

109<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 4437

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

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## IN THE HOUSE OF REPRESENTATIVES

DECEMBER 6, 2005

Mr. SENSENBRENNER (for himself, Mr. KING of New York, Mr. SMITH of Texas, Ms. FOXX, Mr. DANIEL E. LUNGREN of California, Mr. ISSA, and Mr. GARY G. MILLER of California) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Homeland Security, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

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

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

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Border Protection, Antiterrorism, and Illegal Immigra-  
6 tion Control Act of 2005”.

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

- Sec. 1. Short title; table of contents.  
 Sec. 2. State defined.

TITLE I—SECURING UNITED STATES BORDERS

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

TITLE II—COMBATTING ALIEN SMUGGLING AND ILLEGAL ENTRY  
 AND PRESENCE

- Sec. 201. Definition of aggravated felony.  
 Sec. 202. Alien smuggling and related offenses.  
 Sec. 203. Improper entry by, or presence of, aliens.  
 Sec. 204. Reentry of removed aliens.  
 Sec. 205. Mandatory sentencing ranges for persons aiding or assisting certain  
 reentering aliens.  
 Sec. 206. Prohibiting carrying or using a firearm during and in relation to an  
 alien smuggling crime.  
 Sec. 207. Clarifying changes.  
 Sec. 208. Voluntary departure reform.  
 Sec. 209. Deterring aliens ordered removed from remaining in the United  
 States unlawfully and from unlawfully returning to the United  
 States after departing voluntarily.

TITLE III—BORDER SECURITY COOPERATION AND  
 ENFORCEMENT

- Sec. 301. Joint strategic plan for United States border surveillance and sup-  
 port.  
 Sec. 302. Border security on protected land.  
 Sec. 303. Border security threat assessment and information sharing test and  
 evaluation exercise.  
 Sec. 304. Border Security Advisory Committee.

- Sec. 305. Permitted use of Homeland Security grant funds for border security activities.
- Sec. 306. Center of excellence for border security.
- Sec. 307. Sense of Congress regarding cooperation with Indian Nations.

#### TITLE IV—DETENTION AND REMOVAL

- Sec. 401. Mandatory detention for aliens apprehended at or between ports of entry.
- Sec. 402. Expansion and effective management of detention facilities.
- Sec. 403. Enhancing transportation capacity for unlawful aliens.
- Sec. 404. Denial of admission to nationals of country denying or delaying accepting alien.
- Sec. 405. Report on financial burden of repatriation.
- Sec. 406. Training program.
- Sec. 407. Expedited removal.

#### TITLE V—EFFECTIVE ORGANIZATION OF BORDER SECURITY AGENCIES

- Sec. 501. Enhanced border security coordination and management.
- Sec. 502. Office of Air and Marine Operations.
- Sec. 503. Shadow Wolves transfer.

#### TITLE VI—TERRORIST AND CRIMINAL ALIENS

- Sec. 601. Removal of terrorist aliens.
- Sec. 602. Detention of dangerous aliens.
- Sec. 603. Increase in criminal penalties.
- Sec. 604. Precluding admissibility of aggravated felons and other criminals.
- Sec. 605. Precluding refugee or asylee adjustment of status for aggravated felonies.
- Sec. 606. Removing drunk drivers.
- Sec. 607. Designated county law enforcement assistance program.
- Sec. 608. Rendering inadmissible and deportable aliens participating in criminal street gangs; detention; ineligibility from protection from removal and asylum.
- Sec. 609. Naturalization reform.
- Sec. 610. Expedited removal for aliens inadmissible on criminal or security grounds.
- Sec. 611. Technical correction for effective date in change in inadmissibility for terrorists under REAL ID Act.
- Sec. 612. Bar to good moral character.
- Sec. 613. Strengthening definitions of “aggravated felony” and “conviction”.
- Sec. 614. Deportability for criminal offenses.

#### TITLE VII—EMPLOYMENT ELIGIBILITY VERIFICATION

- Sec. 701. Employment eligibility verification system.
- Sec. 702. Employment eligibility verification process.
- Sec. 703. Expansion of employment eligibility verification system to previously hired individuals and recruiting and referring.
- Sec. 704. Basic pilot program.
- Sec. 705. Hiring halls.
- Sec. 706. Penalties.
- Sec. 707. Report on Social Security card-based employment eligibility verification.

Sec. 708. Effective date.

TITLE VIII—IMMIGRATION LITIGATION ABUSE REDUCTION

Sec. 801. Board of Immigration Appeals removal order authority.

Sec. 802. Judicial review of visa revocation.

Sec. 803. Reinstatement.

Sec. 804. Withholding of removal.

Sec. 805. Certificate of reviewability.

Sec. 806. Waiver of rights in nonimmigrant visa issuance.

1 **SEC. 2. STATE DEFINED.**

2 In titles I, III, IV, and V of this Act, the term  
3 “State” has the meaning given it in section 2(14) of the  
4 Homeland Security Act of 2002 (6 U.S.C. 101(14)).

5 **TITLE I—SECURING UNITED**  
6 **STATES BORDERS**

7 **SEC. 101. ACHIEVING OPERATIONAL CONTROL ON THE**  
8 **BORDER.**

9 (a) IN GENERAL.—The Secretary of Homeland Secu-  
10 rity shall take all actions the Secretary determines nec-  
11 essary and appropriate to achieve and maintain oper-  
12 ational control over the entire international land and mari-  
13 time borders of the United States, to include the fol-  
14 lowing—

15 (1) systematic surveillance of the international  
16 land and maritime borders of the United States  
17 through more effective use of personnel and tech-  
18 nology, such as unmanned aerial vehicles, ground-  
19 based sensors, satellites, radar coverage, and cam-  
20 eras;

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

7           (3) hiring and training as expeditiously as possible  
8 additional Border Patrol agents authorized  
9 under section 5202 of the Intelligence Reform and  
10 Terrorism Prevention Act of 2004 (Public Law 108–  
11 458); and

12           (4) increasing deployment of United States  
13 Customs and Border Protection personnel to areas  
14 along the international land and maritime borders of  
15 the United States where there are high levels of un-  
16 lawful entry by aliens and other areas likely to be  
17 impacted by such increased deployment.

18           (b) OPERATIONAL CONTROL DEFINED.—In this sec-  
19 tion, the term “operational control” means the prevention  
20 of the entry into the United States of terrorists, other un-  
21 lawful aliens, instruments of terrorism, narcotics, and  
22 other contraband.

23 **SEC. 102. NATIONAL STRATEGY FOR BORDER SECURITY.**

24           (a) SURVEILLANCE PLAN.—Not later than six  
25 months after the date of the enactment of this Act, the

1 Secretary of Homeland Security shall submit to the appro-  
2 priate congressional committees a comprehensive plan for  
3 the systematic surveillance of the international land and  
4 maritime borders of the United States. The plan shall in-  
5 clude the following:

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

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

11 (3) A description of how the United States Cus-  
12 toms and Border Protection is working, or is ex-  
13 pected to work, with the Directorate of Science and  
14 Technology of the Department of Homeland Secu-  
15 rity to identify and test surveillance technology.

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

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

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

23 (7) A description of how the Department of  
24 Homeland Security is working with the Federal  
25 Aviation Administration on safety and airspace con-

1 control issues associated with the use of unmanned aer-  
2 ial vehicles in the National Airspace System.

3 (b) NATIONAL STRATEGY FOR BORDER SECURITY.—

4 Not later than one year after the date of the enactment  
5 of this Act, the Secretary of Homeland Security, in con-  
6 sultation with the heads of other appropriate Federal  
7 agencies, shall submit to the appropriate congressional  
8 committees a National Strategy for Border Security to  
9 achieve operational control over all ports of entry into the  
10 United States and the international land and maritime  
11 borders of the United States. The Secretary shall update  
12 the Strategy as needed and shall submit to the Committee  
13 on Homeland Security of the House of Representatives,  
14 not later than 30 days after each such update, the updated  
15 Strategy. The National Strategy for Border Security shall  
16 include the following:

17 (1) The implementation timeline for the surveil-  
18 lance plan described in subsection (a).

19 (2) An assessment of the threat posed by ter-  
20 rorists and terrorist groups that may try to infiltrate  
21 the United States at points along the international  
22 land and maritime borders of the United States.

23 (3) A risk assessment of all ports of entry to  
24 the United States and all portions of the inter-

1 national land and maritime borders of the United  
2 States with respect to—

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

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

9 (4) An assessment of the most appropriate,  
10 practical, and cost-effective means of defending the  
11 international land and maritime borders of the  
12 United States against threats to security and illegal  
13 transit, including intelligence capacities, technology,  
14 equipment, personnel, and training needed to ad-  
15 dress security vulnerabilities.

16 (5) An assessment of staffing needs for all bor-  
17 der security functions, taking into account threat  
18 and vulnerability information pertaining to the bor-  
19 ders and the impact of new security programs, poli-  
20 cies, and technologies.

21 (6) A description of the border security roles  
22 and missions of Federal, State, regional, local, and  
23 tribal authorities, and recommendations with respect  
24 to how the Department of Homeland Security can  
25 improve coordination with such authorities, to enable



1 border security enforcement to be carried out in an  
2 efficient and effective manner.

3 (7) A prioritization of research and development  
4 objectives to enhance the security of the inter-  
5 national land and maritime borders of the United  
6 States.

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

12 (9) An assessment of additional detention facili-  
13 ties and bed space needed to detain unlawful aliens  
14 apprehended at United States ports of entry or  
15 along the international land borders of the United  
16 States in accordance with the National Strategy for  
17 Border Security required under this subsection and  
18 the mandatory detention requirement described in  
19 section 301 of this Act.

20 (10) A description of how the Secretary shall  
21 ensure accountability and performance metrics with-  
22 in the appropriate agencies of the Department of  
23 Homeland Security responsible for implementing the  
24 border security measures determined necessary upon

1 completion of the National Strategy for Border Se-  
2 curity.

3 (11) A timeline for the implementation of the  
4 additional security measures determined necessary  
5 as part of the National Strategy for Border Secu-  
6 rity, including a prioritization of security measures,  
7 realistic deadlines for addressing the security and  
8 enforcement needs, and resource estimates and allo-  
9 cations.

10 (c) CONSULTATION.—In creating the National Strat-  
11 egy for Border Security described in subsection (b), the  
12 Secretary shall consult with—

13 (1) State, local, and tribal authorities along the  
14 international land and maritime borders of the  
15 United States; and

16 (2) an appropriate cross-section of private sec-  
17 tor and nongovernmental organizations with relevant  
18 expertise.

19 (d) PRIORITY OF NATIONAL STRATEGY.—The Na-  
20 tional Strategy for Border Security described in subsection  
21 (b) shall be the controlling document for security and en-  
22 forcement efforts related to securing the international land  
23 and maritime borders of the United States.

24 (e) IMMEDIATE ACTION.—Nothing in this section  
25 shall be construed to relieve the Secretary of the responsi-

1 bility to take all actions necessary and appropriate to  
2 achieve and maintain operational control over the entire  
3 international land and maritime borders of the United  
4 States pursuant to section 101 of this Act or any other  
5 provision of law.

6 (f) REPORTING OF IMPLEMENTING LEGISLATION.—  
7 After submittal of the National Strategy for Border Secu-  
8 rity described in subsection (b) to the Committee on  
9 Homeland Security of the House of Representatives, such  
10 Committee shall promptly report to the House legislation  
11 authorizing necessary security measures based on its eval-  
12 uation of the National Strategy for Border Security.

13 (g) APPROPRIATE CONGRESSIONAL COMMITTEE.—  
14 For purposes of this title, the term “appropriate congres-  
15 sional committee” has the meaning given it in section 2(2)  
16 of the Homeland Security Act of 2002 (6 U.S.C. 101(2)).

17 **SEC. 103. IMPLEMENTATION OF CROSS-BORDER SECURITY**  
18 **AGREEMENTS.**

19 (a) IN GENERAL.—Not later than six months after  
20 the date of the enactment of this Act, the Secretary of  
21 Homeland Security shall submit to the appropriate con-  
22 gressional committees (as defined in section 102(g)) a re-  
23 port on the implementation of the cross-border security  
24 agreements signed by the United States with Mexico and

1 Canada, including recommendations on improving co-  
2 operation with such countries to enhance border security.

3 (b) UPDATES.—The Secretary shall regularly update  
4 the Committee on Homeland Security of the House of  
5 Representatives concerning such implementation.

6 **SEC. 104. BIOMETRIC DATA ENHANCEMENTS.**

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

9 (1) in consultation with the Attorney General,  
10 enhance connectivity between the IDENT and  
11 IAFIS fingerprint databases to ensure more expedi-  
12 tious data searches; and

13 (2) in consultation with the Secretary of State,  
14 collect ten fingerprints from each alien required to  
15 provide fingerprints during the alien's initial enroll-  
16 ment in the integrated entry and exit data system  
17 described in section 110 of the Illegal Immigration  
18 Reform and Immigrant Responsibility Act of 1996  
19 (8 U.S.C. 1221 note).

20 **SEC. 105. ONE FACE AT THE BORDER INITIATIVE.**

21 Not later than 90 days after the date of the enact-  
22 ment of this Act, the Secretary of Homeland Security shall  
23 submit to Congress a report—

1 (1) describing the tangible and quantifiable  
2 benefits of the One Face at the Border Initiative es-  
3 tablished by the Department of Homeland Security;

4 (2) identifying goals for and challenges to in-  
5 creased effectiveness of the One Face at the Border  
6 Initiative;

7 (3) providing a breakdown of the number of in-  
8 spectors who were—

9 (A) personnel of the United States Cus-  
10 toms Service before the date of the establish-  
11 ment of the Department of Homeland Security;

12 (B) personnel of the Immigration and Nat-  
13 uralization Service before the date of the estab-  
14 lishment of the Department;

15 (C) personnel of the Department of Agri-  
16 culture before the date of the establishment of  
17 the Department; or

18 (D) hired after the date of the establish-  
19 ment of the Department;

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

24 (5) outlining the steps taken by the Department  
25 to ensure that expertise is retained with respect to

1 customs, immigration, and agriculture inspection  
2 functions under the One Face at the Border Initia-  
3 tive.

4 **SEC. 106. SECURE COMMUNICATION.**

5 The Secretary of Homeland Security shall, as expedi-  
6 tiously as practicable, develop and implement a plan to  
7 ensure clear and secure two-way communication capabili-  
8 ties—

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

11 (2) between Border Patrol agents and their re-  
12 spective Border Patrol stations;

13 (3) between Border Patrol agents and residents  
14 in remote areas along the international land border  
15 who do not have mobile communications, as the Sec-  
16 retary determines necessary; and

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

20 **SEC. 107. PORT OF ENTRY INSPECTION PERSONNEL.**

21 In each of fiscal years 2007 through 2010, the Sec-  
22 retary of Homeland Security shall, subject to the avail-  
23 ability of appropriations, increase by not less than 250 the  
24 number of positions for full-time active duty port of entry  
25 inspectors. There are authorized to be appropriated to the

1 Secretary such sums as may be necessary for each such  
2 fiscal year to hire, train, equip, and support such addi-  
3 tional inspectors under this section.

4 **SEC. 108. CANINE DETECTION TEAMS.**

5 In each of fiscal years 2007 through 2011, the Sec-  
6 retary of Homeland Security shall, subject to the avail-  
7 ability of appropriations, increase by not less than 25 per-  
8 cent above the number of such positions for which funds  
9 were allotted for the preceding fiscal year the number of  
10 trained detection canines for use at United States ports  
11 of entry and along the international land and maritime  
12 borders of the United States.

13 **SEC. 109. SECURE BORDER INITIATIVE FINANCIAL AC-**  
14 **COUNTABILITY.**

15 (a) IN GENERAL.—The Inspector General of the De-  
16 partment of Homeland Security shall review each contract  
17 action related to the Department’s Secure Border Initia-  
18 tive having a value greater than \$20,000,000, to deter-  
19 mine whether each such action fully complies with applica-  
20 ble cost requirements, performance objectives, program  
21 milestones, inclusion of small, minority, and women-owned  
22 business, and timelines. The Inspector General shall com-  
23 plete a review under this subsection with respect to a con-  
24 tract action—

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

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

5           (b) REPORT BY INSPECTOR GENERAL.—Upon com-  
6           pletion of each review described in subsection (a), the In-  
7           spector General shall submit to the Secretary of Homeland  
8           Security a report containing the findings of the review,  
9           including findings regarding any cost overruns, significant  
10          delays in contract execution, lack of rigorous departmental  
11          contract management, insufficient departmental financial  
12          oversight, bundling that limits the ability of small business  
13          to compete, or other high risk business practices.

14          (c) REPORT BY SECRETARY.—Not later than 30 days  
15          after the receipt of each report required under subsection  
16          (b), the Secretary of Homeland Security shall submit to  
17          the appropriate congressional committees (as defined in  
18          section 102(g)) a report on the findings of the report by  
19          the Inspector General and the steps the Secretary has  
20          taken, or plans to take, to address the problems identified  
21          in such report.

22          (d) AUTHORIZATION OF APPROPRIATIONS.—In addi-  
23          tion to amounts that are otherwise authorized to be appro-  
24          priated to the Office of the Inspector General, an addi-  
25          tional amount equal to at least five percent for fiscal year



1 2007, at least six percent for fiscal year 2008, and at least  
2 seven percent for fiscal year 2009 of the overall budget  
3 of the Office for each such fiscal year is authorized to be  
4 appropriated to the Office to enable the Office to carry  
5 out this section.

6 **SEC. 110. BORDER PATROL TRAINING CAPACITY REVIEW.**

7 (a) IN GENERAL.—The Comptroller General of the  
8 United States shall conduct a review of the basic training  
9 provided to Border Patrol agents by the Department of  
10 Homeland Security to ensure that such training is pro-  
11 vided as efficiently and cost-effectively as possible.

12 (b) COMPONENTS OF REVIEW.—The review under  
13 subsection (a) shall include the following components:

14 (1) An evaluation of the length and content of  
15 the basic training curriculum provided to new Bor-  
16 der Patrol agents by the Federal Law Enforcement  
17 Training Center, including a description of how the  
18 curriculum has changed since September 11, 2001.

19 (2) A review and a detailed breakdown of the  
20 costs incurred by United States Customs and Border  
21 Protection and the Federal Law Enforcement Train-  
22 ing Center to train one new Border Patrol agent.

23 (3) A comparison, based on the review and  
24 breakdown under paragraph (2) of the costs, effec-  
25 tiveness, scope, and quality, including geographic

1 characteristics, with other similar law enforcement  
2 training programs provided by State and local agen-  
3 cies, non-profit organizations, universities, and the  
4 private sector.

5 (4) An evaluation of whether and how utilizing  
6 comparable non-Federal training programs, pro-  
7 ficiency testing to streamline training, and long-dis-  
8 tance learning programs may affect—

9 (A) the cost-effectiveness of increasing the  
10 number of Border Patrol agents trained per  
11 year and reducing the per agent costs of basic  
12 training; and

13 (B) the scope and quality of basic training  
14 needed to fulfill the mission and duties of a  
15 Border Patrol agent.

16 **SEC. 111. AIRSPACE SECURITY MISSION IMPACT REVIEW.**

17 Not later than 120 days after the date of the enact-  
18 ment of this Act, the Secretary of Homeland Security shall  
19 submit to the Committee on Homeland Security of the  
20 House of Representatives a report detailing the impact the  
21 airspace security mission in the National Capital Region  
22 (in this section referred to as the “NCR”) will have on  
23 the ability of the Department of Homeland Security to  
24 protect the international land and maritime borders of the  
25 United States. Specifically, the report shall address:

1           (1) The specific resources, including personnel,  
2           assets, and facilities, devoted or planned to be de-  
3           voted to the NCR airspace security mission, and  
4           from where those resources were obtained or are  
5           planned to be obtained.

6           (2) An assessment of the impact that diverting  
7           resources to support the NCR mission has or is ex-  
8           pected to have on the traditional missions in and  
9           around the international land and maritime borders  
10          of the United States.

11 **SEC. 112. REPAIR OF PRIVATE INFRASTRUCTURE ON BOR-**  
12 **DER.**

13          (a) IN GENERAL.—Subject to the amount appro-  
14          priated in subsection (d) of this section, the Secretary of  
15          Homeland Security shall reimburse property owners for  
16          costs associated with repairing damages to the property  
17          owners' private infrastructure constructed on a United  
18          States Government right-of-way delineating the inter-  
19          national land border when such damages are—

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

21                 (2) confirmed by the appropriate personnel of  
22          the Department of Homeland Security and sub-  
23          mitted to the Secretary for reimbursement.

24          (b) VALUE OF REIMBURSEMENTS.—Reimbursements  
25          for submitted damages as outlined in subsection (a) shall

1 not exceed the value of the private infrastructure prior to  
2 damage.

3 (c) REPORTS.—Not later than six months after the  
4 date of the enactment of this Act and every subsequent  
5 six months until the amount appropriated for this section  
6 is expended in its entirety, the Secretary of Homeland Se-  
7 curity shall submit to the Committee on Homeland Secu-  
8 rity of the House of Representatives a report that details  
9 the expenditures and circumstances in which those ex-  
10 penditures were made pursuant to this section.

11 (d) AUTHORIZATION OF APPROPRIATIONS.—There  
12 shall be authorized to be appropriated an initial \$50,000  
13 for each fiscal year to carry out this section.

14 **SEC. 113. BORDER PATROL UNIT FOR VIRGIN ISLANDS.**

15 Not later than September 30, 2006, the Secretary of  
16 Homeland Security shall establish at least one Border Pa-  
17 trol unit for the Virgin Islands of the United States.

18 **SEC. 114. REPORT ON PROGRESS IN TRACKING TRAVEL OF**  
19 **CENTRAL AMERICAN GANGS ALONG INTER-**  
20 **NATIONAL BORDER.**

21 Not later than one year after the date of the enact-  
22 ment of this Act, the Secretary of Homeland Security shall  
23 report to the Committee on Homeland Security of the  
24 House of Representatives on the progress of the Depart-  
25 ment of Homeland Security in tracking the travel of Cen-

1 tral American gangs across the international land border  
2 of the United States and Mexico.

3 **SEC. 115. COLLECTION OF DATA.**

4 Beginning on October 1, 2006, the Secretary of  
5 Homeland Security shall annually compile data on the fol-  
6 lowing categories of information:

7 (1) The number of unauthorized aliens who re-  
8 quire medical care taken into custody by Border Pa-  
9 trol officials.

10 (2) The number of unauthorized aliens with se-  
11 rious injuries or medical conditions Border Patrol  
12 officials encounter, and refer to local hospitals or  
13 other health facilities.

14 (3) The number of unauthorized aliens with se-  
15 rious injuries or medical conditions who arrive at  
16 United States ports of entry and subsequently are  
17 admitted into the United States for emergency med-  
18 ical care, as reported by United States Customs and  
19 Border Protection.

20 (4) The number of unauthorized aliens de-  
21 scribed in paragraphs (2) and (3) who subsequently  
22 are taken into custody by the Department of Home-  
23 land Security after receiving medical treatment.

1 **SEC. 116. DEPLOYMENT OF RADIATION DETECTION POR-**  
2 **TAL EQUIPMENT AT UNITED STATES PORTS**  
3 **OF ENTRY.**

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

10 (b) REPORT.—Not later than 180 days after the date  
11 of the enactment of this Act, the Secretary shall submit  
12 to the Committee on Homeland Security of the House of  
13 Representatives and the Committee on Homeland Security  
14 and Governmental Affairs of the Senate a report on the  
15 Department's progress toward carrying out the deploy-  
16 ment described in subsection (a).

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

21 **SEC. 117. CONSULTATION WITH BUSINESSES AND FIRMS.**

22 With respect to the Secure Border Initiative and for  
23 the purposes of strengthening security along the inter-  
24 national land and maritime borders of the United States,  
25 the Secretary of Homeland Security shall conduct out-  
26 reach to and consult with members of the private sector,

1 including business councils, associations, and small, mi-  
2 nority-owned, women-owned, and disadvantaged busi-  
3 nesses to—

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

6 (2) maximize economies of scale, cost-effective-  
7 ness, systems integration, and resource allocation;  
8 and

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

## 12 **TITLE II—COMBATTING ALIEN** 13 **SMUGGLING AND ILLEGAL** 14 **ENTRY AND PRESENCE**

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

16 (a) IN GENERAL.—Section 101(a)(43) of the Immi-  
17 gration and Nationality Act (8 U.S.C. 1101(a)(43)) is  
18 amended—

19 (1) in subparagraph (N), by striking “para-  
20 graph (1)(A) or (2) of section 274(a) (relating to  
21 alien smuggling)” and inserting “section 274(a)”  
22 and by adding a semicolon at the end;

23 (2) in subparagraph (O), by striking “section  
24 275(a) or 276 committed by an alien who was pre-  
25 viously deported on the basis of a conviction for an

1 offense described in another subparagraph of this  
2 paragraph”, and inserting “section 275 or section  
3 276 for which the term of imprisonment was at least  
4 one year”;

5 (3) in subparagraph (U), by inserting before  
6 “an attempt” the following: “soliciting, aiding, abet-  
7 ting, counseling, commanding, inducing, procuring  
8 or”; and

9 (4) by striking all that follows subparagraph  
10 (U) and inserting the following:

11 “The term applies—

12 (i) to an offense described in this para-  
13 graph whether in violation of Federal or State  
14 law and applies to such an offense in violation  
15 of the law of a foreign country for which the  
16 term of imprisonment was completed within the  
17 previous 15 years;

18 (ii) even if the length of the term of im-  
19 prisonment is based on recidivist or other en-  
20 hancements;

21 (iii) to an offense described in this para-  
22 graph even if the statute setting forth the of-  
23 fense of conviction sets forth other offenses not  
24 described in this paragraph, unless the alien af-  
25 firmatively shows, by a preponderance of evi-



1           dence and using public records related to the  
2           conviction, including court records, police  
3           records and presentence reports, that the par-  
4           ticular facts underlying the offense do not sat-  
5           isfy the generic definition of that offense; and

6                   “(iv) regardless of whether the conviction  
7           was entered before, on, or after September 30,  
8           1996, and notwithstanding any other provision  
9           of law (including any effective date).”.

10          (b) **EFFECTIVE DATE.**—The amendments made by  
11 subsection (a) shall apply to offenses that occur before,  
12 on, or after the date of the enactment of this Act.

13 **SEC. 202. ALIEN SMUGGLING AND RELATED OFFENSES.**

14          Section 274 of the Immigration and Nationality Act  
15 (8 U.S.C. 1324) is amended to read as follows:

16                   “ALIEN SMUGGLING AND RELATED OFFENSES

17                   “SEC. 274. (a) **CRIMINAL OFFENSES AND PEN-**  
18 **ALTIES.**—

19                           “(1) **PROHIBITED ACTIVITIES.**—Whoever—

20                                   “(A) assists, encourages, directs, or in-  
21                                   duces a person to come to or enter the United  
22                                   States, or to attempt to come to or enter the  
23                                   United States, knowing or in reckless disregard  
24                                   of the fact that such person is an alien who  
25                                   lacks lawful authority to come to or enter the  
26                                   United States;

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

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

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

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

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

15          “(G) conspires or attempts to commit any  
16          of the preceding acts,  
17          shall be punished as provided in paragraph (2), re-  
18          gardless of any official action which may later be  
19          taken with respect to such alien.

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

22                 “(A) except as provided in subparagraphs  
23                 (D) through (H), in the case where the offense  
24                 was not committed for commercial advantage,  
25                 profit, or private financial gain, be imprisoned

1 for not more than 5 years, or fined under title  
2 18, United States Code, or both;

3 “(B) except as provided in subparagraphs  
4 (C) through (H), where the offense was com-  
5 mitted for commercial advantage, profit, or pri-  
6 vate financial gain—

7 “(i) in the case of a first violation of  
8 this subparagraph, be imprisoned for not  
9 more than 20 years, or fined under title  
10 18, United States Code, or both; and

11 “(ii) for any subsequent violation, be  
12 imprisoned for not less than 3 years nor  
13 more than 20 years, or fined under title  
14 18, United States Code, or both;

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

22 “(D) in the case where the offense furthers  
23 or aids the commission of any other offense  
24 against the United States or any State, which  
25 offense is punishable by imprisonment for more

1 than 1 year, be imprisoned for not less than 5  
2 nor more than 20 years, or fined under title 18,  
3 United States Code, or both;

4 “(E) in the case where any participant in  
5 the offense created a substantial risk of death  
6 or serious bodily injury to another person, in-  
7 cluding—

8 “(i) transporting a person in an en-  
9 gine compartment, storage compartment,  
10 or other confined space;

11 “(ii) transporting a person at an ex-  
12 cessive speed or in excess of the rated ca-  
13 pacity of the means of transportation; or

14 “(iii) transporting or harboring a per-  
15 son in a crowded, dangerous, or inhumane  
16 manner,

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

20 “(F) in the case where the offense caused  
21 serious bodily injury (as defined in section 1365  
22 of title 18, United States Code, including any  
23 conduct that would violate sections 2241 or  
24 2242 of title 18, United States Code, if the con-  
25 duct occurred in the special maritime and terri-

1           torial jurisdiction of the United States) to any  
2           person, be imprisoned for not less than 7 nor  
3           more than 30 years, or fined under title 18,  
4           United States Code, or both;

5           “(G) in the case where the offense involved  
6           an alien who the offender knew or had reason  
7           to believe was an alien—

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

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

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

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

21           “(3)   EXTRATERRITORIAL    JURISDICTION.—

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

24           “(b) EMPLOYMENT OF UNAUTHORIZED ALIENS.—

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

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

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

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

14           “(c) SEIZURE AND FORFEITURE.—

15                   “(1) IN GENERAL.—Any property, real or per-  
16                   sonal, that has been used to commit or facilitate the  
17                   commission of a violation of this section, the gross  
18                   proceeds of such violation, and any property trace-  
19                   able to such property or proceeds, shall be subject  
20                   to forfeiture.

21                   “(2) APPLICABLE PROCEDURES.—Seizures and  
22                   forfeitures under this subsection shall be governed  
23                   by the provisions of chapter 46 of title 18, United  
24                   States Code, relating to civil forfeitures, including  
25                   section 981(d) of such title, except that such duties

1 as are imposed upon the Secretary of the Treasury  
2 under the customs laws described in that section  
3 shall be performed by such officers, agents, and  
4 other persons as may be designated for that purpose  
5 by the Secretary of Homeland Security.

6 “(d) AUTHORITY TO ARREST.—No officer or person  
7 shall have authority to make any arrests for a violation  
8 of any provision of this section except officers and employ-  
9 ees designated by the Secretary of Homeland Security, ei-  
10 ther individually or as a member of a class, and all other  
11 officers whose duty it is to enforce criminal laws.

12 “(e) ADMISSIBILITY OF EVIDENCE.—

13 “(1) PRIMA FACIE EVIDENCE IN DETERMINA-  
14 TIONS OF VIOLATIONS.—Notwithstanding any provi-  
15 sion of the Federal Rules of Evidence, in deter-  
16 mining whether a violation of subsection (a) has oc-  
17 curred, any of the following shall be prima facie evi-  
18 dence that an alien involved in the violation lacks  
19 lawful authority to come to, enter, reside, remain, or  
20 be in the United States or that such alien had come  
21 to, entered, resided, remained or been present in the  
22 United States in violation of law:

23 “(A) Any order, finding, or determination  
24 concerning the alien’s status or lack thereof  
25 made by a federal judge or administrative adju-



1           dicator (including an immigration judge or an  
2           immigration officer) during any judicial or ad-  
3           ministrative proceeding authorized under the  
4           immigration laws or regulations prescribed  
5           thereunder.

6           “(B) An official record of the Department  
7           of Homeland Security, Department of Justice,  
8           or the Department of State concerning the  
9           alien’s status or lack thereof.

10           “(C) Testimony by an immigration officer  
11           having personal knowledge of the facts con-  
12           cerning the alien’s status or lack thereof.

13           “(2) VIDEOTAPED TESTIMONY.—Notwith-  
14           standing any provision of the Federal Rules of Evi-  
15           dence, the videotaped (or otherwise audiovisually  
16           preserved) deposition of a witness to a violation of  
17           subsection (a) who has been deported or otherwise  
18           expelled from the United States, or is otherwise un-  
19           available to testify, may be admitted into evidence in  
20           an action brought for that violation if the witness  
21           was available for cross examination at the deposition  
22           and the deposition otherwise complies with the Fed-  
23           eral Rules of Evidence.

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

1           “(1) The term ‘lawful authority’ means permis-  
2           sion, authorization, or license that is expressly pro-  
3           vided for in the immigration laws of the United  
4           States or the regulations prescribed thereunder.  
5           Such term does not include any such authority se-  
6           cured by fraud or otherwise obtained in violation of  
7           law, nor does it include authority that has been  
8           sought but not approved. No alien shall be deemed  
9           to have lawful authority to come to, enter, reside, re-  
10          main, or be in the United States if such coming to,  
11          entry, residence, remaining, or presence was, is, or  
12          would be in violation of law.

13           “(2) The term ‘unlawful transit’ means travel,  
14          movement, or temporary presence that violates the  
15          laws of any country in which the alien is present, or  
16          any country from which or to which the alien is trav-  
17          eling or moving.”.

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

19          Section 275 of the Immigration and Nationality Act  
20 (8 U.S.C. 1325) is amended—

21           (1) in the section heading, by inserting “UN-  
22          LAWFUL PRESENCE;” after “IMPROPER TIME OR  
23          PLACE;”;

1           (2) in subsection (a), by striking “Any alien”  
2           and inserting “Except as provided in subsection (b),  
3           any alien”;

4           (3) in subsection (a), by striking “or” before  
5           (3) and by inserting after “concealment of a mate-  
6           rial fact,” the following: “or (4) is otherwise present  
7           in the United States in violation of the immigration  
8           laws or the regulations prescribed thereunder.”;

9           (4) in subsection (a), by striking “6 months”  
10          and inserting “one year and a day”;

11          (5) in subsection (c)—

12                (A) by striking “5 years” and inserting  
13                “10 years”; and

14                (B) by adding at the end the following:  
15                “An offense under this subsection continues  
16                until the fraudulent nature of the marriage is  
17                discovered by an immigration officer.”;

18          (6) in subsection (d)—

19                (A) by striking “5 years” and inserting  
20                “10 years”;

21                (B) by adding at the end the following:  
22                “An offense under this subsection continues  
23                until the fraudulent nature of the commercial  
24                enterprise is discovered by an immigration offi-  
25                cer”; and

1           (7) by adding at the end the following new sub-  
2 sections:

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

4           “(A) shall be fined under title 18, United  
5 States Code, imprisoned not more than 10 years, or  
6 both, if the offense described in such paragraph was  
7 committed subsequent to a conviction or convictions  
8 for commission of three or more misdemeanors in-  
9 volving drugs, crimes against the person, or both, or  
10 a felony (other than an aggravated felony); or

11           “(B) shall be fined under title 18, United  
12 States Code, imprisoned not more than 20 years, or  
13 both, if such offense was committed subsequent to a  
14 conviction for commission of an aggravated felony.

15           “(2) An alien described in this paragraph is an alien  
16 who—

17           “(A) enters or attempts to enter the United  
18 States at any time or place other than as designated  
19 by immigration officers;

20           “(B) eludes examination or inspection by immi-  
21 gration officers;

22           “(C) attempts to enter or obtains entry to the  
23 United States by a willfully false or misleading rep-  
24 resentation or the willful concealment of a material  
25 fact; or

1           “(D) is otherwise present in the United States  
2           in violation of the immigration laws or the regula-  
3           tions prescribed thereunder.

4           “(3) The prior convictions in subparagraph (A) or  
5 (B) of paragraph (1) are elements of those crimes and  
6 the penalties in those subparagraphs shall apply only in  
7 cases in which the conviction (or convictions) that form  
8 the basis for the additional penalty are alleged in the in-  
9 dictment or information and are proven beyond a reason-  
10 able doubt at trial or admitted by the defendant in plead-  
11 ing guilty. Any admissible evidence may be used to show  
12 that the prior conviction is an aggravated felony or other  
13 qualifying crime, and the criminal trial for a violation of  
14 this section shall not be bifurcated.

15           “(4) An offense under subsection (a) or paragraph  
16 (1) of this subsection continues until the alien is discov-  
17 ered within the United States by immigration officers.

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

22 **SEC. 204. REENTRY OF REMOVED ALIENS.**

23           Section 276 of the Immigration and Nationality Act  
24 (8 U.S.C. 1326) is amended—

25           (1) in subsection (a)—

1 (A) in paragraph (2), by striking all that  
2 follows “United States” and inserting a comma;

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

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

20 (2) in subsection (b)—

21 (A) in paragraph (1), by striking “impris-  
22 oned not more than 10 years,” and insert “im-  
23 prisoned for a term of not less than 5 years and  
24 not more than 10 years,”;

1           (B) in paragraph (2), by striking “impris-  
2           oned not more than 20 years,” and insert “im-  
3           prisoned for a term of not less than 10 years  
4           and not more than 20 years,”;

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

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

11          (E) by adding at the end the following:  
12          “The prior convictions in paragraphs (1) and  
13          (2) are elements of enhanced crimes and the  
14          penalties under such paragraphs shall apply  
15          only where the conviction (or convictions) that  
16          form the basis for the additional penalty are al-  
17          leged in the indictment or information and are  
18          proven beyond a reasonable doubt at trial or  
19          admitted by the defendant in pleading guilty.  
20          Any admissible evidence may be used to show  
21          that the prior conviction is a qualifying crime  
22          and the criminal trial for a violation of either  
23          such paragraph shall not be bifurcated.”;

1           (3) in subsections (b)(3), (b)(4), and (c), by  
2 striking “Attorney General” and inserting “Sec-  
3 retary of Homeland Security” each place it appears;

4           (4) in subsection (c), by striking “242(h)(2)”  
5 and inserting “241(a)(4)”; and

6           (5) by adding at the end the following new sub-  
7 section:

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

12 **SEC. 205. MANDATORY SENTENCING RANGES FOR PERSONS**

13                   **AIDING OR ASSISTING CERTAIN REENTERING**  
14                   **ALIENS.**

15           Section 277 of the Immigration and Nationality Act  
16 (8 U.S.C. 1327) is amended—

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

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

20           “(b)(1) Any person who knowingly aids or assists any  
21 alien violating section 276(b) to reenter the United States,  
22 or who connives or conspires with any person or persons  
23 to allow, procure, or permit any such alien to reenter the  
24 United States, shall be fined under title 18, United States



1 Code, imprisoned for a term imposed under paragraph (2),  
2 or both.

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

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

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

11 (1) in paragraphs (1)(A) and (1)(D)(ii), by in-  
12 serting “, alien smuggling crime,” after “crime of vi-  
13 olence” each place it appears;

14 (2) by redesignating paragraph (4) as subpara-  
15 graph (5); and

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

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

22 **SEC. 207. CLARIFYING CHANGES.**

23 (a) **EXCLUSION BASED ON FALSE CLAIM OF NA-**  
24 **TIONALITY.—**

1           (1) IN GENERAL.—Section 212(a)(6)(C)(ii) of  
2 the Immigration and Nationality Act (8 U.S.C.  
3 1182(a)(6)(C)(ii)) is amended—

4           (A) in the heading, by inserting “OR NA-  
5 TIONALITY” after “CITIZENSHIP”; and

6           (B) by inserting “or national” after “cit-  
7 izen” each place it appears.

8           (2) EFFECTIVE DATE.—The amendments made  
9 by paragraph (1) shall take effect on the date of the  
10 enactment of this Act and shall apply to acts occur-  
11 ring before, on, or after such date.

12          (b) SHARING OF INFORMATION.—Section 290(b) of  
13 such Act (8 U.S.C. 1360(b)) is amended—

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

17           (2) by striking “Service” and inserting “Sec-  
18 retary of Homeland Security”; and

19           (3) by striking “Attorney General” and insert-  
20 ing “Secretary”.

21          (c) EXCEPTIONS           AUTHORITY.—Section  
22 212(a)(3)(B)(ii) of such Act (8 U.S.C. 1182(a)(3)(B)(ii))  
23 is amended by striking “Subclause (VII)” and inserting  
24 “Subclause (IX)”.

1 **SEC. 208. VOLUNTARY DEPARTURE REFORM.**

2 (a) ENCOURAGING ALIENS TO DEPART VOLUN-  
3 TARIPLY.—

4 (1) AUTHORITY.—Subsection (a) of section  
5 240B of the Immigration and Nationality Act (8  
6 U.S.C. 1229c) is amended—

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

9 “(1) IN LIEU OF REMOVAL PROCEEDINGS.—The  
10 Secretary of Homeland Security may permit an alien  
11 voluntarily to depart the United States at the alien’s  
12 own expense under this subsection, in lieu of being  
13 subject to proceedings under section 240, if the alien  
14 is not described in section 237(a)(2)(A)(iii) or sec-  
15 tion 237(a)(4).”;

16 (B) by striking paragraph (3);

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

19 (D) by inserting after paragraph (1) the  
20 following new paragraph:

21 “(2) PRIOR TO THE CONCLUSION OF REMOVAL  
22 PROCEEDINGS.—After removal proceedings under  
23 section 240 are initiated, the Attorney General may  
24 permit an alien voluntarily to depart the United  
25 States at the alien’s own expense under this sub-  
26 section, prior to the conclusion of such proceedings

1 before an immigration judge, if the alien is not de-  
2 scribed in section 237(a)(2)(A)(iii) or section  
3 237(a)(4).”; and

4 (E) in paragraph (4), by striking “para-  
5 graph (1)” and inserting “paragraphs (1) and  
6 (2)”.

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

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

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

13 “(A) IN LIEU OF REMOVAL.—Subject to  
14 subparagraph (C), permission to depart volun-  
15 tarily under paragraph (1) shall not be valid for  
16 a period exceeding 120 days. The Secretary of  
17 Homeland Security may require an alien per-  
18 mitted to depart voluntarily under paragraph  
19 (1) to post a voluntary departure bond, to be  
20 surrendered upon proof that the alien has de-  
21 parted the United States within the time speci-  
22 fied.”;

23 (ii) in subparagraph (B), by striking  
24 “subparagraphs (C) and (D)(ii)” and in-  
25 serting “subparagraphs (D) and (E)(ii)”;

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

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

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

9 “(B) PRIOR TO THE CONCLUSION OF RE-  
10 MOVAL PROCEEDINGS.—Permission to depart  
11 voluntarily under paragraph (2) shall not be  
12 valid for a period exceeding 60 days, and may  
13 be granted only after a finding that the alien  
14 has established that the alien has the means to  
15 depart the United States and intends to do so.  
16 An alien permitted to depart voluntarily under  
17 paragraph (2) must post a voluntary departure  
18 bond, in an amount necessary to ensure that  
19 the alien will depart, to be surrendered upon  
20 proof that the alien has departed the United  
21 States within the time specified. An immigra-  
22 tion judge may waive posting of a voluntary de-  
23 parture bond in individual cases upon a finding  
24 that the alien has presented compelling evidence  
25 that the posting of a bond will be a serious fi-

1           nancial hardship and the alien has presented  
2           credible evidence that such a bond is unneces-  
3           sary to guarantee timely departure.”; and

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

6           (3) VOLUNTARY DEPARTURE AGREEMENTS.—

7           Subsection (c) of such section is amended to read as  
8           follows:

9           “(c) CONDITIONS ON VOLUNTARY DEPARTURE.—

10                   “(1) VOLUNTARY DEPARTURE AGREEMENT.—

11           Voluntary departure will be granted only as part of  
12           an affirmative agreement by the alien. A voluntary  
13           departure agreement under subsection (b) shall in-  
14           clude a waiver of the right to any further motion,  
15           appeal, application, petition, or petition for review  
16           relating to removal or relief or protection from re-  
17           moval.

18                   “(2) CONCESSIONS BY THE SECRETARY.—In  
19           connection with the alien’s agreement to depart vol-  
20           untarily under paragraph (1), the Secretary of  
21           Homeland Security in the exercise of discretion may  
22           agree to a reduction in the period of inadmissibility  
23           under subparagraph (A) or (B)(i) of section  
24           212(a)(9).

1           “(3) FAILURE TO COMPLY WITH AGREEMENT  
2           AND EFFECT OF FILING TIMELY APPEAL.—If an  
3           alien agrees to voluntary departure under this sec-  
4           tion and fails to depart the United States within the  
5           time allowed for voluntary departure or fails to com-  
6           ply with any other terms of the agreement (including  
7           a failure to timely post any required bond), the alien  
8           automatically becomes ineligible for the benefits of  
9           the agreement, subject to the penalties described in  
10          subsection (d), and subject to an alternate order of  
11          removal if voluntary departure was granted under  
12          subsection (a)(2) or (b). However, if an alien agrees  
13          to voluntary departure but later files a timely appeal  
14          of the immigration judge’s decision granting vol-  
15          untary departure, the alien may pursue the appeal  
16          instead of the voluntary departure agreement. Such  
17          appeal operates to void the alien’s voluntary depart-  
18          ure agreement and the consequences thereof, but  
19          the alien may not again be granted voluntary depart-  
20          ure while the alien remains in the United States.”.

21           (4) ELIGIBILITY.—Subsection (e) of such sec-  
22          tion is amended to read as follows:

23          “(e) ELIGIBILITY.—

24           “(1) PRIOR GRANT OF VOLUNTARY DEPART-  
25          TURE.—An alien shall not be permitted to depart

1 voluntarily under this section if the Secretary of  
2 Homeland Security or the Attorney General pre-  
3 viously permitted the alien to depart voluntarily.

4 “(2) ADDITIONAL LIMITATIONS.—The Sec-  
5 retary of Homeland Security may by regulation limit  
6 eligibility or impose additional conditions for vol-  
7 untary departure under subsection (a)(1) for any  
8 class or classes of aliens. The Secretary or Attorney  
9 General may by regulation limit eligibility or impose  
10 additional conditions for voluntary departure under  
11 subsection (a)(2) or (b) for any class or classes of  
12 aliens. Notwithstanding any other provision of law  
13 (statutory or nonstatutory), including section 2241  
14 of title 28, United States Code, or any other habeas  
15 corpus provision, and section 1361 and 1651 of such  
16 title, no court may review any regulation issued  
17 under this subsection.”

18 (b) AVOIDING DELAYS IN VOLUNTARY DEPAR-  
19 TURE.—

20 (1) ALIEN’S OBLIGATION TO DEPART WITHIN  
21 THE TIME ALLOWED.—Subsection (c) of section  
22 240B of the Immigration and Nationality Act (8  
23 U.S.C. 1229c), as amended by subsection (a), is fur-  
24 ther amended by adding at the end the following  
25 new paragraph:



1           “(4) VOLUNTARY DEPARTURE PERIOD NOT AF-  
2           FECTED.—Except as expressly agreed to by the Sec-  
3           retary of Homeland Security in writing in the exer-  
4           cise of the Secretary’s discretion before the expira-  
5           tion of the period allowed for voluntary departure,  
6           no motion, appeal, application, petition, or petition  
7           for review shall affect, reinstate, enjoin, delay, stay,  
8           or toll the alien’s obligation to depart from the  
9           United States during the period agreed to by the  
10          alien and the Secretary.”

11           (2) NO TOLLING.—Subsection (f) of such sec-  
12          tion is amended by adding at the end the following  
13          new sentence: “Notwithstanding any other provision  
14          of law (statutory or nonstatutory), including section  
15          2241 of title 28, United States Code, or any other  
16          habeas corpus provision, and section 1361 and 1651  
17          of such title, no court shall have jurisdiction to af-  
18          fect, reinstate, enjoin, delay, stay, or toll the period  
19          allowed for voluntary departure under this section.”.

20          (c) PENALTIES FOR FAILURE TO DEPART VOLUN-  
21          TARILY.—

22           (1) PENALTIES FOR FAILURE TO DEPART.—  
23          Subsection (d) of section 240B of the Immigration  
24          and Nationality Act (8 U.S.C. 229c) is amended to  
25          read as follows:

1       “(d) PENALTIES FOR FAILURE TO DEPART.—If an  
2 alien is permitted to depart voluntarily under this section  
3 and fails voluntarily to depart from the United States  
4 within the time period specified or otherwise violates the  
5 terms of a voluntary departure agreement, the following  
6 provisions apply:

7               “(1) CIVIL PENALTY.—

8                       “(A) IN GENERAL.—The alien will be liable  
9 for a civil penalty of \$3,000.

10                      “(B) SPECIFICATION IN ORDER.—The  
11 order allowing voluntary departure shall specify  
12 the amount of the penalty, which shall be ac-  
13 knowledged by the alien on the record.

14                      “(C) COLLECTION.—If the Secretary of  
15 Homeland Security thereafter establishes that  
16 the alien failed to depart voluntarily within the  
17 time allowed, no further procedure will be nec-  
18 essary to establish the amount of the penalty,  
19 and the Secretary may collect the civil penalty  
20 at any time thereafter and by whatever means  
21 provided by law.

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

1           “(2) INELIGIBILITY FOR RELIEF.—The alien  
2 will be ineligible during the time the alien remains  
3 in the United States and for a period of 10 years  
4 after the alien’s departure for any further relief  
5 under this section and sections 240A, 245, 248, and  
6 249.

7           “(3) REOPENING.—

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

14                   “(B) EXCEPTION.—Subparagraph (A)  
15 does not preclude a motion to reopen to seek  
16 withholding of removal under section 241(b)(3)  
17 or protection against torture.

18           The order permitting the alien to depart voluntarily  
19 under this section shall inform the alien of the pen-  
20 alties under this subsection.”.

21           (2) IMPLEMENTATION OF EXISTING STATUTORY  
22 PENALTIES.—The Secretary of Homeland Security  
23 shall implement regulations to provide for the im-  
24 position and collection of penalties for failure to depart

1 under section 240B(d) of the Immigration and Na-  
2 tionality Act, as amended by paragraph (1).

3 (d) EFFECTIVE DATES.—

4 (1) IN GENERAL.—Except as provided in para-  
5 graph (2), the amendments made by this section  
6 shall apply with respect to all orders granting vol-  
7 untary departure under section 240B of the Immi-  
8 gration and Nationality Act (8 U.S.C. 1229c) made  
9 on or after the date that is 180 days after the date  
10 of the enactment of this Act.

11 (2) EXCEPTION.—The amendment made by  
12 subsection (b)(2) shall take effect on the date of the  
13 enactment of this Act and shall apply with respect  
14 to any petition for review which is entered on or  
15 after such date.

16 **SEC. 209. DETERRING ALIENS ORDERED REMOVED FROM**  
17 **REMAINING IN THE UNITED STATES UNLAW-**  
18 **FULLY AND FROM UNLAWFULLY RETURNING**  
19 **TO THE UNITED STATES AFTER DEPARTING**  
20 **VOLUNTARILY.**

21 (a) INADMISSIBLE ALIENS.—Paragraph (9) of sec-  
22 tion 212(a) of the Immigration and Nationality Act (8  
23 U.S.C. 1182(a)) is amended—

1           (1) in subparagraph (A)(i), by striking “within  
2       5 years of” and inserting “before, or within 5 years  
3       of,”; and

4           (2) in subparagraph (A)(ii) by striking “within  
5       10 years of” and inserting “before, or within 10  
6       years of,”.

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

11           (1) in subsection (a), by striking “Commis-  
12      sioner” and inserting “Secretary of Homeland Secu-  
13      rity”; and

14           (2) by adding at the end the following new sub-  
15      section:

16      “(c) INELIGIBILITY FOR RELIEF.—

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

24           “(2) EXCEPTION.—Paragraph (1) does not pre-  
25      clude a motion to reopen to seek withholding of re-

1 removal under section 241(b)(3) or protection against  
2 torture.”.

3 (c) DETERRING ALIENS FROM UNLAWFULLY RE-  
4 TURNING TO THE UNITED STATES AFTER DEPARTING  
5 VOLUNTARILY.—Section 275(a) of such Act (8 U.S.C.  
6 1325(a)) is amended by inserting “or following an order  
7 of voluntary departure” after “a subsequent commission  
8 of any such offense”.

9 (d) EFFECTIVE DATES.—

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

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

1 **TITLE III—BORDER SECURITY**  
2 **COOPERATION AND EN-**  
3 **FORCEMENT**

4 **SEC. 301. JOINT STRATEGIC PLAN FOR UNITED STATES**  
5 **BORDER SURVEILLANCE AND SUPPORT.**

6 (a) IN GENERAL.—The Secretary of Homeland Secu-  
7 rity and the Secretary of Defense shall develop a joint  
8 strategic plan to use the authorities provided to the Sec-  
9 retary of Defense under chapter 18 of title 10, United  
10 States Code, to increase the availability and use of Depart-  
11 ment of Defense equipment, including unmanned aerial  
12 vehicles, tethered aerostat radars, and other surveillance  
13 equipment, to assist with the surveillance activities of the  
14 Department of Homeland Security conducted at or near  
15 the international land and maritime borders of the United  
16 States.

17 (b) REPORT.—Not later than six months after the  
18 date of the enactment of this Act, the Secretary of Home-  
19 land Security and the Secretary of Defense shall submit  
20 to Congress a report containing—

21 (1) a description of the use of Department of  
22 Defense equipment to assist with the surveillance by  
23 the Department of Homeland Security of the inter-  
24 national land and maritime borders of the United  
25 States;

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

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

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

14       (c) **RULE OF CONSTRUCTION.**—Nothing in this sec-  
15 tion shall be construed as altering or amending the prohi-  
16 bition on the use of any part of the Army or the Air Force  
17 as a posse comitatus under section 1385 of title 18,  
18 United States Code.

19 **SEC. 302. BORDER SECURITY ON PROTECTED LAND.**

20       (a) **IN GENERAL.**—The Secretary of Homeland Secu-  
21 rity, in consultation with the Secretary of the Interior,  
22 shall evaluate border security vulnerabilities on land di-  
23 rectly adjacent to the international land border of the  
24 United States under the jurisdiction of the Department  
25 of the Interior related to the prevention of the entry of



1 terrorists, other unlawful aliens, narcotics, and other con-  
2 traband into the United States.

3 (b) SUPPORT FOR BORDER SECURITY NEEDS.—

4 Based on the evaluation conducted pursuant to subsection  
5 (a), the Secretary of Homeland Security shall provide ap-  
6 propriate border security assistance on land directly adja-  
7 cent to the international land border of the United States  
8 under the jurisdiction of the Department of the Interior,  
9 its bureaus, and tribal entities.

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

13 Not later than one year after the date of the enact-  
14 ment of this Act, the Secretary of Homeland Security shall  
15 design and carry out a national border security exercise  
16 for the purposes of—

17 (1) involving officials from Federal, State, terri-  
18 torial, local, tribal, and international governments  
19 and representatives from the private sector;

20 (2) testing and evaluating the capacity of the  
21 United States to anticipate, detect, and disrupt  
22 threats to the integrity of United States borders;  
23 and

1           (3) testing and evaluating the information shar-  
2           ing capability among Federal, State, territorial,  
3           local, tribal, and international governments.

4 **SEC. 304. BORDER SECURITY ADVISORY COMMITTEE.**

5           (a) ESTABLISHMENT OF COMMITTEE.—Not later  
6 than one year after the date of the enactment of this Act,  
7 the Secretary of Homeland Security shall establish an ad-  
8 visory committee to be known as the Border Security Ad-  
9 visory Committee (in this section referred to as the “Com-  
10 mittee”).

11          (b) DUTIES.—The Committee shall advise the Sec-  
12 retary on issues relating to border security and enforce-  
13 ment along the international land and maritime border of  
14 the United States.

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

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

20           (2) Community representatives from such  
21           States.

22           (3) Tribal authorities in such States.

1 **SEC. 305. PERMITTED USE OF HOMELAND SECURITY**  
2 **GRANT FUNDS FOR BORDER SECURITY AC-**  
3 **TIVITIES.**

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

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

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

16 (3) is carried out under agreement with a Fed-  
17 eral agency.

18 (b) USE OF PRIOR YEAR FUNDS.—Subsection (a)  
19 shall apply to all covered grant funds received by a State,  
20 local government, or Indian tribe at any time on or after  
21 October 1, 2001.

22 (c) COVERED GRANTS.—For purposes of subsection  
23 (a), the term “covered grant” means grants provided by  
24 the Department of Homeland Security to States, local gov-  
25 ernments, or Indian tribes administered under the fol-  
26 lowing programs:

1           (1) STATE HOMELAND SECURITY GRANT PRO-  
2           GRAM.—The State Homeland Security Grant Pro-  
3           gram of the Department, or any successor to such  
4           grant program.

5           (2) URBAN AREA SECURITY INITIATIVE.—The  
6           Urban Area Security Initiative of the Department,  
7           or any successor to such grant program.

8           (3) LAW ENFORCEMENT TERRORISM PREVEN-  
9           TION PROGRAM.—The Law Enforcement Terrorism  
10          Prevention Program of the Department, or any suc-  
11          cessor to such grant program.

12 **SEC. 306. CENTER OF EXCELLENCE FOR BORDER SECU-**  
13                                   **RITY.**

14          (a) ESTABLISHMENT.—The Secretary of Homeland  
15          Security shall establish a university-based Center of Excel-  
16          lence for Border Security following the merit-review proc-  
17          esses and procedures and other limitations that have been  
18          established for selecting and supporting University Pro-  
19          grams Centers of Excellence.

20          (b) ACTIVITIES OF THE CENTER.—The Center shall  
21          prioritize its activities on the basis of risk to address the  
22          most significant threats, vulnerabilities, and consequences  
23          posed by United States borders and border control sys-  
24          tems. The activities shall include the conduct of research,  
25          the examination of existing and emerging border security

1 technology and systems, and the provision of education,  
2 technical, and analytical assistance for the Department of  
3 Homeland Security to effectively secure the borders.

4 **SEC. 307. SENSE OF CONGRESS REGARDING COOPERATION**  
5 **WITH INDIAN NATIONS.**

6 It is the sense of Congress that—

7 (1) the Department of Homeland Security  
8 should strive to include as part of a National Strat-  
9 egy for Border Security recommendations on how to  
10 enhance Department cooperation with sovereign In-  
11 dian Nations on securing our borders and preventing  
12 terrorist entry, including, specifically, the Depart-  
13 ment should consider whether a Tribal Smart Bor-  
14 der working group is necessary and whether further  
15 expansion of cultural sensitivity training, as exists in  
16 Arizona with the Tohono O’odham Nation, should be  
17 expanded elsewhere; and

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

1           **TITLE IV—DETENTION AND**  
2                           **REMOVAL**

3   **SEC. 401. MANDATORY DETENTION FOR ALIENS APPRE-**  
4                           **HENDED AT OR BETWEEN PORTS OF ENTRY.**

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

12                   (1) is permitted to withdraw an application for  
13 admission under section 235(a)(4) of the Immigra-  
14 tion and Nationality Act (8 U.S.C. 1225(a)(4)) and  
15 immediately departs from the United States pursu-  
16 ant to such section; or

17                   (2) is paroled into the United States by the  
18 Secretary of Homeland Security for urgent humani-  
19 tarian reasons or significant public benefit in accord-  
20 ance with section 212(d)(5)(A) of such Act (8  
21 U.S.C. 1182(d)(5)(A)).

22           (b) **REQUIREMENTS DURING INTERIM PERIOD.**—Be-  
23 ginning 60 days after the date of the enactment of this  
24 Act and before October 1, 2006, an alien described in sub-

1 section (a) may be released with a notice to appear only  
2 if—

3 (1) the Secretary of Homeland Security deter-  
4 mines, after conducting all appropriate background  
5 and security checks on the alien, that the alien does  
6 not pose a national security risk; and

7 (2) the alien provides a bond of not less than  
8 \$5,000.

9 (c) RULES OF CONSTRUCTION.—

10 (1) ASYLUM AND REMOVAL.—Nothing in this  
11 section shall be construed as limiting the right of an  
12 alien to apply for asylum or for relief or deferral of  
13 removal based on a fear of persecution.

14 (2) TREATMENT OF CERTAIN ALIENS.—The  
15 mandatory detention requirement in subsection (a)  
16 does not apply to any alien who is a native or citizen  
17 of a country in the Western Hemisphere with whose  
18 government the United States does not have full dip-  
19 lomatic relations.

20 **SEC. 402. EXPANSION AND EFFECTIVE MANAGEMENT OF**  
21 **DETENTION FACILITIES.**

22 Subject to the availability of appropriations, the Sec-  
23 retary of Homeland Security shall fully utilize—

1           (1) all available detention facilities operated or  
2           contracted by the Department of Homeland Secu-  
3           rity; and

4           (2) all possible options to cost effectively in-  
5           crease available detention capacities, including the  
6           use of temporary detention facilities, the use of  
7           State and local correctional facilities, private space,  
8           and secure alternatives to detention.

9   **SEC. 403. ENHANCING TRANSPORTATION CAPACITY FOR**  
10                                   **UNLAWFUL ALIENS.**

11           (a) **IN GENERAL.**—The Secretary of Homeland Secu-  
12           rity is authorized to enter into contracts with private enti-  
13           ties for the purpose of providing secure domestic transport  
14           of aliens who are apprehended at or along the inter-  
15           national land or maritime borders from the custody of  
16           United States Customs and Border Protection to deten-  
17           tion facilities and other locations as necessary.

18           (b) **CRITERIA FOR SELECTION.**—Notwithstanding  
19           any other provision of law, to enter into a contract under  
20           paragraph (1), a private entity shall submit an application  
21           to the Secretary at such time, in such manner, and con-  
22           taining such information as the Secretary may require.  
23           The Secretary shall select from such applications those en-  
24           tities which offer, in the determination of the Secretary,  
25           the best combination of service, cost, and security.



1 **SEC. 404. DENIAL OF ADMISSION TO NATIONALS OF COUN-**  
2 **TRY DENYING OR DELAYING ACCEPTING**  
3 **ALIEN.**

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

6 “(d) DENIAL OF ADMISSION TO NATIONALS OF  
7 COUNTRY DENYING OR DELAYING ACCEPTING ALIEN.—  
8 Whenever the Secretary of Homeland Security determines  
9 that the government of a foreign country has denied or  
10 unreasonably delayed accepting an alien who is a citizen,  
11 subject, national, or resident of that country after the  
12 alien has been ordered removed, the Secretary, after con-  
13 sultation with the Secretary of State, may deny admission  
14 to any citizen, subject, national, or resident of that coun-  
15 try until the country accepts the alien who was ordered  
16 removed.”.

17 **SEC. 405. REPORT ON FINANCIAL BURDEN OF REPATRI-**  
18 **ATION.**

19 Not later than October 31 of each year, the Secretary  
20 of Homeland Security shall submit to the Secretary of  
21 State and Congress a report that details the cost to the  
22 Department of Homeland Security of repatriation of un-  
23 lawful aliens to their countries of nationality or last habit-  
24 ual residence, including details relating to cost per coun-  
25 try. The Secretary shall include in each such report the

1 recommendations of the Secretary to more cost effectively  
2 repatriate such aliens.

3 **SEC. 406. TRAINING PROGRAM.**

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

6 (1) review and evaluate the training provided to  
7 Border Patrol agents and port of entry inspectors  
8 regarding the inspection of aliens to determine  
9 whether an alien is referred for an interview by an  
10 asylum officer for a determination of credible fear;

11 (2) based on the review and evaluation de-  
12 scribed in paragraph (1), take necessary and appro-  
13 priate measures to ensure consistency in referrals by  
14 Border Patrol agents and port of entry inspectors to  
15 asylum officers for determinations of credible fear.

16 **SEC. 407. EXPEDITED REMOVAL.**

17 (a) IN GENERAL.—Section 235(b)(1)(A)(iii) of the  
18 Immigration and Nationality Act (8 U.S.C.  
19 1225(b)(1)(A)(iii)) is amended—

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

23 (2) by adding at the end the following new sub-  
24 clause:

1                   “(III)     EXCEPTION.—Notwith-  
2                   standing subclauses (I) and (II), the  
3                   Secretary of Homeland Security shall  
4                   apply clauses (i) and (ii) of this sub-  
5                   paragraph to any alien (other than an  
6                   alien described in subparagraph (F))  
7                   who is not a national of a country  
8                   contiguous to the United States, who  
9                   has not been admitted or paroled into  
10                  the United States, and who is appre-  
11                  hended within 100 miles of an inter-  
12                  national land border of the United  
13                  States and within 14 days of entry.”.

14               (b) EXCEPTIONS.—Section 235(b)(1)(F) of the Im-  
15 migration and Nationality Act (8 U.S.C. 1225(b)(1)(F))  
16 is amended by striking “who arrives by aircraft at a port  
17 of entry” and inserting “, and who arrives by aircraft at  
18 a port of entry or who is present in the United States  
19 and arrived in any manner at or between a port of entry”.

20               (c) EFFECTIVE DATE.—The amendments made by  
21 this section shall take effect on the date of the enactment  
22 of this Act and shall apply to all aliens apprehended on  
23 or after such date.

1 **TITLE V—EFFECTIVE ORGANIZA-**  
2 **TION OF BORDER SECURITY**  
3 **AGENCIES**

4 **SEC. 501. ENHANCED BORDER SECURITY COORDINATION**  
5 **AND MANAGEMENT.**

6 The Secretary of Homeland Security shall ensure full  
7 coordination of border security efforts among agencies  
8 within the Department of Homeland Security, including  
9 United States Immigration and Customs Enforcement,  
10 United States Customs and Border Protection, and  
11 United States Citizenship and Immigration Services, and  
12 shall identify and remedy any failure of coordination or  
13 integration in a prompt and efficient manner. In par-  
14 ticular, the Secretary of Homeland Security shall—

15 (1) oversee and ensure the coordinated execu-  
16 tion of border security operations and policy;

17 (2) establish a mechanism for sharing and co-  
18 ordinating intelligence information and analysis at  
19 the headquarters and field office levels pertaining to  
20 counter-terrorism, border enforcement, customs and  
21 trade, immigration, human smuggling, human traf-  
22 ficking, and other issues of concern to both United  
23 States Immigration and Customs Enforcement and  
24 United States Customs and Border Protection;

1           (3) establish Department of Homeland Security  
2           task forces (to include other Federal, State, Tribal  
3           and local law enforcement agencies as appropriate)  
4           as necessary to better coordinate border enforcement  
5           and the disruption and dismantling of criminal orga-  
6           nizations engaged in cross-border smuggling, money  
7           laundering, and immigration violations;

8           (4) enhance coordination between the border se-  
9           curity and investigations missions within the Depart-  
10          ment by requiring that, with respect to cases involv-  
11          ing violations of the customs and immigration laws  
12          of the United States, United States Customs and  
13          Border Protection coordinate with and refer all such  
14          cases to United States Immigration and Customs  
15          Enforcement;

16          (5) examine comprehensively the proper alloca-  
17          tion of the Department's border security related re-  
18          sources, and analyze budget issues on the basis of  
19          Department-wide border enforcement goals, plans,  
20          and processes;

21          (6) establish measures and metrics for deter-  
22          mining the effectiveness of coordinated border en-  
23          forcement efforts; and

24          (7) develop and implement a comprehensive  
25          plan to protect the northern and southern land bor-

1       ders of the United States and address the different  
2       challenges each border faces by—

3               (A) coordinating all Federal border secu-  
4               rity activities;

5               (B) improving communications and data  
6               sharing capabilities within the Department and  
7               with other Federal, State, local, tribal, and for-  
8               eign law enforcement agencies on matters relat-  
9               ing to border security; and

10              (C) providing input to relevant bilateral  
11              agreements to improve border functions, includ-  
12              ing ensuring security and promoting trade and  
13              tourism.

14 **SEC. 502. OFFICE OF AIR AND MARINE OPERATIONS.**

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

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

19       “(a) ESTABLISHMENT.—There is established in the  
20 Department an Office of Air and Marine Operations (re-  
21 ferred to in this section as the ‘Office’).

22       “(b) ASSISTANT SECRETARY.—The Office shall be  
23 headed by an Assistant Secretary for Air and Marine Op-  
24 erations who shall be appointed by the President, by and  
25 with the advice and consent of the Senate, and who shall

1 report directly to the Secretary. The Assistant Secretary  
2 shall be responsible for all functions and operations of the  
3 Office.

4 “(c) MISSIONS.—

5 “(1) PRIMARY MISSION.—The primary mission  
6 of the Office shall be the prevention of the entry of  
7 terrorists, other unlawful aliens, instruments of ter-  
8 rorism, narcotics, and other contraband into the  
9 United States.

10 “(2) SECONDARY MISSION.—The secondary  
11 mission of the Office shall be to assist other agencies  
12 to prevent the entry of terrorists, other unlawful  
13 aliens, instruments of terrorism, narcotics, and other  
14 contraband into the United States.

15 “(d) AIR AND MARINE OPERATIONS CENTER.—

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

20 “(2) DUTIES.—The Center shall provide com-  
21 prehensive radar, communications, and control serv-  
22 ices to the Office and to eligible Federal, State, or  
23 local agencies (as determined by the Assistant Sec-  
24 retary for Air and Marine Operations), in order to  
25 identify, track, and support the interdiction and ap-

1       prehension of individuals attempting to enter United  
2       States airspace or coastal waters for the purpose of  
3       narcotics trafficking, trafficking of persons, or other  
4       terrorist or criminal activity.

5       “(e) ACCESS TO INFORMATION.—The Office shall en-  
6       sure that other agencies within the Department of Home-  
7       land Security, the Department of Defense, the Depart-  
8       ment of Justice, and such other Federal, State, or local  
9       agencies, as may be determined by the Secretary, shall  
10      have access to the information gathered and analyzed by  
11      the Center.

12      “(f) REQUIREMENT.—Beginning not later than 180  
13      days after the date of the enactment of this Act, the Sec-  
14      retary shall require that all information concerning all  
15      aviation activities, including all airplane, helicopter, or  
16      other aircraft flights, that are undertaken by the either  
17      the Office, United States Immigration and Customs En-  
18      forcement, United States Customs and Border Protection,  
19      or any subdivisions thereof, be provided to the Air and  
20      Marine Operations Center. Such information shall include  
21      the identifiable transponder, radar, and electronic emis-  
22      sions and codes originating and resident aboard the air-  
23      craft or similar asset used in the aviation activity.

24      “(g) TIMING.—The Secretary shall require the infor-  
25      mation described in subsection (f) to be provided to the



1 Air and Marine Operations Center in advance of the avia-  
2 tion activity whenever practicable for the purpose of timely  
3 coordination and conflict resolution of air missions by the  
4 Office, United States Immigration and Customs Enforce-  
5 ment, and United States Customs and Border Protection.

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

12 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

13 (1) ADDITIONAL ASSISTANT SECRETARY.—Sec-  
14 tion 103(a)(9) of the Homeland Security Act of  
15 2002 (6 U.S.C. 113(a)(9)) is amended by striking  
16 “12” and inserting “13”.

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

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

21 **SEC. 503. SHADOW WOLVES TRANSFER.**

22 (a) TRANSFER OF EXISTING UNIT.—Not later than  
23 90 days after the date of the enactment of this Act, the  
24 Secretary of Homeland Security shall transfer to United  
25 States Immigration and Customs Enforcement all func-

1 tions (including the personnel, assets, and liabilities attrib-  
2 utable to such functions) of the Customs Patrol Officers  
3 unit operating on the Tohono O’odham Indian reservation  
4 (commonly known as the “Shadow Wolves” unit).

5 (b) ESTABLISHMENT OF NEW UNITS.—The Sec-  
6 retary is authorized to establish within United States Im-  
7 migration and Customs Enforcement additional units of  
8 Customs Patrol Officers in accordance with this section,  
9 as appropriate.

10 (c) DUTIES.—The Customs Patrol Officer unit trans-  
11 ferred pursuant to subsection (a), and additional units es-  
12 tablished pursuant to subsection (b), shall operate on In-  
13 dian lands by preventing the entry of terrorists, other un-  
14 lawful aliens, instruments of terrorism, narcotics, and  
15 other contraband into the United States.

16 (d) BASIC PAY FOR JOURNEYMAN OFFICERS.—A  
17 Customs Patrol Officer in a unit described in this section  
18 shall receive equivalent pay as a special agent with similar  
19 competencies within United States Immigration and Cus-  
20 toms Enforcement pursuant to the Department of Home-  
21 land Security’s Human Resources Management System  
22 established under section 841 of the Homeland Security  
23 Act (6 U.S.C. 411).

24 (e) SUPERVISORS.—Each unit described in this sec-  
25 tion shall be supervised by a Chief Customs Patrol Officer,

1 who shall have the same rank as a resident agent-in-  
2 charge of the Office of Investigations within United States  
3 Immigration and Customs Enforcement.

4           **TITLE VI—TERRORIST AND**  
5           **CRIMINAL ALIENS**

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

7           (a) EXPANSION OF REMOVAL.—

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

10                           (A) in subparagraph (A)—

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

14                                   (ii) by inserting “or the Secretary”  
15                                   after “if the Attorney General”

16                           (B) in subparagraph (B)—

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

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

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

23                                   (iv) by inserting after clause (iv) the  
24                                   following new clause:

1           “(v) the alien is described in any sub-  
2           clause of section 212(a)(3)(B)(i) or section  
3           212(a)(3)(F)”, unless, in the case only of  
4           an alien described in subclause (IV) or  
5           (IX) of section 212(a)(3)(B)(i), the Sec-  
6           retary of Homeland Security determines,  
7           in the Secretary’s discretion, that there are  
8           not reasonable grounds for regarding the  
9           alien as a danger to the security of the  
10          United States.”; and

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

14           (vi) by striking the last sentence.

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

17           (A) by striking “subclause (I), (II), (III),  
18           (IV), or (VI)” and inserting “any subclause”;

19           (B) by striking “237(a)(4)(B)” and insert-  
20           ing “212(a)(3)(F)”; and

21           (C) by inserting “or (IX)” after “subclause  
22           (IV)”.

23          (3) Section 240A(c)(4) of such Act (8 U.S.C.  
24          1229b(c)(4)) is amended—

1 (A) by striking “inadmissible under” and  
2 inserting “described in”; and

3 (B) by striking “deportable under” and in-  
4 sserting “described in”.

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

8 (5) Section 249 of such Act (8 U.S.C. 1259))  
9 is amended—

10 (A) by striking “inadmissible under” and  
11 inserting “described in”; and

12 (B) in paragraph (d), by striking “deport-  
13 able under” and inserting “described in”.

14 (b) RETROACTIVE APPLICATION.—The amendments  
15 made by this section shall take effect on the date of enact-  
16 ment of this Act and sections 208(b)(2)(A), 240A, 240B,  
17 241(b)(3), and 249 of the Immigration and Nationality  
18 Act, as so amended, shall apply to—

19 (1) all aliens in removal, deportation, or exclu-  
20 sion proceedings;

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

23 (3) with respect to aliens and applications de-  
24 scribed in paragraph (1) or (2), acts and conditions  
25 constituting a ground for inadmissibility, exclud-

1 ability, deportation, or removal occurring or existing  
2 before, on, or after the date of the enactment of this  
3 Act.

4 **SEC. 602. DETENTION OF DANGEROUS ALIENS.**

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

7 (1) in subsection (a), by striking “Attorney  
8 General” and inserting “Secretary of Homeland Se-  
9 curity” each place it appears;

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

12 “If, at that time, the alien is not in the custody  
13 of the Secretary (under the authority of this  
14 Act), the Secretary shall take the alien into cus-  
15 tody for removal, and the removal period shall  
16 not begin until the alien is taken into such cus-  
17 tody. If the Secretary transfers custody of the  
18 alien during the removal period pursuant to law  
19 to another Federal agency or a State or local  
20 government agency in connection with the offi-  
21 cial duties of such agency, the removal period  
22 shall be tolled, and shall begin anew on the date  
23 of the alien’s return to the custody of the Sec-  
24 retary.”;

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

3                   “(ii) If a court, the Board of Immi-  
4 gration Appeals, or an immigration judge  
5 orders a stay of the removal of the alien,  
6 the date the stay of removal is no longer  
7 in effect.”;

8           (4) by amending subparagraph (C) of sub-  
9 section (a)(1) to read as follows:

10                   “(C) SUSPENSION OF PERIOD.—The re-  
11 moval period shall be extended beyond a period  
12 of 90 days and the alien may remain in deten-  
13 tion during such extended period if the alien  
14 fails or refuses to make all reasonable efforts to  
15 comply with the removal order, or to fully co-  
16 operate with the Secretary’s efforts to establish  
17 the alien’s identity and carry out the removal  
18 order, including making timely application in  
19 good faith for travel or other documents nec-  
20 essary to the alien’s departure, or conspires or  
21 acts to prevent the alien’s removal subject to an  
22 order of removal.”;

23           (5) in subsection (a)(2), by adding at the end  
24 the following: “If a court orders a stay of removal  
25 of an alien who is subject to an administratively

1 final order of removal, the Secretary in the exercise  
2 of discretion may detain the alien during the pend-  
3 ency of such stay of removal.”;

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

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

13 (7) in subsection (a)(6), by striking “removal  
14 period and, if released,” and inserting “removal pe-  
15 riod, in the discretion of the Secretary, without any  
16 limitations other than those specified in this section,  
17 until the alien is removed. If an alien is released, the  
18 alien”;

19 (8) by redesignating paragraph (7) of sub-  
20 section (a) as paragraph (10) and inserting after  
21 paragraph (6) of such subsection the following new  
22 paragraphs:

23 “(7) PAROLE.—If an alien detained pursuant to  
24 paragraph (6) is an applicant for admission, the  
25 Secretary, in the Secretary’s discretion, may parole



1 the alien under section 212(d)(5) of this Act and  
2 may provide, notwithstanding section 212(d)(5), that  
3 the alien shall not be returned to custody unless ei-  
4 ther the alien violates the conditions of the alien's  
5 parole or the alien's removal becomes reasonably  
6 foreseeable, provided that in no circumstance shall  
7 such alien be considered admitted.

8 “(8) APPLICATION OF ADDITIONAL RULES FOR  
9 DETENTION OR RELEASE OF CERTAIN ALIENS WHO  
10 HAVE MADE AN ENTRY.—The procedures described  
11 in subsection (j) shall only apply with respect to an  
12 alien who—

13 “(A) was lawfully admitted the most recent  
14 time the alien entered the United States or has  
15 otherwise effected an entry into the United  
16 States, and

17 “(B) is not detained under paragraph (6).

18 “(9) JUDICIAL REVIEW.—Without regard to the  
19 place of confinement, judicial review of any action or  
20 decision pursuant to paragraphs (6), (7), or (8) or  
21 subsection (j) shall be available exclusively in habeas  
22 corpus proceedings instituted in the United States  
23 District Court for the District of Columbia, and only  
24 if the alien has exhausted all administrative rem-

1 edies (statutory and regulatory) available to the  
2 alien as of right.”; and

3 (9) by adding at the end the following new sub-  
4 section:

5 “(j) ADDITIONAL RULES FOR DETENTION OR RE-  
6 LEASE OF CERTAIN ALIENS WHO HAVE MADE AN  
7 ENTRY.—

8 “(1) APPLICATION.—The procedures described  
9 in this subsection apply in the case of an alien de-  
10 scribed in subsection (a)(8).

11 “(2) ESTABLISHMENT OF A DETENTION RE-  
12 VIEW PROCESS FOR ALIENS WHO FULLY COOPERATE  
13 WITH REMOVAL.—

14 “(A) IN GENERAL.—The Secretary shall  
15 establish an administrative review process to  
16 determine whether the aliens should be detained  
17 or released on conditions for aliens who—

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

20 “(ii) have complied with the Sec-  
21 retary’s efforts to carry out the removal  
22 orders, including making timely application  
23 in good faith for travel or other documents  
24 necessary to the alien’s departure, and

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

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

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

12                   “(ii) may include any information or  
13                   assistance provided by the Department of  
14                   State or other Federal agency and any  
15                   other information available to the Sec-  
16                   retary pertaining to the ability to remove  
17                   the alien.

18           “(3) AUTHORITY TO DETAIN BEYOND THE RE-  
19           MOVAL PERIOD .—

20                   “(A) INITIAL 90 DAY PERIOD.—The Sec-  
21                   retary in the exercise of discretion, without any  
22                   limitations other than those specified in this  
23                   section, may continue to detain an alien for 90  
24                   days beyond the removal period (including any

1 extension of the removal period as provided in  
2 subsection (a)(1)(C)).

3 “(B) EXTENSION.—

4 “(i) IN GENERAL.—The Secretary in  
5 the exercise of discretion, without any limi-  
6 tations other than those specified in this  
7 section, may continue to detain an alien  
8 beyond the 90 days authorized in subpara-  
9 graph (A) if the conditions described in  
10 subparagraph (A), (B), or (C) of para-  
11 graph (4) apply.

12 “(ii) RENEWAL.—The Secretary may  
13 renew a certification under paragraph  
14 (4)(A) every six months without limitation,  
15 after providing an opportunity for the alien  
16 to request reconsideration of the certifi-  
17 cation and to submit documents or other  
18 evidence in support of that request. If the  
19 Secretary does not renew a certification,  
20 the Secretary may not continue to detain  
21 the alien under such paragraph.

22 “(iii) DELEGATION.—Notwithstanding  
23 section 103, the Secretary may not dele-  
24 gate the authority to make or renew a cer-  
25 tification described in clause (ii), (iii), or

1 (v) of paragraph (4)(B) below the level of  
2 the Assistant Secretary for Immigration  
3 and Customs Enforcement.

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

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

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

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

16 “(ii) would be removed in the reason-  
17 ably foreseeable future, or would have been  
18 removed, but for the alien’s failure or re-  
19 fusal to make all reasonable efforts to com-  
20 ply with the removal order, or to fully co-  
21 operate with the Secretary’s efforts to es-  
22 tablish the alien’s identity and carry out  
23 the removal order, including making timely  
24 application in good faith for travel or other  
25 documents necessary to the alien’s depar-

1           ture, or conspiracies or acts to prevent re-  
2           moval.

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

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

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

14                  “(iii) Based on information available  
15                  to the Secretary (including available infor-  
16                  mation from the intelligence community,  
17                  and without regard to the grounds upon  
18                  which the alien was ordered removed),  
19                  there is reason to believe that the release  
20                  of the alien would threaten the national se-  
21                  curity of the United States.

22                  “(iv) The release of the alien will  
23                  threaten the safety of the community or  
24                  any person, the conditions of release can-  
25                  not reasonably be expected to ensure the

1 safety of the community or any person,  
2 and—

3 “(I) the alien has been convicted  
4 of one or more aggravated felonies de-  
5 scribed in section 101(a)(43)(A) or of  
6 one or more crimes identified by the  
7 Secretary by regulation, or of one or  
8 more attempts or conspiracies to com-  
9 mit any such aggravated felonies or  
10 such crimes, for an aggregate term of  
11 imprisonment of at least five years; or

12 “(II) the alien has committed one  
13 or more crimes of violence and, be-  
14 cause of a mental condition or person-  
15 ality disorder and behavior associated  
16 with that condition or disorder, the  
17 alien is likely to engage in acts of vio-  
18 lence in the future.

19 “(v) The release of the alien will  
20 threaten the safety of the community or  
21 any person, conditions of release cannot  
22 reasonably be expected to ensure the safety  
23 of the community or any person, and the  
24 alien has been convicted of at least one ag-  
25 gravated felony.

1           “(C) Pending a determination under sub-  
2           paragraph (B), so long as the Secretary has ini-  
3           tiated the administrative review process no later  
4           than 30 days after the expiration of the removal  
5           period (including any extension of the removal  
6           period as provided in subsection (a)(1)(C)).

7           “(5) RELEASE ON CONDITIONS.—If it is deter-  
8           mined that an alien should be released from deten-  
9           tion, the Secretary in the exercise of discretion may  
10          impose conditions on release as provided in sub-  
11          section (a)(3).

12          “(6) REDETENTION.—The Secretary in the ex-  
13          ercise of discretion, without any limitations other  
14          than those specified in this section, may again de-  
15          tain any alien subject to a final removal order who  
16          is released from custody if the alien fails to comply  
17          with the conditions of release or to cooperate in the  
18          alien’s removal from the United States, or if, upon  
19          reconsideration, the Secretary determines that the  
20          alien can be detained under paragraph (1). Para-  
21          graphs (6) through (8) of subsection (a) shall apply  
22          to any alien returned to custody pursuant to this  
23          paragraph, as if the removal period terminated on  
24          the day of the redetention.



1           “(7) CERTAIN ALIENS WHO EFFECTED  
2 ENTRY.—If an alien has effected an entry into the  
3 United States but has neither been lawfully admitted  
4 nor physically present in the United States continu-  
5 ously for the 2-year period immediately prior to the  
6 commencement of removal proceedings under this  
7 Act or deportation proceedings against the alien, the  
8 Secretary in the exercise of discretion may decide  
9 not to apply subsection (a)(8) and this subsection  
10 and may detain the alien without any limitations ex-  
11 cept those imposed by regulation.”.

12       (b) EFFECTIVE DATE.—The amendments made by  
13 subsection (a) shall take effect upon the date of enactment  
14 of this Act, and section 241 of the Immigration and Na-  
15 tionality Act, as amended, shall apply to—

16           (1) all aliens subject to a final administrative  
17 removal, deportation, or exclusion order that was  
18 issued before, on, or after the date of enactment of  
19 this Act; and

20           (2) acts and conditions occurring or existing be-  
21 fore, on, or after the date of enactment of this Act.

22 **SEC. 603. INCREASE IN CRIMINAL PENALTIES.**

23       Section 243 of the Immigration and Nationality Act  
24 (8 U.S.C. 1253) is amended—

25           (1) in subsection (a)(1)—

1 (A) in the matter before subparagraph (A),  
2 by inserting “or 212(a)” after “section  
3 237(a)”; and

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

8 (2) in subsection (b)—

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

12 (B) by striking “for not more than one  
13 year” and inserting “for not less than six  
14 months or more than five years (or 10 years if  
15 the alien is a member of any class described in  
16 paragraph (1)(E), (2), (3), or (4) of section  
17 237(a)”.

18 **SEC. 604. PRECLUDING ADMISSIBILITY OF AGGRAVATED**

19 **FELONS AND OTHER CRIMINALS.**

20 (a) **EXCLUSION BASED ON FRAUDULENT DOCU-**  
21 **MENTATION.**—Section 212(a)(2)(A)(i) of the Immigration  
22 and Nationality Act (8 U.S.C. 1182(a)(2)(A)(i)) is amend-  
23 ed—

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

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

3           (3) by inserting after subclause (II) the fol-  
4           lowing new subclause:

5                                 “(III) a violation (or a conspiracy  
6                                 or attempt to violate) an offense de-  
7                                 scribed in section 208 of the Social  
8                                 Security Act or section 1028 of title  
9                                 18, United States Code,”.

10           (b) EXCLUSION BASED ON AGGRAVATED FELONY,  
11 UNLAWFUL PROCUREMENT OF CITIZENSHIP, AND  
12 CRIMES OF DOMESTIC VIOLENCE.—Section 212(a)(2) of  
13 such Act (8 U.S.C. 1182(a)(2)) is amended by adding at  
14 the end the following new subparagraphs:

15                                 “(J) AGGRAVATED FELONY.—Any alien  
16                                 who is convicted of an aggravated felony at any  
17                                 time is inadmissible.

18                                 “(K) UNLAWFUL PROCUREMENT OF CITI-  
19                                 ZENSHIP.—Any alien convicted of, or who ad-  
20                                 mits having committed, or who admits commit-  
21                                 ting acts which constitute the essential elements  
22                                 of, a violation of (or a conspiracy or attempt to  
23                                 violate) subsection (a) or (b) of section 1425 of  
24                                 title 18, United States Code is inadmissible.

1           “(L) CRIMES OF DOMESTIC VIOLENCE,  
2 STALKING, OR VIOLATION OF PROTECTION OR-  
3 DERS; CRIMES AGAINST CHILDREN.—

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

6           “(I) IN GENERAL.—Subject to  
7 subclause (II), any alien who at any  
8 time is convicted of, or who admits  
9 having committed, or who admits  
10 committing acts which constitute the  
11 essential elements of, a crime of do-  
12 mestic violence, a crime of stalking, or  
13 a crime of child abuse, child neglect,  
14 or child abandonment is inadmissible.

15           “(II) WAIVER FOR VICTIMS OF  
16 DOMESTIC VIOLENCE.—Subclause (I)  
17 shall not apply to any alien described  
18 in section 237(a)(7)(A).

19           “(III) CRIME OF DOMESTIC VIO-  
20 LENCE DEFINED.—For purposes of  
21 subclause (I), the term ‘crime of do-  
22 mestic violence’ means any crime of  
23 violence (as defined in section 16 of  
24 title 18, United States Code) against  
25 a person committed by a current or

1 former spouse of the person, by an in-  
2 dividual with whom the person shares  
3 a child in common, by an individual  
4 who is cohabiting with or has  
5 cohabited with the person as a spouse,  
6 by an individual similarly situated to  
7 a spouse of the person under the do-  
8 mestic or family violence laws of the  
9 jurisdiction where the offense occurs,  
10 or by any other individual against a  
11 person who is protected from that in-  
12 dividual's acts under the domestic or  
13 family violence laws of the United  
14 States or any State, Indian tribal gov-  
15 ernment, or unit of local or foreign  
16 government.

17 “(ii) VIOLATORS OF PROTECTION OR-  
18 DERS.—

19 “(I) IN GENERAL.—Any alien  
20 who at any time is enjoined under a  
21 protection order issued by a court and  
22 whom the court determines has en-  
23 gaged in conduct that violates the por-  
24 tion of a protection order that involves  
25 protection against credible threats of

1 violence, repeated harassment, or bod-  
2 ily injury to the person or person for  
3 whom the protection order was issued  
4 is inadmissible.

5 “(II) PROTECTION ORDER DE-  
6 FINED.—For purposes of subclause  
7 (I), the term ‘protection order’ means  
8 any injunction issued for the purpose  
9 of preventing violent or threatening  
10 acts of domestic violence, including  
11 temporary or final orders issued by  
12 civil or criminal courts (other than  
13 support or child custody orders or  
14 provisions) whether obtained by filing  
15 an independent action or as an inde-  
16 pendent order in another pro-  
17 ceeding.”.

18 (c) WAIVER AUTHORITY.—Section 212(h) of such  
19 Act (8 U.S.C. 1182(h)) is amended—

20 (1) by striking “Attorney General may, in his  
21 discretion, waive the application of subparagraphs  
22 (A)(i)(I), (B), (D), and (E) of subsection (a)(2)”  
23 and inserting “The Attorney General or the Sec-  
24 retary of Homeland Security may, in the discretion  
25 of the Attorney General or such Secretary, waive the

1 application of subparagraph (A)(i)(I), (A)(i)(III),  
2 (B), (D), (E), (K), and (L) of subsection (a)(2)”;

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

6 (3) in paragraph (2), by striking “Attorney  
7 General may, in his discretion” and “as he” and in-  
8 serting “Attorney General or the Secretary of Home-  
9 land Security, in the discretion of the Attorney Gen-  
10 eral or such Secretary,” and “as the Attorney Gen-  
11 eral or the Secretary”, respectively;

12 (4) in the second sentence, by striking “crimi-  
13 nal acts involving torture” and inserting “criminal  
14 acts involving torture, or an aggravated felony”; and

15 (5) in the third sentence, by striking “if either  
16 since the date of such admission the alien has been  
17 convicted of an aggravated felony or the alien” and  
18 inserting “if since the date of such admission the  
19 alien”.

20 (d) CONSTRUCTION.—The amendments made by this  
21 section shall not be construed to create eligibility for relief  
22 from removal under section 212(c) of the Immigration and  
23 Nationality Act, as in effect before its repeal by section  
24 304(b) of the Immigration Reform and Immigrant Re-  
25 sponsibility Act of 1996 (division C of Public Law 104—

1 208), where such eligibility did not exist before these  
2 amendments became effective.

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

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

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

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

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

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

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

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



1 **SEC. 606. REMOVING DRUNK DRIVERS.**

2 (a) IN GENERAL.—Section 101(a)(43)(F) of the Im-  
3 migration and Nationality Act (8 U.S.C. 1101(a)(43)(F))  
4 is amended by inserting “, including a third drunk driving  
5 conviction, regardless of the States in which the convic-  
6 tions occurred, and regardless of whether the offenses are  
7 deemed to be misdemeanors or felonies under State or  
8 Federal law,” after “offense”).

9 (b) EFFECTIVE DATE.—The amendment made by  
10 subsection (a) shall take effect on the date of the enact-  
11 ment of this Act and shall apply to convictions entered  
12 before, on, or after such date.

13 **SEC. 607. DESIGNATED COUNTY LAW ENFORCEMENT AS-**  
14 **SISTANCE PROGRAM.**

15 (a) DESIGNATED COUNTIES ADJACENT TO THE  
16 SOUTHERN BORDER OF THE UNITED STATES DE-  
17 FINED.—In this section, the term “designated counties  
18 adjacent to the southern international border of the  
19 United States” includes a county any part of which is  
20 within 25 miles of the southern international border of the  
21 United States.

22 (b) AUTHORITY.—

23 (1) IN GENERAL.—Any Sheriff or coalition or  
24 group of Sheriffs from designated counties adjacent  
25 to the southern international border of the United  
26 States may transfer aliens detained or in the custody

1 of the Sheriff who are not lawfully present in the  
2 United States to appropriate Federal law enforce-  
3 ment officials, and shall be promptly paid for the  
4 costs of performing such transfers by the Attorney  
5 General for any local or State funds previously ex-  
6 pended or proposed to be spent by that Sheriff or  
7 coalition or group of Sheriffs.

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

15 (3) LIMITATION TO FUTURE COSTS.—In no  
16 case shall payment be made under this section for  
17 costs incurred before the date of the enactment of  
18 this Act.

19 (4) ADVANCE PAYMENT OF COSTS.—The Attor-  
20 ney General shall make an advance payment under  
21 this section upon a certification of anticipated costs  
22 for which payment may be made under this section,  
23 but in no case shall such an advance payment cover  
24 a period of costs of longer than 3 months.

1 (c) DESIGNATED COUNTY LAW ENFORCEMENT AC-  
2 COUNT.—

3 (1) SEPARATE ACCOUNT.—Reimbursement or  
4 pre-payment under subsection (b) shall be made  
5 promptly from funds deposited into a separate ac-  
6 count in the Treasury of the United States to be en-  
7 titled the “Designated County Law Enforcement Ac-  
8 count”.

9 (2) AVAILABILITY OF FUNDS.—All deposits into  
10 the Designated County Law Enforcement Account  
11 shall remain available until expended to the Attorney  
12 General to carry out the provisions of this section.

13 (3) PROMPTLY DEFINED.—For purposes of this  
14 section, the term “promptly” means within 60 days.

15 (d) FUNDS FOR THE DESIGNATED COUNTY LAW EN-  
16 FORCEMENT ACCOUNT.—Only funds designated, author-  
17 ized, or appropriated by Congress may be deposited or  
18 transferred to the Designated County Law Enforcement  
19 Account. The Designated County Law Enforcement Ac-  
20 count is authorized to receive up to \$100,000,000 per  
21 year.

22 (e) USE OF FUNDS.—

23 (1) IN GENERAL.—Funds provided under this  
24 section shall be payable directly to participating  
25 Sheriff’s offices and may be used for the transfers

1 described in subsection (b)(1), including the costs of  
2 personnel (such as overtime pay and costs for re-  
3 serve deputies), costs of training of such personnel,  
4 equipment, and, subject to paragraph (2), the con-  
5 struction, maintenance, and operation of detention  
6 facilities to detain aliens who are unlawfully present  
7 in the United States. For purposes of this section,  
8 an alien who is unlawfully present in the United  
9 States shall be deemed to be a Federal prisoner be-  
10 ginning upon determination by Federal law enforce-  
11 ment officials that such alien is unlawfully present  
12 in the United States, and such alien shall, upon such  
13 determination, be deemed to be in Federal custody.  
14 In order for costs to be eligible for payment, the  
15 Sheriff making such application shall personally cer-  
16 tify under oath that all costs submitted in the appli-  
17 cation for reimbursement or advance payment meet  
18 the requirements of this section and are reasonable  
19 and necessary, and such certification shall be subject  
20 to all State and Federal laws governing statements  
21 made under oath, including the penalties of perjury,  
22 removal from office, and prosecution under State  
23 and Federal law.

24 (2) LIMITATION.—Not more than 20 percent of  
25 the amount of funds provided under this section may

1 be used for the construction or renovation of deten-  
2 tion or similar facilities.

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

12 (g) REGULATIONS.—The Attorney General shall  
13 issue, on an interim final basis, regulations not later than  
14 60 days after the date of the enactment of this Act—

15 (1) governing the distribution of funds under  
16 this section for all reasonable and necessary costs  
17 and other expenses incurred or proposed to be in-  
18 curred by a Sheriff or coalition or group of Sheriffs  
19 under this section; and

20 (2) providing uniform standards that all other  
21 Federal law enforcement officials shall follow to co-  
22 operate with such Sheriffs and to otherwise imple-  
23 ment the requirements of this section.

24 (h) EFFECTIVE DATE.—The provisions of this sec-  
25 tion shall take effect on its enactment. The promulgation

1 of any regulations under subsection (g) is not a necessary  
2 precondition to the immediate deployment or work of  
3 Sheriffs personnel or corrections officers as authorized by  
4 this section. Any reasonable and necessary expenses or  
5 costs authorized by this section and incurred by such  
6 Sheriffs after the date of the enactment of this Act but  
7 prior to the date of the promulgation of such regulations  
8 are eligible for reimbursement under the terms and condi-  
9 tions of this section.

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

15 (j) SUPPLEMENTAL FUNDING.—All funds paid out  
16 under this section must supplement, and may not sup-  
17 plant, State or local funds used for the same or similar  
18 purposes.

19 **SEC. 608. RENDERING INADMISSIBLE AND DEPORTABLE**  
20 **ALIENS PARTICIPATING IN CRIMINAL**  
21 **STREET GANGS; DETENTION; INELIGIBILITY**  
22 **FROM PROTECTION FROM REMOVAL AND**  
23 **ASYLUM.**

24 (a) INADMISSIBLE.—Section 212(a)(2) of the Immi-  
25 gration and Nationality Act (8 U.S.C. 1182(a)(2)), as

1 amended by section 604(b), is further amended by adding  
2 at the end the following:

3                   “(M) CRIMINAL STREET GANG PARTICIPA-  
4                   TION.—

5                   “(i) IN GENERAL.—Any alien is inad-  
6                   missible if the alien has been removed  
7                   under section 237(a)(2)(F), or if the con-  
8                   sular officer or the Secretary of Homeland  
9                   Security knows, or has reasonable ground  
10                  to believe that the alien—

11                  “(I) is a member of a criminal  
12                  street gang and has committed, con-  
13                  spired, or threatened to commit, or  
14                  seeks to enter the United States to  
15                  engage solely, principally, or inciden-  
16                  tally in, a gang crime or any other un-  
17                  lawful activity; or

18                  “(II) is a member of a criminal  
19                  street gang designated under section  
20                  219A.

21                  “(ii) CRIMINAL STREET GANG DE-  
22                  FINED.—For purposes of this subpara-  
23                  graph, the term ‘criminal street gang’  
24                  means a formal or informal group or asso-  
25                  ciation of 3 or more individuals, who com-

1 mit 2 or more gang crimes (one of which  
2 is a crime of violence, as defined in section  
3 16 of title 18, United States Code) in 2 or  
4 more separate criminal episodes in relation  
5 to the group or association.

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

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

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

19 “(III) A crime involving the man-  
20 ufacturing, importing, distributing,  
21 possessing with intent to distribute, or  
22 otherwise dealing in a controlled sub-  
23 stance or listed chemical (as those  
24 terms are defined in section 102 of



1 the Controlled Substances Act (21  
2 U.S.C. 802)).

3 “(IV) Any conduct punishable  
4 under section 844 of title 18, United  
5 States Code (relating to explosive ma-  
6 terials), subsection (d), (g)(1) (where  
7 the underlying conviction is a violent  
8 felony (as defined in section  
9 924(e)(2)(B) of such title) or is a se-  
10 rious drug offense (as defined in sec-  
11 tion 924(e)(2)(A)), (i), (j), (k), (o),  
12 (p), (q), (u), or (x) of section 922 of  
13 such title (relating to unlawful acts),  
14 or subsection (b), (c), (g), (h), (k), (l),  
15 (m), or (n) of section 924 of such title  
16 (relating to penalties), section 930 of  
17 such title (relating to possession of  
18 firearms and dangerous weapons in  
19 Federal facilities), section 931 of such  
20 title (relating to purchase, ownership,  
21 or possession of body armor by violent  
22 felons), sections 1028 and 1029 of  
23 such title (relating to fraud and re-  
24 lated activity in connection with iden-  
25 tification documents or access de-

1 vices), section 1952 of such title (re-  
2 lating to interstate and foreign travel  
3 or transportation in aid of racket-  
4 eering enterprises), section 1956 of  
5 such title (relating to the laundering  
6 of monetary instruments), section  
7 1957 of such title (relating to engag-  
8 ing in monetary transactions in prop-  
9 erty derived from specified unlawful  
10 activity), or sections 2312 through  
11 2315 of such title (relating to inter-  
12 state transportation of stolen motor  
13 vehicles or stolen property).

14 “(V) Any conduct punishable  
15 under section 274 (relating to bring-  
16 ing in and harboring certain aliens),  
17 section 277 (relating to aiding or as-  
18 sisting certain aliens to enter the  
19 United States), or section 278 (relat-  
20 ing to importation of alien for im-  
21 moral purpose) of this Act.”.

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

1                   “(F) CRIMINAL STREET GANG PARTICIPA-  
2                   TION.—

3                   “(i) IN GENERAL.—Any alien is de-  
4                   portable who—

5                   “(I) is a member of a criminal  
6                   street gang and is convicted of com-  
7                   mitting, or conspiring, threatening, or  
8                   attempting to commit, a gang crime;  
9                   or

10                  “(II) is determined by the Sec-  
11                  retary of Homeland Security to be a  
12                  member of a criminal street gang des-  
13                  ignated under section 219A.

14                  “(ii) DEFINITIONS.—For purposes of  
15                  this subparagraph, the terms ‘criminal  
16                  street gang’ and ‘gang crime’ have the  
17                  meaning given such terms in section  
18                  212(a)(2)(M).”.

19                  (c) DESIGNATION OF CRIMINAL STREET GANGS.—

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

23                  “DESIGNATION OF CRIMINAL STREET GANGS

24                  “SEC. 219A. (a) DESIGNATION.—

25                  “(1) IN GENERAL.—The Attorney General is  
26                  authorized to designate a group or association as a

1 criminal street gang in accordance with this sub-  
2 section if the Attorney General finds that the group  
3 or association meets the criteria described in section  
4 212(a)(2)(M)(ii)(I).

5 “(2) PROCEDURE.—

6 “(A) NOTICE.—

7 “(i) TO CONGRESSIONAL LEADERS.—

8 Seven days before making a designation  
9 under this subsection, the Attorney Gen-  
10 eral shall notify the Speaker and Minority  
11 Leader of the House of Representatives  
12 and the Majority Leader and Minority  
13 Leader of the Senate, and the members of  
14 the relevant committees of the House of  
15 Representatives and the Senate, in writing,  
16 of the intent to designate a group or asso-  
17 ciation under this subsection, together with  
18 the findings made under paragraph (1)  
19 with respect to that group or association,  
20 and the factual basis therefor.

21 “(ii) PUBLICATION IN FEDERAL REG-  
22 ISTER.—The Attorney shall publish the  
23 designation in the Federal Register seven  
24 days after providing the notification under  
25 clause (i).

1 “(B) EFFECT OF DESIGNATION.—

2 “(i) A designation under this sub-  
3 section shall take effect upon publication  
4 under subparagraph (A)(ii).

5 “(ii) Any designation under this sub-  
6 section shall cease to have effect upon an  
7 Act of Congress disapproving such des-  
8 ignation.

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

12 “(4) PERIOD OF DESIGNATION.—

13 “(A) IN GENERAL.—A designation under  
14 this subsection shall be effective for all purposes  
15 until revoked under paragraph (5) or (6) or set  
16 aside pursuant to subsection (b).

17 “(B) REVIEW OF DESIGNATION UPON PE-  
18 TITION.—

19 “(i) IN GENERAL.—The Attorney  
20 General shall review the designation of a  
21 criminal street gang under the procedures  
22 set forth in clauses (iii) and (iv) if the des-  
23 ignated gang or association files a petition  
24 for revocation within the petition period  
25 described in clause (ii).

1           “(ii) PETITION PERIOD.—For pur-  
2 poses of clause (i)—

3           “(I) if the designated gang or as-  
4 sociation has not previously filed a pe-  
5 tition for revocation under this sub-  
6 paragraph, the petition period begins  
7 2 years after the date on which the  
8 designation was made; or

9           “(II) if the designated gang or  
10 association has previously filed a peti-  
11 tion for revocation under this sub-  
12 paragraph, the petition period begins  
13 2 years after the date of the deter-  
14 mination made under clause (iv) on  
15 that petition.

16           “(iii) PROCEDURES.—Any criminal  
17 street gang that submits a petition for rev-  
18 ocation under this subparagraph must pro-  
19 vide evidence in that petition that the rel-  
20 evant circumstances described in para-  
21 graph (1) are sufficiently different from  
22 the circumstances that were the basis for  
23 the designation such that a revocation with  
24 respect to the gang is warranted.

25           “(iv) DETERMINATION.—

1           “(I) IN GENERAL.—Not later  
2 than 180 days after receiving a peti-  
3 tion for revocation submitted under  
4 this subparagraph, the Attorney Gen-  
5 eral shall make a determination as to  
6 such revocation.

7           “(II) PUBLICATION OF DETER-  
8 MINATION.—A determination made by  
9 the Attorney General under this  
10 clause shall be published in the Fed-  
11 eral Register.

12           “(III) PROCEDURES.—Any rev-  
13 ocation by the Attorney General shall  
14 be made in accordance with para-  
15 graph (6).

16           “(C) OTHER REVIEW OF DESIGNATION.—

17           “(i) IN GENERAL.—If in a 5-year pe-  
18 riod no review has taken place under sub-  
19 paragraph (B), the Attorney General shall  
20 review the designation of the criminal  
21 street gang in order to determine whether  
22 such designation should be revoked pursu-  
23 ant to paragraph (6).

24           “(ii) PROCEDURES.—If a review does  
25 not take place pursuant to subparagraph

1 (B) in response to a petition for revocation  
2 that is filed in accordance with that sub-  
3 paragraph, then the review shall be con-  
4 ducted pursuant to procedures established  
5 by the Attorney General. The results of  
6 such review and the applicable procedures  
7 shall not be reviewable in any court.

8 “(iii) PUBLICATION OF RESULTS OF  
9 REVIEW.—The Attorney General shall pub-  
10 lish any determination made pursuant to  
11 this subparagraph in the Federal Register.

12 “(5) REVOCATION BY ACT OF CONGRESS.—The  
13 Congress, by an Act of Congress, may block or re-  
14 voke a designation made under paragraph (1).

15 “(6) REVOCATION BASED ON CHANGE IN CIR-  
16 CUMSTANCES.—

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



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

7           “(7) EFFECT OF REVOCATION.—The revocation  
8           of a designation under paragraph (5) or (6) shall  
9           not affect any action or proceeding based on conduct  
10          committed prior to the effective date of such revoca-  
11          tion.

12          “(8) USE OF DESIGNATION IN HEARING.—If a  
13          designation under this subsection has become effec-  
14          tive under paragraph (2)(B) an alien in a removal  
15          proceeding shall not be permitted to raise any ques-  
16          tion concerning the validity of the issuance of such  
17          designation as a defense or an objection at any hear-  
18          ing.

19          “(b) JUDICIAL REVIEW OF DESIGNATION.—

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

1           “(2) BASIS OF REVIEW.—Review under this  
2 subsection shall be based solely upon the administra-  
3 tive record.

4           “(3) SCOPE OF REVIEW.—The Court shall hold  
5 unlawful and set aside a designation the court finds  
6 to be—

7                   “(A) arbitrary, capricious, an abuse of dis-  
8 cretion, or otherwise not in accordance with  
9 law;

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

12                   “(C) in excess of statutory jurisdiction, au-  
13 thority, or limitation, or short of statutory  
14 right;

15                   “(D) lacking substantial support in the ad-  
16 ministrative record taken as a whole; or

17                   “(E) not in accord with the procedures re-  
18 quired by law.

19           “(4) JUDICIAL REVIEW INVOKED.—The pend-  
20 ency of an action for judicial review of a designation  
21 shall not affect the application of this section, unless  
22 the court issues a final order setting aside the des-  
23 ignation.

24           “(c) RELEVANT COMMITTEE DEFINED.—As used in  
25 this section, the term ‘relevant committees’ means the

1 Committees on the Judiciary of the House of Representa-  
2 tives and of the Senate.”.

3 (2) CLERICAL AMENDMENT.—The table of con-  
4 tents of such Act (8 U.S.C. 1101 et seq.) is amend-  
5 ed by inserting after the item relating to section 219  
6 the following:

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

7 (d) MANDATORY DETENTION OF CRIMINAL STREET  
8 GANG MEMBERS.—

9 (1) IN GENERAL.—Section 236(c)(1)(D) of the  
10 Immigration and Nationality Act (8 U.S.C.  
11 1226(c)(1)(D)) is amended—

12 (A) by inserting “or 212(a)(2)(M)” after  
13 “212(a)(3)(B)”; and

14 (B) by inserting “or 237(a)(2)(F)” before  
15 “237(a)(4)(B)”.

16 (2) ANNUAL REPORT.—Not later than March 1  
17 of each year (beginning 1 year after the date of the  
18 enactment of this Act), the Secretary of Homeland  
19 Security, after consultation with the appropriate  
20 Federal agencies, shall submit a report to the Com-  
21 mittees on the Judiciary of the House of Represent-  
22 atives and of the Senate on the number of aliens de-  
23 tained under the amendments made by paragraph  
24 (1).

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

5           (e) INELIGIBILITY OF ALIEN STREET GANG MEM-  
6           BERS FROM PROTECTION FROM REMOVAL AND ASY-  
7           LUM.—

8           (1) INAPPLICABILITY OF RESTRICTION ON RE-  
9           MOVAL TO CERTAIN COUNTRIES.—Section  
10          241(b)(3)(B) of the Immigration and Nationality  
11          Act (8 U.S.C. 1251(b)(3)(B)) is amended, in the  
12          matter preceding clause (i), by inserting “who is de-  
13          scribed in section 212(a)(2)(M)(i) or section  
14          237(a)(2)(F)(i) or who is” after “to an alien”.

15          (2) INELIGIBILITY FOR ASYLUM.—Section  
16          208(b)(2)(A) of such Act (8 U.S.C. 1158(b)(2)(A))  
17          is amended—

18                 (A) in clause (v), by striking “or” at the  
19                 end;

20                 (B) by redesignating clause (vi) as clause  
21                 (vii); and

22                 (C) by inserting after clause (v) the fol-  
23                 lowing:

24                         “(vi) the alien is described in section  
25                         212(a)(2)(M)(i) or section 237(a)(2)(F)(i)

1 (relating to participation in criminal street  
2 gangs); or”.

3 (3) DENIAL OF REVIEW OF DETERMINATION OF  
4 INELIGIBILITY FOR TEMPORARY PROTECTED STA-  
5 TUS.—Section 244(c)(2) of such Act (8 U.S.C.  
6 1254(c)(2)) is amended by adding at the end the fol-  
7 lowing:

8 “(C) LIMITATION ON JUDICIAL REVIEW.—  
9 There shall be no judicial review of any finding  
10 under subparagraph (B) that an alien is in de-  
11 scribed in section 208(b)(2)(A)(vi).”.

12 (4) EFFECTIVE DATE.—The amendments made  
13 by this subsection are effective on the date of enact-  
14 ment of this Act and shall apply to all applications  
15 pending on or after such date.

16 (f) EFFECTIVE DATE.—Except as otherwise pro-  
17 vided, the amendments made by this section are effective  
18 as of the date of enactment and shall apply to all pending  
19 cases in which no final administrative action has been en-  
20 tered.

21 **SEC. 609. NATURALIZATION REFORM.**

22 (a) BARRING TERRORISTS FROM NATURALIZA-  
23 TION.—Section 316 of the Immigration and Nationality  
24 Act (8 U.S.C. 1427) is amended by adding at the end the  
25 following new subsection:

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

12       (b) CONCURRENT NATURALIZATION AND REMOVAL  
13 PROCEEDINGS.—The last sentence of section 318 of such  
14 Act (8 U.S.C. 1429) is amended—

15           (1) by striking “shall be considered by the At-  
16 torney General” and inserting “shall be considered  
17 by the Secretary of Homeland Security or any  
18 court”;

19           (2) by striking “pursuant to a warrant of arrest  
20 issued under the provisions of this or any other  
21 Act:” and inserting “or other proceeding to deter-  
22 mine the applicant’s inadmissibility or deportability,  
23 or to determine whether the applicant’s lawful per-  
24 manent resident status should be rescinded, regard-  
25 less of when such proceeding was commenced:”; and

1           (3) by striking “upon the Attorney General”  
2           and inserting “upon the Secretary of Homeland Se-  
3           curity”.

4           (c) PENDING DENATURALIZATION OR REMOVAL  
5 PROCEEDINGS.—Section 204(b) of such Act (8 U.S.C.  
6 1154(b)) is amended by adding at the end the following:  
7 “No petition shall be approved pursuant to this section  
8 if there is any administrative or judicial proceeding  
9 (whether civil or criminal) pending against the petitioner  
10 that could (whether directly or indirectly) result in the pe-  
11 titioner’s denaturalization or the loss of the petitioner’s  
12 lawful permanent resident status.”.

13          (d) CONDITIONAL PERMANENT RESIDENTS.—Sec-  
14 tion 216(e) and section 216A(e) of such Act (8 U.S.C.  
15 1186a(e), 1186b(e)) are each amended by inserting before  
16 the period at the end the following: “, if the alien has had  
17 the conditional basis removed under this section”.

18          (e) DISTRICT COURT JURISDICTION.—Section 336(b)  
19 of such Act (8 U.S.C. 1447(b)) is amended to read as  
20 follows:

21           “(b) If there is a failure to render a final administra-  
22 tive decision under section 335 before the end of the 180-  
23 day period after the date on which the Secretary of Home-  
24 land Security completes all examinations and interviews  
25 conducted under such section, as such terms are defined

1 by the Secretary pursuant to regulations, the applicant  
2 may apply to the district court for the district in which  
3 the applicant resides for a hearing on the matter. Such  
4 court shall only have jurisdiction to review the basis for  
5 delay and remand the matter to the Secretary for the Sec-  
6 retary's determination on the application.”.

7 (f) CONFORMING AMENDMENTS.—Section 310(e) of  
8 such Act (8 U.S.C. 1421(e)) is amended—

9 (1) by inserting “, no later than the date that  
10 is 120 days after the Secretary's final determina-  
11 tion” before “seek”; and

12 (2) by striking the second sentence and insert-  
13 ing the following: “The burden shall be upon the pe-  
14 titioner to show that the Secretary's denial of the  
15 application was not supported by facially legitimate  
16 and bona fide reasons. Except in a proceeding under  
17 section 340, notwithstanding any other provision of  
18 law (statutory or nonstatutory), including section  
19 2241 of title 28, United States Code, or any other  
20 habeas corpus provision, and sections 1361 and  
21 1651 of such title, no court shall have jurisdiction  
22 to determine, or to review a determination of the  
23 Secretary made at any time regarding, for purposes  
24 of an application for naturalization, whether an alien  
25 is a person of good moral character, whether an



1 alien understands and is attached to the principles  
2 of the Constitution of the United States, or whether  
3 an alien is well disposed to the good order and hap-  
4 piness of the United States.”.

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

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

14 (a) **IN GENERAL.**—Section 238(b) of the Immigra-  
15 tion and Nationality Act (8 U.S.C. 1228(b)) is amended—

16 (1) in paragraph (1)—

17 (A) by striking “Attorney General” and in-  
18 serting “Secretary of Homeland Security in the  
19 exercise of discretion”; and

20 (B) by striking “set forth in this sub-  
21 section or” and inserting “set forth in this sub-  
22 section, in lieu of removal proceedings under”;

23 (2) in paragraph (3), by striking “paragraph  
24 (1) until 14 calendar days” and inserting “para-  
25 graph (1) or (3) until 7 calendar days”;

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

4           (4) in paragraph (5)—

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

8           (B) by striking “the Attorney General may  
9 grant in the Attorney General’s discretion” and  
10 inserting “the Secretary of Homeland Security  
11 or the Attorney General may grant, in the dis-  
12 cretion of the Secretary or Attorney General, in  
13 any proceeding”;

14           (5) by redesignating paragraphs (3), (4), and  
15 (5) as paragraphs (4), (5), and (6), respectively; and

16           (6) by inserting after paragraph (2) the fol-  
17 lowing new paragraph:

18           “(3) The Secretary of Homeland Security in  
19 the exercise of discretion may determine inadmis-  
20 sibility under section 212(a)(2) (relating to criminal  
21 offenses) and issue an order of removal pursuant to  
22 the procedures set forth in this subsection, in lieu of  
23 removal proceedings under section 240, with respect  
24 to an alien who

25           “(A) has not been admitted or paroled;

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

4           “(C) is not eligible for a waiver of inadmis-  
5           sibility or relief from removal.”.

6           (b) **EFFECTIVE DATE.**—The amendments made by  
7           subsection (a) shall take effect on the date of the enact-  
8           ment of this Act but shall not apply to aliens who are  
9           in removal proceedings under section 240 of the Immigra-  
10          tion and Nationality Act as of such date

11 **SEC. 611. TECHNICAL CORRECTION FOR EFFECTIVE DATE**  
12                           **IN CHANGE IN INADMISSIBILITY FOR TER-**  
13                           **RORISTS UNDER REAL ID ACT.**

14          Effective as if included in the enactment of Public  
15          Law 109–13, section 103(d)(1) of the REAL ID Act of  
16          2005 (division B of such Public Law) is amended by in-  
17          serting “, deportation, and exclusion” after “removal”.

18 **SEC. 612. BAR TO GOOD MORAL CHARACTER.**

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

21                  (1) by inserting after paragraph (1) the fol-  
22          lowing new paragraph:

23                  “(2) one who the Secretary of Homeland Secu-  
24          rity or the Attorney General determines, in the  
25          unreviewable discretion of the Secretary or the At-

1 torney General, to have been at any time an alien  
2 described in section 212(a)(3) or section 237(a)(4),  
3 which determination may be based upon any rel-  
4 evant information or evidence, including classified,  
5 sensitive, or national security information, and which  
6 shall be binding upon any court regardless of the ap-  
7 plicable standard of review;”;

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

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

23 (b) AGGRAVATED FELONY EFFECTIVE DATE.—Sec-  
24 tion 509(b) of the Immigration Act of 1990 (Public Law  
25 101–649), as amended by section 306(a)(7) of the Mis-

1 cellaneous and Technical Immigration and Naturalization  
2 Amendments of 1991 (Public Law 102–232) is amended  
3 to read as follows:

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

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

14 (d) EFFECTIVE DATES.—The amendments made by  
15 subsections (a) and (b) shall take effect on the date of  
16 the enactment of this Act, shall apply to any act that oc-  
17 curred before, on, or after such date, and shall apply to  
18 any application for naturalization or any other benefit or  
19 relief or any other case or matter under the immigration  
20 laws pending on, or filed on or after, such date.

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

23 (a) IN GENERAL.—Section 101(a) of the Immigra-  
24 tion and Nationality Act (8 U.S.C. 1101(a)) is amended—

1           (1) by amending subparagraph (A) of para-  
2 graph (43) to read as follows:

3           “(A) murder, manslaughter, homicide,  
4 rape, or any sexual abuse of a minor, whether  
5 or not the minority of the victim is established  
6 by evidence contained in the record of convic-  
7 tion or by evidence extrinsic to the record of  
8 conviction;” and

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

11 “Any reversal, vacatur, expungement, or modification to  
12 a conviction, sentence, or conviction record that was grant-  
13 ed to ameliorate the consequences of the conviction, sen-  
14 tence, or conviction record, or was granted for rehabilita-  
15 tive purposes, or for failure to advise the alien of the immi-  
16 gration consequences of a guilty plea or a determination  
17 of guilt, shall have no effect on the immigration con-  
18 sequences resulting from the original conviction. The alien  
19 shall have the burden of demonstrating that the reversal,  
20 vacatur, expungement, or modification was not granted to  
21 ameliorate the consequences of the conviction, sentence,  
22 or conviction record, for rehabilitative purposes, or for fail-  
23 ure to advise the alien of the immigration consequences  
24 of a guilty plea or a determination of guilt.”.

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

6 **SEC. 614. DEPORTABILITY FOR CRIMINAL OFFENSES.**

7 (a) IN GENERAL.—Section 237(a)(3)(B) of the Im-  
8 migration and Nationality Act (8 U.S.C. 1227(a)(3)(B))  
9 is amended—

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

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

12 and

13 (3) by inserting after clause (iii) the following

14 new clause:

15 “(iv) of a violation of, or an attempt  
16 or a conspiracy to violate, subsection (a) or  
17 (b) of section 1425 of title 18, United  
18 States Code,”.

19 (b) DEPORTABILITY; CRIMINAL OFFENSES.—Section  
20 237(a)(2) of such Act (8 U.S.C. 1227(a)(2)), as amended  
21 by section 608(b), is amended by adding at the end the  
22 following new subparagraph:

23 “(G) SOCIAL SECURITY AND IDENTIFICA-  
24 TION FRAUD.—Any alien who at any time after  
25 admission is convicted of a violation of (or a

1 conspiracy or attempt to violate) an offense de-  
 2 scribed in section 208 of the Social Security Act  
 3 or section 1028 of title 18, United States Code  
 4 is deportable.”.

5 (c) EFFECTIVE DATE.—The amendments made by  
 6 this section shall apply to any act that occurred before,  
 7 on, or after the date of the enactment of this Act, and  
 8 to all aliens who are required to establish admissibility on  
 9 or after such date and in all removal, deportation, or ex-  
 10 clusion proceedings that are filed, pending, or reopened,  
 11 on or after such date.

## 12 **TITLE VII—EMPLOYMENT** 13 **ELIGIBILITY VERIFICATION**

### 14 **SEC. 701. EMPLOYMENT ELIGIBILITY VERIFICATION SYS-** 15 **TEM.**

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

19 “(7) EMPLOYMENT ELIGIBILITY VERIFICATION  
 20 SYSTEM.—

21 “(A) IN GENERAL.—The Secretary of  
 22 Homeland Security shall establish and admin-  
 23 ister a verification system through which the  
 24 Secretary (or a designee of the Secretary, which  
 25 may be a nongovernmental entity)—



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

7           “(ii) maintains records of the inquir-  
8           ies that were made, of verifications pro-  
9           vided (or not provided), and of the codes  
10          provided to inquirers as evidence of their  
11          compliance with their obligations under  
12          this section.

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

21          “(C) SECONDARY VERIFICATION PROCESS  
22          IN CASE OF TENTATIVE NONVERIFICATION.—In  
23          cases of tentative nonverification, the Secretary  
24          shall specify, in consultation with the Commis-  
25          sioner of Social Security, an available secondary

1 verification process to confirm the validity of in-  
2 formation provided and to provide a final  
3 verification or nonverification within 10 working  
4 days after the date of the tentative  
5 nonverification. When final verification or  
6 nonverification is provided, the verification sys-  
7 tem shall provide an appropriate code indicating  
8 such verification or nonverification.

9 “(D) DESIGN AND OPERATION OF SYS-  
10 TEM.—The verification system shall be designed  
11 and operated—

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

17 “(ii) to respond to all inquiries made  
18 by such persons and entities on whether  
19 individuals are authorized to be employed  
20 and to register all times when such inquir-  
21 ies are not received;

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

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

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

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

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

15           “(E) RESPONSIBILITIES OF THE COMMIS-  
16           SIONER OF SOCIAL SECURITY.—As part of the  
17           verification system, the Commissioner of Social  
18           Security, in consultation with the Secretary of  
19           Homeland Security (and any designee of the  
20           Secretary selected to establish and administer  
21           the verification system), shall establish a reli-  
22           able, secure method, which, within the time pe-  
23           riods specified under subparagraphs (B) and  
24           (C), compares the name and social security ac-  
25           count number provided in an inquiry against

1 such information maintained by the Commis-  
2 sioner in order to validate (or not validate) the  
3 information provided regarding an individual  
4 whose identity and employment eligibility must  
5 be confirmed, the correspondence of the name  
6 and number, and whether the individual has  
7 presented a social security account number that  
8 is not valid for employment. The Commissioner  
9 shall not disclose or release social security infor-  
10 mation (other than such verification or  
11 nonverification) except as provided for in this  
12 section or section 205(c)(2)(I) of the Social Se-  
13 curity Act.

14 “(F) RESPONSIBILITIES OF THE SEC-  
15 RETARY OF HOMELAND SECURITY.—(i) As part  
16 of the verification system, the Secretary of  
17 Homeland Security (in consultation with any  
18 designee of the Secretary selected to establish  
19 and administer the verification system), shall  
20 establish a reliable, secure method, which, with-  
21 in the time periods specified under subpara-  
22 graphs (B) and (C), compares the name and  
23 alien identification or authorization number  
24 which are provided in an inquiry against such  
25 information maintained by the Secretary in

1 order to validate (or not validate) the informa-  
2 tion provided, the correspondence of the name  
3 and number, and whether the alien is author-  
4 ized to be employed in the United States.

5 “(ii) When a single employer has sub-  
6 mitted to the verification system pursuant to  
7 paragraph (3)(A) the identical social security  
8 account number in more than one instance, or  
9 when multiple employers have submitted to the  
10 verification system pursuant to such paragraph  
11 the identical social security account number, in  
12 a manner which indicates the possible fraudu-  
13 lent use of that number, the Secretary of  
14 Homeland Security shall conduct an investiga-  
15 tion in order to ensure that no fraudulent use  
16 of a social security account number has taken  
17 place. If the Secretary has selected a designee  
18 to establish and administer the verification sys-  
19 tem, the designee shall notify the Secretary  
20 when a single employer has submitted to the  
21 verification system pursuant to paragraph  
22 (3)(A) the identical social security account  
23 number in more than one instance, or when  
24 multiple employers have submitted to the  
25 verification system pursuant to such paragraph

1 the identical social security account number, in  
2 a manner which indicates the possible fraudu-  
3 lent use of that number. The designee shall also  
4 provide the Secretary with all pertinent infor-  
5 mation, including the name and address of the  
6 employer or employers who submitted the rel-  
7 evant social security account number, the rel-  
8 evant social security account number submitted  
9 by the employer or employers, and the relevant  
10 name and date of birth of the employee sub-  
11 mitted by the employer or employers.

12 “(G) UPDATING INFORMATION.—The  
13 Commissioner of Social Security and the Sec-  
14 retary of Homeland Security shall update their  
15 information in a manner that promotes the  
16 maximum accuracy and shall provide a process  
17 for the prompt correction of erroneous informa-  
18 tion, including instances in which it is brought  
19 to their attention in the secondary verification  
20 process described in subparagraph (C).

21 “(H) LIMITATION ON USE OF THE  
22 VERIFICATION SYSTEM AND ANY RELATED SYS-  
23 TEMS.—

24 “(i) IN GENERAL.—Notwithstanding  
25 any other provision of law, nothing in this

1 paragraph shall be construed to permit or  
2 allow any department, bureau, or other  
3 agency of the United States Government to  
4 utilize any information, data base, or other  
5 records assembled under this paragraph  
6 for any other purpose other than as pro-  
7 vided for.

8 “(ii) NO NATIONAL IDENTIFICATION  
9 CARD.—Nothing in this paragraph shall be  
10 construed to authorize, directly or indi-  
11 rectly, the issuance or use of national iden-  
12 tification cards or the establishment of a  
13 national identification card.

14 “(I) FEDERAL TORT CLAIMS ACT.—If an  
15 individual alleges that the individual would not  
16 have been dismissed from a job but for an error  
17 of the verification mechanism, the individual  
18 may seek compensation only through the mech-  
19 anism of the Federal Tort Claims Act, and in-  
20 junctive relief to correct such error. No class  
21 action may be brought under this subpara-  
22 graph.

23 “(J) PROTECTION FROM LIABILITY FOR  
24 ACTIONS TAKEN ON THE BASIS OF INFORMA-  
25 TION.—No person or entity shall be civilly or

1 criminally liable for any action taken in good  
2 faith reliance on information provided through  
3 the employment eligibility verification mecha-  
4 nism established under this paragraph.”.

5 (b) REPEAL OF PROVISION RELATING TO EVALUA-  
6 TIONS AND CHANGES IN EMPLOYMENT VERIFICATION.—

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

8 **SEC. 702. EMPLOYMENT ELIGIBILITY VERIFICATION PROC-**  
9 **ESS.**

10 Section 274A of the Immigration and Nationality Act  
11 (8 U.S.C. 1324a) is amended—

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

15 “(B) FAILURE TO SEEK AND OBTAIN  
16 VERIFICATION.—In the case of a person or entity in  
17 the United States that hires, or continues to employ,  
18 an individual, or recruits or refers an individual for  
19 employment, the following requirements apply:

20 “(i) FAILURE TO SEEK VERIFICATION.—

21 “(I) IN GENERAL.—If the person or  
22 entity has not made an inquiry, under the  
23 mechanism established under subsection  
24 (b)(7), seeking verification of the identity  
25 and work eligibility of the individual, by



1 not later than the end of 3 working days  
2 (as specified by the Secretary of Homeland  
3 Security) after the date of the hiring, the  
4 date specified in subsection (b)(8)(B) for  
5 previously hired individuals, or before the  
6 recruiting or referring commences, the de-  
7 fense under subparagraph (A) shall not be  
8 considered to apply with respect to any  
9 employment, except as provided in sub-  
10 clause (II).

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

23 “(ii) FAILURE TO OBTAIN  
24 VERIFICATION.—If the person or entity has  
25 made the inquiry described in clause (i)(I) but

1 has not received an appropriate verification of  
2 such identity and work eligibility under such  
3 mechanism within the time period specified  
4 under subsection (b)(7)(B) after the time the  
5 verification inquiry was received, the defense  
6 under subparagraph (A) shall not be considered  
7 to apply with respect to any employment after  
8 the end of such time period.”;

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

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

16 “(i) obtaining from the individual the  
17 individual’s social security account number  
18 and recording the number on the form (if  
19 the individual claims to have been issued  
20 such a number), and, if the individual does  
21 not attest to United States citizenship  
22 under paragraph (2), obtaining such iden-  
23 tification or authorization number estab-  
24 lished by the Department of Homeland Se-  
25 curity for the alien as the Secretary of

1 Homeland Security may specify, and re-  
2 cording such number on the form; and

3 “(ii)(I) examining a document de-  
4 scribed in subparagraph (B); or (II) exam-  
5 ining a document described in subpara-  
6 graph (C) and a document described in  
7 subparagraph (D).

8 A person or entity has complied with the re-  
9 quirement of this paragraph with respect to ex-  
10 amination of a document if the document rea-  
11 sonably appears on its face to be genuine, rea-  
12 sonably appears to pertain to the individual  
13 whose identity and work eligibility is being  
14 verified, and, if the document bears an expira-  
15 tion date, that expiration date has not elapsed.  
16 If an individual provides a document (or com-  
17 bination of documents) that reasonably appears  
18 on its face to be genuine, reasonably appears to  
19 pertain to the individual whose identity and  
20 work eligibility is being verified, and is suffi-  
21 cient to meet the first sentence of this para-  
22 graph, nothing in this paragraph shall be con-  
23 strued as requiring the person or entity to so-  
24 licit the production of any other document or as

1           requiring the individual to produce another doc-  
2           ument.”;

3           (3) in subsection (b)(1)(D)—

4                 (A) in clause (i), by striking “or such other  
5           personal identification information relating to  
6           the individual as the Secretary finds, by regula-  
7           tion, sufficient for purposes of this section”;  
8           and

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

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

21           (5) by amending paragraph (3) of subsection  
22           (b) to read as follows:

23                 “(3) RETENTION OF VERIFICATION FORM AND  
24           VERIFICATION.—

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

4           “(i) retain the form and make it avail-  
5 able for inspection by officers of the De-  
6 partment of Homeland Security, the Spe-  
7 cial Counsel for Immigration-Related Un-  
8 fair Employment Practices, or the Depart-  
9 ment of Labor during a period beginning  
10 on the date of the hiring, recruiting, or re-  
11 ferral of the individual or the date of the  
12 completion of verification of a previously  
13 hired individual and ending—

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

18           “(II) in the case of the hiring of  
19 an individual, the later of—

20           “(aa) three years after the  
21 date of such hiring; or

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

1                   “(III) in the case of the  
2 verification of a previously hired indi-  
3 vidual, the later of—

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

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

10                  “(ii) make an inquiry, as provided in  
11 paragraph (7), using the verification sys-  
12 tem to seek verification of the identity and  
13 employment eligibility of an individual, by  
14 not later than the end of 3 working days  
15 (as specified by the Secretary of Homeland  
16 Security) after the date of the hiring or in  
17 the case of previously hired individuals, the  
18 date specified in subsection (b)(8)(B), or  
19 before the recruiting or referring com-  
20 mences; and

21                  “(iii) may not commence recruitment  
22 or referral of the individual until the per-  
23 son or entity receives verification under  
24 subparagraph (B)(i) or (B)(iii).

25                  “(B) VERIFICATION.—

1           “(i) VERIFICATION RECEIVED.—If the  
2 person or other entity receives an appro-  
3 priate verification of an individual’s iden-  
4 tity and work eligibility under the  
5 verification system within the time period  
6 specified, the person or entity shall record  
7 on the form an appropriate code that is  
8 provided under the system and that indi-  
9 cates a final verification of such identity  
10 and work eligibility of the individual.

11           “(ii) TENTATIVE NONVERIFICATION  
12 RECEIVED.—If the person or other entity  
13 receives a tentative nonverification of an  
14 individual’s identity or work eligibility  
15 under the verification system within the  
16 time period specified, the person or entity  
17 shall so inform the individual for whom the  
18 verification is sought. If the individual does  
19 not contest the nonverification within the  
20 time period specified, the nonverification  
21 shall be considered final. The person or en-  
22 tity shall then record on the form an ap-  
23 propriate code which has been provided  
24 under the system to indicate a tentative  
25 nonverification. If the individual does con-

1 test the nonverification, the individual shall  
2 utilize the process for secondary  
3 verification provided under paragraph (7).  
4 The nonverification will remain tentative  
5 until a final verification or nonverification  
6 is provided by the verification system with-  
7 in the time period specified. In no case  
8 shall an employer terminate employment of  
9 an individual because of a failure of the in-  
10 dividual to have identity and work eligi-  
11 bility confirmed under this section until a  
12 nonverification becomes final. Nothing in  
13 this clause shall apply to a termination of  
14 employment for any reason other than be-  
15 cause of such a failure.

16 “(iii) FINAL VERIFICATION OR  
17 NONVERIFICATION RECEIVED.—If a final  
18 verification or nonverification is provided  
19 by the verification system regarding an in-  
20 dividual, the person or entity shall record  
21 on the form an appropriate code that is  
22 provided under the system and that indi-  
23 cates a verification or nonverification of  
24 identity and work eligibility of the indi-  
25 vidual.



1           “(iv) EXTENSION OF TIME.—If the  
2 person or other entity in good faith at-  
3 tempts to make an inquiry during the time  
4 period specified and the verification system  
5 has registered that not all inquiries were  
6 received during such time, the person or  
7 entity may make an inquiry in the first  
8 subsequent working day in which the  
9 verification system registers that it has re-  
10 ceived all inquiries. If the verification sys-  
11 tem cannot receive inquiries at all times  
12 during a day, the person or entity merely  
13 has to assert that the entity attempted to  
14 make the inquiry on that day for the pre-  
15 vious sentence to apply to such an inquiry,  
16 and does not have to provide any addi-  
17 tional proof concerning such inquiry.

18           “(v) CONSEQUENCES OF  
19 NONVERIFICATION.—

20           “(I) TERMINATION OR NOTIFICA-  
21 TION OF CONTINUED EMPLOYMENT.—

22 If the person or other entity has re-  
23 ceived a final nonverification regard-  
24 ing an individual, the person or entity  
25 may terminate employment of the in-

1           dividual (or decline to recruit or refer  
2           the individual). If the person or entity  
3           does not terminate employment of the  
4           individual or proceeds to recruit or  
5           refer the individual, the person or en-  
6           tity shall notify the Secretary of  
7           Homeland Security of such fact  
8           through the verification system or in  
9           such other manner as the Secretary  
10          may specify.

11                   “(II) FAILURE TO NOTIFY.—If  
12           the person or entity fails to provide  
13           notice with respect to an individual as  
14           required under subclause (I), the fail-  
15           ure is deemed to constitute a violation  
16           of subsection (a)(1)(A) with respect to  
17           that individual.

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

1 **SEC. 703. EXPANSION OF EMPLOYMENT ELIGIBILITY**  
2 **VERIFICATION SYSTEM TO PREVIOUSLY**  
3 **HIRED INDIVIDUALS AND RECRUITING AND**  
4 **REFERRING.**

5 (a) APPLICATION TO RECRUITING AND REFER-  
6 RING.—Section 274A of the Immigration and Nationality  
7 Act (8 U.S.C. 1324a) is amended—

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

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

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

16 (3) in subsection (a)(2) by striking “after hir-  
17 ing an alien for employment in accordance with  
18 paragraph (1),” and inserting “after complying with  
19 paragraph (1),”; and

20 (4) in subsection (a)(3), as amended by section  
21 702, is further amended by striking “hiring” and in-  
22 serting “hiring, employing,” each place it appears.

23 (b) EMPLOYMENT ELIGIBILITY VERIFICATION FOR  
24 PREVIOUSLY HIRED INDIVIDUALS.—Section 274A(b) of  
25 such Act (8 U.S.C. 1324a(b)), as amended by section

1 701(a), is amended by adding at the end the following new  
2 paragraph:

3           “(8) USE OF EMPLOYMENT ELIGIBILITY  
4 VERIFICATION SYSTEM FOR PREVIOUSLY HIRED IN-  
5 DIVIDUALS.—

6           “(A) ON A VOLUNTARY BASIS.—Beginning  
7 on the date that is 2 years after the date of the  
8 enactment of the Border Protection,  
9 Antiterrorism, and Illegal Immigration Control  
10 Act of 2005 and until the date specified in sub-  
11 paragraph (B)(iii), a person or entity may make  
12 an inquiry, as provided in paragraph (7), using  
13 the verification system to seek verification of  
14 the identity and employment eligibility of any  
15 individual employed by the person or entity, as  
16 long as it is done on a nondiscriminatory basis.

17           “(B) ON A MANDATORY BASIS.—

18           “(i) A person or entity described in  
19 clause (ii) must make an inquiry as pro-  
20 vided in paragraph (7), using the  
21 verification system to seek verification of  
22 the identity and employment eligibility of  
23 all individuals employed by the person or  
24 entity who have not been previously subject  
25 to an inquiry by the person or entity by

1 the date three years after the date of en-  
2 actment of the Border Protection,  
3 Antiterrorism, and Illegal Immigration  
4 Control Act of 2005.

5 “(ii) A person or entity is described in  
6 this clause if it is a Federal, State, or local  
7 governmental body (including the Armed  
8 Forces of the United States), or if it em-  
9 ploys individuals working in a location that  
10 is a Federal, State, or local government  
11 building, a military base, a nuclear energy  
12 site, a weapon site, an airport, or that con-  
13 tains critical infrastructure (as defined in  
14 section 1016(e) of the Critical Infrastruc-  
15 ture Protection Act of 2001 (42 U.S.C.  
16 5195c(e))), but only to the extent of such  
17 individuals.

18 “(iii) All persons and entities other  
19 than those described in clause (ii) must  
20 make an inquiry, as provided in paragraph  
21 (7), using the verification system to seek  
22 verification of the identity and employment  
23 eligibility of all individuals employed by the  
24 person or entity who have not been pre-  
25 viously subject to an inquiry by the person

1 or entity by the date six years after the  
2 date of enactment of the Border Protec-  
3 tion, Antiterrorism, and Illegal Immigra-  
4 tion Control Act of 2005.”.

5 **SEC. 704. BASIC PILOT PROGRAM.**

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

13 **SEC. 705. HIRING HALLS.**

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

17 “(4) DEFINITION OF RECRUIT OR REFER.—As  
18 used in this section, the term ‘refer’ means the act  
19 of sending or directing a person or transmitting doc-  
20 umentation or information to another, directly or in-  
21 directly, with the intent of obtaining employment in  
22 the United States for such person. Generally, only  
23 persons or entities referring for remuneration  
24 (whether on a retainer or contingency basis) are in-  
25 cluded in the definition. However, union hiring halls

1 that refer union members or nonunion individuals  
2 who pay union membership dues are included in the  
3 definition whether or not they receive remuneration,  
4 as are labor service agencies, whether public, private,  
5 for-profit, or nonprofit, that refer, dispatch, or oth-  
6 erwise facilitate the hiring of laborers for any period  
7 of time by a third party. As used in this section the  
8 term ‘recruit’ means the act of soliciting a person,  
9 directly or indirectly, and referring the person to an-  
10 other with the intent of obtaining employment for  
11 that person. Generally, only persons or entities re-  
12 cruiting for remunerations (whether on a retainer or  
13 contingency basis) are included in the definition.  
14 However, union hiring halls that refer union mem-  
15 bers or nonunion individuals who pay union member-  
16 ship dues are included in this definition whether or  
17 not they receive remuneration, as are labor service  
18 agencies, whether public, private, for-profit, or non-  
19 profit that recruit, dispatch, or otherwise facilitate  
20 the hiring of laborers for any period of time by a  
21 third party.”.

22 **SEC. 706. PENALTIES.**

23 Section 274A of the Immigration and Nationality Act  
24 (8 U.S.C. 1324a) is amended—

25 (1) in subsection (e)(4)—

1 (A) in subparagraph (A), in the matter be-  
2 fore clause (i), by inserting “, subject to para-  
3 graph (10),” after “in an amount”;

4 (B) in subparagraph (A)(i), by striking  
5 “not less than \$250 and not more than  
6 \$2,000” and inserting “not less than \$5,000”;

7 (C) in subparagraph (A)(ii), by striking  
8 “not less than \$2,000 and not more than  
9 \$5,000” and inserting “not less than \$10,000”;

10 (D) in subparagraph (A)(iii), by striking  
11 “not less than \$3,000 and not more than  
12 \$10,000” and inserting “not less than  
13 \$25,000”; and

14 (E) by amending subparagraph (B) to read  
15 as follows:

16 “(B) may require the person or entity to  
17 take such other remedial action as is appro-  
18 priate.”;

19 (2) in subsection (e)(5)—

20 (A) by inserting “, subject to paragraph  
21 (10),” after “in an amount”;

22 (B) by striking “\$100” and inserting  
23 “\$1,000”;

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



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

5 (E) by adding at the end the following sen-  
6 tence: “Failure by a person or entity to utilize  
7 the employment eligibility verification system as  
8 required by law, or providing information to the  
9 system that the person or entity knows or rea-  
10 sonably believes to be false, shall be treated as  
11 a violation of subsection (a)(1)(A).”;

12 (3) by adding at the end of subsection (e) the  
13 following new paragraph:

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

24 “(A) In the case of an employer with an  
25 average of fewer than 26 full-time equivalent

1 employees (as defined by the Secretary of  
2 Homeland Security), the amounts shall be re-  
3 duced by 60 percent.

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

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

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

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

17 “(1) CRIMINAL PENALTY.—Any person or enti-  
18 ty which engages in a pattern or practice of viola-  
19 tions of subsection (a)(1) or (2) shall be fined not  
20 more than \$50,000 for each unauthorized alien with  
21 respect to which such a violation occurs, imprisoned  
22 for not less than one year, or both, notwithstanding  
23 the provisions of any other Federal law relating to  
24 fine levels.”; and

1           (5) in subsection (f)(2), by striking “Attorney  
2           General” each place it appears and inserting “Sec-  
3           retary of Homeland Security”.

4 **SEC. 707. REPORT ON SOCIAL SECURITY CARD-BASED EM-**  
5 **PLOYMENT ELIGIBILITY VERIFICATION.**

6           (a) REPORT.—

7           (1) IN GENERAL.—Not later than than 9  
8           months after the date of the enactment of this Act,  
9           the Commissioner of Social Security, in consultation  
10          with the Secretary of Treasury, the Secretary of  
11          Homeland Security, and the Attorney General, shall  
12          submit a report to Congress that includes an evalua-  
13          tion of the following requirements and changes:

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

22                         (i) is authorized to be employed in the  
23                         United States;

24                         (ii) is seeking employment in the  
25                         United States; and

1 (iii) files an application for such card,  
2 whether as a replacement of an existing so-  
3 cial security card or as a card issued in  
4 connection with the issuance of a new so-  
5 cial security account number.

6 (B) The creation of a unified database to  
7 be maintained by the Department of Homeland  
8 Security and comprised of data from the Social  
9 Security Administration and the Department of  
10 Homeland Security specifying the work author-  
11 ization of individuals (including both United  
12 States citizens and noncitizens) for the purpose  
13 of conducting employment eligibility  
14 verification.

15 (C) A requirement that all employers verify  
16 the employment eligibility of all new hires using  
17 the social security cards described in subpara-  
18 graph (A) and a phone, electronic card-reading,  
19 or other mechanism to seek verification of em-  
20 ployment eligibility through the use of the uni-  
21 fied database described in subparagraph (B).

22 (2) ITEMS INCLUDED IN REPORT.—The report  
23 under paragraph (1) shall include an evaluation of  
24 each of the following:

1 (A) Projected cost, including the cost to  
2 the Federal government, State and local govern-  
3 ments, and the private sector.

4 (B) Administrability.

5 (C) Potential effects on—

6 (i) employers;

7 (ii) employees, including employees  
8 who are United States citizens as well as  
9 those that are not citizens;

10 (iii) tax revenue; and

11 (iv) privacy.

12 (D) The extent to which employer and em-  
13 ployee compliance with immigration laws would  
14 be expected to improve.

15 (E) Any other relevant information.

16 (3) ALTERNATIVES.—The report under para-  
17 graph (1) also shall examine any alternatives to  
18 achieve the same goals as the requirements and  
19 changes described in paragraph (1) but that involve  
20 lesser cost, lesser burden on those affected, or great-  
21 er ease of administration.

22 (b) INSPECTOR GENERAL REVIEW.—Not later than  
23 3 months after the report is submitted under subsection  
24 (a), the Inspector General of the Social Security Adminis-  
25 tration, in consultation with the Inspectors General of the

1 Department of Treasury, the Department of Homeland  
2 Security, and the Department of Justice, shall send to the  
3 Congress an evaluation of the such report.

4 **SEC. 708. EFFECTIVE DATE.**

5 This title and the amendments made by this title  
6 shall take effect on the date of enactment of this Act, ex-  
7 cept that the requirements of persons and entities to com-  
8 ply with the employment eligibility verification process  
9 takes effect on the date that is two years after such date.

10 **TITLE VIII—IMMIGRATION**  
11 **LITIGATION ABUSE REDUCTION**

12 **SEC. 801. BOARD OF IMMIGRATION APPEALS REMOVAL**  
13 **ORDER AUTHORITY.**

14 (a) IN GENERAL.—Section 101(a)(47) of the Immi-  
15 gration and Nationality Act (8 U.S.C. 1101(a)(47)) is  
16 amended to read as follows:

17 “(47)(A) The term ‘order of removal’ means the  
18 order of the immigration judge, the Board of Immigration  
19 Appeals, or other administrative officer to whom the At-  
20 torney General or the Secretary of Homeland Security has  
21 delegated the responsibility for determining whether an  
22 alien is removable, concluding that the alien is removable  
23 or ordering removal.

24 “(B) The order described under subparagraph (A)  
25 shall become final upon the earliest of—

1           “(i) a determination by the Board of Immigra-  
2           tion Appeals affirming such order;

3           “(ii) the entry by the Board of Immigration Ap-  
4           peals of such order;

5           “(iii) the expiration of the period in which any  
6           party is permitted to seek review of such order by  
7           the Board of Immigration Appeals;

8           “(iv) the entry by an immigration judge of such  
9           order, if appeal is waived by all parties; or

10          “(v) the entry by another administrative officer  
11          of such order, at the conclusion of a process as au-  
12          thorized by law other than under section 240.”.

13          (b) **EFFECTIVE DATE.**—The amendment made by  
14          subsection (a) shall take effect on the date of the enact-  
15          ment of this Act and shall apply to ordered entered before,  
16          on, or after such date.

17          **SEC. 802. JUDICIAL REVIEW OF VISA REVOCATION.**

18          (a) **IN GENERAL.**—Section 221(i) of the Immigration  
19          and Nationality Act (8 U.S.C. 1201(i)) is amended by  
20          amending the last sentence to read as follows: “Notwith-  
21          standing any other provision of law (statutory or non-  
22          statutory), including section 2241 of title 28, United  
23          States Code, or any other habeas corpus provision, and  
24          sections 1361 and 1651 of such title, a revocation under  
25          this subsection may not be reviewed by any court, and no

1 court shall have jurisdiction to hear any claim arising  
2 from, or any challenge to, such a revocation.”.

3 (b) **EFFECTIVE DATE.**—The amendment made by  
4 subsection (a) shall take effect on the date of the enact-  
5 ment of this Act and shall apply to visa revocations ef-  
6 fected before, on, or after such date.

7 **SEC. 803. REINSTATEMENT.**

8 (a) **IN GENERAL.**—Section 241(a)(5) of the Immi-  
9 gration and Nationality Act (8 U.S.C. 1231(a)(5)) is  
10 amended to read as follows:

11 “(5) **REINSTATEMENT OF REMOVAL ORDERS**  
12 **AGAINST ALIENS ILLEGALLY REENTERING.**—If the  
13 Secretary of Homeland Security finds that an alien  
14 has entered the United States illegally after having  
15 been removed or having departed voluntarily, under  
16 an order of removal, deportation, or exclusion, re-  
17 gardless of the date of the original order or the date  
18 of the illegal entry—

19 “(A) the order of removal, deportation, or  
20 exclusion is reinstated from its original date  
21 and is not subject to being reopened or re-  
22 viewed;

23 “(B) the alien is not eligible and may not  
24 apply for any relief under this Act, regardless



1 of the date that an application for such relief  
2 may have been filed; and

3 “(C) the alien shall be removed under the  
4 order of removal, deportation, or exclusion at  
5 any time after the illegal entry.

6 Reinstatement under this paragraph shall not re-  
7 quire proceedings before an immigration judge under  
8 section 240 or otherwise.”.

9 (b) JUDICIAL REVIEW.—Section 242 of the Immigra-  
10 tion and Nationality Act (8 U.S.C. 1252) is amended by  
11 adding at the end the following new subsection:

12 “(h) JUDICIAL REVIEW OF REINSTATEMENT UNDER  
13 SECTION 241(a)(5).—

14 “(1) IN GENERAL.—Notwithstanding any other  
15 provision of law (statutory or nonstatutory), includ-  
16 ing section 2241 of title 28, United States Code, or  
17 any other habeas corpus provision, sections 1361  
18 and 1651 of such title, or subsection (a)(2)(D) of  
19 this section, no court shall have jurisdiction to re-  
20 view any cause or claim arising from or relating to  
21 any reinstatement under section 241(a)(5) (includ-  
22 ing any challenge to the reinstated order), except as  
23 provided in paragraph (2) or (3).

24 “(2) CHALLENGES IN COURT OF APPEALS FOR  
25 DISTRICT OF COLUMBIA TO VALIDITY OF THE SYS-

1       TEM, ITS IMPLEMENTATION, AND RELATED INDI-  
2       VIDUAL DETERMINATIONS.—

3               “(A) IN GENERAL.—Judicial review of de-  
4       terminations under section 241(a)(5) and its  
5       implementation is available in an action insti-  
6       tuted in the United States Court of Appeals for  
7       the District of Columbia Circuit, but shall be  
8       limited, except as provided in subparagraph  
9       (B), to the following determinations:

10               “(i) Whether such section, or any reg-  
11       ulation issued to implement such section, is  
12       constitutional.

13               “(ii) Whether such a regulation, or a  
14       written policy directive, written policy  
15       guideline, or written procedure issued by  
16       or under the authority of the Attorney  
17       General or the Secretary of Homeland Se-  
18       curity to implement such section, is not  
19       consistent with applicable provisions of this  
20       Act or is otherwise in violation of a statute  
21       or the Constitution.

22               “(B) RELATED INDIVIDUAL DETERMINA-  
23       TIONS.—If a person raises an action under sub-  
24       paragraph (A), the person may also raise in the  
25       same action the following issues:

1           “(i) Whether the petitioner is an  
2           alien.

3           “(ii) Whether the petitioner was pre-  
4           viously ordered removed or deported, or ex-  
5           cluded.

6           “(iii) Whether the petitioner has since  
7           illegally entered the United States.

8           “(C) DEADLINES FOR BRINGING AC-  
9           TIONS.—Any action instituted under this para-  
10          graph must be filed no later than 60 days after  
11          the date the challenged section, regulation, di-  
12          rective, guideline, or procedure described in  
13          clause (i) or (ii) of subparagraph (A) is first  
14          implemented.

15          “(3) INDIVIDUAL DETERMINATIONS UNDER  
16          SECTION 242(a).—Judicial review of determinations  
17          under section 241(a)(5) is available in an action  
18          under subsection (a) of this section, but shall be lim-  
19          ited to determinations of—

20                 “(A) whether the petitioner is an alien;

21                 “(B) whether the petitioner was previously  
22                 ordered removed, deported, or excluded; and

23                 “(C) whether the petitioner has since ille-  
24                 gally entered the United States.

1           “(4) SINGLE ACTION.—A person who files an  
2           action under paragraph (2) may not file a separate  
3           action under paragraph (3). A person who files an  
4           action under paragraph (3) may not file an action  
5           under paragraph (2).”.

6           (c) EFFECTIVE DATE.—The amendments made by  
7           subsections (a) and (b) shall take effect as if enacted on  
8           April 1, 1997, and shall apply to all orders reinstated on  
9           or after that date by the Secretary of Homeland Security  
10          (or by the Attorney General prior to March 1, 2003), re-  
11          gardless of the date of the original order.

12          **SEC. 804. WITHHOLDING OF REMOVAL.**

13          (a) IN GENERAL.—Section 241(b)(3) of the Immi-  
14          gration and Nationality Act (8 U.S.C 1231(b)(3)) is  
15          amended—

16                 (1) in subparagraph (A), by adding at the end  
17                 the following: “The burden of proof is on the alien  
18                 to establish that the alien’s life or freedom would be  
19                 threatened in that country, and that race, religion,  
20                 nationality, membership in a particular social group,  
21                 or political opinion would be at least one central rea-  
22                 son for such threat.”; and

23                 (2) in subparagraph (C), by striking “In deter-  
24                 mining whether an alien has demonstrated that the  
25                 alien’s life or freedom would be threatened for a rea-

1 son described in subparagraph (A)” and inserting  
2 “For purposes of this paragraph”

3 (b) **EFFECTIVE DATE.**—The amendments made by  
4 subsection (a) shall take effect as if included in the enact-  
5 ment of section 101(c) of the REAL ID Act of 2005 (divi-  
6 sion B of Public Law 109–13).

7 **SEC. 805. CERTIFICATE OF REVIEWABILITY.**

8 (a) **ALIEN’S BRIEF.**—Section 242(b)(3)(C) of the  
9 Immigration and Nationality Act (8 U.S.C.  
10 1252(b)(3)(C)) is amended to read as follows:

11 “(C) **ALIEN’S BRIEF.**—The alien shall  
12 serve and file a brief in connection with a peti-  
13 tion for judicial review not later than 40 days  
14 after the date on which the administrative  
15 record is available. The court may not extend  
16 this deadline except upon motion for good cause  
17 shown. If an alien fails to file a brief within the  
18 time provided in this paragraph, the court shall  
19 dismiss the appeal unless a manifest injustice  
20 would result.”.

21 (b) **CERTIFICATE OF REVIEWABILITY.**—Section  
22 242(b)(3) of such Act (8 U.S.C. 1252 (b)(3)) is amended  
23 by adding at the end the following new subparagraphs:

24 “(D) **CERTIFICATE .**—

1           “(i) After the alien has filed the  
2 alien’s brief, the petition for review shall be  
3 assigned to a single court of appeals judge.

4           “(ii) Unless that court of appeals  
5 judge or a circuit justice issues a certifi-  
6 cate of reviewability, the petition for review  
7 shall be denied and the government shall  
8 not file a brief.

9           “(iii) A certificate of reviewability may  
10 issue under clause (ii) only if the alien has  
11 made a substantial showing that the peti-  
12 tion for review is likely to be granted.

13           “(iv) The court of appeals judge or  
14 circuit justice shall complete all action on  
15 such certificate, including rendering judg-  
16 ment, not later than 60 days after the date  
17 on which the judge or circuit justice was  
18 assigned the petition for review, unless an  
19 extension is granted under clause (v).

20           “(v) The judge or circuit justice may  
21 grant, on the judge’s or justice’s own mo-  
22 tion or on the motion of a party, an exten-  
23 sion of the 60-day period described in  
24 clause (iv) if—

1           “(I) all parties to the proceeding  
2           agree to such extension; or

3           “(II) such extension is for good  
4           cause shown or in the interests of jus-  
5           tice, and the judge or circuit justice  
6           states the grounds for the extension  
7           with specificity.

8           “(vi) If no certificate of reviewability  
9           is issued before the end of the period de-  
10          scribed in clause (iv), including any exten-  
11          sion under clause (v), the petition for re-  
12          view shall be deemed denied, any stay or  
13          injunction on petitioner’s removal shall be  
14          dissolved without further action by the  
15          court or the government, and the alien  
16          may be removed.

17          “(vii) If a certificate of reviewability is  
18          issued under clause (ii), the Government  
19          shall be afforded an opportunity to file a  
20          brief in response to the alien’s brief. The  
21          alien may serve and file a reply brief not  
22          later than 14 days after service of the Gov-  
23          ernment’s brief, and the court may not ex-  
24          tend this deadline except upon motion for  
25          good cause shown.

1           “(E) NO FURTHER REVIEW OF THE COURT  
2           OF APPEALS JUDGE’S DECISION NOT TO ISSUE  
3           A CERTIFICATE OF REVIEWABILITY.—The sin-  
4           gle court of appeals judge’s decision not to  
5           issue a certificate of reviewability, or the denial  
6           of a petition under subparagraph (D)(vi), shall  
7           be the final decision for the court of appeals  
8           and shall not be reconsidered, reviewed, or re-  
9           versed by the court of appeals through any  
10          mechanism or procedure.”.

11          (c) EFFECTIVE DATE.—The amendments made by  
12 this section shall apply to petitions filed on or after the  
13 date that is 60 days after the date of the enactment of  
14 this Act.

15 **SEC. 806. WAIVER OF RIGHTS IN NONIMMIGRANT VISA**  
16 **ISSUANCE.**

17          (a) IN GENERAL.—Section 221(a) of the Immigra-  
18 tion and Nationality Act (8 U.S.C. 1201(a)) is amended  
19 by adding at the end the following new paragraph:

20           “(3) An alien may not be issued a nonimmigrant visa  
21 unless the alien has waived any right—

22           “(A) to review or appeal under this Act of an  
23 immigration officer’s determination as to the inad-  
24 missibility of the alien at the port of entry into the  
25 United States; or



1           “(B) to contest, other than on the basis of an  
2           application for asylum, any action for removal of the  
3           alien.”.

4           (b) EFFECTIVE DATE.—The amendment made by  
5           subsection (a) shall apply to visas issued on or after the  
6           date that is 90 days after the date of the enactment of  
7           this Act.

○