



H.R. 2, the Secure the Border Act of 2023

Sponsored by Rep. Mario Diaz-Balart and Rep. Tom McClintock

DIVISION A—Border Security COMMITTEE ON HOMELAND SECURITY

Sec. 101. Definitions.

Provides definitions of key terms used throughout the bill.

Sec. 102. Border Wall Construction.

Requires the Secretary of the Department of Homeland Security to resume construction of the Trump-era border wall. To carry this out, the Secretary shall expend all unexpired funds appropriated or explicitly obligated for this purpose since October 1, 2019, and requires the Department to submit an implementation plan to Congress detailing annual benchmarks of 200 miles of wall construction and associated cost estimates. Previously purchased materials should be used without the need for re-certification.

Sec. 103. Strengthening the Requirements for Barriers Along the Southern Border.

Amends the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 by instructing the Secretary to take the necessary actions to achieve situational awareness, operational control of the border, maximum agent safety, and to impede illegal activity via physical barriers, tactical infrastructure, and technology near the border. This would include construction of a border wall along no fewer than 900 miles of the southwest border. This would include deployment of the most effective technology available, such as advanced surveillance sensors and drones, while minimizing the impact on natural resources, commerce, and sites of historical or cultural significance, promoting officer and agent safety, and ensuring consistent maintenance and effectiveness.

Sec. 104. Border and Port Security Technology Investment Plan.

Requires a five-year technology investment plan to include an analysis of security risks at and between ports of entry, identification of capability gaps, an analysis of current and forecasted trends of aliens who unlawfully enter the United States or who are unlawfully present in the United States, and descriptions/assessments of technology plans, programs, and resources. The plan will include emerging technologies and input from the private sector and will be consistently resubmitted for ten years.

Sec. 105. Border Security Technology Program Management.

Requires the Secretary, for each major acquisition over \$100 million, to ensure that the acquisition program management office has an approved baseline that includes cost, schedule, and performance thresholds, in compliance with the Federal Acquisition Regulation.

Sec. 106. U.S. Customs and Border Protection Technology Upgrades.

Ensures that each CBP officer or agent, where appropriate, is equipped with a secure radio or other two-way communication device allowing for communication between ports of entry and inspection stations and with other law enforcement entities. Authorizes appropriation of \$33 million for the next two fiscal years to implement the Border Security Deployment Program of CBP and expands the integrated surveillance and intrusion detection at land ports of entry by no later than 2025. Authorizes appropriation of \$125 million for the next two fiscal years to upgrade all outdated license plate readers.

Sec. 107. Additional U.S. Customs and Border Protection Personnel.

Mandates for the U.S. Border Patrol no fewer than 22,000 full-time equivalent (FTE) agents, who shall not perform the duties of processing coordinators. Provides retention bonuses for USBP agents whose position is equal to or below GS-12 and who have served at least 5 years. \$100 million is authorized to be divided and distributed to those who qualify.

Sec. 108. Anti-Border Corruption Act Reauthorization.

Amends the Anti-Border Corruption Act of 2010 to grant the Commissioner of CBP polygraph waiver authority for hiring flexibility. Any individual who receives a waiver under this would not be exempt from other hiring requirements relating to suitability for employment and eligibility to hold a national security designated position. Annually, the Commissioner must submit a report noting the number of waivers issued, percentage of applicants hired with a waiver, in addition to information relating to the polygraph program.

Sec. 109. Establishment of Workload Staffing Models for U.S. Border Patrol and Air and Marine Operations of CBP.

Requires CBP to develop and implement a workload staffing model for the U.S. Border Patrol and for Air and Marine Operations. The model would include (1) consideration for essential frontline operator activities and functions, (2) variations in operating environments, (3) present and planned infrastructure and technology, and (4) required operations support levels. Also, this section requires CBP to develop standard operating procedures for a workforce tracking system, to train the workforce on the use of such system, and to implement internal controls to ensure accurate scheduling and reporting. A report to Congress on the model must be submitted within one year.

Sec. 110. Operation Stonegarden.

Authorizes 'Operation Stonegarden', which will make grants to eligible law enforcement agencies to enhance border security. To be eligible for a grant, a law enforcement agency would need to: 1) be in a state bordering Canada or Mexico, or a state or territory with a maritime border; 2) be involved in an active, ongoing CBP operation; and 3) have an agreement in place with U.S. Immigration and Customs Enforcement (ICE) to support enforcement operations. It would authorize appropriation of \$110,000,000 for each fiscal year 2023 through 2027 for grants. Adds a requirement for notification to Congress should a Tier 1 applicant be denied a grant. Further there is report language to make recommendations for other uses of such grants to support law enforcement agencies.

Sec. 111. Air and Marine Operations Flight Hours.

Ensures that no later than 120 days after enactment Air and Marine Operations is able to carry out no fewer than 110,000 annual flight hours and operate unmanned aerial systems on the southern border 24 hours per day. Includes authority for the Commissioner of AMO to contract for completion of mission-critical hours.

Sec. 112. Eradication of Carrizo Cane and Salt Cedar.

Requires the Secretary of Homeland Security, in coordination with the heads of relevant Federal, State, and local agencies, to hire contractors to eradicate the Carrizo cane plant and salt cedar along the Rio Grande River in a cost-effective manner to maintain clear lines of view. Such eradication must be completed by the end of FY2027.

Sec. 113. Border Patrol Strategic Plan.

Requires that the U.S. Border Patrol issue a Border Patrol Strategic Plan to enhance the security of the international borders of the United States. It will include consideration of U.S. Border Patrol documents to address security gaps between ports of entry, dissemination of information relating to border security, situational awareness efforts, an assessment of training programs, information relating to staffing requirements, and information relating to border security information received from State, local, Tribal, territorial, and other Federal law enforcement agencies and border community stakeholders.

Sec. 114. Customs and Border Protection Spiritual Readiness.

Requires, not later than one year following enactment, and annually thereafter, the Commissioner of CBP to submit a report on the availability and usage of the assistance of chaplains, prayer groups, houses of worship, and other spiritual resources for CBP employees who have attempted suicide, have suicidal ideation, or are at risk of suicide and the impact of these resources.

Sec. 115. Restrictions on Funding.

No funds are authorized to be appropriated to process aliens who arrive between ports of entry into the United States. No funds are authorized to be appropriated for disbursement to any non-governmental organization (NGO) that facilitates or encourages illegal activity, including illegal entry, human and drug trafficking, or human and drug smuggling. Further, NGOs cannot receive funds to provide or facilitate transportation, lodging, or immigration legal services to inadmissible aliens.

Sec. 116. Collection of DNA and Biometric Information at the Border.

Requires that DHS certify to Congress that it is complying with federal law for the collection of DNA and biometrics.

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.

Requires the CBP Commissioner to triennially, at minimum, review and update the policy manuals of the Office of Field Operations related to inspections at ports of entry and of the U.S. Border Patrol related to between ports of entry to ensure uniform implementation of inspection practices and inform Congress on any changes made to the manuals.

Sec. 118. Publication by U.S. Customs and Border Protection of Operational Statistics.

Requires CBP to publish information regarding the number of alien encounters and their nationalities, gang affiliated apprehensions and their nationalities, drug seizures, aliens with terrorist ties, arrests of criminal aliens or those wanted by law enforcement and their nationalities, known got aways, the number of deceased aliens, and all other related statistics.

Sec. 119. Alien Criminal Background Checks.

Requires CBP to certify annually that it has access to criminal history databases of all countries of origin and transit for aliens encountered by CBP.

Sec. 120. Prohibited Identification Documents at Airport Security Checkpoints; Notification to Immigration Agencies.

Prohibits the Transportation Security Administration (TSA) from accepting specific ICE, DHS, or CBP forms that direct an individual to report to DHS, including a warrant for arrest, a warrant of removal, an order of release on recognizance, an order of supervision, a notice to appear, an arrival/departure record, work authorization or employment verification, or an alien booking record, as valid proof of identification, at an airport security checkpoint prior to boarding a commercial flight. Also permits the collection of biometric information from individuals with invalid proof of identification seeking entry into a sterile area of an airport, to be submitted to IDENT.

Sec. 121. Prohibition Against Any COVID-19 Vaccine Mandate or Adverse Action Against DHS Employees.

Prohibits the Secretary from issuing any Covid-19 vaccine mandate unless Congress has authorized such a mandate, nor can the Secretary take adverse action against any Department employee based on his or her refusal to receive the Covid-19 vaccine. Requires the Secretary to report how many employees were fired or resigned due to the mandate, what the cost would be to reinstate them, and how the Department would effectuate reinstatement.

Sec. 122. CBP One App Limitation.

Requires DHS to use the CBP One Mobile Application or any other similar program, application, internet-based portal, website, device, or initiative, only for inspection of perishable cargo, rather than processing of aliens.

Sec. 123. Report on Designation of Mexican Cartels as Foreign Terrorist Organizations.

Requires the Secretary of DHS in consultation with the Secretary of State to submit a report to Congress on whether a Mexican drug cartel meets the criteria for designation as a foreign terrorist organization. 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.

Requires a GAO study on actions taken by DHS that have added to the cost incurred by states resulting from the lack of federal action to secure the border, the costs associated with action individual states along the Southwest border have taken to secure the border, and the feasibility of DHS reimbursing states for those costs.

Sec. 125. Report by Inspector General of the Department of Homeland Security.

Requires a report by the Inspector General of DHS examining the economic and security impact of mass migration to municipalities and states along the Southwest border. The report shall examine the impact it has had on state and local law enforcement, public school districts, healthcare providers, and farmers and ranchers.

Sec. 126. Offsetting Authorizations of Appropriations.

The following programs will be cut or reduced in authorization: no funds will be available for the Alternatives to Detention Case Management Pilot Program or Office of the Immigration Ombudsman; no funds for electric vehicles or DHS St. Elizabeths campus construction; a reduction in funds for Intelligence and Analysis office at DHS; and no funds for the Shelter Services Program.

Sec. 127. Report to Congress on Foreign Terrorist Organizations.

The Secretary is required to, annually for the next five years, submit a report to Congress detailing foreign terrorist organizations' attempts to move their members or affiliates into the United States through all borders.

Sec. 128. Assessment by Inspector General of the Department of Homeland Security on the Mitigation of Unmanned Aircraft Systems at the Southwest Border.

The Inspector General of DHS shall submit to Congress an assessment of CBP's ability to mitigate unmanned aircraft systems at the Southwest border. The report shall include information regarding intervention between January 1, 2021, and the date of enactment by any Federal agency affecting in any manner CBP's authority to mitigate such systems.

DIVISION B—Immigration Enforcement and Foreign Affairs

COMMITTEE ON THE JUDICIARY AND COMMITTEE ON FOREIGN AFFAIRS

*Title I—Asylum Reform and Border Protection***Sec. 101. Safe third country.**

This section amends section 208(a)(2)(A) of the Immigration and Nationality Act to allow the Department of Homeland Security to remove aliens seeking asylum to safe third countries where they would have access to a full and fair procedure for applying for asylum without the current necessity for bilateral agreements with those countries.

This section also makes aliens ineligible for asylum if they have transited through at least one country outside their country of citizenship, nationality, or last habitual residence en route to the United States, unless the aliens can show that (1) they applied for protection in at least one of those countries and received a final judgment denying the protection; (2) they were a victim of trafficking; or (3) the countries in which they transited en route to the United States were not parties to the relevant international protection treaties.

Sec. 102. Credible fear interviews.

This section changes the current credible fear standard from requiring that an alien merely show a "significant possibility" that he or she could establish eligibility for asylum to requiring that an alien show that it is more likely than not that he or she could establish asylum eligibility and that 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.

This section conditions eligibility for asylum on arriving in the United States at a port of entry.

Sec. 104. Exceptions.

This section creates new exceptions to asylum eligibility.

Paragraph (2)(A). In General.

This paragraph closes the asylum loophole for criminal aliens by rendering aliens who commit or are convicted of certain crimes ineligible for asylum. Those offenses include the possession of false identification documents, certain controlled substance offenses, gang-related crimes, driving under the influence, child abuse, domestic violence, and extreme cruelty or battery.

Paragraph (2)(B). Special Rules.

This paragraph grants broad discretion to the Attorney General to find that other criminal activity constitutes a particularly serious crime that makes an alien ineligible for asylum. For certain crimes, the section allows the Attorney General and Secretary of Homeland Security to consider facts beyond the conviction documents to more fully assess whether an alien has engaged in a disqualifying activity. The paragraph allows adjudicators to consider Interpol Red Notices in determining whether an alien has committed a serious nonpolitical crime.

Paragraph (2)(C). Specific Circumstances.

This paragraph specifies that an applicant for asylum and withholding of removal cannot meet the definition of a refugee based on circumstances such as personal animus, generalized disapproval of gang and cartel activity, resistance to gang recruitment, and gang affiliation.

Paragraph (2)(D). Definitions and Clarifications.

This paragraph adds definitions for “felony” and “misdemeanor” and streamlines the analysis to determine whether certain criminal aliens are ineligible for asylum. This paragraph also gives adjudicators a guide to determine when certain orders modifying, vacating, or clarifying an alien’s underlying conviction or sentence continue to have immigration consequences.

Sec. 105. Employment Authorization.

This section clarifies when employment authorization terminates, including during an appeal to a federal court and after a denial by an asylum officer. The section creates statutory bars to employment authorization for aliens who would be found ineligible for asylum based on grounds such as criminal conduct, manner of entry, and firm resettlement.

Sec.106. Asylum fees.

This section requires a fee of at least \$50 for each asylum application and reiterates that the fee cannot exceed the cost of adjudicating the application.

Sec. 107. Rules for determining asylum eligibility.

This section provides additional guidance to determine whether an alien is a refugee for purposes of application for asylum and withholding of removal.

Paragraph 1. Particular Social Group.

This paragraph clarifies that a “particular social group” must exist independently of the alleged persecution and cannot be based on one of several grounds that the Board of Immigration Appeals and several federal courts of appeals have repeatedly rejected, such as criminal activity, gang recruitment, and perceived wealth.

Paragraph 2. Political Opinion.

This paragraph clarifies that a political opinion requires expressive behavior in furtherance of a specific cause and does not include general disapproval of gang activity.

Paragraph 3. Persecution.

This paragraph clarifies that persecution cannot be based on the mere existence of a law or policy unless the evidence reflects that such law or policy would be applied to the asylum applicant personally. Persecution also cannot be based on the conduct of rogue officials acting outside the scope of their official capacity.

Paragraph 4. Discretionary Determination.

This paragraph outlines discretionary factors to consider in the grant of asylum, including an alien’s use of fraudulent documents. The provision states that a favorable exercise of discretion generally is not permitted in other circumstances, such as when the alien has failed to pay taxes, has accrued more than one year of unlawful presence in the United States, or has had multiple asylum applications denied. The provision creates exceptions if the alien establishes extraordinary circumstances or exceptional and extremely unusual hardship.

Paragraph 5. Limitation.

This provision states that an alien cannot use his or her failure to define a particular social group as a basis for a motion to reopen or reconsider an application for asylum or withholding of removal unless certain procedural requirements are met.

Paragraph 6. Stereotypes.

This paragraph states that evidence based on stereotypes of an entire country or culture is inappropriate and is not admissible in adjudicating an asylum application unless the evidence shows that the persecutor himself holds such views of the applicant for asylum and withholding of removal.

Paragraph 7. Definitions.

This section defines “membership in a particular social group,” “political opinion,” and “persecution” for purposes of determining whether an applicant for asylum and withholding of removal is a refugee as defined in the Immigration and Nationality Act.

Sec. 108. Firm resettlement.

This section states that the firm resettlement bar applies if an alien either (1) resided in a country through which the

alien traveled before entering the United States and in which the alien was eligible for or received any permanent or non-permanent but indefinitely renewable legal status; or (2) the alien resided in a country for at least one year after departing the alien's country of nationality and before entering into the United States.

Sec. 109. Notice concerning frivolous asylum applications.

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

Sec. 110. Technical amendments.

These amendments add the Secretary of Homeland Security to certain sections in which only the Attorney General is currently included.

Sec. 111. Requirement for Procedures Relating to Certain Asylum Applications.

This section requires the Attorney General to create expedited adjudication procedures for asylum applicants from certain Western Hemisphere countries that have been sanctioned by the United States. The expedited procedures apply to nationals from Cuba, Nicaragua, and Venezuela.

Title II – Border Safety and Migrant Protection

Sec. 201. Inspection of applicants for admission.

This section reiterates that the class of aliens subject to expedited removal includes aliens who are present in the United States without being admitted or paroled and those arriving in the country outside of a port of entry.

This section also reiterates the mandatory detention requirement of certain aliens who are applicants for admission and restricts parole and release of such individuals unless the aliens are either removed to another country in which their life or freedom would not be threatened, or the aliens are returned to the contiguous country from which they arrived for the pendency of their immigration proceedings.

This section mandates that aliens be returned to a contiguous country for the pendency of their immigration proceedings if the Secretary of Homeland Security cannot comply with the obligations to detain aliens or remove them to a safe third country.

This section also allows for the suspension of entry of certain inadmissible aliens if the Secretary deems the suspension necessary to achieve “operational control” of the border. The section also provides states standing to sue if the Secretary violates the detention, return, or removal provisions.

Sec. 202. Operational Detention Facilities.

This section requires the Secretary of Homeland Security to take all necessary actions to restore detention facilities that were in operation as of January 20, 2021, but were subsequently closed or that had capacity reduced, altered, or discontinued. This section also mandates notification to Congress when detention capacity reaches 90, 95, and 100 percent.

Title III – Preventing Uncontrolled Migration Flows in the Western Hemisphere

Sec. 301. United States Policy Regarding Western Hemisphere Cooperation on Immigration and Asylum.

This section states it is U.S. policy to enter into agreements, accords, and memoranda of understanding with countries in the Western Hemisphere to reduce costs associated with illegal immigration, and to ensure that humanitarian and development assistance aimed at reducing illegal immigration is not spent on programs that have not proven to reduce the flows of illegal immigration.

Sec. 302. Negotiations by Secretary of State.

This section authorizes the Secretary of State to negotiate agreements, accords, and memoranda of understanding between the U.S., Mexico, Honduras, El Salvador, Guatemala, and other countries in the Western Hemisphere regarding effective regional immigration enforcement and the processing, detention, and repatriation of foreign nationals seeking to illegally enter the U.S.

This section requires that any agreements under subsection (a) be notified to Congress in accordance with the Case-Zablocki Act.

Defines “alien” as having same the meaning as the term in section 101 of the Immigration and Nationality Act (8 U.S.C. 1101).

Sec. 303. Mandatory Briefing on United States Efforts to Address the Border Crisis.

Requires the Secretary of State to brief the appropriate congressional on the efforts undertaken pursuant to the negotiation authority provided in section 302 to monitor, deter, and prevent illegal immigration to the U.S., including by entering into agreements with foreign countries and by using U.S. foreign assistance to stem the root causes of migration in the Western Hemisphere.

Title IV – Ensuring United Families at the Border

Sec. 401. Clarification of Standards for Family Detention.

In response to certain provisions of the Flores Stipulated Settlement Agreement being applied to accompanied minors, this provision states that there is no presumption that an accompanied minor should not be detained.

This section requires that the Secretary of Homeland Security maintain the care and custody of aliens together with their children while any charges for illegally crossing the border are pending with the Department of Justice. The provision also states that it is the sense of Congress that Title III satisfies the requirements of the Flores Settlement Agreement as applied to accompanied minors.

This section also preempts state licensing requirements for facilities used to detain families and children.

Title V – Protection of Children

Sec. 501. Findings.

This section makes specific findings related to the crisis of unaccompanied alien children (UACs) at the southwest border.

Sec. 502. Repatriation of Unaccompanied Alien Children.

This section requires that all UACs, regardless of whether they are nationals of a contiguous country, be safely and expeditiously returned to their country of origin, provided that they are not victims of trafficking or do not claim a credible fear of persecution.

This section requires that UACs who are victims of severe forms of trafficking or who claim a credible fear of persecution receive a hearing before an immigration judge within 14 days and allows DHS to hold a UAC for up to 30 days to ensure a speedy judicial process.

This section also requires HHS to provide DHS with biographical information regarding the sponsors or family members to whom the minors are released.

This section mandates that DHS follow up with the sponsors of UACs to verify the sponsor’s immigration status and issue notices for the sponsor to appear in immigration court when appropriate.

This section reaffirms the privilege of UACs to have access to counsel to represent them in immigration court but emphasizes that such representation is at no expense to the United States taxpayer.

Sec. 503. Special immigrant juvenile status for immigrants unable to reunite with either parent.

Due to a mistake in current law, juveniles can obtain green cards as Special Immigrant Juveniles (SIJs) if they can show that they have been abandoned by a single parent even though another parent is present in the U.S. and is able and willing to care for them. Many UACs seek green cards through the SIJ process once in the United States. This section clarifies that special immigrant green cards are available only to juveniles who have lost or been abandoned by both parents.

Sec. 504. Rule of Construction.

This section emphasizes that nothing in Title IV shall be construed to limit practices and procedures that involve (1) screening a UAC to determine whether the UAC has a credible fear of persecution, (2) screening a UAC to determine whether the UAC is a victim of trafficking, or (3) the current policy of HHS requiring a home study for UACs under 12 years old.

*Title VI – Visa Overstays Penalties***Sec. 601. Expanded Penalties for Illegal Entry or Presence.**

This section places visa overstay, which is currently solely an immigration violation, on par with illegal entry as a misdemeanor criminal offense punishable by up to six months imprisonment for the first offense. This section specifies that an alien who fails to maintain his or her nonimmigrant status for an aggregate period of 10 days shall be fined or imprisoned or both.

This section also increases the civil penalties for illegal entry from between \$50 and \$250 to between \$500 and \$1,000 and mandates the fine for a subsequent offense be double the initial fine. The section subjects visa overstayers to those same civil penalties.

*Title VII – Immigration Parole Reform***Sec. 701. Immigration Parole Reform.**

This section prohibits the Secretary of the Department of Homeland Security from granting parole “according to eligibility criteria describing an entire class of potential parole recipients,” otherwise known as categorical parole.

This section requires that, with narrow exceptions, parole may only be granted to aliens who are not present in the United States and clarifies that parole is not an admission for purposes of adjustment of status.

This section codifies two existing categorical parole programs: the Cuban Family Reunification Parole program, and another for the spouse or children of active-duty military service members. It also allows the DHS Secretary to grant parole to an alien who is enrolled in a Remain in Mexico-type program for purposes of the alien being escorted to an immigration hearing, attending the hearing, and being escorted back to the contiguous country in which the alien was awaiting immigration proceedings.

This section narrows the scope of the current humanitarian and significant public benefit authority to align with the intent of Congress that parole be used rarely and in individual circumstances, and not as a workaround of the law or to admit groups of aliens who would not otherwise be eligible to enter the U.S.

This section clarifies what is meant by “case-by-case” adjudication of parole applications.

This section precludes aliens granted parole from receiving employment authorization documents with the exception of those in the existing Cuban Family Reunification Parole and the military family parole programs.

This section clarifies that parole cannot be used as an avenue for adjustment of status to that of a lawful permanent resident, or to gain any other immigration benefit if the alien’s underlying immigration status allows for such adjustment or benefit.

This section limits the initial grant of parole to the shorter of: (1) the time it takes to complete the activity for which parole was granted; or (2) one year. Allows a one-time extension of parole for that period.

This section requires DHS to report annually to the House and Senate Judiciary Committees regarding aliens paroled during the previous year, including the total number of aliens paroled into the United States and the type of parole granted.

Sec. 702. Implementation.

This section makes the changes effective 30 days after the date of enactment of the act and allows aliens granted parole prior to January 1, 2023, to continue in their parole status pursuant to the laws in effect on the date parole was granted.

Sec. 703. Cause of Action.

This section creates standing so state attorneys general can hold DHS accountable if DHS grants parole in violation of the law.

Sec. 704. Severability.

This section states that, if any provision of the legislation is found to be unconstitutional, the other provisions in the legislation remain unaffected.

*Title VIII – Legal Workforce***Sec. 801. Employment Eligibility Verification Process.***Proof of Employment Eligibility and Identity.*

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

Retention of Attestation Form.

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

Verification.

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

Phase-In.

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

Agriculture.

This section requires that employees performing "agricultural labor or services," as defined in section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)), are subject to an E-Verify check within 36 months of the date of enactment.

One-Time Extension for Small Businesses.

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

One-Time Extension for Agricultural employers.

This section allows the DHS Secretary to extend the implementation date for agricultural employers for one year once the report required by Section 814 has been submitted to Congress.

Transition.

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

Reverification of Individuals with Limited Work Authorization.

This section requires employers to verify the work eligibility of individuals with work visas, etc. at some point within the three business days of the date on which the work authorization expires. It phases in this requirement according to the size of the business, over the same 24-month period as the initial use phase-in.

Previously Hired Individuals.

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

Transition.

This section allows an employer using, or who wants to use, the E-Verify pilot program to use the new system in lieu of the pilot program even if not yet required to use the new system.

Limited Use of Information.

This section prohibits the information provided under the employment eligibility confirmation process from being used for any reason other than the enforcement of this bill and certain criminal provisions.

Safe Harbor.

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

Possible Implementation Deadline Extension.

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

Sec. 802. Employment Eligibility Verification System.

E-Verify Creation.

This section requires the DHS Secretary to create an employment eligibility verification system, (patterned on the current E-Verify pilot program) that is accessible by internet. The system must provide confirmation or tentative non-confirmation within three working days of the employer's initial inquiry. The system must provide a secondary process in cases of a tentative non-confirmation so that the employer receives a final confirmation or non-confirmation within ten working days of the notice to the employee that there is a tentative non-confirmation. This section allows the Secretary to extend that deadline once on a case-by-case basis for a period of ten working days, but the Secretary must notify the employer and employee of such extension. It requires the Secretary, in consultation with Commissioner, to create a standard process for such extension and notification. The section requires the system to include safeguards for privacy, against unlawful discriminatory practices, and unauthorized disclosure of personal information.

No National Identification Card.

This section reiterates that this is not a national ID card.

Updating Information.

This section requires that the Social Security Administration (SSA) and DHS promptly update E-Verify database information to promote maximum accuracy.

DHS Secretary Authority.

This section allows the DHS Secretary to require certain entities associated with critical infrastructure to use E-Verify if the use will assist in the protection of the critical infrastructure.

Remedies.

This section provides that if a work-eligible individual claims that they were wrongly fired from, or were not hired for, a job due to an incorrect E-Verify non-confirmation, they may seek remedies under the Federal Tort Claims Act. Prohibits class action lawsuits.

Sec. 803. Recruitment and Referral.

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

Sec. 804. Good Faith Defense.

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

Sec. 805. Preemption and States' Rights.

Federal Preemption.

This section creates one federal law requiring E-Verify use by preempting State laws mandating E-Verify use for employment eligibility purposes.

States' Rights.

This section gives States a specific role in helping to enforce the E-Verify requirements by allowing the States to investigate violations of this Act and enforce the provisions pursuant to the federal structure. It incentivizes States to help enforce E-Verify requirements by allowing the States to retain the fines assessed under this Act. States that an employer may be subject only to a state investigation and enforcement action or a federal investigation and enforcement action for the same violation of E-Verify laws. This section retains the ability of States and localities to condition business licenses on the requirement that the employer uses E-Verify in accordance with the requirements of this Act.

Sec. 806. Repeal.

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

Sec. 807. Penalties.

Penalties.

This section increases the civil and criminal penalties for employers who violate the laws prohibiting illegal hiring and employment.

Debarment.

This section allows DHS to bar a business from receiving federal contracts, grants, or other cooperative agreements, if they repeatedly violate the requirements in this bill or if they are convicted of a crime under this bill. If the business has a contract, grant, or agreement at the time, then DHS and the Attorney General must consider the views of the agency with which the business has a contract, grant, or agreement to determine whether the business should be debarred.

State and Local Assistance.

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

Sec. 808. Fraud and Misuse of Documents.

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

Sec. 809. Protection of Social Security Administration Programs.

This section requires DHS to enter into an annual agreement with SSA to reimburse, in a timely manner, SSA for the costs that it incurs in operating its part of E-Verify.

Sec. 810. Fraud Prevention.

Social Security Number “Lock.”

To combat identity theft, this provision requires DHS to “lock” a social security number that is subject to unusual multiple uses so that if the owner attempts to get a job, the owner is alerted that the SSN may have been compromised.

Social Security Number “Self Lock.”

This section requires DHS to allow individuals to “lock” their own SSN so that it cannot be used to verify work eligibility, to combat identity theft.

Social Security Number “Child Lock.”

This section requires DHS to allow parents or legal guardians to “lock” the SSN of their minor child so that it cannot be used for employment eligibility purposes, to combat theft of the minor child’s identity.

Sec. 811. Use of Employment Eligibility Verification Tool.

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

Sec. 812. Identity Authentication Employment Eligibility Verification Pilot Program.

This section requires DHS to create two pilot programs that allow employers to use an identity-authentication-based identification program for work eligibility check purposes.

Sec. 813. Inspector General Audits.

This section requires, to help identify misuse of SSNs within the current workforce, the Inspector General of the SSA to complete audits of certain categories of SSNs for which there is a likelihood of use by unauthorized workers. The House

Committee on Ways and Means and the Senate Finance Committee will then determine the information to be given to DHS to investigate incidents of SSN misuse and unauthorized employment.

Sec. 814. Agriculture Workforce Study.

This section requires the Secretary of the Department of Homeland Security in consultation with the Secretary of the Department of Agriculture to submit a report on the agricultural workforce to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate.

Sec. 815. Repealing regulations.

This section nullifies two Biden Administration regulations, the “Temporary Agricultural Employment of H-2A Nonimmigrants in the United States” and the “Adverse Effect Wage Rate Methodology for the Temporary Employment of H-2A Nonimmigrants in Non-Range Occupations in the United States.”

