AN ACT

To amend the Immigration and Nationality Act to strengthen enforcement of the immigration laws, to enhance border security, 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 Protection, Antiterrorism, and Illegal Immigration Control Act of 2005”.

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

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1 SEC. 2. STATE DEFINED.

2 In titles I, III, IV, and V of this Act, 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)).
SEC. 3. SENSE OF CONGRESS ON SETTING A MANAGEABLE LEVEL OF IMMIGRATION.

It is the sense of Congress that the immigration and naturalization policy shall be designed to enhance the economic, social and cultural well-being of the United States of America.

TITLE I—SECURING UNITED STATES BORDERS

SEC. 101. ACHIEVING OPERATIONAL CONTROL ON THE BORDER.

(a) IN GENERAL.—Not later than 18 months after the date of the enactment of this Act, 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 pos-
sible 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 un-
lawful entry by aliens and other areas likely to be
impacted by such increased deployment.

(b) OPERATIONAL CONTROL DEFINED.—In this sec-
tion, the term “operational control” means the prevention
of all unlawful entries into the United States, including
entries by terrorists, other unlawful aliens, instruments of
terrorism, narcotics, and other contraband.

(e) REPORT.—Not later than one year after the date
of the enactment of this Act and annually thereafter, the
Secretary shall submit to Congress a report on the
progress made toward achieving and maintaining oper-
ational control over the entire international land and mari-
time borders of the United States in accordance with this
section.

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 appro-
priate congressional committees a comprehensive plan for
the systematic surveillance of the international land and
maritime borders of the United States. The plan shall in-
clude the following:

(1) An assessment of existing technologies em-
ployed on such borders.

(2) A description of whether and how new sur-
veillance technologies will be compatible with exist-
ing surveillance technologies.

(3) A description of how the United States Cus-
toms and Border Protection is working, or is ex-
pected to work, with the Directorate of Science and
Technology of the Department of Homeland Secu-
ritv 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. The Secretary shall update the Strategy as needed and shall submit to the appropriate congressional committees, 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 inter-
national land and maritime borders of the United
States, except for ports of entry and facilities sub-
ject to vulnerability assessments under section
70102 or 70103 of title 46, United States Code,
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 all legal requirements that
prevent achieving and maintaining operational con-
trol over the entire international land and maritime
borders of the United States.

(5) 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.

(6) 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.

(7) 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.

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

(9) 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.

(10) 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 401 of this Act.

(11) 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 Se-
curity.

(12) A timeline for the implementation of the
additional security measures determined necessary
as part of the National Strategy for Border Secu-
ritv, including a prioritization of security measures,
realistic deadlines for addressing the security and
enforcement needs, and resource estimates and allo-
cations.

(c) CONSULTATION.—In creating the National Strat-
egy 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) COORDINATION.—The National Strategy for Border Security described in subsection (b) shall be consistent with the National Strategy for Maritime Security developed pursuant to Homeland Security Presidential Directive 13.

(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 appropriate congressional committees, such committees shall promptly report to their respective House legislation authorizing necessary security measures based on its evaluation of the National Strategy for Border Security.
(g) APPROPRIATE CONGRESSIONAL COMMITTEE.—For purposes of this title and section 301(b), 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)).

(h) RULE OF CONSTRUCTION.—Nothing in this section 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.

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 (as defined in section 102(g)) 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 on Homeland Security of the House of Representatives 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 all 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 capabili-
ties, including the specific use of satellite communications—

(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. 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. 108. CANINE DETECTION TEAMS.

In each of fiscal years 2007 through 2011, the Secretary of Homeland Security shall, subject to the avail-
ability of appropriations, increase by not less than 25 per-
cent 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. 109. SECURE BORDER INITIATIVE FINANCIAL AC-
COUNTABILITY.

(a) IN GENERAL.—The Inspector General of the De-
partment of Homeland Security shall review each contract
action related to the Department’s Secure Border Initia-
tive having a value greater than $20,000,000, to deter-
mine whether each such action fully complies with applica-
able cost requirements, performance objectives, program
milestones, inclusion of small, minority, and women-owned
business, and timelines. The Inspector General shall com-
plete a review under this subsection with respect to a con-
tract 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 com-
pletion of each review described in subsection (a), the In-
spector 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 (as defined in section 102(g)) 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.

(e) ACTION BY INSPECTOR GENERAL.—In the event the Inspector General becomes aware of any improper con-
duct or wrongdoing in accordance with the contract review
required under subsection (a), the Inspector General shall,
as expeditiously as practicable, refer information related
to such improper conduct or wrongdoing to the Secretary
of Homeland Security or other appropriate official in the
Department of Homeland Security for purposes of evalu-
ating whether to suspend or debar the contractor.

SEC. 110. 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 pro-
vided 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 Bor-
der 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 Train-
ing 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 Border Patrol agent.

SEC. 111. 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 submit to the appropriate congressional committees a report detailing the impact the airspace security mission in the National Capital Region (in this section referred to as the “NCR”) will have on the ability 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 obtained.

(2) An assessment of the impact that diverting resources to support the NCR mission has or is expected to have on the traditional missions in and around the international land and maritime borders of the United States.

SEC. 112. 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. 113. 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. 114. 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. 115. 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 med-
ial 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. 116. 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 Representatives and the Committee on Homeland Security and Governmental Affairs of the Senate a report on the Department’s progress toward carrying out the deployment described in subsection (a).

(e) 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. 117. CONSULTATION WITH BUSINESSES AND FIRMS.

With respect to the Secure Border Initiative and for the purposes of strengthening security along the international land and maritime borders of the United States, the Secretary of Homeland Security shall conduct outreach to and consult with members of the private sector, including business councils, associations, and small, minority-owned, women-owned, and disadvantaged businesses to—

(1) identify existing and emerging technologies, best practices, and business processes;

(2) maximize economies of scale, cost-effectiveness, systems integration, and resource allocation; and

(3) identify the most appropriate contract mechanisms to enhance financial accountability and mission effectiveness of border security programs.

SEC. 118. SENSE OF CONGRESS REGARDING ENFORCEMENT OF IMMIGRATION LAWS.

(a) FINDINGS.—Congress finds the following:

(1) A primary duty of the Federal Government is to secure the homeland and ensure the safety of United States citizens and lawful residents.
(2) As a result of the terrorist attacks on September 11, 2001, perpetrated by al Qaida terrorists on United States soil, the United States is engaged in a Global War on Terrorism.

(3) According to the National Commission on Terrorist Attacks Upon the United States, up to 15 of the 9/11 hijackers could have been intercepted or deported through more diligent enforcement of immigration laws.

(4) Four years after those attacks, there is still a failure to secure the borders of the United States against illegal entry.

(5) The failure to enforce immigration laws in the interior of the United States means that illegal aliens face little or no risk of apprehension or removal once they are in the country.

(6) If illegal aliens can enter and remain in the United States with impunity, so, too, can terrorists enter and remain while they plan, rehearse, and then carry out their attacks.

(7) The failure to control and to prevent illegal immigration into the United States increases the likelihood that terrorists will succeed in launching catastrophic or harmful attacks on United States soil.
(8) There are numerous immigration laws that are currently not being enforced.

(9) Law enforcement officers are often discouraged from enforcing the law by superiors.

(b) SENSE OF CONGRESS.—It is the sense of Congress that the President, the Attorney General, Secretary of State, Secretary of Homeland Security, and other Department Secretaries should immediately use every tool available to them to enforce the immigration laws of the United States, as enacted by Congress.

SEC. 119. SECURING ACCESS TO BORDER PATROL UNIFORMS.

Notwithstanding any other provision of law, all uniforms procured for the use of Border Patrol agents shall be manufactured in the United States substantially all from articles, materials, or supplies mined, produced, or manufactured, as the case may be, in the United States.

SEC. 120. US-VISIT.

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 timeline for—

(1) equipping all land border ports of entry with the US-VISIT system;
(2) developing and deploying at all land border
ports of entry the exit component of the US-VISIT
system; and
(3) making interoperable all immigration
screening systems operated by the Department of
Homeland Security.

SEC. 121. VOLUNTARY RELOCATION PROGRAM EXTENSION.
Section 5739(e) of title 5, United States Code, is
amended by striking “7” and inserting “12”.

SEC. 122. COMPLETION OF BACKGROUND AND SECURITY
CHECKS.
Section 103 of the Immigration and Nationality Act
(8 U.S.C. 1103) is amended by adding at the end the fol-
lowing:
“(i) Notwithstanding any other provision of law, the
Secretary of Homeland Security, the Attorney General,
and the courts may not—
“(1) grant or order the grant of adjustment of
status of an alien to that of an alien lawfully admit-
ted for permanent residence,
“(2) grant or order the grant of any other sta-
tus, relief, protection from removal, or other benefit
under the immigration laws, or
“(3) issue any documentation evidencing or related to such grant by the Secretary, the Attorney General, or any court, until an IBIS check on the alien has been initiated at a Treasury Enforcement Communications System (TECS) access level of no less than Level 3, results from the check have been returned, and any derogatory information has been obtained and assessed, and until any other such background and security checks have been completed as the Secretary may require.

“(j) Notwithstanding any other provision of law, the Secretary of Homeland Security, the Attorney General, and the courts may not—

“(1) grant or order the grant of adjustment of status of an alien to that of an alien lawfully admitted for permanent residence,

“(2) grant or order the grant of any other status, relief, protection from removal, or other benefit under the immigration laws, or

“(3) issue any documentation evidencing or related to such grant by the Secretary, the Attorney General, or any court, until any suspected or alleged fraud relating to the granting of any status (including the granting of adjustment of status), relief, protection from removal, or other benefit
under this subsection has been fully investigated and
found to be unsubstantiated.’’

**TITLE II—COMBATTING ALIEN SMUGGLING AND ILLEGAL ENTRY AND PRESENCE**

**SEC. 201. DEFINITION OF AGGRAVATED FELONY.**

(a) In General.—Section 101(a)(43) of the Immig-
ration and Nationality Act (8 U.S.C. 1101(a)(43)) is
amended—

(1) in subparagraph (N), by striking ‘‘para-
graph (1)(A) or (2) of section 274(a) (relating to
alien smuggling)’’ and inserting ‘‘section 274(a)’’
and by adding a semicolon at the end;

(2) in subparagraph (O), by striking ‘‘section
275(a) or 276 committed by an alien who was pre-
viously deported on the basis of a conviction for an
offense described in another subparagraph of this
paragraph’’, and inserting ‘‘section 275 or section
276 for which the term of imprisonment was at least
one year’’;

(3) in subparagraph (U), by inserting before
‘‘an attempt’’ the following: ‘‘soliciting, aiding, abet-
ting, counseling, commanding, inducing, procuring
or’’; and
(4) by striking all that follows subparagraph (U) and inserting the following:

“The term applies—

“(i) to an offense described in this paragraph whether in violation of Federal or State law and applies to such an offense in violation of the law of a foreign country for which the term of imprisonment was completed within the previous 15 years;

“(ii) even if the length of the term of imprisonment is based on recidivist or other enhancements;

“(iii) to an offense described in this paragraph even if the statute setting forth the offense of conviction sets forth other offenses not described in this paragraph, unless the alien affirmatively shows, by a preponderance of evidence and using public records related to the conviction, including court records, police records and presentence reports, that the particular facts underlying the offense do not satisfy the generic definition of that offense; and

“(iv) regardless of whether the conviction was entered before, on, or after September 30,
1996, and notwithstanding any other provision of law (including any effective date).”.

(b) Effective Date.—The amendments made by subsection (a) shall apply to offenses that occur before, on, or after the date of the enactment of this Act.

SEC. 202. ALIEN SMUGGLING AND RELATED OFFENSES.

(a) In General.—Section 274 of the Immigration and Nationality Act (8 U.S.C. 1324) is amended to read as follows:

“ALIEN SMUGGLING AND RELATED OFFENSES

“SEC. 274. (a) CRIMINAL OFFENSES AND PENALTIES.—

“(1) PROHIBITED ACTIVITIES.—Whoever—

“(A) assists, encourages, directs, or induces a person to come to or enter the United States, or to attempt to come to or enter the United States, knowing or in reckless disregard of the fact that such person is an alien who lacks lawful authority to come to or enter the United States;

“(B) assists, encourages, directs, or induces a person to come to or enter the United States at a place other than a designated port of entry or place other than as designated by the Secretary of Homeland Security, regardless of whether such person has official permission
or lawful authority to be in the United States,
knowing or in reckless disregard of the fact
that such person is an alien;

“(C) assists, encourages, directs, or in-
duces a person to reside in or remain in the
United States, or to attempt to reside in or re-
main in the United States, knowing or in reck-
less disregard of the fact that such person is an
alien who lacks lawful authority to reside in or
remain in the United States;

“(D) transports or moves a person in the
United States, knowing or in reckless disregard
of the fact that such person is an alien who
lacks lawful authority to enter or be in the
United States, where the transportation or
movement will aid or further in any manner the
person’s illegal entry into or illegal presence in
the United States;

“(E) harbors, conceals, or shields from de-
tection a person in the United States knowing
or in reckless disregard of the fact that such
person is an alien who lacks lawful authority to
be in the United States;

“(F) transports, moves, harbors, conceals,
or shields from detection a person outside of
the United States knowing or in reckless dis-
regard of the fact that such person is an alien
in unlawful transit from one country to another
or on the high seas, under circumstances in
which the person is in fact seeking to enter the
United States without official permission or
lawful authority; or

“(G) conspires or attempts to commit any
of the preceding acts,

shall be punished as provided in paragraph (2), re-
gardless of any official action which may later be
taken with respect to such alien.

“(2) CRIMINAL PENALTIES.—A person who vio-
lates the provisions of paragraph (1) shall—

“(A) except as provided in subparagraphs
(D) through (H), in the case where the offense
was not committed for commercial advantage,
profit, or private financial gain, be imprisoned
for not more than 5 years, or fined under title
18, United States Code, or both;

“(B) except as provided in subparagraphs
(C) through (H), where the offense was com-
mited for commercial advantage, profit, or pri-
ivate financial gain—
“(i) in the case of a first violation of this subparagraph, be imprisoned for not more than 20 years, or fined under title 18, United States Code, or both; and

“(ii) for any subsequent violation, be imprisoned for not less than 3 years nor more than 20 years, or fined under title 18, United States Code, or both;

“(C) in the case where the offense was committed for commercial advantage, profit, or private financial gain and involved 2 or more aliens other than the offender, be imprisoned for not less than 3 nor more than 20 years, or fined under title 18, United States Code, or both;

“(D) in the case where the offense furthers or aids the commission of any other offense against the United States or any State, which offense is punishable by imprisonment for more than 1 year, be imprisoned for not less than 5 nor more than 20 years, or fined under title 18, United States Code, or both;

“(E) in the case where any participant in the offense created a substantial risk of death
or serious bodily injury to another person, including—

“(i) transporting a person in an engine compartment, storage compartment, or other confined space;

“(ii) transporting a person at an excessive speed or in excess of the rated capacity of the means of transportation; or

“(iii) transporting or harboring a person in a crowded, dangerous, or inhumane manner,

be imprisoned not less than 5 nor more than 20 years, or fined under title 18, United States Code, or both;

“(F) in the case where the offense caused serious bodily injury (as defined in section 1365 of title 18, United States Code, including any conduct that would violate sections 2241 or 2242 of title 18, United States Code, if the conduct occurred in the special maritime and territorial jurisdiction of the United States) to any person, be imprisoned for not less than 7 nor more than 30 years, or fined under title 18, United States Code, or both;
“(G) in the case where the offense involved an alien who the offender knew or had reason
to believe was an alien—

“(i) engaged in terrorist activity (as
defined in section 212(a)(3)(B)); or

“(ii) intending to engage in such ter-
rorist activity,

be imprisoned for not less than 10 nor more
than 30 years, or fined under title 18, United
States Code, or both; and

“(H) in the case where the offense caused
or resulted in the death of any person, be pun-
ished by death or imprisoned for not less than
10 years, or any term of years, or for life, or
fined under title 18, United States Code, or
both.

“(3) **Extraterritorial Jurisdiction.**—

There is extraterritorial Federal jurisdiction over the
offenses described in this subsection.

“(b) **Employment of Unauthorized Aliens.**—

“(1) **In General.**—Any person who, during
any 12-month period, knowingly hires for employ-
ment at least 10 individuals with actual knowledge
that the individuals are aliens described in para-
graph (2), shall be fined under title 18, United
States Code, imprisoned for not more than 5 years, or both.

“(2) ALIEN DESCRIBED.—A alien described in this paragraph is an alien who—

“(A) is an unauthorized alien (as defined in section 274A(h)(3)); and

“(B) has been brought into the United States in violation of subsection (a).

“(e) SEIZURE AND FORFEITURE.—

“(1) IN GENERAL.—Any property, real or personal, that has been used to commit or facilitate the commission of a violation of this section, the gross proceeds of such violation, and any property traceable to such property or proceeds, shall be subject to forfeiture.

“(2) APPLICABLE PROCEDURES.—Seizures and forfeitures under this subsection shall be governed by the provisions of chapter 46 of title 18, United States Code, relating to civil forfeitures, including section 981(d) of such title, except that such duties as are imposed upon the Secretary of the Treasury under the customs laws described in that section shall be performed by such officers, agents, and other persons as may be designated for that purpose by the Secretary of Homeland Security.
“(d) Authority to Arrest.—No officer or person shall have authority to make any arrests for a violation of any provision of this section except officers and employees designated by the Secretary of Homeland Security, either individually or as a member of a class, and all other officers whose duty it is to enforce criminal laws.

“(e) Admissibility of Evidence.—

“(1) Prima Facie Evidence in Determinations of Violations.—Notwithstanding any provision of the Federal Rules of Evidence, in determining whether a violation of subsection (a) has occurred, any of the following shall be prima facie evidence that an alien involved in the violation lacks lawful authority to come to, enter, reside, remain, or be in the United States or that such alien had come to, entered, resided, remained or been present in the United States in violation of law:

“(A) Any order, finding, or determination concerning the alien’s status or lack thereof made by a federal judge or administrative adjudicator (including an immigration judge or an immigration officer) during any judicial or administrative proceeding authorized under the immigration laws or regulations prescribed thereunder.
“(B) An official record of the Department of Homeland Security, Department of Justice, or the Department of State concerning the alien’s status or lack thereof.

“(C) Testimony by an immigration officer having personal knowledge of the facts concerning the alien’s status or lack thereof.

“(2) Videotaped testimony.—Notwithstanding any provision of the Federal Rules of Evidence, the videotaped (or otherwise audiovisually preserved) deposition of a witness to a violation of subsection (a) who has been deported or otherwise expelled from the United States, or is otherwise unavailable to testify, may be admitted into evidence in an action brought for that violation if the witness was available for cross examination at the deposition and the deposition otherwise complies with the Federal Rules of Evidence.

“(f) Definitions.—For purposes of this section:

“(1) The term ‘lawful authority’ means permission, authorization, or license that is expressly provided for in the immigration laws of the United States or the regulations prescribed thereunder. Such term does not include any such authority secured by fraud or otherwise obtained in violation of
law, nor does it include authority that has been sought but not approved. No alien shall be deemed to have lawful authority to come to, enter, reside, remain, or be in the United States if such coming to, entry, residence, remaining, or presence was, is, or would be in violation of law.

“(2) The term ‘unlawful transit’ means travel, movement, or temporary presence that violates the laws of any country in which the alien is present, or any country from which or to which the alien is traveling or moving.”.

(b) CLERICAL AMENDMENT.—The item relating to section 274 in the table of contents of such Act is amended to read as follows:

“Sec. 274. Alien smuggling and related offenses.”.

SEC. 203. IMPROPER ENTRY BY, OR PRESENCE OF, ALIENS.

Section 275 of the Immigration and Nationality Act (8 U.S.C. 1325) is amended—

(1) in the section heading, by inserting “UNLAWFUL PRESENCE;” after “IMPROPER TIME OR PLACE;”;

(2) in subsection (a)—

(A) by striking “Any alien” and inserting “Except as provided in subsection (b), any alien”;

(B) by striking “or” before (3);
(C) by inserting after "concealment of a material fact," the following: "or (4) is otherwise present in the United States in violation of the immigration laws or the regulations prescribed thereunder,"; and

(D) by striking "6 months" and inserting "one year and a day";

(3) by amending subsection (c) to read as follows:

"(c)(1) Whoever—

"(A) knowingly enters into a marriage for the purpose of evading any provision of the immigration laws; or

"(B) knowingly misrepresents the existence or circumstances of a marriage—

"(i) in an application or document arising under or authorized by the immigration laws of the United States or the regulations prescribed thereunder, or

"(ii) during any immigration proceeding conducted by an administrative adjudicator (including an immigration officer or examiner, a consular officer, an immigration judge, or a member of the Board of Immigration Appeals);
shall be fined under title 18, United States Code, or
imprisoned not more than 10 years, or both.

“(2) Whoever—

“(A) knowingly enters into two or more mar-
riages for the purpose of evading any provision of
the immigration laws; or

“(B) knowingly arranges, supports, or facili-
tates two or more marriages designed or intended to
evade any provision of the immigration laws;

shall be fined under title 18, United States Code, impris-
oned not less than 2 years nor more than 20 years, or
both.

“(3) An offense under this subsection continues until
the fraudulent nature of the marriage or marriages is dis-
covered by an immigration officer.

“(4) For purposes of this section, the term ‘pro-
ceeding’ includes an adjudication, interview, hearing, or
review.”

(4) in subsection (d)—

(A) by striking “5 years” and inserting

“10 years”;

(B) by adding at the end the following:

“An offense under this subsection continues
until the fraudulent nature of the commercial
enterprise is discovered by an immigration officer.”; and

(5) by adding at the end the following new subsections:

“(e)(1) Any alien described in paragraph (2)—

“(A) shall be fined under title 18, United States Code, imprisoned not more than 10 years, or both, if the offense described in such paragraph was committed subsequent to a conviction or convictions for commission of three or more misdemeanors involving drugs, crimes against the person, or both, or a felony;

(B) whose violation was subsequent to conviction for a felony for which the alien received a sentence of 30 months or more, shall be fined under title 18, United States Code, imprisoned not more than 10 years, or both; or

(C) whose violation was subsequent to conviction for a felony for which the alien received a sentence of 60 months or more, shall be fined under title 18, United States Code, imprisoned not more than 20 years, or both.

“(2) An alien described in this paragraph is an alien who—
“(A) enters or attempts to enter the United States at any time or place other than as designated by immigration officers;

“(B) eludes examination or inspection by immigration officers;

“(C) attempts to enter or obtains entry to the United States by a willfully false or misleading representation or the willful concealment of a material fact; or

“(D) is otherwise present in the United States in violation of the immigration laws or the regulations prescribed thereunder.

“(3) The prior convictions in subparagraph (A), (B), or (C) of paragraph (1) are elements of those crimes and the penalties in those subparagraphs shall apply only in cases in which the conviction (or convictions) that form the basis for the additional penalty are alleged in the indictment or information and are proven beyond a reasonable doubt at trial or admitted by the defendant in pleading guilty. Any admissible evidence may be used to show that the prior conviction is a qualifying crime, and the criminal trial for a violation of this section shall not be bifurcated.
“(4) An offense under subsection (a) or paragraph (1) of this subsection continues until the alien is discovered within the United States by immigration officers.

“(f) For purposes of this section, the term ‘attempts to enter’ refers to the general intent of the alien to enter the United States and does not refer to the intent of the alien to violate the law.”.

SEC. 204. REENTRY OF REMOVED ALIENS.

Section 276 of the Immigration and Nationality Act (8 U.S.C. 1326) is amended—

(1) in subsection (a)—

(A) in paragraph (2), by striking all that follows “United States” the first place it appears and inserting a comma;

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

(C) by adding at the end the following: “It shall be an affirmative defense to an offense under this subsection that (A) prior to an alien’s reembarkation at a place outside the United States or an alien’s application for admission from foreign contiguous territory, the
Secretary of Homeland Security has expressly consented to the alien’s reapplying for admission; or (B) with respect to an alien previously denied admission and removed, such alien was not required to obtain such advance consent under this Act or any prior Act.”;

(2) in subsection (b)—

(A) in paragraph (1), by striking “imprisoned not more than 10 years,” and insert “imprisoned for a term of not less than 5 years and not more than 10 years,”;

(B) in paragraph (2), by striking “imprisoned not more than 20 years,” and insert “imprisoned for a term of not less than 10 years and not more than 20 years,”;

(C) in paragraph (3), by striking “. or” and inserting “; or”;

(D) in paragraph (4), by striking “imprisoned for not more than 10 years,” and insert “imprisoned for a term of not less than 5 years and not more than 10 years,”; and

(E) by adding at the end the following: “The prior convictions in paragraphs (1) and (2) are elements of enhanced crimes and the penalties under such paragraphs shall apply
only where the conviction (or convictions) that
form the basis for the additional penalty are al-
leged in the indictment or information and are
proven beyond a reasonable doubt at trial or
admitted by the defendant in pleading guilty.
Any admissible evidence may be used to show
that the prior conviction is a qualifying crime
and the criminal trial for a violation of either
such paragraph shall not be bifurcated.”;
(3) in subsections (b)(3), (b)(4), and (c), by
striking “Attorney General” and inserting “Sec-
retary of Homeland Security” each place it appears;
(4) in subsection (c), by striking “242(h)(2)”
and inserting “241(a)(4)”;
(5) by adding at the end the following new sub-
section:
“(e) For purposes of this section, the term ‘attempts
to enter’ refers to the general intent of the alien to enter
the United States and does not refer to the intent of the
alien to violate the law.”.

SEC. 205. MANDATORY SENTENCING RANGES FOR PERSONS
AIDING OR ASSISTING CERTAIN REENTERING
ALIENS.

Section 277 of the Immigration and Nationality Act
(8 U.S.C. 1327) is amended—
(1) by striking “Any person” and inserting “(a) Subject to subsection (b), any person”; and

(2) by adding at the end the following:

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

“(2) The term of imprisonment imposed under paragraph (1) shall be within the range to which the reentering alien is subject under section 276(b).”.

SEC. 206. PROHIBITING CARRYING OR USING A FIREARM DURING AND IN RELATION TO AN ALIEN SMUGGLING CRIME.

Section 924(c) of title 18, United States Code, is amended—

(1) in paragraphs (1)(A) and (1)(D)(ii), by inserting “, alien smuggling crime,” after “crime of violence” each place it appears; and

(2) by adding at the end the following new paragraph:

“(6) For purposes of this subsection, the term ‘alien smuggling crime’ means any felony punishable under sec-
tion 274(a), 277, or 278 of the Immigration and Nationality Act (8 U.S.C. 1324(a), 1327, or 1328).”.

SEC. 207. CLARIFYING CHANGES.

(a) Exclusion Based on False Claim of Nationality.—

(1) In General.—Section 212(a)(6)(C)(ii) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(6)(C)(ii)) is amended—

(A) in the heading, by inserting “OR NATIONALITY” after “CITIZENSHIP”; and

(B) by inserting “or national” after “citizen” each place it appears.

(2) Effective Date.—The amendments made by paragraph (1) shall take effect on the date of the enactment of this Act and shall apply to acts occurring before, on, or after such date.

(b) Sharing of Information.—Section 290(b) of such Act (8 U.S.C. 1360(b)) is amended—

(1) by inserting “, or as to any person seeking any benefit or privilege under the immigration laws,” after “United States”; 

(2) by striking “Service” and inserting “Secretary of Homeland Security”; and 

(3) by striking “Attorney General” and inserting “Secretary”.

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(c) Exceptions Authority.—Section 212(a)(3)(B)(ii) of such Act (8 U.S.C. 1182(a)(3)(B)(ii)) is amended by striking “Subclause (VII)” and inserting “Subclause (IX)”.

SEC. 208. VOLUNTARY DEPARTURE REFORM.

(a) Encouraging Aliens to Depart Voluntarily.—

(1) Authority.—Subsection (a) of section 240B of the Immigration and Nationality Act (8 U.S.C. 1229c) is amended—

(A) by amending paragraph (1) to read as follows:

“(1) In Lieu of Removal Proceedings.—The Secretary of Homeland Security may permit an alien voluntarily to depart the United States at the alien’s own expense under this subsection, in lieu of being subject to proceedings under section 240, if the alien is not described in section 237(a)(2)(A)(iii) or section 237(a)(4).”;

(B) by striking paragraph (3);

(C) by redesignating paragraph (2) as paragraph (3);

(D) by inserting after paragraph (1) the following new paragraph:
“(2) PRIOR TO THE CONCLUSION OF REMOVAL PROCEEDINGS.—After removal proceedings under section 240 are initiated, the Attorney General may permit an alien voluntarily to depart the United States at the alien’s own expense under this subsection, prior to the conclusion of such proceedings before an immigration judge, if the alien is not described in section 237(a)(2)(A)(iii) or section 237(a)(4).”; and

(E) in paragraph (4), by striking “paragraph (1)” and inserting “paragraphs (1) and (2)”.

(2) VOLUNTARY DEPARTURE PERIOD.—Such section is further amended—

(A) in subsection (a)(3), as redesignated by paragraph (1)(C)—

(i) by amending subparagraph (A) to read as follows:

“(A) IN LIEU OF REMOVAL.—Subject to subparagraph (C), permission to depart voluntarily under paragraph (1) shall not be valid for a period exceeding 120 days. The Secretary of Homeland Security may require an alien permitted to depart voluntarily under paragraph (1) to post a voluntary departure bond, to be
surrendered upon proof that the alien has departed the United States within the time specified.”;

(ii) in subparagraph (B), by striking “subparagraphs (C) and (D)(ii)” and inserting “subparagraphs (D) and (E)(ii)”;

(iii) in subparagraphs (C) and (D), by striking “subparagraph (B)” and inserting “subparagraph (C)” each place it appears;

(iv) by redesignating subparagraphs (B), (C), and (D) as subparagraphs (C), (D), and (E), respectively; and

(v) by inserting after subparagraph (A) the following new subparagraph:

“(B) Prior to the conclusion of removal proceedings.—Permission to depart voluntarily under paragraph (2) shall not be valid for a period exceeding 60 days, and may be granted only after a finding that the alien has established that the alien has the means to depart the United States and intends to do so. An alien permitted to depart voluntarily under paragraph (2) must post a voluntary departure bond, in an amount necessary to ensure that the alien will depart, to be surrendered upon
proof that the alien has departed the United States within the time specified. An immigration judge may waive posting of a voluntary departure bond in individual cases upon a finding that the alien has presented compelling evidence that the posting of a bond will be a serious financial hardship and the alien has presented credible evidence that such a bond is unnecessary to guarantee timely departure.”; and

(B) in subsection (b)(2), by striking “60 days” and inserting “45 days”.

(3) VOLUNTARY DEPARTURE AGREEMENTS.—Subsection (c) of such section is amended to read as follows:

“(c) CONDITIONS ON VOLUNTARY DEPARTURE.—

“(1) VOLUNTARY DEPARTURE AGREEMENT.—Voluntary departure will be granted only as part of an affirmative agreement by the alien. A voluntary departure agreement under subsection (b) shall include a waiver of the right to any further motion, appeal, application, petition, or petition for review relating to removal or relief or protection from removal.

“(2) CONCESSIONS BY THE SECRETARY.—In connection with the alien’s agreement to depart vol-
untarily under paragraph (1), the Secretary of Homeland Security in the exercise of discretion may agree to a reduction in the period of inadmissibility under subparagraph (A) or (B)(i) of section 212(a)(9).

“(3) Failure to Comply with Agreement and Effect of Filing Timely Appeal.—If an alien agrees to voluntary departure under this section and fails to depart the United States within the time allowed for voluntary departure or fails to comply with any other terms of the agreement (including a failure to timely post any required bond), the alien automatically becomes ineligible for the benefits of the agreement, subject to the penalties described in subsection (d), and subject to an alternate order of removal if voluntary departure was granted under subsection (a)(2) or (b). However, if an alien agrees to voluntary departure but later files a timely appeal of the immigration judge’s decision granting voluntary departure, the alien may pursue the appeal instead of the voluntary departure agreement. Such appeal operates to void the alien’s voluntary departure agreement and the consequences thereof, but the alien may not again be granted voluntary departure while the alien remains in the United States.”
(4) Eligibility.—Subsection (e) of such section is amended to read as follows:

“(e) Eligibility.—

“(1) Prior Grant of Voluntary Departure.—An alien shall not be permitted to depart voluntarily under this section if the Secretary of Homeland Security or the Attorney General previously permitted the alien to depart voluntarily.

“(2) Additional Limitations.—The Secretary of Homeland Security may by regulation limit eligibility or impose additional conditions for voluntary departure under subsection (a)(1) for any class or classes of aliens. The Secretary or Attorney General may by regulation limit eligibility or impose additional conditions for voluntary departure under subsection (a)(2) or (b) for any class or classes of aliens. Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and section 1361 and 1651 of such title, no court may review any regulation issued under this subsection.”.

(b) Avoiding Delays in Voluntary Departure.—
(1) Alien’s obligation to depart within the time allowed.—Subsection (c) of section 240B of the Immigration and Nationality Act (8 U.S.C. 1229c), as amended by subsection (a), is further amended by adding at the end the following new paragraph:

“(4) Voluntary departure period not affected.—Except as expressly agreed to by the Secretary of Homeland Security in writing in the exercise of the Secretary’s discretion before the expiration of the period allowed for voluntary departure, no motion, appeal, application, petition, or petition for review shall affect, reinstate, enjoin, delay, stay, or toll the alien’s obligation to depart from the United States during the period agreed to by the alien and the Secretary.”.

(2) No tolling.—Subsection (f) of such section is amended by adding at the end the following new sentence: “Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and section 1361 and 1651 of such title, no court shall have jurisdiction to affect, reinstate, enjoin, delay, stay, or toll the period allowed for voluntary departure under this section.”.
(c) Penalties for Failure to Depart Voluntarily.—

(1) Penalties for failure to depart.—

Subsection (d) of section 240B of the Immigration and Nationality Act (8 U.S.C. 229c) is amended to read as follows:

“(d) Penalties for Failure to Depart.—If an alien is permitted to depart voluntarily under this section and fails voluntarily to depart from the United States within the time period specified or otherwise violates the terms of a voluntary departure agreement, the following provisions apply:

“(1) Civil penalty.—

“(A) In general.—The alien will be liable for a civil penalty of $3,000.

“(B) Specification in order.—The order allowing voluntary departure shall specify the amount of the penalty, which shall be acknowledged by the alien on the record.

“(C) Collection.—If the Secretary of Homeland Security thereafter establishes that the alien failed to depart voluntarily within the time allowed, no further procedure will be necessary to establish the amount of the penalty, and the Secretary may collect the civil penalty
at any time thereafter and by whatever means
provided by law.

“(D) INELIGIBILITY FOR BENEFITS.—An alien will be ineligible for any benefits under this title until any civil penalty under this sub-
section is paid.

“(2) INELIGIBILITY FOR RELIEF.—The alien will be ineligible during the time the alien remains in the United States and for a period of 10 years after the alien’s departure for any further relief under this section and sections 240A, 245, 248, and 249.

“(3) REOPENING.—

“(A) IN GENERAL.—Subject to subpara-
graph (B), the alien will be ineligible to reopen a final order of removal which took effect upon the alien’s failure to depart, or the alien’s viola-
tion of the conditions for voluntary departure, during the period described in paragraph (2).

“(B) EXCEPTION.—Subparagraph (A) does not preclude a motion to reopen to seek withholding of removal under section 241(b)(3) or protection against torture.
The order permitting the alien to depart voluntarily under this section shall inform the alien of the penalties under this subsection.”.

(2) IMPLEMENTATION OF EXISTING STATUTORY PENALTIES.—The Secretary of Homeland Security shall implement regulations to provide for the imposition and collection of penalties for failure to depart under section 240B(d) of the Immigration and Nationality Act, as amended by paragraph (1).

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply with respect to all orders granting voluntary departure under section 240B of the Immigration and Nationality Act (8 U.S.C. 1229c) made on or after the date that is 180 days after the date of the enactment of this Act.

(2) EXCEPTION.—The amendment made by subsection (b)(2) shall take effect on the date of the enactment of this Act and shall apply with respect to any petition for review which is entered on or after such date.
SEC. 209. DETERRING ALIENS ORDERED REMOVED FROM REMAINING IN THE UNITED STATES UNLAWFULLY AND FROM UNLAWFULLY RETURNING TO THE UNITED STATES AFTER DEPARTING VOLUNTARILY.

(a) INADMISSIBLE ALIENS.—Paragraph (9) of section 212(a) of the Immigration and Nationality Act (8 U.S.C. 1182(a)) is amended—

(1) in subparagraph (A)(i), by striking “within 5 years of” and inserting “before, or within 5 years of,”; and

(2) in subparagraph (A)(ii) by striking “within 10 years of” and inserting “before, or within 10 years of,.”.

(b) FAILURE TO DEPART, APPLY FOR TRAVEL DOCUMENTS, OR APPEAR FOR REMOVAL OR CONSPIRACY TO PREVENT OR HAMPER DEPARTURE.—Section 274D of such Act (8 U.S.C. 1324d) is amended—

(1) in subsection (a), by striking “Commissioner” and inserting “Secretary of Homeland Security”; and

(2) by adding at the end the following new subsection:

“(e) INELIGIBILITY FOR RELIEF.—

“(1) IN GENERAL.—Subject to paragraph (2), unless a timely motion to reopen is granted under
section 240(c)(6), an alien described in subsection
(a) shall be ineligible for any discretionary relief
from removal pursuant to a motion to reopen during
the time the alien remains in the United States and
for a period of 10 years after the alien’s departure.

“(2) Exception.—Paragraph (1) does not pre-
clude a motion to reopen to seek withholding of re-
moval under section 241(b)(3) or protection against
torture.”.

(c) Deterring Aliens From Unlawfully Re-
turning to the United States After Departing
Voluntarily.—Section 275(a) of such Act (8 U.S.C.
1325(a)) is amended by inserting “or following an order
of voluntary departure” after “a subsequent commission
of any such offense”.

(d) Effective Dates.—

(1) In General.—The amendments made by
subsections (a) and (b) shall take effect on the date
of the enactment of this Act with respect to aliens
who are subject to a final order of removal, whether
the removal order was entered before, on, or after
such date.

(2) Voluntary Departure.—The amendment
made by subsection (c) shall take effect on the date
of the enactment of this Act and shall apply with re-
spect to conduct occurring on or after such date.

SEC. 210. ESTABLISHMENT OF THE FORENSIC DOCUMENTS
LABORATORY.

(a) IN GENERAL.—The Secretary of Homeland Secu-
rity shall establish a Fraudulent Documents Center (to be
known as the Forensic Document Laboratory) to carry out
the following:

(1) Collect information from Federal, State,
and local law enforcement agencies, and foreign gov-
ernments on the production, sale, distribution, and
use of fraudulent documents intended to be used to
enter, travel, or remain within the United States un-
lawfully.

(2) Maintain the information described in para-
graph (1) in a comprehensive database.

(3) Maintain a repository of genuine and fraud-
ulent travel and identity document exemplars.

(4) Convert the information collected into re-
ports that provide guidance to government officials
in identifying fraudulent documents being used to
enter into, travel within, or remain in the United
States.
(5) Develop a system for distributing these reports on an ongoing basis to appropriate Federal, State, and local law enforcement agencies.

(b) DISTRIBUTION OF INFORMATION.—The Forensic Document Laboratory shall distribute its reports to appropriate Federal, State, and local law enforcement agencies on an ongoing basis.

SEC. 211. SECTION 1546 AMENDMENTS.

(a) Section 1546(a) of title 18, United States Code, is amended in the first paragraph by inserting “distributes (or intends to distribute),” before “or falsely” the first place it appears.

(b) Section 1546(a) of title 18, United States Code, is amended in the first paragraph by inserting “distributed,” before “or falsely” the second place it appears.

SEC. 212. MOTIONS TO REOPEN OR RECONSIDER.

(a) EXERCISE OF DISCRETION.—Section 240(c) of the Immigration and Nationality Act (8 U.S.C. 1229a(c)) is amended—

(1) by adding at the end of paragraph (5) the following new subparagraph:

“(D) DISCRETION.—The decision to grant or deny a motion to reconsider is committed to the Attorney General’s discretion.”; and
(2) by adding at the end of paragraph (6) the following new subparagraph:

“(D) DISCRETION.—The decision to grant or deny a motion to reopen is committed to the Attorney General’s discretion.”.

(b) PRIMA FACIE ELIGIBILITY FOR PROTECTION FROM REMOVAL TO ALTERNATIVE COUNTRY OF REMOVAL NOT PREVIOUSLY CONSIDERED.—Section 240(c) of the Immigration and Nationality Act (8 U.S.C. 1229a) is further amended by adding at the end of paragraph (6) the following new subparagraph:

“(E) SPECIAL RULE FOR ALTERNATIVE COUNTRIES OF REMOVAL.—The time and numerical limitations specified in this paragraph shall not apply if—

“(i) the Secretary seeks to remove the alien to an alternative or additional country of removal under subparagraph (D) or (E) of section 241(b)(2) that had not been considered during the alien’s prior removal proceedings;

“(ii) the alien’s motion to reopen is filed within 30 days after the date the alien receives notice of the Secretary’s in-
tention to remove the alien to that country;
and
“(iii) the alien establishes a prima facie case that the alien is entitled by law to withholding of removal under section 241(b)(3) or protection under the Convention Against Torture with respect to that particular country.”.

(e) EFFECTIVE DATE.—This section, and the amendments made by this section, shall apply to motions to reopen and reconsider that are filed on or after the date of the enactment of this Act in removal, deportation, or exclusion proceedings, regardless of whether a final administrative order is entered before, on, or after such date.

SEC. 213. REFORM OF PASSPORT, VISA, AND IMMIGRATION FRAUD OFFENSES.

Chapter 75 of title 18, United States Code is amended to read as follows:

“CHAPTER 75—PASSPORT, VISA, AND IMMIGRATION FRAUD

‘1541. Trafficking in passports.
‘1542. False statement in an application for a passport.
‘1543. Forgery and unlawful production of a passport.
‘1544. Misuse of a passport.
‘1545. Schemes to defraud aliens.
‘1546. Immigration and visa fraud.
‘1547. Attempts and conspiracies.
‘1548. Increased penalties for certain offenses.
‘1549. Seizure and forfeiture.
‘1550. Additional jurisdiction.
§ 1541. Trafficking in passports

(a) Whoever, during any three-year period—

(1) knowingly and without lawful authority
produces, issues, or transfers 10 or more passports; or

(2) knowingly forges, counterfeits, alters, or
falsely makes 10 or more passports; or

(3) knowingly secures, possesses, uses, re-
ceives, buys, or sells 10 or more passports, knowing
the passports to be forged, counterfeited, altered,
falsely made, stolen, procured by fraud, issued, or
designed for the use of another, or produced or
issued without lawful authority; or

(4) knowingly completes, mails, prepares, pre-
sents, signs, or submits 10 or more applications for
a United States passport (including any supporting
documentation) knowing the applications to contain
any false statement or representation;

shall be fined under this title, imprisoned not less than
3 years nor more than 20 years, or both.

(b) Whoever knowingly and without lawful authority
produces, counterfeits, secures, possesses, or uses any offi-
cial paper, seal, hologram, image, text, symbol, stamp, en-
graving, plate, or other material used to make a passport
shall be fined under this title, imprisoned not less than
3 years nor more than 20 years, or both.

“§ 1542. False statement in an application for a passport

“Whoever knowingly—

“(1) makes any false statement or representation in an application for a United States passport (including any supporting documentation); or

“(2) completes, mails, prepares, presents, signs, or submits an application for a United States passport (including any supporting documentation) knowing it to contain any false statement or representation; or

“(3) causes or attempts to cause the production of a passport by means of any fraud or false application for a United States passport (including any supporting documentation), when such production occurs or would occur at a facility authorized by the Secretary of State for the production of passports; shall be fined under this title, imprisoned not more than 15 years, or both.

“§ 1543. Forgery and unlawful production of a passport

“(a) Whoever—
“(1) knowingly forges, counterfeits, alters, or falsely makes any passport; or
“(2) knowingly transfers any passport knowing it to be forged, counterfeited, altered, falsely made, stolen, or to have been produced or issued without lawful authority;
shall be fined under this title, imprisoned not more than 15 years, or both.
“(b) Whoever knowingly and without lawful authority—
“(1) produces, issues, authorizes, or verifies a passport in violation of the laws, regulations, or rules governing the issuance of the passport; or
“(2) produces, issues, authorizes, or verifies a United States passport for or to any person not owing allegiance to the United States; or
“(3) transfers or furnishes a passport to a person for use when such person is not the person for whom the passport was issued or designed;
shall be fined under this title, imprisoned not more than 15 years, or both.
“§ 1544. Misuse of a passport
“(a) Whoever—
“(1) knowingly uses any passport issued or designed for the use of another; or
“(2) knowingly uses any passport in violation of the conditions or restrictions therein contained, or in violation of the laws, regulations, or rules governing the issuance and use of the passport; or

“(3) knowingly secures, possesses, uses, receives, buys, or sells any passport knowing it to be forged, counterfeited, altered, falsely made, procured by fraud, or produced or issued without lawful authority; or

“(4) knowingly violates the terms and conditions of any safe conduct duly obtained and issued under the authority of the United States; shall be fined under this title, imprisoned not more than 15 years, or both.

“(b) Whoever knowingly uses any passport—

“(1) to enter or to attempt to enter the United States, or

“(2) to defraud an agency of the United States, a State, or a political subdivision of a State, knowing the passport to be forged, counterfeited, altered, falsely made, procured by fraud, produced or issued without lawful authority, or issued or designed for the use of another, shall be fined under this title, imprisoned not less than 6 months nor more than 15 years, or both.
§ 1545. Schemes to defraud aliens

(a) Whoever knowingly defrauds any person in connection with—

(1) any matter that is authorized by or arises under the immigration laws of the United States, or

(2) any matter the offender claims or represents is authorized by or arises under the immigration laws of the United States,

shall be fined under this title, imprisoned not more than 15 years, or both.

(b) Whoever knowingly and falsely represents himself to be an attorney in any matter authorized by or arising under the immigration laws of the United States shall be fined under this title, imprisoned not more than 15 years, or both.

§ 1546. Immigration and visa fraud

(a) Whoever—

(1) knowingly uses any immigration document issued or designed for the use of another; or

(2) knowingly forges, counterfeits, alters, or falsely makes any immigration document; or

(3) knowingly completes, mails, prepares, presents, signs, or submits any immigration document knowing it to contain any materially false statement or representation; or
“(4) knowingly secures, possesses, uses, transfers, receives, buys, or sells any immigration document knowing it to be forged, counterfeited, altered, falsely made, stolen, procured by fraud, issued or designed for another, or produced or issued without lawful authority; or

“(5) knowingly adopts or uses a false or fictitious name to evade or to attempt to evade the immigration laws; or

“(6) knowingly and without lawful authority transfers or furnishes an immigration document to a person for use when such person is not the person for whom the immigration document was issued or designed;

shall be fined under this title, imprisoned not more than 15 years, or both.

“(b) Whoever, during any three-year period—

“(1) knowingly and without lawful authority produces, issues, or transfers 10 or more immigration documents; or

“(2) knowingly forges, counterfeits, alters, or falsely makes 10 or more immigration documents; or

“(3) knowingly secures, possesses, uses, buys, or sells 10 or more immigration documents, knowing the immigration documents to be forged, counter-
feited, altered, stolen, falsely made, procured by
fraud, or issued or designed for the use of another,
or produced or issued without lawful authority; or
“(4) knowingly completes, mails, prepares, pre-
sents, signs, or submits 10 or more immigration doc-
ments knowing the documents to contain any mate-
rially false statement or representation;
shall be fined under this title, imprisoned not less than
2 years nor more than 20 years, or both.
“(c) Whoever knowingly and without lawful authority
produces, counterfeits, secures, possesses, or uses any offi-
cial paper, seal, hologram, image, text, symbol, stamp, en-
graving, plate, or other material used to make an immigra-
tion document shall be fined under this title, imprisoned
not less than 2 years nor more than 20 years, or both.
§ 1547. Attempts and conspiracies
“Whoever attempts or conspires to violate any section
within this chapter shall be punished in the same manner
as a completed violation of that section. An attempt of-
fense under this chapter is a general intent crime.
§ 1548. Increased penalties for certain offenses
“(a) Whoever violates any of the sections within this
chapter with the intent to facilitate an act of international
terrorism (as defined in section 2331 of this title) shall
be fined under this title, imprisoned not less than 7 years nor more than 25 years, or both.

“(b) Whoever violates any section in this chapter with the intent to facilitate the commission of any offense against the United States (other than an offense in this chapter) or against any State, which offense is punishable by imprisonment for more than 1 year, shall be fined under this title, imprisoned not less than 3 years nor more than 20 years, or both.

“§ 1549. Seizure and forfeiture

“(a) Any property, real or personal, that has been used to commit or facilitate the commission of a violation of any section within this chapter, the gross proceeds of such violation, and any property traceable to such property or proceeds, shall be subject to forfeiture.

“(b) Seizures and forfeitures under this section shall be governed by the provisions of chapter 46 of this title, relating to civil forfeitures, including section 981(d) of such title, except that such duties as are imposed upon the Secretary of the Treasury under the customs laws described in that section shall be performed by such officers, agents, and other persons as may be designated for that purpose by the Secretary of Homeland Security, the Secretary of State, or the Attorney General.
§ 1550. Additional jurisdiction

(a) Whoever commits an offense under this chapter within the special maritime and territorial jurisdiction of the United States shall be punished as provided by that offense.

(b) Whoever commits an offense under this chapter outside the United States shall be punished as provided by that offense if—

(1) the offense involves a United States immigration document (or any document purporting to be the same) or any matter, right, or benefit arising under or authorized by the immigration laws of the United States or the regulations prescribed thereunder; or

(2) the offense is in or affects foreign commerce; or

(3) the offense affects, jeopardizes, or poses a significant risk to the lawful administration of the immigration laws of the United States, or the national security of the United States; or

(4) the offense is committed to facilitate an act of international terrorism (as defined in section 2331 of this title) or a drug trafficking crime (as defined in section 929(a) of this title) that affects or would affect the national security of the United States; or
“(5) an offender is a national of the United States (as defined in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. § 1001(a)(22)) or an alien lawfully admitted for permanent residence in the United States (as defined in section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. § 1001(a)(20)); or

“(6) an offender is a stateless person whose habitual residence is in the United States.

§ 1551. Additional venue

“An offense under section 1542 of this chapter may be prosecuted in—

“(1) any district in which the false statement or representation was made; or

“(2) any district in which the passport application was prepared, submitted, mailed, received, processed, or adjudicated; or

“(3) in the case of an application prepared and adjudicated outside the United States, in the district in which the resultant passport was produced.

Nothing in this section limits the venue otherwise available under sections 3237 and 3238 of this title.

§ 1552. Definitions

“For purposes of this chapter:
“(1) The term ‘falsely make’ means to prepare or complete an immigration document with knowledge or in reckless disregard of the fact that the document—

“(A) contains a statement or representation that is false, fictitious, or fraudulent;

“(B) has no basis in fact or law; or

“(C) otherwise fails to state a fact that is material to the purpose for which the document was created, designed, or submitted.

“(2) The term a ‘false statement or representation’ includes a personation or an omission.

“(3) The term ‘felony’ means any criminal offense punishable by a term of imprisonment of more than 1 year under the laws of the United States, any State, or a foreign government.

“(4) The term ‘immigration document’ means—

“(A) any passport or visa; or

“(B) any application, petition, affidavit, declaration, attestation, form, identification card, alien registration document, employment authorization document, border crossing card, certificate, permit, order, license, stamp, authorization, grant of authority, or other evi-
dentary document, arising under or authorized
by the immigration laws of the United States.
Such term includes any document, photograph, or
other piece of evidence attached to or submitted in
support of an immigration document.

“(5) The term ‘immigration laws’ includes—

“(A) the laws described in section
101(a)(17) of the Immigration and Nationality
Act (8 U.S.C. 1101(a)(17));

“(B) the laws relating to the issuance and
use of passports; and

“(C) the regulations prescribed under the
authority of any law described in paragraphs
(1) and (2) of this subsection.

“(6) A person does not exercise ‘lawful author-
ity’ if the person abuses or improperly exercises law-
ful authority the person otherwise holds.

“(7) The term ‘passport’ means a travel docu-
ment attesting to the identity and nationality of the
bearer that is issued under the authority of the Sec-
retary of State, a foreign government, or an inter-
national organization; or any instrument purporting
to be the same.

“(8) The term ‘produce’ means to make, pre-
pare, assemble, issue, print, authenticate, or alter.
“(9) The term ‘State’ means a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

§ 1553. Authorized law enforcement activities

“The sections in this chapter do not prohibit any lawfully authorized investigative, protective, or intelligence activity of a law enforcement agency of the United States, a State, or a subdivision of a State, or of an intelligence agency of the United States, or any activity authorized under title V of the Organized Crime Control Act of 1970 (18 U.S.C. note prec. 3481).”.

SEC. 214. CRIMINAL DETENTION OF ALIENS.

(a) Section 3142(e) of title 18, United States Code, is amended by inserting at the end the following:

“Subject to rebuttal by the person, it shall be presumed that no condition or combination of conditions will reasonably assure the appearance of the person as required if the judicial officer finds that there is probable cause to believe that the person is an alien and that the person—

“(1) has no lawful immigration status in the United States;

“(2) is the subject of a final order of removal; or
“(3) has committed a felony offense under section 911, 922(g)(5), 1015, 1028, 1425, or 1426 of this title, or any section of chapters 75 and 77 of this title, or section 243, 274, 275, 276, 277, or 278, of the Immigration and Nationality Act.”.

(b) Section 3142(g)(3) of title 18, United States Code, is amended by striking “and” at the end of subparagraph (A) and by adding at the end the following new subparagraph:

“(C) the person’s immigration status; and”.

SEC. 215. UNIFORM STATUTE OF LIMITATIONS FOR CERTAIN IMMIGRATION, NATURALIZATION, AND PEONAGE OFFENSES.

Section 3291 of title 18, United States Code, is amended to read as follows:

“SEC. 3291. IMMIGRATION, NATURALIZATION, AND PEONAGE OFFENSES.

“No person shall be prosecuted, tried, or punished for a violation of any section of chapters 69 (relating to nationality and citizenship offenses), 75 (relating to passport, visa, and immigration offenses), or 77 (relating to peonage, slavery, and trafficking in persons) of this title (or for attempt or conspiracy to violate any such section), or for a violation of any criminal provision of sections 243,
266, 274, 275, 276, 277, or 278 of the Immigration and Nationality Act (or for attempt or conspiracy to violate any such section), unless the indictment is returned or the information filed within ten years after the commission of the offense.”.

SEC. 216. CONFORMING AMENDMENT.

Subparagraph (P) of section 101(a)(43) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(43)) is amended—

(1) by striking “(i) which either is falsely making, forging, counterfeiting, mutilating, or altering a passport or instrument in violation of section 1543 of Title 18 or is described in section 1546(a) of such title (relating to document fraud) and (ii)” and inserting “which is described in any section of chapter 75 of title 18, United States Code,”; and

(2) by inserting after “first offense” the following: “(i) that is not described in section 1548 (relating to increased penalties), and (ii)”.

SEC. 217. INADMISSIBILITY FOR PASSPORT AND IMMIGRATION FRAUD.

(a) IN GENERAL.—Section 212(a)(2)(A)(i) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(2)(A)(i)) is amended—

(1) by striking “or” at the end of subclause (I);
(2) by inserting “or” at the end of subclause (II); and
(3) by inserting the following new subparagraph:

“(III) a violation of (or a conspiracy or attempt to violate) any section of chapter 75 of title 18, United States Code,”.

(b) Effective Date.—The amendments made by subsection (a) shall apply to proceedings pending on or after the date of the enactment of this Act.

SEC. 218. REMOVAL FOR PASSPORT AND IMMIGRATION FRAUD.

(a) In General.—Clause (iii) of section 237(a)(3)(B) of the Immigration and Nationality Act (8 U.S.C.1227(a)(3)(B)) is amended to read as follows “(iii) of a violation of, or an attempt or a conspiracy to violate, any section of chapter 75 of title 18, United States Code,”.

(b) Effective Date.—This amendment made by subsection (a) shall apply to proceedings pending on or after the date of the enactment of this Act.

SEC. 219. REDUCTION IN IMMIGRATION BACKLOG.

(a) In General.—The Secretary of Homeland Security shall require that, not later than six months after the
date of the enactment of this Act, the Director of United
States Citizenship and Immigration Services (in this sec-
tion referred to as “USCIS”) undertake maximum efforts
to reduce to the greatest extent practicable the backlog
in the processing and adjudicative functions of USCIS.

(b) PILOT PROGRAM INITIATIVES.—

(1) IN GENERAL.—The Director is authorized
to implement a pilot program for the purposes of, to
the greatest extent practicable—

(A) reducing the backlog in the processing
of immigration benefit applications; and

(B) preventing such backlog from recur-
ring.

(2) INITIATIVES.—To carry out paragraph (1),
initiatives may include measures such as increasing
personnel, transferring personnel to focus on areas
with the largest potential for backlog, streamlining
paperwork processes, and increasing information
technology and service centers.

SEC. 220. FEDERAL AFFIRMATION OF ASSISTANCE IN THE
IMMIGRATION LAW ENFORCEMENT BY
STATES AND POLITICAL SUBDIVISIONS OF
STATES.

(a) IN GENERAL.—Notwithstanding any other provi-
sion of law and reaffirming the existing inherent authority
of States, law enforcement personnel of a State or a political subdivision of a State have the inherent authority of a sovereign entity to investigate, identify, apprehend, arrest, detain, or transfer to Federal custody aliens in the United States (including the transportation of such aliens across State lines to detention centers), for the purposes of assisting in the enforcement of the immigration laws of the United States in the course of carrying out routine duties. This State authority has never been displaced or preempted by Congress.

(b) CONSTRUCTION.—Nothing in this section may be construed to require law enforcement personnel of a State or political subdivision of a State to—

(1) report the identity of a victim of, or a witness to, a criminal offense to the Secretary of Homeland Security for immigration enforcement purposes;

or

(2) arrest such victim or witness for a violation of the immigration laws of the United States.

SEC. 221. TRAINING OF STATE AND LOCAL LAW ENFORCEMENT PERSONNEL RELATING TO THE ENFORCEMENT OF IMMIGRATION LAWS.

(a) ESTABLISHMENT OF TRAINING MANUAL AND POCKET GUIDE.—Not later than 180 days after the date
of the enactment of this Act, the Secretary of Homeland Security shall establish—

(1) a training manual for law enforcement personnel of a State or political subdivision of a State to train such personnel in the investigation, identification, apprehension, arrest, detention, and transfer to Federal custody of aliens in the United States (including the transportation of such aliens across State lines to detention centers and the identification of fraudulent documents); and

(2) an immigration enforcement pocket guide for law enforcement personnel of a State or political subdivision of a State to provide a quick reference for such personnel in the course of duty.

(b) AVAILABILITY.—The training manual and pocket guide established in accordance with subsection (a) shall be made available to all State and local law enforcement personnel.

(c) APPLICABILITY.—Nothing in this section shall be construed to require State or local law enforcement personnel to carry the training manual or pocket guide established under subsection (a)(2) with them while on duty.

(d) COSTS.—The Secretary of Homeland Security shall be responsible for any and all costs incurred in estab-
lishing the training manual and pocket guide under sub-
section (a).

(c) TRAINING FLEXIBILITY.—

(1) IN GENERAL.—The Secretary of Homeland
Security shall make training of State and local law
enforcement officers available through as many
means as possible, including residential training at
the Center for Domestic Preparedness, onsite train-
ing held at State or local police agencies or facilities,
online training courses by computer, teleconfer-
encing, and videotape, or the digital video display
(DVD) of a training course or courses. E-learning
through a secure, encrypted distributed learning sys-
tem that has all its servers based in the United
States, is sealable, survivable, and can have a portal
in place within 30 days, shall be made available by
the Federal Law Enforcement Training Center Dis-
tributed Learning Program for State and local law
enforcement personnel.

(2) FEDERAL PERSONNEL TRAINING.—The
training of State and local law enforcement per-
sonnel under this section shall not displace the train-
ing of Federal personnel.

(3) CLARIFICATION.—Nothing in this Act or
any other provision of law shall be construed as
making any immigration-related training a require-
ment for, or prerequisite to, any State or local law
enforcement officer to assist in the enforcement of
Federal immigration laws in the normal course of
carrying out their normal law enforcement duties.

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

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

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

SEC. 222. FINANCIAL ASSISTANCE TO STATE AND LOCAL
POLICE AGENCIES THAT ASSIST IN THE EN-
FORCEMENT OF IMMIGRATION LAWS.

(a) GRANTS FOR SPECIAL EQUIPMENT FOR HOUSING
AND PROCESSING ILLEGAL ALIENS.—From amounts
made available to make grants under this section, the Sec-
retary of Homeland Security shall make grants to States
and political subdivisions of States for procurement of
equipment, technology, facilities, and other products that
facilitate and are directly related to investigating, appre-
hending, arresting, detaining, or transporting immigration
law violators, including additional administrative costs incurred under this Act.

(b) Eligibility.—To be eligible to receive a grant under this section, a State or political subdivision of a State must have the authority to, and have in effect the policy and practice to, assist in the enforcement of the immigration laws of the United States in the course of carrying out such agency’s routine law enforcement duties.

c) Funding.—There is authorized to be appropriated for grants under this section $250,000,000 for each fiscal year.

d) GAO Audit.—Not later than 3 years after the date of the enactment of this Act, the Comptroller General of the United States shall conduct an audit of funds distributed to States and political subdivisions of States under subsection (a).

SEC. 223. INSTITUTIONAL REMOVAL PROGRAM (IRP).

(a) Continuation and Expansion.—

(1) In general.—The Department of Homeland Security shall continue to operate and implement the program known as the Institutional Removal Program (IRP) which—

(A) identifies removable criminal aliens in Federal and State correctional facilities;
(B) ensures such aliens are not released into the community; and

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

(2) EXPANSION.—The institutional removal program shall be extended to all States. Any State that receives Federal funds for the incarceration of criminal aliens shall—

(A) cooperate with officials of the institutional removal program;

(B) expeditiously and systematically identify criminal aliens in its prison and jail populations; and

(C) promptly convey such information to officials of such program as a condition for receiving such funds.

(b) AUTHORIZATION FOR DETENTION AFTER COMPLETION OF STATE OR LOCAL PRISON SENTENCE.—Law enforcement officers of a State or political subdivision of a State have the authority to—

(1) hold an illegal alien for a period of up to 14 days after the alien has completed the alien’s State prison sentence in order to effectuate the transfer of the alien to Federal custody when the
alien is removable or not lawfully present in the United States; or

(2) issue a detainer that would allow aliens who have served a State prison sentence to be detained by the State prison until personnel from United States Immigration and Customs Enforcement can take the alien into custody.

(c) TECHNOLOGY USAGE.—Technology such as video conferencing shall be used to the maximum extent possible in order to make the Institutional Removal Program (IRP) available in remote locations. Mobile access to Federal databases of aliens, such as IDENT, and live scan technology shall be used to the maximum extent practicable in order to make these resources available to State and local law enforcement agencies in remote locations.

(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out the institutional removal program—

1. $100,000,000 for fiscal year 2007;
2. $115,000,000 for fiscal year 2008;
3. $130,000,000 for fiscal year 2009;
4. $145,000,000 for fiscal year 2010; and
5. $160,000,000 for fiscal year 2011.
SEC. 224. STATE CRIMINAL ALIEN ASSISTANCE PROGRAM (SCAAP).

Section 241(i)(5) of the Immigration and Nationality Act (8 U.S.C. 1231(i)) is amended by inserting before the period at the end the following: “and $1,000,000,000 for each subsequent fiscal year”.

SEC. 225. STATE AUTHORIZATION FOR ASSISTANCE IN THE ENFORCEMENT OF IMMIGRATION LAWS ENCOURAGED.

(a) In General.—Effective 2 years after the date of the enactment of this Act, a State (or political subdivision of a State) that has in effect a statute, policy, or practice that prohibits law enforcement officers of the State, or of a political subdivision within the State, from assisting or cooperating with Federal immigration law enforcement in the course of carrying out the officers’ routine law enforcement duties shall not receive any of the funds that would otherwise be allocated to the State under section 241(i) of the Immigration and Nationality Act (8 U.S.C. 1231(i)).

(b) Construction.—Nothing in this section shall require law enforcement officials from States or political subdivisions of States to report or arrest victims or witnesses of a criminal offense.

(c) Reallocation of Funds.—Any funds that are not allocated to a State or political subdivision of a State
due to the failure of the State to comply with subsection (a) shall be reallocated to States that comply with such subsection.

TITLE III—BORDER SECURITY COOPERATION AND ENFORCEMENT

SEC. 301. 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 appropriate congressional committees (as defined in section 102(g)) 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) RULES OF CONSTRUCTION.—(1) 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.

(2) Nothing in this section shall be construed to alter, impact, diminish, or in any way undermine the authority
of the Administrator of the Federal Aviation Administra-
tion to oversee, regulate, and control the safe and efficient
use of the airspace of the United States.

SEC. 302. BORDER SECURITY ON PROTECTED LAND.

(a) IN GENERAL.—The Secretary of Homeland Secu-
rity, in consultation with the Secretary of the Interior,
shall evaluate border security vulnerabilities on land di-
rectly adjacent 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 con-
traband 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 ap-
propriate border security assistance on land directly adja-
cent to the international land border of the United States
under the jurisdiction of the Department of the Interior,
its bureaus, and tribal entities.

SEC. 303. BORDER SECURITY THREAT ASSESSMENT AND IN-
FORMATION SHARING TEST AND EVALUA-
TION EXERCISE.

Not later than one year after the date of the enact-
ment 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. 304. 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. 305. 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 covered grant to use those amounts to reimburse itself for costs it incurs in carrying out any terrorism prevention or deterrence 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. 306. 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 proc-
esses 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. 307. 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.

SEC. 308. COMMUNICATION BETWEEN GOVERNMENT AGENCIES AND THE DEPARTMENT OF HOMELAND SECURITY.

(a) In General.—Section 642 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1373) is amended—

(1) by striking “Immigration and Naturalization Service” and inserting “Department of Homeland Security” each place it appears; and

(2) by adding at the end the following:

“(d) Enforcement.—

“(1) Ineligibility for Federal Law Enforcement Aid.—Upon a determination that any person, or any Federal, State, or local government agency or entity, is in violation of subsection (a) or (b), the Attorney General shall not provide to that person, agency, or entity any grant amount pursuant
to any law enforcement grant program carried out
by any element of the Department of Justice, includ-
ing the program under section 241(i) of the Immi-
gration and Nationality Act (8 U.S.C. 241(i)), and
shall ensure that no such grant amounts are pro-
vided, directly or indirectly, to such person, agency,
or entity. In the case of grant amounts that other-
wise would be provided to such person, agency, or
entity pursuant to a formula, such amounts shall be
reallocated among eligible recipients.

“(2) Violations by government officials.—In any case in which a Federal, State, or
local government official is in violation of subsection
(a) or (b), the government agency or entity that em-
loys (or, at the time of the violation, employed) the
official shall be subject to the sanction under para-
graph (1).

“(3) Duration.—The sanction under para-
graph (1) shall remain in effect until the Attorney
General determines that the person, agency, or enti-
ty has ceased violating subsections (a) and (b).”.

(b) Effective Date.—The amendments made by
subsection (a) shall apply to grant requests pending on
or after the date of the enactment of this Act.
SEC. 309. RED ZONE DEFENSE BORDER INTELLIGENCE PILOT PROGRAM.

(a) ESTABLISHMENT.—The Secretary of Homeland Security and the Director of National Intelligence shall jointly establish a pilot program to improve the coordination and management of intelligence and homeland security information provided to or utilized by the Department of Homeland Security relating to the southwest international land and maritime border of the United States.

(b) PILOT AREA.—The Secretary of Homeland Security and the Director of National Intelligence shall designate a geographic area along the southwest international land and maritime border of the United States centered on Cochise County, Arizona, to be the pilot area for the pilot program established pursuant to subsection (a).

(c) PROGRAM.—The pilot program established pursuant to subsection (a) shall—

(1) coordinate and facilitate the sharing of intelligence and homeland security information related to border security within the pilot area designated pursuant to subsection (b) among Federal, State, local, and tribal governments, including relevant intelligence and homeland security information provided to the Department of Homeland Security by the intelligence community and relevant intelligence and homeland security information gathered by the
Department of Homeland Security from other sources;

(2) to the maximum extent possible, provide for persistent surveillance of such pilot area;

(3) to the maximum extent possible, utilize airships, aerostats, and existing unmanned aerial vehicles to provide for surveillance of such pilot area;

(4) to the maximum extent possible, fully utilize the capabilities of underutilized assets currently available to conduct surveillance of such pilot area;

(5) where practicable, utilize the capabilities of existing operational and analytical centers that analyze intelligence and homeland security information relating to such pilot area from multiple sources and improve the interoperability of such centers;

(6) consistent with applicable security requirements, disseminate actionable intelligence and homeland security information relating to border security within such pilot area to the appropriate Federal, State, local, tribal, and foreign governments to support operational activities relating to border security within such pilot area;

(7) provide for direct transmission of such actionable intelligence and homeland security informa-
tion to operational and analytical centers included in the pilot program;

(8) provide for a representative of the Department of Homeland Security to be assigned to each operational and analytical center to facilitate the immediate utilization, where practicable, of such actionable intelligence and homeland security information; and

(9) develop metrics to assess the capability of such pilot program to improve border security.

(d) STRATEGY COORDINATION.—In establishing the pilot program under subsection (a), the Director of National Intelligence shall coordinate the intelligence activities of the pilot program with the relevant activities and programs of other elements of the intelligence community.

(e) HEADQUARTERS.—The Secretary of Homeland Security and the Director of National Intelligence may establish a headquarters for the pilot program established pursuant to subsection (a) within the area designated as the pilot area pursuant to subsection (b).

(f) DURATION.—The pilot program established pursuant to subsection (a) shall last a minimum of two years.

(g) REPORT.—Not later than one year after the establishment of the pilot program pursuant to subsection (a), the Secretary of Homeland Security and the Director
of National Intelligence shall submit to Congress a report containing—

(1) the lessons learned from such pilot program based on the metrics developed pursuant to sub-section (c)(9);

(2) recommendations for enhancing the provision and sharing of intelligence and homeland security information relating to border security under the National Strategy for Border Security submitted pursuant to section 102(b) and with other programs of the intelligence community relating to border security; and

(3) an identification of any provisions of law that may impede effective coordination of intelligence and homeland security information relating to the southwest international land and maritime border of the United States.

(h) DEFINITIONS.—In this section:

(1) HOMELAND SECURITY INFORMATION.—The term “homeland security information” has the meaning given the term in section 892(f)(1) of the Homeland Security Act of 2002 (6 U.S.C. 482(f)(1)).

(2) INTELLIGENCE COMMUNITY.—The term “intelligence community” has the meaning given the
term in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

(i) Authorization of Appropriations.—There are authorized to be appropriated such sums as may be necessary to carry out this section.

TITLE IV—DETENTION AND REMOVAL

SEC. 401. 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 accord-
ance with section 212(d)(5)(A) of such Act (8
U.S.C. 1182(d)(5)(A)).

(b) Requirements During Interim Period.—Be-
inning 60 days after the date of the enactment of this
Act and before October 1, 2006, an alien described in sub-
section (a) may be released with a notice to appear only
if—

(1) the Secretary of Homeland Security deter-
mines, 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.—The
mandatory detention requirement in subsection (a)
does not apply to any alien who is a native or citizen
of a country in the Western Hemisphere with whose
government the United States does not have full dip-
ломatic relations.
(3) DISCRETION.—Nothing in this section shall be construed as limiting the authority of the Secretary of Homeland Security, in the Secretary’s sole unreviewable discretion, to determine whether an alien described in clause (ii) of section 235(b)(1)(B) of the Immigration and Nationality Act shall be detained or released after a finding of a credible fear of persecution (as defined in clause (v) of such section).

SEC. 402. 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. 403. ENHANCING TRANSPORTATION CAPACITY FOR UNLAWFUL ALIENS.

(a) IN GENERAL.—The Secretary of Homeland Security is authorized to enter into contracts with private enti-
ties for the purpose of providing secure domestic transport
of aliens who are apprehended at or along the inter-
national land or maritime borders from the custody of
United States Customs and Border Protection to deten-
tion 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 con-
taining such information as the Secretary may require.
The Secretary shall select from such applications those en-
tities which offer, in the determination of the Secretary,
the best combination of service, cost, and security.

SEC. 404. DENIAL OF ADMISSION TO NATIONALS OF COUN-
TRY 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 con-
sultation with the Secretary of State, may deny admission

to any citizen, subject, national, or resident of that coun-

try until the country accepts the alien who was ordered

removed.”.

SEC. 405. REPORT ON FINANCIAL BURDEN OF REPATRI-

ATION.

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 un-

lawful aliens to their countries of nationality or last habit-

ual residence, including details relating to cost per coun-

try. The Secretary shall include in each such report the

recommendations of the Secretary to more cost effectively

repatriate such aliens.

SEC. 406. 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

regarding the inspection of aliens to determine

whether an alien is referred for an interview by an

asylum officer for a determination of credible fear;

(2) based on the review and evaluation de-

scribed in paragraph (1), take necessary and appro-
appropriate measures to ensure consistency in referrals by
Border Patrol agents and port of entry inspectors to
asylum officers for determinations of credible fear.

SEC. 407. EXPEDITED REMOVAL.

(a) IN GENERAL.—Section 235(b)(1)(A)(iii) of the
Immigration 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
contiguous to the United States, who
has not been admitted or paroled into
the United States, and who is appre-
hended within 100 miles of an inter-
national land border of the United
States and within 14 days of entry.”.
(b) EXCEPTIONS.—Section 235(b)(1)(F) of the Immigration and Nationality Act (8 U.S.C. 1225(b)(1)(F)) is amended by striking “who arrives by aircraft at a port of entry” and inserting “, and who arrives by aircraft at a port of entry or who is present in the United States and arrived in any manner at or between a port of entry”.

(e) 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.

SEC. 408. GAO STUDY ON DEATHS IN CUSTODY.

The Comptroller General of the United States, within 6 months after the date of the enactment of this Act, shall submit to Congress a report on the deaths in custody of detainees held on immigration violations by the Secretary of Homeland Security. The report shall include the following information with respect to any such deaths and in connection therewith:

(1) Whether any crimes were committed by personnel of the Department of Homeland Security.

(2) Whether any such deaths were caused by negligence or deliberate indifference by such personnel.

(3) Whether Department practice and procedures were properly followed and obeyed.
(4) Whether such practice and procedures are sufficient to protect the health and safety of such detainees.

(5) Whether reports of such deaths were made under the Deaths in Custody Act.

SEC. 409. REPORT ON APPREHENSION AND DETENTION OF CERTAIN ALIENS.

(a) REPORT REQUIRED.—Not later than two years after the date of the enactment of this Act, the Secretary of Homeland Security shall submit to Congress a report on—

(1) the number of illegal aliens from noncontiguous countries who are apprehended at or between ports of entry since the date of enactment of this Act;

(2) the number of such aliens who have been deported since the date of enactment of this Act; and

(3) the number of such aliens from countries the governments of which the Secretary of State has determined, for purposes section 6(j)(1)(A) of the Export Administration Act of 1979 (as in effect pursuant to the International Emergency Economic Powers Act; 50 U.S.C. 1701 et seq.), section 40(d) of the Arms Export Control Act (22 U.S.C.
2780(d)), section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371), or other provision of law, are governments that have repeatedly provided support for acts of international terrorism.

(b) Sense of Congress.—It is the sense of Congress that the Secretary of Homeland Security should develop a strategy for entering into appropriate security screening watch lists the appropriate background information of illegal aliens from countries described in paragraph (3) of subsection (a).

SEC. 410. LISTING OF IMMIGRATION VIOLATORS IN THE NATIONAL CRIME INFORMATION CENTER DATABASE.

(a) Provision of Information to the NCIC.—Not later than 180 days after the date of the enactment of this Act, the Under Secretary for Border and Transportation Security of the Department of Homeland Security shall provide the National Crime Information Center of the Department of Justice with such information as the Under Secretary may have on any and all aliens against whom a final order of removal has been issued, any and all aliens who have signed a voluntary departure agreement, any and all aliens who have overstayed their authorized period of stay, and any and all aliens whose visas have been revoked. Such information shall be provided to
the National Crime Information Center, and the National
Crime Information Center shall enter such information
into the Immigration Violators File of the National Crime
Information Center database, regardless of whether—
\[(1)\] the alien received notice of a final order of
removal;
\[(2)\] the alien has already been removed; or
\[(3)\] sufficient identifying information is avail-
able on the alien.

(b) **Inclusion of Information in the NCIC**

**Database.**—Section 534(a) of title 28, United States
Code, is amended—
\[(1)\] in paragraph (3), by striking “and” at the
end;
\[(2)\] by redesignating paragraph (4) as para-
graph (5); and
\[(3)\] by inserting after paragraph (3) the fol-
lowing:
\[“(4) acquire, collect, classify, and preserve
records of violations of the immigration laws of the
United States, regardless of whether the alien has
received notice of the violation or whether sufficient
identifying information is available on the alien and
even if the alien has already been removed; and”.

TITLE V—EFFECTIVE ORGANIZATION OF BORDER SECURITY AGENCIES

SEC. 501. 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 bor-
ders 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. 502. 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 ap-
prehension 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.

“(e) ACCESS TO INFORMATION.—The Office shall ensure that other agencies within the Department of Homeland Security, the Department of Defense, the Department of Justice, the Department of Transportation, 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 coordination and conflict resolution of air missions by the Office, United States Immigration and Customs Enforcement, and United States Customs and Border Protection.

“(h) RULE OF CONSTRUCTION.—Nothing in this section 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.—Section 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 contents in section 1(b) of such Act (6 U.S.C. 101) is amended by inserting after the item relating to section 430 the following new item:

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

SEC. 503. SHADOW WOLVES TRANSFER.

(a) TRANSFER OF EXISTING UNIT.—Not later that 90 days after the date of the enactment of this Act, the Secretary of Homeland Security shall transfer to United States Immigration and Customs Enforcement all func-
tions (including the personnel, assets, and liabilities attributable to such functions) of the Customs Patrol Officers unit operating 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.

**TITLE VI—TERRORIST AND CRIMINAL ALIENS**

**SEC. 601. REMOVAL OF TERRORIST ALIENS.**

(a) **EXPANSION OF REMOVAL.—**

(1) Section 241(b)(3) of the Immigration and
Nationality Act (8 U.S.C. 1231(b)(3)) is amended—

(A) in subparagraph (A)—

(i) by striking “Attorney General may
not” and inserting “Secretary of Home-
land Security may not”;

(ii) by inserting “or the Secretary”
after “if the Attorney General”; and

(B) in subparagraph (B)—

(i) by inserting “or the Secretary of
Homeland Security” after “if the Attorney
General”;

(ii) by striking “or” in clause (iii);

(iii) by striking the period at the end
of clause (iv) and inserting “; or”;

(iv) by inserting after clause (iv) the
following new clause:
“(v) the alien is described in any sub-
clause of section 212(a)(3)(B)(i) or section
212(a)(3)(F), unless, in the case only of an
alien described in subclause (IV) or (IX) of
section 212(a)(3)(B)(i), the Secretary of
Homeland Security determines, in the Sec-
retary’s discretion, that there are not rea-
sonable grounds for regarding the alien as
a danger to the security of the United
States.”; and

(v) in the third sentence, by inserting
“or the Secretary of Homeland Security”
after “Attorney General”; and

(vi) by striking the last sentence and
inserting the following: “The Secretary of
Homeland Security shall waive the applica-
tion of clause (v) in the case of removal of
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.

(2) Section 208(b)(2)(A)(v) of such Act (8
U.S.C. 1158(b)(2)(A)(v)) is amended—

(A) by striking “subclause (I), (II), (III),
(IV), or (VI)” and inserting “any subclause”;
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(B) by striking “237(a)(4)(B)” and insert-
ing “212(a)(3)(F)”; and
(C) by inserting “or (IX)” after “subclause
(IV)”.

(3) Section 240A(c)(4) of such Act (8 U.S.C.
1229b(c)(4)) is amended—
(A) by striking “inadmissible under” and
inserting “described in”; and
(B) by striking “deportable under” and in-
serting “described in”.

(4) Section 240B(b)(1)(C) of such Act (8
U.S.C. 1229e(b)(1)(C)) is amended by striking “de-
portable under” and inserting “described in”.

(5) Section 249 of such Act (8 U.S.C. 1259))
is amended—
(A) by striking “inadmissible under” and
inserting “described in”; and
(B) in paragraph (d), by striking “deport-
able under” and inserting “described in”.

(b) RETROACTIVE APPLICATION.—The amendments
made by this section shall take effect on the date of enact-
ment of this Act and sections 208(b)(2)(A), 240A, 240B,
241(b)(3), and 249 of the Immigration and Nationality
Act, as so amended, shall apply to—
(1) all aliens in removal, deportation, or exclusion proceedings;

(2) all applications pending on or filed after the date of the enactment of this Act; and

(3) with respect to aliens and applications described in paragraph (1) or (2), acts and conditions constituting a ground for inadmissibility, excludability, deportation, or removal occurring or existing before, on, or after the date of the enactment of this Act.

SEC. 602. DETENTION OF DANGEROUS AliENS.

(a) IN GENERAL.—Section 241 of the Immigration and Nationality Act (8 U.S.C. 1231) is amended—

(1) in subsection (a), by striking “Attorney General” and inserting “Secretary of Homeland Security” each place it appears;

(2) in subsection (a)(1)(B), by adding after and below clause (iii) the following:

“If, at that time, the alien is not in the custody of the Secretary (under the authority of this Act), the Secretary shall take the alien into custody for removal, and the removal period shall not begin until the alien is taken into such custody. If the Secretary transfers custody of the alien during the removal period pursuant to law
to another Federal agency or a State or local
government agency in connection with the official duties of such agency, the removal period
shall be tolled, and shall begin anew on the date of the alien’s return to the custody of the Sec-
retary.”;

(3) by amending clause (ii) of subsection (a)(1)(B) to read as follows:

“(ii) If a court, the Board of Immigration Appeals, or an immigration judge orders a stay of the removal of the alien, the date the stay of removal is no longer in effect.”;

(4) by amending subparagraph (C) of subsection (a)(1) to read as follows:

“(C) Suspension of period.—The removal period shall be extended beyond a period of 90 days and the alien may remain in detention during such extended period if the alien fails or refuses to make all reasonable efforts to comply with the removal order, or to fully cooperate with the Secretary’s efforts to establish the alien’s identity and carry out the removal order, including making timely application in good faith for travel or other documents nec-
essential to the alien’s departure, or conspires or
acts to prevent the alien’s removal subject to an
order of removal.”;

(5) in subsection (a)(2), by adding at the end
the following: “If a court orders a stay of removal
of an alien who is subject to an administratively
final order of removal, the Secretary in the exercise
of discretion may detain the alien during the pend-
ency of such stay of removal.”;

(6) in subsection (a)(3), by amending subpara-
graph (D) to read as follows:

“(D) to obey reasonable restrictions on the
alien’s conduct or activities, or perform affirma-
tive acts, that the Secretary prescribes for the
alien, in order to prevent the alien from ab-
seeding, or for the protection of the commu-
nity, or for other purposes related to the en-
forcement of the immigration laws.”;

(7) in subsection (a)(6), by striking “removal
period and, if released,” and inserting “removal pe-
period, in the discretion of the Secretary, without any
limitations other than those specified in this section,
until the alien is removed. If an alien is released, the
alien”;
(8) by redesignating paragraph (7) of subsection (a) as paragraph (10) and inserting after paragraph (6) of such subsection the following new paragraphs:

“(7) PAROLE.—If an alien detained pursuant to paragraph (6) is an applicant for admission, the Secretary, in the Secretary’s discretion, may parole the alien under section 212(d)(5) of this Act and may provide, notwithstanding section 212(d)(5), that the alien shall not be returned to custody unless either the alien violates the conditions of the alien’s parole or the alien’s removal becomes reasonably foreseeable, provided that in no circumstance shall such alien be considered admitted.

“(8) APPLICATION OF ADDITIONAL RULES FOR DETENTION OR RELEASE OF CERTAIN ALIENS WHO HAVE MADE AN ENTRY.—The rules set forth in subsection (j) shall only apply with respect to an alien who was lawfully admitted the most recent time the alien entered the United States or has otherwise effected an entry into the United States.

“(9) JUDICIAL REVIEW.—Without regard to the place of confinement, judicial review of any action or decision pursuant to paragraphs (6), (7), or (8) or subsection (j) shall be available exclusively in habeas
corpus proceedings instituted in the United States District Court for the District of Columbia, and only if the alien has exhausted all administrative remedies (statutory and regulatory) available to the alien as of right.”; and

(9) by adding at the end the following new subsection:

“(j) ADDITIONAL RULES FOR DETENTION OR RELEASE OF CERTAIN ALIENS WHO HAVE MADE AN ENTRY.—

“(1) Application.—The rules set forth in this subsection apply in the case of an alien described in subsection (a)(8).

“(2) Establishment of a detention review process for aliens who fully cooperate with removal.—

“(A) In general.—The Secretary shall establish an administrative review process to determine whether the aliens should be detained or released on conditions for aliens who—

“(i) have made all reasonable efforts to comply with their removal orders;

“(ii) have complied with the Secretary’s efforts to carry out the removal orders, including making timely application
in good faith for travel or other documents necessary to the alien’s departure, and

“(iii) have not conspired or acted to prevent removal.

“(B) DETERMINATION.—The Secretary shall make a determination whether to release an alien after the removal period in accordance with paragraphs (3) and (4). The determination—

“(i) shall include consideration of any evidence submitted by the alien and the history of the alien’s efforts to comply with the order of removal, and

“(ii) may include any information or assistance provided by the Department of State or other Federal agency and any other information available to the Secretary pertaining to the ability to remove the alien.

“(3) AUTHORITY TO DETAIN BEYOND THE REMOVAL PERIOD.—

“(A) INITIAL 90 DAY PERIOD.—The Secretary in the exercise of discretion, without any limitations other than those specified in this section, may continue to detain an alien for 90
days beyond the removal period (including any extension of the removal period as provided in subsection (a)(1)(C)).

“(B) EXTENSION.—

“(i) IN GENERAL.—The Secretary in the exercise of discretion, without any limitations other than those specified in this section, may continue to detain an alien beyond the 90 days authorized in subparagraph (A)—

“(I) until the alien is removed if the conditions described in subparagraph (A) or (B) of paragraph (4) apply; or

“(II) pending a determination as provided in subparagraph (C) of paragraph (4).”

“(ii) RENEWAL.—The Secretary may renew a certification under paragraph (4)(B) every six months without limitation, after providing an opportunity for the alien to request reconsideration of the certification and to submit documents or other evidence in support of that request. If the Secretary does not renew a certification,
the Secretary may not continue to detain
the alien under such paragraph.

“(iii) DELEGATION.—Notwithstanding
section 103, the Secretary may not dele-
gate the authority to make or renew a cer-
tification described in clause (ii), (iii), or
(v) of paragraph (4)(B) below the level of
the Assistant Secretary for Immigration
and Customs Enforcement.

“(iv) HEARING.—The Secretary may
request that the Attorney General provide
for a hearing to make the determination
described in clause (iv)(II) of paragraph
(4)(B).

“(4) CONDITIONS FOR EXTENSION.—The condi-
tions for continuation of detention are any of the fol-
lowing:

“(A) The Secretary determines that there
is a significant likelihood that the alien—

“(i) will be removed in the reasonably
foreseeable future; or

“(ii) would be removed in the reason-
ably foreseeable future, or would have been
removed, but for the alien’s failure or re-
fusal to make all reasonable efforts to com-
ply with the removal order, or to fully co-
operate with the Secretary’s efforts to es-
tablish the alien’s identity and carry out
the removal order, including making timely
application in good faith for travel or other
documents necessary to the alien’s depa-
ture, or conspiracies or acts to prevent re-
moval.

“(B) The Secretary certifies in writing any
of the following:

“(i) In consultation with the Secretary
of Health and Human Services, the alien
has a highly contagious disease that poses
a threat to public safety.

“(ii) After receipt of a written rec-
ommendation from the Secretary of State,
the release of the alien is likely to have se-
rious adverse foreign policy consequences
for the United States.

“(iii) Based on information available
to the Secretary (including available infor-
mation from the intelligence community,
and without regard to the grounds upon
which the alien was ordered removed),
there is reason to believe that the release
of the alien would threaten the national security of the United States.

“(iv) The release of the alien will threaten the safety of the community or any person, the conditions of release cannot reasonably be expected to ensure the safety of the community or any person, and—

“(I) the alien has been convicted of one or more aggravated felonies described in section 101(a)(43)(A) or of one or more crimes identified by the Secretary by regulation, or of one or more attempts or conspiracies to commit any such aggravated felonies or such crimes, for an aggregate term of imprisonment of at least five years; or

“(II) the alien has committed one or more crimes of violence and, because of a mental condition or personality disorder and behavior associated with that condition or disorder, the alien is likely to engage in acts of violence in the future.
“(v) The release of the alien will threaten the safety of the community or any person, conditions of release cannot reasonably be expected to ensure the safety of the community or any person, and the alien has been convicted of at least one aggravated felony.

“(C) Pending a determination under subparagraph (B), so long as the Secretary has initiated the administrative review process no later than 30 days after the expiration of the removal period (including any extension of the removal period as provided in subsection (a)(1)(C)).

“(5) RELEASE ON CONDITIONS.—If it is determined that an alien should be released from detention, the Secretary in the exercise of discretion may impose conditions on release as provided in subsection (a)(3).

“(6) REDETENTION.—The Secretary in the exercise of discretion, without any limitations other than those specified in this section, may again detain any alien subject to a final removal order who is released from custody if the alien fails to comply with the conditions of release or to cooperate in the alien’s removal from the United States, or if, upon
reconsideration, the Secretary determines that the alien can be detained under paragraph (1). Paragraphs (6) through (8) of subsection (a) shall apply to any alien returned to custody pursuant to this paragraph, as if the removal period terminated on the day of the redetention.

“(7) Certain aliens who effected entry.—If an alien has effected an entry into the United States but has neither been lawfully admitted nor physically present in the United States continuously for the 2-year period immediately prior to the commencement of removal proceedings under this Act or deportation proceedings against the alien, the Secretary in the exercise of discretion may decide not to apply subsection (a)(8) and this subsection and may detain the alien without any limitations except those imposed by regulation.”.

(b) Effective Date.—The amendments made by subsection (a) shall take effect upon the date of enactment of this Act, and section 241 of the Immigration and Nationality Act, as amended, shall apply to—

(1) all aliens subject to a final administrative removal, deportation, or exclusion order that was issued before, on, or after the date of enactment of this Act; and
(2) acts and conditions occurring or existing before, on, or after the date of enactment of this Act.

SEC. 603. INCREASE IN CRIMINAL PENALTIES.

Section 243 of the Immigration and Nationality Act (8 U.S.C. 1253) is amended—

(1) in subsection (a)(1)—

(A) in the matter before subparagraph (A), by inserting “or 212(a)” after “section 237(a)”;

(B) by striking “imprisoned not more than four years” and inserting “imprisoned for not less than six months or more than five years”;

and

(2) in subsection (b)—

(A) by striking “not more than $1,000” and inserting “under title 18, United States Code”; and

(B) by striking “for not more than one year” and inserting “for not less than six months or more than five years (or 10 years if the alien is a member of any class described in paragraph (1)(E), (2), (3), or (4) of section 237(a)”.
SEC. 604. PRECLUDING ADMISSIBILITY OF AGGRAVATED FELONS AND OTHER CRIMINALS.

(a) Exclusion Based on Fraudulent Documentation.—Section 212(a)(2)(A)(i) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(2)(A)(i)) is amended—

(1) in subclause (I), by striking “or” at the end;

(2) in subclause (II), by adding “or” at the end; and

(3) by inserting after subclause (II) the following new subclause:

“(III) a violation (or a conspiracy or attempt to violate) an offense described in section 208 of the Social Security Act or section 1028 of title 18, United States Code,”.

(b) Exclusion Based on Aggravated Felony, Unlawful Procurement of Citizenship, and Crimes of Domestic Violence.—Section 212(a)(2) of such Act (8 U.S.C. 1182(a)(2)) is amended by adding at the end the following new subparagraphs:

“(J) Aggravated Felony.—Any alien who is convicted of an aggravated felony at any time is inadmissible.
“(K) UNLAWFUL PROCUREMENT OF CITIZENSHIP.—Any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of, a violation of (or a conspiracy or attempt to violate) subsection (a) or (b) of section 1425 of title 18, United States Code is inadmissible.

“(L) CRIMES OF DOMESTIC VIOLENCE, STALKING, OR VIOLATION OF PROTECTION ORDERS; CRIMES AGAINST CHILDREN.—

“(i) DOMESTIC VIOLENCE, STALKING, OR CHILD ABUSE.—

“(I) IN GENERAL.—Subject to subclause (II), any alien who at any time is convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of, a crime of domestic violence, a crime of stalking, or a crime of child abuse, child neglect, or child abandonment is inadmissible.

“(II) WAIVER FOR VICTIMS OF DOMESTIC VIOLENCE.—Subclause (I) shall not apply to any alien described in section 237(a)(7)(A).
“(III) Crime of domestic violence defined.—For purposes of
subclause (I), the term ‘crime of domestic violence’ means any crime of
violence (as defined in section 16 of title 18, United States Code) against
a person committed by a current or former spouse of the person, by an indi-
vidual with whom the person shares a child in common, by an individual
who is cohabiting with or has cohabited with the person as a spouse,
by an individual similarly situated to a spouse of the person under the do-
mestic or family violence laws of the jurisdiction where the offense occurs,
or by any other individual against a person who is protected from that in-
dividual’s acts under the domestic or family violence laws of the United
States or any State, Indian tribal govern-
ment, or unit of local or foreign
government.

“(ii) Violators of protection or-
ders.—
“(I) IN GENERAL.—Any alien who at any time is enjoined under a protection order issued by a court and whom the court determines has engaged in conduct that violates the portion of a protection order that involves protection against credible threats of violence, repeated harassment, or bodily injury to the person or person for whom the protection order was issued is inadmissible.

“(II) PROTECTION ORDER DEFINED.—For purposes of subclause (I), the term ‘protection order’ means any injunction issued for the purpose of preventing violent or threatening acts of domestic violence, including temporary or final orders issued by civil or criminal courts (other than support or child custody orders or provisions) whether obtained by filing an independent action or as an independent order in another proceeding.”.
(e) Waiver Authority.—Section 212(h) of such Act (8 U.S.C. 1182(h)) is amended—

(1) by striking “The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I), (B), (D), and (E) of subsection (a)(2)” and inserting “The Attorney General or the Secretary of Homeland Security may, in the discretion of the Attorney General or such Secretary, waive the application of subparagraph (A)(i)(I), (A)(i)(III), (B), (D), (E), (K), and (L) of subsection (a)(2)”;

(2) in paragraphs (1)(A) and (1)(B) and the last sentence, by inserting “or the Secretary” after “Attorney General” each place it appears;

(3) in paragraph (2), by striking “Attorney General, in his discretion,” and inserting “Attorney General or the Secretary of Homeland Security, in the discretion of the Attorney General or such Secretary,”;

(4) in paragraph (2), by striking “as he” and inserting “as the Attorney General or the Secretary”;

(5) in the second sentence, by striking “criminal acts involving torture” and inserting “criminal acts involving torture, or an aggravated felony”; and
(6) in the third sentence, by striking “if either since the date of such admission the alien has been convicted of an aggravated felony or the alien” and inserting “if since the date of such admission the alien”.

(d) CONSTRUCTION.—The amendments made by this section shall not be construed to create eligibility for relief from removal under section 212(c) of the Immigration and Nationality Act, as in effect before its repeal by section 304(b) of the Immigration Reform and Immigrant Responsibility Act of 1996 (division C of Public Law 104–208), where such eligibility did not exist before these amendments became effective.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to—

(1) any act that occurred before, on, or after the date of the enactment of this Act; and

(2) to all aliens who are required to establish admissibility on or after the such date, and in all removal, deportation, or exclusion proceedings that are filed, pending, or reopened, on or after such date.

SEC. 605. PRECLUDING REFUGEE OR ASYLEE ADJUSTMENT OF STATUS FOR AGGRAVATED FELONIES.

(a) IN GENERAL.—Section 209(c) of the Immigration and Nationality Act (8 U.S.C. 1159(c)) is amended by
addition at the end the following: “However, an alien who
is convicted of an aggravated felony is not eligible for a
waiver or for adjustment of status under this section.”.

(b) EFFECTIVE DATE.—The amendment made by
subsection (a) shall apply—

(1) to any act that occurred before, on, or after
the date of the enactment of this Act; and

(2) to all aliens who are required to establish
admissibility on or after such date, and in all re-
moval, deportation, or exclusion proceedings that are
filed, pending, or reopened, on or after such date.

SEC. 606. REMOVING DRUNK DRIVERS.

(a) IN GENERAL.—Section 236 of the Immigration
and Nationality Act (8 U.S.C. 1226) is amended—

(1) in subsection (c)(1)—

(A) in subparagraph (C), by striking “or”
at the end;

(B) in subparagraph (D), by inserting
“or” at the end; and

(C) by inserting after subparagraph (D)
the following new subparagraph:

“(E) is unlawfully present in the United
States and who is deportable on any grounds
and is apprehended for any offense described in
section 237(a)(2)(F) by a State or local law en-
forcement officer covered under an agreement under section 287(g),”;

(2) by redesignating subsection (e) as subsection (f); and

(3) by inserting after subsection (d) the following new subsection:

“(e) Driving While Intoxicated.—If a State or local law enforcement officer apprehends an individual for an offense described in section 237(a)(2)(F) and the officer has reasonable ground to believe that the individual is an alien—

“(1) the officer shall verify with the databases of the Federal Government, including the National Criminal Information Center and the Law Enforcement Support Center, whether the individual is an alien and whether such alien is unlawfully present in the United States; and

“(2) if any such database—

“(A) indicates that the individual is an alien unlawfully present in the United States—

“(i) an officer covered under an agreement under section 287(g) is authorized to issue a Federal detainer to maintain the alien in custody in accordance with such agreement until the alien is convicted for
such offense or the alien is transferred to Federal custody;

“(ii) the officer is authorized to transport the alien to a location where the alien can be transferred to Federal custody and shall be removed from the United States in accordance with applicable law; and

“(iii) the Secretary of Homeland Security shall reimburse the State and local law enforcement agencies involved for the costs of transporting aliens when such transportation is not done in the course of their normal duties; or

“(B) indicates that the individual is an alien but is not unlawfully present in the United States, the officer shall take the alien into custody for such offense in accordance with State law and shall promptly notify the Secretary of Homeland Security of such apprehension and maintain the alien in custody pending a determination by the Secretary with respect to any action to be taken by the Secretary against such alien.”.

(b) DEPORTATION FOR DWI.—
(1) IN GENERAL.—Section 237(a)(2) of such Act (8 U.S.C. 1227(a)(2)) is amended by adding at the end the following new subparagraph:

“(F) DRIVING WHILE INTOXICATED AND WHILE UNLAWFULLY PRESENT IN THE UNITED STATES.—An alien—

“(i) who at the time the alien is unlawfully present in the United States and who commits the offense of driving while intoxicated, driving under the influence, or similar violation of State law (as determined by the Secretary of Homeland Security) and who is convicted of such offense, or

“(ii) who is unlawfully present in the United States and who commits an offense by refusing in violation of State law to submit to a Breathalyzer test or other test for the purpose of determining blood alcohol content,

is deportable and shall be deported.”.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to violations or refusals occurring after the date of the enactment of this Act.
(c) SHARING OF INFORMATION BY MOTOR VEHICLE ADMINISTRATORS REGARDING DWI CONVICTIONS AND REFUSALS.—Each State motor vehicle administrator shall—

(1) share with the Secretary of Homeland Security information relating to any alien who has a conviction or refusal described in section 237(a)(2)(F) of the Immigration and Nationality Act;

(2) share such information with other State motor vehicle administrators through the Drivers License Agreement of the American Association of Motor Vehicle Administrators; and

(3) enter such information into the NCIC in a timely manner.

(d) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act and shall apply to convictions entered before, on, or after such date.

SEC. 607. DESIGNATED COUNTY LAW ENFORCEMENT ASSISTANCE PROGRAM.

(a) DESIGNATED COUNTIES ADJACENT TO THE SOUTHERN BORDER OF THE UNITED STATES DEFINED.—In this section, the term “designated counties adjacent to the southern international border of the United States” includes a county any part of which is
within 25 miles of the southern international border of the
United States.

(b) Authority.—

(1) In general.—Any Sheriff or coalition or
group of Sheriffs from designated counties adjacent
to the southern international border of the United
States may transfer aliens detained or in the custody
of the Sheriff who are not lawfully present in the
United States to appropriate Federal law enforce-
ment officials, and shall be promptly paid for the
costs of performing such transfers by the Attorney
General for any local or State funds previously ex-
pired or proposed to be spent by that Sheriff or
coalition or group of Sheriffs.

(2) Payment of costs.—Payment of costs
under paragraph (1) shall include payment for costs
of detaining, housing, and transporting aliens who
are not lawfully present in the United States or who
have unlawfully entered the United States at a loca-
tion other than a port of entry and who are taken
into custody by the Sheriff.

(3) Limitation to future costs.—In no
case shall payment be made under this section for
costs incurred before the date of the enactment of
this Act.
(4) **Advance Payment of Costs.**—The Attorney General shall make an advance payment under this section upon a certification of anticipated costs for which payment may be made under this section, but in no case shall such an advance payment cover a period of costs of longer than 3 months.

(e) **Designated County Law Enforcement Account.**—

(1) **Separate Account.**—Reimbursement or pre-payment under subsection (b) shall be made promptly from funds deposited into a separate account in the Treasury of the United States to be entitled the “Designated County Law Enforcement Account”.

(2) **Availability of Funds.**—All deposits into the Designated County Law Enforcement Account shall remain available until expended to the Attorney General to carry out the provisions of this section.

(3) **Promptly Defined.**—For purposes of this section, the term “promptly” means within 60 days.

(d) **Funds for the Designated County Law Enforcement Account.**—Only funds designated, authorized, or appropriated by Congress may be deposited or transferred to the Designated County Law Enforcement Account. The Designated County Law Enforcement Ac-
count is authorized to receive up to $100,000,000 per year.

(c) Use of Funds.—

(1) In General.—Funds provided under this section shall be payable directly to participating Sheriff’s offices and may be used for the transfers described in subsection (b)(1), including the costs of personnel (such as overtime pay and costs for reserve deputies), costs of training of such personnel, equipment, and, subject to paragraph (2), the construction, maintenance, and operation of detention facilities to detain aliens who are unlawfully present in the United States. For purposes of this section, an alien who is unlawfully present in the United States shall be deemed to be a Federal prisoner beginning upon determination by Federal law enforcement officials that such alien is unlawfully present in the United States, and such alien shall, upon such determination, be deemed to be in Federal custody. In order for costs to be eligible for payment, the Sheriff making such application shall personally certify under oath that all costs submitted in the application for reimbursement or advance payment meet the requirements of this section and are reasonable and necessary, and such certification shall be subject
to all State and Federal laws governing statements
made under oath, including the penalties of perjury,
removal from office, and prosecution under State
and Federal law.

(2) LIMITATION.—Not more than 20 percent of
the amount of funds provided under this section may
be used for the construction or renovation of deten-
tion or similar facilities.

(f) DISPOSITION AND DELIVERY OF DETAINED
ALIENS.—All aliens detained or taken into custody by a
Sheriff under this section and with respect to whom Fed-
eral law enforcement officials determine are unlawfully
present in the United States, shall be immediately deliv-
ered to Federal law enforcement officials. In accordance
with subsection (e)(1), an alien who is in the custody of
a Sheriff shall be deemed to be a Federal prisoner and
in Federal custody.

(g) REGULATIONS.—The Attorney General shall
issue, on an interim final basis, regulations not later than
60 days after the date of the enactment of this Act—

(1) governing the distribution of funds under
this section for all reasonable and necessary costs
and other expenses incurred or proposed to be in-
curred by a Sheriff or coalition or group of Sheriffs
under this section; and
(2) providing uniform standards that all other
Federal law enforcement officials shall follow to co-
operate with such Sheriffs and to otherwise imple-
ment the requirements of this section.

(h) **EFFECTIVE DATE.**—The provisions of this sec-
tion shall take effect on its enactment. The promulgation
of any regulations under subsection (g) is not a necessary
precondition to the immediate deployment or work of
Sheriffs personnel or corrections officers as authorized by
this section. Any reasonable and necessary expenses or
costs authorized by this section and incurred by such
Sheriffs after the date of the enactment of this Act but
prior to the date of the promulgation of such regulations
are eligible for reimbursement under the terms and condi-
tions of this section.

(i) **AUDIT.**—All funds paid out under this section are
subject to audit by the Inspector General of the Depart-
ment of Justice and abuse or misuse of such funds shall
be vigorously investigated and prosecuted to the full extent
of Federal law.

(j) **SUPPLEMENTAL FUNDING.**—All funds paid out
under this section must supplement, and may not sup-
plant, State or local funds used for the same or similar
purposes.
SEC. 608. RENDERING INADMISSIBLE AND DEPORTABLE

ALIENS PARTICIPATING IN CRIMINAL STREET GANGS; DETENTION; INELIGIBILITY FROM PROTECTION FROM REMOVAL AND ASYLUM.

(a) INADMISSIBLE.—Section 212(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(2)), as amended by section 604(b), is further amended by adding at the end the following:

"(M) CRIMINAL STREET GANG PARTICIPATION.—"

"(i) IN GENERAL.—Any alien is inadmissible if the alien has been removed under section 237(a)(2)(F), or if the consular officer or the Secretary of Homeland Security knows, or has reasonable ground to believe that the alien—"

"(I) is a member of a criminal street gang and has committed, conspired, or threatened to commit, or seeks to enter the United States to engage solely, principally, or incidentally in, a gang crime or any other unlawful activity; or"
“(II) is a member of a criminal
street gang designated under section
219A.

“(ii) CRIMINAL STREET GANG DE-
FINED.—For purposes of this subpara-
graph, the term ‘criminal street gang’
means a formal or informal group or asso-
ciation of 3 or more individuals, who com-
mit 2 or more gang crimes (one of which
is a crime of violence, as defined in section
16 of title 18, United States Code) in 2 or
more separate criminal episodes in relation
to the group or association.

“(iii) GANG CRIME DEFINED.—For
purposes of this subparagraph, the term
‘gang crime’ means conduct constituting
any Federal or State crime, punishable by
imprisonment for one year or more, in any
of the following categories:

“(I) A crime of violence (as de-
 fined in section 16 of title 18, United
States Code).

“(II) A crime involving obstruc-
tion of justice, tampering with or re-
taliating against a witness, victim, or
informant, or burglary.

“(III) A crime involving the man-
ufacturing, importing, distributing,
possessing with intent to distribute, or
otherwise dealing in a controlled sub-
stance or listed chemical (as those
terms are defined in section 102 of
the Controlled Substances Act (21
U.S.C. 802)).

“(IV) Any conduct punishable
under section 844 of title 18, United
States Code (relating to explosive ma-
terials), subsection (d), (g)(1) (where
the underlying conviction is a violent
felony (as defined in section
924(e)(2)(B) of such title) or is a se-
rious drug offense (as defined in sec-
tion 924(e)(2)(A)), (i), (j), (k), (o),
(p), (q), (u), or (x) of section 922 of
such title (relating to unlawful acts),
or subsection (b), (e), (g), (h), (k), (l),
(m), or (n) of section 924 of such title
(relating to penalties), section 930 of
such title (relating to possession of
firearms and dangerous weapons in
Federal facilities), section 931 of such
title (relating to purchase, ownership,
or possession of body armor by violent
felons), sections 1028 and 1029 of
such title (relating to fraud and re-
lated activity in connection with iden-
tification documents or access de-
vices), section 1952 of such title (re-
lating to interstate and foreign travel
or transportation in aid of racket-
eering enterprises), section 1956 of
such title (relating to the laundering
of monetary instruments), section
1957 of such title (relating to engag-
ing in monetary transactions in prop-
erty derived from specified unlawful
activity), or sections 2312 through
2315 of such title (relating to inter-
state transportation of stolen motor
vehicles or stolen property).

“(V) Any conduct punishable
under section 274 (relating to bring-
ing in and harboring certain aliens),
section 277 (relating to aiding or as-
sisting certain aliens to enter the United States), or section 278 (relating to importation of alien for immoral purpose) of this Act.”.

(b) **Deportable.**—Section 237(a)(2) of such Act (8 U.S.C. 1227(a)(2)) is amended by adding at the end the following:

“(G) **Criminal street gang participation.**—

“(i) **In general.**—Any alien is deportable who—

“(I) is a member of a criminal street gang and is convicted of committing, or conspiring, threatening, or attempting to commit, a gang crime; or

“(II) is determined by the Secretary of Homeland Security to be a member of a criminal street gang designated under section 219A.

“(ii) **Definitions.**—For purposes of this subparagraph, the terms ‘criminal street gang’ and ‘gang crime’ have the meaning given such terms in section 212(a)(2)(M).”.
(c) DESIGNATION OF CRIMINAL STREET GANGS.—

(1) IN GENERAL.—Chapter 2 of title II of the Immigration and Nationality Act (8 U.S.C. 1181 et seq.) is amended by adding at the end the following:

“DESIGNATION OF CRIMINAL STREET GANGS

“SEC. 219A. (a) DESIGNATION.—

“(1) IN GENERAL.—The Attorney General is authorized to designate a group or association as a criminal street gang in accordance with this subsection if the Attorney General finds that the group or association meets the criteria described in section 212(a)(2)(M)(ii)(I).

“(2) PROCEDURE.—

“(A) NOTICE.—

“(i) TO CONGRESSIONAL LEADERS.—

Seven days before making a designation under this subsection, the Attorney General shall notify the Speaker and Minority Leader of the House of Representatives and the Majority Leader and Minority Leader of the Senate, and the members of the relevant committees of the House of Representatives and the Senate, in writing, of the intent to designate a group or association under this subsection, together with the findings made under paragraph (1)
with respect to that group or association, and the factual basis therefor.

“(ii) Publication in Federal Register.—The Attorney shall publish the designation in the Federal Register seven days after providing the notification under clause (i).

“(B) Effect of designation.—

“(i) A designation under this subsection shall take effect upon publication under subparagraph (A)(ii).

“(ii) Any designation under this subsection shall cease to have effect upon an Act of Congress disapproving such designation.

“(3) Record.—In making a designation under this subsection, the Attorney General shall create an administrative record.

“(4) Period of designation.—

“(A) In general.—A designation under this subsection shall be effective for all purposes until revoked under paragraph (5) or (6) or set aside pursuant to subsection (b).

“(B) Review of designation upon petition.—
“(i) IN GENERAL.—The Attorney General shall review the designation of a criminal street gang under the procedures set forth in clauses (iii) and (iv) if the designated gang or association files a petition for revocation within the petition period described in clause (ii).

“(ii) PETITION PERIOD.—For purposes of clause (i)—

“(I) if the designated gang or association has not previously filed a petition for revocation under this subparagraph, the petition period begins 2 years after the date on which the designation was made; or

“(II) if the designated gang or association has previously filed a petition for revocation under this subparagraph, the petition period begins 2 years after the date of the determination made under clause (iv) on that petition.

“(iii) PROCEDURES.—Any criminal street gang that submits a petition for revocation under this subparagraph must pro-
vide evidence in that petition that the relevant circumstances described in paragraph (1) are sufficiently different from the circumstances that were the basis for the designation such that a revocation with respect to the gang is warranted.

“(iv) DETERMINATION.—

“(I) IN GENERAL.—Not later than 180 days after receiving a petition for revocation submitted under this subparagraph, the Attorney General shall make a determination as to such revocation.

“(II) PUBLICATION OF DETERMINATION.—A determination made by the Attorney General under this clause shall be published in the Federal Register.

“(III) PROCEDURES.—Any revocation by the Attorney General shall be made in accordance with paragraph (6).

“(C) OTHER REVIEW OF DESIGNATION.—

“(i) IN GENERAL.—If in a 5-year period no review has taken place under sub-
paragraph (B), the Attorney General shall review the designation of the criminal street gang in order to determine whether such designation should be revoked pursuant to paragraph (6).

“(ii) PROCEDURES.—If a review does not take place pursuant to subparagraph (B) in response to a petition for revocation that is filed in accordance with that subparagraph, then the review shall be conducted pursuant to procedures established by the Attorney General. The results of such review and the applicable procedures shall not be reviewable in any court.

“(iii) PUBLICATION OF RESULTS OF REVIEW.—The Attorney General shall publish any determination made pursuant to this subparagraph in the Federal Register.

“(5) REVOCATION BY ACT OF CONGRESS.—The Congress, by an Act of Congress, may block or revoke a designation made under paragraph (1).

“(6) REVOCATION BASED ON CHANGE IN CIRCUMSTANCES.—

“(A) IN GENERAL.—The Attorney General may revoke a designation made under para-
graph (1) at any time, and shall revoke a des-
ignation upon completion of a review conducted
pursuant to subparagraphs (B) and (C) of
paragraph (4) if the Attorney General finds
that the circumstances that were the basis for
the designation have changed in such a manner
as to warrant revocation.

“(B) Procedure.—The procedural re-
quirements of paragraphs (2) and (3) shall
apply to a revocation under this paragraph. Any
revocation shall take effect on the date specified
in the revocation or upon publication in the
Federal Register if no effective date is specified.

“(7) Effect of Revocation.—The revocation
of a designation under paragraph (5) or (6) shall
not affect any action or proceeding based on conduct
committed prior to the effective date of such revoca-
tion.

“(8) Use of Designation in Hearing.—If a
designation under this subsection has become effec-
tive under paragraph (2)(B) an alien in a removal
proceeding shall not be permitted to raise any ques-
tion concerning the validity of the issuance of such
designation as a defense or an objection at any hear-
ing.
“(b) Judicial Review of Designation.—

“(1) In General.—Not later than 30 days after publication of the designation in the Federal Register, a group or association designated as a criminal street gang may seek judicial review of the designation in the United States Court of Appeals for the District of Columbia Circuit.

“(2) Basis of Review.—Review under this subsection shall be based solely upon the administrative record.

“(3) Scope of Review.—The Court shall hold unlawful and set aside a designation the court finds to be—

“(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

“(B) contrary to constitutional right, power, privilege, or immunity;

“(C) in excess of statutory jurisdiction, authority, or limitation, or short of statutory right;

“(D) lacking substantial support in the administrative record taken as a whole; or

“(E) not in accord with the procedures required by law.
“(4) Judicial review invoked.—The pendency of an action for judicial review of a designation shall not affect the application of this section, unless the court issues a final order setting aside the designation.

“(c) Relevant committee defined.—As used in this section, the term ‘relevant committees’ means the Committees on the Judiciary of the House of Representatives and of the Senate.”.

(2) Clerical amendment.—The table of contents of such Act (8 U.S.C. 1101 et seq.) is amended by inserting after the item relating to section 219 the following:

“Sec. 219A. Designation of criminal street gangs.”.

(d) Mandatory detention of criminal street gang members.—

(1) In general.—Section 236(c)(1)(D) of the Immigration and Nationality Act (8 U.S.C. 1226(c)(1)(D)) is amended—

(A) by inserting “or 212(a)(2)(M)” after “212(a)(3)(B)”; and

(B) by inserting “237(a)(2)(F) or” before “237(a)(4)(B)”.

(2) Annual report.—Not later than March 1 of each year (beginning 1 year after the date of the enactment of this Act), the Secretary of Homeland
Security, after consultation with the appropriate Federal agencies, shall submit a report to the Committees on the Judiciary of the House of Representatives and of the Senate on the number of aliens detained under the amendments made by paragraph (1).

(3) EFFECTIVE DATE.—This subsection and the amendments made by this subsection are effective as of the date of enactment of this Act and shall apply to aliens detained on or after such date.

(e) INELIGIBILITY OF ALIEN STREET GANG MEMBERS FROM PROTECTION FROM REMOVAL AND ASYLUM.—

(1) INAPPLICABILITY OF RESTRICTION ON REMOVAL TO CERTAIN COUNTRIES.—Section 241(b)(3)(B) of the Immigration and Nationality Act (8 U.S.C. 1251(b)(3)(B)) is amended, in the matter preceding clause (i), by inserting “who is described in section 212(a)(2)(M)(i) or section 237(a)(2)(F)(i) or who is” after “to an alien”.

(2) INELIGIBILITY FOR ASYLUM.—Section 208(b)(2)(A) of such Act (8 U.S.C. 1158(b)(2)(A)) is amended—

(A) in clause (v), by striking “or” at the end;
(B) by redesignating clause (vi) as clause (vii); and

(C) by inserting after clause (v) the following:

“(vi) the alien is described in section 212(a)(2)(M)(i) or section 237(a)(2)(F)(i) (relating to participation in criminal street gangs); or”.

(3) Denial of review of determination of ineligibility for temporary protected status.—Section 244(c)(2) of such Act (8 U.S.C. 1254(c)(2)) is amended by adding at the end the following:

“(C) Limitation on judicial review.—There shall be no judicial review of any finding under subparagraph (B) that an alien is described in section 208(b)(2)(A)(vi).”.

(4) Effective date.—The amendments made by this subsection are effective on the date of enactment of this Act and shall apply to all applications pending on or after such date.

(f) Effective date.—Except as otherwise provided, the amendments made by this section are effective as of the date of enactment and shall apply to all pending
cases in which no final administrative action has been en-
tered.

SEC. 609. NATURALIZATION REFORM.

(a) Barring Terrorists From Naturaliza-
tion.—Section 316 of the Immigration and Nationality
Act (8 U.S.C. 1427) is amended by adding at the end the
following new subsection:

“(g) No person shall be naturalized who the Sec-
retary of Homeland Security determines, in the Sec-
retary’s discretion, to have been at any time an alien de-
scribed in section 212(a)(3) or 237(a)(4). Such determina-
tion may be based upon any relevant information or evi-
dence, including classified, sensitive, or national security
information, and shall be binding upon, and unreviewable
by, any court exercising jurisdiction under the immigra-
tion laws over any application for naturalization, regard-
less whether such jurisdiction to review a decision or ac-
tion of the Secretary is de novo or otherwise.”.

(b) Concurrent Naturalization and Removal
Proceedings.—The last sentence of section 318 of such
Act (8 U.S.C. 1429) is amended—

(1) by striking “shall be considered by the At-
torney General” and inserting “shall be considered
by the Secretary of Homeland Security or any
court”;
(2) by striking “pursuant to a warrant of arrest issued under the provisions of this or any other Act:” and inserting “or other proceeding to determine the applicant’s inadmissibility or deportability, or to determine whether the applicant’s lawful permanent resident status should be rescinded, regardless of when such proceeding was commenced:”; and

(3) by striking “upon the Attorney General” and inserting “upon the Secretary of Homeland Security”.

(e) Pending Denaturalization or Removal Proceedings.—Section 204(b) of such Act (8 U.S.C. 1154(b)) is amended by adding at the end the following: “No petition shall be approved pursuant to this section if there is any administrative or judicial proceeding (whether civil or criminal) pending against the petitioner that could (whether directly or indirectly) result in the petitioner’s denaturalization or the loss of the petitioner’s lawful permanent resident status.”.

(d) Conditional Permanent Residents.—Section 216(e) and section 216A(e) of such Act (8 U.S.C. 1186a(e), 1186b(e)) are each amended by inserting before the period at the end the following: “, if the alien has had the conditional basis removed under this section”.

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(e) District Court Jurisdiction.—Section 336(b) of such Act (8 U.S.C. 1447(b)) is amended to read as follows:

“(b) If there is a failure to render a final administrative decision under section 335 before the end of the 180-day period after the date on which the Secretary of Homeland Security completes all examinations and interviews conducted under such section, as such terms are defined by the Secretary pursuant to regulations, the applicant may apply to the district court for the district in which the applicant resides for a hearing on the matter. Such court shall only have jurisdiction to review the basis for delay and remand the matter to the Secretary for the Secretary’s determination on the application.”.

(f) Conforming Amendments.—Section 310(c) of such Act (8 U.S.C. 1421(c)) is amended—

(1) by inserting “, no later than the date that is 120 days after the Secretary’s final determination” before “seek”; and

(2) by striking the second sentence and inserting the following: “The burden shall be upon the petitioner to show that the Secretary’s denial of the application was not supported by facially legitimate and bona fide reasons. Except in a proceeding under section 340, notwithstanding any other provision of
law (statutory or nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title, no court shall have jurisdiction to determine, or to review a determination of the Secretary made at any time regarding, for purposes of an application for naturalization, whether an alien is a person of good moral character, whether an alien understands and is attached to the principles of the Constitution of the United States, or whether an alien is well disposed to the good order and happiness of the United States.”.

(g) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act, shall apply to any act that occurred before, on, or after such date, and shall apply to any application for naturalization or any other case or matter under the immigration laws pending on, or filed on or after, such date.

SEC. 610. EXPEDITED REMOVAL FOR ALIENS INADMISSIBLE ON CRIMINAL OR SECURITY GROUNDS.

(a) IN GENERAL.—Section 238(b) of the Immigration and Nationality Act (8 U.S.C. 1228(b)) is amended—

(1) in paragraph (1)—
(A) by striking “Attorney General” and inserting “Secretary of Homeland Security in the exercise of discretion”; and

(B) by striking “set forth in this subsection or” and inserting “set forth in this subsection, in lieu of removal proceedings under”; 

(2) in paragraph (3), by striking “paragraph (1) until 14 calendar days” and inserting “paragraph (1) or (3) until 7 calendar days”; 

(3) by striking “Attorney General” each place it appears in paragraphs (3) and (4) and inserting “Secretary of Homeland Security”; 

(4) in paragraph (5)—

(A) by striking “described in this section” and inserting “described in paragraph (1) or (2)” ; and 

(B) by striking “the Attorney General may grant in the Attorney General’s discretion” and inserting “the Secretary of Homeland Security or the Attorney General may grant, in the discretion of the Secretary or Attorney General, in any proceeding”; 

(5) by redesignating paragraphs (3), (4), and (5) as paragraphs (4), (5), and (6), respectively; and
(6) by inserting after paragraph (2) the following new paragraph:

“(3) The Secretary of Homeland Security in the exercise of discretion may determine inadmissibility under section 212(a)(2) (relating to criminal offenses) and issue an order of removal pursuant to the procedures set forth in this subsection, in lieu of removal proceedings under section 240, with respect to an alien who

“(A) has not been admitted or paroled;

“(B) has not been found to have a credible fear of persecution pursuant to the procedures set forth in section 235(b)(1)(B); and

“(C) is not eligible for a waiver of inadmissibility or relief from removal.”.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the date of the enactment of this Act but shall not apply to aliens who are in removal proceedings under section 240 of the Immigration and Nationality Act as of such date

SEC. 611. TECHNICAL CORRECTION FOR EFFECTIVE DATE IN CHANGE IN INADMISSIBILITY FOR TERRORISTS UNDER REAL ID ACT.

Effective as if included in the enactment of Public Law 109–13, sections 103(d)(1) and 105(a)(2)(A) of the
REAL ID Act of 2005 (division B of such Public Law) are each amended by inserting “deportation, and exclusion” after “removal”.

SEC. 612. BAR TO GOOD MORAL CHARACTER.

(a) IN GENERAL.—Section 101(f) of the Immigration and Nationality Act (8 U.S.C. 1101(f)) is amended—

(1) by inserting after paragraph (1) the following new paragraph:

“(2) one who the Secretary of Homeland Security or the Attorney General determines, in the unreviewable discretion of the Secretary or the Attorney General, to have been at any time an alien described in section 212(a)(3) or section 237(a)(4), which determination may be based upon any relevant information or evidence, including classified, sensitive, or national security information, and which shall be binding upon any court regardless of the applicable standard of review;”;

(2) in paragraph (8), by inserting “, regardless whether the crime was classified as an aggravated felony at the time of conviction” after “(as defined in subsection (a)(43))”; and

(3) by striking the sentence following paragraph (9) and inserting the following: “The fact that any person is not within any of the foregoing classes
shall not preclude a discretionary finding for other reasons that such a person is or was not of good moral character. The Secretary and the Attorney General shall not be limited to the applicant’s conduct during the period for which good moral character is required, but may take into consideration as a basis for determination the applicant’s conduct and acts at any time.”.

(b) AGGRAVATED FELONY EFFECTIVE DATE.—Section 509(b) of the Immigration Act of 1990 (Public Law 101–649), as amended by section 306(a)(7) of the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991 (Public Law 102–232) is amended to read as follows:

“(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on November 29, 1990, and shall apply to convictions occurring before, on, or after such date.”.

(c) TECHNICAL CORRECTION TO THE INTELLIGENCE REFORM ACT.—Effective as if included in the enactment of the Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108–458), section 5504(2) of such Act is amended by striking “adding at the end” and inserting “inserting immediately after paragraph (8)”.

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(d) Effective Dates.—The amendments made by subsections (a) and (b) shall take effect on the date of the enactment of this Act, shall apply to any act that occurred before, on, or after such date, and shall apply to any application for naturalization or any other benefit or relief or any other case or matter under the immigration laws pending on, or filed on or after, such date.

SEC. 613. STRENGTHENING DEFINITIONS OF “AGGRAVATED FELONY” AND “CONVICTION”.

(a) In General.—Section 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)) is amended—

(1) by amending subparagraph (A) of paragraph (43) to read as follows:

“(A) murder, manslaughter, homicide, rape, or any sexual abuse of a minor, whether or not the minority of the victim is established by evidence contained in the record of conviction or by evidence extrinsic to the record of conviction;”; and

(2) in paragraph (48)(A), by inserting after and below clause (ii) the following:

“Any reversal, vacatur, expungement, or modification to a conviction, sentence, or conviction record that was granted to ameliorate the consequences of the conviction, sentence, or conviction record, or was granted for rehabilita-
Effective purposes, or for failure to advise the alien of the immigration consequences of a guilty plea or a determination of guilt, shall have no effect on the immigration consequences resulting from the original conviction. The alien shall have the burden of demonstrating that the reversal, vacatur, expungement, or modification was not granted to ameliorate the consequences of the conviction, sentence, or conviction record, for rehabilitative purposes, or for failure to advise the alien of the immigration consequences of a guilty plea or a determination of guilt.”.

(b) Effective Date.—The amendments made by subsection (a) shall apply to any act that occurred before, on, or after the date of the enactment of this Act and shall apply to any matter under the immigration laws pending on, or filed on or after, such date.

SEC. 614. DEPORTABILITY FOR CRIMINAL OFFENSES.

(a) In General.—Section 237(a)(3)(B) of the Immigration and Nationality Act (8 U.S.C. 1227(a)(3)(B)) is amended—

(1) in clause (ii), by striking “or” at the end;

(2) in clause (iii), by inserting “or” at the end;

and

(3) by inserting after clause (iii) the following new clause:
“(iv) of a violation of, or an attempt or a conspiracy to violate, subsection (a) or (b) of section 1425 of title 18, United States Code,”.

(b) DEPORTABILITY; CRIMINAL OFFENSES.—Section 237(a)(2) of such Act (8 U.S.C. 1227(a)(2)), as amended by section 608(b), is amended by adding at the end the following new subparagraph:

“(G) SOCIAL SECURITY AND IDENTIFICATION FRAUD.—Any alien who at any time after admission is convicted of a violation of (or a conspiracy or attempt to violate) an offense described in section 208 of the Social Security Act or section 1028 of title 18, United States Code is deportable.”.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to any act that occurred before, on, or after the date of the enactment of this Act, and to all aliens who are required to establish admissibility on or after such date and in all removal, deportation, or exclusion proceedings that are filed, pending, or reopened, on or after such date.

SEC. 615. DECLARATION OF CONGRESS.

Congress condemns rapes by smugglers along the international land border of the United States and urges
in the strongest possible terms the Government of Mexico
to work in coordination with United States Customs and
Border Protection of the Department of Homeland Secu-
ritiy take immediate action to prevent such rapes from oc-
curring.

SEC. 616. REPORT ON CRIMINAL ALIEN PROSECUTION.

Not later than one year after the date of the enact-
ment of this Act and annually thereafter, the Attorney
General shall submit to the Committee on the Judiciary
of the House of Representatives and the Committee on
the Judiciary of the Senate a report on the status of crimi-
nal alien prosecutions, including prosecutions of human
smugglers.

SEC. 617. DETERMINATION OF IMMIGRATION STATUS OF
INDIVIDUALS CHARGED WITH FEDERAL OF-
FENSES.

(a) Responsibility of United States Attor-
neys.—Beginning 2 years after the date of the enactment
of this Act, the office of the United States attorney that
is prosecuting a criminal case in a Federal court—

(1) shall determine, not later than 30 days
after filing the initial pleadings in the case, whether
each defendant in the case is lawfully present in the
United States (subject to subsequent legal pro-
ceedings to determine otherwise);
(2)(A) if the defendant is determined to be an alien lawfully present in the United States, shall notify the court in writing of the determination and the current status of the alien under the Immigration and Nationality Act; and

(B) if the defendant is determined not to be lawfully present in the United States, shall notify the court in writing of the determination, the defendant’s alien status, and, to the extent possible, the country of origin or legal residence of the defendant; and

(3) ensure that the information described in paragraph (2) is included in the case file and the criminal records system of the office of the United States attorney.

The determination under paragraph (1) shall be made in accordance with guidelines of the Executive Office for Immigration Review of the Department of Justice.

(b) Responsibilities of Federal Courts.—

(1) Modifications of Records and Case Managements Systems.—Not later than 2 years after the date of the enactment of this Act, all Federal courts that hear criminal cases, or appeals of criminal cases, shall modify their criminal records and case management systems, in accordance with
guidelines which the Director of the Administrative Office of the United States Courts shall establish, so as to enable accurate reporting of information described in paragraph (2) of subsection (a).

(2) DATA ENTRIES.—Beginning 2 years after the date of the enactment of this Act, each Federal court described in paragraph (1) shall enter into its electronic records the information contained in each notification to the court under subsection (a)(2).

(c) ANNUAL REPORT TO CONGRESS.—The Director of the Administrative Office of the United States Courts shall include, in the annual report filed with the Congress under section 604 of title 28, United States Code—

(1) statistical information on criminal trials of aliens in the courts and criminal convictions of aliens in the lower courts and upheld on appeal, including the type of crime in each case and including information on the legal status of the aliens; and

(2) recommendations on whether additional court resources are needed to accommodate the volume of criminal cases brought against aliens in the Federal courts.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for each of fiscal years 2007 through 2012, such sums as may be necessary to
carry out this Act. Funds appropriated pursuant to this subsection in any fiscal year shall remain available until expended.

SEC. 618. INCREASED CRIMINAL PENALTIES FOR DOCUMENT FRAUD AND CRIMES OF VIOLENCE.

(a) DOCUMENT FRAUD.—Section 1546 of title 18, United States Code, is amended—

(1) in subsection (a)—

(A) by striking “not more than 25 years” and inserting “not less than 25 years”

(B) by inserting “and if the terrorism offense resulted in the death of any person, shall be punished by death or imprisoned for life,” after “section 2331 of this title));”;

(C) by striking “20 years” and inserting “imprisoned not more than 40 years”;

(D) by striking “10 years” and inserting “imprisoned not more than 20 years”; and

(E) by striking “15 years” and inserting “imprisoned not more than 25 years”; and

(2) in subsection (b), by striking “5 years” and inserting “10 years”.

(b) CRIMES OF VIOLENCE.—
(1) IN GENERAL.—Title 18, United States Code, is amended by inserting after chapter 51 the following:

"CHAPTER 52—ILLEGAL ALIENS"

"Sec. 1131. Enhanced penalties for certain crimes committed by illegal aliens.

§ 1131. Enhanced penalties for certain crimes committed by illegal aliens

(a) Any alien unlawfully present in the United States, who commits, or conspires or attempts to commit, a crime of violence or a drug trafficking offense (as defined in section 924), shall be fined under this title and sentenced to not less than 5 years in prison.

(b) If an alien who violates subsection (a) was previously ordered removed under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) on the grounds of having committed a crime, the alien shall be sentenced to not less than 15 years in prison.

(c) A sentence of imprisonment imposed under this section shall run consecutively to any other sentence of imprisonment imposed for any other crime."

(2) CLERICAL AMENDMENT.—The table of chapters at the beginning of part I of title 18, United States Code, is amended by inserting after the item relating to chapter 51 the following:

"52. Illegal aliens .................................................................................. 1131"
SEC. 619. LAUNDERING OF MONETARY INSTRUMENTS.

Section 1956(c)(7)(D) of title 18, United States Code, is amended—

(1) by inserting “section 1590 (relating to trafficking with respect to peonage, slavery, involuntary servitude, or forced labor),” after “section 1363 (relating to destruction of property within the special maritime and territorial jurisdiction),”; and

(2) by inserting “section 274(a) of the Immigration and Nationality Act (8 U.S.C. 1324(a)) (relating to bringing in and harboring certain aliens),” after “section 590 of the Tariff Act of 1930 (19 U.S.C. 1590) (relating to aviation smuggling),”.

TITLE VII—EMPLOYMENT ELIGIBILITY VERIFICATION

SEC. 701. EMPLOYMENT ELIGIBILITY VERIFICATION SYSTEM.

(a) IN GENERAL.—Section 274A(b) of the Immigration and Nationality Act (8 U.S.C. 1324a(b)) is amended by adding at the end the following:

“(7) EMPLOYMENT ELIGIBILITY VERIFICATION SYSTEM.—

“(A) IN GENERAL.—The Secretary of Homeland Security shall establish and administer a verification system through which the
Secretary (or a designee of the Secretary, which may be a nongovernmental entity)—

“(i) responds to inquiries made by persons at any time through a toll-free telephone line and other toll-free electronic media concerning an individual’s identity and whether the individual is authorized to be employed; and

“(ii) maintains records of the inquiries that were made, of verifications provided (or not provided), and of the codes provided to inquirers as evidence of their compliance with their obligations under this section.

“(B) INITIAL RESPONSE.—The verification system shall provide verification or a tentative nonverification of an individual’s identity and employment eligibility within 3 working days of the initial inquiry. If providing verification or tentative nonverification, the verification system shall provide an appropriate code indicating such verification or such nonverification.

“(C) SECONDARY VERIFICATION PROCESS IN CASE OF TENTATIVE NONVERIFICATION.—In cases of tentative nonverification, the Secretary
shall specify, in consultation with the Commissioner of Social Security, an available secondary verification process to confirm the validity of information provided and to provide a final verification or nonverification within 10 working days after the date of the tentative nonverification. When final verification or nonverification is provided, the verification system shall provide an appropriate code indicating such verification or nonverification.

“(D) Design and Operation of System.—The verification system shall be designed and operated—

“(i) to maximize its reliability and ease of use by persons and other entities consistent with insulating and protecting the privacy and security of the underlying information;

“(ii) to respond to all inquiries made by such persons and entities on whether individuals are authorized to be employed and to register all times when such inquiries are not received;

“(iii) with appropriate administrative, technical, and physical safeguards to pre-
vent unauthorized disclosure of personal
information; and

“(iv) to have reasonable safeguards
against the system’s resulting in unlawful
discriminatory practices based on national
origin or citizenship status, including—

“(I) the selective or unauthorized
use of the system to verify eligibility;

“(II) the use of the system prior
to an offer of employment; or

“(III) the exclusion of certain in-
dividuals from consideration for em-
ployment as a result of a perceived
likelihood that additional verification
will be required, beyond what is re-
quired for most job applicants.

“(E) Responsibilities of the Commiss-
sioner of Social Security.—As part of the
verification system, the Commissioner of Social
Security, in consultation with the Secretary of
Homeland Security (and any designee of the
Secretary selected to establish and administer
the verification system), shall establish a reli-
able, secure method, which, within the time pe-
riods specified under subparagraphs (B) and

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(C), compares the name and social security account number provided in an inquiry against such information maintained by the Commissioner in order to validate (or not validate) the information provided regarding an individual whose identity and employment eligibility must be confirmed, the correspondence of the name and number, and whether the individual has presented a social security account number that is not valid for employment. The Commissioner shall not disclose or release social security information (other than such verification or nonverification) except as provided for in this section or section 205(c)(2)(I) of the Social Security Act.

“(F) Responsibilities of the Secretary of Homeland Security.—(i) As part of the verification system, the Secretary of Homeland Security (in consultation with any designee of the Secretary selected to establish and administer the verification system), shall establish a reliable, secure method, which, within the time periods specified under subparagraphs (B) and (C), compares the name and alien identification or authorization number
which are provided in an inquiry against such
information maintained by the Secretary in
order to validate (or not validate) the informa-
tion provided, the correspondence of the name
and number, and whether the alien is author-
ized to be employed in the United States.

“(ii) When a single employer has sub-
mitted to the verification system pursuant to
paragraph (3)(A) the identical social security
account number in more than one instance, or
when multiple employers have submitted to the
verification system pursuant to such paragraph
the identical social security account number, in
a manner which indicates the possible fraudu-
 lent use of that number, the Secretary of
Homeland Security shall conduct an investiga-
tion, within the time periods specified in sub-
paragraphs (B) and (C), in order to ensure that
no fraudulent use of a social security account
number has taken place. If the Secretary has
selected a designee to establish and administer
the verification system, the designee shall notify
the Secretary when a single employer has sub-
mitted to the verification system pursuant to
paragraph (3)(A) the identical social security
account number in more than one instance, or
when multiple employers have submitted to the
verification system pursuant to such paragraph
the identical social security account number, in
a manner which indicates the possible fraudu-
lent use of that number. The designee shall also
provide the Secretary with all pertinent infor-
mation, including the name and address of the
employer or employers who submitted the rel-

evant social security account number, the rel-

levant social security account number submitted
by the employer or employers, and the relevant
name and date of birth of the employee sub-

mitted by the employer or employers.

“(G) UPDATING INFORMATION.—The
Commissioner of Social Security and the Sec-
retary of Homeland Security shall update their
information in a manner that promotes the
maximum accuracy and shall provide a process
for the prompt correction of erroneous informa-
tion, including instances in which it is brought
to their attention in the secondary verification
process described in subparagraph (C).
“(H) LIMITATION ON USE OF THE VERIFICATION SYSTEM AND ANY RELATED SYSTEMS.—

“(i) IN GENERAL.—Notwithstanding any other provision of law, nothing in this paragraph shall be construed to permit or allow any department, bureau, or other agency of the United States Government to utilize any information, data base, or other records assembled under this paragraph for any other purpose other than as provided for.

“(ii) NO NATIONAL IDENTIFICATION CARD.—Nothing in this paragraph shall be construed to authorize, directly or indirectly, the issuance or use of national identification cards or the establishment of a national identification card.

“(I) FEDERAL TORT CLAIMS ACT.—If an individual alleges that the individual would not have been dismissed from a job but for an error of the verification mechanism, the individual may seek compensation only through the mechanism of the Federal Tort Claims Act, and injunctive relief to correct such error. No class
action may be brought under this subpara-

"(J) Protection from liability for

actions taken on the basis of informa-
tion.—No person or entity shall be civilly or

criminal liability for any action taken in good

faith reliance on information provided through

the employment eligibility verification mecha-
nism established under this paragraph.”.

(b) Repeal of Provision Relating to Evalua-
tions and Changes in Employment Verification.—

Section 274A(d) (8 U.S.C. 1324a(d)) is repealed.

SEC. 702. EMPLOYMENT ELIGIBILITY VERIFICATION PROC-
ESS.

Section 274A of the Immigration and Nationality Act

(8 U.S.C. 1324a) is amended—

(1) in subsection (a)(3), by inserting “(A)”
after “DEFENSE.—”, and by adding at the end the

following:

“(B) Failure to seek and obtain

verification.—In the case of a person or entity in

the United States that hires, or continues to employ,
an individual, or recruits or refers an individual for

employment, the following requirements apply:

“(i) Failure to seek verification.—
“(I) IN GENERAL.—If the person or entity has not made an inquiry, under the mechanism established under subsection (b)(7), seeking verification of the identity and work eligibility of the individual, by not later than the end of 3 working days (as specified by the Secretary of Homeland Security) after the date of the hiring, the date specified in subsection (b)(8)(B) for previously hired individuals, or before the recruiting or referring commences, the defense under subparagraph (A) shall not be considered to apply with respect to any employment, except as provided in subclause (II).

“(II) SPECIAL RULE FOR FAILURE OF VERIFICATION MECHANISM.—If such a person or entity in good faith attempts to make an inquiry in order to qualify for the defense under subparagraph (A) and the verification mechanism has registered that not all inquiries were responded to during the relevant time, the person or entity can make an inquiry until the end of the first subsequent working day in which the
verification mechanism registers no non-
responses and qualify for such defense.

“(ii) Failure to Obtain Verification.—If the person or entity has
made the inquiry described in clause (i)(I) but has not received an appropriate verification of
such identity and work eligibility under such mechanism within the time period specified
under subsection (b)(7)(B) after the time the verification inquiry was received, the defense
under subparagraph (A) shall not be considered to apply with respect to any employment after
the end of such time period.”;

(2) by amending subparagraph (A) of sub-
section (b)(1) to read as follows:

“(A) In General.—The person or entity
must attest, under penalty of perjury and on a
form designated or established by the Secretary
by regulation, that it has verified that the indi-
vidual is not an unauthorized alien by—

“(i) obtaining from the individual the
individual’s social security account number
and recording the number on the form (if
the individual claims to have been issued
such a number), and, if the individual does
not attest to United States citizenship under paragraph (2), obtaining such identification or authorization number established by the Department of Homeland Security for the alien as the Secretary of Homeland Security may specify, and recording such number on the form; and

“(ii)(I) examining a document described in subparagraph (B); or (II) examining a document described in subparagraph (C) and a document described in subparagraph (D).

A person or entity has complied with the requirement of this paragraph with respect to examination of a document if the document reasonably appears on its face to be genuine, reasonably appears to pertain to the individual whose identity and work eligibility is being verified, and, if the document bears an expiration date, that expiration date has not elapsed.

If an individual provides a document (or combination of documents) that reasonably appears on its face to be genuine, reasonably appears to pertain to the individual whose identity and work eligibility is being verified, and is suffi-
cient to meet the first sentence of this para-
graph, nothing in this paragraph shall be con-
strued as requiring the person or entity to so-
licit the production of any other document or as
requiring the individual to produce another doc-
ument.”;

(3) in subsection (b)(1)(D)—

(A) in clause (i), by striking “or such other
personal identification information relating to
the individual as the Attorney General finds, by
regulation, sufficient for purposes of this sec-
tion”; and

(B) in clause (ii), by inserting before the
period “and that contains a photograph of the
individual”;

(4) in subsection (b)(2), by adding at the end
the following: “The individual must also provide that
individual’s social security account number (if the
individual claims to have been issued such a num-
ber), and, if the individual does not attest to United
States citizenship under this paragraph, such identi-
fication or authorization number established by the
Department of Homeland Security for the alien as
the Secretary may specify.”; and
(5) by amending paragraph (3) of subsection (b) to read as follows:

“(3) Retention of verification form and verification.—

“(A) In general.—After completion of such form in accordance with paragraphs (1) and (2), the person or entity must—

“(i) retain a paper, microfiche, microfilm, or electronic version of the form and make it available for inspection by officers of the Department of Homeland Security, the Special Counsel for Immigration-Related Unfair Employment Practices, or the Department of Labor during a period beginning on the date of the hiring, recruiting, or referral of the individual or the date of the completion of verification of a previously hired individual and ending—

“(I) in the case of the recruiting or referral of an individual, three years after the date of the recruiting or referral;

“(II) in the case of the hiring of an individual, the later of—
“(aa) three years after the date of such hiring; or

“(bb) one year after the date the individual’s employment is terminated; and

“(III) in the case of the verification of a previously hired individual, the later of—

“(aa) three years after the date of the completion of verification; or

“(bb) one year after the date the individual’s employment is terminated;

“(ii) make an inquiry, as provided in paragraph (7), using the verification system to seek verification of the identity and employment eligibility of an individual, by not later than the end of 3 working days (as specified by the Secretary of Homeland Security) after the date of the hiring or in the case of previously hired individuals, the date specified in subsection (b)(8)(B), or before the recruiting or referring commences; and
“(iii) may not commence recruitment
or referral of the individual until the per-
son or entity receives verification under
subparagraph (B)(i) or (B)(iii).

“(B) VERIFICATION.—

“(i) Verification received.—If the
person or other entity receives an appro-
priate verification of an individual’s iden-
tity and work eligibility under the
verification system within the time period
specified, the person or entity shall record
on the form an appropriate code that is
provided under the system and that indi-
cates a final verification of such identity
and work eligibility of the individual.

“(ii) Tentative nonverification
received.—If the person or other entity
receives a tentative nonverification of an
individual’s identity or work eligibility
under the verification system within the
time period specified, the person or entity
shall so inform the individual for whom the
verification is sought. If the individual does
not contest the nonverification within the
time period specified, the nonverification
shall be considered final. The person or entity shall then record on the form an appropriate code which has been provided under the system to indicate a tentative nonverification. If the individual does contest the nonverification, the individual shall utilize the process for secondary verification provided under paragraph (7). The nonverification will remain tentative until a final verification or nonverification is provided by the verification system within the time period specified. In no case shall an employer terminate employment of an individual because of a failure of the individual to have identity and work eligibility confirmed under this section until a nonverification becomes final. Nothing in this clause shall apply to a termination of employment for any reason other than because of such a failure.

“(iii) Final verification or nonverification received.—If a final verification or nonverification is provided by the verification system regarding an individual, the person or entity shall record
on the form an appropriate code that is
provided under the system and that indi-
cates a verification or nonverification of
identity and work eligibility of the indi-
vidual.

“(iv) Extension of Time.—If the
person or other entity in good faith at-
ttempts to make an inquiry during the time
period specified and the verification system
has registered that not all inquiries were
received during such time, the person or
entity may make an inquiry in the first
subsequent working day in which the
verification system registers that it has re-
ceived all inquiries. If the verification sys-
tem cannot receive inquiries at all times
during a day, the person or entity merely
has to assert that the entity attempted to
make the inquiry on that day for the pre-
vious sentence to apply to such an inquiry,
and does not have to provide any addi-
tional proof concerning such inquiry.

“(v) Consequences of
Nonverification.—
“(I) TERMINATION OR NOTIFICATION OF CONTINUED EMPLOYMENT.—

If the person or other entity has received a final nonverification regarding an individual, the person or entity may terminate employment of the individual (or decline to recruit or refer the individual). If the person or entity does not terminate employment of the individual or proceeds to recruit or refer the individual, the person or entity shall notify the Secretary of Homeland Security of such fact through the verification system or in such other manner as the Secretary may specify.

“(II) FAILURE TO NOTIFY.—If the person or entity fails to provide notice with respect to an individual as required under subclause (I), the failure is deemed to constitute a violation of subsection (a)(1)(A) with respect to that individual.

“(vi) CONTINUED EMPLOYMENT AFTER FINAL NONVERIFICATION.—If the
person or other entity continues to employ
(or to recruit or refer) an individual after
receiving final nonverification, a rebuttable
presumption is created that the person or
entity has violated subsection (a)(1)(A).”.

SEC. 703. EXPANSION OF EMPLOYMENT ELIGIBILITY
VERIFICATION SYSTEM TO PREVIOUSLY
HIRED INDIVIDUALS AND RECRUITING AND
REFERRING.

(a) APPLICATION TO RECRUITING AND REFERRING.—Section 274A of the Immigration and Nationality
Act (8 U.S.C. 1324a) is amended—

(1) in subsection (a)(1)(A), by striking “for a
fee”;

(2) in subsection (a)(1), by amending subpara-
graph (B) to read as follows:

“(B) to hire, continue to employ, or to re-
cruit or refer for employment in the United
States an individual without complying with the
requirements of subsection (b).”;

(3) in subsection (a)(2) by striking “after hir-
ing an alien for employment in accordance with
paragraph (1),” and inserting “after complying with
paragraph (1),”; and
(4) in subsection (a)(3), as amended by section 702, is further amended by striking “hiring,” and inserting “hiring, employing,” each place it appears.

(b) Employment Eligibility Verification for Previously Hired Individuals.—Section 274A(b) of such Act (8 U.S.C. 1324a(b)), as amended by section 701(a), is amended by adding at the end the following new paragraph:

“(8) Use of Employment Eligibility Verification System for Previously Hired Individuals.—

“(A) On a voluntary basis.—Beginning on the date that is 2 years after the date of the enactment of the Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005 and until the date specified in subparagraph (B)(iii), a person or entity may make an inquiry, as provided in paragraph (7), using the verification system to seek verification of the identity and employment eligibility of any individual employed by the person or entity, as long as it is done on a nondiscriminatory basis.

“(B) On a mandatory basis.—

“(i) A person or entity described in clause (ii) must make an inquiry as pro-
vided in paragraph (7), using the verification system to seek verification of the identity and employment eligibility of all individuals employed by the person or entity who have not been previously subject to an inquiry by the person or entity by the date three years after the date of enactment of the Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005.

“(ii) A person or entity is described in this clause if it is a Federal, State, or local governmental body (including the Armed Forces of the United States), or if it employs individuals working in a location that is a Federal, State, or local government building, a military base, a nuclear energy site, a weapon site, an airport, or that contains critical infrastructure (as defined in section 1016(e) of the Critical Infrastructure Protection Act of 2001 (42 U.S.C. 5195c(e))), but only to the extent of such individuals.

“(iii) All persons and entities other than those described in clause (ii) must
make an inquiry, as provided in paragraph (7), using the verification system to seek verification of the identity and employment eligibility of all individuals employed by the person or entity who have not been previously subject to an inquiry by the person or entity by the date six years after the date of enactment of the Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005.”.

SEC. 704. BASIC PILOT PROGRAM.

Section 401(b) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note) is amended by striking “at the end of the 11-year period beginning on the first day the pilot program is in effect” and inserting “two years after the enactment of the Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005”.

SEC. 705. HIRING HALLS.

Section 274A(h) of the Immigration and Nationality Act (8 U.S.C. 1324a(h)) is amended by adding at the end the following new paragraph:

“(4) RECRUITMENT AND REFERRAL.—As used in this section, the term ‘refer’ means the act of sending or directing a person or transmitting docu-
mentation or information to another, directly or indirectly, with the intent of obtaining employment in the United States for such person. Generally, only persons or entities referring for remuneration (whether on a retainer or contingency basis) are included in the definition. However, labor service agencies, whether public, private, for-profit, or nonprofit, that refer, dispatch, or otherwise facilitate the hiring of workers for any period of time by a third party are included in the definition whether or not they receive remuneration. As used in this section the term ‘recruit’ means the act of soliciting a person, directly or indirectly, and referring the person to another with the intent of obtaining employment for that person. Generally, only persons or entities recruiting for remunerations (whether on a retainer or contingency basis) are included in the definition. However, labor service agencies, whether public, private, for-profit, or nonprofit that refer, dispatch, or otherwise facilitate the hiring of workers for any period of time by a third party are included in the definition whether or not they receive remuneration.’.

SEC. 706. PENALTIES.

Section 274A of the Immigration and Nationality Act (8 U.S.C. 1324a) is amended—
(1) in subsection (e)(4)—
   (A) in subparagraph (A), in the matter before clause (i), by inserting “, subject to paragraphs (10) through (12),” after “in an amount”;
   (B) in subparagraph (A)(i), by striking “not less than $250 and not more than $2,000” and inserting “not less than $5,000 and not more than $7,500”;
   (C) in subparagraph (A)(ii), by striking “not less than $2,000 and not more than $5,000” and inserting “not less than $10,000 and not more than $15,000”;
   (D) in subparagraph (A)(iii), by striking “not less than $3,000 and not more than $10,000” and inserting “not less than $25,000 and not more than $40,000”; and
   (E) by amending subparagraph (B) to read as follows:
      “(B) may require the person or entity to take such other remedial action as is appropriate.”;

(2) in subsection (e)(5)—
   (A) by inserting “, subject to paragraphs (10) through (12),” after “in an amount”;
(B) by striking “$100” and inserting “$1,000”; 

(C) by striking “$1,000” and inserting “$25,000”; 

(D) by striking “the size of the business of the employer being charged, the good faith of the employer” and inserting “the good faith of the employer being charged”; and 

(E) by adding at the end the following sentence: “Failure by a person or entity to utilize the employment eligibility verification system as required by law, or providing information to the system that the person or entity knows or reasonably believes to be false, shall be treated as a violation of subsection (a)(1)(A).”; 

(3) by adding at the end of subsection (e) the following new paragraphs: 

“(10) MITIGATION OF CIVIL MONEY PENALTIES FOR SMALLER EMPLOYERS.—In the case of imposition of a civil penalty under paragraph (4)(A) with respect to a violation of subsection (a)(1)(A) or (a)(2) for hiring or continuation of employment by an employer and in the case of imposition of a civil penalty under paragraph (5) for a violation of subsection (a)(1)(B) for hiring by an employer, the dol-
lar amounts otherwise specified in the respective paragraph shall be reduced as follows:

“(A) In the case of an employer with an average of fewer than 26 full-time equivalent employees (as defined by the Secretary of Homeland Security), the amounts shall be re-
duced by 60 percent.

“(B) In the case of an employer with an average of at least 26, but fewer than 101, full-time equivalent employees (as so defined), the amounts shall be reduced by 40 percent.

“(C) In the case of an employer with an average of at least 101, but fewer than 251, full-time equivalent employees (as so defined), the amounts shall be reduced by 20 percent.

The last sentence of paragraph (4) shall apply under this paragraph in the same manner as it applies under such paragraph.”.

“(11) EXEMPTION FROM PENALTY FOR INITIAL GOOD FAITH VIOLATION.—In the case of imposition of a civil penalty under paragraph (4)(A) with re-
pect to a violation of subsection (a)(1)(A) or (a)(2) for hiring or continuation of employment or recruit-
ment or referral by person or entity and in the case of imposition of a civil penalty under paragraph (5)
for a violation of subsection (a)(1)(B) for hiring or
recruitment or referral by a person or entity, the
penalty otherwise imposed shall be waived if the vio-
lator establishes that it was the first such violation
of such provision by the violator and the violator
acted in good faith.

“(12) SAFE HARBOR FOR CONTRACTORS.—A
person or other entity shall not be liable for a pen-
alty under paragraph (4)(A) with respect to the vio-
lation of subsection (a)(1)(A), (a)(1)(B), or (a)(2)
with respect to the hiring or continuation of employ-
ment of an unauthorized alien by a subcontractor of
that person or entity unless the person or entity
knew that the subcontractor hired or continued to
employ such alien in violation of such subsection.

(4) by amending paragraph (1) of subsection (f)
to read as follows:

“(1) CRIMINAL PENALTY.—Any person or enti-
ty which engages in a pattern or practice of viola-
tions of subsection (a)(1) or (2) shall be fined not
more than $50,000 for each unauthorized alien with
respect to which such a violation occurs, imprisoned
for not less than one year, or both, notwithstanding
the provisions of any other Federal law relating to
fine levels.’”; and
(5) in subsection (f)(2), by striking “Attorney General” each place it appears and inserting “Secretary of Homeland Security”.

SEC. 707. REPORT ON SOCIAL SECURITY CARD-BASED EMPLOYMENT ELIGIBILITY VERIFICATION.

(a) Report.—

(1) In general.—Not later than 9 months after the date of the enactment of this Act, the Commissioner of Social Security, in consultation with the Secretary of the Treasury, the Secretary of Homeland Security, and the Attorney General, shall submit a report to Congress that includes an evaluation of the following requirements and changes:

(A) A requirement that social security cards that are made of a durable plastic or similar material and that include an encrypted, machine-readable electronic identification strip and a digital photograph of the individual to whom the card is issued, be issued to each individual (whether or not a United States citizen) who—

(i) is authorized to be employed in the United States;

(ii) is seeking employment in the United States; and
(iii) files an application for such card, whether as a replacement of an existing social security card or as a card issued in connection with the issuance of a new social security account number.

(B) The creation of a unified database to be maintained by the Department of Homeland Security and comprised of data from the Social Security Administration and the Department of Homeland Security specifying the work authorization of individuals (including both United States citizens and noncitizens) for the purpose of conducting employment eligibility verification.

(C) A requirement that all employers verify the employment eligibility of all new hires using the social security cards described in subparagraph (A) and a phone, electronic card-reading, or other mechanism to seek verification of employment eligibility through the use of the unified database described in subparagraph (B).

(2) Items included in report.—The report under paragraph (1) shall include an evaluation of each of the following:
(A) Projected cost, including the cost to
the Federal government, State and local govern-
m ents, and the private sector.

(B) Administrability.

(C) Potential effects on—

(i) employers;

(ii) employees, including employees
who are United States citizens as well as
those that are not citizens;

(iii) tax revenue; and

(iv) privacy.

(D) The extent to which employer and em-
ployee compliance with immigration laws would
be expected to improve.

(E) Any other relevant information.

(3) ALTERNATIVES.—The report under para-
graph (1) also shall examine any alternatives to
achieve the same goals as the requirements and
changes described in paragraph (1) but that involve
lesser cost, lesser burden on those affected, or great-
er ease of administration.

(b) INSPECTOR GENERAL REVIEW.—Not later than
3 months after the report is submitted under subsection
(a), the Inspector General of the Social Security Admin-
istration, in consultation with the Inspectors General of the
Department of Treasury, the Department of Homeland Security, and the Department of Justice, shall send to the Congress an evaluation of the such report.

SEC. 708. EXTENSION OF PREEMPTION TO REQUIRED CONSTRUCTION OF DAY LABORER SHELTERS.

Paragraph 274A(h)(2) of the Immigration and Nationality Act (8 U.S.C. 1324a(h)(2)) is amended—

(1) by striking “imposing”, and inserting a dash and “(A) imposing”;

(2) by striking the period at the end and inserting “; and”;

(3) by adding at the end the following:

“(B) Requiring as a condition of conducting, continuing, or expanding a business that a business entity—

“(i) provide, build, fund, or maintain a shelter, structure, or designated area for use by day laborers at or near its place of business; or

“(ii) take other steps that facilitate the employment of day laborers by others.”

SEC. 709. EFFECTIVE DATE.

This title and the amendments made by this title shall take effect on the date of enactment of this Act, except that the requirements of persons and entities to com-
ploy with the employment eligibility verification process
takes effect on the date that is two years after such date.

SEC. 710. LIMITATION ON VERIFICATION RESPONSIBILITIES OF COMMISSIONER OF SOCIAL SECURITY.

The Commissioner of Social Security is authorized to
perform activities with respect to carrying out the Com-
missioner’s responsibilities in this title or the amendments
made by this title, but only to the extent (except for the
purpose of carrying out section 707) the Secretary of
Homeland Security has provided, in advance, funds to
cover the Commissioner’s full costs in carrying out such
responsibilities. In no case shall funds from the Federal
Old-Age and Survivors Insurance Trust Fund or the Fed-
eral Disability Insurance Trust Fund be used to carry out
such responsibilities.

SEC. 711. REPORT ON EMPLOYMENT ELIGIBILITY VERIFICATION SYSTEM.

Not later than one year after the implementation of
the employment eligibility verification system and one year
thereafter, the Secretary of Homeland Security shall sub-
mit to Congress a report on the progress and problems
associated with implementation of the system, including
information relating to the most efficient use of the system
by small businesses.
TITLE VIII—IMMIGRATION

LITIGATION ABUSE REDUCTION

SEC. 801. BOARD OF IMMIGRATION APPEALS REMOVAL ORDER AUTHORITY.

(a) In General.—Section 101(a)(47) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(47)) is amended to read as follows:

“(47)(A) The term ‘order of removal’ means the order of the immigration judge, the Board of Immigration Appeals, or other administrative officer to whom the Attorney General or the Secretary of Homeland Security has delegated the responsibility for determining whether an alien is removable, concluding that the alien is removable or ordering removal.

“(B) The order described under subparagraph (A) shall become final upon the earliest of—

“(i) a determination by the Board of Immigration Appeals affirming such order;

“(ii) the entry by the Board of Immigration Appeals of such order;

“(iii) the expiration of the period in which any party is permitted to seek review of such order by the Board of Immigration Appeals;

“(iv) the entry by an immigration judge of such order, if appeal is waived by all parties; or
“(v) the entry by another administrative officer of such order, at the conclusion of a process as authorized by law other than under section 240.”.

(b) Effective Date.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act and shall apply to ordered entered before, on, or after such date.

SEC. 802. JUDICIAL REVIEW OF VISA REVOCATION.

(a) In General.—Section 221(i) of the Immigration and Nationality Act (8 U.S.C. 1201(i)) is amended by amending the last sentence to read as follows: “Notwithstanding any other provision of law (statutory or non-statutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, and sections 1361 and 1651 of such title, a revocation under this subsection may not be reviewed by any court, and no court shall have jurisdiction to hear any claim arising from, or any challenge to, such a revocation.”.

(b) Effective Date.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act and shall apply to visa revocations effected before, on, or after such date.
SEC. 803. REINSTATEMENT.

(a) In General.—Section 241(a)(5) of the Immigration and Nationality Act (8 U.S.C. 1231(a)(5)) is amended to read as follows:

“(5) Reinstatement of removal orders against aliens illegally reentering.—If the Secretary of Homeland Security finds that an alien has entered the United States illegally after having been removed or having departed voluntarily, under an order of removal, deportation, or exclusion, regardless of the date of the original order or the date of the illegal entry—

“(A) the order of removal, deportation, or exclusion is reinstated from its original date and is not subject to being reopened or reviewed;

“(B) the alien is not eligible and may not apply for any relief under this Act, regardless of the date that an application for such relief may have been filed; and

“(C) the alien shall be removed under the order of removal, deportation, or exclusion at any time after the illegal entry.

Reinstatement under this paragraph shall not require proceedings before an immigration judge under section 240 or otherwise.”.
(b) JUDICIAL REVIEW.—Section 242 of the Immigration and Nationality Act (8 U.S.C. 1252) is amended by adding at the end the following new subsection:

“(h) JUDICIAL REVIEW OF REINSTATEMENT UNDER SECTION 241(a)(5).—

“(1) IN GENERAL.—Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, United States Code, or any other habeas corpus provision, sections 1361 and 1651 of such title, or subsection (a)(2)(D) of this section, no court shall have jurisdiction to review any cause or claim arising from or relating to any reinstatement under section 241(a)(5) (including any challenge to the reinstated order), except as provided in paragraph (2) or (3).

“(2) CHALLENGES IN COURT OF APPEALS FOR DISTRICT OF COLUMBIA TO VALIDITY OF THE SYSTEM, ITS IMPLEMENTATION, AND RELATED INDIVIDUAL DETERMINATIONS.—

“(A) IN GENERAL.—Judicial review of determinations under section 241(a)(5) and its implementation is available in an action instituted in the United States Court of Appeals for the District of Columbia Circuit, but shall be
limited, except as provided in subparagraph (B), to the following determinations:

“(i) Whether such section, or any regulation issued to implement such section, is constitutional.

“(ii) Whether such a regulation, or a written policy directive, written policy guideline, or written procedure issued by or under the authority of the Attorney General or the Secretary of Homeland Security to implement such section, is not consistent with applicable provisions of this Act or is otherwise in violation of a statute or the Constitution.

“(B) RELATED INDIVIDUAL DETERMINATIONS.—If a person raises an action under subparagraph (A), the person may also raise in the same action the following issues:

“(i) Whether the petitioner is an alien.

“(ii) Whether the petitioner was previously ordered removed or deported, or excluded.

“(iii) Whether the petitioner has since illegally entered the United States.
“(C) DEADLINES FOR BRINGING ACTIONS.—Any action instituted under this para-
graph must be filed no later than 60 days after
the date the challenged section, regulation, di-
rective, guideline, or procedure described in
clause (i) or (ii) of subparagraph (A) is first
implemented.

“(3) INDIVIDUAL DETERMINATIONS UNDER
SECTION 242(a).—Judicial review of determinations
under section 241(a)(5) is available in an action
under subsection (a) of this section, but shall be lim-
ited to determinations of—

“(A) whether the petitioner is an alien;

“(B) whether the petitioner was previously
ordered removed, deported, or excluded; and

“(C) whether the petitioner has since ille-
gally entered the United States.

“(4) SINGLE ACTION.—A person who files an
action under paragraph (2) may not file a separate
action under paragraph (3). A person who files an
action under paragraph (3) may not file an action
under paragraph (2).”.

(e) EFFECTIVE DATE.—The amendments made by
subsections (a) and (b) shall take effect as if enacted on
April 1, 1997, and shall apply to all orders reinstated on
or after that date by the Secretary of Homeland Security (or by the Attorney General prior to March 1, 2003), regardless of the date of the original order.

SEC. 804. WITHHOLDING OF REMOVAL.

(a) IN GENERAL.—Section 241(b)(3) of the Immigration and Nationality Act (8 U.S.C. 1231(b)(3)) is amended—

(1) in subparagraph (A), by adding at the end the following: “The burden of proof is on the alien to establish that the alien’s life or freedom would be threatened in that country, and that race, religion, nationality, membership in a particular social group, or political opinion would be at least one central reason for such threat.”; and

(2) in subparagraph (C), by striking “In determining whether an alien has demonstrated that the alien’s life or freedom would be threatened for a reason described in subparagraph (A)” and inserting “For purposes of this paragraph”.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect as if included in the enactment of section 101(c) of the REAL ID Act of 2005 (division B of Public Law 109–13).
SEC. 805. CERTIFICATE OF REVIEWABILITY.

(a) ALIEN’S BRIEF.—Section 242(b)(3)(C) of the Immigration and Nationality Act (8 U.S.C. 1252(b)(3)(C)) is amended to read as follows:

“(C) ALIEN’S BRIEF.—The alien shall serve and file a brief in connection with a petition for judicial review not later than 40 days after the date on which the administrative record is available. The court may not extend this deadline except upon motion for good cause shown. If an alien fails to file a brief within the time provided in this paragraph, the court shall dismiss the appeal unless a manifest injustice would result.”.

(b) CERTIFICATE OF REVIEWABILITY.—Section 242(b)(3) of such Act (8 U.S.C. 1252 (b)(3)) is amended by adding at the end the following new subparagraphs:

“(D) CERTIFICATE.—

“(i) After the alien has filed the alien’s brief, the petition for review shall be assigned to a single court of appeals judge.

“(ii) Unless that court of appeals judge or a circuit justice issues a certificate of reviewability, the petition for review shall be denied and the government shall not file a brief.
“(iii) A certificate of reviewability may issue under clause (ii) only if the alien has made a substantial showing that the petition for review is likely to be granted.

“(iv) The court of appeals judge or circuit justice shall complete all action on such certificate, including rendering judgment, not later than 60 days after the date on which the judge or circuit justice was assigned the petition for review, unless an extension is granted under clause (v).

“(v) The judge or circuit justice may grant, on the judge’s or justice’s own motion or on the motion of a party, an extension of the 60-day period described in clause (iv) if—

“(I) all parties to the proceeding agree to such extension; or

“(II) such extension is for good cause shown or in the interests of justice, and the judge or circuit justice states the grounds for the extension with specificity.

“(vi) If no certificate of reviewability is issued before the end of the period de-
scribed in clause (iv), including any exten-
sion under clause (v), the petition for re-
view shall be deemed denied, any stay or
injunction on petitioner’s removal shall be
dissolved without further action by the
court or the government, and the alien
may be removed.

“(vii) If a certificate of reviewability is
issued under clause (ii), the Government
shall be afforded an opportunity to file a
brief in response to the alien’s brief. The
alien may serve and file a reply brief not
later than 14 days after service of the Gov-
ernment’s brief, and the court may not ex-
tend this deadline except upon motion for
good cause shown.

“(E) NO FURTHER REVIEW OF THE COURT
OF APPEALS JUDGE’S DECISION NOT TO ISSUE
A CERTIFICATE OF REVIEWABILITY.—The sin-
gle court of appeals judge’s decision not to
issue a certificate of reviewability, or the denial
of a petition under subparagraph (D)(vi), shall
be the final decision for the court of appeals
and shall not be reconsidered, reviewed, or re-
versed by the court of appeals through any mechanism or procedure.”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to petitions filed on or after the date that is 60 days after the date of the enactment of this Act.

SEC. 806. WAIVER OF RIGHTS IN NONIMMIGRANT VISA ISSUANCE.

(a) IN GENERAL.—Section 221(a) of the Immigration and Nationality Act (8 U.S.C. 1201(a)) is amended by adding at the end the following new paragraph:

“(3) An alien may not be issued a nonimmigrant visa unless the alien has waived any right—

“(A) to review or appeal under this Act of an immigration officer’s determination as to the inadmissibility of the alien at the port of entry into the United States; or

“(B) to contest, other than on the basis of an application for asylum, any action for removal of the alien.”.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to visas issued on or after the date that is 90 days after the date of the enactment of this Act.
SEC. 807. CLARIFICATION OF JURISDICTION ON REVIEW.

(a) Review of Discretionary Determinations.—Section 242(a)(2)(B) of the Immigration and Nationality Act (8 U.S.C. 1252(a)(2)(B)) is amended—

(1) by inserting before “no court” the following: “and regardless of whether the individual determination, decision, or action is made in removal proceedings,”;

(2) in clause (i), by striking “any judgment” and inserting “any individual determination”; and

(3) in clause (ii)—

(A) by inserting “discretionary” after “any other”; 

(B) by striking “the authority for which is specified under this title to be in the discretion of the Attorney General or the Secretary of Homeland Security,” and inserting “under this title or the regulations promulgated hereunder,”; and

(C) by striking the period at the end and inserting the following: “, irrespective of whether such decision or action is guided or informed by standards, regulatory or otherwise.”.

(b) Review of Orders Against Criminal Aliens.—Section 242(a)(2)(C) of the Immigration and Nationality Act (8 U.S.C. 1252(a)(2)(C)) is amended by
inserting after “of removal” the following: “(irrespective of whether relief or protection was denied on the basis of the alien’s having committed a criminal offense)”.

(c) Effective Date.—The amendments made by this section shall apply to petitions for review that are pending on or after the date of the enactment of this Act.

SEC. 808. FEES AND EXPENSES IN JUDICIAL PROCEEDINGS.

(a) In General.—Section 242 of the Immigration and Nationality Act (8 U.S.C. 1252) is amended by adding at the end the following new subsection:

“(i) Notwithstanding any other provision of law, a court shall not award fees or other expenses to an alien based upon the alien’s status as a prevailing party in any proceedings relating to an order of removal issued under this Act, unless the court of appeals concludes that the Attorney General’s determination that the alien was removable under section 212 or 237 was not substantially justified.”.

(b) Effective Date.—The amendment made by subsection (a) shall apply to fees or other expenses awarded on or after the date of the enactment of this Act.
TITLE IX—PRESCREENING OF AIR PASSENGERS

SEC. 901. IMMEDIATE INTERNATIONAL PASSENGER PRESCREENING PILOT PROGRAM.

(a) Pilot Program.—Not later than 90 days after the date of enactment of this Act, the Secretary of Homeland Security shall initiate a pilot program to evaluate the use of automated systems for the immediate prescreening of passengers on flights in foreign air transportation, as defined by section 40102 of title 49, United States Code, that are bound for the United States.

(b) Requirements.—At a minimum, with respect to a passenger on a flight described in subsection (a) operated by an air carrier or foreign air carrier, the automated systems evaluated under the pilot program shall—

(1) compare the passenger’s information against the integrated and consolidated terrorist watchlist maintained by the Federal Government and provide the results of the comparison to the air carrier or foreign air carrier before the passenger is permitted to board the flight;

(2) provide functions similar to the advanced passenger information system established under section 431 of the Tariff Act of 1930 (19 U.S.C. 1431); and
(3) make use of machine-readable data elements on passports and other travel and entry documents in a manner consistent with international standards.

(c) OPERATION.—The pilot program shall be conducted—

(1) in not fewer than 2 foreign airports; and

(2) in collaboration with not fewer than one air carrier at each airport participating in the pilot program.

(d) EVALUATION OF AUTOMATED SYSTEMS.—In conducting the pilot program, the Secretary shall evaluate not more than 3 automated systems. One or more of such systems shall be commercially available and currently in use to prescreen passengers.

(e) PRIVACY PROTECTION.—The Secretary shall ensure that the passenger data is collected under the pilot program in a manner consistent with the standards established under section 552a of title 5, United States Code.

(f) DURATION.—The Secretary shall conduct the pilot program for not fewer than 90 days.

(g) PASSENGER DEFINED.—In this section, the term “passenger” includes members of the flight crew.

(h) REPORT.—Not later than 30 days after the date of completion of the pilot program, the Secretary shall
submit to the Committee on Homeland Security of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report containing the following:

(1) An assessment of the technical performance of each of the tested systems, including the system’s accuracy, scalability, and effectiveness with respect to measurable factors, including, at a minimum, passenger throughput, the rate of flight diversions, and the rate of false negatives and positives.

(2) A description of the provisions of each tested system to protect the civil liberties and privacy rights of passengers, as well as a description of the adequacy of an immediate redress or appeals process for passengers denied authorization to travel.

(3) Cost projections for implementation of each tested system, including—

(A) projected costs to the Department of Homeland Security; and

(B) projected costs of compliance to air carriers operating flights described in subsection (a).

(4) A determination as to which tested system is the best-performing and most efficient system to ensure immediate prescreening of international pas-
sengers. Such determination shall be made after con-
sultation with individuals in the private sector hav-
ing expertise in airline industry, travel, tourism, pri-

(5) A plan to fully deploy the best-performing
and most efficient system tested by not later than

TITLE X—FENCING AND OTHER
BORDER SECURITY IMPROVE-
MENTS

SEC. 1001. FINDINGS.
The Congress finds the following:

(1) Hundreds of people die crossing our inter-
national border with Mexico every year.

(2) Illegal narcotic smuggling along the South-
west border of the United States is both dangerous
and prolific.

(3) Over 155,000 non-Mexican individuals were
apprehended trying to enter the United States along
the Southwest border in fiscal year 2005.

(4) The number of illegal entrants into the
United States through the Southwest border is esti-
mated to exceed one million people a year.
SEC. 1002. CONSTRUCTION OF FENCING AND SECURITY IMPROVEMENTS IN BORDER AREA FROM PACIFIC OCEAN TO GULF OF MEXICO.

Section 102(b) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Public Law 104–208; 8 U.S.C. 1103 note) is amended—

(1) in the subsection heading by striking “NEAR SAN DIEGO, CALIFORNIA”; and

(2) by amending paragraph (1) to read as follows:

“(1) Security features.—

“(A) Reinforced fencing.—In carrying out subsection (a), the Secretary of Homeland Security shall provide for least 2 layers of reinforced fencing, the installation of additional physical barriers, roads, lighting, cameras, and sensors—

“(i) extending from 10 miles west of the Tecate, California, port of entry to 10 miles east of the Tecate, California, port of entry;

“(ii) extending from 10 miles west of the Calexico, California, port of entry to 5 miles east of the Douglas, Arizona, port of entry;
“(iii) extending from 5 miles west of the Columbus, New Mexico, port of entry to 10 miles east of El Paso, Texas;

“(iv) extending from 5 miles northwest of the Del Rio, Texas, port of entry to 5 miles southeast of the Eagle Pass, Texas, port of entry; and

“(v) extending 15 miles northwest of the Laredo, Texas, port of entry to the Brownsville, Texas, port of entry.

“(B) Priority Areas.—With respect to the border described—

“(i) in subparagraph (A)(ii), the Secretary shall ensure that an interlocking surveillance camera system is installed along such area by May 30, 2006 and that fence construction is completed by May 30, 2007; and

“(ii) in subparagraph (A)(v), the Secretary shall ensure that fence construction from 15 miles northwest of the Laredo, Texas port of entry to 15 southeast of the Laredo, Texas port of entry is completed by December 31, 2006.
“(C) EXCEPTION.—If the topography of a specific area has an elevation grade that exceeds 10%, the Secretary may use other means to secure such area, including the use of surveillance and barrier tools.”.

SEC. 1003. NORTHERN BORDER STUDY.

(a) IN GENERAL.—The Secretary of Homeland Security shall conduct a study on the construction of a state-of-the-art barrier system along the northern international land and maritime border of the United States and shall include in the study—

(1) the necessity of constructing such a system; and

(2) the feasibility of constructing the system.

(b) REPORT.—Not later than one year after the date of the enactment of this Act, the Secretary of Homeland Security shall report to the Congress on the study described in subsection (a).

SEC. 1004. SENSE OF THE CONGRESS.

It is the sense of the Congress that the Secretary of Homeland Security shall take all necessary steps to secure the Southwest international border for the purpose of saving lives, stopping illegal drug trafficking, and halting the flow of illegal entrants into the United States.
TITLE XI—SECURITY AND
FAIRNESS ENHANCEMENT

SEC. 1101. SHORT TITLE.

This title may be cited as—

(1) the “Security and Fairness Enhancement for America Act of 2005”; or

(2) the “SAFE for America Act”.

SEC. 1102. ELIMINATION OF DIVERSITY IMMIGRANT PROGRAM.

(a) WORLDWIDE LEVEL OF DIVERSITY IMMIGRANTS.—Section 201 of the Immigration and Nationality Act (8 U.S.C. 1151) is amended—

(1) in subsection (a)—

(A) by inserting “and” at the end of paragraph (1);

(B) by striking “; and” at the end of paragraph (2) and inserting a period; and

(C) by striking paragraph (3); and

(2) by striking subsection (e).

(b) ALLOCATION OF DIVERSITY IMMIGRANT VISAS.—

Section 203 of such Act (8 U.S.C. 1153) is amended—

(1) by striking subsection (e);

(2) in subsection (d), by striking “(a), (b), or (c),” and inserting “(a) or (b),”;
(3) in subsection (e), by striking paragraph (2) and redesignating paragraph (3) as paragraph (2);
(4) in subsection (f), by striking "(a), (b), or (c)" and inserting "(a) or (b)"; and
(5) in subsection (g), by striking "(a), (b), and (c)" and inserting "(a) and (b)".

(c) PROCEDURE FOR GRANTING IMMIGRANT STATUS.—Section 204 of such Act (8 U.S.C. 1154) is amend-
ed—
(1) by striking subsection (a)(1)(I); and
(2) in subsection (e), by striking "(a), (b), or (c)" and inserting "(a) or (b)".
(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on October 1, 2006.

TITLE XII—OATH OF RENUNCIATION AND ALLEGIANCE

SEC. 1201. OATH OF RENUNCIATION AND ALLEGIANCE.

(a) IN GENERAL.—Section 337(a) of the Immigration and Nationality Act (8 U.S.C. 1448(a)) is amended by inserting after the fourth sentence the following: “The oath referred to in this section shall be the oath provided for in paragraph (a) or (b) of section 337.1 of title 8, Code of Federal Regulations, as in effect on April 1, 2005.”.

(b) NOTICE TO FOREIGN EMBASSIES.—Upon the naturalization of a new citizen, the Secretary of Homeland
Security, in cooperation with the Secretary of State, shall notify the embassy of the country of which the new citizen was a citizen or subject that such citizen has—

(1) renounced allegiance to that foreign country; and

(2) sworn allegiance to the United States.

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date that is 6 months after the date of the enactment of this Act.

TITLE XIII—ELIMINATION OF CORRUPTION AND PREVENTION OF ACQUISITION OF IMMIGRATION BENEFITS THROUGH FRAUD

SEC. 1301. SHORT TITLE.

This title may be cited as the “Taking Action to Keep Employees Accountable in Immigration Matters Act of 2005” or the “TAKE AIM Act of 2005”.

SEC. 1302. FINDINGS.

Congress finds the following:

(1) The mission of United States Citizenship and Immigration Services (USCIS) is to faithfully execute the immigration laws enacted by Congress and to ensure that only those aliens who are eligible under such laws and who do not pose a risk to the
United States or its citizens or lawful residents are able to obtain permission to remain in the United States.

(2) Only United States citizens have an absolute right to be in the United States; for all others, permission to enter and reside here, either as non-immigrants or immigrants, is a privilege that is conditioned on following the rules of one’s admission and stay.

(3) It is important that United States Citizenship and Immigration Services, like all other Federal agencies that come into close contact with the public their customers.

(4) Immigration benefits fraud has become endemic. It undermines the rule of law and threatens national security, and so must be addressed aggressively and consistently.

(5) Internal corruption also threatens national security and erodes the integrity of the immigration system. In order to restore integrity and credibility to the system, the backlog of complaints against United States Citizenship and Immigration Services employees must be cleared by experienced investigators as expeditiously as possible without compromising the quality of investigations.
(6) In separating customs and border protection and immigration and customs enforcement from United States Citizenship and Immigration Services, Congress did not intend to wholly eliminate all law enforcement functions within the latter, nor is it possible for United States citizenship and immigration services to achieve its mission without a law enforcement function. The attempt to do so has produced the current abysmal results. Thus, it is imperative that United States Citizenship and Immigration Services embrace the critical law enforcement function especially the internal audit function.

SEC. 1303. STRUCTURE OF THE OFFICE OF SECURITY AND INVESTIGATIONS.

The Director of the Office of Security and Investigations shall report directly to the Director of United States Citizenship and Immigration Services.

SEC. 1304. AUTHORITY OF THE OFFICE OF SECURITY AND INVESTIGATIONS TO INVESTIGATE INTERNAL CORRUPTION.

(a) Authority.—In addition to the authority otherwise provided by this title, the Director of the Office of Security and Investigations, in carrying out the duties of the Office, has sole authority—
(1) to receive, process, dispose of administratively, and investigate any criminal or noncriminal violations of the Immigration and Nationality Act or title 18, United States Code, that are alleged to have been committed by any officer, agent, employee, or contract worker of United States Citizenship and Immigration Services, and that are referred to United States Citizenship and Immigration Services by the Office of the Inspector General of the Department of Homeland Security;

(2) to ensure that all complaints alleging such violations are handled and stored in the same manner as sensitive but unclassified materials;

(3) to have access to all records, reports, audits, reviews, documents, papers, recommendations, or other material available to United States Citizenship and Immigration Services which relate to programs and operations with respect to which the Director has responsibilities under this title;

(4) to request such information or assistance as may be necessary for carrying out the duties and responsibilities of the Office from any Federal, State, or local governmental agency or unit thereof;

(5) to require by subpoena the production of all information, documents, reports, answers, records,
accounts, papers, and other data and documentary evidence necessary in the performance of the functions assigned to the Office of Security and Investigations, which subpoena, in the case of contumacy or refusal to obey, shall be enforceable by order of any appropriate United States district court (except that procedures other than subpoenas shall be used by the Director to obtain documents and information from Federal agencies);

(6) to administer to or take from any person an oath, affirmation, or affidavit, whenever necessary in the performance of the functions assigned to the Office of Security and Investigations, which oath, affirmation, or affidavit when administered or taken by or before an agent of the Office of Security and Investigations designated by the Director shall have the same force and effect as if administered or taken by or before an officer having a seal;

(7) to have direct and prompt access to the head of United States Citizenship and Immigration Services when necessary for any purpose pertaining to the performance of functions and responsibilities of the Office of Security and Investigations;

(8) to select, appoint, and employ such officers and employees as may be necessary for carrying out
the functions, powers, and duties of the Office of Security and Investigations subject to the provisions of title 5, United States Code, governing appointments in the competitive service, and the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates;

(9) to obtain services as authorized by section 3109 of title 5, United States Code, at daily rates not to exceed the equivalent rate prescribed for grade GS–15 of the General Schedule by section 5332 of title 5, United States Code; and

(10) to the extent and in such amounts as may be provided in advance by immigration fee accounts or appropriations Acts, to enter into contracts and other arrangements for audits, studies, analyses, and other services with public agencies and with private persons, and to make such payments as may be necessary to carry out the provisions of this title.

(b)(1) Upon request of the Director for information or assistance under subsection (a)(4), the head of any Federal agency involved shall, insofar as is practicable and not in contravention of any existing statutory restriction or regulation of the Federal agency from which the infor-
information is requested, furnish to such Director, or to an
authorized designee, such information or assistance.

(2) Whenever information or assistance requested
under subsection (a)(3) or (a)(4) is, in the judgment of
the Director, unreasonably refused or not provided, the
Director shall report the circumstances to the Director of
United States Citizenship and Immigration Services with-
out delay.

(e) The Director of United States Citizenship and
Immigration Services shall provide the Office of Security
and Investigations with appropriate and adequate office
space at central and field office locations of United States
Citizenship and Immigration Services, together with such
equipment, office supplies, and communications facilities
and services as may be necessary for the operation of such
offices, and shall provide necessary maintenance services
for such offices and the equipment and facilities located
therein.

(d)(1) In addition to the authority otherwise provided
by this title, the Director, the Deputy Director, the Assist-
ant Director of Security Operations, the Assistant Direc-
tor of Special Investigations, all 1811-series criminal in-
vestigators, certain 1801-series investigative management
specialists, and security specialists supervised by such as-
sistant directors may be authorized by the Secretary of Homeland Security to—

(A) carry a firearm while engaged in official duties as authorized under this title or other statute, or as expressly authorized by the Secretary;

(B) make an arrest without a warrant while engaged in official duties as authorized under this title or other statute, or as expressly authorized by the Secretary, for any offense against the United States committed in the presence of such Director, Assistant Director, or designee, or for any felony cognizable under the laws of the United States if such Director, Assistant Director, or designee has reasonable grounds to believe that the person to be arrested has committed or is committing such felony; and

(C) seek and execute warrants for arrest, search of a premises, or seizure of evidence issued under the authority of the United States upon probable cause to believe that a violation has been committed.

(2) The Secretary shall promulgate, and revise as appropriate, guidelines which shall govern the exercise of the law enforcement powers established under paragraph (1).
(3)(A) Powers authorized for the Director under paragraph (1) may be rescinded or suspended upon a determination by the Secretary that the exercise of authorized powers by that Director has not complied with the guidelines promulgated by the Secretary under paragraph (2).

(B) Powers authorized to be exercised by any individual under paragraph (1) may be rescinded or suspended with respect to that individual upon a determination by the Secretary that such individual has not complied with guidelines promulgated by the Secretary under paragraph (2).

(4) A determination by the Secretary under paragraph (3) shall not be reviewable in or by any court.

(5) No provision of this subsection shall limit the exercise of law enforcement powers established under any other statutory authority.

SEC. 1305. AUTHORITY OF THE OFFICE OF SECURITY AND INVESTIGATIONS TO DETECT AND INVESTIGATE IMMIGRATION BENEFITS FRAUD.

The Office of Security and Investigations of United States Citizenship and Immigration Services shall have authority—

(1) to conduct fraud detection operations, including data mining and analysis;
(2) to investigate any criminal or noncriminal allegations of violations of the Immigration and Nationality Act or title 18, United States Code, that Immigration and Customs Enforcement declines to investigate;

(3) to turn over to a United States Attorney for prosecution evidence that tends to establish such violations; and

(4) to engage in information sharing, partnerships, and other collaborative efforts with any—

(A) Federal, State, or local law enforcement entity;

(B) foreign partners; or

(C) entity within the intelligence community (as defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

SEC. 1306. INCREASE IN FULL-TIME OFFICE OF SECURITY AND INVESTIGATIONS PERSONNEL.

(a) INCREASE IN GS–1811 SERIES CRIMINAL INVESTIGATORS.—(1) In each of fiscal years 2007 through 2010, the Director of the Office of Security and Investigations shall, subject to the availability of security fees described in section 910 of this title, increase by not less than 100 the number of full-time, active-duty GS–1811 series criminal Discussion draft 10 investigators, along
with support personnel and equipment, within the Office of Security and Investigations above the number of such positions for which funds were made available during the preceding fiscal year.

(2) Division of Duties.—

(A) Internal Affairs.—No fewer than one-third of the criminal investigators, and support personnel, hired under paragraph (1) shall be assigned to investigate allegations described in paragraph (1) of section 904(a) of this title;

(B) Benefits Fraud.—The remaining criminal investigators, and support personnel, hired under paragraph (1) shall be assigned to investigate allegations described in section 905 of this title.

(b) Increase in GS–1801 Series Investigation and Compliance Officers.—(1) Subject to the availability of security fees described in section 910 of this title, the Director of the Office of Security and Investigations shall by fiscal year 2008 increase by not less than 150 the number of full-time, active-duty GS–1801 series investigation and compliance officers, along with support personnel and equipment, within the Office of Security and Investigations above the number of such positions for which funds were made available during fiscal year 2006.

(2) Division of Duties.—
(A) INTERNAL AFFAIRS.—No fewer than one-third of the investigation and compliance officers, and support personnel, hired under paragraph (1) shall be assigned to investigate allegations described in paragraph (1) of section 904(a) of this title;

(B) BENEFITS FRAUD.—The remaining investigation and compliance officers, and support personnel, hired under paragraph (1) shall be assigned to investigate allegations described in section 905 of this title.

(c) INCREASE IN GS–0132 SERIES INTELLIGENCE RESEARCH SPECIALISTS.—(1) Subject to the availability of security fees described in section 910 of this title, the Director of the Office of Security and Investigations shall by fiscal year 2008 increase by not less than 150 the number of full-time, active-duty GS–0132 series intelligence research specialists, along with support personnel and equipment, within the Office of Security and Investigations above the number of such positions for which funds were made available during fiscal year 2006.

(2) DIVISION OF DUTIES.—

(A) INTERNAL AFFAIRS.—No fewer than one-third of the investigation and compliance officers, and support personnel, hired under paragraph (1)
shall be assigned to investigate allegations described
in paragraph (1) of section 904(a) of this title;

(B) Benefits Fraud.—The remaining inves-
tigation and compliance officers, and support per-
sonnel, hired under paragraph (1) shall be assigned
to investigate allegations described in section 905 of
this title.

SEC. 1307. ANNUAL REPORT.

The Director of the Office of Security and Investiga-
tions shall annually submit to Congress a report detailing
the activities of the Office. The report shall include data
on the following:

(1) The number of investigations the Office of
Security and Investigations began, completed, and
turned over to a United States Attorney for prosecu-
tion during the past 12 months.

(2) The types of allegations investigated by the
Office of Security and Investigations during the past
12 months, including both the allegations of mis-
conduct by employees of United States Citizenship
and Immigration Services and allegations of immi-
gration benefits fraud.

(3) The disposition of all investigations con-
ducted by the Office of Security and Investigations
during the past 12 months.
(4) The number, if any, of allegations pending at the end of the 12-month period according to the type of allegation, the grade level of the employee, if applicable, along with an assessment of the resources the Office of Security and Investigations would need, if any, to remain current with new allegations received.

SEC. 1308. INVESTIGATIONS OF FRAUD TO PRECEDE IMMIGRATION BENEFITS GRANT.

Section 103 of the Immigration and Nationality Act (8 U.S.C. 1103) is amended by adding at the end the following:

“(j) Notwithstanding any other provision of law, the Secretary of Homeland Security, the Attorney General, or any court may not—

“(1) grant or order the grant of adjustment of status to that of an alien lawfully admitted for permanent residence,

“(2) grant or order the grant of any other status, relief, protection from removal, or other benefit under the immigration laws, or

“(3) issue any documentation evidencing or related to such grant by the Attorney General, the Secretary, or any court,
until any suspected or alleged fraud relating to the benefit application has been fully investigated and found to be unsubstantiated.”.

SEC. 1309. ELIMINATION OF THE FRAUD DETECTION AND NATIONAL SECURITY OFFICE.

Not later than 30 days following the date of enactment of this title, the Secretary of Homeland Security shall eliminate the Fraud Detection and National Security Office of United States Citizenship and Immigration Services and transfer all authority of such office to the Office of Security and Investigations.

SEC. 1310. SECURITY FEE.

Section 286(d) of the Immigration and Nationality Act (8 U.S.C. 1356(d)) is amended by inserting “(1)” before “monies” and adding at the end the following:

“(2) In addition to any other fee authorized by law, the Secretary of Homeland Security shall charge each alien who files an application for adjustment of status or an extension of stay a security fee of $10, which shall be made available to the Office of Security and Investigations to conduct investigations into allegations of internal corruption and benefits fraud.

“(3) In addition to any other fee authorized by law, the Secretary of State shall charge each alien who files an application for an immigrant or nonimmigrant visa a
security fee of $10, which shall be made available to the
Office of Security and Investigations to conduct investiga-
tions into allegations of internal corruption and benefits
fraud.

“(4) Any fees collected under paragraphs (2) and (3)
that are in excess of the operating budget of the Office
of Security and Investigations shall be made available to
Immigration and Customs Enforcement for the sole pur-
pose of investigating immigration benefits fraud referred
to it by United States Citizenship and Immigration Serv-
ices.”.

Passed the House of Representatives December 16,
2005.

Attest:

Clerk.
109TH CONGRESS
1ST SESSION
H. R. 4437
AN ACT
To amend the Immigration and Nationality Act to
strengthen enforcement of the immigration laws,
to enhance border security, and for other purposes.

AN ACT
H. R. 4437
109TH CONGRESS