A SUMMARY OF THE

Secure America and Orderly Immigration Act

(S. 1033 / H.R. 2330)

The Secure America and Orderly Immigration Act of 2005 was introduced by Senators Kennedy (D-MA) and McCain (R-AZ) in the Senate, and Representatives Flake (R-AZ), Gutierrez (D-IL), and Kolbe (R-AZ) in the House of Representatives on May 12, 2005. The following chart is a section-by-section summary of the bill. An article that summarizes and analyzes the different provisions in the bill is also available at www.nilc.org.

June 2005 (REVISED 7/25/05)

PROVISION	SUMMARY
TITLE I	**BORDER SECURITY**
National Strategy for Border Security (§ 111)	♦ The secretary of the Dept. of Homeland Security (DHS) shall develop and implement a national strategy for border security, including a security plan for the Border Patrol and the field offices of the Bureau of Customs and Border Protection (BCBP) of DHS. The strategy is to include (1) an evaluation of points of entry and portions of the international border that must be protected from illegal transit; (2) a description of the most appropriate, practical, and cost-effective means of defending the border against security threats and illegal transit, including technology, intelligence capacity, equipment, personnel, and training; (3) risk-based priorities for assuring border security, with realistic deadlines for addressing them; (4) a strategic plan for security enforcement and border lands management that includes coordination among federal, state, regional, local, and tribal authorities; (5) prioritization of research and development objectives; (6) update of the 2001 Port of Entry Infrastructure Assessment Study conducted by the legacy U.S. Customs Service; (7) strategic interior enforcement coordination plans; and (8) strategic enforcement coordination plans with overseas personnel of DHS and the Dept. of State to end human smuggling and trafficking activities.
Reports to Congress (§ 112)	♦ No later than one year after enactment of the bill, the DHS secretary is to submit the strategy to the Homeland Security and Judiciary committees of the House and Senate. Subsequently, the secretary is to submit revisions to the plan to the committees at least every two years, as well as annual progress reports.
Authorization of Appropriations (§ 113)	♦ Appropriations are authorized for 5 fiscal years.
Border Security Coordination Plan (§ 121)	♦ The DHS secretary (in coordination with federal, state, local, and tribal authorities) shall develop and implement a plan on law enforcement, emergency response, and security-related responsibilities regarding the international border of the U.S. The purpose is to ensure that security is not compromised when jurisdiction for security changes or is shared. ♦ Methods must be considered to coordinate emergency responses, improve data-sharing and communications, promote research and development, and combine personnel and resources. ♦ A report on the plan must be submitted to appropriate congressional committees no later than one year after its implementation.
Border Security Advisory Committee (§ 122)	♦ The DHS secretary is authorized to establish a Border Security Advisory Committee to advise and make recommendations to the secretary. The advisory committee is to be composed of representatives of border states, local law enforcement agencies, community officials, tribal authorities, and other interested parties representing a broad cross section of perspectives.

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Programs on the Use of Technologies (§ 123)	♦ Within 60 days of enactment of the bill, the DHS secretary must develop and implement a program to fully integrate aerial surveillance technologies into border security, to be done in conjunction with the border surveillance plan required by section 5201 of the Intelligence Reform and Terrorism Prevention Act of 2004. In developing the program, the secretary must consult with the secretary of Defense and the administrator of the Federal Aviation Administration. ♦ The program must include the use of a variety of aerial surveillance technologies, including unmanned aerial vehicles, in a variety of topographies and areas, including populated and unpopulated areas on or near the international border. It must also evaluate the cost and effectiveness of various technologies in different circumstances, as well as liability, safety, and privacy concerns relating to their use. ♦ Within one year of implementation of the program, the DHS secretary shall submit a report to appropriate congressional committees, including recommendations for enhancement. The secretary is also authorized to carry out demonstration programs to strengthen communication, information sharing, technology, security, intelligence benefits, and enforcement activities on the border that will not diminish international trade and commerce.
Combating Human Smuggling (§ 124)	♦ The DHS secretary shall develop and implement a plan to improve coordination between ICE, BCBP, and federal, state, local or tribal authorities to combat human smuggling. The plan shall include interoperability of databases, personnel training, programs to target smuggling networks, effective utilization of visas for victims of trafficking and other crimes, consideration of investigatory techniques, equipment and procedures to prevent, detect, and prosecute international money laundering, and joint measures with the State Dept. to enhance intelligence sharing and cooperation with foreign governments. ♦ The DHS secretary must submit a report to Congress regarding the plan no later than one year after its implementation, including recommendations for legislative action.
Savings Clause (§ 125)	♦ Nothing in the sections of the bill regarding border security strategic planning or border infrastructure, technology, integration and security enhancement (sections 111–125) give any state or local entity any additional authority to enforce federal immigration law.
North American Security Initiative (§ 131)	♦ The secretary of State shall enhance the security of the U.S., Canada, and Mexico by providing a framework for better management, communication and coordination among their governments.
Information Sharing Agreements (§ 132)	♦ The secretary of State, in coordination with the DHS secretary and the government of Mexico, shall negotiate an agreement with Mexico for cooperation in the screening of third-country nationals using Mexico as a transit corridor for entry into the U.S. and for providing technical assistance to support stronger immigration control at the border with Mexico.
Improving the Security of Mexico's Southern Border (§ 133)	♦ The secretary of State, in coordination with the DHS secretary, the Canadian Dept. of Foreign Affairs, and the government of Mexico shall establish a program to assess the needs of the governments of Central American countries in maintaining their border security, and to use this assessment to determine the financial and technical support needed by Central American countries from Canada, Mexico, and the U.S. for this purpose. ♦ The program shall also provide technical assistance to Central American countries to secure their issuance of passports and travel documents and encourage them to control and prevent alien smuggling and use of fraudulent documents and to share information with the U.S., Canada, and Mexico.

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Improving the Security of Mexico's Southern Border, cont. (§ 133)	♦ The DHS secretary, in consultation with the secretary of State and Central American governments, shall provide robust law enforcement assistance to the Central American governments to increase their ability to dismantle human smuggling organizations and improve border control. The secretary of State, in consultation with the DHS secretary and the governments of Mexico, Guatemala, Belize and neighboring contiguous countries shall establish a program to provide needed equipment, vehicles, and technical assistance to patrol the international borders between Mexico and Guatemala and between Mexico and Belize. ♦ The secretary of State, in coordination with the DHS secretary, the FBI director, the government of Mexico, and Central American government officials shall establish a program and database to track Central American gang activities, focusing on the identification of returning criminal deportees. The program will include developing a mechanism to notify governments before gang members are deported, providing support for the reintegration of these deportees, and developing an agreement for sharing all relevant information with appropriate agencies in Mexico and Central America.
TITLE II	**STATE CRIMINAL ALIEN ASSISTANCE**
Authorization of Appropriations (§ 201)	♦ Funding for the State Criminal Alien Assistance Program is reauthorized through 2011: such sums as are necessary for fiscal year 2005; $750 million for 2006; $850 million for 2007; and $950 million for 2008–2011. ♦ Funds may be used only for correctional purposes.
Reimbursement of States for Costs Relating to Incarceration of Aliens (§ 202)	♦ Establishes a new program to reimburse states for "indirect" costs (including court costs, county attorney costs, detention costs, criminal proceedings, expenditures that do not involve going to trial, indigent defense costs, and unsupervised probation costs) related to incarcerating noncitizens. ♦ Program will give "special consideration" to states that share a border with Mexico or Canada or have an area in the state where a large number of undocumented noncitizens live relative to the general population of that area. ♦ $200,000,000 is allocated for the program for 2005–2011.
Reimbursement of States for Preconviction Costs Related to Incarceration of Aliens (§ 203)	♦ Allows states to seek reimbursement for preconviction costs associated with incarcerating noncitizens.
TITLE III	**ESSENTIAL WORKER VISA PROGRAM**
Essential Workers (H-5A) (§ 301)	♦ Creates a new temporary workers visa, "H-5A," for nonimmigrant workers (i.e., workers who have no intention of abandoning their foreign residence). ♦ The visa will be available for workers to perform labor or services other than those covered under the current law for agricultural or high-skilled work (i.e., nonimmigrants described in the current provisions for H-1B, H-2A, L, O, P, or R status).
Admission of H-5A Workers (§ 302)	♦ Eligible applicants for an H-5A visa must demonstrate that they are capable of performing the labor or service qualifying them for the visa and must provide the consular officer evidence of a job offer in the U.S. "Evidence of employment" must be provided through a new Employment Eligibility Confirmation System established by § 402 (see below). Applicants must also pay a $500 application fee, undergo a medical examination, and pass a criminal background and security check. ♦ Applicants must be "admissible" under immigration law. Many grounds of inadmissibility may be waived, but not most criminal grounds, security and related grounds, or those for polygamists and child abductors. A waiver under this section requires payment of a $1500 waiver fine.

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Admission of H-5A Workers, cont. (§ 302)	♦ Applicants for H-5A status are not subject to the bars for having failed to comply with voluntary departure or for being subject to reinstatement of removal. ♦ Noncitizens admitted to the U.S. under H-5A visas shall initially be authorized to remain for three years, and this authorization may be extended for an additional three-year period, for a maximum period of 6 years. H-5A visa holders must continue to be employed while in the U.S., and if they are unemployed for 45 or more consecutive days they must return to their home country or country of last residence, or they are subject to removal proceedings. H-5A visa–holders can travel outside of the U.S. and may be readmitted into the U.S. without having to obtain a new visa if their H-5A visa has not expired. H-5A-holders who return home due to unemployment may reenter the U.S. using the same visa, provided that they meet the same requirements as for their original entry. ♦ H-5A visas are portable, which means the H-5A visa–holder's status is not limited to one particular employer, and he or she may accept new employment with a subsequent employer. ♦ H-5A visa holders will not be eligible to renew their nonimmigrant status if they willfully violate any material terms or conditions of their status. They may, however, apply for a waiver to this bar for technical violations, inadvertent errors, or violations that were not their fault.
Employer Obligations Under the H-5A Program (§ 303)	♦ Employers who employ H-5A visa–holders are liable and punishable under all applicable federal, state, and local laws that protect U.S. workers (e.g., employment, labor, and tort laws). ♦ Employers of H-5A visa holders shall comply with the Employment Eligibility Confirmation System (as established by § 402 — see below).
Worker Protections Under the H-5A Program (§ 304)	♦ H-5A visa–holders shall be "employees" under the FLSA. H-5A visa holders shall not be treated as independent contractors. ♦ H-5A visa–holders are covered under all federal, state, or local labor or employment laws that would be apply to a U.S. worker employed in a similar position. They cannot be denied any right or remedy under these laws because of their immigration status as a nonimmigrant worker. ♦ Employers who employ H-5A visa–holders shall comply with all applicable federal, state and local tax revenue laws. ♦ An employer must provide H-5A visa–holders with the same wages, benefits, and working conditions that are provided by the employer to U.S. workers similarly employed in the same occupation and the same place of employment. ♦ An employer may not hire H-5A visa–holders as replacement workers if there is a strike or lockout in the course of a labor dispute. ♦ Employers are prohibited from threatening to or actually withdrawing an H-5A petition in retaliation for the worker's exercise of a right protected by the Act. It is also unlawful for an employer or labor contractor of H-5A visa–holders to intimidate, threaten, restrain, coerce, retaliate, discharge, or in any other manner discriminate against an employee or former employee for disclosing information concerning a violation of, or cooperating in, an investigation or other proceedings concerning compliance with the requirements of this Act. ♦ Foreign labor contractors who recruit H-5A visa holders must register with and be certified by the secretary of Labor (for two-year periods). Foreign labor contractors shall disclose to each H-5A worker who they recruit as to the following: the place of employment; the amount of wages they will receive for their work; a description of employment activities; the period of employment; any other employee benefits and any costs to be charged for each benefit; any travel or transportation expenses to be assessed; the existence of any labor organizing effort, strike, lockout, or other labor dispute; the existence of any arrangement where the contractor receives a commission from the provision of items or services to workers; the extent to which workers will be compensated through workers' compensation, private insurance or otherwise for workplace injuries or deaths; any education or training to be provide or required and who will pay such costs; and a statement provided by DOL describing the protections for workers recruited abroad.

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Worker Protections under the H-5A Program, cont. (§ 304)	♦ The information required to be disclosed by the foreign labor contractor shall be provided in English or, as necessary and reasonable, in the language of the worker being recruited. ♦ Any transportation costs charged by the foreign labor contractor or employer must be reasonable. ♦ Every two years, employers must notify the secretary of Labor of the identity of any foreign contractor hired by the employer. ♦ No person can engage in foreign labor recruiting without a certificate of registration from the secretary of Labor specifying the activities that the person is authorized to perform. Employers can only use certified labor contractors to recruit foreign labor. Unless suspended or revoked, certificates are good for two years. ♦ The secretary of Labor must issue regulations establishing an electronic process for the investigation and approval of a certificate of registration not later than 14 days after the application was filed. Under the regulations, the secretary may refuse to issue or renew, or may suspend or revoke, a certificate for the following reasons: (1) the applicant has knowingly made a material misrepresentation in the application; (2) the applicant is applying for a foreign labor contractor who has been banned from receiving a certificate or does not qualify for a certificate; or (3) the applicant has failed to comply with the requirements of the Act. ♦ The secretary of Labor may require a foreign labor contractor to post a bond sufficient to ensure the protection of individuals recruited by the contractor. ♦ Workers who are harmed by a foreign labor contractor that violates the provisions governing its recruitment practices may bring a complaint (within 12 months of the date of such violation) through an administrative process to be established by the secretary of Labor. ♦ The process shall include an investigation (that takes not longer than 30 days after the complaint was filed) to determine whether the worker had "reasonable cause" to bring the claim, proper notice, and a timely hearing. Not later than 60 days after the secretary finds that there is reasonable cause, the secretary will issue a notice to the interested parties and offer an opportunity for a hearing on the complaint. Claimants who prevail are entitled to reasonable attorney's fees and costs. The secretary may also bring a judicial action to obtain injunctive relief and damages for violations. If the secretary of Labor finds a violation, the secretary may impose administrative remedies and penalties, including back wages, fringe benefits, and/or civil monetary or criminal penalties.
Market-Based Numerical Limitations for the H-5A Program (§ 305)	♦ 400,000 H-5A visas will be made available for the first fiscal year of implementation of the program. The bill lays out additional percentages of the allocated number that shall be made available for each subsequent fiscal quarter if the 400,000-visa cap is reached.
Adjustment of Status to Lawful Permanent Resident Status (§ 306)	♦ H-5A visa–holders are eligible to adjust their status to LPR status through existing employer-based petitions. ♦ H-5A visa–holders who have accumulated four years of work within the U.S. are also eligible to adjust to LPR status through self-petitioning if they are physically present in the U.S. and demonstrate basic knowledge of English and U.S. civics or that they are satisfactorily pursuing a course of study to meet these requirements (satisfactory demonstration of knowledge of these requirements will be applicable to their future naturalization application). H-5A visa–holders who self-petition for LPR status or who are beneficiaries of pending labor certification or immigrant visa petitions can receive an extension of their stay in the U.S. (in one-year increments) until a final decision on their application for LPR status is made. ♦ H-5A visa–holders can also adjust to LPR status through any other means currently available in immigration law (e.g., through a family-based petition or the diversity visa lottery).

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Essential Worker Visa Program Task Force (§ 307)	♦ A task force comprised of 10 persons of pertinent areas of expertise shall be established to study the Essential Worker Visa Program and make recommendations to Congress. Members of the task force shall be appointed by the president and leadership of both houses of Congress, and no one party may constitute a majority of the membership. ♦ No later than two years after implementation of the program, the task force will submit a report to Congress evaluating a variety of aspects of the program. A final report will be submitted no later than four years after the submission of the initial report.
Willing Worker-Willing Employer Job Registry (§ 308)	♦ The secretary of Labor will direct the modification of the national system of public labor exchange services, known as “America’s Job Bank,” to incorporate nonimmigrant workers and essential worker employment opportunities available to U.S. workers.
Authorization of Appropriations (§ 309)	♦ Appropriations are authorized as may be necessary to carry out the Essential Worker Visa Program for each fiscal year beginning with the year of the enactment through seven years after the implementation of the program.
TITLE IV	**ENFORCEMENT**
Document and Visa Requirements (§ 401)	♦ No later than six months after the enactment of this Act, all visas issued by the secretary of State and immigration-related documents issued by DHS must: (1) be machine-readable and tamper-resistant; (2) use biometric identifiers; (3) comply with the biometric and document identifying standards established by the International Civil Aviation Organization; and (4) be compatible with the U.S. Visitor and Immigrant Status Indicator Technology and the Employment Eligibility Confirmation System. ♦ The information on the visas or immigration documents must include: (1) the alien’s name, date and place of birth, alien registration or visa number, and SSN (if applicable); (2) the alien’s citizenship and immigration status; and (3) the date that the alien’s authorization to work in the U.S. expires (if appropriate).
Employment Eligibility Confirmation System (§ 402)	♦ Directs SSA, in consultation with DHS, to create a new Employment Eligibility Confirmation System (EECS) that allows employers who have hired individuals under the H-5A visa program to electronically verify their identity and employment eligibility through machine-readable documents. ♦ The EECS will eventually replace the current Form I-9 employment eligibility verification system. ♦ Requires the EECS to provide a confirmation or tentative nonconfirmation of the individual’s identity and employment eligibility no later than one working day after the initial inquiry. SSA, in consultation with DHS, must establish a secondary verification process for cases of tentative nonconfirmation; the employer must make a secondary verification inquiry within 10 days after receiving a tentative nonconfirmation. If an employee chooses to contest a secondary nonconfirmation, the employer shall provide the employee with a referral letter and instruct the employee to resolve the discrepancy within 10 working days with DHS and/or SSA. An individual’s failure to contest a secondary nonconfirmation cannot be used as proof to the employer that the worker is undocumented. ♦ Requires the EECS to provide a confirmation or tentative nonconfirmation of the individual’s identity and employment eligibility no later than one working day after the initial inquiry. SSA, in consultation with DHS, must establish a secondary verification process for cases of tentative nonconfirmations; however, the employer must make a secondary verification inquiry within 10 days after receiving a tentative nonconfirmation. If an employee contests a secondary nonconfirmation, the employer shall provide the employee with a referral letter and instruct the employee to resolve the discrepancy within 10 working days with DHS and/or SSA. An individual’s failure to contest a secondary nonconfirmation cannot be considered to constitute knowledge on the part of the employer that the worker is undocumented. ♦ Individuals must be allowed to view their own records and contact the appropriate agency to correct any errors through an expedited process established by SSA and DHS.

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Employment Eligibility Confirmation System, cont. (§ 402)	♦ The EECS must be designed to prevent discrimination based on citizenship status and national origin. ♦ It is an unlawful immigration-related employment practice for employers or other third parties (1) to use the EECS selectively or without authorization; (2) to use the EECS prior to an offer of employment; (3) to use the EECS to exclude certain individuals from consideration for employment as a result of a perceived likelihood that additional verification will be required; (4) to use the EECS to deny certain employment benefits, otherwise interfere with the labor rights of employees, or any other unlawful employment practice; and (5) to take adverse action against any person, including terminating or suspending an employee who has received a tentative nonconfirmation. ♦ The data collected by the EECS must include, for non–U.S. citizens: country of origin, immigration status, employment eligibility, occupation, metropolitan statistical area of employment, annual compensation paid, period of employment eligibility, annual commencement date, and employment termination date. ♦ SSA must establish by regulation a process to require employers to conduct annual reverifications of the employment eligibility of all individuals by using machine-readable documents or telephone or electronic communication. ♦ SSA and DHS must issue regulations protecting information in the database from unauthorized disclosure. Employers must: (1) notify employees that prospective employees that the EECS may be used for immigration enforcement purposes; (2) verify the identification and employment authorization status for newly hired individuals not later than 3 days after hire; (3) provide the occupation, statistical area of employment and annual compensation for each employee hired; (5) retain the code received indicating confirmation or tentative nonconfirmation; and (6) provide a copy of the employment verification receipt to the employee. ♦ A person or entity that establishes good faith compliance with the requirements of the EECS with respect to the employment of an individual has established an affirmative defense that the person or entity has not violated the law. A good faith defense does not apply if a person or entity engages in unlawful immigration-related employment practices established above. ♦ To the maximum extent practicable, SSA and DHS must implement an interim system to confirm employment eligibility before implementation of the EECS. ♦ The comptroller general shall submit a report to the House and Senate Judiciary Committees not later than three months after the second and third year that the EECS is in effect. The report must include: (1) an assessment of the impact of the EECS on the employment of unauthorized workers; (2) an assessment of the accuracy of the database maintained by SSA and DHS, and timeliness and accuracy of responses from DHS and SSA to employers; (3) an assessment of the privacy, confidentiality and security of the EECS; (4) an assessment of if the EECS is being implemented in a nondiscriminatory manner; and (5) include recommendations on whether or not the EECS should be modified.
Improved Entry and Exit Data System (§ 403)	♦ Amends the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 to provide for the collection of machine-readable information from a non–U.S. citizen's visa or immigration document upon entry to and exit from the U.S. to determine if he/she is entering or is present unlawfully.
Department of Labor Investigative Authorities (§ 404)	♦ The secretary of Labor may initiate an investigation of any employer that employs H-5A workers if the secretary, or the secretary's designee, certifies that a reasonable cause exists to believe that the employer is in violation of the Act. In determining whether a reasonable cause exists, the secretary shall monitor the Willing Worker – Willing Employer Electronic Job Registry. The secretary shall also monitor the EECS by taking into account whether an employer has a high volume of "tentative nonconfirmations" relative to other comparable employers; whether an employer rarely or never screens new employees; whether the employer's workers rarely or never choose to contest discrepancies in the secondary verification process; or any other indicators that the employer is using the EECS in an illicit, inappropriate, or discriminatory manner. The secretary can also consider any additional evidence the secretary determines appropriate.

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Department of Labor Investigative Authorities, cont. (§ 404)	♦ Absent other evidence of noncompliance by an employer, the secretary shall not initiate an investigation due to an employer's "lack of completeness" or for obvious inaccuracies in hiring and employing H-5A workers.
Protection of Employment Rights (§ 405)	♦ SSA and DHS must establish a process under which an H-5A worker who files a "nonfrivolous" complaint regarding a violation of this Act is allowed to remain and work in the U.S. with another employer.
Increased Fines for Prohibited Behavior (§ 406)	♦ Fines for engaging in unfair immigration-related employment practices such as national origin and citizenship status discrimination, document abuse, and retaliation are increased as follows: (1) civil penalties may range from $500 to $4,000 for each individual discriminated against; (2) employers who have previously violated the law once are subject to a civil penalty ranging from $4,000 to $10,000 for each individual discriminated against; and (3) employers who have previously violated the law more than once are subject to a civil penalty ranging from $6,000 to $20,000 for each individual discriminated against.
TITLE V	**PROMOTING CIRCULAR MIGRATION PATTERNS**
Labor Migration Facilitation Programs (§ 501)	♦ The secretary of State is authorized to enter into an agreement to establish and administer a labor migration facilitation program jointly with the appropriate official of a foreign government whose citizens participate in the H-5A Essential Worker Visa Program. ♦ Elements of such a program may include implementing a program to assist workers in applying for H-5A visas, establishing programs to create economic incentives for H-5A visa–holders to return to their home country, and assisting the foreign government to develop and promote a reintegration program for H-5A visa–holders who return to their home country.
Bilateral Efforts with Mexico to Reduce Migration Pressures and Costs (§ 502)	♦ Makes "findings" regarding migration from Mexico to the U.S., including the importance of remittances from Mexicans in the U.S., barriers to economic growth in Mexico, and measures to promote economic growth in Mexico through the Partnership for Prosperity entered into by the presidents of the U.S. and Mexico in 2001 and the agreement on Security and Prosperity Partnership entered into by the presidents of Mexico and the U.S. and the prime minister of Canada in 2005. ♦ Includes a "Sense of Congress" resolution that the U.S. and Mexico should accelerate the Partnership for Prosperity to help generate economic growth and improve the standard of living in Mexico, which will lead to reduced migration by assisting Mexican efforts to expand economic opportunities in Mexico, strengthen governance, strengthen education, and create incentives for migrants to return to Mexico ♦ Includes a "Sense of Congress" that the U.S. and Mexico should enter into a partnership to examine uncompensated health care costs incurred by the U.S. due to illegal immigration by: increasing health care for the poor in Mexico, assisting Mexico in increasing health care (with an emphasis on prenatal care) along the border, facilitating the return of incapacitated workers to Mexico for care there, and helping Mexico to establish a program with the private sector to cover Mexican temporary workers in the U.S.
TITLE VI	**FAMILY UNITY AND BACKLOG REDUCTION**
Elimination of Existing Backlogs (§ 601)	♦ Provides that visas issued to "immediate relatives" of U.S. citizens will no longer be deducted from the annual worldwide limit of 480,000 family-based visas, making more visas available to the family preference categories. ♦ Allows family-based visas that were authorized but not used in prior years to be added to the 480,000 limit, and eliminates some deductions from this limit that are required by the current law. ♦ Increases the annual worldwide limit on employment-based visas from 140,000 to 290,000, and allows visa numbers not used in prior years to be made available.

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Country Limits (§ 602)	♦ Increases the limits on family-based and employment-based visas that can be charged to one country ("per country limits") from 7% to 10% of the worldwide limits, and increases the limits that can be charged to a dependent area from 2% to 5% of the total.
Allocation of Immigrant Visas (§ 603)	♦ Allocates 10% of family-based visas to the "first preference" for unmarried sons and daughters of U.S. citizens, making approximately 48,000 visas available per year, in place of the current limit of 23,400. ♦ Allocates 50% of family-based visas to the "second preference" for spouses, children, and unmarried sons and daughters of LPRs, with 77% of these visas to be used for spouses and children (the 2A preference). ♦ Allocates 10% of family visas to the "third preference" for married sons and daughters of U.S. citizens, making approximately 48,000 visas available per year, in place of the current limit of 23,400. ♦ Allocates 30% of family visas to the "fourth preference," for brothers and sisters of U.S. citizens, making approximately 144,000 visas available per year, in place of the current limit of 65,000. ♦ Allocates 20% of employment-based visas to the first employment preference, for noncitizens with extraordinary ability, outstanding professors and researchers, and multinational executives and managers. ♦ Allocates 20% of employment visas to the second preference, for noncitizens with advanced degrees or with exceptional ability. ♦ Allocates 35% of employment visas to the third preference, for skilled workers and professionals. ♦ Eliminates the current fourth employment preference, which is for "special immigrants" (an assortment of miscellaneous immigrant categories that includes religious workers, employees of the U.S. government abroad or international organizations, and juveniles dependent on the state); these immigrants would no longer be subject to numerical limits, and visas issued to them would no longer be deducted from the worldwide limit on employment visas. ♦ Allocates 5% of employment visas to *investors,* a category which is made the new fourth preference; investors currently are allocated 7.1% of employment visas, but many of these are not used. ♦ Creates a new fifth preference for unskilled labor that is not temporary or seasonal (formerly a subcategory of the third preference), and allocates 30% of employment visas to this category, increasing the number of available visas for this category from 10,000 per year to 87,000.
Relief for Children and Widows (§ 604)	♦ Expands the definition of "immediate relatives" of U.S. citizens to include children seeking to immigrate along with ("accompanying or following to join") current immediate relative spouses and parents. This would eliminate the need for these children to have separate visa petitions filed on their behalf. ♦ Allows adjustment of status by "surviving spouses, children, and parents" — immigrants who applied for adjustment, including derivative beneficiaries, may have their applications adjudicated without regard to the subsequent death of the petitioner (in immediate relative and family-based cases) or the principal beneficiary (in family, employment, and diversity visa lottery cases).
Amending the Affidavit of Support Requirement (§ 605)	♦ Lowers the level of income and resources that a sponsor must meet from 125% to 100% of federal poverty guidelines.

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Discretionary Authority (§ 606)	♦ Expands the waiver for fraud or misrepresentation to encompass false claims to U.S. citizenship and makes this waiver available to parents as well as spouses, children, sons and daughters of U.S. citizens or LPRs, where the waiver is needed to prevent extreme hardship to the citizen or LPR relative. ♦ Imposes a $2,000 fine for the expanded waiver; the current waiver would still be available without the fine.
Family Unity (§ 607)	♦ Amends the unlawful presence bars to admission to the U.S. (grounds of inadmissibility) by raising the age for which noncitizens' unlawful presence is not counted from age 18 to age 21. ♦ Provides for a waiver of the unlawful presence bars for beneficiaries of visa petitions filed on or before May 12, 2005, and requires noncitizens granted the waiver to pay a $2,000 fine.
TITLE VII	**H-5B NONIMMIGRANTS**
H-5B Nonimmigrants (§ 701)	♦ Undocumented immigrants who were present in the U.S. on the date of introduction of this bill (May 12, 2005), and who have been continuously present in the U.S. since that date, can apply for a temporary visa (H-5B) that is valid for six years. ♦ Spouses and children of undocumented immigrants who receive H-5B visas are eligible to adjust to H-5B status. Abused former spouses and children of H-5B visa–holders are eligible to adjust to H-5B status on their own, provided that the termination of the qualifying relationship was connected to domestic violence, and the former spouse or child has been battered or subjected to extreme cruelty by the H-5B spouse or parent. ♦ Applicants must show that they are "admissible," except that grounds of inadmissibility that relate to undocumented status are not applicable, and most grounds can also be waived, except for security grounds and most criminal grounds. INA sections 240B(d) (the bar to adjustment for noncitizens who fail to timely comply with a voluntary departure order) and 241(a)(5) (reinstatement of removal) would not apply to noncitizens applying for H-5B adjustment. ♦ Applicants must show a history of employment in the U.S. prior to and after the introduction of the bill. This requirement may be met by full-time, part-time, or seasonal employment, or by self-employment. The section outlines what documents serve as evidence of employment in the U.S. Among the conclusive documents, an H-5B applicant may provide documents issued by SSA, the Internal Revenue Service, or any other federal, state, or local government agency, as well as documents from an employer, labor union, day labor center, or other organization that assists workers on employment matters. Workers may also present other documents such as bank records, business records, sworn affidavits from nonrelatives with direct knowledge of the person's work history, or remittance records. ♦ The employment requirement for H-5B visas does not apply to minors (under age 21). Individuals who are over 21 may satisfy this requirement in whole or in part by full-time attendance at an institution of higher education or a secondary school. ♦ H-5B visa applicants also must clear security and law enforcement background checks. ♦ Applicants will have to pay an application fee to DHS, as well as a $1,000 fine (applicants under age 21 will not have to pay the fine) for the temporary 6-year H-5B visa. ♦ The DHS secretary shall set up an appellate authority with the Bureau of Citizenship and Immigration Services to provide for a single level of administrative appellate review of determinations pertaining to applications for H-5B visas. There also shall be judicial review in the federal courts of appeal. Applicants seeking administrative or judicial review shall not be removed from the U.S. until a final decision is rendered. ♦ The information furnished by H-5B applicants shall be confidential. The DHS secretary shall disclose such information to a recognized law enforcement entity only in connection with a criminal investigation or prosecution, or a national security investigation or prosecution, when such information is requested in writing by such an entity. Any person who knowingly uses, publishes, or permits information to be examined in violation of this section shall by fined up to $10,000.

PROVISION	SUMMARY
Adjustment of Status for H-5B Nonimmigrants (§ 702)	♦ In order to qualify for LPR status, workers will have to meet a future work requirement, clear additional security and background checks, pay another fine of $1,000 (only persons over age 21), and an application fee, provide proof that they have paid all income taxes, and satisfy English and U.S. civics requirements. ♦ Applicants who have filed for an H-5B visa shall be granted employment authorization for the period that their adjustment application is pending, shall be granted permission to travel abroad, may not be detained, determined inadmissible or deportable, or removed (deported) unless the applicant becomes ineligible for adjustment of status because of a criminal conviction. ♦ Noncitizens with H-5B status will be prohibited from changing to any other immigrant or nonimmigrant status until the end of the six year duration of the status. ♦ Noncitizens in removal proceedings will be given the opportunity to apply for H-5B adjustment, and this opportunity must also be afforded to individuals apprehended after enactment but before regulations establishing the H-5B adjustment procedure have been promulgated. Noncitizens with final orders of exclusion, deportation, or removal also may apply for H-5B adjustment, and they do not need to file a separate motion to reopen their proceedings. ♦ Spouses and children of H-5B–holders are also eligible to adjust. Abused former spouses and children of H-5B–holders who adjust or who are eligible to adjust are also eligible on their own, provided that the termination of the qualifying relationship was connected to domestic violence and the spouse or child has been battered or subjected to extreme cruelty by the H-5B spouse or parent. ♦ The confidentiality and judicial review sections provided by §701 also apply here.
Aliens Not Subject to Direct Numerical Limitations (§ 703)	♦ Immigrants who adjust from H-5B status to LPR will not be subject to numerical limitations.
Employer Protections (§ 704)	♦ Provides employers with an amnesty against any civil or criminal tax liability relating to the employment of an undocumented worker before that worker obtained work authorization under this bill. ♦ Provides employers who provide workers under this bill with the necessary documentation to establish their work history with an amnesty against any civil or criminal liability for having knowingly hired an undocumented worker.
Authorization of Appropriations (§ 705)	♦ The DHS secretary is authorized funds to carry out Title VII. ♦ Contains a "sense of Congress" that funds should be directly appropriated to DHS in order to facilitate the orderly and timely processing of applications (rather than requiring that such adjudications be funded solely through application fees).
Right to Qualified Representation (§ 801)	♦ Limits the categories of persons who are authorized to represent individuals in an immigration matter before any federal agency. The categories include: (1) attorneys; (2) law students and law graduates, if appearing under supervision and with no remuneration, and permitted to do so by the official before whom they are appearing; (3) any "reputable individual" appearing on an individual basis at the request of the immigrant, without remuneration, permitted to do so by the official before whom he or she is appearing, and who has a preexisting relationship or connection with the immigrant, unless this latter requirement is waived because adequate representation would not otherwise be available and the individual does not regularly engage in immigration practice or preparation; (4) a representative of a recognized organization who has been accredited by the BIA; (5) an accredited official of the immigrant's government (i.e., consular officer) appearing with the consent of the immigrant; and (6) an attorney licensed to practice in the immigrant's country, if the representation concerns matters outside the U.S. and the official before whom he or she is appearing allows such representation.

PROVISION	SUMMARY
TITLE VIII	**PROTECTIONS AGAINST IMMIGRATION FRAUD**
Right to Qualified Representation, cont. (§ 801)	♦ Establishes requirements for Board of Immigration Appeals (BIA) recognition of an organization, which must be a nonprofit religious, charitable, social service, or similar organization; may only make nominal charges to individuals provided assistance; and must have "at its disposal adequate knowledge, information, and experience." Also authorizes the BIA to impose a bond requirement on organizations seeking recognition. The BIA is to approve qualified individuals designated to serve as accredited representatives by recognized organizations if the individuals meet the requirements established by the BIA by regulation. Every three years, accredited representatives must certify their continuing eligibility with the BIA. ♦ Establishes "prohibited acts" subject to civil enforcement if committed by an individual who is not authorized to practice under the statute. These include (1) directly or indirectly providing or offering representation in an immigration matter for compensation or contribution; (2) advertising or soliciting representation in an immigration matter; (3) retaining any compensation for one of the above prohibited acts, whether or not any application was filed; (4) falsely representing directly or indirectly, that the individual is an attorney or supervised by or affiliated with an attorney; or (5) violating any state civil or criminal statute or regulation regarding the provision of representation. Would allow any person with reason to believe he or she has been injured to bring a civil action for enforcement. Remedies may include treble damages, injunctive relief, attorney's fees, and civil penalties of $50,000 for a first violation and $100,000 for a subsequent violation. ♦ The bill does not preempt state and local regulations, except to the extent that they impede the application of the federal requirements. It would define "representation" to include (1) "the appearance, either in person or through the preparation or filing of any brief or other document, paper, application, or petition on behalf of another person or client, before any Federal agency or officer;" and (2) "the study of the facts of a case and the applicable laws, coupled with the giving of advice and auxiliary activities, including the incidental preparation of papers."
TITLE VIII	**PROTECTIONS AGAINST IMMIGRATION FRAUD**
Protection of Witness Testimony (§ 802)	♦ Expands nonimmigrant "U" visa status to include victims of fraud committed by persons not authorized to engage in immigration representation, where the victim has suffered financial, physical, or mental harm. ♦ Increases the number of noncitizens who may be granted "U" status in a fiscal year from 10,000 to 15,000.
TITLE IX	**CIVICS INTEGRATION**
Funding for the Office of Citizenship (§ 901)	♦ Establishes the "United States Citizenship Foundation," a public-private foundation aimed at supporting the Office of Citizenship of U.S. Citizenship and Immigration Services. The Office of Citizenship promotes language and civics training of immigrants seeking naturalize.
Civics Integration Grant Program (§ 902)	♦ Directs DHS to establish a competitive grant program to fund programs that promote knowledge of civics and English as a second language. ♦ Authorizes appropriation of funds needed to carry forth the grant program.

PROVISION	SUMMARY
TITLE X	**PROMOTING ACCESS TO HEALTH CARE**
Federal Reimbursement of Emergency Health Services Furnished to Undocumented Aliens (§ 1001)	♦ Clarifies that health care providers may claim reimbursement for emergency treatment of uninsured H-5A visa–holders and H-5B visa–holders under Section 1011 of the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA). Section 1011 provides limited funding to health care providers to help defray the costs of emergency care to certain uninsured immigrants who are ineligible for public health benefits. ♦ Extends funding authorization under Section 1011, currently set to expire in 2008, for an additional three years, until 2011.
Prohibition against Offset of Certain Medicare and Medicaid Payments (§ 1002)	♦ Clarifies that Section 1011 payments shall not be offset by a reduction in federal Medicaid funding to "disproportionate share hospitals" for the treatment of low-income patients.
Prohibition Against Discrimination (§ 1003)	♦ Prohibits government agencies from discriminating on the basis of employment in a hospital versus a nonhospital against J-1 visa–holders who seek a waiver of the 2-year foreign residency requirement.
Binational Public Health Infrastructure and Health Insurance (§ 1004)	♦ Directs the Dept. of Health and Human Services to contract with the Institute of Medicine of the National Academies to study and issue a report recommending ways to expand or improve binational public health infrastructure and health insurance efforts.
TITLE XI	**MISCELLANEOUS**
Submission to Congress of Information Regarding H-5A Nonimmigrants (§ 1101)	♦ Requires the secretary of State and secretary of DHS to maintain an accurate count of the number of aliens who are issued H-5A visas or otherwise given H-5A status. ♦ Beginning with the first fiscal year after regulations are issued to implement this Act, the secretary of State and secretary of DHS must submit quarterly reports to the Senate and House Judiciary committees on the number of visas issued during the preceding 3-month period. Additionally, annual reports must be submitted that contain the following information: countries of origin, occupation, geographic area of employment in the U.S., and compensation. Information will be compiled based on data reported by employers to the EECS.
H-5B Nonimmigrant Petitioner Account (§ 1102)	♦ Creates a general fund of the Treasury, which is funded by fees and fines collected by the program. Among other things, the Nonimmigrant Petitioner Account will fund the following activities: (1) not more than 1% of the funds will promote public awareness about the H-5B visa program, to protect migrants from fraud, and to combat the unauthorized practice of law under this Act; and (2) 15% will be available to DOL to enforce labor standards in the geographical and occupational areas in which H-5A workers work.
Anti-Discrimination Protections (§ 1103)	♦ Expands the types of immigrants who are protected from national origin and citizenship status to include all LPR's (not just those who apply for naturalization within 6 months of becoming eligible to do so), workers under the Special Agricultural Worker program, immigrants granted temporary residence under or other temporary residents under 245(a)(1), refugees, asylees, and workers granted the new H-5A or H-5B created by this bill.

PROVISION	SUMMARY
Women and Children at Risk of Harm (§ 1104)	♦ Expands the definition of "special immigrant" to include any immigrant outside of the U.S. who is: (1) a minor under 18 who does not have a parent or legal guardian who can provide adequate care, who faces a credible fear of harm related to his or her age, who lacks adequate protection from such harm, and for whom it has been determined to be in his or her best interest to be admitted to the U.S.; and (2) a woman who has a credible fear of harm related to her sex and lacks adequate protection from such harm. ♦ To be eligible, applicants must be referred to a consular, immigration, or other official by a U.S. government agency, an international organization, or a recognized nongovernmental entity designated by the secretary of State. ♦ Prohibits the parent or adopted parent of any child provided special immigrant status from being provided any status under the Immigration and Nationality Act ♦ Prohibits an alien granted special immigrant status from petitioning for a spouse who was represented as missing, deceased, or the source of harm at the time of the alien's application. The secretary of DHS can waive this requirement if the alien can demonstrate that her representations of the spouse were bona fide. ♦ Applicants granted special immigrant status may petition for a sibling or child under the age of 18. ♦ Applicants granted special immigrant status shall be treated as refugees solely for the purposes of refugee resettlement assistance. ♦ Applicants under this section are not subject to the public charge ground of inadmissibility or labor certification and visa requirements. The DHS secretary may waive other grounds of inadmissibility except for those pertaining to controlled substance traffickers, security, and terrorism. ♦ Age is determined by age on the date of referral to a consular officer. ♦ Application fees under this section will be waived for a special immigrant visa, and immigrant visas under this section will not be subject to numerical limitations. Applicants will be provided an expedited adjudication process in which status will be adjudicated not later than 45 days after referral to a consular official. ♦ Those granted special immigrant status may apply adjustment of status to permanent residence not later than 1 year after arrival in the U.S. ♦ All applicants will be subject to criminal, security, and other background checks before being granted special immigrant status, and must be fingerprinted and submit any other biometric data required by the secretary of DHS upon entry to the U.S. All databases containing fingerprints must be searched to determine whether the alien is ineligible to adjust to permanent residence on criminal, security or related grounds. ♦ Immigrants under this section who are determined ineligible for adjustment of status may appeal the decision through the Administrative Appeals Office of the Bureau of Citizenship and Immigration Services. Judicial review of decisions by the AAO is subject to the limitations contained in section 242(a)(2)(B) of the Immigration and Nationality Act. ♦ No later than 1 year after the enactment of this Act, the secretary of DHS shall report to the Senate and House Judiciary committees the following: (1) data related to implementation of this section; (2) data regarding the number of placements of women and children who face credible fear of harm; and (3) any other information that the secretary of DHS deems appropriate. ♦ Funds are authorized to carry out this section.

PROVISION	SUMMARY
Expansion of "S" Visa (§ 1105)	♦ Expands "S" visa availability by providing eligibility to a person (1) whom the DHS secretary and the secretary of State, in consultation with the director of Central Intelligence, determine has information regarding governments or organizations with respect to weapons of mass destruction and delivery systems, if they are at risk of developing or transferring the weapons or systems, and (2) who is willing to supply or has supplied such information to the U.S. government. ♦ If the DHS secretary (in cases involving a criminal organization or enterprise) or the DHS secretary and secretary of State (in cases involving terrorism or weapons of mass destruction) consider it appropriate, the spouse, children and parents of the person may accompany or follow to join him/her. ♦ Increases the annual limit of persons who may be granted an "S" visa from the current 250 to 3,500 persons.
Volunteers (§ 1106)	♦ Exempts certain religious denominations, affiliated religious organizations, and their agents or officers from criminal liability for harboring an undocumented immigrant if the immigrant is a volunteer with the denomination or organization who is not compensated as an employee (room, board, travel and other basic living expenses do not count as "compensation").

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