



1 “(B) BURDEN OF PROOF.—

2 “(i) IN GENERAL.—The burden of  
3 proof is on the applicant to establish that  
4 the applicant is a refugee, within the  
5 meaning of section 101(a)(42)(A). To es-  
6 tablish that the applicant is a refugee with-  
7 in the meaning of such section, the appli-  
8 cant must establish that race, religion, na-  
9 tionality, membership in a particular social  
10 group, or political opinion was or will be at  
11 least one central reason for persecuting the  
12 applicant.

13 “(ii) SUSTAINING BURDEN.—The tes-  
14 timony of the applicant may be sufficient  
15 to sustain the applicant’s burden without  
16 corroboration, but only if the applicant sat-  
17 isfies the trier of fact that the applicant’s  
18 testimony is credible, is persuasive, and re-  
19 fers to specific facts sufficient to dem-  
20 onstrate that the applicant is a refugee. In  
21 determining whether the applicant has met  
22 the applicant’s burden, the trier of fact  
23 may weigh the credible testimony along  
24 with other evidence of record. Where the  
25 trier of fact determines that the applicant

1 should provide evidence that corroborates  
2 otherwise credible testimony, such evidence  
3 must be provided unless the applicant does  
4 not have the evidence and cannot reason-  
5 ably obtain the evidence.

6 “(iii) CREDIBILITY DETERMINA-  
7 TION.—Considering the totality of the cir-  
8 cumstances, and all relevant factors, a  
9 trier of fact may base a credibility deter-  
10 mination on the demeanor, candor, or re-  
11 sponsiveness of the applicant or witness,  
12 the inherent plausibility of the applicant’s  
13 or witness’s account, the consistency be-  
14 tween the applicant’s or witness’s written  
15 and oral statements (whenever made and  
16 whether or not under oath, and considering  
17 the circumstances under which the state-  
18 ments were made), the internal consistency  
19 of each such statement, the consistency of  
20 such statements with other evidence of  
21 record (including the reports of the De-  
22 partment of State on country conditions),  
23 and any inaccuracies or falsehoods in such  
24 statements, without regard to whether an  
25 inconsistency, inaccuracy, or falsehood goes

1 to the heart of the applicant’s claim, or  
2 any other relevant factor. There is no pre-  
3 sumption of credibility, however, if no ad-  
4 verse credibility determination is explicitly  
5 made, the applicant or witness shall have  
6 a rebuttable presumption of credibility on  
7 appeal.”.

8 (b) EXCEPTIONS TO ELIGIBILITY FOR ASYLUM.—  
9 Section 208(b)(2)(A)(v) of the Immigration and Nation-  
10 ality Act (8 U.S.C. 1158(b)(2)(A)(v)) is amended—

11 (1) by striking “inadmissible under” each place  
12 such term appears and inserting “described in”; and

13 (2) by striking “removable under”.

14 (c) WITHHOLDING OF REMOVAL.—Section 241(b)(3)  
15 of the Immigration and Nationality Act (8 U.S.C.  
16 1231(b)(3)) is amended by adding at the end the fol-  
17 lowing:

18 “(C) SUSTAINING BURDEN OF PROOF;  
19 CREDIBILITY DETERMINATIONS.—In deter-  
20 mining whether an alien has demonstrated that  
21 the alien’s life or freedom would be threatened  
22 for a reason described in subparagraph (A), the  
23 trier of fact shall determine whether the alien  
24 has sustained the alien’s burden of proof, and  
25 shall make credibility determinations, in the

1 manner described in clauses (ii) and (iii) of sec-  
2 tion 208(b)(1)(B).”.

3 (d) OTHER REQUESTS FOR RELIEF FROM RE-  
4 MOVAL.—Section 240(c) of the Immigration and Nation-  
5 ality Act (8 U.S.C. 1230(c)) is amended—

6 (1) by redesignating paragraphs (4), (5), and  
7 (6) as paragraphs (5), (6), and (7), respectively; and  
8 (2) by inserting after paragraph (3) the fol-  
9 lowing:

10 “(4) APPLICATIONS FOR RELIEF FROM RE-  
11 MOVAL.—

12 “(A) IN GENERAL.—An alien applying for  
13 relief or protection from removal has the bur-  
14 den of proof to establish that the alien—

15 “(i) satisfies the applicable eligibility  
16 requirements; and

17 “(ii) with respect to any form of relief  
18 that is granted in the exercise of discre-  
19 tion, that the alien merits a favorable exer-  
20 cise of discretion.

21 “(B) SUSTAINING BURDEN.—The appli-  
22 cant must comply with the applicable require-  
23 ments to submit information or documentation  
24 in support of the applicant’s application for re-  
25 lief or protection as provided by law or by regu-

1           lation or in the instructions for the application  
2           form. In evaluating the testimony of the appli-  
3           cant or other witness in support of the applica-  
4           tion, the immigration judge will determine  
5           whether or not the testimony is credible, is per-  
6           suasive, and refers to specific facts sufficient to  
7           demonstrate that the applicant has satisfied the  
8           applicant's burden of proof. In determining  
9           whether the applicant has met such burden, the  
10          immigration judge shall weigh the credible testi-  
11          mony along with other evidence of record.  
12          Where the immigration judge determines that  
13          the applicant should provide evidence which cor-  
14          roborates otherwise credible testimony, such evi-  
15          dence must be provided unless the applicant  
16          demonstrates that the applicant does not have  
17          the evidence and cannot reasonably obtain the  
18          evidence.

19               “(C) CREDIBILITY DETERMINATION.—  
20          Considering the totality of the circumstances,  
21          and all relevant factors, the immigration judge  
22          may base a credibility determination on the de-  
23          meanor, candor, or responsiveness of the appli-  
24          cant or witness, the inherent plausibility of the  
25          applicant's or witness's account, the consistency

1           between the applicant’s or witness’s written and  
2           oral statements (whenever made and whether or  
3           not under oath, and considering the cir-  
4           cumstances under which the statements were  
5           made), the internal consistency of each such  
6           statement, the consistency of such statements  
7           with other evidence of record (including the re-  
8           ports of the Department of State on country  
9           conditions), and any inaccuracies or falsehoods  
10          in such statements, without regard to whether  
11          an inconsistency, inaccuracy, or falsehood goes  
12          to the heart of the applicant’s claim, or any  
13          other relevant factor. There is no presumption  
14          of credibility, however, if no adverse credibility  
15          determination is explicitly made, the applicant  
16          or witness shall have a rebuttable presumption  
17          of credibility on appeal.”.

18          (e) STANDARD OF REVIEW FOR ORDERS OF RE-  
19          MOVAL.—Section 242(b)(4) of the Immigration and Na-  
20          tionality Act (8 U.S.C. 1252(b)(4)) is amended by adding  
21          at the end, after subparagraph (D), the following: “No  
22          court shall reverse a determination made by a trier of fact  
23          with respect to the availability of corroborating evidence,  
24          as described in section 208(b)(1)(B), 240(c)(4)(B), or  
25          241(b)(3)(C), unless the court finds, pursuant to section

1 242(b)(4)(B), that a reasonable trier of fact is compelled  
2 to conclude that such corroborating evidence is unavail-  
3 able.”.

4 (f) CLARIFICATION OF DISCRETION.—Section  
5 242(a)(2)(B) of the Immigration and Nationality Act (8  
6 U.S.C. 1252(a)(2)(B)) is amended—

7 (1) by inserting “or the Secretary of Homeland  
8 Security” after “Attorney General” each place such  
9 term appears; and

10 (2) in the matter preceding clause (i), by insert-  
11 ing “and regardless of whether the judgment, deci-  
12 sion, or action is made in removal proceedings,”  
13 after “other provision of law,”.

14 (g) REMOVAL OF CAPS.—

15 (1) ASYLEES.—Section 209 of the Immigration  
16 and Nationality Act (8 U.S.C. 1159) is amended—

17 (A) in subsection (a)(1)—

18 (i) by striking “Service” and inserting  
19 “Department of Homeland Security”; and

20 (ii) by striking “Attorney General”  
21 each place such term appears and inserting  
22 “Secretary of Homeland Security or the  
23 Attorney General”;

24 (B) in subsection (b)—

1 (i) by striking “Not more” and all  
2 that follows through “asylum who—” and  
3 inserting “The Secretary of Homeland Se-  
4 curity or the Attorney General, in the Sec-  
5 retary’s or the Attorney General’s discre-  
6 tion and under such regulations as the  
7 Secretary or the Attorney General may  
8 prescribe, may adjust to the status of an  
9 alien lawfully admitted for permanent resi-  
10 dence the status of any alien granted asy-  
11 lum who—”; and

12 (ii) in the matter following paragraph  
13 (5), by striking “Attorney General” and  
14 inserting “Secretary of Homeland Security  
15 or the Attorney General”; and

16 (C) in subsection (c), by striking “Attorney  
17 General” and inserting “Secretary of Homeland  
18 Security or the Attorney General”.

19 (2) PERSONS RESISTING COERCIVE POPU-  
20 LATION CONTROL METHODS.—Section 207(a) of the  
21 Immigration and Nationality Act (8 U.S.C. 1157(a))  
22 is amended by striking paragraph (5).

23 (h) EFFECTIVE DATES.—

1           (1) The amendments made by paragraphs (1)  
2           and (2) of subsection (a) shall take effect as if en-  
3           acted on March 1, 2003.

4           (2) The amendments made by subsections  
5           (a)(3), (b), (c), and (d) shall take effect on the date  
6           of the enactment of this division and shall apply to  
7           applications for asylum, withholding, or other relief  
8           from removal made on or after such date.

9           (3) The amendment made by subsection (e)  
10          shall take effect on the date of the enactment of this  
11          division and shall apply to all cases in which the  
12          final administrative removal order is or was issued  
13          before, on, or after such date.

14          (4) The amendments made by subsection (f)  
15          shall take effect on the date of the enactment of this  
16          division and shall apply to all cases pending before  
17          any court on or after such date.

18          (5) The amendments made by subsection (g)  
19          shall take effect on the date of the enactment of this  
20          division.

21          (i) REPEAL.—Section 5403 of the Intelligence Re-  
22          form and Terrorism Prevention Act of 2004 (Public Law  
23          108–458) is repealed.

1 **SEC. 102. WAIVER OF LEGAL REQUIREMENTS NECESSARY**  
2 **FOR IMPROVEMENT OF BARRIERS AT BOR-**  
3 **DERS; FEDERAL COURT REVIEW.**

4 Section 102(c) of the Illegal Immigration Reform and  
5 Immigrant Responsibility Act of 1996 (8 U.S.C. 1103  
6 note) is amended to read as follows:

7 “(c) WAIVER.—

8 “(1) IN GENERAL.—Notwithstanding any other  
9 provision of law, the Secretary of Homeland Security  
10 shall have the authority to waive all legal require-  
11 ments such Secretary, in such Secretary’s sole dis-  
12 cretion, determines necessary to ensure expeditious  
13 construction of the barriers and roads under this  
14 section. Any such decision by the Secretary shall be  
15 effective upon being published in the Federal Reg-  
16 ister.

17 “(2) FEDERAL COURT REVIEW.—

18 “(A) IN GENERAL.—The district courts of  
19 the United States shall have exclusive jurisdic-  
20 tion to hear all causes or claims arising from  
21 any action undertaken, or any decision made,  
22 by the Secretary of Homeland Security pursu-  
23 ant to paragraph (1). A cause of action or  
24 claim may only be brought alleging a violation  
25 of the Constitution of the United States. The

1 court shall not have jurisdiction to hear any  
2 claim not specified in this subparagraph.

3 “(B) TIME FOR FILING OF COMPLAINT.—  
4 Any cause or claim brought pursuant to sub-  
5 paragraph (A) shall be filed not later than 60  
6 days after the date of the action or decision  
7 made by the Secretary of Homeland Security. A  
8 claim shall be barred unless it is filed within  
9 the time specified.

10 “(C) ABILITY TO SEEK APPELLATE RE-  
11 VIEW.—An interlocutory or final judgment, de-  
12 cree, or order of the district court may be re-  
13 viewed only upon petition for a writ of certio-  
14 rari to the Supreme Court of the United  
15 States.”.

16 **SEC. 103. INADMISSIBILITY DUE TO TERRORIST AND TER-**  
17 **RORIST-RELATED ACTIVITIES.**

18 (a) IN GENERAL.—So much of section  
19 212(a)(3)(B)(i) of the Immigration and Nationality Act  
20 (8 U.S.C. 1182(a)(3)(B)(i)) as precedes the final sentence  
21 is amended to read as follows:

22 “(i) IN GENERAL.—Any alien who—  
23 “(I) has engaged in a terrorist  
24 activity;

1           “(II) a consular officer, the At-  
2           torney General, or the Secretary of  
3           Homeland Security knows, or has rea-  
4           sonable ground to believe, is engaged  
5           in or is likely to engage after entry in  
6           any terrorist activity (as defined in  
7           clause (iv));

8           “(III) has, under circumstances  
9           indicating an intention to cause death  
10          or serious bodily harm, incited ter-  
11          rorist activity;

12          “(IV) is a representative (as de-  
13          fined in clause (v)) of—

14                 “(aa) a terrorist organiza-  
15                 tion (as defined in clause (vi)); or

16                 “(bb) a political, social, or  
17                 other group that endorses or es-  
18                 pouses terrorist activity;

19          “(V) is a member of a terrorist  
20          organization described in subclause (I)  
21          or (II) of clause (vi);

22          “(VI) is a member of a terrorist  
23          organization described in clause  
24          (vi)(III), unless the alien can dem-  
25          onstrate by clear and convincing evi-

1           dence that the alien did not know, and  
2           should not reasonably have known,  
3           that the organization was a terrorist  
4           organization;

5           “(VII) endorses or espouses ter-  
6           rorist activity or persuades others to  
7           endorse or espouse terrorist activity or  
8           support a terrorist organization;

9           “(VIII) has received military-type  
10          training (as defined in section  
11          2339D(c)(1) of title 18, United States  
12          Code) from or on behalf of any orga-  
13          nization that, at the time the training  
14          was received, was a terrorist organiza-  
15          tion (as defined in clause (vi)); or

16          “(IX) is the spouse or child of an  
17          alien who is inadmissible under this  
18          subparagraph, if the activity causing  
19          the alien to be found inadmissible oc-  
20          curred within the last 5 years, is inad-  
21          missible.”.

22          (b) ENGAGE IN TERRORIST ACTIVITY DEFINED.—  
23          Section 212(a)(3)(B)(iv) of the Immigration and Nation-  
24          ality Act (8 U.S.C. 1182(a)(3)(B)(iv)) is amended to read  
25          as follows:

1                   “(iv) ENGAGE IN TERRORIST ACTIVITY  
2                   DEFINED.—As used in this Act, the term  
3                   ‘engage in terrorist activity’ means, in an  
4                   individual capacity or as a member of an  
5                   organization—

6                   “(I) to commit or to incite to  
7                   commit, under circumstances indi-  
8                   cating an intention to cause death or  
9                   serious bodily injury, a terrorist activ-  
10                  ity;

11                  “(II) to prepare or plan a ter-  
12                  rorist activity;

13                  “(III) to gather information on  
14                  potential targets for terrorist activity;

15                  “(IV) to solicit funds or other  
16                  things of value for—

17                         “(aa) a terrorist activity;

18                         “(bb) a terrorist organiza-  
19                         tion described in clause (vi)(I) or  
20                         (vi)(II); or

21                         “(cc) a terrorist organiza-  
22                         tion described in clause (vi)(III),  
23                         unless the solicitor can dem-  
24                         onstrate by clear and convincing  
25                         evidence that he did not know,

1 and should not reasonably have  
2 known, that the organization was  
3 a terrorist organization;

4 “(V) to solicit any individual—

5 “(aa) to engage in conduct  
6 otherwise described in this sub-  
7 section;

8 “(bb) for membership in a  
9 terrorist organization described  
10 in clause (vi)(I) or (vi)(II); or

11 “(cc) for membership in a  
12 terrorist organization described  
13 in clause (vi)(III) unless the so-  
14 licitor can demonstrate by clear  
15 and convincing evidence that he  
16 did not know, and should not  
17 reasonably have known, that the  
18 organization was a terrorist orga-  
19 nization; or

20 “(VI) to commit an act that the  
21 actor knows, or reasonably should  
22 know, affords material support, in-  
23 cluding a safe house, transportation,  
24 communications, funds, transfer of  
25 funds or other material financial ben-

1           efit, false documentation or identifica-  
2           tion, weapons (including chemical, bi-  
3           ological, or radiological weapons), ex-  
4           plosives, or training—

5                   “(aa) for the commission of  
6                   a terrorist activity;

7                   “(bb) to any individual who  
8                   the actor knows, or reasonably  
9                   should know, has committed or  
10                  plans to commit a terrorist activ-  
11                  ity;

12                  “(cc) to a terrorist organiza-  
13                  tion described in subclause (I) or  
14                  (II) of clause (vi) or to any mem-  
15                  ber of such an organization; or

16                  “(dd) to a terrorist organi-  
17                  zation described in clause  
18                  (vi)(III), or to any member of  
19                  such an organization, unless the  
20                  actor can demonstrate by clear  
21                  and convincing evidence that the  
22                  actor did not know, and should  
23                  not reasonably have known, that  
24                  the organization was a terrorist  
25                  organization.”.



1                   ties described in subclauses (I)  
2                   through (VI) of clause (iv).”.

3           (d) **EFFECTIVE DATE.**—The amendments made by  
4 this section shall take effect on the date of the enactment  
5 of this division, and these amendments, and section  
6 212(a)(3)(B) of the Immigration and Nationality Act (8  
7 U.S.C. 1182(a)(3)(B)), as amended by this section, shall  
8 apply to—

9           (1) removal proceedings instituted before, on, or  
10          after the date of the enactment of this division; and

11          (2) acts and conditions constituting a ground  
12          for inadmissibility, excludability, deportation, or re-  
13          moval occurring or existing before, on, or after such  
14          date.

15 **SEC. 104. WAIVER FOR CERTAIN GROUNDS OF INADMIS-**  
16 **SIBILITY.**

17          Section 212(d)(3) of the Immigration and Nationality  
18 Act (8 U.S.C. 1182(d)(3)) is amended—

19           (1) by striking “(3)” and inserting “(3)(A)”;

20           (2) by striking “alien (A)” and inserting “alien  
21 (i)”;

22           (3) by striking “or (B)” and inserting “or (ii)”;

23          and

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

1           “(B)(i) The Secretary of State, after consultation  
2 with the Attorney General and the Secretary of Homeland  
3 Security, or the Secretary of Homeland Security, after  
4 consultation with the Secretary of State and the Attorney  
5 General, may conclude in such Secretary’s sole  
6 unreviewable discretion that subsection  
7 (a)(3)(B)(i)(IV)(bb) or (a)(3)(B)(i)(VII) shall not apply to  
8 an alien, that subsection (a)(3)(B)(iv)(VI) shall not apply  
9 with respect to any material support an alien afforded to  
10 an organization or individual that has engaged in a ter-  
11 rorist activity, or that subsection (a)(3)(B)(vi)(III) shall  
12 not apply to a group solely by virtue of having a subgroup  
13 within the scope of that subsection. The Secretary of State  
14 may not, however, exercise discretion under this clause  
15 with respect to an alien once removal proceedings against  
16 the alien are instituted under section 240.

17           “(ii) Not later than 90 days after the end of each  
18 fiscal year, the Secretary of State and the Secretary of  
19 Homeland Security shall each provide to the Committees  
20 on the Judiciary of the House of Representatives and of  
21 the Senate, the Committee on International Relations of  
22 the House of Representatives, the Committee on Foreign  
23 Relations of the Senate, and the Committee on Homeland  
24 Security of the House of Representatives a report on the  
25 aliens to whom such Secretary has applied clause (i).

1 Within one week of applying clause (i) to a group, the  
2 Secretary of State or the Secretary of Homeland Security  
3 shall provide a report to such Committees.”.

4 **SEC. 105. REMOVAL OF TERRORISTS.**

5 (a) IN GENERAL.—

6 (1) IN GENERAL.—Section 237(a)(4)(B) of the  
7 Immigration and Nationality Act (8 U.S.C.  
8 1227(a)(4)(B)) is amended to read as follows:

9 “(B) TERRORIST ACTIVITIES.—Any alien  
10 who is described in subparagraph (B) or (F) of  
11 section 212(a)(3) is deportable.”.

12 (2) EFFECTIVE DATE.—The amendment made  
13 by paragraph (1) shall take effect on the date of the  
14 enactment of this division, and the amendment, and  
15 section 237(a)(4)(B) of the Immigration and Na-  
16 tionality Act (8 U.S.C. 1227(a)(4)(B)), as amended  
17 by such paragraph, shall apply to—

18 (A) removal proceedings instituted before,  
19 on, or after the date of the enactment of this  
20 division; and

21 (B) acts and conditions constituting a  
22 ground for inadmissibility, excludability, depor-  
23 tation, or removal occurring or existing before,  
24 on, or after such date.

1           (b) REPEAL.—Effective as of the date of the enact-  
2 ment of the Intelligence Reform and Terrorism Prevention  
3 Act of 2004 (Public Law 108–458), section 5402 of such  
4 Act is repealed, and the Immigration and Nationality Act  
5 shall be applied as if such section had not been enacted.

6 **SEC. 106. JUDICIAL REVIEW OF ORDERS OF REMOVAL.**

7           (a) IN GENERAL.—Section 242 of the Immigration  
8 and Nationality Act (8 U.S.C. 1252) is amended—

9                   (1) in subsection (a)—

10                           (A) in paragraph (2)—

11                                   (i) in subparagraph (A), by inserting  
12                                   “(statutory or nonstatutory), including sec-  
13                                   tion 2241 of title 28, United States Code,  
14                                   or any other habeas corpus provision, and  
15                                   sections 1361 and 1651 of such title” after  
16                                   “Notwithstanding any other provision of  
17                                   law”;

18                                   (ii) in each of subparagraphs (B) and  
19                                   (C), by inserting “(statutory or nonstatu-  
20                                   tory), including section 2241 of title 28,  
21                                   United States Code, or any other habeas  
22                                   corpus provision, and sections 1361 and  
23                                   1651 of such title, and except as provided  
24                                   in subparagraph (D)” after “Notwith-  
25                                   standing any other provision of law”; and

1 (iii) by adding at the end the fol-  
2 lowing:

3 “(D) JUDICIAL REVIEW OF CERTAIN  
4 LEGAL CLAIMS.—Nothing in subparagraph (B)  
5 or (C), or in any other provision of this Act  
6 (other than this section) which limits or elimi-  
7 nates judicial review, shall be construed as pre-  
8 cluding review of constitutional claims or ques-  
9 tions of law raised upon a petition for review  
10 filed with an appropriate court of appeals in ac-  
11 cordance with this section.”; and

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

13 “(4) CLAIMS UNDER THE UNITED NATIONS  
14 CONVENTION.—Notwithstanding any other provision  
15 of law (statutory or nonstatutory), including section  
16 2241 of title 28, United States Code, or any other  
17 habeas corpus provision, and sections 1361 and  
18 1651 of such title, a petition for review filed with an  
19 appropriate court of appeals in accordance with this  
20 section shall be the sole and exclusive means for ju-  
21 dicial review of any cause or claim under the United  
22 Nations Convention Against Torture and Other  
23 Forms of Cruel, Inhuman, or Degrading Treatment  
24 or Punishment, except as provided in subsection (e).

1           “(5) EXCLUSIVE MEANS OF REVIEW.—Notwith-  
2 standing any other provision of law (statutory or  
3 nonstatutory), including section 2241 of title 28,  
4 United States Code, or any other habeas corpus pro-  
5 vision, and sections 1361 and 1651 of such title, a  
6 petition for review filed with an appropriate court of  
7 appeals in accordance with this section shall be the  
8 sole and exclusive means for judicial review of an  
9 order of removal entered or issued under any provi-  
10 sion of this Act, except as provided in subsection (e).  
11 For purposes of this Act, in every provision that lim-  
12 its or eliminates judicial review or jurisdiction to re-  
13 view, the terms ‘judicial review’ and ‘jurisdiction to  
14 review’ include habeas corpus review pursuant to  
15 section 2241 of title 28, United States Code, or any  
16 other habeas corpus provision, sections 1361 and  
17 1651 of such title, and review pursuant to any other  
18 provision of law (statutory or nonstatutory).”;

19           (2) in subsection (b)(9), by adding at the end  
20 the following: “Except as otherwise provided in this  
21 section, no court shall have jurisdiction, by habeas  
22 corpus under section 2241 of title 28, United States  
23 Code, or any other habeas corpus provision, by sec-  
24 tion 1361 or 1651 of such title, or by any other pro-

1 vision of law (statutory or nonstatutory), to review  
2 such an order or such questions of law or fact.”; and

3 (3) in subsection (g), by inserting “(statutory  
4 or nonstatutory), including section 2241 of title 28,  
5 United States Code, or any other habeas corpus pro-  
6 vision, and sections 1361 and 1651 of such title”  
7 after “notwithstanding any other provision of law”.

8 (b) EFFECTIVE DATE.—The amendments made by  
9 subsection (a) shall take effect upon the date of the enact-  
10 ment of this division and shall apply to cases in which  
11 the final administrative order of removal, deportation, or  
12 exclusion was issued before, on, or after the date of the  
13 enactment of this division.

14 (c) TRANSFER OF CASES.—If an alien’s case, brought  
15 under section 2241 of title 28, United States Code, and  
16 challenging a final administrative order of removal, depor-  
17 tation, or exclusion, is pending in a district court on the  
18 date of the enactment of this division, then the district  
19 court shall transfer the case (or the part of the case that  
20 challenges the order of removal, deportation, or exclusion)  
21 to the court of appeals for the circuit in which a petition  
22 for review could have been properly filed under section  
23 242(b)(2) of the Immigration and Nationality Act (8  
24 U.S.C. 1252), as amended by this section, or under section  
25 309(c)(4)(D) of the Illegal Immigration Reform and Im-

1 migrant Responsibility Act of 1996 (8 U.S.C. 1101 note).  
2 The court of appeals shall treat the transferred case as  
3 if it had been filed pursuant to a petition for review under  
4 such section 242, except that subsection (b)(1) of such  
5 section shall not apply.

6 (d) TRANSITIONAL RULE CASES.—A petition for re-  
7 view filed under former section 106(a) of the Immigration  
8 and Nationality Act (as in effect before its repeal by sec-  
9 tion 306(b) of the Illegal Immigration Reform and Immi-  
10 grant Responsibility Act of 1996 (8 U.S.C. 1252 note))  
11 shall be treated as if it had been filed as a petition for  
12 review under section 242 of the Immigration and Nation-  
13 ality Act (8 U.S.C. 1252), as amended by this section.  
14 Notwithstanding any other provision of law (statutory or  
15 nonstatutory), including section 2241 of title 28, United  
16 States Code, or any other habeas corpus provision, and  
17 sections 1361 and 1651 of such title, such petition for re-  
18 view shall be the sole and exclusive means for judicial re-  
19 view of an order of deportation or exclusion.

20 **TITLE II—IMPROVED SECURITY**  
21 **FOR DRIVERS’ LICENSES AND**  
22 **PERSONAL IDENTIFICATION**  
23 **CARDS**

24 **SEC. 201. DEFINITIONS.**

25 In this title, the following definitions apply:

1           (1) DRIVER’S LICENSE.—The term “driver’s li-  
2           cense” means a motor vehicle operator’s license, as  
3           defined in section 30301 of title 49, United States  
4           Code.

5           (2) IDENTIFICATION CARD.—The term “identi-  
6           fication card” means a personal identification card,  
7           as defined in section 1028(d) of title 18, United  
8           States Code, issued by a State.

9           (3) OFFICIAL PURPOSE.—The term “official  
10          purpose” includes but is not limited to accessing  
11          Federal facilities, boarding federally regulated com-  
12          mercial aircraft, entering nuclear power plants, and  
13          any other purposes that the Secretary shall deter-  
14          mine.

15          (4) SECRETARY.—The term “Secretary” means  
16          the Secretary of Homeland Security.

17          (5) STATE.—The term “State” means a State  
18          of the United States, the District of Columbia, Puer-  
19          to Rico, the Virgin Islands, Guam, American Samoa,  
20          the Northern Mariana Islands, the Trust Territory  
21          of the Pacific Islands, and any other territory or  
22          possession of the United States.

1 **SEC. 202. MINIMUM DOCUMENT REQUIREMENTS AND**  
2 **ISSUANCE STANDARDS FOR FEDERAL REC-**  
3 **OGNITION.**

4 (a) MINIMUM STANDARDS FOR FEDERAL USE.—

5 (1) IN GENERAL.—Beginning 3 years after the  
6 date of the enactment of this division, a Federal  
7 agency may not accept, for any official purpose, a  
8 driver's license or identification card issued by a  
9 State to any person unless the State is meeting the  
10 requirements of this section.

11 (2) STATE CERTIFICATIONS.—The Secretary  
12 shall determine whether a State is meeting the re-  
13 quirements of this section based on certifications  
14 made by the State to the Secretary. Such certifi-  
15 cations shall be made at such times and in such  
16 manner as the Secretary, in consultation with the  
17 Secretary of Transportation, may prescribe by regu-  
18 lation.

19 (b) MINIMUM DOCUMENT REQUIREMENTS.—To meet  
20 the requirements of this section, a State shall include, at  
21 a minimum, the following information and features on  
22 each driver's license and identification card issued to a  
23 person by the State:

24 (1) The person's full legal name.

25 (2) The person's date of birth.

26 (3) The person's gender.

1           (4) The person's driver's license or identifica-  
2           tion card number.

3           (5) A digital photograph of the person.

4           (6) The person's address of principle residence.

5           (7) The person's signature.

6           (8) Physical security features designed to pre-  
7           vent tampering, counterfeiting, or duplication of the  
8           document for fraudulent purposes.

9           (9) A common machine-readable technology,  
10          with defined minimum data elements.

11          (c) MINIMUM ISSUANCE STANDARDS.—

12           (1) IN GENERAL.—To meet the requirements of  
13          this section, a State shall require, at a minimum,  
14          presentation and verification of the following infor-  
15          mation before issuing a driver's license or identifica-  
16          tion card to a person:

17           (A) A photo identity document, except that  
18          a non-photo identity document is acceptable if  
19          it includes both the person's full legal name and  
20          date of birth.

21           (B) Documentation showing the person's  
22          date of birth.

23           (C) Proof of the person's social security  
24          account number or verification that the person

1 is not eligible for a social security account num-  
2 ber.

3 (D) Documentation showing the person's  
4 name and address of principal residence.

5 (2) SPECIAL REQUIREMENTS.—

6 (A) IN GENERAL.—To meet the require-  
7 ments of this section, a State shall comply with  
8 the minimum standards of this paragraph.

9 (B) EVIDENCE OF LAWFUL STATUS.—A  
10 State shall require, before issuing a driver's li-  
11 cense or identification card to a person, valid  
12 documentary evidence that the person—

13 (i) is a citizen or national of the  
14 United States;

15 (ii) is an alien lawfully admitted for  
16 permanent or temporary residence in the  
17 United States;

18 (iii) has conditional permanent resi-  
19 dent status in the United States;

20 (iv) has an approved application for  
21 asylum in the United States or has entered  
22 into the United States in refugee status;

23 (v) has a valid, unexpired non-  
24 immigrant visa or nonimmigrant visa sta-  
25 tus for entry into the United States;

1 (vi) has a pending application for asy-  
2 lum in the United States;

3 (vii) has a pending or approved appli-  
4 cation for temporary protected status in  
5 the United States;

6 (viii) has approved deferred action  
7 status; or

8 (ix) has a pending application for ad-  
9 justment of status to that of an alien law-  
10 fully admitted for permanent residence in  
11 the United States or conditional perma-  
12 nent resident status in the United States.

13 (C) TEMPORARY DRIVERS' LICENSES AND  
14 IDENTIFICATION CARDS.—

15 (i) IN GENERAL.—If a person pre-  
16 sents evidence under any of clauses (v)  
17 through (ix) of subparagraph (B), the  
18 State may only issue a temporary driver's  
19 license or temporary identification card to  
20 the person.

21 (ii) EXPIRATION DATE.—A temporary  
22 driver's license or temporary identification  
23 card issued pursuant to this subparagraph  
24 shall be valid only during the period of  
25 time of the applicant's authorized stay in

1 the United States or, if there is no definite  
2 end to the period of authorized stay, a pe-  
3 riod of one year.

4 (iii) DISPLAY OF EXPIRATION  
5 DATE.—A temporary driver’s license or  
6 temporary identification card issued pursu-  
7 ant to this subparagraph shall clearly indi-  
8 cate that it is temporary and shall state  
9 the date on which it expires.

10 (iv) RENEWAL.—A temporary driver’s  
11 license or temporary identification card  
12 issued pursuant to this subparagraph may  
13 be renewed only upon presentation of valid  
14 documentary evidence that the status by  
15 which the applicant qualified for the tem-  
16 porary driver’s license or temporary identi-  
17 fication card has been extended by the Sec-  
18 retary of Homeland Security.

19 (3) VERIFICATION OF DOCUMENTS.—To meet  
20 the requirements of this section, a State shall imple-  
21 ment the following procedures:

22 (A) Before issuing a driver’s license or  
23 identification card to a person, the State shall  
24 verify, with the issuing agency, the issuance, va-  
25 lidity, and completeness of each document re-

1           required to be presented by the person under  
2           paragraph (1) or (2).

3           (B) The State shall not accept any foreign  
4           document, other than an official passport, to  
5           satisfy a requirement of paragraph (1) or (2).

6           (C) Not later than September 11, 2005,  
7           the State shall enter into a memorandum of un-  
8           derstanding with the Secretary of Homeland  
9           Security to routinely utilize the automated sys-  
10          tem known as Systematic Alien Verification for  
11          Entitlements, as provided for by section 404 of  
12          the Illegal Immigration Reform and Immigrant  
13          Responsibility Act of 1996 (110 Stat. 3009–  
14          664), to verify the legal presence status of a  
15          person, other than a United States citizen, ap-  
16          plying for a driver’s license or identification  
17          card.

18          (d) OTHER REQUIREMENTS.—To meet the require-  
19          ments of this section, a State shall adopt the following  
20          practices in the issuance of drivers’ licenses and identifica-  
21          tion cards:

22               (1) Employ technology to capture digital images  
23               of identity source documents so that the images can  
24               be retained in electronic storage in a transferable  
25               format.

1           (2) Retain paper copies of source documents for  
2           a minimum of 7 years or images of source docu-  
3           ments presented for a minimum of 10 years.

4           (3) Subject each person applying for a driver's  
5           license or identification card to mandatory facial  
6           image capture.

7           (4) Establish an effective procedure to confirm  
8           or verify a renewing applicant's information.

9           (5) Confirm with the Social Security Adminis-  
10          tration a social security account number presented  
11          by a person using the full social security account  
12          number. In the event that a social security account  
13          number is already registered to or associated with  
14          another person to which any State has issued a driv-  
15          er's license or identification card, the State shall re-  
16          solve the discrepancy and take appropriate action.

17          (6) Refuse to issue a driver's license or identi-  
18          fication card to a person holding a driver's license  
19          issued by another State without confirmation that  
20          the person is terminating or has terminated the driv-  
21          er's license.

22          (7) Ensure the physical security of locations  
23          where drivers' licenses and identification cards are  
24          produced and the security of document materials

1 and papers from which drivers' licenses and identi-  
2 fication cards are produced.

3 (8) Subject all persons authorized to manufac-  
4 ture or produce drivers' licenses and identification  
5 cards to appropriate security clearance requirements.

6 (9) Establish fraudulent document recognition  
7 training programs for appropriate employees en-  
8 gaged in the issuance of drivers' licenses and identi-  
9 fication cards.

10 (10) Limit the period of validity of all driver's  
11 licenses and identification cards that are not tem-  
12 porary to a period that does not exceed 8 years.

13 (11) In any case in which the State issues a  
14 driver's license or identification card that does not  
15 satisfy the requirements of this section, ensure that  
16 such license or identification card—

17 (A) clearly states on its face that it may  
18 not be accepted by any Federal agency for fed-  
19 eral identification or any other official purpose;  
20 and

21 (B) uses a unique design or color indicator  
22 to alert Federal agency and other law enforce-  
23 ment personnel that it may not be accepted for  
24 any such purpose.

1           (12) Provide electronic access to all other  
2 States to information contained in the motor vehicle  
3 database of the State.

4           (13) Maintain a State motor vehicle database  
5 that contains, at a minimum—

6                 (A) all data fields printed on drivers' li-  
7 censes and identification cards issued by the  
8 State; and

9                 (B) motor vehicle drivers' histories, includ-  
10 ing motor vehicle violations, suspensions, and  
11 points on licenses.

12 **SEC. 203. TRAFFICKING IN AUTHENTICATION FEATURES**  
13 **FOR USE IN FALSE IDENTIFICATION DOCU-**  
14 **MENTS.**

15           (a) **CRIMINAL PENALTY.**—Section 1028(a)(8) of title  
16 18, United States Code, is amended by striking “false au-  
17 thentication features” and inserting “false or actual au-  
18 thentication features”.

19           (b) **USE OF FALSE DRIVER'S LICENSE AT AIR-**  
20 **PORTS.**—

21                 (1) **IN GENERAL.**—The Secretary shall enter,  
22 into the appropriate aviation security screening  
23 database, appropriate information regarding any  
24 person convicted of using a false driver's license at

1 an airport (as such term is defined in section 40102  
2 of title 49, United States Code).

3 (2) FALSE DEFINED.—In this subsection, the  
4 term “false” has the same meaning such term has  
5 under section 1028(d) of title 18, United States  
6 Code.

7 **SEC. 204. GRANTS TO STATES.**

8 (a) IN GENERAL.—The Secretary may make grants  
9 to a State to assist the State in conforming to the min-  
10 imum standards set forth in this title.

11 (b) AUTHORIZATION OF APPROPRIATIONS.—There  
12 are authorized to be appropriated to the Secretary for  
13 each of the fiscal years 2005 through 2009 such sums as  
14 may be necessary to carry out this title.

15 **SEC. 205. AUTHORITY.**

16 (a) PARTICIPATION OF SECRETARY OF TRANSPOR-  
17 TATION AND STATES.—All authority to issue regulations,  
18 set standards, and issue grants under this title shall be  
19 carried out by the Secretary, in consultation with the Sec-  
20 retary of Transportation and the States.

21 (b) EXTENSIONS OF DEADLINES.—The Secretary  
22 may grant to a State an extension of time to meet the  
23 requirements of section 202(a)(1) if the State provides  
24 adequate justification for noncompliance.

1 **SEC. 206. REPEAL.**

2 Section 7212 of the Intelligence Reform and Ter-  
3 rorism Prevention Act of 2004 (Public Law 108–458) is  
4 repealed.

5 **SEC. 207. LIMITATION ON STATUTORY CONSTRUCTION.**

6 Nothing in this title shall be construed to affect the  
7 authorities or responsibilities of the Secretary of Trans-  
8 portation or the States under chapter 303 of title 49,  
9 United States Code.

10 **TITLE III—BORDER INFRA-**  
11 **STRUCTURE AND TECH-**  
12 **NOLOGY INTEGRATION**

13 **SEC. 301. VULNERABILITY AND THREAT ASSESSMENT.**

14 (a) STUDY.—The Under Secretary of Homeland Se-  
15 curity for Border and Transportation Security, in con-  
16 sultation with the Under Secretary of Homeland Security  
17 for Science and Technology and the Under Secretary of  
18 Homeland Security for Information Analysis and Infra-  
19 structure Protection, shall study the technology, equip-  
20 ment, and personnel needed to address security  
21 vulnerabilities within the United States for each field of-  
22 fice of the Bureau of Customs and Border Protection that  
23 has responsibility for any portion of the United States bor-  
24 ders with Canada and Mexico. The Under Secretary shall  
25 conduct follow-up studies at least once every 5 years.

1           (b) REPORT TO CONGRESS.—The Under Secretary  
2 shall submit a report to Congress on the Under Sec-  
3 retary’s findings and conclusions from each study con-  
4 ducted under subsection (a) together with legislative rec-  
5 ommendations, as appropriate, for addressing any security  
6 vulnerabilities found by the study.

7           (c) AUTHORIZATION OF APPROPRIATIONS.—There  
8 are authorized to be appropriated to the Department of  
9 Homeland Security Directorate of Border and Transpor-  
10 tation Security such sums as may be necessary for fiscal  
11 years 2006 through 2011 to carry out any such rec-  
12 ommendations from the first study conducted under sub-  
13 section (a).

14 **SEC. 302. USE OF GROUND SURVEILLANCE TECHNOLOGIES**  
15 **FOR BORDER SECURITY.**

16           (a) PILOT PROGRAM.—Not later than 180 days after  
17 the date of the enactment of this division, the Under Sec-  
18 retary of Homeland Security for Science and Technology,  
19 in consultation with the Under Secretary of Homeland Se-  
20 curity for Border and Transportation Security, the Under  
21 Secretary of Homeland Security for Information Analysis  
22 and Infrastructure Protection, and the Secretary of De-  
23 fense, shall develop a pilot program to utilize, or increase  
24 the utilization of, ground surveillance technologies to en-

1 enhance the border security of the United States. In devel-  
2 oping the program, the Under Secretary shall—

3 (1) consider various current and proposed  
4 ground surveillance technologies that could be uti-  
5 lized to enhance the border security of the United  
6 States;

7 (2) assess the threats to the border security of  
8 the United States that could be addressed by the  
9 utilization of such technologies; and

10 (3) assess the feasibility and advisability of uti-  
11 lizing such technologies to address such threats, in-  
12 cluding an assessment of the technologies considered  
13 best suited to address such threats.

14 (b) ADDITIONAL REQUIREMENTS.—

15 (1) IN GENERAL.—The pilot program shall in-  
16 clude the utilization of a variety of ground surveil-  
17 lance technologies in a variety of topographies and  
18 areas (including both populated and unpopulated  
19 areas) on both the northern and southern borders of  
20 the United States in order to evaluate, for a range  
21 of circumstances—

22 (A) the significance of previous experiences  
23 with such technologies in homeland security or  
24 critical infrastructure protection for the utiliza-  
25 tion of such technologies for border security;

1 (B) the cost, utility, and effectiveness of  
2 such technologies for border security; and

3 (C) liability, safety, and privacy concerns  
4 relating to the utilization of such technologies  
5 for border security.

6 (2) TECHNOLOGIES.—The ground surveillance  
7 technologies utilized in the pilot program shall in-  
8 clude the following:

9 (A) Video camera technology.

10 (B) Sensor technology.

11 (C) Motion detection technology.

12 (c) IMPLEMENTATION.—The Under Secretary of  
13 Homeland Security for Border and Transportation Secu-  
14 rity shall implement the pilot program developed under  
15 this section.

16 (d) REPORT.—Not later than 1 year after imple-  
17 menting the pilot program under subsection (a), the  
18 Under Secretary shall submit a report on the program to  
19 the Senate Committee on Commerce, Science, and Trans-  
20 portation, the House of Representatives Committee on  
21 Science, the House of Representatives Committee on  
22 Homeland Security, and the House of Representatives  
23 Committee on the Judiciary. The Under Secretary shall  
24 include in the report a description of the program together  
25 with such recommendations as the Under Secretary finds

1 appropriate, including recommendations for terminating  
2 the program, making the program permanent, or enhance-  
3 ing the program.

4 **SEC. 303. ENHANCEMENT OF COMMUNICATIONS INTEGRA-**  
5 **TION AND INFORMATION SHARING ON BOR-**  
6 **DER SECURITY.**

7 (a) IN GENERAL.—Not later than 180 days after the  
8 date of the enactment of this division, the Secretary of  
9 Homeland Security, acting through the Under Secretary  
10 of Homeland Security for Border and Transportation Se-  
11 curity, in consultation with the Under Secretary of Home-  
12 land Security for Science and Technology, the Under Sec-  
13 retary of Homeland Security for Information Analysis and  
14 Infrastructure Protection, the Assistant Secretary of Com-  
15 merce for Communications and Information, and other ap-  
16 propriate Federal, State, local, and tribal agencies, shall  
17 develop and implement a plan—

18 (1) to improve the communications systems of  
19 the departments and agencies of the Federal Gov-  
20 ernment in order to facilitate the integration of com-  
21 munications among the departments and agencies of  
22 the Federal Government and State, local government  
23 agencies, and Indian tribal agencies on matters re-  
24 lating to border security; and

1           (2) to enhance information sharing among the  
2           departments and agencies of the Federal Govern-  
3           ment, State and local government agencies, and In-  
4           dian tribal agencies on such matters.

5           (b) REPORT.—Not later than 1 year after imple-  
6           menting the plan under subsection (a), the Secretary shall  
7           submit a copy of the plan and a report on the plan, includ-  
8           ing any recommendations the Secretary finds appropriate,  
9           to the Senate Committee on Commerce, Science, and  
10          Transportation, the House of Representatives Committee  
11          on Science, the House of Representatives Committee on  
12          Homeland Security, and the House of Representatives  
13          Committee on the Judiciary.

14                           **TITLE IV—TEMPORARY**  
15                           **WORKERS**

16   **SEC. 401. SHORT TITLE.**

17           This title may be cited as the “Save Our Small and  
18          Seasonal Businesses Act of 2005”.

19   **SEC. 402. NUMERICAL LIMITATIONS ON H-2B WORKERS.**

20           (a) IN GENERAL.—Section 214(g) of the Immigra-  
21          tion and Nationality Act (8 U.S.C. 1184(g)) is amended  
22          by adding at the end the following:

23           “(9)(A) Subject to subparagraphs (B) and (C), an  
24          alien who has already been counted toward the numerical  
25          limitations of paragraph (1)(B) during any 1 of the 3 fis-

1 cal years prior to the fiscal year of the approved start date  
2 of a petition for a nonimmigrant worker described in sec-  
3 tion 101(a)(15)(H)(ii)(b) shall not be counted toward such  
4 limitation for the fiscal year in which the petition is ap-  
5 proved. Such an alien shall be considered a returning  
6 worker.

7 “(B) A petition referred to in subparagraph (A) shall  
8 include, with respect to a returning worker—

9 “(i) all information and evidence that the Sec-  
10 retary of Homeland Security determines is required  
11 to support a petition for status under section  
12 101(a)(15)(H)(ii)(b);

13 “(ii) the full name of the alien; and

14 “(iii) a certification to the Department of  
15 Homeland Security that the alien is a returning  
16 worker.

17 “(C) An H-2B visa or grant of nonimmigrant status  
18 for a returning worker shall be approved only if the alien  
19 is confirmed to be a returning worker by—

20 “(i) the Department of State; or

21 “(ii) if the alien is visa exempt or seeking to  
22 change to status under section 101  
23 (a)(15)(H)(ii)(b), the Department of Homeland Se-  
24 curity.”.

25 (b) EFFECTIVE DATE.—

1           (1) IN GENERAL.—The amendment in sub-  
2           section (a) shall take effect as if enacted on October  
3           1, 2004, and shall expire on October 1, 2006.

4           (2) IMPLEMENTATION.—Not later than 14 days  
5           after the date of the enactment of this Act, the Sec-  
6           retary of Homeland Security shall begin accepting  
7           and processing petitions filed on behalf of aliens de-  
8           scribed in section 101(a)(15)(H)(ii)(b) of the Immi-  
9           gration and Nationality Act, in a manner consistent  
10          with this section and the amendments made by this  
11          section. Notwithstanding section 214(g)(9)(B) of  
12          such Act, as added by subsection (a), the Secretary  
13          of Homeland Security shall allocate additional num-  
14          bers for fiscal year 2005 based on statistical esti-  
15          mates and projections derived from Department of  
16          State data.

17 **SEC. 403. FRAUD PREVENTION AND DETECTION FEE.**

18          (a) IMPOSITION OF FEE.—Section 214(e) of the Im-  
19          migration and Nationality Act (8 U.S.C. 1184(e)), as  
20          amended by section 426(a) of division J of the Consoli-  
21          dated Appropriations Act, 2005 (Public Law 108–447),  
22          is amended by adding at the end the following:

23               “(13)(A) In addition to any other fees authorized by  
24          law, the Secretary of Homeland Security shall impose a  
25          fraud prevention and detection fee on an employer filing

1 a petition under paragraph (1) for nonimmigrant workers  
2 described in section 101(a)(15)(H)(ii)(b).

3 “(B) The amount of the fee imposed under subpara-  
4 graph (A) shall be \$150.”

5 (b) USE OF FEES.—

6 (1) FRAUD PREVENTION AND DETECTION AC-  
7 COUNT.—Subsection (v) of section 286 of the Immi-  
8 gration and Nationality Act (8 U.S.C. 1356), as  
9 added by section 426(b) of division J of the Consoli-  
10 dated Appropriations Act, 2005 (Public Law 108-  
11 447), is amended—

12 (A) in paragraphs (1), (2)(A), (2)(B),  
13 (2)(C), and (2)(D) by striking “H1-B and L”  
14 each place it appears;

15 (B) in paragraph (1), as amended by sub-  
16 paragraph (A), by striking “section 214(c)(12)”  
17 and inserting “paragraph (12) or (13) of sec-  
18 tion 214(c)”;

19 (C) in paragraphs (2)(A)(i) and (2)(B), as  
20 amended by subparagraph (A), by striking  
21 “(H)(i)” each place it appears and inserting  
22 “(H)(i), (H)(ii),”; and

23 (D) in paragraph (2)(D), as amended by  
24 subparagraph (A), by inserting before the pe-  
25 riod at the end “or for programs and activities

1 to prevent and detect fraud with respect to peti-  
2 tions under paragraph (1) or (2)(A) of section  
3 214(c) to grant an alien nonimmigrant status  
4 described in section 101(a)(15)(H)(ii)”.

5 (2) CONFORMING AMENDMENT.—The heading  
6 of such subsection (v) of section 286 is amended by  
7 striking “H1-B and L”.

8 (c) EFFECTIVE DATE.—The amendments made by  
9 subsections (a) and (b) shall take effect 14 days after the  
10 date of the enactment of this Act and shall apply to filings  
11 for a fiscal year after fiscal year 2005.

12 **SEC. 404. SANCTIONS.**

13 (a) IN GENERAL.—Section 214(c) of the Immigration  
14 and Nationality Act (8 U.S.C. 1184(c)), as amended by  
15 section 403, is further amended by adding at the end the  
16 following:

17 “(14)(A) If the Secretary of Homeland Security  
18 finds, after notice and an opportunity for a hearing, a sub-  
19 stantial failure to meet any of the conditions of the peti-  
20 tion to admit or otherwise provide status to a non-  
21 immigrant worker under section 101(a)(15)(H)(ii)(b) or  
22 a willful misrepresentation of a material fact in such peti-  
23 tion—

24 “(i) the Secretary of Homeland Security may,  
25 in addition to any other remedy authorized by law,

1 impose such administrative remedies (including civil  
2 monetary penalties in an amount not to exceed  
3 \$10,000 per violation) as the Secretary of Homeland  
4 Security determines to be appropriate; and

5 “(ii) the Secretary of Homeland Security may  
6 deny petitions filed with respect to that employer  
7 under section 204 or paragraph (1) of this sub-  
8 section during a period of at least 1 year but not  
9 more than 5 years for aliens to be employed by the  
10 employer.

11 “(B) The Secretary of Homeland Security may dele-  
12 gate to the Secretary of Labor, with the agreement of the  
13 Secretary of Labor, any of the authority given to the Sec-  
14 retary of Homeland Security under subparagraph (A)(i).

15 “(C) In determining the level of penalties to be as-  
16 sessed under subparagraph (A), the highest penalties shall  
17 be reserved for willful failures to meet any of the condi-  
18 tions of the petition that involve harm to United States  
19 workers.

20 “(D) In this paragraph, the term ‘substantial failure’  
21 means the willful failure to comply with the requirements  
22 of this section that constitutes a significant deviation from  
23 the terms and conditions of a petition.”.

24 (b) EFFECTIVE DATE.—The amendment made by  
25 subsection (a) shall take effect on October 1, 2005.

1 **SEC. 405. ALLOCATION OF H-2B VISAS OR H-2B NON-**  
2 **IMMIGRANT STATUS DURING A FISCAL YEAR.**

3 Section 214(g) of the Immigration and Nationality  
4 Act (8 U.S.C. 1184(g)), as amended by section 402, is  
5 further amended by adding at the end the following new  
6 paragraph:

7 “(10) The numerical limitations of paragraph (1)(B)  
8 shall be allocated for a fiscal year so that the total number  
9 of aliens subject to such numerical limits who enter the  
10 United States pursuant to a visa or are accorded non-  
11 immigrant status under section 101(a)(15)(H)(ii)(b) dur-  
12 ing the first 6 months of such fiscal year is not more than  
13 33,000.”.

14 **SEC. 406. SUBMISSION TO CONGRESS OF INFORMATION RE-**  
15 **GARDING H-2B NONIMMIGRANTS.**

16 Section 416 of the American Competitiveness and  
17 Workforce Improvement Act of 1998 (title IV of division  
18 C of Public Law 105-277; 8 U.S.C. 1184 note) is amend-  
19 ed—

20 (1) by striking “Attorney General” each place  
21 that term appears and inserting “Secretary of  
22 Homeland Security”; and

23 (2) by adding at the end the following new sub-  
24 section:

25 “(d) PROVISION OF INFORMATION.—

1           “(1) SEMIANNUAL NOTIFICATION.—Beginning  
2 not later than March 1, 2006, the Secretary of  
3 Homeland Security and the Secretary of State shall  
4 notify, on a semiannual basis, the Committees on  
5 the Judiciary of the House of Representatives and  
6 the Senate of the number of aliens who during the  
7 preceding 1-year period—

8           “(A) were issued visas or otherwise pro-  
9 vided nonimmigrant status under section  
10 101(a)(15)(H)(ii)(b) of the Immigration and  
11 Nationality Act (8 U.S.C.  
12 1101(a)(15)(H)(ii)(b)); or

13           “(B) had such a visa or such status be re-  
14 voked or otherwise terminated.

15           “(2) ANNUAL SUBMISSION.—Beginning in fiscal  
16 year 2007, the Secretary of Homeland Security and  
17 the Secretary of State shall submit, on an annual  
18 basis, to the Committees on the Judiciary of the  
19 House of Representatives and the Senate—

20           “(A) information on the countries of origin  
21 of, occupations of, and compensation paid to  
22 aliens who were issued visas or otherwise pro-  
23 vided nonimmigrant status under section  
24 101(a)(15)(H)(ii)(b) of the Immigration and  
25 Nationality Act (8 U.S.C.



1 tions to the extent the Secretary Homeland Security, the  
2 Secretary of Labor, or the Secretary of State determine  
3 that compliance with any such requirement would impede  
4 the expeditious implementation of such sections or the  
5 amendments made by such sections.

6 **TITLE V—OTHER CHANGES TO**  
7 **PROVISIONS GOVERNING**  
8 **NONIMMIGRANT AND IMMI-**  
9 **GRANT VISAS**

10 **SEC. 501. RECIPROCAL VISAS FOR NATIONALS OF AUS-**  
11 **TRALIA.**

12 (a) IN GENERAL.—Section 101(a)(15)(E) of the Im-  
13 migration and Nationality Act (8 U.S.C. 1101(a)(15)(E))  
14 is amended—

15 (1) by adding at the end “or (iii) solely to per-  
16 form services in a specialty occupation in the United  
17 States if the alien is a national of the Common-  
18 wealth of Australia and with respect to whom the  
19 Secretary of Labor determines and certifies to the  
20 Secretary of Homeland Security and the Secretary  
21 of State that the intending employer has filed with  
22 the Secretary of Labor an attestation under section  
23 212(t)(1);”; and

24 (2) in clause (i), by striking “or” after “na-  
25 tional;”.

1 (b) NUMERICAL LIMITATION TO ANY SINGLE FOR-  
2 EIGN STATE.—Section 214(g) of such Act (8 U.S.C.  
3 1184(g)), as amended by section 405, is further amended  
4 by adding at the end the following new paragraph:

5 “(11)(A) The Secretary of State may not approve a  
6 number of initial applications submitted for aliens de-  
7 scribed in section 101(a)(15)(E)(iii) that is more than the  
8 applicable numerical limitation set out in this paragraph.

9 “(B) The applicable numerical limitation referred to  
10 in subparagraph (A) is 10,500 for each fiscal year.

11 “(C) The applicable numerical limitation referred to  
12 in subparagraph (A) shall only apply to principal aliens  
13 and not to the spouses or children of such aliens.”.

14 (c) SPECIALTY OCCUPATION DEFINED.—Section  
15 214(i)(1) of such Act (8 U.S.C. 1184(i)(1)) is amended  
16 by inserting “, section 101(a)(15)(E)(iii),” after “section  
17 101(a)(15)(H)(i)(b)”.

18 (d) ATTESTATION.—Section 212(t) of such Act (8  
19 U.S.C. 1182(t)), as added by section 402(b)(2) of the  
20 United States-Chile Free Trade Agreement Implementa-  
21 tion Act (Public Law 108–77; 117 Stat. 941), is amend-  
22 ed—

23 (1) by inserting “or section 101(a)(15)(E)(iii)”  
24 after “section 101(a)(15)(H)(i)(b1)” each place it  
25 appears; and

1           (2) in paragraphs (3)(C)(i)(II), (3)(C)(ii)(II),  
2           and (3)(C)(iii)(II) by striking “or  
3           101(a)(15)(H)(i)(b1)” each place it appears and in-  
4           serting “101(a)(15)(H)(i)(b1), or  
5           101(a)(15)(E)(iii)”.

6 **SEC. 502. VISAS FOR NURSES.**

7           Section 106(d) of the American Competitiveness in  
8           the Twenty-first Century Act of 2000 (Public Law 106–  
9           313; 8 U.S.C. 1153 note) is amended—

10           (1) in paragraph (1), by inserting before the pe-  
11           riod at the end of the second sentence “and any  
12           such visa that is made available due to the difference  
13           between the number of employment-based visas that  
14           were made available in fiscal year 2001, 2002, 2003,  
15           or 2004 and the number of such visas that were ac-  
16           tually used in such fiscal year shall be available only  
17           to employment-based immigrants (and their family  
18           members accompanying or following to join under  
19           section 203(d) of such Act (8 U.S.C. 1153(d)))  
20           whose immigrant worker petitions were approved  
21           based on schedule A, as defined in section 656.5 of  
22           title 20, Code of Federal Regulations, as promul-  
23           gated by the Secretary of Labor”;

24           (2) in paragraph (2)(A), by striking “and  
25           2000” and inserting “through 2004”; and

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

3                   “(B)(i) REDUCTION.—The number de-  
4                   scribed in subparagraph (A) shall be reduced,  
5                   for each fiscal year after fiscal year 2001, by  
6                   the cumulative number of immigrant visas actu-  
7                   ally used under paragraph (1) for previous fis-  
8                   cal years.

9                   “(ii) MAXIMUM.—The total number of  
10                  visas actually used under paragraph (1) may  
11                  not exceed 50,000.”.