

109TH CONGRESS
1ST SESSION

H. R. 4240

To amend the Immigration and Nationality Act and other Acts to strengthen the enforcement of the immigration laws, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 7, 2005

Mr. HOSTETTLER introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Homeland Security, 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 amend the Immigration and Nationality Act and other Acts to strengthen the 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; AMENDMENTS TO IMMIGRATION**
4 **AND NATIONALITY ACT; TABLE OF CON-**
5 **TENTS.**

6 (a) SHORT TITLE.—This Act may be cited as the
7 “Secure America Act of 2005”.

1 (b) AMENDMENTS TO IMMIGRATION AND NATION-
 2 ALITY ACT.—Except as otherwise specifically provided,
 3 whenever in this Act an amendment is expressed in terms
 4 of an amendment to or repeal of a section or other provi-
 5 sion, the reference shall be considered to be made to that
 6 section or other provision of the Immigration and Nation-
 7 ality Act.

8 (c) TABLE OF CONTENTS.—The table of contents of
 9 this Act is as follows:

- Sec. 1. Short title; amendments to Immigration and Nationality Act; table of contents.
- Sec. 2. Expedited removal.
- Sec. 3. Increased criminal sentences and fines for alien smuggling.
- Sec. 4. Enhanced penalties for persons committing offenses while armed.
- Sec. 5. Use of Army and Air Force to secure the border.
- Sec. 6. Mandatory sentencing ranges for reentering aliens.
- Sec. 7. Penalty for countries that do not accept return of nationals.
- Sec. 8. Bureau of Immigration Enforcement.

10 **SEC. 2. EXPEDITED REMOVAL.**

11 (a) IN GENERAL.—Section 235(b)(1)(A)(iii) (8
 12 U.S.C. 1225(b)(1)(A)(iii)) is amended—

13 (1) in subclause (I), by striking “Attorney Gen-
 14 eral” and inserting “Secretary of Homeland Secu-
 15 rity” each place it appears; and

16 (2) by adding at the end the following new sub-
 17 clause:

18 “(III) EXCEPTION.—Notwithstanding sub-
 19 clauses (I) and (II), the Secretary of Homeland
 20 Security shall apply clauses (i) and (ii) of this
 21 subparagraph to any alien (other than an alien

1 described in subparagraph (F)) who is not a
2 national of a country contiguous to the United
3 States, who has not been admitted or paroled
4 into the United States, and who is apprehended
5 within 100 miles of an international land border
6 of the United States and within 14 days of
7 entry.”.

8 (b) EXCEPTIONS.—Section 235(b)(1)(F) (8 U.S.C.
9 1225(b)(1)(F)) is amended by inserting before the period
10 at the end the following: “or in any manner at or between
11 a land border port of entry”.

12 (c) EFFECTIVE DATE.—The amendments made by
13 this section shall take effect on the date of the enactment
14 of this Act and shall apply to all aliens apprehended on
15 or after such date.

16 **SEC. 3. INCREASED CRIMINAL SENTENCES AND FINES FOR**
17 **ALIEN SMUGGLING.**

18 (a) IN GENERAL.—Subject to subsection (b), pursu-
19 ant to its authority under section 994(p) of title 28,
20 United States Code, the United States Sentencing Com-
21 mission shall promulgate sentencing guidelines or amend
22 existing sentencing guidelines for smuggling, transporting,
23 harboring, or inducing aliens under sections 274(a)(1)(A)
24 of the Immigration and Nationality Act (8 U.S.C.
25 1324(a)(1)(A)) so as to—

1 (1) triple the minimum term of imprisonment
2 under that section for offenses involving the smug-
3 gling, transporting, harboring, or inducing of—

4 (A) 1 to 5 aliens from 10 months to 30
5 months;

6 (B) 6 to 24 aliens from 18 months to 54
7 months;

8 (C) 25 to 100 aliens from 27 months to 81
9 months; and

10 (D) 101 or more aliens from 37 months to
11 111 months;

12 (2) increase the minimum level of fines for each
13 of the offenses described in subparagraphs (A)
14 through (D) of paragraph (1) to the greater of
15 \$25,000 per alien or 3 times the amount the defend-
16 ant received or expected to receive as compensation
17 for the illegal activity;

18 (3) increase by at least 2 offense levels above
19 the applicable enhancement in effect on the date of
20 the enactment of this Act the sentencing enhance-
21 ments for intentionally or recklessly creating a sub-
22 stantial risk of serious bodily injury or causing bod-
23 ily injury, serious injury, or permanent or life
24 threatening injury;

1 (4) for actions causing death, increase the of-
2 fense level to be equivalent to that for involuntary
3 manslaughter under section 1112 of title 28, United
4 States Code; and

5 (5) for corporations or other business entities
6 that knowingly benefit from such offenses, increase
7 the minimum level of fines for each of the offenses
8 described in subparagraphs (A) through (D) of para-
9 graph (1) to \$50,000 per alien employed directly, or
10 indirectly through contract, by the corporation or
11 entity.

12 (b) EXCEPTION.—Subsection (a) shall not apply to
13 an offense that involved the smuggling, transporting, or
14 harboring only of the defendant’s spouse or child (or both
15 the defendant’s spouse and child).

16 (c) DEADLINE.—The United States Sentencing Com-
17 mission shall carry out subsection (a) not later than the
18 date that is 6 months after the date of the enactment of
19 this Act.

20 (d) AMENDMENTS TO CRIMINAL PENALTIES.—Sec-
21 tion 274(a) (8 U.S.C. 1324(a)) is amended—

22 (1) in paragraph (1)(B)—

23 (A) in clause (i), by striking “10 years”
24 and inserting “15 years”;

1 (B) in clause (ii), by striking “5 years”
2 and inserting “10 years”; and

3 (C) in clause (iii), by striking “20 years”
4 and inserting “40 years”;

5 (2) in paragraph (2)—

6 (A) in subparagraph (A), by striking “one
7 year, or both; or” and inserting “3 years, or
8 both;”;

9 (B) in subparagraph (B)—

10 (i) in clause (i), by adding at the end
11 the following: “be fined under title 18,
12 United State Code, and imprisoned not
13 less than 5 years nor more than 25
14 years;”;

15 (ii) in clause (ii), by striking “or” at
16 the end and inserting the following: “be
17 fined under title 18, United States Code,
18 and imprisoned not less than 3 years nor
19 more than 20 years; or”; and

20 (iii) in clause (iii), by adding at the
21 end the following: “be fined under title 18,
22 United States Code, and imprisoned not
23 more than 15 years; or”; and

24 (C) by striking the matter following clause
25 (iii) and inserting the following:

1 “(C) in the case of a third or subsequent
2 offense described in subparagraph (B) and for
3 any other violation, shall be fined under title
4 18, United States Code, and imprisoned not
5 less than 5 years nor more than 15 years.”;

6 (3) in paragraph (3)(A), by striking “5 years”
7 and inserting “10 years”; and

8 (4) in paragraph (4), by striking “10 years”
9 and inserting “20 years”.

10 (e) EFFECTIVE DATE.—The amendments made by
11 subsection (d) shall take effect on the date of enactment
12 of this Act and shall apply to offenses committed after
13 such date.

14 **SEC. 4. ENHANCED PENALTIES FOR PERSONS COMMITTING**
15 **OFFENSES WHILE ARMED.**

16 (a) IN GENERAL.—Section 924(c)(1) of title 18,
17 United States Code, is amended—

18 (1) in subparagraph (A)—

19 (A) by inserting after “device)” the fol-
20 lowing: “or any violation of section
21 274(a)(1)(A) of the Immigration and Nation-
22 ality Act”; and

23 (B) by striking “or drug trafficking
24 crime—” and inserting “, drug trafficking

1 crime, or violation of section 274(a)(1)(A) of
2 the Immigration and Nationality Act—”; and
3 (2) in subparagraph (D)(ii), by striking “or
4 drug trafficking crime” and inserting “, drug traf-
5 ficking crime, or violation of section 274(a)(1)(A) of
6 the Immigration and Nationality Act”.

7 (b) EFFECTIVE DATE.—The amendments made by
8 subsection (a) shall take effect on the date of the enact-
9 ment of this Act and shall apply to offenses committed
10 after such date.

11 **SEC. 5. USE OF ARMY AND AIR FORCE TO SECURE THE**
12 **BORDER.**

13 (a) IN GENERAL.—Section 1385 of title 18, United
14 States Code, is amended by inserting after “execute the
15 laws” the following: “other than at or near a border of
16 the United States in order to prevent aliens not permitted
17 by law to enter the United States, terrorists, and drug
18 smugglers from entering the United States”.

19 (b) EFFECTIVE DATE.—The amendment made by
20 subsection (a) shall take effect on the date of the enact-
21 ment this Act.

1 **SEC. 6. MANDATORY SENTENCING RANGES FOR REEN-**
2 **TERING ALIENS.**

3 (a) MANDATORY SENTENCING RANGES FOR REEN-
4 TERING ALIENS.—Section 276 (8 U.S.C. 1326) is amend-
5 ed—

6 (1) in subsection (a), in the matter following
7 paragraph (2), by striking “imprisoned not more
8 than 2 years,” and inserting “imprisoned for a term
9 of not less than 1 year and not more than 2 years,”;
10 and

11 (2) in subsection (b)—

12 (A) in paragraph (1), by striking “impris-
13 oned not more than 10 years,” and inserting
14 “imprisoned for a term of not less than 5 years
15 and not more than 10 years,”;

16 (B) in paragraph (2), by striking “impris-
17 oned not more than 20 years,” and inserting
18 “imprisoned for a term of not less than 10
19 years and not more than 20 years,”; and

20 (C) in paragraph (4), by striking “impris-
21 oned for not more than 10 years,” and insert-
22 ing “imprisoned for a term of not less than 5
23 years and not more than 10 years,”.

24 (b) MANDATORY SENTENCING RANGES FOR PER-
25 SONS AIDING OR ASSISTING CERTAIN REENTERING
26 ALIENS.—Section 277 (8 U.S.C. 1327) is amended—

1 (1) by striking “Any person” and inserting “(a)
2 Subject to subsection (b), any person”; and

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

4 “(b)(1) Any person who knowingly aids or assists any
5 alien violating section 276(b) to reenter the United States,
6 or who connives or conspires with any person or persons
7 to allow, procure, or permit any such alien to reenter the
8 United States, shall be fined under title 18, United States
9 Code, or imprisoned for a term imposed under paragraph
10 (2), or both.

11 “(2) The term of imprisonment imposed under para-
12 graph (1) shall be within the range to which the reentering
13 alien is subject under section 276(b).”.

14 (c) EFFECTIVE DATE.—The amendments made by
15 this section are effective on the date of enactment of this
16 Act and shall apply to sentences entered on or after such
17 date.

18 **SEC. 7. PENALTY FOR COUNTRIES THAT DO NOT ACCEPT**

19 **RETURN OF NATIONALS.**

20 (a) IN GENERAL.— Section 243(d) (8 U.S.C.
21 1253(d)) is amended—

22 (1) by striking “On being notified” and insert-
23 ing the following:

24 “(1) IN GENERAL.—Upon notification”;

1 (2) by striking “Attorney General” and insert-
2 ing “Secretary of Homeland Security” each place it
3 appears; and

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

5 “(2) DENIAL OF ADMISSION.—The Secretary of
6 Homeland Security, after making a determination
7 that the government of a foreign country has denied
8 or unreasonably delayed accepting an alien who is a
9 citizen, subject, national, or resident of that country
10 after the alien has been ordered removed, and after
11 consultation with the Secretary of State, may deny
12 admission to any citizen, subject, national or resi-
13 dent of that country until the country accepts the
14 alien that was ordered removed.”.

15 (b) EFFECTIVE DATE.—The amendments made by
16 subsection (a) effective on the date of enactment of this
17 Act.

18 **SEC. 8. BUREAU OF IMMIGRATION ENFORCEMENT.**

19 (a) IN GENERAL.—Section 442 of Public Law 107–
20 296 is amended—

21 (1) by striking the heading and inserting the
22 following:

1 **“SEC. 442. ESTABLISHMENT OF BUREAU OF IMMIGRATION**
2 **ENFORCEMENT.”;**

3 (2) by striking subsection (a)(1) and inserting
4 the following:

5 “(1) IN GENERAL.—There shall be in the De-
6 partment of Homeland Security a bureau to be
7 known as the ‘Bureau of Immigration Enforcement’.
8 The Bureau shall perform only those functions de-
9 scribed in section 441 and no other functions, in-
10 cluding no functions described in sections 403 and
11 421.”;

12 (3) by striking subsection (a)(2) and inserting
13 the following:

14 “(2) ASSISTANT SECRETARY.—The head of the
15 Bureau of Immigration Enforcement shall be the
16 Assistant Secretary of the Bureau of Immigration
17 Enforcement, who—

18 “(A) shall report directly to the Under
19 Secretary for Border and Transportation Secu-
20 rity; and

21 “(B) shall have a minimum of 5 years pro-
22 fessional experience in immigration law enforce-
23 ment, and a minimum of 5 years of manage-
24 ment experience.”;

25 (4) in subsection (a)(3)—

1 (A) by striking “Assistant Secretary of the
2 Bureau of Border Security” and inserting “As-
3 sistant Secretary of the Bureau of Immigration
4 Enforcement”;

5 (B) by striking “Bureau of Border Secu-
6 rity” and inserting “Bureau of Immigration
7 Enforcement”;

8 (C) by striking “or” and the end of sub-
9 paragraph (A)(i); and

10 (D) by striking clause (ii) of subparagraph
11 (A);

12 (5) in subsection (a)(4), by striking “Assistant
13 Secretary of the Bureau of Border Security” and in-
14 sserting “Assistant Secretary of the Bureau of Immi-
15 gration Enforcement”;

16 (6) in subsection (a)(5), by striking “Assistant
17 Secretary of the Bureau of Border Security” and in-
18 sserting “Assistant Secretary of the Bureau of Immi-
19 gration Enforcement”;

20 (7) in subsection (b), by striking “Bureau of
21 Border Security” and inserting “Bureau of Immi-
22 gration Enforcement” each place it appears; and

23 (8) in subsection (c), by striking “Assistant
24 Secretary of the Bureau of Border Security” and in-

1 serting “Assistant Secretary of Immigration En-
2 forcement” each place it appears.

3 (b) CONFORMING AMENDMENTS.—Sections 443,
4 444, 451, and 471 of such Public Law are each amended
5 by striking “Bureau of Border Security” and inserting
6 “Bureau of Immigration Enforcement” each place it ap-
7 pears.

8 (c) LIMITATION ON FUNCTIONS.—Section 471(b) of
9 such Public Law, as amended by this section, is further
10 amended by adding at the end the following: “In addition,
11 the authority provided by section 1502 may not be used
12 to add functions of the Bureau of Immigration Enforce-
13 ment not listed in section 441 to the Bureau of Immigra-
14 tion Enforcement.”.

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