

H.R. 4760

The SECURING AMERICA'S FUTURE ACT of 2018

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DIVISION A—LEGAL IMMIGRATION REFORM

TITLE I—IMMIGRANT VISA ALLOCATIONS AND PRIORITIES

Sec. 1101. Family-sponsored immigration priorities.

Under current law, adult U.S. citizens can petition for immigrant visas for their spouses, minor children and parents as “immediate relatives.” There are no numerical limitations on the number of green cards that can be issued to immediate relatives in any fiscal year. Subsection (a) provides that parents are no longer eligible for immediate relative status. The average number of immediate relative green cards issued to parents of U.S. citizens each year over the last decade (2006-2015) was 120,286.

Under current law, there are five family-sponsored immigrant visa preference categories: the 1st preference category (unmarried adult children of U.S. citizens and their minor children), the 2nd preference “A” (spouses and minor children of legal permanent residents and their minor children) and “B” (unmarried adult children of legal permanent residents and their minor children) categories, the 3rd preference category (married children of U.S. citizens and their spouses and minor children), and the 4th preference category (siblings of U.S. citizens and their spouses and minor children).

The 1st preference category is allotted up to 23,400 green cards a year (plus visas not required for the 4th preference category). In 2016, 22,072 green cards were issued. There are 288,826 beneficiaries of approved petitions on a waiting list for green cards, and green cards are now available, depending on the country of nationality, for aliens whose petitions were filed from 1996 to 2011.

The 2nd preference categories are allotted up to 114,200 green cards a year (plus visas not required for the 1st preference category) -- at least 87,934 of which are reserved for the “A” category, leaving no more than 26,266 for the “B” category. In 2016, 104,733 green cards were issued in the “A” category and 16,526 were issued in the “B” category. There are 213,730 beneficiaries of approved “A” petitions on a waiting list for green cards, and green cards are now available for aliens whose petitions were filed in 2015. There are 364,353 beneficiaries of approved “B” petitions on a waiting list for green cards, and green cards are now available, depending on the country of nativity, for aliens whose petitions were filed from 1996 to 2010.

The 3rd preference category is allotted up to 23,400 green cards a year (plus visas not required for 1st and 2nd preference categories). In 2016, 27,392 green cards were issued. There are 735,955 beneficiaries of approved petitions on a waiting list for green cards, and green cards are now available, depending on the country of nativity, for aliens whose petitions were filed from 1995 to 2005.

The 4th preference category is allotted up to 65,000 green cards a year (plus visas not required for 1st, 2nd and 3rd preference categories). In 2016, 67,356 green cards were issued. There are 2,344,993 beneficiaries of approved petitions on a waiting list for green cards, and green cards are now available, depending on the country of nativity, for aliens whose petitions were filed from 1994 to 2004.

Subsection (b) rescinds the 1st, 2nd “B”, 3rd, and 4th preference categories.

Subsection (c) provides that for purposes of the 2nd preference “A” category (and children accompanying employment-based green card recipients), a determination of whether an alien is considered a minor shall be made using the age of the alien on the date on which their green card petition was filed (except that if the alien marries or turns 25 years of age prior to being issued a visa green card, they are no longer considered a minor).

Subsection (d) makes conforming amendments.

Subsection (e) creates a “W” nonimmigrant visa category for parents of U.S. citizens. The sponsoring citizen children must be at least 21 years of age and have never received contingent nonimmigrant status under division D. The initial period of authorized admission is 5 years, but may be extended for additional 5-year periods if the citizen children are still residing in the United States.

Parents on W visas are not authorized to be employed in the United States and are not eligible for any Federal, State, or local public benefits. Regardless of the resources of the parents, the sponsoring citizen children are responsible for their parents’ support while in the United States. Parents are ineligible to receive visas unless they provide proof that their citizen children have arranged for their health insurance coverage, at no cost to the parents, during the anticipated period of residence in the United States.

Subsection (f) provides that the amendments made by the section shall take effect on October 1, 2018. In addition, no person may file, and the Secretary of Homeland Security and the Secretary of State may not accept, adjudicate, or approve any petition filed on or after the date of enactment for parents of U.S. citizens as immediate relatives, or for the family-sponsored 1st, 2nd “B”, 3rd, and 4th preference categories. Any application for adjustment of status or an immigrant visa based on such a petition shall be invalid. Neither the Secretary of Homeland Security nor the Secretary of State may adjudicate or approve any petition pending as of the date of enactment seeking classification of an alien as an immediate relative as the parent of a U.S. citizens, or for the family-sponsored 1st, 2nd “B”, 3rd, and 4th preference categories. Any application for adjustment of status or an immigrant visa based on such a petition shall be invalid.

Notwithstanding the amendments made by this section, an alien with regard to whom a petition or application for status under the family-sponsored 1st, 2nd “B”, 3rd, or 4th preference categories was approved prior to the date of the enactment may be issued a green card, but only until such time as the number of green cards that would have been allocated to that category in fiscal year 2019, notwithstanding the amendments made by this section, have been issued. When this number of green cards has been issued for each category described, no additional visas may be issued for that category.

Sec. 1102. Elimination of diversity visa program.

Under current law, up to 55,000 green cards a year are allocated by random lottery to aliens from foreign nations with low admission levels.¹

Subsection (a) rescinds the diversity visa program.

Subsection (b) makes technical and conforming amendments.

Subsection (c) provides that the amendments made by this section shall take effect on the first day of the first fiscal year beginning on or after the date of the enactment.

Sec. 1103. Employment-based immigration priorities.

Under current law, there are five employment-based immigrant visa preference categories. The first three are the 1st preference category (persons of extraordinary ability in the arts, science, education, business, or athletics, outstanding professors and researchers, and certain multi-national executives and managers), the 2nd preference category (members of the professions holding advanced degrees or persons of exceptional abilities in the sciences, art, or business), and the 3rd preference category (skilled workers with at least two years training or experience, professionals with baccalaureate degrees, and up to 10,000 unskilled workers).

¹ The Nicaraguan Adjustment and Central American Relief Act of 1998 provided that for as long as necessary, up to 5,000 of the 55,000 annually allocated diversity visas would be utilized to legalize certain Central Americans. This has had the effect of reducing the diversity visa annual ceiling to 50,000. When the NACARA program winds up, the number of green cards available for the diversity program will return to 55,000.

The 1st preference category is allotted up to 40,400 green cards a year (plus visas not required for the 4th and 5th preference categories). In 2016, 42,862 green cards were issued and green cards are now available for all beneficiaries with approved petitions. The 2nd preference category is allotted up to 40,400 green cards a year (plus visas not required for the 1st preference category). In 2016, 38,858 green cards were issued and green cards are now available for all beneficiaries with approved petitions (except for natives of China (2013) and India (2008)). The 3rd preference category is allotted up to 40,400 green cards a year (plus visas not required for the 1st or 2nd preference categories). In 2016, 35,933 green cards were issued and green cards are now available for all beneficiaries with approved petitions (except for natives of China (2014; 2006 for unskilled workers) and India (2006)).

Subsection (a) increases the allotment of green cards for the 1st preference category by 18,334 a year, to 58,734, and increases the allotment of green cards for the 2nd and 3rd preference categories by 18,333 a year, to 58,733 for each category.

Subsection (b) provides that the amendments made by the section shall take effect on the first day of fiscal year 2019 and shall apply to the visas made available in that and subsequent fiscal years.

Sec. 1104. Waiver of rights by B visa nonimmigrants.

This section amends the INA to require nonimmigrants entering the United States with B visas (issued for those entering temporarily for business or pleasure) to waive their right to review or appeal any determination as to their admissibility or to contest any action for removal (to the same extent as Visa Waiver Program participants must currently do).

TITLE II—AGRICULTURAL WORKER REFORM

Sec. 2101. Short title.

Sec. 2102. H-2C temporary agricultural work visa program.

Subsection (a) amends the Immigration and Nationality Act (INA) to add a new visa category for individuals coming temporarily to the U.S. to perform agricultural labor or services.

Subsection (b) expands the definition of “agricultural labor or services” relative to its meaning under the existing agricultural guestworker program. For the purposes of the Agricultural Guestworker Act, “agricultural labor or services” includes temporary, seasonal, and year-round agricultural and horticultural work as well as the handling, packing, and processing of unmanufactured agricultural and horticultural products, forestry-related activities, aquaculture activities, and the primary processing of fish or shellfish. However, meat and poultry processing jobs, for the purposes of this definition, include only jobs involving the killing of animals and the breakdown of their carcasses.

Sec. 2103. Admission of temporary H-2C workers.

Subsection (a) amends the INA by adding a new section (section 218A) establishing the H-2C temporary agricultural guest worker program. The following is a section-by-section analysis of the amendment made by this section:

Section 218A. Admission of temporary H-2C workers.

Subsection (a) defines “displace,” “job,” “employer,” “forestry-related activities,” “H-2C worker,” “lay off,” “United States worker,” and “special procedures industry.”

Subsection (b) requires an employer seeking to hire an H-2C worker to file a petition with the Secretary of Agriculture in which the employer attests:

To the terms of the employer’s offer of employment to the aliens, including that the employer will employ aliens on a contractual basis as H-2C workers for a specific period of time during which the aliens may not work on an at-will basis, and a description of the place of employment, period of employment, wages and other benefits to be provided, and the duties of the positions;

That the employer will provide the benefits, wages, and working conditions required under the law to all workers employed in the job for which the H-2C workers are sought;

That no U.S. workers will be displaced during the 30-day period preceding the employment period or during the employment period;

That the employer recruited U.S. workers and was unsuccessful in locating sufficient numbers of willing and qualified U.S. workers for the job;

That the employer will offer the job to any U.S. worker who applies, is qualified, and is available at each place, and for the duration of, the need, until the first day that work begins for the H-2C worker (This provision specifically precludes regulations implementing any variation of the “50% Rule.” See 20 C.F.R. 655.135(d));

That insurance covering injury and disease arising out of the job will be provided if the work is not covered by State workers’ compensation law; and

That the vacant job is not the result of a strike or lockout in the course of a labor dispute.

Subsection (c) requires the employer to make a copy of the employer’s petition available for public examination.

Subsection (d) requires the Secretary of Homeland Security to maintain a list of the petitions filed and make it available for public examination.

Subsection (e):

Prohibits the Secretary of Homeland Security from requiring that petitions be filed more than 28 days in advance.

Requires the Secretary to approve or reject a petition, or determine that a petition is incomplete or inaccurate or that an employer has not complied with the recruitment requirements.

Requires the Secretary to notify a petitioner of any deficiencies within 5 business days if a determination is made that a petition is incomplete or inaccurate, or that an employer has not complied with the recruitment requirements, within 5 business days. Further requires the Secretary to approve or reject a corrected petition within 5 business days of receipt.

Requires the Secretary to approve or reject a petition within 10 business days if no determination is made that a petition is incomplete or inaccurate, or that an employer has not complied with the recruitment requirements.

Provides that by filing a petition, an employer consents to allow access to the site where work is being performed to the Department of Agriculture and the Department of Homeland Security for compliance investigations.

Subsection (f):

Allows associations to transfer workers among its members.

Provides that violations by a member will not necessarily disqualify an association and vice versa.

Subsection (g) requires the Secretary of Homeland Security to promulgate regulations to provide for the expedited review of a denial of a petition and for the examination of new evidence provided by the petitioner.

Subsection (h) permits the Secretary of Homeland Security to charge petitioners a fee to cover the cost of processing petitions.

Subsection (i):

Provides that the Secretary of Agriculture shall be responsible for conducting investigations and audits to ensure compliance with the requirements of the H-2C program and designates that fines paid to the Department of Agriculture shall be used to enhance the Department's investigatory and auditing power.

Sets penalties for failure to meet a condition of the petition and material misrepresentations with fines of up to \$1,000 and a 1-year disqualification.

Sets penalties for willful failures to meet conditions of the petition and willful misrepresentations with a fine of up to \$5,000 as well as a 2-year disqualification for an initial violation, a 5-year disqualification for an second violation, and a permanent disqualification for a third violation.

Sets penalties for willful failures and misrepresentations that result in displacement of a U.S. worker with a fine of up to \$15,000 as well as a 5-year disqualification for an initial violation, and a permanent disqualification for a second violation.

Subsection (j) provides that the Secretary of Agriculture shall require the payment of back wages, or other required benefits, due any worker, if the Secretary finds an employer failed to provide the required benefits, wages, and working conditions.

Subsection (k):

Requires employers to offer U.S. workers no less than the same benefits, wages, and working conditions that the employer offers to H-2C workers.

Provides that every interpretation made under this section or under any other law regarding the provision of benefits, wages, and other conditions of H-2C workers shall reflect that the services of workers to their employers and the employment opportunities afforded to workers by the employers mutually benefit the workers and their employers and principally benefit neither worker nor employer and that employment opportunities within the U.S. benefit the U.S. economy.

Requires employers to pay H-2C workers (other than meat or poultry processing workers) a wage that is at least the greatest of 1) the State or local minimum wage, 2) 115 percent of the Federal minimum wage, or 3) the actual wage level paid by the employer to all other individuals in the job.

Permits employers to pay via a piece rate system as long as that rate equals or exceeds the applicable wage rate.

Requires employers to pay H-2C workers who are meat or poultry processing workers a wage that is at least the greatest of 1) the State or local minimum wage, 2) 115 percent of the Federal minimum wage, 3) the prevailing wage level for the occupational classification in the area of employment, or 4) the actual wage level paid by the employer to all other individuals in the job.

Requires the employer to guarantee the worker employment and pay for at least 50 percent of the work days of the total contract period.

Provides that any hours the worker fails to work may be counted by the employer in calculating whether the period of guaranteed employment has been met.

Provides that a worker who abandons his or her employment before the end of the contract or is terminated for cause is not entitled to the 50 percent guarantee.

Provides that if, before the 50 percent guarantee is fulfilled, the services of the worker are no longer required for reasons beyond the control of the employer, the employer may terminate the worker's employment, but shall apply and fulfill the 50 percent guarantee for the period before termination, make efforts to transfer the United States worker to other comparable employment acceptable to the worker, and shall notify the Secretary of Agriculture of the termination.

Subsection (l) prohibits the Department of Agriculture and the Department of Homeland Security from delegating their investigatory, enforcement, or administrative functions relating to the H-2C program to other agencies or departments of the Federal government

Subsection (m) requires any personnel from a Federal agency or Federal grantee visiting an H-2C employer's farm or facility to make their presence known and sign-in in accordance with reasonable bio-security protocols before proceeding to any other area.

Subsection (n):

Permits H-2C workers to be admitted for up to 18 months to work in a job that is temporary or seasonal.

Permits H-2C workers to be admitted initially for up to 36 months to work in a job that is not temporary or seasonal and for up to 18 months subsequently.

Requires H-2C workers who were employed in a temporary or seasonal job to remain outside the U.S. for period equal to at least 1/12th of the duration of their previous period of authorized status as an H-2C worker.

Requires H-2C workers who were employed in a non-temporary or seasonal job to remain outside the U.S. for period equal to at least 1/12th of the duration of their previous period of authorized status as H-2C workers or 45 days.

Requires the Secretary of Homeland Security to deduct absences from the United States during an H-2C worker's period of authorized status from the period the worker is required to remain outside the U.S. if the worker or the worker's employer requests such a deduction, and provides proof that the alien qualifies for such a deduction.

Provides that sheepherders, goatherders, workers employed in the range production of livestock, and workers who return to their permanent residence outside the U.S. each day are not subject to a maximum continuous period of authorized status or a requirement to remain outside the U.S.

Subsection (o):

Provides that, in addition to the maximum period of admission, a worker's authorized period of admission includes an additional period of 1 week before the work begins (for inbound travel) and 2 weeks following the work (to be granted for the purpose of departure) or 30 days (for the purpose of seeking a subsequent job offer).

Provides that an alien who does not depart within these periods shall be considered to be inadmissible for having been unlawfully present and deemed unlawfully present for 181 days as of the 15th day following the period of employment for the purpose of departure or as of the 31st day following the period of employment for the purpose of seeking a subsequent job offer; and

Provides that an alien may not be employed during the 14-day departure period except in the employment for which the alien is otherwise authorized.

Subsection (p):

Requires employers to notify the Secretaries of Agriculture and Homeland Security within 72 hours after learning of the abandonment of employment by an H-2C worker.

Permits an employer to designate an eligible alien to replace an H-2C worker who abandons employment, and provides that the replacement worker shall not count against the numerical cap.

Subsection (q):

Requires the Secretary of Homeland Security to waive grounds of inadmissibility applicable to aliens who procured admission into the United States by fraud, or who were unlawfully present for more than 180 days, in order to provide the alien with H-2C status.

Provides that an alien for the purpose of this subsection is an alien who:

was unlawfully present in the United States on October 23, 2017;

performed agricultural labor or services in the United States for at least 5.75 hours during each of at least 180 days during the 2- year period prior to enactment; and

has departed the United States within 180 days of the issuance of final rules carrying out the Ag Act, and remains outside of the United States.

Subsection (r):

Establishes a trust fund for the purpose of providing a monetary incentive for H-2C workers to return to their home countries upon expiration of their visas.

Requires employers to withhold 10 percent of the wages of H-2C workers, except those employed as shepherders, goatherders, in the range production of livestock, or who return to their permanent residence outside the United States each day, and pay the amount into the trust fund.

Requires employers of H-2C workers employed in jobs that are not temporary or seasonal, other than those employed as shepherders, goatherders, in the range production of livestock, or who return to their permanent residence outside the United States each

day, to pay an amount equivalent to certain Federal taxes on wages (that such employers are not obligated to pay) into the trust fund.

Provides that amounts paid into the trust fund on an employee's behalf shall be transferred from the Trust Fund to the Secretary of Homeland Security, who shall distribute them to the worker if the worker applies to the Secretary within 120 days of the worker's authorized expiration of stay at a U.S. embassy or consulate in the worker's home country, establishes that they have complied with the terms and conditions of the program, physically appears at the U.S. embassy or consulate in their home country, and established their identity.

Provides that the other amounts paid into the trust fund shall be distributed annually to the Secretary of State, Secretary of Agriculture, and the Secretary of Homeland Security in amounts proportionate to the expenses incurred in the administration of the H-2C program.

Provides that any money left over in the trust fund – after the appropriate agencies have been reimbursed for the expense of administering the guestworker program – shall be distributed to the Department of Homeland Security to apprehend, detain, and remove aliens unlawfully present in the U.S.

Requires the Secretary of the Treasury to invest any portion of the Trust Fund not needed to meet withdrawal demands.

Provides that interest and proceeds shall be credited to the account.

Requires the Secretary of the Treasury to hold the Trust Fund and report to Congress each year on the financial condition of the Fund.

Subsection (s):

Requires the Secretary of Homeland Security to permit an employer in a Special Procedures Industry that does not operate at a single fixed place of employment to provide, as part of its petition, a list of places of employment, which may include an itinerary and may subsequently be amended at any time by the employer.

Permits the Secretary of Agriculture to establish monthly, weekly, or biweekly wage rates for occupations in a Special Procedures Industry for a State or other geographic area.

Permits an employer engaged in the commercial beekeeping or pollination services industry to require that job applicants be free from bee-related allergies, including allergies to pollen and bee venom.

Subsection (b) of section 3 of the bill amends chapter 2 of title II of the INA by adding another new section (section 218B) providing for the at-will employment of temporary H-2C workers. The following is a section-by-section analysis of the amendment made by this section:

Sec. 218B. At-will Employment of Temporary H-2C Workers.

Subsection (a) permits registered agricultural employers to employ a worker already lawfully present in the U.S. as an at-will H-2C worker if the worker was admitted under the H-2C program and completed the period of the job offer or had his or her employment terminated because his services were no longer needed for a reason beyond the employer's control.

Subsection (b) provides that H-2C workers performing at-will labor for a registered agricultural employer are subject to the same period of admission, limitation of stay in status, and requirement to remain outside the U.S. as contract H-2C workers, except that they are not permitted to accrue time toward their touchback requirement.

Subsection (c):

Requires the Secretary of Agriculture to establish a process for accepting and adjudicating applications by employers to be designated as registered agricultural employers.

Requires the Secretary of Agriculture to collect a fee to recover the cost of processing the application.

Provides five conditions that must be met in order the Secretary of Agriculture to designate an employer as a registered agricultural employer.

Subsection (d):

Provides that an employer's designation as a registered agricultural employer is valid for 3 years and can be extended for additional 3-year terms.

Requires the Secretary to revoke a designation before the expiration if an employer is subject to disqualification.

Subsection (e):

Provides that the Secretary of Agriculture will be responsible for conducting investigations and random audits of employers to ensure compliance.

Provides that all fines levied against employers shall be paid to the Department of Agriculture and used to enhance its investigatory and audit power.

Subsection (c) prohibits spouses and children of H-2C workers from being admitted to the U.S. along with H-2C workers as accompanying family members.

Subsection (d):

Establishes a limit of 450,000 on the total number of aliens who may be issued visas under the H-2C program in any fiscal year. Such limit includes a base allocation of 40,000 visas for workers employed in meat or poultry processing and a base allocation of 410,000 visas for all other agricultural workers.

Provides for an automatic cap escalator when either base allocation is exhausted and an automatic de-escalator following a period when an allocation is underutilized.

Provides that, in the case of the 410,000 visas for non-meat and poultry processing workers, the base allocation cannot fall below 410,000.

Excludes aliens who performed agricultural labor or services for at least 5.75 hours during each of at least 180 days during the 2-year period beginning on the date of enactment, and H-2A or H-2B workers returning under the H-2C program to work for their previous employers, from the calculation of visas issued in a fiscal year.

Subsection (e) amends the Immigration and Nationality Act to exclude H-2C workers from the requirement that they must disprove the presumption of immigrant intent at the time of application for admission.

Subsection (f) amends the table of contents for the INA to include references to the new sections comprising the H-2C program.

Sec. 2104. Mediation.

Section 2104 prohibits an H-2C worker, or an attorney representing an H-2C worker, from bringing a civil action for damages against an H-2C employer unless the parties have attempted to reach a satisfactory resolution of the issues through mediation.

Sec. 2105. Migrant and seasonal agricultural worker protection.

Section 2105 exempts H-2C workers from the definition of “migrant agricultural worker” under the Migrant and Seasonal Agricultural Worker Protection Act. This provision has the effect of barring an entity receiving funding from the Legal Services Corporation from representing an H-2C worker in an action against his or her employer.

Sec. 2106. Binding arbitration.

Subsection (a) permits employers to require that workers be subject to mandatory binding arbitration and mediation of any grievances as a condition of employment.

Subsection (b) provides that any cost of arbitration or mediation shall be equally shared by the employer and H-2C worker, except that each party shall be responsible for the costs of their own counsel.

Subsection (c) defines the terms “condition of employment” and “H-2C worker.”

Sec. 2107. Eligibility for health care subsidies and refundable tax credits; required health insurance coverage.

Subsection (a) provides that H-2C workers are not eligible for Federal public benefits, including subsidies under the Patient Protection and Affordable Care Act.

Subsection (b) provides that H-2C workers are not eligible for refundable tax credits such as the Earned Income Tax Credit and the Child Tax Credit.

Subsection (c) requires H-2C workers to have health insurance coverage for the period of employment and provides that H-2C workers who do not maintain the required insurance coverage will be considered to have failed to maintain nonimmigrant status.

Sec. 2108. Study of establishment of an agricultural worker employment pool.

Subsection (a) requires the Secretary of Agriculture to conduct a study on the feasibility of establishing an agricultural worker employment pool to assist H-2C workers and employers in identifying job opportunities and willing, able and available workers, respectively.

Subsection (b) enumerates five subjects to be analyzed in the study.

Subsection (c) requires the Secretary of Agriculture to submit a report containing the results of the study to Congress.

Sec. 2109. Prevailing wage.

Section 2109 amends the Immigration and Nationality Act to provide requirements for the computation of the prevailing wage in the case of H-2C employment.

Sec. 2110. Effective dates; sunset; regulations.

Subsection (a):

Provides that the new H-2C program shall take effect on the date on which the Secretary of Homeland Security issues rules to carry out this Act.

Requires the Secretary of Homeland Security to accept petitions for H-2C workers beginning no later than the date on which the Secretary issues the rules.

Provides that provisions allowing for the at-will employment of H-2C workers will become effective when E-Verify becomes mandatory and is capable of indicating whether the individual in question is eligible to be employed in all occupations or only to perform agricultural labor or services.

Subsection (b):

Reinstates H-2A regulations implemented by the Bush administration in 2008 for all petitions (except with respect to employers seeking to hire workers for shepherding, goatherding, range production of livestock, and itinerant animal shearing jobs) beginning on the date of enactment of the Act.

Provides that beginning on the date on which employers can file petitions for H-2C workers, no new petitions to import H-2A workers will be accepted.

Subsection (c) requires the Secretary of Homeland Security to promulgate rules, on an interim or other basis, not later than 6 months after the date of enactment, to carry out this Act.

Sec. 2111. Report on compliance and violations.

Section 2111 requires the Secretary of Homeland Security, in consultation with the Secretary of Agriculture, to submit to the Committees on the Judiciary of the House of Representatives and the Senate a report on H-2C workers' compliance with the requirements of this Act and the Immigration and Nationality Act.

TITLE III—VISA SECURITY

Sec. 3101. Cancellation of additional visas.

This section amends the INA to clarify that all visas held by an alien are void if that alien has overstayed any such visas by remaining in the United States beyond the period of authorized stay, or otherwise violated any of the terms of the nonimmigrant classification in which the alien was admitted.

Sec. 3102. Visa information sharing.

This section amends the INA to provide the Federal government with additional flexibility to release certain data in visa records, such as biographic information, to foreign governments. Current law provides that visa records relating to the issuance or denial of visas must be considered confidential and may be used only for specified purposes – namely, the formulation, amendment, administration, or enforcement of the immigration, nationality, and other laws of the United States – with certain limited exceptions. The section would clarify that Department of State may share visa records with a foreign government on a case-by-case basis for the purpose of determining removability or eligibility for a visa, admission, or other immigration benefits or when sharing is in the national interest. In addition, the section ensures that visa revocation records can be disclosed pursuant to the same standards as records concerning visa issuance and refusal.

Sec. 3103. Restricting waiver of visa interview.

This section ensures that the “national interest” waiver authority for required visa interviews (i) can be exercised only in consultation with the Secretary of Homeland Security; (2) cannot be used to waive interviews for persons of national security concern or where such waiver

would create a high risk of degradation of visa program integrity; and (3) cannot be based on mere travel facilitation or reducing the workload of consular officers.

Sec. 3104. Authorizing the Department of State to not interview certain ineligible visa applicants.

Currently, the State Department must conduct in-person interviews of nonimmigrant visa applicants even if it is evident to the consular officer, based solely on the content of the individual's application, that the applicant is ineligible for a visa. In order to avoid wasting limited resources and making a clearly ineligible visa applicant travel to the consulate, this provision clarifies that State does not have to conduct interviews of visa applicants in these instances.

Sec. 3105. Visa refusal and revocation.

This section authorizes the Secretary of Homeland Security and the Secretary of State to refuse or revoke visas to aliens if in the security interests of the United States and provides that there is no judicial review of visa revocations (including in the context of removal proceedings where such revocation is the sole ground of removal).

Sec. 3106. Petition and application processing for visas and immigration benefits.

This section enhances the requirement for the processing of all immigration petitions and applications. Specifically, it requires that all nonimmigrant and immigrant visa applications be signed by the applicant (immigrant visa applications must be signed in the presence of the consular officer). It also requires that any foreign language documents be translated fully and be accompanied by a certification from the translator.

Sec. 3107. Fraud prevention.

This section requires the Secretary of Homeland Security to submit to the House and Senate Judiciary Committees, a plan to integrate advanced analytics software into existing fraud detection techniques. In addition, this section requires the completion of benefits fraud analyses on several visa categories and applications by the Fraud Detection and National Security Directorate of USCIS. The reports must be completed by fiscal year 2021.

Sec. 3108. Visa ineligibility for spouses and children of drug traffickers.

Closes a loophole that, despite current law, still allows family members of drug traffickers to receive immigration benefits.

Sec. 3109. DNA testing.

Allows DHS the authority to require DNA verification of relationships on a case-by-case basis. Also allows the Department to establish through regulation, DNA verification of classes or sub-classes of applicants.

Sec. 3110. Access to NCIC criminal history database for diplomatic visas.

Expands biometric criminal background checks to include a small class of diplomatic visa applicants. Extends the background check beyond namechecking but does not require fingerprinting for diplomats.

Sec. 3111. Elimination of signed photograph requirement for visa applications.

Removes an outdated requirement by allowing for unsigned applicant photos via the State Department's electronic visa application system, which includes digital photos.

Sec. 3112. Additional fraud detection and prevention.

Allows the Department of State to use fees from visa programs for anti-fraud purposes both within the United States and at U.S. embassies and consulates abroad.

DIVISION B—INTERIOR IMMIGRATION ENFORCEMENT

TITLE I—LEGAL WORKFORCE ACT

Sec. 1101. Short title.

Sec 1102. Employment eligibility verification process.

Requires that the employer attest, in an electronic or paper form, that they have verified the employment eligibility of the individual seeking employment by obtaining the individual's Social Security Number (SSN) or immigrant identification number and examining acceptable documents presented by the individual to establish work eligibility and identity. Requires that the employer use E-Verify to check the work eligibility of the individual. Reduces the number of acceptable documents for proof of work eligibility and identity.

Requires that the employer retain a paper, microfiche or electronic copy of the attestation form for the later of three years or one year after the date of employment termination.

Requires the employer to record the E-Verify verification code for employees when they receive a confirmation or final nonconfirmation of work authorization. Allows an employee who receives a tentative nonconfirmation to use the secondary verification process in place under E-Verify. States that an employer may terminate employment of individuals who receive a final nonconfirmation and if they do not terminate employment they must notify DHS of the decision not to do so (which creates a rebuttable presumption of noncompliance if the employer does not terminate employment). Allows an employer to check the employment eligibility of a prospective employee between the date of the offer of a job and three days after the date of hire. Allows the employer to condition a job offer on an E-Verify confirmation.

Phases-in mandatory E-Verify participation for new hires in six month increments beginning on the date six months after enactment, with businesses having more than 10,000 employees. Twelve months after enactment, businesses having 500 to 9,999 employees are required to use E-Verify, as are recruiters and referrers. Eighteen months after enactment, businesses having 20 to 499 employees must use E-Verify. And 24 months after enactment businesses having 1 to 19 employees must use E-Verify. Note that on the date of enactment, those employers who are currently required by federal law to use E-Verify (certain federal contractors, the Executive Branch, the Legislative Branch) will continue to be required to use E-Verify.

Requires that employees performing “agricultural labor or services,” as defined in section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)), are subject to an E-Verify check within 18 months of the date of enactment.

Allows an employer having 50 or fewer employees to request from DHS a one-time extension of the implementation deadline. DHS shall grant the extension upon request.

Retains the requirements of the Federal Acquisition Rule (FAR) as set out by Executive Order 13465.

Requires employers to verify the work eligibility of individuals with work visas, etc. at some point within the three business days of the date on which the work authorization expires.

Phases this requirement in according to the size of business, over the same 24 month period as the initial use phase-in.

Requires the work eligibility of a current employee to be verified if they 1) work for the Federal government, a State or local government, a critical infrastructure site, or on a Federal or State contract (clarifies that if an employee who falls into this category has already been checked by the current employer using E-Verify, then the employee does not have to be checked again); or 2) submit a SSN that DHS determines has a pattern of unusual multiple use. Allows employers to voluntarily verify the work authorization of their current workforce as long as all of the employees in the same geographic location or employed within the same job category as the employee for whom verification is sought, area also verified.

Allows an employer using, or who wants to use, the E-Verify pilot program to use the new system in lieu of the pilot program even if not yet required to use the new system. Prohibits the information provided under the employment eligibility confirmation process from being used for any reason other than the enforcement of this bill and certain criminal provisions.

Provides that an employer has complied with the requirements set out in this section if there was a good faith attempt to comply with the requirements. Safe harbor does not apply when the employer is engaging in a pattern or practice of violations.

Allows the DHS Secretary a one-time six month extension of the implementation deadlines if the Secretary certifies to Congress that the employment eligibility verification system will not be ready within six months of the date of enactment of the Legal Workforce Act.

Sec. 1103. Employment eligibility verification system.

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

Requires the Secretary in consultation with Commissioner to create a standard process for such extension and notification. Requires the system to include safeguards for privacy, against unlawful discriminatory practices and against unauthorized disclosure of personal information.

Reiterates that this is not a national ID card. Requires that SSA and DHS update E-Verify database information in a prompt manner to promote maximum accuracy. Allows the DHS Secretary to require certain entities associated with critical infrastructure to use E-Verify if the use will assist in the protection of the critical infrastructure.

Provides that if a work eligible individual claims that they were wrongly fired due to an incorrect E-Verify non-confirmation, they may seek remedies under the Federal Tort Claims Act.

Prohibits class actions.

Sec. 1104. Recruitment and referral.

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

Sec. 1105. Good faith defense.

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

Sec. 1106. Preemption and States' Rights.

Creates one federal law requiring E-Verify use by preempting State laws mandating E-Verify use for employment eligibility purposes. Gives States a specific role in helping to enforce the E-Verify requirements by allowing the States to investigate violations of this Act and enforce the provisions pursuant to the federal structure. Incentivizes States to help enforce E-Verify requirements by allowing the States to retain the fines assessed under this Act. States that an employer may be subject only to a State investigation and enforcement action *or* a federal investigation and enforcement action for the same violation of E-Verify laws. Retains the ability

of States and localities to condition business licenses on the requirement that the employer use E-Verify in accordance with the requirements of this Act.

Sec. 1107. Repeal.

Repeals Subtitle A of title IV of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. (This is where E-Verify was created as a pilot – it is in the notes to 8 U.S.C. §1324A and because this bill places E-Verify in the actual text of 1324A, there is no longer a need for Subtitle A of title IV of IIRIRA).

Sec. 1108. Penalties.

Increases the civil and criminal penalties for employers who violate the laws prohibiting illegal hiring and employment. Allows DHS to bar a business from receiving federal contracts, grants or other cooperative agreements, if they repeatedly violate the requirements in this bill or if they are convicted of a crime under this bill. If the business has a contract, grant or agreement at the time then DHS and the Attorney General must consider the views of the agency with which the business has a contract, grant or agreement to determine whether the business should be debarred.

Creates an office within Immigration and Customs Enforcement (ICE), whose sole purpose is to respond to (within five business days of the complaint), and investigate, state and local governmental agency complaints about businesses hiring and/or employing illegal immigrants.

Sec. 1109. Fraud and misuse of documents.

Amends 18 U.S.C. 1546(b) to ensure that employers or prospective employees who submit for work eligibility purposes a social security number or documents related to identity or work authorization, knowing that the social security number or documents do not belong to the person presenting them, are subject to criminal penalties.

Sec. 1110. Protection of Social Security Administration programs.

Requires DHS to enter into an annual agreement with the Social Security Administration (SSA) to reimburse, in a timely manner, SSA for the costs SSA incurs in operating their part of E-Verify.

Sec. 1111. Fraud prevention.

In order to combat identity theft, requires DHS to “lock” a Social Security Number (SSN) that is subject to unusual multiple use so that if the owner attempts to get a job, they are alerted that the SSN may have been compromised. Requires DHS to allow individuals to “lock” their own SSN so that it cannot be used to verify work eligibility, in order to combat identity theft. Requires DHS to allow parents or legal guardians to “lock” the SSN of their minor child so that it cannot be used for employment eligibility purposes, in order to combat theft of the minor child’s identity.

Sec. 1112. Use of employment eligibility verification tool.

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

Sec. 1113. Identity authentication employment eligibility verification pilot program

Requires DHS to create a pilot program that allows employers to use an identity-authentication-based identification program for work eligibility check purposes.

Sec. 1114. Inspector General audits.

Requires, in order to help identify misuse of Social Security Numbers within the current workforce, the Inspector General of the SSA to complete audits of certain categories of SSNs for which there is a likelihood of use by unauthorized workers. The House Committee on Ways and Means and the Senate Finance Committee will then determine information to be given to DHS in order to investigate incidents of SSN misuse and unauthorized employment.

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

Sec. 2201. Short title.

Sec. 2202. State noncompliance with enforcement of immigration law.

This section amends and clarifies section 1373 of title 8 of the United States Code. The section states that no entity or individual may prohibit a government entity from complying with the immigration laws or assisting or cooperating with law enforcement regarding immigration laws. The section also prohibits implementation of any laws, policies, guidance, etc. that prohibit any entity from making inquiries regarding immigration and custody status.

Additionally, this section makes certain federal funding unavailable for jurisdictions that fail to comply with section (a). The section allows DHS to decline to transfer an alien in DHS' custody to a jurisdiction that fails to comply with the provisions of section 1373 and prohibits DHS from transferring aliens with final orders to requesting jurisdictions that fail to comply with section 1373.

Sec. 2203. Clarifying the authority of ICE detainers.

This section amends section 287(d) of title 18 of the United States Code by simplifying the statutory text on issuance of a detainer and clarifying probable cause. The section also provides that ICE must effect a transfer of custody of the alien to DHS custody within 48 hours (excluding weekends and holidays) but in no case more than 96 hours from the time that the alien is due to be released.

For jurisdictions that wish to comply with detainers and are sued for holding an alien past a release date, the United States will defend the claim and will substitute itself in as the defendant. This will not apply, however, if the state or local jurisdiction acted in bad faith and mistreated the alien while in custody.

For certain crimes committed by aliens released from custody resulting from a declined detainer, this section provides the victim of those crimes, or their families, a private right of action against the releasing jurisdiction. This private right of action cannot be maintained against a subordinate jurisdiction when the decision to release was made pursuant to existing law enacted by a sovereign jurisdiction, i.e. state law. Finally, this provision makes certain federal funding unavailable for jurisdictions that fail to comply with detainer requests, except that subordinate jurisdictions will not lose funding when the failure to comply is pursuant to existing law enacted by a sovereign jurisdiction.

Sec. 2204. Sarah and Grant's Law.

The section also provides for the mandatory detention of any alien who is unlawfully present in the United States who has been convicted of driving under the influence of alcohol regardless of whether that conviction is a misdemeanor or felony. It also provides for the mandatory detention of aliens in removal proceedings who were arrested or charged with a particularly serious crime or a crime resulting in the serious bodily injury or death of another when the alien is unlawfully present, is deportable pursuant to the revocation of a visa, or is deportable by reason of failing to comply with the conditions of a visa.

Sec. 2205. Clarification of congressional intent.

This section amends section 287(g) of the Immigration and Nationality Act (which allows DHS to enter into cooperative agreements with States and localities to assist in the enforcement of Federal immigration laws). It requires DHS to accept a request from a State or locality to enter into a 287(g) agreement absent a compelling reason not to. No limit on the number of agreements under this subsection can be imposed. The Secretary shall process requests for such agreements with all due haste, and in no case shall take more than 90 days from the date that the request is made until the agreement is consummated. Any such agreement under this section shall accommodate a requesting State or political subdivision with respect to the enforcement model of their choosing.

No agreement can be terminated absent a compelling reason to do so. DHS shall provide a State or political subdivision written notice of intent to terminate at least 180 days prior to date of intended termination, and the notice shall fully explain the grounds for termination, along with providing evidence substantiating the Secretary's allegations and the State or locality shall have the right to a hearing before an administrative law judge. The agreement shall remain in full effect during the course of any and all legal proceedings. States may seek judicial relief if DHS terminates an agreement.

Sec. 2206. Penalties for illegal entry or presence.

This section makes knowing unlawful presence and knowingly violating the terms of conditions of admission or parole federal misdemeanors after the alien has remained in the United States unlawfully for an aggregate of 90 days.

TITLE III—CRIMINAL ALIENS

Sec. 3301. Precluding admissibility of aliens convicted of aggravated felonies or other serious offenses.

Aggravated felony convictions only render an alien who was admitted to the United States deportable, but do not currently render an alien who entered without inspection inadmissible unless the conviction also falls within one of the existing grounds of inadmissibility. Certain additional grounds of deportability, such as firearms offenses and crimes of domestic violence are likewise not currently grounds of inadmissibility. This section clarifies that convictions for aggravated felonies and certain other offenses are independent grounds of inadmissibility. Further, this section amends the inadmissibility and deportability grounds to allow for the removal of aliens who have committed or been convicted of crimes relating to Social Security fraud or the unlawful procurement of citizenship. The section also clarifies that an alien convicted of an aggravated felony is ineligible for a discretionary waiver of certain criminal inadmissibility grounds.

Sec. 3302. Increased penalties barring the admission of convicted sex offenders failing to register and requiring deportation of sex offenders failing to register.

The section renders an alien inadmissible or deportable where the alien is a convicted sex offender who has failed to register as required by law.

Sec. 3303. Grounds of inadmissibility and deportability for alien gang members.

This section adds grounds of inadmissibility and deportability for criminal gang members. It includes a definition of the term “criminal gang,” and makes any alien who was a criminal gang member either inadmissible or deportable. The section further amends the Immigration and Nationality Act by setting procedures for the Secretary of Homeland Security, in consultation with the Attorney General, to officially designate an organization as a criminal street gang.

Any alien charged in immigration court proceedings as a criminal gang member would be subject to mandatory custody during the pendency of the immigration court proceeding. The relevant agencies can designate specified gangs, membership in which would render an alien inadmissible or deportable. The section further provides that criminal gang members are ineligible for asylum, special immigrant juvenile state, and temporary protected status. In addition, alien gang members may not be paroled into the United States unless actively assisting a law enforcement matter.

Sec. 3304. Inadmissibility and deportability of drunk drivers.

This section provides that a conviction for driving while intoxicated is an aggravated felony when the impaired driving led to the death or serious bodily injury of another person, and that a second or subsequent conviction for driving while intoxicated is an aggravated felony.

Sec. 3305. Definition of aggravated felony.

This section modifies the definition of the term “aggravated felony” to clarify it applies to offenses in violation of Federal or State law and to offenses in foreign countries if the term of imprisonment was completed within the last 15 years.

The section provides that if conviction records do not conclusively establish whether a crime constitutes a crime of violence or theft for purposes of being categorized as a deportable aggravated felony, DHS may consider other evidence related to the conviction that clearly establishes that the conduct for which the alien was engaged constitutes a qualifying offense.

This section also adds manslaughter, certain harboring of aliens crimes, felony marriage fraud, and immigration-related entrepreneurship fraud, in addition to offenses for improper entry and reentry where the alien was sentenced to one year or more of incarceration, as aggravated felonies. Further, it clarifies that theft offenses include any federal or state theft offenses including theft by deceit or fraud. The section also clarifies that soliciting, aiding, abetting, counseling, commanding, inducing, or procuring another to commit an aggravated felony is also considered to be an aggravated felony and clarifies that extrinsic evidence may be used to establish the minority of a victim in cases of sexual abuse of a minor.

Sec. 3306. Precluding withholding of removal for aggravated felons.

This section bars aliens convicted of aggravated felonies from receiving withholding of removal.

Sec. 3307. Protecting immigrants from convicted sex offenders.

The section bars convicted sex offenders from petitioning for relatives for permanent resident status unless DHS determines the petitioner poses no risk to the alien with respect to whom a petition is filed. The provision also applies to fiancée visa applicants.

Sec. 3308. Clarification to crimes of violence and crimes involving moral turpitude.

The section clarifies that Immigration Judges may consider extrinsic evidence in determining whether a crime is a crime of violence or a crime involving moral turpitude.

Sec. 3309. Detention of dangerous aliens.

This section provides a statutory basis for DHS to detain as long as necessary specified dangerous aliens under orders of removal who cannot be removed. It authorizes DHS to detain non-removable aliens beyond six months, if the alien will be removed in the reasonably foreseeable future; the alien would have been removed but for the alien's refusal to make all reasonable efforts to comply and cooperate with DHS's efforts to remove them; the alien has a highly contagious disease; release would have serious adverse foreign policy consequences; release would threaten national security; or release would threaten the safety of the community, conditions of release cannot be expected to ensure public safety and the alien is either an aggravated felon or has committed certain other crimes, or has committed a crime of violence and has a mental condition that will likely lead to acts of violence in the future. These aliens may be detained for periods of six months at a time, and the period of detention may be renewed.

Sec. 3310. Timely repatriation.

This section provides an additional mechanism (in addition to section 243(d) of the INA) to sanction countries that do not accept return of their nationals ordered removed from the United States. DHS must periodically publish a report of countries that have refused or unreasonably delayed repatriation of their nationals and countries that have an excessive repatriation failure rate. The State Department may not issue "A-3" visas to employees and immediate family members of officials and employees who have "A-1" and "A-2" diplomatic status from countries that are listed on multiple reports and shall reduce the number of "A-1" and "A-2" visas it makes available to nationals of countries that continue to remain on the list. Certain waivers are available to the Secretary of State. In addition, if an alien who has been convicted of a criminal offense in the U.S. whose repatriation was refused or unreasonably delayed is to be released from DHS detention, DHS shall provide notice to the State and local law enforcement agency for the jurisdiction in which the alien is required to report or is to be released (and make a reasonable attempt to provide notice to the crime victims and their immediate family members).

Sec. 3311. Illegal reentry.

This section provides strengthened penalties for aliens convicted of illegal reentry who have a serious criminal record. Specifically, criminal aliens convicted of 3 or more misdemeanors or a felony prior to reentry could receive a maximum sentence of 10 years. A criminal alien convicted of a felony and sentenced to at least 30 months could receive a maximum sentence of 15 years. If the criminal alien was sentenced to a felony of at least 60 months, the alien could receive a sentence of 20 years. And a criminal alien convicted of certain crimes including murder, rape, or kidnapping could receive a maximum penalty of 25 years once convicted of illegal reentry.

TITLE IV—ASYLUM REFORM

Sec. 4401. Clarification of intent regarding taxpayer-provided counsel.

The INA has long prohibited taxpayer-funded attorneys for aliens in removal proceedings. In violation of that law, however, the Obama Administration allowed taxpayers to pay for lawyers to represent UAMs in immigration removal proceedings. In addition, the Obama Administration asserted that it was well within the law to allow such funds to be used to pay for representation of any alien (not just UAMs) in removal proceedings. This section clarifies congressional intent so that no Administration can disregard the current prohibition in the INA.

Sec. 4402. Credible fear interviews.

An alien in expedited removal proceedings (and Mexican and Canadian UAMs) can claim a credible fear of persecution, and if found to have a credible fear, has the right to go before an Immigration Judge. In order to establish a credible fear of persecution, the asylum officer must find that a “significant possibility” exists that the individual may be found eligible for asylum or withholding of removal. The intended purpose of this provision was to dispose of claims where there is little possibility of success, while at the same time not foreclosing viable claims. However, the standard is so low that under the Obama Administration, many baseless claims were approved – in fact, during the last years of the Obama Administration, approval rates were as follows:

FY 2013: 92%

FY 2014: 80%

FY 2015: 81%

FY 2016: 88%.

This section applies a heightened standard to address the enormous uptick in the number of people arriving at the borders and successfully claiming “credible fear.” The provision is amended to ensure that determinations are consistent with credibility determination in asylum proceedings. Additionally, in conjunction with showing a “significant possibility,” the alien must show that it is more probable than not that the statements made by the alien in support of the alien's claim are true.

Sec. 4403. Recording expedited removal and credible fear interviews.

This provision requires the Secretary of Homeland Security to establish quality assurance procedures and take steps to ensure that questions by employees of the Department exercising expedited removal authority and those involving credible fear determinations are asked in a standard manner, and that both these questions and the answers provided in response to them are recorded in a uniform fashion.

Sec. 4404. Safe third country.

This section allows DHS to remove asylum seekers to safe third countries where they would have access to a full and fair procedure for applying for asylum without the current necessity for bilateral agreements with those countries. This would allow the return of apprehended Central Americans to Mexico where they could apply for asylum.

Sec. 4405. Renunciation of asylum status pursuant to return to home country.

This provision terminates asylum status where an asylee returns to their home country from which they sought asylum, absent changed circumstances or a change in country conditions.

Sec. 4406. Notice concerning frivolous asylum applications.

This provision clarifies that notice of the consequences of filing a frivolous asylum application that is contained on the application itself is sufficient if the applicant signed it. This section further clarifies what the Secretary of Homeland Security or Attorney General must determine in order to sustain a frivolity finding and bars an alien, found to have filed a frivolous application, from receiving any future immigration benefits.

Sec. 4407. Anti-fraud investigative work product.

To combat asylum fraud, DHS has the ability to conduct overseas and other investigations of asylum claims including examining presented documents for authenticity. In the past several years, the courts have greatly limited DHS' ability to conduct such investigations due to confidentiality and due process concerns. This provision would specifically authorize the trier of fact in an asylum matter, usually an Immigration Judge, to consider investigative reports and other work product compiled in an effort to prevent the granting of a fraudulent asylum claim.

Sec. 4408. Penalties for asylum fraud.

This section amends 18 USC 1001 (relating false statements or entries) to provide for enhanced penalties for those that make false statements or representations in their asylum applications and adjudications. This would include providing false documentation to the Department of Homeland Security or to the immigration court.

Sec. 4409. Statute of limitations for asylum fraud.

This section amends the statute of limitations for violations of 18 USC 1546 (relating to fraud and misuse of visas, permits, and other documents) from 5 years to 10 years and additionally begins the tolling period when the fraud is discovered. This will allow investigators to more fully identify, prosecute, and, ultimately, deter fraud in the asylum context.

Sec. 4410. Technical amendments.

TITLE V—UNACCOMPANIED AND ACCOMPANIED ALIEN MINORS APPREHENDED ALONG THE BORDER

Sec. 5501. Repatriation of unaccompanied alien children.

The Trafficking Victims Protection Reauthorization Act of 2008 created two sets of rules regarding UAMs apprehended from contiguous and non-contiguous countries. Under current law, minors from contiguous countries (such as Mexico) can be immediately returned (if they consent, have not been trafficked and don't have a credible fear of persecution). However, minors from other countries must be placed in very lengthy removal proceedings in immigration court (during which they are usually released into the United States, often to the very parents who attempted to smuggle them into the U.S.). The bill eliminates the conflicting rules and subjects all minors to expeditious return if they have not been trafficked and don't have a credible fear of persecution. The section provides authority for the Secretary of State to negotiate agreements with foreign countries regarding UAMs, which include protections for minors who are returned to their country of nationality.

The section ensures that minors who are victims of severe forms of trafficking are afforded a hearing before an Immigration Judge within 14 days while extending the ability of DHS to hold a UAC up to 30 days to ensure a speedy judicial process.

The section provides for greater transparency and safety of minors by requiring HHS to provide DHS with biographical information regarding the sponsors or family members to whom the minors are released. Currently, there is no requirement to share sponsor or family information with DHS. Without this information, there is a danger these minors will be lost in the system, or worse, be inadvertently delivered into the hands of criminals or abusers. The bill also mandates that DHS follow up with the sponsors with whom the minors are placed to verify the sponsors' immigration status and issue notices for the sponsors to appear in immigration court where appropriate.

The section also reaffirms the privilege of UAMs to have access to counsel to represent them in immigration court, but at no expense to the United States taxpayer.

Sec. 5502. Special immigrant juvenile status for immigrants unable to reunite with either parent.

Due to a mistake in current law, juveniles are able to obtain permanent residence as Special Immigrant Juveniles if they can show they have been abandoned by a single parent even though another parent is present in the U.S. and able and willing to care for them. The bill clarifies that such status is available to juveniles who have lost or been abandoned by both parents.

Sec. 5503. Jurisdiction of asylum applications.

The bill closes a loophole that allows UAMs to get two opportunities for review of their asylum applications, rather than the one opportunity available to other aliens.

Sec. 5504. Quarterly report to Congress.

This section requires the Attorney General and the Secretary of Homeland Security to submit reports every quarter providing the total number of asylum cases filed by unaccompanied children and adjudicated by an immigration judge or DHS, respectively. This report must also include the percentage of those cases that were granted. The report further requires the Attorney General to provide the number of unaccompanied children who failed to appear for any proceedings before the immigration court.

Sec. 5505. Biannual report to Congress.

This section requires a twice yearly report by the Attorney General on each crime that an unaccompanied child is charged or convicted of follow their release from DHS custody.

Sec. 5506. Clarification of standards for family detention.

Under a settlement agreement reached in the 1990s, unaccompanied alien minors in custody are given a detention hearing with a presumption that they should be released. This was recently extended in a 9th Circuit decision to minors who entered with one or both of their parents. This provision clarifies that there is no presumption that an accompanied minor should not be detained and states that any detention determination shall be made in the discretion of the Secretary of Homeland Security.

DIVISION C—BORDER ENFORCEMENT

Sec. 1100. Short title.

TITLE I—BORDER SECURITY

Sec. 1101. Definitions.

Subtitle A—Infrastructure and Equipment

Sec. 1111. Strengthening the requirements for barriers along the southern border.

Mandates that the Secretary of DHS deploy physical barriers, tactical infrastructure and technology along the border where it is most effective and practical to achieve situational awareness and operational control.

Physical barriers are a critical element of the CBP border security strategy, consistent with the January 25, 2017 Executive Order on Border Security and Immigration Enforcement Improvements. This section updates the current law by explicitly authorizing the construction of border wall system, and levee walls.

Sec. 1112. Air and marine operations flight hours.

Requires DHS to increase the number of annual flight hours of CBP Air and Marine Operations (AMO), prioritizes air support requests from the Chief of the Border Patrol, and gives the Border Patrol the lead on the use of small-unmanned aerial vehicles.

There is a significant gap of the between the number of flight hours identified by the U.S. Border Patrol as necessary to secure the border and the current number of hours flown by CBP Air and Marine. This provision aims to close that gap.

Sec. 1113. Capability deployment to specific sectors and transit zone.

Requires DHS to deploy a minimum amount of additional surveillance, and detection technologies in specific sectors along the northern and southern border (e.g. El Centro, Big Bend, and Laredo).

Each U.S. Border Patrol sector is unique in terms of geographical challenges, illicit flow and threat. As a result, the deployment of additional surveillance, and detection technologies should be tailored to each Border Patrol sector as outlined by this provision.

Sec. 1114. U.S. Border Patrol activities.

Requires the U.S. Border Patrol to patrol as close to the border as possible.

The current defense-in-depth strategy unduly endangers Americans who live at or near the border by ceding sovereign U.S. territory to drug cartels and others who would do us harm. This provision requires the U.S Border Patrol to patrol as close to the physical border to protect U.S. citizens who live in close proximity to the border.

Sec. 1115. Border security technology program management.

Requires DHS to document approved baselines, costs, schedules, performance thresholds, and compliance with the Federal Acquisition Regulation Guidelines for its major border security technology acquisition programs that have life-cycle costs of \$300 million or more. Also directs DHS to submit a testing and evaluation plan and use independent verification for new border security technologies.

Prior border technology and infrastructure projects experienced significant cost overruns and mismanagement. This bill will require significant border security investment and this provision will help ensure border security projects are on time, and on budget. .

Sec. 1116. Reimbursement of States for deployment of the National Guard at the southern border.

Directs DoD to reimburse Southern-Border states for the costs of deployment of units/personnel to assist with border security activities. Authorizes up to \$35 million for such reimbursements.

States should not be held financially responsible for National Guard Federal border security efforts as securing the border is the responsibility of the Federal Government.

Sec. 1117. National Guard support to secure the southern border.

Authorizes the deployment of units of the National Guard to assist CBP in securing the border.

The National Guard is a highly effective force multiplier to law enforcement officers and agents on the ground, particularly during the time it will take to assign additional agents, infrastructure, and technology to the border in the course of implementing this Act.

Sec. 1118. Prohibitions on actions that impede border security on certain federal land.

Prohibits the Departments of the Interior or Agriculture from impeding, prohibiting, or restricting CBP activities on federal land located within 100 miles of the southern border to execute search and rescue operations, and to prevent all unlawful entries into the United States.

Border Patrol agents have difficulty accessing Federal land under the purview of the Secretary of the Interior and Secretary of Agriculture to patrol hindering their ability to complete their mission. This provision removes that obstacle.

Sec. 1119. Landowner and rancher security enhancement.

Establishes a National Border Security Advisory Committee to consult with the Secretary on border security issues.

Because ranchers and landowners near the border are disproportionately affected by cartel activities in their communities and often allow the Border Patrol to access their land to complete their mission, they should have a formal mechanism to have their voices heard.

Sec. 1120. Eradication of carrizo cane and salt cedar.

Directs DHS to coordinate with Federal and State authorities and, within 90 days, begin eradicating Carrizo cane and Salt Cedar along the Rio Grande River.

Carrizo Cane and Salt Cedar provide one of the greatest tactical challenges to the detection of illicit activity along the Rio Grande River. Due to the vegetation's thickness, Border Patrol agents cannot detect threats until they are either on the bank of the river, or in the water.

Sec. 1121. Southern border threat analysis.

Requires the Secretary of DHS to develop a Southern Border Threat Analysis that assesses the current state of border security and improvements needed to secure the border.

A comprehensive strategy to secure the southern border would inform the Department's own efforts to gain situational awareness and operational control as well as help inform future border security spending.

Sec. 1122. Amendments to U.S. Customs and Border Protection.

Makes a series of technical and conforming edits to CBP and preclearance authorizations.

Sec. 1123. Agent and officer technology use.

Requires the Secretary of Homeland Security to ensure that technology deployed be provided to front-line agents and officers.

Technology is a force multiplier and should be provided directly to the law enforcement officers and agents on the ground in order to stop illegal border activity more effectively.

Sec. 1124. Integrated border enforcement teams,

Establishes the Integrated Border Enforcement Team (IBET) program that is designed to detect, prevent, investigate, and respond to terrorism and violations of law related to border security principally on the northern border.

Partnership between Federal, State, local, and foreign partners is critical to securing our borders, and a formal mechanism for information sharing and cooperation would reduce the duplication of efforts between agencies.

Sec. 1125. Tunnel task forces.

This amendment establishes the Tunnel Task Force program which leads the Departments efforts at investigating and remediating the threat posed by cross-border tunnels.

Cross border tunnels present a unique risk to national security, making a dedicated task force necessary.

Sec. 1126. Pilot program on use of electromagnetic spectrum in support of border security operations.

Authorizes a pilot program to test and evaluate the use of electromagnetic spectrum by U.S. Customs and Border Protection in support of border security operations.

Spectrum use along the border is important to efficient interoperability and interagency cooperation and in identifying threats including unauthorized spectrum use, and criminal jamming and hacking of communications assets.

Sec. 1127. Homeland security foreign assistance.

Authorizes the Secretary of DHS to provide equipment, training, maintenance, supplies, and/or sustainment support to a foreign government if it would enhance U.S. ability to mitigate the threat of transnational organized crime and terrorism, address irregular migration flows, or facilitate legitimate trade and travel.

Pushing our borders out by collaborating with foreign nations can mitigate threats before they reach U.S. soil and enhances our situational awareness.

Subtitle B—Personnel

Sec. 1131. Additional U.S. Customs and Border Protection agents and officers.

Directs DHS to hire, train, and assign 26,370 Border Patrol agents (increase of 5,000), and 27,725 Customs Officers (increase of 5,000).

Increasing the number of U.S. Border Patrol agents, CBP officers, CBP K-9 units and handlers, Horseback Units, Agricultural Specialists, and other specialized units will increase our ability to stop the flow of illegal immigration and drug smuggling.

Sec. 1132. U.S. Customs and Border Protection retention incentives.

Authorizes recruitment and retention bonuses, special pay for new CBP officers assigned to the remote and hard-to-fill locations.

In order to meet the ambition hiring targets outlined in Section 131, the Department must be able to offer appropriate incentives to both retain and attract qualified law enforcement personnel.

Sec. 1133. Anti-Border Corruption Reauthorization Act.

Provides three, narrowly tailored exemptions for the Commissioner of CBP to waive the polygraph for current state and local law enforcement officers who have already passed a polygraph examination, Federal law enforcement officers who have already passed a stringent background investigation and veterans with at least three consecutive years in the military who have held a clearance and passed a background check.

A streamlined approach to hiring law enforcement officers and select military members will support CBP's efforts to fill current and future vacancies in an expeditious manner while maintaining hiring standards.

Sec. 1134. Training for officers and agents of U.S. Customs and Border Protection.

Requires agents and officers to undergo 21 weeks of mandatory training and provides for additional training for first and second line supervisors.

Additional training will ensure that agents are confident in their ability to track down groups of drug traffickers, provide them additional time to become proficient in a foreign language, and reduce the likelihood that misconduct will occur.

The establishment of a formal leadership training for first and second line supervisors will ensure that they know how to properly manage and supervise subordinates. These basic leadership courses are required in most professional organizations, such as the military, and should be likewise be required of CBP.

Subtitle C—Grants

Sec. 1141. Operation Stonegarden.

Authorizes \$110 million to increase coordination and collaboration between CBP and State, county, tribal, and other governmental law enforcement entities that support border security operations.

State, county, Tribal and other governmental law enforcement entities are vital partners in securing the homeland. These funds will assist in the procurement of necessary equipment to secure the border and may be used to pay for personnel expenses incurred by partner agencies.

Subtitle D—Authorization of Appropriations

Sec. 1151. Authorization of appropriations.

Authorizes \$24.8 billion (over 5 years) to cover costs for implementation of the Act.

TITLE II—EMERGENCY PORT OF ENTRY PERSONNEL AND INFRASTRUCTURE FUNDING

Sec. 2101. Ports of entry infrastructure.

Requires DHS to expand vehicle, cargo, and pedestrian inspection lanes at ports of entry on the southern border by installing additional primary and secondary inspection lanes.

The efficient flow of commerce and people through our ports of entry is essential to our economic prosperity. This section provides the Secretary of DHS with the discretion to construct new ports or modernize and expand older ports as needed.

Sec. 2102. Secure communications.

Requires DHS to provide all CBP officers with secure communications equipment to streamline communications. Also requires DHS to provide multi-band, encrypted high-frequency portable radios to agents or officers required to patrol on foot, by horseback, and with a canine unit, and in other remote mission critical locations.

Providing secure, encrypted communications to officers on the front lines is an officer safety issue that must be prioritized.

Sec. 2103. Border security deployment program.

Funds and expands the border surveillance and intrusion technology program at the nation's ports of entry.

Modern technology is a key force multiplier in securing the border. The expansion of border surveillance and intrusion technology will improve security at the ports of entry.

Sec. 2104. Pilot and upgrade of license plate readers at ports of entry.

Requires an upgrade of existing license plate readers used on incoming and outgoing vehicle lanes along the northern and southern borders. Authorizes CBP to conduct a 6-month pilot on the southern border using license plate readers in all cargo processing lanes to determine their effectiveness in reducing cross-border wait times for commercial traffic and tractor-trailers.

The movement of cargo and vehicles expeditiously through our ports of entry is critical to our economy. However, moving cargo quickly cannot jeopardize our national security. Updating license plate readers will allow vehicles to proceed across the border more rapidly, and expanding this proven technology will increase cargo security efforts at our ports of entry.

Sec. 2105. Non-intrusive inspection operational demonstration.

Requires the deployment of a high throughput non-intrusive passenger vehicle inspection system at not fewer than three land ports of entry along the southern border.

Non-Intrusive Imaging is an efficient way to inspect vehicles at high volume ports where a large amount of smuggling occurs in passenger vehicles. By utilizing this non-intrusive technology, CBP can effectively inspect vehicles and increase both security and the flow of commerce at our ports of entry.

Sec. 2106. Biometric exit data system.

Directs DHS to complete and implement biometric exit at all air, land and sea ports of entry.

A mandate to electronically track entry and exit from the country has been in place for more than 20 years, and a mandate for a biometric entry-exit system has been a statutory requirement for 12 years. This provision provides DHS with a roadmap for success, and for the first time in statute, it would provide definitive timelines for the execution of a biometric exit system.

Sec. 2107. Sense of Congress on cooperation between agencies.

Expresses the sense of Congress that the lack of certified inspection personnel at ports of entry should be addressed by seeking cooperation between agencies through a memorandum of understanding or certification process, and that agents are authorized for additional hours to facilitate the crossing and trade of perishable goods.

This section encourages CBP to leverage MOUs and cross-certification to combat a shortage of inspectors required for cross-border agricultural trade.

Sec. 2108. Authorization of appropriations.

Authorizes \$6.25 billion (over 5 years) to carry out staffing increases and infrastructure improvements.

CBP is understaffed and struggles to hire more officers and agents – the process is slow and arduous. CBP infrastructure is not in much better shape. This bill provides the much needed support for personnel increases and critical infrastructure improvements, and this section authorizes the appropriations to carry out these very important priorities.

SEC. 2109. Definition

TITLE III—VISA SECURITY AND INTEGRITY

Sec. 3101. Visa security.

This section expands ICE’s Visa Security Units (VSU) to the 75 most high-risk posts worldwide, enhances counterterrorism vetting and screening, provides additional training to CBP and ICE international posts, and establishes the Visa Security Advisory Opinion Unit.

The ICE Visa Security Program (VSP) interdicts criminals, terrorists, and other individuals who seek to exploit the visa process to enter the United States by assigning Visa Security Units (VSU) to embassies and consulates around the world to vet visa applications. This section provides VSP with the necessary tools to conduct investigations of potential terrorist or criminal suspects and stop them before they can reach the United States.

Sec. 3102. Electronic passport screening and biometric matching.

This section requires CBP to screen passports at airports by reading the passport’s embedded chip and utilizing facial recognition technology to screen Visa Waiver Program travelers at airports.

This section capitalizes on CBP’s biometric technology by utilizing all the tools available to combat fraudulent international travel documents. By using facial recognition technology to verify documents provided by individuals participating in the Visa Waiver Program we are drastically reducing the risk of illegal entry by way of fraudulent documentation.

Sec. 3103. Reporting of visa overstays.

This section mandates that DHS issue a visa overstay report for the previous Fiscal Year to appropriate Congressional oversight Committees.

In FY 2016, CBP calculated that nearly 740,000 people overstayed their visas. This section requires a much needed review of the visa overstay population in the United States. The report will be conducted by DHS and will include estimates of the number of aliens who have overstayed their visa, which country they are from, the method in which they entered the country, and the authorized period of stay.

Sec. 3104. Student and Exchange Visitor Information System verification.

This section requires the Secretary of DHS to ensure that information collected in SEVIS is available to officers of CBP conducting primary inspections of aliens seeking admission into the U.S. at all ports of entry.

CBP officers at our ports of entry make critical decisions in a matter of seconds with a limited amount of information available to them. This additional information may be the key for a CBP officer to make a fully informed decision about a foreign student's admissibility into the country, and potentially stop associates of known terror suspects from entering or re-entering the United States.

Sec. 3105. Social media review of visa applicants.

This section requires the Secretary of DHS to review the social media accounts of visa applicants who are citizens of, or reside in, high-risk countries as determined by the Secretary.

Social media platforms are increasingly being used by terrorist organizations to recruit and radicalize individuals. DHS needs to examine every possible option for detecting, deterring, and combating the threat of terrorism. This section is the first step in addressing the evolving role that social media is playing by requiring DHS to screen high-risk applicants' social media for indicators of terrorism, or support for terrorism.

**TITLE IV—TRANSNATIONAL CRIMINAL ORGANIZATION ILLICIT SPOTTER
PREVENTION AND ELIMINATION**

Sec. 4101. Short title.

Sec. 4102. Unlawfully hindering immigration, border, and customs controls.

This section amends 8 USC 274 (related to bringing in and harboring certain aliens) to include conspiracy to bring aliens into the United States or harbor them in the country. Penalties increase to up to 10 years in prison if an individual commits any offense in this provision while using or carrying a firearm. This section also amends 8 USC 277 (related to aiding or assisting certain aliens to enter) to include the inchoate crime of attempt and raises penalties to a maximum

of 10 years in prison if the individual uses or carries a firearm while committing the offense. Finally, this section amends 18 USC 1361 (relating to government property or contracts) to include specific penalties for destruction of border control devices, including sensors, fencing, or other barriers. This provision also provides for enhanced penalties if the offense is committed with a firearm.

DIVISION D—LAWFUL STATUS FOR CERTAIN CHILDHOOD ARRIVALS

Sec. 1101. Definitions.

Sec. 1102. Contingent nonimmigrant status for certain aliens who entered the United States as children.

Provides a three-year contingent nonimmigrant status for certain aliens who arrived in the United States as minors and meet certain eligibility requirements. In general, the covered population is the current population that possesses Deferred Action for Childhood Arrivals (DACA) status. The three-year status is renewable in three-year increments indefinitely. The bill does not provide a special pathway to citizenship. The bill does not preclude adjustment of status if the contingent nonimmigrant can adjust through normal channels such as marriage to a U.S. citizen or the labor certification process.

Generally, an alien is eligible for contingent nonimmigrant status if the alien 1) is physically present in the U.S. on the date of application; 2) was physically present in the United States on June 15, 2007; 3) was younger than 16 on the initial date of entrance to the U.S.; 4) is of good moral character; 5) was under 31 on June 15, 2012; 6) has maintained continuous physical presence in the U.S. from June 15, 2012 until the date granted contingent nonimmigrant status; 7) had no lawful immigration status on June 15, 2012; 8) has requested the release to DHS of all records of State or local juvenile delinquent records and the records have been provided to DHS; 9) possesses a valid employment authorization document issued by DHS pursuant to the June 2012 DHS Memorandum regarding DACA.

In addition, the alien must be in regular full-time attendance in school in the U.S. or must have acquired a high school diploma, GED, or high school equivalency certificate in the U.S. The alien is ineligible for contingent nonimmigrant status if the alien 1) has been convicted of the vast majority of criminal offenses including any felony, any aggravated felony, domestic violence, child abuse or neglect, assault resulting in bodily injury, the violation of a protection order, DUI, two or more misdemeanors, or an offense in a foreign country that would render the alien inadmissible or deportable under the INA; 2) has been adjudicated delinquent by a state or local juvenile court based on the commission of serious offenses; 3) has not satisfied civil legal judgements arising out of criminal convictions; 4) is a member of a criminal alien gang as defined in the INA; 5) has pending felony or misdemeanor charges; 6) is inadmissible or deportable under most sections of the INA; 7) already obtained lawful immigration status in the U.S. as of the date of enactment; 8) has failed to comply with any removal order or voluntary departure agreement; 9) has been ordered removed in absentia; 11) has refused to attend or remain in attendance at an inadmissibility or removability hearing; 12) if over the age of 18, cannot demonstrate financial independence; 13) is delinquent in paying any Federal or State tax liability; 14) has failed to settle

debts with the U.S. Treasury; 15) has unreported income that would result in tax liability; or 16) has engaged in sexual harassment or assault.

Requires that the alien's application be filed via electronic filing. Provides that applications must be filed in the one-year period beginning on the date that interim final regulations are published in the Federal Register. Requires that the alien undergo an in-person interview with DHS and submit any information required by DHS. Requires certain documents to be submitted by the alien in order to prove the alien meets the eligibility requirements for contingent nonimmigrant status. Requires that DHS charge a processing fee that covers all costs associated with adjudication of the application for contingent nonimmigrant status. Requires the alien pay a \$1000.00 fee to go toward border security purposes. Provides that aliens showing prima facie eligibility who are apprehended during the application period or are in removal proceedings, be allowed to file an application for contingent nonimmigrant status.

Provides that upon application for employment authorization, a contingent nonimmigrant receives such authorization. Allows the alien to travel outside the U.S. for certain intervals, but clarifies that reentry shall not constitute an admission under section 245(a) of the INA.

Clarifies that a contingent nonimmigrant is ineligible for healthcare subsidies, refundable tax credits, and public benefits.

Clarifies that DHS shall revoke contingent nonimmigrant status if the alien no longer meets eligibility requirements, committed fraud in the application process, or was absent from the U.S. without authorization.

Sec. 1103. Administrative and judicial review.

Provides a single level of de novo administrative appellate review of a determination for a denial of initial or renewal contingent nonimmigrant status, or of revocation of such status. The appeal must be filed within 30 days of the service of the decision to deny or revoke. Provides a single judicial appeal of a final administrative determination regarding denial or revocation. Prohibits class action lawsuits regarding denial or revocation. Sets out parameters for courts when granting relief against the government.

Sec. 1104. Penalties and signature requirements.

Provides a five-year criminal penalty for knowingly and willfully providing false information on an initial or renewal application for contingent nonimmigrant status. Requires the applicant (or parent or guardian of an applicant with a physical or mental impairment) to provide an original signature as part of the application for contingent nonimmigrant status.

Sec. 1105. Rulemaking.

Provides that the Secretary shall issue interim final implementation regulations within one year of the date of enactment. The regulations take immediate effect.

Sec. 1106. Statutory construction.

Provides that nothing in the Division constitutes any substantive or procedural right or benefit enforceable against the United States.