

HR 264 IH

111th CONGRESS

1st Session

**H. R. 264**

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

**IN THE HOUSE OF REPRESENTATIVES****January 7, 2009**

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

**A BILL**

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

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

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

(a) Short Title- This Act may be cited as the 'Save America Comprehensive Immigration Act of 2009'.

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

**TITLE I--FACILITATING FAMILY-BASED IMMIGRATION****SEC. 101. INCREASING THE ALLOCATION OF FAMILY-BASED IMMIGRANT VISAS.**

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

'(c) Worldwide Level of Family-Sponsored Immigrants- The worldwide level of family-sponsored immigrants under this subsection for a fiscal year shall be no more than 960,000.'

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

### (a) Age-Out Protection for Children-

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

### **` AGE-OUT PROTECTION FOR CHILDREN**

` Sec. 408. (a) In General- In the case of an application initially to grant a benefit under this Act (other than an application for naturalization) that otherwise would be granted only after a determination that the beneficiary of the application is a child (such as classification as an immediate relative under section 201(b)(2)(A)(i)), if the application is neither approved nor denied (on procedural or substantive grounds) during the 90-day period beginning on the date of the filing of the application, the beneficiary shall be considered to be a child for all purposes related to the receipt of the benefit if the beneficiary was a child on the last day of such 90-day period, and the beneficiary shall not otherwise be prejudiced with respect to such determination by such delay, and shall be considered to be a child under this Act for all purposes related to such application.

` (b) Termination of Benefit- Subsection (a) shall remain in effect until the termination of the 1-year period beginning on the date on which the application described in such paragraph is approved.'

(2) CLERICAL AMENDMENT- The table of contents is amended by inserting after the item relating to section 407 the following:

` Sec. 408. Age-out protection for children.'

### (b) Timeliness of Adoption for Immigration Purposes-

(1) IN GENERAL- Section 101(b)(1)(E)(i) (8 U.S.C. 1101(b)(1)(E)(i)) is amended by striking `a child adopted while under the age of sixteen years' and inserting `a child, under the age of 16 when adoption proceedings were initiated,'.

(2) SPECIAL RULE FOR SIBLINGS- Section 101(b)(1)(E)(ii)(III) (8 U.S.C. 1101(b)(1)(E)(ii)(III)) is amended by striking `adopted while under the age of 18 years' and inserting `under the age of 18 when adoption proceedings were initiated'.

## **SEC. 103. TEMPORARY STATUS PENDING RECEIPT OF PERMANENT RESIDENT STATUS.**

(a) Classes of Nonimmigrant Aliens- Section 101(a)(15)(K) (8 U.S.C. 1101(a)(15)(K)) is amended--

- (1) by striking `or' at the end of clause (ii);
- (2) by adding `or' at the end of clause (iii); and
- (3) by adding at the end the following:

`(iv)(I) has concluded a valid marriage with an alien lawfully admitted for permanent residence, is the parent of a citizen of the United States, or is the child, son, or daughter of an alien lawfully admitted for permanent residence or a citizen of the United States; (II) is the beneficiary of an approved petition to accord immigrant status on the basis of such family relationship that was filed under section 204 by such family member; (III) has available to the alien an immigrant visa number; (IV) has waited more than 6 months for the issuance of an immigrant visa based upon an application made by the alien; and (V) seeks to enter the United States to await such issuance;'

(b) Admission of Nonimmigrants- Section 214(d) (8 U.S.C. 1184(d)) is amended--

(1) by striking `(d)' and inserting `(d)(1)'; and

(2) by adding at the end the following:

## **SEC. 104. ELIMINATION OF AFFIDAVIT OF SUPPORT REQUIREMENT.**

(a) Grounds for Ineligibility for Admission- Section 212(a)(4) (8 U.S.C. 1182(a)(4)) is amended--

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

`(ii) If an alien submits an affidavit of support described in section 213A, in addition to the factors under clause (i), the consular officer or the Attorney General shall also consider such affidavit in determining whether the alien is inadmissible under this paragraph.'; and

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

(b) Requirements for Sponsor's Affidavit of Support- Subsections (a)(1)(A), (f)(1)(E), and (f)(4)(B)(i) of section 213A (8 U.S.C. 1183a(a)(1)(A), (f)(1)(E), and (f)(4)(B)(i)) are amended by striking `125' and inserting `100'.

`(2) A visa shall not be issued under the provisions of section 101(a)(15)(K)(iv) until the consular officer has received a petition filed in the United States by the lawful permanent resident or citizen relative of the applying alien and approved by the Secretary of Homeland Security. The petition shall be in such form and contain such information as the Secretary shall, by regulation, prescribe.'

## **TITLE II--ESTABLISHMENT OF A BOARD OF VISA APPEALS FOR FAMILY-BASED VISAS**

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

(a) In General- The Immigration and Nationality Act is amended by inserting after section 224 the following new section:

#### **` BOARD OF VISA APPEALS**

` Sec. 225. (a) Establishment- The Secretary of State shall establish within the Department of State a Board of Family-based Visa Appeals. The Board shall be composed of 5 members who shall be appointed by the Secretary. Not more than 2 members of the Board may be consular officers. The Secretary shall designate a member who shall be chairperson of the Board.

` (b) Authority and Functions- The Board shall have authority to review any discretionary decision of a consular officer with respect to an alien concerning the denial, revocation, or cancellation of an immigrant visa of someone who has the immediate relative status described in section 201(2)(A)(i) and (ii); or a preference classification described in section 203(a). The review of the Board shall be made upon the record for decision of the consular officer, including all documents, notes, and memoranda filed with the consular officer, supplemented by affidavits and other writings if offered by the consular officer or alien. Upon a showing that the decision of the consular official is contrary to the preponderance of the evidence, the Board shall have authority to overrule, or remand for further consideration, the decision of such consular officer.

` (c) Procedure- Proceedings before the Board shall be in accordance with such regulations, not inconsistent with this Act and sections 556 and 557 of title 5, United States Code, as the Secretary of State shall prescribe. Such regulations shall include requirements that provide that--

` (1) at the time of any decision of a consular officer under subsection (b), the interested party defined in subsection (d) shall be given notice of the availability of the review process and the necessary steps to request such review;

` (2) a written record of the proceedings and decision of the consular officer (in accordance with sections 556 and 557 of title 5, United States Code) shall be available to the Board, and on payment of lawfully prescribed costs, shall be made available to the alien;

` (3) upon receipt of request for review under this section, the Board shall, within 30 days, notify the consular officer with respect to whose decision review is sought, and, upon receipt of such notice, such officer shall promptly (but in no event more than 30 days after such receipt) forward to the Board the record of proceeding as described in subsection (b);

` (4) the appellant shall be given notice, reasonable under all the circumstances of the time and place at which the Board proceedings will be held;

` (5) the appellant may be represented (at no expense to the Government) by such counsel, authorized to practice in such proceedings, as the appellant shall choose; and

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

` (d) Interested Parties- The Board shall review each decision described in subsection (b) upon request by the petitioner of an immigrant visa petition approved under section 201(2)(A)(i) and (ii) or 203(a).

` (e) Construction- This section may not be construed to restrict any right to further administrative or judicial review established under any other provision of law.

` (f) Fees- The Secretary of State shall charge, and collect, an appropriate fee associated with a request to the Board for a review. Such fee shall be sufficient to cover the cost of the administration of this section.'.

(b) Technical Amendments-

(1) Section 222(f) (8 U.S.C. 1202(f)) is amended by adding at the end: ` An interested party under section 225(d) or court shall be permitted to inspect the record of proceeding as described in subsections (c)(2) and (c)(3) of section 225.'.

(2) Section 104(a)(1) (8 U.S.C. 1104(a)(1)) is amended by striking the `except' and inserting `including'.

(3) The table of contents is amended by inserting after the item relating to section 224 the following new item:

` Sec. 225. Board of Visa Appeals.'.

### **TITLE III--ELIMINATION OF UNFAIR RESTRICTIONS**

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

(a) Requirements for Citizenship Eligibility- Section 309(a) (8 U.S.C. 1409(a)) is amended--

(1) in paragraph (2), by adding `and' at the end;

(2) by striking paragraph (3);

(3) in paragraph (4), by striking `while the person is under the age of 18 years--' and inserting `at any time--'; and

(4) by redesignating paragraph (4) as paragraph (3).

(b) Clarification Regarding Deceased Parents of Children Born Abroad and Out of Wedlock- Section 309 (8 U.S.C. 1409) is amended by adding at the end the following:

` (d) Nothing in this section shall be construed to preclude a person who is a citizen or national of the United States by virtue of a provision of this section from establishing such status under this title after the death of the person's father, mother, or parents.'.

(c) Application of Citizenship Provisions- The amendments made by this Act shall apply to persons born out of wedlock who are alive on or after the date of the enactment of this Act.

#### **SEC. 302. ALLOW AUNTS AND UNCLER OR GRANDPARENTS TO ADOPT ORPHANED OR ABANDONED CHILDREN OF THE DECEASED RELATIVE.**

Section 101(b) is amended by--

- (1) striking `or' at the end of subparagraph (E) and inserting a semicolon;
- (2) striking the period at the end of subparagraph (F) and inserting `; or'; and
- (3) by inserting the following subparagraph:

`(G) a child adopted in the United States or abroad or who is coming to the United States for adoption by a grandparent, aunt or uncle while under the age of eighteen years, who has suffered the death or disappearance of, abandonment or desertion by, or separation or loss from, both parents, or for whom the sole or surviving parent is incapable of providing proper care and has consented in writing to the adoption, if the Secretary of Homeland Security is satisfied that proper care will be furnished the child if admitted to the United States. No natural parent or prior adoptive parent of any such child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act. Nothing in this subsection shall be construed to require the child to be released to an orphanage as a prerequisite for eligibility.'

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

(a) In General- The second sentence of section 201(b)(2)(A)(i) of the Immigration and Nationality Act (8 U.S.C. 1151(b)(2)(A)(i)) is amended by striking `for at least 2 years' and inserting `, and if married for less than two years at the time of the citizen's death proves by a preponderance of the evidence that the marriage was entered into in good faith and not solely for the purpose of obtaining an immigration benefit,' after `within 2 years after such date'; and by inserting the following sentence after the sentence ending with `remarries': `In the case of an alien who was the child or parent of a citizen of the United States at the time of the citizen's death, the alien shall be considered, for purposes of this subsection, to remain an immediate relative after the date of the citizen's death but only if the alien files a petition under section 204(a)(1)(A)(ii), as amended, within two years after such date in the case of a parent, or prior to reaching the age of 21 in the case of a child.'

(b) Petition- Section 204(a)(1)(A)(ii) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(A)(ii)) is amended by inserting `or an alien child or alien parent described in the third sentence of section 201(b)(2)(A)(i)' after `section 201(b)(2)(A)(i)'

(c) Transition Period- In applying section 201(b)(2)(A)(i) of the Immigration and Nationality Act, as amended, in the case of an alien whose citizen relative died before the date of the enactment of this Act, the alien relative may (notwithstanding the deadlines specified in such subsection) file the classification petition referred to in such subsection within 2 years after the date of the enactment of this Act. In the case of an alien who was excluded, deported, removed or departed voluntarily before the date of the enactment of this Act, such alien shall be eligible for parole into the United States pursuant to the Attorney General's authority under section 212(d)(5), and such alien's application for adjustment of status shall be considered notwithstanding section 212(a)(9).

(d) Adjustment of Status- Section 245 (8 U.S.C. 1255) of the Immigration and Nationality Act is amended by adding at the end the following:

`(n) Applications for Adjustment of Status by Surviving Spouses, Children and Parents-

`(1) IN GENERAL- Any alien described in paragraph (2) who applied for adjustment of status prior to the death of the qualifying relative, may have such application adjudicated as if such death had not occurred.

`(2) ALIEN DESCRIBED- An alien described in this paragraph is an alien who--

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

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

`(C) is a derivative beneficiary of an employment-based immigrant under section 203(b), as described in section 203(d); or

`(D) is a derivative beneficiary of a diversity immigrant as described in section 203(c).'

(e) Transition Period- Notwithstanding a denial of an application for adjustment of status, in the case of an alien whose qualifying relative died before the date of the enactment of this Act, such application may be renewed by the alien through a motion to reopen, without fee, filed within two years after the date of the enactment of this Act. In the case of an alien who was excluded, deported, removed or departed voluntarily before the date of the enactment of this Act, such alien shall be eligible for parole into the United States pursuant to the Attorney General's authority under section 212(d)(5), and such alien's application for adjustment of status shall be considered notwithstanding section 212(a)(9).

(f) State Department Processing of Immigrant Visas- Section 204(b) of the Immigration and Nationality Act (8 U.S.C. 1154) is amended by adding at the end the following:

`(7) EFFECT OF DEATH-

`(A) IN GENERAL- Any alien described in subparagraph (B) whose qualifying relative died prior to completion of immigrant visa processing may have an immigrant visa application adjudicated as if such death had not occurred, and any immigrant visa issued prior to the death of the qualifying relative shall remain valid.

`(B) ALIEN DESCRIBED- An alien described in this subparagraph is an alien who--

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

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

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

`(iv) is a derivative beneficiary of a diversity immigrant as described in section 203(c).'

(g) Transition Period- Notwithstanding a denial or revocation of an application for an immigrant visa, in the case of an alien whose qualifying relative died before the date of the

enactment of this Act, such application may be renewed by the alien through a motion to reopen, without fee, filed within two years after the date of the enactment of this Act. In the case of an alien who was excluded, deported, removed or departed voluntarily before the date of the enactment of this Act, such alien's application for an immigrant visa shall be considered notwithstanding section 212(a)(9).

(h) Naturalization- Section 319(a) of the Immigration and Nationality Act (8 U.S.C. 1429(a)) is amended by inserting `or, if the spouse is deceased, the spouse was a citizen of the United States,' after `(a) Any person whose spouse is a citizen of the United States,'.

### **SEC. 304. ELIMINATING THE WIDOWED PERMANENT RESIDENT'S NATURALIZATION PENALTY.**

Section 319(a) (8 U.S.C. 1429(a)) is amended by inserting `or, if the spouse is deceased, the spouse was a citizen of the United States,' after `(a) Any person whose spouse is a citizen of the United States,'.

### **TITLE IV--PREVENTING SEX OFFENDERS FROM USING OUR IMMIGRATION LAWS TO BRING INNOCENT, UNSUSPECTING VICTIMS INTO THE UNITED STATES**

#### **SEC. 401. FINDINGS.**

The Congress finds the following:

- (1) Immigration law allows citizens and aliens lawfully admitted for permanent residence to bring foreign family members to the United States on the basis of immediate relative status or a preference classification.
- (2) Immediate relative status and preference classifications are obtained by filing petitions with the Secretary of Homeland Security.
- (3) For national security purposes, the Secretary of Homeland Security conducts background checks on the beneficiaries of such petitions and, since September 11, 2001, on the petitioners as well.
- (4) The Government Accountability Office (GAO) has determined that, in fiscal year 2005, at least 398 of the petitioners who filed family-based visa petitions were on the National Sex Offender Registry maintained by the Federal Bureau of Investigations.
- (5) GAO was only able to ascertain the nature of the sex offense for 194 of the 398 petitioners.
- (6) GAO was able to ascertain, however, that 119 of the convictions were for sex assault, 35 for child fondling, 9 for strong arm rape, 9 for carnal abuse combined with a sexual assault, 7 were for statutory rape, 4 for crimes against persons, 3 for indecent exposure, 2 for kidnapping, 2 for obscene material possession, 1 for exploitation of a minor with photographs, 1 for incest with a minor, 1 for sodomizing a boy, and 1 for restricting movement.
- (7) At least 14 of the 398 petitioners were classified as `sexual predators', which

means a determination had been made that they are likely to commit additional sex offenses.

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

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

## **SEC. 402. DISCRETIONARY AUTHORITY TO DENY FAMILY-SPONSORED CLASSIFICATION PETITION BY PETITIONER LISTED ON NATIONAL SEX OFFENDER REGISTRY.**

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

`(I) Authority To Deny Family-Based Petition by Petitioner Listed on National Sex Offender Registry-

`(1) IN GENERAL- The Secretary Homeland Security may, in the discretion of the Secretary, deny a petition under subsection (a) for classification of a spouse or child if--

`(A) the Secretary has confirmed that the petitioner is on the national sex offender registry maintained by the Federal Bureau of Investigation for a conviction that individually (disregarding any aggregation due to any other conviction) resulted in incarceration for more than 1 year;

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

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

`(2) DETERMINING DANGER- In making the determination under paragraph (1)(C), the Secretary shall use the following principles:

`(A) NATURE OF THE RELATIONSHIP- In evaluating a petitioner who has filed a petition for a spouse, consideration should be given to indications of how well the petitioner and the spouse know each other. Petitions filed on the basis of marriages between men and women who have had little direct, personal contact with each other should be viewed with suspicion. In cases where the petitioner and the spouse have had little direct, personal contact with each other, evidence should be submitted to establish that they have gotten to know each other in some other way.

`(B) NATURE OF THE SEX OFFENSE- Consideration should be given to when each offense occurred for which the petitioner was incarcerated for more than a year, how serious it was, the sentence that was imposed, how long the petitioner was incarcerated, the age of the petitioner when it was committed, and the

characteristics of the victim.

` (C) REHABILITATION- Evidence of rehabilitation should be evaluated with respect to whether it diminishes the risk of sexual abuse to the primary or derivative spouse or child beneficiaries.

` (D) PREVIOUS VISA PETITIONS- The records for any previous petitions shall be examined to determine whether they provide or might lead to evidence that is pertinent to determining whether granting the petition would put a primary or derivative spouse or child beneficiary in grave danger of being sexually abused.

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

` (4) POST-DENIAL REMEDIES-

` (A) APPEAL- All final denials under paragraph (1) may be appealed to the Board of Immigration Appeals.

` (B) NEW PETITION- The petitioner may file a new petition whenever the petitioner has additional evidence that the petitioner believes might be sufficient to warrant granting the new petition.

` (5) DISCLOSURE BY THE SECRETARY OF HOMELAND SECURITY TO BENEFICIARIES- In all cases in which it has been confirmed that the name of a petitioner under subsection (a) is listed on the national sex offender registry maintained by the Federal Bureau of Investigation, and regardless of whether the Secretary may exercise discretion under paragraph (1), the Secretary shall give the petitioner at least 90 days to establish that the petitioner is not the person named on the registry. If the petitioner fails to establish that the petitioner is not the person named on the registry within the time allotted, the Secretary shall provide the beneficiaries with a written copy of the information on the registry that is available to the public before making a decision on the petition. The beneficiary shall be informed that the registry information is based on available records and may not be complete.

` (6) DISCLOSURE TO DEPARTMENT OF STATE- In all cases in which it has been confirmed that the name of a petitioner under subsection (a) is listed on the national sex offender registry maintained by the Federal Bureau of Investigation, and regardless of whether the Secretary may exercise discretion under paragraph (1), the Secretary shall provide the Secretary of State with--

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

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

`(C) information about any previous petitions under subsection (a) filed by the petitioner.

`(7) DISCLOSURE BY CONSULAR OFFICER TO BENEFICIARIES- When a petition under subsection (a) is granted, if the petition is filed by a petitioner who has failed to make the demonstration of mis-identification described in paragraph (5), the consular officer shall conduct an interview with the primary or derivative spouse or child beneficiary of the petition before issuing a visa to the beneficiary. At least part of the interview must be held without the presence of the petitioner. During the private part of the interview, the beneficiary will be given a written copy of the information about the petitioner from the registry that is available to the public. This document must be written in the beneficiary's primary language. The consular officer is required to advise the beneficiary that approval of the visa petition does not mean that there are no reasons to be concerned about his or her safety.

`(8) ADDITIONAL RESPONSIBILITIES OF CONSULAR OFFICER- The consular officer may return files to the Secretary of Homeland Security for further consideration in cases where the consular officer is concerned that granting the visa might put a primary or derivative spouse or child beneficiary in grave danger of being sexually abused. When returning a file under the previous sentence, the consular officer may add any additional information or observations the officer has that might have a bearing on whether the visa should be granted, including the results of any field examination that has been conducted.'

### **SEC. 403. REMOVAL OF CONDITIONAL PERMANENT RESIDENT STATUS.**

(a) Identify and Provide Assistance for Spouses and Children Who Are Subject to Sexual Abuse or Related Types of Harm- Section 216(d)(3) of the Immigration and Nationality Act (8 U.S.C. 1186a(d)(3)) is amended--

(1) by inserting before `The interview' the following:

`(A) IN GENERAL- Subject to subparagraph (B), the interview'; and

(2) by adding at the end the following:

`(B) PETITIONER LISTED ON NATIONAL SEX OFFENDER REGISTRY- In all cases where the Secretary of Homeland Security has confirmed that a petitioning spouse is listed on the national sex offender registry maintained by the Federal Bureau of Investigation, an interview with the alien spouse, and any alien sons or daughters, shall be required prior to removal of the conditional status, and at least part of the interview shall be held without the presence of the petitioning spouse. During the private portion of the interview, questions will be asked to determine whether an investigation should be conducted regarding the welfare of the alien spouse, or any alien son or daughter. If it is determined that any alien spouse, son, or daughter is being abused or harmed by the petitioning spouse, the victim shall be offered whatever assistance is appropriate, including information on ways to remain in the United State that do not depend on continuing the qualifying marriage.'

(b) Hardship Waiver in Cases Where the Alien Spouse or Child Is Subject to Sexual Abuse- Section 216(c)(4) of the Immigration and Nationality Act (8 U.S.C. 1186a(c)(4)) is amended--

(1) in subparagraph (B), by striking `or' at the end;

(2) in subparagraph (C), by striking the period at the end and inserting `, or'; and

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

`(D) the qualifying marriage was entered into in good faith by the alien spouse and during the marriage the alien spouse, or a son or daughter of the spouse, was sexually abused and the alien was not at fault in failing to meet the requirements of paragraph (1).'

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

(a) In General- The Secretary of Homeland Security shall establish a task force, to be known as the `Task Force to Rescue Immigrant Victims of American Sex Offenders'. The task force shall consist of officials from Federal, State, and local law enforcement agencies with experience in domestic violence, sex crimes, immigration law, trafficking in humans, organized crime, or any other area of experience which may be useful in completing the duties described in subsection (b).

(b) Duties- The duties of the task force shall be the following:

(1) Working back in time from the date of the establishment of the task force, identifying individuals on the Federal Bureau of Investigation's sex offender registry who have filed family-based petitions under section 204(a) of the Immigration and Nationality Act. When a confirmed match has been made with the sex offender registry, the task force should ascertain whether the petitioner filed previous petitions.

(2) Maintaining the information about the petitioners in a comprehensive database.

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

(4) Developing a system for investigating the cases in which beneficiaries may be at risk and providing them with information on how to seek assistance if they are abused.

(5) Except for information on the registry that is available to the public, protecting the information produced by its investigations in accordance with the privacy rights of everyone involved in the investigation.

(6) Taking whatever other actions as are reasonable and appropriate when investigations lead to information about sexual abuse or other criminal activities, including notifying State and local police departments, government offices, public organizations that provide assistance to victims of sexual abuse, and religious

organizations.

(c) Report to Congress- Not later than 270 days after the date of the enactment of this Act, the Secretary shall submit to the Congress a report on the findings and recommendations of the task force. The report shall include the following:

- (1) An analysis of the information obtained in searching visa petition and national sex offender registry records.
- (2) The results of any investigations conducted by the task force.
- (3) Recommendations on administrative and legislative actions that would assist in identifying and protecting immigrant victims of sexual abuse or related harm.

## **SEC. 405. AUTHORIZATION OF APPROPRIATIONS.**

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

## **SEC. 406. REGULATIONS.**

Regulations implementing this Act shall be promulgated in final form not later than 180 days after the date of the enactment of this Act.

### **TITLE V--LEGALIZATION FOR LONG-TERM RESIDENTS**

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

(a) In General- Chapter 5 of title II (8 U.S.C. 1255 et seq.) is amended by inserting after section 245A the following:

### **` ADJUSTMENT OF STATUS ON THE BASIS OF EARNED ACCESS TO LEGALIZATION**

` Sec. 245B. (a) In General- The Secretary of Homeland Security may adjust the status of an alien to that of an alien lawfully admitted for permanent residence if the alien--

- ` (1) was physically present in the United States for a continuous period of not less than 5 years immediately preceding the date on which this provision was enacted and has maintained continuous physical presence since then;
- ` (2) has at all times been a person of good moral character;
- ` (3) has never been convicted of a criminal offense in the United States;
- ` (4) in the case of an alien who is 18 years of age or older, but who is not over the age of 65, has successfully completed a course on reading, writing, and speaking words in ordinary usage in the English language, unless unable to do so on account of physical or developmental disability or mental impairment;

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

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

` (b) Treatment of Brief, Casual, and Innocent Absences- An alien shall not be considered to have failed to maintain a continuous presence in the United States for purposes of subsection (a)(1) by virtue of brief, casual, and innocent absences from the United States.

` (c) Admissible as Immigrant-

` (1) IN GENERAL- The alien shall establish that the alien is admissible to the United States as immigrant, except as otherwise provided in paragraph (2).

` (2) EXCEPTIONS- The provisions of paragraphs (5), (6)(A), (6)(B), (6)(C), (6)(F), (6)(G), (7)(A), (9)(B), and (9)(C)(i)(I) of section 212(a) shall not apply in the determination of an alien's admissibility under this section.

` (d) Security and Law Enforcement Clearances- The alien, if over 15 years of age, shall submit fingerprints in accordance with procedures established by the Secretary of Homeland Security. Such fingerprints shall be submitted to relevant Federal agencies to be checked against existing databases for information relating to criminal, national security, or other law enforcement actions that would render the alien ineligible for adjustment of status under this section. The Secretary of Homeland Security shall provide a process for challenging the accuracy of matches that result in a finding of ineligibility for adjustment of status.

` (e) Inapplicability of Numerical Limitations- When an alien is granted lawful permanent resident status under this subsection, the number of immigrant visas authorized to be issued under any provision of this Act shall not be reduced. The numerical limitations of sections 201 and 202 shall not apply to adjustment of status under this section.

` (f) Termination of Proceedings- The Secretary of Homeland Security may terminate removal proceedings without prejudice pending the outcome of an alien's application for adjustment of status under this section on the basis of a prima facie showing of eligibility for relief under this section.'

(b) Clerical Amendment- The table of contents is amended by inserting after the item relating to section 245A the following:

` Sec. 245B. Adjustment of status on the basis of earned access to legalization.'

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

(a) In General- Chapter 5 of title II (8 U.S.C. 1255 et seq.), as amended by section 201, is further amended by inserting after section 245B the following:

### **` ADJUSTMENT OF STATUS FOR CERTAIN CHILDREN**

` Sec. 245C. (a) In General- The Secretary of Homeland Security may adjust the status of

an alien to that of an alien lawfully admitted for permanent residence if the alien is a child at the time of filing the application for such adjustment and establishes that the alien, at such time--

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

` (2) has fully integrated into life in the United States;

` (3) has learned English or is satisfactorily pursuing a course of study to achieve an understanding of English;

` (4) is successfully pursuing an elementary school, middle school, high school, or college-level education; and

` (5) if older than 13 years of age, has performed at least 60 hours of community service.

` (b) Treatment of Brief, Casual, and Innocent Absences- An alien shall not be considered to have failed to maintain a continuous presence in the United States for purposes of subsection (a)(1) by virtue of brief, casual, and innocent absences from the United States.

` (c) Admissible as Immigrant-

` (1) IN GENERAL- The alien shall establish that the alien is admissible to the United States as an immigrant, except as otherwise provided in paragraph (2).

` (2) APPLICABILITY OF CERTAIN PROVISIONS-

` (A) GROUNDS OF INADMISSIBILITY NOT APPLIED- The provisions of paragraphs (5), (6)(A), (6)(B), (6)(C), (6)(F), (6)(G), (7)(A), (9)(B), and (9)(C) of section 212(a) shall not apply in the determination of an alien's admissibility under this section.

` (B) WAIVER OF OTHER GROUNDS-

` (i) IN GENERAL- Except as provided in clause (ii), the Secretary of Homeland Security may waive any other provision of section 212(a) in the case of an individual alien for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.

` (ii) GROUNDS THAT MAY NOT BE WAIVED- The following provisions of section 212(a) may not be waived by the Secretary under clause (i):

` (I) Paragraphs (2)(A) and (2)(B) (relating to criminals).

` (II) Paragraph (2)(C) (relating to drug offenses), except for so much of such paragraph as relates to a single offense of simple possession of 30 grams or less of marijuana.

` (III) Paragraph (3) (relating to security and related grounds).

`(d) No Numerical Limitations- The numerical limitations of sections 201 and 202 shall not apply to adjustment of status under this section.

`(e) Confidentiality of Information- Except as provided in this section, neither the Secretary of Homeland Security, nor any other official or employee of the Department of Homeland Security, may--

`(1) use information furnished by applicant for an application filed under this section for any purpose other than to make a determination on the application;

`(2) make any publication whereby the information furnished by any particular applicant can be identified; or

`(3) permit anyone other than the sworn officers and employees of the Department, the applicant, or a representative of the applicant to examine individual applications.

`(f) Dissemination of Information- The Secretary of Homeland Security shall broadly disseminate information respecting the benefits which aliens may receive under this section and the requirements to obtain such benefits.'.

(b) Clerical Amendment- The table of contents, as amended by section 201, is amended further by inserting after the item relating to section 245B the following:

### **SEC. 503. UPDATED REGISTRY PROVISION.**

(a) In General- Section 249 (8 U.S.C. 1259) is amended--

(1) in the section heading by striking `1972' and inserting `1986'; and

(2) in paragraph (a), by striking `1972' and inserting `1986'.

(b) Clerical Amendment- The table of sections is amended in the item relating to section 249 by striking `1972' and inserting `1986'.

`Sec. 245C. Adjustment of status for certain children.'.

## **TITLE VI--BORDER SECURITY PROVISIONS**

### **Subtitle A--Rapid Response Measures**

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

(a) In General- If the Governor of a State on an international border of the United States declares an international border security emergency and requests additional United States Border Patrol agents from the Secretary of Homeland Security, the Secretary is authorized, subject to subsections (b) and (c), to provide the State with up to 1,000 additional United States Border Patrol agents for the purpose of patrolling and defending the international border, in order to prevent individuals from crossing the international border and entering the United States at any location other than an authorized port of entry.

(b) Consultation- The Secretary of Homeland Security shall consult with the President upon receipt of a request under subsection (a), and shall grant it to the extent that providing the requested assistance will not significantly impair the Department of Homeland Security's ability to provide border security for any other State.

(c) Collective Bargaining- Emergency deployments under this section shall be made in conformance with all collective bargaining agreements and obligations.

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

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

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

(a) In General- The Secretary of Homeland Security shall increase by not less than 100 the number of United States Border Patrol helicopters, and shall increase by not less than 250 the number of United States Border Patrol power boats. The Secretary of Homeland Security shall ensure that appropriate types of helicopters are procured for the various missions being performed. The Secretary of Homeland Security also shall ensure that the types of power boats that are procured are appropriate for both the waterways in which they are used and the mission requirements.

(b) Use and Training- The Secretary of Homeland Security shall establish an overall policy on how the helicopters and power boats described in subsection (a) will be used and implement training programs for the agents who use them, including safe operating procedures and rescue operations.

## **SEC. 604. CONTROL OF UNITED STATES BORDER PATROL ASSETS.**

The United States Border Patrol shall have complete and exclusive administrative and operational control over all the assets utilized in carrying out its mission, including, aircraft, watercraft, vehicles, detention space, transportation, and all of the personnel associated with such assets.

## **SEC. 605. MOTOR VEHICLES.**

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

**SEC. 606. PORTABLE COMPUTERS.**

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

**SEC. 607. RADIO COMMUNICATIONS.**

The Secretary of Homeland Security shall augment the existing radio communications system so all law enforcement personnel working in every area where United States Border Patrol operations are conducted have clear and encrypted two-way radio communication capabilities at all times. Each portable communications device shall be equipped with a 'panic button' and a global positioning system device that is activated solely in emergency situations for the purpose of tracking the location of the agent in distress.

**SEC. 608. HAND-HELD GLOBAL POSITIONING SYSTEM DEVICES.**

The Secretary of Homeland Security shall ensure that each United States Border Patrol agent is issued a state-of-the-art hand-held global positioning system device for navigational purposes.

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

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

**SEC. 610. BORDER ARMOR.**

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

**SEC. 611. WEAPONS.**

The Secretary of Homeland Security shall ensure that United States Border Patrol agents are equipped with weapons that are reliable and effective to protect themselves, their fellow officers, and innocent third parties from the threats posed by armed criminals. In addition, the Secretary shall ensure that the Department's policies allow all such officers to carry weapons that are suited to the potential threats that they face.

**SEC. 612. UNIFORMS.**

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

### **Subtitle B--Detention Pending Removal**

## **SEC. 621. DETENTION FACILITIES FOR ALIENS ARRESTED FOR ILLEGAL ENTRY.**

The Secretary of Homeland Security shall make arrangements for the availability of 100,000 additional beds for detaining aliens taken into custody by immigration officials. Some of these beds shall be rented from Federal, State, and local detention facilities. The remainder of the 100,000 shall be constructed to meet this demand on a temporary basis and then converted to other use when they are no longer needed as detention facilities.

## **SEC. 622. EXPANSION AND EFFECTIVE MANAGEMENT OF DETENTION FACILITIES.**

(a) In General- Subject to the availability of appropriations, the Secretary of Homeland Security shall fully utilize--

- (1) all available detention facilities operated or contracted by the Department of Homeland Security;
- (2) all possible options to cost effectively increase available detention capacities, including the use of State and local correctional facilities, private space, and secure alternatives to detention; and
- (3) the Department's Office of Civil Rights and Civil Liberties shall monitor all facilities that are being used to hold detainees for more than 72 hours.

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

(b) Secure Alternatives to Detention Program-

- (1) NATURE OF THE PROGRAM- For purposes of this section, the secure alternatives to detention referred to in subsection (a) is a program under which eligible aliens are released to the custody of suitable individual or organizational sponsors who will supervise them, use appropriate safeguards to prevent them from absconding, and ensure that they make required appearances.
- (2) PROGRAM DEVELOPMENT- The program shall be developed in accordance with the following guidelines:
  - (A) The Secretary shall design the program in consultation with nongovernmental organizations and academic experts in both the immigration and the criminal

justice fields. Consideration should be given to methods that have proven successful in appearance assistance programs, such as the appearance assistance program developed by the Vera Institute and the Department of Homeland Security's Intensive Supervision Appearance Program.

(B) The program shall utilize a continuum of alternatives based on the alien's need for supervision, including placement of the alien with an individual or organizational sponsor, a supervised group home, or in a supervised, non-penal community setting that has guards stationed along its perimeter.

(C) The Secretary shall enter into contracts with nongovernmental organizations and individuals to implement the secure alternatives to detention program.

(c) Eligibility and Operations-

(1) SELECTION OF PARTICIPANTS- The Secretary shall select aliens to participate in the program from designated groups specified in paragraph (4) if the Secretary determines that such aliens are not flight risks or dangers to the community.

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

(3) LIMITATION ON PARTICIPATION-

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

(B) RULES OF CONSTRUCTION-

(i) ALIENS APPLYING FOR ASYLUM- Aliens who have established a credible fear of persecution and have been referred to the Executive Office for Immigration Review for an asylum hearing shall not be considered to be in expedited removal proceedings and the custody status of such aliens after service of a Notice to Appear shall be determined in accordance with the procedures governing aliens in removal proceedings under section 240 of such Act (8 U.S.C. 1229a).

(ii) UNACCOMPANIED ALIEN CHILDREN- Unaccompanied alien children (as defined in section 462(g)(2) of the Homeland Security Act (6 U.S.C. 279(g)(2))) shall be considered to be in the care and exclusive custody of the Department of Health and Human Services and shall not be subject to expedited removal and shall not be permitted to participate in the program.

(4) DESIGNATED GROUPS- The designated groups referred to in paragraph (1) are the following:

(A) Alien parents who are being detained with one or more of their children, and their detained children.

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

(C) Aliens who are mentally retarded or autistic.

(D) Pregnant alien women.

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

(F) Aliens placed in expedited removal proceedings after being rescued from trafficking or criminal operations by Government authorities.

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

(5) IMPLEMENTING REGULATIONS- Not later than 180 days after the date of the enactment of this Act, the Secretary shall promulgate regulations to implement the secure alternatives to detention program and to standardize the care and treatment of aliens in immigration custody based on the Detention Operations Manual of the Department of Homeland Security.

(6) DECISIONS REGARDING PROGRAM NOT REVIEWABLE- The decisions of the Secretary regarding when to utilize the program and to what extent and the selection of aliens to participate in the program shall not be subject to administrative or judicial review.

(d) Reporting Requirements- Not later than 180 days after the date of the enactment of this Act and annually thereafter, the Secretary shall submit to the Committee on Homeland Security of the House of Representatives, the Committee on the Judiciary of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Committee on the Judiciary of the Senate a report that details all policies, regulations, and actions taken to comply with the provisions in this section, including maximizing detention capacity and increasing the cost-effectiveness of detention by implementing the secure alternatives to detention program, and a description of efforts taken to ensure that all aliens in expedited removal proceedings are residing under conditions that are safe, secure, and healthy.

(e) Authorization of Appropriations- There are authorized to be appropriated to the Secretary of Homeland Security such sums as may be necessary to carry out this section. Amounts appropriated pursuant to this section shall remain available until expended.

### **Subtitle C--Recruitment and Retention of Additional Immigration Law Enforcement Personnel**

## **SEC. 631. ADDITIONAL UNITED STATES BORDER PATROL AGENTS.**

The Secretary of Homeland Security shall increase the number of United States Border Patrol agents by--

(1) 2,500 in fiscal year 2010;

(2) 2,750 in fiscal year 2011;

(3) 3,000 in fiscal year 2012;

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

(5) 3,500 in fiscal year 2014.

### **SEC. 632. PROVISIONS RELATING TO THE EXERCISE OF CERTAIN APPOINTMENT AND OTHER SIMILAR AUTHORITIES WITH RESPECT TO THE UNITED STATES BORDER PATROL.**

(a) In General- Notwithstanding any other provision of law--

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

(2) an individual may not be appointed or continue to serve as the head of the United States Border Patrol if, at the time of appointment, such individual has not completed at least 20 years of service, within the competitive service (as defined by section 2102 of title 5, United States Code), as a United States Border Patrol agent; and

(3) all activities described in subsection (b) shall be considered inherently Governmental functions and may not be carried out by any persons other than employees of the United States Border Patrol.

(b) Authorities Described- This section applies with respect to any authority relating to the recruitment, selection, and appointment of applicants (including the conducting of any investigation necessary to approve or grant security clearances) for United States Border Patrol agents, law enforcement officers (other than United States Border Patrol agents), and such other positions within the United States Border Patrol as the head of the United States Border Patrol may by regulation determine.

(c) Regulations- The head of the United States Border Patrol shall by regulation identify the specific authorities, including citations to the relevant provisions of law, rule, or regulation, to which this section applies.

### **SEC. 633. TRAINING FACILITIES.**

The Secretary of Homeland Security shall ensure that the training facilities used to train newly-hired United States Border Patrol agents are sufficiently spacious and modern to ensure that all recruits are afforded the highest possible quality training, as well as reasonably comfortable living conditions. All dormitories shall be constructed so that each trainee is housed in separate quarters. Moreover, the Secretary shall ensure that the training sites selected contains adequate housing for all permanent and temporary instructors within the local commuting area.

### **SEC. 634. OPERATIONAL FACILITIES.**

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

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

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

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

` (A) paragraph (2)(A) shall be applied by substituting ` \$20,000' for ` \$10,000'; and

` (B) paragraph (2)(B) shall be applied by substituting ` \$80,000' for ` \$60,000'.'.

**SEC. 636. RECRUITMENT AND RELOCATION BONUSES AND RETENTION ALLOWANCES FOR PERSONNEL OF THE DEPARTMENT OF HOMELAND SECURITY.**

The Secretary of Homeland Security shall ensure that the authority to pay recruitment and relocation bonuses under section 5753 of title 5, United States Code, the authority to pay retention bonuses under section 5754 of such title, and any other similar authorities available under any other provision of law, rule, or regulation, are exercised to the fullest extent allowable in order to encourage service in the Department of Homeland Security.

**SEC. 637. REPEAL OF THE DEPARTMENT OF HOMELAND SECURITY HUMAN RESOURCES MANAGEMENT SYSTEM.**

(a) Repeal-

(1) IN GENERAL- Effective as of the date specified in section 4 of the Homeland Security Act of 2002 (6 U.S.C. 101 note), chapter 97 of title 5, United States Code (as added by section 841(a)(2) of such Act), section 841(b)(3) of such Act, and subsections (c) and (e) of section 842 of such Act are repealed.

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

(b) Nullification of Previous Exclusions- Effective as of the date of the enactment of this Act, all previous determinations as to whether--

(1) an agency or subdivision of the Department of Homeland Security (or a predecessor agency or subdivision transferred into the Department) is excluded from coverage under chapter 71 of title 5, United States Code,

(2) a unit or subdivision of a unit within the Department of Homeland Security (or a predecessor agency or subdivision transferred into the Department) is not appropriate for representation by a labor organization under such chapter, or

(3) an employee or position within the Department of Homeland Security (or a

predecessor agency or subdivision transferred into the Department) is within a unit that is not appropriate for representation by a labor organization under such chapter, are null and void, except to the extent that such determinations were made in accordance with the criteria outlined in paragraph (1), (2), (3), (4), or (7) of section 7112(b) of such title 5.

(c) Clerical Amendment- The table of chapters for part III of title 5, United States Code, is amended by striking the item relating to chapter 97.

### **SEC. 638. ESTABLISHMENT OF SPECIALIZED INSPECTOR OCCUPATIONS.**

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

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

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

### **SEC. 640. LAW ENFORCEMENT RETIREMENT COVERAGE FOR INSPECTION OFFICERS AND OTHER EMPLOYEES.**

(a) Amendments-

(1) FEDERAL EMPLOYEES' RETIREMENT SYSTEM-

(A) Paragraph (17) of section 8401 of title 5, United States Code, is amended by striking `and' at the end of subparagraph (C), and by adding at the end the following:

`(E) an employee (not otherwise covered by this paragraph)--

`(i) the duties of whose position include the investigation or apprehension of individuals suspected or convicted of offenses against the criminal laws of the United States; and

`(ii) who is authorized to carry a firearm; and

`(F) an employee of the Internal Revenue Service, the duties of whose position are primarily the collection of delinquent taxes and the securing of delinquent returns;'

(B) CONFORMING AMENDMENT- Section 8401(17)(C) of title 5, United States Code, is amended by striking `(A) and (B)' and inserting `(A), (B), (E), and (F)'.

(2) CIVIL SERVICE RETIREMENT SYSTEM- Paragraph (20) of section 8331 of title 5, United States Code, is amended by inserting after `position.' (in the matter before subparagraph (A)) the following: `For the purpose of this paragraph, the employees described in the preceding provision of this paragraph (in the matter before `including') shall be considered to include an employee, not otherwise covered by this paragraph, who satisfies clauses (i)-(ii) of section 8401(17)(E) and an employee of the Internal Revenue Service the duties of whose position are as described in section 8401(17)(F).'

(3) EFFECTIVE DATE- Except as provided in subsection (b), the amendments made by this subsection shall take effect on the date of the enactment of this Act, and shall apply only in the case of any individual first appointed (or seeking to be first appointed) as a law enforcement officer (within the meaning of those amendments) on or after such date.

(b) Treatment of Service Performed by Incumbents-

(1) LAW ENFORCEMENT OFFICER AND SERVICE DESCRIBED-

(A) LAW ENFORCEMENT OFFICER- Any reference to a law enforcement officer described in this paragraph refers to an individual who satisfies the requirements of section 8331(20) or 8401(17) of title 5, United States Code (relating to the definition of a law enforcement officer) by virtue of the amendments made by subsection (a).

(B) SERVICE- Any reference to service described in this paragraph refers to service performed as a law enforcement officer (as described in this paragraph).

(2) INCUMBENT DEFINED- For purposes of this subsection, the term `incumbent' means an individual who--

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

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

(3) TREATMENT OF SERVICE PERFORMED BY INCUMBENTS-

(A) IN GENERAL- Service described in paragraph (1) which is performed by an incumbent on or after the date of the enactment of this Act shall, for all purposes (other than those to which subparagraph (B) pertains), be treated as service performed as a law enforcement officer (within the meaning of section 8331(20) or 8401(17) of title 5, United States Code, as appropriate), irrespective of how such service is treated under subparagraph (B).

(B) RETIREMENT- Service described in paragraph (1) which is performed by an incumbent before, on, or after the date of the enactment of this Act shall, for purposes of subchapter III of chapter 83 and chapter 84 of title 5, United States Code, be treated as service performed as a law enforcement officer (within the meaning of such section 8331(20) or 8401(17), as appropriate), but only if an appropriate written election is submitted to the Office of Personnel Management

within 5 years after the date of the enactment of this Act or before separation from Government service, whichever is earlier.

(4) INDIVIDUAL CONTRIBUTIONS FOR PRIOR SERVICE-

(A) IN GENERAL- An individual who makes an election under paragraph (3)(B) may, with respect to prior service performed by such individual, contribute to the Civil Service Retirement and Disability Fund the difference between the individual contributions that were actually made for such service and the individual contributions that should have been made for such service if the amendments made by subsection (a) had then been in effect.

(B) EFFECT OF NOT CONTRIBUTING- If no part of or less than the full amount required under subparagraph (A) is paid, all prior service of the incumbent shall remain fully creditable as law enforcement officer service, but the resulting annuity shall be reduced in a manner similar to that described in section 8334(d)(2) of title 5, United States Code, to the extent necessary to make up the amount unpaid.

(C) PRIOR SERVICE DEFINED- For purposes of this subsection, the term 'prior service' means, with respect to any individual who makes an election under paragraph (3)(B), service (described in paragraph (1)) performed by such individual before the date as of which appropriate retirement deductions begin to be made in accordance with such election.

(5) GOVERNMENT CONTRIBUTIONS FOR PRIOR SERVICE-

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

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

(C) CONTRIBUTIONS TO BE MADE RATABLY- Government contributions under this paragraph on behalf of an incumbent shall be made by the agency ratably (on at least an annual basis) over the 10-year period beginning on the date referred to in paragraph (4)(C).

(6) EXEMPTION FROM MANDATORY SEPARATION- Nothing in section 8335(b) or 8425(b) of title 5, United States Code, shall cause the involuntary separation of a law enforcement officer (as described in paragraph (1)) before the end of the 3-year period beginning on the date of the enactment of this Act.

(7) REGULATIONS- The Office shall prescribe regulations to carry out this section,

including--

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

(B) provisions for the application of this subsection in the case of--

(i) any individual who--

(I) satisfies subparagraph (A) (but not subparagraph (B)) of paragraph (2); and

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

(ii) any individual entitled to a survivor annuity (based on the service of an incumbent, or of an individual under clause (i), who dies before making an election under paragraph (3)(B)), to the extent of any rights that would then be available to the decedent (if still living).

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

#### **SEC. 641. REESTABLISHMENT OF THE UNITED STATES BORDER PATROL ANTI-SMUGGLING UNIT.**

The Secretary of Homeland Security shall reestablish the Anti-Smuggling Unit within the Office of United States Border Patrol, and shall immediately staff such office with a minimum of 500 criminal investigators selected from within the ranks of the United States Border Patrol. Staffing levels shall be adjusted upward periodically in accordance with workload requirements.

#### **SEC. 642. ESTABLISHMENT OF SPECIALIZED CRIMINAL INVESTIGATOR OCCUPATIONS.**

The Secretary of Homeland Security shall establish specialized Criminal Investigator occupations within the Department: one for the investigation of violations of immigration laws, another for customs laws, and a third for agriculture laws. These divisions shall coordinate closely with each other under the direction of a high-level official within the Department, but shall report to separate operational chains of command.

#### **SEC. 643. ESTABLISHMENT OF CAREER PATHS TO CRIMINAL INVESTIGATOR POSITIONS.**

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

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

In each of fiscal years 2010 through 2014, the Secretary of Homeland Security shall increase by not less than 500 the number of positions for full-time active duty immigration enforcement agents responsible for transporting and guarding detained aliens above the number of such positions for which funds were allotted for the preceding fiscal year.

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

(a) In General- Effective as of the first day of the first applicable pay period beginning on or after the date of the enactment of this Act, the rate of basic pay for all employees of the Department of Homeland Security described in subsection (b) shall be increased in accordance with subsection (c).

(b) Employees Described- This section applies to any individual who, as of the date of the enactment of this Act--

(1) is a journey level United States Border Patrol agent or immigration, customs, or agriculture inspector within the Department of Homeland Security, whose primary duties consist of enforcing the immigration, customs, or agriculture laws of the United States;

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

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

(c) Increase Described- The basic rate of pay for the employees described in this subsection shall increase from the annual rate of basic pay for positions at GS-11 of the General Schedule to the annual rate of basic pay for positions at GS-13 of such schedule.

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

Notwithstanding any other provision of law, all overtime hours worked on and after the date of the enactment of this Act by all employees of the Department of Homeland Security who are at or below the second-line level of field supervision shall be compensated in accordance with the provisions of the Fair Labor Standards Act.

**Subtitle D--Enforcement Tools to Diminish Entries Using Fraudulent Documents and Commercial Alien Smuggling****SEC. 651. FOREIGN LANGUAGE TRAINING.**

The Secretary of Homeland Security shall require all officers of the Department of Homeland Security who come into contact with aliens who have crossed the border illegally to take Spanish and other appropriate foreign language training courses to facilitate communication

with the aliens.

## **SEC. 652. FOREIGN LANGUAGE AWARDS.**

(a) Special Rules- The Secretary of Homeland Security shall apply section 4523 of title 5, United States Code, in conformance with the following:

(1) Any law enforcement officer within the Department of Homeland Security whose primary duties involve--

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

(B) the detention or transportation of violators of the immigration laws of the United States, or

(C) both,

shall, for purposes of such section 4523, be presumed to make substantial use of a foreign language in the performance of such officer's official duties.

(2)(A) Any individual who successfully completes a foreign language program as part of their agency-sponsored or agency-approved training shall be deemed to possess the foreign language proficiency necessary to qualify for an award under such section for so long as such individual serves as a law enforcement officer within the Department of Homeland Security.

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

(3) For purposes of applying subsection (a) of such section 4523, substitute `equal to' for `up to'.

(b) Definition- For purposes of this section, the term `law enforcement officer' has the meaning given such term by section 4521 of such title 5.

## **SEC. 653. ADDITIONAL PERSONNEL FOR INVESTIGATION OF FRAUDULENT SCHEMES AND DOCUMENT FRAUD.**

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

## **SEC. 654. ESTABLISH A SPECIAL TASK FORCE FOR COORDINATING AND DISTRIBUTING INFORMATION ON FRAUDULENT IMMIGRATION DOCUMENTS.**

(a) In General- The Secretary of Homeland Security shall establish a Fraudulent Documents Task Force to carry out the following:

- (1) Collect information from Federal, State, and local law enforcement agencies, and foreign governments on the production, sale, distribution and use of fraudulent documents intended to be used to enter, travel or remain within the United States unlawfully.
- (2) Maintain the information described in subpart (1) in a comprehensive database.
- (3) Maintain a repository of genuine and fraudulent travel and identity document exemplars.
- (4) Convert the information collected into reports that provide guidance to government officials in identifying fraudulent documents being used to enter into, travel within or remain in the United States.
- (5) Develop a system for distributing these reports on an ongoing basis to appropriate Federal, State, and local law enforcement agencies.

(b) Distribution of Information- The task force will distribute the reports to appropriate Federal, State, and local law enforcement agencies on an ongoing basis.

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

(a) In General- Section 101(a)(15)(S) (8 U.S.C. 1101(a)(15)(S)) is amended--

- (1) in clause (i), by striking `or' at the end;
- (2) in clause (ii), by striking the comma at the end and inserting `; or';
- (3) by inserting after clause (ii) the following:

` (iii) who the Secretary of Homeland Security, the Secretary of State, or the Attorney General determines--

` (I) is in possession of critical reliable information concerning a commercial alien smuggling organization or enterprise or a commercial operation for making or trafficking in documents to be used for entering or remaining in the United States unlawfully;

` (II) is willing to supply or has supplied such information to a Federal or State court; or

` (III) whose presence in the United States the Secretary of Homeland Security, the Secretary of State, or the Attorney General determines is essential to the success of an authorized criminal investigation, the successful prosecution of an individual involved in the commercial alien smuggling organization or enterprise, or the disruption of such organization or enterprise or a commercial operation for making or trafficking in documents to be used for entering or remaining in the United States unlawfully.';

(4) by inserting ` , or with respect to clause (iii), the Secretary of Homeland Security, the Secretary of State, or the Attorney General' after `jointly'; and

(5) by striking `(i) or (ii)' and inserting `(i), (ii), or (iii)'.

(b) Admission of Nonimmigrants- Section 214(k) (8 U.S.C. 1184(k)) is amended--

(1) by adding at the end of paragraph (1) the following: `The number of aliens who may be provided a visa as nonimmigrants under section 101(a)(15)(S)(iii) in any fiscal year may not exceed 400.'; and

(2) by adding at the end the following:

`(5) If the Secretary of Homeland Security, the Secretary of State, or the Attorney General determines that a nonimmigrant described in clause (iii) of section 101(a)(15)(S), or that of any family member of such a nonimmigrant who is provided nonimmigrant status pursuant to such section, must be protected, such official may take such lawful action as the official considers necessary to effect such protection.'.

## **SEC. 656. ADJUSTMENT OF STATUS WHEN NEEDED TO PROTECT INFORMANTS.**

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

(1) in paragraph (3), by striking `(1) or (2),' and inserting `(1), (2), (3), or (4),';

(2) by redesignating paragraph (3) as paragraph (5);

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

`(3) if, in the opinion of the Secretary of Homeland Security, the Secretary of State, or the Attorney General--

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

`(B) the provision of such information has substantially contributed to the success of a commercial alien smuggling investigation or an investigation of the sale or production of fraudulent documents to be used for entering or remaining in the United States unlawfully, the disruption of such an enterprise, or the prosecution of an individual described in subclause (III) of that section,

the Secretary of Homeland Security may adjust the status of the alien (and the spouse, children, married and unmarried sons and daughters, and parents of the alien if admitted under that section) to that of an alien lawfully admitted for permanent residence if the alien is not described in section 212(a)(3)(E).

`(4) The Secretary of Homeland Security may adjust the status of a nonimmigrant admitted into the United States under section 101(a)(15)(S)(iii) (and the spouse, children, married and unmarried sons and daughters, and parents of the nonimmigrant

if admitted under that section) to that of an alien lawfully admitted for permanent residence on the basis of a recommendation of the Secretary of State or the Attorney General.'; and

(4) by adding at the end the following:

` (6) If the Secretary of Homeland Security, the Secretary of State, or the Attorney General determines that a person whose status is adjusted under this subsection must be protected, such official may take such lawful action as the official considers necessary to effect such protection.'.

## **SEC. 657. REWARDS PROGRAM.**

(a) Rewards Program- Section 274 (8 U.S.C. 1324) is amended by adding at the end the following:

` (e) Rewards Program-

` (1) IN GENERAL- There is established in the Department of Homeland Security a program for the payment of rewards to carry out the purposes of this section.

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

` (3) ADMINISTRATION- The rewards program shall be administered by the Secretary of Homeland Security, in consultation, as appropriate, with the Attorney General and the Secretary of State.

` (4) REWARDS AUTHORIZED- In the sole discretion of the Secretary of Homeland Security, such Secretary, in consultation, as appropriate, with the Attorney General and the Secretary of State, may pay a reward to any individual who furnishes information or testimony leading to--

` (A) the arrest or conviction of any individual conspiring or attempting to produce or sell fraudulent documents to be used for entering or remaining in the United States unlawfully or to commit an act of commercial alien smuggling involving the transportation of aliens;

` (B) the arrest or conviction of any individual committing such an act;

` (C) the arrest or conviction of any individual aiding or abetting the commission of such an act;

` (D) the prevention, frustration, or favorable resolution of such an act, including the dismantling of an operation to produce or sell fraudulent documents to be used for entering or remaining in the United States, or commercial alien smuggling operations, in whole or in significant part; or

` (E) the identification or location of an individual who holds a key leadership

position in an operation to produce or sell fraudulent documents to be used for entering or remaining in the United States unlawfully or a commercial alien smuggling operation involving the transportation of aliens.

` (5) AUTHORIZATION OF APPROPRIATIONS- There are authorized to be appropriated such sums as may be necessary to carry out this subsection. Amounts appropriated under this paragraph shall remain available until expended.

` (6) INELIGIBILITY- An officer or employee of any Federal, State, local, or foreign government who, while in performance of his or her official duties, furnishes information described in paragraph (4) shall not be eligible for a reward under this subsection for such furnishing.

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

` (8) LIMITATIONS AND CERTIFICATION-

` (A) MAXIMUM AMOUNT- No reward under this subsection may exceed \$100,000, except as personally authorized by the Secretary of Homeland Security.

` (B) APPROVAL- Any reward under this subsection exceeding \$50,000 shall be personally approved by the Secretary of Homeland Security.

` (C) CERTIFICATION FOR PAYMENT- Any reward granted under this subsection shall be certified for payment by the Secretary of Homeland Security.'

## **SEC. 658. OUTREACH PROGRAM.**

Section 274 (8 U.S.C. 1324), as amended by subsection (a), is further amended by adding at the end the following:

` (f) Outreach Program- The Secretary of Homeland Security, in consultation, as appropriate, with the Attorney General and the Secretary of State, shall develop and implement an outreach program to educate the public in the United States and abroad about--

` (1) the penalties for--

` (A) bringing in and harboring aliens in violation of this section; and

` (B) participating in a commercial operation for making, or trafficking in, documents to be used for entering or remaining in the United States unlawfully; and

` (2) the financial rewards and other incentives available for assisting in the investigation, disruption, or prosecution of a commercial smuggling operation or a commercial operation for making, or trafficking in, documents to be used for entering or remaining in the United States unlawfully.'

**TITLE VII--EMPLOYMENT-BASED IMMIGRATION****SEC. 701. UNFAIR IMMIGRATION-RELATED EMPLOYMENT PRACTICES.**

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

(1) in subsection (a)(5)--

(A) by amending the paragraph heading to read `Prohibition of Intimidation, Retaliation, or Unlawful Discrimination in Employment';

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

(C) by inserting before such text the following: `(A) IN GENERAL- '; and

(D) by adding at the end the following:

`(B) FEDERAL LABOR OR EMPLOYMENT LAWS- It is an unfair employment practice for any employer to directly or indirectly threaten any individual with removal or any other adverse consequences pertaining to that individual's immigration status or employment benefits for the purpose of intimidating, pressuring, or coercing any such individual not to exercise any right protected by State or Federal labor or employment law (including section 7 of the National Labor Relations Act (29 U.S.C. 157)), or for the purpose of retaliating against any such individual for having exercised or having stated an intention to exercise any such right.

`(C) DISCRIMINATION BASED ON IMMIGRATION STATUS- It is an unfair employment practice for any employer, except to the extent specifically authorized or required by law, to discriminate in any term or condition of employment against any individual employed by such employer on the basis of such individual's immigration status.'; and

(2) in subsection (c)(2), by adding at the end the following: `The Special Counsel shall not disclose to the Secretary of Homeland Security or any other government agency or employee, and shall not cause to be published in a manner that discloses to the Secretary of Homeland Security or any other government agency or employee, any information obtained by the Special Counsel in any manner concerning the immigration status of any individual who has filed a charge under this section, or the identity of any individual or entity that is a party or witness to a proceedings brought pursuant to such charge. The Secretary of Homeland Security may not rely, in whole or in part, in any enforcement action or removal proceeding, upon any information obtained as a result of the filing or prosecution of an unfair immigration-related employment practice charge. For purposes of this paragraph, the term `Special Counsel' includes individuals formerly appointed to the position of Special Counsel and any current or former employee of the office of the Special Counsel. Whoever knowingly uses, publishes, or permits information to be used in violation of this paragraph shall be fined not more than \$10,000.'.

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

The Secretary of Labor, in consultation with the Attorney General and the Secretary of Homeland Security, shall conduct a national study of American workplaces to determine the causes, extent, circumstances, and consequences, of exploitation of undocumented alien workers by their employers. As part of this study, the Secretary of Labor shall create a plan for targeted review of Federal labor law enforcement in industries with a substantial immigrant workforce, for the purpose of identifying, monitoring, and deterring frequent or egregious violators of wage and hour, antidiscrimination, National Labor Relations Act, and workplace safety and health requirements. Not later than 18 months after the date of the enactment of this Act, the Secretary of Labor shall submit to the Congress a report describing the results of the study and the Secretary's recommendations based on the study.

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

Section 214 is amended--

(1) by redesignating subsections (m) (as added by section 105 of Public Law 106-313), (n) (as added by section 107(e) of Public Law 106-386), (o) (as added by section 1513(c) of Public Law 106-386), (o) (as added by section 1102(b) of the Legal Immigration Family Equity Act), and (p) (as added by section 1503(b) of the Legal Immigration Family Equity Act) as subsections (n), (o), (p), (q), and (r), respectively; and

(2) by adding at the end the following:

`(s)(1) No petition to accord employment status under the nonimmigrant classifications described in sections 101(a)(15)(E)(iii) and (H) shall be granted in the absence of an affidavit from the petitioner describing the efforts that were made to recruit an alien lawfully admitted for permanent residence or a citizen of the United States before resorting to a petition to obtain a foreign employee. The recruitment efforts must have included substantial attempts to find employees in minority communities. Recruitment efforts in minority communities should include at least one of the following, if appropriate for the employment being advertised:

`(A) Advertise the availability of the job opportunity for which the employer is seeking a worker in local newspapers in the labor market that is likely to be patronized by a potential worker for at least 5 consecutive days.

`(B) Undertake efforts to advertise the availability of the job opportunity for which the employer is seeking a worker through advertisements in public transportation systems.

`(C) To the extent permitted by local laws and regulations, engage in recruitment activities in secondary schools, recreation centers, community centers, and other places throughout the communities within 50 miles of the job site that serve minorities.

`(2)(A) The Secretary of Homeland Security shall impose a 10 percent surcharge on all fees collected for petitions to accord employment status and shall use these funds to establish an employment training program which will include unemployed workers in the United States who need to be trained or retrained. The purpose of this program shall be to increase the

number of lawful permanent residents and citizens of the United States who are available for employment in the occupations that are the subjects of such petitions. At least 50 percent of the funds generated by this provision must be used to train American workers in rural and inner-city areas.

`(B) The Secretary of Homeland Security shall reserve and make available to the Secretary of Labor a portion of the funds collected under this paragraph. Such funds shall be used by the Secretary of Labor to establish an `Office to Preserve American Jobs' within the Department of Labor. The purpose of this office shall be to establish policies intended to ensure that employers in the United States will hire available workers in the United States before resorting to foreign labor, giving substantial emphasis to hiring minority workers in the United States.'

## **TITLE VIII--FAIRNESS IN REMOVAL PROCEEDINGS**

### **SEC. 801. RIGHT TO COUNSEL.**

Section 292 (8 U.S.C. 1362) is amended by striking the matter after the section designation and inserting the following: `In any bond, custody, detention, or removal proceedings before the Attorney General and in any appeal proceedings before the Attorney General from any such proceedings, the person concerned shall have the privilege of being represented (at no expense to the government) by such counsel, authorized to practice in such proceedings, as he shall choose. With consent of their clients, counsel may enter appearances limited to bond, custody, or other specific proceedings.'

### **SEC. 802. PRESUMPTION IN FAVOR OF WITHDRAWAL OF APPLICATION FOR ADMISSION.**

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

`(4) WITHDRAWAL OF APPLICATION FOR ADMISSION-

`(A) PRESUMPTION IN FAVOR OF WITHDRAWAL- The Attorney General shall permit an alien applying for admission to withdraw the application and depart immediately from the United States at any time, unless an immigration judge has rendered a decision with respect to the admissibility of the alien, except that the Attorney General may deny permission for the withdrawal when warranted by unusual circumstances.

`(B) PERMISSIVE WITHDRAWAL- Except as provided in subparagraph (A), an alien applying for admission may, in the discretion of the Attorney General and at any time after a decision described in such subparagraph has been rendered, be permitted to withdraw the application and depart immediately from the United States.'

### **SEC. 803. ABSENCES OUTSIDE THE CONTROL OF THE ALIEN.**

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

` (ii) has been absent from the United States for a continuous period in excess of one year unless the alien's return was impeded by emergency or extenuating circumstances outside the control of the alien,'.

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

Section 241(a)(5) (8 U.S.C. 1231(a)(5)) is amended--

- (1) by inserting `, after a hearing by an immigration judge,' after ` If';
- (2) by inserting `, on or after September 30, 1996,' after ` alien has';
- (3) by striking ` is reinstated' and inserting ` may be deemed to be reinstated';
- (4) by striking ` and is not subject' and all that follows through ` under this Act'; and
- (5) by striking the period at the end and inserting the following: ` subject to reopening and review of the previous order. Nothing in this section shall preclude an alien from applying for any relief from removal under this Act.'.

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

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

- (1) by inserting ` and' at the end of paragraph (1)(A);
- (2) by amending paragraph (1)(B) to read as follows:

` (B) who is the beneficiary (including a spouse or child of the principal alien) of--

  - (i) a petition for classification under section 204; or
  - (ii) an application for a labor certification under section 212(a)(5)(A);';
- (3) by striking paragraph (1)(C); and
- (4) by striking ` Attorney General' each place such term appears and inserting ` Secretary of Homeland Security'.

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

(a) In General- Section 212(i) (8 U.S.C. 1182(i)) is amended to read as follows:

` (i) The Secretary of Homeland Security may waive the application of subparagraph (A)(i) or (B), or clause (i) or (ii) of subparagraph (C), of subsection (a)(6) in the case of an immigrant who is the parent, spouse, child, son, or daughter of a United States citizen or of an alien lawfully admitted to the United States for permanent residence, if it is established to the satisfaction of the Secretary that the refusal of admission to the United States of such

immigrant would result in hardship to the immigrant or to such citizen or lawful permanent resident parent, spouse, child, son, or daughter.'

(b) Conforming Amendments- Section 212(a)(6) (8 U.S.C. 1182(a)(6)) is amended--

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

` (iii) WAIVER AUTHORIZED- For a provision authorizing the waiver of clause (i), see subsection (i).';

(2) in subparagraph (B)--

(A) by inserting `(i)' after the subparagraph heading; and

(B) by adding at the end the following:

` (ii) WAIVER AUTHORIZED- For a provision authorizing the waiver of clause (i), see subsection (i).'; and

(3) in subparagraph (C)(iii), by inserting `or (ii)' after `(i)'.

### **SEC. 807. WAIVER OF INADMISSIBILITY FOR MINOR CRIMINAL OFFENSES.**

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

(1) in the matter preceding paragraph (1), by striking `offense of simple possession of 30 grams or less of marijuana' and inserting `controlled substance offense for which the alien was not incarcerated for a period exceeding 1 year'; and

(2) by striking the final two sentences.

### **SEC. 808. GENERAL WAIVER FOR ALIENS PREVIOUSLY REMOVED AND FOR THE UNLAWFUL PRESENCE BARS.**

(a) In General- Section 212(d) (8 U.S.C. 1182(d)) is amended by adding at the end the following:

` (14) The Secretary of Homeland Security may, in the discretion of the Secretary, for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest, waive the application of subparagraph (A) or (B)(i) of subsection (a)(9).'

(b) Conforming Amendment- Section 212(a)(9)(B) of such Act (8 U.S.C. 1182(a)(9)(B)) is amended by striking clause (v).

### **SEC. 809. WAIVER OF AGGRAVATED FELONY CONSEQUENCES.**

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

` (j) For purposes of this Act, and notwithstanding subsection (a)(43), the Secretary of Homeland Security may treat any conviction that did not result in incarceration for more than 1 year as if such conviction were not a conviction for an aggravated felony. This

discretion may be exercised for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.'

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

(a) New General Waiver- Section 212(d) (8 U.S.C. 1182(d)) is amended by adding at the end the following:

` (13) The Secretary of Homeland Security may, in the discretion of such Secretary for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest, waive the application of subparagraph (B) or (G) of subsection (a)(6), clause (i) or (ii) of subsection (a)(9)(A), or subsection (a)(9)(B)(i), in unusual circumstances. For purposes of the preceding sentence, an instance of battering or extreme cruelty is deemed to constitute unusual circumstances in the case where it is inflicted on an alien (or a child of an alien) by the alien's United States citizen or lawful permanent resident spouse, parent, child, son, or daughter.'

(b) Waiver for Aliens Previously Removed-

(1) CERTAIN ALIENS PREVIOUSLY REMOVED- Section 212(a)(9)(A) (8 U.S.C. 1182(a)(9)(A)) is amended by adding at the end the following:

` (iv) WAIVER AUTHORIZED- For provision authorizing waiver of clause (i) or (ii), see subsection (d)(13).'

(2) ALIENS UNLAWFULLY PRESENT- Section 212(a)(9)(B)(v) (8 U.S.C. 1182(A)(9)(B)(v)) is amended to read as follows:

` (v) WAIVER AUTHORIZED- For provision authorizing waiver of clause (i), see subsection (d)(13).'

## **SEC. 811. RESTORATION OF SUSPENSION OF DEPORTATION.**

(a) Cancellation of Removal- Section 240A(a)(3) (8 U.S.C. 1229b(a)(3)) is amended to read as follows:

` (3) has not been convicted of an aggravated felony for which the sentence imposed is five years or more.'

(b) Repeal of Rule for Termination of Continuous Period-

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

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

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

(B) by inserting before the period at the end of paragraph (1) (as redesignated) the following: ` , unless the alien's departure from the United States was due to a

temporary trip abroad required by emergency or extenuating circumstances outside the control of the alien'.

(c) Cancellation of Removal and Adjustment for Certain Nonpermanent Residents- Section 240A(b)(1) (8 U.S.C. 1229b(b)(1)) is amended to read as follows:

` (1) IN GENERAL- The Attorney General may cancel removal in the case of an alien who is inadmissible or deportable from the United States if the alien--

` (A) has been physically present in the United States for a continuous period of--

` (i) 7 years immediately preceding the date of application in the case of an alien--

` (I) who is deportable on any ground other than a ground specified in clause (ii)(I); and

` (II) whose deportation would, in the opinion of the Attorney General, result in extreme hardship to the alien or the alien's spouse, child, parent, son, or daughter, who is a citizen of the United States or an alien lawfully admitted for permanent residence; or

` (ii) 10 years immediately preceding the date of application in the case of an alien--

` (I) who is deportable for conviction of an offense under section 212(a)(2), 237(a)(2), or 237(a)(3); and

` (II) whose deportation would, in the opinion of the Attorney General, result in exceptional and extremely unusual hardship to the alien or the alien's spouse, parent, child, son, or daughter, who is a citizen of the United States or an alien lawfully admitted for permanent residence; and

` (B) has been a person of good moral character during such period.'

(d) Elimination of Annual Limitation- Section 240A (8 U.S.C. 1229b) is amended by striking subsection (e).

## **TITLE IX--REMOVAL GROUNDS BASED ON CRIMINAL OFFENSES**

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

(a) Equitable Definition of `Moral Turpitude'-

(1) CONVICTION OF CERTAIN CRIMES- Section 212(a)(2)(A)(i) (8 U.S.C. 1182(a)(2)(A)(i)) is amended by striking `of, or who admits having committed, or who admits committing acts which constitute the essential elements of--' and inserting `of--'.

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

(A) by striking `the maximum' and all that follows through `such crime,'; and

(B) by striking `6 months' and inserting `1 year'.

(b) Equitable Definition of `Crimes of Moral Turpitude'- Section 237(a)(2)(A)(i)(II) (8 U.S.C. 1227(a)(2)(A)(i)(II)) is amended to read as follows:

` (II) for which the alien has been incarcerated for a period exceeding one year,'.

## **SEC. 902. `AGGRAVATED FELONY' DEFINITIONS.**

(a) In General- Section 101(a)(43) (8 U.S.C. 1101(a)(43)) is amended by striking `The term `aggravated felony' means' and inserting `Aggravated felony means a felony'.

(b) Illicit Trafficking- Section 101(a)(43)(B) (8 U.S.C. 1101(a)(43)(B)) is amended by striking `Code);' and inserting `Code), except it does not include simple possession of a controlled substance;'

(c) Crimes of Violence and Theft Offenses- Subparagraphs (F), (G), (R), and (S) of section 101(a)(43) (8 U.S.C. 1101(a)(43)(F), (G), (R), and (S)) are each amended by striking `imprisonment' and all that follows through the semicolon and inserting `imprisonment of more than five years;'

(d) Corrupt Organizations and Gambling Offenses- Section 101(a)(43)(J) is amended by inserting `more than five years' after the words `sentence of'.

(e) Alien Smuggling- Section 101(a)(43)(N) (8 U.S.C. 101(a)(43)(N)) is amended--

(1) by inserting `committed for the purpose of commercial advantage,' after `smuggling),'; and

(2) by adding at the end a semicolon.

(f) Discretionary Waiver in Cases of Other Minor Felonies- Section 101 (8 U.S.C. 1101) is amended by adding at the end the following:

## **SEC. 903. DEFINITIONS OF `CONVICTION' AND `TERM OF IMPRISONMENT'.**

Section 101(a)(48) (8 U.S.C. 1101(a)(48)) is amended--

(1) in subparagraph (A), by striking `court' and all that follows through the period at the end and inserting `court. An adjudication or judgment of guilt that has been expunged, deferred, annulled, invalidated, withheld, or vacated, an order of probation without entry of judgment, or any similar disposition shall not be considered a conviction for purposes of this Act.'; and

(2) in subparagraph (B)--

(A) by inserting `only' after `deemed to include'; and

(B) by striking `court of law' and all that follows through the period at the end and

inserting `court of law. Any such reference shall not be deemed to include any suspension of the imposition or execution of that imprisonment or sentence in whole or in part.'

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

#### **SEC. 904. ELIMINATING RETROACTIVE CHANGES IN REMOVAL GROUNDS.**

(a) Application of Aggravated Felony Definition- The last sentence of section 101(a)(43) (8 U.S.C. 1101(a)(43)) is amended to read as follows: `The term shall not apply to any offense that was not covered by the term on the date on which the offense occurred.'

(b) Grounds of Deportability- Section 237 (8 U.S.C. 1227) is amended by adding at the end the following new subsection:

`(d) Notwithstanding any other provision of this section, an alien is not deportable by reason of committing any offense that was not a ground of deportability on the date the offense occurred.'

(c) Grounds of Inadmissibility- Section 212 (8 U.S.C. 1182) is amended by adding at the end the following new subsection:

`(p) Notwithstanding any other provision of this section, an alien is not inadmissible by reason of committing any offense that was not a ground of inadmissibility on the date the offense occurred.'

#### **SEC. 905. ELIMINATING UNFAIR RETROACTIVE CHANGES IN REMOVAL RULES FOR PERSONS PREVIOUSLY REMOVED.**

(a) In General- The Attorney General shall establish a process by which an alien described in subsection (b) may apply for reopening a proceeding so as to seek relief from exclusion, deportation, or removal under section 212(c) of the Immigration and Nationality Act, as such section was in effect prior to the enactment of the Antiterrorism and Effective Death Penalty Act of 1996, or section 240A of the Immigration and Nationality Act, as amended by this Act.

(b) Alien Described- An alien referred to in subsection (a) is an alien who received a final order of exclusion, deportation, or removal, or a decision on a petition for review or petition for habeas corpus, on or after September 30, 1996, and who was--

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

(2) excluded, deported, or removed from the United States by reason of having committed a criminal offense that is not a basis for removal, exclusion, or deportation on the date of enactment of this Act; or

(3) excluded, deported, or removed from the United States by reason of having

committed a criminal offense prior to April 24, 1996, for which there was relief from exclusion, deportation, or removal available prior to such date.

(c) Parole- The Attorney General may in her discretion exercise the parole authority under section 212(d)(5)(A) of the Immigration and Nationality Act (8 U.S.C. 1182(d)(5)(A)) for the purpose of permitting aliens excluded, deported, or removed from the United States to participate in the process established under subsection (a), if the alien establishes prima facie eligibility for the relief.

#### **TITLE X--DIVERSITY VISAS**

### **SEC. 1001. INCREASE IN WORLDWIDE LEVEL OF DIVERSITY IMMIGRANTS.**

Section 201(e) (8 U.S.C. 1151(e)) is amended by striking `55,000' and inserting `110,000'.

#### **TITLE XI--HAITIAN PARITY**

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

(a) In General- Chapter 5 of title II (8 U.S.C. 1255 et seq.), as amended by section 202, is further amended by inserting after section 245C the following:

#### **` ADJUSTMENT OF STATUS OF CERTAIN HAITIAN NATIONALS**

` Sec. 245D. Notwithstanding the provisions of section 245(c), the status of any alien who is a national or citizen of Haiti, and who has been physically present in the United States for at least one year, may be adjusted by the Secretary of Homeland Security, in the Secretary's discretion and under such regulations as the Secretary may prescribe, to that of an alien lawfully admitted for permanent residence, if the alien makes an application for such adjustment and the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence. Upon approval of such an application for adjustment of status, the Secretary shall create a record of the alien's admission for permanent residence as of a date 30 months prior to the filing of such an application or the date of the alien's last arrival into the United States, whichever date is later. The provisions of this Act shall be applicable to the spouse and child of any alien described in this section, regardless of their citizenship and place of birth, if the spouse or child is residing with such alien in the United States.'.

(b) Clerical Amendment- The table of contents as amended by section 202, is further amended by inserting after the item relating to section 245C the following:

` Sec. 245D. Adjustment of status of certain Haitian nationals.'.

(c) Sunset- The amendments made by this section shall cease to be effective on the date that is 3 years after the date of the enactment of this Act.

### **SEC. 1102. LIMITATION OF ATTORNEY GENERAL'S BOND DISCRETION.**

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

` (f) Exercise of Authority for Arrest, Detention, and Release- The Secretary of Homeland Security shall exercise the discretion afforded under subsection (a) on a case-by-case basis. If bond is to be denied on the ground that the alien's release would give rise to adverse consequences for national security or national immigration policy, the finding of such adverse consequences shall be based on circumstances pertaining to the individual alien whose release is being considered.'

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

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

` (IV) DETENTION- Aliens subject to the procedures under this clause shall be detained in accordance with section 236.'

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

(a) Ground for Inadmissibility for Document Fraud Does Not Apply- The Haitian Refugee Immigration Fairness Act of 1998 (8 U.S.C. 1255 note) is amended in subsections (a)(1)(B) and (d)(1)(D) of section 902 by inserting `(6)(C)(i),' after `(6)(A),'

(b) Determinations With Respect to Children- Section 902(d) of such Act is amended by adding at the end the following:

` (3) DETERMINATIONS WITH RESPECT TO CHILDREN-

` (A) USE OF APPLICATION FILING DATE- Determinations made under this subsection as to whether an individual is a child of a parent shall be made using the age and status of the individual on the date of the enactment of this section.

` (B) APPLICATION SUBMISSION BY PARENT- Notwithstanding paragraph (1)(C), an application under this subsection filed based on status as a child may be filed for the benefit of such child by a parent or guardian of the child, if the child is physically present in the United States on such filing date.'

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

(a) New Applications- Notwithstanding section 902(a)(1)(A) of the Haitian and Immigrant Fairness Act of 1998, an alien who is eligible for adjustment of status under such Act, as amended by section 804 of this Act, may submit an application for adjustment of status under such Act not later than the later of--

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

(2) 1 year after the date on which final regulations implementing section 804 are promulgated.

(b) Motions To Reopen- The Secretary of Homeland Security shall establish procedures for the reopening and reconsideration of applications for adjustment of status under the Haitian Refugee Immigration Fairness Act of 1998 that are affected by the amendments under section 804 of this Act.

(c) Relationship of Application to Certain Orders- Section 902(a)(3) of the Haitian and Immigrant Fairness Act of 1998 shall apply to an alien present in the United States who has been ordered excluded, deported, removed, or ordered to depart voluntarily, and who files an application under subsection (a), or a motion under subsection (b), in the same manner as such section 902(a)(3) applied to aliens filing applications for adjustment of status under such Act before April 1, 2000.

## **SEC. 1106. TEMPORARY PROTECTED STATUS FOR HAITIANS.**

It is the sense of the Congress that the Secretary of Homeland Security should be more liberal with respect to Haiti in deciding whether to designate that country for temporary protected status under section 244(b)(1)(A) of the Immigration and Nationality (8 U.S.C. 1254(b)(1)(A)). It is the sense of the Congress that this decision has sometimes been made without due regard to the serious threat to personal safety that results from sending Haitians back to Haiti during a period of ongoing armed conflict in that country.

### **TITLE XII--FAIRNESS IN ASYLUM AND REFUGEE PROCEEDINGS**

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

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

`(C) When warranted by unusual circumstances or to preserve family unity, the Attorney General may, in the Attorney General's discretion, consider an unmarried son or daughter of a refugee to be a child of the refugee for purposes of this paragraph.'

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

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

`(C) When warranted by unusual circumstances or to preserve family unity, the Attorney General may, in the Attorney General's discretion, consider an unmarried son or daughter of an alien who is granted asylum under this subsection to be a child of the alien for purposes of this paragraph.'

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

Section 208(a)(2) (8 U.S.C. 1158(a)(2)) is amended--

(1) by striking subparagraph (B);

(2) in subparagraph (C), by striking `(D),` and inserting `(C),`;

(3) in subparagraph (D)--

(A) by striking `subparagraphs (B) and (C),` and inserting `subparagraph (B),`;

(B) by striking `either';` and

(C) by striking `asylum or extraordinary' and all that follows through the period at the end and inserting `asylum.';` and

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

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

(a) Treatment as Refugee- Section 101(a)(42) (8 U.S.C. 1101(a)(42)) is amended by adding at the end the following:

`(C) For purposes of determinations under this Act, a person who establishes that he or she suffered persecution in the past, or has a well-founded fear of persecution, on account of gender shall be considered to have suffered persecution, or to have a well-founded fear of persecution, on account of membership in a particular social group.'.

(b) Restriction on Removal to Country Where Alien Would Be Threatened- Section 241(b)(3) of such Act (8 U.S.C. 1231(b)(3)) is amended by adding at the end the following:

`(C) GENDER-BASED PERSECUTION- For purposes of determinations under this paragraph, an alien who establishes that the alien's life or freedom would be threatened in a country on account of gender shall be considered to have established that the alien's life or freedom would be threatened in that country on account of membership in a particular social group.'.

## **TITLE XIII--TEMPORARY PROTECTED STATUS**

### **SEC. 1301. ADJUSTMENT OF STATUS FOR CERTAIN RECIPIENTS OF TEMPORARY PROTECTED STATUS.**

(a) In General- Section 245 (8 U.S.C. 1255) is amended by adding at the end the following:

`(n)(1) If, in the opinion of the Secretary of the Homeland Security Department, a person granted temporary protected status under section 244--

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

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

(C) has never been convicted of a criminal offense in the United States;

` (D) in the case of an alien who is 18 years of age or older, but who is not over the age of 65, has successfully completed a course on reading, writing, and speaking words in ordinary usage in the English language, unless unable to do so on account of physical or developmental disability or mental impairment;

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

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

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

` (2) An alien shall not be considered to have failed to maintain a continuous presence in the United States for purposes of subsection (a)(1) by virtue of brief, casual, and innocent absences from the United States.

` (3)(A) The alien shall establish that the alien is admissible to the United States as immigrant, except as otherwise provided in paragraph (2).

` (B) The provisions of paragraphs (5), (6)(A), (6)(B), (6)(C), (6)(F), (6)(G), (7)(A), (9)(B), and (9)(C)(i)(I) of section 212(a) shall not apply in the determination of an alien's admissibility under this section.

` (4) When an alien is granted lawful permanent resident status under this subsection, the number of immigrant visas authorized to be issued under any provision of this Act shall not be reduced. The numerical limitations of sections 201 and 202 shall not apply to adjustment of status under this section.

` (5) The Secretary of Homeland Security may terminate removal proceedings without prejudice pending the outcome of an alien's application for adjustment of status under this section on the basis of a prima facie showing of eligibility for relief under this section.'

(b) Limitation on Consideration in the Senate of Legislation Adjusting Status- Section 244 (8 U.S.C. 1254a) is amended by striking subsection (h) and redesignating subsection (i) as subsection (h).

## **SEC. 1302. FOREIGN STATE DESIGNATIONS.**

Section 244(b)(1)(C) (8 U.S.C. 1254a(b)(1)(C)) is amended to change the following phrase `the Attorney General finds that there exist extraordinary and temporary conditions in the foreign state that prevent aliens who are nationals of the state from returning to the state in safety,' so that it reads as follows: `the Secretary of Homeland Security finds that extraordinary and temporary conditions in the foreign state make returning aliens to the state undesirable for humanitarian reasons,'.

## **TITLE XIV--MISCELLANEOUS PROVISIONS**

## **SEC. 1401. NATURALIZATION PROVISIONS.**

(a) Physical Presence Requirement- Section 316(a) (8 U.S.C. 1427) is amended by adding at the end the following:

`(g) When warranted by extraordinary circumstances, the Secretary of Homeland Security may reduce, by not more than 90 days, the physical presence requirement described in the preceding sentence.'.

(b) Absences From the United States- Section 316(b) (8 U.S.C. 1427(b)) is amended--

(1) in the first sentence, by striking `one year' and inserting `18 months'; and

(2) in the second sentence, by striking `continuous period of one year' and inserting `continuous period of 18 months'.

### **SEC. 1402. PREVENTING INAPPROPRIATE STATE AND LOCAL GOVERNMENT INVOLVEMENT IN THE ENFORCEMENT OF CIVIL IMMIGRATION PROVISIONS UNDER THE IMMIGRATION AND NATIONALITY ACT.**

(a) Elimination of Ban on State and Local Governments From Preventing Communications With the Department of Homeland Security-

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

(2) VERIFICATION OF ELIGIBILITY FOR FEDERAL PUBLIC BENEFITS- Section 432 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1642) is repealed.

(b) Elimination of Authority To Permit State Personnel To Carry Out Immigration Officer Functions- Section 287(g) (8 U.S.C. 1357(g)) is repealed.

### **SEC. 1403. NONIMMIGRANT CATEGORY FOR FASHION MODELS.**

(a) Elimination of H-1B Classification for Fashion Models- Section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(i)(b)) is amended--

(1) by striking `or as a fashion model'; and

(2) by striking `or, in the case of a fashion model, is of distinguished merit and ability'.

(b) New Classification- Section 101(a)(15)(O) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(O)) is amended--

(1) in clause (iii), by striking `clause (i) or (ii)' and inserting `clause (i), (ii), or (iii)' and by redesignating clause (iii) as clause (iv); and

(2) by inserting after clause (ii) the following new clause:

`(iii) is a fashion model who is of distinguished merit and ability and who is seeking to enter the United States temporarily to perform fashion modeling

services that involve events or productions which have a distinguished reputation or that are performed for an organization or establishment that has a distinguished reputation for, or a record of, utilizing prominent modeling talent; or'.

(c) Effective Date and Implementation-

(1) IN GENERAL- The amendments made by this section shall take effect on the date of the enactment of this Act.

(2) REGULATIONS, GUIDELINES, AND PRECEDENTS- The regulations, guidelines, and precedents in effect on the date of the enactment of this Act for the adjudication of petitions for fashion models under section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(i)(b)) shall be applied to petitions for fashion model under section 101(a)(15)(O)(iii) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(O)(iii)), as added by this section, except that the duration of status approvals shall be based on regulations applicable to other occupations under section 101(a)(15)(O) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(O)).

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

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

(5) VISA VALIDITY PERIOD- The validity period for visas issued to beneficiaries of petitions filed under section 101(a)(15)(O)(iii) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(O)(iii)) shall be for the full period of approval notwithstanding the reciprocity validity periods that would otherwise be applicable.

*END*