

108TH CONGRESS
2D SESSION

S. _____

IN THE SENATE OF THE UNITED STATES

Mr. KENNEDY (for himself, Mr. FEINGOLD, and Mrs. CLINTON) introduced
the following bill; which was read twice and referred to the Committee
on _____

A BILL

To provide for earned adjustment to reward work, reunify
families, establish a temporary worker program that pro-
tects United States and foreign workers and strengthen
national security under the immigration laws of the
United States.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as—

5 (1) the “Safe, Orderly, Legal Visas and En-
6 forcement Act of 2004”; or

7 (2) the “S.O.L.V.E. Act of 2004”.

1 **TITLE I—EARNED ADJUSTMENT**
2 **PROGRAM**

3 **SEC. 101. ADJUSTMENT OF STATUS.**

4 (a) PRINCIPAL ALIENS.—Notwithstanding any other
5 provision of law, the Secretary of Homeland Security shall
6 adjust to the status of an alien lawfully admitted for per-
7 manent residence an alien who satisfies the following re-
8 quirements:

9 (1) APPLICATION.—The alien shall file an ap-
10 plication establishing eligibility for adjustment of
11 status and pay the requisite filing fee under section
12 115, not later than 2 years after the date of the
13 issuance of final regulations implementing this title.

14 (2) CONTINUOUS PHYSICAL PRESENCE.—

15 (A) IN GENERAL.—The alien shall estab-
16 lish that the alien—

17 (i) was physically present in the
18 United States, lawfully or unlawfully, for
19 at least 5 years preceding the date on
20 which this Act was introduced;

21 (ii) on such date, was not legally
22 present in the United States pursuant to
23 any classification set forth in section
24 101(a)(15) of the Immigration and Nation-

1 ality Act (with the exception of subpara-
2 graph (V) of such section); and

3 (iii) has not departed from the United
4 States except pursuant to the following pa-
5 rameters:

6 (I) Single departures of 90 days
7 or less, and multiple departures total-
8 ing 180 days or less, will not be con-
9 sidered to interrupt continuous phys-
10 ical presence for purposes of this sec-
11 tion.

12 (II) The burden will be on the
13 alien to demonstrate that all single
14 departures exceeding 90 days, and
15 multiple departures totaling more
16 than 180 days, were due to excep-
17 tional circumstances.

18 (III) Departures pursuant to vol-
19 untary departure shall not in them-
20 selves be considered to interrupt the
21 period of physical presence.

22 (B) CONSTRUCTION.—A person who has
23 violated any conditions of his visa shall not be
24 considered to be legally present for purposes of
25 subparagraph (A).

1 (3) ADMISSIBLE UNDER IMMIGRATION LAWS.—

2 In establishing admissibility to the United States,
3 the alien shall establish that the alien is not inad-
4 missible under section 212(a) of the Immigration
5 and Nationality Act (8 U.S.C. 1182(a)), except for
6 any provision of that section that is not applicable
7 or waived under section 102.

8 (4) EMPLOYMENT IN UNITED STATES.—

9 (A) IN GENERAL.—The alien shall have
10 been employed, including self-employment, law-
11 fully or unlawfully, in the United States, in the
12 aggregate, for at least 2 years of the 5 years
13 immediately preceding the date on which this
14 Act was introduced. For purposes of this sec-
15 tion, either 1,800 hours or 260 days shall con-
16 stitute 2 years of employment. An alien shall
17 not be required to complete such employment
18 requirements with the same employer.

19 (B) EXCEPTION.—Subparagraph (A) shall
20 not apply to an individual who is under 21
21 years of age on the date on which the applica-
22 tion was filed under this section. Subparagraph
23 (A) also shall not apply to an individual who
24 has not been employed as a result of pregnancy,
25 or because of primary caretaker responsibilities

1 of a child or other person who requires super-
2 vision or is unable to take care of him or her-
3 self.

4 (C) DISABILITY.—In determining whether
5 an alien has met the requirements of (A), the
6 Secretary of Homeland Security shall credit the
7 alien with any workdays lost because the alien
8 was unable to work due to injury or disease
9 arising out of and in the course of the alien's
10 employment, if the alien can establish such dis-
11 abling injury or disease through medical
12 records.

13 (D) EDUCATIONAL ALTERNATIVE.—School
14 attendance by an alien after the age of 18 years
15 of each year of high school, or postsecondary
16 education (at least half-time) shall constitute
17 one year of employment for purposes of this
18 section.

19 (E) EVIDENCE OF EMPLOYMENT.—

20 (i) CONCLUSIVE DOCUMENTS.—For
21 purposes of satisfying the requirement in
22 subparagraph (A), the alien shall submit at
23 least 1 of the following documents for each
24 period of employment, which shall be con-

1 sidered conclusive evidence of such employ-
2 ment:

3 (I) Records maintained by the
4 Social Security Administration.

5 (II) Records maintained by an
6 employer, such as pay stubs, time
7 sheets, or employment work
8 verification.

9 (III) Records maintained by the
10 Internal Revenue Service.

11 (IV) Records maintained by a
12 labor union, day labor center, or an
13 organization that assists workers in
14 matters related to employment.

15 (V) Records maintained by any
16 other government agency, such as
17 worker compensation records, dis-
18 ability records, or business licensing
19 records.

20 (ii) OTHER DOCUMENTS.—Aliens un-
21 able to submit a document described in
22 clause (i) shall submit at least 2 other
23 types of reliable documents, including
24 sworn declarations for each period of em-
25 ployment to satisfy the requirement in sub-

1 paragraph (A). Such documents may in-
2 clude:

3 (I) Bank records.

4 (II) Business records.

5 (III) Affidavits from nonrelatives
6 who have direct knowledge of the ap-
7 plicant's work.

8 (IV) Remittance records.

9 (V) Business correspondence.

10 (iii) INTENT OF CONGRESS.—It is the
11 intent of Congress that the requirement in
12 subparagraph (A) be interpreted and im-
13 plemented in a manner that recognizes and
14 takes into account the difficulties encoun-
15 tered by aliens in obtaining evidence of em-
16 ployment due to the undocumented status
17 of the alien.

18 (F) BURDEN OF PROOF.—An alien apply-
19 ing for adjustment of status under this section
20 has the burden of proving by a preponderance
21 of the evidence that the alien has worked the
22 requisite time period (as required under sub-
23 paragraph (A)). An alien may meet such bur-
24 den of proof by producing sufficient evidence to
25 show the extent of that employment as a matter

1 of just and reasonable inference. In such a case,
2 the burden then shifts to the Secretary of
3 Homeland Security to disprove the alien's evi-
4 dence with a showing which negates the reason-
5 ableness of the inference to be drawn from the
6 evidence.

7 (5) PAYMENT OF INCOME TAXES.—Not later
8 than the date on which status is adjusted under this
9 section, the alien shall establish the payment of all
10 Federal income taxes owed for employment during
11 the period of employment required under paragraph
12 (4)(A). The alien may satisfy such requirement by
13 establishing that—

14 (A) no such tax liability exists;

15 (B) all outstanding liabilities have been
16 met; or

17 (C) the alien has entered into an agree-
18 ment for payment of all outstanding liabilities
19 with the Internal Revenue Service (IRS).

20 (D) The IRS shall be directed to cooperate
21 in providing documentation to the alien pursu-
22 ant to this title.

23 (6) BASIC CITIZENSHIP SKILLS.—

24 (A) IN GENERAL.—Except as provided in
25 subparagraph (B), the alien shall establish that

1 the alien meets the requirements of section
2 312(a) of the Immigration and Nationality Act
3 (8 U.S.C. 1423(a)) (relating to minimal under-
4 standing of ordinary English and a knowledge
5 and understanding of the history and govern-
6 ment of the United States), or is pursuing, or
7 is enrolled or registered to pursue such knowl-
8 edge and understanding of English and civics.

9 (B) EXCEPTIONS.—The requirements of
10 subparagraph (A) shall not apply to any person
11 who is 55 years of age or older or who is unable
12 to comply with those requirements because of a
13 physical or developmental disability or mental
14 impairment.

15 (C) AUTHORIZATION OF APPROPRIA-
16 TIONS.—There are authorized to be appro-
17 priated such sums for English and civics classes
18 as are necessary to carry out this section.

19 (7) SECURITY AND LAW ENFORCEMENT CLEAR-
20 ANCES.—The alien shall submit fingerprints in ac-
21 cordance with procedures established by the Sec-
22 retary of Homeland Security. Such fingerprints shall
23 be submitted to relevant Federal agencies to be
24 checked against existing databases for information
25 relating to criminal, national security, or other law

1 enforcement actions that would render the alien in-
2 eligible for adjustment of status under this section.
3 The relevant Federal agencies shall work to ensure
4 that such clearances are completed as expeditiously
5 as possible. An appeal of a denial by the Secretary
6 of Homeland Security shall be processed through the
7 Administrative Appeals Office of the Bureau of Citi-
8 zenship and Immigration Services.

9 (8) MILITARY SELECTIVE SERVICE.—The alien
10 shall establish that if the alien is within the age pe-
11 riod required under the Military Selective Service
12 Act (50 U.S.C. App. 451 et seq.), that such alien
13 has registered under that Act.

14 (b) SPOUSES AND CHILDREN.—

15 (1) IN GENERAL.—

16 (A) ADJUSTMENT OF STATUS.—Notwith-
17 standing any other provision of law, the Sec-
18 retary of Homeland Security shall, if otherwise
19 eligible under paragraph (2), adjust the status
20 to that of a lawful permanent resident for, or
21 provide an immigrant visa to—

22 (i) the spouse or child, defined as a
23 person who was under 21 years of age on
24 the date of the enactment of this Act, of
25 an alien who adjusts status to that of a

1 permanent resident under subsection (a);
2 or

3 (ii) an alien who, within 5 years pre-
4 ceding such date, was the spouse or child
5 of an alien who adjusts status or is eligible
6 to adjust status to that of a permanent
7 resident under subsection (a), if—

8 (I) the termination of the quali-
9 fying relationship was connected to
10 domestic violence; and

11 (II) the spouse or child has been
12 battered or subjected to extreme cru-
13 elty by the spouse or parent who ad-
14 justs status to that of a permanent
15 resident under subsection (a).

16 (B) APPLICATION OF OTHER LAW.—In
17 acting on applications filed under this sub-
18 section with respect to aliens who have been
19 battered or subjected to extreme cruelty, the
20 Secretary of Homeland Security shall apply the
21 provisions of section 204(a)(1)(J) of the Immi-
22 gration and Nationality Act (8 U.S.C.
23 1154(a)(1)(J)) and the protections, prohibi-
24 tions, and penalties under section 384 of the Il-

1 legal Immigration Reform and Immigrant Re-
2 sponsibility Act of 1996 (8 U.S.C. 1367).

3 (2) WAIVER OF INADMISSIBILITY.—In estab-
4 lishing admissibility to the United States, the spouse
5 or child described in paragraph (1) shall establish
6 that they are not inadmissible under section 212(a)
7 of the Immigration and Nationality Act (8 U.S.C.
8 1182(a)), except for any provision of that section
9 that is not applicable or waived under section 102.

10 (3) SECURITY AND LAW ENFORCEMENT CLEAR-
11 ANCE.—The spouse or child, if that child is 14 years
12 of age or older, described in paragraph (1) shall sub-
13 mit fingerprints in accordance with procedures es-
14 tablished by the Secretary of Homeland Security.
15 Such fingerprints shall be submitted to relevant
16 Federal agencies to be checked against existing
17 databases for information relating to criminal, na-
18 tional security, or other law enforcement actions
19 that would render the alien ineligible for adjustment
20 of status under this section. The relevant Federal
21 agencies shall work to ensure that such clearances
22 are completed as expeditiously as possible. An appeal
23 of a denial by the Secretary of Homeland Security
24 shall be processed through the Administrative Ap-

1 peals Office of the Bureau of Citizenship and Immi-
2 gration Services.

3 (c) NONAPPLICABILITY OF NUMERICAL LIMITA-
4 TIONS.—When an alien is granted lawful permanent resi-
5 dent status under this section, the number of immigrant
6 visas authorized to be issued under any provision of the
7 Immigration and Nationality Act (8 U.S.C. 1101 et seq.)
8 shall not be reduced.

9 **SEC. 102. GROUNDS OF INADMISSIBILITY.**

10 In the determination of an alien's admissibility under
11 subsections (a)(3) or (b)(2) of section 101, the following
12 shall apply:

13 (1) GROUNDS THAT MAY NOT BE WAIVED.—

14 The following provisions of section 212(a) of the Im-
15 migration and Nationality Act (8 U.S.C. 1182(a))
16 may not be waived by the Secretary of Homeland
17 Security or the Secretary of State under paragraph
18 (3)(A):

19 (A) Subparagraphs (A), (B), (C), (E), (G),
20 (H), and (I) of paragraph (2) of such section
21 (relating to criminals).

22 (B) Paragraph (3) of such section (relating
23 to security and related grounds).

1 (C) Subparagraphs (A) and (C) of para-
2 graph (10) of such section (relating to polyg-
3 amists and child abductors).

4 (2) GROUNDS OF INADMISSIBILITY NOT APPLI-
5 CABLE.—The provisions of paragraphs (4), (5),
6 (6)(A), (6)(B), (6)(C), (6)(F), (6)(G), (7), (9), and
7 (10)(B) of section 212(a) of the Immigration and
8 Nationality Act (8 U.S.C. 1182(a)) shall not apply.

9 (3) WAIVER OF OTHER GROUNDS.—

10 (A) IN GENERAL.—Except as provided in
11 paragraph (1), the Secretary of Homeland Se-
12 curity or the Secretary of State may waive any
13 provision of section 212(a) of the Immigration
14 and Nationality Act (8 U.S.C. 1182(a)) in the
15 case of individual aliens for humanitarian pur-
16 poses, to ensure family unity, or when it is oth-
17 erwise in the public interest.

18 (B) CONSTRUCTION.—Nothing in this
19 paragraph shall be construed as affecting the
20 authority of the Secretary of Homeland Secu-
21 rity or the Secretary of State other than under
22 this paragraph to waive the provisions of sec-
23 tion 212(a) of the Immigration and Nationality
24 Act (8 U.S.C. 1182(a)).

1 (4) SPECIAL RULE FOR INDIVIDUALS WHERE
2 THERE IS NO COMMERCIAL PURPOSE.—An alien is
3 not ineligible for adjustment of status under section
4 101 by reason of a ground of inadmissibility under
5 section 212(a)(6)(E) of the Immigration and Na-
6 tionality Act (8 U.S.C. 1182(a)(6)(E)) if the alien
7 establishes that the action referred to in that section
8 was taken for humanitarian purposes, to ensure
9 family unity, or was otherwise in the public interest.

10 (5) APPLICABILITY OF OTHER PROVISIONS.—
11 Section 241(a)(5) of the Immigration and Nation-
12 ality Act (8 U.S.C. 1231(a)(5)) and section 240B(d)
13 of that Act (8 U.S.C. 1229c(d)) shall not apply with
14 respect to an alien who is applying for adjustment
15 of status under section 101.

16 **SEC. 103. TREATMENT OF APPLICANTS.**

17 (a) IN GENERAL.—An alien who files an application
18 under section 101 for adjustment of status, including a
19 spouse or child who files for adjustment of status under
20 section 101(b)—

21 (1) shall be granted employment authorization
22 pending final adjudication of the alien's application
23 for adjustment of status;

1 (2) shall be granted permission to travel abroad
2 pursuant to regulation pending final adjudication of
3 alien's application for adjustment of status;

4 (3) shall not be detained, determined inadmis-
5 sible or deportable, or removed pending final adju-
6 dication of the alien's application for adjustment of
7 status, unless the alien commits an act which ren-
8 ders the alien ineligible for such adjustment of sta-
9 tus; and

10 (4) shall not be considered an unauthorized
11 alien (as defined in section 274A(h)(3) of the Immi-
12 gration and Nationality Act (8 U.S.C. 1324a(h)(3)))
13 until such time as employment authorization under
14 paragraph (1) is denied.

15 (b) SECURITY AND LAW ENFORCEMENT CLEAR-
16 ANCE.—Before an alien is granted employment authoriza-
17 tion or permission to travel under subsection (a), the alien
18 shall be required to undergo a name check against existing
19 databases for information relating to criminal, national se-
20 curity, or other law enforcement actions. The relevant
21 Federal agencies shall work to ensure that such name
22 checks are completed not later than 90 days after the date
23 on which the name check is requested.

24 (c) BIOMETRIC DOCUMENTS.—The Secretary of
25 Homeland Security shall issue to each alien described in

1 paragraph (a) a machine-readable tamper-resistant docu-
2 ment that uses biometric identifiers consistent with the re-
3 quirements of section 303 of the Enhanced Border Secu-
4 rity Visa Reform Act, Public Law 107–173, and rep-
5 resents the benefits and status set forth therein.

6 (d) TERMINATION OF PROCEEDINGS.—An alien in
7 removal proceedings who establishes prima facie eligibility
8 for adjustment of status under section 101 shall be enti-
9 tled to a termination of immigration proceedings pending
10 the outcome of the alien’s application, unless the pro-
11 ceedings are based on criminal or national security
12 grounds.

13 **SEC. 104. APPREHENSION BEFORE APPLICATION PERIOD.**

14 The Secretary of Homeland Security shall provide
15 that, in the case of an alien who is apprehended before
16 the beginning of the application period described in section
17 101 and who can establish prima facie eligibility to have
18 the alien’s status adjusted under that section (but for the
19 fact that the alien may not apply for such adjustment until
20 the beginning of such period), until the alien has had the
21 opportunity during the first 180 days of the application
22 period to complete the filing of an application for adjust-
23 ment, the alien—

24 (1) may not be detained solely for a violation of
25 immigration status as described in section 102(2);

1 (2) may not be removed from the United
2 States; and

3 (3) shall be granted employment authorization
4 after undergoing all clearances determined appro-
5 priate by the Secretary of Homeland Security.

6 **SEC. 105. CONFIDENTIALITY OF INFORMATION.**

7 (a) IN GENERAL.—Except as otherwise provided in
8 this title, no Federal agency or bureau, nor any officer
9 or employee of such agency or bureau, may—

10 (1) use the information furnished by the appli-
11 cant pursuant to an application filed under sub-
12 section (a) or (b) of section 101 for any purpose
13 other than to make a determination on the applica-
14 tion;

15 (2) make any publication through which the in-
16 formation furnished by any particular applicant can
17 be identified; or

18 (3) permit anyone other than the sworn officers
19 and employees of such agency or bureau or, with re-
20 spect to applications filed with a recognized organi-
21 zation under section 112, that recognized organiza-
22 tion, to examine individual applications.

23 (b) REQUIRED DISCLOSURES.—Notwithstanding
24 subsections (b) and (c) of section 112, the Secretary of
25 Homeland Security and the Secretary of State shall pro-

1 vide the information furnished pursuant to an application
2 filed under subsection (a) or (b) of section 101, and any
3 other information derived from such furnished informa-
4 tion, to a duly recognized law enforcement entity in con-
5 nection with a criminal investigation or prosecution or a
6 national security investigation or prosecution, in each in-
7 stance about an individual suspect or group of suspects,
8 when such information is requested in writing by such en-
9 tity.

10 (c) CRIMINAL PENALTY.—Any person who knowingly
11 uses, publishes, or permits information to be examined in
12 violation of this section shall be fined not more than
13 \$10,000.

14 **SEC. 106. PENALTIES FOR FALSE STATEMENTS IN APPLICA-**
15 **TIONS.**

16 (a) CRIMINAL PENALTY.—

17 (1) VIOLATION.—It shall be unlawful for any
18 person—

19 (A) to file or assist in filing an application
20 for adjustment of status under this title and
21 knowingly and willfully falsify, conceal, or cover
22 up a material fact or make any false, fictitious,
23 or fraudulent statements or representations, or
24 make or use any false writing or document

1 knowing the same to contain any false, ficti-
2 tious, or fraudulent statement or entry; or

3 (B) to create or supply a false writing or
4 document for use in making such an applica-
5 tion.

6 (2) PENALTY.—Any person who violates para-
7 graph (1) shall be fined in accordance with title 18,
8 United States Code, imprisoned not more than 5
9 years, or both.

10 (b) INADMISSIBILITY.—An alien who is convicted of
11 a crime under subsection (a) shall be considered to be in-
12 admissible to the United States on the ground described
13 in section 212(a)(6)(C)(i) of the Immigration and Nation-
14 ality Act (8 U.S.C. 1182(a)(6)(C)(i)).

15 (c) EXCEPTION.—Notwithstanding subsections (a)
16 and (b), any alien or other entity (including an employer
17 or union) that submits an employment record that con-
18 tains incorrect data that the alien used in order to obtain
19 such employment, shall not, on that ground, be determined
20 to have violated this section.

21 **SEC. 107. INELIGIBILITY FOR PUBLIC BENEFITS.**

22 An alien whose status has been adjusted in accord-
23 ance with section 101 shall be ineligible for any Federal
24 means-tested public benefit as defined for purposes of sec-
25 tion 403 of the Personal Responsibility and Work Oppor-

1 tunity Reconciliation Act of 1996 (8 U.S.C. 1613) unless
2 the alien meets the alien eligibility criteria for such benefit
3 provided under title IV of such Act (8 U.S.C. 1601 et
4 seq.).

5 **SEC. 108. RELATIONSHIPS OF APPLICATION TO CERTAIN**
6 **ORDERS.**

7 (a) IN GENERAL.—An alien who is present in the
8 United States and has been ordered excluded, deported,
9 removed, or to depart voluntarily from the United States
10 under any provision of the Immigration and Nationality
11 Act (8 U.S.C. 1101 et seq.) may, notwithstanding such
12 order, apply for adjustment of status under section 101.
13 Such an alien shall not be required, as a condition of sub-
14 mitting or granting such application, to file a separate mo-
15 tion to reopen, reconsider, or vacate the exclusion, depor-
16 tation, removal or voluntary departure order. If the Sec-
17 retary of Homeland Security grants the application, the
18 Secretary of Homeland Security shall cancel such order.
19 If the Secretary of Homeland Security renders a final ad-
20 ministrative decision to deny the application, such order
21 shall be effective and enforceable 90 days after the date
22 of the denial.

23 (b) STAY OF REMOVAL.—The filing of an application
24 described in subsection (a) shall stay the removal of the
25 alien pending final adjudication of the application. Noth-

1 ing in this section affects review and stays of removal
2 under section 110.

3 **SEC. 109. APPLICATION OF OTHER IMMIGRATION AND NA-**
4 **TIONALITY ACT PROVISIONS.**

5 Nothing in this title shall preclude an alien who may
6 be eligible to be granted adjustment of status under sec-
7 tion 101 from seeking such status under any other provi-
8 sion of law for which the alien may be eligible.

9 **SEC. 110. ADMINISTRATIVE AND JUDICIAL REVIEW.**

10 (a) IN GENERAL.—Except as provided in this section,
11 there shall be no administrative or judicial review of a de-
12 termination respecting an application for adjustment of
13 status under section 101.

14 (b) ADMINISTRATIVE REVIEW.—

15 (1) SINGLE LEVEL OF ADMINISTRATIVE APPEL-
16 LATE REVIEW.—The Secretary of Homeland Secu-
17 rity shall establish an appellate authority within the
18 Bureau of Citizenship and Immigration Services to
19 provide for a single level of administrative appellate
20 review of a determination respecting an application
21 for adjustment of status under section 101.

22 (2) STANDARD FOR REVIEW.—Administrative
23 appellate review referred to in paragraph (1) shall be
24 based solely upon the administrative record estab-
25 lished at the time of the determination on the appli-

1 cation and upon the presentation of additional or
2 newly discovered evidence during the time of the
3 pending appeal.

4 (c) JUDICIAL REVIEW.—

5 (1) DIRECT REVIEW.—A person whose applica-
6 tion for adjustment of status under section 101 is
7 denied after administrative appellate review under
8 subsection (b) may seek review of such denial, in ac-
9 cordance with chapter 7 of title 5, United States
10 Code, before the United States district court for the
11 district in which the person resides.

12 (2) REVIEW AFTER REMOVAL PROCEEDINGS.—

13 There shall be judicial review in the Federal courts
14 of appeal of the denial of an application for adjust-
15 ment of status under section 101 in conjunction with
16 judicial review of an order of removal, deportation,
17 or exclusion, but only if the validity of the denial has
18 not been upheld in a prior judicial proceeding under
19 paragraph (1). Notwithstanding any other provision
20 of law, the standard for review of such a denial shall
21 be governed by paragraph (3).

22 (3) STANDARD FOR JUDICIAL REVIEW.—Judi-
23 cial review of a denial of an application under this
24 title shall be based solely upon the administrative
25 record established at the time of the review. The

1 findings of fact and other determinations contained
2 in the record shall be conclusive unless the applicant
3 can establish abuse of discretion or that the findings
4 are directly contrary to clear and convincing facts
5 contained in the record, considered as a whole.

6 (4) JURISDICTION OF COURTS.—Notwith-
7 standing any other provision of law, the district
8 courts of the United States shall have jurisdiction
9 over any cause or claim arising from a pattern or
10 practice of the Secretary of Homeland Security in
11 the operation or implementation of this title that is
12 arbitrary, capricious, or otherwise contrary to law,
13 and may order any appropriate relief. The district
14 courts may order any appropriate relief in accord-
15 ance with the preceding sentence without regard to
16 exhaustion, ripeness, or other standing requirements,
17 if the court determines that resolution of such cause
18 or claim will serve judicial and administrative effi-
19 ciency or that a remedy would otherwise not be rea-
20 sonably available or practicable.

21 (d) STAY OF REMOVAL.—Aliens seeking administra-
22 tive or judicial review under this section shall not be re-
23 moved from the United States until a final decision is ren-
24 dered establishing ineligibility under this title.

1 **SEC. 111. DISSEMINATION OF INFORMATION ON ADJUST-**
2 **MENT PROGRAM.**

3 The Secretary of Homeland Security, in cooperation
4 with recognized organizations described in section 112
5 shall broadly disseminate information respecting adjust-
6 ment of status under this title and the requirements to
7 be satisfied to obtain such status. The Secretary of Home-
8 land Security shall also disseminate information to em-
9 ployers and labor organizations to advise them of the
10 rights and protections available to them and to workers
11 who file applications under this title. Such information
12 shall be broadly disseminated, in the top 10 languages spo-
13 ken by the aliens expected to qualify for adjustment of
14 status under this title, including to television, radio, and
15 print media such aliens would have access to.

16 **SEC. 112. ENTITIES QUALIFIED TO RECEIVE APPLICATIONS.**

17 (a) IN GENERAL.—For purposes of assisting in the
18 adjustment of status program provided under this title,
19 the Secretary of Homeland Security shall authorize orga-
20 nizations recognized by the Board of Immigration Appeals
21 to receive applications filed under section 101.

22 (b) TREATMENT OF APPLICATIONS BY RECOGNIZED
23 ORGANIZATIONS.—Each recognized organization shall
24 agree to forward all applications filed with the entity to
25 the Secretary of Homeland Security, but only if the appli-
26 cant has consented to such forwarding in writing.

1 (c) LIMITATION ON ACCESS TO INFORMATION.—Files
2 and records of recognized organizations relating to an
3 alien’s seeking assistance or information with respect to
4 filing an application under this title are confidential and
5 no government agency shall have access to such files or
6 records without the consent of the alien or pursuant to
7 a legally recognized subpoena.

8 **SEC. 113. CORRECTION OF SOCIAL SECURITY RECORDS.**

9 Section 208(d)(1) of the Social Security Act (42
10 U.S.C. 408(d)(1)) is amended—

11 (1) in subparagraph (B), by striking “or” at
12 the end of clause (ii);

13 (2) in subparagraph (C), by inserting “or” at
14 the end;

15 (3) by inserting after subparagraph (C) the fol-
16 lowing:

17 “(D) whose status is adjusted to that of
18 lawful permanent resident under title I of the
19 S.O.L.V.E. Act of 2004,”; and

20 (4) by striking “1990.” and inserting “1990, or
21 in the case of an alien described in subparagraph
22 (D), if such conduct is alleged to have occurred prior
23 to the date on which the alien became lawfully ad-
24 mitted for temporary residence.”.

1 **SEC. 114. EMPLOYER PROTECTIONS.**

2 (a) IMMIGRATION STATUS OF ALIEN.—Employers of
3 aliens applying for adjustment of status under this title
4 shall not be subject to civil and criminal tax liability relat-
5 ing directly to the employment of such alien.

6 (b) PROVISION OF EMPLOYMENT RECORDS.—Em-
7 ployers that provide unauthorized aliens with copies of em-
8 ployment records or other evidence of employment pursu-
9 ant to an application for adjustment of status under this
10 title or any other application or petition pursuant to other
11 provisions of the immigration laws, shall not be subject
12 to civil and criminal liability pursuant to section 274A of
13 the Immigration and Nationality Act (8 U.S.C. 1324a) for
14 employing such unauthorized aliens.

15 (c) APPLICABILITY OF OTHER LAW.—Nothing in this
16 section shall be used to shield an employer from liability
17 pursuant to section 274B of the Immigration and Nation-
18 ality Act (8 U.S.C. 1324b) or any other labor and employ-
19 ment law provisions.

20 **SEC. 115. AUTHORIZATION OF FUNDS; FEES.**

21 (a) AUTHORIZATION OF FUNDS.—

22 (1) IN GENERAL.—There are authorized to be
23 appropriated to the Secretary of Homeland Security
24 such sums as may be necessary to—

1 (A) commence the processing of applica-
2 tions filed under this title and title II of this
3 Act;

4 (B) reimburse or make grants to qualified
5 designated entities described in section 113 to
6 carry out the functions described in sections
7 112 and 113; and

8 (C) otherwise carry out this title.

9 (2) PERIOD OF AUTHORIZATION.—Funds ap-
10 propriated pursuant to this subsection shall be avail-
11 able until expended.

12 (3) SENSE OF CONGRESS.—It is the sense of
13 Congress that funds authorized under paragraph
14 (1)(A) should be directly appropriated so as to facili-
15 tate the orderly and timely commencement of the
16 processing of applications filed under this title.

17 (b) APPLICATION FEE.—An alien who files an appli-
18 cation under this title shall pay an application fee, set by
19 the Secretary of Homeland Security, at a level equal to
20 the full cost of adjudicating such applications.

21 (c) ADDITIONAL AMOUNTS OWED.—Prior to the ad-
22 judication of an application for adjustment of status filed
23 under this title, the alien shall pay an amount equaling
24 \$500, but such amount shall not be required from an alien
25 under the age of 21.

1 (d) USE OF AMOUNTS COLLECTED.—The Secretary
2 of Homeland Security shall deposit payments received
3 under this section in the Immigration Examinations Fee
4 Account, and these payments in such account shall be
5 available, without fiscal year limitation, to cover adminis-
6 trative and other expenses incurred in connection with the
7 review of applications filed under this title and in title II
8 of this Act. Any remaining funds not used in accordance
9 with this subsection shall be used to process other applica-
10 tions for adjustment of status or naturalization.

11 **SEC. 116. ALIENS WHO DO NOT SATISFY THE REQUIRE-**
12 **MENTS FOR EARNED ADJUSTMENT OF STA-**
13 **TUS.**

14 (a) ELIGIBILITY FOR TRANSITIONAL STATUS.—Any
15 alien who is physically present in the United States,
16 whether lawfully or unlawfully, on the date of introduction
17 of this Act, who on such date was not legally present pur-
18 suant to any classification set forth in section 101(a)(15)
19 of the Immigration and Nationality Act (8 U.S.C.
20 1101(a)(15)) (with the exception of subparagraph (V) of
21 such section), and who cannot satisfy the requirements of
22 subparagraph (2) or (4) of section 101(a) of this Act shall
23 be eligible—

24 (1) to apply for a transitional status without
25 having to depart the United States, which shall have

1 a duration period of not more than 5 years from the
2 date of issuance of the transitional status; and

3 (2) be granted employment authorization and
4 permission to travel abroad for a period of time co-
5 extensive with the validity period of the transitional
6 status.

7 (b) SECURITY AND LAW ENFORCEMENT CLEAR-
8 ANCE.—Before an alien described in subsection (a) is
9 granted employment authorization or permission to travel
10 abroad, such alien shall be required to undergo a name
11 check against existing databases for information relating
12 to criminal, security, and other law enforcement actions.
13 The relevant Federal agencies shall work to ensure that
14 such name checks are completed as expeditiously as pos-
15 sible.

16 (c) BIOMETRIC DOCUMENTS.—The Secretary of
17 Homeland Security shall issue to each alien described in
18 subsection (a) a machine-readable, tamper-resistant docu-
19 ment that uses biometric identifiers consistent with the re-
20 quirements of section 303 of the Enhanced Border Secu-
21 rity Visa Reform Act, Public Law 107–173, and rep-
22 resents the benefits and status set forth therein.

23 (d) ELIGIBILITY FOR ADJUSTMENT OF STATUS.—An
24 alien who is granted employment authorization under sub-
25 section (a) and is lawfully employed in the United States

1 in the aggregate, for at least 2 years of the 5 years imme-
2 diately following the date on which this Act was intro-
3 duced, shall be eligible for adjustment of status to that
4 of a lawful permanent resident. For purposes of this sec-
5 tion, either 1,800 hours or 260 days shall constitute 2
6 years of employment. An alien shall not be required to
7 complete such employment with the same employer. Sec-
8 tion 101(a)(4)(C) shall apply to such an alien for purposes
9 of satisfying the lawful employment requirement under
10 this subsection.

11 (e) ADJUSTMENT OF STATUS.—An alien who meets
12 the requirements of subsection (d) and applies for adjust-
13 ment of status to that of a lawful permanent resident shall
14 be required to comply with the requirements of paragraphs
15 (3), (5), (6), (7), and (8) of section 101(a). In adjudi-
16 cating such an application, the Secretary of Homeland Se-
17 curity shall determine the admissibility of the alien in ac-
18 cordance with section 102.

19 (f) SPOUSES AND CHILDREN.—

20 (1) ADJUSTMENT OF STATUS.—Notwith-
21 standing any other provision of law, the Secretary of
22 Homeland Security shall, if otherwise eligible under
23 section 102, adjust the status to that of a lawful
24 permanent resident or provide an immigrant visa
25 to—

1 (A) the spouse or child of an alien who ad-
2 justs status or is eligible to adjust status to
3 that of a lawful permanent resident under sub-
4 section (a); or

5 (B) an alien who was the spouse or child
6 of an alien who adjusts status to that of a law-
7 ful permanent resident under this section, if—

8 (i) the termination of the qualifying
9 relationship was connected to domestic vio-
10 lence; and

11 (ii) the spouse or child has been bat-
12 tered or subjected to extreme cruelty by
13 the spouse or parent who adjusts status to
14 that of a lawful permanent resident under
15 this section.

16 (2) APPLICATION OF OTHER LAW.—In acting
17 on applications filed under this section with respect
18 to aliens who have been battered or subjected to ex-
19 treme cruelty, the Secretary of Homeland Security
20 shall apply the provisions of section 204(a)(1)(J) of
21 the Immigration and Nationality Act (8 U.S.C.
22 1154(a)(1)(J)) and the protections, prohibitions, and
23 penalties under section 384 of the Illegal Immigra-
24 tion Reform and Immigrant Responsibility Act of
25 1996 (8 U.S.C.1367).

1 (g) NONAPPLICABILITY OF NUMERICAL LIMITA-
2 TIONS.—When an alien is granted adjustment of status
3 under this section, the number of immigrant visas author-
4 ized to be issued under any provision of the Immigration
5 and Nationality Act (8 U.S.C. 1101 et seq.) shall not be
6 reduced.

7 **SEC. 117. ELIGIBILITY FOR LEGAL SERVICES.**

8 Section 504(a)(11) of Public Law 104–134 (110
9 Stat. 1321–53 et seq.) shall not be construed to prevent
10 a recipient of funds under the Legal Services Corporation
11 Act (42 U.S.C. 2996 et seq.) from providing legal assist-
12 ance directly related to an application for adjustment of
13 status under this title.

14 **SEC. 118. ADJUSTMENT OF STATUS FOR CERTAIN EN-**
15 **TRANS.**

16 (a) APPLICATION OF TO CERTAIN CLASS MEM-
17 BERS.—Effective November 6, 1986, subsection (f)(4)(C)
18 of section 245A of the Immigration and Nationality Act
19 (8 U.S.C. 1255a) shall not apply to a class member in
20 Northwest Immigrant Right Project et al v. USCIS et al,
21 No. 88–379 (W.D. Washington) (formerly Immigrant As-
22 sistance Project v. INS).

23 (b) WAIVER FOR LEGALIZATION APPLICANTS DE-
24 NIED BECAUSE OF SECTION 245A(g)(2)(B).—

1 (1) IN GENERAL.—Section 245A(g)(2)(B)(i) of
2 the Immigration and Nationality Act (8 U.S.C.
3 1255a(g)(2)(B)(i)) is amended by striking “and” at
4 the end and inserting the following: “except that if
5 a waiver of inadmissibility is granted pursuant to
6 subsection (d)(2)(B), then the alien shall be deemed
7 to have maintained continuous residence in the
8 United States, and”.

9 (2) EFFECTIVE DATE.—The amendment made
10 by paragraph (1) shall be effective as if included in
11 the enactment of the Immigration Reform and Con-
12 trol Act of 1986.

13 **SEC. 119. ISSUANCE OF REGULATIONS.**

14 Not later than 120 days after the date of enactment
15 of this Act, the Secretary of Homeland Security shall issue
16 regulations to implement this title.

17 **TITLE II—FAMILY**
18 **REUNIFICATION**

19 **SEC. 201. TREATMENT OF IMMEDIATE RELATIVES WITH RE-**
20 **SPECT TO THE FAMILY IMMIGRATION CAP.**

21 (a) EXEMPTION OF IMMEDIATE RELATIVES FROM
22 FAMILY-SPONSORED IMMIGRANT CAP.—Section
23 201(c)(1)(A) of the Immigration and Nationality Act (8
24 U.S.C. 1151(c)(1)(A)) is amended by striking clauses (i),
25 (ii), and (iii) and inserting the following:

1 “(i) 480,000, minus;
2 “(ii) the number computed under paragraph
3 (3); plus
4 “(iii) the number (if any) computed under para-
5 graph (2).”.

6 (b) TECHNICAL AND CONFORMING AMENDMENTS.—
7 Section 201(c) of the Immigration and Nationality Act (8
8 U.S.C. 1151(c)) is amended—
9 (1) by striking paragraph (2); and
10 (2) by redesignating paragraphs (3), (4), and
11 (5) as paragraphs (2), (3), and (4), respectively.

12 **SEC. 202. RECLASSIFICATION OF SPOUSES AND MINOR**
13 **CHILDREN OF LEGAL PERMANENT RESI-**
14 **DENTS AS IMMEDIATE RELATIVES.**

15 (a) IMMEDIATE RELATIVES.—Section
16 201(b)(2)(A)(i) of the Immigration and Nationality Act
17 (8 U.S.C. 1151(b)(2)(A)(i)) is amended—

18 (1) in the first sentence, by inserting “or the
19 spouses and children of aliens lawfully admitted for
20 permanent residence,” after “United States,”;

21 (2) in the second sentence—

22 (A) by inserting “or lawful permanent resi-
23 dent” after “citizen” each place that term ap-
24 pears; and

1 (B) by inserting “or lawful permanent resi-
2 dent’s” after “citizen’s” each place that term
3 appears;

4 (3) in the third sentence, by inserting “or the
5 lawful permanent resident loses lawful permanent
6 resident status” after “United States citizenship”;
7 and

8 (4) by adding at the end the following: “A
9 spouse or child, as defined in subparagraph (A), (B),
10 (C), (D), or (E) of section 101(b)(1) shall be enti-
11 tled to the same status, and the same order of con-
12 sideration provided in the respective subsection, if
13 accompanying or following to join the spouse or par-
14 ent. The same treatment shall apply to parents of
15 citizens of the United States being entitled to the
16 same status, and the same order of consideration
17 provided in the respective subsection, if accom-
18 panying or following to join their daughter or son.”.

19 (b) ALLOCATION OF IMMIGRANT VISAS.—Section
20 203(a) of the Immigration and Nationality Act (8 U.S.C.
21 1153(a)) is amended—

22 (1) in paragraph (1), by striking “23,400” and
23 inserting “127,200”;

24 (2) by striking paragraph (2) and inserting the
25 following:

1 “(2) UNMARRIED SONS AND UNMARRIED
2 DAUGHTERS OF PERMANENT RESIDENT ALIENS.—
3 Qualified immigrants who are the unmarried sons or
4 unmarried daughters (but are not the children) of
5 an alien lawfully admitted for permanent residence
6 shall be allocated visas in a number not to exceed
7 80,640, plus any visas not required for the class
8 specified in paragraph (1).”;

9 (3) in paragraph (3), by striking “23,400” and
10 inserting “80,640”; and

11 (4) in paragraph (4), by striking “65,000” and
12 inserting “191,520”.

13 (c) TECHNICAL AND CONFORMING AMENDMENTS.—

14 (1) RULES FOR DETERMINING WHETHER CER-
15 TAIN ALIENS ARE IMMEDIATE RELATIVES.—Section
16 201(f) of the Immigration and Nationality Act (8
17 U.S.C. 1151(f)) is amended—

18 (A) in paragraph (1), by striking “para-
19 graphs (2) and (3),” and inserting “paragraph
20 (2),”;

21 (B) by striking paragraph (2); and

22 (C) by redesignating paragraph (3) as
23 paragraph (2).

1 (2) NUMERICAL LIMITATION TO ANY SINGLE
2 FOREIGN STATE.—Section 202 of the Immigration
3 and Nationality Act (8 U.S.C. 1152) is amended—

4 (A) in subsection (a)(4)—

5 (i) by striking subparagraphs (A) and
6 (B);

7 (ii) by redesignating subparagraphs
8 (C) and (D) as subparagraphs (A) and (B)
9 respectively; and

10 (iii) in subparagraph (A), as so reded-
11 ignated, by striking “section 203(a)(2)(B)”
12 and inserting “section 203(a)(2)”; and

13 (B) in subsection (e), in the flush matter
14 following paragraph (3), by striking “, or as
15 limiting the number of visas that may be issued
16 under section 203(a)(2)(A) pursuant to sub-
17 section (a)(4)(A)”.

18 (3) ALLOCATION OF IMMIGRATION VISAS.—Sec-
19 tion 203(h) of the Immigration and Nationality Act
20 (8 U.S.C. 1153(h)) is amended—

21 (A) in paragraph (1)—

22 (i) in the matter preceding subpara-
23 graph (A), by striking “subsections
24 (a)(2)(A) and (d)” and inserting “sub-
25 section (d)”;

1 (ii) in subparagraph (A), by striking
2 “becomes available for such alien (or, in
3 the case of subsection (d), the date on
4 which an immigrant visa number became
5 available for the alien’s parent),” and in-
6 serting “became available for the alien’s
7 parent,”; and

8 (iii) in subparagraph (B), by striking
9 “applicable”;

10 (B) in paragraph (2), by striking “The pe-
11 tition” and all that follows through the period
12 and inserting “The petition described in this
13 paragraph is a petition filed under section 204
14 for classification of the alien’s parent under
15 subsection (a), (b), or (c).”; and

16 (C) in paragraph (3), by striking “sub-
17 sections (a)(2)(A) and (d)” and inserting “sub-
18 section (d)”.

19 (4) PROCEDURE FOR GRANTING IMMIGRANT
20 STATUS.—Section 204 of the Immigration and Na-
21 tionality Act (8 U.S.C. 1154) is amended—

22 (A) in subsection (a)(1)—

23 (i) in subparagraph (A)—

24 (I) in clause (iii)—

1 (aa) by inserting “or legal
2 permanent resident” after “cit-
3 izen” each place that term ap-
4 pears; and

5 (bb) in subclause
6 (II)(aa)(CC)(bbb), by inserting
7 “or legal permanent resident”
8 after “citizenship”;
9 (II) in clause (iv)—

10 (aa) by inserting “or legal
11 permanent resident” after “cit-
12 izen” each place that term ap-
13 pears; and

14 (bb) by inserting “or legal
15 permanent resident” after “citi-
16 zenship”;

17 (III) in clause (v)(I), by inserting
18 “or legal permanent resident”; and

19 (IV) in clause (vi)—

20 (aa) by inserting “or legal
21 permanent resident status” after
22 “renunciation of citizenship”;
23 and

1 (bb) by inserting “or legal
2 permanent resident” after “abus-
3 er’s citizenship”;

4 (ii) by striking subparagraph (B);

5 (iii) by redesignating subparagraphs
6 (C) through (J) as subparagraphs (B)
7 through (I), respectively;

8 (iv) in subparagraph (B), as so redes-
9 ignated, by striking “subparagraph
10 (A)(iii), (A)(iv), (B)(ii), or (B)(iii)” and in-
11 serting “clause (iii) or (iv) of subpara-
12 graph (A)”;

13 (v) in subparagraph (I), as so
14 redesignated—

15 (I) by striking “or clause (ii) or
16 (iii) of subparagraph (B)”;

17 (II) by striking “under subpara-
18 graphs (C) and (D)” and inserting
19 “under subparagraphs (B) and (C)”;

20 (B) by striking subsection (a)(2);

21 (C) in subsection (h), by striking “or a pe-
22 tition filed under subsection (a)(1)(B)(ii)”;

23 (D) in subsection (j), by striking “sub-
24 section (a)(1)(D)” and inserting “subsection
25 (a)(1)(C)”.

1 **SEC. 203. DERIVATIVE ELIGIBILITY FOR RELATIVES OF IM-**
2 **MEDIATE RELATIVES.**

3 Section 201(b)(2)(A) of the Immigration and Nation-
4 ality Act (8 U.S.C. 1151(b)(2)(A)) is amended by adding
5 at the end the following:

6 “(iii) An alien who is the child of an immediate
7 relative described in clause (i), if accompanying or
8 following to join the child’s parent.”.

9 **SEC. 204. WAIVER OF NUMERICAL LIMITATIONS ON VISAS**
10 **FOR LONG-WAITING FAMILY-SPONSORED IM-**
11 **MIGRANTS.**

12 Notwithstanding numerical limitations under section
13 202(a)(2), section 201(b)(1) of the Immigration and Na-
14 tionality Act is amended by adding at the end the fol-
15 lowing:

16 “(F) Qualified family-sponsored immigrants de-
17 scribed in section 203(a) who are awaiting the issuance
18 of an immigrant visa number under such section, begin-
19 ning in the fiscal year that commences after the 5th anni-
20 versary of the date on which the petition for the immigrant
21 was filed as provided in section 204, and notwithstanding
22 the numerical limitation in section 202(a)(2).”.

23 **SEC. 205. RECAPTURE OF UNUSED VISA NUMBERS.**

24 (a) FAMILY-SPONSORED IMMIGRANTS.—Section
25 201(c)(2) of the Immigration and Nationality Act (8

1 U.S.C. 1151(c)(2)) (as redesignated by section 201 of this
2 Act) is amended by adding at the end the following:

3 “(D) The number computed under this paragraph for
4 a fiscal year shall be increased by the number of immi-
5 grant visas made available under section 203(a) in the
6 previous fiscal year that were not issued to qualified immi-
7 grants for any reason. Visas made available under this
8 subparagraph shall not be subject to the limitations in sec-
9 tion 202(a).”.

10 (b) EMPLOYMENT-BASED IMMIGRANTS.—Section
11 201(d)(2) of the Immigration and Nationality Act (8
12 U.S.C. 1151(d)(2)) is amended by adding at the end the
13 following:

14 “(D) The number computed under this paragraph for
15 a fiscal year shall be increased by the number of immi-
16 grant visas made available under section 203(b) in the
17 previous fiscal year that were not issued to qualified immi-
18 grants for any reason. Visas made available under this
19 subparagraph shall not be subject to the limitations in sec-
20 tion 202(a).”.

21 (c) ELIGIBILITY FOR DIVERSITY VISAS.—Section
22 204(a)(1)(I)(ii)(II) of the Immigration and Nationality
23 Act (8 U.S.C. 1154(a)(1)(I)(ii)(II)) is amended by strik-
24 ing the period at the end and inserting the following: “,
25 except that any such visa that may not be issued due to

1 the pendency of a security, or security-related, check at
2 the end of such fiscal year shall remain available for
3 issuance to the alien in subsequent fiscal years until a rea-
4 sonable period, determined by the Secretary of Homeland
5 Security, after the completion of such check.”.

6 (d) ENSURING SECURITY CLEARANCES DO NOT
7 CAUSE VISA LOSS.—Section 203(e) of the Immigration
8 and Nationality Act (8 U.S.C. 1153(e) is amended by add-
9 ing at the end the following:

10 “(4) Notwithstanding any other provision of this Act,
11 a delay in the completion of a security, or security-related,
12 check shall not result in the forfeiture of an immigrant
13 visa that otherwise would be made available, or issued, to
14 an eligible immigrant under this section.”.

15 **SEC. 206. REFORM OF AFFIDAVIT OF SUPPORT REQUIRE-**
16 **MENTS.**

17 Section 213A of the Immigration and Nationality Act
18 (8 U.S.C. 1183a) is amended, in each of subsections
19 (a)(1)(A) and (f)(1)(E), by striking “125” and inserting
20 “100”.

21 **SEC. 207. INCREASE AGE FOR DERIVATIVE CITIZENSHIP.**

22 (a) IN GENERAL.—Title III of the Immigration and
23 Nationality Act (8 U.S.C. 1401 et seq.) is amended, in
24 each of sections 320 and 322, by striking “eighteen” and
25 inserting “21”.

1 (b) EFFECTIVE DATE.—The amendments made by
2 subsection (a) shall take effect as if enacted on February
3 27, 2001.

4 **SEC. 208. REPEAL BARRIERS TO REENTRY.**

5 (a) IN GENERAL.—Subparagraphs (B) and (C) of
6 section 212(a)(9) of the Immigration and Nationality Act
7 (8 U.S.C. 1182(a)(9)) are repealed.

8 (b) EFFECTIVE DATE.—Subsection (a) shall take ef-
9 fect as if enacted as part of section 301(b) the Illegal Im-
10 migration Reform and Immigrant Responsibility Act of
11 1996 (110 Stat. 3009–575 et seq.).

12 **SEC. 209. BIOMETRIC DOCUMENTS.**

13 Each alien who is issued a visa or otherwise provided
14 immigrant status under this title shall be issued a ma-
15 chine-readable, tamper-resistant visa or document that
16 uses biometric identifiers consistent with the requirements
17 of section 303 of the Enhanced Border Security and Visa
18 Reform Act, Public Law 107–173.

19 **SEC. 210. AUTHORIZATION OF APPROPRIATIONS.**

20 There are authorized to be appropriated such sums
21 for English and civics classes as may be necessary to carry
22 out this title.

1 **TITLE III—TEMPORARY WORKER**
2 **PROGRAM**

3 **SEC. 301. TEMPORARY WORKERS.**

4 (a) H-2b WORKERS.—Section 101(a)(15)(H)(ii)(b)
5 of the Immigration and Nationality Act (8 U.S.C.
6 1101(a)(15)(H)(ii)(b)) is amended—

7 (1) by inserting “subject to section 212(u),” be-
8 fore “having a residence in a foreign country”; and
9 (2) by striking “temporary service or labor”
10 and inserting “short-term service or labor, lasting
11 not more than 9 months”.

12 (b) H-1D WORKERS.—Section 101(a)(15)(H)(i)(c)
13 of the Immigration and Nationality Act (8 U.S.C.
14 1101(a)(15)(H)(i)(c)) is amended by striking the semi-
15 colon and inserting the following: “, or (d) subject to sec-
16 tion 212(u), who is coming temporarily to the United
17 States to perform labor or services, other than those occu-
18 pation classifications covered under the provisions of
19 clauses (i)(b) or (ii)(a) or subparagraphs (L), (O), or (P),
20 for a United States employer, if United States workers
21 capable of performing such labor or service cannot be iden-
22 tified or are unavailable.”.

1 **SEC. 302. RECRUITMENT OF UNITED STATES WORKERS.**

2 Section 212 of the Immigration and Nationality Act
3 (8 U.S.C. 1182) is amended by adding at the end the fol-
4 lowing:

5 “(u)(1) An employer that seeks to employ an alien
6 described in clause (i)(d) or (ii)(b) of section
7 101(a)(15)(H) shall take the following steps to recruit
8 United States workers for the position for which the non-
9 immigrant worker is sought 14 days prior to filing an ap-
10 plication under paragraph (3) (with respect to an alien
11 described in such clause (ii)(b)) or 30 days prior to filing
12 an application under such paragraph (with respect to an
13 alien described in such clause (i)(d)):

14 “(A) Submit a copy of the job offer, including
15 a description of the wages and other terms and con-
16 ditions of employment, to the State Employment
17 Service Agency (SESA) which—

18 “(i) serves the area of employment in the
19 State in which the employer is located; and

20 “(ii) shall provide the employers with an
21 acknowledgment of receipt of the documenta-
22 tion provided to the SESA in accordance with
23 this subparagraph.

24 “(B) Authorize the SESA to post the job op-
25 portunity on the Internet through the web site for
26 ‘America’s Job Bank’, with local job banks, and with

1 unemployment agencies and other labor referral and
2 recruitment sources pertinent to the job in question.

3 “(C) Authorize the SESA to notify the central
4 office of the State Federation of Labor in the State
5 in which the job is located, and if applicable, the of-
6 fice of the local union which represents the employ-
7 ees in the same or substantially equivalent job classi-
8 fication of the job opportunity.

9 “(D) Post the availability of the job opportunity
10 for which the employer is seeking a worker in con-
11 spicuous locations at the place of employment for all
12 employees to see.

13 “(E) Advertise the availability of the job oppor-
14 tunity for which the employer is seeking a worker in
15 a publication with the highest circulation in the
16 labor market that is likely to be patronized by a po-
17 tential worker for at least 3 consecutive days (with
18 respect to an alien described in such clause (ii)(b))
19 or for at least 10 consecutive days (with respect to
20 an alien described in such clause (i)(d)).

21 “(F) Based on recommendations by the local
22 job service, advertise the availability of the job op-
23 portunity in professional, trade, or local minority
24 and ethnic publications that are likely to be patron-
25 ized by a potential worker.

1 “(2) An employer that seeks to employ an alien de-
2 scribed in clause (i)(d) or (ii)(b) of section 101(a)(15)(H)
3 shall—

4 “(A) first offer the job to any eligible United
5 States worker who applies, is qualified for the job,
6 and is available at the time of need;

7 “(B) be required to maintain for at least 1 year
8 after the employment relation is terminated, docu-
9 mentation of recruitment efforts and responses con-
10 ducted and received prior to the filing of the employ-
11 er’s application with the Department of Labor, in-
12 cluding resumes, applications, and if applicable, tests
13 of United States workers who applied and were not
14 hired for the job the employer seeks to fill with a
15 nonimmigrant worker; and

16 “(C) attest that there are not sufficient United
17 States workers who are able, willing, qualified, and
18 available at the time of the filing of the applica-
19 tion.”.

20 **SEC. 303. ADMISSION OF TEMPORARY WORKERS.**

21 (a) APPLICATION TO THE SECRETARY OF LABOR.—
22 Section 212(u) of the Immigration and Nationality Act (8
23 U.S.C. 1182(u)), as added by section 302, is amended by
24 adding after paragraph (2) the following:

1 “(3) An employer that seeks to fill a position with
2 an alien described in clause (i)(d) or (ii)(b) of section
3 101(a)(15)(H), shall file with the Secretary of Labor an
4 application attesting that—

5 “(A) the employer is offering and will offer dur-
6 ing the period of authorized employment to aliens
7 admitted or provided status as a nonimmigrant de-
8 scribed in clause (i)(d) or (ii)(b) of section
9 101(a)(15)(H), the prevailing wage that shall be de-
10 termined as follows:

11 “(i) if the job opportunity is covered by a
12 collective bargaining agreement between a union
13 and the employer, the wage rate set forth in the
14 collective bargaining agreement;

15 “(ii) if the job opportunity is not covered
16 by a collective bargaining agreement between a
17 union and the employer and it is in an occupa-
18 tion that is covered by a wage determination
19 under the Davis-Bacon Act (40 U.S.C. 276a et
20 seq.) or the Service Contract Act of 1965 (41
21 U.S.C. 351 et seq.), the appropriate statutory
22 wage determination; or

23 “(iii) if clauses (i) and (ii) do not apply,
24 the highest 66 percent of the wage data pro-
25 vided by the Department of Labor’s Bureau of

1 Labor Statistics, Occupational Employment
2 Survey;

3 based on the best information available at the time
4 of the filing of the application;

5 “(B) the employer will offer the same wages,
6 benefits, and working conditions for such non-
7 immigrants as those provided to United States work-
8 ers similarly employed in the same occupation and
9 the same place of employment (defined as the actual
10 place where the work is performed);

11 “(C) there is not a strike, lockout, or labor dis-
12 pute in the occupational classification at the place of
13 employment (including any concerted activity to
14 which section 7 of the Labor Management Relations
15 Act (29 U.S.C. 157) applies);

16 “(D) the employer will abide by all applicable
17 laws and regulations relating to the right of workers
18 to join or organize a union;

19 “(E) the employer has provided notice of the
20 filing of the application to the bargaining represent-
21 ative, if any, of the employer’s employees in the oc-
22 cupational classification at the place of employment
23 or, if there is no such bargaining representative, has
24 posted notice of the filing in conspicuous locations at
25 the place of employment for all employees to see for

1 not less than 14 business days for an alien described
2 in clause (ii)(b) of section 101(a)(15)(H) and for not
3 less than 30 business days for an alien described in
4 clause (i)(d) of such section;

5 “(F) the requirements for the job opportunity
6 represent the employer’s actual minimum require-
7 ments for that job and the employer will not hire
8 nonimmigrant workers with less training or experi-
9 ence;

10 “(G) the employer, within the 60 days prior to
11 the filing of the application and the 60 days fol-
12 lowing the filing, has not laid-off, and will not lay-
13 off, any United States worker employed by the em-
14 ployer in the same position at the place of employ-
15 ment;

16 “(H) the employer, prior to the filing of the ap-
17 plication, has complied with the recruitment require-
18 ments in accordance with paragraph (1); and

19 “(I) no job offer may impose on United States
20 workers any restrictions or obligations that will not
21 be imposed by an employer on a nonimmigrant
22 worker described in clause (i)(d) or (ii)(b) of section
23 101(a)(15)(H).”.

24 (b) ACCOMPANIED BY JOB OFFER.—Section 212(u)
25 of the Immigration and Nationality Act (8 U.S.C.

1 1182(u)), as amended by subsection (a), is further amend-
2 ed by adding after paragraph (3) the following:

3 “(4) Each application filed under paragraph (3) shall
4 be accompanied by—

5 “(A) a copy of the job offer describing the
6 wages and other terms and conditions of employ-
7 ment;

8 “(B) a statement of the minimum education,
9 training, experience, and requirements for the job
10 opportunity in question;

11 “(C) copies of the documentation submitted to
12 the State Employment Service Agency to recruit
13 United States workers in accordance with paragraph
14 (1);

15 “(D) copies of the advertisements to recruit
16 United States workers placed in publications in ac-
17 cordance with paragraph (1); and

18 “(E) a copy of the acknowledgment of receipt
19 provided to the employer by the State Employment
20 Service Agency in accordance with paragraph
21 (1)(A)(ii).”.

22 (c) INCOMPLETE APPLICATIONS; RETENTION OF AP-
23 PPLICATION; FILING OF PETITION.—Section 212(u) of the
24 Immigration and Nationality Act (8 U.S.C. 1182(u)), as

1 amended by subsection (b), is further amended by adding
2 after paragraph (4) the following:

3 “(5) The Secretary of Labor shall review the applica-
4 tion and requisite documents filed in accordance with
5 paragraphs (3) and (4) for completeness and accuracy and
6 if deficiencies are found, the Secretary of Labor shall no-
7 tify the employer and provide the employer with an oppor-
8 tunity to address such deficiencies.

9 “(6) A copy of the application and requisite docu-
10 ments filed with the Secretary of Labor in accordance with
11 paragraphs (3) and (4) shall be retained by the employer
12 in a public access file at the employer’s headquarters or
13 principal place of employment of the alien for the duration
14 of the employment relationship and for 1 year after the
15 termination of that employment relationship.

16 “(7) Upon approval of an application by the Sec-
17 retary of Labor, an employer who seeks to employ an alien
18 described in clause (i)(d) or (ii)(b) of section
19 101(a)(15)(H) shall file a petition as required under sec-
20 tion 214(c)(1) with the Bureau of Citizenship and Immi-
21 gration Services within the Department of Homeland Se-
22 curity.”.

23 (d) BIOMETRIC DOCUMENTS.—Each alien who is
24 issued a visa or otherwise provided nonimmigrant status
25 under section 101(a)(15)(H)(i)(d) or (ii)(b) of the Immi-

1 gration and Nationality Act shall be issued a machine-
2 readable, tamper-resistant visa or document that uses bio-
3 metric identifiers consistent with the requirements of sec-
4 tion 303 of the Enhanced Border Security and Visa Re-
5 form Act, Public Law 107–173.

6 **SEC. 304. WORKER PROTECTIONS.**

7 Section 212(u) of the Immigration and Nationality
8 Act (8 U.S.C. 1182(u)), as amended by section 303, is
9 further amended by adding after paragraph (7) the fol-
10 lowing:

11 “(8)(A) Nothing in this subsection shall be construed
12 to limit the rights of an employee under a collective bar-
13 gaining agreement or other employment contract.

14 “(B) An alien admitted or otherwise provided status
15 under clause (i)(d) or (ii)(b) of section 101(a)(15)(H)
16 shall not be denied any right or remedy under Federal,
17 State, or local labor and employment laws applicable to
18 a United States worker employed in a similar position with
19 the employer because of the status of the alien as a non-
20 immigrant worker.

21 “(C) It shall be unlawful for an employer who has
22 filed a petition for a nonimmigrant worker described in
23 clause (i)(d) or (ii)(b) of section 101(a)(15)(H) to intimi-
24 date, threaten, restrain, coerce, blacklist, discharge, or in

1 any other manner, discriminate against an employee (in-
2 cluding a former employee) because the employee—

3 “(i) disclosed information, to the employer or to
4 any other person, that the employee reasonably be-
5 lieves evidences a violation of this subsection or any
6 rule or regulation pertaining to this subsection; or

7 “(ii) because the employee cooperates or seeks
8 to cooperate in an investigation or other proceeding
9 concerning the employer’s compliance with the re-
10 quirements of this subsection or any rule or regula-
11 tion pertaining to this subsection.

12 “(D) The Secretary of Labor and the Secretary of
13 Homeland Security shall establish a process under which
14 a nonimmigrant worker described in clause (i)(d) or (ii)(b)
15 of section 101(a)(15)(H) who files a complaint regarding
16 a violation of this subsection, or any other rule or regula-
17 tion pertaining to this subsection and is otherwise eligible
18 to remain and work in the United States may be allowed
19 to seek other appropriate employment in the United States
20 for a period not to exceed the maximum period of stay
21 authorized for that nonimmigrant classification.

22 “(E)(i) The Secretary of Labor shall establish a proc-
23 ess for the receipt, investigation, and disposition of com-
24 plaints respecting a petitioner’s failure to meet a condition
25 specified in the application submitted under paragraph

1 (3), or a petitioner's misrepresentation of a material fact
2 in an application submitted under paragraph (3). Com-
3 plaints may be filed by an aggrieved person or organiza-
4 tion (including bargaining representatives). No investiga-
5 tion or hearing shall be conducted on a complaint con-
6 cerning such a failure or misrepresentation unless the
7 complaint was filed not later than 12 months after the
8 date of the failure or misrepresentation, respectively. The
9 Secretary of Labor shall conduct an investigation under
10 this clause if there is reasonable cause to believe that such
11 a failure or misrepresentation has occurred.

12 “(ii) The process established under clause (i) shall
13 provide that, not later than 30 days after a complaint is
14 filed, a determination of whether or not a reasonable basis
15 exists to find a violation shall be made.

16 “(iii) If it is determined that a reasonable basis exists
17 under clause (ii), then not later than 60 days after that
18 determination is made, the Secretary of Labor shall issue
19 a notice to the interested parties and offer an opportunity
20 for a hearing on the complaint, in accordance with section
21 556 of title 5, United States Code.

22 “(iv) If the Secretary of Labor, after receiving a com-
23 plaint under clause (i), does not offer the aggrieved party
24 or organization an opportunity for a hearing under clause
25 (iii), the Secretary of Labor shall notify the aggrieved

1 party or organization of such determination and the ag-
2 grieved party or organization may seek a hearing on the
3 complaint in accordance with section 556 of title 5, United
4 States Code.

5 “(v) If a hearing is requested under clause (iii) or
6 (iv), then not later than 60 days after the date of the hear-
7 ing, the Secretary of Labor shall make a finding on the
8 matter in accordance with paragraph (6).

9 “(vi) If the Secretary of Labor finds, after notice and
10 opportunity for a hearing, a failure to meet a requirement
11 of paragraph (3), or a misrepresentation of a material fact
12 in an application—

13 “(I) the Secretary of Labor shall notify the Sec-
14 retary of Homeland Security of such findings, and
15 may impose administrative remedies, including civil
16 monetary penalties not to exceed \$3,000 per viola-
17 tion; and

18 “(II) the Secretary of Homeland Security shall
19 not approve petitions filed by that employer under
20 section 214(c) for a period of at least 1 year for
21 aliens to be employed by the employer.

22 “(vii) If the Secretary of Labor finds, after notice and
23 opportunity for a hearing, a willful failure to meet a re-
24 quirement of paragraph (3), or a willful misrepresentation
25 of a material fact in an application—

1 “(I) the Secretary of Labor shall notify the Sec-
2 retary of Homeland Security of such findings, and
3 may impose administrative remedies, including civil
4 monetary penalties in an amount not to exceed
5 \$8,000 per violation; and

6 “(II) the Secretary of Homeland Security shall
7 not approve petitions filed with respect to that em-
8 ployer under section 214(c) during a period of at
9 least 2 years for aliens to be employed by the em-
10 ployer.

11 “(viii) If the Secretary of Labor finds, after notice
12 and opportunity for a hearing, a willful failure by an em-
13 ployer to meet a requirement of paragraph (3), or a willful
14 misrepresentation of material fact in an application, in the
15 course of which failure or misrepresentation the employer
16 displaced a United States worker employed by the em-
17 ployer within the period beginning 60 days before and end-
18 ing 60 days after the date of filing of any visa petition
19 supported by the application—

20 “(I) the Secretary of Labor shall notify the Sec-
21 retary of Homeland Security of such findings, and
22 may impose administrative remedies, including civil
23 monetary penalties in an amount not to exceed
24 \$35,000 per violation; and

1 “(II) the Secretary of Homeland Security shall
2 not approve petitions filed with respect to that em-
3 ployer under section 214(c) during a period of at
4 least 3 years for aliens to be employed by the em-
5 ployer.

6 “(F) The Department of Labor shall have the author-
7 ity to initiate and pursue investigations and audits of em-
8 ployers, whether upon complaint or otherwise, in order to
9 ensure that employers are not violating the rights guaran-
10 teed under this subsection to nonimmigrant workers de-
11 scribed in clause (i)(d) or (ii)(b) of section 101(a)(15)(H).

12 “(G) In any complaint respecting a willful failure by
13 an employer to meet a requirement of law or a regulation
14 concerning the employment of nonimmigrants described in
15 clause (i)(d) or (ii)(b) of section 101(a)(H) or a willful
16 misrepresentation of material fact in an application, the
17 court in its discretion, may allow a prevailing party, other
18 than the United States, a reasonable attorney’s fee.

19 “(H) A nonimmigrant worker described in clause
20 (i)(d) of (ii)(b) of section 101(a)(15)(H) aggrieved by a
21 violation of rights enforceable under section 212(u)(8) by
22 an employer or other person may file suit in any district
23 court of the United States having jurisdiction of the par-
24 ties, without regard to the amount in controversy, without
25 regard to the citizenship of the parties, and without regard

1 to the exhaustion of any alternative administrative remedy
2 under this Act, not later than 3 years after the date on
3 which the violation occurs.”.

4 **SEC. 305. PORTABILITY.**

5 Section 212(u) of the Immigration and Nationality
6 Act (8 U.S.C. 1182(u)), as amended by section 304, is
7 further amended by adding after paragraph (8) the fol-
8 lowing:

9 “(9)(A) Any alien admitted or otherwise provided sta-
10 tus as a nonimmigrant described in section
11 101(a)(15)(H)(i)(d) or (ii)(b) may change employers only
12 after the alien has been employed by the petitioning em-
13 ployer for at least 3 months from the date of admission
14 or the date such status was otherwise acquired.

15 “(B) The 3-month employment requirement in sub-
16 paragraph (A) may be waived (without loss of status dur-
17 ing the period of the waiver) in circumstances where—

18 “(i) the alien began and continued the employ-
19 ment in good faith but the employer violated a term
20 or condition of sponsorship of the alien under this
21 Act or violated any other law or regulation relating
22 to the employment of the alien; or

23 “(ii) the personal circumstances of the alien
24 changed so as to require a change of employer, in-
25 cluding family, medical, or humanitarian reasons, a

1 disability, or other factor rendering the alien unable
2 to perform the job.

3 “(C) If a waiver under subparagraph (B) is sought,
4 the application shall be accompanied by such evidence to
5 warrant the approval of such waiver.

6 “(D) A nonimmigrant alien admitted or otherwise
7 provided status as a nonimmigrant described in clause
8 (i)(d) or (ii)(b) of section 101(a)(15)(H) may accept new
9 employment with a new employer upon the filing by the
10 new employer of a new application on behalf of such alien
11 as provided under paragraph (3). Employment authoriza-
12 tion shall continue until the new petition is adjudicated.
13 If the new petition is denied, the alien’s right to work as
14 established by this subsection shall cease. The alien’s right
15 to work, if any, established by any other provision of law,
16 shall not be affected by the denial of such new applica-
17 tion.”.

18 **SEC. 306. SPOUSES AND CHILDREN OF TEMPORARY WORK-**
19 **ERS.**

20 Section 212(u) of the Immigration and Nationality
21 Act (8 U.S.C. 1182(u)), as amended by section 305, is
22 further amended by adding after paragraph (9) the fol-
23 lowing:

24 “(10) A spouse or child of a nonimmigrant worker
25 described in clause (i)(d) or (ii)(b) of section

1 101(a)(15)(H) shall be eligible for derivative status by ac-
2 companying or following to join the alien.”.

3 **SEC. 307. PETITIONS BY EMPLOYER GROUPS AND UNIONS.**

4 Section 214(c)(1) of the Immigration and Nationality
5 Act (8 U.S.C. 1184(c)(1)) is amended—

6 (1) by inserting after the first sentence the fol-
7 lowing: “In the case of an alien or aliens described
8 in clause (i)(d) or (ii)(b) of section 101(a)(15)(H),
9 the petition may be filed by an associated or affili-
10 ated group of employers that have multiple openings
11 for similar employment on behalf of the individual
12 employers or by a union or union consortium. The
13 petition, if approved, will be valid for employment in
14 the described positions for the member employers,
15 the union, or union consortium, provided the em-
16 ploying entity has complied with all applicable re-
17 cruitment requirements and paid the requisite peti-
18 tion fees.”; and

19 (2) by adding at the end the following: “Noth-
20 ing in this paragraph shall be construed to permit
21 a recruiting entity or job shop to petition for an
22 alien described in clause (i)(d) or (ii)(b) of section
23 101(a)(15)(H).”.

1 **SEC. 308. PROCESSING TIME FOR PETITIONS.**

2 Section 214(c) of the Immigration and Nationality
3 Act (8 U.S.C. 1184(c)) is amended by adding at the end
4 the following:

5 “(12) The Secretary of Labor shall review the appli-
6 cation filed under section 212(u)(3) for completeness and
7 accuracy and issue a determination with regard to the ap-
8 plication not later than 10 workings days after the date
9 on which the application was filed.

10 “(13) The Secretary of Homeland Security shall es-
11 tablish a process for reviewing and completing adjudica-
12 tion of petitions filed under this subsection with respect
13 to nonimmigrant workers described in clause (i)(d) or
14 (ii)(b) of section 101(a)(15)(H) and derivative applica-
15 tions associated with these petitions, not later than 60
16 days after the completed petition has been filed.”.

17 **SEC. 309. TERMS OF ADMISSION.**

18 Section 214(g) of the Immigration and Nationality
19 Act (8 U.S.C. 1184(g)) is amended by adding at the end
20 the following:

21 “(9) In the case of a nonimmigrant described in sec-
22 tion 101(a)(15)(H)(ii)(b), the initial period of authorized
23 admission shall be for not more than 9 months from the
24 date of application for admission in such status in any
25 1-year period. No nonimmigrant described in such section

1 may be admitted for a total period that exceeds an aggre-
2 gate of 40 months.

3 “(10) In the case of a nonimmigrant described in sec-
4 tion 101(a)(15)(H)(i)(d), the initial period of authorized
5 admission shall be for not more than 2 years. The em-
6 ployer may petition for extensions of such status for 2 ad-
7 ditional periods of not more than 2 years each. No non-
8 immigrant described in such section shall be admitted for
9 a total period that exceeds 6 years.

10 “(11)(A) The limitation contained in paragraphs (9)
11 and (10) with respect to the duration of authorized stay
12 shall not apply to any nonimmigrant alien previously
13 issued a visa or otherwise provided nonimmigrant status
14 under clause (i)(d) or (ii)(b) of section 101(a)(15)(H) on
15 whose behalf a petition has been filed under section 204(b)
16 to accord the alien immigrant status under section 203(b),
17 or an application for adjustment of status has been filed
18 under section 245 to accord the alien status under section
19 203(b), if 365 days or more have elapsed since—

20 “(i) the filing of a labor certification application
21 on behalf of the alien (if such certification is re-
22 quired for the alien to obtain status under section
23 203(b)); or

24 “(ii) the filing of the petition under section
25 204(a).

1 “(B) The Secretary of Homeland Security shall ex-
2 tend the stay of an alien who qualifies for an exemption
3 under subparagraph (A) until such time as a final decision
4 is made—

5 “(i) to deny the application described in sub-
6 paragraph (A)(i), or, in a case in which such appli-
7 cation is granted, to deny a petition described in
8 subparagraph (A)(ii) filed on behalf of the alien pur-
9 suant to such grant;

10 “(ii) to deny the petition described in subpara-
11 graph (A)(ii); or

12 “(iii) to grant or deny the alien’s application for
13 an immigrant visa or for adjustment of status to
14 that of an alien lawfully admitted for permanent res-
15 idence.”.

16 **SEC. 310. NUMBER OF VISAS ISSUED.**

17 Section 214 (g)(1)(B) of the Immigration and Na-
18 tionality Act (8 U.S.C. 1184(g)(1)(B)) is amended to read
19 as follows:

20 “(B)(i) under section 101(a)(15)(H)(i)(d) may
21 not exceed 250,000; and

22 “(ii) under section 101(a)(15)(H)(ii)(b) may
23 not exceed 100,000.”.

1 **SEC. 311. CHANGE OF STATUS.**

2 Section 212(u) of the Immigration and Nationality
3 Act (8 U.S.C. 1182(u)), as amended by section 306, is
4 further amended by adding after paragraph (10) the fol-
5 lowing:

6 “(11) An alien admitted as a nonimmigrant or other-
7 wise provided status under clause (i)(d) or (ii)(b) of sec-
8 tion 101(a)(15)(H) shall be eligible to obtain a change of
9 status to another immigrant or nonimmigrant classifica-
10 tion that the alien may be eligible for.”.

11 **SEC. 312. ADJUSTMENT OF STATUS TO LAWFUL PERMA-**
12 **NENT RESIDENT.**

13 (a) EMPLOYMENT-BASED IMMIGRANT VISAS.—Sec-
14 tion 212(u) of the Immigration and Nationality Act (8
15 U.S.C. 1182(u)), as amended by section 311, is further
16 amended by adding after paragraph (11) the following:

17 “(12)(A) Nonimmigrant aliens admitted or otherwise
18 provided status under clause (i)(d) or (ii)(b) of section
19 101(a)(15)(H) shall be eligible for an employment-based
20 immigrant visa pursuant to section 203(b)(3) and adjust-
21 ment of status pursuant to section 245.

22 “(B) Pursuant to subparagraph (A), for purposes of
23 adjustment of status under section 245(a) or issuance of
24 an immigrant visa under section 203(b)(3), employment-
25 based immigrant visas shall be made available without nu-
26 merical limitation to an alien having nonimmigrant status

1 described in clause (i)(d) or (ii)(b) of section
2 101(a)(15)(H) upon the filing of a petition for such a visa
3 by—

4 “(i) the employer of the alien; or

5 “(ii) the alien, provided the alien has been em-
6 ployed under such nonimmigrant status for at least
7 2 years.

8 “(C) The spouse or child of an alien granted status
9 under clause (i)(d) or (ii)(b) of section 101(a)(15)(H)
10 shall be eligible as a derivative beneficiary for an immi-
11 grant visa and adjustment of status.”.

12 (b) DUAL INTENT.—Section 214(h) of the Immigra-
13 tion and Nationality Act (8 U.S.C. 1184(h)) is amended
14 by inserting “(H)(ii)(b),” after “(H)(i)(d),”.

15 **SEC. 313. NOTIFICATION OF EMPLOYEE RIGHTS.**

16 Section 214(c), as amended by section 208, is further
17 amended by adding at the end the following:

18 “(15) An employer that employs an alien de-
19 scribed in clause (i)(d) or (ii)(b) of section
20 101(a)(15)(H) shall provide such alien with the
21 same notification of the alien’s rights under Federal,
22 State, or local laws that the employer is required to
23 provide to United States workers.”.

1 **SEC. 314. GROUNDS OF INADMISSIBILITY.**

2 Section 212(u) of the Immigration and Nationality
3 Act (8 U.S.C. 1182(u)), as amended by section 312, is
4 further amended by adding after paragraph (12) the fol-
5 lowing:

6 “(13) In determining the admissibility of an alien
7 under clause (i)(d) or (ii)(b) of section 101(a)(15)(H), vio-
8 lations of grounds of inadmissibility described in para-
9 graphs (5), (6)(A), (6)(B), (6)(C), (6)(G), (7), (9), and
10 (10)(B) of section 212(a) committed prior to the issuance
11 or a visa under such section, or the approval of a change
12 of status to a classification under such section shall not
13 apply.”.

14 **SEC. 315. PETITION FEES.**

15 Section 212(u) of the Immigration and Nationality
16 Act (8 U.S.C. 1182(u)), as amended by section 314, is
17 further amended by adding after paragraph (13) the fol-
18 lowing:

19 “(14)(A) An employer filing a petition for an alien
20 described in section 101(a)(15)(H)(i)(d) shall be required
21 to pay a filing fee based on the cost of carrying out the
22 processing duties under this subsection, and a secondary
23 fee of—

24 “(i) \$250, in the case of an employer employing
25 25 employees or less;

1 “(ii) \$500, in the case of an employer employ-
2 ing between 26 and 150 employees;

3 “(iii) \$750, in the case of an employer employ-
4 ing between 151 and 500 employees; or

5 “(iv) \$1,000, in the case of an employer em-
6 ploying more than 500 employees.

7 “(B) An employer filing a petition for an alien de-
8 scribed in section 101(a)(15)(H)(ii)(b) shall be required
9 to pay a filing fee based on the costs of carrying out the
10 processing duties under this subsection, and a secondary
11 fee of—

12 “(i) \$125, in the case of an employer employing
13 25 employees or less;

14 “(ii) \$250, in the case of an employer employ-
15 ing between 26 and 150 employees;

16 “(iii) \$375, in the case of an employer employ-
17 ing between 151 and 500 employees; or

18 “(iv) \$500, in the case of an employer employ-
19 ing more than 500 employees.

20 “(C) An employer filing a petition for an alien de-
21 scribed in clause (i)(d) or (ii)(b) of section 101(a)(15)(H)
22 shall be prohibited from charging the alien for a fee re-
23 quired under subparagraph (A) or (B).

24 “(D) The fees collected under this paragraph shall
25 be deposited into accounts within the Department of

1 Homeland Security, the Department of Labor, and the
2 Department of State, and allocated such that—

3 “(i) 20 percent of the amounts received shall be
4 made available to the Department of Homeland Se-
5 curity until expended to carry out the requirements
6 related to processing petitions filed by employers for
7 aliens described in clause (i)(d) or (ii)(b) of section
8 101(a)(15)(H);

9 “(ii) 15 percent of the amounts received shall
10 be made available to the Department of Labor until
11 expended to carry out the requirements related to
12 processing attestation applications filed by employers
13 for aliens described in clause (i)(d) or (ii)(b) of sec-
14 tion 101(a)(15)(H);

15 “(iii) 20 percent of the amounts received shall
16 be made available to the Department of State until
17 expended to carry out the requirements related to
18 processing applications for visas by aliens under
19 clause (i)(d) or (ii)(b) of section 101(a)(15)(H);

20 “(iv) 15 percent of the amounts received shall
21 be made available to the Department of Labor until
22 expended to carry out the requirements described in
23 paragraph (8);

24 “(v) 15 percent of the amounts received shall be
25 made available to the Department of Labor until ex-

1 pended to increase the funds available to the United
2 States Employment Service to assist State employ-
3 ment service agencies in responding to employers
4 and employees contacting such agencies as a result
5 of the requirements described in paragraph (1); and

6 “(vi) 15 percent of the amounts received shall
7 be made available to the Department of Homeland
8 Security until expended to make improvements in
9 technology for border security, including the use of
10 machine-readable, tamper-resistant documents with
11 biometric identifiers, expanding the use of readers
12 and scanners, expanding programs for pre-enroll-
13 ment and pre-clearance, updating and correcting
14 electronic databases, and other improvements to fa-
15 cilitate the flow of commerce and persons at ports
16 of entry.”.

17 **SEC. 316. DEFINITIONS.**

18 Section 212(u) of the Immigration and Nationality
19 Act (8 U.S.C. 1182(u)), as amended by section 315, is
20 further amended by adding after paragraph (14) the fol-
21 lowing:

22 “(15) In this subsection:

23 “(A) The term ‘U.S. employer’ means any per-
24 son or entity with a principal place of business in
25 the United States that employs workers in labor or

1 services that are not agricultural, and shall not in-
2 clude recruiting entities or job shops.

3 “(B) The term ‘job opportunity’ means a job
4 opening for short-term full-time or part-time employ-
5 ment at a place in the United States to which
6 United States workers can be referred.

7 “(C)(i) The term ‘layoffs’, with respect to a
8 worker—

9 “(I) means to cause the worker’s loss of
10 employment, other than through a discharge for
11 inadequate performance, violation of workplace
12 rules, cause, voluntary departure, voluntary re-
13 tirement, contract impossibility, termination of
14 the position or company, temporary layoffs due
15 to weather, markets, or other temporary condi-
16 tions; but

17 “(II) does not include any situation in
18 which the worker is offered, as an alternative to
19 such loss of employment, a similar employment
20 opportunity with the same employer at equiva-
21 lent or higher compensation and benefits than
22 the position from which the employee was dis-
23 charged, regardless of whether or not the em-
24 ployee accepts the offer.

1 “(ii) Nothing in this subparagraph is intended
2 to limit an employee’s rights under a collective bar-
3 gaining agreement or other employment contract.

4 “(D) The term ‘United States worker’ means
5 any worker, whether a United States citizen or na-
6 tional, a lawfully admitted permanent resident alien,
7 or any other alien, who is authorized to work in the
8 job opportunity within the United States, except an
9 alien admitted or otherwise provided status under
10 clauses (i)(b), (i)(d), (ii)(a), or (ii)(b) of section
11 101(a)(15)(H), (L), (O), or (P) of section
12 101(a)(15).”.

13 **SEC. 317. COLLECTIVE BARGAINING AGREEMENTS.**

14 Notwithstanding any other provision of law, the fact
15 that an individual holds a visa as a nonimmigrant worker
16 described in clause (i)(d) or (ii)(b) of section
17 101(a)(15)(H) of the Immigration and Nationality Act (8
18 U.S.C. 1101(a)(15)(H)) shall not render that individual
19 ineligible to qualify as an employee under the National
20 Labor Relations Act (29 U.S.C. 151 et seq.) or to be pro-
21 tected under section 7 of that Act (29 U.S.C. 157).

22 **SEC. 318. INVESTIGATIONS BY DEPARTMENT OF HOME-**
23 **LAND SECURITY DURING LABOR DISPUTES.**

24 (a) IN GENERAL.—When information is received by
25 the Department of Homeland Security concerning the em-

1 ployment of undocumented or unauthorized aliens, consid-
2 eration should be given to whether the information is
3 being provided to interfere with the rights of employees
4 to—

5 (1) form, join, or assist labor organizations or
6 to exercise their rights not to do so;

7 (2) be paid minimum wages and overtime;

8 (3) have safe work places;

9 (4) receive compensation for work related inju-
10 ries;

11 (5) be free from discrimination based on race,
12 gender, age, national origin, religion, or handicap; or

13 (6) retaliate against employees for seeking to
14 vindicate these rights.

15 (b) DETERMINATION OF LABOR DISPUTE.—When-
16 ever information received from any source creates a sus-
17 picion that an immigration enforcement action might in-
18 volve the Department of Homeland Security in a labor dis-
19 pute, a reasonable attempt should be made by Department
20 of Homeland Security enforcement officers to determine
21 whether a labor dispute is in progress. The information
22 officer at the regional office of the National Labor Rela-
23 tions Board can supply status information on unfair labor
24 practice charges or union election or decertification peti-
25 tions that are pending involving most private sector, non-

1 agricultural employers. Wage and hour information can be
2 obtained from the Wage and Hour Division of the Depart-
3 ment of Labor or the State labor department.

4 (c) RELEVANT QUESTIONS FOR INFORMANT.—In
5 order to protect the Department of Homeland Security
6 from unknowingly becoming involved in a labor dispute,
7 persons who provide information to the Department of
8 Homeland Security about the employer or employees in-
9 volved in the dispute should be asked—

10 (1) their names;

11 (2) whether there is a labor dispute in progress
12 at the worksite;

13 (3) whether the person is or was employed at
14 the worksite in question (or by a union representing
15 workers at the worksite);

16 (4) if applicable, whether the person is or was
17 employed in a supervisory or managerial capacity or
18 is related to anyone who is;

19 (5) how the person came to know that the sub-
20 jects lacked legal authorization to work, as well as
21 the source and reliability of the information con-
22 cerning the subject's status;

23 (6) whether the person had or is having a dis-
24 pute with the employer or the subjects of the infor-
25 mation; and

1 (7) if the subjects of the information have
2 raised complaints or grievances about hours, work-
3 ing conditions, discriminatory practices, or union
4 representation or actions, or whether the subjects
5 have filed workers' compensation claims.

6 (d) BICE REVIEW.—There is no prohibition for en-
7 forcing the Immigration and Nationality Act (8 U.S.C.
8 1101 et seq.), even when there may be a labor dispute
9 in progress, however, where it appears that information
10 may have been provided in order to interfere with or to
11 retaliate against employees for exercising their rights, no
12 action should be taken on this information without review
13 and approval by the Bureau of Immigration and Customs
14 Enforcement of the Department of Homeland Security.

15 (e) ENFORCEMENT ACTION.—When enforcement ac-
16 tion is taken by the Department of Homeland Security
17 and the Department determines that there is a labor dis-
18 pute in progress, or that information was provided to the
19 Department of Homeland Security to retaliate against em-
20 ployees for exercising their employment rights, the lead
21 immigration officer in charge of the Department of Home-
22 land Security enforcement team at the worksite must en-
23 sure, to the extent possible, that any aliens who are ar-
24 rested or detained and are necessary for the prosecution
25 of any violations are not removed from the country with-

1 out notifying the appropriate law enforcement agency that
2 has jurisdiction over the violations.

3 (f) INTERVIEWS.—Any arrangements for aliens to be
4 held or interviewed by investigators or attorneys for the
5 Department of Labor, the State labor department, the Na-
6 tional Labor Relations Board, or any other agencies or
7 entities that enforce labor or employment laws will be de-
8 termined on a case-by-case basis.

9 **SEC. 319. PROTECTION OF WITNESSES.**

10 Chapter 8 of title II of the Immigration and Nation-
11 ality Act (8 U.S.C. 1151 et seq.) is amended by adding
12 after section 280 the following:

13 “STAY OF REMOVAL

14 “SEC. 280A. (a) An alien against whom removal pro-
15 ceedings have been initiated pursuant to chapter 4, who
16 has filed a workplace claim or who is a material witness
17 in any pending or anticipated proceeding involving a work-
18 place claim, shall be entitled to a stay of removal and to
19 an employment authorized endorsement unless the De-
20 partment of Labor established by a preponderance of the
21 evidence in proceedings before the immigration judge pre-
22 siding over that alien’s removal hearing that—

23 “(1) the Department of Homeland Security ini-
24 tiated the alien’s removal proceeding for wholly inde-
25 pendent reasons and not in any respect based on, or
26 as a result of, any information provided to or ob-

1 tained by the Department of Homeland Security
2 from the alien's employer, from any outside source,
3 including any anonymous source, or as a result of
4 the filing or prosecution of the workplace claim; and

5 “(2) the workplace claim was filed in a bad
6 faith intent to delay or avoid the alien's removal.

7 “(b) Any stay of removal or work authorization
8 issued pursuant to subsection (a) shall remain valid and
9 in effect at least during the pendency of the proceedings
10 concerning such workplace claim. The Secretary of Home-
11 land Security shall extend such relief for a period of not
12 longer than 3 additional years upon determining that—

13 “(1) such relief would enable the alien asserting
14 the workplace claim to be made whole;

15 “(2) the deterrent goals of any statute under-
16 lying the workplace claim would thereby be served;
17 or

18 “(3) such extension would otherwise further the
19 interests of justice.

20 “(c) In this section—

21 “(1) the term ‘workplace claim’ shall include
22 any claim, charge, complaint, or grievance filed with
23 or submitted to the employer, a Federal or State
24 agency or court, or an arbitrator, to challenge an
25 employer's alleged civil or criminal violation of any

1 legal or administrative rule or requirement affecting
2 the terms or conditions of its workers' employment,
3 the treatment of workers, or the hiring or firing of
4 its workers; and

5 “(2) the term ‘material witness’ means an indi-
6 vidual who presents an affidavit from an attorney
7 prosecuting or defending the workplace claim or
8 from the presiding officer overseeing the workplace
9 claim attesting that, to the best of the affiant’s
10 knowledge and belief, reasonable cause exists to be-
11 lieve that the testimony of the individual will be cru-
12 cial to the outcome of the workplace claim.

13 “CONFIDENTIALITY OF IMMIGRATION INFORMATION
14 OBTAINED DURING ADMINISTRATIVE PROCEEDINGS

15 “SEC. 280B. (a) No officer or employee, including
16 any former officer or employee, of any Federal or State
17 administrative agency with jurisdiction over any employ-
18 er’s workplace shall disclose to the Department of Home-
19 land Security, or cause to be published in a manner that
20 discloses to the Department of Homeland Security, any
21 information concerning the immigration status of any
22 worker obtained by that officer or employee in connection
23 with the official duties of that officer or employee, and
24 the Department of Homeland Security shall not, in any
25 enforcement action or removal proceeding, use or rely
26 upon, in whole or in part, any information so obtained.

1 “(b) Any person who knowingly uses, publishes, or
2 permits information to be used in violation of subsection
3 (a) shall be fined not more than \$10,000.”.

4 **SEC. 320. DOCUMENT FRAUD.**

5 Section 274C(d)(3) of the Immigration and Nation-
6 ality Act (8 U.S.C. 1324c(d)(3)) is amended by inserting
7 before “In applying this subsection” the following: “The
8 civil penalties set forth in subparagraphs (A) and (B) shall
9 be tripled in the case of any commercial enterprise that
10 commits any violation of subsection (a) principally for
11 commercial advantage or financial gain.”.

12 **SEC. 321. CONTINUED APPLICATION OF BACKPAY REM-**
13 **EDIES.**

14 (a) IN GENERAL.—Section 274A(h) of the Immigra-
15 tion and Nationality Act (8 U.S.C. 1324a(h)) is amended
16 by adding at the end the following:

17 “(4) BACKPAY REMEDIES.—Backpay or other
18 monetary relief for unlawful employment practices
19 shall not be denied to a present or former employee
20 as a result of the employer’s or employee’s—

21 “(A) failure to comply with the require-
22 ments of this section; or

23 “(B) violation of a provision of Federal law
24 related to the employment verification system

1 described in subsection (b) in establishing or
2 maintaining the employment relationship.”.

3 (b) **EFFECTIVE DATE.**—The amendment made by
4 subsection (a) shall apply to any failure to comply or any
5 violation that occurs prior to, on, or after the date of en-
6 actment of this Act.

7 **SEC. 322. UNFAIR IMMIGRATION-RELATED EMPLOYMENT**
8 **PRACTICES.**

9 Section 274B of the Immigration and Nationality Act
10 (8 U.S.C. 1324b) is amended—

11 (1) in subsection (a)(5)—

12 (A) by striking “Prohibition of intimidat-
13 ion or retaliation.—It is also” and inserting
14 “Prohibition of intimidation, retaliation, or un-
15 lawful discrimination in employment.—

16 “(A) **IN GENERAL.**—It is”; and

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

18 “(B) **PROHIBITION ON THREATS OF RE-**
19 **MOVAL.**—It is an unfair immigration-related
20 employment practice for any employer, directly
21 or indirectly, to threaten any individual with re-
22 moval or any other adverse consequence or legal
23 process pertaining to the immigration status or
24 benefits of that individual for the purpose of—

1 “(i) intimidating, pressuring, or coercing
2 any such individual not to exercise any
3 right protected by Federal or State labor
4 or employment law, including section 7 of
5 the National Labor Relations Act (29
6 U.S.C. 157); or

7 “(ii) retaliating against any such indi-
8 vidual for having exercised, or having stat-
9 ed an intention to exercise, any such right.

10 “(C) PROHIBITION ON UNLAWFUL DIS-
11 CRIMINATION.—It is an unfair immigration-re-
12 lated employment practice for any employer, ex-
13 cept to the extent specifically authorized or re-
14 quired by law, to discriminate in any term or
15 condition of employment against any individual
16 employed by such employer on the basis of the
17 immigration status of such individual.”;

18 (2) in subsection (c)—

19 (A) in paragraph (2)—

20 (i) by striking “The” and inserting
21 the following:

22 “(A) IN GENERAL.—The”; and

23 (ii) by adding at the end the fol-
24 lowing:

25 “(B) DISCLOSURES.—

1 “(i) IN GENERAL.—The Special Coun-
2 sel shall not disclose to any government
3 agency or employee, and shall not cause to
4 be published in a manner that discloses to
5 any government agency or employee, any
6 information obtained in any manner by the
7 Special Counsel concerning the immigra-
8 tion status of any individual who has filed
9 a charge under this section or the identity
10 of any individual or entity that is a party
11 or witness to a proceeding brought pursu-
12 ant to such a charge.

13 “(ii) RELIANCE ON INFORMATION.—
14 The Department of Labor shall not rely, in
15 whole or in part in any enforcement action
16 or removal proceeding, upon any informa-
17 tion obtained as a result of the filing or
18 prosecution of an unfair immigration-re-
19 lated employment practice charge.

20 “(C) VIOLATION.—Any person who knowingly
21 uses, publishes, or permits information to be used in
22 violation of subparagraph (B) shall be fined not
23 more than \$10,000.”; and

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

1 “(5) SPECIAL COUNSEL DEFINITION.—In this
2 subsection, the term ‘Special Counsel’ includes indi-
3 viduals formerly appointed to the position of Special
4 Counsel and any current or former employee of the
5 Office of the Special Counsel.”;

6 (3) in subsection (d)(3), by striking “180 days”
7 and inserting “1 year”;

8 (4) in subsection (g)(2)—

9 (A) in subparagraph (B)—

10 (i) in clause (iii), by inserting before
11 the semicolon the following: “, or to make
12 whole (including by requiring reinstatement
13 where appropriate) any individual
14 who has been injured in his or her person
15 or property by reason of any unfair immi-
16 gration-related employment practice”; and

17 (ii) in clause (iv)—

18 (I) in subclause (I), by striking
19 “not less than \$250 and not more
20 than \$2,000” and inserting “not less
21 than \$500 and not more than
22 \$4,000”;

23 (II) in subclause (II), by striking
24 “not less than \$2,000 and not more
25 than \$5,000” and inserting “not less

1 than \$4,000 and not more than
2 \$10,000”;

3 (III) in subclause (III), by strik-
4 ing “not less than \$3,000 and not
5 more than \$10,000” and inserting
6 “not less than \$6,000 and not more
7 than \$20,000”; and

8 (IV) by striking subclause (IV)
9 and inserting the following:

10 “(IV) in the case of an unfair immi-
11 gration-related employment practice de-
12 scribed in subparagraph (B) or (C) of sub-
13 section (a)(5), if the person or entity has
14 been found by a Federal or State agency
15 or court of competent jurisdiction, at any
16 time during the preceding 5 years, to have
17 committed violations affecting 2 or more
18 workers of any Federal or State statute
19 proscribing workplace discrimination, re-
20 quiring the payment of wages or benefits,
21 protecting the right to engage in concerted
22 activities for the purpose of mutual aid or
23 protection, or mandating the protection of
24 worker safety or health, to pay a civil pen-
25 alty of not less than \$5,000 and not more

1 than \$20,000 for each individual discrimi-
2 nated against, and in addition, to pay a
3 fine equivalent to the sum required to be
4 paid to the individual discriminated
5 against pursuant to clause (i).”; and

6 (B) in subparagraph (C)—

7 (i) by striking “two years” and insert-
8 ing “3 years”; and

9 (ii) by striking “or the payment to an
10 individual of any backpay,”;

11 (5) in subsection (h), by striking “, if the losing
12 party’s argument is without reasonable foundation
13 in law and fact”;

14 (6) in subsection (j)(4), by striking “but only if
15 the losing party’s argument is without reasonable
16 foundation in law and fact”; and

17 (7) in subsection (l), by striking “Not later
18 than 3 months after the date of enactment of this
19 subsection” and inserting “Not later than 3 months
20 after the date of the enactment of the S.O.L.V.E.
21 Act of 2004”.

22 **SEC. 323. TEMPORARY WORKERS PROGRAM COMMISSION.**

23 (a) ESTABLISHMENT OF COMMISSION.—

24 (1) ESTABLISHMENT.—There is established a
25 commission to be known as the Temporary Worker

1 Programs Commission (hereafter in this section re-
2 ferred to as the “Commission”).

3 (2) PURPOSE.—The purpose of the Commission
4 is to study the temporary worker programs created
5 under this title, their effect on the security of the
6 United States, the United States workforce, busi-
7 nesses, workers participating in such programs, and
8 their countries of origin, and make recommendations
9 to Congress with respect to such programs.

10 (3) MEMBERSHIP OF COMMISSION.—

11 (A) COMPOSITION.—The Commission shall
12 be composed of 14 members as follows:

13 (i) 3 members shall be appointed by
14 the Majority Leader of the Senate.

15 (ii) 3 members shall be appointed by
16 the Speaker of the United States House of
17 Representatives.

18 (iii) 3 members shall be appointed by
19 the Minority Leader of the Senate.

20 (iv) 3 members shall be appointed by
21 the Minority Leader of the United States
22 House of Representatives.

23 (v) 1 member shall be a designee of
24 the Secretary of Labor.

1 (vi) 1 member shall be a designee of
2 the Secretary of Homeland Security.

3 (B) QUALIFICATIONS OF MEMBERS.—

4 (i) APPOINTMENTS.—Persons who are
5 appointed under subparagraph (A) shall be
6 persons who have expertise in economics,
7 demography, labor, business, immigration
8 and immigration law, national security, or
9 other pertinent qualifications or experience.

10 (ii) OTHER CONSIDERATIONS.—In ap-
11 pointing Commission members, every effort
12 shall be made to ensure that the
13 members—

14 (I) are representative of a broad
15 cross-section of perspectives within
16 the United States, including the pub-
17 lic and private sectors, academics, im-
18 migrant leaders and advocates, and
19 law enforcement and security experts;
20 and

21 (II) provide fresh insights to ex-
22 amining the temporary worker pro-
23 grams.

24 (4) PERIOD OF APPOINTMENT; VACANCIES.—

1 (A) IN GENERAL.—Members shall be ap-
2 pointed not later than 120 days after the enact-
3 ment of this Act and the appointment shall be
4 for the life of the Commission.

5 (B) VACANCIES.—Any vacancy in the
6 Commission shall not affect its powers, but
7 shall be filled in the same manner as the origi-
8 nal appointment.

9 (5) INITIAL MEETING.— Not later than 60 days
10 after the date on which all members of the Commis-
11 sion have been appointed, the Commission shall hold
12 its first meeting.

13 (6) MEETINGS.—The Commission shall meet at
14 the call of the Chairperson.

15 (7) CHAIRPERSON AND VICE CHAIRPERSON.—
16 The members of the Commission shall elect a chair-
17 person and vice chairperson from among the mem-
18 bers of the Commission.

19 (8) QUORUM.—A majority of the members of
20 the Commission shall constitute a quorum for the
21 transaction of business.

22 (9) VOTING.—Each member of the Commission
23 shall be entitled to 1 vote, which shall be equal to
24 the vote of every other member of the Commission.

1 (10) COMPENSATION AND EXPENSES.—The
2 members of the Commission shall not receive com-
3 pensation for the performance of services for the
4 Commission, but shall be allowed travel expenses, in-
5 cluding per diem in lieu of subsistence, at rates au-
6 thorized for employees of agencies under subchapter
7 I of chapter 57 of title 5, United States Code, while
8 away from their homes or regular places of business
9 in the performance of services for the Commission.

10 (11) STAFF.—The Chair, in accordance with
11 rules agreed upon by the Commission, may appoint
12 and fix the compensation of an executive director,
13 staff members, and such other personnel as may be
14 necessary to enable the Commission to carry out its
15 functions, without regard to the provisions of title 5,
16 United States Code, governing appointments in the
17 competitive services, and without regard to the pro-
18 visions of chapter 51 and subchapter III of chapter
19 53 of such title, relating to classification and Gen-
20 eral Schedule pay rates, except that no rate of pay
21 fixed under this paragraph may exceed the equiva-
22 lent of that payable for a position at level V of the
23 Executive Schedule under section 5316 of such title.

24 (12) DETAILEES.—Any Federal Government
25 employee may be detailed to the Commission without

1 reimbursement from the Commission, and such
2 detailee shall retain the rights, status, and privileges
3 of his or her regular employment without interrup-
4 tion.

5 (13) CONSULTANT SERVICES.—The Commis-
6 sion is authorized to procure the services of experts
7 and consultants in accordance with section 3109 of
8 title 5, United States Code, but at rates not to ex-
9 ceed the daily rate paid a person occupying a posi-
10 tion at level IV of the Executive Schedule under sec-
11 tion 5315 of title 5, United States Code.

12 (b) ADMINISTRATIVE PROVISIONS.—

13 (1) INFORMATION FROM FEDERAL AGENCIES.—
14 The Commission may secure directly from any Fed-
15 eral department or agency such information, sugges-
16 tions, estimates, and statistics as the Commission
17 considers necessary to carry out the provisions of
18 this section. Upon request of the Commission, the
19 head of such department or agency shall furnish
20 such information to the Commission.

21 (2) HEARINGS.—The Commission may hold
22 such hearings, sit and act at such times and places,
23 take such testimony, and receive such evidence as
24 the Commission considers advisable to carry out the
25 objectives of this section, except that, to the extent

1 possible, the Commission shall use existing data and
2 research. The Commission shall provide all inter-
3 ested parties an opportunity for input regarding the
4 duties into the fact-finding undertaken pursuant to
5 their knowledge and expertise

6 (3) POSTAL SERVICES.—The Commission may
7 use the United States mails in the same manner and
8 under the same conditions as departments and agen-
9 cies of the Federal Government.

10 (4) ASSISTANCE FROM FEDERAL AGENCIES.—
11 The Administrator of General Services shall provide
12 to the Commission on a reimbursable basis adminis-
13 trative support and other services for the perform-
14 ance of the Commission's functions. The depart-
15 ments and agencies of the United States may pro-
16 vide to the Commission such services, funds, facili-
17 ties, staff, and other support services as they may
18 determine advisable and as may be authorized by
19 law.

20 (c) REPORTS.—Not later than 3 years after all of the
21 members are appointed to the Commission, the Commis-
22 sion shall submit to the Congress, the Secretary of Labor,
23 and the Secretary of Homeland Security a preliminary re-
24 port that summarizes the directions of the Commission
25 and initial recommendations. Not later than 5 years after

1 the Commission members are appointed, the Commission
2 shall submit to the Congress, the Secretary of Labor, and
3 the Secretary of Homeland Security a report that contains
4 the findings of the Commission and makes such rec-
5 ommendations as are consistent with the purpose and du-
6 ties of the Commission, including recommendations for
7 legislative and administrative actions to implement the
8 conclusions of the Commission.

9 (d) DUTIES OF THE COMMISSION.—The Commission
10 shall examine—

11 (1) the effect that the employment of workers
12 described in clause (ii)(b) or (i)(d) of section
13 101(a)(15)(H) of the Immigration and Nationality
14 Act (8 U.S.C. 1101(a)(15)(H)) has on the national
15 security of the United States, including the impact
16 such programs have had on screening aliens seeking
17 admission at the U.S. borders and ports of entry ;

18 (2) the effect that the employment of workers
19 described in clause (ii)(b) or (i)(d) of section
20 101(a)(15)(H) of the Immigration and Nationality
21 Act (8 U.S.C. 1101(a)(15)(H)) has on the United
22 States workforce, including the wages, employment
23 and working conditions of United States workers;
24 whether actual shortages existed for the positions
25 sought to be filled, alternative methods to address

1 skill shortages, and whether the positions filled
2 under the programs were actually temporary;

3 (3) the effect that the employment of workers
4 described in clause (ii)(b) or (i)(d) of section
5 101(a)(15)(H) of the Immigration and Nationality
6 Act (8 U.S.C. 1101(a)(15)(H)) has on United States
7 businesses, including any alleviation of workforce
8 shortages or creation of new jobs;

9 (4) the effect that the employment of workers
10 described in clause (ii)(b) or (i)(d) of section
11 101(a)(15)(H) of the Immigration and Nationality
12 Act (8 U.S.C. 1101(a)(15)(H)) has on such workers,
13 including the wages and working conditions of such
14 workers;

15 (5) the effect that the employment of workers
16 described in clause (ii)(b) or (i)(d) of section
17 101(a)(15)(H) of the Immigration and Nationality
18 Act (8 U.S.C. 1101(a)(15)(H)) has on the countries
19 of origin of such workers, including the impact of re-
20 mittances, economic development, and brain drain
21 on such countries;

22 (6) the adequacy and accuracy of the current
23 wage calculation system, and whether changes are
24 needed to improve such system, including the Occu-
25 pational Employment System survey, its calculation

1 of wage data based on skill and experience levels,
2 difference among types of employers (specifically for-
3 profit and nonprofit, and government and non-gov-
4 ernment) and the use of private, independent wage
5 surveys;

6 (7) the adequacy of past labor certification sys-
7 tems under the H-2b program, in comparison to the
8 labor attestation system created by this title; wheth-
9 er changes are needed to improve such system; and
10 recommendations for such improvements;

11 (8) the factors necessary to develop and imple-
12 ment an appropriate labor market test governing the
13 temporary worker programs described in this sec-
14 tion, including measures related to unemployment
15 levels that are geographic and occupational-specific,
16 and median wages in the occupations and vacancy
17 rates; and make recommendations to promulgate
18 such a labor market test;

19 (9) the current enforcement mechanisms con-
20 tained in the temporary worker programs and
21 whether changes are needed to improve the inves-
22 tigation and enforcement of violations;

23 (10) any other recommendations that are war-
24 ranted.

1 (e) AUTHORIZATION OF APPROPRIATIONS.—There
2 are authorized to be appropriated such sums as may be
3 necessary to carry out the provisions of this section.

4 **SEC. 324. SUBMISSION TO CONGRESS OF INFORMATION RE-**
5 **GARDING H-2B AND H-1D NONIMMIGRANTS.**

6 Section 416 of the American Competitiveness and
7 Workforce Improvement Act of 1998 (title IV of division
8 C of Public Law 105–277; 8 U.S.C. 1184 note) is
9 amended—

10 (1) by striking “Attorney General” each place
11 that term appears and inserting “Secretary of
12 Homeland Security”; and

13 (2) by adding at the end the following new sub-
14 section:

15 “(d) PROVISION OF INFORMATION.—

16 “(1) QUARTERLY NOTIFICATION.—Beginning
17 not later than December 1, 2005, the Secretary of
18 Homeland Security shall notify, on a quarterly basis,
19 the Committees on the Judiciary of the House of
20 Representatives and the Senate of the numbers of
21 aliens who during the preceding 3-month period—

22 “(A) were issued visas or otherwise pro-
23 vided nonimmigrant status under clause (i)(d)
24 or (ii)(b) of section 101(a)(15)(H) of the Immi-

1 gration and Nationality Act (8 U.S.C.
2 1101(a)(15)(H)); or

3 “(B) had such a visa or such status expire
4 or be revoked or otherwise terminated.

5 “(2) ANNUAL SUBMISSION.—Beginning with
6 fiscal year 2006, the Secretary of Homeland Secu-
7 rity shall submit on an annual basis, to the Commit-
8 tees on the Judiciary of the House of Representa-
9 tives and the Senate—

10 “(A) information on the countries of origin
11 and occupations of, and compensation paid to,
12 aliens who were issued visas or otherwise pro-
13 vided nonimmigrant status under clause (i)(d)
14 or (ii)(b) of section 101(a)(15)(H) of the Immi-
15 gration and Nationality Act (8 U.S.C.
16 1101(a)(15)(H)) during the previous fiscal
17 year;

18 “(B) the number of aliens who during each
19 month of such fiscal year had such a visa or
20 such status expire or be revoked or otherwise
21 terminated;

22 “(C) the number of aliens who were pro-
23 vided nonimmigrant status under such section
24 during both such fiscal year and the fiscal year
25 preceding such fiscal year; and

1 “(D) the number of aliens provided non-
2 immigrant status under such section who adjust
3 status to lawful permanent residence based on
4 a petition filed by an employer or a self-peti-
5 tion.”.