

# **H.R. 2, the Child Deportation Act (Diaz-Balart)**

## **Section By Section**

*(Prepared by CHS/HJC/HFAC Democratic Staff)*

### **SEC 1. SHORT TITLE; TABLE OF CONTENTS.**

#### **DIVISION A—BORDER SECURITY**

### **SEC 101. DEFINITIONS.**

Defines “CBP”, “Commissioner”, “Department”, “Operational Control”, “Secretary”, “Situational Awareness”, and “Unmanned Aircraft System”.

### **SEC 102. BORDER WALL CONSTRUCTION.**

#### **(a) IN GENERAL.**

- (1) IMMEDIATE RESUMPTION OF BORDER WALL CONSTRUCTION. Requires, within 7 days of enactment, the resumption of all activities related to border wall barrier system that were underway or planned prior to January 20, 2021.
- (2) USE OF FUNDS. Requires DHS to expend all unexpired funds appropriated or explicitly obligated for the construction of the border wall system that were appropriated or obligated, as the case may be, for use beginning October 1, 2019.
- (3) USE OF MATERIALS. Allows any unused materials purchased for construction of the border wall to be used for such activity.

#### **(b) PLAN TO COMPLETE TACTICAL INFRASTRUCTURE AND TECHNOLOGY ELEMENTS OF SYSTEM.** Requires DHS to submit to appropriate congressional committees, not later than 90 days after enactment and annually thereafter until construction of the border wall is complete, an implementation plan for the expenditure of funds appropriated or explicitly obligated, as the case may be, for use as well as any future appropriated funds for satisfying all the requirements of the construction of the border wall system referred to in subsection (a)(1). The plan must include annual 200-mile benchmarks and cost estimates.

#### **(c) DEFINITIONS.** Defines for this section “appropriate congressional committees”, “tactical infrastructure”, and “technology”.

### **SEC 103. STRENGTHENING THE REQUIREMENTS FOR BARRIERS ALONG THE SOUTHERN BORDER.**

Makes the following changes to section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Division C of Public Law 104-208; 8 U.S.C. 1103 note)—

Amends subsection (a) to require DHS to “take such actions as may be necessary (including removal of obstacles to detection of illegal entrants) to design, test, construct, install, deploy, integrate, and operate physical barriers, tactical infrastructure, and technology in the vicinity of the U.S. border to achieve situational awareness and operational control of the southwest border and to deter, impede, and detect unlawful activity.”

In subsection (b)(1)(A), replaces “Fencing and Road Improvements” with “Physical Barriers” and changes “700 miles” to “900 miles”, replaces “roads, lighting, cameras, and sensors” with “tactical infrastructure, and technology” and inserts “achieve situational awareness” ahead of “gain operational control.”

In subsection (b)(1)(B), directs DHS to deploy “the most practical and effective physical barriers, tactical infrastructure, and technology available for achieving situational awareness and operational control of the border.”

In subsection (b)(1)(C), directs DHS to carry out the section in consultation with the Secretaries of Interior and Agriculture, appropriate representatives of State, Tribal, and local governments and appropriate property owners “to minimize the impact on natural resources, commerce, and sites of historical or cultural significance for the communities and residents located near the sites at which such physical barriers are to be constructed.” States that this consultation may not delay construction for longer than seven days.

Adds to the savings clause – subsection (b)(1)(C)(ii) – to clarify that nothing in this subparagraph shall “delay the transfer to the U.S. of the possession of property or affect the validity of any property acquisition by the U.S. by purchase or eminent domain, or to otherwise affect the eminent domain laws of the U.S. or of any State” or “create any right or liability for any party.”

Strikes (b)(1)(D) and makes technical edits to (b)(2).

Amends subsection (b)(3) (formerly “safety features”) to read as “Agent Safety” which requires DHS to “incorporate such safety features into such design, construction, or deployment of physical barriers, tactical infrastructure, or technology to “maximize the safety and effectiveness of officers or agents” of DHS or any other Federal agency deployed in the vicinity of such barriers, infrastructure, or technology.

Amends subsection (c) to require DHS to waive, notwithstanding any provision of law, “all legal requirements necessary to ensure the expeditious design, testing, construction, installation, deployment, integration, and operation of physical barriers, tactical infrastructure, and technology.” Seven days after exercising this waiver requirement, DHS is required to notify CHS and HSGAC.

Adds subsections (e) and (f) to the end:

“(e) TECHNOLOGY. Requires DHS to deploy “the most practical and effective technology available for achieving situational awareness and operational control”.

“(f) DEFINITIONS. Defines, in this section, “advanced unattended surveillance sensors”, “operational control”, “physical barriers”, “situational awareness”, “tactical infrastructure”, “technology”, and “unmanned aircraft system”.

#### **SEC 104. BORDER AND PORT SECURITY TECHNOLOGY INVESTMENT PLAN.**

(a) IN GENERAL. Requires CBP, in consultation with covered officials and border and port security technology stakeholders, to submit a strategic 5-year technology investment plan to appropriate congressional committees. Authorizes the plan to have a classified annex.

(b) CONTENTS OF THE PLAN. Sets forth 16 elements of the plan to include an analysis of security risks at and between ports of entry and current and forecast trends regarding encounters with aliens.

(c) LEVERAGING THE PRIVATE SECTOR. Requires the plan, to the extent practicable, to (1) leverage emerging technological capabilities and research and development trends in public and private

sectors; (2) incorporate input from private sector, including from border and port security stakeholders, through requests for information days, industry day events, and other innovative means; and (3) identify security-related technologies that are in development or deployed, with or without adaptation, that may satisfy the mission needs of CBP.

(d) **FORM.** Requires the plan to be published in the unclassified form to the extent practicable.

(e) **DISCLOSURE.** Requires the identification of non-Federal employees who contributed to the development of the plan.

(f) **UPDATE AND REPORT.** Requires the Commissioner to submit to appropriate congressional committees two years after submitting the plan pursuant to subsection (a) and biennially thereafter for ten years, an update of the plan, if appropriate and information on the extent to which each security-related technology acquired by CBP since the initial submission of the plan or most recent update, as the case may be, is consistent with the planned technology programs under subsection (b)(5) and the type of contract for each security-related technology.

(g) **DEFINITIONS.** Defines for purposes of this section “appropriate congressional committee”, “covered officials”, and “unlawfully present”.

## **SEC 105. BORDER SECURITY TECHNOLOGY PROGRAM MANAGEMENT.**

(a) **IN GENERAL.** Adds the following new section to the end of Subtitle C of title IV of the Homeland Security Act of 2002 (6 U.S.C. 231 et seq.)

### **“SEC 437. BORDER SECURITY TECHNOLOGY PROGRAM MANAGEMENT.**

“(a) **MAJOR ACQUISITION PROGRAM DEFINED.** Defines “major acquisition program” as requiring an eventual total expenditure of at least \$100,000,000 (based on FY 2023 constant dollars).

“(b) **PLANNING DOCUMENTATION.** Sets forth three documentation and planning requirements for each DHS border security technology acquisition program that is determined to be a major acquisition program.

“(c) **ADHERENCE TO STANDARDS.** Requires DHS, to ensure that border security technology acquisition program managers adhere to relevant GAO internal control standards.

“(d) **PLAN.** Requires DHS to submit a plan for testing, evaluating, and using independent verification and validation of resources relating to proposed acquisition of border security technology to CHS and HSGAC. Directs the proposed acquisition of new border security technologies to be evaluated through assessments, processes, and audits under the plan to ensure compliance relevant DHS acquisitions policies and the Federal Acquisition Regulations and “the effective use of taxpayer dollars.”

(b) **CLERICAL AMENDMENT.** Adds “SEC 437. Border security technology program management” to Homeland Security Act table of contents.

(c) **PROHIBITION ON ADDITIONAL AUTHORIZATION OF APPROPRIATIONS.** Clarifies that no additional funds are authorized to be appropriated to carry out section 437.

## **SEC 106. U.S. CUSTOMS AND BORDER PROTECTION TECHNOLOGY UPGRADES.**

(a) **SECURE COMMUNICATIONS.** Requires CBP to ensure that each CBP officer or agent, as appropriate, is equipped a secure radio or other two-way communications device.

(b) **BORDER SECURITY DEPLOYMENT PROGRAM.** Requires CBP to fully implement the Border Security Deployment Program, not later than September 30, 2025, and expand the integrated surveillance and intrusion detection system at land POEs along the northern and southern borders. Authorizes \$33,000,000 for FY 2024 and 2025 to carry out this subsection.

(c) **UPGRADE OF LICENSE PLATE READERS AT PORTS OF ENTRY.** Requires CBP to upgrade all existing license plate readers in need of upgrading within two years of enactment. Authorizes \$125,000,000 for FY 2023 and 2024 to carry out this subsection.

## **SEC 107. U.S. CUSTOMS AND BORDER PROTECTION PERSONNEL.**

(a) **RETENTION BONUS.** Authorizes \$100 million to CBP to provide retention to any front-line Border Patrol agent at GS-12 or lower that has at least 5 years of service and commits to an additional two years in the Border Patrol.

(b) **BORDER PATROL AGENTS.** Directs CBP, not later than September 30, 2025, to hire, train, and assign agents to maintain an active duty presence of not fewer than 22,000 full-time equivalent Border Patrol agents who are prohibited from performing the duties of processing coordinators.

(c) **PROHIBITION AGAINST ALIEN TRAVEL.** Prohibits the use of Air & Marine (A&M) personnel or equipment to transport “non-detained aliens, or detained aliens expected to be administratively released upon arrival,” from the Southwest Border to destinations within the United States.

(d) **GAO REPORT.** By September 30, 2027, requires GAO to publish a review of why staffing levels set forth in this section were not achieved if such levels are not achieved by September 30, 2025.

## **SEC 108. ANTI-BORDER CORRUPTION ACT REAUTHORIZATION.**

(a) **HIRING FLEXIBILITY.** Strikes subsection (b) of section 3 of the Anti-Border Corruption Act of 2010 (6 U.S.C. 221; P.L. 111-376) and inserts the following subsections—

“(b) **WAIVER REQUIREMENT.** Requires CBP to waive polygraph requirement for a job candidate who is—

“(1) a current, full-time law enforcement officer employed by a State or local law enforcement agency who (A) has continuously served as a law enforcement officer (LEO) for not fewer than 3 years; (B) is authorized by law to engage in or to supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for any violation of law, and has statutory powers for arrest or apprehension; and (C) is not currently under investigation, has not been found to have engaged in criminal activity or serious misconduct, has not resigned from a LEO position under investigation or in lieu of termination, and not been dismissed from a LEO position;

“(2) a current, full-time Federal LEO who (A) has continuously served as a LEO for not less than 3 years; (B) is authorized to make arrests, conduct investigations, conduct searches, make seizures, carry firearms, and serve orders, warrants, and other processes; (C) is not currently under investigation, has not been found to have engaged in criminal activity or serious

misconduct, has not resigned from a LEO position under investigation or in lieu of termination, and has not been dismissed from a LEO position; and (D) holds a current Tier 4 or 5 background investigation; and

“(3) a member of the Armed Forces (or a reserve component thereof) or a veteran, if such individual (A) served for not fewer than 3 years; (B) holds or has held within the past 5 years a Secret or higher clearance; (C) holds or has undergone within the past 5 years a current Tier 4 or 5 background investigation; (D) received or is eligible to receive an honorable discharge and has not engaged in criminal activity or committed a serious military or civil offense under the Uniform Code of Military Justice; and © was not granted any waivers to obtain the clearance referred to in subparagraph (B).

“(c) TERMINATION OF WAIVER REQUIREMENT. Terminates this mandatory waiver requirement when CBP certifies to CHS and HSGAC that it has met all the personnel level requirements set forth in section 8 of the Border Reinforcement Act of 2023 but if, at any time after the certification level fall below what is required in this Act, the waiver requirement automatically resumes.

(b) SUPPLEMENTAL COMMISSIONER AUTHORITY; REPORTING; DEFINITIONS.

Adds to the end of the Anti-Border Corruption Act of 2010 the following new sections—

**“SEC 5. SUPPLEMENTAL COMMISSIONER AUTHORITY.**

“(a) NONEXEMPTION. Clarifies that an individual who is exempted from polygraph requirement is still subject to CBP suitability requirements for employment and eligibility to hold a national security designated position requirements.

“(b) BACKGROUND INVESTIGATIONS. Requires any individual who holds a Tier 4 background investigation and is exempted from the polygraph requirement to be subject to a Tier 5 background investigation.

“(c) ADMINISTRATION OF POLYGRAPH EXAMINATION. Authorizes CBP to administer a polygraph for an individual subject to the waiver (under section 3(b) of the Anti-Border Corruption Act of 2010 as amended by this Act) if information is discovered before the completion of the background investigation that results in the determination that a polygraph is necessary to make a final determination about suitability for employment or continued employment.”

**“SEC 6. REPORTING.**

“(a) ANNUAL REPORT. Requires CBP to submit a report to Congress, not later than one year after enactment and annually thereafter, that includes, with respect to each such reporting period (1) the number of waivers granted; (2) the percentage of applicants hired who received waivers; (3) the number of applicants who received polygraphs after initially receiving waivers; (4) an assessment of the waiver requirement on filling CBP LEO positions; and (5) additional authorities needed by CBP to better utilize the polygraph waiver program.

“(b) ADDITIONAL INFORMATION. Requires first report under subsection (a) to include (1) an analysis of other methods of employment suitability tests that detect deception and could be used in conjunction with traditional background investigations; and (2) a recommendation a test identified pursuant to paragraph (1) should be adopted by CBP when polygraphs are to be waived.

**“SEC 7. DEFINITIONS.**

Adds definitions to the Ant-Border Corruption Act of 2010 for “Federal Law Enforcement Officer”, “Serious Military or Civil Offense”, “Tier 4”, “Tier 5”, and “Veteran”.

- (c) **POLYGRAPH EXAMINERS.** Requires DHS, not later than September 30, 2025, to increase to not fewer than 150 the number of trained full-time equivalent polygraph examiners.

**SEC 109. ESTABLISHMENT OF WORKLOAD STAFFING MODELS FOR U.S. BORDER PATROL AND AIR AND MARINE OPERATIONS OF CBP.**

(a) **IN GENERAL.** Directs CBP, in coordination with certain other DHS entities to implement, one year after enactment, workload staffing models for U.S. Border Patrol and Air and Marine (A&M) within CBP.

(b) **RESPONSIBILITIES OF THE COMMISSIONER OF CBP.** Amends section 411(c) of the Homeland Security Act (6 U.S.C. 211) to insert the following two paragraphs:

“(18) implement a staffing model that includes consideration for essential frontline operator activities and functions, variations in operating environments, present and planned infrastructure and technology, and required support levels.

“(19) develop standard operating procedures for a workforce tracking system within BP, A&M, and OFO.

(c) **REPORT.** Requires DHS to submit a report to appropriate congressional committees, not later than a year after the date of enactment, that includes a status update on the implementation of subsection (a) and paragraphs (18) and (19) of section 411(c) of the Homeland Security Act, as amended. The report shall include each relevant workload staffing model together with information on data sources and methodology used to generate each such model.

(d) **INSPECTOR GENERAL REVIEW.** Not later than 90 days after CBP develops a model pursuant to subsection (a), the Inspector General shall review the model and provide feedback to DHS and the appropriate congressional committees regarding the model’s responsiveness to IG recommendations including from its February 2019 audit.

(e) **APPROPRIATE CONGRESSIONAL COMMITTEE DEFINED.** Defines “appropriate congressional committees” for purposes of this section..

**SEC 110. OPERATION STONEGARDEN.**

- (a) **IN GENERAL.** Adds new section to the end of Subtitle A of title XX of the Homeland Security Act (6 U.S.C. 601 et seq.).

**“SEC 2010. OPERATION STONEGARDEN.**

“(a) **ESTABLISHMENT.** Establishes Operation Stonegarden program in which FEMA, on behalf of DHS, distributes grants to eligible law enforcement agencies, through State administrative agencies, to enhance border security in accordance with this section.

“(b) **ELIGIBLE RECIPIENTS.** To be eligible for these grants the law enforcement agency must be located in a State bordering Mexico or Canada or along our maritime border and involved in an active, ongoing, U.S. Customs and Border Protection operation coordinated through a U.S. Border Patrol sector office. They also must have an agreement in place with ICE to support enforcement operations.

“(c) PERMITTED USES. Allows grantees to use funding for (1) equipment (including maintenance and sustainment costs); (2) personnel (including overtime and backfill); and (3) any activity permitted by DHS under the most recent Notice of Funding Opportunity.

“(d) PERIOD OF PERFORMANCE. Grantees have 36 months to complete grant activities.

“(e) NOTIFICATION. Requires FEMA to submit written notices to Congress when denying a grant application.

“(f) REPORT. Requires FEMA to report to CHS and HSGAC on the expenditure of grants under this section annually from FY 2024 to 2028 and any recommendation for other uses of grant funds.

“(g) AUTHORIZATION OF APPROPRIATIONS. Authorizes \$110,000,000 for each FY 2024 through 2028 for grants under this section.

(b) CONFORMING AMENDMENT. Amends SEC 2002 of the Homeland Security Act to cross-reference SEC 2010 to the list of grant programs FEMA administers for DHS.

(C) CLERICAL AMENDMENT. Adds “SEC 2010. Operation Stonegarden.” to the Homeland Security Act table of contents.

## **SEC 111. AIR AND MARINE OPERATIONS FLIGHT HOURS.**

(a) AIR AND MARINE OPERATIONS FLIGHT HOURS. Requires DHS to ensure that A&M carries out not more than 110,000 annual flight hours.

(b) UNMANNED AIRCRAFT SYSTEMS. Requires DHS, after coordinating with FAA, to ensure that A&M UAS operate on the southern border not less than 24 hours per day.

(c) PRIMARY MISSIONS. Requires CBP to ensure that A&M’s primary missions are to directly support U.S. Border Patrol and transit zone operations of Joint Interagency Task Force South and Joint Task Force East. It also requires CBP to ensure that the Executive Commissioner of A&M Operations “assigns the greatest priority” to support these missions.

(d) HIGH DEMAND FLIGHT HOUR REQUIREMENTS. Directs CBP to have BP Sector Chiefs identify air support mission-critical hours and direct A&M to support them.

(e) CONTRACT AIR SUPPORT AUTHORIZATION. Directs CBP to contract for the unfulfilled air support mission-critical hours identified in subsection (d).

(f) SMALL UNMANNED AIRCRAFT SYSTEMS. Designates the BP Chief as the “executive agent with respect to the use of small unmanned aircraft systems” within CBP for purposes of BP’s unmet flight hour operational requirements and achieving situational awareness and operational control. Directs the BP Chief to coordinate flight operations with FAA and the Executive Assistant Commissioner for A&M Operations. A&M coordination is to ensure safety of other CBP aircraft in the vicinity of BP-operated small UAS and establish a process to include data from flight hours in the calculation of got away statistics. Includes a conforming amendment to section 411(e)(3) of the Homeland Security Act.

(g) SAVINGS CLAUSE. Clarifies that nothing in this section shall confer, transfer, or delegate any authority of FAA related to the use of airspace or aviation safety.

(h) DEFINITIONS. Defines for this section “got away” and “transit zone.”

## **SEC 112. ERADICATION OF CARRIZO CANE AND SALT CEDAR.**

(a) **IN GENERAL.** Directs DHS, not later than 30 days after enactment of the Act, to hire contractors to begin eradicating the carrizo cane plants and any salt cedar along the Rio Grande River that impedes border security and complete such efforts in the most expeditious and cost-effective manner by September 30, 2027.

(b) **APPLICATION.** Extends broad Secure Fence waiver authority at section 102(c) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1103 note) to eradicating carrizo cane plants and salt cedar.

(c) **REPORT.** Requires DHS, not later than 180 days after enactment of this Act, to submit a strategic plan to CHS and HSGAC to eradicate carrizo cane and salt cedar along the Rio Grande River by no later than September 30, 2027.

(d) **AUTHORIZATION OF APPROPRIATIONS.** Authorizes \$7,000,000 for each of FY 2024 through 2027 to carry out this subsection.

## **SEC 113. BORDER PATROL STRATEGIC PLAN.**

(a) **IN GENERAL.** Requires CBP, acting through the BP Chief, to issue a Border Patrol Strategic Plan, not later than a year after the date of enactment and biennially thereafter, to enhance the security of the international borders of the United States.

(b) **ELEMENTS.** The plan sets forth 10 elements for the plan.

## **SEC 114. U.S. CUSTOMS AND BORDER PROTECTION SPIRITUAL READINESS.**

Requires CBP to report to Congress annually for five years “on the availability and usage of the assistance of chaplains, prayer groups, houses of worship, and other spiritual resources for members of CBP who identify as religiously-affiliated and have attempted suicide, have suicidal ideation, or are at risk of suicide, and metrics on the impact such resources have in assisting religiously-affiliated members who have access to and utilize such resources compared to religiously-affiliated members who do not.”

## **SEC 115. RESTRICTIONS ON FUNDING.**

(a) **ARRIVING ALIENS.** Prohibits any DHS funding to process the entry of “aliens arriving between ports of entry.”

(b) **RESTRICTION ON NONGOVERNMENTAL ORGANIZATION SUPPORT FOR ALIENS.** Prohibits funding to any non-governmental organization that “facilitates or encourages unlawful activity, including unlawful entry, human trafficking, human smuggling, drug trafficking, and drug smuggling.

(c) **RESTRICTION ON NONGOVERNMENTAL ORGANIZATION SUPPORT FOR UNLAWFUL ACTIVITY.** Prohibits funding for disbursement to “any non-governmental organization to provide, or facilitate the provision of, transportation, lodging, or immigration legal services to inadmissible aliens who enter the United States after the date of enactment of this Act.”

## **SEC 116. COLLECTION OF DNA AND BIOMETRIC INFORMATION AT THE BORDER.**

Requires DHS to certify to Congress within 14 days of enactment that CBP is “fully compliant with Federal DNA and biometric collection requirements at the United States land borders.”



**SEC 117. ERADICATION OF NARCOTIC DRUGS AND FORMULATING EFFECTIVE NEW TOOLS TO ADDRESS YEARLY LOSSES OF LIFE; ENSURING TIMELY UPDATES TO U.S. CUSTOMS AND BORDER PROTECTION FIELD MANUALS.**

- (a) IN GENERAL. Require CBP to review and update, not later than 90 days after enactment and triennially, the current policies and manuals of the Office of Field Operations related to inspections at ports of entry, and the U.S. Border Patrol related to inspections between ports of entry.
- (b) REPORTING REQUIREMENT. Requires reporting to Congress on changes not less than 90 days after an update.

**SEC 118. PUBLICATION BY U.S. CUSTOMS AND BORDER PROTECTION OF OPERATIONAL STATISTICS.**

- (a) IN GENERAL. Requires CBP, not later than the seventh day of every month, to publish certain border encounter data on its publicly available website.
- (b) EXCEPTIONS. If not published within the timeline, CBP is required to explain to Congress.
- (c) DEFINITIONS. Defines in this section “alien encounters”, “got away”, “terrorist screening database”, and “unaccompanied alien child.”

**SEC 119. ALIEN CRIMINAL BACKGROUND CHECKS.**

- (a) IN GENERAL. Requires, not later than seven days after enactment, CBP to certify to Congress that CBP has real-time access to the criminal history databases of all countries of origin and transit for aliens encountered by CBP.
- (b) STANDARDS. Requires the certification to include a determination whether the databases of other countries are accurate, up to date, digitized, searchable, and otherwise meet the standards of the Federal Bureau of Investigations.
- (c) CERTIFICATION. Requires DHS to annually submit the certification to Congress.

**SEC 120. PROHIBITED IDENTIFICATION DOCUMENTS AT AIRPORT SECURITY CHECKPOINTS; NOTIFICATION TO IMMIGRATION AGENCIES.**

- (a) IN GENERAL. Prohibits TSA from accepting “a prohibited identification document” (as defined in subsection (f)) as valid proof of identification at an airport checkpoint.
- (b) NOTIFICATION TO IMMIGRATION AGENCIES. Requires TSA to promptly notify U.S. Immigration and Customs Enforcement, CBP and local law enforcement if a prohibited identification document is presented.
- (c) ENTRY INTO STERILE AREAS. Prohibits TSA from allowing a person who presented a prohibited identification document from entering the sterile area of an airport unless the individual is leaving the U.S. for purposes of removal or deportation or presents a covered identification document.
- (d) COLLECTION OF BIOMETRIC INFORMATION FROM CERTAIN INDIVIDUALS SEEKING ENTRY INTO THE STERILE AREA OF AN AIRPORT. Directs TSA, not later than 120 days after enactment, to collect biometric information on any person who (1) seeks to enter the sterile area of an airport; (2) does not present a covered identification document; and (3) cannot be verified as a U.S. national.

- (e) INDIVIDUALS DESCRIBED. Sets forth the three criteria to trigger biometric collection pursuant to subsection (d).
- (f) PARTICIPATION IN IDENT. Direct TSA, not later than 120 days after enactment, to submit biometric data collected under this section to the Automated Biometric Identification System (IDENT).
- (g) DEFINITIONS. Defines in this section “Administrator”, “Biometric Information”, “Covered Identification Document”, “Immigration Laws”, “Prohibited Identification Document”, and “Sterile Area.”

#### **SEC 121. PROHIBITION AGAINST ANY COVID-19 VACCINE MANDATE OR ADVERSE ACTION AGAINST DHS EMPLOYEES.**

- (a) LIMITATION ON IMPOSITION OF NEW MANDATE. Prohibits DHS from issuing any COVID-19 vaccine mandate unless expressly authorized by Congress.
- (b) PROHIBITION ON ADVERSE ACTION. Prohibits DHS from taking any adverse action against a DHS employee based solely on the refusal of such employee to receive a COVID-19 vaccine.
- (c) REPORT. Requires DHS to report to Congress on the number of DHS employees who were terminated or resigned due to the COVID-19 vaccine mandate, costs to reinstate such employees, and how reinstatement would be done.
- (d) RETENTION AND DEVELOPMENT OF UNVACCINATED EMPLOYEES. Requires DHS to make every effort to retain unvaccinated DHS employees and provide those employees with professional development, promotion and leadership opportunities, and consideration equal to that of their peers.

#### **SEC 122. CBP ONE APP LIMITATION.**

- (a) LIMITATION. Restricts DHS from using the CBP One Mobile Application or similar internet-based portals or programs for any activity other than inspection of perishable cargo.
- (b) REPORT. Requires CBP to report to Congress within 60 days on how CBP used the CBP One Mobile Application to allow aliens to schedule interviews at ports of entry.

#### **SEC 123. REPORT ON DESIGNATION OF MEXICAN CARTELS AS FOREIGN TERRORIST ORGANIZATIONS.**

- (a) REPORT. Requires DHS, in coordination with the State Department to submit a report on whether certain Mexican drug cartels meet the criteria for designation as a foreign terrorist organization.
- (b) DEFINITIONS. Defines for this section “appropriate congressional committee” and “foreign terrorist organization.”
- (c) RULE OF CONSTRUCTION. Clarifies that Nothing in this section may be construed to expand the eligibility for asylum of any alien by reason of the designation of a drug cartel as a foreign terrorist organization.

#### **SEC 124. GAO STUDY ON COSTS INCURRED BY STATES TO SECURE THE SOUTHWEST BORDER.**

- (a) IN GENERAL. Directs GAO, within 90 days of enactment, to examine costs incurred by States as a result of “actions taken by such States in support of the Federal mission to secure the southwest border, and the feasibility of a program to reimburse such States for such costs.”
- (b) CONTENTS. Sets forth three elements for the study.

## **SEC 125. REPORT BY INSPECTOR GENERAL OF THE DEPARTMENT OF HOMELAND SECURITY.**

- (a) **REPORT.** Requires annual reports that examine the economic and security impact of mass migration to municipalities and States along the southwest border.
- (b) **CONSULTATION.** Requires consultation with certain entities for the report.

## **SEC 126. OFFSETTING AUTHORIZATION OF APPROPRIATIONS.**

- (a) **OFFICE OF THE SECRETARY AND EMERGENCY MANAGEMENT.** Prohibits funding for Alternatives to Detention Case Management Pilot Program or the Office of the Secretary and Emergency Management of the Department.
- (b) **MANAGEMENT DIRECTORATE.** Prohibits funding for electric vehicles or construction at St. Elizabeths (DHS headquarters).
- (c) **INTELLIGENCE, ANALYSIS, AND SITUATIONAL AWARENESS.** Authorizes \$216 million toward DHS' Intelligence, Analysis, and Situational Awareness.
- (d) **U.S. CUSTOMS AND BORDER PROTECTION.** Prohibits funding for the CBP's Shelter and Services Program.

## **SEC 127. REPORT TO CONGRESS ON FOREIGN TERRORIST ORGANIZATIONS.**

Requires DHS to submit to Congress annually for 5 years an assessment of foreign terrorist organizations attempting to move their members or affiliates into the U.S. through the southern, northern, or maritime border. Defines "foreign terrorist organization" for purposes of this section.

## **SEC 128. ASSESSMENT BY INSPECTOR GENERAL OF THE DEPARTMENT OF HOMELAND SECURITY ON THE MITIGATION OF UNMANNED AIRCRAFT SYSTEMS AT THE SOUTHWEST BORDER.**

Requires the DHS IG to submit to Congress, within 90 days of enactment, an assessment of CBP's ability to mitigate unmanned aircraft systems at the southwest border.

# **DIVISION B— IMMIGRATION ENFORCEMENT AND FOREIGN AFFAIRS**

## **TITLE I – ASYLUM REFORM AND BORDER PROTECTION**

### **SEC 101. SAFE THIRD COUNTRY.**

Eliminates the requirement of a bilateral or multilateral agreement for the removal of an individual (not just children) to a safe third country. Bars individuals from asylum eligibility if they transited through a third country en route to the US unless the individual demonstrates they either (1) applied for and received a denial of a protection application in the third country, (2) were a victim of a severe form of trafficking for sex work (coercion is required for adults, minors do not have to prove coercion) or forced labor, and they were unable to apply for protection as a result; or (3) the only countries the individual transited through are not parties to the 1951 refugee convention, the 1967 refugee protocol, or the Convention against Torture.

### **SEC 102. CREDIBLE FEAR INTERVIEWS.**

Amends the definition of "credible fear of persecution" to include the requirement that "the alien more likely than not could establish eligibility for asylum... and it is more likely than not that the statements made by the alien in support of the alien's claim are true."

### **SEC 103. CLARIFICATION OF ASYLUM ELIGIBILITY.**

Ends the right to asylum for people who cross the border between ports of entry, except for those interdicted in the ocean.

### **SEC 104. EXCEPTIONS.**

Adds new bars to asylum eligibility. Currently, an individual can be barred from asylum if they (1) persecuted someone due to a protected ground; (2) were convicted of a particularly serious crime, including an aggravated felony and constitute a danger to the US; (3) committed a serious non-political crime outside the U.S.; (4) are a danger to the US; (5) they are inadmissible based on terrorism grounds and cannot obtain a waiver; or (6)) they were firmly resettled in a third country. The bill adds the following new bars: (1) felony conviction; (2) misdemeanor conviction related to (a) possession or use of a false ID; (b) unlawful receipt of a public benefit; or (c) possession or trafficking of a controlled substance/paraphernalia (other than a single offense involving simple possession of less than 30 grams of marijuana); (3) conviction of for alien harboring/smuggling; (4) any gang-related conviction; (5) any DWI conviction resulting in another person's serious bodily injury or death; (6) two or more DWI convictions; (7) conviction of a crime (a) that involves conduct amounting to stalking; (b) of child abuse, neglect, or abandonment; or (c) that involves conduct amounting to domestic assault or battery; (8) the individual engaged in acts of battery or extreme cruelty against a partner or child; or (9) there are reasonable grounds that the individual could avoid persecution by relocating to another part of the country in which they were persecuted.

The bill also bars asylum for claims based on: (1) personal animus or retribution; (2) generalized disagreement or opposition to criminal, terrorist, gang, guerilla, or other non-state actors; (3) resistance to recruitment or coercion by criminal, terrorist, gang, guerilla, or other non-state actors; (4) criminal targeting based on actual or perceived wealth; (5) criminal activity; or (6) perceived gang affiliation.

### **SEC 105. EMPLOYMENT AUTHORIZATION.**

Ends entitlement to employment authorization for asylum applicants. Asylum-based employment authorization documents (EADs) will only be valid for 6 months, but are renewable. Individuals who entered without inspection are barred from asylum-based EADs due to the bars in Section 105.

### **SEC 106. ASYLUM FEES.**

Levies a \$50 application fee on asylum applications (excluding UACs) and allows for a fee for asylum-based employment authorization applications.

### **SEC 107. RULES FOR DETERMINING ASYLUM ELIGIBILITY.**

Makes extensive changes to the asylum rules. Requires asylum applicants to specifically articulate or demonstrate the definition of the particular social group and that it exists outside of the context of the alleged persecution. Bars political opinion claims based on opposition to criminal, terrorist, gang, or guerilla groups. Redefines "political opinion" to only relate to control of a state. Bars a finding of persecution "based only on" laws or government policies "that are unenforced or infrequently enforced," or based on conduct by "rogue foreign government officials" Provides additional discretionary grounds for denying asylum to otherwise strong claims and prohibits a favorable exercise of discretion for a wide variety of reasons. Limits appellate opportunities. Prohibits evidence that promotes stereotypes unless it is evidence that the persecutors hold stereotypical views of the asylum seeker.

Defines membership in a particular social group as membership in a group that is: (A) composed of members who share a common immutable characteristic; (B) defined with particularity; and (C) socially distinct within the society in question.

Persecution does not include (1) generalized harm/violence; (2) “all treatment that the United States regards as unfair, offensive, unjust, unlawful, or unconstitutional;” (3) intermittent harassment, including some detention; (4) threats with no follow through; (5) non-severe economic harm/property damage.

#### **SEC 108. FIRM RESETTLEMENT.**

Requires that asylum be denied to an applicant if they lived in another country while transiting to the United States and received or could have received any status other than tourist status; resided without suffering persecution for a year or more in a third country other than residing in Mexico as part of a Remain in Mexico-style program, or is or was a citizen of a third country through which they transited after leaving the country in which they were persecuted but prior to arriving in the United States. If a parent firmly resettled in a third country before the applicant turned 18 and they resided with the parent at that time, they can be barred from asylum eligibility unless they can prove they cannot obtain a permanent or indefinite status in that country.

#### **SEC 109. NOTICE CONCERNING FRIVOLOUS ASYLUM APPLICATIONS.**

Removes a provision in current law that requires the Department of Homeland Security (DHS) to provide asylum applicants with an oral warning of the consequence of filing a frivolous asylum application. The section requires DHS to provide asylum applicants with a written warning on the application in lieu of an oral warning. However, the asylum application already includes a written warning. This would eliminate the oral warning requirement.

Permanently bars submitters of frivolous asylum applicants from receiving any immigration benefits other than withholding of removal or protection under the convention against torture.

Defines frivolous applications as ones knowingly filed by an applicant with no intention of pursuing the case on the merits for the sole purpose of (1) delaying removal; (2) obtaining employment authorization; or (3) obtaining a notice to appear to seek cancellation of removal. Applications in which any of the material elements are knowingly fabricated are also considered frivolous.

#### **SEC 110. TECHNICAL AMENDMENTS.**

Contains a series of noncontroversial technical amendments inserting “Secretary of Homeland or” before “Attorney General” or replacing “Attorney General” with “Secretary of Homeland Security.”

#### **SEC 111. REQUIREMENT FOR PROCEDURES RELATING TO CERTAIN ASYLUM APPLICATIONS.**

Requires the Attorney General to, within 30 days of enactment, establish procedures to expedite the adjudication of asylum applications for individuals from Cuba, Nicaragua, and Venezuela in regular removal proceedings.

### **TITLE II – BORDER SAFETY AND MIGRANT PROTECTION**

#### **SEC 201. INSPECTION OF APPLICANTS FOR ADMISSION.**

Amends section 235(b) of the Immigration and Nationality Act, which covers migrants who are entering the United States and intending to apply for asylum, by adding all individuals who enter the United States unlawfully.

Makes individuals deemed inadmissible because they entered without admission or parole or because they lack the required documentation ineligible for parole unless they qualify under the bill's new parole categories or if the attorney general chooses to release the individual on bond or conditional parole.

In four different places where detention is required under expedited removal, it states individuals shall not be released unless they meet one of the new parole requirements or if they will be removed to a country that is described in the newly created paragraph 3 under 235(b).

Restates the INA's current "Remain in Mexico" provision granting the DHS Secretary the authority to return individuals to Mexico pending removal proceedings under section 240 of the INA.

Allows state attorneys general to bring a cause of action alleging a violation of the detention, return, removal, or suspension requirements outlined in the new provisions of the INA created by this title.

Provides the Secretary of Homeland Security with the discretion to suspend the entry of individuals who are inadmissible because they entered without admission or parole or because they lack the required documentation at a U.S. land or sea border for a period of time the Secretary determines necessary to attain "operational control" over such border.

## **SEC 202. OPERATIONAL DETENTION FACILITIES.**

Requires DHS to reopen all Immigration and Customs Enforcement (ICE) detention facilities that were closed after the Biden administration began. This includes the Irwin County Detention Center, the site of numerous horrifying allegations of detainees forced to undergo invasive gynecological procedures, including forced hysterectomies.

## **TITLE III – PREVENTING UNCONTROLLED MIGRATION FLOWS IN THE WESTERN HEMISPHERE**

### **SEC 301. UNITED STATES POLICY REGARDING WESTERN HEMISPHERE COOPERATION ON IMMIGRATION AND ASYLUM.**

It is the policy of the U.S. to enter into agreements, accords, and MOUs with countries in the Western Hemisphere to reduce costs associated with illegal immigration and to protect the human capital, societal traditions, and economic growth of other nations, and ensure that foreign assistance is not used on programs that have not proven to reduce illegal immigrant flows.

### **SEC 302. NEGOTIATIONS BY SECRETARY OF STATE.**

(a&b) This section mandates the Secretary of State to seek to negotiate agreements, accords and MOUs between the U.S. and countries in the Western Hemisphere (Mexico, Honduras, Guatemala, El Salvador, and other countries) on cooperation and burden sharing of regional immigration enforcement, expediting asylum claims, detention and repatriation of persons seeking to enter the U.S. unlawfully. This section details the requirements under such agreements placed on the U.S. and other countries of the Western Hemisphere. This section also requires Congressional notice of agreements that have been signed within 48 hours.

(c) Definition of "alien" per Immigration and Nationality Act (8 U.S.C. 1101).

### **SEC 303. MANDATORY BRIEFINGS ON UNITED STATES EFFORTS TO ADDRESS THE BORDER CRISIS.**

- a) This section requires the State Department to brief HFAC every 90 days on efforts by the Department to monitor, deter, and prevent illegal immigration.

- b) Termination of mandatory briefing after consultation with relevant Federal departments and agencies certifying that illegal immigration flows have subsided to manageable rate.
- c) Appropriate congressional committees include HFAC and SFRC.

#### **TITLE IV – ENSURING UNITED FAMILIES AT THE BORDER**

##### **SEC 401. CLARIFICATION OF STANDARDS FOR FAMILY DETENTION.**

Amends the Trafficking Victims Protection Reauthorization Act (TVPRA) by adding a rule of construction that states children who are accompanied shall be detained like any adult would be under sections 217, 235, 236, and 241 of the INA. There is no presumption that a child who is accompanied should not be detained. This section would require the indefinite and mandatory detention of children.

The Department of Homeland Security shall maintain custody of a parent and child together if the parent is being prosecuted for the crime of unlawful entry under 8 U.S.C. 1325(a). There is no mention about what happens if the parent is sentenced to time in federal prison.

Adds a Sense of Congress which states that these amendments to the TVPRA satisfy the requirements under the *Flores* Settlement Agreement.

The bill takes effect on the date of enactment and shall apply to all actions that occur, before, on, or after the date of enactment.

Lastly, the bill says any federal facility detaining families cannot be required to meet state licensing requirements.

#### **TITLE V – PROTECTION OF CHILDREN**

##### **SEC 501. FINDINGS.**

Provides numerous findings regarding the state of the border and the Biden administration's response to problems on the border.

##### **SEC 502. REPATRIATION OF UNACCOMPANIED ALIEN CHILDREN.**

Section 2(a)(1)(A)(ii)(I) removes the distinction between unaccompanied children from contiguous and non-contiguous countries and subjects all unaccompanied children to an expedited screening mechanism that would rely on immigration officers along the border (typically Border Patrol agents) to identify trafficking and persecution claims.

Section 2(a)(1)(A)(ii)(IV) strips protections for young children under the age of 13 and children with intellectual disabilities by removing the requirement that DHS officials ascertain whether the child is able to make an independent decision to withdraw his or her application for admission to the United States.

Currently Mexican children have the right to voluntarily withdraw their applications for admission. Section 2(a)(1)(A)(iii)(II) would strip all children of that right and would make the withdrawal a discretionary determination by the DHS officer.

Section 2(a)(1)(B)(ii) requires that children who successfully get through this expedited screening process have a hearing before an immigration judge within 14 days of the screening.

If a child passes the screening, HHS must be notified within 48 hours and DHS has the right to transfer the child to HHS custody at any time. Section 2(a)(2)(A) removes the current provision requiring DHS to transfer a child to HHS custody within 72 hours.

Under section 2(a)(2)(B), if a child does not pass the screening, HHS does not need to be notified and DHS must transfer these children within 30 days after screening. This contravenes the *Flores* Settlement, which requires that DHS hold unaccompanied children for no longer than 72 hours. Likewise, under *Flores*, DHS is not allowed to house juveniles with adults.

Section 2(a)(3)(A) requires HHS to provide DHS with detailed identifying information about any sponsor with whom a child will be placed, including their name, social security number, date of birth, address, immigration status and contact information. Within 30 days after receiving information about the sponsors, if the Secretary determines a sponsor is unlawfully present and not in removal proceedings, DHS shall initiate removal proceedings against the sponsor.

Section 2(a)(3)(B) strips all legal counsel programs for children and reinforces that access to counsel for children shall be at no expense to the government.

#### **SEC 503. SPECIAL IMMIGRANT JUVENILE STATUS FOR IMMIGRANTS UNABLE TO REUNITE WITH EITHER PARENT.**

Section 3 restricts Special Immigrant Juvenile Status (SIJS) to children who cannot be reunified with either parent due to abandonment, abuse, or neglect. A child who was abandoned, abused, or neglected by only one parent will be ineligible for SIJS.

#### **SEC 504. RULE OF CONSTRUCTION.**

Nothing in this title should be construed to prevent screening for credible fear or trafficking, or an HHS home study for children under the age of 12.

### **TITLE VI – VISA OVERSTAYS PENALTIES**

#### **SEC 601. EXPANDED PENALTIES FOR ILLEGAL ENTRY OR PRESENCE.**

Amends INA § 275 to subject individuals with a prior conviction of overstaying a visa who either: (1) entered the United States at a time or place not designated by immigration officers; (2) eluded inspection or examination by immigration officers; or (3) attempted to enter or successfully obtained entry into the United States to a fine under title 18 of the US. Code or imprisonment of not more than 6 months, or both.

Increases the civil penalties for entering or attempting to enter the United States at a time or place not designated by immigration officers from a range of \$50 – \$250 to \$500 – \$1,000, or \$1,000 – \$2,000 if they were previously convicted of this offense or of overstaying a visa.

Amends INA § 275 to make any individual admitted as a nonimmigrant who either fails to maintain the status in which they were admitted or changed to under INA § 248 (which controls how to change from one nonimmigrant status to another) or fails to comply with the conditions of any such status for an aggregate of 10 days in violation of the section.

Individuals who commit such a violation shall be fined under Title 18 or imprisoned for not more than 6 months, or both, and subject to a civil penalty between \$500 – \$1,000. Those who commit subsequent violations shall be fined under Title 18 or imprisoned for not more than 2 years, or both, and subject to a civil penalty between \$1,000 – \$2,000.



## **TITLE VII – IMMIGRATION PAROLE REFORM**

### **SEC 701. IMMIGRATION PAROLE REFORM.**

Allows the Secretary to parole individuals into the United States, on a case-by-case basis, for urgent humanitarian reasons or significant public benefit. The Secretary may not parole individuals based on eligibility criteria describing an entire class of potential parole recipients. Declares that parole is not an admission and that when the parole period ends, the former parolee should “immediately return or be returned to the custody from which the alien was paroled.”

Undocumented spouses or minor children of active duty servicemembers in the United States may also be paroled if they are the beneficiary of a family-sponsored green card petition and are otherwise admissible.

Attempts to codify the Cuban Family Reunification Parole Program, which was created in 2007 by President Bush. Just like the program, the bill allows parole for Cubans living in Cuba who are the beneficiary of a family-sponsored green card petition, are otherwise admissible, for whom an immigrant visa is not available, and who meet all the criteria for an immigrant visa.

Allows for parole to be granted to individuals who are coming into the United States from a contiguous country for their “Remain in Mexico”-style immigration court proceeding.

Limits humanitarian parole to the following types of cases: (1) serious medical emergencies (or parolees are the parents of minors with such emergencies) or organ/tissue donation to a family member, or where a family member’s death is imminent; (2) the individual is seeking to attend a funeral of a family member (3) adopted children with urgent medical conditions who are in the legal custody of petitioner for a final adoption-related visa; and (4) where an individual is a lawful applicant for adjustment of status.

Limits public interest parole to instances in which an individual assisted or will be assisting the U.S. government in a law enforcement matter, the person’s presence in the United States is required, and the person is either inadmissible, ineligible for nonimmigrant status or there is insufficient time to be admitted through the normal process.

States that “case-by-case basis” means that the facts in each individual case are considered and parole is not granted based on membership in a defined class. It further states the fact that aliens are considered for or granted parole one-by-one and not as a group is not sufficient to establish that the parole decision is made on a “case-by-case basis”.

Specifically limits the use of parole to the limited options above. Further, only military family or Cuban family parolees may obtain work authorization.

Limits the length of parole to a maximum of one year. It can be extended one time for significant public benefit or humanitarian parole. It can be extended indefinitely in one-year increments for individuals with a pending adjustment of status application.

Requires a report from DHS no later than 90 days following the end of a fiscal year detailing the number and categories of individuals paroled into the United States, as well as the duration of parole, and the current status of individuals paroled during the previous fiscal year.

### **SEC 702. IMPLEMENTATION.**

Generally, the bill takes effect 30 days after enactment. However, applications for parole or advanced parole filed before this bill is enacted will be adjudicated under the law that was in effect before.

Individuals paroled in before January 1, 2023, will be subject to the terms of parole that were in effect on the date on which the parole was approved.

### **SEC 703. CAUSE OF ACTION.**

Any person, state or local government that experiences “harm” in excess of \$1,000 due to a failure to follow this law shall have standing to bring a civil action.

### **SEC 704. SEVERABILITY.**

If any part of the bill is declared unconstitutional, the rest of the bill is not impacted.

## **TITLE VIII – LEGAL WORKFORCE**

### **SEC 801. EMPLOYMENT ELIGIBILITY VERIFICATION PROCESS.**

Replaces the existing INA § 274A(b) with new provisions governing the verification of individuals for employment. The following describes section 274A(b) as amended:

#### **Section 274A(b)(1) New Hires, Recruitment, Referral**

##### *Section 274A(b)(1)(A) – Attestation After Examination of Documentation.*

Section 274A(b)(1)(A)(i) requires that during the “verification period” (defined in the bill as the period between the date on which an offer of employment is extended and the date that is 3 days after the date of hire) the employer must sign and attest on a DHS form established by regulation that the employer has verified that the individual is not an unauthorized alien by:

- (I) obtaining and recording the prospective employee’s social security number or U.S. passport number, or if the individual does not claim U.S. nationality, obtaining and recording the identification number designated by DHS; and
- (II) examining the prescribed documents that establish identity and employment authorization.

Section 274A(b)(1)(A)(ii) reduces the list of documents that demonstrate both employment authorization and identity (List A on the “List of Acceptable Documents”) to the following:

- (I) unexpired U.S. passport or passport card;
- (II) unexpired permanent resident card with a photo;
- (III) unexpired employment authorization card with a photo;
- (IV) in the case of a nonimmigrant alien authorized to work for a specific employer incident to status, a foreign passport with Form I-94, Form I-94A, or documents designated by DHS with certain limitations;
- (V) passport from Micronesia or the Marshall Islands with Form I-94, Form I-94A, or documents designated by DHS; or
- (VI) other documentation designated by DHS that contains a photo, biometric data required by DHS, evidence of employment authorization, and fraud-resistant security features.

Section 274A(b)(1)(A)(iii) reduces the list of documents that demonstrate employment authorization to a Social Security card (which shall evidence employment authorization unless that card specifies on its face that it does not authorize employment in the United States).

Section 274A(b)(1)(A)(iv) reduces the list of documents that demonstrate identity to the following:

- (I) unexpired state issued driver's license or ID card, if it contains a photo and other identifying personal data;
- (II) unexpired Military identification card;
- (III) unexpired Native American tribal ID card;
- (IV) for minors under 18 years-old, an attestation of identity by a parent or legal guardian.

Section 274A(b)(1)(A)(v) gives DHS authority to restrict the use of documents it finds unreliable.

Section 274A(b)(1)(A)(vi) permits the employer attestation to be provided by hand-written or electronic signature.

*Section 274A(b)(1)(B) – Individual Attestation of Employment Authorization.*

Section 274A(b)(1)(B) requires that during the verification period, the individual being verified must attest by signature that he or she is a U.S. citizen or national, lawful permanent resident, or noncitizen authorized to work in the United States. The individual is required to provide information demonstrating identity and employment authorization as specified above, as well as his or her Social Security number or U.S. passport number, if he or she claims to have one.

*Section 274A(b)(1)(C) – Retention of Verification Form and Verification.*

Section 274A(b)(1)(C)(i) requires employers to retain a paper, microfiche, microfilm, or electronic version of the DHS verification form and make it available for inspection three years after the date of recruiting or referral. For hires, the employer must retain the form for either three years after the date verification is completed or one year after termination, whichever is later. Employers must verify the identity and employment eligibility during the verification period.

Section 274A(b)(1)(C)(ii) provides information about initial responses from the verification system.

- Confirmation: Section 274A(b)(1)(C)(ii)(I) requires that if the employer receives confirmation of the individual's identity and work authorization, the employer shall record it on the verification form.
- Tentative Nonconfirmation (TNC): Section 274A(b)(1)(C)(ii)(II) requires the employer to notify the individual in question if the verification system returns a TNC. If the individual does not contest the TNC within the specified time period, the TNC is considered final. The bill prescribes a process for individuals who contest the TNC. Until nonconfirmation becomes final, the bill prohibits employers from rescinding an offer of employment or terminating an employee.
- Final Confirmation or Nonconfirmation: Section 274A(b)(1)(C)(ii)(III) requires employers to record final confirmations and nonconfirmations.
- Extension of Time: Section 274A(b)(1)(C)(ii)(IV) provides an extension of one working day if an employer makes a good faith effort to make an inquiry, but the verification system registers that not all inquiries were received within the required time frame.
- Consequences of Nonconfirmation: Section 274A(b)(1)(C)(ii)(V) states that an employer who receives final nonconfirmation must either terminate employment (or decline to recruit or refer the individual), or notify DHS that the employer will not do so. Failure to notify DHS is deemed a violation of the existing prohibition on unlawful employment of aliens at INA § 274A(a)(1)(A).

- Continued Employment After Final Nonconfirmation (FNC): Section 274A(b)(1)(C)(ii)(VI) creates a rebuttable presumption that an employer who continues to employ or recruit or refer a person after an FNC has violated the existing prohibition on unlawful employment of aliens at INA § 274A(a)(1)(A).

*Section 274A(b)(1)(D) - Effective Dates of New Procedure.*

Section 274A(b)(1)(D)(i) provides staged roll-out of the new verification system for new hires based upon the size and type of employer as follows:

- Employers with 10,000 or more employees: 6 months after enactment
- Employers with 500-9,999 employees: 12 months after enactment
- Employers with 20-499 employees: 18 months after enactment
- Employers with 1-19 employees: 24 months after enactment

Section 274A(b)(1)(D)(ii) requires use of the new verification system for companies or other entities that recruit or refer workers 12 months after enactment.

Section 274A(b)(1)(D)(iii) requires use of the new verification system for employees performing agricultural labor or services or recruited or referred by a farm labor contractor 18 months after enactment. The term “agricultural labor or services” is defined broadly to include packing, packaging, processing, and grading any agricultural or horticultural commodity, as well as similar services in fish or shellfish facilities.

Section 274A(b)(1)(D)(iv) states that an employer who employs 50 or fewer employees may request a one-time extension of 6 months beyond the relevant effective date before coming into compliance with the law.

Section 274A(b)(1)(D)(v) states that until the verification system takes effect on the above effective dates for each employer or other entity, existing E-Verify requirements will remain in effect.

*Section 274A(b)(1)(E) – Definition of Verification Period.*

Section 274A(b)(1)(E)(i) defines the verification period for recruitment or referrals as the period before recruiting or referring begins. The verification period for hiring is defined as the period beginning when an offer of employment is extended until three days after the date of hire. Clause (i) refers to a special rule in clause (iii) providing that if a person who is authorized for employment provides evidence from the SSA that he or she has applied for a social security number, the verification period ends three business days after the alien receives his or her social security number. It is unclear how, prior to verification, an employer is supposed to know that such an employer is authorized for employment.

Section 274A(b)(1)(D)(ii) authorizes employers to condition offers of employment on final confirmation.

Section 274A(b)(2) Mandatory Reverification for Individuals with Limited Work Authorization

Section 274A(b)(2)(A) and (B) use the same effective dates as the phased-in implementation plan for the verification system. The bill requires the reverification of existing employees with a limited period of work authorization during the three business days after the expiration of work authorization.

Section 274A(b)(2)(C) explains that the process for reverification is the same as for verification of new hires, recruits or referrals, except that employers shall use a specific form designated by DHS

regulations and retain electronic or paper copies for three years after reverification or one year after termination (whichever is later).

#### Section 274A(b)(3) Previously Hired Individuals (i.e., Existing Employees)

##### *Section 274A(b)(3)(A) – On a Mandatory Basis for Certain Employees.*

Section 274A(b)(3)(A)(i) provides that within six months of enactment of the bill, reverification is required for the following workers if they have not already been verified under the existing E-Verify system:

- (I) any employee of federal, state and local governments;
- (II) any employee who requires federal security clearance working in any government building, military base, nuclear energy or weapons site, airport or other site that requires Transportation Worker Identification Credential;
- (III) any employee assigned to perform work in the U.S. under federal or state contracts over \$100,000, with the exception of the following: (1) those who have clearance under Homeland Security Presidential Directive 12; (2) administrative or overhead personnel; and (3) those working solely on contracts that provide Commercial Off The Shelf goods or services as defined in the FAR.

##### *Section 274A(b)(3)(B) – On a Mandatory Basis for Multiple Users of Same Social Security Administrators Number.*

Section 274A(b)(3)(B)(i) requires SSA to notify annually all employees who submit Social Security numbers to more than one employer each of whom reports income to such number if there is a pattern of unusual multiple use.

Section 274A(b)(3)(B)(ii) requires SSA to lock the social security account number for employment eligibility purposes if an individual confirms that it was used without his or her knowledge and to notify the employer that the employee may not be work eligible.

Section 274A(b)(3)(B)(iii) requires employers receiving such notices to reverify the employee within ten business days of receipt of the notice.

##### *Section 274A(b)(3)(C) – On a Voluntary Basis.*

Section 274A(b)(3)(C) permits an employer to voluntarily verify an existing employee so long as the employer verifies all other employees at the same geographic location or, at the option of the employer, all employees within the same job category. An employer's decision whether to voluntarily verify shall not be considered by a government agency in any proceedings, investigation or review.

##### *Section 274A(b)(3)(D) – Verification.*

Section 274A(b)(3)(D) explains that the process for reverifications and voluntary verification is the same as for verifications of new hires except that employers must use a specific form designated by DHS by regulations and retain electronic or paper copies for three years after reverification or one year after termination (whichever is later).

#### Section 274A(b)(4) Early Compliance

##### *Section 274A(b)(4)(A) - Former E-Verify Required Users, Including Federal Contractors.*

Section 274A(b)(4)(A) authorizes DHS to require certain employers to comply with the verification system while complying with any additional requirements of the Federal Acquisition laws and regulations. During this time, these employers would no longer be required to comply with the current E-Verify system. The specified employers are those that are required to participate in E-Verify as described in IIRIRA § 403(a) and employers that are required to participate in E-Verify under the Federal acquisition laws and regulations.

*Section 274A(b)(4)(B) - Former E-Verify Voluntary Users and Others Desiring Early Compliance.*

Section 274A(b)(4)(B) requires DHS to permit employers to voluntarily comply early with the verification system.

#### Section 274A(b)(5) Copying of Documentation Permitted

Section 274A(b)(5) provides that employers may copy documents presented by employees or prospective employees only for the purpose of complying with the verification system.

#### Section 274A(b)(6) Limitation on Use of Forms

Section 274A(b)(6) provides that the forms DHS designates for use with the verification system may only be used for the purpose of enforcing the INA and any provision of Federal criminal law.

#### Section 274A(b)(7) Good Faith Compliance

Section 274A(b)(7) provides a safe harbor for employers who made a good faith effort to comply with the law, but were unable to do so as a result of technical or procedural failures. The employer loses the good faith defense if: (1) the error is not *de minimus*; (2) DHS has explained the basis for the failure and why it is not a *de minimus* error; and (3) the employer has not corrected the failure voluntarily within 30 days after being given such an opportunity. The good faith protection does not apply to employers engaging in a pattern or practice of violating existing prohibitions against unlawful hiring or employment of authorized aliens.

#### Section 274A(b)(8) Single Extension of Deadlines Upon Certification

Section 274A(b)(8) provides that if the DHS Secretary certifies to Congress that the verification system will not be fully operational six months after enactment of the bill, each deadline for an employer to make an inquiry under the system shall be extended six months.

Section 2(b) amends INA § 274A(h) to define “data of hire” to mean the date of actual commencement of employment for wages.

### **SEC 802. EMPLOYMENT ELIGIBILITY VERIFICATION SYSTEM (EEVS).**

Replaces the existing INA § 274A(d) with new provisions describing the process for verifying employment eligibility. The following describes Section 274A(d) as amended:

#### *Section 274A(d) Employment Eligibility Verification System*

Section 274A(d)(1) establishes a verification system “patterned” on the existing E-Verify system that will respond to inquiries at any time by telephone line and other electronic media concerning an individual’s identity and work authorization and maintain records of inquiries made and responses provided to employers.

Section 274A(d)(2) requires the verification system to respond to an inquiry with a confirmation or TNC within 3 working days of submission.

Section 274A(d)(3) states that where a TNC is issued, the Secretary and Commissioner of SSA shall specify a secondary verification process to provide final confirmation or nonconfirmation within ten working days on which the notice of the TNC is received by the employee. The deadline may be extended on a case-by-case basis.

Section 274A(d)(4) states that the verification system is to be designed and operated to maximize reliability and ease of use, to respond to all inquiries, to prevent unauthorized disclosures of information, to protect against unlawful discrimination, to maximize the prevention of identity theft use in the system, and to limit verification to persons being hired, referred or recruited, current, employees, potential employees, and persons who wish to confirm their own authorization to work. Section 274A(d)(5) details program requirements for the Commissioner of Social Security.

Section 274A(d)(6) details program requirements for the Secretary of Homeland Security.

Section 274A(d)(7) requires the SSA Commissioner and DHS Secretary to update data in order to maximize accuracy and provide a process to correct erroneous information.

Section 274A(d)(8) states that nothing in this section shall be construed as creating a national ID card and permits the Secretary to authorize or direct employers working on critical infrastructure to use the verification system if it will help protect critical infrastructure.

Section 274A(d)(9) limits the remedies available to workers who are dismissed from a job due to a verification error to claims under the Federal Tort Claims Act and injunctive relief. Class actions are also prohibited.

### **SEC 803. RECRUITMENT, REFERRAL, AND CONTINUATION OF EMPLOYMENT.**

Defines the term “refer” to mean sending or directing a person or transmitting documents to another for the purpose of obtaining employment for that person. Also defines “recruit” to mean the act of soliciting a person, directly or indirectly, and referring that person with the intent of obtaining employment for that person. Although only persons or entities that recruit or refer for remuneration are included in the definition, this section explicitly includes in both definitions union hiring halls and day labor centers that assist workers to find jobs. This section takes effect one year after enactment.

### **SEC 804. GOOD FAITH DEFENSE.**

Amends INA § 274A(a)(3) to provide employers a good faith defense when they take an employment-related action based on information provided by E-Verify. Absent a showing of clear and convincing evidence by the Secretary that the employer had knowledge that the employee is an unauthorized alien, the employer would not be liable to a job applicant or a government under civil or criminal law. An employer who fails to seek verification and continues to employ an individual may not use the good faith defense. If the verification system registers that not all inquiries were responded to within the required timeframe, the employer can submit another inquiry the next working day to preserve the good faith defense.

### **SEC 805. PREEMPTION AND STATES' RIGHTS.**

Preempts any state or local law, ordinance, policy or rule, including any criminal or civil fine or penalty structure, as they relate to the hiring, continued employment, or status verification for employment eligibility of unauthorized aliens. This section also authorizes state or political subdivisions to exercise their authority over business licensing and similar laws in order to impose a penalty for failure to use E-Verify. This is consistent with the Supreme Court’s holding in *Chamber of Commerce v. Whiting*.

Contains a new provision that permits states, at their own expense, to enforce all of the civil and criminal provisions for unauthorized hiring in section 274A of the INA. The provision requires that in doing so, a state must follow the federal regulations, apply the federal penalty structure, and comply with all federal rules and guidelines. The section protects employers from overlapping audits, investigations, and other enforcement actions by giving the right of first refusal to whichever governmental entity first initiated the action. This language would permit states to act in the place of the federal government in administrative proceedings before an administrative law judge of the Office of the Chief Administrative Hearing Officer.

#### **SEC 806. REPEAL.**

Repeals subtitle A of title IV of the Illegal Immigration Reform and Immigrant Responsibility Act. Any reference to the E-Verify program is deemed to refer to EEVS established under this title. This section takes effect 30 months after the date of enactment.

#### **SEC 807. PENALTIES.**

Amends the penalties in INA § 274A in various respects. Section 274A(e)(4) and (e)(5) would impose substantially higher civil penalties for the unlawful hiring or employment of unauthorized aliens. This section also makes not using the verification system or entering information into the system that a person reasonably believes to be false a violation of the prohibition against the unlawful employment of aliens.

Section 274A(e)(10) authorizes DHS to waive such penalties if the violator acted in good faith.

Section 274A(e)(11) states that the size of a business must be taken into account when assessing the level of civil money penalty.

Section 274A(e)(12) authorizes the Secretary to debar repeat offenders of prohibitions against the unlawful employment of aliens or those convicted of a crime under this section from the receipt of federal contracts, grants, or cooperative agreements under the Federal Acquisition Regulation (FAR). If an entity does not have a federal contract, the DHS Secretary or the Attorney General can refer the matter to GSA to determine whether the entity should be placed on the list of those excluded from federal procurement.

Section 274A(e)(13) creates a new DHS Office for State and Local Government Complaints to which state and local governments can report suspected violations of the prohibitions on unauthorized hiring and employment and which must investigate such reports and notify the state and local government and Congress of the results of such investigations.

Section 274A(f)(1) increases the penalty on employers who engage in a pattern or practice of hiring unauthorized workers by significantly raising the fine and setting a mandatory minimum penalty of one year imprisonment and up to ten years.

#### **SEC 808. FRAUD AND MISUSE OF DOCUMENTS.**

Amends 18 U.S.C. § 1546(b) to make it a crime for a person to use an identification document or any document meant to establish work authorization for purposes of demonstrating employment authorization through the verification system if the person knows or has reason to know that the document was not issued to the person or is false.

#### **SEC 809. PROTECTION OF SOCIAL SECURITY ADMINISTRATION PROGRAMS.**

Requires the DHS Secretary and the SSA Commissioner to reach agreement on making sure SSA receives the funds it needs to establish, carry out, and maintain its duties and responsibilities under the title.



## **SEC 810. FRAUD PREVENTION.**

- (a) Requires the DHS Secretary and the SSA Commissioner to create a program that allows Social Security numbers that have been identified as subject to unusual multiple use or suspected or determined to have been compromised by identity fraud, to be blocked from use in the E-Verify system, unless the user of the Social Security number is able to show that the Social Security number is his or hers.
- (b) Requires the Secretary and the Commissioner to also create a program that will provide a method by which victims of identity fraud may suspend or limit, for E-Verify purposes, the use of their Social Security number or other identifying information. The Secretary may make this a pilot program before making it available to all individuals.
- (c) Requires the Secretary and the Commissioner to create a program to allow parents or legal guardians to suspend or limit, for E-Verify purposes, the use of a Social Security number or other identifying information belonging to a minor child under such person's care. This program also may be initiated as a pilot program.

## **SEC 811. USE OF EMPLOYMENT ELIGIBILITY VERIFICATION PHOTO TOOL.**

States that an employer that uses the photo matching tool currently in the E-Verify system must match the photograph provided by the system to both the photograph on the document provided by the employee and to the face of the employee.

## **SEC 812. IDENTITY AUTHENTICATION EMPLOYMENT ELIGIBILITY VERIFICATION PILOT PROGRAMS.**

Creates a biometric pilot program within 24 months of enactment.

## **SEC 813. INSPECTOR GENERAL AUDITS**

Requires the SSA Office of Inspector General to complete audits of: (1) workers who dispute wages reported on their Social Security account number when they believe someone else has used such number and name to report wages; (2) children's Social Security numbers used for work purposes; and (3) employers whose workers present significant numbers of mismatched social security account numbers or names for wage reporting.

## **SEC 814. AGRICULTURE WORKFORCE STUDY**

No more than 36 months after enactment, DHS, in consultation with the Department of Agriculture will submit a report regarding the potential impact of the bill on the agricultural workforce.

## **SEC 815. REPEALING REGULATIONS**

Repeals the Biden administration's 2022 and 2023 H-2A regulations.