Comprehensive Immigration Reform for America's Security and Prosperity (CIR ASAP) Act of 2009

TITLE I - BORDER SECURITY, DETENTION, AND ENFORCEMENT

Subtitle A - Border Security:
Subtitle A of Title I assembles a vision of effective and accountable enforcement for the 21st century through maximizing border security by requiring the Secretary of Homeland Security to form a national strategy that is consistent with the progress already made. In order to achieve these goals, oversight and accountability for the Department of Homeland Security is emphasized, especially as they pertain to fiscal appropriations and cost-benefit analyses of operations and programs.

Protecting Our Borders: This subtitle protects United States border cities and communities from violence and crime along the U.S.-Mexico border by:

- Creating a Southern Border Security Task Force that is composed of federal, state, and local law enforcement officers
- Requiring a security plan for land ports of entry at the borders involved in international trade
- Expanding the programs under the Customs-Trade Partnership Against Terrorism that is in accordance to the SAFE Port Act
- Improving the exchange of information between federal agencies on North American Security by a conducting a targeted study of security clearance standards, document integrity, immigration and visa management and coordination, terrorist watch lists and smuggling operations

Effective Enforcement: Subtitle A achieves effective enforcement by improving personnel, assets and technology. This section:

- Supports additional training, oversight and evaluation for agents who are the first face of America at the borders
- Ensures that Customs and Border Protection have sufficient personal equipment like body armor, weapons, and uniforms, and that Customs and Border Protection have sufficient assets such as helicopters, power boats, motor vehicles and other electronic equipment
- Promotes standards for searches of electronic devices and appropriate training for agents in conducting such searches
- Minimizes wasteful spending by developing and studying comprehensive uses of advanced technologies, such as aerial and automated surveillance
- Requires an inventory prior to any increase of personnel assets and technology

Securing Ports of Entry: Our nation's ports of entry are modernized for our economic benefit and security by conducting a study of the infrastructure and operations to identify necessary

improvements and projects to enhance border security and the flow of legitimate commerce and travel. This section:

- Improves infrastructure and recalibrates resources and training to allow for more effective screening of commercial goods and individuals so as to minimize threats to national security at ports of entry
- Increases the number of full-time port of entry inspectors, agricultural specialists, and support staff to improve the timely and safe flow of commercial goods and individuals
- Establishes a demonstration project to test and evaluate new port of entry technologies and also refines existing technologies and operational concepts

Combating Criminal Activity: This subtitle recognizes the role of state law enforcement at the border in combating criminal activity by creating border relief grant programs for Northern and Southern border state, local and tribal law enforcement entities. This section:

- Enables better training and technical assistance for state and local partners that deals with narcotics-related kidnapping, drug trafficking and the interdiction of weapons and currency
- Facilitates information-sharing and collaboration between federal and state partners
- Suspends the Operation Streamline program pending review of the goals, impacts and cost-benefit analyses
- Reimburses Northern and Southern border state and local prosecutors for prosecuting federally initiated drug cases
- Provides expanded resources for Operation Armas Cruzadas and Project Gunrunner to identify, investigate, and prosecute individuals involved in the trafficking and smuggling of firearms between Mexico and the United States.

Improving Partnerships: The importance of border communities as partners and allies are recognized as key in achieving effective enforcement by prioritizing community consultation in developing enforcement policies, border protection strategies and training. This subtitle:

- Establishes the U.S.-Mexico Border Enforcement Commission and a Border Communities Liaison Office to foster and institutionalize community consultation
- Prohibits military involvement in non-emergency border enforcement
- Prioritizes mitigating adverse impacts to federal, tribal, state, local and private lands, waters, wildlife and habitats by promoting cross-agency development of comprehensive monitoring and mitigation of ecological and environmental impacts of border security infrastructure and activity

Combating Human Trafficking: Subtitle A requires the development and implementation of a plan to improve coordination amongst federal and state partners to address human smuggling and migrant deaths. This section calls for additional ICE agents dedicated to combating human smuggling are stationed at ports of entry, requires reporting on migrant deaths, and establishes a study of strategies used at the Southern border to address this problem.

Subtitle B - Detention:

Improving Conditions of Detention: The bill requires DHS to meet minimum requirements to ensure the humane treatment of detainees. Minimum requirements include:

- Adequate medical and mental health screenings, evaluations, medically necessary treatment, and continuing care

- A review process for medical treatment requests and complete and confidential medical records
- Reasonable access to telephones, affordable rates, and privacy protections for calls
- Protections from sexual abuse, care for victims, and reports and investigations of abuse
- Protection from transfers that fail to consider health and access to counsel

To ensure compliance with minimum detention conditions, the bill requires rulemaking and enforcement. An independent immigration detention commission is established to investigate and report on compliance. DHS must report the death of a detainee within 48 hours, and report annually to Congress on the circumstances of all deaths in detention.

Protecting U.S. Citizens, Lawfully Present Immigrants, Vulnerable Populations, and Communities: This section increases screening and protections during immigration-related enforcement activities for U.S. citizens, Legal Permanent Residents, others lawfully present in the U.S., and vulnerable populations. Social service agencies, translators, and legal services must be available during enforcement activities. DHS will be required to:

- Issue regulations prohibiting apprehensions at enumerated community, educational, and religious locations
- Provide access to legal orientation programs and access to counsel during enforcement activities and for disabled individuals unable to fully participate in removal proceedings
- Give timely notice and service of immigration charges, as well as timely bond hearings if detained more than 48 hours

This section increases protections for individuals subject to immigration detainers, limits the use of detainers to confirmed removable aliens, and requires DHS to collect data and report on detainer use. The unnecessary detention of refugees is prohibited. DHS is required to report to Congress on the impact of immigration-related enforcement activities.

Improving Secure Alternative to Detention Programs: Criteria are established to guide detention and release decisions and require release for vulnerable populations. Detention decisions must be in writing, served upon detainees, and are subject to redetermination by an immigration judge.

Protecting Family Unity: Families with children may not be separated except in exceptional circumstances where alternatives to detention are not available. Residential, non-penal facilities are developed for any necessary family detention with appropriate protections for children and parental rights. The bill includes safeguards for families and children during immigration-related enforcement actions by:

- Improving child welfare services for children separated from parents and guardians who are in immigration detention or have been removed
- Requiring training for federal and state personnel who interact with separated children and for staff at immigration detention facilities on parental rights, humanitarian, and due process protections
- Ensuring protections for detained parents, guardians, and caregivers in immigration detention to promote access to children, family courts, child welfare services, and consular officials

Protecting Unaccompanied Alien Children: Training is required for DHS employees who encounter unaccompanied alien children. Upon apprehension of an unaccompanied alien child, immediate notice is required by DHS or ORR and transfer to ORR custody within 24 hours.

Subtitle C - Enforcement:

Protecting workers: Provides temporary visas and work authorization for detained workers when they have been retaliated against by their employer for asserting their labor rights and they agree to pursue labor claims against their employer. Also expands U visas to provide for whistleblower protections with regard to worker exploitation, civil rights violations and retaliation for exercising labor rights.

Address Reporting: Clarifies address reporting requirements

Ending Discrimination: Preempts any state or local law that discriminates against an individual based on immigration status or imposes sanctions on any individual or entity based on the immigration status of its clients, employees or tenants

Repeals the 287(g) program: Repeals the 287(g) program and clarifies that the authority to enforce federal immigration law lies solely with the federal government

ICE Ombudsman: Establishes an Immigration and Customs Enforcement (ICE) Ombudsman

Asylum: Eliminates the arbitrary 1-year bar to applying for asylum

Restores federal jurisdiction: Restores the federal courts of their jurisdiction to review decisions and practices of DHS thereby also restoring the historic role that the courts play in reviewing agency actions

TITLE II - EMPLOYMENT VERIFICATION

This section sets up an employment verification system for employers to verify each new hire's authorization to work. The new system will eventually apply to all workers and all new hires, and will be rolled out in phases, beginning with critical infrastructure employers and large employers. The employment verification system:

- Creates significant civil penalties for employers who do not comply with the requirements under the new system
- Establishes serious criminal penalties for knowingly hiring unauthorized aliens
- Debars employers who repeatedly violate these provisions from government contracts, grants, and agreements
- Includes privacy safeguards by limiting the data that can be collected and stored in the database and requiring the agencies to develop the system with maximum security and privacy protections
- Requires the agencies to evaluate impact of system from a privacy perspective and complete privacy impact statements

- Prohibits creation of a national identification card
- Includes anti-discrimination provisions. Forbids employers from using the new system to discriminate against applicants or employees on the basis of nationality. Prohibits employers from terminating employment due to a tentative non-confirmation, using the system to screen employees prior to offering employment, or using the system selectively
- Allows an individual to register with the Social Security Administration and acquire a PIN that would allow them electronic access to their file in the system, update their information, and lock their file for purposes of employment

TITLE III - VISA REFORMS

Backlog Reduction and Numerical Limit Reforms:

Reduction of existing backlogs: Permits the "recapture" of unused employment-based visas and family-sponsored visas from fiscal years 1992-2008 and allows future unused visa numbers to roll over to next fiscal year. Immediate relatives are exempted from the annual cap on the number of immigrant visas. This section increases the percentage limit of visas which may be issued yearly to a single country.

Promotion of Family Unity: To recognize family unity principles and facilitate backlog reduction, reclassifies spouses and children of lawful permanent residents as immediate relatives. The government is given greater discretionary authority to waive unlawful presence bars to reunite families upon a demonstration of hardship for applicant's U.S. citizen or lawful permanent resident family members.

Sons and daughters of Filipino World War II veterans: Exempts the sons and daughters of Filipino WWII veterans from the annual numerical limitations.

Immigrants with Advanced Skills Exempt from Visa Cap: Exempts several categories of highly skilled workers from the employment-based immigrant visa cap.

Retaining Workers Subject to the Green Card Backlog: Current nonimmigrant skilled workers whose employer has petitioned for an employment-based green card on their behalf and their dependents will be permitted to file an application for adjustment of status, regardless of whether a visa is immediately available. An applicant under this section must pay a supplemental $500 fee, to be used by DHS for backlog reduction and clearing security background check delays. The Secretary shall provide employment and travel authorization in 3-year increments while the application is pending.

Protection of Children and Families:

Relief for Orphans and Widows: Ensures that surviving spouses and children applying for adjustment of status or naturalization, including spouses and children of asylees and refugees, retain eligibility for waivers and other considerations that would have been available to them at the time of the petitioner's death.

Reform of Cancellation of Removal: Permits immigration judges greater discretion in determining eligibility requirements for long-term lawful permanent residents seeking

cancellation of removal. Eliminates prohibitions on including time spent in the United States after becoming inadmissible or being placed in removal proceedings as counting towards continuous presence requirements for cancellation of removal.

Protection for Refugees, Parolees or Asylees: Prohibits the removal of any individual who fled his or her homeland for fear of persecution before the age of twelve and was subsequently admitted into the United States as a parolee or refugee or was granted asylum in the U.S.

Enhanced Protections for Children: Revises current law to ensure that the children of fiancés of United States citizens will be protected from aging out of eligibility to adjust to conditional resident status by requiring that eligibility determinations are based on the child's age at the time the U.S. citizen files a petition for classifying the child's parent as a fiancé or spouse. Eliminates the requirement that stepchildren must have been under the age of 18 at the time the qualifying marriage took place in order to be classified as a child for purposes of immigration eligibility.

Limits on Removal for Parents of U.S. Citizen Children: Permits an immigration judge to decline to order the removal of the parent of U.S. citizen child if the judge determines that removal would not be in the child's best interests and the parent is not subject to removal based on national security, terrorism or trafficking grounds.

Determinations under the Haitian Refugee Immigration Fairness Act of 1998: This section amends the Haitian Refugee Immigration Fairness Act of 1998 (HRIFA) to preserve eligibility for children of applicants based on their age on the date of enactment of HRIFA and permits new applications and motions to reopen on that basis.

Affidavit of Support: Revises the eligibility requirements for sponsorship of immigrants by reducing the level of support required from 125% of poverty level to 100% of poverty level.

Return of Talent Program: Permits lawful permanent residents to temporarily return to their home country to assist in post-conflict or natural disaster reconstruction activities, for up to two years without losing credit towards time as a continuous resident of the U.S. for purposes of applying for naturalization.

Humanitarian Visa Program to Prevent Unauthorized Migration (PUM Visa):
Prevent Unauthorized Migration Visa (PUM Visa) Creates a stop-gap new visa program that will provide for safe, humanitarian migration during the three-year transition period before the implementation of recommendations made by the new Labor Commission.

- One hundred thousand PUM visas will be made available annually, for three years, to persons from sending countries of unauthorized migration to the United States to be distributed on a percentage basis through a lottery system.
- Individuals may apply to the lottery if they are not present in the United States at the time of filing, do not have other family or employment-based means to immigration, submit to criminal background checks, and have completed less than a 4-year college degree program.
- Individuals awarded visas will be admitted to the United States as conditional residents and may petition to remove the condition after three years upon showing they have good moral character, pass all required background and security checks, comply with all tax requirements

and other factors, including payment of a $500 fee that will be used to fund security and employment programs.

TITLE IV – EARNED LEGALIZATION PROGRAM FOR THE UNDOCUMENTED

Visa Program for Qualified Undocumented Workers: Creates a program providing conditional nonimmigrant status for undocumented immigrants (and their spouses and children) in the U.S., which is valid for six years.

Features of the Conditional Nonimmigrant Program:
- Provides conditional nonimmigrant visa applicants with work and travel authorization and protection from removal
- Bars related to undocumented status will be waived (security and criminal bars cannot be waived)
- Contains provisions for administrative and judicial review of denied applications

Requirements for Conditional Nonimmigrant Status: The alien must:
- Establish presence in the U.S. on the day of introduction, and continuously thereafter
- At time of registration, attests to contributions to the U.S. through employment, education, military service, or other volunteer/community service (with exemptions for minors, persons with disabilities, the elderly, or other unusual circumstances)
- Complete criminal and security background checks
- Pay a $500 fine plus necessary application fees (fine exemption for children and certain immigrants who initially entered the U.S. before the age of 16)
- The individual shall be ineligible to receive a visa as a result of a serious criminal conviction, persecution of another person or reasonable grounds for believing that the alien committed a particularly serious crime abroad
- There is a penalty of up to five years imprisonment for anyone who willfully falsifies information in an application for conditional nonimmigrant status

Adjustment of Status to LPR: Provides qualified conditional nonimmigrants and their spouses and children with an opportunity to apply for lawful permanent resident status (green card) and eventual citizenship.

Features of the Earned Adjustment of Status Program:
- No green cards may be issued under this program earlier than six years after the date of enactment unless existing immigrant backlogs have been cleared before that time
- The Department of State and DHS are required to provide any requesting law enforcement entity with information furnished on an application in connection with a criminal or national security investigation or prosecution
- New penalties for making false statements in an application for earned citizenship are created
- Immigrants who adjust from a conditional nonimmigrant visa (including dependents) to lawful permanent resident status shall not be counted against the worldwide numerical visa caps

- Those appealing decisions associated with the application for adjustment to permanent status have access to a defined administrative and judicial process

Special Rule for Persons Brought to the United States Before the Age of 16: In order to simplify processing of applicants under CIR ASAP, those persons ordinarily covered under the DREAM Act will apply for status through the same program outlined above, with the following special features:

- No fines for persons who were brought to the United States before the age of 16, have resided in the U.S. for at least five years, and were 35 years of age or less
- Such persons will be eligible for accelerated LPR status upon graduation from high school, and completion of two years of college, military service, or employment. Persons granted LPR status under this provision will be eligible for naturalization three years after the date LPR status is granted
- Graduation from a U.S. high school or receipt of an equivalency degree will meet the English proficiency requirement
- Individual states permitted to determine residency requirements for in-state tuition purposes

Requirements for Earned Adjustment: The applicant must:

- Demonstrate contribution to the United States through employment, education, military service, or voluntary or community service, where applicable
- Complete criminal and security background checks
- Establish registration under the Selective Service (if applicable)
- Meet English and civics requirements
- Undergo a medical examination
- Pay all taxes
- Show admissibility to the U.S

Other Provisions in Title IV:

- AgJOBS Act of 2009

TITLE V - STRENGTHENING U.S. ECONOMY AND WORKFORCE

Title V of CIR ASAP strengthens America's workforce by reforming the badly-flawed H-1B, H-2B and L-1 visa programs and establishes a Commission on Immigration and Labor Markets to provide researched, unbiased, accurate recommendations for future flows of workers. It also permanently reauthorizes the EB-5 visa program and establishes stricter requirements for employers and recruiters of foreign workers. Title V additionally establishes the American Worker Recruit and Match System which will match qualified individuals with job opportunities in fields that traditionally have relied on unauthorized labor. Furthermore, this title establishes the Security and Prosperity Account which directs funds raised from fines in the earned legalization program to fortify America's workforce, integrate new Americans and safeguard our borders.

Commission on Immigration and Labor Markets: Title V establishes a new independent federal agency known as the Commission on Immigration and Labor Markets. The Commission will:

- Establish employment based-immigration policies that promote economic growth and competitiveness while minimizing job displacement, wage depression and unauthorized employment
- Create and implement a policy-focused research agenda on the economic impact of immigration on multiple levels
- Collect and analyze information on employment-based immigration and publish the data and analysis
- Recommend to Congress and the President appropriate methods for determining the levels of employment-based immigration and assessing the effects of such immigration as well as the numerical levels and characteristics of procedures for future flows of workers to be admitted into the United States

Security and Prosperity Account: The Security and Prosperity Account is established in Title V to fund efforts including:

- Grants to states for adult and dislocated worker employment and training activities
- Funding for the Electronic Employment Verification System to ensure that all individuals working in the U.S. are authorized to do so
- Funding for the Commission on Immigration and Labor Markets to provide sound, researched and objective employment based immigration policy
- Funds to the dislocated workers assistance national reserve
- Establishment of AWRMS programs and funds for educational activities
- Funding to reduce the USCIS visa backlog to ensure a timely and reliable process for all individuals applying for visas and further the integration of new Americans with programs that, for example, facilitate citizenship for legal permanent resident students and create citizenship promotion services
- Funding for border security, detention and enforcement activities

American Worker Recruit and Match System: Title V establishes the American Worker Recruit and Match System (AWRMS), which is an internet-based program that is set up by each State Workforce Agency (SWA) to be incorporated into current Web-based job search engines. AWRMS is a searchable database that allows employers to post job opportunities in fields that have traditionally relied on unauthorized labor. In addition, individuals can post their employment profiles and AWRMS will match employers with qualified individuals.

Protecting Workers: Title V protects foreign workers from exploitation and abuse by ensuring that each prospective employee is provided a written description of the terms of their employment which may not knowingly include any misleading or false information. In addition, each employer must provide to the Secretary of Labor the identity of all recruiters working on their behalf and any possible violations committed by a recruiter. An employer will be held responsible for the actions of a recruiter and may be subject to civil penalties.

H-1B visa program: The current H-1B visa program does not adequately protect American or H-1B workers. Title V reforms the H-1B visa program to:

- Ensure that before an employer can hire an H-1B worker, the employer must meet strict requirements for the recruitment of American workers
- Authorize the Department of Labor (DOL) to initiate investigations into possible fraud and abuse in the absence of a formal complaint and/or the Secretary's approval
- Increase penalties for violations
- Authorize the DOL to conduct annual audits of employers that rely heavily on the H-1B program

L-1 visa program: The L-1 visa program is currently vulnerable to fraud and abuse. CIR ASAP authorizes the Secretary of Homeland Security to audit L-1 visa participants. Penalties will be assessed for violations of the provisions of the L-1 visa program.

H-2B visa program: The H-2B visa program is reformed to prevent the exploitation of H-2B non-immigrant workers and the depression of wages as well as other workplace abuses committed by exploitative employers. Reforms to the program:
- Include stricter requirements for recruitment of American workers
- Prevent employers from participating in the program if they have conducted a mass lay-off in the past year
- Include strengthened worker protections

EB-5 Visa program: The EB-5 Visa program is permanently reauthorized within Title V with an increase in available visas to 10,000. It also allows for an expedited processing of petitions for a fee of $2,500. The definition of Targeted Employment Area (TEA) is expanded to include:
- Rural areas,
- High-unemployment areas
- Counties with a 20 percent or more population decrease since 1970
- Areas within the boundaries of state or federal economic development incentive programs
- Areas designated as TEAs by a state agency authorized by the Governor
- Areas designated as TEAs during the two year period before visa application

In addition, Title V requires the Secretary of Homeland Security to study and report on the current job creation counting methodology and how to promote the employment creation program to overseas investors. Lastly it creates a new category of job-producing foreigners eligible for visas: venture capitalist seeking a Founder's visa.

TITLE VI - INTEGRATION OF NEW AMERICANS

Immigration Fees: Immigration fees have risen steeply in the past decade. Title VI will ensure that future fee increase requests receive closer scrutiny than provided by the largely perfunctory regulatory public comment process. Title VI incorporates and expands on provisions of the Citizenship Promotion Act of 2007 to make citizenship more accessible and affordable. This title:
- Provides for greater transparency for immigration application fees and encourages a uniform process to submit fee waiver applications
- Provides for uniform administration of the naturalization exam
- Promotes citizenship of the elderly by adjusting the age requirements for English language exemption

Improving the Naturalization Process: The process for naturalization is lengthy and difficult to navigate. Title VI creates reforms that encourage citizenship among immigrant communities. This section requires timely response on background checks and evaluates their efficiency. In addition, this title includes a grant program for community based organizations to promote and help immigrants prepare for citizenship. These grants in support of naturalization efforts will assist legal permanent residents with:

- English language and citizenship classes
- Legal assistance
- Community outreach activities
- Assisting aliens with applications for citizenship

Integration Grant Programs:
Title VI includes a grant program for education, training and support efforts relating to the provisions of the CIR ASAP Act, including protections from immigration fraud and the availability of benefits provided by the act. Provisions ensure that to the extent possible, the nonprofit community organizations receiving grants serve geographically diverse and ethnically diverse locations.

USCIS Grant Program: Title VI establishes a grant program within USCIS that provides funding to community-based organizations, including community-based legal service organizations, as appropriate, to develop and implement programs to assist eligible applicants for naturalization. Grants provided for in Title VI will be funded through fees and fines deposited in the Security and Prosperity Account.

Initial Entry, Adjustment, and Citizenship Assistant Grant Program: Title VI establishes the Initial Entry, Adjustment and Citizenship Assistance Grant Program. IEACA grants will be awarded to community-based organizations for the design and implementation of programs to provide the following services:

- Assistance and instruction, including legal assistance, to aliens making initial application for conditional nonimmigrant or conditional nonimmigrant dependent classification
- Assistance and instruction, including legal assistance, to aliens seeking to adjust their status
- Assistance and instruction to applicants on the rights and responsibilities of US citizenship and English language proficiency

Improving Naturalization for Legal Permanent Residents: Facilitates citizenship among Legal Permanent Resident students that want to naturalize. Legal Permanent Resident students will be deemed to have satisfied the language and civics requirements for naturalization if they are able to demonstrate they graduated high school after completing grades 6 through 12 in the United States and the curriculum reflects knowledge of U.S. history, Government, and civics.

Strengthening Communities: Title VI strengthens and unites communities by creating incentives for English language acquisition programs. Creates tax credits for teachers in limited English proficient schools. Provides employers with a tax credit for qualified English language education programs. Authorizes states to form State New American Councils comprised of 15-19 individuals from state and local government, business and community organizations.

Celebrating Citizenship: Title VI celebrates the citizenship of new Americans and encourages these individuals to integrate into their communities. It provides for the availability of funds to the Director of USCIS or to approved public or private nonprofit entities to support public ceremonies for administering oaths of allegiance to naturalizing legal immigrants. Independence Day naturalization ceremonies include appropriate outreach, ceremonial, and celebratory activities. This program shall be funded through fees and fines deposited in the Security and Prosperity Account.