Section-by-Section Analysis of the Safe, Orderly Legal Visas and Enforcement ("SOLVE") Act of 2004

Title I. Earned Adjustment Program

Section 101. Adjustment of Status.

(a) Program Eligibility Requirements for Principal Alien. To be eligible for adjustment of status to permanent resident under the Earned Adjustment Program, an alien must:

(1) File an application within 2 years of issuance of final regulations implementing this title;

(2) Establish evidence of continuous physical presence in the U.S., specifically that he or she:

(i) was present for at least five years preceding the date of the Act's introduction;

(ii) was not legally present on the date of introduction pursuant to any classification set forth in section 101(a)(15) (with the exception of subparagraph (V) of such section) (for purposes of this paragraph, an alien who has violated any conditions of his or her visa shall not be considered to be legally present); and

(iii) has not departed from the U.S. except that single departures of 90 days or less and multiple departures totaling 180 days or less will not break continuous physical presence;

(3) Demonstrate admissibility under INA §212(a), except as otherwise provided in this Act;

(4) Provide proof of employment for at least two of the five years immediately preceding the date of the Act's introduction. The Act defines two years of employment as either 1800 hours or 260 days and permits fulfillment of the requirement through multiple employers. This employment requirement does not apply to aliens who were under 21 years of age on the date of application filing or who were not employed as a result of pregnancy, or because of primary caretaker responsibilities of a child or other person requiring supervision. The alien is also credited with any work days lost due to injury or disease incurred on the job. The Act creates an educational alternative to the employment requirement in which each year of high school or postsecondary school (at least half-time) attended by an alien over 18 years old constitutes one year of employment.

(5) Pay all federal income taxes owed for employment during the required two-year employment period or enter into an agreement with the IRS to do so;

(6) Demonstrate basic citizenship (English & civics) skills or provide evidence of enrollment in citizenship class unless the immigrant is physically or developmentally disabled. This requirement does not apply to aliens 55 years of age or older or who cannot comply due to physical or developmental disabilities or mental impairments;

(7) Obtain clearance from the FBI and DHS by submitting fingerprints and undergoing any other necessary investigations; and

(8) Establish registration in accordance with the Military Selective Service Act, if applicable.

(b) Spouses and Children. This section provides for adjustment of status of the spouses and children (under 21 years of age on the date of enactment) of principal aliens eligible to adjust under this section. In addition, the Act provides adjustment eligibility for certain battered

spouses and children. All derivative applicants (except children under 14) must undergo the same battery of security checks.

(c) Nonapplicability of Numerical Limitations. Aliens granted permanent residence under this section will not be counted against any numerical limitations established by the Immigration and Nationality Act.

Section 102: Grounds of Inadmissibility.
Provides that the Secretary of Homeland Security, in determining an alien's admissibility for purposes of the Earned Adjustment Program, may not waive certain grounds of inadmissibility, including grounds related to criminal conduct, security, polygamy, and child abduction. Other grounds of inadmissibility will not apply to adjustment applicants under this title, including grounds related to public charge, labor certification, illegal entrants, documentation requirements, unlawful presence, and guardianship of a helpless alien. The Secretary of Homeland Security may waive any other grounds of inadmissibility for humanitarian purposes, to ensure family unity, or when otherwise in the public interest. In addition, the INA provision reinstating removal orders against aliens who illegally reenter the U.S. shall not apply to adjustment applicants under this title.

Section 103: Treatment of Applicants.
Aliens who submit applications for adjustment of status under the Earned Adjustment Program, including spouses and children, will undergo security clearances deemed appropriate by the Secretary of Homeland Security, after which they will be granted employment authorization and permission to travel abroad. The documents issued to evidence such authorization shall be machine-readable, tamper-resistant, and shall utilize biometric identifiers consistent with the standards set forth in the Enhanced Border Security and Visa Reform Act. Adjustment applicants may not be detained, determined inadmissible, or removed pending final adjudication of the application unless they commit an act rendering them ineligible for such adjustment. In addition, adjustment applicants shall not be considered unauthorized aliens for employment purposes unless and until employment authorization is denied. An alien in removal proceedings who establishes eligibility for adjustment under this title will be entitled to termination of the proceedings pending adjudication of the application, unless the proceedings are based on criminal or national security grounds.

Section 104: Apprehension Before Application Period.
Immigrants apprehended before the beginning of the application period described in § 101 and who can establish eligibility for adjustment may not be detained or removed from the U.S. until they have had an opportunity, during the first 180 days of the application period, to complete their filing, unless they have engaged in criminal activity or are a threat to national security. Such individuals shall be granted employment authorization, subject to security clearances, during that interim period.

Section 105: Confidentiality of Information.
Establishes a criminal penalty with a corresponding fine of up to $10,000 for any officer or employee of a federal agency or bureau who uses, publishes, or permits anyone outside the agency or bureau to view information furnished in an adjustment application for any purpose other than a determination on the application. An exemption is created which requires the Secretaries of Homeland Security and State to provide information furnished pursuant to such application in connection with a criminal or national security investigation.

Section 106: Penalties for False Statements in Applications.
Establishes a criminal penalty of up to five years imprisonment and/or a fine for persons who file or assist in filing an application for adjustment containing false statements. Carves out an exception from this penalty for aliens or employers who submit employment records containing incorrect data that the alien used to obtain such employment.

Section 107: Ineligibility for Public Benefits.
An alien granted adjustment of status under this Act will not be eligible to receive certain means-tested public benefits unless he or she meets the eligibility criteria under Title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

Section 108: Relationship of Application to Certain Orders.
Aliens with an order of removal, exclusion, deportation, or voluntary departure may apply for adjustment under this Act without filing a separate motion to reopen, reconsider or vacate such order, and the filing of the application will stay the removal pending final adjudication of the application.

Section 109: Application of Other Immigration and Nationality Act Provisions
Ensures that nothing in this title precludes an alien from seeking adjustment of status under any other provision of law for which he or she may be eligible.

Section 110: Administrative and Judicial Review.
Provides for a single level of administrative appellate review from denials of applications to adjust status. If the administrative appeal is denied, judicial review shall be available in the United States District Court with jurisdiction over the applicant's residence. The United States Courts of Appeals may also review the denial of an application for adjustment of status in conjunction with judicial review of an order of removal, deportation, or exclusion, but only if the denial has not been previously upheld in a judicial proceeding. Judicial review shall be based solely on the administrative record established at the time of review. Aliens seeking administrative or judicial review shall not be removed from the U.S. until a final decision has been rendered establishing ineligibility. Accords jurisdiction to United States District Courts to entertain claims that the Secretary of Homeland Security is implementing the title in an arbitrary or capricious manner.

Section 111: Dissemination of Information on Adjustment Program.
The Secretary of Homeland Security, in cooperation with qualified entities, must broadly disseminate information concerning the Earned Adjustment Program and its eligibility requirements. The Secretary of Homeland Security must also disseminate information to

employers and labor unions, advising them of their rights and the rights of workers applying for adjustment of status under this section. The information must be made available in the top 10 languages spoken by aliens expected to qualify for adjustment of status.

Section 112: Entities Qualified to Receive Applications.
The Secretary of Homeland Security must authorize organizations recognized by the Board of Immigration Appeals to receive applications filed under this title. Each such organization must agree to forward all applications filed with the entity if the applicant has consented to such forwarding in writing. Guarantees that the files of such organizations remain confidential and not accessible by a government agency without the alien's consent.

Section 113: Correction of Social Security Records.
This section allows aliens who are granted adjustment of status under the Act to correct their social security records by exempting them from criminal penalties under the Social Security Act.

Section 114: Employer Protections.
This section exempts employers of applicants for adjustment under this program from civil or criminal tax liability directly relating to the employment of these individuals. Employers providing such applicants with employment records will not be subject to civil and criminal liability for employing unauthorized aliens, but they remain liable for other labor and employment violations.

Section 115: Authorization of Funds; Fees.
Authorizes appropriations for the Department of Homeland Security for funds necessary to begin processing applications under Titles I and II. Recognized organizations disseminating information under section 111 or receiving applications under section 112 would be eligible for grants or reimbursement. All applicants must pay an application fee and applicants 21 years of age and over must pay an additional sum of $500 in connection with their applications. The payments received under this section shall be deposited into an account dedicated to cover expenses incurred in connection with the review of applications filed under Titles I and II of this Act.

Section 116: Transitional Status.
Aliens who are physically present in the U.S. on the date of the Act's introduction and are not legally present pursuant to a nonimmigrant visa classification, but who cannot satisfy the other continuous physical presence or prior employment requirements, may apply for a transitional status lasting no more than 5 years. Such individuals will be granted employment authorization and permission to travel abroad once the requisite security checks have been performed. Individuals in this transitional status will be eligible for adjustment of status to permanent residence if they: (1) are lawfully employed in the U.S. for at least two years (as defined in Title I) of the five years immediately following the Act's introduction, and (2) meet all the other requirements for adjustment set forth above. Spouses and children will be eligible for derivative status and to adjust status with the principal alien. Adjustments from the transitional status shall not count against the numerical limitations on immigrant visas in the INA.

Section 117: Adjustment of Status for Certain Entrants.
This section exempts class members in Northwest Immigrant Rights Project v USCIS from application of a provision in IIRAIRA that precluded court jurisdiction to remedy erroneous INS actions relating to persons who were eligible for adjustment of status under IRCA. That limitation on jurisdiction has prevented a subset of class members from securing relief and has prevented final settlement of the class action. Addresses a problem related to jurisdiction to provide relief that is being litigated in another class action, *Proyecto San Pablo v. INS*. This provision clarifies the availability of waivers for certain absences.

Section 118: Eligibility for Legal Services.
Applications for the earned adjustment program would be eligible for legal assistance from Legal Service Corporation organizations.

Section 119: Issuance of Regulations.
Regulations implementing Title I must be issued within 120 days of enactment.

Title II. Family Reunification

Section 201. Treatment of Immediate Relatives with Respect to the Family Immigration Cap. Exempts immediate relatives from the family-sponsored immigrant cap and makes the necessary technical and conforming amendments to carry out this change.

Section 202. Reclassification of Spouses and Minor Children of Legal Permanent Residents as Immediate Relatives.
Amends the definition of immediate relatives in the INA to include spouses and minor children of legal permanent residents and reallocates the number of available immigrant visas among the remaining categories. Pursuant to these changes, the preference categories would receive the following allocation of visa numbers:

1) Unmarried sons and daughters of citizens would increase from 23,400 to 127,200;
2) Unmarried sons and unmarried daughters of LPRs would be allocated 80,640 visa numbers plus any visas not required for the 1st preference;
3) Married sons or married daughters of citizens would increase from 23,400 to 80,640;
4) Brothers and sisters of citizens would increase from 65,000 to 191,520.

Makes technical and conforming amendments throughout the INA necessary to effect these changes.

Section 203. Derivative Eligibility for Relatives of Immediate Relatives.
Amends the definition of immediate relatives to include the children of immediate relatives if accompanying or following to join their immediate relative parent.

Section 204. Waiver of Numerical Limitations on Visas for Long-Waiting Family-Sponsored Immigrants.
Authorizes the allocation of immigrant visas, notwithstanding per-country or worldwide numerical limitations, to family-sponsored immigrants who have been waiting five years (from the date their immigrant petition was filed) for a visa to become available.

Section 205. Recapture of Unused Visa Numbers.
(a) Family-sponsored immigrants – This subsection increases the annual number of family-based immigrant visas by the number of such visas that were not issued in the prior fiscal year. These recaptured visas shall be made available without regard to per-country limitations.

(b) Employment-based immigrants - This subsection increases the annual number of employment-based immigrant visas by the number of such visas that were not issued to qualified individuals in the prior fiscal year. These recaptured visas shall be made available without regard to per-country limitations.

(c) Diversity visa eligibility – This subsection guarantees that diversity-based immigrant visas that are not issued before the fiscal year closes due to delays created by security checks may nonetheless be issued once the security check is complete.

(d) Ensuring security clearances do not cause visa loss - This section further clarifies that delays in the completion of security checks will not result in forfeiture of an immigrant visa that would otherwise be made available or issued to an eligible immigrant.

Section 206. Reform Affidavit of Support Requirements.
Reduces the minimum income level required for an affidavit of support from 125% of the Federal poverty line to 100%.

Section 207. Increase Age for Derivative Citizenship.
Increases the age of eligibility for derivative citizenship from 18 years of age to 21 years of age.

Section 208. Repeal Barriers to Reentry.
Removes the bars to reentry from accrued unlawful presence and makes the repeal retroactive to the date of IIRAIRA's passage.

Section 209. Biometric Documents.
Mandates that each alien accorded immigrant status under Title II be issued a machine-readable, tamper-resistant visa or other document that uses biometric identifiers consistent with the standards set forth in the Enhanced Border Security and Visa Reform Act.

Section 210. Authorization of Appropriation.
Authorizes funds to carry out the requirements of Title II.

Title III. Temporary Worker Program

Section 301. Temporary Workers.
Amends the definition of H-2B worker to mean a nonimmigrant worker who is coming to the U.S. temporarily to engage in short-term service or labor for not more than nine months. Adds a new subsection 101(a)(15)(H)(i)(d) for nonimmigrant workers coming to perform labor or service, other than that performed by workers in the H-1B, H-2A, L, O, or P nonimmigrant

categories, where a qualified American worker cannot be identified or are unavailable.

Section 302. Recruitment of United States Workers.
Sets forth the recruitment steps required of employers seeking to hire H-2B or H-1D workers. In the case of H-2B workers, the recruitment must be undertaken 14 days prior to the filing of a "labor attestation application" with the Secretary of Labor, discussed in § 303 below. In the case of H-1D workers, the recruitment must be undertaken 30 days prior to the filing of the labor attestation application.

Employers must: (1) submit a copy of the job opportunity, including a description of the wages and other terms of employment, to the State Employment Service Agency (SESA), which will acknowledge receipt of the job opportunity description; (2) authorize the SESA to post the job opportunity on 'America's job bank,' local job banks, and with unemployment agencies and other pertinent referral and recruitment sources; (3) authorize the SESA to notify the State Federation of Labor in the state of the job opportunity and, if applicable, the office of the pertinent local union; (4) post the job description in conspicuous locations at the job site; (5) advertise the job opportunity in a publication with the highest circulation likely to be patronized by potential workers for at least three consecutive days for H-2B workers and for at least 10 consecutive days for H-ID workers; (6) advertise the job opportunity in other professional, trade, and ethnic publications likely to be read by potential workers; and (7) advertise the job opportunity in minority publications in communities where the unemployment rate for minorities is greater than 100 of the regional average.

Requires an employer to have offered the job to any qualified, eligible and available U.S. worker that applies, and to maintain documentation of recruitment efforts for at least one year after the employment relationship is terminated. Prospective employers must also attest that there are not sufficient workers who are able, willing, qualified, and available at the time of the filing of the application.

Section 303. Admission of Temporary Workers.
Employers wishing to hire H-2B or H-1D workers must file an application with the Secretary of Labor attesting that: (1) the employer will pay the nonimmigrant worker the prevailing wage, which will be the wage rate set forth in any applicable collective bargaining agreement, or, if the job is not covered by a collective bargaining agreement, a wage determination under either the Davis-Bacon Act or the Service Contract Act of 1965, or if neither of those are applicable, the highest 66 percent of the wage data provided by the Department of Labor's Bureau of Labor Statistics' Occupational Employment Survey; (2) the employer will offer the same wages, benefits, and working conditions as it offers to similarly employed U.S. workers; (3) there is not a strike, lockout, or labor dispute in the occupational classification at the place of employment (including any concerted activity to which section 7 of the Labor Management Relations Act (29 USC § 157) applies); (4) the employer will abide by applicable laws and regulations relating to the right of workers to join or organize a union; (5) the employer has provided notice of the filing of the application to its employees' bargaining representative, or, if there is no bargaining representative, has posted notice of the filing in a conspicuous location at the place of employment. The notice must be posted for 14 business days in the case of an H-2B worker, and for 30 business days in the case of an H-1D worker; (6) the employer will not hire nonimmigrant

workers with less training or experience than is minimally required to perform the job duties; (7) the employer has not displaced and will not displace a U.S. worker within 60 days prior or 60 days following the filing of the application who is employed in the same position at the place of employment; (8) the employer has complied with the applicable recruitment requirements; and (9) the employer will not impose any restrictions on U.S. workers that will not be imposed on the nonimmigrant workers.

Requires that the labor attestation application be accompanied by: (1) a copy of the job offer describing wages and other terms and conditions of employment; (2) a statement of minimum education, training, experience, and requirements for the job; (3) copies of the recruitment documentation; (4) copies of the recruitment advertisements; and (5) a copy of the SESA's acknowledgment of receipt of the job opportunity.

If, upon review of the documentation for accuracy and completeness, the Secretary of Labor finds deficiencies, the Secretary must provide the employer with an opportunity to remedy same. Upon the Secretary of Labor's approval of the application, the employer must file a petition for a nonimmigrant worker with U.S. Citizenship and Immigration Services. The employer must retain in a public access file the application and supporting documentation filed with the Secretary of Labor for a period of one year beyond the termination of the employment relationship with the alien.

Requires that each alien issued an H-2B or H-1D visa, or otherwise provided such status, be issued a machine-readable, tamper-resistant document that uses biometric identifiers consistent with the requirements of section 303 of the Enhanced Border Security and Visa Reform Act (Pub. L. No. 107-173).

Section 304. Worker Protections.
Institutes a series of worker protection measures, including:

(1) ensuring continuation of an employee's rights in collective bargaining agreements or employment contracts;

(2) prohibiting the denial to nonimmigrant workers of any rights or remedies under Federal, State or local labor laws that are applicable to similarly employed U.S. workers;

(3) making it unlawful for employers to retaliate against nonimmigrant whistleblower employees;

(4) requiring the Secretaries of Labor and Homeland Security to establish a process under which nonimmigrant whistleblowers may be allowed to seek other appropriate employment;

(5) requiring the Secretary of Labor to develop a process for the receipt, investigation, and disposition of complaints respecting a petitioner's failure to meet a condition specified in the labor attestation application or the misrepresentation of a material fact therein. A complaint may be filed by an aggrieved person or organization, including bargaining representatives, and must be filed within 12 months after the date of the failure or misrepresentation. The Secretary must

determine if a reasonable basis exists to believe that such a failure or misrepresentation occurred within 30 days after the complaint is filed. If a determination is made that a reasonable basis exists, the Secretary must issue a notice to the parties within 60 days, providing an opportunity for a hearing. If the Secretary does not offer the aggrieved party a hearing, the latter may seek a hearing on the complaint, and the Secretary must render a finding within 60 days of such hearing. If the Secretary has not filed a complaint before an administrative law judge (ALJ) within the 60-day period, the Secretary will notify the person making the charge of the determination not to file a complaint and the person may file a complaint directly before the ALJ within 90 days of receiving such notice. If the Secretary determines that there was a failure to meet a requirement or a misrepresentation in an application, the Secretary can award equitable relief and various civil monetary penalties not to exceed $3,000 per violation. In addition, the Secretary of Homeland Security may not approve petitions for a nonimmigrant worker filed by the employer for at least one year. If a willful failure to meet a requirement or a willful misrepresentation is determined, the Secretary of Labor can award equitable relief and various civil monetary penalties not to exceed $8,000 per violation, with a two-year bar on the filing of petitions. If willful failure or misrepresentation led to the displacement of U.S. workers, the Secretary of Labor can award equitable relief and various civil monetary penalties not to exceed $35,000 per violation, with a three-year bar on the filing of petitions. In cases involving a willful failure or misrepresentation, the court may allow a prevailing party, other than the United States, a reasonable attorney's fee; and

(6) giving the Department of Labor the authority to initiate and pursue investigations and audits of employers to ensure that they do not violate the rights of workers described in this section.

Section 305. Portability.
Provides that H-2B or H-1D nonimmigrant workers may change employers only after the nonimmigrant worker has been employed by the original petitioning employer for at least three months from the date of admission or the date such status was acquired. A waiver of the three-month employment requirement (without loss of status during the waiver period) is available in cases where the employer violates a term or condition of sponsorship, or any other applicable law or regulation relating to the employment, or where the personal circumstances of the nonimmigrant worker warrant a change in employment (i.e. for family, medical, humanitarian or other reasons). Employment with the new employer can commence upon the filing of a new labor attestation application and employment authorization will continue until the new petition is adjudicated. If the new petition is denied, such employment authorization will cease.

Section 306. Spouses and Children of Temporary Workers.
Provides for derivative status for the spouses and children who accompany or follow to join an H-2B or H-1D worker.

Section 307. Petitions by Employer Groups and Unions.
Provides that petitions for H-2B or H-1D employees may be filed by an associated or affiliated group of employers that has multiple openings for similar employment or by a union. If approved, the petition will be valid for employment in the described positions for any of the member employers, the union, or union consortium, providing the employing entity has complied with all recruitment requirements and paid the requisite fees. This section also clarifies

that recruiting entities or job shops are not allowed to file petitions.

Section 308. Processing Time for Petitions.
Requires the Secretary of Labor to review the labor attestation application and issue a determination within 10 working days of the filing date. Requires the Secretary of Homeland Security to adjudicate petitions and derivative applications associated with the petitions within 60 days after a completed petition is filed.

Section 309. Terms of Admission.
Authorizes an initial period of admission for H-2B nonimmigrant workers of not more than 9 months from the date of the application for admission in any one-year period, with a total period of not more than 40 months. H-1D workers are provided an initial period of admission of not more than two years with the possibility of extensions in two-year increments, for a total period not exceeding six years.

These limitations do not apply if the nonimmigrant worker has filed for adjustment of status or is the beneficiary of an employment-based petition, if 365 days have elapsed since the filing of the labor certification application (if required) or immigrant worker petition. In such cases, the Secretary of Homeland Security shall extend the stay of the nonimmigrant worker until a final decision is reached.

Section 310. Number of Visas Issued.
Provides that the number of visas for H-1D nonimmigrant workers may not exceed 250,000 and the number of visas for nonimmigrant workers classified as H-2B nonimmigrants may not exceed 100,000.

Section 311. Change of Status.
Provides that H-2B and H-1D nonimmigrants will be eligible to change status to any other immigrant or nonimmigrant classification for which they may be eligible.

Section 312. Adjustment of Status to Lawful Permanent Resident.
Provides that H-2B and H-1D nonimmigrant workers will be eligible for an employment-based immigrant visa pursuant to INA § 203(b)(3), without regard to the numerical limitations of INA §§ 201 or 202, and for adjustment of status upon the filing of a petition for such visa by the employer or by a nonimmigrant worker who has been employed for at least two years. Spouses and children will be eligible as derivative beneficiaries. Dual intent is permissible with respect to both H-2Bs and H-1Ds.

Section 313. Notification of Employee Rights.
Requires employers of H-2B or H-1D aliens to provide the nonimmigrant worker with the same notification of his or her rights and remedies under federal, state, and local laws that the employer is required to provide to U.S. workers.

Section 314. Grounds of Inadmissibility.
Exempts H-2B and H-1D nonimmigrants from the following grounds of inadmissibility: INA § 212(a)(5) (labor certification and qualifications for certain immigrants); (6)(A) (aliens present

without admission or parole); (6)(B) (failure to attend removal proceedings); (6)(C) (misrepresentation); (6)(G) (student visa abusers); (7) (documentation requirements); (9) (aliens previously removed); and (10)(B) (guardian required to accompany helpless alien).

Section 315. Petition Fees.
Requires employers filing petitions for H-2B or H-1D nonimmigrant workers to pay a filing fee based on processing costs and a secondary fee that is determined by the number of employees already employed by the petitioner. These secondary fees range from $250 to $1000 for H-1D nonimmigrants, and from $125 to $500 for H-2B nonimmigrants. Employers cannot charge the H-2B or H-1D workers for these secondary fees. The fees will be distributed in the following manner: 20% for the Department of Homeland Security to process petitions, 15% for the Department of Labor to process attestation applications, 20% for the State Department to process visa applications, 15% for the Department of Labor for the complaint process and enforce violations, 15% for the Department of Labor to increase the funds available for the State Employment Service Agencies, and 15% to Homeland Security for improvements in border security technology.

Section 316. Definitions.
Amends the INA to include definitions of terminology used in the Act, including "employer," "job opportunity, "lays off," and "U.S. worker."

Section 317. Collective Bargaining Agreements.
Ensures that H-2B and H-1D workers are eligible for protection under collective bargaining agreements.

Section 318. Investigations by Department of Homeland Security During Labor Disputes.
Codifies current immigration policy that addresses employers using immigration violations to undermine efforts by employees to exercise their employment rights. It specifies that before the Department of Homeland Security gets involved in an immigration enforcement action, it should acquire certain pieces of information in order to ascertain if there is an ongoing labor dispute. If the Department of Homeland Security determines that "there is a labor dispute in progress" or that "information was provided to the Department of Homeland Security to retaliate against employees for exercising their employment rights," the immigration officer in charge of the Department of Homeland Security enforcement team must ensure, to the extent possible, that any workers who are arrested or detained and are necessary for the prosecution of any violations are not removed from the country without notifying the law enforcement agency that has jurisdiction over the violations.

Section 319. Protection of Witnesses.
Provides for a stay of removal for an alien against whom removal proceedings have been initiated if he or she has filed, or is a material witness in connection with, a workplace claim, unless it can be shown that the removal is wholly independent of the workplace claim and the claim was filed with a bad faith intent to delay or avoid removal or the alien has engaged in criminal conduct or is a threat to national security. This section also provides for the confidentiality of immigration information obtained during administrative proceedings.

Section 320. Document Fraud.
Increases the penalty for document fraud when committed principally for commercial advantage or financial gain.

Section 321. Continued Application of Backpay Remedies.
Provides a legislative fix to the *Hoffman Plastics* decision. Adds a new subsection to INA§ 274A(h) to provide that backpay or other monetary relief for unlawful emloyment practices may not be denied to a present or former employee as a result of an employer's failure to comply with the immigration laws concerning the hiring of aliens or an employee's violation of law related to the employment verification system.

Section 322. Unfair Immigration-Related Employment Practices.
Expands INA §274B's enforcement tools and penalties for employers who use immigration-related threats, etc. to harass, intimidate, or discriminate against alien employees. Under current law, 274B (a)(5) prohibits intimidation, threats, coercion, or retaliation against any individual for the purpose of interfering with any right or privilege secured by 274B. The proposed change would insert language specifically prohibiting threats of removal or any other adverse immigration status consequences if the individual exercises his or her rights under labor or employment law. This section also would prohibit discrimination in any term or condition of employment against any individual on the basis of his or her immigration status.

Add language prohibiting the Special Counsel from disclosing to any government agency or employee any information obtained by the Special Counsel in any manner concerning the immigration status of any individual who has filed a charge under this section or the identification of any individual or entity who is a party or witness to a proceeding brought pursuant to such charge.

Extends from six months to one year the permissible time period for filing a complaint concerning an unfair immigration-related employment practice and increases the fines and penalties for employers found to have engaged in such a practice.

Section 323. Temporary Workers Program Commission.
Establishes a commission to study temporary workers programs created by this Act, including their effect on national security, the U.S. work force, businesses, the foreign workers, and their sending countries, and requires the commission to make recommendations to Congress.

The commission will have 14 members, 12 of which will be appointed by Democratic and Republican leadership of the House and Senate, and the other 2 will be a designee of the Secretary of Labor and a designee of the Secretary of Homeland Security. Commissioners will have expertise in economics, demography, business, immigration, national security or other pertinent experience, and represent a broad cross-section of perspectives, including the public and private sector, academics, and immigration advocates. The commission will be able to obtain information from federal agencies, hold hearings, and receive input from interested parties.

The commission will issue a preliminary report to Congress in 3 years and a final report in 5

years, consistent with its purpose and duties, including recommendations for legislative and administrative actions to implement their conclusions.

The duties of the commission are to examine the effect of the H-2B and H-1D temporary worker program on: 1) national security; 2) the U.S. workforce; 3) U.S. businesses; 4) the foreign workers; and 5) the countries of origin; 6) the adequacy and accuracy of the current wage calculation system; 7) the adequacy of past labor certification systems compared to the attestation system created by the act; 8) the development and implementation of a labor marker test; 9) the current enforcement mechanisms in the temporary worker programs; and 10) any other recommendations that are warranted.

Section 324. Submission to Congress of Information Regarding H-2B and H-1D Non-immigrants

Beginning in December 2005, the Secretary of Homeland Security shall issues quarterly reports detailing the number of visas issued, revoked, or terminated under the H-2B and H-1D program. Beginning in fiscal year 2006, the Secretary of Homeland Security shall issue annual reports containing information on the countries of origin and occupations of the H-2B and H-1D non-immigrants and the compensation they were paid; the number of visas issued, revoked or terminated each month under these programs; the number of such visas each for each fiscal year; and the number of such aliens who adjusted status through employer petitions or self-petitions.