrorism or national security (including a conviction for a violation of any provision of chapter 113B of title 18, United States Code; or

"(W) (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 (inc00luding a conviction for driving under the influence of or impaired by alcohol or dr0ugs); or

"(X) an attempt or conspiracy to commit an offense described in this paragraph or aiding, abetting, counseling, procuring, commanding, inducing, facilitating, or soliciting the commission of such an offense.

Any determinations under this paragraph shall be made on the basis of the record of conviction. For purposes of this paragraph, a person shall be considered to have committed an aggravated felony if that person has been convicted for 3 or more misdemeanors not arising out the traffic laws (except for any conviction for driving under the influence or an offense that results in the death or serious bodily injury of another person) or felonies for which the aggregate term of

imprisonment imposed was 3 years or more, regardless of whether the convictions were all entered pursuant to a single trial or the offenses arose from a single pattern or scheme of conduct.".

(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 Act; 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.

(source: § 3104 of H.R. 6136 (Bob Goodlatte), 115th Cong.)

SEC. X. ADDING CERTAIN SERIOUS JUVENILE CRIMES TO THE DEFINITION OF AGGRAVATED FELONY.

ASSUMING ADDED TO SECTION 101(a)(43) OF THE IMMIGRATION AND NATIONALITY ACT AS AMENDED BY THE PREVIOUS SECTION

(a) IN GENERAL.—

"(Y) 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 (as defined in section 503(e) of the Victims' Rights and Restitution Act of 1990 (42 U.S.C. 10607(e)) was conscious or unconscious), statutory rape, or any offense of a sexual nature involving a victim (as so defined) 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).".

(b) ADJUSTMENT OF STATUS.—Section 245 of the Immigration and Nationality Act (8 U.S.C. 1255) is amended by adding a new subsection (n) at the end as follows:

"(n) JUVENILE COURT RECORDS.—An alien who was physically present in the United States at any time prior to the age of 18 may not apply for the adjustment of his or her status to that of an alien lawfully admitted for permanent residence unless they have 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.".

SEC. X. DEFINITION OF CRIME OF VIOLENCE.

Section 16 of title 18, United States Code, is amended to read as follows:

"§ 16. Crime of violence defined

"(a) The term 'crime of violence' means an offense that—

"(1) (A) is murder, voluntary manslaughter, assault, sexual abuse or aggravated sexual abuse, abusive sexual contact, child abuse, kidnapping, robbery, carjacking, firearms use, burglary, arson, extortion, communication of threats, coercion, unauthorized use of a vehicle, fleeing, interference with flight crew members and attendants, domestic violence, hostage taking, stalking, human trafficking, or using weapons of mass destruction; or

"(B) involves use or unlawful possession of explosives or destructive devices described in 5845(f) of the Internal Revenue Code of 1986;

"(2) has as an element the use, attempted use, or threatened use of physical force against the person or property of another; or

"(3) is an attempt to commit, conspiracy to commit, solicitation to commit, or aiding and abetting any of the offenses set forth in paragraphs (1) and (2).

"(b) In this section:

"(1) The term 'abusive sexual contact' means conduct described in section 2244(a)(1) and (a)(2).

"(2) The terms 'aggravated sexual abuse' and 'sexual abuse' mean conduct described in sections 2241 and 2242. For purposes of such conduct, the term 'sexual act' means conduct described in section 2246(2), or the knowing and lewd exposure of genitalia or masturbation, to any person, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

"(3) The term 'assault' means conduct described in section 113(a), and includes conduct committed recklessly, knowingly, or intentionally.

"(4) The term 'arson' means conduct described in section 844(i) or unlawfully or willfully damaging or destroying any building, inhabited structure, vehicle, vessel, or real property by means of fire or explosive.

"(5) The term 'burglary' means an unlawful or unprivileged entry into, or remaining in, a building or structure, including any nonpermanent or mobile structure that is adapted or used for overnight accommodation or for the ordinary carrying on of business, and, either before or after entering, the person—

"(A) forms the intent to commit a crime; or

"(B) commits or attempts to commit a crime.

"(6) The term 'carjacking' means conduct described in section 2119, or the unlawful taking of a motor vehicle from the immediate actual possession of a person against his will, by means of actual or threatened force, or violence or intimidation, or by sudden or stealthy seizure or snatching, or fear of injury.

"(7) The term 'child abuse' means the unlawful infliction of physical injury or the commission of any sexual act against a child under fourteen by any person eighteen years of age or older.

"(8) The term 'communication of threats' means conduct described in section 844(e), or the transmission of any communications containing any threat of use of violence to—

"(A) demand or request for a ransom or reward for the release of any kidnapped person; or

"(B) threaten to kidnap or injure the person of another.

"(9) The term 'coercion' means causing the performance or non-performance of any act by another person which under such other person has a legal right to do or to abstain from doing, through fraud or by the use of actual or threatened force, violence, or fear thereof, including the use, or an express or implicit threat of use, of violence to cause harm, or threats to cause injury to the person, reputation or property of any person.

"(10) The term 'domestic violence' means any assault committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim

"(11) The term 'extortion' means conduct described in section 1951(b)(2)), but not extortion under color of official right or fear of economic loss.

"(12) The term 'firearms use' means conduct described in section 924(c) or 929(a), if the firearm was brandished, discharged, or otherwise possessed, carried, or used as a weapon and the crime of violence or drug trafficking crime during and in relation to which the firearm was possessed, carried, or used was subject to prosecution in any court of the United States, State court, military court or tribunal, or tribal court. Such term also includes unlawfully possessing a firearm described in section 5845(a) of the Internal Revenue Code of 1986 (such as a sawed-off shotgun or sawed-off rifle, silencer, bomb, or machine gun), possession of a firearm described in section 922(g)(1), 922(g)(2) and 922(g)(4), possession of a firearm with the intent to use such firearm unlawfully, or reckless discharge of a firearm at a dwelling.

"(13) The term 'fleeing' means knowingly operating a motor vehicle and, following a law enforcement officer's signal to bring the motor vehicle to a stop—

"(A) failing or refusing to comply; or

"(B) fleeing or attempting to elude a law enforcement officer.

"(14) The term 'force' means the level of force needed or intended to overcome resistance.

"(15) The term 'hostage taking' means conduct described in section 1203.

"(16) The term 'human trafficking' means conduct described in section 1589, 1590, and 1591.

"(17) The term 'interference with flight crew members and attendants' means conduct described in section 46504 of title 49, United States Code.

"(18) The term 'kidnapping' means conduct described in section 1201(a)(1) or seizing, confining, inveigling, decoying, abducting, or carrying away and holding for ransom or reward or otherwise any person.

"(19) The term 'murder' means conduct described as murder in the first degree or murder in the second degree described in section 1111.

"(20) the term 'robbery' means conduct described in section 1951(b)(1), or the unlawful taking or obtaining of personal property from the person or in the presence of another, against his will, by means of actual or threatened force, or violence or intimidation, or by sudden or stealthy seizure or snatching, or fear of injury, immediate or future, to his person or property, or property in his custody or possession, or the person or property of a relative or member of his family or of anyone in his company at the time of the taking or obtaining.

"(21) The term 'stalking' means conduct described in section 2261A.

"(22) The term 'unauthorized use of a motor vehicle' means the intentional or knowing operation of another person's boat, airplane, or motor vehicle without the consent of the owner.

"(23) The term 'using weapons of mass destruction' means conduct described in section 2332a.

"(24) the term 'voluntary manslaughter' means conduct described in section 1112(a).

"(c) For purposes of this section, in the case of any reference in subsection (b) to an offense under this title, such reference shall include conduct that constitutes an offense under State or tribal law or under the Uniform Code of Military Justice, if such conduct would be an offense under this title if a circumstance giving rise to Federal jurisdiction had existed.".

(source: § 3105 of H.R. 6136 (Bob Goodlatte, 115th Cong.)

SEC. X. PRECLUDING ADMISSIBILITY OF ALIENS CONVICTED 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 inadmissible. 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 common, 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 domestic or family violence laws of the jurisdiction 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 government.

"(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 subparagraph.

"(iv) CLARIFICATION.—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 may consider other evidence related to the conviction that establishes 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 subparagraphs (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),".

(c) 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 Act; 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 Immigration and Nationality Act where such eligibility did not exist before these amendments became effective.

(source: § 3301 of H.R. 4760 (Bob Goodlatte), 115th Cong.)

SEC. X. 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 enactment of this Act and apply to convictions entered on or after such date.

(source: § 3304 of H.R. 4760 (Bob Goodlatte), 115th Cong.)

SEC. X. 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 Act; 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.

(source: § 3306 of H.R. 4760 (Bob Goodlatte), 115th Cong.)

C: Sex Offenders

SEC. X. BARRING THE ADMISSION OF CONVICTED SEX OFFENDERS FAILING TO REGISTER AND REQUIRING DEPORTATION OF SUCH OFFENDERS.

(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 Act and shall apply to acts that occur before, on, or after the date of the enactment of this Act.

(source: § 3302 of H.R. 4760 (Bob Goodlatte), 115th Cong.)

SEC. X. 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, determines that the citizen poses no risk to the alien with respect 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 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, determines that the alien lawfully admitted for permanent residence poses no risk to the alien with respect to whom a petition described in subclause (I) is filed.".

(b) NONIMMIGRANTS.—Section 101(a)(15)(K) of such Act (8 U.S.C. 1101(a)(15)(K)), is amended by striking "204(a)(1)(A)(viii)(I))" each place such term appears and inserting "204(a)(1)(A)(viii))".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act and shall apply to petitions filed on or after such date.

(source: § 3307 of H.R. 4760 (Bob Goodlatte), 115th Cong.)

Subsection D: Convictions and Post-Conviction Relief

SEC. X. CLARIFICATION OF AUTHORITY REGARDING DETERMINATIONS OF CONVICTIONS.

Section 101(a)(48) of the Immigration and National Act (8 U.S.C. 1101(a)(48)) is amended by adding at the end the following:

"(C) In making a determination as to whether a conviction is for—

"(i) a crime under section 212(a)(2), or

"(ii) a crime under 237(a)(2),

such determination shall be determined on the basis of the record of conviction and any facts established within the record of conviction.

(source: § 3108 of H.R. 6136 (Bob Goodlatte, 115th Cong.), see also § 3308 of H.R. 4760 (Bob Goodlatte, 115th Cong.))

SEC. X. POST-CONVICTION RELIEF.

(a) Section 101(a)(48) of the Immigration and National Act (8 U.S.C. 1101(a)(48)) is amended by adding at the end the following:

"(D) Any reversal, vacatur, expungement, or modification to a conviction, sentence, or conviction record that was granted to ameliorate the immigration consequences of the conviction, sentence, or conviction record, or was granted for rehabilitative purposes shall have no effect on the immigration consequences resulting from the original conviction. The alien shall have the burden of proving that the reversal, vacatur, expungement, or modification was not for such purposes. In no case in which a reversal, vacatur, expungement, or modification was granted for a procedural or substantive defect in the criminal proceedings. Whether an alien has been convicted of a crime for which a sentence of one year or longer may be imposed or whether the alien has been convicted for a crime where the maximum penalty possible did not exceed one year shall be determined based on the maximum penalty allowed by the statute of conviction as of the date the offense was committed. Subsequent changes in State or Federal law which increase or decrease the sentence that may be imposed for a given crime shall not be considered.".

(b) PARDONS

(1) DEFINITION.—Section 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)), as amended by section 311(a) of this Act, is further amended by adding at the end the following:

"(54) The term 'pardon' means a full and unconditional pardon granted by the President of the United States, Governor of any of the several States or constitutionally recognized body.".

(2) DEPORTABILITY.—Section 237(a) of such Act (8 U.S.C. 1227(a)) is amended—

(A) in paragraph (2)(A), by striking clause (vi); and

(B) by adding at the end the following:

"(8) PARDONS.—

"(A) IN GENERAL.—In the case of an alien who has been convicted of a crime and is subject to removal due to that conviction, if the alien, subsequent to receiving the criminal conviction, is granted a pardon, the alien shall not be deportable by reason of that criminal conviction.

"(B) EXCEPTION.—Subparagraph (A) shall not apply in the case of an alien granted a pardon if the pardon is granted in whole or in part to eliminate that alien's condition of deportability.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act and shall apply to [X] granted before, on, or after such date.

(source: § 3108 of H.R. 6136 (Bob Goodlatte), 115th Cong.); see also § 3308 of H.R. 4760 (Bob Goodlatte), 115th Cong.)

E: Access to Databases

SEC. X. DEPARTMENT OF HOMELAND SECURITY ACCESS TO CRIME INFORMATION DATABASES.

Section 105(b) of the Immigration and Nationality Act (8 U.S.C. 1105(b)) is amended—

(1) in paragraph (1)—

(A) by striking "the Service" and inserting "the Department of Homeland Security"; and

(B) by striking "visa applicant or applicant for admission" and inserting "visa applicant, applicant for admission, applicant for adjustment of status, or applicant for any other benefit under the immigration laws"; and

(2) by inserting after paragraph (4) the following:

"(5) The Secretary of Homeland Security shall receive, upon request, access to the information described in paragraph (1) by means of extracts of the records for placement in the appropriate database without any fee or charge.".

(source: § 3111 of H.R. 6136 (Bob Goodlatte), 115th Cong.)

F. Increased Federal Penalties

SEC. X. INCREASED CRIMINAL PENALTIES FOR CERTAIN CRIMES COMMITTED BY ILLEGAL ALIENS

.

(a) IN GENERAL.—Title 18, United States Code, is amended by inserting after chapter 51 the following:

"CHAPTER 52—ILLEGAL ALIENS

"Sec. 1131. Enhanced penalties for certain crimes committed by illegal aliens.

"(a) Any alien unlawfully present in the United States, who commits, or conspires or attempts to commit, a crime of violence or a drug trafficking offense (as defined in [X]), shall be fined under this title and sentenced to not less than 5 years in prison.

"(b) If an alien who violates subsection (a) was previously ordered removed under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) on the grounds of having committed a crime, the alien shall be sentenced to not less than 15 years in prison.

"(c) A sentence of imprisonment imposed under this section shall run consecutively to any other sentence of imprisonment imposed for any other crime.".

(b) CLERICAL AMENDMENT.—The table of chapters at the beginning of part I of title 18, United States Code, is amended by inserting after the item relating to chapter 51 the following:

"52. Illegal aliens 1131".

(source: § 203 of S. 1438 (John Cornyn), 109th Cong.)

SEC. X. INCREASED CRIMINAL PENALTIES RELATED TO REMOVAL.

Section 243 (8 U.S.C. 1253) is amended—

(1) in subsection (a)(1)—

(A) in the matter preceding subparagraph (A), by inserting "212(a) or" after "section"; and

(B) in the matter following subparagraph (D)—

(i) by striking "or imprisoned not more than four years" and inserting "and imprisoned for not less than 6 months or more than 5 years"; and

(ii) by striking ", or both";

(2) in subsection (b), by striking "not more than $1000 or imprisoned for not more than one year, or both" and inserting "under title 18, United States Code, and imprisoned for not less than 6 months or more than 5 years (or for not more than 10 years if the alien is a member of any of the classes described in paragraphs (1)(E), (2), (3), and (4) of section 237(a)).".

(source: § 205(b) of S. 2454 (Bill Frist), 109th Cong.)

SEC. X. CRIMINAL PENALTIES RELATED TO THE EMPLOYMENT OF UNAUTHORIZED ALIENS.

Section 274A(f)(1) of the Immigration and Nationality Act (8 U.S.C. 1324a) is amended by—

(1) placing the current text in a subparagraph (A); and

(2) adding a new subparagraph (B) as follows**.—**

"(B) (i) Any person who, during any 12-month period, knowingly employs 10 or more individuals with actual knowledge or in reckless disregard of the fact that the individuals are aliens described in clause (ii), shall be fined under title 18, United States Code, imprisoned for not more than 10 years, or both.

"(ii) DEFINITION.—An alien described in this subparagraph is an alien who—

"(I) is an unauthorized alien (as defined in subsection (h)(3)); and

"(II) is unlawfully present in the United States.".

(source: § 205 of H.R. 2454 (Bill Frist), 109th Cong.)

SEC. X. IDENTITY THEFT OFFENSES.

(a) FRAUD AND RELATED ACTIVITIES RELATING TO IDENTIFICATION DOCUMENTS.—Section 1028 of title 18, United States Code, is amended in subsection (a)(7), by striking “of another person” and inserting “that is not his or her own”.

(b) AGGRAVATED IDENTITY THEFT.—Section 1028A(a) of title 18, United States Code, is amended by striking “of another person” both places it appears and inserting “that is not his or her own”.

(source: § 312 of H.R. 2278 (Trey Gowdy), 113th Cong.)

SEC. X. INCREASED CRIMINAL PENALTIES FOR DOCUMENT FRAUD.

Section 1546 of title 18, United States Code, is amended--

(1) in subsection (a)--

(A) by striking “not more than 25 years" and inserting ``not less than 25 years”

(B) by inserting “and if the terrorism offense resulted in the death of any person, shall be punished by death or imprisoned for life," after ``section 2331 of this title)),”;

(C) by striking “20 years” and inserting “imprisoned not more than 40 years”;

(D) by striking “10 years" and inserting “imprisoned not more than 20 years”; and

(E) by striking “15 years" and inserting “imprisoned not more than 25 years”; and

(2) in subsection (b), by striking “5 years” and inserting “10 years”.

(source: § 618 of H.R. 4437 (F. James Sensenbrenner, Jr.,), 109th Cong., as passed by the House)

SEC. X. LAUNDERING OF MONETARY INSTRUMENTS.

Section 1956(c)(7)(D) of title 18, United States Code, is amended--

(1) by inserting "section 1590 (relating to trafficking with respect to peonage, slavery, involuntary serviture, or forced labor)," after ``section 1363 (relating to destruction of property within the special maritime and territorial jurisdiction),"; and

(2) by inserting "section 274(a) of the Immigration and Nationality Act (8 U.S.C.1324(a)) (relating to bringing in and harboring certain aliens)," after "section 590 of the Tariff Act of 1930 (19 U.S.C. 1590) (relating to aviation smuggling),".

(source: § 618 of H.R. 4437 (F. James Sensenbrenner, Jr.), 109th Cong., as passed by the House)

SEC. X. CONFORMING AMENDMENT TO THE DEFINITION OF RACKETEERING ACTIVITY.

Section 1961(1) of title 18, United States Code, is amended by striking "section 1542" and all that follows through "section 1546 (relating to fraud and misuse of visas, permits, and other documents)" and inserting "sections 1541–1548 (relating to passports and visas)".

(source: § 306 of H.R. 2278 (Trey Gowdy), 113th Cong., as reported by the Judiciary Committee)

SEC. X. PENALTIES FOR MISUSING SOCIAL SECURITY NUMBERS OR FILING FALSE INFORMATION WITH SOCIAL SECURITY ADMINISTRATION.

(a) IN GENERAL.—Section 208(a) of the Social Security Act (42 U.S.C. 408(a)) is amended—

(1) in paragraph (7), by adding after subparagraph (C) the following:

"(D) with intent to deceive, discloses, sells, or transfers his own social security account number, assigned to him by the Commissioner of Social Security (in the exercise of the Commissioner's authority under section 205(c)(2) to establish and maintain records), to any person; or";

(2) in paragraph (8), by adding "or" at the end; and

(3) by inserting after paragraph (8) the following:

"(9) without lawful authority, offers, for a fee, to acquire for any individual, or to assist in acquiring for any individual, an additional social security account number or a number that purports to be a social security account number; or

"(10) willfully acts or fails to act so as to cause a violation of section 205(c)(2)(C)(xii); or

"(11) being an officer or employee of any executive, legislative, or judicial agency or instrumentality of the Federal Government or of a State or political subdivision thereof (or a person acting as an agent of such an agency or instrumentality) in possession of any individual's social security account number (or an officer or employee thereof or a person acting as an agent thereof), willfully acts or fails to act so as to cause a violation of clause (vi)(II), (x), (xi), (xii), (xiii), or (xiv) of section 205(c)(2)(C); or

"(12) being a trustee appointed in a case under title 11, United States Code (or an officer or employee thereof or a person acting as an agent thereof), willfully acts or fails to act so as to cause a violation of clause (x) or (xi) of section 205(c)(2)(C),".

(b) EFFECTIVE DATES.—Paragraphs (7)(D) and (9) of section 208(a) of the Social Security Act, as added by paragraph (1), shall apply with respect to each violation occurring after the date of enactment of this Act. Paragraphs (10), (11), and (12) of section 208(a) of such Act, as added by paragraph (1)(C), shall apply with respect to each violation occurring on or after the effective date of this Act.

(source: § 303 of S. 1438 (John Cornyn), 109th Cong.)

SEC. X. MINIMUM FINES FOR ILLEGAL ENTRY AND OVERSTAY.

(a) ILLEGAL ENTRY.—Chapter 8 of title II of the Immigration and Nationality Act (8 U.S.C. 1321 et seq.) is amended—

(1) in section 275 (8 U.S.C. 1325)—

(A) in subsection (a)—

(i) by striking "(1)";

(ii) by striking "(2)";

(iii) by striking "(3)"; and

(iv) by striking "shall, for" and all that follows and inserting the following: "shall—

"(1) for the first commission of any such offense, be fined in accordance with subsection (b), imprisoned not more than 6 months, or both; and

"(2) for a subsequent commission of any such offense, be fined in accordance with subsection (b), imprisoned not more than 2 years, or both."; and

(B) in subsection (b)—

(i) by inserting "(1)" before "Any alien";

(ii) by striking "civil penalty of" and all that follows through the period at the end of paragraph (2) and inserting "civil penalty in an amount equal to not less than $3,000 and not more than $10,000."; and

(iii) in the undesignated matter at the end, by inserting "(2)" before "Civil penalties" and moving the paragraph, as so designated, four ems to the right; and

(2) in section 276(a) (8 U.S.C. 1326(a)), in the undesignated matter following paragraph (2)(B), by striking "shall be fined under title 18, United States Code, or" and inserting "shall be subject to a civil penalty in an amount equal to not less than $3,000 and not more than $10,000,".

(b) OVERSTAY.—Section 222(g) of the Immigration and Nationality Act (8 U.S.C. 1202(g)) is amended by adding at the end the following:

"(3) An alien described in paragraph (1) shall be subject to a civil penalty in an amount equal to $50 multiplied by the number of months that the alien remained in the United States beyond the alien's authorized period of stay.".

(source: § 4 of H.R. 3146 (James Inhofe), 117th Cong.)

G. New Grounds of Inadmissibility and Deportability

SEC. X. IMMIGRATION CONSEQUENCES OF TRADE SECRET THEFT AND ECONOMIC ESPIONAGE.

(a) INADMISSIBILITY.—Section 212(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)) is amended—

(1) in subparagraph (A)(i)—

(A) by striking "(I) to violate" and inserting "that violates"; and

(B) by striking "or (II)" and all that follows and inserting a semicolon; and

(2) by adding at the end the following:

"(H) THEFT OF SENSITIVE INFORMATION OR TRADE SECRETS.—Any alien who a consular officer, the Secretary of Homeland Security, the Secretary of State, or the Attorney General knows, or has reasonable grounds to believe—

"(i) has engaged in, is engaging in, or is seeking admission to the United States to engage in any activity that—

"(I) violates or evades any law prohibiting the export from the United States of goods, technology, or sensitive information; or

"(II) violates any law of the United States relating to the theft or misappropriation of trade secrets or economic espionage; or

"(ii) has been convicted of conspiracy related to an activity described in clause (i), is inadmissible.".

(b) DEPORTABILITY.—Section 237(a)(4) of the Immigration and Nationality Act (8 U.S.C. 1227(a)(4)) is amended—

(1) in subparagraph (A)(i), by striking "or to violate or evade any law prohibiting the export from the United States of goods, technology, or sensitive information," and inserting a semicolon; and

(2) by adding at the end the following:

"(G) THEFT OF SENSITIVE INFORMATION OR TRADE SECRETS.—Any alien who—

"(i) has engaged, is engaged, or at any time after admission engages in any activity that—

"(I) violates or evades any law prohibiting the export from the United States of goods, technology, or sensitive information; or

"(II) violates any law of the United States relating to the theft or misappropriation of trade secrets or economic espionage; or

"(ii) has been convicted of conspiracy related to an activity described in clause (i), is deportable.".

(c) ANNUAL REPORT OF INADMISSIBLE AND DEPORTABLE FOREIGN NATIONALS. Not later than 180 days after the date of the enactment of this Act, and annually thereafter, the Secretary of Homeland Security, in cooperation with the Attorney General, shall submit a report to the Chair and Ranking Member of the Committee on the Judiciary of the Senate and of the Committee on the Judiciary of the House of Representatives that identifies—

(1) the nationality and visa admission category of each of the foreign nationals who was determined, during the reporting period, to be inadmissible under section 212(a)(3)(H) of the Immigration and Nationality Act, as added by section 2(a), or deportable pursuant to section 237(a)(4)(G) of such Act, as added by section 2(b); and

(2) the research institutions, United States private industries, United States Government agencies, and taxpayer-funded organizations with which such foreign nationals were associated.

(source: §§ 2-3 of S. 4370 (Charles Grassley), 116th Cong.)

VIII: ALIEN TERRORISTS

SEC. X. EXPANDED INAPPLICABILITY OF RESTRICTION ON REMOVAL.

(a) IN GENERAL.—Section 241(b)(3) (8 U.S.C. 1231(b)(3)) is amended--

(1) in subparagraph (A)--

(A) by striking "Attorney General may not" and inserting "Secretary of Homeland Security may not";

(B) by inserting "or the Secretary" after "if the Attorney General'"; and

(2) in subparagraph (B)—

(A) in the matter preceding clause (i), by striking "section 237(a)(4)(D)" and inserting "paragraph (4)(B) or (4)(D) of section 237(a)";

(B) by inserting "or the Secretary of Homeland Security" after "if the Attorney General";

(C) by striking "or" in clause (iii);

(D) by striking the period at the end of clause (iv) and inserting"; or";

(E) by inserting after clause (iv) the following new clause:

"(v) the alien is described in any subclause of section 212(a)(3)(B)(i), section 212(a)(3)(F), or section 237(a)(4)(B), unless, in the case only of an alien described in subclause (IV) or (IX) of section 212(a)(3)(B)(i), the Secretary of Homeland Security determines, in the Secretary's discretion, that there are not reasonable grounds for regarding the alien as a danger to the security of the United States.";

(F) in the third sentence, by inserting "or the Secretary of Homeland Security" after "Attorney General"; and

(G) by striking the last sentence.

(b) EXCEPTIONS.—Section 208(b)(2)(A)(v) of the Immigration and Nationality Act (8 U.S.C. 1158(b)(2)(A)(v)) is amended--

(1) by striking "inadmissible under" each place such term appears and inserting "described in"; and

(2) by striking "removable under".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act and shall apply to--

(1) removal proceedings instituted before, on, or after the date of the enactment of this Act; and

(2) acts and conditions constituting a ground for inadmissibility or removal occurring or existing before, on, or after such date.

(sources: § 3031 of H.R. 10 (Dennis Hastert), 107th Cong.); § 601(a) of H.R. 4437 (F. James Sensenbrenner, Jr.), 109th Cong., as passed by the House)

SEC. X. NATURALIZATION REFORM.

(a) BARRING TERRORISTS FROM NATURALIZATION.—Section 316 of the Immigration and Nationality Act (8 U.S.C. 1427) is amended by adding at the end the following new subsection:

"(g) No person shall be naturalized who the Secretary of Homeland Security determines, in the Secretary's discretion, to have been at any time an alien described in section 212(a)(3) or 237(a)(4). Such determination may be based upon any relevant information or evidence, including classified, sensitive, or national security information, and shall be binding upon, and unreviewable by, any court exercising jurisdiction under the immigration laws over any application for naturalization, regardless whether such jurisdiction to review a decision or action of the Secretary is de novo or otherwise.".

(b) CONCURRENT NATURALIZATION AND REMOVAL PROCEEDINGS.—The last sentence of section 318 of such Act (8 U.S.C. 1429) is amended--

(1) by striking "shall be considered by the Attorney General" and inserting "shall be considered by the Secretary of Homeland Security or any court";

(2) by striking "pursuant to a warrant of arrest issued under the provisions of this or any other Act:" and inserting "or other proceeding to determine the applicant's inadmissibility or deportability, or to determine whether the applicant's lawful permanent

resident status should be rescinded, regardless of when such proceeding was commenced:"; and

(3) by striking "upon the Attorney General" and inserting "upon the Secretary of Homeland Security".

(c) PENDING DENATURALIZATION OR REMOVAL PROCEEDINGS.—Section 204(b) of such Act (8 U.S.C. 1154(b)) is amended by adding at the end the following: "No petition shall be approved pursuant to this section if there is any administrative or judicial proceeding (whether civil or criminal) pending against the petitioner that could (whether directly or indirectly) result in the petitioner's denaturalization or the loss of the petitioner's lawful permanent resident status.".

(d) CONDITIONAL PERMANENT RESIDENTS.—Section 216(e) and section 216A(e) of such Act (8 U.S.C. 1186a(e), 1186b(e)) are each amended by inserting before the period at the end the following: ", if the alien has had the conditional basis removed under this section".

(e) DISTRICT COURT JURISDICTION.—Section 336(b) of such Act (8 U.S.C. 1447(b)) is amended to read as follows:

"(b) If there is a failure to render a final administrative decision under section 335 before the end of the 180-day period after the date on which the Secretary of Homeland Security completes all examinations and interviews conducted under such section, as such terms are defined by the Secretary pursuant to regulations, the applicant may apply to the district court for the district in which the applicant resides for a hearing on the matter. Such court shall only have jurisdiction to review the basis for delay and remand the matter to the Secretary for the Secretary's determination on the application.".

(f) CONFORMING AMENDMENTS.—Section 310(c) of such Act (8 U.S.C. 1421(c)) is amended--

(1) by inserting ", no later than the date that is 120 days after the Secretary's final determination" before "seek"; and

(2) by striking the second sentence and inserting the following: "The burden shall be upon the petitioner to show that the Secretary's denial of the application was not supported by facially legitimate and bona fide reasons. Except in a proceeding under section 340, notwithstanding any other provision of law (statutory or nonstatutory), 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 determine, or to review a determination of the Secretary made at any time regarding, for purposes of an application for naturalization, whether an alien is a person of good moral character, whether an alien understands and is attached to the principles of the Constitution of the United States, or whether an alien is well disposed to the good order and happiness of the United States.".

(g) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act, shall apply to any act that occurred before, on, or after such date, and shall apply to any application for naturalization or any other case or matter under the immigration laws pending on, or filed on or after, such date.

(source: § 609 of H.R. 4437 (F. James Sensenbrenner, Jr.), 109th Cong., as passed by the House)

SEC. X. DENATURALIZATION OF TERRORISTS.

(a) IN GENERAL.—Section 340 of the Immigration and Nationality Act is amended—

(1) by redesignating subsections (f) through (h) as subsections (g) through (i), respectively; and

(2) by inserting after subsection (e) the following:

"(f) (1) If a person who has been naturalized participates in any act described in paragraph (2), the Attorney General is authorized to find that, as of the date of such naturalization, such person was not attached to the principles of the Constitution of the United States and was not well disposed to the good order and happiness of the United States at the time of naturalization, and upon such finding shall set aside the order admitting such person to citizenship and cancel the certificate of naturalization as having been obtained by concealment of a material fact or by willful misrepresentation, and such revocation and setting aside of the order admitting such person to citizenship and such canceling of certificate of naturalization shall be effective as of the original date of the order and certificate, respectively.

"(2) The acts described in this paragraph are the following:

"(A) Any activity a purpose of which is the opposition to, or the control or overthrow of, the Government of the United States by force, violence, or other unlawful means.

"(B) Engaging in a terrorist activity (as defined in clauses (iii) and (iv) of section 212(a)(3)(B)).

"(C) Incitement of terrorist activity under circumstances indicating an intention to cause death or serious bodily harm.

"(D) Receiving military-type training (as defined in section 2339D(c)(1) of title 18, United States Code) from or on behalf of any organization that, at the time the training was received, was a terrorist organization (as defined in section 212(a)(3)(B)(vi)).".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the date of the enactment of this Act and shall apply to acts that occur on or after such date.

(source: § 204 of H.R. 2278 (Trey Gowdy), 113th Cong., as reported by the Judiciary Committee)

SEC. X. BAR TO FINDING OF GOOD MORAL CHARACTER.

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

(1) by inserting after paragraph (1) the following new paragraph:

"(2) one who the Secretary of Homeland Security or the Attorney General determines, in the unreviewable discretion of the Secretary or the Attorney General, to have been at any time an alien described in section 212(a)(3) or section 237(a)(4), which determination may be based upon any relevant information or evidence, including classified, sensitive, or national security information, and which shall be binding upon any court regardless of the applicable standard of review;";

(2) in paragraph (8), by inserting ", regardless whether the crime was classified as an aggravated felony at the time of conviction" after "(as defined in subsection (a)(43))"; and

(3) by striking the sentence following paragraph (9) and inserting the following: "The fact that any person is not within any of the foregoing classes shall not preclude a discretionary finding for other reasons that such a person is or was not of good moral character. The Secretary and the Attorney General shall not be limited to the applicant's conduct during the period for which good moral character is required, but may take into consideration as a basis for determination the applicant's conduct and acts at any time.".

(b) AGGRAVATED FELONY EFFECTIVE DATE.—Section 509(b) of the Immigration Act of 1990 (Public Law 101-649), as amended by section 306(a)(7) of the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991 (Public Law 102-232) is amended to read as follows:

"(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on November 29, 1990, and shall apply to convictions occurring before, on, or after such date.".

(c) TECHNICAL CORRECTION TO THE INTELLIGENCE REFORM ACT.—Effective as if included in the enactment of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108-458), section 5504(2) of such Act is amended by striking "adding at the end" and inserting "inserting immediately after paragraph (8)".

(d) EFFECTIVE DATES.—The amendments made by subsections (a) and (b) shall take effect on the date of the enactment of this Act, shall apply to any act that occurred before, on, or

after such date, and shall apply to any application for naturalization or any other benefit or relief or any other case or matter under the immigration laws pending on, or filed on or after, such date.

(source: § 612 of H.R. 4437 (F. James Sensenbrenner, Jr.), 109th Cong., as passed by the House)

SEC. X. REVOCATION OR DENIAL OF PASSPORTS AND PASSPORT CARDS TO TERRORISTS.

The Act entitled "An Act to regulate the issue and validity of passports, and for other purposes", approved July 3, 1926 (22 U.S.C. 211a et seq.) (commonly known as the "Passport Act of 1926"), is amended by adding at the end the following:

"SEC. 4. AUTHORITY TO DENY OR REVOKE PASSPORT AND PASSPORT CARD.

"(a) ISSUANCE.—Subject to subsection (c), the Secretary of State, in the Secretary's discretion, may decline to issue a passport or passport card to any national of the United States who—

"(1) has been convicted under chapter 113B of title 18, United States Code; or

"(2) the Secretary has determined would be described, if the national were an alien—

"(A) in subclause (IV)(aa) or (VIII) of section 212(a)(3)(B)(i) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(i)), but only to the extent that the relevant terrorist organization is described in subclause (I) or (II) of section 212(a)(3)(B)(vi) of such Act (8 U.S.C. 1182(a)(3)(B)(vi));

"(B) in section 212(a)(3)(B)(i)(V) of such Act (8 U.S.C. 1182(a)(3)(B)(i)(V)); or

"(C) in subclause (IV)(bb), (V)(bb), or (VI)(cc) of section 212(a)(3)(B)(iv) of such Act (8 U.S.C. 1182(a)(3)(B)(iv)).

"(b) REVOCATION.—Subject to subsection (c), the Secretary of State, in the Secretary's discretion, may revoke a passport or passport card previously issued to any United States national described in subsection (a).

"(c) LIMITATION FOR RETURN TO UNITED STATES.—

"(1) DECLINATION OF ISSUE.—If the Secretary of State declines to issue a passport or passport card pursuant to subsection (a) to a national of the United States who is not physically present in the United States, the Secretary shall issue, at the national's request, a passport or passport card only valid for direct return to the United States.

"(2) REVOCATION.—If the Secretary of State revokes a passport or passport card pursuant to subsection (b) to a national of the United States who is not physically present in the United States, the Secretary shall, at the national's request, issue a passport or passport card only valid for direct return to the United States.

"(d) RIGHT OF REVIEW.—Any person who, in accordance with this section, is denied issuance of a passport or passport card, or has their passport or passport card revoked, by the Secretary of State, may request a due process hearing not later than 60 days after receiving such notice of the nonissuance or revocation.

"(e) DEFINITIONS.—For purposes of this section:

"(1) ALIEN.—The term 'alien' has the meaning given such term in section 101(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(3)).

"(2) NATIONAL OF THE UNITED STATES.—The term 'national of the United States' has the meaning given such term in section 101(a)(22) of such Act (8 U.S.C. 1101(a)(22)).".

(source: § 208 of H.R. 2431 (Raul Labrador), 114th Cong.)

SEC. X. CLARIFICATION OF TERRORISM DEFINITION.

Section 212(a)(3)(B)(iv) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(iv)) is amended—

(1) in subclause (I), by striking "death or serious bodily injury, a terrorist activity;" and inserting "death, serious bodily injury, or substantial damage to property, a terrorist activity";

(2) in subclause (V)(cc), by striking "or" at the end;

(3) in subclause (VI)(dd), by striking the period at the end and inserting "; or"; and

(4) by adding at the end the following:

"(VII) to threaten, attempt, or conspire to do any of the acts described in subclauses (I) through (VI).".

(source: § 209 of H.R. 2431 (Raul Labrador), 114th Cong.)

IX: Detention

A: Facilities

SEC. X. FEDERAL DETENTION FACILITIES.

(a) CONSTRUCTION OF ACQUISITION OF DETENTIOIN FACILITIES.

(1) IN GENERAL.—The Secretary of Homeland Security shall construct or acquire, in addition to existing facilities for the detention of aliens, detention facilities in the United States for aliens detained pending removal from the United States or a decision regarding such removal to increase the number of available detention beds to at least [X] beds before the end of fiscal year 202[X].

(2) DETERMINATIONS.—The location of any detention facility built or acquired in accordance with this section shall be determined by the Secretary of Homeland Security

(b) TECHNICAL AND CONFORMING AMENDMENT.— Section 241(g)(1) of the Immigration and Nationality Act (8 U.S.C. 1231(g)(1)) is amended by striking "may expend" and inserting "shall expend".

(sources: § 107 of H.R. 2431 (Raul Labrador), 115th Cong.; 8 U.S.C. § 1368)

B: Flores Settlement Agreement Issues

SEC. X. CLARIFICATION OF STANDARDS FOR FAMILY DETENTION.

(a) PROMOTING FAMILY UNITY.—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) PROMOTING FAMILY UNITY.—

"(1) DETENTION OF ALIEN MINORS.—

"(A) IN GENERAL.—Notwithstanding any other provision of law, judicial determination, consent decree, or settlement agreement, the Secretary of Homeland Security may detain any alien minor (other than an unaccompanied alien child) who is inadmissible to the United States under section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)) or removable from the United States under section 237(a) of that Act (8 U.S.C 1227(a)) pending the completion of removal proceedings, regardless of whether the alien minor was previously an unaccompanied alien child.

"(B) PRIORITY REMOVAL CASES.—The Attorney General shall—

"(i) prioritize the removal proceedings of an alien minor, or a family unit that includes an alien minor, detained under subparagraph (A); and

"(ii) set a case completion goal of not more than 100 days for such proceedings.

"(C) DETENTION AND RELEASE DECISIONS.—The decision to detain or release an alien minor described in subparagraph (A)—

"(i) shall be governed solely by sections 212(d)(5), 217, 235, 236, and 241 of the Immigration and Nationality Act (8 U.S.C. 1182(d)(5), 1187, 1225, 1226, and 1231) and implementing regulations or policies; and

"(ii) shall not be governed by standards, requirements, restrictions, or procedures contained in a judicial decree or settlement relating to the authority to detain or release alien minors.

"(2) CONDITIONS OF DETENTION.—

"(A) IN GENERAL.—Notwithstanding any other provision of law, judicial determination, consent decree, or settlement agreement, the Secretary of Homeland Security shall determine, in the sole discretion of the Secretary, the conditions of detention applicable to an alien minor described in paragraph (1)(A) regardless of whether the alien minor was previously an unaccompanied alien child.

"(B) NO JUDICIAL REVIEW.—A determination under subparagraph (A) shall not be subject to judicial review.

"(3) RULE OF CONSTRUCTION.—Nothing in this section—

"(A) affects the eligibility for bond or parole of an alien; or

"(B) limits the authority of a court to hear a claim arising under the Constitution of the United States.

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

"(5) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be to carry out this subsection.".

"(k) APPLICABILITY OF CONSENT DECREES, SETTLEMENTS, AND JUDICIAL DETERMINATIONS.—

"(1) FLORES SETTLEMENT AGREEMENT.—Any conduct or activity that was, before the date of the enactment of this subsection, subject to any restriction or obligation imposed by the stipulated settlement agreement filed on January 17, 1997, in the United States District Court for the Central District of California in Flores v. Reno, CV 85–4544–RJK, (commonly known as the 'Flores settlement agreement'), or imposed by any amendment of that agreement or judicial determination based on that agreement—

"(A) shall be subject to the restrictions and obligations in subsection (j) or imposed by the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (Public Law 110-457); and

"(B) shall not be subject to the restrictions and the obligations imposed by such settlement agreement or judicial determination.

"(2) OTHER SETTLEMENT AGREEMENTS OR CONSENT DECREES.—In any civil action with respect to the conditions of detention of alien children, the court shall not enter or approve a settlement agreement or consent decree unless it complies with the limitations set forth in subsection (j).".

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

(sources: § 2(a) of S. 959 (Lindsey Graham), 117th Cong.; § 102 of H.R. 1901 (Andy Biggs), 117th Cong.)

C: Mandatory Detention

SEC. X. CLARIFICATION AND REINFORCEMENT OF THE PREEXISTING REQUIREMENT THAT THE EXECUTIVE BRANCH ENFORCE THE IMMIGRATION LAWS OF THE UNITED STATES AS SET IN STATUTE.

OPTION 1

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

(1) in paragraph (1):

(A) in subparagraph (B)(ii), by inserting "and under no circumstances shall the alien be released (including pursuant to parole under section 212(d)(5))," after "shall be detained"; and

(B) in subparagraph (B)(iii)(IV) by inserting "and under no circumstances shall the alien be released (including pursuant to parole under section 212(d)(5))," after "shall be detained"; and

(2) in paragraph (2)(A) by inserting "and under no circumstances shall the alien be released (including pursuant to parole under section 212(d)(5)) other than in order to be returned pursuant to subparagraph (C) to the foreign territory contiguous to the United States from which they arrived" after "shall be detained".

OPTION 2

Insert "without exception" before "shall" each time the latter term appears in part IV of subchapter II of chapter 12 of title 8 of the U.S. Code.

OPTION 3

(a) Section 232(a) of the Immigration and Nationality Act (8 U.S.C. 1222(a)) is amended by inserting "and under no circumstances shall the alien be released (including pursuant to parole under section 212(d)(5))" after "be detained".

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

(1) in subsection (a)(2), by inserting "without exception" before "be ordered removed";

(2) in subsection (b)—

(A) in paragraph (1)--

(i) in subparagraph (A)(i) by inserting "without exception" before "order the alien".

(ii) in subparagraph (B)--

(I) in clause (ii) by inserting "and under no circumstances shall the alien be released (including pursuant to parole under section 212(d)(5))" after "be detained";

(II) in clause (iii)--

(aa) in subclause (I) by inserting "without exception" before "order the alien removed";

(bb) in subclause (IV) by inserting "and under no circumstances shall the alien be released (including pursuant to parole under section 212(d)(5))" after "be detained"; and

(iii) in subparagraph (D) by inserting "without exception" before "not have jurisdiction"; and

(B) in paragraph (2)(A) by inserting "and under no circumstances shall the alien be released (including pursuant to parole under section 212(d)(5))" after "be detained"; and

(3) In subsection (c) by inserting "without exception" after "officer or judge";

(c) in section 236 of the Immigration and Nationality Act (8 U.S.C. 1226)--

(1) in subsection (c)(1) by inserting "without exception" before "take into custody"; and

(2) in subsection (e) by inserting "without exception" before "not be subject";

(d) in section 236A of the Immigration and Nationality Act (8 U.S.C. 1226a)--

(1) in subsection (a)--

(A) in paragraph (1) by inserting "and under no circumstances shall the alien be released (including pursuant to parole under section 212(d)(5))" after "take into custody"; and

(B) in paragraph (2) by inserting "and under no circumstances shall the alien be released (including pursuant to parole under section 212(d)(5))" after "maintain custody" after "be maintained"; and

(2) in subsection (b)(1) by inserting "without exception" before "have jurisdiction";

(e) in section 237(a) of the Immigration and Nationality Act (8 U.S.C. 1227)—

(1) by inserting "without exception" before ", upon the order";

(2) in paragraph (1)(G) by inserting "without exception" before "be considered"; and

(3) in paragraph (3)(C)(ii) by inserting "without exception" before "have jurisdiction";

(f) in section 238 of the Immigration and Nationality Act (8 U.S.C. 1228)--

(1) in subsection (c) by inserting "without exception" before "conclusively presumed"; and

(2) in subsection (d)(3)(iii) by inserting "without exception" before "become final" and before "be executed";

(g) in section 240(b) of the Immigration and Nationality Act (8 U.S.C. 1229a)--

(1) in paragraph (5)(A) by inserting "without exception" before "be ordered removed" and

(2) in paragraph (7) by inserting "without exception" before "not be eligible";

(h) in section 240(B)(f) of the Immigration and Nationality Act (8 U.S.C. 1229c) by inserting "without exception" before "have jurisdiction" and "any court order"; and

(i) in section 241 of the Immigration and Nationality Act (8 U.S.C. 1231)--

(1) in subsection (a)--

(A) in paragraph (1)--

(i) in subparagraph (A) by inserting "without exception" before "shall remove"; and

(ii) in subparagraph (C) by inserting "without exception" before "be extended";

(B) in paragraph (2) by inserting "and under no circumstances shall the alien be released (including pursuant to parole under section 212(d)(5))" after "detain the alien"; and

(C) in paragraph (5) by inserting "without exception" before "be removed";

(2) in subsection (b)--

(A) in paragraph (1)--

(i) by subparagraph (A) by inserting "without exception" before "be removed"; and

(ii) in subparagraph (B by inserting "without exception" before "be to the country"; and

(B) in paragraph (3)(B) by inserting "without exception" before "be considered to have", before "not preclude", and before "be considered to be";

(3) in subsection (c)(1) by inserting "without exception" before "be removed immediately";

(4) in subsection (g)(1) by inserting "without exception" before "arrange for appropriate places"; and

(5) in subsection (i)--

(A) in paragraph (1) by inserting "without exception" before ", as determined"; and

(B) in paragraph (4)(B) by inserting "without exception" before "ensure that".

D: Detention of Dangerous Aliens

SEC. X. 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 paragraph (4)(B)(i), and inserting "Secretary of Homeland Security";

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

"(B) BEGINNING OF PERIOD.—The removal period begins on the latest of the following:

"(i) The date the order of removal becomes 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 confined (except under an immigration process) on the date the order of removal becomes administratively final, the date the alien is taken into the custody of the Secretary, after the alien is released from such detention or confinement.";

(3) in paragraph (1), by amending subparagraph (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 Secretary'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 cooperate 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 documents necessary to the alien's departure or conspires or acts to prevent the alien's removal that is subject to an order of removal;

"(II) a court, the Board of Immigration 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 removal 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 application for a writ of habeas corpus in accordance with chapter 153 of title 28, United States Code. No alien whose period

of detention is extended under this subparagraph shall have the right to seek release on bond.";

(4) in paragraph (3)—

(A) by adding after "If the alien does not leave or is not removed within the removal period" the following: "or is not detained pursuant to paragraph (6) of this subsection"; and

(B) by striking subparagraph (D) and inserting 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 cooperate fully with the Secretary of Homeland Security'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 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 removed), 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 reasonably be expected to ensure the safety of the community or any person, and either (AA)—

"(AA) the alien has been convicted of (aaa) one or more aggravated felonies (as defined in section 101(a)(43)(A)), (bbb) one or more crimes identified by the Secretary of Homeland Security by regulation, if the aggregate term of imprisonment for such crimes is at least 5 years, or (ccc) one or more attempts or conspiracies to commit any such aggravated 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 committed one or more violent crimes (as referred to in section 101(a)(43)(F), 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.".

(source: § 3103 of H.R. 6136 (Bob Goodlatte), 115th Cong.)

E: Detention of Criminal Aliens

SEC. X. 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:

"(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 (c) may seek release on bond.".

(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 Act 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.

(source: § 2204 of H.R. 4760 (Bob Goodlatte), 115th Cong.)

X. Alien Smuggling

SEC. X. INCREASED CRIMINAL PENALTIES RELATED ALIEN SMUGGLING.

OPTION 1

Section 274 (8 U.S.C. 1324), is amended to read as follows:

"SEC. 274. CRIMINAL OFFENSES AND PENALTIES FOR ALIEN SMUGGLING AND RELATED OFFENSES.

"(a) PROHIBITED ACTIVITIES.—Except as provided in subsection (c), a person shall be punished as provided under subsection (b), if the person—

"(1) facilitates, encourages, directs, or induces a person to come to or enter the United States, or to cross the border to the United States, knowing or in reckless disregard of the fact that such person is an alien who lacks lawful authority to come to, enter, or cross the border to the United States;

"(2) facilitates, encourages, directs, or induces a person to come to or enter the United States, or to cross the border to the United States, at a place other than a designated port of entry or place other than as designated by the Secretary of Homeland Security, knowing or in reckless disregard of the fact that such person is an alien and regardless of whether such alien has official permission or lawful authority to be in the United States;

"(3) transports, moves, harbors, conceals, or shields from detection a person outside of the United States knowing or in reckless disregard of the fact that such person is an alien in unlawful transit from 1 country to another or on the high seas, under circumstances in which the alien is seeking to enter the United States without official permission or legal authority;

"(4) encourages or induces a person to reside or remain in the United States, knowing or in reckless disregard of the fact that such person is an alien who lacks lawful authority to reside in or remain in the United States;

"(5) transports or moves a person in the United States, knowing or in reckless disregard of the fact that such person is an alien who lacks lawful authority to enter or be in the United States, if the transportation or movement will further the alien's illegal entry into or illegal presence in the United States;

"(6) harbors, conceals, or shields from detection a person in the United States, knowing or in reckless disregard of the fact that such person is an alien who lacks lawful authority to be in the United States; or

"(7) conspires or attempts to commit any of the acts described in paragraphs (1)-(6).

"(b) CRIMINAL PENALTIES.—A person who violates any provision under paragraph (1)—

"(1) except as provided in subparagraphs (C) through (G), if the offense was not committed for commercial advantage, profit, or private financial gain, shall be fined under title 18, United States Code, imprisoned for not more than 5 years, or both;

"(2) except as provided in subparagraphs (C) through (G), if the offense was committed for commercial advantage, profit, or private financial gain—

"(A) if the violation is the offender's first violation under this subparagraph, shall be fined under such title, imprisoned for not more than 20 years, or both; or

"(B) if the violation is the offender's second or subsequent violation of this subparagraph, shall be fined under such title, imprisoned for not less than 3 years or more than 20 years, or both;

"(3) if the offense furthered or aided the commission of any other offense against the United States or any State that is punishable by imprisonment for more than 1 year, shall be fined under such title, imprisoned for not less than 5 years or more than 20 years, or both;

"(4) shall be fined under such title, imprisoned not less than 5 years or more than 20 years, or both, if the offense created a substantial and foreseeable risk of death, a substantial and foreseeable risk of serious bodily injury (as defined in section 2119(2) of title 18, United States Code), or inhumane conditions to another person, including—

"(A) transporting the person in an engine compartment, storage compartment, or other confined space;

"(B) transporting the person at an excessive speed or in excess of the rated capacity of the means of transportation; or

"(C) transporting the person in, harboring the person in, or otherwise subjecting the person to crowded or dangerous conditions;

"(5) if the offense caused serious bodily injury (as defined in section 2119(2) of title 18, United States Code) to any person, shall be fined under such title, imprisoned for not less than 7 years or more than 30 years, or both;

"(6) shall be fined under such title and imprisoned for not less than 10 years or more than 30 years if the offense involved an alien who the offender knew or had reason to believe was—

"(A) engaged in terrorist activity (as defined in section 212(a)(3)(B)); or

"(B) intending to engage in terrorist activity;

"(7) if the offense caused or resulted in the death of any person, shall be punished by death or imprisoned for a term of years not less than 10 years and up to life, and fined under title 18, United States Code.

"(c) EXTRATERRITORIAL JURISDICTION.—There is extraterritorial Federal jurisdiction over the offenses described in this section.

"(d) DEFINITIONS.—In this section:

"(1) CROSSED THE BORDER INTO THE UNITED STATES.—An alien is deemed to have crossed the border into the United States regardless of whether the alien is free from official restraint.

"(2) LAWFUL AUTHORITY.—The term 'lawful authority' means permission, authorization, or license that is expressly provided for in the immigration laws of the United States or accompanying regulations. The term does not include any such authority secured by fraud or otherwise obtained in violation of law or authority sought, but not approved. No alien shall be deemed to have lawful authority to come to, enter, reside in, remain in, or be in the United States if such coming to, entry, residence, remaining, or presence was, is, or would be in violation of law.

"(3) UNLAWFUL TRANSIT.—The term 'unlawful transit' means travel, movement, or temporary presence that violates the laws of any country in which the alien is present or any country from which the alien is traveling or moving.".

(e) CLERICAL AMENDMENT.—The table of contents is amended by striking the item relating to section 274 and inserting the following:

"Sec. 274. Alien smuggling and related offenses.".

(source: § 205 of H.R. 2454 (Bill Frist), 109th Cong.)

OPTION 2

(a) IN GENERAL.—Subject to subsection (b), pursuant to its authority under section 994(p) of title 28, United States Code, the United States Sentencing Commission shall promulgate sentencing guidelines or amend existing sentencing guidelines for smuggling, transporting, harboring, or inducing aliens under sections 274(a)(1)(A) of the Immigration and Nationality Act (8 U.S.C. 1324(a)(1)(A)) so as to—

(1) increase the minimum term of imprisonment under that section for offenses involving the smuggling, transporting, harboring, or inducing of—

(A) 1 to 5 aliens to 30 months;

(B) 6 to 24 aliens to 54 months;

(C) 25 to 100 aliens to 81 months; and

(D) 101 or more aliens to 111 months;

(2) increase the minimum level of fines for each of the offenses described in subparagraphs (A) through (D) of paragraph (1) to the greater of $25,000 per alien or 3 times the amount the defendant received or expected to receive as compensation for the illegal activity;

(3) increase by at least 2 offense levels above the applicable enhancement in effect on the date of the enactment of this Act the sentencing enhancements for intentionally or recklessly creating a substantial risk of serious bodily injury or causing bodily injury, serious injury, or permanent or life threatening injury;

(4) for actions causing death, increase the offense level to be equivalent to that for involuntary manslaughter under section 1112 of title 28, United States Code; and

(5) for corporations or other business entities that knowingly benefit from such offenses, increase the minimum level of fines for each of the offenses described in subparagraphs (A) through (D) of paragraph (1) to $50,000 per alien employed directly, or indirectly through contract, by the corporation or entity.

(b) EXCEPTION.—Subsection (a) shall not apply to an offense that involved the smuggling, transporting, or harboring only of the defendant's spouse or child (or both the defendant's spouse and child).

(c) DEADLINE.—The United States Sentencing Commission shall carry out subsection (a) not later than the date that is 6 months after the date of the enactment of this Act.

(d) AMENDMENTS TO CRIMINAL PENALTIES.—Section 274(a) (8 U.S.C. 1324(a)) is amended—

(1) in paragraph (1)(B)—

(A) in clause (i), by striking "10 years" and inserting "15 years";

(B) in clause (ii), by striking "5 years" and inserting "10 years"; and

(C) in clause (iii), by striking "20 years" and inserting "40 years";

(2) in paragraph (2)—

(A) in subparagraph (A), by striking "one year, or both; or" and inserting "3 years, or both;";

(B) in subparagraph (B)—

(i) in clause (i), by adding at the end the following: "be fined under title 18, United State Code, and imprisoned not less than 5 years nor more than 25 years;";

(ii) in clause (ii), by striking "or" at the end and inserting the following: "be fined under title 18, United States Code, and imprisoned not less than 3 years nor more than 20 years; or"; and

(iii) in clause (iii), by adding at the end the following: "be fined under title 18, United States Code, and imprisoned not more than 15 years; or"; and

(C) by striking the matter following clause (iii) and inserting the following:

"(C) in the case of a third or subsequent offense described in subparagraph (B) and for any other violation, shall be fined under title 18, United States Code, and imprisoned not less than 5 years nor more than 15 years.";

(3) in paragraph (3)(A), by striking "5 years" and inserting "10 years"; and

(4) in paragraph (4), by striking "10 years" and inserting "20 years".

(e) EFFECTIVE DATES.—The amendments made by subsection (d) shall take effect on the date of enactment of this Act and shall apply to offenses committed after such date.

(source: § 3 of H.R. 4240 (John Hostettler), 109th Cong.)

SEC. X. REVISED 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 requirements 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 misdemeanors 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 Act, 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 Act and shall apply to acts described in such section 275(b) that occur before, on, or after such date.

(source: § 2206 of H.R. 4760 (Bob Goodlatte), 115th Cong.)

SEC. X. INCREASED PENALTIES FOR 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 Nationality Act or any prior Act, the alien shall not be subject to the fine and imprisonment provided for in paragraph (1).

"(b) REENTRY OF CRIMINAL OFFENDERS.—Notwithstanding 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 felony, 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 sentenced 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 sentenced 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, 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 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 COMPLETION OF TERM OF IMPRISONMENT.—Any alien removed pursuant to section 241(a)(4) who 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 incarcerated for the remainder of the sentence of imprisonment which was pending at the time of deportation without any reduction for parole or supervised release unless the alien affirmatively demonstrates that the Secretary 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 provision 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 prevents 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 imprisonment 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.".

(source: § 3311 of H.R. 4760 (Bob Goodlatte), 115th Cong.)

SEC. X. PROHIBITING CARRYING OR USING A FIREARM DURING AND IN RELATION TO AN ALIEN SMUGGLING CRIME.

Section 924(c) of title 18, United States Code, is amended—

(1) in paragraph (1)—

(A) in subparagraph (A), by inserting ", alien smuggling crime," after "any crime of violence";

(B) in subparagraph (A), by inserting ", alien smuggling crime," after "such crime of violence";

(C) in subparagraph (D)(ii), by inserting ", alien smuggling crime," after "crime of violence"; and

(2) by adding at the end the following:

"(6) For purposes of this subsection, the term 'alien smuggling crime' means any felony punishable under section 274(a), 277, or 278 of the Immigration and Nationality Act (8 U.S.C. 1324(a), 1327, and 1328).".

(source: § 205 of H.R. 2454 (Bill Frist), 109th Cong.)

XI. Interior Enforcement

A: Structure and Staffing

SEC. X. BUREAU OF IMMIGRATION ENFORCEMENT.

(a) IN GENERAL.—Section 442 of Public Law 107–296 is amended—

(1) by striking the heading and inserting the following:

"SEC. 442. ESTABLISHMENT OF BUREAU OF IMMIGRATION ENFORCEMENT";

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

"(1) IN GENERAL.—There shall be in the Department of Homeland Security a bureau to be known as the 'Bureau of Immigration Enforcement'. The Bureau shall perform only those functions described in section 441 and no other functions, including no functions described in sections 403 and 421.";

(3) by striking subsection (a)(2) and inserting the following:

"(2) ASSISTANT SECRETARY.—The head of the Bureau of Immigration Enforcement shall be the Assistant Secretary of the Bureau of Immigration Enforcement, who—

"(A) shall report directly to the Under Secretary for Border and Transportation Security; and

"(B) shall have a minimum of 5 years professional experience in immigration law enforcement, and a minimum of 5 years of management experience.";

(4) in subsection (a)(3)—

(A) by striking "Assistant Secretary of the Bureau of Border Security" and inserting "Assistant Secretary of the Bureau of Immigration Enforcement";

(B) by striking "Bureau of Border Security" and inserting "Bureau of Immigration Enforcement";

(C) by striking "or" and the end of subparagraph (A)(i); and

(D) by striking clause (ii) of subparagraph (A));

(5) in subsection (a)(4), by striking "Assistant Secretary of the Bureau of Border Security" and inserting "Assistant Secretary of the Bureau of Immigration Enforcement";

(6) in subsection (a)(5), by striking "Assistant Secretary of the Bureau of Border Security" and inserting "Assistant Secretary of the Bureau of Immigration Enforcement";

(7) in subsection (b), by striking "Bureau of Border Security" and inserting "Bureau of Immigration Enforcement" each place it appears; and

(8) in subsection (c), by striking "Assistant Secretary of the Bureau of Border Security" and inserting "Assistant Secretary of Immigration Enforcement" each place it appears.

(b) CONFORMING AMENDMENTS.—Sections 443, 444, 451, and 471 of such Public Law are each amended by striking "Bureau of Border Security" and inserting "Bureau of Immigration Enforcement" each place it appears.

(c) LIMITATION ON FUNCTIONS.—Section 471(b) of such Public Law, as amended by this section, is further amended by adding at the end the following: "In addition, the authority provided by section 1502 may not be used to add functions of the Bureau of Immigration Enforcement not listed in section 441 to the Bureau of Immigration Enforcement.".

(source: § 8 of H.R. 4240 (John Hostettler), 109th Cong.)

SEC. X. ICE DEPORTATION OFFICERS AND SUPPORT STAFF.

(a) IN GENERAL.—The Secretary of Homeland Security shall, subject to the availability of appropriations for such purpose, increase the number of positions for full-time active-duty U.S. Immigration and Customs Enforcement deportation officers by [10,000] above the number of full-time positions for which funds were appropriated for fiscal year 202[2]. The Secretary will determine the rate at which the additional officers will be added with due regard to filling the positions as expeditiously as possible without making any compromises in the selection or the training of the additional officers.

(b) SUPPORT STAFF.—The Secretary shall, subject to the availability of appropriations for such purpose, increase the number of positions for full-time support staff for U.S. Immigration and Customs Enforcement deportation officers by [700] above the number of full-time positions for which funds were appropriated for fiscal year 20[22].

(source: § 506 of H.R. 2431 (Raul Labrador), 115th Cong.)

SEC. X. ICE DETENTION ENFORCEMENT OFFICERS.

(a) AUTHORIZATION.—The Secretary of Homeland Security shall, subject to the availability of appropriations for such purpose, increase the number of positions for full-time active duty United States Immigration and Customs Enforcement detention enforcement officers by [2,500] above the number of full-time positions for which funds were appropriated for fiscal year 202[2]. The Secretary will determine the rate at which the additional officers will be added with due regard to filling positions as expeditiously as possible without making any compromises in the selection or the training of the additional officers.

(b) DUTIES.—U.S. Immigration and Customs Enforcement detention enforcement officers who have successfully completed detention enforcement officers' basic training shall be responsible for—

(1) taking and maintaining custody of any person who has been arrested by an immigration officer;

(2) transporting and guarding immigration detainees;

(3) securing Department of Homeland Security detention facilities; and

(4) assisting in the processing of detainees.

(source: § 502 of H.R. 2431 (Raul Labrador), 115th Cong.)

SEC. X. ICE PROSECUTORS AND SUPPORT STAFF

(a) IN GENERAL.—The Secretary of Homeland Security shall, subject to the availability of appropriations for such purpose, increase the number of positions for full-time trial attorneys working for U.S. Immigration and Customs Enforcement by [60] above the number of full-time positions for which funds were appropriated for fiscal year 202[2]. The Secretary will determine the rate at which the additional trial attorneys will be added with due regard to filling positions as expeditiously as possible without making any compromises in the selection or the training of the additional attorneys.

(b) SUPPORT STAFF.—The Secretary shall, subject to the availability of appropriations for such purpose, increase the number of positions for full-time support staff for U.S. Immigration and Customs Enforcement full-time trial attorneys by [X] above the number of full-time positions for which funds were appropriated for fiscal year 202[2].

(source: § 507 of H.R. 2431 (Raul Labrador), 115th Cong.)

B. Miscellaneous

SEC. X. PENALTIES FOR FAILURE TO OBEY REMOVAL ORDERS.

(a) IN GENERAL.—Section 243(a) of the Immigration and Nationality Act (8 U.S.C. 1253(a)) is amended—

(1) in the matter preceding subparagraph (A) of paragraph (1), by inserting "212(a) or" before "237(a),"; and

(2) by striking paragraph (3).

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the date of the enactment of this Act and shall apply to acts that are described in subparagraphs (A) through (D) of section 243(a)(1) of the Immigration and Nationality Act (8 U.S.C. 1253(a)(1)) that occur on or after the date of the enactment of this Act.

(source: § 322 of H.R. 2431 (Raul Labrador), 115th Cong.)

SEC. X. ENCOURAGING ALIENS TO DEPART VOLUNTARILY.

(a) IN GENERAL.—Section 240B of the Immigration and Nationality Act (8 U.S.C. 1229c) is amended—

(1) in subsection (a)—

(A) by amending paragraph (1) to read as follows:

"(1) INSTEAD OF REMOVAL PROCEEDINGS.—If an alien is not described in paragraph (2)(A)(iii) or (4) of section 237(a), the Secretary of Homeland Security may permit the alien to voluntarily depart the United States at the alien's own expense under this subsection instead of being subject to proceedings under section 240.";

(B) by striking paragraph (3);

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

(D) by adding after paragraph (1) the following:

"(2) BEFORE THE CONCLUSION OF REMOVAL PROCEEDINGS.—If an alien is not described in paragraph (2)(A)(iii) or (4) of section 237(a), the Secretary of Homeland Security may permit the alien to voluntarily depart the United States at the alien's own expense under this subsection after the initiation of removal proceedings under section 240 and before the conclusion of such proceedings before an immigration judge.";

(E) in paragraph (3), as redesignated—

(i) by amending subparagraph (A) to read as follows:

"(A) INSTEAD OF REMOVAL.—Subject to subparagraph (C), permission to voluntarily depart under paragraph (1) shall not be valid for any period in excess of 120 days. The Secretary may require an alien permitted to voluntarily depart under paragraph (1) to post a voluntary departure bond, to be surrendered upon proof that the alien has departed the United States within the time specified.";

(ii) by redesignating subparagraphs (B), (C), and (D) as subparagraphs (C), (D), and (E), respectively;

(iii) by adding after subparagraph (A) the following:

"(B) BEFORE THE CONCLUSION OF REMOVAL PROCEEDINGS.—Permission to voluntarily depart under paragraph (2) shall not be valid for any period in excess of 60 days, and may be granted only after a finding that the alien has the means to depart the United States and intends to do so. An alien permitted to voluntarily depart under paragraph (2) shall post a voluntary departure bond, in an amount necessary to ensure that the alien will depart, to be surrendered upon proof that the alien has departed the United States within the time specified. An

immigration judge may waive the requirement to post a voluntary departure bond in individual cases upon a finding that the alien has presented compelling evidence that the posting of a bond will pose a serious financial hardship and the alien has presented credible evidence that such a bond is unnecessary to guarantee timely departure.";

(iv) in subparagraph (C), as redesignated, by striking "subparagraphs (C) and (D)(ii)" and inserting "subparagraphs (D) and (E)(ii)";

(v) in subparagraph (D), as redesignated, by striking "subparagraph (B)" each place that term appears and inserting "subparagraph (C)"; and

(vi) in subparagraph (E), as redesignated, by striking "subparagraph (B)" each place that term appears and inserting "subparagraph (C)"; and

(F) in paragraph (4), by striking "paragraph (1)" and inserting "paragraphs (1) and (2)";

(2) in subsection (b)(2), by striking "a period exceeding 60 days" and inserting "any period in excess of 45 days";

(3) by amending subsection (c) to read as follows:

"(c) CONDITIONS ON VOLUNTARY DEPARTURE.—

"(1) VOLUNTARY DEPARTURE AGREEMENT.—Voluntary departure may only be granted as part of an affirmative agreement by the alien. A voluntary departure agreement under subsection (b) shall include a waiver of the right to any further motion, appeal, application, petition, or petition for review relating to removal or relief or protection from removal.

"(2) CONCESSIONS BY THE SECRETARY.—In connection with the alien's agreement to depart voluntarily under paragraph (1), the Secretary of Homeland Security may agree to a reduction in the period of inadmissibility under subparagraph (A) or (B)(i) of section 212(a)(9).

"(3) ADVISALS.—Agreements relating to voluntary departure granted during removal proceedings under section 240, or at the conclusion of such proceedings, shall be presented on the record before the immigration judge. The immigration judge shall advise the alien of the consequences of a voluntary departure agreement before accepting such agreement.

"(4) FAILURE TO COMPLY WITH AGREEMENT.—

"(A) IN GENERAL.—If an alien agrees to voluntary departure under this section and fails to depart the United States within the time allowed for voluntary departure or fails to comply with any other terms of the agreement (including failure to timely post any required bond), the alien is—

"(i) ineligible for the benefits of the agreement;

"(ii) subject to the penalties described in subsection (d); and

"(iii) subject to an alternate order of removal if voluntary departure was granted under subsection (a)(2) or (b).

"(B) EFFECT OF FILING TIMELY APPEAL.—If, after agreeing to voluntary departure, the alien files a timely appeal of the immigration judge's decision granting voluntary departure, the alien may pursue the appeal instead of the voluntary departure agreement. Such appeal operates to void the alien's voluntary departure agreement and the consequences of such agreement, but precludes the alien from another grant of voluntary departure while the alien remains in the United States.

"(5) VOLUNTARY DEPARTURE PERIOD NOT AFFECTED.—Except as expressly agreed to by the Secretary in writing in the exercise of the Secretary's discretion before the expiration of the period allowed for voluntary departure, no motion, appeal, application, petition, or petition for review shall affect, reinstate, enjoin, delay, stay, or toll the alien's obligation to depart from the United States during the period agreed to by the alien and the Secretary.";

(4) by amending subsection (d) to read as follows:

"(d) PENALTIES FOR FAILURE TO DEPART.—If an alien is permitted to voluntarily depart under this section and fails to voluntarily depart from the United States within the time period specified or otherwise violates the terms of a voluntary departure agreement, the alien will be subject to the following penalties:

"(1) CIVIL PENALTY.—The alien shall be liable for a civil penalty of $3,000. The order allowing voluntary departure shall specify this amount, which shall be acknowledged by the alien on the record. If the Secretary thereafter establishes that the alien failed to depart voluntarily within the time allowed, no further procedure will be necessary to establish the amount of the penalty, and the Secretary may collect the civil penalty at any time thereafter and by whatever means provided by law. An alien will be ineligible for any benefits under this chapter until this civil penalty is paid.

"(2) INELIGIBILITY FOR RELIEF.—The alien shall be ineligible during the time the alien remains in the United States and for a period of 10 years after the

alien's departure for any further relief under this section and sections 240A, 245, 248, and 249. The order permitting the alien to depart voluntarily shall inform the alien of the penalties under this subsection.

"(3) REOPENING.—The alien shall be ineligible to reopen the final order of removal that took effect upon the alien's failure to depart, or upon the alien's other violations of the conditions for voluntary departure, during the period described in paragraph (2). This paragraph does not preclude a motion to reopen to seek withholding of removal under section 241(b)(3) or protection against torture, if the motion—

"(A) presents material evidence of changed country conditions arising after the date of the order granting voluntary departure in the country to which the alien would be removed; and

"(B) makes a sufficient showing to the satisfaction of the Secretary of Homeland Security that the alien is otherwise eligible for such protection.";

(5) by amending subsection (e) to read as follows:

"(e) ELIGIBILITY.—

"(1) PRIOR GRANT OF VOLUNTARY DEPARTURE.—An alien shall not be permitted to voluntarily depart under this section if the Secretary of Homeland Security or the Attorney General previously permitted the alien to depart voluntarily.

"(2) RULEMAKING.—The Secretary may promulgate regulations to limit eligibility or impose additional conditions for voluntary departure under subsection (a)(1) for any class of aliens. The Secretary may by regulation limit eligibility or impose additional conditions for voluntary departure under subsections (a)(2) or (b) of this section for any class or classes of aliens."; and

(6) in subsection (f), by adding at the end the following: "Notwithstanding section 242(a)(2)(D) of this Act, sections 1361, 1651, and 2241 of title 28, United States Code, any other habeas corpus provision, and any other provision of law (statutory or nonstatutory), no court shall have jurisdiction to affect, reinstate, enjoin, delay, stay, or toll the period allowed for voluntary departure under this section.".

(b) RULEMAKING.—The Secretary shall within one year of the date of the enactment of this Act promulgate regulations to provide for the imposition and collection of penalties for failure to depart under section 240B(d) of the Immigration and Nationality Act (8 U.S.C. 1229c(d)).

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply with respect to all orders granting voluntary departure under section 240B of the Immigration and Nationality Act (8 U.S.C. 1229c) made on or after the date that is 180 days after the enactment of this Act.

(2) EXCEPTION.—The amendment made by subsection (a)(6) shall take effect on the date of the enactment of this Act and shall apply with respect to any petition for review which is filed on or after such date.

(source: § 602 of H.R. 2431 (Raul Labrador), 115th Cong.)

SEC. X. DETERRING ALIENS ORDERED REMOVED FROM REMAINING IN THE UNITED STATES UNLAWFULLY.

(a) INADMISSIBLE ALIENS.—Section 212(a)(9)(A) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(9)(A)) is amended—

(1) in clause (i), by striking "seeks admission within 5 years of the date of such removal (or within 20 years" and inserting "seeks admission not later than 5 years after the date of the alien's removal (or not later than 20 years after the alien's removal"; and

(2) in clause (ii), by striking "seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of" and inserting "seeks admission not later than 10 years after the date of the alien's departure or removal (or not later than 20 years after".

(b) BAR ON DISCRETIONARY RELIEF.—Section 274D of such Act (8 U.S.C. 324d) is amended—

(1) in subsection (a), by striking "Commissioner" and inserting "Secretary of Homeland Security"; and

(2) by adding at the end the following:

"(c) INELIGIBILITY FOR RELIEF.—

"(1) IN GENERAL.—Unless a timely motion to reopen is granted under section 240(c)(6), an alien described in subsection (a) shall be ineligible for any discretionary relief from removal (including cancellation of removal and adjustment of status) during the time the alien remains in the United States and for a period of 10 years after the alien's departure from the United States.

"(2) SAVINGS PROVISION.—Nothing in paragraph (1) shall preclude a motion to reopen to seek withholding of removal under section 241(b)(3) or protection against torture, if the motion—

"(A) presents material evidence of changed country conditions arising after the date of the final order of removal in the country to which the alien would be removed; and

"(B) makes a sufficient showing to the satisfaction of the Secretary of Homeland Security that the alien is otherwise eligible for such protection.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act with respect to aliens who are subject to a final order of removal entered before, on, or after such date.

(source: § 603 of H.R. 2431 (Raul Labrador), 115th Cong.)

SEC. X. ADDITIONAL REMOVAL AUTHORITIES.

(a) IN GENERAL.—Section 241(b) of the Immigration and Nationality Act (8 U.S.C. 1231(b)) is amended--

(1) in paragraph (1)—

(A) in each of subparagraphs (A) and (B), by striking the period at the end and inserting "unless, in the opinion of the Secretary of Homeland Security, removing the alien to such country would be prejudicial to the United States."; and

(B) by amending subparagraph (C) to read as follows:

"(C) ALTERNATIVE COUNTRIES.—If the alien is not removed to a country designated in subparagraph (A) or (B), the Secretary of Homeland Security shall remove the alien to--

"(i) the country of which the alien is a citizen, subject, or national, where the alien was born, or where the alien has a residence, unless the country physically prevents the alien from entering the country upon the alien's removal there; or

"(ii) any country whose government will accept the alien into that country."; and

(2) in paragraph (2)—

(A) by striking "Attorney Genera" each place such term appears and inserting "Secretary of Homeland Security;

(B) by amending subparagraph (D) to read as follows:

"(D) ALTERNATIVE COUNTRIES.—If the alien is not removed to a country designated under subparagraph (A)(i), the Secretary of Homeland Security shall remove the alien to a country of which the alien is a subject, national, or citizen, where the alien was born, or where the alien has a residence, unless—

"(i) such country physically prevents the alien from entering the country upon the alien's removal there; or

"(ii) in the opinion of the Secretary of Homeland Security, removing the alien to the country would be prejudicial to the United States."; and

(C) by amending subparagraph (E)(vii) to read as follows:

"(vii) Any country whose government will accept the alien into that country.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the date of the enactment of this Act and shall apply to any deportation, exclusion, or removal on or after such date pursuant to any deportation, exclusion, or removal order, regardless of whether such order is administratively final before, on, or after such date.

(source: § 3033 of H.R. 10 (Dennis Hastert), 108th Cong.)

XII: Employment Eligibility

A. Discretionary Grants of Employment Authorization

SEC. X. DEFINITION OF UNAUTHORIZED ALIEN.

Section 274A(h)(3) of the Immigration and Nationality Act (8 U.S.C. 1324a(h)(3)) is amended by striking ", or by the Attorney General".

(source: § 2 of H.R. 2497 (Lamar Smith), 112th Cong.)

B. "The Legal Workforce Act"/Employment Eligibility Verification

SEC. X. 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 REFERAL.—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 DOCUMENTS.—

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

"(C) RETENTION OF VERIFICATION FORM AND VERIFICATION.

"(i) IN GENERAL.—After completion of such form in accordance with subparagraphs (A) and (B), the person or entity shall—

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

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

"(bb) in the case of the hiring of an individual, the later of 3 years after the date the verification is completed or one year after the date the individual's employment is terminated; and

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

"(ii) CONFIRMATION.—

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

"(II) TENTATIVE NONCONFIRMATION RECEIVED.—If the person or other entity receives a tentative nonconfirmation 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 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 identity and work eligibility of the individual.

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

"(V) CONSEQUENCES OF NONCONFIRMATION.—

"(aa) TERMINATION OR NOTIFICATION OF CONTINUED EMPLOYMENT.—If the person or other entity has received a final nonconfirmation regarding an individual, the person or entity may terminate employment of the individual (or decline to recruit or refer the individual). If the person or entity does not terminate

employment of the individual or proceeds to recruit or refer the individual, the person or entity shall notify the Secretary of Homeland Security of such fact through the verification system or in such other manner as the Secretary may specify.

"(bb) FAILURE TO NOTIFY.—If the person or entity fails to provide notice with 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 [X], on the date that is 6 months after such date of enactment.

"(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 [X], on the date that is 12 months after such date of enactment.

"(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 [X], on the date that is 18 months after such date of enactment.

"(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 [X], on the date that is 24 months after the date of the enactment.

"(ii) RECRUITING AND REFERRING.— Except as provided in clause (iii), the provisions of this paragraph shall apply to a person or other entity recruiting or referring an individual for employment in the United States on the date that is 12 months after the date of the enactment of [X].

"(iii) AGRICULTURAL LABOR OR SERVICES.—With respect to an employee performing agricultural labor or services, this paragraph shall not apply with respect to the verification of the employee until the date that is 18 months after the date of the enactment of [X]. For purposes of the preceding sentence, the term 'agricultural labor or services' has the meaning given such term by the Secretary of Agriculture in regulations and includes agricultural labor as defined in section 3121(g) of the Internal Revenue Code of 1986, agriculture as defined in section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)), the handling, planting, drying, packing, packaging, processing, freezing, or grading prior to delivery for storage of any agricultural or horticultural commodity in its unmanufactured state, all activities required for the preparation, processing or manufacturing of a product of agriculture (as such term is defined in such section 3(f)) for further distribution, and activities similar to all the foregoing as they relate to fish or shellfish facilities. An employee described in this clause shall not be counted for purposes of clause (i).

"(iv) EXTENSIONS.—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 [X].

"(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 [X].

"(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 [X], 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 [X], beginning on the date that is 6 months after such date of enactment.

"(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 [X], beginning on the date that is 12 months after such date of enactment.

"(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 [X], beginning on the date that is 18 months after such date of enactment.

"(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 [X], beginning on the date that is 24 months after such date of enactment.

"(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), 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 [X]. 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 [X], an employer shall make an inquiry, as provided in subsection (d), using the verification system to seek verification of the identity and employment eligibility of any individual described in

clause (ii) employed 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 (8 U.S.C. 1324a note).

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

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

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

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

"(aa) is not applicable to individuals who have a clearance under Homeland Security Presidential Directive 12 (HSPD 12 clearance), are administrative or overhead personnel, or are working solely on contracts that 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 Commissioner, and indicates that the social security account number was used without their knowledge, the Secretary and the Commissioner shall lock the social security account number for employment eligibility verification purposes and shall notify the employers of the individuals who wrongfully submitted the social security account number that the employee may not be work eligible.

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

"(C) ON A VOLUNTARY BASIS.—Subject to paragraph (2), and subparagraphs (A) through (C) of this paragraph, beginning on the date that is 30 days after the date of the enactment of [X], 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 [X], 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 program 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 requirements of such Federal acquisition laws and regulation) in lieu of any requirement to participate in the E-Verify Program.

"(B) FORMER E-VERIFY VOLUNTARY USERS AND OTHERS DESIRING EARLY COMPLIANCE.—Notwithstanding the deadlines in paragraphs (1) and (2), beginning on the date of the enactment of [X], the Secretary shall provide for the voluntary compliance 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 Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note) before such date, as well as by other employers seeking voluntary early compliance.

"(5) COPYING OF DOCUMENTATION PERMITTED.—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 [X], each deadline established under this section for an employer to make an inquiry using such system shall be extended by 6 months. No other extension of such a deadline shall be made except as authorized under paragraph (1)(D)(iv).".

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

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

(source: § 1102 of H.R. 4760 (Bob Goodlatte), 115th Cong.)

SEC. X. 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)—

"(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 nonconfirmation, the Secretary shall specify, in consultation with the Commissioner of Social Security, an available secondary verification process to confirm the validity of information provided and to provide a final confirmation or nonconfirmation not later than 10 working days after the date on which the notice of the tentative nonconfirmation is received by the employee. The Secretary, in consultation with the Commissioner, may extend this deadline once on a case-by-case basis for a period of 10 working days, and if the time is extended, shall document such extension within the verification system. The Secretary, in consultation with the Commissioner, shall notify the employee and employer of such extension. The Secretary, in 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.".

(source: § 1103 of H.R. 4760 (Bob Goodlatte), 115th Cong.)

SEC. X. RECRUITMANT, 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 paragraph (1),” and inserting "after complying with paragraph (1),".

(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 persons or entities referring for remuneration (whether on a retainer or contingency basis) are included in the definition, except that union hiring halls that refer union members or nonunion individuals who pay union membership dues are included in this definition whether or not they receive remuneration, as are labor service entities or labor service agencies, whether public, private, for-profit, or nonprofit that recruit, dispatch, or otherwise facilitate the hiring of laborers for any period of time by a third party.".

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

(source: § 1104 of H.R. 4760 (Bob Goodlatte), 115th Cong.)

SEC. X. GOOD FAITH DEFENSE.

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

"(3) GOOD FAITH DEFENSE.—

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

"(i) shall not be liable to a job applicant, an employee, the Federal Government, or a State or local government, under Federal, State, or local criminal or civil law for any employment-related action taken with respect to a job applicant

or employee in good-faith reliance on 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 defense under subparagraph (A) shall not be considered to apply with respect to any employment, except as provided in subclause (II).

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

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

(source: § 1105 of H.R. 4760 (Bob Goodlatte), 115th Cong.)

SEC. X. 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 LAWS.—

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

"(ii) GENERAL RULES.—A State, at its own cost, may enforce the provisions of this section, but only insofar as such State follows the Federal regulations implementing this section, applies the Federal penalty structure set out in this section, and complies with all Federal rules and guidance concerning implementation of this section. Such State may collect any fines assessed under this section. An employer may not be subject to enforcement, including audit and investigation, by both a Federal agency and a State for the same violation 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.".

(source: § 1106 of H.R. 4760 (Bob Goodlatte), 115th Cong.)

SEC. X. 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 [X].

(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.

(source: § 1107 of H.R 4760 (Bob Goodlatte), 115th Cong.)

SEC. X. 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 debarment 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 Government's interest in having the person or entity considered for debarment, and after soliciting and considering the views of all such agencies and departments, the Secretary or Attorney General may refer the matter to any appropriate lead agency to determine whether to list the person or entity on the List of Parties 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.".

(source: § 1108 of H.R. 4760 (Bob Goodlatte), 115th Cong.)

SEC. X. 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),".

(source: § 1109 of H.R. 4760 (Bob Goodlatte), 115th Cong.)

SEC. X. PROTECTION OF SOCIAL SECURITY ADMINISTRATION PROGRAMS.

(a) FUNDING UNDER AGREEMENT.—Effective for fiscal years beginning on or after October 1, 20[22], 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, 20[22], 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.

(source: § 1110 of H.R. 4760 (Bob Goodlate), 115th Cong.)

SEC. X. 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.

(source: § 1111 of H.R. 4760 (Bob Goodlatte), 115th Cong.)

SEC. X. 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.

(source: § 1112 of H.R. 4760 (Bob Goodlatte), 115th Cong.)

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

Not later than 24 months after the date of the enactment of [X], the Secretary of Homeland Security, after consultation with the Commissioner of Social Security and the Director of the National Institute of Standards and Technology, shall establish by regulation not less than 2 Identity Authentication Employment Eligibility Verification pilot programs, each using a separate and distinct technology (the "Authentication Pilots"). The purpose of the Authentication Pilots shall be to provide for identity authentication and employment eligibility verification with respect

to enrolled new employees which shall be available to any employer that elects to participate in either of the Authentication Pilots. Any participating employer may cancel the employer's participation in the Authentication Pilot after one year after electing to participate without prejudice to future participation. The Secretary shall report to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate the Secretary's findings on the Authentication Pilots, including the authentication technologies chosen, not later than 12 months after commencement of the Authentication Pilots.

(source: § 1113 of H.R. 4760 (Bob Goodlatte), 115th. Cong.)

SEC. X. INSPECTOR GENERAL AUDITS.

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

(1) Workers who dispute wages reported on their social security account number when they believe 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.

(*source: § 1114 of H.R. 4760 (Bob Goodlatte), 115th Cong.*)

SEC. X. MANDATORY NOTIFICATION OF SOCIAL SECURITY ACCOUNT NUMBER MISMATCHES AND MULTIPLE USES.

(a) NOTIFICATION OF MISMATCHED NAME AND SOCIAL SECURITY ACCOUNT NUMBER.—The Commissioner of Social Security shall notify on an annual basis each United States employer with one or more employees whose social security account number does not match the employee's name or date of birth in the Commissioner's records. Such notification shall instruct employers to notify listed employees that they have 10 business days to correct the mismatch with the Social Security Administration or the employer will be required to

terminate their employment. The notification also shall inform employers that they may not terminate listed employees prior to the close of the 10-day period.

(b) NOTIFICATION OF MULITPLE USES OF INDIVIDUAL SOCIAL SECURITY ACCOUNT NUMBERS.—Prior to crediting any individual with concurrent earnings from more than one employer, the Commissioner of Social Security shall notify the individual that earnings from two or more employers are being reported under the individual's social security account number. Such notice shall include, at a minimum, the name and location of each employer and shall direct the individual to contact the Social Security Administration to present proof that the individual is the person to whom the social security account number was issued and, if applicable, to present a pay stub or other documentation showing that such individual is employed by both or all employers reporting earnings to that social security account number.

XIII. Minors

A. Unaccompanied Alien Children

SEC. X. REPATRIATION OF UNACCOMPANIED ALIEN CHILDREN.

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

(1) in subsection (a)—

(A) in paragraph (2)—

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

(ii) in subparagraph (A)—

(I) in the matter preceding clause (i), by striking "who is a national or habitual resident of a country that is contiguous with the United States";

(II) in clause (i), by inserting "and" at the end;

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

(IV) by striking clause (iii);

(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 an immigration officer with specialized training in interviewing child trafficking victims."; 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 subject to exceptions under subsection (a)(2)," and inserting "who does not meet the criteria listed in paragraph (2)(A)"; and

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

(2) in subsection (b)—

(A) in paragraph (2)—

(i) in subparagraph (A), by inserting before the semicolon the following: "believed not to meet the criteria listed in subsection (a)(2)(A)"; and

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

(B) in paragraph (3), by striking "an unaccompanied alien child in custody shall" and all that follows, and inserting the following:

"an unaccompanied alien child in custody—

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

"(B) in the case of a child who meets the criteria listed in subsection (a)(2)(A), may transfer the custody of such child to the Secretary of Health and Human Services after determining that such child is an unaccompanied alien child who meets such criteria."; and

(3) in subsection (c)—

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

"(D) INFORMATION ABOUT INDIVIDUALS WITH WHOM CHILDREN ARE PLACED.—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, if available.

"(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."; and

(B) in paragraph (5)—

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

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

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to any unaccompanied alien child apprehended on or after the date of enactment.

(sources: § 2(a) of S. 959 (Lindsey Graham), 117th Cong.; § 101 of H.R. 1901 (Andy Biggs), 117th Cong.)

SEC. X. RESCISSION OF PREFERENTIAL AVAILABILITY FOR ASYLUM FOR UNACCOMPANIED ALIEN CHILDREN.

Section 208(b)(3) of the Immigration and Nationality Act (8 U.S.C. 1158) is amended by striking subparagraph (C).

(source: § 202 of H.R. 1901 (Andy Biggs), 117th Cong.)

SEC. X. DEFINITION OF UNACCOMPANIED ALIEN CHILD.

Section 462(g)(2) of the Homeland Security Act of 2002 (6 U.S.C. 279(g)(2)) is amended to read as follows:

"(2) The term 'unaccompanied alien child'—

"(A) means an alien who—

"(i) has no lawful immigration status in the United States;

"(ii) has not attained 18 years of age; and

"(iii) with respect to whom—

"(I) there is no parent or legal guardian in the United States;

"(II) no parent or legal guardian in the United States is available to provide care and physical custody; or

"(III) no sibling over 18 years of age, aunt, uncle, grandparent, or cousin over 18 years of age is available to provide care and physical custody; except that

"(B) such term shall cease to include an alien if at any time a parent, legal guardian, sibling over 18 years of age, aunt, uncle, grandparent, or cousin over 18 years of age of the alien is found in the United States and is available to provide care and physical custody

(and the Secretary of Homeland Security and the Secretary of Health and Human Services shall revoke accordingly any prior designation of the alien under this paragraph).".

(source: § 8 of H.R. 391 (Jason Chaffetz), 115th Cong.)

B. Special Immigrant Juvenile Status.

SEC. X. SPECIAL IMMIGRANT JUVENILE STATUS FOR IMMIGRANTS UNABLE TO REUNITE WITH EITHER PARENT.

Section 101(a)(27)(J) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(27)(J)) is amended—

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

(2) in clause (iii)—

(A) by striking "and" at the end of subclause (I);

(B) by inserting "and" at the end of subclause (II); and

(C) by adding at the end the following: "(III) an alien may not be granted special immigrant juvenile status under this subparagraph if his or her reunification .with any one parent or legal guardian is not precluded by abuse, neglect, abandonment, or any similar cause under State law;".

(source: § 103 of H.R. 1901 (Andy Biggs), 117th Cong.)

XIV: Reform of Humanitarian Relief

A: Expedited Removal

SEC. X. COUNTRY OF REMOVAL.

Section 235(b)(1)(B)(iii)(I) of the Immigration and Nationality Act (8 U.S.C. 1225(b)(1)(B)(iii)(I) is amended as follows:

"(I) (aa) IN GENERAL.—Subject to item (bb) and subclause (III), if the officer determines that an alien does not have a credible fear of persecution, the officer shall order the alien removed from the United States without further hearing or review.

"(bb) (AA) If the alien establishes a reasonable possibility of persecution (including by establishing that he or she is not subject to one or more of the mandatory bars to eligibility for withholding of removal contained in section 241(b)(3)(B)) or torture; or would be able to establish a reasonable possibility of persecution but for the fact that he or she is subject to a mandatory bar to eligibility for withholding of removal under section 241(b)(3)(B) but nevertheless establishes that it is more likely than not that he or she would be tortured in the prospective country of removal, the Secretary may, in the Secretary's unreviewable discretion, either

"(BB) detain the alien for further consideration of the alien's claims for asylum, withholding of removal under section 241(b)(3) or withholding or deferral of removal under the regulations issued pursuant to section 2242(b) of title XXII, subdivision B, division G, of the Foreign Affairs Reform and Restructuring Act, Pub. L. No. 105–277; or

"(CC) remove the alien to a third country as provided in section 241 prior to such further consideration, if, after being notified of the identity of the prospective third country of removal and provided an opportunity to demonstrate that he or she is more likely than not to be tortured in such third country, the alien fails to establish that he or she is more likely than not to be tortured there.".

(source: 85 FR 84160, USCIS, EOIR, Security Bars and Processing (Dec. 23, 2020) (final rule, effective date delayed by Biden administration))

SEC. X. CREDIBLE FEAR STANDARD.

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 208, 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. An alien shall not be determined to have a credible fear of persecution if the officer determines that the alien is prohibited from applying for or receiving asylum, including by being subject to a limitation or condition under subsection (a)(2) or (b)(2) (including a regulation promulgated under such subsection) of section 208.".

(sources: § 201 of H.R. 1901 (Andy Biggs), 117th Cong.; § 3 of S. 959 (Lindsey Graham), 117th Cong.); 8 C.F.R. § 208(e)(1)(iii) from 85 FR 80274, 80390 (Dec. 11, 2020) (enjoined))

SEC. X. 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 expedited 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) CREDIBLE FEAR INTERVIEW CHECKLISTS.—The Secretary of Homeland Security shall provide a checklist of standard questions and concepts to be addressed in all interviews under section 235(b) to immigration officers exercising decision-making authority in such interviews. Such checklists shall be routinely updated to include relevant changes to law and procedures and shall, at a minimum, require that all immigration officers utilizing such checklists provide concise justifications of their decision regardless of whether credible fear was or was not established.

(c) 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.

(d) 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.

(e) 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.

(f) 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.

(source: § 203 of H.R. 1901 (Andy Biggs), 117th Cong.)

SEC. X. FAILURE TO SEEK REVIEW.

Section 235(b)(1)(B)(iii)(III) of the Immigration and Nationality Act (8 U.S.C. 1225(b)(1)(B)(iii)(III)) is amended by inserting after the first sentence the following:

"An alien's refusal to make such a request shall be considered an affirmative decision to decline review.".

(source: Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review, 85 FR 36264, June 15, 2020 (proposed rule), 85 FR 80274, Dec. 11, 2020 (final rule))

SEC. X. LIMITATION ON ASYLUM APPEALS.

Section 235(b)(1)(B) of the Immigration and Nationality Act (8 U.S.C. 1225(b)(1)(B)) is amended by adding at the end the following—

"(vi) ELIGIBILITY FOR RELIEF.—

"(I) CREDIBLE FEAR REVIEW BY IMMIGRATION JUDGE.—An alien determined to have a credible fear of persecution shall be referred to an immigration judge for review of such determination, which shall be limited to a determination whether the alien—

"(aa) is eligible for asylum under section 208, withholding of removal under section 241(b)(3), or protection under the regulations issued pursuant to the legislation implementing the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, done at New York, December 10, 1984 (referred to in this clause as the 'Convention Against Torture)'; and

"(bb) merits a grant of asylum in the exercise of discretion.

"(II) ALIENS WITH REASONABLE FEAR OF PERSECUTION.—

"(aa) IN GENERAL.—Except as provided in item (bb), if an alien referred under subparagraph (A)(ii) is determined to have a reasonable fear of persecution or torture, the alien shall be eligible only for consideration of an application for withholding of removal under section 241(b)(3) or protection under the Convention Against Torture.

"(bb) EXCEPTION.—An alien shall not be eligible for consideration of an application for relief under item (aa) if the failure of the alien to establish a credible fear of persecution precludes the alien from eligibility for such relief.

"(cc) LIMITATION.—An alien whose application for relief is adjudicated under item (aa) shall not be eligible for any other form of relief or protection from removal.

"(vii) INELIGIBILITY FOR REMOVAL PROCEEDINGS.—An alien referred under subparagraph (A)(ii) shall not be eligible for a hearing under section 240.".

(source: § 3 of S. 959 (Lindsey Graham), 117th Cong.)

B. Asylum Reform

SEC. X. SAFE THIRD COUNTRIES.

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

(1) by striking "if the Attorney General determines" and inserting "if the Attorney General or the Secretary of Homeland Security determines—";

(2) by striking "that the alien may be removed" and inserting: "(i) that the alien may be removed";

(3) by striking "removed, pursuant to a bilateral or multilateral agreement, to" and inserting "removed to";

(4) by inserting ", on a case by case basis," before "finds that".

(source: § 204 of H.R. 1901 (Andy Biggs), 117th Cong.)

SEC. X. STANDARD OF REVIEW FOR CORROBORATING EVIDENCE.

(a) STANDARD OF REVIEW FOR ORDERS OF REMOVAL.–Section 242(b)(4) of the Immigration and Nationality Act (8 U.S.C. 1252(b)(4)) is amended by adding after subparagraph (D) the following flush language: ``No court shall reverse a determination made by an adjudicator with respect to the availability of corroborating evidence as described in section 208(b)(1)(B), unless the court finds that a reasonable adjudicator is compelled to conclude that such corroborating evidence is
unavailable.".

(b) EFFECTIVE DATE.–The amendment made by subsection (b) shall take effect upon the date of enactment of this Act and shall apply to cases in which the final administrative removal order was issued before, on, or after the date of enactment of this Act.

(source: § H.R. 4406 (F. James Sensenbrenner, Jr.), 108th Cong.); S. 2443 (Orrin Hatch), 108th Cong.)

SEC. X. 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 subparagraph (B), any alien who is granted asylum status under this Act, who, absent 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.".

(b) CONFORMING AMENDMENT.—Section 208(c)(3) of the Immigration and Nationality Act (8 U.S.C. 1158(c)(3)) is amended by inserting after "paragraph (2)" the following: "or (4)".

(source: § 205 of H.R. 1901 (Andy Biggs), 117th Cong.)

SEC. X. NOTICE CONCERNING FRIVOLOUS ASYLUM APPLICATIONS.

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

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

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

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

(4) by adding at the end the following:

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

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

"(A) 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 the material elements are knowingly fabricated.

"(C) 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.".

(source: § 206 of H.R. 1901 (Andy Biggs), 117th Cong.)

SEC. X. 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".

(source: § 207 of H.R. 1901 (Andy Biggs), 117th Cong.)

SEC. X. 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.".

(source: § 213 of H.R. 1901 (Andy Biggs), 117th Cong.)

SEC. X STATUTE OF LIMITATIONS FOR ASYLUM FRAUD.

Section 3291 of title 18 is amended—

(1) by striking "1544," and inserting "1544, and section 1546,";

(2) by striking "offense." and inserting "offense or within 10 years after the fraud is discovered.".

(source: § 214 of H.R. 1901 (Andy Biggs), 117th Cong.)

SEC. X. BAR TO ASYLUM ELIGIBILITY FOR ALIENS WHO FAIL TO APPLY FOR PROTECTION FROM AT LAST ONE THIRD COUNTRY THROUGH WHICH THEY TRANSIT EN ROUTE TO THE UNITED STATES.

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

(1) by striking the period at the end and inserting "; or"; and

(2) by adding at the end the following:

"(ii) that the alien entered, attempted to enter, or arrived in the United States after transiting through at least one country outside the alien's country of citizenship, nationality, or last lawful habitual residence en route to the United States, unless—

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

"(II) the alien demonstrates that he or she was a victim of a severe form of trafficking in which a commercial sex act was induced by force, fraud, or coercion, or in which the person induced to perform such act was under the age of 18 years; or in which the trafficking included the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services through the use of force,

fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery, and was unable to apply for protection from persecution in all countries that alien transited en route to the United States as a result of such severe form of trafficking; or

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

(sources: sec. § 204 of H.R. 1901 (Andy Biggs), 117th Cong.; 85 FR 82260, 82289-90 (Dec. 17, 2020) (enjoined))

SEC. X. DEFINITION OF PARTICULAR SOCIAL GROUP.

Section 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)) is amended by adding a new paragraph (44) (and redesignating current paragraph (44) and succeeding paragraphs accordingly) to read as follows:

"(44) The term "particular social group" means a group that is based on an immutable or fundamental characteristic, is defined with particularity, and is recognized as socially distinct in the society at question. Such a group cannot be defined exclusively by the alleged persecutory acts or harms and must also have existed independently of the alleged persecutory acts or harms that form the basis of a claim. No group consisting of or defied by the following circumstances shall be considered a particular social group:

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

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

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

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

"(E) interpersonal disputes of which governmental authorities were unaware or uninvolved;

"(F) private criminal acts of which governmental authorities were unaware or uninvolved;

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

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

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

The substance of the alleged particular social group, rather than the precise form of its delineation, shall be considered in determining whether the group falls within one of the categories on the foregoing list.".

(sources: Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review, 85 FR 36264, June 15, 2020 (proposed rule), 85 FR 80274, Dec. 11, 2020 (final rule))

SEC. X. DEFINITION OF PERSECUTION.

Section 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)) is amended by adding a new paragraph (44) (and redesignating current paragraph (44) and succeeding paragraphs accordingly) to read as follows:

"(44) The term "persecution" requires an intent to target a belief or characteristic, a severe level of harm, and the infliction of a severe level of harm by the government of a country or by persons or an organization that the government was unable or unwilling to control. For purposes of evaluating the severity of the level of harm, persecution is an extreme concept involving a severe level of harm that includes actions so severe that they constitute an exigent threat. Persecution does not encompass the generalized harm that arises out of civil, criminal, or military strife in a country, nor does it encompass all treatment that the United States regards as unfair, offensive, unjust, or even unlawful or unconstitutional. It does not include intermittent harassment, including brief detentions; threats with no actual effort to carry out the threats, except that particularized threats of severe harm of an immediate and menacing nature made by an identified entity may constitute persecution; or, non-severe economic harm or property damage. The existence of laws or government policies that are unenforced or infrequently enforced do not, by themselves, constitute persecution, unless there is credible evidence that those laws or policies have been or would be applied to an applicant personally.".

(sources: Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review, 85 FR 36264, June 15, 2020 (proposed rule), 85 FR 80274, Dec. 11, 2020 (final rule))

SEC. X. DEFINITION OF NEXUS.

Section 101(a)(42) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(42)) is amended by adding at the end the following:

"For purposes of determinations under this chapter, a person shall not be considered to have been persecuted on account of race, religion, nationality, membership in a particular social

group, or political opinion, and a person shall not be considered to have a well founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion, based on the following circumstances:

"(A) interpersonal animus or retribution;

"(B) interpersonal animus in which the alleged persecutor has not targeted, or manifested an animus against, other members of an alleged particular social group in addition to the member who has raised the claim at issue;

"(C) resistance to recruitment or coercion by guerilla, criminal, gang, terrorist or other non-state organizations;

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

"(E) criminal activity;

"(F) past or present gang affiliation or perceived gang affiliation; or

"(G) gender.".

(source: Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review, 85 FR 36264, June 15, 2020 (proposed rule), 85 FR 80274, Dec. 11, 2020 (final rule))

SEC. X. DEFINITION OF FIRM RESETTLEMENT.

OPTION 1

Section 208(b)(2)(A)(vi) of the Immigration and Nationality Act (8 U.S.C. 1158(b)(2)(A)(vi)) is amended by striking "States." and inserting "States, to be demonstrated by evidence that the alien can live in such country (in any legal status) without fear of persecution.".

(source: § 19 of H.R. 391 (Jason Chaffetz), 115th Cong.)

OPTION 2

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

"(vi) the alien was firmly resettled in another country prior to arriving in the United States, to be demonstrated by, after the events giving rise to the alien's asylum claim:

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

"(aa) having received or being eligible for any permanent legal immigration status in that country;

"(bb) having resided in such a country with any non-permanent but indefinitely renewable legal immigration status (including asylee, refugee, or similar status but excluding status such as of a tourist); or

"(cc) having resided in such a country and having been able to apply for and obtain any non-permanent but indefinitely renewable legal immigration status in that country;

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

"(III) the alien having been a citizen of a country other than the one where the alien alleges a fear of persecution and the alien was present in that country while a citizen after departing his country of nationality or last habitual residence and prior to arrival in or entry into the United States.".

(source: Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review (proposed rule), 85 FR 36264, June 15, 2020 (proposed rule), 85 FR 80274, Dec. 11, 2020 (final rule))

SEC. X. DEFINITION OF INTERNAL RELOCATION

Section 208(b)(2)(A) of the Immigration and Nationality Act (8 U.S.C. 1158(b)(2)(A) is amended—

(1) in clause (v), by striking "or";

(2) in clause (vi) by striking the period at the end and inserting "; or"; and

(3) by adding a new clause (vii) as follows:

"The alien could avoid future persecution by relocating to another part of the alien's country of nationality or, if stateless, another part of the alien's country of last habitual residence, and under all the circumstances, it would be reasonable to expect the alien to do so, considering the totality of the relevant circumstances regarding an alien's prospects for relocation, including the size of the country of nationality or last habitual residence, the geographic locus of the alleged persecution, the size, reach, or numerosity of the alleged

persecutor, and the applicant's demonstrated ability to relocate to the United States in order to apply for asylum.".

(source: Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review, 85 FR 36264, June 15, 2020 (proposed rule), 85 FR 80274, Dec. 11, 2020 (final rule))

SEC. X. DISCRETIONARY FACTORS IN THE GRANTING OF ASYLUM.

Section 208(b)(1) of the Immigration and Nationality Act (8 U.S.C. 1158(b)(1)) is amended by adding at the end a new subparagraph (D) as follows:

"(D) DISCRETIONARY FACTORS.—A decision-maker shall consider, to the extent applicable, the following significant adverse discretionary factors that in determining whether an alien merits a grant of asylum in the exercise of discretion—

"(i) An alien's unlawful entry or unlawful attempted entry into the United States unless such entry or attempted entry was made in immediate flight from persecution in a contiguous country or unless such entry or attempted entry was made by an alien under the age of 18 at the time the entry or attempted entry was made; and

"(ii) An alien's use of fraudulent documents to enter the United States, unless the alien arrived in the United States by air, sea, or land directly from the applicant's home country without transiting through any other country.".

(source: Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review, 85 FR 36264, June 15, 2020 (proposed rule), 85 FR 80274, Dec. 11, 2020 (final rule))

C. Reform of Convention Against Torture (CAT) Relief

SEC. X. OFFICIALS DESIGNATED TO DETERMINE ELIGIBITY FOR CONVENTION AGAINST TORTURE RELIEF

(a) IN GENERAL.—Section 241(b) (8 U.S.C. 1231(b)) is amended by adding at the end the following new paragraph:

"(4) DESIGNATED OFFICIALS.—A determination as to whether the removal of an alien to any country should be withheld or deferred under the regulations issued pursuant to section 2242(b) of title XXII, subdivision B, divisionn G, of the Foreign Affairs Reform and Restructuring Act, Pub. L. No. 105–277 shall be made only by an officer of the Department of Homeland Security designated by the Secretary of Homeland Security for this purpose. There shall be no administrative or judicial review of such determination.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act and shall apply to applications pending on or after such date if the application has not resulted in a final administrative order before such date.

(source: § 604 of H.R. 5013 (George Gekas), 107th Cong.)

SEC. X. EXCEPTION TO CONVENTION AGAINST TORTURE RELIEF FOR CERTAIN ALIEN TERRORISTS AND CRIMINALS.

(a) REGULATIONS.—

(1) REVISION DEADLINE.—Not later than 120 days after the date of the enactment of this Act, the Secretary of Homeland Security shall revise the regulations prescribed by the Secretary to implement the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment, done at New York on December 10, 1984.

(2) EXCLUSION OF CERTAIN ALIENS.—The revision—

(A) shall exclude from the protection of such regulations aliens described in section 241(b)(3)(B) of the Immigration and Nationality Act (8 U.S.C. 1231(b)(3)(B)) (as amended by this title), including rendering such aliens ineligible for withholding or deferral of removal under the Convention; and

(B) shall ensure that the revised regulations operate so as to--

(i) allow for the reopening of determinations made under the regulations before the effective date of the revision; and

(ii) apply to acts and conditions constituting a ground for ineligibility for the protection of such regulations, as revised, regardless of when such acts or conditions occurred.

(3) BURDEN OF PROOF.—The revision shall also ensure that the burden of proof is on the applicant for withholding or deferral of removal under the Convention to establish by clear and convincing evidence that he or she would be tortured if removed to the proposed country of removal.

(b) JUDICIAL REVIEW.—Notwithstanding any other provision of law, no court shall have jurisdiction to review the regulations adopted to implement this section, and nothing in this section shall be construed as providing any court jurisdiction to consider or review claims raised under the Convention or this section, except as part of the review of a final order of removal pursuant to section 242 of the Immigration and Nationality Act (8 U.S.C. 1252).

(source: § 3032 of H.R. 10 (Dennis Hastert), 108th Cong.)

SEC. X. DEFINITION OF TORTURE AND ACQUIESCENCE OF A PUBLIC OFFICAL.

Section 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)) is amended by adding a new paragraph (44) (and redesignating current paragraph (44) and succeeding paragraphs accordingly) to read as follows:

"(44) (A) Torture is defined as any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or her or a third person information or a confession, punishing him or her for an act he or she or a third person has committed or is suspected of having committed, intimidating or coercing him or her or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by, or at the instigation of, or with the consent or acquiescence of, a public official acting in an official capacity or other person acting in an official capacity. Pain or suffering inflicted by a public official who is not acting under color of law shall not constitute pain or suffering inflicted by, or at the instigation of, or with the consent or acquiescence of, a public official acting in an official capacity or other person acting in an official capacity, although a different public official acting in an official capacity or other person acting in an official capacity could instigate, consent to, or acquiesce in the pain or suffering inflicted by the public official who is not acting under color of law.

"(B) Acquiescence of a public official requires that the public official, prior to the activity constituting torture, have awareness of such activity and thereafter breach his or her legal responsibility to intervene to prevent such activity. Such awareness requires a finding of either actual knowledge or willful blindness. Willful blindness means that the public official acting in an official capacity or other person acting in an official capacity was aware of a high probability of activity constituting torture and deliberately avoided learning the truth; it is not enough that such public official acting in an official capacity or other person acting in an official capacity was mistaken, recklessly disregarded the truth, or negligently failed to inquire. In order for a public official to breach his or her legal responsibility to intervene to prevent activity constituting torture, the official must have been charged with preventing the activity as part of his or her duties and have failed to intervene. No person will be deemed to have breached a legal responsibility to intervene if such person is unable to intervene, or if the person intervenes but is unable to prevent the activity that constitutes torture.".

(source: Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review, 85 FR 36,264, June 15, 2020 (proposed rule), 85 FR 80,274, Dec. 11, 2020 (final rule)

D. Temporary Protected Status

SEC. X. TEMPORARY PROTECTED STATUS DESIGNATION.

OPTION 1

(a) CONGRESSIONAL REVIEW OF EXTENSION OF DESIGNATION.—Section 244(b)(3) of the Immigration and Nationality Act (8 U.S.C. 1254a(b)(3)) is amended—

(1) in subparagraph (A), by striking the final sentence; and

(2) by striking subparagraph (C) and inserting the following:

"(C) RECOMMENDATION TO CONGRESS TO EXTEND DESIGNATION.—If the Secretary determines under subparagraph (A) that a foreign state (or part of such foreign state) continues to meet the condition for designation under paragraph (1), the Secretary of Homeland Security shall submit a recommendation to the Congress to extend the period of designation for not more than 18 months. The Secretary shall set forth the stification for the extension, including the humanitarian concerns, or how the extension otherwise is in the national interest. If, 90 days after the submission of the Secretary's recommendation, the President has not signed into law legislation passed by the House and the Senate extending the designation, the designation shall be terminated in accordance with subsection (d)(3).".

(b) ADJUSTMENT OF STATUS OF ALIENS WITH TEMPORARY POROTECTED STATUS.—Section 244(f)(4) of the Immigration and Nationality Act (8 U.S.C. 1254(f)(4)) is amended by striking the period at the end and inserting "but shall not be regarded as satisfying the definition of the term 'admitted' under section 101(a)(13)(A).".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act, except that the amendments made by subsection (a) shall not apply to extensions pursuant to subsection 244(b)(3)(C) of the Immigration and Nationality Act (8 U.S.C. 1254a(b)(3)(C)) of designations originally made pursuant to section 244(b)(1) of such Act (8 U.S.C. 1254a(b)(1)) before such date.

(source: § 608 of H.R. 2431 (Raul Labrador), 115th Cong.)

OPTION 2

(a) IN GENERAL.–Section 244 (8 U.S.C. 1254a) is amended–

(1) in subsection (a)–

(A) by striking paragraph (3)(D);

(B) in paragraph (4)–

(i) by striking subparagraph (B);

(ii) by moving the text of subparagraph (A) up and to the right so that it follows immediately after the paragraph heading; and

(iii) by striking "(A)";

(C) in paragraph (5), by striking "to deny temporary protected status to an alien based on the alien's immigration status or";

(2) in subsection (b)—

(A) in paragraph (1)—

(i) in subparagraph (A), by adding "or" at the end

(ii) in subparagraph (B)—

(I) in clause (i), by striking "disruption of living conditions" and inserting "physical destruction of homes and businesses";

(II) by amending clause (ii) to read as follows:

"(ii) the foreign state is unable, temporarily, to house and employ the aliens who are nationals of the state residing in the United States, but has a specific plan to repatriate such nationals in a short and specified period of time; and"; and

(III) in clause (iii), by striking "; or" and inserting a period;

(iii) by striking subparagraph (C); and

(iv) by adding at the end the following:

"An initial designation, or extension of a designation, of a foreign state (or part of such foreign state) under this paragraph shall not become effective if the Attorney General finds that permitting the aliens to remain temporarily in the United States is contrary to the national interest of the United States."

(B) in the last sentence of paragraph (2), by striking "18 months" and inserting "12 months";

(C) in paragraph (3) .—

(i) in subparagraph (A), by inserting "all" after "and shall determine whether";

(ii) in subparagraph (B), by inserting "all" after "no longer continues to meet"; and

(iii) by amending subparagraph (C) to read as follows:

"(C) EXTENSION OF DESIGATION.—If the Attorney General determines under subparagraph (A) that a foreign state (or part of such foreign state) continues to meet all the conditions for designation under paragraph (1) and that the foreign state warrants an extension, the period of designation of the foreign State is extended for an additional period of 6 months (or, in the discretion of the Attorney General, a period of 12 months)."; and

(D) in paragraph (5)—

(i) by striking subparagraph (B);

(ii) by moving the text of subparagraph (A) up and to the right so that it follows immediately after the paragraph heading; and

(iii) by striking "(A) DESIGNATIONS.—";

(3) in subsection (c)--

(A) in paragraph (1)(B), by striking "The amount of any such fee shall not exceed $50.";

(B) in paragraph (2)—

(i) in subparagraph (A), by striking "of paragraph (1)—" and all that follows through the end and inserting the following: ", the provisions of section 212(a)(1) may be waived in the Attorney General's discretion if a denial of temporary protected status would separate the alien from a spouse or child in the United States.";

(ii) in subparagraph (B)—

(I) by amending clause (i) to read as follows:

"(i) the alien is inadmissible undersection 212(a) by reason of having been convicted of a crime committed in the United States, or the alien is deportable under section 237(a) (other than under section 237(a)(1)(B));";

(II) in clause (ii), by striking the period at the end and inserting "; or"; and

(III) by adding at the end the following:

"(iii) the alien was unlawfully present in the United States on the effective date of the designation of the applicable foreign state (or part of a state), or the effective date of any extension of such designation, unless a law to the contrary is enacted before such date, except that if the Congress is adjourned sine die on such date, the alien may be granted temporary protected status for a period of not more than 4 months.";

(C) in paragraph (3)—

(i) by striking ", or" at the end of subparagraph (B) and inserting a semicolon;

(ii) in subparagraph (C)—

(I) by inserting "and record the alien's current address" after "register"; and

(II) by striking the period at the end and inserting a semicolon; and

(iii) by adding at the end the following:

"(D) the alien commits a crime after being granted temporary protected status; or

"(E) the alien travels, no matter how briefly, to the foreign state (or part of such state) the designation of which was the basis of the alien being granted such status.";

(D) in paragraph (4), in each of subparagraphs (A) and (B), by inserting before the period at the end the following: ", unless the alien travels, no matter how briefly, to the foreign state (or part of such state) the designation of which was the basis of the alien being granted such status"; and

(E) by striking paragraph (6);

(4) in subsection (d), by striking paragraph (4);

(5) in subsection (e), by striking ", unless the Attorney General determines that extreme hardship exists" in the first sentence;

(6) in subsection (f)—

(A) by inserting "and" at the end of paragraph (2);

(B) in paragraph (3), by striking "General; and" and inserting "General, except to the foreign state (or part of such state) the designation of which was the basis of the alien being granted such status."; and

(C) by striking paragraph (4); and

(7) in subsection (h)–

(A) in paragraph (1), by inserting "or the House of Representatives" after "Senate";

(B) in paragraph (2), by striking "three-fifths" and inserting "two-thirds"; and

(C) by inserting "and the House of Representatives" after "Senate" each place such term appears in paragraphs (2) and (3).

(b) INELIGIBILITY OF CERTAIN ALIENS–

(1) IN GENERAL.–In the case of a foreign state (or part of a foreign state) initially designated under section 244 (8 U.S.C. 1254a), or having such a designation extended, before the date of the enactment of this Act, an alien who is a national of such state (or in the case of an alien having no nationality, is a person who last habitually resided in such state), and was unlawfully present in the United States on the date of such designation or extension, shall be subject to paragraph (2).

(2) ALIENS INELIGIBLE.–An alien described in paragraph (1) shall not be considered eligible for temporary protected status under section 244 pursuant to any initial or succeeding extension of a designation described in such paragraph that takes effect after the date of the enactment of this Act, unless a law to the contrary is enacted before such effective date, except that if the Congress is adjourned sine die on such effective date, the alien may be granted temporary protected status for a period of not more than 4 months.

(source: § 901 of H.R. 5013 (George Gekas), 107th Cong.)

XV: Expulsion of Aliens Under Title 8

SEC. X. AVERTING OR CURTAILING A MASS MIGRATION EVENT.

Add a new section 1233 to Title 8 of the U.S. Code to read as follows:

"SEC. 1233. AVERTING OR CURTAILING A MASS MIGRATION EVENT.

"(a) Whenever the Secretary of Homeland Security determines that an actual or anticipated mass migration of aliens en route to, or arriving off the coast of, the United States presents urgent circumstances requiring an immediate Federal response, the Secretary may make, subject to the approval of the President, rules and regulations prohibiting, in whole or in part, the introduction of persons from such countries or places as he shall designate in order to avert or curtail such mass migration, and for such period of time as he may deem necessary for such purpose, including through the expulsion of such aliens.

"(b) Notwithstanding any other provision of law, when the Secretary of Homeland Security makes a determination specified in subsection (a) and then makes, subject to the approval of the President, rules and regulations specified in subsection (a), the Secretary shall have the authority to waive all legal requirements of Title 8 that such Secretary, in such Secretary's sole discretion, determines necessary in order to avert or curtail the mass migration specified in subsection (a). Any such decision by the Secretary shall be effective upon being published in the Federal Register.".

(source: 46 U.S.C. §70051; 42 U.S.C. §265, §102(c) of subtitle A of title 1 of division C of Pub. L. No. 104-208, as amended)

XVI: Refugee Reform

SEC. X. ANNUAL ADJUSTMENT OF THE NUMBER OF ADMISSIBLE REFUGEES.

(a) IN GENERAL.—Section 207(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1157(a)(2)) is amended by striking all that follows after "shall be" and inserting the following: "60,000. The President may, after appropriate consultation, submit a recommendation to Congress for the revision of such number not later than 6 months prior to the beginning of such fiscal year, setting forth the justification for such revision due to humanitarian concerns or that such revision is otherwise in the national interest.".

(b) IN CASE OF EMERGENCIES.—Section 207(b) of the Immigration and Nationality Act (8 U.S.C. 1157(b)) is amended—

(1) by striking "the President may fix a number of refugees" and inserting the following: "the President may submit to Congress a recommended number of refugees"; and

(2) by striking all that follows after "to the emergency refugee situation" and inserting a period.

(source: § 2 of H.R. 4731 (Raul Labrador), 114th Cong.)

SEC. X. TERMINATION OF REFUGEE STATUS.

Section 207(c) of the Immigration and Nationality Act (8 U.S.C. 1157(c)), as amended by this Act, is further amended—

(1) in paragraph (4)—

(A) by striking "may" each place it appears and inserting "shall";

(B) by inserting after "determines" the following: "—";

(C) by striking "that the alien was not" and inserting the following:

"(A) that the alien was not";

(D) by striking the period at the end and inserting "; or"; and

(E) by adding at the end the following:

"(B) that the alien, who applied for such status because of persecution or a well-founded fear of persecution in the country from which they sought refuge on account of race, religion, nationality, membership in a particular social group, or political opinion, returned to such country absent changed conditions therein."; and

(2) by inserting after paragraph (4) the following:

"(5) Each fiscal year, the Secretary shall submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate a report that includes the number of terminations of status under paragraph (4), disaggregated by whether the termination occurred pursuant to subparagraph (A) or (B) of such paragraph.".

(source: § 3 of H.R. 4731 (Raul Labrador), 114th Cong.)

SEC. X. PRIORITY CONSIDERATION OF CERTAIN APPLICANTS FOR REFUGEE STATUS.

Section 207(c) of the Immigration and Nationality Act (8 U.S.C. 1157(c)) is amended—

(1) by adding at the end the following:

"(6) When processing refugee applications from individuals seeking refuge from a country listed as a 'Country of Particular Concern' in the annual report of the Commission on International Religious Freedom under section 203 of the International Religious Freedom Act of 1998 for the year prior to the current year, the Secretary of Homeland Security shall grant priority consideration to such applicants whose claims are based on

persecution or a well-founded fear of persecution based on religion by reason of those applicants being practitioners of a minority religion in the country from which they sought refuge."; and

(2) by striking "Attorney General" each place it appears and inserting "Secretary of Homeland Security".

(source: § 4 of H.R. 4731 (Raul Labrador) 114th Cong.)

SEC. X. RECURRENT SECURITY MONITORING.

Section 207 of the Immigration and Nationality Act (8 U.S.C. 1157) is amended—

(1) in subsection (c)(3), by striking "any other provision of such section (other than paragraph (2)(C) or subparagraph (A), (B), (C), or (E) of paragraph (3))" and inserting "paragraph (1) of section 212(a)"; and

(2) by adding at the end the following:

"(g) The Secretary may conduct recurrent background security checks of an admitted refugee until such date as the refugee adjusts status under section 209.".

(source: § 6 of H.R. 4731 (Raul Labrador), 114th Cong.)

SEC. X. ADJUSTMENT OF STATUS OF REFUGEES.

(a) Section 209(a)(1) of the Immigration and Nationality Act (8 U.S.C. 1159(a)(1)) is amended—

(1) in subparagraph (B), by striking "for at least one year" and inserting "for 3 years"; and

(2) by striking "shall, at the end of such year period" and inserting "shall, at the end of such period".

(b) GROUNDS FOR INADMISSIBILITY.—Section 209(c) of the Immigration and Nationality Act (8 U.S.C. 1159(c)) is amended by striking "any other provision of such section (other than paragraph (2)(C) or subparagraph (A), (B), (C), or (E) of paragraph (3))" and inserting "paragraph (1) of section 212(a)".

(c) GROUNDS OF DEPORTABILITY; IN-PERSON INTERVIEW REQUIRED; REQUIRED REEXAMINATION FOR ADMISSION.—Section 209 of the Immigration and Nationality Act (8 U.S.C. 1159) is amended by adding at the end the following:

"(d) COORDINATION WITH SECTION 237.—An alien may not adjust status under this section if the alien is deportable under section 237, except that section 237(a)(5) shall not apply for purposes of this subsection.

"(e) IN-PERSON INTERVIEW REQUIREMENTS.—An alien may not adjust status under this section unless, at the time of application for adjustment, the alien establishes by clear and convincing evidence during an in-person interview with the Secretary of Homeland Security that the alien continues to meet the requirements of section 101(a)(42).

"(f) REQUIRED REEXAMINATION FOR ADMISSION.—An alien who is admitted as a refugee who is denied admission under subsection (a)(1) shall, beginning on the date that is 5 years after such denial, and every 5 years thereafter, if that alien retains status as a refugee, return or be returned to the custody of the Department of Homeland Security for inspection and examination for admission to the United States as an immigrant in accordance with the provisions of sections 235, 240, and 241.".

(source: §§ 5, 7-8 of H.R. 4731 (Raul Labrador), 114th Cong.)

SEC. X. STATE OF RESETTLEMENT.

Section 412 of the Immigration and Nationality Act (8 U.S.C. 1522) is amended by adding at the end the following:

"(g) LIMITATION ON RESETTLEMENT.—Notwithstanding any other provision of this section, for a fiscal year, the resettlement of any refugee may not be provided for—

"(1) in any State where the Governor of that State, or the State legislature, has taken any action formally disapproving of resettlement in that State; or

"(2) in any locality where the chief executive of that locality's government, or the local legislature, has taken any action formally disapproving of resettlement in that locality.".

(source: § 9 of H.R. 4731 (Raul Labrador), 114th Cong.)

SEC. X. DOCUMENT FRAUD DETECTION PROGRAM.

Not later than 2 years after the date of enactment of this Act, the Secretary of Homeland Security shall establish a program for detecting the use of fraudulent documents in applications for admission as a refugee, including—

(1) placement of Fraud Detection and National Security officials who are under the direction of the Fraud Detection and National Security Directorate of U.S. Citizenship and Immigration Services at initial refugee screening in conjunction with the resettlement agency and

with the authority to hold a refugee application in abeyance until any fraud or national security concerns are resolved; and

(2) creation of a searchable database of scanned and categorized documents proffered by applicants at initial refugee screening to allow for discovery of fraud trends and random translation verification within such documents

(source: § 11 of H.R. 4731 (Raul Labrador), 114th Cong.)

XVII: Parole Reform

SEC. X. REFORM OF HUMANITARIAN AND SIGNIFICANT PUBLIC BENEFIT PAROLE STANDARDS.

OPTION 1

(a) IN GENERAL.—Paragraph (5) of section 212(d) of the Immigration and Nationality Act (8 U.S.C. 1182(d)) is amended to read as follows:

"(5)(A) Subject to the provisions of this paragraph and section 214(f)(2), the Secretary of Homeland Security, in the sole discretion of the Secretary, may on a case-by-case basis parole an alien into the United States temporarily, under such conditions as the Secretary may prescribe, only

"(i) for an urgent humanitarian reason (as described under subparagraph (B)); or

"(ii) for a reason deemed strictly in the public interest (as described under subparagraph (C)).

"(B) The Secretary of Homeland Security may parole an alien based on an urgent humanitarian reason described in this subparagraph only if—

"(i) the alien has a medical emergency and the alien cannot obtain necessary treatment in the foreign state in which the alien is residing or the medical emergency is life-threatening and there is insufficient time for the alien to be admitted through the normal visa process;

"(ii) the alien is needed in the United States in order to donate an organ or other tissue for transplant into a close family member; or

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

"(C) The Secretary of Homeland Security may parole an alien based on a reason deemed strictly in the public interest described in this subparagraph only if—

"(i) the alien has assisted the United States Government in a matter, such as a criminal investigation, espionage, or other similar law enforcement activity, and either the alien's presence in the United States is required by the Government or the alien's life would be threatened if the alien were not permitted to come to the United States; or

"(ii) the alien is to be prosecuted in the United States for a crime.

"(D) The Secretary of Homeland Security may not use the parole authority under this paragraph to permit to come to the United States aliens who have applied for and have been found to be ineligible for refugee status or any alien to whom the provisions of this paragraph do not apply.

"(E) Parole of an alien under this paragraph shall not be considered an admission of the alien into the United States. When the purposes of the parole of an alien have been served, as determined by the Secretary of Homeland Security, the alien shall immediately return or be returned to the custody from which the alien was paroled and the alien shall be considered for admission to the United States on the same basis as other similarly situated applicants for admission.

"(F) Not later than 90 days after the end of each fiscal year, the Secretary of Homeland Security shall submit a report to the Committees on the Judiciary of the House of Representatives and the Senate describing the number and categories of aliens paroled into the United States under this paragraph. Each such report shall contain information and data concerning the number and categories of aliens paroled, the duration of parole, and the current status of aliens paroled during the preceding fiscal year.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to individuals paroled into the United States [on or after the date of the enactment of [X].]

(source: § 523 of H.R. 2202 (Lamar Smith), 104th Cong., as reported by the House Judiciary Committee)

OPTION 2

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

"(5) HUMANITARIAN AND SIGNIFICANT PUBLIC BENEFIT PAROLE.—

"(A) IN GENERAL.—Subject to the provisions of this paragraph and section 214(f)(2), the Secretary of Homeland Security, in the sole discretion of the Secretary, may, on an individual case-by-case basis and not according to eligibility criteria describing an

entire class of potential parole recipients, parole an alien into the United States temporarily, under such conditions as the Secretary may prescribe, only—

"(i) for an urgent humanitarian reason (as described under subparagraph (B)); or

"(ii) for a reason deemed strictly for the significant public benefit (as described under subparagraph (C)).

"(B) HUMANITARIAN PAROLE.—The Secretary of Homeland Security may parole an alien based on an urgent humanitarian reason described in this subparagraph only if—

"(i) the alien has a medical emergency and the alien cannot obtain necessary treatment in the foreign state in which the alien is residing or the medical emergency is life-threatening and there is insufficient time for the alien to be admitted through the normal visa process;

"(ii) the alien is the legal guardian or otherwise has legal authority to make medical decisions on behalf of an alien described in clause (i);

"(iii) the alien is needed in the United States in order to donate an organ or other tissue for transplant into an immediate family member and there is insufficient time for the alien to be admitted through the normal visa process;

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

"(v) the alien is a lawful applicant for adjustment of status under section 245; or

"(vi) the alien was lawfully granted status under section 208 or lawfully admitted under section 207.

"(C) SIGNIFICANT PUBLIC BENEFIT PAROLE.—The Secretary of Homeland Security may parole an alien based on a reason deemed strictly for the significant public benefit described in this subparagraph only if—

"(i) the presence of the alien is necessary in a matter such as a criminal investigation or prosecution, espionage activity, or other similar law enforcement or intelligence-related activity;

"(ii) the presence of the alien is necessary in a civil matter concerning the termination of parental rights;

"(iii) the alien has previously assisted the United States Government in a matter described in clause (i) and the life of the alien would be threatened if the alien were not permitted to enter the United States; or

"(iv) in the case of an alien returned to a foreign territory contiguous to the United States pursuant to section 235(b)(2)(C), it is necessary to parole the alien into the United States for an immigration proceeding.".

(source: § 3(d) of S. 959 (Lindsey Graham), 117th Cong.)

SEC. X. LIMITATION OF PAROLE TO ALIENS NOT PHYSICALLY PRESENT IN THE UNITED STATES

Section 212(d)(5)(A) of the Immigration and Nationality Act (8 U.S.C. 1182(d)(5)(A)) is amended by inserting "already physically present in the United States who is" before "applying for admission to the United States".

SEC. X. INCLUSION IN WORLD-WIDE LEVEL OF FAMILY SPONSORED IMMIGRANTS

(a) IN GENERAL.—Section 201(c) of the Immigration and Nationality Act (8 U.S.C. 1151(c)) is amended—

(1) by amending paragraph (1)(A)(ii) to read as follows:

"(ii) the sum of the number computed under paragraph (2) and the number computed under paragraph (4), plus"; and

(2) by adding at the end the following new paragraphs:

"(4) 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 and who did not depart from the United States within 365 days.

"(5) If any alien described in paragraph (4) is subsequently admitted as an alien lawfully admitted for permanent residence, such alien shall not again be considered for purposes of paragraph (1).".

(b) INCLUSION OF PAROLED ALIENS.—Section 202 of the Immigration and Nationality Act (8 U.S.C. 1152) is amended by adding at the end the following new subsection:

"(f)(1) For purposes of subsection (a)(2), an immigrant visa shall be considered to have been made available in a fiscal year to any alien who is not an alien lawfully admitted for

permanent residence but who was paroled into the United States under section 212(d)(5) in the second preceding fiscal year and who did not depart from the United States within 365 days.

"(2) If any alien described in paragraph (1) is subsequently admitted as an alien lawfully admitted for permanent residence, an immigrant visa shall not again be considered to have been made available for purposes of subsection (a)(2).".

(source: § 192 of S. 1664 (Orrin Hatch), 104th Cong.)

XVIII: Litigation Reform

SEC. X. WAIVER OF RIGHTS IN NONIMMIGRANT VISA ISSUANCE.

(a) IN GENERAL.—Section 221(a) of the Immigration and Nationality Act (8 U.S.C. 1201(a)) is amended by adding at the end the following new paragraph:

"(3) An alien may not be issued a nonimmigrant visa unless the alien has waived any right—

"(A) to review or appeal under this Act of an immigration officer's determination as to the inadmissibility of the alien at the port of entry into the United States; or

"(B) to contest, other than on the basis of an application for asylum or withholding of removal, any action for removal of the alien.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to visas issued on or after the date that is 90 days after the date of the enactment of [X].

(source: § 806 of H.R. 4437 (F. James Sensenbrenner, Jr.), 109th Cong., as passed by the House)

SEC. X. JUDICIAL REVIEW OF ORDERS OF REMOVAL.

(a) IN GENERAL.—Section 242 of the Immigration and Nationality Act (8 U.S.C. 1252) is amended--

(1) in subsection (a)—

(A) in paragraph (2)—

(i) in subparagraphs (A), (B), and (C), by inserting "(statutory and nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of title 28, United States Code" after "Notwithstanding any other provision of law"; and

(ii) by adding at the end the following:

"(D) JUDICIAL REVIEW OF CERTAIN LEGAL CLAIMS.—Nothing in this paragraph shall be construed as precluding consideration by the circuit courts of appeals of constitutional claims or pure questions of law raised upon petitions for review filed in accordance with this section. Notwithstanding any other provision of law (statutory and nonstatutory), including section 2241 of title 28, United States Code, or, except as provided in subsection (e), any other habeas corpus provision, and sections 1361 and 1651 of title 28, United States Code, such petitions for review shall be the sole and exclusive means of raising any and all claims with respect to orders of removal entered or issued under any provision of this Act."; and

(B) by adding at the end the following:

"(4) CLAIMS UNDER THE CONVENTION AGAINST TORTURE REGULATIONS.—Notwithstanding any other provision of law (statutory and nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of title 28, United States Code, a petition for review by the circuit courts of appeals filed in accordance with this section is the sole and exclusive means of judicial review of claims arising under regulations issued pursuant to the legislation implementing the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman, or Degrading Treatment or Punishment.

"(5) EXCLUSIVE MEANS OF REVIEW.—The judicial review specified in this subsection shall be the sole and exclusive means for review by any court of an order of removal entered or issued under any provision of this Act. For purposes of this title, in every provision that limits or eliminates judicial review or jurisdiction to review, the terms 'judicial review' and 'jurisdiction to review' include habeas corpus review pursuant to section 2241 of title 28, United States Code, or any other habeas corpus provision, sections 1361 and 1651 of title 28, United States Code, and review pursuant to any other provision of law.";

(2) in subsection (b)—

(A) in paragraph (3)(B), by inserting "pursuant to subsection (f)" after "unless"; and

(B) in paragraph (9), by adding at the end the following: "Except as otherwise provided in this subsection, no court shall have jurisdiction, by habeas corpus under section 2241 of title 28, United States Code, or any other habeas corpus provision, by section 1361 or 1651 of title 28, United States Code, or by any

other provision of law (statutory or nonstatutory), to hear any cause or claim subject to these consolidation provisions.";

(3) in subsection (f)(2), by inserting "or stay, by temporary or permanent order, including stays pending judicial review," after "no court shall enjoin"; and

(4) in subsection (g), by inserting "(statutory and nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of title 28, United States Code" after "notwithstanding any other provision of law".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect upon the date of enactment of this Act and shall apply to cases in which the final administrative removal order was issued before, on, or after the date of enactment of this Act.

(sources: § 2 of H.R. 4406 (F. James Sensenbrenner, Jr.), 108th Cong.; S. 2443 (Orrin Hatch), 108th Cong.)

SEC. X. CONSOLIDATION OF APPEALS.

(a) IN GENERAL.—Section 242(b)(2) of the Immigration and Nationality Act (8 U.S.C. 1252(b)(2)), is amended by striking the first sentence and inserting the following: "The petition for review shall be filed with the court of appeals for the Federal Circuit.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to any final agency order that was entered on or after the date of enactment of this Act.

(sources: § 3 of H.R. 4406 (F. James Sensenbrenner, Jr.), 108th Cong.); S. 2443 (Orrin Hatch), 108th Cong.)

SEC. X. CERTIFICATE OF REVIEWABILITY.

(a) ALIEN'S BRIEF.—Section 242(b)(3)(C) of the Immigration and Nationality Act (8 U.S.C. 1252(b)(3)(C)) is amended to read as follows:

"(C) ALIEN'S BRIEF.—The alien shall serve and file a brief in connection with a petition for judicial review not later than 40 days after the date on which the administrative record is available. The court may not extend this deadline except upon motion for good cause shown. If an alien fails to file a brief within the time provided in this paragraph, the court shall dismiss the appeal unless a manifest injustice would result.".

(b) CERTIFICATE OF REVIEWABILITY.—Section 242(b)(3) of such Act (8 U.S.C. 1252 (b)(3)) is amended by adding at the end the following new subparagraphs:

"(D) CERTIFICATE.—

"(i) After the alien has filed the alien's brief, the petition for review shall be assigned to a single court of appeals judge.

"(ii) Unless that court of appeals judge or a circuit justice issues a certificate of reviewability, the petition for review shall be denied and the government shall not file a brief.

"(iii) A certificate of reviewability may issue under clause (ii) only if the alien has made a substantial showing that the petition for review is likely to be granted.

"(iv) The court of appeals judge or circuit justice shall complete all action on such certificate, including rendering judgment, not later than 60 days after the date on which the judge or circuit justice was assigned the petition for review, unless an extension is granted under clause (v).

"(v) The judge or circuit justice may grant, on the judge's or justice's own motion or on the motion of a party, an extension of the 60-day period described in clause (iv) if—

"(I) all parties to the proceeding agree to such extension; or

"(II) such extension is for good cause shown or in the interests of justice, and the judge or circuit justice states the grounds for the extension with specificity.

"(vi) If no certificate of reviewability is issued before the end of the period described in clause (iv), including any extension under clause (v), the petition for review shall be deemed denied, any stay or injunction on petitioner's removal shall be dissolved without further action by the court or the government, and the alien may be removed.

"(vii) If a certificate of reviewability is issued under clause (ii), the Government shall be afforded an opportunity to file a brief in response to the alien's brief. The alien may serve and file a reply brief not later than 14 days after service of the Government's brief, and the court may not extend this deadline except upon motion for good cause shown.

"(E) NO FURTHER REVIEW OF THE COURT OF APPEALS JUDGE'S DECISION NOT TO ISSUE A CERTIFICATE OF REVIEWABILITY.—The single court of appeals judge's decision not to issue a certificate of reviewability, or the denial of a petition under subparagraph (D)(vi), shall be the final decision for the court of appeals and shall not be reconsidered, reviewed, or reversed by the court of appeals through any mechanism or procedure.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to petitions filed on or after the date that is 60 days after the date of the enactment of [X].

(source: § 805 of H.R. 4437 (F. James Sensenbrenner, Jr.), 109th Cong., as passed the House)

SEC. X. CLARIFICATION OF JURISDICTION ON REVIEW.

(a) REVIEW OF DISCRETIONARY DETERMINATIONS.—Section 242(a)(2)(B) of the Immigration and Nationality Act (8 U.S.C. 1252(a)(2)(B)) is amended—

(1) by inserting before "no court" the following: "and regardless of whether the individual determination, decision, or action is made in removal proceedings,";

(2) in clause (i), by striking "any judgment" and inserting "any individual determination"; and

(3) in clause (ii)—

(A) by inserting "discretionary" after "any other";

(B) by striking "the authority for which is specified under this title to be in the discretion of the Attorney General or the Secretary of Homeland Security," and inserting "under this title or the regulations promulgated hereunder,"; and

(C) by striking the period at the end and inserting the following: ", irrespective of whether such decision or action is guided or informed by standards, regulatory or otherwise.".

(b) REVIEW OF ORDERS AGAINST CRIMINAL ALIENS.—Section 242(a)(2)(C) of the Immigration and Nationality Act (8 U.S.C. 1252(a)(2)(C)) is amended by inserting after "of removal" the following: "(irrespective of whether relief or protection was denied on the basis of the alien's having committed a criminal offense)".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to petitions for review that are pending on or after the date of the enactment of [X].

(source: § 807 of H.R. 4437 (F. James Sensenbrenner, Jr.), 109th Cong., as passed by the House)

SEC. X. CONTINUANCE REFORM

(a) IN GENERAL.—Section 240(b)(1) (8 U.S.C. 1229a(b)(1)) is amended by adding at the end the following:

"The immigration judge may not grant a continuance to permit an alien to become eligible for relief under any provision of law. In proceedings under this section or under section 236, the immigration judge may not grant a change of venue for an alien who has not been inspected and admitted or paroled into the United States. For all other aliens, the immigration judge may grant a change of venue only if the alien demonstrates that the alien cannot obtain a fair proceeding in the current venue.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act and shall apply to continuances and changes of venue sought after such date.

(source: § 602 of H.R. 5013 (George Gekas), 107th Cong.)

SEC. X. REINSTATEMENT OF REMOVAL ORDERS.

(a) IN GENERAL.—Section 241(a)(5) of the Immigration and Nationality Act (8 U.S.C. 1231(a)(5)) is amended to read as follows:

"(5) REINSTATEMENT OF REMOVAL ORDERS AGAINST ALIENS ILLEGALLY REENTERING.—If the Secretary of Homeland Security finds that an alien has entered the United States illegally after having been removed, deported, or excluded or having departed voluntarily, under an order of removal, deportation, or exclusion, regardless of the date of the original order or the date of the illegal entry—

"(A) the order of removal, deportation, or exclusion is reinstated from its original date and is not subject to being reopened or reviewed notwithstanding section 242(a)(2)(D);

"(B) the alien is not eligible and may not apply for any relief under this Act, regardless of the date that an application or request for such relief may have been filed or made; and

"(C) the alien shall be removed under the order of removal, deportation, or exclusion at any time after the illegal entry.

Reinstatement under this paragraph shall not require proceedings under section 240 or other proceedings before an immigration judge.".

(b) JUDICIAL REVIEW.—Section 242 of the Immigration and Nationality Act (8 U.S.C. 1252) is amended by adding at the end the following:

"(h) JUDICIAL REVIEW OF REINSTATEMENT UNDER SECTION 241(A)(5).—

"(1) REVIEW OF REINSTATEMENT.—Judicial review of determinations under section 241(a)(5) is available in an action under subsection (a).

"(2) NO REVIEW OF ORIGINAL ORDER.—Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, United States Code, any other habeas corpus provision, or sections 1361 and 1651 of such title, no court shall have jurisdiction to review any cause or claim, arising from, or relating to, any challenge to the original order.".

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall take effect as if enacted on April 1, 1997, and shall apply to all orders reinstated or after that date by the Secretary of Homeland Security (or by the Attorney General prior to March 1, 2003), regardless of the date of the original order.

(source: § 604 of H.R. 2431 (Raul Labrador), 115th Cong.)

SEC. X. PROHIBITION OF ATTORNEY FEE AWARDS FOR REVIEW OF FINAL ORDERS OF REMOVAL.

(a) IN GENERAL.—Section 242 (8 U.S.C. 1252), as amended by section 505(b), is further amended by adding at the end the following new subsection:

"(i) PROHIBITION ON ATTORNEY FEE AWARDS.—Notwithstanding any other provision of law, a court may not award fees or other expenses to an alien based upon the alien's status as a prevailing party in any proceedings relating to an order of removal issued under this Act, unless the court of appeals concludes that the determination of the Attorney General or the Secretary of Homeland Security that the alien was removable under sections 212 and 237 was not substantially justified.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to proceedings relating to an order of removal issued on or after the date of the enactment of this Act, regardless of the date that such fees or expenses were incurred.

(source: § 509 of S. 2454 (Bill Frist), 109th Cong.)

XIX: Office of Security and Investigations

SEC. X. FINDINGS.

Congress finds the following:

(1) The mission of United States Citizenship and Immigration Services (USCIS) is to faithfully execute the immigration laws enacted by Congress and to ensure that only those aliens who are eligible under such laws and who do not pose a risk to the United States or its citizens or lawful residents are able to obtain permission to remain in the United States.

(2) Only United States citizens have an absolute right to be in the United States; for all others, permission to enter and reside here, either as nonimmigrants or immigrants, is a privilege that is conditioned on following the rules of one's admission and stay.

(3) Immigration benefits fraud has become endemic. It undermines the rule of law and threatens national security, and so must be addressed aggressively and consistently.

(4) Internal corruption also threatens national security and erodes the integrity of the immigration system. In order to restore integrity and credibility to the system, the backlog of complaints against United States Citizenship and Immigration Services employees must be cleared by experienced investigators as expeditiously as possible without compromising the quality of investigations.

(5) In separating customs and border protection and immigration and customs enforcement from United States Citizenship and Immigration Services, Congress did not intend to wholly eliminate all law enforcement functions within the latter, nor is it possible for United States citizenship and immigration services to achieve its mission without a law enforcement function. the attempt to do so has produced the current abysmal results. Thus, it is imperative that United States Citizenship and Immigration Services embrace the critical law enforcement function especially the internal audit function.

(source: § 1302 of H.R. 4437 (F. James Sensenbrenner, Jr.), 109th Cong., as passed by the House)

SEC. X. STRUCTURE OF THE OFFICE OF SECURITY AND INVESTIGATIONS.

The Director of the Office of Security and Investigations shall report directly to the Director of United States Citizenship and Immigration Services.

(source: § 1303 of H.R. 4437 (F. James Sensenbrenner, Jr.), 109th Cong., as passed by the House)

SEC. X. AUTHORITY OF THE OFFICE OF SECURITY AND INVESTIGATIONS TO INVESTIGATE INTERNAL CORRUPTION.

(a) AUTHORITY.—In addition to the authority otherwise provided by this title, the Director of the Office of Security and Investigations, in carrying out the duties of the Office, has sole authority-

(1) to receive, process, dispose of administratively, and investigate any criminal or noncriminal violations of the Immigration and Nationality Act or title 18, United States Code, that are alleged to have been committed by any officer, agent, employee, or contract worker of United States Citizenship and Immigration Services,and that are referred to United States Citizenship and Immigration Services by the Office of the Inspector General of the Department of Homeland Security;

(2) to ensure that all complaints alleging such violations are handled and stored in the same manner as sensitive but unclassified materials;

(3) to have access to all records, reports, audits, reviews, documents, papers, recommendations, or other material available to United States Citizenship and Immigration Services which relate to programs and operations with respect to which the Director has responsibilities under this title;

(4) to request such information or assistance as may be necessary for carrying out the duties and responsibilities of the Office from any Federal, State, or local governmental agency or unit thereof;

(5) to require by subpoena the production of all information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence necessary in the performance of the functions assigned to the Office of Security and Investigations, which subpoena, in the case of contumacy or refusal to obey, shall be enforceable by order of any appropriate United States district court (except that procedures other than subpoenas shall be used by the Director to obtain documents and information from Federal agencies);

(6) to administer to or take from any person an oath, affirmation, or affidavit, whenever necessary in the performance of the functions assigned to the Office of Security and Investigations, which oath, affirmation, or affidavit when administered or taken by or before an agent of the Office of Security and Investigations designated by the Director shall have the same force and effect as if administered or taken by or before an officer having a seal;

(7) to have direct and prompt access to the head of United States Citizenship and Immigration Services when necessary for any purpose pertaining to the performance of functions and responsibilities of the Office of Security and Investigations;

(8) to select, appoint, and employ such officers and employees as may be necessary for carrying out the functions, powers, and duties of the Office of Security and Investigations subject to the provisions of title 5, United States Code, governing appointments in the competitive service, and the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates;

(9) to obtain services as authorized by section 3109 of title 5, United States Code, at daily rates not to exceed the equivalent rate prescribed for grade GS-15 of the General Schedule by section 5332 of title 5, United States Code; and

(10) to the extent and in such amounts as may be provided in advance by immigration fee accounts or appropriations Acts, to enter into contracts and other arrangements for audits, studies, analyses, and other services with public agencies and with private persons, and to make such payments as may be necessary to carry out the provisions of this title.

(b)(1) Upon request of the Director for information or assistance under subsection (a)(4), the head of any Federal agency involved shall, insofar as is practicable and not in contravention of

any existing statutory restriction or regulation of the Federal agency from which the information is requested, furnish to such Director, or to an authorized designee, such information or assistance.

(2) Whenever information or assistance requested under subsection (a)(3) or (a)(4) is, in the judgment of the Director, unreasonably refused or not provided, the Director shall report the circumstances to the Director of United States Citizenship and Immigration Services without delay.

(c) The Director of United States Citizenship and Immigration Services shall provide the Office of Security and Investigations with appropriate and adequate office space at central and field office locations of United States Citizenship and Immigration Services, together with such equipment, office supplies, and communications facilities and services as may be necessary for the operation of such offices, and shall provide necessary maintenance services for such offices and the equipment and facilities located therein.

(d)(1) In addition to the authority otherwise provided by this title, the Director, the Deputy Director, the Assistant Director of Security Operations, the Assistant Director of Special Investigations, all 1811-series criminal investigators, certain 1801-series investigative management specialists, and security specialists supervised by such assistant directors may be authorized by the Secretary of Homeland Security to--

(A) carry a firearm while engaged in official duties as authorized under this title or other statute, or as expressly authorized by the Secretary;

(B) make an arrest without a warrant while engaged in official duties as authorized under this title or other statute, or as expressly authorized by the Secretary, for any offense against the United States committed in the presence of such Director, Assistant Director, or designee, or for any felony cognizable under the laws of the United States if such Director, Assistant Director, or designee has reasonable grounds to believe that the person to be arrested has committed or is committing such felony; and

(C) seek and execute warrants for arrest, search of a premises, or seizure of evidence issued under the authority of the United States upon probable cause to believe that a violation has been committed.

(2) The Secretary shall promulgate, and revise as appropriate, guidelines which shall govern the exercise of the law enforcement powers established under paragraph (1).

(3)(A) Powers authorized for the Director under paragraph (1) may be rescinded or suspended upon a determination by the Secretary that the exercise of authorized powers by that Director has not complied with the guidelines promulgated by the Secretary under paragraph (2).

(B) Powers authorized to be exercised by any individual under paragraph (1) may be rescinded or suspended with respect to that individual upon a

determination by the Secretary that such individual has not complied with guidelines promulgated by the Secretary under paragraph (2).

(4) A determination by the Secretary under paragraph (3) shall not be reviewable in or by any court.

(5) No provision of this subsection shall limit the exercise of law enforcement powers established under any other statutory authority.

(source: § 1304 of H.R. 4437 (F. James Sensenbrenner, Jr.), 109th Cong., as passed by the House)

SEC. X. AUTHORITY OF THE OFFICE OF SECURITY AND INVESTIGATIONS TO DETECT AND INVESTIGATE IMMIGRATION BENEFITS FRAUD.

The Office of Security and Investigations of United States Citizenship and Immigration Services shall have authority--

(1) to conduct fraud detection operations, including data mining and analysis;

(2) to investigate any criminal or noncriminal allegations of violations of the Immigration and Nationality Act or title 18, United States Code, that Immigration and Customs Enforcement declines to investigate;

(3) to turn over to a United States Attorney for prosecution evidence that tends to establish such violations; and

(4) to engage in information sharing, partnerships, and other collaborative efforts with any-

(A) Federal, State, or local law enforcement entity;

(B) foreign partners; or

(C) entity within the intelligence community (as defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

(source: § 1305 of H.R. 4437 (F. James Sensenbrenner, Jr.), 109th Cong., as passed by the House)

SEC. X. OFFICE OF SECURITY AND INVESTIGATIONS PERSONNEL.

(a) INCREASE IN GF-1811 SERIES CRIMINAL INVESTIGATORS.—

(1) In each of fiscal years 202[X] through 202[X], the Director of the Office of Security and Investigations shall, subject to the availability of subject to the availability of

security fees described in section [X], increase by not less than 100 the number of full-time, active-duty GS-1811 series criminal Discussion draft 10 investigators, along with support personnel and equipment, within the Office of Security and Investigations above the number of such positions for which funds were made available during the preceding fiscal year.

(2) DIVISION OF DUTIES.—

(A) INTERNAL AFFAIRS.—No fewer than one-third of the criminal investigators, and support personnel, hired under paragraph (1) shall be assigned to investigate allegations described in paragraph (1) of section [X](a);

(B) BENEFITS FRAUD.—The remaining criminal investigators, and support personnel, hired under paragraph (1) shall be assigned to investigate allegations described in section [X].

(b) INCREASE IN GS-1801 SERIES INVESTIGATION AND COMPLIANCE OFFICERS.—

(1) Subject to the availability of security fees described in section [X] of this title, the Director of the Office of Security and Investigations shall by fiscal year 202[X] increase by not less than 150 the number of full-time, active-duty GS-1801 series investigation and compliance officers, along with support personnel and equipment, within the Office of Security and Investigations above the number of such positions for which funds were made available during fiscal year 202[X].

(2) DIVISION OF DUTIES.—

(A) INTERNAL AFFAIRS.—No fewer than one-third of the investigation and compliance officers, and support personnel, hired under paragraph (1) shall be assigned to investigate allegations described in paragraph (1) of section [X](a);

(B) BENEFITS FRAUD.—The remaining investigation and compliance officers, and support personnel, hired under paragraph (1) shall be assigned to investigate allegations described in section [X].

(c) INCREASE IN GS-0132 SERIES INTELLIGENCE RESEARCH SPECIALISTS.—

(1) Subject to the availability of security fees described in section [X] of this title, the Director of the Office of Security and Investigations shall by fiscal year 202[X] increase by not less than 150 the number of full-time, active-duty GS-0132 series intelligence research specialists, along with support personnel and equipment, within the Office of Security and Investigations above the number of such positions for which funds were made available during fiscal year 202[X].

(2) DIVISION OF DUTIES.—

(A) INTERNAL AFFAIRS.—No fewer than one-third of the investigation and compliance officers, and support personnel, hired under paragraph (1) shall be assigned to investigate allegations described in paragraph (1) of section [X](a);

(B) BENEFITS FRAUD.—The remaining investigation and compliance officers, and support personnel, hired under paragraph (1) shall be assigned to investigate allegations described in section [X].

(source: § 1306 of H.R. 4437 (F. James Sensenbrenner, Jr.), 109th Cong., as passed by the House)

SEC. X. ELIMINATION OF THE FRAUD DETECTION AND NATIONAL SECURITY OFFICE.

Not later than 30 days following the date of enactment of this title, the Secretary of Homeland Security shall eliminate the Fraud Detection and National Security Office of United States Citizenship and Immigration Services and transfer all authority of such office to the Office of Security and Investigations.

(source: § 1309 of H.R. 4437 (F. James Sensenbrenner, Jr.), 109th Cong., as passed by the House)

SEC. X. SECURITY FEE.

Section 286(d) of the Immigration and Nationality Act (8 U.S.C. 1356(d)) is amended by inserting "(1)" before "monies" and adding at the end the following:

"(2) In addition to any other fee authorized by law, the Secretary of Homeland Security shall charge each alien who files an application for adjustment of status or an extension of stay a security fee of $[50], which shall be made available to the Office of Security and Investigations to conduct investigations into allegations of internal corruption and benefits fraud.

"(3) In addition to any other fee authorized by law, the Secretary of State shall charge each alien who files an application for an immigrant or nonimmigrant visa a security fee of $10, which shall be made available to the Office of Security and Investigations to conduct investigations into allegations of internal corruption and benefits fraud.

"(4) Any fees collected under paragraphs (2) and (3) that are in excess of the operating budget of the Office of Security and Investigations shall be made available to Immigration and Customs Enforcement for the sole purpose of investigating immigration benefits fraud referred to it by United States Citizenship and Immigration Services.".

(source: § 1310 of H.R. 4437 (F. James Sensenbrenner, Jr.), 109th Cong., as passed by the House)

XX. IDENTIFICATION DOCUMENTS

A: Individual Taxpayer Identification Numbers

SEC. X. REDUCING INDIVIDUAL TAXPAYER IDENTIFICATION NUMBER ABUSE.

(a) MODIFIED ITIN FORMAT AND LAWFUL PRESENCE REQUIREMENT.—

(1) IN GENERAL.—Section 6109(c) of the Internal Revenue Code of 1986 is amended to read as follows:

"(c) REQUIREMENT FOR INFORMATION.—

"(1) IN GENERAL.—For purposes of this section, the Secretary is authorized to require such information as may be necessary to assign an identifying number of any person.

"(2) SEPARATE FROM SOCIAL SECURITY ACCOUNT NUMBERS.—Any identifying number assigned by the Secretary shall be comprised of a sequence of numerals and dashes that is visually distinguishable from and will not be mistaken for a social security account number.

"(3) VERIFICATION OF STATUS FOR ALIENS.—Prior to issuing any identifying number, the Secretary shall verify with the Department of Homeland Security that the applicant for such number is lawfully present in the United States.".

(2) EFFECTIVE DATE.—Section 6109(c)(2) of the Internal Revenue Code of 1986, as amended by paragraph (1), shall take effect not later than 30 days after the date of the enactment of this Act.

(b) INFORMATION SHARING.—

(1) IN GENERAL.—Section 6103(i)(3) of the Internal Revenue Code of 1986 is amended by adding at the end the following new subparagraph:

"(D) POSSIBLE VIOLATIONS OF FEDERAL IMMIGRATION LAW.—The Secretary shall disclose in electronic format to the Secretary of Homeland Security the taxpayer identity (as defined in subsection (b)(6)) of each taxpayer who has been assigned an individual taxpayer identification number. The Secretary of Homeland Security may disclose such information to officers and employees of the Department to the extent necessary to enforce Federal immigration laws."

(2) EFFECTIVE DATE.—The Secretary of the Treasury shall disclose information under the amendment made by paragraph (1) not later than 60 days after the date of the enactment of this Act.

B: Improved Security for Birth Certificates

SEC. X. DEFINITIONS. In this [X], the following definitions apply:

(1) BIRTH CERTIFICATE.—The term "birth certificate" means a certificate of birth--

(A) for an individual (regardless of where born)—

(i) who is a citizen or national of the United States at birth; and

(ii) whose birth is registered in the United States; and

(B) that—

(i) is issued by a Federal, State, or local government agency or authorized custodian of record and produced from birth records maintained by such agency or custodian of record; or

(ii) is an authenticated copy, issued by a Federal, State, or local government agency or authorized custodian of record, of an original certificate of birth issued by such agency or custodian of record.

(2) REGISTRANT.—The term "registrant" means, with respect to a birth certificate, the person whose birth is registered on the certificate.

(3) State.--The term "State" means a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

(source: §§ 3051, 3061 of H.R. 10 (Dennis Hastert), 108th Cong.)

SEC. X. APPLICABILITY OF MINIMUM STANDARDS TO LOCAL GOVERNMENTS.

The minimum standards in this chapter applicable to birth certificates issued by a State shall also apply to birth certificates issued by a local government in the State. It shall be the responsibility of the State to ensure that local governments in the State comply with the minimum standards.

(source: § 3062 of H.R. 10 (Dennis Hastert), 108th Cong.)

SEC. X. MINIMUM STANDARDS FOR FEDERAL RECOGNITION.

(a) MINIMUM STANDARDS FOR FEDERAL USE

(1) IN GENERAL.—Beginning 3 years after the date of enactment of this Act, a Federal agency may not accept, for any official purpose, a birth certificate issued by a State to any person unless the State is meeting the requirements of this section.

(2) STATE CERTIFICATIONS.—The Secretary shall determine whether a State is meeting the requirements of this section based on certifications made by the State to the Secretary. Such certifications shall be made at such times and in such manner as the Secretary, in consultation with the Secretary of Health and Human Services, may prescribe by regulation.

(b) MINIMUM DOCUMENT STANDARDS.—To meet the requirements of this section, a State shall include, on each birth certificate issued to a person by the State, the use of safety paper, the seal of the issuing custodian of record, and such other features as the Secretary may determine necessary to prevent tampering, counterfeiting, and otherwise duplicating the birth certificate for fraudulent purposes. The Secretary may not require a single design to which birth certificates issued by all States must conform.

(c) MINIMUM ISSUANCE STANDARDS.—

(1) IN GENERAL.—To meet the requirements of this section, a State shall require and verify the following information from the requestor before issuing an authenticated copy of a birth certificate:

(A) The name on the birth certificate.

(B) The date and location of the birth.

(C) The mother's maiden name.

(D) Substantial proof of the requestor's identity.

(2) ISSUANCE TO PERSONS NOT NAMED ON BIRTH CERTIFICATES.—To meet the requirements of this section, in the case of a request by a person who is not named on the birth certificate, a State must require the presentation of legal authorization to request the birth certificate before issuance.

(3) ISSUANCE TO FAMILY MEMBERS.—Not later than one year after the date of enactment of this Act, the Secretary, in consultation with the Secretary of Health and Human Services and the States, shall establish minimum standards for issuance of a birth certificate to specific family members, their authorized representatives, and others who

demonstrate that the certificate is needed for the protection of the requestor's personal or property rights.

(4) WAIVERS.—A State may waive the requirements set forth in subparagraphs (A) through (C) of subsection (c)(1) in exceptional circumstances, such as the incapacitation of the registrant.

(5) APPLICATIONS BY ELECTRONIC MEANS.—To meet the requirements of this section, for applications by electronic means, through the mail or by phone or fax, a State shall employ third party verification, or equivalent verification, of the identity of the requestor.

(6) VERIFICATION OF DOCUMENTS.—To meet the requirements of this section, a State shall verify the documents used to provide proof of identity of the requestor.

(d) OTHER REQUIREMENTS.—To meet the requirements of this section, a State shall adopt, at a minimum, the following practices in the issuance and administration of birth certificates:

(1) Establish and implement minimum building security standards for State and local vital record offices.

(2) Restrict public access to birth certificates and information gathered in the issuance process to ensure that access is restricted to entities with which the State has a binding privacy protection agreement.

(3) Subject all persons with access to vital records to appropriate security clearance requirements.

(4) Establish fraudulent document recognition training programs for appropriate employees engaged in the issuance process.

(5) Establish and implement internal operating system standards for paper and for electronic systems.

(6) Establish a central database that can provide interoperative data exchange with other States and with Federal agencies, subject to privacy restrictions and confirmation of the authority and identity of the requestor.

(7) Ensure that birth and death records are matched in a comprehensive and timely manner, and that all electronic birth records and paper birth certificates of decedents are marked “deceased”.

(8) Cooperate with the Secretary in the implementation of electronic verification of vital events under section 3065.

(source: § 3063 of H.R. 10 (Dennis Hastert), 108th Cong.)

SEC. X. ESTABLISHMENT OF ELECTRONIC BIRTH AND DEATH REGISTRATION SYSTEMS.

In consultation with the Secretary of Health and Human Services and the Commissioner of Social Security, the Secretary shall take the following actions:

(1) Work with the States to establish a common data set and common data exchange protocol for electronic birth registration systems and death registration systems.

(2) Coordinate requirements for such systems to align with a national model.

(3) Ensure that fraud prevention is built into the design of electronic vital registration systems in the collection of vital event data, the issuance of birth certificates, and the exchange of data among government agencies.

(4) Ensure that electronic systems for issuing birth certificates, in the form of printed abstracts of birth records or digitized images, employ a common format of the certified copy, so that those requiring such documents can quickly confirm their validity.

(5) Establish uniform field requirements for State birth registries.

(6) Not later than 1 year after the date of enactment of this Act, establish a process with the Department of Defense that will result in the sharing of data, with the States and the Social Security Administration, regarding deaths of United States military personnel and the birth and death of their dependents.

(7) Not later than 1 year after the date of enactment of this Act, establish a process with the Department of State to improve registration, notification, and the sharing of data with the States and the Social Security Administration, regarding births and deaths of United States citizens abroad.

(8) Not later than 3 years after the date of establishment of databases provided for under this section, require States to record and retain electronic records of pertinent identification information collected from requestors who are not the registrants.

(9) Not later than 6 months after the date of enactment of this Act, submit to Congress, a report on whether there is a need for Federal laws to address penalties for fraud and misuse of vital records and whether violations are sufficiently enforced.

(source: § 3064 of H.R. 10 (Dennis Hastert), 108th Cong.)

SEC. X. ELECTRONIC VERIFICATION OF VITAL EVENTS.

(a) LEAD AGENCY.—The Secretary shall lead the implementation of electronic verification of a person's birth and death.

(b) REGULATIONS.—In carrying out subsection (a), the Secretary shall issue regulations to establish a means by which authorized Federal and State agency users with a single interface will be able to generate an electronic query to any participating vital records jurisdiction throughout the Nation to verify the contents of a paper birth certificate. Pursuant to the regulations, an electronic response from the participating vital records jurisdiction as to whether there is a birth record in their database that matches the paper birth certificate will be returned to the user, along with an indication if the matching birth record has been flagged "deceased". The regulations shall take effect not later than 5 years after the date of enactment of this Act.

(source: § 3065 of H.R. 10 (Dennis Hastert), 108th Cong.)

SEC. X. GRANTS TO STATES.

(a) IN GENERAL.—The Secretary may make grants to a State to assist the State in conforming to the minimum standards set forth in this chapter.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary for each of the fiscal years 202[] through 202[] such sums as may be necessary to carry out this chapter.

(source: § 3066 of H.R. 10 (Dennis Hastert), 108th Cong.)

SEC. X. AUTHORITY.

(a) PARTICIPATION WITH FEDERAL AGENCIES AND STATES.--All authority to issue regulations, certify standards, and issue grants under this chapter shall be carried out by the Secretary, with the concurrence of the Secretary of Health and Human Services and in consultation with State vital statistics offices and appropriate Federal agencies.

(b) EXTENSIONS OF DEADLINES.--The Secretary may grant to a State an extension of time to meet the requirements of section 3063(a)(1) if the State provides adequate justification for noncompliance.

(source: § 3067 of H.R. 10 (Dennis Hastert), 108th Cong.)

C. Improved Security for Social Security Account Numbers

SEC. X. PROHIBITION OF THE DISPLAY OF SOCIAL SECURITY ACCOUNT NUMBERS ON DRIVER'S LICENSES OR MOTOR VEHICLE REGISTRATIONS.

(a) IN GENERAL.—Section 205(c)(2)(C)(vi) of the Social Security Act (42 U.S.C. 405(c)(2)(C)(vi)) is amended—

(1) by inserting "(I)" after "(vi)"; and

(2) by adding at the end the following new subclause:

"(II) Any State or political subdivision thereof (and any person acting as an agent of such an agency or instrumentality), in the administration of any driver's license or motor vehicle registration law within its jurisdiction, may not display a social security account number issued by the Commissioner of Social Security (or any derivative of such number) on any driver's license or motor vehicle registration or any other document issued by such State or political subdivision to an individual for purposes of identification of such individual or include on any such licence, registration, or other document a magnetic strip, bar code, or other means of communication which conveys such number (or derivative thereof).".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to licenses, registrations, and other documents issued or reissued after 1 year after the date of the enactment of this Act.

(source: § 3071 of H.R. 10 (Dennis Hastert), 108th Cong.)

SEC. X. INDEPENDENT VERIFICATION OF BIRTH RECORDS PROVIDED IN SUPPORT OF APPLICATIONS FOR SOCIAL SECURITY ACCOUNT NUMBERS.

(a) APPLICATIONS FOR SOCIAL SECURITY ACCOUNT NUMBERS.—Section 205(c)(2)(B)(ii) of the Social Security Act (42 U.S.C. 405(c)(2)(B)(ii)) is amended—

(1) by inserting "(I)" after "(ii)"; and

(2) by adding at the end the following new subclause:

"(II) With respect to an application for a social security account number for an individual, other than for purposes of enumeration at birth, the Commissioner shall require independent verification of any birth record provided by the applicant in support of the application. The Commissioner may provide by regulation for reasonable exceptions from the requirement for independent verification under this subclause in any case in which the Commissioner determines there is minimal opportunity for fraud.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to applications filed after 270 days after the date of the enactment of this Act.

(c) STUDY REGARDING APPLICATIONS FOR REPLACEMENT SOCIAL SECURITY CARD.—

(1) IN GENERAL.—As soon as practicable after the date of the enactment of this Act, the Commissioner of Social Security shall undertake a study to test the feasibility and cost effectiveness of verifying all identification documents submitted by an applicant for a replacement social security card. As part of such study, the Commissioner shall determine the feasibility of, and the costs associated with, the development of appropriate electronic processes for third party verification of any such identification documents which are issued by agencies and instrumentalities of the Federal Government and of the States (and political subdivisions thereof).

(2) REPORT.—Not later than 2 years after the date of the enactment of this Act, the Commissioner shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate regarding the results of the study undertaken under paragraph (1). Such report shall contain such recommendations for legislative changes as the Commissioner considers necessary to implement needed improvements in the process for verifying identification documents submitted by applicants for replacement social security cards.

(source: § 3072 of H.R. 10 (Dennis Hastert), 108th Cong.)

SEC. X. ENUMERATION AT BIRTH.

(a) IMPROVEMENT OF APPLICATION PROCESS.—

(1) IN GENERAL.—As soon as practicable after the date of the enactment of this Act, the Commissioner of Social Security shall undertake to make improvements to the enumeration at birth program for the issuance of social security account numbers to newborns. Such improvements shall be designed to prevent--

(A) the assignment of social security account numbers to unnamed children;

(B) the issuance of more than 1 social security account number to the same child; and

(C) other opportunities for fraudulently obtaining a social security account number.

(2) REPORT TO THE CONGRESS.—Not later than 1 year after the date of the enactment of this Act, the Commissioner shall transmit to each House of the Congress a report specifying in detail the extent to which the improvements required under paragraph (1) have been made.

(b) STUDY REGARDING PROCESS FOR ENUMERATION AT BIRTH.—

(1) IN GENERAL.—As soon as practicable after the date of the enactment of this Act, the Commissioner of Social Security shall undertake a study to determine the most efficient options for ensuring the integrity of the process for enumeration at birth. Such study shall include an examination of available methods for reconciling hospital birth records with birth registrations submitted to agencies of States and political subdivisions thereof and with information provided to the Commissioner as part of the process for enumeration at birth.

(2) REPORT.—Not later than 18 months after the date of the enactment of this Act, the Commissioner shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate regarding the results of the study undertaken under paragraph (1). Such report shall contain such recommendations for legislative changes as the Commissioner considers necessary to implement needed improvements in the process for enumeration at birth.

(source: § 3073 of H.R. 10 (Dennis Hastert), 108th Cong.)

SEC. X. STUDY RELATING TO USE OF PHOTOGRAPHIC IDENTIFICATION IN CONNECTION WITH APPLICATIONS FOR BENEFITS, SOCIAL SECURITY ACCOUNT NUMBERS, AND SOCIAL SECURITY CARDS.

(a) IN GENERAL.—As soon as practicable after the date of the enactment of this Act, the Commissioner of Social Security shall undertake a study to—

(1) determine the best method of requiring and obtaining photographic identification of applicants for old-age, survivors, and disability insurance benefits under title II of the Social Security Act, for a social security account number, or for a replacement social security card, and of providing for reasonable exceptions to any requirement for photographic identification of such applicants that may be necessary to promote efficient and effective administration of such title, and

(2) evaluate the benefits and costs of instituting such a requirement for photographic identification, including the degree to which the security and integrity of the old-age, survivors, and disability insurance program would be enhanced.

(b) REPORT.—Not later than 18 months after the date of the enactment of this Act, the Commissioner shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate regarding the results of the study undertaken under subsection (a). Such report shall contain such recommendations for legislative changes as the Commissioner considers necessary relating to requirements for photographic identification of applicants described in subsection (a).

(source: § 3074 of H.R. 10 (Dennis Hastert), 108th Cong.)

SEC. X. RESTRICTIONS ON ISSUANCE OF MULTIPLE REPLACEMENT SOCIAL SECURITY CARDS.

(a) IN GENERAL.—Section 205(c)(2)(G) of the Social Security Act (42 U.S.C. 405(c)(2)(G)) is amended by adding at the end the following new sentence: "The Commissioner shall restrict the issuance of multiple replacement social security cards to any individual to 3 per year and to 10 for the life of the individual, except in any case in which the Commissioner determines there is minimal opportunity for fraud.".

(b) REGULATIONS AND EFFECTIVE DATE.—The Commissioner of Social Security shall issue regulations under the amendment made by subsection (a) not later than 1 year after the date of the enactment of this Act. Systems controls developed by the Commissioner pursuant to such amendment shall take effect upon the earlier of the issuance of such regulations or the end of such 1-year period.

(source: § 3075 of H.R. 10 (Dennis Hastert), 108th Cong.)

SEC. X. STUDY RELATING TO MODIFICATION OF THE SOCIAL SECURITY ACCOUNT NUMBERING SYSTEM TO SHOW WORK AUTHORIZATION STATUS.

(a) IN GENERAL.—As soon as practicable after the date of the enactment of this Act, the Commissioner of Social Security, in consultation with the Secretary of Homeland Security, shall undertake a study to examine the best method of modifying the social security account number assigned to individuals who—

(1) are not citizens of the United States,

(2) have not been admitted for permanent residence, and

(3) are not authorized by the Secretary of Homeland Security to work in the United States, or are so authorized subject to one or more restrictions so as to include an indication of such lack of authorization to work or such restrictions on such an authorization.

(b) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Commissioner shall report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate regarding the results of the study undertaken under this section. Such report shall include the Commissioner's recommendations of feasible options for modifying the social security account number in the manner described in subsection (a).

(source: § 3076 of H.R. 10 (Dennis Hastert), 108th Cong.)

D: Foreign Identification Documents

SEC. X. ALIEN IDENTIFICATION STANDARDS.

Section 211 of the Immigration and Nationality Act (8 U.S.C. 1181) is amended by adding at the end the following:

"(d) For purposes of establishing identity to any Federal employee, an alien present in the United States may present any document issued by the Attorney General or the Secretary of Homeland Security under the authority of one of the immigration laws (as defined in section 101(a)(17)), or an unexpired lawfully issued foreign passport. Subject to the limitations and exceptions in immigration laws (as so defined), no other document may be presented for those purposes.".

(source: § 3005 of H.R. 10 (Dennis Hastert), 108th Cong.)

SEC. X. FOREIGN-ISSUED FORMS OF IDENTIFICATION PROHIBITED AS PROOF OF IDENTITY TO OPEN ACCOUNTS AT FINANCIAL INSTITUTIONS.

Section 5318(l) of title 31, United States Code (relating to identification and verification of accountholders) is amended—

(1) by redesignating paragraph (6) as paragraph (7); and

(2) by inserting after paragraph (5) the following new paragraph:

"(6) PROHIBITION ON USE OF IDENTIFICATION ISSUED BY A FOREIGN GOVERNMENT.—A financial institution may not accept any form of identification that was issued by a foreign government, other than a passport, for use in verifying the identity of a person in connection with the opening of an account by such person at the financial institution, including a matricula consular issued in the United States by a duly authorized consular officer of the Government of Mexico.".

(source: H.R. 815 (Scott Garrett), 109th Cong.)

XXI: Biden Administration Abuses

SEC. X. SUSPENSION OF CERTAIN LAWS SUBJECT TO ABUSE.

(a) WAIVER OF INADMISSIBILITY OF ALIENS UNLAWFULLY PRESENT.—Section 212(a)(9)(B)(v) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(9)(B)(v)) is suspended during the period beginning on the date of the enactment of this Act and ending on January 21, 2025.

(b) PAROLE.—Section 212(d)(5)(A) of the Immigration and Nationality Act (8 U.S.C. 1182(d)(5)(A)) is suspended during the period beginning on the date of the enactment of this Act

and ending on January 21, 2025 except to the extent that the discretionary authority conferred under such section is exercised for the purpose of paroling an alien into the United States—

(1) to be tried for a crime, or to be a witness at trial, upon the request of a Federal, State, or local law enforcement agency;

(2) for any other significant law enforcement or national security purpose; or

(3) for a humanitarian purpose where the life of the alien is imminently threatened.

(c) CANCELLATION OF REMOVAL AND ADJUSTMENT OF STATUS FOR CERTAIN NONPERMANENT RESIDENTS.—Section 240A(b)(1) of the Immigration and Nationality Act (8 U.S.C. 1229b(b)(1)) is suspended during the period beginning on the date of the enactment of this Act and ending on January 21, 2025

(d) DESIGNATION FOR TEMPORARY PROTECTED STATUS.—No foreign state may be designated or re-designated under section 244(b) of the Immigration and Nationality Act (8 U.S.C. 1254a(b)) during the period beginning on the date of the enactment of this Act and ending on January 21, 2025 The preceding sentence shall not be construed to affect any extension of a designation under paragraph (3)(C) of such section, if the designation was made prior to the date of the enactment of this Act.

(e) DEFINITION OF UNAUTHORIZED ALIEN.—Section 274A(h)(3) of the Immigration and Nationality Act (8 U.S.C. 1324a(h)(3)) is deemed amended during the period beginning on the date of the enactment of this Act and ending on January 21, 2025, by striking ", or by the Attorney General".

(f) DEFERRED ACTION; EXTENDED VOLUNTARY DEPARTURE.—The Secretary of Homeland Security may not grant deferred action or extended voluntary departure to any alien during the period beginning on the date of the enactment of this Act and ending on January 21, 2025, except to the extent that such grant authority is exercised for the purpose of maintaining the alien in United States—

(1) to be tried for a crime, or to be a witness at trial, upon the request of a Federal, State, or local law enforcement agency;

(2) for any other significant law enforcement or national security purpose; or

(3) for a humanitarian purpose where the life of the alien is imminently threatened.

(g) REGULATIONS.—

(1) IN GENERAL.—The following provisions of title 8, Code of Federal Regulations, are suspended during the period beginning on the date of the enactment of this Act and ending on January 21, 2025:

(A) Section 274a.12(a)(11).

(B) Section 274a.12(c)(11).

(C) Section 274a.12(c)(14).

(D) Section 274a.12(c)(16).

(E) Section 274a.12(c)(18).

(2) REFERENCES.—Any reference in paragraph (1) to a section of the Code of Federal Regulations shall be construed to be a reference to that section and any successor section.

(h) TREATMENT OF CERTAIN BENEFITS.—In the case of any immigration benefit granted during the period beginning on [X], and ending on the date of the enactment of this Act under any authority suspended under subsection (b), (e), (f), or (g), the benefit is revoked as of the date of the enactment of this Act.

(source: § 2 of H.R. 2497 (Lamar Smith), 112th Cong.)

SEC. X. REPORTS TO CONGRESS ON THE EXERCISE AND ABUSE OF PROSECUTORIAL DISCRETION.

(a) IN GENERAL.—Not later than 180 days after the end of each fiscal year, the Secretary of Homeland Security and the Attorney General shall each provide to the Committees on the Judiciary of the House of Representatives and of the Senate a report on the following:

(1) Aliens apprehended or arrested by State or local law enforcement agencies who were identified by the Department of Homeland Security in the previous fiscal year and for whom the Department of Homeland Security did not issue detainers and did not take into custody despite the Department of Homeland Security's findings that the aliens were inadmissible or deportable.

(2) Aliens who were applicants for admission in the previous fiscal year but not clearly and beyond a doubt entitled to be admitted by an immigration officer and who were not detained as required pursuant to section 235(b)(2)(A) of the Immigration and Nationality Act (8 U.S.C. 1225(b)(2)(A)).

(3) Aliens who in the previous fiscal year were found by Department of Homeland Security officials performing duties related to the adjudication of applications for immigration benefits or the enforcement of the immigration laws to be inadmissible or deportable who were not issued notices to appear pursuant to section 239 of such Act (8 U.S.C. 1229) or placed into removal proceedings pursuant to section 240 (8 U.S.C. 1229a), unless the aliens were placed into expedited removal proceedings pursuant to section

235(b)(1)(A)(i) (8 U.S.C. 1225(b)(1)(A)(5)) or section 238 (8 U.S.C. 1228), were granted voluntary departure pursuant to section 240B, were granted relief from removal pursuant to statute, were granted legal nonimmigrant or immigrant status pursuant to statute, or were determined not to be inadmissible or deportable.

(4) Aliens issued notices to appear that were cancelled in the previous fiscal year despite the Department of Homeland Security's findings that the aliens were inadmissible or deportable, unless the aliens were granted relief from removal pursuant to statute, were granted voluntary departure pursuant to section 240B of such Act (8 U.S.C. 1229c), or were granted legal nonimmigrant or immigrant status pursuant to statute.

(5) Aliens who were placed into removal proceedings, whose removal proceedings were terminated in the previous fiscal year prior to their conclusion, unless the aliens were granted relief from removal pursuant to statute, were granted voluntary departure pursuant to section 240B, were granted legal nonimmigrant or immigrant status pursuant to statute, or were determined not to be inadmissible or deportable.

(6) Aliens granted parole pursuant to section 212(d)(5)(A) of such Act (8 U.S.C. 1182(d)(5)(A)).

(7) Aliens granted deferred action, extended voluntary departure or any other type of relief from removal not specified in the Immigration and Nationality Act or where determined not to be inadmissible or deportable.

(b) CONTENTS OF REPORT.—The report shall include a listing of each alien described in each paragraph of subsection (a), including when in the possession of the Department of Homeland Security their names, fingerprint identification numbers, alien registration numbers, and reason why each was granted the type of prosecutorial discretion received. The report shall also include current criminal histories on each alien from the Federal Bureau of Investigation.

(source: § 605 of H.R. 2278 (Trey Gowdy), 113th Cong.)

XXII: Public Benefits

A. Eligibility of Classes of Aliens for Public Benefits

SEC. X. DEFINITION OF FEDERAL MEANS-TESTED PUBLIC BENEFIT.—

Section 1613 of Title 8 is amended by adding a new subsection (e) at the end to read as follows**:**

"(e) For purposes of this section, the term "Federal means-tested public benefit" means any public benefit (including cash, medical, housing, food, and social services) provided or funded in whole or in part by the Federal Government in which the eligibility of an individual, household,

or family eligibility unit for the benefit or the amount of the benefit, or both, are determined on the basis of income, resources, or financial need of the individual, household, or unit.".

(source: § 501(e) of H.R. 2202 (Lamar Smith), 104th Cong., conference report)

SEC. X. INELIGIBILITY FOR HEALTH CARE SUBSIDIES.

Section 1611(c)(1) of Title 8 is amended by—

(1) striking "and" in subparagraph (A);

(2) striking the period in subparagraph (B) and inserting "; and"; and

(3) inserting a new subparagraph (C) to read as follows:

"(C) 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 in section 1402(e) of the Patient Protection and Affordable Care Act (42 U.S.C. 18071(e)).".

(source: § 2107 of H.R. 4760 (Bob Goodlatte), 115th Cong.)

SEC. X. ALIENS WHO ARE NOT QUALIFIED ALIENS OR NONIMMIGRANTS INELIGIBLE FOR STATE AND LOCAL PUBLIC BENEFITS.

(a) IN GENERAL.—Section 1621 of Title 8 is amended by striking subsection (d).

(b) EFFECTIVE DATE.—This section takes effect six months after the date of enactment and applies to all applicable state and local public benefits provided on or after that date.

SEC. X. FEDERAL PUBLIC BENEFITS FOR ASYLEES

(a) 8 U.S.C. 1612 is amended by

(1) in subsection (a)(2)(A)

(A) in the title, striking "and asylees"; and

(B) striking clause (ii) and redesignating succeeding clauses accordingly; and

(2) in subsection (b)(2)(A)

(A) in the title, striking "and asylees";

(B) in clause (i), striking subclause (ii) and redesignate succeeding subclauses accordingly

(C) in clause (ii), strike subclause (ii) and redesignating succeeding subclauses accordingly.

(b) 8 U.S.C. 1613(b)(1), is amended by

(1) in the title, striking "and asylees"; and

(2) striking subparagraph (B) and redesignating succeeding subparagraphs accordingly.

SEC. X. MAKING UNAUTHORIZED ALIENS INELIGIBLE FOR UNEMPLOYMENT BENEFITS.

(a) IN GENERAL.—Notwithstanding any other provision of law, no unemployment benefits shall be payable (in whole or in part) out of Federal funds to the extent the benefits are attributable to any employment of the alien in the United States for which the alien was not granted employment authorization pursuant to Federal law.

(b) PROCEDURES.—Entities responsible for providing unemployment benefits subject to the restrictions of this section shall make such inquiries as may be necessary to assure that recipients of such benefits are eligible consistent with this section.

(source: § 602 of H.R. 2202 (Lamar Smith), 104th Cong., as passed by the House)

SEC. X. PAYMENT OF PUBLIC ASSISTANCE BENEFITS.

The payment or provision of any benefits under any program of assistance provided or funded, in whole or in part, by the Federal Government for which eligibility (or the amount of assistance) is based on financial need (other than those described in section 1611(b) of Title 8) shall be made only through an individual or person who is not ineligible to receive such benefits under such program on the basis of immigration status.

(source: § 607 of H.R. 2202 (Lamar Smith), 104th Cong., as passed by the House)

SEC. X. ELIGIBILITY FOR CHILD TAX CREDIT.

(a) IN GENERAL.—Section 24(e) of the Internal Revenue Code of 1986 is amended to read as follows:

"(e) IDENTIFICATION REQUIREMENTS.—

"(1) IN GENERAL.—No credit shall be allowed under this section to a taxpayer with respect to any qualifying child unless the taxpayer includes on the return of tax for the taxable year—

"(A) the name of such qualifying child, and

"(B) the valid identification number of the taxpayer (and, in the case of a joint return, the taxpayer's spouse) and such qualifying child.

"(2) VALID IDENTIFICATION NUMBER.—

"(A) IN GENERAL.—For purposes of this subsection, the term 'valid identification number' means—

"(i) in the case of the taxpayer and any spouse of the taxpayer, a social security number issued to the individual by the Social Security Administration on or before the due date for filing the return for the taxable year, and

"(ii) in the case of a qualifying child, a social security number issued to such child by the Social Security Administration on or before the due date for filing such return.

"(B) EXCEPTION FOR INDIVIDUALS PROHIBITED FROM ENGAGING IN EMPLOYMENT IN UNITED STATES.—For purposes of subparagraph (A)(i) and subsection (h)(4)(C), the term 'social security number' shall not include the social security number of an individual who is prohibited from engaging in employment in the United States.".

(b) CONFORMING AMENDMENTS.—Subsection (h) of section 24 of the Internal Revenue Code of 1986 is amended—

(1) in paragraph (1), by striking "(7)" and inserting "(6)";

(2) in paragraph (4), by amending subparagraph (C) to read as follows:

"(C) SOCIAL SECURITY NUMBER REQUIRED.—Subparagraph (A) shall not apply with respect to any dependent of the taxpayer unless the taxpayer includes on the return of tax for the taxable year, for both the taxpayer and the dependent, a social security number issued to each such individual by the Social Security Administration on or before the due date for filing such return."; and

(3) by striking paragraph (7).

(c) EFFECTIVE DATE.—The amendments made by this subsection shall apply to taxable years ending after the date of the enactment of this Act.

(source: § 3 of H.R. 3146 (James Inhofe), 117th Cong.)

SEC. X. ELIGIBILITY FOR EARNED INCOME TAX CREDIT

(a) Subsection (m) of section 32 of the Internal Revenue Code of 1986 is amended to read as follows:

"(m) IDENTIFICATION NUMBERS.—

"(1) IN GENERAL.—Solely for purposes of subsections (c)(1)(E) and (c)(3)(D), a taxpayer identification number means a social security number issued to an individual by the Social Security Administration on or before the due date for filing the return for the taxable year.

"(2) EXCEPTION FOR INDIVIDUALS PROHIBITED FROM ENGAGING IN EMPLOYMENT IN UNITED STATES.—For purposes of paragraph (1), in the case of subsection (c)(1)(E), the term 'social security number' shall not include the social security number of an individual who is prohibited from engaging in employment in the United States.".

(b) EFFECTIVE DATE.—The amendment made by this subsection shall apply to taxable years ending after the date of the enactment of this Act.

(source: § 3 of H.R. 3146 (James Inhofe), 117th Cong.)

B. Verification of Eligibility for Public Benefits

SEC. X. REQUIRING PROOF OF IDENTITY FOR FEDERAL CONTRACTS, GRANTS, LOANS, LICENSES, AND PUBLIC ASSISTANCE.

(a) IN GENERAL.—In considering an application for a Federal contract, grant, loan, or license, or for public assistance under a program described in paragraph (2), a Federal agency shall require the applicant to provide proof of identity under paragraph (3) to be considered for such Federal contract, grant, loan, license, or public assistance.

(b) PUBLIC ASSISTANCE PROGRAMS COVERED.—The requirement of proof of identity under paragraph (1) shall apply to the following Federal public assistance programs (and include any successor to such a program as identified by the Attorney General in consultation with other appropriate officials):

(1) SSI.—The supplemental security income program under title XVI of the Social Security Act, including State supplementary benefits programs referred to in such title.

(2) AFDC.—The program of aid to families with dependent children under part A or E of title IV of the Social Security Act.

(3) SOCIAL SERVICES BLOCK GRANT.—The program of block grants to States for social services under title XX of the Social Security Act.

(4) MEDICAID.—The program of medical assistance under title XIX of the Social Security Act.

(5) FOOD STAMPS.—The program under the Food Stamp Act of 1977.

(6) HOUSING ASSISTANCE.—Financial assistance as defined in section 214(b) of the Housing and Community Development Act of 1980.

(c) DOCUMENTS THAT SHOW PROOF OF IDENTITY.—

(1) IN GENERAL.—Any one of the documents described in subparagraph (B) may be used as proof of identity under this subsection if the document is current and valid. No other document or documents shall be sufficient to prove identity.

(2) DOCUMENTS DESCRIBED.—The documents described in this subparagraph are the following:

(A) A United States passport (either current or expired if issued both within the previous 20 years and after the individual attained 18 years of age).

(B) A resident alien card.

(C) A State driver's license, if presented with the individual's social security account number card.

(D) A State identity card, if presented with the individual's social security account number card.

(source: § 601 of H.R. 2202 (Lamar Smith), 104th Cong., as reported by the Judiciary Committee)

SEC. X. VERIFICATION REQUIREMENT FOR NONPROFIT CHARITABLE ORGANIZATIONS

Section 432 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1642) is amended by striking subsection (d).

(source: § 432 of Pub. L. No. 104-193, replacing § 508 of IIRIRA)

SEC. X. VERIFICATION OF ELIGIBILITY FOR HOUSING ASSISTANCE.

(a) 42 U.S.C. 1436a(i) is amended to read:

"(i) VERIFICATION OF ELIGIBILITY.—

"(1) IN GENERAL.—No individual or family applying for financial assistance may receive such financial assistance prior to the affirmative establishment and verification of eligibility of the individual or each family member under subsection (d) by the applicable Secretary or other appropriate entity.

"(2) RULES APPLICABLE TO PUBLIC HOUSING AGENCIES.—A public housing agency (as that term is defined in section 3 of the United States Housing Act of 1937 [42 U.S.C. 1437a])—in carrying out subsection (d)—

"(A) may initiate procedures to affirmatively establish or verify the eligibility of an individual or family under this section at any time at which the public housing agency determines that such eligibility is in question, regardless of whether or not that individual or family is at or near the top of the waiting list of the public housing agency;

"(B) shall affirmatively establish or verify the eligibility of an individual or family under this section in accordance with the procedures set forth in section 1324a(b)(1) of title 8; and

"(C) shall have access to any relevant information contained in the SAVE system (or any successor thereto) that relates to any individual or family applying for financial assistance.".

(b) 42 U.S.C. 1436a(b)(2) is amended to read:

"(2) No financial assistance shall be made available to a family by the Secretary of Housing and Urban Development until the eligibility of all individuals who are members of the family has been affirmatively established under the program of financial assistance and under this section.".

C. Public Charge Ground of Deportability

SEC. X. GROUND FOR DEPORTATION.

(a) IMMIGRANTS.—Section 241(a)(5) (8 U.S.C. 1251(a)(5)) is amended to read as follows:

"(5) PUBLIC CHARGE.—

"(A) IN GENERAL.—

"(i) Except as provided in subparagraph (B), an immigrant who during the public charge period becomes a public charge, regardless of when the cause for becoming a public charge arises, is deportable.

"(ii) The immigrant shall be subject to deportation under this paragraph only if the deportation proceeding is initiated not later than the end of the 7-year period beginning on the last date the immigrant receives a benefit described in subparagraph (D) during the public charge period.

"(B) EXCEPTIONS.—Subparagraph (A) shall not apply--

"(i) to an alien granted asylum under section 208;

"(ii) to an alien admitted as a refugee under section 207; or

"(iii) if the cause of the alien's becoming a public charge--

"(I) arose after entry in the case of an alien who entered as an immigrant or after adjustment to lawful permanent resident status in the case of an alien who entered as a nonimmigrant, and

"(II) was a physical illness or physical injury so serious the alien could not work at any job, or was a mental disability that required continuous institutionalization.

"(C) DEFINITIONS.—

"(i) PUBLIC CHARGE PERIOD.—For purposes of subparagraph (A), the term `public charge period' means the period ending 7 years after the date on which the alien attains the status of an alien lawfully admitted for permanent residence (or attains such status on a conditional basis).

"(ii) PUBLIC CHARGE.—For purposes of subparagraph (A), the term `public charge' includes any alien who receives benefits described in subparagraph (D) for an aggregate period of at least 12 months or 36 months in the case of an alien described in subparagraph (E).

"(D) BENEFITS DESCRIBED.—

"(i) IN GENERAL.—Subject to clause (ii), the benefits described in this subparagraph are means-tested public benefits defined under section 213A(e)(1).

"(ii) EXCEPTIONS.—Benefits described in this subparagraph shall not include the following:

"(I) Any benefits to which the exceptions described in section 213A(e)(2) apply.

"(II) Emergency medical assistance (as defined in subparagraph (F)).

"(III) Payments for foster care and adoption assistance under parts B and E of title IV of the Social Security Act made on the child's behalf under such part.

"(IV) Benefits under laws administered by the Secretary of Veterans Affairs and any other benefit available by reason of service in the United States Armed Forces.

"(V) Benefits under the Head Start Act.

"(VI) Benefits under the Job Training Partnership Act.

"(VII) Benefits under any English as a second language program.

"(iii) SUCCESSOR PROGRAMS.—Benefits described in this subparagraph shall include any benefits provided under any successor program as identified by the Attorney General in consultation with other appropriate officials.

"(E) SPECIAL RULE FOR BATTERED SPOUSE AND CHILD.—Subject to the second sentence of this subparagraph, an alien is described under this subparagraph if the alien demonstrates that--

"(i)(I) the alien has been battered or subjected to extreme cruelty in the United States by a spouse or a parent, or by a member of the spouse or parent's family residing in the same household as the alien and the spouse or parent consented or acquiesced to such battery or cruelty, or

"(II) the alien's child has been battered or subjected to extreme cruelty in the United States by a spouse or parent of the alien (without the active participation of the alien in the battery or cruelty), or by a member of the spouse or parent's family residing in the same household as the alien when the spouse or parent consented or acquiesced to and the alien did not actively participate in such battery or cruelty;

"(ii) the need for benefits described in subparagraph (D) beyond an aggregate period of 12 months has a substantial connection to the battery or cruelty described in clause (i); and

"(iii) any battery or cruelty under clause (i) has been recognized in an order of a judge or an administrative law judge or a prior determination of the Service.

An alien shall not be considered to be described under this subparagraph during any period in which the individual responsible for such battery or cruelty resides in the same household or family eligibility unit as the individual subjected to such battery or cruelty.

"(F) EMERGENCY MEDICAL ASSISTANCE.—

"(i) IN GENERAL.—For purposes of subparagraph (C)(ii)(II), the term `emergency medical assistance' means medical assistance under title XIX of the Social Security Act (or any successor program to such title) for care and services that are necessary for the treatment of an emergency medical condition of the alien involved and are not related to an organ transplant procedure.

"(ii) EMERGENCY MEDICAL CONDITION DEFINED.—For purposes of this subparagraph, the term `emergency medical condition' means a medical condition (including emergency labor and delivery) manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in—

"(I) placing the patient's health in serious jeopardy,

"(II) serious impairment to bodily functions, or

"(III) serious dysfunction of any bodily organ or part.".

(source: § 532 of H.R. 2202 (Lamar Smith), 104th Cong., conference report)

D. Naturalization

SEC. X. INELIGIBILITY TO NATURALIZE FOR ALIENS DEPORTABLE AS PUBLIC CHARGES.

(a) IN GENERAL.—Chapter 2 of title III of the Act is amended by inserting after section 315 the following new section:

"Ineligibility to naturalize for persons deportable as public charge

"Sec. 315A. A person shall not be naturalized if the person is deportable as a public charge under section 241(a)(5). The Secretary of Homeland Security shall make a determination that each applicant for naturalization is not deportable as a public charge under section 241(a)(5).".

(b) CLERICAL AMENDMENT.—The table of contents is amended by inserting after the item relating to section 315 the following:

"Sec. 315A. Ineligibility to naturalize for persons deportable as public charge".

SEC. X. SETTLEMENT OF CLAIMS PRIOR TO NATURALIZATION.

Section 316 of the Immigration and Nationality Act (8 U.S.C. 1427) is amended—

(1) in subsection (a), by striking "and" before "(3)", and by inserting before the period at the end the following:

", and (4) in the case of an applicant that has received assistance under a means-tested public benefits program (as defined in subsection (f)(3) of section 213A) administered by a Federal, State, or local agency and with respect to which amounts may be owing under an affidavit of support executed under such section, provides satisfactory evidence that there are no outstanding amounts that may be owed to any such Federal, State, or local agency pursuant to such affidavit by the sponsor who executed such affidavit, except as provided in subsection (g)"; and

(2) by adding at the end the following new subsection:

"(g) Clause (4) of subsection (a) shall not apply to an applicant where the applicant can demonstrate that--

"(A) either—

"(i) the applicant has been battered or subject to extreme cruelty in the United States by a spouse or parent or by a member of the spouse or parent's family residing in the same household as the applicant and the spouse or parent consented or acquiesced to such battery or cruelty, or

"(ii) the applicant's child has been battered or subject to extreme cruelty in the United States by the applicant's spouse or parent (without the active participation of the applicant in the battery or extreme cruelty), or by a member of the spouse or parent's family residing in the same household as the applicant when the spouse or parent consented or acquiesced to and the applicant did not actively participate in such battery or cruelty;

"(B) such battery or cruelty has led to the issuance of an order of a judge or an administrative law judge or a prior determination of the Service; and

"(C) the need for the public benefits received as to which amounts are owing had a substantial connection to the battery or cruelty described in subparagraph (A).".

(source: § 632(c) of H.R. 2202 (Lamar Smith), 104th Cong., as passed by the House)

E. Miscellaneous

SEC. X. LIMITATION ON ELIGIBILITY FOR PREFERENTIAL TREATMENT OF ALIENS NOT LAWFULLY PRESENT ON BASIS OF RESIDENCE FOR HIGHER EDUCATION BENEFITS.

(a) Sec. X. is amended by striking "on the basis of residence within a State (or a political subdivision)"."

(b) EFFECTIVE DATE.—This section shall apply to benefits provided on or after the date of enactment.

SEC. X. REQUIREMENTS FOR SPONSOR'S AFFIDAVIT OF SUPPORT.

Section 213A(f)(1)(E) of the Immigration and Nationality Act (8 U.S.C. 1183a(f)(1)(E) is amended by striking "125 percent of the federal poverty line" and inserting:

"(i) 200 percent of the poverty level for the individual and the individual's family (including the alien and any other aliens with respect to whom the individual is a sponsor), or

"(ii) for an individual who is on active duty (other than active duty for training) in the Armed Forces of the United States, the means to maintain an annual income equal to at least 100 percent of the poverty level for the individual and the individual's family including the alien and any other aliens with respect to whom the individual is a sponsor).".

(source: § 632 of H.R. 2202 (Lamar Smith), 104th Cong., as passed by the House)

SEC. X. NO SOCIAL SECURITY CREDIT FOR WORK PERFORMED WHILE UNLAWFULLY PRESENT.

Sections 214(c)(1) and 223(a)(1)(C)(i) of the Social Security Act (42 U.S.C. 414(c)(1), 423(a)(1)(C)(i)), as added by section 211 of the Social Security Protection Act of 2004 (Public Law 108–203), are each amended by striking "at the time of assignment, or at any later time" and inserting "at the time any such quarters of coverage are earned".

XXIII: Finance Reform

A: Reimbursement for the Costs of Illegal Immigration

SEC. X. REIMBURSEMENTS FOR STATES AND POLITICAL SUBDIVISIONS FOR EXPENSES RELATED TO THE PRESENCE OF ILLEGAL ALIENS.

(a) IN GENERAL.—The Secretary of the Treasury shall establish a program for the purpose of reimbursing States, and political subdivisions of States, for expenses required to be incurred that are related to the presence within the geographical area of the State or political subdivision of aliens not lawfully present in the United States.

(b) EXPENSES DESCRIBED.—The expenses described in subsection (a) include, but are not limited to, the following:

(1) public elementary and secondary education;

(2) incarceration and detention; and

(3) public benefits described in section 411(b) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1621(b)).

(c) EXCEPTIONS.—Expenses are not reimbursable under this section if the Secretary of the Treasury determines that—

(1) the State or political subdivision has failed to submit sufficient documents, statements, or records necessary to support the request for reimbursement;

(2) the State or political subdivision otherwise has been substantially compensated for the expenses; or

(3) such compensation will be forthcoming in a reasonable period of time.

(d) PUBLIC ELEMENTARY AND SECONDARY EDUCATION.—

(1) IN GENERAL.—Compensation for a local educational agency under subsection (b)(1) shall be based on—

(A) the number of minor having not lawfully present in the United States who were in average daily attendance during the preceding school year at the schools of such agency and for whom such agency provided a free public education; multiplied by

(B) the average per-pupil expenditure of the State in which the local educational agency is located.

(2) DEFINITIONS.—For purposes of this subsection, the terms “average daily attendance”, “average per-pupil expenditure”, “free public education”, and “local educational agency” have the meanings given such terms in section 9101 of the Elementary and Secondary Education Act of 1965 2 (20 U.S.C. 7801).

(e) INCARCERATION AND DETENTION.—Compensation under subsection (b)(2) shall be the average cost of incarceration of a prisoner in the relevant State, as determined by the Attorney General.

(f) APPLICATIONS.—

(1) STATE APPLICATIONS.—A State desiring to receive reimbursement for expenses required to be incurred by the State and related to the presence within the geographical area of the State of aliens not lawfully present in the United States shall submit an application for such payment to the Secretary of the Treasury. Such application shall be submitted not later than September 30 of each year.

(2) LOCAL APPLICATIONS.—A political subdivision of a State desiring to receive reimbursement for expenses required to be incurred by the political subdivision and related to the presence within the geographical area of the political subdivision of aliens not lawfully present in the United States shall submit an application for such payment to the State. Subject to verification (as determined necessary by the State), the State shall include such local expenses in the State application submitted under paragraph (1). The Governor of the State shall establish deadlines for the submission of local applications under this paragraph, and shall distribute all funds received from the Secretary of the Treasury on behalf of a political subdivision of a State to the political subdivision.

(g) VERIFICATION OF IMMIGRATION STATUS OF ALIENS.—Notwithstanding any other provision of law, when used for purposes of establishing or demonstrating eligibility for reimbursement under this section, the head of each State or local public agency that incurs costs in connection with a benefit or service provided to an alien shall use the immigration status verification system of the Systematic Alien Verification For Entitlements Program (SAVE) of the Department of Homeland Security to determine the immigration status of such alien.

(source: § 2 of H.R. 369 (Renee Ellmers), 114th Cong.)

SEC. X. BORDER LANDOWNER COMPENSATION AND SECURITY GRANT PROGRAM.

(a) DEFINITIONS. In this section:

(1) IMPACTED PARTY.—The term "impacted party" means an individual who owns property within the border zone that has experienced theft or damage caused by an alien entering the United States at a time or place other than as designated by immigration officers (as provided for at 8 U.S.C. 1325(a)(1)).

(2) AT-RISK PARTY.—The term "at-risk party" means an individual who owns property within the border zone that they reasonably believe to be at risk of experiencing

theft or damage caused by an alien entering the United States at a time or place other than as designated by immigration officers (as provided for at 8 U.S.C. 1325(a)(1)).

(3) BORDER ZON.E.—The term "border zone" means the area of the United States that is within 10 miles of an international land or maritime border of the United States.

(b) BORDER LANDOWNER SECURITY GRANT PROGRAM. The Administrator of the Federal Emergency Management Agency shall establish a grant program to be known as the Border Landowner Security Grant Program to provide grants to impacted parties to cover losses or damage to property and to at-risk parties to improve the security of certain property.

(1) GRANTS TO IMPACTED PARTIES.

(A) IN GENERAL.—The Administrator may provide grants under this Act to impacted parties to cover loss or damages not otherwise covered by insurance to the property described in subsection (a) if such parties certify, to the satisfaction of the Administrator, that—

(i) such property was located in the border zone at the time the loss or damage occurred; and

(ii) the loss or damage was caused by an alien entering the United States at a time or place other than as designated by immigration officers (as provided for at 8 U.S.C. 1325(a)(1)).

(2) GRANTS TO AT-RISK PARTIES.

(A) IN GENERAL.—The Administrator may provide grants under this Act to at-risk parties to improve the physical security of property located within the border zone if such parties certify, to the satisfaction of the Administrator, that the parties reasonably believe that such property is at risk of loss or damage caused by an alien entering the United States at a time or place other than as designated by immigration officers (as provided for at 8 U.S.C. 1325(a)(1)).

(B) REPORT ON USE OF FUNDS.—Not later than 290 days after an at-risk party receives funds under this section, such party shall submit to the Administrator documentation on how the party spent such funds. Any funds that remain unspent on the day on which such documentation is submitted shall be returned to the Administrator for further provision under this section.

(3) REGULATIONS. The Administrator may issue such regulations as are necessary to carry out this subsection, including—

(A) requirements that applicants for funds under this Act submit evidentiary documentation, including property deeds, police reports, insurance coverage

documentation, and other documentation considered appropriate by the Administrator;

(B) a review process conducted by the Administrator or the inspector general of the Agency to review applications annually for waste, fraud, and abuse; and

(C) the applicable penalties for fraudulent claims or false statements.

(source: §§ 2-7 of H.R. 6120 (Stephanie Bice), 117th Cong.)

SEC. X. REIMBURSEMENT TO AGRICULTURAL PRODUCERS FOR LOSSES SUSTAINED DUE TO ILLEGAL IMMIGRATION.

(a) IN GENERAL.—Not later than 60 days after the date of the enactment of this Act, the Secretary of Agriculture shall establish a program under which the Secretary will reimburse agriculture producers for qualified damages due to illegal immigration, to be known as the Emergency Land and Food Program.

(b) APPLICATION.—

(1) IN GENERAL.—An agricultural producer seeking reimbursement under this Act shall submit an application to the Secretary in such time, in such manner, and containing such information as the Secretary may specify.

(2) RESPONSE.—The Secretary shall—

(A) determine whether to provide the amount of reimbursement requested in such application; and

(B) notify the agricultural producer submitting such application of that determination.

(3) VERIFICATION.—The Secretary shall establish a process under which the Secretary shall verify claims for reimbursement specified in an application submitted under paragraph (1) with a Federal law enforcement agency, the applicable State or local law enforcement agency, or a State agency designated by the Governor of the State in which the applicant is located.

(c) AMOUNT.—The maximum amount a single agricultural producer may receive as reimbursement under this section for a fiscal year shall not exceed [$100,000].

(d) PRIORITY.—

(1) IN GENERAL.—In providing reimbursements under this section, the Secretary shall give priority to applications submitted by agricultural producers who are located in counties determined under paragraph (2) to have a high level of illegal immigration.

(2) HIGH LEVEL OF ILLEGAL IMMIGRATION COUNTIES.—The Secretary shall consult with the Secretary of Homeland Security and the heads of other relevant Federal agencies to determine which counties in the United States have high levels of illegal immigration along the southern border of the United States.

(e) REPORT TO CONGRESS.—Not later than one year after the date of the enactment of this Act, and annually thereafter, the Secretary shall submit to the Committee on Agriculture, the Committee on Homeland Security, and the Committee on Appropriations of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry and Committee on Homeland Security and Governmental Affairs, and the Committee on Appropriations of the Senate a report on the nature of the payments made to agricultural producers under this section, including—

(1) the number of applications for reimbursement under this section that were approved;

(2) the number of such applications that were denied and the reasons for such denials; and

(3) data on the amount of reimbursement provided to each producer, the median amount such reimbursement, and the counties in which recipients of such payments are located.

(f) DEFINITIONS.—In this section:

(1) AGRICULTURE PRODUCER.—The term "agricultural producer" means a producer of an agricultural product (as defined in section 207 of the Agricultural Marketing Act of 1946 (7 U.S.C. 1626)), other than a processed or manufactured product.

(2) QUALIFIED DAMAGES.—The term "qualified damages" includes damages to property of an agricultural producer that are determined by a Federal law enforcement officer, a State or local law enforcement officer in the location involved, or the State agency designated by the Governor of the State involved to result from the actions of an alien present in the United States not lawfully present under the immigration laws (as such term is defined in section 101 of the Immigration and Nationality Act (8 U.S.C. 1101)), including—

(A) livestock loss and damage;

(B) crop loss and damage;

(C) damage to perimeter fences;

(D) damage to physical structures; and

(E) property loss and damage.

(source: § 2 of H.R. 4896 (August Pfluger), 117th Cong.)

SEC. X. REIMBURSEMENT OF ADDITIONAL COSTS RELATING TO THE INCARCERATION OF ILLEGAL ALIENS.

Section 241(i) of the Immigration and Nationality Act (8 U.S.C. 1231(i)) is amended—

(1) by striking "Attorney General" the first place such term appears and inserting "Secretary of Homeland Security";

(2) by striking "Attorney General" each place such term appears thereafter and inserting "Secretary:";

(3) in paragraph (1), by inserting "and medical expenses" after "incarceration";

(4) in paragraph (3)(A), by inserting "charged with or" before "convicted"; and

(5) by amending paragraph (5) to read as follows:

"(5) There are authorized to be appropriated to carry out this subsection such sums as may be necessary for fiscal year 202[2]] and each subsequent fiscal year.";

(6) by redesignating paragraphs (4), (5), and (6), as paragraphs (5), (6), and (7), respectively;

(7) in paragraph (7), as redesignated, by striking "(5)" and inserting "(6)"; and

(8) by inserting after paragraph (3) the following:

"(4) In the case of an alien whose immigration status is unable to be verified by the Secretary of Homeland Security, and who would otherwise be an undocumented criminal alien if the alien is not lawfully present in the United States, the Attorney General shall compensate the State or political subdivision of the State for the incarceration and medical expenses of the alien in accordance with paragraph (2).".

(sources: § 1 of S. 745 (Jeff Flake), 115th Cong.; § 113 of H.R. 2278 (Trey Gowdy), 113th Cong.)

SEC. X. REIMBURSEMENT OF INDIRECT COSTS RELATING TO THE INCARCERATION OF ILLEGAL ALIENS.

(a) IN GENERAL.—Section 501 of the Immigration Reform and Control Act of 1986 (8 U.S.C. 1365) is amended—

(1) in subsection (a), by striking "a State for" and all that follows through "State" and inserting the following: "each State and political subdivision of the State for—

"(1) costs incurred by the State or political subdivision for the imprisonment of any illegal alien who is convicted of a felony by such State; and

"(2) indirect costs related to the imprisonment described in paragraph (1)."; and

(2) by striking subsections (c) through (e) and inserting the following:

"(c) DEFINITIONS.—As used in this section—

"(1) the term 'indirect costs' includes costs relating to—

"(A) court proceedings, attorneys for units of local government, and detention of illegal aliens;

"(B) indigent defense;

"(C) State and local prosecution;

"(D) autopsies; and

"(E) translation and interpreter services; and

"(2) the term 'State' has the meaning given such term in section 101(a)(36).

"(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated [$500,000,000] for each of the fiscal years [X] through [X] to carry out subsection (a).".

(b) STATE ALLOCATIONS.—

(1) BASED ON PERCENTAGE OF ILLEGAL ALIENS.—

(A) IN GENERAL.—From the amount appropriated for a fiscal year pursuant to section 501(d) of the Immigration Reform and Control Act of 1986 (8 U.S.C. 1365(d)), the Attorney General shall allocate [$333,000,000] for States and political subdivisions of the States in accordance with subparagraph (B).

(B) FORMULA.—The amount allocated under this paragraph for each State (including political subdivisions of the State) for a fiscal year shall be equal to the product of—

(i) the total amount available to be allocated under this paragraph for that fiscal year; and

(ii) the percentage of illegal aliens residing in the United States who reside in such State.

(2) BASED ON NUMBER OF ILLEGAL ALIENS APPREHENSIONS IN STATES.—

(A) IN GENERAL.—From the amount appropriated for a fiscal year pursuant to such section 501(d), the Attorney General shall allocate [$167,000,000], in addition to amounts allocated under paragraph (1), for each of the States with the highest number of illegal alien apprehensions for such fiscal year.

(B) DETERMINATION OF ALLOTMENTS.—The amount allocated under this paragraph for a fiscal year for each State described in subparagraph (A) (including political subdivisions of the States) shall be equal to the product of—

(i) the total amount available to be allocated under this paragraph for the fiscal year; and

(ii) the percentage of all apprehensions of illegal aliens residing in the United States represented by apprehensions of illegal aliens in such State.

(source: § 3 of S. 1006 (Jon Kyl), 109th Cong.)

SEC. X. REIMBURSEMENT FOR COSTS OF INCARCERATING JUVENILE ALIENS.

(a) IN GENERAL.—Section 501 of the Immigration Reform and Control Act of 1986 (8 U.S.C. 1365) is amended—

(1) in subsection (a)(1), by inserting "or illegal juvenile alien who has been adjudicated delinquent or committed to a juvenile correctional facility by such State or locality" before the semicolon;

(2) in subsection (b), by inserting "(including any juvenile alien who has been adjudicated delinquent or has been committed to a correctional facility)" before "who is in the United States not lawfully present"; and

(3) by adding at the end the following:

"(f) JUVENILE ALIEN DEFINED.—In this section, the term 'juvenile alien' means an alien (as defined in section 101(a)(3) of the Immigration and Nationality Act) who has been adjudicated delinquent or committed to a correctional facility by a State or locality as a juvenile offender.".

(b) ANNUAL REPORT.—Section 332 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1366) is amended—

(1) by striking "and" at the end of paragraph (3);

(2) by striking the period at the end of paragraph (4) and inserting "; and"; and

(3) by adding at the end the following:

"(5) the number of illegal juvenile aliens (as defined in section 501(f) of the Immigration Reform and Control Act) that are committed to State or local juvenile correctional facilities, including the type of offense committed by each juvenile.".

(c) CONFORMING AMENDMENT.—Section 241(i)(3)(B) of the Immigration and Nationality Act (8 18 U.S.C. 1231(i)(3)(B)) is amended—

(1) by striking "or" at the end of clause (ii);

(2) by striking the period at the end of clause (iii) and inserting "; or"; and

(3) by adding at the end the following: "(iv) is a juvenile alien with respect to whom section 501 of the Immigration Reform and Control Act of 1986 applies.".

(source: § 104 of S. 1709 (Jon Kyl), 106th Cong.)

SEC. X. BORDER RELIEF GRANT PROGRAM.

(a) GRANTS AUTHORIZED.—

(1) IN GENERAL.—The Secretary is authorized to award grants, subject to the availability of appropriations, to an eligible law enforcement agency to provide assistance to such agency to address--

(A) criminal activity that occurs in the jurisdiction of such agency by virtue of such agency's proximity to the United States border; and

(B) the impact of any lack of security along the United States border.

(2) COMPETITIVE BASIS.—The Secretary shall award grants under this subsection on a competitive basis, except that the Secretary shall give priority to applications from any eligible law enforcement agency serving a community--

(A) with a population of less than 50,000; and

(B) located no more than 100 miles from a United States border with--

(i) Canada; or

(ii) Mexico.

(b) USE OF FUNDS.—Grants awarded pursuant to subsection (a) may only be used to provide additional resources for an eligible law enforcement agency to address criminal activity occurring along any such border, including--

(1) to obtain equipment;

(2) to hire additional personnel;

(3) to upgrade and maintain law enforcement technology;

(4) to cover operational costs, including overtime and transportation costs; and

(5) such other resources as are available to assist that agency.

(c) APPLICATION.—

(1) IN GENERAL.—Each eligible law enforcement agency seeking a grant under this section shall submit an application to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may reasonably require.

(2) CONTENTS.—Each application submitted pursuant to paragraph (1) shall—

(A) describe the activities for which assistance under this section is sought; and

(B) provide such additional assurances as the Secretary determines to be essential to ensure compliance with the requirements of this section.

(d) DEFINITIONS.—For the purposes of this section:

(1) ELIGIBLE LAW ENFORCEMENT AGENCY.—The term "eligible law enforcement agency" means a tribal, State, or local law enforcement agency—

(A) located in a county no more than 100 miles from a United States border with--

(i) Canada; or

(ii) Mexico; or

(B) located in a county more than 100 miles from any such border, but where such county has been certified by the Secretary as a High Impact Area.

(2) HIGH IMPACT AREA.—The term "High Impact Area" means any county designated by the Secretary as such, taking into consideration—

(A) whether local law enforcement agencies in that county have the resources to protect the lives, property, safety, or welfare of the residents of that county;

(B) the relationship between any lack of security along the United States border and the rise, if any, of criminal activity in that county; and

(C) any other unique challenges that local law enforcement face due to a lack of security along the United States border.

(e) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated $50,000,000 for each of fiscal years 2023 through 202[X] to carry out the provisions of this section.

(2) DIVISION OF AUTHORIZED FUNDS.—Of the amounts authorized under paragraph (1)—

(A) \2/3\ shall be set aside for eligible law enforcement agencies located in the 6 States with the largest number of undocumented alien apprehensions; and

(B) \1/3\ shall be set aside for areas designated as a High Impact Area under subsection (d).

(source: § 153 of S. 2611 (Arlen Specter), 109th Cong.)

B: Remittances

SEC. X. FEES FOR CERTAIN REMITTANCE TRANSFERS.

Section 920 of the Electronic Fund Transfer Act (relating to remittance transfers) (15 U.S.C. 1693o–1) is amended—

(1) by redesignating subsection (g) as subsection (i);

(2) by inserting after subsection (f) the following:

"(g) BORDER SECURITY FEE COLLECTION.—

"(1) IN GENERAL.—

"(A) FEES.—If the designated recipient of a remittance transfer is located in a foreign country described in subparagraph (B), a remittance transfer provider shall collect from the sender of such remittance transfer a remittance fee equal to [X] percent of the United States dollar amount to be transferred (excluding any fees or other charges imposed by the remittance transfer provider). Except as provided in subparagraph (C), such remittance fees shall be submitted to the Treasury to be expended for:

"(i) the construction or acquisition of detention facilities pursuant to sec. X of X; and

"(ii) the construction of reinforced fencing in border area from Pacific Ocean to Gulf of Mexico pursuant to section 102(b)(1) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1103 note), as amended.

"(B) FOREIGN COUNTRIES.—Subparagraph (A) shall apply to designated recipients located in [Mexico, Guatemala, Belize, Cuba, the Cayman Islands, Haiti, the Dominican Republic, the Bahamas, Turks and Caicos, Jamaica, El Salvador, Honduras, Nicaragua, Costa Rica, Panama, Colombia, Venezuela, Aruba, Curacao, the British Virgin Islands, Anguilla, Antigua and Barbuda, Saint Kitts and Nevis, Montserrat, Guadeloupe, Dominica, Martinique, Saint Lucia, Saint Vincent and the Grenadines, Barbados, Grenada, Guyana, Suriname, French Guiana, Ecuador, Peru, Brazil, Bolivia, Chile, Paraguay, Uruguay, or Argentina.]

"(C) COSTS.—For the 5-year period beginning on the date of the enactment of this subsection, a remittance transfer provider may retain up to 5 percent of any remittance fees collected by such remittance transfer provider pursuant to subparagraph (A) to cover the costs of collecting and submitting such remittance fees.

"(2) FEE COLLECTION SYSTEM.—Not later than September 30, 20[22], the Bureau, in consultation with the Secretary of Homeland Security, the Secretary of the Treasury, and remittance transfer providers, shall develop and make available a system for remittance transfer providers to—

"(A) submit the remittance fees collected in accordance with paragraph (1)(A) to the Treasury; and

"(B) retain a portion of such remittance fees in accordance with paragraph (1)(C).

"(3) PENALTIES.—

"(A) Whoever, with the intent to evade a remittance fee to be collected in accordance with this subsection, and who has knowledge that, at the time of a remittance transfer, the value of the funds involved in the transfer will be further transferred to a recipient located in a country listed in paragraph (1)(B), requests or facilitates such remittance transfer to a designated recipient in a country that is not listed in paragraph (1)(B) shall be subject to a penalty of not more than $500,000 or twice the value of the funds involved in the remittance transfer, whichever is greater, or imprisonment for not more than 20 years, or both.

"(B) Any foreign country that, in the joint determination of the Secretary of Homeland Security, the Secretary of the Treasury, and the Secretary of State aids or harbors an individual conspiring to avoid the fee collected in accordance with this subsection shall be ineligible to receive foreign assistance and to participate in the visa waiver program or any other programs, at the discretion of the Secretaries described in this subparagraph.".

(3) BORDER SECURITY FEE ACCOUNT.—Section 286 of the Immigration and Nationality Act (8 U.S.C. 1356) is amended by creating a new subsection (w) to read as follows:

"(w) BORDER SECURITY ACCOUNT.—

"(1) All fees collected under 15 U.S.C. 1693o–1(g) shall be deposited as offsetting receipts in a separate account within the general fund of the Treasury of the United States and shall remain available until expended. Such account shall be known as the 'Border Security Fee Account'.

"(2)(A) Subject subparagraph (B), the Secretary of the Treasury shall refund out of the Border Security Fee Account, at least on a quarterly basis, amounts for expenses incurred for:

"(i) the construction or acquisition of detention facilities pursuant to sec. X of X; and

"(ii) the construction of reinforced fencing in border area from Pacific Ocean to Gulf of Mexico pursuant to section 102(b)(1) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1103 note), as amended.

"(B)(i) [X] percent of all fees collected under 15 U.S.C. 1693o–1(g) shall be refunded for expenses described in subparagraph (A)(i) and [X] percent shall be refunded for the expenses described in subparagraph (A)(ii).

(ii) Beginning with the fiscal year which begins after the effective date of this subsection, amounts required to be refunded in any fiscal year shall be refunded in accordance with estimates made in the budget request of the Secretary of Homeland Security for that fiscal year. Any proposed change in an amount specified in such budget request shall only be made after notification to the Committees on Appropriations of the House of Representatives and the Senate in and only if the Committees on the Judiciary of the House of Representatives and the Senate are notified at least fifteen days in advance.

(iii) The Secretary of Homeland Security shall not transfer or otherwise use any amount from the Fund for any purpose other than an authorized purpose described in subparagraph (2)(A).

"(3) Beginning one year after the date of enactment of this Act, and every year thereafter, the Secretary of Homeland Security shall prepare and submit to the Congress a report containing a statement of the financial condition of the Border Security Fee Account, including the beginning account balance, revenues, withdrawals, and ending account balance and projection for the next two fiscal years; and

(b) SUBMISSION OF PLAN.—Not later than ninety days after the date of enactment of this Act, the Secretary of Homeland Security shall submit in writing to the Committees on the Judiciary and the Committees on Appropriations of the House of Representatives and of the Senate a plan detailing the proposed implementation of section 286(w) of the Immigration and Nationality Act.

(sources: § 2 of H.R. 1813 (Mike Rogers), 115th Cong.; § 211 of S. 269 (Alan Simpson), 104th Cong.)

XXIV. VERIFICATION OF CITIZENSHIP OF VOTERS IN FEDERAL ELECTIONS

OPTION 1 (Mandatory)/OPTION 2 (Voluntary)

SEC. X. ESTABLISHMENT OF PROGRAM.

(a) IN GENERAL.--The Secretary of Homeland Security, in consultation with the Commissioner of Social Security, shall establish a Citizenship Verification Program (hereafter in this title referred to as the "Program") under which they shall respond to citizenship verification inquiries made by the chief election official of any State to verify the United States citizenship of

an individual applying to register to vote, or registered to vote, in elections for Federal office in the State.

(b) INFORMATION REQUIRED TO BE PROVIDED BY ELECTION OFFICIALS.--

(1) IN GENERAL.--In order to make an inquiry through the Program with respect to an individual, an election official shall provide the name, date of birth, and social security account number of the individual.

(2) AUTHORITY TO USE SOCIAL SECURITY ACCOUNT NUMBERS.--The chief election official of a State shall, for the purpose of making inquiries under the Program, use the social security account numbers issued by the Commissioner of Social Security, and shall ["*may", if program is to be voluntary*], for such purpose, require any individual who is or appears to be affected by a voter registration law of such State (or political subdivision thereof) to furnish to such official the social security account number (or numbers, if the individual has more than one such number) issued to the individual by the Commissioner.

(c) FEATURES OF PROGRAM.--

(1) IN GENERAL.--The Program shall be designed and operated--

(A) to respond to an inquiry concerning citizenship only in a case where determining whether an individual is a citizen of the United States is necessary for determining whether the individual is eligible to vote in an election for Federal office;

(B) in a manner that is uniform and nondiscriminatory;

(C) to maximize its reliability and ease of use, consistent with insulating and protecting the privacy and security of the underlying information;

(D) to permit inquiries to be made to the program through a toll-free telephone line or other toll-free electronic media;

(E) to respond to all inquiries made by authorized persons;

(F) with appropriate administrative, technical, and physical safeguards to prevent unauthorized disclosure of personal information, including violations of the requirements of section 205(c)(2)(C)(viii) of the Social Security Act; and

(G) to have reasonable safeguards against the selective or unauthorized use of the program. [*; and*]

(H) [*if voluntary] to be used on a voluntary basis, as a supplementary information source, by Federal, State, and local election officials for the purpose*

of assessing the eligibility of voter registration applicants, and administering voter registration, through citizenship verification.

(2) USE OF EMPLOYMENT ELIGIBILITY VERIFICATION SYSTEM.--To the extent practicable, in establishing the verification system used under the Program, the Secretary of Homeland Security, in consultation with the Commissioner of Social Security, shall use [E-Verify].

(sources: § 701 of H.R. 5013 (George Gekas), 107th Cong.; § 2 of H.R. 1428 (Steve Horn), 105th Cong.)

SEC. X. RESPONSES TO INQUIRIES.

(a) IN GENERAL.--The Program shall provide for a verification or a nonverification of an individual's United States citizenship by the Secretary of Homeland Security as soon as practicable after an initial inquiry to the Secretary.

(b) NOTICE TO INDIVIDUAL OF NONVERIFICATION.--If the chief election official of a State receives a notice under subsection (a) of nonverification of an individual's United States citizenship, the official shall provide the individual with a written notice of such nonverification, and shall include in the notice a description of the individual's right to use the process provided under subsection (c) for the prompt correction of erroneous information in the Program.

(c) REJECTION OF APPLICATION.--If the chief election official of a State receives a notice under subsection (a) of nonverification of the United States citizenship of an individual who is an applicant for voter registration in the State, the official shall reject the application (subject to the right to reapply), but only if each of the following conditions has been satisfied:

(1) The 30-day period beginning on the date notice of nonverification was mailed or otherwise provided to the individual pursuant to subsection (b) has elapsed.

(2) During such 30-day period, the official did not receive adequate verification of the individual's United States citizenship from the Program, pursuant to a new inquiry to the Program made by the official upon receipt of information (from the individual or through any other reliable source) that erroneous or incomplete material information previously in the Program has been updated, supplemented, or corrected.

(d) REMOVAL OF INELIGIBLE REGISTRANTS.--

(1) IN GENERAL.--If the chief election official of a State receives a notice under subsection (a) of nonverification of the United States citizenship of an individual who is registered to vote in elections for Federal office in the State, the official shall remove the name of the individual from the official list of eligible voters for elections for Federal office in the State (subject to the right to submit another voter registration application), but only if each of the following conditions has been satisfied:

(A) The 30-day period beginning on the date notice of nonverification was mailed or otherwise provided to the individual pursuant to subsection (b) has elapsed.

(B) During such 30-day period, the official did not receive adequate verification of the citizenship of the individual under subsection (c)(2).

(2) CONFORMING AMENDMENT.--52 U.S.C. 20507(a)(3) is amended--

(A) by striking "; or" at the end of subparagraph (B) and inserting a comma;

(B) by striking the semicolon at the end of subparagraph (C) and inserting ", or"; and

(C) by adding at the end the following new subparagraph:

"(D) in accordance with the citizenship verification program established and operated under [X]".

(source: § 702 of H.R. 5013 (George Gekas), 107th Cong.)

SEC. X. *REQUIRING [if mandatory]* VERIFICATION OF CITIZENSHIP OF REGISTERED VOTERS AND APPLICANTS.

(a) *REQUIRING [if mandatory]* INQUIRIES TO BE MADE UNDER PROGRAM FOR REGISTRANTS.--

(1) IN GENERAL.--*Not later than June 1, 2023 [if mandatory],* the chief election official of each State shall *["may", if voluntary]* submit a citizenship verification inquiry through the Program with respect to each individual who is registered to vote in elections for Federal office in the State as of such date.

(2) REMOVAL OF REGISTANTS WITHOUT VERIFIED CITIZENSHIP.--In accordance with the procedures described in section [X](d), the chief election official of each State shall remove from the list of individuals eligible to vote in elections for Federal office in the State any individual who is the subject of an inquiry under paragraph (1) whose United States citizenship is not verified under the Program.

(b) *REQUIRING [if mandatory]* INQUIRIES TO BE MADE UNDER PROGRAM FOR NEW APPLICANTS FOR VOTER REGISTRATION.--

(1) IN GENERAL.--The chief election official of each State shall [*"may", if voluntary*] submit a citizenship verification inquiry through the Program with respect to

each individual who, on or after the date on which the official submits inquiries under subsection (a), applies to register to vote in elections for Federal office in the State.

[*if mandatory*] *(2) PROHIBIITING REGISTRATION OF INDIVIDUALS WITHOUT VERIFIED CITIZENSHIP.--The chief election official of a State may not accept a voter registration application submitted by an individual whose United States citizenship is not verified under the Program.*

(3) SPECIAL RULE FOR STATES PERITTING INDIVIDUALS TO REGISTER ON OR NEAR DATE OF ELECTION.--In the case of a State which permits an individual to register to vote in an election for Federal office fewer than 60 days before the date of the election (including at the polling place at the time of voting in the election), the following rules shall apply with respect to such individual's application for registration ["*if the chief election official will submit a citizenship verification inquiry through the program", if voluntary*]:

(A) *Notwithstanding paragraph (2) [if mandatory]*, the individual shall be permitted to register to vote and vote in the election (if the individual is otherwise eligible to register to vote and vote under applicable State law).

(B) On the day after the date of the election, the chief State election official shall submit a citizenship verification inquiry with respect to the individual through the Program. The official may not submit the inquiry with respect to the individual prior to such date.

(C) An election official at the polling place shall transfer the ballot cast by the individual to an appropriate State or local election official to be set aside until the individual's citizenship can be verified under the Program.

(D) As soon as practicable after receiving the inquiry, the program shall provide the chief election official of the State with verification or nonverification of the individual's United States citizenship.

(E) Upon verification of the individual's United States citizenship through the program (including verification resulting from the individual's correction of erroneous information pursuant to section [X](c)), the State shall accept the individual's voter registration application and the individual's vote shall be tabulated.

(c) *["REQUIRING" if mandatory*] NEW APPLICANTS REGISTERING TO VOTE TO PROVIDE INFORMATION.--

(1) REGISTRATION WITH APPLICATION FOR DRIVER'S LICENSE.--

(A) IN GENERAL.--52 U.S.C. 20504(c)(2) is amended--

(i) by striking "and" at the end of subparagraph (D);

(ii) by striking the period at the end of subparagraph (E) and inserting "; and"; and

(iii) by adding at the end the following new subparagraph:

"(F) shall [*"may", if voluntary*] require the applicant to provide the applicant's Social Security number.".

(B) CONFORMING AMENDMENT.--52 U.S.C. 20504(c)(2)(A) is amended by inserting after "subparagraph (C)" the following: ", or the information described in subparagraph (F)".

(2) MAIL REGISTRATION.--52 U.S.C. 20508(b)(1) is amended by striking "may require only such identifying information" and inserting the following: "shall [*"may", if voluntary*] require the applicant to provide the applicant's Social Security number, and may require only such additional identifying information".

(3) EFFECTIVE DATE.--The amendments made by this subsection shall apply with respect to applicants registering to vote in elections for Federal office after the expiration of the 90-day period which begins on the date of the enactment of this Act.

(source: § 703 of H.R. 5013 (George Gekas), 107th Cong.)

SEC. X. RESPONSIBILITIES OF FEDERAL OFFICIALS.

(a) RESPONSIBILITIES OF THE COMMISSIONER OF SOCIAL SECURITY.--As part of the Program, the Commissioner of Social Security shall establish a reliable, secure method which compares the name, date of birth, and social security account number provided in an inquiry against such information maintained by the Commissioner, in order to verify (or not verify) the correspondence of the name, date of birth, and number provided and whether the individual is shown as a citizen of the United States on the records maintained by the Commissioner (including whether such records show that the individual was born in the United States). The Commissioner shall not disclose or release social security information (other than such verification or nonverification).

(b) RESPONSIBILITIES OF THE SECRETARY OF HOMELAND SECURITY.--As part of the Program, the Secretary of Homeland Security shall establish a reliable, secure method which compares the name and date of birth which are provided in an inquiry against information maintained by the Secretary in order to verify (or not verify) the validity of the information provided, the correspondence of the name and date of birth, and whether the individual is a citizen of the United States.

(c) UPDATING INFORMATION.--The Commissioner of Social Security and the Secretary of Homeland Security shall each update the information maintained under the Program in a manner that promotes the maximum accuracy of the Program and shall each provide a process for the prompt correction of erroneous information, including instances in which the Commission is made aware of erroneous information under the Program as a result of any action taken by an individual upon receipt of a written notice of nonverification under section [X](b).

(source: § 704 of H.R. 5013 (George Gekas), 107th Cong.)

SEC. X. LIMITATION ON USE OF THE PROGRAM AND ANY RELATED SYSTEMS.

(a) IN GENERAL.--Notwithstanding any other provision of law, nothing in this subtitle shall be construed to permit or allow any department, bureau, or other agency of the United States Government to utilize any information, data base, or other records assembled under the Program for any other purpose other than as provided for under this subtitle.

(b) NO NATIONAL IDENTIFICATION CARD.--Nothing in this subtitle shall be construed to authorize, directly or indirectly, the issuance or use of national identification cards or the establishment of a national identification card.

(source: § 705 of H.R. 5013 (George Gekas), 107th Cong.)

SEC. X. ENFORCEMENT.

(a) CIVIL ACTION BY ATTORNEY GENERAL.--The Attorney General may bring a civil action in an appropriate district court for such declaratory or injunctive relief as is necessary to carry out this title.

(b) PRIVATE RIGHT OF ACTION.—

(1) A person who is aggrieved by a violation of this title may provide written notice of the violation to the chief election official of the State involved.

(2) If the violation is not corrected within 90 days after receipt of a notice under paragraph (1), or within 20 days after receipt of the notice if the violation occurred within 120 days before the date of an election for Federal office, the aggrieved person may bring a civil action in an appropriate district court for declaratory or injunctive relief with respect to the violation.

(3) If the violation occurred within 30 days before the date of an election for Federal office, the aggrieved person need not provide notice to the chief election official of the State under paragraph (1) before bringing a civil action under paragraph (2).

(c) ATTORNEY'S FEES.--In a civil action under this section, the court may allow the prevailing party (other than the United States) reasonable attorney's fees, including litigation expenses, and costs.

(source: § 706 of H.R. 5013 (George Gekas), 107th Cong.)

SEC. X. CHIEF ELECTION OFFICIAL DEFINED.

In this title, the term "chief election official" means, with respect to a State, the individual designated by the State under 52 U.S.C. 20509 to be responsible for coordination of the State's responsibilities under such Act.

(source: § 707 of H.R. 5013 (George Gekas), 107th Cong.)

SEC. X. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Department of Homeland Security and the Social Security Administration for fiscal year and each succeeding fiscal year such sums as may be necessary to carry out the provisions of this title.

(source: § 708 of H.R. 5013 (George Gekas), 107th Cong.)

SEC. X. PERMITTING STATES TO REQUIRE APPLICANTS REGISTERING TO VOTE TO PROVIDE SOCIAL SECURITY NUMBER.

Causes (i) and (vi) of section 205(c)(2)(C) of the Social Security Act (42 U.S.C. 405(c)(2)(C)) are amended by inserting "voter registration," after "driver's license,".

(source: § 3 of H.R. 1428 (Steve Horn), 105th Cong.)

XXV: Legal Immigration Reform

A: Fraud/National Security Risks

SEC. X. BACKGROUND AND SECURITY CHECKS.

(a) REQUIREMENT TO COMPLETE BACKGROUND AND SECURITY CHECK.—Section 103 of the Immigration and Nationality Act (8 U.S.C. 1103) is amended by adding at the end the following:

"(h) Notwithstanding any other provision of law (statutory or nonstatutory), including but not limited to section 309 of Public Law 107–173, sections 1361 and 1651 of title 28, United States Code, and section 706(1) of title 5, United States Code, neither the Secretary of Homeland Security, the Attorney General, nor any court may—

"(1) grant, or order the grant of or adjudication of an application for adjustment of status to that of an alien lawfully admitted for permanent residence;

"(2) grant, or order the grant of or adjudication of an application for United States citizenship or any other status, relief, protection from removal, employment authorization, or other benefit under the immigration laws;

"(3) grant, or order the grant of or adjudication of, any immigrant or nonimmigrant petition; or

"(4) issue or order the issuance of any documentation evidencing or related to any such grant, until—

"(A) such background and security checks as the Secretary may in the Secretary's discretion require have been completed or updated to the satisfaction of the Secretary; and

"(B) any suspected or alleged materially false information, material misrepresentation or omission, concealment of a material fact, fraud or forgery, counterfeiting, or alteration, or falsification of a document, as determined by the Secretary, relating to the adjudication of an application or petition for any status (including the granting of adjustment of status), relief, protection from removal, or other benefit under this subsection has been investigated and resolved to the Secretary's satisfaction.

"(i) Notwithstanding any other provision of law (statutory or nonstatutory), including section 309 of the Enhanced Border Security and Visa Entry Reform Act (8 U.S.C. 1738), sections 1361 and 1651 of title 28, United States Code, and section 706(1) of title 5, United States Code, no court shall have jurisdiction to require any of the acts in subsection (h) to be completed by a certain time or award any relief for failure to complete or delay in completing such acts.".

(b) CONSTRUCTION.—

(1) IN GENERAL.—Chapter 4 of title III of the Immigration and Nationality Act (8 U.S.C. 1501 et seq.) is amended by adding at the end the following:

"CONSTRUCTION

"SEC. 362.

(a) IN GENERAL.—Nothing in this Act or any other law, except as provided in subsection (d), shall be construed to require the Secretary of Homeland Security, the Attorney General, the Secretary of State, the Secretary of Labor, or a consular officer to grant any application, approve any petition, or grant or continue any relief, protection from removal, employment authorization, or any other status or benefit under the immigration laws by, to, or on behalf of—

"(1) any alien deemed by the Secretary to be described in section 212(a)(3) or section 237(a)(4); or

"(2) any alien with respect to whom a criminal or other proceeding or investigation is open or pending (including, but not limited to, issuance of an arrest warrant, detainer, or indictment), where such proceeding or investigation is deemed by the official described in subsection (a) to be material to the alien's eligibility for the status or benefit sought.

"(b) DENIAL OR WITHHOLDING OF ADJUDICATION.—An official described in subsection (a) may, in the discretion of the official, deny (with respect to an alien described in paragraph (1) or (2) of subsection (a)) or withhold adjudication of pending resolution of the investigation or case (with respect to an alien described in subsection (a)(2) of this section) any application, petition, relief, protection from removal, employment authorization, status or benefit.

"(c) JURISDICTION.—Notwithstanding any other provision of law (statutory or nonstatutory), including section 309 of the Enhanced Border Security and Visa Entry Reform Act (8 U.S.C. 1738), sections 1361 and 1651 of title 28, United States Code, and section 706(1) of title 5, United States Code, no court shall have jurisdiction to review a decision to deny or withhold adjudication pursuant to subsection (b) of this section.

"(d) WITHHOLDING OF REMOVAL AND TORTURE CONVENTION.—This section does not limit or modify the applicability of section 241(b)(3) or the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, subject to any reservations, understandings, declarations and provisos contained in the United States Senate resolution of ratification of the Convention, as implemented by section 2242 of the Foreign Affairs Reform and Restructuring Act of 1998 (Public Law 105–277) with respect to an alien otherwise eligible for protection under such provisions.".

(2) CLERICAL AMENDMENT.—The table of contents for such Act is amended by inserting after the item relating to section 361 the following:

"Sec. 362. Construction.".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act and shall apply to applications for immigration benefits pending on or after such date.

(sources: § 206 of H.R. 2431 (Raul Labrador), 115th Cong.); § 206 of H.R. 2278 (Trey Gowdy), 113th Cong.)

SEC. X. INVESTIGATION OF FRAUD TO PRECEDE IMMIGRATION BENEFITS GRANT.

Section 103 of the Immigration and Nationality Act (8 U.S.C. 1103) is amended by adding at the end the following:

"(j) Notwithstanding any other provision of law, the Secretary of Homeland Security, the Attorney General, or any court may not--

"(1) grant or order the grant of adjustment of status to that of an alien lawfully admitted for permanent residence,

"(2) grant or order the grant of any other status, relief, protection from removal, or other benefit under the immigration laws, or

"(3) issue any documentation evidencing or related to such grant by the Attorney General, the Secretary, or any court, until any suspected or alleged fraud relating to the benefit application has been fully investigated and found to be unsubstantiated.".

(source: § 1308 of H.R. 4437 (F. James Sensenbrenner, Jr.), 109th Congress, as passed by the House)

SEC. X. FRAUD PREVENTION INITIATIVES.

(a) CREDIBLE EVIDENCE CONSIDERED.—Section 240A(b)(2) of the Immigration and Nationality Act (8 U.S.C. 1229b) is amended by striking subparagraph (D) and inserting the following:

"(D) CREDIBLE EVIDENCE CONSIDERED.—In acting on applications under this paragraph, the Attorney General shall consider any credible evidence relevant to the application, including credible evidence submitted by a national of the United States or an alien lawfully admitted for permanent residence accused of the conduct described in subparagraph (A)(i) so long as this evidence is not gathered in violation of section 384 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996.".

(b) APPLICATION OF SPECIAL RULE FOR BATTERED SPOUSE, PARENT, OR CHILD.—Section 204(a)(1) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)) is amended—

(1) in subparagraph (A)(iii), by inserting after subclause (II) the following:

"(III) (aa) Upon filing, each petition under this clause shall be assigned to an investigative officer for adjudication and final determination of eligibility.

"(bb) During the adjudication of each petition under this paragraph, an investigative officer from a local office of United States Citizenship and Immigration Services shall conduct an in-person interview of the alien who filed the petition. The investigative officer may also gather other evidence so long as this evidence is not gathered in violation of section 384 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. The investigative officer who conducted the in-person interview shall provide to the investigative officer who is responsible for the adjudication and final determination of eligibility a summary of the interview and any other evidence gathered and a determination of the credibility of the interviewee and other evidence gathered.

"(cc) All interviews under this clause shall be conducted under oath and subject to applicable penalties for perjury.

"(dd) The investigative officer who is responsible for the adjudication and final determination of eligibility shall determine whether the petitioner had filed previous applications or petitions for immigration benefits that had been denied and whether the petitioner had been the beneficiary of a previous petition filed pursuant to this section that had been denied. If either was the case, the investigative officer shall consider the denials and the reasons for the denials as part of the adjudication of the petition.

"(ee) The investigative officer who is responsible for the adjudication and final determination of eligibility shall as part of the adjudication of the petition consult with the investigative officer at the local office of United States Citizenship and Immigration Services who had conducted the in-person interview of the alien who filed the petition.

"(ff) Upon the conclusion of the adjudication process under this subparagraph, the investigative officer who is responsible for the adjudication and final determination of eligibility shall issue a final written determination to approve or deny the petition. The investigative officer shall not approve the petition unless the officer finds, in writing and with particularity, that all requirements under this paragraph, including proof that the alien is a victim of the conduct described in clause (iii)(I)(bb), have been proven by a preponderance of the evidence.

"(IV) During the adjudication of a petition under this clause—

"(aa) the petition shall not be granted unless the petition is supported by a preponderance of the evidence; and

"(bb) all credible evidence submitted by an accused national of the United States or alien lawfully admitted for permanent residence shall be considered so long as this evidence was not gathered in violation of section 384 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996.

"(V) (aa) During the adjudication of a petition under this paragraph, the investigative officer who is responsible for the adjudication and final determination of eligibility shall determine whether any Federal, State, territorial, tribal, or local law enforcement agency has undertaken an investigation or prosecution of the abusive conduct alleged by the petitioning alien.

"(bb) If an investigation or prosecution was commenced, the investigative officer shall—

"(AA) obtain as much information as possible about the investigation or prosecution; and

"(BB) consider that information as part of the adjudication of the petition.

"(cc) If an investigation or prosecution is pending, the adjudication of the petition shall be stayed pending the conclusion of the investigation or prosecution. If no investigation has been undertaken or if a prosecutor's office has not commenced a prosecution after the matter was referred to it, that fact shall be considered by the investigative officer as part of the adjudication of the petition.

"(VI) If a petition filed under this paragraph is denied, any obligations under an underlying affidavit of support previously filed by the accused national of the United States or alien lawfully admitted for permanent residence shall be terminated.";

(2) in subparagraph (A)(iv), by adding at the end the following: "The petition shall be adjudicated according to the procedures that apply to self-petitioners under clause (iii).";

(3) in subparagraph (A)(vii), by adding at the end the following continuation text:

"The petition shall be adjudicated according to the procedures that apply to self-petitioners under clause (iii).".

(4) in subparagraph (B)(ii), by inserting after subclause (II) the following:

"(III) (aa) Upon filing, each petition under this clause shall be assigned to an investigative officer for adjudication and final determination of eligibility.

"(bb) During the adjudication of each petition under this paragraph, an investigative officer from a local office of United States Citizenship and Immigration Services shall conduct an in-person interview of the alien who filed the petition. The investigative officer may also gather other evidence so long as this evidence is not gathered in violation of section 384 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. The investigative officer who conducted the in-person interview shall provide to the investigative officer who is responsible for the adjudication and final determination of eligibility a summary of the interview and any other evidence gathered and a determination of the credibility of the interviewee and other evidence gathered.

"(cc) All interviews under this clause shall be conducted under oath and subject to applicable penalties for perjury.

"(dd) The investigative officer who is responsible for the adjudication and final determination of eligibility shall determine whether the petitioner had filed previous applications or petitions for immigration benefits that had been denied and whether the petitioner had been the beneficiary of a previous petition filed pursuant to this section that had been denied. If either was the case, the investigative officer shall consider the denials and the reasons for the denials as part of the adjudication of the petition.

"(ee) The investigative officer who is responsible for the adjudication and final determination of eligibility shall as part of the adjudication of the petition consult with the investigative officer at the local office of United States Citizenship and Immigration Services who had conducted the in-person interview of the alien who filed the petition.

"(ff) Upon the conclusion of the adjudication process under this subparagraph, the investigative officer who is responsible for the adjudication and final determination of eligibility shall issue a final written determination to approve or deny the petition. The investigative officer shall not approve the petition unless the officer finds, in writing and with particularity, that all requirements under this paragraph, including proof that the alien is a victim of the conduct described in clause (ii)(I)(bb), have been proven by a preponderance of the evidence.

"(IV) During the adjudication of a petition under this clause—

"(aa) the petition shall not be granted unless the petition is supported by a preponderance of the evidence; and

"(bb) all credible evidence submitted by an accused national of the United States or alien lawfully admitted for permanent residence shall be considered so long as this evidence was not gathered in violation of section 384 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996.

"(V) (aa) During the adjudication of a petition under this clause, the investigative officer who is responsible for the adjudication and final determination of eligibility shall determine whether any Federal, State, territorial, tribal, or local law enforcement agency has undertaken an investigation or prosecution of the abusive conduct alleged by the petitioning alien.

"(bb) If an investigation or prosecution was commenced, the investigative officer shall—

"(AA) obtain as much information as possible about the investigation or prosecution; and

"(BB) consider that information as part of the adjudication of the petition.

"(cc) If an investigation or prosecution is pending, the adjudication of the petition shall be stayed pending the conclusion of the investigation or prosecution. If no investigation has been undertaken or if a prosecutor's office has not commenced a prosecution after the matter was referred to it, that fact shall be considered by the investigative officer as part of the adjudication of the petition.

"(VI) If a petition filed under this clause is denied, any obligations under an underlying affidavit of support previously filed by the accused national of the United States or alien lawfully admitted for permanent residence shall be terminated."; and

(5) in subparagraph (B)(iii), by adding at the end the following: "The petition shall be adjudicated according to the procedures that apply to self-petitioners under clause (ii).".

(source: § 801 of H.R. 4970 (Sandy Adams), 112th Cong.)

SEC. X. INFORMATION ON FOREIGN CRIMES.

Section 245(a) of the Immigration and Nationality Act (8 U.S.C. 1255(a)) is amended by striking "and (3)" and inserting the following "(3) the Secretary of Homeland Security or the Attorney General has thoroughly examined the records of the alien's countries of prior residence to determine whether the alien has committed a crime in any of those countries that renders the alien inadmissible, and (4)".

(source: § 609, H.R. 2431 (Raul Labrador), 115th Cong.)

SEC. X. ANTIFRAUD FEE.

(a) IMPOSITION OF FEE.—

(1) IN GENERAL.—Chapter 9 of title II of the Immigration and Nationality Act (8 U.S.C. 1351 et seq.) is amended by inserting after section 281 the following—

"antifraud fee

"Sec. 281A. (a) IN GENERAL.—In addition to any other fees authorized by law, the Secretary of Homeland Security shall impose an antifraud fee on a petitioner filing a petition for classification under section 204, or a petition for an alien's status as a nonimmigrant under section 101(a)(15) (excluding status under subparagraph (A), (B), (G), or (S) of such section).

"(b) AMOUNT.—The amount of the fee shall be $100 for each such petition.

"(c) DISPOSITION.—Fees collected under this section shall be deposited in the Treasury in accordance with section 286(v).".

(2) CLERICAL AMENDMENT.—The table of contents of the Immigration and Nationality Act is amended by inserting after the item relating to section 281 the following:

"Sec. 281A. Antifraud fee.".

(b) ESTABLISHMENT OF ACCOUNT; USE OF FEES.—Section 286 (8 U.S.C. 1356) is amended by adding at the end the following:

"(v) ANTIFRAUD ACCOUNT.—

"(1) IN GENERAL.—There is established in the general fund of the Treasury a separate account which shall be known as the `Antifraud Account'. Notwithstanding any other provision of law, there shall be deposited as offsetting receipts into the account all fees collected under section 281A.

"(2) USE OF FEES TO COMBAT FRAUD.—

"(A) SECRETARY OF HOMELAND SECURITY—

"(i) PROGRAMS TO ELIMINATE FRAUD.—20 percent of amounts deposited into the Antifraud Account shall remain available to the Secretary of Homeland Security until expended for programs and activities to eliminate fraud by petitioners and beneficiaries with respect to immigrant visa petitions under section 204 or status under section 101(a)(15) (excluding status under subparagraph (A), (B), (G), or (S) of such section).

"(ii) REMOVAL OF ALIENS.—20 percent of amounts deposited into the Antifraud Account shall remain available to the Secretary of Homeland Security until expended for the removal of aliens who are deportable under section

237(a)(1)(A) by reason of having been found to be within the class of aliens inadmissible under section 212(a)(6)(C).

"(B) SECRETARY OF STATE.—40 percent of the amounts deposited into the Antifraud Account shall remain available to the Secretary of State until expended for programs and activities to eliminate fraud by petitioners and beneficiaries described in subparagraph (A).

"(C) JOINT PROGRAMS.—20 percent of amounts deposited into the Antifraud Account shall remain available to the Secretary of Homeland Security and the Secretary of State until expended for programs and activities conducted by them jointly to eliminate fraud by petitioners and beneficiaries described in subparagraph (A).".

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect 6 months after the date of the enactment of this Act.

(source: § 205 of H.R. 5013 (George Gekas), 107th Cong.)

SEC. X. REMOVAL OF ALIENS WHO MAKE MISREPRESENTATIONS TO PROCURE BENEFITS.

(a) IN GENERAL.—Section 237(a)(3) (8 U.S.C. 1127(a)(3)) is amended by adding at the end the following.—

"(F) MISREPRESENTATION.—Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act, for himself, herself, or any other alien, is deportable.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act and shall apply to misrepresentations made on or after such date.

(source: § 903 of H.R. 5013 (George Gekas), 107th Cong.)

SEC. X. GOOD MORAL CHARACTER.

(a) IN GENERAL.—Section 101(f)(6) (8 U.S.C. 1101(f)(6)) is amended to read as follows:

"(6) one who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act, for himself, herself, or any other alien;".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act and shall apply to misrepresentations made on or after such date.

(source: § 903 of H.R. 5013 (George Gekas), 107th Cong.)

B: Immigrant Visas

Family-Sponsored Green Cards

OPTION 1

SEC. X. WORLDWIDE NUMERICAL LIMITATION ON FAMILY-SPONSORED IMMIGRANTS.

(a) Section 201(c) of the Immigration and Nationality Act (8 U.S.C. 1151(c)) is amended to read as follow—

"(c) WORLDWIDE LEVEL OF FAMILY-SPONSORED IMMIGRANTS.—

"(1) IN GENERAL.—Subject to the succeeding provisions of this subsection, the worldwide level of family-sponsored immigrants under this subsection (in this subsection referred to as the 'worldwide family level') for a fiscal year is 330,000.

"(2) REDUCTION FOR SPOUSES AND CHILDREN OF UNITED STATES CITIZENS AND CERTAIN OTHER FAMILY-RELATED IMMIGRANTS.—The worldwide family level for a fiscal year shall be reduced (but not below 85,000) by the number of aliens described in subsection (b)(2) who were issued immigrant visas or who otherwise acquired the status of aliens lawfully admitted to the United States for permanent residence in the previous fiscal year.

"(3) FURTHER REDUCTION FOR ANY PREVIOUS EXCESS FAMILY IMMIGRATION.—

"(A) IN GENERAL.—If there are excess family admissions in a particular fiscal year (as determined under subparagraph (B)) beginning with fiscal year 2023, then for the following fiscal year the worldwide family level shall be reduced (but not below 85,000) by the net number of excess admissions in that particular fiscal year (as defined in subparagraph (C)).

"(B) DETERMINATION OF EXCESS FAMILY ADMISSIONS.—For purposes of subparagraph (A), there are excess family admissions in a fiscal year if—

"(i) the number of aliens who are issued immigrant visas or who otherwise acquire the status of aliens lawfully admitted to the United States for permanent residence under section 203(a) or subsection (b)(2) in a fiscal year, exceeds

"(ii) 330,000, less the carryforward number of excess admissions computed for the previous fiscal year (as defined in subparagraph (D)).

"(C) NET NUMBER OF EXCESS ADMISSIONS.—For purposes of subparagraph (A), the "net number of excess admissions" for a fiscal year is—

"(i) the excess described in subparagraph (B) for the fiscal year, reduced (but not below zero) by

"(ii) the number (if any) by which the worldwide level under subsection (d) for the previous fiscal year exceeds the number of immigrants who are issued immigrant visas or who otherwise acquire the status of aliens lawfully admitted to the United States for permanent residence under section 203(b) in that previous fiscal year.

"(D) CARRYFORWARD NUMBER OF EXCESS ADMISSIONS.—For purposes of subparagraph (B)(ii), the carryforward number of excess admissions for a particular fiscal year is the net number of excess admissions for the previous fiscal year (as defined in subparagraph (C)), reduced by the reductions effected under subparagraph (A) and paragraph (4) in visa numbers for the particular fiscal year.

(source: § 501 of H.R. 2202 (Lamar Smith), 104th Cong., as reported by the Judiciary Committee)

SEC. X. LIMITATION OF IMMEDIATE RELATIVES TO SPOUSES AND CHILDREN.

(a) RECLASSIFICATION.—Section 201(b)(2)(A) of the Immigration and Nationality Act (8 U.S.C. 1151(b)(2)(A)) is amended—

(1) in clause (i)—

(A) by striking "IMMEDIATE RELATIVES.—" and all that follows through the end of the first sentence and inserting "An alien who is a spouse or child of a citizen of the United States.", and

(B) in the second sentence, by striking "an immediate relative" and inserting "a spouse of a citizen of the United States"; and

(2) in clause (ii), by striking "an immediate relative" and inserting "a spouse of a citizen of the United States".

(b) PROTECTION OF CERTAIN CHILDREN FROM AGING OUT OF PREFERENCE STATUS.—

(1) IN GENERAL.—Section 204 (8 U.S.C. 1154) is amended by adding at the end the following new subsection:

"(i) For purposes of applying section 101(b)(1) in the case of issuance of an immigrant visa to, or admission or adjustment of status of, an alien under section 201(b)(1)(A), section 203(a)(1), or 203(d) as a child of a citizen of the United States or a permanent resident alien, the age of the alien shall be determined as of the date of the filing of the classification petition under section 204(a)(1) as such a child of a citizen of the United States or a permanent resident alien.".

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to immigrant visas issued on or after October 1, 2022.

(source: § 511 of H.R. 2202 (Lamar Smith), 104th Cong., as reported by the Judiciary Committee)

SEC. X. CHANGE IN FAMILY-SPONSORED CLASSIFICATION.

(a) IN GENERAL.—Section 203(a) (8 U.S.C. 1153(a)) is amended by striking paragraphs (1) through (4) and inserting the following—

"(1) SPOUSES AND CHILDREN OF LAWFUL PERMANENT RESIDENT ALIENS.—Immigrants who are the spouses and children of an alien lawfully admitted for permanent residence shall be allocated visas in a number not to exceed 85,000, plus any immigrant visas not required for the class described in paragraph (2).

"(2) PARENTS OF UNITED STATES CITIZENS.—

"(A) IN GENERAL.—Immigrants who are the qualifying parents (as defined in subparagraph (B)) of an individual who is at least 21 years of age and a citizen of the United States shall be allocated visas in a number not to exceed the lesser of--

"(i) 50,000, or

"(ii) the number by which the worldwide level exceeds 85,000.

"(B) QUALIFICATIONS.—For purposes of subparagraph (A), the term 'qualifying parent' means an immigrant with respect to whom, as of the date of approval of the classification petition under section 204(a)(1), at least 50 percent of the immigrant's sons and daughters are

(i) nationals of the United States or aliens lawfully admitted for permanent residence and

(ii) lawfully residing in the United States.

"(C) REFERENCE TO INSURANCE REQUIREMENT.—For requirement relating to insurance for qualifying parents, see section 212(a)(4)(F).".

(b) INSURANCE REQUIREMENT.—Section 212(a)(4) (8 U.S.C. 1182(a)(4)) is amended by adding at the end the following new subparagraph:

"(F) INSURANCE REQUIREMENTS FOR QUALIFYING PARENTS.—

"(i) IN GENERAL.—Any alien who seeks admission as a qualifying parent under section 203(a)(2) is inadmissible unless the alien demonstrates at the time of issuance of the visa (and at the time of admission) to the satisfaction of the consular officer and the Secretary of Homeland Security that the alien--

"(I) will have coverage under an adequate health insurance policy (at least comparable to coverage provided under the Medicare program under title XVIII of the Social Security Act), and

"(II) will have coverage with respect to long-term health needs (at least comparable to such coverage provided under the Medicaid program under title XIX of such Act for the State in which either the alien intends to reside or in which the petitioner (on behalf of the alien under section 204(a)(1)) resides, throughout the period the individual is residing in the United States.

"(ii) FACTORS TO BE TAKEN INTO ACCOUNT.—In making a determination under clause (i), the Secretary shall take into account the age of the qualifying parent and the likelihood of the parent securing health insurance coverage through employment.".

(source: § 512 of H.R. of H.R. 2202 (Lamar Smith), 104th Cong., as reported by the Judiciary Committee)

SEC. X. MISCELLANEOUS CONFORMING AMENDMENTS.

(a) CONFORMING AMENDMENTS RELATING TO IMMEDIATE RELATIVES.—

(1) Section 101(b)(1)(F) (8 U.S.C. 1101(b)(1)(F)) is amended by striking "as an immediate relative under section 201(b)" and inserting "as a child of a citizen of the United States".

(2) Section 204 (8 U.S.C. 1154) is amended—

(A) in subsection (a)(1)(A)(i), by striking "paragraph (1), (3), or (4) of section 203(a) or to an immediate relative status" and inserting "section 203(a)(2) or to status as the spouse or child of a citizen of the United States";

(B) in subsection (a)(1)(A)(iii), by striking "as an immediate relative" and inserting "as the spouse of a citizen of the United States";

(C) in subsection (a)(1)(iv), by striking "as an immediate relative" and inserting "as a child of a citizen of the United States";

(D) in subsection (b), by striking "an immediate relative specified in section 201(b)" and inserting "a spouse or child of a citizen of the United States under section 201(b)";

(E) in subsection (c), by striking "an immediate relative or preference" and inserting "a preferential";

(F) in subsection (e)--

(i) by striking "an immediate relative" and inserting "a spouse or child of a citizen of the United States", and

(ii) by striking "his" and "he" and inserting "the alien's" and "the alien", respectively; and

(G) in subsection (g), by striking "immediate relative status" and inserting "status as a spouse or child of a citizen of the United States or other".

(3) Section 212(a)(6)(E)(ii) (8 U.S.C. 1182(a)(6)(E)(ii)) is amended by striking "an immediate relative" and inserting "a spouse, child, or parent of a citizen of the United States".

(4) Section 212(d)(11) (8 U.S.C. 1182(d)(11)) is amended by striking "an immediate relative" and inserting "a spouse or child of a citizen of the United States".

(5) Section 216(g)(1)(A) (8 U.S.C. 1186a(g)(1)(A)) is amended by striking "an immediate relative (described insection 201(b)) as the spouse of a citizen of the United States" and inserting "as the spouse of a citizen of the United States (described in section 201(b))".

(6) Section 221(a) (8 U.S.C. 1201(a)) is amended by striking ", immediate relative,".

(7)(A) Section 224 (8 U.S.C. 1204) is amended--

(i) by amending the heading to read as follows:

"visas for spouses and children of citizens and special immigrants",

(ii) by striking "immediate relative" the first place it appears and inserting "a spouse or child of a citizen of the United States", and

(iii) by striking "immediate relative status" and inserting "status or status as a spouse or child of a citizen of the United States".

(B) The item in the table of contents relating to section 224 is amended to read as follows—

"Sec. 224. Visas for spouses and children of citizens and special immigrants.".

(8) Subsection (a)(1)(E)(ii) of section 241 (8 U.S.C. 1251), before redesignation as section 237 by section 305(2), is amended by striking "an immediate relative" and inserting "a spouse, child, or parent of a citizen of the United States under section 201(b) or 203(a)(2)".

(9) Section 245(c) (8 U.S.C. 1255(c)) is amended by striking "an immediate relative as defined in section 201(b)" and inserting ``a spouse or child of a citizen of the United States under section 201(b) or a parent of a citizen under section 203(a)(2)" each place it appears.

(10) Section 291 (8 U.S.C. 1361) is amended by striking "immigrant, special immigrant, immediate relative" and inserting ``immigrant status, special immigrant status, status as a spouse or child of a citizen of the United States".

(11) Section 401 of the Immigration Reform and Control Act of 1986 is amended by striking "immediate relatives" and inserting "spouses and children of citizens".

(b) CONFORMING AMENDMENTS FOR OTHER FAMILY-SPONSORED IMMIGRANTS.—

(1) PETITIONING REQUIREMENTS.—Section 204 (8 U.S.C. 1154) is amended—

(A) in subsection (a)(1)(B)(i), by striking "203(a)(2)" and inserting "203(a)(1)";

(B) in clauses (ii) and (iii) of subsection (a)(1), by striking "203(a)(2)(A)" and inserting "203(a)(1)"; and

(C) in subsection (f)(1), by striking ", 203(a)(1), or 203(a)(3)" and inserting "or 203(a)(2)".

(2) APPLICATION OF PER COUNTRY LEVELS.—Section 202 (8 U.S.C. 1152) is amended--

(A) by amending paragraph (4) of subsection (a) to read as follows:

"(4) SPECIAL RULES FOR SPOUSES AND CHILDREN OF LAWFUL PERMANENT RESIDENT ALIENS.—

"(A) 75 PERCENT OF 1ST PREFERENCE NOT SUBJECT TO PER COUNTRY LIMITATION.—Of the visa numbers made available under section 203(a) to immigrants described in paragraph (1) of that section in any fiscal year, 63,750 shall be issued without regard to the numerical limitation under paragraph (2).

"(B) LIMITING PASS DOWN FOR CERTAIN COUNTRIES SUBJECT TO SECTION (e) .—Limiting pass down for certain countries subject to subsection (e).--In the case of a foreign state or dependent area to which subsection (e) applies, if the total number of visas issued under section 203(a)(1) exceeds the maximum number of visas that may be made available to immigrants of the state or area under such section consistent with subsection

(B) in subsection (e)--

(i) in paragraph (1), by inserting before the semicolon the following: "(determined without regard to subsections (c)(4) and (d)(2) of section 201)",

(ii) in paragraph (2), by striking "paragraphs (1) through (4)" and inserting "paragraphs (1) and (2)", and

(iii) in the last sentence, by striking "203(a)(2)(A)" and inserting "203(a)(1)".

(3) ADDITIONAL CONFORMING AMENDMENTS.—

(A) Section 203(d) (8 U.S.C. 1153(d)) is amended by striking "(a)" and inserting "(a)(2)".

(B) Section 212(a)(6)(E)(ii) (8 U.S.C. 1182(a)(6)(E)(ii)) is amended by striking "203(a)(2)" and inserting "203(a)(1)".

(C) Section 212(d)(11) (8 U.S.C. 1182(d)(11)) is amended by striking "immigrant under section 203(a) (other than paragraph (4) thereof)" and inserting "an immigration under section 203(a)".

(D) Section 216(g)(1)(C) (8 U.S.C. 1186a(g)(1)(C)) is amended by striking "203(a)(2)" and inserting "203(a)(1)".

(E) Section 241(a)(1)(E)(ii) (8 U.S.C. 1251(a)(1)(E)(ii)), before redesignation as section 237 under section 305(a)(2), is amended by striking "203(a)(2)" and inserting "203(a)(1)".

(F) Section 2(c) of the Virgin Islands Nonimmigrant Alien Adjustment Act of 1982 (Public Law 97-271) is amended.—

(i) in paragraph (2), by inserting "or first family preference petitions" after "second preference petitions";

(ii) in paragraph (3)(A), by striking "or" at the end;

(iii) in paragraph (3)(B), by striking the period at the end and inserting ", or";

(iv) by adding at the end of paragraph (3) the following new subparagraph:

"(C) by virtue of a first family preference petition filed by an individual who was admitted to the United States as an immigrant by virtue of a second family preference petition filed by the son or daughter of the individual, if that son or daughter had his or her status adjusted under this section."; and

(v) in paragraph (4), by striking "on or after such date)." and inserting the following: "on or after such date and before October 1, 2022). For purposes of this subsection, the terms 'first family preference petition' and 'second family preference petition' mean, in the case of an alien, a petition filed under section 204(a) of the Act to grant preference status to the alien by reason of the relationship described in section 203(a)(1) or 203(a)(2), respectively (as in effect on and after October 1, 2022).".

(c) CONFORMING AMENDMENTS RELATING TO EMPLOYMENT-BASED IMMIGRANTS.—

(1) TREATMENT OF SPECIAL K IMMIGRANTS.--Section 203(b)(6)(B) (8 U.S.C. 1153(b)(6)(B)) is amended.—

(A) in clause (i), by striking "reduced by \1/3\" and inserting "reduced by the same proportion, as the proportion (of the visa numbers made available under all such paragraphs) that were made available under each respective paragraph,", and

(B) in clause (iii), by striking "reduced by \1/3\" and inserting "reduced by the same proportion, as the proportion (of the visa numbers made available under all such paragraphs to natives of the foreign state) that were made available under each respective paragraph to such natives,".

(2) CONFORMING AMENDMENTS RELATING TO PETITIONING RIGHTS.—Section 204(a)(1) (8 U.S.C. 1154(a)(1)) is amended—

(A) in subparagraph (C), by striking "203(b)(1)(A)" and inserting "203(b)(1)";

(B) in subparagraph (D), by striking "section 203(b)(1)(B), 203(b)(1)(C), 203(b)(2), or 203(b)(3)" and inserting "section 203(b)(2) or 203(b)(3)";

(C) in subparagraph (E)(i), by striking "203(b)(4)" and inserting "203(b)(5)";

(D) in subparagraph (F), by striking "203(b)(5)" and inserting "203(b)(4)"; and

(E) by redesignating subparagraphs (E) and

(F) as subparagraphs (F) and (E), respectively, and by moving subparagraph (E) (as so redesignated) to precede subparagraph (F) (as so redesignated).

(3) GROUND FOR INADMISSIBILITY.—Section 212(a)(5)(C) (8 U.S.C. 1182(a)(5)(C)) is amended by striking "(2)" and inserting "(2)(B)".

(4) OTHER CONFORMING AMENDMENTS.—

(A) Subsections (b)(1)(C) and (f)(1) of section 216A (8 U.S.C. 1186b) are each amended by striking "203(b)(5)" and inserting "203(b)(4)".

(B) Section 245(j)(3) (8 U.S.C. 1255(j)(3)), as added by section 130003(c)(1) Violent Crime Control and Law Enforcement Act of 1994 (Public Law 103-322) and as redesignated by section 815(a)(4)(A) of this Act, is amended by striking "203(b)(4)" and inserting "203(b)(5)'".

(C) Section 154(b)(1)(B)(i) of the Immigration Act of 1990 is amended by striking "1991)" and inserting "1991, and before October 1, 2022) or under section 203(a), 203(b)(1), or 203(b)(2)(C) (as in effect on and after October 1, 2022)".

(D) Section 206(a) of the Immigration Act of 1990 is amended by striking "203(b)(1)(C)" and inserting "203(b)(2)(C)".

(E) Section 610 of Public Law 102-395 is amended—

(i) in subsection (a), by striking "section 203(b)(5) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5))" and inserting "section 203(b)(4) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(4))",

(ii) in subsection (b), by striking "section 203(b)(5)" and inserting "section 203(b)(4)", and

(iii) in subsection (c), by striking "203(b)(5)(A)(iii)" and inserting "203(b)(4)(A)(iii)".

(F) Section 2(d)(2) of the Chinese Student Protection Act of 1992 (Public Law 102-404) is amended—

(i) in subparagraph (A), by striking "203(b)(3)(A)(i)" and inserting "203(b)(3)(B)", and

(ii) in subparagraph (B), by striking "203(b)(5)" and inserting "203(b)(4)".

(G) The Soviet Scientists Immigration Act of 1992 (Public Law 102-509) is amended—

(i) in sections 3 and 4(a), by striking "203(b)(2)(A) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(2)(A))" and inserting "203(b)(2)(B)(i) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(2)(B)(i))", and

(ii) in section 4(c), by striking "203(b)(2)(A) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(2)(A))" and inserting "203(b)(2)(B) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(2)(B))".

(d) REPEAL OF CERTAIN OUTDATED PROVISIONS.—The following provisions of law are repealed—

(1) Section 9 of Public Law 94-571 (90 Stat. 2707).

(2) Section 19 of Public Law 97-116 (95 Stat. 1621).

(source: § 517 of H.R. 2202 (Lamar Smith), 104th Cong., as reported by the Judiciary Committee)

OPTION 2

SEC. X. 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 immediate 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-sponsored 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 permanent 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 numerical 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 follows:

"(1) IN GENERAL.—Subject to paragraph (2), for purposes of subsections (a)(2) and (d), a determination of whether an alien satisfies the age requirement 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 following:

"(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 described 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 striking "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 undesignated 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)"; and

(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)".

(7) CLASSES OF DEPORTABLE ALIENS.—Section 237(a)(1)(E)(ii) of such Act (8 U.S.C. 1227(a)(1)(E)(ii)) is amended by striking "section 203(a)(2)" and inserting "section 203(a)".

(e) CREATION OF NONIMMIGRANT CLASSIFICATION FOR ALIEN PARENTS OF 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 semicolon;

(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 is at least 21 years of age."

(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 nonimmigrant 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 nonimmigrant 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, 2022.

(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 Act 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 Act 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.

(3) APPLICABILITY TO WAITLISTED APPLICANTS.—

(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 Nationality Act (8 U.S.C. 1153(a)), as in effect on the day before the date of enactment of this Act, was approved prior to the date of the enactment of this Act, may be issued a visa pursuant to that paragraph in accordance 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 2022, 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.

(source: § 1101 of H.R. 4760 (Bob Goodlatte), 115th Cong.)

Diversity Visa Green Card Program

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

(1) in section 101(a)(15)(V), by striking "section 203(d)" and inserting "section 203(c)";

(2) in section 201—

(A) in subsection (a)—

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

(ii) by striking paragraph (3); and

(B) by striking subsection (e);

(3) in section 203—

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

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

(C) in subsection (c), as redesignated, by striking "subsection (a), (b), or (c)" and inserting "subsection (a) or (b)";

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

(i) by striking paragraph (2); and

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

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

(F) in subsection (f), as redesignated, by striking "subsections (a), (b), and (c)" and inserting "subsections (a) and (b)"; and

(G) in subsection (g), as redesignated—

(I) by striking "(d)" each place such term appears and inserting "(c)"; and

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

(4) in section 204—

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

(B) in subsection (e), by striking "subsection (a), (b), or (c) of section 203" and inserting "subsection (a) or (b) of section 203"; and

(C) 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(c)";

(5) in section 214(q)(1)(B)(i), by striking "section 203(d)" and inserting "section 203(c)";

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

(7) in section 245(i)(1)(B), by striking "section 203(d)" and inserting "section 203(c)".

(c) EFFECIVE 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 Act

(source: § 1102 of H.R. 4760 (Bob Goodlatte), 115th Cong.)

C: Nonimmigrant Visas

B Visas

SEC. X. BIRTH TOURISM.

Section 214 of the Immigration and Nationality Act (8 U.S.C. 1184) is amended by adding a new subsection (s) at the end to read as follows:

OPTION 1

"(s) The term pleasure, as used in section 101(a)(15)(B) for the purpose of visa issuance, refers to legitimate activities of a recreational character, including tourism, amusement, visits with friends or relatives, rest, medical treatment, and activities of a fraternal, social, or service nature, and does not include obtaining a visa for the primary purpose of obtaining U.S. citizenship for a child by giving birth in the United States.".

(source: 85 FR 4219, State Department, Visas: Temporary Visitors for Business or Pleasure (Jan. 24, 2020) (final rule)

OPTION 2

"(s) Any applicant for a visitor visa pursuant to section 101(a)(15)(B) who a consular officer has reason to believe will give birth during her stay in the United States is presumed to be traveling for the primary purpose of obtaining U.S. citizenship for the child.".

SEC. X. MEDICAL CARE.

Section 214 of the Immigration and Nationality Act (8 U.S.C. 1184) is amended—

"(a) Any visa applicant who seeks medical treatment in the United States must establish to the satisfaction of a consular officer—

"(1) a legitimate reason why the applicant wishes to travel to the United States for medical treatment,

"(2) that a medical practitioner or facility in the United States has agreed to provide treatment,

"(3) that the applicant has reasonably estimated the duration of the visit and all associated costs, and

"(4) that the applicant has the means derived from lawful sources and intent to pay for the medical treatment and all incidental expenses, including transportation and living expenses, either independently or with the pre-arranged assistance of others.".

SEC. X. B VISAS IN LIEU OF H-1B VISAS.

Section 214(g) of the Immigration and Nationality Act (8 U.S.C. 1184(g)) is amended by adding at the end the following:

"(12) Unless otherwise authorized by law, an alien normally classifiable under section 101(a)(15)(H)(i) who seeks admission to the United States to provide services in a specialty occupation described in paragraph (1) or (3) of subsection (i) may not be issued a visa or admitted under section 101(a)(15)(B) for such purpose. Nothing in this paragraph may be construed to authorize the admission of an alien under section 101(a)(15)(B) who is coming to the United States for the purpose of performing skilled or unskilled labor if such admission is not otherwise authorized by law.".

(source: § 110 of S. 3770 (Charles Grassley), 116th Cong.)

E-2 Visas

SEC. X. EMPLOYEES OF E-2 VISA PRINCIPLES.

Section 101(a)(15)(E)(ii) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(E)(ii)) is amended by inserting "or, if an employee of the alien having the nationality of the treaty country, solely to develop and direct the operations of such enterprise" before ";"."

F/I/J/M Visas

SEC. X. LENGTH OF VISA TERM FOR F, I AND J VISAS.

Section 221(c)(2) of the Immigration and Nationality Act (8 U.S.C. 1201(c)(2)) is amended by—

(1) placing the text of the paragraph into a new subparagraph (c)(2)(A);

(2) in the text of the new subparagraph (c)(2)(A), striking "A nonimmigrant visa" and inserting "IN GENERAL.—Except as provided in subparagraph (B), a nonimmigrant visa"; and

(3) by adding a new subparagraph (B) to read as follows:

"(B) (i) F AND J VISAS.—In the case of a nonimmigrant visa issued under subparagraph (F) or (J) of section 101(a)(15) for study in the United States, the visa shall not be valid for any period in excess of the stated period that the institution or place of study to which the visa relates determines is necessary and proper for the purpose of achieving the objective of such study, not to exceed 4 years (or a lesser period as determined by the Secretary of Homeland Security in the Secretary's discretion), plus a period up to 30 days before the program start date and an additional 30 days at the end of the program. The Secretary may issue extensions of stay in the Secretary's discretion, not to exceed 4 years each (or a lesser period as determined by the Secretary in the Secretary's discretion).

"(ii) I VISAS.—In the case of a nonimmigrant visa issued under subparagraph (I) of section 101(a)(15) for a representative of foreign information media, the visa shall not be valid for any period in excess of the period of time necessary to complete the planned activities or assignments consistent with the nonimmigrant visa classification, not to exceed 240 days (or a lesser period as determined by the Secretary of Homeland Security in the Secretary's discretion). The Secretary may issue extensions of stay in the Secretary's discretion, not to exceed 240 days each (or a lessor period as determined by the Secretary in the Secretary's discretion).".

(sources: 85 FR 60526, ICE, Establishing a Fixed Time Period of Admission and an Extension of Stay Procedure for Nonimmigrant Academic Students, Exchange Visitors, and Representatives of

Foreign Information Media, Sept. 25, 2020 (proposed rule); § 905 of H.R. 5013 (George Gekas), 107th Cong.)

SEC. X. OPTIONAL PRACTICAL TRAINING FOR FOREIGN STUDENTS.

OPTION 1

Section 214 of the Immigration and Nationality Act (8 U.S.C. 1184) is amended by adding at the end the following:

"(s) (1) An employer may provide optional practical training to an alien who has been issued a visa or otherwise provided nonimmigrant status under subparagraph (F) or (M) of section 101(a)(15) only if

"(A) it is directly related to the student's major area of study; and

"(B) the employer

"(i) offers to the alien during the period of optional practical training wages that are at least—

"(I) the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question; or

"(II) the prevailing wage level for the occupational classification in the area of employment,

whichever is greater; and

"(ii) shall provide working conditions for such alien that will not adversely affect the working conditions of workers similarly employed.".

(source: § 206(b) of H.R. 2131 (Darrell Issa), 113th Cong.)

OPTION 2

Add a new subparagraph (B) to the above and redesignate (B) as (C) —

"(B) it only takes place during such periods when the student is currently enrolled and in no instance can occur after completion of the student's course of study (or, if a thesis or equivalent is required for a bachelor's, master's, or doctoral degree, after completion of all course requirements for the degree); and"

OPTION 3

(a) Section 214 of the Immigration and Nationality Act (8 U.S.C. 1184) is amended by adding at the end the following:

"(s) (1) No alien with nonimmigrant status under section 101(a)(15)(F)(i) may be authorized to be employed (for purposes of section 274A(h)(3)) following the date of completion of the alien's course of studies unless the alien has enrolled in a new course of studies.

(b) Subsection (a) is effective as of the date of enactment. Employment authorization granted prior to the date of enactment remains valid for the period granted, but may not be further extended.

SEC. X. ELIGIBLE INSTITUTIONS.

(a) Section 214 of the Immigration and Nationality Act (8 U.S.C. 1202) is amended by adding at the end the following:

"(s) A nonimmigrant visa may not be issued under subparagraph (F), (J), or (M) of section 101(a)(15) for postsecondary study at an educational institution unless that institution is an eligible institution for the purpose of a program authorized under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.).".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect 6 months after the date of the enactment of this Act.

(source: § 905 of H.R. 5013 (George Gekas), 107th Cong.)

SEC. X. TRACKING COURSES OF STUDY THROUGH THE PROGRAM TO COLLECT INFORMATION RELATING TO FOREIGN STUDENTS.

Section 641(c)(1)(C) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1372(c)(1)(C)) is amended by inserting after "including" the following: "each course of study,".

(source: § 302 of H.R. 5013 (George Gekas), 107th Cong.)

H-1B Visas

SEC. X. PROTECTION AGAINST DISPLACEMENT OF UNITED STATES WORKERS.

OPTION 1

Section 212(n)(1) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(1)) is amended by—

(1) Amending subparagraph (E) to read as follows—

"(E) The employer did not displace and will not displace a United States worker (as defined in paragraph (4)) employed by the employer within the period beginning 90 days before the date of filing of any visa petition supported by the application and until the conclusion of the employer's employment of any H-1B workers who are the beneficiaries of any such visa petition."; and

(2) amending subparagraph (F) to read as follows—

"(F) The employer will not place the nonimmigrant with another employer where—

"(i) the nonimmigrant performs duties in whole or in part at one or more worksites owned, operated, or controlled by such other employer; and

"(ii) there are indicia of an employment relationship between the nonimmigrant and such other employer unless the employer has inquired of the other employer as to whether, and has no knowledge that, within the period beginning 90 days before the date of the placement of the nonimmigrant with the other employer and ending at the conclusion of such placement, the other employer has displaced or intends to displace a United States worker employed by the other employer.".

(source: § 3 of H.R. 3736 (Lamar Smith), 105th Cong., as reported by the Judiciary Committee)

OPTION 2

TEXT FORTHCOMING

(source: H.R. 170 (Darrell Issa), 115th Cong., as passed by the House Judiciary Committee)

SEC. X. RECRUITMENT OF UNITED STATES WORKERS PRIOR TO SEEKING NONIMMIGRANT WORKERS.

OPTION 1

Section 212(n)(1)(G) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(1)(G)) is amended to read as follows:

"(G) The employer, prior to filing the application—

"(i) has taken good faith, timely and significant steps to recruit, in the United States using procedures that meet industry-wide standards and offering compensation that is at least as great as that required to be offered to H–1B nonimmigrants under subparagraph (A), United States workers for the job for which the nonimmigrant or nonimmigrants is or are sought; and

"(ii) has offered the job to any United States worker who applies and is equally or better qualified for the job for which the nonimmigrant or nonimmigrants is or are sought.".

(source: § 4 of H.R. 3736 (Lamar Smith), 105th Cong., as reported by the Judiciary Committee)

OPTION 2

TEXT FORTHCOMING

(source: H.R. 170 (Darrell Issa), 115th Cong., as passed by the House Judiciary Committee)

SEC. X. NO PREFERENCE FOR H-1B WORKERS OVER AMERICAN WORKERS.

Section 212(n)(1) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(1)) is amended by inserting after subparagraph (G)(ii) the following:

"(H) (i) The employer, or a person or entity acting on the employer's behalf, has not advertised any available position specified in the application in an advertisement that states or indicates that—

"(I) such position is only available to an individual who is or will be an H–1B nonimmigrant; or

"(II) an individual who is or will be an H–1B nonimmigrant shall receive priority or a preference in the hiring process for such position.

"(ii) The employer has not primarily recruited individuals who are or who will be H–1B nonimmigrants to fill such position.".

(source: § 102 of S. 3770 (Charles Grassley), 116th Cong.)

SEC. X. WAGES TO BE PAID TO H-1B WORKERS.

OPTION 1

Section 212(n)(1)(A) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(1)(A)) is amended to read as follows:

"(A) That the employer is offering, and will offer during the period of authorized employment, an annual wage to the H–1B nonimmigrant that is the greater of—

"(i) the annual wage that was paid to the United States citizen or lawful permanent resident employee who did identical or similar work during the 2 years before the employer filed such application; or

"(ii) $110,000, if offered not later than 1 year after the date of the enactment of [X], which amount shall be annually adjusted for inflation by July 1 of each year."; and

(source: § 4 of H.R. 6206 (Jim Banks), 117th Cong.)

OPTION 2

(a) GENERAL APPLICATION REQUIREMENTS.—Section 212(n)(1)(A) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(1)(A)) is amended to read as follows:

"(A) The employer—

"(i) is offering and will offer to H–1B nonimmigrants, during the period of authorized employment for each H–1B nonimmigrant, wages that are determined based on the best information available at the time the application is filed and which are not less than the highest of—

"(I) the locally determined prevailing wage level for the occupational classification in the area of employment;

"(II) the median wage for all workers in the occupational classification in the area of employment; and

"(III) the median wage for skill level 2 in the occupational classification found in the most recent Occupational Employment Statistics survey; and

"(ii) will provide working conditions for such H–1B nonimmigrant that will not adversely affect the working conditions of United States workers similarly employed by the employer or by an employer with which such H–1B nonimmigrant is placed pursuant to a waiver under paragraph (2)(E).".

(b) INTERNET POSTING REQUIREMENT.—Section 212(n)(1)(C) of such Act is amended—

(1) by redesignating clause (ii) as subclause (II);

(2) by striking "(i) has provided" and inserting the following:

"(ii) (I) has provided"; and

(3) by inserting before clause (ii), as redesignated by paragraph (2), the following:

"(i) has posted on the Internet website described in paragraph (3), for at least 30 calendar days, a detailed description of each position for which a nonimmigrant is sought that includes a description of—

"(I) the wages and other terms and conditions of employment;

"(II) the minimum education, training, experience, and other requirements for the position; and

"(III) the process for applying for the position; and".

(c) WAGE DETERMINATION INFORMATION.—Section 212(n)(1)(D) of such Act is amended by inserting "the wage determination methodology used under subparagraph (A)(i)," after "shall contain".

(source: § 101 of S. 3770 (Charles Grassley), 116th Cong.)

SEC. X. WAGES PAID BY H-1B DEPENDENT EMPLOYERS.

TEXT FORTHCOMING

(source: H.R. 170 (Darrell Issa), 115th Cong., as passed by the House Judiciary Committee)

SEC. X. ALLOCATION OF H–1B VISAS.

OPTION 1

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

(1) in paragraph (3), by

(A) striking the first sentence and inserting the following—

"(A) Subject to subparagraph (B), aliens who are subject to the numerical limitations under paragraph (1)(A) shall be issued visas, or otherwise provided nonimmigrant status in a manner and order established by the Secretary by regulation. If for a fiscal year petitions are filed seeking a number of nonimmigrant workers under section 101(a)(15)(H)(i)(b) that exceeds the numerical limitation set out in paragraph (1)(A) for such fiscal year, the Secretary of Homeland Security shall allocate the available visas for the petitions seeking such worker in accordance with subparagraph (B)."; and

(B) by adding at the end the following—

"(B) If for a fiscal year petitions are filed seeking a number of nonimmigrant workers under section 101(a)(15)(H)(i)(b) that exceeds the numerical limitation set out in paragraph (1)(A) for such fiscal year, the Secretary shall consider and approve petitions for a visa or nonimmigrant status under section 101(a)(15)(H)(i)(b) in accordance with the following:

"(i) first, if the petitioner certifies that the prevailing wage level for the position is level 3 (or successor wage level) and the nonimmigrant will receive wages (calculated such that non-discretionary cash bonuses, incentive payments, non-cash bonuses, and similar compensation may be considered wages and will be applied based on their fair market value at the time the employer files the petition, and no wages may come from any form of discretionary compensation) greater than or equal to 200 percent of the level 3 prevailing wage as published by the Secretary of Labor for an occupational classification in the area of employment at the time of filing the application, then 150 percent, then 100 percent;

"(ii) then, if the petitioner certifies that the prevailing wage level for the position is level 2 (or successor wage level) and the nonimmigrant will receive wages (calculated such that non-discretionary cash bonuses, incentive payments, non-cash bonuses, and similar compensation may be considered wages and will be applied based on their fair market value at the time the employer files the petition, and no wages may come from any form of discretionary compensation) greater than or equal to 200 percent of the level 2 prevailing wage as published by the Secretary of Labor for an occupational classification in the area of employment at the time of filing the application, then 150 percent, then 100 percent; and

"(iii) then, if the petitioner certifies that the prevailing wage level for the position is level 1 (or successor wage level) and the nonimmigrant will receive wages (calculated such that non-discretionary cash bonuses, incentive payments, non-cash bonuses, and similar compensation may be considered wages and will be applied based on their fair market value at the time the employer files the petition, and no wages may come from any form of discretionary compensation) greater than or equal to 200 percent of the level 1 prevailing wage as published by the Secretary of Labor for an occupational classification in the area of employment at the time of filing the application, then 150 percent, then 100 percent.

"(C) The employer may not reduce the H–1B nonimmigrant's wages, regardless of whether the deduction is in accordance with a voluntary authorization by the H–1B nonimmigrant, except for Federal, State, and local taxes and lawful garnishments. An employer may also reduce an H–1B nonimmigrant's wages if the

deduction is authorized by a collective bargaining agreement or is reasonable and customary in the occupation and/or area of employment, including deductions for health, life, disability and other insurance plans; retirement and savings plans; and union dues.

"(D) The employer may no longer employ the H–1B nonimmigrant described in subparagraph (B) if the H–1B nonimmigrant's wages (calculated such that non-discretionary cash bonuses, incentive payments, non-cash bonuses, and similar compensation may be considered wages and will be applied based on their fair market value at the time the employer files the petition, and no wages may come from any form of discretionary compensation) are reduced below the level identified in clauses (i), (ii), and (iii) of subparagraph (B).

"(E) If the H–1B nonimmigrant described in subparagraph (B) receives wages (calculated such that non-discretionary cash bonuses, incentive payments, non-cash bonuses, and similar compensation may be considered wages and will be applied based on their fair market value at the time the employer files the petition, and no wages may come from any form of discretionary compensation) for services rendered on behalf of the employer for 30 calendar days or more, including partial days, in any area of employment other than area of employment indicated at the time of filing the application, the employer shall pay the H–1B nonimmigrant wages at the level identified in clauses (i), (ii), and (iii) based on the prevailing wage of the area of employment with the highest prevailing wage.

"(F) If the Secretary of Labor finds, after notice and opportunity for a hearing, a knowing failure to meet a condition of subparagraph (C), (D), or (E) or a knowing misrepresentation of material fact—

"(i) the Secretary shall notify the Attorney General of such finding and may, in addition, impose such administrative remedies (including civil monetary penalties in an amount not to exceed $5,000 per violation) as the Secretary determines to be appropriate;

"(ii) after the first offense, the Secretary shall not approve petitions filed with respect to that employer, including parent, subsidiary, and other affiliated entities, under section 204 or 214(c) during a period of at least 2 years for aliens to be employed by the employer; and

"(iii) after the second offense, the Secretary shall not approve any petitions filed with respect to that employer, including parent, subsidiary, and other affiliated entities, under section 204 or 214(c).".

(2) by adding a new paragraph (12) as follows—

"(12) The numerical limitations of paragraph (1)(A) shall be allocated for a fiscal year so that 20 percent of the number of aliens who may receive visas or nonimmigrant

status subject to such numerical limitations shall be reserved for employers with 50 or fewer full-time employees, including parent, subsidiary, and other affiliated entities. Petitions filed under this subsection must include an attestation from the petitioning employer that the beneficiary will not be placed for more than 30 days at a third party worksite. If the Secretary determines, after notice and opportunity for a hearing, a misrepresentation of material fact in the attestation or action by the petitioning employer in contravention to this attestation, paragraph (3)(F) applies and the petitioning employer may be punished in the same manner as a violation punishable under such paragraph. In a fiscal year, any visa or nonimmigrant status reserved under this paragraph that is not used by the end of the third quarter of that fiscal year may be issued to an alien who is eligible for such visa or nonimmigrant status. In the case of an alien receiving a visa or nonimmigrant status under this paragraph, paragraph (3)(B) does not apply, unless for a fiscal year the number of petitions seeking visas or nonimmigrant status under this paragraph received during the first 10 business days that petitions may be filed exceeds 20 percent of all petitions subject to the numerical limitations of paragraph (1)(A).".

(source: § 6 of H.R. 670 (Zoe Lofgren), 115th Cong.)

OPTION 2

Section 214(g)(3) of the Immigration and Nationality Act, (8 U.S.C. 1184(g)(3)) is amended by—

(1) placing the text of the paragraph into a new subparagraph (3)(A),

(2) striking the first sentence of the new subparagraph (3)(A) and inserting the following:

"(A) Aliens who are subject to the numerical limitation of paragraph (1)(A) shall be issued visas (or otherwise provided nonimmigrant status) in the order in which petitions are filed for such visas or status, except that if a sufficient number of petitions are filed seeking nonimmigrant workers under section 101(a)(15)(H)(i)(b) that would exceed the numerical limitation set out in paragraph (1)(A) for the fiscal year, the Secretary of Homeland Security shall allocate the available visas or status in accordance with subparagraph (B). Aliens who are subject to the numerical limitation of paragraph (1)(B) shall be issued visas (or otherwise provided nonimmigrant status) in the order in which petitions are filed for such visas or status."; and

(3) inserting a new subparagraph (B) to read as follows:

"(B) If a sufficient number of petitions are filed seeking nonimmigrant workers under section 101(a)(15)(H)(i)(b) that would exceed the numerical limitation set out in paragraph (1)(A) for the fiscal year, the Secretary shall rank and select from among the petitions received for a visa or nonimmigrant status under section 101(a)(15)(H)(i)(b) on the basis of the highest corresponding Occupational Employment Statistics (OES) wage level that the proffered wage will equal or exceed for the relevant Standard Occupational

Classification code and area or areas of intended employment, beginning with OES wage level IV and proceeding in descending order with OES wage levels III, II, and I, provided that the Secretary will

> "(i) rank the petition in the same category as OES wage level I if the proffered wage is lower than the OES wage level I because it is based on a prevailing wage from another accepted source;
>
> "(ii) rank and select the petition based on the OES wage level that corresponds to the requirements of the proffered position where there is no current OES prevailing wage information for the proffered position;
>
> "(iii) rank and select the petition based on the lowest corresponding OES wage level that the proffered wage will equal or exceed if the H–1B beneficiary will work in multiple locations; and
>
> (iv) if having received and ranked more petitions at a particular wage level than are needed to meet the numerical limitation, randomly select from all petitions within that particular wage level a sufficient number to reach the numerical limitation.".

(source: 86 FR 1676, USCIS, Modification of Registration Requirement for Petitioners Seeking To File Cap-Subject H–1B Petitions, Jan. 8, 2021) (final rule))

OPTION 3

Section 214(g)(3) of the Immigration and Nationality Act (8 U.S.C. 1184(g)(3)), is amended—

> (1) by striking the first sentence and inserting the following:
>
> "(A) Subject to subparagraph (B), aliens who are subject to the numerical limitations under paragraph (1)(A) shall be issued visas, or otherwise provided nonimmigrant status, in a manner and order established by the Secretary by regulation."; and
>
> (2) by adding at the end the following:
>
> "(B) The Secretary shall consider petitions for nonimmigrant status under section 101(a)(15)(H)(i)(b) in the following order:
>
> "(i) Petitions for nonimmigrants described in section 101(a)(15)(F) who, while physically present in the United States, have earned an advanced degree in a field of science, technology, engineering, or mathematics from a United States institution of higher education (as defined in section 101(a) of the Higher Education

Act of 1965 (20 U.S.C. 1001(a))) that has been accredited by an accrediting entity that is recognized by the Department of Education.

"(ii) Petitions certifying that the employer will be paying the nonimmigrant the median wage for skill level 4 in the occupational classification found in the most recent Occupational Employment Statistics survey.

"(iii) Petitions for nonimmigrants described in section 101(a)(15)(F) who are graduates of any other advanced degree program, undertaken while physically present in the United States, from an institution of higher education described in clause (i).

"(iv) Petitions certifying that the employer will be paying the nonimmigrant the median wage for skill level 3 in the occupational classification found in the most recent Occupational Employment Statistics survey.

"(v) Petitions for nonimmigrants described in section 101(a)(15)(F) who are graduates of a bachelor's degree program, undertaken while physically present in the United States, in a field of science, technology, engineering, or mathematics from an institution of higher education described in clause (i).

"(vi) Petitions for nonimmigrants described in section 101(a)(15)(F) who are graduates of bachelor's degree programs, undertaken while physically present in the United States, in any other fields from an institution of higher education described in clause (i).

"(vii) Petitions for aliens who will be working in occupations listed in Group I of the Department of Labor's Schedule A of occupations in which the Secretary of Labor has determined there are not sufficient United States workers who are able, willing, qualified, and available.

"(viii) Petitions filed by employers meeting the following criteria of good corporate citizenship and compliance with the immigration laws:

"(I) The employer is in possession of—

"(aa) a valid E-Verify company identification number; or

"(bb) if the enterprise is using a designated agent to perform E-Verify queries, a valid E-Verify client company identification number and documentation from U.S. Citizenship and Immigration Services that the commercial enterprise is a participant in good standing in the E-Verify program.

"(II) The employer is not under investigation by any Federal agency for violation of the immigration laws or labor laws.

"(III) A Federal agency has not determined, during the immediately preceding 5 years, that the employer violated the immigration laws or labor laws.

"(IV) During each of the preceding 3 fiscal years, at least 90 percent of the petitions filed by the employer under section 101(a)(15)(H)(i)(b) were approved.

"(V) The employer has filed, pursuant to section 204(a)(1)(F), employment-based immigrant petitions, including an approved labor certification application under section 212(a)(5)(A), for at least 90 percent of employees imported under section 101(a)(15)(H)(i)(b) during the preceding 3 fiscal years.

"(ix) Any remaining petitions.

"(C) In this paragraph the term 'field of science, technology, engineering, or mathematics' means a field included in the Department of Education's Classification of Instructional Programs taxonomy within the summary groups of computer and information sciences and support services, engineering, biological and biomedical sciences, mathematics and statistics, and physical sciences.".

(source: § 104 of S. 3770 (Charles Grassley), 116th Cong.)

OPTION 4

Section 214(g)(3) of the Immigration and Nationality Act, (8 U.S.C. 1184(g)(3)) is amended by—

(1) placing the text of the paragraph into a new subparagraph (3)(A),

(2) striking the first sentence of the new subparagraph (3)(A) and inserting the following:

"(A) Aliens who are subject to the numerical limitation of paragraph (1)(A) shall be issued visas (or otherwise provided nonimmigrant status) in the order in which petitions are filed for such visas or status, except that if a sufficient number of petitions are filed seeking nonimmigrant workers under section 101(a)(15)(H)(i)(b) that would exceed the numerical limitation set out in paragraph (1)(A) for the fiscal year, the Secretary of Homeland Security shall allocate the available visas or status in accordance with subparagraph (B). Aliens who are subject to the numerical limitation of paragraph (1)(B) shall be issued visas (or otherwise provided nonimmigrant status) in the order in which petitions are filed for such visas or status."; and

(3) inserting a new subparagraph (B) to read as follows:

"(B) If a sufficient number of petitions are filed seeking nonimmigrant workers under section 101(a)(15)(H)(i)(b) that would exceed the numerical limitation set out in paragraph (1)(A) for the fiscal year, the Secretary shall rank and select from among the petitions received for a visa or nonimmigrant status under section 101(a)(15)(H)(i)(b) on the basis of highest proffered wage level, and if having received and ranked more petitions at a particular wage level than are needed to meet the numerical limitation, randomly select from all petitions within that particular wage level a sufficient number to reach the numerical limitation.".

(source: § 4 of H.R. 6206 (Jim Banks), 117th Cong.)

SEC. X. RANDOM INVESTIGATIONS.

Section 212(n)(2)(F) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(2)(F)) is amended to read as follows:

"(F) The Secretary of Labor may, on a case-by-case basis, subject an employer to random investigations.".

(source: § 201(d) of H.R. 2131 (Darrell Issa), 113th Cong., as reported by the Judiciary Committee)

SEC. X. FEE ON H-1B DEPENDENT EMPLOYERS

TEXT FORTHCOMING

(source: H.R. 170 (Darrell Issa), 115th Cong.)

SEC. X. DEFINITION OF "EXEMPT" H-1B WORKERS

TEXT FORTHCOMING

(source: H.R. 170 (Darrell Issa), 115th Cong.)

SEC. X. CURTAILING H-1B FRAUD

(a) FOREIGN DEGREES.—

(1) SPECIALTY OCCUPATION.—Section 214(i) of the Immigration and Nationality Act (8 U.S.C. 1184(i)) is amended by adding at the end the following:

"(4) (A) For purposes of paragraphs (1)(B) and (3)(B), the term 'bachelor's or higher degree' includes a foreign degree that is a recognized foreign equivalent of a bachelor's or higher degree.

"(B) (i) In the case of an alien with a foreign degree, any determination with respect to the equivalence of that degree to a degree obtained in the United States shall be made by the Secretary of State.

"(ii) In carrying out the preceding clause, the Secretary of State shall verify the authenticity of any foreign degree proffered by an alien. The Secretary of State may enter into contracts with public or private entities in conducting such verifications.

"(iii) In addition to any other fees authorized by law, the Secretary of State may impose a fee on an employer filing a petition under subsection (c)(1) initially to grant an alien nonimmigrant status described in section 101(a)(15)(H)(i)(b), if a determination or verification described in clause (i) or (ii) is required with respect to the petition. Fees collected under this clause shall be deposited in the Treasury in accordance with section 286(t).".

(2) H–1B EDUCATIONAL CREDENTIAL VERIFICATION ACCOUNT.—Section 286 of the Immigration and Nationality Act (8 U.S.C. 1356) is amended by adding at the end the following:

"(w) H-1B EDUCATIONAL CREDENTIAL VERIFICATION ACCOUNT.—There is established in the general fund of the Treasury a separate account, which shall be known as the 'H–1B Educational Credential Verification Account'. Notwithstanding any other provision of law, there shall be deposited as offsetting receipts into the account all fees collected under section 214(i)(4)(B)(iii). Amounts deposited into the account shall remain available to the Secretary of State until expended to carry out section 214(i)(4)(B).".

(b) BONA FIDE BUSINESSES.—Section 214(c) of the Immigration and Nationality Act (8 U.S.C. 1184(c)) is amended by adding at the end the following:

"(15) The Secretary of Homeland Security may not approve any petition under paragraph (1) filed by an employer with respect to an alien seeking to obtain the status of a nonimmigrant under subclause (b) or (b1) of section 101(a)(15)(H)(i) and the Secretary of State may not approve a visa with respect to an alien seeking to obtain the status of a nonimmigrant under subparagraph (E)(iii) or (H)(i)(b1) of section 101(a)(15) unless—

"(A) the employer—

"(i) is an institution of higher education (as defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a))), or a governmental or nonprofit entity; or

"(ii) maintains a place of business in the United States that is licensed in accordance with any applicable State or local business licensing requirements and is used exclusively for business purposes; and

"(B) the employer—

"(i) is a governmental entity;

"(ii) has aggregate gross assets with a value of not less than $50,000—

"(I) in the case of an employer that is a publicly held corporation, as determined using its most recent report filed with the Securities and Exchange Commission; or

"(II) in the case of any other employer, as determined as of the date on which the petition is filed under regulations promulgated by the Secretary of Homeland Security; or

"(iii) provides appropriate documentation of business activity under regulations promulgated by the Secretary of Homeland Security.".

(c) SUBPOENA AUTHORITY.—Section 212(n)(2) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(2)) is amended—

(1) by redesignating subparagraph (I) as subparagraph (J); and

(2) by inserting after subparagraph (H) the following:

"(I) The Secretary of Labor is authorized to take such actions, including issuing subpoenas and seeking appropriate injunctive relief and specific performance of contractual obligations, as may be necessary to ensure employer compliance with the terms and conditions under this subsection. The rights and remedies provided to H–1B nonimmigrants under this subsection are in addition to any other contractual or statutory rights and remedies of such nonimmigrants and are not intended to alter or affect such rights and remedies.".

(sources: § 201(d) of H.R. 2131 (Darrell Issa), 113th Cong., as reported by the Judiciary Committee); § 108 of S. 3770 (Charles Grassley), 116th Cong.)

SEC. X. BAR TO MAJORITY H-1B/L VISA WORKFORCES.

Section 212(n)(1) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(1) is amended by inserting after subparagraph (G)(ii) the following:

"(I) If the employer employs 50 or more employees in the United States—

"(i) the sum of the number of such employees who are H–1B nonimmigrants plus the number of such employees who are nonimmigrants described in section 101(a)(15)(L) does not exceed 50 percent of the total number of employees; and

"(ii) the employer's corporate organization has not been restructured to evade the limitation under clause (i).".

(source: § 102 of S. 3770 (Charles Grassley), 116th Cong.)

SEC. X. APPLICATION REVIEW REQUIREMENTS.

(a) TECHNICAL AMENDMENT.—Section 212(n)(1) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(1)) is amended, in the undesignated paragraph at the end, by striking "The employer" and inserting the following:

"(K) The employer.".

(b) APPLICATION REVIEW REQUIREMENTS.—Section 212(n)(1)(K), as designated by subsection (a), is amended—

(1) in the fourth sentence, by inserting "and through the Department of Labor's website, without charge." after "D.C.";

(2) in the fifth sentence, by striking "only for completeness" and inserting "for completeness, indicators of fraud or misrepresentation of material fact,";

(3) in the sixth sentence—

(A) by striking "or obviously inaccurate" and inserting ", presents indicators of fraud or misrepresentation of material fact, or is obviously inaccurate"; and

(B) by striking "within 7 days of" and inserting "not later than 14 days after"; and

(4) by adding at the end the following: "If the Secretary of Labor's review of an application identifies indicators of fraud or misrepresentation of material fact, the Secretary may conduct an investigation and hearing in accordance with paragraph (2).".

(source: § 103 of S. 3770 (Charles Grassley), 116th Cong.)

SEC. X. SPECIALTY OCCUPATION TO REQUIRE A DEGREE.

Section 214(i) of the Immigration and Nationality Act (8 U.S.C. 1184(i)) is amended—

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

"(B) attainment of a bachelor's or higher degree in the specific specialty directly related to the occupation as a minimum for entry into the occupation in the United States."; and

(2) by striking paragraph (2) and inserting the following:

"(2) For purposes of section 101(a)(15)(H)(i)(b), the requirements under this paragraph, with respect to a specialty occupation, are—

"(A) full State licensure to practice in the occupation, if such licensure is required to practice in the occupation; or

"(B) if a license is not required to practice in the occupation—

"(i) completion of a United States degree described in paragraph (1)(B) for the occupation; or

"(ii) completion of a foreign degree that is equivalent to a United States degree described in paragraph (1)(B) for the occupation.".

(source: § 106 of S. 3770 (Charles Grassley), 116th Cong.)

SEC. X. LABOR CONDITION APPLICATION FEE.

Section 212(n) of the Immigration and Nationality Act (8 U.S.C. 1182(n)) is amended by adding at the end the following:

"(6) (A) The Secretary of Labor shall promulgate a regulation that requires applicants under this subsection to pay a reasonable application processing fee.

"(B) All of the fees collected under this paragraph shall be deposited as offsetting receipts within the general fund of the Treasury in a separate account, which shall be known as the 'H–1B Administration, Oversight, Investigation, and Enforcement Account' and shall remain available until expended. The Secretary of the Treasury shall refund amounts in such account to the Secretary of Labor for salaries and related expenses associated with the administration, oversight, investigation, and enforcement of the H–1B nonimmigrant visa program.".

(source: § 107 of S. 3770 (Charles Grassley), 116th Cong.)

SEC. X. LIMITATION ON EXTENSION OF H–1B PETITION.

Section 214(g)(4) of the Immigration and Nationality Act (8 U.S.C. 1184(g)(4)) is amended to read as follows:

"(4) (A) Except as provided in subparagraph (B), the period of authorized admission as a nonimmigrant described in section 101(a)(15)(H)(i)(b) may not exceed 3 years.

"(B) The period of authorized admission as a nonimmigrant described in subparagraph (A) who is the beneficiary of an approved employment-based immigrant petition under section 204(a)(1)(F) may be authorized for a period of up to 3 additional years if the total period of stay does not exceed six years, except for an extension under section 104(c) or 106(b) of the American Competitiveness in the Twenty-first Century Act of 2000 (8 U.S.C. 1184 note).".

(source: § 109 of S. 3770 (Charles Grassley), 116th Cong.)

SEC. X. GENERAL MODIFICATION OF PROCEDURES FOR INVESTIGATION AND DISPOSITION.

Section 212(n)(2)(A) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(2)(A)) is amended—

(1) by striking "(A) Subject" and inserting the following:

"(A) (i) Subject";

(2) by striking "12 months" and inserting "two years";

(3) by striking the last sentence; and

(4) by adding at the end the following:

"(ii) (I) Upon the receipt of a complaint under clause (i), the Secretary may initiate an investigation to determine if such failure or misrepresentation has occurred.

"(II) In conducting an investigation under subclause (I), the Secretary may—

"(aa) conduct surveys of the degree to which employers comply with the requirements under this subsection; and

"(bb) conduct compliance audits of employers that employ H–1B nonimmigrants.

"(III) The Secretary shall—

"(aa) conduct annual compliance audits of not fewer than 1 percent of the employers that employ H–1B nonimmigrants during the applicable calendar year;

"(bb) conduct annual compliance audits of each employer with more than 100 employees who work in the United States if more than 15 percent of such employees are H–1B nonimmigrants; and

"(cc) make available to the public an executive summary or report describing the general findings of the audits carried out pursuant to this subclause.

"(iii) The process for receiving complaints under clause (i) shall include a hotline that is accessible 24 hours a day, by telephonic and electronic means.".

(source: § 111 of S. 3770 (Charles Grassley), 116th Cong.)

SEC. X. INVESTIGATION, WORKING CONDITIONS, AND PENALTIES.

Section 212(n)(2)(C) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(2)(C)) is amended—

(1) in clause (i)—

(A) in the matter preceding subclause (I), by striking "a condition of paragraph (1)(B), (1)(E), or (1)(F), a substantial failure to meet a condition of paragraph (1)(C), (1)(D), or (1)(G)(i)(I)" and inserting "a condition under subparagraph (A), (B), (C), (D), (E), (F), (G)(i), (H), (I), or (J0) of paragraph (1)";

(B) in subclause (I)—

(i) by striking "$1,000" and inserting "$5,000"; and

(ii) by striking "and" at the end;

(C) in subclause (II), by striking the period at the end and inserting "; and"; and

(D) by adding at the end the following:

"(III) an employer that violates paragraph (1)(A) shall be liable to the employees harmed by such violation for lost wages and benefits.";

(2) in clause (ii)—

(A) in subclause (I)—

(i) by striking "may" and inserting "shall"; and

(ii) by striking "$5,000" and inserting "$25,000";

(B) in subclause (II), by striking the period at the end and inserting "; and"; and

(C) by adding at the end the following:

"(III) an employer that violates paragraph (1)(A) shall be liable to the employees harmed by such violation for lost wages and benefits.";

(3) in clause (iii)—

(A) in the matter preceding subclause (I), by striking "displaced a United States worker employed by the employer within the period beginning 90 days before and ending 90 days after the date of filing of any visa petition supported by the application" and inserting "displaced or replaced a United States worker in violation of subparagraph (E)";

(B) in subclause (I)—

(i) by striking "may" and inserting "shall";

(ii) by striking "$35,000" and inserting "$150,000"; and

(iii) by striking "and" at the end;

(C) in subclause (II), by striking the period at the end and inserting "; and"; and

(D) by adding at the end the following:

"(III) an employer that violates paragraph (1)(A) shall be liable to the employees harmed by such violation for lost wages and benefits.";

(4) by striking clause (iv) and inserting the following:

"(iv) (I) An employer that has filed an application under this subsection violates this clause by taking, failing to take, or threatening to take or fail to take a personnel action, or intimidating, threatening, restraining, coercing, blacklisting, discharging, or discriminating in any other manner against an employee because the employee—

"(aa) disclosed information that the employee reasonably believes evidences a violation of this subsection or any rule or regulation pertaining to this subsection; or

"(bb) cooperated or sought to cooperate with the requirements under this subsection or any rule or regulation pertaining to this subsection.

"(II) In this subparagraph, the term 'employee' includes—

"(aa) a current employee;

"(bb) a former employee; and

"(cc) an applicant for employment.

"(III) An employer that violates this clause shall be liable to the employee harmed by such violation for lost wages and benefits."; and

(5) in clause (vi)—

(A) by amending subclause (I) to read as follows:

"(I) It is a violation of this clause for an employer that has filed an application under this subsection—

"(aa) to require an H–1B nonimmigrant to pay a penalty or liquidated damages for ceasing employment with the employer before a date agreed to by the nonimmigrant and the employer; or

"(bb) to fail to offer to an H–1B nonimmigrant, during the nonimmigrant's period of authorized employment, on the same basis, and in accordance with the same criteria, as the employer offers to United States workers, benefits and eligibility for benefits, including—

"(AA) the opportunity to participate in health, life, disability, and other insurance plans;

"(BB) the opportunity to participate in retirement and savings plans; and

"(CC) cash bonuses and noncash compensation, such as stock options (whether or not based on performance)."; and

(B) in subclause (III), by striking "$1,000" and inserting "$5,000".

(source: § 112 of S. 3770 (Charles Grassley), 116th Cong.)

SEC. X. INITIATION OF INVESTIGATIONS.

Section 212(n)(2)(G) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(2)(G)) is amended—

(1) in clause (i), by striking "if the Secretary of Labor" and all that follows and inserting "with regard to the employer's compliance with the requirements under this subsection.";

(2) in clause (ii), by striking "and whose identity" and all that follows through "failure or failures." and inserting "the Secretary may conduct an investigation into the employer's compliance with the requirements under this subsection.";

(3) in clause (iii), by striking the last sentence;

(4) by striking clauses (iv) and (v);

(5) by redesignating clauses (vi), (vii), and (viii) as clauses (iv), (v), and (vi), respectively;

(6) in clause (iv), as redesignated, by striking "meet a condition described in clause (ii), unless the Secretary of Labor receives the information not later than 12 months" and inserting "comply with the requirements under this subsection unless the Secretary of Labor receives the information not later than 2 years";

(7) by amending clause (v), as redesignated, to read as follows:

"(v) (I) Except as provided in subclause (II), the Secretary of Labor shall provide notice to an employer of the intent to conduct an investigation under this subparagraph. Such notice shall be provided in such a manner, and shall contain sufficient detail, to permit the employer to respond to the allegations before an investigation is commenced.

"(II) The Secretary of Labor is not required to comply with subclause (I) if the Secretary determines that such compliance would

interfere with an effort by the Secretary to investigate or secure compliance by the employer with the requirements under this subsection.

"(III) A determination by the Secretary of Labor under this clause shall not be subject to judicial review.";

(8) in clause (vi), as redesignated, by striking "An investigation" and all that follows through "the determination." and inserting "If the Secretary of Labor, after an investigation under clause (i) or (ii), determines that a reasonable basis exists to make a finding that the employer has failed to comply with the requirements under this subsection, the Secretary, not later than 120 days after the date of such determination, shall provide interested parties with notice of such determination and an opportunity for a hearing in accordance with section 556 of title 5, United States Code."; and

(9) by adding at the end the following:

"(vii) If the Secretary of Labor, after a hearing, finds a reasonable basis to believe that the employer has violated the requirements under this subsection, the Secretary shall impose a penalty in accordance with subparagraph (C).".

(source: § 114 of S. 3770 (Charles Grassley), 116th Cong.)

SEC. X. INFORMATION SHARING.

Section 212(n)(2)(H) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(2)(H)) is amended to read as follows:

"(H) The Director of U.S. Citizenship and Immigration Services shall provide the Secretary of Labor with any information contained in the materials submitted by employers of H–1B nonimmigrants as part of the petition adjudication process that indicates that the employer is not complying with visa program requirements for H–1B nonimmigrants. The Secretary may initiate and conduct an investigation and hearing under this paragraph after receiving information of noncompliance under this subparagraph.".

(source: § 115 of S. 3770 (Charles Grassley), 116th Cong.)

SEC. X. POSTING AVAILABLE POSITIONS THROUGH THE DEPARTMENT OF LABOR.

(a) DEPARTMENT OF LABOR WEBSITE.—Section 212(n)(3) of the Immigration and Nationality Act (8 U.S.C. 1182(n)(3)) is amended to read as follows:

"(3) (A) Not later than 90 days after the date of the enactment of [X], the Secretary of Labor shall establish a searchable Internet website for posting positions in accordance with paragraph (1)(C) that is available to the public without charge.

"(B) The Secretary may work with private companies or nonprofit organizations to develop and operate the Internet website described in subparagraph (A).

"(C) The Secretary may promulgate rules, after notice and a period for comment, to carry out this paragraph.".

(b) PUBLICATION REQUIREMENT.—The Secretary of Labor shall submit to Congress, and publish in the Federal Register and in other appropriate media, a notice of the date on which the internet website required under section 212(n)(3) of the Immigration and Nationality Act, as amended by subsection (a), will be operational.

(c) APPLICATION.—The amendment made by subsection (a) shall apply to any application filed on or after the date that is 30 days after the date described in subsection (b).

(source: § 121 of S. 3770 (Charles Grassley), 116th Cong.)

H-1B1/E-3/TN Visas

SEC. X. WAGES AND WORKING CONDITIONS FOR MEXICAN AND CANADIAN PROFESSIONALS AND ASSOCIATED ENFORCEMENT POWERS.

Section 214(e) of the Immigration and Nationality Act (8 U.S.C. 1184(e)) is amended by adding at the end the following—

"(7) (A) An employer of a Mexican or Canadian professional under this subsection—

"(i) (I) will offer to the alien during the period of authorized employment wages that are at least—

"(aa) the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question; or

"(bb) the prevailing wage level for the occupational classification in the area of employment, whichever is greater, based on the best information available; and

"(ii) will provide working conditions for such alien that will not adversely affect the working conditions of workers similarly employed.

"(B) The Secretary of Labor shall have the same investigatory and enforcement powers to ensure compliance with this paragraph as are set forth in section 212(n)(2).".

"(C) The Secretary of Labor is authorized to take such actions, including issuing subpoenas and seeking appropriate injunctive relief and specific performance of contractual obligations, as may be necessary to ensure employer compliance with the terms and conditions under this subsection. The rights and remedies provided nonimmigrants under this subsection are in addition to any other contractual or statutory rights and remedies of such nonimmigrants and are not intended to alter or affect such rights and remedies.".

(sources: § 204 of H.R. 2131 (Darrell Issa), 113th Cong., as reported by the Judiciary); § 108 of S. 3770 (Charles Grassley), 116th Cong.)

SEC. X. H-1B1 AND E-3 VISA PROGRAM ENFORCEMENT POWERS.

Section 212(t)(3)(E) of the Immigration and Nationality Act (8 U.S.C. 1182(t)(3)(E)) is amended to read as follows:

"(E) (i) The Secretary of Labor may, on a case-by-case basis, subject an employer to random investigations.

"(ii) The Secretary of Labor is authorized to take such actions, including issuing subpoenas and seeking appropriate injunctive relief and specific performance of contractual obligations, as may be necessary to ensure employer compliance with the terms and conditions under this subsection. The rights and remedies provided nonimmigrants under this subsection are in addition to any other contractual or statutory rights and remedies of such nonimmigrants and are not intended to alter or affect such rights and remedies.".

(sources: § 205 of H.R. 2131 (Darrell Issa), 113th Cong., as reported by the Judiciary Committee); § 108 of S. 3770 (Charles Grassley), 116th Cong.)

K Visas

SEC. X. PROTECTIONS FOR FIANCÉES OR FIANCÉS OF CITIZENS.

(a) IN GENERAL.—Section 214 of the Immigration and Nationality Act (8 U.S.C. 1184) is amended—

(1) in subsection (d)—

(A) in paragraph (1), by striking "crime." and inserting "crime described in paragraph (3)(B) and information on any permanent protection or restraining order issued against the petitioner related to any specified crime described in paragraph (3)(B)(i).''; and

(B) in paragraph (3)(B)(i), by striking "abuse, and stalking." and inserting "abuse, stalking, or an attempt to commit any such crime."; and

(2) in subsection (r)—

(A) in paragraph (1), by striking "crime." and inserting "crime described in paragraph (5)(B) and information on any permanent protection or restraining order issued against the petitioner related to any specified crime described in subsection (5)(B)(i)."; and

(B) in paragraph (5)(B)(i), by striking "abuse, and stalking." and inserting "abuse, stalking, or an attempt to commit any such crime.".

(b) PROVISION OF INFORMATION TO K NONIMMIGRANTS.—Section 833 of the International Marriage Broker Regulation Act of 2005 (8 U.S.C. 1375a) is amended in subsection (b)(1)(A), by striking "or" after "orders" and inserting "and".

(source: § 201(d) of H.R. 2131 (Darrell Issa), 113th Cong., as reported by the Judiciary Committee)

L Visas

SEC. X. WAGES AND WORKING CONDITIONS FOR L VISA WORKERS.

OPTION 1

(a) IN GENERAL.—Section 214(c)(2) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(2)) is amended by adding at the end the following—

"(G) (i) An employer of an alien who will serve in a capacity for the employer involving specialized knowledge under section 101(a)(15)(L) for a cumulative period of time in excess of 4 months over a 2-year period—

"(I) will offer to the alien during the period of authorized employment wages that are at least—

"(aa) the actual wage level paid by the employer to all other individuals with similar experience and qualifications for the specific employment in question; or

"(bb) the prevailing wage level for the occupational classification in the area of employment,

whichever is greater; and

"(II) will provide working conditions for such alien that will not adversely affect the working conditions of workers similarly employed.

"(ii) In complying with the requirements of clause (i), an employer may keep the alien on their home country payroll, and may take into account the value of wages paid by the employer to the alien in the currency of the alien's home country, the value of benefits paid by the employer to the alien in the alien's home country, employer-provided housing or housing allowances, employer-provided vehicles or transportation allowances, and other benefits provided to the alien as an incident of the assignment in the United States.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act and shall apply to employers with respect to aliens issued visas or otherwise provided nonimmigrant status under section 101(a)(15)(L) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(L)) on or after such date.

(source: § 202 of H.R. 2131 (Darrell Issa), 113th Cong., as reported by the Judiciary Committee)

OPTION 2

(a) IN GENERAL.—Section 214(c)(2) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(2)) is amended by adding at the end the following:

"(G) (i) An employer that employs a nonimmigrant described in section 101(a)(15)(L) for a cumulative period of time in excess of 1 year shall—

"(I) offer such nonimmigrant, during the period of authorized employment, wages, based on the best information available at the time the application is filed, which are not less than the highest of—

"(aa) the locally determined prevailing wage level for the occupational classification in the area of employment;

"(bb) the median wage for all workers in the occupational classification in the area of employment; and

"(cc) the median wage for skill level 2 in the occupational classification found in the most recent Occupational Employment Statistics survey; and

"(II) provide working conditions for such nonimmigrant that will not adversely affect the working conditions of workers similarly employed by the employer or by an employer with which such nonimmigrant is placed pursuant to a waiver under subparagraph (F)(ii).

"(ii) If an employer, in such previous period specified by the Secretary of Homeland Security, employed 1 or more such nonimmigrants, the employer shall provide to the

Secretary of Homeland Security the Internal Revenue Service Form W–2 Wage and Tax Statement filed by the employer with respect to such nonimmigrants for such period.

"(iii) It is a failure to meet a condition under this subparagraph for an employer who has filed a petition to import 1 or more aliens as nonimmigrants described in section 101(a)(15)(L)—

"(I) to require such a nonimmigrant to pay a penalty or liquidated damages for ceasing employment with the employer before a date mutually agreed to by the nonimmigrant and the employer; or

"(II) to fail to offer to such a nonimmigrant, during the nonimmigrant's period of authorized employment, on the same basis, and in accordance with the same criteria, as the employer offers to United States workers, benefits and eligibility for benefits, including—

"(aa) the opportunity to participate in health, life, disability, and other insurance plans;

"(bb) the opportunity to participate in retirement and savings plans; and

"(cc) cash bonuses and noncash compensation, such as stock options (whether or not based on performance).".

(b) RULEMAKING.—The Secretary of Homeland Security, after notice and a period of comment and taking into consideration any special circumstances relating to intracompany transfers, shall promulgate rules to implement the requirements under section 214(c)(2)(K) of the Immigration and Nationality Act, as added by subsection (a).

(source: § 205 of S. 3770 (Charles Grassley), 116th Cong.)

SEC. X. SPECIALIZED KNOWLEDGE.

Section 214(c)(2)(B) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(2)(B)) is amended to read as follows:

"(B) (i) For purposes of section 101(a)(15)(L), the term 'specialized knowledge'—

"(I) means knowledge possessed by an individual whose advanced level of expertise and proprietary knowledge of the employer's product, service, research, equipment, techniques, management, or other interests of the employer are not readily available in the United States labor market;

"(II) is clearly different from those held by others employed in the same or similar occupations; and

"(III) does not apply to persons who have general knowledge or expertise which enables them merely to produce a product or provide a service.

"(ii) (I) The ownership of patented products or copyrighted works by a petitioner under section 101(a)(15)(L) does not establish that a particular employee has specialized knowledge. In order to meet the definition under clause (i), the beneficiary shall be a key person with knowledge that is critical for performance of the job duties and is protected from disclosure through patent, copyright, or company policy.

"(II) Different procedures are not proprietary knowledge within this context unless the entire system and philosophy behind the procedures are clearly different from those of other firms, they are relatively complex, and they are protected from disclosure to competition.".

(source: § 201 of S. 3770 (Charles Grassley), 116th Cong.)

SEC. X. PROHIBITION ON REPLACEMENT OF UNITED STATES WORKERS AND RESTRICTING OUTPLACEMENT OF L–1 WORKERS.

(a) RESTRICTION ON OUTPLACEMENT OF L-1 WORKERS.—Section 214(c)(2)(F) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(2)(F)) is amended to read as follows:

"(F) (i) Unless an employer receives a waiver under clause (ii), an employer may not employ an alien, for a cumulative period exceeding 1 year, who—

"(I) will serve in a capacity involving specialized knowledge with respect to an employer for purposes of section 101(a)(15)(L); and

"(II) will be stationed primarily at the worksite of an employer other than the petitioning employer or its affiliate, subsidiary, or parent, including pursuant to an outsourcing, leasing, or other contracting agreement.

"(ii) The Secretary of Labor may grant a waiver of the requirements under clause (i) if the Secretary determines that the employer requesting such waiver has established that—

"(I) the employer with which the alien referred to in clause (i) would be placed—

"(aa) will not at any time replace a United States worker with 1 or more nonimmigrants described in section 101(a)(15)(L); and

"(bb) has not displaced and does not intend to displace a United States worker employed by the employer within the period beginning 180 days before the date of the placement of such alien with the employer and ending 180 days after such date (not including any period of on-site or virtual training of nonimmigrants described in section 101(a)(15)(L) by employees of the employer);

"(II) such alien will be principally controlled and supervised by the petitioning employer; and

"(III) the placement of the nonimmigrant is not essentially an arrangement to provide labor for hire for an unaffiliated employer with which the nonimmigrant will be placed, rather than a placement in connection with the provision of a product or service for which specialized knowledge specific to the petitioning employer is necessary.

"(iii) The Secretary shall grant or deny a waiver under clause (ii) not later than seven days after the date on which the Secretary receives the application for the waiver.".

(b) PROHIBITION ON REPLACEMENT OF UNITED STATES WORKERS.—Section 214(c)(2) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(2)) is amended by adding at the end the following:

"(G) (i) An employer importing an alien as a nonimmigrant under section 101(a)(15)(L)—

"(I) may not at any time replace a United States worker (as defined in section 212(n)(4)(E)) with 1 or more such nonimmigrants; and

"(II) may not displace a United States worker (as defined in section 212(n)(4)(E)) employed by the employer during the period beginning 180 days before and ending 180 days after the date of the placement of such a nonimmigrant with the employer.

"(ii) The 180-day period referenced in clause (i)(II) may not include any period of on-site or virtual training of nonimmigrants described in clause (i) by employees of the employer.".

(c) RULEMAKING.—The Secretary of Homeland Security, after notice and a period for comment, shall promulgate rules for an employer to apply for a waiver under section 214(c)(2)(F)(ii), as added by subsection (a).

(source: § 201 of S. 3770 (Charles Grassley), 116th Cong.)

SEC. X. L–1 EMPLOYER PETITION REQUIREMENTS FOR EMPLOYMENT AT NEW OFFICES.

Section 214(c)(2) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(2)) is amended by adding at the end the following:

"(G) (i) If the beneficiary of a petition under this paragraph is coming to the United States to open, or to be employed in, a new office, the petition may be approved for up to 12 months only if—

"(I) the alien has not been the beneficiary of 2 or more petitions under this subparagraph during the immediately preceding 2 years; and

"(II) the employer operating the new office has—

"(aa) an adequate business plan;

"(bb) sufficient physical premises to carry out the proposed business activities; and

"(cc) the financial ability to commence doing business immediately upon the approval of the petition.

"(ii) An extension of the approval period under clause (i) may not be granted until the importing employer submits an application to the Secretary of Homeland Security that contains—

"(I) evidence that the importing employer meets the requirements of this subsection;

"(II) evidence that the beneficiary of the petition is eligible for nonimmigrant status under section 101(a)(15)(L);

"(III) a statement summarizing the original petition;

"(IV) evidence that the importing employer has fully complied with the business plan submitted under clause (i)(I);

"(V) evidence of the truthfulness of any representations made in connection with the filing of the original petition;

"(VI) evidence that the importing employer, for the entire period beginning on the date on which the petition was approved under clause (i), has been doing business at the new office through regular, systematic, and continuous provision of goods and services;

"(VII) a statement of the duties the beneficiary has performed at the new office during the approval period under clause (i) and the duties the beneficiary will perform at the new office during the extension period granted under this clause;

"(VIII) a statement describing the staffing at the new office, including the number of employees and the types of positions held by such employees;

"(IX) evidence of wages paid to employees;

"(X) evidence of the financial status of the new office; and

"(XI) any other evidence or data prescribed by the Secretary.

"(iii) A new office employing the beneficiary of an L–1 petition approved under this paragraph shall do business only through regular, systematic, and continuous provision of goods and services for the entire period for which the petition is sought.

"(iv) Notwithstanding clause (ii), and subject to the maximum period of authorized admission set forth in subparagraph (D), the Secretary of Homeland Security, in the Secretary's discretion, may approve a subsequently filed petition on behalf of the beneficiary to continue employment at the office described in this subparagraph for a period beyond the initially granted 12-month period if the importing employer has been doing business at the new office through regular, systematic, and continuous provision of goods and services for the 6 months immediately preceding the date of extension petition filing and demonstrates that the failure to satisfy any of the requirements described in those subclauses was directly caused by extraordinary circumstances, as determined by the Secretary in the Secretary's discretion.".

(source: § 202 of S. 3770 (Charles Grassley), 116th Cong.)

SEC. X. INVESTIGATION AND DISPOSITION OF COMPLAINTS AGAINST L–1 EMPLOYERS.

Section 214(c)(2) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(2)) is amended by adding at the end the following—

OPTION 1

"(G) The Secretary of Labor shall have the same investigatory and enforcement powers to ensure compliance with this subparagraph as are set forth in section 212(n)(2).".

(source: § 202 of H.R. 2131 (Darrell Issa), 113th Cong., as reported by the Judiciary Committee)

OPTION 2

"(G) (i) The Secretary of Homeland Security may initiate an investigation of any employer that employs nonimmigrants described in section 101(a)(15)(L) with regard to the employer's compliance with the requirements under this subsection.

"(ii) If the Secretary receives specific credible information from a source who is likely to have knowledge of an employer's practices, employment conditions, or compliance with the requirements under this subsection, the Secretary may conduct an investigation into the employer's compliance with the requirements of this subsection. The Secretary may withhold the identity of the source from the employer, and the source's identity shall not be subject to disclosure under section 552 of title 5, United States Code.

"(iii) The Secretary shall establish a procedure for any person desiring to provide to the Secretary information described in clause (ii) that may be used, in whole or in part, as the basis for the commencement of an investigation described in such clause, to provide the information in writing on a form developed and provided by the Secretary and completed by or on behalf of the person.

"(iv) No investigation described in clause (ii) (or hearing described in clause (vi) based on such investigation) may be conducted with respect to information about a failure to comply with the requirements under this subsection, unless the Secretary receives the information not later than 24 months after the date of the alleged failure.

"(v) Before commencing an investigation of an employer under clause (i) or (ii), the Secretary shall provide notice to the employer of the intent to conduct such investigation. The notice shall be provided in such a manner, and shall contain sufficient detail, to permit the employer to respond to the allegations before an investigation is commenced. The Secretary is not required to comply with this clause if the Secretary determines that to do so would interfere with an effort by the Secretary to investigate or secure compliance by the employer with the requirements of this subsection. There shall be no judicial review of a determination by the Secretary under this clause.

"(vi) If the Secretary, after an investigation under clause (i) or (ii), determines that a reasonable basis exists to make a finding that the employer has failed to comply with the requirements under this subsection, the Secretary shall provide the interested parties with notice of such determination and an opportunity for a hearing in accordance with section 556 of title 5, United States Code, not later than 120 days after the date of such determination. If such a hearing is requested, the Secretary shall make a finding concerning the matter by not later than 120 days after the date of the hearing.

"(vii) If the Secretary, after a hearing, finds a reasonable basis to believe that the employer has violated the requirements under this subsection, the Secretary shall impose a penalty under subparagraph (K).

"(viii) (I) The Secretary may conduct surveys of the degree to which employers comply with the requirements under this section.

"(II) The Secretary shall—

"(aa) conduct annual compliance audits of not less than 1 percent of the employers that employ nonimmigrants described in section 101(a)(15)(L) during the applicable fiscal year;

"(bb) conduct annual compliance audits of each employer with more than 100 employees who work in the United States if more than 15 percent of such employees are nonimmigrants described in section 101(a)(15)(L); and

"(cc) make available to the public an executive summary or report describing the general findings of the audits carried out pursuant to this subclause.

"(ix) The Secretary is authorized to take other such actions, including issuing subpoenas and seeking appropriate injunctive relief and specific performance of contractual obligations, as may be necessary to assure employer compliance with the terms and conditions under this paragraph. The rights and remedies provided to nonimmigrants described in section 101(a)(15)(L) under this paragraph are in addition to, and not in lieu of, any other contractual or statutory rights and remedies of such nonimmigrants, and are not intended to alter or affect such rights and remedies.".

(source: § 204 of S. 3770 (Charles Grassley), 116th Cong.)

SEC. X. PENALTIES.

Section 214(c)(2) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(2)) is amended by adding at the end the following:

"(G) (i) If the Secretary of Homeland Security determines, after notice and an opportunity for a hearing, that an employer failed to meet a condition under subparagraph [X], or misrepresented a material fact in a petition to employ 1 or more aliens as nonimmigrants described in section 101(a)(15)(L)—

"(I) the Secretary shall impose such administrative remedies (including civil monetary penalties in an amount not to exceed $5,000 per violation) as the Secretary determines to be appropriate;

"(II) the Secretary may not, during a period of at least 1 year, approve a petition for that employer to employ 1 or more aliens as such nonimmigrants; and

"(III) in the case of a violation of subparagraph (K) or (M), the employer shall be liable to the employees harmed by such violation for lost wages and benefits.

"(ii) If the Secretary finds, after notice and an opportunity for a hearing, a willful failure by an employer to meet a condition under subparagraph [X] or a willful

misrepresentation of material fact in a petition to employ 1 or more aliens as nonimmigrants described in section 101(a)(15)(L)—

"(I) the Secretary shall impose such administrative remedies (including civil monetary penalties in an amount not to exceed $25,000 per violation) as the Secretary determines to be appropriate;

"(II) the Secretary may not, during a period of at least 2 years, approve a petition filed for that employer to employ 1 or more aliens as such nonimmigrants; and

"(III) in the case of a violation of subparagraph [X], the employer shall be liable to the employees harmed by such violation for lost wages and benefits.".

(source: § 206 of S. 3770 (Charles Grassley), 116th Cong.)

SEC. X. PROHIBITION ON RETALIATION AGAINST L–1 WORKERS.

Section 214(c)(2) of the Immigration and Nationality Act (8 U.S.C. 1184(c)(2)) is amended by adding at the end the following:

"(G) (i) An employer that has filed a petition to import 1 or more aliens as nonimmigrants described in section 101(a)(15)(L) violates this subparagraph by taking, failing to take, or threatening to take or fail to take, a personnel action, or intimidating, threatening, restraining, coercing, blacklisting, discharging, or discriminating in any other manner against an employee because the employee—

"(I) has disclosed information that the employee reasonably believes evidences a violation of this subsection, or any rule or regulation pertaining to this subsection; or

"(II) cooperates or seeks to cooperate with the requirements under this subsection, or any rule or regulation pertaining to this subsection.

"(ii) In this subparagraph, the term 'employee' includes—

"(I) a current employee;

"(II) a former employee; and

"(III) an applicant for employment.".

(source: § 207 of S. 3770 (Charles Grassley), 116th Cong.)

T/U Visas

SEC. X. CLARIFICATION OF REQUIRMENTS APPLICABLE TO T VISAS

(a) Section 214(o) of the Immigration and Nationality Act (8 U.S.C. 1184(o)) is amended by adding at the end the following new paragraph:

"(8) No alien shall be eligible for admission to the United States under section 101(a)(15)(T) if there is a substantial reason to believe that the alien voluntarily came to the United States, except that if the alien is or has been a victim of a severe form of trafficking in the form of sex trafficking, the alien shall be eligible for admission under such section unless the alien knew or reasonably should have known when coming to the United States that the alien would be expected to perform commercial sex acts.".

(b) Section 245(l) of the Immigration and Nationality Act (8 U.S.C. 1255(l)) is amended—

(A) in paragraph (1)(C)(i), by striking "or" at the end and inserting "and";

(B) by redesignating—

(i) paragraphs (3) and (4) as paragraphs (4) and (5), respectively; and

(ii) the second paragraph (2) as paragraph (3);

(C) in paragraph (2)(B), by striking "(3), (10)(C), and (10(E)), if the activities rendering the alien inadmissible under the provision were caused by, or were incident to," and inserting "(2), (3), (8), (9)(A), (10)(C), (10)(D), and (10)(E)), if the activities rendering the alien inadmissible under the provision were caused by"; and

(D) by amending paragraph (5) (as so redesignated) to read as follows:

"(5) Upon the approval of adjustment of status under paragraph (1), the Secretary of Homeland Security shall record the alien's lawful admission for permanent residence as of the date of such approval and the Secretary of State shall reduce by one the number of visas authorized to be issued under sections 201(d) and 203(b)(4) for the fiscal year then current, unless the number of remaining visas authorized to be issued under section 203(b)(4) for such year is zero, in which case such reductions shall not be made.".

(source: § 528 of H.R. 5013 (George Gekas), 107th Cong.)

SEC. X. CLARIFICATION OF THE REQUIREMENTS APPLICABLE TO U VISAS.

(a) Section 101(a)(15)(U)(iii) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(U)(iii)) is amended to read as follows:

"(iii) the criminal activity referred to in this clause is that involving 1 or more of the following or any similar activity in violation of Federal, State, or local criminal law: rape; incest; domestic violence, sexual assault; abusive sexual contact; sexual exploitation; female genital mutilation; or attempt or conspiracy to commit any of the above mentioned crimes; or".

(b) Section 204(a)(1)(C) of such Act (8 U.S.C. 1154(a)(1)(C)) is amended by inserting "directly" before "connected".

(c) Section 214(p)(1) of such Act (8 U.S.C. 1184(p)(1)) is amended as follows:

(1) by striking "The petition" and inserting the following:

"(A) IN GENERAL.—The petition".

(2) by adding at the end the following:

"(B) CERTIFICATION REQUIREMENTS.—Each certification submitted under subparagraph (A) shall confirm under oath that—

"(i) the criminal activity is actively under investigation or a prosecution has been commenced; and

"(ii) the petitioner has provided to law enforcement information that will assist in identifying the perpetrator of the criminal activity or the perpetrator's identity is known.

"(C) REQUIREMENT FOR CERTIFICATION.—No application for a visa under section 101(a)(15)(U) may be granted unless accompanied by the certification as described in this paragraph.".

(3) by striking "This certification may also be provided by an official of the Service whose ability to provide such certification is not limited to information concerning immigration violations.".

(d) Section 237(a)(1)(H) of such Act (8 U.S.C. 1227(a)(1)(H)) is amended—

(1) by striking clause (ii);

(2) in clause (i), by striking "(I)"; and

(3) by redesignating subclause (II) as clause (ii).

(e) Section 240A of such Act (8 U.S.C. 1229b) is amended—

(1) in subsection (b)(2)(A)(ii), by striking ", and the issuance of a charging document for removal proceedings shall not toll the 3-year period of continuous physical presence in the United States";

(2) by amending subsection (b)(2)(A)(iv) to read as follows:

"(iv) the alien is not inadmissible under paragraph (2), (3), (8), (9)(A), (10)(C), (10)(D), or (10)(E) of section 212(a), is not deportable under paragraph (1)(E), (1)(G), or (2) through (4) of section 237(a) (except in a case described in section 237(a)(7) where the Attorney General exercises discretion to grant a waiver), and has not been convicted of an aggravated felony; and"; and

(3) in subsection (b)(2)(B)—

(A) by inserting "direct" before "connection between the absence";

(B) by inserting "directly" before "connected to the battering or extreme";

(C) in the third sentence, by inserting "battery or cruelty-related" before "absences or portions of the absences";

(D) in subsection (b)(2)(C), by inserting "directly" before "connected";

(E) in subsection (b)(4)(A), by striking "shall" and inserting "may"; and

(F) in subsection (d)(1), by striking "except in the case of an alien who applies for cancellation of removal under subsection (b)(2),".

(f) Section 245 of such Act (8 U.S.C. 1255) is amended by redesignating the subsection (l) that was added by section 1513(f) of Public Law 106-386 as subsection (m) and in such redesignated subsection--

(1) in paragraph (1)--

(A) in the matter preceding subparagraph (A), by striking "section 212(a)(3)(E), unless the Attorney General determines based on affirmative evidence" and inserting "(2), (3), (8), (9)(A), (10)(C), (10)(D), or (10)(E) of section 212(a), unless the Attorney General determines";

(B) by striking "and" at the end of subparagraph (A); and

(C) by striking subparagraph (B) and inserting the following:

"(B) the alien has, throughout such period, been a person of good moral character; and

"(C) in the opinion of the Secretary of Homeland Security, the alien or the alien's spouse, parent, or child, who is a citizen of the United States or an alien lawfully admitted for permanent residence, would suffer extreme hardship.";

(2) in paragraph (2), by striking "or unless an official involved in the investigation or prosecution certifies that the absence was otherwise justified"; and

(3) by amending paragraph (4) to read as follows:

"(4) Upon the approval of adjustment of status under paragraph (1) or (3), the Secretary of Homeland Security shall record the alien's lawful admission for permanent residence as of the date of such approval and the Secretary of State shall reduce by one the number of visas authorized to be issued under sections 201(d) and 203(b)(4) for the fiscal year then current, unless the number of remaining visas authorized to be issued under section 203(b)(4) for such year is zero, in which case such reductions shall not be made.".

(sources: § 801 of H.R. 4970 (Sandy Adams), 112th Cong., as passed by the House; § 528 of H.R. 5013 (George Gekas), 107th Cong.)

SEC. X. TEMPORARY NATURE OF U VISA STATUS.

(a) IN GENERAL.—Section 245(m) of the Immigration and Nationality Act (8 U.S.C. 1255(m)) is amended by striking "the alien is not described" and inserting "the individual who was convicted of the criminal activity referred to in section 101(a)(15)(U)(i)(I) that was the basis for the alien being admitted into the United States (or otherwise provided nonimmigrant status) under section 101(a)(15)(U) was himself or herself an alien and has been physically removed to the foreign state of which the alien with nonimmigrant status under section 101(a)(15)(U) is a national, and if the alien with nonimmigrant status under section 101(a)(15)(U) is not described".

(b) DURATION OF NONIMMIGRANT STATUS.—Section 214(p)(6) of such Act (8 U.S.C. 1184(p)(6)) is amended by striking "if the alien is eligible for relief under section 245(m) and is unable to obtain such relief because regulations have not been issued to implement such section and shall be extended".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to applications for adjustment of status submitted on or after the date of the enactment of this Act, and to previously filed applications that are pending on the date of enactment of this Act.

(source: § 806 of H.R. 4970 (Sandy Adams), 112th Cong., as passed by the House)

SEC. X. ANNUAL REPORT ON IMMIGRATION APPLICATIONS MADE BY VICTIMS OF ABUSE.

Not later than December 1, 2022, and annually thereafter, the Secretary of Homeland Security shall submit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report that includes the following:

(1) the number of aliens who—

(A) submitted an application for nonimmigrant status under paragraph (15)(T)(i), (15)(U)(i), or (51) of section 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)) during the preceding fiscal year;

(B) were granted such nonimmigrant status during such fiscal year; or

(C) were denied such nonimmigrant status during such fiscal year;

(2) the number of aliens granted continued presence in the United States under section 107(c)(3) of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7105(c)(3)) during the preceding fiscal year;

(3) the actions being taken to combat fraud and to ensure program integrity; and

(4) each type of criminal activity by reason of which an alien received nonimmigrant status under section 101(a)(15)(U) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(U)) during the preceding fiscal year and the number of occurrences of that criminal activity that resulted in such aliens receiving such status.

(source: § 807 of H.R. 4970 (Sandy Adams), 112th Cong., as passed by the House)

Miscellaneous

SEC. X. TRANSPARENCY.

Section 204 of the Immigration and Nationality Act (8 U.S.C. 1154) is amended by adding at the end the following:

"(m) EMPLOYER TO PROVIDE IMMIGRATION PAPERWORK EXCHANGED WITH FEDERAL AGENCIES.—

"(1) IN GENERAL.—Not later than 21 business days after receiving a written request from a former, current, or prospective employee of an employer who is the beneficiary of an employment-based immigrant or nonimmigrant petition filed by the employer, such employer shall provide such employee or beneficiary with the original (or a certified copy of the original) of all petitions, notices, and other written communication exchanged between the employer and the Department of Labor, the Department of Homeland Security, or any other Federal agency or department that is related to an

immigrant or nonimmigrant petition filed by the employer for such employee or beneficiary.

"(2) WITHHOLDING OF FINANCIAL OR PROPRIETARY INFORMATION.—If a document required to be provided to an employee or prospective employee under paragraph (1) includes any sensitive financial or proprietary information of the employer, the employer may redact such information from the copies provided to such person.".

(source: § 122 of S. 3770 (Charles Grassley), 116th Cong.)

SEC. X. REQUIREMENTS FOR INFORMATION FOR H–1B AND L–1 WORKERS.

Section 214 of the Immigration and Nationality Act (8 U.S.C. 1184) is amended by adding at the end the following:

"(s) REQUIREMENTS FOR INFORMATION FOR H-1B AND L-1 WORKERS.—

"(1) IN GENERAL.—Upon issuing a visa to an applicant, who is outside the United States, for nonimmigrant status pursuant to subparagraph (H)(i)(b) or (L) of section 101(a)(15), the issuing office shall provide the applicant with—

"(A) a brochure outlining the obligations of the applicant's employer and the rights of the applicant with regard to employment under Federal law, including labor and wage protections;

"(B) the contact information for appropriate Federal agencies or departments that offer additional information or assistance in clarifying such obligations and rights; and

"(C) a copy of the petition submitted for the nonimmigrant under section 212(n) or the petition submitted for the nonimmigrant under subsection (c)(2)(A), as appropriate.

"(2) APPLICANTS INSIDE THE UNITED STATES.—Upon the approval of an initial petition filed for an alien who is in the United States and seeking status under subparagraph (H)(i)(b) or (L) of section 101(a)(15), the Secretary of Homeland Security shall provide the applicant with the material described in subparagraphs (A), (B), and (C) of paragraph (1).".

(source: § 123 of S. 3770 (Charles Grassley), 116th Cong.)

XXVI. Prevailing Wages

SEC. X. CLARIFICATION OF THE PREVAILING WAGE.

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

(1) in paragraph (1), by striking "subsections (a)(5)(A), (n)(1)(A)(i)(II), and (t)(1)(A)(i)(II)" and inserting "subsections (a)(5)(A), (n)(1)(A)(i)(II), and (t)(1)(A)(i)(II) of this section, and subsections (c)(2)(G), (e), and (s) of section 214,";

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

(3) by inserting after paragraph (1) the following:

"(2) In computing the prevailing wage level for an occupational classification in an area of employment for purposes of subsections (a)(5)(A), (n)(1)(A)(i)(II), and (t)(1)(A)(i)(II) of this section, and subsections (c)(2)(G), (e), and (s) of section 214, the wage level shall be the wage level specified in subparagraph (A), (B), or (C) of paragraph (5) depending on the experience, education, and level of supervision required for the position.";

(4) in paragraph (4) (as redesignated), by striking "subsections (a)(5)(A), (n)(1)(A)(i)(II), and (t)(1)(A)(i)(II)" and inserting "subsections (a)(5)(A), (n)(1)(A)(i)(II), and (t)(1)(A)(i)(II) of this section, and subsections (c)(2)(G), (e), and (s) of section 214,";

(5) by amending paragraph (5) (as redesignated) to read as follows:

"(5) Subject to paragraph (2), the Secretary of Labor shall make available to employers a governmental survey to determine the prevailing wage for each occupational classification by metropolitan statistical area in the United States. Such survey, or other survey approved by the Secretary of Labor, shall provide 3 levels of wages commensurate with experience, education, and level of supervision. Such wage levels shall be determined as follows:

"(A) The first level shall be the mean of the lowest two-thirds of wages surveyed, but in no case less than 80 percent of the mean of the wages surveyed.

"(B) The second level shall be the mean of wages surveyed.

"(C) The third level shall be the mean of the highest two-thirds of wages surveyed."; and

(6) by adding at the end the following:

"(6) An employer may use an independent authoritative survey approved by the Secretary of Labor for purposes of paragraph (5), if—

"(A) the survey data was collected within 24 months;

"(B) the survey was published within the prior 24 months;

"(C) the survey reflects the area of intended employment;

"(D) the employer's job description adequately matches the job description in the survey;

"(E) the survey is across industries that employ workers in the occupation;

"(F) the wage determination is based on the arithmetic mean (weighted average); and

"(G) the survey identifies a statistically valid methodology that was used to collect the data.".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the date of the enactment of this Act, and shall apply to employers with regard to labor certifications under sections 212(a)(5)(A) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(5)(A)), labor condition applications under section 212(n)(1) of such Act (8 U.S.C. 1182(n)(1)), and attestations under section 212(t)(1) of such Act (8 U.S.C. 1182(t)(1)), filed on or after such date, to employers with regard to aliens issued visas or otherwise provided nonimmigrant status under section 101(a)(15)(L) of such Act (8 U.S.C. 1101(a)(15)(L)) on or after such date, and to employers with regard to aliens they provide post-course of study optional practical training that begins on or after such date.

(source: § 301 of H.R. 2131 (Darrell Issa), 113th Cong., as reported by the Judiciary Committee)

SEC. X. ENTRY-LEVEL PREVAILING WAGES CAN ONLY BE PAID TO RECENT GRADUATES OF U.S. INSTITUTIONS OF HIGHER EDUCATION.

TEXT FORTHCOMING

(source: H.R. 170 (Darrell Issa), 115th Cong., as passed by the Judiciary Committee)

XXVII: Amnesty Amendments

SEC. X. GROUNDS FOR INELIGIBILITY.

An alien is ineligible for X status if the Secretary determines that the alien—

(1) has a conviction for—

(A) an offense classified as a felony in the convicting jurisdiction;

(B) an aggravated felony;

(C) an offense classified as a misdemeanor 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);

(D) 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

(E) 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));

(2) has been adjudicated delinquent in a State or local juvenile court proceeding for an offense equivalent to—

(A) an offense relating to murder, manslaughter, homicide, rape (whether the victim (as defined in section 503(e) of the Victims' Rights and Restitution Act of 1990 (42 U.S.C. 10607(e)) was conscious or unconscious), statutory rape, or any offense of a sexual nature involving a victim (as so defined) 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));

(B) a crime of violence, as such term is defined in section 16 of title 18, United States Code; or

(C) an offense punishable under section 401 of the Controlled Substances Act (21 U.S.C. 841);

(3) 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 (as defined in section 503(e) of the Victims' Rights and Restitution Act of 1990 (42 U.S.C. 10607(e), or family members of victims, of the crime;

(4) 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);

(5) has been charged with a felony or misdemeanor offense (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), and the charge or charges are still pending;

(6) 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—

(A) paragraphs (5), (7), and (9)(B) of such section shall not apply; and

(B) 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 [X];

(7) 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—

(A) 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

(B) subparagraphs (B) through (D) of section 237(a)(1) and section 237(a)(3)(A) of such Act shall not apply;

(8) has failed to comply with the requirements of any removal order or voluntary departure agreement;

(9) 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));

(10) has failed or refused to attend or remain in attendance at a proceeding to determine the alien's inadmissibility or deportability;

(11) 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 [X], unless the alien has demonstrated that the alien is enrolled in, and is in regular full-time attendance at, an educational institution within the United States;

(12) is delinquent with respect to any Federal, State, or local income or property tax liability;

(13) has failed to pay to the Treasury, in addition to any amounts owed, an amount equal to the aggregate value of any disbursements received by such alien for refunds described in section 1324(b)(2);

(14) has income that would result in tax liability under section 1 of the Internal Revenue Code of 1986 and that was not reported to the Internal Revenue Service; or

(15) has at any time engaged in:

(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 (as defined in section 503(e) of the Victims' Rights and Restitution Act of 1990 (42 U.S.C. 10607(e)) 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).

(source: § 1102 of H.R. 4760 (Bob Goodlatte), 115th Cong.)

SEC. X. RECORDS REGARDING JUVENILE COURT PROCEEDINGS

[Add where appropriate]:

"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;"

(source: § 1102 of H.R. 4760 (Bob Goodlatte), 115th Cong.)

SEC. X. INELIGIBILITY OF THE PARENTS OF LEGALIZATION BENEFICIARIES TO BE SPONSORED FOR GREEN CARDS

TEXT FORTHCOMING

SEC. X. DOCUMENTARY REQUIREMENTS.

An application filed by an alien under this section shall include the following:

(1) one or more of the following documents demonstrating the alien's identity:

(A) a passport (or national identity document) from the alien's country of origin;

(B) a certified birth certificate along with photo identification;

(C) a State-issued identification card bearing the alien's name and photograph;

(D) an Armed Forces identification card issued by the Department of Defense; or

(E) a Coast Guard identification card issued by the Department of Homeland Security;

(2) a certified copy of the alien's birth certificate or certified school transcript demonstrating that the alien satisfies the requirement of [X]; or

(3) immigration records from the Department of Homeland Security (demonstrating that the alien satisfies the requirements under [X].

(source: § 1102 of H.R. 4760 (Bob Goodlatte), 115th Cong.)

SEC. X. FEES.

(a) STANDARD PROCESSING FEE.—

(1) IN GENERAL.—Aliens applying for [X] status under this section shall pay a processing fee to the Department of Homeland Security in an amount determined by the Secretary.

(2) RECOVERY OF COSTS.—The processing fee authorized under paragraph (1) 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—

(A) to adjudicate the application;

(B) to take and process biometrics;

(C) to perform national security and criminal checks;

(D) to prevent and investigate fraud; and

(E) to administer the collection of such fee.

(3) DEPOSIT AND USE OF PROCESSING FEES.—Fees collected under paragraph (1) 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.—

(1) IN GENERAL.—Aliens applying for [X] status under this section shall pay a border security fee to the Department of Homeland Security in an amount of $1,000.

(2) USE OF BORDER SECURITY FEES.—Fees collected under paragraph (1) shall be available, to the extent provided in advance in appropriation Acts, to the Secretary of Homeland Security for the purposes of carrying out [X].

(source: § 1102 of H.R. 4760 (Bob Goodlatte), 115th Cong.)

SEC. X. INELIGIBILITY FOR CERTAIN FEDERAL PUBLIC BENEFITS.

(a) HEALTH CARE SUBSIDIES.—An [X]—

(1) is 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.—A [X] shall not be allowed any credit under sections 24 and 32 of the Internal Revenue Code of 1986.

(c) 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 [X] shall not be considered a qualified alien under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).

(source: § 1102 of H.R. 4760 (Bob Goodlatte), 115th Cong.)

SEC. X. NOT CONSIDERED ADMITTED TO THE UNITED STATES.

An alien granted [X] 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)).

(source: § 1102 of H.R. 4760 (Bob Goodlatte), 115th Cong.)

SEC. X. 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 [X] shall be conducted solely in accordance with this section.

(b) ADMINISTRATIVE APPELLATE REVIEW.—

(1) ESTABLISHMENT OF ADMINISTRATIVE APPELLATE AUTHORITY.—The Secretary shall establish 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 [X].

(2) SINGLE APPEAL FOR EACH ADMINISTRATIVE DECISION.—

(A) IN GENERAL.—An alien in the United States whose application for status under this [X] has been denied or revoked may file with the Secretary not more than 1 appeal, pursuant to this subsection, of each decision to deny or revoke such status.

(B) NOTICE OF APPEAL.—A notice of appeal 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 [X] 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 [X] 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 Act pertaining to the administration or enforcement of the application for status under [X].

(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 [X], 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).

(source: § 1103 of H.R. 4760 (Bob Goodlatte), 115th Cong.)

SEC. X. PENALTIES FOR FALSE STATEMENTS IN APPLICATIONS.

Whoever files an initial or renewal application for [X] 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.

(source: § 1104 of H.R. 4760 (Bob Goodlatte), 115th Cong.)