To establish and rapidly implement regulations for State driver’s license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, and to ensure expeditious construction of the San Diego border fence.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 26, 2005

Mr. SENSENBRENNER (for himself, Mr. Tom Davis of Virginia, Mr. Dreier, Mr. Hunter, Mr. Hyde, Mr. Hoekstra, Mr. Cox, Mr. Hostettler, Mr. Smith of Texas, Mr. Coble, Mr. Chabot, Mr. Akin, Mr. Alexander, Mr. Bachi, Mr. Baker, Mr. Barton of Texas, Mr. Bass, Mr. Bilarakis, Mrs. Blackburn, Mr. Blunt, Mrs. Bono, Mr. Boozman, Mr. Bradley of New Hampshire, Mr. Brady of Texas, Ms. Ginny Brown-Waite of Florida, Mr. Burgess, Mr. Burton of Indiana, Mr. Buyer, Mr. Calvert, Mr. Camp, Mr. Cantor, Mrs. Capito, Mr. Carter, Mr. Chocola, Mr. Crenshaw, Mrs. Cubin, Mr. Culberson, Mr. Cunningham, Mr. Davis of Kentucky, Mrs. Jo Ann Davis of Virginia, Mr. Davis of Tennessee, Mr. Deal of Georgia, Mr. Doolittle, Mr. Duncan, Mrs. Emerson, Mr. Everett, Mr. Feeney, Mr. Foley, Mr. Forbes, Mr. Fossella, Ms. Foxx, Ms. Gallegly, Mr. Garrett of New Jersey, Mr. Gillmor, Mr. Gingrey, Mr. Gohmert, Mr. Goode, Mr. Goodlatte, Mr. Green of Wisconsin, Mr. Gutknecht, Ms. Hart, Mr. Hayworth, Mr. Hensarling, Mr. Herger, Mr. Issa, Mr. Istook, Mr. Sam Johnson of Texas, Mr. Jones of North Carolina, Mr. Keller, Mr. Kennedy of Minnesota, Mr. King of Iowa, Mr. Kingston, Mr. Kline, Mr. Lewis of California, Mr. Lewis of Kentucky, Mr. Linder, Mr. Daniel E. Lungren of California, Mr. McCaul of Texas, Mr. McCreary, Mr. McHugh, Mr. McKeon, Mr. Manzullo, Mr. Miller of Florida, Mr. Gary G. Miller of California, Mrs. Musgrave, Mrs. Myrick, Mr. Neugebauer, Mrs. Northup, Mr. Norwood, Mr. Nunes, Mr. Osborne, Mr. Otter, Mr. Pitts, Mr. Radanovich, Mr. Ramstad, Mr. Rogers of Alabama, Mr. Rogers of Michigan, Mr. Rohrabacher, Mr. Royce, Mr. Ryan of Wisconsin, Mr. Sessions, Mr. Shadegg, Mr. Silaw, Mr. Shuster, Mr. Simpson, Mr. Souder, Mr. Stearns, Mr. Sullivan, Mr. Sweeney, Mr. Tancredo, Mr. Turner, Mr. Thomas, Mr. Wamp, Mr. Weldon of Florida, Mr. Wilson of South Carolina, and Mrs. Drake) introduced the following bill; which was referred to the
Committee on the Judiciary, and in addition to the Select Committee on Homeland Security and Government Reform, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To establish and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, and to ensure expeditious construction of the San Diego border fence.

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 the "REAL ID Act of 2005".

TITLE I—AMENDMENTS TO FEDERAL LAWS TO PROTECT AGAINST TERRORIST ENTRY

SEC. 101. PREVENTING TERRORISTS FROM OBTAINING ASYLUM.

(a) CONDITIONS FOR GRANTING ASYLUM.—Section 208(b)(1) of the Immigration and Nationality Act (8 U.S.C. 1158(b)(1)) is amended—
(1) by striking “The Attorney General” following the paragraph heading and inserting the following:

“(A) Eligibility.—The Secretary of Homeland Security or the Attorney General”;

(2) by striking “the Attorney General” each place such term appears and inserting “the Secretary of Homeland Security or the Attorney General”; and

(3) by adding at the end the following:

“(B) Burden of Proof.—

“(i) In General.—The burden of proof is on the applicant to establish that the applicant is a refugee, within the meaning of section 101(a)(42)(A). To establish that the applicant is a refugee, within the meaning of such section, the applicant must establish that race, religion, nationality, membership in a particular social group, or political opinion was or will be a central reason for persecuting the applicant.

“(ii) Sustaining Burden.—The testimony of the applicant may be sufficient to sustain the applicant’s burden without
corroboration, but only if the trier of fact determines that it is credible, is persuasive, and refers to specific facts that demonstrate that the applicant is a refugee. In determining whether the applicant has met the applicant’s burden, the trier of fact is entitled to weigh the credible testimony along with other evidence of record. Where the trier of fact determines, in the trier of fact’s discretion, that the applicant should provide evidence which corroborates otherwise credible testimony, such evidence must be provided unless the applicant does not have the evidence or cannot obtain the evidence without departing the United States. The inability to obtain corroborating evidence does not excuse the applicant from meeting the applicant’s burden of proof.

“(iii) CREDIBILITY DETERMINATION.—The credibility determination of the trier of fact may, in the trier of fact’s discretion, be based, in addition to other factors, on the demeanor, candor, or responsiveness of the applicant or witness, the in-
herent plausibility of the applicant’s or witness’ account, the consistency between the applicant’s or witness’ written and oral statements, made at any time and whether or not under oath, the internal consistency of each such statement, the consistency of such statements with the country conditions in the country from which the applicant claims asylum, and any inaccuracies or falsehoods in such statements.”.

(b) WITHHOLDING OF REMOVAL.—Section 241(b)(3) of the Immigration and Nationality Act (8 U.S.C. 1231(b)(3)) is amended by adding at the end the following:

“(C) SUSTAINING BURDEN OF PROOF; CREDIBILITY DETERMINATIONS.—In determining whether an alien has demonstrated that the alien’s life or freedom would be threatened for a reason described in subparagraph (A), the trier of fact shall determine whether the alien has sustained the alien’s burden of proof, and shall make credibility determinations, in the manner described in clauses (ii) and (iii) of section 208(b)(1)(B).”.
(c) Standard of Review for Orders of Removal.—Section 242(b)(4) of the Immigration and Nationality Act (8 U.S.C. 1252(b)(4)) is amended by adding at the end, after the final subparagraph, the following:

“No court shall reverse a determination made by a trier of fact with respect to the availability of corroborating evidence, as described in section 208(b)(1)(B) or 241(b)(3)(C), unless the court finds that a reasonable trier of fact is compelled to conclude that such corroborating evidence is unavailable.”.

(d) Clarification of Discretion.—Section 242(a)(2)(B) of the Immigration and Nationality Act (8 U.S.C. 1252(a)(2)(B)) is amended—

(1) in the matter preceding clause (i), by inserting “and regardless of whether the judgment, decision, or action is made in removal proceedings,” after “other provision of law,”; and

(2) in clause (ii), by inserting “or the Secretary of Homeland Security” after “Attorney General” each place such term appears.

(e) Effective Dates.—

(1) The amendments made by paragraphs (1) and (2) of subsection (a) shall take effect as if enacted on March 1, 2003.
(2) The amendments made by subsections (a)(3) and (b) shall take effect on the date of the enactment of this Act and shall apply to applications for asylum or withholding made on or after such date.

(3) The amendment made by subsection (c) shall take effect on the date of the enactment of this Act and shall apply to all cases in which the final administrative removal order was issued before, on, or after such date.

(4) The amendments made by subsection (d) shall take effect on the date of the enactment of this Act and shall apply to all cases pending before any court on or after such date.

(f) REPEAL.—Section 5403 of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108–458) is repealed.

SEC. 102. WAIVER OF LAWS NECESSARY FOR IMPROVEMENT OF BARRIERS AT BORDERS.

Section 102(e) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1103 note) is amended to read as follows:

“(e) WAIVER.—

“(1) IN GENERAL.—Notwithstanding any other provision of law, the Secretary of Homeland Security
shall have the authority to waive, and shall waive, all
laws such Secretary, in such Secretary’s sole discre-
tion, determines necessary to ensure expeditious con-
struction of the barriers and roads under this sec-
tion.

“(2) No judicial review.—Notwithstanding
any other provision of law (statutory or nonstatu-
tory), no court shall have jurisdiction—

“(A) to hear any cause or claim arising
from any action undertaken, or any decision
made, by the Secretary of Homeland Security
pursuant to paragraph (1); or

“(B) to order compensatory, declaratory,
injunctive, equitable, or any other relief for
damage alleged to arise from any such action or
decision.”.

SEC. 103. INADMISSIBILITY DUE TO TERRORIST AND TER-
RORIST-RELATED ACTIVITIES.

(a) In general.—Section 212(a)(3)(B)(i) of the
Immigration and Nationality Act (8 U.S.C.
1182(a)(3)(B)(i)) is amended to read as follows:

“(i) In general.—Any alien who—

“(I) has engaged in a terrorist
activity;
“(II) a consular officer, the Attorney General, or the Secretary of Homeland Security knows, or has reasonable ground to believe, is engaged in or is likely to engage after entry in any terrorist activity (as defined in clause (iv));

“(III) has, under circumstances indicating an intention to cause death or serious bodily harm, incited terrorist activity;

“(IV) is a representative (as defined in clause (v)) of—

“(aa) a terrorist organization; or

“(bb) a political, social, or other group that endorses or espouses terrorist activity;

“(V) is a member of a terrorist organization described in subclause (I) or (II) of clause (vi);

“(VI) is a member of a terrorist organization described in clause (vi)(III), unless the alien can demonstrate by clear and convincing evi-
dence that the alien did not know, and should not reasonably have known, that the organization was a terrorist organization;

“(VII) endorses or espouses terrorist activity or persuades others to endorse or espouse terrorist activity or support a terrorist organization;

“(VIII) has received military-type training (as defined in section 2339D(c)(1) of title 18, United States Code) from or on behalf of any organization that, at the time the training was received, was a terrorist organization; or

“(IX) is the spouse or child of an alien who is inadmissible under this subparagraph, if the activity causing the alien to be found inadmissible occurred within the last 5 years,
is inadmissible. An alien who is an officer, official, representative, or spokesman of the Palestine Liberation Organization is considered, for purposes of this Act, to be engaged in a terrorist activity.”.
(b) ENGAGE IN TERRORIST ACTIVITY DEFINED.—

Section 212(a)(3)(B)(iv) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(iv)) is amended to read as follows:

“(iv) ENGAGE IN TERRORIST ACTIVITY DEFINED.—As used in this subparagraph, the term ‘engage in terrorist activity’ means, in an individual capacity or as a member of an organization—

“(I) to commit or to incite to commit, under circumstances indicating an intention to cause death or serious bodily injury, a terrorist activity;

“(II) to prepare or plan a terrorist activity;

“(III) to gather information on potential targets for terrorist activity;

“(IV) to solicit funds or other things of value for—

“(aa) a terrorist activity;

“(bb) a terrorist organization described in clause (vi)(I) or (vi)(II); or
“(cc) a terrorist organization described in clause (vi)(III), unless the solicitor can demonstrate by clear and convincing evidence that he did not know, and should not reasonably have known, that the organization was a terrorist organization;

“(V) to solicit any individual—

“(aa) to engage in conduct otherwise described in this clause;

“(bb) for membership in a terrorist organization described in clause (vi)(I) or (vi)(II); or

“(cc) for membership in a terrorist organization described in clause (vi)(III), unless the solicitor can demonstrate by clear and convincing evidence that he did not know, and should not reasonably have known, that the organization was a terrorist organization; or
“(VI) to commit an act that the actor knows, or reasonably should know, affords material support, including a safe house, transportation, communications, funds, transfer of funds or other material financial benefit, false documentation or identification, weapons (including chemical, biological, or radiological weapons), explosives, or training—

“(aa) for the commission of a terrorist activity;

“(bb) to any individual who the actor knows, or reasonably should know, has committed or plans to commit a terrorist activity;

“(cc) to a terrorist organization described in subclause (I) or (II) of clause (vi); or

“(dd) to a terrorist organization described in clause (vi)(III), unless the actor can demonstrate by clear and convincing evidence that the actor
did not know, and should not
reasonably have known, that the
organization was a terrorist orga-
nization.”.

(c) TERRORIST ORGANIZATION DEFINED.—Section
212(a)(3)(B)(vi) of the Immigration and Nationality Act
(8 U.S.C. 1182(a)(3)(B)(vi)) is amended to read as fol-
lows:

“(vi) TERRORIST ORGANIZATION DE-
FINED.—As used in this section, the term
‘terrorist organization’ means an organiza-
tion—

“(I) designated under section
219;

“(II) otherwise designated, upon
publication in the Federal Register, by
the Secretary of State in consultation
with or upon the request of the Attor-
ney General or the Secretary of
Homeland Security, as a terrorist or-
ganization, after finding that the or-
ganization engages in the activities
described in subclauses (I) through
(VI) of clause (iv); or
“(III) that is a group of two or more individuals, whether organized or not, which engages in, or has a subgroup which engages in, the activities described in subclauses (I) through (VI) of clause (iv).”.

(d) Effective Date.—The amendments made by this section shall take effect on the date of the enactment of this Act and shall apply to—

(1) removal proceedings instituted before, on, or after the date of the enactment of this Act; and

(2) acts and conditions constituting a ground for inadmissibility occurring or existing before, on, or after such date.

SEC. 104. REMOVAL OF TERRORISTS.

(a) In General.—

(1) In General.—Section 237(a)(4)(B) (8 U.S.C. 1227(a)(4)(B)) is amended to read as follows:

“(B) Terrorist Activities.—Any alien who would be considered inadmissible pursuant to subparagraph (B) or (F) of section 212(a)(3) is deportable.”.

(2) Effective Date.—The amendment made by paragraph (1) shall take effect on the date of the
enactment of this Act and shall apply to acts and conditions constituting a ground for removal occurring or existing before, on, or after such date.

(b) REPEAL.—Effective as of the date of the enactment of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108–458), section 5402 of such Act is repealed, and the Immigration and Nationality Act shall be applied as if such section had not been enacted.

TITLE II—IMPROVED SECURITY FOR DRIVERS’ LICENSES AND PERSONAL IDENTIFICATION CARDS

SEC. 201. DEFINITIONS.

In this title, the following definitions apply:

(1) DRIVER’S LICENSE.—The term “driver’s license” means a motor vehicle operator’s license, as defined in section 30301 of title 49, United States Code.

(2) IDENTIFICATION CARD.—The term “identification card” means a personal identification card, as defined in section 1028(d) of title 18, United States Code, issued by a State.

(3) SECRETARY.—The term “Secretary” means the Secretary of Homeland Security.
(4) **STATE.**—The term “State” means a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

**SEC. 202. MINIMUM DOCUMENT REQUIREMENTS AND ISSUANCE STANDARDS FOR FEDERAL RECOGNITION.**

(a) **Minimum Standards for Federal Use.**—

(1) **IN GENERAL.**—Beginning 3 years after the date of the enactment of this Act, a Federal agency may not accept, for any official purpose, a driver’s license or identification card issued by a State to any person unless the State is meeting the requirements of this section.

(2) **State Certifications.**—The Secretary shall determine whether a State is meeting the requirements of this section based on certifications made by the State to the Secretary. Such certifications shall be made at such times and in such manner as the Secretary, in consultation with the Secretary of Transportation, may prescribe by regulation.
(b) Minimum Document Requirements.—To meet the requirements of this section, a State shall include, at a minimum, the following information and features on each driver’s license and identification card issued to a person by the State:

1. The person’s full legal name.
2. The person’s date of birth.
3. The person’s gender.
4. The person’s driver’s license or identification card number.
5. A digital photograph of the person.
6. The person’s address of principle residence.
7. The person’s signature.
8. Physical security features designed to prevent tampering, counterfeiting, or duplication of the document for fraudulent purposes.
9. A common machine-readable technology, with defined minimum data elements.

(c) Minimum Issuance Standards.—

1. In general.—To meet the requirements of this section, a State shall require, at a minimum, presentation and verification of the following information before issuing a driver’s license or identification card to a person:
(A) A photo identity document, except that a non-photo identity document is acceptable if it includes both the person’s full legal name and date of birth.

(B) Documentation showing the person’s date of birth.

(C) Proof of the person’s social security account number or verification that the person is not eligible for a social security account number.

(D) Documentation showing the person’s name and address of principal residence.

(2) SPECIAL REQUIREMENTS.—

(A) IN GENERAL.—To meet the requirements of this section, a State shall comply with the minimum standards of this paragraph.

(B) EVIDENCE OF LAWFUL STATUS.—A State shall require, before issuing a driver’s license or identification card to a person, valid documentary evidence that the person—

(i) is a citizen of the United States;

(ii) is an alien lawfully admitted for permanent or temporary residence in the United States;
(iii) has conditional permanent resident status in the United States;

(iv) has an approved application for asylum in the United States or has entered into the United States in refugee status;

(v) has a valid, unexpired non-immigrant visa or nonimmigrant visa status for entry into the United States;

(vi) has a pending application for asylum in the United States;

(vii) has a pending or approved application for temporary protected status in the United States;

(viii) has approved deferred action status; or

(ix) has a pending application for adjustment of status to that of an alien lawfully admitted for permanent residence in the United States or conditional permanent resident status in the United States.

(C) TEMPORARY DRIVERS’ LICENSES AND IDENTIFICATION CARDS.—

(i) IN GENERAL.—If a person presents evidence under any of clauses (v) through (ix) of subparagraph (B), the
State may only issue a temporary driver’s license or temporary identification card to the person.

(ii) Expiration Date.—A temporary driver’s license or temporary identification card issued pursuant to this subparagraph shall be valid only during the period of time of the applicant’s authorized stay in the United States or, if there is no definite end to the period of authorized stay, a period of one year.

(iii) Display of Expiration Date.—A temporary driver’s license or temporary identification card issued pursuant to this subparagraph shall clearly indicate that it is temporary and shall state the date on which it expires.

(iv) Renewal.—A temporary driver’s license or temporary identification card issued pursuant to this subparagraph may be renewed only upon presentation of valid documentary evidence that the status by which the applicant qualified for the temporary driver’s license or temporary identi-
fication card has been extended by the Secretary of Homeland Security.

(3) VERIFICATION OF DOCUMENTS.—To meet the requirements of this section, a State shall implement the following procedures:

(A) Before issuing a driver’s license or identification card to a person, the State shall verify, with the issuing agency, the issuance, validity, and completeness of each document required to be presented by the person under paragraph (1) or (2).

(B) The State shall not accept any foreign document, other than an official passport, to satisfy a requirement of paragraph (1) or (2).

(C) Not later than September 11, 2005, the State shall enter into a memorandum of understanding with the Secretary of Homeland Security to routinely utilize the automated system known as Systematic Alien Verification for Entitlements, as provided for by section 404 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (110 Stat. 3009–664), to verify the legal presence status of a person, other than a United States citizen, ap-
plying for a driver’s license or identification card.

(d) Other Requirements.—To meet the requirements of this section, a State shall adopt the following practices in the issuance of drivers’ licenses and identification cards:

(1) Employ technology to capture digital images of identity source documents so that the images can be retained in electronic storage in a transferable format.

(2) Retain paper copies of source documents for a minimum of 7 years or images of source documents presented for a minimum of 10 years.

(3) Subject each person applying for a driver’s license or identification card to mandatory facial image capture.

(4) Establish an effective procedure to confirm or verify a renewing applicant’s information.

(5) Confirm with the Social Security Administration a social security account number presented by a person using the full social security account number. In the event that a social security account number is already registered to or associated with another person to which any State has issued a driv-
er’s license or identification card, the State shall re-
solve the discrepancy and take appropriate action.

(6) Refuse to issue a driver’s license or identi-
fication card to a person holding a driver’s license
issued by another State without confirmation that
the person is terminating or has terminated the driv-
er’s license.

(7) Ensure the physical security of locations
where drivers’ licenses and identification cards are
produced and the security of document materials
and papers from which drivers’ licenses and identi-
fication cards are produced.

(8) Subject all persons authorized to manufac-
ture or produce drivers’ licenses and identification
cards to appropriate security clearance requirements.

(9) Establish fraudulent document recognition
training programs for appropriate employees en-
gaged in the issuance of drivers’ licenses and identi-
fication cards.

(10) Limit the period of validity of all driver’s
licenses and identification cards that are not tem-
porary to a period that does not exceed 8 years.

(11) In any case in which the State issues a
driver’s license or identification card that does not
satisfy the requirements of this section, ensure that
such license or identification card—

(A) clearly states on its face that it may
not be accepted by any Federal agency for any
official purpose; and

(B) uses a unique design or color indicator
to alert Federal agency and other law enforcem-
ment personnel that it may not be accepted for
any such purpose.

(e) ADDITIONAL POWERS OF SECRETARY.—The Sec-
retary, in the Secretary’s discretion—

(1) may, in addition to the requirements of sub-
section (b), prescribe one or more design formats for
driver’s licenses and identification cards that satisfy
the requirements of this section in order—

(A) to protect the national security inter-
ests of the United States; and

(B) to allow for clear visual differentiation
between categories of driver’s licenses and iden-
tity cards (such as to differentiate between driv-
er’s licenses valid for multi-year terms and tem-
porary driver’s licenses); and

(2) may, in addition to the limitations described
in subsections (c)(2)(C)(ii) and (d)(10), further limit
the validity period of driver’s licenses and identifica-
tion cards in order to provide for periodic confirmation of principal residence address and lawful presence in the United States in a status described in subsection (c)(2)(B).

SEC. 203. LINKING OF DATABASES.

(a) IN GENERAL.—To be eligible to receive any grant or other type of financial assistance made available under this title, a State shall participate in the interstate compact regarding sharing of driver license data, known as the “Driver License Agreement”, in order to provide electronic access by a State to information contained in the motor vehicle databases of all other States.

(b) REQUIREMENTS FOR INFORMATION.—A State motor vehicle database shall contain, at a minimum, the following information:

(1) All data fields printed on drivers’ licenses and identification cards issued by the State.

(2) Motor vehicle drivers’ histories, including motor vehicle violations, suspensions, and points on licenses.
SEC. 204. TRAFFICKING IN AUTHENTICATION FEATURES FOR USE IN FALSE IDENTIFICATION DOCUMENTS.

Section 1028(a)(8) of title 18, United States Code, is amended by striking “false authentication features” and inserting “false or actual authentication features”.

SEC. 205. GRANTS TO STATES.

(a) IN GENERAL.—The Secretary may make grants to a State to assist the State in conforming to the minimum standards set forth in this title.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary for each of the fiscal years 2005 through 2009 such sums as may be necessary to carry out this title.

SEC. 206. AUTHORITY.

(a) PARTICIPATION OF SECRETARY OF TRANSPORTATION AND STATES.—All authority to issue regulations, certify standards, and issue grants under this title shall be carried out by the Secretary, in consultation with the Secretary of Transportation and the States.

(b) EXTENSIONS OF DEADLINES.—The Secretary may grant to a State an extension of time to meet the requirements of section 202(a)(1) if the State provides adequate justification for noncompliance.
SEC. 207. REPEAL.

Section 7212 of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108–458) is repealed.