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(Original Signature of Member)

113TH CONGRESS
1ST SESSION

H. R. _____

To create a nonimmigrant H–2C work visa program for agricultural workers, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. GOODLATTE introduced the following bill; which was referred to the Committee on _____

A BILL

To create a nonimmigrant H–2C work visa program for agricultural workers, and for other purposes.

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

SECTION 1. SHORT TITLE.

This Act may be cited as—

(1) the "Agricultural Guestworker Act"; or

(2) the "AG Act".

SEC. 2. H–2C TEMPORARY AGRICULTURAL WORK VISA PROGRAM.

(a) IN GENERAL.—Section 101(a)(15)(H) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)) is amended by striking ''; or (iii)'' and inserting '', or (c) having a residence in a foreign country which he has no intention of abandoning who is coming temporarily to the United States to perform agricultural labor or services; or (iii)''.

(b) DEFINITION.—Section 101(a) of such Act (8 U.S.C. 1101(a)) is amended by adding at the end the following:

''(53) The term 'agricultural labor or services' has the meaning given such term by the Secretary of Agriculture in regulations and includes agricultural labor as defined in section 3121(g) of the Internal Revenue Code of 1986, agriculture as defined in section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)), the handling, planting, drying, packing, packaging, processing, freezing, or grading prior to delivery for storage of any agricultural or horticultural commodity in its unmanufactured state, all activities required for the preparation, processing or manufacturing of a product of agriculture (as such term is defined in such section 3(f)) for further distribution, and activities similar to all the foregoing as they relate to fish or shellfish in aquaculture facilities.''.

SEC. 3. ADMISSION OF TEMPORARY H–2C WORKERS.

(a) PROCEDURE FOR ADMISSION.—Chapter 2 of title II of the Immigration and Nationality Act (8 U.S.C. 1181 et seq.) is amended by inserting after section 218 the following:

"SEC. 218A. ADMISSION OF TEMPORARY H–2C WORKERS.

"(a) DEFINITIONS.—In this section and section 218B:

"(1) AREA OF EMPLOYMENT.—The term 'area of employment' means the area within normal commuting distance of the worksite or physical location where the work of the H–2C worker is or will be performed. If such work site or location is within a Metropolitan Statistical Area, any place within such area shall be considered to be within the area of employment.

"(2) DISPLACE.—The term 'displace' means to lay off a worker from a job that is essentially equivalent to the job for which an H–2C worker is sought. A job shall not be considered to be 'essentially equivalent' to another job unless the job—

"(A) involves essentially the same responsibilities as such other job;

"(B) was held by a United States worker with substantially equivalent qualifications and experience; and

"(C) is located in the same area of employment as the other job.

"(3) ELIGIBLE INDIVIDUAL.—The term 'eligible individual' means an individual who is not an unauthorized alien (as defined in section 274A(h)(3)) with respect to the employment of the individual.

"(4) EMPLOYER.—The term 'employer' means an employer who hires workers to perform agricultural employment.

"(5) H–2C WORKER.—The term 'H–2C worker' means a nonimmigrant described in section 101(a)(15)(H)(ii)(c).

"(6) LAY OFF.—

"(A) IN GENERAL.—The term 'lay off'—

"(i) means to cause a worker's loss of employment, other than through a discharge for inadequate performance, violation of workplace rules, cause, voluntary departure, voluntary retirement, or the expiration of a grant or contract (other than a temporary employment contract entered into in order to evade a condition described in paragraph (3) of subsection (b)); and

"(ii) does not include any situation in which the worker is offered, as an alter-

native to such loss of employment, a similar employment opportunity with the same employer (or, in the case of a placement of a worker with another employer under subsection (b)(7), with either employer described in such subsection) at equivalent or higher compensation and benefits than the position from which the employee was discharged, regardless of whether or not the employee accepts the offer.

''(B) CONSTRUCTION.—Nothing in this paragraph is intended to limit an employee's rights under a collective bargaining agreement or other employment contract.

''(7) PREVAILING WAGE.—The term 'prevailing wage' means the wage rate paid to workers in the same occupation in the area of employment as computed pursuant to section 212(p).

''(8) UNITED STATES WORKER.—The term 'United States worker' means any worker who is—

''(A) a citizen or national of the United States; or

''(B) an alien who is lawfully admitted for permanent residence, is admitted as a refugee under section 207, is granted asylum under sec-

tion 208, or is an immigrant otherwise authorized, by this Act or by the Secretary of Homeland Security, to be employed.

"(b) PETITION.—An employer, or an association acting as an agent or joint employer for its members, that seeks the admission into the United States of an H–2C worker shall file with the Secretary of Agriculture a petition attesting to the following:

"(1) TEMPORARY WORK OR SERVICES.—

"(A) IN GENERAL.—The employer is seeking to employ a specific number of agricultural workers on a temporary basis and will provide compensation to such workers at a specified wage rate.

"(B) DEFINITION.—For purposes of this paragraph, a worker is employed on a temporary basis if the employer intends to employ the worker for no longer than 18 months (except for sheepherders) during any contract period.

"(2) BENEFITS, WAGES, AND WORKING CONDITIONS.—The employer will provide, at a minimum, the benefits, wages, and working conditions required by subsection (k) to all workers employed in the jobs for which the H–2C worker is sought and to all

other temporary workers in the same occupation at the place of employment.

"(3) NONDISPLACEMENT OF UNITED STATES WORKERS.—The employer did not displace and will not displace a United States worker employed by the employer during the period of employment of the H–2C worker and during the 30-day period immediately preceding such period of employment in the occupation at the place of employment for which the employer seeks approval to employ H–2C workers.

"(4) RECRUITMENT.—

"(A) IN GENERAL.—The employer—

"(i) conducted adequate recruitment in the area of intended employment before filing the attestation; and

"(ii) was unsuccessful in locating a qualified United States worker for the job opportunity for which the H–2C worker is sought.

"(B) OTHER REQUIREMENTS.—The recruitment requirement under subparagraph (A) is satisfied if the employer places a local job order with the State workforce agency serving the local area where the work will be performed, except that nothing in this subparagraph shall

1 require the employer to file an interstate job
2 order under section 653 of title 20, Code of
3 Federal Regulations. The State workforce agen-
4 cy shall post the job order on its official agency
5 website for a minimum of 30 days and not later
6 than 3 days after receipt using the employment
7 statistics system authorized under section 15 of
8 the Wagner-Peyser Act (29 U.S.C. 49l–2). The
9 Secretary of Labor shall include links to the of-
10 ficial Web sites of all State workforce agencies
11 on a single webpage of the official Web site of
12 the Department of Labor.

13 ''(C) END OF RECRUITMENT REQUIRE-
14 MENT.—The requirement to recruit United
15 States workers shall terminate on the first day
16 that work begins for the H–2C worker.

17 ''(5) OFFERS TO UNITED STATES WORKERS.—
18 The employer has offered or will offer the job for
19 which the H–2C worker is sought to any eligible
20 United States worker who—

21 ''(A) applies;

22 ''(B) is qualified for the job; and

23 ''(C) will be available at the time and place
24 of need.

This requirement shall not apply to a United States worker who applies for the job on or after the first day that work begins for the H–2C worker.

''(6) PROVISION OF INSURANCE.—If the job for which the H–2C worker is sought is not covered by State workers' compensation law, the employer will provide, at no cost to the worker unless State law provides otherwise, insurance covering injury and disease arising out of, and in the course of, the worker's employment, which will provide benefits at least equal to those provided under the State workers compensation law for comparable employment.

''(7) REQUIREMENTS FOR PLACEMENT OF H–2C WORKERS WITH OTHER EMPLOYERS.—A nonimmigrant who is admitted into the United States as an H–2C worker may be transferred to another employer that has filed a petition under this subsection and is in compliance with this section.

''(8) STRIKE OR LOCKOUT.—There is not a strike or lockout in the course of a labor dispute which, under regulations promulgated by the Secretary of Agriculture, precludes the hiring of H–2C workers.

''(9) PREVIOUS VIOLATIONS.—The employer has not, during the previous two-year period, em-

ployed H–2C workers and knowingly violated a material term or condition of approval with respect to the employment of domestic or nonimmigrant workers, as determined by the Secretary of Agriculture after notice and opportunity for a hearing.

''(c) PUBLIC EXAMINATION.—Not later than 1 working day after the date on which a petition under this section is filed, the employer shall make a copy of each such petition available for public examination, at the employer's principal place of business or worksite.

''(d) LIST.—

''(1) IN GENERAL.—The Secretary of Agriculture shall maintain a list of the petitions filed under subsection (b), which shall—

''(A) be sorted by employer; and

''(B) include the number of H–2C workers sought, the wage rate, the period of intended employment, and the date of need for each alien.

''(2) AVAILABILITY.—The Secretary of Agriculture shall make the list available for public examination.

''(e) PETITIONING FOR ADMISSION.—

''(1) CONSIDERATION OF PETITIONS.—For petitions filed and considered under subsection (b)—

"(A) the Secretary of Agriculture may not require such petition to be filed more than 28 calendar days before the first date the employer requires the labor or services of the H–2C worker;

"(B) unless the Secretary of Agriculture determines that the petition is incomplete or obviously inaccurate, the Secretary, not later than 10 business days after the date on which such petition was filed, shall either approve or reject the petition and provide the petitioner with notice of such action by means ensuring same or next day delivery; and

"(C) if the Secretary determines that the petition is incomplete or obviously inaccurate, the Secretary shall—

"(i) within 5 business days of receipt of the petition, notify the petitioner of the deficiencies to be corrected by means ensuring same or next day delivery; and

"(ii) within 10 business days of receipt of the corrected petition, approve or deny the petition and provide the petitioner with notice of such action by means ensuring same or next day delivery.

1 ''(2) PETITION AGREEMENTS.—By filing an H–
2 2C petition, a petitioner and each employer consents
3 to allow access to the site where the labor is being
4 performed to the Department of Agriculture and the
5 Department of Homeland Security for the purpose
6 of investigations to determine compliance with H–2C
7 requirements and the immigration laws. Notwith-
8 standing any other provision of law, the Depart-
9 ments of Agriculture and Homeland Security cannot
10 delegate their compliance functions to other agencies
11 or Departments.
12 ''(f) ROLES OF AGRICULTURAL ASSOCIATIONS.—
13 ''(1) PERMITTING FILING BY AGRICULTURAL
14 ASSOCIATIONS.—A petition under subsection (b) to
15 hire an alien as a temporary agricultural worker
16 may be filed by an association of agricultural em-
17 ployers which use agricultural services.
18 ''(2) TREATMENT OF ASSOCIATIONS ACTING AS
19 EMPLOYERS.—If an association is a joint employer
20 of temporary agricultural workers, such workers may
21 be transferred among its members to perform agri-
22 cultural services of a temporary nature for which the
23 petition was approved.
24 ''(3) TREATMENT OF VIOLATIONS.—

1 "(A) INDIVIDUAL MEMBER.—If an indi-
2 vidual member of a joint employer association
3 violates any condition for approval with respect
4 to the member's petition, the Secretary of Agri-
5 culture shall consider as an employer for pur-
6 poses of subsection (b)(9) and invoke penalties
7 pursuant to subsection (i) against only that
8 member of the association unless the Secretary
9 of Agriculture determines that the association
10 or other member participated in, had knowledge
11 of, or had reason to know of the violation.

12 "(B) ASSOCIATION OF AGRICULTURAL EM-
13 PLOYERS.—If an association representing agri-
14 cultural employers as a joint employer violates
15 any condition for approval with respect to the
16 association's petition, the Secretary of Agri-
17 culture shall consider as an employer for pur-
18 poses of subsection (b)(9) and invoke penalties
19 pursuant to subsection (i) against only the as-
20 sociation and not any individual member of the
21 association, unless the Secretary determines
22 that the member participated in, had knowledge
23 of, or had reason to know of the violation.

1 ''(g) EXPEDITED ADMINISTRATIVE APPEALS.—The
2 Secretary of Agriculture shall promulgate regulations to
3 provide for an expedited procedure—
4 ''(1) for the review of a denial of a petition
5 under this section by the Secretary; or
6 ''(2) at the petitioner's request, for a de novo
7 administrative hearing at which new evidence may
8 be introduced.
9 ''(h) MISCELLANEOUS PROVISIONS.—
10 ''(1) ENDORSEMENT OF DOCUMENTS.—The
11 Secretary of Homeland Security shall provide for the
12 endorsement of entry and exit documents of H–2C
13 workers as may be necessary to carry out this sec-
14 tion and to provide notice for purposes of section
15 274A.
16 ''(2) FEES.—
17 ''(A) IN GENERAL.—The Secretary of Ag-
18 riculture shall require, as a condition of approv-
19 ing the petition, the payment of a fee, in ac-
20 cordance with subparagraph (B), to recover the
21 reasonable cost of processing petitions filed by
22 employers or associations of employers seeking
23 H–2C workers for jobs of a temporary or sea-
24 sonal nature, but may not require the payment
25 of such fees to recover the costs of processing

1 petitions filed by employers or associations of
2 employers seeking H–2C workers for jobs not of
3 a temporary or seasonal nature.
4 ''(B) FEE BY TYPE OF EMPLOYEE.—
5 ''(i) SINGLE EMPLOYER.—An em-
6 ployer whose petition for temporary alien
7 agricultural workers is approved shall, for
8 each approved petition, pay a fee that—
9 ''(I) subject to subclause (II), is
10 equal to $100 plus $10 for each ap-
11 proved H–2C worker; and
12 ''(II) does not exceed $1,000.
13 ''(ii) ASSOCIATION.—Each employer-
14 member of a joint employer association
15 whose petition for H–2C workers is ap-
16 proved shall, for each such approved peti-
17 tion, pay a fee that—
18 ''(I) subject to subclause (II), is
19 equal to $100 plus $10 for each ap-
20 proved H–2C worker; and
21 ''(II) does not exceed $1,000.
22 ''(iii) LIMITATION ON ASSOCIATION
23 FEES.—A joint employer association under
24 clause (ii) shall not be charged a separate
25 fee.

"(C) METHOD OF PAYMENT.—The fees collected under this paragraph shall be paid by check or money order to the Department of Agriculture. In the case of employers of H–2C workers that are members of a joint employer association petitioning on their behalf, the aggregate fees for all employers of H–2C workers under the petition may be paid by 1 check or money order.

"(i) ENFORCEMENT.—

"(1) INVESTIGATIONS AND AUDITS.—The Secretary of Agriculture shall be responsible for conducting investigations and random audits of employers to ensure compliance with the requirements of the H–2C program. All monetary fines levied against violating employers shall be paid to the Department of Agriculture and used to enhance the Department of Agriculture's investigatory and auditing power.

"(2) FAILURE TO MEET CONDITIONS.—If the Secretary of Agriculture finds, after notice and opportunity for a hearing, a failure to meet a condition of subsection (b), or a material misrepresentation of fact in a petition under subsection (b), the Secretary—

"(A) may impose such other administrative remedies (including civil money penalties in an amount not to exceed $1,000 per violation) as the Secretary determines to be appropriate; and

"(B) may disqualify the employer from the employment of H–2C workers for a period of 1 year.

"(3) PENALTIES FOR WILLFUL FAILURE.—If the Secretary of Agriculture finds, after notice and opportunity for a hearing, a willful failure to meet a material condition of subsection (b), or a willful misrepresentation of a material fact in a petition under subsection (b), the Secretary—

"(A) may impose such other administrative remedies (including civil money penalties in an amount not to exceed $5,000 per violation) as the Secretary determines to be appropriate;

"(B) may disqualify the employer from the employment of H–2C workers for a period of 2 years;

"(C) may, for a subsequent violation not arising out of the prior incident, disqualify the employer from the employment of H–2C workers for a period of 5 years; and

"(D) may, for a subsequent violation not arising out of the prior incident, permanently disqualify the employer from the employment of H–2C workers.

"(4) PENALTIES FOR DISPLACEMENT OF UNITED STATES WORKERS.—If the Secretary of Agriculture finds, after notice and opportunity for a hearing, a willful failure to meet a material condition of subsection (b) or a willful misrepresentation of a material fact in a petition under subsection (b), in the course of which failure or misrepresentation the employer displaced a United States worker employed by the employer during the period of employment of the H–2C worker or during the 30-day period preceding such period of employment, the Secretary—

"(A) may impose such other administrative remedies (including civil money penalties in an amount not to exceed $15,000 per violation) as the Secretary determines to be appropriate;

"(B) may disqualify the employer from the employment of H–2C workers for a period of 5 years; and

"(C) may, for a second violation, permanently disqualify the employer from the employment of H–2C workers.

1 "(j) FAILURE TO PAY WAGES OR REQUIRED BENE-
2 FITS.—
3 "(1) ASSESSMENT.—If the Secretary of Agri-
4 culture finds, after notice and opportunity for a
5 hearing, that the employer has failed to provide the
6 benefits, wages, and working conditions attested by
7 the employer under subsection (b), the Secretary
8 shall assess payment of back wages, or such other
9 required benefits, due any United States worker or
10 H–2C worker employed by the employer in the spe-
11 cific employment in question.
12 "(2) AMOUNT.—The back wages or other re-
13 quired benefits described in paragraph (1)—
14 "(A) shall be equal to the difference be-
15 tween the amount that should have been paid
16 and the amount that was paid to such worker;
17 and
18 "(B) shall be distributed to the worker to
19 whom such wages or benefits are due.
20 "(k) MINIMUM WAGES, BENEFITS, AND WORKING
21 CONDITIONS.—
22 "(1) PREFERENTIAL TREATMENT OF ALIENS
23 PROHIBITED.—
24 "(A) IN GENERAL.—Each employer seek-
25 ing to hire United States workers shall offer

1 such workers not less than the same benefits,
2 wages, and working conditions that the em-
3 ployer is offering, intends to offer, or will pro-
4 vide to H–2C workers. No job offer may impose
5 on United States workers any restrictions or
6 obligations which will not be imposed on the
7 employer's H–2C workers.

8 ''(B) INTERPRETATION.—Every interpreta-
9 tion and determination made under this section
10 or under any other law, regulation, or interpre-
11 tative provision regarding the nature, scope,
12 and timing of the provision of these and any
13 other benefits, wages, and other terms and con-
14 ditions of employment shall be made so that—

15 ''(i) the services of workers to their
16 employers and the employment opportuni-
17 ties afforded to workers by the employers,
18 including those employment opportunities
19 that require United States workers or H–
20 2C workers to travel or relocate in order to
21 accept or perform employment—

22 ''(I) mutually benefit such work-
23 ers, as well as their families, and em-
24 ployers; and

1 ''(II) principally benefit neither
2 employer nor employee; and
3 ''(ii) employment opportunities within
4 the United States benefit the United
5 States economy.
6 ''(2) REQUIRED WAGES.—
7 ''(A) IN GENERAL.—Each employer peti-
8 tioning for workers under subsection (b) shall
9 pay not less than the greater of—
10 ''(i) the prevailing wage level for the
11 occupational classification in the area of
12 employment; or
13 ''(ii) the applicable Federal, State, or
14 local minimum wage, whichever is greatest.
15 ''(B) SPECIAL RULE.—An employer can
16 utilize a piece rate or other alternative wage
17 payment system as long as the employer guar-
18 antees each worker a wage rate that equals or
19 exceeds the amount required under subpara-
20 graph (A).
21 ''(3) EMPLOYMENT GUARANTEE.—
22 ''(A) IN GENERAL.—
23 ''(i) REQUIREMENT.—Each employer
24 petitioning for workers under subsection
25 (b) shall guarantee to offer the worker em-

ployment for the hourly equivalent of not less than 50 percent of the work hours during the total anticipated period of employment, beginning with the first work day after the arrival of the worker at the place of employment and ending on the expiration date specified in the job offer.

''(ii) FAILURE TO MEET GUARANTEE.—If the employer affords the United States worker or the H–2C worker less employment than that required under this subparagraph, the employer shall pay such worker the amount which the worker would have earned if the worker had worked for the guaranteed number of hours.

''(iii) PERIOD OF EMPLOYMENT.—For purposes of this subparagraph, the term 'period of employment' means the total number of anticipated work hours and workdays described in the job offer and shall exclude the worker's Sabbath and Federal holidays.

''(B) CALCULATION OF HOURS.—Any hours which the worker fails to work, up to a

maximum of the number of hours specified in the job offer for a work day, when the worker has been offered an opportunity to do so, and all hours of work actually performed (including voluntary work in excess of the number of hours specified in the job offer in a work day, on the worker's Sabbath, or on Federal holidays) may be counted by the employer in calculating whether the period of guaranteed employment has been met.

"(C) LIMITATION.—If the worker voluntarily abandons employment before the end of the contract period, or is terminated for cause, the worker is not entitled to the 50 percent guarantee described in subparagraph (A).

"(D) TERMINATION OF EMPLOYMENT.—

"(i) IN GENERAL.—If, before the expiration of the period of employment specified in the job offer, the services of the worker are no longer required due to any form of natural disaster, including flood, hurricane, freeze, earthquake, fire, drought, plant or animal disease, pest infestation, regulatory action, or any other reason beyond the control of the employer

before the employment guarantee in subparagraph (A) is fulfilled, the employer may terminate the worker's employment.

"(ii) REQUIREMENTS.—If a worker's employment is terminated under clause (i), the employer shall—

"(I) fulfill the employment guarantee in subparagraph (A) for the work days that have elapsed during the period beginning on the first work day after the arrival of the worker and ending on the date on which such employment is terminated;

"(II) make efforts to transfer the United States worker to other comparable employment acceptable to the worker; and

"(III) not later than 24 hours after termination, notify (or have an association acting as an agent for the employer notify) the Secretary of Homeland Security of such termination.

"(l) PERIOD OF ADMISSION.—

"(1) IN GENERAL.—An H–2C worker shall be admitted for a period of employment, not to exceed 18 months (or 36 months as provided in subsection (o)(3)(A) for a worker employed in a job that is not of a temporary or seasonal nature), and except for sheepherders, that includes—

"(A) a period of not more than 7 days prior to the beginning of the period of employment for the purpose of travel to the work site; and

"(B) a period of not more than 14 days following the period of employment for the purpose of departure or a period of not more than 30 days following the period of employment for the purpose of seeking a subsequent offer of employment by an employer pursuant to a petition under this section (or pursuant to at-will employment pursuant to section 218B during such time as that section is in effect). An H–2C worker who does not depart within these periods will be considered to have failed to maintain nonimmigrant status as an H–2C worker and shall be subject to removal under section 237(a)(1)(C)(i). Such alien shall be considered to be inadmissible pursuant to section

212(a)(9)(B)(i) for having been unlawfully present, with the alien considered to have been unlawfully present for 180 days as of the 15th day following the period of employment for the purpose of departure or as of the 31st day following the period of employment for the purpose of seeking a subsequent offer of employment where the alien has not found at-will employment with a registered agricultural employer pursuant to section 218B or employment pursuant to this section.

''(2) EMPLOYMENT LIMITATION.—An alien may not be employed during the 14-day period described in paragraph (1)(B) except in the employment for which the alien is otherwise authorized.

''(m) ABANDONMENT OF EMPLOYMENT.—

''(1) IN GENERAL.—An alien admitted or provided status under section 101(a)(15)(H)(ii)(c) who abandons the employment which was the basis for such admission or status—

''(A) shall have failed to maintain nonimmigrant status as an H–2C worker;

''(B) shall depart the United States or be subject to removal under section 237(a)(1)(C)(i); and

"(C) shall be considered to be inadmissible pursuant to section 212(a)(9)(B)(i) for having been unlawfully present, with the alien considered to have been unlawfully present for 180 days as of the 15th day following the date of the abandonment of employment.

"(2) REPORT BY EMPLOYER.—Not later than 24 hours after an employer learns of the abandonment of employment by an H–2C worker, the employer or association acting as an agent for the employer, shall notify the Secretary of Homeland Security of such abandonment.

"(3) REMOVAL.—The Secretary of Homeland Security shall promptly remove from the United States any H–2C worker who violates any term or condition of the worker's nonimmigrant status.

"(4) VOLUNTARY TERMINATION.—Notwithstanding paragraph (1), an alien may voluntarily terminate the alien's employment if the alien promptly departs the United States upon termination of such employment. An alien who voluntarily terminates the alien's employment and who does not depart within 14 days shall be considered to have failed to maintain nonimmigrant status as an H–2C worker and shall be subject to removal under section

237(a)(1)(C)(i). Such alien shall be considered to be inadmissible pursuant to section 212(a)(9)(B)(i) for having been unlawfully present, with the alien considered to have been unlawfully present for 180 days as of the 15th day following the voluntary termination of employment.

''(n) REPLACEMENT OF ALIEN.—An employer may designate an eligible alien to replace an H–2C worker who abandons employment notwithstanding the numerical limitation found in section 214(g)(1)(C).

''(o) EXTENSION OF STAY OF H–2C WORKERS IN THE UNITED STATES.—

''(1) EXTENSION OF STAY.—If an employer seeks approval to employ an H–2C worker who is lawfully present in the United States, the petition filed by the employer or an association pursuant to subsection (b) shall request an extension of the alien's stay and, if applicable, a change in the alien's employment.

''(2) WORK AUTHORIZATION UPON FILING PETITION FOR EXTENSION OF STAY.—

''(A) IN GENERAL.—An alien who is lawfully present in the United States on the date of the filing of a petition to extend the stay of the alien may commence or continue the em-

ployment described in a petition under paragraph (1) until and unless the petition is denied. The employer shall provide a copy of the employer's petition for extension of stay to the alien. The alien shall keep the petition with the alien's identification and employment eligibility document, as evidence that the petition has been filed and that the alien is authorized to work in the United States.

"(B) EMPLOYMENT ELIGIBILITY DOCUMENT.—Upon approval of a petition for an extension of stay or change in the alien's authorized employment, the Secretary of Homeland Security shall provide a new or updated employment eligibility document to the alien indicating the new validity date, after which the alien is not required to retain a copy of the petition.

"(C) FILE DEFINED.—In this paragraph, the term 'file' means sending the petition by certified mail via the United States Postal Service, return receipt requested, or delivering by guaranteed commercial delivery which will provide the employer with a documented acknowledgment of the date of receipt of the petition for an extension of stay.

"(3) LIMITATION ON AN INDIVIDUAL'S STAY IN STATUS.—

"(A) MAXIMUM PERIOD.—The maximum continuous period of authorized status as an H–2C worker (including any extensions) is 18 months for a worker employed in a job that is of a temporary or seasonal nature. For an H–2C worker employed in a job that is not of a temporary or seasonal nature, the initial maximum continuous period of authorized status is 36 months and subsequent maximum continuous periods of authorized status are 18 months. There is no maximum continuous period of authorized status for a sheepherder.

"(B) REQUIREMENT TO REMAIN OUTSIDE THE UNITED STATES.—In the case of an alien outside the United States who was employed in a job of a temporary or seasonal nature pursuant to section 101(a)(15)(H)(ii)(c) whose period of authorized status as an H–2C worker (including any extensions) has expired, the alien may not again be admitted to the United States as an H–2C worker unless the alien has remained outside the United States for a continuous period equal to at least ⅙ the duration of

the alien's previous period of authorized status as an H–2C worker. For an alien outside the United States who was employed in a job not of a temporary or seasonal nature pursuant to section 101(a)(15)(H)(ii)(c) whose period of authorized status as an H–2C worker (including any extensions) has expired, the alien may not again be admitted to the United States as an H–2C worker unless the alien has remained outside the United States for a continuous period equal to at least the lesser of ⅙ the duration of the alien's previous period of authorized status as an H–2C worker or 3 months. There is no requirement to remain outside the United States for sheepherders.

"(p) ADJUSTMENT OF STATUS.—Notwithstanding any other provision of law, an alien who is unlawfully present in the United States on April 25, 2013, is eligible to adjust status to that of an H–2C worker.

"(q) TRUST FUND TO ASSURE WORKER RETURN.—

"(1) ESTABLISHMENT.—There is established in the Treasury of the United States a trust fund (in this section referred to as the 'Trust Fund') for the purpose of providing a monetary incentive for H–2C

workers to return to their country of origin upon expiration of their visas.

"(2) WITHHOLDING OF WAGES; PAYMENT INTO THE TRUST FUND.—

"(A) IN GENERAL.—Notwithstanding the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.), all employers of H–2C workers shall withhold from the wages of the workers an amount equivalent to 10 percent of the wages of each worker and pay such withheld amount into the Trust Fund.

"(B) JOBS THAT ARE NOT OF A TEMPORARY OR SEASONAL NATURE.—Employers of H–2C workers employed in jobs that are not of a temporary or seasonal nature shall pay into the Trust Fund an amount equivalent to the Federal tax on the wages paid to H–2C workers that the employer would be obligated to pay under chapters 21 and 23 of the Internal Revenue Code of 1986 had the H–2C workers been subject to such chapters.

Amounts withheld under this paragraph shall be maintained in such interest bearing account with such a financial institution as the Secretary of Agriculture shall specify.

"(3) DISTRIBUTION OF FUNDS.—Amounts paid into the Trust Fund on behalf of an H–2C worker, and held pursuant to paragraph (2)(A) and interest earned thereon, shall be paid by the Secretary of State to the worker if—

"(A) the worker applies to the Secretary of State (or the designee of such Secretary) for payment within 30 days of the expiration of the alien's last authorized stay in the United States as an H–2C worker at a United States embassy or consulate in the worker's home country;

"(B) in such application the worker establishes that the worker has complied with the terms and conditions of the H–2C program; and

"(C) in connection with the application, the H–2C worker confirms their identity.

"(4) ADMINISTRATIVE EXPENSES.—The amounts paid into the Trust Fund and held pursuant to paragraph (2)(B), and interest earned thereon, shall be paid to the Secretary of State, the Secretary of Agriculture, and the Secretary of Homeland Security in amounts equivalent to the expenses incurred by such officials in the administration of

the H–2C program not reimbursed pursuant to subsection (h)(2) or section 218B(b).

"(r) INVESTMENT OF TRUST FUND.—

"(1) IN GENERAL.—It shall be the duty of the Secretary of the Treasury to invest such portion of the Trust Fund as is not, in the Secretary's judgment, required to meet current withdrawals. Such investments may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose, such obligations may be acquired—

"(A) on original issue at the price; or

"(B) by purchase of outstanding obligations at the market price.

The purposes for which obligations of the United States may be issued under chapter 31 of title 31, United States Code, are hereby extended to authorize the issuance at par of special obligations exclusively to the Trust Fund. Such special obligations shall bear interest at a rate equal to the average rate of interest, computed as to the end of the calendar month next preceding the date of such issue, borne by all marketable interest-bearing obligations of the United States then forming a part of the pub-

lic debt, except that where such average rate is not a multiple of ⅛ of 1 percent, the rate of interest of such special obligations shall be the multiple of ⅛ of 1 percent next lower than such average rate. Such special obligations shall be issued only if the Secretary of the Treasury determines that the purchase of other interest-bearing obligations of the United States, or of obligations guaranteed as to both principal and interest by the United States on original issue or at the market price, is not in the public interest.

"(2) SALE OF OBLIGATION.—Any obligation acquired by the Trust Fund (except special obligations issued exclusively to the Trust Fund) may be sold by the Secretary of the Treasury at the market price, and such special obligations may be redeemed at par plus accrued interest.

"(3) CREDITS TO TRUST FUND.—The interest on, and the proceeds from the sale or redemption of, any obligations held in the Trust Fund shall be credited to and form a part of the Trust Fund.

"(4) REPORT TO CONGRESS.—It shall be the duty of the Secretary of the Treasury to hold the Trust Fund, and (after consultation with the Secretary of Agriculture) to report to the Congress each

year on the financial condition and the results of the operations of the Trust Fund during the preceding fiscal year and on its expected condition and operations during the next fiscal year. Such report shall be printed as both a House and a Senate document of the session of the Congress to which the report is made.''.

(b) AT-WILL EMPLOYMENT.—Chapter 2 of title II of the Immigration and Nationality Act (8 U.S.C. 1181 et seq.) is amended by inserting after section 218A (as inserted by subsection (a)) the following:

''SEC. 218B. AT-WILL EMPLOYMENT OF TEMPORARY H–2C WORKERS.

''(a) AT-WILL EMPLOYMENT.—

''(1) IN GENERAL.—An H–2C worker may perform agricultural labor or services for any employer that is designated as an 'registered agricultural employer' pursuant to subsection (b). However, an H–2C worker may only perform labor or services pursuant to this section if the worker is already lawfully present in the United States as an H–2C worker, having been admitted or otherwise provided nonimmigrant status pursuant to section 218A, and has completed the period of employment specified in the job offer the worker accepted pursuant to section

218A or the employer has terminated the worker's employment pursuant to section 218A(k)(3)(D)(i). An H–2C worker who abandons the employment which was the basis for admission or status pursuant to section 218A may not perform labor or services pursuant to this section until the worker has returned to their home country, been readmitted as an H–2C worker pursuant to section 218A and has completed the period of employment specified in the job offer the worker accepted pursuant to section 218A or the employer has terminated the worker's employment pursuant to section 218A(k)(3)(D)(i).

"(2) PERIOD OF STAY.—An H–2C worker performing such labor or services for a registered agricultural employer is subject to the period of admission, limitation of stay in status, and requirement to remain outside the United States contained in subsections (l) and (o)(3) of section 218A.

"(3) TERMINATION OF EMPLOYMENT.—At the conclusion of at-will employment with a registered agricultural employer or the conclusion of employment pursuant to section 218A qualifying an H–2C worker to perform at-will work pursuant to this section, an H–2C worker shall find at-will employment with a registered agricultural employer or employ-

1 ment pursuant to section 218A within 30 days or
2 will be considered to have failed to maintain non-
3 immigrant status as an H–2C worker and shall de-
4 part from the United States or be subject to removal
5 under section 237(a)(1)(C)(i). An H–2C worker who
6 does not so depart shall be considered to be inadmis-
7 sible pursuant to section 212(a)(9)(B)(i) for having
8 been unlawfully present, with the alien considered to
9 have been unlawfully present for 180 days as of the
10 31st day after conclusion of employment where the
11 alien has not found at-will employment with a reg-
12 istered agricultural employer or employment pursu-
13 ant to section 218A. However, an alien may volun-
14 tarily terminate the alien's employment if the alien
15 promptly departs the United States upon termi-
16 nation of such employment. Either a registered agri-
17 cultural employer or an H–2C worker may volun-
18 tarily terminate the worker's at–will employment at
19 any time. The H–2C worker then shall find addi-
20 tional at-will employment with a registered agricul-
21 tural employer or employment pursuant to section
22 218A within 30 days or will be considered to have
23 failed to maintain nonimmigrant status as an H–2C
24 worker and shall depart from the United States or
25 be subject to removal under section 237(a)(1)(C)(i).

An H–2C worker who does not so depart shall be considered to be inadmissible pursuant to section 212(a)(9)(B)(i) for having been unlawfully present, with the alien considered to have been unlawfully present for 180 days as of the 31st day after conclusion of employment where the alien has not found at-will employment with a registered agricultural employer or employment pursuant to section 218A.

''(b) REGISTERED AGRICULTURAL EMPLOYERS.—The Secretary of Agriculture shall establish a process to accept and adjudicate applications by employers to be designated as registered agricultural employers. The Secretary shall require, as a condition of approving the petition, the payment of a fee to recover the reasonable cost of processing the application. The Secretary shall designate an employer as a registered agricultural employer if the Secretary determines that the employer—

''(1) employs individuals who perform agricultural labor or services;

''(2) has not been subject to debarment from receiving future temporary agricultural labor certifications pursuant to section 101(a)(15)(H)(ii)(a) within the last five years;

"(3) has not been subject to disqualification from the employment of H–2C workers within the last five years,

"(4) agrees to, if employing an H–2C worker pursuant to this section, abide by the terms of the attestations contained in section 218A(b) and the obligations contained in subsections (k) (excluding paragraph (3) of such subsection) and (q) of section 218A as if it had submitted a petition making those attestations and accepting those obligations, and

"(5) agrees to notify the Secretary of Agriculture and the Secretary of Homeland Security each time it employs an H–2C worker pursuant to this section within 24 hours of the commencement of employment and each time an H–2C worker ceases employment within 24 hours of the cessation of employment.

"(c) LENGTH OF DESIGNATION.—An employer's designation as a registered agricultural employer shall be valid for 3 years, and the designation can be extended upon reapplication for additional 3-year terms. The Secretary shall revoke a designation before the expiration of its three year term if the employer is subject to disqualification from the employment of H–2C workers subse-

1 quent to being designated as a registered agricultural em-
2 ployer.

3 ''(d) ENFORCEMENT.—The Secretary of Agriculture
4 shall be responsible for conducting investigations and ran-
5 dom audits of employers to ensure compliance with the
6 requirements of this section. All monetary fines levied
7 against violating employers shall be paid to the Depart-
8 ment of Agriculture and used to enhance the Department
9 of Agriculture's investigatory and audit power. The Sec-
10 retary of Agriculture's enforcement powers and an em-
11 ployer's liability described in subsections (i) through (j)
12 of section 218A are applicable to employers employing H–
13 2C workers pursuant to this section.

14 ''(e) REMOVAL OF H-2C WORKER.—The Secretary of
15 Homeland Security shall promptly remove from the
16 United States any H–2C worker who is or had been em-
17 ployed pursuant to this section on an at-will basis who
18 is who violates any term or condition of the worker's non-
19 immigrant status.''.

20 (c) PROHIBITION ON FAMILY MEMBERS.—Section
21 101(a)(15)(H) of the Immigration and Nationality Act (8
22 U.S.C. 1101(a)(15)(H)) is amended by striking ''him;'' at
23 the end and inserting ''him, except that no spouse or child
24 may be admitted under clause (ii)(c);''.

(d) NUMERICAL CAP.—Section 214(g)(1) of the Immigration and Nationality Act (8 U.S.C. 1184(g)(1)) is amended—

(1) in subparagraph (A), by striking ''or'' at the end;

(2) in subparagraph (B), by striking the period at the end and inserting ''; or''; and

(3) by adding at the end the following:

''(C) under section 101(a)(15)(H)(ii)(c) may not exceed 500,000, except that—

''(i) the Secretary of Agriculture may increase or decrease such number based on—

''(I) a shortage or surplus of workers performing agricultural labor or services;

''(II) growth or contraction in the United States agricultural industry that has increased or decreased the demand for workers to perform agricultural labor or services;

''(III) the level of unemployment and underemployment of United States workers (as defined in section

1 218A(a)(8)) in agricultural labor or
2 services;
3 ''(IV) the number of non-
4 immigrant workers employers sought
5 during the preceding fiscal year pur-
6 suant to clause (a) or (c) of section
7 101(a)(15)(H)(ii);
8 ''(V) the number of H-2C work-
9 ers (as defined in section 218A(a)(5))
10 who in the preceding fiscal year had
11 to depart from the United States or
12 be subject to removal under section
13 237(a)(1)(C)(i) because they could
14 not find additional at-will employment
15 within 30 days pursuant to section
16 218B;
17 ''(VI) the estimated number of
18 United States workers (as defined in
19 section 218A(a)(8)) who worked in
20 agriculture during the preceding fiscal
21 year pursuant to clause (a) or (c) of
22 section 101(a)(15)(H)(ii); and
23 ''(VII) the number of non-
24 immigrant agricultural workers issued
25 a visa or otherwise provided non-

immigrant status pursuant to clause (a) or (c) of section 101(a)(15)(H)(ii) during preceding fiscal years who remain in the United States out of compliance with the terms of their status;

''(ii) during any fiscal year, the Secretary of Agriculture may increase such number on an emergency basis for severe shortages of agricultural labor or services; and

''(iii) this numerical limitation shall not apply to any alien who performed agricultural labor or services for not fewer than 575 hours or 100 days in which the alien was employed 5.75 or more hours performing agricultural labor or services pursuant to section 7 of the AG Act during the 2-year period beginning on the date of the enactment of such Act and ending on the date that is 2 years after such date.''.

(e) WAIVER OF BARS TO ADMISSIBILITY.—Section 212(a)(9)(B)(v) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(9)(B)(v)) is amended—

(1) by striking ''The Attorney General'' and inserting the following:

"(I) IN GENERAL.—The Secretary of Homeland Security".

(2) by striking "Attorney General" each place it appears and inserting "Secretary of Homeland Security"; and

(3) by adding at the end the following:

"(II) H–2C WORKERS.—The Secretary of Homeland Security shall waive clause (i) solely if necessary to allow an alien to come temporarily to the United States to perform agricultural labor or services as provided in section 101(a)(15)(H)(ii)(c), except to the extent that the alien's unlawful presence followed after the alien's having the status of a nonimmigrant under such section.".

(f) PREVAILING WAGE.—Section 212(p) of the Immigration and Nationality Act (8 U.S.C. 1182(p)) is amended—

(1) in paragraph (1), by adding "and section 218A" after "of this section"; and

(2) in paragraph (3), by adding "and section 218A" after "of this section".

(g) CLERICAL AMENDMENT.—The table of contents for the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended by inserting after the item relating to section 218 the following:

"Sec. 218A. Admission of temporary H–2C workers.
"Sec. 218B. At-will employment of temporary H–2C workers.".

SEC. 4. MEDIATION.

A nonimmigrant having status under section 101(a)(15)(H)(ii)(c) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(c)) may not bring a civil action for damages against the nonimmigrant's employer, nor may any other attorney or individual bring a civil action for damages on behalf of such a nonimmigrant against the nonimmigrant's employer, unless at least 90 days prior to bringing the action a request has been made to the Federal Mediation and Conciliation Service to assist the parties in reaching a satisfactory resolution of all issues involving all parties to the dispute and mediation has been attempted.

SEC. 5. MIGRANT AND SEASONAL AGRICULTURAL WORKER PROTECTION.

Section 3(8)(B)(ii) of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1802(8)(B)(ii)) is amended by striking "under sections 101(a)(15)(H)(ii)(a) and 214(c) of the Immigration and Nationality Act." and inserting "under subclauses (a) and

(c) of section 101(a)(15)(H)(ii), and section 214(c), of the Immigration and Nationality Act.''.

SEC. 6. BINDING ARBITRATION.

(a) APPLICABILITY.—Any H–2C worker may, as a condition of employment with an employer, be subject to mandatory binding arbitration and mediation of any grievance relating to the employment relationship. An employer shall provide any such worker with notice of such condition of employment at the time the job offer is made.

(b) ALLOCATION OF COSTS.—Any cost associated with such arbitration and mediation process shall be equally divided between the employer and the H–2C worker, except that each party shall be responsible for the cost of its own counsel, if any.

(c) DEFINITIONS.—As used in this section:

(1) The term ''condition of employment'' means a term, condition, obligation, or requirement that is part of the job offer, such as the term of employment, the job responsibilities, the employee conduct standards, and the grievance resolution process, and to which an applicant or prospective H–2C worker must consent or accept in order to be hired for the position.

(2) The term ''H–2C worker'' means a nonimmigrant described in section 101(a)(15)(H)(ii)(c)

of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(ii)(c)).

SEC. 7. THE PERFORMANCE OF AGRICULTURAL LABOR OR SERVICES BY ALIENS WHO ARE UNLAWFULLY PRESENT.

The Secretary of Homeland Security shall waive the grounds of inadmissibility contained in paragraphs (5), (6), (7), and (9)(B) of section 212(a), and the grounds of deportability contained in subparagraphs (A) through (D) of paragraph (1), and paragraph (3), of section 237(a), of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) in the case of an alien physically present in the United States as of April 25, 2013, solely as may be necessary in order to allow the alien to perform agricultural labor or services. Such alien shall not be considered an unauthorized alien for purposes of section 274A(h)(3) of the Immigration and Nationality Act (8 U.S.C. 1324a(h)(3)) or to be unlawfully present as long as the alien performs such labor or services.

SEC. 8. ELIGIBILITY FOR FEDERAL PUBLIC BENEFITS AND REFUNDABLE TAX CREDITS.

(a) FEDERAL PUBLIC BENEFITS.—H–2C workers (as defined in section 218A(a)(5) of the Immigration and Nationality Act, as inserted by section 3(a) of this Act)

and aliens performing agricultural labor or services pursuant to section 7 of this Act—

(1) are not entitled to the premium assistance tax credit authorized under section 36B of the Internal Revenue Code of 1986;

(2) shall be subject to the rules applicable to individuals who are not lawfully present set forth in subsection (e) of such section; and

(3) shall be subject to the rules applicable to individuals who are not lawfully present set forth in section 1402(e) of the Patient Protection and Affordable Care Act (42 U.S.C. 18071(e)).

(b) REFUNDABLE TAX CREDITS.—H–2C workers (as defined in section 218A(a)(5) of the Immigration and Nationality Act, as inserted by section 3(a) of this Act) and aliens performing agricultural labor or services pursuant to section 7 of this Act shall not be allowed any credit under section 24 or 32 of the Internal Revenue Code of 1986. In the case of a joint return, no credit shall be allowed under either such section if both spouses are such a worker or alien.

SEC. 9. EFFECTIVE DATES; SUNSET; REGULATIONS.

(a) EFFECTIVE DATES.—

(1) IN GENERAL.—The amendments made by sections 2 and 4 through 6, and subsections (a) and

(c) through (f) of section 3, of this Act shall take effect on the date that is 2 years after the date of the enactment of this Act, and the Secretary of Agriculture shall accept petitions to import an alien under sections 101(a)(15)(H)(ii)(c) and 218A of the Immigration and Nationality Act, as inserted by this Act, beginning on such date.

(2) AT-WILL EMPLOYMENT.—The amendment made by section 3(b) of this Act shall take effect on the date that it becomes unlawful for any person or other entity to hire, or to recruit or refer for a fee, for employment in the United States an individual (as provided in section 274A(a)(1) of the Immigration and Nationality Act) (8 U.S.C. 1324a(a)(1)) without participating in the E-Verify Program described in section 403(a) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note) or an employment eligibility verification system patterned on such program's verification system, and only if at that time the E-Verify Program (or another program patterned after the E-Verify Program) responds to inquiries made by such persons or entities by providing confirmation, tentative nonconfirmation, and final nonconfirmation of an individual's identity and employment

eligibility in such a way that indicates whether the individual is eligible to be employed in all occupations or only to perform agricultural labor or services pursuant to section 101(a)(15)(H)(ii)(c) of the Immigration and Nationality Act (as inserted by this Act), and if the latter, whether the nonimmigrant would be in compliance with their maximum continuous period of authorized status and requirement to remain outside the United States pursuant to sections 218A and 218B of such Act (as so added) and on what date the alien would cease to be in compliance with their maximum continuous period of authorized status.

(3) AGRICULTURAL LABOR OR SERVICES BY ALIENS UNLAWFULLY PRESENT.—Section 7 of this Act shall take effect on the date of the enactment of this Act and shall cease to be in effect on the date that is 2 years after such date.

(b) OPERATION AND SUNSET OF THE H–2A PROGRAM.—

(1) APPLICATION OF EXISTING REGULATIONS.—The Department of Labor H–2A program regulations published at 73 Federal Register 77110 et seq. (2008) shall be in force for all petitions approved under sections 101(a)(15)(H)(ii)(c) and

218A of the Immigration and Nationality Act, as inserted by this Act, beginning on the date of the enactment of this Act.

(2) ADJUSTMENT OF STATUS.—Notwithstanding any other provision of law, an alien who is unlawfully present in the United States on the date of the enactment of this Act is eligible to adjust status to that of an alien described in section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a)) beginning on the date of the enactment of this Act and ending on the date that is 2 years after the date of the enactment of this Act.

(3) SUNSET.—Beginning on the date that is 2 years after the date of the enactment of this Act, no new petition to import an alien under sections 101(a)(15)(H)(ii)(a) and 218 of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a); 8 U.S.C. 1188) shall be accepted.

(c) REGULATIONS.—Not later than 18 months after the date of the enactment of this Act, the Secretary of Agriculture shall promulgate regulations, in accordance with the notice and comment provisions of section 553 of

1 title 5, United States Code, to implement the Secretary's
2 duties under this Act.