

108TH CONGRESS
1ST SESSION

S. 1906

To provide for enhanced Federal, State, and local enforcement of the immigration laws, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 20, 2003

Mr. SESSIONS (for himself and Mr. MILLER) introduced the following bill;
which was read twice and referred to the Committee on the Judiciary

A BILL

To provide for enhanced Federal, State, and local enforcement of the immigration laws, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Homeland Security
5 Enhancement Act of 2003”.

1 **TITLE I—ENHANCING FEDERAL,**
2 **STATE, AND LOCAL ENFORCE-**
3 **MENT OF THE IMMIGRATION**
4 **LAWS**

5 **SEC. 101. FEDERAL AFFIRMATION OF IMMIGRATION LAW**
6 **ENFORCEMENT BY STATES AND POLITICAL**
7 **SUBDIVISIONS OF STATES.**

8 Notwithstanding any other provision of law and re-
9 affirming the existing inherent authority of States, law en-
10 forcement personnel of a State or a political subdivision
11 of a State have the inherent authority of a sovereign entity
12 to apprehend, arrest, detain, or transfer to Federal cus-
13 tody aliens in the United States (including the transpor-
14 tation of such aliens across State lines to detention cen-
15 ters), in the enforcement of the immigration laws of the
16 United States. This State authority has never been dis-
17 placed or preempted by Congress.

18 **SEC. 102. STATE AUTHORIZATION FOR ENFORCEMENT OF**
19 **FEDERAL IMMIGRATION LAWS ENCOURAGED.**

20 (a) IN GENERAL.—Effective 2 years after the date
21 of enactment of this Act, a State (or political subdivision
22 of a State) that has in effect a statute, policy, or practice
23 that prohibits law enforcement officers of the State, or of
24 a political subdivision within the State, from enforcing
25 Federal immigration laws or from assisting or cooperating

1 with Federal immigration law enforcement in the course
2 of carrying out the officers' law enforcement duties shall
3 not receive any of the funds that would otherwise be allo-
4 cated to the State under section 241(i) of the Immigration
5 and Nationality Act (8 U.S.C. 1231(i)).

6 (b) REALLOCATION OF FUNDS.—Any funds that are
7 not allocated to a State due to the failure of the State
8 to comply with this section shall be reallocated to States
9 that comply with this section.

10 **SEC. 103. CIVIL AND CRIMINAL PENALTIES FOR ALIENS UN-**
11 **LAWFULLY PRESENT IN THE UNITED STATES.**

12 (a) ALIENS UNLAWFULLY PRESENT.—Title II of the
13 Immigration and Nationality Act (8 U.S.C. 1151 et seq.)
14 is amended by adding after section 275 the following:

15 “CRIMINAL PENALTIES AND FORFEITURE FOR
16 UNLAWFUL PRESENCE IN THE UNITED STATES

17 “SEC. 275A. (a) In addition to any other violation,
18 an alien present in the United States in violation of this
19 Act shall be guilty of a misdemeanor and shall be fined
20 under title 18, United States Code, imprisoned not more
21 than 1 year, or both. The assets of any alien present in
22 the United States in violation of this Act shall be subject
23 to forfeiture under title 18, United States Code.

24 “(b) It shall be an affirmative defense to a violation
25 of subsection (a) that the alien overstayed the time allot-
26 ted under the visa due to an exceptional and extremely

1 unusual hardship or physical illness that prevented the
2 alien from leaving the United States by the required
3 date.”.

4 (b) INCREASE IN CRIMINAL PENALTIES FOR ILLEGAL
5 ENTRY.—Section 275(a) of the Immigration and Nation-
6 ality Act (8 U.S.C. 1325(a)) is amended by striking “6
7 months,” and inserting “1 year,”.

8 (c) PERMISSION TO DEPART VOLUNTARILY.—Sec-
9 tion 240B of the Immigration and Nationality Act (8
10 U.S.C. 1229c) is amended—

11 (1) by striking “Attorney General” each place
12 that term appears and inserting “Secretary of
13 Homeland Security”; and

14 (2) in subsection (a)(2)(A), by striking “120”
15 and inserting “30”.

16 **SEC. 104. LISTING OF IMMIGRATION VIOLATORS IN THE NA-**
17 **TIONAL CRIME INFORMATION CENTER DATA-**
18 **BASE.**

19 (a) PROVISION OF INFORMATION TO THE NCIC.—
20 Not later than 180 days after the date of enactment of
21 this Act, the Under Secretary for Border and Transpor-
22 tation Security of the Department of Homeland Security
23 shall provide the National Crime Information Center of
24 the Department of Justice with such information as the
25 Director may have on any and all aliens against whom

1 a final order of removal has been issued, any and all aliens
2 who have signed a voluntary departure agreement, and
3 any and all aliens who have overstayed their visa. Such
4 information shall be provided to the National Crime Infor-
5 mation Center regardless of whether or not the alien re-
6 ceived notice of a final order of removal and even if the
7 alien has already been removed.

8 (b) INCLUSION OF INFORMATION IN THE NCIC
9 DATABASE.—Section 534(a) of title 28, United States
10 Code, is amended—

11 (1) in paragraph (3), by striking “and” at the
12 end;

13 (2) by redesignating paragraph (4) as para-
14 graph (5); and

15 (3) by inserting after paragraph (3) the fol-
16 lowing:

17 “(4) acquire, collect, classify, and preserve
18 records of violations of the immigration laws of the
19 United States, regardless of whether or not the alien
20 has received notice of the violation and even if the
21 alien has already been removed; and”.

22 **SEC. 105. STATE AND LOCAL LAW ENFORCEMENT PROVI-**
23 **SION OF INFORMATION ABOUT APPRE-**
24 **HENDED ILLEGAL ALIENS.**

25 (a) PROVISION OF INFORMATION.—

1 (1) IN GENERAL.—In order to receive funds
2 under the State Criminal Alien Assistance Program
3 described in section 241(i) of the Immigration and
4 Nationality Act (8 U.S.C. 1231(i)), States and local-
5 ities shall provide to the Department of Homeland
6 Security the information listed in subsection (b) on
7 each alien apprehended in the jurisdiction of the
8 State or locality who is believed to be in violation of
9 an immigration law of the United States.

10 (2) TIME LIMITATION.—Not later than 10 days
11 after an alien described in paragraph (1) is appre-
12 hended, information required to be provided under
13 paragraph (1) must be provided in such form and in
14 such manner as the Secretary of Homeland Security
15 may, by regulation or guideline, require.

16 (b) INFORMATION REQUIRED.—The information list-
17 ed in this subsection is as follows:

18 (1) The alien's name.

19 (2) The alien's address or place of residence.

20 (3) A physical description of the alien.

21 (4) The date, time, and location of the encoun-
22 ter with the alien and reason for stopping, detaining,
23 apprehending, or arresting the alien.

24 (5) If applicable, the alien's driver's license
25 number and the State of issuance of such license.

1 (6) If applicable, the type of any other identi-
2 fication document issued to the alien, any designa-
3 tion number contained on the identification docu-
4 ment, and the issuing entity for the identification
5 document.

6 (7) If applicable, the license plate number,
7 make, and model of any automobile registered to, or
8 driven by, the alien.

9 (8) A photo of the alien, if available or readily
10 obtainable.

11 (9) The alien's fingerprints, if available or read-
12 ily obtainable.

13 (c) REIMBURSEMENT.—The Department of Home-
14 land Security shall reimburse States and localities for all
15 reasonable costs, as determined by the Secretary of Home-
16 land Security, incurred by that State or locality as a result
17 of providing information required by this section.

18 (d) AUTHORIZATION OF APPROPRIATIONS.—There is
19 authorized to be appropriated such sums as necessary to
20 carry out this Act.

21 **SEC. 106. INCREASED FEDERAL DETENTION SPACE.**

22 (a) CONSTRUCTION OR ACQUISITION OF DETENTION
23 FACILITIES.—

24 (1) IN GENERAL.—The Secretary of Homeland
25 Security shall construct or acquire, in addition to ex-

1 isting facilities for the detention of aliens, 20 deten-
2 tion facilities in the United States, with 500 beds
3 per facility, for aliens detained pending removal or
4 a decision on removal of such alien from the United
5 States.

6 (2) **ADDITIONAL FACILITIES.**—Whenever the
7 capacity of any detention facility remains within a 1
8 percent range of full capacity for longer than 1 year,
9 the Secretary of Homeland Security shall construct
10 or acquire additional detention facilities beyond the
11 number authorized in paragraph (1) as are appro-
12 priate to eliminate that condition.

13 (3) **DETERMINATIONS.**—The need for, or loca-
14 tion of, any detention facility built or acquired in ac-
15 cordance with this subsection shall be determined by
16 the detention trustee within the Bureau of Immigra-
17 tion and Customs Enforcement.

18 (4) **USE OF INSTALLATIONS UNDER BASE CLO-**
19 **SURE LAWS.**—In acquiring detention facilities under
20 this subsection, the Secretary of Homeland Security
21 shall consider the transfer of appropriate portions of
22 military installations approved for closure or realign-
23 ment under the Defense Base Closure and Realign-
24 ment Act of 1990 (part A of title XXIX of Public

1 Law 101–510; 10 U.S.C. 2687 note) for use in ac-
2 cordance with subsection (a)(1).

3 (b) AUTHORIZATION OF APPROPRIATIONS.—There
4 are authorized to be appropriated such sums as necessary
5 to carry out this section.

6 (c) TECHNICAL AND CONFORMING AMENDMENT.—
7 Section 241(g)(1) of the Immigration and Nationality Act
8 (8 U.S.C. 1231(g)(1)) shall be amended by striking “may
9 expend” and inserting “shall expend”.

10 **SEC. 107. FEDERAL CUSTODY OF ILLEGAL ALIENS APPRE-**
11 **HENDED BY STATE OR LOCAL LAW ENFORCE-**
12 **MENT.**

13 (a) IN GENERAL.—Title II of the Immigration and
14 Nationality Act (8 U.S.C. 1151 et seq.) is amended by
15 adding after section 240C the following:

16 “CUSTODY OF ILLEGAL ALIENS

17 “SEC. 240D. (a) If the chief executive officer of a
18 State (or, if appropriate, a political subdivision of the
19 State) exercising authority with respect to the apprehen-
20 sion of an illegal alien submits a request to the Secretary
21 of Homeland Security that the alien be taken into Federal
22 custody, the Secretary of Homeland Security—

23 “(1) shall—

24 “(A) not later than 48 hours after the con-
25 clusion of the State charging process or dis-
26 missal process, or if no State charging or dis-

1 missal process is required, not later than 48
2 hours after the illegal alien is apprehended,
3 take the illegal alien into the custody of the
4 Federal Government and incarcerate the alien;
5 or

6 “(B) request that the relevant State or
7 local law enforcement agency temporarily incar-
8 cerate or transport the illegal alien for transfer
9 to Federal custody; and

10 “(2) shall designate a Federal, State, or local
11 prison or jail or a private contracted prison or deten-
12 tion facility within each State as the central facility
13 for that State to transfer custody of the criminal or
14 illegal aliens to the Department of Homeland Secu-
15 rity.”.

16 “(b) The Department of Homeland Security shall re-
17 imburse States and localities for all reasonable expenses,
18 as determined by the Secretary of Homeland Security, in-
19 curred by a State or locality in the incarceration and
20 transportation of an illegal alien as described in subpara-
21 graphs (A) and (B) of subsection (a)(1). Compensation
22 provided for costs incurred under subparagraphs (A) and
23 (B) of subsection (a)(1) shall be the average cost of incar-
24 ceration of a prisoner in the relevant State, as determined
25 by the chief executive officer of a State (or, as appropriate,

1 a political subdivision of the State) plus the cost of trans-
2 porting the criminal or illegal alien from the point of ap-
3 prehension, to the place of detention, and to the custody
4 transfer point if the place of detention and place of cus-
5 tody are different.

6 “(c) The Secretary of Homeland Security shall en-
7 sure that illegal aliens incarcerated in Federal facilities
8 pursuant to this subsection are held in facilities which pro-
9 vide an appropriate level of security.

10 “(d)(1) In carrying out this section, the Secretary of
11 Homeland Security may establish a regular circuit and
12 schedule for the prompt transfer of apprehended illegal
13 aliens from the custody of States and political subdivisions
14 of States to Federal custody.

15 “(2) The Secretary of Homeland Security may enter
16 into contracts with appropriate State and local law en-
17 forcement and detention officials to implement this sub-
18 section.

19 “(e) For purposes of this section, the term ‘illegal
20 alien’ means an alien who—

21 “(1) entered the United States without inspec-
22 tion or at any time or place other than that des-
23 ignated by the Secretary of Homeland Security;

24 “(2) was admitted as a nonimmigrant and who,
25 at the time the alien was taken into custody by the

1 State or a political subdivision of the State, had
2 failed to—

3 “(A) maintain the nonimmigrant status in
4 which the alien was admitted or to which it was
5 changed under section 248; or

6 “(B) comply with the conditions of any
7 such status;

8 “(3) was admitted as an immigrant and has
9 subsequently failed to comply with the requirements
10 of that status; or

11 “(4) failed to depart the United States under a
12 voluntary departure agreement or under a final
13 order of removal.”.

14 (b) AUTHORIZATION OF APPROPRIATIONS FOR THE
15 DETENTION AND TRANSPORTATION TO FEDERAL CUS-
16 TODY OF ALIENS NOT LAWFULLY PRESENT.—There is
17 authorized to be appropriated \$500,000,000 for the deten-
18 tion and removal of aliens not lawfully present in the
19 United States under the Immigration and Nationality Act
20 (8 U.S.C. 1101 et seq.) for fiscal year 2004 and each sub-
21 sequent fiscal year.

22 **SEC. 108. TRAINING OF STATE AND LOCAL LAW ENFORCE-**
23 **MENT PERSONNEL RELATING TO THE EN-**
24 **FORCEMENT OF IMMIGRATION LAWS.**

25 (a) TRAINING MANUAL AND POCKET GUIDE.—

1 (1) ESTABLISHMENT.—Not later than 180 days
2 after the date of enactment of this Act, the Sec-
3 retary of Homeland Security shall establish—

4 (A) a training manual for law enforcement
5 personnel of a State or political subdivision of
6 a State to train such personnel in the investiga-
7 tion, identification, apprehension, arrest, deten-
8 tion, and transfer to Federal custody of aliens
9 in the United States (including the transpor-
10 tation of such aliens across State lines to deten-
11 tion centers and identification of fraudulent
12 documents); and

13 (B) an immigration enforcement pocket
14 guide for law enforcement personnel of a State
15 or political subdivision of a State to provide a
16 quick reference for such personnel in the course
17 of duty.

18 (2) AVAILABILITY.—The training manual and
19 pocket guide established in accordance with para-
20 graph (1) shall be made available to all State and
21 local law enforcement personnel.

22 (3) APPLICABILITY.—Nothing in this sub-
23 section shall be construed to require State or local
24 law enforcement personnel to carry the training

1 manual or pocket guide established in accordance
2 with paragraph (1) with them while on duty.

3 (4) COSTS.—The Department of Homeland Se-
4 curity shall be responsible for any costs incurred in
5 establishing the training manual and pocket guide
6 under this subsection.

7 (b) TRAINING FLEXIBILITY.—

8 (1) IN GENERAL.—The Department of Home-
9 land Security shall make training of State and local
10 law enforcement officers available through as many
11 means as possible, including residential training at
12 Federal facilities, onsite training held at State or
13 local police agencies or facilities, online training
14 courses by computer, teleconferencing, and video-
15 tape, or the digital video display (DVD) of a train-
16 ing course or courses.

17 (2) FEDERAL PERSONNEL TRAINING.—The
18 training of State and local law enforcement per-
19 sonnel under this section shall not displace or other-
20 wise adversely affect the training of Federal per-
21 sonnel.

22 (c) ADMINISTRATION FEES.—The Secretary of
23 Homeland Security may charge a fee for training under
24 subsection (b) that shall be an amount equal to not more
25 than half the actual costs of providing such training.

1 (d) CLARIFICATION.—Nothing in this Act or any
2 other provision of law shall be construed as making any
3 immigration-related training a requirement for, or pre-
4 requisite to, any State or local law enforcement officer ex-
5 ercising that officer’s inherent authority to apprehend, ar-
6 rest, detain, or transfer to Federal custody illegal aliens
7 during the normal course of carrying out their law enforce-
8 ment duties.

9 (e) TRAINING LIMITATION.—Section 287(g) of the
10 Immigration and Nationality Act (8 U.S.C. 1357(g)) is
11 amended—

12 (1) by striking “Attorney General” each place
13 that term appears and inserting “Secretary of
14 Homeland Security”; and

15 (2) in paragraph (2), by adding at the end the
16 following: “Such training shall not exceed 14 days or
17 80 hours, whichever is longer.”.

18 **SEC. 109. IMMUNITY.**

19 (a) PERSONAL IMMUNITY.—Notwithstanding any
20 other provision of law, a law enforcement officer of a State
21 or local law enforcement agency shall be immune, to the
22 same extent as a Federal law enforcement officer, from
23 personal liability arising out of the enforcement of any im-
24 migration law, provided the officer is acting within the
25 scope of the officer’s official duties.

1 (b) AGENCY IMMUNITY.—Notwithstanding any other
2 provision of law, a State or local law enforcement agency
3 shall be immune from any claim for money damages based
4 on Federal, State, or local civil rights law for an incident
5 arising out of the enforcement of any immigration law,
6 except to the extent that the law enforcement officer of
7 that agency, whose action the claim involves, committed
8 a violation of Federal, State, or local criminal law in the
9 course of enforcing such immigration law.

10 **SEC. 110. PLACES OF DETENTION FOR ALIENS ARRESTED**
11 **PENDING EXAMINATION AND DECISION ON**
12 **REMOVAL.**

13 (a) IN GENERAL.—Section 241(g) of the Immigra-
14 tion and Nationality Act (8 U.S.C. 1231(g)) is amended
15 by adding at the end the following:

16 “(3) POLICY ON DETENTION IN STATE AND
17 LOCAL DETENTION FACILITIES.—In carrying out
18 paragraph (1), the Secretary of Homeland Security
19 shall ensure that an alien arrested under section
20 287(a) is detained, pending the alien’s being taken
21 for the examination described in that section, in a
22 State or local prison, jail, detention center, or other
23 comparable facility, if—

1 “(A) such a facility is the most suitably lo-
2 cated Federal, State, or local facility available
3 for such purpose under the circumstances;

4 “(B) an appropriate arrangement for such
5 use of the facility can be made; and

6 “(C) such facility satisfies the standards
7 for the housing, care, and security of persons
8 held in custody of a United States marshal.”.

9 (b) **DETENTION FACILITY SUITABILITY.**—Notwith-
10 standing any other provision of law, a facility described
11 in section 241(g)(3)(C) of the Immigration and Nation-
12 ality Act, as added by subsection (a), is adequate for de-
13 tention of persons being held for immigration related vio-
14 lations.

15 (c) **TECHNICAL AND CONFORMING AMENDMENT.**—
16 Section 241 of the Immigration and Nationality Act (8
17 U.S.C. 1231) is amended by striking “Attorney General”
18 each place that term appears and inserting “Secretary of
19 Homeland Security”.

20 **SEC. 111. INSTITUTIONAL REMOVAL PROGRAM.**

21 (a) **CONTINUATION.**—

22 (1) **IN GENERAL.**—The Department of Home-
23 land Security shall continue to operate and imple-
24 ment the program known as the Institutional Re-
25 moval Program (IRP) which—

1 (A) identifies removable criminal aliens in
2 Federal and State correctional facilities;

3 (B) ensures such aliens are not released
4 into the community; and

5 (C) removes such aliens from the United
6 States after the completion of their sentences.

7 (2) EXPANSION.—The Institutional Removal
8 Program shall be extended to all States. Any State
9 that receives Federal funds for the incarceration of
10 criminal aliens shall—

11 (A) cooperate with Federal Institutional
12 Removal Program officials;

13 (B) expeditiously and systematically iden-
14 tify criminal aliens in its prison and jail popu-
15 lations; and

16 (C) promptly convey such information to
17 Federal IRP authorities as a condition for re-
18 ceiving such funds.

19 (b) AUTHORIZATION FOR DETENTION AFTER COM-
20 PLETION OF STATE OR LOCAL PRISON SENTENCE.—Law
21 enforcement officers of a State or political subdivision of
22 a State have the authority to—

23 (1) hold an illegal alien for a period of up to
24 14 days after the alien has completed the alien's
25 State prison sentence in order to effectuate the

1 transfer of the alien to Federal custody when the
2 alien is removable or not lawfully present in the
3 United States; or

4 (2) issue a detainer that would allow aliens who
5 have served a State prison sentence to be detained
6 by the State prison until personnel from the Bureau
7 of Immigration and Customs Enforcement can take
8 the alien into custody.

9 (c) TECHNOLOGY USAGE.—Technology such as
10 videoconferencing shall be used to the maximum extent
11 possible in order to make the Institutional Removal Pro-
12 gram (IRP) available in remote locations. Mobile access
13 to Federal databases of aliens, such as IDENT, and live
14 scan technology shall be used to the maximum extent prac-
15 ticable in order to make these resources available to State
16 and local law enforcement agencies in remote locations.

17 (d) AUTHORIZATION OF APPROPRIATIONS.—There is
18 authorized to be appropriated to carry out the Institu-
19 tional Removal Program—

20 (1) \$10,000,000 for fiscal year 2004;

21 (2) \$20,000,000 for fiscal year 2005;

22 (3) \$30,000,000 for fiscal year 2006;

23 (4) \$40,000,000 for fiscal year 2007;

24 (5) \$50,000,000 for fiscal year 2008;

25 (6) \$60,000,000 for fiscal year 2009;

1 (7) \$70,000,000 for fiscal year 2010; and

2 (8) \$80,000,000 for fiscal year 2011.

3 **TITLE II—ENHANCING EN-**
 4 **FORCEMENT OF THE IMMI-**
 5 **GRATION AND NATIONALITY**
 6 **ACT IN THE INTERIOR**
 7 **THROUGH IMPROVED DOCU-**
 8 **MENT SECURITY**

9 **SEC. 201. DRIVERS LICENSES.**

10 (a) EXPIRATION DATE FOR CERTAIN ALIENS.—

11 (1) IN GENERAL.—Section 656 of the Illegal
 12 Immigration Reform and Immigrant Responsibility
 13 Act of 1996 (5 U.S.C. 301 note) is amended by in-
 14 serting after subsection (a) the following:

15 “(b) STATE-ISSUED DRIVER’S LICENSES EXPIRA-
 16 TION DATE.—A Federal agency may not accept for any
 17 identification-related purpose a driver’s license issued by
 18 a State unless, if the driver’s license is issued to an alien
 19 who is in lawful status but who is not an alien lawfully
 20 admitted for permanent residence, the period of validity
 21 of the license expires on the date on which the alien’s au-
 22 thorization to remain in the United States expires.”.

23 (2) EFFECTIVE DATE.—The amendment made
 24 by paragraph (1) shall take effect beginning on Oc-
 25 tober 1, 2007, but shall apply only to licenses issued

1 to an individual for the first time and to replace-
2 ment or renewal licenses issued according to State
3 law.

4 (b) **CONDITION OF FUNDS.**—Section 402(b)(1) of
5 title 23, United States Code, is amended—

6 (1) in subparagraph (C), by striking “and” at
7 the end;

8 (2) in subparagraph (D), by striking the period
9 at the end and inserting “; and”; and

10 (3) by adding at the end the following:

11 “(E) prohibit aliens who are not in lawful
12 status, as determined under the Immigration
13 and Nationality Act (8 U.S.C. 1101 et seq.),
14 from being issued a driver’s license in that
15 State.”.

16 **SEC. 202. SECURE AND VERIFIABLE IDENTIFICATION RE-**
17 **QUIRED FOR FEDERAL PUBLIC BENEFITS.**

18 (a) **IN GENERAL.**—In the provision in the United
19 States of a Federal public benefit or service that requires
20 the recipient to produce identification, no Federal agency,
21 commission, or other entity within the executive, legisla-
22 tive, or judicial branch of the Federal Government may
23 accept, recognize, or rely on (or authorize the acceptance
24 or recognition of, or the reliance on) any identification
25 document, unless—

1 (1) the document was issued by a United States
2 Federal or State authority and is subject to
3 verification by a United States Federal law enforce-
4 ment, intelligence, or homeland security agency; or

5 (2) the recipient—

6 (A) is lawfully present in the United
7 States;

8 (B) is in possession of a passport; and

9 (C) is a citizen of a country for which the
10 visa requirement for entry into the United
11 States is waived if the alien possesses a pass-
12 port from such country.

13 (b) IMMUNITY.—An elected or appointed official, em-
14 ployee, or other contractor or agent of the Federal Govern-
15 ment who takes an action inconsistent with subsection (a)
16 is deemed to be acting beyond the scope of authority
17 granted by law and shall not be immune from liability for
18 such action, unless such immunity is conferred by the
19 Constitution and cannot be waived.

○