

1 notice, the employer shall notify
 2 the Secretary in such manner as
 3 the Secretary may specify.”

Page 23, after line 14, insert the following:

4 “(G) ADMINISTRATIVE REVIEW.—
 5 “(i) IN GENERAL.—An individual who
 6 is notified pursuant to subparagraph
 7 (C)(ii)(V)(cc) of a nonconfirmation by the
 8 employer may, not later than 15 business
 9 days after the date that such notice is re-
 10 ceived, file an administrative appeal of
 11 such nonconfirmation. An individual sub-
 12 ject to a nonconfirmation may file an ap-
 13 peal thereof after the 15-day period if the
 14 appeal is accompanied by evidence that the
 15 individual did not receive timely notice of
 16 a nonconfirmation, or that there was good
 17 cause for the failure to file an appeal with-
 18 in the 15-day period. All administrative ap-
 19 peals shall be filed as follows:

20 “(I) CITIZENS OR NATIONALS OF
 21 THE UNITED STATES.—An individual
 22 claiming to be a citizen or national of
 23 the United States shall file the admin-

1 istrative appeal with the Commis-
2 sioner.

3 “(II) ALIENS.—An individual
4 claiming to be an alien authorized to
5 work in the United States shall file
6 the administrative appeal with the
7 Secretary.

8 “(ii) ADMINISTRATIVE STAY OF NON-
9 CONFIRMATION.—The nonconfirmation
10 shall be automatically stayed upon the
11 timely filing of an administrative appeal,
12 and the stay shall remain in effect until
13 the resolution of the appeal, unless the
14 Secretary or the Commissioner terminates
15 the stay based on a determination that the
16 administrative appeal is frivolous or filed
17 for purposes of delay.

18 “(iii) REVIEW FOR ERROR.—The Sec-
19 retary and the Commissioner shall develop
20 procedures for resolving administrative ap-
21 peals regarding nonconfirmations based
22 upon the information that the individual
23 has provided, including any additional evi-
24 dence or argument that was not previously
25 considered. Any such additional evidence

1 or argument shall be filed within 15 days
 2 of the date the appeal was originally filed.
 3 Appeals shall be resolved within 30 days
 4 after the individual has submitted all evi-
 5 dence and arguments he or she wishes to
 6 submit, or has stated in writing that there
 7 is no additional evidence that he or she
 8 wishes to submit. The Secretary and the
 9 Commissioner may, on a case by case basis
 10 for good cause, extend the filing and sub-
 11 mission period in order to ensure accurate
 12 resolution of an appeal before him or her.
 13 Administrative review under this para-
 14 graph shall be limited to whether the non-
 15 confirmation notice is supported by the
 16 weight of the evidence.

17 “(iv) COMPENSATION FOR ERROR.—If
 18 the individual was denied a stay under
 19 clause (ii) and the Secretary makes a de-
 20 termination that the nonconfirmation
 21 issued for an individual was not caused by
 22 an act or omission of the individual or the
 23 employer, the Secretary shall compensate
 24 the individual for lost wages in an amount
 25 not exceeding \$75,000 and reasonable

1 costs and attorneys' fees incurred during
 2 administrative and judicial review which
 3 shall not exceed \$50,000. Amounts under
 4 this clause may be adjusted to account for
 5 inflation pursuant to the US Consumer
 6 Price Index—All Urban Consumers (CPI-
 7 U) compiled by the Bureau of Labor Sta-
 8 tistics.

9 “(v) CALCULATION OF COMPENSA-
 10 TION.—Lost wages shall be calculated
 11 based on the wage rate and work schedule
 12 that prevailed prior to termination. The in-
 13 dividual shall be compensated for wages
 14 lost beginning on the first scheduled work
 15 day after employment was terminated and
 16 ending 180 days after completion of the
 17 administrative review process described in
 18 this paragraph, or judicial review if any, or
 19 the day after the individual is reinstated or
 20 obtains employment elsewhere, whichever
 21 occurs first. If the individual obtains em-
 22 ployment elsewhere at a lower wage rate,
 23 the individual shall be compensated for the
 24 difference in wages for the period ending
 25 180 days after completion of the adminis-

7

1 trative review process or judicial review, if
2 any. For purposes of determining an indi-
3 vidual's compensation for the loss of em-
4 ployment, such compensation shall not in-
5 clude any period in which the individual
6 was ineligible for employment in the
7 United States. Compensation or reimburse-
8 ment provided under this subparagraph
9 shall not be provided from funds appro-
10 priated in annual appropriations Acts to
11 the Secretary for the Department of
12 Homeland Security.

13 “(vi) TEMPORARY STAY OF FINAL AD-
14 MINISTRATIVE DECISION DENYING AP-
15 PEAL.—If the appeal is denied, the Sec-
16 retary shall stay the decision for a period
17 of 30 days to permit the individual to seek
18 judicial review of the decision under sub-
19 paragraph (H). If a judicial action is
20 brought within this period, the stay shall
21 remain in effect until the resolution of the
22 case, unless the Court terminates the stay
23 based on a determination that the action
24 for judicial review is frivolous or filed for
25 purposes of delay.

1 “(H) JUDICIAL REVIEW.—

2 “(i) IN GENERAL.—After the Sec-
3 retary or the Commissioner makes a final
4 determination on an appeal filed by an in-
5 dividual under subparagraph (G), the indi-
6 vidual may obtain judicial review of such
7 determination in a civil action commenced
8 not later than 30 days after notice of such
9 decision.

10 “(ii) JURISDICTION.—A civil action —
11 for such judicial review shall be brought in
12 the district court of the United States for
13 the judicial district in which the plaintiff
14 resides or, if the plaintiff does not reside
15 within any such judicial district, in the
16 District Court of the United States for the
17 District of Columbia.

18 “(iii) SERVICE.—The defendant is ei-
19 ther the Secretary or the Commissioner,
20 but not both, depending upon who issued
21 the administrative order under subpara-
22 graph (G). In addition to serving the de-
23 fendant, the plaintiff shall also serve the
24 Attorney General.

1 “(iv) ANSWER.—As part of the Sec-
 2 retary’s or the Commissioner’s answer to a
 3 complaint for such judicial review, the Sec-
 4 retary or the Commissioner shall file a cer-
 5 tified copy of the administrative record
 6 compiled during the administrative review
 7 under subparagraph (G), including the evi-
 8 dence upon which the findings and decision
 9 complained of are based. The court shall
 10 have power to enter, upon the pleadings—
 11 and the administrative record, a judgment
 12 affirming or reversing the result of that
 13 administrative review, with or without re-
 14 manding the cause for a rehearing.

15 “(v) STANDARD OF REVIEW.—
 16 “(I) The burden shall be on the
 17 plaintiff to show that the administra-
 18 tive order was erroneous. Administra-
 19 tive findings of fact are conclusive un-
 20 less any reasonable adjudicator would
 21 be compelled to conclude to the con-
 22 trary. The court, upon good cause
 23 shown, may in its discretion remand
 24 to the Secretary or the Commissioner

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

for additional fact-finding or other proceedings.

“(II) If the plaintiff meets his or her burden to show that the administrative order was erroneous, the court shall, upon request of the plaintiff, determine whether the plaintiff can establish by the preponderance of the evidence that the error was caused by the decision rules, processes, or procedures utilized by the System or erroneous system information that was not the result of acts or omissions of the individual.

“(vi) COMPENSATION FOR ERROR.—

“(I) IN GENERAL.—In cases in which the judicial review reverses the final determination of the Secretary or the Commissioner made under subparagraph (G), the individual was denied a stay under subparagraph (G)(ii), and the court finds that the final determination was erroneous by reason of the decision rules, processes, or procedures utilized by the System

1 or erroneous system information that
 2 was not the result of acts or omissions
 3 of the individual, the court may award
 4 to the individual lost wages not ex-
 5 ceeding \$75,000, reasonable costs and
 6 attorneys' fees incurred during admin-
 7 istrative and judicial review which
 8 shall not exceed \$50,000, and com-
 9 pensatory damages in an amount
 10 deemed necessary by the court.
 11 Amounts under this clause may be ad-
 12 justed to account for inflation pursu-
 13 ant to the US Consumer Price
 14 Index—All Urban Consumers (CPI-
 15 U) compiled by the Bureau of Labor
 16 Statistics.

17 “(II) CALCULATION OF LOST
 18 WAGES.—Lost wages shall be cal-
 19 culated based on the wage rate and
 20 work schedule that prevailed prior to
 21 termination. The individual shall be
 22 compensated for wages lost beginning
 23 on the first scheduled work day after
 24 employment was terminated and end-
 25 ing 180 days after completion of the

1 judicial review described in this para-
 2 graph or the day after the individual
 3 is reinstated or obtains employment
 4 elsewhere, whichever occurs first. If
 5 the individual obtains employment
 6 elsewhere at a lower wage rate, the in-
 7 dividual shall be compensated for the
 8 difference in wages for the period end-
 9 ing 180 days after completion of the
 10 judicial review process. No lost wages
 11 shall be awarded for any period of
 12 time during which the individual was
 13 not authorized to be employed in the
 14 United States.

15 “(III) PAYMENT OF COMPENSA-
 16 TION.—Notwithstanding any other
 17 law, payment of compensation for lost
 18 wages, costs and attorneys’ fees under
 19 this paragraph, or compromise settle-
 20 ments of the same, shall be made as
 21 provided by section 1304 of title 31,
 22 United States Code. Appropriations
 23 made available to the Secretary or the
 24 Commissioner, accounts provided for
 25 under section 286 of the Immigration

1 and Nationality Act (8 U.S.C. 1356),
 2 and funds from the Federal Old-Age
 3 and Survivors Insurance Trust Fund
 4 or the Federal Disability Insurance
 5 Trust Fund shall not be available to
 6 pay such compensation.

7 “(IV) EXCLUSIVE REMEDY.—
 8 Awards of compensation for lost
 9 wages, costs, and attorneys’ fees
 10 under this paragraph shall be the ex-
 11 clusive remedy for a finding under
 12 subclause (I) that a final determina-
 13 tion of the Secretary or the Commis-
 14 sioner made under subparagraph (G)
 15 was erroneous by reason of the neg-
 16 ligence or recklessness of the Sec-
 17 retary or the Commissioner.”

Page 47, line 2, insert after “paragraph.” the fol-
 lowing:

18 “(11) BACKPAY REMEDIES.—Neither backpay
 19 nor any other monetary remedy for unlawful employ-
 20 ment practices, workplace injuries or other causes of
 21 action giving rise to liability shall be denied to a
 22 present or former employee on account of—

1 “(A) the employer’s or the employee’s fail-
2 ure to comply with the requirements of this sec-
3 tion in establishing or maintaining the employ-
4 ment relationship; the employee’s violation of
5 the provisions of federal law related to the em-
6 ployment verification system set forth in sub-
7 section (a); or
8 “(B) the employee’s continuing status as
9 an unauthorized alien both during and after
10 termination of employment.”

--☒--