116TH CONGRESS
2D Session

H. R._____

To reform the process by which temporary nonagricultural workers’ visas are allocated, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. CASTRO of Texas introduced the following bill; which was referred to the Committee on ___________________

A BILL

To reform the process by which temporary nonagricultural workers’ visas are allocated, and for other purposes.

1 Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

2 SECTION 1. SHORT TITLE.

3 This Act may be cited as the “Seasonal Worker Solidarity Act of 2020”.

4 SEC. 2. H–2B WORKERS.

5 (a) In General.—The Immigration and Nationality Act (8 U.S.C. 1151 et seq.) is amended by inserting after section 218 the following:

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“SEC. 218A. ADMISSION OF H–2B WORKERS.

“(a) NATIONWIDE RECRUITMENT.—

“(1) IN GENERAL.—The Secretary of Labor shall require employers to conduct recruitment activities nationwide and consider, without prejudice, applications from workers and labor organizations in any region, including all of the States and territories of the United States, consistent with the requirements in section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act. The Secretary shall coordinate with State Workforce Agencies to conduct concerted recruitment in any State or metropolitan statistical areas designated by the Secretary of Labor as a Labor Surplus Area.

“(2) DISASTER RESPONSE WORKERS.—

“(A) DISASTER RESPONSE PRIORITY FOR DISPLACED WORKERS.—Any worker authorized to work in the United States who is displaced as a result of a local, State, or nationally declared disaster shall be given priority for employment as a temporary nonagricultural worker.

“(B) SUPPLEMENTAL INFORMATION.—Employers seeking to hire temporary non-agricultural workers for disaster response shall submit to the Secretary of Labor a supple-
mental worksheet detailing the health and safety training plan and equipment to be provided to temporary nonagricultural workers to ensure health and safety of such workers in impacted geographical areas.

“(C) PLAN APPROVAL.—The Secretary of Labor may not issue a labor certification unless the Secretary approves the plan to adequately protect workers in declared disaster areas submitted under this paragraph.

“(b) ADVISORY COMMITTEE.—In accordance with the provisions of the Federal Advisory Committee Act, the Secretary of Labor shall establish an advisory committee not later than 5 months after the date of enactment of the Seasonal Worker Solidarity Act of 2020, whose membership shall consist of representatives from the Department of Labor, State Workforce Agencies, and labor organizations, and organizations advocating for workers in relevant industries. The advisory committee shall meet on a periodic basis and shall advise the Secretary of Labor on issues related to improving recruitment of United States workers and the development, testing, and implementation of the recruitment platform described in subsection (e) and the prevention of discrimination in the recruitment, hiring, and treatment of temporary nonagricultural work-
ers. Not later than 18 months after the date on which the advisory committee hold its initial meeting, the committee shall submit to the Secretary of Labor and Congress a report on issues related to improving recruitment of United States workers and the development, testing, and implementation of the recruitment platform and the prevention of discrimination in the recruitment, hiring, and treatment of temporary nonagricultural workers.

“(e) Recruitment Platform.—

“(1) Creation.—Not later than 90 days after the date of enactment of the Seasonal Worker Solidarity Act of 2020, the Secretary of Labor shall create and make available on the Department of Labor website a centralized, national electronic seasonal and temporary job search and worker recruitment platform (in this section referred to as the ‘recruitment platform’) for employment opportunities for which employers are seeking authorization to hire H–2B workers.

“(2) Purpose.—The recruitment platform shall allow applicants to submit applications for available positions electronically to—

“(A) facilitate the nationwide recruitment of United States workers; and
“(B) provide transparency about United States employment opportunities for job seekers outside of the United States.

“(3) NOTIFICATION.—The Secretary of Labor shall create a mechanism by which the public, job seekers, State Workforce Agencies, labor unions, and other organizations are able to receive electronic notification within 24 hours when job orders in relevant industries and regions are posted to the website.

“(4) REGISTRATION.—An employer seeking to recruit temporary nonagricultural workers shall register on the recruitment platform and job orders on the recruitment platform may only be posted by such registered employers.

“(5) ARCHIVES.—Job orders shall remain publicly accessible for a period of at least 5 years after the original posting date.

“(d) PUBLIC RESPONSE.—The Secretary of Labor, in consultation with the Secretary of Homeland Security, shall develop a streamlined process for labor organizations, and organizations advocating for workers in relevant industries, to publicly challenge an employer’s claim of temporary need, wage rates, job requirements posted to
the recruitment platform, or any other employment issue related to temporary nonagricultural workers.

“(e) EMPLOYER CERTIFICATION.—When registering on the recruitment platform, an employer shall certify compliance with each of the following:

“(1) SAFE AND FAIR WORKPLACE.—

“(A) IN GENERAL.—The employer shall, in addition to all other certifications required by the Secretary of Labor meet the following requirements:

“(i) LEGAL COMPLIANCE.—The employer shall comply with Federal law and any applicable State law, or local law or ordinance, and recognize any labor organization that provides evidence of support from a majority of the workforce.

“(ii) WORKERS’ COMPENSATION.—

The employer shall provide workers’ compensation insurance coverage in compliance with State law covering injury and disease arising out of and in the course of the worker’s employment. If the type of employment for which the certification is sought is not covered by or is exempt from the State’s workers’ compensation law, the
employer shall provide, at no cost to the worker, insurance covering injury and disease arising out of and in the course of the worker’s employment that shall provide benefits at least equal to those provided under the State workers’ compensation law for other comparable employment.

“(iii) CONDITIONS OF EMPLOYMENT.—The employer shall offer the same terms and conditions of employment whether the workers hired to fill posted positions are recruited domestically or from abroad.

“(B) PENALTY.—The National Labor Relations Board shall, within 2 weeks of employer registration, review relevant records to verify employer compliance with this paragraph over the previous 5 year period. An employer who has failed to comply shall be subject to a 2-year suspension from the H–2B program and the use of the recruitment platform.

“(2) POSTING.—

“(A) IN GENERAL.—The employer shall post job orders on the recruitment platform for 60 days before applying for an H–2B labor cer-
tification. Any United States applicant who applies for a job on the recruitment platform may only be rejected for job-related reasons and those found by the Secretary of Labor to have been rejected on any other basis shall be hired. Each employer shall retain records of all hired workers and rejected applicants for 5 years.

“(B) LANGUAGE.—The following are requirements with respect to job order postings on the recruitment platform:

“(i) In the case of any employer whose workforce is comprised of a significant portion of workers who are not literate in English, such employer shall provide the job order posting in a language in which the employees are literate.

“(ii) The Secretary of Labor shall post all job orders prepared by employers in English, Spanish, and such other language as the Secretary may determine necessary on their website.

“(C) FORMAT.—Each job order shall be posted in a standard format, developed by the Secretary of Labor, which shall include such
terms and conditions of employment as the Secretary may require, including—

“(i) the States and locations in which workers will be employed and information that is searchable and shareable in an electronic format;

“(ii) wages, hours, working conditions, worksite, and other benefits of employment that the Secretary of Labor, in consultation with State Workforce Agencies, determines are in compliance with requirements of Federal, State, and local law; and

“(iii) official forms submitted by prospective H–2B employers to secure labor certification and prevailing wage determinations, including any approvals thereof by the Secretary of Labor.

“(3) UNION APPLICANTS.—The employer shall consider applicants or groups of applicants put forward by United States labor organizations and organizations advocating for workers in relevant industries that have qualified members available for posted job orders. The employer shall recognize the union training credentials of members of United States labor unions who come from abroad and such
members shall be eligible for H–2B visas that are exempt from annual numerical limitations.

“(4) WORKER QUALIFICATIONS.—

“(A) IN GENERAL.—The employer shall hire workers who meet the minimum qualifications for a position, and shall not impose unnecessary experience or educational requirements of applicants, and shall not require criminal background checks, unless otherwise required by law for the specific position.

“(B) POSITIONS REQUIRING LITTLE OR NO EXPERIENCE.—In the case that the Secretary of Labor determines that a position is in an Occupational Information Network Job Zone One occupation requiring little or no prior training or experience, the Secretary shall not permit an employer to require prior training or experience for the position.

“(5) WAGE RATES.—The salaries paid to H–2B workers shall be set at rates that do not adversely affect the local or national average wages in the occupations of employment or otherwise negatively impact the working conditions and benefits of workers in the United States who are similarly employed.
“(6) MINIMUM WORK HOURS.—The employer shall guarantee that temporary nonagricultural workers are paid for at least the number of hours stipulated on the job order, and not less than 40 hours per week.

“(7) TRANSPORTATION AND HOUSING.—The employer shall provide transportation and offer housing for any temporary nonagricultural workers hired to fill posted job orders as follows:

“(A) TRANSPORTATION.—

“(i) TRANSPORTATION TO AND FROM PLACE OF EMPLOYMENT.—The employer shall provide transportation and subsistence for each temporary nonagricultural worker to travel from the worker’s place of permanent residence to the place of employment and back at no cost to the worker.

“(ii) TRANSPORTATION BETWEEN LIVING QUARTERS AND WORKSITE.—The employer shall provide daily round-trip transportation between living quarters and worksite at no cost to workers, whether or not the housing is employer provided.
“(iii) Employer-provided transportation.—All employer-provided transportation shall comply with all applicable Federal, State, or local laws and regulations, and shall meet all relevant transportation safety standards, driver licensure, and vehicle insurance requirements.

“(iv) Employer-reimbursed transportation.—Notwithstanding clauses (i), (ii), and (iii), in lieu of providing transportation to a temporary nonagricultural worker, an employer may reimburse a such worker for transportation if such reimbursement is made not later than 5 business days after receipt of written documentation of the worker’s transportation costs.

“(B) Housing.—

“(i) Obligation to provide housing.—The employer shall provide housing at no cost to temporary nonagricultural workers who seek such housing and H-2B workers. Housing shall meet the following criteria:
“(I) **HOUSING STANDARDS.**— Employer-provided housing may be owned or rented by the employer and shall meet Federal temporary housing regulations and comply with all other applicable Federal, State, or local laws and regulations and meet all relevant Occupational Safety and Health Administration standards. The employer shall retain for at least 5 years any records documenting that the employer-provided housing is compliant with such laws, regulations, and standards.

“(II) **HOUSING COSTS AND FEES.**—In a case in which the employer provides rented housing, housing fees shall be paid according to the following criteria:

“(aa) **RENTAL COSTS AND FEES.**—Any costs, including charges and fees for rental housing, shall be paid by the employer to the owner or operator of the housing.
Neither employers nor landlords may charge workers for bedding, furnishings, or other similar incidentals related to housing. An employer may require workers to reimburse the employer for damage for which they are responsible and which is not the result of normal wear and tear related to habitation.

“If the employer secures public housing for temporary nonagricultural workers under the auspices of a local or State government, the employer shall pay any charges normally required for use of the public housing units directly to the housing’s management.

Family housing shall be made available to spouses and dependents of temporary non-agricultural workers who request it, and
employers should inform temporary non-agricultural workers at the time of hire of the right to make such a request.

“(8) RECORDS.—The employer shall maintain certified payroll records, which shall be made available to the Department of Labor, workers and the designees of such workers upon request. Such records shall not be subject to the Freedom of Information Act and shall be maintained by an employer for five calendar years after the last date of employment. The employer shall issue pay statements in both a paper and electronic format to workers that clearly enumerate wage rates, hours, and all deductions and identify the legal name, business address, and Federal employer identification number of the employer. H–2B wages shall be paid by the employer who submits the labor certification application.

“(9) DIRECT EMPLOYMENT.—A registered employer shall employ temporary nonagricultural workers directly and not place H–2B workers under the direct or indirect supervision of a third party employer, agency, or contractor. Subcontracting of H–2B workers is prohibited.

“(10) HIRING H–2B WORKERS.—Before hiring H–2B workers and after at least 60 days of domes-
tic recruitment on the national recruitment platform, the employer shall—

“(A) attest to a shortage of workers in the local surrounding areas and across the United States; and

“(B) at the time of recruitment and upon hire, provide H–2B workers with a written notice, in a language that the worker understands, that identifies the job classification, describes duties, compensation, hours, all relevant terms of employment, housing, and transportation and information on applicable labor and employment rights, including the right to form or join a labor organization under the National Labor Relations Act.

“(11) SUPPLY CHAIN DISCLOSURE AND REQUIREMENTS.—

“(A) IN GENERAL.—The employer shall disclose the entire recruitment supply chain, including any recruiters or foreign or domestic labor contractors and subagent local recruiters involved in securing workers for job postings and any funding sources for the work to be provided, including both public and private contracts.
“(B) JOINT AND SEVERAL LIABILITY.—

The employer shall be jointly and severally liable for the actions of any recruiters or foreign or domestic labor contractors involved in or acting on behalf of the employer in securing workers for job postings.

“(C) WRITTEN VERIFICATIONS.—The employer shall obtain and submit to the Secretary of Labor written certifications that any and all recruiters or foreign or domestic labor contractors in the supply chain shall—

“(i) engage in non-discriminatory hiring practices;

“(ii) at the time of recruitment and in a language the workers understand, provide workers with posted job orders and terms and conditions of employment;

“(iii) not charge fees of any kind to any applicant or job seeker, including in the form of loans, deductions, or kickbacks; and

“(iv) not engage in forms of retaliation, including blacklisting.

“(f) PUBLISHED ATTESTATIONS.—Employer attestations and data disclosures made pursuant to this section
shall be made publicly available on the national job search
and worker recruitment platform immediately upon being
entered into the system.

“(g) NON-DISCRIMINATION AND WAGE EQUITY.—

“(1) APPLICATION REVIEW.—

“(A) IN GENERAL.—In order to prevent adverse effects on the wages of United States workers, employers shall offer and pay United States workers and H–2B workers the highest of—

“(i) the mean of the wages of workers similarly employed in the area of intended employment using the wage component of the Bureau of Labor Statistics Occupational Employment Statistics Survey;

“(ii) 200 percent of the Federal minimum wage;

“(iii) any collectively bargained wage and fringe rates for the broad occupational category within each State of employment;

“(iv) wage and fringe benefit rates applicable to similar construction, alteration, or repair work in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of
title 40, United States Code (known as the Davis-Bacon Act); and

“(v) any wage and fringe benefit rates for the occupation established by chapter 67 of title 41 (known as the McNamara-O’Hara Service Contract of 1965).

“(B) OCCUPATION DESIGNATION.—For purposes of this paragraph, the term ‘occupation’ does not include an occupation that is a subset of a Standard Occupational Classification or a Department of Labor approved Occupational Information Network subclassification if such subset or subclassification would result in an average wage that is lower than the average wage in the Standard Occupational Classification from which the subset or subclassification is derived.

“(2) WAGE SURVEYS.—The Secretary of Labor may only consider Federal data sources and may not permit the use of private wage surveys or wage surveys conducted by State or local public agencies or private entities to establish the mean wage for an occupation under paragraph (1)(A)(i).
“(3) **Labor Certifications.**—Prior to approving a labor certification, the Secretary of Labor shall—

“(A) cross reference each employer applicant with relevant Department of Labor databases, including the Equal Employment Opportunity Commission database, and National Labor Relations Board databases to determine whether a labor dispute or investigation is ongoing; and

“(B) in the event of an ongoing labor dispute or investigation, implement supplemental measures to prevent abuses of temporary non-agricultural workers, including onsite visits, interviewing workers, requiring additional safety measures, and denying certifications when appropriate.

“(4) **Audit.**—Every fiscal year, the Secretary of Labor shall conduct random audits of not less than 5 percent of all H–2B employers and not less than 50 percent of all employers employing more than 50 H–2B workers. The Secretary of Labor shall give priority to the audit of employers with a workforce in which at least 15 percent of workers have H–2B status. The audits shall assess—
“(A) whether the employer is engaging in criminal background checks that are not otherwise required by a Federal, State, or local law;

“(B) whether experience requirements are reasonable for the indicated Occupational Information Network level and commensurate with the advertised position, and whether such requirements are used to screen out applicants based on their race, age, national origin, disability, genetic information, religious belief, or sex, including sexual orientation or gender identity;

“(C) whether an employer’s hiring practices are having a disparate impact on employees;

“(D) whether an employer is adhering to the terms of the job order, employment contract, or collective bargaining agreement and has paid the promised wage rates listed on the labor certification and petition for an H–2B worker, as well as any other applicable overtime hours, fringe benefits, or bonuses;

“(E) whether the employer has engaged in retaliation;
“(F) whether the employer has committed or is being investigated for any other violations of labor and employment law;

“(G) whether housing and transportation provided to temporary nonagricultural workers meets all relevant standards; and

“(H) whether recruiters designated by the H–2B employers are in compliance with labor and employment laws.

“(5) OVERSIGHT.—The Secretary of Labor shall conduct active and ongoing oversight of the recruitment platform, registered employers, and the H–2B program to ensure that—

“(A) there is no adverse effect on wages and working conditions;

“(B) United States workers and H–2B workers receive equal treatment;

“(C) any application for labor certification that does not meet the requirements of this section is denied;

“(D) action is taken based on the audits conducted pursuant to paragraph (4), including—

“(i) the initiation of civil or criminal proceedings where appropriate;
“(ii) the identification of and public
reporting of recurring challenges for
women and other protected classes and
underrepresented groups seeking tem-
porary nonagricultural employment; and

“(iii) the initiation process for suspen-
sion or permanent debarment of employers
where appropriate.

“(6) EQUAL OPPORTUNITY ADVOCATE.—The
Secretary of Labor shall create an H–2B Equal Op-
portunity Advocate position to investigate, report on,
and address any challenges identified under para-
graph (4)(B). The Equal Opportunity Advocate shall
report to and consult with the Advisory Committee.

“(h) VISA ALLOCATION.—

“(1) DURATION.—In order to be eligible for the
H–2B program, a job order may not exceed a term
of 7 months.

“(2) QUARTERLY ALLOCATION.—Every quarter
of the fiscal year, the Secretary of Homeland Secu-
ritv shall make available one-fourth of all H–2B pe-
titions subject to the annual numerical limit. Any
unused H–2B petition numbers shall roll over to the
following quarter in the same fiscal year, but shall
not roll over to the following fiscal year.
“(3) Cap per Employer.—An employer may not employ more than 100 H–2B workers, including any workers hired by a subcontractor of the employer, at any time.

“(4) Limitations on H–2B Share of a Workforce.—If an employer employs 50 or more workers in the United States, the sum of the number of such workers who are H–2B workers may not exceed 50 percent of the total number of workers employed.

“(5) Priority.—In a case in which demand for visas exceeds supply in any given quarter, the Secretary of Homeland Security shall give priority in visa issuance to employers that—

“(A) pay wages at the 75th percentile or above based on Department of Labor survey data or collectively bargained wages or Davis Bacon wages;

“(B) are seeking to employ H–2B workers on worksites located in States with exceptionally low unemployment rates;

“(C) are hiring returning workers previously employed in H–2B nonimmigrant status or workers from under-represented groups (based on gender, country of origin, or occupation); or
“(D) have less than 15 percent of their workforce in the United States comprised of H–2B workers.

“(i) ASSESSMENT.—The Secretary of Labor shall assess a fee on each employer to fund the labor certification process at such amount as may be necessary to support effective processing by the Department of Labor, and meaningful investigation and enforcement of worker protections, and may update the fee as necessary to meet the requirement. The Secretary of Homeland Security shall have the authority to assess and periodically update fees on each employer for the processing and adjudication of petitions in order to support effective processing and adjudication, if and when the Secretary determines that the fees are insufficient for doing so.

“(j) LIMITATION ON ASSIGNMENT.—Employers shall not assign H–2B workers to a worksite other than the worksite stipulated on an employer’s original job order without obtaining the workers’ consent and a new labor certification.

“(k) EMPLOYMENT AUTHORIZATIONS.—An H–4 nonimmigrant spouse of an H–2B nonimmigrant shall be eligible to apply for employment authorization with the Secretary of Homeland Security but shall be prohibited
from accepting employment with the same employer as the
principal H–2B nonimmigrant.

“(l) Employer Accountability.—

“(1) Use of other visa programs.—Within
any 2 year period, an employer of H–2B workers
may not employ directly or through subcontractors,
any workers in the same broad occupational category
or industry through any other nonimmigrant visa
program except those workers who are employed—
authorized through a nonimmigrant visa issued for
humanitarian or family purposes. Any employer
found to have violated this paragraph shall be sub-
ject to a 2-year suspension from employing non-
immigrants or using the recruitment platform.

“(2) Fair pay and safe workplace.—

“(A) In general.—In the case that a reg-
istered employer is found to have violated the
terms of this section, including the fair pay and
safe workplaces commitment, the established
prevailing wage under subsection (j)(2), or the
provision on working conditions such registered
employer and the principals, subsidiary, owner,
or affiliated company of such registered em-
ployer shall be subject to a 2-year suspension
from employing nonimmigrants or using the re-
cruitment platform for the first violation and
permanent debarment for subsequent violations.

“(B) RELIANCE.—In making a determina-
tion under subparagraph (A), the Secretary of
Labor or the Secretary of Homeland Security
may rely on findings of a Federal, State, or
local agency or court that an employer has vio-
lated Federal, State, or local employment laws.

“(3) OTHER VIOLATIONS.—

“(A) IN GENERAL.—Any employer of an
H–2B worker, or the successor in interest of
that employer, who is determined by the Sec-
retary of Labor or the Secretary of Homeland
Security to have committed a violation of this
section at any time, including a misdemeanor or
felony violation, shall be subject to immediate

suspension.

“(B) RELIANCE.—In making a determina-
tion under subparagraph (A), the Secretary of
Labor or the Secretary of Homeland Security
may rely on findings of a Federal, State, or
local agency or court that an employer has vio-
lated Federal, State, or local employment laws.

“(4) JOINT AND SEVERAL LIABILITY.—Employ-
ers shall be jointly and severally liable for the ac-
tions of any recruiter and foreign labor contractor of
the employer in violation of any H–2B regulation,
requirement, or other labor or employment law.

“(5) STATUTE OF LIMITATIONS.—The com-
cencement of a civil action shall be barred unless
such action is commenced before the date that is 10
years after the right of action accrues.

“(m) REDRESS FOR WORKERS.—

“(1) PRIVATE RIGHT OF ACTION AND FEE
SHIFTING.— A temporary nonagricultural worker
may bring a civil action before any district court of
the United States, or other court having jurisdiction
over the parties, against an employer or recruiter
who violates any H–2B regulation, requirement, or
other labor or employment law, or who retaliates
against a worker who exercises the worker’s rights
under this section, without respect to the amount in
controversy and without regard to the citizenship of
the parties and without regard to exhaustion of any
alternative administrative remedies. Any such em-
ployer shall be liable for back pay, unpaid wages,
and other damages, including general, compensatory,
and punitive damages, and reasonable attorneys’
fees. An employer may not require, as a condition of
employment, mandatory arbitration of private
claims. A waiver of any right created under this law shall be void and unenforceable.

“(2) LEGAL SERVICES.—H–2B workers shall be eligible to be represented by the Legal Services Corporation and service providers that are recipients of Legal Services Corporation funds.

“(3) APPOINTMENT OF ATTORNEY AND COMMENCEMENT OF ACTION.—Upon application by a complainant and in such circumstances as the court may determine just, the court may appoint an attorney for such complainant and may authorize the commencement of the action.

“(n) INJUNCTION AUTHORITY.—The Attorney General may, on his or her own or at the request of the Secretary of Labor or the Secretary of Homeland Security, bring a civil action before any district court of the United States to seeking an order of injunction against any employer or recruiter who violates any H–2B regulation, requirement, or other labor or employment law, or who retaliates against a worker who exercises the worker’s rights under this section.

“(o) REBUTTABLE PRESUMPTION.—There shall be a rebuttable presumption that a worker is the subject of retaliation if a worker exercises a protected right, assists in a labor agency investigation, or complains about work-
ing conditions and is not hired for another posted job for
which the worker is qualified within 1 year after the end
of the contract in which the worker was engaged when
he or she exercised such right or complained about such
condition.

“(p) NATIONAL ORIGIN.—

“(1) IN GENERAL.—The Secretary of Homeland
Security, in consultation with the Secretary of State,
shall—

“(A) on the date of enactment of this sec-
tion, designate all countries as eligible for H–
2B recruitment;

“(B) formulate and publish clear criteria
for temporarily designating countries as ineligi-
gible after the date of enactment of this section;

and

“(C) disclose reasons and evidence for tem-
porarily designating a country as ineligible after
the date of enactment of this section

“(2) JUDICIAL REVIEW.—The temporary des-
ignation of a country as ineligible for H–2B recruit-
ment shall be subject to judicial review.

“(q) VISA FOR ACCEPTED POSITION.—
“(1) IN GENERAL.—The Secretary of State shall issue a 7-month visa to a worker for each H–2B position the worker accepts.

“(2) CONTROL.—An H–2B worker may self-petition to request a change of status to a new H–2B employer. An H–2B worker who notifies the Department of Labor of intent to change employers shall receive a 60-day grace period in which to secure a new position.

“(3) RECRUITMENT FEES.—Employers shall be responsible for all fees associated with H–2B labor certifications, petitions, and visa applications. Employers may not collect a job placement fee or other compensation (either direct or indirect) at any time, including before or after a labor certification or petition have been approved, as a condition of employment of a temporary nonagricultural worker.

“(4) UNEMPLOYMENT PERIOD.—An alien with H–2B worker status may not be unemployed for more than a 60-day period, during which time the worker may apply for open positions on the H–2B jobs portal, and shall have priority for hiring before new H–2B applicants.

“(r) COUNTRY OF ORIGIN VIOLATIONS.—An H–2B worker who experiences or reports, in the worker’s country
of origin, retaliation or other violations of this section by
a United States employer, or a recruiter or foreign labor
contractor working on behalf of such employer, shall be
capable of parole for a period of not less than 2 years
in order to return to the United States to seek legal re-
dress.

“(s) STATE WORKFORCE AGENCIES.—The Secretary
of Labor shall allocate such funds as may be necessary
to train State Workforce Agencies on the H–2B program
and the recruitment platform so such agencies can assist
with efforts to recruit available United States workers, in-
cluding through engagement with any and all relevant
labor organizations and organizations advocating for
workers in relevant industries. In any State with more
than 200 approved H–2B labor certifications, the State
Workforce Agency shall prepare, in consultation with labor
organizations and organizations advocating for workers in
relevant industries, an annual plan to identify and address
the barriers to employment, such as housing or transpor-
tation, that discourage unemployed or underemployed
U.S. workers from applying for such jobs.

“(t) DEFINITIONS.—In this section:

“(1) DISCLOSE.—The term ‘disclose’ means to
make a formal or informal communication or trans-
mission.
“(2) EMPLOY.—The term ‘employ’ has the meaning given such term under section 3(g) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(g)).


“(4) LABOR CONTRACTOR.—The term ‘labor contractor’ means any person, other than an employer, who is contracted to perform any recruitment activity on behalf of an employer, whether domestically or abroad.

“(5) LABOR SURPLUS AREA.—The term ‘Labor Surplus Area’ is any area in which the unemployment rate is more than 6 percent or is at least 20 percent above the national unemployment rate.

“(6) PLACE OF EMPLOYMENT.—The term ‘place of employment’ means the geographic location in which work occurs, and where the living quarters are located.

“(7) RECRUITER.—The term ‘recruiter’ means any person, other than an employer, who performs any recruitment activity on behalf of an employer, whether domestically or abroad.
“(8) Recruitment.—The term ‘recruitment’ means advertising, disseminating information, selection, placement into employment, housing and transport to and from place of permanent residence for temporary nonagricultural workers. The term applies to both jobseekers and those who are or were employed.

“(9) Temporary nonagricultural worker.—The term ‘temporary nonagricultural worker’ means an individual who is, has been, or is seeking to be employed in a position posted on the Department of Labor’s seasonal job search and recruitment platform, regardless of immigration status.

“(10) State.—The term ‘State’ means any of the states of the United States, the District of Columbia, the United States Virgin Islands, the Commonwealth of Puerto Rico, and Guam.

“(11) Worker.—The term ‘worker’ means an individual who is, has been, or is seeking to be employed or otherwise perform work for pay, regardless of immigration status.

“(12) Worksite.—The term ‘worksite’ means the physical location of the job for which the worker is hired.”
(b) Numerical Limitation Conforming Amendments.—Section 214(g)(10) of the Immigration and Nationality Act is amended—

(1) by striking “first 6 months” and inserting “every 3 months”; and

(2) by striking “33,000” and inserting “16,500”.

SEC. 3. VICTIMS OF SERIOUS LABOR AND EMPLOYMENT VIOLATIONS OR CRIME.


(1) in clause (i)—

(A) by amending subclause (I) to read as follows:

“(I) the alien—

“(aa) has suffered substantial abuse or harm as a result of having been a victim of criminal activity described in clause (iii);

“(bb) has suffered substantial abuse or harm related to a violation described in clause (iv);
“(cc) is a victim of criminal activity described in clause (iii) and would suffer extreme hardship upon removal; or
“(dd) has suffered a violation described in clause (iv) and would suffer extreme hardship upon removal;”;

(B) in subclause (II), by inserting “, or a labor or employment violation resulting in a workplace claim described in clause (iv)” before the semicolon at the end;

(C) in subclause (III)—

(i) by striking “or State judge, to the Service” and inserting “, State, or local judge, to the Department of Homeland Security, to the Equal Employment Opportunity Commission, to the Department of Labor, to the National Labor Relations Board”; and

(ii) by inserting “, or investigating, prosecuting, or seeking civil remedies for a labor or employment violation related to a workplace claim described in clause (iv)” before the semicolon at the end; and
(D) in subclause (IV)—

(i) by inserting “(aa)” after “(IV)”;

and

(ii) by adding at the end the following: “or

“(bb) a workplace claim described in clause (iv) resulting from a labor or employment violation;”;

(2) in clause (ii)(II), by striking “and” at the end;

(3) in clause (iii), by striking “or” at the end and inserting “and”; and

(4) by adding at the end the following:

“(iv) in the labor or employment violation related to a workplace claim, the alien—

“(I) has filed, is a material witness in, or is likely to be helpful in the investigation of, a bona fide workplace claim or other qualifying crime (as defined in section 274A(e)(10)(C)(iii)(II)); and

“(II) reasonably fears, has been threatened with, or has been the victim of, an action involving force, physical restraint, retaliation, or abuse of
the immigration or other legal process
gainst the alien or another person by
the employer in relation to acts under-
lying the workplace claim or related to
the filing of the workplace claim; or”.

(b) TEMPORARY PROTECTION FOR INJURED WORK-
ERS AND VICTIMS OF CRIME, LABOR, AND EMPLOYMENT
VIOLATIONS.—Notwithstanding any other provision of
law, the Secretary of Homeland Security may permit an
alien to temporarily remain in the United States, and
grant the alien employment authorization, if the Secretary
determines that the alien—

(1) has filed for relief under section
101(a)(15)(U) of the Immigration and Nationality
Act (8 U.S.C. 1101(a)(15)(U));

(2)(A) has filed, or is a material witness to, a
bona fide workplace claim (as defined in section
274A(e)(10)(B)(iii)(II) of such Act, as added by sec-
tion 3(b) of this Act); and

(B) has been helpful, is being helpful, or is like-
ly to be helpful to—

(i) a Federal, State, or local law enforce-
ment official;

(ii) a Federal, State, or local prosecutor;

(iii) a Federal, State, or local judge;
(iv) the Department of Homeland Security;

(v) the Equal Employment Opportunity Commission;

(vi) the Department of Labor, including the Occupational Safety and Health Administration;

(vii) the National Labor Relations Board;

(viii) the head official of a State or local government department of labor, workforce commission, or human relations commission or council; or

(ix) other Federal, State, or local authorities investigating, prosecuting, or seeking civil remedies related to the workplace claim; or

(3) has filed a workers’ compensation claim or is undergoing treatment for a workplace injury or illness.

(c) REQUIREMENTS APPLICABLE TO U VISAS.—Section 214(p) of the Immigration and Nationality Act (8 U.S.C. 1184(p)) is amended—

(1) in paragraph (1)—

(A) by inserting “or investigating, prosecuting, or seeking civil remedies for workplace claims described in section 101(a)(15)(U)(iv)”
after “section 101(a)(15)(U)(iii)” each place such term appears;

(B) by striking “The petition” and inserting the following:

“(A) **IN GENERAL.**—The petition”; and

(C) by adding at the end the following:

“(B) **FEES.**—An alien petitioning for, or having status under, section 101(a)(15)(U) shall not be required to submit any fee (or request any fee waiver) in connection with such petition or status, including fees associated with biometric services, or an application for advance permission to enter as a nonimmigrant.

“(C) **CONFIDENTIALITY OF INFORMATION.**—Neither the Secretary of Homeland Security, nor the Attorney General, may use the information furnished pursuant to a petition for status under section 101(a)(15)(U) for purposes of initiating or carrying out a removal proceeding.”;

(2) by striking paragraph (2); and

(3) in paragraph (6)—

(A) by inserting “or workplace claims described in section 101(a)(15)(U)(iv)” after “described in section 101(a)(15)(U)(iii)”; and
(B) by inserting “or workplace claim” after “prosecution of such criminal activity”.

(d) ADJUSTMENT OF STATUS FOR VICTIMS OF CRIMES.—Section 245(m)(1) of the Immigration and Nationality Act (8 U.S.C. 1255(m)(1)) is amended by inserting “or an investigation or prosecution regarding a workplace claim” after “prosecution”.

(e) CHANGE OF NONIMMIGRANT CLASSIFICATION.—Section 384(a)(1) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1367(a)(1)) is amended—

(1) in subparagraph (E), by striking “physical or mental abuse and the criminal activity” and inserting “abuse and the criminal activity or workplace claim”;

(2) in subparagraph (F), by adding “or” at the end; and

(3) by inserting after subparagraph (F) the following:

“(G) the alien’s employer,”.

SEC. 4. WHISTLEBLOWER PROTECTIONS.

(a) IN GENERAL.—Section 214(c) of the Immigration and Nationality Act (8 U.S.C. 1184(c)) is amended by adding at the end the following:

“(15) WHISTLEBLOWER PROTECTIONS.—
“(A) **Prohibitions.—** A person may not discharge, demote, suspend, threaten, harass, decline to hire, or in any other manner discriminate against a worker in the terms and conditions of employment because such worker—

“(i) has filed or has information about a potential complaint, instituted or caused to be instituted any proceeding, testified, assisted, or will testify, or cooperated or seeks to cooperate, in an investigation or other proceeding concerning compliance with the requirements under this title or any rule or regulation pertaining to this title or any workplace claim;

“(ii) has disclosed information to any other person or entity, that the worker reasonably believes evidences a violation of this title or any rule or regulation pertaining to this title, or grounds for any workplace claim;

“(iii) has assisted or participated, or has information that may assist, in any manner in a proceeding or in any other action to carry out the purposes of this title or any workplace claim;
“(iv) has furnished information to the Department of Labor, the Department of Homeland Security, the Department of Justice, the Equal Employment Opportunity Commission, the National Labor Relations Board, or any Federal, State, or local regulatory or law enforcement agency relating to a violation of this title or any workplace claim, or has such information to furnish to the relevant agency; or

“(v) has objected to, or refused to participate in, any activity, policy, practice, or assigned task that the worker (or other such individual) reasonably believed to be in violation of any provision of this Act or any other Act, or any order, rule, regulation, standard, or ban under any Act.

“(B) ENFORCEMENT.—

“(i) IN GENERAL.—A worker who believes that he or she has suffered a violation of subparagraph (A) may seek relief in accordance with the procedures, notifications, burdens of proof, remedies, and statutes of limitation set forth in section 1514A of title 18, United States Code.
(ii) APPEALS.—

  (I) JURISDICTION.—Any person adversely affected or aggrieved by an order issued under clause (i) may obtain review of the order in the United States Court of Appeals for—

  (aa) the circuit in which the violation, with respect to which the order was issued, allegedly occurred; or

  (bb) the circuit in which the complainant resided on the date of such violation.

  (II) REVIEW OF PETITION.—A petition for review under this subparagraph shall be filed not later than 60 days after the date on which the final order was issued by the Secretary of Labor.

  (III) APPLICABLE LAW.—A review under this subparagraph shall conform to the provisions set forth in chapter 7 of title 5, United States Code.
“(IV) Stay of Order.—Unless ordered by the court, the commencement of proceedings under this subparagraph shall not operate as a stay of the order by the Secretary of Labor.

“(C) Education.—Each person, entity, and institution covered by this Act shall—

“(i) prominently communicate to all sectors and ranks of its labor force the rights and responsibilities under this Act; and

“(ii) provide associated education and training to all sectors and ranks of its labor force through notifications, postings, mailings, and training classes, supplemented with publicly accessible online materials on the requirements of, and developments that would affect the implementation of this Act.

“(D) No Limitation on Rights.—Nothing in this paragraph may be construed to diminish the rights, privileges, or remedies of any worker under any Federal or State law, equity, or under any collective bargaining agreement.
The rights and remedies set forth in this paragraph may not be waived by any agreement, policy, form, or condition of employment.

“(E) DEFINITIONS.—In this paragraph:

“(i) DISCLOSE.—The term ‘disclose’ means to make a formal or informal communication or transmission.


“(iii) MATERIAL WITNESS.—The term ‘material witness’ means an individual who presents a declaration from an attorney investigating, prosecuting, or defending the workplace claim or from the presiding officer overseeing the workplace claim attesting that, to the best of the declarant’s knowledge and belief, reasonable cause exists to believe that the testimony of the individual will be relevant to the outcome of the workplace claim.

“(iv) PERSON.—The term ‘person’ means any individual, partnership, associa-
tion, joint stock company, trust, cooperative, or corporation.

“(v) STATE.—The term ‘State’ means any of the States of the United States, the District of Columbia, the United States Virgin Islands, the Commonwealth of Puerto Rico, and Guam.

“(vi) WORKER.—The term ‘worker’ means an individual who is, has been, or is seeking to be employed or otherwise perform work for pay, regardless of immigration status.

“(vii) WORKPLACE CLAIM.—The term ‘workplace claim’ means any written or oral claim, charge, complaint, or grievance filed with, communicated to, or submitted to the employer, a Federal, State, or local agency or court, or an employee representative related to workplace injury or illness or to the violation of applicable Federal, State, and local labor laws or labor agreements, including laws concerning wages and hours, labor relations, family and medical leave, occupational health and safety,
civil rights, nondiscrimination, or other terms and conditions of employment.”.

(b) RULEMAKING.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Labor shall make rules to carry out the amendments made under subsection (a).

SEC. 5. INVESTIGATION AUTHORITY OF THE SECRETARY OF LABOR.

Section 503.7 of title 29, Code of Federal Regulations (as in effect on the date of enactment of this Act), shall have the full force and effect of law, except that any authority delegated to the Administrator of the Wage and Hour Division of the Department of Labor shall be deemed to be delegated to the Secretary of Labor.

SEC. 6. LABOR ENFORCEMENT ACTIONS.

(a) REMOVAL PROCEEDINGS.—Section 239(e) of the Immigration and Nationality Act (8 U.S.C. 1229(e)) is amended—

(1) in paragraph (1)—

(A) by striking “In cases where” and inserting “If”; and

(B) by inserting “or as a result of information provided to the Department of Homeland Security in retaliation against individuals for exercising or attempting to exercise their em-
ployment rights or other legal rights” after “paragraph (2)”; and
(2) in paragraph (2), by adding at the end the following:

“(C) At a facility about which a workplace claim has been filed or is contemporaously filed.”.

(b) UNLAWFUL EMPLOYMENT OF ALIENS.—Section 274A(e) of the Immigration and Nationality Act (8 U.S.C. 1324a(e)) is amended by adding at the end the following:

“(10) CONDUCT IN ENFORCEMENT ACTIONS.—

“(A) ENFORCEMENT ACTION.—If the Secretary of Homeland Security undertakes an enforcement action at a facility about which a workplace claim has been filed or is contempoaneously filed, or as a result of information provided to the Department of Homeland Security in retaliation against workers for exercising their rights related to a workplace claim, the Secretary shall ensure that—

“(i) any aliens arrested or detained who are necessary for the investigation or prosecution of workplace claim violations or criminal activity (as described in sub-paragraph (T) or (U) of section
101(a)(15)) are not removed from the United States until after the Secretary—

“(I) notifies the appropriate law enforcement agency with jurisdiction over such violations or criminal activity; and

“(II) provides such agency with the opportunity to interview such aliens; and

“(ii) no aliens entitled to a stay of removal or abeyance of removal proceedings under this section are removed.

“(B) PROTECTIONS FOR VICTIMS OF CRIME, LABOR, AND EMPLOYMENT VIOLATIONS.—

“(i) STAY OF REMOVAL OR ABEYANCE OF REMOVAL PROCEEDINGS.—An alien against whom removal proceedings have been initiated under chapter 4 of title II, who has filed a workplace claim, who is a material witness in any pending or anticipated proceeding involving a bona fide workplace claim, or who has filed for relief under section 101(a)(15)(U), shall be entitled to a stay of removal or an abeyance of
removal proceedings and to employment authorization until the resolution of the workplace claim or the denial of relief under section 101(a)(15)(U) after exhaustion of administrative appeals, whichever is later, unless the Secretary of Homeland Security establishes, by a preponderance of the evidence in proceedings before the immigration judge presiding over that alien’s removal hearing, that the workplace claim was filed in bad faith with the intent to delay or avoid the alien’s removal.

“(ii) DURATION.—Any stay of removal or abeyance of removal proceedings and employment authorization issued pursuant to clause (i) shall remain valid until the resolution of the workplace claim or the denial of relief under section 101(a)(15)(U) after the exhaustion of administrative appeals, and shall be extended by the Secretary of Homeland Security for a period of not longer than 10 additional years upon determining that—
“(I) such relief would enable the alien asserting a workplace claim to pursue the claim to resolution;

“(II) the deterrent goals of any statute underlying a workplace claim would be served; or

“(III) such extension would otherwise further the interests of justice.

“(iii) DEFINITIONS.—In this paragraph:

“(I) MATERIAL WITNESS.—Notwithstanding any other provision of law, the term ‘material witness’ means an individual who presents a declaration from an attorney investigating, prosecuting, or defending the workplace claim or from the presiding officer overseeing the workplace claim attesting that, to the best of the declarant’s knowledge and belief, reasonable cause exists to believe that the testimony of the individual will be relevant to the outcome of the workplace claim.

“(II) WORKPLACE CLAIM.—The term ‘workplace claim’ means any
written or oral claim, charge, complaint, or grievance filed with, communicated to, or submitted to the employer, a Federal, State, or local agency or court, or a worker representative related workplace injury or illness or to the violation of applicable Federal, State, and local labor laws or labor agreements, including laws concerning wages and hours, labor relations, family and medical leave, occupational health and safety, civil rights, or non-discrimination.”.

SEC. 7. H–2B WORKER GRANTS.

(a) TECHNICAL TRAINING GRANTS.—

(1) IN GENERAL.—Not later than 3 months after the date of enactment of this Act, and annually thereafter, the Secretary of Homeland Security shall award funds to qualified nonprofit, nongovernmental organizations and labor organizations to assist H–2B workers with applications for adjustment of status.

(2) APPLICATION.—To be eligible to receive a grant under this subsection, a labor organization or qualified nonprofit, nongovernmental organization
shall submit to the Secretary of Homeland Security an application at such time, in such manner, and containing such information as the Secretary may require.

(3) USE OF FUNDS.—Fund received pursuant to this subsection shall only be used to assist H–2B workers with applications for adjustment of status.

(b) KNOW YOUR RIGHTS GRANTS.—

(1) IN GENERAL.—Not later than a year after the date of enactment of this Act, and each year thereafter, the Secretary of Labor shall award 3-year grants to qualified nonprofit, nongovernmental organizations and labor organizations to—

(A) train H–2B workers on their rights before such workers begin employment; and

(B) conduct surveys after such employment ends to document treatment and conditions of such workers.

(2) APPLICATION.—To be eligible to receive a grant under this subsection, a labor organization or qualified nonprofit, nongovernmental organization shall submit to the Secretary of Labor an application at such time, in such manner, and containing such information as the Secretary may require.
(3) USE OF FUNDS.—Funds received pursuant to this subsection shall only be used to provide information to H–2B workers with respect to the rights of such workers.

SEC. 8. ADJUSTMENT OF STATUS FOR LONG-TERM H–2B WORKERS.

(a) REQUIREMENTS FOR ADJUSTMENT OF STATUS.—The Secretary of Homeland Security shall adjust the status of an alien from that of an alien admitted pursuant to section 101(a)(15)(H)(ii)(B) to that of a lawful permanent resident if the alien submits a completed application, including such processing fees as the Secretary of Homeland Security may require, and the Secretary of Homeland Security determines that—

(1) the applicant has completed not less than 18 months of employment as an H–2B worker within a 10 year period;

(2) the applicant has not become ineligible for H–2B worker status under section 218A of the Immigration and Nationality Act, as added by this Act; and

(3) the applicant meets the requirements set forth by the Secretary of Labor and the Secretary of Homeland Security, except that the applicant may not be required to acquire a permanent labor certifi-
cation from the Secretary of Labor under section 212(a)(5)(A) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(5)(A)).

(b) DEPENDENT ALIENS.—The spouse and each child of an alien described in paragraph (1) whose status has been adjusted to that of a lawful permanent resident may be granted lawful permanent residence and shall be exempt from the numerical limitations.

(e) NUMERICAL LIMITATION.—Not later than 6 months after the date of enactment of this Act, the worldwide level of immigrants admitted under this section shall not exceed 40,040 for each fiscal year, and may not equal less than one-third of the H–2B visas issued each fiscal year, unless an insufficient number of applications for adjustment to lawful permanent status have been filed under this section.

(d) EFFECT OF PENDING APPLICATION.—During the period beginning on the date on which an alien applies for adjustment of status under this subtitle, and ending on the date on which the Secretary of Homeland Security makes a final administrative decision regarding such application, the alien and any dependents included on the application—

(1) may apply for advance parole, which shall be granted upon demonstrating a legitimate need to
travel outside the United States for a temporary purpose;

(2) may not be detained by the Secretary of Homeland Security or removed from the United States unless the USCIS makes a prima facie determination that such alien is, or has become, ineligible for adjustment of status under subsection (a);

(3) may not be considered unlawfully present under section 212(a)(9)(B) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(9)(B)); and

(4) may not be considered an unauthorized alien (as defined in section 274A(h)(3) of the Immigration and Nationality Act (8 U.S.C. 1324a(h)(3))).

(c) RETROACTIVE ELIGIBILITY AND NUMERICAL EXEMPTION.—Any nonimmigrant who has accrued 36 months of H–2B employment over the 10 years prior to the date of enactment of this Act shall be eligible to submit within 2 years after such date an application for adjustment of status to that of a lawful permanent resident, and such adjustment shall be exempt from all employment based numerical and per-country limits.

(f) CONFORMING AMENDMENTS.—

(1) IN GENERAL.—Section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act (8 U.S.C.
1101(a)(15)(H)(ii)(b)) is amended by striking “which he has no intention of abandoning”.

(2) NO EVIDENCE.—Section 214(h) of the Immigration and Nationality Act (22 U.S.C. 1254(h)) is amended by inserting “or (H)(ii)(b)” after “(H)(i)(b)”.