To establish operational control over the international land and maritime borders of the United States, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 14, 2005

Mr. KING of New York (for himself, Mr. DANIEL E. LUNGREN of California, and Ms. LORETTA SANCHEZ of California) introduced the following bill; which was referred to the Committee on Homeland Security, and in addition to the Committees on the Judiciary and Armed Services, 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.

DECEMBER 6, 2005

Reported from the Committee on Homeland Security with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

Additional sponsors: Mr. SMITH of Texas, Mr. LINDE, Mr. SOUDER, Mr. GIBBONS, Mr. SIMMONS, Mr. ROGERS of Alabama, Mr. PEARCE, Ms. HARRIS, Mr. REICHERT, Mr. McCaul of Texas, Mr. DENT, Ms. GINNY BROWN-WAITE of Florida, Mr. McHUGH, Mr. ROYCE, Mrs. MYRICK, Mr. GORDON, Mr. SHUSTER, and Mr. ISTOOK

Deleted sponsor: Ms. LORETTA SANCHEZ of California (added November 14, 2005; deleted December 6, 2005)

DECEMBER 6, 2005

Committees on the Judiciary and Armed Services discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed
A BILL

To establish operational control over the international land and maritime borders of the United States, and for other purposes.

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Border Security and Terrorism Prevention Act of 2005”.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Definitions.

TITLE I—SECURING UNITED STATES BORDERS

Sec. 101. Achieving operational control on the border.
Sec. 102. National strategy for border security.
Sec. 103. Implementation of cross-border security agreements.
Sec. 104. Biometric data enhancements.
Sec. 105. One face at the border initiative.
Sec. 106. Secure communication.
Sec. 107. Border patrol agents.
Sec. 108. Port of entry inspection personnel.
Sec. 109. Canine detection teams.
Sec. 110. Secure border initiative financial accountability.
Sec. 111. Border patrol training capacity review.
Sec. 112. Airspace security mission impact review.
Sec. 113. Repair of private infrastructure on border.
Sec. 114. Border Patrol unit for Virgin Islands.
Sec. 115. Report on progress in tracking travel of Central American gangs along international border.
Sec. 116. Collection of data.
Sec. 117. Deployment of radiation detection portal equipment at United States ports of entry.
Sec. 118. Sense of Congress regarding the Secure Border Initiative.
TITLE II—BORDER SECURITY COOPERATION AND ENFORCEMENT

Sec. 201. Joint strategic plan for United States border surveillance and support.
Sec. 203. Border security threat assessment and information sharing test and evaluation exercise.
Sec. 204. Border Security Advisory Committee.
Sec. 205. Permitted use of Homeland Security grant funds for border security activities.
Sec. 206. Center of excellence for border security.
Sec. 207. Sense of Congress regarding cooperation with Indian Nations.

TITLE III—DETENTION AND REMOVAL

Sec. 301. Mandatory detention for aliens apprehended at or between ports of entry.
Sec. 302. Enhanced detention capacity.
Sec. 303. Expansion and effective management of detention facilities.
Sec. 304. Enhancing transportation capacity for unlawful aliens.
Sec. 305. Denial of admission to nationals of country denying or delaying accepting alien.
Sec. 306. Report on financial burden of repatriation.
Sec. 307. Training program.
Sec. 308. Expedited removal.

TITLE IV—EFFECTIVE ORGANIZATION OF BORDER SECURITY AGENCIES

Sec. 401. Enhanced border security coordination and management.
Sec. 402. Office of Air and Marine Operations.
Sec. 403. Shadow Wolves transfer.

1 SEC. 2. DEFINITIONS.

In this Act:

(1) APPROPRIATE CONGRESSIONAL COMMITTEE.—The term “appropriate congressional committee” has the meaning given it in section 2(2) of the Homeland Security Act of 2002 (6 U.S.C. 101(2)).

(2) STATE.—The term “State” has the meaning given it in section 2(14) of the Homeland Security Act of 2002 (6 U.S.C. 101(14)).
TITLE I—SECURING UNITED STATES BORDERS

SEC. 101. ACHIEVING OPERATIONAL CONTROL ON THE BORDER.

(a) IN GENERAL.—The Secretary of Homeland Security shall take all actions the Secretary determines necessary and appropriate to achieve and maintain operational control over the entire international land and maritime borders of the United States, to include the following—

(1) systematic surveillance of the international land and maritime borders of the United States through more effective use of personnel and technology, such as unmanned aerial vehicles, ground-based sensors, satellites, radar coverage, and cameras;

(2) physical infrastructure enhancements to prevent unlawful entry by aliens into the United States and facilitate access to the international land and maritime borders by United States Customs and Border Protection, such as additional checkpoints, all weather access roads, and vehicle barriers;

(3) hiring and training as expeditiously as possible additional Border Patrol agents authorized under section 5202 of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108–458); and
(4) increasing deployment of United States Customs and Border Protection personnel to areas along the international land and maritime borders of the United States where there are high levels of unlawful entry by aliens and other areas likely to be impacted by such increased deployment.

(b) OPERATIONAL CONTROL DEFINED.—In this section, the term “operational control” means the prevention of the entry into the United States of terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband.

SEC. 102. NATIONAL STRATEGY FOR BORDER SECURITY.

(a) SURVEILLANCE PLAN.—Not later than six months after the date of the enactment of this Act, the Secretary of Homeland Security shall submit to the appropriate congressional committees a comprehensive plan for the systematic surveillance of the international land and maritime borders of the United States. The plan shall include the following:

(1) An assessment of existing technologies employed on such borders.

(2) A description of whether and how new surveillance technologies will be compatible with existing surveillance technologies.
(3) A description of how the United States Customs and Border Protection is working, or is expected to work, with the Directorate of Science and Technology of the Department of Homeland Security to identify and test surveillance technology.

(4) A description of the specific surveillance technology to be deployed.

(5) The identification of any obstacles that may impede full implementation of such deployment.

(6) A detailed estimate of all costs associated with the implementation of such deployment and continued maintenance of such technologies.

(7) A description of how the Department of Homeland Security is working with the Federal Aviation Administration on safety and airspace control issues associated with the use of unmanned aerial vehicles in the National Airspace System.

(b) National Strategy for Border Security.—Not later than one year after the date of the enactment of this Act, the Secretary of Homeland Security, in consultation with the heads of other appropriate Federal agencies, shall submit to the appropriate congressional committees a National Strategy for Border Security to achieve operational control over all ports of entry into the United States and the international land and maritime borders of the United States.
United States. The Secretary shall update the Strategy as needed and shall submit to the Committee, not later than 30 days after each such update, the updated Strategy. The National Strategy for Border Security shall include the following:

(1) The implementation timeline for the surveillance plan described in subsection (a).

(2) An assessment of the threat posed by terrorists and terrorist groups that may try to infiltrate the United States at points along the international land and maritime borders of the United States.

(3) A risk assessment of all ports of entry to the United States and all portions of the international land and maritime borders of the United States with respect to—

(A) preventing the entry of terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband into the United States; and

(B) protecting critical infrastructure at or near such ports of entry or borders.

(4) An assessment of the most appropriate, practical, and cost-effective means of defending the international land and maritime borders of the United States against threats to security and illegal transit,
including intelligence capacities, technology, equipment, personnel, and training needed to address security vulnerabilities.

(5) An assessment of staffing needs for all border security functions, taking into account threat and vulnerability information pertaining to the borders and the impact of new security programs, policies, and technologies.

(6) A description of the border security roles and missions of Federal, State, regional, local, and tribal authorities, and recommendations with respect to how the Department of Homeland Security can improve coordination with such authorities, to enable border security enforcement to be carried out in an efficient and effective manner.

(7) A prioritization of research and development objectives to enhance the security of the international land and maritime borders of the United States.

(8) A description of ways to ensure that the free flow of legitimate travel and commerce of the United States is not diminished by efforts, activities, and programs aimed at securing the international land and maritime borders of the United States.

(9) An assessment of additional detention facilities and bed space needed to detain unlawful aliens
apprehended at United States ports of entry or along the international land borders of the United States in accordance with the National Strategy for Border Security required under this subsection and the mandatory detention requirement described in section 301 of this Act.

(10) A description of how the Secretary shall ensure accountability and performance metrics within the appropriate agencies of the Department of Homeland Security responsible for implementing the border security measures determined necessary upon completion of the National Strategy for Border Security.

(11) A timeline for the implementation of the additional security measures determined necessary as part of the National Strategy for Border Security, including a prioritization of security measures, realistic deadlines for addressing the security and enforcement needs, and resource estimates and allocations.

(c) CONSULTATION.—In creating the National Strategy for Border Security described in subsection (b), the Secretary shall consult with—

(1) State, local, and tribal authorities along the international land and maritime borders of the United States; and
(2) an appropriate cross-section of private sector and nongovernmental organizations with relevant expertise.

(d) **Priority of National Strategy.**—The National Strategy for Border Security described in subsection (b) shall be the controlling document for security and enforcement efforts related to securing the international land and maritime borders of the United States.

(e) **Immediate Action.**—Nothing in this section shall be construed to relieve the Secretary of the responsibility to take all actions necessary and appropriate to achieve and maintain operational control over the entire international land and maritime borders of the United States pursuant to section 101 of this Act or any other provision of law.

(f) **Reporting of Implementing Legislation.**—After submittal of the National Strategy for Border Security described in subsection (b) to the Committee on Homeland Security of the House of Representatives, such Committee shall promptly report to the House legislation authorizing necessary security measures based on its evaluation of the National Strategy for Border Security.

**SEC. 103. Implementation of Cross-Border Security Agreements.**

(a) **In General.**—Not later than six months after the date of the enactment of this Act, the Secretary of Homeland
Security shall submit to the appropriate congressional committees a report on the implementation of the cross-border security agreements signed by the United States with Mexico and Canada, including recommendations on improving cooperation with such countries to enhance border security.

(b) Updates.—The Secretary shall regularly update the Committee concerning such implementation.

SEC. 104. BIOMETRIC DATA ENHANCEMENTS.

Not later than October 1, 2006, the Secretary of Homeland Security shall—

(1) in consultation with the Attorney General, enhance connectivity between the IDENT and IAFIS fingerprint databases to ensure more expeditious data searches; and

(2) in consultation with the Secretary of State, collect ten fingerprints from each alien required to provide fingerprints during the alien’s initial enrollment in the integrated entry and exit data system described in section 110 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1221 note).

SEC. 105. ONE FACE AT THE BORDER INITIATIVE.

Not later than 90 days after the date of the enactment of this Act, the Secretary of Homeland Security shall submit to Congress a report—
(1) describing the tangible and quantifiable benefits of the One Face at the Border Initiative established by the Department of Homeland Security;

(2) identifying goals for and challenges to increased effectiveness of the One Face at the Border Initiative;

(3) providing a breakdown of the number of inspectors who were—

(A) personnel of the United States Customs Service before the date of the establishment of the Department of Homeland Security;

(B) personnel of the Immigration and Naturalization Service before the date of the establishment of the Department;

(C) personnel of the Department of Agriculture before the date of the establishment of the Department; or

(D) hired after the date of the establishment of the Department;

(4) describing the training time provided to each employee on an annual basis for the various training components of the One Face at the Border Initiative; and

(5) outlining the steps taken by the Department to ensure that expertise is retained with respect to
customs, immigration, and agriculture inspection
functions under the One Face at the Border Initiative.

SEC. 106. SECURE COMMUNICATION.

The Secretary of Homeland Security shall, as expeditiously as practicable, develop and implement a plan to ensure clear and secure two-way communication capabilities—

(1) among all Border Patrol agents conducting operations between ports of entry;

(2) between Border Patrol agents and their respective Border Patrol stations;

(3) between Border Patrol agents and residents in remote areas along the international land border who do not have mobile communications, as the Secretary determines necessary; and

(4) between all appropriate Department of Homeland Security border security agencies and State, local, and tribal law enforcement agencies.

SEC. 107. BORDER PATROL AGENTS.

There are authorized to be appropriated to the Secretary of Homeland Security such sums as may be necessary for each of fiscal years 2007 through 2010 to carry out section 5202 of the Intelligence Reform and Terrorism Prevention Act of 2004 (requiring the Secretary to increase
by not less than 2,000 the number of positions for full-time active-duty Border Patrol agents within the Department of Homeland Security above the number of such positions for which funds were allotted for the preceding fiscal year (Public Law 108–458; 118 Stat. 3734).

SEC. 108. PORT OF ENTRY INSPECTION PERSONNEL.

In each of fiscal years 2007 through 2010, the Secretary of Homeland Security shall, subject to the availability of appropriations, increase by not less than 250 the number of positions for full-time active duty port of entry inspectors. There are authorized to be appropriated to the Secretary such sums as may be necessary for each such fiscal year to hire, train, equip, and support such additional inspectors under this section.

SEC. 109. CANINE DETECTION TEAMS.

In each of fiscal years 2007 through 2011, the Secretary of Homeland Security shall, subject to the availability of appropriations, increase by not less than 25 percent above the number of such positions for which funds were allotted for the preceding fiscal year the number of trained detection canines for use at United States ports of entry and along the international land and maritime borders of the United States.
SEC. 110. SECURE BORDER INITIATIVE FINANCIAL ACCOUNTABILITY.

(a) In General.—The Inspector General of the Department of Homeland Security shall review each contract action related to the Department’s Secure Border Initiative having a value greater than $20,000,000, to determine whether each such action fully complies with applicable cost requirements, performance objectives, program milestones, inclusion of small, minority, and women-owned business, and timelines. The Inspector General shall complete a review under this subsection with respect to a contract action—

(1) not later than 60 days after the date of the initiation of the action; and

(2) upon the conclusion of the performance of the contract.

(b) Report by Inspector General.—Upon completion of each review described in subsection (a), the Inspector General shall submit to the Secretary of Homeland Security a report containing the findings of the review, including findings regarding any cost overruns, significant delays in contract execution, lack of rigorous departmental contract management, insufficient departmental financial oversight, bundling that limits the ability of small business to compete, or other high risk business practices.
(c) Report by Secretary.—Not later than 30 days after the receipt of each report required under subsection (b), the Secretary of Homeland Security shall submit to the appropriate congressional committees a report on the findings of the report by the Inspector General and the steps the Secretary has taken, or plans to take, to address the problems identified in such report.

(d) Authorization of Appropriations.—In addition to amounts that are otherwise authorized to be appropriated to the Office of the Inspector General, an additional amount equal to at least five percent for fiscal year 2007, at least six percent for fiscal year 2008, and at least seven percent for fiscal year 2009 of the overall budget of the Office for each such fiscal year is authorized to be appropriated to the Office to enable the Office to carry out this section.

SEC. 111. BORDER PATROL TRAINING CAPACITY REVIEW.

(a) In General.—The Comptroller General of the United States shall conduct a review of the basic training provided to Border Patrol agents by the Department of Homeland Security to ensure that such training is provided as efficiently and cost-effectively as possible.

(b) Components of Review.—The review under subsection (a) shall include the following components:
(1) An evaluation of the length and content of the basic training curriculum provided to new Border Patrol agents by the Federal Law Enforcement Training Center, including a description of how the curriculum has changed since September 11, 2001.

(2) A review and a detailed breakdown of the costs incurred by United States Customs and Border Protection and the Federal Law Enforcement Training Center to train one new Border Patrol agent.

(3) A comparison, based on the review and breakdown under paragraph (2) of the costs, effectiveness, scope, and quality, including geographic characteristics, with other similar law enforcement training programs provided by State and local agencies, non-profit organizations, universities, and the private sector.

(4) An evaluation of whether and how utilizing comparable non-Federal training programs, proficiency testing to streamline training, and long-distance learning programs may affect—

(A) the cost-effectiveness of increasing the number of Border Patrol agents trained per year and reducing the per agent costs of basic training; and
(B) the scope and quality of basic training

needed to fulfill the mission and duties of a Bor-

der Patrol agent.

SEC. 112. AIRSPACE SECURITY MISSION IMPACT REVIEW.

Not later than 120 days after the date of the enactment

of this Act, the Secretary of Homeland Security shall sub-

mit to the Committee on Homeland Security of the House

of Representatives a report detailing the impact the air-

space security mission in the National Capital Region (in

this section referred to as the “NCR”) will have on the abil-

ity of the Department of Homeland Security to protect the

international land and maritime borders of the United

States. Specifically, the report shall address:

(1) The specific resources, including personnel,

assets, and facilities, devoted or planned to be devoted

to the NCR airspace security mission, and from where

those resources were obtained or are planned to be ob-

tained.

(2) An assessment of the impact that diverting

resources to support the NCR mission has or is ex-
pected to have on the traditional missions in and

around the international land and maritime borders

of the United States.
SEC. 113. REPAIR OF PRIVATE INFRASTRUCTURE ON BORDER.

(a) IN GENERAL.—Subject to the amount appropriated in subsection (d) of this section, the Secretary of Homeland Security shall reimburse property owners for costs associated with repairing damages to the property owners’ private infrastructure constructed on a United States Government right-of-way delineating the international land border when such damages are—

(1) the result of unlawful entry of aliens; and

(2) confirmed by the appropriate personnel of the Department of Homeland Security and submitted to the Secretary for reimbursement.

(b) VALUE OF REIMBURSEMENTS.—Reimbursements for submitted damages as outlined in subsection (a) shall not exceed the value of the private infrastructure prior to damage.

(c) REPORTS.—Not later than six months after the date of the enactment of this Act and every subsequent six months until the amount appropriated for this section is expended in its entirety, the Secretary of Homeland Security shall submit to the Committee on Homeland Security of the House of Representatives a report that details the expenditures and circumstances in which those expenditures were made pursuant to this section.
(d) Authorization of Appropriations.—There shall be authorized to be appropriated an initial $50,000 for each fiscal year to carry out this section.

SEC. 114. BORDER PATROL UNIT FOR VIRGIN ISLANDS.
Not later than September 30, 2006, the Secretary of Homeland Security shall establish at least one Border Patrol unit for the Virgin Islands of the United States.

SEC. 115. REPORT ON PROGRESS IN TRACKING TRAVEL OF CENTRAL AMERICAN GANGS ALONG INTERNATIONAL BORDER.
Not later than one year after the date of the enactment of this Act, the Secretary of Homeland Security shall report to the Committee on Homeland Security of the House of Representatives on the progress of the Department of Homeland Security in tracking the travel of Central American gangs across the international land border of the United States and Mexico.

SEC. 116. COLLECTION OF DATA.
Beginning on October 1, 2006, the Secretary of Homeland Security shall annually compile data on the following categories of information:

(1) The number of unauthorized aliens who require medical care taken into custody by Border Patrol officials.
(2) The number of unauthorized aliens with serious injuries or medical conditions Border Patrol officials encounter, and refer to local hospitals or other health facilities.

(3) The number of unauthorized aliens with serious injuries or medical conditions who arrive at United States ports of entry and subsequently are admitted into the United States for emergency medical care, as reported by United States Customs and Border Protection.

(4) The number of unauthorized aliens described in paragraphs (2) and (3) who subsequently are taken into custody by the Department of Homeland Security after receiving medical treatment.

SEC. 117. DEPLOYMENT OF RADIATION DETECTION PORTAL EQUIPMENT AT UNITED STATES PORTS OF ENTRY.

(a) DEPLOYMENT.—Not later than one year after the date of the enactment of this Act, the Secretary of Homeland Security shall deploy radiation portal monitors at all United States ports of entry and facilities as determined by the Secretary to facilitate the screening of all inbound cargo for nuclear and radiological material.

(b) REPORT.—Not later than 180 days after the date of the enactment of this Act, the Secretary shall submit to
the Committee on Homeland Security of the House of Rep-
sentatives and the Committee on Homeland Security and
Governmental Affairs of the Senate a report on the Depart-
ment’s progress toward carrying out the deployment de-
scribed in subsection (a).

(c) AUTHORIZATION OF APPROPRIATIONS.—There is
authorized to be appropriated to the Secretary to carry out
subsection (a) such sums as may be necessary for each of
fiscal years 2006 and 2007.

SEC. 118. SENSE OF CONGRESS REGARDING THE SECURE
BORDER INITIATIVE.

It is the sense of Congress that—

(1) as the Secretary of Homeland Security devel-
ops and implements the Secure Border Initiative and
other initiatives to strengthen security along the Na-
tion’s borders, the Secretary shall conduct extensive
outreach to the private sector, including small, minor-
ity-owned, women-owned, and disadvantaged busi-
nesses; and

(2) the Secretary also shall consult with firms
that are practitioners of mission effectiveness at the
Department of Homeland Security, homeland security
business councils, and associations to identify existing
and emerging technologies and best practices and
business processes, to maximize economies of scale,
cost-effectiveness, systems integration, and resource allocation, and to identify the most appropriate contract mechanisms to enhance financial accountability and mission effectiveness of border security programs.

TITLE II—BORDER SECURITY CO-OPTION AND ENFORCEMENT

SEC. 201. JOINT STRATEGIC PLAN FOR UNITED STATES BORDER SURVEILLANCE AND SUPPORT.

(a) In General.—The Secretary of Homeland Security and the Secretary of Defense shall develop a joint strategic plan to use the authorities provided to the Secretary of Defense under chapter 18 of title 10, United States Code, to increase the availability and use of Department of Defense equipment, including unmanned aerial vehicles, tethered aerostat radars, and other surveillance equipment, to assist with the surveillance activities of the Department of Homeland Security conducted at or near the international land and maritime borders of the United States.

(b) Report.—Not later than six months after the date of the enactment of this Act, the Secretary of Homeland Security and the Secretary of Defense shall submit to Congress a report containing—

(1) a description of the use of Department of Defense equipment to assist with the surveillance by the
Department of Homeland Security of the international land and maritime borders of the United States;

(2) the joint strategic plan developed pursuant to subsection (a);

(3) a description of the types of equipment and other support to be provided by the Department of Defense under the joint strategic plan during the one-year period beginning after submission of the report under this subsection; and

(4) a description of how the Department of Homeland Security and the Department of Defense are working with the Department of Transportation on safety and airspace control issues associated with the use of unmanned aerial vehicles in the National Airspace System.

(c) Rule of Construction.—Nothing in this section shall be construed as altering or amending the prohibition on the use of any part of the Army or the Air Force as a posse comitatus under section 1385 of title 18, United States Code.

SEC. 202. BORDER SECURITY ON PROTECTED LAND.

(a) In General.—The Secretary of Homeland Security, in consultation with the Secretary of the Interior, shall evaluate border security vulnerabilities on land directly ad-
jacent to the international land border of the United States under the jurisdiction of the Department of the Interior related to the prevention of the entry of terrorists, other unlawful aliens, narcotics, and other contraband into the United States.

(b) SUPPORT FOR BORDER SECURITY NEEDS.—Based on the evaluation conducted pursuant to subsection (a), the Secretary of Homeland Security shall provide appropriate border security assistance on land directly adjacent to the international land border of the United States under the jurisdiction of the Department of the Interior, its bureaus, and tribal entities.

SEC. 203. BORDER SECURITY THREAT ASSESSMENT AND INFORMATION SHARING TEST AND EVALUATION EXERCISE.

Not later than one year after the date of the enactment of this Act, the Secretary of Homeland Security shall design and carry out a national border security exercise for the purposes of—

(1) involving officials from Federal, State, territorial, local, tribal, and international governments and representatives from the private sector;

(2) testing and evaluating the capacity of the United States to anticipate, detect, and disrupt threats to the integrity of United States borders; and
(3) testing and evaluating the information sharing capability among Federal, State, territorial, local, tribal, and international governments.

SEC. 204. BORDER SECURITY ADVISORY COMMITTEE.

(a) Establishment of Committee.—Not later than one year after the date of the enactment of this Act, the Secretary of Homeland Security shall establish an advisory committee to be known as the Border Security Advisory Committee (in this section referred to as the “Committee”).

(b) Duties.—The Committee shall advise the Secretary on issues relating to border security and enforcement along the international land and maritime border of the United States.

(c) Membership.—The Secretary shall appoint members to the Committee from the following:

(1) State and local government representatives from States located along the international land and maritime borders of the United States.

(2) Community representatives from such States.

(3) Tribal authorities in such States.

SEC. 205. PERMITTED USE OF HOMELAND SECURITY GRANT FUNDS FOR BORDER SECURITY ACTIVITIES.

(a) Reimbursement.—The Secretary of Homeland Security may allow the recipient of amounts under a cov-
ered grant to use those amounts to reimburse itself for costs it incurs in carrying out any activity that—

(1) relates to the enforcement of Federal laws aimed at preventing the unlawful entry of persons or things into the United States, including activities such as detecting or responding to such an unlawful entry or providing support to another entity relating to preventing such an unlawful entry;

(2) is usually a Federal duty carried out by a Federal agency; and

(3) is carried out under agreement with a Federal agency.

(b) Use of Prior Year Funds.—Subsection (a) shall apply to all covered grant funds received by a State, local government, or Indian tribe at any time on or after October 1, 2001.

(c) Covered Grants.—For purposes of subsection (a), the term “covered grant” means grants provided by the Department of Homeland Security to States, local governments, or Indian tribes administered under the following programs:

(1) State Homeland Security Grant Program.—The State Homeland Security Grant Program of the Department, or any successor to such grant program.
(2) **Urban Area Security Initiative.**—The Urban Area Security Initiative of the Department, or any successor to such grant program.

(3) **Law Enforcement Terrorism Prevention Program.**—The Law Enforcement Terrorism Prevention Program of the Department, or any successor to such grant program.

**SEC. 206. CENTER OF EXCELLENCE FOR BORDER SECURITY.**

(a) **Establishment.**—The Secretary of Homeland Security shall establish a university-based Center of Excellence for Border Security following the merit-review processes and procedures and other limitations that have been established for selecting and supporting University Programs Centers of Excellence.

(b) **Activities of the Center.**—The Center shall prioritize its activities on the basis of risk to address the most significant threats, vulnerabilities, and consequences posed by United States borders and border control systems. The activities shall include the conduct of research, the examination of existing and emerging border security technology and systems, and the provision of education, technical, and analytical assistance for the Department of Homeland Security to effectively secure the borders.
SEC. 207. SENSE OF CONGRESS REGARDING COOPERATION WITH INDIAN NATIONS.

It is the sense of Congress that—

(1) the Department of Homeland Security should strive to include as part of a National Strategy for Border Security recommendations on how to enhance Department cooperation with sovereign Indian Nations on securing our borders and preventing terrorist entry, including, specifically, the Department should consider whether a Tribal Smart Border working group is necessary and whether further expansion of cultural sensitivity training, as exists in Arizona with the Tohono O’odham Nation, should be expanded elsewhere; and

(2) as the Department of Homeland Security develops a National Strategy for Border Security, it should take into account the needs and missions of each agency that has a stake in border security and strive to ensure that these agencies work together cooperatively on issues involving Tribal lands.

TITLE III—DETENTION AND REMOVAL

SEC. 301. MANDATORY DETENTION FOR ALIENS APPREHENDED AT OR BETWEEN PORTS OF ENTRY.

(a) IN GENERAL.—Beginning on October 1, 2006, an alien who is attempting to illegally enter the United States
and who is apprehended at a United States port of entry or along the international land and maritime border of the United States shall be detained until removed or a final decision granting admission has been determined, unless the alien—

(1) is permitted to withdraw an application for admission under section 235(a)(4) of the Immigration and Nationality Act (8 U.S.C. 1225(a)(4)) and immediately departs from the United States pursuant to such section; or

(2) is paroled into the United States by the Secretary of Homeland Security for urgent humanitarian reasons or significant public benefit in accordance with section 212(d)(5)(A) of such Act (8 U.S.C. 1182(d)(5)(A)).

(b) REQUIREMENTS DURING INTERIM PERIOD.—Beginning 60 days after the date of the enactment of this Act and before October 1, 2006, an alien described in subsection (a) may be released with a notice to appear only if—

(1) the Secretary of Homeland Security determines, after conducting all appropriate background and security checks on the alien, that the alien does not pose a national security risk; and

(2) the alien provides a bond of not less than $5,000.
(c) Rules of Construction.—

(1) Asylum and Removal.—Nothing in this section shall be construed as limiting the right of an alien to apply for asylum or for relief or deferral of removal based on a fear of persecution.

(2) Treatment of Certain Aliens.—Nothing in this section shall be construed to change or alter any provision of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) relating to an alien who is a native or citizen of a country in the Western Hemisphere with whose government the United States does not have full diplomatic relations.

Sec. 302. Enhanced Detention Capacity.

There are authorized to be appropriated to the Secretary of Homeland Security such sums as may be necessary for each of fiscal years 2007 through 2010 to carry out Section 5204 of the Intelligence Reform and Terrorism Prevention Act of 2004 (related to an increase in the number of beds by not less than 8,000 each fiscal year available for immigration detention and removal operations of the Department of Homeland Security) (Public Law 108–458; 118 Stat. 3734).
SEC. 303. EXPANSION AND EFFECTIVE MANAGEMENT OF DETENTION FACILITIES.

Subject to the availability of appropriations, the Secretary of Homeland Security shall fully utilize—

(1) all available detention facilities operated or contracted by the Department of Homeland Security; and

(2) all possible options to cost effectively increase available detention capacities, including the use of temporary detention facilities, the use of State and local correctional facilities, private space, and secure alternatives to detention.

SEC. 304. ENHANCING TRANSPORTATION CAPACITY FOR UNLAWFUL ALIENS.

(a) In General.—The Secretary of Homeland Security is authorized to enter into contracts with private entities for the purpose of providing secure domestic transport of aliens who are apprehended at or along the international land or maritime borders from the custody of United States Customs and Border Protection to detention facilities and other locations as necessary.

(b) Criteria for Selection.—Notwithstanding any other provision of law, to enter into a contract under paragraph (1), a private entity shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require. The Sec-
retary shall select from such applications those entities which offer, in the determination of the Secretary, the best combination of service, cost, and security.

SEC. 305. DENIAL OF ADMISSION TO NATIONALS OF COUNTRY DENYING OR DELAYING ACCEPTING ALIEN.

Section 243(d) of the Immigration and Nationality Act (8 U.S.C. 1253(d)) is amended to read as follows:

“(d) DENIAL OF ADMISSION TO NATIONALS OF COUNTRY DENYING OR DELAYING ACCEPTING ALIEN.—Whenever the Secretary of Homeland Security determines that the government of a foreign country has denied or unreasonably delayed accepting an alien who is a citizen, subject, national, or resident of that country after the alien has been ordered removed, the Secretary, after consultation with the Secretary of State, may deny admission to any citizen, subject, national, or resident of that country until the country accepts the alien who was ordered removed.”.

SEC. 306. REPORT ON FINANCIAL BURDEN OF REPATRIATION.

Not later than October 31 of each year, the Secretary of Homeland Security shall submit to the Secretary of State and Congress a report that details the cost to the Department of Homeland Security of repatriation of unlawful aliens to their countries of nationality or last habitual resi-
dence, including details relating to cost per country. The Secretary shall include in each such report the recom-
mendations of the Secretary to more cost effectively repa-
triate such aliens.

SEC. 307. TRAINING PROGRAM.

Not later than six months after the date of the enact-
ment of this Act, the Secretary of Homeland Security—

(1) review and evaluate the training provided to
Border Patrol agents and port of entry inspectors re-
garding the inspection of aliens to determine whether
an alien is referred for an interview by an asylum of-

(2) based on the review and evaluation described
in paragraph (1), take necessary and appropriate
measures to ensure consistency in referrals by Border
Patrol agents and port of entry inspectors to asylum

SEC. 308. EXPEDITED REMOVAL.

(a) IN GENERAL.—Section 235(b)(1)(A)(iii) of the Im-
migration and Nationality Act (8 U.S.C. 1225(b)(1)(A)(iii)) is amended—

(1) in subclause (I), by striking “Attorney Gen-

eral” and inserting “Secretary of Homeland Secu-

rity” each place it appears; and
(2) by adding at the end the following new sub-
clause:

“(III) EXCEPTION.—Notwith-
standing subclauses (I) and (II), the
Secretary of Homeland Security shall
apply clauses (i) and (ii) of this sub-
paragraph to any alien (other than an
alien described in subparagraph (F))
who is not a national of a country con-
tiguous to the United States, who has
not been admitted or paroled into the
United States, and who is apprehended
within 100 miles of an international
land border of the United States and
within 14 days of entry.”.

(b) EXCEPTIONS.—Section 235(b)(1)(F) of the Immi-
grantion and Nationality Act (8 U.S.C. 1225(b)(1)(F)) is
amended by inserting before the period at the end the fol-
lowing: “or in any manner at or between a land border
port of entry”.

(c) EFFECTIVE DATE.—The amendments made by this
section shall take effect on the date of the enactment of this
Act and shall apply to all aliens apprehended on or after
such date.
TITLE IV—EFFECTIVE ORGANIZATION OF BORDER SECURITY AGENCIES

SEC. 401. ENHANCED BORDER SECURITY COORDINATION AND MANAGEMENT.

The Secretary of Homeland Security shall ensure full coordination of border security efforts among agencies within the Department of Homeland Security, including United States Immigration and Customs Enforcement, United States Customs and Border Protection, and United States Citizenship and Immigration Services, and shall identify and remedy any failure of coordination or integration in a prompt and efficient manner. In particular, the Secretary of Homeland Security shall—

(1) oversee and ensure the coordinated execution of border security operations and policy;

(2) establish a mechanism for sharing and coordinating intelligence information and analysis at the headquarters and field office levels pertaining to counter-terrorism, border enforcement, customs and trade, immigration, human smuggling, human trafficking, and other issues of concern to both United States Immigration and Customs Enforcement and United States Customs and Border Protection;
(3) establish Department of Homeland Security task forces (to include other Federal, State, Tribal and local law enforcement agencies as appropriate) as necessary to better coordinate border enforcement and the disruption and dismantling of criminal organizations engaged in cross-border smuggling, money laundering, and immigration violations;

(4) enhance coordination between the border security and investigations missions within the Department by requiring that, with respect to cases involving violations of the customs and immigration laws of the United States, United States Customs and Border Protection coordinate with and refer all such cases to United States Immigration and Customs Enforcement;

(5) examine comprehensively the proper allocation of the Department’s border security related resources, and analyze budget issues on the basis of Department-wide border enforcement goals, plans, and processes;

(6) establish measures and metrics for determining the effectiveness of coordinated border enforcement efforts; and

(7) develop and implement a comprehensive plan to protect the northern and southern land borders of
the United States and address the different challenges each border faces by—

(A) coordinating all Federal border security activities;

(B) improving communications and data sharing capabilities within the Department and with other Federal, State, local, tribal, and foreign law enforcement agencies on matters relating to border security; and

(C) providing input to relevant bilateral agreements to improve border functions, including ensuring security and promoting trade and tourism.

SEC. 402. OFFICE OF AIR AND MARINE OPERATIONS.

(a) ESTABLISHMENT.—Subtitle C of title IV of the Homeland Security Act of 2002 (6 U.S.C. 201 et seq.) is amended by adding at the end the following new section:

“SEC. 431. OFFICE OF AIR AND MARINE OPERATIONS.

“(a) ESTABLISHMENT.—There is established in the Department an Office of Air and Marine Operations (referred to in this section as the ‘Office’).

“(b) ASSISTANT SECRETARY.—The Office shall be headed by an Assistant Secretary for Air and Marine Operations who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall report
directly to the Secretary. The Assistant Secretary shall be responsible for all functions and operations of the Office.

“(c) Missions.—

“(1) Primary Mission.—The primary mission of the Office shall be the prevention of the entry of terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband into the United States.

“(2) Secondary Mission.—The secondary mission of the Office shall be to assist other agencies to prevent the entry of terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband into the United States.

“(d) Air and Marine Operations Center.—

“(1) In General.—The Office shall operate and maintain the Air and Marine Operations Center in Riverside, California, or at such other facility of the Office as is designated by the Secretary.

“(2) Duties.—The Center shall provide comprehensive radar, communications, and control services to the Office and to eligible Federal, State, or local agencies (as determined by the Assistant Secretary for Air and Marine Operations), in order to identify, track, and support the interdiction and apprehension of individuals attempting to enter United
States airspace or coastal waters for the purpose of narcotics trafficking, trafficking of persons, or other terrorist or criminal activity.

“(c) ACCESS TO INFORMATION.—The Office shall ensure that other agencies within the Department of Homeland Security, the Department of Defense, the Department of Justice, and such other Federal, State, or local agencies, as may be determined by the Secretary, shall have access to the information gathered and analyzed by the Center.

“(f) REQUIREMENT.—Beginning not later than 180 days after the date of the enactment of this Act, the Secretary shall require that all information concerning all aviation activities, including all airplane, helicopter, or other aircraft flights, that are undertaken by the either the Office, United States Immigration and Customs Enforcement, United States Customs and Border Protection, or any subdivisions thereof, be provided to the Air and Marine Operations Center. Such information shall include the identifiable transponder, radar, and electronic emissions and codes originating and resident aboard the aircraft or similar asset used in the aviation activity.

“(g) TIMING.—The Secretary shall require the information described in subsection (f) to be provided to the Air and Marine Operations Center in advance of the aviation activity whenever practicable for the purpose of timely co-
oordination and conflict resolution of air missions by the
Office, United States Immigration and Customs Enforce-
ment, and United States Customs and Border Protection.

“(h) RULE OF CONSTRUCTION.—Nothing in this sec-
tion shall be construed to alter, impact, diminish, or in any
way undermine the authority of the Administrator of the
Federal Aviation Administration to oversee, regulate, and
control the safe and efficient use of the airspace of the
United States.”.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) ADDITIONAL ASSISTANT SECRETARY.—Sec-
tion 103(a)(9) of the Homeland Security Act of 2002
(6 U.S.C. 113(a)(9)) is amended by striking “12” and
inserting “13”.

(2) CLERICAL AMENDMENT.—The table of con-
tents in section 1(b) of such Act (6 U.S.C. 101) is
amended by inserting after the item relating to sec-
tion 430 the following new item:

“Sec. 431. Office of Air and Marine Operations.”.

SEC. 403. SHADOW WOLVES TRANSFER.

(a) TRANSFER OF EXISTING UNIT.—Not later that 90
days after the date of the enactment of this Act, the Sec-
retary of Homeland Security shall transfer to United States
Immigration and Customs Enforcement all functions (in-
cluding the personnel, assets, and liabilities attributable to
such functions) of the Customs Patrol Officers unit oper-
ating on the Tohono O’odham Indian reservation (commonly known as the “Shadow Wolves” unit).

(b) **Establishment of New Units.**—The Secretary is authorized to establish within United States Immigration and Customs Enforcement additional units of Customs Patrol Officers in accordance with this section, as appropriate.

(c) **Duties.**—The Customs Patrol Officer unit transferred pursuant to subsection (a), and additional units established pursuant to subsection (b), shall operate on Indian lands by preventing the entry of terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband into the United States.

(d) **Basic Pay for Journeyman Officers.**—A Customs Patrol Officer in a unit described in this section shall receive equivalent pay as a special agent with similar competencies within United States Immigration and Customs Enforcement pursuant to the Department of Homeland Security’s Human Resources Management System established under section 841 of the Homeland Security Act (6 U.S.C. 411).

(e) **Supervisors.**—Each unit described in this section shall be supervised by a Chief Customs Patrol Officer, who shall have the same rank as a resident agent-in-charge of the Office of Investigations within United States Immigration and Customs Enforcement.
A BILL

To establish operational control over the international land and maritime borders of the United States, and for other purposes.

DECEMBER 6, 2005

Committees on the Judiciary and Armed Services discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed