

118TH CONGRESS
1ST SESSION

H. R. 2640

To provide for reform of the asylum system and protection of the border.

IN THE HOUSE OF REPRESENTATIVES

APRIL 17, 2023

Mr. McCLINTOCK (for himself and Mr. BIGGS) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committees on Ways and Means, Education and the Workforce, and Homeland Security, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To provide for reform of the asylum system and protection of the border.

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

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Border Security and Enforcement Act of 2023”.

6 (b) TABLE OF CONTENTS.—The table of contents for
7 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—ASYLUM REFORM AND BORDER PROTECTION

- Sec. 101. Short title.
- Sec. 102. Safe third country.
- Sec. 103. Credible fear interviews.
- Sec. 104. Clarification of asylum eligibility.
- Sec. 105. Exceptions.
- Sec. 106. Employment authorization.
- Sec. 107. Asylum fees.
- Sec. 108. Rules for determining asylum eligibility.
- Sec. 109. Firm resettlement.
- Sec. 110. Notice concerning frivolous asylum applications.
- Sec. 111. Technical amendments.
- Sec. 112. Requirement for procedures relating to certain asylum applications.

TITLE II—BORDER SAFETY AND MIGRANT PROTECTION

- Sec. 201. Short title.
- Sec. 202. Inspection of applicants for admission.

TITLE III—ENSURING UNITED FAMILIES AT THE BORDER

- Sec. 301. Short title.
- Sec. 302. Clarification of standards for family detention.

TITLE IV—PROTECTION OF CHILDREN

- Sec. 401. Short title.
- Sec. 402. Findings.
- Sec. 403. Repatriation of unaccompanied alien children.
- Sec. 404. Special immigrant juvenile status for immigrants unable to reunite with either parent.

TITLE V—VISA OVERSTAYS PENALTIES

- Sec. 501. Short title.
- Sec. 502. Expanded penalties for illegal entry or presence.

TITLE VI—IMMIGRATION PAROLE REFORM

- Sec. 601. Short title.
- Sec. 602. Immigration parole reform.
- Sec. 603. Implementation.
- Sec. 604. Cause of action.
- Sec. 605. Severability.

TITLE VII—LEGAL WORKFORCE

- Sec. 701. Short title.
- Sec. 702. Employment eligibility verification process.
- Sec. 703. Employment eligibility verification system.
- Sec. 704. Recruitment, referral, and continuation of employment.
- Sec. 705. Good faith defense.
- Sec. 706. Preemption and States' rights.
- Sec. 707. Repeal.
- Sec. 708. Penalties.
- Sec. 709. Fraud and misuse of documents.
- Sec. 710. Protection of Social Security Administration programs.
- Sec. 711. Fraud prevention.
- Sec. 712. Use of employment eligibility verification photo tool.

Sec. 713. Identity authentication employment eligibility verification pilot programs.

Sec. 714. Inspector General audits.

Sec. 715. Agriculture Workforce Study.

1 **TITLE I—ASYLUM REFORM AND** 2 **BORDER PROTECTION**

3 **SEC. 101. SHORT TITLE.**

4 This title may be cited as the “Asylum Reform and
5 Border Protection Act of 2023”.

6 **SEC. 102. SAFE THIRD COUNTRY.**

7 Section 208(a)(2)(A) of the Immigration and Nation-
8 ality Act (8 U.S.C. 1158(a)(2)(A)) is amended—

9 (1) by striking “if the Attorney General deter-
10 mines” and inserting “if the Attorney General or the
11 Secretary of Homeland Security determines—”;

12 (2) by striking “that the alien may be removed”
13 and inserting the following:

14 “(i) that the alien may be removed”;

15 (3) by striking “, pursuant to a bilateral or
16 multilateral agreement, to” and inserting “to”;

17 (4) by inserting “or the Secretary, on a case by
18 case basis,” before “finds that”;

19 (5) by striking the period at the end and insert-
20 ing “; or”; and

21 (6) by adding at the end the following:

22 “(ii) that the alien entered, attempted to enter,
23 or arrived in the United States after transiting

1 through at least one country outside the alien's
2 country of citizenship, nationality, or last lawful ha-
3 bitual residence en route to the United States, un-
4 less—

5 “(I) the alien demonstrates that he or she
6 applied for protection from persecution or tor-
7 ture in at least one country outside the alien's
8 country of citizenship, nationality, or last lawful
9 habitual residence through which the alien
10 transited en route to the United States, and the
11 alien received a final judgment denying the
12 alien protection in each country;

13 “(II) the alien demonstrates that he or she
14 was a victim of a severe form of trafficking in
15 which a commercial sex act was induced by
16 force, fraud, or coercion, or in which the person
17 induced to perform such act was under the age
18 of 18 years; or in which the trafficking included
19 the recruitment, harboring, transportation, pro-
20 vision, or obtaining of a person for labor or
21 services through the use of force, fraud, or coer-
22 cion for the purpose of subjection to involuntary
23 servitude, peonage, debt bondage, or slavery,
24 and was unable to apply for protection from
25 persecution in each country through which the

1 alien transited en route to the United States as
2 a result of such severe form of trafficking; or
3 “(III) the only countries through which the
4 alien transited en route to the United States
5 were, at the time of the transit, not parties to
6 the 1951 United Nations Convention relating to
7 the Status of Refugees, the 1967 Protocol Re-
8 lating to the Status of Refugees, or the United
9 Nations Convention against Torture and Other
10 Cruel, Inhuman or Degrading Treatment or
11 Punishment.”.

12 **SEC. 103. CREDIBLE FEAR INTERVIEWS.**

13 Section 235(b)(1)(B)(v) of the Immigration and Na-
14 tionality Act (8 U.S.C. 1225(b)(1)(B)(v)) is amended by
15 striking “there is a significant possibility” and all that fol-
16 lows, and inserting “, taking into account the credibility
17 of the statements made by the alien in support of the
18 alien’s claim, as determined pursuant to section
19 208(b)(1)(B)(iii), and such other facts as are known to
20 the officer, the alien more likely than not could establish
21 eligibility for asylum under section 208, and it is more
22 likely than not that the statements made by, and on behalf
23 of, the alien in support of the alien’s claim are true.”.

1 **SEC. 104. CLARIFICATION OF ASYLUM ELIGIBILITY.**

2 (a) IN GENERAL.—Section 208(b)(1)(A) of the Im-
3 migration and Nationality Act (8 U.S.C. 1158(b)(1)(A))
4 is amended by inserting after “section 101(a)(42)(A)” the
5 following: “(in accordance with the rules set forth in this
6 section), and is eligible to apply for asylum under sub-
7 section (a)”.

8 (b) PLACE OF ARRIVAL.—Section 208(a)(1) of the
9 Immigration and Nationality Act (8 U.S.C. 1158(a)(1))
10 is amended—

11 (1) by striking “or who arrives in the United
12 States (whether or not at a designated port of ar-
13 rival and including an alien who is brought to the
14 United States after having been interdicted in inter-
15 national or United States waters),”; and

16 (2) by inserting after “United States” the fol-
17 lowing: “and has arrived in the United States at a
18 port of entry (including an alien who is brought to
19 the United States after having been interdicted in
20 international or United States waters),”.

21 **SEC. 105. EXCEPTIONS.**

22 Paragraph (2) of section 208(b) of the Immigration
23 and Nationality Act (8 U.S.C. 1158(b)(2)) is amended to
24 read as follows:

25 “(2) EXCEPTIONS.—

1 “(A) IN GENERAL.—Paragraph (1) shall
2 not apply to an alien if the Secretary of Home-
3 land Security or the Attorney General deter-
4 mines that—

5 “(i) the alien ordered, incited, as-
6 sisted, or otherwise participated in the per-
7 secution of any person on account of race,
8 religion, nationality, membership in a par-
9 ticular social group, or political opinion;

10 “(ii) the alien has been convicted of
11 any felony under Federal, State, tribal, or
12 local law;

13 “(iii) the alien has been convicted of
14 any misdemeanor offense under Federal,
15 State, tribal, or local law involving—

16 “(I) the unlawful possession or
17 use of an identification document, au-
18 thentication feature, or false identi-
19 fication document (as those terms and
20 phrases are defined in the jurisdiction
21 where the conviction occurred), unless
22 the alien can establish that the convic-
23 tion resulted from circumstances
24 showing that—

1 “(aa) the document or fea-
2 ture was presented before board-
3 ing a common carrier;

4 “(bb) the document or fea-
5 ture related to the alien’s eligi-
6 bility to enter the United States;

7 “(cc) the alien used the doc-
8 ument or feature to depart a
9 country wherein the alien has
10 claimed a fear of persecution;
11 and

12 “(dd) the alien claimed a
13 fear of persecution without delay
14 upon presenting himself or her-
15 self to an immigration officer
16 upon arrival at a United States
17 port of entry;

18 “(II) the unlawful receipt of a
19 Federal public benefit (as defined in
20 section 401(e) of the Personal Re-
21 sponsibility and Work Opportunity
22 Reconciliation Act of 1996 (8 U.S.C.
23 1611(e))), from a Federal entity, or
24 the unlawful receipt of similar public

1 benefits from a State, tribal, or local
2 entity; or

3 “(III) possession or trafficking of
4 a controlled substance or controlled
5 substance paraphernalia, as those
6 phrases are defined under the law of
7 the jurisdiction where the conviction
8 occurred, other than a single offense
9 involving possession for one’s own use
10 of 30 grams or less of marijuana (as
11 marijuana is defined under the law of
12 the jurisdiction where the conviction
13 occurred);

14 “(iv) the alien has been convicted of
15 an offense arising under paragraph (1)(A)
16 or (2) of section 274(a), or under section
17 276;

18 “(v) the alien has been convicted of a
19 Federal, State, tribal, or local crime that
20 the Attorney General or Secretary of
21 Homeland Security knows, or has reason
22 to believe, was committed in support, pro-
23 motion, or furtherance of the activity of a
24 criminal street gang (as defined under the
25 law of the jurisdiction where the conviction

1 occurred or in section 521(a) of title 18,
2 United States Code);

3 “(vi) the alien has been convicted of
4 an offense for driving while intoxicated or
5 impaired, as those terms are defined under
6 the law of the jurisdiction where the con-
7 viction occurred (including a conviction for
8 driving while under the influence of or im-
9 paired by alcohol or drugs), without regard
10 to whether the conviction is classified as a
11 misdemeanor or felony under Federal,
12 State, tribal, or local law, in which such in-
13 toxicated or impaired driving was a cause
14 of serious bodily injury or death of another
15 person;

16 “(vii) the alien has been convicted of
17 more than one offense for driving while in-
18 toxicated or impaired, as those terms are
19 defined under the law of the jurisdiction
20 where the conviction occurred (including a
21 conviction for driving while under the in-
22 fluence of or impaired by alcohol or drugs),
23 without regard to whether the conviction is
24 classified as a misdemeanor or felony
25 under Federal, State, tribal, or local law;

1 “(viii) the alien has been convicted of
2 a crime—

3 “(I) that involves conduct
4 amounting to a crime of stalking;

5 “(II) of child abuse, child ne-
6 glect, or child abandonment; or

7 “(III) that involves conduct
8 amounting to a domestic assault or
9 battery offense, including—

10 “(aa) a misdemeanor crime
11 of domestic violence, as described
12 in section 921(a)(33) of title 18,
13 United States Code;

14 “(bb) a crime of domestic vi-
15 olence, as described in section
16 40002(a)(12) of the Violence
17 Against Women Act of 1994 (34
18 U.S.C. 12291(a)(12)); or

19 “(cc) any crime based on
20 conduct in which the alien har-
21 assed, coerced, intimidated, vol-
22 untarily or recklessly used (or
23 threatened to use) force or vio-
24 lence against, or inflicted phys-

1 ical injury or physical pain, how-
2 ever slight, upon a person—

3 “(AA) who is a current
4 or former spouse of the
5 alien;

6 “(BB) with whom the
7 alien shares a child;

8 “(CC) who is cohabi-
9 tating with, or who has
10 cohabitated with, the alien
11 as a spouse;

12 “(DD) who is similarly
13 situated to a spouse of the
14 alien under the domestic or
15 family violence laws of the
16 jurisdiction where the of-
17 fense occurred; or

18 “(EE) who is protected
19 from that alien’s acts under
20 the domestic or family vio-
21 lence laws of the United
22 States or of any State, tribal
23 government, or unit of local
24 government;

1 “(ix) the alien has engaged in acts of
2 battery or extreme cruelty upon a person
3 and the person—

4 “(I) is a current or former
5 spouse of the alien;

6 “(II) shares a child with the
7 alien;

8 “(III) cohabitates or has
9 cohabitated with the alien as a spouse;

10 “(IV) is similarly situated to a
11 spouse of the alien under the domestic
12 or family violence laws of the jurisdic-
13 tion where the offense occurred; or

14 “(V) is protected from that
15 alien’s acts under the domestic or
16 family violence laws of the United
17 States or of any State, tribal govern-
18 ment, or unit of local government;

19 “(x) the alien, having been convicted
20 by a final judgment of a particularly seri-
21 ous crime, constitutes a danger to the com-
22 munity of the United States;

23 “(xi) there are serious reasons for be-
24 lieving that the alien has committed a seri-
25 ous nonpolitical crime outside the United

1 States prior to the arrival of the alien in
2 the United States;

3 “(xii) there are reasonable grounds
4 for regarding the alien as a danger to the
5 security of the United States;

6 “(xiii) the alien is described in sub-
7 clause (I), (II), (III), (IV), or (VI) of sec-
8 tion 212(a)(3)(B)(i) or section
9 237(a)(4)(B) (relating to terrorist activ-
10 ity), unless, in the case only of an alien in-
11 admissible under subclause (IV) of section
12 212(a)(3)(B)(i), the Secretary of Home-
13 land Security or the Attorney General de-
14 termines, in the Secretary’s or the Attor-
15 ney General’s discretion, that there are not
16 reasonable grounds for regarding the alien
17 as a danger to the security of the United
18 States;

19 “(xiv) the alien was firmly resettled in
20 another country prior to arriving in the
21 United States; or

22 “(xv) there are reasonable grounds for
23 concluding the alien could avoid persecu-
24 tion by relocating to another part of the
25 alien’s country of nationality or, in the

1 case of an alien having no nationality, an-
2 other part of the alien's country of last ha-
3 bitual residence.

4 “(B) SPECIAL RULES.—

5 “(i) PARTICULARLY SERIOUS CRIME;
6 SERIOUS NONPOLITICAL CRIME OUTSIDE
7 THE UNITED STATES.—

8 “(I) IN GENERAL.—For purposes
9 of subparagraph (A)(x), the Attorney
10 General or Secretary of Homeland Se-
11 curity, in their discretion, may deter-
12 mine that a conviction constitutes a
13 particularly serious crime based on—

14 “(aa) the nature of the con-
15 viction;

16 “(bb) the type of sentence
17 imposed; or

18 “(cc) the circumstances and
19 underlying facts of the convic-
20 tion.

21 “(II) DETERMINATION.—In mak-
22 ing a determination under subclause
23 (I), the Attorney General or Secretary
24 of Homeland Security may consider
25 all reliable information and is not lim-

1 ited to facts found by the criminal
2 court or provided in the underlying
3 record of conviction.

4 “(III) TREATMENT OF FELO-
5 NIES.—In making a determination
6 under subclause (I), an alien who has
7 been convicted of a felony (as defined
8 under this section) or an aggravated
9 felony (as defined under section
10 101(a)(43)), shall be considered to
11 have been convicted of a particularly
12 serious crime.

13 “(IV) INTERPOL RED NOTICE.—
14 In making a determination under sub-
15 paragraph (A)(xi), an Interpol Red
16 Notice may constitute reliable evi-
17 dence that the alien has committed a
18 serious nonpolitical crime outside the
19 United States.

20 “(ii) CRIMES AND EXCEPTIONS.—

21 “(I) DRIVING WHILE INTOXI-
22 CATED OR IMPAIRED.—A finding
23 under subparagraph (A)(vi) does not
24 require the Attorney General or Sec-
25 retary of Homeland Security to find

1 the first conviction for driving while
2 intoxicated or impaired (including a
3 conviction for driving while under the
4 influence of or impaired by alcohol or
5 drugs) as a predicate offense. The At-
6 torney General or Secretary of Home-
7 land Security need only make a fac-
8 tual determination that the alien pre-
9 viously was convicted for driving while
10 intoxicated or impaired as those terms
11 are defined under the jurisdiction
12 where the conviction occurred (includ-
13 ing a conviction for driving while
14 under the influence of or impaired by
15 alcohol or drugs).

16 “(II) STALKING AND OTHER
17 CRIMES.—In making a determination
18 under subparagraph (A)(viii), includ-
19 ing determining the existence of a do-
20 mestic relationship between the alien
21 and the victim, the underlying conduct
22 of the crime may be considered, and
23 the Attorney General or Secretary of
24 Homeland Security is not limited to
25 facts found by the criminal court or

1 provided in the underlying record of
2 conviction.

3 “(III) BATTERY OR EXTREME
4 CRUELTY.—In making a determina-
5 tion under subparagraph (A)(ix), the
6 phrase ‘battery or extreme cruelty’ in-
7 cludes—

8 “(aa) any act or threatened
9 act of violence, including any
10 forceful detention, which results
11 or threatens to result in physical
12 or mental injury;

13 “(bb) psychological or sexual
14 abuse or exploitation, including
15 rape, molestation, incest, or
16 forced prostitution, shall be con-
17 sidered acts of violence; and

18 “(cc) other abusive acts, in-
19 cluding acts that, in and of them-
20 selves, may not initially appear
21 violent, but that are a part of an
22 overall pattern of violence.

23 “(IV) EXCEPTION FOR VICTIMS
24 OF DOMESTIC VIOLENCE.—An alien
25 who was convicted of an offense de-

1 scribed in clause (viii) or (ix) of sub-
2 paragraph (A) is not ineligible for
3 asylum on that basis if the alien satis-
4 fies the criteria under section
5 237(a)(7)(A).

6 “(C) SPECIFIC CIRCUMSTANCES.—Para-
7 graph (1) shall not apply to an alien whose
8 claim is based on—

9 “(i) personal animus or retribution,
10 including personal animus in which the al-
11 leged persecutor has not targeted, or mani-
12 fested an animus against, other members
13 of an alleged particular social group in ad-
14 dition to the member who has raised the
15 claim at issue;

16 “(ii) the applicant’s generalized dis-
17 approval of, disagreement with, or opposi-
18 tion to criminal, terrorist, gang, guerilla,
19 or other non-state organizations absent ex-
20 pressive behavior in furtherance of a dis-
21 crete cause against such organizations re-
22 lated to control of a State or expressive be-
23 havior that is antithetical to the State or
24 a legal unit of the State;

1 “(iii) the applicant’s resistance to re-
2 cruitment or coercion by guerrilla, crimi-
3 nal, gang, terrorist, or other non-state or-
4 ganizations;

5 “(iv) the targeting of the applicant for
6 criminal activity for financial gain based
7 on wealth or affluence or perceptions of
8 wealth or affluence;

9 “(v) the applicant’s criminal activity;
10 or

11 “(vi) the applicant’s perceived, past or
12 present, gang affiliation.

13 “(D) DEFINITIONS AND CLARIFICA-
14 TIONS.—

15 “(i) DEFINITIONS.—For purposes of
16 this paragraph:

17 “(I) FELONY.—The term ‘felony’
18 means—

19 “(aa) any crime defined as a
20 felony by the relevant jurisdiction
21 (Federal, State, tribal, or local)
22 of conviction; or

23 “(bb) any crime punishable
24 by more than one year of impris-
25 onment.

1 “(II) MISDEMEANOR.—The term
2 ‘misdemeanor’ means—

3 “(aa) any crime defined as a
4 misdemeanor by the relevant ju-
5 risdiction (Federal, State, tribal,
6 or local) of conviction; or

7 “(bb) any crime not punish-
8 able by more than one year of
9 imprisonment.

10 “(ii) CLARIFICATIONS.—

11 “(I) CONSTRUCTION.—For pur-
12 poses of this paragraph, whether any
13 activity or conviction also may con-
14 stitute a basis for removal is immate-
15 rial to a determination of asylum eli-
16 gibility.

17 “(II) ATTEMPT, CONSPIRACY, OR
18 SOLICITATION.—For purposes of this
19 paragraph, all references to a criminal
20 offense or criminal conviction shall be
21 deemed to include any attempt, con-
22 spiracy, or solicitation to commit the
23 offense or any other inchoate form of
24 the offense.

1 “(III) EFFECT OF CERTAIN OR-
2 DERS.—

3 “(aa) IN GENERAL.—No
4 order vacating a conviction,
5 modifying a sentence, clarifying a
6 sentence, or otherwise altering a
7 conviction or sentence shall have
8 any effect under this paragraph
9 unless the Attorney General or
10 Secretary of Homeland Security
11 determines that—

12 “(AA) the court issuing
13 the order had jurisdiction
14 and authority to do so; and

15 “(BB) the order was
16 not entered for rehabilitative
17 purposes or for purposes of
18 ameliorating the immigra-
19 tion consequences of the
20 conviction or sentence.

21 “(bb) AMELIORATING IMMI-
22 GRATION CONSEQUENCES.—For
23 purposes of item (aa)(BB), the
24 order shall be presumed to be for

1 the purpose of ameliorating im-
2 migration consequences if—

3 “(AA) the order was
4 entered after the initiation
5 of any proceeding to remove
6 the alien from the United
7 States; or

8 “(BB) the alien moved
9 for the order more than one
10 year after the date of the
11 original order of conviction
12 or sentencing, whichever is
13 later.

14 “(cc) AUTHORITY OF IMMI-
15 GRATION JUDGE.—An immigra-
16 tion judge is not limited to con-
17 sideration only of material in-
18 cluded in any order vacating a
19 conviction, modifying a sentence,
20 or clarifying a sentence to deter-
21 mine whether such order should
22 be given any effect under this
23 paragraph, but may consider
24 such additional information as

1 the immigration judge determines
2 appropriate.

3 “(E) ADDITIONAL LIMITATIONS.—The
4 Secretary of Homeland Security or the Attorney
5 General may by regulation establish additional
6 limitations and conditions, consistent with this
7 section, under which an alien shall be ineligible
8 for asylum under paragraph (1).

9 “(F) NO JUDICIAL REVIEW.—There shall
10 be no judicial review of a determination of the
11 Secretary of Homeland Security or the Attorney
12 General under subparagraph (A)(xiii).”.

13 **SEC. 106. EMPLOYMENT AUTHORIZATION.**

14 Paragraph (2) of section 208(d) of the Immigration
15 and Nationality Act (8 U.S.C. 1158(d)) is amended to
16 read as follows:

17 “(2) EMPLOYMENT AUTHORIZATION.—

18 “(A) AUTHORIZATION PERMITTED.—An
19 applicant for asylum is not entitled to employ-
20 ment authorization, but such authorization may
21 be provided under regulation by the Secretary
22 of Homeland Security. An applicant who is not
23 otherwise eligible for employment authorization
24 shall not be granted such authorization prior to

1 the date that is 180 days after the date of filing
2 of the application for asylum.

3 “(B) TERMINATION.—Each grant of em-
4 ployment authorization under subparagraph
5 (A), and any renewal or extension thereof, shall
6 be valid for a period of 6 months, except that
7 such authorization, renewal, or extension shall
8 terminate prior to the end of such 6 month pe-
9 riod as follows:

10 “(i) Immediately following the denial
11 of an asylum application by an asylum offi-
12 cer, unless the case is referred to an immi-
13 gration judge.

14 “(ii) 30 days after the date on which
15 an immigration judge denies an asylum ap-
16 plication, unless the alien timely appeals to
17 the Board of Immigration Appeals.

18 “(iii) Immediately following the denial
19 by the Board of Immigration Appeals of an
20 appeal of a denial of an asylum applica-
21 tion.

22 “(C) RENEWAL.—The Secretary of Home-
23 land Security may not grant, renew, or extend
24 employment authorization to an alien if the
25 alien was previously granted employment au-

1 thorization under subparagraph (A), and the
2 employment authorization was terminated pur-
3 suant to a circumstance described in subpara-
4 graph (B)(i), (ii), or (iii), unless a Federal
5 court of appeals remands the alien’s case to the
6 Board of Immigration Appeals.

7 “(D) INELIGIBILITY.—The Secretary of
8 Homeland Security may not grant employment
9 authorization to an alien under this paragraph
10 if the alien—

11 “(i) is ineligible for asylum under sub-
12 section (b)(2)(A); or

13 “(ii) entered or attempted to enter the
14 United States at a place and time other
15 than lawfully through a United States port
16 of entry.”.

17 **SEC. 107. ASYLUM FEES.**

18 Paragraph (3) of section 208(d) of the Immigration
19 and Nationality Act (8 U.S.C. 1158(d)) is amended to
20 read as follows:

21 “(3) FEES.—

22 “(A) APPLICATION FEE.—A fee of not less
23 than \$50 for each application for asylum shall
24 be imposed. Such fee shall not exceed the cost
25 of adjudicating the application. Such fee shall

1 not apply to an unaccompanied alien child who
2 files an asylum application in proceedings under
3 section 240.

4 “(B) EMPLOYMENT AUTHORIZATION.—A
5 fee may also be imposed for the consideration
6 of an application for employment authorization
7 under this section and for adjustment of status
8 under section 209(b). Such a fee shall not ex-
9 ceed the cost of adjudicating the application.

10 “(C) PAYMENT.—Fees under this para-
11 graph may be assessed and paid over a period
12 of time or by installments.

13 “(D) RULE OF CONSTRUCTION.—Nothing
14 in this paragraph shall be construed to limit the
15 authority of the Attorney General or Secretary
16 of Homeland Security to set adjudication and
17 naturalization fees in accordance with section
18 286(m).”.

19 **SEC. 108. RULES FOR DETERMINING ASYLUM ELIGIBILITY.**

20 Section 208 of the Immigration and Nationality Act
21 (8 U.S.C. 1158) is amended by adding at the end the fol-
22 lowing:

23 “(f) RULES FOR DETERMINING ASYLUM ELIGI-
24 BILITY.—In making a determination under subsection
25 (b)(1)(A) with respect to whether an alien is a refugee

1 within the meaning of section 101(a)(42)(A), the following
2 shall apply:

3 “(1) PARTICULAR SOCIAL GROUP.—The Sec-
4 retary of Homeland Security or the Attorney Gen-
5 eral shall not determine that an alien is a member
6 of a particular social group unless the alien articu-
7 lates on the record, or provides a basis on the record
8 for determining, the definition and boundaries of the
9 alleged particular social group, establishes that the
10 particular social group exists independently from the
11 alleged persecution, and establishes that the alien’s
12 claim of membership in a particular social group
13 does not involve—

14 “(A) past or present criminal activity or
15 association (including gang membership);

16 “(B) presence in a country with general-
17 ized violence or a high crime rate;

18 “(C) being the subject of a recruitment ef-
19 fort by criminal, terrorist, or persecutory
20 groups;

21 “(D) the targeting of the applicant for
22 criminal activity for financial gain based on per-
23 ceptions of wealth or affluence;

1 “(E) interpersonal disputes of which gov-
2 ernmental authorities in the relevant society or
3 region were unaware or uninvolved;

4 “(F) private criminal acts of which govern-
5 mental authorities in the relevant society or re-
6 gion were unaware or uninvolved;

7 “(G) past or present terrorist activity or
8 association;

9 “(H) past or present persecutory activity
10 or association; or

11 “(I) status as an alien returning from the
12 United States.

13 “(2) POLITICAL OPINION.—The Secretary of
14 Homeland Security or the Attorney General may not
15 determine that an alien holds a political opinion with
16 respect to which the alien is subject to persecution
17 if the political opinion is constituted solely by gener-
18 alized disapproval of, disagreement with, or opposi-
19 tion to criminal, terrorist, gang, guerilla, or other
20 non-state organizations and does not include expres-
21 sive behavior in furtherance of a cause against such
22 organizations related to efforts by the State to con-
23 trol such organizations or behavior that is antithet-
24 ical to or otherwise opposes the ruling legal entity of
25 the State or a unit thereof.

1 “(3) PERSECUTION.—The Secretary of Home-
2 land Security or the Attorney General may not de-
3 termine that an alien has been subject to persecution
4 or has a well-founded fear of persecution based only
5 on—

6 “(A) the existence of laws or government
7 policies that are unenforced or infrequently en-
8 forced, unless there is credible evidence that
9 such a law or policy has been or would be ap-
10 plied to the applicant personally; or

11 “(B) the conduct of rogue foreign govern-
12 ment officials acting outside the scope of their
13 official capacity.

14 “(4) DISCRETIONARY DETERMINATION.—

15 “(A) ADVERSE DISCRETIONARY FAC-
16 TORS.—The Secretary of Homeland Security or
17 the Attorney General may only grant asylum to
18 an alien if the alien establishes that he or she
19 warrants a favorable exercise of discretion. In
20 making such a determination, the Attorney
21 General or Secretary of Homeland Security
22 shall consider, if applicable, an alien’s use of
23 fraudulent documents to enter the United
24 States, unless the alien arrived in the United
25 States by air, sea, or land directly from the ap-

1 plicant’s home country without transiting
2 through any other country.

3 “(B) FAVORABLE EXERCISE OF DISCRE-
4 TION NOT PERMITTED.—Except as provided in
5 subparagraph (C), the Attorney General or Sec-
6 retary of Homeland Security shall not favorably
7 exercise discretion under this section for any
8 alien who—

9 “(i) has accrued more than one year
10 of unlawful presence in the United States,
11 as defined in sections 212(a)(9)(B)(ii) and
12 (iii), prior to filing an application for asy-
13 lum;

14 “(ii) at the time the asylum applica-
15 tion is filed with the immigration court or
16 is referred from the Department of Home-
17 land Security, has—

18 “(I) failed to timely file (or time-
19 ly file a request for an extension of
20 time to file) any required Federal,
21 State, or local income tax returns;

22 “(II) failed to satisfy any out-
23 standing Federal, State, or local tax
24 obligations; or

1 “(III) income that would result
2 in tax liability under section 1 of the
3 Internal Revenue Code of 1986 and
4 that was not reported to the Internal
5 Revenue Service;

6 “(iii) has had two or more prior asy-
7 lum applications denied for any reason;

8 “(iv) has withdrawn a prior asylum
9 application with prejudice or been found to
10 have abandoned a prior asylum application;

11 “(v) failed to attend an interview re-
12 garding his or her asylum application with
13 the Department of Homeland Security, un-
14 less the alien shows by a preponderance of
15 the evidence that—

16 “(I) exceptional circumstances
17 prevented the alien from attending the
18 interview; or

19 “(II) the interview notice was not
20 mailed to the last address provided by
21 the alien or the alien’s representative
22 and neither the alien nor the alien’s
23 representative received notice of the
24 interview; or

1 “(vi) was subject to a final order of
2 removal, deportation, or exclusion and did
3 not file a motion to reopen to seek asylum
4 based on changed country conditions with-
5 in one year of the change in country condi-
6 tions.

7 “(C) EXCEPTIONS.—If one or more of the
8 adverse discretionary factors set forth in sub-
9 paragraph (B) are present, the Attorney Gen-
10 eral or the Secretary, may, notwithstanding
11 such subparagraph (B), favorably exercise dis-
12 cretion under section 208—

13 “(i) in extraordinary circumstances,
14 such as those involving national security or
15 foreign policy considerations; or

16 “(ii) if the alien, by clear and con-
17 vincing evidence, demonstrates that the de-
18 nial of the application for asylum would re-
19 sult in exceptional and extremely unusual
20 hardship to the alien.

21 “(5) LIMITATION.—If the Secretary or the At-
22 torney General determines that an alien fails to sat-
23 isfy the requirement under paragraph (1), the alien
24 may not be granted asylum based on membership in
25 a particular social group, and may not appeal the

1 determination of the Secretary or Attorney General,
2 as applicable. A determination under this paragraph
3 shall not serve as the basis for any motion to reopen
4 or reconsider an application for asylum or with-
5 holding of removal for any reason, including a claim
6 of ineffective assistance of counsel, unless the alien
7 complies with the procedural requirements for such
8 a motion and demonstrates that counsel’s failure to
9 define, or provide a basis for defining, a formulation
10 of a particular social group was both not a strategic
11 choice and constituted egregious conduct.

12 “(6) STEREOTYPES.—Evidence offered in sup-
13 port of an application for asylum that promotes cul-
14 tural stereotypes about a country, its inhabitants, or
15 an alleged persecutor, including stereotypes based on
16 race, religion, nationality, or gender, shall not be ad-
17 missible in adjudicating that application, except that
18 evidence that an alleged persecutor holds
19 stereotypical views of the applicant shall be admis-
20 sible.

21 “(7) DEFINITIONS.—In this section:

22 “(A) The term ‘membership in a particular
23 social group’ means membership in a group
24 that is—

1 “(i) composed of members who share
2 a common immutable characteristic;

3 “(ii) defined with particularity; and

4 “(iii) socially distinct within the soci-
5 ety in question.

6 “(B) The term ‘political opinion’ means an
7 ideal or conviction in support of the furtherance
8 of a discrete cause related to political control of
9 a state or a unit thereof.

10 “(C) The term ‘persecution’ means the in-
11 fliction of a severe level of harm constituting an
12 exigent threat by the government of a country
13 or by persons or an organization that the gov-
14 ernment was unable or unwilling to control.
15 Such term does not include—

16 “(i) generalized harm or violence that
17 arises out of civil, criminal, or military
18 strife in a country;

19 “(ii) all treatment that the United
20 States regards as unfair, offensive, unjust,
21 unlawful, or unconstitutional;

22 “(iii) intermittent harassment, includ-
23 ing brief detentions;

24 “(iv) threats with no actual effort to
25 carry out the threats, except that particu-

1 larized threats of severe harm of an imme-
2 diate and menacing nature made by an
3 identified entity may constitute persecu-
4 tion; or

5 “(v) non-severe economic harm or
6 property damage.”.

7 **SEC. 109. FIRM RESETTLEMENT.**

8 Section 208 of the Immigration and Nationality Act
9 (8 U.S.C. 1158), as amended by this Act, is further
10 amended by adding at the end the following:

11 “(g) FIRM RESETTLEMENT.—In determining wheth-
12 er an alien was firmly resettled in another country prior
13 to arriving in the United States under subsection
14 (b)(2)(A)(xiv), the following shall apply:

15 “(1) IN GENERAL.—An alien shall be consid-
16 ered to have firmly resettled in another country if,
17 after the events giving rise to the alien’s asylum
18 claim—

19 “(A) the alien resided in a country through
20 which the alien transited prior to arriving in or
21 entering the United States and—

22 “(i) received or was eligible for any
23 permanent legal immigration status in that
24 country;

1 “(ii) resided in such a country with
2 any non-permanent but indefinitely renew-
3 able legal immigration status (including
4 asylee, refugee, or similar status, but ex-
5 cluding status of a tourist); or

6 “(iii) resided in such a country and
7 could have applied for and obtained an im-
8 migration status described in clause (ii);

9 “(B) the alien physically resided volun-
10 tarily, and without continuing to suffer persecu-
11 tion or torture, in any one country for one year
12 or more after departing his country of nation-
13 ality or last habitual residence and prior to ar-
14 rival in or entry into the United States, except
15 for any time spent in Mexico by an alien who
16 is not a native or citizen of Mexico solely as a
17 direct result of being returned to Mexico pursu-
18 ant to section 235(b)(2)(C) or of being subject
19 to metering; or

20 “(C) the alien is a citizen of a country
21 other than the country in which the alien al-
22 leges a fear of persecution, or was a citizen of
23 such a country in the case of an alien who re-
24 nounces such citizenship, and the alien was
25 present in that country after departing his

1 country of nationality or last habitual residence
2 and prior to arrival in or entry into the United
3 States;

4 “(2) BURDEN OF PROOF.—If an immigration
5 judge determines that an alien has firmly resettled
6 in another country under paragraph (1), the alien
7 shall bear the burden of proving the bar does not
8 apply.

9 “(3) FIRM RESETTLEMENT OF PARENT.—An
10 alien shall be presumed to have been firmly resettled
11 in another country if the alien’s parent was firmly
12 resettled in another country, the parent’s resettlement
13 occurred before the alien turned 18 years of
14 age, and the alien resided with such parent at the
15 time of the firm resettlement, unless the alien estab-
16 lishes that he or she could not have derived any per-
17 manent legal immigration status or any non-perma-
18 nent but indefinitely renewable legal immigration
19 status (including asylum, refugee, or similar status,
20 but excluding status of a tourist) from the alien’s
21 parent.”.

1 **SEC. 110. NOTICE CONCERNING FRIVOLOUS ASYLUM AP-**
2 **PLICATIONS.**

3 (a) IN GENERAL.—Section 208(d)(4) of the Immi-
4 gration and Nationality Act (8 U.S.C. 1158(d)(4)) is
5 amended—

6 (1) in the matter preceding subparagraph (A),
7 by inserting “the Secretary of Homeland Security
8 or” before “the Attorney General”;

9 (2) in subparagraph (A), by striking “and of
10 the consequences, under paragraph (6), of knowingly
11 filing a frivolous application for asylum; and” and
12 inserting a semicolon;

13 (3) in subparagraph (B), by striking the period
14 and inserting “; and”; and

15 (4) by adding at the end the following:

16 “(C) ensure that a written warning ap-
17 pears on the asylum application advising the
18 alien of the consequences of filing a frivolous
19 application and serving as notice to the alien of
20 the consequence of filing a frivolous applica-
21 tion.”.

22 (b) CONFORMING AMENDMENT.—Section 208(d)(6)
23 of the Immigration and Nationality Act (8 U.S.C.
24 1158(d)(6)) is amended by striking “If the” and all that
25 follows and inserting:

1 “(A) IN GENERAL.—If the Secretary of
2 Homeland Security or the Attorney General de-
3 termines that an alien has knowingly made a
4 frivolous application for asylum and the alien
5 has received the notice under paragraph (4)(C),
6 the alien shall be permanently ineligible for any
7 benefits under this chapter, effective as the date
8 of the final determination of such an applica-
9 tion.

10 “(B) CRITERIA.—An application is frivo-
11 lous if the Secretary of Homeland Security or
12 the Attorney General determines, consistent
13 with subparagraph (C), that—

14 “(i) it is so insufficient in substance
15 that it is clear that the applicant know-
16 ingly filed the application solely or in part
17 to delay removal from the United States,
18 to seek employment authorization as an
19 applicant for asylum pursuant to regula-
20 tions issued pursuant to paragraph (2), or
21 to seek issuance of a Notice to Appear in
22 order to pursue Cancellation of Removal
23 under section 240A(b); or

24 “(ii) any of the material elements are
25 knowingly fabricated.

1 “(C) SUFFICIENT OPPORTUNITY TO CLAR-
2 IFY.—In determining that an application is friv-
3 olous, the Secretary or the Attorney General,
4 must be satisfied that the applicant, during the
5 course of the proceedings, has had sufficient op-
6 portunity to clarify any discrepancies or implau-
7 sible aspects of the claim.

8 “(D) WITHHOLDING OF REMOVAL NOT
9 PRECLUDED.—For purposes of this section, a
10 finding that an alien filed a frivolous asylum
11 application shall not preclude the alien from
12 seeking withholding of removal under section
13 241(b)(3) or protection pursuant to the Con-
14 vention Against Torture.”.

15 **SEC. 111. TECHNICAL AMENDMENTS.**

16 Section 208 of the Immigration and Nationality Act
17 (8 U.S.C. 1158) is amended—

18 (1) in subsection (a)—

19 (A) in paragraph (2)(D), by inserting
20 “Secretary of Homeland Security or the” before
21 “Attorney General”; and

22 (B) in paragraph (3), by inserting “Sec-
23 retary of Homeland Security or the” before
24 “Attorney General”;

1 (2) in subsection (b)(2), by inserting “Secretary
2 of Homeland Security or the” before “Attorney Gen-
3 eral” each place such term appears;

4 (3) in subsection (c)—

5 (A) in paragraph (1), by striking “Attor-
6 ney General” each place such term appears and
7 inserting “Secretary of Homeland Security”;

8 (B) in paragraph (2), in the matter pre-
9 ceeding subparagraph (A), by inserting “Sec-
10 retary of Homeland Security or the” before
11 “Attorney General”; and

12 (C) in paragraph (3), by inserting “Sec-
13 retary of Homeland Security or the” before
14 “Attorney General”; and

15 (4) in subsection (d)—

16 (A) in paragraph (1), by inserting “Sec-
17 retary of Homeland Security or the” before
18 “Attorney General” each place such term ap-
19 pears;

20 (B) in paragraph (2), by striking “Attor-
21 ney General” and inserting “Secretary of
22 Homeland Security”; and

23 (C) in paragraph (5)—

1 (i) in subparagraph (A), by striking
2 “Attorney General” and inserting “Sec-
3 retary of Homeland Security”; and

4 (ii) in subparagraph (B), by inserting
5 “Secretary of Homeland Security or the”
6 before “Attorney General”.

7 **SEC. 112. REQUIREMENT FOR PROCEDURES RELATING TO**
8 **CERTAIN ASYLUM APPLICATIONS.**

9 (a) IN GENERAL.—Not later than 30 days after the
10 date of the enactment of this Act, the Attorney General
11 shall establish procedures to expedite the adjudication of
12 asylum applications for aliens—

13 (1) who are subject to removal proceedings
14 under section 240 of the Immigration and Nation-
15 ality Act (8 U.S.C. 1229a); and

16 (2) who are nationals of a Western Hemisphere
17 country sanctioned by the United States, as de-
18 scribed in subsection (b), as of January 1, 2023.

19 (b) WESTERN HEMISPHERE COUNTRY SANCTIONED
20 BY THE UNITED STATES DESCRIBED.—Subsection (a)
21 shall apply only to an asylum application filed by an alien
22 who is a national of a Western Hemisphere country sub-
23 ject to sanctions pursuant to—

1 (1) the Cuban Liberty and Democratic Soli-
2 darity (LIBERTAD) Act of 1996 (22 U.S.C. 6021
3 note);

4 (2) the Reinforcing Nicaragua’s Adherence to
5 Conditions for Electoral Reform Act of 2021 or the
6 RENACER Act (50 U.S.C. 1701 note); or

7 (3) Executive Order 13692 (80 Fed. Reg.
8 12747; declaring a national emergency with respect
9 to the situation in Venezuela).

10 (c) APPLICABILITY.—This section shall only apply to
11 an alien who files an application for asylum after the date
12 of the enactment of this Act.

13 **TITLE II—BORDER SAFETY AND** 14 **MIGRANT PROTECTION**

15 **SEC. 201. SHORT TITLE.**

16 This title may be cited as the “Border Safety and
17 Migrant Protection Act of 2023”.

18 **SEC. 202. INSPECTION OF APPLICANTS FOR ADMISSION.**

19 Section 235 of the Immigration and Nationality Act
20 (8 U.S.C. 1225) is amended—

21 (1) in subsection (b)—

22 (A) in paragraph (1)—

23 (i) in subparagraph (A)—

24 (I) in clauses (i) and (ii), by
25 striking “section 212(a)(6)(C)” in-

1 serting “subparagraph (A) or (C) of
2 section 212(a)(6)”; and

3 (II) by adding at the end the fol-
4 lowing:

5 “(iv) INELIGIBILITY FOR PAROLE.—
6 An alien described in clause (i) or (ii) shall
7 not be eligible for parole except as ex-
8 pressly authorized pursuant to section
9 212(d)(5), or for parole or release pursu-
10 ant to section 236(a).”; and

11 (ii) in subparagraph (B)—

12 (I) in clause (ii), by striking
13 “asylum.” and inserting “asylum and
14 shall not be released (including pursu-
15 ant to parole or release pursuant to
16 section 236(a) but excluding as ex-
17 pressly authorized pursuant to section
18 212(d)(5)) other than to be removed
19 or returned to a country as described
20 in paragraph (3).”; and

21 (II) in clause (iii)(IV)—

22 (aa) in the header by strik-
23 ing “DETENTION” and inserting
24 “DETENTION, RETURN, OR RE-
25 MOVAL”; and

1 (bb) by adding at the end
2 the following: “The alien shall
3 not be released (including pursu-
4 ant to parole or release pursuant
5 to section 236(a) but excluding
6 as expressly authorized pursuant
7 to section 212(d)(5)) other than
8 to be removed or returned to a
9 country as described in para-
10 graph (3).”;

11 (B) in paragraph (2)—

12 (i) in subparagraph (A)—

13 (I) by striking “Subject to sub-
14 paragraphs (B) and (C),” and insert-
15 ing “Subject to subparagraph (B) and
16 paragraph (3),”; and

17 (II) by adding at the end the fol-
18 lowing: “The alien shall not be re-
19 leased (including pursuant to parole
20 or release pursuant to section 236(a)
21 but excluding as expressly authorized
22 pursuant to section 212(d)(5)) other
23 than to be removed or returned to a
24 country as described in paragraph
25 (3).”; and

1 (ii) by striking subparagraph (C);
2 (C) by redesignating paragraph (3) as
3 paragraph (6); and
4 (D) by inserting after paragraph (2) the
5 following:

6 “(3) RETURN TO FOREIGN TERRITORY CONTIG-
7 UOUS TO THE UNITED STATES.—

8 “(A) IN GENERAL.—The Secretary of
9 Homeland Security may return to a foreign ter-
10 ritory contiguous to the United States any alien
11 arriving on land from that territory (whether or
12 not at a designated port of entry) pending a
13 proceeding under section 240 or review of a de-
14 termination under subsection (b)(1)(B)(iii)(III).

15 “(B) MANDATORY RETURN.—If at any
16 time the Secretary of Homeland Security can-
17 not—

18 “(i) comply with its obligations to de-
19 tain an alien as required under clause (ii)
20 and (iii)(IV) of subsection (b)(1)(B) and
21 subsection (b)(2)(A); or

22 “(ii) remove an alien to a country de-
23 scribed in section 208(a)(2)(A),
24 the Secretary of Homeland Security shall, with-
25 out exception, including pursuant to parole or

1 release pursuant to section 236(a) but exclud-
2 ing as expressly authorized pursuant to section
3 212(d)(5), return to a foreign territory contig-
4 uous to the United States any alien arriving on
5 land from that territory (whether or not at a
6 designated port of entry) pending a proceeding
7 under section 240 or review of a determination
8 under subsection (b)(1)(B)(iii)(III).

9 “(4) REQUIRED SUSPENSION OF ENTRY OF
10 ALIENS.—Notwithstanding any other provision of
11 law, the Secretary of Homeland Security shall pro-
12 hibit the entry of aliens who are inadmissible under
13 subparagraph (A) or (C) of section 212(a)(6) or
14 under section 212(a)(7) for any period during which
15 the Secretary cannot comply with the requirements
16 under section 212(b)(3)(B).

17 “(5) ENFORCEMENT BY STATE ATTORNEYS
18 GENERAL.—The attorney general of a State, or
19 other authorized State officer, alleging a violation of
20 the detention, return, removal, or suspension re-
21 quirements under paragraph (1), (2), (3), or (4)
22 that affects such State or its residents, may bring
23 an action against the Secretary of Homeland Secu-
24 rity on behalf of the residents of the State in an ap-

1 appropriate United States district court to obtain ap-
 2 propriate injunctive relief.”; and

3 (2) by adding at the end the following:

4 “(e) **AUTHORITY TO PROHIBIT INTRODUCTION OF**
 5 **CERTAIN ALIENS.**—If the Secretary of Homeland Security
 6 determines, in his discretion, that the prohibition of the
 7 introduction of aliens who are inadmissible under subpara-
 8 graph (A) or (C) of section 212(a)(6) or under section
 9 212(a)(7) at an international land or maritime border of
 10 the United States is necessary to achieve operational con-
 11 trol (as defined in section 2 of the Secure Fence Act of
 12 2006 (8 U.S.C. 1701 note)) of such border, the Secretary
 13 may prohibit, in whole or in part, the introduction of such
 14 aliens at such border for such period of time as the Sec-
 15 retary determines is necessary for such purpose.”.

16 **TITLE III—ENSURING UNITED**
 17 **FAMILIES AT THE BORDER**

18 **SEC. 301. SHORT TITLE.**

19 This title may be cited as the “Ensuring United
 20 Families at the Border Act”.

21 **SEC. 302. CLARIFICATION OF STANDARDS FOR FAMILY DE-**
 22 **TENTION.**

23 (a) **IN GENERAL.**—Section 235 of the William Wil-
 24 berforce Trafficking Victims Protection Reauthorization

1 Act of 2008 (8 U.S.C. 1232) is amended by adding at
2 the end the following:

3 “(j) CONSTRUCTION.—

4 “(1) IN GENERAL.—Notwithstanding any other
5 provision of law, judicial determination, consent de-
6 cree, or settlement agreement, the detention of any
7 alien child who is not an unaccompanied alien child
8 shall be governed by sections 217, 235, 236, and
9 241 of the Immigration and Nationality Act (8
10 U.S.C. 1187, 1225, 1226, and 1231). There is no
11 presumption that an alien child who is not an unac-
12 companied alien child should not be detained.

13 “(2) FAMILY DETENTION.—The Secretary of
14 Homeland Security shall—

15 “(A) maintain the care and custody of an
16 alien, during the period during which the
17 charges described in clause (i) are pending,
18 who—

19 “(i) is charged only with a mis-
20 demeanor offense under section 275(a) of
21 the Immigration and Nationality Act (8
22 U.S.C. 1325(a)); and

23 “(ii) entered the United States with
24 the alien’s child who has not attained 18
25 years of age; and

1 “(B) detain the alien with the alien’s
2 child.”.

3 (b) SENSE OF CONGRESS.—It is the sense of Con-
4 gress that the amendments in this section to section 235
5 of the William Wilberforce Trafficking Victims Protection
6 Reauthorization Act of 2008 (8 U.S.C. 1232) are intended
7 to satisfy the requirements of the Settlement Agreement
8 in *Flores v. Meese*, No. 85–4544 (C.D. Cal), as approved
9 by the court on January 28, 1997, with respect to its in-
10 terpretation in *Flores v. Johnson*, 212 F. Supp. 3d 864
11 (C.D. Cal. 2015), that the agreement applies to accom-
12 panied minors.

13 (c) EFFECTIVE DATE.—The amendment made by
14 subsection (a) shall take effect on the date of the enact-
15 ment of this Act and shall apply to all actions that occur
16 before, on, or after the date of the enactment of this Act.

17 (d) PREEMPTION OF STATE LICENSING REQUIRE-
18 MENTS.—Notwithstanding any other provision of law, ju-
19 dicial determination, consent decree, or settlement agree-
20 ment, no State may require that an immigration detention
21 facility used to detain children who have not attained 18
22 years of age, or families consisting of one or more of such
23 children and the parents or legal guardians of such chil-
24 dren, that is located in that State, be licensed by the State
25 or any political subdivision thereof.

1 **TITLE IV—PROTECTION OF**
2 **CHILDREN**

3 **SEC. 401. SHORT TITLE.**

4 This title may be cited as the “Protection of Children
5 Act of 2023”.

6 **SEC. 402. FINDINGS.**

7 Congress makes the following findings:

8 (1) Implementation of the provisions of the
9 Trafficking Victims Protection Reauthorization Act
10 of 2008 that govern unaccompanied alien children
11 has incentivized multiple surges of unaccompanied
12 alien children arriving at the southwest border in the
13 years since the bill’s enactment.

14 (2) The provisions of the Trafficking Victims
15 Protection Reauthorization Act of 2008 that govern
16 unaccompanied alien children treat unaccompanied
17 alien children from countries that are contiguous to
18 the United States disparately by swiftly returning
19 them to their home country absent indications of
20 trafficking or a credible fear of return, but allowing
21 for the release of unaccompanied alien children from
22 noncontiguous countries into the interior of the
23 United States, often to those individuals who paid to
24 smuggle them into the country in the first place.

1 (3) The provisions of the Trafficking Victims
2 Protection Reauthorization Act of 2008 governing
3 unaccompanied alien children have enriched the car-
4 tels, who profit hundreds of millions of dollars each
5 year by smuggling unaccompanied alien children to
6 the southwest border, exploiting and sexually abus-
7 ing many such unaccompanied alien children on the
8 perilous journey.

9 (4) Prior to 2008, the number of unaccom-
10 panied alien children encountered at the southwest
11 border never exceeded 1,000 in a single year.

12 (5) The United States is currently in the midst
13 of the worst crisis of unaccompanied alien children
14 in our nation's history, with over 350,000 such un-
15 accompanied alien children encountered at the
16 southwest border since Joe Biden became President.

17 (6) In 2022, during the Biden Administration,
18 152,057 unaccompanied alien children were encoun-
19 tered, the most ever in a single year and an over
20 400 percent increase compared to the last full fiscal
21 year of the Trump Administration in which 33,239
22 unaccompanied alien children were encountered.

23 (7) The Biden Administration has lost contact
24 with at least 85,000 unaccompanied alien children

1 who entered the United States since Joe Biden took
2 office.

3 (8) The Biden Administration dismantled effective
4 safeguards put in place by the Trump Administration that protected unaccompanied alien children
5 from being abused by criminals or exploited for illegal
6 and dangerous child labor.
7

8 (9) A recent New York Times investigation
9 found that unaccompanied alien children are being
10 exploited in the labor market and “are ending up in
11 some of the most punishing jobs in the country.”.

12 (10) The Times investigation found unaccompanied
13 alien children, “under intense pressure to
14 earn money” in order to “send cash back to their
15 families while often being in debt to their sponsors
16 for smuggling fees, rent, and living expenses,”
17 feared “that they had become trapped in circumstances
18 they never could have imagined.”.

19 (11) The Biden Administration’s Department of
20 Health and Human Services Secretary Xavier
21 Becerra compared placing unaccompanied alien children
22 with sponsors, to widgets in an assembly line,
23 stating that, “If Henry Ford had seen this in his
24 plant, he would have never become famous and rich.
25 This is not the way you do an assembly line.”.

1 (12) Department of Health and Human Serv-
2 ices employees working under Secretary Xavier
3 Becerra’s leadership penned a July 2021 memo-
4 randum expressing serious concern that “labor traf-
5 ficking was increasing” and that the agency had be-
6 come “one that rewards individuals for making quick
7 releases, and not one that rewards individuals for
8 preventing unsafe releases.”.

9 (13) Despite this, Secretary Xavier Becerra
10 pressured then-Director of the Office of Refugee Re-
11 settlement Cindy Huang to prioritize releases of un-
12 accompanied alien children over ensuring their safe-
13 ty, telling her “if she could not increase the number
14 of discharges he would find someone who could” and
15 then-Director Huang resigned one month later.

16 (14) In June 2014, the Obama-Biden Adminis-
17 tration requested legal authority to exercise discre-
18 tion in returning and removing unaccompanied alien
19 children from non-contiguous countries back to their
20 home countries.

21 (15) In August 2014, the House of Representa-
22 tives passed H.R. 5320, which included the Protec-
23 tion of Children Act.

24 (16) The Protection of Children Act of 2023
25 ends the disparate policies of the Trafficking Victims

1 Protection Reauthorization Act of 2008 by ensuring
2 the swift return of all unaccompanied alien children
3 to their country of origin if they are not victims of
4 trafficking and do not have a fear of return.

5 **SEC. 403. REPATRIATION OF UNACCOMPANIED ALIEN CHIL-**
6 **DREN.**

7 (a) IN GENERAL.—Section 235 of the William Wil-
8 berforce Trafficking Victims Protection Reauthorization
9 Act of 2008 (8 U.S.C. 1232) is amended—

10 (1) in subsection (a)—

11 (A) in paragraph (2)—

12 (i) by amending the heading to read
13 as follows: “RULES FOR UNACCOMPANIED
14 ALIEN CHILDREN.—”;

15 (ii) in subparagraph (A)—

16 (I) in the matter preceding clause
17 (i), by striking “who is a national or
18 habitual resident of a country that is
19 contiguous with the United States”;

20 (II) in clause (i), by inserting
21 “and” at the end;

22 (III) in clause (ii), by striking “;
23 and” and inserting a period; and

24 (IV) by striking clause (iii); and
25 (iii) in subparagraph (B)—

1 (I) in the matter preceding clause
2 (i), by striking “(8 U.S.C. 1101 et
3 seq.) may—” and inserting “(8
4 U.S.C. 1101 et seq.)—”;

5 (II) in clause (i), by inserting be-
6 fore “permit such child to withdraw”
7 the following: “may”; and

8 (III) in clause (ii), by inserting
9 before “return such child” the fol-
10 lowing: “shall”; and

11 (B) in paragraph (5)(D)—

12 (i) in the matter preceding clause (i),
13 by striking “, except for an unaccompanied
14 alien child from a contiguous country sub-
15 ject to the exceptions under subsection
16 (a)(2),” and inserting “who does not meet
17 the criteria listed in paragraph (2)(A)”;
18 and

19 (ii) in clause (i), by inserting before
20 the semicolon at the end the following: “,
21 which shall include a hearing before an im-
22 migration judge not later than 14 days
23 after being screened under paragraph (4)”;

24 (2) in subsection (b)—

25 (A) in paragraph (2)—

1 (i) in subparagraph (A), by inserting
2 before the semicolon the following: “be-
3 lieved not to meet the criteria listed in sub-
4 section (a)(2)(A)”;

5 (ii) in subparagraph (B), by inserting
6 before the period the following: “and does
7 not meet the criteria listed in subsection
8 (a)(2)(A)”;

9 (B) in paragraph (3), by striking “an un-
10 accompanied alien child in custody shall” and
11 all that follows, and inserting the following: “an
12 unaccompanied alien child in custody—

13 “(A) in the case of a child who does not
14 meet the criteria listed in subsection (a)(2)(A),
15 shall transfer the custody of such child to the
16 Secretary of Health and Human Services not
17 later than 30 days after determining that such
18 child is an unaccompanied alien child who does
19 not meet such criteria; or

20 “(B) in the case of a child who meets the
21 criteria listed in subsection (a)(2)(A), may
22 transfer the custody of such child to the Sec-
23 retary of Health and Human Services after de-
24 termining that such child is an unaccompanied
25 alien child who meets such criteria.”;

1 (3) in subsection (c)—

2 (A) in paragraph (3), by inserting at the
3 end the following:

4 “(D) INFORMATION ABOUT INDIVIDUALS
5 WITH WHOM CHILDREN ARE PLACED.—

6 “(i) INFORMATION TO BE PROVIDED
7 TO HOMELAND SECURITY.—Before placing
8 a child with an individual, the Secretary of
9 Health and Human Services shall provide
10 to the Secretary of Homeland Security, re-
11 garding the individual with whom the child
12 will be placed, information on—

13 “(I) the name of the individual;

14 “(II) the social security number
15 of the individual;

16 “(III) the date of birth of the in-
17 dividual;

18 “(IV) the location of the individ-
19 ual’s residence where the child will be
20 placed;

21 “(V) the immigration status of
22 the individual, if known; and

23 “(VI) contact information for the
24 individual.

1 “(ii) ACTIVITIES OF THE SECRETARY
2 OF HOMELAND SECURITY.—Not later than
3 30 days after receiving the information
4 listed in clause (i), the Secretary of Home-
5 land Security, upon determining that an
6 individual with whom a child is placed is
7 unlawfully present in the United States
8 and not in removal proceedings pursuant
9 to chapter 4 of title II of the Immigration
10 and Nationality Act (8 U.S.C. 1221 et
11 seq.), shall initiate such removal pro-
12 ceedings.”; and

13 (B) in paragraph (5)—

14 (i) by inserting after “to the greatest
15 extent practicable” the following: “(at no
16 expense to the Government)”; and

17 (ii) by striking “have counsel to rep-
18 resent them” and inserting “have access to
19 counsel to represent them”.

20 (b) EFFECTIVE DATE.—The amendments made by
21 this section shall apply to any unaccompanied alien child
22 apprehended on or after the date that is 30 days after
23 the date of enactment of this Act.

1 **SEC. 404. SPECIAL IMMIGRANT JUVENILE STATUS FOR IM-**
2 **MIGRANTS UNABLE TO REUNITE WITH EI-**
3 **THEIR PARENT.**

4 Section 101(a)(27)(J) of the Immigration and Na-
5 tionality Act (8 U.S.C. 1101(a)(27)(J)) is amended—

6 (1) in clause (i), by striking “, and whose reuni-
7 fication with 1 or both of the immigrant’s parents
8 is not viable due to abuse, neglect, abandonment, or
9 a similar basis found under State law”; and

10 (2) in clause (iii)—

11 (A) in subclause (I), by striking “and” at
12 the end;

13 (B) in subclause (II), by inserting “and”
14 after the semicolon; and

15 (C) by adding at the end the following:

16 “(III) an alien may not be grant-
17 ed special immigrant status under this
18 subparagraph if the alien’s reunifica-
19 tion with any one parent or legal
20 guardian is not precluded by abuse,
21 neglect, abandonment, or any similar
22 cause under State law;”.

1 **TITLE V—VISA OVERSTAYS**
2 **PENALTIES**

3 **SEC. 501. SHORT TITLE.**

4 This title may be cited as the “Visa Overstays Pen-
5 alties Act”.

6 **SEC. 502. EXPANDED PENALTIES FOR ILLEGAL ENTRY OR**
7 **PRESENCE.**

8 Section 275 of the Immigration and Nationality Act
9 (8 U.S.C. 1325) is amended—

10 (1) in subsection (a) by inserting after “for a
11 subsequent commission of any such offense” the fol-
12 lowing: “or if the alien was previously convicted of
13 an offense under subsection (e)(2)(A)”;

14 (2) in subsection (b)—

15 (A) in paragraph (1), by striking “at least
16 \$50 and not more than \$250” and inserting
17 “not less than \$500 and not more than
18 \$1,000”; and

19 (B) in paragraph (2), by inserting after
20 “in the case of an alien who has been previously
21 subject to a civil penalty under this subsection”
22 the following: “or subsection (e)(2)(B)”;

23 (3) by adding at the end the following:

24 “(e) VISA OVERSTAYS.—

1 “(1) IN GENERAL.—An alien who was admitted
2 as a nonimmigrant has violated this paragraph if the
3 alien, for an aggregate of 10 days or more, has
4 failed—

5 “(A) to maintain the nonimmigrant status
6 in which the alien was admitted, or to which it
7 was changed under section 248, including com-
8 plying with the period of stay authorized by the
9 Secretary of Homeland Security in connection
10 with such status; or

11 “(B) to comply otherwise with the condi-
12 tions of such nonimmigrant status.

13 “(2) PENALTIES.—An alien who has violated
14 paragraph (1)—

15 “(A) shall—

16 “(i) for the first commission of such a
17 violation, be fined under title 18, United
18 States Code, or imprisoned not more than
19 6 months, or both; and

20 “(ii) for a subsequent commission of
21 such a violation, or if the alien was pre-
22 viously convicted of an offense under sub-
23 section (a), be fined under such title 18, or
24 imprisoned not more than 2 years, or both;
25 and

1 “(B) in addition to, and not in lieu of, any
2 penalty under subparagraph (A) and any other
3 criminal or civil penalties that may be imposed,
4 shall be subject to a civil penalty of—

5 “(i) not less than \$500 and not more
6 than \$1,000 for each violation; or

7 “(ii) twice the amount specified in
8 clause (i), in the case of an alien who has
9 been previously subject to a civil penalty
10 under this subparagraph or subsection
11 (b).”.

12 **TITLE VI—IMMIGRATION** 13 **PAROLE REFORM**

14 **SEC. 601. SHORT TITLE.**

15 This title may be cited as the “Immigration Parole
16 Reform Act of 2023”.

17 **SEC. 602. IMMIGRATION PAROLE REFORM.**

18 Section 212(d)(5) of the Immigration and Nationality
19 Act (8 U.S.C. 1182(d)(5)) is amended to read as follows:

20 “(5)(A) Except as provided in subparagraphs
21 (B) and (C) and section 214(f), the Secretary of
22 Homeland Security, in the discretion of the Sec-
23 retary, may temporarily parole into the United
24 States any alien applying for admission to the
25 United States who is not present in the United

1 States, under such conditions as the Secretary may
2 prescribe, on a case-by-case basis, and not according
3 to eligibility criteria describing an entire class of po-
4 tential parole recipients, for urgent humanitarian
5 reasons or significant public benefit. Parole granted
6 under this subparagraph may not be regarded as an
7 admission of the alien. When the purposes of such
8 parole have been served in the opinion of the Sec-
9 retary, the alien shall immediately return or be re-
10 turned to the custody from which the alien was pa-
11 roled. After such return, the case of the alien shall
12 be dealt with in the same manner as the case of any
13 other applicant for admission to the United States.

14 “(B) The Secretary of Homeland Security may
15 grant parole to any alien who—

16 “(i) is present in the United States without
17 lawful immigration status;

18 “(ii) is the beneficiary of an approved peti-
19 tion under section 203(a);

20 “(iii) is not otherwise inadmissible or re-
21 movable; and

22 “(iv) is the spouse or child of a member of
23 the Armed Forces serving on active duty.

24 “(C) The Secretary of Homeland Security may
25 grant parole to any alien—

1 “(i) who is a national of the Republic of
2 Cuba and is living in the Republic of Cuba;

3 “(ii) who is the beneficiary of an approved
4 petition under section 203(a);

5 “(iii) for whom an immigrant visa is not
6 immediately available;

7 “(iv) who meets all eligibility requirements
8 for an immigrant visa;

9 “(v) who is not otherwise inadmissible; and

10 “(vi) who is receiving a grant of parole in
11 furtherance of the commitment of the United
12 States to the minimum level of annual legal mi-
13 gration of Cuban nationals to the United States
14 specified in the U.S.-Cuba Joint Communiqué
15 on Migration, done at New York September 9,
16 1994, and reaffirmed in the Cuba-United
17 States: Joint Statement on Normalization of
18 Migration, Building on the Agreement of Sep-
19 tember 9, 1994, done at New York May 2,
20 1995.

21 “(D) The Secretary of Homeland Security may
22 grant parole to an alien who is returned to a contig-
23 uous country under section 235(b)(2)(C) to allow
24 the alien to attend the alien’s immigration hearing.
25 The grant of parole shall not exceed the time re-

1 quired for the alien to be escorted to, and attend,
2 the alien’s immigration hearing scheduled on the
3 same calendar day as the grant, and to immediately
4 thereafter be escorted back to the contiguous coun-
5 try. A grant of parole under this subparagraph shall
6 not be considered for purposes of determining
7 whether the alien is inadmissible under this Act.

8 “(E) For purposes of determining an alien’s eli-
9 gibility for parole under subparagraph (A), an ur-
10 gent humanitarian reason shall be limited to cir-
11 cumstances in which the alien establishes that—

12 “(i)(I) the alien has a medical emergency;

13 and

14 “(II)(aa) the alien cannot obtain necessary
15 treatment in the foreign state in which the alien
16 is residing; or

17 “(bb) the medical emergency is life-threat-
18 ening and there is insufficient time for the alien
19 to be admitted to the United States through the
20 normal visa process;

21 “(ii) the alien is the parent or legal guard-
22 ian of an alien described in clause (i) and the
23 alien described in clause (i) is a minor;

24 “(iii) the alien is needed in the United
25 States in order to donate an organ or other tis-

1 sue for transplant and there is insufficient time
2 for the alien to be admitted to the United
3 States through the normal visa process;

4 “(iv) the alien has a close family member
5 in the United States whose death is imminent
6 and the alien could not arrive in the United
7 States in time to see such family member alive
8 if the alien were to be admitted to the United
9 States through the normal visa process;

10 “(v) the alien is seeking to attend the fu-
11 neral of a close family member and the alien
12 could not arrive in the United States in time to
13 attend such funeral if the alien were to be ad-
14 mitted to the United States through the normal
15 visa process;

16 “(vi) the alien is an adopted child with an
17 urgent medical condition who is in the legal
18 custody of the petitioner for a final adoption-re-
19 lated visa and whose medical treatment is re-
20 quired before the expected award of a final
21 adoption-related visa; or

22 “(vii) the alien is a lawful applicant for ad-
23 justment of status under section 245 and is re-
24 turning to the United States after temporary
25 travel abroad.

1 “(F) For purposes of determining an alien’s eli-
2 gibility for parole under subparagraph (A), a signifi-
3 cant public benefit may be determined to result from
4 the parole of an alien only if—

5 “(i) the alien has assisted (or will assist,
6 whether knowingly or not) the United States
7 Government in a law enforcement matter;

8 “(ii) the alien’s presence is required by the
9 Government in furtherance of such law enforce-
10 ment matter; and

11 “(iii) the alien is inadmissible, does not
12 satisfy the eligibility requirements for admission
13 as a nonimmigrant, or there is insufficient time
14 for the alien to be admitted to the United
15 States through the normal visa process.

16 “(G) For purposes of determining an alien’s eli-
17 gibility for parole under subparagraph (A), the term
18 ‘case-by-case basis’ means that the facts in each in-
19 dividual case are considered and parole is not grant-
20 ed based on membership in a defined class of aliens
21 to be granted parole. The fact that aliens are consid-
22 ered for or granted parole one-by-one and not as a
23 group is not sufficient to establish that the parole
24 decision is made on a ‘case-by-case basis’.

1 “(H) The Secretary of Homeland Security may
2 not use the parole authority under this paragraph to
3 parole an alien into the United States for any reason
4 or purpose other than those described in subpara-
5 graphs (B), (C), (D), (E), and (F).

6 “(I) An alien granted parole may not accept
7 employment, except that an alien granted parole
8 pursuant to subparagraph (B) or (C) is authorized
9 to accept employment for the duration of the parole,
10 as evidenced by an employment authorization docu-
11 ment issued by the Secretary of Homeland Security.

12 “(J) Parole granted after a departure from the
13 United States shall not be regarded as an admission
14 of the alien. An alien granted parole, whether as an
15 initial grant of parole or parole upon reentry into
16 the United States, is not eligible to adjust status to
17 lawful permanent residence or for any other immi-
18 gration benefit if the immigration status the alien
19 had at the time of departure did not authorize the
20 alien to adjust status or to be eligible for such ben-
21 efit.

22 “(K)(i) Except as provided in clauses (ii) and
23 (iii), parole shall be granted to an alien under this
24 paragraph for the shorter of—

1 “(I) a period of sufficient length to accom-
2 plish the activity described in subparagraph
3 (D), (E), or (F) for which the alien was grant-
4 ed parole; or

5 “(II) 1 year.

6 “(ii) Grants of parole pursuant to subparagraph
7 (A) may be extended once, in the discretion of the
8 Secretary, for an additional period that is the short-
9 er of—

10 “(I) the period that is necessary to accom-
11 plish the activity described in subparagraph (E)
12 or (F) for which the alien was granted parole;
13 or

14 “(II) 1 year.

15 “(iii) Aliens who have a pending application to
16 adjust status to permanent residence under section
17 245 may request extensions of parole under this
18 paragraph, in 1-year increments, until the applica-
19 tion for adjustment has been adjudicated. Such pa-
20 role shall terminate immediately upon the denial of
21 such adjustment application.

22 “(L) Not later than 90 days after the last day
23 of each fiscal year, the Secretary of Homeland Secu-
24 rity shall submit to the Committee on the Judiciary
25 of the Senate and the Committee on the Judiciary

1 of the House of Representatives and make available
2 to the public, a report—

3 “(i) identifying the total number of aliens
4 paroled into the United States under this para-
5 graph during the previous fiscal year; and

6 “(ii) containing information and data re-
7 garding all aliens paroled during such fiscal
8 year, including—

9 “(I) the duration of parole;

10 “(II) the type of parole; and

11 “(III) the current status of the aliens
12 so paroled.”.

13 **SEC. 603. IMPLEMENTATION.**

14 (a) **IN GENERAL.**—Except as provided in subsection
15 (b), this Act and the amendments made by this Act shall
16 take effect on the date that is 30 days after the date of
17 the enactment of this Act.

18 (b) **EXCEPTIONS.**—Notwithstanding subsection (a),
19 each of the following exceptions apply:

20 (1) Any application for parole or advance parole
21 filed by an alien before the date of the enactment of
22 this Act shall be adjudicated under the law that was
23 in effect on the date on which the application was
24 properly filed and any approved advance parole shall

1 remain valid under the law that was in effect on the
2 date on which the advance parole was approved.

3 (2) Section 212(d)(5)(J) of the Immigration
4 and Nationality Act, as added by section 2, shall
5 take effect on the date of the enactment of this Act.

6 (3) Aliens who were paroled into the United
7 States pursuant to section 212(d)(5)(A) of the Im-
8 migration and Nationality Act (8 U.S.C.
9 1182(d)(5)(A)) before January 1, 2023, shall con-
10 tinue to be subject to the terms of parole that were
11 in effect on the date on which their respective parole
12 was approved.

13 **SEC. 604. CAUSE OF ACTION.**

14 Any person, State, or local government that experi-
15 ences financial harm in excess of \$1,000 due to a failure
16 of the Federal Government to lawfully apply the provisions
17 of this Act or the amendments made by this Act shall have
18 standing to bring a civil action against the Federal Gov-
19 ernment in an appropriate district court of the United
20 States for appropriate relief.

21 **SEC. 605. SEVERABILITY.**

22 If any provision of this Act or any amendment by
23 this Act, or the application of such provision or amend-
24 ment to any person or circumstance, is held to be uncon-
25 stitutional, the remainder of this Act and the application

1 of such provision or amendment to any other person or
 2 circumstance shall not be affected.

3 **TITLE VII—LEGAL WORKFORCE**

4 **SEC. 701. SHORT TITLE.**

5 This title may be cited as the “Legal Workforce Act”.

6 **SEC. 702. EMPLOYMENT ELIGIBILITY VERIFICATION PROC-** 7 **ESS.**

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

11 “(b) EMPLOYMENT ELIGIBILITY VERIFICATION
 12 PROCESS.—

13 “(1) NEW HIRES, RECRUITMENT, AND REFER-
 14 RAL.—The requirements referred to in paragraphs
 15 (1)(B) and (3) of subsection (a) are, in the case of
 16 a person or other entity hiring, recruiting, or refer-
 17 ring an individual for employment in the United
 18 States, the following:

19 “(A) ATTESTATION AFTER EXAMINATION
 20 OF DOCUMENTATION.—

21 “(i) ATTESTATION.—During the
 22 verification period (as defined in subpara-
 23 graph (E)), the person or entity shall at-
 24 test, under penalty of perjury and on a
 25 form, including electronic and telephonic

1 formats, designated or established by the
2 Secretary by regulation not later than 6
3 months after the date of the enactment of
4 the Legal Workforce Act, that it has
5 verified that the individual is not an unau-
6 thorized alien by—

7 “(I) obtaining from the indi-
8 vidual the individual’s social security
9 account number or United States
10 passport number and recording the
11 number on the form (if the individual
12 claims to have been issued such a
13 number), and, if the individual does
14 not attest to United States nationality
15 under subparagraph (B), obtaining
16 such identification or authorization
17 number established by the Depart-
18 ment of Homeland Security for the
19 alien as the Secretary of Homeland
20 Security may specify, and recording
21 such number on the form; and

22 “(II) examining—

23 “(aa) a document relating to
24 the individual presenting it de-
25 scribed in clause (ii); or

1 “(bb) a document relating to
2 the individual presenting it de-
3 scribed in clause (iii) and a docu-
4 ment relating to the individual
5 presenting it described in clause
6 (iv).

7 “(ii) DOCUMENTS EVIDENCING EM-
8 PLOYMENT AUTHORIZATION AND ESTAB-
9 LISHING IDENTITY.—A document de-
10 scribed in this subparagraph is an individ-
11 ual’s—

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

14 “(II) unexpired permanent resi-
15 dent card that contains a photograph;

16 “(III) unexpired employment au-
17 thorization card that contains a pho-
18 tograph;

19 “(IV) in the case of a non-
20 immigrant alien authorized to work
21 for a specific employer incident to sta-
22 tus, a foreign passport with Form I-
23 94 or Form I-94A, or other docu-
24 mentation as designated by the Sec-
25 retary specifying the alien’s non-

1 immigrant status as long as the pe-
2 riod of status has not yet expired and
3 the proposed employment is not in
4 conflict with any restrictions or limita-
5 tions identified in the documentation;

6 “(V) passport from the Fed-
7 erated States of Micronesia (FSM) or
8 the Republic of the Marshall Islands
9 (RMI) with Form I-94 or Form I-
10 94A, or other documentation as des-
11 ignated by the Secretary, indicating
12 nonimmigrant admission under the
13 Compact of Free Association Between
14 the United States and the FSM or
15 RMI; or

16 “(VI) other document designated
17 by the Secretary of Homeland Secu-
18 rity, if the document—

19 “(aa) contains a photograph
20 of the individual and biometric
21 identification data from the indi-
22 vidual and such other personal
23 identifying information relating
24 to the individual as the Secretary
25 of Homeland Security finds, by

1 regulation, sufficient for purposes
2 of this clause;

3 “(bb) is evidence of author-
4 ization of employment in the
5 United States; and

6 “(cc) contains security fea-
7 tures to make it resistant to tam-
8 pering, counterfeiting, and fraud-
9 ulent use.

10 “(iii) DOCUMENTS EVIDENCING EM-
11 PLOYMENT AUTHORIZATION.—A document
12 described in this subparagraph is an indi-
13 vidual’s social security account number
14 card (other than such a card which speci-
15 fies on the face that the issuance of the
16 card does not authorize employment in the
17 United States).

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

21 “(I) an individual’s unexpired
22 State issued driver’s license or identi-
23 fication card if it contains a photo-
24 graph and information such as name,

1 date of birth, gender, height, eye
2 color, and address;

3 “(II) an individual’s unexpired
4 U.S. military identification card;

5 “(III) an individual’s unexpired
6 Native American tribal identification
7 document issued by a tribal entity rec-
8 ognized by the Bureau of Indian Af-
9 fairs; or

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

15 “(v) AUTHORITY TO PROHIBIT USE OF
16 CERTAIN DOCUMENTS.—If the Secretary of
17 Homeland Security finds, by regulation,
18 that any document described in clause (i),
19 (ii), or (iii) as establishing employment au-
20 thorization or identity does not reliably es-
21 tablish such authorization or identity or is
22 being used fraudulently to an unacceptable
23 degree, the Secretary may prohibit or place
24 conditions on its use for purposes of this
25 paragraph.

1 “(vi) SIGNATURE.—Such attestation
2 may be manifested by either a handwritten
3 or electronic signature.

4 “(B) INDIVIDUAL ATTESTATION OF EM-
5 PLOYMENT AUTHORIZATION.—During the veri-
6 fication period (as defined in subparagraph
7 (E)), the individual shall attest, under penalty
8 of perjury on the form designated or established
9 for purposes of subparagraph (A), that the indi-
10 vidual is a citizen or national of the United
11 States, an alien lawfully admitted for perma-
12 nent residence, or an alien who is authorized
13 under this Act or by the Secretary of Homeland
14 Security to be hired, recruited, or referred for
15 such employment. Such attestation may be
16 manifested by either a handwritten or electronic
17 signature. The individual shall also provide that
18 individual’s social security account number or
19 United States passport number (if the indi-
20 vidual claims to have been issued such a num-
21 ber), and, if the individual does not attest to
22 United States nationality under this subpara-
23 graph, such identification or authorization num-
24 ber established by the Department of Homeland

1 Security for the alien as the Secretary may
2 specify.

3 “(C) RETENTION OF VERIFICATION FORM
4 AND VERIFICATION.—

5 “(i) IN GENERAL.—After completion
6 of such form in accordance with subpara-
7 graphs (A) and (B), the person or entity
8 shall—

9 “(I) retain a paper, microfiche,
10 microfilm, or electronic version of the
11 form and make it available for inspec-
12 tion by officers of the Department of
13 Homeland Security, the Department
14 of Justice, or the Department of
15 Labor during a period beginning on
16 the date of the recruiting or referral
17 of the individual, or, in the case of the
18 hiring of an individual, the date on
19 which the verification is completed,
20 and ending—

21 “(aa) in the case of the re-
22 cruiting or referral of an indi-
23 vidual, 3 years after the date of
24 the recruiting or referral; and

1 “(bb) in the case of the hir-
2 ing of an individual, the later of
3 3 years after the date the verifi-
4 cation is completed or one year
5 after the date the individual’s
6 employment is terminated; and

7 “(II) during the verification pe-
8 riod (as defined in subparagraph (E)),
9 make an inquiry, as provided in sub-
10 section (d), using the verification sys-
11 tem to seek verification of the identity
12 and employment eligibility of an indi-
13 vidual.

14 “(ii) CONFIRMATION.—

15 “(I) CONFIRMATION RE-
16 CEIVED.—If the person or other entity
17 receives an appropriate confirmation
18 of an individual’s identity and work
19 eligibility under the verification sys-
20 tem within the time period specified,
21 the person or entity shall record on
22 the form an appropriate code that is
23 provided under the system and that
24 indicates a final confirmation of such

1 identity and work eligibility of the in-
2 dividual.

3 “(II) TENTATIVE NONCONFIRMA-
4 TION RECEIVED.—If the person or
5 other entity receives a tentative non-
6 confirmation of an individual’s iden-
7 tity or work eligibility under the
8 verification system within the time pe-
9 riod specified, the person or entity
10 shall so inform the individual for
11 whom the verification is sought. If the
12 individual does not contest the non-
13 confirmation within the time period
14 specified, the nonconfirmation shall be
15 considered final. The person or entity
16 shall then record on the form an ap-
17 propriate code which has been pro-
18 vided under the system to indicate a
19 final nonconfirmation. If the indi-
20 vidual does contest the nonconfirma-
21 tion, the individual shall utilize the
22 process for secondary verification pro-
23 vided under subsection (d). The non-
24 confirmation will remain tentative
25 until a final confirmation or noncon-

1 firmation is provided by the verifica-
2 tion system within the time period
3 specified. In no case shall an employer
4 terminate employment of an individual
5 because of a failure of the individual
6 to have identity and work eligibility
7 confirmed under this section until a
8 nonconfirmation becomes final. Noth-
9 ing in this clause shall apply to a ter-
10 mination of employment for any rea-
11 son other than because of such a fail-
12 ure. In no case shall an employer re-
13 scind the offer of employment to an
14 individual because of a failure of the
15 individual to have identity and work
16 eligibility confirmed under this sub-
17 section until a nonconfirmation be-
18 comes final. Nothing in this subclause
19 shall apply to a rescission of the offer
20 of employment for any reason other
21 than because of such a failure.

22 “(III) FINAL CONFIRMATION OR
23 NONCONFIRMATION RECEIVED.—If a
24 final confirmation or nonconfirmation
25 is provided by the verification system

1 regarding an individual, the person or
2 entity shall record on the form an ap-
3 propriate code that is provided under
4 the system and that indicates a con-
5 firmation or nonconfirmation of iden-
6 tity and work eligibility of the indi-
7 vidual.

8 “(IV) EXTENSION OF TIME.—If
9 the person or other entity in good
10 faith attempts to make an inquiry
11 during the time period specified and
12 the verification system has registered
13 that not all inquiries were received
14 during such time, the person or entity
15 may make an inquiry in the first sub-
16 sequent working day in which the
17 verification system registers that it
18 has received all inquiries. If the
19 verification system cannot receive in-
20 quiries at all times during a day, the
21 person or entity merely has to assert
22 that the entity attempted to make the
23 inquiry on that day for the previous
24 sentence to apply to such an inquiry,

1 and does not have to provide any ad-
2 ditional proof concerning such inquiry.

3 “(V) CONSEQUENCES OF NON-
4 CONFIRMATION.—

5 “(aa) TERMINATION OR NO-
6 TIFICATION OF CONTINUED EM-
7 PLOYMENT.—If the person or
8 other entity has received a final
9 nonconfirmation regarding an in-
10 dividual, the person or entity
11 may terminate employment of the
12 individual (or decline to recruit
13 or refer the individual). If the
14 person or entity does not termi-
15 nate employment of the indi-
16 vidual or proceeds to recruit or
17 refer the individual, the person or
18 entity shall notify the Secretary
19 of Homeland Security of such
20 fact through the verification sys-
21 tem or in such other manner as
22 the Secretary may specify.

23 “(bb) FAILURE TO NO-
24 TIFY.—If the person or entity
25 fails to provide notice with re-

1 spect to an individual as required
2 under item (aa), the failure is
3 deemed to constitute a violation
4 of subsection (a)(1)(A) with re-
5 spect to that individual.

6 “(VI) CONTINUED EMPLOYMENT
7 AFTER FINAL NONCONFIRMATION.—If
8 the person or other entity continues to
9 employ (or to recruit or refer) an indi-
10 vidual after receiving final noncon-
11 firmation, a rebuttable presumption is
12 created that the person or entity has
13 violated subsection (a)(1)(A).

14 “(D) EFFECTIVE DATES OF NEW PROCE-
15 DURES.—

16 “(i) HIRING.—Except as provided in
17 clause (iii), the provisions of this para-
18 graph shall apply to a person or other enti-
19 ty hiring an individual for employment in
20 the United States as follows:

21 “(I) With respect to employers
22 having 10,000 or more employees in
23 the United States on the date of the
24 enactment of the Legal Workforce
25 Act, on the date that is 6 months

1 after the date of the enactment of
2 such Act.

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

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

19 “(IV) With respect to employers
20 having one or more employees in the
21 United States, but less than 20 em-
22 ployees in the United States, on the
23 date of the enactment of the Legal
24 Workforce Act, on the date that is 24

1 months after the date of the enact-
2 ment of such Act.

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

11 “(iii) AGRICULTURAL LABOR OR SERV-
12 ICES.—With respect to an employee per-
13 forming agricultural labor or services, this
14 paragraph shall not apply with respect to
15 the verification of the employee until the
16 date that is 36 months after the date of
17 the enactment of the Legal Workforce Act.
18 For purposes of the preceding sentence,
19 the term ‘agricultural labor or services’ has
20 the meaning given such term by the Sec-
21 retary of Agriculture in regulations and in-
22 cludes agricultural labor as defined in sec-
23 tion 3121(g) of the Internal Revenue Code
24 of 1986, agriculture as defined in section
25 3(f) of the Fair Labor Standards Act of

1 1938 (29 U.S.C. 203(f)), the handling,
2 planting, drying, packing, packaging, proc-
3 essing, freezing, or grading prior to deliv-
4 ery for storage of any agricultural or horti-
5 cultural commodity in its unmanufactured
6 state, all activities required for the prepa-
7 ration, processing or manufacturing of a
8 product of agriculture (as such term is de-
9 fined in such section 3(f)) for further dis-
10 tribution, and activities similar to all the
11 foregoing as they relate to fish or shellfish
12 facilities. An employee described in this
13 clause shall not be counted for purposes of
14 clause (i).

15 “(iv) EXTENSIONS.—

16 “(I) ON REQUEST.—Upon re-
17 quest by an employer having 50 or
18 fewer employees, the Secretary shall
19 allow a one-time 6-month extension of
20 the effective date set out in this sub-
21 paragraph applicable to such em-
22 ployer. Such request shall be made to
23 the Secretary and shall be made prior
24 to such effective date.

1 “(II) FOLLOWING REPORT.—If
2 the study under section 715 of the
3 Legal Workforce Act has been sub-
4 mitted in accordance with such sec-
5 tion, the Secretary of Homeland Secu-
6 rity may extend the effective date set
7 out in clause (iii) on a one-time basis
8 for 12 months.

9 “(v) TRANSITION RULE.—Subject to
10 paragraph (4), the following shall apply to
11 a person or other entity hiring, recruiting,
12 or referring an individual for employment
13 in the United States until the effective
14 date or dates applicable under clauses (i)
15 through (iii):

16 “(I) This subsection, as in effect
17 before the enactment of the Legal
18 Workforce Act.

19 “(II) Subtitle A of title IV of the
20 Illegal Immigration Reform and Im-
21 migrant Responsibility Act of 1996 (8
22 U.S.C. 1324a note), as in effect be-
23 fore the effective date in section 7(c)
24 of the Legal Workforce Act.

1 “(III) Any other provision of
2 Federal law requiring the person or
3 entity to participate in the E-Verify
4 Program described in section 403(a)
5 of the Illegal Immigration Reform and
6 Immigrant Responsibility Act of 1996
7 (8 U.S.C. 1324a note), as in effect be-
8 fore the effective date in section 7(c)
9 of the Legal Workforce Act, including
10 Executive Order 13465 (8 U.S.C.
11 1324a note; relating to Government
12 procurement).

13 “(E) VERIFICATION PERIOD DEFINED.—

14 “(i) IN GENERAL.—For purposes of
15 this paragraph:

16 “(I) In the case of recruitment or
17 referral, the term ‘verification period’
18 means the period ending on the date
19 recruiting or referring commences.

20 “(II) In the case of hiring, the
21 term ‘verification period’ means the
22 period beginning on the date on which
23 an offer of employment is extended
24 and ending on the date that is three
25 business days after the date of hire,

1 except as provided in clause (iii). The
2 offer of employment may be condi-
3 tioned in accordance with clause (ii).

4 “(ii) JOB OFFER MAY BE CONDI-
5 TIONAL.—A person or other entity may
6 offer a prospective employee an employ-
7 ment position that is conditioned on final
8 verification of the identity and employment
9 eligibility of the employee using the proce-
10 dures established under this paragraph.

11 “(iii) SPECIAL RULE.—Notwithstand-
12 ing clause (i)(II), in the case of an alien
13 who is authorized for employment and who
14 provides evidence from the Social Security
15 Administration that the alien has applied
16 for a social security account number, the
17 verification period ends three business days
18 after the alien receives the social security
19 account number.

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

22 “(A) IN GENERAL.—Except as provided in
23 subparagraph (B), a person or entity shall
24 make an inquiry, as provided in subsection (d),
25 using the verification system to seek reverifica-

1 tion of the identity and employment eligibility
2 of all individuals with a limited period of work
3 authorization employed by the person or entity
4 during the three business days after the date on
5 which the employee’s work authorization expires
6 as follows:

7 “(i) With respect to employers having
8 10,000 or more employees in the United
9 States on the date of the enactment of the
10 Legal Workforce Act, beginning on the
11 date that is 6 months after the date of the
12 enactment of such Act.

13 “(ii) With respect to employers having
14 500 or more employees in the United
15 States, but less than 10,000 employees in
16 the United States, on the date of the en-
17 actment of the Legal Workforce Act, be-
18 ginning on the date that is 12 months
19 after the date of the enactment of such
20 Act.

21 “(iii) With respect to employers hav-
22 ing 20 or more employees in the United
23 States, but less than 500 employees in the
24 United States, on the date of the enact-
25 ment of the Legal Workforce Act, begin-

1 ning on the date that is 18 months after
2 the date of the enactment of such Act.

3 “(iv) With respect to employers hav-
4 ing one or more employees in the United
5 States, but less than 20 employees in the
6 United States, on the date of the enact-
7 ment of the Legal Workforce Act, begin-
8 ning on the date that is 24 months after
9 the date of the enactment of such Act.

10 “(B) AGRICULTURAL LABOR OR SERV-
11 ICES.—With respect to an employee performing
12 agricultural labor or services, or an employee
13 recruited or referred by a farm labor contractor
14 (as defined in section 3 of the Migrant and Sea-
15 sonal Agricultural Worker Protection Act (29
16 U.S.C. 1801)), subparagraph (A) shall not
17 apply with respect to the reverification of the
18 employee until the date that is 36 months after
19 the date of the enactment of the Legal Work-
20 force Act. For purposes of the preceding sen-
21 tence, the term ‘agricultural labor or services’
22 has the meaning given such term by the Sec-
23 retary of Agriculture in regulations and in-
24 cludes agricultural labor as defined in section
25 3121(g) of the Internal Revenue Code of 1986,

1 agriculture as defined in section 3(f) of the
2 Fair Labor Standards Act of 1938 (29 U.S.C.
3 203(f)), the handling, planting, drying, packing,
4 packaging, processing, freezing, or grading
5 prior to delivery for storage of any agricultural
6 or horticultural commodity in its unmanufac-
7 tured state, all activities required for the prepa-
8 ration, processing, or manufacturing of a prod-
9 uct of agriculture (as such term is defined in
10 such section 3(f)) for further distribution, and
11 activities similar to all the foregoing as they re-
12 late to fish or shellfish facilities. An employee
13 described in this subparagraph shall not be
14 counted for purposes of subparagraph (A).

15 “(C) REVERIFICATION.—Paragraph
16 (1)(C)(ii) shall apply to reverifications pursuant
17 to this paragraph on the same basis as it ap-
18 plies to verifications pursuant to paragraph (1),
19 except that employers shall—

20 “(i) use a form designated or estab-
21 lished by the Secretary by regulation for
22 purposes of this paragraph; and

23 “(ii) retain a paper, microfiche, micro-
24 film, or electronic version of the form and
25 make it available for inspection by officers

1 of the Department of Homeland Security,
2 the Department of Justice, or the Depart-
3 ment of Labor during the period beginning
4 on the date the reverification commences
5 and ending on the date that is the later of
6 3 years after the date of such reverification
7 or 1 year after the date the individual's
8 employment is terminated.

9 “(3) PREVIOUSLY HIRED INDIVIDUALS.—

10 “(A) ON A MANDATORY BASIS FOR CER-
11 TAIN EMPLOYEES.—

12 “(i) IN GENERAL.—Not later than the
13 date that is 6 months after the date of the
14 enactment of the Legal Workforce Act, an
15 employer shall make an inquiry, as pro-
16 vided in subsection (d), using the
17 verification system to seek verification of
18 the identity and employment eligibility of
19 any individual described in clause (ii) em-
20 ployed by the employer whose employment
21 eligibility has not been verified under the
22 E-Verify Program described in section
23 403(a) of the Illegal Immigration Reform
24 and Immigrant Responsibility Act of 1996
25 (8 U.S.C. 1324a note).

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

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

6 “(II) An employee who requires a
7 Federal security clearance working in
8 a Federal, State, or local government
9 building, a military base, a nuclear
10 energy site, a weapons site, or an air-
11 port or other facility that requires
12 workers to carry a Transportation
13 Worker Identification Credential
14 (TWIC).

15 “(III) An employee assigned to
16 perform work in the United States
17 under a Federal contract, except that
18 this subclause—

19 “(aa) is not applicable to in-
20 dividuals who have a clearance
21 under Homeland Security Presi-
22 dential Directive 12 (HSPD 12
23 clearance), are administrative or
24 overhead personnel, or are work-
25 ing solely on contracts that pro-

1 vide Commercial Off The Shelf
2 goods or services as set forth by
3 the Federal Acquisition Regu-
4 latory Council, unless they are
5 subject to verification under sub-
6 clause (II); and

7 “(bb) only applies to con-
8 tracts over the simple acquisition
9 threshold as defined in section
10 2.101 of title 48, Code of Federal
11 Regulations.

12 “(B) ON A MANDATORY BASIS FOR MUL-
13 TIPLE USERS OF SAME SOCIAL SECURITY AC-
14 COUNT NUMBER.—In the case of an employer
15 who is required by this subsection to use the
16 verification system described in subsection (d),
17 or has elected voluntarily to use such system,
18 the employer shall make inquiries to the system
19 in accordance with the following:

20 “(i) The Commissioner of Social Secu-
21 rity shall notify annually employees (at the
22 employee address listed on the Wage and
23 Tax Statement) who submit a social secu-
24 rity account number to which more than
25 one employer reports income and for which

1 there is a pattern of unusual multiple use.
2 The notification letter shall identify the
3 number of employers to which income is
4 being reported as well as sufficient infor-
5 mation notifying the employee of the proc-
6 ess to contact the Social Security Adminis-
7 tration Fraud Hotline if the employee be-
8 lieves the employee's identity may have
9 been stolen. The notice shall not share in-
10 formation protected as private, in order to
11 avoid any recipient of the notice from
12 being in the position to further commit or
13 begin committing identity theft.

14 “(ii) If the person to whom the social
15 security account number was issued by the
16 Social Security Administration has been
17 identified and confirmed by the Commis-
18 sioner, and indicates that the social secu-
19 rity account number was used without
20 their knowledge, the Secretary and the
21 Commissioner shall lock the social security
22 account number for employment eligibility
23 verification purposes and shall notify the
24 employers of the individuals who wrong-
25 fully submitted the social security account

1 number that the employee may not be
2 work eligible.

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

10 “(C) ON A VOLUNTARY BASIS.—Subject to
11 paragraph (2), and subparagraphs (A) through
12 (C) of this paragraph, beginning on the date
13 that is 30 days after the date of the enactment
14 of the Legal Workforce Act, an employer may
15 make an inquiry, as provided in subsection (d),
16 using the verification system to seek verification
17 of the identity and employment eligibility of any
18 individual employed by the employer. If an em-
19 ployer chooses voluntarily to seek verification of
20 any individual employed by the employer, the
21 employer shall seek verification of all individ-
22 uals employed at the same geographic location
23 or, at the option of the employer, all individuals
24 employed within the same job category, as the
25 employee with respect to whom the employer

1 seeks voluntarily to use the verification system.
2 An employer's decision about whether or not
3 voluntarily to seek verification of its current
4 workforce under this subparagraph may not be
5 considered by any government agency in any
6 proceeding, investigation, or review provided for
7 in this Act.

8 “(D) VERIFICATION.—Paragraph
9 (1)(C)(ii) shall apply to verifications pursuant
10 to this paragraph on the same basis as it ap-
11 plies to verifications pursuant to paragraph (1),
12 except that employers shall—

13 “(i) use a form designated or estab-
14 lished by the Secretary by regulation for
15 purposes of this paragraph; and

16 “(ii) retain a paper, microfiche, micro-
17 film, or electronic version of the form and
18 make it available for inspection by officers
19 of the Department of Homeland Security,
20 the Department of Justice, or the Depart-
21 ment of Labor during the period beginning
22 on the date the verification commences and
23 ending on the date that is the later of 3
24 years after the date of such verification or

1 1 year after the date the individual’s em-
2 ployment is terminated.

3 “(4) EARLY COMPLIANCE.—

4 “(A) FORMER E-VERIFY REQUIRED USERS,
5 INCLUDING FEDERAL CONTRACTORS.—Notwith-
6 standing the deadlines in paragraphs (1) and
7 (2), beginning on the date of the enactment of
8 the Legal Workforce Act, the Secretary is au-
9 thorized to commence requiring employers re-
10 quired to participate in the E-Verify Program
11 described in section 403(a) of the Illegal Immi-
12 gration Reform and Immigrant Responsibility
13 Act of 1996 (8 U.S.C. 1324a note), including
14 employers required to participate in such pro-
15 gram by reason of Federal acquisition laws
16 (and regulations promulgated under those laws,
17 including the Federal Acquisition Regulation),
18 to commence compliance with the requirements
19 of this subsection (and any additional require-
20 ments of such Federal acquisition laws and reg-
21 ulation) in lieu of any requirement to partici-
22 pate in the E-Verify Program.

23 “(B) FORMER E-VERIFY VOLUNTARY
24 USERS AND OTHERS DESIRING EARLY COMPLI-
25 ANCE.—Notwithstanding the deadlines in para-

1 graphs (1) and (2), beginning on the date of
2 the enactment of the Legal Workforce Act, the
3 Secretary shall provide for the voluntary com-
4 pliance with the requirements of this subsection
5 by employers voluntarily electing to participate
6 in the E-Verify Program described in section
7 403(a) of the Illegal Immigration Reform and
8 Immigrant Responsibility Act of 1996 (8 U.S.C.
9 1324a note) before such date, as well as by
10 other employers seeking voluntary early compli-
11 ance.

12 “(5) COPYING OF DOCUMENTATION PER-
13 MITTED.—Notwithstanding any other provision of
14 law, the person or entity may copy a document pre-
15 sented by an individual pursuant to this subsection
16 and may retain the copy, but only (except as other-
17 wise permitted under law) for the purpose of com-
18 plying with the requirements of this subsection.

19 “(6) LIMITATION ON USE OF FORMS.—A form
20 designated or established by the Secretary of Home-
21 land Security under this subsection and any infor-
22 mation contained in or appended to such form, may
23 not be used for purposes other than for enforcement
24 of this Act and any other provision of Federal crimi-
25 nal law.

1 “(7) GOOD FAITH COMPLIANCE.—

2 “(A) IN GENERAL.—Except as otherwise
3 provided in this subsection, a person or entity
4 is considered to have complied with a require-
5 ment of this subsection notwithstanding a tech-
6 nical or procedural failure to meet such require-
7 ment if there was a good faith attempt to com-
8 ply with the requirement.

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

12 “(i) the failure is not de minimus;

13 “(ii) the Secretary of Homeland Secu-
14 rity has explained to the person or entity
15 the basis for the failure and why it is not
16 de minimus;

17 “(iii) the person or entity has been
18 provided a period of not less than 30 cal-
19 endar days (beginning after the date of the
20 explanation) within which to correct the
21 failure; and

22 “(iv) the person or entity has not cor-
23 rected the failure voluntarily within such
24 period.

1 “(C) EXCEPTION FOR PATTERN OR PRAC-
2 TICE VIOLATORS.—Subparagraph (A) shall not
3 apply to a person or entity that has or is engag-
4 ing in a pattern or practice of violations of sub-
5 section (a)(1)(A) or (a)(2).

6 “(8) SINGLE EXTENSION OF DEADLINES UPON
7 CERTIFICATION.—In a case in which the Secretary
8 of Homeland Security has certified to the Congress
9 that the employment eligibility verification system
10 required under subsection (d) will not be fully oper-
11 ational by the date that is 6 months after the date
12 of the enactment of the Legal Workforce Act, each
13 deadline established under this section for an em-
14 ployer to make an inquiry using such system shall
15 be extended by 6 months. No other extension of such
16 a deadline shall be made except as authorized under
17 paragraph (1)(D)(iv).”.

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

21 “(4) DEFINITION OF DATE OF HIRE.—As used
22 in this section, the term ‘date of hire’ means the
23 date of actual commencement of employment for
24 wages or other remuneration, unless otherwise speci-
25 fied.”.

1 **SEC. 703. EMPLOYMENT ELIGIBILITY VERIFICATION SYS-**
2 **TEM.**

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

5 “(d) EMPLOYMENT ELIGIBILITY VERIFICATION SYS-
6 TEM.—

7 “(1) IN GENERAL.—Patterned on the employ-
8 ment eligibility confirmation system established
9 under section 404 of the Illegal Immigration Reform
10 and Immigrant Responsibility Act of 1996 (8 U.S.C.
11 1324a note), the Secretary of Homeland Security
12 shall establish and administer a verification system
13 through which the Secretary (or a designee of the
14 Secretary, which may be a nongovernmental enti-
15 ty)—

16 “(A) responds to inquiries made by per-
17 sons at any time through a toll-free telephone
18 line and other toll-free electronic media con-
19 cerning an individual’s identity and whether the
20 individual is authorized to be employed; and

21 “(B) maintains records of the inquiries
22 that were made, of verifications provided (or
23 not provided), and of the codes provided to in-
24 quirers as evidence of their compliance with
25 their obligations under this section.

1 “(2) INITIAL RESPONSE.—The verification sys-
2 tem shall provide confirmation or a tentative non-
3 confirmation of an individual’s identity and employ-
4 ment eligibility within 3 working days of the initial
5 inquiry. If providing confirmation or tentative non-
6 confirmation, the verification system shall provide an
7 appropriate code indicating such confirmation or
8 such nonconfirmation.

9 “(3) SECONDARY CONFIRMATION PROCESS IN
10 CASE OF TENTATIVE NONCONFIRMATION.—In cases
11 of tentative nonconfirmation, the Secretary shall
12 specify, in consultation with the Commissioner of
13 Social Security, an available secondary verification
14 process to confirm the validity of information pro-
15 vided and to provide a final confirmation or noncon-
16 firmation not later than 10 working days after the
17 date on which the notice of the tentative noncon-
18 firmation is received by the employee. The Secretary,
19 in consultation with the Commissioner, may extend
20 this deadline once on a case-by-case basis for a pe-
21 riod of 10 working days, and if the time is extended,
22 shall document such extension within the verification
23 system. The Secretary, in consultation with the
24 Commissioner, shall notify the employee and em-
25 ployer of such extension. The Secretary, in consulta-

1 tion with the Commissioner, shall create a standard
2 process of such extension and notification and shall
3 make a description of such process available to the
4 public. When final confirmation or nonconfirmation
5 is provided, the verification system shall provide an
6 appropriate code indicating such confirmation or
7 nonconfirmation.

8 “(4) DESIGN AND OPERATION OF SYSTEM.—

9 The verification system shall be designed and oper-
10 ated—

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

15 “(B) to respond to all inquiries made by
16 such persons and entities on whether individ-
17 uals are authorized to be employed and to reg-
18 ister all times when such inquiries are not re-
19 ceived;

20 “(C) with appropriate administrative, tech-
21 nical, and physical safeguards to prevent unau-
22 thorized disclosure of personal information;

23 “(D) to have reasonable safeguards against
24 the system’s resulting in unlawful discrimina-

1 tory practices based on national origin or citi-
2 zenship status, including—

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

5 “(ii) the exclusion of certain individ-
6 uals from consideration for employment as
7 a result of a perceived likelihood that addi-
8 tional verification will be required, beyond
9 what is required for most job applicants;

10 “(E) to maximize the prevention of iden-
11 tity theft use in the system; and

12 “(F) to limit the subjects of verification to
13 the following individuals:

14 “(i) Individuals hired, referred, or re-
15 cruited, in accordance with paragraph (1)
16 or (4) of subsection (b).

17 “(ii) Employees and prospective em-
18 ployees, in accordance with paragraph (1),
19 (2), (3), or (4) of subsection (b).

20 “(iii) Individuals seeking to confirm
21 their own employment eligibility on a vol-
22 untary basis.

23 “(5) RESPONSIBILITIES OF COMMISSIONER OF
24 SOCIAL SECURITY.—As part of the verification sys-
25 tem, the Commissioner of Social Security, in con-

1 sultation with the Secretary of Homeland Security
2 (and any designee of the Secretary selected to estab-
3 lish and administer the verification system), shall es-
4 tablish a reliable, secure method, which, within the
5 time periods specified under paragraphs (2) and (3),
6 compares the name and social security account num-
7 ber provided in an inquiry against such information
8 maintained by the Commissioner in order to validate
9 (or not validate) the information provided regarding
10 an individual whose identity and employment eligi-
11 bility must be confirmed, the correspondence of the
12 name and number, and whether the individual has
13 presented a social security account number that is
14 not valid for employment. The Commissioner shall
15 not disclose or release social security information
16 (other than such confirmation or nonconfirmation)
17 under the verification system except as provided for
18 in this section or section 205(c)(2)(I) of the Social
19 Security Act.

20 “(6) RESPONSIBILITIES OF SECRETARY OF
21 HOMELAND SECURITY.—As part of the verification
22 system, the Secretary of Homeland Security (in con-
23 sultation with any designee of the Secretary selected
24 to establish and administer the verification system),
25 shall establish a reliable, secure method, which, with-

1 in the time periods specified under paragraphs (2)
2 and (3), compares the name and alien identification
3 or authorization number (or any other information
4 as determined relevant by the Secretary) which are
5 provided in an inquiry against such information
6 maintained or accessed by the Secretary in order to
7 validate (or not validate) the information provided,
8 the correspondence of the name and number, wheth-
9 er the alien is authorized to be employed in the
10 United States, or to the extent that the Secretary
11 determines to be feasible and appropriate, whether
12 the records available to the Secretary verify the
13 identity or status of a national of the United States.

14 “(7) UPDATING INFORMATION.—The Commis-
15 sioner of Social Security and the Secretary of Home-
16 land Security shall update their information in a
17 manner that promotes the maximum accuracy and
18 shall provide a process for the prompt correction of
19 erroneous information, including instances in which
20 it is brought to their attention in the secondary
21 verification process described in paragraph (3).

22 “(8) LIMITATION ON USE OF THE
23 VERIFICATION SYSTEM AND ANY RELATED SYS-
24 TEMS.—

1 “(A) NO NATIONAL IDENTIFICATION
2 CARD.—Nothing in this section shall be con-
3 strued to authorize, directly or indirectly, the
4 issuance or use of national identification cards
5 or the establishment of a national identification
6 card.

7 “(B) CRITICAL INFRASTRUCTURE.—The
8 Secretary may authorize or direct any person or
9 entity responsible for granting access to, pro-
10 tecting, securing, operating, administering, or
11 regulating part of the critical infrastructure (as
12 defined in section 1016(e) of the Critical Infra-
13 structure Protection Act of 2001 (42 U.S.C.
14 5195c(e))) to use the verification system to the
15 extent the Secretary determines that such use
16 will assist in the protection of the critical infra-
17 structure.

18 “(9) REMEDIES.—If an individual alleges that
19 the individual would not have been dismissed from
20 a job but for an error of the verification mechanism,
21 the individual may seek compensation only through
22 the mechanism of the Federal Tort Claims Act, and
23 injunctive relief to correct such error. No class ac-
24 tion may be brought under this paragraph.”.

1 **SEC. 704. RECRUITMENT, REFERRAL, AND CONTINUATION**
2 **OF EMPLOYMENT.**

3 (a) ADDITIONAL CHANGES TO RULES FOR RECRUIT-
4 MENT, REFERRAL, AND CONTINUATION OF EMPLOY-
5 MENT.—Section 274A(a) of the Immigration and Nation-
6 ality Act (8 U.S.C. 1324a(a)) is amended—

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

8 (2) in paragraph (1), by amending subpara-
9 graph (B) to read as follows:

10 “(B) to hire, continue to employ, or to re-
11 cruit or refer for employment in the United
12 States an individual without complying with the
13 requirements of subsection (b).”; and

14 (3) in paragraph (2), by striking “after hiring
15 an alien for employment in accordance with para-
16 graph (1),” and inserting “after complying with
17 paragraph (1),”.

18 (b) DEFINITION.—Section 274A(h) of the Immigra-
19 tion and Nationality Act (8 U.S.C. 1324a(h)), as amended
20 by section 2(b) of this Act, is further amended by adding
21 at the end the following:

22 “(5) DEFINITION OF RECRUIT OR REFER.—As
23 used in this section, the term ‘refer’ means the act
24 of sending or directing a person who is in the United
25 States or transmitting documentation or information
26 to another, directly or indirectly, with the intent of

1 obtaining employment in the United States for such
2 person. Only persons or entities referring for remun-
3 eration (whether on a retainer or contingency
4 basis) are included in the definition, except that
5 union hiring halls that refer union members or non-
6 union individuals who pay union membership dues
7 are included in the definition whether or not they re-
8 ceive remuneration, as are labor service entities or
9 labor service agencies, whether public, private, for-
10 profit, or nonprofit, that refer, dispatch, or other-
11 wise facilitate the hiring of laborers for any period
12 of time by a third party. As used in this section, the
13 term ‘recruit’ means the act of soliciting a person
14 who is in the United States, directly or indirectly,
15 and referring the person to another with the intent
16 of obtaining employment for that person. Only per-
17 sons or entities referring for remuneration (whether
18 on a retainer or contingency basis) are included in
19 the definition, except that union hiring halls that
20 refer union members or nonunion individuals who
21 pay union membership dues are included in this defi-
22 nition whether or not they receive remuneration, as
23 are labor service entities or labor service agencies,
24 whether public, private, for-profit, or nonprofit that

1 recruit, dispatch, or otherwise facilitate the hiring of
2 laborers for any period of time by a third party.”.

3 (c) EFFECTIVE DATE.—The amendments made by
4 this section shall take effect on the date that is 1 year
5 after the date of the enactment of this Act, except that
6 the amendments made by subsection (a) shall take effect
7 6 months after the date of the enactment of this Act inso-
8 far as such amendments relate to continuation of employ-
9 ment.

10 **SEC. 705. GOOD FAITH DEFENSE.**

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

14 “(3) GOOD FAITH DEFENSE.—

15 “(A) DEFENSE.—An employer (or person
16 or entity that hires, employs, recruits, or refers
17 (as defined in subsection (h)(5)), or is otherwise
18 obligated to comply with this section) who es-
19 tablishes that it has complied in good faith with
20 the requirements of subsection (b)—

21 “(i) shall not be liable to a job appli-
22 cant, an employee, the Federal Govern-
23 ment, or a State or local government,
24 under Federal, State, or local criminal or
25 civil law for any employment-related action

1 taken with respect to a job applicant or
2 employee in good-faith reliance on informa-
3 tion provided through the system estab-
4 lished under subsection (d); and

5 “(ii) has established compliance with
6 its obligations under subparagraphs (A)
7 and (B) of paragraph (1) and subsection
8 (b) absent a showing by the Secretary of
9 Homeland Security, by clear and con-
10 vincing evidence, that the employer had
11 knowledge that an employee is an unau-
12 thorized alien.

13 “(B) MITIGATION ELEMENT.—For pur-
14 poses of subparagraph (A)(i), if an employer
15 proves by a preponderance of the evidence that
16 the employer uses a reasonable, secure, and es-
17 tablished technology to authenticate the identity
18 of the new employee, that fact shall be taken
19 into account for purposes of determining good
20 faith use of the system established under sub-
21 section (d).

22 “(C) FAILURE TO SEEK AND OBTAIN
23 VERIFICATION.—Subject to the effective dates
24 and other deadlines applicable under subsection
25 (b), in the case of a person or entity in the

1 United States that hires, or continues to em-
2 ploy, an individual, or recruits or refers an indi-
3 vidual for employment, the following require-
4 ments apply:

5 “(i) FAILURE TO SEEK
6 VERIFICATION.—

7 “(I) IN GENERAL.—If the person
8 or entity has not made an inquiry,
9 under the mechanism established
10 under subsection (d) and in accord-
11 ance with the timeframes established
12 under subsection (b), seeking
13 verification of the identity and work
14 eligibility of the individual, the de-
15 fense under subparagraph (A) shall
16 not be considered to apply with re-
17 spect to any employment, except as
18 provided in subclause (II).

19 “(II) SPECIAL RULE FOR FAIL-
20 URE OF VERIFICATION MECHANISM.—
21 If such a person or entity in good
22 faith attempts to make an inquiry in
23 order to qualify for the defense under
24 subparagraph (A) and the verification
25 mechanism has registered that not all

1 inquiries were responded to during the
2 relevant time, the person or entity can
3 make an inquiry until the end of the
4 first subsequent working day in which
5 the verification mechanism registers
6 no nonresponses and qualify for such
7 defense.

8 “(ii) FAILURE TO OBTAIN
9 VERIFICATION.—If the person or entity
10 has made the inquiry described in clause
11 (i)(I) but has not received an appropriate
12 verification of such identity and work eligi-
13 bility under such mechanism within the
14 time period specified under subsection
15 (d)(2) after the time the verification in-
16 quiry was received, the defense under sub-
17 paragraph (A) shall not be considered to
18 apply with respect to any employment after
19 the end of such time period.”.

20 **SEC. 706. PREEMPTION AND STATES’ RIGHTS.**

21 Section 274A(h)(2) of the Immigration and Nation-
22 ality Act (8 U.S.C. 1324a(h)(2)) is amended to read as
23 follows:

24 “(2) PREEMPTION.—

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

9 “(B) STATE ENFORCEMENT OF FEDERAL
10 LAW.—

11 “(i) BUSINESS LICENSING.—A State,
12 locality, municipality, or political subdivi-
13 sion may exercise its authority over busi-
14 ness licensing and similar laws as a pen-
15 alty for failure to use the verification sys-
16 tem described in subsection (d) to verify
17 employment eligibility when and as re-
18 quired under subsection (b).

19 “(ii) GENERAL RULES.—A State, at
20 its own cost, may enforce the provisions of
21 this section, but only insofar as such State
22 follows the Federal regulations imple-
23 menting this section, applies the Federal
24 penalty structure set out in this section,
25 and complies with all Federal rules and

1 guidance concerning implementation of this
2 section. Such State may collect any fines
3 assessed under this section. An employer
4 may not be subject to enforcement, includ-
5 ing audit and investigation, by both a Fed-
6 eral agency and a State for the same viola-
7 tion under this section. Whichever entity,
8 the Federal agency or the State, is first to
9 initiate the enforcement action, has the
10 right of first refusal to proceed with the
11 enforcement action. The Secretary must
12 provide copies of all guidance, training,
13 and field instructions provided to Federal
14 officials implementing the provisions of
15 this section to each State.”.

16 **SEC. 707. REPEAL.**

17 (a) **IN GENERAL.**—Subtitle A of title IV of the Illegal
18 Immigration Reform and Immigrant Responsibility Act of
19 1996 (8 U.S.C. 1324a note) is repealed.

20 (b) **REFERENCES.**—Any reference in any Federal
21 law, Executive order, rule, regulation, or delegation of au-
22 thority, or any document of, or pertaining to, the Depart-
23 ment of Homeland Security, Department of Justice, or the
24 Social Security Administration, to the employment eligi-
25 bility confirmation system established under section 404

1 of the Illegal Immigration Reform and Immigrant Respon-
2 sibility Act of 1996 (8 U.S.C. 1324a note) is deemed to
3 refer to the employment eligibility confirmation system es-
4 tablished under section 274A(d) of the Immigration and
5 Nationality Act, as amended by section 3 of this Act.

6 (c) EFFECTIVE DATE.—This section shall take effect
7 on the date that is 30 months after the date of the enact-
8 ment of this Act.

9 (d) CLERICAL AMENDMENT.—The table of sections,
10 in section 1(d) of the Illegal Immigration Reform and Im-
11 migrant Responsibility Act of 1996, is amended by strik-
12 ing the items relating to subtitle A of title IV.

13 **SEC. 708. PENALTIES.**

14 Section 274A of the Immigration and Nationality Act
15 (8 U.S.C. 1324a) is amended—

16 (1) in subsection (e)(1)—

17 (A) by striking “Attorney General” each
18 place such term appears and inserting “Sec-
19 retary of Homeland Security”; and

20 (B) in subparagraph (D), by striking
21 “Service” and inserting “Department of Home-
22 land Security”;

23 (2) in subsection (e)(4)—

1 (A) in subparagraph (A), in the matter be-
2 fore clause (i), by inserting “, subject to para-
3 graph (10),” after “in an amount”;

4 (B) in subparagraph (A)(i), by striking
5 “not less than \$250 and not more than
6 \$2,000” and inserting “not less than \$2,500
7 and not more than \$5,000”;

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

12 (D) in subparagraph (A)(iii), by striking
13 “not less than \$3,000 and not more than
14 \$10,000” and inserting “not less than \$10,000
15 and not more than \$25,000”; and

16 (E) by moving the margin of the continu-
17 ation text following subparagraph (B) two ems
18 to the left and by amending subparagraph (B)
19 to read as follows:

20 “(B) may require the person or entity to
21 take such other remedial action as is appro-
22 priate.”;

23 (3) in subsection (e)(5)—

24 (A) in the paragraph heading, strike “PA-
25 PERWORK”;

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

3 (C) by striking “\$100” and inserting
4 “\$1,000”;

5 (D) by striking “\$1,000” and inserting
6 “\$25,000”; and

7 (E) by adding at the end the following:
8 “Failure by a person or entity to utilize the em-
9 ployment eligibility verification system as re-
10 quired by law, or providing information to the
11 system that the person or entity knows or rea-
12 sonably believes to be false, shall be treated as
13 a violation of subsection (a)(1)(A).”;

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

16 “(10) EXEMPTION FROM PENALTY FOR GOOD
17 FAITH VIOLATION.—In the case of imposition of a
18 civil penalty under paragraph (4)(A) with respect to
19 a violation of subsection (a)(1)(A) or (a)(2) for hir-
20 ing or continuation of employment or recruitment or
21 referral by person or entity and in the case of im-
22 position of a civil penalty under paragraph (5) for a
23 violation of subsection (a)(1)(B) for hiring or re-
24 cruitment or referral by a person or entity, the pen-
25 alty otherwise imposed may be waived or reduced if

1 the violator establishes that the violator acted in
2 good faith.

3 “(11) MITIGATION ELEMENT.—For purposes of
4 paragraph (4), the size of the business shall be
5 taken into account when assessing the level of civil
6 money penalty.

7 “(12) AUTHORITY TO DEBAR EMPLOYERS FOR
8 CERTAIN VIOLATIONS.—

9 “(A) IN GENERAL.—If a person or entity
10 is determined by the Secretary of Homeland Se-
11 curity to be a repeat violator of paragraph
12 (1)(A) or (2) of subsection (a), or is convicted
13 of a crime under this section, such person or
14 entity may be considered for debarment from
15 the receipt of Federal contracts, grants, or co-
16 operative agreements in accordance with the de-
17 barment standards and pursuant to the debar-
18 ment procedures set forth in the Federal Acqui-
19 sition Regulation.

20 “(B) DOES NOT HAVE CONTRACT, GRANT,
21 AGREEMENT.—If the Secretary of Homeland
22 Security or the Attorney General wishes to have
23 a person or entity considered for debarment in
24 accordance with this paragraph, and such a
25 person or entity does not hold a Federal con-

1 tract, grant, or cooperative agreement, the Sec-
2 retary or Attorney General shall refer the mat-
3 ter to the Administrator of General Services to
4 determine whether to list the person or entity
5 on the List of Parties Excluded from Federal
6 Procurement, and if so, for what duration and
7 under what scope.

8 “(C) HAS CONTRACT, GRANT, AGREE-
9 MENT.—If the Secretary of Homeland Security
10 or the Attorney General wishes to have a per-
11 son or entity considered for debarment in ac-
12 cordance with this paragraph, and such person
13 or entity holds a Federal contract, grant, or co-
14 operative agreement, the Secretary or Attorney
15 General shall advise all agencies or departments
16 holding a contract, grant, or cooperative agree-
17 ment with the person or entity of the Govern-
18 ment’s interest in having the person or entity
19 considered for debarment, and after soliciting
20 and considering the views of all such agencies
21 and departments, the Secretary or Attorney
22 General may refer the matter to any appro-
23 priate lead agency to determine whether to list
24 the person or entity on the List of Parties Ex-

1 cluded from Federal Procurement, and if so, for
2 what duration and under what scope.

3 “(D) REVIEW.—Any decision to debar a
4 person or entity in accordance with this para-
5 graph shall be reviewable pursuant to part 9.4
6 of the Federal Acquisition Regulation.

7 “(13) OFFICE FOR STATE AND LOCAL GOVERN-
8 MENT COMPLAINTS.—The Secretary of Homeland
9 Security shall establish an office—

10 “(A) to which State and local government
11 agencies may submit information indicating po-
12 tential violations of subsection (a), (b), or
13 (g)(1) that were generated in the normal course
14 of law enforcement or the normal course of
15 other official activities in the State or locality;

16 “(B) that is required to indicate to the
17 complaining State or local agency within five
18 business days of the filing of such a complaint
19 by identifying whether the Secretary will fur-
20 ther investigate the information provided;

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

1 “(D) that is required to notify the com-
2 plaining State or local agency of the results of
3 any such investigation conducted; and

4 “(E) that is required to report to the Con-
5 gress annually the number of complaints re-
6 ceived under this paragraph, the States and lo-
7 calities that filed such complaints, and the reso-
8 lution of the complaints investigated by the Sec-
9 retary.”; and

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

12 “(1) CRIMINAL PENALTY.—Any person or enti-
13 ty which engages in a pattern or practice of viola-
14 tions of subsection (a) (1) or (2) shall be fined not
15 more than \$5,000 for each unauthorized alien with
16 respect to which such a violation occurs, imprisoned
17 for not more than 18 months, or both, notwith-
18 standing the provisions of any other Federal law re-
19 lating to fine levels.”.

20 **SEC. 709. FRAUD AND MISUSE OF DOCUMENTS.**

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

23 (1) in paragraph (1), by striking “identification
24 document,” and inserting “identification document
25 or document meant to establish work authorization

1 (including the documents described in section
2 274A(b) of the Immigration and Nationality Act),”;
3 and

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

9 **SEC. 710. PROTECTION OF SOCIAL SECURITY ADMINISTRA-**
10 **TION PROGRAMS.**

11 (a) **FUNDING UNDER AGREEMENT.**—Effective for
12 fiscal years beginning on or after October 1, 2023, the
13 Commissioner of Social Security and the Secretary of
14 Homeland Security shall enter into and maintain an
15 agreement which shall—

16 (1) provide funds to the Commissioner for the
17 full costs of the responsibilities of the Commissioner
18 under section 274A(d) of the Immigration and Na-
19 tionality Act (8 U.S.C. 1324a(d)), as amended by
20 section 3 of this Act, including (but not limited
21 to)—

22 (A) acquiring, installing, and maintaining
23 technological equipment and systems necessary
24 for the fulfillment of the responsibilities of the
25 Commissioner under such section 274A(d), but

1 only that portion of such costs that are attrib-
2 utable exclusively to such responsibilities; and

3 (B) responding to individuals who contest
4 a tentative nonconfirmation provided by the em-
5 ployment eligibility verification system estab-
6 lished under such section;

7 (2) provide such funds annually in advance of
8 the applicable quarter based on estimating method-
9 ology agreed to by the Commissioner and the Sec-
10 retary (except in such instances where the delayed
11 enactment of an annual appropriation may preclude
12 such quarterly payments); and

13 (3) require an annual accounting and reconcili-
14 ation of the actual costs incurred and the funds pro-
15 vided under the agreement, which shall be reviewed
16 by the Inspectors General of the Social Security Ad-
17 ministration and the Department of Homeland Secu-
18 rity.

19 (b) CONTINUATION OF EMPLOYMENT VERIFICATION
20 IN ABSENCE OF TIMELY AGREEMENT.—In any case in
21 which the agreement required under subsection (a) for any
22 fiscal year beginning on or after October 1, 2023, has not
23 been reached as of October 1 of such fiscal year, the latest
24 agreement between the Commissioner and the Secretary
25 of Homeland Security providing for funding to cover the

1 costs of the responsibilities of the Commissioner under
2 section 274A(d) of the Immigration and Nationality Act
3 (8 U.S.C. 1324a(d)) shall be deemed in effect on an in-
4 terim basis for such fiscal year until such time as an
5 agreement required under subsection (a) is subsequently
6 reached, except that the terms of such interim agreement
7 shall be modified by the Director of the Office of Manage-
8 ment and Budget to adjust for inflation and any increase
9 or decrease in the volume of requests under the employ-
10 ment eligibility verification system. In any case in which
11 an interim agreement applies for any fiscal year under this
12 subsection, the Commissioner and the Secretary shall, not
13 later than October 1 of such fiscal year, notify the Com-
14 mittee on Ways and Means, the Committee on the Judici-
15 ary, and the Committee on Appropriations of the House
16 of Representatives and the Committee on Finance, the
17 Committee on the Judiciary, and the Committee on Ap-
18 propriations of the Senate of the failure to reach the
19 agreement required under subsection (a) for such fiscal
20 year. Until such time as the agreement required under
21 subsection (a) has been reached for such fiscal year, the
22 Commissioner and the Secretary shall, not later than the
23 end of each 90-day period after October 1 of such fiscal
24 year, notify such Committees of the status of negotiations

1 between the Commissioner and the Secretary in order to
2 reach such an agreement.

3 **SEC. 711. FRAUD PREVENTION.**

4 (a) **BLOCKING MISUSED SOCIAL SECURITY ACCOUNT**
5 **NUMBERS.**—The Secretary of Homeland Security, in con-
6 sultation with the Commissioner of Social Security, shall
7 establish a program in which social security account num-
8 bers that have been identified to be subject to unusual
9 multiple use in the employment eligibility verification sys-
10 tem established under section 274A(d) of the Immigration
11 and Nationality Act (8 U.S.C. 1324a(d)), as amended by
12 section 3 of this Act, or that are otherwise suspected or
13 determined to have been compromised by identity fraud
14 or other misuse, shall be blocked from use for such system
15 purposes unless the individual using such number is able
16 to establish, through secure and fair additional security
17 procedures, that the individual is the legitimate holder of
18 the number.

19 (b) **ALLOWING SUSPENSION OF USE OF CERTAIN SO-**
20 **CIAL SECURITY ACCOUNT NUMBERS.**—The Secretary of
21 Homeland Security, in consultation with the Commis-
22 sioner of Social Security, shall establish a program which
23 shall provide a reliable, secure method by which victims
24 of identity fraud and other individuals may suspend or
25 limit the use of their social security account number or

1 other identifying information for purposes of the employ-
2 ment eligibility verification system established under sec-
3 tion 274A(d) of the Immigration and Nationality Act (8
4 U.S.C. 1324a(d)), as amended by section 3 of this Act.
5 The Secretary may implement the program on a limited
6 pilot program basis before making it fully available to all
7 individuals.

8 (c) ALLOWING PARENTS TO PREVENT THEFT OF
9 THEIR CHILD'S IDENTITY.—The Secretary of Homeland
10 Security, in consultation with the Commissioner of Social
11 Security, shall establish a program which shall provide a
12 reliable, secure method by which parents or legal guard-
13 ians may suspend or limit the use of the social security
14 account number or other identifying information of a
15 minor under their care for the purposes of the employment
16 eligibility verification system established under 274A(d) of
17 the Immigration and Nationality Act (8 U.S.C. 1324a(d)),
18 as amended by section 3 of this Act. The Secretary may
19 implement the program on a limited pilot program basis
20 before making it fully available to all individuals.

21 **SEC. 712. USE OF EMPLOYMENT ELIGIBILITY**
22 **VERIFICATION PHOTO TOOL.**

23 An employer who uses the photo matching tool used
24 as part of the E-Verify System shall match the photo tool
25 photograph to both the photograph on the identity or em-

1 ployment eligibility document provided by the employee
2 and to the face of the employee submitting the document
3 for employment verification purposes.

4 **SEC. 713. IDENTITY AUTHENTICATION EMPLOYMENT ELIGI-**
5 **BILITY VERIFICATION PILOT PROGRAMS.**

6 Not later than 24 months after the date of the enact-
7 ment of this Act, the Secretary of Homeland Security,
8 after consultation with the Commissioner of Social Secu-
9 rity and the Director of the National Institute of Stand-
10 ards and Technology, shall establish by regulation not less
11 than 2 Identity Authentication Employment Eligibility
12 Verification pilot programs, each using a separate and dis-
13 tinct technology (the “Authentication Pilots”). The pur-
14 pose of the Authentication Pilots shall be to provide for
15 identity authentication and employment eligibility
16 verification with respect to enrolled new employees which
17 shall be available to any employer that elects to participate
18 in either of the Authentication Pilots. Any participating
19 employer may cancel the employer’s participation in the
20 Authentication Pilot after one year after electing to par-
21 ticipate without prejudice to future participation. The Sec-
22 retary shall report to the Committee on the Judiciary of
23 the House of Representatives and the Committee on the
24 Judiciary of the Senate the Secretary’s findings on the
25 Authentication Pilots, including the authentication tech-

1 nologies chosen, not later than 12 months after com-
2 mencement of the Authentication Pilots.

3 **SEC. 714. INSPECTOR GENERAL AUDITS.**

4 (a) IN GENERAL.—Not later than 1 year after the
5 date of the enactment of this Act, the Inspector General
6 of the Social Security Administration shall complete audits
7 of the following categories in order to uncover evidence
8 of individuals who are not authorized to work in the
9 United States:

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

14 (2) Children's social security account numbers
15 used for work purposes.

16 (3) Employers whose workers present signifi-
17 cant numbers of mismatched social security account
18 numbers or names for wage reporting.

19 (b) SUBMISSION.—The Inspector General of the So-
20 cial Security Administration shall submit the audits com-
21 pleted under subsection (a) to the Committee on Ways and
22 Means of the House of Representatives and the Committee
23 on Finance of the Senate for review of the evidence of
24 individuals who are not authorized to work in the United
25 States. The Chairmen of those Committees shall then de-

1 termine information to be shared with the Secretary of
2 Homeland Security so that such Secretary can investigate
3 the unauthorized employment demonstrated by such evi-
4 dence.

5 **SEC. 715. AGRICULTURE WORKFORCE STUDY.**

6 Not later than 36 months after the date of enact-
7 ment, the Secretary of the Department of Homeland Secu-
8 rity, in consultation with the Secretary of the Department
9 of Agriculture, shall submit to the Committee on the Judi-
10 ciary of the House of Representatives and the Committee
11 on the Judiciary of the Senate, a report that includes the
12 following:

13 (1) The number of individuals in the agricul-
14 tural workforce.

15 (2) The number of U.S. citizens in the agricul-
16 tural workforce.

17 (3) The number of aliens in the agricultural
18 workforce who are authorized to work in the United
19 States.

20 (4) The number of aliens in the agricultural
21 workforce who are not authorized to work in the
22 United States.

23 (5) Wage growth in each of the previous ten
24 years, disaggregated by agricultural sector.

1 (6) The percentage of total agricultural indus-
2 try costs represented by agricultural labor during
3 each of the last ten years.

4 (7) The percentage of agricultural costs in-
5 vested in mechanization during each of the last ten
6 years.

7 (8) Recommendations, other than a path to
8 legal status for aliens not authorized to work in the
9 United States, for ensuring U.S. agricultural em-
10 ployers have a workforce sufficient to cover industry
11 needs, including recommendations to—

12 (A) increase investments in mechanization;

13 (B) increase the domestic workforce; and

14 (C) reform the H-2A program.

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