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Section/Subsection of Law	*Description of the Bill's Language*	*Discussion of the Effect of the Language*
	SECTION 2 – CONGRESSIONAL FINDINGS	
Sec. 2(3). Congressional Findings— [Bill p.8]	Contains the following verbiage: "The world depends on America to be strong — economically, militarily and ethically. The establishment of a stable, just and efficient immigration system only supports those goals"	Passing observation: many persons would take exception to the implication that the current system is unethical and unjust, and they ascribe its inefficiencies to politicization of the system, not to injustices inherent in the system itself.
	SECTION 3 – EFFECTIVE DATE TRIGGERS	
Sec. 3(a)(4). Effective Date Triggers, Definition of "Effectiveness Rate"— [Bill p.9]	States: "The 'effectiveness rate', in the case of a border sector, is the percentage calculated by dividing the number of apprehensions and turn backs in the sector during a fiscal year *by the total number of illegal entries in the sector* during such fiscal year." (emphasis added)	The validity of existing border metrics have been questioned by a number of scholars. For instance, a Rand Corporation report of 2011 ("Measuring Illegal Border Crossing Between Ports of Entry") found that U.S. Customs and Border Protection [CBP] explained *increases* in apprehensions in some border sectors to improved CBP operations and *decreases* in apprehensions in other sectors to the deterrent effects of improved CBP technologies. The authors concluded, "Clearly, a measure that reflects successful performance whether it rises or falls has limited value as a management tool." Now we find that this bill would levy on DHS responsibility for a whole new metric: determining "the total number of illegal entries in the sector during such fiscal year" as a trigger for granting of benefits. At present *there is no trustworthy methodology for determining the total number of illegal entries in any sector*. Given this administration's keen interest in "regularizing" the status of millions of illegal aliens, and its already-

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		evidenced propensity for manipulating border statistics (even the president has referred to them as "a little deceptive"), the inevitable consequence will be for DHS to produce low, and empirically indefensible, projections of total illegal entries in key sectors, in order to achieve the 90% effectiveness trigger required to move forward.
Sec. 3(c)(2)(A)(i). Triggers: Adjustment of Status of RPIs— [Bill p.11]	Provides that the DHS Secretary may not begin adjusting aliens from RPI to lawful permanent resident [LPR] status until certifying that "the Comprehensive Southern Border Security Strategy has been submitted to Congress and is *substantially deployed and substantially operational*." (emphasis added)	The bill provides no definitions of either "substantially deployed" or "substantially operational," leaving these important concepts open to interpretation. In addition, as written, the bill does not require the Secretary to certify substantial *success* in the strategy—only operational deployment. As a consequence, previously-illegal aliens continue their march onward toward LPR status while the southern border remains unsecured, and the promised enforcement emphasis of this bill proves ephemeral.
Sec. 3(c)(2)(B)(i). Triggers: Adjustment of Status of RPI: Exception— [Bill p.12]	Establishes an exception to the prohibition against the Secretary adjusting aliens to LPR status until the triggers have been met. The exception permits adjustment without triggers in the event that "litigation or a force majeure has prevented one or more of the conditions…from being implemented; or the implementation…has been held unconstitutional by the Supreme Court; or the Supreme Court has granted certiorari	These exceptions are exceedingly troubling in that they invite litigation by parties who have a keen interest in amnesty but no interest whatever in enforcement of the immigration laws. The third clause is most troubling of all: a simple grant by the Supreme Court of a request to hear the case (certiorari)—with no assurance at all that the litigants would win—is enough to move forward with adjustment of status. But just by granting certiorari, the Court moots the case since the issue in

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	to the litigation…and ten years have elapsed since enactment."	contention is whether or not to initiate adjustment proceedings for RPIs—which the grant of certiorari provides. It is a deliberate catch-22 built into the system to ensure that adjustment happens no matter what.
SECTION 4 – SOUTHERN BORDER SECURITY COMMISSION		
Sec. 4. Southern Border Security Commission— [Bill p.14]	States: "If Secretary [sic] certifies that the Department has not achieved effective control in all high risk border sectors during any fiscal year beginning before the date that is 5 years after the date of the enactment of this Act, not later than 60 days after the date of the certification there shall be established a commission to be known as the 'Southern Border Security Commission.' "	Creation of such a commission is predicated only on a certification of failure by the DHS Secretary. For political reasons, as explained in our analysis of Sec. 3(a)(4) above, it is highly unlikely that the Secretary will certify failure. But even if this were to occur, why should the American public invest confidence in a policy advisory commission, when recent experience (such as with the Simpson-Bowles Commission) indicates that the reports and recommendations of such groups are routinely ignored?
SECTION 5 – COMPREHENSIVE SOUTHERN BORDER SECURITY STRATEGY AND SOUTHERN BORDER FENCING STRATEGY		
Sec. 5. Comprehensive Southern Border Security Strategy and Southern Border Fencing Strategy— [Bill p.18]	Requires the Secretary to submit to Congress, within 180 days of enactment, the two strategies (security and fencing), outlining goals and priorities, plus the requisite fiscal, human and technical resources needed to achieve them.	Despite the fact that, until there is an adequate track record, we have no way to know whether the strategies will be successful, or whether the fiscal and resource requirements will be met, as soon as the Secretary submits a "Notice of Commencement" [per Sec. 3(c)(1)], processing of RPI applications will begin. Thus, as is evident throughout the bill, enforcement possibilities take a backseat to amnesty realities.
SECTION 6 – COMPREHENSIVE IMMIGRATION REFORM TRUST FUND		

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Sec. 6(a)(1). Comprehensive Immigration Reform Trust Fund: Deposits— [Bill p.25]	This subsection lays out the many sources of money—beginning with a massive infusion of funding from the Treasury and, thereafter, a variety of user fee and fine and penalty accounts—which will be used to bankroll the Fund whose purpose is to carry out the Comprehensive Southern Border Security and Southern Border Fencing Strategies, to augment southern border prosecutions, etc.	Issue #1: It is important to remember that at least 40% of the present illegal alien population of the United States consists of visa overstays who are *not*, in the main, in the southern border purview of operations. Apportioning these user fees for strictly southern border-related strategies leaves a funding hole for other DHS immigration enforcement components such as ICE, which have relied on the user fee accounts to fund nationwide interior enforcement activities. Issue #2: Given the multiplicity of items for which the Fund must pay (many of them relating not to enforcement, but to the benefits applications processes), there is no assurance that the amounts collected from the various user fees and penalties will be adequate to the purposes. At present, this is an unknown, and could have a significant adverse impact on enforcement activities if the fund falls short of expectations. Issue #3: There is a provision in the bill that specifically authorizes the DHS Secretary to limit fee collections from families, and to waive fees to classes designated by the Secretary, such as the indigent. While this would be counter-intuitive in that aliens applying for RPI (and, ultimately, LPR) status are supposed to be self-sufficient, historically federal immigration benefits-granting agencies have promulgated fee-waiver rules for virtually every benefit imaginable, and been liberal in their application. Thus the concern we raise in Issue #2 immediately above (funding shortages) could be

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		further exacerbated by such an agency rule.
Sec. 6(a)(3)(B)(ii). Comprehensive Immigration Reform Trust Fund: Ongoing Funding— [Bill p.29]	States that $50 million will be provided each fiscal year, 2014 – 2018, to carry out the activities described in section 1104(b) of the bill [the Border Patrol's Operation Stonegarden project].	A review of the referenced section 1104(b) [found at bill p. 38] shows that law enforcement agencies in southwest border states may use the money for personnel, overtime, travel, and other costs related to *drug smuggling*, as well as illegal-immigration related activities. (emphasis added) While narcotics interdiction is a valuable and worthy endeavor, the statutory language provides *no assurance* that the majority of the cumulative $250 million dollars set aside (90% of which is specifically for state and local agencies) will be used to interdict alien smuggling or impede illegal border crossings.
Sec. 6(b). Comprehensive Immigration Reform Trust Fund: Limitation on Collection— [Bill p.30]	States: "No fee described…may be collected under this Act except to the extent that the expenditure of the fee to pay the costs of activities and services for which the fee is imposed is provided for in advance in an appropriations Act."	Although the bill lays out huge amounts to be set aside in advance and apportioned from the Fund for specific purposes, years into the future, this "Limitation" provision makes clear that *unless specific authorizing language is included in appropriations bills for each federal fiscal year*, collections are impermissible under the law. Given the frequent and repetitive difficulties with Congress being able to pass appropriations acts in a timely and routine manner in recent years (witness the current stalemate), we could easily end up with a multitude of unfunded enforcement mandates—resulting in lack of enforcement ,even while amnesty and benefits-granting activities move forward on a grand scale.

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	TITLE I—BORDER SECURITY	
Sec. 1103(d). National Guard Support to Secure the Border: Materiel and Logistical Support— [Bill p.35]	Authorizes State governors, with approval of the U.S. Defense Secretary [SecDef], to assign national guard units for the purposes of assisting CBP's Border Patrol in securing the Southern border. Subsection (d) directs the SecDef to "deploy such materiel and equipment and logistical support as may be necessary to ensure success of the operations and missions conducted by the National Guard under this section."	*There is no funding mechanism contained within this section to pay for the salaries and benefits of the National Guard troops used*. We must presume therefore that such payments, which could be substantial, must be taken out of the Comprehensive Immigration Reform Trust Fund, and thus unavailable for use by CBP itself to undertake the enhanced patrol and inspectional duties envisioned by other parts of the bill.
Sec. 1105(b). Border Security on Certain Federal Land: Support for Border Security Needs— [Bill p.40] *—and—* **Sec. 1105(d). Border Security on Certain Federal Land: Intermingled State and Private Land—** [Bill p.42]	Subsection (b) provides that to achieve effective control of Federal lands, "the Secretary concerned [Agriculture or Interior]shall authorize and provide U.S. Customs and Border Protection personnel with immediate access to Federal lands for security activities", such as patrols; and deployment of communications, surveillance, and detection equipment. But Subsection (d) goes on to make clear that the right of access *does not apply to state or private lands which are encompassed inside federal lands.* (emphasis added)	The prohibitions in subsection (d) actually *diminish* the right of access to border lands by patrol officers, as presently authorized in the Immigration and Nationality Act (INA) and its implementing regulations— Section 287(a)(3) of the INA [8 USC 1357(a)(3)] states: "(a) Any officer or employee of the Service authorized under regulations prescribed by the Attorney General shall have power without warrant-…(3) within a reasonable distance from any external boundary of the United States, to board and search for aliens any vessel within the territorial waters of the United States and any railway car, aircraft, conveyance, or vehicle, *and within a distance of twenty-five miles from any such external boundary to have access to private lands*, but not dwellings for the purpose of patrolling the border to prevent the illegal entry of

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		aliens into the United States…" (emphasis added) Because subsection (d) of this bill does not carve out the 25-mile exception permitting access to private lands, it can readily be construed as amending existing INA 287(a)(3) to no longer permit that access.
Sec. 1110. **SCAAP Reauthorization—** [Bill p.48]	This section reauthorizes federal funds to be used to reimburse state and local governments, through fiscal year 2015, under the State Criminal Alien Assistance Program (SCAAP). In so doing, it extends the life of the program several years into the future.	SCAAP funding has been problematic in the past few years because millions of dollars have been given to a number of state and local governments which actively obstruct federal immigration enforcement efforts, by— • enactment of sanctuary statutes and ordinances; implementation of policies making it difficult for state or local employees to communicate with federal immigration authorities; • restricting access of federal immigration authorities to detained criminals suspected of being deportable aliens; and • refusing to honor federal immigration detainers filed against deportable aliens. If this bill, as claimed, carefully balanced immigration enforcement interests against the demands that large numbers of illegal aliens receive benefits permitting them to remain in the U.S., then the authors would have ensured that SCAAP reauthorization language *restricted access to the funds solely to those state and local governments which unreservedly cooperate with federal immigration enforcement efforts*.
Sec. 1111.	Obliges the Secretary to establish rules for	The section makes no attempt to define "use of

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Use of Force— [Bill p.48]	use of force; reporting of use of force; discipline for use of force.	force"; to distinguish between levels of the use of force; nor to carve out exceptions for the reasonable use of force. Queries: □ If an alien raises his fist to strike a blow and the officer uses his arm to block the blow, has the officer committed a use of force? □ If an alien flees and the officer is obliged to tackle the alien to effect arrest, has the officer committed a use of force? Additional observation: the language of this section may have a chilling effect on officers' reaction times when deciding whether to use necessary force to protect themselves or others, with injurious consequences.
Sec. 1112. Training for Border Security and Immigration Enforcement Officers— [Bill p.49]	Requires the Secretary (in consultation with the Assistant Attorney General for Civil Rights) to provide training to all CBP inspectors, agricultural inspectors, Border Patrol agents and ICE agents within 100 miles of any land or maritime border, or any U.S. port of entry [POE]. The training mostly involves civil rights-related matters, but also includes fraudulent document identification.	The language is anomalous for two reasons: □ First, because it is only required for officers stationed within 100 miles of external U.S. borders, or at international POEs; and □ Second, because it is not required for USCIS employees. The fraudulent document training would seem to be particularly apt for USCIS examiners and adjudicators, given the huge volume of documents that they will be receiving from applicants seeking RPI status in the U.S. If the training is important, then it should be mandatory for all DHS officers.
Sec. 1114. DHS Immigration	Amends Sec. 452 of the Homeland Security Act (6 U.S.C. 272) to create a DHS	Under the proposed language, the ombudsman will take on added oversight responsibilities for CBP and

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Ombudsman— [Bill p.56]	immigration ombudsman in place of the currently existing U.S. Citizenship and Immigration Services (USCIS) ombudsman. The language states: "It shall be the function of the Ombudsman—(1) to assist individuals and employers in resolving problems with [the relevant agencies]; (2) to identify areas in which individuals and employers have problems in dealing with [the relevant agencies]…"	Immigration and Customs Enforcement [ICE], as well as for USCIS. However, the scope of those responsibilities still revolves solely around service to aliens and employers. For this bill to fairly balance interests between enforcement on one hand, and benefits and services on the other, then the scope of the ombudsman should clearly have been expanded to include an obligation *to assist individuals and families who have been the victims of alien crimes or border violence.* There have been innumerable egregious instances of such victimization throughout the country. The federal government owes its citizens at least as much attention to their alien-crime-related concerns as it does to the concerns of aliens or employers seeking immigration benefits and assistance.
TITLE II—IMMIGRANT VISAS		
Sec. 2101(a). Registered Provisional Immigrant [RPI] Status— *Reference to* **"Immigration and Nationality Act [INA] Sec. 245B(a)(3). Adjustment of Status of Eligible Entrants Before Dec. 31, 2011 to RPI"** [Bill p.61]	Under the bill, a grant of RPI is predicated, among other things, on whether the applicant "(3) has paid the fee required under subsection (c)(10)(A) and the penalty required under subsection (c)(10)(C), if applicable."	Once the DHS Secretary promulgates fee-waiver regulations for indigence or other circumstances, the requirement that an alien remit his fees and penalties before receiving RPI status has little meaning.

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Sec. 2101(a). **RPI Status—** *Reference to* **"INA Sec. 245B(b)(2)(B).** **RPI Eligibility Requirements:** **Break in Physical Presence."** [Bill p.61]	As proposed in the bill, INA Sec. 245B(b)(2)(B)(i) will state that, "*Except as provided in clause (ii),* an alien who is absent from the United States without authorization after the date of the enactment of this section does not meet the continuous physical presence requirement." (emphasis added)	A careful reading of the referenced exception clause (ii) indicates that "An alien who departed from the United States after December 31, 2011 will not be considered to have failed to maintain continuous presence in the United States if the alien's absences from the United States are brief, casual, and innocent *whether or not such absences were authorized by the Secretary*." (emphasis added) It is difficult to conceive of *any* absence from the United States which was not legally authorized, as being "brief, casual, and innocent." The juxtaposition of the two clauses stands logic on its head, because the only way an illegal alien could reenter the U.S. without permission is *illegally,* making him a repeat violator. What could possibly be brief, casual or innocent about such conduct? This is one of the many ways in which the bill subverts any culture shift away from disrespect, and toward one of compliance and respect for the nation's immigration laws.
Sec. 2101(a). **RPI Status—** *Reference to* **"INA Sec. 245B(b)(3)(A)(i)(I).** **RPI Eligibility Requirements:** **Grounds for Ineligibility:** **Felony Convictions."** [Bill p.62]	This section provides that an alien is ineligible for RPI status if he has been convicted of a felony in the convicting jurisdiction, "(other than a State or local offense for which an essential element was the alien's immigration status or a violation of this Act)…"	The parenthetical phrase is troubling. State and local police—particularly in southern border areas—are frequently first responders at smuggling safe houses, where the smuggled aliens are often held under extortionate and dangerous conditions. Consequently several States have criminalized alien smuggling, and some of the State laws use language taken from, or incorporate by reference, the relevant portion of the anti-smuggling provisions in the INA [section 274, 8 USC 1324].

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		The parenthetical phrase suggests that a State felony conviction for alien smuggling could not be used to deny RPI status to the smuggler himself, if he is an alien (as border smugglers often are) since such a conviction arguably devolves around "a violation of this Act."
Sec. 2101(a). Registered Provisional Immigrant [RPI] Status— *Reference to* **"INA Sec. 245B(b)(3)(A)(i)(III). RPI Eligibility Requirements: Grounds for Ineligibility: Misdemeanor Convictions."** [Bill p.63]	An alien is ineligible for RPI status if he has been convicted of three or more misdemeanor offenses "(other than minor traffic offenses, or a State or local offense for which an essential element was the alien's immigration status or a violation of this Act)…… *if the alien was convicted on different dates for each of the 3 offenses*…" (emphasis added)	Issue #1: We question the wisdom of permitting aliens with fewer than 3 misdemeanor convictions to apply for RPI status. Such aliens may have a rap sheet as long as one's arm, but simply be either too lucky (or violent and intimidating toward witnesses) to have sustained convictions for anything but the most trivial of offenses. Or the misdemeanors may have reduced from serious felony offenses as part of a plea bargain process. This is often the case, for instance, with domestic violence charges that sometimes lead later to fatal consequences. Issue #2: The bill provides no definition of "minor traffic offenses". Does "minor" include DUI / DWI offenses in this context? How about illegal street-rodding, which endangers innocent pedestrians? Issue #3: Once again, the language excluding crimes for which an essential element was "a violation of this Act" [the INA] has been included. Once again, we reiterate our objections. Issue #4: The phrase "convicted on different dates for each of the 3 offenses" is troubling. Was the intent to ensure that 3 misdemeanor convictions

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		arising out of a single scheme of misconduct should be treated as one offense? If that was the intent, this language goes far beyond it. Consider: • Because of court backlogs, an alien is awaiting trial on a misdemeanor committed in June. In August, he is again arrested for a misdemeanor, and then a third time in September. Each time he posts bond. In the interest of judicial economy, all three trials are ultimately consolidated and held on the same day in December, and the alien is convicted of all three. Three different offenses; no single scheme; but all 3 convictions occurring on the same date. Under the language of this bill, such an alien is entitled to apply for RPI status.
Sec. 2101(a). RPI Status— *Reference to* **"INA Sec. 245B(b)(3)(A)(ii)(II). RPI Eligibility Requirements: Grounds for Ineligibility: Inadmissibility."** [Bill p.64]	This section requires that an alien applying for RPI status cannot be inadmissible to the U.S. under INA section 212(a), *except* that, in determining an alien's inadmissibility— "(II) subparagraphs (A), (C), (D), (F), and (G) of section 212(a)(6) and paragraphs (9)(C) and (10)(B) of section 212(a) *shall not apply* unless based on the act of unlawfully entering the United States after the date of the enactment of [this] Act…" (emphasis added)	Translated into English, among the rather surprising grounds of inadmissibility / ineligibility forgiven of RPI applicants by this provision are the following— • aliens who have committed fraud and misrepresentations, including false claims to U.S. citizenship; • aliens civilly penalized for use of false documents; • alien students who have engaged in visa abuse; and • aliens who reentered the United States after having been deported.
Sec. 2101(a). RPI Status—	This section of the bill requires that an alien applying for RPI status cannot be inadmissible to the U.S. under [INA]	This section of the bill forgives aliens who are inadmissible as— • absconders who failed to appear for their duly

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Reference to **"INA Sec. 245B(b)(3)(A)(ii)(III). RPI Eligibility Requirements: Inadmissibility."** [Bill p.64]	section 212(a), *except* that in determining an alien's inadmissibility— "(III) paragraphs (6)(B) and (9)(A) of section 212(a) *shall not apply* unless the relevant conduct began on or after the date on which the alien files an application for registered provisional immigrant status…" (emphasis added)	ordered immigration judge hearings; and □ prior deportees (regardless of the underlying legal grounds that were the basis of the removal from the United States).
Sec. 2101(a). RPI Status— *Reference to* **"INA Sec. 245B(b)(3)(B)(i). RPI Eligibility Requirements…Waiver."** [Bill p.65]	The bill provides that aliens legally in the U.S., including nonimmigrants, are ineligible to apply for status as RPIs. However, clause (b)(3)(B)(i) permits the DHS Secretary to waive such ineligibilities "for humanitarian purposes, to ensure family unity, or if such a waiver is otherwise in the public interest."	The key point to consider is the waiver of ineligibility when needed "to ensure family unity". One can, without a stretch, visualize a cottage industry of marriage fraud springing up, as otherwise-ineligible nonimmigrants seek out pliable RPI spouses in order to procure for themselves the ability to remain and work in the U.S. There is no reason to think that this won't happen—it already does with great regularity in other situations within our much-abused immigration system.
Sec. 2101(a). RPI Status— *Reference to* **"INA Sec. 245B(b)(3)(C). RPI Eligibility Requirements…Conviction Explained."** [Bill p.67]	This provision states that "For purposes of this paragraph, the term 'conviction' does not include a judgment that has been expunged, set aside, or the equivalent."	The provision is overly-broad. Consider the case of an alien who pleads *nolo contendere* (no contest) to serious criminal charges, or who serves probation for simple possession of narcotics, after which judgment is deemed to be "withheld." Under the language in this bill, it appears that such aliens would be entitled to file for RPI status. The language is a significant departure from present constructions of immigration law and regulation, which provide that, even in the event a legal judgment has been set aside, if the judgment serves as a conviction for *any* purpose under the law of the

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		jurisdiction, then it is adequate to initiate deportation proceedings.
Sec. 2101(a). RPI Status— *Reference to* **"INA Sec. 245B(b)(4). RPI Eligibility Requirements…Applicability of Other Provisions."** [Bill p.67]	This provision states that "Sections 208(d)(6) and 240B(d) [of the INA] shall not apply to any alien filing an application for registered provisional immigrant status under this section."	The language forgives aliens who have— □ previously filed frivolous asylum applications, or □ refused to leave after being granted by an immigration judge the privilege of departing voluntarily in lieu of being formally deported, and permits them to apply for RPI status. In our view, this continues to perpetuate the culture of disrespect for the rule of immigration law.
Sec. 2101(a). RPI Status— *Reference to* **"INA Sec. 245B(c)(2). RPI Application Procedures: Payment of Taxes."** [Bill p.69]	"An alien may not file an application for [RPI] status under paragraph (1) unless the applicant has satisfied any applicable Federal tax liability [as] assessed in accordance with section 6203 of the Internal Revenue Code…an applicant may demonstrate compliance with this paragraph by submitting appropriate documentation, in accordance with regulations promulgated by the [DHS] Secretary, in consultation with the Secretary of the Treasury."	The language will mislead ordinary Americans into believing that alien applicants will end up paying back taxes. We don't believe that, since in the case of most aliens, the Internal Revenue Service [IRS] has never assessed their liability under § 6203—either because they received their wages under the table, paid no taxes and are not of record; or because they worked by means of identity theft, using someone else's name and social security number (SSN). What is more, this section contains *no* language waiving the statutory confidentiality of tax or social security files, and thus provides no method of DHS and IRS, or the Social Security Administration, sharing information with the idea of unscrambling records relating to the alien applicant's use of phony names and stolen SSNs. Given this fact, and the massive volume of applicants anticipated, it is entirely likely that the DHS and Treasury Secretaries will simply

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		write regulations forgiving past tax debts, and render no assessments against any individual alien except in notorious or exceptional circumstances.
Sec. 2101(a). RPI Status— *Reference to* **"INA Sec. 245B(c)(3). RPI Application Procedures: Application Period."** [Bill p.70]	"(A) Except as provided subparagraph (B), the [DHS] Secretary may only accept applications for registered provisional immigrant status from aliens in the United States during the 1-year period; (B) If the Secretary determines, during the initial period described in subparagraph (A), that additional time is required…the Secretary may extend the period for accepting applications…for an additional 18 months."	These two provisions follow a pattern that is detectable throughout the bill—the first paragraph is filled with stern language that is eviscerated by the exceptions, waivers, and minutiae which follow in succeeding paragraphs. Can there be any doubt whatever that the Secretary will find it necessary to extend the application period another 18 months? We take it as a given. This bill is creating an amnesty that will likely endure for 2½ years (after which will likely come many further years of litigation and class action lawsuits at taxpayer expense).
Sec. 2101(a). RPI Status— *Reference to* **"INA Sec. 245B(c)(5). RPI Application Procedures: Aliens Apprehended Before or During the Application Period."** [Bill p.71]	"If an alien who is apprehended during the period beginning on the date of the enactment of [this] Act and the end of the application period described in paragraph (3) appears prima facie eligible for [RPI] status… the Secretary… (B) *may not remove the individual until a final administrative determination is made on the application…"* (emphasis added)	This language establishes no qualifiers about the circumstances under which an alien is apprehended. Imagine an alien being arrested in a region closely proximate to the physical southern land border, who nonetheless makes a verbal claim to being eligible for RPI status. Likely the apprehending officer, rather than risk career difficulties or disciplinary action, will take the safer course and simply release him to apply, even though the officer may suspect that the application—if ever submitted—will in all likelihood be fraudulent. This provision perpetuates—in fact reinforces—the southern border's status as a turnstile and not a

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		barrier.
Sec. 2101(a). **RPI Status—** *Reference to* **"INA Sec. 245B(c)(6)(A), (B),** *and* **(C).** **RPI Application Procedures: Aliens Apprehended Before or During the Application Period."** [Bill p.71]	Subparagraph (A) begins by saying that an alien who departed from the United States while subject to an order of exclusion, deportation, or removal, or pursuant to an order of voluntary departure and who is outside of the [U.S.], or who has reentered the [U.S.] illegally after December 31, 2011 without receiving consent to reapply for admission "*shall not be eligible to file an application for [RPI] status*…" (emphasis added) But subsequent Subparagraphs (B) and (C) make clear that the prohibition in (A) is far from absolute— "(B) Waiver. *The [DHS] Secretary… may waive the application of subparagraph (A) on behalf of an alien*…."(emphasis added) "(C) Eligibility. Notwithstanding subsection (b)(2), section 241(a)(5), or a prior order of exclusion, deportation, or removal, *an alien described in subparagraph (B) who is otherwise eligible for [RPI] status may file an application for such status."* (emphasis added)	This is another example of "tough" talk in one subparagraph, followed by giveaways in those that follow. Note also that the prohibition in subparagraph (A) is not consonant with earlier provisions of the bill* which made clear that— □ absences from the U.S. of 180 days or less, with or without the Secretary's consent, would not constitute a break of physical presence; and that □ illegal reentries, prior removals, and failures to depart were not grounds of inadmissibility which would bar filing applications for RPI status. *See "INA Sec. 245B(b)(2)(B)," and "INA Sec. 245B(b)(3)(A)(ii)(III)," and "INA Sec. 245B(b)(4)," discussed previously in this analysis.
Sec. 2101(a). **RPI Status—** *Reference to*	RPIs may not be detained or removed from the U.S. unless… "(I) such alien is, or has become, ineligible for [RPI] status [or] (II) the alien's [RPI] status has been revoked…"	This is a near guarantee of no action. Consider— □ First, once having been released from custody (as required by INA Sec. 245B(c)(5), discussed earlier) to pursue his claim, an alien will only appear for

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"INA Sec. 245B(c)(7)(C)(i). RPI Application Procedures: Suspension of Removal During Application Period: Protection from Detention Or Removal." [Bill p.74]		interviews or other adjudicative activities as long as it is (literally) to his benefit. He will certainly not put his liberty in jeopardy by making himself available for apprehension, if denied. □ Second, we can imagine very few circumstances in which he will end up in detention or being removed, since <u>all</u> information derived from RPI applications is confidential and may not be used in expulsion proceedings, or even to locate the alien.
Sec. 2101(a). RPI Status— *Reference to* **"INA Sec. 245B(c)(7)(C)(i)(I). RPI Application Procedures: Suspension of Removal During Application Period: Treatment of Certain Aliens."** [Bill p.76]	The language provides that if an alien who otherwise meets eligibility requirements, is present in the U.S. and has been ordered excluded, deported, or removed, or ordered to depart voluntarily, *"(I) notwithstanding such order or section 241(a)(5) [of the INA], the alien may apply for [RPI] status under this section*." (emphasis added)	The language is subtle but significant. In recent years, tens of thousands of aliens have absconded from proceedings rather than obey the lawful directives of immigration judges who order their deportation, or grant them, as a matter of discretion, voluntary departure in lieu of formal removal. (Some estimates put the number of alien fugitives who have absconded from proceedings as high as 400,000.) Under this provision, each and every one of these scofflaws, who have shown their contempt for the due process of law, will be entitled to file for RPI status.
Sec. 2101(a). RPI Status— *Reference to* **"INA Sec. 245B(c)(7)(D)(iii). RPI Application Procedures… Continuing**	This provision states, "An employer *who knows that an alien employee is an applicant for [RPI] status or will apply for such status* once the application period commences is not in violation of section 274A(a)(2) if the employer continues to employ the alien pending the adjudication	The phrase "knows that an alien employee…will apply for such status" provides the employer a continuing defense against being penalized for hiring or continuing to employ an illegal alien *who may or may not be eligible to apply for RPI status, and who may or may not in fact file for the status.*

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Employment." [Bill p.79]	of the alien employee's application." (emphasis added)	This is because that language permits the employer to simply take an employee's word that he is eligible and intends to apply (how else could he "know" since the information is confidential and unavailable to him?). The provision as written *makes no reference to any official proof* (such as a receipt for filing), *and establishes no time limit in which the alien must present evidence that he has applied.* Thus the employer is most probably buying himself 2½ years of protection against sanctions, if one tallies the initial 12 month application period, *plus* a Secretary-authorized 18 month extension. There is no reason for this kind of wide-open language, which could instead provide a window of opportunity, after which the alien must provide the employer evidence that he has applied (in the form of an official DHS receipt). It could additionally require the alien to present to the employer his RPI document, within 30 or 60 days of receipt, if-and-when approved.
Sec. 2101(a). **[RPI Status—** *Reference to* **"INA Sec. 245B(c)(8)(C)(i). RPI Application Procedures…Security and Law Enforcement Clearances: Data Collection."** [Bill p.80]	This provision requires the Secretary to collect from each alien applying for status…biometric, biographic, and other data appropriate— ''(I) to conduct national security and law enforcement clearances; and ''(II) to determine whether there are any national security or law enforcement factors that would render an alien ineligible for such status."	While such checks are of course a necessary prophylactic, they are also of limited utility, as the recent tragic events in Boston have once again shown. No one should fool themselves into believing background checks are a panacea against the unknown, or in the face of a statutory or adjudicative bias in favor of approvals.

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Sec. 2101(a). RPI Status— *Reference to* **"INA Sec. 245B(c)(9)(B)(ii). RPI Application Procedures…Employment or Education Requirement."** [Bill p.82]	This provision states that an alien who receives RPI is only entitled to a 6-year extension of RPI status *after* showing that he is able to "demonstrate average income or resources that are not less than 100 percent of the *Federal poverty level* throughout the [initial] period of admission as a Registered Provisional Immigrant." (emphases added)	We were quite surprised, when we logged onto the official website of the Department of Health and Human Services [http://aspe.hhs.gov/poverty/13poverty.cfm] to find the following advisory: *The poverty guidelines are sometimes loosely referred to as the 'federal poverty level' (FPL), but that phrase is ambiguous and should be avoided, especially in situations (e.g., legislative or administrative) where precision is important.* It would appear that the bill's drafters did not consult with HHS about the ambiguity of the phrase "Federal poverty level", nor its lack of utility as a guideline—especially when crafting legislation.
Sec. 2101(a). RPI Status— *Reference to* **"INA Sec. 245B(c)(10)(A)(ii). RPI Application Procedures…Recovery of Costs."** [Bill p.83]	"The processing fee…shall be set at a level that is sufficient to recover the full costs of processing the application, including any costs incurred to—" ☐ adjudicate applications, ☐ process biometrics, ☐ perform national security/criminal checks, ☐ prevent and investigate fraud, and ☐ administer fee processing and collection.	The language is a fig leaf. The federal government has *never* assessed fees adequate to recover all of the costs of administering any of its benefits processes. We suspect it will not and cannot now do so, without risk of putting the fees outside the reach of most potential applicants. For this reason, we believe that the fees assessed will never even closely approximate the full cost to American taxpayers—especially if DHS issues fee waiver regulations, as permitted by the bill, and as we expect they will for reasons discussed earlier.
Sec. 2101(a). RPI Status—	The provisions of this clause state that the [DHS] Secretary, by regulation, may (I) *limit*	These follow-on clauses undo the strict language of the preceding clause, described above. Although the

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Reference to **"INA Sec. 245B(c)(10)(A)(iii). RPI Application Procedures…Authority to Limit Fees."** [Bill p.83]	the maximum processing fee payable under this subparagraph by a family…and (II) *exempt* defined classes of individuals, including DACA recipients, from payment of the fee authorized. (emphases added)	bill purports to require recovery of all costs expended in administering the RPI program, the fee limitations available to families or other designated classes ensure that recovery of costs will not and cannot possibly take place.
Sec. 2101(a). RPI Status— *Reference to* **"INA Sec. 245B(c)(10)(C)(i)** *and* **(ii). RPI Application Procedures…Penalty."** [Bill p.84]	Clause (i) of 245B(c)(10)(C) requires any RPI applicant, except designated "childhood arrivals," to pay, in addition to the fees specified by regulation, a $1,000 penalty.	Note that clause (ii) clarifies that *applicants need only pay half of the penalty ($500) up front in order to obtain RPI status* – it is only should they seek an extension of an additional 6 years that they must then make good on the second half of the penalty. Note also that the second half of the penalty *may be made in installments*: the bookkeeping required to track such installments will be onerous and expensive to the government to maintain, especially if contracted-out to private entities.
Sec. 2101(a). RPI Status— *Reference to* **"INA Sec. 245B(c)(13). RPI Application Procedures: DACA Recipients."** [Bill p.87]	Provides that the Secretary may grant RPI status to aliens previously placed into administrative DACA ["Deferred Action Childhood Arrivals"] status pursuant to the DHS Secretary's June 15, 2012 memorandum *provided* that renewed national security and criminal history checks are performed "on behalf of the alien".	The provision places these individuals in the enviable position of receiving RPI status without need to undertake the full application process. Consequently it would appear that they are automatically exempt payment of fees and penalties. What is more, if they obtained DACA status by means of undetected fraud, this provision essentially grandfathers that fraud into a legally protected status without any opportunity for the government to reexamine the facts and circumstances surrounding the initial DACA request.

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		(See, also, our analysis below, of Sec. 2103(a) of the bill, relating to the constitutionality of DACA.)
Sec. 2101(a). RPI Status— *Reference to* **"INA Sec. 245B(d)(2)(A). Terms and Conditions of [RPI Status: Revocation: General."** [Bill p.90]	This subsection provides that the Secretary may revoke the status of an RPI for three reasons: (i) no longer meets eligibility requirements; (ii) knowingly used RPI documents provided to him for a fraudulent or illegal purpose; (iii) extended absences which break the continuous physical presence requirements.	Issue #1: The legal bases for revocation are singularly limited. It would have been better by far had the bill *at least* added a clause to the following effect: "The [RPI] status of an alien shall be deemed automatically revoked in the event that the alien becomes the subject of a final order of removal, or is granted voluntary departure in lieu of removal from the United States pursuant to section 240B(d) for any violations of this Act occurring after grant of status." Issue #2: Curiously, there is no provision to revoke RPI status based on *withholding of material facts or uttering false statements*—use of fraudulent documents is the only overt basis for revocation in this regard.
Sec. 2101(a). RPI Status— *Reference to* **"INA Sec. 245B(d)(2)(A)(ii). Terms and Conditions of [RPI Status: Revocation: General."** [Bill p.90]	As indicated above, clause (ii) provides that the Secretary may revoke the status of an RPI if the alien has "knowingly used documentation issued under this section for an unlawful or fraudulent purpose".	The language should have been stronger. Many LPRs have been known to sell their resident cards for fraudulent use by others, after which they apply for a replacement, claiming that the original was "lost." Clause (ii) should have contemplated this possibility with regard to RPIs as well, as follows— "(ii) knowingly used *or provided to others* documentation issued under this section for an unlawful or fraudulent purpose." (emphasis added for clarity)
Sec. 2101(a). RPI Status—	This subsection authorizes the Social Security Commissioner to assign a Social	Nothing in the subsection requires the Commissioner to arrange for the numbers and cards to be issued on

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Reference to **"INA Sec. 245B(d)(5)(A). Assignment of Social Security Number: General."** [Bill p.93]	Security number and issue a card to each alien granted RPI status.	a time-limited basis that is commensurate with the timeframes for which RPI status is issued initially or after extension. While it is entirely possible that the Commissioner will issue regulations to that effect, the bill should have made this a statutory requirement.
Sec. 2102(a). Adjustment Of Status Of RPIs— *Reference to* **"INA Sec. 245C(b)(1)(B). Adjustment of Status of RPIs…Continuous Physical Presence."** [Bill p.96]	This provision requires the alien to establish that he was not continuously absent from the United States for more than 180 days in any calendar year during the period of admission as a registered provisional immigrant, unless the alien's absence was due to extenuating circumstances beyond the alien's control.	The provision specifies no aggregate of time spent outside the U.S., beyond which the alien will be deemed ineligible to seek adjustment. As written, such an alien could be outside of the U.S. for half of each year, and still be entitled to apply for adjustment to LPR status.
Sec. 2102(a). Adjustment Of Status Of RPIs— *Reference to* **"INA Sec. 245C(b)(3)(B)(ii)(V). Adjustment of Status of RPIs…Other Documents."** [Bill p.99]	This provision permits the Secretary to accept ''(V) sworn affidavits from nonrelatives who have direct knowledge of the alien's work or education, that contain— ''(aa) the name, address, and telephone number of the affiant; ''(bb) the nature and duration of the relationship between the affiant and the alien; and ''(cc) other verification or information…"	Issue #1: The provision should have required that each affidavit overtly include a phrase, to be inserted just above the affiant's signature, to this effect: "This affidavit has been prepared, sworn to and subscribed by me, in a language I speak and understand, under penalty of perjury." Issue #2: As written, there is no prohibition to aliens who are seeking (or who have obtained) benefits under this bill from filing affidavits for one another—clearly this is an invitation to large-scale and egregious fraud and misrepresentation.
Sec. 2102(a).	Subclause (iii) contains the following	Issue #1: Given our fragile economy and the high

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Adjustment of Status of RPIs— *Reference to* **"INA Sec. 245C(b)(3)(E)(iii). Adjustment of Status of RPIs…Temporary Exceptions."** [Bill p.104]	"temporary" exception to the requirement that RPIs applying for permanent residence have regular employment: "(iii) was unable to work due to circumstances outside the control of the alien."	unemployment rate, does this ambiguous language permit, as a valid excuse, assertions that the alien was unable to work because he *could not find* work? Isn't such an alien a likely public charge? And how does all of this reconcile with other portions of the bill stating that RPIs are ineligible for social benefits? Issue #2: The term "temporary" is undefined. If an alien cannot find gainful employment for one year, is that temporary? How about 18 months? Two years?
Sec. 2102(a). Adjustment Of Status Of RPIs— *Reference to* **"INA Sec. 245C(b)(4) Adjustment of Status of RPIs: Security and Law Enforcement Clearances."** [Bill p.107]	"The Secretary may not adjust the status of a registered provisional immigrant…until renewed national security and law enforcement clearances have been completed with respect to the registered provisional immigrant, *to the satisfaction of the Secretary*." (emphasis added)	The phrase in italics may be used by USCIS to justify—as it has done in the past—a regulation stating that if it has not received a response to a national security or law enforcement check in 90 days, it shall be deemed satisfactory and the adjustment should proceed.
Sec. 2102(a). Adjustment Of Status Of RPIs— *Reference to* **"INA Secs. 245C(b)(5)(A), B). Adjustment of Status of RPIs… Processing Fees; Penalties."** [Bill pp.107 through 109]	The language for the fees and penalties to be assessed to RPIs seeking resident alien status is substantially the same as the language for the fees and penalties assessed when they applied to become RPIs – that the fees and penalties must be sufficient to recover all costs.	We reiterate the very same concerns which we raised previously regarding the initial RPI applications—after the various waivers are written into the regulatory structure, any fees and penalties collected will almost certainly be inadequate to recover all costs of administering the benefit.

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Sec. 2103(a). The Dream Act— *Reference to* **"INA Sec. 245D(a)** *and* **(b). Adjustment of Status for Certain Aliens Who Entered the United States as Children."** [Bill p.111]	Creates new provisions in the INA providing for adjustment to lawful resident alien status for childhood arrivals. The requirements are similar to those imposed on RPIs (biometrics, background checks, etc.); and the waivers of inadmissibility also very similar.	The weaknesses discussed above, in reference to the provisions for granting illegal aliens RPI status—forgiveness of serious grounds of inadmissibility; waiver of fees and penalties; inadequacy of background checks to ensure public safety; forgiveness of multiple criminal offenses, etc.—also exist in this section of the bill, so we will not repeat them here. *See our analyses above.*
Sec. 2103(a). The Dream Act— *Reference to* **"INA Sec. 245D(b)(2)(C). Adjustment of Status for Certain Aliens Who Entered the United States as Children: DACA Recipients."** [Bill p.117]	This portion of the bill permits the DHS Secretary to streamline applications for adjustment of status by childhood arrivals who were recipients of the administration's DACA initiative.	Many believe that the DACA initiative was an unlawful intrusion by the executive branch into the legislative powers granted Congress by the Constitution (see, e.g. the preliminary decision of Judge Reed O'Connor, dated April 23, 2013, in *Crane v. Napolitano*, No. 3-12-cv-03247-O, U.S. District for the Northern District of Texas (Dallas)). By specifically embedding DACA recipients into the bill—and in fact giving them preference—Congress is establishing a principle which may result in future incursions of the executive branch into "administrative lawmaking" when it cannot persuade the Congress to pass laws it wishes.
Sec. 2103(a). The Dream Act— *Reference to* **"INA Sec. 245D(d).**	Succinctly states "(1) REPEAL.—Section 505 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1623) is repealed."	The dry language masks the purpose. The repealed provision states, "Notwithstanding any other provision of law, an alien who is not lawfully present in the United States shall not be eligible on the basis of residence within a State (or a political subdivision)

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Adjustment of Status for Certain Aliens Who Entered the United States as Children: Restoration of State Option to Determine Residency for Purposes of Higher Education." [Bill p.119]		for any postsecondary education benefit unless a citizen or national of the United States is eligible for such a benefit (in no less an amount, duration, and scope) without regard to whether the citizen or national is such a resident." Repeal of this statute gives a State the right to show preferential treatment to illegal aliens over U.S. citizens, by permitting the State to grant in-state tuition fees to those aliens, while out-of-state U.S. citizens would continue to pay higher fees.
Sec. 2104(a). Additional Requirements— *Reference to* **"INA Sec. 245E(a)(1)** *and* **(2). Additional Requirements Relating to RPIs and Others: Disclosures."** [Bill p.120]	This provision creates a new section of the INA establishing both prohibited [(a)(1)] and required [(a)(2)] disclosures with regard to the information furnished by aliens to the government on their application forms.	☐ The prohibitions under subsection (a)(1) do not allow federal employees to use the information "for any purpose other than to make a determination on any application by the alien for any immigration benefit or protection." Because of the prohibition, if a U.S. Attorney declines to prosecute an alien who has committed a fraud or uttered a false statement on his application, *no administrative action may be taken to initiate removal proceedings based on the evidence.* The most that can be done is to deny the application, or terminate the benefit—apparently leaving the alien free to wander about the U.S. illegally. ☐ The "required" disclosures under subsection (a)(2) permit limited sharing of information to pursue criminal or national security investigations *provided they are not related to the applicant's immigration status*, thus closing the door to

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		prosecution for frauds committed on the applications themselves.
Sec. 2104(a). Additional Requirements— *Reference to* **"INA Sec. 245E(a)(3). Additional Requirements Relating to RPIs and Others: Auditing and Evaluation of Information."** [Bill p.121]	This provision permits audit of information from files "for purposes of identifying immigration fraud or fraud schemes" and permits the information so obtained to be used for denying or terminating benefits, or in criminal prosecutions.	The language of this provision is puzzling, given the prohibition discussed immediately above. It would appear to permit use of the information that has been derived from applications, as part of an audit and evaluation process, in order to prosecute—but we are unable to discern exactly how the two seemingly contrary positions can be reasonably reconciled. Furthermore, what is clear is that audit information *may not be used by immigration enforcement agents to initiate removal proceedings,* once an application has been denied, or a benefit terminated based on the fraud. This prohibition paralyzes interior enforcement. What happens to these denied aliens? Do they remain free until serendipitously encountered at some undefinable future date by enforcement agents?
Sec. 2104(a). Additional Requirements— *Reference to* **"INA Sec. 245E(a)(3)(C)(2). Additional Requirements Relating to RPIs and Others: Administrative Appellate Review"** [Bill p.122]	Provides that there will be a single appellate procedure for administrative review of denials; authorizes the Secretary to designate or establish the administrative appellate authority responsible for the reviews.	The required review might be handled by the already existing (and overburdened) Administrative Appeals Unit of USCIS, or through creation of an as-yet-nonexistent new unit. Although only a single administrative appellate review is authorized, chances are strong that regulations will be written that permit "motions to reopen / reconsider." If so, such rules would honor the letter while vitiating the spirit of the bill.

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		Note also that follow-on subparagraph 245E(a)(3)(E) provides that aliens may not be removed during the pendency of the administrative review process. [Bill p. 124] Note, finally, that the single administrative review is not the end-of-the-line for appeals by the alien, insofar as federal courts are now being endowed with new powers of judicial review (see the analysis below) of agency denials.
Sec. 2104(b). Additional Requirements: Judicial Review— *Reference to* **"INA Sec. 242(a)** *and* **(b). Judicial Review of Orders of Removal."** *—and—* **"INA Sec. 242(h). Judicial Review of Eligibility Determinations Relating to Status Under Chapter 5."** [Bill p.125 and p.126]	The bill expands judicial review of – □ orders for an alien's removal, and □ denial of benefits under any of the legalization and adjustment provisions established in this bill by permitting the filing of requests for review, not only in the federal circuit courts of appeal where such appeals have been previously directed by law, but also to the federal district courts—after which the circuit courts again become involved. The expansion is accomplished by— □ altering the language of now-existing INA Subsections 242(a)(2)(B) and (D); □ altering INA Subsection 242(b)(2); and □ creating a new, extremely lengthy and detailed INA Subsection242(h).	Issue #1: Expansion of judicial review into U.S. district courts for the millions who will apply is virtually guaranteed to glut the federal system at all levels. Issue #2: It will also grind immigration law enforcement to a standstill, because earlier parts of the bill specify that no alien may be detained or removed for the entire duration of the pendency of his application (including appeals of denial, or revocation or termination of status). Issue #3: The bill practically invites U.S. District courts to assume an unwarranted supervisory role over the administrative practices of the immigration agencies— □ New Subparagraph 242(h)(5)(A) gives the courts "jurisdiction over any cause or claim arising from *a pattern or practice* of the Secretary of Homeland Security in the operation or implementation of the [Act], or the amendments made by such Act…" (emphasis added)

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		▯ New Subparagraph (h)(5)(B) specifies that the courts "may order any appropriate relief in a clause or claim described in subparagraph (A) *without regard to exhaustion, ripeness, or other standing requirements…"* (emphasis added) ▯ New Subsection 242(h)(5)(E) even asserts that alien plaintiffs *do not need to exhaust their administrative remedies before filing suit* in federal district court. Cumulatively, all of this is quite extraordinary—particularly the assertion that courts may entertain review before a matter has become ripe for consideration, or administrative review exhausted—and is a clear invitation to litigious-minded groups to sue the Secretary at every opportunity.
Sec. 2104(c): Rule of Construction— *Reference to* **"INA Sec. 244(h). Temporary Protected Status: Limitation on Consideration in the Senate of Legislation Adjusting Status."** [Bill p.131]	"Section 244(h)* shall not limit the authority of the Secretary to adjust the status of an alien under section 245C or 245D of the [Act], as added by this subtitle." *Sec. 244(h) states: "Except as provided in paragraph (2) [requiring a 3/5 supermajority], *it shall not be in order in the Senate to consider any bill, resolution, or amendment that…provides for adjustment to lawful temporary or permanent resident alien status for any alien receiving temporary protected status* under this section, or…has the effect of amending this subsection or limiting the	Using the arcane title, "Rule of Construction", this provision eviscerates Section 244 of the INA *to permit adjustment of status to TPS aliens as a class,* whether or not this bill will pass by "supermajority" – which is, of course, doubtful in the extreme. Section 244 was controversial when passed and was achieved only after promises by its sponsors that it was solely intended for temporary humanitarian purposes, not as a gateway to permanent residence. That is the reason for the existence of Subsection 244(h), which is now being gutted. This provision should engender recognition that promises of strict immigration enforcement and careful limitations made in one bill, blow away with

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	application of this subsection." (emphasis added)	the wind in future bills.
Sec. 2104(d): Effect of Failure to Register on Eligibility for Immigration Benefits— *Reference to* **"8 CFR Sec. 264.1(f). Registration, fingerprinting, and photographing of certain nonimmigrants."** [Bill p.129]	"Failure to comply with section 264.1(f) of title 8, Code of Federal Regulations or with removal orders or voluntary departure agreements based on such section for acts committed before the date of the enactment of this Act *shall not affect the eligibility of an alien to apply for a benefit* under the [INA]…." (emphasis added)	The effect of the provision is wide-reaching, in that it permits □ alien fugitives who have fled orders of deportation, and □ alien scofflaws who ignored grants of voluntary departure by immigration judges in lieu of deportation, to gain benefits under *any* provision of immigration law—not just the RPI and Dream Act statuses created by this bill. In so doing, the provision destroys a key principle of many years standing: that those who ignore due process of law must sacrifice any claim to immigration benefits. It is also important to understand that the aliens the provision addresses by its reference to this specific CFR, are *special interest aliens,* a category which came into being as a national security measure after the attacks of 9/11.
Sec. 2105. Criminal Penalty— *Reference to* **"18 U.S.C. Sec. 1430. Improper use of information relating to registered provisional immigrant applications."**	Creates a new Sec. 1430 in the federal criminal code (18 USC 1430) criminalizing "improper" use of information from files of RPI applicants, punishable by a $10,000 fine, although no periods of confinement for violation are mentioned.	It is ironic that while this provision criminalizes releases of information from the applications of aliens seeking to legalize—clearly a provision aimed at government employees and contract personnel—the bill waives and excuses a whole host of frauds, false statements, misrepresentations and other forms of illegal conduct on the part of those self-same applicants. To say this is lopsided is to sorely understate matters.

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[Bill p. 132]		The provision also seems impermissibly vague, in that it includes, without qualifiers, a penalty for publishing or permitting examination of information. Does it apply to journalists?
Sec. 2106. Grant Program to Assist Eligible Applicants— [Bill p. 132]	Authorizes the Secretary to establish grants to "eligible public or private nongovernmental organizations" in order to assist individuals in applying for RPI status.	Subsection (d) would divert $50 million from the Comprehensive Trust Fund to award NGO grants, which removes use of that money for enforcement purposes. The subsection *also* authorizes additional taxpayer-funded appropriations to be applied to these grants, once again raising doubts that the legalization provisions will be self-funding, or that the Trust Fund will be adequate for immigration law enforcement operations.
Sec. 2107(a). Conforming Amendments to the Social Security Act: Correction of Social Security Records— *Reference to* **''42 U.S.C. 408(E)(1). Penalties: Application of subsection (a)(6) and (7) to certain aliens."** [Bill p. 135]	This provision forgives aliens who have committed identity theft, by using the social security numbers and accounts of citizens and lawful workers, while employed illegally in the U.S. The provision does so by modifying the criminal provisions contained in the Social Security Act, at 42 U.S.C. 408(e)(1), to excuse such violations.	The innocuously titled, "Correction Of Social Security Records" in fact provides relief from criminal penalties for RPI-applicant aliens who misused social security accounts and numbers through identity fraud, yet *provides no basis* for unscrambling the accounts or earnings of the citizens and lawful resident aliens who were victimized.
Sec. 2107(b). Conforming Amendments	Amends the provisions of 42 U.S.C. 675(5)(E) [section 475(5)(E) of the Social	The title, "State Discretion Regarding Termination of Parental Rights" is deceptive in that paragraph

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to the Social Security Act: State Discretion Regarding Termination of Parental Rights— *Reference to* **"42 U.S.C. 675(5)(E). Definitions: Case Review System."** [Bill p. 136]	Security Act] with regard to State actions to terminate the parental rights of aliens who have been deported from the United States.	(b)(1) of this provision creates a statutory presumption *against* termination of a deported alien's parental rights, without specific regard to the grounds underlying the alien's removal, such as criminal or immoral behavior. In addition, paragraph (b)(2) of the amended provision establishes onerous and costly procedures that a State must follow before attempting to terminate a deported alien's parental rights—provisions that include required attempts to locate, and initiate contact with, the parent in the foreign country.
Sec. 2107(c). Conforming Amendments to the Social Security Act: State Plan for Foster Care and Adoption Assistance— *Reference to* **"42 U.S.C. 671(a). State Plan For Foster Care And Adoption Assistance: Requisite features of State plan."** [Bill p. 138]	Amends the provisions contained in 42 U.S.C. 671(a) [section 471(a) of the Social Security Act] to require States to give "preference to an adult relative over a nonrelated caregiver when determining a placement for a child" in adoption or foster care, regardless of the adult relative's immigration status. Also requires states to ensure that assigned case managers are either fluent in the language of child and caregivers, or that interpreters are hired and assigned to assist case managers. [Paragraph (c)(1)(D), bill p. 139]. Additionally levies a requirement that States maintain privacy and confidentiality "by not disclosing such information to	Issue #1: There may be circumstances where the adult relative, even if illegally in the U.S., is the best possible caregiver for the child. But it is not axiomatic, given the precarious existence of aliens who have no right to reside or work in the United States. This is especially true if we accept assertions by the bill's supporters that the new employment verification procedures will ensure that illegal aliens cannot work in the U.S. How could such aliens possibly provide an adequate level of care for a child? Issue #2: These provisions levy new, onerous and costly requirements on States by mandating language fluency of case managers, and/or use of interpreters in situations such as those described in Issue #1 just above. Issue #3: By establishing confidentiality requirements on States which prevent them from sharing

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	other government agencies or persons…"	information with "other government agencies" (clearly an oblique reference to DHS immigration agencies), the bill contradicts existing federal law which forbids States from prohibiting sharing of information with federal immigration authorities—see 8 USC 1373.
Sec. 2211(a). Program For Earned Status Adjustment Of Agricultural Workers: Requirements For Blue Card Status— [Bill p. 153]	Section 2201 of the bill creates new provisions in which an alien may qualify for "blue card status" [earned status adjustment as agricultural workers] if he meets certain agricultural work history requirements. Sec. 2211 lays out the work requirements, in addition to other requirements which are fundamentally the same as those imposed on RPIs and childhood arrival recipients (biometrics, background checks, continuing employment, etc.). The waivers of inadmissibility also very similar, as are the fee and penalty provisions.	The weaknesses discussed earlier, in reference to the provisions for granting RPI and Dream Act status—forgiveness of serious grounds of inadmissibility; waivers of fees and penalties; inadequacy of background checks to ensure public safety; forgiveness of multiple criminal offenses, etc.—also exist in this section of the bill granting "Blue Card" status. See our prior analyses.
Sec. 2211(a). Blue Card Status: Requirements For Blue Card Status— [Bill p. 153]	2211(a)(1)(A) provides that an alien may qualify for "a blue card" if he has worked "not fewer than 575 hours or 100 work days during the 2-year period ending on December 31, 2012."	This is an inordinately short agricultural employment history to entitle one to obtain a blue card – for instance, 575 hours is less than 72 days of work, calculated on an 8-hour workday. In other words, an alien would be entitled to a blue card *for having worked 72 days in agriculture, spread over the course of two years.* That's roughly one day of work for every 10 days.

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Sec. 2211(d). Blue Card Status: Record of Employment— [Bill p. 174]	The bill requires agricultural employers to yearly provide alien employees a written record of their employment, with a copy to the Agriculture Secretary. There is a civil penalty of $500 against employers who fail to do so— although they may not be fined if the alien employee does not provide them proof of employment authorization.	Issue #1: It is not clear whether the Secretary of Agriculture or Secretary of Homeland Security is the penalty assessing authority. There is no indicator of how the penalty is assessed, nor whether the employer has a right to appeal. Issue #2: There seems to be a catch-22 in the "fine limitation" provision in subparagraph 2211(d)(2)(B)—an employer is not required to pay the $500 fine if the alien does not show his employment authorization proof. But in that case, *the employer should not have hired or employed the alien in the first place, because without evidence of work authorization, he cannot legally hire the alien*. Thus the employer is in violation of the employer sanctions provisions under INA Sec. 274A, even as amended by this bill.
Secs. 2211(f) *and* **(g). Blue Card Status: Limitation on Access to Information** *and* **Confidentiality of Information—** [Bill p. 183]	The provisions in the bill limiting access to, and requiring confidentiality of, information are substantially the same as those articulated for RPI applicants, which are described above.	We disagree with the language of this confidentiality provision for the same reasons we did for the provision drafted for RPIs—see our analysis of Sec. 2104(a) of the bill earlier.
Sec. 2211(h). Blue Card Status: Penalties for False Statements in Applications— [Bill p. 184]	Subsection (h) criminalizes false statements, fraudulent documents, withholding of material facts, and other similar acts, in connection with applications for blue card status, or subsequent adjustment of status to	We wonder why there are no parallel provisions criminalizing false statements or fraudulent activities by applicants for RPI status or childhood arrivals.

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	resident alien by blue card holders. Violators are subject to fines and 5 years imprisonment.	
Sec. 2211(i). Blue Card Status: Eligibility for Legal Services— [Bill p. 185]	This provision authorizes recipients of federal funds under the Legal Services Corporation Act (42 U.S.C. 2996 et seq.) to provide legal assistance directly related to applications for blue card status under section 2211 or adjustment of status [to permanent residence] under the section.	Insofar as legal service corporations are recipients of federal monies, it would appear that taxpayers will share the burden of helping aliens prepare applications for benefits under the Blue Card provisions of the bill.
Sec. 2221. Blue Card Status: Correction of Social Security Records— *Reference to* **"42 U.S.C. 408(e)(1). Penalties."** [Bill p. 187]	This provision forgives aliens applying for blue cards, who have committed identity theft by using the social security numbers and accounts of others while working illegally in the U.S. It does so by modifying the criminal provisions contained in 42 U.S.C. 408(e)(1) [section 208(e)(1) of the Social Security Act] to ensure that they do not apply.	This provision is parallel to the Social Security identity theft forgiveness provision for RPI applicants; we register the same objections to this language as we did previously – see our prior analysis in that regard.
Sec. 2232. Establishment Of Nonimmigrant Agricultural Worker [NAW] Program— *Reference to* **"INA Sec. 218A (e)(4)(G)(iii)(I). NAW Program…Public Housing."**	The new INA section 218A, created by Sec. 2232 of the bill, provides in pertinent part, "*If the employer arranges public housing for nonimmigrant agricultural workers through a State, county, or local government program* and such public housing units normally require payments from tenants, such payments shall be made by the employer directly to the landlord." (emphasis added)	We cannot imagine why indigent United States citizens or longtime resident aliens should have to compete with employers seeking to place nonimmigrant agricultural workers into public housing units—potentially without fee—particularly at a time of economic hardship and sequestration in which many state public assistance programs have been cut, and their federal grants and matching funds significantly reduced.

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[Bill p. 219]		
SEC. 2232. Establishment of NAW Program— *Reference to* **"INA Sec. 218A (g)(2)(B). NAW Program…Eligibility of NAW for Certain Legal Assistance."** [Bill p. 235]	The new INA section 218A provides that: "A nonimmigrant agricultural worker shall be considered to be lawfully admitted for permanent residence for purposes of establishing eligibility for legal services under the Legal Services Corporation Act… on matters relating to wages, housing, transportation, and other employment rights."	Insofar as legal service corporations are recipients of federal monies, it would appear that taxpayers will share the burden of assisting nonimmigrant agricultural workers who contemplate, for instance, unionizing or filing suits against their employers for violation of the various health-and-welfare requirements embedded in this provision, or other protected legal activities. Since the provision exists to assist agricultural employers, why should they not be required to contribute to a fund set aside for this purpose instead?
SEC. 2232. Establishment of NAW Program— *Reference to* **"[INA] Sec. 218A (g)(2)(C)(i). NAW… Free Mediation Services."** [Bill p. 235]	Proposed new INA section 218A provides that: "The Federal Mediation and Conciliation Service shall be available to assist in resolving disputes arising under this section between nonimmigrant agricultural workers and designated agricultural employers *without charge to the parties*." (emphasis added)	Why should nonimmigrant agricultural workers and their employers be accorded access to this taxpayer-funded activity for free? Since the provision exists to assist agricultural employers, why should they not be required to contribute to a fund set aside for this purpose instead?
SEC. 2232. Establishment Of NAW Program— *Reference to* **"[INA] Sec. 218A (g)(3)(C)(i). NAW Program: Worker Protections and Dispute**	"Nonimmigrant agricultural workers shall be entitled to the rights granted to other classes of aliens under [INA] sections 242(h) and 245E."	The phrasing is oblique: the rights mentioned [in INA sections 242(h) and 245E] do not now exist; they would only come into existence with passage of the bill, and the rights accorded by those sections *significantly* expand aliens' access to the federal courts in order to contest denials of benefits and removals (see our analysis above). This proviso now extends those significant appellate and review rights

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Resolution: Other Rights." [Bill p. 237]		to nonimmigrant agricultural "guest workers."
SEC. 2232. Establishment Of NAW Program. *Reference to* **"[INA] Sec. 218A(j)(2). NAW Program…Monitoring Requirement."** [Bill p. 250]	This provision requires that "The Secretary shall monitor the movement of nonimmigrant agricultural workers through…the Employment Verification System described in section 274A(b); and establish[ment of] an electronic monitoring system, which shall…be modeled on the Student and Exchange Visitor Information System (SEVIS) and the SEVIS II tracking system administered by U.S. Immigration and Customs Enforcement…"	Neither of the two monitoring systems described in this provision presently exist, and creating them will be arduous, costly and time-consuming. The cost of establishing a "system modeled on SEVIS" is particularly troubling, since that system would be nonimmigrant agricultural worker-specific, whereas at least the electronic employment verification system would be universally applicable. The SEVIS-modeled system cannot simply be cloned and pressed into use for agricultural workers: the forms, inputs, and key data fields are significantly different, and this provision has no equivalent to Designated School Officials, who are critical to inputting data and maintaining the accuracy and timeliness of the SEVIS system. Tens of millions of dollars will be spent to develop any new agricultural worker-specific system.
Sec. 2312(a)(3). Relief for Orphans, Widows, and Widowers: Eligibility for Parole. [Bill p.334]	Paragraph (3) states "If an alien described in section 204(l) of the [INA]…was excluded, deported, removed, or departed voluntarily before the date of the enactment of this Act…such alien shall be eligible for parole into the United States pursuant to the Secretary's discretionary authority."	Compare this parole authority with that contained in prior paragraph (2) on p. 323 of the bill, which limits the eligibility for parole *only* to those aliens who were removed *based solely upon the alien's lack of classification as an immediate relative.* Because paragraph (3) does not mirror the language of prior paragraph (2), an alien who was removed for substantive grounds *having nothing to do with lack of classification as a relative* could still apply for parole and subsequent adjustment.

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Sec. 2312(b)(2)(B). Relief for Orphans, Widows, and Widowers: Inapplicability of Bars to Entry [Bill p. 336]	The provision states that "Notwithstanding section 212(a)(9) of the [INA]… an alien's application for an immigrant visa shall be considered if the alien was excluded, deported, removed, or departed voluntarily before the date of the enactment of this Act."	See our analysis immediately above. This "inapplicability of bars to entry" (due to prior exclusions, deportations or voluntary departures) is similarly open-ended, and creates no delimiters based on the *reasons* that the alien was previously removed. We do not believe that a blanket forgiveness of prior removals is in the best interest of society or public safety.
Sec. 2313(a). Discretionary Authority With Respect to Removal, Deportation or Inadmissibility of Citizen and Resident Immediate Family Members: Applications for Relief from Removal— *Reference to* **"[INA Sec. 240(c)(4)(D). Judicial Discretion."** [Bill p. 337]	Amends INA Sec. 240(c)(4) by adding a new paragraph (D), "[T]he immigration judge may exercise discretion to decline to order the alien removed, deported or excluded from the United States and terminate proceedings if the judge determines that such removal, deportation, or exclusion is against the public interest or would result in *hardship* to the alien's United States citizen or lawful permanent resident parent, spouse, or child, or the judge determines the alien is prima facie eligible for naturalization…" (emphasis added) This paragraph also goes on to specify that the judge *may not use discretion to decline to remove, deport, exclude aliens* who are inadmissible for certain specific reasons under Section 212(a) of the INA*, but permits the exercise of discretion to waive a number of significant grounds of inadmissibility in order to provide relief*	Issue #1: We cannot discern how excludable or deportable aliens could be "prima facie eligible for naturalization," whether or not an immigration judge grants them relief (which isn't the same as ruling they were not inadmissible/removable). Issue #2: The immigration judge is authorized to exercise discretion to refuse to remove, deport or exclude aliens who are inadmissible for a host of serious offenses, including— □ fraud and false claims to U.S. citizenship, □ alien smuggling, □ coming to the U.S. to engage in commercial vice, □ having been previously removed or excluded from the United States, and □ aliens permanently ineligible for citizenship. Past standards for grants of relief required a finding of *extreme* hardship—note that the key word "extreme" is absent from this provision. The omission, plus the substantial expansion of discretionary authority (solely to grant relief) will

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	from expulsion. (emphasis added)	result in a significant number of undesirable aliens being permitted to remain in the U.S.
Sec. 2313(b). Discretionary Authority…Secretary's Discretion— *Reference to* **"INA Sec. 212(w). Secretary's Discretion."** [Bill p.339]	Amends INA Sec. 212 by adding a new subsection (w), which authorizes the DHS Secretary to exercise discretion commensurate with that given to immigration judges as described immediately above: to waive the same grounds of inadmissibility in cases which would result in hardship to the alien's United States citizen or permanent resident parent, spouse, or child.	Once again, the key word "extreme" has been deleted from the hardship requirement. The exercise of discretion granted to the Secretary by this section is unacceptably broad, in that it permits waiver of too many significant grounds of inadmissibility and will result in a significant number of undesirable aliens being permitted to remain in the U.S. (See our analysis immediately above.)
Sec. 2313(c). Discretionary Authority…Reinstatement Of Removal Orders— *Reference to* **"INA Sec. 241(a)(5). Detention and Removal of Aliens Ordered Removed: Reinstatement of removal orders against aliens illegally reentering."** [Bill p.340]	Amends INA Sec. 241(a)(5) by modifying existing language, which permits federal officers to reinstate prior orders of removal when aliens are apprehended back in the U.S. after reentering illegally. The new language would now prohibit reinstatements if the alien reentered "prior to attaining the age of 18 years, or reinstatement of the prior order of removal would not be in the public interest or would result in hardship to the alien's United States citizen or permanent resident parent, spouse, or child."	Although entitled "Reinstatement of Removal Orders" in point of fact, the first proposed amendment *precludes* reinstatement orders for aliens who reenter the U.S. illegally before their 18th birthday (present law cuts off the age at 16). The provision is ill considered as written, because it would apply as equally to alien youths charged as adults by the justice system and convicted of serious crimes, as to alien youths who were previously removed for less significant, administrative reasons. [For better, more nuanced language, look at subparagraph (2) under "(e) Affirmative Defenses" on bill p. 624.] The second modification again eliminates the "extreme hardship" standard, referring instead simply to hardship. We also believe this modification will result in abuse by encouraging 11th hour marriage frauds, since an alien who marries a citizen or

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		resident after illegally reentering the U.S. will then be in a position to solicit relief. The provision's amendments will also adversely affect felony prosecutions for reentry after deportation, because other portions of the bill prevent U.S. Attorney's Offices from prosecuting aliens who have reentered as long as there is a pending application for relief. This in turn will contribute to the "revolving turnstile" border the bill purports to end. [It is significant in this regard to note that more than 25% of ICE interior apprehensions in recent years have been of previously deported aliens.]
Sec. 2314(b) **Waivers of Inadmissibility: Aliens Unlawfully Present—** *Reference to* **"INA Sec. 212(a)(9)(B)(v). Aliens Unlawfully Present: Waivers."** [Bill p.341]	Amends INA 212(a)(9)(B)(v) which presently permits waiver of the "unlawfully present" ground of inadmissibility for an "immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence [if] the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent (emphasis added).	The new language expands the waiver grounds, by permitting the unlawfully present *parent* of a U.S. citizen or resident alien to also seek a waiver—even though there is no requirement to establish that the parent provided financial support, or was ever actively involved in rearing the child. The new language also eliminates the word *extreme* in favor, simply, of hardship. In practical effect, without this key modifier, any hardship, no matter how trivial, may be used as a basis to request relief. Is not deportation itself a "hardship" on the family? Using this standard, virtually any alien would be entitled to remain.
Secs. 2314(d)(1) *and* **(2). False Claims: Inadmissibility** *and* **Deportability—**	Subsection (d)(1) amends INA 212(a)(6)(C)(i), which renders inadmissible aliens who, "by fraud or willfully	The amendment to clause (i) would limit the inadmissibility *solely to misrepresentations made in the last 3 years;* this is a singular narrowing of scope

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Reference to **"INA Sec. 212(a)(6)(C)(i). Misrepresentation."** *and* **"INA Sec. 212(a)(6)(C)(ii). Falsely Claiming Citizenship."** *and* **"INA Sec. 212(a)(6)(C)(iiI). Waiver."** *and* **"INA Sec. 237(a)(3)(D). Falsely Claiming Citizenship."** [Bill p.342-344]	misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act…" Subsection (d)(1) also amends the grounds of inadmissibility for falsely claiming U.S. citizenship under INA 212(a)(6)(C)(ii). In addition, Subsection (d)(1) creates a new clause (iii) which establishes a waiver for grounds of inadmissibility under both clause (i) and (ii). Finally, Subsection (d)(2) amends the deportation provision of the INA at §237(a)(3)(D), so that it adopts the same new circumscribed definition, and narrowed applicability, of false claims to U.S. citizenship previously applied to the inadmissibility provision.	over existing law for which we cannot find any reasonable justification. The clause (ii) amendment would vitiate applicability of false claims to citizenship against any alien under the age of 18, without regard to the facts and circumstances surrounding the false claim or its maker. The waiver authority established by clause (iii) is entirely new—presently there is no waiver for false claims to U.S. citizenship—although it is limited to cases where the inadmissibility would cause extreme hardship to a citizen or LPR spouse, parent, son or daughter. However, it provides that the waiver may be granted without regard to whether the alien is inside or outside of the United States.
Sec. 2315. Continuous Presence— *Reference to* **"INA Sec. 240A(d)(1). Termination Of Continuous Period."** [Bill p. 345]	The proposed amendment— □ First, alters the date at which "continuous presence" ceases to accrue, changing it *from* the date the alien is served with charging papers in deportation proceedings, *to* the date the immigration court receives and files them. □ Second, the amendment eliminates an important clause now existing in the	Continuous presence is highly significant, in that it permits an alien to accrue time needed in order to apply for cancellation of removal under the law. First amendment : acts in the alien's favor, because additional weeks—perhaps months—of continuous presence are permitted to accrue, despite the fact that he has at that point been charged with violating the law.

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	law, which terminates accrual of continuous presence: *"(B) when the alien has committed an offense that renders the alien inadmissible to …or removable from…the United States, whichever is earliest."* (emphasis added)	Second amendment: why should an alien who commits additional offenses rendering him inadmissible or deportable be permitted to continue to accrue time toward eligibility for cancellation of removal?
Sec. 2317. Extension and Improvement of The Iraqi Special Immigrant Visa Program— [Bill p. 353] *--and—* **Sec. 2318. Extension and Improvement of the Afghan Special Immigrant Visa Program.** *Reference to* **"8 U.S.C. 1157 note, at Sec. 1244. Special Immigrant Status for Certain Iraqis."** *—and—* **"8 U.S.C. 1101 note, at Sec. 602(b). Special Immigrant Status for Certain Afghans."** [Bill p. 360]	8 USC 1157 note, Section 1244 presently permits Iraqis (and their family members, including siblings of any age) who were or are "*employed by or on behalf of the United States Government* in Iraq, on or after March 20, 2003, for not less than one year [and who] provided faithful and valuable service" to apply for special immigrant status. (emphasis added) Similarly, 8 USC 1101 note, Section 602(b) permits Afghans (and their family members, including siblings of any age) who were or are "employed *by or on behalf of the United States Government in Afghanistan* on or after October 7, 2001, for not less than one year [and who] provided faithful and valuable service" to apply for special immigrant status. (emphasis added)	The proposed amendments would expand the pool of Iraqis and Afghans eligible for special immigrant visas *beyond* those who were employed by or on behalf of the U.S., to include Iraqis and Afghans employed by NGOs or the media, or "an organization or entity closely associated with the United States…" We are concerned by the potentially serious and adverse national security consequences of this expansion, and are uncertain why Iraqis or Afghans employed by NGOs or the media should be entitled to such extraordinary benefits—why should they receive treatment equal to that of Afghans or Iraqis who faithfully served our military and civilian government officials? Existing law already provides that individuals who worked for NGOs or media are entitled to priority processing for refugee status. This amendment may set new standards of expectation for other troubling and dangerous parts of the world.

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Center for Immigration Studies: Analysis of Selected Sections of the Senate "Comprehensive Immigration Reform" Bill, S. 744*

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	TITLE III—INTERIOR ENFORCEMENT	
Sec. 3101(a). Unlawful Employment of Unauthorized Aliens— *Reference to* **"INA Sec. 274A Unlawful Employment of Unauthorized Aliens."** [Bill p. 404]	The bill amends, by re-writing, virtually all of the provisions of Sec. 274A, commonly referred to as the "employer sanctions" provisions of the law.	The re-write of INA Section 274A appears to have been cobbled together. For instance, the definitions—which are critical to understanding the import of the section, and which in most statutes appear as the first subsection—are embedded several pages into the relevant provisions of this section. The result is confusion and misunderstanding, with a considerable amount of flipping back and forth to comprehend the meaning of the opening provisions.
Sec. 3101(a). Unlawful Employment of Unauthorized Aliens— *Reference to* **"INA Sec. 274A(b)(3). Unlawful Employment of Aliens: Definitions: Employer."** [Bill p. 410]	This provision exempts from the definition of employer someone who "hires, employs, recruits, or refers for a fee an individual for employment in the United States *that is not casual, sporadic, irregular, or intermittent* (as defined by the Secretary)."	Use of the phrase in italics widely opens the door to abuse by notorious employers and middle-men who hire unauthorized day laborers that congregate around convenience stores, street corners and other informal but notorious locations. They can easily argue that they do not meet the definition of employer and are not subject to sanction, since the individuals they hire or obtain for fee are working sporadically, irregularly and intermittently.
Sec. 3101(a). Unlawful Employment of Unauthorized Aliens— *Reference to* **"INA Sec. 274A(c)(1)(C)(iii)(I). Unlawful Employment of**	As a part of the document verification regimen to ensure that only authorized workers are employed, employers must review specified documents that either confirm both identity and work authorization or, alternatively, one document that proves identity and another that proves work authorization. The lists	Real ID Act documents are not appropriate to verify work authorization status, because Sec. 202 of the Real ID Act permits States to issue them to a variety of nonimmigrants and other aliens whose work authorization is either time-limited or circumscribed to particular circumstances: circumstances which will not be evident on a driver's license usually facially valid for 5–10 years, depending on the State.

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Aliens: Document Verification System: Employer: Documents Establishing Identity and Employment Authorized Status." [Bill p. 416]	containing these documents are enumerated within the bill. Subclause 274A(c)(1)(C)(iii)(I) places into the list of documents that verify both identity and work authorization, "An enhanced driver's license or identification card issued to a national of the United States by a State or a federally recognized Indian tribe that…meets the requirements under section 202 of the REAL ID Act of 2005."	Consequently, employers will be relying on facially valid documents that do not necessarily accurately reflect the limitations on an alien's actual employment authorization.
Sec. 3101(a). Unlawful Employment of Unauthorized Aliens— *Reference to* **"INA Sec. 274A(c)(1)(D)(ii). Unlawful Employment of Aliens: Document Verification System: Employer: Documents Establishing Identity."** [Bill p. 418]	Clause 274A(c)(1)(D)(ii) would place voter registration cards into the list of documents acceptable to verify identity.	It is unlikely that voter registration cards can adequately verify identity since few, if any, contain evidence that they relate to the person presenting them. They have no security features, no photographs or other biometrics, no biographic data and, sometimes, not even a signature. By way of comparison, look at the requirements for (non-Real ID Act compliant) driver's licenses contained in clause 274A(c)(1)(D)(i) of this bill, which are listed just before the voter's registration card on the list: they are acceptable only when they reflect a variety of substantive identity verifiers.
Sec. 3101(a). Unlawful Employment of Unauthorized Aliens— *Reference to*	Subparagraph 274A(c)(1)(F) provides that, for certain documents, in addition to the verification procedures for identity, employers must use either an "identity authentication mechanism *described in*	The mechanisms described by clause (iii) and (iv) *do not exist*; the bill requires them to be created by the Secretary. The electronic and technical development of these

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"INA Sec. 274A(c)(1)(F). Unlawful Employment of Aliens: Document Verification System: Identity Authentication Mechanism. [Bill p. 420]	*clause (iii) or provided in clause (iv)* after it becomes available to verify the identity of each individual the employer seeks to hire."	tools will be time-consuming and expensive, but the bill provides no guidance about where the funds will be obtained to create them, nor does it contemplate timeframes for their completion.
Sec. 3101(a). Unlawful Employment of Unauthorized Aliens— *Reference to* **"INA Sec. 274A(c)(4). Unlawful Employment of Aliens: Copying of Documentation and Recordkeeping."** [Bill p. 427]	Paragraph 274A(c)(4) provides that the Secretary may promulgate regulations specifying conditions under which employers may photocopy the identity and work authorization documents presented by employees as a part of the verification process.	Existing statute makes clear that employers have that right, without reference to the regulatory process: "Notwithstanding any other provision of law, the person or entity may copy a document presented by an individual pursuant to this subsection and may retain the copy, but only (except as otherwise permitted under law) for the purpose of complying with the requirements of this subsection. " We believe the existing language better protects the integrity of the verification process *and* provides employers with better protection as well.
Sec. 3101(a). Unlawful Employment of Unauthorized Aliens— *Reference to* **"INA Sec. 274A(c)(7). Unlawful Employment of Aliens: Receipts."** [Bill p. 427]	Paragraph 274A(c)(4) provides that an applicant may present a receipt for a lost or stolen document required to verify employment, "on a temporary basis not to exceed 1 year, after which time the individual shall provide documentation sufficient to satisfy the documentation requirements under this subsection."	Issue #1: Permitting an individual to work for a full year before having to provide an acceptable document is excessive. Existing regulations limit the use of receipts to 90 days. Issue #2: The provision does not require that the document finally provided relates to the receipt initially presented. This opens the door to abuse by unauthorized aliens, who could present a false receipt (because even legitimate receipts have few if any security features) for one kind of document,

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		while buying time to procure legitimate documents of another sort, quite possibly by fraud.
Sec. 3101(a). Unlawful Employment of Unauthorized Aliens— *Reference to* **"INA Sec. 274A(d). Employment Verification System."** [Bill p. 428]	This provision of the bill requires the Secretary, in consultation with the Social Security Commissioner, to "establish the Employment Verification System".	In addition to the many specific concerns expressed in our analyses above and below, there are three major concerns: Issue #1: As can be seen later in this analysis, the bill eliminates the existing E-Verify system, in favor of a new system that does not exist. The bill's authors do not explain what, if anything, will fill the gap (likely many years in the making) between elimination of the one, and commencement of the other. Issue #2: Creating a new a replacement will be onerous, time-consuming and expensive, and, if past history is any gauge, require several iterations before being fully functional.
Sec. 3101(a). Unlawful Employment of Unauthorized Aliens— *Reference to* **"INA Sec. 274A(d)(1)(B). Employment Verification System: Monitoring: Procedures."** [Bill p. 428]	This paragraph requires that the DHS Secretary "…create processes to provide an individual with direct access to the individual's case history in the System, including…the identities of all persons or entities that have queried the individual through the System…"	□ An exception should be carved out of this requirement to exempt revealing law enforcement, national security or intelligence queries against the system, when doing so would be prejudicial to the ongoing inquiry or investigation should the subject become aware of the interest. □ Note, however, that this is not contemplated because, in language found later in this section of the bill, it is clear that *law enforcement, national security or intelligence officers are not permitted to view the information*. This is a mistake.

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		▯ Compare, by way of example, the required disclosures to enforcement and intelligence agencies under the bill's proposed INA Sec. 245E(a)(2), discussed earlier in our analysis. ▯ See, also, our related observations regarding the prohibition laid out by proposed INA Sec. 274A(d)(9) in the analysis below.
Sec. 3101(a). Unlawful Employment of Unauthorized Aliens— *Reference to* **"INA Sec. 274A(d)(2)(F). Employment Verification System: Agricultural Employment."** [Bill p. 433]	This subparagraph specifies that employers of agricultural workers need not participate In the electronic verification system until 4 years after enactment of the Legal Workforce Act.	Four years is an inordinately long delay in establishing verification rigor in an employment sector historically known to hire aliens who have no work authorization. We also note that the agricultural industry is being provided the opportunity to avail itself of a host of workers under the NAW and INA 218A programs. Is it not in the government's interest, then, to initiate electronic verification quickly, so as to determine the effectiveness of these programs in ensuring an adequate supply of *lawful* workers in the agricultural sector?
Sec. 3101(a). Unlawful Employment of Unauthorized Aliens— *Reference to* **"INA Sec. 274A(d)(4)(A)(v)(II). Employment Verification System: Procedures for Participants In The System."** [Bill p. 438]	This clause requires participating employers to obtain, and record in the system, identification or authorization numbers as specified by the Secretary if "the individual does not attest to United States citizenship *or noncitizen nationality*." (emphasis added)	The phrase in italics is confusing. If the intent was to include those individuals who are United States nationals, then it should simply have said, "if the individual does not attest to United States citizenship or United States nationality."

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Sec. 3101(a). Unlawful Employment of Unauthorized Aliens— *Reference to* **"INA Sec. 274A(d)(4)(C)(iii)(VI). Employment Verification System: Employee Protections."** [Bill p. 447] *—and—* **"INA Sec. 274A(d)(6). Administrative Appeal."** [Bill p. 458] *—and—* **"INA Sec. 274A(d)(7). Review by Administrative Law Judge ."** [Bill p. 460] *—and—* **"INA Sec. 274A(d)(7)(G). Appeal [by Federal Circuit Court] ."** [Bill p. 466]	Subclause (d)(4)(C)(iii)(VI): An employer *may not terminate employment or take any other adverse action* against an individual solely because of a failure of the individual to have identity and employment eligibility confirmed…until "a nonconfirmation has been issued" or the appeal time has tolled, or the appeal before an administrative law judge is final and adverse. Subparagraph (d)(6): if as the result of the federal officer interview authorized by section 274A(d)(4)(C)(iii)(II) described above, the system thereafter issues a notice that the individual is not authorized to work (a "nonconfirmation" notice), he may file an appeal of the notice. This results in an automatic stay of the notice during the pendency of the appeal to the administrative authorities at USCIS, or SSA, as appropriate. Subparagraph (d)(7), if the administrative appeal is unfavorable to the individual, he may then appeal that decision to a corps of administrative law judges (AlJs), who will conduct hearings under a host of conditions and stipulations provided by the bill. And again, during the pendency of the appeal to an ALJ, unless the judge finds the	During the entire pendency of the administrative appeal to agency authorities provided by paragraph (6), or the administrative law judge provided by paragraph (7), an employer cannot terminate the individual's employment without risking penalties, including attorney's fees or other costs. We understand the important of preserving individual rights in an important area such as the right to work, but sheer volume can paralyze a system, in which case the whole purpose behind the system, in this case eliminating the magnet of unauthorized employment, falls apart. A system such as the one presented by the bill—which is so tilted toward repetitive appeals for workers, and filled with complex, burdensome and expensive requirements for employers—is virtually guaranteed dead-on-arrival. It will cure nothing.

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	appeal to be frivolous, the appeal generates an automatic stay of an action to terminate employment. And, finally, if the individual is dissatisfied with the decision of the ALJ, subparagraph (7)(G) authorizes him to file an appeal of that decision to the federal circuit court of appeals.	
Sec. 3101(a). Unlawful Employment of Unauthorized Aliens— *Reference to* **"INA Sec. 274A(d)(9). Limitation on Use of the System."** [Bill p. 480]	States, "Nothing in this subsection may be construed to permit or allow any department, bureau, or other agency of the United States Government or any other entity to utilize any information, database, or other records assembled under this subsection for any purpose other than for employment verification or to ensure secure, appropriate and nondiscriminatory use of the System."	We disagree with this prohibition, and *strongly* believe that law enforcement, national security and intelligence officers should be given access to the system upon providing appropriate cause. Such information could prove critical in combating terrorism and other serious public safety violations. (See, also, our related comments above.)
Sec. 3101(a). Unlawful Employment of Unauthorized Aliens— *Reference to* **"INA Sec. 274A(e)(6)(E). Requirements for Review of a Final Determination: Scope and Standard for Review."** [Bill p. 497]	The bill permits employers who are the subject of civil penalties to appeal to the federal circuit courts. This subparagraph provides that "The court of appeals shall conduct a *de novo review* of the administrative record on which the final determination was based *and any additional evidence that the Court finds was previously unavailable* at the time of the administrative hearing."	The provision imposes an extremely unusual standard of review on circuit courts, which almost exclusively review decisions and issue rulings based on the record developed in the lower courts and tribunals. This standard of review inappropriately places the circuit court in the situation of acting as a court of first impression.

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Center for Immigration Studies: Analysis of Selected Sections of the Senate "Comprehensive Immigration Reform" Bill, S. 744*

Section/Subsection of Law	*Description of the Bill's Language*	*Discussion of the Effect of the Language*
Sec. 3101(a). Unlawful Employment of Unauthorized Aliens— *Reference to* **"INA Sec. 274A(g)(1). Government Contracts: Contractors and Recipients."** [Bill p. 504]	This paragraph provides that federal contractors may be debarred after violating the civil hiring and verification provisions more than 3 times, or for any criminal violation. Contractor is defined as "an employer who holds a Federal contract, grant, or cooperative agreement, or reasonably may be expected to submit an offer for or be awarded a government contract."	Issue #1: Permitting a federal contract employer to violate the civil provisions more than 3 times before initiating debarment is too lenient, especially given that taxpayer funds are involved. Issue #2: The definition of employer should be expanded to include contractors to States and political subdivisions, when the State or political subdivision is using monies derived in whole or part from federal grants or funds (such as TARP).
Sec. 3101(b). Report on Use of the System in the Agricultural Industry— [Bill p. 509]	Sec. 3101(b) lays out an exacting and detailed requirement for the Secretary to report to Congress on implementation of the System with regard to agricultural employers and employees (including nonimmigrant "guest workers under the proposed new INA Sec. 218A).	Insofar as prior Sec. 3101(a) already creates (within the INA) a requirement for the Secretary to provide a detailed report to Congress on all aspects of the System, and a concurrent requirement for the GAO to report to Congress *yearly* on all aspects of the System, this additional report seems superfluous: the above-mentioned sections could be modified to include specific agricultural-related informational requirements in those reports.
Sec. 3101(c). Report on Impact of the System on Employers— [Bill p. 510] *—and—* **Sec. 3101(d). Government Accountability Office Study of the Effects of Document Requirements**	Bill Sections. 3101(c) and (d) lay out detailed requirements for the Secretary and GAO, respectively, to report to Congress on implementation of the System with regard to employers and employees.	Insofar as prior Sec. 3101(a) already creates (within the INA) a requirement for the Secretary to provide a detailed report to Congress on all aspects of the System, and a concurrent requirement for the GAO to yearly report to Congress on all aspects of the System, we believe the above-mentioned sections could be modified to include the specific additional requirements articulated by these sections.

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on Employment Authorized Persons and Employers. [Bill p. 511]		
Sec. 3101(e). Repeal of Pilot Programs and E-Verify and Transition Procedures— [Bill p. 513]	Repeals the existing electronic verification system now in place, and provides transitional procedures *once a new system is in place.*	As discussed earlier, the language eliminates existing processes and information technology systems now in use, in favor of a nonexistent system. Creation of this new system will be onerous, time-consuming and expensive and—if past information technology projects of this size are any indicator—preliminary versions of the new system will be riddled with flaws requiring years to iron out. In the meantime, there will be no electronic system whatever. Employers and government both will be forced to revert to a paper-intensive system.
Sec. 3102(b). Multiple (Social Security) Cards— *Reference to* **''42 U.S.C. 405(c)(2)(G). Evidence, procedure, and certification for payments."** [Bill p. 517]	Amends the noted section of the Social Security Act to limit "issuance of multiple replacement social security cards to any individual to 3 per year and 10 for the life of the individual" but also permits "reasonable exceptions from the limits under this clause on a case-by-case basis in compelling circumstances.''	The provision is overly generous—particularly since the Social Security Commissioner is also given discretion to waive limits in compelling circumstances. Individuals should be limited to one replacement card per year, five for life. An additional provision should be created to require the Commissioner to direct investigation in the case of any individual who solicits three or more cards.
Sec. 3104. Responsibilities Of The Social Security Administration— *Reference to*	Creates a new Part E, outlining the employment verification responsibilities of the Social Security Commissioner, with regard to the new employment verification system to be created, including the obligation to share information with said	The provision does not specify a requirement to refer instances of apparent fraud against the system for further investigation. [Fraud against the system is referred to in the "Reports to Congress" specifications—but findings of

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Title XI of the Social Security Act (42 U.S.C. 1301 et seq.) [Bill p. 521]	system so that it may accurately and timely issue notices of employment eligibility confirmation or nonconfirmation.	that type are at a high level, and not the same as taking prompt and effective action against perpetrators of fraud at the individual level.]
Sec. 3201(a). Protections For Victims Of Serious Violations Of Labor And Employment Law Or Crime: General— *Reference to* **"INA Sec. 101(a)(15)(U). Victims of Criminal Activity or Labor and Employment Violations."** *—and—* **"INA Sec. 274A(e)(10). Conduct In Enforcement Actions."** [Bill p. 531-537]	Collectively, these provisions change the INA in the noted sections to— □ redefine and expand the provision in the INA relating to nonimmigrant "U" visas for alien victims or crime, to include additional "covered" activities, to wit, labor and employment violations [amended INA 101(a)(15)(U)]; □ direct the Secretary to temporarily stay the removal of, and grant U visa protection to, any alien who is a material witness or "has been helpful, is being helpful, or is likely to be helpful, in the investigation, prosecution, or pursuit of civil remedies related to the…covered violation" and grant commensurate work authorization [new INA Sec. 274A(e)(10)].	The amendment lacks a proviso cancelling U visa protection, dissolving the stay, and revoking work authorization to— □ aliens who "[are] being helpful" or "[are] likely to be helpful" but later renege, refuse or otherwise decline to assist in the investigation, prosecution, or pursuit of civil remedies; or □ aliens who do not fully and satisfactorily discharge their duties as material witnesses.
Sec. 3201(f)(1). Expansion of Limitation on Sources of Information that May Be Used to Make Adverse Determinations: General—	This provision of the bill expands the grounds of 8 USC 1367(a)(1), by which an alien may be designated as a "victim of crime" to now include various civil actions involving workplace infractions and; as a consequence—	The provision is very expansive. Under the definition of "workplace claim" it appears that an unauthorized alien who is a member of the collective bargaining unit could file a union grievance with a local or state agency alleging violation of collective bargaining unit regulations (or the contract itself), and as a

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Reference to **"8 U.S.C. 1367(a)(1). Penalties for disclosure of information."** [Bill p. 539]	□ precludes information which is evidence of those civil offenses, from being used against the individuals who provide it, as a basis to deny them benefits; □ defines workplace claims to include any "claim, petition, charge, complaint, or *grievance…"* filed with a federal, state or local court or agency "relating to the violation of applicable Federal, State, or local labor or employment laws…" (emphasis added)	consequence avail himself of a host of benefits, including a stay of removal, work authorization, etc.
Sec. 3201(f)(2). Protections for Victims of Serious Violations of Labor and Employment Law or Crime: Expansion of Limitation on Sources of Information that May be Used to Make Adverse Determinations— *Reference to* **"8 U.S.C. 1367(e)(2). Penalties for Disclosure of information."** [Bill p. 540]	The bill amends 8 USC 1367 to add a new paragraph (e)(2) to the end— "Any person who knowingly presents a false or fraudulent claim to a law enforcement official in relation to a covered violation for the purpose of The bill obtaining a benefit under this section shall be subject to a civil penalty of not more than $1,000."	Issue #1: The penalty seems puny compared with the potential benefits. On a risk-benefit basis, many aliens may think it worthwhile to file a false allegation—particularly in a "my word against his" situation—if all they risk is a fine, but what they gain is the right to work and live in the U.S. for a significant period of time. Issue #2: The penalty only relates to false or fraudulent claims to *law enforcement officials*. Many (perhaps most) of the officials throughout the federal, state and local governments who are charged with receiving workplace infraction allegations are not law enforcement officers.
Sec. 3301(a) *and* **(b). Funding: Establishment of the Interior Enforcement**	This section of the bill establishes an Interior Enforcement Account, and authorizes for appropriation $1B for	Subsection (b) specifies that within 5 years, DHS must ensure that there are at least 5,000 individuals assigned to the oversight and administration

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Account *and* **Appropriations.—** [Bill p. 544]	placement into the account, which is to be used for enforcing the sanctions, anti-discrimination and other provisions of Secs. 274A, 274B and 274C of the INA—specifically including monitoring and support for the not-yet existing employer verification system.	provisions of Secs. 274A, 274B and 274C, to be paid out of the fund being created. But Paragraph (b)(1) makes clear that, despite the title of the account, the positions are comingled between ICE and USCIS, which emphatically *is not* an enforcement agency. In that USCIS will be responsible for day-to-day maintenance and administration of "the System" it seems possible, even likely, that agency will be given the lion's share of positions. If so, actual enforcement of the employment verification and sanctions provisions will in the future suffer the same fate they have for many years – starvation through attrition and neglect.
Sec. 3303(a). Mandatory Exit System: Establishment— [Bill p.550]	This section requires the Secretary to establish, no later than December 31, 2015, a mandatory system for the collection of data from machine-readable visas, passports, and other travel and entry documents for all categories of aliens who are exiting from air and sea ports of entry (POEs).	Issue #1: Congress mandated the development of such an exit verification system in 1996, and has reiterated that demand five more times over the past 17 years, and it has yet to be accomplished. There is substantial reason to doubt this mandate will accomplish what has not been done previously. Issue #2: an exit system which only collects data from air and sea POEs is a three-legged stool with one broken leg. Most foreign visitors arrive via land POEs, and those who do exit, probably exit the same way they came. The problem, of course, is that if the land border arrivals don't depart, we won't know it. Given that ±40% of the aliens illegally in the U.S. are legitimate entrants who thereafter simply don't depart, this is a massive gap.

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Sec. 3303(b)(3). Integration and Interoperability: Interoperable Data System— [Bill p.551]	Requires the Secretary to integrate into the system "current and immediate" access to information in the databases of Federal law enforcement agencies and the intelligence community which is relevant to determine whether to issue a visa; or the admissibility or deportability of an alien.	The bill has no companion provision requiring the intelligence and law enforcement communities to agree to integrate their data into the DHS system, nor does it specify which systems were contemplated. It is naïve to believe non-DHS agencies will construe a mandate to the Secretary as being binding on them, in the absence of specific language to that effect.
Sec. 3305. Profiling— [Bill p.557]	This section prohibits profiling by federal law enforcement officers based on race or ethnicity, except under certain circumstance, such as in connection with a specific investigation; and in enforcing laws protecting the integrity of the Nation's borders, only as permitted by the Constitution and laws of the United States. It additionally requires, in Subsection (c), a study to be followed by regulations for "covered" DHS officers (ICE, CBP and TSA), and a report to Congress.	Issue #1: although the statute on its face prohibits all federal enforcement officers from profiling, the regulatory and reporting requirements only relate to "covered" DHS officers, not the entire federal government. We can discern no reason for this. It is curious that *even other DHS officers*, such as Secret Service or Coast Guard, are not deemed "covered" even though they engage in law enforcement duties. Issue #2: although the bill calls for a comprehensive study, the language immediately goes on to suggest that the regulation must address "race, ethnicity and *other suspect classifications*." (emphasis added) Use of the emotionally laden phrase, "suspect classifications" suggests a predisposition. There needs to be an honest recognition that in enforcing federal immigration laws, officers daily confront the fine line between race and ethnicity on one hand, and nationality-based traits on the other—traits which federal courts have repeatedly approved as "articulable facts" leading a reasonable officer to suspect alienage: facts such as heavy accents or limited English skills; foreign clothing; an apparent

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		lack of familiarity with common social customs, etc. If these kinds of articulable facts are to be outlawed in the Secretary's regulations, then it is important—*especially* for immigration officers working in the interior, where there is no direct nexus to the physical border or at ports of entry—to provide immigration enforcement officers a regulatory framework in which they can invest confidence, operate without fear, and be effective at their jobs.
Sec. 3401. Time Limits and Efficient Adjudication of Genuine Asylum Claims— *Reference to* **"INA Sec. 208(a)(2). Authority to Apply for Asylum: Exceptions."** [Bill p.561]	This section— □ eliminates the requirement of existing law that an asylum claim must be made within 1 year of arrival; □ permits aliens previously denied asylum to seek reopening of their cases, if a basis for denial was failure to apply within the year, or if they were granted withholding of removal but have not gained LPR status *provided* they apply for reopening no later than 2 years of passage of the bill; and □ permits aliens to seek reopening of prior denials on the basis of "changed circumstances" or if granted.	The reason that the existing requirements were inserted into the law in the 1980s and 1990s was because *the asylum process had become subject to abuse, delays, frivolous claims, and dilatory tactics.* Contrary to the reference to "efficient adjudication" in the title, the modifications proposed by this bill will return us to the *status quo ante,* including a repetition of the wholesale abuses of the nation's asylum regimen that have happened before.
Sec. 3403. Clarification on Designation of Certain Refugees— *Reference to* **"INA Sec. 207(c)(1).**	This section proposes to amend existing INA 207(c)(1), through renumbering and insertion of a new 207(c)(1)(B)(i). That provision would permit the president to identify and designate *as a class "*specifically defined groups of aliens" who,	Issue #1: The language in this provision stands refugee law on its head by suggesting that whole groups may be wholesale "designated" to be refugees. International law, treaty, and domestic law have always held that a grant of refugee status is dependent on the *particular* facts and circumstances

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Annual Admission of Refugees and Admission of Emergency Situation Refugees." [Bill p.563]	simply by virtue of being part of the class, would be granted refugee status. The only exception permitted for denying an individual who is part of such a class is if he has been found to have ordered or participated in the persecution of others.	present in a person's life. That is why individual refugee interviews and "credible fear" determinations have formed such an important part of U.S. refugee and asylee programs. Issue #2: The sole exception that has been carved out, permitting denial to persecutors, is inadequate. To name just one overlooked arena: what about aliens who are members or associates of terrorist organizations, or who have provided material support to such groups? Should they be admitted just because they are part of the "specially defined group"?
Sec. 3404. Asylum Determination Efficiency— *Reference to* **"INA Section 235(b)(1)(B)(ii). Inspection by Immigration Officers…Asylum Interview."** [Bill p.565]	This provision amends the inspectional procedures at U.S. ports of entry for individuals claiming asylum. At present, if an alien makes such a claim on entry, "An asylum officer shall conduct interviews of [such] aliens … If the officer determines at the time of the interview that an alien has a credible fear of persecution…the alien shall be detained for further consideration of the application for asylum. The amendment would permit asylum officers, after conducting a "nonadversarial asylum interview" and obtaining supervisory approval, to grant asylum on the spot.	Issue #1: It is unreasonable to believe that asylum officers are well poised to make informed judgments about the propriety of a claim, or the truthfulness and accuracy of assertions made by applicants, in the environment of a port of entry (POE) or immediately after arrival. How, precisely, does the interviewing officer avail himself of adequate information about country conditions and other data, which is often voluminous and detailed, that may be relevant to the claim? Issue #2: Such spontaneous grants, based on non-confrontational interviews, permit no opportunity to thoroughly vet the individual and ensure that he is not himself a persecutor, war criminal, terrorist, or otherwise undesirable and ineligible for asylum. When do the background checks take place? Issue #3: An on-the-spot grant regimen will most

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		certainly lead to a sharp spike in the number of aliens arriving at POEs and making asylum claims, as the word gets out. (See the prior discussion, above, about systemic asylum abuses that have confronted our nation in the recent past.)
Sec. 3405. Stateless Persons in the United States— *Reference to* **"INA Sec. 210A. Protection of Certain Stateless Persons In The United States."** [Bill p.566]	This section creates an entirely new provision within the INA at Sec. 210A, which would permit designation of "specific groups of individuals who are considered stateless persons, for purposes of this section" who, being in the U.S., would then be permitted to apply for conditional resident alien status. If granted, they would be entitled to apply to become full LPRs a year later. Those denied such status could renew their applications in proceedings, and additionally seek judicial review in the federal courts.	There are serious national security implications to this provision. Even with vetting, our government doesn't always know who is a threat. Speculate, for example, that Palestinians originally from the West Bank are designated as such a group. Do we really imagine that operatives and supporters of HAMAS (a designated terrorist organization) would not find their way into the U.S. and obtain status?
Sec. 3407. Representation at Overseas Refugee Interviews— *Reference to* **"INA Sec. Section 207(c) Annual Admission of Refugees and Admission of Emergency Situation Refugees."**	This section amends the INA— □ to permit refugees in refugee camps overseas to bring their attorneys or designated representatives with them to interviews by federal officers; □ by establishing new and detailed requirements for the way in which denials must be documented and transmitted to the applicant; and □ by creating a new process for denied	The proposed new procedures will result in long delays and administrative inefficiencies or in the alternate, ill-considered grants of status, or quite possibly an unfortunate combination of both.

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[Bill p.574]	applicants to seek administrative review of their denials.	
Sec. 3502. Improving Immigration Court Efficiency and Reducing Costs by Increasing Access to Legal Information— *Reference to* **"INA Sec. Section 292. Right to Counsel."** [Bill p.574]	This provision amends existing INA Section 292 by— □ eliminating the phrase "at no expense to the government" in order to permit legal representation to aliens in removal proceedings; □ permitting the Attorney General to exercise his discretion to "appoint or provide counsel *at government expense* to aliens in immigration [removal] proceedings"; and □ requiring the attorney general to appoint counsel *at government expense* to represent minors and mentally incompetent aliens (at present their interests are represented by *guardians ad litem*, usually on a pro bono basis).	It is well established by law and court doctrine that aliens do not possess the same rights to counsel as defendants in criminal proceedings. There has always been a hard-and-fast line drawn at providing aliens in expulsion proceedings attorneys at taxpayer expense. This provision breaks the line. The language in this section will be unacceptable to the vast majority of the American people, when they find out about it. They are not likely to be amenable to establishing a whole new Federal Alien Defenders corps at a time of economic hardship. And it is a legitimate concern, in that this administration will likely expand representation at government expense to aliens denied asylum, withholding or cancellation of removal, or a host of other discretionary benefits.
Sec. 3702(a) *and* **(b). Banning Habitual Drunk Drivers from the United States—** *Reference to* **"INA Sec. 212(a)(2). General Classes of Aliens Ineligible to Receive Visas and Ineligible For Admission:**	These two parallel provisions render an alien inadmissible under new INA subparagraph paragraph 212(a)(2)(J), and removable under new INA subparagraph 237(a)(2)(G) , as a habitual drunk driver if he has been "convicted of 3 or more offenses [on separate dates]* related to driving under the influence or driving while intoxicated".	□ First, the 3-conviction threshold is too high. It should have been limited to two convictions, and only one if the offense which predicated the conviction involved injury or death to another. □ Second, the inadmissibility proviso requiring that the convictions occur on different dates is inapt. If the intent was to ensure the convictions did not arise out of a single scheme of misconduct, that phrase should have been used. Often, for reasons of judicial economy, substantively

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Criminal Grounds." [Bill p.617] *—and—* **"INA Sec. 237(a)(2). General Classes of Deportable Aliens: Criminal Grounds."** [Bill p.617]	** Note: The "separate conviction dates" standard is found only in the inadmissibility provision, and not, for some reason, repeated in the deportability provision.*	different and serial offenses will be consolidated into trials held on a single date. In that instance, the convictions would be on the same date, even though the factual circumstances would clearly indicate that the convicted alien is a dangerous and habitual drunk driver. □ Third, inaptness of the "separate conviction dates" has apparently been recognized by at least some of the bill's drafters, because the requirement is not used for deportation grounds.
Sec. 3704(a). Illegal Entry— *Reference to* **"INA Sec. 275(a)** *and* **(b). Entry of Alien at Improper Time or Place…Criminal Offenses** *and* **Civil Penalties."** [Bill p. 619]	This section rewrites the existing provisions of INA Sec. 275 relating to illegal entry into the United States. In subsection (a), it— □ *decriminalizes* attempts to illegally enter the United States (by removing that phrase from the reconstructed language); and □ enhances criminal penalties for 1st, 2nd and 3rd entries. INA 275(b)—the civil penalties provision—maintains the prohibition on attempts at entry; enhances the fine amounts for 1st offenses; and doubles them for subsequent offenses.	Decriminalizing attempts to enter the U.S. is inappropriate. There are many scenarios, particularly at land ports of entry, involving significant risk of injury to both officers and persons effecting legal crossings in both directions even though the alien attempting to break through—often via dangerous and reckless use of a vehicle—is caught before effecting entry. This behavior should not be excused.
Sec. 3705. Reentry of Removed Alien—	This section rewrites the existing provisions of INA Sec. 276 relating to illegal reentry into the United States after having been removed.	Once again there is a reference, at proposed paragraph 276(b)(1), to three misdemeanors "with convictions occurring on different dates." For reasons explained above, this is inappropriate.

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Reference to **"INA Sec. 276(a), (b)** and **(e).** **Reentry of Removed Alien."** [Bill p. 622]	Subsection (a) modifies the language relating to noncriminal re-entrants, but leaves the same criminalized acts substantially in place, including attempts to reenter. It also leaves in place existing penalty structure. Subsection (b) substantially modifies the language and categories relating to criminal re-entrants convicted of multiple misdemeanors and felonies. Subsection (e) creates an affirmative defense against prosecution for re-entry if the reentrant is under the age of 18.	Issue #1: The subparagraphs under276(b)(1) relating to conviction of one or more felonies are also significantly different from current law, in that they *delete any reference to, and enhancement of penalties against, aliens who were previously removed for commission of aggravated felonies*. Issue #2: for reasons described earlier in this analysis, we do not believe that a blanket statutory forgiveness of all aliens under 18 is a poor idea. We note that a number of violent alien gang members—for instance, participants in MS-13—would meet this definition, even though they are old beyond their years and seasoned criminals.
Sec. 3705. **Reentry of Removed Alien—** *Reference to* **"INA Sec. 276(f).** **Limitation on Collateral Attack on Underlying Deportation Order."** [Bill p. 625]	This section amends that portion of INA Sec. 276 which statutorily limits attacks on underlying deportation orders in a criminal prosecution for reentry after removal. In subsection (f) as revised, the grounds permitting collateral attack are expanded from 2 to 3. The new ground permitting the attack is if "the deportation proceedings at which the order was issued improperly deprived the alien of the opportunity for judicial review".	The specified new ground appears to be a subrosa attack on the provisions in existing law that permit immigration enforcement officers to— □ expeditiously remove aliens; □ remove aggravated felons using administrative processes; and □ reinstate prior orders of removal, all without resort to immigration judge hearings under Sec. 240 of the INA. Without hearings there is, functionally, no opportunity for judicial review. Thus, the new ground invites litigation over whether such proceedings are therefore "improper" even though they are consonant with the law.
Sec. 3707(e).	Modifies presently existing Section 1546 of	The key phrase in proposed subsection (b),

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Immigration And Visa Fraud— *Reference to* **"18 U.S.C. 1546(b). Immigration and Visa Fraud."** [Bill p. 633]	Title 18 (the federal criminal code, now entitled "Fraud and misuse of visas, permits, and other documents". The first subsection (a) remains unchanged. The second subsection (b) is substantially changed to criminalize trafficking in "immigration documents" using substantially the same language adopted for the modified passport provision of 18 USC 1541, to wit: the acts require *the illicit actor to commit the acts for 3 or more documents within a 3-year timeframe.*	"immigration documents," has not been defined, without which the criminalized behavior becomes unacceptably vague and open to question. (Compare, by way of example, the specific verbiage used in the retained subsection (a) to describe the kinds of immigration documents and instruments which may not be misused.)
SEC. 3709(a) *and* **(b). Inadmissibility** *and* **Removal for Passport and Immigration Fraud Offenses—** *Reference to* **"INA Sec. 212(a)(2)(A)(i). General Classes of Aliens Ineligible to Receive Visas and Ineligible For Admission: Criminal Grounds."** [Bill p.638] *—and—* **"INA Sec. 237(a)(3)(B)(iii). General Classes of Deportable Aliens: Criminal**	This section of the bill amends the INA's inadmissibility and deportation grounds to include convictions for the revised provisions relating to passport and immigration fraud, specifically 18 USC 1541, 1545, and Sec. (b) of 1546.	The language is troubling for the grounds that it *does not include*. Through silence, this rewritten provision of the bill specifically excludes criminal convictions for violations of 18 USC 1542, 1543, 1544, and 1546(a) as bases for inadmissibility and removal, yet all of these provisions, too, relate to fraud and misuse of passports and immigration documents.

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Grounds." [Bill p.638]		
Sec. 3710(b)(2). Directives Related to Passport and Document Fraud: Protection of Vulnerable Persons— [Bill p.639]	This provision, at (b)(2), prohibits prosecution of aliens for any of the passport and visa related provisions, or for illegal entry or illegal reentry, as long as they have a claim pending as a "protected person" which is defined, among other things, at (b)(3), as seeking asylum, withholding of removal, or Convention Against Torture (CAT) protection.	□ First: the provision will grind prosecutions to a standstill, as aliens discover that to forestall being charged, they can apply under one of the "protected" statuses—they need not be entitled, they need only drag the claim out through the various applications and extended reviews and appeals provided by other portions of this bill. □ Second: In the case of reentrants, had they been entitled to a claim as a protected person in the first place, they would never have been deported to begin with. □ Third: extending the provision to CAT, without appropriate caveats, is dangerous. Even known terrorists are entitled to CAT protection. Given the nexus between international terror and abuse of passports and visas, do we *really* not want to prosecute them for passport and immigration-related offenses, because they initiate a CAT claim? □ Fourth: the provision invites abuse of, and backlogs in, sensitive and important avenues of safe haven, throwing all of those avenues into serious disrepute in the eye of the public. □ Fifth and final: as mentioned before, more than one quarter of ICE interior apprehensions involve aliens who reentered after removal. This provision will drive that statistical spike even higher as prior removals discover they can reenter with impunity. This is not a way to instill

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		rigor in the integrity of the system.
Sec. 3711. Inadmissible Aliens: Deterring Aliens Ordered Removed from Remaining in the United States Unlawfully— *Reference to* **"INA Sec. 212(a)(9)(A)(i)** *and* **(ii). Aliens Previously Removed."** [Bill p.642]	This provision aims to amend the existing grounds of inadmissibility for aliens previously removed, by modifying the language in the noted clauses— (i)…''seeks admission not later than 5 years after the date of the alien's removal (or not later than 20 years after the alien's removal''… (ii)…''seeks admission not later than 10 years after the date of the alien's removal (or not later than 20 years after the alien's removal''…	□ First, the parenthesis has not been closed in either clause, leaving both typographically incorrect. □ Second, the amended language in both clauses is syntactically flawed and has no context as written, since there is no qualifying language to specify when the 5-year / 20-year distinction applies in clause (i); nor the 10-year / 20-year distinction in clause (ii). [Compare, by way of example, the distinguishing language in the existing INA 212(a)(9)(A)(i).] □ Third, since there is no change in the inadmissibility timeframes between this bill and existing law (which does specify when to apply the 5-versus-20 years, and the 10-versus-20 years), we can only conclude that the new language was drafted solely because *it eliminates reference to aggravated felonies.*
Sec. 3712. Organized and Abusive Human Smuggling Activities— *Reference to* **"INA Sec. 295. Organized Human Smuggling."** [Bill p.648]	Creates a new INA Sec. 295, criminalizing organized and abusive human smuggling acts, including acts on the high seas and elsewhere where the individuals are destined to the U.S. The provision parallels, but also expands upon, existing INA Sec. 274 ("Bringing In And Harboring Certain Aliens"), and also establishes escalating penalties depending on the severity of the crime, and whether	In this new provision, paragraph 295(d)(7) provides that "in the case of a violation resulting in the death of any person, [the violator may] be fined under title 18, imprisoned for or any term of years or for life, or both." This is a disparity from the penalty assessed by INA 274(a)(1)(B)(iv): "in the case of a violation…resulting in the death of any person, [the violator may] be *punished by death* or imprisoned for any term of years or for life, fined under title 18, United States

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	or not injuries or death occur as a consequence of the smuggling venture.	Code, or both." (emphasis supplied)
Sec. 3715(d). Secure Alternatives Programs: Custody— [Bill p.656]	States in pertinent part, "If an individual is not eligible for release from custody or detention, the Secretary shall consider the alien for placement in secure alternatives that maintain custody over the alien to serve as detention, including the use of electronic ankle devices."	Existing provisions of the INA require mandatory detention for certain categories of aliens including, notably, aggravated felons. Current interpretations of the mandatory detention requirement do not contemplate various forms of home confinement, shelter care or electronic monitoring to meet the definition of "detention." The language of this bill would permit aggravated felons and other serious violators to be placed into situations of soft confinement or remote monitoring by statutorily defining those situations as detention. The language puts the safety of the public at great risk, and will likely add to the already huge pool of alien absconders. In addition, there is no assurance whatever that alternatives to detention are not, in the long run, more expensive to the taxpayer than routine detention.
Sec. 3716(c)(3). Oversight of Detention Facilities: Availability of Records— [Bill p.657]	This paragraph specifies that "All detention facility contracts, memoranda of agreement, and evaluations and reviews shall be considered records for purposes of section 552(f)(2) of title 5, United States Code."	By obliquely referring to 5 USC 552, the provision subtly but explicitly requires that all documents relating to evaluations and reviews of detention facilities be made public. There are many reasons this should not be the rule, particularly including the fact that such evaluations and reviews may reveal potential security weaknesses that could result in escape, or harm to detention or correctional officers or other inmates. The language makes no exception

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		for such situations.
Sec. 3716(c)(4). Oversight of Detention Facilities: Consultation— [Bill p.648]	"The Secretary shall seek input from nongovernmental organizations regarding their independent opinion of specific facilities."	If the NGOs have no substantive experience or expertise with the operation and maintenance of detention facilities—and, in many instances, are philosophically opposed to the concept of detaining aliens—of what value is their opinion?
Sec. 3717(a). Procedures for Bond Hearings and Filing of Notices to Appear— *Reference to* **"INA Sec. 236(f)(1)** *through* **(6). Apprehension and Detention of Aliens: Procedures for Custody Hearings."** [Bill p.661]	Creates a new subsection (f) with several following paragraphs, requiring— □ the Secretary to present all aliens charged in removal proceedings to an immigration judge for a bond hearing, if the aliens have not already been released on bond or recognizance; □ the immigration judge to conduct the bond hearing *de novo*; □ the Secretary to bear the burden of proving to the immigration judge that an alien subject to mandatory detention should be placed in a facility rather than under an alternative to detention; and □ the immigration judge to convene another *de novo* hearing every 90 days in the case of an alien ordered confined in a detention facility.	□ Current interpretations of the law do not permit or require the presentation of mandatorily-detained aliens to an immigration judge for a bond hearing. This provision reverses that for no discernible reason. □ Requiring presentation of aliens to immigration judges in each and every filing flies in the face of judicial economy—immigration judge dockets are already unwieldy and backlogged by many months; imposing this new requirement can do no earthly good. □ Placing the burden on the Secretary to justify use of a detention facility for mandatory detentions, instead of using soft confinement and monitoring methods that as yet have no sustained track record of success is unconscionable. □ Requiring overburdened immigration judges to reconvene de novo hearings on the same alien every 90 days goes beyond unconscionable.

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